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PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

SENATE—*Monday, February 27, 1995*

(Legislative day of Wednesday, February 22, 1995)

The Senate met at 12 noon, on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The guest Chaplain, the Reverend Paul Lavin, of St. Joseph's Catholic Church, offered the following prayer:

In Psalm 72 we read:

O God, give your judgment to those who govern. That they may govern your people with justice, That the mountains may yield their bounty for the people, and the hills their great abundance. That they may defend the oppressed among the people, save the poor and crush the oppressor.

Let us pray:

Good and gracious God. You guide and govern everything with order and love.

Look upon the men and women of this U.S. Senate and fill them with Your wisdom.

May these Senators and those who work with them always act in accordance with Your will and may their decisions be for the peace and well-being of our Nation and of all the world. Amen.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for not to extend beyond the hour of 12:30 p.m., with Senators permitted to speak therein for not to exceed 10 minutes each.

Mr. DORGAN addressed the Chair.

The PRESIDENT pro tempore. The Senator from North Dakota is recognized.

THE SCHOOL LUNCH PROGRAM

Mr. DORGAN. Mr. President, we are hearing a great deal these days about something called the Contract With America. It was constructed by the Republican Party prior to the 1994 election and was designed by them to be a road map or a political device by which they could tell the American people what they stand for and what they hoped to accomplish. Some of the contract makes good sense. Some of it continues and retains the same kinds of policies that we on the Democratic side of the aisle have been pushing for some years. But some parts of the contract make no sense at all.

I stand on the Senate floor today to talk about something that soon will come to the floor from the other body as a result of action they took last week. The House Economic and Educational Opportunities Committee passed a bill that repeals the School Lunch Act and replaces it with block grants to the States. It also eliminates the requirement that poor children get free school lunches. And, third, it eliminates Federal nutrition standards.

I say to my friends on the other side of the aisle who constructed this that there is reason for us to differ on some things and that there is room to differ on many issues. We, for example, differ on the subject of whether this country should build star wars. Some say the Contract With America says, "let us—despite the fact that the Soviet Union is gone, vanished, done—build star wars again. Let us spend tens of billions of dollars building a star wars program."

They also say, "let us cut taxes; in fact, let us cut taxes and give the majority of the benefits to the rich." It will reduce the revenue to the Federal Government by three-quarters of a trillion dollars in the next 10 years, if we do what the Contract With America wants us to do on revenues.

So there is room to disagree on these proposals. But there is much more room to disagree on another proposal at a time when some are saying, "let us cut taxes, especially for wealthier Americans, and let us build star wars because we apparently have the money to do that."

There is much more room for disagreement on the notion that we ought to decide at this time in our country's history to repeal the School Lunch Act and to eliminate the requirement that the poor children get free school lunches. I can recall—as I told my colleagues last week—sitting in a hearing one day and hearing a young boy named David Bright from New York City. His family had been down and out, down on their luck. They had no place to live, so they lived in a homeless shelter. He described for us the rats in the homeless shelter, the living conditions, and what it is like for a 9-year-old boy to be hungry in school. What he—this young boy—said to the Hunger Committee when he testified:

> No young boy like me should have to put his head down on his desk at school in the afternoon because it hurts to be hungry.

It was some years ago that young David told us that. But I have not forgotten what he said or how he said it. How many in this Chamber have ever hurt because they were hungry in the afternoon? Not very many, I might say, and probably none. But young children do, if they come from families that are disadvantaged. Young children do when they come from families with no parents. Young children do when they come from homes without money to buy breakfast or nutritious lunches.

This country in its wisdom created national nutrition standards and created the School Hot Lunch Program. It also created another requirement that I am proud of. It is the requirement that says poor children in this country will get free school lunches.

There ought not be anyone in this Chamber and there ought not be anyone who disagrees with the basic assumption that it is our responsibility to give free school lunches to poor children. If we cannot, by looking into the eyes of children, understand the dimensions of a public policy that would withhold food from children who are hungry, what on Earth can we do that is constructive in this body?

I am hoping, when the product—that says in effect that we do not care about

● This "bullet" symbol identifies statements or insertions which are not spoken by a member of the Senate on the floor.

poor children and that there is no national requirement here—is sent to us by the House of Representatives under the Contract With America, that all of us have the willingness to stand here in the Senate and say, we disagree; poor children matter, America's kids matter.

Let me use a couple of quotes just to show you how those who push this Contract With America have changed. In 1982, the current Speaker of the House cosponsored a resolution written by then-Representative Carl D. Perkins that expressed the sense of the Congress "that the Federal Government should retain primary responsibility for the child nutrition programs and such programs should not be included in any block grant."

Well, here we are, turning 180 degrees, running the other direction, saying, Let us just eliminate the requirement. Let us roll it into a block grant. Roll it all together and ship it back to the States so you can have 50 different standards. Maybe one State would say it is not a standard that they care about. Maybe a dozen States would say they do not have the money to feed poor children. Does this country not care about that? I think that is not the case.

I think it would be a tragic mistake for us to decide in this body that what is really important in the Contract With America is to build star wars or to give tax cuts to the wealthiest among us, but it is not important to feed hungry children.

I know that when I go back to my office, I will get calls from someone watching C-SPAN saying that this is not what the contract says. But you had better believe this is what it says, and it is what the House of Representatives is trying to do. If you decide that we should eliminate the national requirement that poor children get free school lunches, then that is exactly what some mean to do.

At least from my standpoint, I hope my colleagues on both sides of the aisle will say that this makes no sense for this country. It ignores America's children and it retreats on a national standard that makes eminently good sense. Children matter. Hungry children must have access to free school lunches. It matters to all of us in this country to see that is done.

This is a fight and a discussion that I am anxious to have in the coming weeks when this bill comes to the Senate, because this proposal is something that we should change.

Mr. President, I yield the floor.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER (Mr. STEVENS). The minority leader is recognized.

CHILD NUTRITION

Mr. DASCHLE. Mr. President, let me commend the distinguished Senator from North Dakota for his eloquent remarks just now and identify with them. The Senator from North Dakota commented about the Contract With America and its ramifications on school children.

What I think some of our colleagues forget is that we have had a contract in this country for a long time with our school children. At the heart of that contract is an understanding about the important role that nutrition plays in educating children today.

Our contract with school children grew out of our experience in World War II, when large numbers of young men were unable to serve in the military because of nutrition-related childhood illnesses.

At the same time, many children were coming to school malnourished, and because of that, they were unable to learn; and because they were unable to learn, they were unable to become productive citizens.

So even back in the 1940's, Americans recognized the direct relationship between nutrition and healthy development and learning. We also recognized that what happens in the lunchroom affects what happens in the classroom.

In 1946 President Truman signed the National School Lunch Act—not as a matter of charity but as a matter of national security.

What an cruel irony it would be, Mr. President, if in order to prevent our children from inheriting a huge debt tomorrow, we would take away their meals today.

Yet that is exactly what some of our colleagues would now have us do.

We cannot allow that to happen. Either way, whether we saddle our children with debt tomorrow or rob them of their lunch today, we are jeopardizing their future, and that is wrong.

Let us learn from history. The strength of our Nation is not measured only by armaments. It is also measured by the health and education of our children.

Talk to the teachers who teach our children. Talk to the men and women who run the school cafeterias and make their lunches. Talk to the parents who depend on those lunches to make sure their children are adequately nourished. They will tell you.

The reality is that a lot of kids, even today, come to school hungry. The reality is that many of them don't get enough to eat at home and, if it weren't for the School Lunch Program, they would be too malnourished to learn.

So, Mr. President, this goes beyond simply a matter of nutrition. If we deprive children of a balanced meal, we risk depriving them of their ability to learn and become productive citizens.

What a terrible mistake it would be if, in our attempts to reduce the national debt, we increased our nutritional debt to our children. What a terrible mistake it would be if, in attempting to brighten our future, we forgot our past.

We understood in Harry Truman's time the critical role nutrition plays in children's physical and intellectual development. For nearly 50 years, we have acknowledged the direct link between nutrition and education, and between education and the ability to be productive citizens.

When Americans think about cutting government and redtape, taking food out of the mouths of children is not what they have in mind.

This is a provision of the Contract With America, Mr. President, that I hope will be short-lived. It denigrates the commitment we have made to children, to their education and to their future.

As the distinguished Senator from North Dakota has indicated, I hope that we will recognize the fallacies of this shortsighted proposal and retain in this Congress and in Congresses to come a genuine commitment to America's children and their well-being.

With that, I yield the floor.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

THE BALANCED BUDGET AMENDMENT

Mr. COATS. Mr. President, we are approaching perhaps one of the most historic moments in the history of the Congress, when tomorrow this Senate will vote on the balanced budget amendment. We have not had an opportunity to pass a balanced budget amendment of this magnitude since my tenure in the Congress, and I doubt this century. We are very, very close—perhaps only one vote away. I think it is important for the Senate to understand, and for Senators to consider, just how critical it is that we bring to a final resolution this now 4-week-long debate on the necessity of a balanced budget.

I went back and grabbed a copy of the General Accounting Office report to the Congress, written in 1992, to review what their conclusions in a study entitled "Prompt Action Necessary to Avert Long-Term Damage to the Economy."

I will just cite a couple of items from their conclusion. They said, "Failure to reverse the trends and fiscal policy," current fiscal policy, "and the composition of Federal spending will doom future generations to a stagnating standard of living, will damage the United States competitiveness and influence in the world and hamper our ability to address pressing national needs."

In 1992, the General Accounting Office warned the Congress, as it has repeatedly—and as many others have warned—that failure to reverse the current trends in how we spend money and the composition of that spending will doom future generations. It will doom future generations. They go on to say, "If not nothing is done to reverse current trends, deficits will explode over the longer term."

Finally, they conclude, "The economic and political reality is that the Nation cannot continue on the current path."

The discussion over the past 4 weeks in this Senate Chamber has been on whether or not we continue on the current path, or whether we put in place a device which will cause us to change direction, which will fundamentally alter the way in which this Congress addresses the spending of taxpayers' dollars, through a constitutional mandate, constitutional direction to balance the Federal budget. That is the question that is before us.

We have heard speeches and we have had many, many amendments saying we need to exempt certain programs from the balanced budget amendment. Primarily, the emphasis, as we have just heard, is: let us not follow the mandates of the contract because it will doom our children. It will adversely impact those children. We have had a number of amendments saying let us exempt programs for children from the effect of the balanced budget amendment. But it seems to me that if we are really, truly interested in our children, we will face up to the responsibility that is ours to address this deficit and this national debt—a debt which has run beyond our control and, as the General Accounting Office reports, "will doom future generations of these children."

The contract was put before the American people, and it outlined a new direction for this Congress and a new direction for this Nation that was overwhelmingly endorsed in the last election. We are going forward in an attempt to take a look at the Federal programs as they currently exist, including those that address children, and ask ourselves the fundamental questions: Is this the best expenditure of taxpayers dollars? Can we maximize that expenditure with fewer dollars? Is this the most efficient way of getting support to the very children that our colleagues were talking about here this morning? When we delve into the record, we find that it is not efficient. There is duplication and overlap, waste and mismanagement, and administrative costs that deny benefits to the very people that we are trying to help. Many of these programs were well-intended when they were started.

But because the Congress failed to adequately oversee the implementation of these programs, and because we have been in literally a feeding frenzy over the past couple of decades of adding more and more programs, we end up with an inefficiency in Government that is staggering. This Government spending is driving our deficit and driving our national debt to the point where we will have very little, if anything, to offer to those children in the future.

The Labor and Human Resources Committee on which I serve looked at job training and found that there were 163 separate Federal job training programs. Is job training a worthy goal? Of course, it is. Can it be done more efficiently? I think we instinctively understand that if there are 163 programs administered by 14 agencies of the Federal Government that perhaps we can consolidate those and run those programs more efficiently.

In child care, a component of the children's programs, there are 93 separate programs of child care administered by 11 different Federal agencies, disbursing $11.5 billion a year in targeted programs. Many of those programs overlap. In fact, a child in poverty could theoretically qualify for 13 separate child care programs, all providing the same benefit.

So the charge to this Congress is: Can you do it better? Can you do it more efficiently? Can you do it more effectively? And time after time, year after year, Congress has failed in that responsibility.

We are here seeking a balanced budget amendment to the Constitution because Congress has failed in its responsibility to provide efficient, effective management of the programs that it enacts. It has failed to correctly oversee the spending of taxpayers' dollars to the point where, in just the last 14 years, we have driven the national debt from less than $1 to $4.8 trillion.

We are saddling future generations with enormous debt. Each new child born in America bears a cost of nearly $20,000 which will have to be repaid. We are approaching an interest payment alone that exceeds virtually every other category of discretionary domestic spending for the Government. Interest does not go to children's lunches. It does not to go child care. It does not go to road investment. It does not go to community policing. It does not go to fight crime. It does not go to fight drugs and all the other numbers of programs the Federal Government has been involved in. It simply goes to pay interest, simply interest on the debt. And that interest is going to explode in the future.

If we really care about our children, we will look at where we are today and say: "We must change course. We must do something differently than what we have done before."

We have had all kinds of so-called congressional solutions, legislative solutions, to deal with this deficit. And while we are touting the promise of the latest proposal by the Congress to deal with the deficit, the deficit keeps mounting at a staggering rate.

The National Taxpayers Union has estimated that for a child born today, by the time that child is 18 years old, he or she will have accumulated $103,000 in extra taxes over his or her lifetime because of the debt. Today's debt burden is over 10 times more than the debt today's adults inherited from their parents. Let me repeat that. The debt that I inherited from my parents is one-tenth of what my children will inherit from me.

The National Taxpayers Union goes on to say:

> Our children and grandchildren will pay. In many ways—not just in extra taxes. But in higher interest rates. Less affordable homes. Fewer jobs. Lower wages. Decaying infrastructure. Meager retirement incomes. A debt-burdened Government unable to afford programs and benefits Americans now take for granted.

The very programs that our colleagues were talking about—the School Lunch Programs, the Child Care Programs that go to benefit children and which we now take for granted—will become completely unaffordable by an increasing debt-burdened Government.

Thomas Jefferson left us with words of wisdom that we have not followed, and that we need to ponder as we come to a decision about how we are going to vote on this balanced budget amendment. He said:

> The question of whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of Government. We should consider ourselves unauthorized to saddle posterity with our debts, and be morally bound to pay for them ourselves.

We are entrusted with a unique privilege and responsibility as Members of the U.S. Senate. We should heed the words of Jefferson that say we should be morally bound to pay our own debts.

What right do we have to enjoy a standard of living now and simply dump the payment for that standard of living on to our children and our grandchildren? What right do we have to do that? It is immoral to do that. We should, as Jefferson said, be morally bound to pay for what we spend. And we have not done that. We have not done that in small margins, we have not done that in massive margins.

We have expanded our national debt from less than $1 trillion in 1980 to nearly $5 trillion in 1994. We have quintupled it in 15 years. We have quintupled the debt that took 200 years to accumulate prior to that.

And so, as Members contemplate their vote, I hope they would see the extraordinary implications of this vote. If the balanced budget amendment fails, I fear we will not have another opportunity to address the primary and fundamental issue facing this Nation. If it passes, we will begin a process of doing what we were elected to do in the first place—of determining priorities, of establishing ways in which the taxpayers' dollar can be spent in effective, efficient ways. We will have to go into every program, every program of Government, to ask ourselves the fundamental question: Is this the best way we can spend this money? Is this the highest priority for this money? Is there a more efficient way to do it? It is a question, as Jefferson said, of such consequence to place it among the fundamental principles of Government.

It is wrong. It is wrong for us to continue this course.

We have a choice before us tomorrow evening that will fundamentally alter the way we do business. We have proven our incapacity to be careful stewards of the Nation's debt, careful stewards of the Nation's earnings, careful stewards of the future of this country for our children's sakes, for our grandchildren's sakes, for future generations' sakes.

Let us do what we all know we need to do—save us from ourselves. Give us a tool which will allow us to balance that budget and once and for all end this practice of saddling posterity with our debts.

Mr. President, I yield the floor

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I ask unanimous consent that I be allowed to continue as though in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, will the Senator yield briefly for an inquiry?

Mr. LEAHY. Mr. President, I yield.

Mr. BYRD. Am I still to be recognized for 1 hour as under the previous order?

The PRESIDING OFFICER. The Senator from West Virginia is correct, that would be the order. The Chair has just recognized the Senator from Vermont for an extension of morning business.

Mr. BYRD. That would not interfere with my hour?

The PRESIDING OFFICER. There will be no interference.

Mr. BYRD. I thank the Chair. I thank the Senator from Vermont.

Mr. LEAHY. Mr. President, I assure the Senator from West Virginia that I will not be long. I had not realized that he had that order.

CHILD NUTRITION CONCERNS

Mr. LEAHY. Mr. President, I was concerned over the weekend as I read some of the items on both the balanced budget amendment and the pending resolution, House Joint Resolution 1.

I was in a debate over the weekend on this balanced budget amendment on television and other areas. I have been asked questions about some of the issues involving child nutrition.

Now, the area of child nutrition, Mr. President—I may or may not have expertise in some areas in this body—I do believe I have an expertise in that area. As both chairman and as ranking member of the Senate Agriculture Committee, and before that as a member, I have had a primary responsibility handling our child nutrition programs. I have done this in Republican administrations and Democratic administrations. I have done it with both Republican and Democratic cosponsors.

In fact, I might say that since the Truman administration, both Republicans and Democrats have strongly backed the School Lunch Program. The distinguished occupant of the chair may recall when this program began. It began right after World War II. President Truman realized that thousands of military recruits were turned down, even at a time of war, because of malnutrition and nutrition-related medical problems.

Now, I am afraid, Mr. President, the House Republicans want to end this 50-year tradition. They want to repeal the School Lunch Act. Actually, I believe they want to do that as part of this overall Contract With America, which includes the balanced budget amendment and others.

In fact, in committees last week, the Republican majority in the House repealed free lunches for school children who cannot afford a meal ticket. They turned their back on the program supported by Republican and Democratic Presidents since the time of Harry Truman. They eliminated national nutrition standards for healthy school lunches. Now, that will not make parents of grade school children very happy, but it will make a fortune for soft drink bottlers and their PAC's and their lobbyists.

Now, Republicans also have taken steps to cut thousands of children off child care food programs. They are dismantling the WIC Program. Millions of pregnant women, infants and children could be thrown off the WIC Program. In fact, it is the height of hypocrisy when they speak of having the Contract With America and the American family when they move to cut the Women, Infants and Children Program, something that feeds pregnant women and feeds their children when they are first born.

Not only that, I would say to my colleagues; they removed the so-called Leahy amendment which required competition among infant formula makers. This competition saved the American taxpayers $975 million a year and allowed more children, more infants, and more pregnant women to go on this program. They eliminated that.

What does it do? It tells the American taxpayers that that $975 million, instead of feeding poor hungry children, will go to four major drug companies. It is welfare for the wealthiest. It is denying food to the neediest. It is hypocrisy at its worst, and it is a giveaway to major political contributors in the most obvious sense.

These people have reduced dramatically the chance of low-income families to get off welfare. Their cuts in day care funding may mean that thousands of day care homes go out of business. They know the children are not old enough to vote, so what they have done is target the School Lunch Program, the School Breakfast Program, the child care programs, and WIC. They put back in Meals on Wheels because they suddenly realized that went to older Americans who do vote and may contribute. So they put that back in, but they cut out the children who do not vote.

The fine print in the Contract With America is really a contract against children. It is a contract against mothers and fathers. I believe it must be stopped. The contract is antichild, antifamily, and false advertising.

I believe, Mr. President, that we ought to look at what they have done. They say they will pass this out in block grants. Of course, they do not put out money for the block grants, and if they do, we know what will be the first thing to be cut. In fact, I must say that one of the best arguments against block granting child nutrition programs have come from Speaker GINGRICH and Congressman WILLIAM GOODLING, but, in the past, not when they are here with this unholy contract.

Speaker GINGRICH has done a complete about-face on these issues. He cosponsored a resolution in 1982 stating that the "Federal Government should retain primary responsibility for the child nutrition programs and such programs should not be included in any block grant."

The reasons child nutrition programs should not be included in block grants is best stated by Congressman WILLIAM GOODLING, who is now chairman of the House committee. He said that "a child's basic nutrition needs should not vary from State to State," and yet we now find that what was true then apparently is not true today when you have a Contract With America to fulfill, no matter how hypocritical it is, no matter how many giveaways to huge campaign contributors and wealthy interests there are.

Mr. President, I feel, as does the distinguished senior Senator from West Virginia, that I have one contract with America, and like him, I carry that with me. It is the Constitution of the

United States—the Constitution of the United States. This is so good, we have only had to amend it 17 times since the Bill of Rights. It has been the framework of the most powerful democracy known to history. It has been the framework of a democracy that, if it keeps to its basic tenets, can last for hundreds and hundreds and hundreds of years.

I do not like the Republican Contract With America. I think it would result in the largest transfer of benefits and entitlements from working-class families and the middle class to the rich of this country. I have seen reports that households with incomes over $200,000 would receive an average annual tax entitlement of more than $11,500 by the year 2002, and working-class America will lose. I will fight those changes in the Senate.

Since the Truman administration, Republicans and Democrats have strongly backed the School Lunch Program. The Lunch Program began because thousands of military recruits were turned down in World War II because of malnutrition and nutrition-related medical problems.

Now House Republicans want to end this 50-year tradition and repeal the School Lunch Act. The Republicans keep changing their minds on who they should pick on next—infants, toddlers, pregnant women, or school children?

In committee last week, the Republican majority repealed free lunches for school children who cannot afford a meal ticket.

They eliminated national nutrition standards for healthy school lunches. That will not make parents of grade school children very happy, but it will make a fortune for the soft drink bottlers.

House Republicans also have taken steps to cut thousands of toddlers off child care food programs, and they are dismantling the WIC Program. Millions of pregnant women, infants and children could be thrown off the WIC Program.

House Republicans have reduced dramatically the chance that low-income families can get off welfare—their cuts in day care funding may mean that thousands of day care homes go out of business.

This makes no sense whatsoever.

But, the Republicans know that children are not old enough to vote so they have targeted the School Lunch Program, the School Breakfast Program, child care programs, and WIC.

The fine print in the Contract With America is really a contract against children, and a contract against mothers and fathers. This assault on America's families must be stopped.

The contract is antichild, antifamily, and false advertising. It promises limited block grants, but delivers big cuts.

The contract is antitaxpayer as well. The House Republicans on the committee voted down last week a provision that would save taxpayers $1 billion a year.

The WIC Program is required to buy infant formula under competitive bidding under a provision I was able to get passed in 1989. That provision puts an additional 1.5 million pregnant women, infants, and children on WIC at no extra cost to taxpayers—it does this by saving $1 billion.

Who wins under this Republican scheme? Four giant drug companies that make infant formula. Who loses? Taxpayers, and 1.5 million pregnant women, infants, and children.

At the same time House Republicans are throwing hundreds of millions of dollars at these corporate giants, they are proposing to cut free lunches to children who cannot afford the cost of a lunch.

The best arguments against block granting child nutrition programs have come from NEWT GINGRICH and Congressman WILLIAM GOODLING.

NEWT GINGRICH has done a complete about-face on these issues. He cosponsored a resolution in 1982 stating that the "Federal government should retain primary responsibility for the child nutrition programs and such programs should not be included in any block grant." [H. Con. Res. 384, which passed on September 29, 1982.]

The reasons that child nutrition programs should not be included in block grants was best stated by Congressman WILLIAM GOODLING who is now chairman of the House committee that just approved the block grants of child nutrition programs. He said that "a child's basic nutrition needs do not vary from State to State." [Cong. Rec., July 23, 1982, p. 17865.]

The report explaining that resolution, which was sponsored by NEWT GINGRICH, said that if you have "50 distinct State programs, there is no guarantee that the needy child whose family income has fallen below the poverty line would be entitled to participation in a free-lunch program."

The report concluded that Federal child nutrition programs "should not be turned back to the states or diluted through a block grant at reduced funding." [Page 4, Hse. Rpt. 97–870, Sept. 24, 1982.]

The report explains that block grants do not increase to address recessions, and thus they throw children off the program just when the lunch program is most needed.

That was true then. It is still true today.

Why has NEWT GINGRICH changed his mind? To understand why you have to look at the whole contract.

The Republican Contract With America and the balanced budget amendment—taken together—would likely result in the largest transfer of benefits and entitlements from working-class families and the middle class to the rich in the history of this country. I have seen reports that households with incomes over $200,000 a year would receive an average annual tax entitlement of more than $11,500 by the year 2002. And the working class will lose.

I will fight these changes in the Senate.

I yield the floor.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, before contemplating today's bad news about the Federal debt, let's conduct that little pop quiz again: How many million dollars are in $1 trillion? When you arrive at an answer, bear in mind that it was the Congress of the United States that ran up a debt now exceeding $4.8 trillion.

To be exact, as of the close of business Friday, February 24, the Federal debt—down to the penny—stood at $4,838,340,257,340.71—meaning that every man, woman, and child in America now owes $18,366.42 computed on a per capita basis.

Mr. President, again to answer our pop quiz question—how many million in a trillion?—there are one million million in a trillion; and you can thank the U.S. Congress for the existing Federal debt exceeding $4.8 trillion.

REMARKS OF COMMISSIONER GEORGE W. HALEY

Mr. DOLE. Mr. President, I would like to share with my colleagues the remarks of Commissioner George W. Haley, who was recently invited to speak at Dyess Air Force Base in Abilene, TX, in observance of Black History Month.

In his remarks, Commissioner Haley reminds us that the American experiment is indeed working today, despite all the divisions that beset our great Nation. Commissioner Haley's message is one of hope and optimism for the future. He understands that America is not perfect, but that injustice and imperfection should inspire us to work harder to ensure that the American dream can become a reality for all Americans.

Commissioner Haley comes from a military family. During World War I, his father was wounded in the Argonne Forest. His brother Alex spent 20 years in the U.S. Coast Guard. His brother Julius is a Korean war veteran. And Commissioner Haley himself served his country as a member of the U.S. Army Air Corps during World War II.

We are proud of the Haley family, and we thank them for the important contributions they have made to our country.

Mr. President, I ask unanimous consent that Commissioner Haley's remarks be reprinted in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

REMARKS BY HON. GEORGE W. HALEY, POSTAL RATE COMMISSIONER, IN OBSERVANCE OF BLACK HISTORY MONTH

Martin Luther King, Jr., liked to tell a story about a minister who was very emotional and dramatic in his presentations. After one of his fiery Sunday morning sermons, a member of his congregation was commenting to one of his friends that afternoon on what a good sermon the minister had preached. His friend asked: "What did he say?" The parishioner replied: "I don't know, but he sure was good!"

My friends, it is my intention that my address this evening will be both good and thought provoking.

I consider it a great privilege to be invited to speak at this banquet this evening. Before I move on, let me pause for just a moment. General Henderson, I thank you and your staff very much for making this occasion and opportunity possible, and I am glad to be with you tonight.

Two prize members of your military family here, Major James Durant and his wife, Karen, are also members of my family. Major Durant, whom we affectionately call Jimmy, and his wife are both a credit to the military and to our Nation—our family is exceedingly proud of them.

On May 12, 1946, I was honorably discharged from your predecessor service, the United States Army Air Corps. I had been drafted three years earlier, just two months after my 18th birthday, to serve in the Second World War.

Being in the service was a rich experience for me. I had come from a rather sheltered environment, and I learned many valuable lessons about life as a young adult in the military. During my entire military career, the United States Army Air Corps, and all of the military forces of the United States, were totally segregated. Squadron F was the segregated squadron to which all African Americans, then called colored Americans, were assigned. Calling an African American "Black" at that time—well, those were fighting words. But the meaning of some words changes with time. For instance, then, the word mouse had no computer connotations. When we thought about a mouse, the only mouse we ever hoped to catch was in a trap and not a mouse driving a computer. Mr. Justice Holmes describes changes in meanings and interpretations of words most eloquently in a case before the U.S. Supreme Court in 1918, in which he says:

"A word is not a crystal, transparent and unchanged. It is the skin of a living thought, and may vary in circumstances according to the time and place in which it is used."

Everything was not dismal when I was a young man in the military. We were hardy, healthy, young men. We were proud of our country—aware of its inequalities, but willing and ready to defend it against its enemies and those who would threaten it. Our squadron sang the words, "Off we go into the wild blue yonder, climbing high into the sky * * *," with much patriotism—and with gusto and pride.

My father served in the Army. He was wounded in the Argonne forest in France during World War I. My brother, Alex, spent 20 years in the United States Coast Guard, including the World War II years. Julius, my younger brother, served in the Korean conflict. Dad was proud that he and his three sons were all veterans and had served this Nation. He lost no opportunity to tell you about himself and his children. During his later years, Dad was a very active veterans serving for some years as Commander of the American Legion post in Pine Bluff, Arkansas, and in many other capacities until his death at age 83.

I have been privileged to travel in all parts of the world, and there is absolutely no place I'd rather claim as a citizen—including the Republic of South Africa, under the magnificent leadership of Nelson Mandela—than the United States of America. But in spite of the sentiments of Oscar Hammerstein's famous song, "Summertime, and the Livin' is Easy," which, as you know, is from the beloved American classic, George Gershwin's opera, "Porgy and Bess," the lives of African Americans have never been easy.

As I grow older, I feel more the urge to express my thoughts and to articulate some of the challenges which I believe confront young Americans—and more specifically, young African Americans. I want to share with you, as we consider your African-American heritage celebration this year, my interpretation and reaction to the incredible story of African Americans since we were brought to this country early in the 17th century. But I also want to stress how all of us can be proactive and accept the opportunities, challenges, and responsibilities to make this Nation and the world a better, safer, more humane place for the great experiment our Nation represents to continue.

It has been said that history is important only as it relates to the present and the future. From the evils of slavery came the Dred Scott case. The Dred Scott case was decided by the United States Supreme Court in 1856. It still amazes me when I read portions of it. The Nation's highest court found that a slave was not a person—that a slave was simply personal property—and could be sold like a pig or cow or mule.

Just a bit more than a decade after this case the era in our Nation's history which is the theme of your celebration here this year. Specifically, we are reflecting on the lives and philosophies of three Americans: Frederick Douglass, WEB DuBois, and Booker T. Washington. The influence of these three men continues to be felt, not only on the domestic front, but increasingly on the international scene as well.

There is no statement by Frederick Douglass that is more compelling and meaningful than when he states:

"We Negroes are here, and here we are likely to be. To imagine that we shall ever be eradicated is absurd and ridiculous. We can be remodified, changed and assimilated, but never extinguished. We repeat, therefore, that we are here; and that this is our country. We shall neither die out, nor be driven out, but shall go forth with this people, either as a testimony against them, or as an evidence in their favor throughout their generations."

Booker T. Washington advocated a doctrine which suggested that Blacks and whites could both prosper, but live in separate communities. This doctrine was calculated to appeal to whites. DuBois was more the carrier of Douglass's tradition towards an integrationist position. We can conclude from the debates between DuBois and Washington that in the making of history no individual has all of the answers—only God has all the answers. Life for all of us—Black and white; Asian, Native American, and Hispanic—is a compromise. We influence each other—as individuals, within the races, within the Nation.

Benjamin Elijah Mays, an eminent theologian, philosopher, educator—and for many years the President of Morehouse College from which I graduated—used to tell us when I was a student there:

"Train your minds while you are young. For the man who out-thinks you, rules you."

One of Dr. Mays' many other sources of inspiration were the writings of the Apostle Paul, from the Christian tradition. Specifically, he enjoyed Paul's letter to the church at Rome. In that epistle, Paul wrote:

"Do not be conformed to this age, but be transformed by the renewal of your mind."

And what can we say about this age? Our society and our communities in many areas of this Nation have become frightening. We don't need to cite isolated events; they abound all over the Nation—in big cities as well as small towns. Soaring homicide rates for young African-American men in center cities now commonly referred to as "war zones." There are more Blacks in prison than in college. Displays of profanity and sexuality abound, masquerading as free speech and "the language of the people." The society in which we presently live would have given my grandmother apoplexy. I know that most of you are deeply troubled—as am I—by this chaotic state of affairs. We are reminded today, more than ever, that the mind is a terrible thing to waste. Is it not time for us to transform the entire political process by the renewal of our minds?

Don't be afraid to think and to act! And don't be afraid to change. The art of politics is power, and the ability to use it wisely.

In Shakespeare's "King Lear," one of the characters describes a politician as having few or no principles—a man who speaks without redeeming purpose while practicing his "oily art." I certainly would not consider all who are politicians to be practitioners of the "oily art"—the political process can be used for good or for bad, liberation or oppression. I urge you to use it well!

Many of you have brilliant minds. Use them. The economic and political world in our democracy is based on power and the wise use of political and business acumen—not race.

You must use your minds, because:

While you are here in the military, you have great opportunities for further preparedness.

Some of you will move on from military service into civilian life, still at very young and productive ages.

You need to prepare for further contributions.

Our country and the world need you.

You can continue your educations here. Many American colleges and universities have excellent correspondence programs for advancing your formal training.

You can hone your skills—become more proficient—not just getting-by or getting-over.

You must strive for excellence in whatever your responsibilities are.

You should be satisfied only after you have given your best and done your best.

We know that African Americans play with a stacked deck in America. Things are not always equal. Opportunities can appear and, just as suddenly, disappear. Such is the nature of the world in which we live. You cannot always control situations, but you can control your response. When slapped down, get up. When up, don't forget—help someone else. As you grow in strength, so does the Nation.

There is much discussion about affirmative action in the Nation today. General Colin Powell recently stated:

"Nowhere in corporate America can it be said, as it can be said in the military, that a person is judged by his merit and his character and can supervise and command troops everyday at every level from corporal to general."

You, here in the military, are very much aware of the opportunities that affirmative action can bring about, but the discussion is also divisive and unsettling in many quarters. There is grave need to encourage and stimulate as much of the citizen ability as possible for the good of the entire Nation.

Affirmative action was initially designed to help make a level playing field for a race crippled socially, culturally, and economically from generations of unequal treatment. It was certainly never designed to take away any opportunities from white Americans by giving preference to underserving minorities. Rather it was designed to enable African Americans—and, subsequently, other minorities and women—to compete in education and industry for the betterment of the entire Nation. When I was growing up in the South, public schools for whites received the new text books and new science and laboratory equipment, while the Black schools invariably inherited the used books and old equipment.

It is not questioned that there have been some abuses along the way of what the basic intentions of affirmative action are. Admittedly, some of its policies and remedies need reexamination. It cannot be challenged, however, that America is a better, stronger country when all of its citizens are able to compete and contribute. And this is the purpose of affirmative action!

Never let anybody convince you that you are inferior—the Bell Curve and anybody else's curve notwithstanding! Many whites are conditioned to think they are superior to African Americans and some African Americans are conditioned to think they are inferior. This is a most unfortunate myth. If intellect, survival, and progress of this Nation were based solely on skin color, this Nation would not be nearly so strong and vibrant.

Don't deal with these misconceptions in a hostile manner, even with those who seek to use African Americans as scapegoats. Most African Americans, male and female, cringed with fear as the Nation sought the head of a nonexistent Black male so vividly described by the distraught Susan Smith of Union, South Carolina, when, in fact, she, herself, had driven her two little boys down a ramp to their deaths in a lake. That was the same sort of apprehension when Charles Stuart of Boston, Massachusetts, said his wife was murdered by a Black man and he, himself, had done it.

Much of the madness which has developed in inner cities is, in fact, caused by a deep frustration of racial overtones in this Nation. We as a Nation simply must recognize it, and continue to seek solutions to solve our problems, not letting this madness consume us. This is a national problem, and white suburbia dare not keep its doors locked as if it didn't exist.

Even against these odds, African Americans have made untold contributions. Across America and throughout its history—whether in arts, literature, sports, science, politics, business, military—we have seen heroes. From Crispus Attucks to Colin Powell, we have witnessed incredible African-American contributions. African Americans have—indeed—assimilated into the American culture and strongly influenced many of its institutions. There is absolutely no end of contributors: Michael Jackson, Oprah Winfrey, Ed Brooke, Douglas Wilder, Marian Anderson, Benjamin O. Davis, Mary McLeod Bethune, Malcolm X, Jesse Jackson, Maya Angelou, Jackie Robinson, Joe Louis, Andrew Young, Roland Hayes, Sojourner Truth, and many, many others.

But do you know what? While it is easy to find fault, and while shortcomings abound, what Alexis de Tocqueville long ago called America's experiment in government is working! In so many situations, people from many ethnic backgrounds work together for a common purpose. Just as I have seen divisions based on color in my lifetime, so have I seen rich and rewarding diversity at work. And I think you also have seen what I am talking about. As a Nation, we can do better—we must do better, but maybe—just maybe—we are getting better.

My final question for you is: Where do you fit into this great American experiment—into this American dream? Have you ever seriously thought about it? You are unique. There is absolutely nobody else in all the world like you. No other person can offer the world what you can!

I leave you with the challenge as we reflect on this Black history observance this year. What will you do to keep this country strong and safe—this country we all are proud to call home?

I thank you!

CHERISHING THE IRISH DIASPORA—PRESIDENT MARY ROBINSON'S ADDRESS TO THE IRISH PARLIAMENT

Mr. KENNEDY. Mr. President, 1995 marks the beginning of the 150th anniversary of the Great Irish Famine. Many of the 70 million men, women, and children of Irish descent around the world today, including 44 million Irish-Americans, are part of the Irish diaspora which the famine caused.

Earlier this month, President Mary Robinson of Ireland addressed both Houses of the Irish Parliament on the famine and on the larger subject of the Irish diaspora and the modern meaning of "Irishness" for peoples and communities everywhere. I believe that President Robinson's eloquent address will be of interest to all of us in Congress and I ask unanimous consent that it may be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

CHERISHING THE IRISH DIASPORA—ADDRESS TO THE HOUSES OF THE OIREACHTAS

(By President Mary Robinson)

Four years ago I promised to dedicate my abilities to the service and welfare of the people of Ireland. Even then I was acutely aware of how broad that term "the people of Ireland" is and how it resisted any fixed or narrow definition. One of my purposes here today is to suggest that, far from seeking to categorize or define it, we widen it still further to make it as broad and inclusive as possible.

At my inauguration I spoke of the seventy million people worldwide who can claim Irish descent. I also committed my Presidency to cherishing them—even though at the time I was thinking of doing so in a purely symbolic way. Nevertheless the simple emblem of a light in the window, for me, and I hope for them, signifies the inextinguishable nature of our love and remembrance on this island for those who leave it behind.

But in the intervening four years something has occurred in my life which I share with many deputies and senators here and with most Irish families. In that time I have put faces and names to many of those individuals.

In places as far apart as Calcutta and Toronto, on a number of visits to Britain and the United States, in cities in Tanzania and Hungary and Australia, I have met young people from throughout the island of Ireland who felt they had no choice but to emigrate. I have also met men and women who may never have seen this island but whose identity with it is part of their own self-definition. Last summer, in the city of Cracow, I was greeted in Irish by a Polish student, a member of the Polish-Irish Society. In Zimbabwe I learned that the Mashonaland Irish Association had recently celebrated its centenary. In each country I visited I have met Irish communities, often in far-flung places, and listened to stories of men and women whose pride and affection for Ireland have neither deserted them nor deterred them from dedicating their loyalty and energies to other countries and cultures. None are a greater source of pride than the missionaries and aid workers who bring such dedication, humour and practical common sense to often very demanding work. Through this office, I have been a witness to the stories these people and places have to tell.

The more I know of these stories the more it seems to me an added richness of our heritage that Irishness is not simply territorial. In fact Irishness as a concept seems to me at its strongest when it reaches out to everyone on this island and shows itself capable of honouring and listening to those whose sense of identity, and whose cultural values, may be more British than Irish. It can be strengthened again if we turn with open minds and hearts to the array of people outside Ireland for whom this island is a place of origin. After all, emigration is not just a chronicle of sorrow and regret. It is also a powerful story of contribution and adaptation. In fact, I have become more convinced each year that this great narrative of dispossession and belonging, which so often had its origins in sorrow and leave-taking, has become—with a certain amount of historic irony—one of the treasures of our society. If that is so then our relation with the diaspora beyond our shores is one which can instruct our society in the values of diversity, tolerance, and fair-mindedness.

To speak of our society in these terms is itself a reference in shorthand to the vast distances we have traveled as a people. This island has been inhabited for more than five thousand years. It has been shaped by pre-Celtic wanderers, by Celts, Vikings, Normans, Hugenots, Scottish and English settlers. Whatever the rights or wrongs of history, all those people marked this island: down to the small detail of the distinctive ship-building of the Vikings, the linen-making of the Hugenots, the words of Planter balladeers. How could we remove any one of these things from what we call our Irishness? Far from wanting to do so, we need to recover them so as to deepen our understanding.

Nobody knows this more than the local communities throughout the island of Ireland who are retrieving the history of their own areas. Through the rediscovery of that local history, young people are being drawn into their past in ways that help their future. These projects not only generate employment; they also regenerate our sense of who we were. I think of projects like the Ceide Fields in Mayo, where the intriguing agricultural structures of settlers from thousands of years ago are being explored through scholarship and field work. Or Castletown House in Kildare where the grace of our Anglo-Irish architectural heritage is being restored with scrupulous respect for detail. The important excavations at Navan fort in Armagh are providing us with vital information about early settlers whose proved existence illuminates both legend and history. In Ballance House in Antrim the Ulster-New Zealand Society have restored the birthplace of John Ballance, who became Prime Minister of New Zealand and led that country to be the first in the world to give the vote to women.

Varied as these projects may seem to be, the reports they bring us are consistently challenging in that they may not suite any one version of ourselves. I for one welcome that challenge. Indeed, when we consider the Irish migrations of the 17th, 18th, 19th and 20th centuries our pre-conceptions are challenged again. There is a growing literature which details the fortunes of the Irish in Europe and later in Canada, America, Australia, Argentina. These important studies of migration have the power to surprise us. They also demand from us honesty and self-awareness in return. If we expect that the mirror held up to us by Irish communities abroad will show us a single familiar identity, or a pure strain of Irishness, we will be disappointed. We will overlook the fascinating diversity of culture and choice which looks back at us. Above all we will miss the chance to have that dialogue with our own diversity which this reflection offers us.

This year we begin to commemorate the Irish famine which started 150 years ago. All parts of this island—north and south, east and west—will see their losses noted and remembered, both locally and internationally. This year we will see those local and global connections made obvious in the most poignant ways. But they have always been there.

Last year, for example, I went to Grosse Isle, an island on the St. Lawrence river near Quebec city. I arrived in heavy rain and as I looked at the mounds which, together with white crosses, are all that mark the mass graves of the five thousand or more Irish people who died there, I was struck by the sheer power of commemoration. I was also aware that, even across time and distance, tragedy must be seen as human and not historic, and that to think of it in national terms alone can obscure that fact. And as I stood looking at Irish graves, I was also listening to the story of the French Canadian families who braved fever and shared their food, who took the Irish into their homes and into their heritage.

Indeed, the woman who told me that story had her own origins in the arrival at Grosse Ile. She spoke to me in her native French and, with considerable pride, in her inherited Irish. The more I have travelled the more I have seen that the Irish language since the famine has endured in the accents of New York and Toronto and Sydney, not to mention Camden Town. As such it is an interesting record of survival and adaptation. But long before that, it had standing as a scholarly European language. The Irish language has the history of Europe off by heart. It contains a valuable record of European culture from before the Roman conquest there. It is not surprising therefore that it is studied today in universities from Glasgow to Moscow and from Seattle to Indiana. And why indeed should I have been surprised to have been welcomed in Cracow in Irish by a Polish student? I take pleasure and pride in hearing Irish spoken in other countries just as I am moved to hear the rhythms of our songs and our poetry finding a home in other tongues and other traditions. It proves to me what so many Irish abroad already know: that Ireland can be loved in any language.

The weight of the past, the researches of our local interpreters and the start of the remembrance of the famine all, in my view, point us towards a single reality: that commemoration is a moral act, just as our relation in this country to those who have left it is a moral relationship. We have too much at stake in both not to be rigorous.

We cannot have it both ways. We cannot want a complex present and still yearn for a simple past. I was very aware of that when I visited the refugee camps in Somalia and more recently in Tanzania and Zaire. The thousands of men and women and children who came to those camps were, as the Irish of the 1840s were, defenseless in the face of catastrophe. Knowing our own history, I saw the tragedy of their hunger as a human disaster. We, of all people, know it is vital that it be carefully analyzed so that their children and their children's children be spared that ordeal. We realize that while a great part of our concern for their situation, as Irish men and women who have a past which includes famine, must be at practical levels of help, another part of it must consist of a humanitarian perspective which springs directly from our self-knowledge as a people. Famine is not only humanly destructive, it is culturally disfiguring. The Irish who died at Grosset Isle were men and women with plans and dreams of future achievements. It takes from their humanity and individuality to consider them merely as victims.

Therefore it seemed to me vital, even as I watched the current tragedy in Africa, that we should uphold the dignity of the men and women who suffer there by insisting there are no inevitable victims. It is important that in our own commemoration of famine, such reflections have a place. As Tom Murphy has eloquently said in an introduction to his play FAMINE: "a hungry and demoralized people becomes silent". We cannot undo the silence of our own past, but we can lend our voice to those who now suffer. To do so we must look at our history, in the light of this commemoration, with a clear insight which exchanges the view that we were inevitable victims in it, for an active involvement in the present application of its meaning. We can examine in detail humanitarian relief then and relate it to humanitarian relief now and assess the inadequacies of both. And this is not just a task for historians. I have met children in schools and men and women all over Ireland who make an effortless and sympathetic connection between our past suffering and the present tragedies of hunger in the world. One of the common bonds between us and our diaspora can be to share this imaginative way of re-interpreting the past. I am certain that they, too, will feel that the best possible commemoration of the men and women who died in that famine, who were cast up on other shores because of it, is to take their dispossession into the present with us, to help others who now suffer in a similar way.

Therefore I welcome all initiatives being taken during this period of commemoration, many of which can be linked with those abroad, to contribute to the study and understanding of economic vulnerability. I include in that all the illustrations of the past which help us understand the present. In the Famine Museum in Strokestown, there is a vivid and careful re-telling of what happened during the Famine. When we stand in front of those images I believe we have a responsibility to understand them in human terms now, not just in Irish terms then. They should inspire us to be a strong voice in the analysis of the cause and the cure of conditions that predispose to world hunger, whether that involves us in the current debate about access to adequate water supplies or the protection of economic migrants. We need to remember that our own diaspora was once vulnerable on both those counts. We should bear in mind that an analysis of sustainable development, had it existed in the past, might well have saved some of our people from the tragedy we are starting to commemorate.

I chose the title of this speech-cherishing the Irish diaspora—with care. Diaspora, in its meaning of dispersal or scattering, includes the many ways, not always chosen, that people have left this island. To cherish is to value and to nurture and support. If we are honest we will acknowledge that those who leave do not always feel cherished. As Eavan Boland reminds us in her poem "The Emigrant Irish":

"Like oil lamps we put them out the back,
"Of our houses, of our minds."

To cherish also means that we are ready to accept new dimensions of the diaspora. Many of us over the years—and I as President—have direct experience of the warmth and richness of the Irish-American contribution and tradition, and its context in the hospitality of that country. I am also aware of the creation energies of these born on this island who are now making their lives in the United States and in so many other countries. We need to accept that in their new perspectives may well be a critique of our old ones. But if cherishing the diaspora is to be more than a sentimental regard for those who leave our shores, we should not only listen to their voice and their viewpoint. We have a responsibility to respond warmly to their expressed desire for appropriate fora for dialogue and interaction with us by examining in an open and generous way the possible linkages. We should accept that such a challenge is an education in diversity which can only benefit our society.

Indeed there are a variety of opportunities for co-operation on this island which will allow us new ways to cherish the diaspora. Many of those opportunities can be fruitfully explored by this oireachtas. Many will be taken further by local communities. Some are already in operation. Let me mention just one example here. One of the most understandable and poignant concerns of any diaspora is to break the silence: to find out the names and places or origin. If we are to cherish them, we have to assist in that utterly understandable human longing. The Irish Genealogical Project, which is supported by both governments, is transferring handwritten records from local registers of births, deaths and marriages, on to computer. It uses modern technology to allow men and women, whose origins are written down in records from Kerry to Antrim, to gain access to them. In the process it provides employment and training for young people in both technology and history. And the recent establishment of a council of genealogical organizations, again involving both parts of this island, shows the potential, for voluntary co-operation.

I turn now to those records which are still only being written. No family on this island can be untouched by the fact that so many of our young people leave it. The reality is that we have lost, and continue every day to lose, their presence and their brightness. These young people leave Ireland to make new lives in demanding urban environments. As well as having to search for jobs, they may well find themselves lonely, homesick, unable to speak the language of those around them; and if things do not work out, unwilling to accept the loss of face of returning home. It hardly matters at that point whether they are graduate or unskilled. What matters is that they should have access to the support and advice they need. It seems to me, therefore, that one of the best ways to cherish the diaspora is to begin at home. We need to integrate into our educational and social and counselling services an array of skills of adaptation and a depth of support which will prepare them for this first gruelling challenge of adulthood.

The urgency of this preparation, and its outcome, allow me an opportunity to pay tribute to the voluntary agencies who respond with such practical compassion and imagination to the Irish recently arrived in other countries. I have welcomed many of their representatives to Aras an Uachtarain and I have also seen their work in cities such as New York and Melbourne and Manchester, where their response on a day-to-day basis may be vital to someone who has newly arrived. It is hard to overestimate the difference which personal warmth and wise advice, as well as practical support, can make in these situations.

I pay a particular tribute to those agencies in Britain—both British and Irish—whose generous support and services, across a whole range of needs have been recognized by successive Irish governments through the Dion project. These services extend across employment, housing and welfare and make a practical link between Irish people and the future they are constructing in a new environment. Compassionate assistance is given, not simply to the young and newly arrived, but to the elderly, the sick including those isolated by HIV or AIDS, and those suffering hardship through alcohol or drug dependency or who are in prison. Although I think of myself as trying to keep up with this subject, I must say I was struck by the sheer scale of the effort which has been detailed in recent reports published under the auspices of the Federation of Irish Societies. These show a level of concern and understanding which finds practical expression every day through these agencies and gives true depth to the meaning of the word cherish.

When I was a student, away from home, and homesick for my family and my friends and my country, I walked out one evening and happened to go into a Boston newsagent's shop. There, just at the back of the news stand, almost to my disbelief, was "The Western People." I will never forget the joy with which I bought it and took it back with me and found, of course, that the river Moy was still there and the Cathedral was still standing. I remember the hunger with which I read the news from home. I know that story has a thousand versions. But I also know it has a single meaning. Part of cherishing must be communication. The journey which an Irish newspaper once made to any point outside Ireland was circumscribed by the limits of human travel. In fact, it replicated the slow human journey through ports and on ships and airplanes. Now that journey can be transformed, through modern on-line communications, into one of almost instantaneous arrival.

We are at the centre of an adventure in human information and communication greater than any other since the invention of the printing press. We will see our lives changed by that. We still have time to influence the process and I am glad to see that we in Ireland are doing this. In some cases this may merely involve drawing attention to what already exists. The entire Radio 1 service of RTE is now transmitted live over most of Europe on the Astra satellite. In North America we have a presence through the Galaxy satellite. There are several internet providers in Ireland and bulletin boards with community database throughout the island. The magic of E-mail surmounts time and distance and cost. And the splendid and relatively recent technology of the World Wide Web means that local energies and powerful opportunities of access are being made available on the information highway.

The shadow of departure will never be lifted. The grief of seeing a child or other family member leave Ireland will always remain sharp and the absence will never be easy to bear. But we can make their lives easier if we use this new technology to being the news from home. As a people, we are proud of our story-telling, our literature, our theatre, our ability to improvise with words. And there is a temptation to think that we put that at risk if we espouse these new forms of communications. In fact we can profoundly enrich the method of contact by the means of expression, and we can and should—as a people who have a painful historic experience of silence and absence—welcome and use the noise, the excitement, the speed of contact and the sheer exuberance of these new forms.

This is the second time I have addressed the two Houses of the Oireachtas as provided under the Constitution. I welcome the opportunity it has given me to highlight this important issue at a very relevant moment for us all. The men and women of our diaspora represent not simply a series of departures and losses. They remain, even while absent, a precious reflection of our own growth and change, a precious reminder of the many strands of identity which compose our story. They have come, either now or in the past, from Derry and Dublin and Cork and Belfast. They know the names of our townlands and villages. They remember our landscape or they have heard of it. They look at us anxiously to include them in our sense of ourselves and not to forget their contribution while we make our own. The debate about how to best engage their contribution with our own has many aspects and offers opportunities for new structures and increased contact.

If I have been able to add something to this process of reflection and to encourage a more practical expression of the concerns we share about our sense of ourselves at home and abroad then I am grateful to have had your attention here today. Finally, I know this Oireachtas will agree with me that the truest way of cherishing our diaspora is to offer them, at all times, the reality of this island as a place of peace where the many diverse traditions in which so many of them have their origins, their memories, their hopes are bound together in tolerance and understanding.

TRIBUTE TO LINDA WARD-WILLIAMS

Mr. BURNS. Mr. President, I rise today to pay tribute to a dedicated servant of the people of the United States. Linda Ward-Williams, who has an outstanding record of public service, was tragically killed in an auto accident February 7, 1995, near the family home of Fishtail, MT. She is survived by her husband, Burt, and her parents, Thomas and Ethel Ward of Hysham, MT. Burt Williams is currently with the Bureau of Land Management.

According to the Billings Gazette,

> Linda was definitely an individual. She was born June 12, 1947, the daughter of Tom and Ethel Ward, and attended schools in Hysham, Billings and Missoula in Montana, culminating in a master's degree in anthropology at the University of Colorado, working toward a Ph.D.
>
> Linda started professional life as an Old World archaeologist and worked on projects in Israel and Western Europe. She gave up the allure of the Old World and settled into Western U.S. archaeology when she married her husband in 1971.

Linda as an archaeologist, started her career with the Bureau of Land Management in 1978. She moved to the Bureau of Reclamation in 1979. She began her work as a forest ranger for the U.S. Forest Service in 1987 and was elevated to district ranger at the Beartooth Ranger District, Red Lodge, MT, in 1989.

Federal land managers have the most challenging positions of all the public service jobs in the West. They are constantly being challenged by resource managers and users, special interest groups, and folks who know very little about natural resource management but think they do, especially the great renewable resources found on our Nation's national forests. She met those challenges with intelligence and judgment. I did not always agree with her but she gave the full measure of thought before every decision.

The State of Montana has lost a friend, the Nation has lost a dedicated public servant. In the great tradition of those who are tied to the land in this country, there will be those who will follow in her footsteps with the same degree of dedication. That is how it should be and how she would have it.

A TRIBUTE TO SENATOR J. WILLIAM FULBRIGHT

Mr. PRYOR. Mr. President, a constituent of mine, Clyde Edwin Pettit, was a member of the staff of the late Senator J. William Fulbright. Mr. Pettit went to Vietnam as a foreign correspondent and made many distinguished radio broadcasts from there in 1965 and 1966. He was one of the very first Americans to predict that the United States would not prevail in that tragic undertaking. He wrote what Senator Fulbright called a long and prescient letter * * * from Saigon that was a substantial influence upon my long opposition to America's adventure in Indochina. Mr. Pettit has written a moving and eloquent tribute to Senator Fulbright.

Mr. President, I ask unanimous consent that a copy of the eulogy to which

I have referred and a letter of introduction Senator Fulbright wrote regarding Clyde Pettit be inserted in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BILL FULBRIGHT—AN APPRECIATION

Senator J. William Fulbright is dead.

He was, in every sense, an American original.

A small-town boy, who was both a scholar and triple-threat halfback on the Razorback football team at the University of Arkansas, he became, almost by chance, a Rhodes scholar in England.

Later, while a law professor, he became president of the University of Arkansas—the youngest college president in the country.

He backed into politics almost accidently, running for the House of Representatives and winning.

In Congress in 1943 he revived the concept of the League of Nations, but a more effective one. This was the Fulbright Resolution pledging U.S. membership for a future United Nations. Arkansas made Fulbright a Democrat. Europe made him an internationalist.

After his Rhodes scholarship experience, he wanted other young men and women to have the educational opportunities he had. In 1945 he had a unique idea: the world was awash with surplus war materiel. The secretary of state could dispose of assets outside the U.S. in return for foreign credits. Since none of the countries involved had dollars to pay for the materiel, why not exchange it for credits and use them for an educational exchange program? The idea became the internationally celebrated Fulbright Act. Since that time, approximately 220,000 young scholarship students have traversed the globe—the greatest cross-pollination of learning in the history of the world.

Few remember that he cast the single vote in the Senate in 1954 against funding Senator Joe McCarthy's witchhunting subcommittee. McCarthy called Fulbright a communist sympathizer, referring to him as "Senator Halfbright." Fulbright: "I can only say that his manner and his methods were offensive to me. I thought him to be a demagogue and a ruthless boor." He said McCarthy had "done more harm to the United States than he has ever done to the Communist conspiracy here or abroad." He cosponsored the censure resolution that was the beginning of the end of McCarthy.

In 1960 President Kennedy wanted Fulbright as his Secretary of State, but was dissuaded from asking him to serve. Much later Fulbright said he was "not temprementally asuited" to administer "somebody else's policy—or one I disagreed with." Another reason is that it would have removed him from the Senate that he loved.

He opposed the disastrous Bay of Pigs invasion of Cuba and tried vainly to talk President Kennedy out of proceeding with it.

As Chairman of the Senate Foreign Relations Committee, Senator Fulbright led the floor-fight for the Gulf of Tonkin Resolution because President Johnson asked him to, promising him that its effects would be limited and not open-ended. This began Johnson's tragic adventure in Indochina. Soon after, Fulbright realized he had been lied to about what really happened in the Gulf of Tonkin, he had the courage and the manhood to confess that he had been wrong in supporting it. He then convened the so-called, Fulbright Hearings of the Senate Foreign Relations Committee, summoning Dean Rusk and Robert McNamara and all the great war-hawks to educate the American public via television. He began his courageous seven-year crusade against the Vietnam War.

When a colleague asked him if the Senate had the power to enact certain legislation, Fulbright replied, "We have the power to do any darn fool thing we want, and we always seem to do it."

Apropos of Vietnam and our tragic experience there, he liked to quote Kipling:

The end of the fight is a tombstone white
with the name of the late deceased,
And the epitaph drear: "A fool lies here
who tried to hustle the East".

He was one of the first to warn that Americans were being taxed to pay for being propagandized by what he called "The Pentagon Propaganda Machine."

He had the wisdom to see that in all political systems there is a tendency for public servants to metamorphose into public masters, surfeited with unchecked power and privilege and increasingly overpaid to misgovern. He knew that even free peoples can be led to death and maiming because they do not realize that all wars are against their interests. The tragedy of his life is his discovery that wars, once started, tend to become inundating forces of nature, inexhorable and beyond the control of any of the participants.

He was a tory by birth and breeding, a capitalist by background, conviction and instinct. He used to say, "I believe that capitalism is, by and large, the best system to bring the highest standard of living to the most people. If, however, a country wants to try socialism or some other system, then they should by all means be permitted to. But I do not believe that we have the moral right, and certainly not the capacity, to prevent their going their own way."

He was a conservative. He believed as the Founding Fathers did that governments derive their powers from the consent of the governed. He believed in the limitation of executive powers, in checks and balances and in the separation of governmental powers. Constitutionally he was a strict constructionist.

He was a liberal, resonating to the principles of the American Revolution and the inherent right of all peoples to change their governments. His liberalism was in the original sense of the word, derived from the word liberty, in being broad-minded, undogmatic, tolerant—which is what all true conservatives should aspire to be.

He was one of the early champions of the wise investment of American aid to rebuild and strengthen a war-ravaged Europe. Later, he was one of the early opponents of the extravagant support of unpopular and repressive dictatorships abroad—enriching Asian countries merely because they professed to be anti-communist. He fought against the transfer of hundreds of billions of U.S. dollars to the Far East, enriching Asian nations merely because they professed to be anti-communist. He was a reluctant witness to America's rapid decline from being the biggest creditor nation on earth to become the biggest debtor nation—what he called "a crippled giant."

Usually courteous to the point of courtliness—especially to the humble—he was sometimes professorial, even condescending to his peers—especially the pompous. Only with difficulty did he suffer fools. He had contempt for politicians and their "communications" experts—with government by poll. "Their purpose seems to consist largely in discovering what people want and feel and dislike," he said, "and then associating themselves with those feelings. * * * This is the opposite of leadership, it is followship, elevated to a science, for the purpose of self-advancement. Even formal policy speeches are determined by the polls. The policy statements that emerge have little to do with the national interest."

He lived through most of a terrible and turbulent century. In the vastness of time, his nine decades of life were but a narrow valley between the peaks of two eternities. And yet, what a bountiful valley it was.

Sir Christopher Wren's epitaph in London—in the St. Paul's Cathedral he designed—is Si monentum requiris circumspice—"If you would seek his monument, look around you."

The same epitaph is appropriate for Bill Fulbright.

The United Nations.

The Fulbright scholarships.

The anti-war years during the maelstrom of Vietnam.

The scores of legislative accomplishments.

The wise world-view he sustained thoroughout his long lifetime.

"Our future is not in the stars," he used to say, "but in our own minds and hearts."

In a sense, his most lasting monument is invisible. It is the thousands of names that are not engraved on The Wall of the Vietnam Memorial in Washington—all the names that are not there because once, long ago, he led the fight against an unwinnable war he knew was contrary to the interests of his country. He was one of the first to diagnose the dangers of the arrogance of unchecked executive power, the price of pride and hubris. He had the common sense to oppose old myths, the vision to appreciate new realities, and a keen feel for the great lesson of history—that the price of empire is always too high.

If half the Congress were composed of Bill Fulbrights, legislative functioning might be extremely difficult. But unless America continues to produce two or three in every generation, America democracy as we know it might indeed perish.

We have lost a great national treasure—perhaps a nonrenewable resource.

Sic transit.

To whom it may concern:

Mr. Clyde E. Pettit, Jr. is well known to me. He is a lawyer and television producer from a prominent family in my state. He is President of KYMA-TV and Vice President of Sun Communications.

Mr. Pettit was on the United States Senate staff during the years I was U.S. Senator from Arkansas and Chairman of the Senate Foreign Relations Committee. He was Special Assistant to the late Senator Carl Hayden, then the President of the U.S. Senate.

Mr. Pettit went to Vietnam as a foreign correspondent and made many distinguished radio broadcasts in 1965 and 1966. He was one of the very first Americans to predict that the United States could not prevail in that tragic undertaking. He wrote a long and prescient letter to me from Saigon that was a substantial influence upon my long opposition to America's adventure in Indochina. Later he wrote the book, "The Experts"—the definitive chronicle of the Vietnam War. He has had a consistent vision of our proper role in foreign affairs and a continuing concern for U.S. involvement in Asia and the Middle East.

He believes, incidentally, that since more than fifteen years have elapsed since the end of hostilities, it is time for diplomatic, cultural and commercial relations to be re-established. I agree.

Any courtesies extended to him will be appreciated.

Sincerely,

J.W. FULBRIGHT.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The PRESIDING OFFICER. The Chair does apologize to the Senator from West Virginia. Under the previous order, the Senate was to resume consideration of House Joint Resolution 1 at 12:30. We will now do that. The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 1) proposing a balanced budget amendment to the Constitution of the United States.

The Senate resumed consideration of the joint resolution.

Pending:

(1) Feinstein amendment No. 274, in the nature of a substitute.

(2) Feingold amendment No. 291, to provide that receipts and outlays of the Tennessee Valley Authority shall not be counted as receipts or outlays for purposes of this article.

(3) Graham amendment No. 259, to strike the limitation on debt held by the public.

(4) Graham amendment No. 298, to clarify the application of the public debt limit with respect to redemptions from the Social Security Trust Funds.

(5) Kennedy amendment No. 267, to provide that the balanced budget constitutional amendment does not authorize the President to impound lawfully appropriated funds or impose taxes, duties, or fees.

(6) Bumpers modified motion to refer H.J. Res. 1 to the Committee on the Budget with instructions.

(7) Nunn amendment No. 299, to permit waiver of the amendment during an economic emergency.

(8) Nunn amendment No. 300, to limit judicial review.

(9) Levin amendment No. 273, to require Congress to pass legislation specifying the means for implementing and enforcing a balanced budget before the balanced budget amendment is submitted to the States for ratification.

(10) Levin amendment No. 310, to provide that the Vice President of the United States shall be able to cast the deciding vote in the Senate if the whole number of the Senate be equally divided.

(11) Levin amendment No. 311, to provide that the Vice President of the United States shall not be able to cast the deciding vote in the Senate if the whole number of the Senate be equally divided.

(12) Pryor amendment No. 307, to give the people of each State, through their State representatives, the right to tell Congress how they would cut spending in their State in order to balance the budget.

(13) Byrd amendment No. 253, to permit a bill to increase revenue to become law by majority vote.

(14) Byrd amendment No. 254, to establish that the limit on the public debt shall not be increased unless Congress provides by law for such an increase.

(15) Byrd amendment No. 255, to permit the President to submit an alternative budget.

(16) Byrd amendment No. 258, to strike any reliance on estimates.

(17) Byrd amendment No. 259, to provide that any bill to increase revenues shall not become law unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

(18) Byrd amendment No. 252, to permit outlays to exceed receipts by a majority vote.

(19) Kerry motion to commit H.J. Res. 1 to the Committee on the Budget.

(20) Hatch (for Dole) motion to recommit H.J. Res. 1 to the Committee on the Budget with instructions.

(21) Hatch (for Dole) motion to recommit H.J. Res. 1 to the Committee on the Budget with instructions.

(22) Hatch (for Dole) motion to commit H.J. Res. 1 to the Committee on the Judiciary with instructions.

(23) Hatch (for Dole) motion to commit H.J. Res. 1 to the Committee on the Judiciary with instructions.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia [Mr. BYRD] is now recognized.

(Mr. HELMS assumed the chair.)

Mr. BYRD. I thank the Chair.

Mr. President, I have discussed this request with the distinguished Senator from Utah. I think, at the moment, he might be constrained to object, because I believe he will want to discuss the request with the majority leader. But I will make it for the RECORD just now and then I will withdraw it.

Mr. President, I ask unanimous consent that my amendments be voted on in the following order: No. 252, 254, 255, 253, and 258, and that amendment No. 289 be withdrawn.

I withdraw that request until such time as the distinguished Senator from Utah can discuss it with the majority leader.

Mr. President, on tomorrow, the Senate will begin voting on the amendments that have been called up and made to qualify under the order that was entered previously. I believe that there are in the nature of 22 or 23 or 24 amendments that are on the list. Among those amendments, I have five amendments. I am not counting the amendment which I anticipate that I will withdraw.

Mr. President, in the main, my amendments go to certain of the flaws, which I have discussed on previous occasions, that I have found objections to in the balanced budget amendment to the Constitution. For example, I have been troubled by the numerous supermajority requirements that are included in the balanced budget amendment.

As I have stated on previous occasions that the United States Constitution and amendments thereto contain nine circumstances in which a two-thirds vote in one or both Houses is necessary to an action or to the making of a quorum. Specifically, these are, one, conviction following impeachment; two, expulsion of a Member; three, override of a Presidential veto; four, advise and consent on treaties; five, proposing constitutional amendments; six, removing the bar of entry to Congress for having engaged in insurrection or rebellion against the United States; and seven, determining the President's ability to discharge his duties following a Vice Presidential declaration of Presidential disability.

In addition, article II, section 1, clause 3, and the 12th amendment, which supersedes the article II provision, require a two-thirds quorum when the election of the President and/or Vice President should be decided by Congress. The actual vote, however, remains a constitutional majority.

In several of these instances, the supermajorities have either never been called into play or have been resorted to only in a few instances and, in some instances, the last occasion in which the particular provision was called into play was decades ago.

For example, in the case of the expulsion of a Member, which requires a supermajority, the last instance in which a Member of Congress was actually expelled was in 1862, when Waldo P. Johnson, Democrat of Missouri, was expelled for having supported the rebellion. Therefore, in that instance, as we can see, it was 133 years ago when that situation requiring a supermajority last arose.

In the case of constitutional amendments, for which supermajorities are required in both Houses and by the States, only 27 amendments have been adopted, and 17 of those have been adopted since the first 10 amendments.

There are six additional amendments that have been submitted to the States, thus having received the requisite two-thirds in both Houses, but which have failed on ratification. The following are those six amendments that did not receive the requisite support of three-fourths of the States:

September 25, 1789, an amendment dealing with the number of Representatives in the House; an amendment adopted during the second session of the 11th Congress relating to acceptance of foreign titles of nobility; an amendment adopted and submitted to the States on March 2, 1861, prohibiting congressional abolition of slavery; June 2, 1926, authorizing the Congress to enact child labor laws; March 22, 1972, the equal rights amendment; and August 22, 1978, relating to the voting rights of D.C. residents.

So, as we can see, the amendment provision under article 5 of the United States Constitution has not been used very frequently.

As to the 14th amendment, namely, the removal of the bar from entry into Congress, the right to remove disabilities imposed by section 3 of the 14th amendment was exercised by Congress, by supermajority votes in both Houses, at different times on behalf of certain persons. In 1872, the disabilities were removed by a blanket act from all persons "except Senators and Representatives of the 36th and 37th Congresses," and 26 years later on June 6, 1898,—in other words, 97 years ago—Congress passed legislation removing the disability imposed by section 3.

The authority of Congress to determine Presidential disability under section 4 of the 25th amendment has never been exercised since the amendment's ratification in February, 1967. It should be noted, however, that President Reagan did notify the Speaker of the House and the Senate President pro tempore of his temporary disability on July 13, 1985. The disability, due to anesthesia administered during surgery, was subsequently terminated later the same day.

What I have attempted to show here, Mr. President, is the dearth of instances in which many of these supermajorities, that are included in the original Constitution and the amendments thereto, have actually been called into play. And as I say in some instances decades have passed since these provisions last were activated. These supermajorities, however, deal with the structure of our form of government, or with the protection of individual rights.

But here we come now with this amendment to the Constitution to balance the budget which requires supermajorities in enforcing fiscal policy—for example, in section 1, section 2, section 4, and section 5. Included in those supermajorities is the phraseology of section 4 which refers to approval by "a majority of the whole number of each House," and of section 5 which does likewise.

Mr. President, the requirement of approval by a majority of the whole number of each House can very well in some instances require more votes than a two-thirds vote depending upon how many Senators or House Members are present and voting.

The instances in the original Constitution and the amendments thereto that require two-thirds majorities, require a two-thirds majority of those Senators and House Members "present and voting", except in the instance of treaties and convictions on impeachments. I seem to remember that in those two instances a two-thirds majority of the Senators "present" are required—not two-thirds of the Senators who are chosen and sworn, not two-thirds of those Senators who are voting, but two-thirds of the Senators "present".

May I inquire of the Chair if I am correct?

The PRESIDING OFFICER. The Chair informs the Senator from West Virginia he is correct.

Mr. BYRD. I thank the Chair.

But, now, this balanced budget amendment, in section 1, which deals with balancing outlays and receipts, any waiver requires that "three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote."

Section 2, the provision whereby the limit on the debt may be increased, "three-fifths of the whole number of each House" is required to waive that stricture.

Section 4: "No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote."

Well, as I have already indicated, depending upon how many Members are present and voting in each House, that requirement could well require more than a two-thirds or three-fifths majority of those present and voting.

And the same thing obtains with respect to section 5 of the balanced budget amendment. Any resolution allowing for the provisions of the article to "be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security," must be adopted by a majority of the whole number of each House, which, in the case of the Senate, means at least 51—and that requirement may very well be more than two-thirds or more than three-fifths of the Senators who are present and voting.

These are very difficult strictures to overcome—these supermajority requirements that are being written into the Constitution by this balanced budget amendment—more constrictive than any of the supermajorities written into the original constitution and/or amendments thereto.

Mr. President, let us see what the authors of the Federalist Papers have to say about supermajorities. Hamilton in the Federalist No. 75 said and I quote:

> . . . all provisions which require more than the majority of any body to its resolutions have a direct tendency to embarrass the operations of the government and an indirect one to subject the sense of the majority to that of the minority.

In other words, they create a minority veto.

I will read Hamilton's statement in Federalist No. 75 again.

> . . . all provisions which require more than the majority of any body to its resolutions have a direct tendency to embarrass the operations of the government and an indirect one to subject the sense of the majority to that of the minority.

Hamilton, in the Federalist No. 22 says this, about giving the minority a negative on the majority:

> To give a minority a negative upon the majority (which is always the case where more than a majority is requisite to a decision) . . .

Let me read that again because it goes to the provisions that require a majority of the whole number of each body, that are to be found in sections 4 and 5 of the balanced budget amendment.

> To give a minority a negative upon the majority (which is always the case where more than a majority is requisite to a decision) is, in its tendency, to subject the sense of the greater number to that of the lesser number.

* * * *

> In those emergencies of a nation in which the goodness or badness, the weakness or strength, of its government is of the greatest importance, there is commonly a necessity for action. The public business must in some way or other go forward. If a pertinacious minority can control the opinion of a majority, respecting the best mode of conducting it, the majority in order that something may be done must conform to the views of the minority; and thus the sense of the smaller number will overrule that of the greater and give a tone to the national proceedings. Hence, tedious delays; continual negotiation and intrigue; contemptible compromises of the public good. And yet, in such a system it is even happy when such compromises can take place: for upon some occasions things will not admit of accommodation; and then the measures of government must be injuriously suspended, or fatally defeated. It is often by the impracticability of obtaining the concurrence of the necessary number of votes kept in a state of inaction. Its situation must always savor of weakness, sometimes border upon anarchy.

Mr. President, you see we have to go through these Perils of Pauline in every fiscal year.

The Northwest Ordinance was being debated in New York City at the very same time that the Constitutional Convention was meeting in Philadelphia. On July 13, 1787, the Northwest Ordinance was adopted. And that ordinance is one of the most important documents in the history of this country, and it rates—not as high as the Constitution and the Declaration of Independence, but it may rank a very close third. It may be instructive to note that the Northwest Ordinance required only simple majorities in the votes of the council, which would correspond with the Senate in the Federal Constitution, and in the votes of the representatives who were to be elected.

It also should be remembered that when and where these supermajorities are required—and I have listed four instances here in the balanced budget amendment in which supermajorities would be required—they promote unreliability and unpredictability. People cannot count on, from year to year, just what is going to happen, and how their lives are to be affected, because we are talking about balancing the budget in every fiscal year.

> Total outlays for any fiscal year shall not exceed receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts. . . .

Hence, the people are to be left without assurance as to whether or not their Government is going to be constant. These supermajorities promote inconstancy. Let us see what Madison, in the Federalist No. 62, has to say about such.

> What prudent merchant will hazard his fortunes in any new branch of commerce when he knows not but that his plans may be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government? In a word, no great improvement or laudable enterprise can go forward which requires the auspices of a steady system of national policy.

Madison continues:

> But the most deplorable effect of all is that diminution of attachment and reverence which steals into the hearts of the people towards a political system which betrays so many marks of infirmity, and disappoints so many of their flattering hopes. No government, any more than an individual, will long be respected without being truly respectable; nor be truly respectable without possessing a certain portion of order and stability.

Daniel Webster said, "Let us develop the resources of our land, call forth its powers, build up its institutions, promote all its great interests, and see whether we also, in our day and generation, may perform something worthy to be remembered."

Webster was talking about the development of the country, and about investing in the Nation, in its people, in its highways, its railroads, its waterways. But such investment needs to be on a multi-year basis—it requires reliability, predictability, and consistency in accordance with long-term planning and design. Such investment planning must not be subjected to the fits and starts that will result from annual supermajority requirements to balance the Federal budget.

Madison, in 62, is talking about this inconstancy and unpredictability in Government policy that would be brought about by this spate of new and very difficult supermajorities required in the implementation of fiscal policy.

> What prudent merchant will hazard his fortunes in any new branch of commerce, when he knows not but that his plans may be rendered unlawful before they can be executed? What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an inconstant government? In a word no great improvement or laudable enterprise, can go forward, which requires the auspices of a steady system of national policy.

There are also those who are concerned, like myself, with respect to section 5, which deals with military conflicts.

> Section 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

Let us see what Hamilton has to say in the Federalist No. 30.

> How can it undertake or execute any liberal or enlarged plans of public good?
>
> Let us attend to what would be the effects of this situation in the very first war in which we should happen to be engaged. We will presume, for argument's sake, that the revenue arising from the impost duties answers the purposes of a provision for the public debt and of a peace establishment for the Union. Thus circumstanced, a war breaks out. What would be the probable conduct of the government in such an emergency? Taught by experience that proper dependence could not be placed on the success of requisitions, unable by its own authority to lay hold of fresh resources, and urged by considerations of national danger, would it not be driven to the expedient of diverting the funds already appropriated from their proper objects to the defense of the State?

Mr. President, note that Hamilton refers to "the expedient of diverting the funds already appropriated from their proper objects to the defense of the State?"

I have heard Senators who are supporters of this amendment say that, if we get into a military exigency we will just cut other programs, we will divert funds from other programs—as though we have plenty of time during a military exigency to go through all this examination of other programs and projects and take our pencils and add up and subtract all those things. We do not have time for that during an emergency involving our military security.

Hamilton is here speaking of diverting funds already appropriated from their proper objects to the defense of the state.

> It is not easy to see how a step of this kind could be avoided; and if it should be taken, it is evident that it would prove the destruction of public credit at the very moment that it was becoming essential to the public safety.

* * * * *

> In the modern system of war, nations the most wealthy are obliged to have recourse to large loans.
>
> But who would lend to a government that prefaced its overtures for borrowing by an act which demonstrated that no reliance could be placed on the steadiness of its measures for paying?

Section 2 deals with the limit on the debt of the United States:

> The limit on the debt of the United States held by the public shall not be increased unless three-fourths of the whole number of each house shall provide by law for such an increase by a rollcall vote.

Hamilton says:

> But who would lend to a government that prefaced its overtures for borrowing by an act which demonstrated that no reliance could be placed on the steadiness of its measures for paying? The loans it might be able to procure, would be as limited in their extent as burthensome in their conditions. They would be made upon the same principles that usurers commonly lend to bankrupt and fraudulent debtors—with a sparing hand and at enormous premiums.

Then Hamilton in 22 goes on to say this:

> Suppose, for example, we were engaged in a war, in conjunction with one foreign nation against another. Suppose the necessity of our situation demanded peace, and the interest or ambition of our ally led him to seek the prosecution of the war, with views that might justify us in making separate terms. In such a state of things, this ally of ours would evidently find it much easier by his bribes and intrigues to tie up the hands of government from making peace, where two-thirds of all the votes were requisite to that object, then where a simple majority would suffice. In the first case he would have to corrupt a smaller number; in the last, a greater number. Upon the same principle, it would be much easier for a foreign power with which we were at war, to perplex our councils and embarrass our exertions. In a commercial view, we may be subjected to similar inconveniences.

We have discussed section 5 of this balanced budget amendment heretofore. It is very obvious that, when it comes to dealing with an imminent military threat to the Nation's security, the Congress may be hard pressed to secure a majority of the whole number of each House in order to lift this burdensome restriction of requiring that outlays not exceed receipts in a given fiscal year.

Let us see what Hamilton, in the Federalist No. 30, says that might have some bearing upon this situation.

> It has been already observed that the federal government ought to possess the power of providing for the support of the national forces; in which proposition was intended to be included the expense of raising troops, of building and equipping fleets, and all other expenses in any wise connected with military arrangements and operations. But these are not the only objects to which the jurisdiction of the Union in respect to revenue must necessarily be empowered to extend. It must embrace a provision for the support of the national civil list; for the payment of the national debts contracted or that may be contracted; and, in general, for all those matters which will call for disbursements out of the national treasury. The conclusion is that there must be interwoven in the frame of the government a general power of taxation, in one shape or another.

I have heard certain Republican Senators recently on this floor state that they will never vote for a tax increase. Yet, Mr. President, it may be absolutely necessary to have a tax increase, if the Nation is faced with a military exigency such as that contemplated in section 5 of the balanced budget amendment, and increases in taxes may also be necessary to balance the budget, or to pay for other important objects that are within the jurisdiction of the Congress and the Union.

Hamilton, in the Federalist No. 30, goes on to say:

> What substitute can there be imagined for this *ignis fatuus*—

That is a will-o'-the-wisp or jack-o-lantern.

> What substitute can there be imagined for this ignis fatuus in finance, but that of permitting the national government to raise its

> own revenues by the ordinary methods of taxation, authorized in every well-ordered constitution of civil government?

Mr. President, we are not going to have "ordinary methods of taxation" if this balanced budget amendment is approved because, in order to increase revenues, "a majority of the whole number of each house" will be required to do so. And in some instances, as I have already demonstrated, that may amount to more than a two-thirds vote. It may actually amount to more than two-thirds or three-fifths of the total membership in a given situation.

Continuing with Hamilton's Federalist No. 30:

> Ingenious men may declaim with plausibility on any subject; but no human ingenuity can point out any other expedient to rescue us from the inconveniences and embarrassments, naturally resulting from defective supplies of the public treasury.
>
> How is it possible that a government half supplied and always necessitous, can fulfill the purposes of its institution—can provide for the security of—advance the prosperity—or support the reputation of the commonwealth? How can it ever possess either energy or stability, dignity or credit, confidence at home or respectability abroad?

Mr. President, this new amendment with its supermajorities will makes this Nation musclebound. It will put the Nation in a straitjacket when it comes to the necessity of increasing revenues, when it comes to the necessity of waving the requirements that outlays not exceed receipts.

Let us look at the plausibility of these new supermajorities which fly in the face of what the Framers contemplated. I call attention to the fact that, under the Articles of Confederation agreed to on November 15, 1777, supermajorities were required in great number—one of the reasons why the Articles of Confederation did not work well. I shall read from article 10 of the Articles of Confederation.

> The united states in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expences necessary for the defence and welfare of the united states, or any of them, nor emit bills, nor borrow money on the credit of the united states, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine states assent to the same; nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the united states in congress assembled.

Well, there were 13 States. Nine votes would mean a majority of the whole number. But in the case of ascertaining the sums and expenses necessary for the defense and welfare of the United States or to borrow money on the credit of the United States or to appropriate money or to agree upon the number of vessels at war to be built or purchased, or to agree upon the number of land or sea forces to be raised, a supermajority of 9 States out of the 13 would be required in each of those instances. Hence, the Articles of Confederation were filled with requirements for supermajorities. As I say, that was one of the primary reasons why the Articles of Confederation did not work.

So, the Framers of our Constitution, some of whom had served in the Congress under the Articles of Confederation, saw the bane of those supermajorities and were determined that the new Constitution would not contain them. Therefore, only a majority is required to exercise the great policy powers that are granted in article I, section 8 and in section 9 of the Constitution.

I offered an amendment last week that would have eliminated the problem with section 5, insofar as a majority of the whole number of each House is required to lift the restrictions of the balanced budget amendment in a time of serious conflict, the security of the Nation being at stake. My amendment was tabled by a vote of 55 to 41. The language of section 5 remains.

I talked about the possibility of a Vice President not being able to cast a vote that would count in a situation arising under section 5 of the balanced budget amendment, because at least 51 Senators would be required. At least 51 Senators would be required to lift the strictures imposed by the balanced budget amendment. In the event of a 50–50, or a 48–48, or a 47–47 vote—a vote of the Vice President could not break the tie to make a simple majority. A minimum of 51 Members of the Senate must vote to lift such restrictions in a time of danger to the Nation.

Here is what Hamilton said in Federalist No. 68:

> The appointment of an extraordinary person, as Vice President, has been objected to as superfluous, if not mischievous.
>
> . . . two considerations seem to justify the ideas of the convention in this respect. One is, that to secure at all times the possibility of a definitive resolution of the body, it is necessary that the President should have only a casting vote.

There are other dangers in the balanced budget amendment that I have cited from time to time. I think it is pregnant with an invitation to the judiciary to intervene. There is nothing in the balanced budget amendment that either forbids or invites the judiciary to intervene in the enforcement of the balanced budget amendment. But I think that circumstances themselves would result in the intervention by the judiciary when it came to cutting programs, increasing taxes, deciding other problems and cases and controversies that might arise under this new article and even outside the new article.

I read from Hamilton, Federalist No. 78:

> The executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse. . . . It proves incontestably that the judiciary is beyond comparison the weakest of the three departments of power.
>
> . . . there is no liberty, if the power of judging be not separated from the legislative and executive powers.

Mr. President, when this new amendment is adopted and later ratified—if it is adopted and ratified—it will stand Hamilton's words on their head. The judiciary will then become the strongest of the three departments of power, rather than the weakest, as Hamilton had said in the Federalist No. 78.

No one can say, Mr. President, with absolute certitude as to what will happen if and when this amendment is made a part of the Constitution. Nobody can say with absolute certainty. But we have to explore these possibilities, and I fear, with great alarm, the possibility, nay the probability, that the power of the purse will be shifted to the executive; and when cases or controversies arise, the courts will intervene and we will have situations in which the courts, made up of unelected judges with life tenures, will be telling the Congress when to tax, where to tax, how much to tax, when to cut programs, what programs to cut, and by how much, and it will be a sad day when our country awakens to the fact that the judiciary is the strongest of the three branches. Even if there were a way to exclude the judiciary—and the Johnston amendment was an attempt to do so, but it was rejected—the legislative branch would still be weakened.

Mr. NUNN has an amendment which will be voted on. I will support the Nunn amendment, as I supported the Johnston amendment. But I do not concede that that amendment will eliminate all prospects of the judicial branch's entering into the political thicket of decisions with respect to this new article, the balanced budget amendment.

What did Madison say about the power of the purse in Federalist No. 58? This is what he said:

> The House of Representatives cannot only refuse, but they alone can propose the supplies requisite for the support of Government. They, in a word, hold the purse; that powerful instrument by which we behold, in the history of the British Constitution, an infant and humble representation of the people, gradually enlarging the sphere of its activity and importance, and finally reducing, as far as it seems to have wished, all the overgrown prerogatives of the other branches of the Government. This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

In the Federalist No. 48, by Madison, we are told,

> . . . the legislative department alone has access to the pockets of the people.

All this is going to be changed, Mr. President, once this balanced budget amendment goes into the Constitution. If it ever becomes a part of the Constitution, much of what Madison and Hamilton have said in the Federalist Papers will have been thrust aside by today's would-be Framers. This power over the purse may, in fact, be shifted to the executive and judicial branches of Government and away from the people's representatives in Congress.

There is also a danger of too-frequent amendments to the Constitution. Hamilton warned of this in Federalist No. 49.

> . . . as every appeal to the people would carry an implication of some defect in the Government, frequent appeals would, in great measure, deprive the Government of that veneration, which time bestows on everything, and without which perhaps the wisest and freest governments would not possess the requisite stability.

So here we are, we are about to appeal to the people again by submitting to them this balanced budget constitutional amendment. The fact that the Senate has taken 30 days to deliberate on this amendment, points, Mr. President, to the utility of the Senate. This balanced budget amendment was adopted by the other body in 2 days—2 days! Including tomorrow, the balanced budget amendment will have been before the Senate for a total of 30 days. During those 30 days, Senators have debated at considerable length the entire new article, and they have found numerous flaws which, upon careful probing, were brought to light. This did not happen in the other body. It happened here because this is the U.S. Senate, where there is unlimited debate, which can only be shut off by a cloture motion or by a unanimous-consent agreement entered into by all Senators.

I believe the constitutional Framers would have been proud of the Senate in this instance. I do not know how proud they would be of the Senate, once the rollcall vote is taken tomorrow evening upon the final disposition of this glittering gewgaw of glorified garbage. That remains to be seen. I hope they will be proud of it, as they look down from above, because I hope that the amendment will be defeated.

Madison spoke of the utility of the Senate in Federalist No. 62.

> The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions.

What Madison said in the Federalist No. 62 reflects exactly what took place in the House of Representatives—passage after only 2 days of debate on this amendment. Let me read Madison's words again from the Federalist No. 62.

> The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies, to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders, into intemperate and pernicious resolutions. . . . The mutability in the public councils, arising from a rapid succession of new members, however qualified they may be, points out, in the strongest manner, the necessity of some stable institution in the government.

And in Federalist No. 63, Madison continues to write about the utility of having a Senate. I quote:

> . . . so there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career and to suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind? What bitter anguish would not the people of Athens have often escaped if their government had contained so provident a safeguard against the tyranny of their own passions? Popular liberty might then have escaped the indelible reproach of decreeing to the same citizens the hemlock on one day and statues on the next.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Chair is advised the Senator has 9 minutes remaining.

Mr. BYRD. I thank the Chair.

Mr. President, that Montesquieu or Locke or Washington or Madison or Hamilton could have believed in the fooleries contained in this constitutional amendment on the balanced budget cannot be suspected.

I should think that the amendment might very well be pronounced as the "gunpowder plot" against the Constitution. The Gunpowder Plot was that conspiracy which was discovered and foiled when Guy Fawkes and a group of Englishmen intended to blow up the English Parliament on November 5, 1605, the day that King James I was to address it.

Fortunately the plot was foiled. Whether or not this "gunpowder plot" against the Constitution will be foiled will be determined by tomorrow's vote, but I will cast one vote to help in its demise.

Mr. President, I think that about the best that can be said of the amendment is that it is a partisan, political amendment. In it we can see the "cloven foot" as to the intentions of most of those in the Senate who support it. It is a political amendment. It is supported by a political party, as witness the fact that all but one of the Republican Senators will very likely vote for it. Political ads have been run throughout the Nation by the Republican Party in support of it. It is a partisan amendment. That is what we are about to nail into the Constitution.

Washington, in his farewell address, warned us against putting in the place of

> The delegated will of the nation the will of party, often a small but artful and enterprising minority of the community; and, according to the alternate, triumphs of different parties, to make the public administration the mirror of the ill concerted and incongruous projects of faction . . . they are likely, in the course of time and things to become potent engines, by which cunning, ambitious, and unprincipled men, will be enable to subvert the power of the people, and to usurp for themselves the reigns of government; destroying afterwards the very engines which have lifted them to unjust dominion.

Mr. President, the proponents of this amendment in the Congress are really living in a fool's paradise. They are living in a state of illusive bliss, suspended in the limbo of hypocrisy, doublespeak, double-shuffle, vanity, and nonsense. Milton spoke about the limbo of vanity in "Paradise Lost." Dante wrote in his "Divine Comedy" that limbo was the first circle of Hell.

Mr. President, let me close by remembering some words from the "Rubaiyat" written by Omar Khayyam, a Persian poet of the 12th century:

> The Moving Finger writes; and, having writ,
> Moves on: nor all your Piety nor Wit
> Shall lure it back to cancel half a Line,
> Nor all your Tears wash out a Word of it.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from the New York Times of today, February 27, titled "Unbalanced Amendment," together with letters from the Secretaries of Defense; Housing and Urban Development; Education; Veterans Affairs; Health and Human Services; and Justice; and various and sundry other articles and materials that are germane to the subject of the balanced budget amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE PRESIDENT, COUNCIL OF ECONOMIC ADVISERS,
Washington, DC, February 23, 1995.

Hon. ROBERT C. BYRD,
U.S. Senate,
Washington, DC.

DEAR SENATOR BYRD: The Council of Economic Advisers is strongly opposed to a balanced budget amendment to the Constitution. Although continued progress on deficit reduction is sound economics, a balanced budget amendment is not. As the attached opinion piece which appeared in The Washington Post two weeks ago indicates, such an amendment would eliminate the ability of the Federal budget to moderate the cyclical ups and downs of business cycles which are normal occurrences in a market economy. Indeed, a balanced budget amendment would actually require budgetary policy to aggravate the business cycle, by requiring Congress to increase taxes or cut spending whenever the economy slowed in order to avoid an increase in the deficit. Statistical analysis performed at the Council and at the Department of the Treasury indicates that the amendment would cause recessions to be substantially deeper.

With fiscal policy enjoined by a balanced budget amendment to be destabilizing rather than stabilizing, sole responsibility for moderating the business cycle would rest with the Federal Reserve. As the attached analysis indicates, even a well-intentioned and prescient Federal Reserve would not be able to play this role as well on its own as it can working in tandem with the automatic fiscal stabilizers. Moreover, in order to fulfill this responsibility, the Federal Reserve might well have to foster greater cyclical variability in interest rates, something which could have a destabilizing effect on financial markets. Finally, there is no reason to assume that Federal Reserve decisions will be influenced by the single goal of stabilizing output and employment levels. Historically, concern about inflation has been the major determinant of Federal Reserve actions. Indeed, some proponents of the balanced budget amendment have also proposed legislation that would require the Federal Reserve's only policy target to be price stability. If such legislation were also to become law, neither monetary nor fiscal policy would be available to limit the ups and downs of the business cycle and their attendant human and economic costs.

Deficit reduction can be achieved even without a balanced budget amendment. This Administration, working with the Democrats of the 103rd Congress, dramatically reduced the deficits for FY1994 and FY1995, and the budget we have just presented for FY1996 makes additional progress. If it were not for the interest owed on the debt accumulated during the 1981–92 period, the federal budget would be in balance by 1996 and headed toward surplus thereafter. Based on our projections, the Clinton Administration will be the first since the Johnson Administration to run a non-interest budget surplus for a cycle of four fiscal years. Moreover, net federal debt, after tripling during the 1980s, has now stabilized relative to the size of the economy, and the deficit is projected to decline relative to the size of the economy for at least the next ten years.

A balanced budget amendment offers only a promise to reduce the deficit—it does not reduce the deficit by a single penny. And it has the potential to cause serious economic harm. I urge you to vote against it for the economic well-being of the Nation.

Sincerely yours,

LAURA D'ANDREA TYSON,
Chair.
MARTIN N. BAILY,
Member-Nominee.
JOSEPH E. STIGLITZ,
Member.

[From the Washington Post, Feb. 7, 1995]

IT'S A RECIPE FOR ECONOMIC CHAOS

(By Laura D'Andrea Tyson)

Continued progress on reducing the deficit is sound economic policy, but a constitutional amendment requiring annual balance of the federal budget is not. The fallacy in the logic behind the balanced budget amendment begins with the premise that the size of the federal deficit is the result of conscious policy decisions. This is only partly the case. The pace of economic activity also plays an important role in determining the deficit. An economic slowdown automatically depresses tax revenues and increases government spending on such programs as unemployment compensation, food stamps and welfare.

Such temporary increases in the deficit act as "automatic stabilizers," offsetting some of the reduction in the purchasing power of the private sector and cushioning the economy's slide. Moreover, they do so quickly and automatically, without the need for lengthy debates about the state of the economy and the appropriate policy response.

By the same token, when the economy strengthens again, the automatic stabilizers work in the other direction: tax revenues rise, spending for unemployment benefits and other social safety net programs falls, and the deficit narrows.

A balanced budget amendment would throw the automatic stabilizers into reverse. Congress would be required to raise tax rates or cut spending programs in the face of a recession to counteract temporary increases in the deficit. Rather than moderating the normal ups and downs of the business cycle, fiscal policy would be required to aggravate them.

A simple example from recent economic history should serve as a cautionary tale. In fiscal year 1991, the economy's unanticipated slowdown caused actual government spending for unemployment insurance and related items to exceed the budgeted amount by $6 billion, and actual revenues to fall short of the budgeted amount by some $67 billion. In a balanced-budget world, Congress would have been required to offset the resulting shift of more than $70 billion in the deficit by a combination of tax hikes and spending cuts that by themselves would have sharply worsened the economic downturn—resulting in an additional loss of 1¼ percent of GDP and 750,000 jobs.

The version of the amendment passed by the House has no special "escape clause" for recessions—only the general provision that the budget could be in deficit if three-fifths of both the House and Senate agree. This is a far cry from an automatic stabilizer. It is easy to imagine a well-organized minority in either House of Congress holding this provision hostage to its particular political agenda.

In a balanced-budget world—with fiscal policy enjoined to destabilize rather than stabilize the economy—all responsibility for counteracting the economic effects of the business cycle would be placed at the doorstep of the Federal Reserve. The Fed could attempt to meet this increased responsibility by pushing interest rates down more aggressively when the economy softens and raising them more vigorously when it strengthens. But there are several reasons why the Fed would not be able to moderate the ups and downs of the business cycle on its own as well as it can with the help of the automatic fiscal stabilizers.

First, monetary policy affects the economy indirectly and with notoriously long lags, making it difficult to time the desired effects with precision. By contrast, the automatic stabilizers of fiscal policy swing into action as soon as the economy begins to slow, often well before the Federal Reserve even recognizes the need for compensating action.

Second, the Fed could become handcuffed in the event of a major recession—its scope for action limited by the fact that it can push short-term interest rates no lower than zero, and probably not even that low. By historical standards, the spread between today's short rates of 6 percent and zero leaves uncomfortably little room for maneuver. Between the middle of 1990 and the end of 1992, the Fed reduced the short-term interest rate it controls by a cumulative total of 5¼ percentage points. Even so, the economy sank into a recession from which it has only recently fully recovered—a recession whose severity was moderated by the very automatic stabilizers of fiscal policy the balanced budget amendment would destroy.

Third, the more aggressive actions required of the Fed to limit the increase in the variability of output and employment could actually increase the volatility of financial markets—an ironic possibility, given that many of the amendment's proponents may well believe they are promoting financial stability.

Finally, a balanced budget amendment would create an automatic and undesirable link between interest rates and fiscal policy. An unanticipated increase in interest rates would boost federal interest expense and thus the deficit. The balanced budget amendments under consideration would require that such an unanticipated increase in the deficit be offset within the fiscal year.

In other words, independent monetary policy decisions by the Federal Reserve would require immediate and painful budgetary adjustments. Where would they come from? Not from interest payments and not, with such short notice, from entitlement programs. Rather they would have to come from either a tax increase or from cuts or possible shutdowns in discretionary programs whose funds had not yet been obligated. This is not a sensible way to establish budgetary priorities or maintain the healthy interaction and independence of monetary and fiscal policy.

One of the great discoveries of modern economics is the role that fiscal policy can play in moderating the business cycle. Few if any members of the Senate about to vote on a balanced budget amendment experienced the tragic human costs of the Great Depression, costs made more severe by President Herbert Hoover's well intentioned but misguided efforts to balance the budget. Unfortunately the huge deficits inherited from the last decade of fiscal profligacy have rendered discretionary changes in fiscal policy in response to the business cycle all but impossible. Now many of those responsible for the massive run-up in debt during the 1980s are leading the charge to eliminate the automatic stabilizers as well by voting for a balanced budget amendment.

Instead of undermining the government's ability to moderate the economy's cyclical fluctuations by passing such an amendment, why not simply make the hard choices and cast the courageous votes required to reduce the deficit—the kind of hard choices and courageous votes delivered by members of the 103rd Congress when they passed the administration's $505 billion deficit reduction package?

THE SECRETARY OF DEFENSE,
Washington, DC, January 11, 1995.

Hon. ROBERT C. BYRD,
Committee on Appropriations,
U.S. Senate, Washington, DC.

DEAR SENATOR: Thank you for your recent letter. I join you in looking forward to working together closely on crucial matters affecting our nation's future security.

Your letter asked for my assessment of the probable and possible consequences on America's defense posture of an amendment to the Constitution requiring a balanced federal budget. Such an assessment is detailed in the enclosed statement, which was presented at a recent hearing on this subject by John Hamre, Under Secretary of Defense (Comptroller). This statement is an update of my presentation to your committee last February 15, and I strongly support its warnings. With the absence of any realistic implementation details in the amendment, [I fear that huge defense reductions are likely under a balanced budget amendment, which would fundamentally change the character of

America's military posture, make our new strategy unsupportable, call into question our ability to fulfill U.S. commitments to our allies and to protect our interests worldwide, and undermine U.S. global leadership.]

I thank you for this opportunity to inject defense concerns into the debate on this critical issue facing our nation.

Sincerely,

WILLIAM J. PERRY.

STATEMENT OF UNDER SECRETARY OF DEFENSE (COMPTROLLER) JOHN J. HAMRE IN CONNECTION WITH THE BALANCED BUDGET AMENDMENT, HOUSE JUDICIARY COMMITTEE, JANUARY 10, 1995

Mr. Chairman, members of the Committee, thank you for the opportunity to appear before you today to discuss the Balanced Budget Amendment, and the likely impact that it would have on America's defense posture.

The Balanced Budget Amendment (BBA) could severely jeopardize America's national security, and that is one of the major reasons for the Administration's opposition to it. Unless legislatively exempted from reductions, defense spending could end up being the primary billpayer to make federal budgets balance, and that would fundamentally undermine the security of our nation.

If the Balanced Budget Amendment were adopted, America's defense posture would be vulnerable to two different problems: the impact on defense to reach a zero deficit and the effect on defense of the annual budget process under the BBA.

IMPACT ON DEFENSE TO GET TO A ZERO DEFICIT

(Chart 1) To illustrate the impact of getting to a zero deficit, several assumptions have to be made about the final date and provisions of the BBA. Let us assume that the year of BBA implementation if 2002, and make calculations based on the most recent deficit projections by the Congressional Budget Office. Balancing the budget on a phased basis—14 percent year in 1996 through 2002—would require a total of $1,040 billion in spending cuts and/or revenue increases.

Exactly how much the Department of Defense (DoD) would have to contribute to achieving a zero deficit would depend on how much revenue would be increased and whether entitlements would be cut. Under the worst case scenario, there would be no increase in revenue and no cuts in the entitlement programs. This means the budget would have to be balanced by cuts in discretionary spending, of which national defense represents about one half. The best case scenario assumes half of the deficit would be offset by increases in revenue and the other half proportionately to spending for entitlements and domestic and defense discretionary programs.

(Chart 2) Not reproducible in the RECORD.

(Chart 3) For national defense, the best case scenario would have a serious impact on national security. The worst case would be a disaster. Achieving these totals would entail subtantial reductions to defense people and programs, which are already downsized to the minimum acceptable level deemed necessary in the Bottom-Up Review. Our forces would become hollow and we would have to give up our quality of life initiatives such as adequate compensation for military personnel, child care programs, decent barracks and family housing and other programs that provide a sense of community and support for military families. We would have to stop the modernization and recapitalization, which is needed and planned in our current five-year budget. We would have to cut back our emphasis on science and technology and technology reinvestment programs, and thereby risk the technological edge that has always given our forces an advantage over our adversaries.

Reductions such as these would fundamentally change the character of America's military posture, make our new strategy unsupportable, call into question our ability to fulfill U.S. commitments to our allies and to protect our interests worldwide, and undermine America's global leadership.

THE ANNUAL BUDGET PROCESS UNDER THE BBA

Let me now turn to the second problem: Life under a balanced budget amendment.

What about the effect on defense of the annual budget process under the Balanced Budget Amendment? The BBA annual budget process could routinely end up removing from our elected political leaders the decision about what level of defense spending is prudent. America's defense preparedness could get determined by economic shifts, cost growth in entitlements, and other nondefense factors. Even if threats to America's global interests were increasing or our forces deteriorating, the BBA could lead to deep defense cuts.

The fact that these consequences could be avoided with ⅗ approval of each house of Congress is scant reassurance. Preservation of an adequate defense posture would become dependent on exceptional political efforts. The BBA process would be heavily skewed in favor of cutting defense to compensate for whatever was escalating elsewhere in the budget. Even when a ⅗ majority minus one in either house believed that BBA cuts were unjustified, the minority view would prevail. Not exactly ideal for the world's most powerful democracy and best hope for future peace and stability.

The BBA would threaten frequent interruptions to the many long-term processes that are essential to maintaining a prudent defense posture. The quality and morale of our people must be continually nurtured, and would be devastated by rapid and deep cuts in end strength. Our military and civilian professionals require extensive training and experience. We cannot recruit and retain top-notch military and civilian professionals, if they are vulnerable to summary dismissal.

Repair parts must be ordered three years ahead of anticipated use, in order to ensure the readiness of U.S. forces. Many years of research and development are needed to ensure that our forces are never outgunned or outmaneuvered. The average major weapons procurement program requires 8 years of development and testing. Production lines are necessarily set up anticipating stable procurement rates; they cannot be stopped and started, in order to offset a downturn in revenues or surge in entitlements. Because of the long-lead times needed for our weapons systems, DoD is unique among executive departments in that we must have detailed five-year plans incorporating them. It would be extremely costly, and essentially unworkable, to turn on and off defense programs, when the BBA forced deep budget cuts.

In sum, budgeting under BBA would inject great uncertainty and chaos into defense planning, which needs to have stability and a long-term perspective.

(Chart 4) Small changes in the U.S. economy would mean even bigger budget problems. Using the CBO rule of thumb, a one percent rise per year in interest rates would increase the federal budget deficit $5 billion in the first year and 108 billion over five years. A one percent fall per year in real growth in the economy would increase the deficit $9 billion in the first year and $289 billion over five years. Thus under the BBA, even modest changes in the economy could trigger sweeping cuts to federal programs.

CLOSING

The Balanced Budget Amendment addresses a very important issue, but it would dramatically complicate our ability to plan for and manage a strong Department of Defense.

Defense programs would be especially vulnerable under the BBA, because DoD accounts for about half of all discretionary spending. And that is critical because the BBA has no implementation details. Unless the BBA becomes a vehicle by which revenues are increased or entitlements cut, DoD could well have to pay for half of every dollar of deficit reduction.

DoD budget authority, in real terms, has been in decline since FY 1985. We have finally reached the end of our builddown. It would be dangerous to continue to downsize our forces at this time. The Balanced Budget Amendment would cut defense spending to whatever level its arbitrary formula dictated, and thereby displace the carefully considered judgments of Members of Congress, Presidents, and civilian and military leaders as to what spending is necessary and wise. I do not believe such an approach to questions of national security would serve America well.

IMPACT ON DEFENSE TO GET TO A ZERO DEFICIT

In order to assess the impact on DOD, assumptions have to be made about final date and provisions of the balanced budget amendment:

	Assumption
Year of implementation	2002.
Projected deficit at implementation	Current budget projection.
Will revenue be increased?	If yes, 50%/50% revenue/spending.
Will entitlements be cut?	If yes, in proportion to outlays.

IMPACT OF CUTS ON NATIONAL DEFENSE

Make substantial reductions to military and civilian personnel.

Return to "Hollow Forces."

Cancel Quality of Life Initiatives.

Stop planned modernization and recapitalization.

Cut back on science and technology.

Cancel technology and reinvestment programs.

Fundamentally change U.S. military posture.

Undermine U.S. commitments to allies.

Small Economic Changes Mean Big Budget Problems

Modest changes in the economy would necessitate sweeping program cuts.

CBO RULE OF THUMB

[In billions of dollars]

	Deficit impact	
	First year	5-Years
1 percent rise in interest rates	5	108
1 percent fall in real growth	9	289

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, THE SECRETARY,

Washington DC, February 8, 1995.

Senator ROBERT BYRD,

Ranking Minority Member, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR SENATOR BYRD: This letter presents the views of the Department of Housing and

Urban Development on the proposed balanced budget amendment, House Joint Resolution 1. We are opposed to the proposed balanced budget amendment because it is unnecessary and could undermine important functions of this Department.

We certainly support the intended goal of reducing the federal deficit. Indeed, in 1993 the President joined with Members of Congress to enact the largest deficit reduction bill in history. The Administration looks forward to continuing to work with Congress on deficit reduction.

At the Department of Housing and Urban Development, we have established basis spending priorities to guide our decisions in preparing budgets for FY 96 and beyond. We have made our own hard choices and tough spending cuts in developing our proposed "Reinvention Blueprint", which would consolidate 60 programs into three programs and accomplish $800 million in administrative savings alone over the next five years. Further program reforms and budget economies to be announced February 6, 1995 will show five year savings at HUD of $51 billion in budget authority and $13 billion in outlays. In addition, we have already generated savings through a reorganization of our field structure to eliminate an entire layer of regional management. We have found many ways to do more with less people through service-oriented, performance-driven, results management, and partnerships with communities and the people we serve.

The proposed balanced budget amendment would create havoc with our budget decisions and program management. It could have a devastating impact on HUD's mission of service to the American people and communities. For example, our Department worked very hard to provide emergency relief to the victims of natural disasters such as the Southern California earthquake, the Midwest floods, Hurricane Andrew in Florida and Hurricane Iniki in Hawaii. Our ability to respond rapidly and effectively to emergencies could be severely curtailed by the balanced budget amendment. The amendment's requirement of a three-fifths vote could cause long delays, severe hardship, and perhaps even irreparable harm for the many people that will lose their homes and urgently need adequate housing in these emergency situations.

While we support the goal of a balanced budget, the proposals under consideration to achieve a balanced budget by the year 2002 could require an unprecedented level of reductions in our programs. It is our understanding that, if social security and defense are exempt from reductions and the tax cuts in the Contract with America are enacted, the remaining Federal programs will have to be reduced by more than 30 percent in FY 2002. For HUD, this would mean a cut of about $10 billion in one year alone. Assuming that reductions of this magnitude would be evenly spread across agencies and accounts, the effect on HUD programs would be devastating. For example, low-income rental assistance, which in the President's Budget would already be declining at the end of the century, would suffer severely, putting thousands more families at risk of homelessness, and our capacity to assist the already homeless would be crippled. A cut of 30 percent—$1.4 billion—in Community Opportunity Performance Funds (CDBG), would be a major blow to cities and communities across the nation who depend on the grant to support low-income job creation and infrastructure.

HUD has taken a disciplined, fiscally responsible, creative approach to achieving our key priorities. We have proposed dramatic, sweeping changes in the way the Department is structured and operates. Implementation of our Reinvention Blueprint would make HUD a more customer-driven, cost-effective, entrepreneurial organization. With consolidation of existing programs into performance-based funds, the focus would be on serving people and communities and producing better outcomes at significantly less cost.

This Administration has made great strides in reducing the size of the Federal budget and HUD has contributed to that effort. We must continue these efforts, but we must be prudent and produce real results, not simply crowd-pleasing rhetoric.

I am committed to working with the Congress to produce savings through further responsible program rescissions, reductions and reforms.

Sincerely,

HENRY G. CISNEROS.

U.S. DEPARTMENT OF EDUCATION,
THE SECRETARY,
Washington, DC, February 22, 1995.

Hon. ROBERT C. BYRD,
Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR SENATOR BYRD: Thank you for your recent call and your inquiry concerning the possible impact of a balanced budget amendment to the Constitution on the operation of Federal education programs. I have set out some examples of the effect of the implementation of such an amendment on education programs.

I am informed by reliable analysts that if we assume that Social Security and National Defense Expenditures are exempted from the reductions in Federal spending required to comply with a balanced budget amendment, all other Federal programs could be subject to an estimated 30 percent reduction from the 1995 appropriated level.

Based on these assumptions, the following are some specific examples of how these reductions could affect Department of Education programs:

Financial aid for college—the surest route to the middle class American dream—would be slashed. A 30 percent cut would require a $2 billion cut in Pell Grant funding, eliminating awards to nearly 300,000 students and reducing the average award to the remaining 3.5 million students from $1,548 to $1,218. The termination of loan interest subsidies for 3 million low-income students and their families could increase borrowing costs by as much as 20 percent over the life of their loans. Support for the Supplemental Educational Opportunity Grant and Work-Study programs would decline by $360 million, eliminating awards to more than 500,000 needy postsecondary students. These cuts would effectively reverse 30 years of progress in expanding postsecondary education opportunity.

Goals 2000 and School-to-Work Opportunities. Reform efforts now under way in nearly all States would be dramatically scaled back, forcing the Nation to significantly reduce its commitment to high standards for all students. Under Goals 2000, for example, 45 States and 5 territories and thousands of communities are working hard to improve their schools, and are counting on these Federal dollars to help implement their education reform plans.

Title I Grants to Local Educational Agencies. The $2 billion cut required by a balanced budget amendment could reduce assistance to over 6 million economically disadvantaged elementary and secondary school students, or even terminate services altogether to as many as 2 million students. Title I helps low-achieving children, particularly those in high-poverty schools, meet the same challenging academic content and performance standards expected of all children.

Special Education Grants to States. Federal assistance in meeting the extra costs of serving over 5.6 million children with disabilities could drop from $426 to $298 per eligible child. Similar reductions for preschool and early intervention programs could lead many States to stop serving younger children with disabilities, a step that could only increase the need for more expensive services in later years.

Impact Aid. For this program, there could be a 30 percent reduction in Federal support for paying the operating costs of school districts enrolling large numbers of Federally connected children. Districts heavily dependent on such support could be forced to undertake such actions as furloughing or laying off teachers or shortening the length of the school year.

All of these serious reductions in Federal support for education could come at a time when international economic competition demands ever higher skill levels from American workers, and when our civic life and democracy demands better educated citizens. It is absolutely the wrong time to take any steps that might reduce our investment in education. I hope that this information will aid your efforts to place the full implications of such an amendment before the Members of the United States Senate.

Yours sincerely,

RICHARD W. RILEY.

THE SECRETARY OF VETERANS AFFAIRS,
Washington, DC, January 30, 1995.

Hon. ROBERT C. BYRD,
Ranking Minority Member, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR SENATOR BYRD: This is in response to your request for information on the potential effect on VA programs of the Balanced Budget Amendment that is soon to be considered on the Senate floor. I appreciate the need for continuing efforts to reduce federal deficits and support the goal of a balanced budget. However, I am extremely worried about how the current proposal would affect veterans and their families.

The proponents of the amendment have refused to indicate what spending cuts they would make in order to eliminate the deficit by fiscal year 2002. Nevertheless, many of the amendment's proponents have indicated what they will not do to eliminate the deficit: reduce Social Security and increase taxes. At the same time, they are promising to create new deficit pressures by increasing defense spending and actually reducing taxes, again without showing how they would offset the enormous costs involved in their initiatives. But despite the fundamental nature of the federal government's commitment to our veterans, Balanced Budget Amendment proponents have left VA programs on the table—subject to tremendous, inevitable pressures that the amendment will create to cut unprotected programs.

It is my understanding that, if Social Security and defense are exempt from reductions and the tax cuts in the Contract With America are enacted, then remaining federal programs will have to be reduced by more than 30 percent in FY 2002. Assuming, in the current absence of specifics, that such a reduction would be applied across the board, it would have a devastating effect on veterans' programs.

A 30-percent reduction to the Veterans Health Administration would prohibit us from providing health care services to many of those whom we now treat. A reduction in full-time-equivalent employees (FTEE) of 63,000 in 2002 could be expected and we would be able to treat 488,000 fewer inpatients and accommodate 11,403,000 fewer outpatient visits. The cutbacks could mean the closing of many VA hospitals, outpatient clinics, and nursing homes. In fact, the viability of the VA as a national health-care system for veterans could be threatened. It certainly could not be maintained on the same scale as today's system, and the Department's ability to maintain the current high level of quality care could be severely damaged.

Similarly, our Regional Offices could suffer a reduction of 3,000 FTEE, which might make it impossible for us to process veterans' claims for benefits in a timely way. Likewise, operations in the National Cemetery System might have to be severely curtailed; impairing our ability to bury veterans with dignity.

The many benefit programs that VA administers for disabled veterans could also be subject to deep cuts. As an example, certain severely disabled veterans who receive compensation for service-connected disabilities would, under current policy, be receiving approximately $42,400 per year by 2002. A 30-percent reduction in such a veteran's earned benefit would amount to $12,721 for that year. This is hardly an appropriate response for a grateful nation.

Our pension program for non-service-disabled wartime veterans is designed to keep these disabled veterans from living a life of abject poverty. A 30-percent cut in 2002 would result in a loss of up to $4,790 for the neediest of veterans, and would force nearly all VA pension recipients below the poverty line.

Thank you for this opportunity to share with you my concerns regarding the Balanced Budget Amendment. As always, I greatly appreciate your concern for and support of veterans and their families.

Sincerely,

JESSE BROWN.

THE SECRETARY OF HEALTH
AND HUMAN SERVICES,
Washington, DC, January 30, 1995.

Hon. ROBERT C. BYRD,
Ranking Minority Member, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR SENATOR BYRD: Much has been said and written about adding a balanced budget amendment to the United States Constitution, but I want to make sure that the American people and the members of Congress fully understand what such an amendment could mean for the people served by the Department of Health and Human Services.

Let me be clear: While we support the goal of a balanced budget, the proposals under consideration by the Congress to achieve a balanced budget by the year 2002 could require an unprecedented level of reductions in our programs—including Medicare, Head Start, NIH research, and Medicaid.

If reductions to Social Security and defense spending are taken off the table and the tax cuts included in Contract With America are adopted, then all other domestic programs, including those at HHS, would have to be reduced by over 30 percent. This magnitude of reduction could threaten the affordable, high-quality health care our elderly have come to expect, jeopardize the critical research performed by our National Institutes of Health, and drive millions more families into poverty.

Applying a 30 percent reduction to the Medicare program to achieve the Balanced Budget Amendment goals could mean cuts of over $100 billion in the year 2002 alone. If Congress required beneficiaries to absorb the full cost, it would be the equivalent of charging an additional $215 a month to maintain the Medicare program in addition to the current projected Part B premium in 2002 of $59 a month. If these Medicare premiums are deducted from Social Security checks, this would mean a 25 percent reduction in the average beneficiary's Social Security check each month. For the one-in-four elderly Americans who rely almost solely on their Social Security check for their income, this is a painful loss.

If Congress instead chooses to cut the $100 billion from medical providers, then one of two things could happen: Providers may accept fewer Medicare beneficiaries as patients, or they may shift the costs to their non-Medicare business. This could increase private sector health costs by over 10 percent.

For Medicaid, balancing the budget could require over $55 billion in cuts in the year 2002 alone. Because Medicaid is a Federal/State partnership, cuts in the Federal budget could force States to make up the cuts either with increased State spending or through reduced support to the Medicaid program. Either approach simply shifts the burdens to the States. Moreover, States could have to choose between cutting services or coverage to either the elderly, disabled or poor mothers and their children.

Other key HHS programs could be harmed by a balanced budget amendment. For example, Head Start local programs could be forced to discontinue services to almost a quarter of a million children. The National Institutes of Health could lose $3.5 billion. This would be equivalent to eliminating the entire National Cancer Institute; the National Heart, Lung and Blood Institute; and about half of the National Institute on Neurological Disorders and Stroke.

This Administration has made great strides in reducing the size of the Federal budget deficit, and the Department of Health and Human Services has contributed its fair share, but we must proceed down the path of further deficit reduction with care and with the full knowledge of what the price will be.

Sincerely,

DONNA E. SHALALA.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, January 27, 1995.

Hon. ROBERT BYRD,
Ranking Minority Member, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR SENATOR BYRD: We understand that the Senate will shortly turn its consideration to various proposals to amend the Constitution to require a balanced federal budget. We certainly support the intended goal of reducing the federal deficit. Indeed, in 1993, the President joined with Members of Congress to enact the largest deficit reduction bill in history. The Administration looks forward to continuing to work with Congress on deficit reduction.

Before passing a balanced budget amendment, however, the Congress should be keenly aware of the impact that such an amendment could have on the essential operations of the federal government in general, and of the Department of Justice in particular. In a word, the impact could be devastating.[1]

When the Attorney General testified before the Senate Committee on Appropriations on February 15, 1994, she stated that "[p]ut simply, the Balanced Budget Amendment would put at risk the Justice Department's ability to fight crime. Passage of the Amendment would mean sharp reductions in all of the Department's crime fighting units." This is as true today as it was a year ago. We believe now, as we did then, that the American people look to the federal government for more, not less, assistance in making their communities safe, and that they will not support arbitrary cutbacks or limitations on the essential resources that are urgently needed to combat wrongdoing.

The Attorney General also noted in her statement that passage of the Balanced Budget Amendment would lead to sharp reductions—and perhaps total elimination—of federal aid to State and local law enforcement. As the Attorney General indicated, elimination of this funding would "destroy any hope of implementing our community policing and pubic safety initiatives"—two absolutely critical goals of last year's crime bill. At a time when we are striving to assist our State and local partners in ridding the Nation's schools and streets of crime, such an outcome would be tragic—and wrong.

We have taken the liberty of enclosing a copy of the Attorney General's statement of February 15, 1994, before the Senate Appropriations Committee. It goes into considerably greater detail than this letter about the likely negative effects that passage and ratification of a Balanced Budget Amendment would have upon the Department of Justice and upon law enforcement in the United States. We recognize, of course, that, because of the passage of time, the figures cited in the Attorney General's statement are not current. For example, the effects upon the Department, as stated by the Attorney General, were based on the assumption that spending would have to be reduced by twenty percent. If a thirty percent reduction were required, the budget impact would be fifty percent greater. These considerations do not, however, alter in any way the conclusions contained in the Attorney General's statement. If anything, they reinforce them. We urge that the Senate evaluate these considerations with extreme care before acting on any of the Balanced Budget Amendments that may come before it.

Thank you for permitting us to provide our views on this important matter. If we may be of additional assistance, or if you require additional information, please do not hesitate to call upon us. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

SHEILA F. ANTHONY,
Assistant Attorney General.

Enclosure.

STATEMENT OF JANET RENO, ATTORNEY GENERAL, BEFORE THE COMMITTEE ON APPROPRIATIONS FEBRUARY 15, 1994

Mr. Chairman and Members of the Committee:

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[1] Many proponents of the balanced budget proposals have stated that they would implement the balanced budget amendment without spending reductions in Social Security and national defense. If this is the case, and if the tax proposals contained in the Contract With America are adopted, all other domestic discretionary spending would have to be reduced by over 30 percent. Such reductions would be unprecedented—indeed Draconian—and would wreak havoc on the essential law enforcement programs of this Department.

INTRODUCTION

I am pleased to have this opportunity to appear before you today to testify on Senate Joint Resolution 41—the Balanced Budget Amendment. My remarks this morning will be devoted to explaining why this Amendment, which I oppose, could severely undermine the ability of the Department of Justice to fulfill its core function of fighting crime.

As everyone here is no doubt aware, the Administration is deeply committed to fighting crime and to making our streets and schools safe once again. President Clinton has made a promise to the American people to use all the resources of his Administration to reduce the rate of crime now plaguing our communities. As the President himself said last month in his State of the Union Address, "violent crime and the fear it provokes are crippling our society, limiting personal freedom, and fraying the ties that bind us." Our charge is clear: to rid our society of this scourge while healing the wounds that divide us.

Members of this Committee have made a significant contribution in the fight against crime by voting for passage of a comprehensive crime bill. I salute you—and your colleagues in the Senate—for your support and dedicated efforts toward making this legislation a reality.

As Attorney General, my most important responsibility to the American people is to ensure that the laws are strictly enforced and that all the means at my disposal are utilized to their fullest extent in the fight against crime. My testimony today will focus on why the Balanced Budget Amendment—by forcing cutbacks in the very programs at the center of our anti-crime crusade—could severely undermine the Department's ability to banish violence from our homes and streets.

At the outset, let me state very clearly the basic assumptions I have made in addressing the effects of the Balanced Budget Amendment on the Department of Justice. For purposes of my analysis this morning, I have assumed that any spending cuts required by the Balanced Budget Amendment on the department of Justice. For purposes of my analysis this morning, I have assumed that any spending cuts required by the Balanced Budget Amendment would be pro-rated across all government programs; no single Cabinet Department or agency would be asked to cut any more, or any less, than any other. All would be affected equally.

Applying this basic assumption, in 1999—the earliest year the Amendment could go into effect—the total budget deficit is projected to be $201 billion. Because Department of Justice outlays are approximately 1 percent of total Federal outlays, we have estimated—again assuming that the Department will be asked to make the same percentage of spending reductions as everyone else—that the Department would be cut by $2 billion in outlays, or one percent of $201 billion. This equates to about $1.8 billion in budget authority by 1999, or approximately 20 percent of our discretionary budget authority.

Let me be blunt: If the Balanced Budget Amendment took effect today, and we were asked to cut almost $2 billion from our discretionary spending—the effects would be immediate, and they would be dire. We would feel those cuts in the very areas we are now trying to strengthen in order to win back our streets, schools and homes against escalating crime and violence.

Put simply, the Balanced Budget Amendment would put at risk the Justice Department's ability to fight crime. Passage of the Amendment would mean sharp reductions in all of the Department's crime fighting units.

THE AMENDMENT WOULD CAUSE SHARP REDUCTIONS IN ESSENTIAL DEPARTMENTAL PROGRAMS

Every single component of the Department—the FBI, the DEA, INS, the U.S. Attorneys' Offices, the U.S. Marshal's Office, the Bureau of Prisons, and other federal prosecutors—has worked hard to meet the President's FY 1995 budget. To cut them further—as the Balanced Budget Amendment would require—would not only prevent us from meeting our ambitious goals, but might result in a significant retreat from our current capabilities. Let me be more specific.

As you all well know, most of the Department's activities are funded out of a discretionary budget authority which is under the jurisdiction of the Committees On Appropriations. While the President's 1995 appropriation request for the Department includes only $103 million in mandatory appropriations, it includes a full $12.2 billion in discretionary budget authority. This portion funds the FBI, the DEA, the INS, the U.S. Marshals Offices, the U.S. Attorneys Offices, the Criminal Division, the Tax Division, the Antitrust Division, the Civil Rights Division, the Environment and Natural Resources Division and their respective litigating operations, the Bureau of Prisons, the Office of Justice Programs, and other components.

As I have already testified, we estimate that the Balanced Budget Amendment, if enacted, would require us to cut $2 billion from our discretionary programs by 1999. Using 1994 budget figures, instead of having $9.4 billion in discretionary funds to spend on crime fighting measures, we would have slightly more than seven and a half billion dollars.

Make no mistake about it: these cuts would have immediate consequences for our department. All this at a time when we are working so hard to take back our streets and to stop this devastating cycle of crime and violence.

With the public up in arms about the epidemic of crime in our communities, I am confident that no one on this Committee would want to see such draconian cuts in our crime-fighting units. Unfortunately, the Balanced Budget Amendment might leave us with no other choice. Indeed, if forced to operate with the parameters of this Amendment, all the paths available to us would lead to one inevitable dead-end—the necessity of limiting the resources our nation so desperately needs to fight crime aggressively.

For example, one of the cornerstones of our crime-fighting program is the assistance we provide to state and local jurisdictions devoted to crime prevention. In fiscal year 1994, this assistance, most of which comes in the form of grants, will amount to nearly $1 billion. The purpose of these funds is to help our local and state law enforcement officials by supplementing their often severely limited resources, providing incentives for action in areas of critical need, and giving them the tools they need to serve their communities.

The hard, cold reality is that complying with the requirements of the Balanced Budget Amendment might mean eliminating aid to state and local law enforcement entirely. As the former prosecutor of Dade County, I learned first-hand how critically important this assistance is to holding the line against crime at the local level. I know, and President Clinton knows, that it is our local law enforcement officials, working in partnership with citizens and public interest groups, who are leading the fight to take back our streets. If that money is eliminated, it would effectively destroy any hope of forging the crucial federal-local partnerships that today must form the basis of our crime prevention efforts, and destroy any hope of implementing our community policing and public safety initiatives. In practical terms, the Balanced Budget Amendment would make it impossible to meet the President's budget request to put up to 100,000 more police officers on the street by 1999. As you know, in order to increase in 1995 the financial assistance to state and local law enforcement for purposes authorized in the Senate version of the crime bill, the President has already "bitten the bullet" and reallocated within the discretionary spending ceiling in order to support this new initiative.

Yet eliminating all local and state assistance measures—while a severe remedy in itself—would account for only half of the cutbacks required by the Balanced Budget Amendment. The Department would still have to eliminate approximately 11 percent of its total full-time staff funded by discretionary programs.

If instead state and local assistance were continued at a rate 20 percent below the current level, we would need to cut approximately 20,000 full-time employees, or about one-quarter of our entire full-time workstaff.

If, on the other hand, we continued the President's commitment to fund 100,000 new police, and the Balanced Budget Amendment were enacted today, the effect on the various Department components responsible for our crime prevention efforts would be catastrophic. The 20 percent reduction in our discretionary spending from 1994 resources required by the Amendment would mean:

The Federal Bureau of Investigation (FBI) would have to decrease its 1994 resources by $412.1 million and eliminate 4387 positions, including approximately 1900 agents and 2500 support staff. The Drug Enforcement Administration (DEA) would have to decrease its total resources by $145.9 million and eliminate approximately 500 agents and 600 support staff.

The impact of this reduction on these programs would be devastating. At all levels of law enforcement, essential training programs and important task forces would be eliminated. In addition, DEA's drug king-pin strategy would be crippled. Most, if not all, of the DEA's resident offices and posts of duty in small and mid-sized cities and towns would have to be closed. These effects would be felt well beyond this nation's borders, as DEA offices in drug source and transit countries would be forced to close shop.

The Immigration and Naturalization Service (INS) would need to reduce about 2400 staff members to cut $211.9 million off its budget. A reduction of this magnitude would severely curtail INS' ability to control the U.S. borders and enforce the nation's immigration laws. At a time when both the agency and the Administration have been targeting resources on controlling our borders, this would virtually shut down border patrol operations and negate all enhancements, including the increased agent strength that we achieved in 1994.

No new prisons would be built by the Bureau of Prisons (BOP), and due to lack of staff, existing institutions would have to close. Prison overcrowding would soar, to a startling 77 percent by 1999, forcing courts to mandate the release of violent offenders back onto the street. Living conditions would worsen, increasing the dangers posed to staff, inmates and the community at large.

The American people, tired of empty rhetoric and tired of escalating crime, are looking to us to provide direct and immediate action to make our communities safe once again. By passing the Balanced Budget Amendment, we would not be able to make good on the promises set forth in the crime bill. We would be saying to the American people in the same breath that while we're serious about fighting crime, we won't be able to fund the essential programs necessary to win this battle. We can not—and we should not—send such conflicting messages to the American people.

By passing the Balanced Budget Amendment, we would be gutting the heart and soul of the Senate-passed Crime Bill: the 20 percent reduction required by the Amendment would affect the Crime Control Fund like all other discretionary spending programs. For example, one of the most important initiatives included in the Crime Bill is the provision to hire 100,000 new police officers over the next five years. America's neighborhoods desperately need these new cops; more cops on the streets, working hand-in glove in their communities, means less crime. If passed today, the Balanced Budget Amendment will severely undercut our ability to put these police in the communities where they belong.

Just as important to our crime-fighting plan is the decision to build boot camps. These camps can give youths who have committed their first crime and who are at risk of drug and gang involvement the discipline, education and training they need to grab another chance for an honest life. If passed today, the Balanced Budget Amendment, however, would slash funds intended for these camps, depriving many young offenders of a chance at a new start on life.

Similarly, drug-treatment and coerced abstinence programs for criminal offenders—including residential substance abuse for prisoners—cornerstones of both the Crime Bill and the President's National Drug Control Strategy, would not be possible under a Balanced Budget Amendment. Nor could the Bill's plan to help support drug courts, drug testing and certainty of punishment for young offenders be implemented under a Balanced Budget Amendment.

Tomorrow, Assistant Attorney General Walter Dellinger will testify before this Committee on the potential impact of the Balanced Budget Amendment on the structure of the constitution, and I don't want to duplicate what he will say. I do hope, however, that you will listen very carefully to his testimony, because it will highlight another important aspect of this debate, one that merits serious consideration when you debate the merits of this Amendment.

CONCLUSION

Mr. Chairman, I hope my testimony has made this Committee more aware of just how dangerous the Balanced Budget Amendment could be for the Department and its efforts to reduce violent crime and drugs in America's streets and schools.

No one wants to see the deficit reduced more than this Administration. As the President and the Senate showed last summer, the deficit can be reduced only if we are willing to make the hard and necessary choices to control federal spending.

The Balanced Budget Amendment is not the simple cure that its proponents suggest. If it does work, it will only cause painful reductions in the very areas we are trying to bolster.

The fight against crime is not easy. It has never been easy. Hundreds of thousands of Americans each day put their lives on the line to protect their fellow-countrymen and women from the dangers of their communities. We owe it to them, and to all of us who are afraid to walk our streets at night or to attend schools during the daytime, to provide them with the resources to stamp out this epidemic of crime and restore our neighborhood security. The Balanced Budget Amendment will impede us in this effort at the very time that it is needed most. Let us not make this mistake.

Thank you for the opportunity to meet with you this morning and I'll be happy to answer any questions.

DEPARTMENT OF THE TREASURY,
Washington, DC, January 12, 1995.

Hon. HOWARD DEAN, M.D.,
Chairman, National Governors' Association, Office of the Governor, Montpelier, VT.

DEAR GOVERNOR DEAN: I write to answer your request for information on the likely effects of passage of a balanced-budget amendment, accompanied by "Contract with America" federal tax reductions, on state budgets and state taxes.

Enclosed is a set of estimates that Treasury staff have constructed of the possible effect on states and their finances of a constitutional amendment requiring the balancing of the federal budget in 2002, accompanied by the tax reductions mentioned above. These estimates are based on the following assumptions: (I) that the federal budget would be balanced through spending cuts, (II) that Social Security and Defense spending would not be reduced below baseline, and thus (III) that the entire burden of balancing the federal budget would be placed on non-interest, non-Social Security, non-Defense spending, as proposed methods for balancing the budget and financing various tax cuts excludes Social Security and Defense.

The estimates assume that every expenditure—interest, Social Security, and Defense aside—would be reduced relative to baseline by the same proportional amount. The estimates assume that the deficit reduction will be phased in gradually, an equal amount in each year between now and 2002. This arrangement of the spending cuts results in substantial interest savings relative to the baseline in 2002, and thus reduces the amount of non-interest spending that must be cut in 2002 to balance the budget.

Nevertheless, the cuts required in 2002 would be severe. To help balance the budget and help offset the tax reductions noted above, federal grants to states would be cut by a total of $97.8 billion in fiscal 2002. Other federal spending that directly benefits state residents would be cut by $242.2 billion in fiscal 2002.

The cuts in grants—in Medicaid, highway funds, AFDC, and other grants—and the cuts in other spending—on Medicare and on other spending—were distributed across states proportionately to current levels of federal expenditures. Also reported is the amount by which total state taxes would have to be raised if the state wished to fully offset the reduction in federal grants.

Grants to states in the aggregate, to specific states, and to states for specific programs may be cut by more or by less than projected here. Yet, without further detail, the most reasonable method for illustrating the likely burdens on states is to assume across-the-board proportional cuts.

Note, also, that these estimates do not incorporate any significant feedback effects: it is possible that shifts in monetary policy would not be able to fully offset the downward macroeconomic impact of a balanced-budget amendment. To the extent that implementation of an amendment slows growth and reduces state revenues, the gap would be somewhat larger and the effect on state finances somewhat more severe. On the other hand, balancing the federal budget could have substantial positive effects on the U.S. economy, which would promise to raise state revenues as state economic activity increased. Such effects are not discussed here.

Note, finally, that this set of estimates is far from being a complete analysis of a balanced-budget amendment. Its principal function is to identify and evaluate the approximate impact on state government finances of a constitutional amendment that requires federal budget balance by 2002.

Sincerely yours,
JOYCE CARRIER,
Deputy Assistant Secretary for Public Liaison.

THE IMPACT OF A BALANCED-BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON STATE FINANCES

TABLE 1.—SPENDING REDUCTIONS UNDER BALANCED BUDGET AMENDMENT

[Fiscal year 2002, Millions of dollars]

State	Cuts in grants to State Government					Required State tax increase (percent)	Cuts in other Federal spending		
	Total	Medicaid	Highway	AFDC	Other		Total	Medicare	Other
U.S. total	71,300	40,314	5,176	4,508	21,301	N.A.	176,492	77,475	99,017
Alabama	1,162	641	98	32	391	16.4	3,058	1,157	1,900
Alaska	306	89	71	19	127	9.8	576	44	532
Arizona	919	519	78	68	254	10.4	2,397	949	1,447
Arkansas	723	416	65	16	225	16.5	1,567	766	800
California	7,708	3,944	442	960	2,362	9.2	20,321	9,101	11,220
Colorado	755	387	79	36	253	11.8	2,764	721	2,044
Connecticut	1,008	587	105	63	253	11.2	1,843	1,089	755
Delaware	158	70	18	9	61	7.2	383	176	207
DC	697	183	17	24	473	20.4	4,937	313	4,624
Florida	2,656	1,520	202	170	764	10.2	9,782	5,336	4,446
Georgia	1,608	938	131	101	438	12.0	3,790	1,392	2,398
Hawaii	328	117	62	24	125	6.8	737	216	522

TABLE 1.—SPENDING REDUCTIONS UNDER BALANCED BUDGET AMENDMENT—Continued

[Fiscal year 2002, Millions of dollars]

State	Cuts in grants to State Government					Required State tax increase (percent)	Cuts in other Federal spending		
	Total	Medicaid	Highway	AFDC	Other		Total	Medicare	Other
Idaho	254	118	33	8	95	9.9	855	218	637
Illinois	2,576	1,354	174	155	892	11.6	7,532	4,092	3,441
Indiana	1,490	956	123	54	357	13.8	2,531	1,497	1,034
Iowa	630	328	69	35	197	10.9	1,919	897	1,022
Kansas	622	355	52	29	186	13.0	1,730	819	911
Kentucky	1,157	690	69	56	341	14.5	2,111	952	1,159
Louisiana	1,966	1,500	94	48	324	27.8	2,361	1,066	1,296
Maine	452	279	28	24	121	17.5	717	385	331
Maryland	1,125	581	83	65	396	9.9	6,253	1,377	4,876
Massachusetts	1,915	1,073	248	135	459	12.6	4,683	2,449	2,234
Michigan	2,477	1,355	140	229	753	13.2	4,988	3,333	1,655
Minnesota	1,177	679	102	83	314	9.4	2,547	1,123	1,424
Mississippi	864	496	61	24	282	20.8	1,672	713	959
Missouri	1,316	747	109	62	398	15.5	3,942	1,781	2,161
Montana	277	123	52	12	89	19.8	744	218	526
Nebraska	388	192	44	23	129	13.3	1,213	482	732
Nevada	227	116	32	11	68	6.2	1,005	258	747
New Hampshire	212	112	31	11	58	17.6	563	270	293
New Jersey	2,476	1,500	141	129	705	12.7	4,653	2,894	1,759
New Mexico	524	233	70	28	193	12.9	2,117	321	1,796
New York	8,181	5,442	274	535	1,930	17.4	11,058	6,876	4,182
North Carolina	1,697	1,025	136	95	441	11.1	3,217	1,432	1,785
North Dakota	229	105	35	8	81	19.7	563	231	332
Ohio	2,826	1,718	170	212	727	14.4	6,007	3,442	2,565
Oklahoma	770	424	51	51	244	12.4	2,110	934	1,177
Oregon	706	342	54	47	263	12.2	1,976	833	1,143
Pennsylvania	3,057	1,767	211	178	901	12.7	8,555	5,120	3,435
Rhode Island	430	255	42	23	109	21.4	619	347	272
South Carolina	1,003	644	68	31	260	14.3	2,217	682	1,535
South Dakota	231	103	39	6	82	24.7	577	205	372
Tennessee	1,537	989	78	60	411	19.5	3,845	1,349	2,496
Texas	4,167	2,520	340	147	1,159	14.0	10,758	4,280	6,479
Utah	422	190	49	22	160	11.4	1,078	235	842
Vermont	207	89	37	13	68	17.4	301	150	151
Virginia	1,005	490	72	49	393	8.2	6,073	1,374	4,699
Washington	1,318	730	117	126	346	8.4	3,569	1,107	2,463
West Virginia	765	488	45	32	199	20.6	1,209	600	608
Wisconsin	1,250	694	111	96	349	10.3	2,480	1,503	977
Wyoming	218	55	38	8	118	18.7	286	96	191
State total:	70,172	40,271	5,093	4,480	20,328	12.6	172,792	77,199	95,593
Undist. & Terr.	1,127	43	83	28	973	N.A.	3,700	276	3,424

TABLE 2.—SPENDING REDUCTIONS UNDER CONTRACT WITH AMERICA

[Fiscal year, millions of dollars]

State	Cuts in grants to State Governments					Required State tax increase (percent)	Cuts in other Federal spending		
	Total	Medicaid	Highway	AFDC	Other		Total	Medicare	Other
U.S. total	97,825	55,312	7,102	6,185	29,226	N.A.	242,151	106,298	135,854
Alabama	1,594	879	135	44	536	22.5	4,195	1,588	2,608
Alaska	420	123	98	26	174	13.5	790	60	730
Arizona	1,261	712	108	93	348	14.2	3,288	1,302	1,986
Arkansas	992	571	90	23	309	22.7	2,150	1,052	1,098
California	10,576	5,412	607	1,317	3,241	12.6	27,880	12,486	15,394
Colorado	1,036	531	108	49	347	16.2	3,793	989	2,804
Connecticut	1,383	805	145	86	348	15.4	2,529	1,494	1,035
Delaware	217	97	25	12	83	9.8	526	241	284
DC	956	252	23	32	650	27.9	6,774	429	6,345
Florida	3,644	2,086	277	233	1,048	14.0	13,421	7,321	6,100
Georgia	2,206	1,286	180	138	601	16.5	5,200	1,910	3,290
Hawaii	450	161	85	32	172	9.3	1,012	296	716
Idaho	349	162	46	11	131	13.6	1,173	299	874
Illinois	3,534	1,858	239	213	1,224	15.9	10,334	5,614	4,721
Indiana	2,044	1,312	168	74	490	18.9	3,473	2,054	1,419
Iowa	864	451	95	48	270	15.0	2,633	1,231	1,402
Kansas	853	487	71	40	255	17.8	2,374	1,124	1,249
Kentucky	1,587	947	95	77	468	19.8	2,896	1,306	1,590
Louisiana	2,697	2,059	129	66	444	38.2	3,240	1,462	1,778
Maine	621	383	38	33	166	24.0	983	529	454
Maryland	1,543	798	113	89	543	13.5	8,579	1,889	6,690
Massachusetts	2,627	1,472	340	185	630	17.3	6,425	3,360	3,065
Michigan	3,398	1,859	192	314	1,034	18.1	6,844	4,572	2,271
Minnesota	1,615	931	139	113	431	13.0	3,494	1,541	1,954
Mississippi	1,185	681	84	33	387	28.5	2,294	978	1,316
Missouri	1,806	1,025	149	85	547	21.2	5,408	2,444	2,965
Montana	380	169	71	17	123	27.1	1,021	298	722
Nebraska	533	264	60	31	177	18.3	1,665	661	1,004
Nevada	312	159	44	15	94	8.6	1,379	354	1,025
New Hampshire	291	154	43	16	79	24.1	773	370	403
New Jersey	3,397	2,059	194	177	968	17.5	6,384	3,971	2,413
New Mexico	719	320	96	38	265	17.6	2,904	440	2,464
New York	11,225	7,466	376	734	2,649	23.8	15,172	9,435	5,738
North Carolina	2,329	1,406	187	130	605	15.2	4,414	1,965	2,449
North Dakota	314	144	48	10	111	27.0	773	317	455
Ohio	3,878	2,358	233	290	997	19.8	8,242	4,722	3,520
Oklahoma	1,056	582	70	69	335	17.0	2,896	2,281	1,615
Oregon	969	469	75	65	361	16.8	2,711	1,143	1,568
Pennsylvania	4,194	2,424	290	244	1,237	17.4	11,738	7,025	4,713
Rhode Island	590	350	58	32	150	29.3	849	476	373
South Carolina	1,376	883	94	42	357	19.6	3,042	935	2,106
South Dakota	316	142	53	9	113	33.8	792	281	511
Tennessee	2,109	1,357	107	82	563	26.7	5,275	1,850	3,425
Texas	5,717	3,457	466	202	1,591	19.2	14,761	5,872	8,889
Utah	579	261	68	31	220	15.6	1,479	323	1,156
Vermont	284	122	51	18	93	23.9	413	206	207
Virginia	1,379	673	99	68	539	11.2	8,332	1,885	6,447
Washington	1,809	1,001	161	172	474	11.5	4,897	1,518	3,379

TABLE 2.—SPENDING REDUCTIONS UNDER CONTRACT WITH AMERICA—Continued

[Fiscal year, millions of dollars]

State	Cuts in grants to State Governments					Required State tax increase (percent)	Cuts in other Federal spending		
	Total	Medicaid	Highway	AFDC	Other		Total	Medicare	Other
West Virginia	1,049	670	62	44	273	28.3	1,658	824	835
Wisconsin	1,716	952	153	132	479	14.2	3,402	2,062	1,340
Wyoming	300	75	52	10	162	25.7	393	131	262
State total	96,278	55,253	6,988	6,147	27,891	17.3	237,075	105,919	131,155
Undist. & Terr.	1,547	59	114	38	1,335	N.A.	5,077	378	4,698

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF ALABAMA[1]

I. A Balanced Budget Amendment would reduce annual Federal grants to the Alabama state government by $1.2 billion.

$641 million per year in lost funding for Medicaid.

$98 million per year in lost highway trust fund grants.

$32 million per year in lost funding for welfare (AFDC).

$391 million per year in lost funding for education, job training, the environment, housing, and other areas.

Alabama would have to increase state taxes by 16.4 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Alabama state government by $1.6 billion.

$879 million per year in lost funding for Medicaid.

$135 million per year in lost highway trust fund grants.

$44 million per year in lost funding for welfare (AFDC).

$536 million per year in lost funding for education, job training, the environment, housing, and other areas.

Alabama would have to increase state taxes by 22.5 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Alabama by $4.2 billion.

$1.6 billion per year in Medicare benefits.

$2.6 billion per year in other spending including housing assistance, student loans, veteran's benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF ALASKA

I. A Balanced Budget Amendment would reduce annual Federal grants to the Alaska state government by $306 million.

$89 million per year in lost funding for Medicaid.

$71 million per year in lost highway trust fund grants.

$19 million per year in lost funding for welfare (AFDC).

$127 million per year in lost funding for education, job training, the environment, housing, and other areas.

Alaska would have to increase state taxes by 9.8 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Alaska state government by $420 million.

$123 million per year in lost funding for Medicaid.

$98 million per year in lost highway trust fund grants.

$26 million per year in lost funding for welfare (AFDC).

$174 million per year in lost funding for education, job training, the environment, housing, and other areas.

Alaska would have to increase state taxes by 13.5 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Alaska by $790 million.

$60 million per year in Medicare benefits.

$730 million per year in other spending including housing assistance, student loans, veteran's benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF ARIZONA

I. A Balanced Budget Amendment would reduce annual Federal grants to the Arizona state government by $919 million.

$519 million per year in lost funding for Medicaid.

$78 million per year in lost highway trust fund grants.

$68 million per year in lost funding for welfare (AFDC).

$254 million per year in lost funding for education, job training, the environment, housing, and other areas.

Arizona would have to increase state taxes by 10.4 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Arizona state government by $1.3 billion.

$712 million per year in lost funding for Medicaid.

$108 million per year in lost highway trust fund grants.

$93 million per year in lost funding for welfare (AFDC).

$348 million per year in lost funding for education, job training, the environment, housing, and other areas.

Arizona would have to increase state taxes by 14.2 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Arizona by $3.3 billion.

$1.3 billion per year in Medicare benefits.

$2.0 billion per year in other spending including housing assistance, student loans, veteran's benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF ARKANSAS

I. A Balanced Budget Amendment would reduce annual Federal grants to the Arkansas state government by $723 million.

$416 million per year in lost funding for Medicaid.

$65 million per year in lost highway trust fund grants.

$16 million per year in lost funding for welfare (AFDC).

$225 million per year in lost funding for education, job training, the environment, housing, and other areas.

Arkansas would have to increase state taxes by 16.5 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Arkansas state government by $992 million.

$571 million per year in lost funding for Medicaid.

$90 million per year in lost highway trust fund grants.

$23 million per year in lost funding for welfare (AFDC).

$309 million per year in lost funding for education, job training, the environment, housing, and other areas.

Arkansas would have to increase state taxes by 22.7 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Arkansas by $2.1 billion.

$1.1 billion per year in Medicare benefits.

$1.1 billion per year in other spending including housing assistance, student loans, veteran's benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF CALIFORNIA

I. A Balanced Budget Amendment would reduce annual Federal grants to the California state government by $7.7 billion.

$3.9 billion per year in lost funding for Medicaid.

$442 million per year in lost highway trust fund grants.

$960 million per year in lost funding for welfare (AFDC).

$2.4 billion per year in lost funding for education, job training, the environment, housing, and other areas.

California would have to increase state taxes by 9.2 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the California state government by $10.6 billion.

$5.4 billion per year in lost funding for Medicaid.

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[1] For all calculations, a balanced budget is achieved by FY 2002 through across-the-board spending cuts that exclude defense and social security.

$607 million per year in lost highway trust fund grants.

$1.3 billion per year in lost funding for welfare (AFDC).

$3.2 billion per year in lost funding for education, job training, the environment, housing, and other areas.

California would have to increase state taxes by 12.6 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in California by $27.9 billion.

$12.5 billion per year in Medicare benefits.

$15.4 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF COLORADO

I. A Balanced Budget Amendment would reduce annual Federal grants to the Colorado state government by $755 million.

$387 million per year in lost funding for Medicaid.

$79 million per year in lost highway trust fund grants.

$36 million per year in lost funding for welfare (AFDC).

$253 million per year in lost funding for education, job training, the environment, housing, and other areas.

Colorado would have to increase state taxes by 11.8 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Colorado state government by $1.0 billion.

$531 million per year in lost funding for Medicaid.

$108 million per year in lost highway trust fund grants.

$49 million per year in lost funding for welfare (AFDC).

$347 million per year in lost funding for education, job training, the environment, housing, and other areas.

Colorado would have to increase state taxes by 16.2 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Colorado by $3.8 billion.

$989 million per year in Medicare benefits.

$2.8 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF CONNECTICUT

I. A Balanced Budget Amendment would reduce annual Federal grants to the Connecticut state government by $1.0 billion.

$587 million per year in lost funding for Medicaid.

$105 million per year in lost highway trust fund grants.

$63 million per year in lost funding for welfare (AFDC).

$253 million per year in lost funding for education, job training, the environment, housing, and other areas.

Connecticut would have to increase state taxes by 11.2 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Connecticut state government by $1.4 billion.

$805 million per year in lost funding for Medicaid.

$145 million per year in lost highway trust fund grants.

$86 million per year in lost funding for welfare (AFDC).

$348 million per year in lost funding for education, job training, the environment, housing, and other areas.

Connecticut would have to increase state taxes by 15.4 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Connecticut by $2.5 billion.

$1.5 billion per year in Medicare benefits.

$1.0 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF DELAWARE

I. A Balanced Budget Amendment would reduce annual Federal grants to the Delaware state government by $158 billion.

$70 million per year in lost funding for Medicaid.

$18 million per year in lost highway trust fund grants.

$9 million per year in lost funding for welfare (AFDC).

$61 million per year in lost funding for education, job training, the environment, housing, and other areas.

Delaware would have to increase state taxes by 7.2 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Delaware state government by $217 million.

$97 million per year in lost funding for Medicaid.

$25 million per year in lost highway trust fund grants.

$12 million per year in lost funding for welfare (AFDC).

$83 million per year in lost funding for education, job training, the environment, housing, and other areas.

Delaware would have to increase state taxes by 9.8 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Delaware by $526 million.

$241 million per year in Medicare benefits.

$284 million per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE DISTRICT OF COLUMBIA

I. A Balanced Budget Amendment would reduce annual Federal grants to the D.C. government by $697 million.

$183 million per year in lost funding for Medicaid.

$17 million per year in lost highway trust fund grants.

$24 million per year in lost funding for welfare (AFDC).

$473 million per year in lost funding for education, job training, the environment, housing, and other areas.

D.C. would have to increase state taxes by 20.4 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the D.C. government by $956 million.

$252 million per year in lost funding for Medicaid.

$23 million per year in lost highway trust fund grants.

$32 million per year in lost funding for welfare (AFDC).

$650 million per year in lost funding for education, job training, the environment, housing, and other areas.

D.C. would have to increase state taxes by 27.9 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in DC by $6.8 billion.

$429 million per year in Medicare benefits.

$6.3 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF FLORIDA

I. A Balanced Budget Amendment would reduce annual Federal grants to the Florida state government by $2.7 billion.

$1.5 billion per year in lost funding for Medicaid.

$202 million per year in lost highway trust fund grants.

$170 million per year in lost funding for welfare (AFDC).

$764 million per year in lost funding for education, job training, the environment, housing, and other areas.

Florida would have to increase state taxes by 10.2 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Florida state government by $3.6 billion.

$2.1 billion per year in lost funding for Medicaid.

$277 million per year in lost highway trust fund grants.

$233 million per year in lost funding for welfare (AFDC).

$1.0 billion per year in lost funding for education, job training, the environment, housing, and other areas.

Florida would have to increase state taxes by 14.0 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Florida by $13.4 billion.

$7.3 billion per year in Medicare benefits.

$6.1 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF GEORGIA

I. A Balanced Budget Amendment would reduce annual Federal grants to the Georgia state government by $1.6 billion.

$938 million per year in lost funding for Medicaid.

$131 million per year in lost highway trust fund grants.

$101 million per year in lost funding for welfare (AFDC).

$438 million per year in lost funding for education, job training, the environment, housing, and other areas.

Georgia would have to increase state taxes by 12.0 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Georgia state government by $2.2 billion.

$1.3 billion per year in lost funding for Medicaid.

$180 million per year in lost highway trust fund grants.

$138 million per year in lost funding for welfare (AFDC).

$601 million per year in lost funding for education, job training, the environment, housing, and other areas.

Georgia would have to increase state taxes by 16.5 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Georgia by $5.2 billion.

$1.9 billion per year in Medicare benefits.

$3.3 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF HAWAII

I. A Balanced Budget Amendment would reduce annual Federal grants to the Hawaii state government by $328 million.

$117 million per year in lost funding for Medicaid.

$62 million per year in lost highway trust fund grants.

$24 million per year in lost funding for welfare (AFDC).

$125 million per year in lost funding for education, job training, the environment, housing, and other areas.

Hawaii would have to increase state taxes by 6.8 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Hawaii state government by $450 million.

$161 million per year in lost funding for Medicaid.

$85 million per year in lost highway trust fund grants.

$32 million per year in lost funding for welfare (AFDC).

$172 million per year in lost funding for education, job training, the environment, housing, and other areas.

Hawaii would have to increase state taxes by 9.3 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Hawaii by $1.0 billion.

$296 million per year in Medicare benefits.

$716 million per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF IDAHO

I. A Balanced Budget Amendment would reduce annual Federal grants to the Idaho state government by $254 million.

$118 million per year in lost funding for Medicaid.

$33 million per year in lost highway trust fund grants.

$8 million per year in lost funding for welfare (AFDC).

$95 million per year in lost funding for education, job training, the environment, housing, and other areas.

Idaho would have to increase state taxes by 9.9 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Idaho state government by $349 million.

$162 million per year in lost funding for Medicaid.

$46 million per year in lost highway trust fund grants.

$11 million per year in lost funding for welfare (AFDC).

$131 million per year in lost funding for education, job training, the environment, housing, and other areas.

Idaho would have to increase state taxes by 13.6 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Idaho by $1.2 billion.

$299 million per year in Medicare benefits.

$874 million per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF ILLINOIS

I. A Balanced Budget Amendment would reduce annual Federal grants to the Illinois state government by $2.6 billion.

$1.4 billion per year in lost funding for Medicaid.

$174 million per year in lost highway trust fund grants.

$155 million per year in lost funding for welfare (AFDC).

$892 million per year in lost funding for education, job training, the environment, housing, and other areas.

Illinois would have to increase state taxes by 11.6 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require deeper spending cuts, thereby reducing annual Federal grants to the Illinois state government by $3.5 billion.

$1.9 billion per year in lost funding for Medicaid.

$239 million per year in lost highway trust fund grants.

$213 million per year in lost funding for welfare (AFDC).

$1.2 billion per year in lost funding for education, job training, the environment, housing, and other areas.

Illinois would have to increase state taxes by 15.9 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Illinois by $10.3 billion.

$5.6 billion per year in Medicare benefits.

$4.7 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF INDIANA

I. A Balanced Budget Amendment would reduce annual grants to the Indiana state government by $1.5 billion.

$956 million per year in lost funding for Medicaid.

$123 million per year in lost highway trust fund grants.

$54 million per year in lost funding for welfare (AFDC).

$357 million per year in lost funding for education, job training, the environment, housing, and other areas.

Indiana would have to increase state taxes by 13.8 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Indiana state government by $2.0 billion.

$1.3 billion per year in lost funding for Medicaid.

$168 million per year in lost highway trust fund grants.

$74 million per year in lost funding for welfare (AFDC).

$490 million per year in lost funding for education, job training, the environment, housing, and other areas.

Indiana would have to increase state taxes by 18.9 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Indiana by $3.5 billion.

$2.1 billion per year in Medicare benefits.

$1.4 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF IOWA

I. A Balanced Budget Amendment would reduce annual Federal grants to the Iowa state government by $630 million.

$328 million per year in lost funding for Medicaid.

$69 million per year in lost highway trust fund grants.

$35 million per year in lost funding for welfare (AFDC).

$197 million per year in lost funding for education, job training, the environment, housing, and other areas.

Iowa would have to increase state taxes by 10.9 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Iowa state government by $864 million.

$451 million per year in lost funding for Medicaid.

$95 million per year in lost highway trust fund grants.

$48 million per year in lost funding for welfare (AFDC).

$270 million per year in lost funding for education, job training, the environment, housing, and other areas.

Iowa would have to increase state taxes by 15.0 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Iowa by $2.6 billion.

$1.2 billion per year in Medicare benefits.

$1.4 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF KANSAS

I. A Balanced Budget Amendment would reduce annual Federal grants to the Kansas state government by $622 million.

$355 million per year in lost funding for Medicaid.

$52 million per year in lost highway trust fund grants.

$29 million per year in lost funding for welfare (AFDC).

$186 million per year in lost funding for education, job training, the environment, housing, and other areas.

Kansas would have to increase state taxes by 13.0 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would requre even deeper spending cuts, thereby reducing annual Federal grants to the Kansas state government by $853 million.

$487 million per year in lost funding for Medicaid.

$71 million per year in lost highway trust fund grants.

$40 million per year in lost funding for welfare (AFDC).

$255 million per year in lost funding for education, job training, the environment, housing, and other areas.

Kansas would have to increase state taxes by 17.8 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Kansas by $2.4 billion.

$1.1 billion per year in Medicare benefits.

$1.2 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF KENTUCKY

I. A Balanced Budget Amendment would reduce annual Federal grants to the Kentucky state government by $1.2 billion.

$690 million per year in lost funding for Medicaid.

$69 million per year in lost highway trust fund grants.

$56 million per year in lost funding for welfare (AFDC).

$341 million per year in lost funding for education, job training, the environment, housing, and other areas.

Kentucky would have to increase state taxes by 14.5 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would requre even deeper spending cuts, thereby reducing annual Federal grants to the Kentucky state government by $1.6 billion.

$947 million per year in lost funding for Medicaid.

$95 million per year in lost highway trust fund grants.

$77 million per year in lost funding for welfare (AFDC).

$468 million per year in lost funding for education, job training, the environment, housing, and other areas.

Kentucky would have to increase state taxes by 19.8 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Kentucky by $2.9 billion.

$1.3 billion per year in Medicare benefits.

$1.6 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF LOUISIANA

I. A Balanced Budget Amendment would reduce annual Federal grants to the Louisiana state government by $2.0 billion.

$1.5 billion per year in lost funding for Medicaid.

$94 million per year in lost highway trust fund grants.

$48 million per year in lost funding for welfare (AFDC).

$324 million per year in lost funding for education, job training, the environment, housing, and other areas.

Louisiana would have to increase state taxes by 27.8 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would requre even deeper spending cuts, thereby reducing annual Federal grants to the Louisiana state government by $2.7 billion.

$2.1 billion per year in lost funding for Medicaid.

$129 million per year in lost highway trust fund grants.

$66 million per year in lost funding for welfare (AFDC).

$444 million per year in lost funding for education, job training, the environment, housing, and other areas.

Louisiana would have to increase state taxes by 38.2 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Louisiana by $3.2 billion.

$1.5 billion per year in Medicare benefits.

$1.8 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF MAINE

I. A Balanced Budget Amendment would reduce annual Federal grants to the Maine state government by $452 million.

$279 million per year in lost funding for Medicaid.

$28 million per year in lost highway trust fund grants.

$24 million per year in lost funding for welfare (AFDC).

$121 million per year in lost funding for education, job training, the environment, housing, and other areas.

Maine would have to increase state taxes by 17.5 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would requre even deeper spending cuts, thereby reducing annual Federal grants to the Maine state government by $621 million.

$383 million per year in lost funding for Medicaid.

$38 million per year in lost highway trust fund grants.

$33 million per year in lost funding for welfare (AFDC).

$166 million per year in lost funding for education, job training, the environment, housing, and other areas.

Maine would have to increase state taxes by 17.8 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Maine by $983 million.

$529 million per year in Medicare benefits.

$454 million per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF MARYLAND

I. A Balanced Budget Amendment would reduce annual Federal grants to the Maryland state government by $1.1 billion.

$581 million per year in lost funding for Medicaid.

$83 million per year in lost highway trust fund grants.

$65 million per year in lost funding for welfare (AFDC).

$396 million per year in lost funding for education, job training, the environment, housing, and other areas.

Maryland would have to increase state taxes by 9.9 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Maryland state government by $1.5 billion.

$798 million per year in lost funding for Medicaid.

$113 million per year in lost highway trust fund grants.

$89 million per year in lost funding for welfare (AFDC).

$543 million per year in lost funding for education, job training, the environment, housing, and other areas.

Maryland would have to increase state taxes by 13.5 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Maryland by $8.6 billion.

$1.9 billion per year in Medicare benefits.

$6.7 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF MASSACHUSETTS

I. A Balanced Budget Amendment would reduce annual Federal grants to the Massachusetts state government by $1.9 billion.

$1.1 billion per year in lost funding for Medicaid.

$248 million per year in lost highway trust fund grants.

$135 million per year in lost funding for welfare (AFDC).

$459 million per year in lost funding for education, job training, the environment, housing, and other areas.

Massachusetts would have to increase state taxes by 12.6 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Massachusetts state government by $2.6 billion.

$1.5 billion per year in lost funding for Medicaid.

$340 million per year in lost highway trust fund grants.

$185 million per year in lost funding for welfare (AFDC).

$630 million per year in lost funding for education, job training, the environment, housing, and other areas.

Massachusetts would have to increase state taxes by 17.3 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Massachusetts by $6.4 billion.

$3.4 billion per year in Medicare benefits.

$3.1 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF MICHIGAN

I. A Balanced Budget Amendment would reduce annual Federal grants to the Michigan state government by $2.5 billion.

$1.4 billion per year in lost funding for Medicaid.

$140 million per year in lost highway trust fund grants.

$229 million per year in lost funding for welfare (AFDC).

$753 million per year in lost funding for education, job training, the environment, housing, and other areas.

Michigan would have to increase state taxes by 13.2 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Michigan state government by $3.4 billion.

$1.9 billion per year in lost funding for Medicaid.

$192 million per year in lost highway trust fund grants.

$314 million per year in lost funding for welfare (AFDC).

$1.0 billion per year in lost funding for education, job training, the environment, housing, and other areas.

Michigan would have to increase state taxes by 18.1 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Michigan by $6.8 billion.

$4.6 billion per year in Medicare benefits.

$2.3 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF MINNESOTA

I. A Balanced Budget Amendment would reduce annual Federal grants to the Minnesota state government by $1.2 billion.

$679 million per year in lost funding for Medicaid.

$102 million per year in lost highway trust fund grants.

$83 million per year in lost funding for welfare (AFDC).

$314 million per year in lost funding for education, job training, the environment, housing, and other areas.

Minnesota would have to increase state taxes by 9.4 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Minnesota state government by $1.6 billion.

$931 million per year in lost funding for Medicaid.

$139 million per year in lost highway trust fund grants.

$113 million per year in lost funding for welfare (AFDC).

$431 million per year in lost funding for education, job training, the environment, housing, and other areas.

Minnesota would have to increase state taxes by 13.0 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Minnesota by $3.5 billion.

$1.5 billion per year in Medicare benefits.

$2.0 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF MISSISSIPPI

I. A Balanced Budget Amendment would reduce annual Federal grants to the Mississippi state government by $864 million.

$496 million per year in lost funding for Medicaid.

$61 million per year in lost highway trust fund grants.

$24 million per year in lost funding for welfare (AFDC).

$282 million per year in lost funding for education, job training, the environment, housing, and other areas.

Mississippi would have to increase state taxes by 20.8 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Mississippi state government by $1.2 billion.

$681 million per year in lost funding for Medicaid.

$84 million per year in lost highway trust fund grants.

$33 million per year in lost funding for welfare (AFDC).

$387 million per year in lost funding for education, job training, the environment, housing, and other areas.

Mississippi would have to increase state taxes by 28.5 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Mississippi by $2.3 billion.

$978 million per year in Medicare benefits.

$1.3 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF MISSOURI

I. A Balanced Budget Amendment would reduce annual Federal grants to the Missouri state government by $1.3 billion.

$747 million per year in lost funding for Medicaid.

$109 million per year in lost highway trust fund grants.

$62 million per year in lost funding for welfare (AFDC).

$398 million per year in lost funding for education, job training, the environment, housing, and other areas.

Missouri would have to increase state taxes by 15.5 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Missouri state government by $1.8 billion.

$1.0 billion per year in lost funding for Medicaid.

$149 million per year in lost highway trust fund grants.

$85 million per year in lost funding for welfare (AFDC).

$547 million per year in lost funding for education, job training, the environment, housing, and other areas.

Missouri would have to increase state taxes by 21.2 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Missouri by $5.4 billion.

$2.4 billion per year in Medicare benefits.

$3.0 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF MONTANA

I. A Balanced Budget Amendment would reduce annual Federal grants to the Montana state government by $277 million.

$123 million per year in lost funding for Medicaid.

$52 million per year in lost highway trust fund grants.

$12 million per year in lost funding for welfare (AFDC).

$89 million per year in lost funding for education, job training, the environment, housing, and other areas.

Montana would have to increase state taxes by 19.8 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Montana state government by $380 million.

$169 million per year in lost funding for Medicaid.

$71 million per year in lost highway trust fund grants.

$17 million per year in lost funding for welfare (AFDC).

$123 million per year in lost funding for education, job training, the environment, housing, and other areas.

Montana would have to increase state taxes by 27.1 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Montana by $1.0 billion.

$298 million per year in Medicare benefits.

$722 million per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF NEBRASKA

I. A Balanced Budget Amendment would reduce annual Federal grants to the Nebraska state government by $388 million.

$192 million per year in lost funding for Medicaid.

$44 million per year in lost highway trust fund grants.

$23 million per year in lost funding for welfare (AFDC).

$129 million per year in lost funding for education, job training, the environment, housing, and other areas.

Nebraska would have to increase state taxes by 13.3 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Nebraska state government by $533 million.

$264 million per year in lost funding for Medicaid.

$60 million per year in lost highway trust fund grants.

$31 million per year in lost funding for welfare (AFDC).

$177 million per year in lost funding for education, job training, the environment, housing, and other areas.

Nebraska would have to increase state taxes by 18.3 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Nebraska by $1.7 billion.

$661 million per year in Medicare benefits.

$1.0 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF NEVADA

I. A Balanced Budget Amendment would reduce annual Federal grants to the Nevada state government by $227 million.

$116 million per year in lost funding for Medicaid.

$32 million per year in lost highway trust fund grants.

$11 million per year in lost funding for welfare (AFDC).

$68 million per year in lost funding for education, job training, the environment, housing, and other areas.

Nevada would have to increase state taxes by 6.2 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Nevada state government by $312 million.

$159 million per year in lost funding for Medicaid.

$44 million per year in lost highway trust fund grants.

$15 million per year in lost funding for welfare (AFDC).

$94 million per year in lost funding for education, job training, the environment, housing, and other areas.

Nevada would have to increase state taxes by 8.6 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Nevada by $1.4 billion.

$354 million per year in Medicare benefits.

$1.0 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF NEW HAMPSHIRE

I. A Balanced Budget Amendment would reduce annual Federal grants to the New Hampshire state government by $212 million.

$112 million per year in lost funding for Medicaid.

$31 million per year in lost highway trust fund grants.

$11 million per year in lost funding for welfare (AFDC).

$58 million per year in lost funding for education, job training, the environment, housing, and other areas.

New Hampshire would have to increase state taxes by 17.6 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the New Hampshire state government by $291 million.

$154 million per year in lost funding for Medicaid.

$43 million per year in lost highway trust fund grants.

$16 million per year in lost funding for welfare (AFDC).

$79 million per year in lost funding for education, job training, the environment, housing, and other areas.

New Hampshire would have to increase state taxes by 24.1 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in New Hampshire by $773 million.

$370 million per year in Medicare benefits.

$403 million per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF NEW JERSEY

I. A Balanced Budget Amendment would reduce annual Federal grants to the New Jersey state government by $2.5 billion.

$1.5 billion per year in lost funding for Medicaid.

$141 million per year in lost highway trust fund grants.

$129 million per year in lost funding for welfare (AFDC).

$705 million per year in lost funding for education, job training, the environment, housing, and other areas.

New Jersey would have to increase state taxes by 12.7 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the New Jersey state government by $3.4 billion.

$2.1 billion per year in lost funding for Medicaid.

$194 million per year in lost highway trust fund grants.

$177 million per year in lost funding for welfare (AFDC).

$968 million per year in lost funding for education, job training, the environment, housing, and other areas.

New Jersey would have to increase state taxes by 17.5 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in New Jersey by $6.4 billion.

$4.0 billion per year in Medicare benefits.

$2.4 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF NEW MEXICO

I. A Balanced Budget Amendment would reduce annual Federal grants to the new Mexico state government by $524 million.

$233 million per year in lost funding for Medicaid.

$70 million per year in lost highway trust fund grants.

$28 million per year in lost funding for welfare (AFDC).

$193 million per year in lost funding for education, job training, the environment, housing, and other areas.

New Mexico would have to increase state taxes by 12.9 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the New Mexico state government by $719 million.

$320 million per year in lost funding for Medicaid.

$96 million per year in lost highway trust fund grants.

$38 million per year in lost funding for welfare (AFDC).

$265 million per year in lost funding for education, job training, the environment, housing, and other areas.

New Mexico would have to increase state taxes by 17.6 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in New Mexico by $2.9 billion.

$440 million per year in Medicare benefits.

$2.5 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF NEW YORK

I. A Balanced Budget Amendment would reduce annual Federal grants to the New York state government by $8.2 billion.

$5.4 billion per year in lost funding for Medicaid.

$274 million per year in lost highway trust fund grants.

$535 million per year in lost funding for welfare (AFDC).

$1.9 billion per year in lost funding for education, job training, the environment, housing, and other areas.

New York would have to increase state taxes by 17.4 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the New York state government by $11.2 billion.

$7.5 billion per year in lost funding for Medicaid.

$376 million per year in lost highway trust fund grants.

$734 million per year in lost funding for welfare (AFDC).

$2.6 billion per year in lost funding for education, job training, the environment, housing, and other areas.

New York would have to increase state taxes by 23.8 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in New York by $15.2 billion.

$9.4 billion per year in Medicare benefits.

$5.7 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF NORTH CAROLINA

I. A Balanced Budget Amendment would reduce annual Federal grants to the North Carolina state government by $1.7 billion.

$1.0 billion per year in lost funding for Medicaid.

$136 million per year in lost highway trust fund grants.

$95 million per year in lost funding for welfare (AFDC).

$441 million per year in lost funding for education, job training, the environment, housing, and other areas.

North Carolina would have to increase state taxes by 11.1 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the North Carolina state government by $2.3 billion.

$1.4 billion per year in lost funding for Medicaid.

$187 million per year in lost highway trust fund grants.

$130 million per year in lost funding for welfare (AFDC).

$605 billion per year in lost funding for education, job training, the environment, housing, and other areas.

North Carolina would have to increase state taxes by 15.2 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in North Carolina by $4.4 billion.

$2.0 billion per year in Medicare benefits.

$2.4 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF NORTH DAKOTA

I. A Balanced Budget Amendment would reduce annual Federal grants to the North Dakota state government by $229 million.

$105 million per year in lost funding for Medicaid.

$35 million per year in lost highway trust fund grants.

$8 million per year in lost funding for welfare (AFDC).

$81 million per year in lost funding for education, job training, the environment, housing, and other areas.

North Dakota would have to increase state taxes by 19.7 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the North Dakota state government by $314 million.

$144 million per year in lost funding for Medicaid.

$48 million per year in lost highway trust fund grants.

$10 million per year in lost funding for welfare (AFDC).

$111 million per year in lost funding for education, job training, the environment, housing, and other areas.

North Dakota would have to increase state taxes by 27.0 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in North Dakota by $773 million.

$317 million per year in Medicare benefits.

$455 million per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF OHIO

I. A Balanced Budget Amendment would reduce annual Federal grants to the Ohio state government by $2.8 billion.

$1.7 billion per year in lost funding for Medicaid.

$170 million per year in lost highway trust fund grants.

$212 million per year in lost funding for welfare (AFDC).

$727 million per year in lost funding for education, job training, the environment, housing, and other areas.

Ohio would have to increase state taxes by 14.4 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the North Dakota state government by $3.9 billion.

$2.4 billion per year in lost funding for Medicaid.

$233 million per year in lost highway trust fund grants.

$290 million per year in lost funding for welfare (AFDC).

$997 million per year in lost funding for education, job training, the environment, housing, and other areas.

Ohio would have to increase state taxes by 19.8 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Ohio by $8.2 billion.

$4.7 billion per year in Medicare benefits.

$3.5 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF OKLAHOMA

I. A Balanced Budget Amendment would reduce annual Federal grants to the Oklahoma state government by $770 million.

$424 million per year in lost funding for Medicaid.

$51 million per year in lost highway trust fund grants.

$51 million per year in lost funding for welfare (AFDC).

$244 million per year in lost funding for education, job training, the environment, housing, and other areas.

Oklahoma would have to increase state taxes by 12.4 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Oklahoma state government by $1.1 billion.

$582 million per year in lost funding for Medicaid.

$70 million per year in lost highway trust fund grants.

$69 million per year in lost funding for welfare (AFDC).

$335 million per year in lost funding for education, job training, the environment, housing, and other areas.

Oklahoma would have to increase state taxes by 17.0 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Oklahoma by $2.9 billion.

$1.3 billion per year in Medicare benefits.

$1.6 billion per year in other spending including housing assistance student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF OREGON

I. A Balanced Budget Amendment would reduce annual Federal grants to the Oregon state government by $706 million.

$342 million per year in lost funding for Medicaid.

$54 million per year in lost highway trust fund grants.

$47 million per year in lost funding for welfare (AFDC).

$263 million per year in lost funding for education, job training, the environment, housing, and other areas.

Oregon would have to increase state taxes by 12.2 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Oregon state government by $969 million.

$469 million per year in lost funding for Medicaid.

$75 million per year in lost highway trust fund grants.

$65 million per year in lost funding for welfare (AFDC).

$361 million per year in lost funding for education, job training, the environment, housing, and other areas.

Oregon would increase state taxes by 16.8 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Oregon by $2.9 billion.

$1.3 billion per year in Medicare benefits.

$1.6 billion per year in other spending including housing assistance, student loans, veteran's benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF PENNSYLVANIA

I. A Balanced Budget Amendment would reduce annual Federal grants to the Pennsylvania state government by $3.1 billion.

$1.8 billion per year in lost funding for Medicaid.

$211 million per year in lost highway trust fund grants.

$178 million per year in lost funding for welfare (AFDC).

$901 million per year in lost funding for education, job training, the environment, housing, and other areas.

Pennsylvania would have to increase state taxes by 12.7 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Pennsylvania state government by $4.2 billion.

$2.4 billion per year in lost funding for Medicaid.

$290 million per year in lost highway trust fund grants.

$244 million per year in lost funding for welfare (AFDC).

$1.2 billion per year in lost funding for education, job training, the environment, housing, and other areas.

Pennsylvania would have to increase state taxes by 17.4 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Pennsylvania by $11.7 billion.

$7.0 billion per year in Medicare benefits.

$4.7 billion per year in other spending including housing assistance student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF RHODE ISLAND

I. A Balanced Budget Amendment would reduce annual Federal grants to the Rhode Island state government by $430 million.

$255 million per year in lost funding for Medicaid.

$42 million per year in lost highway trust fund grants.

$23 million per year in lost funding for welfare (AFDC).

$109 million per year in lost funding for education, job training, the environment, housing, and other areas.

Rhode Island would have to increase state taxes by 21.4 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Rhode Island state government by $590 million.

$350 million per year in lost funding for Medicaid.

$58 million per year in lost highway trust fund grants.

$32 million per year in lost funding for welfare (AFDC).

$150 million per year in lost funding for education, job training, the environment, housing, and other areas.

Rhode Island would have to increase state taxes by 29.3 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Rhode Island by $849 million.

$476 million per year in Medicare benefits.

$373 million per year in other spending including housing assistance student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF SOUTH CAROLINA

I. A Balanced Budget Amendment would reduce annual Federal grants to the South Carolina state government by $1.0 billion.

$644 million per year in lost funding for Medicaid.

$68 million per year in lost highway trust fund grants.

$31 million per year in lost funding for welfare (AFDC).

$260 million per year in lost funding for education, job training, the environment, housing, and other areas.

South Carolina would have to increase state taxes by 14.3 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the South Carolina state government by $1.4 billion.

$883 million per year in lost funding for Medicaid.

$94 million per year in lost highway trust fund grants.

$42 million per year in lost funding for welfare (AFDC).

$357 million per year in lost funding for education, job training, the environment, housing, and other areas.

South Carolina would have to increase state taxes by 19.6 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in South Carolina by $3.0 billion.

$935 million per year in Medicare benefits.

$2.1 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF SOUTH DAKOTA

I. A Balanced Budget Amendment would reduce annual Federal grants to the South Dakota state government by $231 million.

$103 million per year in lost funding for Medicaid.

$39 million per year in lost highway trust fund grants.

$6 million per year in lost funding for welfare (AFDC).

$82 million per year in lost funding for education, job training, the environment, housing, and other areas.

South Dakota would have to increase state taxes by 24.7 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the South Dakota state government by $316 million.

$142 million per year in lost funding for Medicaid.

$53 million per year in lost highway trust fund grants.

$9 million per year in lost funding for welfare (AFDC).

$113 million per year in lost funding for education, job training, the environment, housing, and other areas.

South Dakota would have to increase state taxes by 33.8 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in South Dakota by $792 million.

$281 million per year in Medicare benefits.

$511 million per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF TENNESSEE

I. A Balanced Budget Amendment would reduce annual Federal grants to the Tennessee state government by $1.5 billion.

$989 million per year in lost funding for Medicaid.

$78 million per year in lost highway trust fund grants.

$60 million per year in lost funding for welfare (AFDC).

$411 million per year in lost funding for education, job training, the environment, housing, and other areas.

Tennessee would have to increase state taxes by 19.5 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Tennessee state government by $2.1 billion.

$1.4 billion per year in lost funding for Medicaid.

$107 million per year in lost highway trust fund grants.

$82 million per year in lost funding for welfare (AFDC).

$563 million per year in lost funding for education, job training, the environment, housing, and other areas.

Tennessee would have to increase state taxes by 26.7 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Tennessee by $5.3 billion.

$1.9 billion per year in Medicare benefits.

$3.4 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF TEXAS

I. A Balanced Budget Amendment would reduce annual Federal grants to the Texas state government by $4.2 billion.

$2.5 billion per year in lost funding for Medicaid.

$340 million per year in lost highway trust fund grants.

$147 million per year in lost funding for welfare (AFDC).

$1.2 billion per year in lost funding for education, job training, the environment, housing, and other areas.

Texas would have to increase state taxes by 14.0 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Texas state government by $5.7 billion.

$3.5 billion per year in lost funding for Medicaid.

$466 million per year in lost highway trust fund grants.

$202 million per year in lost funding for welfare (AFDC).

$1.6 billion per year in lost funding for education, job training, the environment, housing, and other areas.

Texas would have to increase state taxes by 19.2 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Texas by $14.8 billion.

$5.9 billion per year in Medicare benefits.

$8.9 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF UTAH

I. A Balanced Budget Amendment would reduce annual Federal grants to the Utah state government by $422 million.

$190 million per year in lost funding for Medicaid.

$49 million per year in lost highway trust fund grants.

$22 million per year in lost funding for welfare (AFDC).

$160 million per year in lost funding for education, job training, the environment, housing, and other areas.

Utah would have to increase state taxes by 11.4 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Utah state government by $579 million.

$261 million per year in lost funding for Medicaid.

$68 million per year in lost highway trust fund grants.

$31 million per year in lost funding for welfare (AFDC).

$220 million per year in lost funding for education, job training, the environment, housing, and other areas.

Utah would have to increase state taxes by 15.6 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Utah by $1.5 billion.

$323 million per year in Medicare benefits.

$1.2 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF VERMONT

I. A Balanced Budget Amendment would reduce annual Federal grants to the Vermont state government by $207 million.

$89 million per year in lost funding for Medicaid.

$37 million per year in lost highway trust fund grants.

$13 million per year in lost funding for welfare (AFDC).

$68 million per year in lost funding for education, job training, the environment, housing, and other areas.

Vermont would have to increase state taxes by 17.4 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Vermont state government by $284 million.

$122 million per year in lost funding for Medicaid.

$51 million per year in lost highway trust fund grants.

$18 million per year in lost funding for welfare (AFDC).

$93 million per year in lost funding for education, job training, the environment, housing, and other areas.

Vermont would have to increase state taxes by 23.9 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Vermont by $413 million.

$206 million per year in Medicare benefits.

$207 million per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF VIRGINIA

I. A Balanced Budget Amendment would reduce annual Federal grants to the Virginia state government by $1.0 billion.

$490 million per year in lost funding for Medicaid.

$72 million per year in lost highway trust fund grants.

$49 million per year in lost funding for welfare (AFDC).

$393 million per year in lost funding for education, job training, the environment, housing, and other areas.

Virginia would have to increase state taxes by 8.2 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Virginia state government by $1.4 billion.

$673 million per year in lost funding for Medicaid.

$99 million per year in lost highway trust fund grants.

$68 million per year in lost funding for welfare (AFDC).

$539 million per year in lost funding for education, job training, the environment, housing, and other areas.

Virginia would have to increase state taxes by 11.2 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Virginia by $8.3 billion.

$1.9 billion per year in Medicare benefits.

$6.4 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF WASHINGTON

I. A Balanced Budget Amendment would reduce annual Federal grants to the Washington state government by $1.3 billion.

$730 million per year in lost funding for Medicaid.

$117 million per year in lost highway trust fund grants.

$126 million per year in lost funding for welfare (AFDC).

$346 million per year in lost funding for education, job training, the environment, housing, and other areas.

Washington would have to increase state taxes by 8.4 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Washington state government by $1.8 billion.

$1.0 billion per year in lost funding for Medicaid.

$161 million per year in lost highway trust fund grants.

$172 million per year in lost funding for welfare (AFDC).

$474 million per year in lost funding for education, job training, the environment, housing, and other areas.

Washington would have to increase state taxes by 11.5 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Washington by $4.9 billion.

$1.5 billion per year in Medicare benefits.

$3.4 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF WEST VIRGINIA

I. A Balanced Budget Amendment would reduce annual Federal grants to the West Virginia state government by $765 million.

$488 million per year in lost funding for Medicaid.

$45 million per year in lost highway trust fund grants.

$32 million per year in lost funding for welfare (AFDC).

$199 million per year in lost funding for education, job training, the environment, housing, and other areas.

West Virginia would have to increase state taxes by 20.6 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the West Virginia state government by $1.0 billion.

$670 million per year in lost funding for Medicaid.

$62 million per year in lost highway trust fund grants.

$44 million per year in lost funding for welfare (AFDC).

$273 million per year in lost funding for education, job training, the environment, housing, and other areas.

West Virginia would have to increase state taxes by 28.3 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in West Virginia by $1.7 billion.

$824 million per year in Medicare benefits.

$835 million per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF WISCONSIN

I. A Balanced Budget Amendment would reduce annual Federal grants to the Wisconsin state government by $1.3 billion.

$694 million per year in lost funding for Medicaid.

$111 million per year in lost highway trust fund grants.

$96 million per year in lost funding for welfare (AFDC).

$349 million per year in lost funding for education, job training, the environment, housing, and other areas.

Wisconsin would have to increase state taxes by 10.3 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Wisconsin state government by $1.7 billion.

$952 million per year in lost funding for Medicaid.

$153 million per year in lost highway trust fund grants.

$132 million per year in lost funding for welfare (AFDC).

$479 million per year in lost funding for education, job training, the environment, housing, and other areas.

Wisconsin would have to increase state taxes by 14.2 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Wisconsin by $3.4 billion.

$2.1 billion per year in Medicare benefits.

$1.3 billion per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

THE IMPACT OF A BALANCED BUDGET AMENDMENT AND THE CONTRACT WITH AMERICA ON THE STATE OF WYOMING

I. A Balanced Budget Amendment would reduce annual Federal grants to the Wyoming state government by $218 million.

$55 million per year in lost funding for Medicaid.

$38 million per year in lost highway trust fund grants.

$8 million per year in lost funding for welfare (AFDC).

$118 million per year in lost funding for education, job training, the environment, housing, and other areas.

Wyoming would have to increase state taxes by 18.7 percent across-the-board to make up for the loss in grants.

II. A Balanced Budget Amendment combined with the "Contract with America" tax cuts would require even deeper spending cuts, thereby reducing annual Federal grants to the Wyoming state government by $300 million.

$75 million per year in lost funding for Medicaid.

$52 million per year in lost highway trust fund grants.

$10 million per year in lost funding for welfare (AFDC)

$162 million per year in lost funding for education, job training, the environment, housing, and other areas.

Wyoming would have to increase state taxes by 25.7 percent across-the-board to make up for the loss in grants.

III. A Balanced Budget Amendment and the "Contract with America" tax cuts would reduce other annual Federal spending in Wyoming by $393 million.

$131 million per year in Medicare benefits.

$262 million per year in other spending including housing assistance, student loans, veterans' benefits, and grants to local governments.

BALANCED BUDGET AMENDMENT—ESTIMATION OF STATE-BY-STATE EFFECTS

The following description provides information on the estimation and allocation of spending cuts under two scenarios that achieve a balanced budget by FY2002 without tax increases and with Social Security and defense excluded from spending reductions. The second scenario differs from the first in that it also incorporates a set of deficit-increasing provisions in the Contract with America (CWA). These provisions are all tax reductions except for a spending increase associated with relaxation of the Social Security earnings test. No specific defense spending increases discussed in the CWA are reflected in the simulations.

Step 1: Derive size of aggregate budget cuts

Congressional Budget Office (CBO) baseline estimates of the Federal deficit were taken from Table 4 of the preliminary Economic and Budget Outlook dated January 5, 1995. Equal yearly deficit reductions, beginning in FY1996, were then computed which were sufficient to achieve a balanced budget by FY2002.

The required cuts take into account the interest savings that would result from lower deficits and debt; a 6.7 percent rate of interest was assumed throughout based on long-term CBO projections of the 10-year Treasury note rate. The estimates are static in nature and reflect no macroeconomics feedback—e.g., lower economic growth resulting from the contractionary effects of deficit reduction or higher growth resulting from lower tax rates. Deficit-reducing spending and tax changes of $248 billion, or 22.5 percent of noninterest, non-Social Security spending, would have to be made in FY2002 to achieve a balanced budget. The required cumulative deficit reduction is approximately $1.3 trillion, of which about $0.2 trillion occurs through interest savings.

A similar procedure was used to derive required spending reductions with the CWA's tax cut and Social Security spending amounts (and associated interest carrying costs) added to the CBO deficit baseline. Estimated revenue effects of the proposed tax reductions were obtained from the Treasury Department, Office of Tax Analysis. Annual costs of the proposed relaxation of the Social Security earnings test were taken from a National Economic Council staff working paper, September 20, 1994. The required percentage spending reduction is 30.9 percent in this scenario. The aggregate required cuts in total spending in FY2002 total $340 billion.

Step 2: Derive allocation parameters for states

Grants to state and local governments, as well as Social Security, defense, and other Federal spending, are reported in Federal Expenditures by State for Fiscal Year 1993. Our analysis divides intergovernmental grants into four components. Aid to Families with Dependent Children, Medicaid, highway trust fund grants, and all Other. It was assumed that all grants in the first three of these categories went directly to state governments. To estimate the local share of the Other category, we used estimates of total 1992 intergovernmental revenues from Federal to local governments in each state, as reported in the August 1994 Census publication Government Finances, 1991–92: Preliminary Report. These state-by-state estimates were divided by the Government Finances estimates of Federal revenues to states and localities combined, less the values of AFDC, Medicaid, and highway grants from the FY1992 edition of Federal Expenditures by State. It should be emphasized that discrepancies between the Government Finances and Federal Expenditures aggregates, resulting from different definitions and sources, make this local vs. state, decomposition of Other grants an imprecise process.

State tax revenues for the average of the 1990 and 1992 fiscal years was also taken from issues of Government Finances. The use of two years at different points in the business cycle was designated to mitigate cyclical influences on projected revenue.

Step 3: Project FY2002 Grants and State Taxes

CBO's projected levels for FY2002 for Social Security, Medicare, and most other major spending categories were taken from the above-mentioned CBO report. For defense spending, the Administration's project of FY2000 defense outlays was inflated by the annual rate of growth to total discretionary spending from FY2000 to FY2002 in the CBO projections.

The projection of grant amounts was also derived from the long-term CBO budget forecast. AFDC grants were projected using the ratio of 2002 to 1993 values of Other Mandatory spending as reported by CBO, respectively, in the January 5 report and on page 37 of The Economic and Budget Outlook: Update dated August 1994. (Unpublished figures on FY1993 Civil Service and military retirement spending were obtained from CBO.) Highway trust fund grants were projected using the ratio of 2002 to 1993 values of domestic discretionary spending; the 2002 value was estimated as estimated total nondefense discretionary spending multiplied by the FY2002 ratio of domestic to the sum of international and domestic discretionary spending in Table 4 of the January 5 report.

The category of Other grants was decomposed into discretionary and mandatory components. The Other mandatory component was defined to include: Agricultural Marketing Service Funds for strengthening markets (Section 32); child nutrition programs; food stamp grants; special milk program; national grasslands payments to counties; social services block grants; foster care and adoption assistance; assistance for legalized aliens; other Administration for Children and Families grants; and Supplemental Security Income grants. These were projected in the same manner as AFDC, while the residual Other discretionary grants were projected in the same manner as highway grants.

Total baseline state taxes were projected to move in proportion to nominal U.S. Gross Domestic Product. The projection of GDP for calendar year 2000 was taken from Table 1 of the CBO January 5 report and increased by three years of assumed 2.3 percent real growth and 2.8 percent increases in the GDP price deflator. The growth in nominal GDP between 1991 and 2002 was converted to a per capita basis. Individual state taxes in FY2002 were then estimated by multiplying 1990–1992 state population growth and the growth in U.S. per capita GDP. State population totals for 2000 and 2010 were drawn from the 1994 Statistical Abstract, and our estimates for 2002 were interpolations of the 2000 and 2010 values.

Step 4: Derive required grant reductions and state tax increases

The percentage reductions in FY2002 grants and other spending components necessary to achieve budget balance were, by assumption, equal to the aggregate rate computed for all nondefense, non-Social Security spending. Finally, the percentage increase in the state tax levels necessary to make up the dollar loss in Federal grants to each state was computed.—Office of Economic Policy, Department of the Treasury, January 11, 1995.

HIGH COST OF A BALANCED BUDGET AMENDMENT

(By Richard Kogan)

Advocates of the Balanced Budget Amendment to the Constitution do not intend to jeopardize the life savings of America's families, or threaten the stability of the nation's banks. As written, however, the amendment could do just that.

Currently, America's savings are safe. The Federal Deposit Insurance Corp. (FDIC) guarantees individual deposits in banks and thrift institutions up to $100,000 per account. Depositors rely on the U.S. government to keep its word, quickly and automatically; if a bank goes broke, the government makes good on deposits. Deposit insurance claims are enforceable in court.

Now look at the Balanced Budget Amendment. It begins, "Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a roll-call vote." This deceptively simple concept—that the federal budget must be balanced each year—would inadvertently cast doubt over the "full faith and credit" of the U.S. government, putting all federal guarantees, including deposit insurance, at risk.

Here's why. During a severe economic downturn, the risk of bank failure is greatest. An economic downturn also produces (or exacerbates) federal budget deficits as tax revenues decline and spending for programs such as unemployment compensation increases. At such time, the government would lack the extra revenues it could need to cover the large costs of rescuing depositors and the banking system. Under current law, deposit insurance claims are automatically paid as needed, regardless of the deficit. Under the amendment, if deposit insurance payments would cause a deficit, might not those payments be prohibited? Don't forget that the measure would amend the Constitution, while deposit insurance and other such guarantees are only statutes.

American banking was not always protected. The Great Depression was so steep—the economy shrank almost 30 percent from 1929 to 1933—in part because there was no deposit insurance. Some lost all their savings. A rumor that a bank was in trouble prompted panic, with depositors rushing to withdraw their savings. Even false rumors caused banks to collapse.

One of President Roosevelt's first acts was to close the banks while Congress enacted deposit insurance. The banks reopened, citizens could redeposit their funds in safety and the economic collapse ended. Deposit insurance became the first and best economic stabilizer. It is one reason that no post-war recession has shrunk the economy more than 3½ percent.

Doesn't the FDIC charge annual fees to banks, building up large balances, which would automatically be available in a banking crisis?

Not after the amendment. It prohibits spending borrowed funds. Incredibly, it also prohibits using accumulated savings; it requires that all federal spending in any fiscal year be covered by that year's revenues. This requirement is like telling a family to finance a new house or a child's college tuition out of that year's wages, no matter how much money the family has in the bank. In this case, the amendment precludes a sudden increase in deposit insurance payments if that increase would cause federal spending to exceed federal revenues in that year, no matter how much the FDIC has "in the bank."

There are two possible ways out. First, Congress could raise taxes or cut other spending by enough to offset deposit insurance costs. But the potential size of those payments shows why they could not be easily offset. The recent restructuring of the savings and loan industry required deposit insurance payments of $156 billion over four years, $66 billion in 1991 alone. And the government's deposit insurance guarantee covers private savings of $2.7 trillion. These amounts are too large to be offset by a single year's tax increases or spending cuts.

Second, there is the escape hatch. By a three-fifths vote, Congress could choose to pay deposit insurance and allow deficit spending. But it is hardly automatic that Congress would respond in a timely manner (or at all), even in a pending crisis. In August 1941 Congress barely mustered a majority to extend the draft, even though Hitler had already marched across half of Europe. In the current debate, neither the Senate nor the House could find a majority to write into the amendment an exception for recessions. Finding three-fifths majorities in each House of Congress is significantly more difficult. By the time Congress fully understands the scope of a developing banking crisis and gathers the three-fifths vote (if it can), the problem would have grown, perhaps to a dangerous degree.

Taking the amendment at face value, then, legal commitments made by the U.S. government would no longer be binding. When economic troubles arose and the banking system, depositors and the economy as whole most needed it, those "commitments" could prove ephemeral.

[From the New York Times, Feb. 21, 1995]

THE PITFALLS OF A BALANCED BUDGET: DISMANTLING A DECADES-OLD SYSTEM FOR SOFTENING RECESSIONS

(By Louis Uchitelle)

The unemployment rate, which peaked at 7.7 percent after the last recession, could have reached 9 percent if a balanced budget has been required, Government and private economists estimate. And a laid-off worker who collected $12,000 in unemployment pay might have received only $7,000 or so.

Such estimates of the potential economic impact are not emphasized very much, however, in the debate over the balanced budget amendment. So far, the battle has focused on its value as a tool to shrink government or to discipline spending. But if the amendment is enacted, the side effect would be huge: a system that has softened recessions since the 1930's would be dismantled.

"There are risks associated with a balanced budget, and I don't think anyone should deny them." said William Hoagland, the Republican staff director for the Senate Budget Committee. "Nevertheless, the debate on the floor has been dominated by what we must do to get the budget in balance, not what the risks of a balanced budget amendment might be."

Mr. Hoagland expressed surprise that the biggest risk—deeper, more painful recessions—had not figured significantly in the debate, although Senator Daniel P. Moynihan, Democrat of New York, and Senator Paul S. Sarbanes, Democrat of Maryland, had called attention to this risk in several floor speeches. "The reason must be that the advocates of a balanced budget see the benefits to the economy as far outweighing the negatives associated with cyclical downturn," Mr. Hoagland said. "That must be what is going on."

No benefit seems to hold more sway than the view that the amendment would shrink the Federal Government by restricting its power to tax and to spend. A dollar not collected and spent by the Government is a dollar left in the hands of the private sector. And the private sector invariably invests money more efficiently than the Government, this view holds.

THE "AUTOMATIC STABILIZERS" OF THE ECONOMY RELY ON DEFICIT SPENDING

"The people have spoken clearly that government is too big and we need to do something about it," said Robert Hall, a Stanford University economist who favors smaller government. "The problem is that the balanced budget amendment is a heavy-handed solution and risky."

The biggest risk is to the nation's "automatic stabilizers," which have made recessions less severe than they were in the century before World War II. The stabilizers, an outgrowth of Keynesian economics, work this way: When the economy weakens, outlays automatically rise for unemployment pay, food stamps, welfare and Medicaid. Simultaneous, as incomes fall, so do corporate and individual income tax payments. Both elements make more money available for spending, thus helping to pull the economy out of its slump.

The problem, of course, is that the stabilizers make the deficit shoot up—by roughly $65 billion as a result of the 1990–1991 recession, according to the Treasury Department. Under the balanced budget amendment, Congress and the Administration would be required to get the budget quickly back into balance, through spending cuts, higher tax rates, or a combination of the two—perhaps even in the midst of a recession.

"The Government would become, almost inevitably, a destabilizer of the economy rather than a stabilizer," said Joseph Stiglitz, a member of the President's Council of Economic Advisers. Many economists share that view.

Absent the stabilizers, every 73-cent drop in national income in the last recession would have become a $1 drop, said Bradford DeLong, deputy assistant Secretary of the Treasury, who as a Harvard economist studies this dynamic and recently updated his research. Of the 27 cents in cushioning, 20 cents came from falling tax revenue and 7 cents from the higher spending.

Economists outside the Government offer similar estimates. Ray Fair of Yale University, for example, said for every $10 billion decline in national income during a recession, the deficit rises by $2 billion, as the stabilizers kick in with their higher spending and lower tax revenue.

"We ought not to give up the stabilizers," Professor Fair said. "That would be very Draconian."

Nearly every economist agrees that the American economy requires, if not stabilizers, some substitute method for offsetting recessions in an era of balanced budgets. And those who favor the amendment are no exception.

"It would be a disaster to lose the stabilizers," said C. Fred Bergsten, director of the Institute of International Economics, who endorses the amendment as a necessary step if the nation is to afford the high cost of Social Security and Medicare for the baby boom generation, which reaches retirement age early in the next century.

Mr. Bergsten notes that the amendment, as now worded, would permit Congress to bring back the stabilizers by a three-fifths vote in both houses. The vote would permit the necessary deficit spending to finance the stabilizers.

While a three-fifths vote is a big hurdle, Mr. Bergsten and others argue that Congress would get used to authorizing the necessary deficits during recessions. Nevertheless, he would prefer a different solution. Once through the painful process of balancing the budget by 2002, as required by the amendment, then the Government should run budget surpluses in years of strong economic growth and full employment, Mr. Bergsten said.

The surpluses would cover the rising costs of the stabilizers during recessions. "You could go down to a balanced budget in the hard years, and still give the economy a little stimulus," he said.

IS MONETARY POLICY ENOUGH TO BOLSTER THE U.S. ECONOMY IN TOUGH TIMES?

The Congressional Budget Office has estimated that the surplus needed to pay for the stabilizers during a recession as severe as that of 1981–1982, the worst since World War II, would be 1 percent of the national income during robust periods of full employment, and perhaps as much as 1.5 percent.

That would mean an annual surplus in today's dollars of $70 billion to $100 billion, rather than the nearly $200 billion or so in annual deficits expected under current policy. Most of the $200 billion is to help pay for programs like highway construction and new weaponry that have fixed costs and do not fluctuate with the ups and downs of the economy, as unemployment pay, food stamps, tax revenues and the other stabilizers do.

Some economists—including Milton Friedman, a Nobel laureate in economics who is with the Hoover Institute—hold that the stabilizers, despite the ballyhoo, are no longer so important. The Federal Reserve, through monetary policy, can more than offset their disappearance by lowering interest rates an extra notch or two to give the economy an additional stimulus in hard times.

"I have looked at many episodes in the world in which monetary policy went one way and fiscal policy the other, and I have never found a case in which monetary policy did not dominate," Mr. Friedman said. He favors a balanced budget amendment that would shrink the Federal Government by putting a ceiling on the tax increases that could be enacted to balance the budget.

But the Clinton Administration and even Federal Reserve officials question whether monetary policy could alone handle the task of reviving an economy in recession. The stabilizers, they note, kick in automatically—before the Federal Reserve and most economists often realize that the economy is falling toward recession.

A recession might be well along and getting deeper before the Fed recognized the problem and began to drop rates. The lower rates, in turn, would not be felt in the economy for a year to 18 months, the traditional lag. And even if the Fed acted quickly enough, the economy would behave in new and different ways without the stabilizers.

"My guess is that we would get it wrong the first time we went into recession, making that recession much deeper than it should be," said a Federal Reserve official, who spoke on condition that he not be identified. "But we would learn from that experience and do a better job thereafter."

[From Newsweek, Jan. 30, 1995]

CORRUPTING THE CONSTITUTION: BALANCE THE BUDGET, BUT NOT BY AMENDMENT

(By Robert J. Samuelson)

The Constitution is not a sledgehammer. It embodies broad principles of government and enduring national values. As such, it commands deep public respect and even reverence. There's a temptation to think that its power and mystique can bludgeon public opinion into convenient consensus on hard issues. It can't, and the exercise shouldn't be tried. The balanced-budget amendment—to be debated by Congress this week—promises just such a popular conversion. The proposal is a very bad idea.

You should not confuse balancing the budget, which in general is desirable, with the undesirability of using the Constitution to do it. Just because the Constitution requires a balanced budget does not mean that the budget will be balanced. If an amendment were regularly flouted, then the budgetary impasse would become a constitutional crisis. "The first principle of a conservative should be: don't muck with the Constitution," says constitutional scholar Robert Goldwin of the American Enterprise Institute.

By this standard, Congress has lots of Republicans but few conservatives. The amendment's advocates essentially embrace a theory of immaculate consensus. No one wants to confront the inconsistencies of public opinion—the simultaneous desires for lower taxes, higher spending and no tampering with social security—that cause budget deficits. Instead, an amendment is supposed to dissolve these inconsistencies. Congress can't control "its deficit addiction without the strong therapy of a constitutional mandate to make it get clean and sober," proclaims Orrin Hatch, chairman of the Senate Judiciary Committee.

All recent major amendment proposals have been similarly inspired; they aimed to pervert the Constitution by using it to settle passionate public disputes. The school-prayer, "equal rights" and anti-abortion amendments all fit this description. None succeeded, because the Founders did not intend for the Constitution to be so used. They set high hurdles for amendments (two-thirds congressional approval, then ratification by three quarters of the states). Although Prohibition—the 18th Amendment—overcame these barriers, it showed the folly of using the Constitution for consciousness-raising.

Congress passed it in 1917 in a "mood of Spartan idealism" created by World War I, wrote historian Frederick Lewis Allen. If the war would "end all wars," then Americans could imagine an "era of efficient sobriety!" The actual result was rampant lawlessness: bootleggers, speak-easies and gangsterism. Congress was complicit because—caught between demands for tougher enforcement and for repeal—it did neither. Finally, the amendment was repealed in 1933.

The plain lesson that the Constitution can't singlehandedly impose consensus is now ignored. The amendment's proponents echo the simple moralisms of prohibitionists; note Senator Hatch's identical imagery ("get clean and sober"). The reality is bound to be grittier. Consider three broad possibilities and their probability if Congress passes the amendment.

It's ratified by the states—and it works. Intimidated, Congress and the president end programs (farm subsidies, public TV) and trim entitlements (social security, Medicare). Because a deficit remains, they also raise taxes. Finally, they pass long-term social-security and Medicare reforms to prevent huge deficits when baby boomers retire. (Probability, generously: 20 percent.)

It isn't ratified. Congressional passage triggers a lobbying and TV blitz aimed at state legislatures by groups that feel threatened (the elderly, farmers, the poor, etc.). State and local officials realize the amendment could be costly; less federal spending on highways, health care and schools will mean more pressure for local spending. (Probability: 40 percent.)

It's ratified—and doesn't work as advertised. Congress balks at visible tax increases or entitlement cuts. Or it regularly votes to run deficits by a three-fifths majority, as the amendment permits. Or it resorts to gimmicks to spend outside "the budget." The amendment has no enforcement mechanism: courts refuse to intervene, because budget choices are deemed "political" matters. (Probability: 40 percent.)

Until the 1960s, Americans valued balanced budgets. The respect was rooted in Jeffersonian beliefs that budget balancing checked the "corruption" of government, writes political scientist James Savage of the University of Virginia.* Deficits were tolerated in wars and depressions. But the need for discipline was seen, and budgets were balanced in good times. This consensus was destroyed by Keynesian doctrines that deficits could spur the economy. Now, the need is to reverse this: to de-emphasize the budget's use as an economic tool, and to restore a balanced budget as a way of defining what government should and shouldn't do.

BIPARTISAN HYSTERIA

Unfortunately, the balanced-budget amendment serves as an excuse to evade specifics. At present, balancing the budget is not so hard. The deficit equals about 2.5 to 3 percent of national income. Americans will not starve if farm subsidies stop; the elderly will not become destitute if cost-of-living adjustments are trimmed; the economy will not collapse if taxes are raised modestly. Changes are horrific only if any spending cuts or tax increases are considered intolerable. The harder issues involve adjusting programs for baby boomers' retirement.

Yet, budget hysteria is bipartisan. House Majority Leader Richard Armey won't say how Republicans would balance the budget because "once members of Congress know exactly, chapter and verse, the pain . . . to get to a balanced budget, their knees will buckle." President Clinton condemns GOP silence. But he has not proposed a balanced budget; all the White House plugs is "deficit reduction." Worse, it tries to terrify people about the harsh tax hikes or spending cuts needed to balance the budget.

The resort to the Constitution is a reckless gambit that could backfire in many ways. It postpones necessary choices and, perversely, could make the choices harder by mobilizing threatened groups against ratification. But mostly it assaults our political culture. The Constitution stands above ordinary disputes; that's why it's respected. The amendment imperils this. Instead of elevating the budget debate, it may lower the Constitution.

[From the New York Times, Jan. 24, 1995]

STATE OF THE UNION? SOMEDAY, PARALYZED

(By Paul Starr)

PRINCETON, N.J. When the Framers replaced the Articles of Confederation with the Constitution, they gave the Government unqualified and unimpeded fiscal powers. Today, a new Republican majority in Congress proposes to overturn that decision. Speaker Newt Gingrich says he intends to reverse the growth of the Federal Government's role in society since 1932. The legacy he challenges, however, is not only that of Franklin D. Roosevelt but more fundamentally that of Alexander Hamilton.

As President Clinton delivers his State of the Union Message tonight, many Americans will wonder about the fate of particular programs and policies in the new Congress. But the larger question raised by the Republicans is the Government's capacity to act, for they propose not just to shrink programs but to impose a permanent constitutional straightjacket that is likely to paralyze the Government in future crises.

The Constitution is a parsimonious document, unencumbered with detailed policy prescriptions. This restraint expressed confidence in representative government; it left the people's future representatives free to confront problems the Founders knew they could not anticipate. As Hamilton explains in "The Federalist" (No. 30), it was imprudent to set any limit to the new government's taxing power because there was no clear limit to the demands that might be placed upon it. The Constitutional Convention deliberately rejected requirements for supermajorities: impediments to revenue-raising had helped make the Articles of Confederation unworkable.

Today's Republican majority apparently believes it is more capable of making fiscal policy for future generations than were the Founding Fathers. It seeks to prescribe a balanced-budget amendment, to require a three-fifths supermajority for tax increases and to prohibit the Government from imposing requirements on the states except when it assumes 100 percent of the costs.

These measures are frankly intended to disable a Government that many Americans say they no longer trust. Yet those measures severely weaken the Government's capacity to achieve any purpose. They hand weapons to minorities to obstruct majorities: a minority in either house would be able to impede preparations for national defense as well as spending on the poor.

If in the pursuit of a balanced budget in the year 2002, we cut Medicare and social programs and provoked an inevitable angry reaction, it would be all the harder to find money for purposes that conservatives prefer, whether "Star Wars" defense systems, more prisons or intensified border patrols.

The Government's capacity to act is a resource as much for conservative as for liberal purposes. So those who are planting a time bomb under the welfare state may see it explode in their own faces.

The comeuppance could be much more serious for the nation than for any party. The dangers would likely be greatest in a recession. If revenue fell along with economic activity and if three-fifths of Congress could not agree to run a deficit, the Government would be forced to aggravate the downturn by cutting public expenditures as well—a recipe for turning recessions into depressions.

The Pentagon is committed to maintaining forces prepared to fight two wars simultaneously, but a nation with weakened fiscal powers is much less capable of sustaining such commitments. Our enemies would understand this and act accordingly.

Some critics may dismiss these as empty worries. After all, the amendment, if passed in time, would not require a balanced budget until 2002. But seven years come soon enough. Concerns about the amendment are empty only if the amendment itself is empty of force.

The requirements for supermajorities are the most dangerous element in the Republicans' plan. But even if they reduced voting requirements to an absolute majority of members of Congress—as many Democrats prefer—it would give undue constitutional force to the norm of budget balancing.

Denying the Government the routine power to borrow is a surrender to the medieval view of debt that continues to shape popular attitudes. The introduction of credit cards almost three decades ago prompted overwhelming disapproval in public opinion surveys; meanwhile, Americans got the cards in droves.

There has never been a time—not even during the New Deal—when public opinion surveys failed to register overwhelming disapproval of government deficits. Yet Americans' disapproval of deficits ought to be taken as a mandate for constitutional prohibition about as seriously as their disapproval of credit cards was taken as grounds for outlawing charge accounts. Credit cards have not doomed the economy, nor will Federal deficits.

The problem of the deficit is its long-term rate of growth, which is due almost entirely to projected health care costs. There are no more grounds for making a zero deficit a constitutionally required objective than for denying corporations or families the ability to borrow. Federal deficits of 1 or 2 percent of the gross domestic product are entirely manageable. If the outstanding debt is inflation-adjusted annually, deficits of that scale typically do not amount to a real increase in the debt anyway.

Judge Robert Bork opposes the amendment as unworkable. So do other jurists, who think that if Congress used accounting gimmicks to portray an unbalanced budget as balanced, the courts would have no competence to enforce the amendment. And some state officials worry that the burdens of Federal cutbacks would be passed on to them. If the Senate does not derail the amendment, such objections may well do so.

The original rationale for constitutional parsimony still stands. We will never know enough about the future to predict the tests that democratic government will face. More than 200 years of American history should assure us that the Republic not only can survive without constitutionally imposed fiscal restrictions, it has been better off without them.

If the Constitution had required a balanced budget, many members of Congress would not sit there today: for one thing, Thomas Jefferson could never have completed the Louisiana Purchase.

Hamilton's legacy of unimpeded fiscal power has been crucial to a system of government that has brought us through wars, depressions and natural calamities to an unchallenged position as the strongest nation on earth.

During the Depression, World War II and the cold war, there was a ready-made answer to questions about why we needed a strong Federal Government. The crisis of Government capacity has erupted today in part because there is no longer any shared sense of the Government's overriding mission. But depressions and wars have not been banished forever; rules we adopt now must be good when the world turns bad. Constitutionalizing fiscal policy is bad for the Constitution and bad for fiscal policy. It would make a mockery of one or a failure of the other, or both.

[From the Washington Post, Jan. 22, 1995]

ANY WAY ITS PROPONENTS SLICE IT, BALANCED-BUDGET AMENDMENT IS BALONEY

(By Hobart Rowen)

The case against a constitutional amendment to balance the budget is overwhelming. It has been hyped by Democrats and Republicans alike as the only way to force reluctant congressmen to make tough decisions, and there is no doubt that a large segment of the public has come to believe this propaganda.

But the truth is that an amendment to the Constitution for this purpose is bad economics, bad budget policy and bad constitutional policy. By itself, such an amendment would cut neither a dollar nor a program from the federal budget. As Office of Management and Budget Director Alice S. Rivlin told the Senate Judiciary Committee on Jan. 5, "most of all, it evades the hard choices needed to achieve real deficit reduction."

Why is the constitutional amendment bad economics? In an interview, Council of Economic Advisers Chairman Laura D'Andrea Tyson points out that the beauty of the present fiscal system is that it contains automatic stabilizers that moderate economic activity whenever business activity weakens. Thus, when workers lose jobs, unemployment compensation rises and it cushions the slide. If business profits are off, then tax liabilities decline. These events boost the government deficit, thus offsetting to some degree the decline in the private sector.

"But the balanced budget amendment would take away these automatic stabilizers when the economy is slowing down," Tyson said. It would force the government to raise taxes or cut spending to cover the increasing deficit that a slowing economy was generating. Rivlin puts it this way: "Fiscal policy would exaggerate, rather than mitigate, swings in the economy. Recessions would tend to be deeper and longer."

Meanwhile, the House Republican version of the amendment wrongly (and possibly unconstitutionally) requires a three-fifths majority of each house of Congress to increase revenue, run budget deficits or increase the public debt. There is supposed to be a safety valve to permit a deficit in time of real economic weakness. But who in Congress is a good enough forecaster to sense when the safety valve should be opened? As Rivlin said, in all likelihood, "the damage would be done long before we recognize that the economy is turning down."

Why would the amendment also be bad constitutional policy? Not only would it put fiscal policy, as outlined above, in a straitjacket, it would denigrate the document that deals with the big issues—individual rights, the system of separation of powers, the ultimate guarantor of our system of liberties in effect since 1776. It would force the courts to adjudicate disputes certain to arise.

Meanwhile, what are the hard choices being avoided? The Republicans who are pushing the "Contract With America" freely concede that to balance the budget by the year 2002, as called for by the amendment, would cost $1.2 trillion in cuts in the various big entitlement programs—Social Security, Medicare, Medicaid and other pensions. But they aren't prepared to make them. Rep. Richard K. Armey of Texas, House majority leader, said forthrightly that if members of Congress understood the full dimension of what is involved, "they would buckle at the knees."

But wait, there's more than $1.2 trillion involved: Because of the new tax cuts and other "reforms" proposed in the Republican "Contract," there is an additional $450 million that would have to be found by 2002—making a net reduction of $1.65 trillion.

But the story isn't over—and this is the most significant missing piece.

The bland assumption is that if somehow a miracle is accomplished—the huge $1.65 trillion cuts are made to balance the budget by 2002—the budget will continue to be in balance. Not so! The dirty little secret is that within a few years after 2002, as the Kerry-Danforth entitlement commission report showed, the workplace demographics begin to explode, and with that, the budget deficit. Fewer workers in the labor force supporting Social Security pensioners will drive the Social Security trust fund deep into the red. Once again, the budget will be unbalanced, perhaps more so than before—and the game must start over again.

Clearly, the balanced-budget amendment is bad business. Congress should reconsider the whole plot. The real goal, in the first place, should not be to balance the budget but to balance the economy. The deficit needs to be cut back sharply, but to aim at a balance in 2002 or 2012 is self-defeating. There will be some years ahead when the nation may need to run a deficit—and it shouldn't be afraid to make such decisions.

The need now is to put aside the gimmickry, forget the constitutional amendment and for the Clinton administration and the Republican Congress to attend to business. A little maturity, please!

[From the New York Times, Feb. 27, 1995]

UNBALANCED AMENDMENT

Tomorrow's vote in the Senate on the balanced-budget amendment is crucial for the Republican agenda to chop Government programs into bits. The outcome is also crucial to the nation because the pernicious amendment would do enormous fiscal damage. Proponents are alarmingly within three votes of winning.

The core of the amendment would require the Government to balance its books unless three-fifths of the House and Senate vote to run a deficit. To the wavering Democrats—John Breaux of Louisiana, Sam Nunn of Georgia, Wendell Ford of Kentucky, and Kent Conrad and Byron Dorgan of North Dakota—here are five unassailable reasons to vote no.

UNNECESSARY

Federal deficits have indeed been too high. That poses a threat that borrowing will siphon savings away from productive private investments.

But the fact that borrowing must be contained does not imply it ought to be eliminated—any more than family borrowing, to buy a house or pay college tuition, need be eliminated. A prudent rule would keep Federal debt growing less quickly than incomes. This rule would justify deficits of about $200 billion a year, close to current levels.

MISLEADING

Proponents claim the amendment would protect future generations against ruinous interest payments. True, today's children will owe taxes when they grow up to pay interest on Federal debt. But proponents ignore the fact that the tax payments will flow right back to these children as owners of Government bonds.

UNENFORCEABLE

Because key terms of the amendment—like outlays and receipts—are undefined, Congress will be able to manipulate and evade. Can Congress create independent agencies or find other ways to spend and borrow off the Government books? A Senate committee has already written into the legislative record, used to guide future court decisions, that the Tennessee Valley Authority would be exempt from the amendment. It should take lawyers five minutes to stretch whatever "principle" guides that exception to scores of other Government programs.

The amendment also fails to provide an enforcement mechanism. I might simply become an empty gesture or, worse yet, the courts might step in to tell Congress how much it should tax and where it should spend.

IRRATIONAL

Federal bookkeeping lumps ordinary spending with long-term public investments. Congress, forced by the amendment to cut quickly, would go after hugely expensive, though vitally important, investments, such as scientific research, costly laboratories and equipment, job training or other investments that would not produce benefits for years, if not decades.

RECKLESS

When the economy slows, tax revenues fall off and spending on unemployment insurance and food stamps rises. This automatic rise in the deficit, by triggering spending, serves to mitigate the slowdown. But under the proposed amendment, Congress could easily turn a mild downturn into something worse. Unless a three-fifths supermajority saves the day, Congress would have to raise taxes and cut spending in a slow economy—the opposite of responsible stewardship.

Take another unintended consequence. When savings and loans went bankrupt during the 1980's, the Federal Government bailed out depositors with borrowed money, thereby preventing a banking panic. But under the proposed amendment, the Government could not react instantly unless a supermajority in Congress approved.

The balanced-budget amendment appeals to taxpayers who demand that the Government spend their money wisely. But Senators Nunn, Ford, Conrad, Dorgan and Breaux need to recognize that this honorable sentiment cannot be wisely embedded into the Constitution.

Mr. BYRD. Mr. President, I yield the floor.

Mr. HATCH. Mr. President, I notice the Senator from Massachusetts is here. If I can, I would like to make a few comments.

Mr. President, the gist of the amendments of the distinguished Senator from West Virginia numbered 252 and 254 is that the majority provisions of House Joint Resolution 1 are undemocratic and alter the fine balance in the Constitution between the branches of Government.

More specifically, as I understand the distinguished Senator from West Virginia, he contends—and I think in the past has eloquently debated the balanced budget amendment—that Congress' control over taxing, spending, and borrowing is diluted by restraints placed on such powers by supermajority requirements of the amendment. According to the distinguished Senator from West Virginia, the democracy reflected by the present majority requirement of Congress would be dealt a blow if this amendment passes.

Naturally, I disagree. The balanced budget amendment furthers the purpose and structure of the Constitution. Indeed, the amendment goes to the very heart of the hope of the Framers of the Constitution for the constitutional system, a system that would protect individual freedom and restrain the size and power of the Federal Government.

In the latter half of this century, however, the intention of the Framers has been betrayed by Congress' own inability to control its spending habits. Passage and ratification of the balanced budget amendment would restore the constitutional Framers' promises of liberty and what the Framers called our republican form of government.

Mr. President, let me first say what the modern day crisis is. Our Nation is faced with the worsening problem of rising national debt and deficits and the increased Government use of capital that would otherwise be available to the private sector to create jobs or to invest in our future. Increased amounts of capital are being wasted on merely financing the debt through spiraling interest costs. This problem presents risk to our long-term economic growth and endangers the well-being of our elderly, our working people, and especially our children and our grandchildren. The debt burden is a mortgage on their future.

Mr. President, the time has come for a solution strong enough that it cannot be evaded for short-term gain. We need a constitutional amendment or requirement to balance our budget. House Joint Resolution 1, the consensus balanced budget amendment, is that solution. It is reasonable. It is enforceable. It is necessary to force Congress to get our fiscal house in order. It not only furthers the economic welfare of our Republic, it fosters the Constitution's purpose of protecting liberty through the framework of limited government.

James Madison, in explaining the theory undergirding the Government he helped to create, had this to say about government and human nature:

> Government [is] the greatest of all reflections on human nature. If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government that is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is no doubt the primary control on government; but experience has taught mankind the necessity of auxiliary precautions.

Now, Mr. President, we are here to debate an auxiliary precaution, House Joint Resolution 1, proposing an amendment to the Constitution of the United States to require a balanced budget, because our recent history has shown that Congress is not under control and will not bring spending under control without such a mechanism being placed into the Constitution.

The balanced budget amendment helps restore two important elements in the constitutional structure: limited government and an accountable, deliberative legislative assembly, both of which are vital to a free and vibrant constitutional democracy.

Deliberative assembly—the essence of whose authority is, in Alexander

Hamilton's words, "to enact laws, or in other words to prescribe rules for the regulation of society" for the common good—was considered by the Framers of the Constitution the most important branch of the Government because it reflected the will of the people. Yet, as the makers of laws, it was considered the most powerful and the one that needed to be guarded against the most.

Recognizing that in republican government the legislative authority necessarily predominates and to prevent elective despotism, James Madison, the father of the Constitution, recommended that the Philadelphia Convention adopt devices in the Constitution that would safeguard liberty. These include bicameralism, separation of powers and checks and balances, a qualified executive veto, limiting congressional authority through enumerating its powers, and, of course, the election of legislators to assure accountability to the people.

However, in the late 20th century, our century, these constitutional processes that Madison termed auxiliary precautions have failed to limit the voracious appetite of Congress to legislate in every area of private concern, to invade the traditional bailiwick of the States, and consequently, to spend and spend to fund these measures until the Government has become functionally insolvent and the economy placed in jeopardy. Congress has been mutated from a legislative assembly deliberating the economic interests into the playground of special interests.

The balanced budget amendment, Mr. President, will go a long way toward ameliorating this wrong. It will create an additional constitutional process, an auxiliary precaution, if you will, that will bring back legislative accountability to the constitutional system.

The balanced budget amendment process accomplishes this by making Federal deficit spending significantly more difficult. Significantly, it advances liberty by making it more difficult for the Government to fund overzealous legislation and regulation that invades the private lives of citizens.

According to Prof. Harvey Mansfield, Jr., of Harvard, in his scholarly book, "The Taming of the Prince," the real genius of our Constitution is that, having placed all power in the hands of its citizenry, the American people consented to restraints on that power. Understanding that direct or pure democracies in history were inherently unstable and fickle, the Framers placed restraints on popular rule and congressional power, what we now call supermajority requirements.

Senator BYRD is this body's expert on these requirements, but we will mention some of them again, that are in the Constitution now. Article I, section 3, the Senate may convict on an impeachment vote of two-thirds; article I, section 5, each House may expel a Member with a two-thirds vote, a supermajority; article I, section 7, a Presidential veto may be overridden by a two-thirds vote of each House, again, a supermajority in each House; article II, section 2, the Senate advises and consents to treaties, again, by a majority of two-thirds; article V, a constitutional amendment requires two-thirds of each House or a constitutional convention can be called by two-thirds of the State legislatures, three-quarters of the State legislatures must ratify any constitutional amendment—all supermajorities; article VII, the Constitution itself required ratification of 9 of the 13 States, again, a supermajority.

This is not a democracy. This is a representative republic. Our Founding Fathers understood the need to have majorities. The 12th amendment requires a quorum of two-thirds of the States in the House to choose a President. A majority of States is required to elect the President. The same requirements exist for the Senate choosing the Vice President; again, a supermajority. The 25th amendment dealing with the President's competency and removal requires that if Congress is not in session within 21 days after Congress is required to assemble, it must determine by a two-thirds vote of both Houses that the President is unable to discharge the duties of his office. Now, all of those are supermajorities. All of those are part of the Constitution now.

Mr. President, it is indeed ironic as we debate a constitutional amendment following a cloture vote, that arguments are being made that mere majorities are more appropriate to fundamental constitutional decisionmaking than supermajorities. We recently voted on ending this debate, and we were scheduled to vote on that again before we entered into an agreement setting a final vote. A substantial majority expressed its desire to end the debate. A three-fifths vote of Senators—that means 60 Senators—must vote to end debate. Is that rule inappropriate in a constitutional debate? Of course not. As a matter of fact, I think we would have had the 60 votes had we gone to cloture the second time. I think that is one reason why the minority agreed to the time agreement that we now have before the Senate.

The Constitution requires that a supermajority approve a constitutional amendment. To pass the balanced budget amendment, we must have 67 Senators vote for it. Is this inappropriate? Or should we allow some number between 26 and 51, or 50 with the Vice President casting the tie-breaking vote to approve the balanced budget amendment? The Constitution requires that three-quarters of the States ratify the balanced budget amendment. Perhaps our majoritarian friends would prefer that some number of States between 26 and 51 ratify the amendment, with the District of Columbia, Puerto Rico, or Guam casting the tie-breaking vote if the States are evenly divided. That is not the Constitution, however. The Constitution provides for a supermajority.

Mr. President, if majority rule were the fundamental principle of our Government, as I have heard some in this debate say, we would not have the Government we do. We would have a unicameral parliamentary system without judicial review and, indeed, without the Bill of Rights or a written Constitution, because each of those features of our Government is an intrusion into the principle of majority rule, and they are certainly not the only examples.

The first amendment does not say Congress shall not abridge free speech unless a fleeting majority wants to. It does not say that Congress shall not interfere with the free exercise of religion or establish religion unless a majority of those present and voting want to. The first amendment takes those options away from even supermajorities of Congress, except through constitutional amendment. Shall we tear up the Bill of Rights and the Constitution because they contain checks on the power of transient majorities? I do not think so.

As I have said, as Thomas Jefferson said, as even Prof. Laurence Tribe has said, the power of transient majorities to saddle minorities or future majorities with debt is the kind of infringement on fundamental rights that deserves constitutional protection. The Framers wished to protect life, liberty and property. They reacted harshly against taxation without representation. As I pointed out throughout this debate, our deficit spending taxes generations which are not now represented. It takes their property and their economic liberty. It is wholly appropriate that we at least increase the consensus of those currently represented to allow them to shackle those who are not—that is, future generations—with the debt, the taxes and the economic servitude that go with citizenship in a country with high national debt.

Opponents of the balanced budget amendment charge that supermajority requirements will create some new kind of sinister bargaining among factions to gain advantage in return for supporting the necessary consensus. This objection strikes me as strange because that kind of negotiation is as old as the legislative process. It happens now in the search for a majority.

Opponents also charge that the balanced budget amendment writes fiscal policy into the Constitution in an inappropriate way. This amendment deals with the structural problem in our fiscal decisionmaking. We unthinkingly spend money we do not have for temporary benefit to our children's long-term harm. But I would note that the 16th amendment allows taxes to be levied by Congress. Is that not fiscal policy in the same sense as the balanced budget amendment? Article I, section 8 allows Congress to collect taxes, duties, imposts and excises, to borrow money and to regulate commerce. Are not these fiscal policy provisions like the balanced budget amendment? In fact, is not the balanced budget amendment simply a process to safeguard against overuse of the article I power to borrow? Article VI adopted the pre-Constitution debts of the Continental Congress. That was certainly a decision of fiscal policy.

Under the balanced budget amendment, majorities will continue to set budget priorities from year to year. Only if a majority attempts to borrow money from future generations to pay for its priorities would there have to be a supermajority vote. This allows the minority to play the conscience of the Nation and to protect future generations from the type of borrowing sprees that we have seen in recent decades.

I would note that those who believe the supermajority vote would be the rule rather than the exception betray their mental habit of thinking in terms of deficit spending. We must break this habit and make deficit spending the exception instead of the rule. The balanced budget amendment does not require a supermajority to pass the budget, only a budget that is out of balance. The balanced budget amendment creates a positive incentive for current majorities to avoid borrowing to avoid supermajority votes and risking the kind of intrigue opponents say could happen when supermajorities are required. This is wholly appropriate and reasonable to break Congress of its borrowing habit.

Finally, Mr. President, the amendments offered by the Senator from West Virginia would gut the balanced budget amendment by cutting its central provision, the supermajority requirement it places in the way of Congress' deficit spending. If either of these amendments were adopted, the balanced budget amendment would read in essence: "Congress shall not spend money it does not have unless it wants to."

Such a balanced budget amendment would be no balanced budget amendment at all. It would be the status-quo, business-as-usual, let-us-keep-rolling-up-the-debt amendment.

This amendment, or other of these similar amendments, is a poison dart aimed at the heart of the last best hope for the fiscal sanity of Congress and our country. I urge that they both be defeated.

Mr. President, it is absolutely clear that to restore the constitutional concept of limited government and its protection of liberty, as well as to restore fiscal and economic sanity, we must pass this balanced budget amendment. We need the supermajority provisions of House Joint Resolution 1—a modern day "auxiliary precaution" in Madison's words—to put teeth into the balanced budget amendment, to be a force to end "business as usual" here in Congress and, most importantly, to foster the liberty of limited government that the Framers believed to be essential.

Mr. SARBANES. Mr. President, I just very quickly want to address the argument that was advanced by the chairman of the Judiciary Committee in opposition to Senator BYRD's amendments that are pending at the desk dealing with the supermajorities.

In that statement, he asserted as an argument against Senator BYRD's contention that these supermajority requirements here were running counter to the prevailing theme of the Constitution that a majority ought to prevail, the fact that there were some supermajority requirements put in the Constitution by the Founding Fathers, for example, amending the Constitution or overriding a veto.

I wish to make the point that the very Founding Fathers who put those supermajorities into the Constitution considered at the time whether supermajorities ought to be required in order to make decisions, and they rejected that concept. So they in effect considered the very issue that is before us in this regard and rejected the notion of supermajorities.

So they specifically weighed that question at a time when they did include some supermajorities in very special instances. Obviously, amending the document is a very special instance, and the veto is an essential part of the checks and balances.

I cite the quote of James Madison in Federalist Paper 58 in which he rejects the notion of the supermajorities in order to reach decisions and says in fact in the course of that quote, and I will include all of it in the RECORD, "It would no longer be the majority that would rule. The power would be transferred to the minority." And he spoke, of course, against that proposition.

There being no objection, the quote was ordered to be printed in the RECORD, as follows:

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> It has been said that more than a majority ought to have been required for a quorum; and in particular cases, if not in all, more than a majority of a quorum for a decision. That some advantages might have resulted from such a precaution cannot be denied. It might have been an additional shield to some particular interests, and another obstacle generally to hasty and partial measures. But these considerations are outweighed by the inconveniences in the opposite scale. In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority. Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or, in particular emergencies, to extort unreasonable indulgences.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. GRASSLEY). The Senator from Massachusetts [Mr. KENNEDY] is recognized.

Mr. KENNEDY. Mr. President, I notice the distinguished Senator from Kansas is on the floor and has an important statement. I will be glad to yield to her and then be recognized following her statement.

The PRESIDING OFFICER. The Senator from Kansas [Mrs. KASSEBAUM] is recognized.

Mrs. KASSEBAUM. Mr. President, I appreciate the Senator from Massachusetts yielding for a few moments so I can weigh in and offer my observations on the constitutional amendment that we have been debating over the past several weeks.

During these debates, I think we have heard some very thoughtful comments, both pro and con, on this important issue. This debate, in some ways, seems a fitting symbol for the amendment itself which involves a great deal of talk without any specific action.

As many of my colleagues know, I have long been an opponent of this proposed change in the Constitution of the United States. I have said it would not get us 1 cent closer to a balanced budget. I have contended that it would invite evasive accounting and legal gymnastics. I have expressed concern that it would open a whole new frontier for judicial review.

These concerns are not without basis and actual experience. I am sure we all remember the lengths we went to in order to get around the provisions of the Gramm-Rudman-Hollings Act and other abbreviated attempts at deficit reduction. We remember how, in the wake of the savings and loan crisis, the Resolution Trust Corporation was created, masking billions of dollars from budget totals. Even for this very amendment, we have left definitions of crucial language open to reinterpretation. Today's outlays may become tomorrow's "working capital."

I think many of my colleagues will also remember that in the past, I have referred to this amendment as a sham and a gimmick. I do not believe it is the panacea to a sound fiscal policy. It has been highly effective, however, in both roles by preventing us from focusing on the real choices that must be made in the Federal budget and serving as a nearly annual diversion that allows us to talk about balanced budgets while avoiding the clear and urgent need to adopt a sound fiscal policy.

This may sound, Mr. President, as if I am leading up to expressing a vote against a constitutional amendment to balance the budget. But this year, I intend to vote for final passage of the balanced budget amendment. I do so not as a result of the change in my views or beliefs or because of some revelation that this amendment does not suffer from the flaws that troubled me in the past. Instead, I will vote for this amendment this year simply and solely to eliminate it as an excuse for not cutting spending. We have been debating this amendment for more than a decade, constantly arguing about a change in the Constitution that would force us somehow to do what we all know eventually must be done.

If this seems like a backhanded endorsement to this amendment, it certainly is the case. All of the arguments that I have made in the past and many of the arguments that have been made in the last few weeks are, in my mind, still valid. Unfortunately, Mr. President, the arguments against this amendment and my concern about casual changes in the Constitution are rendered almost irrelevant by another simple fact of our budget life. That fact is that every day our Government issues scraps of paper marked IOU that are themselves becoming a deadly weight not only to future generations but to the Constitution itself. This year, we will issue almost $500 million a day in IOU's. Interest is piling up alongside those IOU's high enough to consume 15 percent of our spending. To put that in perspective, the budget we received a couple of weeks ago calls for us to spend almost as much money next year in interest as on defense. If only that meant our world had become peaceful and safe. Instead, what it means is that we have put our grandchildren in debt and the future of our Government in danger.

Mr. President, I believe it is time to stop debating this amendment. It is time to pass it, get it out of the way, take it off the list of excuses we constantly use, and move on to the real issue, which is how to balance our Government's income with its expenditures, how to lay out a sound fiscal policy every year. If this amendment works, then I will be glad to admit that I was wrong to ever oppose it. I certainly hope it serves the purpose for which it was intended. If it does not work, then it will no longer be available as an excuse for failure to achieve sound fiscal policy.

That, Mr. President, is my reason for supporting this constitutional amendment to balance the budget and why I believe it is important for us in the Senate to pass it this year.

Thank you. I yield the floor.

The PRESIDING OFFICER. By previous order, the Senator from Massachusetts is recognized.

AMENDMENT NO. 267

Mr. KENNEDY. Mr. President, I ask unanimous consent that the pending amendments be temporarily laid aside and that my amendment No. 267 be placed before the Senate for the duration of my remarks on the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, during the debate on the proposed constitutional amendment, we have heard practically nothing from supporters of the proposal regarding how the amendment is to be enforced. The reason is clear: The amendment would give the President and the Federal courts unprecedented, and unacceptable, roles in deciding how Federal funds are to be allocated. My amendment addresses the first of these issues—the powers of the President.

In its current form, the proposed constitutional amendment would give the President—in order to avoid an unauthorized deficit—the power to impound funds appropriated by Congress. Section 1 of the amendment provides that:

> [t]otal outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

In other words, the constitutional amendment would flatly prohibit spending from exceeding revenues, unless both the House and the Senate authorize the deficit.

Under article II, section 3 of the Constitution, the President has a duty to "take care that the Laws be faithfully executed," and article II, section 7, requires the President to take an oath to "preserve, protect and defend the Constitution."

In any fiscal year in which it is clear that there will be an unauthorized deficit, the President is bound by the Constitution and his oath of office to balance the budget and prevent the deficit.

Such a deficit could occur for a wide range of reasons. Congress may lack the political will to cast a vote authorizing a deficit as large as the one that it actually anticipates. Or, unanticipated decreases in revenue or increases in expenditures may result from natural disasters or from a downturn in the economy.

In these circumstances, the proposed constitutional amendment would give the President the power, indeed the duty, to impound appropriated funds to prevent the unauthorized deficit from occurring.

That is not just my opinion. This commonsense reading of the proposed constitutional amendment is shared by a broad range of highly respected legal scholars and by the executive branch of the Government.

Assistant Attorney General Walter Dellinger, who as head of the Office of Legal Counsel at the Department of Justice is responsible for advising the President and the Attorney General on the scope and limits on Presidential authority, testified before the Judiciary Committee that the proposed constitutional amendment would authorize the President to impound funds to ensure that outlays do not exceed receipts.

Harvard Law School Professor Charles Fried, who served as Solicitor General during the Reagan administration, testified that in a year when actual revenues fall below projections and a bigger-than-authorized deficit occurs, section 1 "would offer a President ample warrant to impound appropriated funds." Others who share this view include former Attorney General Nicholas Katzenbach, Stanford University Law School Professor Kathleen Sullivan, Yale University Law School Professor Burke Marshall, and Harvard University Law School Professor Laurence Tribe.

By giving the President impoundment authority, the proposed amendment would dramatically alter the allocation of powers set forth in the Constitution. As James Madison wrote in The Federalist No. 48, "the legislative department alone" has the power to tax and spend.

So, Mr. President, as we mentioned here, we have broad views of different high administration officials who have served in the Justice Department or in the White House, who are thoughtful men and women and constitutional scholars, who believe virtually unanimously, if you regard the hearings that were held on the balanced budget amendment by Senator BYRD as well as by the Judiciary Committee—virtually unanimously that this power of impoundment is very real and that the President would have a duty to impound; not just an option, a duty to impound should there be an imbalance between receipts and outlays.

The Constitution gives Congress the primary authority and responsibility with regard to raising and spending funds.

Article I, section 7 states that "all Bills for raising Revenue" must originate in the House of Representatives.

Article I, section 8 grants Congress the powers "to lay and collect Taxes, Duties, Imposts and Excises," and "to borrow Money on the credit of the United States."

Article I, section 9 provides that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."

Changing the constitutional allocation of powers that has served this country well for over 200 years would be a profound mistake.

I support a statutory line-item veto, and I hope to be able to vote for one on the floor this year. But the impoundment authority given to the President by this amendment is far broader than a line-item veto.

The line-item veto simply allows the President to delete or reduce specific items in an appropriations bill. But as Assistant Attorney General Dellinger testified, the impoundment authority conferred upon the President by the proposed constitutional amendment would allow a President, confronted with an unauthorized deficit, to order across-the-board cuts in all Federal programs, abolish entire programs, or target expenditures intended for particular States or regions for impoundment.

In the name of deficit reduction, the President could freeze cost-of-living adjustments for Social Security recipients. He could abolish Medicare. He could slash defense spending.

In the past, Presidents from time to time have asserted that they had inherent constitutional authority to impound funds. This issue came to a head during the Nixon administration, when President Nixon impounded $18 billion from programs he wanted to terminate or reduce.

He impounded $9 billion appropriated for water treatment facilities. He imposed a moratorium on subsidized housing. He cut back on disaster relief. He suspended rural and community development programs. He withheld almost $2 billion from the Department of Labor and from the Department of Health, Education and Welfare.

Dozens of lawsuits were filed challenging the legality of President Nixon's actions. The vast majority of court decisions ruled against the impoundment. In 1974, Congress finally resolved the matter by passing the Impoundment Control Act to require the appropriated funds to be spent—unless the President sends a rescission message to Congress and Congress acts to uphold the rescission. The balanced budget amendment would scrap this arrangement. As I mentioned, that is the law now. The Impoundment Control Act since 1974 is the law guiding the whole issue of impoundment.

The balanced budget amendment would scrap this arrangement, and fundamentally change the allocation of powers between the President and the Congress.

In addition to granting authority to the President to impound appropriated funds, the amendment would also enable future Presidents to assert that they have the power unilaterally to raise taxes, duties, or fees—in order to generate additional revenue to avoid an unauthorized deficit. That was the testimony of Assistant Attorney General Walter Dellinger, the chief legal advisor to the executive branch, before the Judiciary Committee this year.

This outcome would drastically transform the allocation of powers envisioned by the Framers. No longer would the legislative department alone have the power to tax and spend, as Madison promised in The Federalist No. 48.

The fact that the proposed constitutional amendment would confer impoundment authority on the President is confirmed by the actions of the Judiciary Committee this year. Supporters of the amendment opposed and defeated my amendment that would have added the following section to the proposed amendment:

> Nothing in this article shall authorize the President to impound funds appropriated by Congress by law, or to impose taxes, duties or fees.

If the supporters of the proposed constitutional amendment to do not intend to give impoundment authority to the President, there is no legitimate explanation for their failure to include this clear prohibition in the proposed amendment.

Supporters of the constitutional amendment make two arguments to support its assertion that the proposal would not give the President impoundment authority. Both are wrong.

They argue that there will never be an unauthorized, and therefore unconstitutional, deficit, because Congress will always step in at the end of the year and ratify whatever deficit has occurred.

That is like arguing the President has the unilateral power under the Constitution to declare war, because Congress will always step in to ratify a Presidential declaration.

If their prediction is accurate, then the balanced budget amendment is a sham, because it would impose no fiscal discipline whatsoever. But if the prediction is wrong—if Congress failed to act before the end of a fiscal year to ratify an unauthorized deficit—then all of the expenditures by the Federal Government throughout the fiscal year would be unconstitutional and open to challenge in the State and Federal courts. it is inconceivable that the President, sworn to preserve, protect and defend the Constitution, would be found to be powerless to prevent such a result.

Supporters also argue that Congress can specify in the enforcement legislation required by section 6 exactly the enforcement mechanism it wants, and that the President, as Chief Executive, is duty bound to carry out the congressional plan, to the exclusion of impoundment. But just because Congress spells out one means of enforcing the amendment does not mean that the President could not assert another means.

As the Supreme Court recognized in In re Neagle, the President's obligation to faithfully execute the laws is independent of Congress. That duty is not—

> * * * limited to the enforcement of facts of Congress * * * according to their express terms * * * it include[s] the rights, duties and obligations growing out of the Constitution itself. * * * and all the protection implied by the nature of the government under the Constitution[.]

If an unconstitutional deficit were occurring, Congress could not constitutionally stop the President from impounding appropriated funds in order to prevent it. As Prof. Kathleen Sullivan testified, the proposed constitutional amendment—

> * * * if enacted would, of course, be constitutional law, fundamental law. It would trump [the Impoundment Control Act of 1974] or any other statute designed to umpire disputes between the President and Congress.

In short, the only certain way to see that the President is not given impoundment authority is by adopting the Kennedy amendment.

This does not even take into consideration the fact that if you have subsequent enabling legislation, as suggested by those who support it, that the President might veto it. He way say, "No, I believe that the statements and the positions that have been expressed by Charles Fried and former Attorney General Katzenbach and Solicitor General Archibald Cox and Walter Dellinger and Kathleen Sullivan give me the power to do that. They give me the power to do it so I am going to veto the implementing legislation." And what is to say what would be the outcome of such a veto?

My amendment will make clear that nothing in the balanced budget amendment gives the President authority to impound appropriated funds or impose taxes, duties, or fees.

My amendment will not limit Congress' power to give the President line-item veto authority. I will not limit the authority already given to the President elsewhere in the Constitution, and by the Budget Control and Impoundment Act. All it will do is specify that the proposed constitutional amendment does not give the President the power to impound appropriated funds or impose taxes, duties, or fees.

We should not sign over to the President the power that Congress has had over the purse for over 200 years, simply because some Members lack the political courage to make the tough decisions needed to balance the budget.

I urge my colleagues to support the amendment.

Mr. HATCH. Mr. President, I wish to respond to Senator KENNEDY's impoundment argument. In each of the years the balanced budget amendment has been debated, I have noticed that one specious argument is presented as a scare tactic by the opponents of the amendment. This year the vampire rising from the grave is presidential impoundment. Supposedly, a President, when faced with the possibility of budgetary shortfalls after ratification of the balanced budget amendment, will somehow have the constitutional authority—nay duty—to arbitrarily cut social spending programs or even raise taxes.

I want to emphasize that there is nothing in House Joint Resolution 1 that authorizes or otherwise allows for impoundment. It is not the intent of the amendment to grant the President any impoundment authority under House Joint Resolution 1. Indeed, House Joint Resolution 1 imposes one new duty, delegates one new authority, on the President: To transmit to Congress a proposed budget for each fiscal year in which total outlays do not exceed total receipts. In fact, there is a ripeness problem to any attempted impoundment: Up to the end of the fiscal year the President has no plausible basis to impound funds because Congress under the amendment has the power to ameliorate any budget shortfalls or ratify or specify the amount of deficit spending that may occur in that fiscal year.

Moreover, under section 6 of the amendment, Congress must—and I emphasize must—mandate exactly what type of enforcement mechanism it wants, whether it be sequestration, rescission, the establishment of a contingency fund, or some other mechanism. The President, as Chief Executive, is duty bound to enforce a particular requisite congressional scheme to the exclusion of impoundment. That the President must enforce a mandatory congressional budgetary measure has been the established law since the nineteenth century case of *Kendall* v. *United States ex rel. Stokes*, 37 U.S. (12 Pet.) 542 (1838). In Kendall, Congress had passed a private act ordering the Postmaster General to pay Kendall for services rendered. The Supreme Court rejected the argument that Kendall could not sue in mandamus because the Postmaster General was subject only to the orders of the President and not to the directives of Congress. The Court held that the President must enforce any mandated—as opposed to discretionary—congressional spending measure pursuant to his duty to faithfully execute the law pursuant to article II, section 3 of the Constitution. The Kendall case was given new vitality in the 1970's, when lower Federal courts, as a matter of statutory construction, rejected attempts by President Nixon to impound funds where Congress did not give the President discretion to withhold funding. For example, *State Highway Commission* v. *Volpe*, 479 F.2d 1099 (8th Cir. 1973). Unless Congress grants the President impoundment power, the President, as a practical matter, will not be able to impound funds under this amendment.

Let me stress again that section 6 of House Joint Resolution 1 requires Congress to enforce and implement the amendment by appropriate legislation. This is not a delegation of power to Congress, similar to that of the 14th, 15th, 16th, and 19th amendments, whereby Congress has the discretion whether or not to exercise its enforcement power. Congress must enforce the balanced budget amendment by appropriate legislation. This is a powerful statement that evidences a preclusion of unilateral presidential action.

The position that section 6 implementing legislation would preclude Presidential impoundment was seconded by Attorney General Barr at the recent Judiciary Committee hearing on the balanced budget amendment. Testifying that the impoundment issue was in reality incomprehensible, General Barr concluded that "the whip hand is in Congress' hand, so to speak; under section 6 [the] Congress can provide the enforcement mechanism that the courts will defer to and that the President will be bound by."

Further, the notion that Congress would stand idly by while the President threatens to, or, in fact, does invade Congress' spending authority, is not realistic as a practical matter. We simply would not stand for it.

What we have here then, is an argument based on a remote possibility. Under the remote possibility scenario of an impoundment, we would have to preclude any possibility, however, remote, in the amendment. The amendment would look like an insurance policy. Why preclude something in the Constitution that in strong probability could never happen, and which Congress could preclude by legislation?

Finally, the Kennedy amendment, as worded, would prohibit Congress from delegating to the President in implementing legislation any rescissionary authority. This is what Congress did in Gramm-Rudman-Hollings. Why limit the tools that Congress may employ to balance the budget in the future?

As to the President's hypothetical power to raise taxes, this is not even a remote possibility. It is a constitutional impossibility. President's simply do not have the power to raise taxes and the balanced budget amendment does not alter this. This power is exclusively delegated to Congress by the Constitution in article 1. All the balanced budget amendment does is to limit Congress' spending, taxing, and borrowing powers.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, in 1788, Alexander Hamilton recognized that deliberations on the Constitution would by no means be, as he put it, "decorous and genteel." Much too much was at stake. Instead, he predicted there would be "a torrent of angry and malignant passions" that would be let loose during "the great national discussion."

Well, Mr. President, we are having a great national discussion. We can be thankful that we are having it on a basis which is appropriate and genteel. At the same time, we must answer some of the charges that have been made, as well as examine further some of the arguments that are being raised against the balanced budget amendment.

Just moments ago, in this Chamber, the Senator from Maryland came to us with the suggestion that the supermajority that is required in this amendment—and, as we all know, in the proposed amendment there is a supermajority of 60 percent required to raise the national debt—is undemocratic to the extent that it inappropriately gives to a minority of people, the 40 percent, the right to block the will of the 60 percent.

I agree that it is important for us all to agree that we do not want to have supermajority requirements everywhere, particularly where it is not important. But we also know that the Constitution itself contains a variety of supermajorities that are included in the Constitution because there are some things it is vital to protect.

Indeed, the Senator from Maryland pointed out that we have a supermajority requirement for overriding the President's veto. But the reasoning behind prohibiting supermajorities in the main is to keep one group from unduly imposing its will on another group. The reason we believe generally in simple majorities is that we believe that people who are represented ought to be represented on an equal footing.

However, there is a special situation about which we debate here today concerning the national debt. And it is not about one group in America displacing the cost of its consumption to another group now existent in America. What we are talking about is the displacement of the costs of current programs that we now benefit from onto the next generation, who are not currently represented at all. It is in truth a problem about allowing one group to impose its will on another group—another group upon whom this debt is being imposed who are not even here to protest.

Mr. President, we have tried over and over again as a body—in the United States—to somehow preclude this recurring debt problem by binding the next Senate. We had the Gramm-Rudman-Hollings Act, then we had GRAMM-Rudman, and then we had the budget deals of 1990 and 1993. We have not been able to get one Senate to bind the next Senate to the necessary discipline to restrain this Government from going deeper and deeper into debt. Unfortunately, while the Senate cannot bind the next Senate, the Senate certainly binds the next generation to the current debt.

So, when we are talking about a group that is yet to come into existence—the next generation of Americans whose toil has not yet produced the first of its wages—I think it is essential that we have the capacity to require a supermajority vote.

Mr. President, in the deliberations we also frequently hear that there is no need for us to have this kind of amendment to the U.S. Constitution. It is argued that there is authority now for the U.S. Congress to do what is right. There is authority for the U.S. Congress to do what is right and to live within its means.

Frankly, it is only part of what a Constitution stands for, what a Constitution's function is, to provide authority to do what is right. The other half of the Constitution's function and purpose is to prohibit that which is wrong. If we come to the conclusion that spending the resources of the next generation is wrong, we cannot rely on the fact that there is authority in the Constitution for the Congress to act properly. We must prohibit the Congress from doing that which is wrong.

The mere authority to do that which is right has been insufficient. We have had in the last 60 years only seven balanced budgets. We have had authority to balance the budget in every one of those 60 years, yet we have not had the fiscal discipline to balance the budget. It is agreed, we have had the authority to do what is right. What we need now is a prohibition against doing what is wrong.

It is wrong to spend your neighbor's resources. It is wrong to take those things which are not yours. It is simply wrong. It is part of the consensus that we all have when we first understand right from wrong. Yet we in Congress continue to recklessly spend the resources of the next generation without their consent.

The idea of placing a prohibition on the actions of Congress is not new. As a matter of fact, as a precondition for ratifying the U.S. Constitution, the States demanded that there be a Bill of Rights that clearly curtailed the ability of Congress to do things that were wrong. The first five words of the Bill of Rights are "Congress shall make no law."

Again, I reiterate Mr. President, it is very important that the Constitution not only include authority to do that which is right, but to prohibit the Congress from doing those things which are wrong. And this is a fundamental function of the Constitution that is as old as the Bill of Rights and the Constitution itself.

It is in this context, then, that we need a balanced budget amendment to the Constitution. When you think of the things which were said by those at the beginning of this Republic which inspire us now—such as Nathan Hale saying on his way to the gallows, a patriot willing to give his life, "I regret that I have but one life to lose for my country." I think sometimes that the Congress regrets that there are but one or two generations to pay for the excesses of the Congress.

As a matter of fact, I do not believe we can have any confidence that the debt which we now have could be paid off within one generation, or even perhaps within two generations. But I do have confidence that if we now take this act of principled discipline and begin to prohibit our profligate spending, we will begin to move away from the kind of deficits which have characterized this country for far too many years.

It is in this context that we must have this great discussion, Mr. President. It is in this context that we must understand the need for the U.S. Congress to send to the States for ratification an amendment to the Constitution which would impose upon the Congress of the United States the very same discipline under which virtually every State in the United States operates.

It is the discipline of practice, of living within the resources that are available, of living within the resources which have been contributed by those whose representatives are in the elected bodies—the legislative branches of the States. We should engage in the same practice at the national level. Indeed, we should live within the resources that we are willing to gather now—we should not attempt to take the resources of the next generation.

The ability to take the resources of the next generation is unique to the U.S. Congress. No family in America finds its children encumbered by the debts of their parents. No matter how profligate the spending of a father may be, the children are not asked to endure the debts of the father. While the Congress cannot bind the next Congress, it can and does bind the next generation. It is time for the Constitution to be amended so that we do indeed curtail this practice which deprives individuals affected of representation—a practice, again, which imposes on the next generation a kind of taxation, a kind of confiscation of their wealth without any participation whatsoever in the development of the priorities their resources are allocated for.

It is wrong, Mr. President, and we need to stop it. I yield the floor.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

AMENDMENTS NOS. 259 AND 298

Mr. GRAHAM. Mr. President, on Friday, I proposed two amendments, which will be voted on tomorrow. I would like to use this opportunity to briefly discuss those amendments, and why I believe they are so critical, prior to the passage of this constitutional amendment and its possible ratification by the States.

I commence by saying that it is my intention to vote for the balanced budget amendment. I do so with great regret. I consider the very debate that we are having today, and over the past several days, an admission of failure. It is an admission of failure in a basic quality of the American character, and that is the quality that each generation has not only the responsibility to attend to its own affairs, but to leave this country as a stronger and better place for our children and grandchildren. That, in fact, has been the history of America for over 200 years. Regrettably, it is the generation of our children that may be the first generation to find that they are not better off, that they do not have greater opportunities personally, economically, educationally than did our generation and preceding generations.

We have broken that contract, that intergenerational contract of America. The balanced budget amendment, therefore, is the regrettable response to that broken contract. If there were reason to believe that we were prepared to reform Federal spending without having to go to the draconian extreme of a constitutional amendment, with all of its implications, many of which are unforeseen, if we had not broken that contract, if we had shown some discipline in the past or demonstrated our serious intention to do so in the future, then I would not vote for this constitutional amendment. But the fact is that we have done neither. We have been profligate in the past, and every indication is that we will continue to be in the future.

I will cite two examples from each of the major political parties. The President has submitted a budget this year which calls for approximately a $200 billion addition to our national debt—$200 billion of deficit, and about the same level of projected deficit through the next 5 years. The Republicans' Contract With America calls for a balanced budget, but it also calls for increased spending, particularly in the area of Defense, and it calls for tax cuts which, over the next 10 years, will cost the Treasury in excess of $700 billion.

Neither the President's budget nor the Republicans' Contract With America adds up. Thus, we are at the point that we are considering a constitutional amendment to place shackles on ourselves so that we will not be as able to sin in the future as we have in the past.

My criticism of this amendment, Mr. President, is that its reality does not live up to its rhetoric. It is less than it is purported to be; it is less than it should be. It is not, as it has been described by some of its most fervent advocates, the ironclad amendment that will protect the fiscal future of America.

This amendment, however, is likely to be a permanent part of the Constitution of America in the form that we submit it to the States. I believe the States are likely to ratify this amendment. The history of the United States is that we have had 27 constitutional amendments. With the exception of the amendment on prohibition that was repealed some 13 years after it was adopted, no other amendment has been repealed. No other amendment has been modified. So I am operating on the assumption that what we pass in this

Senate, what the States ratify, will be in the Constitution of the United States for the foreseeable future. And it is against that long stretch of time that we must evaluate whether this amendment meets our rhetoric and the public's expectation.

In my opinion, the combination of the provisions in section 1, which provide that total outlays for any fiscal year shall not exceed total receipts for any fiscal year; section 2, which states that the limit on the debt of the United States held by the public shall not be increased without a three-fifths vote; and section 7, which states that total receipts shall include all receipts to the U.S. Government, total outlays shall include all outlays of the U.S. Government, results in a constitutional amendment that will tolerate—will almost assure that we will grow the national debt by $3 trillion over the next 25 years.

While the public is being led to believe that we are passing an amendment that is going to assure fiscal responsibility, we are going to be passing an amendment that will almost have the opposite effect of assuring a dramatic increase in our national debt.

How is that going to happen? Well, the first component of that, as this chart indicates, is going to happen whatever we do. Between now and the year 2002, which is the earliest fiscal year to which this amendment will apply, we are going to add approximately $1 trillion to our current $4.942 trillion national debt. So that we will reach the year 2002 with a national debt of $6 trillion. It is the next $2 trillion that we have the opportunity to avoid. The combination of those three sections that I summarized will provide that we will account for our national deficit by an accounting system that says you take in all of the income and you subtract all of the expenditures, and if you are in balance on that basis, then you have met the strictures of the constitutional amendment.

The fact is that for the next period, from now until approximately the year 2018, our Social Security Program is going to be generating enormous surpluses. These surpluses will reach a peak of over $3 trillion—a $3 trillion Social Security surplus. Every one of those dollars generated as a surplus in the Social Security system is a dollar against which we can spend for any purpose. Use of the surplus will not be limited to Social Security spending.

So the effect of this amendment, with its requirement that Social Security be integrated into the rest of the Federal budget, is to tolerate a $2 trillion increase in the national debt between now and the year 2018.

But it could be worse, Mr. President. If, for instance, this or future Congresses decide to manipulate Social Security and the handful of other trust funds that will be contributing to this large debt held by Social Security and other trust funds, we can have further opportunities to spend, cut taxes, and still appear to be balancing the budget.

The aviation trust fund provides us with a good example of how Congress has misused a Federal trust fund. Every time an American or a foreign visitor purchases an airline ticket within the United States, they must pay a Federal transportation tax. The tax revenue then goes into an aviation trust fund. Legislation passed by this Congress stated that the proceeds of that trust fund were to be used to finance America's aviation system. It helps to pay for the very complex communications system that protects the navigation and the safety of aircraft. It goes, in part, to expanding our system of airfields and airports and terminals and other activities which benefit aviation in this country.

The fact is that for a period of years, particularly during the 1980's, we did not spend the money that was coming into that aviation trust fund. The primary reason we did not spend the money was not because we had suddenly decided we were going to become extra conservative in the area of aviation spending, but rather because every dollar we did not spend out of that trust fund added to its surplus and contributed to the masking of the Federal budget deficit. I think that while we were artificially reducing the reported deficit, we were tragically contributing to a degeneration of the best aviation safety system in the world. And we are all aware of some of the recent consequences of that degeneration. So I do not believe that we ought to be encouraging Congress to continue that pattern of behavior.

Finally, let me say on this point, Mr. President, I am concerned that some of the strongest advocates of this constitutional amendment are contributing to this public perception that we are going to be passing an ironclad constitutional amendment. Let me just refer to a few of the statements that were published over this weekend and which caught my attention. I am certain they also caught the attention of many of my colleagues.

First was an article in the Washington Post, dated Sunday, February 26, entitled "Congress May Ask Historic Gamble by States," a discussion of this constitutional amendment. I ask unanimous consent that the text of this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Feb. 26, 1995]

CONGRESS MAY ASK HISTORIC GAMBLE BY STATES

BALANCED BUDGET AMENDMENT VARIOUSLY CHARACTERIZED AS OFFERING "GLIDE PATH" OR CRASH

(By Eric Pianin)

If the Senate approves the proposed balanced budget amendment Tuesday, Congress will ask the states to take a historic gamble that some say will free future generations from onerous debt and others warn could ruin the economy, disrupt vital government services and devastate the social safety net.

For nearly 60 years, the fight over a constitutional amendment to force the government to live within its means except in times of war has largely been an academic exercise. But in the wake of the Republican takeover of Congress, the House has overwhelmingly approved the measure, 300 to 132, and supporters in the Senate are within a couple of votes of the two-thirds majority needed to adopt the amendment and send it on to the states for ratification.

Republican leaders—including House Budget Committee Chairman John R. Kasich (Ohio) and Senate Judiciary Committee Chairman Orrin G. Hatch (Utah)—say passage of a balanced budget amendment is essential to GOP plans to impose fiscal discipline on an unruly and often cowardly Congress and put the government on a seven-year "glide path" to eliminating the deficit.

With a balanced budget amendment in place, they insist, the Republicans can cut taxes, protect Social Security from reductions, beef up defense and still eliminate the deficit by the year 2002—all without much upheaval or suffering.

"It isn't like we're trying to haul a Mack truck—attach ourselves to a Mach truck—and then pull it 100 yards with the power of our own bodies," Kasich said recently. "There's an impression out there this is somehow impossible or terribly difficult. It's not that at all."

But critics—such as Sens. Robert C. Byrd (D-W.Va.), Paul S. Sarbanes (D-Md.) and Paul D. Wellstone (D-Minn.)—warn the opposite: If the amendment is approved, it would make the government powerless to respond quickly to recessions and other economic crises and force dismantling of agencies and programs crucial to the poor and the middle class.

Others, including Sen. Sam Nunn (D-Ga.), also argue the amendment would disrupt the balance of power among the three branches of government, strengthening the hand of the president to impound funds any time Congress violated the constitutional strictures and opening the door to judicial intervention on congressional fiscal policy.

Critics also complain Republicans have refused to detail how they intend to achieve a balanced budget within seven or eight years. And they say the Social Security trust fund would become an irresistible target for budget-cutters early next century, despite assurances from House Speaker Newt Gingrich (R-Ga.) and Senate Majority Leader Robert J. Dole (R-Kan.) that Social Security would be exempted.

"No one is going to escape the wrath of the balanced budget mandate," Byrd said in a recent Senate speech.

The new Republican leadership has premised much of its economic and budgetary strategy on passage of the budget amendment, centerpiece of the House GOP's "Contract With America." Many proponents favor the amendment on moral grounds, saying its adoption would help spare their children and grandchildren from the economic burdens of a national debt approaching $5 trillion.

Passage of the balanced budget amendment is also a vital pretext for the larger goal of dramatically shrinking size of government—dismantling or repackaging large chunks of it. Sen. Connie Mack (R-Fla.) said last week, "This is a fundamental debate about those who believe more government will solve our problems and those who believe less government, less taxing and less spending will give us more freedom."

As a foretaste, Republican House appropriators last week voted to cut $17 billion from current spending for housing, health care, nutrition, clean water, job training and other programs. Moreover, the House Economic and Educational Opportunity Committee voted to repeal the National School Lunch Act and fold school feeding and other nutritional programs for the poor into block grants for states to administer.

While these budgetary actions caused an uproar among angry Democrats and social welfare activists, the cuts and program changes were a drop in the bucket compared with what would be required under a balanced budget amendment.

Studies by the Congressional Budget Office, the Treasury and Center on Budget and Policy Priorities show Congress would have to reduce projected spending over the next seven years by as much as $1.4 trillion to balance the budget and pay for the Republicans' $200 billion package of tax cuts. In the year the proposed amendment would take effect, 2002, Congress would have to cut an estimated $357 billion of spending to meet the constitutional requirement.

The Republicans have promised a relatively painless prescription for achieving the deficit, by redesigning costly entitlement programs like Medicare and Medicaid, consolidating other programs into block grants and slowing the rate of growth of spending from a projected 5.4 percent to 3.2 percent.

"I won't call it horrific cuts," said Sen. Larry E. Craig (R–Idaho), a leading proponent of the balanced budget amendment. "I'm talking about reductions of the rates of growth. There isn't going to be one dime cut below this year's budget in next year's spending."

But liberal and conservative policy groups say the "glide path" to a balanced budget will be far bumpier than the Republicans let on. Also, it will be virtually impossible to balanced the budget in seven years if Republicans insist on fencing off large portions of the federal budget from spending cuts, they say.

"You have to be willing to take down defense and future Social Security benefits, and you have to meanstest Medicare and you have to eliminate a lot of cats' and dogs' programs," said William Niskanen, an economic adviser to the Reagan administration and head of the Cato Institute, a conservative think tank. "Arithmetically, it's not difficult to do, but that begs the question of whether it's politically difficult."

Under the amendment, the president would be obliged to submit a balanced budget each year and Congress would have to adopt a budget with outlays no greater than the projected revenues for the coming year, unless three-fifths of the House and Senate agree to allow a deficit.

The amendment would also require a three-fifths majority in each chamber to raise the ceiling on the amount of debt the government can incur, and a simple majority to raise taxes. The provisions would be waived in times of war or threats to national security.

Although it is called a balanced budget amendment, the measure does not guarantee a balanced budget in any year, only that Congress certifies it is attempting to stay within the project revenues. If, as commonly happens, revenue or spending estimates prove faulty, the government could still close its books showing a deficit. However, if annual deficits get out of hand and push the overall national debt to the legal ceiling, it would take a three-fifths "supermajority" to raise the limit to allow additional borrowing.

The biggest problem with the amendment, critics say, is that it would rob the Congress of flexibility in responding to economic crises, such as recessions, or emergencies similar to the mass failures of savings and loan associations. Programs like unemployment insurance, food stamps and other welfare benefits currently kick in automatically whenever unemployment surges. But under a balanced budget amendment, it would take supermajorities in the House and Senate to approve the emergency funding.

"That kind of extreme fiscal policy makes a small recession worse," President Clinton said in his radio address yesterday. "In its most exaggerated form, it's what helped turn the economic slowdown of the 1920s into the Great Depression of the 1930s."

TEXT OF PROPOSED AMENDMENT

Following is text of proposed balanced budget amendment:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein). That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several states within seven years after the date of its submission to the states for ratification:

ARTICLE —

SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a roll call vote.

SECTION 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a roll call vote.

SECTION 3. Prior to each fiscal year, the president shall transmit to the Congress a proposed budget for the United States government for that fiscal year, in which total outlays do not exceed total receipts.

SECTION 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a roll call vote.

SECTION 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

SECTION 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

SECTION 7. Total receipts shall include all receipts of the United States government except those derived from borrowing. Total outlays shall include all outlays of the United States government except for those for repayment of the debt principal.

SECTION 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.

Mr. GRAHAM. Mr. President, in this article, this statement appeared:

> The amendment would also require a three-fifths majority in each Chamber to raise the ceiling on the amount of debt the Government can incur.

It goes on to state:

> If annual deficits get out of hand and push the overall national debt to the legal ceiling, it would take a three-fifths supermajority to raise the limit to allow additional borrowing.

That is clearly untrue.

The constitutional amendment in the clearest words—and it is ironic that the text of the amendment was printed inside the article that I have just read—states that "the limit on the debt of the United States held by the public"—held by the public—"shall not be increased without a three-fifths vote."

By the year 2018, only approximately half of the total national debt will be held by the public. The rest of the national debt will be held primarily by Social Security and other Federal trust funds which are not subject to the limitation of this constitutional amendment.

In a response to the President on Saturday, one of our colleagues made this statement.

> Americans know this measure would require Washington to start living within its means and balancing its budget like families and most State governments must do. That's why about 80 percent of Americans support it.

If 80 percent of Americans believe that this would require Washington to start living within its means and operating like a typical American household, they are supporting this amendment for the wrong reasons and they are about to be severely disappointed.

Finally, on one of the Sunday talk shows, one of our colleagues, in discussing the amendment, challenged a statement that this amendment would require 60 votes to raise taxes, correctly challenged that statement by saying:

> No, you don't need 60 votes under this amendment to increase revenues. You need 60 votes to increase the debt ceiling.

That is not what the amendment provides. You do not need 60 votes to increase the debt ceiling. You need 60 votes to increase the amount of debt held by the public, which will be by the year 2018 only about half of our national debt. All the other debt that the Government borrows is outside of the three-fifths requirement. And it is that other availability of borrowing that is going to drive our national debt to almost $8 trillion by the year 2018.

I have one other item from the weekend news that I want to discuss in a moment where I think there has been a misstatement.

So these are some of the realities of the amendment that we are about to pass. It is an amendment which does not live up to its rhetoric. What is going to be the principal consequence of this gap between reality and rhetoric? The principal consequence of this deficiency in reality as opposed to the rhetoric with which the amendment is being sold is going to be aimed, targeted, focused on our Social Security system and primarily on those Social Security beneficiaries born after the year 1954.

If you were born after the year 1954—and I see some people in this Chamber who I think meet that standard—listen: Social Security is going to be used to mask the extent of the real deficits of the United States.

Let me just give you a few figures at 5-year intervals. In 1980, the reported national debt—this is reported on integrated, budgeted, total revenues versus total receipts including Social Security—the deficit was reported at $73.8 billion in 1980. When you look at the Social Security trust fund in 1980, the Social Security trust fund was running in a deficit. It had a deficit of $1.1 billion. So the real deficit of the general operations of Government was $72.7 billion; that is, the reported deficit minus the degree to which it incorporated the necessity to finance the deficit of Social Security.

By 1985, the reported deficit had jumped to $212.3 billion. And by 1985, as a result of the changes made in Social Security in 1983 when Social Security was converted from a pay-as-you-go system to a surplus system—one that had this print line of developing large surpluses in order to be prepared to meet the needs of that population largely born after World War II and particularly after 1954—we had a surplus of $9.4 billion. So the real deficit in the general accounts of the Federal Government, that is everything other than Social Security, was $221.7 billion. That is 1985.

In 1990, the reported deficit, $221.4 billion. The real deficit, after you eliminate the mask of Social Security surplus, was $279.6 billion.

In 1995, reported deficit, $176 billion. It would appear that we had made significant progress in controlling the deficit. But because there has been a significant increase in Social Security surpluses, the real deficit was $245 billion, or not so much progress. By the year 2000, according to the Congressional Budget Office's latest report, dated January 1995, the reported deficit will be $284 billion. The Social Security surplus will equal $96 billion. So the real deficit, the deficit in all of our ongoing governmental accounts, will be $380 billion—$380 billion.

That is just a foretaste of what it will be like 5 years later when, according to the Congressional Budget Office, we have a reported deficit of $421 billion and a Social Security surplus of $137 billion for a real deficit of $558 billion. That is what we are experiencing in terms of the direction of the budget.

That brings me to my fourth and final weekend news communique. A leading Washington Post columnist wrote in an article entitled "Fool's Amendment," that the redink hemorrhage this constitutional amendment is supposed to stop is not a chronic condition, it is actually a phenomena of the 1980's which has washed over into the 1990's, but it is a dubious proposition to rewrite the permanent charter of Government to correct for the follies of one decade.

I am afraid, my friends, that the facts indicate this was not just a decade-long aberration, that we did not just lose our way for one 10-year period. In fact, we seem to have lost this fundamental character of America of generational responsibility. We are masking the extent to which we are lost by these increasing Social Security surpluses. We are lost with no indication that we are about to find a compass.

Why is Social Security in the target of this issue? It is because that any future attempts to reform Social Security—and clearly Social Security cries out for some reform—are going to be stymied by the fact that those very reforms will be seen as, and in fact will be, means to further mask the deficit. Those reforms will not be used for the principal purpose of assisting Social Security to be a sound, reliable, retirement system for the indefinite future. They will be used as a means of generating additional surplus so we can have even more spending, even more tax cuts, even more borrowing.

Third, the increased national debt will lead to increased national annual debt payments. Under this constitutional amendment, the amount of deficit that we will add from the year 2002 through the year 2018 will be between $120 billion and $140 billion. That is $120 billion to $140 billion that our children and grandchildren and their children and grandchildren are going to be asked to pay.

There will be no net national savings increase as a result of this amendment between 1995 and the year 2018.

Mr. President, we reformed the Social Security system in the early 1980's, in order to build a surplus to meet our future obligations. By statute, that fund can only be invested in a particular form of Treasury notes which, incidentally, are restrained so they are nontransferable. How are we going to pay for all those notes when this large wave of Americans, particularly those born after 1954, arrive and begin to ask for their benefits?

The theory was that the rest of the national budget would be in balance during this period, and we would use the Social Security surpluses for real investments in America, in our economic growth, in making our country stronger so that it would be in a position after the year 2018 to meet this enormous indebtedness.

In fact, we have not been doing that. We have been using the Social Security surplus to fund our annual deficits. This amendment will allow Members to continue to use our Social Security surplus to fund our annual deficits and add $12 trillion to that national debt.

We are facing, Mr. President, a gigantic truck wreck beginning in about the year 2015. We are still operating in a surplus, but the rate of increase in that surplus is beginning to decline. I remember an old joke told about a trucker who was in a class, studying new techniques in driving trucks. The teacher used a method of instruction in which he would ask students different hypothetical questions to see how they would respond in emergency situations. One of the questions that was asked was, "Joe, suppose you are riding on a mountainous road in northern New Mexico. You are 200 yards from the top of the hill, and you look up and there is another truck that has just crested the hill. You can tell it is out of control, and you can tell it is going over 100 miles an hour. What would you do?" Joe said, "I would turn to my relief driver, Ray, who is sleeping in back of me, and wake him up." The driver was shocked. "You would do what? You would wake up your relief driver in that kind of an emergency situation?" Joe said, "I sure would, because Joe never has seen a truck wreck like the one we are about to have."

Well, friends, we need to wake up America because we have not seen a truck wreck like the one we will have which will begin in about the year 2015, no longer having the enormous annual surpluses but reversing to the point where we will have deficits.

And what type of deficits? The period of about the year 2020 or 2025—and it sounds like a long time from now; we hope we will be here to see it—about that time, we will be running deficits in the Social Security of in the range of $350 billion to $400 billion a year. We will be spending out that much more than we will be taking in. That is not an aberration. That is the way the system was designed in order to create a core of assets that will be able to meet this future demand.

If you could analogize this to a household, the Jones household has earnings of $40,000. Unfortunately, the Joneses have not been very prudent and they have gotten into a pattern over the last 2 or 3 years of spending $50,000. So every year, their indebtedness goes up and they get a little more in the hole. Well, good news and bad news has just occurred for the Jones family. Their favorite uncle died, and the uncle left an inheritance, part of which goes to the Jones family.

Now, this is a somewhat unusual inheritance. The Jones family is going to receive $15,000 a year for the next 10 years. They are very happy about that. But the uncle has imposed a requirement on them. He loves the Jones' two children. They are his favorite nephew and niece, and he wants to see that they go to college. So he is going to require as a condition of receiving this $15,000 over each of the next 10 years that the Jones family commit that they will send these two children to college.

They estimate that it will cost $10,000 a year per child to send them to college. What do the Joneses do? Do they put the $15,000 aside in some trust fund to meet this obligation to send their children to school, as their beloved uncle wanted? No. They take the money and they start to spend it. They actually increase their annual spending from $50,000 up to $55,000, so now they are spending the $40,000 they make and the $15,000 they got from their favorite uncle, and they live very well for the next 10 years.

At the end of the 10 years, the $15,000 no longer is there. They are back to $40,000, having gotten themselves into the lifestyle of a $55,000-a-year family, and they have this obligation to send their two children to college.

It is not far off from what our family of America will face in about the year 2018. We will no longer have the Social Security surplus, but we will have to meet the retirement obligations that we have made to our older Americans. We are setting up another type of clash, and that will be a confrontation between classes of Americans. We are setting up a potential confrontation between those Americans who will be in the work force in the decade of the 2020's and those Americans who will be retired, because we will be asking those people in the work force to work harder. There will be fewer of them to support the large number of retirees. We will ask them to pay excessively higher taxes in order to meet those accumulated obligations.

Further, there will not be the kinds of student financial aid that maybe the Jones family thought they would get for their two children because we cannot afford student financial aid anymore.

There is going to be a generational clash in America. There could also be a clash between older Americans and better-off Americans. There is going to be a temptation to manipulate Social Security in order to make the surplus even greater so that some of those obligations in the Contract With America that have this $700 billion-plus price tag from now until the year 2005 can be met. This concerns me.

So we are going to be fraying the basic social relationship between and among important groups of Americans. And we are doing all of this, Mr. President, unnecessarily. We do not have to do this in order to pass this constitutional amendment. We will pass a better, a stronger, a significantly more conservative amendment if we will but take a series of actions in the next few hours.

It would be my hope that we would take as preferred action, No. 1, the passage of the amendment that the Senator from California, Senator FEINSTEIN, has offered which takes Social Security out of the rest of the Federal budget. It would deal with the principal issues raised particularly in section 1 and in section 7 that I discussed earlier.

If we fail to pass the Feinstein amendment, we ought to adopt the first of my two amendments which says: If we are going to have a three-fifths vote to raise the limit of debt held by the public, let us make it a three-fifths vote on all national debt. The Social Security funds should not be more exposed than the other sources from which the Congress can borrow money.

Let us all play on a level playing field. Let us have a three-fifths vote for lifting our public debt limit. Let us do what the reporter in the Washington Post, and what two of our colleagues apparently think we are doing in this amendment, by requiring a three-fifths vote to raise the ceiling on borrowing. We are not doing that in this amendment. We should.

Finally, and I particularly would like to direct this comment to the chairman of the Budget Committee who probably understands these issues as well as anybody in this Chamber. If we continue with the outline of fiscal policy found in this amendment, using the Social Security surpluses as an additional area of borrowing, with only a majority vote required, we will be masking the extent of our other spending or tax cuts. As a result, in 2018 we will carry an $8 trillion debt, about $3 trillion of which is held by the Social Security System.

In 2019, we begin this dramatic drawdown of the Social Security fund. The surplus will drop from $3 trillion to zero by the year 2028. How are we going to fill this triangle on this chart? The triangle represents the national debt that we have accumulated by borrowing from Social Security, but which now we are going to have to start repaying to the beneficiary. How are we going to fill that void?

Under the balanced budget amendment, a three-fifths vote would be required to borrow from the public. This amendment will worsen this gigantic truck crash by saying that over a 10-year period, we have to borrow $3 trillion additional from the public and do it, we must have a three-fifths vote. At an absolute minimum, I think at least we ought to adopt my second amendment. The second Graham amendment which says that, when the Social Security program moves into a deficit position, we should be able to refinance the program by a simple majority vote. If we were able to borrow from Social Security at a majority vote, why should we not be able to pay off the beneficiaries with a majority vote?

In addition, I would like to comment on the issue of judicial review. As the advocates have stated on this issue, as well as others, how much judicial interference there would be in enforcing this amendment? All of these matters can be handled pursuant to the language in section 2 which states:

> The Congress shall enforce and implement this article by appropriate legislation which may rely on estimates of outlays and expenditures.

I think that there is an obligation owed by us to the American people to tell them how we are going to do that. I believe that the outcome of the balance budget amendment has been misrepresented. We should outline the implementing legislation. I believe that the advocates of this legislation ought to present to us between now and approximately 23 hours from now that language. Certainly, the bill's advocates have drafted this language. The objectives and strengths of this legislation are being regularly commented upon. Making public that language might help to alleviate some of the concerns that myself and others have raised during this debate.

I think we have a right to see what the implementing language will actually say so that we can assess whether we think it will protect the Social Security System, and other important areas that have been stated.

Or finally, and this, again, goes to the chairman of the Budget Committee, if we pass this amendment without either the modifications that address the serious problems of integrating Social Security into the rest of the Federal budget, and without the ability to analyze the implementing legislation, then I think the Budget Committee needs to lead our colleagues by pledging that we are not going to succumb to the temptation to borrow an additional $2 trillion between the year 2002 and 2018. Instead, the Senate will produce a budget plan that, in fact, will get us in balance, without having to use the Social Security surplus. That we will, rather than adding to the national debt, be adding to the Nation's savings account.

I think that a commitment by the leadership of the Senate and the Budget Committee that they would take that course of action would be of considerable relief to the American people, it would certainly be of considerable relief to this Senator.

So, Mr. President, in closing, the American people are poised for a disappointment. It is not the first time. This Congress, over many years, has stated that its intention was to act with fiscal responsibility. You could list the amendments, bills, the proposals that have had that as their objective. In every one of those instances, the American people have been disappointed. They have felt that they have been misled. That has contributed to the fact that the public standing of this institution has reached almost historic lows.

It is in our hands to do otherwise. It is in our hands to pass a balanced budget amendment which will live up to our rhetoric. It is in our hands to pass a balanced budget amendment which will provide a strong deterrent to further additions to the national debt. It is in our hands to pass a balanced budget amendment that will protect what has been one of the great social programs in this Nation's history, a program that has lifted the America's seniors out of poverty, given them a level of respect and dignity in their retirement years. We should protect the Social Security system, a system that now stands in the gun sight of this amendment.

All of those things are within our power to do and to do beginning 23 hours and 5 minutes from now. The question is, will we? Thank you, Mr. President.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from New Mexico.

Mr. DOMENICI. I thank the Chair.

I might say to my friend from Florida, I only have about 15 minutes, and if the Senator does not mind, with reference to the questions the Senator has posed to me regarding the Social Security trust fund, I will come back to the floor on another occasion before the vote if I am granted time and I will explain my version of what the Senator has just described.

Frankly, I think the issue is one of a unified budget and whether we should abandon the unified budget or not. I am a staunch proponent of the unified budget which has everything on board for economic purposes and for deficit purposes. I believe I can explain to the Senator that the changes the Senator is talking about would be accomplished by majority vote, not by supermajority vote, because of the residuals we are talking about, and the residuals come about by passing laws that change things, and those laws are passed by simple majorities. But I will go into that in more detail with the Senator at another time.

I came today, Mr. President, because over the weekend there was a lot of talk about what I choose to call what ifs. There were some what ifs that Senator MOYNIHAN used on "Meet the Press." There is a what if this morning by a columnist named Richard Kogan, who used to be a staffer on the House Budget Committee. And I would like to talk about this a bit because this constitutional amendment will not leave us without some what ifs. I think there will be some.

I propose that the what ifs we are going to have to address are less dangerous to America's future than if we do nothing and leave the budget process and leave the Constitution alone and continue the profligate spending that we have.

I was lucky over the weekend to go for 4 hours to the city of Detroit and then moved next door to Oakland County to conduct a hearing with my distinguished friend, the new Senator from Michigan [Mr. ABRAHAM], and a very large crowd of participants, including their Governor.

It is interesting, Mr. President, that on that day on the front page of the Detroit paper was a good picture of money, and it was 43 million dollars' worth of money. It was, "What Does $43 Million Look Like?" It indicated that the night before last they were drawing their lottery, which they call a lotto, and somebody might win $43 million.

I would like the American people to know that it is interesting that it took that much space to show $43 million, and yet in 1 day the deficit of the United States is increased by about $500 million, which is about 12 times that $43 million. I left a dollar with Senator ABRAHAM and said buy me one of those lottery tickets and make the U.S. Government the beneficiary, and if we win we will get $43 million. It turns out there were three winners so we would only have gotten $15 million.

But essentially, if we would have won the $43 million and put it against the deficit, which exists even though Americans are working and paying taxes to try to pay our current expenses, it would have taken care of 2 hours of the accumulated deficit of the United States for the year—2 hours, $43 million.

Now, frankly, that is what brings me to the floor and that is what brings me in support of an effort on our part to produce within our Constitution a mandate that we stop this kind of profligate spending which is going to cause America to have little economic future 15 or 20 years from now when my good friend from Florida is worried about how we are going to pay the Social Security recipients, and I am worried about that. But I am also worried about what is going to remain for anybody else, including my grandchildren and their children, who are going to have to work—in one case it is suggested that to pay this bill, if we do not get the costs under control, the marginal tax rates would have to be 82 percent.

Now, who is going to work in America and what kind of future do you have if that is the case?

So there are a lot of what ifs, and one of the what ifs is what would we do if our banking system or our savings and loan system suffered a very big loss and we had to come up with the money to bail it out.

Well, Mr. President, let me suggest there is nothing in this constitutional amendment which says you must have a three-fifths vote to conduct the business of the U.S. Government, whatever that business is.

What it does say is if you want to do it in a way that is unbalancing the budget and you must borrow more money to do it, you need three-fifths.

So it is a matter of priorities and choices. And for those who think we will not have the wherewithal to prevent the big recessions from occurring and harming us more if we have this amendment than if we did not, might I suggest that we can be accused of a lot of things but we cannot be accused of being totally ignorant and stupid. We will have to draw our laws after we have this amendment in place—and I hope it is in place within the next couple of years—we will have to draw the laws with reference to security of banks, security of savings and loans, recessions and, yes, even unemployment compensation so as to comply with this law. We will have to choose some priorities. We may in fact have to set up better reserves in some of these funds so that at the end of the year we do not have to push ourselves out of balance in order to meet these kinds of requirements.

So for those who want to continue with a whole laundry list of what ifs, I would just suggest what if we do not do anything about this deficit. That is the biggest what if.

Some would say just go ahead and cut the deficit, cut programs. Some of us have been trying for a long time. Presidents have been around, four, five, or six, and we have only had one balanced budget or two in that whole period of time.

What we need is the American people speaking throughout our country in a loud and clear voice that says enough is enough. And what if we do not put this in the Constitution and force ourselves, and, yes, force the American people to accept less from their Government rather than more?

Now, in trying to get the deficit better under control, when we have our great constituents, our friends from our home States, coming before us saying, "Not my program, somebody else's," let me say in my State I pledge only fairness, that my State in this restraint and this restructuring of Government will be treated fairly. But I cannot say that every single program and every single entitlement that we currently spend, that we currently have programmed in where they will increase every year—in the case of Medicare and Medicaid at 10.5 or 11 percent ad infinitum—I will not have to say who is going to pay for that. And if we have to get the deficit under control, what are we going to change if we do not change yours?

So the bigger what if is not what if we have a bank failure or what if we have a recession or what if we have more unemployment.

I would remind the Senate, if you are wondering whether the Senate can work its will even against difficult voting requirements for something like unemployment, I would like to put in the RECORD the unemployment compensation extension which occurred, believe it or not, when the rule of law in the Senate said you cannot spend any more money because you would violate the pay-as-you-go requirement, much like we are going to have with this constitutional amendment, and somebody said we have to pay for unemployment, we still need 6 or 8 months of extended benefits. What do we do? What do we do? Eighty-eight Senators voted to do it; 88 Senators voted to do that because it was needed.

Now, that is the what if. If we have not planned to take care of that, we will vote on it, just like we do everything else. And who knows, we may even do the next one by a simple majority for we might cut something and say cut this and pay for something that is more important. We do not choose to do that very often even in crisis in our great country and in our great Senate and House. We choose to say we have to spend some more because there is a crisis upon us.

There are stabilizers in our economy now. Where I now see this new diagram of how our economy has been up and down since the turn of the century, including the Great Depression, and it used to be that our economy went in broad sweeps like this and now in the last few years we are just in narrow sweeps like this because we have a lot of stabilizers in it. The biggest one is the Federal Reserve Board. It now controls things so we do not have those big ups and downs. I do not think we are ever going to have them again. Is it suggested that the stabilizers in our Government—unemployment compensation, the Federal Reserve Board putting more money on the market or making less available, reducing short-term interest rates if they can, in crises, extending unemployment when we need to, making sure that banks really cannot go totally broke from the standpoint of diminishing our currency value—we have all those things in place. Are we going to wipe all those out just because we are insisting that it is enough to spend $1.6 trillion and perhaps we should not spend $1.7 trillion? Should we not be prudent enough to keep the stabilizers in?

So I believe those arguments are truly, truly red herrings. For those who think we ought to control the American economy by turning spending on and off, the Keynesian idea of economics, frankly they will remain people who think that is what we ought to do. And there will remain those who do not think we ought to do that. And, frankly, I am confident that we are going to find our way within the implementing language for this amendment to do what we must to be prudent and rational with reference to a strong American economy.

I would like to make two other points. First, all of the changes required to reach results within the framework of this constitutional amendment require simple majorities. It was thought at one point the Constitution may have in it three-fifths vote on taxes. That is not in the Constitution, in this amendment. So whatever you want to change to make the deficit go up or down, tax more, cut more, create less of an entitlement or a bigger entitlement—those are all done by simple majority. It is the residual of the simple majority votes that end up with the deficit being too big or too little.

My final point is it is amazing to this Senator that there is now an argument that we should not have a three-fifths vote to borrow more money and break the concept of a balanced budget at a point in time. There is an argument we should not have three-fifths.

My friends and fellow Americans, you must be bound by something. The simple majority got us where we are, voting for everything and refusing to cut; voting for taxes, and then not voting to cut spending. Those are all a result of simple majority votes.

Should we have a constitutional amendment—what a joke—that says you must be in balance unless a simple majority says you do not have to be? Why go through the trouble of passing it? That is the rule today. That is what Senator Harry Byrd from Virginia did 18 years ago in the U.S. Senate. He passed a substantive law of the land that said you shall no longer have any deficits, starting 1 year from now.

That stayed on the books while we incurred deficits, because when Congress votes the last vote, the last law governs. So if we had a constitutional amendment that did not have some kind of supermajority, where would it stand on a roster of enforceability, of something with teeth? It would have zero teeth.

So, for those who do not like the three-fifths, they must be saying one of two things. We will really solve the budget with simple majority votes, although we have been unable to do it heretofore; it will be done. Or they must be saying it should be stronger than three-fifths. I thought that was an argument I might hear. I thought I might hear an argument that there should be no way to avoid a balanced budget—three-fifths, six-fifths, who cares? You cannot do it.

This amendment is pretty well thought out. Because most things will get done by simple majorities around here, which is the good way to do it, the democratic way, the majoritarian vote idea is a paramount idea in American democracy. However, we are merely suggesting that the debt is getting too big. The annual deficits seem never to be controllable. So when it comes to borrowing money to pay for this deficit, increasing the debt, that you have to have a supermajority. I think it is the only way we are going to get there. In fact, I will confess when they were looking for ways to enforce a constitutional amendment, and if you look back in history we have had a number of them, they have been enforceable by different mechanisms, I concurred wholeheartedly as budget chairman that this was probably the best way—put a limitation on the public debt.

I believe when we are finished arguing tomorrow about the unified budget and Social Security—and I hope to bring that to the floor and talk about it—that essentially everyone will understand that the unified budget governs everything in it and that essentially if you want to change things you change them by simple majority and you are not going to borrow any more or any less, based upon the Social Security trust fund, because those calculations are already in the unified budget concept by definition.

I will go into that in more detail tomorrow because I believe that is the case. I do not believe the argument that you can borrow all you want from Social Security because you are only governed under this amendment when increasing the publicly held debt; I do not think that is a valid argument. I think they are one and the same when it comes to the unified budget. It is no easier to do one or the other under the unified budget and I will try to do a better job on that tomorrow.

So, in conclusion, this Senator has been through many, many "what ifs?" Many times we have said what if we would have done this, we would be in better shape than we are. What if the 1986 budget that Senator DOLE and I put through the Senate had been accomplished, where would we be? We would be very far along in terms of the deficit, ridding ourselves of it. But it did not happen. So the what ifs on the side of the equation that says what if we do not do this, put this constitutional amendment in place, far outweigh the other what ifs about how we will solve some other smaller problem within the huge, huge notion of borrowing to pay for our current debts and interest that we have incurred.

I will close today by suggesting to the senior citizens of the United States, if I were advising what policy should be adopted I would say whatever policy the Congress of the United States and the President are going to be firmly committed to that is most apt to have sustained economic growth over a 20- or 25-year period of time. Whatever that policy is, with reference to fiscal policy, we better support it. I will guarantee that for all that is being said on the floor about the future of the Social Security trust fund and how much have we borrowed and how much have we not borrowed and what are we going to do 12 years from now and 20 years from now, I will say to every senior in America there is little chance that what is expected of Social Security will ever occur in a 20- or 25-year timeframe, unless you can extract from your legislators and policymakers that they have done the very best they can to create an environment for sustained economic growth. Without it Social Security is doomed, the pensions of the future are doomed, and the trust fund is not going to mean much.

I believe a balanced budget approach like this is a start down the road of the best fiscal policy we can have, comparing what we have been able to do and what we have promoted and propped up and levied against the people of this country over the past 20 to 25 years.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

AGAINST THE AMENDMENT

Mr. PELL. Mr. President, after much deliberation, I have concluded that I should not support the balanced budget amendment and will vote against it when the final vote is taken in the Senate tomorrow.

The proposed amendment is appealing on the surface, but underneath there are a host of problems. I believe its objectives are unrealistic and possibly detrimental, and I fear that it could place intolerable burdens on the States.

I find myself in basic disagreement with the philosophy of the proposed amendment. As our distinguished colleague from New York, Mr. MOYNIHAN, has so eloquently reminded us, the Federal budget is not supposed to be in perpetual balance. Those of us who experienced the economic cycles preceding World War II have a special respect for the wisdom of John Maynard Keynes, who showed us that government should save when times are good so that it can spend when times are bad.

The balanced budget amendment is the antithesis of that sensible doctrine. Its ritualistic requirement for balance in each fiscal year disregards the random vagaries of economic cycles, precluding the timely operation of automatic stabilizers such as unemployment insurance and bank deposit insurance during downsizings when they are most needed.

Likewise, the ritual requirement to achieve balance might deter the accumulation of budget surpluses in good years, since the pending amendment might tend to promote unreasoning tax slashes, instead of the prudent salting away of a surplus.

I also fear that the rapid withdrawal of some $1.6 trillion in Federal spending in the arbitrary time frame of the next 7 years could virtually wreck the economy, especially if it should coincide with a period of high interest rates or a recession. And I am particularly concerned about the impact of a cumulative loss of $1.8 billion in Federal spending to the small State of Rhode Island over the same timeframe.

Finally, Mr. President, I recoil at the notion of using our Constitution for the purpose of imposing bookkeeping rules. I doubt that this amendment will stand the test of timelessness which has sustained the wisdom of the Framers for 200 years.

From the perspective of the year 2095, it may appear rather anomalous that the U.S. Senate spent the month of February 1995 trying to mandate for all time that our books should be balanced, down to the last dollar and cent, at the end of each 12-month period. My guess is that—if the amendment is approved—a disenchanted electorate will have repealed it long before the century passes.

Of course, we can and should continue to do everything we can to cut Government spending and reduce deficits. But we already have ample authority to do so and should simply get on with the task.

In my mind, there is no need for a constitutional amendment. The Constitution should not contain a balanced budget amendment, and I would trust that it does not succeed. I realize the political appeal of the very title of a balanced budget amendment is immense. It is not an open and shut case one way or the other. Many of us have proposed different ways at different times. I voted for it in the past. But it is a close call. But my conclusion is that the best interests of the Nation would be served by not passing the balanced budget amendment.

The judgment against this proposal was best summed up by the columnist David Broder when he wrote that it is "a bad idea whose time has gone." The time and place to stop it is here and now. I urge its rejection.

I yield the floor.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I thank the Chair for recognizing me.

Mr. President, before I make a few short remarks, I would like, if I might, to compliment the distinguished Senator from Rhode Island. He and I have talked about this issue of the balanced budget on several occasions. I have been in what you might call sort of soul-searching meetings with the Senator from Rhode Island. I have watched him—I do not want to say in his agony—in attempting to reach a decision about his vote. But I certainly have seen him trying to search for the proper role to take and the proper answer to give to his constituents and ours with regard to this all-important vote that we will take tomorrow.

Mr. President, please allow me to compliment my very distinguished friend from Rhode Island, not only on his decision, but on the very thoughtful way in which that decision was reached.

Mr. PELL. I thank my friend, the Senator from Arkansas.

AMENDMENT NO. 307

Mr. PRYOR. Mr. President, on Friday I talked briefly about an amendment that I am going to call up for a vote tomorrow. The number of this amendment, for the purposes of our staff who might be watching the monitor at this time, is amendment number 307.

Mr. President, this amendment is very simple. In fact, it is only one sentence long. I am going to take the liberty of reading amendment 307 that we will consider tomorrow, and I will do that at this time. On page 3 of the constitutional amendment, between lines 8 and 9, the following sentence would be inserted:

> It is the intent of Congress that each State should, as a part of the ratification process, submit to Congress recommendations for reductions in direct and indirect Federal funds provided to the State and its residents (based on the State's allocation of Federal funds) necessary to balance the State's share of the Federal deficit.

That new sentence I would attempt to add by amendment 307 to the proposed constitutional amendment before us at this time.

Mr. President, I call this—and I think I can call it this in all truth and honesty—a States' rights amendment. This is an amendment that would belong to the people as their right to tell the Congress how the cuts should be made in our respective States.

Back in the middle part of January the Department of Treasury came out with what I consider to be a very thorough study of how each State would be impacted and affected by a constitutional amendment to balance the budget by the year 2002.

Mr. President, I hold this study in my hand. And from time to time, I have been given the opportunity to discuss with my colleagues in the Senate how each of our States represented by this body would be affected by this particular amendment that will be voted on sometime during the course of the legislative day tomorrow.

For example, the Treasury Department has indicated that the State of Arkansas from which I come, a small State of around 2.5 million people, would have to increase State taxes—not Federal taxes, State taxes—by 16.5 percent across the board to make up for the loss of grants, should the balanced budget amendment pass, and the Federal budget is balanced by the year 2002.

Also, Mr. President, we would see a cut in about $1.1 billion a year in Medicare benefits to our State, and another $1.1 billion per year in other programs where the Government allocates the money to the States.

There are going to be severe cuts to each State. My amendment basically would say that the people of the State—through or via their own State legislatures sitting at the proper time, during the debate on whether or not to ratify this amendment by the respective States, would tell their State legislators sitting in their respective general assemblies how the people feel these allocations should be effectuated in the State.

The State legislatures would be looking at the allocation of cuts based upon the total Federal funds received today. That would be the basis of the formula that the States would be employing in recommending to the Federal Government, the Federal Congress, the national Congress, how these Federal funds, these cuts, should be implemented out in the States.

This would give the people of our country a very, very rare opportunity. It would provide our people the opportunity to tell Congress where these cuts should be made. It would provide the people of America the right basically to petition Congress, in an informal, nonbinding way, say as what we believe out in the country, the priorities should be in allocating cuts in Federal spending back to the States.

Mr. President, we have just gone through a very, very lengthy several days of session in the Senate with regard to the issue of unfunded mandates. Let me say that this is not an unfunded mandate. This is not even a mandate. This is something merely declaring the intent of the Congress, that the States would have the opportunity to show us where these cuts and where this pain could be best allocated. We think it is fair; we think it is simple. It speaks to the issue in one simple sentence that we hope will be accepted by this body tomorrow.

Some might say, if we accept this amendment, even though it is just one sentence, then we are going to have to go back and have a conference with the House of Representatives to reconcile any differences. We would do this because we have dared to differ with the House just by adding this one sentence. Mr. President, I do not really buy that argument, because it is very rare indeed that we approach the eve of a historic vote on an amendment such as this, which will change forever the basic relationships of the three branches of Government. We would be forever changing the way Government deals with how we finance, how we structure the American economic system.

This is a crucial, critical vote tomorrow. In the 1 or 2 days' time that might be expended in a conference between House and Senate conferees—conferences are done all the time; it is normal and it is natural to have conferences on differences between the two bodies—I feel they can work out. If not this language, at least the spirit of this language to be encompassed in the final draft of the amendment, so as to give the people of America the opportunity to speak to the Congress, to say where these cuts should occur.

Mr. President, once again, the people of the State would speak during the ratification process. This is presupposing—maybe wrongfully, I do not know—that there will be 67 votes tomorrow to ratify this amendment to balance the budget. But, Mr. President, in my opinion, it is very, very important because we have now lost the fight on the people's right to know how Congress will balance the Federal budget, and at least we will have some safeguard, some measure of the impact on the States, should this amendment receive 67 votes. And before the States ratify or fail to ratify this amendment, we would have the opportunity for the people to express to us how they feel as to the allocation of this pain that we will feel.

Mr. President, I will conclude by saying that this is, as we have all known for a long time, going to be a very close vote. We are seeing many phone calls come into our offices, and letters and telegrams; there is no question about that. That should be encouraged because the people should express how they feel about altering the Constitution of the United States in this way. But I am just very hopeful that all of the people in the country who are watching this particular debate on this issue of the balanced budget amendment, I am just hoping, Mr. President, they will realize that most of us in this body want and desire and are committed to a balanced budget. Some of us do not feel at this time that the proper way to achieve that balanced budget is to put it in the Federal Constitution.

I, for one, do not feel that we should wait until the year 2002 to begin trying to balance the budget. I think that we have to begin that process now, as we did in 1990, as we did in 1993. We have to continue on that cycle in order to find ourselves, to place ourselves on the glidepath to a balanced budget. I think, too, that many people who might be watching this argument must realize that we cannot in this country violate a 60-year-old contract that we have had and have maintained with the people of this country relative to their Social Security trust funds, which some fear will be used to balance the budget.

Mr. President, we know that in this amendment, we have voted down the amendment which would have exempted Social Security funds from the balanced budget amendment. I say, and say without reservation, that this was one of the more critical votes that we dissected and explored with regard to this constitutional amendment.

Finally, Mr. President, I think there is another issue that hangs out there and haunts us and, in fact, taints this constitutional amendment as proposed. This is the issue of the judiciary's role in interpreting what we did, and also, the role that the Federal judges might well play in implementing the constitutional amendment to balance the budget, and their having the ability to raise taxes to balance the Federal budget.

Mr. President, I am not talking about the U.S. Supreme Court having that ability. I am talking about Federal district judges perhaps having the opportunity, or seizing the opportunity, to come forward and say that the Congress has not balanced the budget; therefore I, acting under the authority vested in me as a Federal district judge in Nashville, TN, or Little Rock, AR, or Oshkosh, WI, or wherever the case may have arisen, to enjoin the issue of taxation.

Under the constitutional amendment, we are going to see taxation without representation, Mr. President—that is my firm belief—in the event that we pass the Federal balanced budget constitutional amendment on tomorrow.

Tomorrow is a critical vote, and I just hope that the people of our country will realize that this has not been a delaying tactic, that we have wanted to fully explore the momentous decision that we have to make on tomorrow.

Mr. President, I respectfully submit that on both sides of the aisle, we have conducted this debate in a manner where I hope the people—whether they agree or disagree with our decision—will at least say that the U.S. Senate is a great deliberative body and that we have carried out our mission, I hope, with sincerity and a commitment to the cause that we are attempting to serve.

Mr. President, I see my very good friend from Connecticut, and he is not ready to speak just now. Therefore, I will suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I rise again today to discuss the balanced budget amendment and to provide what I hope will be some constitutional historical perspective on this issue.

Let me begin by commending my colleagues for the fact that we have had an opportunity now over the past several weeks to thoroughly debate and discuss this issue. As my colleague from Arkansas just noted, I think the institution has been well served by this debate. It is exactly what the framers intended; that, on matters of deep and profound concern to the Republic, this body act in a deliberate fashion. And there can be no matter more serious than an effort to amend the Constitution of the United States. And certainly, when we attempt to do so, a thorough and complete debate and discussion of the implications of that decision ought to be the business of this body for however long it takes.

I particularly want to commend the efforts of my colleague from West Virginia, Senator BYRD, who is, I believe all recognize in this body, regardless of party, truly one of the great historians, one of the great minds when it comes to the Constitution, and to the rules of the Senate. I suspect that all of our colleagues have benefited directly from his historical perspective and his leadership on making Members aware of the implications of a constitutional amendment of this significance.

Mr. President, the congressional leadership of the new majority is now advocating the most sweeping rewrite of the U.S. Constitution in two centuries. In addition to the matter before us—the balanced budget amendment—many in the new leadership are advocating amendments on tax limitation, term limits, line-item veto, unfunded mandates, school prayer, and flag burning. Mr. President, that is seven constitutional amendments that the new Republican leadership hopes to pass in this Congress.

Other than the Bill of Rights, composed of 10 amendments, all ratified in 1791, making so many changes to the Constitution so fast would be utterly and totally unprecedented.

Throughout our history, we have changed the Constitution only occasionally. Since 1791, we have amended the document an average of only once every 12 years. We amended the constitution only four times during the entire 19th century—that is three fewer amendments than the new majority leadership wants to adopt in the next 2 years alone.

It is certainly not unusual for the winning party in an election in this country to seek adoption of its legislative agenda. That is democracy and that is as it should be. What is unusual, Mr. President, about the new leadership's plans is the desire to enact its agenda not by statute but into the permanent Constitution of this Nation, the organic law of our country.

These proposals are even more surprising, I might add, coming from some who are self-styled conservatives who profess to believe in cautious, reasoned, and judicious change.

The Constitution is not a set of fraternity bylaws to be amended with each new pledge class. It should reflect not the popular winds of the time, but the sacred principles of all time.

As a country, we have never supported governing by means of constitutional amendment. Since the adoption of the U.S. Constitution, 10,831 constitutional amendments have been proposed in the U.S. Congress, but only 17 of those amendments have ever been ratified, if you exclude the Bill of Rights. That is fewer than one-quarter of 1 percent of all amendments ever proposed.

Why do I mention that? The procedural hurdles to ratification of constitutional amendments are very, very hard for a very, very good reason. An amendment that may look perfectly reasonable today may prove to be unnecessary or even dangerous, not to mention silly, down the road.

A few examples from history I think will make this point.

In 1808, one of my predecessors from Connecticut, Senator Hillhouse, proposed to limit the President's annual salary to $15,000 a year by writing it into the Constitution of the United States. Now, I am hesitant about citing that example because it may enjoy some popular support today, given the reactions the people have to people serving in public life. But Senator Hillhouse figured that surely this was a generous offer at the time.

In 1838, the Nation was scandalized when one Member of Congress killed one of his colleagues during a duel. This led to the introduction of a constitutional amendment to bar individuals implicated in dueling from ever holding elective office by changing the Constitution.

In the latter half of the 19th century, a great concern over the abuse of patronage led to repeated amendments mandating the popular election of postmasters and deputy postmasters in the country. Imagine what that would do to the political process today?

In the opening decades of the 20th century, there was increasing alarm over the number of divorces in the country that led Senator Ransdell of Louisiana to offer a constitutional amendment to prohibit divorce in the United States.

In 1919, a growing concern over the evils of drinking led to the 18th amendment, prohibiting the sale or manufacture of alcoholic beverages in the United States. The amendment, as most will recall, was a failure—prohibition was widely flouted. Congress's only choice was the unseemly one of adopting yet a new constitutional amendment to repeal the previous one.

My point, Mr. President, in mentioning these amendments is not to ridicule those who offered them nor to question their motives at the time. In fact, many of these proposals were undoubtedly reasonable, or at least thought to be so, at the time they were suggested. But, Mr. President, as I recite them, I think all would agree that they would not have stood the test of time.

Over time, I believe that a balanced budget amendment will fare no better.

I would like to take a few moments, if I could, and add a little historical perspective to our debate on balanced budgets.

Much has been said in the last few days and weeks about our current Federal deficit and debt problems. I would concur with my colleagues about the importance of reducing our debt. It is clearly a drag on our economy and a burden on all Americans.

I, however, strongly differ, Mr. President, with my colleagues in their interpretation of our current deficit problems as a recent development in our Nation's history.

This chart to my left, Mr. President, lays out the historical perspective, beginning in 1794 and moving up to 1994 of surpluses and deficits as a percentage of our spending.

This chart reveals that there have been wide variations in spending patterns throughout our history. We have had surpluses as high as 102 percent of Federal spending in 1835—in this area—and deficits as great as 89 percent of Federal spending in 1862 during the Civil War—this bottom line down here.

The chart also illustrates that our current difficulties are small relative to deficits that our Nation has experienced in the past. When we compare the high-water marks of past deficit spending with the worst of the Reagan era deficits, we find that the depth of our current deficit cycle is much smaller.

That is the period from here, beginning at about 1959, and going to the present, these smaller lines back and forth.

In 1983, at the height of our current deficit problems, the Federal deficit was 26 percent of overall spending. It is now about 13 percent of overall spending. Let me quickly add, there is no question that these rates are far too high, but they have been far worse—and we have recovered.

We have run deficits in half of our last 200 years. Most of the major bumps and squiggles that you see on the chart are readily explainable. The War of 1812, the panic of 1837, and the depression that followed—I have already mentioned the Civil War, the bottom line here—World War I, over here, and World War II, as well, where deficits were incurred.

Without the so-called discipline of a balanced budget amendment, we were able to get out of those difficult deficit cycles.

One huge deficit swing that is not reported on this chart is President Thomas Jefferson's 1803 decision to make the Louisiana Purchase.

Jefferson borrowed $15 million, an amount $4 million greater than the entire Federal budget for that year, to acquire the new territory.

Based on a letter he wrote, a number of my colleagues have cited Jefferson as a supporter of a balanced budget amendment.

I think my colleague from Texas, Senator GRAMM, is one who made specific reference to it. I point out that

Thomas Jefferson would have found it a good bit more difficult to make this purchase if a vote on waiving the Constitution to permit an unbalanced budget had been required in 1805. Today our colleague from Texas might be running for the Presidency of Texas rather than the Presidency of the United States.

The Louisiana Purchase does not show up on the chart because of an accounting distinction. The appropriation is not shown here because our chart excludes receipts from borrowing. If borrowing had been included, the Louisiana Purchase would be twice as deep as the largest dip in the chart caused by the Civil War.

Jefferson knew that the Constitution did not explicitly grant authority to purchase new land, and that concerned him. He considered a constitutional amendment to permit such authority. But he realized, Mr. President, that the opportunity to buy the new land could be lost through a lengthy ratifying process. So despite his constitutional reservations, he sought congressional approval to add both vast new territory and a staggering public debt to our young Nation.

Mr. President, the historical perspective reinforces, I think, a very important point. Balanced budgets have not been a natural part of our national experience. Nor should we expect them to be.

Clearly, balanced budgets are desirable. I do not think there is any debate about that point. But they are not our only goal. Providing economic and military stability, raising living standards, promoting adequate savings and investment, and reacting repeatedly to unforeseen events, are also critically important objectives.

It is unrealistic, in my view, to expect any great nation to achieve all of these goals in every given year. In America, we elect our representatives to make difficult decisions and to balance competing needs. If we amend our Constitution to require balanced budgets we elevate one goal above other equally important objectives. We fundamentally change our ability to respond to complex and changing circumstances.

It is a law of physics, Mr. President, and of life, that every action has a reaction. Some we can anticipate, others we cannot. One reaction we can expect is that balancing our budget in economic recessions will destabilize our economy and increase the volatility of the financial markets.

Laura Tyson, the President's Chief Economic Adviser, recently noted that had a balanced budget requirement been in effect during the last recession, it would have thrown 800,000 people in this country out of work. Historically, deficit spending has functioned as an important fiscal tool to stabilize the economy and moderate fluctuations in the business cycle.

When the economy is in recession, the Federal Government takes in less money. That is stating the obvious. A balanced budget requirement would compel Congress to match declining revenues with increased taxes or spending cuts. In the process, Mr. President, it would force the Congress to renege on promises to provide a critical safety net to our citizens just when it is needed the most, and it would impede our ability to hasten recovery by providing a fiscal stimulus when it, too, was needed most.

Changing the Constitution is not like adopting a simple statute that can be modified or appealed in that Congress or succeeding Congresses. Constitutional amendments must be held to the highest possible standard. Indeed, the language we insert into the Constitution will very likely stay there as long as this Republic stands. Generation after generation will live with the consequences of our constitutional decisions.

Henry Clay said, 140 years ago:

> The Constitution of the United States was made not merely for the generation that then existed, but for posterity—unlimited, undefined, endless, perpetual prosperity.

The key to the Constitution's ability to endure is its simplicity, Mr. President. That is why making the Constitution too long and too specific runs the risk of damaging the entire document. The Framers understood that danger when they wrote the Constitution two centuries ago.

Edmund Randolph of Virginia was one of a handful of delegates to the Constitutional Convention charged with turning the general principles agreed upon into constitutional language. Before getting down to drafting, Randolph briefly spelled out his philosophy of Constitution writing:

> In the draft of a fundamental constitution, two things deserve attention: (1) To insert essential principles only, lest the operations of Government should be clogged by rendering those provisions permanent and unalterable, which ought to be accommodated to times and events; and (2) to use simple and precise language, and general propositions, according to the example of the several constitutions of the several States; for the construction of a constitution necessarily differs from that of law.

While the U.S. Constitution has endured, many of our State constitutions have come and gone. As the constitutional scholar Martin Landau has pointed out, there have been more than 200 State constitutional conventions since 1789, as States have had to shelve detailed Constitutions that became obsolete and overly restrictive. As Landau writes:

> State Constitutions, notoriously complicated, cluttered, and rigid, have come and gone—tossed away as outmoded, inelastic, and maladaptive instruments.

That is a fate, Mr. President, we do not want to visit on our national Constitution. We must ensure that it remains a brief, lucid statement of general principles, not a highly specific legislative vehicle.

I invite my colleagues to read the entire Constitution with all of its amendments and then immediately read this proposed amendment. Like me, I think you may find this to be a jarring exercise, moving from the simple elegance of our existing Constitution to the arcane complexity of this proposed addition.

This balanced budget amendment has eight sections and 292 words in it. That is more words, Mr. President, than the first five amendments that establish some of our most enduring and fundamental liberties: The freedom of speech, the freedom of religion, the freedom of assembly, the right to petition the Government, the right to bear arms, freedom from unreasonable search and seizure, and the right to a jury trial. There are less words included in those five amendments than is proposed by this amendment.

Mr. President, our current deficits are too high. We all know that. They need to be reduced. As a direct result of President Clinton's leadership, we have made significant progress on this problem. The deficits are declining for 3 straight years in a row, the first time, I might add, that that has happened since the Truman administration.

For the first time since the 1960's, the Federal Government is collecting more in revenues than it is spending on programs. Our most recent deficits are not due to overspending on Federal programs but rather to the payment of interest on the debt accumulated during the 1980's. According to the Council of Economic Advisers, our budget would be in balance by 1996 if it were not for required interest payments on the debt run up from 1981 to 1992.

It is important, though, that we take a broad view of deficit spending and learn from our past history. I refer my colleagues again to this chart of 200 years of Federal spending. Throughout our entire history, we have experienced great peaks and valleys in Federal spending patterns. Over the last 40 or 50 years we have had relative stability. This amendment threatens to compromise our economic stability and to do great damage to our economy.

We ought not to look just at this most recent period and ignore the spending patterns throughout our history. And, we ought not to look at most recent experience and deny 205 years of constitutional history in the process. That would be a grave mistake.

Mr. President, we have a serious obligation to confront our fiscal difficulties. We do not have the right to visit on the Constitution of the United States a highly questionable solution to a contemporary problem. The answer to our present-day frustrations should not be sought by cluttering up the perpetual life of our democracy. To do so, I believe, would be a decision that we will live to severely, severely regret.

I urge my colleagues to reject this proposal when the vote occurs tomorrow.

Mr. President, I yield the floor.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I rise today in very strong support of a balanced budget amendment to the Constitution.

I will begin by asking unanimous consent that this letter that was released today signed by 219 economists from throughout the country who have endorsed the balanced budget amendment be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

BALANCED BUDGET AMENDMENT—AN OPEN LETTER TO CONGRESS, FEBRUARY, 1995

It is time to acknowledge that mere statutes that purport to control federal spending or deficits have failed. It is time to adopt constitutional control through a Balanced Budget Amendment. In supporting such an amendment, Congress can control its spending proclivities by setting up control machinery external to its own internal operations, machinery that will not be so easily neglected and abandoned.

Why do we need the Balanced Budget Amendment now, when no such constitutional provision existed for two centuries? The answer is clear. Up until recent decades, the principle that government should balance its budget in peacetime was, indeed, a part of our effective constitution, even if not formally written down. Before the Keynesian-inspired shift in thinking about fiscal matters, it was universally considered immoral to incur debts, except in periods of emergency (wars or major depressions). We have lost the moral sense of fiscal responsibility that served to make formal constitutional constraints unnecessary. We cannot legislate a change in political morality; we can put formal constitutional constraints into place.

The effects of the Balanced Budget Amendment would be both real and symbolic. Elected politicians would be required to make fiscal choices within meaningfully-constructed boundaries; they would be required to weigh predicted benefits against predicted tax costs. They would be forced to behave "responsibly," as this word is understood by the citizenry, and knowledge of this fact would do much to restore the confidence of citizens in governmental processes.

It is important to recognize that the Balanced Budget Amendment imposes procedural constraints on the making of budgetary choices. It does not take away the power of the Congress to spend or tax. The amendment requires only that the Congress and the Executive spend no more than what they collect in taxes. In its simplest terms, such an amendment amounts to little more than "honesty in budgeting."

Of course, we always pay for what we spend through government, as anywhere else. But those who pay for the government spending that is financed by borrowing are taxpayers in future years, those who must pay taxes to meet the ever-mounting interest obligations that are already far too large an item in the federal budget. The immorality of the intergenerational transfer that deficit financing represents cries out the correction.

Some opponents of the Balanced Budget Amendment argue that the interest burden should be measured in terms of percentage of national product, and, so long as this ratio does not increase, all is well. This argument is totally untenable because it ignores the effects of both inflation and real economic growth. So long as government debt is denominated in dollars, sufficiently rapid inflation can, for a short period, reduce the interest burden substantially, in terms of the ratio to product. But surely default by way of inflation is the worst of all possible ways of dealing with the fiscal crisis that the deficit regime represents.

Opponents also often suggest that Congress and the Executive must maintain the budgetary flexibility to respond to emergency needs for expanding rates of spending. This prospect is fully recognized, and the Balanced Budget Amendment includes a provision that allows for approval of debt or deficits by a three-fifths vote of those elected to each house of Congress.

When all is said and done, there is no rational argument against the Balanced Budget Amendment. Simple observation of the fiscal record of recent years tells us that the procedures through which fiscal choices are made are not working. The problem is not one that involves the wrong political leaders or the wrong parties. The problem is one where those whom we elect are required to function under the wrong set of rules, the wrong procedures. It is high time to get our fiscal house in order.

We can only imagine the increase in investor and business confidence, both domestic and foreign, that enactment of a Balanced Budget Amendment would produce. Perhaps even more importantly, we could all regain confidence in ourselves, as a free people under responsible constitutional government.

Mr. DEWINE. Mr. President, this particular letter was solicited by the American Legislative Exchange Council and I believe, when read, will indicate the strong support these economists have for the balanced budget amendment and why they feel it is necessary.

I agree with the statement of the Senator from Connecticut that tomorrow will be a very historic day. He and I come down on different sides of this issue. Many of his comments and many of the comments that have been made in the last 5 weeks on this floor against the balanced budget amendment may seem to make some sense. And quite frankly, I do not believe anyone in this Chamber is happy about the fact that at this point in our history, we have come to the point where we have to pass, or at least many of us believe we have to pass, a balanced budget amendment.

Never before have we been this close to passing a balanced budget amendment and, quite candidly, I am not sure if we do not pass it tomorrow we will ever really have a good opportunity to do it again. For the balanced budget amendment to pass, the time is now. If we cannot pass a balanced budget amendment in the current political climate in this country—after having seen what happened in 1992 when everyone in this country voted for change in frustration and then in 1994 where people again voted for change, where today 80 percent of the American people want a balanced budget amendment—if we cannot pass it today, I am not sure that we ever can.

Last November, the American people voted for change. For 25 consecutive years, Congress has failed to balance the budget. The last time we balanced a budget in this country I was a senior in high school, 25 years ago. Congress has amassed a $4.7 trillion national debt that our children and our grandchildren and our great grandchildren are going to have to deal with. That, Mr. President, is what the American people voted to change in 1994.

For decades, they have heard promises from Congress. The American people, people that I talk to, are tired of promises. They want action. They are tired of words. They want a balanced budget and they want a balanced budget amendment. They know that Congress is simply incapable of balancing the budget unless it is forced to balance the budget. Eighty percent of the American people support the balanced budget amendment because they realize that unless we change the budget process in a fundamental way, we are not going to change the result of the budget process. Let us make no mistake about this, only a constitutional amendment can create this fundamental change.

As long ago as 1921, Congress was trying to change the budget process by statute. This strategy clearly has not worked. At least six different times, maybe more, this Congress has passed statutory balanced budget requirements, all to no avail. History proves that Congress cannot balance the budget by statute, and it has been true no matter which party was in power. When we had a Republican President, we had a deficit. When we had a Democrat President, we have had a deficit. When we had a Democrat Senate, we had a deficit and, yes, even with a Republican Senate, we have had a deficit, too.

There is no better evidence of the bankruptcy of this statutory approach than the current budget that was sent to Capitol Hill by the President. The President's budget proposes deficits in the neighborhood of $200 billion, but even more shocking, there really is no serious attempt to balance the budget in what people on Capitol Hill refer to as the outyears and what people away from the beltway refer to as the future.

As far, Mr. President, as the eye can see with the President's budget proposals, we have nothing but red ink. This budget proposal proves beyond a shadow of a doubt that America's fiscal policy is fundamentally misguided. Clearly, we need to change course, and if we do not change course, if the balanced budget amendment is voted down, the result will be a bleak future, indeed, for the next generation of Americans.

We are already paying over $235 billion—$235 billion—a year in interest on the national debt. That is eight times what we currently invest in education. It is 50 times what we invest in job training programs. Every year we add to this mountain of debt, every year we are committing more of tomorrow's resources, our children's resources, to pay for Congress' failures today.

By the year 2003, just 8 years from now, spending on entitlements and interest alone will exceed 70 percent of the whole Federal budget. Take out defense and you leave just 15 percent of the budget for all the discretionary spending—all the discretionary spending—on our domestic needs; less than 15 percent cumulative total for education, for job training, for Women, Infants and Children Program, and for all the other programs that help the American people at home; just 15 percent of the budget for all these programs combined.

We have heard a lot of talk on the floor about how a balanced budget amendment will stop us from being able to help the neediest in society, how a balanced budget amendment will unduly penalize our children, and how it will make it very, very difficult for us to invest in our future. I believe that just the opposite is true; that unless we pass a balanced budget amendment, future Congresses, future generations will have no money left to invest in our young people.

Mr. President, following up on these figures, if you go out to the year 2012, just 17 years from today, there will be nothing left in the budget for these social needs—zero, no money at all for our children. Every last red cent in the Federal budget will go to entitlements and interest payments.

The year 2012 has special significance for my wife and myself, because just a year before that, our grandson, Albert, will graduate from high school. In the year 2012, our daughter, Anna, should be in her first year of college. If we do not act today, Albert, Anna, and other children will pay a severe human cost. Tomorrow we face a decision about their future, and it is of historic significance. Let us prove by our vote tomorrow that we can put partisanship aside and that we can for once act together in the long-term best interest of our country and of our children.

Mr. President, let us just admit that well-intentioned people of both parties, of both parties, have failed to enact a responsible Federal budget. Therefore, let us do what is necessary to fix the problem. If we do not do it today, it may never happen. And future Americans will ask why, why, why the Congress, faced with a clear and well informed mandate from the American people, chose once again to defend a fiscal process that had already created a debt of nearly $5 trillion.

Some people would have us believe that this constitutional amendment is a quick fix; that it will not solve the real problems of fiscal policy, but when I go home to Ohio that is not what I hear. That is not what I hear from people back home. This is not something the people of Ohio want to do any more than we do. It is something, however, that they are convinced we have to do as a last resort.

In the short term, passing the balanced budget amendment is no quick fix. It will create a monumental challenge for this very Congress because for the first time in a generation we will not be permitted to take unlimited spending demands and just tack them on to the deficit. Future Congresses will have to deliberate, will have to make the best choices they can and will have to be judged by the American people on the results that are produced.

Over the short term this will not be pleasant, but over the long term this constitutional amendment is the greatest gift we can make to future generations. Last week, a columnist in the Wall Street Journal warned Senators that their grandchildren will remember the votes they cast on this amendment. I believe the author of that article was correct. That is why I am proud to vote yes on this very historic measure. I urge my colleagues to do the same.

Mr. President, I yield the floor.

Mr. THOMAS. Mr. President, I rise in support of the balanced budget amendment.

We will have talked about it tomorrow for 30 days. We talked about the pros and cons. We have debated and discussed it. Actually, I suspect it is fair to say that most everything that can be said has been said. I suppose the thing that has not happened is not everybody said it yet, and that seems to be why we go on as we do. It is not a new topic. It is not as if this issue just came up. It has been talked about for years. As a matter of fact, it has been voted on in the last several years.

Mr. President, you and I came from the House. We talked about it last year. We voted on it last year. It was voted on here. So it is not a new topic.

Interestingly enough, everyone who rises says, yes, I want to balance the budget; of course, we need to balance the budget. But we have been 26 years and have not balanced the budget. They rise and say, well, but we do not need an artificial discipline to do that; we just simply need to do it.

It is true. We have not done it. We have not done it for 26 years.

Many who oppose it have been here for a very long time, and I am not critical of that. But it has not happened. Many who oppose it have been in very important positions dealing with the budget. They have not balanced it. And you can argue about the reasons why. You can argue that it is difficult to have an amendment in the Constitution. But the fact is if you want to change the way things happen you have to change the process. You cannot continue to do things the same way you have been doing them for 26 years and expect some kind of different result.

I think the people of this country expect the decision. I am delighted that we are coming to a decision tomorrow. I think we have been too long.

I respect the notion that the Senate is here to deliberate, to take longer, I suspect, than the House typically takes. Nevertheless, there comes a time when the question needs to be brought to a decision, and that is what voting is for and we are going to do that.

I have a hunch that many of the things we have talked about have really been sort of a reason, a justification for voting no when in fact the big difference is a philosophical difference. It seems to me there is a great deal more involved here. As important as the financial aspect is, as important as the morality of being fiscally responsible is, there is also a broader question. That question is what kind of a Federal Government do you see us having? What do you see as the role of the Federal Government? Do you see it as an ever-increasing bureaucracy that grows continuously year after year?

If you take a look at a chart—I did not bring a chart—of spending, spending has continued to go up. Last year and even this year, in this budget, in my hometown paper it said administration cuts. It leads you to believe there is less spending than the year before. Not so. Spending has gone up. Spending is going up 5.5 percent. Spending has gone up every year. Spending will go up under the budgets that are being talked about in the House. So spending continues to go up.

There is a philosophical difference, however, as to whether you see the Government as ever growing or whether you see it as being limited, whether there ought to be a transfer or movement toward emphasizing State and local governments more, the private sector more, more personal responsibility, or do we continue to do more and more in the Federal Government. That is part of what we are talking about here—not only the money but also the role of the Federal Government.

We have heard a great deal just today about how there are exceptions, there are times when things need to be done, and that is, indeed, true. It also in the budget amendment allows for exceptions. It allows for changes. It does take a majority, or a supermajority to do it. But there is no reason why it cannot be done if it is justifiable and, indeed, it can be.

People and the legislatures of this country I think deserve an opportunity to vote on a constitutional amendment, if it goes there, and it should. We have talked about the Founding Fathers having not put it into the Constitution, but I recall Thomas Jefferson said if there was one change he could make, it would be to limit overspending.

I had the honor the other day to read George Washington's Farewell Address again, and he spoke to it. Let me quote.

> As a very important source of strength and security, cherish public credit. One method of preserving it is to use it as sparingly as possible, avoiding occasions of expense by cultivating peace, but remembering, also, that timely disbursements, to prepare for danger, frequently prevent much greater disbursements to repel it.

And then he said:

> Avoiding likewise the accumulation of debt, not only by shunning occasions of expense, but by vigorous exertions, in time of peace, to discharge the debts. . . .

We have not done that. And that is what this is all about. This provides the discipline to make the tough decisions that we have to make.

So there are reasons to do it. It is morally and fiscally responsible. Ask anyone should we balance the budget, should we spend more than we take in on a consistent, 26-year basis? The answer is no, of course not.

Ask anyone, should we have to balance the budget? The answer is yes, of course, we should. We hear it every day: I am for a balanced budget. We do not do it. There is no reason to expect that we will unless we change the process. Is the current situation out of control? Of course, it is.

Do the States do it? Of course, they do. I come from a legislature in which the Constitution provides for a balanced budget. We do it. We live with it. It works. And we can deal with it.

So, tomorrow we vote, and I am delighted for that. I think it will be a very important vote. I think it will be a crucial vote. I think it is a vote that helps not only to shape the future in terms of spending but to shape the future in terms of the kind of Government and the extensiveness of Government that we have. If there was one thing that was clear from this November's election, at least the people whom I represent said we have too much Government and it costs too much. We have too much Government and it costs too much. That is what this vote is about, doing something about that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, there is no greater problem facing the country today than our continued failure to balance the Federal budget. Unfortunately, this is not a new phenomenon, as has been pointed out here on the floor by earlier speakers. Over the past 33 years, we have balanced the budget once and that was a quarter of a century ago in 1969. Had the Social Security program not generated a surplus, we would not have balanced the budget in that year either. Furthermore, the forecast put out by the Congressional Budget Office and the administration show that absent dramatic action on our part, these deficits are not going to end any time soon. It is not that we are just on the edge of ending the deficits through normal action, absent this balanced budget amendment.

For example, CBO predicts that the deficit in the year 2005, 10 years from now, could be as high as $421 billion. The President's budget, which was released early this month, forecasts Federal deficits of approximately $200 billion for each of the next 5 years. So in the next 5 years the President himself predicts we are going to have $200 billion of deficits. The Congressional Budget Office says 10 years from now those $200 billion deficits are going to rise to $421 billion a year.

Even worse than this dire prediction of what is going to happen is that the President has taken little action to address this problem. The $81 billion of deficit reduction in the President's plan is really relatively minor when it is realized that this $81 billion of deficit reduction occurs over 5 years, and, $60 billion of those savings come from keeping spending at the current level, not from making any cuts; just from keeping it where it is.

Why is it bad that the Federal Government routinely spends more than it takes in? We are told in soothing tones by the administration that it is very important to note that the deficits for each year in the future are going to be a lower percentage of the gross domestic product. That is somehow meant to be grand news. What the administration tells us is do not worry, that for each of the future years the deficits are going to be a smaller part, an ever decreasing part of the Federal budget each year. Somehow that is meant to be good news, even though the dollar amounts of the deficits constantly grow.

The problem is that every year we run a deficit we have to borrow to fund the shortfall. From the beginning of our country until today, we have incurred a debt—I believe the Senator from Ohio touched on this—we have incurred a debt of about $5 trillion with the overwhelming portion of that accumulated over the past 15 years. The cost of servicing that debt, the gross interest, will total $339 billion in 1995. In 1995, just to pay the gross interest on the debt is $339 billion. This is the second largest expenditure in the Federal budget after Social Security. To put this number in perspective, our gross interest expense for 1994, this $339 billion, is more than the entire budget of the country 20 years ago. Just imagine if we were not spending that $339 billion, what we could do to improve our education, or to spend some of that money—not all of it but some of it—to help our education, help our health care system, or to bolster our efforts to fight crime.

Aside from diverting resources that could be used for much better purposes, the deficit also puts a tremendous strain on our national economy. The most notable effect of this is on our interest rates. Alan Greenspan, who is Chairman of the Federal Reserve, recently testified before the Finance Committee. This is what he said:

> Investors here and abroad are exacting from issuers of dollar-denominated debt an extra inflation risk premium that reflects not their estimate of the most likely rate of price level increase over the life of the obligation, but the possibility it could prove to be significantly greater.

Let us translate that into English we all can understand. What Mr. Greenspan was talking about was a risk premium. What is a risk premium? A risk premium is the extra amount that anyone who issues debt, anyone who issues a long-term bond, must pay in interest because the buyers of that bond can predict with some measure of surety what the rates will be in the future but they have to add to it a factor, what Mr. Greenspan called the risk premium, because the country is running such large deficits that the fear of inflation is always there; the fear that inflation will come, that the Government will print money in order to get rid of this deficit. Thus this risk premium is added to any issuance—Ford Motor Co. or the U.S. Government—anybody who issues bonds that might last, for example, 20 years. If the buyer of that bond were assured that this country was on a process of balancing its budget, then he would not seek that risk premium and the bonds could be issued at a lower interest rate. Thus these artificially high interest rates affect all Americans. Families pay a risk premium when they borrow money for a home or when they borrow money for a new car or to finance their children's education.

The Federal deficit also has a negative effect on future economic growth. Our potential to expand the economy in the United States is directly linked to the amount we invest in physical and human capital. What are we talking about, physical or human capital? We are talking about new machinery or we are talking about training the work force, bringing its skills up to date. We are talking about providing a foundation for increasing our output of goods and services. With this higher productivity comes a higher standard of living in our country. To achieve this, however, we must have a pool of national savings from which the investment can be made.

Unfortunately, our national savings rate has declined dramatically over the last decade, partly because the Federal Government has engaged in what is known as dissaving. In other words, it is not saving money, it is borrowing money through this deficit spending. The Federal Government's reliance on borrowing to pay its bills crowds out the private sector. The Federal Government comes in, has to borrow money—obviously there is not money left to lend at a low rate to you and me and businesses and others who want to borrow.

The worst consequence of this fiscal irresponsibility is that we are jeopardizing the economic futures of our children and grandchildren. We are living beyond our means and we are passing the bill to these future generations.

Recently I ran across a paper which discussed the idea of generational accounting. What does this mean? It is the process of measuring how Government policies affect the distribution of income and wealth among different generations. To make this comparison, the authors calculated the lifetime net tax rates. My generation—I was born in the 1920's—is facing a net tax rate over our lifetimes of 26 percent. Of everything we earn, 26 percent will go for taxes. For somebody who is born in 1991, the lifetime net tax rate is not 26 percent, it is 34 percent. That is not so bad, you say—34 percent. I can handle that, perhaps.

But according to this analysis, if we do not take action to improve the Federal domestic situation, future generations, generations born, grandchildren born, children born, individuals born, starting in 1995, 1996, 1997 will face lifetime tax rates not of 26 percent, not of 34 percent, but of 70 percent. In other words, future generations can look forward to handing over 70 cents of every dollar earned to the Government if we do not reverse our course.

For the past few years the administration has also included a generational analysis in its budget documents. Unfortunately, the President chose to delete that section from this year's budget. But the figures were similar to the ones I just pointed out. Why will future generations face such a daunting tax bill? Consider the obligations we have levied upon them. The Social Security program has been generating surpluses.

The surpluses will turn. They will no longer start, will end, and pretty soon the program will not be bringing in surpluses. That is in the year 2013. That leaves workers in the middle of the next century with a hefty bill to pay to provide retirement benefits for those who are retiring today. On top of that, we have incurred this $5 trillion in debt, which I mentioned before. That is likely to increase by $750 billion even with the passage of this balanced budget amendment. Obviously, at some point, all of this has to be repaid.

What exactly does the balanced budget do? Very simply, it prohibits Federal outlays from exceeding Federal receipts unless a three-fifths majority of both Houses of Congress approves a specific deficit. In other words, it says that Congress can only spend what it is willing to collect in taxes, unless Congress determines a specific reason for and a legitimate reason for running a deficit. This could happen if there is a recession, if there is a natural disaster. Absent those situations, the country has to run a balanced budget.

This amendment will make fiscal responsibility the norm rather than the exception. As has been said, the Federal Government has run a deficit for 25 straight years. There have been Republican Presidents. There have been Democratic Presidents. There have been Republican Senators. There have been Democratic Senators. Neither body is free from blame. The truth is there has not been the will to make the tough decisions to balance the budget.

I listen to these people say there is no need to have this, that all we have to do is show some courage. But the truth of the matter is, we have not shown that courage. So we have to go to this artificial procedure, and the Senator from Connecticut says it has more words than the first five amendments. So what? What does that prove?

The amendment before us today demands the same fiscal responsibility from the President that it establishes for Congress. The administration has to submit a balanced budget.

I am grateful that the sponsors have not sought to include a three-fifths majority requirement for raising revenue. That was discussed. You have to have 60 votes to increase taxes. That was rejected by the House, and rightfully so. That provision would be disastrous for this country because it would significantly hamper our ability to govern. Facing a deficit, Congress would in all likelihood be forced to cut spending rather than to raise revenue because the latter—to raise revenue—requires 60 votes.

I support spending cuts over tax increases but feel it would be unwise to tilt the playing field against raising revenue. In other words, you need 60 votes to increase taxes but you only need 51 votes to cut spending. I would not support this amendment if it had the three-fifths majority for raising revenue. But fortunately, it is not in there.

The amendment includes a process whereby the requirements can be waived by a simple majority for any year in which the country is in war or when the United States is engaged in a military conflict. I think these are legitimate circumstances.

In section 7 of the amendment, it states that the total receipts, all receipts, of the U.S. Government except those derived from borrowing and total outlays should include outlays for the U.S. Government except those for the repayment of debt principal. What this means is that every dollar that comes in to the Treasury and every dollar that goes out of the Treasury will be counted in determining whether the budget is balanced.

Again, this makes sense. This is the way we run our families. We count the dollars that come in and the dollars that go out, except for borrowing, obviously.

Much of the efforts to derail this resolution has centered on excluding certain programs from the balanced budget amendment. This all started in the Judiciary Committee when an effort was made to exclude Social Security. I find this inconceivable. Why would we adopt as part of the Constitution an exclusion for Social Security or any other aspect of the Federal budget? I am for protecting the fiscal soundness of the Social Security system. But it is absurd to exempt a program that represents 29 percent of all Federal receipts and 22 percent of all outlays. A big chunk of the budget would be disregarded in all of this process, if that had been adopted. Thank goodness, it was rejected.

Exempting Social Security receipts would provide a perverse incentive for future Congresses to shift Social Security revenues to the general fund. This should be very attractive since the program currently collects more in revenue than it pays out in benefits. But this would undermine the actuarial balance of the Social Security trust fund, and would certainly require draconian changes in the future in order to stave off bankruptcy when the baby boomers retire.

Critics of the balanced budget amendment have argued that it is a sham, that it avoids, as I mentioned previously, the tough choices required to balance the budget. I disagree. What this represents is the first and most important step in a long and difficult journey to fiscal responsibility. It symbolizes the tide has finally changed; we are committed to living within our means, and we are willing to embody that principle in the basic document of the Nation, on which the foundation of all our Government rests; namely, the Constitution.

Other fiscal disciplines we have enacted, while they are important—and I voted for every single one them—have not done the job. The Gramm-Rudman-Hollings deficit control laws, the firewalls, the discretionary spending caps, the pay-as-you-go rules—all of these we have tried. As I say, I voted for every single one of them, and have supported them when they have attempted to be amended. But they failed to break the attractive lure of deficit spending.

Opponents have also argued we should not pass a balanced budget amendment until the supporters of it outline specifically how we reach that goal. This is nonsense, in my judgment.

It is like a doctor saying you have to lose 40 pounds. "I am not going to lose 40 pounds until you tell me specifically how I am going to do it." Well, the objective is, if you want to keep your health, you had better lose that 40 pounds. There are a variety of ways you can do it. You can work those out yourself, as long as you get there, to lose the 40 pounds. You can go on a diet. You can eat less. You can go through health plans. You can exercise more. You can try different approaches. But the end result is you have to get there. That is what we have said.

The so-called right-to-know amendment to the resolution before us really is a smokescreen thrown up by those who had no intention of supporting this proposal, whether or not we had outlined the specifics as to how we are going to get there. The fact is, there is no agreement upon the path to reach a balanced budget. The path that I would subscribe to is likely different from the path that others would subscribe to. Any plan will be the product of numerous compromises and the give and take of a normal political process. All that is going to take place once the requirement is established.

To those who do not support the resolution before us, the question is: What would you do? How would you get there? Are you content with the current situation where the annual deficits exceed $200 billion, and in the foreseeable future going up greater than that? Ten years from now, it will be $451 billion, as I said. Do people believe we can put this problem off for another day; that somehow it is going to get easier? Do you believe we are improving our children's future by dropping this massive debt in their laps? Every previous effort to balance the budget without an amendment to the Constitution has been a failure, as I mentioned. Why has that been the case? The answer is simple. Once the targets become too difficult to meet, Congress changes the law or budgets.

This resolution makes it difficult for us to avoid our responsibilities. The task is monumental, but the consequences for our failure are far worse. If this amendment is defeated, the ones who will be hurt the most are future generations of this country.

So for our children's and our grandchildren's sake, and for those of future generations, I fervently hope that this balanced budget amendment is approved here, and approved in the States likewise.

I thank the Chair.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I rise today in strong support of the balanced budget amendment to the Constitution. I do not think I have seen a time in my life when we have approached a crossroads where the decision could be clearer, especially when we have people all over this country at all levels of government—from the county level, the city level, the State level—reassessing the primary role of government. What is the mission of government? What is the mission of a city government, of a county government, or of the government that most of—and, of course, the legislatures that are in session across our Nation today reassessing the role and what their missions really are? And, yes, we are going through that here in this town, the role of the Federal Government. There will be some who will simplify things and say that the role of the Federal Government is simply to deliver my mail and protect my shores. Other than that, that is about as much as I need out of Washington, DC. But we know it goes a little further than that. Anybody that has any degree of responsibility understands there is more to it than that. Nonetheless, the elections of November 8, as bad as someone would like to admit, did tell us to sit down and rethink just exactly what the role and mission of the Federal Government really are.

I can honestly say that this issue has really been talked about and studied for the last 4 weeks, completely aired on all ramifications of it, and that is the way the Senate is supposed to work. I could not agree more with my friend from West Virginia, who probably has the strongest sense of the duty and the responsibility of this body. I think we on this side of the aisle have approached it the same way. There has been no real serious move to cut off debate, as we want to hear all sides of this story, because we are talking about a subject that has very serious ramifications from this town, to the White House, to the courthouse. But we must take stock, and it is what I believe would put America back onto the road of steady economic growth and stability.

After years of talking about balancing the budget, instead of just tinkering around the edges of the deficit, it is time now to take action. It will impose a discipline on the budget process, and it will impose a discipline on this Congress. Past efforts to balance the budget have just been able just maybe, at times, to put dents in the deficit, but no dent at all in the national debt that keeps climbing. We hear two words being interchanged a lot in our news accounts—debt and deficit. They say, if you cut the deficit, you are cutting the debt. Well, basically you are only cutting the degree to which debt is accumulated. We deficit spend and we create or accumulate debt.

So this will put more than a dent in it, we hope. This measure would actually put some teeth into the efforts to balance the budget. In other words, we might turn the old saying around and say the bite will be worse than the bark. So on this issue the bottom line is one of responsibility—responsibility to every citizen in our country and future generations and to economic prosperity. It is time that Congress lives up to its future obligations and, of course, take responsibility for our actions. We have to ask the American people to help us. This is a crisis. It is as much a crisis to our economic freedom as it is if we were in war and our political freedoms were at stake.

I am being told by the citizens of Montana, yes, we are willing to fight this with you. We cannot do it alone here in this body or in the other body, the House of Representatives, or in this Government, unless we get support and cooperation from every citizen across this great land. They understand what is at stake. They understand that it takes sacrifice. They understand in their daily dealings with everybody else in the business world, or the paternal world, that they have some obligation to their communities, their churches, their schools, and their friends, and they are willing to go down the road shoulder to shoulder and help us get this done. It is obligations, and not only ours here, but also for every man, woman, and child that lives in this great country. We have been living on the credit card for quite a while. Now is the time to put away those credit cards, get serious about paying off the overdue account, the incessant spending; and borrowing, of course, must cease. The debt of more than $4.7 trillion is going to continue to climb, unless we get America's help—help to keep this Government from this business of spend and borrow, spend and borrow.

There have been a couple of packages that have come up that had tax hikes in them in the last 5 years that I can remember. I voted against each one of those because not only inside that was taxes, new taxes imposed on this country in one way or the other; some called it user fees, and some were called something else. Nonetheless, it was an increase in taxes because there was no cutting on the other side.

I have heard a lot of folks stand on this floor and be critical of the Reagan years when we, yes, cut taxes, but we did not stop our spending. There is enough blame in that to go around for everybody. I was not here then.

So we will break the cycle of continued deficit spending at the risk of cur long-term economic security. We cannot and must not ruin our health now for short-term gains. So the reckless spending must come first and be put under control. For as long as I have been here, I have been concerned with spending. It is difficult to challenge the balance of the needs of our country with revenues we do not have without resorting sometimes to more taxes or higher debt. We had an obligation and we had to fulfill that obligation. Now we must find a way to balance obligation with responsibility.

We have heard the arguments here against the balanced budget amendment. The arguments show more than anything else how this is not a gimmick. There are those we have heard say this is a political gimmick and that we are posturing with the American people. But I tell the American people that nothing could be further from the truth. Forty-seven other States, including my State of Montana, already maintain a balanced budget. I was a Yellowstone County commissioner, the largest county in Montana. We were forced to live within that budget. We had a special initiative called 105 that we could not raise property taxes in order to provide the needs and services in a county called I–105.

We dealt with that. We also had, in the middle of the 1980's, a declining tax base. Agricultural land went in the tank. We maintained that. We were forced to balance the budget, so we made some of those very, very, very tough decisions.

And those people who were in charge of the different departments in the county came in and said, "OK, we can do it with this, if there are promises for later." But we could not promise anything later, so we lived within that budget.

I tried to keep my own family on a budget and every time we got off of it, we paid for it. We paid for it every time.

So it is time the Federal Government becomes an institution which has to take care of its checkbook, too. The challenge lies with all of us. The challenge is the spending priorities for our Nation. It will force us to set priorities to see what this mission is all about, this goal or role of Government.

The Federal Government consumes 23 percent of the GDP now. The current projected growth rate of spending at 2 percent a year is a lot faster, 2 percent faster, than our economy. So what do you do? You pull up your belt and the reins at the same time.

If seems funny to me that we are reluctant to set priorities. What is really important to us as a community? Would it surprise you that there are actually organizations that are not Government organizations that are willing to assume the responsibility of taking care of those things that add to the quality of life of our own neighborhoods and much our own communities? Would it surprise you that service clubs and many organizations and our churches and how many fraternal organizations are willing to take on a little bit of responsibility for the quality of life of all the citizens that live in that community? They are not asking the Government for anything. They say, "Just stand back. Let us take care of ourselves."

You know, we used to do that. We used to build great homes. We used to build facilities to take care of our own, so to speak. What happened to that? Did Big Brother step in and say, "We can do it better," and so they loosened the ties that we had in our communities?

They worked pretty good for a long time; built a great and free nation. No other nation is as free economically, politically, or even in private rights as this country is. No other country can feed and clothe itself as well as this country can. No other country has a food production and processing and distribution system like this country has.

Government did not build it. Americans built it, because of not only a sense of duty but also a sense of feeding and clothing ourselves in this great society.

So there is plenty of room to cut in the $1.6 trillion budget. I am sure that we can cut out a little waste and look at the priorities that we are going to have to set in order to keep this society on an even keel.

Balancing the budget is going to take some hard decisions, some political, very distasteful decisions, but the reward will be a balanced budget and a more prosperous America. And the real growth of America will start at the grassroots.

It may surprise more of our friends that the new wealth created by any society, the new wealth starts with the soil. It is renewable. It comes every year. And, God willing, it will feed and clothe us forever. As we look at that, then we must get our house in order here.

So I beg my colleagues, I implore them, to pass this balanced budget amendment. There will not be a more important vote that you will cast for responsibility—and, yes, an obligation to the American people—than this vote you will cast this week on the balanced budget amendment.

I want to congratulate my friend from Illinois, PAUL SIMON, who is on the floor, for the work he has done with this. His roots are in southern Illinois, where traditions of communities and families go deep, a great sense and a great tide of the land, middle America, that understands what communities are all about. They know it takes money to provide Government services. They also know it takes responsibility and a little bit of reality to make it work here in America.

This is an important vote. It is an important vote for all of us who call ourselves Americans.

I know that there are those who would make the argument that we are tinkering around with the Constitution. But I think it was even Jefferson who feared the day when we could learn to borrow money against future collections on taxes.

Even George Washington—and the other day, Senator CRAIG THOMAS, of Wyoming, read George Washington's Farewell Address; and I had the great privilege of reading that myself—one of his fears was public debt.

But Jefferson went on to say that this Constitution every now and again needs to reflect the needs of the time, to be changed to deal with the needs or the emergencies of the time. So those who would fear change, I do not think this change is not unwarranted.

A vote "yes" on this amendment would do much to restore the accountability and responsibility of this Congress in the eyes of all citizens in this country.

Thank you, Mr. President.

I yield the floor.

Mr. ABRAHAM addressed the Chair.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from Michigan.

Mr. ABRAHAM. Thank you, Mr. President.

I rise today, once again, one final time, in strong support of the balanced budget amendment to the Constitution and to urge my colleagues to support this amendment.

Last November the American people sent a clear signal to Washington. They made clear that they are tired of business as usual. They made clear that they no longer will accept, or reelect, representatives who do not take their responsibilities seriously. They made clear that we must put our financial house in order.

Only when we have re-established order can we again represent the people's interests as we should. Only when we have re-established the discipline necessary to make hard choices can we begin again to recognize what is important and what is not so important.

Only when we begin to balance our own budgets—to sit down and decide how much of the people's money we can afford to spend—will we again have fully earned their trust.

The simple fact is that we are spending more than we should as a government. We are spending the people's money on things the people do not need, or that the people of a free country can more safely and efficiently provide for themselves.

The people demanded a more efficient government this past November. They also demanded a smaller Government. One that is more careful in how it spends their money and more careful not to interfere unduly with their lives.

We have a bloated, inefficient Government because for decades Congress has not felt the need to sit down and decide what it has a right to spend the people's money on, and what we must, as a government, do without.

You see, those who oppose the balance budget amendment, or complain that it will cause too much pain, ignore the pain our current irresponsible deficit spending already causes. Our spiraling debt inflates interest rates, it causes economic dislocation—and higher taxes on the American people. Worse, it leaves our children and grandchildren a legacy of debt.

After all, every year we must pay hundreds of billions of dollars to retire old debt, even as we add new debt. Our current irresponsible spending causes economic pain; pain which will only get worse if we allow it to continue.

This amendment will not suddenly eliminate Federal spending. It will not even suddenly eliminate deficit spending. Until the year 2002 we will continue to spend more than we take in—only at a less horrifying pace. But this amendment will reintroduce discipline to the budgeting process and help us get a grip, once again, on our spending priorities.

It will force those of us in this Chamber to actually sit down and decide what our priorities ought to be. Instead of spending money on everything, we will, for a change, debate which programs we should, and should not, fund at the taxpayers' expense.

The amendment will help reduce the size of Government by severely limiting the option to borrow money. Currently, when faced with demands for more spending, the Congress makes the easy choice to borrow money. Under the balanced budget amendment, Congress will be forced to make the tough choices.

In this way, unless we are in the midst of a crisis severe enough to produce a supermajority in favor of deficit spending, Congress will be forced to control its appetite for spending, or select the even less desirable alternative of raising taxes.

No longer will we be able to borrow against our childrens' future. No longer will we be able to continue increasing the size of Government, oblivious to its costs to our pocketbooks and our liberties. No longer will Government be able to duck responsibility for the way it spends the people's money.

Mr. President, I remember well what the folks in Michigan told me when I was campaigning for the Senate a few months back. From Detroit to the Upper Peninsula, from Grand Rapids to Saginaw, Michiganders all expressed the same confusion about the way Congress does business. They could not understand why Congress could not operate the way they did in their families or the way businesses did in trying to meet a bottom line.

The people did not ask for a fancier bookkeeping method that will make it look as if the budget is balanced when it really is not. They did not ask for a balanced budget except for this or that program. A balanced budget means just that. If you put spending programs off budget you are simply fooling yourself and the American people.

But the people were not asking that we budget exactly as if we were a family. The big difference between Congress and a family is that a family is spending its own money. Congress, on the other hand, is spending money entrusted to it by the people.

If a family decides to buy a home it will go into debt as it invests for the future. But the Government is not a family. Government is the servant of families. It is our duty to spend no more of families' hard-earned money than we need to.

And massive public spending projects all too often are boondoggles rather than good investments for America's families.

In fact, it seems to me we should not even need to debate the need for a balanced budget amendment because over the last 25 years Congress has proved that it is incapable of managing effectively the Nation's pursestrings.

And President Clinton's latest budget makes clear that he has no intention of doing anything to fight the deficit in the years ahead. According to his own budget projections, Federal spending will grow from $1.5 trillion in 1995 to over $1.9 trillion at the turn of the century.

Deficits will remain near $200 billion in every year through the year 2000. That means that between now and the end of the century we will add well over $1 trillion to the deficit.

I think that the choice is clear. Either we continue spending trillions of dollars we do not have, or we get our financial house in order. Either we give up on the idea of getting our spending under control, or we pass a balanced budget amendment. Either we do the job we were sent here to do, or we continue to spend our childrens' and grandchildrens' money and leave them to foot the bill.

Now, some of my colleagues have said that they like the idea of a balanced budget—but they fear one or another horrible unintended consequence of this amendment. From judicial budget writing to Presidential impoundment, some Senators fear there are dangers lurking in this amendment, dangers to our status as an institution and to the Republic itself.

Mr. President, we must not shrink before these phantom dangers. This amendment is a model of clear, concise drafting. It does a single thing, and does it well. It says that Congress now must balance its budgets the same way families and businesses do—by spending no more than it takes in.

I will not restate all the arguments again here. But it is clear to me that this simple, policy-centered amendment will provide the discipline we in this institution need to rethink our priorities and get spending under control—and nothing else.

We should concern ourselves less with phantoms and more with our responsibilities to our Nation and to our families.

Mr. President: My family is important to me. I work in large part so that I can pass on something to them. I hope I can pass on a little wisdom. I want to make sure I pass on some decent habits of hard work and honesty. And I also want to pass on as much economic opportunity and security to them as I can.

Trillions of dollars in debt is not my idea of a good inheritance to leave to my kids. Neither is a government that has gotten out of control, that spends money with little idea of what is important, that has no discipline in its budgeting procedures, that interferes with the daily lives of its citizens simply because to do so is cost-free.

Let Members protect our children from debt and from irresponsible government. Let Members limit government and expand freedom. Let Members pass the balanced budget amendment.

I yield the floor.

Mr. SIMON. Mr. President, I probably agree with the editors in the New York Times 90 percent of the time. Today they have an editorial on "Unbalanced Amendment," which shows an emotional attachment to a position that I do not think is very rational. I ask unanimous consent that their editorial, be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNBALANCED AMENDMENT

Tomorrow's vote in the Senate on the balanced-budget amendment is crucial for the Republican agenda to chop Government programs into bits. The outcome is also crucial to the nation because the pernicious amendment would do enormous fiscal damage. Proponents are alarmingly within three votes of winning.

The core of the amendment would require the Government to balance its books unless three-fifths of the House and Senate vote to run a deficit. To the wavering Democrats—John Breaux of Louisiana, Sam Nunn of Georgia, Wendell Ford of Kentucky, and Kent Conrad and Byron Dorgan of North Dakota—here are five unassailable reasons to vote no.

Unnecessary.—Federal deficits have indeed been too high. That poses a threat that borrowing will siphon savings away from productive private investments.

But the fact that borrowing must be contained does not imply it ought to be eliminated—any more than family borrowing, to buy a house or pay college tuition, need be eliminated. A prudent rule would keep Federal debt growing less quickly than incomes. This rule would justify deficits of about $200 billion a year, close to current levels.

Misleading.—Proponents claim the amendment would protect future generations against ruinous interest payments. True, today's children will owe taxes when they grow up to pay interest on Federal debt. But proponents ignore the fact that the tax payments will flow right back to these children as owners of Government bonds.

Unenforceable.—Because key terms of the amendment—like outlays and receipts—are undefined, Congress will be able to manipulate and evade. Can Congress create independent agencies or find other ways to spend and borrow off the Government books? A Senate committee has already written into the legislative record, used to guide future court decisions, that the Tennessee Valley Authority would be exempt from the amendment. It should take lawyers five minutes to stretch whatever "principle" guides that exception to scores of other Government programs.

The amendment also fails to provide an enforcement mechanism. It might simply become an empty gesture or, worse yet, the courts might step in to tell Congress how much it should tax and where it should spend.

Irrational.—Federal bookkeeping lumps ordinary spending with long-term public investments. Congress, forced by the amendment to cut quickly, would go after hugely expensive, though vitally important, investments, such as scientific research, costly laboratories and equipment, job training or other investments that would not produce benefits for years, if not decades.

Reckless.—When the economy slows, tax revenues fall off and spending on unemployment insurance and food stamps rises. This automatic rise in the deficit, by triggering spending, serves to mitigate the slowdown. But under the proposed amendment, Congress could easily turn a mild downturn into something worse. Unless a three-fifths supermajority saves the day, Congress would have to raise taxes and cut spending in a slow economy—the opposite of responsible stewardship.

Take another unintended consequence. When savings and loans went bankrupt during the 1980's, the Federal Government bailed out depositors with borrowed money, thereby preventing a banking panic. But under the proposed amendment, the Government could not react instantly unless a supermajority in Congress approved.

The balanced-budget amendment appeals to taxpayers who demand that the Government spend their money wisely. But Senators Nunn, Ford, Conrad, Dorgan and Breaux need to recognize that this honorable sentiment cannot be wisely embedded into the Constitution.

Mr. SIMON. Mr. President, I would like to comment on the editorial.

First, they say it is unnecessary. Federal deficits have indeed been too high. That poses a threat that borrowing will siphon savings away from productive private investments.

Clearly, that has happened already. The Federal Reserve Bank of New York said between 1978 and 1988 the deficit cost 5 percent growth in our national income.

But the fact that borrowing must be contained does not imply it ought to be eliminated—any more than family borrowing, to buy a house or pay tuition need be eliminated.

I will get into that because that is stressed later.

A prudent rule would keep Federal debt growing less quickly than incomes. This rule would justify deficits of about $200 billion a year, close to current levels.

That is what the GAO calls stumbling along at the present level. But, in fact, the CBO forecast is that those deficits are going to escalate, and escalate significantly. We have shown we do not have the political will to do anything about it.

That is the simple reality. In 1986, this House, by one vote, failed to pass the balanced budget amendment. Then the debt was $2 trillion. Now it is $4.8 trillion and we are hearing the same arguments again, that we can do this without a balanced budget amendment.

Second, they say the amendment is misleading.

Proponents claim the amendment would protect future generations against ruinous interest payments. True, today's children will owe taxes when they grow up to pay interest on Federal debt. But proponents ignore the fact that the tax payments will flow right back to these children as owners of Government bonds.

I would make three points here. One is, Thomas Jefferson said one generation should no more be willing to accept the debts of a previous generation than the debts of another country. Thomas Jefferson was right. Second, this argument that this interest just flows back into our own hands ignores the reality that we have somewhere between $650 and $800 billion owned by other countries, people in other countries. In fact, foreign aid to the wealthy of other countries is at least double the foreign economic assistance we give to poor people. And that foreign economic assistance to the wealthy is through our indebtedness. Third, this editorial ignores the redistribution effect of the interest.

Who pays the interest in our country? By and large, people of limited means. Who collects the interest? Those who have enough means to own the T-bills. That is not the average citizen.

That is redistributing money to those who are more fortunate. It is interesting, of the $339 billion we are estimated to pay for interest this year, that is roughly twice what we will spend on our poverty programs, 11 times what we will spend on education, and 22 times what we spend on foreign economic assistance.

Then they say it is unenforceable. If it were unenforceable, my good friend—and he is my friend—Senator BYRD, would not be fighting this amendment like he is. Of course, it is enforceable. They say the amendment fails to provide an enforcement mechanism. When you require a three-fifths vote for the increase of the debt, you have a very powerful enforcement mechanism.

They say it is irrational, Federal bookkeeping lumping ordinary spending with long-term public investments, a point they made earlier. The reality is, while a family has to borrow for a home or a college education, the Federal Government does not, and frankly, even a State the size of Illinois does not have to. I served in the State legislature for 14 years and served 4 years as Lieutenant Governor. A State the size of Missouri—and I do not mean this disrespectfully of the State of the Presiding Officer—is in a little different situation than a large State. But in the State of Illinois, frankly, we do not need to do it and the Federal Government does not need to do it.

It is interesting that the long-term investment has gone down as the deficit has gone up. In fact, the argument is just the reverse, and I would point out also—and I mentioned this on the floor several times, and the Presiding Officer has heard me mention this, I am sure—when President Eisenhower, to his great credit, proposed the Interstate Highway System, the largest single capital project in the history of humanity, he suggested issuing bonds. Senator Albert Gore, Sr., the father of our present Vice President said, "Let's not issue bonds. Let's increase the gasoline tax and do it on a pay-as-you-go basis." Fortunately, he prevailed.

As of a year and a half ago, the estimate was we had saved $750 billion in interest.

Then they say it is reckless; when the economy slows, tax revenues fall off and spending on unemployment insurance and food stamps rise. This automatic rise in the deficit by triggering spending serves to mitigate the slowdown. Study after study, including the unanimous report of the Joint Economic Committee of Congress, then chaired by Senator Lloyd Bentsen, said we respond too slowly in emergencies. And because of the deficit, we have simply been unable to respond.

When President Clinton suggested that we spend $15 billion on a jobs program to stimulate the economy, and $15 billion is not much in a $6 trillion economy, we were not able to get $15 billion passed. I voted for it, but we could not do it.

Former Assistant Secretary of the Treasury Fred Bergsten, who served under Jimmy Carter, said that if we would plan for a 2-percent surplus and then we could have a triggering mechanism so the President could respond when unemployment passed a certain level in any region, then we could respond quickly. We can respond just as quickly and more quickly with a constitutional amendment.

Finally, let me make three other points. One is the New York Times editorials have consistently ignored economic history, and I have to say the Washington Post editorials have done the same. They just act as though we are dealing by ourselves with an absolutely new initiative and no other nation has ever gone through this debt before.

The reality of the history of nations is that they pile up debts and pile up debts and then they become so bad they start monetizing the debt; they start printing money. And we are headed to do the same thing. Nations have done that historically when they get around 9, 10, 11 percent, except in a wartime situation where there is a freeze on private and public spending.

We are heading, according to CBO, to 18 percent. We can take a chance that we will be the first Nation in history to be able to do that without monetizing the debt. But what a chance for the future of these pages and my children and my grandchildren. We should not be doing it.

Second, it ignores the reality that the General Accounting Office and CBO and Data Resources, Inc. and everyone says if we balance the budget, we will improve the standard of living of our country. GAO says balance the budget and in two decades you will have an increase in the standard of living of approximately 36 percent. That type of economic information is totally ignored by this New York Times editorial.

And finally, not so much in this editorial but in others, and all the horror stories that have been spread around here about what is going to happen to social spending, what is going to happen to this or what is going to happen to that, how do we get there? There are two options.

One is if you do not make any changes in Social Security and if interest rates do not go down, and every projection is that they will go down but you would have some savings on interest because you would not have as much of a large deficit, we would have to limit non-Social-Security spending growth to 1.7 percent between now and the year 2002. That is doable.

Let me put it another way. Revenue in the year 2002 will be approximately $300 billion greater than what we will spend this year. What we have to do between now and the year 2002 is to control the growth of spending so it does not exceed that amount. That is doable.

Is it going to cause a little pain? Of course, it will. If there were not pain, why, we could pass a balanced budget; we would have done it a long time ago. We need the discipline of something to force us to do the right thing. So my hope is that tomorrow we will do the right thing. This is my 21st year in Congress. This is the most important vote I will have cast in those 21 years. We are talking about the future of our country.

We make a lot of short-term decisions because of one thing or another, and I am as guilty of that as anyone. Here is one where we ought to ask ourselves not which party is going to benefit, not what it is going to do to each of us politically—and I realize it is easy for me since I am not going to be running for reelection—we ought to be asking what is going to happen to the future of our country. I think if we ask that question and dig, the answer is fairly obvious.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, the real question here has been brought out repeatedly in this debate. What we have heard over and over and over again is that we need the balanced budget amendment because we need something to force us to act responsibly; we need something to give us political courage; we need something that says, "I am going to put a gun to my head and I'm going to say I'll shoot if you don't prevent me from spending again."

We need the discipline. We have heard that word over and over. And we have heard repeatedly, both here and over in the House, the term "political will." They say this forces us to have the "political will."

Well, Mr. President, I do not believe that anyone worthy of being a U.S. Senator needs such legislation to gain political will—if they are doing their job properly. We are capable of spelling out just what steps we need to take, and our knees will not buckle when we know the truth, as was stated by one of the Members of the House. How do I know that? Because just 2 short years ago, the Congress voted for the largest deficit reduction package in history. Why so many people refuse to remember that, I do not know.

With passage of that single bill, the budget deficit was cut by over $500 billion. And, I must add, we had to do it without a single Republican vote in either the House or the Senate. In fact, the Vice President had to break the tie in the Senate.

President Clinton said 2 years ago, in both public and private conversations, that the most important thing is health of the economy.

His campaign commitment on deficit reduction was not just election year rhetoric. In the first year of his Presidency, he presented a clear agenda for deficit reduction. He offered us real specifics, not a lot of rhetoric but real specifics—a program that combined both spending cuts and new taxes. He had the guts to do that.

Mr. President, how did we do that? The President made his proposals. The Democratic Congress responded, and said OK, we will take on your deficit reduction agenda. We know it is going to mean tough votes, but we are going to do this.

So it came up here to the Hill, and we farmed it out to various committees, and the committees were given assignments, so much of a cut per committee. And those were tough cuts and tough votes—tough, tough votes. And they were brought back here to the floor where we voted them out of the Senate. They went to conference with the House, and the conference package came back. And we voted it out—a tough vote as reflected by the fact some Members of the Senate were probably not reelected because of their vote on this package.

I do not know why—with the deficit reduction record we've achieved over the past couple of years—the Republicans do not do the same thing right now. Instead of talking about grand ideals—be specific. Do not say trust us and we will tell you later how we are going to do this. That is not how we did it during that reconciliation vote in August 1993, less than 2 years ago. We stood up and made the hard choices at that time, and that is what we should do in dealing with the deficit. That was a tough package in the Senate and in the House. In fact, it came up to a 50–50 tie, one of the more dramatic moments in recent years in the Senate, and the Vice President had to break the tie during the vote in the Senate.

Now, that bill became law despite the lack of bipartisan support, and we are now seeing our third year of declining deficits. Why do people ignore that? When that bill was passed, our deficits were going up and they were estimated to be close to $300 billion a year. The next year they went down to $250 billion. They are estimated to be around $190 billion a year now. But the proponents of this bill make a lot out of the fact that the President said, well, we are going to have deficits of $200 billion a year from here out into the near future.

I do not like that either, but I can tell you what we ought to be concentrating on. Instead of a balanced budget amendment with all of its disadvantages, we should be concentrating on how to continue this trend of deficit reduction. For the first time since Harry Truman, we have seen consecutive years of deficit reduction.

The President deserves a lot of credit for that, and the Democratic Congress deserves a lot of credit for that because we are the ones who put it through. I think we should be taking great pride in that.

We do not need a balanced budget amendment to give us guts. Political courage should not stop at the middle aisle in this Chamber. It should be all across this Chamber. We demonstrated less than 2 years ago that that is the way to cut the deficit; not by some legislation that is supposed to instill a false sense of courage or a political will that we would lack otherwise. This new sense of courage is supposed to come from the fact that we will blame hard choices on the balanced budget amendment.

We do not have to say that we lack responsibility or political will. We can do it. We know we can do it because the Democrats in this Senate did it before. And we can be very, very proud of that.

Mr. President, when we have asked for specifics during this lengthy debate on whether taxes would be raised or on what would be cut, we have been stonewalled on the other side and amendment after amendment after amendment has been voted down to show that they mean business over there. They are not going to tell us how we will go about cutting programs or what will be threatened. They just want the balanced budget amendment to hide behind.

Now, what if I would say to those watching at home, your Social Security is going to be cut.

Oh, no, no, no, the proponents of the amendment say, we plan to take that off the table. That is going to be off budget.

Well, if that is the case, then your Medicare is going to be cut. Oh, no, no, no, they say, that is not going to be cut. We are going to leave that off budget over here some place. Well, we know that national defense needs to be continued. It is not going to be cut substantially. In fact, the proposal is to increase national defense just a little bit, and I go along with that.

Now, if you take Social Security, you take Medicare, and you take defense off, what does that result in? I can tell you, if you are going to put a balanced budget amendment in, it means that every other function in the budget has to be cut by well over 30 percent—every other function: AIDS research, cancer research; you name it.

Oh, well, we would not cut those. That means something else then is going to get cut double so you can keep up with AIDS research and cancer research and the other programs we would like to keep.

Now, what if we included a couple of the other things I think would probably not be voted out here. Take tax cuts. Those are going to be put in. Take veterans programs, veterans retirement off, civilian retirement for civil service people who have retired. If you just add those things to it, do you know what we come up with?

We come up with the fact that every other function in the Federal Government would have to be cut by over 50 percent—every other function of Government—including health and safety matters—every other function of Government. And yet we are supposed to vote for this and say we are going to put a gun to our heads and say we are going to force ourselves into this straitjacket so we will have this balanced budget amendment to hide behind when we start cutting such programs.

Mr. President, I disagree with this approach. We need to be honest. If certain programs are going to be on the table, the American people need to know they will not be sacrosanct.

But some people who say we would not dare cut Social Security would—these same Senators—would not vote to exempt Social Security from the balanced budget amendment here on the Senate floor just last week. They would not vote to set Social Security aside. No, it is still on the table. So believe me, whether they like to say so or not, your Social Security benefits are in danger because everything is still in play. Everything is still in play. And to the States that are so concerned about unfunded mandates out there, wait until you look at that billions of dollars you are receiving every year for environmental concerns—just for environmental concerns such as clean air and clean water.

What happens to that? You can bet that is going to get cut back, and so all the Governors who have been here so concerned about this—and some of them supporting a balanced budget amendment—better look to what is going to happen to their Federal funding once something like this goes through.

Mr. President, I believe we have had a good debate here in the Senate on the balanced budget amendment. We did not push it through for the sake of press releases and false deadlines. We did not set ourselves so many days and say we have to do this or else, because we take amendments to the Constitution very seriously in the Senate—very, very seriously indeed.

I believe that the debate in the Senate has served to unearth some other very serious flaws with the balanced budget amendment. I wish to spell out what some of these other problems are besides the ones I have already mentioned—and to explain why I believe they make this balanced budget amendment unacceptable.

Mr. President, as I stated earlier, the first step should have been to map out a plan to reach a balanced budget. That is why I supported the so-called right-to-know-amendment offered by the distinguished Democratic leader, Senator DASCHLE. We are now hearing there will be plans announced at a later date to balance the budget by the year 2002.

Mr. President, when I talk to people back home in Ohio and when I visit back home in Ohio, people throughout Ohio feel they have a right to know up front how their lives are going to be affected, how their Social Security will be affected, how their Medicare will be affected, how their retirement will be affected, how their children will be affected. They want to know up front how we intend to achieve a balanced budget.

Mr. President, while we debate the balanced budget amendment, we are seeing more headlines about tax cuts than about deficit reduction. Many of the proponents of the amendment, who should be laying out deficit-reduction proposals, are busy preparing tax-cut plans. Does that sound familiar? It reminds me of the very strategy that added more than $3.5 trillion to our national debt. Then, like today, there was a lot of talk about balancing the budget but almost no talk about how to get there. Instead we had feel-good budget plans. Cut taxes, smile, be happy—it is morning in America.

What did we do back then? We cut taxes by one-fourth over a 3-year period of time, 5 percent the first year, 10 percent for each of the next 2 years. That was supposed to result in such economic growth we would not wind up losing money, we would wind up earning more in revenue because of the increased economic activity.

It just did not work. That is what gave us the additional $3.8 trillion in debt that occurred over the 12 years before the Clinton administration. I take some Democratic responsibility for some of that, and for this reason. Back during the Jimmy Carter years when he was President, remember, we had 21-percent interest rates and 17-percent inflation rates for a while. Everybody was scared. I was, too. I was afraid what money I had was in jeopardy during a situation like that. I think that lack of control of the national economy is one of the things that led to the election of President Ronald Reagan. Then he came in and made his big proposals for supply-side economics, and those went into effect, and we have seen the budget deficit going up—not only the budget deficit but the national debt going up ever since.

If we do everything the proponents say they want to do, take defense, Social Security, and Medicare off the table, we are faced with a prospect, as I said earlier, of more than 30-percent cuts. Everything else in the Federal budget would have to have about by more than 30 percent cut.

And as I've said, we are not entirely sure if that will be the case because the same proponents of the amendment who say they feel Social Security should be off the table, voted against an amendment to exempt Social Security from the balanced budget amendment. They say the same about veterans benefits. They say they will not cut veterans programs. But then they turn around and vote down an amendment to exempt veterans programs. So nobody is exactly sure where they stand with this amendment. It is all speculation because no one is being told what will be cut, whether taxes will be raised or anything else, for that matter.

I submit that my constituents in Ohio are the taxpayers and they have a right to know in advance what the impact is going to be on their lives if we put the balanced budget amendment into effect. We can spell out for the American people how we will reduce the budget. We do not need a balanced budget amendment. We on the Democratic side did that in the summer of 1993. President Clinton made his proposals that led to deficit reduction of more than. We did it, and we did it without a single Republican vote from the other side of the aisle.

So this idea that we do not have political courage, we do not have guts enough to make some of these hard decisions, fall on deaf ears, as far as I am concerned. We did it and we can do it again. What I would like to see, instead of these $200 billion deficits continuing as projected, is for us to come up with real proposals for continued reductions. What we should be doing instead of debating a balanced budget amendment, is try to decide how we will keep that reduction going.

I want to see us achieve a balanced budget by the year 2002. I think we should start moving in that direction immediately—start working on it right now. I intend to support an amendment offered by my distinguished colleague from Arkansas, Senator BUMPERS, which will require that our congressional budget resolutions from here on map out specifically how to reach a balanced budget by the year 2000.

Do we have courage enough to do that? I hope we do. Real political courage is a true alternative to the balanced budget amendment. The problem with the balanced budget amendment is that it brings with it so many unintended consequences. First, it threatens the separation of powers, so carefully laid out in the Constitution. According to former solicitor and Federal Judge Robert Bork, the balanced budget amendment, and I quote him, "Would likely result in hundreds if not thousands of lawsuits around the country, many of them on inconsistent theories, and providing inconsistent results."

In fact, the judicial consequences of the proposed amendment have brought together an unexpected alliance of legal scholars who oppose the amendment. Conservatives such as Bork and Robert Fried and liberals such as Archibald Cox and Laurence Tribe all think it is a serious mistake.

I fear activist Federal judges, trying to enforce the balanced budget amendment, would place themselves in the role of elected officials. These judges, appointed for life and insulated from the people, could usurp the power to tax and spend from elected officials. I believe our Founding Fathers, who fought a revolution against taxation without representation, would be shocked at that potential prospect. If the judiciary had a case before them and said, OK the Congress has not balanced this budget as the Constitution requires, what shall we do? Would they then say we will just cut certain programs? Or will they say one of the options is to tax? They might give the remedy. No one says they cannot do that. How do we deal with that? Some say the Missouri versus Jenkins precedent which opened up such a possibility should not be read in this way. Some state the courts have grown less activist and less likely to enter this sphere.

I remind my colleagues, the Constitution will last throughout future generations of Americans. The judiciary of the future may or may not be activist, and it will be interpreting evolving precedents that we cannot predict. That is why I have and will continue to support amendments to the balanced budget amendment to add predictability to the area of judicial review and ensure the balanced budget amendment will not simply become a full employment act for lawyers.

I am also deeply concerned about the impact of the amendment during tough economic times. There has been a great deal of discussion on the floor about this topic by other Senators. In times of economic downturn, our economy would be placed on autopilot. The economic downturn would cause an unpredictable hemorrhage of revenues. Tax increases and massive spending cuts would be forced just at the time when a fragile economy could not sustain them. We could not do the countercyclical spending that has held us out of more depressions since those days of the Great Depression. And that is just what turned a recession into the Great Depression in the 1930's, that lack of ability to make countercyclical spending.

The supermajority requirements of the amendment would have a minority of legislators, deciding the fate of all Americans during these times. This same minority would be deciding the fate of Ohioans—or people anyplace else in the country, for that matter—who are hit by natural disasters. Over the years, tornadoes and floods have ravaged different parts of the country, as well as my own State of Ohio. The Federal Government always came to our aid. With this amendment in place, legislators who have never been to Ohio nor visited other areas impacted by disasters, would suddenly have veto power over Government compassion. Tough luck, you are on your own.

That is why I support an amendment offered by my friend from California, Senator BOXER, to provide flexibility in cases of natural disaster.

Another area of very great concern to me also is that of national defense.

The amendment has a military conflict waiver which is extremely important but it certainly does not go far enough. What happens if America faces a military threat, not a conflict? Will we be able to gear our forces up in time? If you look back over our military history at military spending, we have operated since the days of the Spanish-American War on basically a 17-year cycle. It is really striking to look at the figures. Almost on an exact 17-year cycle we have seen buildup of 7 years, followed by a 10-year reduction in the military: 7-year buildup, then a 10-year builddown. Military spending follows that persistent trend almost exactly—except for World War II, where the peak was displaced by about 4 years. But every 17 years, we seem to decide the world is safe and that we can cut back on our military budget. Then something always happens which makes us reconsider, and we begin building up again to prepare for whatever the new threat is; threats that we could not foresee, threats that we could not define when we made the cuts to begin with.

Military preparedness is not something that just happens overnight when we suddenly see a new threat. Congress is charged in the Constitution with the awesome responsibility of providing for the common defense of all of our people. Yet today, we are debating an amendment to the Constitution which I fear may not allow Congress to live up to that responsibility. There are trouble spots throughout the world that could erupt at any time.

What will our adversaries think if they know we have no ability to rise to the occasion? What about our allies? I know that many here in Congress signed the Contract With America. But we all took an oath to support and defend the Constitution of the United States. That certainly takes precedent over the Contract With America.

Mr. President, I want us to achieve a balanced budget. We took an important step toward a balanced budget 2 years ago. We need to take the same sort of action in this Congress. I simply do not believe that this balanced budget amendment, as it currently is crafted, is a wise course to follow. We have had 3 consecutive years of deficit reduction. It went from about $300 billion, down to a little under $250 billion, down to about $190 billion right now. What we need to do is plan to continue that, not just going out with $200 billion into the indefinite future, as the President's budget has proposed.

Mr. President, I come back again to where I started my remarks; that is, to ask: Why do we need this amendment to our Constitution? We are told by the other side that we need it for political courage, we need it for political will, we need it for discipline. We demonstrated political courage, political will, and discipline less than 2 years ago in this very Chamber when we voted a $500 billion budget deficit reduction package. That was a tough package. Putting it together involved many tough votes. We did it upfront in a responsible manner. We were honest. People knew exactly what we were voting on. We were accountable to the people we represent. We went home and explained why we voted the way we did. We did not hide behind some balanced budget amendment that gives cover for those hard votes.

I think the way to go is to repeat what we did less than 2 years ago on this floor, and lay out a plan of how we will continue the deficit reduction program that President Clinton first presented, and we enacted into law. It has been effective; it has worked.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair.

It's is no exaggeration to suggest Mr. President, the Senate is about to make one of the most momentous decisions in the history of the Nation—on the question of whether to add a balanced budget amendment to the Constitution.

On the eve of this significant vote, it is instructive to consider the counsel of our Founding Fathers on this matter. Thomas Jefferson said in 1816 that "To preserve our independence, we must not let our rulers load us with perpetual debt. We must make our election between economy and liberty, or profusion and servitude."

Mr. Jefferson thereby laid out the choice before the Senate—liberty or servitude. Congress, having become enslaved to deficit spending, has refused for decades to stop the practice of spending money it does not have.

How enormous is the Federal debt? For nearly 3 years, Mr. President, I have made a daily report to the Senate regarding the Federal debt—down to the penny as of the close of business the preceding day. As of close of business this past Friday, February 24, the debt stood at $4,838,340,250,340.71. On a per capita basis, every man, woman, and child in America owes $18,366.42.

The taxpayers had to fork over $203 billion in 1994 just to pay the interest on this massive debt, and that, on a per capita basis, amounts to $1,138.76 for every American man, woman, and child.

One looks back in time to see where we stood.

Mr. President, when I was sworn in as a Senator in January 1973, I was distressed that long ago, that Congress had been spending far more than it took in—year after year. Deficit spending had become a way of legislative life.

So on July 19, 1973, I offered S. 2215, a bill to require a balanced budget. It was cosponsored by the then distinguished Senator Harry F. Byrd. On that day, July 19, 1973—if you can believe this—the Federal debt stood at a relatively small figure of $455,570,163,323.85. Today, 22 years later, the Federal debt has skyrocketed to $4.3 trillion. The historical tables of the 1996 budget reveal that the interest on the money borrowed by Congress since 1973, cost the taxpayers $3,209,417,000,000.

Imagine if Congress had passed a balanced budget amendment in 1973 as proposed by Senator Harry F. Byrd and me, the American taxpayers could have been saved more than $3.2 trillion in interest alone.

The American people have difficulty comprehending the enormity of a trillion dollars. I went into the cloakroom the other day, and several Senators were sitting around. I said, "How many million are in a trillion?" One said "100,000." Another one said, "I do not know." And a third one said, "Don't give us that. What is it?"

I said, "There are 1 million millions in a trillion." Bear in mind that the U.S. Government—meaning the taxpayers of this country—owes $4.8 trillion. That dead cat lies at the doorstep of the U.S. Senate and the House of Representatives. We cannot get around it. No President can spend a dime that is not first authorized and appropriated by the Congress of the United States.

If I may return for a moment to one of my American heroes, Mr. Jefferson, he also said that "The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves."

Amen, Thomas Jefferson.

That just about tells it all, certainly in terms of the moral injustice that we have been heaping upon our children and their children and their children. Nobody suggests that balancing the budget will be easy. It will be tough. It really boils down to a matter of doing what we were elected to do, and that is leveling with the people of this country.

I can debate for hours the contention that accepting a balanced budget amendment is not constitutional. However, statements like that do not make sense. I do not denigrate anybody who uses their best argument to try to defeat something that I happen to believe in.

There was another eloquent President, by the way, who spoke one time of a rendezvous with destiny. What destiny will the U.S. Senate choose tomorrow? What legacy will we vote tomorrow for generations yet to come?

Mr. President, I ask unanimous consent that the text of S. 2215, the balanced budget bill offered by the then Senator Harry Byrd, Jr., and myself, on July 1973 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2215

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Anti-Inflation Act of 1973".

FINDINGS AND PURPOSE

SECTION 1. (a) The Congress of the United States hereby determines that—

(1) the Federal Government is now and has been expending funds during the fiscal yer for nontrust fund budget items in excess of revenues received from all nontrust sources,

(2) such fiscal policy by the Federal Government has resulted in substantial borrowing from both public and private sources,

(3) the aggregate of such borrowing has resulted in an exorbitant national debt totaling more than $450,000,000,000,

(4) this debt will continue to increase so long as the Federal Government spends more than it receives,

(5) the Federal Government is now paying annual interest on the national debt in excess of $20,000,000,000, and

(6) this interest payment is annually increasing as a fixed expenditure in the Federal budget.

(b) The Congress further determines that—

(1) deficit spending by the Federal Government has resulted in inflation in the Nation's economy and a lessening in the value of the dollar in terms of its ability to purchase goods and services in foreign and domestic markets,

(2) unless this deficit spending on the part of the Federal Government is discontinued a severe economic depression will result.

(c) The purpose of this Act is to require the President to submit to the Congress a budget in which nontrust fund expenditures do not exceed revenues received by the Government from nontrust sources.

SEC. 2. The nontrust fund expenditures of the Government of the United States during each fiscal year shall not exceed its revenues from all nontrust sources for such year.

SEC. 3. (a) The President shall submit a budget pursuant to the Budget and Accounting Act of 1921, as amended, in which nontrust fund expenditures do not exceed nontrust fund revenues for each fiscal year.

(b) The provisions of this section may be adjusted to reflect any additional revenues of the Government received during a fiscal year resulting from tax legislation enacted after the submission of the budget for such fiscal year.

SEC. 4. This Act shall apply only in respect of fiscal years beginning after June 30, 1974.

Mr. HELMS. Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER (Mr. FRIST). The Senator from North Dakota.

Mr. DORGAN. Mr. President, it is not usual to hear the Senator from North Carolina quote Franklin Delano Roosevelt, but I appreciated listening to his presentation and, as always, his presentation is interesting and heartfelt.

The issue that we debate today in the Congress is not an ordinary issue or one of passing interest. It is about changing the U.S. Constitution. I know there are some people who serve in this body who support a menu of changes to the Constitution. You name it, they support it. The Senator from Arkansas said the other day—and I have not counted them—there has been nearly one proposal to change the Constitution every day that we have been in session since the first of the year, and 11,000 proposals have been offered to change the Constitution since the Constitution was written.

I have described on this floor before a day in my life that I shall always remember. I was one of 55 persons to go back to an assembly room in Constitution Hall and celebrate the 200th birthday of the writing of the Constitution. Two-hundred years previous, fifty-five white, largely overweight men, sat in that room in Philadelphia. We know that because we know who was there. We know the stories about how they had to keep the shades drawn during that hot Philadelphia summer in that room, because it got very warm while they were trying to craft a Constitution. There were some of the most brilliant minds in the history of this country convening there. Absent, of course, was Thomas Jefferson, who was in Europe at the time. But he contributed nonetheless substantially to the Bill of Rights and especially to the writing of the first amendment's free speech clause.

As I said, there are some who seem to want to support virtually every proposed change to the Constitution, like human weather vanes spinning in the winds of the public passion of the moment. Others are opposed to changing the Constitution under any case, ever. The Founding Fathers who wrote the Constitution actually provided for a process to make changes to it. Still, they made it very difficult, and changes have been made only on very rare occasions. We are trying to decide today and tomorrow whether this should be one of those occasions.

I am not someone who believes that we should reject change in every circumstance. But I am, I suppose, a conservative, if you can forgive the use of the word in this Chamber, because it is confusing to try to understand these days who conservatives and liberals really are. I am conservative when it comes to changing the Constitution. I believe it ought to be done only on rare occasions and only in circumstances of extraordinary need. Harold Wilson once talked about the only human institution which rejects progress or change is the cemetery. Change is a part of our lives. Yes, indeed, even change in the Constitution may be part of our lives when it is necessary.

Each of us, as other speakers have indicated, takes an oath when we come to the Senate to serve, and that oath is to uphold the Constitution. I do not think anyone takes that oath lightly. All of us understand the circumstances and the meaning of that oath. All of us understand, as well, that it is not just public passion that should persuade this body or the House to decide to change the Constitution. Our system of Government, I think, has worked for over 200 years because people have had faith in this system.

When I sat there in that room, 200 years after the writing of the Constitution, 55 of us went back in to recreate the event on its 200th birthday. As I indicated, it was written by 55 white men. So 55 of us—men, women, and minorities—went back into that room, and in a very solemn ceremony, celebrated the 200th anniversary of the writing of this wonderful document. I grew up in a small town, went to a small school and studied George Washington, and here I was in this chamber where George Washington's chair was at the front of the room—the very chair he sat in while presiding over the Constitutional Convention; it was still in the front of this room. Franklin sat over there, and Madison, Mason. It was a wonderful experience to sit in that room. It kind of gave you goose bumps to understand the history that was created there—the crafting of a document called the Constitution, which has represented the framework of self-government in the most successful way in recorded human history. There is no record of a society that has practiced self-government as successfully as has this country.

So I think now about sitting in that room and I think about the people who must have sat there 200 years ago as they tried to understand what kind of a framework would work. What kind of fabric would reach over a couple of centuries and more—maybe a couple of more centuries—and allow for our system of government to work? And one must admit that even with 11,000 different proposals to change the Constitution, those who wrote it originally did a masterful job. It is an extraordinary document in the history of civilization.

As I have said, it works because in people's minds and hearts there represents an acceptance that self-government is something they agree with and believe in and think represents the best hope for this country to make progress. We are now, as all of us understand, facing a difficult set of circumstances in our country. We face, I think, a debt crisis of sorts. It is a debt crisis with respect to fiscal policy—that is, the Government spends more money than it takes in, and a debt crisis, additionally, in our trade policy. This year was the largest trade deficit in the history of this country, or any country, for that matter.

How did we come to that point and what causes all of this? It is interesting if you listen to some of the political dialog. And this is done deliberately, and I understand that. It is, gee, you know something, the Members of Congress come to take their seat in the U.S. Senate Chamber and the first thing they want to do is cast another vote to spend more money. But all of us understand what happens. The reason we spend more money this year than last year is that there is an automatic pilot on entitlements, and this year we will spend much, much more on health care than last year.

Why? For two reasons.

In Medicaid, more people are poorer and the health costs are going up. In Medicare, more people are reaching Medicare age, more people are triggering that eligibility, and health care costs are going up. Therefore, we spent a lot more on health care this year than we did last year because health care costs in many cases have been running double and triple the rate of inflation and there is never a vote on that, just to use health care as an example. That is on automatic pilot and it increases and increases and increases.

And so the point of it is, it is not a case where there are 100 people voting to say, "Yes, let's increase that." It is an entitlement program that is now latched to inflation and whose costs move up every single year.

Revenue does not do the same. In fact, the income tax system and the personal exemption, for example, is indexed exactly the other way. As inflation increases, you then increase the personal exemption, so there is not an automatic increase in revenue. So you have an automatic increase in the cost of entitlements because of inflation because they are hooked to it and accelerate, and the revenue system is hooked just the opposite way so that it will not increase automatically. And we have created then this mismatch in policy and it just cannot exist; it cannot continue to exist.

I think all of us in this Chamber understand we have a circumstance in this country where we routinely have higher expenditures than we have revenue. And what happens to the difference? Well, we simply charge it. We issue more bonds and the children then are faced with more and more debt.

The deficit at this point is roughly $180 billion. But that is not the honest deficit. The honest deficit at this point would be the $180 billion, plus the $70 billion in Social Security surplus this year. That is used to reduce the $250 billion back to $180 billion. The real deficit is about $250 billion.

That is the way the accounting system works, unfortunately. It should not work that way. We need to try to address that.

We have a Social Security system that is now raising more money than it expends. The reason we have that is because Congress decided in 1983 that we were going to face a crisis in Social Security at some point and we had to start saving for it.

In 1983, I was serving on the House Ways and Means Committee. We had to write the Social Security reform bill. A lot of people do not understand the magnitude of that bill. It increased FICA taxes for both the employee and the employer. Certainly, all of them understand that. It even stretched out the retirement age from 65 to 67. I bet a lot of people do not know that is in the law. But it begins after the turn of the century. It is phased in very gradually.

But this Social Security reform package made a lot of changes. One intent of that package was to try to require a savings each year in order to meet the need when the baby boomers retired after the turn of the century, when the largest baby crop in American history hits retirement. Then we have serious financial problems with Social Security.

So the approach to reform that and respond to it was to say, "Let us have each year a forced savings in the Social Security system." And this year, incidentally, it is about $69 billion. We will take in $69 billion more in the Social Security system in revenue than we will spend out. Therefore, the surplus this one year will be nearly $70 billion.

Why are we doing that? Again, to save it for after the turn of the century when we are going to need it.

Now, is it being saved? No; I mean, technically there is a bond that goes in the trust fund but, as all of us understand, the money is still used and it is customarily referred to as a pool of money that reduces what we call the Federal deficit. The Social Security revenues are used as an offset to reduce the operating budget deficit of the Federal Government.

And the fact is that we cannot continue to do that. That breaks the promise with the workers. It breaks the promise with the senior citizens. Either we are going to save the money or we are not going to save the money. But let us not have a charade in which we say we are going to tax you to raise more money than we need to spend at this point and we promise to save it, but we really will not because it will be used to offset spending.

Well, I think that there is general agreement by Members in this Chamber that we have a debt crisis, a real problem. And what do we do about it?

We just heard the speaker before the last, Senator GLENN from Ohio. He accurately portrayed 2 years ago, when we had a very significant budget debate and we were asked to vote on a budget bill that cut the deficit over 5 years by $500 billion, we had to find all the votes for it on this side of the aisle. Not even one vote—one would expect somebody would vote wrong accidentally from time to time; you know, just not quite understand it. You expect to get one vote from the other side just as a result of an accident. But we could not even get one vote.

So we had to figure out how we could come up with a plan that cut the budget deficit by $500 billion. Some of it was not very popular. But I was perfectly happy to do that because that is our job. We are required to do that. We ought to do a lot more of it. And we did it. So we passed this Budget Deficit Reduction Act and the deficit has gone down.

I mean, the deficit was around $270 billion. It has gone down about $90 billion or so. Actually, the real deficit is $250 billion. And, you know, if you take the Social Security out, it was over $300 billion. Now it is down to about $250 billion.

But the point is, the deficit reduction package reduced the Federal deficit, but people did not like it very well because the medicine is not medicine that tastes very good. It is bitter-tasting medicine.

So we have come here today with another set of challenges and that is, following on the heels of 2 years ago when we passed the Deficit Reduction Act, and understanding that we did not pass health care reform and understanding that health care costs keep going up, not just up a bit but way up in the long term, the question is how do you then respond to an even greater challenge in the outyears? Do you continue to have increasing Federal deficits now in the outyears, because we have not been able to control health care costs? Or do we find a way to do something about that?

Some say, "Well, let's change the Constitution. Let's put in the Constitution a requirement that in 7 years, we balance the budget."

I am willing to consider that. I have voted for a constitutional amendment in the past. I hope I will vote for one in the future, and I may vote for this one, depending on a couple of caveats. I am going to raise those questions today, as I have raised them earlier today with those who have been the principal authors of this legislation.

The question is not whether we do something. The question is how we do something about this debt crisis. Do we pass a constitutional amendment to balance the budget? If we do, what kind of amendment will we pass?

Will we, after we consider a constitutional amendment to balance the budget and vote on it, if we enact it, restore some thread of confidence with the American people?

No, we will not have done anything, not even one penny's worth of progress to responding to the debt issue, by passing the constitutional amendment. No one here would stand, in my judgment, and allege that doing anything to deal with the deficit is going to be a part of this constitutional amendment.

The fact is, the amendment is simply words that will be a part of the constitution. Now, that is important, very important. But, in and of itself, it does nothing to advance even one penny's worth towards reducing the deficit. That will have to be accomplished by a series of other steps, including taxing and spending decisions that the Congress will have to confront. It can confront them with or without a constitutional amendment.

The question is, what would provide the greatest likelihood to advance toward the solution to this debt problem?

And let me ask a couple of questions that I have asked rhetorically today of those who are the principal sponsors.

The first has to do with Social Security. I know that we are told that the Social Security System is a system that is important to everyone in this Chamber, and everyone believes that we ought to protect and preserve the system. We continue to hear that time and time again.

We also hear virtually everyone say that the design to collect more money now for the Social Security System and have an enforced surplus to be saved until after the turn of the century when we need it is a design that virtually everyone subscribes to and believes in.

So we had a vote on this constitutional amendment, on an amendment offered by Senator REID, that said, "All right. Let's change this so that the definition of expenditures and receipts in the constitutional amendment to balance the budget does not include expenditures and receipts of the Social Security System."

The reason? Because if you include expenditures and receipts of the Social Security System—a system which, incidentally, is going to run very large surpluses in the coming years that we are going to need to save—if you do that, what you do is you create a circumstance by design that says we will balance the budget by using the Social Security trust funds to do so.

Well, you know, you would have to keep faith with one or the other, but you cannot keep faith with both. Either we say to the senior citizens and the workers who contribute the money that goes into this trust fund that this is saved and we pledge that it is a dedicated tax put in a trust fund to be used only for one purpose, or we do not.

Then you say: Well, we are collecting this dedicated tax. Yes, it is regressive. Yes, we agreed to do it for Social Security, but we have changed our minds. It is now going to be part of the operating budget deficit and it will be used to lower the general operating budget deficit of the United States. One of the two will be the case.

The question the Senate has to answer is which one of those two? We are told, "Well, we really cannot do much about that at this point. Maybe that could be accomplished in implementing legislation in which we describe what expenditures and receipts mean."

If that is possible, and it may be possible that we describe what expenditures and receipts mean in the implementing legislation and they do not mean Social Security receipts and expenditures, then that will solve the problem, in my judgment. That can be done by passing that portion of the implementing legislation prior to the vote tomorrow on the constitutional amendment to balance the budget.

There is a way for that to be accomplished. If that is accomplished, that will resolve my concerns with respect to the use of the Social Security revenues because the Senate will have spoken on that issue. But the Senate has to make a decision: Is it going to allow in this amendment the use of the Social Security reserves or surpluses to balance the operating budget deficit, or is it going to use them to save for the future?

It is not going to be both. It will be one or the other. We have already had one occasion in which the implication was that we would use the Social Security surpluses or trust funds to balance the operating budget deficit. If that is the case, that is not satisfactory to me.

If, on the other hand, we are willing to say in implementing legislation, prior to the vote tomorrow, that expenditures and receipts from the Social Security System are not included in the constitutional amendment as expenditures and receipts, as a matter of definition, then that resolves the problem, at least from my standpoint.

So the question whether that is resolved is not up to me. The question of whether that is resolved is a matter of intent with respect to those who offer the amendment and whether we can, through amendment tomorrow, by passing part of the implementing legislation, deal with that issue.

Let me mention the second issue that has been well discussed, and that is the issue of enforcement. Senator NUNN has raised, and I think appropriately so, the question of how will the constitutional amendment be enforced? Are we creating a constitutional amendment on fiscal policy and asking the courts to be involved in taxing and spending decisions, if, in fact, the Congress does not respond appropriately to what the Constitution requires?

If the answer to that is, yes, we will have the courts enforce the constitutional provision on the balanced budget, then I think there is serious concern by a number of other Senators. This can be resolved easily, and it can be resolved quickly. It can be resolved by precisely the addition of the amendment that was accepted last year ago when we debated this.

Senator Danforth offered and the Senate accepted the provision on enforcement that deals with the declaratory judgment capability. That is exactly the way to solve this. Senator NUNN has raised the issue. Others have. I say from my standpoint, we really ought to respond to this issue in a forthright way. I think it can be responded to in a forthright way. If that is the case, if that is dealt with, then, once again, I raise no objections about that issue.

I would like very much to see Congress advance a solution to this debt crisis. That solution may very well be a constitutional amendment to balance the budget. But I would not be comfortable supporting a constitutional amendment to balance the budget if riding on that vote was $3/4 trillion of Social Security revenue used in the future to offset operating budget expenditures in order to show a lower deficit for the Federal Government but which, at the same time, would mean we would not have saved in the Social Security system that which we promised to save.

It seems to me that the fate of this constitutional amendment to balance the budget will be determined tomorrow by a judgment made by those who offer the amendment on how they resolve, at least from my standpoint, those two questions. What is the will of the Senate with respect to the use of $3/4 trillion of Social Security funds? Are those trust funds going to be used to balance the operating budget deficit, or are they going to be saved?

We are told it is hard to sift through all of this. It is hard because of procedural circumstances. We are told that it is difficult to do these things. Look, when we are passing a change in the U.S. Constitution, this Senate should work its will to make sure that that change is exactly the kind of change we want and the country needs.

The last thing I want to do is make a mistake in amending the U.S. Constitution, because that is a mistake that cannot easily be corrected. This is not, in my judgment, bumper sticker politics or sloganeering. It is deadly serious business when we are talking about changing the basic Constitution of this country.

I have said before and I will say again, I think the debt crisis in this country is sufficiently serious to warrant this serious discussion about changing the Constitution, and I would be a part of those who are willing to change the Constitution if the two issues I have mentioned are resolved. If they are not resolved, I will not be a part of that change. The decision is not a decision I will make. The decision is a decision that will be made by those who are crafting this and whether they will allow the will of the Senate to be expressed on this issue of the use of $3 to $4 trillion of Social Security funds and on the issue of enforcement.

Some say, "Well, you voted for the balanced budget amendment previously." Yes, I have. It was different in the sense that it contained the enforcement provision provided by Senator Danforth. This does not. If they do that, it will make me more comfortable.

And one other thing has changed that is fundamental. We now have something called a Contract With America which proposes at the same time that we face a serious debt crisis in our country, a massive tax cut, ingeniously, in the mind of some, concocted so that a smaller part of it occurs in the first 5 years of budget scoring and a much larger portion occurs in the second 5 years, a tax-cut proposal that will reduce revenues in 10 years by some $3 to $4 trillion, it is estimated.

I think it is very difficult to have a serious discussion about a tax cut at a time when we are also having a serious discussion about changing the Constitution because this country has a debt crisis. In my own view, the job of the U.S. Senate is to find a way to cut spending. And, yes, we ought to be tough and cut spending and cut spending, and use the money to cut the deficit.

Now, there is a judicious way to cut spending and another way to cut spending. You do not have to do it with a meat ax, and you can do it with some judgment and some discipline. I confess that I am confused by those who are the loudest voices for changing the Constitution so that we would require a balanced budget, and who on the other side of their coverall pockets are saying, "We also want a $3 to $4 trillion tax cut. And we want more defense spending, and we also, by the way, want to resurrect Star Wars at the same time."

I have no idea where these arithmetic books come from, but they did not use them in my home school. I hope, as we work through all of this agenda, that we will come to a more focused agenda; that is, a determination by all Members, to head towards the same common goal: Relieve this country of a debt crisis that is getting worse, see if we can move towards a balanced budget, and try to do the right thing for this country's future.

I am willing to take risks. And I think we should be willing to take risks these days to try to respond to this problem; if not for us, then certainly for our children. But I am not willing to cast a vote for a constitutional amendment unless it is the right constitutional amendment, and I am hoping that, in the coming day or so, a couple of the problems that we have had discussed at length discussions can be addressed. If that is the case, I will vote for the constitutional amendment. If it is not the case, then those who have written this proposal will end up short of votes to pass this proposal.

Mr. President, I will be on the floor again tomorrow, and I assume we will have additional discussions. I say again that the decision of whether this constitutional amendment to balance the budget is enacted by the Senate is a decision that will be made by those who advance it, and whether or not they will allow the Senate to work its will on these two questions, from my standpoint, the use of the Social Security reserves and trust funds and, also, the question of enforcement.

Mr. President, I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I have listened with great interest to the remarks of the distinguished Senator from North Dakota who, it seems to me, has made three points or sets of reservations about the balanced budget amendment rather than two.

One is the failure to exempt Social Security from all calculations under the amendment; the second is the absence of any provision in the amendment that will prevent the courts of the United States from arrogating to themselves the right to write balanced budgets; and third is the impact on attempting to balance the budgets of various proposals in the House of Representatives for reductions in taxes.

I say with all the sincerity at my command with respect to those concerns of the Senator that two of the three, it seems to me, rather argue in favor of supporting this constitutional amendment than they do against it. The third is, as I believe the Senator from North Dakota knows, a concern which I share and share deeply.

Let me take the first two points first. The first question that arises with respect to Social Security is, is the Social Security System protected in some way by a defeat of this constitutional amendment in a way that it is not by its passage? Well, Mr. President, the answer to that question is clearly no. In fact, I am convinced that the Social Security System of this country will be stronger and more secure with the passage of this constitutional amendment in its present form than it will be either without a constitutional amendment at all or, alternatively, with a specific exemption in the constitutional amendment itself.

It is clear that the Senator from North Dakota, who is genuinely agonized by the choice in front of him, does wish that we balance our budget, does feel that the present system has failed to do so. And yet with each year that passes under the present system, the pressure on Social Security and, for that matter, on all other vital forms of spending in the United States, increases by reason of the failure of this and other administrations and the Congress to deal with problems of the deficit.

No one can feel that early in the next century when this country, if we make no changes in the way in which we operate, will literally have no money left for anything other than a handful of entitlements, no person can feel that under those circumstances Social Security will not be changed. It will, and it will be changed to the detriment of the recipients of Social Security retirement income.

Bringing our fiscal house in order, therefore, protects rather than threatens the Social Security System. And if, as I believe and the Senator from North Dakota believes, that we are not going to bring our house in order unless we establish some kind of external discipline, why then, Mr. President, the passage of this amendment in its present form is a protection for Social Security rather than a threat to it.

An addition to this amendment of a specific exemption for Social Security, I think, perhaps threatens the system even more because it will provide, by such a huge exception to the requirement for a balanced budget, an overwhelming temptation directed at future Congresses to redefine what is in Social Security, to include in the system all kinds of benefits which will go to the same classes of people who benefit from Social Security today that are not now defined as Social Security or, alternatively, in order to balance the budget, a reduction in the Social Security payroll tax and, therefore, in present surpluses in that system and a transfer of that taxing authority to the general fund in order to balance the budget.

So an exemption of Social Security written into the Constitution will not protect the system. A rejection of the constitutional amendment will not protect the system. The system will, I am convinced, be protected best by treating the budget deficit for what it is: A terrible threat to the country, a threat which Congress and Presidents have been unable or unwilling to meet in the past, and dealing with it through a constitutional amendment which requires all parties, everyone in the country, but most particularly future Presidents and future Members of Congress to be a part of the solution rather than a part of the problem.

The difficulty, of course, is that Social Security receipts and disbursements are receipts and disbursements of the United States. The payroll tax is a tax. Disbursements are disbursements. Markets, the economy of the United States, are not fooled by saying that money goes into and comes out of one pocket rather than another. If we are to balance the budget, we must balance it with all receipts and all expenditures, and those who are recipients of Social Security will be best off if we recognize that fact because if we fail to do so, they will be threatened along with everyone else.

On a second subject, Mr. President, I had not previously heard that one of the arguments against this constitutional amendment is a set of proposals in the House of Representatives with respect to tax cuts. The President of the United States himself in his budget submission has proposed tax reductions somewhat more modest than those in the so-called Contract With America, probably less effective in rebuilding our economy and opportunity for economic growth in the United States.

But again, with respect to a more liberal Member on the other side of the aisle who opposes the tax reductions contained in the Contract With America, it would seem to me that the existence of those promises would be rather an argument in favor of this constitutional amendment than an argument against it, since it is obvious that a requirement that the budget be balanced by the year 2002, as a matter of constitutional law, will require all Members of Congress—those who favor tax reductions and those who do not—to look much more carefully at the budget implications of each and every action, whether that action refers to spending or to taxing policies.

The third point made by the Senator from North Dakota, on the other hand, is one with which this Senator agrees. This Senator was one of several on this side of the aisle who voted in favor of an amendment proposed by the distinguished senior Senator from Louisiana a week or so ago to make clear that the responsibility for budget decisions, after the passage of this amendment, rests exactly where it does now: With the President and with the Congress of the United States, subject to the heavy discipline this amendment requires.

I do not wish courts substituting their judgment for the judgment of those who are elected by the people of the United States to make these vital and important decisions for the people of the country by any stretch of the imagination. And I hope—I think it is perhaps possible—that that kind of change may be made in this constitutional amendment. I am delighted with the thoughtful attitude toward it by the Senator from North Dakota.

That is a proposal which, in my mind, would strengthen this constitutional amendment. The other proposal would weaken it and would weaken the Social Security System at the same time.

Now, having listened to the last hour or so of debate on this floor, I am reminded of the set of categories with which I was impressed on the very first day of the debate on this constitutional amendment; and that is that Members of this body are divided into three groups with respect to the budget of the United States.

There is clearly a group of liberal Members, that does not include the Senator from North Dakota, that simply does not believe in a balanced budget at all, who like the status quo, who favor the present system, who believe that deficits are not harmful to economic growth or to the prosperity of the people of the United States of America.

Those Members are and should be opposed to a constitutional amendment which makes an unbalanced budget a much more difficult task to undertake than it is at the present time.

There is, in addition, Mr. President, a second group, a group represented at least in the original instance by the remarks of the distinguished senior Senator from Ohio about 1 hour ago, who tell us that they believe deeply and passionately in a balanced budget but that we ought to do it ourselves; that we should not engage in a change in the Constitution; that it is simply a matter of discipline.

Then there is the third and largest group—whether it includes 67 Members or not will be determined about 24 hours from right now—a third and larger group which believes that the present system is broken, that a balanced budget is desirable—in fact it is imperative if we are to do our duty to generations yet to come—which in many cases has tried varying formulae for bringing the budget into balance without a change in the fundamental system itself and observe simply as a result of our history that it has not worked; that the system is broken; that we need a radical change, a new direction; and that that new direction is represented by the amendment to the Constitution which is before us right now.

The difficulty with opposition to this amendment, in my view, Mr. President, is just this. The first and second categories tend to have a fuzzy distinction between them, tend to meld into one another. The distinguished Senator from Ohio began his speech by demanding a discipline on the part of Members of the Congress: do the job ourselves, do what we were sent here to do, do not ask for constitutional changes in order to do it. Then he launched into a criticism of all of the possible ways of reducing spending so that the budget might be balanced. He seemed to move, in other words, from category 2 into category 1. We should discipline ourselves; we should balance the budget on our own hook; but it would be a terrible threat to deal with any of the really expensive spending programs which in total result in our having a budget that is unbalanced.

It is in that second category, it seems to me now, that the President of the United States falls. We have heard a great deal about the fiscal discipline and the political courage that was involved in passing the budget here just 2 years ago which significantly increased taxes without significantly reducing spending and resulted in, or was coincident with at the time of rising economic growth, a relatively modest decline in the budget deficit.

However, that budget year is over, and we now have a proposal from the President that never, even under very rosy economic growth projections, results in a budget deficit of significantly less than $200 billion a year as far as the eye can see—5 years, 10 years, beyond that period of time—which suggests some modest tax reductions and even more modest spending reductions. It overwhelmingly lacks courage, a status quo budget, and it is perhaps the best single illustration of why we must pass this constitutional amendment.

When a President, who made deficit reduction the heart of his message during his first year as President, abandons that goal totally, lock, stock, and barrel, by the third year of his Presidency, it is clear we need to change the system under which we operate.

Of course, it is exactly that change which is proposed in this constitutional amendment. The dynamics of its passage and its ratification by the people of the United States will clearly be dramatic. If this proposal were a part of the Constitution of the United States today, the President of the United States could not validly have submitted the budget to us which he has before us right now. He would be required by his oath of office, by the Constitution of the United States itself, to be a part of the solution rather than part of the problem. Political cowardice would instead be political folly, an abandonment of a constitutional duty.

Many of us here might not like the proposals of this President with respect to balancing the budget, but he would have been required to propose such a course of action. And for those of us who dislike it, we would have been required to come up with an alternative.

Now, anyone can speak of the desirability of balancing the budget in the abstract and the lack of desirability of cutting any spending programs in reality, and there is no penalty for taking such a course of action. As and when this proposal becomes a part of the Constitution of the United States, there will be a huge penalty for such a course of action. Presidents and Members of Congress will be required to come up with budgets that either reduce spending or increase taxes or both. And if at some time there is a return to the majority of those who believe in higher taxes—a group clearly not in the majority today—they will be able to do so. There is nothing in this constitutional amendment that prevents balancing the budget on the backs of taxpayers of the United States. There is a clear majority in this body right now who will not do so. But if an election campaign is run successfully on the proposition that we need higher taxes, a Congress which wins on that platform will be able to do so. By the same token, those who believe that spending needs to be cut will be under the gun; they will be required to produce; and the President will be required to come up with some kind of proposal or another, better and more responsible than the proposal that we received from this President this year.

The dynamics of this constitutional amendment, Mr. President, are simply this: Everyone in elected office will have to be a part of the solution. Everyone will have to be a part of the game rather than allowing the challenge simply to be kicked down the road, left to the next administration, to the next Congress, to the next group of people who come here.

How much better off we would be had a proposal such as this been passed some years ago, but if we have learned anything in the course of the last decade or decade and a half, it is that the most sincere statutory solutions, like Gramm-Rudman, do not work because they get abandoned as soon as the shoe begins to pinch.

There is, in my view, no solution to the fiscal problems facing this country—no solution that will free our economy, no solution that will create more and more opportunities for the present generations and generations yet to come except to make the kind of changes proposed in this constitutional amendment.

It is clear that tomorrow's vote is going to be absolutely vital for the future of this country. It is clear that a majority of the people of the country want this constitutional amendment. It is clear that a majority of the Members of this body want that constitutional amendment.

What remains unclear is whether the necessary two-thirds in this body will follow logic, reason, and the will of their constituents and refer this constitutional amendment to the States of the United States for ratification.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I appreciate what the Senator from Washington has just been saying. I have been on the floor listening to him. He is one of the people I admire most in this body. He has been the attorney general of his State. He knows the legalities and the importance of doing this as a constitutional amendment. I am very pleased he is one of the leaders in this effort.

I would just like to say it is the most important vote that I will cast in my public life. That is how important the vote tomorrow is, in my opinion, for our future generations of this country. So I do think we need to focus on the basic issues.

The first one is why? Why do we need this to be a constitutional amendment? The national debt is a cancer on this country and we are passing it to our children and grandchildren. It is now over $4 trillion; $17,600 for every man, woman, and child in this country. For a family of four this is over $70,000 in debt. If a family of four has a $70,000 debt, that is a big responsibility. That is a burden on the shoulders of that family. You have to pay it out over time and it is not easy. In fact, every family of four in this country has the $70,000 debt that we will only be able to erase if we pass this amendment tomorrow. It is soaking up capital that we need for investment in our businesses, and it is 26 percent of our budget that we are paying in interest.

That money could be going into investment capital for investment in equipment that would create jobs, that would help our economy and would help the people of our country get back to work. But instead, that money is just going to pay interest on the national debt.

It has been getting worse just in the last few years. Since 1975, 20 years ago, our per capita debt has increased more than sevenfold. So it is something that is getting worse, not better. In fact, the per capita debt has increased $900 just since we started debating this amendment earlier this month. It is $900. You have seen the charts. It just keeps going up as we talk. We must take drastic action. This is for the Constitution.

Let us take some of their arguments. Their arguments are: Do it by statute. We can do it if we have the resolve to do it. But in fact we have tried for the last 30 years to do what was right and Congress found it was always easier to spend than it was to cut. They found it was even easier to tax than to curb that voracious appetite for spending. I think we have to take the very important step of getting this country back on track. We have tried to do it by statute. We tried Gramm-Rudman. We tried the 1990 budget agreement. But every time something comes up and Congress wimps out and we do not start balancing the budget. We must have a constitutional mandate if it is really going to work. We have tried everything else. If we are going to do what is right we must do it by amendment.

Some of the opponents say: Tell us where you are going to cut. We will probably vote with you if we know where you are going to cut. It would be a year from now before we could get through all of these arguments and then go to the argument of how we are going to make these cuts on sort of a try it basis, not for real.

No, every business and every household in America cuts their budget the same way. They determine what is the priority, what is the revenue, and then they say: OK, here is what we have to spend. They do not say here is what I would like to spend and I will just take care of it later. They do what every State does, they find out what the revenue is and then they prioritize their needs. I do not know why the Federal Government does not get it. I do not know why the U.S. Congress cannot figure out that we, too, can do what every State, every business and every household in America does and that is determine what the revenue is and then decide what the spending priorities are. That is the responsible way to approach the budget.

There have been legitimate arguments on the issue of exempting Social Security. I think a lot of people have thought why do you not set Social Security aside? Of course we believe Social Security is inviolate. But we are talking about amending our Constitution. We have seen what Congress has already done to Social Security without one vote by any Republican in the Congress, on the House side or the Senate side. Taxes were increased on Social Security.

I do not think we can assume Congress is going to do the responsible thing. Let us see what would happen if we exempted Social Security. All of a sudden more things would be moved into Social Security. We would have Social Security take up welfare; perhaps Medicaid. Everything that Congress wanted to stuff outside of the quota that will be established with a balanced budget amendment would just be locked into Social Security and there is nothing to prevent it.

If you are going to exempt anything you cannot have a balanced budget amendment. It will not be effective if anything is exempted out because whatever it is will then get everything that Congress wants to put in that will not count against the restraints that we will put on ourselves through a balanced budget amendment to our Constitution.

I am going to support Social Security and the veracity of our Social Security system as long as I am in public life. But if we take that outside of this constitutional amendment we will not protect Social Security. It will be the opposite. We will make Social Security more precarious than it is now because we will not have the ability to say: This is the budget. Here is the revenue. And we are going to live within our means like every family and every business and every State in this country strives to do.

Senator PAUL SIMON, the Senator from Illinois, has been one of the prime movers in the balanced budget amendment. I admire and respect him greatly. Last year, when he cosponsored this amendment, he got all wound up and he said the reason that there were so many heroes at the Alamo is because there was no back door.

I love Senator SIMON but I had to come down on the floor and say to my distinguished colleague that his facts were wrong but his point was right. The fact is, there was a back door at the Alamo. It was a line drawn in the sand and every man at the Alamo was given the choice of crossing the line to fight for the independence of Texas, or to leave at that time. And every man at the Alamo voluntarily walked across that line, and Jim Bowie was carried in his stretcher across that line, to say we are going to commit ourselves to fight for the independence of Texas and we are going to voluntarily close that door. So they were heroes. They were real American heroes.

But Senator SIMON was making a point, and the point was right. That is the same thing that we can do right here tomorrow; that is, close the back door, become a hero. The vote tomorrow is what is right for the long-term future of this country. That is what will close the door, and we will do it in a responsible manner because it is the right thing to do for our children to stop this $18,000 debt that they have over their heads right now. Yes. This is the most important vote that we will ever cast.

Thomas Jefferson, one of our Founding Fathers, must have feared that, in all of the thinking about what might come in the future, perhaps there would be a tendency to spend more money because he probably sensed that it is human nature to want to spend the money to do the good things that all of us would like to do. Two hundred years ago, Thomas Jefferson said:

> The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts and morally bound to pay them ourselves.

Thomas Jefferson went on to say:

> There does not exist an engine so corruptive of the government and so demoralizing of the nation as a public debt. It will bring us more ruin at home than all of the enemies from abroad.

He realized that this is not something that should be done just by statute. If it is really going to have teeth, he questioned whether it should not go into the framework of our Government, the policy statements that will last through the generations. And I think his instincts were right, and they have been proven so as our country has gone headlong into over a $4 trillion debt. While Thomas Jefferson was very farsighted, I do not think even he could have foreseen a $4 trillion debt. But he knew that there was the possibility that weak Congresses would spend now and pay later.

We have the ability to do what I think Thomas Jefferson thought we should have done in the first place; that is, put in our framework of Government, if we think something is so important, that we will put it on our priority list and we will pay for it now, and if it is not that important, it does not meet the test of responsible governing.

So I hope that we will take this monumental opportunity that we have tomorrow. It is probably the best chance we are going to have in my lifetime to do what is right to get this country back on track and to pass a balanced budget amendment to our Constitution so that our State legislatures, while they are meeting now, will have the opportunity to ratify or not ratify, but will have the opportunity to vote on this very important framework of Government issue. And I hope we do the right thing.

Thank you, Mr. President.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER (Mr. BOND). The Senator from Michigan.

Mr. LEVIN. Mr. President, there are three amendments that I have offered which I want to describe tonight to the body.

First, I am offering two amendments regarding the vote of the Vice President of the United States in the two situations in which the balanced budget amendment calls for a constitutional majority. Section 4 states:

> No bill to increase revenues shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

Section 5 states:

> Provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution adopted by a majority of the whole number of each House which becomes law.

So the question has arisen in debate as to whether or not the language in these provisions "the whole number of each House" would deny the Vice President of the United States a vote to break a 50-to-50 tie. While it is clear that 51 votes would be necessary under this provision, it is unclear whether the Vice President would be denied a vote in an equal division of 50 to 50. Why should he or she be so denied? The Vice President is not denied a vote in a 50-to-50 tie situation anywhere else in the Constitution. The proponents of the balanced budget amendment in the House and the Senate have not agreed about the effect of this language. In the House of Representatives, the chief sponsor of this constitutional amendment, Representative SCHAEFER of Colorado, stated in the CONGRESSIONAL RECORD on January 26:

> This language is not intended to preclude the Vice President in his or her constitutional capacity as President of the Senate from casting a tie-breaking vote that would produce a 51–50 result.

Representative SCHAEFER goes on to say:

> Nothing in section 4 of the substitute takes away the Vice President's right to vote under such circumstances.

However, the principal Senate sponsor, the Senator from Utah, stated on the floor of the Senate on February 16 that the Vice President would be denied the deciding vote in a 50–50 situation. He went on to cite the example of the President's 1993 deficit reduction package, which was passed by a 51 to 50 vote with the Vice President casting the deciding vote, as legislation which would not have passed had this constitutional amendment then been in effect.

Mr. President, the two amendments which I have offered are very straightforward. One makes it clear that the Vice President has a vote. If that fails, the other would say that he does not.

Think for a moment about a future situation like the Persian Gulf war. A future President required to make a decision about the deployment of thousands of American troops, in a situation in which he might not know if they would be attacked or required to enter into hostilities, might well not be able to assess whether the outlays required to support those troops would exceed the balanced budget because he does not know if hostilities will occur. But he would be reluctant, properly, to deploy those troops without the certain knowledge that they would be unequivocally given the necessary resources to support them in the field, if attacked or if needed. Approval of such authority might be a close question as it was in the case of the gulf war.

What if we faced a 50-to-50 vote to waive under section 5? With the language unclear, is it not likely that the Vice President would be in the chair, and that he or she would vote? Would there then be a point of order raised that his vote was unconstitutional under section 5? What if the Senate voted 50 to 50 on the constitutional point of order? The Vice President might then break that tie. Might not the law providing the waiver then be subject to a lawsuit arguing that it was unconstitutional because the Vice President had voted? Should we invite this sort of constitutional crisis by leaving ambiguity in the amendment? I say no.

I would prefer that we approve the first of these amendments, thus preserving a vote for the Vice President. I urge my colleagues to vote against tabling amendment No. 310. However, Mr. President, I hope that those who believe that the Vice President should have no vote in such circumstances would support amendment No. 311.

Logically, every Senator, in my view, should support one amendment or the other. A vote to table both is a vote to leave this proposed constitutional amendment ambiguous on a matter of considerable importance. I will reiterate one critical point. The chief sponsors in the House have specifically indicated in a formal answer on the record that it is not intended to deny the Vice President a vote in these circumstances. The chief sponsors in the Senate have denied that it is intended to deny the Vice President a vote in these circumstances. This is not a record which should be allowed to remain in this condition. The stakes are simply too huge and we should clarify this one way or the other.

Mr. President, the constitutional amendment we would be voting on tomorrow does not balance the budget. By its own terms, some future Congress would still need to adopt enforcement and implementation legislation to achieve a balanced budget. The argument has been made that we have tried everything. We have tried legislation; we have tried statutes; we have tried passing laws. Why not a constitutional amendment?

The argument goes: "We can't depend on legislation, so let's try a constitutional amendment."

So what does the constitutional amendment do? It depends on the same kind of legislation. The exact same kind of legislation needs to be enacted under the terms of this constitutional amendment which the sponsors of the amendment say has previously been ineffective.

The constitutional amendment may sound fiscally conservative, but it will delay the day of reckoning for up to 7 years and it will still depend upon congressional action for there to be a reckoning even then.

I have offered an amendment to the constitutional amendment. My amendment would require this Congress to pass the needed enforcement legislation and not pass the buck to a future Congress to pass the enforcement legislation, which is so critical if this constitutional amendment be effective.

My amendment provides that the constitutional amendment, if we adopt it tomorrow, would be submitted to the States for ratification only after we have enacted legislation specifying the means for implementing and enforcing its call for a balanced budget.

Now, there are two advantages to this approach. First, it places the responsibility on us instead of leaving it to the future. Second, the States would be informed how the enforcement mechanism would work so they could consider that in their ratification deliberations.

First, Mr. President, there is no doubt that for this amendment to be effective, a Congress must pass enforcement or implementing legislation. Section 6 reads that:

> The Congress shall enforce and implement this article by appropriate legislation.

This is different from most other amendments to the Constitution and most other provisions in the Constitution.

For instance, the 14th amendment says that "Congress shall have the power to enforce," but it is not dependent upon the Congress adopting legislation. The 15th amendment says that "Congress shall have the power to enforce." Again, a court decision has decided it is not dependent upon Congress adopting enforcement language. The 19th amendment, "Congress shall have the power to enforce"; the 23rd amendment, "Congress shall have the power to enforce"; the 24th amendment, "Congress shall have the power to enforce"; the 26th amendment, "Congress shall have the power to enforce"; the 18th amendment, "Congress and the several States shall have concurrent power to enforce."

The 13th amendment, the amendment which abolished slavery, provides that "Congress shall have the power to enforce." But the 13th amendment, like the others I have described, is not dependent on legislation. It is enforceable without legislation.

It would be unthinkable, I believe, for any of us to believe that the 13th amendment, or an amendment like it, would pass which said something like the following: Slavery will be abolished in this country when Congress enacts legislation to abolish it.

The 13th amendment and the other amendments which I have described are self-enforcing. They do not depend upon legislation for them to be enforced.

Mr. President, the importance of the need for Congress to adopt implementing legislation has been discussed and described by many, many people. The most recent Director of the Congressional Budget Office, Mr. Reischauer, said the following about this issue. He said, "First of all," and here I think he is in agreement with most, if not all, of us, "a large reduction in Government borrowing is highly desirable." But then he said that "A balanced budget amendment, on its own, does not advance the chances for lowering Federal borrowing."

"A balanced budget amendment, on its own, does not advance the chances for lowering Federal borrowing." He put it another way in his testimony. That "A balanced budget amendment, in and of itself, is not a solution, rather it is only a repetition in an even louder voice of an intention that has been stated over and over again during the course of the last 50 years." He went on to say that "A balanced budget amendment, in and of itself, will neither produce a plan nor allocate responsibility for producing." In perhaps his most pointed comment, he said that "Without credible legislation for the transition that embodies an effective mechanism for enforcement"—an effective mechanism for enforcement—"Government borrowing is not going to be cut." And he concluded that thought by saying, "But the transitional legislation and the enforcement mechanism are 95 percent of the battle. If we could get agreement on those," he said, "we would not need a constitutional amendment."

Yet, this constitutional amendment depends on there being an agreement on an enforcement mechanism by a future Congress.

Supporters and sponsors of this legislation have said in the past, over the years that this constitutional amendment was being considered, that enforcement legislation is critical to its success.

Senator DOMENICI, back in 1982, said that "Congress is going to have to pass some very difficult enabling legislation to carry out the purposes of this amendment."

Senator THURMOND, in August of 1992, said: "The amendment would not be self-enforcing. There would be a clear responsibility upon Congress to develop procedures to ensure that it is capable of satisfying its new constitutional responsibilities under the proposed amendment." Again, he said back in 1982, "There is no serious question that Congress will have to develop effective implementing legislation."

Senator HATCH, the prime sponsor of this legislation, in March of 1986, said the following:

> There is no question that Congress would have to pass implementing legislation to make it effective. In that sense, it is not self-executing. It would be the obligation of Congress, after the amendment is passed by both Houses and ratified by three-quarters of the States, to, of course, enact legislation that would cause a balanced budget to come about.

The committee report for this legislation says the following:

> Congress has a positive obligation to fashion legislation to enforce this article. An amendment dealing with subject matter as complicated as the Federal budget process must be supplemented with implementing legislation.

In a colloquy that I had with Senator SIMON the last time that this amendment was before this body, we had the following questions and answers:

> Mr. LEVIN. . . . How would the monitoring of the flow and receipts of outlays be done to determine whether the budget for any fiscal year is on the track of being balanced? Would this require implementing legislation?
>
> Mr. SIMON. There would have to be monitoring, and future legislation would have to take care of the implementation of that monitoring.
>
> Mr. LEVIN. What exactly is the definition of receipts and outlays? Specifically, would the receipts and outlays to the Bonneville Power Administration be receipts and outlays of the United States pursuant to this constitutional amendment? Would the answer to these questions require implementing legislation?
>
> Mr. SIMON. Implementing legislation will be needed on some of these peripheral questions. . .
>
> Mr. LEVIN. . . . In an instance in which the Office of Management and Budget and the Congressional Budget Office disagree with each other on what a level of outlays is, how will the dispute be resolved so that it can be determined whether or not outlays exceed receipts?
>
> Mr. SIMON. Future legislation will have to take care of this.
>
> Mr. LEVIN. Who will determine the level of receipts and whether a revenue bill is "a bill to increase revenues"? . . .
>
> Mr. SIMON. That will also have to be determined through future legislation.
>
> Mr. LEVIN. At what point will it be determined that outlays will in fact exceed revenues and that action such as a tax increase, spending cuts, or tapping into a rainy day fund will be required? . . .
>
> Mr. SIMON. . . . future legislation will work out the details.

The importance of enforcement legislation is recognized inside the constitutional amendment itself. In section 6—and the report of the committee makes it clear that within section 6 it says that the Congress shall enforce and implement this article by appropriate legislation—the words of section 6, in the words of the committee report:

> This section recognizes that an amendment must be supplemented with implementing legislation.

Again, Senator HATCH, the distinguished chief sponsor of this legislation, said as recently as January 30 that:

> Moreover, under section 6 of the amendment, Congress must, and I emphasize must, mandate exactly what type of enforcement mechanism it wants, whether it be sequestration, rescission, or the establishment of a contingency fund.

Mr. President, there have been a number of critical questions raised during this debate that have also been left to enforcement legislation. There is the question of impoundment. Will the President have the right to impound under this constitutional provision? The answer is, that will be determined by implementing legislation.

Then the question is, what is the role of the courts? An absolutely essential question for many Members of this body, indeed a question so essential that some votes may be dependent upon making certain that the courts will not be able to raise taxes or to veto appropriations.

And, by the way, the chief sponsor in the House said specifically in a question and answer colloquy that a court could have the right to veto an appropriation or a revenue.

These are absolutely essential questions to not be left ambiguous. The answer is future enforcement legislation will determine whether or not the court will have any such authority.

Well, it is not good enough to leave the critical issues and the teeth to future enforcement legislation when this Congress can and should adopt that legislation prior to this amendment going to the States, assuming, again, that it passes the Senate tomorrow. There is no reason why we should not accept the responsibility of deciding what is in that enforcement legislation, what the teeth will be, what the sequestration mechanism will be, and not just simply kick the enforcement can down the road.

If we do that, it means there is no hook. We are off the hook for 7 years, at least, because 2002 is the first year it is enforced. And we may find there is no hook then.

Mr. President, it has been said if this constitutional amendment is adopted, that we will adopt some future implementation legislation; because we have all taken an oath to uphold the Constitution, that that will increase pressure on Members to adopt enforcement legislation.

First of all, our oath to the Constitution does not require, does not assure, we will be able to agree on any particular mechanism or set of procedures to carry out the constitutional amendment if it is adopted. The oath we take is not a group oath, it is an individual oath. As individuals, we would be duty bound to carry out the intent of the Constitution, of course, duty bound to support an endorsement mechanism, presumably. But that is far different from language being self-enforcing, because there is no assurance that a majority of the Congress would agree on the same mechanism, even though every Member might carry out his constitutional duty and vote for one enforcement mechanism or another.

To the extent that the Constitution adds some pressure to reach a majority decision on an enforcement mechanism, that pressure would be significantly enhanced and made much more real if the Senate adopts my amendment tomorrow.

Under my approach, the pending constitutional amendment—assuming, of course, that two-thirds of the Congress votes for it—would be sent to the States for ratification only after the enforcement legislation is passed. And to the extent that there is a hammer on Members in the language of the pending amendment to adopt enforcement language down the road, there is a hammer on Members to adopt the enforcement legislation if the pending constitutional amendment is not sent to the States for ratification until after we adopt that enforcement mechanism legislation.

Now, without my amendment, if we adopt a constitutional provision tomorrow, it is but an empty promise. It would allow the Congress to put off adopting the credit implementation legislation, and therefore allow the argument to be made that the deficit was cured, although, in fact, the strong medicine has not even been taken.

There are two advantages, again, to adopting this amendment. First, it places the responsibility on this Congress instead of leaving it to a future Congress. We should not kick that enforcement can down the road to some uncertain time and some uncertain fate. Enacting a clear mechanism for enforcing the constitutional amendment before the amendment goes to the States is a way of assuring that we meet our responsibility instead of abdicating it.

Second, the States would be informed how that mechanism would work so that they could consider that in their ratification deliberations. This would not be a long delay. We were given assurances by the Senator from Utah the other night relative to part of the enforcement legislation as it relates to the courts, assurances that were given to the Senator from Georgia, that that could be worked out during a summit by the end of the summer. I believe he said this need not be a long delay. This is just a matter of months to be sure that we do not just say, in a constitutional amendment, some future Congress should adopt enforcement legislation to achieve a balanced budget.

My amendment, if adopted, would make sure that if we adopt a constitutional amendment, that before we send it to the States for ratification, that we adopt an enforcement mechanism to achieve a balanced budget. That will make it much more likely. I am very concerned that enforcement mechanism would be adopted and that it would then be subject to the scrutiny of the States in determining whether or not they should ratify this amendment.

Mr. President, I thank the Chair. I yield the floor.

Mr. HATCH. Mr. President, I will not be long. I understand that the Senator from Maryland would like to speak.

I would like to point out one more time about our balanced budget debt tracker. We only have 1 more day to go. We might as well finish what we started, and that is after the 27th, we were $22 billion in debt; after the 28th, we will be up to $23 billion; the 28th day, we have added to our deficit of $4.8 trillion since the beginning of this debate. Frankly, we are now in day 29, and here we are, as we debated this matter, we are now up to $24,053,760,000 in additional debt to the baseline of $4.8 trillion since we started debating. We will be adding one more of these green debt tracker slots tomorrow, the 30th day since we started debate on this matter.

It is apparent this will go up every day we do not pass a balanced budget amendment. It is apparent we will have to have $300 billion a year in added deficits, maybe $350 billion a year in added deficits every year that we do not do something about this. So this balanced budget debt tracker is a very, very, important indication of just where we are going.

We have to do something about it. Everybody admits that. Are we going to do business as usual, which is where we have been for the last 60 years—certainly, the last 36 years, when we have only balanced the budget once—or are we really going to do something new here, something that would work, to put the pressure on Presidents to have to do something about bringing the budget into balance, and something that would put pressure on Members of Congress to make priority choices among competing programs?

If we do not do that, we are mortgaging the future of our children and grandchildren. I hate to see that. Tomorrow is a big day. By the end of the day, we will know whether we passed a balanced budget amendment, and I hope we will. I will limit my remarks to that and the chart tomorrow, and hopefully we can finish tomorrow in a short time.

Mr. President, the opponents of the balanced budget amendment seem to have an infatuation with requiring the implementation plans before we pass the balanced budget amendment. This latest version requires us to pass the implementing legislation before we pass the amendment itself. This is, to say the least, a peculiar way of proceeding.

This amendment is a requirement that we put the cart before the horse. Mr. President, how can we implement a constitutional amendment which has not yet been ratified?

If the Framers worked as this proposal suggests we should, all Federal laws would have had to be passed before there was even a Congress to pass them. Does the Senator believe we should have had to choose all the jurors for a trial before we adopted the sixth amendment? Or pass the 1964 Civil Rights Act before we adopted the 14th amendment?

This type of amendment is a perfect example of why we need the balanced budget amendment. Congress is always looking for a way out—a way to stave off responsibility. And the Congress knows that the balanced budget amendment means that it will be held responsible for its actions.

It also confuses the debate about the rule with the debate about outcomes within the rule. The proponents are interrupting the discussion of the rules until the outcomes within the rules can be determined. It is like stopping the discussion of the rules of a poker game until it can be determined what hands will be dealt. We need to establish this new regime of rules before we can start implementing it.

Mr. President, I have made it as clear as I possibly can that after the balanced budget amendment is ratified, I will be more than happy to work with any Member of the Senate in drafting the implementing legislation. I cannot do any more than that. It is simply not possible to do as the proposed amendment seeks, to pass the implementing legislation before the balanced budget amendment is ratified.

I hope we can put this proposal aside and move back the real issue at hand—will we stop the Government's slide into an endless pit of debt or stand idly by and watch as the country falls into economic crisis?

IN OPPOSITION TO THE BALANCED BUDGET AMENDMENT

Mr. MOYNIHAN. Mr. President, the distinguished scholars and administrators of the Jerome Levy Economics Institute of Bard College placed an advertisement in this morning's Washington Post which delineated the perils of writing economic policy into the U.S. Constitution. This document deserves the fullest attention of the Senate and I ask unanimous consent that the entire text be printed in the RECORD.

There being no objection, the item was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Feb. 27, 1995]

AN INVITATION TO DISASTER

The Balanced Budget Amendment would destroy the ability of the United States government to prevent economic depressions, to respond to natural disasters, to protect the savings of tens of millions of working Americans, and, over time, to enable the economy to grow.

The ability of the federal government to pump money into an ailing economy has time and again in the postwar era limited the depth and duration of a recession and prevented a depression. During the 1957–58 recession, the Eisenhower administration deliberately increased the deficit. That strategy brought a rapid end to the decline. During every recession thereafter, either by design or through circumstance, a deficit was crucial in containing and ending the decline. For example, tax reductions adopted in 1981 were not planned as a counter-recession tactic, but the enacted cut that took effect in 1982 was the key to the recovery that began in that year.

Floods in the Midwest, hurricanes in the Southeast, and earthquakes in California during recent years prompted the federal government to spend hundreds of millions to relieve suffering and limit damage. Scientists who study natural phenomena warn against worse disasters. The balanced budget amendment would keep the federal government from dealing with such calamities.

Occasional man made disasters have occurred throughout the history of capitalism—for example, the savings and loan debacle of the 1980s. Had the federal government not been able to provide the money to validate the deposits of millions of ordinary citizens, their losses and runs on saving and commercial banking institutions would have recreated 1932. To assume that financial crises will never recur is unrealistic.

The balanced budget amendment ignores the nature of our monetary system. The Federal Reserve and the commercial banks issue money against their holdings of federal debt. Under a balanced budget amendment, the debt will not increase. Eventually the system will not be able to create the money the economy needs in order to grow.

The Jerome Levy Economics Institute.

S JAY LEVY,
Chairman.
LEON LEVY,
President.
HYMAN MINSKY,
Distinguished Scholar.
DIMITRI PAPADIMITRIOU,
Executive Director.
EDWARD V. REGAN,
Distinguished Fellow.
DAVID A. LEVY,
Vice Chairman, Director of Forecasting.

Mr. CHAFEE. Mr. President, there is no greater problem facing the country today than our continual failure to balance the Federal budget.

Unfortunately, this is not a new phenomenon. Over the past 33 years we have balanced the budget once, one-quarter of a century ago in 1969. Had the Social Security program not generated a surplus, we would not have balanced the budget in that year either.

Furthermore, the forecasts put out by the Congressional Budget Office and the administration show that, absent dramatic action on our part, these deficits will not end any time soon. For example, CBO predicts that the deficit in the year 2005 could be as high as $421 billion.

The President's budget, which was released early this month, forecasts Federal deficits of approximately $200 billion for each of the next 5 years, and gives no promise that they will decline anytime after that period. Even worse, the President has taken little action to address this problem.

In the President's plan, $81 billion of deficit reductions are relatively minor when it is realized those occur over 5 years; $60 billion of those cuts come from keeping discretionary spending at today's level.

Why is it bad that the Federal Government routinely spends more than it takes in?

We are told in soothing tones by the administration that the deficits are each year predicted to be a lower percentage of the gross domestic product. That is somehow meant to be grand news, even though the dollar amounts of the deficits constantly grow.

The problem is that every year we run a deficit, we must borrow to fund the shortfall. From the beginning of our country until today, we have incurred a debt of about $5 trillion, with the overwhelming portion of that accumulated over the past 15 years.

The cost of servicing that debt will total $339 billion in 1995, making interest the second highest single Federal expenditure after Social Security.

To put this number in perspective, our gross interest expense for 1995 is more than the entire Federal budget 20 years ago. Imagine how this money could be used to improve our education, or better our health care system, or bolster our efforts to combat crime.

Aside from diverting resources that could be used for much better purposes, the deficit also places a great strain on the national economy. The most notable effect is on interest rates.

Alan Greenspan, Chairman of the Federal Reserve Board, recently testified before the Finance Committee on this subject. According to Chairman Greenspan "investors here and abroad are exacting from issuers of dollar-denominated debt an extra inflation risk premium that reflects not their estimate of the most likely rate of price level increase over the life of the obligation, but the possibility that it could prove to be significantly greater." This risk premium is directly the result of our large Federal budget deficits.

These artificially high interest rates affect all Americans. Families pay this risk premium when they borrow money for a home, for a new car, to finance their children's education.

The Federal deficit also has a negative effect on future economic growth. Our potential to expand the economy is directly linked to the amount we invest in physical and human capital. Newer and better machinery, and a work force whose skills are continually updated, provide the foundation for increasing our output of goods and services. With this higher productivity comes a higher standard of living.

To achieve this, however, we must have a pool of national savings from which this investment can be made. Unfortunately, our national savings rate has declined dramatically over the last decade, in part because the Federal Government has engaged in a policy of dissaving through its deficit spending. The Federal Government's reliance on borrowing to pay its bills crowds out the private sector, making it more difficult for it to obtain financing.

But the worse consequence of this fiscal irresponsibility is that we are jeopardizing the economic futures of our children and grandchildren. We are living beyond our means and passing along the bill to future generations.

I recently ran across a paper which described this problem. The paper discussed the idea of generational accounting, which a process of measuring how Government policies affect the distribution of income and wealth among different generations rather than simply over a 5- or 10-year budget period.

To make this comparison, the authors calculated lifetime net tax rates for various generations. My generation will face a lifetime net tax rate of 26 percent. This compares to a lifetime net tax rate of 34 percent for a person born in 1991.

What is troubling is the gloomy forecast for future generations. According to this analysis, if we do not take action to improve our fiscal situation, future generations will face lifetime tax rates that approach 70 percent. In other words, future generations can look forward to handing over 70 cents of each dollar earned to the Government if we do not reverse our present course.

For the past few years the administration has also included a generational analysis in its budget documents. Its analyses generated results that were similar to the figures just mentioned. Unfortunately, the President chose to delete this section from this year's budget.

Why will future generations face such a daunting tax bill? Consider the obligations we have levied upon them. The Social Security Program, while solvent today, faces drastic long-term problems once the baby-boom generation—born in the 1950's—retires. The surpluses, that the program is currently generating, will reverse in the year 2013 and will quickly evaporate, leaving workers in the middle of the next century with a hefty bill for providing retirement benefits for those working today.

On top of that, the general fund has amassed $5 trillion in debt to date and is likely to add $750 billion more even with the passage of the balanced budget amendment. At some point that debt must be repaid.

What exactly does the balanced budget amendment do? Very simply, it prohibits Federal outlays from exceeding Federal receipts unless a three-fifths majority of both Houses of Congress approve a specific deficit.

In other words, it says that Congress can only spend what it is willing to collect in taxes, unless Congress determines that there is a legitimate reason for running a deficit. Such a situation could arise, for example, if the country fell into a recession or was hit with a natural disaster. But those would be the exceptions which Congress would expressly authorize. The balanced budget constraint on Congress would be comparable to that which every American family faces.

Mr. President, this amendment makes fiscal responsibility the norm rather than the exception.

The Federal Government has failed to balance its budget for 25 straight years. Over this period there have been both Republicans and Democrats in the White House, and the Senate has had both Republican and Democratic majorities. Neither party is free from blame. The truth is, there has not been the will to make the tough decisions necessary to balance the budget

The amendment before the Senate today demands the same fiscal responsibility from the President that it establishes for Congress. It requires the administration to submit a budget to Congress in which outlays do not exceed receipts. I think that makes perfect sense. It recognizes that both branches of Government must participate in this very difficult task if we are to succeed.

In addition to requiring a balanced budget, the amendment requires a majority of the whole number of each House of Congress to approve, by a rollcall vote, legislation raising revenue. Frankly, this is not a critical component of this proposal, because historically most tax bills have passed Congress with constitutional majorities.

However, I am grateful that the sponsors have not sought to include a three-fifths majority requirement for raising revenue. That issue was considered and rejected by the House, and rightly so. That provision would be disastrous for this country, because it would significantly hamper our ability to govern. Facing a potential deficit, Congress would, in all likelihood, be forced to cut spending rather than raise revenue because the latter would be much more difficult to accomplish. While I support spending cuts over tax increases, it would be unwise for us to tilt the playing field against raising revenue as part of the Constitution. I would not support this amendment if the three-fifths majority for raising revenue were included in it.

The amendment includes a process whereby its requirements could be waived by a simple majority for any year in which a declaration of war is in effect or where the United States is engaged in military conflict which causes an imminent threat to national security. I think those are legitimate circumstances to warrant deficit spending, and the amendment provides the appropriate amount of flexibility to adequately address them.

Mr. President, the amendment encompasses the entire Federal budget. Section 7 states that "total receipts shall include all receipts of the United States Government except those derived from borrowing" and that "total outlays shall include all outlays of the United States Government except for those for repayment of debt principal."

What this means is that every dollar that comes into the Treasury and every dollar that goes out of the Treasury will be counted in determining whether the budget is balanced.

Again, this makes eminent sense and is exactly the way every family in America must manage its fiscal affairs.

Much of the effort to derail this resolution has centered on excluding certain programs from the balanced budget requirement. In fact, this assault began during the amendment's consideration in the Judiciary Committee, when an effort was made to exclude Social Security.

Mr. President, I find it inconceivable that we would consider adopting, as part of the Constitution, an exclusion for Social Security or any other aspect of the federal budget. I am firmly behind protecting the fiscal soundness of the Social Security System, but I think it is absurd to exempt a program that represents 29% of all Federal receipts and 22% of all Federal outlays.

The true folly with this effort to protect Social Security is that by applying different rules to that program it becomes a magnet for efforts to circumvent the balanced budget amendment. Other federal programs will begin to find their way under the Social Security umbrella, and we will have achieved little if anything in the way of deficit reduction. This loophole, once opened, would be very difficult to shut.

Exempting Social Security receipts would also provide a perverse incentive for future Congresses to shift Social Security taxes revenues to the general fund. This action would be particularly attractive since the program currently collects more in revenue than it pays out in benefits. But such an action would seriously undermine the actuarial balance of the Social Security trust fund, and would almost certainly require draconian changes in the future in order to stave off bankruptcy when the baby boom generation retires. The irony of the exemption for Social Security is that, unless our fiscal house is in order, we won't be able to meet our Social Security obligations. And unless Social Security is factored into the balanced budget equation, we will not get our fiscal house in order.

Critics of the balanced budget amendment argue that it is a sham; that it avoids the rough choices required to balance the budget. I strongly disagree.

What it represents is the first and most important step in a long and very difficult journey to fiscal responsibility. It symbolizes that the tides have finally changed; that we are committed to living within our means, and that we are willing to embody that principle in the document that sets forth the foundation on which our whole system of government operates.

Other fiscal disciplines we have enacted, while important, have not done the job. The Gramm-Rudman-Hollings deficit control laws, the firewalls, the discretionary spending caps, and the pay-as-you-go rules have failed to break the attractive lure of deficit spending.

Opponents have argued that we should not pass a balanced budget amendment until its supporters outline specifically how we plan to reach that goal. That was the so-called right-to-know amendment to the resolution before us. But this is simply a smokescreen thrown up by those in this Chamber who have no intention of supporting this proposal, whether or not a plan is outlined.

The fact is, there is no agreed upon path to reaching a balanced budget. The path that I would prescribe is likely to be different than the paths that other members might advance. Any plan that will be adopted to reach this goal, will be the product of numerous compromises and the give and take of the normal political process. All of that will take place once the requirement is established. The appropriate time frame for outlining how to balance the budget is after we have committed ourselves to making that the law of the land. It is the process that we are trying to change with this proposal.

To those who do not support the resolution before us I ask: What is your plan? Are you content with the current situation where annual deficits exceed $200 billion for the foreseeable future? Do you believe that if we put this problem off for another day, it will get easier? Do you believe that we are improving our children's futures by dropping this massive debt in their laps?

Mr. President, every previous effort to balance the budget without an amendment to the Constitution—that is, by statute—has failed to achieve that goal.

Why has that been the case? The answer is simple.

Once the targets become too difficult to meet, we simply changed the law. This resolution makes it difficult for us to avoid our responsibility. The task is monumental, but the consequences for our failure are far worse. If this amendment is defeated, the ones who will be hurt the most are the future generations of our nation.

Ms. SNOWE. Mr. President, as I have done on so many previous occasions in Congress, I rise today in strong support of a balanced budget amendment to the Constitution of the United States.

It is my hope—and that of the American people—that we will pass this amendment tomorrow and begin to chart a new course for this Nation.

And there is now question that our Nation needs to change direction—both politically and economically, and put an end to the fiscal status quo. That message was made clear to all of us after the results of last November's elections. It is time to hear and act on that clarion call for change.

Tomorrow, we will have a chance to put to an end some of the hallmarks, some of the monuments, of America's status quo: our growing national debt and annual deficits.

I graduated from the University of Maine in 1969, and since the day I graduated, Congress has been unable—even unwilling—to pass one Federal budget that would have brought revenues in line with expenditures. That's right—we have not experienced one balanced budget since 1969, 26 years ago. It is almost hard to believe that we haven't passed a balanced budget since the year America put a man on the Moon. But with today's $4.7 trillion debt, we could walk to the Moon and back on a bridge of dollars bills stacked end to end from that debt.

As I have said before, this 26-year dry stretch represents one of our Nation's worst losing streaks, and it is Congress' very own fiscal losing streak.

But, today, we stand at the precipice of monumental change—the kind of change the American people voted for last November. The kind of desire for change that brought me here to this Chamber as a U.S. Senator. Today's vote on this measure will help the American people, "to know the change and feel it," in the words of the English poet, John Keats.

Today is our opportunity to rise to the occasion and meet the expectations of the citizens of this country, or, we merely do nothing and uphold the malaise of economics-as-usual.

Passing the balanced budget amendment will help restore a lost sense of confidence and trust that our institutions of Government have been lacking for the past generation. Tomorrow's vote marks our generations' chance to make a positive difference for all other future generations of Americans. And as we act on this proposal, we should remind ourselves that what we do—or do not do—tomorrow on the floor on this amendment affects a generation that currently has no say, no voice, and no vote.

But they will pay the price. They will foot the bill. They will bear a terrible burden.

While today's vote has the promise of marking a new beginning for America, we must understand that it is only part of the means to the end—not the end of the process itself. If and when we decide to pass this balanced budget amendment, we begin a process that our Founding Fathers envisioned to be in the best interest of democracy and the welfare of the American people.

Let us be clear about one thing: with tomorrow's vote, we will not be ratifying the balanced budget amendment. We will merely be giving the 50 States the opportunity—the chance—to ratify the amendment before us. Congress has an obligation and a responsibility to let the American people's voice be heard throughout the Nation, in every state capital. Seventy-eight percent of the American people support the balanced budget amendment, according to a recent survey by KRC Research and Consulting. Nearly three-quarters of all Democrats—73 percent—support the amendment, 88 percent of all Republicans, and 79 percent of all unenrolled voters.

Mr. President, I am confident that, when given the chance, the States and the American people will say "yes" to a new regimen of spending within our means; they will say "yes" to fiscal responsibility, they will say "yes" to putting our Nation's fiscal house in order on a permanent basis, and they will say "yes" to a Congress accountable to them and their needs.

After almost 4 weeks of continuous debate in the Senate and almost 13 years after this Chamber passed this same measure by one vote, and after 26 years of continuous deficits and growing debts, it is hard to believe we have again come to this point.

We have arrived at this juncture not necessarily by choice, but because economic and financial circumstances have compelled us to act. Our failure to take responsible action to end years and years of spiralling debt and deficit spending in the past is forcing our hand today. But make no mistake about it, tomorrow's vote is about tomorrow's generation.

Although the figures and statistics about our debts and deficits have often been mentioned during Senate debate on the balanced budget amendment, they bear repeating once again in order to show the American people—and opponents of this measure—the devastating costs of our fiscal irresponsibility and lack of action.

I think the American people and opponents of this measure need to be reminded that, since 1980, our national debt has grown from $1 trillion to a staggering $4.7 trillion for a growth rate of 309 percent. And our national debt is expected to grow to a whopping $6.3 trillion by 1999, for a growth rate of 453 percent since 1980. And an astounding 17 percent of our national debt—$800 billion—is held by other nations or people in other nations—so even control over our own indebtedness has been handed to foreign banks and foreign creditors.

The American people and opponents of this measure need to be reminded that in the next 5 years alone, the personal burden of this debt and these interest payments for every American man, woman, and child will rise from $17,938 to $22,909—that's growth of nearly $5,000 in just 5 years.

In fact, it should be pointed out that the Office of Management and Budget has already estimated that if we continue our current cycle of deficit spending, future generations—those who will inherit a Nation beset by fiscal problems we could not solve—will be forced to suffer a tax rate of 82 percent in order to pay the bills we left behind.

The American people and opponents of this measure need to be reminded that the annual interest we pay on our ever-increasing national debt has grown almost exponentially, rising from $177 billion in 1982—the only year when the Senate passed this measure—to almost $300 billion in 1994. And our annual interest payments are expected to balloon to $373 billion in 1999, for a 219-percent growth rate between 1982 and 1999.

To appreciate the impact of interest costs on our annual deficits, one only need look at the chart behind me. If we continue our current fiscal course, the interest costs related to servicing the debt will continue to exceed our total annual deficits.

The American people and opponents of this measure need to be reminded that every day, we add $819 million in daily interest to the national debt. That figure will rise to $1 billion in interest every single day of the year. In fact, as I speak here for about 8 minutes on behalf of the balanced budget amendment, we will have added almost $5 million to the debt. Unfortunately, even when I do stop speaking, the debt keeps on growing—and growing, and growing like the "Energizer Bunny of our fiscal irresponsibility."

The American people and opponents of this measure need to be reminded that these interest payments on the debt already consume 14 percent of our annual Federal budget. These interest payments consume 57 percent of all personal income taxes each year, while the interest payments we make on our debt are eight times higher than what we spend on our children's education, 50 times higher than what we spend on job training for our workers, and 55 times higher than what we spend on Head Start programs. With these interest payments out of the way, Congress can finally prioritize its spending to where the American people want their tax dollars to be spent.

The American people are painfully aware that the estimates of future deficits aren't getting any smaller no matter how much Congress procrastinates its fiscal discipline. Only a few months ago, the Congressional Budget Office told Congress that the estimated deficit in the current fiscal year would reach $162 billion, steadily rise upward to $197 billion by 1998, and climb again to $257 billion in the year 2000, and $319 billion in 2002.

The CBO now estimates that the deficit will be higher than prior projections by an average of $25 billion per year over the next 5 years. This year's deficit has already been increased to $176 billion, $222 billion in 1998, $284 billion in 2000, and $421 billion in 2005. Not only that, but between now and 2002, we will add a cumulative total of nearly $2 trillion to the existing debt if we make no change in fiscal policy.

But the American people also need to know that these numbers have a direct impact on their lives and on the future of their families. And they need to know that a balanced budget amendment would have a positive impact on their futures and on the economy of the Nation.

The New York Federal Reserve Board, in an often referred to study, showed how America lost five percent growth in gross domestic product—a loss in economic growth that translates into a 3.75 million job loss during the decade spanning 1979 and 1989—jobs in rural America, jobs in our inner cities, jobs on America's farms, and jobs for America's youth.

The Concord Coalition study showed that a loss of national productivity has caused a sharp decline in America's family incomes, resulting in an average family income of $35,000 rather than the estimated $50,000 it would have been in the absence of our structural deficits and burgeoning debt.

In June 1992, the General Accounting Office released a report showing a gradual decline in America's quality of life and standard of living if our deficit spending is not brought under control. But the report also showed that if we did balance the budget by the year 2001, then by the year 2020 the average American will have real growth in quality of life and income by 36 percent.

The econometrics firm DRI/McGraw Hill reported that a balanced budget is worth $1,000 a year to the average American household over the next 10 years. A balanced budget would boost long-term economic growth: national interest rates would drop by 2.5 percent and by the year 2002, half the savings that is said to be needed in our budget simulations could come from lower interest costs.

So the balanced budget amendment is not a gimmick—it does yield positive results. Most importantly, it puts into law what Congress has been unable and unwilling to do for the past two decades: that is, muster the courage and discipline necessary to balance the budget without an amendment to the Constitution.

Over the years—and often to stem the tide toward a balanced budget amendment—Congress has tried to balance the budget through statutory means. And on each and every one of these efforts Congress has failed.

The simple fact is statutory laws are easy to ignore. They are a paper tiger. During the past 26 years, Congress has operated without this amendment, but with eight statutes designed to lower or eliminate deficits. Looking at this chart, it is clear what the results have been. Passing this amendment is the only way—our last choice, our last resort—to put our fiscal house in order.

I share the sentiments of whose who say Congress should be able to balance the budget without a constitutional amendment. But it is also said that you can learn from history. Mr. President, if the past 26 years have taught us anything, it is that Congress and the President are unwilling and unable to balance the budget absent a force greater than politics. That force is the Constitution of the United States.

If the states ratify this amendment, Congress will be beholden to a law with as much weight as the original Bill of Rights. Congress will be prohibited from ignoring annual deficits. We will be compelled by law to act. Each of us in this Chamber will have a duty to follow our solemn oaths of office to uphold and protect the Constitution. When we pass this measure, we will be beholden to following through on that oath.

Mr. President, today we can make history. Today, we should make history. We can make history by molding a better, brighter future for the next generation and for every generation thereafter. I hope today we will make the right kind of history, and chart a new course for America, one where balanced budgets and fiscal responsibility become the norm, and not the exception to the rule.

VICE PRESIDENT AND BALANCED BUDGET AMENDMENT

Mr. HATCH. Mr. President, the issue arises as to how House Joint Resolution 1 effects the obligations of the Vice President, as President of the Senate, to vote in case of a tie vote in the Senate.

Article I, section 3 of the Constitution provides that the "Vice President shall be President of the Senate, but shall have no Vote, unless they be equally divided." By the plain meaning of this provision, the Vice President is not a Member of the Senate; he is merely the presiding officer—President of the Senate—a neutral umpire, and, thus, cannot vote or take part in the deliberations of the Senate. The only exception to this is where there exists a tie vote. In that case, to "secure at all times the possibility of a definitive resolution of the body, it is necessary that the [Vice President] should have only a casting vote." *The Federalist No. 68* (Hamilton).

But the situation where the Vice President can break a tie vote only applies to a simple majority vote, the run-of-the-mill ordinary vote of the Senate. Where the Constitution, however, provides for a "supermajority" vote, in situations where the Framers of the Constitution feared the passions of majority rule would retard reasoned deliberation, there really is no occasion for a tie vote and therefore the Vice President may not vote.

These include the two-thirds vote requirement of each House to override a veto; the two-thirds vote requirement of the Senate to give its advice and consent to treaties; and the two-thirds vote requirement of the Senate to convict on impeachment.

The balanced budget amendment's supermajority provisions, whether the three-fifths number of the whole number of each House of Congress [sec. 1 waiver to allow outlays to exceed receipts; sec. 2 waiver to increase the limit on the debt], or the "constitutional majority" provisions—a majority of the whole number of each House—[sec. 4 requirement to raise revenue; sec. 5 requirement to waive amendment when the U.S. is involved in a military action that is a threat to national security]—would work the same way as the Constitution's other supermajority provisions.

Because these "supermajority" votes require a supermajority vote of the "whole number of each House of Congress," and it is clear that the Vice President is not a member of either House, these provisions, like the two-thirds vote in the Senate for treaties, are exceptions to the simple majority vote general rule that the Vice President may vote in cases of a tie in the Senate.

Moreover, the Vice President would not have a vote because these supermajority provisions would mandate that a tie-vote would be meaningless. For instance, 60 votes in the Senate would be required to raise the debt ceiling—where three-fifths is required under section 2 of the amendment, and 51 votes would be needed to raise taxes, as required by section 4.

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly on the issue of the potential issue of the jurisdiction of the Federal courts to decide matters under the constitutional amendment for a balanced budget if it is passed and ratified. I think it is important that courts not have jurisdiction to intervene in any controversy where the issue is the raising of taxes or the cutting of expenses, which would be the issues under the balanced budget amendment, because it is not a judicial function.

I think the preferable course is to have within the body of the amendment itself a flat statement that the Federal courts—no courts—would have jurisdiction over any controversy arising out of the balanced budget amendment.

We have seen in a case originating in Kansas City, MO, the State of the distinguished Presiding Officer, a situation where the courts actually ordered the imposition of taxes which, in my view, is not in any conceivable regard a judicial function. If there is any core legislative function, it is the raising of taxes. We elected officials are responsible to our constituents, and that is a core legislative function. But it happened and it was upheld by the Supreme Court of the United States in the celebrated 5-to-4 decision a few years ago.

There is a major issue as to whether the Congress has the authority, through legislation, to take away the jurisdiction of the Supreme Court or the Federal courts on a constitutional issue. There is a post-Civil War case, ex parte McCardle, which suggests that Congress has that jurisdiction. In my legal judgment, that case is not valid for any matter which is current today.

I believe that it is very unwise for the Congress to have legislative authority to take away the jurisdiction of the Supreme Court of the United States, for example, on a first amendment issue. That was a matter which was discussed extensively during the confirmation proceedings of Chief Justice Rehnquist, when after some discussion Chief Justice Rehnquist concluded that the Congress would not have the authority to take away the jurisdiction of the Federal courts on a matter involving the first amendment. When we got to other amendments, the fourth amendment, fifth amendment and sixth amendment, Chief Justice Rehnquist would not give the same response, nor would he respond to the difference of the authority of Congress to take away jurisdiction of the first amendment contrasted with the fourth, fifth or sixth amendments.

I give that very brief review to suggest that there may well be a question as to whether the Congress, through enabling legislation, could take away the jurisdiction of the courts to intervene on a controversy arising out of this balanced budget amendment. It is my hope that we will yet address that issue within the confines of the amendment itself. It may well be that critical votes necessary to pass the balanced budget amendment will depend upon our ability to find a way to satisfy those Senators. I believe that it is so important to pass the constitutional amendment for a balanced budget that I continue to support the amendment, even though an amendment offered to the constitutional amendment for a balanced budget failed in an effort to put within the balanced budget amendment itself a prohibition of Federal court jurisdiction. It gets sort of complicated when we talk about it, Mr. President.

I think the factors are clear. I think that our legislative history is clear. Aside from putting in a prohibition of Federal court jurisdiction, our legislative history is clear that it is congressional intent on the balanced budget amendment that the Federal courts should not have jurisdiction. But even the question of congressional intent is a muddy field, with some Justices—notably, Justice Scalia—saying he will not look to congressional intent but only to the body of the language itself.

So I will conclude by saying that I hope we have made it clear as a matter of Senate intent, congressional intent, that the courts should not have jurisdiction over any controversy under the balanced budget amendment, and with the extra hope that we may make it plain in the body of the amendment itself before we conclude.

I yield the floor.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. HATCH. Will the Senator yield for just a unanimous-consent request?

Mr. SARBANES. Yes.

Mr. HATCH. Mr. President, I ask unanimous consent that "A Balanced Budget Amendment," an open letter to Congress from all kinds of economists, doctors of economics, be printed in the RECORD. And I also ask unanimous consent that a column by William Safire on this matter also be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BALANCED BUDGET AMENDMENT—AN OPEN LETTER TO CONGRESS, FEBRUARY 1995

It is time to acknowledge that mere statutes that purport to control federal spending or deficits have failed. It is time to adopt constitutional control through a Balanced Budget Amendment. In supporting such an amendment, Congress can control its spending proclivities by setting up control machinery external to its own internal operations, machinery that will not be so easily neglected and abandoned.

Why do we need the Balanced Budget Amendment now, when no such constitutional provision existed for two centuries? The answer is clear. Up until recent decades, the principle that government should balance its budget in peacetime was, indeed, a part of our effective constitution, even if not formally written down. Before the Keynesian-inspired shift in thinking about fiscal matters, it was universally considered immoral to incur debts, except in periods of emergency (wars or major depressions). We have lost the moral sense of fiscal responsibility that served to make formal constitutional constraints unnecessary. We cannot legislate a change in political morality, we can put formal constitutional constraints into place.

The effects of the Balanced Budget Amendment would be both real and symbolic. Elected politicians would be required to make fiscal choices within meaningfully-constructed boundaries; they would be required to weigh predicted benefits against predicted tax costs. They would be forced to behave "responsibily," as this word is understood by the citizenry, and knowledge of this fact would do much to restore the confidence of citizens in governmental processes.

It is important to recognize that the Balanced Budget Amendment imposes procedural constraints on the making of budgetary choices. It does not take away the power of the Congress to spend or tax. The amendment requires only that the Congress and the Executive spend no more than what they collect in taxes. In its simplest terms, such an amendment amounts to little more than "honesty in budgeting."

Of course, we always pay for what we spend through government, as anywhere else. But those who pay for the government spending that is financed by borrowing are taxpayers in future years, those who must pay taxes to meet the ever-mounting interest obligations that are already far too large an item in the federal budget. The immorality of the intergenerational transfer that deficit financing represents cries out for correction.

Some opponents of the Balanced Budget Amendment argue that the interest burden should be measured in terms of percentage of national product, and, so long as this ratio does not increase, all is well. This argument is totally untenable because it ignores the effects of both inflation and real economic growth. So long as government debt is denominated in dollars, sufficiently rapid inflation can, for a short period, reduce the interest burden substantially, in terms of the ratio to product. But surely default by way of inflation is the worst of all possible ways of dealing with the fiscal crisis that the deficit regime represents.

Opponents also often suggest that Congress and the Executive must maintain the budgetary flexibility to respond to emergency needs for expanding rates of spending. This prospect is fully recognized, and the Balanced Budget Amendment includes a provision that allows for approval of debt or deficits by a three-fifths vote of those elected to each house of Congress.

When all is said and done, there is no rational argument against the Balanced Budget Amendment. Simple observation of the fiscal record of recent years tells us that the procedures through which fiscal choices are made are not working. The problem is not one that involves the wrong political leaders or the wrong parties. The problem is one where those whom we elect are required to function under the wrong set of rules, the wrong procedures. It is high time to get our fiscal house in order.

We can only imagine the increase in investor and business confidence, both domestic and foreign, that enactment of a Balanced Budget Amendment would produce. Perhaps even more importantly, we could all regain confidence in ourselves, as a free people under responsible constitutional government.

Dr. Burton A. Abrams, University of Delaware; Dr. Ogden Allsbrook, Jr., University of Georgia; Dr. Robert Andelson (Ret), Auburn University; Dr. Annelise Anderson, Stanford University; Dr. Terry L. Anderson, Political Economy Research Center; Dr. Richard Ault, Auburn University; Dr. Charles Baird, California State University—Hayward; Dr. Charles Baker, Northeastern University; Dr. Doug Bandow, Cato Institute; Dr. Eric C. Banfield, Lake Forest Graduate School of Management;

Dr. Andy Barnett, Auburn University; Dr. Carl P. Bauer, Harper College; Dr. Joe Bell, SW Missouri State; Dr. James Bennett, George Mason University; Dr. Bruce L. Benson, Florida State University; Dr. John Berthoud, National Taxpayers Union; Dr. Michael Block, University of Arizona; Dr. David Boaz, Cato Institute; Dr. Peter J. Boettke, New York University; Dr. Jeffrey Boeyink, Tax Education Foundation;

Dr. Cecil Bohanon, Ball State University; Dr. Donald J. Boudreaux, Clemson University; Dr. Samuel Bostaph, University of Dallas; Dr. Dennis Brennen, Harper College; Dr. Charles Britton, University of Arkansas; Dr. Eric Brodin, Foundation for International

Studies; Dr. Richard C.K. Burdekin, Claremont McKenna College; Prof. M.L. Burnstein, York University; Dr. Henry Butler, University of Kansas; Mr. Ian Calkins, American Legislative Exchange Council;

Dr. W. Glenn Campbell, Hoover Institute; Dr. Keith W. Chauvin, University of Kansas; Dr. Betty Chu, San Jose State University; Dr. Will Clark, University of Oklahoma; Dr. J.R. Clarkson, University of Tennessee; Dr. Kenneth Clarkson, University of Miami; Dr. J. Paul Combs, Appalachian State University; Dr. John Conant, Indiana State University; Dr. John F. Cooper, Rhodes College; Mr. Wendell Cox, American Legislative Exchange Council;

Dr. Mark Crain, George Mason University; Dr. Ward Curran, Trinity College; Dr. Coldwell Daniel II, Memphis State University; Dr. Michael R. Darby, U.C.L.A.; Dr. Otto A. Davis, Carnegie Mellon University; Dr. Ted E. Day, University of Texas—Dallas; Dr. Louis De Alessi, University of Miami; Prof. Andrew R. Dick, U.C.L.A.; Dr. Tom Dilorenzo, Loyola College (MD); Mr. James A. Dorn, Cato Institute;

Dr. Aubrey Drewry, Birmingham Southern College; Dr. Gerald P. Dwyer, Jr., Clemson University; Dr. Robert B. Ekelund, Jr., Auburn University; Dr. Peter S. Elek, Villanova University; Dr. Jerry Ellig, George Mason University; Dr. John M. Ellis, University of California; Dr. Kenneth G. Elzinga, University of Virginia; Dr. David Emanuel, University of Texas-Dallas; Dr. David J. Faulds, University of Louisville; Mr. Richard A. Ford, Free Market Foundation; Dr. Andrew W. Foshee, McNeese University;

Dr. William J. Frazer, University of Florida; Dr. Eirik G. Furuboth, University of Texas-Arlington; Dr. Lowell Galloway, Ohio State University; Dr. David E. R. Gay, University of Arkansas; Dr. Martin S. Geisel, Vanderbilt University; Dr. Fred R. Glahe, University of Colorado; Dr. Paul Goelz, St. Mary's University; Dr. Robert Gnell, Indiana State University; Mr. John C. Goodman, National Center for Policy Analysis; Dr. Kenneth V. Greene, S.U.N.Y.—Binghamton;

Dr. Paul Gregory, University of Houston; Dr. Gerald Gunderson, Trinity College; Dr. James Gwartney, Florida State University; Dr. Claire H. Hammond, Wake Forest University; Dr. Daniel J. Hammond, Wake Forest University; Dr. Ronald W. Hanson, University of Rochester; Dr. David R. Henderson, Hoover Institution; Dr. Robert Herbert, Auburn University; Dr. A. James Heins, University of Illinois; Dr. John Heinke, Santa Clara University;

Dr. Alan Heslop, Claremont McKenna College; Dr. Robert Higgs, Independent Institute; Dr. P.J. Hill, Wheaton College; Dr. Mark Hirschey, University of Kansas; Dr. Bradley K. Hobbs, Bellarmine College; Dr. Randall Holcombe, Florida State University; Dr. Steven Horwitz, St. Lawrence University; Dr. Doug Houston, University of Kansas; Dr. David A. Huettner, University of Oklahoma; Dr. William J. Hunter, Marquette University;

Dr. Thomas Ireland, University of Missouri; Dr. Jesse M. Jackson, Jr., San Jose State University; Dr. Gregg A. Jarrell, University of Rochester; Dr. Thomas Johnson, North Carolina State University; Dr. David L. Kaserman, Auburn University; Dr. Robert Kleiman, Oakland University; Dr. David Klingaman, Ohio University; Dr. W.F. Kiesner, Loyola Marymount University; Dr. David Kreutzer, James Madison University; Dr. Michael Kurth, McNeese State University; Dr. David N. Laband, Auburn University;

Dr. Everett Ladd, University Connecticut; Dr. Harry Landreth, Centre College; Dr. Stanley Leibowitz, University of Texas—Dallas; Dr. Dwight Lee, University of Georgia; Dr. David Levy, George Mason University; Dr. Dennis Logue, Dartmouth College; Dr. Robert F. Lusch, University of Oklahoma; Dr. R. Ashley Lyman, University of Idaho; Dr. Jonathon Macey, Cornell University; Dr. Yuri Maltsev, Carthage College;

Dr. Alan B. Mandelstamm, Roanoke, Virginia; Dr. George Marotta, Hoover Institute; Dr. J. Stanley Marshall, The James Madison Institute; Dr. Merrill Mathews, Jr., National Center for Policy Analysis; Dr. Richard B. Mauke, Tufts University; Dr. Margaret N. Maxey, University of Texas—Austin; Dr. Thomas H. Mayor, University of Houston; Dr. Paul W. McAvoy, Yale University School of Management; Dr. Robert McCormick, Clemson University; Dr. Paul McCracken, University of Michigan;

Dr. Myra J. McCrickard, Bellarmine College; Dr. J. Houston McCulloch, Ohio State University; Dr. Robert W. McGee, Seton Hall University; Dr. Mark Meador, Loyola College (MD); Dr. Roger Meiners, Clemson University; Dr. Lloyd J. Mercer, University of California; Dr. Richard Milam, Appalachian State University; Dr. Dennis D. Miller, Baldwin Wallace College; Dr. Stephen Moore, Cato Institute; Dr. John Moore, George Mason University;

Dr. John Moorhouse, Wake Forest University; Dr. Laurence Moss, Babson College; Mr. Bob Morrison, Tax Education Support Organization; Dr. Timothy Muris, George Mason University; Dr. J. Carter Murphy, Southern Methodist University; Dr. Gerald Musgrove, Economics America; Dr. Ramon Myers, Stanford University; Dr. Michael Nelson, Illinois State University; Dr. William A. Niskanen, Cato Institute; Dr. Geoffrey Nunn, San Jose State University;

Dr. M. Barry O'Brien, Francis Marion University; Dr. David Olson, Olson Research Company; Dr. Dale K. Osborne, University of Texas—Dallas; Dr Allen M. Parkman, University of Mexico; Dr. E. C. Pasour, Jr., North Carolina State University; Dr. Timothy Patton, Ambassador University; Dr. Judd W. Patton, Bellevue College; Dr. Sam Peltzman, University of Chicago Graduate School; Dr. Garry Petersen, Tax Research Analysis Center; Dr. Manfred O. Peterson, University of Nebraska;

Dr. Steve Pejovich, Texas A&M University; Dr. Timothy Perri, Appalachian State University; Dr. William S. Pierce, Case Western Reserve University; Dr. Sally Pipes, Pacific Research Institute; Dr. Yeury-Nan Phiph, San Jose State University; Dr. Rulon Pope, Brigham Young University; Dr. Robert Premus, Wright State University; Dr. Jan S. Prybyla, Pennsylvania State University; Dr. Alvin Rabushka, Stanford University; Dr. Don Racheter, Central College;

Dr. Ed Rauchutt, Bellevue University; Dr. Robert Reed, University of Oklahoma; Dr. John Reid, Memphis State University; Dr. Barrie Richardson, Centenary College; Dr. H. Joseph Reitz, University of Kansas; Dr. James Rinehart, Francis Marion University; Dr. Mario Rizzo, New York University; Dr. Jerry Rohacek, University of Alaska; Dr. Simon Rottenberg, University of Massachusetts; Dr. Roy J. Ruffin, University of Houston; Mr. John Rutledge, Rutledge & Company Inc.;

Dr. Anandi P. Sahu, Oakland University; Dr. Thomas R. Saving, Texas A&M University; Dr. Craig T. Schulman, University of Arkansas; Dr. Richard T. Seldon, University of Virginia; Dr. Gerry Shelley, Appalachian State University; Dr. William Shughart II, University of Mississippi; Mr. William E. Simon, William E. Simon & Sons; Dr. Randy Simmons, Utah State University; Dr. Daniel T. Slesnick, University of Texas—Austin; Dr. Frank Slesnick, Bellarmine College;

Dr. Daniel Slottje, Southern Methodist University; Dr. Gene Smiley, Marquette University; Dr. Barton Smith, University of Houston; Dr. Lowell Smith, Nichols College; Mr. Robert Solt, Iowans for Tax Relief; Dr. John Soper, John Caroll University; Dr. Michael Sproul, U.C.L.A.; Dr. Richard Stroup, Montana State University; Dr. Michael P. Sweeney, Bellarmine College; Prof. Ronald Teeples, Claremont McKenna College; Dr. Clifford Thies, University of Georgia; Dr. Roy Thoman, West Texas State University;

Dr. Henry Thompson, Auburn University; Dr. Mark Thornton, Auburn University; Dr. Walter Thurman, North Carolina State University; Dr. Richard Timberlake, University of Georgia; Dr. Robert Tollison, George Mason University; Prof. George W. Trivoli, Jacksonville State University; Dr. Leo Troy, Rutgers University; Dr. Gordon Tullock, University of Arizona; Dr. Norman Ture, Institute for Research on the Economics of Taxation; Dr. Jon G. Udell, University of Wisconsin;

Dr. Hendrik Van den Berg, University of Nebraska; Dr. T. Norman Van Cott, Ball State University; Dr. Charles D. Van Eaton, Hillside College; Dr. Richard Vedder, Ohio University; Dr. George Viksnins, Georgetown University; Dr. Richard Wagner, George Mason University; Dr. Stephen J.K. Walters, Loyola College (MD); Dr. Alan R. Waters, California State University; Dr. John T. Wenders, University of Idaho; Mr. Brian S. Wesbury, Joint Economic Committee; Dr. Allen J. Wilkins, Marshall University; Dr. James F. Willis, San Jose State University; Dr. Gene Wunder, Washburn University; Dr. Bruce Yandle, Clemson University; Dr. Jerrold Zimmerman, University of Rochester.

[From the Essay]

BALANCE THAT BUDGET

(By William Safire)

Back in 1972, when the Federal budget reached $245 billion, Congress took a look at that year's deficit—$15 billion—and decided the budget was out of control.

Wilbur Mills, chairman of House Ways and Means, took emergency action: he rammed through a bill delegating to the President the power to cut the budget any way he wanted when it exceeded $250 billion.

President Nixon was ready, but the Senate was not; in blocking that radical action, which would have transferred more power than the line-item veto, senators argued that "there is no reason we cannot cut the budget deficit ourselves."

They failed. During the Carter Administration, with national debt mounting, Virginia Senator Harry Byrd proposed an even more Draconian bill to balance the budget, and this one passed both houses and was signed into law. P.L. 95-435 stated: "Beginning with Fiscal Year 1981, the total budget outlays of the Federal Government shall not exceed its receipts."

Brave words. Because subsequent laws control, the mere passage of a deficit budget for 1981 nullified the Byrd law. Then came the Gramm-Rudman Act in the mid-80's, supposedly imposing real fiscal discipline for our generation; all that remains of that pass at self-restraint is Phil Gramm running for President saying he told us so.

Thus is demonstrated that budget-balancing statutes are hot air, and our experience shows that all protestations about a "responsible" Congress someday balancing the budget are groundless.

Meanwhile, the national debt has soared from a piddling $373 billion when Wilbur Mills sought drastic action to $5 trillion today. The interest we must pay on that debt now exceeds all we spend on national defense.

Worse, from the perspective of the budget our children will have to face, these are the good old days. Their tax dollars will be consumed by paying interest on the deficits we run today, leaving nothing for their own good life. They will condemn their parents' current profligacy as cruelly reckless.

That's why the Gingrich House has already passed the Balanced Budget Amendment to the Constitution as the centerpiece of its contract, and why four out of five Americans support its passage when the vote comes up in the Dole Senate tomorrow.

A third of the Senators could block it; minority rule is still possible.

With all Republicans except Mark Hatfield united behind the balancing amendment, and with most Democrats opposing such deficit demolition, key votes among the undecided are Senators Byron Dorgan and Kent Conrad. Never has so much of the nation's future rested on the decision of two guys from North Dakota.

Another potential savior of liberal spenders is Sam Nunn of Georgia who wants ironclad guarantees that the amendment will not be enforceable in court, lest some Federal judge wind up as de facto budget director.

But an unenforceable law would mock the Constitution. Let the legislative history show that in the event of imbalance, the Congress and the states intend any judicial injunction to apply to all spending and taxing as a lump, with no discretion left to judges to choose which spending to cut. If enjoined by the court from running a red-ink government at all the Congress would be forced to do its duty and balance the budget.

A few points for the gentlemen from North Dakota:

1. By voting yes, they would empower the people back home (including North Dakotans and Georgians) to join in deciding this great question; 75 percent of the states must vote to ratify or the amendment fails.

2. If the pendulum of public opinion swings, a future generation can choose new taxes over spending cuts as a means of balancing the nation's accounts. There's room for a shift back to activist government centralized in Washington, if that's what our children want.

3. President Clinton has just surrendered to red ink. His own pusillanimous budget, which makes not even the easy choices, helplessly projects another trillion in debt—and that assumes his rosy economic projections come true.

That last item is the crusher. Publicly bowing to personal and political defeat by the deficit, Mr. Clinton has turned the budget helm over to Congress. That branch has demonstrated how it needs to lash itself to the mast of the Constitution.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, a good deal of the debate thus far has failed to focus on what I regard as one of the most important factors to be considered as we address this amendment to the Constitution—how the balanced budget amendment might affect the economy. What impact will the amendment have on jobs, on incomes, and on the long-term standards of living of the American people.

It is my strongly held view that a balanced budget amendment could, under certain economic circumstances, cause significant harm to the economy. Requiring a balanced budget in each and every year, as this proposed amendment requires, regardless of the economic situation, would hamper the ability of the Federal Government to lessen the impact of recessions.

A balanced budget amendment would make economic recessions more severe than they might otherwise be. The reason for that is that currently the Federal budget helps to lessen the impact of recessions through what are called automatic stabilizers.

These automatic stabilizers allow spending to increase and revenue to fall during times of economic hardship. When the economy goes into a downturn, headed toward a recession, the automatic stabilizers start to work. Spending on Federal Government programs, such as unemployment compensation and food stamps, automatically increase as the economy goes into recession, as more people lose their jobs and become eligible for these programs.

In addition, as people earn less money as a result of a recession, they pay less in taxes. The way our system is currently constructed, these changes in spending and taxes occur automatically. These automatic stabilizers reduce the damage done to the American economy and to American families by the recession.

The balanced budget amendment would force the Government to raise taxes and to cut spending in recessions, at just the moment that raising taxes and cutting spending will do the most harm to the economy and aggravate the recession; in other words, it would work directly counter to cushioning or ameliorating the impacts of the recession.

This chart shows the percent change in gross domestic product, beginning back in the 1880's and coming forward to the present. Since World War II and the concept of automatic stabilizers we have lessened the severity of economic downturns. As a consequence of the economic downturn there was greater job loss and less revenue into the Treasury. There were also increased expenditures out of the Treasury for unemployment insurance and for medical care and food stamps. The increased expenditures and loss of revenue allow a deficit to take place in an economic downturn and work to support incomes and stimulate the economy.

In the post-World War II period, we have allowed that to happen without trying to balance the budget in an economic downturn. Prior to World War II we tried to balance the budget in an economic downturn. President Hoover did it before the Great Depression.

Previously, when we tried to do this, the business cycle went through tremendous fluctuations. Prior to economic stabilizers the growth in the economy would go from boom to bust. We used to have very deep valleys of negative growth. In fact, during the Depression, we had 15-percent negative growth. From 1929 to 1933 we had a 30-percent drop in our gross national product, almost a one-third drop in gross national product.

So prior to World War II, we had these tremendous fluctuations, and in the postwar period, using the automatic stabilizers, we have been able to effectively eliminate periods of negative growth. We still have fluctuations, but they are much shallower and most of them have taken place above the positive growth line.

In fact, Charles Schultze, in testimony he gave concerning the balanced budget amendment said, and I quote him:

> A balanced budget amendment would be bad economics. Federal revenues automatically fall and expenditures for unemployment compensation rise when recessions occur. The deficit necessarily rises. This budgetary behavior is a very important economic stabilizer. It helps sustain private incomes during recession and thus keeps sales, employment and production better maintained than they otherwise would be.

And he goes on to state:

> The American economy in the postwar years has been far more stable than it was between the Civil War and the Second World War, even if we exclude the Great Depression from the comparison. In the period between the Civil War and the First World War, the American economy spent about half the time in expansion and half in contraction.
>
> In the period since 1946, the economy spent 80 percent of the time expanding and only 20 percent contracting. In the years after the Second World War, fluctuations in the American economy around its long-term growth trend were only half as large as they were in the period 1871 to 1914. Many people who have studied the period, credit an important part of the increased economic performance to the automatic stabilizing characteristics of the Federal budget.

Under the proposed constitutional amendment, this stabilizing force would be seriously threatened. The first year of a recession would turn an initially balanced budget into deficit, but under the proposed constitutional amendment, the Congress would be required to bring the budget back into balance by large tax increases or spending cuts imposed as the recession was still underway.

Of course, to do that would only drive the recession downward and move the economy even deeper, deeper into these valleys.

Let me just talk a little bit about how the fiscal stabilizers work in terms of keeping income up during an economic downturn.

This chart illustrates how automatic stabilizers work.

Between the second quarter of 1990 and the fourth quarter of 1991, real personal income from all sources before taxes and without transfers fell by 2 percent.

In other words, we went into an economic slowdown, and personal income began to decline. Transfer payments including unemployment insurance, food stamps, and medical care increase. These payments do not increase incomes up to the level that they were earning, but it gives them a percentage of what they were earning so they are not completely wiped out. They have some income continuing to come in.

So as you start this deep decline in wages, families were able to keep up their after-tax income and after-transfer income. So these payments offset or cushioned what was happening as a consequence of the recession. The reason this happens is that Government fiscal policy helps to stabilize incomes.

During the 1990–92 recession family incomes before taxes and before any transfer income fell by $70 billion, but their incomes after taxes and with the transfer income rose by $92 billion. So we were able to cushion the economic downturn, and we did it because we got income support from these fiscal stabilizers. You get direct income support through unemployment insurance, and you get a decrease in the tax burden as a consequence of the economic slowdown.

Now, had the balanced budget amendment been in effect, these income stabilizers would not have been available, real disposable incomes of American families would have been almost $100 billion lower, and the recession would have been much, much deeper. It is for this reason that an article in the New York Times only a few days ago said, and I quote its heading, "The Pitfalls of a Balanced Budget, Dismantling a Decades Old System for Softening Recessions." The article goes on to say, and I quote it:

> If the amendment is enacted, the side effects would be huge. A system that has softened recessions since the 1930's would be dismantled.

And further on, the article states:

> The biggest risk is to the Nation's automatic stabilizers which have made recessions less severe than they were in the century before World War II. The stabilizers work this way: When the economy weakens, outlays automatically rise for unemployment pay, food stamps, welfare and Medicaid. Simultaneously, as incomes fall, so do corporate and individual income tax payments. Both elements make more money available for spending, thus helping to pull the economy out of its slump.

Now, we would run the risk, without the automatic stabilizers which help to offset the downturn, of putting the economy back in the boom-and-bust cycle which was particularly marked in the late 1800's and through the first half of this century and which prompted the comments made by Charles Schultze with respect to how we have managed to offset the economic downturns since the end of World War II. As he pointed out in his statement, the American economy in the postwar years, post-World War II years, has been far more stable than it was between the Civil War and the Second World War. And as he states, "Many people who have studied the period credit an important part of the improved economic performance to the automatic stabilizing characteristics of the Federal budget."

Some of my colleagues have argued, we can waive the amendment with 60 votes. I do not know of constitutional principles that are waivable, but they say we will come along and we will get a 60-vote supermajority and we will waive the requirement of an annual balance in order to address the recessionary situation.

The difficulty with this is that the automatic stabilizers work automatically, and they take effect immediately. The stabilizers, which prevent these deep fluctuations, begin as soon as the economy softens. They begin before the economic downturn is generally recognized.

Various votes have been cited in the Chamber by others who say, we took a vote and extended the unemployment insurance, and this vote passed by a large majority, so clearly if we were into difficulties, we will get the majorities necessary in order to waive the balanced budget amendment and run the deficit to offset the recession.

The first point I wish to make is that we have not always gotten those votes for the extension of unemployment insurance. In the 1982 recession, for example, there was a vote that failed to get the 60-vote requirement. So it is not accurate to say that whenever the issue is presented, the Congress has always responded—and particularly not responded in a timely fashion.

Second, those votes that people cite are votes for a further extension of unemployment insurance beyond what the basic program provides by law. But the application of the fiscal stabilizers begins with the use of the basic program. There is no vote taken here to institute the basic program. The basic program begins automatically as the economy slows down, and we rely upon that basic program to cushion the economic downturn.

If the economic downturn is severe, there is a necessity to extend the basic program. On that extension, it has on occasion been approved by large votes and on other occasions not so approved.

So it is not at all clear that the vote necessary to waive the amendment would be forthcoming, and in any event it is crystal clear that the vote comes very late in the day after we have already started on the downward slope. Therefore, our ability to check that downward movement to avoid these kinds of fluctuations will be markedly limited under the balanced budget amendment. We are inviting the prospect of going from these fluctuations over the business cycle without the deep moves into negative growth back to the very fluctuations that marked the economy in the century before the post-World War II period.

This matter may seem somewhat far removed because we have not had a great depression for a long, long time. But I simply want to underscore that what these deep plunges into negative growth represent very severe unemployment, the likes of which we have not seen in the post World War II period: Very extensive business failures—bankruptcies, farm foreclosures. So we would be crippling our ability to address economic downturns.

Laura Tyson, when she was the chair of the President's Council of Economic Advisers stated in an article entitled, "It's a Recipe For Economic Chaos":

> Continued progress on reducing the deficit is sound economic policy, but a constitutional amendment requiring annual balance of the federal budget is not. The fallacy in the logic behind the balanced budget amendment begins with the premise that the size of the federal deficit is the result of conscious policy decisions. This is only partly the case. The pace of economic activity also plays an important role in determining the deficit. An economic slowdown automatically depresses tax revenues and increases government spending on such programs as unemployment compensation, food stamps and welfare.
>
> Such temporary increases in the deficit act as "automatic stabilizers," offsetting some of the reduction in the purchasing power of the private sector and cushioning the economy's slide. Moreover, they do so quickly and automatically, without the need for lengthy debates about the state of the economy and the appropriate policy response.
>
> * * * * *
>
> A balanced budget amendment would throw the automatic stabilizers into reverse. Congress would be required to raise tax rates or cut spending programs in the face of a recession to counteract temporary increases in the deficit. Rather than moderating the normal ups and downs of the business cycle, fiscal policy would be required to aggravate them.

That is exactly what used to happen when we experienced the boom and bust cycles prior to World War II, and when we talked about the panics, the great panic of 1893, and 1922, and 1929.

Mr. President, I ask unanimous consent that the article by Laura Tyson be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. ABRAHAM). Without objection, it is so ordered.

(See exhibit 1.)

Mr. SARBANES. Mr. President, I want to address one other feature of this proposal for a balanced budget amendment. We do not have a capital budget at the Federal level and therefore the analogy that is drawn, where people say the State and local governments balance their budgets, why does the Federal Government not balance its budget—is completely false. Most States run deficits under the accounting principles used to compute the Federal budget. States have balanced budget requirements but they have a capital budget separate and apart, which they finance by borrowing.

We had two Governors who testified that having a balanced budget requirement helped them maintain a good credit rating.

The question was then, "Why do you need a good credit rating if you have to have a balanced budget?"

Of course the answer was they expected to borrow in the future. In fact the Governors acknowledged that their budget balance is required only on their operating budget and that they make active use of a capital budget for which borrowing is permitted. Individuals, of course, borrow. Most people could not buy a home or a car if they had to have an annually balanced budget of the sort that this amendment requires because they would not be able to make a capital investment. It is prudent economics to make wise capital investments in your future and to depreciate the capital asset over its useful life.

Let me just turn to the question of the failure of this amendment to distinguish between different types of spending and the impact that those different types of spending would have on fiscal policy. The first is deposit insurance. It must be understood, this amendment requires an annual balance; the outlays and the receipts must be in balance. Between 1988 and 1991, substantial outlays were used to close insolvent thrifts and transfer their assets to the Resolution Trust Corporation. As these assets have been sold in recent years, they have begun to yield a smaller but still sizable stream of net revenue back to the Treasury. This kind of flexible response to a major national financial crisis would have been prevented by the year-by-year lockstep approach of the balanced budget amendment, which makes no account for anticipated future receipts.

The amendment actually requires the current outlays for deposit insurance be matched with current spending cuts or tax increases. This would produce a strong downward pressure on the economy because deposit insurance payments do not add to current economic activity. They replace moneys which depositors already considered as in the bank, while the offsetting cuts or taxes would subtract for current activity.

There was an interesting article that appeared in this morning's paper entitled, "The High Cost of a Balanced Budget Amendment." Mr. President, I ask unanimous consent that article appear in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. SARBANES. It is stated there:

> Advocates of the Balanced Budget Amendment to the Constitution do not intend to jeopardize the life savings of America's families or threaten the stability of the nation's banks. As written, however, the amendment could do just that.

What happens now is, as soon as you encounter a problem, the deposit insurance fund covers those deposits. But in order to do that, your outlays have to exceed your receipts in the year in which you are making that coverage.

Insurance claims are automatically paid as needed, regardless, under the deficit. Under the amendment, if deposit insurance payment would cause a deficit, might not those payments be prohibited?

> During a severe economic downturn, the risk of bank failure is greatest. An economic downturn also produces (or exacerbates) federal budget deficits, as tax revenues decline and spending for programs such as unemployment compensation increases. At such a time, the government would lack the extra revenues it could need to cover the large costs of rescuing depositors and the banking system. Under current law, deposit insurance claims are automatically paid as needed, regardless of the deficit. Under amendment, if deposit insurance payments would cause a deficit, might not those payments be prohibited?

So it is a very important question as we consider the amendment before us. Furthermore, I have difficulty in understanding under the amendment how, with respect to both Social Security and unemployment compensation, we would be able to use the balances that we build up in those trust funds in order to cover future years? How would we be able to expend those balances since by definition to do so your outlays would be exceeding your receipts in that particular fiscal year. We regard that as wise policy. We build up these surpluses in the instance of the Social Security System in anticipation of retirement of the baby boom generation, and with the unemployment system we build them up during better economic times in order to pay benefits during recessions.

How would those surpluses be used in the future when the baby boomers retire or when the next recession hits since you would have an excess of outlays over revenues in the Social Security trust fund with respect to Social Security and in the unemployment insurance trust fund with respect to unemployment insurance?

So this requirement of an annual balance between outlays and receipts fundamentally undermines the economic prudence associated with anticipatory budget. This is budgeting which we have done consistently, and I think wisely. We build up the funds in the trust fund and spend them during difficult times by anticipating the future expenditures.

Mr. President, the New York Times today in an editorial entitled "Unbalanced Amendment" addresses this point. I ask unanimous consent that the editorial be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 3.)

Mr. SARBANES. Mr. President, this editorial addresses this point of the automatic stabilizers and our ability to avoid these very deep and severe economic downward plunges.

I quote the editorial:

> When the economy slows, tax revenues fall off and spending on unemployment insurance and food stamps rises. The automatic rise in the deficit by triggering spending serves to mitigate the slowdowns, but under the proposed amendment Congress could easily turn a $1 million downturn into something worse. Unless a three-fifths supermajority saves the day, Congress would have to raise taxes and cut spending in a slow economy, the opposite of responsible stewardship. Take another unintended consequence. When savings and loans went bankrupt during the 1980's, the Federal Government bailed out the depositors with borrowed money, thereby preventing a banking panic. But under the proposed amendment the government could not react instantly unless a supermajority in Congress approved.

Before people start saying we could get a supermajority vote to waive the amendment, let me just remind them of the extremely close votes that we had here on the floor of the Senate with respect to providing the funds to cover the closing out of the failed S&L's.

Mr. President, I regard the vote coming tomorrow as a critical vote for a number of reasons, but in particular because I am extremely apprehensive that by eliminating our ability to conduct a rational fiscal policy to offset economic downturns, we will again plunge our economy into the severe up and down boom and bust cycles which we experienced consistently through our history. This is not hypothetical. This is not conjecture. This is what happened.

This chart only shows GDP back to the 1880's, but we could have taken it back farther, and it would have shown the same severe up and down fluctuations. We have been able to moderate those movements of the business cycle during the post-World War II period. People have become accustomed to the more moderate business cycle. Many simply assume that somehow the business cycle will continue as it were. But the business cycle remains with us. As the ups and downs prior to World War II show, we have succeeded in ameliorating the business cycle, cushioning it as it begins a downward path. So that we have avoided the very deep plunges that we previously had experienced. These deep plunges represent economic disaster for the country. They represent unemployment, business bankruptcies, and farm foreclosures, the like of which we have not seen in the post-World War II period. We almost seem to take it for granted that these major declines will not occur.

I am extremely apprehensive that the balanced budget amendment will take us back to these days. I wanted to come tonight to sound this warning as to the potential impact of this balanced budget amendment and how it might affect our economy, how it might impact on jobs, on incomes, on the long-term standards of living of the American people, how it could cause significant harm to the economy because it would not allow us to follow policies which would avoid bringing economic slowdown into recession and recession into depression.

Mr. President, I yield the floor.

EXHIBIT 1

[From the Washington Post, Feb. 7, 1995]

IT'S A RECIPE FOR ECONOMIC CHAOS

(By Laura D'Andrea Tyson)

Continued progress on reducing the deficit is sound economic policy, but a constitutional amendment requiring annual balance of the federal budget is not. The fallacy in the logic behind the balanced budget amendment begins with the premise that the size of the federal deficit is the result of conscious policy decisions. This is only partly the case. The pace of economic activity also plays an important role in determining the deficit. An economic slowdown automatically depresses tax revenues and increases government spending on such programs as unemployment compensation, food stamps and welfare.

Such temporary increases in the deficit act as "automatic stabilizers," offsetting some of the reduction in the purchasing power of the private sector and cushioning the economy's slide. Moreover, they do so quickly and automatically, without the need for lengthy debates about the state of the economy and the appropriate policy response.

By the same token, when the economy strengthens again, the automatic stabilizers work in the other direction: tax revenues rise, spending for unemployment benefits and other social safety net programs falls, and the deficit narrows.

A balanced budget amendment would throw the automatic stabilizers into reverse. Congress would be required to raise tax rates or cut spending programs in the face of a recession to counteract temporary increases in the deficit. Rather than moderating the normal ups and downs of the business cycle, fiscal policy would be required to aggravate them.

A simple example from recent economic history should serve as a cautionary tale. In fiscal year 1991, the economy's unanticipated slowdown caused actual government spending for unemployment insurance and related items to exceed the budgeted amount by $6 billion, and actual revenues to fall short of the budgeted amount by some $67 billion. In a balanced-budget world, Congress would have been required to offset the resulting shift of more than $70 billion in the deficit by a combination of tax hikes and spending cuts that by themselves would have sharply worsened the economic downturn—resulting in an additional loss of 1¼ percent of GDP and 750,000 jobs.

The version of the amendment passed by the House has no special "escape clause" for recessions—only the general provision that the budget could be in deficit if three-fifths of both the House and Senate agree. This is a far cry from an automatic stabilizer. It is easy to imagine a well-organized minority in either House of Congress holding this provision hostage to its particular political agenda.

In a balanced-budget world—with fiscal policy enjoined to destabilize rather than stabilize the economy—all responsibility for counteracting the economic effects of the business cycle would be placed at the doorstep of the Federal Reserve. The Fed could attempt to meet this increased responsibility by pushing interest rates down more aggressively when the economy softens and raising them more vigorously when it strengthens. But there are several reasons why the Fed would not be able to moderate the ups and downs of the business cycle on its own as well as it can with the help of the automatic fiscal stabilizers.

First, monetary policy affects the economy indirectly and with notoriously long lags, making it difficult to time the desired effects with precision. By contrast, the automatic stabilizers of fiscal policy swing into action as soon as the economy begins to slow, often well before the Federal Reserve even recognizes the need for compensating action.

Second, the Fed could become handcuffed in the event of a major recession—its scope for action limited by the fact that it an push short-term interest rates no lower than zero, and probably not even that low. By historical standards, the spread between today's short rates of 6 percent and zero leaves uncomfortably little room for maneuver. Between the middle of 1990 and the end of 1992, the Fed reduced the short-term interest rate it controls by a cumulative total of 5¼ percentage points. Even so, the economy sank into a recession from which it has only recently fully recovered—a recession whose severity was moderated by the very automatic stabilizers of fiscal policy the balanced budget amendment would destroy.

Third, the more aggressive actions requires of the Fed to limit the increase in the variability of output and employment could actually increase the volatility of financial markets—an ironic possibility, given that many of the amendment's proponents may well believe they are promoting financial stability.

Finally, a balanced budget amendment would create an automatic and undesirable link between interest rates and fiscal policy. An unanticipated increase in interest rates would boost federal interest expense and thus the deficit. The balanced budget amendment under consideration would require that such an unanticipated increase in the deficit be offset within the fiscal year!

In other words, independent monetary policy decisions by the Federal Reserve would require immediate and painful budgetary adjustments. Where would they come from? Not from interest payments and not, with such short notice, from entitlement programs. Rather they would have to come from either a tax increase or from cuts or possible shutdowns in discretionary programs whose funds had not yet been obligated. This is not a sensible way to establish budgetary priorities or maintain the healthy interaction and independence of monetary and fiscal policy.

One of the great discoveries of modern economics is the role that fiscal policy can play in moderating the business cycle. Few if any members of the Senate about to vote on a balanced budget amendment experienced the tragic human costs of the Great Depression, costs made more severe by President Herbert Hoover's well-intentioned but misguided efforts to balance the budget. Unfortunately, the huge deficits inherited from the last decade of fiscal profligacy have rendered discretionary changes in fiscal policy in response to the business cycle all but impossible. Now many of those responsible for the massive run-up in debt during the 1980s are leading the charge to eliminate the automatic stabilizers as well by voting for a balanced budget amendment.

Instead of undermining the government's ability to moderate the economy's cyclical fluctuations by passing such an amendment, why not simply make the hard choices and cast the courageous votes required to reduce the deficit—the kind of hard choices and courageous votes delivered by members of the 103rd Congress when they passed the administration's $505 billion deficit reduction package?

EXHIBIT 2

HIGH COST OF A BALANCED BUDGET AMENDMENT

(By Richard Kogan)

Advocates of the Balanced Budget Amendment to the Constitution do not intend to jeopardize the life savings of America's families or threaten the stability of the nation's banks. As written, however, the amendment could do just that.

Currently, America's savings are safe. The Federal Deposit Insurance Corp. (FDIC) guarantees individual deposits in banks and thrift institutions up to $100,000 per account. Depositors rely on the U.S. government to keep its word, quickly and automatically; if a bank goes broke, the government makes good on deposits. Deposit insurance claims are enforceable in court.

Now look at the Balanced Budget Amendment. It begins, "Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a roll-call vote." This deceptively simple concept—that the federal budget must be balanced each year—would inadvertently cast doubt over the "full faith and credit" of the U.S. government, putting all federal guarantees, including deposit insurance, at risk.

Here's why. During a severe economic downturn, the risk of bank failure is greatest. An economic downturn also produces (or exacerbates) federal budget deficits, as tax revenues decline and spending for programs such as unemployment compensation increases. At such a time, the government would lack the extra revenues it could need to cover the large costs of rescuing depositors and the banking system. Under current law, deposit insurance claims are automatically paid as needed, regardless of the deficit. Under the amendment, if deposit insurance payments would cause a deficit, might not those payments be prohibited? Don't forget that the measure would amend the Constitution, while deposit insurance and other such guarantees are only statutes.

American banking was not always protected. The Great Depression was so steep—the economy shrank almost 30 percent from 1929 to 1933—in part because there was no deposit insurance. Some lost all their savings. A rumor that a bank was in trouble prompted panic, with depositors rushing to withdraw their savings. Even false rumors caused banks to collapse.

One of President Roosevelt's first acts was to close the banks while Congress enacted deposit insurance. The banks reopened, citizens could redeposit their funds in safety and the economic collapse ended. Deposit insurance became the first and best economic stabilizer. It is one reason that no post-war recession has shrunk the economy more than 3½ percent.

Doesn't the FDIC charge annual fees to banks, building up large balances, which would automatically be available in a banking crisis?

Not after the amendment. It prohibits spending borrowed funds. Incredibly, it also prohibits using accumulated savings; it requires that all federal spending in any fiscal year be covered by that year's revenues. This requirement is like telling a family to finance a new house or a child's college tuition out of that year's wages, no matter how much money the family has in the bank. In this case, the amendment precludes a sudden increase in deposit insurance payments if that increase would cause federal spending to exceed federal revenues in that year, no matter how much the FDIC has "in the bank."

There are two possible ways out. First, Congress could raise taxes or cut other spending by enough to offset deposit insurance costs. But the potential size of those payments shows why they could not be easily offset. The recent restructuring of the savings and loan industry required deposit insurance payments of $156 billion over four years, $66 billion in 1991 alone. And the government's deposit insurance guarantee covers private savings of $2.7 trillion. These amounts are too large to be offset by a single year's tax increases or spending cuts.

Second, there is the escape hatch. By a three-fifths vote, Congress could choose to pay deposit insurance and allow deficit spending. But it is hardly automatic that Congress would respond in a timely manner (or at all), even in a pending crisis. In August 1941 Congress barely mustered a majority to extend the draft, even though Hitler had already marched across half of Europe. In the current debate, neither the Senate nor the House could find a majority to write into the amendment an exception for recessions. Finding three-fifths majorities in each House of Congress is significantly more difficult. By the time Congress fully understands the scope of a developing banking crisis and gathers the three-fifths vote (if it can), the problem would have grown, perhaps to a dangerous degree.

Taking the amendment at face value, then, legal commitments made by the U.S. government would no longer be binding. When economic troubles arose and the banking system, depositors and the economy as whole most needed it, those "commitments" could prove ephemeral.

EXHIBIT 3

UNBALANCED AMENDMENT

Tomorrow's vote in the Senate on the balanced-budget amendment is crucial for the Republican agenda to chop Government programs into bits. The outcome is also crucial to the nation because the pernicious amendment would do enormous fiscal damage. Proponents are alarmingly within three votes of winning.

The core of the amendment would require the Government to balance its books unless three-fifths of the House and Senate vote to run a deficit. To the wavering Democrats—John Breaux of Louisiana, Sam Nunn of Georgia, Wendell Ford of Kentucky, and Kent Conrad and Byron Dorgan of North Dakota—here are five unassailable reasons to vote no.

Unnecessary.—Federal deficits have indeed been too high. That poses a threat that borrowing will siphon savings away from productive private investments.

But the fact that borrowing must be contained does not imply it ought to be eliminated—any more than family borrowing, to buy a house or pay college tuition, need be eliminated. A prudent rule would keep Federal debt growing less quickly than incomes. This rule would justify deficits of about $200 billion a year, close to current levels.

Misleading.—Proponents claim the amendment would protect future generations against ruinous interest payments. True, today's children will owe taxes when they grow up to pay interest on Federal debt. But proponents ignore the fact that the tax payments will flow right back to these children as owners of Government bonds.

Unenforceable.—Because key terms of the amendment—like outlays and receipts—are undefined, Congress will be able to manipulate and evade. Can Congress create independent agencies or find other ways to spend and borrow off the Government books? A Senate committee has already written into the legislative record, used to guide future court decisions, that the Tennessee Valley Authority would be exempt from the amendment. It should take lawyers five minutes to stretch whatever "principle" guides that exception to scores of other Government programs.

The amendment also fails to provide an enforcement mechanism. It might simply become an empty gesture or, worse yet, the courts might step in to tell Congress how much it should tax and where it should spend.

Irrational.—Federal bookkeeping lumps ordinary spending with long-term public investments. Congress, forced by the amendment to cut quickly, would go after hugely expensive, though vitally important, investments, such as scientific research, costly laboratories and equipment, job training or other investments that would not produce benefits for years, if not decades.

Reckless.—When the economy slows, tax revenues fall off and spending on unemployment insurance and food stamps rises. This automatic rise in the deficit, by triggering spending, serves to mitigate the slowdown. But under the proposed amendment, Congress could easily turn a mild downturn into something worse. Unless a three-fifths supermajority saves the day, Congress would have to raise taxes and cut spending in a slow economy—the opposite of responsible stewardship.

Take another unintended consequence. When savings and loans went bankrupt during the 1980's, the Federal Government bailed out depositors with borrowed money, thereby preventing a banking panic. But under the proposed amendment, the Government could not react instantly unless a supermajority in Congress approved.

The balanced-budget amendment appeals to taxpayers who demand that the Government spend their money wisely. But Senators Nunn, Ford, Conrad, Dorgan and Breaux need to recognize that this honorable sentiment cannot be wisely embedded into the Constitution.

Mr. HATCH. Mr. President, critics or outright opponents of the balanced budget amendment have made the point that one reason we should not have a balanced budget rule is because of how the business cycle and the so-called automatic stabilizers work. The basic idea is that in recessions, revenues decrease and outlays—such as welfare payments—increase. Critics say that economic fluctuations are as inevitable as the tides and hence so is a cycle of deficits, therefore, commanding budget balance is like ordering the tides to retreat.

The notion that ordering budget balance is like commanding the tides to retreat is absurd. It is like saying it is impossible to stop using your credit cards. The truth is that taxing and spending decisions are volitional, notwithstanding decades of bad habits.

Economic fluctuations which result in changes in revenue or outlay projections are not an argument against balance, but could an argument for surplus contingency funds. It is decidedly not an argument for maintaining large structural deficits. A family saves for a rainy day, they do not keep their credit cards "maxed out"—in good times and bad—and then tell the credit company that economic fluctuations are as inevitable as the tides so how about another few thousand on the credit limit.

The balanced budget amendment in no way prevents us from running a small surplus, which could be used to offset the effects of an economic downturn. In fact, Fred Bergston, a noted economist and former Treasury Department official, suggests we create a habit of saving for rainy days, which will allow us to use fiscal policy within the balanced budget rule better than we can now without it.

The argument made by the Senator from Maryland seems to be a distorted version of Keynsianism, and it is not clear that it would work to stimulate our current economy. In fact, our recent history seems to refute such an expectation. In the early 1990's, we had record deficits and zero or low growth for 3 years. The experience of the late Bush, early Clinton, years was the experience of the Carter years, namely high deficits and recession. This sort of stimulus mechanism obviously does not work very well. Additionally, Mr. President, President Clinton's response to the recession of the early 1990's was to send a budget with tax increases and spending cuts. This was supported by the Senator from Maryland. Why was this plan appropriate in 1993 but apparently no other time?

Moreover, we have been running deficits for three decades. Have we been in recession for three decades? Have we avoided the business cycle for three decades? No. We have had numerous business cycles since 1969 but have only balanced the budget once. If critics are right, we should have had a cycle of deficits and surpluses. Far from cycling, the debt is on a steady increase. The debt is growing at a fantastic rate: it is now over $4.8 trillion and is projected to exceed $6 trillion in only 3 years. The correlation between deficits and prosperity is far from clear, based on our history.

I have other questions about this argument. At the level we are now spending, about $1.5 trillion each year, just how big of a deficit would we have to run to stimulate the economy? We already have our foot to the floor on the debt accelerator—we cannot seriously argue that pushing our debts further will be helpful. Talk about inflexible fiscal policy. Our debt and yearly deficits are so large there just is not any clear room to move further. We would have more flexible fiscal policy if we got our deficits under control.

Mr. President, the principle of a rule of balanced budgets is unassailable, and should be violated only when absolutely necessary.

MORNING BUSINESS

SUPPORTING THE CONFIRMATION OF THE NOMINEES TO THE BASE CLOSURE AND REALIGNMENT COMMISSION

Mr. THURMOND. Mr. President, I will not take much of the Senate's time to express my support for the confirmation of Mrs. Cox, General Davis, Admiral Montoya, Mr. Kling, Mr. Cornella, and Mrs. Steele to be members of the Base Closure and Realignment Commission.

Despite the dismal performance by the White House when it submitted these nominations, the Armed Services Committee resolved all outstanding issues concerning individual nominees. I should add that these issues were, for the most part, related to whether or not an individual should recuse himself or herself from deliberating on a particular base. After considerable discussion and individual interviews, these concerns were alleviated and the committee recommended that the Senate confirm the nominees.

We now face a crucial decision. Tomorrow, as required by law, the Secretary of Defense will release his recommended list of bases for closure. Whether or not the Senate confirms the Base Closure Commissioners has no impact on the release of the list. However, it does impact on the deliberative process which will proceed since we have a Commission chairman. The question that every Senator who wants to delay the confirmation process should be asking is: Do we allow the chairman of the Base Closure and Realignment Commission, Senator Alan Dixon, to solely conduct the evaluations of the Secretary's list, or do we provide him with the assistance of these six Commissioners?

I have no doubt that despite the abilities of Alan Dixon, he and the Senate would rather see a group of individuals make decisions on the future of the Nation's military bases and our local economies. Therefore, I urge the Senate to confirm these nominations and let the 1995 Base Closure Commission proceed with its work.

CONFIRMATION OF AL CORNELLA

Mr. PRESSLER. Mr. President, I rise today to express my strong support for the nomination of Al Cornella to be a member of the 1995 Defense Base Closure and Realignment Commission.

This Commission was created by Congress in 1990 with the intention it would be an independent, nonpartisan decision-making body. I can assure my colleagues, Al Cornella is a man of the highest integrity. He will be fair in his deliberations and recommendations. During his opening statement before the Senate Armed Services Committee, Al committed himself to conducting his deliberations in a fair and impartial manner. Al Cornella is a man who keeps his word. The law requires the Commission to make recommendations based on specific criteria, ranging from military readiness to fiscal cost. Al Cornella's deliberations will be fully consistent with the law.

Mr. President, I am confident in Al's character and trust his judgment. Al Cornella exemplifies the American spirit of community involvement. He is one of South Dakota's very best. Currently, Al is a small business owner in Rapid City, SD, and has served as chairman of the board of the Rapid City Area Chamber of Commerce.

In addition to his civic involvement, Al has a strong interest in and knowledge of military issues. He served in the U.S. Navy during the Vietnam conflict. Being a Vietnam veteran myself as a lieutenant in the U.S. Army, I strongly believe his commitment to duty and country should not go unnoticed. For many years, Al served as a key leader in issues concerning military affairs in the Rapid City Chamber of Commerce. For the past 3 years, Al has served as a member of my Service Academy Advisory Board, evaluating applicants seeking admission to our three military academies.

Again, Mr. President, Al Cornella is a man of integrity. I urge my colleagues to support his confirmation. Al Cornella has distinguished himself in every endeavor in his life. He will do so again as a member of the Defense Base Closure and Realignment Commission.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 3:12 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 450. An act to ensure economy and efficiency of Federal Government operations by establishing a moratorium on regulatory rulemaking actions, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 20. Concurrent resolution permitting the use of the rotunda of the Capitol for a ceremony to commemorate the days of remembrance of victims of the Holocaust.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 450. An act to ensure economy and efficiency of Federal Government operations by establishing a moratorium on regulatory rulemaking actions, and for other purposes; to the Committee on Governmental Affairs.

The Committee on the Budget was discharged from further consideration of the following measures, which were referred to the Committee on Governmental Affairs for a period not to exceed 30 days.

S. 4. A bill to grant the power to the President to reduce budget authority; and

S. 14. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to provide for the expedited consideration of certain proposed cancellations of budget items.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DOMENICI, from the Committee on the Budget, without recommendation with amendments:

S. 4. A bill to grant the power to the President to reduce budget authority (Rept. No. 104–9).

By Mr. DOMENICI, from the Committee on the Budget, without recommendation with an amendment in the nature of a substitute:

S. 14. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to provide for the expedited consideration of certain proposed cancellations of budget items (Rept. No. 104–10).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. STEVENS:

S. 475. A bill to authorize a certificate of documentation for the vessel *Lady Hawk*; to the Committee on Commerce, Science, and Transportation.

By Mr. NICKLES (for himself, Mr. CAMPBELL, Mr. INHOFE, Mr. HELMS, Mr. ASHCROFT, and Mrs. HUTCHISON):

S. 476. A bill to amend title 23, United States Code, to eliminate the national maximum speed limit, and for other purposes; to the Committee on Environment and Public Works.

By Mr. KOHL (for himself and Mr. FEINGOLD):

S. 477. A bill to provide for the temporary suspension of the reformulated gasoline requirements under the Clean Air Act in States where bona fide health concerns have been raised until those concerns are appropriately addressed; to the Committee on Environment and Public Works.

By Mr. BREAUX (for himself and Mr. CHAFEE):

S. 478. A bill to amend the Internal Revenue Code of 1986 to allow the taxable sale or use, without penalty, of dyed diesel fuel with respect to recreational boaters; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DOMENICI (for himself, Mr. EXON, Mr. DOLE, Mr. DASCHLE, Mr. GRASSLEY, Mr. NICKLES, Mr. GRAMM, Mr. BOND, Mr. LOTT, Mr. BROWN, Mr. GORTON, Mr. GREGG, Ms. SNOWE, Mr. ABRAHAM, Mr. FRIST, Mr. HOLLINGS, Mr. JOHNSTON, Mr. LAUTENBERG, Mr. SIMON, Mr. CONRAD, Mr. DODD, Mr. SARBANES, Mrs. BOXER, Mrs. MURRAY, Mr. HATFIELD, and Mr. PACKWOOD):

S. Res. 81. A resolution commending Robert D. Reischauer for his service to the Congress and the Nation; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. STEVENS:

S. 475. A bill to authorize a certificate of documentation for the vessel *Lady Hawk*, to the Committee on Commerce, Science, and Transportation.

DOCUMENTATION FOR THE VESSEL "LADY HAWK"

Mr. STEVENS. Mr. President, today I am introducing a bill to provide a certificate of documentation for the vessel *Lady Hawk*, U.S. Official No. 961095.

The *Lady Hawk* is owned by Ms. Joan Dunn of Seldovia, AK.

The vessel was built in Little Falls, MN in 1989.

The first owners of the vessel—a married couple—were thought to be U.S. citizens, and a certificate of documentation for the *Lady Hawk* was issued in June 1990.

In November 1990, Ms. Joan Dunn purchased the *Lady Hawk* from the original owners, with the intent to eventually use it as a charter fishing vessel.

On November 11, 1993, Ms. Dunn received a notice from the Coast Guard that one of the married couple who originally owned the vessel was in fact a Canadian citizen, and that the certificate of documentation for the *Lady Hawk* was therefore invalid.

The Coast Guard determined that Ms. Dunn was a bona fide purchaser in good faith, and informed her that it was pursuing penalty action against the former owner, but that the certificate of documentation for the *Lady Hawk* was nevertheless invalid.

The bill I am introducing today would grant a Jones Act waiver to Ms. Dunn for the vessel *Lady Hawk*.

Ms. Dunn, through no fault of her own, cannot use this vessel for fishing charters or other coastwise trade without this waiver.

By Mr. NICKLES (for himself, Mr. CAMPBELL, Mr. INHOFE, Mr. HELMS, Mr. ASHCROFT, and Mrs. HUTCHINSON):

S. 476. A bill to amend title 23, United States Code, to eliminate the national maximum speed limit, and for other purposes; to the Committee on Environment and Public Works.

NATIONAL MAXIMUM SPEED LIMIT REPEAL ACT

Mr. NICKLES. Mr. President, I rise today to introduce the National Maximum Speed Limit Repeal Act of 1995 on behalf of myself and Mr. CAMPBELL. This legislation will return to the States the authority to establish their own speed limits.

The national maximum speed limit allows the Federal Government to penalize States which do not comply with posting and enforcement of speed regulations. The penalties are potentially as high as 10 percent of a State's National Highway System and surface transportation funds. It is also important to note that these highway revenues are generated entirely by the States.

The 55 mph speed limit law, which was amended to allow for a 65 mph limit on interstates and similar highways, in one of 19 provisions of Federal law which threatens States with the loss of their badly needed highway funds. Repealing the national maximum speed limit will help to eliminate these unnecessary and unfair Federal penalties.

This bill will further empower States with the responsibility to make their own decisions with regard to speed limits. Such authority should not be imposed by the bureaucracy in Washington, DC, but instead should be regulated by the individual States who understand their own transportation needs and who know what restrictions are best-suited for their citizens. Following my statement, I request that the text of the bill be printed in the RECORD.

Thank you, Mr. President. We urge all Members to cosponsor this important measure.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 476

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPEAL OF NATIONAL MAXIMUM SPEED LIMIT.

(a) IN GENERAL.—Section 154 of title 23, United States Code, is repealed.

(b) CONFORMING AMENDMENTS.—

(1) The analysis for chapter 1 of the title is amended by striking the item relating to section 154.

(2) Section 141 of the title is amended—

(A) by striking subsection (a);

(B) by designating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively; and

(C) in subsection (b) (as so redesignated), by striking "subsection (b)" each place it appears and inserting "subsection (a)".

(3) Section 123(c)(3) of the Federal-Aid Highway Act of 1978 (Public Law 95–599; 23 U.S.C. 141 note) is amended by striking "section 141(b)" and inserting "section 141(a)".

(4) Section 153(i)(2) of title 23, United States Code, is amended to read as follows:

"(2) MOTOR VEHICLE.—The term 'motor vehicle' means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.".

(5) Section 1029 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 23 U.S.C. 154 note) is amended—

(A) by striking subsection (d); and

(B) by redesignating subsections (e), (f), and (g) as subsections (d), (e), and (f), respectively.

(6) Section 157(d) of title 23, United States Code, is amended by striking "154(f) or".

(7) Section 410(i)(3) of the title is amended to read as follows:

"(3) MOTOR VEHICLE.—The term 'motor vehicle' means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.".

By Mr. KOHL (for himself and Mr. FEINGOLD):

S. 477. A bill to provide for the temporary suspension of the reformulated gasoline requirements under the Clean Air Act in States where bona fide health concerns have been raised until those concerns are appropriately addressed; to the Committee on Environment and Public Works.

TEMPORARY SUSPENSION OF REFORMULATED GASOLINE REQUIREMENTS

• Mr. KOHL. Mr. President, on January 1 of this year, the reformulated gasoline requirements under the Clean Air Act came into effect in southeastern Wisconsin, as well as other areas around the Nation. The purpose of the reformulated gasoline requirement is to facilitate the use of cleaner-burning fuels in the areas of the country that are experiencing the most severe air pollution problems.

In general, I have supported the use of reformulated gasoline as being one of the most cost-effective ways to address air pollution from mobile sources, such as automobiles. However earlier this month, citizens of southeastern Wisconsin began to experience difficulties with the new fuels. Problems have ranged from health concerns to mechanical problems to reductions in fuel efficiency.

Most alarming to me are the health complaints that I have heard associated with the fumes from the reformulated gas, including nausea, itchy and burning eyes, shortness of breath, dizziness, and skin rashes.

I believe that the citizens of Wisconsin strongly support the overall goal of the Clean Air Act, which is to protect human health through improved air quality. But when people are becoming sick as a result of these requirements, it only makes sense to temporarily suspend the program in question, until the health concerns are adequately addressed.

On February 10 of this year, I called on EPA Administrator Carol Browner to suspend the reformulated gasoline program in Wisconsin until April 1, 1995, in order to allow citizens to purchase conventional gasoline while the health concerns associated with the reformulated fuels are being investigated. The Governor of Wisconsin had made the same request earlier that day.

On February 24, I finally received the response to the request that I had made. In short, I found the response to be very inadequate. EPA did not agree to provide the temporary suspension that we had request, but instead offered to work with the oil industry to make an unspecified alternative fuel available on a limited basis.

Because the EPA response to the matter does not address my concerns, I am offering legislation to require the suspension of reformulated gasoline requirements when bona fide health concerns are raised by a State where the requirements have been imposed.

The bill addresses the specific problem faced by Wisconsin, without affecting the reformulated gasoline program as implemented in other regions of the Nation. The bill also establishes a process whereby a task force of Federal health and environmental officials work with the affected State to investigate the specific health concerns, and report back to Congress about their findings. The task force would also make recommendations to Congress and the State about other fuel formulations that could be used in the State, without causing the health problems that led to the suspension. Once the concerns are addressed, the reformulated gasoline program would be reinstated.

Mr. President, it is not my intent to hinder the implementation of the Clean Air Act. But as I said when I supported passage of the Clean Air Act, my bottom line concern is the health of the citizens of Wisconsin. If people are getting sick, I believe that it is my responsibility to see that the health questions are addressing adequately. While I had hoped that such effort would have been handled administratively by EPA, the lack of action of the part of EPA has left no alternative but legislative action.

I ask unanimous consent that the full text of the bill be included in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 477

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SUSPENSION OF REFORMULATED GASOLINE RULES.

Notwithstanding any other law, upon the certification by appropriate health officials of a State that bona fide health concerns have been raised with respect to the use of reformulated gasoline as required by rules issued by the Administrator of the Environmental Protection Agency to achieve the objectives of 211(k) of the Clean Air Act (42 U.S.C. 7545(k)), the Administrator shall suspend implementation of those rules in the State until the later of—

(1) April 1, 1995; or

(2) the date on which the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, in conjunction with appropriate public health officials of the State, certify that the reformulated gasoline used to achieve the objectives of that section is not causing human health problems.

SEC. 2. STUDY OF HEALTH EFFECTS OF REFORMULATED GASOLINE.

The Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, in conjunction with appropriate public health officials of a State that has requested a suspension of rules under section 1, shall—

(1) investigate health complaints associated with use of reformulated gasoline in the State;

(2) report to Congress by April 1, 1995, on the result of the investigation; and

(3) include in the report recommendations for alternative formulations that will meet with requirements of section 211(k) of the Clean Air Act (42 U.S.C. 7545(k)) without causing the health problems reported in the State.●

By Mr. BREAUX (for himself and Mr. CHAFEE):

S. 478. A bill to amend the Internal Revenue Code of 1986 to allow the taxable sale or use, without penalty, of dyed diesel fuel with respect to recreational boaters; to the Committee on Finance.

CORRECTION OF THE IMPLEMENTATION OF THE RECREATIONAL BOAT DIESEL FUEL TAX

● Mr. BREAUX. Mr. President, I rise today to reintroduce legislation to clarify the implementation of a law that we adopted in 1993. One of the provisions included in the 1993 Budget Reconciliation Act removed the exemption from payment of the diesel fuel tax that recreational boaters previously had.

At the same time, the 1993 Budget Act modified the collection point for all of the fuel taxes and imposed fuel dying requirements. The combination of these two changes have made the implementation of the fuel tax a disaster creating a situation where many recreational boaters cannot find any fuel to pay tax on.

Under the 1993 changes, fuel that is subject to taxation is clear and fuel that is exempt from taxation is dyed. The problem for boaters arises because most marinas have only one fuel tank, however, they provide fuel to both commercial and recreational boats. Commercial boat fuel is exempt from any tax and therefore commercial boat operators seek to purchase dyed fuel. Recreational fuel is taxable and recreational boaters want to purchase clear fuel. For those marina operators with only one fuel tank, they must decide if they will offer clear, taxable fuel for the recreational boaters or offer dyed tax-exempt fuel for the commercial boaters. Most marina operators in my State of Louisiana, find that their primary customer base is made up of commercial boaters and they are choosing to sell the dyed fuels. Thus, recreational boaters have no place to purchase the clear fuel.

Mr. President, this is a clear case of unintended consequences. The boaters are willing to pay the tax, they simply cannot find the place to buy the fuel and pay the tax. My bill is very simple. It modifies the collection process for diesel boating fuel. It allows marina operators to purchase dyed, exempt fuel and then collect the tax directly from recreational boaters and remit the tax to the Government directly.

Mr. President, I believe that this is a very simple solution to this very difficult problem. I urge the Senate to act on this important issue as soon as possible.●

ADDITIONAL COSPONSORS

S. 50

At the request of Mr. LOTT, the name of the Senator from Texas [Mrs. HUTCHISON] was added as a cosponsor of S. 50, a bill to repeal the increase in tax on social security benefits.

S. 262

At the request of Mr. GRASSLEY, the names of the Senator from Delaware [Mr. BIDEN] and the Senator from Missouri [Mr. BOND] were added as cosponsors of S. 262, a bill to amend the Internal Revenue Code of 1986 to increase and make permanent the deduction for health insurance costs of self-employed individuals.

S. 275

At the request of Mr. GRASSLEY, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 275, a bill to establish a temporary moratorium on the Interagency Memorandum of Agreement Concerning Wetlands Determinations until enactment of a law that is the successor to the Food, Agriculture, Conservation, and Trade Act of 1990, and for other purposes.

S. 325

At the request of Mr. THOMAS, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 325, a bill to make certain technical corrections in laws relating to Native Americans, and for other purposes.

S. 457

At the request of Mr. SIMON, the name of the Senator from Washington

[Mrs. MURRAY] was added as a cosponsor of S. 457, a bill to amend the Immigration and Nationality Act to update references in the classification of children for purposes of U.S. immigration laws.

SENATE CONCURRENT RESOLUTION 3

At the request of Mr. SIMON, the names of the Senator from Delaware [Mr. ROTH] and the Senator from Indiana [Mr. LUGAR] were added as cosponsors of Senate Concurrent Resolution 3, a concurrent resolution relative to Taiwan and the United Nations.

SENATE RESOLUTION 81—COMMENDING ROBERT D. REISCHAUER FOR SERVICE TO CONGRESS AND THE NATION

Mr. DOMENICI (for himself, Mr. EXON, Mr. DOLE, Mr. DASCHLE, Mr. GRASSLEY, Mr. NICKLES, Mr. GRAMM, Mr. BOND, Mr. LOTT, Mr. BROWN, Mr. GORTON, Mr. GREGG, Ms. SNOWE, Mr. ABRAHAM, Mr. FRIST, Mr. HOLLINGS, Mr. JOHNSTON, Mr. LAUTENBERG, Mr. SIMON, Mr. CONRAD, Mr. DODD, Mr. SARBANES, Mrs. BOXER, Mrs. MURRAY, Mr. HATFIELD, and Mr. PACKWOOD) submitted the following resolution, which was considered and agreed to:

S. RES. 81

Whereas Dr. Robert D. Reischauer served as Director of the Congressional Budget Office from March 6, 1989 to February 28, 1995;

Whereas he previously served in that office in its formative years from February 28, 1975 to April 1, 1981 as a Special Assistant, Assistant Director, and Deputy Director;

Whereas he has ably and faithfully performed the difficult duties of the Director's office serving all Members of the Congress with great professional integrity and dedication;

Whereas he has maintained the high tradition of that office by providing critical analysis and review of complex fiscal policy issues pending before the Congress;

Whereas he has provided the Congress and the American public with analysis of these complex fiscal policy issues with candor, objectivity, and clarity;

Whereas he has performed the duties of his office with remarkable diligence, perseverance, and intelligence often at great sacrifice to his personal life; and

Whereas he has earned the respect, affection, and esteem of the United States Senate: Now, therefore, be it

Resolved, That the Senate of the United States commends Robert D. Reischauer for his long, faithful, and exemplary service to his country and to the Senate.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the full Committee on Energy and Natural Resources on domestic petroleum production and international supply.

The hearing will take place on Wednesday, March 8 at 9:30 a.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

Those wishing to testify or who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Howard Useem or Judy Brown at (202) 224–6567.

ADDITIONAL STATEMENTS

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, REGARDING EDUCATIONAL TRAVEL

• Mr. BRYAN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received notification under rule 35 for David Podoff to participate in a program in the Netherlands sponsored by the State Department and the Netherlands Government.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Podoff in this program.

The select committee received notification under rule 35 for Senator KAY BAILEY HUTCHISON to participate in a program in Davos, Switzerland, sponsored by the World Economic Forum Foundation from January 27 to 29, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Senator HUTCHISON in this program.

The select committee received notification under rule 35 for Amy Dunathan, a member of the staff of Senator CHAFEE, to participate in a program in Taiwan sponsored by Tamkang University from January 10 to 16, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Ms. Dunathan in this program.

The select committee received notification under rule 35 for Bernadine Abbott Hoduski, a member of the staff of Senator FORD, to participate in a program in Africa, sponsored by the International Federal of Library Associations and Institutions [IFLA], from December 15 to 18, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Ms. Hoduski in this program.

The select committee received notification under rule 35 for Jay C. Ghazal, a member of the staff of Senator PELL, to participate in a program in Korea sponsored by the Korean Institute for International Economic Policy to be held in Korea from November 12 to 20, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Ghazal in this program.•

THE 150TH ANNIVERSARY OF THE EMANU-EL CONGREGATION

• Mr. D'AMATO. Mr. President, I rise today to extend my congratulations to the Emanu-El Congregation on their 150th anniversary.

The Emanu-El Congregation stands as a beacon and an example for the entire community. The congregation has grown and it's ever-expanding members contribute brilliantly to the many important aspects of American life and culture. Additionally, its unselfish contributions also help to increase the quality of life for not only the residents of their neighborhood, but for all New Yorkers as well.

In these trying times, both at home and abroad, it is vital that the congregation work to strengthen and bring together the entire community. The vitality and activism of the congregation is essential and invaluable, especially in these periods of increased anti-Semitism and other hatred, as well as the continued dangers for the State of Israel.

I wish the Emanu-El Congregation happiness and continued success in all their future endeavors. I hope their celebration is a special one that will be treasured for years to come.•

PEACE POEMS BY HARTFORD FOURTH-GRADERS

• Mr. DODD. Mr. President, violent crime is taking a terrible toll on our entire society, but nowhere are its effects more pronounced or more tragic than on our youngest citizens. An American child dies from gunshot wounds every 2 hours. Homicide is now the third leading cause of death for children between ages 5 and 14.

Although the violence has also swept through rural and suburban areas, it has been especially pronounced in our cities. Hartford, the capital city of my State, has seen a terrible loss of life in recent years, much of it involving young people. But many of Hartford's children are saying, "Enough."

One such group of children, Mrs. Kulesa's fourth-grade class at the M.D. Fox School in Hartford, recently wrote to me with copies of their "Peace Poems." These poems are cries from the heart by a group of children who want nothing more than to grow up without violence and without fear.

These children's words are more eloquent than mine could ever be, so I want to allow them to speak for themselves. Therefore, I ask that their poems be printed in the RECORD.

The poems follow:

PEACE

(By Ashley Serrano)

It will make things right,
and end all evils
of the bitter night.

PEACE

(By Joshua Joseph)

Peace is not bad.
When it is missing, it is sad.
To make it grow,
seeds of kind acts we sow.

PEACE

(By Wanda Vega)

Peace is so good,
Having it we should.
It avoids fighting,
and back biting.

PEACE

(By Jason Vazquez)

When we are all together as one,
good will and peace will be done.
We will take turns,
so that everyone learns.

PEACE

(By Alexis Soto)

Peace is to share.
It's not to be unfair.
When wars do start,
we shall break apart.

PEACE

(By Miezan Edoukoun)

When you show peace.
it will be shown to you.
When I am peaceful to my niece,
I'm obeying the golden rule.

PEACE

(By Carlos Ferrer)

Peace does no mugging.
It's like getting good hugging.
When peace is around,
It's a super town.
A peaceful heart is a big size.
It's had only by the very wise.

PEACE

(By Elesabeth Robles and Carlos Figueroa)

From East to West
Of peace we do tell.
It's the very best.
It rules swell.

PEACE

(By Elias Morales)

It means not to be cruel.
It's neat, because it makes us follow the rule.
Peace makes us cool,
when it reigns in our school.

LOVE

(by George Lanzo)

Love is like a blue star in the sky.
Love feels like flying through air.
Love sounds like a rap song
It is like smelling delicious perfume.
Love tastes like brownies.

PEACE

(by Wilburt Jarrett)

Peace is like the color of red.
It feels like a feather on your head.
It smells like roses in vases.
It sounds like people talking in races.
Peace tastes like buttercup candy.
Always keep supplies of understanding handy.

PEACE

(by Michael Robinson)

How can I be useful to you?
Do you know what you can do?
You must stop killing,
And do only good things too.

PEACE

(by Tomarra Weaver)

Peace means a nice life.
It is for every man and wife.
It is beautiful and so are you.
It makes us all beautiful and true.

PEACE

(by Mariah Fisher)

I love peace today.
From town hall to a neighborhood pool
you can have peace in every way,
if helpfulness is your tool.

PEACE

(by Edward Cruz)

Roses are red, violets are blue,
peace is great, so don't be a fool.
To your own self be true.
Keep peace in your school

PEACE

(by Jermaine Cruz)

May we have a better day;
let us have peace everywhere.
We do pray
for peace here and there.

PEACE

(by Joanna Genao)

Peace is not a beast.
It should be high on a pole,
so it can be seen in the East.
For it's message to be told.

PEACE

(by George Lanzo)

Living peacefully is fun.
Then came the drugs that are now done.
Then came my mother to take me to have fun.
But now I can't go, cause I have to run.

PEACE

(by Mrs. Kulesa)

Peace is not unkind or haughty
It's attitude is best
to give life great zest
To be fair
It will always dare.
It is ready to help people everywhere
Until man learns how to really share.
It is delicate and free
It's a treat for all eternity

DEDICATION

To Mr. DeJesus who always give us love
We wish blessings from above.
To Mrs. Lazarus who gives us appreciative cheer
May abundant good fortune be near.
To Dr. Hines who leads in work and play
We wish the best forever and a day.
Gratitude to them is without measure
They wish education to be our treasure.
Their influence on us does show
As day by day we grow.
Whatever the future may be,
We wish them tranquility.

GRANDMOTHER LINDEN

(by Mrs. Kulesa)

Grandma Linden to us is so dear
Whenever we need help she is near.
Encouraging us to stay on task
She does whatever we ask.
She is generous and kind.,
Often our true loving words are hard to find.
She shows us what's right
Helping us not to fight.
She shares with us wisdom of her years
As her warm words melt away our fears
With a hug and love so true
Grandma we embrace you.●

BUDGET SCOREKEEPING REPORT

● **Mr. DOMENICI.** Mr. President, I hereby submit to the Senate the budget scorekeeping report prepared by the Congressional Budget Office under section 308(b) and in aid of section 311 of the Congressional Budget Act of 1974, as amended. This report meets the requirements for Senate scorekeeping of section 5 of Senate Concurrent Resolution 32, the first concurrent resolution on the budget for 1986.

This report shows the effects of congressional action on the budget through February 24, 1995. The estimates of budget authority, outlays, and revenues, which are consistent with the technical and economic assumptions of the concurrent resolution on the budget (H. Con. Res. 218), show that current level spending is below the budget resolution by $2.3 billion in budget authority and $0.4 billion in outlays. Current level is $0.8 billion over the revenue floor in 1995 and below by $8.2 billion over the 5 years 1995–99. The current estimate of the deficit for purposes of calculating the maximum deficit amount is $238.7 billion, $2.3 billion below the maximum deficit amount for 1995 of $241.0 billion.

Since my last report, dated February 13, 1995, there has been no action that affects the current level of budget authority, outlays, or revenues.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 27, 1995.

Hon. PETE DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report for fiscal year 1995 shows the effects of Congressional action on the 1995 budget and is current through February 24, 1995. The estimates of budget authority, outlays and revenues are consistent with the technical and economic assumptions of the 1995 Concurrent Resolution on the Budget (H. Con. Res. 218). This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended, and meets the requirements of Senate scorekeeping of Section 5 of S. Con. Res. 32, the 1986 First Concurrent Resolution on the Budget.

Since my last report, dated February 13, 1995, there has been no action that affects the current level of budget authority, outlays, or revenues.

Sincerely,

ROBERT D. REISCHAUER.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE FISCAL YEAR 1995 104TH CONGRESS, 1ST SESSION AS OF CLOSE OF BUSINESS FEBRUARY 24, 1995

[In billions of dollars]

	Budget resolution (H. Con. Res. 218)[1]	Current level[2]	Current level over/under resolution
On-budget:			
Budget authority	$1,238.7	$1,236.5	−2.3
Outlays	1,217.6	1,217.2	−0.4
Revenues:			
1995	977.7	978.5	0.8

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE FISCAL YEAR 1995 104TH CONGRESS, 1ST SESSION AS OF CLOSE OF BUSINESS FEBRUARY 24, 1995—Continued

[In billions of dollars]

	Budget resolution (H. Con. Res. 218)[1]	Current level[2]	Current level over/under resolution
1996–1999 [3]	5,415.2	5,407.0	−8.2
Maximum deficit amount	241.0	238.7	−2.3
Debt subject to limit	4,965.1	4,747.3	−217.8
Off-budget			
Social Security outlays:			
1995	287.6	287.5	−0.1
1995–1999	1,562.6	1,562.6	*0.
Social Security revenues:			
1995	360.5	360.3	−0.2
1995–1999	1,998.4	1,998.2	−0.2

[1] Reflects revised allocation under section 9(g) of H. Con. Res. 64 for the Deficit—Neutral reserve fund.

[2] Current level represents the estimated revenue and direct spending effects of all legislation that Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[3] Includes effects, beginning in fiscal year 1996, of the International Antitrust Enforcement Act of 1994 (P.L. 103–438).

*Less than $50 million.

Note.—Detail may not add due to rounding.

THE ON—BUDGET CURRENT LEVEL REPORT FOR THE U.S. SENATE, 104TH CONGRESS, 1ST SESSION, SENATE SUPPORTING DETAIL FOR FISCAL YEAR 1995 AS OF CLOSE OF BUSINESS FEBRUARY 24, 1995

[In millions of dollars]

	Budget authority	Outlays	Revenues
Enacted in previous sessions			
Revenues			$978,466
Permanents and other spending legislation	$750,307	$706,236	
Appropriation legislation	738,096	757,783	
Offsetting receipts	(250,027)	(250,027)	
Total previously enacted	1,238,376	1,213,992	978,466
Entitlements and mandatories			
Budget resolution baseline estimates of appropriated entitlements and other mandatory programs not yet enacted	(1,887)	3,189	
Total current level[1]	1,236,489	1,217,181	978,466
Total budget resolution	1,238,744	1,217,605	977,700
Amount remaining:			
Under budget resolution	2,255	424	
Over budget resolution			766

[1] In accordance with the Budget Enforcement Act, the total does not include $1,394 million in budget authority and $6,466 million in outlays in funding for emergencies that have been designated as such by the President and the Congress, and $877 million in budget authority and $935 million in outlays for emergencies that would be available only upon an official budget request from the President designating the entire amount requested as an emergency requirement.

*Less than $500 thousand.

Note.—Numbers in parentheses are negative. Detail may not add due to rounding.•

ILLINOIS' WOMEN IN CONGRESS, 1920–90

• **Mr. SIMON.** Mr. President, in 1992, Illinoisians made history by electing the first African-American woman to the U.S. Senate, our distinguished colleague, Senator CAROL MOSELEY-BRAUN.

For that landmark election and for other reasons, Illinois can take pride in the women our State has sent to Congress in this century. Philip A. Grant, Jr., a professor of history at Pace University in New York City, recently documented this record in a paper he presented at the Illinois History Symposium in Springfield, IL. I ask that it be printed in the RECORD.

The article follows:

CONGRESSWOMEN FROM ILLINOIS, 1920–1990

(By Philip A. Grant, Jr.)

The purpose of this paper will be to review the careers of the various women elected to Congress from the State of Illinois between 1920 and 1990. During this eventful period of seven decades, a total of nine women won congressional seats in Illinois.

Two of the nine Illinois congresswomen were members of prominent political families. These two ladies, Winnifred Mason Huck of Chicago and Edna O. Simpson of Carrollton, were Republicans whose tenures on Capitol Hill were rather brief.

Huck decided to run for the position of Congressman-at-Large shortly after the death of her father, William E. Mason, on June 16, 1921. Mason, subsequent to having been a member of both Houses of the Illinois Legislature, had served fourteen years in Congress. On November 8, 1992 Huck was elected to complete the unexpired portion of her father's term in the House. Although she enjoyed the distinction of becoming Illinois' first woman to enter Congress, Huck's actual experience was limited to the fifteen weeks between November 20, 1922 and March 3, 1923.

Simpson was the wife of Representative Sid Simpson, who spent eight terms in the House and was a former Chairman of the Committee on the District of Columbia. A solid favorite to win a ninth term, Simpson suddenly died on October 26, 1958. At the urging of Republican leaders in Illinois' Twentieth Congressional District, Mrs. Simpson agreed to be the party's candidate in the 1958 general election. On election day she handily defeated her Democratic opponent, carrying twelve of the district's fourteen counties. Although she represented a heavily Republican constituency, Mrs. Simpson opted to retire in 1960.

Two other ladies from Illinois who were elected to Congress were Ruth Hanna McCormick of Bryan and Emily Taft Douglas of Chicago. McCormick, a Republican, was both the daughter and the wife of former Congressmen, while Douglas, a Democrat, was married to a future member of the United States Senate.

McCormick's father was Marcus A. Hanna, who had served both as a United States Senator from Ohio and Chairman of the Republican National Committee. Her husband, Medill McCormick, had been a member of both the House and Senate. After four years as Republican National Committeewoman from Illinois, McCormick in 1928 was elected Congresswoman-at-Large. Closely identified with the policies of President Herbert Hoover, McCormick in 1930 was defeated in her quest for a seat in the United States Senate.

Douglas was the wife of Paul H. Douglas, who served in the United States Senate from 1949 to 1967. On November 7, 1944 Douglas became the first Democratic woman to be elected to Congress from Illinois. Douglas in 1944 defeated the incumbent Republican Congressman-at-Large, Stephen A. Day, a staunch isolationist. Assigned to the prestigious Committee on Foreign Affairs, Douglas worked for passage of the United Nations Participation Bill, the British Loan Bill, and the measures authorizing American involvement in UNESCO and the United Nations Food and Agriculture Organization. In November 1946 Douglas lost her bid for re-election to Republican William G. Stratton, who later would twice be elected Governor of Illinois.

Three Illinois ladies who each served several consecutive terms in the House were Republicans Jessie Sumner of Milford, Marguerite Stitt Church of Evanston, and Charlotte T. Reid of Aurora. Sumner, Church, and Reid compiled unblemished records of political success in their respective congressional campaigns.

Sumner was elected to the first of four terms in Congress in November 1938. Sumner's district consisted of six downstate counties extending vertically in close proximity to the Indiana state line. As a member of the Banking and Currency Committee, Sumner vigorously opposed the domestic policies of Democratic Presidents Franklin D. Roosevelt and Harry S. Truman. Moreover, Sumner was one of the most outspoken isolationists on Capitol Hill, opposing such key measures as the 1939 repeal of the arms embargo, the Lend-Lease Bill, the Fulbright Resolution, and the International Monetary Fund (Bretton Woods) Bill.

Church was the widow of Ralph E. Church, who was in the midst of his seventh term in the House at the time of his death on March 21, 1950. Mrs. Church was elected to Congress in November 1950 and was thereafter re-elected five times. In addition to the City of Evanston, her constituency included several affluent suburban communities north of Chicago. Mrs. Church's victorious proportions ranged from 66.0% to 74.1%, and in all six campaigns she polled the highest number of votes of any Illinois congressman. She was a member of the Foreign Affairs Committee and in her final term served as a delegate to the General Assembly of the United Nations.

Reid was initially elected to the House in November 1962. Her district was composed of five counties located between thirty and fifty miles west of Chicago. Reid was elected to five terms by sizeable margins and became the first Illinois congresswoman to serve on the powerful Committee on Appropriations. On October 7, 1971 Reid relinquished her seat in the House of Representatives to accept President Richard M. Nixon's appointment to the Federal Trade Commission.

The two most renowned Illinois congresswomen in recent years have been Republican Lynn M. Martin of Rockford and Democrat Cardiss Collins of Chicago. Martin and Collins began their active political careers in the nineteen seventies and have remained two of the most articulate members of their rival political parties.

After serving in both the Illinois House of Representatives and State Senate, Martin was elected to Congress in 1980. Her district for two decades had been represented by John D. Anderson, who in 1980 became an Independent candidate for President. A formidable vote-getter and an eloquent public speaker, Martin became the first Illinois congresswoman to be designed a member of the influential Committee on Rules and the woman to be chosen as Vice Chairman of the House Republican Conference. Although virtually guaranteed re-election to a sixth term in 1990, Martin instead engaged in an unsuccessful bid for the United States Senate. On December 4, 1990 Martin was appointed by President George Bush to the Cabinet-level position of Secretary of Labor.

Collins on June 5, 1973 won a special election to succeed her late husband, Representative George W. Collins. At that time Collins became the first Black congresswomen from the Midwest. Easily re-elected to nine additional terms, Collins after her 1990 victory was outranked in seniority by only sixty-seven of her four hundred and thirty-four House colleagues. Collins, serving an impoverished urban district, established herself as one of the most liberal Democrats in Congress. Between 1979 and 1981 she occupied the post of Chairperson of the Congressional Black Caucus. Finally, as the ranking Democrat on the Committee on Government Operations, Collins chaired the Subcommittee on Government Activities and Transportation.

The nine women from Illinois who served in Congress between 1920 and 1990 performed their duties in a conscientious manner. As members of such important committees as Banking and Currency, Foreign Affairs, Appropriations, and Rules, these congresswomen exerted influence over the fate of a substantial number and wide variety of major legislative measures. While two of these ladies failed in attempts to win races for the United States Senate, it was noteworthy that the nine congresswomen prevailed in thirty-four of thirty-five House elections. Both individually and collective the nine congresswomen from Illinois reflected high credit on their state and nation.•

INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT AGREEMENT WITH THE PEOPLE'S REPUBLIC OF CHINA

• Mr. THOMAS. Mr. President, as the chairman of the Subcommittee on East Asian and Pacific Affairs, I am pleased to report to my colleagues that early yesterday the United States signed an Intellectual Property Rights Enforcement Agreement with the People's Republic of China.

Since 1992, the People's Republic of China has failed to live up to its obligation under the memorandum of understanding on intellectual property rights. Factories throughout China, especially in such southern and eastern provinces as Guangdong, continue to mass-produce pirated versions of American computer software, compact discs, CD-ROM's, and video and audio cassettes mostly for sale abroad. The United States Trade Representative estimates that piracy of audio-visual works runs close to 100 percent, while piracy of other technological items such as computer software runs around 94 to 100 percent. In addition, piracy of trademarks is rampant. This piracy is much more than a minor nuisance. The sale of these pirated items has cost U.S. businesses more than $1 billion, a sum which threatens to increase exponentially as the number of pirated products swells. It endangers Americans jobs, as well as our primacy in software innovation.

While we understand that enforcing IPR in such a large country can be difficult, such an argument in relation to the People's Republic of China is somewhat specious in light of the fact that production is tolerated, if not actively encouraged in some instances, by Chinese municipal and provincial governments as well as the central authorities in Beijing. The United States Trade Representative has complained repeatedly about the problem and United States-China negotiators have been meeting for more than a year and a half in an effort to resolve it.

Still, the Chinese refused to stem the manufacture of these goods. Consequently, the United States Trade Representative proposed to impose punitive tariffs on about $1 billion worth of Chinese goods if a satisfactory accord was not reached by February 26. The two sides negotiated right up to and past the deadline, and in the early hours Sunday reached a consensus.

The agreement has three principle goals: to take immediate steps to stem piracy of IPR material, to make long-term changes to ensure effective enforcement of IPR in the future, and to provide United States IPR holders with greater access to the Chinese market. As for the first goal, Beijing has pledged to implement a 6-month special enforcement period beginning March 1 during which time the Government will increase resources to target the 29 CD and laser disc factories known to be engaging in pirated production, and confiscate and destroy illegally produced output and the machinery used to produce it. Beijing has already signaled its willingness to work with us on this front; during the negotiations, the authorities shut down seven of the illegal factories including two of the most notorious—the Shenfei Laser Optical Systems Co. plant in Shenzhen, and a factory in Zhuhai. In addition, Beijing has proposed to tighten its customs practices to stem the exportation of illegal products.

As for long-term changes, the Chinese Government has pledged to ensure that Government ministries cease using pirated software—apparently pirated Microsoft products are very popular, even within the Trade Ministry. Furthermore, the Government will establish an effective IPR enforcement structure consisting of IPR conference working groups at the central, provincial, and local level to coordinate enforcement efforts, and to ensure that the laws are strictly enforced. Similarly, it will remodel its customs enforcement system after that of the United States. Lastly, China would create a title verification system, and would ensure that United States right holders have access to effective and meaningful judicial relief in cases of infringements.

Finally the People's Republic of China has pledged to enhance access to its markets for United States right holders. It will place no quotas on the importation of U.S. audio-visual products, and will allow U.S. record companies—subject to certain censorship concerns—to market their entire catalog. Finally, United States companies will be permitted to enter into joint ventures for the production and reproduction of their products in the People's Republic of China.

Mr. President, although I fully supported the position of the United States Trade Representative and would have fully supported the imposition of sanctions, ultimately imposing sanctions on the Chinese would have been a Pyrrhic victory. "When two dragons fight, the grasses are trampled"; a trade war would have had disastrous effects on countless U.S. businesses, as well as overall Sino-American relations. I'm glad that we have avoided that outcome, and am pleased with the resulting agreement. I would like to commend Charlene Barshefsky, Deputy U.S. Trade Representative, for her hard work.

On March 8, our subcommittee will conduct a hearing on IPR in China and the Enforcement Agreement. I hope to learn about the agreement in detail from the United States Trade Representative's office, and to hear from representatives of private industry on their view of the accord. While the agreement is an important step forward, the true test will lie in its implementation; and we intend that the subcommittee will closely monitor compliance with the agreement over the coming months.•

P.S./WASHINGTON

• Mr. SIMON. Mr. President, readers of a newspaper column that I have written within the last 2 weeks were exposed to a tribute to First Lady Hillary Rodham Clinton and a serious discussion about public opposition to homosexuals in the military.

For the benefit of my colleagues, I ask that they be printed in the RECORD.

The columns follow:

THE HATERS TARGET HILLARY RODHAM CLINTON

(By Senator Paul Simon)

When I was about nine years old, my father took me to hear Eleanor Roosevelt speak. Even as a nine-year-old, I knew she had sparked controversy. My father, a Lutheran minister, told me that she stood for helping those in great need.

Years later I had the opportunity to meet her a few times, and on one occasion to sit next to her at a dinner. A plainspoken women of simple tastes but obvious conviction, she somehow stirred passionate opposition.

History now regards her as one of our finest first ladies.

I mention this because in a somewhat similar way, Hillary Rodham Clinton manages to generate strong feelings of disapproval from some. I confess I do not understand it.

I saw her leadership on the health care issue, and while some mistakes were made and the nation did not get health coverage for all our citizens, I have yet to meet anyone who sat in any of those meetings who did not come away impressed by her ability, her mastery of the subject, and her sincerity.

In one interview that has been published, she half-apologized for the way she has handled things.

She is not the person who should apologize; it is the mean-spirited haters who should reflect on their response.

There are those who expect the first lady to be present on official occasions, smile sweetly at the appropriate time, cut a ribbon for a new building or enterprise now and then but otherwise be devoid of opinion or influence.

That day has passed.

I have served under five presidents, beginning with Gerald Ford. All of their wives, starting with Betty Ford, are known to have played a role in public matters. Hillary Clinton has done it more openly.

Senator Bob Dole is the leading Republican candidate for President today. If he should be elected, Elizabeth Dole, a former cabinet member and now president of the American Red Cross, will not be some decorative figure sitting on the sidelines. "Liddy" Dole will make her presence felt on the national scene, if that situation arises, and I would want her to do that.

My wife, Jeanne Simon, has contributed significantly to what I have been able to do in public life, and I am grateful to her for that, and proud of her for that.

President Clinton brought to the White House someone whose leadership and base of conviction means much to all of us.

Her critics are noisier than her supporters. That is always the case.

But she should know that there are many of us who are grateful to her.

HOMOSEXUALITY AND MILITARY SERVICE

(By Senator Paul Simon)

"How can you support having homosexuals in the armed forces?" a visibly angry woman asked me after a town meeting recently. "Don't you believe in the Bible?"

I confess I am not much impressed by people who hate in the name of religion. But let me answer her question partially, since I do not claim to be a theologian.

When I was a boy, my father never had to call me aside and say, "Paul, you ought to be interested in girls." I came by it very naturally. He had to give me other warnings!

Just as my interest in girls came naturally, that is not natural for a small percentage of men. There is evidence that there is a genetic basis for this difference among men, although the scientific research is less complete for women.

Regardless of the reasons for this difference, there are several issues that woman with the angry question should address.

If there is a military emergency and we have a draft, would you exempt anyone who says he is gay? The percentage of those claiming to be gay would suddenly escalate!

Because you mentioned the biblical basis for your beliefs, since the 10 Commandments mention adultery and not homosexuality, and adultery is condemned at least 40 times more than homosexuality in the Bible, should we keep anyone out of the service who has committed adultery? My recollection of my Army days is that would thin our ranks appreciably.

Or should we judge people by their conduct, not their genes? That makes sense to me.

When I was in the Army—long ago—I served in intelligence and we screened people for security clearances. Those who were gay were kicked out of the Army—that's a recent phenomenon—but they could not get security clearances because we judged that they could be blackmailed, certainly a proper judgment in the early 1950s.

But during those days, and during all of our previous wars, we had an armed service to be proud of, and it was inclusive.

There is also the problem of where you stop the practice of discrimination. If people cannot serve in the armed forces, what about the police force or fire department? What jobs would you let them have? Once you start the practice of discrimination, where do you stop?

I would finally ask that woman who is so righteously angry: What would you do if your son or daughter came home and told you that he or she is gay?

What would you do?

My guess is that even that hard heart would melt.

And become more understanding.●

UNANIMOUS CONSENT AGREEMENT

Mr. SARBANES. Mr. President, on behalf of Senator BYRD, I ask unanimous consent that the Byrd amendments be voted in the following sequence: amendment No. 252, amendment No. 254, amendment No. 255, amendment No. 253, and amendment No. 258; further, that amendment No. 289 be withdrawn.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

COMMENDING ROBERT D. REISCHAUER FOR HIS SERVICE TO THE CONGRESS AND THE NATION

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Senate Resolution 81 submitted earlier today by Senator DOMENICI and others.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 81) commending Robert D. Reischauer for his service to the Congress and to the Nation.

Mr. HATCH. Mr. President, I ask unanimous consent that the resolution be agreed to; and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Without objection, the preamble is agreed to.

The resolution (S. Res. 81) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 81

Whereas Dr. Robert D. Reischauer served as Director of the Congressional Budget Office from March 6, 1989 to February 28, 1995;

Whereas he previously served in that office in its formative years from February 28, 1975 to April 1, 1981 as a Special Assistant, Assistant Director, and Deputy Director;

Whereas he has ably and faithfully performed the difficult duties of the Director's office serving all Members of the Congress with great professional integrity and dedication;

Whereas he has maintained the high tradition of that office by providing critical analysis and review of complex fiscal policy issues pending before the Congress;

Whereas he has provided the Congress and the American public with analysis of these complex fiscal policy issues with candor, objectivity, and clarity;

Whereas he has performed the duties of his office with remarkable diligence, perseverance, and intelligence often at great sacrifice to his personal life; and

Whereas he has earned the respect, affection, and esteem of the United States Senate: Now, therefore, be it

Resolved, That the Senate of the United States commends Robert D. Reischauer for his long, faithful, and exemplary service to his country and to the Senate.

ORDERS FOR TOMORROW

Mr. HATCH. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9 a.m. on Tuesday, February 28, 1995; that following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day, and at that time the Senate resume consideration of House Joint Resolution 1.

I further ask unanimous consent that the Senate stand in recess between the hours of 12:30 p.m. and 2:15 p.m. in order for the weekly party caucuses to meet.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. HATCH. Mr. President, for the information of all of my colleagues, as previously announced, there will be up to 22 rollcall votes on amendments or motions beginning at 2:15 p.m..

In addition, I ask unanimous consent that after the first rollcall vote to begin at 2:15 p.m. tomorrow that all remaining stacked rollcall votes be limited to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Therefore, I urge all Senators not to try to leave the Chamber during this period of voting.

RECESS UNTIL TOMORROW AT 9 A.M.

Mr. HATCH. Mr. President, if there is no further business to come before the Senate, and if no other Senator is seeking recognition, I now ask that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 8:19 p.m., recessed until tomorrow, Tuesday, February 28, 1995, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate February 27, 1995:

DEPARTMENT OF LABOR

EDMUNDO A. GONZALES, OF COLORADO, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF LABOR. (NEW POSITION.)

NATIONAL COUNCIL ON DISABILITY

JOHN D. KEMP, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON DISABILITY

FOR A TERM EXPIRING SEPTEMBER 17, 1997, VICE MARY MATTHEWS RAETHER, TERM EXPIRED.

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

JOSUE ROBLES, JR., OF TEXAS, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS, VICE ROBERT D. STUART, JR., TERM EXPIRED.

IN THE ARMY

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 12203(A) AND 3383:

ARMY PROMOTION LIST

To be colonel

PETER P. BALJET [redacted]
DANIEL F. BOWLINE, JR [redacted]
JOHN E. BRAUN, JR [redacted]
JAMES R. CARR [redacted]
JAMES E. CHILDS [redacted]
DONALD F. CURTIS [redacted]
ROBERT S. FOLDESI [redacted]
WILLIAM R. HERB [redacted]
STANLEY LABIDOW [redacted]
STEPHEN R. LEOPOLD [redacted]
JAMES MARTIN [redacted]
WILLIAM OBLEY [redacted]
MICHAEL QUINN [redacted]
LEWIS S. ROACH [redacted]
DAVID H. SCOTT, JR [redacted]
ROBERT STEADMAN [redacted]
JAMES E. SWARTZ [redacted]
GODFREY W. UPDIKE, JR [redacted]
EUGENIO VEIGA [redacted]

To be lieutenant colonel

WILLIAM R. AHONEN [redacted]
EDWARD L. ARNSTON II [redacted]
LOGAN B. BARBEE [redacted]
RONALD FELTENBERGER [redacted]
JOHN E. FIEG [redacted]
JERRY T. GASKIN [redacted]
DANIEL A. LOUVIERE, JR [redacted]
ANTONIO P. MONACO [redacted]
WILLIAM T. PATULA [redacted]
GARY E. PELCAK [redacted]
KEITH R. VOTAVA [redacted]
MICH WHITEHEAD [redacted]
MICHAEL W. WILSON [redacted]

ARMY NURSE CORPS

To be lieutenant colonel

STEPHEN A. GREENE [redacted]

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10, UNITED STATES CODE. THE OFFICER INDICATED BY ASTERISK IS ALSO NOMINATED FOR APPOINTMENT IN THE REGULAR ARMY IN ACCORDANCE WITH SECTION 531, TITLE 10, UNITED STATES CODE:

CHAPLAIN

To be colonel

JACK N. ANDERSON [redacted]
*EDMOND S. BORYCZ [redacted]
MARK F. BREINHOLT [redacted]
WILLIAM J. DELEC [redacted]
JAMES A. DURHAM [redacted]
MARK E. FENTRESS [redacted]
WILLIAM H. HAMMANN [redacted]
DOUGLAS S. MC LEROY [redacted]
WILLIAM I. PHILIPS [redacted]
LOUIE G. SCALES [redacted]
KENNETH SCHROEDER [redacted]
DONALD TAYLOR [redacted]
PETER TELENCIO [redacted]
LARRY A. WALKER [redacted]
KARL K. WILLOUGHBY [redacted]

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 12203(A) AND 3370:

CHAPLAIN CORPS

To be colonel

DUANE B. ANDERSON, 572–64–6241
WILLIAM GALLAGHER [redacted]
RONALD P. HERZOG [redacted]
JOHN E. JACKSON [redacted]
SIDNEY J. MARCEAUX [redacted]
JAMES J. WELCH [redacted]

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE RESERVE OF THE ARMY, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTIONS 11203(A) AND 3366:

CHAPLAIN CORPS

To be lieutenant colonel

ARTHUR D. BACON [redacted]
RICHARD L. BEARDEN [redacted]
DEWITT T. BELL [redacted]
GEORGE M. CAMPBELL [redacted]
ELEAZAR CARMONA [redacted]
ANDRE C. CIEPLY [redacted]
STEVEN P. CORUM [redacted]
CHRISTIAN DAHLBERG [redacted]
ROBERT H. FORREST [redacted]
JAMES G. HARRIS, [redacted]
GARY E. HILL [redacted]
DAVID A. IRISH [redacted]
JOHN D. JOHNSON [redacted]
BENJAMIN D. KILLIAN [redacted]
MARK S. LARSON [redacted]
DANNY W. MARKSBERRY [redacted]
MICHAEL T. MC EWEN [redacted]
CURTIS MC LILLY [redacted]
THOMAS H. MOODY [redacted]
RAYMOND E. MOORE [redacted]
PATRICK D. NEAL [redacted]
BRUCE M. RUX [redacted]
CHARLES E. SIMPSON [redacted]
JOHN W. SIPPOLA [redacted]
GEORGE F. SPENCER [redacted]
THOMAS A. STAFFORD [redacted]
TERRY W. SWAN [redacted]
MARVIN D. SWEEZY [redacted]
HARRY F. SZCZESNIAK [redacted]
ALFRED A. TERRELL [redacted]
JAMIE A. THOMAS, [redacted]
JOHN H. THURMAN [redacted]
JON M. WRIGHT [redacted]

IN THE ARMY

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10M, UNITED STATES CODE.

To be colonel

ADAMS, ANDREW E. [redacted]
ADAMS, BILLY J. [redacted]
ALLEN, HARRY P. [redacted]
ANDERSON, DORIAN T. [redacted]
ANDERSON, LARRY D. [redacted]
ANGELSCHULTZ, DEBOR [redacted]
ANKLEY, STEVEN P. [redacted]
ANSLEY, STEPHEN P [redacted]
ATKINSON, WILLIAM E. [redacted]
BABYLON, WILLIAM T. [redacted]
BAKER, CHARLES B. [redacted]
BARRY, JAMES M. [redacted]
BEAN, GREGOY G. [redacted]
BEASLEY, BRAD M. [redacted]
BEATY, DOUGLAS R. [redacted]
BECK, CHARLES D. [redacted]
BENEDICT, JONATHAN [redacted]
BENFER, DENNIS E. [redacted]
BENSON, ROBERT A. [redacted]
BERLIN, CHARLES H [redacted]
BERO, VICTOR J. [redacted]
BERRY, CORLIS S., III [redacted]
BERTOCCHI, STEPHEN [redacted]
BESSLER, JAMES E [redacted]
BLYTHE, MICHAEL J. [redacted]
BOEVERS, BRUCE E. [redacted]
BONNEY DANIEL J. [redacted]
BORCHINI, CHARLES P. [redacted]
BORDER, GARY L. [redacted]
BOWMAN, STEVEN A. [redacted]
BRADLEY, GARY W. [redacted]
BRANDENBURG, WILLIA. [redacted]
BRANDT, DUANE E., [redacted]
BRANSFORD, PAUL D. [redacted]
BRANT, BRUCE A. [redacted]
BREWER, PAUL G. [redacted]
BRICELAND, PATRICK [redacted]
BROWN, ISAAC [redacted]
BROWN, KERRY M. [redacted]
BROWN, WILLIAM A. [redacted]
BROWNLEE, DANIEL P. [redacted]
BRYAN, GEORGE M. [redacted]
BRYAN, JAMES L. [redacted]
BUCHANAN, LLOYD W. [redacted]
BURKE, DONALD S. [redacted]
BUTHORNE, NEIL R. [redacted]
BYERS, MARK E. [redacted]
CALDWELL, JOHN F. [redacted]
CALDWELL, WILLIAM B. [redacted]
CANNATA, GREGORY A. [redacted]
CARR, HERBERT M. [redacted]
CARRAWAY, THOMAS P. [redacted]
CARROLL, JUDYANN [redacted]
CARSTENS, JOSEPH E. [redacted]
CASEY, TIMOTHY J. [redacted]
CERNIGLIA, JAMES A. [redacted]
CERUTTI, EDWARD A. [redacted]
CHALKLEY, JAMES R. [redacted]
CHRISTIANSON, JEFFR [redacted]
COFFMAN, SAMMY L. [redacted]
COLAW, SANDRA L. [redacted]
COLLINS, COLIN P. [redacted]
COMO, JOHN A. [redacted]
CONNER, WILLIAM L. [redacted]
CORLEY, HARRY L., [redacted]
COTTRELL, SCOTT B. [redacted]
COY, BERNIE D. [redacted]
CRABTREE, BRENT A. [redacted]
CRAWLEY, CHARLES G. [redacted]
CRAY, JOHN C. [redacted]
CRIBBS, JOHN M. [redacted]
CRUMRINE, THOMAS E. [redacted]
CUFF, MICHAEL V. [redacted]
CUMMINS, MICHAEL L. [redacted]
DAVENPORT, BRIAN W. [redacted]
DAVES, JOSEPH H. [redacted]
DAVID, WILLIAM C. [redacted]
DAVIDSON, KIRK W. [redacted]
DAVIS, DANNY M. [redacted]
DAVIS, JOE B. [redacted]
DEAL, JOHN C [redacted]
DEBOW, MICHAEL J. [redacted]
DEETER, LOUIS P. [redacted]
DEKANTER, SCIPIO, JR. [redacted]
DIMENGO, DENNIS C. [redacted]
DOBECK, KENNETH R. [redacted]
DODD, JOSEPH G. [redacted]
DODD, MARY C. [redacted]
DONNELLY, JOSEPH P. [redacted]
DOROSKI, CHARLES R. [redacted]
DRESEN, THOMAS E. [redacted]
DUNWOODY, ANN E. [redacted]
EASTER, CORNELIUS [redacted]
ECKERT, GREGORY M. [redacted]
EHLY, WILLIAM E. [redacted]
EVERETT, MICHAEL W. [redacted]
FAST, BARBARA G. [redacted]
FASULO, ROBERT J. [redacted]
FEIL, SCOTT R. [redacted]
FERRELL, STEPHEN J [redacted]
FIL, JOSEPH R [redacted]
FILTER, WILLIAM F. [redacted]
FINLAY, JOHN S. [redacted]
FIX, GAYLE W. [redacted]
FLAVIN, MARK J. [redacted]
FLEMING, DANIEL E. [redacted]
FRANKS, ROBERT F. [redacted]
FREAKLEY, BENJAMIN [redacted]
FRECKLETON, ROBERT [redacted]
FREDERICKS, BRIAN E. [redacted]
FRUTIGER, RUSSELL L. [redacted]
FULLER, LESLIE L [redacted]
FURLONI, JOE F. [redacted]
GANNON, THOMAS P. [redacted]
GARCIA, ROBERT [redacted]
GARDNER, STEPHEN W. [redacted]
GEBHARD, NORMAN A. [redacted]
GEEHAN, BRIAN I. [redacted]
GERACI, RICHARD V. [redacted]
GET, JER D. [redacted]
GITHERMAN, LARRY W. [redacted]
GLOVER, CHARLES W. [redacted]
GOEHRING, RUSSELL J. [redacted]
GOURGUES, MICHAEL H. [redacted]
GRECZYN, NORMAN D. [redacted]
GREGG, ROBERT B. [redacted]
GRIBLING, RICHARD H. [redacted]
GROSS, ALFRED H. [redacted]
HACKERSON, MICHAEL [redacted]
HAMILTON, PHILIP E. [redacted]
HAMMERLE, ROBERT A. [redacted]
HARDESTY, JOHN M. [redacted]
HARMAN, LARRY D. [redacted]
HARMATZ, HOWARD I. [redacted]
HARMON, ROBERT T. [redacted]
HARRIS, GARY L. [redacted]
HARRIS, GEORGE C. [redacted]
HEINEMANN, TIMOTHY [redacted]
HENDRICKSON, JAMES [redacted]
HERBERG, JAMES A. [redacted]
HOBBY, CLYDE R. [redacted]
HODGES, NORMAN B. [redacted]
HOHNSTINE, DAVID L. [redacted]
HORTON, WALTER S. [redacted]
HOWARD, MARC S. [redacted]
HUBER, KEITH M. [redacted]
HUGHES, HENRY J. [redacted]
IDIART, PHILIP L. [redacted]
INMAN, PAUL T. [redacted]
INNES, JOHN O. [redacted]
JACKSON, RICHARD A. [redacted]
JAHN, SHELDON L. [redacted]
JANER, ENRIQUE A. [redacted]
JEONG, JOHN C. [redacted]
JESKA, ROBERT S. [redacted]
JIMENEZ, MARIO [redacted]
JOHNSON, RONALD L. [redacted]
JONES, GUY L. [redacted]
JONES, ROGER W. [redacted]
JUNEAU, MICHAEL J. [redacted]
KANE, EDWARD M. [redacted]
KEE, STEPHEN G. [redacted]
KEEBLER, HENRY C. [redacted]
KEITH, ALVIN [redacted]
KEITH, REMBERT M. [redacted]
KENNEALLY, MICHAEL [redacted]
KERSH, TODD B. [redacted]
KIDDER, STEPHEN D. [redacted]
KILLEN, MICHAEL W. [redacted]
KIMMELL, MICHAEL L. [redacted]
KING, RONALD D., [redacted]
KIRIN, STEPHEN J [redacted]
KIRK, DAVID C. [redacted]
KLASSE, DOROTHY F. [redacted]
KLINEFELTER, STEPHE [redacted]
KNARR, WILLIAM M. [redacted]
KNOX, ROGER D. [redacted]
KOMO, EUGENE J. [redacted]
KOPENHAFER, JAMES F [redacted]
KRUCZEK, KATHLEEN M. [redacted]
KURRUS, ROBERT V. [redacted]
KUZELL, CHARLES M. [redacted]
LABELLE, SANDRA K. [redacted]
LANCE, DARELL G. [redacted]
LANGBEIN, GEORGE L. [redacted]

LARAMORE, WILLIAM F. [redacted]
LAUDERDALE, LARRY C. [redacted]
LAVINE, MICHAEL J. [redacted]
LEDBETTER, RICHARD [redacted]
LEIBEL, MICHAEL J. [redacted]
LENAGHAN, PATRICK J. [redacted]
LEWIS, JAMES T. [redacted]
LINGAMFELTER, LEE S. [redacted]
LOGAN, PATRICK E. [redacted]
LUNASCO, DAVE K. [redacted]
LUPO, ANTHONY T. [redacted]
LUSK, PATRICK J. [redacted]
LUTE, DOUGLAS E. [redacted]
LYDICK, FRED S. [redacted]
MACK, PETER B. [redacted]
MADSEN, PETER T. [redacted]
MAPSTONE, TERRY L. [redacted]
MARKS, JAMES A. [redacted]
MAROVITZ, MITCHELL [redacted]
MARX, JOHN A. [redacted]
MATA, JOSE L. [redacted]
MATHENY, MICHAEL R. [redacted]
MATTES, DAVID J. [redacted]
MATTHEWS, THOMAS E. [redacted]
MC ARTHUR, WILLIAM S. [redacted]
MC CHRYSTAL, STANLEY [redacted]
MC CONVILLE, LESTER [redacted]
MC CRACKEN, DAVID E. [redacted]
MC DAVID, ALLEN M. [redacted]
MC FARLAND, MAXIE L. [redacted]
MC GINNIS, THOMAS M. [redacted]
MC ILWAIN, RONNIE J. [redacted]
MC KEEMAN, MICHAEL W. [redacted]
MC KENNON, ALTON C. [redacted]
MC MILLEN, LEROY B. [redacted]
MC MILLER, ANITA W. [redacted]
MC NALLY, JOHN J. [redacted]
MEDFORD, RODNEY H. [redacted]
MEGORDEN, FRANK M. [redacted]
MELCHER, DAVID F. [redacted]
MELVIN, SUSAN J. [redacted]
MENARD, EDWARD J. [redacted]
MENO, DONALD S. [redacted]
MILLS, GRADY S. [redacted]
MILLS, JOHN D. [redacted]
MITCHELL, CHARLES J. [redacted]
MIYAKE, KIRK D. [redacted]
MOAKLER, MARTIN W. [redacted]
MOGREN, ERIC T. [redacted]
MOILANEN, JON H. [redacted]
MOLDENHAUER, CHARLE [redacted]
MONTES, PORFIRIO [redacted]
MOON, ALAN B. [redacted]
MOORE, SPURGEON A. [redacted]
MOORMAN, JOHN H. [redacted]
MORAN, DENNIS C. [redacted]
MORRIS, GALEN E. [redacted]
MORRIS, JOHN W. [redacted]
MORRIS, ROBERT E. [redacted]
MORRISON, STEWART M. [redacted]
MUDD, JAMES V. [redacted]
MURPHY, SALLY D. [redacted]
NAIGLE, ALFRED J. [redacted]
NEGRETE, BERNARDO C. [redacted]
NEWMAN, BILLY W. [redacted]
NORBERG, JOSEPH M. [redacted]
NOYES, NATHEN W. [redacted]
NUNN, THOMAS C. [redacted]
NUXOLL, MAXIMILLIAN [redacted]
O DELL, JOHN C. [redacted]
O GILVIE, VICENTE C. [redacted]
OLSON, CHRISTOPHER [redacted]
OLSON, LARRY J. [redacted]
PACK, JOHN E. [redacted]
PALMER, JAMES T. [redacted]
PATE, BRUCE E. [redacted]
PEARCE, WILLIAM H. [redacted]
PENICK, JOE K. [redacted]
PENNYPACKER, WILLIA [redacted]
PENTECOST, BRIAN M. [redacted]
PETERSON, KERTIS D. [redacted]
PETERSON, TIMOTHY A. [redacted]
PHILBRICK, STEVEN H. [redacted]
PICKETT, ROBERT L. [redacted]
PIERCE, KERRY K. [redacted]
PLANCHAK, JOSEPH E. [redacted]
PLATER, DONALD E. [redacted]
PORTANTE, ROBERT A. [redacted]
POTTS, ERIC R. [redacted]
POWELL, DAVID C. [redacted]
POWELL, OWEN C. [redacted]
POWERS, JAMES F. [redacted]
PRASEK, F.J. [redacted]
PREMO, GREGORY J. [redacted]
PREWITT, DAVID S. [redacted]
QUINLAN, KENNETH J. [redacted]
RAIFORD, ROBERT C. [redacted]
RALSTON, DAVID C. [redacted]
RALSTON, ROBERT W. [redacted]
RASH, CHARLES R. [redacted]
REARDON, ROBERT H. [redacted]
REDDICK, ROBERT M. [redacted]
REDMANN, JEFFREY C. [redacted]
REED, DAVID M. [redacted]
REESE, ROBERT J. [redacted]
REYNOLDS, ROBERT T. [redacted]
RICE, KEVIN M. [redacted]
RICHARD, JOHN S. [redacted]
RICHARDSON, VELMA L. [redacted]
RITCHIE, WILLIAM D. [redacted]
ROBERTSON, DANA [redacted]
ROBINSON, FRED D. [redacted]
ROMANCIK, DAVID J. [redacted]
ROSE, LAWRENCE C. [redacted]
ROSENBERGER, JOHN D. [redacted]
ROWELL, SCOTTNWILLI [redacted]
ROZEK, JOSEPH D. [redacted]
RUSS, MERLE D. [redacted]
RUSSELL, MARK W. [redacted]
RYAN, KEVIN T. [redacted]
RYAN, THOMAS M. [redacted]
SAVAGE, RICHARD T. [redacted]
SAYLES, ANDRE H. [redacted]
SCHMIDT, HAROLD S. [redacted]
SCHROEDER, JAMES T. [redacted]
SCHROEDER, MICHAEL [redacted]
SCHWARTZ, GERARD W. [redacted]
SCHWITTERS, JAMES H. [redacted]
SCIPIONE, JOHN A. [redacted]
SCROGGINS, JOHN C. [redacted]
SCULLY, TIMOTHY A. [redacted]
SHANAHAN, DAVID M. [redacted]
SHIMKO, EDWARD J. [redacted]
SIMMONS, JAMES E. [redacted]
SIMPSON, BRUCE E. [redacted]
SLIWOSKI, RICHARD F. [redacted]
SLUSAR, ROBERT T. [redacted]
SMITH, JOHN A. [redacted]
SMITH, STEPHEN F. [redacted]
SOBY, CHARLES S. [redacted]
SORENSON, JEFFREY A. [redacted]
SPEAR, HARRY L. JR. [redacted]
SPEER, WILLIAM H. [redacted]
SPENCER, CARMEN J. [redacted]
SPIDEL, ROBERT J. [redacted]
STANLEY, JAMES G. [redacted]
STONE, EDWARD L. [redacted]
STONE, FRANK J. [redacted]
STUART, HENRY P. [redacted]
SVITAK, GEORGE M. [redacted]
SWAN, GUY C. [redacted]
TAYLOR, ALLEN E. [redacted]
TAYLOR, CURTIS B. [redacted]
TAYLOR, STEPHEN C. [redacted]
TERRY, JO C. [redacted]
TETER, WILLIAM A. [redacted]
THOMAS, JOHN R. [redacted]
THOMAS, KENT D. [redacted]
THOMAS, RICHARD B. [redacted]
THOMPSON, NATHANIEL [redacted]
THOMPSON, TOM E. [redacted]
THORNTON, EUGENIA [redacted]
TISO, ROLAND J. [redacted]
TISSERAND, JOHN B. [redacted]
TOAL, MICHAEL J. [redacted]
TONER, SHEILA C. [redacted]
TOOL, KARL E. [redacted]
TRIPLETT, CHARLES L. [redacted]
TUCKER, DONALD G. [redacted]
TURNER, ABRAHAM J. [redacted]
TURNER, ALBERT F. [redacted]
URIAS, JOHN M. [redacted]
URRUTIA, MICHAEL B. [redacted]
VALCOURT, DAVID P. [redacted]
VANE, MICHAEL A. [redacted]
VANHORN, WILLIAM A. [redacted]
VELEZ, RAYMOND [redacted]
VIGEN, EDWARD M. [redacted]
VINCENT, MARK E. [redacted]
VINSON, WILLIAM N. [redacted]
VIOLETTE, PAUL E. [redacted]
VOLZ, ROBERT D. [redacted]
VOSS, JAMES S. [redacted]
WALKER, CHARLES R. [redacted]
WALKER, DAVID L. [redacted]
WALKER, ROBIN C. [redacted]
WALSH, JOHN C. [redacted]
WARREN, VICKI L. [redacted]
WATERS, SUMNER, H [redacted]
WEBB, DENNIS M. [redacted]
WEINER, RICHARD K. [redacted]
WEISS, JACK L. [redacted]
WELLS, DANIEL W. [redacted]
WELTER, RICHARD F. [redacted]
WEST, STEVEN R. [redacted]
WESTHOLM, ROBERT L. [redacted]
WHITE, DAVID C. [redacted]
WHITE, JONATHAN [redacted]
WHITTEN, DONALD J. [redacted]
WIDEMAN, JAMES T. [redacted]
WILDERMAN, DAVID J. [redacted]
WILLIAMS, MURRAY W. [redacted]
WILLIAMSON, DANIEL [redacted]
WINFIELD, W.M. [redacted]
WOLFE, JACK L. [redacted]
WONDRASEK, ALAN M. [redacted]
WOODS, JOHN C. [redacted]
WORTZEL, LARRY M. [redacted]
WYLAND, STEWART W. [redacted]
YATKAUSKAS, ALBERT [redacted]
YOUNG, JAMES E. [redacted]
YOUNG, JAMES R. [redacted]
YOUNG, JULIUS M. [redacted]
YUILL, ROBERT G. [redacted]
ZAHACZEWSKY, GEORGE [redacted]
ZEKAS, WILLIAM. [redacted]

HOUSE OF REPRESENTATIVES—*Monday, February 27, 1995*

The House met at 12:30 p.m. and was called to order by the Speaker pro tempore [Mr. CRAPO].

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
February 27, 1995.

I hereby designate the Honorable MICHAEL D. CRAPO to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

MORNING HOUR DEBATES

The SPEAKER pro tempore. Pursuant to the order of the House of January 4, 1995, the Chair will now recognize Members from lists submitted by the majority and the minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to 30 minutes and each Member other than the majority and minority leaders limited to 5 minutes.

The Chair now recognizes the gentlewoman from Colorado [Mrs. SCHROEDER] for 5 minutes.

PROTECT CHILD NUTRITION PROGRAMS

Mrs. SCHROEDER. Mr. Chairman, I am proud to come to the floor to talk about children. As you know, I used to chair the Select Committee on Children, Youth and Families, and I just returned from Denver where people are really very troubled by what is happening to children in this new talk about block granting school lunches, money for WIC, and money for non-school child care.

I am very, very proud that in my State we have what is called the Colorado Children's Campaign. A year ago they started something that has been carried on here, this year, by people advocating for these programs.

What they did was dress dolls and then tied a story of a real Colorado child around that doll's neck, to talk about how these programs really do affect children.

For example, here is one that was made by a Coloradan. This young child's name is Wayne. He is 6 months old. He has a big sister. His mother does not want him. So therefore let me tell you what happened to Wayne. Wayne went to grandma. Grandma decided she did not want this little boy. He is now in foster care. This is a child who is going to be dependent upon nutrition services or he is going to not be well raised. I think that is very, very important.

They also brought this little girl. This little girl's name is Susan. Her dad left her mom. Her mom went on welfare. Her mom got job training, finally found a job, and Susan is now in child care. But that child care center receives food from the U.S. Agriculture Department, and that is part of the food that we are talking about block granting.

Now, many of my constituents were trying to move these around the Hill last week and felt very intimidated. People were telling them these dolls were not welcomed in committees, they were not welcomed in the Halls of Congress, because people wanted to be able to cut these programs and not realize what they were really doing.

We talk about numbers, but behind every one of these numbers is a child who is not fortunate enough to be able to pick its parents. Therefore, they are in real trouble if this country backs down on the commitment we have made for the last 50 years to nutrition and making sure that every American child gets a good start.

You know, James Baldwin said it better than any of us. He said these are all our children, and we will all either profit by or pay for whatever they become.

I think that was the motto that started this whole area of child nutrition programs. We know Harry Truman started it in 1946 after they were horrified by the level of malnutrition they saw of young men applying to fight during World War II. So as a consequence, it has grown and grown.

We now have some very disturbing statistics from the Department of Agriculture about what will happen if this Congress moves to implement the block grants that we are talking about. If we implement those block grants, we know that the WIC Program would immediately cut out 275,000 recipients today. If you compared it to what is in the President's budget, it would be over 400,000 recipients. These are low-income women that are getting food to try and make sure that their child is born safely.

Now, that is very important, because in my State of Colorado we have more babies born too small to be healthy this year than any other year since 1976. So our hope had been they would be expanding this program. We know that nutrition during pregnancy is a critical, critical problem, and if we do not feed them, then we end up with all sorts of developmental problems later on.

If you look at the school lunch program, in my city of Denver there is about 70 percent of the kids, 70 percent of the kids in Denver, CO, qualifying for subsidized lunch programs. That is because so many of the middle class kids have left.

Well, if this goes into effect, many children are going to be pushed out or there will be no national nutritional standards. Instead you are going to have 50 different States doing whatever they want to do, with no monitoring and being able to spend the money however they want.

I think Americans have been proud of the school lunch program. It has been a program that works, it has been a program that has been efficient, it has had national standards, and we have seen the results through our military recruitment. I would hope this body reconsiders what happens and try to undo some of the damage we have seen by the block grants that are coming forward.

REPORT ON UNITED STATES MILITARY OPERATIONS IN HAITI

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Florida [Mr. GOSS] is recognized during morning business for 5 minutes.

Mr. GOSS. Mr. Speaker, it is day 162 of the occupation of Haiti by United States troops. The costs are about $850 million, heading to $1 billion, but every American can feel safe and secure that the Haitian military is not going to invade us.

Congress put itself back into the Haiti policy loop last year, after some of the concerns we had about the way it was being handled by the White House, by requiring reports. I have the report from February 1 submitted by the White House to Congress. The report, a bit self-congratulatory, documents the success of operations in Haiti to date. Indeed, it does that. It is a short report.

What it does not do is document the problems we are facing and the risks we are facing and the costs we are obligating our taxpayers to at all, and that is something that needs to be done.

I read from the report. It says the purpose of our mission down there was to use all necessary means to secure the departure of the coup leaders. Many will remember they have left, and I think we have primarily former President Carter, General Colin Powell, and Senator SAM NUNN to thank for that. Certainly the threat of the force of our U.S. military was part of that. But the fact is, maybe we did not need to send 21,000 of our assault troops to that friendly, neighboring country to accomplish the removal of those coup leaders.

But let us go on to the next point, restoring the legitimate, democratically elected Government of Haiti to power. The administration is claiming great success for that. Well, they have not restored the Government of Haiti to power. They have restored President Aristide to power in his White House, but we no longer have a Parliament in Haiti, which is an essential part of government, and we certainly do not have much of a judiciary system. Any student of the Constitution in this country will understand that a functioning democracy has to have those three branches of government, which they do not have in Haiti.

You also have to say that in Haiti that the Haitians are not the power. The Government of Haiti is certainly not the power. It is the U.S. military that is the power down there now. To say that it has been restored to the Haitian people is a further mistruth, because it is only to select Haitian people.

If you go to Haiti today and say how do you feel about the United States troops, you will get a number of answers, depending on who you talk to. The people who are pro-Aristide will say we are very friendly. The people who are not pro-Aristide, which is about 30 percent of the country or so, will say we think everything the U.S. Government is doing is backing Aristide, and it is very pro-Lavalas, and we are being identified with one man's power, one man's presidency in that country, and that is a dangerous place for our foreign policy to be.

But moving forward from those points, when we talk about whether or not the Haitians can run Haiti yet, it is clear they cannot, and even though we and the United Nations have declared that it is a secure and stable environment, we saw just last week that they had a massacre as soon as our troops left one of the enforcement areas, the police station up in a town called Limbe. Our troops left, the mob went in, grabbed the people out of the station, beat them to death, burned them, and at least had the decency to bury them after that.

That is an isolated incident, I agree. But I suspect as our forces leave, we need to be on guard. To say things are secure and stable may be stretching the point just a little bit the way things are in Haiti today.

That police force is supposed to provide some of the stability. Some observers now are saying they are being politicized, deliberately politicized by President Aristide; he is bypassing some of the screening process put in to build a professional police force. This is a serious problem and we need to know a lot more about it.

I think that the report that we are talking about, restarting the Haitian economy, which is very important, signals something very curious for us as American taxpayers. We have about $1.6 billion pledged for our military support, and another $1 billion pledged for some type of aid support over the next year or so, I think would be a fair statement, and yet it is all at the top. It is not down at the bottom. We are not getting the money and the expertise down at the working level on the front lines of commerce.

Talking to businessman after businessman after businessman, our program there is misdirected, and that is something we have to refocus very quickly, especially for that kind of money.

We are paying a very heavy price in Haiti as taxpayers, as I said. What are we spending money on? We are buying troops from other countries. We are paying foreign soldiers, paying them at the rate of about $1,000 a month to foreign governments, who are taking a handling fee to put their troops into Haiti as part of a joint task force. Our troops down there are being used right now for things like garbage collecting, writing speeding tickets, making traffic flow work, that kind of thing.

In this report, interestingly enough, the White House says we must have to cover a $2.6 billion shortfall in our defense spending because without it the net effect will be a significant decrease in overall military readiness.

In other words, our military readiness is at threat because our troops are picking up the garbage in Haiti. We need a fuller report from the White House.

SSI EXTENSION TO GUAM AND THE VIRGIN ISLANDS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Guam [Mr. UNDERWOOD] is recognized during morning business for 5 minutes.

Mr. UNDERWOOD. Mr. Speaker, today I am introducing legislation to correct the fundamental flaw in the Republicans' welfare reform proposal contained in the Contract With America. Their proposal would substantially undermine the public assistance program by sending block grants to the States, limiting the Federal spending, and dropping millions of children and adults from the rolls, thus jeopardizing them to a future of poverty, joblessness, and hopelessness.

The Republican proposal to restructure the welfare system is fraught with provisions to exclude noncitizens from receiving many public assistance programs. For instance, they would be ineligible for Medicaid, SSI, and a variety of food, housing, and health care programs. The denial of these services to low-income children and families is cruel and would only exacerbate their poverty and dim their hopes for a better future.

While there should be strong and vigorous debate on the inclusion of noncitizens, perhaps it is not clearly known that not all U.S. citizens are included in the benefits. Let me repeat this: Not all U.S. citizens are eligible for SSI.

I am concerned about a major omission in the majority's welfare reform bill, which fails to address the need for Supplemental Security Income coverage for the territories. Since the implementation of the SSI Program in 1974, the citizens of the insular areas have been excluded from participating in this program. The Republican bill continues to deny SSI benefits to the U.S. citizens living in these offshore areas. The bill I am introducing today would extend the SSI Program to Guam and the Virgin Islands, and I understand that the extension of SSI to American Samoa and Puerto Rico will be addressed in separate legislation.

The gross disparity of denying SSI to the territories is particularly significant, coupled with the fact that the total Federal expenditures for all cash assistance programs, including the Aid to Families with Dependent Children and the adult assistance programs, are capped each year for the insular areas. For Guam, the Federal cap is $3.8 million per year. In fiscal year 1994, Guam spent under Federal mandate approximately $15 million to provide Federal assistance to eligible low-income individuals.

Today, I am seeking a quality of treatment for the people of Guam and the Virgin Islands in comparison with those residents of the 50 States and the District of Columbia. Citizenship in this country and the privileges associated with it should not be measured by geographic choice, in residency, or the size of one's pocketbook. Whether one chooses to live in Alaska, Florida, or the Virgin Islands, a federally funded program should be accessible to everyone. However, if you are residing in Agana, Guam, or St. Croix, Virgin Islands, you are not eligible for SSI benefits.

Finally, providing SSI benefits to Guam and the U.S. Virgin Islands will provide the well-being of low-income aged, blind, and disabled residents of our island economies who are dependent on imports from the States and foreign markets.

Guam and the Virgin Islands have been associated with Uncle Sam for many years. In a partnership associates share in the benefits of the association. Uncle Sam, it is time to share the wealth and the responsibility of caring for your partners. We on Guam have fulfilled our responsibilities by giving up one-third of our island for national security, giving our sons and daughters to fight in wars all over the world, and giving loyalty to the American flag every day of our lives.

And here is the fundamental craziness in SSI eligibility, both from the past and into the present. The Commonwealth of the Northern Marianas is included and eligible under current SSI regulations, and they are 40 miles from Guam and have been associated with the United States since 1976 and became citizens at that time. Guam, whose people have been under the U.S. flag since 1898 and became citizens in 1950, and the Virgin Islands, whose people came under the flag in 1917 and became citizens in 1927, are ineligible.

Why the loyalty and dedication of the citizens of these two territories goes unrewarded while others assume benefits, including noncitizens resident in this country? Who knows. But we want to fix it, and this is one of the things that we can fix, and we can fix today.

I urge my colleagues to join me in extending the SSI benefit to the two insular territories of Guam and the Virgin Islands.

SUPPORT THE RISK ASSESSMENT AND COST-BENEFIT ACT

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Georgia [Mr. NORWOOD] is recognized during morning business for 5 minutes.

Mr. NORWOOD. Mr. Speaker, I rise today in support of the Risk Assessment and Cost-Benefit Act. We must put an end to the overreaching bureaucrats whose choking regulations threaten American people every day. We must make the first rule of our regulatory system common sense. The bill will force Federal bureaucrats to use a little more common sense.

The examples of Federal regulatory nonsense are too numerous for me to mention here. Some are painful and some are just plain absurd. A pair that come to mind include an OSHA rule that cost the dental industry over $2 billion but produced no measurable improvement in worker safety, or then there's OSHA's attempt to declare bricks a potentially poisonous substance—yes, bricks. I imagine it is only a matter of time before some bureaucratic genius issues an advisory that says, "If Americans stopped driving their cars, there would be a lot fewer auto accidents."

Mr. Speaker, the way to bring sensibility to Federal regulations is to apply risk assessment and cost-benefit analysis as in our bill. The EPA and the FDA's own estimates suggest that their new regulations cost the economy as much as $12 billion each year. Our bill will force these bureaucrats to prove that the cost is worth the benefit we receive from those regulations. It will force agencies to focus on the most dangerous risks to society. It will force regulators to look at the effectiveness of $10 million solutions versus $100 million solutions.

Our opponents will argue that this legislation will roll back existing regulations. They will argue that this bill will endanger the safety of Americans. Mr. Speaker, the EPA Director, Carol Browner, went so far as to say, "20 years of protection of our children, our air, our land, and our water are being rolled back in the dead of night." Nothing could be further from the truth. Mr. Speaker, EPA Director Browner's remarks only show how desperate Federal bureaucrats are to hold on to the coercive power they now have over American business and the American people.

The main principle of our regulatory reform system must be common sense. The Risk Assessment and Cost-Benefit Act will force Federal bureaucrats to focus their regulatory efforts on what will benefit Americans the most. It will prevent Federal bureaucrats from forcing industries to spend millions, even billions of dollars without proving with good science the responsibility of that action. It will force Federal bureaucrats to give cost-effective solutions the same consideration and the same weight as the extravagant ideal solutions they pursue today.

Mr. Speaker, it is past time that we recognize that our resources are not boundless. If we are to save ourselves from the debt that is crushing us every day, we must force Federal regulators to behave responsibly and ease the burden they place on our economy.

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THE BALANCED BUDGET AMENDMENT

The SPEAKER pro tempore (Mr. CRAPO). Under the Speaker's announced policy of January 4, 1995, the gentleman from Kansas [Mr. TIAHRT] is recognized during morning business for 2 minutes.

Mr. TIAHRT. Mr. Speaker, tomorrow the Senate will vote on the balanced budget amendment and they are one vote short. That is an issue that is very much needed by all Americans.

We must balance the budget. We must provide this discipline to end the deficit spending and to shrink Government and reduce the tax burden.

Over the last 25 years we have been unable to exercise the self-discipline of a balanced budget. So passage of the balanced budget amendment means an ending to the liberal welfare state just like passage of regulatory reform meant an end to the nanny state.

The balanced budget amendment is not only important to this generation, Mr. Speaker, but it is important to the next generation. We are $4.5 trillion in debt. The balanced budget amendment starts a glide path that gets us down to the year 2002. It is a 7-year plan.

My oldest child Jessica is now 14 years old. In 7 years she will be 21. She will be out of college. She will be paying taxes and contributing to society. So it will be up to her generation to pay off the debt because we have spent their money. If it takes as long to pay off the debt as it took for us to spend it, to raise the debt, than she will be nearly 50 years old.

One vote away. Mr. Speaker, we must have this discipline. Because if we do not get this discipline, Americans, I fear, will lose faith in this economy and in this system of self-governance, just like Mexico recently lost faith in their economy. It caused a near economic collapse, and we are still struggling with the solution to that problem.

We just ask that the Senate join with the Republicans in the House and all across the Nation who want a balanced budget amendment because we are committed to stopping the out-of-control spending and the out-of-control regulation. We are working hard for real change and for keeping our promises.

CHINA AND INTELLECTUAL PROPERTY RIGHTS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentlewoman from California [Ms. PELOSI] is recognized during morning business for 5 minutes.

Ms. PELOSI. Mr. Speaker, this weekend U.S. Trade Representative Mickey Kantor announced that the United States and China reached an agreement that will provide protection of intellectual property rights for the United States companies and provide market access for intellectual property-based products. Good for him, and I commend the Clinton administration for their tough negotiating stand that they took on reaching this agreement.

The agreement between China and the United States contains the following commitments from China: to take immediate steps to address rampant piracy throughout China; to make long-term changes to ensure effective enforcement of intellectual property rights; to provide United States rights holders enhanced access to Chinese markets. This includes a commitment for no quota on United States audiovisual products among other provisions.

Mr. Speaker, this agreement—and it was necessary for the administration to be so very tough—this was necessary because about 3 years ago, the Bush administration, in addressing this intellectual property problem, engaged in a memorandum of understanding with the Chinese. Operating in good faith, the United States entered into this agreement which, unfortunately, the Chinese did not enter into in good faith. Because China did not live up to its obligation of the agreement to enforce its laws and regulations, intellectual property rights have been virtually absent in China. Respect for them have been absent and piracy rates are soaring in all the major centers along China's increasingly prosperous east coast. In the past 2 years Chinese companies have been exporting pirated products in large volume. Not only are they pirating intellectual property for domestic consumption, they have become exporters to Asia and Latin America, Canada and the United States of our intellectual property.

For example, Mr. Speaker, China—in China they have a capacity to produce 75 million CD's for a domestic market that can only absorb 5 million CD's annually. So they produce 15 times more than they can possibly consume domestically under the present circumstances.

So it was, as I say, I thought that the memorandum of understanding was weak when it was entered into, but the Bush administration gave the Chinese the benefit of the doubt.

Since that time, as you know, Mr. Speaker, there has been a boom in the Chinese economy, the rates of growth have been record highs—have reached record highs. And with that increase in the boom have increased the piracy and violations of our intellectual property agreement.

The agreement is one thing, however, and enforcement is another. Today's action was necessary because of the failure of the MOU, as I mentioned.

Why am I suspicious and why do we have to be very vigilant as far as the Chinese on the enforcement of the intellectual property? Because of several factors.

In the past 5½ years, since Tiananmen Square, the trade deficit with China, largely because of unfair trade practices of the Chinese, has increased from $6 billion to $30 billion—$30 billion trade deficit. I told you about the CD's, 75 million—for domestic consumption, 5 million. At that, pirated, even the 5 million would be pirated.

You may recall, Mr. Speaker, that the paramount leader, Deng Xiaping visited south China to support the market reforms going on there and with great pride he visited the Shen Fei factory in 1992, the very factory that was producing pirated illegal U.S. intellectual property.

Many of us, people even in the administration, are suspicious of the Chinese willingness to crack down on that particular factory because relatives of the highest leaders in China benefit from the profits. They are the owners. Indeed, it might surprise you, Mr. Speaker, to know that even the trade ministry of China uses pirated Microsoft software. So when I say that they do not operate in good faith in the memorandum of understanding, you know why I am suspicious.

But one other thing happened over the weekend in relationship to China. I wanted to call it to the attention of our colleagues.

Twelve intellectuals petitioned China on corruption. The dozen prominent intellectuals formally petitioned the parliamentary bodies to conduct an independent investigation into corruption of the Chinese leadership. The presentation of the 2,000-word petition marks the first time in a year that an organized group of scholars, writers, and former Communist Party members—indeed, two of these people were former editors of the People's Daily; they had been fired because their prodemocratic sympathies, proreform sympathies.

In any event, my point is: If the administration pays at least 1 percent of the time to the rights of the intellectuals, the workers, the people of China as it is done to intellectual property rights, we might be able to have some success in that arena as well.

I wanted to make sure our colleagues were aware of the petition of the intellectuals.

THE SCHOOL LUNCH PROGRAM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Ohio [Mr. HOKE] is recognized during morning business for 5 minutes.

Mr. HOKE. Mr. Speaker, I have been troubled over the past 10 days and particularly this weekend over the rhetoric that has been coming from the other side of the aisle with respect to the school lunches and WIC, which means the program that is for women, infants and children. We have been attacked on this side of the aisle with all of the old canards: callousness, lack of compassion, not caring at all, being the toutees of big business, et cetera, et cetera, et cetera.

I have been extremely curious about why the Democrats have been attacking us with such viciousness. We heard another attack just this morning on the same subject, not a vicious attack, but an attack nonetheless. And because it is clear to me that when you analyze the Republican approach to this, it certainly does not do what the Democrats claim it would do. In other words, it is not on the facts that people are confused.

If you listen to the numbers, Mr. Speaker, you get a very different picture. First of all, the amount that we are spending on school lunches in 1995 is $4,509,000,000. Under the base line, what the proposal from the President, it would have been $4,703,000,000 in 1996. Our Republican proposal actually increases that to $4,712,000,000. So in other words, there is more money going to school lunches, certainly $200 million more than in 1995. Actually, $9 million more than, I am sorry, not $9 million, $90 million more than had been proposed in the President's budget. And so that does not square with the attacks you have heard.

Look at the WIC spending. WIC is money that goes to women, infants and children, $3,470,000,000 in 1995. Under our proposal, $3,684,000,000 in 1996, an increase of more than $200 million. That is also an increase of $100 million over the CBO baseline estimate.

Now, I started to think about this. I thought, if we are in fact increasing the amount of money that is going to school lunch spending, why is it that we have been attacked by the President, by the administration, by Cabinet members and by leadership on the other side of the aisle? It seems to me that what you have to look at is who is being cut. And who is being cut by this program are bureaucrats in Washington. The people in Washington that have been making these decisions, they are cut through the Ag budget. They are cut substantially. It is real pain for a person that is losing their job in the Federal bureaucracy. I do not doubt that for a moment. But the fact is, that when we are making the cuts, as a result of that, you have to say to yourself, who is it that the Democrats are representing in this process? Are they representing the children or are they representing the bureaucrats?

So I decided to myself, well, maybe what I want to do is what I used to do in the private sector, and that is follow the money.

So I did a little analysis, the details of which I am going to disclose later on today, but it compared the number of dollars that have been contributed to Democrat candidates over the past 10 years, the past five cycles, by Federal employee PAC's, political action committees. Those are special interests that give money to candidates.

I compared those dollars given the Democrats to dollars by those same Federal employee PAC's given to Republicans. Guess what I found out? I found out that Democrats get more than 10 times the amount of those dollars in terms of contributions. So I started to say to myself, of course, there is something very natural going on here. The Democrats understand who their constituents are. Their constituents are not the children. Their constituents are not the children who, in this case, here is a doll that was given to me by Jamie. It was brought to me by Billy Osborn Fears, who is probably one of the most wonderful, responsible, intelligent, creative, energetic, committed social workers I have ever met working in Cleveland, OH. And what the Democrats are saying is that Billy Osborn Fears, who actually goes in and out of these centers on a daily basis, she is there, she knows what is needed, she knows how to administer these things, she knows how to get the biggest bang for the buck, that she does not have as much intelligence or commitment as the Federal bureaucrats in Washington do.

I am not going to impugn the reputation of people working in Washington, but I will tell you one thing, and that is, that if you are in Washington, how can you possibly know what is needed on the west side of Cleveland? How can you possibly have the same sensitivity to what is needed in the borough of the Bronx of New York, if you are not there, if you are not there every day? And that is what this program is all about.

It is a very different way of spending your Federal tax dollars.

Mr. Speaker, it is very important. So I started to think about this. My only conclusion is that you have to determine who the constituents are. We represent the children.

RECESS

The SPEAKER pro tempore. There being no further Members listed for morning hour, pursuant to clause 12, rule I, the Chair declares the House in recess until 2 p.m. today.

Accordingly (at 1 o'clock and 5 minutes p.m.) the House stood in recess until 2 p.m.

☐ 1400

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore [Mr. BEREUTER].

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We know, O gracious God, that when the resources of our minds and spirits grow fragile and the burdens are great, we can seek Your will and Your way in our prayers. We recognize that our intellect and our commitment are not enough for all the pressures and anxieties of daily life and we are often too slow to seek Your guidance and assurance. We pray, O God, that Your grace that is greater than we could ask or imagine, will be with us in all the moments of life and give us that strength and that peace that the world cannot give. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Ohio [Mr. TRAFICANT] come forward and lead the House in the Pledge of Allegiance.

Mr. TRAFICANT led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

REPUBLICAN CONTRACT WITH AMERICA

(Mr. WELLER asked and was given permission to address the House for 1 minute.)

Mr. WELLER. Mr. Speaker, our Contract With America states the following:

On the first day of Congress, a Republican House will require Congress to live under the same laws as everyone else; cut committee staffs by one-third, and cut the congressional budget. We kept our promise.

It continues that in the first 100 days, we will vote on the following items: A balanced budget amendment—we kept our promise; unfunded mandates legislation—we kept our promise; line-item veto—we kept our promise; a new crime package to stop violent criminals—we kept our promise; national security restoration to protect our freedoms—we kept our promise; Government regulatory reform—we are doing this now; welfare reform to encourage work, not dependence; family reinforcement to crack down on deadbeat dads and protect our children; tax cuts for middle income families; Senior Citizens' Equity Act to allow our seniors to work without Government penalty; commonsense legal reform to end frivolous lawsuits, and congressional term limits to make Congress a citizen legislature.

This is our Contract With America.

SCHOOL LUNCH PROGRAM

(Mr. UNDERWOOD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. UNDERWOOD. Mr. Speaker, every day on Guam 18,000 hot lunches and 6,000 breakfasts are served to schoolchildren.

As a former classroom teacher, I know the value of a nutritious meal to the learning process. And I can spot when someone has not done their homework and is faking it.

The other side would argue that they cut this program, but it is included in the new block grants better entitled block head grants. This rationale is baloney. The new block grants are by every admission, a way that will eventually cut programs and reduce funding. The savings are supposed to be in less bureaucracy. But school lunches are not made by bureaucrats. These programs work quite well because they are administered by the elementary school principals for the benefit of our children whom we place in their trust.

We need to send some Members of Congress back to first grade to relearn their ABC's—

A. Elementary schools are not bureaucracies.

B. Schoolchildren are not freeloaders; and,

C. Hot lunches are not pork.

MEAN SPIRITED

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Mr. Speaker, as we have just heard, some overmodulated liberals in the new minority have taken to calling our new Republican majority mean spirited. By their curious standards, our attempt to cut Federal bureaucrats is mean spirited. Our efforts to reform welfare are mean spirited.

But, Mr. Speaker, it is fair to ask, what is the real definition of mean spirited? Is defending a system that wastes the taxpayers' money not mean spirited? Is fighting an effort to instill some fiscal responsibility not mean spirited? Is continuing a welfare mentality that kills opportunity and creates hopelessness not mean spirited? Is taking money from future generations to pay interest on our debt today not mean spirited? That is why we need the balanced budget amendment.

Mr. Speaker, defenders of the old order have always accused those of us who want to bring change of being mean spirited. I urge those so quick to judge us to look in the mirror to see if they can find the true culprits.

NUTRITION BLOCK GRANT PROPOSAL CALLED MEAN SPIRITED

(Mr. WARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WARD. Mr. Speaker, today I rise in opposition to the mean-spirited nutrition block grant proposal. I say mean spirited, and I do intend to say that, because what the Republicans are saying is, "No, we're not going to cut the amount of money that's spent. We're going to put it into one bundle or block and give it to each of the States."

You know, that sounds good on the surface, but what they are doing is saying, "What we're going to spend is a fixed amount. It's not going to depend on the economy. It's not going to depend how some regions of our country fare compared to some other regions. It's going to depend on how much we want to give them today."

Let me tell you, Mr. Speaker. It will devastate our Nation's children. Children are the most defenseless population in America. They are entirely at the mercy of adults. We have a moral obligation to provide for these children.

When I was in the Peace Corps, living in Africa, I was not surprised to see children malnourished. I do not want to see it in America.

BALANCED BUDGET AMENDMENT

(Mr. JONES asked and was given permission to address the House for 1 minute.)

Mr. JONES. Mr. Speaker, while home over the weekend, numerous people shared their hope and anticipation in the passage of the balanced budget amendment. These people understand the need for this legislation since their share of the national debt exceeds $13,000. The debt now stands at over $4.5 trillion and it has been 25 years since the Federal Government has endorsed a fiscal year surplus.

My constituents and constituents nationwide want a balanced budget amendment because it denies the Federal Government from spending more than it takes in. It ensures that the Federal Government lives by the same rules as families, businesses, and local governments, and it restores fiscal sanity and common sense to Washington. As elected officials, it is our duty to work for passage of this legislation. This commonsense approach to changing business as usual is the right thing to do for future generations.

My fellow Members, it is my hope that this amendment passes for the sake of the American people.

CHINESE TRADE: THE FLY AND THE SHARK

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, another trade deal with China. This time it is over software. Software, Mr. Speaker. While we are quibbling over software, China is melting down hardware in factories all over America.

Check this out. Nike makes over 1 million pairs of athletic shoes in China every year and it costs 17 cents to make a pair of those shoes. Nearly all of them are shipped to America and they sell for over $100 a pair. But these think tank experts keep telling Congress, we need these cheap Chinese goods so we can keep our prices down.

Beam me up, Mr. Speaker. I commend Mickey Kantor for his efforts, but the truth is I think this trade deal is a fly on China's face while a full-grown great white shark is eating America's assets. That is assets, Mr. Speaker. Think about it.

ENDING BIG BUSINESS AS WE KNOW IT

(Mr. KNOLLENBERG asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KNOLLENBERG. Mr. Speaker, tomorrow the other body will cast its most important vote to date on the balanced budget amendment. Only a balanced budget amendment can provide the discipline to end deficit spending, shrink the Government, and reduce the burden on American families to shoulder the national debt for generations to come.

The balanced budget amendment is still one vote short as President Clinton and the other guardians of big government are doing everything within their power to kill it.

The fact of the matter is that many Members of Congress and the President have absolutely no intention of ever balancing the budget. They seem to be content with ongoing $200 billion deficits and the intrusion of big government into the daily lives of American taxpayers.

Mr. Speaker, there is a fork in the road and the paths are clear. One leads to more of the same, deficits and higher taxes. The other leads toward the replacement of the welfare state with an opportunity society that understands that power emanates from people, not from government.

The choice is clear. I urge all my colleagues in the other body to move this country in the right direction.

PUBLIC BROADCASTING BRINGS REWARDS

(Mr. MINETA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MINETA. Mr. Speaker, last week the House Appropriations Committee took the first step to cut funding, and eventually eliminate, the Corporation for Public Broadcasting.

Public Broadcasting stations are different than commercial stations in that they are not always bound by the bottom line. This allows them to air programs commercial stations cannot afford. And it allows the American public to watch quality, commercial-free programming that is not available elsewhere.

The Corporation for Public Broadcasting ensures that our children watch Sesame Street rather than Beavis and Butthead, that quality arts and cultural entertainment are available, and that we get indepth news coverage on television and radio.

Mr. Speaker, as we cut Federal spending, we must be smart and responsible. And we should remember that for a relatively small investment, Public Broadcasting brings us great rewards.

PASS THE BALANCED BUDGET AMENDMENT

(Mr. CHABOT asked and was given permission to address the House for 1 minute.)

Mr. CHABOT. Mr. Speaker, after listening to some of my liberal colleagues on the other side of the aisle, you would think that balancing the budget was like dreaming the impossible dream. Actually nothing could be further from the truth. We can balance our budget. We just need to act a little more responsibly. That is why I support the balanced budget amendment to the Constitution. It forces us to act a little more responsibly.

One would think from the rhetoric of the liberal Democrats that balancing the budget means draconian cuts in the budget. Actually all we have to do is slow the rate of spending to an additional $2 trillion instead of $3 trillion in the next 7 years. The fearmongers are acting like we want to starve children. Ridiculous. We want to save our children's future.

I encourage all of my colleagues, pass the balanced budget amendment now.

CHILD SUPPORT ENFORCEMENT AND MEAN SPIRITEDNESS

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute.)

Mrs. SCHROEDER. Mr. Speaker, I rise today to thank the President for signing the order that will make the Federal Government a model employer on child support enforcement. I chaired the hearings last year where we had parent after parent come forward and talk about their problem of making Federal employees be responsible for paying child care. Now the President has done everything within his means and I would hope that this body would do everything within their means to fill in the things that we have to do by legislation.

I also would like to speak for a moment about the mean spiritedness I am hearing about on the floor today. I think it is rather ironic that the same bureaucracy that they do not want to handle child lunches is going to be able to continue doing food stamps. I mean, that makes no sense to me.

Why will 50 bureaucracies do a better job of handling children's lunches but you do not want to entrust the food stamps to them? I think we know. I think it is because we are going to let the bureaucracies eat the kids' food.

SUPPORT THE BALANCED BUDGET AMENDMENT

(Mr. HOKE asked and was given permission to address the House for 1 minute.)

Mr. HOKE. Mr. Speaker, as the debate on the balanced budget amendment comes to a conclusion, the American people have heard a great many reasons why this amendment to the Constitution should not be enacted. There is the Social Security red herring. There is the canard regarding the role of the judicial branch. There are the dire predictions of gloom and doom to our economy. Excuses, diversions, distractions, delaying tactics.

The American voters do not want any more excuses. They want a balanced budget to the Constitution. They want this amendment because the people are tired of the Congress taxing and spending away our children's futures. They want this amendment because the Congress has proved incapable of coming to grips with our budget deficit without it.

Mr. Speaker, I urge opponents of the balanced budget amendment to stop with their excuses. A vote for the balanced budget amendment is a vote for the future prosperity of our Nation.

FEED THE CHILDREN

(Ms. PELOSI asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. PELOSI. Mr. Speaker, last week when we saw the proposals that were being made by the Republican leadership to cut the Federal nutrition programs, our colleague, TONY HALL, a great leader in the fight against hunger in America and indeed throughout the world, said, "Up until now, the issue of hunger has not been debatable." Indeed it should not be. A great country, a decent country like ours should heed the Bible and feed the hungry.

Before we vote on these changes, because we will have to vote on them, which will jeopardize our children's health, we should think and we should listen. We should listen to the teachers. Teachers tell us that a hungry child is a distracted child. A good meal is an investment in learning. We should listen to the doctors. With the WIC Program, the doctors tell us that a dollar spent on nutrition for a pregnant mom saves $4 to be spent on problems to be dealt with with a sick child later, a malnourished child later.

In addition to our concern about the child, this has fiscal overtones. We should listen to the generals. It is indeed they who had suggested the School Lunch Program when they saw that our troops were malnourished in the 1940's.

This is not about domestic versus defense. This is about a strong defense. We must feed our children.

TODAY'S FORGOTTEN AMERICANS

(Mr. SMITH of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Speaker, the giant sucking sound in America in 1995 is a governmental grabbing of private property through ruinous regulation. Our farmers in the Midwest and across the Great Plains are unable to use their farmland because the Government calls their dry lands wetlands.

Property owners on the East Coast are denied the right to build homes for their families because bureaucrats deem their construction unwise.

Across, Texas, homeowners, ranchers, and farmers are warned they may not be able to use private land if a golden-cheeked warbler decides to nest there.

These are today's forgotten Americans. These citizens will be forgotten no longer if, later this week, we pass the Private Property Protection Act of 1995.

This legislation puts the rights of these Americans who do the work, pay the taxes, and pull the wagon on the same par as the blind cave spider and the fairy shrimp.

This legislation requires the Government to pay for land that it wants to use for a public good. It prevents us from shifting those costs onto the farmer, the rancher, the homeowner who happens to own the wrong land in the wrong place at the wrong time.

Mr. Speaker, let us remember the forgotten Americans.

REMEMBER THE CHILDREN

(Mr. HILLIARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HILLIARD. Mr. Speaker, today I rise in protest to the Republican plan to transfer funding for the school student nutritional program to block grants to the States. The claim that this proposal will be beneficial by reducing bureaucracy is misleading and downright false.

The purpose of this program which has been in place for 49 years and has been modified and approved in previous Congresses is to ensure that our children are well-nourished and that they are provided with the nutritional substance that they need to get them through the day.

Many children who participate in this program have no other source for meals during the school day. The family may not be able to provide for the child because of financial difficulties, and, of course, we must acknowledge that parental neglect does take place even in affluent families.

How can we justify taking food from the mouths of poor children who are struggling to get through school? Mr. Speaker, we have lost a generation of children through violence and drugs. Let us not destroy another one through malnutrition and neglect.

OHIO LEADS THE COUNTRY IN THE GLOBAL MARKETPLACE

(Mr. OXLEY asked and was given permission to address the House for 1 minute.)

Mr. OXLEY. Mr. Speaker, I rise today to commend the manufacturers and workers of Ohio on a noteworthy achievement. According to World Trade Magazine, the State of Ohio ranks No. 1 in the country in the number of businesses that export goods. Thanks in no small part to the policies of Governor Voinovich and the Ohio Department of Development, 67 percent of Ohio's manufacturing companies with over 100 employees exported products last year. Ohio has become a major player in the world economy. In the words of the magazine's editor—

> This dispels the myth that Ohio is the capital of the Rust Belt. Ohio is one of the most progressive and forward thinking States in America in terms of export promotion.

Mr. Speaker, I am a long-time supporter of free trade and international competition. I cannot tell you how gratifying it is to see Ohio leading the country in the global marketplace. This is proof positive that protrade policies at the State and national levels are benefiting Ohio's workers.

FEDERAL FOOD ASSISTANCE

(Mrs. CLAYTON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CLAYTON. Mr. Speaker, it appears that our appeals for a compassionate Congress are paying off. On Friday, it was announced that the Committee on Agriculture had reached some accord with the Speaker and that the food stamps will not be converted to a block grant. It remains as an entitlement with a cap. While the cap is a problem, nonetheless we have won a battle, but the war goes on.

The Committee on Economic and Educational Opportunity has proposed a radical change in the School Lunch and WIC Programs. If these changes stand, 275,000 women, infants and children will be removed from the WIC Program. Nutritious meals served to some 185,000 family day care centers will be eliminated. School food programs will be reduced by $309 million. The Committee on Agriculture is to be commended for taking the first step in the right direction.

But, Mr. Speaker, we have many more battles to fight for the hungry in America. The war goes on.

□ 1415

COSPONSOR REGULATORY A-TO-Z BILL

(Mr. LATHAM asked was given permission to address the house for 1 minute and to revise and extend his remarks.)

Mr. LATHAM. Mr. Speaker, I rise today to introduce legislation requiring each committee of the House to report a comprehensive regulatory relief plan during this session of Congress.

We are currently in the process of considering the Contract With America's long-overdue regulatory relief and reform provisions.

However, we need a vehicle for addressing existing excessive regulations that are costing our States, cities, and businesses hundreds of billions of dollars. This bill will provide that vehicle, free of the arbitrary schedules of reauthorization bills.

Under this proposal, every Member of the House would have the opportunity to offer amendments to their committees' regulatory package in order to streamline or reduce the costs of existing regulations, eliminate or reduce unfunded Federal mandates, and apply cost-benefit analysis review to existing regulations.

In the tradition of openness of the A-to-Z spending cut plan, I call this bill the regulatory A-to-Z bill. I hope all Members will join me as a cosponsor of this comprehensive regulatory reform bill.

AS THE ROMANS DID

(Mr. FORBES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FORBES. Mr. Speaker, Rome was not built in a day and the Washington bureaucracy will not be torn down in 100 days. While the President of the United States goes to foreign soil to criticize Members of this body, the Republican majority is making progress. We are working hard, we are keeping our promises and starting to change the way that Washington operates.

This week we continue to change the federal regulatory process.

For years, our small business sector has cried for an end to stifling regulations and arcane rules that hurt economic growth and kill jobs. We have heard those cries and we will deliver relief. We will create jobs and help the American people.

Next month we will continue to change Washington. We will end the cruel cycle of dependence and hopelessness by comprehensively reforming our welfare system.

RISK ASSESSMENT AND COST-BENEFIT ACT OF 1995

Mr. DIAZ-BALART. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 96 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 96

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 1022) to provide regulatory reform and to focus national economic resources on the greatest risks to human health, safety, and the environment through scientifically objective and unbiased risk assessments and through the consideration of costs and benefits in major rules, and for other purposes. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed two hours equally divided among and controlled by the chairman and ranking minority members of the Committee on Commerce and the Committee on Science. After general debate the bill shall be considered for amendment under the five-minute rule for a period not to exceed ten hours and shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore (Mr. BEREUTER). The gentleman from Florida [Mr. DIAZ-BALART] is recognized for 1 hour.

Mr. DIAZ-BALART. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from California [Mr. BEILENSON], pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 96 is a modified open rule providing for the consideration of H.R. 1022, the Risk Assessment and Cost-Benefit Act of 1995. The purpose of this legislation is to provide regulatory reform and to focus national economic resources on the greatest risks to human health, safety, and the environment through scientifically objective and unbiased risk assessments and through the consideration of costs and benefits in major rules.

In addition to the 1 hour of debate on this rule, the rule provides for 2 hours of general debate, with 1 hour equally divided between and controlled by the chairman and ranking minority member of the Commerce Committee, and 1 hour equally divided between and controlled by the chairman and ranking minority member of the Science Committee.

After general debate is completed, the bill will be considered for amendment under the 5-minute rule, for a period of time not to exceed 10 hours. I would like to emphasize that any Member will have the opportunity to offer an amendment of the bill under the 5-minute rule. I believe this is a fair process, in that, again, it will allow any Member with a suggestion for improvement of this legislation, to bring it up for consideration by the full House in the form of an amendment.

Finally, the rule provides for one motion to recommit, with or without instructions.

Mr. Speaker, House Resolution 96 brings to the floor H.R. 1022, a bill which is the product of intense negotiations to reconcile the differences between bills marked up and reported out by the Committee on Science and the Committee on Commerce. Both committees had jurisdiction over title III of H.R. 9, the Job Creation and Wage Enhancement Act, and I believe that this compromise legislation is a balanced and appropriate vehicle for floor consideration for purposes of amendment to achieve the goal of setting a comprehensive risk assessment policy for the Federal Government.

This legislation, the Risk Assessment and Cost-Benefit Act of 1995, consists of six major provisions. Title I deals with presenting the public, and Federal executive branch decisionmakers, with the most scientifically objective and unbiased information concerning the nature and magnitude of health, safety, and environmental risks in order to provide for sound regulatory decisions and public education. Title II requires Federal agencies to prepare information regarding costs and benefits for each major rule within a program designed to protect human health, safety, or the environment Title III establishes peer review requirements for rules that are likely to increase annual costs by $100 million and calls for the establishment of national peer-review panels to review agency practices concerning risk and cost assessments. Title IV sets up the applicable judicial review requirements. Title V requires each covered Federal agency to publish a plan concerning procedures for receiving and considering new information and revising risk assessments or rules where appropriate. And finally, title VI requires the President to issue biennial reports addressing risk reduction priorities among Federal regulatory programs designed to protect human health.

All too often, although well-intentioned, Federal regulatory costs are vastly out of proportion to the concerns that the regulations were meant to address.

Mr. Speaker, H.R. 1022 reforms the Federal regulatory process in a sound and reasonable manner and will hopefully help us avoid some of the unintended consequences we have encountered in the past.

Mr. Speaker, I believe H.R. 1022 is a good bill, and I defer to the judgment of the chairmen of the committees that reported this bill, who have stated that 10 hours is ample time for the amendment process. If we work together in a spirit of cooperation and comity, and do not resort to dilatory tactics, we should be able to have a thoughtful amendment process to enable us to improve the bill from its current form, in necessary.

I strongly support the Risk Assessment and Cost-Benefit Act of 1995 and urge adoption of this open rule for its consideration.

□ 1430

Mr. Speaker, I reserve the balance of my time.

Mr. BEILENSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we are opposed to this rule because it limits the amount of time allowed for considering amendments to the bill it makes in order, the Risk Assessment and Cost-Benefit Act of 1995. This is a very complex bill which many Members believe is seriously flawed, and the rule for its consideration ought to ensure that Members have an adequate amount of time to offer amendments which would improve it.

Mr. Speaker, we understand the desire of the majority to have H.R. 1022 considered in a timely manner. However, based on our experience during the last 2 weeks considering four bills which were also subject to a 10-hour limit on the amendment process, we can realistically expect that the actual amount of time spent debating amendments will be much less than 10 hours—somewhere between 6 and 8 hours.

During consideration of this rule in the Rules Committee on Friday, we offered an amendment to strike the 10-hour time limit on the amendment process, since it was our first preference not to have any limit at all. That amendment was rejected on a straight party-line vote.

We then offered an amendment to lengthen the time provided for the amendment process to 20 hours, the amount requested by the gentleman from Michigan, the ranking minority member of the Commerce Committee, Mr. DINGELL. If one-quarter to one-third of the time is likely to be consumed by voting, then actual time spent debating amendments would be between 12 and 16 hours. That amendment was also rejected on a party-line vote.

Finally, we offered an amendment to exclude time spent on recorded votes from the 10-hour limit. That change would have meant that there would actually be 10 hours in which to debate amendments, rather than 6 or 7 or 8. But that amendment, too, was rejected on a party-line vote.

As I said, the majority's desire to have a time limit on the offering of amendments is understandable, but their insistence on including in that limit the time it takes to hold recorded votes is not. Our request to exclude time spent on recorded votes was a very reasonable one which should have been accepted. Besides providing more opportunity to a greater number of Members to offer amendments, it would have made the arduous process of paring down and prioritizing amendments—which Members on both sides of the aisle are affected by—significantly less difficult.

Furthermore, if time spent on recorded votes is not excluded from the limit, sponsors of amendments are put in the uncomfortable position of having to choose between seeking a recorded vote, or foregoing that recorded vote in order to increase the likelihood that other Members will get a chance to offer their amendments. It is simply not fair to put Members in that position.

The argument that was made in the Rules Committee against excluding time spent voting from the 10-hour time limit was that such a change would encourage dilatory tactics—that opponents of the bill would call for recorded votes on every amendment. But, in fact, by not excluding voting time, a parliamentary tactic of another sort can be employed by the bill's proponents—and in fact, has been. Three times during consideration of amendments to the Regulatory Transition Act, Members who agreed with the outcome of the amendment on voice vote called for recorded votes in order to consume time alloted for considering amendments.

Partly as a result of that tactic, the amount of time spent actually debating amendments to the Regulatory Transition Act was only 6½ hours, and 15 Members who wanted to offer amendments were unable to do so.

Mr. Speaker, the time limit on the amendment process would not be quite so troubling to Members on our side of the aisle if it were not for the fact that the Risk Assessment and Cost-Benefit Act, like many of the other Contract With America bills, did not receive adequate consideration prior to floor consideration.

This is a bill which makes extremely far-reaching changes in the Federal regulatory process. Yet the Science Committee, which has principal jurisdiction over the bill, dispensed with subcommittee hearings and markup entirely, and held just 2 days of hearings at the full committee level.

The committee began markup of the bill 3 days after the hearings, before the committee had received many of the agency responses it had requested analyzing the impact of the bill and responding to questions asked by witnesses. And, the chairman of the committee presented extensive amendments changing the scope and application of the bill at markup, without giving other Members any time to prepare amendments in response.

The other committee of jurisdiction, Commerce, also dispensed with subcommittee hearings and markup, and held just 2 days of hearings at the full committee level. The committee began markup 5 days after the hearings, without giving minority members a copy of the markup vehicle until the day before they began amending the bill. That left members on that committee, as well, without sufficient opportunity to prepare amendments.

In addition, the bill that this rule makes in order is not the version of the legislation that either committee reported—it is a version that was introduced just last Thursday, which neither of the ranking minority members had adequate opportunity to review prior to testifying at our Rules Committee hearing on Friday.

The tragedy of this hasty and deficient committee process is that it contributed to the loss of an opportunity to bring to the floor a more reasonable and rational regulatory reform bill which would have had the support of virtually the entire membership.

We all agree that better use of risk assessment, cost-benefit analysis, and peer review could help make the regulatory process more rational, efficient, and cost-effective, and would result in regulations that are less expensive and less onerous to comply with. A great deal of work toward that end was done by the Science Committee in past Congresses under its former chairman, now the ranking minority member, the gentleman from California [Mr. BROWN].

However, the bill before us is an ill-considered piece of legislation that will have widespread unintended consequences and make legitimate regulation much more difficult. In its present form, it would: Set up a cumbersome and costly procedural maze which is likely to require more Federal employees and agency costs at a time we are trying to downsize the Federal bureaucracy—by imposing a whole new set of regulatory requirements on top of existing ones which are already too complex; invite massive amounts of new litigation; establish a nonscientific process of comparative-risk analysis; permit peer review panels to be dominated by scientists who have financial conflicts of interest; and impose an inflexible and unrealistic requirement that agencies certify that benefits outweigh costs before issuing final rules.

Particularly troubling is the fact that the bill's decision criteria for issuing rules would supercede such requirements in existing health, safety, and environmental laws. By applying these new requirements to such laws as the Clean Air and Clean Water Acts, this legislation threatens to overturn the important health protections citizens have under those laws.

Fortunately, in the course of consideration of this bill, we shall have the opportunity to change many of its most worrisome features. Several worthwhile amendments will be offered and, we hope, adopted. A complete substitute, offered by Mr. BROWN of California and Mr. BROWN of Ohio, would cure all of the bill's most serious problems, and we hope that Members from both sides of the aisle will give it their support.

Mr. Speaker, again, we oppose this rule because of the restriction it imposes on the amount of time allowed for the amendment process, and I urge Members to vote "no" on it.

Mr. Speaker, I reserve the balance of my time.

Mr. DIAZ-BALART. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. SOLOMON], the distinguished chairman of the Committee on Rules.

Mr. SOLOMON. Mr. Speaker, I thank the gentleman from Florida [Mr. DIAZ-BALART] for yielding me this time, and I want to commend him for the great job he does as a new and a very valuable member of the Committee on Rules. He really is producing results.

Mr. Speaker, I rise today in support of another open rule from the Committee on Rules. I rise further to enthusiastically support this bill, the Risk Assessment and Cost Benefit Act of 1995.

This bill is the third in the Republican five-part series of bills to reform the Government's byzantine regulatory system. Later this week the House will take up H.R. 926, the Regulatory Reform and Relief Act. And then it will take up H.R. 925, the Private Property Protection Act, which I helped to write, and which I am so proud of.

Mr. Speaker, legislation like the measure before us today is exactly why you and I, Mr. Speaker, came to this Congress back in 1978.

In fact, the Clinton administration has substantially increased the number of wacky Federal regulations, and they have opposed our efforts over the last 2 weeks to reform the regulatory process.

Mr. Speaker, this bill requires risk assessment and cost-benefit analysis on regulations contemplated by Federal agencies. It is as simple as that. All too often Federal rules are promulgated with faulty science or, even worse, with political objectives in mind. This legislation sets forth the very scientific principles that must be adhered to in the conduct of the rulemaking process. In my upstate New York district, regulations that were developed with no regard to scientific evidence are threatening to close paper mills that employ thousands of people in the Glens Falls and other upstate regions. The EPA-proposed cluster rules, which set emission standards for the pulp and paper industry, could have been a much improved regulatory product had a cost-benefit analysis been conducted, but it was not.

Mr. Speaker, regulations to implement the Safe Drinking Water Act sound great, do they not? But in my district, they are yet another example of the regulatory chokehold the bureaucracy has on this Nation. Just listen to this: The cost to the small towns in my district is astronomical. The town of Keene, NY, with only 209 water users, has got to come up with a half-million dollars under the new regulation. The village of Lake Placid, with 2,485 users, $4.2 million. Where are they going to get the money from? And the village of Lake George, with only 933 users, $5 million. Boy, I just wonder where all this comes from. Mr. Speaker, this is outrageous, considering there has not been a waterborne disease in Lake Placid in over 50 years.

Mr. Speaker, unemployment in my area is twice the level of that of the State of New York, and my district cannot afford any more of these ill-conceived, ridiculous regulations. They have got to be stopped. The Republican Congress is about to turn the tables on the regulators in Washington.

For years business and industry have been forced to jump through hoops to satisfy regulators in the bureaucracy. Well, if this legislation becomes law, we are going to turn that around.

The executive branch in the future will be forced to jump through those same hoops, conducting commonsense studies before they can saddle business and industry and local governments with these kinds of ridiculous regulations.

The rule to provide for consideration of this dramatic reform pill is an open rule allowing for a 10-hour amendment process. This type of time capsule encourages Members to organize with their colleagues in advance and consult with their respective leaderships on which amendments should be offered inside the 10 hours.

The minority leader, the gentleman from Missouri [Mr. GEPHARDT], supports this kind of concept. He said so before our joint committee on reform task force. Such a time capsule allows for a fair and open amendment process within the time constraints made necessary by our ambitious agenda which was endorsed at the polls last November.

Mr. Speaker, I have said it before on this floor, but with each passing week, there is new evidence to support my assertion that a bipartisan coalition in this House is implementing the second Reagan Revolution. There have been large Democrat votes in this Congress in favor of such monumental reforms as the balanced budget amendment, the line-item veto, meaningful crime bills, and the regulatory moratorium bill just last week which passed the House by a vote of 276 to 146. A lot of good conservative Democrats voted for it on a bipartisan basis.

Mr. Speaker, I fully expect the same bipartisan group to come together and pass this piece of legislation. I urge support for the rule.

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Minnesota [Mr. PETERSON].

Mr. PETERSON of Minnesota. Mr. Speaker, last week the House passed H.R. 450, placing a temporary hold on Government regulations until commonsense risk assessment and cost-benefit analysis is passed and signed into law. As the ranking member on the subcommittee that drafted the regulatory moratorium legislation, I believe that our current regulatory process has become unworkable most of the time. The current process is too often made up of senseless rules and regulations that cost us time and money without producing a benefit.

Today we will consider and vote on H.R. 1022, a viable risk assessment bill which is the first step towards the lifting of the moratorium. H.R. 1022 is a commonsense approach to risk assessment that is essential to tangible and effective regulatory reform. Not only does H.R. 1022 make the regulatory process more reasonable by forcing Federal agencies to use sound science and practical common sense, but it also requires Government agencies to prioritize regulations, so that the most critical health and environmental risks are addressed first.

I speak for several of my Democrat colleagues who support this bill, and I can firmly say we support the rule and support H.R. 1022 in it's present form. If we were in charge of writing risk assessment legislation, I can say that we may have not drafted the bill exactly as it is, however, H.R. 1022 is a good start, and we do support this basic approach to risk assessment.

Some of my colleagues are arguing that enough time has not been given for adequate consideration of H.R. 1022. This is simply not the case. When we debated H.R. 450 last week, we had 1 hour less than has been given today for H.R. 1022. The time given last week for the regulatory moratorium was more than enough for thorough consideration. Furthermore, the truth of the matter is that those disputing the rule, will oppose this bill regardless of the amount of debate or with any amendments.

Again, last week the House passed a moratorium on Federal regulations as a first step to achieving commonsense regulatory reform. H.R. 1022 is the next critical step to more sensible and rational regulation. This bill lays the groundwork for what the American people have requisitioned Congress to do. The American people want the Federal Government out of their lives. I urge my colleagues to support the rule and vote for final passage of H.R. 1022 without amendments.

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Mr. DIAZ-BALART. Mr. Speaker, I yield 4 minutes to the distinguished chairman of the Committee on Science, the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of this rule to provide consideration of H.R. 1022, the Risk Assessment and Cost-Benefit Act of 1995.

This legislation is an important part of the regulatory reform package which the House began debating last week. Over 15 years ago, the first risk assessment bill was introduced in this House by our former colleague, Don Ritter. Since that time, Congress has held over 22 hearings on this subject. In this body, 10 of these hearings have been in the Committee on Science, 4 in the Committee on Commerce, 2 in the Committee on Government Reform and Oversight, and 2 in the Committee on Economic and Educational Opportunities.

Last year, the Committee on Science marked up and reported the Risk Assessment Improvement Act of 1994. Many of the provisions of title I of the bill we will debate today were contained in that act and were later added to the Environmental Technologies Act.

In fact, I have a chart here of where we were with the bill that was in the 103d Congress and where we are with the present bill.

You will see that the bills in many ways are very, very close. So, therefore, we are not talking about new subject matter, by any stretch of the imagination. The amendment which set forth the principles of risk assessment and risk characterization was passed by the House by a vote of 286 to 139. Because they were strong and meaningful guidelines, however, these principles were not enacted.

Today, after 15 years of debate and 15 years of study, it is time to act. In fact, I was amazed to hear all of the talk in the Committee on Rules the other day when testifying about the need to do this. The fact is something has gone terribly wrong in our regulatory structure, and we need to do something about it. And Member after Member, on both sides of the issue, came up and said we have to do something about it.

Well, the fact is we have gone 40 years. The regulatory system in this country has become a nightmare, and we have done nothing.

Now, when we attempt to do something, some members of the Committee on the Rules and others come to the House floor and suggest, "We have got to do something, but now is not the time. The hearings that were held were too quick; we can't do it in 10 hours of debate."

I am fascinated by the 10-hour debate argument because when I looked back, I found out on House Resolution 299 in the previous Congress, we were told at that point that 1 hour of general debate and 4 hours of amendment process was in fact—now, get this—it was an open rule.

According to a gentleman on the other side of the aisle, a member of the majority party at that time, he said that is an open rule. He said, "After careful consideration the Committee on Rules granted this time limit request that is both fair and reasonable."

Now imagine that. We come out here with 10 hours, and we are told somehow this is a horrible problem being visited upon the minority. The gentleman who made that statement in the last Congress was none other than Mr. BEILENSON, who is handling the bill before us at this time. He called that an open rule, 4 hours of debate, and he said it was fair and reasonable.

Now, the question is whether or not 2½ times that amount of time is even more fair and reasonable.

I think it is, particularly given the magnitude of the bill that we have before us.

What people have come to the conclusion across this country is that it is time to rationalize our regulatory process. Our constituents understand that risk is a part of everyday life. It is a phenomenon which had confronted mankind since the beginning. Most are willing to accept the fact of risk. It is time to use good science to ensure that the regulatory burden we impose on the American people provides them with the protection from real hazards, not the exaggerated risks of the zero-tolerance crowd.

Mr. Speaker, I support this resolution. It is time to get on with the debate, and I congratulate the gentleman from Florida [Mr. DIAZ-BALART] for bringing it forward.

Mr. BEILENSON. Mr. Speaker, for purposes of debate, I yield 5 minutes to the distinguished gentleman from Michigan [Mr. DINGELL], the ranking minority member on the Committee on Commerce.

Mr. DINGELL. I thank the gentleman for yielding this time to me.

Mr. Speaker, the claims of bipartisanship are extraordinary here. And they are completely unfounded. Mr. Speaker, there is a wonderful story I told my good friend, the gentleman from New York [Mr. SOLOMON], at the Committee on Rules about a stew which was abominable in taste and appearance. The customer said, "This is horrible. I want to talk to the cook." The cook came out and he said, "What kind of stew is it?" The cook said, "It is one-horse, one-rabbit stew." The guy said, "that is remarkable. What is the recipe?" He said, "Very simple. Equal parts, one horse, one rabbit."

That is the kind of bipartisanship you are seeing today.

Frankly, I would be ashamed to present this bill to the House of Representatives. The rule does little to rectify the abuses and the failures that have taken place procedurally with regard to the presentation of this legislation.

First of all, the inadequate hearings; second of all, inadequate notice; third of all, total inability for the people to understand what is in it.

Next, total misunderstanding on the part of my colleagues over here on the other side of the aisle as to what this legislation does or how it is going to work or what its impact is going to be.

This legislation drips unintended and unforeseen consequences. No one here knows or understands what are going to be the consequences of this legislation.

The process that we are embarked upon is bottomed on a careless, sloppy, slovenly, partisan and irresponsible legislative process. It is done in a way which has precluded intelligent participation on the part of all the Members.

I think the greatest complaint that the people of the United States are going to have with this particular piece of legislation when they have had a chance to observe what has happened is the fact that they have never been brought into the process.

The legislation we have before us was never the subject of hearings, there has been no open discussion amongst the Members. What has happened is that the chairmen of the two committees, the gentleman from Virginia [Mr. BLILEY] and the gentleman from Pennsylvania [Mr. WALKER], have had a series of meetings somewhere, where they have quietly, without attention or notice to any individual, come up with changes to the bill.

Now, ostensibly these changes would correct abuses which my colleagues found. But they never consulted with anybody about what the abuses were. And they never consulted with the members of the committee on both sides of the aisle as to what were the failures or the defects in this legislation.

Now, the art of Federal regulation is really a constitutional exercise. It is something which is required to meet both the requirements of statutes as set forth in the Administrative Procedures Act, which is actually a codification of the constitutional requirements of due process, and the provisions of the Constitution, which sets forth the right of every American to be heard in connection with the regulatory processes of this Government.

It is interesting to note that no consideration has been given as to whether the affected regulations are good or bad, whether they need to be adopted or whether they do not, whether there is, in fact, an emergency; whether, in fact, there is some urgent need for the legislation from the standpoint of consumers or environmentalists; or from the standpoint of the American business community.

The moratorium passed last week is going to preclude the adoption of many regulations which are desperately needed by American business. One of the interesting things it would probably do is preclude the sale of about $6.9 billion in licenses to the American telecommunications industry, something which is of great urgency to them and upon which American competitiveness, not only in the field of the telecommunications but elsewhere, is heavily dependent. My colleagues over there have never paid appreciable heed to that and were probably vastly surprised on this point the other day when considering the same question.

Similarly, this legislation today has the potential for preventing the duck season from going forward in the fall. And to deal with other important matters of public business where American industry desperately needs relief from regulations now in place or where it needs regulations which would permit it to better compete around the world.

I would think that if we are to adopt a rule today, we ought at least not kid ourselves. We ought not tell ourselves, nor should we tell the American people, that this legislation has been heard, that its authors know what it does or that the Committee on Rules, in putting it on the floor, is honoring the practices and tradition which make for responsible and careful legislation that does not carry dangerous future surprises for the American people.

Mr. DIAZ-BELART. Mr. Speaker, I yield 3 minutes to the distinguished chairman of the Committee on Commerce, the gentleman from Virginia [Mr. BLILEY].

Mr. BLILEY. Mr. Speaker, I rise in support of the rule to accompany H.R. 1022, the Risk Assessment and Cost-Benefit Act of 1995.

I want to commend Chairman SOLOMON and the Rules Committee for bringing forward an open rule that will allow an honest and open debate of this part of our Contract With America.

Such open rules have not been the custom of the Rules Committee under Democratic leadership. In the 103d Congress, for example, the Rules Committee granted open rules less than half the time.

Let me point out some recent examples of the abuse that came from this practice. In the 103d Congress, proponents of risk assessment and cost-benefit legislation were denied a vote on the Thurman-Mica risk and cost-benefit amendment to the bill to elevate EPA to Cabinet-level status. The Rules Committee issued a restrictive rule, despite the fact that the Senate approved similar risk and cost-benefit amendments to EPA Cabinet legislation by a vote of 95 to 3. This restrictive rule was defeated by a vote of 227 to 191, and the EPA Cabinet legislation was never brought to the House floor.

With respect to Superfund in the 103d Congress, the Rules Committee received proposed amendments in early August of last year, but never issued a rule, and the Democrats never brought Superfund to the floor. One amendment of concern to the Rules Committee was a cost-benefit supermandate proposed by Representatives GEREN, CONDIT, SHUSTER, and MICA. That amendment stated: "Notwithstanding any other provision of this Act, the incremental costs shall be reasonably related to the incremental benefits." The power of this commonsense amendment struck fear into the Federal bureaucracy and its allies in Congress. Rather than allow the will of the working majority to prevail, the Rules Committee decided not bring the Superfund legislation to the floor.

Today we bring legislation to place Federal regulatory programs on a more sound footing. The Risk Assessment and Cost-Benefit Act of 1995 requires objective and unbiased risk assessment and careful analysis of regulatory alternatives. This legislation is long overdue. We cannot continue the incredible expansion of the regulatory octopus into the business of State and local governments and the regulated community. Furthermore, we must restore credibility to the regulatory process.

Some oppose these changes in favor of the status quo. Under this open rule, we can debate amendments from either side. I urge my colleagues to support this rule to provide for consideration of important regulatory reforms, an important part of our Contract With America.

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield 5 minutes to the distinguished ranking member of the Committee on Rules, the gentleman from Massachusetts [Mr. MOAKLEY].

Mr. MOAKLEY. I thank the gentleman for yielding this time to me.

Mr. Speaker, today we are looking at another restrictive rule and this one prevents Democrats from offering amendments to another Republican attack on our country's health, safety, and environmental laws.

Mr. Speaker, my Republican colleagues promised a lot of open rules and they are not keeping their promise.

They said all of the contract items would be brought up under open rules. Mr. Speaker, only 5 out of 14 contract items have been brought up under open rules, the rest have been restrictive.

And Republicans promised that they would grant 70 percent open rules. But, so far, less than 30 percent of the rules and procedures they have brought up so far have been open.

I think my Republican colleagues are finding out that governing is a lot harder than it looks.

And today's bill is another example. As I said up in the Rules Committee, this bill creates an expensive, bureaucratic mess, and will only end up endangering American families.

And it is not cheap. CBO estimates that this bill will cost at least $250 million every year, or over 1.6 million school lunches. That's a lot of peanut butter sandwiches to waste.

Once again we are looking at a badly drafted, wide-ranging Republican bill that Members will not be able to amend because of the 7-hour time cap.

I say 7-hour time cap because Republican time caps include votes—so, 10 hours is really only 7 hours, and dozens of Members end up being shut out of the process.

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Mr. Speaker, I am submitting under leave to include extraneous matter a list of Members who were precluded from speaking under this so-called open rule.

There have been 10 Members on the law enforcement block grants who were precluded from speaking under a so-called open rule, a rule just like this. There were eight Members who were precluded from speaking under the National Security Revitalization Act under a rule just like this. Fifteen Members were precluded from speaking on a regulatory moratorium.

Mr. Speaker, the material I am including is as follows:

Amount of Time Spent on Voting Under the Three Restrictive Time Cap Procedures in the 104th Congress

Bill No.	Bill title	Roll calls	Time spent	Time on amends
H.R. 667	Violent Criminal Incarceration Act.	8	2 hrs, 40 min	7 hrs, 20 min.
H.R. 728	Block grants	7	2 hrs, 20 min	7 hrs. 40 min.
H.R. 7	National security revitatlization.	11	3 hrs, 40 min	6 hrs, 20 min.
H.R. 450	Regulatory moratorium.	13	3 hrs, 30 min	6 hrs, 30 min.

Members Shut out by the 10 hour Time Cap 104th Congress:

This is a list of Members who were not allowed to offer amendments to major legislation because the 10 hour time cap on amendments had expired. These amendments were also pre-printed in the CONGRESSIONAL RECORD. There may be other Members who did not pre-print their amendments but who were nonetheless shut out of the process because the cap time had expired.

H.R. 728—Law Enforcement Block Grants—10 Members.

Mr. Bereuter, Mr. Kasich, Ms. Jackson-Lee, Mr. Stupak, Mr. Serrano, Mr. Watt, Ms. Waters, Mr. Wise, Ms. Furse, Mr. Fields.

H.R. 7—National Security Revitalization Act—8 Members.

Ms. Lofgren, Mr. Bereuter, Mr. Bonior, Mr. Meehan, Mr. Sanders(2), Mr. Schiff, Ms. Schroeder, Ms. Waters.

H.R. 450—Regulatory Moratorium—15 Members.

Mr. Towns, Bentsen, Volkmer, Markey, Moran, Fields, Abercrombie, Richardson, Traficant, Mfume, Collins, Cooley, Hansen, Radanovich, Schiff.

Mr. Speaker, I urge my colleagues to oppose this rule. Members need a chance to fix this bill and protect American families from another risky waste of money.

Mr. SOLOMON. Mr. Speaker, would my very good friend please yield to me?

Mr. MOAKLEY. To my very good friend, yes, I will yield.

Mr. SOLOMON. Mr. Speaker, to my very good friend from Boston, let me say that I hope the weather is better in Boston than it is in New York. I just flew in in an awful storm, and I am still a little upset.

I was just reading the gentleman's remarks, and may I quote? It says here, "Mr. Speaker, House Resolution 562 is an open rule. I urge its adoption."

That was on the American Heritage Act on October 5, which gave us 1 hour of debate and only 3 hours on this huge complex bill.

I say to the gentleman one more time, you never had it so good. We are treating you twice as fairly as you treated us. Never in the history of this Congress has a minority been treated as fairly as we are treating you.

Mr. MOAKLEY. Mr. Speaker, I take back my time.

I say to the gentleman from New York [Mr. SOLOMON], you said that would never happen again. You said you were going to come forward with open rules so everybody could fully participate. I say to the gentleman, if you want to emulate our Congress, fine, but I thought you were coming in with a new broom, that you were going to sweep clean and give all open rules. This was going to be a new Congress. You said that, and Mr. GINGRICH said that.

Mr. VOLKMER. Mr. Speaker, will the gentleman yield?

Mr. MOAKLEY. I am glad to yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Speaker, what the gentleman is telling us is that even though the gentleman from New York, the day after we were sworn in, said we would have all these open rules, we are really not having them. These are not open rules. I say to the gentleman from Massachusetts, we do not have open rules at all, do we?

The SPEAKER pro tempore (Mr. BEREUTER). The time of the gentleman from Massachusetts [Mr. MOAKLEY] has expired.

Mr. BEILENSON. Mr. Speaker, I yield 1 additional minute to the gentleman from Massachusetts [Mr. MOAKLEY].

Mr. MOAKLEY. In fact, Mr. Speaker, in every one of the rules we granted, that 4-hour rule, we had time left over. So nobody was precluded.

Mr. SOLOMON. Mr. Speaker, if the gentleman will yield, I should hope so. We do not need to waste all those words.

Mr. VOLKMER. Mr. Speaker, if the gentleman will yield further, on the bill just last week, we had Members who could not offer amendments. We had Members on the crime bill that could not offer amendments.

What the gentleman is saying is this: They are saying that it is necessary to reduce the time that Members can speak in order to meet the 100 days, in order to get this legislation through, and the heck with individual Members and their ideas. They are saying they are not going to let them voice their ideas on separate bills. That is what they are saying.

Mr. MOAKLEY. Mr. Speaker, I say to the gentleman in the Chair that he knew personally about this. I say to the gentleman, you were frozen out. You had a preprinted amendment and you could not get your amendment on the floor under this so-called open rule. So I do have to convince you, but I think the other Members on the other side of the aisle should really take a look at what they are doing. The reason we have had so many closed rules is because the definition of closed rules was written by my very dear friend, the chairman of the Rules Committee, the gentleman from New York [Mr. SOLOMON].

Mr. DIAZ-BALART. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I know some antics can somehow get some very clear things confused. We are all trying to focus in on the words that were stated before when it was stated in the last session by our colleagues on the other side that we had 4 hours of debate without restricting what amendments could be introduced, and during those 4 hours it was all an open rule, and today we are permitting in addition to the 3 hours for the rule and the 2 hours for general debate, in other words, 1 plus 2 and 3 hours, we are permitting 10 hours for amendments, and now our colleagues are saying that that is not open.

I think either it is unclear or there is an element of unfairness.

Beyond that, at this point, Mr. Speaker, what I would like to do is yield 1 minute to a distinguished new Member of the House, the gentlewoman from California [Mrs. SEASTRAND], a member of the Committee on Science.

Mrs. SEASTRAND. Mr. Speaker, I rise today in strong support of H.R. 1022, the Risk Assessment and Cost-Benefit Act.

For too long we have stood by and watched the regulatory monster engulf the small businessman and woman and the entrepreneur. In just 2 years, the Clinton administration has added 126,580 pages of regulations to the Federal Register. This is more than any other President since the last 2 years of the Carter administration.

Federal regulations cost our country hundreds of billions of dollars every year. For weeks now we have heard opponents of risk assessment argue that it will create additional bureaucracies and cost more money. I do not believe either is the case.

What bothers Federal agencies about this legislation is that it will slow down the promulgation of burdensome regulations and save money. Risk assessment legislation will dramatically reduce the overall costs to society. Why shouldn't Federal agencies be required to justify choosing a costly $150 million solution to a problem that could be solved by a $10 million solution with the same benefits?

Mr. Speaker, sound regulations are necessary to protect health, safety, and the environment. This legislation will ensure that regulations are in fact sound.

Mr. BEILENSON. Mr. Speaker, for the purposes of debate only, I yield 2 minutes to the gentleman from Pennsylvania [Mr. DOYLE].

Mr. DOYLE. Mr. Speaker, I rise today as a Member who has supported the regulatory reform embodied in H.R. 9. Clearly, the time has come for a thorough examination of our regulatory structure and the scientific methods we use to make judgments about protecting public health and safety. The use of consistent, state-of-the-art science is a long overdue remedy for the plague of unnecessary and burdensome Government regulation.

I am pleased that this issue is receiving the attention it deserves; however, I must express my dissatisfaction with the way in which the Congress has considered this legislation. In the Science Committee markup of this bill, members were not given the bill text until an hour after the markup was scheduled to start. Members were then given less than 2 hours to redraft their amendments to a bill that bore little resemblance to the original draft of title III of H.R. 9. We then spent the ensuing 10 hours marking up title III, at the same time that Commerce Committee was marking up the same title.

Now, I have to wonder why either committee bothered marking up the bill at all. The bill we are considering here today has dropped language that was reported by both committees and now contains totally new language that has not been reviewed by either committee. These are not small technical subsections we are talking about, Mr. Speaker, there are some of the most important elements of this legislation, such as the judicial review provisions, which have been redrafted at the last minute with no substantive review.

Among the new issues that concern me the most are the inclusion of permits in the scope of this bill's requirements. Most of these permits are State-issued. Are we now requiring the States to perform risk assessment and cost-benefit analysis on all their permitting? Mr. Speaker, that would seem to me to be an unfunded mandate. I would be more certain of this if we had

had the opportunity to review this concern in committee, but since permits weren't mentioned in the bill we marked up, this issue remains unresolved.

I sincerely believe that is the goal of Members on both sides of the aisle to make true progress toward easing the control of a distant Washington bureaucracy. In order to accomplish this, many of us on this side joined with majority in passing important unfunded mandates legislation. Now, through either carelessness or hypocrisy, we may be imposing many new burdens on State and local government. This rule provides for a mere 10 hours consideration of new, highly technical language that will impact every economic sector. This is no way to govern, I urge opposition to the rule.

Mr. DIAZ-BALART. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Ohio [Mr. OXLEY], chairman of a subcommittee of the Committee on Commerce.

Mr. OXLEY. Mr. Speaker, I rise in support of the rule to accompany H.R. 1022, the Risk Assessment and Cost-Benefit Act of 1995.

With the adoption of this rule, the House will take another important step toward implementing in the manner in which the Federal Government writes regulations to protect the public from certain health, safety, and environmental risks.

I remind my colleagues that we have been working on this legislation for several years. In the previous Congress, we had a number of hearings on risk assessment and cost-benefit reforms. In 1993, the Senate passed risk assessment and cost-benefit language in the form of the so-called Johnson amendment by 90 votes.

In early 1994, a bipartisan coalition of House Members defeated a restrictive rule that would not allow for consideration of similar amendments by a vote 227 to 191. Later in the year, the Walker amendment, which provided language requiring objective and unbiased risk assessments and comparisons, passed the House by a vote of 286 to 189.

The criticism of the rule before us today is ironic when I remember how Superfund legislation was handled in the previous Congress.

Last year, the Commerce Committee, with full administration support, passed a national risk protocol for Superfund and language requiring that the presentation of risk information be objective and unbiased. Those provisions created judicially reviewable and enforceable requirements.

Yet that legislation went nowhere, because the Rules Committee would not issue a rule for fear that risk and cost-benefit amendments would be approved on the House floor.

That is why I applaud the Rules Committee under Chairman SOLOMON's leadership for bringing forward this rule to allow open debate on risk assessment and cost-benefit legislation.

I acknowledge that some differences remain today among Members of the House. There are differences on the threshold for regulations that should be subject to this legislation; there are differences on whether the requirements of this legislation should be judicially reviewable; and there are differences on whether the requirements of this bill should apply to existing regulations.

The proposed rule provides sufficient time and opportunity to debate these differences and I urge my colleagues to support the rule.

□ 1515

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the distinguished gentleman from California [Mr. BROWN], the ranking member of the Committee on Science.

Mr. BROWN of California. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I am ambivalent about this rule. I think we need considerably more time than is available to thoroughly debate this bill. On the other hand, it does not vary too much from previous bills and future bills that we are going to have.

My problem with the bill so far has been the procedures by which it was brought to the floor, which have been commented on with great eloquence by my friend, the gentleman from Michigan [Mr. DINGELL], and others. I think everyone would agree it is not legislative craftsmanship to present legislation to committees or to the floor which have not been adequately considered, to have only the briefest of hearings on legislation, and not have a full exploration of all of the implications.

My good friend, the gentleman from Pennsylvania [Mr. WALKER], compared this bill to the risk assessment bill that we had last year, pointing out that we only had 4 hours on that bill, whereas we are getting 10 hours here.

What needs to be said, and I hoped the gentleman from Pennsylvania [Mr. WALKER] would mention this, is that last year's bill was only one title of the six that are contained in this bill; that it related only to risk assessment for EPA. This includes many more aspects of regulatory control, including risk-assessment characterization, cost-benefit analysis, peer review, and a number of other things, and applies it to 12 different departments of the Government.

We have asked for reports from those departments as to the impact on them, and we have not received those reports. We need to explore what that impact is on these others, including the Nuclear Regulatory Commission and the Corps of Engineers. We do not have that information, and it needs to be discussed at great length.

We all agree that regulatory reform needs to be done. The gentleman from Pennsylvania [Mr. WALKER] pointed out that we have had 15 hearings on risk assessment, for example, 10 of them in the committee which he now chairs. I will say to you that I have been the author or coauthor of all of these bills, including the initial one the gentleman referred to brought by Mr. Ritter. I have tried to focus my best efforts on the issue of focusing the science of risk assessment.

Unfortunately, I failed. It is not because we did not try. We have gotten bills to the floor and passed. We have actually made good progress. There is no disagreement. The President has announced within the last week a comprehensive regulatory reform program which includes most of the things included in this bill.

What I fear, Mr. Speaker, is that in this particular bill we are asking for more than can be delivered from the existing state of the science of risk assessment and cost-benefit analysis. In doing so, we are going to add to the complexity, make regulation more difficult, make it more costly, and the old adage applies, "Be careful what you ask for, you may get it." Because that is the situation we are in at the present time.

Most Democrats would like to support this bill if it were properly drafted. We do not think it is. We will have a substitute which we think includes all of the good parts of the bill, and leaves out those parts which will cause trouble in the future. I am going to urge all of my friends on both sides to support the substitute, to give it thorough consideration. I think they will find it is a bill that the Senate would pass and the President would sign. The present vehicle before us meets neither of these criteria, and it would, in fact, be a horror, a tremendous imposition upon the American business community which you would hear a great deal from your constituents about in the near term.

Mr. Speaker, my comments are directed less at this rule and more at the process which has brought us here today. For over 30 years, I have served in Congress and have been proud to have participated in a number of historic debates in this institution. I have both supported and opposed the status quo and joined and opposed Members of the other party, and my own party, in these efforts. But at the end of the day, win or lose, I have always felt some pride in the work that had taken place here.

Today, as we consider this legislation, I no longer feel that pride. In reviewing the progress of this bill, I do not feel that the public interest is being served, in either the content or the course of this bill. From the start of this bill's consideration in committee through today's action on the floor, I have felt as though adherence to an arbitrary schedule and the need to punch tickets to mark legislation's progress makes this place more like a railroad than the greatest deliberative body in the world. And, believe me, I have been railroaded by the best of both parties over the years as I have taken principled but unpopular positions.

But what specific problems do I have with this process? First, subcommittee hearings and markups were dispensed with. Initially, the chairman proposed a single day of full committee hearings, to be composed of a single panel of witnesses sympathetic to the bill. Administration requests to testify were rejected until we were forced to ask for a second day of hearings, as provided by the House rules, to ensure a more balanced hearing process.

Then, the redraft of title III of H.R. 9, the precursor of H.R. 1022, was written behind closed doors and without any input from Democratic Members. At full committee, this redraft was presented as a chairman's en bloc amendment the evening before the full committee markup. Our staff had received a set of the chairman's proposed amendments labeled "draft" the night before the markup, but we did not get the final version until the day of the markup. Then, in markup when Members protested this process, the chairman decided to change his series of en bloc amendments into an entire substitute. The markup was suspended for 2 hours while we read the substitute, tried to understand its implications, and then drafted amendments to it. A request for a 1-day postponement of the markup was refused by the chairman, on the grounds that the bill was scheduled for consideration on the House floor the following week. This was not the case.

After both the Science Committee and Commerce Committee acted on February 9 to meet this hurried schedule, we waited while the two committee texts were merged. We waited for 2 weeks, until February 23, when the new text was introduced as H.R. 1022. The new text was changed substantially from the reported bills and we have spent the weekend trying to understand again what the impact of this legislation is. Now it is on the floor, while many of our colleagues are not even here, apparently hurried up again to meet some arbitrary deadline.

I would remind my colleagues that the legislation we are discussing is not some simple commemorative bill. H.R. 1022 proposes to fundamentally change the direction of the Federal regulatory system, in ways that even the authors of the bill cannot understand. Last week we considered and passed a temporary regulatory moratorium. This bill will, in effect, become permanent regulatory moratorium, by virtue of its complexity, ambiguity, and cost.

This bill adds hundreds of millions of dollars in costs to the Federal Government—the Congressional Budget Office's limited estimate is $250 million—imposes unfunded mandates of the same order of magnitude on State regulatory permitting agencies, and imposes mandates on industry to produce the scientific data to feed the process created in this bill. Yet, we have no clear idea what the scope of these costs is. We are only told that the costs must be absorbed by the regulatory agencies, already underfunded for their current work load. A simpler, more effective bill could improve regulations. This bill will do the opposite.

There are a host of other questions raised, but not answered by H.R. 1022. For example, the bill has been rewritten from its original form to include many special exemptions and carve-outs for specific industries. What are the impact of those changes? We do not know.

The bill overrides unspecified provisions of existing law. The final list of which laws and which provisions have been overridden is unknown. Even Members of the other side have stated that the committee is unable to identify which provisions of existing law would be affected, much less knowing in what fashion. A partial list of affected statutes includes the Endangered Species Act, the Federal Insecticide, Fungicide and Rodenticide Act [FIFRA], the Federal Food, Drug, and Cosmetic Act, the Clean Air Act, the Resource Conservation and Recovery Act [RCRA]: in short most of the environmental laws of the country. Does the bill pick up other statutes such as the Americans with Disabilities Act? We simply do not know.

I could go on, but we will be hearing more about the specifics of this bill during the debate. I just want to make the point that this is a very complicated and serious bill we are discussing and we do not understand its impact. Worse yet, the leadership on the other side, judging by their actions, is not even interested in taking the time to explore the impacts. Their main interest is in meeting their 100-day schedule for their contract.

So as with other bills in recent weeks that have moved without full disclosure, we must again take to the floor to try to explore the effects of this complex bill during the course of the amendment process. Yet even this process is narrowed by an arbitrary limit on debate designed to make the legislative trains run on time. So, I will object to this process, make the best use of the time we have, try to fix some of the worst parts of this bill, and hope that the public forgives us since we know not what we do.

Mr. DIAZ-BALART. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. BILIRAKIS], the distinguished chairman of the Subcommittee on Health and Environment.

Mr. BILIRAKIS. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of the rule. H.R. 1022 is an important piece of legislation, and I know many Members have a strong interest in it. That is why the Commerce Committee and the Science Committee requested an open rule—to give Members the opportunity to offer amendments to this legislation on the Floor of the House. The rule before us was crafted to provide time for thorough discussion of these issues.

Some of my colleagues argue that we are proceeding too swiftly. However, I believe that the regulatory horror stories which we have all heard suggest that Congress has waited far too long to establish accountability in Federal regulatory programs.

Mr. Speaker, the issues addressed in this legislation are not new. My colleague and friend Mr. MOORHEAD of California introduced risk assessment legislation in the last Congress, legislation that now forms the basis for title I of H.R. 1022. A hearing was held on that bill in the Commerce Committee in 1993, and similar provisions were included in environmental legislation which was approved by the committee in the 103d Congress.

The risk assessment bills passed by the Commerce and Science Committees have been available for nearly 3 weeks. As soon as the differences between the two bills were reconciled last week, the compromise language was made available to all Members. In large part, the compromise language merely reflects the provisions already approved and made public in the separate committee versions.

I hope that we will be able to pass this bill sometime tomorrow with broad bipartisan support. We did pick up some support from our friends on the other side of the aisle during the Commerce Committee markup, and it is my impression that there are a number of others who would like to support the bill. Hopefully, the compromises we reached with the Science Committee will help to bring more of my democratic colleagues on board.

We have moved quickly through the legislative process this year, but we have worked to ensure that the bill has been open to full review. I urge my colleagues to join me in supporting this open rule.

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield the final 3 minutes to the gentleman from New York [Mr. MANTON].

Mr. MANTON. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in opposition to the rule.

Mr. Speaker, the legislation before us today is a misguided answer to a serious problem. In an attempt to curb excess Government regulations, H.R. 1022 would threaten the public's health and safety, encourage court challenges to new regulations and cost at least $250 million according to the Congressional Budget Office.

I regret that risk assessment is being considered by this body as part of the Contract With America because I wholeheartedly agree that our Government's regulatory process should be redesigned and streamlined. I believe consumers, producers, and State and local governments would benefit from legislation designed to curb exhaustive review by the executive agencies, thereby bringing products to the market faster and enabling swifter action for protecting public health and safety.

Unfortunately, H.R. 1022 achieves none of these goals.

Rather than streamlining Government, this bill would add yet another layer of burdensome bureaucracy. By requiring agencies to complete copious and scientifically meaningless risk assessment and cost benefit analyses, I believe this bill would delay regulatory action instead of reforming the process.

If the House leadership had allowed the committees of jurisdiction to complete subcommittee markup of the legislation and work to fashion a bipartisan bill, I honestly believe we could have crafted risk assessment legislation which lessened the load on American business without risking the health and safety of the public.

Unfortunately, the rigors of the artificial 100-day schedule did not allow the Commerce or Science Committees to meaningfully address the issue. I look forward to the day when the concepts of governing and legislating rather than political partisanship again become the focus of this institution.

There is compelling evidence that this bill has not been adequately considered. The bill changed throughout the House Commerce Committee's consideration of the bill mostly to address unintended consequences of the original measure. For example, the bill as introduced, would have resulted in long delays for FDA approval of new lifesaving prescription drugs. Furthermore, this legislation applies to agencies not covered by the version of the bill approved by the Commerce Committee, including the Nuclear Regulatory Commission.

In order to address the concerns of regulated industries, the majority counsel revised whole sections of the bill just hours before committee markup.

While it is not unusual for the legislative process to uncover drafting problems as a bill moves through the House, the speed with which this bill has moved means that there is a high probability that many problems with this bill have not yet been found.

The minority will offer a series of amendments today and tomorrow to address the most obvious shortcomings of this bill, however, the fact that we are voting on a bill today which was not drafted until last Thursday means that none of my colleagues can be sure exactly what the impact of this bill will be.

I want to caution my colleagues that they should carefully assess the risks of voting to pass this rule and H.R. 1022.

Mr. DIAZ-BALART. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. MOORHEAD], the distinguished vice chairman of the full Committee on Commerce.

Mr. MOORHEAD. Mr. Speaker, I support the rule for this bill.

When I introduced H.R. 2910 in 1993, legislation that formed the basis for title I of H.R. 1022, my aim was only to provide a sensible, open framework for the Government to analyze and address risks. Our former colleagues, Al Swift, took an interest in the issue and held a hearing on the bill.

The legislation we will have before us today and tomorrow addresses a number of issues, but I am pleased that its foremost requirements are the ones from my bill that tell agencies to look at risks objectively and present scientific findings in an unbiased manner. Objectivity is not a controversial idea; we should expect no less in our Government's presentation of science.

The Rules Committee has provided plenty of time for debating all the issues surrounding this bill. We have been debating them for several years already. I encourage my colleagues to vote for the rule to bring this important legislation to the floor.

Mr. BEILENSON. Mr. Speaker, I yield the remaining 1 minute to the gentleman from Massachusetts [Mr. MOAKLEY].

Mr. MOAKLEY. Mr. Speaker, from the other side we hear claims that we had a bill with a cap on it with 4 hours, and this has a 10-hour cap. But the bill that we had the cap on for 4 hours had one title; this has four titles. The bill that we had a cap on of 4 hours left nobody, nobody without being able to put his or her amendment in. Their caps have caused over 40 people to be left not able to put their amendments forward. So it is not exactly the same situation, not exactly the same bill.

But, more than that, the promise was made to the American people that the 103d Congress' action in the Committee on Rules would never be repeated; that they will come out with open rules. That is all I am asking for. I am not saying we were worse or better. They just violated their statement. They said they would be coming out with open rules, and they have not done it.

PARLIAMENTARY INQUIRY

Mr. MOAKLEY. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. BEREUTER). The gentleman will state it.

Mr. MOAKLEY. Mr. Speaker, the rules make in order consideration of H.R. 1022. The committees of jurisdiction, however, reported out H.R. 9 with amendments. My question is, has the committee reported on H.R. 1022?

The SPEAKER pro tempore. The Chair would state that that bill was not reported from committee.

Mr. MOAKLEY. So the bill that was heard before the Committee on Rules is not on the floor today? This is a bill that was not heard by the Committee on Rules?

The SPEAKER pro tempore. The Chair is informed that the Committee on Rules held a hearing on H.R. 1022.

Mr. MOAKLEY. But reported out H.R. 9.

The SPEAKER pro tempore. No, the Committee on Rules reported out a special order on H.R. 1022.

Mr. MOAKLEY. Continuing my parliamentary inquiry, is it not true that with regard to the Budget Act and the reporting requirements in clause 2 of rule XI, the points of order prohibiting consideration of a measure, these requirements apply only to reported measures?

The SPEAKER pro tempore. The gentleman is correct.

Mr. MOAKLEY. In other words, Mr. Speaker, the Budget Act point of order that would apply if H.R. 9 was reported does not apply to H.R. 1022, is that true?

The SPEAKER pro tempore. The Chair will not speculate on points of order against other measures.

Mr. MOAKLEY. In other words, Mr. Speaker, the rule could have made in order H.R. 9 with the text of H.R. 1022 as the original bill for purpose of amendment, and the Committee on Rules often reports bills like that. That would have required waiving points of order.

Instead, in this instance the Committee on Rules opted to discharge the Committee on Science, the Committee on Energy and Commerce, and the Committee on Government Reform, and instead the Committee on Rules decided to make in order a bill that no one reported, and in that way they avoided waiving all points of order. Am I correct?

The SPEAKER pro tempore. The Chair would indicate that is a rhetorical question, and not a parliamentary inquiry.

☐ 1530

Mr. DIAZ-BALART. Mr. Speaker, I yield myself such time as I may consume.

The SPEAKER pro tempore [Mr. BEREUTER]. The gentleman from Florida [Mr. DIAZ-BALART] has 4½ minutes remaining.

Mr. DIAZ-BALART. Mr. Speaker, in the interest of Members who may have amendments that they would like to proffer, the Committee on Rules would suggest that any Members that would wish to engage in colloquies for the purpose of making legislative history should consider doing so during general debate. That way the time taken for such colloquies, of course, would not be counted against the time on the amendment process, the 10 hours of the amendment process.

Mr. Speaker, this is an open rule. There is no Member of this House who may have a suggestion to improve this legislation who would like to bring it forth in the form of an amendment who is precluded from doing so under this rule. It is a completely open rule. There is a 10-hour time limit after the 2 hours of general debate for the bringing forth of amendments, but no one is precluded, as I have stated, from bringing forth any amendments.

Mr. MOAKLEY. Mr. Speaker, will the gentleman yield?

Mr. DIAZ-BALART. I yield to the gentleman from Massachusetts.

Mr. MOAKLEY. Mr. Speaker, the gentleman had four similar rules that had caps on them. The Members whose amendments were preprinted in the RECORD so they would be sure of having their amendment heard were not heard. How can the gentleman give any Members today, make a statement, stand and say that their amendments absolutely would be heard?

Mr. DIAZ-BALART. Mr. Speaker, what we are saying is, to the distinguished gentleman from Massachusetts, is that we have 2 hours now for general debate, after which there is 10 hours for Members who have amendments to bring them forth. There is preclusion. They do not have to have printed them anywhwere in order to bring them forth. If there are no dilatory tactics, if Members who have serious amendments wish to bring them forward during the next 2 days, 10 hours of debate, they can do so.

Mr. Speaker, I yield the balance of my time to the gentleman from New York [Mr. SOLOMON], the distinguished chairman of the Committee on Rules.

Mr. SOLOMON. Mr. Speaker, let me say that first of all, the contract items are concepts. They are subject to refinement. That is what we are doing here today.

I had a call in my office last Friday from a woman. She said to me, what is all the whining about? Why do you not get down to business and do the people's work?

That is exactly what we are doing here. That is why the approval rating of this Congress has gone from 18 percent up to over 50 percent, because are getting it done.

Second, the gentleman from Missouri [Mr. GEPHARDT] wants us to go upstairs. He wants us Republicans to pick your Democrat amendments to make in order on this floor. We are not going to do that. We are not going to take you off the hook. If you have amendments to offer on your side of the aisle, you select the items. You lay out the time for debate on them, and you bring them to this floor. Do not try to put the blame on us. We are recognizing your conservative Democrats. They have been gagged for 40 years by your leadership. No longer. They can act.

They can work their will on the floor of this House.

Mr. MOAKLEY. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Massachusetts.

Mr. MOAKLEY. Mr. Speaker, if it is a free and open debate and everybody can act, how come all these Members got shut out in the last four rules that had caps on them.

Mr. SOLOMON. Mr. Speaker, reclaiming my time, with due diligence they would have all been recognized in proper order. They should go see their respective leaderships on both sides of the aisle. That is what this Member does, and he gets his amendments in order on the floor.

Mr. MOAKLEY. Mr. Speaker, it is not true, when you talk about dilatory tactics, there were amendments up there that passed on rollcalls with zero votes against or one vote against that were called by your side and those matters took 20 to 25 minutes out of these 10 hours? So where are the dilatory tactics coming from?

Mr. SOLOMON. Mr. Speaker, my friend is getting at a vote on an amendment, which is not a dilatory tactic. That is representing 600,000 people back in our districts. That is what we were sent here to do.

Mr. MOAKLEY. Even though there are no votes against it?

Mr. SOLOMON. Mr. Speaker, the gentleman is sounding sort of like what the woman called me about. Let us get down to the people's business.

Mr. MOAKLEY. Mr. Speaker, last year I got a call from a lady and she said, "What is all that whining about by Mr. SOLOMON and all those people from the Rules Committee?"

Mr. SOLOMON. Mr. Speaker, she must have found out, because she voted Republican and so did most of the people throughout the country.

Mr. DIAZ-BALART. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BEILENSON. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, the Chair postpones further proceedings on the question of adoption of the resolution until later today, but not before 5 p.m.

The point of no quorum is considered withdrawn.

The SPEAKER pro tempore. Pursuant to House Resolution 96, rule XXIII, and the order of the House of Friday, February 24, 1995, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1022.

□ 1535

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1022) to provide regulatory reform and to focus national economic resources on the greatest risks to human health, safety, and the environment through scientifically objective and unbiased risk assessments and through the consideration of costs and benefits in major rules, and for other purposes with Mr. HASTINGS of Washington in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the order of the House of Friday, February 24, 1995, the bill is considered as having been read the first time.

Under the rule, the gentleman from Virginia [Mr. BLILEY] will be recognized for 30 minutes, the gentleman from Michigan [Mr. DINGELL] will be recognized for 30 minutes, the gentleman from Pennsylvania [Mr. WALKER] will be recognized for 30 minutes, and the gentleman from California [Mr. BROWN] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today the Committee on Science and the Committee on Commerce are bringing forth for consideration the Risk Assessment and Cost-Benefit Act of 1995. It is the hope of its sponsors that by its enactment the bill will usher in a new era of rationality in the imposition of regulations implementing safeguards for human health, safety and the environment.

This bill will require the use of sound science and sound economic principles to determine if there is a national basis for imposing new and costly regulations on the American people. It will, for the first time, establish a consistent basis by which disparate laws can be measured and integrated. It will, for the first time, communicate to decision makers and the public the nature and magnitude of risks they face in an objective and unbiased way.

Title I of the bill requires that when a Government agency undertakes a risk assessment it fully discuss the methods which were used by the agency to determine the extent of the risk. The bill would require the agency to identify any policy or value judgments, as well as the empirical data that went into the assumptions underlying the risk assessment. Once the risk is identified the legislation would require an agency to characterize the risk in such a manner so as to identify what is the best estimate for the specific population or natural resource which has been characterized. This means that we will know what is the most likely, plausible level of risk, in many cases, for the first time, and not just the most unrealistic worst case scenario.

Further, the legislation requires that an agency provide the public with comparisons of risks that are routinely and familiarly encountered in everyday life. What is more dangerous—driving a car? What is less dangerous—being struck by lighting? What is equally hazardous—drinking a glass of orange juice every day? It turns out so much of what we regulate or ban fits this kind of scenario. This bill will be truly eye-opening. Thanks to a compilation of ideas of SHERRY BOEHLERT, CONNIE MORELLA, VERN EHLERS, and TIM ROEMER, the bill requires ongoing research and training in risk assessment so that the science of risk assessment is not frozen in place. Title I also mandates a study of comparative risk, a provision offered by Science Committee Member TIM ROEMER.

Title II of the bill provides for an analysis of risk reduction costs and benefits. The legislation requires agencies, when undertaking such an analysis, to consider alternative regulatory strategies which would require no government action, accommodate differences among geographic regions, and employ performance or other market-based mechanisms that permit the greatest flexibility in achieving the identified benefits of the rule. Title II would further require that before an agency can issue a regulation, it must show that:

First, the analysis used to issue the rule are based on objective and unbiased scientific and economic evaluations;

Second, the incremental cost reduction or other regulatory benefit will be likely to justify, and be reasonably related to, the costs incurred by governments and private entities; and

Third, that the strategy employed is more cost-effective or flexible than the alternatives considered.

Furthermore, title II states that if the criteria of that title conflict with existing law the new criteria shall supersede that law, I emphasize, only to the extent that such criteria are in conflict. This title gives further guidance to the agencies and OMB to report back to the Congress in order to identify these conflicts.

Title III will require that risk assessments and cost-benefit analyses shall have the benefit of a peer review process when the proposed rule is expected to result in an annual increase in costs of $100 million or more.

Title IV of the bill will provide for judicial review under the Administrative Procedure Act and the statute currently granting an agency authority to act. This will provide the critical enforcement mechanism to assure bureaucracy compliance with the requirements of this act.

Title V will require each covered federal agency to establish procedures to review any previously published risk assessment or risk characterization document, based on the criteria in title I, if such criteria or new scientific information received at the agency would be likely to alter results of the prior risk assessment of risk characterization. The agency could further revise or repeal a regulation supported by that modified risk assessment.

Finally, title VI will allow agencies to better set priorities to allow agencies to concentrate precious resources to target major risks, instead of minor or nonexistent risks.

I want to make a few observations about the bill as a whole. First, its provisions are measured. It exempts from its purview emergencies, military readiness, product labeling, and State compliance programs or plans. Risk assessment criteria are not mandated for screening analysis; health, safety, or environmental inspections; or the sale or lease of Federal resources or regulatory activities that directly result in the collection of Federal receipts. The bill's aim is targeted at major assessments and major rules, thus a $25 million increase in cost threshold is established for titles I and II, the proactive sections of the bill. And, many of the requirements of the bill are mandated under the condition of feasibility. "To the extent feasible" as used in the text of H.R. 1022 means doing everything possible to meet a requirement given the constraints of time, money, and ability.

The opponents of this bill will tell you that this legislation is overly prescriptive. They say that it imposes too much of an administrative burden on the Government. To this we reply that it is about time that the body worries more about the burden on the public, and less about the burden on the bureaucracy.

The opponents of this bill will tell you that this bill will freeze in place the science for doing risk assessments. We reply that this bill will do no such thing, but it will require that sound, unbiased and evolving science be used to formulate regulations.

The opponents of this bill will tell you that this bill will not allow the Government to regulate health, safety, and the environment. We reply that there is nothing in this bill that would prevent justified regulations from being promulgated, as long as they are based on scientific fact and the costs don't exceed the benefits.

The opponents of this bill will tell you that this legislation was rushed to judgment. We reply that the committees of jurisdiction have been studying risk assessment for over 15 years. It is time to act. In fact, we reported a very similar bill out of committee last year with only one major addition.

If Members take a look at the chart, they will see that last year's bill included the best estimates. It included comparative risk. It included substitution risk. Yet the cost-benefit analysis and rules were not included in last year's bill. Peer review was included for the purpose of guidelines, and judicial review was included.

In other words, what we did last year was very, very similar to what is in the bill that we have before us today.

This is nothing new. It is nothing coming out of the blue. It is interesting to note though what happened last year. When the committee decided in its wisdom to have a stronger provision for the risk analysis than what the committee and the committee chairman wanted, we reported this bill that then never came to the floor.

□ 1545

The ultimate closed rule was applied. We never considered the legislation on the floor. It was simply held because the committee had wanted to go further than what the leadership of the committee had determined to do.

Therefore, what we have before us, finally, is a bill that we can actually act on. It is about time. The American people think it is about time. It is the kind of bill that the American people have been looking for.

If this bill is not passed, we will continue to have situations where Federal regulators have run amuck. For example, EPA has required billions of dollars to be spent to remove asbestos from schools, when the lifetime risk that a child, exposed for 5 years to commonly occurring levels of asbestos fiber, will contract a fatal asbestos-linked cancer is 1 in 2.5 million. By contrast, that same child has 1 chance in 5,800 of dying from a motor vehicle accident.

Consider, for a moment, the opportunity cost of that this extravagant waste of funds has engendered. All across this land school boards are claiming they do not have the resources to educate our children, yet local communities have been required to spend money to address a very limited risk.

The money spent could have been used to improve the quality of education, which would have made a real, not an imaginary, difference in a child's life. Rules such as these have no basis in common sense. The irony is that the removal of the asbestos has actually created a greater risk by releasing more fibers into the air than would have been present by leaving it dormant—a substitution risk that could have been identified if that rulemaking had been done under this bill.

Although the bill before us is not the entire solution, it does provide a prospective basis to begin a degree of rationality in our regulatory system.

The opponents of this measure would continue the status quo, but as this Congress is a departure from the past, so is this legislation. I ask my colleagues to join me today in supporting a sensible new framework for regulatory analysis.

The regulatory process we want to bring about is a smart and sensible regulatory process, rather than a dumb and dumber regulatory process. Right now we have a dumb and dumber regulatory process that brings about very bad results in too many instances. This will allow us to become smart and sensible. That is the way we should regulate.

Mr. Chairman, I reserve the balance of my time.

Mr. BROWN of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I have indicated earlier that I think the time is ripe for regulatory reform, and for improvements in our risk assessment and cost-benefit analysis. I know that the Members on that side feel very strongly about this, and I can assure them that the Members on this side feel equally strongly that something needs to be done.

The problem, as I see it, Mr. Chairman, is that in our haste to get something done, we may create a problem that is greater than the one which we seek to cure. This is the purpose of this debate, is to explore that aspect, not whether or not we need to improve regulatory reform, we know we do, but whether or not this bill and its contents represents an improvement, or whether it causes problems.

Frankly, the reason that on our side we feel we need more time is because this is the only way we can educate Members on both sides to what both the benefits and problems of this bill are. It is the only way we can educate the public, to the degree that they pay any attention to what we are doing here.

Hopefully the media will pick up the message, and hopefully it will get to our colleagues on the other side, and ultimately, to the President, so he can determine whether we have acted to correct the major deficiencies or whether they still remain in the bill.

Therefore, it is not just because we want to hear our voice in support of some amendment. It is because we are part of a much broader process which is important to the American people, and we want to use this time as well as possible.

Mr. Chairman, I am in opposition to H.R. 1022 in its present language. The press releases that accompanied the unveiling of the bill, the Job Creation and Wage Enhancement Act, formerly H.R. 9, promised a simplification of regulation, an elimination of redtape, a fair and open governmental process in which everyone could participate, and a downsizing of Government. Somewhere between the issuance of that press release and today's debate, something went terribly wrong.

H.R. 1022 is an "Alice in Wonderland" version of those original goals, goals which, as I have already stated, are shared on a bipartisan basis, I might add. H.R. 1022 establishes a more convoluted process, adds to the expense of regulation by many hundreds of millions of dollars, has unintended consequences that even the Republicans admit they cannot determine, favors big business over small business, has had dozens of special interest loopholes added behind closed doors, and sets up a judicial quagmire that has trial lawyers dancing in the street in anticipation of the legal actions needed to straighten the bill out. I will detail these claims in just a moment.

The sad part of today's debate is that none of this was necessary. Members on both sides of the aisle want true regulatory reform. Previous Republican administrations worked diligently to improve the regulatory process.

I have already indicated that I joined with former congressmen, Republican Congressmen to introduce these bills many years ago, and have continued to work diligently to improve the legislative framework. We struggled with similar legislation last year and came very close.

The Clinton White House issued Executive Order 12866, which seeks to reform the way the Government conducts its regulatory business. The Vice President's Reinventing Government work is starting to move this process along, as well. Democrats and Republicans were prepared to work together on this issue and fashion a bipartisan approach to regulatory reform, but the bill before us today cannot be called bipartisan, any more than it can be called true regulatory reforms.

The bill slows down and complicates the regulatory process. The bill describes the detailed steps required to be taken in the course of a regulatory decision, using so much detail that it ties the regulatory agency in knots. This process adds hundreds of millions of dollars in cost to the Federal Government. To that, we must add the cost imposed on the private sector and State governments.

The CBO cost estimate is only an inkling, because it admits it does not have adequate information, but it says a quarter of a billion of dollars, without even counting the impact on many agencies which they could not get figures from, or the impact of tieups as a result of litigation.

Since the process described in H.R. 1022 requires more scientific and economic data to be provided, this reform process will require industry to conduct innumerable studies at great cost to the private sector. In addition, since permits are included under H.R. 1022, and since State governments issue many of the permits under Federal regulatory law, such as the Clean Water Act, State governments will have the provisions of H.R. 1022 imposed upon them. What the cost will be of doing full-blown risk assessment for State permitting decisions is anyone's guess.

I should add that since H.R. 1022 sets up such a complicated process, it will take more resources just to keep track of the process, let alone participate by generating the data required.

What is the differential effect on business in this situation? Big business and trade associations inside the beltway have the money and staff to keep up. Individual smaller businesses outside of Washington are going to have a tough time in this new process.

I do not know if the changes made to the provisions of this bill were designed by big business, trying to squeeze their smaller competitors, or by trade associations, trying to drum up business. Perhaps neither of these occurred. However, the end result is the same: a more complicated regulatory process takes more money to participate in.

Small businesses do not have much money to spare. That is why they started this regulatory revolution. H.R. 1022 inadvertently penalizes them, and I think we can expect a repercussion from small business as great as their original campaign to reduce the pervasiveness of Federal regulation.

H.R. 1022 overrides existing law and applies to ongoing process in ways that even the supporters of the bill cannot detail. Which statutes are being superseded? What regulatory processes are being affected? I note that even many of my Republican colleagues are concerned with these questions, and expressed their concern in supplemental views in the report to accompany H.R. 9, from which I quote, and this is the Republican Supplemental Views:

> The committee was unable to identify which provisions would be affected, much less in what fashion * * *. (T)itle III may undermine landmark laws that were enacted only after years of work and discussion to create a delicate balance of interested and affected parties—laws that range from protection of food and drinking water quality to aviation safety, hazardous waste management, and preservation of wildlife. (Supplemental Views, Report No. 103-33, Part 2.)

After all of this talk of comprehensive reform, starting with the original press releases on the Contract, I would point out to my colleagues that this reform does not apply to all regulations. We have "reformed" the process for Government to challenge a potentially harmful product, drug, pesticide, or chemical, and take it off the market, or restrict its use. However, the process of getting these products on the market has been exempted from these "reforms." This is like announcing a program to improve highway safety, and then make it tougher to revoke a suspected offender's driver's license.

Mr. Chairman, let me shorten my remarks somewhat and come to a conclusion. I look forward to an opportunity to improve this seriously flawed bill, and will be offering a substitute, along with my colleague, the gentleman from Ohio, Mr. SHERROD BROWN. In addition, individual amendments will be offered to correct some of the problems I have mentioned.

I hope that those who share my feelings on H.R. 1022 as currently written will join with me in an effort to improve the bill.

Mr. Chairman, I reserve the balance of my time.

Mr. BLILEY. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, I rise in strong support of H.R. 1022, the Risk Assessment and Cost-Benefit Act of 1995. This legislation is long overdue.

On January 1, 1970, the National Environmental Policy Act took effect. NEPA declares that it is the policy of the United States "to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations."

Unfortunatly, somewhere along the line, we've lost sight of this important balance between economic and environmental concerns. And as a result, we have more and more Federal regulations that impose enormous costs for minimal, even hypothetical, benefits in public health.

A series of articles published in the New York Times in 1992 pointed out this problem. In one of those articles, the author wrote:

> In the last 15 years, environmental policy has too often evolved largely in reaction to popular panics, not in response to sound scientific analysis of which environmental hazards present the greatest risks. As a result * * * billions of dollars are wasted each year in battling problems that are no longer considered especially dangerous, leaving little money for others that cause far more harm.

An EPA-appointed panel of experts apparently agrees. In a March 1992 report entitled "Safeguarding the Future," these experts cast serious doubt on the quality of science used by the Agency to justify its regulatory programs. Even many agency personnel perceived that EPA science was "adjusted to fit policy."

We tried several times in the previous Congress to make improvements in the way Federal regulations are written, but each time we were rebuffed. In November, the American people sent us a message, loud and clear: Tame this regulatory beast. Our constituents demand that we break the Federal Government's stranglehold on job creation and get the Federal Government out of decisions that are best left to individuals, State and local governments.

H.R. 1022, the Risk Assessment and Cost-Benefit Act of 1995, contains commonsense propositions. Title I seeks to ensure that risk assessments and risk communication are open, objective, and sufficiently informative to serve the needs of decisionmakers, the regulated community, and the public.

Title II seeks to ensure that major rules that would increase costs by $25 million are the subject of careful analysis and reasonable decision criteria.

Title III sets out a consistent system of peer review for regulations that would increase annual costs over $100 million. Title IV makes clear that the act is enforceable in court against Federal agencies. Title V provides that there be procedures and priorities for the review of risk assessments and rules. Finally, title VI requires the President to report on opportunities to set regulatory priorities among Federal regulatory programs.

These provisions are responsible management tools. Some say weaker legislation is all that we should do for now. I disagree. We cannot afford to do less than this bill requires. Some say risk legislation should not be subject to judicial review. I disagree. Risk legislation must be enforceable; there should be no double standard where the Federal Government is not subject to review by courts, but State and local governments and businesses are.

Some say we should not disturb existing law, even when that law results in regulations that are expensive and inefficient. I disagree. For a number of years we have been adding layers of regulations. It is time to take a fresh look at the process we use to regulate risks to public health and the environment.

We will see in this debate who clings to the status quo of bureaucracy gone awry, and who is really interested in meaningful regulatory reform. I urge my colleagues to support the Risk Assessment and Cost-Benefit Act of 1995.

□ 1600

Mr. Chairman, I reserve the balance of my time.

Mr. DINGELL. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, everyone in this Chamber wants protective health, safety, and environmental standards issued by the United States Government agencies to be done on the basis of good science and good regulatory practice. That is not the issue. Indeed the question of how these matters are dealt with in the regulatory agencies has long been a special concern of mine because of lack of fairness, because of bad science, and because of other defects in the process.

However, it must be noted that the behavior of the regulatory agencies—EPA and the other agencies which are engaged now in seeking to protect the health and the welfare of the American people, and agencies that are seeking to protect the economy of this country, to see to it that our securities markets and our other financial activities are conducted well and safely and in conformance with Federal law—are indeed not only important but are responses, in almost every instance to requirements imposed on those agencies by the Congress.

Washington is not full of crazy, runamok bureaucrats running around seeking to penalize honest Americans and to create economic hardships or other hardships for the American people. That is quite an unfair and untrue image.

It must be observed that what is going on here is that the agencies downtown are responding to a set of highly complex laws written by the Congress of the United States. In the case of environmental laws, they are responding to legislation which is not only enormously complex but enormously controversial, regulations which were written in response to clear mandates from this Congress which require particular actions to be taken.

One of the remarkable things about this is that several of the Governors who were denouncing the clean air bill that we passed a few Congresses ago for its not being strong enough, such as the Governor of California and the Governor of Wisconsin, who still hold those offices—although the Governor now of California was at that time a distinguished senior Senator from his State—were demanding that we pass not the laws that we passed but legislation which was indeed much stronger and much more punitive in character, something which I resisted with considerable vigor.

It is fair to say the use of risk assessment, cost-benefit analysis and peer review will be helpful. These are important analytical tools, and they will help the agencies to do their job better, limit burdens on private industry, reduce Government regulatory activity and Government waste, and see to it that our legislation is properly handled.

The Government does not need and should not tolerate excessive industry regulation, nor should it excuse sloppy or biased regulatory programs, whether they are biased toward the environmental groups or toward business groups.

I feel, however, very firm and very strong in the belief that environmental health and safety laws which the Congress has adopted after careful consideration are on the books for good reasons. Admittedly these are complex pieces of legislation. They are because they have to be, because the subject matter is complex. And to unwisely impose now a whole new spectrum of additional requirements and mandates, equally complex, upon an already complex system of laws and regulations is simply to compound the difficulties that this Nation confronts.

Business will find it harder, environmental groups will find it more difficult, and the laws and the regulations will be more complex. They will take more time, and the lawyers will have a better time and make more money simply because we have compounded a situation which is now overly complex and made it still more so.

How was it that this got to be so complex? It got to be so complex because this Congress wrote that legislation, and because the agencies are now seeking to carry out the laws which were written by this body.

The health and safety and environmental laws written by the Congress are almost always done on a bipartisan basis as the votes on the House floor indicate. The clean air bill was passed by something like 403 to 5. In the frenzy to complete the Contract on America within 100 days, we have taken out a contract on the history of good legislation and upon the body of good statutory law, and indeed upon the processes of this institution.

As if the Congress now is not going to be satisfied with a flawed process for passing this legislation, H.R. 1022 is literally a contract on the health and the safety of the American people, and on the environment that we will be leaving to our grandchildren.

According to every responsible prediction and estimate, H.R. 1022 will create more paperwork, not less, and increase the number of Federal employees who must be involved in the decision-making and the litigation questions. It will also take more time, and it will add to the miseries and the costs of business as business seeks to live with Government regulation.

The Congressional Budget Office estimates that this bill will cost the Federal Treasury at least a quarter of a billion dollars more every year, and CBO has not yet completed accounting for the costs. Preliminary estimates from the executive branch indicate that more than 1,500 new bureaucrats would have to be hired to carry out the extensive and prescriptive requirements of H.R. 1022 in administering now a much more complex regulatory process.

My Republican colleagues are increasing the size of Government with this bill, at the same time that President Clinton is making a real effort and real progress in streamlining and downsizing government.

My comment to the American people would be: If you like increased bureaucracy, bigger Government, more work for lawyers, more delay, and more costs to American taxpayers, then H.R. 1022 is the bill for you.

Republican and Democratic Presidents have alike proposed and Congress has enacted specific laws establishing protective standards for identifiable threats to human health, human safety and the environment. These statutes cover a wide range of concerns: protecting women from breast cancer, protecting children from unsafe toys, regulating emissions of toxic air pollutants, ensuring airline safety, providing for the safety of workers in the workplace, and providing for clean water, clean rivers, and safe food. Each was passed for a real and important group of reasons based on particular circumstances posed by clearly identifiable threats.

H.R. 1022 cosponsors now want to override these carefully crafted protective standards of existing law with a uniform set of decision-making criteria, one-size-fits-all criteria, which by the way are different in many respects than the criteria in the bills reported by either of the two committees.

It is interesting to note that no hearings were held on the matter that we are now considering on the floor. The bills that were considered in the committees are different than that which is now before us. Proposals which were in the bills of both committees have vanished in some strange process that can only be explained by my colleagues on the majority side. And proposals which were in neither have all of a sudden appeared to raise new questions about the legislative history and what it is that the Congress is doing here today.

Do we know what laws are going to be impacted by the legislation before us? No. No one can tell us that. We do know some. I had asked the cosponsors of the bill to provide a comprehensive list when the Committee on Commerce marked up this bill. They said, "Of course. We will be delighted to do so." But that list is not yet before us.

In addition to changing the protective standards of existing law, H.R. 1022 will cause significant delays in issuing regulations important to industry, either to provide regulatory relief or relief from existing burdens. This bill is going to slow down the giving of relief to industry on matters which are important to industry, which will make the United States more competitive, and which will reduce costs to American industry.

Ironically, most of the regulations my Republican friends complain of were issued by Republican administrations, like the asbestos regulations raised earlier by the gentleman from Pennsylvania [Mr. WALKER].

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Important health and safety protections for the public like these will also be delayed. I would like to now address some of these regulations, since my colleagues on the Republican side were never able to tell us what would be the consequences of being caught in this Rube Goldberg construction which they are now inflicting upon the American people, leading to multiplied gridlock and diminishing the agencies of government and the rights of the American people and American business.

In 1992 the Congress established the Nation's first nuclear waste disposal facility in New Mexico called the Waste Isolation Pilot Plant or WIPP, which will receive nuclear waste material currently being stored at more risky storage facilities around the country. WIPP cannot open until EPA promulgates regulations setting forth operating standards to protect the public health. The Department of Energy indicates that these will be significantly delayed under H.R. 1022.

New Federal Aviation Administration rules to enhance safety standards for commuter airlines in the wake of recent tragic air crashes were to be issued on a fast-track basis by December 1995. According to FAA, these new safety enhancements will be delayed for some indefinite period by the requirements of H.R. 1022.

EPA is now contemplating and working on deregulatory action under the Toxic Substances Control Act pursuant to a rule adopted in December 1994 which would save the economy better than $2 to $4 billion in control costs for PCBs. The proposed changes will reduce disposal costs and provide additional flexibility to industry. They will add to our competitiveness and reduce the burdens on American industry. They will be delayed by this legislation.

The Nuclear Regulatory Commission last year proposed a rule to update seismic standards for any new nuclear reactors built in the United States. In its proposal, the NRC noted that reviewing seismic safety rules for nuclear power plants is particularly timely because of the possible renewed interest in nuclear reactor siting for a new generation of nuclear reactors. The certification and other prescriptive requirements of H.R. 1022 would delay those safety regulations and create a situation where industry will not be able to move forward on important safety regulations which will benefit not only consumers and environmental groups, but also American industry.

The Department of Housing and Urban Development estimated lead-based paint regulations being promulgated to address risks from childhood lead poisoning in Government-owned and Government-assisted housing would be delayed by 2 to 3 years.

The National Highway Traffic Safety Administration has proposed regulations pursuant to a requirement of law enacted by this Congress to provide improved protection against head impacts in the interior of cars and light duty trucks. The estimates of the agency is that, for each year of delay, 1,000 lives will be lost and 600 injuries will occur.

Mr. Chairman, there are literally thousands of other examples of delay of important health and safety standards that will come to light as this legislation moves forward. And the delay of deregulatory actions which could result from the passage of H.R. 1022 will be substantial and costly to the American economy.

The unknown and unintended consequences caused by the hurried consideration of this legislation will emerge for Members in embarrassing and unwanted ways in weeks and months ahead.

I urge my colleagues to oppose the bill. I urge them to support the substitute which will be offered, and I urge them to adopt the narrower amendments which will be offered to eliminate wrongful, mischievous and evil consequences of different parts of this legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. WALKER. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. BOEHLERT].

Mr. BOEHLERT. Mr. Chairman, the person who deserves the "I don't get it" award for 1994 is the one who recommended to the President that he buy Dave McCollough's Truman biography and give it to key operatives to read in preparation for the 1996 campaign against what they perceive will be a do nothing Congress. This will not be the do nothing Congress. This will very much be a do something Congress.

The challenge is to do something that is responsive to the problems, and there is no doubt about it, in this area we have a lot of problems. Overregulations, and excessively costly regulations are two of the big ones and we have to be responsible in addressing them.

I would suggest that Terry Davis, who is the director of the Resource for the Future Center for Risk Management capsulizes it nicely when he said in a recent article in the winter of 1995 issue of his publication, "If the varied interests with a stake in environmental policy can reduce the ideological and partisan coalition that has characterized the risk debate so far, and if they can accept both the uses and limitations of risk assessment, the risk debate could lead to a new era of more effective, efficient, and equitable environmental program."

I would submit to all of my colleagues that is something, that is an idea we can all embrace.

I serve on one of the committees of jurisdiction, the Committee on Science, and I think the committee did a pretty good job under the leadership of Chairman WALKER, but I submitted, along with a couple of my colleagues, some supplemental views to our committee report. And among other things we say we agree with the majority on the need to address risk assessment, and cost-benefit analysis. However, we do have some severe reservations about title III of the Job Creation and Wage Enhancement Act.

Under existing law, final agency rules and orders are judicially reviewable under the Administrative Procedures Act. Without clarification in title III of the Job Creation and Wage Enhancement Act, courts may hold that risk assessment guidelines themselves are reviewable, which is sure to lead to excessive litigation. We believe that risk assessment guidelines should not be reviewable.

Additionally, we believe that compliance with title III requirements should be reviewable only in the context of a challenge to a final agency rule or order. Without such a provision, this legislation may exacerbate existing litigations problems and stifle efforts to resolve conflicts within a Federal agency.

Title III requires Federal agencies to conduct resource intensive formal risk assessments and cost-benefit analysis. To me, that is the trial lawyers employment act of 1995.

I will submit the balance of my statement for the RECORD because it is worthy of note.

Mr. BROWN of California. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Chairman, this is a matter that was discussed at quite a length at the committee level. It deals with section 106 that refers specifically to recommendations or classifications by a non-United States-based entity.

One of the things we have done around here in the Congress of the United States that has caused an awful lot of overregulation is because Congress has been basically nebulous and vague on the directives that it places in its legislation.

Non-United States-based entities, and the bill says if it becomes Federal law that "no covered Federal agency shall automatically incorporate or adopt any recommendation or classification made by a non-United States-based entity concerning the health effects value of a substance without an opportunity for notice and comment," without an opportunity for notice and comment. I think this bill begs for a definition of a non-United States-based entity. It does not in fact redefine or reinvent the wheel by any chance, but I will be offering an amendment to this bill.

The Traficant amendment says for purposes of this section, the term "non-United States-based entities" means an entity that is No. 1, incorporated outside the United States, No. 2, has its principal place of business outside the United States, or No. 3, is the United Nations or any of its divisions.

The reason why I say this is because the World Health Organization could say that a certain substance is a carcinogen or not a carcinogen and under this bill if they are not determined to be a non-United States-based entity, that would automatically be without notice and comment given. The Traficant amendment would say that any organization outside non-United States-based entity as defined by this decent perimeter would enforce in fact the language of the bill as it is designed and intended to do. I am hoping for the support on this. This was sort of a modified version in the committee that was met with basic approval and I think it should be in the bill, not in report language, and it should be specific since the bill speaks to non-United States-based entities.

I ask for support on this amendment.

Mr. BLILEY. Mr. chairman, I yield 5 minutes to the gentleman from Florida [Mr. BILIRAKIS], chairman of the Subcommittee on Health and the Environment.

Mr. BILIRAKIS. Mr. Chairman, in September, 1993, the Clinton administration issued its National Performance Review, which stated that private sector costs from Federal regulations were "at least $430 billion per year—9 percent of our gross domestic product." Others put the total annual costs to the private sector and State and local governments at between $500 and $850 billion per year. To put this in perspective, this is more than the total amount of discretionary domestic spending by the Federal Government each year.

As if this weren't enough, the U.S. EPA estimates that it will impose 93 regulations on society during the next year, each of which will cost between $25 and $100 million per year. The Department of Agriculture estimates that it will add 200 regulations annually with costs in that range. And the Food and Drug Administration says it will add another 25 regulations per year with costs between $25 and $100 million. That's an additional 318 regulations for just these three agencies over the next year, with an added cost to society every year of $8 to $32 billion.

H.R. 1022 is sensible legislation that, among other things, will help us ensure that whatever amount society spends on regulation is justified by the amount of benefits from those regulations. We are committing a huge proportion of our economic resources to health, safety, and environmental regulation. That is the way it should be. It should be beyond debate that we need to make sure we are getting real benefits for all that we are investing.

Cost-benefit analysis is only one part of H.R. 1022. The other major part is a series of requirements that will ensure that when an agency determines how much benefit society is receiving in the form of reduced health, safety, or environmental risks, it uses objective science and presents its findings in an unbiased, open manner. Lest we hear today, and we are hearing today, from opponents of the bill that these provisions are designed to weaken health and safety standards, let me assure you that this is not the case. We are not striving for some particular policy outcome. We are trying to make sure that when we make regulatory decisions based on risk assessments that we are basing our decisions on science and not on policy preferences.

Unfortunately, that has not always been the practice in the past.

I am going to go into some what I consider examples of regulatory overkill.

The cost of EPA's hazardous waste listing for wood preserving chemicals is $5.7 trillion per theoretical life saved or cancer incidence avoided. The cost of EPA's municipal solid waste landfill standards is $19.1 billion per theoretical life saved or cancer incidence avoided. Clearly, I think everyone would agree with me, these costs are excessive, given the risk involved.

The Safe Drinking Water Act currently limits arsenic levels in drinking water to no more than two to three parts per billion. However, a regular portion of shrimp typically served in a restaurant contains around 30 parts per billion

We all remember the Alar scare of 1989. As a result of the Alar scare, the damage to the apple industry nationwide—from growers and processors to retailers—totaled hundreds of millions of dollars. Even growers who did not use Alar on their apples were devastated.

However, scientific studies showed that Alar was not carcinogenic in either rats or mice. But UDMH—a breakdown product of Alar—when consumed in massive doses—equivalent to a human consuming 19,000 quarts of apple juice daily over a lifetime—did cause some blood vessel tumors in mice.

In 1991, the OSHA regional office in Chicago issued a citation to a brickmaker for failing to supply a Material Safety Data Sheet [MSDS] with each pallet of bricks. OSHA reasoned that a brick could be poisonous, because when sawed, it can release a small amount of the mineral silica. The fact that this did not happen much at construction sites was of no consequence.

Brickmakers, fearing lawsuits, began sending the form so that workers would know how to identify a brick—a "hard ceramic body with no odor"—and giving its boiling point—"above 3,500 degrees Fahrenheit". In 1994, after 3 years of litigation, OSHA finally backed down and removed the poison designation.

Mr. Chairman, for those reasons we think that this legislation is so necessary.

At the joint hearings on title III of H.R. 9, a number of witnesses highlighted examples of the need for risk assessment and cost-benefit analysis:

Ohio EPA Director Donald Schregardus testified that of the 52 synthetic organic chemical pesticides for which U.S. EPA requires testing, only 9 were used in the State of Ohio in quantities that might be detected. The State and local communities were forced to spend thousands of dollars and significant time proving to U.S. EPA that those pesticides were not a problem, instead of using resources to solve real drinking water concerns.

Ms. Barbara Wheeler of the National School Boards Association emphasized that inaccurate risk assessment on asbestos has diverted billions of dollars from schools. The formulation of public policy on the asbestos issue was ahead of the scientific evidence to establish an accurate risk assessment; the result was that millions of scarce educational dollars were wasted. EPA's science ignored the variations in risk from different types of asbestos and focused on tests involving brown asbestos—the most hazardous type. However, the asbestos found in most schools was white asbestos, which is much less hazardous.

The Occupational Safety and Health Administration requires warnings that crystalline silica—one of the most commonly occurring elements in rocks and sand—is a carcinogen. In California—a state famous as a beach-lover's paradise—bags of sand used to fill children's sandboxes are labeled with a warning that sand is known to cause cancer.

The labeling of silica as a carcinogen was the result of a study on rats which were exposed to 100 times or more the amount of silica that workers in even the dustiest of conditions would be exposed to. However, similar studies on mice and hamsters failed to produce carcinogenic results.

OSHA's Hazard Communication standard—a "right to know" regulation—requires employers to post Material Safety Data Sheets [MSDS] explaining chemicals used in the workplace. MSDS violations account for more citations than any other OSHA rule. Unfortunately, these sheets are often difficult to understand or border on the absurd.

For example, the suggested remedy for exposure to charcoal dust is "seek air," and for exposure to sawdust: "flush with water." One construction company was cited by OSHA for failing to provide a Material Safety Data Sheet for Joy dishwashing liquid.

During our hearings in February, Dr. John Graham from the Harvard Center for Risk Analysis said that the most urgent need for health, safety, and environmental regulations is "a statutory requirement that Federal agencies report realistic estimates of risk based on the best available science."

Dr. Lester Lave of Carnegie Mellon University said "Congress should instruct regulatory agencies to use the best scientific knowledge, not "conservative" decision rules. Agencies should explore all plausible alternative scientific theories and explain why they chose a particular theory." That is what we have done in this bill. Objective science presented in an open manner will help us and the agencies make better decisions, and it will also help the public understand what kind of risks it is facing.

I urge my colleagues to support this legislation. It is a reasonable, common sense initiative that will help ensure that we provide appropriate protection for the public.

Mr. DINGELL. Mr. Chairman, I yield 5 minutes to the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Chairman, I thank the gentleman from Michigan for yielding me this time and I rise in opposition to the legislation that is before us today. It is a Frankenstein monster of ill-conceived and excessive provisions grafted together from bits and pieces of the Science Committee and Commerce Committee reported versions of the so-called Job Creation and Wage Enhancement Act of 1995.

Unfortunately, the only people whose jobs are going to be enhanced and created and whose wages are going to go up will be the attorneys of the United States who will be litigating under this legislation for the next decade, countless billable hours, filing lawsuits to challenge virtually every action taken by Federal regulators and legions of bureaucrats needed to generate the mountains of paperwork necessary to comply with the complex substantive and procedural requirements of the act.

I am particularly concerned because it could transfer scientific peer review panels into special interest pleadings. This legislation allows, believe it or not, the lobbyists and the scientists of the industries being regulated to sit on the scientific peer review panels that are going to judge whether or not the regulations should be put on the books to protect the public health and safety and environment. It is absolutely a built-in conflict of interest that will result not only in bad laws being put on the books, but endless litigation as people challenge the rules that are finally put on the books.

In addition, it would construct a legislative labyrinth of procedures which would have to be engaged in. We would have no reason to close down House Annex 2. Just like the final scene of Raiders of the Lost Ark, we could need to fill it with all of the regulations, all of the procedures that had to be gone through in order to ensure that the regulators of the lost ark had been tied into knots and made absolutely powerless by the Lilliputians of bureaucrats and peer reviewers who will block any meaningful health, safety or environmental regulations from being placed upon the books.

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And finally, all of this is subject to judicial review, thousands of lawyers crossing fingers back in their law firms right now, praying that this bill goes through.

We have billable hours of such a gargantuan number that it is almost unimaginable.

This is a bill which is a dream for lawyers across this country.

And finally, the safety of our Nation's nuclear powerplants, of the nuclear waste sites, protecting children against unsafe toys, preservation of our natural environment, clean food, clear water. Is our water too clean? Is our food too safe? Are the airlines too safe against any disasters befalling the American people?

And finally, before we avoid making policy on the basis of false or misleading, anecdotal information, for example, over the last several days we heard one of the proponents of this legislation claim that the Consumer Product Safety Commission had a regulation requiring all buckets have a hole in the bottom of them so water can flow through and avoid the danger of someone falling face down into the bucket and drowning. Sounds bad. Now, that would be ridiculous regulation, if it existed. But the truth is that there has never been such a rule, and there never will be such a rule.

The fact is that nearly 30 infants, toddlers, each year have been drowning in 5-gallon buckets, and the Consumer Product Safety Commission has worked with the industry to come up with a program of voluntary labels warning parents about the drowning danger. Voluntary.

This is an example of the public-private sector cooperation which is prevalent through many areas of the regulatory world.

I urge my colleagues throughout this debate, first make such that lobbyists and scientists of the companies being regulated cannot serve on the peer review panels; second, ensure that there is no reduction, no reduction in the overall health, safety, and environmental protections that are offered to all Americans; and, ensure that at the end of the day that we have not turned back the clock of progress which we have made in extending the life expectancy of all Americans, which is what has happened over the last 30 and 40 years in this country. Let us not tie the hands of those who have been committed to health and safety so that the private interests, the special interests, can go back to an era where those products that endangered the public were made available without any warning, without any protection against danger.

Mr. WALKER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we had at least 1 person stand up and defend the present regulatory system. I did not think we were going to have that.

Mr. Chairman, I yield 1 minute to the gentleman from Arizona [Mr. SALMON].

Mr. SALMON. Mr. Chairman, I do not think it is too unreasonable to require the Federal Government to operate based on good science, and I do not think it is unreasonable to expect that the Federal Government should do a cost-benefit analysis before rules are promulgated.

Let me tell you a little bit of a horror story as a State legislator I had to deal with in the State of Arizona. We came under fire of the Federal Government because of the 1990 Clean Air Act, and basically we were told not only what the outcome should be of our plan to avert destruction by the Federal Government, but also what the modality should be. In fact, it was dictated to us that we must institute the IM-240 program, which is about three to four times more costly than the existing vehicle emissions testing and takes about four to five times as long, those that have to wait in line for the tests. Could you imagine all the smog and pollutants that are put into the atmosphere while they are waiting an extra hour in line with their cars running?

Finally, I would just like to say we have an opportunity to turn all of these, this madness around, and I hope we get a chance to do that.

Look before we leap.

Mr. BROWN of California. Mr. Chairman, I yield 3 minutes to the gentlewoman from Michigan [Ms. RIVERS].

Ms. RIVERS. Mr. Chairman, several years ago when New York City was experiencing one of its garbage strikes, there was a young fellow who was getting very, very upset with the garbage that was piling up in his apartment. He did not know what to do, so one day he put it into a box, wrapped the box with gift wrapping paper, put it in the back seat of his car, and waited for someone to steal it. It worked.

Well, Mr. Chair, I would say to you that that is exactly what we have here. We have some garbage wrapped in pretty paper.

Now, I know that people will say that since I am speaking against the bill I am really against any change in how we regulate business and industry in this country. Not true. As a freshman who ran on reform and as the child of small business people, I want very much to see our regulatory climate improved in this country, but as someone with a degree in biological anthropology and a law school graduate, I also believe in science and logic, and neither of those things are to be found in this bill.

It increases costs. It overrides existing laws around health, safety, and the environment. It creates a labyrinth of procedures, and so encourages litigation that its only possible outcome must be a desire to have paralysis by analysis.

It purports to require good science, but when you look at the bill, we see that it mandates participation, or allows, forces participation for people who have an income interest in the outcome of the deliberation. It sets up vague standards.

When I talked to the scientists in my district, the University of Michigan is in my area, I asked them what they thought about the bill. It is interesting. One professor pointed out that while the word "cost" is used over and over and over again, and defined in several ways, the word "benefit" is never defined. It is never talked about. And his last comments in this area are interesting; he says, "These admissions by themselves are a dead giveaway about the intent of this bill."

And so I say to you, Mr. Chair, that, yes, there is pretty packaging, but underneath of it, 1022 is still garbage.

Mr. BLILEY. Mr. Chairman, I yield 3 minutes to the gentlewoman from Florida [Mrs. THURMAN].

Mr. WALKER. Mr. Chairman, I yield 1 minute to the gentlewoman from Florida [Mrs. THURMAN].

The CHAIRMAN. The gentlewoman from Florida is recognized for 4 minutes.

Mrs. THURMAN. I want to thank the gentleman from Virginia very much for yielding this time to me.

I rise today as a longtime supporter of risk assessment and cost-benefit analysis.

This legislation puts to use good science and common sense over political priorities which arise from the vicious circle of unsubstantiated media claims and subsequent public fear about exaggerated risk. Risk assessment and cost-benefit analysis allow us to prioritize our finite resources to those risks that truly threaten society.

We all have examples of outrageous regulations forced on the American people that drive up costs to consumers and businesses.

There was a television special last year hosted by John Stossel on the issue of risk assessment which was titled "Are We Scaring Ourselves to Death?"

Let us look at risks which actually shorten our life spans, airplanes by 1 day, hazardous waste by 4 days, air pollution by 61 days, crime by 113 days, driving 182 days. In the last decade, we have heard Alar, Perrier, cellular phones, carpets, coffee. They have all been dramatized by the media and the public for the risk they pose, and yet no one on this floor expects to pass legislation outlawing everyday hazards like stairs, which kill a thousand Americans, and bikes, which kill 700 Americans each year.

Mr. Chairman, one of the reasons that I ran for Congress was to foster and renew strong partnerships between citizens and their Government.

The President stated in an executive order requesting Federal agencies and departments to conduct risk assessment that the United States is overburdened with Federal regulations and that the American public deserves a system that protects and improves their health, safety, environment, and well-being, and improves the performance of the economy without imposing unacceptable or unreasonable costs on society.

The legislation before us achieves this goal. Risk assessment and cost-benefit analysis was also adopted as part of the Southern Legislative Conference priority agenda, and in the State of Florida this year, Governor Lawton Chiles is considering similar legislation.

As we are forced to allocate scarce resources to combat the most serious threats facing our health, safety, and the environment, risk assessment and cost-benefit analysis are important management tools necessary in crafting sound public policy. We can no longer enact unnecessary regulations here in Washington. It is not fiscally possible.

By basing our Nation's regulations on these principles, we stand to forge rather than force that strong partnership.

In addition, through the use of risk assessment and cost-benefit, we can identify those areas around our Nation, particularly the poorer regions, that are in need of Federal regulatory protection. The Congressional Research Service and the General Accounting Office assert such analysis might increase the net benefits of Federal regulations, might reveal cost-effective alternatives, and might actually justify stricter regulations..

In a recent Time-CNN poll, 68 percent of the American people favored environmental regulations being subject to a cost-benefit analysis. Another survey by the Harvard Center for Risk Analysis showed similar results.

Mr. Chairman, the American people want their Government to produce necessary and meaningful regulations and not burden them with unnecessary ones.

Opponents will argue $125 million to implement this bill is too costly, but they will fail to mention the cost of compliance of $430 billion annually, 9 percent of our gross domestic product. As cited in the Vice President's national performance review, the time is now to enact this bill.

I urge my colleagues to vote for sensible regulatory reform and vote for H.R. 1022.

Mr. WALKER. Mr. Chairman, I yield 1 minute to the gentleman from Tennessee [Mr. WAMP].

Mr. WAMP. Mr. Chairman, I thank the gentleman for the time. Mr. Chairman, this legislation is long overdue. Risk assessments and cost-benefit analyses are critical to the economic health of our nation's citizens, businesses, and local governments.

As a member of the Science Committee, I understand the importance of H.R. 1022 and the common sense approach it will bring to the regulatory process. It is the first step in restoring logic and order to our nation's regulatory nightmare.

If used properly, risk assessments serve as an important basis for sound regulatory and risk management decisions.

But, if there is no rhyme or reason to the process of assessing risk, they can harm industries and destroy jobs.

Let me give you an example of how manufacturers in my state are affected. One of the biggest industries in the Southeast and in Tennessee, my home State, is the appliance manufacturing industry. This industry employes over 28,000 people in Tennessee and over 50,000 people in southern States like Florida, Georgia, North and South Carolina, Virginia, Alabama, and Kentucky.

Mr. Chairman, the biggest threat to this industry is not foreign competition. Believe it or not, the biggest threat to this industry is the impact of federal regulations. More and more, these costly, and unreasonable regulations are redirecting human, financial, and technical resources to comply with the growing number of Government mandates.

The appliance manufacturing industry is one of the last remaining true American manufacturers. More than 80 percent of the major appliances used by American consumers are produced here in the United States.

The total impact on the appliance industry of a growing burden of federal regulations is a serious and immediate concern to manufacturers in my state and the entire Southeast region of the country.

That is exactly why I introduced an amendment during committee mark-up which explicitly requires regulators to consider the total burden of government regulations on companies or products, of any industry, and to accurately evaluate financial impacts on manufacturers in all industries.

Currently, the Department of Energy does not take into account consideration of the total financial or technical resource burden on manufacturers of continuously redesigning all of their major products to meet the standards.

What is more absurd is that neither the EPA or the Department of Energy coordinate with one another to take into account the problems manufacturers have in meeting separate, and often conflicting, standards at the same time.

As you can imagine, these EPA and Department of Energy standards are often times conflicting, which simply adds to the manufacturers' cost of compliance.

For the sake of our Nation's manufacturers, I strongly urge passage of this bill.

Mr. BROWN of California. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, I found this debate to be quite useful, and I regret very much that there are not more Members who are here to listen to it and to participate in it. I say that because I have a number of Members who expressed a desire to speak who are not here on the floor right at this moment, and I consider that to be regrettable.

Nevertheless, during the course of this debate, there are going to be statements made probably on both sides which are going to be difficult to verify and which, in some cases, may be a slight distortion of the truth.

The gentleman from Massachusetts [Mr. MARKEY], for example, cited purported EPA regulation of buckets to require a hole in the bottom. I do not know whether that is a true story or not.

□ 1645

But it indicates a problem of how stories get around. The gentleman from Florida [Mr. BILIRAKIS] made reference to the Alar problem, which I was quite familiar with and participated in it as a member of the Committee on Agriculture.

My recollection of that situation, which I deplored publicly on many occasions, was not that the EPA had overregulated, but that very vociferous consumer groups insisted that they had under-regulated and carried that through all the media to the point that it created a wave of hysteria against what EPA had actually done.

Now, I hope that I am not mistaken in my recollection of the facts. It turns out that it almost ruined the apple crop that year, put severe stress on the people who supplied the Alar chemicals, and cost them most of their market, and led, I think, to their voluntary withdrawal of the commodity.

These are the kinds of situations which deserve to be more fully explored.

Unfortunately, it cannot be done here on the floor. I will confess my memory is not perfect on an event of this sort and by the time it gets perfect, it will be next week and we will have voted on the matter and it will be impossible to ascertain what the real facts were.

Mr. Chairman, I reserve the balance of my time.

Mr. BLILEY. Mr. Chairman, I yield 3 minutes to the gentleman from California, the vice chairman of the committee [Mr. MOORHEAD].

Mr. MOORHEAD. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise in strong support of H.R. 1022.

This bill incorporates as title I legislation I introduced in the last Congress to set requirements for the assessment and characterization of risks.

For risk assessment documents, it requires the following: A discussion of laboratory and epidemiological data and whether it shows a link between a substance or activity and health risks. An explanation of the assumptions the agency made and why others were rejected. A discussion of whether agency studies show the same results as real life data.

Once the risk is assessed, it requires that the agency present the information fairly and openly, including the following: A description of who or what is at risk, a best estimate of the risk, and a description of how much scientific uncertainty there is. An explanation of how the agency believes the population would be exposed. A comparison of the risk to risks from other activities, especially ones that the public would understand. A statement of how much risk there would be from other alternatives.

Title I only applies to risk assessment and risk characterization documents used by a list of covered federal agencies, not to all federal agencies, and only in connection with regulatory programs designed to protect human health, safety and the environment. It also only applies to certain agency actions, like final rules that have compliance costs for our country of more than $25 million, reports that agencies issue to Congress, environmental cleanup plans, certain permit conditions, and to the placement of a substance on a list of carcinogens or toxic substances.

Title I is really fair legislation. It is not designed to roll back health and environmental standards or override existing laws. In fact, it explicitly states that it does not modify any existing statutory standard or statutory requirement designed to protect health, safety or the environment.

We need this legislation to make sure that we are not ignoring real risks while we are regulating phantom ones. I urge my colleagues to support the bill.

Mr. DINGELL. Mr. Chairman, I continue to reserve my time.

PARLIAMENTARY INQUIRY

Mr. WALKER. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. WALKER] will state it.

Mr. WALKER. Mr. Chairman, would the Chair advise this gentleman who has the right to close the debate?

The CHAIRMAN. The gentleman from Virginia [Mr. BLILEY] or the gentleman from Pennsylvania [Mr. WALKER] would have the right to close.

Mr. WALKER. I thank the Chair.

Mr. Chairman, I yield 2 minutes to the gentleman from Maryland [Mr. BARTLETT].

Mr. BARTLETT of Maryland. Mr. Chairman, I rise to express my unwavering support for H.R. 1022, the Risk Assessment and Cost-Benefit Act.

Additionally, I would like to thank the gentleman from Pennsylvania, Chairman WALKER, and the gentleman from Virginia, Chairman BLILEY, for their leadership on this important piece of legislation.

Mr. Chairman, the Congressional Office of Technology Assessment in November 1993 released a study which stated that the Federal Government devotes inadequate attention and resources to federal risk assessment research. Additionally, EPA's own Scientific Advisory Board noted that if the Nation's finite resources are spent solving low-risk problems rather than high-risk ones, then society will be exposed to higher risks with inadequate resources to deal with them.

Regulatory costs is the single greatest hurdle facing U.S. businesses and is a big job killer. Businesses and local governments which were regulated spent more than $500 billion in direct and indirect costs in 1993 twice the deficit to comply with federal mandates, and that figure is expected to climb to more than $650 billion annually by the year 2000, roughly 3 times our whole defense costs.

Almost 75 percent of this cost increase is expected to result from additional environmental, health and safety regulations. Beyond problems caused by the rising costs of government regulations, the regulatory process itself has become unduly rigid, unresponsive and inconsistent.

We all lose because of irresponsible policies. Without risk assessment, the EPA does not have to use sound science in environmental regulation formation. Bias input can be used to adjust data to fit a policy agenda which is not looking out for business, local governments or the average citizen—who must comply with political agendas.

We need to create confidence in our environmental regulations through risk and cost-benefit analysis. As a representative, one of my goals in representing my constituents in Congress has been to provide regulatory relief to local government and local employers and to balance this with the needs of people for a clean environment.

Before we burden our economy and society with costly new laws and regulations or continue some of those now in place, we must be sure that the benefits justify the costs.

Sound science, cost benefit analysis and risk assessment must all work together to ensure balanced environmental laws and regulations when they are enacted. The process must include: scientifically sound risk assessment; risk-based prioritization; and cost-effective risk management. In addition, there must be public participation in all phases of the process. These aspects must be at the heart of any environmental decisionmaking.

Mr. BROWN of California. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas, Ms. EDDIE BERNICE JOHNSON.

Ms. EDDIE BERNICE JOHNSON of Texas. I thank the gentleman for yielding this time to me.

Mr. Chairman, I, like everyone else, say we need to deal with this kind of legislation, but this piece of legislation goes too far. It is too extreme.

Title II of H.R. 1022 provides new decisional criteria that elevate flexibility for industry and cost reduction above public health and safety. The bill rescinds the decisional criteria for balancing harms and benefits, both public and private, both known and unknown, that have been built into the Federal environmental protection legislation over the past 25 years. It requires EPA to bear the burden of proof that the benefits of regulatory actions are worth it.

What this means in real terms is that the vulnerable Americans—the sick, the elderly, the newborn—can no longer be protected because their protection is too expensive. This also means that EPA would not be able to take any action that addresses many current health hazards, such as preventing the reoccurrence in the Nation's water supply of various bacterial diseases like the one that killed numerous people in Milwaukee and caused 400,000 illnesses, preventing the 70,000 deaths estimated to be caused each year by breathing air laden with fine particles or reducing airborne emission dioxin from waste incinerators located in residential communities.

Mr. Chairman, I know firsthand about many of these kinds of conditions. This puts people's lives at risk.

Mr. Chairman, title II of H.R. 1022 provides new decisional criteria that elevate flexibility for industry and cost reduction above public health and safety. The bill rescinds the decisional criteria for balancing harms and benefits, both public and private, both known and unknown, that have been built into all Federal environmental protection legislation over the past 25 years. It requires EPA to bear the burden of proof that the benefits of regulatory action are worth it.

What this means in real terms is that vulnerable Americans—the sick, the elderly, the newborn—can no longer be protected because their protection is too expensive.

This also means that EPA would not be able to take any action to address many current health hazards, such as preventing the recurrence in the Nation's water supply of microbial diseases like the one that killed numerous people in Milwaukee and caused 400,000 illnesses, preventing the 70,000 deaths estimated to be caused each year by breathing air laden with fine particles, or reducing the airborne emissions of dioxin from waste incinerators located near residential communities.

BACKGROUND

Section 202(a) requires that the benefits of any major rule to protect health, safety, or the environment—one resulting in an increase in cost of $25 million or more—justify and be related to, the costs of the rule. That section also requires that there be no regulatory or nonregulatory option that could achieve similar benefits in a more cost-effective manner or in a manner providing more flexibility to the regulated entities. These requirements must be met by substantial evidence in the rulemaking record (section 202(b)(2)), a higher standard for agency rulemaking than the "arbitrary and capricious" standard required for agency rulemakings under the Administrative Procedure Act [APA].

As a result, this bill supersedes, and rescinds, the decisional criteria for balancing harms and benefits built into all current Federal environmental laws. The mandates of environmental statutes that EPA rulemaking be necessary to protect human health or the environment—RCRA hazardous waste requirements—or provide an adequate margin of safety (Clean Air Act) or prevent the endangerment of drinking water supplies (Safe Drinking Water Act), to use just a few examples, would be fundamentally altered. Instead, EPA's rules under all environmental statutes would need to be based on a demonstration that the benefits of the action "justify" the costs and that there are no other options, including non-regulatory options, that are more cost-effective.

Because of the substantial evidence standard, EPA will need to quantify costs and benefits to the extent possible. And, since many of the public and private benefits of environmental regulation are difficult to identify, let alone quantify, public health and environment will always be on the losing side of this kind of analysis.

And the biggest losers in this kind of analysis are people who are the most expensive to protect: infants, older Americans, people with serious illnesses, people in rural areas, and people who live in low income areas. Prolonging the life of persons who are the most vulnerable may have little economic value.

Similiarly, preventing people from becoming ill, a major benefit of new drinking water protection rules, for example, has little dollar value and would be unlikely to survive this analysis. As a result, EPA would not be able to require the additional water treatment that would prevent the recurrence of incidents such as the outbreak of Cryptosporidiosis in the Milwaukee water supply that resulted in an estimated hundred deaths and over 400,000 illnesses.

EPA would also have great difficulty justifying new Clean Air Act standards to protect children from lead poisoning, asthmatics from sulfur dioxide, and cardiac patients from carbon monoxide. EPA would also not be able to revise the outdated rules for hazardous waste incinerators located in or near residential communities.

Mr. BLILEY. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia [Mr. NORWOOD], a member of the committee.

Mr. NORWOOD. I thank the gentleman for yielding this time to me.

Mr. Chairman, I do not just rise, I stand up with great glee to support H.R. 1022. I have for the last 5 years of my life lived under the rules of this Federal Government. Finally, I decided to run for Congress to try to get out of the way of the Food and Drug Administration, OSHA, and all the other regulatory agencies in this country.

This bill is an important first step toward a Federal rulemaking system that solves legitimate problems cost effectively, a rulemaking system that cooperates with governments and businesses and that prioritizes potential risks to society based on objective science rather than subjective whimsy.

I know that this town may not be full of crazy regulators or standards writers or enforcers, I do know there are a lot of them here, but Mr. Chairman, they are all over the country. And if I may cite a couple of examples which have a source: EPA regulations require municipal water treatment plants to remove 30 percent of organic material before discharging treated water into the ocean. What a good idea. Who could disagree with that?

Because water, though, in Anchorage, AK, is already cleaned, the town has had to recruit local fish processors to purposely dump 5,000 pounds of fish guts into the sewer system each day, thus allowing the city to clean the water and satisfy EPA requirements.

Another wonderful example, Mr. Chairman: Montana rancher John Shuler was awakened one night by a grizzly bear rummaging through his sheep herd. He went outside with his guns and fired shots into the air in an attempt to scare them off. An unseen grizzly emerged from the dark to attack Shuler. Fearing for his life, Shuler shot the bear.

The grizzly bear, you know, is on the endangered species list, Mr. Chairman, and Mr. Shuler was consequently fined $4,000 by the EPA.

I am amazed today to hear people say that it is unfair to have a peer review committee where the very people who are being ruled and regulated are going to sit on that committee and be able to defend their families and businesses. I am amazed to hear the people that sit in the hearings, directors of agencies, complain about paperwork, complain about being regulated and complain about lawyers. For goodness sakes, that is what we have been living with for the last 10 years.

Mr. Chairman, Federal regulatory costs are estimated to be over $540 billion. Our supporters ask us to support H.R. 1022.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Florida [Mr. HASTINGS].

Mr. HASTINGS of Florida. Mr. Chairman, title I of H.R. 1022 will cripple American industry. It requires extensive risk analysis which is time consuming, redundant, and unnecessary. It will apply to hundreds of thousands of American industries and businesses that need environmental permits or changes to permits they already have. The provisions of this title will result in huge delays in the construction or modification of the hundreds of thousands of industries and businesses that apply for any type of environmental permit or permit modification each year. And it is the permittee who will bear the cost of the delay and the redundant analysis. This is gridlock at its worst.

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Also, because these analyses are required prior to EPA even proposing cleanup measures for oil or toxic spills, contamination of land and water will spread and grow more costly, and more dangerous, while awaiting these analyses. These analyses are required even if they are completely unnecessary for the cleanup. This kind of redtape and bureaucratic strangulation is absurd.

Title I or H.R. 1022 requires that each significant risk assessment document and significant risk characterization document prepared by or for a Federal agency meet detailed analysis requirements prior to completing actions designed to protect human health, safety, or the environment. (Section 103(b).) Federal actions in which such assessments or characterizations are used and which do not comply with these requirements must be voided by the courts even where the document itself was tangential to the federal action.

While risk assessment and risk characterization documents are necessary and important bases for federal regulatory action, the scope of this provision goes far beyond scientific risk assessment or characterization documents. In fact, risk assessment and risk characterization documents are sweepingly defined to include virtually any federal document which identifies, describes, or discusses any hazard (Section 110). Although the definition of significant documents narrows the scope of these provisions, the federal actions affected remain large, including all federal permits, major rules, and federal oil or chemical spill response plans.

More importantly within those categories, all risk assessment documents or risk characterization documents, regardless of their significance, must meet the analysis requirements of sections 104 and 105. Since almost any document prepared for a Federal permit, Federal permit modification, cleanup plan, or major rule will at least refer to, if not discuss, the hazards addressed by the federal action, almost all documents must meet the analysis requirements, even when that analysis is not particularly relevant or necessary for the Federal action.

Mr. Chairman, this is a crippling American industry provision, and I ask that we reject H.R. 1022.

Mr. WALKER. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. DAVIS].

Mr. DAVIS. Mr. Chairman, today our Nation spends about $140 billion each year to comply with environmental regulations. That total will climb past $200 billion by the year 2000. Now these regulations are vital, but these costs mean that less money is available for other important needs like reducing crime, creating jobs, improving our education system, and, as we saw in committee in some cases, even allowing more money to go for medical science research that could be available with the cost-benefit analysis before we move ahead. Inefficient investments in regulatory programs reduces our ability as a nation to create new opportunities for Americans.

I have been hearing arguments from the other side of the aisle that they want regulatory reform but not this reform. But my question is, "If you want reform, where have you been the last 40 years?"

Mr. Chairman, what did they accomplish? Zip, zero, except add law after law, regulation after regulation, layer after layer of $50 solutions to $5 problems.

Opponents of this bill also argue that this will open the floodgates to litigation. I ask, "What do you think we have now?" At least for the first time we will get good science, and we will get some cost-benefit analysis before these costs are imposed on small businesses, local governments and consumers.

Mr. Chairman, H.R. 1022 should make the regulatory process more efficient and more productive instead of squandering time and resources treating relatively minor risks. This bill establishes criteria for identifying and treating the more serious risks facing the environment, public health and safety. When emergency rule-making authority is needed, this bill allows agencies to continue to use their emergency rulemaking authority.

Mr. BROWN of California. Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee [Mr. TANNER].

Mr. TANNER. Mr. Chairman, I have always been and will continue to be a strong supporter of risk assessments and regulatory reform. This bill was intended to address real problems within the current system. However, this new version before us today differs from either bill considered by the Committee on Commerce or the Committee on Science, and it needs substantive changes if it is to address the regulatory morass now present.

Implementation of its cumbersome procedures requires people. Using conservative CBO estimates this could mean putting about 5,000 people back on the federal payroll.

This bill will result in an increase in risk assessments and cost-benefits analyses by agencies from the current level of 80 per year to more than 2,400 per year.

The cost to the Department of Defense for developing and implementing peer review for the base realignment and closure process alone will be estimated between $35 and $70 million per year. The Department of Transportation will have to perform risk assessment and cost-benefit analysis before issuing mirror requirements to help school bus drivers protect the safety of our schoolchildren.

That is not the kind of reform our constituents would like to see, not to mention State governments coming under this.

Talk about an unfunded mandate; H.R. 1022 would require State governments, when acting as agents of the Federal Government, to perform risk assessment and cost-benefit analysis on issuance of permits or even modifications to the permitting process. In my opinion this is the classic definition of an unfunded mandate.

Not only that, but the bill, as written, allows courts to determine the criteria for sound science, the impact which will certainly be endless lawsuits.

Remember, my colleagues, it was 1991, after the Reagan-administration-appointed judge who, after reviewing thousands of pages of scientific assessments, imposed a logging ban across much of the Pacific Northwest to protect the spotted owl.

Finally, and unbelievably, as written H.R. 1022 allows individuals with a vested interest in the outcome to sit on peer review panels.

Curiously, this contract that was created by legislators rightly concerned about the exercise of power by unelected bureaucrats would give the power to delay new regulations, some needed, to unelected peer review panels and the courts. I am for reform, as I said, but this bill must have substantive change to be worthy of its title.

Mr. Chairman, in our haste to meet an arbitrary deadline on this legislation let us, please, not make an intolerable situation more intolerable.

Mr. BLILEY. Mr. Chairman, I reserve the balance of my time.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. BROWN].

Mr. BROWN of Ohio. Mr. Chairman, I rise because of concerns about H.R. 1022.

First of all, I am proud to live in a nation with the cleanest air, the purest food, the safest drinking water, the safest products, the safest working conditions, of any country in the world. I am proud of that. I think that obviously the people of this country are proud of the working conditions, proud of the clean air, and safe drinking water, and pure food laws, and the consensus that this country has arrived at on both sides of the aisle in making the standard of living in this country as high as it is and making the environment in this country as good as it is.

I live on Lake Erie in Lorain, Ohio, 25 or so miles west of Cleveland. Twenty years ago parts of Lake Erie were literally dead. The Cuyahoga River caught on fire in the city of Cleveland. Today—as I said, I live on the lake. I have two daughters that swim in Lake Erie. People drink the water in Lake Erie. It is a wonderful resource for all kinds of commercial purposes, for all kinds of activities around the lake, and we have been able to do that in this country because of the cooperation of business and the cooperative of government and the active citizens that have cleaned up that lake and made it safe and made it what we would like it to be.

Certainly sometimes government does overreach, and, when government does overreach, it is up to us to deal with those regulations one by one, not with a meat axe approach like H.R. 1022 does, but to deal with it case by case. That is why I support risk assessment. That is why I support good scientific based information, risk assessment, cost-benefit analysis. That is why it makes sense to do it case by case by case, not the way that H.R. 1022 does.

What H.R. 1022 will bring to this society in this government is more regulation, more bureaucracy, more lawyers, more litigation. That is why many groups around the country have called this the lawyers' full employment bill. It simply does not make sense to pile more government, more bureaucracy, more litigation, more lawyers on top of what we now have. It simply does not make sense.

The gentleman from California [Mr. BROWN] and I will offer a substitute amendment later this evening. It will set a higher threshold for rulemaking which will save government money and save private sector money. It will allow for appropriate judicial review which will cut the costs of litigation, will mean fewer lawyers rather than more lawyers. It will mean less litigation rather than more litigation, and the Brown-Brown substitute will provide for peer review with no conflict of interest so that, when regulations are considered under risk assessment, that the decisions will be made fairly, without undue private interference from those groups, or those industries or those businesses that have something to gain by that interference. The substitute, the Brown-Brown substitute which we will offer later, means less money, less litigation, less bureaucracy, less conflict of interest. It simply makes sense, Mr. Chairman.

Mr. WALKER. Mr. Chairman, I yield 1 minute to the gentleman from Kansas [Mr. TIAHRT].

Mr. TIAHRT. Mr. Chairman, for the last 40 years Washington, government, has been taxing and strangling both American families and American jobs, and let there be no doubt. Unneeded regulations are nothing more than a tax on the American public. I say to my colleagues, "You and I have paid the bill for the cost shifting of increased prices associated with the things we need to purchase. According to the Alliance for Reasonable Regulations, it is now estimated that the effective cost to an average family is over $6,000 per year. That's why the House passed in a bipartisan vote a moratorium on new regulations. Six thousand dollars a year for irresponsible, unneeded, expensive regulations prevents parents from keeping enough food, enough of their hard-earned money, to buy food and clothing and provide a comfortable living for their children."

Remember the cost of regulation is the most regressive type of tax because both the poor and the rich pay the same, and it is harder for the poor families. So, if we care about our kids and our families, and we all do, we should start to reduce the burden of unnecessary regulations and start to apply some common sense.

I urge a vote for H.R. 1022, a vote for sound science and reasonable regulation.

Mr. BROWN of California. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas [Ms. JACKSON-LEE].

Ms. JACKSON-LEE. Mr. Chairman, risk assessment and cost-benefit analysis, a resounding yes.

However, Mr. Chairman, House Resolution 1022 has been developed far too hastily to be considered as a sound policy prescriptive for public health, safety and environmental regulatory standards. This bill imposes inflexible and unrealistic requirements for regulatory analysis and decision making. Our Federal agencies will have to spend more time scrutinizing the regulations than gathering a base of research to support the proposed rule, the business that they should be in. The effect of this bill would be nothing more than to slow the regulatory rule-making business down to a crawl, and we cannot even begin to speculate what kind of effect such restrictions would have on public safety and public health. These administrative burdens are projected to cost at least $250 million a year if this particular bill is implemented, but yet we stand here, Mr. Chairman, and say that we want to cut costs and make government more efficient.

We are creating problems rather than addressing them. Between expanding the scope of judicial review for virtually all Federal rules aimed at protecting health, safety or the environment and in a single broad stroke superseding various provisions of such laws, this bill becomes to a certain extent the mother of all risks.

□ 1715

We are risking public health, public safety, and threatening our environment. This Risk Assessment and Cost-benefit Act presently before us is more of a cost than a benefit. I urge my colleagues to solve the real problem the real way, with less bureaucracy.

I might add, if I can, Mr. Chairman, to simply query the gentleman from Pennsylvania [Mr. WALKER], because I heard him complaining about, and I am a new Member, the high cost of asbestos removal regulations. I was just wondering as to when that particular rule was implemented. I was just wondering, as I am a new Member, why you mentioned the asbestos removal regulations that many of us did operate under. I am from local government. We had to respond to it. But I was wondering, since you mentioned it, whether you knew when that rule was implemented.

Mr. WALKER. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I think it was during the 1980's.

Ms. JACKSON-LEE. I think it was during the Reagan administration. I would ask for your comment, at the time it was done under a Republican administration, the concern was we were trying to resolve this as it related to our children. We were looking to improve the safety conditions of our children, and I think we were working with the present scientific technology at that time.

Mr. WALKER. If the gentlewoman would yield, the problem is that even in the Reagan administration bureaucrats are bureaucrats, and they did not have any mandate to do good science. We are going to mandate them to do good science. It would have prevented that mistake from being made, whether it was during the Reagan, Carter, or Clinton administration. This bill is designed to make certain we do not have to go through that kind of problem once again. It was a disaster.

Ms. JACKSON-LEE. I wholeheartedly agree with you that we need good science. I think the science used at that time was the best science they could use, and I think we must be cognizant of that and be sure that we do nothing to damage the health and safety of our children.

Mr. BLILEY. Mr. Chairman, I yield 1 minute to the gentleman from Florida [Mr. MICA].

Mr. WALKER. Mr. Chairman, I yield 2 minutes to the gentleman from Florida [Mr. MICA].

The CHAIRMAN. The gentleman from Florida [Mr. MICA] is recognized for 3 minutes.

Mr. MICA. Mr. Chairman, my colleagues in the House of Representatives, regardless of what you have heard in the debate today, this is really a well-crafted bill. It is incredible to hear the opponents whine against this bill, because this bill does not do any of the things to any of the regulations they are talking about. This bill does not go back. This bill is not retroactive. This bill is prospective. This bill gives the President a say in this risk assessment process. This bill gives the agencies a say in this risk assessment process.

This is a well-crafted, sound piece of legislation. Let me tell you something else this bill does for the future. Current law in many instances prohibits the use of cost as a criteria in assessing risks and benefits. This bill says for the first time that we will use a cost-benefit and risk assessment based on a set of criteria that makes sense in an orderly procedure.

Let me give you some examples, if I may, of ridiculous approaches to requirements to assess risk right now. In 1992, OSHA cited a two-person company for not having material safety data sheets for Windex and Joy cleaning solutions. Here is a material safety data sheet that they are required to fill out. Is that a good use of our resources?

EPA rules force dentists to keep logs for possession an disposal of White-Out. Here is White-Out correction fluid. It is classified as a hazardous waste. Is that a good use of our resources?

Mr. Chairman, let me give you one more example—strawberries. Strawberries, EPA limits benzene to 5 parts per billion in drinking water. Strawberries naturally have 50 parts per billion. Does this make sense? Is this how we are protecting public health, safety and welfare? I say not.

GAO cited in a study to this Congress that politics is the main criteria for choosing cleanup sites. What does that say to our children in inner cities? What does that say to the real risk to human life and human limb?

Limited resources require that we do a better job. Let me quote John Graham, a Harvard professor, who said, "Sound science means saving the most lives and achieving the most ecological protection with our scarce budgets. Without sound science, we are engaging in a form of 'statistical murder,' where we squander our resources on phantom risks when our families continue to be endangered by real risks."

So this legislation today for the first time gives some direction to an agency like EPA, like OSHA, and says these are the risks. This is the way we will address these risks, and we will use cost-benefit analysis in the process. It is a good piece of legislation, and I urge Members to support it.

Mr. DINGELL. Mr. Chairman, how much time remains amongst the several of us allocating time?

The CHAIRMAN. The gentleman from Michigan [Mr. DINGELL] has 5 minutes remaining, the gentleman from Virginia [Mr. BLILEY] has 10 minutes remaining, the gentleman from California [Mr. BROWN] has 5 minutes remaining, and the gentleman from Pennsylvania [Mr. WALKER] has 7 minutes remaining.

Mr. WALKER. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Chairman, the opponents of this bill would like the American people to believe that their health and safety will be jeopardized if this legislation passes, but nothing could be further from the truth. The American people have had to endure radical environmentalists screaming lies into their face for far too long. This bill insists that government will be basing its decisions on sound science, peer review, and cost-benefit analysis.

What really is at issue here is the ability of power-hungry bureaucrats to intimidate the homeowner or the farmer or the small businessman or woman at will. It is a stake in the heart of big brother government.

From now on, if local government and small enterprise is going to be driven out of business, it has got to be justified, and it has got to be justified on a reasonable condition, rather than just pandering to the paranoid screams of environmental Chicken Littles. In hearings before the Committee on Science, we watched as bureaucrats shed crocodile tears because this bill would cause unacceptable delays that would cost more and add layers of bureaucracy to their departments. In other words, Mr. Chairman, they are opposed to this bill because it would impose the same burdens on them that they have been imposing on the American people.

Perhaps if this bill had been in effect, our public schools would not have been forced to spend $10 billion on a nonexistent asbestos problem, and instead could have used the money for educating our children. There are numerous examples of this monstrously costly nonsense, from cyclamates to alar, from lead paint to cranberries causing cancer.

A vote for H.R. 1022 is a vote for rational regulation, sound science, and a vote against Big Brother bureaucracy. It is a vote for prosperity and safety for our people. I urge all of my colleagues to join with me in supporting this bill.

Mr. BLILEY. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio [Mr. OXLEY], the chairman of the subcommittee.

Mr. OXLEY. Mr. Chairman, I rise in support of the legislation. The Risk Assessment and Cost-benefit Act of 1995 achieves two fundamental objectives. First, the bill ensures that the system of assessing risks and communicating that information to decision makers in the public is objective, unbiased and informative.

Second, it ensures that the Federal regulatory process has an enforceable system that considers the incremental costs and benefits of each significant option for every piece of major legislation. I think that makes good common sense in the sense of common sense legal reform that we are trying to bring about.

Mr. Chairman, I had an opportunity to look at the Wall Street Journal just last week in which I found a very interesting column that was titled "In Search of Zero Risk." It was written by a Kathryn Kelly, a principal of ERM—Environmental Toxicology International in Seattle, WA, who had some interesting points to make in terms of what we are looking at in our existing environmental standards.

She says the "acceptable risk" criterion on which much of the current environmental regulation is premised has no basis in scientific fact, has received no serious review, and was in fact "pulled out of a hat." At issue is the so-called "one-in-a-million" standard of acceptable risk for environmental contaminants.

She goes on to talk about how they talked to several people that were involved in this risk assessment and how they came to this one-in-a-million risk. I think the Members will find it interesting.

She says, "What is the origin of this criterion which has cost society billions of dollars? In 1991 my firm set out to solve this mystery. We contacted officials from the Bush White House, the Environmental Protection Agency, the Food and Drug Administration, the Congressional Office of Technology Assessment, and activist groups such as Greenpeace. The result, no one, not even the very Federal officials who currently use the one-in-a-million standard, knew what it was based on."

A sample of the responses: "My mind is a complete blank." "My, what an interesting question." "It is an economic criterion, whatever that means." "It is based on the chance of being hit by lightning, which is one in a million." "It was a purely political decision made by several of the major agencies behind closed doors in the 1970's. I doubt very much you will get anyone to talk to you about it." Our personal favorite: "You really shouldn't be asking these questions." This from one of the Federal agencies.

Now, I ask you, does the response from these so-called agencies make sense whatsoever in the real world? If you look at the statutes that we are dealing with, the Clean Water Act, the Clean Air Act, the recent alar scare, the recent flap over asbestos in schools, you have to say to yourself, we have gone far too much in the wrong direction in trying to set these particular standards.

It is unconscionable for a school district the size of mine in a town of 35,000 people to have to spend over $3 million removing asbestos from the school system that was found later to be perfectly safe, and was in fact safer had they left it alone than if they tried to get it out and put it back in the air.

Or let us look at the Clean Air Act. You talk about a political decision. All of us remember, of course, the study that was commissioned where we spent over $600 million to study clean air, and particularly acid rain. I am glad to see my friend from California show up, because he was responsible for this mishmash that is the Clean Air Act.

We had this NAPAP report. The NAPAP report supposedly was going to give us the information we needed to craft a good and effective clean air bill. What happened? In the tradition of the Congress, ready, fire, aim, the Congress actually passed a clean air bill before the NAPAP report came out. When the NAPAP report came out several months later, it was found that we were clearly killing a fly with a sledgehammer. That has meant in my home State of Ohio an increase already of 14 percent for my electric rates for my constituents and constituents of other Ohio Members.

Now, I ask you, does that really make any sense? Can you stand here and make a legitimate argument that after the NAPAP report came out, that the clean air bill, particularly as it related to SO_2 made any sense? This is a good bill, it is a fair bill, it is balanced, it makes sense for America, and let us get on with it.

Mr. Chairman, the Risk Assessment and Cost-Benefit Act of 1995 achieves two fundamental objectives. First, the bill ensures that the system of assessing risks and communicating that information to decisionmakers and the public is objective, unbiased and informative. Second, it ensures that the Federal regulatory process has an enforceable system that considers the incremental costs and benefits of each significant option for every piece of major regulation.

The biggest problem faced in preparing this legislation is that so many early laws simply provide for, or even allow for, these rules of reason. The bill states that three rules of reason must be met notwithstanding prior law. The act requires Federal agencies to certify that:

(1) risk assessments and cost analyses are objective and unbiased;

(2) the incremental risk reduction or other benefits of a major rule will be likely to justify, and be reasonably related to, the incremental costs; and

(3) that the regulation is either more cost-effective or provides more flexibility to State, local, or tribal governments or regulated entities than the other options considered.

I believe these are sound and reasonable principles. The current costs of Federal regulatory programs are estimated between $430 and $700 billion and increasing every day. Yet, Congress has never in any significant way reformed a Federal regulatory program to consider sound risk assessments and incremental cost-benefit analysis.

Real reform means you must supersede the inconsistent old requirements to the extent they are not reasonable. We know this is a novel concept in a legislative body that has only added more regulatory programs and to a Federal bureaucracy defending its own weak programs.

Why should we preserve a system based on biased risk assessments? Why should we preserve a system where costs are unjustified or unreasonable? Why should we preserve a system where regulations are inflexible or not cost-effective?

Simply put, if the bureaucrats can't justify their rules, we should not continue to add more and more regulations with major costs.

The debate over the last number of years has revealed strong differences among some Members about the role of the Federal Government and risk assessment and cost-benefit analysis. The view from outside the Washington beltway, from Governors, mayors, school boards and small and large businesses, is that there is a serious problem concerning the credibility and impact of Federal regulatory programs.

A number of Members, however, believe that rules which increase annual costs between $25 and $100 million should not be subject to cost-benefit requirements. Many of these same Members advocate that risk and cost-benefit legislation should essentially be unenforceable. In my view, such an approach would shield the Federal bureaucracy from real accountability and effectively neuter the legislation.

I am further reminded of how those who oppose judicial review for the Federal bureaucrats were eagerly prepared to impose penalties under the Toxic Substances Control Act on ordinary homeowners during real estate transactions. Last year I opposed Radon legislation which placed requirements on ordinary homesellers and even those who rented out rooms. Republicans argued that such an approach intruded on State law and would swamp the Federal courts with millions of violations during ordinary real estate transactions.

We asked EPA to justify its support when the possible penalties were as high as $10,000 for failing to hand out a hazard information pamphlet. I offered an amendment to remove this provision, but the Administration and the Democratic leadership prevailed. Moreover, the League of Conservation Voters scored my amendment as an anti-environmental vote.

I think I can guarantee that such an approach to expand the Federal regulatory octopus to ordinary homeowners will not occur this Congress.

I am struck, however, by the double standard and the passionate defense of the Federal bureaucracy by the same Members so willing to impose Federal penalties and litigation on ordinary homeowners. Congress has simply added new regulatory program upon new regulatory program. America is long over due for real change.

I strongly support H.R. 1022, the Risk Assessment and Cost-Benefit Act. The bill provides a strong, enforceable system of accountability, disclosure, peer review, and careful analysis of regulatory alternatives. This is a critical building block for Federal regulatory programs to ensure that our national resources reduce real risks and set realistic priorities.

Mr. WALKER. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. BAKER].

□ 1730

Mr. BAKER of California. Mr. Chairman, in his book "Breaking the Vicious Circle," Supreme Court Justice Stephen Breyer tells the story of a case he tried while he was on the First Circuit Court of Appeals. The case U.S. versus Ottati and Gross, involved a toxic waste site that had been substantially cleaned-up, so much so that small children could eat small amounts of dirt from the site for 70 days every year with no ill effects.

Enter the Environmental Protection, Agency. The E.P.A. wanted the owners of the dump to spend an additional $9.3 million to make the site clean enough so that children could eat dirt there for 245 days annually—despite the facts that the site was in the middle of a swamp, no children played there and that the E.P.A. acknowledged that much of the remaining waste would evaporate by the year 2000.

Mr. Chairman, as this amazing story demonstrates, we need risk assessment reform. The Republican plan strikes a balance between environmental protection and human safety, on the one hand, and environmental extremism and bureaucratic excess on the other. Burdening the private sector with costly and useless regulations undermines the cause of a sound environment, and costs jobs in the process.

In fact, Mr. Chairman, even the Clinton administration has admitted that the cost of private sector compliance with Federal regulations to be $430 billion annually—a full 9 percent of the gross domestic product. Other studies indicate that the true cost could be double this amount.

The Republican risk assessment plan requires Federal agencies that issue health, safety or environmental regulations to perform risk assessment and cost-benefit analysis for any rule that would cost the economy $25 million or more. Our bill establishes peer review programs so that experts from outside the Government and ordinary citizens affected by Federal rules can give their imput. And our plan says that the President has to set regulatory priorities and report to Congress, every 2 years, on how to implement them.

Mr. Chairman, we need risk assessment to protect our citizens from the worst excess of zealous regulators. Let's act now before the bureaucrats strike again.

Mr. BROWN of California. Mr. Chairman, I yield 2 minutes to the gentleman from Texas, Mr. PETE GEREN.

Mr. PETE GEREN of Texas. Mr. Chairman, I rise in support of H.R. 1022 and the peer review process contained therein. Any true regulatory reform must have as a fundamental principle a methodical process to evaluate the relative risk of a proposed regulation. That is where peer review comes in, and it is an integral part of this bill.

Some critics have voiced skepticism over the peer review provision of H.R. 1022 because it does not require peer reviewers to be excluded solely because they represent entities that may have an interest in the regulation. Some feel that this sets a dangerous precedent, inviting conflicts of interest. Not only is there precedent for such peer review panels, Congress has in certain instances required panels to include labor, industry and others involved in an issue so that balance is achieved in a peer review process.

Under the provisions of this bill, the panels are required to be balanced and all panel members must fully disclose any interest they have in the outcome. This same practice has been followed by a number of advisory boards already in existence set up by the Federal Government. For example, under the National Environmental Policy Act, the Science Advisory Board was established to conduct peer review of any proposed standard, limitation or regulation administered by the Environmental Protection Agency. The Science Advisory Board is required to be composed of at least nine members with the only qualification being education, training and experience in evaluating scientific and technical information. Nowhere does it dictate who should or should not participate in the decisions because of their affiliation.

Scientific integrity has been maintained under the Science Advisory Board. Nothing has been compromised.

In another example, the Occupational Safety and Health Act established the National Advisory Committee on Occupational Safety and Health to advise, consult with and make recommendations to the Secretary of Labor on issues under OSHA. Specifically, the committee is to be composed of representatives of management, labor, occupational safety and occupational health professions and the public. Clearly, all of these parties have a stake in the decisions made by this committee, but none is barred by participation based on that interest.

The Energy Policy Act, passed by Congress in 1992, also requires the establishment of a peer review panel, and there are no requirements based on interest in the outcome.

Mr. Chairman, the provisions of the peer review process of this bill are sound, and I urge support of this bill.

Mr. BLILEY. Mr. Chairman, I yield 1 minute to the gentleman from Idaho, [Mr. CRAPO], a member of the committee.

Mr. CRAPO. Mr. Chairman, it is an important time that we have reached finally in the debate for regulatory reform. People across America know all of the examples, the schools that are facing a tremendous burden our regulations put on them, the libraries across our country, the hospitals, the people in every walk of life who have to face the significant requirements that are burdens of our regulations put upon them to require them to increase the safety to vary increasingly minute risks with virtually no analysis of whether the cost of reaching those increasingly minute risks or safety factors are justified.

Today we have an opportunity to correct that, to require that common sense be applied when we are crafting regulations, to require that when we say that a certain goal is something that should be reached by the people in this country, that we know what it is going to cost them and that the benefits that are going to be gained by that expenditure money are justified by the analysis. This is what the American people want. It is no less than we should give them in the administration of our laws.

Mr. DINGELL. Mr. Chairman, I yield 1 minute to the distinguished gentlewoman from Arkansas [Mrs. LINCOLN].

Mrs. LINCOLN. Mr. Chairman, I rise as a strong proponent of risk assessment and effective government and cost-benefit analysis.

Having grown up on a farm in eastern Arkansas and having seen in person both the tremendous waste, that government regulations can assist us in preserving our environment and our surroundings but also in being overburdensome as well as top heavy in regulatory needs. Risk assessment is a vital tool in forming cost-effective and well-reasoned federal regulations. It should be used to create a better and responsive Federal Government, not stymie things down with court actions or excessive delay.

But I do have some concerns that the bill we are looking at today, this will happen under the current bill. Before we consider H.R. 1022 further, we may have to take a time-out to do a cost-benefit analysis on this bill. CBO has made some conservative estimates that the bill will cost the Federal Government an additional 250 million a year to conduct risk assessment. This breaks down to approximately 5,000 new federal employees, including many new lawyers hired to defend agency actions.

As we look at this bill today, I hope that we will work in bipartisan fashion to make it better so that it will be of great assistance to all of us across the Nation in making government more effective.

Mr. WALKER. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota [Mr. GUTKNECHT].

Mr. GUTKNECHT. Mr. Chairman, there is an article that is working its way around the Capitol entitled, "Whatever Happened to Common Sense." I think that is really what we are talking about with this bill today.

I want to share with my colleagues two examples of people who have been in my office in the last two weeks.

One of them was a cardiologist from my district. He was in town for a convention. They were talking about some of the technologies that are available today in Europe, Japan and even in Israel that are not available in the United States because of the bureaucratic tangle that they have to go through to get FDA approval.

A second gentleman runs a little three-person business, and it is not in my district, but he has a partner in my district that by his own count, last year, they had to fill out 6,243 pages of bureaucratic paperwork. Whatever happened to common sense?

That is what is before us today. I think the American people are tired of $50 solutions to $5 problems. We need H.R. 1022, and we need it now.

Mr. BROWN of California. Mr. Chairman, I yield myself the balance of my time.

We have had, as I have indicated before, an illuminating debate on this issue. But I think it needs to be stressed again that there is no basic difference on either side as to what we are trying to achieve. We want a more rational, less expensive, more common sense, to use the phrase of the last speaker, system of regulation. What seems to be causing us problems is a discussion of how we go about achieving this very desirable goal.

I have pointed out in earlier remarks that every administration in my experience here, which goes back 32 years, has sought to achieve this same goal and failed. And most of those were Republican presidents, I might say. So I presume the response of the other side is, well, it was a democratic Congress that prevented these things from happening.

That is not the case. The situation has been that those, many of us in Congress equally wanted to do that, but the situation did not point to an easy solution. It still does not.

Unfortunately, on the other side, they believe that they have an easy solution. I think this is best illustrated by some of the anecdotes that we have heard here.

The Republicans have done a very good job of packaging this as well as their other contract items. In critical areas they have used the argument that this is for the children. This always gets a marvelous 80 percent response. If it is for the children, maybe 90 percent in some cases, that is the thing that needs to be done.

What happened in the alar case? It was not EPA regulation. It was the Natural Resources Defense Council which held a press conference which belabored EPA for not regulating alar. And what happened then? Sixty Minutes picked it up and said, look what is happening to our children because they are being exposed to this poison. And EPA did not anticipate the undue concentration of apple juice in the diet of little children. And the demand was overwhelming throughout the United States for EPA to regulate more strictly than they had.

Now, the same thing has happened in cases of asbestos, for example. It is well known that asbestos kills. It leads to a deadly, fatal lung disease. I was exposed to that problem 30 years ago, when workers at the naval shipyard came to me and said that they were getting sick and dying, and it was the children living in schools where there was asbestos insulation that caused the furor for asbestos regulation. I do not think that there was ever any mandate from EPA to regulate it, but there was a huge, popular demand from school boards and parents all over this country.

Beware what you are doing because you may hurt some little children, and it will come back and bite you.

Mr. BLILEY. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. BILBRAY], a member of the committee.

Mr. BILBRAY. Mr. Chairman, earlier today a colleague of mine on the Committee on Commerce made a reference to outrageous regulations and paperwork that government would have to do if this bill passed. Well, let me tell Members something. On the first day we actually passed a law that said that Congress will start living under the rules we set for other people. Maybe this bill is saying, government will start living by the rules that everybody in the United States has to live under, that we have to consider the cost-effectiveness of our actions before we initiate them.

I find it ironic to see the people that have been screaming for years that we need more regulation and more paperwork now point to a situation where we are asking government to reciprocate, all at once they are worried about it.

Mr. Chairman, my colleagues and I who work on environmental issues throughout this Nation, I for one in California, have been appalled over the years that the fact that our environmental regulations sent down from Washington have not had the effect of protecting the public in a manner that would be the most cost-effective and, thus, avoiding benefit that could be perpetuated if we were focusing on cost-effectiveness.

In California, Mr. Chairman, we have for decades had a mandate for cost-effectiveness. It has not been a barrier to protecting the public health. It has been one of our greatest successes.

In fact, in our Clean Air strategies, which I think all of us would agree is one of the most successful programs in this country, California's clean air strategies have been made successful because we have a cost-effectiveness mandate, not regardless thereof.

I think that we also need to point out, Mr. Chairman, that we are talking about the public health when we are talking about cost-effectiveness. We are talking about bringing some reasonable logic into the formulation of our public health strategy. And I know there may be Members of this body that may get nervous when we talk about common sense and reasonableness, but that is all we are talking about here.

□ 1745

We are not talking about dollars and cents, we are not talking about business. From this Member's point of view, when we talk cost-effectiveness, we talk about getting the most public health benefit for every dollar spent. This equates into the public health of our children, and without it, our children would be exposed.

Mr. Chairman, I ask for support of this item, for our children's public health.

Mr. DINGELL. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. Mr. Chairman, I oppose this legislation for three reasons: it is a fraud, it is a rollback of 25 years of environmental progress, and it is just plain stupid. Let me explain what I mean.

The proponents of this bill say that it is designed to improve the regulatory process. They say that all it does is inject common sense in the form of risk assessment, and cost-benefit analysis into rulemaking process. This is a fraud. This bill is not about improving rulemaking, it is not about risk assessment or cost-benefit analysis.

These are tools used now, wisely. They are very helpful in deciding what regulations are appropriate, but what they in fact do is create in this bill so many procedural hurdles to regulations that Federal agencies will simply be unable to protect the public health and the environment any more.

Mr. Chairman, let me show the Members what I mean. I have a chart, and this chart illustrates the rulemaking maze created by H.R. 1022 and other components of the so-called Contract With America. The legislation adds so many review requirements that it will be virtually impossible for any agency to issue new rules.

Agencies have to perform risk assessments, cost benefit analyses, cost effectiveness analyses, flexibility analyses, comparative risk analyses, to name only a few of the new requirements. The Environmental Protection Agency has told us that to comply with these new requirements they will need 1,000 new employees.

The Food and Drug Administration has told us that issuing even simple rules, like standards to improve the detection of breast cancer during mammographies, could be delayed up to 2 years. Is this common sense? I doubt it.

If an agency ever gets through this maze, it is then open to judicial review. H.R. 1022 makes the agency's risk assessments, cost-benefit analyses, all the other activities, subject to a court action, a lawyer's dream.

Any industry that does not like the regulation that comes out of that maze can go into court and challenge the regulation, tie it up for years. These two charts that I have up now illustrate 60 new grounds for challenging agency actions; let me repeat that, 60 new grounds to go into court.

That is laying it out for the lawyers to be able to tie up regulations that some big industry polluter does not like. For instance, a regulation can be challenged on the basis that the risk assessment did not sufficiently discuss laboratory data, or did not adequately discuss comparative physiology or pharmacokinetics.

This is a fraud on the American people. The Members supporting this legislation are telling us they want to improve and streamline the rulemaking process. The truth, which they know but are not willing to tell the American people, is just the opposite. This legislation adds so many new procedural requirements it would allow any industry that opposes a new regulation to delay and litigate the regulation to death, no matter how essential that regulation may be.

Mr. Chairman, this legislation is a rollback of 25 years of health and environmental progress: the Clean Air Act, the Clean Water Act, the safe drinking water laws, the Toxic Substances Act. All of these laws have been successful. The air is cleaner in so many parts of our country. You can swim in areas which in fact in the past have been too polluted to even stick your toe in, and the drinking water is going to be improved and has been improved throughout the country.

However, the laws that are now being proposed this week would supersede all of the laws that I have mentioned and many others with a new set of requirements to roll back those standards.

I urge my colleagues to oppose this legislation. It is a rollback of important legislation that protects the health and the environment, and it just is not common sense.

Mr. BLILEY. Mr. Chairman, I yield such time as he may consume to the gentleman from Colorado [Mr. SCHAEFER].

Mr. SCHAEFER. Mr. Chairman, I rise today in strong support of the Risk Assessment and Cost-Benefit Act of 1995. This common sense legislation will reform the way in which regulatory agencies set their rulemaking priorities.

People across the country want regulatory reform. A recent article in the Washington Post cited a study showing that 69 percent of the public thinks that the Federal Government controls too much of our daily lives. People find it hard to believe that we are devoting precious resources to address risks that are so remote as to be negligible. We need rules that are rationally based, work better, and cost less.

Government agencies, as well as private individuals and businesses, will benefit from risk assessment and cost benefit analysis. For instance, DOE is currently required to clean up sites across the country from its nuclear and weapons activities. These cleanups are subject to the requirements of RCRA and superfund. To the extent we add, through this legislation, reasonableness to the regulatory process, agencies of Government will benefit.

The Risk Assessment and Cost-Benefit Act will not undermine needed Federal safety guidelines nor will it prevent the Government from dealing with real environmental dangers. Instead, it asks Federal agencies to pursue the best alternative for the taxpayers' dollar. It is my view that the Government should justify the reasonableness of what it is doing to improve our citizens' lives, and that is exactly what this legislation is designed to accomplish.

Some opponents of the measure decry it as a burden on the Federal regulatory bureaucracy. A burden on quick Federal regulation. I believe this is exactly what is needed. It is not unreasonable to ask the Federal Government to thoroughly review its regulation criteria to ensure the regulations are needed and efficient.

Mr. Chairman, this legislation makes sense and is long overdue. I urge my colleagues' support.

Mr. BLILEY. Mr. Chairman, I yield the balance of my time to the gentleman from Florida [Mr. STEARNS].

Mr. STEARNS. Mr. Chairman, I thank the gentleman from Virginia for yielding to me, and I thank the gentleman from Pennsylvania [Mr. WALKER], the chairman of the Committee on Science, for one great bill that we got out of Congress.

I might say to the gentleman from California [Mr. WAXMAN] who preceded me that his other colleague pointed out that he wishes his party could have offered this legislation in the intervening 40 years since Republicans have been a majority, so he does not think it is a fraud. He does not think it is stupid. In fact, many people feel that this particular bill's time has come.

Obviously, Mr. Chairman, I rise in strong support of H.R. 1022, the Risk Assessment and Cost Benefit Act of 1995. Many of us know that we spend up until the 15th of May to pay our taxes. That is how long we work to pay our taxes. We go to the 15th of July to pay for the regulations.

This legislation represents the Republicans' commitment to achieve true reform of the way government works, and more importantly, it brings us closer to fulfilling the promise that we made to the American people.

I find it some concern that there could be any opposition to this legislation, for truly, it is one of the most common sense bills we have brought before the House. It takes a rational look at irrational regulatory process. It forces agencies to slow down and look long and hard at each proposed rule.

It forces out irrational regulation based upon upward bound technology, and implements, instead, a process that is both rational and fair. Rules and regulations would still exist, but they would finally be based upon sound science.

This bill would force the Federal Government to live under the same rational rules that govern American households and businesses. The bill would require regulators to use their brains when making rules. They could no longer base their overly draconian regulations on the highest available technology, an idea that has led to a huge amount of increased regulatory burden on American taxpayers.

Therefore, Mr. Chairman, I support and I urge all my colleagues to support this bill. Its time has finally come.

Mr. WALKER. Mr. Chairman, I yield myself the remainder of my time.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. WALKER] is recognized for 2 minutes.

Mr. WALKER. Mr. Chairman, as we conclude the debate, it seems to me that the main complaint we have heard from the opposition is the fact that we seem to be doing more in 4 months than they were able to do in 40 years in terms of trying to deal with regulations.

Nearly everybody that got up said they are for the intent of this bill.

That is always the case. They are for it, they say, but not now, not soon, and perhaps not ever.

Mr. Chairman, I think what we need to look at is the reality of where we are in this country today. Some have actually gotten up here and defended the present regulatory climate. The gentleman from California showed his chart, and he was all concerned about the fact that the regulators would actually have to do something about trying to make themselves more real in terms of science.

Let us look at what is really happening in terms of this bill. This is the present regulatory climate, created by people who are now opposing this bill. All we are doing is we are adding four little boxes to the whole thing.

What we are saying to the regulators is "You impose all of this on the economy as a whole, you impose this on business, you impose this on individuals. Now we are going to ask you, in four little places, to do a little bit more." Now what we will get out of that is good science, we will get better regulations.

Let me tell the Members who should be for this bill: anyone who has ever seen some Government regulations in some area he knows something about and thought or said "That is really stupid. That person ought to be for this bill, because there is a lot of stupid regulation that goes on out there." American knows there are too many stupid Government regulations.

This bill gives us a chance to stop being dumb and dumber, this bill gives us a chance to be smart and sensible. What this bill says is that the country has already undergone all kinds of turmoil as a result of what we have done in Government regulations. It is high time that bureaucrats also have to take a look at what they are doing. They have to apply good science, they have to apply common sense.

Good science and common sense, that is what we are debating here. Some are for it, some are against it.

Mr. BILBRAY. Mr. Chairman, I rise today in strong support of H.R. 1022, the Risk Assessment and Cost-Benefit Analysis Act of 1995.

We have reached a point in our regulatory infrastructure where we have come to value to process over the product. Our goal should be to provide the best possible service to all Americans in terms of our public health and safety regulations.

With this bill, we move a long way towards being able to deliver on this goal.

The fundamental purpose of H.R. 1022 is to present the public, and Federal decisionmakers, with the most objective and unbiased scientific information available, concerning the nature and magnitude of various health, safety and environmental risks.

With this information available, we can help ensure sound regulatory decisionmaking, and improved public awareness.

H.R. 1022 will also require analysis of costs and benefits for major-rulemaking on human health, safety and the environment.

Major rules are defined as regulations that are likely to result in an annual increase of $25 million or more in costs to State, local and tribal governments, or the regulated community.

This is very important, Mr. Chairman, because in an era where we are necessarily focused on downsizing government and reducing federal outlays, it is essential that our available resources are allocated carefully and efficiently.

We can no longer afford, if indeed we ever could, to simply throw money at a perceived problem.

The examples of false alarms and wasted tax dollars are many, and we cannot maintain sound public health standards by setting policy based on the "crisis du jour."

In San Diego we have 2 examples of regulations that are costly, and unnecessary and prohibitively burdensome.

The first is the federally mandated secondary sewage standard.

This is a requirement that will cost ratepayers billions and provide little benefit to the public or the environment.

We also have an electronic light rail project that has been held up by various agencies' permitting processes for years.

This is an environmentally beneficial project—one that promotes mass transit and clean air—and yet it has been tangled in a bureaucratic battle with various agencies such as the U.S. Fish and Wildlife Service and Army Corps of Engineers since 1992.

It is truly an example of an environmentally sound public project held hostage by Federal agencies which are supposed to facilitate projects like this.

As the New York Times recently stated, ". . . environmental policy too often has evolved largely in reaction to popular panics, not in response to sound scientific analysis of which environmental hazards present the greatest risks.

Critics, naysayers, and "Chicken Littles" claim that we are "rolling back 30 years of environmental protection." Please.

What we are doing is assuring Americans the greatest degree of regulatory enforcement possible, based on sound science, with the limited resources we have available.

It is unfair and ineffective to do anything short of this.

Mr. Chairman, we have an opportunity here to respond to the American people's call for change, and to restore a measure of sanity and common sense to the Federal oversight which affects so many of them.

I urge my colleagues to deliver on these positive changes, and join me in support of H.R. 1022.

Mr. MINETA. Mr. Chairman, I rise in strong opposition to the bill H.R. 1022, the Risk Assessment and Cost-Benefit Act of 1995.

First, let me make clear that I favor having good information about risks so that we can fashion sensible regulations to protect human health and safety and the environment while cutting down on unnecessary bureaucracy. I am also in favor of sound cost-benefit analysis to improve economic efficiency.

But I opposed H.R. 1022 because it does neither. On the contrary, it merely creates more bureaucracy, generate redtape, and reduces efficiency while providing no additional health, safety, or environmental benefits. In short, it is the exact opposite of streamlining government.

The bill mandates a uniform set of regulatory procedures for Federal agencies without flexibility. While the model used to develop the risk assessment principles and guidelines included in the bill may fit some cancer risks, it is entirely inappropriate for regulating highway safety.

Yet the Department of Transportation is required to follow the same rigid and inappropriate procedure to evaluate risks as at EPA. That simply doesn't make sense to me.

What I see is that the bill is sacrificing the Federal Government's ability to protect human health and safety or the environment for the sake of maintaining regulatory uniformity. It will produce bad regulations, and will create an inflexible process that produces nothing but extra paperwork.

Make no mistake, this bill does not benefit the average American; it benefits only corporate interests. It impedes public health and safety or environmental protection while making it easier than ever for businesses to make a quick buck at public expense.

How else can you explain why industry representatives who have an interest in the outcome of a risk assessment are allowed to serve on a peer review panel simply by disclosing that interest? It is preposterous to suggest that such people do not have an unacceptable conflict of interest.

And the bill is a sweet deal for lawyers. By opening up the process of risk assessment to judicial review, opponents of necessary health and environmental protection can tie up the regulatory process virtually forever. No working people, no children, no pregnant women, and no elderly will benefit from endless litigation. But the bill is a "full employment act" for lawyers.

This bill is also a back-door way to repeal important environmental legislation enacted in the last quarter century through its super mandate provision. If there are specific statutes or portions of statute that we want to repeal, fine, let's debate them openly and decide their fate. We should not use some procedural sleight of hand to supersede their authority.

Finally, the bill would subject individual permits to the extensive procedural obstacles specified in it. It would grind the clean water permit program, for example, to a screeching halt. The law would require permits, but it could take forever to issue one.

The bottom line is: the bill does not have the people's or the environment's interests at heart, only those of the lawyers and big business.

I urge you to vote no on this bill.

Mrs. LINCOLN. Mr. Chairman, I rise as a strong proponent of risk assessment and effective government and cost-benefit analysis.

Having grown up on a farm in eastern Arkansas and having seen in person both the tremendous waste, that government regulations can assist us in preserving our environment and our surroundings but also in being overburdensome as well as top heavy in regulatory needs. Risk assessment is a vital tool in forming cost-effective and well-reasoned Federal regulations. It should be used to create a better and responsive Federal Government, not stymie things down with court actions or excessive delay.

But I do have some concerns that the bill we are looking at today, this will happen under the current bill. Before we consider H.R. 1022 further, we may have to take a time-out to do a cost-benefit analysis on this bill. CBO has made some conservative estimates that the bill will cost the Federal Government an additional 250 million a year to conduct risk assessment. This breaks down to approximately 5,000 new Federal employees, including many new lawyers hired to defend agency actions.

As we look at this bill today, I hope that we will work in bipartisan fashion to make it better so that it will be of great assistance to all of us across the Nation in making government more effective.

Mr. Chairman, the costs of doing an effective and needed risk assessment doesn't bother me very much if in the long run those expenses are more than covered in the costs saved down the road. However, I am skeptical that the $25 million threshold is a figure where we can get the biggest bang for our buck. The threshold set out under this bill to conduct risk assessments is $25 million. However, Executive orders in the past issued by President Ford, Reagan and Clinton set the threshold at $100 million. OMB in 1993 concluded that 97 percent of the total rulemaking costs on the economy came from rules with a dollar threshold over $100 million. Like the companies who rightly complain that we shouldn't spend millions of dollars to get Superfund sites, water and air one additional percentage cleaner, I question whether we should be spending so much money in conducting additional risk assessments to reach an additional 3 percent of the regulations that have a financial impact on the economy. Additionally, H.R. 1022 requires a risk assessment for permits under Federal program. Does this mean that every State that issues a Clean Water Act section 402 permit must conduct a risk assessment before finalizing any permit? Let's make sure that we are adopting the most cost effective law as we can by looking at the potential scope of the bill.

I am also concerned about this bill's potential financial impact on our States. Just last month we passed a bill to curb unfunded Federal mandates on unwitting States. However, upon closer analysis of this bill, I feel that there might be possibility that States will bear the impacts and financial burdens of conducting risk assessments. Many States act as the agents of the Federal Government in enforcing certain laws. This bill would require the Federal Government, or any entity acting "on behalf of a covered agency in the implementation of a regulatory program" to conduct risk assessments.

I will be offering an amendment later during the debate to solve the potential unintended consequence. It has the support of the National Conference of State Legislatures and the Governor from Arkansas.

I hope that my colleagues will support some of the bipartisan amendments that will be offered during the course of debate to eliminate some of the bureaucratic nightmares in this bill.

Ms. WOOLSEY. Mr. Chairman, I rise in strong opposition to H.R. 1022, the Risk Assessment and Cost Benefit Act.

H.R. 1022 is not a regulatory reform bill as the new Republican leadership claims. It is an attempt by supporters of the Contract On America to destroy environmental protections which the American people fought for long and hard. Landmark environmental legislation such as the Clean Air Act, the Clean Water Act, and the endangered Species Act will be superseded by H.R. 1022, leaving our air, water, and wildlife unprotected.

Under H.R. 1022, 12 Federal agencies including the Environmental Protection Agency, the Energy Department, and the Interior Department will be required to follow a single set of new, government-wide principles for risk assessment activities in order to carry out their regulatory responsibilities. This one-size-fits-all approach to risk assessments will prevent Federal officials from developing sound public policy. Instead, H.R. 1022 will lead to long delays of important environmental protection programs, and more red tape.

Mr. Chairman, this bill will impact not only our nation's environment, but our nation's taxpayers as well. The Congressional Budget Office estimated that risk assessment proposals similar to H.R. 1022 would cost affected federal agencies $250 million annually. H.R. 1022 does not contain provisions to offset the bill's potential costs. Therefore, it will result in increasing the deficit or cutting desperately needed funds for education and other social programs.

Mr. Chairman, it seems that lawyers are the only ones who benefit from H.R. 1022. The bill opens up numerous new pathways for litigation, and it gives lawyers interested in holding up valuable environmental regulations a powerful new tool to prolong agency actions.

Mr. Chairman, I urge my colleagues to oppose the Republican leadership's efforts to hamper the government's ability to protect the environment. Vote no on H.R. 1022. Thank you.

Mr. WALKER. Mr. Chairman, I move the Committee do now rise.

The CHAIRMAN. The question is on the motion offered by the gentleman from Pennsylvania [Mr. WALKER].

The motion was agreed to.

Accordingly the committee rose; and the Speaker pro tempore, Mr. MCHUGH, having assumed the chair, Mr. HASTINGS of Washington, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1022) to provide regulatory reform and to focus national economic resources on the greatest risks to human health, safety, and the environment through scientifically objective and unbiased risk assessments and through the consideration of costs and benefits in major rules, and for other purposes had come to no resolution thereon.

VOTE ON HOUSE RESOLUTION 96, PROVIDING FOR THE CONSIDERATION OF H.R. 1022, RISK ASSESSMENT AND COST-BENEFIT ACT OF 1995

The SPEAKER pro tempore. The pending business is the question de novo of the vote on House Resolution 96.

The Clerk read the title of the resolution.

For text of House Resolution 96, see prior pages of the RECORD of this date.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. DINGELL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

This will be a 17-minute vote.

The vote was taken by electronic device, and there were—yeas 253, nays 165, not voting 16, as follows:

[Roll No. 175]

YEAS—253

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCarthy
McCollum
McCrery
McDade
McHugh

McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Morella
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Williams
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—165

Abercrombie
Ackerman
Baesler
Baldacci
Barrett (WI)
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Foglietta
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McDermott
McHale
McNulty
Meehan
Meek
Menendez
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Moran
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Rangel
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thornton
Thurman
Torres
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Wise
Woolsey
Wyden
Wynn
Yates

NOT VOTING—16

Andrews
Becerra
Chapman
Flake
Ford
Gallegly
Gibbons
Gonzalez
Hunter
Lipinski
McKinney
Mfume
Rahall
Roukema
Rush
Wilson

□ 1814

Messrs. GENE GREEN of Texas, BALDACCI, and MATSUI changed their vote from "yea" to "nay."

Mr. FLANAGAN changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. ANDREWS. Mr. Speaker, due to a death in my family, I missed a vote on Monday, February 27. If I had been present I would have voted as follows: Rollcall vote No. 175, "no".

I would appreciate it if this position could be reflected in the RECORD.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 926, REGULATORY RELIEF AND REFORM ACT

Mr. SOLOMON, from the Committee on Rules, submitted a privileged report (Rept. No. 104–52) on the resolution (H. Res. 100) providing for the consideration of the bill (H.R. 926) to promote regulatory flexibility and enhance public participation in Federal agency rulemaking and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION REQUESTING THE PRESIDENT TO SUBMIT INFORMATION CONCERNING ACTIONS TAKEN THROUGH THE EXCHANGE STABILIZATION FUND TO STRENGTHEN THE MEXICAN PESO AND STABILIZE THE ECONOMY OF MEXICO

Mr. LEACH, from the Committee on Banking and Financial Services, submitted a privileged report (Rept. No. 104–53) on the resolution (H. Res. 80) requesting the President to submit information to the House of Representatives concerning actions taken through the exchange stabilization fund to strengthen the Mexican peso and stabilize the Mexican economy, which was referred to the House Calendar and ordered to be printed.

RISK ASSESSMENT AND COST-BENEFIT ACT OF 1995

The SPEAKER pro tempore (Mr. MCHUGH). Pursuant to House Resolution 96 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1022.

□ 1817

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1022) to provide regulatory reform and to focus national economic resources on the greatest risks to human health, safety and the environment through scientifically objective and unbiased risk assessments and through the consideration of costs and benefits in major rules, and for other purposes, with Mr. HASTINGS of Washington in the chair.

The CHAIRMAN. When the Committee of the Whole rose earlier today, all time for general debate had expired.

Pursuant to the rule, the bill is considered as having been read for amendment under the 5-minute rule.

The text of H.R. 1022 is as follows:

H.R. 1022

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Risk Assessment and Cost-Benefit Act of 1995".

SEC. 2. FINDINGS.

The Congress finds that:

(1) Environmental, health, and safety regulations have led to dramatic improvements in the environment and have significantly reduced human health risk; however, the Federal regulations that have led to these improvements have been more costly and less effective than they could have been; too often, regulatory priorities have not been based upon a realistic consideration of risk, risk reduction opportunities, and costs.

(2) The public and private resources available to address health, safety, and environmental concerns are not unlimited; those resources need to be allocated to address the greatest needs in the most cost-effective manner and so that the incremental costs of regulatory alternatives are reasonably related to the incremental benefits.

(3) To provide more cost-effective and cost-reasonable protection to human health and the environment, regulatory priorities should be based upon realistic consideration of risk; the priority setting process must include scientifically sound, objective, and unbiased risk assessments, comparative risk analysis, and risk management choices that are grounded in cost-benefit principles.

(4) Risk assessment has proven to be a useful decision making tool; however, improvements are needed in both the quality of assessments and the characterization and communication of findings; scientific and other data must be better collected, organized, and evaluated; most importantly, the critical information resulting from a risk assessment must be effectively communicated in an objective and unbiased manner to decision makers, and from decision makers to the public.

(5) The public stake holders must be fully involved in the risk-decision making process. They have the right-to-know about the risks addressed by regulation, the amount of risk to be reduced, the quality of the science used to support decisions, and the cost of implementing and complying with regulations. This knowledge will allow for public scrutiny and promote quality, integrity, and responsiveness of agency decisions.

(6) Although risk assessment is one important method to improve regulatory decisionmaking, other approaches to secure prompt relief from the burden of unnecessary and overly complex regulations will also be necessary.

SEC. 3. COVERAGE OF ACT.

This Act does not apply to any of the following:

(1) A situation that the head of an affected Federal agency determines to be an emergency. In such circumstance, the head of the agency shall comply with the provisions of this Act within as reasonable a time as is practical.

(2) Activities necessary to maintain military readiness.

(3) Any individual food, drug, or other product label, or to any risk characterization appearing on any such label, if the individual product label is required by law to be approved by a Federal department or agency prior to use.

(4) Approval of State programs or plans by Federal agencies.

SEC. 4. DEFINITIONS

For purposes of this Act:

(1) COSTS.—The term "costs" includes the direct and indirect costs to the United States Government, to State, local, and tribal governments, and to the private sector, wage earners, consumers, and the economy, of implementing and complying with a rule or alternative strategy.

(2) BENEFIT.—The term "benefit" means the reasonably identifiable significant health, safety, environmental, social and economic benefits that are expected to result directly or indirectly from implementation of a rule or alternative strategy.

(3) MAJOR RULE.—The term "major rule" means any regulation that is likely to result in an annual increase in costs of $25,000,000 or more. Such term does not include any regulation or other action taken by an agency to authorize or approve any individual substance or product.

(4) PROGRAM DESIGNED TO PROTECT HUMAN HEALTH.—The term "program designed to protect human health" does not include regulatory programs concerning health insurance, health provider services, or health care diagnostic services.

Title I—Risk Assessment and Communication

SEC. 101. SHORT TITLE.

This title may be cited as the "Risk Assessment and Communication Act of 1995".

SEC. 102. PURPOSES.

The purposes of this title are—

(1) to present the public and executive branch with the most scientifically objective and unbiased information concerning the nature and magnitude of health, safety, and environmental risks in order to provide for sound regulatory decisions and public education;

(2) to provide for full consideration and discussion of relevant data and potential methodologies;

(3) to require explanation of significant choices in the risk assessment process which will allow for better peer review and public understanding; and

(4) to improve consistency within the executive branch in preparing risk assessments and risk characterizations.

SEC. 103. EFFECTIVE DATE; APPLICABILITY; SAVINGS PROVISIONS.

(a) EFFECTIVE DATE.—Except as otherwise specifically provided in this title, the provisions of this title shall take effect 18 months after the date of enactment of this title.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (3), this title applies to all significant risk assessment documents and significant risk characterization documents, as defined in paragraph (2).

(2) SIGNIFICANT RISK ASSESSMENT DOCUMENT OR SIGNIFICANT RISK CHARACTERIZATION DOCUMENT.—(A) As used in this title, the terms "significant risk assessment document" and "significant risk characterization document" include, at a minimum, risk assessment documents or risk characterization documents prepared by or on behalf of a covered Federal agency in the implementation of a regulatory program designed to protect human health, safety, or the environment, used as a basis for one of the items referred to in subparagraph (B), and—

(i) included by the agency in that item; or

(ii) inserted by the agency in the administrative record for that item.

(B) The items referred to in subparagraph (A) are the following:

(i) Any proposed or final major rule, including any analysis or certification under title II, promulgated as part of any Federal regulatory program designed to protect human health, safety, or the environment.

(ii) Any proposed or final environmental clean-up plan for a facility or Federal guidelines for the issuance of any such plan. As used in this clause, the term "environmental clean-up" means a corrective action under the Solid Waste Disposal Act, a removal or remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and any other environmental restoration and waste management carried out by or on behalf of a covered Federal agency with respect to any substance other than municipal waste.

(iii) Any proposed or final permit condition placing a restriction on facility siting or operation under Federal laws administered by the Environmental Protection Agency or the Department of the Interior.

(iv) Any report to Congress.

(v) Any regulatory action to place a substance on any official list of carcinogens or toxic or hazardous substances or to place a new health effects value on such list, including the Integrated Risk Information System Database maintained by the Environmental Protection Agency.

(vi) Any guidance, including protocols of general applicability, establishing policy regarding risk assessment or risk characterization.

(C) The terms "significant risk assessment document" and "significant risk characterization document" shall also include the following:

(i) Any such risk assessment and risk characterization documents provided by a covered Federal agency to the public and which are likely to result in an annual increase in costs of $25,000,000 or more.

(ii) Environmental restoration and waste management carried out by or on behalf of the Department of Defense with respect to any substance other than municipal waste.

(D) Within 15 months after the date of the enactment of this Act, each covered Federal agency administering a regulatory program designed to protect human health, safety, or the environment shall promulgate a rule establishing those additional categories, if any, of risk assessment and risk characterization documents prepared by or on behalf of the covered Federal agency that the agency will consider significant risk assessment documents or significant risk characterization documents for purposes of this title. In establishing such categories, the head of the agency shall consider each of the following:

(i) The benefits of consistent compliance by documents of the covered Federal agency in the categories.

(ii) The administrative burdens of including documents in the categories.

(iii) The need to make expeditious administrative decisions regarding documents in the categories.

(iv) The possible use of a risk assessment or risk characterization in any compilation of risk hazards or health or environmental effects prepared by an agency and commonly made available to, or used by, any Federal, State, or local government agency.

(v) Such other factors as may be appropriate.

(E)(i) Not later than 18 months after the date of the enactment of this Act, the President, acting through the Director of the Office of Management and Budget, shall determine whether any other Federal agencies should be considered covered Federal agencies for purposes of this title. Such determination, with respect to a particular Federal agency, shall be based on the impact of risk assessment documents and risk characterization documents on—

(I) regulatory programs administered by that agency; and

(II) the communication of risk information by that agency to the public.

The effective date of such a determination shall be no later than 6 months after the date of the determination.

(ii) Not later than 15 months after the President, acting through the Director of the Office of Management and Budget, determines pursuant to clause (i) that a Federal agency should be considered a covered Federal agency for purposes of this title, the head of that agency shall promulgate a rule pursuant to subparagraph (D) to establish additional categories of risk assessment and risk characterization documents described in that subparagraph.

(3) EXCEPTIONS.—(A) This title does not apply to risk assessment or risk characterization documents containing risk assessments or risk characterizations performed with respect to the following:

(i) A screening analysis, where appropriately labeled as such, including a screening analysis for purposes of product regulation or premanufacturing notices.

(ii) Any health, safety, or environmental inspections.

(iii) The sale or lease of Federal resources or regulatory activities that directly result in the collection of Federal receipts.

(B) No analysis shall be treated as a screening analysis for purposes of subparagraph (A) if the results of such analysis are used as the basis for imposing restrictions on substances or activities.

(C) The risk assessment principle set forth in section 104(b)(1) need not apply to any risk assessment or risk characterization document described in clause (iii) of paragraph (2)(B). The risk characterization and communication principle set forth in section 105(4) need not apply to any risk assessment or risk characterization document described in clause (v) or (vi) of paragraph (2)(B).

(c) SAVINGS PROVISIONS.—The provisions of this title shall be supplemental to any other provisions of law relating to risk assessments and risk characterizations, except that nothing in this title shall be construed to modify any statutory standard or statutory requirement designed to protect health, safety, or the environment. Nothing in this title shall be interpreted to preclude the consideration of any data or the calculation of any estimate to more fully describe risk or provide examples of scientific uncertainty or variability. Nothing in this title shall be construed to require the disclosure of any trade secret or other confidential information.

SEC. 104. PRINCIPLES FOR RISK ASSESSMENT.

(a) IN GENERAL.—The head of each covered Federal agency shall apply the principles set forth in subsection (b) in order to assure that significant risk assessment documents and all of their components distinguish scientific findings from other considerations and are, to the extent feasible, scientifically objective, unbiased, and inclusive of all relevant data and rely, to the extent available and practicable, on scientific findings. Discussions or explanations required under this section need not be repeated in each risk assessment document as long as there is a reference to the relevant discussion or explanation in another agency document which is available to the public.

(b) PRINCIPLES.—The principles to be applied are as follows:

(1) When discussing human health risks, a significant risk assessment document shall contain a discussion of both relevant laboratory and relevant epidemiological data of sufficient quality which finds, or fails to find, a correlation between health risks and a potential toxin or activity. Where conflicts among such data appear to exist, or where animal data is used as a basis to assess human health, the significant risk assessment document shall, to the extent feasible and appropriate, include discussion of possible reconciliation of conflicting information, and as relevant, differences in study designs, comparative physiology, routes of exposure, bioavailability, pharmacokinetics, and any other relevant factor, including the sufficiency of basic data for review. The discussion of possible reconciliation should indicate whether there is a biological basis to assume a resulting harm in humans. Animal data shall be reviewed with regard to its relevancy to humans.

(2) Where a significant risk assessment document involves selection of any significant assumption, inference, or model, the document shall, to the extent feasible—

(A) present a representative list and explanation of plausible and alternative assumptions, inferences, or models;

(B) explain the basis for any choices;

(C) identify any policy or value judgments;

(D) fully describe any model used in the risk assessment and make explicit the assumptions incorporated in the model; and

(E) indicate the extent to which any significant model has been validated by, or conflicts with, empirical data.

SEC. 105. PRINCIPLES FOR RISK CHARACTERIZATION AND COMMUNICATION.

Each significant risk characterization document shall meet each of the following requirements:

(1) ESTIMATES OF RISK.—The risk characterization shall describe the populations or natural resources which are the subject of the risk characterization. If a numerical estimate of risk is provided, the agency shall, to the extent feasible, provide—

(A) the best estimate or estimates for the specific populations or natural resources which are the subject of the characterization (based on the information available to the Federal agency); and

(B) a statement of the reasonable range of scientific uncertainties.

In addition to such best estimate or estimates, the risk characterization document may present plausible upper-bound or conservative estimates in conjunction with plausible lower bounds estimates. Where appropriate, the risk characterization document may present, in lieu of a single best estimate, multiple best estimates based on assumptions, inferences, or models which are equally plausible, given current scientific understanding. To the extent practical and appropriate, the document shall provide descriptions of the distribution and probability of risk estimates to reflect differences in exposure variability or sensitivity in populations and attendant uncertainties.

(2) EXPOSURE SCENARIOS.—The risk characterization document shall explain the exposure scenarios used in any risk assessment, and, to the extent feasible, provide a statement of the size of the corresponding population at risk and the likelihood of such exposure scenarios.

(3) COMPARISONS.—The document shall contain a statement that places the nature and magnitude of risks to human health, safety, or the environment in context. Such statement shall, to the extent feasible, provide comparisons with estimates of greater, lesser, and substantially equivalent risks that are familiar to and routinely encountered by the general public as well as other risks, and, where appropriate and meaningful, comparisons of those risks with other similar risks regulated by the Federal agency resulting from comparable activities and exposure pathways. Such comparisons should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks and the preventability or nonpreventability of risks.

(4) SUBSTITUTION RISKS.—Each significant risk assessment or risk characterization document shall include a statement of any significant substitution risks to human health, where information on such risks has been provided to the agency.

(5) SUMMARIES OF OTHER RISK ESTIMATES.—If—

(A) a commenter provides a covered Federal agency with a relevant risk assessment document or a risk characterization document, and a summary thereof, during a public comment provided by the agency for a significant risk assessment document or a significant risk characterization document, or, where no comment period is provided but a commenter provides the covered Federal agency with the relevant risk assessment document or risk characterization document, and a summary thereof, in a timely fashion, and

(B) the risk assessment document or risk characterization document is consistent with the principles and the guidance provided under this title,

the agency shall, to the extent feasible, present such summary in connection with the presentation of the agency's significant risk assessment document or significant risk characterization document. Nothing in this paragraph shall be construed to limit the inclusion of any comments or material supplied by any person to the administrative record of any proceeding.

A document may satisfy the requirements of paragraph (3), (4) or (5) by reference to information or material otherwise available to the public if the document provides a brief summary of such information or material.

SEC. 106. RECOMMENDATIONS OR CLASSIFICATIONS BY A NON-UNITED STATES-BASED ENTITY.

No covered Federal agency shall automatically incorporate or adopt any recommendation or classification made by a non-United States-based entity concerning the health effects value of a substance without an opportunity for notice and comment, and any risk assessment document or risk characterization document adopted by a covered Federal agency on the basis of such a recommendation or classification shall comply with the provisions of this title.

SEC. 107. GUIDELINES AND REPORT.

(a) GUIDELINES.—Within 15 months after the date of enactment of this title, the President shall issue guidelines for Federal agencies consistent with the risk assessment and characterization principles set forth in sections 104 and 105 and shall provide a format for summarizing risk assessment results. In addition, such guidelines shall include guidance on at least the following subjects: criteria for scaling animal studies to assess risks to human health; use of different types of dose-response models; thresholds; definitions, use, and interpretations of the maximum tolerated dose; weighting of evidence with respect to extrapolating human health risks from sensitive species; evaluation of benign tumors, and evaluation of different human health endpoints.

(b) REPORT.—Within 3 years after the enactment of this title, each covered Federal agency shall provide a report to the Congress evaluating the categories of policy and value judgments identified under subparagraph (C) of section 104(b)(2).

(c) PUBLIC COMMENT AND CONSULTATION.—The guidelines and report under this section, shall be developed after notice and opportunity for public comment, and after consultation with representatives of appropriate State, local, and tribal governments, and such other departments and agencies, offices, organizations, or persons as may be advisable.

(d) REVIEW.—The President shall review and, where appropriate, revise the guidelines published under this section at least every 4 years.

SEC. 108. RESEARCH AND TRAINING IN RISK ASSESSMENT.

(a) EVALUATION.—The head of each covered agency shall regularly and systematically evaluate risk assessment research and training needs of the agency, including, where relevant and appropriate, the following:

(1) Research to reduce generic data gaps, to address modelling needs (including improved model sensitivity), and to validate default options, particularly those common to multiple risk assessments.

(2) Research leading to improvement of methods to quantify and communicate uncertainty and variability among individuals, species, populations, and, in the case of ecological risk assessment, ecological communities.

(3) Emerging and future areas of research, including research on comparative risk analysis, exposure to multiple chemicals and other stressors, noncancer endpoints, biological markers of exposure and effect, mechanisms of action in both mammalian and nonmammalian species, dynamics and probabilities of physiological and ecosystem exposures, and prediction of ecosystem-level responses.

(4) Long-term needs to adequately train individuals in risk assessment and risk assessment application. Evaluations under this paragraph shall include an estimate of the resources needed to provide necessary training.

(b) STRATEGY AND ACTIONS TO MEET IDENTIFIED NEEDS.—The head of each covered agency shall develop a strategy and schedule for carrying out research and training to meet the needs identified in subsection (a).

(c) REPORT.—Not later than 6 months after the date of the enactment of this Act, the head of each covered agency shall submit to the Congress a report on the evaluations conducted under subsection (a) and the strategy and schedule developed under subsection (b). The head of each covered agency shall report to the Congress periodically on the evaluations, strategy, and schedule.

SEC. 109. STUDY OF COMPARATIVE RISK ANALYSIS.

(a) IN GENERAL.—(1) The Director of the Office of Management and Budget, in consultation with the Office of Science and Technology Policy, shall conduct, or provide for the conduct of, a study using comparative risk analysis to rank health, safety, and environmental risks and to provide a common basis for evaluating strategies for reducing or preventing those risks. The goal of the study shall be to improve methods of comparative risk analysis.

(2) Not later than 90 days after the date of the enactment of this Act, the Director, in collaboration with the heads of appropriate Federal agencies, shall enter into a contract with the National Research Council to provide technical guidance on approaches to using comparative risk analysis and other considerations in setting health, safety, and environmental risk reduction priorities.

(b) SCOPE OF STUDY.—The study shall have sufficient scope and breadth to evaluate comparative risk analysis and to test approaches for improving comparative risk analysis and its use in setting priorities for health, safety, and environmental risk reduction. The study shall compare and evaluate a range of diverse health, safety, and environmental risks.

(c) STUDY PARTICIPANTS.—In conducting the study, the Director shall provide for the participation of a range of individuals with varying backgrounds and expertise, both technical and nontechnical, comprising broad representation of the public and private sectors.

(d) DURATION.—The study shall begin within 180 days after the date of the enactment of this Act and terminate within 2 years after the date on which it began.

(e) RECOMMENDATIONS FOR IMPROVING COMPARATIVE RISK ANALYSIS AND ITS USE.—Not later than 90 days after the termination of the study, the Director shall submit to the Congress the report of the National Research Council with recommendations regarding the use of comparative risk analysis and ways to improve the use of comparative risk analysis for decision-making in appropriate Federal agencies.

SEC. 110. DEFINITIONS.

For purposes of this title:

(1) RISK ASSESSMENT DOCUMENT.—The term "risk assessment document" means a document containing the explanation of how hazards associated with a substance, activity, or condition have been identified, quantified, and assessed. The term also includes a written statement accepting the findings of any such document.

(2) RISK CHARACTERIZATION DOCUMENT.—The term "risk characterization document" means a document quantifying or describing the degree of toxicity, exposure, or other risk posed by hazards associated with a substance, activity, or condition to which individuals, populations, or resources are exposed. The term also includes a written statement accepting the findings of any such document.

(3) BEST ESTIMATE.—The term "best estimate" means a scientifically appropriate estimate which is based, to the extent feasible, on one of the following:

(A) Central estimates of risk using the most plausible assumptions.

(B) An approach which combines multiple estimates based on different scenarios and weighs the probability of each scenario.

(C) Any other methodology designed to provide the most unbiased representation of the most plausible level of risk, given the current scientific information available to the Federal agency concerned.

(4) SUBSTITUTION RISK.—The term "substitution risk" means a potential risk to human health, safety, or the environment from a regulatory alternative designed to decrease other risks.

(5) COVERED FEDERAL AGENCY.—The term "covered Federal agency" means each of the following:

(A) The Environmental Protection Agency.

(B) The Occupational Safety and Health Administration.

(C) The Department of Transportation (including the National Highway Transportation Safety Administration).

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration

(J) The United States Army Corps of Engineers.

(K) The Mine Safety and Health Administration.

(L) The Nuclear Regulatory Commission.

(M) Any other Federal agency considered a covered Federal agency pursuant to section 103(b)(2)(E)

(6) FEDERAL AGENCY.—The term "Federal agency" means an executive department, military department, or independent establishment as defined in part I of title 5 of the United States Code, except that such term also includes the Office of Technology Assessment.

(7) DOCUMENT.—The term "document" includes material stored in electronic or digital form.

Title II—Analysis of Risk Reduction Benefits and Costs

SEC. 201. ANALYSIS OF RISK REDUCTION BENEFITS AND COSTS.

(a) IN GENERAL.—The President shall require each Federal agency to prepare the following for each major rule within a program designed to protect human health, safety, or the environment that is proposed or promulgated by the agency after the date of enactment of this Act:

(1) An identification of reasonable alternative strategies, including strategies that—

(A) require no government action;

(B) will accommodate differences among geographic regions and among persons with different levels of resources with which to comply; and

(C) employ performance or other market-based mechanisms that permit the greatest flexibility in achieving the identified benefits of the rule.

The agency shall consider reasonable alternative strategies proposed during the comment period.

(2) An analysis of the incremental costs and incremental risk reduction or other benefits associated with each alternative strategy identified or considered by the agency. Costs and benefits shall be quantified to the extent feasible and appropriate and may otherwise be qualitatively described.

(3) A statement that places in context the nature and magnitude of the risks to be addressed and the residual risks likely to remain for each alternative strategy identified or considered by the agency. Such statement shall, to the extent feasible, provide comparisons with estimates of greater, lesser, and substantially equivalent risks that are familiar to and routinely encountered by the general public as well as other risks, and, where appropriate and meaningful, comparisons of those risks with other similar risks regulated by the Federal agency resulting from comparable activities and exposure pathways. Such comparisons should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks and the preventability or nonpreventability of risks.

(4) For each final rule, an analysis of whether the identified benefits of the rule are likely to exceed the identified costs of the rule.

(5) An analysis of the effect of the rule—

(A) on small businesses with fewer than 100 employees;

(B) on net employment; and

(C) to the extent practicable, on the cumulative financial burden of compliance with the rule and other existing regulations on persons producing products.

(b) PUBLICATION.—For each major rule referred to in subsection (a) each Federal agency shall publish in a clear and concise manner in the Federal Register along with the proposed and final regulation, or otherwise make publicly available, the information required to be prepared under subsection (a).

SEC. 202. DECISION CRITERIA.

(a) IN GENERAL.—No final rule subject to the provisions of this title shall be promulgated unless the agency certifies the following:

(1) That the analyses under section 201 are based on objective and unbiased scientific and economic evaluations of all significant and relevant information and risk assessments provided to the agency by interested parties relating to the costs, risks, and risk reduction and other benefits addressed by the rule.

(2) That the incremental risk reduction or other benefits of any strategy chosen will be likely to justify, and be reasonably related to, the incremental costs incurred by State, local, and tribal governments, the Federal Government, and other public and private entities.

(3) That other alternative strategies identified or considered by the agency were found either (A) to be less cost-effective at achieving a substantially equivalent reduction in risk, or (B) to provide less flexibility to State, local, or tribal governments or regulated entities in achieving the otherwise applicable objectives of the regulation, along with a brief explanation of why alternative strategies that were identified or considered by the agency were found to be less cost-effective or less flexible.

(b) EFFECT OF DECISION CRITERIA.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law, the decision criteria of subsection (a) shall supplement and, to the extent there is a conflict, supersede the decision criteria for rulemaking otherwise applicable under the statute pursuant to which the rule is promulgated.

(2) SUBSTANTIAL EVIDENCE.—Notwithstanding any other provision of Federal law, no major rule shall be promulgated by any Federal agency pertaining to the protection of health, safety, or the environment unless the requirements of section 201 and subsection (a) are met and the certifications required therein are supported by substantial evidence of the rulemaking record.

(c) PUBLICATION.—The agency shall publish in the Federal Register, along with the final regulation, the certifications required by subsection (a).

(d) NOTICE.—Where the agency finds a conflict between the decision criteria of this section and the decision criteria of an otherwise applicable statute, the agency shall so notify the Congress in writing.

SEC. 203. OFFICE OF MANAGEMENT AND THE BUDGET GUIDANCE.

The Office of Management and Budget shall issue guidance consistent with this title—

(1) to assist the agencies, the public, and the regulated community in the implementation of this title, including any new requirements or procedures needed to supplement prior agency practice; and

(2) governing the development and preparation of analyses of risk reduction benefits and costs.

Title III—Peer Review

SEC. 301. PEER REVIEW PROGRAM.

(a) ESTABLISHMENT.—For regulatory programs designed to protect human health, safety, or the environment, the head of each Federal agency shall develop a systematic program for independent and external peer review required by subsection (b). Such program shall be applicable across the agency and—

(1) shall provide for the creation of peer review panels consisting of experts and shall be broadly representative and balanced and to the extent relevant and appropriate, may include representatives of State, local, and tribal governments, small businesses, other representatives of industry, universities, agriculture, labor, consumers, conservation organizations, or other public interest groups and organizations;

(2) may provide for differing levels of peer review and differing numbers of experts on peer review panels, depending on the significance or the complexity of the problems or the need for expeditiousness;

(3) shall not exclude peer reviewers with substantial and relevant expertise merely because they represent entities that may have a potential interest in the outcome, provided that interest is fully disclosed to the agency and in the case of a regulatory decision affecting a single entity, no peer reviewer representing such entity may be included on the panel;

(4) may provide specific and reasonable deadlines for peer review panels to submit reports under subsection (c); and

(5) shall provide adequate protections for confidential business information and trade secrets, including requiring peer reviewers to enter into confidentiality agreements.

(b) REQUIREMENT FOR PEER REVIEW.—In connection with any rule that is likely to result in an annual increase in costs of $100,000,000 or more (other than any rule or other action taken by an agency to authorize or approve any individual substance or product), each Federal agency shall provide for peer review in accordance with this section of any risk assessment or cost analysis which forms the basis for such rule or of any analysis under section 201(a). In addition, the Director of the Office of Management and Budget may order that peer review be provided for any major risk assessment or cost assessment that is likely to have a significant impact on public policy decisions.

(c) CONTENTS.—Each peer review under this section shall include a report to the Federal agency concerned with respect to the scientific and economic merit of data and methods used for the assessments and analyses.

(d) RESPONSE TO PEER REVIEW.—The head of the Federal agency shall provide a written response to all significant peer review comments.

(e) AVAILABILITY TO PUBLIC.—All peer review comments or conclusions and the agency's responses shall be made available to the public and shall be made part of the administrative record.

(f) PREVIOUSLY REVIEWED DATA AND ANALYSIS.—No peer review shall be required under this section for any data or method which has been previously subjected to peer review or for any component of any analysis or assessment previously subjected to peer review.

(g) NATIONAL PANELS.—The President shall appoint National Peer Review Panels to annually review the risk assessment and cost assessment practices of each Federal agency for programs designed to protect human health, safety, or the environment. The Panel shall submit a report to the Congress no less frequently than annually containing the results of such review.

Title IV—Judicial Review

SEC. 401. JUDICIAL REVIEW.

Compliance or noncompliance by a Federal agency with the requirements of this Act shall be reviewable pursuant to the statute granting the agency authority to act or, as applicable, that statute and the Administrative Procedure Act. The court with jurisdiction to review final agency action under the statute granting the agency authority to act shall have jurisdiction to review, at the same time, the agency's compliance with the requirements of this Act. When a significant risk assessment document or risk characterization document subject to title I is part of the administrative record in a final agency action, in addition to any other matters that the court may consider in deciding whether the agency's action was lawful, the court shall consider the agency action unlawful if such significant risk assessment document or significant risk characterization document does not substantially comply with the requirements of sections 104 and 105.

Title V—Plan

SEC. 501. PLAN FOR ASSESSING NEW INFORMATION.

(a) PLAN.—Within 18 months after the date of enactment of this Act, each covered Federal agency (as defined in title I) shall publish a plan to review and, where appropriate revise any significant risk assessment document or significant risk characterization document published prior to the expiration of such 18-month period if, based on information available at the time of such review, the agency head determines that the application of the principles set forth in sections 104 and 105 would be likely to significantly alter the results of the prior risk assessment or risk characterization. The plan shall provide procedures for receiving and considering new information and risk assessments from the public. The plan may set priorities and procedures for review and, where appropriate, revision of such risk assessment documents and risk characterization documents and of health or environmental effects values. The plan may also set priorities and procedures for review, and, where appropriate, revision or repeal of major rules promulgated prior to the expiration of such period. Such priorities and procedures shall be based on the potential to more efficiently focus national economic resources within Federal regulatory programs designed to protect human health, safety, or the environment on the most important priorities and on such other factors as such Federal agency considers appropriate.

(b) PUBLIC COMMENT AND CONSULTATION.—The plan under this section, shall be developed after notice and opportunity for public comment, and after consultation with representatives of appropriate State, local, and tribal governments, and such other departments and agencies, offices, organizations, or persons as may be advisable.

Title VI—Priorities

SEC. 601. PRIORITIES.

(a) IDENTIFICATION OF OPPORTUNITIES.—In order to assist in the public policy and regulation of risks to public health, the President shall identify opportunities to reflect priorities within existing Federal regulatory programs designed to protect human health in a cost-effective and cost-reasonable manner. The President shall identify each of the following:

(1) The likelihood and severity of public health risks addressed by current Federal programs.

(2) The number of individuals affected.

(3) The incremental costs and risk reduction benefits associated with regulatory or other strategies.

(4) The cost-effectiveness of regulatory or other strategies to reduce risks to public health.

(5) Intergovernmental relationships among Federal, State, and local governments among programs designed to protect public health.

(6) Statutory, regulatory, or administrative obstacles to allocating national economic resources based on the most cost-effective, cost-reasonable priorities considering Federal, State, and local programs.

(b) BIENNIAL REPORTS.—The President shall issue biennial reports to Congress, after notice and opportunity for public comment, to recommend priorities for modifications to, elimination of, or strategies for existing Federal regulatory programs designed to protect public health. Within 6 months after the issuance of the report, the President shall notify the Congress in writing of the recommendations which can be implemented without further legislative changes and the agency shall consider the priorities set forth in the report when preparing a budget or strategic plan for any such regulatory program.

The CHAIRMAN. The bill will be considered for amendment under the 5-minute rule for a period not to exceed 10 hours.

Are there any amendments to the bill?

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. BROWN OF CALIFORNIA

Mr. BROWN of California. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. BROWN of California:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Regulatory Reform Act of 1995".

SEC. 2. PURPOSES.

The purposes of this Act are the following:

(1) To direct the head of each covered agency to establish appropriate regulatory priorities among regulatory initiatives based on the seriousness of the risks to be addressed and available resources, and other appropriate factors.

(2) To require the head of each covered agency to conduct a risk assessment and cost benefit analysis for all major rules.

(3) To require the head of each covered agency to—

(A) oversee the development, periodic revision, and implementation of risk assessment guidelines throughout the covered agency, which reflect scientific advances;

(B) provide for appropriate scientific peer review of and public comment on risk assessment guidelines and for peer review of risk assessments and cost-benefit analyses throughout the process of development and implementation;

(C) develop risk characterization guidance and oversee its implementation in order to communicate an accurate description of the full range of risks and uncertainties; and

(D) identify, prioritize, and conduct research and training needed to advance the science and practice of risk assessment and cost-benefit analysis.

(4) To establish a study to improve comparative risk analysis and to direct the Office of Science and Technology Policy to establish an interagency coordinating process to promote more compatible risk assessment procedures across Federal agencies.

SEC. 3. ESTABLISHING AGENCY PRIORITIES.

(a) Priorities for Regulation.—Each covered agency shall establish, after notice and opportunity for comment, priorities for regulatory purposes among threats to human health, safety, and the environment according to—

(1) the seriousness of the risk they pose;

(2) the opportunities available to achieve the greatest overall net reduction in those risks with the public and private resources available; and

(3) other factors as appropriate.

(b) Report.—Each covered agency shall submit an annual report to Congress setting forth the agency's regulatory priorities. The report shall recommend priorities, consistent with otherwise applicable law, for the use of resources available to the agency to reduce those risks in accordance with the priorities established under subsection (a), including strategic planning and research activities of the agency. The report shall also explain any statutory priorities which are inconsistent with the priorities established according to the factors set forth in this section.

SEC. 4. ANALYSIS OF RISKS, BENEFITS, AND COSTS.

For all major rules protecting human health, safety, or the environment, the head of each covered agency shall—

(1) conduct a risk assessment and cost-benefit analysis that uses sound scientific, technical, economic, and other data. Such an analysis shall be conducted with as much specificity as practicable, of—

(A) the risk to human health, safety, or the environment, and any combination thereof, addressed by the rule, including, where applicable and practicable, the health and safety risks to persons who are disproportionately exposed or particularly sensitive, including children, the elderly, and disabled individuals;

(B) the costs, including the incremental costs, associated with implementation of, and compliance with, the rule;

(C) the quantitative or qualitative benefits of the rule, including the incremental benefits, reduction or prevention of risk, or other benefits expected from the rule; and

(D) where appropriate and meaningful, a comparison of that risk relative to other similar risks, regulated by that Federal agency or another Federal agency, resulting from comparable activities and exposure pathways (such comparisons should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks, and the preventability and nonpreventability of risks); and

(2) include with the rule a statement that, to the extent consistent with otherwise applicable law—

(A) the rule will substantially advance the purpose of protecting against the risk referred to in paragraph (1)(A);

(B) the rule will produce benefits and reduce risks to human health, safety, or the environment, and any combination thereof, in a cost-effective manner taking into account the costs of the implementation of and compliance with the rule, by local, State, and Federal Government and other public and private entities;

(C) the benefits, quantitatively or qualitatively, will be likely to justify the costs; and

(D) the most cost-effective option allowed by the statute under which the rule is promulgated has been employed, or if such option has not been employed, the head of the agency shall include a summary of the analysis justifying why it is not employed.

SEC. 5. RISK ASSESSMENT GUIDELINES.

(a) Functions of the Agency Head.—The head of each covered agency shall ensure that any risk assessments conducted by the agency are performed in accordance with risk assessment guidelines issued by the agency head under subsection (b) and use relevant, reliable, and reasonably available data.

(b) Issuance of Risk Assessment Guidelines.—

(1) In general.—The head of each covered agency shall develop and publish in the Federal Register risk assessment guidelines that provide appropriate consistency and technical quality among risk assessments performed by the agency.

(2) Procedures for publishing guidelines.—Before issuing guidelines under this subsection, the head of a covered agency shall—

(A) publish notice of intent to revise as appropriate existing guidelines or to develop new guidelines and a list of the issues the agency head intends to address and upon which the agency head seeks public comment;

(B) publish all proposed guidelines for the purpose of seeking public comment; and

(C) conduct scientific peer review of such guidelines.

(3) Review and updates.—Not less than once every 3 years, the head of a covered agency shall review and, as necessary, update guidelines issued under this subsection.

(4) Procedures for review of risk assessments.—Within 1 year after the date of the enactment of this Act, the head of each covered agency shall develop and publish procedures for the review of significant new information made available to the agency relative to risk assessments performed by the agency that are (or if this Act had been in effect would have been) covered by section 4.

(c) Use of Guidelines.—The agency head shall ensure—

(1) consistency in the use of such guidelines to the extent such consistency is appropriate;

(2) that risk assessments are scientifically supportable; and

(3) that significant uncertainties regarding facts, scientific knowledge, and the validity of analytical techniques, or numerical risk estimates are clearly disclosed in terms readily understandable to the public.

(d) Contents.—Risk assessments conducted by the Agency should be carried out at a level of effort and accuracy appropriate to the decision being made and the need for accuracy of the risk estimate and should be conducted according to risk assessment guidelines that include:

(1) An explanation of the scope and applicability of the guidelines, including appropriate limitations or restrictions on their use.

(2) Criteria for accepting and evaluating data.

(3) A complete description of any mathematical models or other assumptions used in the risk assessment, including a discussion of their validation, limitations and plausibility.

(4) A description of the default options, the scientific justification supporting the default options, and an explicit statement of the rationale for selecting a particular default option, in the absence of adequate data, based on explicitly stated science policy choices and consideration of relevant scientific information.

(5) The technical justification for, and a description of the degree of conservatism each model selection, default option, or assumption imposes upon the risk assessment.

(6) Criteria for conducting uncertainty analysis during the course of the risk assessment, and an explanation of the data needs for such analysis.

(e) Regional Compliance.—The regional offices of each agency shall comply with, and follow, the risk assessment guidelines and policies established by the head of the agency. Where credible information has been received from an affected party that a region is violating such guidelines, the head of the agency shall examine the information and resolve the matter.

SEC. 6. RISK CHARACTERIZATION.

(a) In General.—The head of each covered agency shall ensure that all risk assessments required by section 4, and the risk characterizations that are components of such assessments, make apparent the distinction between data and policy assumptions to facilitate interpretation and appropriate use of the characterization by decisionmakers.

(b) Contents.—

(1) In general.—As scientifically appropriate, such risk characterizations shall contain the following:

(A) Relevant information on data selection and rejection in the risk assessment, including a specific rationale justifying the basis for the selection or rejection, and the influence of the selection or rejection on the risk estimate.

(B) Identification of significant limitations, assumptions, and default options included in the risk assessment and the rationale and extent of scientific support for their use.

(C) A discussion of significant uncertainties and data gaps and their influence upon the risk assessment.

(2) Quantitative estimates of certain risks.—As scientifically appropriate, any such risk characterization that includes quantitative estimates of carcinogenic risk shall contain the following:

(A) The range and distribution of exposures derived from exposure scenarios used in the risk assessment of which the risk characterization is a component, including upper bound estimates and central estimates and, when appropriate and practicable, the identification of susceptible groups, species, and subpopulations, including children, the elderly, and disabled individuals, or groups whose exposure exceeds the general population.

(B) A description of appropriate statistical expressions of the range and variability of the risk estimate, including the population or populations addressed by any risk estimates, central estimates of risk for each such specific population, any appropriate upper bound estimates, the reasonable range, or other description of uncertainties in the risk characterization which is contained in the risk assessment.

To the extent the types of information referred to in subparagraphs (A) and (B) are scientifically appropriate for risk characterizations other than for carcinogenic risks, such characterizations shall include such information. As other scientifically appropriate methods are developed for quantitatively estimating carcinogenic risks, such methods may be used in lieu of the methods described in subparagraphs (A) and (B).

SEC. 7. PEER REVIEW.

(a) ESTABLISHMENT.—For regulatory programs addressing human health, safety, or the environment, the head of each Federal agency shall develop a systematic program for peer review of risk assessments used by the agency. Such program shall be applicable across the agency and—

(1) shall provide for peer review by independent and well-qualified experts;

(2) to the extent a peer review panel is used, the panel shall be broadly representative and balanced to the extent feasible;

(3) may provide for differing levels of peer review depending on the significance or the complexity of the problems or the need for expeditiousness;

(4) shall exclude peer reviewers who are associated with entities that may have a financial interest in the outcome unless such interest is disclosed to the agency and the agency has determined that such interest will not reasonably be expected to create a bias in favor of obtaining an outcome that is consistent with such interest;

(5) shall result in the appointment of peer reviewers who are qualified on the basis of their professional training or expertise as reflected in their record of peer-reviewed publications or equivalent;

(6) may provide specific and reasonable deadlines for peer review comments; and

(7) shall provide adequate protections for confidential business information and trade secrets, including requiring peer reviewers to enter into confidentiality agreements.

(b) REQUIREMENT FOR PEER REVIEW.—Each Federal agency shall provide for appropriate peer review of scientific information used for purposes of any risk assessment required by section 4. For any such risk assessment, the head of a covered agency shall provide a written response to comments made by the peer reviewers. The response shall indicate that the agency head explicitly considered the comments, the degree to which such comments have been incorporated into the risk assessment guidelines or risk assessment, as applicable, and the reason why a comment has not been incorporated.

(c) AVAILABILITY TO PUBLIC.—For all peer review to which this section applies, a summary of all peer review comments or conclusions and any response of the agency shall be made available to the public.

(d) PREVIOUSLY REVIEWED DATA AND ANALYSIS.—No peer review shall be required under this section for any data or analysis which has been previously subjected to peer review or for any component of any evaluation or assessment previously subjected to peer review.

(e) REPORTS.—Not later than 180 days after the date of the enactment of this Act, the head of each covered agency shall submit to the Congress a report on a plan for conducting peer review under this section, and shall also report to the Congress whenever significant modifications are made to the plan.

SEC. 8. REVIEW OF AGENCY COMPLIANCE.

During the 3-year period beginning 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall annually conduct a review to determine the extent of compliance by each covered Federal agency with the provisions of this Act and shall annually submit to Congress a report on such review.

SEC. 9. RESEARCH AND TRAINING IN RISK ASSESSMENT.

(a) EVALUATION.—The head of each covered agency shall regularly and systematically evaluate risk assessment research and training needs of the agency, including the following:

(1) Research to reduce data gaps or redundancies, address modelling needs (including improved model sensitivity), and validate default options, particularly those common to multiple risk assessments.

(2) Research leading to improvement of methods to quantify and communicate uncertainty and variability throughout risk assessment, and risk assessment reporting methods that clearly distinguish between uncertainty and variability.

(3) Research to examine the causes and extent of variability within and among individuals, species, populations, and, in the case of ecological risk assessment, ecological communities.

(4) Emerging and future areas of research, including research on comparative risk analysis, exposure to multiple chemicals and other stressors, noncancer endpoints, biological markers of exposure and effect, mechanisms of action in both mammalian and nonmammalian species, dynamics and probabilities of physiological and ecosystem exposures, and prediction of ecosystem-level responses.

(5) Long-term needs to adequately train individuals in risk assessment and risk assessment applications. Evaluations under this paragraph shall include an estimate of the resources needed to provide necessary training and recommendations on appropriate educational risk assessment curricula.

(b) STRATEGY AND ACTIONS TO MEET IDENTIFIED NEEDS.—The head of each covered agency shall develop a strategy, schedule, and delegation of responsibility for carrying out research and training to meet the needs identified in subsection (a) consistent with available resources.

(c) REPORT.—Not later than 6 months after the date of the enactment of this Act, the head of each covered agency shall submit to the Congress a report on the evaluations conducted under subsection (a) and the strategy and schedule developed under subsection (b). The head of each covered agency shall report to the Congress whenever the evaluations, strategy, and schedule are updated or modified.

SEC. 10. STUDY OF COMPARATIVE RISK ANALYSIS.

(a) IN GENERAL.—The Director of the Office of Science and Technology Policy shall conduct, or provide for the conduct of, a study of the methods for conducting comparative risk analysis of health, safety, and environmental risks, and to provide a common basis for evaluating strategies for reducing, or preventing those risks. The goal of the study shall be to survey and rigorously evaluate methods of comparative risk analysis.

(b) STUDY PARTICIPANTS.—In conducting the study, the Director shall provide for the participation of a range of individuals with varying backgrounds and expertise, both technical and nontechnical, comprising broad representation of the public and private sectors.

(c) REPORT.—Not later than 90 days after the termination of the study, the Director shall submit to the Congress a report on the results of the study referred to in subsection (a).

SEC. 11. INTERAGENCY COORDINATION.

To promote the conduct, application, and practice of risk assessment in a consistent manner under Federal and to identify risk assessment data needs common to more than one Federal agency, the Director of the Office of Science and Technology Policy shall—

(1) periodically survey the manner in which each Federal agency involved in risk assessment is conducting such risk assessment to determine the scope and adequacy of risk assessment practices in use by the Federal Government;

(2) provide advice and recommendations to the President and the Congress based on the surveys conducted and determinations made under paragraph (1);

(3) establish appropriate interagency mechanisms to promote coordination among Federal agencies conducting risk assessment with respect to the conduct, application, and practice of risk assessment and to promote the use of state-of-the-art risk assessment practices throughout the Federal Government;

(4) establish appropriate mechanisms between Federal and State agencies to communicate state-of-the-art risk assessment practices; and

(5) periodically convene meetings with State government representatives and Federal and other leaders to assess the effectiveness of Federal-State cooperation in the development and application of risk assessment.

SEC. 12. SAVINGS PROVISION.

Nothing in this Act shall be construed to modify any statutory standard or requirement designed to protect health, safety, or the environment or shall delay any action required to meet a deadline imposed by a statute or a court.

SEC. 13. DEFINITIONS.

For the purposes of this Act:

(1) The term "major rule" means any rule (as that term is defined in section 551(4) of title 5, United States Code) that is likely to result in an annual effect on the economy of $100,000,000 or more.

(2) The term "risk assessment" means a process that uses a factual base to—

(A) identify, characterize, and to the extent practicable and appropriate, quantify or describe the potential adverse effects of exposure of individuals, populations, habitats, ecosystems, or materials to hazardous pollutants or other stressors; and

(B) to the extent practicable and appropriate, identify and characterize important uncertainties.

(3) The term "risk characterization" means the final component of a risk assessment, that qualitatively or quantitatively (or both) describes the magnitude and consequences of that risk in terms of the population exposed to the risk and the types of potential effects of exposure.

(4) The term "covered agency" means each of the following:

(A) The Environmental Protection Agency.

(B) The Consumer Product Safety Commission.

(C) The Department of Labor (including the Occupational Health and Safety Administration).

(D) The Department of Transportation.
(E) The Department of Energy.
(F) The Department of Agriculture.
(G) The Department of the Interior.
(H) The Food and Drug Administration.

SEC. 14. EXCEPTIONS.

This Act does not apply to risk assessments or risk characterizations performed with respect to either of the following:

(1) A situation that the head of the agency considers to be an emergency.

(2) A situation the head of the agency considers to be reasonably expected to cause death or serious injury or illness to humans, or substantial endangerment to private property or the environment unless prompt action is taken to avoid death or to avoid or mitigate serious injury or illness to humans, or substantial endangerment to private property or the environment.

SEC. 15. JUDICIAL REVIEW.

Nothing in this Act creates any right to judicial or administrative review, nor creates any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. If an agency action is subject to judicial or administrative review under any other provision of law, the adequacy of any document prepared pursuant to this Act, and any alleged failure to comply with this Act, may not be used as grounds for affecting or invalidating such agency action, but statements and information prepared pursuant to this Act which are otherwise part of the record, may be considered as part of the record for the judicial or administrative review conducted under such other provision of law.

SEC. 16. UNFUNDED MANDATES.

Nothing in this Act shall create an obligation or burden on any State or local government or otherwise impose any financial burden any State or local government. Nothing in this Act shall force a State to change its laws.

Mr. BROWN of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BROWN of California. Mr. Chairman, I will use a very brief portion of the time and then yield to my cosponsor, the gentleman from Ohio [Mr. BROWN].

Mr. Chairman, this amendment was drafted after considerable discussion of the major problems of this bill which have been pointed out during general debate. It seeks to reflect the views of those who have expressed concerns about the workability of the bill, including Members on both sides, and we believe that the substitute is a considerable improvement over the original bill, and we elaborate on that during further debate.

Mr. BROWN of Ohio. Mr. Chairman, will the gentleman yield?

Mr. BROWN of California. I yield the remainder of my time to the gentleman from Ohio.

Mr. BROWN of Ohio. Mr. Chairman, I rise in strong support of the Brown-Brown substitute amendment to H.R. 1022. This substitute provides a common sense approach to risk assessment without creating a lawyers' paradise. It ensures that public health and safety will continue to be protected. At the same time it enhances the decision-making process to ensure that our resources are spent on our most critical prioritized needs.

Risk assessment and management provide valuable tools with which we can identify the most critical threats to health and safety of Americans and establish a system of priorities to address these problems. In time of scarce resources, it is essential that we plan appropriately and demand sufficient information to make decisions based on sound science. Risk assessment can help us do that.

Risk assessment practices, however, must not in and of themselves become a burdensome process. This bill as currently drafted is loaded with unintended consequences and will effectively derail the last 25 years of accomplishments in protecting the public's health and safety.

I remember when parts of Lake Erie were dead. Today my daughter can swim in Lake Erie. I remember when the Cuyahoga River was on fire. Today it is an essential water route for interstate commerce.

We have in this country the cleanest air, the safest drinking water, the purest food, the safest consumer products in the world. It is not an accident we were able to do that by working together with Government and business and regulations and making sure that those products were safe, the water was clean, the food was pure and the air was clean. Citizens of northeast Ohio continue to be concerned about the high rates of breast and prostate cancer in that part of the State. They believe the cause could be the pollutants of a previous day. Did we address the most serious concerns when we cleaned up Lake Erie or cleaned up the Cuyahoga River? We do not know. We should find out. Risk assessment and analysis can help us do that without it becoming the lawyers' for employment act.

Listen to some of the comments, Mr. Chairman, that have been made about this legislation. A former Republican chairman of the Senate Environment and Public Works Committee said this legislation would shift the financial, legal and moral burden of dealing with pollution from the polluters to the victims.

A former Republican EPA Administrator under Presidents Bush and Reagan said the proposal would render the Nation's environmental laws by and large unworkable and unpredictable by creating a procedural nightmare and endless litigation. More bureaucracy, more lawyers, more government.

The Natural Resources Defense Council report said the bill would dismantle laws that have worked, would block improvements to public health, would pay polluters to bloat the deficit and would dramatically increase bureaucracy and litigation.

Mr. Chairman, the evidence is overwhelming that this legislation would have enormous unintended consequences for the public health and safety of all Americans. Twenty-four Members of the House, a dozen Republicans and a dozen Democrats signed a "Dear Colleague" letter to urge Members to think this legislation through and to address three major concerns about the bill. Our substitute addresses these concerns in a way that does not diminish the science of risk assessment, which I support, or create endless bureaucracies or litigation.

Our substitute is patterned after a Republican proposal of 2 years ago. It is a reasonable alternative. It is a strong risk assessment bill without bureaucracy, without more lawyers, without more government, and without the unintended consequences that the authors of this bill have not foreseen because of the quick way in which it passed the committee.

Mr. Chairman, I ask Members of the House to look carefully at the substitute. The substitute makes sense. It is a reasonable middle-of-the-road, down-the-middle approach. I ask support for the Brown-Brown substitute.

Mr. WALKER. Mr. Chairman, I rise to oppose the amendment.

Mr. Chairman, I am glad we got this amendment out here first because it is a good way of kind of delineating the debate.

This is the status quo amendment. This is keep things as they are, do not change regulations.

The gentleman from Ohio has just given Members this explanation. He thinks the things that have been done in the name of regulation have in fact been beneficial to the country. In fact, there are some things that have been done in the name of regulation have in fact been beneficial to the country. In fact, there are some things that have been beneficial, but the fact is that we have regulations run amok at the present time too that need to have some handle on them, and we need to get the good science, and we need to have common sense prevail.

Under the Brown substitute what we have is an opportunity for the regulators to continue to do exactly what they have been doing. Since we had such a discussion about process out here a few minutes ago with the gentleman from Michigan and the gentleman from California criticizing the process, I must say we have not had much of a chance to review this substitute, since I only got it at 6 o'clock, which means about 25 minutes ago we actually got a chance to see this amendment in the nature of a substitute. In other words, this is the whole bill, folks. We are trying to take one whole bill and substitute it. At least even under their scenario we gave them a couple of hours. We got 25 minutes.

But let me say that we have had a chance to look at a few things here, and it does give one a little bit of cause to be suspicious if in fact we had had the idea that we were going to really change regulations. For example, it changes a major rule from an annual impact of $25 to $100 million. Guess what that does? That wipes out virtually all of the business of finding regulation. One hundred dollars' worth of impact means you have $100 million dollars' worth of impact in the economy. No small business is likely to have something that is 100 million dollars' worth of impact. Service station operators, dry cleaners, all of these folks across the country that have been hit hard by Federal regulation would not even qualify under this bill. All the big businesses like General Motors and so on, yes, they might come under, and their lobbyists will not be all that unhappy with all of that by the big lobbying community. But the little guy, the little guy is going to be affected by this.

So guess what? This bill that they have brought before us now is the big guys versus the little guys, and the little guys come down on the side of our amendment that says $25 million worth of impact.

I also was interested to look at the language that dealt with how we were going to compare risk. In other words, what our bill says is you ought to compare risk to the thing that the general public has knowledge of, drinking a glass of orange juice, riding in a car, things that the public really understands, you ought to compare that.

Here is the language they substitute though for that kind of thing, listen to this language, Members will love it. If this is not a regulator's dream or a litigator's dream, I do not know what is. Listen to this:

> Where appropriate and meaningful, a comparison of that risk relative to other similar risks, regulated by that Federal agency or another Federal agency, resulting from comparable activities and exposure pathways (such comparisons should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks, and the preventability and nonpreventability of risks).

Now what the devil does that mean? I do not know. No one knows. It is just one more way of making certain that regulation stays right where it is.

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You know, you put in a bill risk ought to be compared to that that the public knows. Then they come up with that kind of junk.

Now, it seems to me that what you want to do is just turn down this substitute flat.

The other thing that is does is it says that we are not going to have any judicial or administrative review. Now, what that means is that if in fact you have a regulation issued that the Department thinks is fine, you have no appeal after that. The Department issues the regulation, and nothing can be done about it because, in their substitute, they wipe out the ability to have any kind of administrative or judicial review.

You know, even under the Administrative Procedures Act at the present time there is at least a process for doing this. They wipe that out. Here is the language. They say, "Nothing in the title creates any right to judicial or administrative review." You cannot even do what people can do now in terms of going back to the agencies under what they have created here. This is really a bad bill. This is the kind of thing that says, "Regulators, do whatever you want. If you have been down there regulating an industry and so on, if you have been regulating people out of business, you go right ahead and keep doing it."

All of this talk that we heard during the general debate, "We agree with the intent of this legislation, and we would love to do something that would help," this is their idea of what it is. This is their substitute. This substitute makes the situation worse. It does not help the situation. This destroys exactly what we are attempting to do with the bill here on the floor.

So I would suggest that if ever you wanted to cast a big "no" vote, if ever you wanted to stand up and say, "Let us stop regulation from batting down the American people," vote "no" on this substitute. This substitute is really bad news.

Mr. DINGELL. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I would just note for the benefit of the last speaker that this bill was gotten to the House more quickly than any of the various and sundry substitutes which the gentleman was presenting to us after moonlight discussions with other Members on that side of the aisle. So if you are concerned about the time that we have had in terms of having this available to us, we have done better than has the gentleman from Pennsylvania.

Now, the gentleman complains about the language he read. That is language out of legislation that passed the House last year relative to exactly the kind of thing we are trying to do, and that is to set in place risk assessment. It also is language which is very close to the language that is in the bill that the gentleman has submitted to us, and I can understand, with the haste that the gentleman from Pennsylvania has crafted these different sundry substitutes that we have been confronting over time without opportunity to read them, that he may not have had full enough time to read his own bill so he really does not understand what is there.

Having said that, the effects of the basic legislation will be seen in many ways. One is with regard to a final rule which is anticipated by December 1995 with regard to safety on commuter airlines. As we all know, commuter airline safety is open to question, and that a fatal commuter accident in North Carolina caused the Secretary of Transportation to announce a commuter safety program would be fast-tracked. The fast-tracking of that commuter safety airline legislation or, rather, regulation which will address very specifically pilot training and crew rest requirements would be sidetracked by the language of the bill but not by the amendment which is put forward.

FAA has plenary authority to take actions necessary for airline safety. But that plenary authority will be effectively delayed by this matter.

Having said those things, the airline safety rule will exceed the $100 million cost threshold established in title III. FAA will have to peer review any risk or cost analysis which forms the basis for action under this.

Never before have we had risk assessment or cost-benefit in rules of these kinds, and the reason was very important. FAA exists to assure that there be safety of the American airline traveling public. That safety will be substantially denigrated and severely jeopardized by the bill unless the amendment is adopted.

Similar situations with regard to PCB control regulations, those which are actively sought by legislation, will be sidetracked and will cost industry and the American economy billions of dollars in additional disposable costs and will rob industry of flexibility and opportunity to become more competitive through relaxation of current situations which they find unacceptable.

H.R. 1022 is a very simple thing. It is a political campaign statement which is now being turned into bad law, and it is being done so in the most extraordinary of haste, the idea being to meet some curious 100-day deadline which relates not to the well-being of the American people but to simply the keeping of some kind of political statement.

The amendment should be adopted, or the bill should be rejected, and the safety and the well-being of the American people, the protection of their environment will, indeed, be better served by that course.

I urge my colleagues to adopt the amendment.

Mr. BROWN of California. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from California.

Mr. BROWN of California. Mr. Chairman, I ask the gentleman from Michigan [Mr. DINGELL], did I understand you correctly that the language on comparative risk assessment is the same language that passed the House and Senate and was signed into law last year in the Agricultural Reorganization Act?

Mr. DINGELL. The gentleman is correct in that statement.

Mr. BROWN of California. And the $100 million cap the gentleman from Pennsylvania [Mr. WALKER] referred to is the same in the Reagan and Bush Executive orders?

Mr. DINGELL. That is also correct. The $100 million is exactly the same as was in the Executive orders brought forward by Presidents Bush and Reagan.

Mr. OXLEY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I am particularly concerned about providing a double standard, one for the regulators and another for everybody else.

Let me read to you and the Members the language on compliance in the Brown squared substitute. It says:

> During a 3-year period beginning 1 year after the date of enactment of this act, the Comptroller General of the United States shall annually conduct a review to determine the extent of compliance by each covered Federal agency with the provision of this act and shall annually submit to Congress a report on such review.

Essentially what we are saying is that the regulators can have their usual run at regulating with only apparently a drive-by windshield effort by the Comptroller to do that. That double standard, coupled with the lack of judicial review in the Brown squared substitute, would indicate that this is a very weak provision at best.

Judicial review in the Brown substitute:

> Nothing in this act creates any right to judicial or administrative review or creates any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees or any other person. The adequacy of any document prepared pursuant to this act, and any alleged failure to comply with this act may not be used as grounds for affecting or invalidating such agency action.

It is business as usual, folks, with all the regulators. They are just free and wild.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from Pennsylvania.

Mr. WALKER. The gentleman makes an excellent point. If you go down and look in the contents section on page 7 of the substitute, you find exactly the same thing the gentleman is talking about. It says here,

> Risk assessments conducted by the agency should be carried out on a level of effort and accuracy appropriate to the decision being made and the need for accuracy of the risk assessment and should be conducted according to risk-assessment guidelines.

What that means is the bureaucrats are going to decide whether or not the bureaucrats are right. The regulators are going to decide whether or not the regulators are right. You know, it is really an attempt here to say whatever the regulators want, the regulators get.

Mr. OXLEY. I thank the gentleman for his comments, because that is exactly right, and it is the same old story, and the same old game, and the regulators will continue to regulate, and nobody is going to be able to check them unless we defeat this substitute.

Now, Mr. Chairman, I have a list here of the Alliance for Reasonable Regulation, and I have a list of 35 organizations and companies throughout this country, everybody from Goodyear all the way down to small operations, and this includes the National Federation of Independent Business, NFIB, that supports our legislation and opposes any weakening efforts like the Brown substitute.

I want to make certain that the Members understand that it is not just the major companies but small businesses throughout this country that are finally coming to realize that they are being put upon by these massive regulatory burdens that have cost us jobs and our competitiveness throughout the world, and that is really important to understand.

I also want to point out, Mr. Chairman, that we want to maintain the $25 million threshold. We think that one of the major weaknesses in the Brown provision is to raise this threshold to $100 million.

Now, I do not know about the Members on the other side of the aisle, but I know to a lot of people that we represent in small businesses and the like, $25 million is an awful lot of money, and while we may spill that much before breakfast around here in Washington, the fact is that is an important threshold that we want to maintain in the legislation that came out of our committee as well as came out of the committee of the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. If the gentleman will yield further, I was interested to hear the discussion on the other side that the Executive orders of the Bush and Reagan administrations were at the $100 million level. I wonder if there is anybody who in this Chamber believes that the Bush and Reagan administrations got the regulatory process under control. I mean, the fact is the $100 million did not work. It did not result in the regulatory process being gotten under control.

In fact, we had a discussion out here earlier today about the mess that was made during the 1980's of the asbestos policy, and that was done under the Reagan administration, and it may, in fact, be a perfect example of why the $100 million limit of those executive orders was the wrong limit.

Mr. BROWN of California. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from California.

Mr. BROWN of California. Mr. Chairman, I do not want to impose on the gentleman's time. I can get someone on our side to do it. If the gentleman would like to have me comment as he proceeds, I would like to do it.

I wanted to point out that the $100 million figure which exists in all past Executive orders captures 97 percent of all the economic impact of regulations on the American public.

Mr. OXLEY. Reclaiming my time, the gentleman from Pennsylvania had it right, that is, it just did not get the job done. One hundred million dollars is not going to get the job done. There are a lot of people in my district and other districts around here who are very concerned about $100 million. They think $25 million makes a lot of sense and so do I.

Mr. MANTON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Brown substitute.

Mr. Chairman, the Brown substitute offers Members a chance to vote for meaningful regulatory reform without endangering the public's health and safety. Furthermore, unlike H.R. 1022, this substitute would not expand judicial review of agency decisionmaking.

My colleagues who historically have expressed concerns that legislation passed by this Congress is ill-suited to real world applications should be troubled that H.R. 1022 would implement a one-size fits all risk assessment scheme. By contrast, the Brown substitute would require each agency to issue scientifically sound risk assessment guidelines with criteria specifically tailored to fit the agency's area of expertise. Thus, in contrast to H.R. 1022, the Brown substitute would require federal agencies to use the most useful scientific data available to complete risk assessment.

I strongly believe we should establish a balanced approach to environmental concerns. I have tried to represent the views of my constituents who have told me they want a clean environment but also less government regulation. I also share the frustration of many of my colleagues about ill-conceived and unduly burdensome regulations which have been issued by the EPA as well as other agencies. It is therefore tempting to support this bill because it will slow down the regulatory process and perhaps lead to less regulation.

However, simply reducing the amount of regulations promulgated by the Government is not the answer to our current problems.

We need a regulatory process that better reflects simple common sense and that is carefully targeted to protect public health and promote free market competition.

That is why I believe risk assessment and cost benefit analysis can play a meaningful and useful role in developing environmental regulations.

Finally, I want to inform my colleagues who may be considering voting for H.R. 1022 because they support the general concept of risk assessment that this bill is dangerously overbroad.

H.R. 1022 would impact many federal regulations designed to protect health and safety. The Brown substitute cures this defect in the registration by specifying that no existing health, safety or environmental laws may be overridden through passage of H.R. 1022.

While certain Federal regulations designed to protect safety or public health are counterproductive, the vast majority are not.

A scattershot approach is not the way to correct this problem.

As children, most of us were told that "it is better to be safe than sorry."

Our parents who gave us this advice were trying to pass along the wisdom of their years. It is good advice that we in the House should consider today.

I urge my colleagues to support scientifically sound cost benefit and risk assessment analysis, and support the Brown amendment.

□ 1845

Mr. BILBRAY. Mr. Chairman, I speak in opposition to the substitute motion. I am sure my colleagues on the other side of the aisle are really well intentioned in thinking that environmental and regulatory mandates from the Federal Government somehow always protect the public, always defend the little guy. I am here, though, representing a district which has been severely impacted by Federal regulations. The public health of my citizens has been severely impacted by government and Federal regulations.

Mr. Chairman, I happened to have the privilege of going back to my district and being able to enjoy the beautiful southern California climate. I was able to take my 8- and 9-year-olds to the beach, and this is what we were greeted with, Mr. Chairman. "Contaminated" signs that have been there for so long that they are not made out of paper, they are made out of weather-resistant plastic because the contaminated beaches of southern California have been allowed to perpetuate for a long time.

My colleague from Ohio [Mr. BROWN] continually points out how great the successes have been on Lake Erie. I appreciate that his children can swim in their water. My children cannot. My children cannot or should not be swimming in our water, not because of some business or because the government has not done its job under the existing rules, but because under the existing rules our government regulations have done a job on the environment. I point out the fact, Mr. Chairman, that there have actually been environmental rules interpreted by bureaucracies to state that because the area has been polluted for so long that there is a possibility that a sewage-based ecology has been created and thus is protected under environmental regulations. And that may stand in the way of diverting sewage away from this area and into a sewage treatment system as we all know it should be.

At the same time, this same problem has been going on, the same area has a mandate coming down from EPA to treat our sewage in a manner that both Scripps Institute of Oceanography and the Academy of Sciences say are inappropriate and actually damaging to the environment. But these regulations are taking precedence over the environment, Mr. Chairman.

What the substitute will say is that those of us who are the victims of inappropriate government regulation will not be able to go to court, will not be able to use the justice system to be able to straighten out the insensitivity of the bureaucracy.

I stand here as somebody who has worked almost two decades trying to take care of the pollution problems in my neighborhoods and in my district, and at the same time trying to keep the EPA from requiring us to spend over $3 billion to $6 billion on so-called improvements that will not benefit the environment or the public health.

Mr. Chairman, I stand in opposition to this amendment because it will not allow the citizens of my district to stand up and demand that they get preferable and fair treatment from the Federal Government and that government regulations will not continue to constitute one of the greatest public health risks southern California has seen, not the lack of environmental regulations but the inappropriate application thereof. That is why I stand in opposition to this substitute motion.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Brown substitute. I have some serious concerns about H.R. 1022, which is before us today. It started out with the best of intentions: reforming the Federal regulatory system. We all agree that change is needed in this system and change is starting to occur, in the Clinton Executive Order No. 12866, in the Reinventing Government work, and on a number of fronts in individual agencies.

I think that most of us agree that any legislative measure to speed this change in a constructive direction is welcome. What is not welcome is the bill that has emerged from Committee consideration. Somewhere between the original intent of this bill, something has gone wrong. The problems with this bill are so extensive that only a substitute measure can correct them, and for that reason I am supporting the Brown Substitute.

Let me give you a single example of the problems with H.R. 1022. The bill, in Section 201(b)(1) states:

> Notwithstanding any other provision of Federal law, the decision criteria of section (a) shall supplement and, to the extent there is a conflict, supersede the decision criteria for rulemaking other wise applicable under the statute pursuant to which the rule is promulgated.

This single sentence overrides every existing statute and imposes the risk analysis and benefits calculation process outlined in this bill. Where is the list of these statutes that are being overridden? It does not exist. During committee markup, the comprehensive list of statutes was requested, but was not available. The report accompanying H.R. 9, the original legislation from which this bill was derived, has a simple table outlining some of the statutes overridden. But it is not complete, nor do we know today what the impact of approving this sentence will be.

And this is not a partisan concern. Republican Members of the Science Committee observed in the report on H.R. 9, which contains this same preemptive language:

> (T)itle III may undermine landmark laws that were enacted only after years of work and discussion to create a delicate balance of interested and affected parties—laws that range from protection of food and drinking water quality, to aviation safety, to hazardous waste management, and preservation of wildlife. (Supplemental Views, Report # 103-33, Part 2.)

The Brown substitute contains a savings clause that makes its provisions in addition to and not in place of the provisions of existing law. That is the sane way to legislate. I urge my colleagues to support this substitute.

Mr. CRAPO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is important for us to understand precisely what this debate is about. The legislation we are discussing today would require that under the existing Federal system of law under which the regulations are now implemented, that we look at whether what we are doing is cost-beneficial. It requires first that we assess the risks which our regulations seek to reduce and then we assess the cost of what the regulations are requiring us as a society to pay in order to reduce those risks.

If it is determined that we are getting only a very minute increase in the reduction of the risk at a very expensive cost, then it is expected that the agency will say that this is not a cost-beneficial decision and we as a society can better spend our limited resources in another way.

Yet there are previous statutes that often set absolute requirements that the Federal agency will then say they must meet. The central debate here is: If we determine after a cost-benefit analysis that moneys can be expended, better for the environment, better for our health, better for our safety in another way, should we let a prior statute tell us that that cannot be done? Should we let a prior set of laws tell us that we cannot conduct a cost-benefit analysis, that we cannot find a better way, that we cannot go forward and use common sense in application of Federal regulations and must continue to follow old approaches?

No. This legislation does not change by itself any previous law; this legislation says we are going to look at the regulations that come out and we are going to see what new efforts by the agencies do and compare what the costs of those regulations, whether it is justified by this benefit.

The current costs of our Federal regulatory programs are estimated to be between $430 billion and $700 billion every year, and are increasing every day.

Yet Congress has never in a significant way reformed our regulatory program to consider meaningful risk assessment and incremental cost-benefit analysis. We have to reform the way our Federal Government operates and take the burden of unreasonable regulations off the backs of the American people.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding, and I think he went to the heart of the problem when he suggested that we are in fact trying to make certain new regulations written even under old rules actually make sense and are based upon good science.

What amazes me is to hear the opposition to this bill suggest we do not want to do that. If in fact there is no benefit to the costs being incurred under the Clean Air Act, should we not know that? Is it not something that should be evaluated?

The point is, if there is a benefit, then we go ahead and do it, even under this bill. But to suggest, as they are suggesting, that you should not even do the cost-benefit analysis to find out what the case is, is, I think, a monument to the position that they are taking: That the status quo works just fine.

The other point I would like to make to the gentleman is we are having a chance more and more to review the substitute that we had not seen heretofore.

But it strikes me very odd, for instance, that the substitute drops out the Corps of Engineers from coverage, which is covered under our bill.

Now, I do not know any Federal agency that has had more of an impact on the country, and some adverse environmental impact, than the Corps of Engineers. And yet, under their substitute, the Corps of Engineers is specifically dropped from coverage.

One has to wonder who got to them. Why in the world would you drop out this huge agency, which has this massive environmental impact, from a bill that is forcing us to look at cost-benefits? If there is any place we ought to look at cost-benefits analysis, it is some of the work that the Corps of Engineers have done over the years.

I am just puzzled as to why that particular agency is one that is dropped from coverage under this bill.

I thank the gentleman for yielding.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield to me?

Mr. CRAPO. I yield to the gentleman from California.

Mr. WAXMAN. I thank the gentleman for yielding.

Mr. Chairman, I do want to clarify for my friend from Pennsylvania [Mr. WALKER], the way the Clean Air Act works. The Clean Air Act has health-based standards so that people can breathe the air and know that their health is not going to be damaged. Then we have to figure out the strategies to achieve that.

This bill would take the health-based standards and weaken it because they would have a cost-benefit analysis of what the health standards are. Otherwise, in the Clean Air Act we have technology standards on toxic air pollutants, and those technology standards are important. If you want to go through the risk assessment, you can go on for years and years and years. We ought to at least use the best technology we have to reduce the pollutants that cause cancer, birth defects, and environmental damage.

I did want to clarify that for the gentleman.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has expired.

(On request of Mr. WALKER and by unanimous consent, Mr. CRAPO was allowed to proceed for 2 additional minutes.)

Mr. CRAPO. I yield further to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. I thank the gentleman.

Mr. Chairman, I understand full well what the case is. But the fact is that some of the things that have been done under the bill have proven to have absolutely no benefit. Now, in fact, if they meet health standards that have some benefit, then they will certainly be able to go forward under this bill. But if, in fact, they cannot meet the cost-benefit analysis under the bill, then they would not go forward.

It seems to me that even under the health standard, we ought to be assured people are actually going to be benefited from the costs. That is what the gentleman cannot stand. He cannot stand the idea that we would actually have to have a benefit at the end of all of this and that the costs should justify the benefits.

Mr. CRAPO. I thank the gentleman for his comments. The point is very clearly made. This bill does not change any standard. It requires us to look at what is done under existing statues and any new regulations that seek to impose further requirements under that statute we must first assess under that statute what kind of a risk, how big is that risk, and what benefit will it give us and at what cost to society to get to that point?

Mr. BURR. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from North Carolina.

Mr. BURR. I thank the gentleman for yielding to me.

Mr. Chairman, if I understand it, we could go through a cost-benefit analysis and judge something as not worthy of the attention of the Federal agency and in fact there might be something else that is prioritized out there that actually is in the best benefit of the American people.

Mr. CRAPO. That is exactly right. The point is we have limited resources in this society, and we must place them and use them most effectively.

If we are spending the last 80 percent of our money on a very minor increase in the safety to our people when we could use that money for significant safety and environmental and health increases, we need to know that and we need to function in that way.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from California.

Mr. WAXMAN. I thank the gentleman for yielding.

Mr. Chairman, the issue is not whether you are going to look at a cost-benefit analysis or risk assessment or supersede all existing laws.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has again expired.

(On request of Mr. WAXMAN and by unanimous consent, Mr. CRAPO was allowed to proceed for 1 additional minute.)

Mr. WAXMAN. If the gentleman would yield further, I would like to finish my statement on this issue because we do cost-benefit analysis when we develop the strategies to achieve health standards.

But what this bill would do is to supersede the Clean Air Act completely and not even have health standards that would be required to be met.

I think that is offensive because it weakens the exact purpose of the law, which is to protect the public health from pollutions.

Mr. CRAPO. This bill does not eliminate any health standard.

Mr. WAXMAN. The gentleman is incorrect.

Mr. CRAPO. What it says is: If the health benefit standard is not beneficial, then we must find a more cost-beneficial use for the funds.

Mr. BILBRAY. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from California.

Mr. BILBRAY. I thank the gentleman for yielding.

Mr. Chairman, I think I want to point out the gentleman from California is aware of the fact that we are not talking about static standards here. The fact is there are conflicts that have not been addressed when we go to decommission a fuel tank. But the public health exposure of the air pollution created by that regulation is never fully considered under the existing system. In areas where you may have a saltwater aquifer, implementing the Federal law may actually expose the public to more than not doing anything.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has again expired.

(On request of Mr. WALKER and by unanimous consent, Mr. CRAPO was allowed to proceed for 1 additional minute.)

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from Pennsylvania.

□ 1900

I think one of the things that needs to be looked at here is the fact that under the clean air standards one of the tests that many industries have had to meet is an opacity standard even though the smokestack was cleaned up to a point that there was no health risk. EPA went on and suggested that they had to achieve an opacity standard which then says that it has to be completely clean coming out of the stack.

Well, what we are suggesting is that maybe the cost-benefit of achieving the opacity standard, which has nothing to do with health, is too great, and it ought to be looked at as a part of doing the work.

Mr. CRAPO. Mr. Chairman, I thank the gentleman. Let me just make one example, and then I will yield back my time.

I think that maybe we could look at an example. Right now we have a Federal standard, the Delaney clause, that basically has been interpreted to say that we must, in that particular health area, reach a zero tolerance, a zero risk standard. That is what the law says, as the gentlemen over here have said, and we had significant agreement last year in this Congress that we should address that so that we can use our resources more intelligently. This act would allow us to do that.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has expired.

(On request of Mr. BROWN of Ohio and by unanimous consent, Mr. CRAPO was allowed to proceed for 2 additional minutes.)

Mr. BROWN of Ohio. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from Ohio.

Mr. BROWN of Ohio. Mr. Chairman, in the committee report on page 36, Mr. WALKER's Committee on Science talks about the Clean Air Act as superseded, the Resource Conservation Recovery Act, RCRA, superseded. One issue, after another, after another. I say, If you don't like the Clean Air Act, let's debate the Clean Air Act. It passed this Chamber overwhelmingly, passed the Senate overwhelmingly. If we want to dismantle clean air, as apparently people on the other side of the aisle do, let's debate it. Let's not try a back door approach where people don't really quite understand exactly what's happening when you supersede these laws. Let's come out. Let's have hearings. Let's have longer hearings than we had in committees on this legislation where both sides come out, both sides can talk about it. We can hear what the issues are and really decide.

Does the public want us to undo the Clean Air Act? I do not really believe that.

Mr. CRAPO. Reclaiming my time, I think it is very important to point out this act does not eliminate the Clean Air Act, and any impression, indication, of that is wrong.

What this act says is that a cost-benefit analysis must be done and that if a cost-benefit analysis done by the very agency that manages the Clean Air Act shows that what we are doing is costing us much more than the benefits that it is yielding, then we have got to look at that law and find a better way to approach it.

Mr. BILBRAY. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from California.

Mr. BILBRAY. I do not know why everybody is so scared of just bringing some reasonable application to law.

I say to my colleagues, you're not destroying the law by making sure that it's applied reasonably. You're reinforcing it. You're making sure that the intention is finally executed.

The frustration out there is the fact that the reasonable application of the law has been lost, and this brings back a dose of reality, a little reality in the application of these regulations which will fulfill the law, not destroy it.

Mr. BROWN of Ohio. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from Ohio.

Mr. BROWN of Ohio. When the cost-benefit displaces clean air, when the cost-benefit displaces—when those calculations displace public health issues, public health standards, when my area of Ohio has some of the highest breast cancer rates in the country and we do not know why, and we only are going to look for cost-benefit analysis, and yet it is superseded by this law, it simply does not make sense.

Let us get out and debate these issues so we know what we are really doing——

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has expired.

(On request of Mr. WALKER and by unanimous consent, Mr. CRAPO was allowed to proceed for 1 additional minute.)

Mr. WALKER. Mr. Chairman, will the gentleman yield to me?

Mr. CRAPO. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, the gentleman referred to a chart in our committee report. The gentleman, I think, ought to read beyond just the chart because when the word "supersede" is used, it is used when existing legislation does not permit risk assessment cost analysis or peer review.

In other words, they passed this legislation, it passed, and the gentleman just admitted now we do not know. We have a lot of stuff we do not know as a result of, as a result of, a lot of this legislation. He made the statement himself.

What we are saying is that we are now putting in place a mechanism whereby we can have cost-benefit analysis and we can have risk assessment, and they do not wipe out the present law. They simply add on a case-by-case basis an ability to do these kinds of assessments in the future as new regulations come forward.

Mr. BROWN of Ohio. Mr. Chairman, will the gentleman yield for an explanation?

Mr. CRAPO. I yield to the gentleman from Ohio.

Mr. BROWN of Ohio. If I could ask the gentleman from Pennsylvania to explain on page 29 of the bill, notwithstanding any other provision of Federal law, the decision criteria of subsection A shall supplement and, to the extent there is a conflict, supersede——

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has expired.

Mr. WAXMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I worked on the clean air law for 10 years before it was adopted in 1990, and let me tell all my colleagues that this bill that is before us today would supersede the clean air law, and it would supersede it in terms of the health base standards. That is exactly what is intended, and what would happen when it says that this bill will supersede the rulemaking under any other existing law. This legislation would take laws like clean air, clean water, safe drinking water and supersede them, take the guts out of the bill, of the laws, that are in there to protect the public health, and they take away the flexibility on the parts of the States to make them work. They do not add a streamlining or cost-benefit analysis that we never had before. They put in so many roadblocks that the laws just will not work.

Mr. BROWN of California. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from California.

Mr. BROWN of California. Would the gentleman concur with me that the Brown substitute remedies this defect?

Mr. WAXMAN. Absolutely.

Mr. BROWN of California. And that it would allow us then to go ahead and conduct the cost-benefit analysis and the risk assessments that the gentlemen are so happy to see?

Mr. WAXMAN. I do not think anyone disagrees with the idea of doing a cost-benefit analysis, a risk assessment, trying to get the information that will help us make the right decision when we adopt regulations to enforce the laws, but there were some laws that were designed to protect the public health, and to say to protect the public health is really not going to be the objective any longer because this bill is going to supersede it, and we are going to look at whether the standard ought to be subject to some kind of analysis, which would mean it is a weakened standard, and then the strategy to develop that standard is also weakened as well, what we have is a mush. What we have is a rejection of laws that have been on the books since 1970; in the case of the Clean Air Act, signed by President Nixon, with a great deal of pride by Members of the Congress on both sides of the aisle, that we would try to protect the public health from pollutants that injure, and to a great extent millions of people now live in areas where they can breathe safer air because of all this work.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from Idaho.

Mr. CRAPO. I think that the point that we are trying to make is that the only circumstances in which this statute would supersede any other statute is in that case where an agency has made a cost-benefit analysis and a risk assessment and has determined that the increment of increased safety, or increased health or increased environmental protection that is obtained is not justified by the cost.

Mr. WAXMAN. If that were true, if I can reclaim my time, we would not be arguing about it, but that is not the way I read the law because the way I read the law that is being proposed is it will subject existing laws to a whole new analysis to redo them again, and not only that, the elevation of the least cost-effective way to achieve the results would mean that other factors could not be taken into consideration.

Let me give my colleagues an example of what that would mean: Carol Browner, the head of the Environmental Protection Agency, testified before our committee, and she said that, if this were the law, she would have to put an inspection and maintenance program on automobiles all over the country. Why? Because that is a very cost-effective way to reduce pollutants from cars. But it is not the best political way to do it. The better way would be to have new cars to reduce pollutants by being made to pollute less. That means that the auto industry would bear the cost rather than the individual consumers having to spend a lot of money to get their cars inspected, to have the changes in the way the cars work, to achieve those standards for many years thereafter.

Mr. BILBRAY. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from California.

Mr. BILBRAY. Mr. Chairman, does the gentleman realize what he just said?

Mr. WAXMAN. I think so.

Mr. BILBRAY. We are talking public health, and now the gentleman is talking the fact that it is the political answer that he wants to make sure is still on the table.

That is fine, but let me just say we for 20 years—the gentleman has worked on this; I understand that. I administered it. I say to the gentleman, "You got to understand for 20 years we were pushing people towards the use of diesel. We thought that that was a great health standard. The fact is diesel has a toxicity above benzene."

But what we are saying is, "Let's go back and check. Let's look at these things from reality."

Mr. Chairman, I know when they passed these laws they meant them to be health based, but, God forbid, let us not make the health based strategy somehow subservient to some kind of political whim.

What we are saying is that environmental protection is a science, not a religion and not politics, and what we are trying to talk about is, "Let's put science ahead of politics when it comes to environmental protection."

Mr. WAXMAN. I do not disagree with that statement at all, but what this bill says is, "You have to, no matter what, take the least cost-effective way to achieve the result." That sounds fine except when we get into the reality that some States would like to have flexibility.

I asked Governor Wilson from my State when he testified before our committee would he favor a bill that would repeal the clean air standards as ambient standards based on health, and he said, "Absolutely not."

The CHAIRMAN. The time of the gentleman from California [Mr. WAXMAN] has expired.

Mr. PALLONE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support the substitute amendment.

Mr. Chairman, I strongly support the Brown substitute because I do believe it achieves the basic purpose of risk assessment, which is to safeguard public health and the environment without wasting limited resources.

The laws Congress has passed to protect public health and safety are on the books for a reason. United States citizens deserve to know that the food they eat, the air and water in the surrounding environment and the power plants they live alongside are safe, and I believe that H.R. 1022 in its current form will do more harm than good.

First and foremost, I have serious doubts about the bill's approach to regulating different types of risks. While the legislation was conceived with the EPA in mind, it has been expanded to apply to nearly all Federal agencies with health and safety responsibilities. At best this approach may solve problems that do not actually exist; at worst it may undermine effective agency programs already in place.

If I could take a bit from the gentleman from Pennsylvania [Mr. WALKER] in what he was saying before, part of the problem I see with the legislation and why I prefer the substitute is because I believe that the substitute allows more flexibility. There are certain agencies which are included under the rubric of the bill but which are exempted in the substitute, and I believe the reason for that is because many of those agencies that are exempt from the substitute are already carrying out valid risk assessment cost-benefit analysis, and I am fearful that with the bill in its current form it will simply be superseded by a new, more rigorous procedure. I think we need flexibility with these agencies. A lot of them are already carrying out good risk assessment.

If I could give an example with the NRC, the Nuclear Regulatory Commission: The Nuclear Regulatory Commission for years has conducted cost-benefit analyses of all proposals to upgrade nuclear reactor safety under the so-called backfit rule. This standard has been in effect since 1985, and has been upheld by the courts and is familiar to all those who come before the agency. It is not clear to me to what, if any, safety gain would be achieved by making the NRC adapt to H.R. 1022's new cost-benefit approach. The Brown substitute exempts the NRC because the agency already performs risk assessment tailored to its specific needs.

I would argue that the same is true in a different way for the Army Corps of Engineers which the gentleman from Pennsylvania [Mr. WALKER] mentioned. The Army Corps of Engineers conducts very extensive cost-benefit analyses before any water project begins.

Mr. BROWN of California. Mr. Chairman, will the gentleman yield?

Mr. PALLONE. I yield to the gentleman from California.

Mr. BROWN of California. Mr. Chairman, I should point out that the reason we have left the Corps of Engineers out, at least I am informed by the staff, is because they modeled after the H.R. 9, which had left it out, which was part of the contract that we thought, "Well, at least here's part of the contract we can follow," so we left it out also.

Mr. PALLONE. Mr. Chairman, my point is that many agencies are already carrying out good risk assessment, good cost-benefit analysis, and I think that is the type of flexibility we need. There may be some instances where we need to do it, but we do not want to supersede the risk assessment that is valid and is already being done.

Second, I am also worried about the burdens H.R. 1022 in its current form may impose in terms of money and delay, whether they fall on the Government, industry or the public. I fear that this will only intensify regulatory gridlock since it will spawn new layers of bureaucracy to carry its prescriptive procedural requirements. As we all know, more bureaucracy slows the pace of agency action, and, while this may sound attractive to some, delay for its own sake will neither improve Government efficiency nor help the average citizen.

Now, if we look at the Brown substitute, I believe it is preferable because it allows each agency more flexibility in the way it performs risk assessment, and I believe it will result in less cost and less bureaucracy.

□ 1915

My third and final overriding concern is that this bill may undermine safety protections embodied by current law because the bill contains a supermandate which would override existing law. While there certainly may be some problems associated with some of the regulations issued pursuant to such laws, should we really be using a supermandate to revise our major health, safety and environmental laws overnight? I do not think so. I do not think so. The Brown substitute basically eliminates the mandate and declares that nothing in this legislation is intended to modify existing health, safety, or environmental laws. I believe that this legislation in its current form rushed through two committees in a lot of haste. It shows. We can see the haste. I urge my colleagues to reject it and adopt the Brown substitute.

Mr. BURR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, what we have had is a continuation of the rhetoric that we heard already in committee. The reason that there is so strong opposition to this bill is the fact that many of the rules that are on the books today, if they were to go through a cost-benefit analysis, would not pass. They would be judged not in the best benefit of the American people.

It is time that we speak up for what is in the best interests and benefit for not only the health, but for the taxpayers out there. It is this bill that will allow the risk analysis, that risk assessment to be done, and a cost-benefit analysis to be performed on it.

The fact is that we should go back and we should look at things that are already on the books to determine are they in the best interests of the American people. But if we do not pass this legislation, that will not happen.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. BURR. I yield to the gentleman from Idaho.

Mr. CRAPO. Mr. Chairman, I would like to respond to some of the points that were made earlier with regard to whether this statute supersedes all other health codes or requirements and requires us to look at only cost. In the statute itself, under decisional criteria, it talks about the fact that the agencies promulgating rules subject to this statute must certify, and then in subsection 3 on page 29, that they are to be the less cost-effective at achieving a substantially equivalent reduction in risk, or B, to provide less flexibility to state, local, and tribal governments or regulated entities in achieving the otherwise applicable objectives of the regulation.

What it says is flexibility at state and local level as well as cost effectiveness are written into the statute. The point I make is as we address the question of the Federal regulatory burden that faces this country, this statute says let us look at what benefits these regulations are giving us and what the cost of those benefits is.

The point is that every time we take a societal resource and allocate it to one benefit, that means we cannot use it on another benefit. If we find that we can save one or two lives by spending a million dollars here and save 100 lives by spending it over here, this statute says let us find that out and let us put our money where it will do us the best good.

Mr. PALLONE. Mr. Chairman, will the gentleman yield?

Mr. BURR. I yield to the gentleman from New Jersey.

Mr. PALLONE. Mr. Chairman, my concern is, when you talk about flexibility, that the bill in its current form is not more flexible. I understand what the gentleman is saying. You are saying you think there is going to be more flexibility for the States or whatever. But when you establish one set of procedures about how you are going to go about risk assessment, and essentially ask agencies that are already doing risk assessment, such as the NRC, that they have to retool and go through a new procedure, the danger I think is that you have good risk assessment procedures on the books that are being used by some of these agencies that are going to actually be eliminated, and they are going to be asked to retool and come up with a new way of doing the risk assessment or the cost-benefit analysis that may not be as flexible and as good for those things that come under the rubric of their agency. So I see less flexibility, and that is one of my concerns.

Mr. CRAPO. Mr. Chairman, if the gentleman will yield further, the whole point of the purpose behind this statute is, and I am willing to work with everybody in this body, is to find the most effective and best way to conduct risk assessment and cost-benefit analysis. If we need to refine this over the years and make sure it works the best, that is fine. But the problem we face now is that many of the regulators say to us, let us go back to the Delaney clause, the Delaney clause standards make us do this, regardless of what our risk assessment says. Regardless of whether this is cost beneficial, the previous statutory standards make us do this.

When they say they will make us do this, they say we under our own risk analysis or own cost-benefit analysis, we believe there is a better way we can spend our resources. But the regulations and the statutes that we are dealing with have a requirement in them that we cannot ignore because of our own approach to the statute. The point here is that the sole time that this statute would supersede something that has been developed previously by this Congress is when the agency determines that the increase in benefit that it provides to society is not justified by the cost of society. I do not see how you can object to having that kind of common sense put into our law.

Mr. BILBRAY. Mr. Chairman, will the gentleman yield?

Mr. BURR. I yield to the gentleman from California.

Mr. BILBRAY. Mr. Chairman, my colleague from California pointed out the inspection and maintenance of the vehicles as being an issue. But I think if you look at page 29, section 3, you will see right in there is a vehicle to be able to carry this kind of reasonable application.

In California we got into this issue and a major conflict between the State of California and the 30 million people thereof and the U.S. Government over what is the best way to go. What we were able to do is not abandon the cost-effective aspect, but prove that we had a better, more cost-effective, more socially acceptable way to be able to address it.

We run into these conflicts all the time, to where you have unique situations in certain areas, and that part of reality is not allowed to be included; where you will have the Federal Government requiring that we talk about reducing pollution by maybe 3 percent by requiring ride sharing, and then at the same time the same Federal Government is allowing foreign commuters to come in that constitute 14 percent of the pollution. But that is ignored.

Through this process we will be able to have a give-and-take to develop these rules, rather than what we had in California, which was a major conflict.

Ms. RIVERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, throughout the course of today we have heard a lot of criticism of H.R. 1022. Unfortunately, the way that criticism has been met is with the accusation that the only way anyone could possibly oppose this particular piece of legislation is if they support entirely the regulation climate as it stands right now.

This is just not true. Most of the people in this Chamber, Members of this body, want to see a change in the regulatory climate in this country. What we are disagreeing over is how to do it.

I think a good way to explain the differences is to recognize this overregulation for what it is, which is a cancer which has spread across the face of this Nation. When we have a cancer patient, there are lots of ways you can treat this individual. If your only focus is on killing the cancer, probably the most simple, easy way to do that is to kill the patient and the cancer dies with the patient.

If, however, you are hoping to have a healthy, safe, productive patient at the end, you need a skillful surgeon who will come in and cut only that which needs to be cut, to leave the healthy systems intact, to leave the important organs available to do their work. That is the difference between the approaches that are going on here.

Our side of the aisle is not arguing that the status quo should remain. Our side of the aisle is not arguing that we like regulations. It appears that the other side of the aisle has chosen to use the best defense is a good offense as their strategy, and I resent it. I want to see a system put in place that makes sense legislatively, that works practically, and that will allow us to have clean water, clean air, safe food, safe cosmetics, and all of those things that we take for granted.

Frankly, the bill that is being proposed does not meet that criteria. We need to reject it.

Mr. DOGGETT. Mr. Chairman, will the gentlewoman yield?

Ms. RIVERS. I yield to the gentleman from Texas.

Mr. DOGGETT. Really, I think it is confession time. I think that we need to confess on this side of the aisle that an error has been made, that really the distinguished Member from California has committed a grave sin with this substitute. The sin, of course, of moderation. The sin of reasonableness. The sin of balance. The sin of gentlemanliness in trying to fashion good public policy.

There was a time in this House when the idea of balance, when the idea of reason, when the idea of trying to reach some agreement between conflicting interests, when that was of value. But no longer. Because we have had the Gingrich revolution, and revolutionaries do not have time for working out the differences between conflicts in public policy. Revolutionaries do not have time for reason. They have only quick fixes. And that is what we have before us tonight. Not an attempt to get through risk true risk-benefit analysis. Rather, an attempt to put the risk as far as public health and safety, to put all that risk on the backs of the American working families and to take all the benefits and give the benefits to the special vested interests who want the authority to do whatever they please without any oversight from public authorities.

That is the problem with this risk-benefit. Some might say it is balanced, but the only balance is to balance that burden on the backs of families across this country. And I think that is an imbalance.

The problem with this whole risk-benefit assessment is that it is the American people who are being assessed with all the risk of threats to their health and safety under this piece of legislation, and the distinguished gentleman from California [Mr. BROWN] has erred, has sinned, because what he suggested is that we need to reason together and work out reasoned, balanced public policy. But that is out the door now. Now we have to have a revolution.

At least there are some Republicans who speak up against this. In fact, I think the most effective and specific comment on this piece of legislation that we are debating tonight has come not from the Democratic side of the aisle, but has come from the Republican side, in fact on the other side of the Capitol, when the distinguished Senator from Rhode Island, a Republican Member, Senator CHAFEE, has described this very piece of legislation as "a prescription for gridlock." Because what is at stake here is not risk-benefit analysis, but a piece of legislation time.

The CHAIRMAN. The time of the gentlewoman from Michigan [Ms. RIVERS] has expired.

(At the request of Mr. BROWN of California and by unanimous consent, Ms. RIVERS was allowed to proceed for 2 additional minutes.)

Mr. DOGGETT. Mr. Chairman, will the gentlewoman yield?

Ms. RIVERS. I yield to the gentleman from Texas.

Mr. DOGGETT. What is at stake here is not cost-benefit analysis, but a weird kind of system to gum up the whole regulatory process, not to analyze the cost or benefits, but to ensure that no regulation on the public health and safety will ever get out of a regulatory agency unless it has been so watered-down until we have the least of the least of the common denominators and something is put out in the name of protecting the public health and safety, which probably only serves to protect the vested interests that want it in there in the first place.

Let me give you an example of just one provision in this bill which the wise gentleman from California had the bad judgment to try to reason with. And that is the provision concerning conflict of interest. Because perhaps for the first time in the history of this country, instead of trying to prevent conflict of interest, this piece of legislation that we debate tonight does not prevent it; it says we have got to have it.

It says we need conflict of interest. We have got to mandate that when we have peer review of each of these new regulations, that the people who have an economic interest, that have a financial interest, they are not excluded. No, if they have got an ax to grind, the regulatory agency cannot exclude them. They have got to be included.

Think about what that means. It means if we are trying to do something, as another distinguished Member of this body from California has struggled so ably to deal with, the problem of tobacco, that when an issue concerning tobacco is before a regulatory agency it is essential that they have tobacco company scientists, people bought and paid for by the tobacco companies, to be there, to advise on whether it is good science.

This is not putting science ahead of politics. It is putting lobbyists and people who are bought and paid for by vested interests ahead of both. And that is wrong.

The CHAIRMAN. The time of the gentlewoman from Michigan [Ms. RIVERS] has expired.

(At the request of Mr. WAXMAN and by unanimous consent, Ms. RIVERS was allowed to proceed for 5 additional minutes.)

Mr. DOGGETT. Mr. Chairman, will the gentlewoman yield?

Ms. RIVERS. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, when I have always heard the term "peer review" before this bill, I guess as a former judge I have always thought about a jury of one's peers, a jury of one's equals. Well, what kind of scientific equals, what type of scientific peers are included under the bill without the Brown substitute?

Well, it is just about like the jury that we see right now in the O.J. Simpson trial. If we took O.J.'s lawyers and put them on the jury, we would have the kind of peer review that is proposed under this piece of legislation. Because it mandates those who have an economic interest in the matter, that they be the jury. And that is just one of many provisions that is wrong with this bill. It is not about good science, it is about good lobbying, it is about good vested interests, it is about ensuring that we do not protect the public health and safety unless we turn it over to the people that created the problem and the threat and the danger to the people of this country in the first place.

Mr. WAXMAN. Mr. Chairman, will the gentlewoman yield?

Ms. RIVERS. I yield to the gentleman from California.

Mr. WAXMAN. This bill is one of the most poorly drafted, thought through pieces of legislation I have ever seen.

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It is being rushed through this House without due consideration. We had a hearing for a day or two, a markup that went on for 10 hours. We had to do it with 1 day for only one purpose, because it is in the Contract for America.

This bill is going to pass because a lot of Members figure, well, they will vote for it and the Senate will clean it up or the President will veto it.

But it is an irresponsible piece of legislation. It supersedes existing law. If we wanted to supersede laws, the gentleman made reference to tobacco, there is nothing that is a greater risk than tobacco. When we look at the actual causes of death, according to the Centers for Disease Control, tobacco is No. 1. Then you get poor diet or exercise, alcohol, infectious agents, pollutants, and toxics way down there. They should have superseded the laws that prevent agencies doing anything to protect kids from tobacco. Tobacco companies are pushing their products on these kids. People who breathe in secondhand smoke suffer a health risk. But they did not supersede that.

They superseded the laws that are on the books to protect public health like the Clean Air Act, the drinking water law, and the others. I think that the American people ought to know really what is involved here. This is a pretty cynical bill. It is not well thought out and certainly does not do what it is claimed to do.

Mr. DOGGETT. Mr. Chairman, to be entirely fair about it, I cannot exactly say that this bill was rushed through our committee, because as the distinguished chairman indicated, we had a whole 2 hours, a whole 2 hours to consider the substitute. So there was time to reason about risk benefit. In fact, there was so much reasoning that during much of the questioning of the general counsel of our committee to explain this bill, he had to continue to turn around and whisper and talk to the lobbyist that were behind him to provide the answers to answer the members of the committee.

That is the problem with these peer review committees, as we have set them up, because we are going to have those agencies turning around and whispering to whatever special interest is out there that wants to block the protection of the public health and welfare.

The American people may not understand very much about this bill. It is a lot of gobbledygook about risk benefit and science this and that. But there is one thing they can understand. That is that this bill mandates a conflict of interest, and I say it is a pretty sad time in the history of this country, a tragic time, at a time that there are a lot of things going on around this House and around this city about conflict of interest, about ethics problems, and this is part of a broader pattern where we come in under a rushed piece of legislation and we mandate and demand a conflict of interest be included in the way our regulations are set.

I say to the gentleman from California, I appreciate the fact that he is on this matter and he continues to demand that we approach things in moderation instead of giving in to the special interests that think they can write everything up here.

Ms. RIVERS. Mr. Speaker, reclaiming my time to finish my remarks, I said that we are all interested in eradicating the cancer that is found in overregulation. This side of the aisle, however, wants the patient, the American public, to survive healthy, safe, and productive. Under 1022, they will not.

Mr. ROHRABACHER. Mr. Chairman, I move to strike the requisite number of words.

In case my colleagues on the other side of the aisle have not seen, our country is being strangled by overregulation. This is coming not from the actions of people who have just now achieved some sort of influence because of the last election but because of actions that have taken place over the last 20 years when Members on that side of that aisle had all the time in the world to act, and the Members on the other side of the aisle did not act.

People have been thrown out of work. We have seen billions of dollars of resources wasted. We have seen fundamental concepts of freedom that were always part of the American system just totally negated by this rush for regulation that we have seen in the last two decades.

My liberal colleagues have given such power to the bureaucracy to regulate that it has become a major threat not only to the freedom but to the well-being of this country. That is why in the last election, in November, the people turned away from those who had been making the rules before, the people who are making the arguments tonight.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, I thank the gentleman for yielding to me, because he was a part of the process that we went through in the committee that the gentleman from Texas rather cavalierly noted lacked integrity. But I think that the gentleman from Texas ought to probably read the bill before he makes statements that are completely erroneous with regard to any mandate for people with financial interests to be a part of peer review.

The fact is there is no such thing in the legislation. The gentleman knows that and yet misrepresented it.

Let me read the language which is in the bill. Let me suggest that the language in the bill that creates the peer review panel says this:

> Shall provide for the creation of peer review panels consisting of experts and shall be broadly representative and balanced and to the extend relevant and appropriate, may include representatives of state, local, and tribal governments, small businesses, other representatives of industry, universities, agriculture, labor, consumers, conservation organizations and organizations.

That does not sound like a mandate for special interests to me. That is the language that creates the peer review panels. The gentleman from Texas had it absolutely wrong.

Mr. ROHRABACHER. Mr. Chairman, reclaiming my time, what that is is a formula for including the public. What was created by the liberal Democrats when they controlled both Houses of Congress was a regulatory dictatorship. And the reason power has shifted in this House is because the American people have felt oppressed, and they see that their standard of living is declining because there has been no balance to the regulatory process. And their rights have been trampled upon by unelected officials.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. Mr. Chairman, the reason I will not yield is because we were very, very gracious in providing the gentleman the extra time he needed. But at a time when we wanted to ask him questions, he was not gracious, even after we had granted him extra time to open up for questions.

If I might finish my statement, I will move forward.

What we have in the United States today is far from the freedom that we had years ago and the American people understand that by granting the bureaucracy the powers that the liberal

Democrats granted, it has not made us appreciably better off and, in fact, is detracting from our economic well-being

Certainly, some lakes were polluted and they have been corrected. There were problems in the past. But what we went on in this regulatory power grab in the last few decades was a situation where the regulators, who were given power to solve some problems, expanded and expanded and expanded their authority to the point that it, indeed, threatened the freedom and well-being of the country.

We plan to turn that around. That is what this is all about.

When we talk about peer review, as my colleague from Pennsylvania demonstrated, we are talking about opening up the process so that the American people will be able to effect the regulations that are heaped upon them by unelected officials.

Our bill has judicial review, which is also a protection of our citizens. Their substitute has no judicial review. We talk about a new way of doing things, because it is necessary now to change the way this government has been acting in order to ensure the well-being of our people. That is what this bill is all about. That is what this substitute is against.

Ms. HARMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Brown substitute.

Mr. Chairman, I appreciate the poetry of the last speaker. I do, my colleague from California, but now maybe it is time for a little prose.

Over the past 2 years, many of us on this side of the aisle have supported legislation to reform the federal regulatory process. Last month this Member voted for the unfunded mandates bill to help reduce the burden of federal regulations on state and local governments, and last week this member voted to simplify and declare a moratorium on regulatory action. I support the concept of risk assessment and last year I joined with you, I believe, to vote against the rule on elevating EPA to cabinet level status because risk assessment and cost-benefit amendments were not even allowed to be considered.

I also supported the bipartisan Committee on Science risk assessment bill that was proposed by Members ZIMMER and Klein in the last Congress.

But, Mr. Chairman, to me the issue is not whether risk assessment legislation must be enacted. It is what is a responsible way to achieve a risk assessment program?

I have a number of concerns about H.R. 1022. First, I am worried that the bill's judicial review provisions will cause a litigation explosion in federal courts and could turn into the full employment for lawyers act. Any special interest group, including environmentalists and businesses alike, would be able to cause regulatory gridlock by subjecting interim agency processes to judicial scrutiny.

Second, like many Members on both sides of the aisle, I am concerned about H.R. 1022's provisions which would override any conflicting substantive requirement in federal law.

I agree that many existing environmental health and safety laws are broken. However, to fix these problems, we must address these issues head on through a statute by statute examination.

And finally, while H.R. 1022 purports to ease the sting of federal regulations, I am concerned that the legislation will create too much new federal bureaucracy and red tape.

The bill would create a regulatory maze that could end up wasting hard-earned taxpayer dollars.

Mr. Chairman, the Brown substitute is a strong risk assessment and cost-benefit bill without the problems in H.R. 1022.

I urge the House to accept the Brown substitute and, therefore, to adopt a responsible risk assessment cost benefit bill.

Mr. ROBERTS. Mr. Chairman, I move to strike the requisite number of words. I rise in opposition to the substitute.

Mr. Chairman, I think Members should pay attention to page 16 of the bill in which it says the document shall contain a statement that places the nature and magnitude of risk to human health, safety and the environment in context. Such statements shall, to the extent feasible, provide comparisons with estimates of great or lesser and substantially equivalent risks that are familiar to and routinely encountered by the general public as well as other risks.

The reason I bring that up is this. Several speakers have indicated we are rushing to judgment. For 14 years and even years before that, the gentleman from California [Mr. BROWN] and I have served on the sometimes powerful House Committee on Agriculture in an effort to ride this animal called FIFRA out of the chute and finally get some legislation with regard to food safety and finally repeal the clause called the Delaney clause that called for zero risk. Everybody agrees that has to be done.

We have tried and tried and tried to forge a coalition between industry, agriculture, and the environmental groups, all to no avail.

Part of the problem is the climate that we have had in reference to the whole pesticide issue and the whole business of risk assessment. That is what this bill is all about.

The gentleman from California, and his knowledge about this issue is second to none of anybody in the Congress, referred to the alar situation and the fact that it was concerned about children that led to that dispute. It is my recollection that the 60 Minutes story on alar just did not happen.

In fact, it was carefully planned by the Natural Resources Defense Council with the aid of a very savvy public relations firm called Fenton Communications.

In fact, in a memo published by the Wall Street Journal it was indicated as that report was being finalized, Fenton began contacting the media all throughout the country and that agreement was made with 60 Minutes to break the story. And later in that memo Mr. Fenton stated, a modest investment by NRDC repaid itself many fold in tremendous media exposure and submitted his campaign was a model for other such efforts.

What we had was a proven formula for really raising controversy and manipulating the public opinion. And it sure was not sound science. This was a strategy of manipulation that had serious implications for agriculture. In the food safety policy arena, the Congress was left out. The EPA, as a regulator, was left out. The scientific community in its research function was left out. Everybody in agriculture was left out, except the apple producer and they lost $400 million.

□ 1945

What we need is an approach to have risk assessment put in a common language that everybody can understand. Accurate science today lies in the eyes of the beholder, and today we have reached the point where risk assessment, based on so-called accurate science, is a shotgun marriage between science and politics. We have in chemical detection technology today the resources to detect parts per trillion, so we can find a little bit of chemical everywhere we look. Almost everything is contaminated by something else.

Mr. Chairman, let us put this issue into perspective. The cancer risk in regard to aflatoxin, what we find in peanut butter sandwiches we feed our children that is 75 times greater than the dietary risk from minute amounts of the chemical EDB that has already been banned as a grain fumigant.

The reason I brought that up is I can remember in past debates on this issue, when people were worried about the amount of daminozide, which is the same thing, in peanut butter, and what was safe for our kids.

We come to find out that if everybody in this body had to consume the same amount of peanut butter and aflatoxin that the poor lab rat did before he went legs up, everybody here would have to consume 600 pounds of peanut butter a day.

Judging from the debate, I know some people over there that I would like to feed 600 pounds of peanut butter a day to, and it would certainly gum up the debate, or at least maybe shed a little bit of light.

A swimming pool, a child swimming in a swimming pool for an hour may be exposed to chloroform, that is a byproduct of the chlorination we have, at levels that exceed the risk by EDB, which again was a grain fumigant that was banned, I am not for bringing it back, but we chlorinate the pool because the risk of disease and infection from bacteria is much greater than the risk in regard to the chloroform. That is what risk-benefit is all about.

We have a pesticide law, I mentioned it before, FIFRA, and we have the Federal Food and Drug and Cosmetic Act.

The CHAIRMAN. The time of the gentleman from Kansas [Mr. ROBERTS] has expired.

(At the request of Mr. BROWN of California and by unanimous consent, Mr. ROBERTS was allowed to proceed for 2 additional minutes.)

Mr. ROBERTS. Basically what this law says is that these products should only be used when the benefits really exceed the risk. If they do not, if the risks are greater, then the EPA should and does have the authority to ban the use of any kind of product on an emergency basis.

In regard to risk-benefit, and I will sum up, and this is the whole issue, my word, when we talk about gridlock, when we talk about time consumed on this issue, 14 years; more than that, 15 or 20 years? People crawl out of train wrecks faster than we handle the food safety laws around here.

We have a good bill, H.R. 1627. We need to move on it. I think we have good bipartisan support. However, this bill will, at least by peer review, describe risk assessment so the American public knows what the real risk is.

I think common sense would tell us and the American people should understand that in this debate what we are in far greater danger of, harm in regard to these kinds of risks, are from lightning, dog bites, drowning, falling down, too much sunshine, certainly smoking, certainly if we get into the smart juice; or getting in our cars to drive to the grocery store to eliminate the products that some say are unsafe, you are in greater danger of having a car wreck going down to the grocery store in regards to the products. I find it incredible that some in our country would legalize drugs and ban apples.

The whole point is I think if we had a cost-benefit yardstick here, or a description that every American could understand, we could put the food safety debate in proper perspective. We could get to risk assessment that would not endanger the apple industry or anybody else that would be in the barrel in regards to these unmitigated attacks on agriculture, and the risk-benefit or the risk assessment would be based, certainly, on sound public opinion.

Ms. JACKSON-LEE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would simply ask the question as to whether or not we are listening to each other. It is good to engage in eloquent prose and poetry and debate, which it seems we have been doing. I wonder whether or not we are hearing. What we are saying on both sides of the aisle, Democrats and Republicans, is that we believe in risk assessment and cost-benefit analysis.

I rise to support the Brown-Brown substitute to H.R. 1022. Because we are saying the same thing, I would hope that we would be able to listen to what is actually the best way to do what we are all trying to do. I prefer to accomplish that reform in an open and honest way that does not overreach and cause more problems than the existing system.

Banning apples, making drugs legal, none of that reaches the point. The point is if we want cost-benefit analysis and risk assessment to work, we must make it work in an open and fair way so that the States and local jurisdictions can work along with us.

H.R. 1022 envisions a complicated and detailed system of actions, all set out in statute and without a judicial review disclaimer, all reviewable in the courts. The reform process in this bill will add another $250 billion to the Federal cost of regulation.

We are all talking about reinventing government, bringing down the cost of government, and yet this legislation adds $250 billion to that cost. In addition, the provisions of this bill will cost industry millions more in the cost of developing the data that this bill requires.

Finally, which is a point that is very important, State governments will be saddled with these costs as well, since these provisions apply to State permitting decisions made under Federal laws, such as the Clean Water Act permits.

If the State and local agency that tries to modify this process to better suit their jurisdictional needs does this, remember that they can be taken to court by anyone and made to comply with every phrase and sentence in the bill.

Mr. Chairman, I would like to just speak about this for a moment. Coming from local government, making every effort to comply with Federal regulations under State guidance, the idea that we would be susceptible at every turn to judicial review is overwhelming. The costs would be burdensome. It would be unimagineable.

If we are trying to emphasize unfunded mandates, why would we have legislation that would then ultimately impact negatively the State, counties, and cities?

If this is such good regulatory process, why is it so costly and convoluted? The supporters of H.R. 1022 claim that the existing system is convoluted and costs many millions of dollars, and that the cost of H.R. 1022 is justified when the reduction of the burden on the private sector is factored in.

I do not think that washes. I want to reemphasize the impact it would have on States who would try to be creative and comply with the regulations, and then be hauled into court. We all agree that the existing system needs to be changed. Most of us would agree that the existing system is convoluted and inflexible.

Again I emphasize, we are saying the same thing. Let us have effective legislation. Therefore, the Brown-Brown substitute amendment indicates we can do this in a fair manner. It would force major Federal health, safety and environmental regulations, those with an impact of $100 million or more, to comply with a revised system of regulation, providing for independent peer review, cost-benefit analysis, worst-first regulatory priority setting, and a host of other reforms; again, an honest and open process.

These major rules account for 97 percent of the costs imposed on industry by Federal regulations, so these provisions represent a significant reform. Is that not what we are asking for? Is that not what we are talking about, Republicans and Democrats alike? We are talking about positive reform in order to make this country work.

Mr. Chairman, the Brown substitute does not expand judicial review. It does not frighten me, as someone who had been in local government and State government, that at every turn I would be subject to costly litigation.

It does not contain a broad override of existing law, and explicitly states there would be no unfunded mandate imposed on the States in the substitute, for counties and cities as well.

Mr. Chairman, I support sane regulatory reform, and therefore support the Brown substitute, so we can do this in an honest and fair manner, but more importantly, to listen to each other and to provide the kind of legislation that will make this reform work.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the debate over the last number of years has revealed strong differences among some Members about the role of the Federal Government and risk assessment and cost-benefit analysis. The view from outside the Washington Beltway, from Governors, mayors, school boards and small and large businesses, is that there is a serious problem concerning the credibility and impact of Federal regulatory programs.

A number of Members, however, believe that rules which increase annual costs between $25 and $100 million should not be subject to cost-benefit requirements. Many of these same Members advocate that risk and cost-benefit legislation should essentially be unenforceable. In my view, such an approach would shield the Federal bureaucracy from real accountability and effectively neuter the legislation.

I am further reminded of how those who oppose judicial review for the Federal bureaucrats were eagerly prepared to impose penalties under the Toxic Substances Control Act on ordinary homeowners during real estate transactions. Last year I opposed radon legislation which placed requirements on ordinary home sellers and even those who rented out rooms. Republicans argued that such an approach intruded on State law and would swamp the Federal courts with millions of violations during ordinary real estate transactions.

We asked EPA to justify its support when the possible penalties were as high as $10,000 for failing to hand out a hazard information pamphlet. An amendment to remove this provision was offered, but the administration and the Democratic leadership prevailed. Moreover, the League of Conservation Voters scored the amendment as an anti-environmental vote.

I think I can guarantee that such an approach to expand the Federal regulatory octopus to ordinary homeowners will not occur this Congress.

I am struck, however, by the double standard and the passionate defense of the Federal bureaucracy by the same Members who are so willing to impose Federal penalties and litigation on ordinary homeowners. Congress has simply added new regulatory program upon new regulatory program. America is long overdue for real change.

I strongly support H.R. 1022, the Risk Assessment and Cost-Benefit Act. The bill provides a strong, enforceable system of accountability, disclosure, peer review, and careful analysis of regulatory alternatives. This is a critical building block for Federal regulatory programs to ensure that our national resources reduce real risks and set realistic priorities.

Mr. Chairman, I urge my colleagues to support the bill.

Mr. KLINK. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as I listened to the debate, like the gentlewoman from California who spoke a few moments ago, I would like to remind my colleagues on the other side of the aisle, I joined many of them in voting against the rule that would make EPA a Cabinet-level position, because we did not have the opportunity to take a vote on any amendments that had to do with risk-cost assessment. I think risk assessment is a good idea.

However, that said, I think 1022 is a bad bill, and I think the process that brought us to this point is a bad process. Mr. Chairman, I was elected not for 100 days but for 2 years. We have time to do this bill and do it correctly. I think that the Brown substitute takes us one huge step in that direction.

The OMB reports that 97 percent of the total cost of Government regulation occurs as a result of regulations with an economic impact of $100 million or more.

We need to do risk assessment on H.R. 1022, because what are we spending? How many millions of dollars are we spending to go back and get a portion of that remaining 3 percent, and to take that figure from $100 million down to $25 million?

The substitute that is offered by the gentleman from California [Mr. BROWN] and the gentleman from Ohio [Mr. BROWN] sets the limit of major rule at $100 million. I think that is a very important step.

Under H.R. 1022, hundreds of Federal employees would have to be hired to do risk assessment, cost-benefit analysis, and arrange for peer review of regulations that have a financial impact of as little as $500,000 for each State. That is the level that is set in the current H.R. 1022 language, going back to the $25 million figure.

Mr. Chairman, we have to wonder, as we put all of this legislation in, the kind of order that we are passing it. First of all, we come out here after only being in town for 3 weeks and we pass a Balanced Budget Amendment. Then we come in and we want to talk about risk assessment that CBO says could cost the Federal Government a minimum of $250 million per year.

We are in the process of trying to cut down on the size of Federal Government. The reinventing government that has been headed up by Vice President GORE is designed to cut 252,000 Federal workers out of the Government.

□ 2000

Yet we understand, Mr. Chairman, that under this bill we might have to hire as many as 5,000 additional Federal workers to do risk assessment and cost-benefit analysis.

Mr. Chairman, again I have to wonder about the consensus. That as we are passing legislation that says unfunded mandates, how much of an unfunded mandate is this bill going to pass on to the States and to the cities as they are our partners in handling these regulations? I think the Brown and Brown substitute makes a huge step in that direction.

I think that the gentleman from Ohio [Mr. BROWN] also in a Dear Colleague that he put out talking about his substitute made a great point when he said:

> This amendment was drafted based on the very language that was included in the majority Science Committee report. It would expand section 3 to eliminate the 23-step risk assessment process for those situations where prompt action is necessary to avoid death, illness or serious injury.

I think that we have to take a very serious look at this amendment.

Mr. BROWN of Ohio. Mr. Chairman, will the gentleman yield?

Mr. KLINK. I yield to the gentleman from Ohio.

Mr. BROWN of Ohio. I thank the gentleman from Pennsylvania [Mr. KLINK] for yielding.

May I inquire of the other side, because of time constraints on the total time we are allowed to debate, how many more Members are planning to speak on the other side? I would ask the gentleman from Pennsylvania [Mr. WALKER] if someone can let us know how many Members are speaking.

We have several other amendments to offer. I imagine your side has a few. We would like to bring this to a close as quickly as possible if I can inquire how many Members you have. We have 2 or 3 left on this side.

Mr. WALKER. If the gentleman will yield, I have 2 that I know of on my side.

Mr. BROWN of Ohio. Can we make an agreement of no more than 3 on each side so that we can bring this to a vote?

Mr. Chairman, I ask unanimous consent to end all debate at 8:30 on this substitute. We have debated the substitute for 2-plus hours already and in the total of 10 hours to consume, we have about seven or eight more amendments on our side.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

Mr. WALKER. Reserving the right to object, Mr. Chairman, as I understand what the gentleman is proposing here, we would have a half-hour more of debate, that we would go until 8:30 and we would divide the time equally between the two sides?

Mr. BROWN of Ohio. If the gentleman will yield, sure. That is fine.

Mr. WALKER. And that would include any amendment to this amendment, is that correct?

Mr. BROWN of Ohio. We do not plan any. That is correct.

Mr. WALKER. Mr. Chairman, I have no objection to that.

Mr. KLINK. Reclaiming my time, and I will end with this, Mr. Chairman.

Mr. CHAIRMAN. The gentleman will suspend.

Mr. BROWN of Ohio. Mr. Chairman, I ask unanimous consent that the debate be concluded by 8:30 and both sides share equally in the time between now and 8:30.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio.

Mr. WALKER. Mr. Chairman, reserving the right to object, is the time of the gentleman from Pennsylvania [Mr. KLINK] going to be included in this now?

Mr. KLINK. Reclaiming my time, Mr. Chairman, I have about 30 seconds and I will be done.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. KLINK] is recognized.

Mr. KLINK. Mr. Chairman, I will wrap up very quickly. I just want to make the final point on the peer review.

The CHAIRMAN. If the gentleman would suspend, in order to settle this unanimous-consent request, is it the Chair's understanding that the time limit covers any amendments thereto?

Mr. BROWN of Ohio. Mr. Chairman, I withdraw the request until the gentleman from Pennsylvania [Mr. KLINK] has concluded his remarks.

The CHAIRMAN. The gentleman from Pennsylvania has 90 seconds remaining.

Mr. KLINK. Mr. Chairman, I will not take all of it. I just wanted to make one mention. That is, as I said earlier on, the process is what has bothered me. It is the process not only where we have come with drawing up this legislation but the period of time that we are dealing with in moving this legislation forward. It also relates to the peer review panel and it has been talked about. I just want to go to page 31 of the bill and item 3 at the bottom.

It says the peer review panel "shall not exclude peer reviewers with substantial and relevant expertise merely because they represent entities that may have a potential interest in the outcome, provided that interest is fully disclosed to the agency."

So we are not talking about excluding anybody but we are talking about the fact that these people most likely are going to be taking part in the peer review panels, they have helped to draft the legislation, they have helped to draft the Contract for America and I think that that is up to the Members of Congress, not up to special interests and lobbyists.

Mr. BROWN of Ohio. Mr. Chairman, I ask unanimous consent that each side have 3 more speakers for 5 minutes each.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

Mr. WALKER. Mr. Chairman, reserving the right to object, that was not what we agreed to. We agreed to the fact that we would have a half-hour more of time controlled equally on each side, 15 minutes on each side. That is the agreement.

Mr. BROWN of Ohio. Mr. Chairman, if the gentleman will yield, is he proposing, I ask the gentleman from Pennsylvania [Mr. WALKER] that each side control 15 minutes?

Mr. WALKER. That is right.

Mr. BROWN of Ohio. Fine.

Mr. WALKER. And that includes all amendments thereto.

Mr. BROWN of Ohio. Mr. Chairman, I ask unanimous consent that debate be concluded on this amendment and all amendments thereto at 8:35.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN. The gentleman from Ohio [Mr. BROWN] will have 15 minutes, and the gentleman from Pennsylvania [Mr. WALKER] will have 15 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Chairman, I yield 5 minutes to the gentleman from Georgia [Mr. NORWOOD].

Mr. NORWOOD. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I rise to answer some very interesting statements that were made earlier by the gentleman from Texas on the other side of the aisle. When I hear him talk about the sin of reasonableness, the sin of balance, the sin of moderation, I have to ask, where has reasonableness, balance and moderation been over the last 14 years when that side of the aisle controlled this Congress?

We are here today basically to discuss not just cost analysis. When we hear the other side speak, we really hear only of cost analysis. We are here to allow and ask Federal agencies to do a cost-benefit analysis. We, too, want them to look at the benefit for the American people in terms of safety and health.

The problem is, you take situations that have occurred over and over in this country like the example where the EPA forced Columbia, Mississippi to clean an 81-acre piece of land that was contaminated with small amounts of hazardous chemicals. Who can be against that if a risk assessment is done? We all want those chemicals cleaned up if need be.

But what does the EPA do? They order the removal of 12,500 tons of dirt. Why could they not simply have just covered over that hazardous chemical with other dirt? Because the EPA based its cleanup standard on a theoretical child by eating half a teaspoon of dirt per month for 7 years?

The standard is based on a child eating more than half a gallon of dirt, so we spend $20 million to remove that dirt rather than covering it over for the cost of $1 million?

That is what is driving the American people crazy out there. They know we owe $5 trillion. They know we are borrowing a half a trillion dollars every 2 years. Yet we continue to allow a Federal agency to pass down rules and regulations that have absolutely no conflict of interest.

I notice that the gentleman from Texas talks about conflict of interest. He cannot believe that people with an economic interest could actually be invited to the table to discuss the problem.

I find that unbelievable that people who have been done to over the years with rules and regulations that are not necessarily reasonable cannot be invited to the table of the Federal agencies that are not elected to office to discuss the right and wrong of every regulation.

I know that the American people must not understand this bill, because I have been told that. But I am absolutely certain that the American people understand what has been done to them over the last 5 and 10 years in terms of excessive rules and regulations where so many are not necessary, where every time they lose another freedom.

I ask you all to please support our bill and vote against this amendment.

Mr. GANSKE. Mr. Chairman, will the gentleman yield?

Mr. NORWOOD. I yield to the gentleman from Iowa.

Mr. GANSKE. I really think that we ought to talk about the substantial differences between the Brown-Brown substitute and the bill. Really the substitute is full of language such as reasonable, and reasonable, and reasonable. But the real difference is in whether there is judicial review. It is as simple as that. Do you want to have the Federal agencies judicially reviewed, or do you not?

The Federal agencies I think for a long time have reviewed the actions of private citizens and would require them to submit to their regulations. I personally think it is time for the Federal agencies to have to justify, create a paper trail and to be under this realm of judicial review.

If we look at the Brown substitute, in section 15 under judicial review, "Nothing in this Act creates any right to judicial or administrative review."

A distinct difference between the substitute and the bill itself which in section 401 says, "The court with jurisdiction to review final agency action under the statute granting the agency authority to act shall have jurisdiction to review, at the same time, the agency's compliance with the requirements of this Act."

It is a distinct difference and that is what we have been talking about. We all agree, for instance, that cost-benefit analysis and risk assessment are important things. It is simply a matter of whether you want to go further and require the agencies to be under judicial review among other things. I do. I think that that is a good provision.

Mr. BROWN of Ohio. Mr. Chairman, I yield 6 minutes to the gentleman from Missouri [Mr. VOLKMER].

Mr. VOLKMER. Here we go again, Mr. Chairman. We have got a new little wrinkle here this evening, today and tomorrow. Something that has not happened before again. I will have to admit that the majority have come up with a way to get around some rules.

As has been mentioned before in debate here, this bill will cost by CBO a minimum of $250 million. We have in our budget act under present law a provision called pay-as-you-go, or pay-go.

And you are supposed to pay for that. But I do not see any paying for that. And how do you get around it? It was a pretty cute move.

You now have before you a bill that has never been reported by a committee. You have before you a bill that was introduced and brought out of thin air, put in the Committee on Rules and sent to the floor in order to get around pay-go. That is all it is.

I have heard the gentleman from Pennsylvania many times, his time here, as long as I have been here yell and holler about waiving the budget. He did not waive the budget. He just circumvented the budget act, snuck around it. That is all he did.

Where are we going? We are going to spend $250 million to do this? To bring this about? Where does the money come from? It is not in here. Not in here at all.

It appears to me by looking at this bill that is before us and the substitute, I find some things that—is the gentleman from California not on the floor?

We had a big time passing legislation, and I had hoped that the gentleman from Kansas who is the chairman of the committee would have yielded to me because I wanted to talk to him a little bit about it, but he did not.

If the gentleman from California could come up here for a few minutes, I want to do a little colloquy if I could. While we were passing legislation, we worked through the Committee on Agriculture, the House and the Senate, spent well over a year working on reorganization, restructuring the USDA. We put a provision in there for a cost-benefit analysis for all regulations in the future by USDA. Is that not correct, I ask the gentleman from California [Mr. BROWN]?

Mr. BROWN of California. If the gentleman will yield, that is correct.

Mr. VOLKMER. And the substitute that you now have before us basically follows the language that we incorporated, this House unanimously passed, both Republicans and Democrats just last year? Is that correct?

□ 2015

Mr. BROWN of California. That is correct.

Mr. VOLKMER. Now, what has gotten so bad with it all of a sudden? All of a sudden that substitute is not any good anymore. People who overwhelmingly voted for it now condemn it, say it is terrible, say it does not do anything. Yet last year they were praising it. They were saying what a great thing it was.

Mr. BROWN of California. If the gentleman will yield further, this bill is somewhat more comprehensive than the one we passed last year, but the language, as the gentleman points out, is identical on subjects like comparative risk assessment, for example.

Mr. VOLKMER. I admit this bill goes further and your substitute goes further. But basically it is.

Mr. BROWN of California. Yes.

PARLIAMENTARY INQUIRY

Mr. VOLKMER. Mr. Chairman, now, the other thing that I find in the principal legislation that is ironical to make is that just recently we are moving things here so fast I cannot remember, we did a moratorium on regulations, if I remember right, that passed.

I would like to perhaps make a parliamentary inquiry to the Chair. Maybe the Chair can enlighten me a little bit. I think I know the answer to the question I am going to propose, and maybe the Chair can, if it is not a parliamentary inquiry, can say so, and then I will give the answer, and if they disagree with it, they can disagree with it.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. VOLKMER. We passed a moratorium-on-regulations bill. Let us assume that that bill is passed by the Senate day after tomorrow and goes into conference, and in the meantime the Senate takes this bill, which is going to pass this House by tomorrow, they take this bill up and pass it and send it directly the way it is to the President, the President signs it. It becomes law. The moratorium bill 2 weeks from now comes out of conference, passes the House and Senate, goes to the President, becomes law.

Is it not true that the moratorium legislation on all regulations would affect the proposed regulations under this bill?

The CHAIRMAN. The Chair cannot interpret what the enactment of that legislation would do.

Mr. VOLKMER. I did not think the Chair would know the answer. I agree.

Just one quick move to prove, to show, the point that if that happens, you cannot do what is proposed to be done in this bill in the 15 or 18 months, folks. It cannot be done, because you have a moratorium on all regulations including these regulations that are to implement the pay-as-you-go.

Mr. WALKER. Mr. Chairman, I yield 5 minutes to the gentleman from Maine [Mr. LONGLEY].

Mr. LONGLEY. Mr. Chairman, judicial review, what a radical idea that the regulatory bureaucracy should be accountable. My district was one of the first districts in the country to adopt, to implement, the enhanced air emissions testing under the Clean Air Act, and did so with a good spirit and the intention of hopefully being able to clean the air.

It did not take the people of my district more than 6 weeks to figure out the program was flawed and, frankly, was not based on science, and as we dug into it, we found out that not only had the EPA forced, threatened, sanctions on the State's economy, the adoption of this system, but that agency itself had not even complied with the Federal law requiring scientific studies that were supposed to be done.

So we had seven counties and 600,000 men and women who again attempted to comply with this and took all of 6 weeks to decide that the program should be canned. It was not only suspended, but we had a petition campaign in my State that will probably lead to its ultimate repeal.

But what about the actions that have been taken by the State? As we speak this evening, the Maine senate and the legislature in Augusta is debating what to do about a $15 million contract that was entered into in good faith with a testing service that was the mandatory choice under the EPA's plan, and at the same time that we are doing this, in the last 4 months, in fact, barely 2 weeks ago, the EPA on its own volition came in and said, "Surprise, surprise, we don't really need to test in four of the seven counties, that, in fact, they are now in attainment whereas, before, they were in nonattainment."

If you go back into the RECORD, you are going to discover the EPA cannot as of this date even verify where the pollution was coming from that they were requiring the people in my State to test for. In fact, there were two different versions offered by different officials within the bureaucracy. One official testified that if we took every car in the State and drove it into Casco Bay that the State of Maine could still be in noncompliance with the Clean Air Act. Another official said that the estimate of pollution coming from out of State and anywhere between 30 percent and 70 percent, and again, coming back to the fundamental requirement of the law, the EPA did not conduct the scientific studies it was required to conduct so there was any scientific basis whatsoever for the actions that were forced onto my State.

And as if that were not enough, many of the towns and cities in my State, in my district, are evaluating compliance with the sewer overflow requirement under the Clean Water Act, and I met with officials of the city of Augusta barely 10 days ago who are now staring in the face of a $30 million expenditure based on the scientific determination, or regulatory determination, by the EPA that water overflow as a result of a once-a-year rain event or the spring melt were creating bacteria counts that were excessively high, and so based on the fact that the Kennebec River is not swimmable during a heavy downpour or during spring melt, the citizens of the city of Augusta are going to be faced with the expenditure of $30 million. I do not know anyone in this city, but I know that the citizens of Augusta are smart enough to know they do not need to swim in the Kennebec River during a downpour, let alone during spring melt, at least in Maine.

Not only that, other towns and cities, the town of Bridgton water district is now going from testing routinely for 10 to 20 contaminants that, in their professional opinion, were scientifically appropriate to testing for over 280 different contaminants, most of which have no known presence in my State.

I think the provisions of our legislation providing judicial review, providing for a scientific assessment of the need and making sure that the costs are appropriate to the benefits that we can obtain are entirely consistent with what the citizens in my district expect us to do as their representatives.

Mr. BROWN of Ohio. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. MINETA].

Mr. MINETA. Mr. Chairman, H.R. 1022 mandates a uniform set of regulatory procedures for Federal agencies without flexibility.

Now, while the model used to develop the risk-assessment principles and guidelines included in the bill may fit some cancer risks, it is entirely inappropriate for regulating highway safety, and yet the Department of Transportation is required to follow the same rigid and appropriate procedure to evaluate risks as at EPA, and that simply does not make sense to me.

What I see is that the bill is sacrificing the Federal Government's ability to protect human health and safety or the environment for the sake of maintaining regulatory uniformity. It will produce bad regulations and will create an inflexible process that produces nothing but extra paperwork.

Mr. Chairman, I rise in support of the Brown squared substitute to H.R. 1022. The Brown substitute proposes a reasoned regulatory reform that expands the use of risk assessment and cost-benefit analysis to all major rules with an impact of $100 million or larger.

Now, those rules account for 97 percent of the compliance costs for Federal regulations. So nearly all of the Federal regulatory problem is brought under these reforms.

In addition, the Brown substitute does not expand the right of judicial review, preventing long litigious process to further delay regulatory reform. The substitute establishes a worst-first regulatory priority system so that the highest risks are the focus of regulatory action, not minor risks.

The Brown substitute was worked out between the Commerce and Science Committees and represents a rational approach to reform.

H.R. 1022, on the other hand, moves us in directions we should not be going if our goal is true regulatory reform. The scope of this bill is unknown. It sweeps in so many statutes and programs that even the sponsors of this bill cannot detail all of the current Federal statutes that will be affected or superseded. It allows expanded judicial review of the provisions of this bill and permits anyone with the money to hire a lawyer to take the Federal Government to court for noncompliance with the detailed processes described in the underlying bill.

Worst of all, H.R. 1022 actually adds hundreds of millions of dollars in costs to Federal regulatory efforts. The Federal Government pays more, State governments issuing permits under Federal laws will pay more, and industry will pay more as they have to develop more data to feed the reformed system described in H.R. 1022.

The Brown substitute does not add these costs and specifically states that there will be no unfunded mandate contained in this bill.

And it is my hope that my colleagues will join me in supporting the Brown squared substitute and the real regulatory reform that it proposes.

Mr. WALKER. Mr. Chairman, I yield 1 minute to the gentleman from Florida [Mr. MICA].

Mr. MICA. Mr. Chairman and my colleagues, I have been slightly involved in this issue during the past year, and again we hear the whines and complaints from the other side.

We had an opportunity last year. We begged, we pleaded, we requested politely to bring this issue before the Congress, and at every juncture our pleas were not heard, and here tonight we have an opportunity to make some of these changes.

They did not hear us on the other side, but the Amercian people heard us, and they said they are tired of being tied up in regulations that make no sense, that put our people out of jobs, that do not address the risks to life, health, safety, and welfare of our people. We want to protect the environment, and we can do a better job protecting the environment, and the money we spend can be spent wisely if we adopt this bill.

I urge you, let us try something new around here. Try something new. Take a minute and read the bill. The bill is a good, well-thought-out measure, and it will protect us. It will do a better job in protecting the environment, and I urge the defeat of the Brown substitute.

We had a chance for that last year, and no one spoke to that. No one gave us that opportunity.

Mr. BROWN of Ohio. Mr. Chairman, I yield 3 minutes to the gentleman from Hawaii [Mr. ABERCROMBIE].

Mr. ABERCROMBIE. Mr. Chairman, while we were discussing these issues in here this evening, it was interesting to observe some of the newscasts tonight. Airline regulation on icing, 68 people dead, going over what needs to be done. People on television saying, "Oh, if we only had the regulations, and after the experiments are over, we will do the regulations."

Pesticides for home use, causing cancer in children. We need to have the regulations. It is on the news right now. It is not abstract, the way we are speaking here this evening. It is not anecdotal. These are things happening in our Nation.

Carpal tunnel syndrome, back injuries, ergonomics, the science of physical mechanics: How are we going to prevent increased workers' compensation, increased costs to business, hurting our people, our health care? These are the kinds of things that will be addressed if we taken up the Brown—Brown substitute.

This is what was happening realistically in our world tonight, not the overblown hyperbole that some of which was on the floor tonight.

I want to say I respect the admonitions of my old friend, the gentleman from Pennsylvania [Mr. WALKER], earlier today about speaking about the little guy, and my new friend, the gentleman from Georgia [Mr. NORWOOD], who said he came here to fight and issued some of the anecdotal examples.

□ 2030

I can have those as well in Hawaii. We have an absolute intolerance in Hawaii for contamination of our water supply. We cannot afford it. Where I live any contamination of the water supply has immediate disastrous consequences for us. So, these are issues that have to be addressed at the very time when we are supposedly diminishing regulations.

I believe that H.R. 1022 will hurt the little guy, will not address some of the issues that have been presented by some of our good friends on the other side. Now is the time to move toward the kind of regulatory reform as embodied in the Brown substitute and address the real world, the real world of icing on airplanes, pesticides for home use, carpal tunnel syndrome in the work force that exists today, and the kind of regulations for health and safety we have to provide for them.

Mr. BROWN of Ohio. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BROWN].

Mr. BROWN of California. Mr. Chairman, one final point:

I try not to be too sensitive, but my good friend, the gentleman from Pennsylvania [Mr. WALKER]. read some language earlier in the day having to do with comparative risk analysis which I will quote in which he said:

> * * * where appropriate and meaningful, comparisons of those risks with other similar risks regulated by the Federal agency resulting from comparable activities and exposure pathways. Such comparisons should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks and the preventability or nonpreventability of risks.

As I recall, he kind of ridiculed that language, and I would not mention it except that is the same identical language contained in his bill, and it is the language essentially that was passed by the House last year, and I would hope that he would not use his superior debating skills, which we all acknowledge, to take advantage of a poor old guy like me.

Now, having said that, Mr. Chairman, it seems to me that our amendment is much more consistent than H.R. 1022 with some themes heard with some frequency around here, cutting redtape, et cetera.

Over the last hour or so, we have tried to explain some of the problems that many of us on this side of the aisle have with H.R. 1022. As we have said before, there is a bipartisan consensus that regulatory reform is needed and that risk assessment and cost-benefit analysis are two critical tools that can lead to more reasonable regulations.

Unfortunately, we were not given the time to try to perfect H.R. 1022. Members on both committees had little opportunity to review the bill before markup. The bill itself is a moving target, changing at every new iteration, making it even more difficult for Members to understand what is in it.

But it is clear that H.R. 1022 is fundamentally flawed. If this amendment is defeated, we will be offering other amendments to try to correct some of the more egregious problems in H.R. 1022. No one should be misled into believing, however, that those amendments, if adopted, would cure the faults of H.R. 1022. For that reason, we are offering this substitute to attempt to illustrate what a rational regulatory reform bill could look like.

Make no mistake: This amendment does represent real regulatory reform. It incorporates the best of ideas from a number of bills, including H.R. 650, introduced earlier this year by Mr. ZIMMER. Like H.R. 1022, the amendment would require agencies issuing major rules to conduct risk assessments and cost-benefit analyses. Unlike H.R. 1022, we define major rules as those rules that are likely to result in $100 million or more in annual effects on the U.S. economy—the same threshold chosen by President Reagan over 10 years ago. According to OMB, that threshold captures 97 percent of the economic impact of all Federal rules.

Like H.R. 1022, the amendment also directs each of the major regulatory agencies to: Set regulatory priorities based on the seriousness of the risk and availability of resources, consistent with law; publish peer-reviewed guidelines for conducting scientifically sound risk assessments throughout the agency and ensure regional compliance with those guidelines; provide for independent peer review of the scientific information in risk assessments used in major rules; and describe fully and accurately the range of risks, with disclosure of important assumptions and limitations.

But more important is what this amendment does not do.

It does not override existing health, environment, and safety laws. Congress passed those laws after due consideration and debate. If any changes are to be made, Congress should make them directly to those laws, not through a back-door procedural gimmick.

Unlike H.R. 1022, the amendment does not expand judicial review, leading to endless and wasteful litigation. Courts will be able to review risk assessments and cost-benefit analysis relied on by the agencies in their rules.

Unlike H.R. 1022, the amendment is focused on the rules that truly impact the economy, and will not cost the taxpayers hundreds of millions of dollars every year to do studies on hundreds of regulations that have little impact. We won't need an army of new bureaucrats to carry out the requirements of this amendment.

Unlike H.R. 1022, the amendment does not purport to tell scientists how to do science. Phrases like "central estimates" and "most plausible and unbiased assumptions" may sound logical, but I can assure you that they have no agreed-upon scientific meaning. After an exhaustive review of EPA risk assessment practices, a congressionally mandated study released last year by the National Research Council of the National Academy of Sciences concluded that EPA's use of conservative default assumptions was sound. At the same time, the NAS encouraged EPA to disclose a range of risks and the limitations and assumptions used. That is precisely what this amendment does. It does not tell scientists how to do risk assessments, but rather requires them to disclose more openly and completely what they have done so that decisionmakers and the public can more easily understand the limits of risk assessments. It is also consistent with the recommendations of the National Commission on Risk Assessment, the congressionally appointed panel preparing recommendations on risk assessment practices.

The amendment would achieve real regulatory reform, but without the costly regulatory morass that would be created by H.R. 1022, and without overriding existing health, environment, and safety laws.

It seems to me that this amendment is much more consistent than H.R. 1022 with some themes heard with some frequency around here these days: cutting redtape, ending unfunded Federal mandates, reducing burdens on industry, cutting the size of the bureaucracy, improving the scientific basis of regulation, and limiting unnecessary litigation.

I urge my colleagues to join me and my distinguished colleague from Ohio, the other Mr. BROWN, in supporting this amendment.

I yield back the balance of my time.

The CHAIRMAN. The gentleman from Pennsylvania is recognized to close debate with 4 minutes remaining.

Mr. WALKER. Mr. Chairman, I thank the gentleman from California [Mr. BROWN] for pointing out the language in our bill, but he left out the most important point which is the point I was making, and that is that under our bill we say, "You have to use the risk assessment based upon those things which are familiar to and routinely encountered by the general public." That is what he left out, and that is the point. It is that one gets bureaucratic gobbledegook instead of things which are routinely available to the public and which they understand.

Now I was interested a little while ago when the gentleman from Missouri lectured us on the business of the budget. The fact is that the gentleman would check a little bit further on the rules, what he would find out is that there are no Budget Act requirements for discretionary spending. PAYGO does not apply to discretionary spending. We are talking about discretionary spending here. We solve this problem by having less regulations.

I say, "You wouldn't have $250 million of expenditures if you simply did less regulation; problem solved."

Now the thing is, the problem for the other side, that they are absolutely right with regard to the brown amendment. The Brown amendment would incur absolutely no additional costs. As a matter of fact, my guess is that the CBO would not even bother to score the Brown amendment because all of the agencies are going to be able to go on doing exactly what they are doing now under the Brown amendment.

For example, the hundred million dollar rule means that EPA, which in 1993 issued about 170 regulations, only about 1 or 2 percent of those would be covered under the Brown amendment. In other words, practically nothing would be done under the Brown amendment. We would end up with the situation just as it is now.

What does that mean? Well, we have heard about $250 million in costs. Two hundred fifty million dollars in costs has to be compared to $490 billion in costs that are being incurred by the economy as a result of regulation, $490 billion being imposed upon middle-class Americans by what the Government does. That is 2,000 times more than what they are talking about in terms of costs of this amendment.

Now, my colleagues, it seems to be that what the American people are worried about is 2,000 times more being done to them than what we do here. They are worried about $490 billion worth of costs that are destroying our ability to compete in the world. We look at global competition, and those regulations are undermining and destroying our ability to compete.

What does the Brown amendment say to $490 billion worth of regulatory costs?

"Keep it, just keep it. Don't do anything. Stop. Status quo. Do what we have done for 40 years, do nothing."

Defeat the Brown amendment and make certain that as we go toward regulatory reform we do it for real.

Mr. FAZIO of California. Mr. Chairman, I rise in support of the Brown-Brown substitute. The substitute perfects the bill by recognizing the need to incorporate the concepts of risk assessment and cost-benefit analysis into the regulatory rulemaking process.

Regulations must be made in a commonsense manner that recognizes our limited financial resources. Put another way, we cannot implement regulations as if we have an unlimited pot of money to deal with these problems. We have to recognize our fiscal limitations and prioritize the hazards facing us.

The measure requires agencies to set priorities based on the seriousness of the risk and the viability of resources. Using a "worst first" approach, the substitute directs each agency to establish regulatory priorities based on the seriousness of the risks to human health, safety, and the environment.

The substitute requires assessments and cost-benefit analysis for all major rules. It requires agencies to compare risks to other comparable risks. It also specifically calls on agencies to state that benefits are likely to justify the costs and that the remedies chosen are cost-effective.

Peer review is essential to the public's faith in agency action. The substitute requires agencies to publish peer-reviewed guidelines for conducting risk assessments and sets forth a mechanism to ensure that the guidelines are enforced uniformly in each region.

Section 7 of the substitute requires each agency to establish a systematic program for independent peer review of risk assessment and economic impact projections of each agency. The agencies are required to respond to this independent peer review. To maintain the integrity of the peer review process, peer reviewers with direct conflicts of interest are excluded.

Finally, the substitute ensures that the right to judicial review is not expanded. It provides much needed certainty by reiterating existing law and emphasizing that it does not give new right to judicial review.

Mr. Chairman, I am proud to support this measure that represents true reform to the regulatory process.

Mr. VENTO. Mr. Chairman, I rise in support of the substitute offered by the gentlemen from California and Ohio.

The substitute amendment before the House is a rational well reasoned response to the need to better judge the efficiency of Federal Rules and Regulations. Frankly, the basic bill H.R. 1022 is a poorly conceived measure which would paralyze the Federal Government's ability to implement a host of environmental, health, safety and energy laws.

Rules and regulations are the wheels that laws are put into effect and H.R. 1022 as presented proposes to slash the tires and immobilize the laws as vehicles to implement the basic policy objectives inherent in the measure passed by the Congress and signed into laws by numerous Presidents.

The measure H.R. 1022 actually increases the complexity of the regulatory process by adding risk assessment and cost benefit analysis. These concepts and models are not some off the shelf material that can be applied in a cook book fashion to the problem at hand a proposed regulatory framework for action to implement a law.

Rather cost benefit and risk assessment exist in vague conceptual terms which will lend themselves to wide interpretation. The measure H.R. 1022 then subjects the entire regulatory process including these controversial new charges to judicial review. This is a formula for expense, controversy and gridlock.

I find it difficult to interpret this as a good faith attempt to deal effectively with red tape and the problems presented by the regulatory process. Rather this basic proposal seems designed to undercut the laws it embraces and to frustrate the implementation of sound policy. Certainly federal regulations and law are in numerous instances in need of change and sometimes counter productive, but this effort to circumvent the application and effectiveness of law is very troublesome.

The Brown-Brown substitute eliminates most of the defects of the basic bill, raising the threshold, making clear that this law is regulatory reform not a wholesale assault of environment, safety health and energy law. Furthermore the substitute eliminates the conflicts of interest on the peer review section by excluding special interests from drafting the studies and the rules themselves.

The substitute builds upon regulatory reform supported by and instituted by the past three administrations and enacted in the Department of Agriculture Reorganization Act of 1994. Judicial review is limited to the basic provisions of the Administrative Procedure Act making certain and predictable the flow of regulations rather than a rush for the court house when an interested party wants to delay a regulatory decision.

Many features of the substitute respond to the need for regulatory reform by setting rule making priorities, including risk assessment and cost benefit, but the substitute recognizes the difference between agencies and permits rules and analysis unique to such process. Most importantly the substitute permits the scientists to do science rather than super-imposing a political frame work and models upon the work that they are required to do by the law as is advanced in the basic measure H.R. 1022.

The basic measure H.R. 1022 is estimated to cost over 250 million dollars and frankly it would be taxpayer money poorly expended because it will be purchasing more red tape, more controversy and delay with regards to the implementation of law.

The basic measure seems a thinly veiled attempt to undercut a myriad of federal law that the proponents lack the overt support to achieve directly, but rather have chosen to put up a straw man argument of regulatory red tape and expense behind which they will achieve the gutting of basic environmental, safety, health, and energy policy which are in the public interest.

The Brown and Brown substitute answers the call for regulatory reform while preserving, not undercutting the basic laws; the existing problems that we face today are complex—certainly the environment, health, safety and energy laws must reflect that, we as a Congress must not sacrifice sound policy to the politically motivated that would undercut basic law. I urge my colleagues to support the substitute and oppose the basic bill, H.R. 1022.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from California [Mr. BROWN].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BROWN of Ohio. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 174, noes 246, not voting 14, as follows:

[Roll No. 176]

AYES—174

Abercrombie
Ackerman
Andrews
Baldacci
Barcia
Barrett (WI)
Beilenson
Bentsen
Berman
Bevill
Bishop
Boehlert
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
Danner
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gilchrest
Gilman
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
Meehan
Meek
Menendez
Miller (CA)
Mineta
Minge
Mink
Moakley
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Pomeroy
Porter
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roukema
Roybal-Allard
Sabo
Sanders
Sanford
Sawyer
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Thompson
Thornton
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Wise
Woolsey
Wyden
Wynn
Yates
Zimmer

NOES—246

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Ganske
Gekas
Geren
Gillmor
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht

Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Peterson (MN)
Petri
Pickett
Pombo
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Royce
Salmon
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thurman
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Williams
Wolf
Young (AK)
Young (FL)
Zeliff

NOT VOTING—14

Becerra
Dicks
Flake
Gallegly
Gibbons
Gonzalez
Hunter
Lipinski
McKinney
Mfume
Rahall
Rangel
Rush
Wilson

□ 2053

Mr. HALL of Texas changed his vote from "aye" to "no."

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments?

AMENDMENT OFFERED BY MR. CRAPO

Mr. CRAPO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CRAPO: page 5, after line 18, insert:

(5) EMERGENCY.—As used in this Act, the term "emergency" means a situation that is immediately impending and extraordinary in nature, demanding attention due to a condition, circumstance, or practice reasonably expected to cause death, serious illness, or severe injury to humans, or substantial endangerment to private property or the environment if no action is taken.

Mr. CRAPO. Mr. Chairman, we have just had a significant debate about the importance of cost-benefit analysis. But there is one concern with this legislation that I think needs to be addressed. The legislation provides that the requirements of this act do not apply if the director of any agency subject to the act or the head of any such agency declares an emergency to exist.

□ 2100

The problem is that there is no definition in the act of what constitutes an emergency. Those of us who have had experience, whether it be in the legislative arena or in a regulatory arena, with a declaration of an emergency, know that it is very easy to declare an emergency. This leaves a loophole in the act that is probably big enough to drive a truck through.

The purpose of this amendment, which is very short and straightforward, is to provide a very carefully crafted, tight definition of what an emergency is. It requires the head of an agency to determine that there is some situation that is immediately impending, extraordinary in nature, and that it demands attention due to a condition, circumstance, or practice reasonably expected to cause death, serious illness, or severe injury to humans, or substantial endangerment to private property or the environment if no action is taken.

The purpose of this is to make it clear that agencies are not entitled under this legislation and under the emergency provisions of this legislation to simply declare an emergency without good, substantial justification.

In the committee report, on page 28, it says that "The mere existence of the usual kind and level of risk which any statute subject to this title is designed to regulate does not constitute an emergency."

Again, the purpose of this is to make it so that the requirements of this act in all cases except a true emergency, where there is an immediately impending danger, extraordinary in nature, demanding immediate attention, under the circumstances designated in this amendment. In only those circumstances can the head of an agency declare an emergency and avoid the application of this statute.

Mr. Chairman, I think it is very important that we impose this kind of control over the statute, and require that the agencies not use this provision as a loophole.

Mr. BARTON of Texas. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I have worked on this bill in both the Committee on Science and in the Committee on Commerce. The gentleman from Idaho, Mr. CRAPO, is absolutely correct, there is no definition of emergency.

I think the gentleman's definition is well within the spirit and the intent of the legislation. It is well crafted, it is tightly drawn, it is very concise. Any member who plans to support the legislation would certainly not go against any other option if they vote for this amendment. I would hope that we will adopt it.

In the interests of time, I would hope we would adopt it by a voice vote.

Mr. BROWN of Ohio. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I oppose this amendment because it narrows the definition of "emergency." During the hearings that we had, as brief as they may have been, as uncomplete as they were, we heard witness after witness come in front of the committee concerned about the lack of flexibility given to the agencies to be able to deal with an emergency. This narrows the language even more by constructing a very narrow definition of "emergency."

Let me give two or three examples. When the Centers for Disease Control receive information about severe outbreaks of illness related to chryptosporidia, it can act to ensure that the outbreak of the illness is limited.

Prompt action is essential; not more lawyers, not more bureaucracy, not more government, not more Rube Goldberg ways to stop these agencies from acting quickly in an emergency basis, in imminent endangerment of the public.

When contaminated blood, another example, can be removed from hospitals and blood banks before it is used, before it infects some unsuspecting victim with HIV, the public health is protected, people's safety is protected.

Mr. Chairman, let me give another example. When a local nuclear reactor is not running quite right, should the NRC have to wait for a meltdown before it can react? Obviously not. They ought to be able to anticipate prior to an emergency, again to protect the health and protect public safety. It simply makes sense.

This amendment takes away any flexibility, and is one more example of adding to bureaucracy, meaning more lawyers, more government, more litigation, going in the exact opposite direction that people in this country want.

I ask for a defeat of the amendment. Tomorrow there will be an amendment to make sure that they have the authority, that agencies have the flexibility, to act to prevent an emergency situation to protect people's public health and public safety.

Mr. SCHAEFER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in strong support of the Crapo amendment to the Risk and Cost-Benefit Act of 1995, and I would commend the gentleman from Idaho for offering it.

Mr. Chairman, the emergency situation provisions is an important part of this legislation. It provides flexibility for unforeseen threats to public health and safety. However, an ill-defined standard of what actually constitutes an emergency creates a gaping loophole for improperly opting out of the review requirements. Without a standard definition, agency heads could be confused as to when they can exercise their authority.

The emergency situation provision delegates a great deal of authority of the Federal agencies in carrying out the spirit of this important legislation. However, this delegated authority should not be misinterpreted by agencies as giving them wide latitude in applying the provision. Consequently, it is imperative that lawmakers make the definition of the emergency situations provision very clear. The Crapo amendment achieves this goal.

Mr. Chairman, this amendment provides a very reasonable gauge of an emergency situation for Federal agencies to know when they can abbreviate the risk assessment and cost-benefit analysis requirement. I urge my colleagues to support this well thought out modification to the bill.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Crapo amendment. Mr. Chairman, the argument is made that the Crapo amendment defining what an emergency is in the bill is too tightly drawn, perhaps too restrictive of the word "emergency."

Let me argue the contrary. The bill provides an exception to the act. It says that an agency that is undertaking a rulemaking does not necessarily have to do risk analysis, risk characterization, when an emergency exists in the making of a rule.

It does not say that risk analysis cost-benefit performance must be conducted on every agency action, carrying out an existing rule. To carry out a rule that already exists, the agency simply performs its function. It is in the new rulemaking, in the execution of new rulemaking decisions, that the act requires a risk assessment, risk characterization, and cost-benefit analysis.

It provides an exception even in that case. Even when it needs to move swiftly on a rule, if in fact it finds an emergency, it can avoid the very necessary requirements of looking at cost, looking at risk, and doing a relative analysis of the two.

The bill says that "You can avoid this bill any time the agency head declares an emergency." I remember we had a rule in the sessions in Louisiana that you could only pass taxes in an off year, but the Governor wanted to pass it one year and it was not the right year.

He asked his advisor "What can I do?" He said "You can declare an emergency." He said "What is going to be the emergency?" The emergency was that it was the wrong year to pass taxes, so he declared the emergency and proceeded. It was, of course, contested in court. Here the effort is to define "emergency" in a clear and concise way.

I want to call Members' attention to the words chosen by the gentleman from Idaho [Mr. CRAPO] in his amendment. If this amendment were restrictively written, we would probably see a lot of "ands" in it: "you have to find this and that and this and that" before you find an emergency.

However, look at the words. It says that "It is immediately impending." What is an emergency if it is not immediately impending? It says it is extraordinary in nature. That indeed is the nature of an emergency. It says that it demands attention due a condition, circumstance, or practice reasonably expected to cause death, serious illness, or severe injury to humans, or substantial endangerment to private property or the environment if no action is taken.

On the contrary, this amendment is drawn to cover all of the real emergencies that should be useful in avoiding the real necessities of risk assessment cost-benefit analysis, when there is a real impending emergency.

Without this language, Mr. Chairman, any agency head can use that term "emergency" to avoid this act. With this language, with all of the "R"'s in it, you have to find something real that is present, that is pending, that is extraordinary, and can in fact cause damage to health or environment or to humans or to private property or to the environment itself before the agency can avoid this bill.

If this bill is worth passing, this amendment is necessary to make sure that agency heads abide by it. Remember, we are talking about rulemaking, not agency action. We are talking about rulemaking, and to make a new rule, you ought to follow this bill. If you do not want to follow this bill, there ought to be a real, impending, extraordinary emergency why, to make a new rule, you will not follow this bill.

I urge adoption of the amendment offered by the gentleman from Idaho.

Mr. BLILEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the amendment.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. BLILEY. I yield to the gentleman from Idaho.

Mr. CRAPO. Mr. Chairman, I thank the gentleman from Virginia for yielding to me.

I would just like to respond on some of the issues that have been raised. It is very easy to raise the specter of a big problem that will occur if we do not have a very broad emergency language, but the examples given just do not fit it.

First of all, it says that serious illnesses that were considered would come under the jurisdiction of the Centers for Disease Control, which is not covered by this legislation; the same situation, at least to the contaminated blood issue; the nuclear reactor situation that was raised.

I would like to take each of these, whether we are talking about a threat to contamination of the blood supply, whether we are talking about a serious illness that is threatening the public, or whether we are talking about a danger with a nuclear reactor.

What does this provision provide? It says that if you can find that there is a problem that is immediately pending, that is what we are talking about with those examples. It says it is extraordinary in nature; that is exactly what we are talking about, and that it presents a threat to the environment or is reasonably expected to cause death or serious illness, or severe injury to humans, substantial endangerment to private property or the environment. Any of those examples will trigger this.

As the gentleman from Louisiana [Mr. TAUZIN] has said, we have plenty of opportunity in here for an emergency to be declared in a real emergency. What we are trying to do is tighten that loophole so it is not so big that the exclusion eats the rule; so that this legislation, which is carefully crafted to address meaningful problems in our society, is not simply swept aside each time the agency head feels that there is a difficulty in facing the problem, and that they have to declare an emergency.

We have to put parameters on what constitutes an emergency. We have to make this bill mean it when we say we want to have real cost-benefit analysis.

Mr. WALKER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in favor of the amendment. I simply would point out that the language that the gentleman has offered tracks language on page 28 of the committee report. The committee report was very specific in not wanting to have emergencies defined as being something that is manufactured at the agencies, but that emergencies should be real emergencies, so the committee report language makes that clear.

The gentleman has tracked in his amendment that language in a very close fashion, and it is, therefore, acceptable to us.

Mr. BARTLETT of Maryland. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of this very common sense bill and this very common sense amendment. This is just the kind of legislation that the American people anticipated when they went to the polls last November 8.

There are a couple of axioms from our heritage that I think are applicable to situations like this.

□ 2115

It has oft been said by our fathers and grandfathers that the cure should not be worse than the disease.

If we look back at many of our regulations which are now in effect, the cure has very often been worse than the disease, and one can cite as a good example of this the asbestos cleanup in our schools, costing billions of dollars and creating more environmental hazard than if it had been contained and left alone.

There is another observation made by an old country sage that put into very few words what this institution has sometimes had difficulty in understanding. His remark when trying to express his concern that the effort was not justified by the results, he would say, "The juice ain't worth the squeezing."

I suggest that there are a great many of our regulations of which this could be said.

I think that the American people expect that in any of these regulations, that the juice should be worth the squeezing, and this very commonsense bill and this very commonsense amendment will make sure of that.

As a matter of fact, Mr. Chairman, it might be retitled, the cost-benefit analysis bill to assure that in all future regulations, the juice is going to be worth the squeezing.

Mr. VENTO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this is an interesting amendment that my colleague makes because the presumption that you have to make is that somehow the administers, those at the executive branch of our Government somehow are not going to operate in good faith in terms of the emergency declaration. I suppose a further definition of that will help my colleagues so that we can be sure to get cost-benefit analysis and risk assessment.

I understand my colleagues want a lot more information with regards to these issues before we take action. I notice, though, Mr. Chairman, on page 12 of this bill, under the exceptions, this title does not apply to the risk assessment or risk characterization document containing risk assessment or risk characterization performed with respect to the following.

On page 12, what do we have? The sale or lease of Federal resources or regulatory activities that directly result in the collection of Federal receipts.

Like what? Well, perhaps like mining receipts, or grazing receipts, or timber receipts, or oil receipts. In other words, a cost-benefit analysis and risk assessment, that is wonderful for all of the regulations that are conjured up as causing all sorts of difficulty in this country, but apparently when it comes to timber roads, when it comes to mining, when it comes to exploitation and the government not being able to meet the bottom line when it comes out red with regards to a timber sale or when it comes out red with regards to mining when we are left with the cleanup and the cyanide and all the other problems that are associated with that, as long as it comes in in terms of bringing back some receipt from those water projects, you know, we may be losing $5 for every $1 we pick up, but the fact is then we do not want any cost-benefit analysis or risk.

When we have oil spills, we do not want any cost-benefit analysis. In fact, the gentleman from Pennsylvania that is rising to his feet implied earlier today that the Brown amendment did not cover the Corps of Engineers. I do not know if that was the case or not.

He was suggesting why was the Corps of Engineers excluded from this amendment? After all, we know the Corps of Engineers is responsible for significant water projects and activities across the land. He proclaimed broadly how important it was and that that was excluded.

Well, under the precepts that we have here, as I understand the gentleman's bill, now, this amendment was not put in in either committee, the Commerce Committee or the Science Committee, but all of a sudden it appears in this final version of the bill.

I would just suggest to the gentleman under the provisions of the bill that he has so artfully worked on, he has excluded many of those same water projects because they are involved in the collection of Federal receipts.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield briefly to the gentleman from Pennsylvania.

Mr. WALKER. The gentleman said that this had something to do with cost-benefit. It does not.

The language that he refers to is only with regard to risk assessment. Cost-benefit analysis would be covered, so the gentleman would stand corrected.

Mr. VENTO. That is not the way I understand the gentleman's bill as I look at the gentleman's bill.

Mr. WALKER. The language on page 12 only applies to title I. It does not apply to title II.

Mr. VENTO. The gentleman is suggesting that we will do cost-benefit analysis of the leasing and of the water projects and we will do a cost-benefit of those under the provisions of the gentleman's bill?

Mr. WALKER. As long as it has a $25 million impact, I would tell the gentleman.

Mr. VENTO. I thank the gentleman, and I will continue to read this. But it seems to me that the provisions in this does exclude the risk analysis and the other provisions of the bill from these very projects that the gentleman suggests that he covers.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Idaho [Mr. CRAPO].

The amendment was agreed to.

Mr. WALKER. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore [Mr. KINGSTON] having assumed the chair, Mr. HASTINGS of Washington, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, (H.R. 1022) to provide regulatory reform and to focus national economic resources on the greatest risks to human health, safety, and the environment through scientifically objective and unbiased risk assessments and through the consideration of costs and benefits in major rules, and for other purposes, had come to no resolution thereon.

PERSONAL EXPLANATION

Mr. MFUME. Mr. Speaker, pursuant to the leave of absence which I was granted Monday, February 27, 1995, I was not present during two rollcall votes. Specifically, I was absent during rollcall votes Nos. 175 and 176.

Had I been here I would have voted "nay" on rollcall No. 175, the rule for debate on H.R. 1022 and "yea" on rollcall No. 176, the Brown of California substitute to H.R. 1022.

PERMISSION FOR CERTAIN COMMITTEES TO SIT TOMORROW, TUESDAY, FEBRUARY 28, 1995, DURING 5-MINUTE RULE

Mr. WALKER. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the 5-minute rule.

The Committee on Agriculture;

The Committee on Banking and Financial Services;

The Committee on Government Reform and Oversight;

The Committee on House Oversight;

The Committee on the Judiciary;

The Committee on National Security;

The Committee on Small Business; and

The Committee on Transportation and Infrastructure;

It is my understanding that the minority has been consulted and that there is no objection to these requests.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

Ms. WATERS. Mr. Speaker, reserving the right to object, we have consulted with the ranking member on our side and have no objection to this request.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

COMMUNICATION FROM THE CHAIRMAN OF THE COMMITTEE ON THE BUDGET REGARDING CURRENT LEVELS OF SPENDING AND REVENUES FOR FISCAL YEARS 1995–1999

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio [Mr. KASICH] is recognized for 5 minutes.

Mr. KASICH. Mr. Speaker, on behalf of the Committee on the Budget and pursuant to sections 302 and 311 of the Congressional Budget Act, I am submitting for printing in the CONGRESSIONAL RECORD an updated report on the current levels of on-budget spending and revenues for fiscal year 1995 and for the 5-year period fiscal year 1995 through fiscal year 1999.

This report is to be used in applying the fiscal year 1995 budget resolution (H. Con. Res. 218), for legislation having spending or revenue effects in fiscal years 1995 through 1999.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, DC, February 27, 1995.

Hon. NEWT GINGRICH,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: To facilitate application of sections 302 and 311 of the Congressional Budget Act, I am transmitting a status report on the current levels of on-budget spending and revenues for fiscal year 1995 and for the 5-year period fiscal year 1995 through fiscal year 1999.

The term "current level" refers to the amounts of spending and revenues estimated for each fiscal year based on laws enacted or awaiting the President's signature as of February 27, 1995.

The first table in the report compares the current level of total budget authority, outlays, and revenues with the aggregate levels set by H. Con. Res. 218, the concurrent resolution on the budget for fiscal year 1995. This comparison is needed to implement section 311(a) of the Budget Act, which creates a point of order against measures that would breach the budget resolution's aggregate levels. The table does not show budget authority and outlays for years after fiscal year 1995 because appropriations for those years have not yet been considered.

The second table compares the current levels of budget authority, outlays, and new entitlement authority of each direct spending committee with the "section 602(a)" allocations for discretionary action made under H. Con. Res. 218 for fiscal year 1995 and for fiscal years 1995 through 1999. "Discretionary action" refers to legislation enacted after adoption of the budget resolution. This comparison is needed to implement section 302(f) of the Budget Act, which creates a point of order against measures that would breach the section 602(a) discretionary action allocation of new budget authority or entitlement authority for the committee that reported the measure. It is also needed to implement section 311(b), which exempts committees that comply with their allocations from the point of order under section 311(a). The section 602(a) allocations printed in the conference report on H. Con. Res. 218 (H. Rept. 103–490) have been revised to reflect the changes in committee jurisdiction as specified in the Rules of the House of Representatives adopted on January 4, 1995.

The third table compares the current levels of discretionary appropriations for fiscal year 1995 with the revised "section 602(b)" suballocations of discretionary budget authority and outlays among Appropriations subcommittees. This comparison is also needed to implement section 302(f) of the Budget Act, since the point of order under that section also applies to measures that would breach the applicable section 602(b) suballocaiton. The revised section 602(b) suballocaitons were filed by the Appropriations Committee on September 1, 1994.

The aggregate appropriate levels and allocations reflect the adjustments required by section 25 of H. Con. Res. 218 relating to additional funding for the Internal Revenue Service compliance initiative.

Sincerely,

JOHN R. KASICH,
Chairman.

REPORT TO THE SPEAKER FROM THE COMMITTEE ON THE BUDGET

STATUS OF THE FISCAL YEAR 1995 CONGRESSIONAL BUDGET ADOPTED IN HOUSE CONCURRENT RESOLUTION 218

REFLECTING ACTION COMPLETED AS OF FEBRUARY 22, 1995

[On-budget amounts, in millions of dollars]

	Fiscal year 1995	Fiscal year 1995–99
Appropriate level (as set by H. Con. Res. 218):		
Budget Authority	1,238,705	6,892,705
Outlays	1,217,605	6,767,805
Revenues	977,700	5,415,200
Current level:		
Budget Authority	1,236,489	NA
Outlays	1,217,181	NA
Revenues	978,466	5,384,858
Current level over (+)/under (−) appropriate level:		
Budget Authority	−2,216	NA
Outlays	−424	NA
Revenues	766	−30,342

Note.—NA=Not applicable because annual appropriations acts for fiscal years 1997 through 1999 will not be considered until future sessions of Congress.

BUDGET AUTHORITY

Enactment of measures providing more than $2.216 billion in new budget authority for FY 1995 (if not already included in the current level estimate) would cause FY 1995 budget authority to exceed the appropriate level set by H. Con. Res. 218.

OUTLAYS

Enactment of measures providing new budget or entitlement authority that would increase FY 1995 outlays by more than $.424 billion (if not already included in the current level estimate) would cause FY 1995 outlays to exceed the appropriate level set by H. Con. Res. 218.

REVENUES

Enactment of any measures producing any net revenue loss of more than $766 million in FY 1995 (if not already included in the current level estimate) would cause FY 1995 revenues to fall below the appropriate level set by H. Con. Res. 218.

Enactment of any measure producing any net revenue loss for the period FY 1995 through FY 1999 (if not already included in the current level estimate) would cause revenues for that period to fall further below the appropriate level set by H. Con. Res. 218.

DIRECT SPENDING LEGISLATION—COMPARISON OF CURRENT LEVEL WITH COMMITTEE ALLOCATIONS PURSUANT TO BUDGET ACT SECTION 602(a)

[Fiscal years, in millions of dollars]

	1995			1995–1999		
	BA	Outlays	NEA	BA	Outlays	NEA
House committee:						
Agriculture:						
Allocation	0	0	0	0	0	4,861
Current level	499	−155	0	497	−152	0
Difference	499	−155	0	497	−152	−4,861
National Security:						
Allocation	0	0	0	0	0	0
Current level	42	34	0	221	210	82
Difference	42	34	0	221	210	82
Banking, Finance and Urban Affairs:						
Allocation	0	0	0	0	0	0
Current level	−25	−25	0	−75	−75	0
Difference	−25	−25	0	−75	−75	0
Economic and Educational Opportunities:						
Allocation	0	0	309	0	0	5,943
Current level	8	−13	297	104	81	1,674
Difference	8	−13	−12	104	81	−4,269
Commerce:						
Allocation	0	0	0	0	0	0
Current level	0	0	0	0	0	0
Difference	0	0	0	0	0	0
International Relations:						
Allocation	0	0	0	0	0	0
Current level	5	4	0	11	11	0
Difference	5	4	0	11	11	0
Government Reform & Oversight:						
Allocation	0	0	0	0	0	0
Current level	0	0	0	4	4	−3

DIRECT SPENDING LEGISLATION—COMPARISON OF CURRENT LEVEL WITH COMMITTEE ALLOCATIONS PURSUANT TO BUDGET ACT SECTION 602(a)—Continued

[Fiscal years, in millions of dollars]

	1995			1995–1999		
	BA	Outlays	NEA	BA	Outlays	NEA
Difference	0	0	0	4	4	−3
House Oversight:						
Allocation	0	0	0	0	0	0
Current level	0	0	0	0	0	0
Difference	0	0	0	0	0	0
Resources:						
Allocation	0	0	0	0	0	0
Current level	−8	−5	4	0	−2	4
Difference	−8	−5	4	0	−2	4
House committee:						
Judiciary:						
Allocation	0	0	0	0	0	0
Current level	−59	−59	0	−6	−6	0
Difference	−59	−59	0	−6	−6	0
Transportation and Infrastructure:						
Allocation	2,161	0	0	64,741	0	0
Current level	2,161	0	0	4,375	0	0
Difference	0	0	0	−60,366	0	0
Science:						
Allocation	0	0	0	0	0	0
Current level	0	0	0	0	0	0
Difference	0	0	0	0	0	0
Small Business:						
Allocation	0	0	0	0	0	0
Current level	0	0	0	0	0	0
Difference	0	0	0	0	0	0
Veterans' Affairs:						
Allocation	0	0	340	0	0	5,743
Current level	2	2	334	3	3	1,888
Difference	2	2	−6	3	3	−3,855
Ways and Means:						
Allocation	0	0	0	0	0	214
Current level	44	−37	98	−3,674	−5,711	−3,655
Difference	44	−37	98	−3,674	−5,711	−3,869
Total authorized:						
Allocation	2,161	0	649	64,741	0	16,761
Current level	2,669	−254	733	1,460	−5,637	−10
Difference	508	−254	84	−63,281	−5,637	−16,771

DISCRETIONARY APPROPRIATIONS FOR FISCAL YEAR 1995—COMPARISON OF CURRENT LEVEL WITH SUBALLOCATIONS PURSUANT TO BUDGET ACT SECTION 602(b)

[In millions of dollars]

	Revised 602(b) suballocations (September 21, 1994)				Current level				Difference			
	General purpose		Violent crime		General purpose		Violent crime		General purpose		Violent crime	
	BA	O	BA	O	BA	O	BA	O	BA	O	BA	O
Agriculture, Rural Development	13,397	13,945	0	0	13,396	13,945	0	0	−1	0	0	0
Commerce, Justice, State	24,031	24,247	2,345	667	24,001	24,247	2,345	667	−30	0	0	0
Defense	243,432	250,515	0	0	243,430	250,463	0	0	−2	−52	0	0
District of Columbia	720	722	0	0	712	714	0	0	−8	−8	0	0
Energy and Water Development	20,493	20,888	0	0	20,493	20,884	0	0	0	−4	0	0
Foreign Operations	13,785	13,735	0	0	13,634	13,735	0	0	−151	0	0	0
Interior	13,521	13,916	0	0	13,517	13,916	0	0	−4	0	0	0
Labor, HHS and Education	69,978	69,819	38	8	69,978	69,819	38	7	0	0	0	−1
Legislative Branch	2,368	2,380	0	0	2,367	2,380	0	0	−1	0	0	0
Military Construction	8,837	8,553	0	0	8,836	8,525	0	0	−1	−28	0	0
Transportation	13,704	36,513	0	0	13,694	36,513	0	0	−10	0	0	0
Treasury-Postal Service	11,741	12,256	40	28	11,575	12,220	39	28	−166	−36	−1	0
VA-HUD-Independent Agencies	70,418	72,781	0	0	70,417	72,780	0	0	−1	−1	0	0
Reserve	2,311	6	0	0	0	0	0	0	−2,311	−6	0	0
Grand total	508,736	540,276	2,423	703	506,050	540,141	2,422	702	−2,686	−135	−1	−1

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 22, 1995.

Hon. JOHN KASICH,
Chairman, Committee on the Budget,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended, this letter and supporting detail provide an up-to-date tabulation of the on-budget current levels of new budget authority, estimated outlays, and estimated revenues for fiscal year 1995. These estimates are compared to the appropriate levels for those items contained in the 1995 Concurrent Resolution on the Budget (H. Con. Res. 218), and are current through February 21, 1995. A summary of this tabulation follows:

[In millions of dollars]

	House current level	Budget resolution (H. Con. Res. 218)	Current Level +/− resolution
Budget authority	1,236,489	1,238,705	−2,216
Outlays	1,217,181	1,217,605	−424
Revenues:			
1995	978,466	977,700	766
1999	5,384,858	5,415,200	−30,342

This is my first report for the first session of the 104th Congress.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, Director).

PARLIAMENTARIAN STATUS REPORT, 104TH CONGRESS, 1ST SESSION, HOUSE ON-BUDGET SUPPORTING DETAIL FOR FISCAL YEAR 1995 AS OF CLOSE OF BUSINESS FEBRUARY 21, 1995

[In millions of dollars]

	Budget authority	Outlays	Revenues
Enacted in Previous Sessions			
Revenues	....	....	978,466
Permanents and other spending legislation	750,343	706,271	....
Appropriation legislation	738,096	757,783	....
Offsetting receipts	(250,027)	(250,027)	....
Total previously enacted	1,238,412	1,214,027	978,466
Entitlements and Mandatories			
Budget resolution baseline estimates of appropriated entitlements and other mandatory programs not yet enacted	(1,923)	3,154	....
Total current level [1]	1,236,489	1,217,181	978,466
Total budget resolution	1,238,705	1,217,605	977,700
Amount remaining:			
Under budget resolution	2,216	424	....

PARLIAMENTARIAN STATUS REPORT, 104TH CONGRESS, 1ST SESSION, HOUSE ON-BUDGET SUPPORTING DETAIL FOR FISCAL YEAR 1995 AS OF CLOSE OF BUSINESS FEBRUARY 21, 1995—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Over budget resolution			766

[1] In accordance with the Budget Enforcement Act, the total does not include $1,394 million in budget authority and $6,466 in outlays for funding of emergencies that have been designated as such by the President and the Congress, and $877 million in budget authority and $935 million in outlays for emergencies that would be available only upon an official budget request from the President designating the entire amount requested as an emergency requirement.

Notes: Numbers in parentheses are negative. Detail may not add due to rounding.

AFFIRMATIVE ACTION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Mississippi [Mr. THOMPSON] is recognized for 60 minutes as the designee of the minority leader.

Mr. THOMPSON. Tonight, Mr. Speaker, several of my colleagues and I will talk on affirmative action.

Last week, as you know, we started talking about it, Congressman CLYBURN and some others, and we will be moving forward as the night goes on.

What I would like to do, though, is start until my colleagues come to say that as most of us know, this is a real difficult issue that is grasping the whole country. We would like to make sure that as the dialog continues that everyone would look upon affirmative action as something that clearly is the litmus test for us all.

Congressman CLYBURN, who is coming in as I talk, will lead the discussion on the historical approach to affirmative action along with some other Members.

Mr. Speaker, it is important for us to realize that affirmative action is a key discussion going on. In all States, there are discussions taking place saying whether or not this country is colorblind or whether or not we should move forward with affirmative action at all. Clearly it is a divisive issue. It is an issue that all of us are concerned about.

The Congressional Black Caucus, the National Association for the Advancement of Colored People, all organizations of good will, have started looking at this issue and are very concerned about it. Clearly what we would like to do tonight, and my colleague the gentleman from South Carolina [Mr. CLYBURN] is here, is begin the discussion on historical perspective around affirmative action in this country and from that we will move forward.

Mr. Speaker, I yield to my colleague, the gentleman from South Carolina [Mr. CLYBURN], after which time I will retain the hour.

Mr. CLYBURN. I thank my good friend, the gentleman from Mississippi [Mr. THOMPSON], for getting us started on this discussion this evening.

Mr. Speaker, all weekend I listened to the various talk shows, I listened to all of the Sunday morning newscasts, and in every instance we heard people discussing this issue of affirmative action, whether or not we have reached a point in our existence when affirmative action is no longer needed.

□ 2130

Let me begin, Mr. Speaker, by looking at affirmative action, where it got started and what it is all about, and why it was ever necessary in the first place.

Affirmative action, to begin with, is grounded in an executive order, Executive Order 11246, which was signed by President John F. Kennedy, signed by President Lyndon Johnson, and all Presidents since.

Now, the whole purpose of this executive order was to move beyond the passive notion that we should not discriminate on the basis of one's color and, of course, it is interesting that in a subsequent executive order, the issue of sex was added as well. Now, what the attempts were, they were simply methods to say we cannot just say that we would no longer discriminate. We have to mix some affirmative efforts to go out and let people know that there will no longer be discrimination, that they are welcome to come in and apply for jobs, they are welcome to come in and apply for Federal contracts, and that they will be treated fairly and given an opportunity to participate in the mainstream of the economic activity of our society.

And so throughout the years there has been discussion as to whether or not affirmative action really works. In the early 1980's this discussion became pretty loud and, of course, the then Reagan administration undertook to look at affirmative action and to see whether or not it worked and then to find out whether or not it unnecessarily trammeled upon the rights of other citizens, and so the administration brought in a Dr. Jonathan Leonard, a professor from California, who looked at the affirmative action programs and made a report that these programs did, in fact, work.

But, secondarily, he found that there was no proof, no facts to sustain the allegations that these programs unnecessarily trammeled on the rights of white men as well as other citizens. It seemed as if this was not good enough, and so this administration undertook a second study. This time it was done by OFCCP, the Office of Federal Contracts and Compliance, and in this instance, the results were the same, that the programs worked, that they did, in fact, bring people into the mainstream of economic opportunity, people who had not been allowed to participate before, and again, secondarily, that these programs did not, in fact, unfairly trammel upon the rights of white men.

And so then we continued with this executive order all the way down until the present day. Now, along the way, there have been those who have participated in this program of affirmative action, many of them very serious, others a little bit disingenuous.

We have had people who have put programs together knowing full well that they were not legitimate programs, in an attempt to undercut, to discredit, to in some way bring embarrassment and shame upon a noble effort to bring people into the mainstream of the economic activity of our society. And then there have been others who, out of a notion to do right, have been very, very anxious and, in some instances, overly so, and they, too, have brought programs into being which did not pass judicial muster.

Let me give you an example. In my other life, I ran a State agency in South Carolina, the South Carolina Human Affairs Commission, and part of my responsibility at that agency was to do the affirmative action coordination and planning for the State of South Carolina. And I remember one instance when a school district from the upper part of the State began to have a little trouble. These things usually come about because of one hiring decision that was made and did not go the way somebody wanted it to go, and in this particular instance, they had begun to have problems in their communities, and then they asked me to come up and to help them with it and to do an affirmative action plan for them.

Now, Mr. Speaker, when I went up, we did our analysis, and what you have to do in all of these instances is not just go on what somebody feels, but you go out and you analyze the work force, you look and see how many people are out there in the work force, not how many people are in the population, but how many people are in the work force who have the requisite skills for the kind of work that is needed, and in this particular instance, we went out and we analyzed the community's work force, and we looked at the work force at the school district. We came to the conclusion that there was no underutilization of blacks in that district at all, and so when we finished doing the affirmative action plan, we said to the school district, "Now, look, here is our analysis. Here is your affirmative action plan. But we would recommend that you do not use it, because there is no need for it, because when we did our analysis, we went through what we call our eight-factor analysis. We found that there was no underutilization of blacks in this work force."

They were shocked. The community was shocked. But when we explained to them what a real affirmative action plan is, they all accepted and even today, that school district is now doing well, and I am pleased to say is a school district that had about, I think, around 23 percent of the population is African American, yet the school district followed, by about a year after we left there, they hired a black superintendent to run the district. But they never had to use an affirmative action plan, because once we analyzed their work force and compared it with the availability of blacks in the labor force, then we found out that affirmative action was not needed.

And so my point here is simply this: All of these people who are talking about affirmative action, I would wish that they would get beyond the emotional diatribes and begin to look at what this program really is and look at exactly how it came into being and how it ought to be operated. And I do believe that all fair minded, maybe not everybody, but all fair-minded people, when they take a look at these programs and see exactly what they mean and exactly how they are carried out, we would not be talking about whether or not we should do away with affirmative action.

We will be talking about how we can take this principle and apply it to all aspects of our society and begin to bring people into the mainstream.

Now, Mr. Speaker, I have been joined now by the gentleman from Alabama [Mr. HILLIARD], and I see my good friend, the gentleman from Mississippi [Mr. THOMPSON], now has all of his statistics with him, so I am now going to yield back to the gentleman from Mississippi [Mr. THOMPSON], so that we can take us further on this discussion, and I will come back at a later time.

Mr. THOMPSON. I thank the gentleman, What I would like to do is yield to my colleague, the gentleman from Alabama [Mr. HILLIARD], who will further enlighten us on the discussion of affirmative action.

Mr. HILLIARD. I thank the gentleman from Mississippi very much.

There is a subject matter that I would like to discuss for just about 4 or 5 minutes that is an offshoot of affirmative action.

You know, oftentimes people think that affirmative action is quotas. I just want everyone to know that affirmative action absolutely has nothing to do with quotas, and I also want my colleagues to know that in America there is not a national law that mandates quotas, and I say this, because I recall when Lani Guinier was being recommended for the job in the Justice Department that Deval Patrick now has, and one of the things they said, they did not like her because of her views on quotas and they thought she would push the law mandating quotas.

Well, my answer to that is there is no law. There is not a national law mandating quotas. Affirmative action has absolutely nothing to do with quotas. That is just a political ploy used by the other side. It sounds good when you can say that we want to get away from mandating anything or giving preference to any person or any group of persons.

And I would think everybody wants a plan, but what affirmative action is, is just a remedy for past discrimination, a remedy to make up for the shortcoming of our law and our society, and in most instances it speaks only in terms of goals, of objectives, and never in the language of mandates, of quotas.

You look, oftentimes in Congress we try to make laws that are national in scope and that will take care of every situation surrounding that subject matter. Many times we fail. We fail because in this country there is a diversity in terms in people, races, religions, and then you have other types of diversity, geographical balances, but the most important thing is that we are all Americans, and we always try to make laws that will protect the interests of all Americans.

So we have three branches of government, the court system, our judiciary system, which is just one branch of governance, and interpreting the laws that Congress has passed that we thought would satisfy a problem. Many times the court adds in its interpretation certain things that were not intended by Congress, and in that context, I wish to talk about quotas.

The only laws in this country that really mandate quotas are laws passed not by Congress, not by Executive orders, but the interpretation of laws by our court system, and it is narrowly used. Quotas are narrowly used. But it is only used when the court has found that there has been a reckless disregard for the rights of some class of individuals, and it was to make sure that the practice is not continuous, so it sets forth that until 25 percent of the work force in a particular area is of a certain gender or a certain race, then no one else from any other race or any other gender could be hired.

But that is the court setting forth quotas or mandating a percentage, and the court only does that when the situation is aggrieved, when the situation is harsh, and when the State or the agency has not made any effort to correct the situation.

□ 2145

Mr. THOMPSON. Mr. Speaker, is the gentleman saying that all this discussion that we are hearing about quotas as it relates to affirmative action, that there are no laws that the gentleman can identify at this point that talk about quotas, that that for the most part has always been a remedy addressed by the courts?

Mr. HILLIARD. Absolutely I am saying that. That is absolutely the case.

Mr. THOMPSON. I guess that is part of the reason we are trying to have this dialog tonight, is try to get the discussion back on focus so that the general public can understand what we are talking about.

Some of the statistics I want to share with both my colleagues on this subject that might shed a little more light to it, talk about if African-Americans had parity with whites in America, what would those numbers look like? Well, if we had parity as African Americans in this country with whites, the average black family income would be $19,568 higher per year. If we had parity among black males, the income would be $8,500 per year. The female parity number is 2,000. But the net worth is almost $40,000, so that means that in America right now that net worth of a white household is $40,000 higher than the average black household.

So, Mr. Speaker, I say to my colleagues, "When you talk about parity, you have to talk about things being equal, and, as you've talked, Mr. HILLARD and my colleagues, Congressman CLYBURN, also, that when we talk about affirmative action, we're talking about describing for the sake of remedy a solution to past wrongs, and none of us disagree with the fact that, as we look across this country there are some things that we're not proud."

But I am happy to be part of the solution by trying to factor in certain solutions that would make things equal. So, as we talk about parity in this affirmative action, I hope our colleagues who differ with us do not differ with the numbers because the numbers speak for themselves.

Mr. HILLIARD. Mr. Speaker, if the gentleman will yield, let me expand on a point he made just a minute ago indirectly.

As my colleagues know, there is no perfect country on this earth, but America is beautiful. I love it. But America has problems, and, until we are willing to even admit that America has problems, it is going to be difficult to solve them, and I think that when those courts make decisions mandating certain goals to be reached in certain categories, or mandating quotas, it is only trying to remedy a problem that has existed. It is only trying to correct that problem.

And I think that the court is trying to improve American society, trying to diversify its educational institutions, trying to diversify and integrate its work force, and it is trying to correct 200 years of wrongdoing.

Mr. CLYBURN. Mr. Speaker, if the gentleman would yield, before we leave the area of quotas let me point out something here.

I have in my hand here a review; sort of an overview, I guess, is more of what it is; that was requested by one of the members of the other body who is now running for President. He asked the Congressional Research Service to give him an overview of all of the affirmative action programs in the Federal

Government, and this document contains around 160 instances where references to affirmative action are made in one form or another, and the interesting thing is there is nothing in any of it that talks about quotas.

In fact, Mr. Speaker, I think it was the Washington Post that wrote a story after this was published, and they had in their headlines: No, affirmative action does not require quotas. So I would hope that those people who continue to harp on that, because they know it is an inflammatory term, would stop being so dishonest with the American people and actually say what the facts are.

Now, Mr. Speaker, the interesting thing about this is one little line in here that I want to just read because I think it tells it all. In this report it says no quotas, but goals and timetables. However it says the goals may be waived where not practicable due to unavailability of people in the work force. So even when you set out the goal, even when you set the goal out, if you find that in trying to reach this goal that there is not the kind of availability in the work force that you had anticipated, that goal is then set aside.

So Mr. Speaker, I think that that says it all, and so I think the gentleman is absolutely correct, and I am glad that he took us down that discourse so we could clear up this issue of quotas because I think it ought to be said over and over again because I think that there are those who are trying to inflame the American public on this subject by using that term.

Mr. HILLIARD. Mr. Speaker, if the gentleman would yield, you know one of the things that people get mixed up with in this country, and sometimes I find myself guilty of it, is the fact that I listen to political rhetoric, and sometimes I think of it as being fact because I think that the person that is making the statement, I think that his credibility is fine and that the statement he is making is all truthful. But then when I do my research or when I really start looking at something in depth, I realize that he is just pushing his individual agenda, or his party agenda, or some other agenda that is foreign and alien to the American agenda, and I say that because for the last 4 or 5 years I have been hearing the word "quotas" and we do not want any quotas, and we do not want any preference, and they talk about affirmative actions, affirmative action as if it mandates quotas or it mandates preference when in fact it does not.

And my colleagues know the language of affirmative action is very soft. It is not harsh. The harsh words are "quotas" and "mandates." But the language of affirmative action is: encourage, seek, incentives, positive effort, and to the extent practicable. That is the language, and, when you have language like that, it does not kill quotas, it does not set quotas, and it does not give preference, and that is very important to this discussion because there have been those who have politicized something that is very much American, very much American.

Mr. CLYBURN. If the gentleman would yield, let us look at another issue here, the issue of productivity.

As my colleagues know, one of the things that we hear about affirmative action is that it requires that you hire unqualified people.

Mr. HILLIARD. I have heard that.

Mr. CLYBURN. We have heard that so often.

First of all, there is absolutely nothing about affirmative action that requires hiring unqualified people. I say to my colleagues, in fact, if you're to do that, and with all these 25 years of affirmative action if you were hiring unqualified people, it would seem to me that the productivity of the country would have gone down, but that has not happened at all. In fact all the studies we've seen indicate that productivity is on the increase, that our workers are in fact the most productive, and we've had even studies that zero in on people who have been hired as a result of affirmative action, especially as relates to women, and what we found is that production on the part of women increased as a result.

Mr. Speaker, that is the same thing we find all the time when people are made to feel as if they are worth something, that they can, in fact, get promoted without regard to race and sex, that they do, in fact, produce more and produce better.

Now let me say one other thing about this issue of qualifications:

If you establish a criteria for a job, if you said, "In order to get this job you have to take a test, you have to score at least 80 on the test," and now if you score 80 on the test, it means that you're qualified.

Mr. HILLIARD. Absolutely.

Mr. CLYBURN. And nobody has ever asked anybody to hire the person who made 78 or 79. We just said, when the person makes 80, don't ignore the person. Don't pass over the person. Don't throw that person's test scores in the garbage can waiting for somebody white to come along.

Now people are saying, as my colleagues know, it is not just qualified; it has got to be most qualified. So that is saying, if you make 80 on the test, and that's what's required, and someone else comes along and makes 82 on the test, then you're duty bound to hire the person that makes 82. That is where the rub comes because that is not what qualifies a person for the job.

Mr. HILLIARD. Mr. Speaker, if the gentleman would yield, you know one of the problems we have had in history is the fact that someone makes 80, and the job is available, someone makes 78 or 79, and they reach down and give it to the person that makes 78, and this is the problem we are trying to correct. But even if a person made 80, sometimes they would hold that job open, re-give another test, and then take someone who might make higher. That in itself is discrimination. That in itself is what we are trying to get away from. That is what we are trying to remedy, that is what we are trying to correct, and that is what the court has said. That is what the court is trying to correct, and the laws that we have set out already just say, "Give that person a chance."

Mr. THOMPSON. I think one of the notions also is the fact that affirmative action in the minds of some people has failed, and I think it is clear that of the statistics that we have been able to find in this country, the good that has come about has been because of affirmative action programs, and I shudder to think what and where we would be as a Nation if, in fact, many of the laws that we are presently operating under would not be in place.

For instance, if we had parity in this country as African-Americans with whites, according to the census there would be 9,559 fewer unemployed black adults because parity would mean that more African-Americans would be employed. But more so than that, there would be 6.9 million fewer black persons in poverty, and one of the things I am trying to relate to it, there is a correlation between discrimination and poverty as we talk about affirmative action.

Because if the job market, if the contract market, if the educational market is not available to certain individuals, then the likelihood that they will live in poverty is greatly increased. So what we are trying to do is provide a vehicle for individuals to move upward in this country. We would not like to see race, sex, or age as an impediment to moving forward. And the framers of many of these affirmative action goals have outlined that these are ways you move up.

□ 2200

As we look at some of the other statistics, let us talk about Federal contract procurement. Of the $182 billion that we identified in the study, we had less than 7 percent going to minorities.

Well, that is not where it should be. It has been only because we have had some affirmative action laws on the book that we have that much.

The same goes for higher education. If we look at almost $20 billion in grants going from the Federal Government to universities, we find less than 4 percent going to historically black colleges and universities.

Well, the numbers go on and on. Until we are able to find a replacement for affirmative action, because clearly most of us will agree that affirmative action, if we did not have it, minorities would be further back than they are now.

So I subscribe to the notion that we have to not throw the baby out with the bath water. What we have to do is strengthen the existing law, so that all minorities can in fact one day have that parity that I am talking about that is not here. The numbers bear that out.

So without this parity, we have to have laws on the books to encourage opportunities for minorities. So I am convinced that we have to have it.

Mr. CLYBURN. If the gentleman will yield, on that same question, I have not seen the study, but we were informed today that Richmond, VA, you recall Richmond was the place of the Crowson versus Richmond decision, the decision that threw out a procurement program there that was called affirmative action, though there were many of us in the field that did not want to see that case go forward because we felt it was not a good enough case for us to test the issue.

But I understand that today, the recent reviews indicate that the contracts that minorities are now getting from the city of Richmond have dropped to somewhere around 1 percent.

Mr. THOMPSON. Less than 1 percent.

Mr. CLYBURN. That is kind of interesting. For all those people that said we do not need affirmative action, when we had affirmative action programs, there was a question as to whether or not they were getting enough. Well, they were getting some. Now it looks as if after the Crowson decision that outlawed the plan, they have dropped down to less than 1 percent.

Now, I predict that that is the future for all minorities and women trying to do business in our society if we in fact get rid of these programs as many of our friends want us to do.

Now, the kind of interesting thing to me is why is it that the group of people who constitute 65 percent of the people eligible to do the work want to have 100 percent of all the work? That sounds to me like an illegal quota. 100 percent.

Mr. HILLIARD. If the gentleman will yield, one of the things that amazes me is the fact you stated here is a group that is 65 percent of the population of this country, and they are crying because 15 percent is given to minorities or given to some other group.

Mr. CLYBURN. That is right.

Mr. HILLIARD. It has to be greed. It has to be greed. But without getting into that discussion, let us look at the leadership in this country.

Now, we have struggled with the problems of segregation and the problems of discrimination for several centuries, and the last four or five decades we have sought remedies that we thought would correct the problems, rectify the situation, and set America on a course so that we would never be plagued with those problems again.

As a result of that, we have corporate America that has come on board. They have set up affirmative action programs that are basically incentive-based programs, no quotas, no mandates. We have State agencies. We have the Federal Government agencies that have set up incentives instead of goals and certain things they wished to achieve.

All of this is in place now and it is working, because for the first time we see a diversity in our work force that we have not seen before, Chicano-Americans, Americans, Spanish-Americans, women, minorities of all kinds. It reflect the beautiful diversity of this country.

But all of a sudden here comes a group, 65 percent of the population, that want 100 percent of the jobs, 100 percent of the business, 100 percent of all the work, and we have a group that comes and says let's give it to them. Let's destroy all of the affirmative action programs. Let's kick out the things that Truman, Nixon, Ford, Carter, Bush, and Clinton have thought were good for this country. Each one of them thought that affirmative action was so good that they passed Executive orders that said during my administration, this is what we will seek to put in place or to maintain.

Mr. THOMPSON. I think that is the question of leadership, and the question of leadership in the affirmative action debate is whether or not the leaders of this country are strong enough to recognize that we do have individuals and groups in this country that have not established a parity with the rest of the country. And we have to create opportunities for those individuals to move up. But the leadership is very important in this issue. It is easy to talk about we live in America, I want America to be colorblind. But the test of leadership is whether or not we can put together legislation that would allow opportunities for all Americans to rise to the top.

If corporate America recognizes that diversity is important in doing business, then why can we not in government assume our rightful place in creating those opportunities too?

I venture to say that, as we all know, minorities are great consumers of service. And if corporate America understands that minorities spend money and they approach that, why can't we in government reciprocate by allowing minorities to participate in all levels of government? And when that participation is not there, we should crate the vehicle to allow that participation to occur.

Mr. HILLIARD. One of the things we have to understand is that in order for each one of us to get to Congress, we have to win a race. In order for the President to be President, he has to win. Unfortunately, sometimes we put our personal agenda before we put the national agenda, and what happens is we do things that we really should not do. We politicize certain situations to invoke certain types of emotions so that we can channel peoples' behavior to the extent they would vote for us.

Just like the Tanya Harding situation. You know, you want to create a hysterical situation that everybody could immediately see and say "I am not going to go that way." Then you take it and identify it with a certain candidate, with a certain party, and you achieve your purpose. I will not do America like that. And we should not be politicizing affirmative action.

Mr. CLYBURN. I think we ought to really look at that question. I want to just take a minute and say thanks to a great leader in this country, Art Fletcher, who as Assistant Secretary of Labor, I believe it was, under Richard Nixon, kind of pulled all of these affirmative action programs together. What we do today in the name of affirmative action was given to us by the Nixon administration. Art Fletcher was out on the front of this. My point being you cannot be more Republican than he was.

So this was not a partisan issue. Affirmative action has always been a bipartisan issue, and I think we ought to keep this there. And those people trying to use this now as a so-called wedge issue, thinking that it will pay off for them at the polls at the next general election, I think that that is the worst possible thing that you can do to any country or any people in the country, because I can tell you this: We are bound to repeat some very bad sections of our history if we are not careful with those kinds of issues.

We are coming upon the close of a century, and I know my history a little bit, and I know what happened to this country at the close of the last century when we saw court decisions. We went all the way from Dred Scott of 1854 to Plessy versus Ferguson of 1898, and we finally got to 1954, and I thought we were doing fine with these issues.

But now, all of a sudden, we are trying to change the playing field. We are now trying to create a different atmosphere. We are now trying to use these wedge issues in order to inflame the electorate, hoping that they would not go out and vote for something, but go out and vote against something. That, to me, would be a horrible mistake for us to make.

□ 2210

Mr. HILLIARD. If the gentleman will yield, one of the things we do not want to do in America is turn the clock back. We are on the road to prosperity. We have come out of a recession. We are moving along. Unemployment is dropping. This country is undoubtedly the world's leader. We lead in almost every category. We are the world leader.

People still die trying to get to this country called America, because it is so beautiful, it is so good, but it is not perfect. However, we should be willing to improve upon what we have. Affirmative action is a step in the right direction in improving what we have.

We ought to strive towards improvement, because we want to be inclusive. We want our country never to backslide to where it has been. We want to move into the 21st century with a diversity and an inclusion that can never be matched again anywhere else on this Earth.

Mr. THOMPSON. If the gentleman will yield, I agree wholeheartedly, this is a great country. All of us opted not just to be citizens, but to participate in the process by getting elected to Congress. That in itself is a noble gesture, but I think the fact that we agreed to challenge the system inside the system, that is important, just like we are having this debate tonight on affirmative action.

Clearly we have to highlight affirmative action as we go along. I look forward to it.

We have now been joined by the gentleman from New Jersey, Mr. DONALD PAYNE, who as we know is the new chairman of the Congressional Black Caucus. The caucus has taken a leadership role in the affirmative action debate that will be going on over the next few weeks and months to come.

Mr. Speaker, for the sake of the RECORD, I would ask the gentleman from New Jersey [Mr. PAYNE], where is the caucus with respect to this notion of revisiting affirmative action?

Mr. PAYNE of New Jersey. Mr. Speaker, will the gentleman yield?

Mr. THOMPSON. I yield to the gentleman from New Jersey.

Mr. PAYNE of New Jersey. I thank the gentleman for giving me an opportunity to address this very, very important issue, an issue that we in the Black Caucus feel is the No. 1 issue facing us at this present time, because it strikes at the very heart of what made this country great.

The Congressional Black Caucus has formed a task force, as we have done in the past, on issues that we feel are very important to the caucus and to African-Americans in this Nation, and the Nation as a whole. We have a task force which is chaired by the gentleman from Maryland, KWEISI MFUME, and co-chaired by the gentleman from South Carolina [Mr. CLYBURN] and the gentlewoman from California [Ms. WATERS].

The caucus will be coming up with a position. We will be looking at the issue of affirmative action, we will be talking about and studying and coming up with our position. We would hope that the President will stand firm, as he said he would, as he is reviewing this.

We were very pleased, I think, at the review that Senator DOLE called for that showed that affirmative action was basically a move toward a more perfect Union. As a matter of fact, in our Constitution we talk about we are moving toward and hoping to have a more perfect Union. Affirmative action is a program that attempts to move people toward a more perfect Union. Therefore, we will certainly be engaging the Nation in a debate.

Let me just say a few other things that I would like to say. We have seen in recent weeks a great deal that has been put in the news media about affirmative action. It has been a topic that appears that the Republicans will try to turn into an all-out assault on people of color and women and minorities in this Nation.

As chairman of the Congressional Black Caucus, I am outraged by the efforts of the Republican majority to try to repeal affirmative action programs and attempt to turn the clock back on progress that had been made throughout the years.

Mr. Speaker, let me share some basic facts very quickly about affirmative action. Affirmative action, as you know, is defined in broad terms as any measure adopted to correct or compensate for past or present discrimination, or to prevent discrimination from recurring in the future.

It does not mean quotas, which are rigid requirements mandating that employers hire fixed percentages of members of a specific group, regardless of the qualifications.

Affirmative action programs have incorporated goals and timetables, and have clear objectives. Goals and timetables are merely used to help employers establish targets and time frames for achieving the targets. Employers are encouraged to make good faith efforts, but there are no legal penalties if they do not make their goals, if in fact they are making a good faith effort.

There has been a lot of distortion about this whole question of affirmative action. The history of affirmative action has revealed strong bipartisan support, as the gentleman from South Carolina recently said. Current standards were initiated throughout the years, and in the 1960s several large corporations said we should move this along, and President Nixon endorsed it.

Since then, eight successive Presidents have supported affirmative action. Other groups, like the Business Round Table and the National Association for Manufacturers, have stated that affirmative action is good business. In fact, studies have confirmed these statements time and time again.

As I conclude, Mr. Speaker, let me say that most employers believe that their productivity has not suffered by affirmative action at all, but has been enhanced. A report from Fortune Magazine found that many business leaders believe affirmative action is necessary to allow them to compete domestically and internationally. They believe it produces a work force that reflects the diversity of markets they serve.

In an all perfect world it would be nice to say that we live in a color-blind society. However, discrimination today is alive and well and still exists. Therefore, as long as there is discrimination based on race and gender, we must develop remedies that will take these factors into account.

Our country has a long and sad history of discrimination. Now more than ever our society needs to tear down barriers to prosperity and achievement, and enable every American equal access to education, decent housing, health care, job training, so that everyone is able to participate in this society.

Let me just say, Mr. Speaker, really in conclusion that this is nothing new to countries around the world. They have affirmative action programs in Fiji. They have affirmative action programs in Malaysia. The ethnic Malays were not getting opportunities, and they have a very specific, even much more rigid program than the affirmative action program we have here.

In Nigeria there was an attempt, because of the domination of one ethnic group over the total country, for affirmative action. In Northern Ireland, they are talking about the McBride principles as they are trying to integrate and make equal the arguments and the discrimination between the Protestants and the Catholics.

This is absolutely nothing new around the world. This is something that countries have struggled for to make their societies better, and once again, I commend the gentleman and gentlewomen who are here trying to educate this Nation about the positiveness of affirmative action.

Mr. THOMPSON. Mr. Speaker, I thank the gentleman. We look forward to his leadership in the Congressional Black Caucus on this and other issues.

Clearly, as the gentleman has said, this is the issue at this point that all of America is talking and wondering about. We know the debate will be fast and furious as the days come, but clearly, the CBC, along with other organizations of good will, are committed to making sure that this country remains strong and committed to equal opportunity for all.

Therefore, we compliment you and your leadership in the CBC, and look forward to having that debate for the entire American public.

Mr. HILLIARD. If the gentleman will continue to yield, Mr. Speaker, in closing, I just want to say a couple of things. First of all, the ultimate goal of affirmative action is to achieve fair representation for qualified racial minorities and women in all areas of American life.

I would say to you that this goal has not been realized. We have been trying for the last five decades to take care of this problem.

□ 2220

But we have in place a system, and to begin to tinker with and unravel equal opportunity and affirmative action programs at this juncture when so much progress has yet to be made is unthinkable. But it is absolutely unforgivable, because you turn the clock back and you create additional problems for America, in many instances, problems that have already been solved, or the solution is in the process.

Mr. CLYBURN. In closing, let me just say this, as I say so often. Affirmative action is in fact an experiment. We are experimenting with a method by which we can overcome the current effects of past discrimination. Our society, this democracy that we live in, is in fact an experiment. But as we look at all the groups of people that make up this great Nation of ours, we have to think about the different religions, different cultures. There is no religion that we call American, there is no culture that can be called American.

America is a mosaic of many things. Jews celebrate Yom Kippur, Christians celebrate Easter, Italians celebrate Columbus Day, black Americans celebrate Martin Luther King, Jr.'s birthday, Irish-Americans celebrate St. Patrick's Day, all of that, and we participate with each other, trying to make sure that people learn to respect these different cultures and these different religions.

If we can do that, then I think that what we need to do is learn to carry that same respect and participation into the workplace as well. If we can do that, I think that America is going to be a much better place for all of us.

Mr. THOMPSON. I thank the gentleman from South Carolina [Mr. CLYBURN].

Tonight we have tried to put in perspective some of the issues around the affirmative action debate. I would like to thank Congressman PAYNE, Congressman CLYBURN, and Congressman HILLIARD for joining me in this special order.

Mr. Speaker, if I am permitted, I yield the balance of my time to the gentleman from California [Mr. FARR] who has joined us at this time.

The SPEAKER pro tempore (Mr. KINGSTON). The gentleman from California is recognized for 3 minutes.

COMMEMORATING 50TH ANNIVERSARY OF CANNERY ROW AND JOHN STEINBECK'S 93D BIRTHDAY

Mr. FARR. Mr. Speaker, I thank my colleagues and the leaders of the Congressional Black Caucus for the last hour colloquy on the issue of affirmative action.

I want for a few minutes to recognize someone who brought to light the plight of the conditions of many of the people who represent and live in the district that I represent in the central coast of California. For today is a very special day in my central coast of California district.

Today would have been the 93d birthday of one of our Nation's greatest authors, John Steinbeck. John Steinbeck Nobel Laureate and native son of California, led a life as rich and provocative as the Salinas Valley he immortalized in his writings. His obsession with his hometown would develop into a lifelong theme, unfolding through the course of time like a Steinbeck novel. The year 1995 is also being celebrated as the 50th anniversary of the publication of "Cannery Row," his novel about the thirties in Monterey, CA.

Fifty years ago John Steinbeck shook off the anguish and horrors of World War II which he had experienced as a war correspondent. He wrote "Cannery Row," a lively story about the thirties, when life seemed to him to have more meaning. His novel about Doc, Mack, and the boys, Flora and her girls, and Lee Chong became an instant success with the war-weary American public. Today, schoolchildren throughout our Nation read Steinbeck's "Cannery Row" as part of their curriculum.

Steinbeck won the Pulitzer Prize fiction award for the "Grapes of Wrath" in 1940, which has now become an American classic. In 1962 he received the greatest honor of his distinguished writing career—the Nobel Prize for Literature "for his realistic as well as imaginative writings, distinguished by a sympathetic humor and keen social perception."

John Steinbeck's fiction has been recognized as being representative of the character of our people, especially their vitality and uniquely American qualities. People from around the world are attracted to our Monterey Bay shores because of his writing and come to the Monterey Peninsula and Salinas Valley to renew memories of his novels. Especially to visit the localities of his stories which are so vividly portrayed in "Cannery Row," "The Pastures of Heaven," "Of Mice and Men," "East of Eden," "The Red Pony," and "Travels with Charley."

Steinbeck achieved worldwide recognition for his keen observations and powerful writings of the human condition, bringing the plight of the disadvantaged and outcast to the forefront of social consciousness.

Our Nation has bestowed high honors on him, including the Medal of Freedom from President Lyndon Johnson and the American Gold Medallion issued by the U.S. Mint.

I invite you to join me in honoring John Steinbeck, on the 50th anniversary of the publishing of "Cannery Row" and in memory of his 93d birthday. His is truly a national treasure.

REFLECTIONS ON BLACK HISTORY MONTH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. FOX] is recognized for 5 minutes.

Mr. FOX of Pennsylvania. Mr. Speaker, I rise to discuss with my colleagues a wonderful journey I took during the month of February. The voyage I speak of was one of education and learning throughout our Black History Month which concludes tomorrow.

I had an opportunity, Mr. Speaker, to see how the people of my home district in Montgomery County, PA celebrated the heritage of a people who have contributed much to our society.

Many of you may realize it, but Montgomery County, PA was the end of the line for many slaves as they escaped to freedom along the underground railroad with the help of Lucretia Mott for whom the wonderful community of LaMott is now named in Cheltenham Township.

Communities in my district, Mr. Speaker, such as the beautiful town of Penllyn arose because of those men and women who fought so hard for their freedom. Even today it is clear that the freedoms we all enjoy here in the United States have a special home in places like Bethlehem Baptist Church which rose like a monument to freedom for those families under the leadership of Rev. Charles Quann.

What was perhaps most gratifying was to see the pride in the faces of the youth of these communities as they learned about the freedom fighters who risked everything so their children could breathe the sweet air of freedom, justice and equality.

These great men and women knew that, as Thomas Paine said in "The American Crisis," that "those who expect to reap the blessings of freedom must undergo the fatigues of supporting it."

Great black leaders and all those who fought for equality have never failed to undergo the fatigues of supporting freedom.

The words and ideals of individuals like the great emancipator Abraham Lincoln and the eloquent drum major for peace, Dr. Martin Luther King, Jr., rang throughout Montgomery County throughout February just as they rang out across the Nation when they were alive.

The spirit of Harriet Tubman was palpable as our children recalled how she inspired a Nation to continue the backbreaking battle for freedom.

Is the battle over? I would have to say no. But for those who have grown weary fighting against individuals and groups who would repress a people, any people, the events of this month must have had a rejuvenating effect on their souls.

Another freedom fighter, Franklin Delano Roosevelt, once said,

> We look forward to a world founded on the basis of four essential human freedoms. The first is freedom of speech and expression, everywhere in the world. The second is freedom of every person to worship God in his own way, everywhere in the world. The third is freedom from want, everywhere in the world. The fourth is freedom from fear, anywhere in the world.

My friends and colleagues, we still have a distance to travel on this journey of equality and justice for all.

I heard a young man in church recently say to the congregation in the words of Frederick Douglass who said, When we are noted for enterprise, industry and success, we shall no longer have any hurdles in our quest to achieve civil rights for all.

Mr. Speaker, I know that the people of this Nation will continue to recognize the works of King, Tubman, Douglass and Lincoln who have done so much to help others. Not it is time that we as a Nation do all we can to ensure that their records are emulated and their contribution will never be forgotten.

□ 2230

THE DEFENSE OF OUR COUNTRY

The SPEAKER pro tempore (Mr. KINGSTON). Under the Speaker's announced policy of January 4, 1995, the gentleman from Pennsylvania [Mr. WELDON] is recognized for 60 minutes as the designee of the majority leader.

Mr. WELDON of Pennsylvania. Mr. Speaker, I will hopefully not take the entire hour this evening.

My topic this evening is the defense of our country, and as a 9-year member of the National Security Committee, formerly the Armed Services Committee, and current chairman of the Research and Technology Subcommittee, I would like to focus on three specific items relative to our national defense. The first will be our budget and the current conflict in Washington over how much money we should spend on our military over the next 5 years, and especially this next fiscal year. The second will be missile defense, where we are going in terms of protecting this country, and our troops from a missile attack. The third will be a problem I see emerging in terms of arms sales that the Clinton administration has not yet addressed.

Before I get into the budget numbers, in terms of defense spending, Mr. Speaker, I quote an article today that appeared in two newspapers that I have to share with you and all of our colleagues that outraged me when I read it. It was printed; originally the story ran in the Baltimore Sun, and then was reprinted by the Tampa Tribune in an editorial.

It has to do with the abuse of our current social welfare system. The reason I bring it up during this 1-hour special order on defense is that over the past 10 or 15 years we have heard Member after Member talk about, even the President talk about, expensive toilet seats and hammers that were especially designed materials for use by the military, and much of that criticism, I might add, was warranted, especially where we did not have good control of our procurement process.

And that is why we have worked on acquisition reform in past sessions, and it is again a priority for this session. But we have seemed to never want to talk about the abuse that occurs in the social welfare state and the spending that has occurred totally out of control over the past 30 years. I pointed out during the debate on the National Security Revitalization Act several weeks ago, over the past 30 years, we have had two wars in America. The first war was the war on poverty declared by Lyndon Johnson which we lost. We spent the taxpayers' money to the extent of $6 trillion over the past 30 years on social welfare programs, yet we have more impoverished people today than at any time in recent history.

During that same time period the cold war ended. We won that war, and we won that war because of our focus on a strong national defense. The purpose of a strong defense is not to fight wars but, rather, to deter aggression.

During this same time period, we were spending $6 trillion public dollars on social welfare programs, we spent approximately $5 trillion on national security and national defense, and I think the best evidence of how successful those dollars were in terms of being spent is that we saw communism fall, the Berlin Wall came down, and democracy break out around the world. Even former Soviet leader Gorbachev stated he just could not keep up with America's defense posture which was the reason why they chose to work toward a democratic state and to begin to dismantle the Russian arsenal which is being done. Some would argue to what extent it is being done. At least, it is being done.

I want to highlight this story, because we need to understand, America, what happens with the tax dollars that we spend, and this is probably as good of an example as you could have. It results from an interview that the Baltimore Sun had with an unemployed family in Lake Providence, LA. This family of nine people qualifies and receives $46,716 a year in tax-free cash from the Federal Government.

Now, I am not an accountant or a CPA, but I know to get $46,716 of tax-free cash, you would have to make a lot more money if you were paying ordinary tax rates.

I am reluctant to mention the name of this family, but it has been reported in both the Baltimore Sun and the Tampa Tribune, and the lady who was interviewed evidently had no problem with her name being used, as you will see from some of the quotes. The name is Rosie Watson. Rosie Watson gets $343.50 a month in disability payments because a judge ruled the she is too stressed out to work. Now, that, in fact, may be legitimate. I am not arguing that point. Her common law husband receives $343.50 a month also from the Federal Government because he is too fat to work. He weights 386 pounds.

Now, in addition, their seven children, ages 13 to 22, all receive Federal support in the amount of $458 a month because supposedly they have demonstrated age-appropriate inappropriate behavior so they qualify for this special compensation. Multiplying all of those dollars out, you come to the figure of $46,716 a year from the Federal Government without having to pay any tax.

In addition, they also receive full medical care and benefits through Medicaid which is not included in that sum of money.

When questioned by the Baltimore Sun about this, she said, and I quote, "I got nothing to hide."

In 1978 she told officials that her second child, at age 4, was a threat to other children and, therefore, she should get compensation for that child. She kept reapplying until, in 1984, the officials agreed that he did have a behavior problem, and the award was granted. But a few years later because of that ruling, she was given a $10,000 lump sum check to make up for back compensation that she had not been provided for that child. In all, the family has received $37,000 in retroactive payments. That is above and beyond the $46,716 each year.

Now, Mr. Speaker, for all of our senior citizens out there, they have to remember this is coming out of the Social Security system, yes, even the money for the children is coming out of the Social Security system. After 15 years of relentless applications, Rosie Watson has had all of her children put on these disability payments.

Now, here is a rub: You know, you could see that these payments are supposed to do or are designed to help individuals deal with their disabilities and attempt to get back into the mainstream of society. But the Baltimore Sun went on to ask her what she uses the money for, and she explained how she divvies it up each month, and then she said, and I quote, "One need that she has each month is $120 in allowances for George, who is 14, David 17, Willie, 18, and Denny, 19. 'Being the age they is and being out there with their little girl friends, they need the money,' she says."

Now, Mr. Speaker, what we are hearing is not only are we paying this family $47,000 a year of tax-free Federal money, but that four of the children are getting a monthly allotment of $120, $30 each, to be used partly to take care of their girl friends.

Mr. Speaker, I think this is an example of what the American people feel is wrong with the social welfare state in this country. Now, we can talk about all the hammers and toilet seats we want, and I can tell you that no department of the Federal Government has more oversight than DoD has right now, but this year and this session it is time to focus on reconfiguring the way we spend money on social welfare programs, and I am glad that is one of our major items under consideration for reform.

Part of the problem in an era where we have declining dollars available for Federal priorities, one of the areas that has got hit the hardest during the past 5 years has been defense spending, and yet, in fact, in this fiscal year no one can tell us what the right amount is to spend on our national security.

We had the President tell us when he was a candidate for office that he would cut $60 billion off of defense spending over 5 years from what President Bush had projected. Then when he became the President, he said, "No, I was wrong. I am going to increase that cut to $128 billion," which he is currently in the process of implementing. Many of us on both sides of the aisle last year and 2 years ago told the President that he was making a grave mistake, that cutting defense spending by $128 billion over 5 years after four successive years of declining defense budgets would just not be able to be lived up to by the military, and that it was imprudent for him to include that kind of cut in his 5-year budget. But he went ahead and did it.

Now, here this year we have the General Accounting Office coming before Congress and testifying that the President's defense needs, as outlined by the bottom-up review, outlined by Les Aspin when he was Secretary of Defense, are in fact $150 billion short. So the General Accounting Office is saying we are short $150 billion over 5 years.

Now, the Congressional Budget Office, which reports to the Congress, last year came up with a figure that we are now using this year showing that the budget over 5 years is between $60 billion and $100 billion short.

One of the most respected Democrats in terms of defense posture in this Congress, the gentleman from Missouri [Mr. SKELTON] has come out with his own budget saying in just this fiscal year alone, our defense needs are $44 billion short, and, therefore, he wants his colleagues, and all of us on both sides of the aisle, to support the restoration of $44 billion in defense outlays, I should say, over the next 5 years, so we have three different numbers from three different individuals and groups.

What we would like to think is that we base our defense needs on the realities that are out there, and as we see the potential for conflict, the military leadership would come back to us and tell us what it is in the way of manpower and equipment that they need to deal with those potential conflicts. Unfortunately, for the past 2 years, the budget number that we have been given by the administration, as SAM NUNN has said publicly, was simply pulled out of the air. It was not based on real needs and not based on a real net threat assessment.

This year we are trying to deal with it and solve the dilemma of what is the correct amount of funding in terms of our military for this next fiscal year and for the remaining 4 years of the 5-year budget cycle.

Now, President Clinton stood in this very Chamber in January when he gave the State of the Union Message, and he pounded his fist on the podium directly behind me, and he told the American people as well as all of us that he would not accept any more defense cuts, and those were his exact words. Usually the American people want to believe the President, because what he says we would think in fact is what he was going to do. In fact, when he pounded the desk, we figured he really meant this. He also said he was going to add back in $25 billion over 5 years, in effect, because there was a need for additional funds.

But we need to look at two things, Mr. Speaker. First of all, this year's defense budget is, in fact, lower than last year's, and the President's cuts are still under way, so his notion about not having any further cuts is really not borne out by the budget he submitted to us.

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But more importantly, the administration is really playing a charade with the American people. He said at this podium that he was going to add back $25 billion of new money. What he did not tell the American people was that $23 of that $25 billion would not come into play until after the next presidential election. Now that is pretty convenient. In other words, "Trust me. When I run for relection, and if I am elected, then I will put back the other $23 billion of the $25 billion I promised." None of it is going back in this year. It is coming after, in fact, the President has to run for relection, assuming he would be reelected.

In fact, over the past 5 years the defense spending for this country has gone down by 25 percent. The single largest decrease in any part of the Federal budget has, in fact, been in support of our military, and I am not saying that some of those cuts were not necessary. In fact many of them I supported. But while we have cut defense spending by 25 percent, what outrages me is the fact that during that same 5-year time period we have increased nondefense spending in the defense budget by 361 percent. What that means is that while we have cut defense spending dramatically, Members of Congress have stuck in items in the defense bill that they could not get funded through normal appropriation channels, and that amount has increased 361 percent and includes such items as, in this year's defense bill, $13 billion for environmental restoration and cleanup, $3 billion, some of it for questionable dual use conversion projects, $4.7 billion for add-ons never requested by the military, never gone through the authorization process, stuck on by Members of Congress.

So what is really concerning to me is that, while we have cut defense spending by 25 percent, Members of Congress keep adding on more and more programs that in some cases have nothing to do with the military.

Now I happen to be a strong supporter of cancer research. I think it is important that we work to find a cure, but I cannot for the life of me understand why all the cancer research is funded out of the defense bill, and many of those same liberals who question the level of defense spending are the ones who put cancer research in the defense bill. Now that does not make sense. Likewise I think a solution for the problem of AIDS is important, but I cannot understand why tens of millions of dollars for AIDS research are in the defense bill. Four point seven billion dollars of this year's defense bill has nothing to do with defense in terms of requirements by the Pentagon, but rather are priorities identified by individual Members and stuck in defense spending provisions.

Mr. Speaker, this has got to stop. If we are going to be fair with our military, then we need to have a clean budget process. What we need for the military should be that. If we think there are other priorities that should be addressed, they should be paid for through other bills that are worked through the appropriation process.

We also need to make sure that, when this President wants to send our troops overseas, as he has done frequently, that he is willing to stand up and ask us to pay for it. Many of us; in fact, most of us in this body; wanted to have a vote on whether or not our troops should be sent into Haiti. In fact many of us signed resolutions. We wanted to have a clear, up-front debate before the President committed our troops because we were debating this issue for months. We knew he was planning on sending our troops into Haiti. The President did not want us to have that opportunity. In fact, as we know, it was a Sunday evening while we were out of session over a recess that he decided he was going to send our planes down to Haiti, and this was only averted, a military insertion was only averted, by the actions of SAM NUNN, Colin Powell, and Jimmy Carter. But in fact the troops did go into Haiti, although it was a peaceful process that they went in under, but the point is we have now spent $1.5 billion of DOD money on the Haitian operation.

So my point is that while we are continuing to use the defense budget for all these other purposes, Mr. Speaker, we are also using defense money to pay for the President's escapades around the world, not just in Haiti, continued presence in Somalia which every day seems like it was more and more of a waste to keep our troops there, and troops in Macedonia, Bosnia, and now the huge operation in Haiti.

What really offended me when we had the hearings on our Haiti presence was to find out that while our troops are being told that we have less money to spend on them, that we are using our DOD tax dollars to pay the full salaries, benefits, housing costs and travel for non-United States troops, troops from Guatemala, Nepal, Bangladesh. Other countries that President Clinton had to entice into Haiti are being paid with United States DOD tax dollars. To me that is an outrage, especially at a time when we are cutting defense dollars in such a draconian way.

Mr. Speaker, all of these budget cuts that we have imposed on the military and imposed on our national security establishment have forced us to push back further and further the whole issue that is my second topic tonight, and that is the issue of missile defense. This is an extremely important issue, Mr. Speaker, that we are going to focus on very aggressively between now and the end of this session because the facts have not been properly brought out to the American people about the real threat that is out there.

We know that there are Saddam Husseins in the world and the other threats that we have seen and had to face down, but it is harder to understand what the threat is in terms of a ballistic missile attack, whether it be deliberate or accidental, or even a Cruise missile attack. We are going to be focusing on this glaring area of our national security where we currently have a vacuum and have no proper defense mechanism in place.

When I asked my constituents back in Pennsylvania if they think that we have a system to protect us against one single missile coming into America fired accidentally or deliberately, they cannot believe it when I say that we have no system in place. They just cannot understand how a country with the assets that we have, spending the money that we spend, does not yet have a ballistic missile defense system to protect mainstream America, as well as our troops in the field. As a matter of fact, many of those who have fought long and hard for the past 20 years against missile defense were the same ones cheering the success of the Patriot system when it was brought into play in Desert Storm. The Patriot system was developed through the dollars that we put forth in the old SDI Program starting under President Reagan. If we had not spent money back then, we would not have had a defensive missile system to take down those missiles coming into Israel fired by Saddam Hussein, as primitive as they were.

Mr. Speaker, despite the money that we have spent and despite what the misconception is of the American people, we still do not have adequate missile defense capability for this country in three different areas, and I want to talk about each of them briefly. First of all, Cruise missiles, the missiles that fly at low altitude, the kind that we saw Saddam fire at Israel called the Scud missiles. Seventy-seven countries in the world today have Cruise missiles. Seventy-seven countries in the world today, we have verified, have Cruise missiles. Over 20 countries in the world are capable of producing Cruise missiles.

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Now, granted, cruise missiles are primarily aimed at sinking ships. But, Mr. Speaker, a cruise missile can be placed on any platform. A cruise missile can be put on a ship at sea. So when our liberal friends say that we do not need missile defense because no missile can hit our mainland, what they forget is that a cruise missile can in fact be mounted on a ship and in fact could be used to deploy against some part of the American mainland.

We are aggressively developing antimissile defenses for the cruise missile technology, but not as fast as many in the military would like us to proceed, and in fact not as fast as I would like us to proceed, because I think that poses a tremendous threat to our security.

Now, the Russians, on the other hand, have an aggressive program for cruise missile defense. They have the SA–10 and the SA–12. The SA–12 has more capability than our Patriot system, the one we used in Desert Storm. In fact, what are the Russians doing with that system? We have evidence they are selling it all over the world.

So here are the Russians selling a technology even better than the one that we have in terms of our ballistic missile defense. As a matter of fact, our CIA purchased one of these sophisticated systems and delivered it to Huntsville, AL. To the embarrassment of the CIA, the New York Times ran an editorial about how open this whole process was of buying this supposedly sophisticated piece of equipment from the Russians.

I can tell you, Mr. Speaker, that if we have the SA–12, countries all over the world have the SA–12, because the Russians have placed it on the open market. So cruise missiles are in fact an area that we have to focus our attention on.

The second area is the adequate protection of our defenses when they are in the theater of operation like we saw over in the Middle East called theater missile defense, where we can protect our troops from the kind of attacks that we saw with Scud missiles. The Clinton administration is in favor of theater missile defense, and, even though they have cut the funding for missile defense significantly, we do have a robust program looking to implement theater ballistic missile defense whenever our troops are deployed. Both the Navy, the Army, and the Air Force are working on aggressive theater missile defense capabilities, and I support those efforts. Hopefully we can wrap up some of the funding for those programs, because who knows where the next threat will come from, a theater missile being used against our troops or one of our allies' troops.

In addition, Mr. Speaker, we are working with the Israelis right now to develop a theater missile system that will be used specifically in Israel called the Arrow system, where 80 percent of the costs of that program are being paid for with United States tax dollars.

So theater missile defense is the second key area of missile defense that we are focusing on, and I support the administration's attempt in that area, as well as leadership of General O'Neill, who heads the office and that operation.

But there is a third area of missile defense we are completely ignoring, and that is the whole area of national missile defense. That was part of our debate that we had on the National Security Revitalization Act 2 weeks ago. There are those of us who feel we owe it to the administration to come back and tell us whether or not we have technologies we can deploy that will give us some capability against a deliberate or accidental launch of one, two, three, or perhaps four or five intercontinental ballistic missiles.

Today we have no such system. Even though the ABM treaty allows each of the two signatories the opportunity to have a ballistic missile defense system, only Russia has one. In fact, Russia has today the only operational ABM system, surrounding Moscow. In fact, if you add in the capability of the large phased array radars around that system, you can in effect say they have a larger system, perhaps even the one that would break them out of the ABM treaty. We have no such system in America.

So if a country, whether it be Russia, or China, or eventually North Korea when they develop the capability, has their own technology or buys the technology to fire one missile at one of our cities, we have absolutely no way today to defend the American people.

None. Zilch, zero. Despite all the money that we spend on defense in this country, we have no antiballistic missile system to protect our mainland.

Many say we do not need it because we operate on the theory of mutually assured destruction. We dare the Russians to attack us because of retaliation and vice-versa with them. But, Mr. Speaker, that is not the scenario today. In fact, the biggest potential problem we have today comes from instability within the former Soviet Union and the warheads and missiles that are still in place that can in fact be sold to a Third World nation or a rogue nation.

Now, what are the chances of that happening? I have confidence in our intelligence community being able to assess what is the command and control system in Russian today. Let me give you one example. I am going to elaborate on it in a special order in the future.

The mainstay of the Russian ballistic missile system with nuclear warhead capability is the SS–25. Russia has a number of SS–25's positioned throughout their country.

The SS–25 typically operates out of a battery of three missiles, each of which can be programmed to a different city or different target. On each of those missiles in that battery of three is a separate nuclear warhead which means they have three warheads on three different missiles, which can be aimed very quickly at any city in the mainland United States and could hit any one of those cities from any location inside of Russia, or in fact any place that they would choose to take that capability.

That system is the one that worries me the most. Now, why does it worry me? First of all, the SS–25 is mobilely launched, which means the mobile launcher for that rocket can be moved very quickly and very easily. What worries me secondarily about the SS–25 is that the Russians have offered that technology to Brazil to be used as a space launch vehicle.

Now, what is so scary about that? What is so scary about that is there is no difference in the configuration of a SS–25 in Russia with a nuclear warhead than it is in Brazil as a space launch vehicle. If the Russians are offering the SS–25 to Brazil, the question we have to ask is where else are they offering the SS–25?

Now, thank goodness, when we found out about the offering of the SS–25 to Brazil, we stepped in and said no, that is a violation of agreements that we have with the Russians, you cannot do that. So they did in fact back off. But, Mr. Speaker, the point is, how much time are we going to have from the moment that a rogue nation gets the capability of a SS–25 and decides they are going to aim that at one of our cities? Can we afford then to wait 6 to 8 years to develop an affective ballistic missile defense system for our country?

I say no. And that is why I think the prudent course for us to take is not to go off spending tens of billions of new dollars in missile defense. We cannot do that in this environment. But we do owe it to our people and to our citizens to look carefully at technologies that we have been working on that are ready to be deployed.

Secretary Perry organized a Tiger Team task force to look at national ballistic missile defense in January of this year. Their preliminary report showed that we could implement a limited thin layer of protection for the entire continental U.S., headquartered in Grand Forks, ND, that would be able to give us a 90 percent effective rate in taking out a battery of three intercontinental ballistic missiles such as the SS–25. That system is doable today. It could be deployed in a matter of 4 years from the date that we give the go-ahead, which could be as early as say July of this year.

The cost of that system over 5 years is not $25 billion or $30 billion. The cost of that system is approximately $5 billion over 5 years. But it would give us for the first time a defensive capability against an accidental or deliberate launch by a rogue nation of a missile like the SS–25.

Mr. Speaker, I think we owe it to our constituents and to our security interests to pursue the development and implementation of that kind of a system. Beyond the system that is outlined in the Tiger Team report is the need to establish a system of sensors in space. Even our colleagues on the Democratic side led by our good friend and expert from South Carolina, JOHN SPRATT, agree that space-based sensors are necessary for us to detect when a missile is being launched any place in the world.

Following that movement toward a limited thin-layer defense system, we also need to develop a space-based sensor system, which allows us to detect when someone would in fact fire a system against us.

Mr. Speaker, for those reasons, I think it is absolutely critical that when we debate missile defense in this year's authorization and appropriation bill, that we do it based on the facts. Because of that, we are going to be implementing an aggressive program to educate Members of Congress and their staffs with real information about situations occurring around the world that could threaten our security, and where missile defense comes in as a critical element, whether it is theater, whether it is cruise missile, or whether it is national missile defense.

We will be announcing within the week a major proactive effort that will be bipartisan that will include briefings for Members, that will include regular handouts for Members, focusing on the ballistic missile capabilities that are out there today, what capabilities our enemies have, and what kinds of technologies are being distributed throughout the world.

It is extremely important that our colleagues, when faced with a vote on missile defense in the future, do so based on fact and not emotion. We are not talking about the term "star wars." As I said during the debate on the National Security Revitalization Act, star wars has no place in the discussion today. Even our colleagues on the other side have acknowledged that.

We are talking about moving very deliberately into technology that we have been working on that we know are deployable within the near term, and doing it in such a way that we can afford it, based upon the budgetary constraints that we have, given our other concerns and priorities.

Mr. Speaker, this debate will occur in the May-June time frame, when we have defense bills on the floor, but I want to make sure as chairman of the Military Research and Development Subcommittee of the Committee on National Security that Members do so based on factual information.

Mr. Speaker, the final topic I want to hit tonight as relates to defense has to do with technology transfer, and a very scary event that is about to happen or actually has happened and continues to unfold involving the ability of the Chinese to enhance their Cruise Missile capability.

Mr. Speaker, an article in the Washington Times dated February 13 highlighted the sale of Russian rocket motors to China, and the Clinton administration's efforts to try to halt the Russian sale of the rocket motors to China because of our antiproliferation legislation and laws, and because our officials feel the engines will be used in advanced Chinese cruise missiles.

The Clinton administration maintains that the sale of these engines by the Russians violates the missile technology control regime, but the Russian Government recently informed the United States Government and the Clinton administration it would not stop the sale because, and this is what is really outrageous, the White House had approved a similar sale of United States-made gas turbines to the Chinese last year.

We have seen the headlines today, where we have a new agreement with the Chinese on trade relations, but Mr. Speaker, how outrageous is it that we in fact are continuing under the Clinton administration to sell dangerous technology that will allow them to enhance their Cruise Missile capability?

We objected when the Russians wanted to sell their engines to the Chinese, because of what it would do, but we in fact ourselves are committing and have committed that same egregious error.

In fact, this past Monday, February 20, in the Jack Anderson and Michael

Binstein column entitled "A Red Flag on Technology Sale to China, the Clinton administration is poised to allow a controversial technology sale that many believe could help the Communist country upgrade its missile program."

We are not just talking now about the sale of the engines. The Clinton administration now is about ready to approve the sale of the technology, so that Chinese can now begin to build the engines that will be used in the cruise missiles that could in fact attack the United States or our allies.

Let me read a quote from one frustrated administration official in the Jack Anderson column: "The Administration knows this in fact would give China this new technology capability, but so far, no one has had the political will to stand up and say no." It further goes on to say "Clearly, the Chinese could use this technology to make engines which are perfectly suited for that requirement, of improving their Cruise Missile engines," says Kenneth Timmerman, a security specialist and director of the Middle East Data Project.

He goes on to say that there was a confidential memo that Jack Anderson was able to get a copy of that supports Mr. Timmerman's view. I quote from the memo: "Garrett engines," and Garrett is a company that manufactures these engines in the U.S., "Garrett engines and/or production technology would provide an array of high performance capabilities to satisfy China's military requirements well into the 21st Century," one document alleges.

"Another study indicates China could make engines capable of launching a biological warhead about 1,000 miles if it obtained these materials."

Mr. Speaker, what the administration is saying internally, which has not yet come out in public until this article by Jack Anderson was revealed last week, is that internal documents in the administration are cautioning that giving the Chinese this technology will allow them to have cruise missiles that can go up to 1,000 miles with a biological warhead on that cruise missile.

Despite the red flags being raised, the Clinton administration last year lifted the export controls for this particular engine that normally cover the Garrett technology, and they are now about to let the technology itself be transferred to the Chinese.

"Critics of the deal are outraged," as they should be. "This is exactly what we said would happen a year ago," an American official said. "We warned that the Chinese would come after the technology after they got the engines, but the administration decontrolled it anyway. In my mind, it constitutes criminal negligence."

An administration official that opposed the sale of the engines and now the technology itself, saying that they told the administration the Chinese would go to get the technology, which they are doing right now, and that we did it anyway, in his mind, it is criminal negligence.

Mr. Speaker, this administration has to understand that the defense of this country and our people is of the highest priority, and those of us who serve on the Committee on National Security, both Republicans and Democrats, use every minute of the day that we have to focus on how to support that defense.

However, Mr. Speaker, what we are seeing occur today with defense spending numbers, with the lack of an effort for adequate missile defense capability, and with uncontrolled arms sales that jeopardize our future security, that is absolutely outrageous.

Mr. Speaker, over the next 4 weeks we will be highlighting each of these components in detail. I ask you and our colleagues to read with great interest what we provide, to challenge it, to ask for backup material and data, so when we have a full debate in May on the authorization bill, that we do it based on the facts and not emotion.

Mr. Speaker, I include for the RECORD the editorial from the Tampa Tribune of February 13, and that articles from the Washington Times dated February 13, entitled "Russia Sells Rocket Motors to China" be entered, and that the Monday, February 20 Jack Anderson column entitled "A Red Flag on Technology Sale to China" also be entered in the RECORD.

I thank the Speaker and our hardworking staff for their dedication in allowing me to complete this special order.

The material referred to is as follows:

[From the Tampa Tribune, Feb. 13]

HERE'S A GRAND LITTLE STORY TO STIR YOUR BLOOD ON A MONDAY MORNING

How does an unemployed family in Lake Providence, LA., qualify for $46,716 a year in tax-free cash from the federal government?

The Baltimore Sun, in a special report, details one woman's crusade to win disability benefits and gives a rare insight into a welfare system infuriatingly out of control.

Rosie Watson, the Sun reports, gets $343.50 a month in disability payments because a judge found her too stressed-out to work. Her common-law husband, at 386 pounds, was ruled too fat to work, so he gets $343.50 a month too.

Their seven children, ages 13 to 22, have all failed to demonstrate "age-appropriate behavior," so each of them qualifies for payments of $458 a month, what the welfare world calls "crazy checks."

The Sun's description of Watson's persistent efforts over many years to convince social workers and judges that various members of her family are incapable of supporting themselves reveals serious flaws in the welfare system, flaws that account for the nation's increasingly hostile opinion of it.

"I GOT NOTHING to hide," the woman told the Sun, and allowed reporters to visit her in her modest home, even opened her Social Security records to them. The inescapable conclusion is that the problems lie with the system, not with people like Watson who, like good attorneys, endeavor to make their best case.

Watson's quest began in 1975 when she tried and failed to convince Social Security officials she couldn't work.

In 1978 she told officials that her second child, at age 4, was a threat to other children and should receive financial aid. They didn't buy it, but she kept up, applying again and again until, in 1984, Social Security officials agreed that he had behavior problems. A few years later she received a $10,000 check after it was decided he should have been declared disabled four years earlier.

In all, the family has received $37,000 in retroactive payments, part of $1.4 billion in retroactive checks mailed after the Supreme Court in 1990 gave children increased rights to disability payments.

After 15 years of relentless applications, Rosie Watson has had all her children put on disability payments. The youngest child, now 13, attends elementary school, where the principal complains that the quest for "crazy checks" is undermining academic standards. The children don't want to fail but perform poorly to please their parents, he says.

Not true, says Watson.

"I ain't never told any of 'em to act crazy and get some money," she said. "Social Security will send you to their own doctor. They're not fooled because those doctors read your mind. They know what you can do and not do."

The Sun discovered that one doctor found a Watson boy had "strong anti-social features in his personality and is volatile and explosive." And, "he said he does not want work."

Apparently, unless government rules are changed, he will never have to get a job.

Here is the Sun's description of what Mother Watson does with the $3,893 worth of monthly checks:

"As soon as she extracts the nine checks from the [post office] box, she cashes them. She gives the full amount so Sam, 21 and Cary, 22, the father of two children who have moved out of the house since being awarded benefits. The remainder is used for the other children and household expenses.

"Most of the money goes for the children to 'see that they have what's needed,' the woman says. 'With what's left, I pay bills and buy food.'

"One need is $120 allowances for George, 14 David, 17, Willie, 18, and Danny, 19.

"Being the age they is and being out there-with their little girlfriends, they need the money,' she says."

The checks are sent because of a disability, but there is no requirement that the money be spent to try to overcome that disability, the Sun reports. The family's medical needs are taken care of through Medicaid, the value of which the newspaper did not attempt to calculate.

The reporters had a little trouble determining exactly what Rosie Watson's disability is.

In 1974 she said she couldn't work because of high blood pressure, heart trouble and bad nerves, and was rejected. In 1975 she reported it was anemia, dizziness, nerves and bad kidneys, and was rejected. In 1976 she blamed low blood pressure and heart problems, was rejected and gave up for a while.

In 1984 she applied again complaining of stomach problems, epilepsy and sinus trouble. In 1985 the list included "female problems," and an examining doctor concluded: "This is a 34-year-old black female who has seven children under 12 years of age, an alcoholic husband and no money, who complains of insomnia, crying spells, depression."

She appealed that rejection to a judge who determined her unable to cope with the "stresses of any type of competitive employment," and the checks began to flow. Two years later, a judge ruled her husband disabled because he was obese.

The newspaper concludes that the Watson family likely will remain on welfare permanently, with the children moving directly onto the adult rolls.

What did Congress intend when it created such a program that rewards failure more richly than the competitive market can reward hard work?

What it got was places like Lake Providence, where "crazy checks" have become important parts of the town's culture and economy.

[From the Washington Times, Feb. 13, 1995]

RUSSIA SELLS ROCKET MOTORS TO CHINA

(By Bill Gertz)

The Clinton administration is trying to halt Russia's sale of rocket motors to China because anti-proliferation officials say the engines will be used in advanced Chinese cruise missiles.

State Department officials notified Moscow last year that the sale of military rocket motors would violate the Missile Technology Control Regime (MTCR), the international accord aimed at blocking the spread of missile technology, according to administration officials.

But the Russian government recently informed the U.S. government it would not stop the sale because the White House had approved a similar sale of U.S.-made gas turbine engines to China last year.

One official said the small rocket motors are taken from Russian cruise missiles and are suitable for use in Chinese cruise missiles.

The official said the sale would put Moscow in violation of the 1987 MTCR, which bars sales of missiles or components capable of lofting a payload of at least 1,100 pounds of a range of at least 186 miles.

The engine deal is part of broader Russian efforts to supply military hardware and technology to China, regarded as a major proliferator of weapons and technology, officials said.

The U.S.-Russia dispute over the sale comes amid fresh reports that the United States tried unsuccessfully to block an $800 million contract between Moscow and the Iranian government to build a nuclear power plant.

Russian officials went ahead with the Iranian reactor because of the U.S. agreement with North Korea to provide that rogue nation with nuclear reactor technology, said officials who spoke on condition of anonymity.

U.S. officials believe the Russian support will assist Tehran's drive for nuclear weapons, which many officials say are several years away.

"We have expressed our concerns on that issue and continue to express our concerns," White House Chief of Staff Leon Panetta said yesterday. "And, obviously, we think that ultimately there's some hope that this will not take place."

Mr. Panetta said the administration will review "our relationship" with Russia in an effort to force Moscow to "adhere to the policy that we believe in, which is, let us not give aid to terrorists in this world."

Administration officials said U.S. efforts to halt the proposed sale of Russian rocket motors to China were undermined by the sale last year of jet engines made by the Phoenix-based Garrett Co., a subsidiary of AlliedSignal.

The Garrett jet engines were sold to the Nanchang Aircraft Co., which manufactures jet trainers used by the Chinese military.

The engine sale lifted controls on the small engine technology that the CIA believes could be used in long-range Chinese cruise missiles.

China produces six types of surfaced-launched cruise missiles, including the Silkworm, and has exported cruise missiles to Iran, Iraq, North Korea and Pakistan. It also has exported airlaunched cruise missiles to Iran.

The officials did not disclose the exact type of cruise missile engine being marketed by the Russians.

The sale of jet engines by the Phoenix-based manufacturer Garrett was bitterly opposed by some CIA and Pentagon officials last year because of just the type of problem raised by efforts to head off the proposed engine sale by the Russians.

"The administration's counter-proliferation program is a total failure," one official said. "There isn't one program that has been able to stop the proliferation of weapons technology."

The Chinese are more interested in acquiring the Garrett engine production technology than the Russian engines, which are inferior to the U.S. engines.

In fact, the Chinese are now seeking to buy the technology needed to produce their own versions to produce their own versions of the Garrett turbine engines, U.S. officials said.

[From the Post, Monday, Feb. 20, 1995]

A RED FLAG ON TECHNOLOGY SALE TO CHINA

(By Jack Anderson and Michael Binstein)

The Clinton administration is proving once again that on arms proliferation issues, profit often rules over prudence.

At a time when American officials are threatening the People's Republic of China over its unfair trade practices, human rights abuses and weapons exports, the Clinton administration is poised to allow a controversial technology sale that many believe could help the communist country upgrade its missile program.

"This [sale] would give China the technological know-how to make engines for long-range cruise missiles capable of hitting any city in Japan, Korea—all the way through India," one frustrated American official explained. "The administration knows this, but so far no one has had the political will to stand up and say no."

The proposed deal involves AlliedSignal Inc., the California-based aerospace giant. The company recently informed the government that it intends to sell China the manufacturing technology used to build its Garrett gas turbine engines. This follows on the heels of a controversial decision by the administration last year to allow the Garrett engines to be sold.

AlliedSignal officials told us the technology poses little risk because it is suited only to build aircraft engines."We are not in a position to judge China's missile engine manufacturing capability," a company spokesman said, "However, the technology involved is specific to civil-certified [Garrett] engines, which are designed for aircraft operations."

Arms proliferation experts believe China wants the Garrett technology to establish a domestic production line for upgraded cruise missile engines. "Clearly, the Chinese could use this to make engines which are perfectly suited for that requirement," says Kenneth Timmerman, a security specialist and director of the Middle East Data Project.

Confidential government studies obtained by our associates Dean Boyd and Dale Van Atta support Timmerman's view. "Garrett engines and/or production technology would provide an array of high * * * performance capabilities to satisfy [China's] military requirements well into the next century," one document alleges. Another study indicates China could make engines capable of launching a biological warhead about 1,000 miles if it obtained these materials.

Despite the red flags, the Clinton administration last year lifted the export controls that normally cover the Garrett technology. This means AlliedSignal is free to sell its manufacturing technology without government approval—unless the administration reverses itself. So far, there's been little indication this will happen.

Iain S. Baird, the Commerce Department's deputy assistant secretary for export administration, maintains there is no legal basis to oppose the sale. He says the Garrett technology is more than 20 years old and "completely impractical" for use in cruise missiles. Baird added that AlliedSignal should be applauded for taking "the unusual step of advising" the government of the sale when it wasn't required to.

In the original engine sale, which came in the wake of the administration's 1994 decision, the engines were to be used in a military jet China was developing with Pakistan. Many American officials opposed the deal, after intelligence studies found that the Chinese recipient was involved in missile building and that the engines could form the basis for a new Chinese cruise missile.

Nevertheless, the Clinton administration approved the sale, allowing the engines to be exported as civilian goods despite their declared military end-use. Despite specific warnings from Congress, officials at the Pentagon and the Commerce Department also removed export controls from the Garrett manufacturing technology.

Allied Signal says it has sold only 33 Garrett engines to China, and the technology sale hasn't been finalized. A company spokesman added, "At this point, we don't need government approval."

Critics of the deal are outraged. "This is exactly what we said would happen a year ago," an American official said. "We warned that the Chinese would come after the technology after they got the engines, but [the administration] decontrolled it anyway. In my mind, it constitutes criminal negligence."

The anger generated by the proposed sale is not surprising considering a simulated war game played out by the Pentagon last year. In the fictitious battle scenario, which projected what China's military capability and manpower would be in 2010, China routed the U.S. Navy's 7th Fleet, due in part to a line of new precision-guided cruise missiles.

COMMUNICATION FROM THE CHAIRMAN OF THE COMMITTEE ON THE BUDGET REGARDING REVISED 302(a)/602(a) ALLOCATION FOR FISCAL YEARS 1995–1999

(Mr. KASICH asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. KASICH. Mr. Speaker, pursuant to section 202(c) of House Resolution 6, I am submitting for printing in the CONGRESSIONAL

RECORD a revised allocation, based upon the conference report on House Congressional Resolution 218, the concurrent budget resolution for fiscal year 1995, of the appropriate levels of total outlays, new budget authority, and entitlement authority among each committee of the House of Representatives that has jurisdiction over legislation providing those amounts.

The revised allocation reflects the changes in committee jurisdiction set forth in clause 1 of rule X of the Rules of the House of Representatives for the 104th Congress. Pursuant to section 202(c) of House Resolution 6, the revised allocation shall be effective in the House as though made pursuant to sections 302(a) and 602(a) of the Congressional Budget Act of 1974.

Section 302(b) and 602(b) of the Congressional Budget Act of 1974 require the submission of an allocation as part of the joint statement accompanying a conference report on a budget resolution. The allocation provides the basis for congressional enforcement of the resolution through points of order under the Congressional Budget Act.

The allocation is as follows:

ALLOCATIONS OF SPENDING TO HOUSE COMMITTEES PURSUANT TO SEC. 602(a) OF THE CONGRESSIONAL BUDGET ACT—FY 1995

[In millions of dollars]

	Budget authority	Outlays	Entitlement authorities
APPROPRIATIONS COMMITTEE			
Current level (enacted law):			
050 National Defense	198	198	
150 International Affairs	174	174	
300 Natural Resources & Environment	2,088	1,932	
350 Agriculture	8,902	546	
370 Commerce & Housing Credit	938	1,238	
400 Transportation	571	574	
500 Education, Training, Employment & Social Services	12,280	12,059	
550 Health	100,823	100,790	
570 Medicare	42,896	42,896	
600 Income	77,792	78,012	
650 Social Security	25	25	
700 Veterans' Benefits & Services	18,599	18,119	
750 Administration of Justice	398	394	
800 General Government	7,743	7,735	
900 Net Interest	57	57	
Subtotal	273,484	264,750	
Discretionary appropriations action (assumed legislation):			
050 National Defense	264,321	271,102	
150 International Affairs	20,936	20,954	
250 General Science, Space & Technology	17,300	17,153	
270 Energy	6,475	6,488	
300 Natural Resources & Environment	21,358	21,238	
350 Agriculture	4,421	4,500	
370 Commerce & Housing Credit	3,714	3,488	
400 Transportation	15,211	38,348	
450 Community & Regional Development	9,165	9,129	
500 Education, Training, Employment & Social Services	44,321	40,425	
550 Health	23,119	22,237	
570 Medicare	2,975	2,974	
600 Income	34,850	37,533	
650 Social Security		2,590	
700 Veterans' Benefits & Services	17,926	17,742	
750 Administration of Justice	18,465	16,849	
800 General Government	13,206	12,951	
920 Allowances	(6,604)	(4,722)	
Subtotal	511,159	540,979	
Discretionary action by other committees (assumed entitlement legislation):			
600 Income Security	361	309	
700 Veterans' Benefits & Services	340	340	
Subtotal	701	649	
Committee total	785,344	806,378	
AGRICULTURE COMMITTEE			
Current level (enacted law):			
150 International Affairs	(534)	(534)	
270 Energy	13	(459)	
300 Natural Resources & Environment	514	519	
350 Agriculture	8,416	7,308	7,924
400 Transportation	61	61	
450 Community & Regional Development	324	280	
600 Income Security			1,142
800 General Government	270	273	
900 Net Interest			57
Committee total	9,063	7,448	9,123
NATIONAL SECURITY			
Current level (enacted law):			
50 National Defense	12,788	12,925	
300 Natural Resources & Environment	3	2	
400 Transportation	6	(22)	
500 Education	4	3	
600 Income Security	27,599	27,467	27,461
700 Veterans' Benefits	191	179	179
Committee total	40,591	40,554	27,640
BANKING, FINANCE & URBAN AFFAIRS			
Current level (enacted law):			
150 International Affairs	(479)	(1,355)	
370 Commerce & Housing Credit	2,935	(12,934)	
450 Community & Regional Development	2	(17)	
500 Education, Training, Employment & Social Services		1	
600 Income Security	50	166	
800 General Government	(28)	(22)	
900 Net Interest	3,108	3,108	
Committee total	5,587	(11,054)	
ECONOMIC & EDUCATIONAL OPPORTUNITIES			
Current level (enacted law):			
500 Education, Training, Employment & Social Services	905	1,010	4,095

ALLOCATIONS OF SPENDING TO HOUSE COMMITTEES PURSUANT TO SEC. 602(a) OF THE CONGRESSIONAL BUDGET ACT—FY 1995—Continued

[In millions of dollars]

	Budget authority	Outlays	Entitlement authorities
600 Income Security	122	120	9,437
Subtotal	1,026	1,130	13,532
Discretionary action (assumed legislation):			
600 Income Security			309
Committee total	1,026	1,130	13,841
COMMERCE			
Current level (enacted law):			
300 Natural Resources & Environment		(7)	
400 Transportation	11	9	
550 Health	433	435	96,484
600 Income Security	14,778	14,407	11,196
800 General Government	8	8	
Committee total	15,231	14,851	107,680
INTERNATIONAL RELATIONS			
Current level (enacted law):			
150 International Affairs	14,464	14,082	
400 Transportation	7	18	
600 Income Security	479	479	468
800 General Government	4	4	
Committee total	14,954	14,582	468
GOVERNMENT REFORM & OVERSIGHT			
Current level (enacted law):			
550 Health		(653)	3,658
600 Income Security	37,999	36,802	36,802
750 Administration of Justice	44	44	44
800 General Government	13,328	13,328	
900 Net Interest	87	87	
Committee total	51,458	49,609	40,505
HOUSE OVERSIGHT			
Current level (enacted law):			
500 Education, Training, Employment & Social Services	19	17	
700 Veterans' Benefits & Services	2	2	
800 General Government	83	26	116
Committee total	104	45	116
RESOURCES			
Current level (enacted law):			
270 Energy	167	(62)	
300 Natural Resources	681	572	
370 Commerce Housing & Credit	66	66	
450 Community & Regional Development	444	441	339
550 Health	5	5	
800 General Government	819	829	171
Committee total	2,181	1,849	510
JUDICIARY			
Current level (enacted law):			
370 Commerce & Housing Credit	152	152	
500 Education, Training, Employment & Social Services	243	244	
600 Income Security	60	19	19
750 Administration of Justice	1,328	1,360	173
800 General Government	488	488	
Committee total	2,270	2,262	191
TRANSPORTATION & INFRASTRUCTURE			
Current level (enacted law):			
270 Energy	1,356	760	
300 Natural Resources	270	218	
400 Transportation	24,101	6	546
450 Community & Regional Development	5	168	
800 General Government	16	16	
Subtotal	25,748	1,169	546
Discretionary action (assumed legislation):			
400 Transportation	2,161		
Committee total	27,909	1,169	546
SCIENCE			
Current level (enacted law):			
250 General Science, Space & Technology	30	30	
500 Education, Training, Employment & Social Services	1	1	
Committee total	31	31	
SMALL BUSINESS			
Current level (enacted law):			
370 Commerce & Housing Credit	6	(104)	
450 Community & Regional Development		(279)	
Committee total	6	(383)	
VETERANS' AFFAIRS			
Current level (enacted law):			
700 Veterans' Benefits & Services	1,531	1,596	19,498

ALLOCATIONS OF SPENDING TO HOUSE COMMITTEES PURSUANT TO SEC. 602(a) OF THE CONGRESSIONAL BUDGET ACT—FY 1995—Continued

[In millions of dollars]

	Budget authority	Outlays	Entitlement authorities
Subtotal	1,531	1,596	19,498
Discretionary action (assumed legislation):			
700 Veterans' Benefits & Services			340
Committee total	1,531	1,596	19,837
WAYS & MEANS			
Current level (enacted law):			
500 Education, Training, Employment & Social Services			7,535
570 Medicare	183,258	181,302	177,368
600 Income Security	39,966	39,095	80,609
650 Social Security	6,815	6,815	
750 Administration of Justice	450	450	
800 General Government	354	354	
900 Net Interest	314,285	314,285	314,285
Committee total	545,129	542,301	579,797
UNASSIGNED TO COMMITTEES			
Current level (enacted law):			
050 National Defense	(13,508)	(13,524)	
150 International Affairs	(15,261)	(15,221)	
250 General Science, Space & Technology	(30)	17	
270 Energy	(1,711)	(1,726)	
300 Natural Resources & Environment	(3,214)	(3,175)	
350 Agriculture	(8,738)	(154)	
370 Commerce & Housing Credit	(111)	(105)	
400 Transportation	(229)	(193)	
450 Community & Regional Development	(440)	(422)	
500 Education, Training, Employment & Social Services	(73)	(60)	
550 Health	(79)	(14)	
570 Medicare	(66,729)	(66,672)	
600 Income Security	(13,256)	(13,210)	
650 Social Security	(40)	(30)	
700 Veterans' Benefits & Services	(1,389)	(1,377)	
750 Administration of Justice	(1,884)	(1,896)	
800 General Government	(21,885)	(21,885)	
900 Net Interest	(70,438)	(70,438)	(55,752)
920 Allowances	4	22	
950 Undistributed Offsetting Receipts	(44,700)	(44,700)	
Committee total	(263,710)	(254,762)	(55,752)
Grand committee total	1,238,705	1,217,605	744,502

ALLOCATION OF SPENDING RESPONSIBILITY TO HOUSE COMMITTEES PURSUANT TO SECTION 602(a) OF THE CONGRESSIONAL BUDGET ACT

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	1995–1999
APPROPRIATIONS COMMITTEE						
Current level:						
Budget authority	273,484	270,468	302,357	328,114	359,693	1,534,116
Outlays	264,750	261,786	293,031	319,587	350,593	1,489,747
Discretionary action:						
General purpose:						
Budget authority	506,872	509,616	511,391	519,492	531,725	2,578,646
Outlays	538,696	538,706	539,951	541,050	542,001	2,700,404
Violent crime:						
Budget authority	4,287	5,000	5,500	6,500	6,500	27,787
Outlays	2,283	3,936	4,904	5,639	6,225	22,987
Total:						
Budget authority	511,159	514,616	516,891	525,992	537,775	2,606,433
Outlays	540,979	542,642	544,855	546,689	548,226	2,723,391
Discretionary action by other committees:						
Budget authority	701	27,668	29,239	33,503	35,395	126,506
Outlays	649	27,019	29,177	32,850	35,213	124,908
Committee total:						
Budget authority	785,344	812,752	848,487	887,609	932,864	4,267,055
Outlays	806,378	831,447	867,063	899,126	934,032	4,338,045
AGRICULTURE COMMITTEE						
Current level (enacted law):						
Budget authority	9,063	9,733	10,052	10,205	10,517	49,570
Outlays	7,448	7,569	7,660	7,791	8,067	38,535
New entitlement authority		1,150	1,204	1,237	1,270	4,861
NATIONAL SECURITY COMMITTEE						
Current level (enacted law):						
Budget authority	40,591	42,789	45,053	47,498	50,776	226,707
Outlays	40,554	42,609	44,857	47,313	50,584	225,917
BANKING, FINANCE & URBAN AFFAIRS COMMITTEE						
Current level (enacted law):						
Budget authority	5,587	3,981	3,609	3,447	3,310	19,934
Outlays	(11,054)	(13,068)	(5,800)	(5,677)	(4,789)	(40,388)
Currentl level (enacted by law):						
ECONOMIC & EDUCATIONAL OPPORTUNITIES COMMITTEE						
Budget authority	1,026	532	351	176	97	2,181
Outlays	1,130	(733)	(44)	172	77	602
New entitlement authority	309	389	420	2,162	2,663	5,943
COMMERCE COMMITTEE						
Current level (enacted law):						
Budget authority	15,231	15,552	15,873	16,141	16,349	79,146
Outlays	14,851	15,152	15,284	15,540	15,547	76,374
INTERNATIONAL RELATIONS COMMITTEE						
Current level (enacted law):						
Budget authority	14,954	12,507	11,584	10,489	9,683	59,217

ALLOCATION OF SPENDING RESPONSIBILITY TO HOUSE COMMITTEES PURSUANT TO SECTION 602(a) OF THE CONGRESSIONAL BUDGET ACT—Continued

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	1995–1999
Outlays	14,582	13,798	12,980	12,122	11,276	64,758
GOVERNMENT REFORM & OVERSIGHT COMMITTEE						
Current level (enacted law):						
Budget authority	51,458	52,669	54,455	56,350	58,402	273,334
Outlays	49,609	50,692	52,426	54,247	56,228	263,202
HOUSE OVERSIGHT COMMITTEE						
Current level (enacted law):						
Budget authority	104	103	102	103	104	516
Outlays	45	203	23	20	49	340
RESOURCES COMMITTEE						
Current level (enacted law):						
Budget authority	2,181	2,245	2,167	2,094	2,112	10,799
Outlays	1,849	2,113	2,152	2,081	2,023	10,218
JUDICIARY COMMITTEE						
Current level (enacted law):						
Budget authority	2,270	2,180	2,284	2,404	2,528	11,666
Outlays	2,262	2,140	2,224	2,343	2,467	11,436
TRANSPORTATION & INFRASTRUCTION COMMITTEE						
Current level (enacted law):						
Budget authority	25,748	25,254	27,335	1,554	834	80,725
Outlays	1,169	979	981	971	636	4,736
Discretionary action:						
Budget authority	2,161	2,161	2,161	28,750	29,508	64,741
Outlays						
Committee total:						
Budget authority	27,909	27,415	29,496	30,304	30,342	145,466
Outlays	1,169	979	981	971	636	4,736
SCIENCE COMMITTEE						
Current level (enacted law):						
Budget authority	31	31	31	31	31	155
Outlays	31	31	31	31	31	155
SMALL BUSINESS COMMITTEE						
Current level (Enacted Law):						
Budget authority	6	3	4	3	3	19
Outlays	(383)	(313)	(249)	(185)	(154)	(1,284)
VETERANS' AFFAIRS COMMITTEE						
Current level (enacted law):						
Budget authority	1,531	1,470	1,445	1,344	1,272	7,062
Outlays	1,596	1,446	1,449	1,464	1,464	7,419
New entitlement authority	340	674	1,133	1,573	2,023	5,743
WAYS & MEANS COMMITTEE						
Current level (enacted law):						
Budget authority	545,129	588,303	628,675	671,199	719,529	3,152,835
Outlays	542,301	585,182	625,435	667,765	715,576	3,136,259
New entitlement authority						
UNASSIGNED TO COMMITTEE						
Current level (enacted law):						
Budget Authority	(263,710)	(263,466)	(279,269)	(295,496)	(311,017)	(1,412,958)
Outlays	(254,762)	(254,848)	(269,872)	(286,822)	(302,214)	(1,368,518)
Total current level:						
Budget Authority	724,684	764,355	826,109	855,655	924,221	4,095,024
Outlays	675,978	714,738	782,568	838,761	907,461	3,919,506
Total discretionary action:						
Budget Authority	514,021	544,445	548,291	588,245	602,679	2,797,681
Outlays	541,627	569,661	574,032	579,539	583,439	2,848,298
Grand total:						
Budget Authority	1,238,705	1,308,800	1,374,400	1,443,900	1,526,900	6,892,705
Outlays	1,217,605	1,284,400	1,356,600	1,418,300	1,490,900	6,767,400
Total new entitlement authority	649	2,214	2,757	4,972	6,170	16,761

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. HUNTER (at the request of Mr. ARMEY), for today, on account of family medical reasons.

Mr. RUSH (at the request of Mr. GEPHARDT), for February 24, 27, and 28, on account of personal business.

Mr. MFUME (at the request of Mr. GEPHARDT), for today, on account of personal business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. TOWNS) to revise and extend their remarks and include extraneous material:)

Mr. FARR, for 5 minutes, today.

Mr. OWENS, for 5 minutes, today.

(The following Members (at the request of Mr. HAYWORTH) to revise and extend their remarks and include extraneous material:)

Mr. KASICH, for 5 minutes, today.

Mr. WHITFIELD, for 5 minutes, on February 28.

Mr. FOX of Pennsylvania, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. TOWNS) and to include extraneous matter:)

Mr. STARK, in two instances.

Mr. MARKEY.

Mr. OBEY.

Mr. MILLER of California.

Mr. DELLUMS.

Mr. FAZIO of California.

Mr. MANTON.

Mr. FALEOMAVAEGA.

Mr. MOAKLEY.

Ms. KAPTUR.

Mr. MCNULTY.

Mr. PASTOR.

Mr. POSHARD.

The following Members (at the request of Mr. HAYWORTH) and to include extraneous matter:)

Mrs. JOHNSON of Connecticut.

Mr. ROGERS.

Mr. MOORHEAD.

Mr. SHAYS.

Mr. SMITH of New Jersey.

Mr. PACKARD.

Mr. DAVIS, in two instances.

Mr. YOUNG of Alaska, in two instances.

Mr. GILMAN.

ADJOURNMENT

Mr. WELDON. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 8 minutes p.m.), under its previous order, the House adjourned until tomorrow, Tuesday, February 28, 1995, at 9:30 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

411. A letter from the Under Secretary of Defense (Comptroller), transmitting a report of a violation of the Anti-Deficiency Act which occurred in the Department of the Navy, pursuant to 31 U.S.C. 1517(b); to the Committee on Appropriations.

412. A letter from the Under Secretary of Defense (Comptroller), transmitting a report of a violation of the Anti-Deficiency Act which occurred in the Department of the Air Force, pursuant to 31 U.S.C. 1517(b); to the Committee on Appropriations.

413. A letter from the Assistant Secretary of Defense for Economic Security, transmitting the BRAC 95 force structure plan for the Armed Forces, pursuant to Public Law 101–510, section 2903(a); to the Committee on National Security.

414. A letter from the Acting Secretary of State, Department of State, transmitting the listing of a commercial military export that is eligible for approval in calendar year 1995, pursuant to 22 U.S.C. 2765(a); to the Committee on International Relations.

415. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on International Relations.

416. A letter from the Deputy Assistant Secretary for Public Affairs, Department of Defense, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

417. A letter from the Chairman, U.S. Merit Systems Protection Board, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. McINNIS: Committee on Rules. House Resolution 100. Resolution providing for the consideration of the bill (H.R. 926) to promote regulatory flexibility and enhance public participation in Federal agency rulemaking, and for other purposes (Rept. 104–52). Referred to the House Calendar.

Mr. LEACH: Committee on Banking and Financial Services. House Resolution 80. Resolution requesting the President to submit information to the House of Representatives concerning actions taken through the exchange stabilization fund to strengthen the Mexican peso and stabilize the economy of Mexico; with an amendment (Rept. 104–53). Referred to the Committee of the Whole House on the state of the Union.

Mr. YOUNG of Alaska: Committee on Resources. H.R. 531. A bill to designate the Great Western Scenic Trail as a study trail under the National Trails System Act, and for other purposes; with an amendment (Rept. 104–54). Referred to the Committee of the Whole House on the State of the Union.

Mr. YOUNG of Alaska: Committee on Resources. H.R. 529. A bill to authorize the exchange of National Forest System lands in the Targhee National Forest in Idaho for non-Federal lands within the forest in Wyoming; with an amendment (Rept. 104–55). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. GILMAN:

H.R. 1057. A bill to provide for hearing care services by audiologists to Federal civilian employees; to the Committee on Government Reform and Oversight.

By Mr. BLILEY (for himself, Mr. Fields of Texas, Mr. Cox of California, and Mr. Tauzin):

H.R. 1058. A bill to reform Federal securities litigation, and for other purposes; to the Committee on Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FALEOMAVAEGA:

H.R. 1059. A bill to require the Secretary of Agriculture to extend a nutrition assistance program to American Samoa, and for other purposes; to the Committee on Agriculture.

H.R. 1060. A bill to include the Territory of American Samoa in the Supplemental Security Income Program; to the Committee on Ways and Means.

By Mrs. JOHNSON of Connecticut (for herself, Mr. Matsui, Mr. Crane, Mrs. Kennelly, and Ms. Eshoo):

H.R. 1061. A bill to amend the Internal Revenue Code of 1986 to more accurately codify the depreciable life of semiconductor manufacturing equipment; to the Committee on Ways and Means.

By Mr. LEACH:

H.R. 1062. A bill to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers; to the Committee on Banking and Financial Services, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MARKEY:

H.R. 1063. A bill to provide a framework for Securities and Exchange Commission supervision and regulation of derivatives activities, and for other purposes; to the Committee on Commerce.

By Mr. SENSENBRENNER:

H.R. 1064. A bill to repeal the Impoundment Control Act of 1974; to the Committee on Government Reform and Oversight, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SMITH of New Jersey:

H.R. 1065. A bill to direct the Secretary of Health and Human Services to establish a program to provide pregnant women with certificates to cover expenses incurred in receiving services at maternity and housing services facilities and to direct the Secretary of Housing and Urban Development to provide assistance to nonprofit entities for the rehabilitation of existing structures for use as facilities to provide housing and services to pregnant women; to the Committee on Commerce, and in addition to the Committee on Banking and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.R. 1066. A bill to establish grant programs and provide other forms of Federal assistance to pregnant women, children in need of adoptive families, and individuals and families adopting children; to the Committee on Economic and Educational Opportunities, and in addition to the Committees on National Security, Banking and Financial Services, Ways and means, Commerce, Government Reform and Oversight, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. STARK:

H.R. 1067. A bill to amend title XVIII of the Social Security Act to require renal dialysis facilities to meet hemodialysis standards as a condition of receiving payment for renal hemodialysis services furnished under the Medicare Program; to the Committee on Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.R. 1068. A bill to direct the Secretary of Health and Human Services to conduct a demonstration project under which payment shall be made under the Medicare Program for renal disease management services furnished to individuals at risk for end stage renal disease to accurately assess whether those management services can prevent the progression of renal disease to renal failure and thereby delay the onset of dialysis and cause savings for the Medicare Program; to the Committee on Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. UNDERWOOD (for himself and Mr. Frazer):

H.R. 1069. A bill to extend the Supplemental Security Income Benefits Program to Guam and the U.S. Virgin Islands; to the Committee on Ways and Means.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 9: Mr. Dreier, Mr. Taylor of North Carolina, Mr. Gallegly, Mr. Peterson of Minnesota, and Mr. Chabot.

H.R. 24: Mr. Peterson of Minnesota.

H.R. 70: Mr. CHABOT and Mr. HASTINGS of Washington.

H.R. 89: Mr. GUNDERSON.

H.R. 93: Mr. STUMP.

H.R. 94: Mr. QUILLEN and Mr. BUNNING of Kentucky.

H.R. 218: Mr. LAHOOD.

H.R. 248: Ms. LOFGREN.

H.R. 312: Mr. SENSENBRENNER, Mr. TALENT, Mr. PETERSON of Minnesota, Mr. HANCOCK, Mr. SOUDER and Mr. COX.

H.R. 371: Mr. CRAMER.

H.R. 375: Mr. HERGER.

H.R. 377: Ms. FURSE and Mr. EVANS.

H.R. 436: Mr. BARRETT of Nebraska, Mrs. LINCOLN, Mr. JOHNSON of South Dakota, Mr. STENHOLM, Mr. BISHOP, Mr. JACOBS, Mr. MINGE, and Mrs. CHENOWETH.

H.R. 489: Mr. DICKEY, Mr. ALLARD, and Mr. HASTINGS of Washington.

H.R. 490: Mr. DICKEY and Mr. RIGGS.

H.R. 497: Mr. PACKARD, Mr. HALL of Ohio, Mr. MCKEON, and Mr. WICKER.

H.R. 605: Mrs. MEYERS of Kansas, Mr. SHAYS, and Mr. ROYCE.

H.R. 638: Mr. ENGEL and Mr. REED.

H.R. 652: Mr. LIPINSKI and Mr. BEILENSON.

H.R. 676: Mr. MEEHAN, Mr. DELLUMS, Mr. SANDERS, Mr. FRANK of Massachusetts, Mr. LIPINSKI, Mr. JACOBS, Ms. RIVERS, Mr. WAXMAN, Mr. BROWN of California, Ms. ESHOO, and Ms. ROYBAL-ALLARD.

H.R. 682: Mr. BREWSTER, Mr. CRANE, and Mr. BURTON of Indiana.

H.R. 697: Mr. ALLARD.

H.R. 721: Ms. DELAURO and Mr. PORTER.

H.R. 726: Mr. KANJORSKI, Mr. FILNER, Ms. ESHOO, Mr. DEAL of Georgia, Mr. SISISKY, and Mr. SENSENBRENNER.

H.R. 733: Mr. RAMSTAD, Mr. BARCIA of Michigan, Mr. LINDER, Ms. LOFGREN, Mr. SMITH of Texas, and Mrs. JOHNSON of Connecticut.

H.R. 734: Mr. BARCIA of Michigan, Mr. LINDER, Ms. LOFGREN, Mr. SMITH of Texas, and Mrs. JOHNSON of Connecticut.

H.R. 763: Mr. PETE GEREN of Texas, Mr. BEILENSON, Mr. LEACH, Mr. FIELDS of Texas, Mr. ENGLISH of Pennsylvania, Mr. GENE GREEN of Texas, Mr. HORN, Mr. PICKETT, Mr. DAVIS, Mr. MARKEY, Mr. DORNAN, Mr. SHAW, Mr. BOUCHER, Mr. SISISKY, Mr. SHAYS, Mr. FALEOMAVAEGA, Mr. DINGELL, Mr. MOAKLEY, Mr. BACHUS, and Mr. WICKER.

H.R. 782: Mr. DAVIS, Mrs. MORELLA, Mr. BARTLETT of Maryland, and Mr. MORAN.

H.R. 788: Mr. SOUDER and Mrs. WALDHOLTZ.

H.R. 789: Mr. ALLARD.

H.R. 795: Mr. HERGER.

H.R. 800: Mr. GUTKNECHT, Mr. RIGGS and Mr. WICKER.

H.R. 804: Mr. SOUDER and Mr. BARTLETT of Maryland.

H.R. 833: Mr. LEACH and Mr. TOWNS.

H.R. 861: Mr. COLEMAN and Mr. BILBRAY.

H.R. 873: Mr. STEARNS, Mr. CHRYSLER, Mr. WICKER, Mr. BROWN of Ohio, Mrs. SMITH of Washington, Mr. FAWELL, and Mr. MEEHAN.

H.R. 949: Mr. FUNDERBURK and Mr. JACOBS.

H.R. 952: Mr. CANADY, Mr. MINGE, Mr. SENSENBRENNER, Mr. KOLBE, Mr. WELDON of Pennsylvania, and Mr. SMITH of New Jersey.

H.R. 963: Mr. GOSS, Mr. ROTH, Mr. FROST, Mr. GENE GREEN of Texas, Mrs. FOWLER, Mr. LIPINSKI, Mr. CUNNINGHAM, Mr. SENSENBRENNER, Mr. SAXTON, and Mr. HANCOCK.

H.R. 971: Mr. STARK.

H.R. 1015: Mr. NEUMANN.

H.R. 1043: Mr. PETE GEREN of Texas, Mr. MORAN, Mr. LATOURETTE, Mr. WICKER, and Mr. OLVER.

H.J. Res. 52: Ms. WOOLSEY.

H.J. Res 61: Mr. COBLE, Mr. GALLEGLY, Mrs. VUCANOVICH, Mr. SOLOMON, Mr. QUILLEN, Mr. KNOLLENBERG, Mr. BARTON of Texas, Mr. BAKER of California, Mr. LAHOOD, Mr. DOOLITTLE, Mr. JONES, Mr. BARR, Mr. WICKER, Mr. TATE, Mr. KINGSTON, Mr. EWING, Mr. WELLER, Mr. STEARNS, Mr. MOORHEAD, Mr. SHUSTER, and Mrs. SEASTRAND.

H. Con. Res. 12: Mr. BROWNBACK, Mr. TALENT, Mr. COX, and Mr. ABERCROMBIE.

H. Con. Res. 28: Mr. CONYERS.

H. Con. Res. 31: Mr. ZIMMER, Mr. FRANK of Massachusetts, Mr. SCHUMER, Mr. GENE GREEN of Texas, Mr. ANDREWS, Mr. PALLONE, Mr. MEEHAN, and Mr. RANGEL.

H. Res. 56: Mr. FOLEY.

H. Res. 80: Mr. FILNER, Mr. GORDON, Mr. HOLDEN, and Mr. BROWN of Ohio.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 925

OFFERED BY: MR. FATTAH

AMENDMENT NO. 1. Page 2, line 8, after the period insert "The Federal Government may, in a civil action, obtain equitable contribution toward the payment of any compensation required under this Act from any property owners the value of whose property was increased by the agency action that gave rise to the right to that compensation.".

H.R. 925

OFFERED BY: MR. TRAFICANT

AMENDMENT NO. 2: Page 2, line 5, strike "10" and insert "25".

H.R. 925

OFFERED BY: MR. TRAFICANT

AMENDMENT NO. 3: Page 5, after line 8, insert the following:

SEC. . DUTY OF NOTICE TO OWNERS.

Whenever an agency takes an agency action limiting the use of private property, the agency shall give notice to the owners of that property explaining their rights under this Act and the procedures for obtaining any compensation that may be due to them under this Act.

Redesignate succeeding sections accordingly.

H.R. 925

OFFERED BY: MR. WATT OF NORTH CAROLINA

AMENDMENT NO. 4: Page 4, strike lines 6 through 21.

H.R. 925

OFFERED BY: MR. WATT OF NORTH CAROLINA

AMENDMENT NO. 5: Page 2, lines 12 and 13, change the heading to read:

"(a) CIRCUMSTANCES IN WHICH NO COMPENSATION SHALL BE AWARDED.—"

Page 2, after line 19, add the following:

"No compensation shall be made under this Act with respect to an agency action which is reasonably related to or in furtherance of the purposes of any law enacted by Congress, unless such law is determined to be in violation of the United States Constitution."

Page 4, strike lines 6 through 21.

H.R. 926

OFFERED BY: MR. EWING

AMENDMENT NO. 1: Page 2, line 11, strike "180 days" and insert "one year", in line 24, strike "(2)(A)" and all that follows through "(B)" in line 4 on page 3, and in line 8 on page 3, strike "180 days" and insert "one year".

H.R. 926

OFFERED BY: MR. TRAFICANT

AMENDMENT NO. 2: Page 15, line 22, strike "and", in line 3 on page 16 strike the period and insert "; and", and add after line 3 the following:

"(D) any regulation proposed or issued in connection with imposing trade sanctions against any country that engages in illegal trade activities against the United States that are injurious to American technology, jobs, pensions, or general economic well-being.

H.R. 926

OFFERED BY: MR. TRAFICANT

AMENDMENT NO. 3: Page 15, line 22, strike "and", in line 3 on page 16 strike the period and insert "; and", and add after line 3 the following:

"(D) any regulation proposed or issued in connection with ensuring the collection of taxes from a subsidiary of a foreign company doing business in the United States.

H.R. 926

OFFERED BY: MR. WATT OF NORTH CAROLINA

AMENDMENT NO. 4: On page 6, line 16, strike the period and insert the following new language:

"(4) SPECIAL RULE.—No proposed rules issued by an appropriate federal banking agency (as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or the Office of Federal Housing Enterprise Oversight, shall be subject to the requirements of this subsection."

H.R. 1022

OFFERED BY: MR. BARTON OF TEXAS

AMENDMENT NO. 5: Page 36, after line 2, insert the following new title, redesignate title VI as title VII, and redesignate section 601 on page 36, line 4, as section 701:

TITLE VI—PETITION PROCESS

SEC. 601. PETITION PROCESS.

(2) PURPOSE.—The purpose of this section is to provide an accelerated process for the review of Federal programs designated to protect human health, safety, or the environment and to revise rules and program elements where possible to achieve substantially equivalent protection of human health, safety or the environment at a substantially lower cost of compliance or in a more flexible manner.

(b) ACCELERATED PROCESS FOR CERTAIN PETITIONS.—Within 1 year after the date of enactment of this Act, the head of each Federal agency administering any program designed to protect human health, safety, or the environment shall establish accelerated procedures for accepting and considering petitions for the review of any rule or program element promulgated prior to the effective date of this Act which is part of such program, if the annual costs of compliance with such rule or program element are at least $25,000,000.

(c) WHO MAY SUBMIT PETITIONS.—Any person who demonstrates that he or she is affected by a rule or program element referred to in subsection (b) may submit a petition under this section.

(d) CONTENTS OF PETITIONS.—Each petition submitted under this section shall include adequate supporting documentation, including, where appropriate, the following:

(1) New studies or other relevant information that provide the basis for a proposed revision of a risk assessment or risk characterization used as a basis of a rule or program element.

(2) Information documenting the costs of compliance with any rule or program element which is the subject of the petition and information demonstrating that a revision could achieve protection of human health,

safety or the environment substantially equivalent to that achieved by the rule or program element concerned but at a substantially lower cost of compliance or in a manner which provides more flexibility to States, local, or tribal governments, or regulated entities. Such documentation may include information concerning investments and other actions taken by persons subject to the rule or program element in good faith to comply.

(e) DEADLINES FOR AGENCY RESPONSE.—Each agency head receiving petitions under this section shall assemble and review all such petitions received during the 6-month period commencing upon the promulgation of procedures under subsection (b) and during 15 successive 6-month periods thereafter. Not later than 180 days after the expiration of each such review period, the agency head shall complete the review of such petitions, make a determination under subsection (f) to accept or to reject each such petition, and establish a schedule and priorities for taking final action under subsection (g) with respect to each accepted petition. For petitions accepted for consideration under this section, the schedule shall provide for final action under subsection (g) within 18 months after the expiration of each such 180-day period and may provide for consolidation of reasonably related petitions. The schedule and priorities shall be based on the potential to more efficiently focus national economic resources within Federal regulatory programs designed to protect human health, safety, or the environment on the most important priorities and on such other factors as such Federal agency considers appropriate.

(f) CRITERIA FOR ACCEPTANCE OF PETITIONS.—

(1) IN GENERAL.—An agency head shall accept a petition for consideration under this section if the petition meets the applicable requirements of subsections (b), (c), and (d) and if there is a reasonable likelihood that the revision requested in the petition would achieve protection of human health, safety or the environment substantially equivalent to that achieved by the rule or program element concerned but a substantially lower cost of compliance or in a manner which provides more flexibility to States, local, or tribal governments, or regulated entities.

(2) FINAL AGENCY ACTION.—If the agency head rejects the petition, the agency head shall publish the reasons for doing so in the Federal Register. Any petition rejected for consideration under this section may be considered by the agency under any other applicable procedures, but a rejection of a petition under this section shall be considered final agency action.

(3) CONSIDERATION.—In determining whether to accept or reject a petition with respect to any rule or program element, the agency shall take into account any information provided by the petitioner concerning costs incurred in complying with the rule or program element prior to the date of the petition and the costs that could be incurred by changing the rule or program element as proposed in the petition.

(g) FINAL AGENCY ACTION.—In accordance with the schedule established under subsection (e), and after notice and opportunity for comment, the agency head shall take final action regarding petitions accepted under subsection (f) by either revising a rule or program element or determining not to make any such revision. When reviewing any final agency action under this subsection, the court shall hold unlawful and set aside the agency action if found to be unsupported by substantial evidence.

(h) OTHER PROCEDURES REMAIN AVAILABLE.—Nothing in this section shall be construed to preclude the review or revision of any risk characterization document, risk assessment document, rule or program element at any time under any other procedures.

SEC. 602. REVIEWS OF HEALTH EFFECTS VALUES.

Within 5 years after the enactment of this Act, the Administrator of the Environmental Protection Agency shall review each health or environmental effects value placed, before the effective date of title I, on the Integrated Risk Information System (IRIS) Database maintained by the Agency and revise such value to comply with the provisions of title I.

SEC. 603. DEFINITIONS.

As used in this title:

(1) The term "Federal agency" has the same meaning as when used in section 110.

(2) The terms "rule" and "program element" shall include reasonably related provisions of the Code of Federal Regulations and any guidance, including protocols of general applicability establishing policy regarding risk assessment or risk characterization, but shall not include any permit or license or any regulation or other action by an agency to authorize or approve any individual substance or product.

H.R. 1022

OFFERED BY: MR. COOLEY

AMENDMENT NO. 6: Page 4, after line 18, insert after section 3(4) the following new paragraph (5):

(5) An action under any regulatory program designed to protect human health, safety, or the environment under any Federal law for which appropriations are not specifically and explicitly authorized for the fiscal year in which the action is taken, except that this Act applies to such action after the first date on which there has been enacted after the date of the enactment of this Act a law authorizing appropriations to carry out that Federal law.

H.R. 1022

OFFERED BY: MR. COOLEY

AMENDMENT NO. 7: At the end of the bill (page 37, after line 13), add the following new title:

TITLE VII—REGULATORY PROHIBITION

SEC. 701. REGULATORY PROHIBITION.

A Federal agency may not take any regulatory action under a program designed to protect human health, safety, or the environment under any Federal law for which appropriations are not specifically and explicitly authorized for the fiscal year in which the action is taken.

H.R. 1022

OFFERED BY: MR. FIELDS OF LOUISIANA

AMENDMENT NO. 8: Page 27, line 4, after the period insert: "Such analysis shall include consideration of the impacts on future generations.".

H.R. 1022

OFFERED BY: MR. HAYES OF LOUISIANA

AMENDMENT NO. 9: Page 4, line 4, insert "(a) EXCLUSIONS.—" before "This Act" in the matter preceeding section 3(1).

Page 4, after line 18, insert the following new subsection (b) of section 3:

(b) SAVINGS PROVISION.—The provisions of this Act shall be supplemental to any other provisions of law relating to risk assessments, risk characterizations, or decision criteria for rulemaking, except that nothing in this Act shall be construed to modify any statutory standard or statutory requirement designed to protect health, safety, or the environment. Nothing in this Act shall be interpreted to preclude the consideration of any data or the calculation of any estimate to more fully describe or analyze risk to provide examples of scientific uncertainty or variability. Nothing in this Act shall be construed to require the disclosure of any trade secret or other confidential information.

Strike section 103(c) (page 12, line 18 through page 13, line 4).

Strike section 202(b)(1) (page 29, lines 18 through 23) and strike "(2) SUBSTANTIAL EVIDENCE.—" in section 202(b) (page 29, line 24).

H.R. 1022

OFFERED BY: MR. HAYES

AMENDMENT NO. 10: Strike clause (iii) of section 103(b)(2)(B) (page 8, lines 9 through 13) and redesignate clauses (iv), (v), and (vi) of such section as clauses (iii), (iv), and (v).

H.R. 1022

OFFERED BY: MR. ROEMER

AMENDMENT NO. 11: Strike section 401 (page 34, lines 2 through 19) and insert the following:

SEC. 401. JUDICIAL REVIEW.

Nothing in this Act creates any right to judicial or administrative review, nor creates any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. If an agency action is subject to judicial or administrative review under any other provision of law, the adequacy of any certification or other document prepared pursuant to this Act, and any alleged failure to comply with this Act, may not be used as grounds for affecting or invalidating such agency action, but statements and information prepared pursuant to this title which are otherwise part of the record may be considered as part of the record for the judicial or administrative review conducted under such other provision of law.

Strike section 202(b)(2) (page 29, line 24 through page 30, line 6) relating to substantial evidence and strike "(1) IN GENERAL.—" in section 202(b) (page 29, line 18).

H.R. 1022

OFFERED BY: MR. SMITH OF MICHIGAN

AMENDMENT NO. 12: Page 5, after line 18, insert the following new section:

SEC. 5. AVAILABILITY OF INFORMATION AMONG FEDERAL AGENCIES

Covered Federal agencies shall make existing databases and information developed under this Act available to other Federal agencies, subject to applicable confidentiality requirements, for the purpose of meeting the requirements of this Act. Within 15 months after the date of enactment of this Act, the President shall issue guidelines for Federal agencies to comply with this section.

H.R. 1022

OFFERED BY: MR. TRAFICANT

AMENDMENT NO. 13: At the end of section 106 (page 18, line 25), add after the period the following:

For purposes of this section, the term "non-United States-based entity" means—

(1) an entity that is incorporated outside the United States and has its principal place of business outside the United States; or

(2) the United Nations or any of its divisions.

H.R. 1022

OFFERED BY: MR. VENTO

AMENDMENT NO. 14: Page 12, strike lines 3, 4 and 5.

EXTENSION OF REMARKS

IN MEMORY OF LUCIAN C. CRUTCHFIELD AND WILLIAM F. BROOKS

HON. MICHAEL R. McNULTY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. MCNULTY. Mr. Speaker, on March 5, 1995, in a small town in northern Italy two United States B–25 Airmen, 2d Lt. Lucian C. Crutchfield of San Antonio, TX and Flight Officer William F. Brooks of Cohoes, NY, both killed during World War II, will be recognized at a ceremony in which a granite memorial will be dedicated in their honor. Mr. Larry Pisoni, now a U.S. citizen, and coordinator of the event entitled "Thank You America," explains his realization of a lifelong dream in the attached article which appeared in the Capital, an Annapolis, MD, newspaper, on February 7, 1995.

[From the Capital, Feb. 7, 1995]

ANNAPOLIS MAN PLANS RETURN TO ITALY TO DEDICATE MONUMENT FOR U.S. FLIERS

(By Michael Cody)

In the 50 years since Nazi soldiers executed two U.S. airmen near his hometown in Italy, Lorenzo Pisoni has taken America's heroes as his own.

Next month, 12 miles from Vezzano and thousands of miles from his new home in Annapolis, Mr. Pisoni 57, will dedicate a monument to 2nd Lt. Lucian C. Crutchfield of San Antonio, Texas, and Flight Officer William F. Brooks of Cohoes, N.Y.

They were among a crew of seven aboard a B–25 bomber that was shot down on Feb. 27, 1945, while trying to cripple a railroad through the Adige River valley.

Mr. Pisoni was 7 then, and was called "Enzo" by family and friends. He was having lunch in a second-story room when he saw each member of the crew bail out, and each parachute open.

Many years later, while examining U.S. documents, Mr. Pisoni confirmed that the plane went down at 11:57 a.m., just as he was eating his meal. From 1943, when Allied bombing began in earnest, until the end of the war, he never saw another plane destroyed.

Some of the B–25 crew members were taken prisoner by Nazi soldiers. Others escaped capture with help from brave, anti-Nazi partisans.

"It was risky. The German law compelled them to turn them in right away. If they didn't, they could have killed them—they had to keep the people in terror," Mr. Pisoni said.

The feared SS took 2nd Lt. Crutchfield, the co-pilot, and Flight Officer Brooks into custody.

The next day, Enzo went to his little town's square. He doesn't remember why. Possibly it was the rumor of American prisoners that drew him.

He saw the prisoners, led by two Nazis—one tall, and one small.

The Americans looked healthy and honest, not at all the monsters described in Nazi propaganda.

The group walked out of town, south ward toward Arco, a much larger city. Along the mountain trail in the Italian Alps, partisans said, 2nd Lt. Crutchfield slipped. Flight Officer Brooks stooped to help him.

Both were shot and killed. The SS reported they were trying to escape.

"They just mowed them down," said Charles Reagin, of Cory, Ind., the plane's radio operator, who was captured separately and spent the rest of the war in a prison camp.

The news traveled quickly, even among a populace hardened to conflict.

"My life was greatly influenced by this episode," Mr. Pisoni said. "They (the SS) said they wanted to escape, but no one believed that."

And long after the war, when he had graduated from an Ohio college and had become a U.S. citizen, Lorenzo "Larry" Pisoni drove past the spot in Italy and thought of the men who died for another country as well as their own.

"It's time to say thank you," he said, describing a March 5 ceremony he helped plan. The airmen's survivors and 12,500 Italian families are invited.

The regional administration of Trentino-Alto Adige has lent its support to the event, and a local stonecutter has donated granite for the monument.

"At this spot, on Feb. 28, 1945, two American airmen were shot by Nazis," its tablet will say, in two languages. They were two of more than 38,000 Americans who gave their lives on Italian soil during World War II to help Europeans of good will regain freedom and democracy."

An Alpine bank is practicing American songs in honor of 2nd Lt. Crutchfield.

Mr. Pisoni, who splits his time between Annapolis and Vezzano, said he expects all five surviving crew members to attend, including Mr. Reagin, pilot Jay DeBoer of Virginia Beach, Va., and navigator Robert Cravey of Thomaston, Ga.

Mr. DeBoer escaped from the Germans crossing the Swiss border disguised as a monk, while Mr. Cravey was hidden by an Italian family.

"It's going to be an emotional thing," said Mr. Reagin, a retired Air Force master sergeant. "Not only going back with the guys, but going to that spot."

Mr. Pisoni, owner of Gourmet Italia, a pasta-importing firm, said he didn't start the monument effort to reconstruct what happened. "I like to consider this a symbol of what the United States has done for Europe. The U.S. is the only country in the world that has helped its former enemies."

IN SUPPORT OF H.R. 227—THE INTERSTATE WASTE ACT OF 1995

HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. ROGERS. Mr. Speaker, the American people said loudly and clearly that they want Washington bureaucrats out of their hair. This is especially true in the hardworking, patriotic areas of eastern Kentucky. Well, I agree with these citizens, and that is why I rise today in strong support of H.R. 227, the Interstate Waste Act of 1995, and urge its immediate passage by the House.

I firmly believe that local citizens ought to have the right to make decisions regarding their lives. As we return power to our communities, we should start with the regulation of out-of-State trash. Simply stated, local citizens should have the final say whether their town becomes a national garbage dump—not the Supreme Court or Washington know-it-alls.

H.R. 227 is the way to accomplish this goal. It says that, and I'm quoting from the bill.

[E]ffective January 1, 1996, a landfill or incinerator in a State may not receive for disposal or incineration any out-of-State municipal solid waste unless the owner or operator of such landfill or incinerator obtains explicit authorization from the affected local government to receive the waste.

What a concept. Local people making local decisions. In Kentucky, we call this horse sense. Washington could sure use a strong dose of that, Mr. Speaker.

But seriously, this is a fundamental right of our local communities, and they have waited far too long for us to give them that right. We were close last year—the House passed the bill unanimously in the 11th hour of the session. But unfortunately, the session ended before the Senate could take action.

But we are moving again this year. I have spoken to my good friend and colleague, the gentleman from Ohio [Mr. OXLEY], who is the chairman of the Subcommittee on Commerce, Trade and Hazardous Materials which has jurisdiction over this bill. He has assured me that this legislation will get a fair hearing in the subcommittee and he is confident that we can bring it before the full House for floor consideration.

Mr. Speaker, this is a critical issue that we must deal with and I am committed to seeing that H.R. 227 is acted on this year.

We need jobs, clean water, and good roads in Kentucky—not tons of trash from Florida.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

PREVENTION OF PROGRESSION TO END-STAGE RENAL DISEASE

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. STARK. Mr. Speaker, I would like to address this issue of kidney disease and its progression to end-stage renal disease [ESRD]. The Social Security Act section 1881 has established the ESRD Program as part of Medicare in order to provide treatment for patients with renal failure. Currently there are about 200,000 beneficiaries of the ESRD Program. The average ESRD patient is now costing the health care system—primarily Medicare—an estimated $51,000 per year, or $4,250 per month. The number of patients entering the ESRD Program is increasing, and these patients are sicker than in the past. Obviously, delaying the onset of kidney failure could greatly improve a patient's quality of life and simultaneously save Medicare substantial amounts of money.

An ESRD patient can choose either transplantation or dialysis. Without these measures, kidney failure is lethal. Dialysis, a mechanical cleansing of the blood, is disruptive to an individual's lifestyle and negatively impacts on one's quality of life. The work force is diminished daily as patients learn that they must begin dialysis treatment. In fact, a recent study found that only 11 percent of the interviewed patients were employed. If we focused our energies on delaying the day which a patient must accept the burden of dialysis, we could realize a cost savings and improve the patient's quality of life.

As a result of the evidence before us, I am today introducing legislation to require the Medicare agency to conduct a 3-year demonstration program to quantify the cost and benefits associated with identifying patients who are approaching renal failure, providing a range of services to them, and thus effectively delaying the onset of complete renal failure. The demonstration will attempt to determine whether the savings from a prevention program, including improvement in quality of life measurements and job retention, exceed the cost of the preventive services themselves.

The prevention of progression to renal failure should be the primary focus when constructing treatment goals for patients with renal disease. While all the preventive measures that will consistently produce an increase in survival are as yet undetermined, there is a wealth of evidence that many patients can be effectively managed so as to delay the day that dialysis is needed to survive. I feel that the medical community knows enough about such preventive strategies and the patient populations that would most benefit from them to explore the idea of extending the Medicare ESRD benefit package to these patients prior to dialysis.

A recent NIH consensus panel concluded that because comorbid factors affecting the outcome of renal disease are present prior to the onset of renal failure, patients should be referred to a renal team for evaluation before dialysis begins. This team should consist of a physician, nurse, social worker, dietitian, and mental health professional and focus on the reduction in mortality and morbidity of the patient. There should be an interest in controlling hypertension and diabetes, reducing cardiovascular risk factors, correcting metabolic, endocrinologic, and hematologic abnormalities, treating underlying illnesses, evaluating and modifying psychological and social stressors, and setting nutritional parameters.

More specific guidelines for the prevention of progression to renal failure that can be undertaken encompass the following: First, encouraging smoking cessation, reducing obesity, increasing aerobic exercise, reducing the intake of fat and cholesterol, correcting anemia, monitoring calcium and phosphorous; second, implementing the most recent American Diabetic Association guidelines for strict management of diabetes; third, reducing exposure to environmental toxins including analgesic abuse, lead poisoning, and other nephrotoxins; fourth, managing hypertension through prescription of angiotensin converting enzyme inhibitors and calcium channel blockers preferentially; fifth, regulating diet to maintain normal acid-base balance and intravascular fluid volume; and sixth, evaluating and correcting malnutrition.

Diabetes is the No. 1 cause of renal failure in the United States. Approximately 25–35 percent of new ESRD patients have diabetes as the underlying etiology. Greater than 65 percent of all ESRD is due to diabetes and hypertension combined. The intensive management of both hypertension and diabetes has the benefit of reducing the time to the onset of dialysis. Although the progression to ESRD is rare in people with hypertension, there is the paradox of its continuing increase despite improvements in blood pressure control in the general population and reduction in mortality from other complications associated with hypertension. Cardiovascular mortality accounts for approximately 50 percent of deaths in patients receiving dialysis, highlighting the need for control of risk factors such as hypertension, smoking, anemia, obesity, and lipid abnormalities.

Furthermore, the racial differences manifested in the increased risk of hypertension-related ESRD for blacks, and the excess risk of ESRD for low income, poorly educated blacks and whites must stimulate new evaluation of these problems. The correlation between lower socioeconomic status and ESRD has been examined, with several inter-related factors possibly playing a role, including: lack of appropriate access to health care, lack of a primary care physician, lack of insurance, and noncompliance with a treatment regimen. Further examination of the relationship between hypertension, renal disease, and the interrelated factors must be undertaken in order to develop and implement viable treatment regimens that will have lasting effects.

The patients in the ESRD Program have not only suffered through the tremendous burden of kidney failure, but their quality of life is further worsened by factors that can be corrected. The medical community needs to identify patients with renal disease prior to the onset of renal failure in order to reduce the burden of dialysis, thereby allowing these patients to remain viable members of the work force. The benefits of weight loss, regulation of fat intake, and reduction of stress have all become commonplace in the layperson's repertoire of medical knowledge. Strict control of diabetes, hypertension, diet, and psychological stressors can also have a real benefit for patients with kidney disease in reducing the onset of renal failure, subsequently improving the quality of life, and ultimately retrieving some patients from the brink of dialysis.

RISK ASSESSMENT/COST BENEFIT ANALYSIS

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. PACKARD. Mr. Speaker, Republicans continue to move forward with their agenda for a smaller, less costly, less intrusive government. Last week House Republicans took the first step in rolling back the regulatory tide. Passage of the Regulatory Transition Act gives the American taxpayers a time out from the crushing regulatory load. Now we must work for long-term regulatory reform.

The regulatory reform provision within our Contract with America introduces commonsense approaches that will assist Federal agencies in prioritizing regulatory decisions—ensuring that limited public resources are targeted to the greatest needs our Republican proposal favors cost-effective regulation to address real risks.

All regulatory agencies must use risk assessment, sound science, and cost-benefit analysis for all regulations. Federal agencies must check to see if the regulation makes sense before taxpayers bear the costly burden, each year Government regulations cost approximately $600 billion.

The Republican commonsense approach to regulatory reform works for a smaller, less costly, and less intrusive Government risk assessment and cost benefit analysis will force the Federal Government to be accountable for their actions. The American people deserve to know that their tax dollars will be used wisely to serve their needs, not the needs of the Federal Government.

TRIBUTE TO ROBERT WAGNER

HON. CARLOS J. MOORHEAD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. MOORHEAD. Mr. Speaker, I rise today to salute Mr. Robert Wagner, an outstanding resident of my congressional district. I have been privileged to become acquainted with Mr. Wagner over the years through his many community activities and through his strong interest in public policy.

A veteran of World War II, Mr. Wagner served honorably from 1940 until 1945. After graduating from Georgetown University's School of Foreign Service in 1948, he launched a successful business career in South Pasadena. Mr. Wagner's loyalty to his alma mater continued, however, and he was honored by Georgetown for his many consistent years of alumni service.

Mr. Wagner has demonstrated tireless service on behalf of senior citizens and is, in fact, my appointee to the 1995 White House Conference on Aging. He has been a Senior Senator in the California Senior Legislature since 1988. This work earned him a Distinguished Public Service Proclamation from the mayor of South Pasadena. Mr. Wagner is retiring from the Senior Legislature this year where I am sure he will be missed.

In addition, he has somehow found time to contribute his energies to various civic and humanitarian organizations in and around South Pasadena. These efforts have not gone without notice. Mr. Wagner has been the recipient of the YMCA Service to Youth Award, the Rotary Club Merit Award, a Certificate of Appreciation from the University of Southern California, and the Los Angeles County Board of Supervisors Award for distinguished public service.

Robert Wagner offers proof that one dedicated citizen can make a positive impact on the community in which he or she lives. I am glad to take a moment to publicly recognize his many years of volunteer service and devotion to those around him. We certainly wish Robert, his wife Bernice, and their three children the best.

THE SEMICONDUCTOR INVESTMENT ACT OF 1995

HON. NANCY L. JOHNSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mrs. JOHNSON of Connecticut. Mr. Speaker, today I am pleased to join my Ways and Means Committee colleagues, Representatives ROBERT MATSUI, PHIL CRANE, and BARBARA KENNELLY, as well as Congresswoman ANNA ESHOO, in introducing the Semiconductor Investment Act of 1995. This legislation will enhance the international competitiveness of the U.S. semiconductor industry by changing the statutory life of semiconductor manufacturing equipment to more accurately reflect the industry's rapid pace of technological change. This change in the tax depreciable life of semiconductor manufacturing equipment from 5 years to 3 years will enable U.S. semiconductor manufacturers to recover capital costs incurred in maintaining state-of-the-art facilities over a period that more closely approximates economic life.

Semiconductors are at the core of all aspects of the information highway. They drive technological advances in computers, telecommunications and consumer electronics, and change our society in ways ranging from telecommuting to electronic banking to promoting citizen access to legislation through the Internet. Semiconductors are at the heart of the $500 billion U.S. electronics industry that employs more than 2 million Americans. The U.S. semiconductor industry alone provides over 200,000 high-skilled American jobs and has recently regained its position as the world's leading producer of chips. It is a highly capital intensive industry that demands continuing changes to manufacturing infrastructure.

This dynamic industry is based on ever-evolving technology. The rapid pace of technological change makes semiconductor manufacturing equipment obsolete, technologically and economically, soon after being placed into service. Recent economic studies and normal business practices indicate that such equipment should qualify for a 3-year depreciable life under tax depreciation rules because two-thirds of the equipment's economic usefulness is exhausted in the first 2 years and the equipment's full economic life is less than 4 years. However, current U.S. tax rules depreciate semiconductor manufacturing equipment over 5 years, a period significantly longer than the equipment's true economic life. As a result, the U.S. semiconductor industry is at a competitive disadvantage with foreign firms whose cost recovery rules more accurately reflect economic reality.

Japanese semiconductor producers, for example, may depreciate up to 88 percent of their manufacturing equipment in the first year. U.S. producers, on the other hand, may depreciate only 20 percent in the first year. Thus, existing U.S. cost recovery rules are a key factor in determining whether firms build new plants in the United States or overseas. In view of the fact that the global semiconductor industry is expected to invest $120 billion in capital expenditures during the remainder of this decade, we need more accurate cost recovery rules to ensure that much of that investment is made here—not overseas.

To compete in today's global market, our domestic manufacturers must be able to recover the cost of their capital investments in a timely manner. Reducing the depreciable life of semiconductor manufacturing equipment to 3 years will enable U.S. semiconductor manufacturers to invest the capital needed to keep pace with rapid technological changes and strengthen their international competitiveness.

Mr. Speaker, it is my hope that, as the Committee on Ways and Means reviews the operation of the existing cost recovery rules in the context of the Contract With America, we may have the opportunity to update this narrow, but economically significant, aspect of our cost recovery rules. I urge my colleagues to join us as sponsors of this initiative to keep the United States the home of cutting-edge semiconductor technology.

TRIBUTE TO DR. CHARLES W. JENSEN III

HON. CHRISTOPHER SHAYS

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. SHAYS. Mr. Speaker, I would like to take this opportunity to extend my condolences to the Jensen family of Riverside, CT, for the loss of their son and brother. Dr. Charles W. Jensen III, 34, a doctor of dental medicine in Greenwich, CT, who died suddenly last Monday morning at his office in Greenwich.

A resident of Stamford, he previously lived in Greenwich and Darien. He had been practicing dentistry for almost 8 years and had just taken over the practice from his father, who retired at the end of December.

Dr. Jensen was an avid sportsman whose special interest was sports fishing. His other interests were softball and golf, and he was a member of the Innis Arden Golf Club.

Born August 24, 1960, in Goldsboro, NC, he moved to Greenwich when he was a year old. He was a 1979 graduate of Greenwich High School, graduated magna cum laude from Fairleigh Dickinson University and was a 1987 graduate of the University of Connecticut Dental School. He was a member of the American Dental Association, the Connecticut State Dental Association, and the Greenwich Dental Society.

In addition to his father, he is survived by his mother, Rachel Vuono Jensen of Riverside; three brothers, James S. Jensen of Silver Spring, MD, Thomas F. Jensen of San Ramon, CA, and Daniel T. Jensen of Riverside; two sisters, Mary Beth Jensen of Park City, UT, and Kathleen Bellissimo of Los Altos, CA; and his girlfriend, Rachel Gregg, of New Canaan, CT.

Charlie will always be remembered as a genial, engaging person of rock solid integrity. The very mention of his name elicited a warm smile and a laugh from all those who knew him. Whether fishing off the shores of Nantucket, boating on Long Island Sound, or caring for his patients in the dental office, Charlie will always be remembered as a wonderful brother, trustworthy friend, and a dedicated professional.

John W. Moffly IV, a long-time friend of the Jensen family, recently stated, "I so much admired Charlie, not only as a professional, but as a person * * * he took such great interest in his patients that I never had a single doubt that whatever the problem, he would find the right solution * * * certain doctors rise above the norm and earn special recognition for their talent, dedication and humanity. This was Charlie."

Mr. Speaker, Dr. Charles W. Jensen III will be very, very missed.

TRIBUTE TO LES T. DAVIS

HON. DAVID R. OBEY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. OBEY. Mr. Speaker, I want to take this opportunity to bring to my colleagues' attention the work of a true pioneer in the field of supercomputing on the occasion of his retirement. Lester "Les" T. Davis, chief operating officer and one of the cofounders of Cray Research, Inc. in Chippewa Falls, WI, recently announced he would retire after 22 years with the company.

Cray Research began in Chippewa Falls in 1972 as a small start-up company with a handful of employees. Les Davis took financial risks, made personal sacrifices, and worked extraordinarily long and hard to create the first broadly used supercomputer. That in turn created a new industry, and with it the company that became synonymous with supercomputing. Cray now has 5,000 employees worldwide.

Mr. Davis has served as the heart and soul of Cray Research, exhibiting both technological and managerial leadership. In addition to his role as the technical and design leader of the company, he has also been Cray Research's No. 1 salesperson, winning and retaining many global customers over the years with his thorough knowledge of Cray architecture, software, and applications.

Mr. Davis has made a significant contribution to the people of Chippewa Falls by helping to increase the economic development in that area for over two decades. He also has made an exceptional contribution to our Nation in advancing America's leadership in the critical field of supercomputing.

I want to thank Mr. Davis for his vision and the spirit he instilled in our Nation's scientific community. We all wish him the best in whatever his future holds.

A TRIBUTE TO JAMES F. BOATRIGHT

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. DELLUMS. Mr. Speaker, I rise today to pay tribute to a distinguished public servant, Mr. James F. Boatright, as he retires on March 3 from his position in the Department of the Air Force. Mr. Boatright's Federal career spans 39 years of service. He served as a commissioned officer in the Army and then entered the Federal civil service where he has served in the Bureau of Reclamation, the Army Corps of Engineers, the Army Research and Development Laboratory, and with the Air Force. Since 1979 he has served with great distinction as the Deputy Assistant Secretary of the Air Force for Installations. It is in this capacity that we in the Congress have become acquainted with and appreciative of the many talents of Jim Boatright.

During the buildup of our military forces throughout the early 1980's, Jim Boatright spearheaded the efforts of the Department of the Air Force to modernize its facilities championing quality of life in both the workplace and the living environment long before it became the catchword of the Department of Defense. His efforts succeeded in providing benefits to all members of the Air Force, active, reserve and civilian, as well as to their dependents who accompanied them to Air Force installations worldwide. Those installations have come to be regarded as a source of pride throughout the Department of the Air Force and have served to set the standard of excellence for which others strive.

With the onset of downsizing of our military forces, Jim Boatright became the focal point for the Air Force in its planning to downsize its infrastructure. Throughout the first three rounds of base closure Jim Boatright has directed the Air Force efforts to reduce and he did so with the same dedication and professionalism which has been characteristic of his career.

The quality of his performance has been recognized by numerous awards, including the Presidential Meritorious Executive Rank Award, the Presidential Distinguished Executive Rank Award and the Department of Defense Distinguished Civilian Service Award. He is the only two-time awardee of this latter prestigious award. Clearly these awards bespeak the respect of those for whom and with whom he has worked in the Department of Defense. In his relations with the Congress, particularly the Armed Services Committees and the Defense subcommittees of the Appropriations Committees, he was respected above all else for the integrity with which he dealt with us.

Mr. Speaker, I salute Jim Boatright for his many achievements throughout his distinguished career and I wish him good health and godspeed as he and his wife Gloria begin their most well earned retirement.

GOP WELFARE PLAN IGNORES WORK

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. MILLER of California. Mr. Speaker, the so-called welfare reform legislation developed by Republicans fails to address the single most urgent need for ending the current welfare system: putting people to work.

The Republicans have walked away from their early commitment to work as a key component of welfare reform. In the Contract With America, half of the welfare caseload would have been required to work by 2003. And the contract promised nearly $10 billion to pay for the new work requirement programs; the pending Republican bill has no money, and no work programs to speak of. In fact, as the New Republic points out, the great model program in Michigan by Republican leaders would authorize activities like checking a book out of a library as constituting work activity.

The Democratic leadership of the House, together with the Clinton administration, has endorsed a much tougher policy that would require recipients to accept work and training, and would require States to provide welfare recipients with a plan for moving from dependence to self-sufficiency.

Only in such a way will we end not only welfare, but poverty, too. By contrast, the Republican legislation promises only to throw people off welfare, whether or not any effort has been made to prepare them for self-sufficiency. The Republican scheme will mean millions of former welfare recipients without jobs, without homes and without any way to provide for their children. It will mean even more homelessness and huge additional costs for local communities and property taxpayers who will have to support this army of the impoverished through local general assistance programs.

In short, the Republican plan is not to end poverty, but to throw people off welfare. That will solve neither their problems, nor ours. We cannot allow the Republican plan to masquerade as welfare reform.

[From the New Republic, March 13, 1995]

WORKFARE WIMP-OUT

(By Mickey Kaus)

Call me naive, but I almost believed House Republicans when they pledged in their "contract" to reform welfare through "a tough two-years-and-out provision with work requirements." Making welfare recipients work, after all, is wildly popular (if it weren't, it wouldn't be in the contract). Newt Gingrich's political action committee once even listed "workforce" as one of the "Optimistic Positive Governing Words" it recommended to fellow revolutionaries. I figured Gingrich himself had talked so much about the need for a "mandatory requirement of work for everybody" that he might actually mean it, or at least would be too embarrassed to admit he didn't mean it. I underestimated him.

House Republicans unveiled their welfare reform plan on February 10. Most welfare-watchers expected the new bill to dilute somewhat the contract's work provisions. But few expected the abject abandonment of any credible attempt to require work. Yet that's more or less what Representative Clay Shaw, the lead Republican on welfare reform, announced. The new GOP bill, which has cleared Shaw's subcommittee, is not only weaker on the work issue than President Clinton's welfare proposal, it is in some respects weaker than the current welfare law Republicans deride.

It's certainly a long way from the Contract with America. The contract would have required work by those who had received welfare "for at least twenty-four months." Work meant "an average of not fewer than thirty-five hours per week." No funny business. By 2003, 50 percent of the welfare caseload (which currently consists of more than 5 million households) would be working.

The rationale behind these provisions was obvious: if potential welfare recipients (mainly young women) knew they were really going to have to work after two years, they might think twice before doing the things (mainly becoming single mothers) that put them on welfare in the first place. But Republican governors, it turns out, don't like work requirements much—in part because putting a welfare mother to work costs money (an extra $6,000, over and above the cost of benefits, to pay for supervisors and day care, according to the Congressional Budget Office).

Why raise state taxes to make welfare recipients perform community-service work—annoying public employee unions in the process—when you can do what Michigan's Republican Governor John Engler does: cycle recipients through inexpensive education and "job search" programs while claiming to be a great reformer? Engler's inflated reputation was recently punctured by journalist David Whitman (see "Compleat Engler," TNR February 6). But that didn't stop him from leading the charge to gut the contract's work requirements when House Republicans decided, after the election, to negotiate with GOP governors over replacing the federal welfare program with a "block grant" to the states.

Engler's mission was successful. Look first at the numbers. The bill unveiled by Shaw requires that, in 1996, states place 2 percent of the welfare caseload "in work activities." The requirement rises to 20 percent—not the contract's 50 percent—by 2003. In meeting this requirement, governors could count the 6 percent of recipients who already work at least part-time. Another 5 percent are already required to work by a 1988 reform law now in effect (which the Republican bill would repeal). That makes 11 percent already working. With a little creative bookkeeping—say, by counting all those who work, even for a few days, over the course of a year—most governors could meet the 20 percent "work activity" standard without doing anything they're not already doing.

But creative bookkeeping won't be necessary, because the Shaw bill lets the states decide what a "work activity" is. It needn't be actual work. Under the bill, a governor could declare, as Engler has, that checking a book out of a library counts as a "work activity." Leafing through the want ads might also qualify, or circulating a résumé or attending a "self-esteem" class.

Republicans criticized President Clinton's ill-fated two-years-and-work plan because it only would have required approximately 500,000 recipients, or about 10 percent of the caseload, to be in a work program by 2003. But at least in Clinton's plan those 500,000 people would really have to be working. (An additional 900,000 or so would be in education and training programs.) The House Republicans say they will put "at least 1 million cash welfare recipients in work programs by 2003," but the "work" could be completely phony. Workfake, you might call it.

It is all the more likely to be fake because the Shaw bill provides no money to make it real. The Contract with America, in a fit of honesty, earmarked $9.9 billion to pay for its work programs. The new bill contain no new funds. It does retain language that seems to require states to make recipients work—sorry, "engage in work activities"—after two years. But GOP aids admit this provision is "mostly rhetoric" not meant to be obeyed. There are no penalties for states that ignore it. (If it were obeyed, a lot more than 20 percent of the caseload would wind up "working.")

House Republicans don't even try very hard to pretend they haven't caved on the work issue. It was the price, they argue, of getting the governors to agree to a stingy "block grant," and to accept the contract's cutoff of aid to young unwed mothers. Priorities! Bizarrely, the Newtoids sacrificed the popular parts of the contract ("make 'em work") to save the unpopular parts ("cut 'em off"). It was too much even for some conservatives. Robert Rector, the Heritage Foundation's welfare expert, called the Shaw work provisions a "major embarrassment," Jack Kemp issued a statement warning that Republicans were squandering welfare reform in the pursuit of a decentralized "funding mechanism."

Shaw now says he will try to shore up the work provisions—specifying what counts as a "work activity," for example. But it may be difficult to convince the governors to endorse a major tightening—after all, the chief virtue of Shaw's bill, for them, was that it let them weasel out of the contract's work requirements.

It also may be too late. The premise of the GOP's new state-based welfare bill is that the nation's governors are reformist tigers who need only to be unlashed by the bureaucrats in Washington. But the governors have now shown their hand, and it's obvious to all that they have no appetite for radical reform especially reform based on work. Instead, they have with great effort turned the contract's ambitious plan into a bill that allows them to preserve the status quo. Even the controversial cutoff of young unwed mothers may be mainly an accounting trick. (States can simply pay the benefits out of their "own" funds.) The Republicans' welfare reform is looking less like a menace and more like a fraud.

SAVING LIVES—SETTING STANDARDS FOR DIALYSIS

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. STARK. Mr. Speaker, there are approximately 200,000 Medicare beneficiaries in the Endstage Renal Disease [ESRD] Program, initially established by the Social Security Act § 1881. This debilitating disease costs approximately $10 billion per year translating to a cost of $51,000 per patient.[1] Dialysis treatment for the ESRD patient is in essence an artificial kidney, and while there have been multitudes of research papers and numerous conferences addressing the issue of standards for dialysis treatment, the development of these standards has been a slow process. There is presently a need for quality assessment and continuous quality improvement (QA & CQI) within dialysis facilities, reformation of reimbursement schedules, improved data collection, and the introduction of industry-wide treatment standards for the benefit of the patient as well as the providers.

In recent years, numerous studies have shown relatively unexplained and dramatic differences in survival rates between kidney dialysis facilities. While it is often explained that facilities with higher mortality rates also treat sicker patients, this only explains part of the story. Mortality rates between facilities range from 0 to 43 deaths per 100 dialysis years, which means that there are other causes of death attributable to the treatment centers that cannot be explained by how sick their patients are.[2] To be blunt, some facilities are allowing their patients to die prematurely and needlessly. I believe that there is now a relative consensus among kidney disease experts that if certain quality standards are met during the course of dialysis treatment, a patient has an improved chance of prolonged survival.

Mortality rates for dialysis patients remain consistently greater than 20 percent.[3,4] Similarly, renal failure has a significant impact on the life expectancies of its victims. According to a recent NIH Consensus Panel, at 49 years of age, the average life expectancy of a patient with ESRD is 7 years, compared with 30 years for an age-matched person without ESRD.[5]

The mortality rates for patients with ESRD are increased for men, whites, elderly, diabetics, and patients with impaired functional status and malnutrition.[2,3,6–8] Survival is further complicated by the changes within the ESRD patient population and the growing list of comorbidities that contribute to their worsened state of health. Although differences between patient subgroups can result in variable risk factors for death, it seems that dialysis treatment times consistently effect the mortality rates of renal failure patients.

Dialysis functions as an artificial kidney by removing waste products from the blood, and the standard for dialysis should be expressed in terms of the formula KT/V. This formula has been offered as the most effective measurement in determining the adequacy of hemodialysis treatment. Most authors agree that the KT/V must be at least 1.0 or greater to achieve an adequate dose of dialysis, and many have concluded that levels as high as 1.2–1.4 are necessary to reduce mortality.

Therefore, I am introducing a bill today to require the Secretary of HHS to deny payment to a facility after January 1, 1997, if a majority of its patients do not receive a dialysis treatment which sufficiently cleans the blood. Hemodialysis must be supplied to achieve a delivered KT/V of 1.2. This bill will also establish contingencies whereby dialysis facilities could calculate treatment effectiveness using the urea reduction ratio [URR] instead of the KT/V. In simple terms, the URR measures the percentage of waste products cleansed from the blood over the course of a single dialysis treatment. The standards would be set to achieve a delivered URR of ≥ 65 percent. Although the URR does not have the accuracy of the KT/V, it requires only simple mathematics without the need for computer software and can provide a useful verification of treatment effectiveness. It is understood that there are other factors affecting the outcome of patients on dialysis; however, dialysis has become quantifiable and, therefore, should be utilized to effectively realize treatment goals.

Putting this in layman's terms, it is possible to measure the amount of dialysis a patient will receive by knowing the duration of treatment, the amount of waste products in the blood, and the quantity of blood that the dialysis filter will clear of those waste products during treatment. In essence, the longer a patient remains on a dialysis machine, the more likely they are to achieve the 1.2 figure.

It is appalling to think that some facilities would cut the amount of time on the dialysis machine in order to save money. Quality dialysis facilities have shown us that they can make money and still provide adequate time on the machine. Furthermore, statistical studies have demonstrated that increased time translates into less death. I believe there is enough medical consensus on this point that it would be improper for Medicare to continue to pay for facilities that do not provide adequate levels of dialysis as measured by the KT/V value. That is what my bill seeks to do: Force those facilities which are not providing sufficient dialysis to improve their level of care in accordance with a set of industry-wide standards, and ultimately stop the premature death of their patients.

Many studies have shown the correlation between increased treatment time and decreased mortality rates.[7,9–14] However, it has been argued that the combination of falling real-dollar reimbursement rates and increases in the required bundle of services have caused not only a decline in the amount of dialysis being delivered but also a reduction in the ability of dialysis centers to provide adjunct resources such as dietary counseling, social work management, mental health information, and vocational rehabilitation. As Congress considers this legislation, it also needs to examine and address this whole range of issues impacting on the lives of dialysis patients.

Medical science is continually evolving, of course, and future information may provide us with a better measure of dialysis or show us that 1.2 is not the right number to strive for.

Footnotes at end of article.

Therefore, my bill authorizes the Secretary to adjust the KT/V value or substitute a different formula if a report is sent to Congress explaining the wisdom of such a change. My bill also addresses the issue of monitoring dialysis facilities in order to assess their compliance with the above standards.

Once the progression to chronic renal failure has occurred, the main goals of the medical community should be to maintain and improve, if possible, the quality of life of the end-stage renal disease patient. Treatment plans should focus on prescription and delivery of adequate dialysis, attention to the social and psychological factors that influence survival and functional outcome of hemodialysis patients, provision of dietary counseling and management, assessment and reduction of malnutrition, control of hypertension, strict management of diabetes, maintaining vascular access, and provision of vocational rehabilitation.

In closing, Mr. Speaker, I urge the renal community to evaluate the need for reform within the dialysis industry to reduce the untimely deaths of so many patients with kidney failure.

REFERENCES

[1] VanValkenburgh D and Snyder S. Challenges and barriers to managing quality in an end-stage renal disease facility. "American Journal of Kidney Diseases" 1994;24(2):337–345.

[2] McClellan W and Soucie M. Facility mortality rates for new end-stage renal disease patients: Implications for quality improvement. "American Journal of Kidney Diseases" 1994;24(2):280–289.

[3] Levinsky N and Mesler D. Measuring, managing, and improving the quality of end-stage renal disease care. "American Journal of Kidney Diseases" 1994;24(2):235–246.

[4] Lowrie E. Chronic dialysis treatment: Clinical outcome and related process of care. "American Journal of Kidney Diseases" 1994;24(2):255–266.

[5] Consensus Development Conference Panel. Morbidity and mortality of renal dialysis: An NIH Consensus Conference statement. "Annals of Internal Medicine" 1994;121(1):62–70.

[6] Levin N. Adequacy of dialysis. "American Journal of Kidney Diseases" 1994;24(2):308–315.

[7] Lowrie EG and Lew NL. Death risk in hemodialysis patients: The predictive value of commonly measured variables and an evaluation of death rate differences between facilities. "American Journal of Kidney Diseases" 1990;15:458–482.

[8] Owen WF, et al. The urea reduction ratio and serum ablumin concentration as predictors of mortality in patients undergoing hemodialysis. "NEJM" 1993;329:1001–1006.

[9] Collins AJ, et al. Urea index and other predictors of hemodialysis patient survival. "American Journal of Kidney Diseases" 1994;23:272–282.

[10] Held PJ, Levin NW, Bovbjerg JD, Pauly MV, and Diamond LH. Mortality and duration of hemodialysis treatment. "JAMA" 1992;265(7):871–875.

[11] Hakim RM, et al. Adequacy of hemodialysis. "American Journal of Kidney Diseases" 1992;20:107–124.

[12] Blagg C. The US Renal Data System and the Case-mix Severity Study. "American Journal of Kidney Diseases" 1993;21(1):106–108.

[13] Hakim RM, Breyer J, Ismail N, Schulman G. Effects of dose of dialysis on morbidity and mortality. "American Journal of Kidney Diseases" 1994;23(5):661–669.

[14] Parker T, Husni L, Huang W. Survival of hemodialysis patients in the United States is improved with a greater quantity of dialysis. "American Journal of Kidney Diseases" 1994;23(5):670–680.

INTRODUCTION OF DERIVATIVES DEALERS ACT OF 1995

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. MARKEY. Mr. Speaker, today I am introducing the Derivatives Dealers Act of 1995. This legislation is aimed at providing a framework for improved supervision and regulation of previously unregulated dealers and assuring appropriate protections for their customers.

Today's newspapers report on the disastrous consequences of derivatives losses by Barings PLC—one of Great Britain's oldest merchant banks. According to these reports, Baring's has lost at least $950 million due to unauthorized derivatives trading by a 27-year-old trader in its Singapore office. This sorry episode underscores the risks inherent in failing to assure that regulators have adequate tools on hand to minimize the potential for OTC derivatives to contribute to a major disruption in the financial markets, either through excessive speculation and overleveraging, or due to inadequate internal controls and risk management on the part of major derivatives dealers or end users. Despite the best efforts of the Bank of England to rescue Barings, apparently the scale of the losses is so great that as collapse could not be averted. As a consequence, both European and Asian financial markets are in turmoil today. The bill I am introducing today will help assure that no similar disaster befalls American derivatives dealers or our financial markets.

Derivatives are financial products whose value is dependent on—or derived from—the value of some underlying financial asset such as a stock, bond, foreign currency, commodity, or an index representing the value of such assets. Some derivatives have been around for many years, such as the exchange-traded futures and options used by investors and dealers seeking to hedge positions taken in the stock and bond markets, or to speculate on future market movements.

Within the last few years, however, such exchange-traded futures and options have been supplemented by a vast and dizzying array of over-the-counter [OTC] derivatives. These include forwards, swaps, options, swaptions, caps, floors, and collars that may be linked to the performance of the Japanese stock market, the dollar-deutschemark exchange rate, the S&P 500, or virtually any other asset. Today, the total outstanding value of the principal underlying such over-the-counter derivatives is estimated to be over $12 trillion.

The dynamic growth of the OTC derivatives market is the direct result of developments in computer and telecommunications technology and breakthroughs in modern portfolio management theory that have created a new world of cyber-finance that is reshaping U.S. and global financial markets. These new financial instruments are an important component of modern financial activity and provide useful risk management tools for corporations, financial institutions, and governments around the world seeking to respond to fluctuations in interest rates, foreign currency exchange rates, commodity prices, and movements in stock or other financial markets.

While OTC derivatives are frequently used to hedge foreign currency or interest rate risks or to lower borrowing costs, there has been a proliferation of increasingly exotic, customized financial contracts or instruments that enable dealers and end users to make speculative synthetic side bets on global financial markets. This development has raised concerns over the potential for OTC derivatives to increase, rather than reduce risk of financial loss or contribute to a future financial panic. In addition, the concentration of market-making functions in a small number of large banks and securities firms, the close financial interlinkages OTC derivatives have created between each of these firms, and the sheer complexity of the products being traded raise serious concerns about the potential for derivatives to contribute to serious disruptions in the fabric of our financial system. My bill will help assure that Federal regulators have the ability to effectively monitor the activities of certain heretofore unregulated derivatives dealers.

In addition, my bill will help assure that our financial regulatory structure includes appropriate customer protections in place in the form of full disclosure, accurate financial accounting, appropriate sales practices, and restrictions against fraudulent or manipulative activity.

While the Barings PLC disaster underscores the some of the risks and dangers associated with derivatives, the Subcommittee on Telecommunications and Finance, which I chaired in the last Congress, has been closely monitoring the financial derivatives market for the last 3 years. In June 1992, I wrote to the General Accounting Office [GAO] to request a comprehensive study of the derivatives market. At that time, the subcommittee noted that the trading of new and complex derivative products by financial institutions and their customers had greatly increased in recent years, creating a corresponding need to assure that knowledge of how to manage and oversee the risks associated with these products was keeping pace.

The GAO derivatives study submitted on May 19, 1994, in response to the subcommittee's request, has identified some serious gaps in the current legal and regulatory structure relating to OTC derivatives.

The GAO made a number of important recommendations for reforms in the regulation of financial derivatives disclosure, financial accounting, and dealer regulation. Of particular concern to me was GAO's finding that serious gaps existed in the current legal and regulatory framework that allows derivatives dealers affiliated with securities firms or insurance companies to largely escape the type of regulations which are already in place for derivatives dealers affiliated with banks. GAO also identified potential gaps in antifraud and antimanipulation enforcement authority, and sales practice regulation. In response, the GAO recommended that this "black hole" be plugged by granting a Federal regulator, such as the Securities and Exchange Commission, appropriate authority to conduct examinations and set capital standards for these currently unregulated dealers.

The subcommittee closely examined the derivatives markets and the findings and recommendations of the GAO study in oversight hearings held on May 10, 19, 25, and July 7th of last year. Based on the information gathered in the course of these hearings and other inquiries, I have crafted a piece of legislation which would close the most glaring legal gap affecting the derivatives markets—the presence of virtually unregulated OTC derivatives dealers in the market.

This bill will close the regulatory "black hole" that has allowed derivatives dealers affiliated with securities or insurance firms to escape virtually any regulatory scrutiny. It will give the SEC the tools needed to monitor the activities of these firms, assess their impact on the financial markets, and assure appropriate protections are provided to their customers against any fraudulent or abusive activities. It is not a radical restructuring of the derivatives market; it is focused laser-like on the real gaps that exist in the current regulatory framework that need to be closed, and closed now before we have our own Barings PLC disaster right here in America.

I urge my colleagues to cosponsor and support this important legislation.

TO EXTEND A NUTRITION ASSISTANCE PROGRAM TO AMERICAN SAMOA

HON. ENI F.H. FALEOMAVAEGA

OF AMERICAN SAMOA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. FALEOMAVAEGA. Mr. Speaker, I rise today to introduce a bill to provide permanent funding for a nutrition program in American Samoa.

The American Samoa Nutrition Assistance Program currently in existence is funded on an annual basis out of discretionary funds from the Department of Agriculture. The national Food Stamp Program is not available in American Samoa, and the program in Samoa serves as a modified Food Stamp Program in that only the blind, severely disabled, and poor elderly are eligible for benefits. Benefits are also limited in that they vary between $50 and $125 per month, depending on the income of and the assets owned by the recipient.

Unfortunately, the method of annual appropriations used for American Samoa's Nutrition Assistance Program is unsatisfactory in that the level of funding, or perhaps more appropriately the existence of any funding, is subject to annual appropriations. I can see no reason why funding for the Food Stamp Programs for the 50 States, the District of Columbia, and for all but one of the U.S. Territories should come from one source, and the funding for American Samoa's program should come from a different source.

Mr. Speaker, I believe American Samoa's Nutrition Assistance Program is a model to be followed by other U.S. jurisdictions in that no benefits are available for the able-bodied. As I stated earlier, the only recipients are the poor blind, severely disabled, and the elderly. The cost of the program for fiscal year 1995 is $5.5 million, a cost which could easily be absorbed within the multi-billion dollar contingency fund of the national program, and I urge my colleagues to join me in addressing this variance in national policy and support this bill.

Mr. Speaker, I submit the bill to be printed in the RECORD, as follows:

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF NUTRITION ASSISTANCE PROGRAM TO AMERICAN SAMOA.

The first sentence of section 601(c) of Public Law 96-597 (48 U.S.C. 1469d(c)) is amended by inserting before the period at the end the following: ", and the Secretary of Agriculture shall extend a nutrition assistance program conducted under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) to American Samoa".

TERESA McGOVERN

HON. JOHN JOSEPH MOAKLEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. MOAKLEY. Mr. Speaker, last December, Senator George McGovern's daughter, Teresa, died in Madison, WI—losing her long battle with alcoholism. Terry was a remarkable young woman who cared deeply about others and cared passionately for this country. I recall meeting her in Boston back in 1972 when her father ran for the Presidency. She was intelligent, articulate and totally dedicated to making our Government reflect the very best in our Nation.

Since her death, the McGovern family has courageously talked publicly about the ravages of Terry's alcoholism and their attempt to deal with it. In an excellent article which recently appeared in Parade magazine, George McGovern eloquently and painfully describes the impact that this disease had on his daughter and his family.

The article follows:

WHAT I LEARNED FROM MY DAUGHTER

(By George McGovern)

On the 10th day of June, 1949, my wife, Eleanor, gave birth to a 6-pound, 14-ounce baby girl, whom we named Teresa. "She's a beautiful little porcelain doll," said an admiring artist friend. We agreed that we had brought forth a creature of remarkable beauty and charm. That was the way I saw her for the next 45 years, through laughs and joys, anxieties and tears.

From the beginning, Teresa blossomed into an engaging, fun-loving, quick-witted child—a special joy in our family. She later developed a notable sense of compassion, insight and sensitivity toward others, communicating easily with people about their concerns and aspirations, disappointments and victories.

The day of Teresa's birth was hot and dry in Mitchell, S.D., the temperature around 90 degrees. Forty-five years later, on Dec. 12, 1994, the ground was covered with snow in Madison, Wis., and the temperature was far below freezing. That night, Teresa died in the snow in a lot, out of sight of passersby. "Hypothermia due to exposure while in a state of acute alcohol intoxication," read the Dane County coroner's report.

We had dreaded such a report for years. Terry's troubles seem to have started as early as high school, when she had the first indications of depression and then experimented with alcohol with teenage friends. She seemed to have been born with a vulnerability to both depression and alcoholism. To whatever extent genes influence these matters, there is a pattern of alcoholism in some of my Irish ancestry, just as there is a pattern of depression in some of Eleanor's English and Norwegian ancestry.

Terry's dependence on alcohol seemed both to enhance and to result from the depression. It was a vicious circle. When she achieved periods of sobriety she sometimes was afflicted with a depression that seemed to trigger a relapse into alcohol consumption. When doctors finally found a medication that was somewhat successful in combating her depression, the medication often would be neutralized by drinking bouts that she seemed powerless to control.

A glass or two of wine or a cocktail can be a pleasant and relaxing experience for most people. But to the 15 million or more Americans like Terry who are alcoholics, there is no such thing as a casual glass of wine. In Terry's case, she drank until she collapsed or blacked out. During her last five years, she was admitted to Madison's Tellurian detoxification center 76 times. Sometimes she checked in voluntarily. More frequently she was taken there after she had collapsed in a bar or on the street or in her home.

Terry couldn't seem to stop drinking, but she fought the addiction with tenacity for most of her life. With pressure from Eleanor and me, as well as her sisters and brother, she agreed to treatment in some of the best centers in the nation. These painstaking, sometimes expensive programs, combined with attendance at AA meetings, brought her sobriety for periods of time—days, weeks or months, and once for seven years, as she gave birth to and lovingly nurtured her daughters, Marian and Colleen, who remained the central passions of her life—except for alcohol, her hated master.

She devoured pamphlets and books on alcoholism. She searched the Bible and other spiritual sources for guidance and insight. She pursued "users" in recovery who would share their secrets with her. She talked to her patient, unfailing mother about her struggle.

My office staff knew Terry had a problem that frequently took precedence over all else in my life. Especially in the years since I left the U.S. Senate in 1981, Terry has never been far from my consciousness and concern. In the 1960s and early '70s, the Vietnam War and the excesses of the Cold War became such obsessions with me that I ran for the Presidency in 1972 to offer a different course. But Terry became my obsession in the 1980s and '90s. Only another parent with an alcoholic or otherwise chemically addicted child can begin to comprehend the endless concern and anxiety, anger and resentment, excited hopes and disappointments, exhausting and sometimes frightening experiences that go with loving and caring for an alcoholic offspring.

Two years ago, while having lunch with Michael Deaver, a long-time aide to former President Reagan, I mentioned my deep concern over Terry's drinking problem. He arranged for her to go through one of the finest treatment programs in the nation—Father Martin's Ashley rehabilitation center in Havre de Grace, Md. After six weeks of a seemingly successful recovery, Terry was urged to live for the next six months in the protective environment of a halfway house. Terry, however, was desperate to return to Madison to be near her daughters, so she rejected this advice. Eleanor agreed to go with her to Madison and stay until Terry could get settled. With her usual patience and love, Eleanor remained with Terry for two weeks. On the day of her departure, Terry started drinking again. Eleanor returned home—her heart broken one more time.

A few months later, we persuaded Terry to enter a program at the National Institutes of Health in Bethesda, Md. She cooperated with all aspects of the agenda, and so did Eleanor and I, which involved counseling and group-discussion sessions with family members of other patients. We were highly encouraged by Terry's seeming success.

On the morning of the completion of the program, I happily brought Terry home. She asked if she could use the car for a few minutes to pick up a prescription at a drugstore nearby. Three hours later, I was called by a friendly bartender who told me that Terry had collapsed from drinking. It pains me even now to recall the sad and bitter disappointment, the personal regret and doubt about my own judgment that followed.

One of the things I learned from experiences like this was to separate my feelings toward the alcoholic whom I loved from the alcoholism which I hated. Some of her friends would tell me that there were two Terry's—the sober one whom they cared about and the intoxicated one whom they could not stand. I understand this well-meaning sentiment, which I sometimes held. But it is wrong. There was never more than one Terry—a Terry who usually brought joy to her friends but at other times transferred to others her own suffering. If a member of the family were suffering from cancer or AIDS, we would not say that we love them when they are healthy but despise them when they are ill. So it should be with alcoholism, a frequently fatal disease. The same disease that hurts the alcoholic's family and friends hurts and demoralizes the alcoholic vastly more.

I developed an exchange with Terry that seemed to work for both of us. "Who is ahead today—you or the demon?" I would ask. She loved that way of posing the problem. It's okay to love your family member or friend and despise the demon that attacks him or her.

What parents discover is that they are powerless to overcome the addiction that's destroying their precious creation. A friend of Terry's, from one of America's most celebrated families, says she saved his life by persuading him to go forward with alcohol treatment. He sent us a eloquent letter in which he wrote: "Senator, not all the Senators of all the Congresses could legislate a person sober. And Mrs. McGovern, no amount of love expressed by good mothers like you can birth sobriety."

You can assist, advise, agonize, pay and pray, but you cannot deliver sobriety. And in many cases, neither can the victim, no matter how hard she or he tries.

However, another thing I learned is that you must never abandon hope. Never give up on the alcoholic, and don't let him or her give up. If you have a spiritual faith or wish to develop one, use the power of prayer. Share that hope and faith with the victim. Terry died at age 45. She probably would have died at 18 or 30 or 40 had it not been for her faith and the faith of others.

I believe that alcoholism and other chemical dependencies constitute America's No. 1 social problem. Every year, victory eludes 100,000 Americans like Teresa, who die of alcoholism. Countless others suffer from the loss of employment, the neglect of their families the breakup of marriages, a sense of shame and defeat—all of this, plus constant danger and distress.

We must support the good treatment centers and urge public officials to support adequate funding for alcoholism research and rehabilitation. Unfortunately, funds recently have been cut back. The price of this "economy" includes more suffering and death from alcohol and other drugs, more loss of productivity, and more disorder and crime. For every dollar saved in cuts, we will spend several times that much in future costs—some of which are immeasurable.

IF SOMEONE YOU LOVE IS AN ALCOHOLIC:

More than 15 million Americans drink too much, according to some experts. Alcoholism has no known cure, but the National Council on Alcoholism and Drug Dependence (NCADD) says the disease can be stopped. In fact, there are more than 1.5 million Americans in recovery. Here are some of the council's recommendations when dealing with an alcoholic:

1. Recognize that alcoholism is a disease and not a moral failure or lack of willpower.
2. Learn as much as you can about the disease. Many libraries have sections on alcoholism, addiction and related subjects.
3. Don't become an "enabler." An enabler is a person close to the alcoholic who supports or "enables" the drinking by pretending that there isn't a problem (denial), or by protecting or lying for the alcoholic.
4. Avoid "home treatments." Don't try to solve a loved one's drinking problem by preaching, complaining, acting like a martyr or reasoning with the drinker. An alcoholic needs help from experts, such as Alcoholics Anonymous.
5. Get help for yourself. One of the hallmarks of the illness is that it affects everyone close to the alcoholic. Many treatment programs provide help for those affected by another person's drinking.

TRIBUTE TO JUSTIN AARON HARRIS

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Ms. KAPTUR. Mr. Speaker, I rise today to pay respectful tribute to a young man from my district who has made the ultimate sacrifice, giving his life in service to our country in a foreign land. Justin Aaron Harris, a Marine Sergeant, was tragically killed last week when his helicopter went down at sea after hitting a ship off the coast of Mogadishu. He died on February 19, 1995, leaving a wife, Chantay, and a young son, Justin, Jr., his parents, Peggy and Joe, a sister, Julie Morrison, brothers, Joe, Jeffrey, Jerry, and Javan Harris and scores of relatives and friends who mourn the loss of a promise-filled life cut short. We offer them our hearts in empathy as they face this deep tragedy. We hope that his vision for America and his devotion and belief in service to our nation and oppressed people around the world will make this cross a little easier to bear. We pray the memories his family and friends shared in his too-brief life will sustain them all. Justin knows as we all know, the price of freedom is not free. He laid down his life in service to us.

A poem was read at his memorial service, held in his hometown of Toledo, Ohio on February 25, 1995. The author apparently unknown, it symbolizes Justin's and his family's faith and offers a meaning to his passing, helping all to understand and to gain strength:

I'M FREE

Don't grieve for me, for now I'm free
I'm following the path God laid for me.
I took his hand when I heard Him call
I turned my back, and left it all.
I could not stay another day
To laugh, or love, or work, or play
Tasks left undone must stay that way
I found that place at the close of the day.
If my parting has left a void,
Then fill it with remembered joy.
A friendship shared, a laugh, a kiss
Oh yes, these things I too will miss.
Be not burdened with times of sorrow
I wish you sunshine of tomorrow.
My life's been full, I savored much
Good friends, good times, a loved one's touch.
Perhaps my time seemed all too brief.
Don't lengthen it now with undue grief.
Lift up your heart and share with me . . .
God wanted me now
He set me Free!

Justin Aaron Harris, age 23; always remembered, always honored, always loved.

SUSTAINABLE CONSUMPTIVE USE OF MARINE RESOURCES

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. YOUNG of Alaska. Mr. Speaker, this Nation has had an enviable and successful record, both domestically and internationally, of fostering sound conservation and scientific management of wildlife and marine resources. Through statutes, regulation and international treaties, the United States has traditionally taken a leadership role in demanding science-based information and data upon which to shape policy and programs for the conservation of plants, animals, and fish. An integral part of wildlife and resource management is the concept of consumptive use of such renewable resources under proper and professional management.

In the February issue of the American Spectator there is a most thought provoking article by David Andrew Price regarding the issue of whaling by coastal and island nations. With the exception of a small science-based harvest of whales by natives in Alaska, the United States is no longer a consumer or producer of whale products. For other nations, however, whale products have been a traditional source of food for thousands of years. The serious question is whether or not such traditional harvests should be blocked when limited taking in no manner would have an adverse impact on populations stocks. Further, ignoring science in the management of one species of wildlife based upon a response to a protectionist philosophy sets a dangerous precedent. Wildlife and marine resources cannot afford to be managed on the basis of some subjective ethic that ignores science and appropriate management.

I commend Mr. Price's article to my colleagues on a most important issue of sustainable use of renewable marine resources and the role of the United States in that policy.

[From the American Spectator, February 1995]

SAVE THE WHALERS

(By David Andrew Price)

One morning last January, Arvid Enghaugen, a resident of the Norwegian coastal town of Gressvik, found his whaling boat sitting unusually deep in the water. When he climbed aboard to investigate, he found that the ship was in fact sinking; someone had opened its sea cock and padlocked the engine-room door. After breaking the lock, Enghaugen discovered that the engine was underwater. He also found a calling card from the Sea Shepherd Conservation Society, a small, California-based environmentalist group that specializes in direct actions against whalers. Counting Enghaugen's boat, Sea Shepherd has sunk or damaged eleven Norwegian, Icelandic, Spanish, and Portuguese vessels since 1979.

The boat was repaired in time for the 1994 whaling season, but Enghaugen's problems weren't over. On July 1, while he was looking for whales off the Danish coast, live Greenpeace protesters boarded the ship from an inflatable dinghy and tried to take its harpoon cannon. Enghaugen's crew tossed one protester into the sea, and the rest then jumped overboard; the protesters were picked up by the dinghy and returned to the Greenpeace mother ship.

A week later, after Enghaugen's boat shot a harpoon into a whale, a team from another Greenpeace vessel cut the harpoon line to free the wounded animal. A group again tried to board the whaler, and the crew again threw them off. Enghaugen cut a hole in one of the Greenpeace dinghies with a whale flensing knife. For the next two weeks, Enghaugen and crew were dogged by Greenpeace ships and helicopters.

Although the activities failed to stop Enghaugen's hunt, their public relations war in America has been a different story. Over the past twenty years, the save-the-whales movement has been so successful in shaping public sentiment about the whaling industry that the U.S. and other nations have adopted a worldwide moratorium on whaling. Part of the credit must go to the animals themselves, which are more charismatic on television than Kurds, Bosnians, or Rwandans, who have engendered far less international protection. The movement owes most of its success, however, to the gullibility of Hollywood and the press in passing along bogus claims from whaling's opponents.

The mainstay of the case against whaling—that it threatens an endangered species—is characteristic of the misinformation. It is true that European nations and the United States killed enormous numbers of whales during commercial whaling's heyday in the nineteenth century, but to say that "whales" are endangered is no more meaningful than to say that "birds" are endangered; there are more than seventy species of whales, and their numbers vary dramatically. Some are endangered, some are not. The blue whale, the gray whale, and the humpback were indeed depleted, but those species were later protected by international agreement long before the existence of Greenpeace or Sea Shepherd. (There have been abuses. Alexei V. Yablokov, special adviser to the president of Russia for ecology and health, has revealed that the whaling fleet of the former Soviet Union illegally killed more than 700 protected right whales during the 1960's but the International Whaling Commission's institution of an observer program in 1972 essentially put an end to the Soviet fleet's illegal activities.)

The only whale species that Enghaugen and his fellow Norwegian whalers hunt is the minke, which Norwegians eat as whale steaks, whale meatballs, and whaleburgers. As it turns out, minke whales are no more in danger of extinction than Angus cattle. In 1994, thirty-two Norwegian boats killed a total of 279 minkes, out of an estimated local population of about 87,000 and a world population of around 900,000.

In 1982 the IWC voted to suspend commercial whaling for a five-year period starting in 1986. The ostensible purpose was to permit the collection of better data on whales before hunting resumed. Norway lodged a reservation exempting itself from the moratorium, as the IWC treaty permitted, but it complied voluntarily.

Whaling nations soon learned, though, that the majority of nations in the IWC—including the United States—intended to maintain the ban indefinitely, no matter what the numbers showed. Canada left the IWC in 1982, and Iceland left in 1992. Norway terminated its voluntary compliance in 1993. To protest the commission's disregard of the facts about whale stocks, the British chairman of the IWC's scientific committee resigned that year pointing out in his angry letter of resignation that the commission's actions "were nothing to do with science." The IWC continued the moratorium anyway at it next meeting.

A 1993 report by the Congressional Research Service observed that the data on whales undercut the conservationist argument, and that "if the United States argues for continuing the moratorium on commercial whaling, it may have to rely increasingly on moral and ethical appeals." The ban on whaling is no longer about conservation, in other words, but about the desire of many Americans and Western Europeans to impose their feelings about whales upon the whaling nations (which include Iceland, Russia, Japan, and the Inuits of Canada and Alaska).

Popular notions of whales' human-like intelligence, often cited by opponents of whaling, have little real support. Whales possess large brains, but that proves nothing about their mental agility. Margaret Klinowska, a Cambridge University expert on cetacean intelligence, holds that the structure of the whale brain has more in common with that of comparatively primitive mammals such as hedgehogs and bats than with the brains of primates.

Whales can be trained to perform stunts and other tasks, but so can pigeons and many other animals that have never been credited with the cerebral powers of homo sapiens. And the idea that whales have something like a human language is, at present, pure folklore. Like virtually all animals, whales make vocalizations, but there is no evidence that they are uttering Whalish words and sentences. Their famed "singing" is done only by the males, and then during but half the year—a pattern more suggestive of bird-song than human speech.

Much of the popular mythology about cetacean intelligence comes from crank scientist John Lilly, a physician who became convinced in the 1950s that whales and dolphins are not only smarter and more communicative than humans, but also have their own civilizations, complete with philosophy, history, and science that are passed down orally through the generations. His conclusions about the animals' mental skills were based partly on his observations of captive dolphins at his lab in the Virgin Islands, but mainly on wild flights of conjecture. Lilly also predicted in the late seventies that the State Department would eventually negotiate treaties with the cetaceans, and that humanity's progress in its dealings with them would lead the Galactic Coincidence Control Center to send agents to planet Earth to open the way for extraterrestrial contacts with us. The anthropomorphization of the whale reached new heights with a 1993 open letter to the Norwegian people from Sea Shepherd president Paul Watson, who predicted, "The whales will talk about you in the same vein as Jews now talk of Nazis. For in the eyes of whalekind, there is little difference between the behavior of the monsters of the Reich and the monsters behind the harpoon."

Cetacean behavior researchers have rejected Lilly's claims. Dolphin investigator Kenneth Norris of the University of California Santa Cruz, who was among the first to study dolphins in the wild and is responsible for much of our knowledge about dolphin sonar, writes that they have "a complicated animal communication system, yes, but for an abstract syntactic language like ours, no compelling evidence seemed, or seems, to exist." The late David and Melba Caldwell, who studied dolphin behavior at the University of Florida, maintained flatly that "dolphins do not talk." In their view, "dolphins probably are just exceptionally amiable mammals with an intelligence now considered by most workers, on a subjective basis, to be comparable to that of a better-than-average dog."

Louis Herman, director of the University of Hawaii's marine mammal laboratory and an opponent of whaling, has been studying the behavior of captive dolphins since 1967. Herman says he has seen no evidence that the natural vocalizations of dolphins constitute a language. And for whales? "There's no reason to think the situation would be different with other cetacean species," he answers.

What American policy on whaling enforces is simply a cultural preference—one comparable to our distaste for horsemeat, which is favored in France. The whale-savers have succeeded in shaping policy by selling the idea that whales are different; that they are endangered underwater Einsteins. That's why Icelandic filmmaker Magnus Gudmundsson, who has produced a documentary showing Greenpeace's machinations on the issue, is correct in calling the movement "a massive industry of deception."

INTRODUCTION OF THE OMNIBUS ADOPTION ACT OF 1995 AND THE HEALTH CARE AND HOUSING FOR WOMEN AND CHILDREN ACT

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. SMITH of New Jersey. Today, I reintroduced two important bills which will have a direct and substantial impact on women, children, and families nationwide. These bills—the Omnibus Adoption Act of 1995 and the Health Care and Housing for Women and Children Act—both promote the joining of needy children and caring families through the loving option of adoption.

There is no doubt that there are children patiently and hopefully awaiting adoption. Over the past decade, between 50,000–60,000 children found adoptive homes each year. This figure is down from 89,000 in 1970; but that is not indicative of fewer needy children. In fact, over this same time period, the number of children in foster care increased to more than 407,000 and the number of children born out-of-wedlock increased three-fold to 1,165,000.

The National Council for Adoption [NCFA] estimates that between one and two million individuals and couples want to adopt. But there are obstacles in their way. Some of these obstacles are financial; some are merely education; some are cultural. The Omnibus Adoption Act of 1995 takes aim at these hurdles with the intention of leveling them.

Furthermore, evidence suggests that the benefits of adoption to birthmothers are overwhelmingly positive. In fact, some research indicates that those women who do choose to make an adoption plan for their children will be less likely to live in poverty, more likely to complete high school, and less likely to have additional unplanned pregnancies. We must provide Federal support to these pregnant women and all pregnant women who lack the means to pay for prenatal and maternal health care.

The centerpiece of the Omnibus Adoption Act is the means tested $5000 tax credit. According to the NCFA, the average cost of an adoption is $14,000 and it is not uncommon for this figure to reach upwards of $25,000. Often this includes prenatal care for the birthmother and child, counseling for the adoptive family, and legal fees. For a middle-income family already on a tight budget, this one-time up-front cost can be prohibitive.

The targeted tax credit would be available in full to families earning less than $60,000 and in part to families earning between $60,000 and $100,000. In this way, it is able to give as much help as possible to the families which need it the most. And while this tax credit has a limitless reward, it has a very modest cost. The Republican staff of the Budget Committee estimated last year that the adoption tax credit would cost $900 million over 5 years.

You may recognize this provision from the Republican Contract with America as well. I am pleased that this aspect of my bill has been included in the Contract's Family Reinforcement Act [H.R. 11].

Other provisions of the Omnibus Adoption Act are equally valuable and popular. For instance, the bill establishes a national advisory council on adoption to monitor the progress of the various adoption related programs which exist and which the bill institutes. The bill also establishes a national adoption data collection system. These two provisions will work hand-in-hand to further advance adoption options. As does a section stating the sense of Congress that every State implement and enforce uniform adoption laws ranging from detailed home studies for prospective adoptive families to health benefits for birthmothers and adopted children.

The Omnibus Adoption Act establishes a program of graduate study fellowships to encourage our best young minds to research and develop innovation in adoption programs. Additionally, the bill organizes a grant program within the Department of Education offering grant funding to States which implement adoption education programs. The Boston Globe, in a editorial highly supportive of this bill in general and the tax credit provision in particular, noted that this was an idea that deserves close study.

Another provision in the Omnibus Adoption Act which the Globe thought worthy of closer study clarifies Federal and military employee adoption benefits. This would allow these families to use sick leave for adoption purposes. They would also be eligible for reimbursement through Federal health benefit plans for the prenatal and maternity care of the birthmother in their adoption plan. The bill specifically prohibits surrogate parenting arrangements with regard to this provision.

The final two provisions of the Omnibus Adoption Act are so critical to the promotion of adoption and the health of birthmothers and their children that I have introduced them as a separate bill as well—the Health Care and Housing for Women and Children Act. These provisions establish material health certificates and grants for rehabilitation of housing for use as maternity homes. Maternal health certificates could be used by low-income pregnant women who seek assistance in carrying their child to term at maternity homes. Here they could get housing, medical care, educational and vocational training, adoption counseling, and other supportive services. To ensure that maternity homes are available to these women, a grant program would be established to give non-profit organizations aid in rehabilitating old housing for use as maternity homes.

The American Enterprise in its January/February 1995 noted the central role which maternity homes once played in helping young, low-income women to carry their pregnancies to term and how that role has unfortunately diminished. Writer George Liebmann observed that:

> Current American welfare policy is plagued by an ideology of cash entitlement. What the poor really need today is not a check but a powerful set of rehabilitative social services. These should be offered by private community groups, without any illusion of moral neutrality. Rescuing an underclass is by definition a highly moralistic undertaking.

This is the historical mission of the maternity home. They provide therapy and support through the grouping of several young women in similar circumstances under one roof. They provide rehabilitation through education, vocational training, health care, and counseling. Furthermore, they offer discipline and supervision to women who have often lived on streets and in neighborhoods devoid of such backbone. This is crucial to the health and welfare of both mother and child. And it can all be provided by community groups with a commitment to care.

Over the past two sessions in which I have introduced these bills, they have enjoyed broad bipartisan support from more than one hundred Members. I encourage my colleagues to respond to the needs of homeless children and the families who long to help them by cosponsoring both the Omnibus Adoption Act and the Health Care and Housing for Women and Children Act.

HONORING THE STUDENTS OF FAIRFAX HIGH SCHOOL

HON. THOMAS M. DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. DAVIS. Mr. Speaker, I rise today to pay tribute to some students at Fairfax High School in Fairfax, Virginia. These students represented the Eleventh Congressional District in the We The People Competition on February 14, 1995 in Richmond, Virginia. These students ranked in third place in the statewide competition with a score of 897, studying for months to become experts on the Bill of Rights. This is significant when I remind members that Fairfax County was the home of George Mason, the author of the Bill of Rights. By all accounts, these fine students have demonstrated expertise on those rights.

The We The People program is the most extensive education program in the country developed to teach young people about the Constitution and the Bill of Rights and the principles and values they embody. The course of instruction, using the specially designed With Liberty and Justice for All text, is followed by a test designed to measure the students' constitutional literacy. High school classes may then elect whether to enter a series of competitions at the congressional district, State, and national levels.

Administered by the Center for Civic Education and funded by the U.S. Department of Education by an Act of Congress, the program is currently being implemented in every Congressional District in the country, the four Trust Territories, and the District of Columbia. When combined with the noncompetitive elementary and middle school levels, more than 20 million students have participated in the program over the past 7 years.

Mr. Speaker, I would like to acknowledge these fine students at this time: Pretty Bhatt, Alicia Bridges, Lucy Brown, Paul Cavazos, Maya Crumbaugh, Anita Grover, Brian Johnson, Brooke Kemp, Margarita Koushinova, Christy McMillian, Kevin McPherson, Moghees Nezam, Jonathan Park, Iana Phillips, Jake Spatz, Thanh Tran, Beth Ulan, Patrick Varney, Alex Will, Laurie Wright, and Rabiah Yusef.

Mr. Speaker, I know that all of my colleagues join me in commending these fine students for becoming experts on the Bill of Rights and for joining in the battle of ideas with their peers on all levels of competition.

TRIBUTE TO THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS

HON. ED PASTOR

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. PASTOR. Mr. Speaker, I wish to call my colleagues' attention to the efforts of one organization to prevent the youth of our Nation from becoming school dropouts. The League of United Latin American Citizens (LULAC) will be holding its Annual Youth Leadership Conference on Friday, March 17 on the campus of

Pima Community College in Arizona. Approximately 1,500 at-risk 7th through 12th graders from around the State will be participating in this day of education and motivation. They will be directed by business, government and community leaders through 40 workshop sessions designed to teach goal-setting skills and instill the value that staying in school is a necessity in facilitating their success in life. Muralist, Judith Baca will be this year's keynote speaker. I am confident this program will leave its young participants with a sense of hope for the future and the realization that their education is the cornerstone in their preparation to become tomorrow's leaders.

LULAC, the conference organizer, was founded in 1929 and is the Nation's oldest Hispanic-American civic organization. Its purpose is to assist underprivileged Hispanics through a variety of programs which promote economic development, cultural heritage, and political involvement. For the past 6 years, the League has targeted the prevention of dropouts as a high priority for all volunteer efforts in Arizona. This year it will team up with the Metro Educational Commission, Pima Community College, the University of Arizona, the Tucson Police Department, and the Pima County Sheriff's Department in promoting education as the road to persistence and success in the Hispanic community.

I would like to commend and extend my gratitude to all involved in LULAC for their untiring efforts to preserve the promise of tomorrow by working to keep America's young people in school. I have no doubt that the leadership conference will be resounding success and a model for other events around the country.

SSI FOR SAMOA

HON. ENI F.H. FALEOMAVAEGA

OF AMERICAN SAMOA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. FALEOMAVAEGA. Mr. Speaker, American Samoa is the only jurisdiction of the United States that is not served by the SSI program, nor its predecessor program, the Aid to the Aged, Blind, or Disabled [AABD]. SSI and AABD are basically the same in design. The only significant difference between the two programs is funding. With SSI, benefits and the cost of administering the program are fully financed by the Federal Treasury. As for AABD, the Federal Government pays 75 percent of benefits up to a specified limit and the States absorb the remaining 25 percent. Administrative cost is shared by both the Federal Government and the States at 50 percent each.

Under current law, in order to receive SSI benefits, a low-income elderly, blind or disabled individual must reside in one of the 50 States, the District of Columbia, or the Commonwealth of the Northern Mariana Islands. For qualified individuals who reside in Guam, Puerto Rico, or the Virgin Islands, similar benefits are available to them through the AABD program. Unfortunately, the elderly, blind and disabled individuals in American Samoa who have low or no income are not covered by either program.

Mr. Speaker, this is yet another example of a vital program extended to all 50 States, the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands, but not American Samoa. I believe this may have been an oversight when Puerto Rico and the Virgin Islands were included in the AABD program in 1950, and Guam after 1952.

According to a recent survey in American Samoa, there are now approximately 3,500 elderly, blind and disabled individuals with low or no income. These individuals currently receive some assistance through a nutrition assistance program, but funding for this program is determined on a year-to-year basis.

In addition, Mr. Speaker, the elderly population in American Samoa are caught between two systems. When Social Security went into effect in Samoa, this group of people were too old to contribute long enough to qualify for minimum benefits. On the other hand, the territorial retirement system did not begin until 1971. By that time, many of these people had already left the work force or had so little time remaining that they were also excluded from benefits under this system.

In each Congress since 1990, I have introduced legislation to include Samoa's elderly, blind and disabled population in the SSI program to address their critical financial needs. In 1990, it was estimated that approximately 1,600 such individuals resided in the Territory. The Congressional Budget Office estimated that if SSI was in place in American Samoa in 1993, Federal outlays would be about $3 million higher than under current law.

Mr. Speaker, I know we are going through a difficult time in budgeting our revenue. I also know all Americans will have to sacrifice to bring our budget into balance. As we go through this process, I simply want to ask my colleagues that we not ask the most vulnerable among us, namely the blind, disabled and poor elderly, to make a disproportionate share of that sacrifice.

Mr. Speaker, I submit the bill to be printed in the RECORD as follows:

H.R.—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF SUPPLEMENTAL SECURITY INCOME BENEFITS PROGRAM TO AMERICAN SAMOA.

(a) IN GENERAL.—The 7th sentence of section 1101(a)(1) of the Social Security Act (42 U.S.C. 1301(a)(1)) is amended by inserting 'and title XVI (as in effect pursuant to the amendment made by section 301 of the Social Security Amendments of 1972)' before 'also'.

(b) CONFORMING AMENDMENTS.—

(1) Section 1614(e) of such Act (42 U.S.C. 1382c(e)) is amended by inserting ', American Samoa,' before 'and'.

(2) Section 1614(a)(1)(B)(ii) of such Act (42 U.S.C. 1382c(a)(1)(B)(ii)) is amended by inserting 'or national' after 'citizen'.

SEC. 2. EFFECTIVE DATE.

The amendments made by section 1 shall take effect on October 1, 1995.

HEARING CARE FOR FEDERAL EMPLOYEES ACT

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, February 27, 1995

Mr. GILMAN. Mr. Speaker, I rise today to introduce legislation H.R. 1057 which would cover audiology services for Federal employees.

More specifically, this measure would amend the statute governing the Federal Employees Health Benefits Program [FEHBP] by requiring FEHBP insurance carriers to guarantee direct access to, and reimbursement for, audiologist-provided hearing care services when hearing care is covered under a FEHBP plan.

The statute that this legislation would amend is 5 U.S.C., section 8902(k)(1), which allows direct access to services provided by optometrists, clinical psychologists and nurse midwives, yet fails to allow direct access to services provided by audiologists in FEHBP plans covering hearing care services.

My legislation would not increase health care costs since it would not mandate any new insurance benefits. On the contrary, the bill should reduce the costs of hearing care by facilitating direct access to health care providers who are uniquely qualified and generally used to diagnose the extent and causes of hearing impairment.

Accordingly, I urge my colleagues to cosponsor this measure, H.R.1057.

At this point in the RECORD I request that the full text of my bill be inserted for review by my colleagues.

H.R. 1057

Be it enacted by the House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Hearing Care for Federal Employees Act".

SEC. 2. Section 8902(k)(1) of title 5, United States Code, is amended by inserting the word "audiologist," after the word "optometrist" wherever it appears in that section.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, February 28, 1995, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

MARCH 1

9:00 a.m.
Environment and Public Works
Superfund, Waste Control, and Risk Assessment Subcommittee

To hold hearings to examine proposals to authorize State and local governments to enact flow control laws and to regulate the interstate transportation of solid waste.

SD–406

9:30 a.m.
Appropriations
Interior Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the National Endowment for the Arts.

SD–192

Appropriations
Energy and Water Development Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Energy, focusing on atomic energy defense activities.

SD–116

Commerce, Science, and Transportation
Science, Technology, and Space Subcommittee

To hold oversight hearings on the United States civilian space program.

SR–253

Energy and Natural Resources

To hold hearings on S. 395, to authorize and direct the Secretary of Energy to sell the Alaska Power Marketing Administration, including title II, proposed Trans-Alaska Pipeline Amendment Act.

SD–366

Finance

To hold hearings on proposed legislation to change the Social Security earnings limit and repeal the tax on 85% of Social Security benefits.

SD–215

Labor and Human Resources

To continue hearings to examine the impact of welfare reform, focusing on the child care system.

SD–430

Veterans' Affairs

To hold joint hearings with the House Committee on Veterans' Affairs to review the legislative recommendations of the Disabled American Veterans.

345 Cannon Building

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Commodity Futures Trading Commission, Farm Credit Administration, and the Food and Drug Administration of the Department of Health and Human Services.

SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of State.

S–146, Capitol

11:00 a.m.
Appropriations
Interior Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the National Endowment for the Humanities.

SD–192

Foreign Relations

To continue hearings on the ratification of the Treaty Between the United States and the Russian Federation on Further Reduction and Limitation of Strategic Offensive Arms (START II Treaty) (Treaty Doc. 103-1).

SD–419

2:00 p.m.
Energy and Natural Resources
Forests and Public Land Management Subcommittee

To hold hearings on S. 391, to authorize and direct the Secretaries of the Interior and Agriculture to undertake activities to halt and reverse the decline in forest health on Federal lands.

SD–366

Select on Intelligence

To hold closed hearings on intelligence matters.

SH–219

2:30 p.m.
Commerce, Science, and Transportation
Aviation Subcommittee

To hold hearings to review the recommendations of the President's Airline Commission.

SR–253

MARCH 2

9:30 a.m.
Armed Services

To resume hearings on proposed legislation authorizing funds for fiscal year 1996 for the Department of Defense and the future years defense program.

SR–222

Commerce, Science, and Transportation

Business meeting, to consider the nomination of Robert Pitofsky, of Maryland, to be a Federal Trade Commissioner.

SR–253

Energy and Natural Resources

To hold hearings on S. 167, to revise certain provisions of the Nuclear Waste Policy Act of 1982, S. 433, to reaffirm the Federal Government's commitment to electric consumers and environmental protection by reaffirming the requirement of the Nuclear Waste Policy Act of 1982 that the Secretary of Energy provide for the safe disposal of spent nuclear fuel beginning not later than January 31, 1998, S. 429, to revise the Nuclear Waste Policy Act of 1982 to allow commercial nuclear utilities that have contracts with the Secretary of Energy under section 302 of that Act to receive credits to offset the cost of storing spent fuel that the Secretary is unable to accept for storage on and after Jan. 31, 1998, and S. 473, to establish as the nuclear energy policy of the U.S. that no new civilian nuclear power reactors shall be built until adequate waste emplacement capacity is available.

SD–366

Finance

To hold hearings to examine middle income tax proposals.

SD–215

Labor and Human Resources
Education, Arts and Humanities Subcommittee

To resume hearings on proposed legislation authorizing funds for programs of the National Foundation on the Arts and Humanities Act of 1965, focusing on the National Endowment for the Humanities.

SD–430

Special on Aging

To hold hearings to examine Social Security and disability policy issues, focusing on the large growth of the Supplemental Security Income and Social Security Disability Insurance programs.

SD–562

9:45 a.m.
Commerce, Science, and Transportation

To hold hearings on U.S. telecommunication policy.

SR–253

10:00 a.m.
Appropriations
Transportation Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Transportation.

SD–192

Environment and Public Works
Drinking Water, Fisheries, and Wildlife Subcommittee

To hold oversight hearings on efforts by the United States Forest Service and the National Marine Fisheries Service to comply with recent court decisions requiring consultation on forest plans under Section 7(a)(2) of the Endangered Species Act.

SD–406

Governmental Affairs

Business meeting, to mark up S. 4, to grant the power to the President to reduce budget authority, and S. 14, to amend the Congressional Budget and Impoundment Control Act of 1974 to provide for the expedited consideration of certain proposed cancellations of budget items.

SD–342

2:00 p.m.
Appropriations

Business meeting, to mark up H.R. 889, making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995.

S–128, Capitol

Foreign Relations
Near Eastern and South Asian Affairs Subcommittee

To hold hearings to examine U.S. policy toward Iran and Iraq.

SD–419

MARCH 3

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the National Credit Union Administration, the Neighborhood Reinvestment Corporation, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation-Inspector General.

SD–138

10:00 a.m.
Judiciary
To hold hearings to examine proposals to reform Federal habeas corpus regulations, focusing on the elimination of prisoners' abuse of the judicial process.
SD-226

MARCH 6

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Office of National Drug Control Policy.
SD-192

Energy and Natural Resources
To hold hearings on S. 333, to direct the Secretary of Energy to institute certain procedures in the performance of risk assessments in connection with environmental restoration activities.
SD-366

Joint Printing
Organizational meeting to consider pending committee business.
H-164, Capitol

MARCH 7

9:30 a.m.
Energy and Natural Resources
Parks, Historic Preservation and Recreation Subcommittee
To hold joint hearings with the House Committee on Resources' Subcommittee on National Parks, Forests, and Lands to review the health of the National Park System.
SD-366

Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to review the legislative recommendations of the Veterans of Foreign Wars.
345 Cannon Building

10:00 a.m.
Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Commerce.
S-146, Capitol

Judiciary
To hold hearings to examine the jury process, focusing on the search for truth in trials.
SD-226

Indian Affairs
To hold oversight hearings to review Federal programs which address the challenges facing Indian youth.
SR-485

2:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Labor.
SD-192

MARCH 8

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Geological Survey, Department of the Interior.
SD-116

Energy and Natural Resources
To hold oversight hearings on domestic petroleum production and international supply.
SD-366

Governmental Affairs
To resume hearings on proposed legislation to reform the Federal regulatory process, to make government more efficient and effective.
SD-342

Small Business
To hold hearings on the proposed "Regulatory Flexibility Amendments Act".
SR-428A

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for rural economic and community development services of the Department of Agriculture.
SD-138

2:00 p.m.
Energy and Natural Resources
Forests and Public Land Management Subcommittee
To hold oversight hearings on Forest Service appeals.
SD-366

2:30 p.m.
Indian Affairs
To hold oversight hearings to examine the structure and funding of the Bureau of Indian Affairs.
SR-485

MARCH 9

9:30 a.m.
Agriculture, Nutrition, and Forestry
To hold hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on cost issues of certain farm programs.
SR-332

Energy and Natural Resources
Business meeting, to consider the nomination of Wilma A. Lewis, of the District of Columbia, to be Inspector General, Department of the Interior; to be followed by a closed briefing on international aspects of petroleum supply.
S-407, Capitol

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Transportation Safety Board.
SD-192

Judiciary
To hold hearings on S. 227, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions.
SD-226

2:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Health and Human Services.
SD-138

Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Secret Service, Federal Law Enforcement Training Center, and the Financial Crimes Enforcement Network, Department of the Treasury.
SD-192

MARCH 10

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Science Foundation, and the Office of Science and Technology Policy.
SD-138

Joint Economic
To hold hearings to examine the employment-unemployment situation for February.
SD-562

MARCH 14

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on wetlands and farm policy.
SR-332

Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense.
SD-138

MARCH 15

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Smithsonian Institution.
SD-116

Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for farm and foreign agriculture services of the Department of Agriculture.
SD-138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Justice.
Room to be announced

MARCH 16

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on taxpayers' stake in Federal farm policy.
SR-332

10:00 a.m.
Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Bureau of Investigation and Drug

Enforcement Agency, both of the Department of Justice.
S–146, Capitol

Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Highway Administration, Department of Transportation.
SD–192

2:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Education.
SD–192

MARCH 22

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Fish and Wildlife Service, Department of the Interior.
SD–192

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Natural Resources Conservation Service, Department of Agriculture.
SD–138

MARCH 23

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Railroad Administration, Department of Transportation, and the National Passenger Railroad Corporation (Amtrak).
SD–192

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Alcohol, Tobacco and Firearms and the United States Customs Service, Department of the Treasury.
SD–192

3:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Institutes of Health, Department of Health and Human Services.
SD–138

MARCH 24

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Housing and Urban Development.
SD–138

MARCH 27

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Executive Office of the President, and the General Services Administration.
SD–138

MARCH 28

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Land Management, Department of the Interior.
SD–116

MARCH 29

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Food Safety and Inspection Service, Animal and Plant Health Inspection Service, Agricultural Marketing Service, and the Grain Inspection, Packers and Stockyards Administration, all of the Department of Agriculture.
SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Judiciary, Administrative Office of the Courts, and the Judicial Conference.
S–146, Capitol

MARCH 30

9:30 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to review the legislative recommendations of AMVETS, American Ex-Prisoners of War, Vietnam Veterans of America, Blinded Veterans Association, and the Military Order of the Purple Heart.
345 Cannon Building

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Aviation Administration, Department of Transportation.
SD–192

MARCH 31

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on agricultural credit.
SR–332

Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Veterans Affairs, the Court of Veteran's Appeals, and Veterans Affairs Service Organizations.
SD–138

APRIL 3

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Internal Revenue Service, Department of the Treasury, and the Office of Personnel Management.
SD–138

APRIL 4

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on market effects of Federal farm policy.
SR–332

Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Park Service, Department of the Interior.
SD–138

APRIL 5

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Aeronautics and Space Administration.
SD–192

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Agricultural Research Service, Cooperative State Research, Education, and Extension Service, Economic Research Service, and the National Agricultural Statistics Service, all of the Department of Agriculture.
SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Immigration and Naturalization Service, and the Bureau of Prisons, both of the Department of Justice.
S–146, Capitol

APRIL 6

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Emergency Management Agency.
SD–138

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of the Treasury and the Office of Management and Budget.
SD–116

APRIL 26

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for energy conservation.
SD–116

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Food and Consumer Service, Department of Agriculture.
SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Legal Services Corporation.
S–146, Capitol

11:00 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for fossil energy, clean coal technology, Strategic Petroleum Reserve, and the Naval Petroleum Reserve.
SD–116

APRIL 27

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Transit Administration, Department of Transportation.
SD–192

MAY 2

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Forest Service of the Department of Agriculture.
SD–138

MAY 3

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Environmental Protection Agency, the Council on Environmental Quality, and the Agency for Toxic Substances and Disease Registry.
SD–192

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Agriculture.
SD–138

MAY 4

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Coast Guard, Department of Transportation.
SD–192

MAY 5

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for Environmental Protection Agency science programs.
SD–138

MAY 11

10:00 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Indian Affairs, Department of the Interior.
SD–116

1:00 p.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Indian Health Service, Department of Health and Human Services.
SD–116

MAY 17

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of the Interior.
SD–192

CANCELLATIONS

FEBRUARY 28

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Postal Service.
SD–116

Special on Aging
Business meeting, to consider pending committee business.
SD–562

MARCH 1

9:30 a.m.
Governmental Affairs
To resume hearings on proposed legislation to reform the Federal regulatory process, to make government more efficient and effective.
SD–342

SENATE—*Tuesday, February 28, 1995*

(Legislative day of Wednesday, February 22, 1995)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Our prayer will be offered by a guest Chaplain, Father Paul Lavin, of St. Joseph's Catholic Church, Washington, DC.

PRAYER

The guest Chaplain, the Reverend Paul Lavin, offered the following prayer:

In Psalm 89 we read:

May the goodness of the Lord be upon us, and give success to the work of our hands.

Let us pray:

God our Father, You have placed all the powers of nature under the control of the human family and the work we do.

May the men and women of the U.S. Senate and their staffs work to support one another and our fellow citizens to bring Your spirit to all our efforts, and may we work with our brothers and sisters at our common task of guiding Your creation to the fulfillment to which You have called us.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of House Joint Resolution 1, which the clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 1) proposing a balanced budget amendment to the Constitution of the United States.

The Senate resumed consideration of the joint resolution.

Pending:

(1) Feinstein amendment No. 274, in the nature of a substitute.

(2) Feingold amendment No. 291, to provide that receipts and outlays of the Tennessee Valley Authority shall not be counted as receipts or outlays for purposes of this article.

(3) Graham amendment No. 259, to strike the limitation on debt held by the public.

(4) Graham amendment No. 298, to clarify the application of the public debt limit with respect to redemptions from the Social Security Trust Funds.

(5) Kennedy amendment No. 267, to provide that the balanced budget constitutional amendment does not authorize the President to impound lawfully appropriated funds or impose taxes, duties, or fees.

(6) Bumpers modified motion to refer H.J. Res. 1 to the Committee on the Budget with instructions.

(7) Nunn amendment No. 299, to permit waiver of the amendment during an economic emergency.

(8) Nunn amendment No. 300, to limit judicial review.

(9) Levin amendment No. 273, to require Congress to pass legislation specifying the means for implementing and enforcing a balanced budget before the balanced budget amendment is submitted to the States for ratification.

(10) Levin amendment No. 310, to provide that the Vice President of the United States shall be able to cast the deciding vote in the Senate if the whole number of the Senate be equally divided.

(11) Levin amendment No. 311, to provide that the Vice President of the United States shall not be able to cast the deciding vote in the Senate if the whole number of the Senate be equally divided.

(12) Pryor amendment No. 307, to give the people of each State, through their State representatives, the right to tell Congress how they would cut spending in their State in order to balance the budget.

(13) Byrd amendment No. 252, to permit outlays to exceed receipts by a majority vote.

(14) Byrd amendment No. 254, to establish that the limit on the public debt shall not be increased unless Congress provides by law for such an increase.

(15) Byrd amendment No. 255, to permit the President to submit an alternative budget.

(16) Byrd amendment No. 253, to permit a bill to increase revenue to become law by majority vote.

(17) Byrd amendment No. 258, to strike any reliance on estimates.

(18) Kerry motion to commit H.J. Res. 1 to the Committee on the Budget.

(19) Hatch (for Dole) motion to recommit H.J. Res. 1 to the Committee on the Budget with instructions.

(20) Hatch (for Dole) motion to recommit H.J. Res. 1 to the Committee on the Budget with instructions.

(21) Hatch (for Dole) motion to commit H.J. Res. 1 to the Committee on the Judiciary with instructions.

(22) Hatch (for Dole) motion to commit H.J. Res. 1 to the Committee on the Judiciary with instructions.

RECOGNITION OF THE DEMOCRATIC LEADER

The PRESIDENT pro tempore. The distinguished Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I yield 10 minutes to the distinguished Senator from North Dakota [Mr. CONRAD].

(Mr. KYL assumed the chair.)

Mr. CONRAD. I thank the Chair and I thank the minority leader. Mr. President, today is an important day in the life of our Nation. Today we consider a balanced budget amendment to the Constitution of the United States. We do not lightly consider amendments to the Constitution because that document has served as the framework that has made this the greatest Nation in human history.

Mr. President, we are here because this Nation faces a debt threat. I have brought with me several charts to try to illustrate the challenge that we face. This first chart shows what has happened to the gross debt in our country from 1940 to 1999. One can see that back in 1940 the debt of the country exploded during World War II, and then we went into a long period in which the gross debt of the country came down steadily, until 1979. At that time, gross debt, once again, exploded. We saw the gross debt of the country down about 30 percent, and it has gone up 70 percent, not as high as it was during the Second World War, nonetheless a real concern because the growth of the debt puts enormous pressure on the financial markets, puts pressure on interest rates, and has an adverse effect on our total economy.

Mr. President, I think this chart tells a very important story. This is the work of the entitlements commission that just concluded their work. On this chart, the green line shows the revenue of the United States back from 1970, forecasted up through 2030. One can see that the revenue has consistently run at just under 20 percent of our gross domestic product. We are right in this change today. One can see that the difference between the green line and these bars is the deficit, and we have worked the deficit down in this period to about 2.5 percent of gross domestic product.

Mr. President, look at what happens if we do not change course. Let me just say the entitlements commission did not take the worst case scenario. They assumed no recessions, no wars, no catastrophes, no natural disasters. Look at how the deficit explodes by the year 2030. By the year 2012 alone, we will use every penny of Federal revenue just on entitlements and interest on the debt.

Mr. President, we must address the debt threat without question. That takes us to the next chart. Some have said, "Well, Senator CONRAD, if you feel so strongly about the need to attack the deficits, why have you not signed up to the constitutional amendment" that is before us today? Very simply, Mr. President, I have several concerns.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

As I indicated earlier, we do not amend the Constitution of the United States lightly. That is the organic law of our country. It is the document that has stood the test of time, and we must take that measure against any proposed constitutional amendment.

Mr. President, there are three items that especially concern me. First is the possibility of looting the Social Security trust fund in order to balance the operating budget. That really raises the question that I have on this chart: What budget is being balanced? I think it is very important to know what budget is being balanced. To answer that question, we need to go to the language of the amendment itself.

In section 7, it says:

> Total receipts shall include all receipts of the U.S. Government except those derived from borrowing. Total outlays shall include all outlays of the U.S. Government except for those for repayment of debt principal.

Mr. President, what that means, very simply, is that everything is going in the pot. This is a little teapot that shows the pot of Federal spending that we have created. It shows what goes in on the revenue side—individual income taxes, social insurance taxes, corporate income taxes, and other taxes. It shows the spending that comes out the spigot of Federal spending, the spigot of the pot of Federal spending. You can see Social Security comes out of the spending spigot—interest on the debt, defense, Medicare, and Medicaid. They are the big items. In fact, Social Security, interest, defense, and Medicare make up 78 percent of Federal spending.

Mr. President, the problem with that part of this constitutional amendment is that it assumes Social Security is in the pot, and Social Security is not contributing to the deficit; Social Security is in surplus. Social Security, in fact, is going to run a surplus over the 7 years necessary to balance the budget, under this provision, by $636 billion. So the amendment that is before us today assumes that we will be looting the Social Security trust fund surpluses of the $636 billion in order to balance the operating budget.

Mr. President, I do not consider that balancing the budget. That is, frankly, Washington talk for balancing a budget. If a head of any company in this country told the investors that he was balancing the budget and that a central part of balancing was to take the employees' trust funds, that person would be on the way to a Federal facility—and it would not be the U.S. Congress; that person would be on their way to jail. So this is a concern that I think must be addressed.

The second concern that I have—and it is a concern shared by others—is the role of the courts, because once you put in the Constitution of the United States an amendment, you have constitutionalized the issue. I brought with me a quote from Walter Dellinger who testified last year at the hearings on the question of a balanced budget, and he said:

> If we have an amendment that for the first time constitutionalizes the taxing and spending process and creates a constitutional mandate which the courts are sworn on oath to uphold, there is simply no way that we can rule out the possibility that tax increases or spending cuts would be ordered by the judiciary. And I think we would all agree that that is a profound change in our constitutional system.

Mr. President, I hope people focus on this question. Would we really want unelected judges to be able to order tax increases in this country? I think not. That would be taxation without representation. Judges are not elected. Judges are not chosen to make these decisions. That is part of the genius of our Constitution: a separation of powers, with Congress, the elected representatives, making the financial decisions for the people of America.

Mr. President, it is not just Mr. Dellinger's view. Former Senator Danforth, who was among our most respected colleagues, a Republican Senator from Missouri, said last year when he offered an amendment—an amendment, by the way, which was accepted—to deal with the issue of clarifying the role of the courts said:

> The implications of this judicial encroachment are staggering when applied to the proposed balanced budget amendment. As Professor Tribe testified before the Committee on the Budget: "What remedy could a federal court then decree? [if the budget is not balanced under this amendment] The court in the United States in Missouri vs. Jenkins a couple of years ago held that judges may have the power to mandate higher taxes if needed to force the government to comply with the Constitution."

Senator Danforth went on to say:

> I find it troublesome, but it is the law. Talk about taxation without representation, unelected judges mandating higher taxes.

Mr. President, we ought to listen to the wisdom of former Senator Danforth. He was one of the most respected Members of this Chamber. He was dead right on this question.

Mr. President, there is a third issue that I want to raise today that is of concern and I think must be addressed if we are to pass a balanced budget amendment.

Mr. President, the third issue that I raise is the question of an economic emergency. Mr. President, we know that today the right policy is to cut spending and reduce the deficits and balance the budget. Sixty years ago that was precisely the wrong policy. In the Depression, raising taxes and cutting spending only made the Depression deeper and longer lasting.

Mr. President, Robert Solow, of MIT, a Nobel laureate in economics, said:

> The balanced budget amendment would force perverse actions by Congress, easily turning a small recession into a big one and a big one into a disaster. Monetary policy can solve the small problems, but not the big ones.

Mr. President, if we are to have a constitutional amendment, I believe we must have special provision for an economic emergency.

I end on this note, a quote from Henry Aaron, the director of economic studies at the Brookings Institution. Dr. Aaron, in testimony last year said:

> One does not need to be a primitive Keynesian to believe that a requirement forcing tax increases or spending cuts during an economic slowdown could be catastrophic.

Catastrophic, Mr. President—

> Yet the need to mobilize a three-fifths majority, not just in the Senate but in the House of Representatives as well, heightens the possibility that such policies would result because of incapacity to mobilize the necessary supermajority in both Houses.

Mr. President, some have assured Members "Don't worry. If we are in an economic emergency, you will be able to get 60 votes." Mr. President, I went back to the time leading into World War II when the economy of this country was in deep trouble, when we faced an enormous external threat. I found an interesting thing. When we needed $1 billion to start to rebuild the Navy of this country, that passed by only 58 votes. When we needed to start to have a draft to prepare for war, that passed by only 56 votes.

Mr. President, I think it is very clear that we cannot take the assurance that in an emergency we would be able to muster the 60 votes.

Mr. President, let me just conclude by saying I believe deeply that we must address the debt threat hanging over this country. We must cut spending. We must reduce the deficit. We must balance the budget in preparation for the time when the baby boom generation starts to retire, the Social Security expenses and Medicare and all the rest start to explode.

Mr. President, we are talking about amending the Constitution of the United States. We should only do it if we are absolutely convinced we are properly crafting such an amendment. The three concerns that I have raised must be addressed if this amendment is to secure my vote.

We should not loot the Social Security trust fund because that is not balancing the budget. That is a paper sham. That is wrong. We should not leave the role of the courts vague and ambiguous. No unelected judges should be writing the budget for the United States, raising taxes, cutting spending. That would subvert the genius of the Constitution. Third, I believe we must have provision for an economic emergency so that we do not put our great Nation at risk at a time of economic weakness and vulnerability.

Mr. President, I thank the Chair. I yield the floor. I look very much forward to what the day will bring. I hope that we are able to come together and craft an amendment that will stand the test of time.

Mr. STEVENS. Mr. President, how much time am I allowed?

The PRESIDING OFFICER. The Senator controls 73 minutes 20 seconds.

Mr. STEVENS. Will the Chair notify me when I have used 12 minutes?

The PRESIDING OFFICER. Yes, sir.

Mr. STEVENS. Mr. President, my support of a balanced budget amendment goes back to the 95th Congress.

In the last Congress, I did not perceive the willingness of Congress to consider all expenditures in order to achieve a balanced budget and did not support this amendment at that time.

Now, it is my belief that the changes in Congress and in the attitude of the country as a whole have brought a new commitment to consider all Federal expenditures, including entitlements. There is no question that the passage of this amendment is important to the Nation as a whole. That is particularly true to small States such as Alaska, and other States in the West.

We believe Congress must operate under fiscal restraint, restraint that is missing from the Federal budget process at this time. I am informed that next September the current Federal debt limit of $4.9 trillion will be reached. Congress may have to vote to increase that Federal debt limit above $5 trillion or face the prospect of shutting down the Federal Government and defaulting upon our obligations.

Default is an unthinkable option for a Nation like the United States. But I do not believe that I could in good conscience vote to increase the debt limit unless this Nation adopts a plan to balance the budget and end unnecessary deficit spending.

Based upon President Clinton's 1996 budget, 16 percent of the total Federal budget for this next fiscal year will be required to pay interest on that $4.9 trillion dollar national debt. The President's budget also requests and projects 16 percent of the total Federal budget to go to support of our national defense, 15 percent to grants to States and localities, and 5 percent to go to the operation of Federal agencies.

In my judgment, interest payments are competing now with the national defense. Our national defense is the second largest expenditure of Federal funds, second only to the direct benefit payments to individuals. This national debt is a real threat. Left unchecked, increased interest payments will endanger every Federal program.

In the past, and particularly last year, I expressed concern that entitlement programs would not be included in any efforts to balance the budget and that the necessary cuts would come from the remaining 36 percent of the budget. I was concerned that discretionary spending would bear all of the cuts.

It was my expressed fear that small States, like Alaska, would be severely and unfairly impacted by those cuts in discretionary spending. Cuts of the magnitude required to balance the budget taken solely from discretionary spending would impose a great burden upon us because of the necessity to have Federal programs—the Coast Guard, the FBI, the FAA, and so many other agencies of the Federal Government that provide the safety net for our people—in a State as large and diverse as mine.

After giving this issue serious consideration and having discussed the matter seriously with many of my colleagues, I have come to the conclusion that it is now the intent of Congress that spending cuts would be fairly applied to all expenditures.

Mr. President, we keep track of the calls and letters we receive in my Washington and Alaska offices, and the majority of Alaskans support a balanced budget amendment. They support it by a margin of 6 to 1, as reflected by the calls and letters that have come to my office endorsing or opposing the Amendment.

The Kerry-Danforth Commission, the Bipartisan Commission on Entitlement Reform, identified as one of its five broad principles the issue of balancing entitlement commitments with the funds available to meet those promises. If current entitlement policies are left unchanged, entitlement spending and interest on the national debt would consume almost all Federal revenues in the year 2010. By the year 2030, projected Federal revenues will not cover entitlement payments.

I do not support exempting any specific type of spending in the balanced budget amendment, per se, but I do believe Congress must find a way to balance the budget without reducing Social Security payments. On February 10, our distinguished majority leader, Senator DOLE, offered a measure on the Senate floor which calls on the Senate Budget Committee to report to the Senate a plan to protect Social Security while allowing Congress to balance the budget. I supported that amendment.

According to our Joint Economic Committee, Congress could balance the budget while Government spending increases 2 percent per year without touching Social Security or Medicare and allowing Medicaid to grow at the rate of 5 percent per year. There are some who question that plan, but that is the result of the report by the Joint Economic Committee.

It is time for the Federal, State, and local legislative and executive leaders to work together to find a way or to find ways to cut the fat out of Government without removing its heart. Spending decisions will be more difficult as interest on the national debt consumes a larger portion of Federal revenues.

It is my judgment that the Congress and the States must act now to ratify this balanced budget amendment to the Constitution. There is still time for Federal, State, and local governments to work together, as I suggested, to decide how to provide the necessary government services for our people. Our country cannot afford to wait any longer. We must get our fiscal house in order, and we can begin that process today.

I want to urge the Senate, particularly my colleagues who have not taken a position on this amendment, to support it. I shall support this amendment. I do so in order that, consistent with our Constitution, it may be submitted to the 50 States for ratification and we may begin this process. It will be a long and arduous process, Mr. President, but I think the time to commence is now.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. EXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. Mr. President, I ask that I be yielded approximately 8 minutes from the time reserved for Senator HATCH, the Senator from Utah.

The PRESIDING OFFICER. Does the Senator yield time?

Mr. STEVENS. I am pleased to yield to the Senator from Nebraska that amount of time.

Mr. EXON. Mr. President, I thank my friend from Alaska.

The constitutional amendment to balance the budget should be viewed as an important step in the right direction, but rejected as a certain cure-all assuring future sound national fiscal policy. The primary benefit, if passed in Congress and ratified by three-fourths of the States, is the considerable "discipline"—and I emphasize the word "discipline"—that it would provide to correct our current course. We veered dangerously off course in the 1980's when we ballooned annual deficits from manageable levels, under $100 billion by increasing it threefold or more. And from 1980 to the present we have skyrocketed the national debt, the culmination of those yearly deficits, fivefold, to $5 trillion, and it is going higher.

In fiscal year 1996, annual interest on that debt to non-trust fund or public debt costs taxpayers $260 billion, which alarmingly is the fastest growing part of our Federal budget. Of that $260 billion in interest costs about a fourth or $65 billion goes to foreign investors. Talk about foreign aid giveaways.

The $65 billion in interest the taxpayers will pay is shipped directly overseas, with no strings attached, and it is going up each and every year. It is astonishing, Mr. President, when we compare the $20 billion that we provide annually for foreign aid, a category that we hear so much about, which is actually going down every year, compare that, if you will, with the $65 billion in taxpayers' money that is going overseas without any strings attached whatsoever.

The facts are that we are giving $45 billion more to foreigners in interest than in aid. If there were no other sound reasons—and there are many—the concerns just stated would be reason enough to employ the discipline that the balanced budget amendment will bring.

I salute the many good and reasoned arguments made by opponents in opposition to the amendment. Indeed, there are good reasons not to vote for it. I am not satisfied in total with the amendment and I believe it should have been amended in the Senate.

The trouble seems to be that the constitutional amendment before us has been Newtonized. Such a description, therefore, makes it infallible and unamendable. It is a believe exactly as we do or perish philosophy that is dangerous.

It is required that Republicans and the Democrats alike simply roll over and play dead for the good of the new order.

Mr. President, this is a very important day in the history of the U.S. Senate. Today, at the Republican caucus, the decision will be made as to whether or not a reasonable compromise will be accepted. That is the last real chance for success.

Notwithstanding what will be reported Tuesday evening—today—this amendment will not be approved—I emphasize, will not be approved—unless it is on a bipartisan basis. We can garner the minimum 67 votes to pass it—and the numbers I have indicate that it should be 52 Republicans and 15 Democrats—if we accept some version of the Danforth-Johnston-Nunn, et al., amendment. That concept is to keep the courts out of budgeting and agree to address some of the Social Security trust fund concerns that have been expressed on the floor most recently by my colleague from North Dakota a few moments ago. If we do not do that, it will not, and, in such an event, the responsibility for failure will rest on our inability to compromise just a little bit.

We can still pass this constitutional amendment if there is just a little give and a little concern. Despite the many seemingly unsurmountable hurdles, I am encouraged that, after a series of discussions of last Friday, yesterday and this morning, we may well be close to resolving enough of the more contentious issues to see success today. But I am not sure.

The key vote, Mr. President, on whether or not we can pass a constitutional amendment will come today on the Nunn amendment regarding concerns about court involvement. If that fails, I predict we will not garner the 67 votes for the balanced budget amendment. In that case, the final vote will just be an exercise to establish how many votes short of the required 67 that the constitutional amendment requires.

Mr. President, I think we are about some very, very serious business. I have previously said on many occasions why I support the constitutional amendment to balance the budget, with some reservations.

At this time, I appeal for reason and I appeal somehow to give and take a little bit, to compromise on one or two very important issues. If that happens and it is approved in the Republican caucus today, we can go on to success with the balanced budget amendment. If not, we will live to regret it, in the view of this Senator.

Mr. President, I yield the floor and yield back the remainder of any time that I had reserved on my original request.

Mr. HATCH. Mr. President, I suggest the absence of a quorum, with the time divided equally.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. I understand the distinguished Senator from Texas would like some time. How much time would the Senator like, 10 minutes?

Mr. GRAMM. What about 15?

Mr. HATCH. We are pressed for time. I yield 10 minutes to the distinguished Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 10 minutes.

Mr. GRAMM. Mr. President, I thank our distinguished colleague from Utah for yielding me time.

Mr. President, today we have an opportunity to change the course of American history. I guess each of us in our own way came into public life because we wanted to make historic decisions. I think it is fair to say that every Member of the Senate initially ran for office because he or she wanted to make a difference in the lives of the people in their State and across this country. We have an opportunity today in one vote to rewrite the history of the United States of America. That one vote is adopting a balanced budget amendment to the Constitution of the United States of America.

I would like to talk today about what happens if we do not pass a balanced budget amendment to the Constitution, and to also talk about what happens if we do, not in abstract terms but in concrete terms that have to do with the well-being of the forgotten people in America who do the work, pay the taxes, pull the wagon, and who ought to be the focal point of this debate, but unfortunately are not.

Then I wish to touch very briefly on some of the arguments that are being made against the amendment. First of all, I think we have to understand that Government spending means Government taxing. In 1950, the average American family with two children sent $1 out of every $50 it earned to Washington, DC. Today, that same family is sending $1 out of every $4 it earns to Washington, DC, and in 20 years, if we do not create a single new Federal program, if we simply pay for the Government that is already on the books, that family is going to be sending $1 out of every $3 it earns to Washington, DC.

It seems to me we have come to the moment of truth where either we are going to stay on this 40-year spending spree and squander the future of our children or we are going to stop the spending so as to save the American dream. That is the choice we make today.

Since 1950, the Federal Government's budget has grown 2½ times as fast as the family budget. Since 1950, the Government has spent money at a rate 2½ times as fast as the institution in America which created the income that the Government spent, the American family.

Now, what difference has it made over the last 40 years that Government spending has grown 2½ times as fast as family spending? Let me give you a startling statistic. If the ability of the family to spend the money it earned had grown as fast as the ability of Government to spend the money the family earned, families in America today would be spending not $45,000 per family of four but would be spending $120,000 per family.

Conversely, if Government spending had grown only as rapidly as spending by the family, the Federal Government would be roughly one-third the size it is today.

When you think about the American dream, when you think about the kind of America you want for your children and grandchildren, which pictures fits your view of America's future: Families with incomes three times as large as they are today and the Government a third the size it is today, or the reverse?

It seems to me that the priority of the family's budget over the Federal budget is the definition of what we are talking about. The debate here is not a debate about how much money is going to be spent on education and housing and nutrition and all of the other things that we are all for. The debate is about who is going to do the spending.

For many of our colleagues on the left, many of the Democratic Members of the Senate, the President of the United States, Bill Clinton, their vision for America's future is that they want Government to do the spending. Our vision for America's future is that we want the family to do the spending. We know the Government; we know the family; we know the difference; and we know something else. We are betting the future of America on the decision we make today. We want to bet the future of America on the family and not on the Government.

Now, in looking at these mind-numbing figures, since they are so big, we tend to forget that they really mean something. Let me give you some figures. If we adopt and enforce the budget proposed by Bill Clinton, that will mean that in 10 years we are going to be spending $412 billion simply paying interest on the public debt. That is more money than Jimmy Carter's budget for the whole Government of the United States in 1977. That was not that long ago.

Let me give you another figure that gives you an idea of the magnitude of the choice we make today. If we do nothing, if we stay with the status quo that Bill Clinton would have us adopt, the interest cost on the public debt in a decade is going to rise by $177 billion.

Now, nobody knows what $1 billion is except Ross Perot, but let me convert that into English. If we stop the deficit spending, if we did not borrow all that money, we could give every family in America a $13,000 tax deduction for the money we are going to squander paying interest on debt simply because this Congress has been incapable of saying no to any special interest group with a letterhead that has asked for our money.

Now, I wish to address very briefly some of the arguments that are made against the amendment. One argument, which many of us heard this weekend on television, is that deficit spending is a powerful medicine that can cure recessions, that can cure depressions, and if we lost the ability to use this medicine we might forever be pushed into a great recession and a great depression.

Mr. President, deficit spending is a drug to which we have become addicted. We have engaged in deficit expenditures in expansions, in contractions, in recessions, in inflations, and if deficit spending ever had any curative power, that curative power has long ago been lost.

We debate today whether to end this addiction to deficit spending. We debate today whether or not to force the Government to do what every family and every business in America has to do, and that is say no.

Finally, let me try to set this in perspective. Balancing the Federal budget is not going to be easy. It is going to mean hard choices. It is certainly not going to be easy for Members of Congress. But we cannot forget the benefits to be derived for the future of America in terms of opportunity and growth, and we must not forget what this means in terms of freedom. We should not get so caught up in the dollars and cents of the deficit and the budget debate that we forget that what is being squandered here is not just our money, it is our freedom. Government has grown so big, so powerful, so expensive, so distant, so hostile that this is a process that has to be reversed and we have it within our power today to do it. We all stand here on the floor of the Senate and wring our hands about the deficit. To balance the Federal budget means we have to freeze Government spending at its current level for 3 years.

How many businesses in America have made tougher choices than that just to keep their doors open in the last year? How many families in America have had to make tougher choices than that when a job was lost or when a parent died? The difference is that families and businesses in America live in the real world where you have to say no, where bad things happen, where you have to make adjustments, where you have to change.

Change is a fact of life everywhere except in Washington, DC, in America. Our Government has not lived in the real world for 40 years. We have it within our power today to change that. We have it within our power to pull our Government into the real world with our people, and in doing so enrich the lives of millions of Americans who want the kind of opportunity that has been routine in the American experience.

If we can adopt the balanced budget amendment to the Constitution today, we will change the course of the history of our Nation. And I am prayerfully hopeful that when our colleagues cast this vote they will realize we are shooting with real bullets and we are determining the future of the greatest country that the world has ever known.

The PRESIDING OFFICER. The distinguished minority leader.

Mr. DASCHLE. Mr. President, I yield 5 minutes to the distinguished Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, I do want to point out for the record on the floor of the U.S. Senate, as I listened to my colleague from Texas speak about special interests, that I introduced an amendment several weeks ago, with Senator FEINGOLD from Wisconsin, which said that when we go forward with deficit reduction and continue on this path of deficit reduction and reach the goal of balancing the budget, we should consider $425 billion—that is in any given year—of tax expenditures, many of which are loopholes and deductions and sometimes outright giveaways to the largest corporations and financial institutions in America. That amendment was voted down on the floor of the U.S. Senate.

So it is interesting how children are a special interest, somehow with a negative connotation. Older Americans are a special interest, somehow with a negative connotation. Students who are trying to afford higher education are a special interest, sometimes with a negative connotation. But, on the other hand, subsidies for oil companies, the subsidies for coal companies, subsidies for pharmaceutical companies—they are not special interests at all. I think that has something to do with who are the heavy hitters, who has the representation, who does the lobbying, who has the power, who is well represented and who is left out.

I have been very involved in this debate and today there is just time for a few concluding remarks or reflections. At the very beginning of this 104th Congress I came to the floor with an amendment from my State of Minnesota. This amendment essentially said, based upon a resolution passed by my State legislature and signed by Governor Carlson, which urged that before we send a balanced budget amendment to the States, if it is passed, we ought to do an analysis for States of the impact on our States and of the people back in Minnesota and across the country. That was voted down. Similar amendments were also voted down.

There are other amendments that were very important to this effort to improve this constitutional amendment to balance the budget—very important. There was an amendment to make sure that there would not be a raid on the Social Security trust funds. That was voted down. There was an amendment, as I mentioned, that Senator FEINGOLD and I introduced, that urged that we at least consider some of the tax subsidies and giveaways to the largest corporations of America, the wealthiest people, as part of what we do in deficit reduction. Let us not just cut nutrition programs for children or Medicare. That was voted down. There was an amendment introduced on the floor of the U.S. Senate that said—and it makes good, rigorous economic sense—let us separate capital budgets from operating budgets. If we are going to make a comparison to family budgets, then let's really look closely at the similarities and differences. Sheila and I have never cash flowed the homes we've bought. We did not cash flow education for our children, higher education. And we did not cash flow cars. Those were investments in the future. We certainly have done a good job of balancing our budget every month, if that means keeping up with our payments. The same thing is true of most of the State legislatures in this country. So the point was to make some separation.

There was an important amendment that said in times of recession let us not have those recessions become depressions. This is rigorous economic analysis. I say this as someone with an interest and a background in political economy. That was voted down. We do have to be concerned about the economics and the economic management of our Nation.

There were other amendments as well. I had a sense of the Senate amendment that we would not do anything to increase hunger or homelessness among children. That was voted down.

I have to say, I am acutely aware of what is politically popular at the moment. This constitutional amendment to balance the budget is politically popular at the moment. It is politically popular in the abstract. But people do not yet know what the specifics are. There has not been any truth in budgeting with this. I do not believe people have yet had a chance to look at all of the consequences of it.

So my position remains the same position. I was sent to the U.S. Senate from Minnesota to listen closely to people. I was sent to the U.S. Senate from Minnesota to stay close to people. But I also said to people in Minnesota that I would always vote my conscience. I would always vote what I believed was right for my Nation. I would always vote what I believed was right for the people I represented—even if it was a difficult political vote, even if it was politically unpopular at the moment, even if I was subject to attack ads and other criticism for my vote.

I will not back down from that. I will continue to go by that code. And it is my honest view, it is my profound sense that this constitutional amendment to balance the budget is a very serious mistake for a Nation that I love and for a State that I love.

And therefore for all the reasons I have outlined during this debate over the last month, I will vote no.

(Disturbance in the visitors' galleries.)

The PRESIDING OFFICER. The gallery will please withhold any display.

Thank you.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER (Mr. DEWINE). The Senator is recognized for 10 minutes.

AMENDMENT NO. 274

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent my amendment be the pending business.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, I rise today in support of a substitute amendment to House Joint Resolution 1, the balanced budget constitutional amendment.

I support a balanced budget amendment to the Constitution, and I would like to see this body pass such an amendment. However, as I have previously stated, I do not believe that the House-passed amendment, the amendment being considered by the Senate, is the right amendment for this country.

With Senators FORD, HOLLINGS, MCCAIN, MIKULSKI, KOHL, HARKIN, DASCHLE, DORGAN, REID, and GRAHAM of Florida, I, therefore, offer my colleagues—both Republican and Democratic—a substitute.

The substitute I am offering today is a balanced budget amendment to the Constitution that will permanently exempt Social Security from the calculations. It will protect this fund, holding in trust the money deducted from American workers' paychecks every week until they are ready to use them in retirement.

The amendment does not alter any other aspect of House Joint Resolution 1—not a single item. It merely exempts Social Security—it is an honest balanced budget amendment—a balanced budget amendment which can pass.

Unfortunately, this body has steadfastly refused to make any changes to the original balanced budget amendment submitted to the Senate despite hours of good debate—especially on the establishment of capital budgeting procedures, with which I agree, the removal of Social Security from the budget, and attempts by both Senators JOHNSTON and NUNN to clarify the areas of legal redress under this amendment. The leadership has merely posed the same amendment which the House passed and asked that we rubberstamp it here in the Senate. I find this approach both unacceptable and puzzling.

This Senate has been involved in 1 month of detailed and incisive debate of this subject. Virtually all amendments have been defeated. No matter how salient or cogent points raised have been, they have been rejected. Apparently, the only acceptable amendment is the one presented. No changes can be made no matter how correct or compelling the criticism.

Now, while I believe a balanced budget is the correct policy decision for this country—I do not believe we must pass any amendment just because a few have ordained this to be the amendment. It is our duty in the Senate to weigh all legislative matters carefully. Amending the Constitution is a serious historical task which demands the thought and wisdom of all of us here in the Senate. I was elected by the people of California to represent their interests in the Senate. I was not elected to genuflect to a measure simply because it was passed by the House of Representatives.

At this point in our history, we should not be altering the legislative process. This body should not be simply a rubberstamp to a measure ramrodded through the other House. We should be examining all pieces of legislation independently from the House. This deliberation includes altering and amending legislation to fit the needs of Americans as we see them—I believe that the balanced budget amendment being offered by Republicans does not best serve as a correct methodology for balancing the budget.

Mr. President, I have stated previously my reasons for strongly supporting a constitutional balanced budget amendment. In the year that I was born, the Federal debt amounted to less than $25 billion. In the year my daughter was born, the Federal debt was about $225 billion—10 times greater. My granddaughter Eileen was born 2 years ago. At the time of her birth, the Federal debt was more than 150 times greater than it was when I was born—nearly $4 trillion.

In the last 35 years, the Federal Government has balanced its budget exactly twice. Once in 1960, a surplus of $300 million and again in 1969, a surplus of $3.2 billion.

Yet, in the last quarter of a century, the Federal Government has run up more than $4 trillion in debt without once balancing the budget. During this time, this Nation has experienced war and peace and economic booms and recessions. Never did this Government balanced the Federal budget, let alone run a surplus.

One fact is inescapable—spending in this country has grown out of control, and we have let the Federal debt grow at a rate that is unacceptable. That is why I am a strong supporter of a constitutional balanced budget amendment. We do not have another generation to allow this problem to fester. The time for action is now. But equally important to the need for a solution is its workability in the future.

There are four important arguments for protecting Social Security:

First, this amendment would place Social Security off-budget, thereby enshrining into the Constitution congressional action and guaranteeing the integrity of the system.

Between its creation in 1935 and 1969, Social Security had always been off-budget. In an attempt to cover the costs of the Vietnam war and later to mask growing deficits, Social Security was put on-budget. This was a misuse of the Social Security trust fund. In the 1990 Budget Enforcement Act, Congress put an end to this practice by declaring Social Security funds off-budget. The amendment in the Senate to exclude Social Security from budget calculations was passed in the 101st

Congress by a vote of 98–2. Every Member today who served in the 101st Congress voted to place Social Security off-budget.

Second, Social Security is not like other Government programs and should not be treated like other Government programs.

Social Security is a publicly administered, compulsory, contributory retirement system. Through the Federal Insurance Contributions Act, known as FICA, workers are required to contribute 6.2 percent of their salaries to Social Security. Every worker does this. Employers are required to match that amount. Every employer does this. This combined 12.4-percent contribution funds the Social Security system. It is not meant to fund Interior, or Agriculture, or Defense, or HUD, or welfare, or anything else. By law these funds are required to be held by the Federal Government in trust. They are not the Federal Government's funds, but contributions that workers pay in and expect to get back.

Over 58 percent of working Americans pay more in FICA taxes, if you include the employers' share, than they pay in Federal income taxes. This is not a small amount, and it is not adjusted by salary.

Third, Social Security does not contribute to the Federal deficit. In fact, the Social Security trust fund surpluses are masking the true size of the deficit today. In 1995, Social Security will take in $69 billion more than it will pay out in benefits. By 2001, Social Security will be running surpluses of more than $100 billion a year. By the time this amendment goes in place, in 2002, the surplus in the Social Security System will be $705 billion.

Fourth, the failure to save Social Security surpluses could undermine the system's viability.

In the late 1970's and 1980's, Congress changed the way the Social Security System was financed. Recognizing the large demand on the system that would be created by the retirement of the baby boomer generation early next century, the Social Security System was changed from a pay-as-you-go system to a system that would accumulate large surpluses now to prepare for the vast increase in the number of retirees later.

The amendment being offered by the Republicans permits the collected funds to be used to finance the deficit. That means beginning in 2019, when Social Security is supposed to begin drawing down its accumulated surpluses to pay for the benefits of the vast numbers of retiring baby boomers, there will be no money saved to distribute.

Congress will be forced to either raise taxes, cut Social Security benefits, or further cut other spending programs to meet the obligations workers are paying for now. In short, the American workers will have to pay twice for the retirement of the baby boomers because we will not be saving what they contribute now.

The only way to save the Social Security surpluses to pay for future retirements is to balance the budget exclusive of these revenues, and that is what this amendment would do.

The impact of this, of course, would be that the Federal Government would run a unified budget surplus—a balanced Federal budget and a surplus in the Social Security trust fund. In this way, we would cut the Federal debt and save Social Security funds, not just watch the debt keep growing. The alternative balanced budget amendment being offered today will do just that.

On February 17, the Times Mirror released its latest public interest poll. I think every Senator here should be aware of the results. When asked what should be given a higher priority in 1995, cutting taxes or taking steps to reduce the budget deficit, 55 percent want to reduce the deficit while 37 percent want to cut taxes for the middle class. Now, this supports the argument which we all are making for the balanced budget amendment. The American public wants to reduce the deficit; balancing the budget is the best way to do just that.

But this question is only one part of the story. When asked if it was more important to reduce the budget or keep Social Security and Medicare benefits as they are, the respondents favored keeping Social Security benefits as they are by a 70 to 24 percent margin. Let me say that again, 70 percent of the American public favors protecting Social Security while only 24 percent want to reduce the deficit at the expense of Social Security. This amendment we are offering will satisfy both of these desires.

Just last week, on February 23, I received a letter from the AARP supporting the protection of Social Security. Let me quote some of it:

> The Association believes that a specific exemption for Social Security is required because anything less is inadequate and nonbinding. Without an exemption the program is at risk in several ways. First, benefits could be cut to reach the balanced budget goal even though money from such unwarranted reductions would remain in the Social Security trust funds. This would have the affect of further masking the deficit at the expense of Social Security beneficiaries. Just as important the benefit promise to today's workers will be jeopardized because the annual reserve will continue to be used to hide the extent of the Federal deficit.

The letter concludes by stating:

> During the most recent election, candidates and the leadership of both political parties pledged to protect Social Security. The American people have grown angry and wary of promises from Washington. To tell the American public that Social Security is protected—and then fail to address the issue directly—will only lead to an increase in the cynicism that is currently prevalent throughout the Nation.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of this letter, along with a letter I received on February 1 from the National Committee to Preserve Social Security and Medicare supporting this amendment to protect the Social Security.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN ASSOCIATION OF
RETIRED PERSONS
Washington, DC, February 23, 1995.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: The American Association of Retired Persons (AARP) appreciates your efforts to protect Social Security from the proposed constitutional amendment to require a balanced budget. Many members of Congress speak about the importance of this program and the need to maintain it for current and future beneficiaries. However, since previous attempts to specifically shield Social Security from the balanced budget amendment have been defeated, your substitute represents the last opportunity to truly protect this vital program before the amendment would be sent to the states.

While AARP continues to believe that a requirement for a balanced budget federal budget does not belong in the Constitution, we believe that exempting Social Security is warranted for the following reasons:

Social Security is a self sustaining program that is financed by employer and employee contributions that are credited to the Social Security trust funds in order to pay benefits and run the program,

Social Security does not contribute one penny to the federal deficit. It currently has over $400 billion in reserve—an amount that is expected to increase by $70 billion this year alone; and

Raiding the trust funds would weaken our benefit promise to today's worker, as well as undermine their confidence in our nation's most important protection program.

The Association believes that a specific exemption for Social Security is required because anything less is inadequate and nonbinding. Without an exemption the program is at risk in several ways. First, benefits could be cut to reach the balanced budget goal even though the money from such unwarranted reductions would remain in the Social Security trust funds. This would have the affect of further masking the deficit at the expense of Social Security beneficiaries. Just as important, the benefit promise to today's workers will be jeopardized because the annual reserve will continue to be used to hide the extent of the federal deficit. In addition, Section 2 of the proposed amendment treats the Social Security trust funds' government bonds differently than the rest of the debt held by the public. This differentiation could lead to further attempts to use the Social Security trust funds as a cash cow.

During the most recent election, candidates and the leadership of both political parties pledged to protect Social Security. The American people have grown angry and wary of promises from Washington. To tell the American public that Social Security is protected—and then fail to address the issue directly—will only lead to an increase in the cynicism that is currently prevalent throughout the nation.

Sincerely,

HORACE B. DEETS.
Executive Director.

NATIONAL COMMITTEE TO
PRESERVE SOCIAL SECURITY AND
MEDICARE,
Washington, DC, January 9, 1995.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the nearly six million members and supporters of the National Committee to Preserve Social Security and Medicare, I offer our strong support for your amendment to remove Social Security trust funds from budget and deficit calculations under the pending balanced budget constitutional amendment, S.J. Res. 1.

The National Committee agrees that the future economic growth of this nation will be enhanced if the budget of the United States is brought into balance. However, we strongly disagree that balancing the budget requires putting Social Security at risk by including it in the budget.

Balancing the budget requires reasoned decision making and the courage to face up to hard choices. It also requires recognizing the source of the problem. And that, by definition, excludes Social Security. The Social Security program is self-supporting and does not contribute one penny to the deficit. To the contrary, it produces a substantial surplus which Congress has been using to conceal the true size of the deficit. Including Social Security in this balanced budget constitutional amendment makes this budgetary charade much worse by writing it into the Constitution.

Amending the Constitution of the United States to legitimize this practice amounts to a breach of trust with the American people. Social Security today is exactly what it was established to be almost sixty years ago—a publicly administered, compulsory, contributory retirement program. Treating Social Security as just one more federal expenditure alters the very character of the program in a way that will ultimately undermine the program's great success.

Seniors support a balanced budget, but will strongly object to a Constitutional amendment which includes Social Security trust funds in budget and deficit calculations. On behalf of our members, I offer our sincere thanks for your efforts to protect Social Security.

Sincerely,

MARTHA A. MCSTEEN,
President.

Mrs. FEINSTEIN. I will not rehash the arguments lodged against this alternative balanced budget amendment at this point except to restate two important points:

First, the opponents of this amendment have repeatedly stated that we should not place a statute in the Constitution. They fear that Congress will have to amend the Constitution every time they enact enabling legislation.

This statement is pure hogwash—history has proven that constitutional amendments are inevitably defined by enabling legislation. During my statement on February 9, I displayed 20 volumes of the United States Code Annotated related to the 14th amendment. Are the supporters of this argument saying that they are opposed to all this legislation because it does not belong in the Constitution?—I think not.

They also believe that the Social Security trust funds can be protected through this same enabling legislation. At this time, I will reintroduce to the RECORD a letter from the American Law Division of the Congressional Research Service. Just to remind my colleagues, let me read the reply I received to an inquiry about the ability to protect Social Security in implementing legislation. The letter reads,

> If the proposed amendment was ratified, then Congress would appear to be without the authority to exclude the Social Security trust funds from the calculation of total receipts and outlays under section 1 of the balanced budget amendment.

I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, February 6, 1995.

To: Senator Diane Feinstein
Attention: Mark Kadesh
From: American Law Division
Subject: Whether the Social Security Trust Funds Can Be Excluded from the Calculations Required by the Proposed Balanced Budget Amendment.

This is to respond to your request to evaluate whether Congress could by statute or resolution provide that certain outlays or receipts would not be included within the term "total outlays and receipts" as used in the proposed Balance Budget Amendment. Specifically, you requested an analysis as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund could be exempted from the calculation necessary to determine compliance with the constitutional amendment proposed in H.J. Res. 1, which provides that total expenditures will not exceed total outlays.[1]

Section 1 of H.J. Res. 1, as placed on the Senate Calendar, provides that total outlays for any fiscal year will not exceed total receipts for that fiscal year, unless authorized by three-fifths of the whole number of each House of Congress. The resolution also states that total receipts shall include all receipts of the United States Government except those derived from borrowing, and that total outlays shall include all outlays of the United States Government except for those used for repayment of debt principal. These requirements can be waived during periods of war or serious threats to national security.

Under the proposed language, it would appear that the receipts received by the United States which go to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund would be included in the calculations of total receipts, and that payments from those funds would similarly be considered in the calculation of total outlays. This is confirmed by the House Report issued with H.J. Res. 1.[2] Thus, if the proposed amendment was ratified, then Congress would appear to be without the authority to exclude the Social Security Trust Funds from the calculations of total receipts and outlays under section 1 of the amendment.[3]

KENNETH R. THOMAS,
Legislative Attorney,
American Law Division.

Mrs. FEINSTEIN. Second, I recognize that the exclusion of Social Security will make it harder to balance the budget. Taking Social Security off budget will require about $3 trillion more in spending cuts by the year 2017. However, the alternative of leaving Social Security on budget allows Social Security funds to be stolen to avoid spending cuts. When the baby-boomer generation begins to retire, there will not be any funds available for them to collect.

In order to address this valid concern, I believe a capital budget should

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FOOTNOTES

[1] H.J. Res. 16, 104th Congress, 1st Sess. (January 27, 1995) provides the following proposed constitutional amendment—

Section 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

Section 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

Section 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year in which total outlays do not exceed total receipts.

Section 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

Section 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

Section 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

Section 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

Section 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.

[2] House Rept. 104–3, 104th Congress, 1st Session states the following: "The Committee concluded that exempting Social Security from computations of receipts and outlays would not be helpful to Social Security beneficiaries. Although Social Security accounts are running a surplus at this time, the situation is expected to change in the future with a Social Security related deficit developing. If we exclude Social Security from balanced budget computations, Congress will not have to make adjustments elsewhere in the budget to compensate for this projected deficit. . . ." (Id. at 11.)

it should also be noted that an amendment by Representative Frank to exempt the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund from total receipts and total outlays was defeated in committee by a 16–19 rollcall vote. Id. at 14. A similar amendment by Representative Conyers was defeated in the House, 141 Cong. Rec. H741 (daily ed. January 23, 1995), as was an amendment by Representative Wise. Id. at H731.

[3] Although the Congress is given the authority to implement this article by appropriate legislation, there is no indication that the Congress would have the authority to pass legislation which conflicts with the provisions of the amendment.

be established to assure continued Federal investments in major public physical assets. Instituting a capital budget would more than offset the effects of moving Social Security from the budget. However, I was not permitted to offer this alternative. I was hoping that we would have been able to vote on this alternative. However, the Senate was denied that opportunity by an objection from the other side of the aisle. It is rather ironic—we are considering amending our Constitution—the great protector of free speech—and my speech was stifled, squashed, and censored.

In conclusion, I do not believe that the working men and women of this country are well served if we take the FICA tax moneys that they believe will be available for their retirements and use them to balance the budget. That is wrong. It is dishonest. It masks the debt. It betrays people. And it jeopardizes the retirements of future generations. I will not break the trust of the American people.

I urge my fellow Senators to vote for this honest balanced budget amendment. I want to see a balanced budget amendment pass this Senate.

This amendment can pass—there are enough Senators in this body who support a balanced budget amendment to pass this version.

However, if Senators wish to gamble in an attempt to gather enough votes for House Joint Resolution 1, they can.

I, for one, do not wish to take that risk.

I will vote for this honest balanced budget amendment.

Mr. FORD. Mr. President, time is short and I have only a few minutes to speak on behalf of the Feinstein substitute balanced budget amendment, so I'll keep my remarks to the point. As I have said before, the public trusts Congress to keep the Nation's finances in order. Nowhere is that agreement and that trust more evident or more important than in the governing of the Social Security trust fund. For that reason, I have had a great deal of concern about voting for the version of the balanced budget amendment that is before the Senate and it is that concern which led me to cosponsor with my colleague from California, a substitute amendment exempting Social Security from the equation.

The fact is that surpluses in trust funds are being used to hide the true debt of our Nation. As I mentioned on the floor last Friday, the highway and airport improvement trust funds are being used to hide debt. There are billions of dollars in these funds that are expressly raised and set aside for the specific purposes of repairing and building either highways or airports. What are they being used for? I'll tell you, they are being used to hide the actual level of the shortfall that we have around here between what comes in and what goes out.

The biggest example of this trickery is in Social Security. The other trust funds amount to a few billion dollars apiece, an amount that pales by comparison to the Social Security fund. From 1994 through the year 2002, the date that the amendment would likely take effect, an additional $706 billion in creative accounting and budgetary illusions will be used to mask the true size of our Nation's red ink. Well, I want to believe that all of us in this body know that these budgetary manipulations are not good for the country and should be stopped. Those that support the Feinstein substitute amendment will actually be doing something about that.

Senator FEINSTEIN's amendment respects the contract our Nation made with its people long ago. It reinforces the Social Security pact, makes it stronger, safer, and more secure. By exempting Social Security with the substitute amendment, it secures and fortifies its position as a separate trust fund. Social Security did not cause the deficit, and under our amendment, it will not be used to hide the deficit. Our amendment demands honest budgeting to get us to a balanced budget.

I have heard some argue that this amendment would shield any program Congress wanted to protect under the guise of Social Security. This simply is not true. We would require the same mechanisms to change the structure of Social Security as we do today, a 60-vote supermajority to waive the Budget Act.

Passage of the much-needed balanced budget amendment could be guaranteed if we're only willing to tell the American people that we will not misplace their trust. Working Americans pay into the Social Security system for the purpose of providing a nest egg in their older years. Perhaps it will give them the freedom and dignity to live independent lives so that they will not be a burden to their children. In any case, these taxes are paid to the Federal Government for retirement—not for Government operating expenses.

Mr. President, I will yield the floor shortly so that other Senators may speak, but I must add one more thought. Why is it that we have two separate and distinct Houses of Congress? As I always remembered from my history lessons, the Senate and the House are co-equal bodies. If that is the case—and I don't think I will find anyone in the Chamber who will disagree with me—if that is the case, then why are we being asked to be a rubberstamp for the House? Certainly most things in life are not perfect. The Feinstein substitute is not perfect either, but surely my colleagues must agree that it is better than the present language of the balanced budget amendment. Each body is supposed to review the others' actions and try to improve upon them. Surely if given a chance, the other body will pass the Feinstein amendment language. Why don't we give them a chance? Are we afraid of improving this measure? If not, there is no excuse for what has been going on here.

Mr. HATCH. Mr. President, this debate is unnecessary. We have already debated and voted on the substance of this amendment. This amendment is a substitute balanced budget amendment incorporating the Reid Social Security amendment, which has already been rejected by the Senate.

This issue was debated in committee and it was rejected. Then it was brought to the Senate floor, with only a minor alteration in the language, where it was debated and rejected again. Now, we are encouraging the same amendment for the third time. I also note Mr. President, that the distinguished Senator from California voted for the balanced budget amendment last year without a similar amendment on Social Security. Why?

We have heard complaints from the opponents of the balanced budget amendment that things are moving too fast, that we need to take more time, even though we have spent a full month of floor time on this constitutional amendment. Well, if all we are going to do is rehash the same arguments—and indeed the same amendments—over and over, it is time to vote.

Every minute of every day that we spend debating the balanced budget amendment, the debt increases more and more. Over $829 million every day. It is right here on my debt tracker chart. And people in Washington cannot understand why the American people are so upset at their Government it is because we do things like this—have repeated debates using the same old arguments on the same amendments we have already disposed of, while the country runs up hundreds of millions of dollars of debt every day. Business as usual has got to end.

Mr. President, there is only one reason that I can think of for this amendment to be brought to the floor again. The vote on this amendment could be used by some Senators who have promised their constituents that they would vote in favor of a balanced budget amendment the political cover to vote against the balanced budget amendment. In other words, they can claim that they kept their promise to vote for a balanced budget amendment by voting for something of that name which has no chance of passing, and then not voting for the one that does. We know this alternative has no chance because we have already had a vote on the modification embodied in this alternative, it was rejected.

Mr. President, such a cover vote was offered last year to help defeat the balanced budget amendment. Like last year's cover alternative, this substitute amendment is simply a sham, a cover vote to allow Members to say to their constituents—the vast majority of whom want a balanced budget amendment—that they supported a balanced budget amendment, but one which would obviously fail. Remember that last year, proponents of the real balanced budget amendment were not alone in this assessment. The New York Times agreed. As Adam Clymer wrote in the Times last year.

> The substitute version was intended to serve as a political fig leaf that would allow some Senators to vote for the measure and then, after its near-certain defeat, vote against the original version and still tell constituents they had supported a balanced budget amendment.—Option May Doom Budget Amendment (for Now) The New York Times, Friday, February 25, 1994, page A14.

More interesting, and more damning, is the fact that one of the key administration opponents of the balanced budget amendment suggested days before the introduction of last year's cover amendment that such tactics would be necessary to beat the real amendment. On February 18 of last year, Leon Panetta, President Clinton's then Director of the Office of Management and Budget, now his Chief of Staff, and a longtime foe of a balanced budget amendment, has this to say:

> If you allow people to say, "Are you for or against a balanced budget," you'll lose it.

He explained that—

> There are going to be some members who are going to have to have an alternative proposal that they can vote for in order to give them cover to come out against the [original] proposal.

Describing the process of developing sufficient cover for Members, Mr. Panetta further explained that—

> You're basically counting votes and you're basically saying to members, "What do you need?" To the extent that a member says, "I need a constitutional amendment" * * * you probably have to design an alternative amendment to the Constitution that would in some way protect them.

Well, Mr. President, here they go again. Given the fact that this is the only complete substitute alternative balanced budget amendment, and given that the only change from the real balanced budget amendment is the addition of Social Security language already debated at length and rejected, the purpose of this amendment can be no other than a cover vote. Well, Mr. President, the American people will not be fooled by this. They want a real balanced budget amendment, and they want it passed now.

Let me repeat for the record, that I believe this amendment would not help Social Security recipients. In fact this amendment would create an incentive to call as much of the budget Social Security as a clever Congress could get away with. This would gut the balanced budget amendment, destroy Social Security, and keep us on the path to economic ruin. The real threat to Social Security is our mounting debt. If we can get that under control with the help of a real balanced budget amendment, only then will Social Security and any other Government program be safe, and only then will our Nation's economic future be brighter, rather than darker, for all our generations.

Mr. President, I urge my colleagues to table this alternative to the real balanced budget amendment.

Mr. President, I move to table the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

AMENDMENT NO. 300, AS MODIFIED.

Mr. NUNN. Mr. President, I ask unanimous consent that my amendment No. 300 be modified by the amendment I now send to the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 300), as modified, is as follows:

> On page 3, line 3, after the period insert: "The judicial power of the United States shall not extend to any case or controversy arising under this Article except as may be specifically authorized by legislation adopted pursuant to this section."

Mr. DASCHLE. I yield 5 minutes to the distinguished Senator from New York.

Mr. MOYNIHAN. Mr. President, at the outset of this very important day, I rise to speak not to the particulars of our budget and our budget problems, but to the risk which we take with the entire economy by the measure proposed before us; a measure that would place in the Constitution a set of propositions that are essentially contrary to everything we have learned about the management of a modern industrial economy in this extraordinary half century since the enactment of the Employment Act of 1946.

I will take the liberty of reading to the Senate a statement issued by the Jerome Levy Economics Institute of Bard College at Annandale-on-Hudson, NY, written by some of the finest economists gathered together in any site in the country today. It was placed as an advertisement in the Washington Post, a rare and unprecedented event for the persons involved, but a measure of their sense of urgency. It is headed, sir, "An Invitation to Disaster." It reads:

> The balanced budget amendment would destroy the ability of the United States government to prevent economic depressions, to respond to natural disasters, to protect the savings of tens of millions of working Americans, and, over time, to enable the economy to grow.
>
> The ability of the federal government to pump money into an ailing economy has time and again in the postwar era limited the depth and duration of a recession and prevented a depression. During the 1957-58 recession, the Eisenhower administration deliberately increased the deficit.

And from that moment on, sir—and I can say I came to Washington as an Assistant Secretary of Labor, policy planning and research, which was on the periphery but still very much involved, and took a place in the economic response of the Kennedy administration to the recession of 1961, which followed that of the Eisenhower administration that was followed on in the next decade by that of the Nixon administration. We have gone, sir, 50 years with only one recession that brought us to a significant negative economic growth, which was a 2.2-percent drop in 1982—50 years. It was the great crisis of capitalism which shook the world, shook our country, because we could not manage the business cycle, and have yielded to understanding, to discourse, to evidence. It was a bipartisan, immensely successful experience to save everything we hold most valuable about a free-enterprise, private-market economy.

We put this in jeopardy. It is an invitation to disaster. The New York Newsday, in an editorial this morning, speaks of an "Unbalanced Idea" and refers to the chart that I have several times shown on the floor of the huge swings, boom and bust, starting from the 1890's, the panic of 1893, leading up to the postwar period of almost unbroken—the business cycle is moderate and the growth is continuous. That chart, says Newsday, "tells it all." In part, it reads:

> Since World War II, this country has enjoyed 50 years of economic stability unmatched in modern U.S. history. Recessions have been shorter and shallower, periods of growth markedly longer than during the half century before the war.
>
> That's largely because government spending has expanded, which works to fill in some of the gaps when recessions hit * * *.

We have automatic anticyclical measures. It says in this provision that we can anticipate and we can vote with a supermajority to raise the debt ceilings and such like. No. Mr. President, recessions in our country have not occurred until the dating committee of the National Bureau of Economic Research announced that they happened. In the meantime, the automatic adjustments have been responding long before anybody is aware of an economic decline.

Mr. President, we know this. President after President has understood it. The time has come to say we understand it as well and reject the amendment.

Mr. President, I ask unanimous consent that at the conclusion of these remarks, we have printed in the RECORD the statement of the Jerome Levy Economics Institute; the statement of the New York Newsday, an "Unbalanced

Idea''; and above all, the lead editorial in today's Washington Post, sir, which says it all. It is entitled, ''The Urgency of Political Courage.''

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Feb. 27, 1995]

AN INVITATION TO DISASTER

The Balanced Budget Amendment would destroy the ability of the United States government to prevent economic depressions, to respond to natural disasters, to protect the savings of tens of millions of working Americans, and, over time, to enable the economy to grow.

The ability of the federal government to pump money into an ailing economy has time and again in the postwar era limited the depth and duration of a recession and prevented a depression. During the 1957–58 recession, the Eisenhower administration deliberately increased the deficit. That strategy brought a rapid end to the decline. During every recession thereafter, either by design or through circumstance, a deficit was crucial in containing and ending the decline. For example, tax reductions adopted in 1981 were not planned as a counter-recession tactic, but the enacted cut that took effect in 1982 was the key to the recovery that began in that year.

Floods in the Midwest, hurricanes in the Southeast, and earthquakes in California during recent years prompted the federal government to spend hundreds of millions to relieve suffering and limit damage. Scientists who study natural phenomena warn against worse disasters. The balanced budget amendment would keep the federal government from dealing with such calamities.

Occasional man made disasters have occurred throughout the history of capitalism—for example, the savings and loan debacle of the 1980s. Had the federal government not been able to provide the money to validate the deposits of millions of ordinary citizens, their losses and runs on saving and commercial banking institutions would have recreated 1932. To assume that financial crises will never recur is unrealistic.

The balanced budget amendment ignores the nature of our monetary system. The Federal Reserve and the commercial banks issue money against their holdings of federal debt. Under a balanced budget amendment, the debt will not increase. Eventually the system will not be able to create the money the economy needs in order to grow.—The Jerome Levy Economics Institute.

[From the New York Newsday, Feb. 28, 1995]

UNBALANCED IDEA—A RISKY BUDGET AMENDMENT

The chart that New York's Sen. Daniel Patrick Moynihan showed the Senate a couple of weeks ago tells it all: Since World War II, this country has enjoyed 50 years of economic stability unmatched in modern U.S. history. Recessions have been shorter and shallower, periods of growth markedly longer than during the half-century before the war.

That's largely because government spending has expanded, which works to fill in some of the gaps when recessions hit and private spending contracts. That counterbalance effect will be far harder to achieve if the nation adopts the balanced-budget amendment the U.S. Senate is scheduled to vote on today.

So the senators should turn it down. That's too bad, in a way. The federal government has run up its debt to frightening levels during the last 20 years because of its now-routine reliance on deficits—spending more than it takes in—in the bountiful years as well as the bad ones. That should be stopped. But despite President Bill Clinton's effort to change that in his first budget, annual deficits will start growing again in a couple of years.

Some formal discipline, such as a constitutional amendment, might give presidents and legislators the cover they need to cut popular spending programs and raise unpopular taxes. ''We have to; it's in the Constitution,'' they could say. But the trouble is that the amendment the Senate votes on today, essentially unchanged from the version passed by the House last month, goes too far the other way. It includes *no* mechanism to allow deficit spending during recessions—when deficits help to keep economic downturns from getting worse.

There is only an allowance for Congress to waive the balance requirement by a supermajority vote. Winning such a waiver would be far from a certainty, and a minority of lawmakers in either house could block it.

A realistic mechanism to counter recessions probably could be devised. It's regrettable the Republican leadership took the easier path—the ''just say no to deficits'' approach—instead of a responsible one. As a result, it's the Senate that should just say no, today, to an ill-conceived balanced-budget amendment.

[From the Washington Post, Feb. 28, 1995]

THE URGENCY OF POLITICAL COURAGE

It is hard to decide which would be worse: if the balanced budget amendment that the Senate is voting on today functioned as its sponsors intend, thereby locking the country into what would often be an ill-advised economic policy; or if Congress found a way to duck the command, thereby trivializing the Constitution and creating a permanent monument to political timidity.

Take the second possibility. The Constitution of the United States is remarkable because no country in the world has taken its written Constitution so seriously. It is a concise Constitution, and it has not been amended lightly. Other countries have acted as if their constitutions were merely pieces of legislation to be changed at will, but not the United States.

The balanced budget amendment marks the intrusion of the worst kind of legislative politics onto our constitutional tradition. For about a decade and a half, for mostly political reasons, Congress has not found the fortitude to come even close to balancing the budget. Instead of doing what it should and voting the spending cuts and taxes to narrow the deficit, Congress wants to dodge the hard choices by changing the Constitution. But as Sen. Daniel P. Moynihan argued on ''Meet the Press'' this Sunday: ''My proposition is that you avoid trying to pretend a machine will do this for you. . . . You have to do it yourself.'' With or without the amendment, only Congress will get the budget balanced. And who is to say that the amendment, which becomes effective only in 2002, won't delay Congress from making the hard decisions until it is against the wall of its mandate, give it yet another excuse? ''Gosh, we passed the balanced budget amendment,'' the unfailingly inventive members will be inclined to say, ''and it goes into effect in just a few years. Isn't that enough? What do you want us to do? Balance the budget?''

Sen. Sam Nunn, whose vote could prove decisive, has argued forcefully that this amendment could lead to the judiciary's making decisions on spending cuts and tax increases that ought only be made by the legislative branch. Last night, Sen. Byron Dorgan, another whose vote had been in doubt, voiced a similar reservation. Supporters of the amendment are now trying to win their votes by arguing that legislation could be passed to protect against judicial supremacy. But surely Mr. Nunn's first instinct was right: No legislation can supersede the Constitution. If the amendment itself does not protect against judicial interference, there is no guarantee as to how a court will act. And if, on the other hand, there is no enforcement mechanism for the amendment, then why pass it in the first place? It becomes an utterly empty symbol, which is exactly what the United States Constitution has never been and never should be.

As bad as this prospect is, and effective balanced budget amendment might be even worse. By requiring three-fifths votes to pass unbalanced budgets, it would enshrine minority rule. And while deficits in periods of prosperity make little sense, modest deficits during economic downturns have been powerful engines for bringing the economy back to prosperity. This amendment, if it worked as planned, would shackle government to economic policies that are plainly foolish. Since government revenues drop during recessions and since payments for benefits such as food stamps and unemployment compensation increase, the amendment would require Congress by constitutional mandate to pursue exactly the policies that would only further economic distress; to raise taxes, to cut spending, or do both.

Moreover, as Mr. Moynihan and others have pointed out, the amendment could one day lead to the devastation of the banking system. This might happen because a balanced budget amendment could stall or stop the government from meeting its obligations to protect the depositors of banks that failed during an economic downturn. Mr. Moynihan is not exaggerating when he says that ''everything we have learned about managing our economy since the Great Depression is at risk.''

Voting against this amendment should be easy. It has been said that were today's vote secret, the amendment would certainly fail. But the political pressures on the undecided senators—Mr. Nunn, Mr. Dorgan, John Breaux, Kent Conrad and Wendell Ford—are immense and largely in the amendment's favor. These senators have an opportunity only rarely given public figures; to display genuine courage on an issue of enormous historical significance. They should seize their moment and vote this amendment down.

Mr. MOYNIHAN. I thank the Chair and I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, I yield myself 10 minutes of the democratic leader's time. I request that the Chair notify me when I have used 8 of the 10 minutes.

Mr. President, I have just been looking at the modification that apparently the majority party has agreed to in order to accommodate Senator NUNN's concerns about the court's role in enforcing this amendment.

I do not want the courts involved, but I do not want to tinker with our sacred organic law, either. Because when you take the courts out, what you have are the same people charged with the responsibility of enforcing this amendment that are now in charge. The only difference is you have the requirements of a supermajority of 60 votes.

The Nunn proposal apparently says that the courts may not involve themselves in this matter unless we grant them that authority in the future. I can tell you now, I am not ever going to grant them the authority to meddle in this. That makes another portion of the Constitution, of which James Madison was proudest, a eunuch, because then you torpedo the separate branches of Government.

My amendment, which we are going to vote on this afternoon, is more powerful in getting the budget balanced than is this constitutional amendment. If you take the courts out, the only thing you have left is a 60-vote majority required to unbalance the budget. My amendment does that by amending the Budget Act and saying you may not change—you may not change—the requirement that every budget resolution, starting this year—not in the year 2002, this year—must provide for a deficit smaller than the preceding year and a balanced budget in the year 2002.

This constitutional amendment does not require this body to do one blessed thing until the year 2002. We may do it, but there is not anything in this thing that requires it. My amendment would require it now, not in 2002, not after the Republicans have spent another $471 billion. That is what the contract calls for between now and 2002, $471 billion in additional tax cuts and defense spending, and then—and then—we will start talking about balancing the budget. It is the biggest scam ever perpetrated on an unsuspecting nation.

There has to be some ambivalence on the other side among some people about whether they really want this or not. If they do not get it, it will be the No. 1 issue in the 1996 election. "He voted against a constitutional amendment to balance the budget." And to the ordinary American citizen that is tantamount to voting against a balanced budget. Is that not a tragedy, that we have not been able to separate the two during this debate?

I yield to nobody in this body in my efforts to get spending under control for 20 years, but I am not willing to tinker with, literally trivialize, the sacred organic law of this Nation that makes us the oldest living democracy, living under the oldest living document, for political purposes.

So if they lose, they have it all going their way in 1996. "He voted against a budget resolution." And the reason I think they are ambivalent is because, if they win, then they have to say to the American people sometime between now and the year 2002, "We overpromised. It cannot be done."

Do you think $1.5 trillion can be cut from the budget between now and 2002? Why, of course, it is ridiculous. The question answers itself.

My amendment is tougher than the constitutional amendment, as I say, because it puts us on a glidepath now. It starts balancing the budget now, not in the year 2002.

Let me ask my colleagues who are still perhaps undecided: If you vote to take the courts out, what do you have? You have a constitutional amendment that nobody but the U.S. Congress can enforce. It is wholly unenforceable unless we have the spine to do it.

That is what this amendment is all about. It is an admission to the American people that we cannot be trusted to trust them with the truth. And it is an admission that we cannot bring the budget into balance. And if you take the courts out of this, that is what you have.

One Senator told me the reason he was voting for it was because he wanted the courts to enforce it. And I am wondering now how that Senator is going to vote, now that there is going to be a provision in the amendment saying they cannot enforce it.

And if you put the courts in or if you do nothing, there is a chance that the courts would take jurisdiction, and then you have unmitigated chaos.

Do you know what the litmus test is going to be in 1996 and 1998 and the year 2000? It will not be, "If you elect me, I will vote for a balanced budget amendment. I will vote for a line-item veto. I will vote for term limits. I will vote for prayer in school. You tell me whatever has a majority of popular opinion. Count me in, I will vote for it."

The PRESIDING OFFICER. The Chair advises the Senator he has used 8 minutes.

Mr. BUMPERS. I thank the Chair.

Everybody will be campaigning with one additional provision— "I will never vote and be one of the 60 votes to unbalance the budget."

So what do you have? You have a depression, you have a hurricane, you have an earthquake, you have floods, you have an S&L bailout, the banks fail, and we sit here trying to muster 60 votes and everybody says, "No, I promised my people in the last campaign that I would never be one of the people who would vote to unbalance the budget." A depression, so be it. Precisely what Herbert Hoover said, precisely the reason we had 25 percent unemployment in 1933.

I talked to one of my law school classmates yesterday who is a couple years older than I. We both remember the Depression. He said to me, "Do you know what this country needs? A good depression."

They have forgotten why all these laws are in effect—FDIC, FSLIC, the Securities and Exchange Commission. They are there because we put them in during the Depression to protect people.

Mr. President, the distinguished floor manager from Utah was quoted in the press this morning as saying, "I pity"—I pity—"anybody in this body who votes no."

Mr. President, I pity an unsuspecting nation if we vote yes.

I yield the floor.

Mr. LEAHY. Mr. President, I share the anger, frustration, and impatience of those who want to reduce our deficit. But a constitutional amendment simply is not the way to achieve that goal.

The Senate debate on this constitutional amendment and the amendments offered to improve it, which were all tabled by the majority, have reinforced my conclusion that the balanced budget amendment is a bad idea whose time has not come.

I have 10 reasons why I believe adoption of this proposed 28th amendment to the U.S. Constitution would be a grave mistake.

IT DOES NOT REDUCE THE DEBT OR THE DEFICIT

First, the proposed constitutional amendment will not cut a single penny from the Federal budget or deficit this year, next year, or any year. It is a copout.

There are only two responsible ways to reduce our budget deficit: cut spending or raise taxes. Focusing our attention on this proposed amendment only delays us from making progress on those choices.

PROPONENTS' DEBT TRACKER CHART

I have noted the daily ritual of proponents of this amendment using their debt tracker chart. That practice is as deceptive as the constitutional amendment that we are debating: It misleads the American people by suggesting that this debate is responsible for billions of dollars of increased national debt.

But if this resolution had been passed on the first day of debate, the national debt would have risen just as fast and just as high. The debt tracker has nothing to do with the debate on this resolution. But it is symbolic of the lack of substance of the arguments of the proponents of this so-called balanced budget amendment.

Further, the debt tracker is indicative, not of delay by opponents of this constitutional amendment, but delay in starting the difficult process of cutting the deficit. It is the proponents of the amendment that are fiddling while the debt is growing.

It makes more sense to cast votes that will cut the deficit now and not wait until the next century. Of course, this year there is additional irony in that the Republican Party has assumed majority status in both the House and Senate. As such, it can pass any budget it wants. That only requires a majority vote.

If they want to balance the budget, eliminate the deficit, pay off the debt. They can do all that by a simple majority vote in both Houses. They do not need a constitutional amendment to do any of this; they can do it right now.

Our Republican colleagues have been preparing for their leadership role since November 9. In over 3 months, they have proposed no budget resolution, proposed no balanced budget, proposed no budget moving toward balance, indeed, proposed no budget at all. Instead, they choose to distract and delay through the use of this proposed constitutional amendment.

It is only with resolve and hard work that we make progress. Neither is evident in this effort. This is politics pure and simple and no one should play politics with the Constitution.

IT WILL SHIFT BURDENS TO STATE AND LOCAL GOVERNMENTS

Second, the proposed amendment contains no protection against the Federal Government seeking to balance its budget by shifting burdens to the States. This is the ultimate budget gimmick—pass the buck to the States.

That is not the way to cut the Federal deficit—shifting burdens to State and local government and requiring them to raise the revenues necessary to take up the slack. Working people cannot afford tax increases any more easily because they are imposed by State and local authorities.

Unless we carefully balance the budget, this amendment could pass the buck to the States. Studies make dire predictions if we resort to across-the-board spending cuts—the easiest way to avoid the painful choices needed to balance the budget.

In response to a request from Governor Dean of Vermont, the Treasury Department recently studied what could happen to State and local taxes under the balanced budget amendment.

Assuming that Social Security and Defense cuts were off the table, as the Republican leadership has promised, the Treasury analysis predicts cuts in Federal grants of over $200 million to Vermont in 2002.

Treasury predicts Vermont would lose $89 million per year in Medicaid funding. Treasury predicts Vermont would lose $37 million per year in highway trust fund grants. Treasury predicts Vermont would lose $13 million per year in welfare funding. And Treasury predicts Vermont would lose $68 million in other Federal funding.

To try to offset these losses, Vermont would have to raise State taxes by 17.4 percent.

The Treasury Department forecast higher State taxes not only for Vermont, but for the other 49 States as well. Louisiana would have to raise State taxes by 27.8 percent to make up for lost Federal funds. Rhode Island would have to raise State taxes by 21.4 percent to make up for lost Federal funds. South Dakota would have to raise State taxes by 24.7 percent to make up for lost Federal funds. West Virginia would have to raise State taxes by 20.6 percent to make up for lost Federal funds. Mississippi would have to raise State taxes by 20.8 percent to make up for lost Federal funds, and so on. If we try to balance the Federal budget by scaling back essential services, we will just as surely be shifting these costs and burdens on State and local governments. I know that the people of Vermont are not going to let their neighbors go hungry or without medical care.

And I expect people elsewhere will not either. As much as our churches, synagogues, charities, communities, and volunteers will contribute, a large share of the costs will fall to State and local governments.

I believe that before we are called upon to consider this constitutional amendment, we need to know what its impact is likely to be. Certainly before any State is called upon to consider ratification of such a constitutional amendment, it should be advised of the likely effects on its budget.

In spite of the majority leader's assurance more than 2 weeks ago that Republicans would provide as much detail as possible in the course of this debate about how they intend to balance the budget, we have heard none. Their secret plan remains secret. Let us get some answers and know where we are headed.

IT WILL HURT CHILDREN'S PROGRAMS

Third, simple arithmetic indicates that sharp cuts will be proposed in programs for our Nation's children. Supporters of this amendment have promised not to cut Social Security and not to cut defense, although they do propose that we cut taxes. What is left?

Programs like school lunches, education, childhood immunization. Under the proposed amendment, programs like these will face likely cuts of 30 percent or more.

The Children's Defense Fund has predicted that across-the-board spending cuts from the balanced budget amendment would unfairly balance the budget on the backs of children.

Under the balanced budget amendment in 2002, the Children's Defense Fund fears that in Vermont alone: 4,850 babies, preschoolers, and pregnant women would lose infant formula under the WIC Program; 7,600 children would lose food stamps; 13,900 children would lose subsidized school lunches; 13,750 children would lose Medicaid health coverage, and 2,500 children in child care and Head Start would lose Child and Adult Care Food Program meals.

More than 7 million children nationwide may be thrown out of these Federal programs.

Let us remember that these programs for children are investments in our future. Study after study shows that healthy, educated children grow up to become productive citizens.

Take for example the WIC Program, which provides nutrition and health care for pregnant women, infants, and children. The GAO indicates that in the long haul, a dollar spent on WIC saves $3.50 in health care costs. Let us not be pennywise in our deliberations. There will be a bill to pay later for unwise, shortsighted cuts, and that bill will be left to the next generation.

I do not want to saddle our children and grandchildren with Federal debt, but neither do I want to leave them a legacy of malnutrition, poor education, and inadequate health care. Children are our most vulnerable population and our most valuable resources for the future.

IT WILL ENCOURAGE BUDGET GIMMICKRY

Fourth, this proposed constitutional amendment would invite the worst kind of cynical evasion and budget gimmickry. The experience of States with balanced budget requirements only bears this out.

Many States with a balanced budget requirement achieve compliance only with what the former controller of New York State calls "dubious practices and financial gimmicks."

These gimmicks include shifting expenditure to off-budget accounts, postponing payments to localities and school district suppliers, delaying refunds to taxpayers, deferring contributions to pension funds, and selling State assets. The proposed balanced budget amendment does not prohibit the Federal Government from using these same and other "dubious practices and gimmicks."

With Congress facing a constitutional mandate, the overwhelming temptation will be to exaggerate estimates of economic growth and tax receipts, underestimate spending and engage in all kinds of accounting tricks, as was done before the honest budgeting effort of 1993.

Passing a constitutional directive that will inevitably encourage evasion, will invite public cynicism and scorn not only toward Congress, but toward the Constitution itself.

Let us not debase our national charter in a misguided, political attempt to curry favor with the American people by this declaration against budget deficits. Let us not make the mistake of other countries and turn our Constitution into a series of hollow promises.

IT IS LOADED WITH LOOPHOLES

Fifth, the loopholes in House Joint Resolution 1 already abound. One need only consult the language of the proposed amendment and the majority report for the first sets of exceptions and creative interpretations that will allow Congress to reduce the deficit only so far as Members choose to cast responsible votes. The distinguished senior Sentor from West Virginia and others have pointed out additional problems, as well.

The Senate Judiciary Committee report says that Congress will have "flexibility" in deciding what is off-budget for purposes of the constitutional amendment.

Proponents expressly exempt in that report the Tennessee Valley Authority as "[a]mong the Federal programs that would not be covered." What other exemptions are contemplated or will be granted?

It may mean one thing this year and another the next. It can be shifted around the calendar as Congress deems appropriate. Watch out for the shifting of fiscal years in order to juggle accounts when elections are approaching.

As the senior Senator from West Virginia so ably explained, this proposed amendment gives Congress leeway to rely on estimates to measure the budget and to ignore very small or negligible deficits. But what is small, what is negligible? With an apology to Everett Dirksen: "A billion here, a billion there, after a while it does not add up."

I commend Senator FEINGOLD for offering an amendment to strike the exemption for the Tennessee Valley Authority from the Judiciary Committee report. I voted for it. Unfortunately, my colleagues overwhelmingly voted to keep this loophole.

This proposed constitutional amendment uses the seemingly straightforward term "fiscal year." But, according to the Senate report, this time period can mean whatever a majority in Congress wants it to mean.

The biggest loophole, of course, is using the Social Security trust fund to make the true deficit. I commend Senator REID and Senator FEINSTEIN for their amendment to exclude Social Security from the balanced budget amendment. Unfortunately, it was tabled by the majority.

Social Security is the true contract with America. And we owe it to our senior citizens to make sure we do not balance the budget with their lifetime contributions.

Social Security does not add a penny to our deficit. In fact, the Social Security trust fund runs annual surpluses that are now used to offset the deficit. In 1995, the Social Security trust fund is estimated to run a $69 billion surplus, and by 2002 the Social Security trust fund will run annual surpluses totaling $636 billion.

We should not raid the annual surpluses in the Social Security trust fund to balance the budget.

IT MAY HARM THE ECONOMY

Sixth, this proposed constitutional amendment could be economically ruinous. During recessions, deficits rise because tax receipts go down and various Government payments, like unemployment insurance go up. By contrast, the amendment would demand that taxes be raised and spending be cut during a recession or depression.

Last week, the Treasury Department issued a report that concluded the balanced budget amendment would have worsened the recession of 1990–92. The Treasury Department found that:

> A balanced budget amendment would force the Government to raise taxes and cut spending in recessions—at just the moment that raising taxes and cutting spending will do the most harm to the economy, and aggravate the recession.

In Vermont, had this amendment been in effect, Treasury predicted that between 1,300 to 3,800 more Vermonters would have lost their jobs during the 1990–92 recession.

A study completed last year by the Wharton Econometrics Forecasting Associates concluded that a balanced budget amendment would devastate the economies of our States. The study found that such a constitutional amendment would cause severe job losses and drastic cuts in personal income in 2003.

For Vermont, the study predicted a loss of personal income of $1.2 billion, an average of 5.4 percent for each Vermonter, and 3,900 lost jobs, resulting in a 0.5 percent rise in Vermont's unemployment rate. The study predicted dire job loss and devastating economic consequences for every other State.

Economic policy must be flexible enough to deal with a changing and increasingly global economy. Yet, the requirements of this proposal will tie Congress' hands to address national problems that may necessitate deficit spending.

Senator BOXER and I offered an amendment that would have permitted Congress to waive the balanced budget supermajority requirement to provide Federal aid in response to a natural disaster as declared by the President.

The Boxer-Leahy amendment would have given future Congresses needed flexibility to respond to the needs of natural disaster victims under a balanced budget amendment. But once again, the majority voted in lock step to table this amendment.

We should not hamstring the legislative power expressly authorized in article I, section 8, of the Constitution. Let us not undo that which our Founders wisely provided—flexibility.

Let us not limit choices and accountability. Instead, let us exercise our constitutional responsibilities in the best interests of the American people.

IT INVITES CONSTITUTIONAL CLASHES

Seventh, this proposed constitutional amendment risks seriously undercutting the protection of our constitutional separation of powers.

No one has yet convincingly explained how the proposed amendment will work and what roles the President and the courts are to play in its implementation and enforcement. Constitutionalizing economic policy would inevitably throw the Nation's fiscal policy into the courts, the last place issues of taxing and spending should be decided.

The effect of the proposed amendment could be to toss important issues of spending priorities and funding levels to the President or to thousands of lawyers, hundreds of lawsuits and dozens of Federal and State courts. If approved, the amendment could let Congress off the hook by kicking massive responsibility for how tax dollars are spent to unelected judges and the President.

Indeed, the Nunn amendment, as modified this morning, arguably makes things worse. It seeks to strip the Federal courts, including the U.S. Supreme Court of judicial power in connection with cases arising under this constitutional provision. The result of the Nunn amendment is that State courts are left to interpret and apply the constitutional provision and that any conflicts that arise in that interpretation and implementation by the courts of the 50 States cannot be considered or resolved by the U.S. Supreme Court.

I do not believe that this is what Senator NUNN intended, but that is the result of the language he has offered. This shows the difficulty and danger of seeking to draft constitutional language overnight with careful consideration and the input of constitutional experts.

I applaud Senator JOHNSTON for his foresight in offering an amendment to preclude judicial review of this amendment unless Congress specifically provides for such review in the implementing legislation. The Johnston amendment would have dried up one of the many murky swamps surrounding this constitutional amendment. But in their zest to keep the Senate version of this constitutional amendment identical to the House version, the majority tabled the Johnston amendment.

Instead of creating future constitutional crises, let us do the job we were elected to do. Let us make the tough choices, cast the difficult votes and make progress toward a balanced budget.

IT ERODES THE FUNDAMENTAL PRINCIPLE OF MAJORITY RULE

Eighth, this proposed constitutional amendment undermines the fundamental principle of majority rule by imposing a three-fifths supermajority vote to adopt certain budgets.

Our Founders rejected such supermajority voting requirements on matters within Congress' purview. Alexander Hamilton described supermajority requirements as a "poison."

As one of my home state newspapers, the Rutland Herald, recently noted, James Madison condemned supermajority requirements in Federalist Paper No. 58.

Madison warned that:

> In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: The power would be transferred to the minority.

Such supermajority requirements reflect a basic distrust not just of Congress, but of the electorate itself. I reject that notion.

I am prepared to keep faith with and in the American people.

IT WILL RESULT IN DISTRESSING SURPRISES

Ninth, there is much truth to the axiom that the devil is in the details.

The proposed constitutional amendment uses such general terms that even its sponsors and proponents concede that implementing legislation will be necessary to clarify how it will work.

What will this implementing legislation say?

We will not find out until we see this implementing legislation what programs will be off-budget, what role the courts and the President will have in enforcing the amendment, and how much of a deficit may be financed and carried over to the next year. And who knows what other core matters will be added to implementing legislation.

I do not think that Congress should be asked to amend the Constitution by signing what amounts to a blank check. Nor should any State be asked to ratify a pig in a poke.

That is why I voted for Senator DASCHLE's amendment that would have required Congress to tell the American people the details of how we intend to balance the budget by 2002. The distinguished minority leader's right-to-know amendment was the right thing to do. Unfortunately, this amendment was just the first of many to be tabled by the majority.

In the interests of fair disclosure, Congress should first determine the substance of any implementing legislation, as it did in connection with the 18th amendment, the other attempt to draft a substantive behavioral policy in to the Constitution.

IT IS NOT CONSTITUTIONALLY NECESSARY

Tenth, this amendment does not meet the requirements of article V of the Constitution for proposal to the States—it is not constitutionally necessary.

Instead of a sloganeering amendment, what we need is the wisdom to ask what programs we must cut and how much we need to raise revenues, and the courage to explain to the American people that there is no procedural gimmick that can cut the deficit or the debt.

Let us not proceed with a view to short-run popularity, but with vision of our responsibilities to our constituents and the Nation in accordance with our cherished Constitution.

We should quit playing politics with the Constitution. This is folly. There is nothing wrong with the Constitution.

Let us get on with the real business of reducing the deficit and balancing the budget.

Mr. BRADLEY. Mr. President, today's vote on the balanced budget amendment is not a vote on how we should reduce our Nation's crippling deficit. It's not a vote about the substance of serious deficit reduction. After this vote, not a single program will have been cut and not a single dollar will have been saved. Instead, this is simply a vote on a procedure that will enshrine in our Nation's most sacred document both bad constitutional policy and bad economic policy that will make it more difficult to counter recessions. It is more likely that banks will fail and more certain that disasters will go unabated.

We all agree on the need to cut the deficit. However, the debate over the balanced budget amendment is not about which programs to cut, how to stop the unchecked growth of entitlement spending, or what our tax policy should be. Instead, this debate is about procedural fixes. It is about finding ways to continue ducking the tough choices that need to be made, all the while appearing to be concerned about the deficit. If a decade of procedural fixes to the deficit has shown us anything, it has shown us that such fixes are no substitute for leadership.

Unfortunately, Mr. President, the amendment we will vote on today is simply a substitute for solid, courageous leadership. Before taking this route, we would do well to remind ourselves why we were elected. Under our Constitution, it is the Congress that is vested with the power to make all laws, and it is our obligations as Senators to make decisions about these laws and live with the implications of these decisions. No one. No President. No Senator has placed the cuts necessary for a balanced budget before the American people. We vote on the amendment without knowing what it means for citizens who work every day.

The irony of this proposed amendment is that nothing in the Constitution stands in the way of a balanced budget. The plain truth is that the Senate already has the power to reduce the deficit. Cutting the deficit requires leadership now and no amendment to the Constitution will cut the deficit if we lack such leadership. In fact, we can have a balanced budget whenever enough Members of Congress are ready to vote for one. If we agree that deficits should be reduced, then we should take the responsibility for making the necessary decisions and live with the consequences.

Mr. President, this amendment does nothing to reduce the deficit. It simply allows Congress to postpone action until at least 2002, and even then it will not require Congress to balance the budget. Instead, it will lead to more gimmicks such as off-balance-sheet budgeting, inflated revenue estimates, redefining such terms as CPI, and raids on the Government trust funds to mask the size of the deficit. Throughout this debate, I have supported efforts to protect Social Security and prevent Congress from relying on budgetary gimmicks. Each of these efforts has been defeated by the supporters of this balanced budget amendment.

No one disputes that we need to reduce the deficit substantially. The massive Federal deficit continues to sap our economic strength by raising interest rates and passing an enormous tax burden onto our children and grandchildren. Throughout my tenure in the Senate, I have introduced legislation to cut wasteful Government spending. I have offered proposals to cut wasteful spending in appropriations bills for defense spending, for agricultural spending, for Interior Department spending, and for HUD spending, among others. I have also offered legislation to close many of the tax loopholes that increase the Federal deficit by billions of dollars each year. In addition, in 1993, I voted for the largest deficit reduction act in our Nation's history. That act, which cut the deficit by over $500 billion, passed without a single Republican vote in its favor.

I am also concerned that the balanced budget amendment will serve to exacerbate recessions. Currently, Federal spending helps to reduce the harm caused by recessions. As the economy slows down, more people qualify for unemployment compensation and other Federal assistance programs. In addition, as people earn less as a result of the recession, they pay less in taxes. While these changes in spending and taxes temporarily increase the deficit, they also serve to reduce the damage done by recessions to the American economy and families. The balanced budget amendment would require the Federal Government to raise taxes and cut spending at precisely the same time that such policies will cause the most harm. Have we learned nothing from economic lessons of the 20th century?

According to a recent report by the Treasury Department, if this amendment had been in place during the 1990–92 recession, an additional 1.5 million Americans would have lost their jobs as the unemployment rate rose to 9.4 percent, the highest level since the enactment of the Employment Act of 1946. In New Jersey, we would have seen the unemployment rate reach 11.8 percent, as an additional 34,000 to 103,000 New Jerseyans lost their jobs. Without the support provided by Federal assistance programs, many of these families might have found themselves destitute.

Mr. President, not only would the balanced budget amendment that we are voting on today aggravate recessions and harm American families, it makes no distinction between current operating expenses and long-term capital investments. Every family understands the difference between credit card debt and mortgage debt. While we need to balance our budget, we should not do so in a way that would prevent us from making those investments that will be necessary for our children to compete in the world economy.

Despite a balanced budget requirement, New Jersey, along with almost all other States, allows the State government to borrow to finance long-term capital projects, such as highways, schools, and water treatment facilities. Although families are required to balance their budgets, they also borrow to buy homes. The balanced budget amendment would prevent the Federal Government from borrowing to finance long-term projects over their useful lives. As a result, we will be far less likely to make these necessary investments in our Nation's infrastructure, especially when confronted with the day-to-day demands of competing interests. In order to address this risk, Senator BIDEN and I offered an amendment to the balanced budget amendment that would have allowed the Federal Government to borrow to invest in long-term capital projects just as families, businesses, and States do.

Mr. President, in addition to the damage that this balanced budget amendment will cause our economy, I am concerned that the amendment will significantly damage our democratic form of government. The Constitution is primarily a charter of basic rights, not a prescription for economic policy. Unfortunately, while enshrining economic policy in the Constitution, this amendment would allow minority rule and potentially shift tremendous power to unelected judges—both violations of the basic tenets of a representative democracy.

Of the 26 amendments to the Constitution, all but 2 have been drafted to protect the fundamental rights of American citizens or correct flaws in the original structure of the Constitution. The only two exceptions are the amendments which were passed to establish prohibition and then to repeal it.

Prohibition—established by the 18th amendment and repealed by the 21st amendment—was a scar on the face of our Constitution. Its proponents screamed, "Keep us from drinking" only to find there was not the will equal to the words.

Mr. President, I find a parallel between the prohibition amendment and the balanced budget amendment. Proponents of this amendment scream, "Keep us from spending." Here also, there must be the will to equate the words.

Without that will, the amendment will make little difference. If our experience with Gramm-Rudman and the budget agreement has shown anything, it has shown the ability of Congress to get around rules meant to limit deficits. If we are unwilling to make unpopular votes, the amendment will result in placing more programs off-budget, mandating more expenditures by the States, and playing more tricks with revenue and expenditure estimates. We have seen these types of gimmicks before.

In 1981, in their official estimates, the Republicans promised the Nation that they could cut taxes, increase defense spending, and balance the budget—all by 1984. By relying on false estimates to pass their legislative programs, the Republicans unleashed a tidal wave of red ink. In the almost 200 years leading up to 1980, our Nation amassed a Federal debt of roughly $750 billion. Over the next 12 years, this debt quintupled to approximately $4.5 trillion.

Ironically, it is these same empty promises that have led to our current budgetary problems. In 1994, total Federal revenue exceeded all programmatic spending combined. The deficits that we suffer from today are due solely to the cost of paying interest on the debt that was run up during the 1980's. If we did not have to pay these interest charges, we would have a balanced budget today.

In addition, Mr. President, even with the proposed changes suggested by Senator NUNN, this amendment holds the potential to significantly expand the rule of the courts. Over 200 years ago, the Framers were wise enough to exclude judges from making economic policy decisions. Depending on unspecified enabling legislation, this amendment would allow judges to make unilateral tax and spending decisions. In fact, legal scholars as diverse as Judge Robert Bork and Harvard Prof. Lawrence Tribe have opposed the amendment because of the danger posed by the expansion of the role of the courts. The change proposed by Senator NUNN does not eliminate this danger.

Furthermore, this amendment will enshrine in the Constitution not a balanced budget amendment, but rather the principle of minority rule. With this amendment, just more than 40 percent of either House will be able to hold the entire Government hostage to their demands. Over 200 years ago, in The Federalist Papers No. 22, Alexander Hamilton warned against the danger of granting a congressional minority a veto power over government activities. We would be wise to heed this warning.

Mr. President, I am painfully aware of the effects which the Federal Government's uncontrolled spending is having on this generation and on future generations. The longer we wait to address the issue, the more enormous the problem is going to be. Balancing the budget will be bitter medicine for the entire country. I believe the time has come for this bitter medicine. But, Mr. President, I also believe that it is fundamentally unfair to ask the American people to take this medicine without their full knowledge and consent. Every citizen has a right to know what the likely effects of the budget cuts will be before their elected representatives are asked to vote on it.

The bottom line is that we have to decide just what it is that we owe to our children. By running deficits, we have been acting as if we owe no obligation at all to the future. Traditionally, Americans have thought otherwise. We have seen ourselves as part of a progression of Americans, linked to each other across time. We have agreed with Edmund Burke, who saw society as a "partnership not only between those who are living, but between those who are dead, and those who are to be born." Otherwise, "The whole chain and continuity of the commonwealth would be broken. No one generation could link with the other."

Instead of postponing action with gimmicks such as the balanced budget amendment and Contract With America, let's get onto the job of fashioning real deficit reduction. One of the great tasks for this Congress should be to define—in terms of specific policies and spending priorities—what such a partnership across time should mean. The first step should be to stop arguing about process and start debating substance.

Mr. President, in the coming weeks, I will propose a package of spending cuts that will substantially reduce the Federal deficit and place us on a path toward a balanced budget. If the American people are to be prepared for the sacrifices necessary to put us back on a track toward long-term growth, their elected leaders must be candid in their description of the problem and forthcoming in their discussion of possible solutions. We must also begin this debate now—not at some point in the distant future. Unfortunately, the balanced budget amendment before us today simply postpones this debate, while doing nothing to actually reduce the deficit. We should defeat it and lead with serious action.

AMENDMENT NO. 300, NUNN AMENDMENT, AS MODIFIED

Mr. LEAHY. Mr. President, a few hours ago, our distinguished colleague from Georgia came to the floor and modified his amendment seeking to prohibit judicial review of matters that may arise under the so-called balanced budget amendment to the Constitution. In the brief opportunity I have to examine the language of his modification, I discern a number of serious problems with this amendment.

The first and most obvious point is that this amendment and the language it would add to our fundamental charter, the U.S. Constitution, is being considered without adequate study or debate. The language has not been the subject of hearings, testimony, examination, comment by constitutional experts, or comment by the Department of Justice. Nor is there any opportunity provided to obtain adequate study. This language was sprung on the Senate this morning without any opportunity for Senate debate before the scheduled votes on this amendment or the other pending amendments or the constitutional amendment, itself. This is not the way to go about considering constitutional language. The value of the month of debate in which we did engage is likely to be lost in this last-minute maneuvering. That, too, is a shame.

Second, the language of the amendment does not do that which its sponsor apparently intends. It does not remove the likelihood of judicial review of matters arising under this constitutional language. To the contrary, it is expressly limited to denying our Federal courts authority to decide cases. Thus, it leaves the courts of the 50 States free to determine what this constitutional amendment means and whether it is properly implemented.

It was a proponent of the constitutional amendment, the former Republican Attorney General, William P. Barr, who emphasized at the Judiciary Committee hearing back on January 5, 1995, a problem with the drafting of the constitutional amendment that "holds some potential for mischief." That problem, according to Mr. Barr was the possibility that "a State court could entertain a challenge to a Federal statute under the balanced budget amendment * * * [T]he State court in such a circumstance would have the authority to render a binding legal judgment."

Mr. Barr went on to suggest that:

> To avoid the possibility that a Federal statute or the Federal budgetary process itself might be entangled in such a State court challenge . . . Congress include a provision for exclusive federal jurisdiction in any implementing legislation enacted pursuant to section 6 of the amendment. Such a provision should be carefully worded so as not to create inadvertently any implied right of judicial review in federal court and so as not to affect any of the otherwise applicable limitations on justiciability. . . .

The Nunn amendment, as just modified this morning, would do the opposite of that which former Attorney General Barr recommended. Instead of restricting judicial review to the Federal courts, the Nunn amendment prohibits Federal court involvement by the prohibition against the extension of the "judicial power of the United States" to cases and controversies arising under the constitutional amendment.

That serves to funnel court challenges to the myriad State courts. Ironically, Mr. Barr was worried that the State courts are not bound by the same justiciability doctrines, like standing and the political question doctrine, that act to restrain Federal courts from intervening in matters in which they are not competent and in which judicial determination is inappropriate. Through the Nunn amendment we will, in fact, be left with an even less perfect world in which the various State courts may choose to intervene in budgetary matters and in which the U.S. Supreme Court is literally powerless to stop them or even to resolve the conflict among their rulings and competing injunctions of spending and taxation.

Senator NUNN has been quite right to argue, as he has forcefully and repeatedly, that we should not leave these important matters to the vagaries of implementing legislation. Unfortunately, that is the circumstance in which we are left by the Nunn amendment as modified. I have little doubt that Congress will reinstate the authority of the U.S. Supreme Court in the wake of the implicit authorization of State courts left by the Nunn amendment. It is inconceivable that Congress would tolerate a situation where supreme courts of different States could interpret important provisions of the U.S. Constitution differently or in conflict.

My main point here is that those who believe that by adopting the Nunn amendment they have cut off judicial review are mistaken.

There are other problems with the language of the amendment that we are not able to explore before being required to vote on it or the constitutional amendment to which it is being attached. Whether once the Nunn language is adopted in the Constitution, it is even possible in mere implementing legislation to curtail the sole avenue to judicial review that we retain through the State courts by way of this amendment is a complex constitutional problem. Whether we can effectively strip the Supreme Court of authority to construe the Constitution of the United States is a much mooted legal question. Whether this amendment language can be interpreted to be consistent with the absolute language of article III and our 200-year history of respecting the Supreme Court and judicial power is another question that will require serious reflection that our circumstances in the Senate Chamber today do not allow.

Finally, I cannot support the Nunn amendment for additional reasons. One of the enduring guarantees of our Constitution is that its provision will be respected and will be enforced. To strip the Federal courts of the power to enforce a constitutional right is wrong in my view. Too many other countries around the world have embarked on such a path with too little result for us to follow. Rather our Constitution is one of positive rights that can and should be enforceable. If we start by seeking to limit Federal judicial power to protect rights under this amendment to the Constitution, what will it mean? What rights will we next ask the American people to cede? When will we be asked to sacrifice court protection of our first amendment guarantees or of the rights to equal protection or due process? This is not the way. We need only ask the people of Eastern Europe and elsewhere whose constitutions were filled with empty promises. I will not vote to degrade and deface our Constitution in this way.

Mr. SHELBY. Mr. President, Webster's dictionary defines the term "red herring" as "something that distracts attention from the real issue. [From the practice of drawing a red herring across a trail to confuse hunting dogs]."

The reason I share this definition is because most all of the arguments we have heard over the past 4 weeks in objection to the balanced budget amendment amounts to little more than red herrings. The objections are simply distractions from the real issue.

The real issue is that Federal spending is out of control and unless we pass a constitutional amendment to control spending, our children and grandchildren will never know the America we take for granted. The United States has a current national debt of over $4.75 trillion and according to President Clinton's new budget, will be $6.7 trillion in the year 2000. I have said it before and I will say it again Mr. President, debtors are never free, they are only subject to dominion of their creditors. That is the real issue.

Over the past couple of weeks, we have heard no less then six red herrings that are repeated time and again. I would like to take a moment to go through them one at a time and explain why they are just distractions from the real issue.

Red herring No. 1: The balanced budget amendment would raid Social Security and put the burden of balancing the budget on the elderly.

The fact is that there is no Social Security trust fund. The surplus to which many speak is actually in the form of IOU's. The purpose of the balanced budget amendment is to ensure the solvency of the United States so we can protect the living standards of Americans and pay our creditors. If we experience a currency problem like Mexico, we will not be able to pay our creditors much less Social Security recipients. If you truly care about the elderly and clearly understand the issue at hand, I see no other option but to support the balanced budget amendment.

Why do the opponents view the Reid and Feinstein amendments as litmus tests to whether we support Social Security? They contest the only reason one would not support these amendments is because one wants to raid the trust fund. Some of the opponents even say we should be more honest with the American people and what we have in mind for Social Security. Besides the fact there is no trust fund, this charge is completely false and an effort to demagog the issue at hand. To imply proponents of the balanced budget amendment favor cutting Social Security is incorrect, wrong, and at odds with the consistent demonstrated record of advocacy Congress has toward seniors. We should not balance the budget on the backs of Social Security recipients. In fact, I believe we should help seniors by repealing the earnings limits for Social Security recipients. However, proponents of the balanced budget amendment believe the solvency of the whole country will do far more to protect the standard of living of every American than making an ineffective attempt to ensure one particular interest group is protected. Which, by the way, those amendments would not do.

Primarily, these amendments would not protect anyone because Congress could, and in my opinion would, reclassify programs such as supplemental security income and Medicaid as Social Security. This would allow Congress to avoid balancing the budget by using FICA taxes to pay these benefits. In addition, Congress could redefine terms in the Social Security Act such as the term "recipient." We define who the recipients of Social Security are and as such could change the definition to include any special interest group.

Red herring No. 2: The balanced budget amendment is not enforceable. The amendment would curtail the authority of and respect for the Constitution.

Section 2 of the amendment requires a three-fifths vote to increase the debt ceiling. If you consider that insignificant, I ask why do we vote every year to increase the debt limit? Why does the President submit his budget by the first Monday in February every year? Neither of these procedures are identified in the Constitution. Indeed, these budget procedures are based on statute. As U.S. Senators, we are obligated to abide by the law. If one suggests that Members will arbitrarily disregard the Constitution, then I content you are completely off base and your lack of confidence in the institution undermines our role as a legislative body in a participatory democracy.

Red herring No. 3: The people have the right to know how this is going to affect them. Proponents of the balanced budget amendment should map out the way they will achieve a balanced budget within 7 years.

It is true the people need to know what their legislature is doing and how its decisions affect them. For the most part, I think they have the general idea. However, as former Nobel Laureate of Economics James Buchanan has so eloquently stated, "This argument reflects a failure to understand what a choice of a constitutional constraint is all about and conflates within-rule choices and choices of rules themselves."

We have debated year after year and day after day ways to cut spending. We have also debated year after year and day and day whether or not we should increase taxes. Unfortunately we have been unable to achieve significant deficit reduction within the framework we have. The choices we have made as a collective body have placed us deeper in debt. As a result, we are sincerely trying to rectify the problem by changing the framework in which we operate. The idea that we are trying to pull the wool over someone's eyes is false and seemingly disingenuous.

Furthermore, I would like to know where right to know advocates were when Congress passed the Endangered Species Act and the wetlands legislation? Wouldn't one assume the people would like to have known ahead of time that a puddle that stands for more then 2 weeks of the year would be considered a wetland and that their property rights thereof would be forgone? I think they would. Do you think the American people would like to have known the inflationary impact of the 1993 Tax Act before it was passed? I'm sure they would have. The point is that there is no way to tell an individual that the balanced budget amendment will reduce their Government subsidy by exactly $342.34 or that a particular service will be taken from the States and therefore State taxes will be increased by exactly $43.25 You can see how absurd that request really is. The point is the citizens of the United States know all too well the problems of Federal spending. They want to see us pass a balanced budget amendment to stop the fiscal hemorrhaging from the Nation's Capital. The opponents are correct in that the people have a right, but the right they have is for the Federal Government to stop spending this country into bankruptcy.

Red herring No. 4: The balanced budget amendment will have dire consequences on the elderly and the children.

On the one hand the opponents claim a balanced budget amendment will lead to draconian cuts in very critical programs. According to them every old person, young person, and poor person will be cut off from a dignified standard of living.

Red herring No. 2 claims that the balanced budget amendment is not enforceable. No amendment will be able to force the President and Congress to balance the budget. Who is going to sue them they ask. Well, which is it? Are we going to experience draconian cuts or aren't we? The arguments against the balanced budget amendment are faulty according to their own logic.

Since the logic is inconsistent, opponents will try to paint a dreadful picture to the American people, hoping this will elevate opposition to the balanced budget amendment. Well, I have a frightening picture I would like to share with the American people.

Imagine, one day 30 years in the future, your children are now retired and living comfortably. They have worked all their lives, spent frugally and saved religiously. One day, they wake up and find the value of the dollar has crashed in financial markets. The Federal Reserve cannot stop the falling dollar and in response, the Treasury prints money. Suddenly, your children's assets are worth half of what they were a day before. Inflation is rampant and we are reduced to a Third World country. Everything your children have worked for has been taken from them because Members of the generations represented in this Chamber did not think that addressing the debt was important. Instead, Members chose the immediate gratification of consumption.

The opposition to the balanced budget amendment provides significant insight as to why many people do not understand the virtues of capitalism. The idea of capitalism means that one chooses to forgo current consumption and save in order to accumulate capital. In other words, deny consumption now for bigger and better things later. To gather capital—which by the way, increases productivity and therefore living standards—we must deny ourselves immediate gratification. In order to pass the America we know on to our children, we must deny ourselves immediate gratification and pay the bills we have incurred.

Red hearing No. 5: The balanced budget amendment is just some popular idea we are voting for brought about by the Contract With America. We need time to think about a balanced budget amendment.

The fact of the matter is that the balanced budget amendment is not a new idea at all. Thomas Jefferson is well known for saying, "If I could add one amendment to the Constitution, it would be to prohibit the Federal Government from borrowing funds * * * We should consider ourselves unauthorized to saddle posterity with our debts and morally bound to pay them ourselves."

In 1936, Representative Harold Kuntson of Minnesota proposed the first constitutional amendment to balance the budget. Since then, a number of balanced budget amendments have been proposed. We have held hearings as far back as 1979 and even passed a balanced budget amendment in 1982. Indeed, the issue has come up several times since then. Several of the Senators opposing the balanced budget amendment have been around for many of those debates.

The balanced budget amendment is not a new idea that has not been justly considered. We know the issue all too well. The balanced budget amendment is an idea whose time has come.

Red herring No. 6: Federal accounting does not allow for capital budgeting. Federal accounting would throw chills down the spine of any business executive.

Trying to confront the arguments against the balanced budget amendment is like following a bouncing ball. When they are defending Social Security, the books are fine, they are in surplus. However, when we discuss the tremendous deficits and debt of the United States, the Federal accounting is somehow inept.

Once again, there is an inconsistency in the opponents reasoning. If you maintain the argument that Federal accounting is flawed, then one must take another look at the books of the Social Security trust fund. There is no fund. There is no surplus. According to accounting rules used by business executives, liabilities exceed assets. By definition, that is not a surplus.

In addition, I hear analogies being made to the American family in that they enter into substantial debt when they purchase a house. They have to pay mortgage payments monthly, but they are not worse off. Indeed, most would say they are better off. This is true, but lets take that analogy one step further as it applies to our national debt. The difference is that homeowners do not buy a house this year, and another house the next year and another the year after that. A homeowner pays down the principal. As a Government, we never get to this point because we have to borrow just to pay the interest. It is a perpetual problem that feeds on itself.

The arguments I have just mentioned are the objections opponents make to the balanced budget amendment. I call them red herrings because I believe such arguments are just distractions from the real issue. The term again comes from the practice of drawing a red herring across a trail to confuse hunting dogs.

Mr. President, the trail of debt now tops $4.75 trillion. The red herrings of a balanced budget amendment will not convince anyone on Wall Street or Main Street. Mr. President, the hunting dogs are not confused. The time has come for a balanced budget amendment to the Constitution of the United States of America.

Mr. CAMPBELL. Mr. President, I rise today to speak in favor the balanced budget amendment to the Constitution.

When we began this debate, I spoke on the floor in favor of this constitutional amendment as a means to ensure a strong economy and protect our children from rising interest payments and the debt.

There is no doubt that passage of this amendment will raise our Nation's savings rate and standard of living.

Today, I speak in favor of the amendment because I believe the American people and the States have the right to make the decision to either approve or reject the balanced budget amendment.

It's often repeated on this floor that the American people want this constitutional amendment. Most surveys show that about 80 percent of Americans favor it. Likewise, Governors and State legislators are calling for its adoption.

Realizing that the American people want this, and that a general feeling of frustration and distrust exists among voters, we should hand it to States and ask, "Do you really want a balanced budget or not?"

We should bring the debate closer to the people, to the States. States have a profound interest in this legislation because their budgets will be affected. Of the 50 States, 44 rely on the Federal Government for at least one-fifth of their budgets. Alabama relies on Federal funds for 58 percent of its budget, and Mississippi relies on Federal funds for 41 percent of its budget.

If elected officials in the States are worried that the sky will fall under a balanced budget, as so many have predicted, they can vote against the Amendment in the State legislatures.

On the other hand, if the States think a balanced budget is necessary to ensure a strong economy and protect our children from rising interest payments and the debt, they can vote for the amendment in the State legislatures.

Opponents claim a constitutional amendment is bad policy, and that the voters are not ready for the necessary spending cuts. If that is true, let the American people and the State legislatures reject it.

A recent editorial in the Durango Herald, a newspaper that actually opposes the constitutional amendment, yet realizes the need to get our fiscal house in order, says, "Since it's clear this thing is not going to just wander off and die, let's get on with it" and approve it so the States can decide.

The point is that this debate will not end until it is won or lost. This debate will not end until the States have the opportunity to either approve or reject the balanced budget amendment. In other words, to quote the Durango Herald, "Let's get on with it."

I ask unanimous consent that this article from the Durango Herald be printed in the RECORD. Thank you.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Durango Journal, Jan. 15, 1995]

PASS IT AND MOVE ON: LET THE STATES KILL THE BALANCED BUDGET AMENDMENT

Amending the Constitution of the United States to require a balanced budget is a terrible idea—and one Congress should approve. Since it's clear this thing is not going to just wander off and die, let's get on with it. Give everyone in Congress the opportunity to posture and pose and send the proposed amendment to the States for ratification. Closer to the people, and the problems, cooler heads will drive a stake through its heart.

With good reason, the States fear Washington would balance its budget at their expense. And, they have no desire to have federal budgets decided by the courts. Both of those are likely consequences of a balanced budget amendment.

Of course there are other reasons to oppose such an amendment. For starters, it would be an abdication of one of Congress' fundamental responsibilities. Moreover, it wouldn't work. It's not even certain it would be good if it did.

Writing in The Wall Street Journal, economist Robert Eisner points out one of the fallacies behind a balanced budget amendment is that deficit spending is inherently bad. One common argument compares the deficit with an individual's finances: "I balance my checkbook. Why can't the government balance its?" Eisner says that's wrong on a couple of points.

Both the government's revenue and its expenditures are tied to the economy in ways that are out of its immediate control. Eisner figures that if unemployment were to go back up to where it was in June of 1992 the deficit would increase by more than $110 billion. What gets cut when that happens? And, if Congress could make that kind of call why do we need a balanced budget amendment?

A better point is that the checkbook analogy neglects another side of spending. Deficit spending is borrowing, something responsible individuals and businesses do all the time.

So do States. Although they may have balanced budgets mandated by their constitutions, most also have separate capital budgets financed by borrowing. In checkbook terms, they don't consider themselves overdrawn because they have a mortgage.

Eisner points out that if the deficit grows at the same rate as national income, the ratio of debt to gross domestic product will stay constant. Like someone who always trades in the car before it's paid off, we'll always be in debt, but never in trouble. Excess debt is crippling, but would our lives be better off if we were compelled to pay for houses, cars and appliances out of pocket?

What's needed is not a balanced budget, but some responsibility, some agreement as to what's important and a sense of proportion. No amendment will provide that. By sending the balanced budget amendment to the states for execution, maybe we can be rid of it for good.

Mr. McCONNELL. Mr. President, I rise today to join the chorus of support for a balanced budget amendment to the Constitution. This action is long overdue. For the last quarter-century the Federal Government has failed to pass a single balanced budget. Rhetoric, desk-pounding, and campaign promises notwithstanding Congress has time and time again come up short. The fact is, willpower hasn't done it and term limits won't do it. We must be boxed in by a constitutional mandate.

To say the least, Congress' fiscal irresponsibility has frustrated the American people. The last election was a collective scream for change. Voters did not just send new members to Congress last November, but a clear message as well: cut the waste and balance the books.

The public clamor for term limits is largely attributable to the Federal budget fiasco. Ironically, term limits would not work to instill courage or fiscal disciple but a balanced budget amendment may serve to limit terms as Members are constrained from using the Treasury to buy votes.

Unfortunately, the President has not heeded the message of last November, or did not hear it, and sent a budget that embodies more of the same. Between 1994 and the year 2000, President Clinton proposes that we add another $2.5 trillion to the gross national debt. I fail to see how it gets us close to a balanced budget—must be some new math of the 1990's.

Since coming to the Senate 10 years ago, I have listened to those who oppose a balanced budget tell the American people that all we need is courage. Year after year, Congress runs up billions on the public credit card that is to be paid for by future generations. What right do we have to ask our children and grandchildren to pay for excesses today?

Thomas Jefferson, a strong proponent of a balanced budget amendment, felt very strongly about this. He stated:

> The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves.

That was the questions our Founding Fathers wrestled with when drafting the Constitution. It is the same question we contemplate as we cast our votes to amend this living document. Is it our place to ask others to pay for our lack of discipline? I think not.

A balanced budget amendment will serve as a bulwark to ensure that spending not exceed outlays. It purposely excludes any reference to specific programs—such a detailed blueprint has no place in the Constitution. Within this confine Congress can reprioritize spending to meet the most urgent needs and eliminate those programs that are duplicative or outmoded. Among other things, we will need to redefine terminology used in Washington. Only in Washington bureaucratese does a cut mean an increase in spending smaller than the increase the year before.

Congress would have 7 years to meet the objective of a balanced budget in the year 2002. This will be an evolutionary process in an effort to accurately reflect ongoing economic and political changes. In testimony before the Senate Budget Committee, on February 7, Secretary Rubin echoed these sentiments regarding the difficulty to predict economic situations 7 years from now. It would not be possible to precisely lay out budget priorities for the next 7 years.

Mr. President, to ensure we don't continue to resort to higher taxes instead of cutting spending to balance the budget, I urge my colleagues to support the three-fifths vote requirement to raise taxes. The record is clear, Congress has been remarkably resourceful in raising taxes. And each time taxes went up it was accompanied by increased spending. Clearly, the deficit is not a result of taxing too little, but spending too much.

Mr. President, let's take a look where we are now. Presently, the Federal debt is $4.7 trillion. If every man, woman, and child were to pay an equal share, they would owe about $18,000. Under the Clinton proposal, their Federal share would jump to $26,000 by the year 2000.

Probably one of the most astounding facts is that interest on the debt has become the second largest budget item. It amounts to 5½ times more than is spent on education, job training, and employment programs combined. On top of that, this budget function is the only item truly off-limits. The only way we can reduce it is to balance the budget. In the meantime it remains a very substantial charge to taxpayers. The Congressional Budget Office predicts that if interest rates are even 1 percent higher than predicted, interest costs would rise by $50 billion in 2000. This is on top of the $310 billion in net annual payments expected that year.

The cumulative impact of this irresponsible behavior is staggering. Deficit spending crowds out savings and investment. Over the last 14 years, savings has declined from its highest point to record lows. Billions are diverted annually from private investment to cover government excess, and this has a direct impact on job creation.

Balanced budget opponents are trying to scare people with Social Security nightmare scenarios. The fact is, Congress continues to abdicate its fiscal responsibility, it will surely jeopardize future commitments to retirees. Only by putting our fiscal house in order now, can we continue to honor retirement obligations. Already actuarial models show the rapid depletion of the trust funds as baby-boomers begin to retire. Unless Congress takes swift action, there will be no resources available to support these people.

Opponents of the balanced budget would like seniors to believe that a balanced budget amendment will devastate the trust funds. I would be interested in knowing how many of my colleagues who have engaged in this rhetoric also supported the President's tax increase on seniors that diverted billions from Social Security to the General Treasury? This should be a clear indication of the threat posed to the trust fund under an unbalanced budget. I am as committed to Social Security as anyone and will work to ensure this commitment can be honored, a promise which must entail balancing the budget.

Some in this body seek to undermine the balanced budget by attaching a Social Security exemption. This exemption is a hoax fraught with loopholes and questions. This exemption would create an off-budget blackhole where more and more programs are sent to be exempt from the constraints of a balanced budget. If this prediction comes true, seniors will be sharing their special exemption with a multitude of other programs. This will threaten the reserves and defeat the purpose of a balanced budget. As the old saying goes, "give them an inch and they'll take a mile."

No amount of gimmickry will protect future generations like a balanced budget will. Only by relieving them of our burdens, can we ensure that they can realize a higher standard of living. This is something every generation has been afforded until now. I urge my colleagues to support the balanced budget amendment to the Constitution.

Wouldn't it be nice if our children could owe a debt of gratitude, and not just a debt?

Mr. KEMPTHORNE. Mr. President, if this Senate has the courage to finally approve the balanced budget amendment, I predict that my State of Idaho will proudly be the first State to ratify the amendment.

Idaho eagerly waits the opportunity to do what is right. Idaho will not waste 40 years ratifying this amendment, it will not waste 40 weeks or even 40 days to approve this amendment. Idaho may well act within 40 hours to ratify this amendment. And for the simple reason Idaho knows what Congress is just now figuring out—our future as a nation, and the future of our children demand that Congress stops spending the Nation recklessly into debt.

This past Monday evening I was in Montpelier, ID—population 2,520—for a Lincoln Day meeting. What impressed me was the number of young folks who came.

Those young folks, Mr. President, were there because they are concerned about their own future. They see our generation mortgaging away their future. This debate is about bringing us some fiscal sanity so that these young people will have a future, and not one that is mortgaged away.

Idahoans, like most Americans, have lived under a State balanced budget requirement for years. Has it forced tough decisions? Certainly. Has it prevented Idaho from doing some things the people may have wanted to do? Undoubtedly. But has it worked? Yes.

The people of my home State have shown they can and will live within a limited budget, on both a personal and governmental level. It is an example Congress would do well to follow.

The truth is Congress soon will once again raise the debt limit, this time to more than $5 trillion—a staggering, incomprehensible amount of debt, a debt we pass on as our selfish legacy to future generations. It is sad to say, but all signs indicate this deficit spending will continue unless we make it against the law.

It has been 26 years since the last balanced budget was approved by Congress. 26 years. Mr. President, I was preparing to graduate from high school and enter the real world 26 years ago. But for more than a quarter of a century, Congress has failed to operate in the real world. Congress' world has been one of illusions where, when the money runs out, it is like that Doritos Corn Chip ad where Jay Leno boasts, "We'll make more." In Congress, we fire up the printing presses, make more, and add a few extra zeroes to the national debt.

As many of my colleagues are aware, I had the privilege of serving as the mayor of Boise, ID, before coming to the U.S. Senate.

As chief executive officer for a municipality, I had the responsibility to make sure the city's budget was balanced. I did not have other options. I could not spend the city into the red. I had to prioritize. I would have loved to put more police officers on the street. We had vacant parcels of land which had been waiting years for grass, ball fields, and playground equipment. It would have been fantastic to expand more bus routes, build a new firehouse, and purchase a new bookmobile.

Those were all desirable propositions. But we did what was realistic, and we lived within our means.

And do you know what? We kept our river clean. Our crime rates went down. We built some great parks. We modernized our firefighting equipment. We were voted one of the most livable cities in America—"A great place to raise a family"—said one national magazine.

We were able to do that because our mandate from Boiseans was clear: Learn to do more with less. And, I would add, Mr. President, that we did all this and either held the line or decreased the property tax levy the final 2 years I was in office.

We need to get used to the fact that the American people want the Federal Government to cut up its credit cards, prioritize the real needs, ignore the wants list, learn to do more with less, and balance its budget.

I mention credit cards, and I am sure this has never happened to any of my colleagues, but I had a bit of an embarrassing experience while I was back in Idaho this past weekend.

I pulled out a credit card and gave it to a hotel clerk. She ran it through the machine to print out a receipt for me to sign. But instead of handing me a receipt, she politely handed me my card back and said, "I'm sorry Mr. KEMPTHORNE, but your card expired at the end of January."

It became painfully clear to me at that moment, that Congress' credit card has also expired. And the American people aren't going to issue a new card because Congress has run its limit up to a point where we no longer have a favorable credit rating.

When that happens, the solution is obvious. You cut up the credit cards and start to pay off the debt.

The call for fiscal responsibility is nothing new, it has been sounding for years. Just over a decade ago, the American people heard these words:

> We must act now to protect future generations from government's desire to spend its citizens' money and tax them into servitude when the bills come due. Let us make it unconstitutional for the Federal Government to spend more money than the Federal Government takes in.

This sage advice came from President Ronald Reagan on the event of his second inauguration. His words were true then, and they are even more so now. Since he made that call for a balanced budget amendment to the Constitution, we have had 10 more years of unbalanced budgets, 10 more years of deficits, 10 more years of telling our children and grandchildren that they will have to discover a way to do what we did not have the courage to do.

We have been inching closer to passing a balanced budget amendment. One reason for this is the tireless efforts of Idaho's senior Senator, LARRY CRAIG, who has spent 13 years working to see his dream of congressional approval of a balanced budget come true.

His partners in this effort—Senators HATCH and SIMON—have left no stone unturned in the effort to get this amendment passed.

These Senators know better than anyone else here that the Senate has approved this amendment in the past, only to have it fail in the House. Now, the House has approved a balanced budget amendment, and the eyes of the Nation—particularly the eyes of those young people I met in rural Idaho this past weekend—are watching and waiting for us to do what is right.

This vote is real this time.

This vote counts.

Let us finally stop talking and do what is right: Pass House Joint Resolution 1, the constitutional amendment to balance the budget. Idaho and the rest of the Nation is watching, and waiting, and is ready to act.

Mr. HEFLIN. Mr. President, I again come to the floor as an original cosponsor of the resolution calling for a balanced budget amendment to the U.S. Constitution. I do so with the firm belief that this measure, and the amendment it would help establish, is the very best hope we have now or in the near future of finally getting a handle on our massive budget debt and yearly deficits.

Just as we did in the summer of 1993 by passing the largest deficit-reduction legislation in history, we again stand at a unique place and time in history with regard to addressing our most pressing structural economic problems. The American public, through countless opinion surveys, consistently ranks deficit reduction as one of its paramount concerns. What we did in August 1993 was the right thing to do, and we are seeing benefits from that legislation. Deficits are coming down for the third year in a row. But as we know all too well, that is nowhere near enough. The temptation to spend is still a mighty one to resist for Congress, regardless of who is in control.

I believe in the inherent good sense of the American people, and I believe that good sense has opened millions of eyes and even hearts to the fact that America has been victimized by more than a dozen years of borrow-and-spend Federal fiscal policies that have run up a horrendous $4 trillion national debt. The public is saying, "enough is enough. This irresponsibility must stop." There is a sense of urgency for protecting the future of our children and grandchildren. The question is whether we will act further with an even more bold step to not only reduce the deficit, but to eventually wipe it out completely. If we don't seize this opportunity—the best chance we've ever had to pass the balanced budget amendment—we might not get another opportunity any time soon. We must act to complete what the House has started.

Unfortunately, our viable alternatives are few. We must finally begin to service and reduce our debt or our Nation will face the miserable consequences of bankruptcy.

We are deeply and sincerely committed to doing something about deficit reduction. The American people, by all accounts, are prepared to do their part. This is one of the few times in my more than 16 years in the Senate that I have seen such an array of forces converged in an attempt to address this pervasive problem. Indeed, it is rare that we ever have a committed public and majority of Congress aligned on any economic issue, much less one that strikes at the very soul of our free Republic. But we need more than just a simple majority. We must get 67 votes to ratify what the House has already passed overwhelmingly.

The bottom line is this: We have the momentum to take bold and decisive action to begin reducing it. It is an opportunity to build on what we started 2 years ago. I am fearful that if we do not act this time and finally send this amendment to the States for ratification, we will lose that momentum, perhaps never to regain it.

And so, we can continue to wring our hands and play the blame game, or we can act. There is plenty of blame to go around, in both branches of Government and both parties, for how we came to this point. But the time has come for the blame to end and for us, as a body, to accept responsibility.

Winston Churchill once said, "If we open a quarrel between the past and the present, we shall find we have lost the future." We can argue forever about what might have been done in the past to avoid the debt we face. We do not have the luxury of replaying the past, but we do have the present. And the quarreling of the present will only impact our future security. Let us heed Churchill's warning and cast a vote for the future.

I implore all of my colleagues to stop the blame game and wringing of hands and vote for a new beginning with this resolution calling for a balanced budget amendment to the Constitution. Let us give it to the States, where it will be fully debated, analyzed, and voted on. This is as it should be, because amending the Constitution is gravely serious business. This is why the process is so difficult. But the States should have the opportunity to decide this issue. Support this historic effort at debt reduction by stepping up to the plate and accepting responsibility. It is what we have been elected to do. The economic future of our Nation depends on us fulfilling that responsibility.

AMENDMENT NO. 300, AS MODIFIED

Mr. GORTON. Mr. President, the Nunn amendment fills the last gap in a vitally needed balanced budget amendment. It makes clear that the responsibility for abiding by its solemn requirements rests in the Congress and the President. The prospect of judicial intervention into fiscal estimates, and taxing and spending decisions, made exclusively by the elected representatives of the people for more than 200 years, is appalling. The people of the United States must retain their control over those whose decisions so affect their lives and their pocketbooks.

Under the Nunn amendment, of course, Congress may grant this power of judicial review with such limitations as it deems appropriate. But the power can be withdrawn, and that makes all the difference. Such a power is highly unlikely to be misused.

The balanced budget amendment, House Joint Resolution 1, is the key to our commitment to change, to a new course of action to deal with deficits that choke our economy and unjustly burden our children and grandchildren. It is a revolt against the status quo and the promise of a new way. It is a rejection of the old and discredited way of doing business, and the promise of a brighter future.

With the Nunn amendment, the balanced budget amendment is the most important initiative of this Congress. It must be approved.

AMENDMENT NO. 291

Mr. HATFIELD. Mr. President, on February 15, 1995, this body considered an amendment by Senator FEINGOLD, the effect of which would have been to nullify Judiciary Committee report language pertaining to the impact of the balanced budget constitutional amendment on the legal status of the Tennessee Valley Authority.

I opposed the motion to table the Feingold amendment because I believe the Judiciary Committee report language related to TVA goes beyond the plain meaning of the language of the balanced budget constitutional amendment.

Section 7 of the Senate Judiciary Committee's Report No. 104-5 indicates that total receipts under section 5 of the proposed constitutional amendment are intended to include all moneys received by the Treasury either directly or indirectly, except for the proceeds of Federal borrowing. The report states that "total outlays" under section 5 of the proposed constitutional amendment are intended to include all disbursements from the Treasury, either directly or indirectly through Federal or quasi-Federal agencies created by the Congress, whether they are on budget or off budget, with the exception of that total outlays do not include the repayment of debt principal. In the case of TVA or the Bonneville Power Administration, this means that their borrowing would not count as a receipt and their debt principal repayment would not count as an outlay. This is correct and entirely consistent with existing budget law.

It is the following statement in the Senate Judiciary Committee report language that is troubling to me: "Among the Federal programs that would not be covered by Senate Joint Resolution 1 is the electric power program of the Tennessee Valley Authority." The text of the proposed constitutional amendment is clear: There are to be no exemptions to the amendment unless the Congress would later waive the provisions of the article under the Declaration of War provision in section 4. The above TVA report language attempts to go beyond the stated language in the proposed constitutional amendment. I do not believe this report language can overcome the plain meaning of the text of the proposed constitutional amendment.

Congress has recognized that the power programs of TVA, BPA, and the other power marketing administrations are unique and that ratepayer revenues should not be traded off against taxpayer appropriations. Under our current budget rules, the TVA and BPA power programs are on budget, direct spending authority programs. These programs possess borrowing authority which is subject neither to sequestration nor reduction. This sequestration protection has been provided because the funds that would be reduced are derived from electric ratepayers and not taxpayers and such reduction would not reduce the Federal district.

We should not return to the time when the Congress was involved in detailed power system decisionmaking for the TVA and the BPA. These programs must remain direct spending and exempt from sequestration and budget reduction. Reduction of the expenditure of ratepayer revenues would not help reduce the Federal deficit. At the same time, the proposed constitutional amendment as currently written clearly applies to TVA and BPA. The Senate Judiciary report language cannot overcome the clear language of the proposed constitutional amendment.

The Senate tabled the Feingold amendment on a vote of 63 to 33. I voted against tabling because of my belief that the TVA report language would have no effect because it exceeds the language of the constitutional amendment. It is my view that the tabling of this amendment did the disservice of reinforcing the TVA report language and further complicating the ability of courts or this body to clearly understand the legislative intent behind this part of the balanced budget amendment.

Senator FEINGOLD has now offered another amendment to force the issue of whether this report language overcomes the plain meaning of the balanced budget amendment. The point is made in a counterintuitive way by seeking to exempt TVA in the legislative language, rather than the report language, of the balanced budget amendment.

Because I oppose exempting TVA from the balanced budget amendment, just as I would oppose exempting BPA, I will vote to table the Feingold amendment. Regardless of the outcome of this vote, I continue to believe that, to the extent it is inconsistent with the text of the balanced budget amendment, the underlying report language related to TVA should be without effect.

I yield the floor.

THE BALANCED BUDGET CONSTITUTIONAL AMENDMENT

Mr. ROTH. Mr. President, today I rise as a proud cosponsor of the constitutional balanced budget amendment, and I urge its adoption.

The time has come to put an end to out of control Federal spending that has taken money from the private sector—the very sector that creates jobs and economic opportunity for all Americans.

The President's recent budget proposals for next year offer clear evidence for the lack of political will to make the hard choices when it comes to cutting Government spending. I strongly disagree with President Clinton's decision not to fight for further deficit reduction this year.

The American people are crying out for a smaller, more efficient government. They are concerned about the trends that for too long has put the interests of big Government before the interests of our job-creating private sector. They are irritated by the double-standard that exists between how our families are required to balance their checkbooks and how Government is allowed to continue spending despite its deficit accounts.

It is clear, Mr. President. The time has come to heed the will of the people. It is our duty, not only to heed their will, but to act in their best interest. And this amendment is in their best interest.

The President's budget maintains deficits of $200 billion over the next 5 years, and the deficits go up from there. His budget does not take seriously the need for spending restraint—restraint that would put us on a path toward a balanced budget by the year 2002.

In fact, Bill Clinton proposes spending over $1.5 trillion in fiscal year 1995 to over $1.9 trillion in the year 2000. In other words, the only path that the President proposes is one that leads to higher Government spending and ever increasing deficits.

Mr. President, my decision to cosponsor this legislation was not made lightly. The U.S. Constitution is our Nation's most sacred document. Dozens of countries have modeled their constitutions around the principles espoused in ours. Many of the emerging democracies around the world recognize the profound simplicity and timelessness contained in that hallowed document.

Any amendments to the Constitution should be made with care, and with careful consideration of the intended outcome.

I believe the outcome of a balanced budget for our Nation is one of the most important steps we can take to ensure the economic opportunities for prosperity for our children and for our children's children.

As a Nation—and as individuals—we are morally bound to pass opportunity and security to the next generation. This is what a balanced budget amendment will help us do. As Thomas Paine has written, no government or group of people has the right to shackle seceding generations with its obligations. A balanced budget amendment will help us prevent the shackling of future generations.

As chairman of the Senate Governmental Affairs Committee I have outlined a plan to reduce the Federal bureaucracy, eliminate outdated and wasteful Government programs, and to strengthen Government's ability to better serve the taxpayers.

In January I kicked off a series of hearings on Government Reform: Building a Structure for the 21st Century. It is my belief that as we move into the 21st century, so should our Government. Innovative technologies should allow us to cut out many layers of management bureaucracy, and reduce Federal employment. Programmatic changes should also occur.

Just this week I released a report that I asked the GAO to examine the current structure of the Federal Government. The GAO examined all budget and Government functions and missions. They did not conduct in-depth analysis, but simply illustrated the complex web and conflicting missions under which agencies are currently operating.

The GAO report confirms that our Federal behemoth must be reformed to meet the needs of all taxpayers for the 21st century. I am convinced that it is through a smaller, smarter government we will be able to serve Americans into the next century.

Deficit spending cannot continue. We can no longer allow waste, inefficiency, and overbearing Government to consume the potential of America's future. I am committed to spending restraint as we move to balance the budget by the year 2002. And I ask my colleagues—and all Americans—to support our efforts.

THIS IS THE VOTE THAT COUNTS; DO WE TRUST THE PEOPLE?

Mr. CRAIG. Mr. President, we are now down to final passage of House Joint Resolution 1, the BBA.

No matter how any Senator voted on any amendment earlier, your constituents will understand:

Vote no, and you kill any form of BBA, here and now.

Vote yes, and you continue one of the great debates of our age.

This vote is really about engaging the American people in the most important public debate about the appropriate role of the Federal Government since the Bill of Rights was sent to the States by the First Congress.

Do we trust the people with that debate?

Do we trust the 80 percent of the people who demand this amendment?

Do we trust the American people who voted for change last November?

This Senator trusts the people.

FUNDAMENTAL RIGHTS, LIMITS ON GOVERNMENT

A constitution—

Protects the basic rights of the people;

Outlines the fundamental responsibilities of the Government and broad principles of governance;

Sets forth just the essential procedures to do these things.

House Joint Resolution 1 fits squarely within that constitutional tradition:

The American people have a right to be protected from the burdens of an intolerable public debt.

The Framers thought that the limited and enumerated powers of government, a gold standard, and a moral imperative would make an explicit balanced budget requirement redundant.

For 150 years, they were right. But times have changed.

We are having this debate today because the American people are demanding that Congress change, as well.

THE DEBT IS THE THREAT

Even as we speak, we are adding to the Federal debt: $829,440,000 a day; $34,560,000 an hour; $576,000 a minute; and $9,600 a second.

Americans are paying now, with a sluggish economy. Under current trends, our children will pay even more dearly.

For each year with a $200 billion deficit, a child born today will pay $5,000 in additional taxes over his or her lifetime.

Last year, the President's budget projected that future generations face a lifetime net tax rate of 82 percent in order to pay the bills left by this generation.

Total Federal debt is now $4.8 trillion—$18,500 for every man, woman, and child in America.

Gross interest on that debt is $300 billion—the second largest item of Federal spending;

Growing interest payments threaten to squeeze out every other budget and economic priority—including Social Security.

THE BBA IS THE BEST HOPE FOR ECONOMIC SECURITY

A 1992 GAO report shows gains in standard of living of between 7 percent and 36 percent in 2020 resulting from balanced Federal budgets.

According to the economic forecasting firm DRI/McGraw-Hill:

Balancing the budget can create 2.5 million new jobs by 2002.

Lower interest rates from balancing the budget could increase nonresidential investment 4 percent to 5 percent by 2002.

Balancing the budget could produce an additional $1,000 in per-household GDP in 2002, in today's dollars.

We can balance the budget by simply holding the growth of spending to 3 percent a year until 2002.

Spending would still grow from $1.53 trillion this year to $1.88 trillion in 2002—a $350 billion increase in 2002 alone.

CBO and the Treasury Department say a balanced budget saves $64 to $74 billion in 2002, in interest costs. DRI says lower interest rates and economic growth would save even more.

CONCLUSION

It's been suggested that we don't need a BBA—we already have the power to balance the budget.

We also have the power to protect freedom of speech and religion, protect property rights, and ensure equal protection under the law.

That didn't stop previous Congresses from including those protections in the Constitution.

Today, it is clear from bitter experience that the American people need one additional protection, from a profligate, borrow-and-spent government.

This is not a short-term problem; the Federal Government has run deficits for: 57 of the last 63 years; 34 of the last 35 years; the last 26 years in a row.

Washington, Franklin, Madison, and others learned from experience and determined that certain protections were inadequate unless provided for in the Constitution.

We should do the same.

Jefferson said:

> I am not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. * * * We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors.

If you want to ignore the lessons of the last 35 years of excessive debt, vote no on this amendment.

If you are willing to leave our children a stagnant or declining standard of living, vote no on this amendment.

If you want to continue the failed status quo, vote no on this amendment.

If you agree with Jefferson that, "as new discoveries are made, new truths discovered, * * * institutions must advance also," then vote yes on the balanced budget amendment.

If you trust the American people, and understand their demand that government change its ways, then vote yes on the balanced budget amendment.

If you want today to be the first day of new hope and opportunity for our Nation, our economy, and our children, then vote yes on the balanced budget amendment.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, how much time do we have remaining on both sides?

The PRESIDING OFFICER. The Senator from Utah has 42 minutes 40 seconds.

Mr. HATCH. And the other side?

The PRESIDING OFFICER. The minority leader has 20 minutes 9 seconds.

Mr. HATCH. Mr. President, I am just going to finish the last day with this balanced budget debt tracker that we have been keeping track of throughout this whole debate.

As you can see, we started 30 days ago and we have gone steadily uphill from this baseline of $4.8 trillion.

We are now, in this 30th day, almost $25 billion more in debt. I do not care what anybody says, that is a tremendous problem to this country. In other words, while we have been debating this matter, almost every day we have gone $1 billion deeper in debt.

Now, we can scream and shout all we want. We can talk about how important it is to do the right thing around here. For 36 years we have failed to balance the budget except once—one time in 36 years. The people who are fighting this want to continue business as usual, the old way of doing things, forgetting about our children and the grandchildren and the future of this country while we just continue to go up ad infinitum.

And the President's own budget this year made it very clear that he has no serious intent to do anything about bringing deficit spending down, because for the next 12 years his budget averages, there will be at least $190 billion-plus deficits each of those next 12 years. That is, in the next 12 years, trillions of dollars in debt.

For the first time in history, the House of Representatives has passed a balanced budget amendment. Many people think that was a miracle after watching the House for all these years. I, myself, feel that it was a stunning occasion, as one who has brought the balanced budget amendment to the floor of either House for the first time in history in 1982, then 1986, and then last year again. We won in 1982. We had 69 votes. We lost in 1986 by one vote. We lost last year by four votes. Now we have picked up three people who voted against it last year, Senator BIDEN, Senator BAUCUS, and Senator HARKIN, who have committed to vote for this. We have lost a few who voted for it last year.

It is coming right down to one vote, one way or the other. This is the last chance, it seems to me, for Members to strike out and do something that is right for our country, for our children, for our grandchildren, and for their future.

I hear a lot of talk about automatic stabilizers. Let me say, the only automatic stabilizer I know is an attempt to live within our means. All the automatic stabilizers in the world will not work if we do not get spending under control. We are wrecking the future of our children and our grandchildren. This is the day. This is the day. We will pass this amendment or we will not pass this amendment. It is coming down to one solitary vote.

One thing is crystal clear. That is, we need to move toward a balanced budget. During the debate, both sides have cited lots of numbers and figures. One such figure is the $4.8 trillion represented by the red line on the balanced budget amendment debt tracker.

But how does one communicate the implications of our staggering debt in trillions of dollars? In 1975, before the recent borrowing spree, the Federal debt amounted to $2,500 per individual in this country, man, woman, and child, and the annual interest charges were roughly $250 per taxpayer.

At the present, the Federal debt amounts to $18,500 for every man, woman, and child in America with annual interest rates exceeding $2,575 per taxpayer. That is what we owe.

That is at today's interest rates, which could go much higher. Thanks to Congress, every American is endowed not only with life or liberty but with over $18,500 in individual owed debt. I wonder how long liberty will last if we keep going the way we are going.

The Congressional Budget Office predicts under the current law if we continue business as usual, which is what is being argued for here on the floor today by the other side—sincerely, I might add. I do not find fault with people who differ from us, except I think it is time to wake up. The Congressional Budget Office predicts under current law in 1999 total firm debt will be $6.4 trillion. That is under the President's current budget package. It will go from $4.8 trillion, that bottom red line, to $6.4 trillion. That means $23,700 per person with annual interest cost projected to be over $3,500 per taxpayer. The last figures would mean a tenfold increase in per capita debt and a nearly fourteenfold increase in annual interest charges per taxpayer since 1975.

This breakdown may give a bigger picture of the actual magnitude of the debt. It still does not describe human implications. Its human implications are that our children are shackled with an insurmountable burden as a result of our profligacy. How could you conclude otherwise? According to the National Taxpayers Union, a child born today will have to pay over $100,000 in extra taxes over the course of his or her lifetime in order just to pay the interest on the debt which accumulates in just their first 18 years of life; $100,000 more in taxes for every kid born today, in the first 18 years of life, the way things are going.

Further, the National Taxpayers Union has calculated that for every $200 billion deficit the Government runs up—and we will do it every year now for 12 years, according to the President's budget—the average child born today will have to pay an additional $5,000 in taxes just to cover the interest charges. That is $5,000 for every $200 billion in deficit spending that will occur every year now for the next 12 years.

Think about that. That is $60,000 over the next 12 years that that child will have to pay—extra taxes on top of the $100,000 that they have to pay in the first 18 years of their lives. Over time the disproportionate burdens imposed on today's children and their children can include some combination of the following: Increased taxes, reduced public welfare benefits, reduced public pensions, reduced expenditures on infrastructure and other public investments, and diminished capital formation, job creation, productivity enhancement, real wage growth in the private economy, and higher interest rates, higher inflation, increased indebtedness, and economic dependence on foreign creditors, increased risk of default on the Federal debt.

This sociopathic economic policy has continued under President Clinton's latest budget proposal, as I have said. In complete surrender to deficit spending, the President's budget runs deficits of around $200 billion for each of the next 5 years—actually, 12 years. That is $1 trillion right there in the next 5 years added to the debt and another $25,000 in tax for today's children. Under recent projections of the Congressional Budget Office, we will continue to have deficits of about 3 percent of GDP for the next 10 years, increasing as we go into the future.

In a 1992 report, the GAO found that this scenario, which it called the "muddling through option," would not be sufficient to avoid the severe economic consequences of deficit spending. Among the conclusions that GAO reached are the following:

No. 1:

> If we continue on the current "muddling through option," by the year 2005 the amount of deficit reduction that will be required to limit the deficit to 3 percent of GDP will increase exponentially. By the year 2020, it will require $1/2 trillion of additional deficit reduction every year just to maintain a deficit path of 3 percent of GDP.

No. 2:

> The muddling through path requires one to make harder and harder decisions just to stay in place, partly just to offset the growing interest rates that compound with the deficit. To select this path is to fend off the disaster of inaction, but it would lock the Nation into many years of unpleasant and relatively unproductive deficit debates rather than debates about what Government ought to do and should be doing. It is death by 1,000 cuts.

No. 3:

> While the implications for the economy of the muddling through approach are less devastating than the no action scenario, they still imply an economy that grows only slowly with ominous implications for the ability to sustain both the commitments made to the retiring baby boomers and a satisfactory standard of living for the working-age population in 2020 and beyond.

It sounds like shock therapy. The shocking thing about this forecast is that President Clinton's much ballyhooed deficit reduction only keeps us in this muddling through approach. President Clinton's one-time fix of record-setting tax hikes does not set us off in the direction of responsible Government nor does it move us off the path to long-term fiscal disaster.

It just sets the stage for ever-increasing tax hikes and growing debt. I think that the President's latest proposal is best described by a famous American who said:

> Look at the President. He started in with the idea of a balanced budget, and said that was what he would hold out for. But look at the thing now. Poor President, he tried but couldn't do it by persuasion and he can't do it by law. So he may just have to give up and say, "Boys, I've tried, but I guess it's back to the old ways of an unbalanced budget."

The amazing thing about that statement is that it was made over 60 years ago by Will Rogers. You see, Mr. President, budget deficits are not new. They are not cyclical. They are not short-term. Budget deficits are an institutional, structural problem which must be dealt with in a long-term, insoluble rule. We need a constitutional amendment to balance the budget.

The debate is going to end pretty soon. We will all have to vote. I just want to point out to my colleagues how expensive our debate has been. It has been 30 days since we started. We are now in the 30th day, and just in those 30 days we have put us $35 billion further in debt. If you stop and think about it, that is over $95 for every man, woman and child in America, just in these 30 days.

I hope the American people have been enjoying the debate. It has cost each of them $95 in national debt. One of my staffers told me that much would buy him groceries for 2 weeks. I am sure most people watching this debate would prefer to have the $95 to spend on something other than this debate. Certainly they could have found better entertainment for their money than this debate. Any way you cut it, this has been an expensive debate. And if the people watching prefer things change, they should call their Senators today and tell them you want them to vote for change, to vote for a balanced budget amendment. I promise the call will be less than the $95 this debate has cost you.

Now that I have reviewed what will happen without a balanced budget amendment, I would like to tell you some of the gains we will enjoy if we do adopt it.

DRI/McGraw-Hill, one of the country's leading nonpartisan economic analysis firms, has analyzed the economic impact of the balanced budget amendment and has concluded that it will result in a significant improvement for our Nation's citizens. Their study suggests that the balanced budget amendment would greatly brighten the future for Americans of all generations. Among the good news following adoption of a balanced budget amendment are these highlights:

As Government spending is reduced, resources will be freed up for private investment and interest rates will drop. Both of these factors will make it easier for businesses to expand, resulting in the creation of 2.5 million new jobs by the year 2002.

Further, fueled by the drop in interest rates, private investment will rise and real nonresidential investment could grow by 4 to 5 percent by the year 2002.

Last, by the end of the 10-year forecast, real GDP is projected to be up $170 billion from what it would be without the balanced budget amendment. That is about $1,000 per household in the United States.

The balanced budget amendment also serves to protect the civil rights of generations of young Americans. As we spend the money of generations not yet old enough to vote, we commit one of the most infamous offenses against liberty in the history of our country: No taxation without representation. Just as the 15th and 19th amendments stand as great defenders of our democracy and the right to vote, so, too, does the balanced budget amendment. It will prevent Congress from spending our children's future wages and preserve their future for them to shape their own destiny as all Americans have sought to do.

Mr. President, we have a clear choice between two visions of the future of our children and grandchildren. We can choose to continue down the path to oppressive Government and increased taxes, stagnant wages, fiscal chaos and economic servitude, or we can choose decreased Government burdens, a robust economy, and political freedom. So I think it is time for the Senate to pass House Joint Resolution 1 to end business as usual and leave a legacy to future generations we can be proud of, a legacy of responsible Government and greater personal and economic freedom.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I yield myself 1 minute of the minority leader's time.

I have been looking at this chart now for 30 days. It is a beautiful chart, very impressive, all these microfigures, $4.6 trillion and so on.

We should remember one thing, between 1981 and 1992, the national debt tripled in 12 years—tripled. I am not going to go through the rest of it because you have heard it too many times. In 1993, we proposed to cut the deficit by $600 billion. I say "we," the Democrats proposed to cut the deficit by $600 billion in 5 years and we did it without one single Republican vote—50 Democrats plus the Vice President. That is the reason the deficit was down $100 billion less last year than anticipated.

If you want to be honest, add one-third to the top of each one of those green bars. Add one-third to the top of each one of those green bars and that is what it would have been if the Republicans had had their way in August 1993.

I yield 5 minutes to my distinguished colleague from Connecticut on behalf of the minority leader.

Mr. LIEBERMAN. Mr. President, I thank my friend and colleague from Arkansas.

Mr. President, let me say first that this has been a remarkable debate, a serious, thoughtful and important debate as befits the subject. I must say personally that the result of it has been my own increased respect for my colleagues and pride in service in this institution. As this debate ends, I wanted to rise briefly to explain why I will vote against the balanced budget amendment.

Our national books obviously are out of balance, and that should worry every American because it directly affects every American. We spend too much of our wealth each year on interest payments on the debt, money that could otherwise remain with taxpayers for them to save or invest.

Because of the deficit, we jeopardize our capacity to fund vital programs that we need to enhance our security and our futures. We burden our children and their children with a debt that they must pay for obligations that we have incurred but not paid for. This is wrong and must be stopped.

That is why I introduced a deficit reduction program during the last session of Congress which would have cut more than $150 billion from our projected debt. That is why I joined with a bipartisan group of colleagues, including Senators KERREY and BROWN, ROBB, GREGG, and GRAHAM in introducing another deficit reduction package that would have cut $91 billion from the deficit. That is why I will work with that same group this year to enact further spending cuts. And that is why I will support a line-item veto as a reasonable test of whether greater Presidential authority will be used responsibly to prune unnecessary spending from our Nation's budget.

But, Mr. President, I will not support this balanced budget amendment because it freezes forever in our Constitution the response to a fiscal problem—that is budget deficits—that has been a serious problem for only a small part of our history, and it does so in a way that will alter the fundamental allocation of power in the Constitution from elected officials, the President and Congress to unelected judges who will inevitably end up interpreting and enforcing taxing and spending.

Mr. President, we should have more respect for the wisdom of those who founded and formed our democracy, if not for our personal capacity to govern responsibly than as expressed in this amendment.

I will also vote against this amendment because it takes our Government's responsibility to protect the American people and puts it in a straitjacket that will weaken the Government and make it difficult, if not impossible, for us to respond to serious military, economic or law enforcement threats to our Nation.

Reducing the deficit is and must be accepted as a very important national goal and responsibility. But it is not our only national goal and responsibility. Passing this amendment will effectively make everything else the Federal Government may need to do subservient to balancing the budget, and that, in my opinion, is not a prescription for good and strong Government.

In a given year, the elected leaders of the American people may decide that they need to spend more to protect our security or our health or our jobs than the balanced budget amendment will allow. They should be free to do that, subject to the will of the people as expressed at the next election.

Our aim should be to continue to reduce the deficit each year, both in absolute dollars and as a percentage of our gross domestic product, as we have in the last 2 fiscal years and as we in Congress must for the next fiscal year, even though, sadly, the Administration has not sent us a budget that will do so.

Mr. President, the best way to eliminate the deficit is not by forcing into the Constitution our promise to do so. The best way is the hard way—by doing so, by continuing the difficult work of reducing the size of the Federal Government and cutting its costs until we return to a balanced budget.

Today, Mr. President, I renew my personal commitment to that work, as I cast my vote against this amendment.

I thank the Chair and yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I yield 5 minutes to the distinguished Senator from Georgia.

Mr. NUNN. I thank my friend from Utah.

Mr. President, as I noted last Thursday, adoption of the balanced budget amendment to me is very important, but I also noted that without a limitation on judicial review, a limitation which was accepted during our 1994 debate when offered by Senator DANFORTH of Missouri, we could radically alter the balance of powers among the three branches of Government that is fundamental to our democracy.

Former Federal Judge Robert Bork, who served as Solicitor General during the Reagan administration, has stated that a restriction on judicial intervention is "essential if Congress is not to risk ceding some of its most important powers to the Federal judiciary."

As Judge Bork has said, without some restriction on judicial review, the result—

> would likely be hundreds, if not thousands, of lawsuits around the country, many of them on contradictory theories and providing inconsistent results. By the time the Supreme Court straightened out the whole matter, the budget in question would be at least 4 years out of date and lawsuits involving the next 3 fiscal years would be slowly climbing toward the Supreme Court.

Former Attorney General Nicholas Katzenback has noted:

> [T]o open up even the possibility that judges appointed for life might end up making the most fundamental of all political decision[s] is not only an unprecedented shift of constitutional roles and responsibilities but one that should be totally unacceptable in a democratic society.

Mr. President, the Framers of the Constitution placed the constitutional taxing and spending powers in the two elected policy making branches of Government, not in unelected life-tenure members of the Federal bench, because our Founding Fathers knew well the dangers of taxation without representation. The single-most important motivating force in the American Revolution was the opposition of the American people to taxation without representation. They would have found it inconceivable that the power to tax might be vested in the unelected, lifetime-tenure members of the judicial branch.

Mr. President, I have listened with care to the arguments on the issue offered by my good friend and superb floor leader on this amendment, Senator HATCH, the chairman of the Judiciary Committee. I have also conferred at length on this subject with Senator SIMON, an individual I respect immensely, as well as Senator CRAIG, who has done a superb job on this. All are highly respected in their views and knowledge of the Constitution and in this amendment. Senator HATCH, in particular, has provided detailed arguments in the Judiciary Committee report, on the Senate floor, and in personal discussions with me in support of the proposition that an amendment is not needed to address the issue of judicial intervention. His arguments are carefully researched and well written.

If my amendment does not pass, if this constitutional amendment does pass, if this matter is adjudicated before the Supreme Court, I would want the Senator from Utah to make those arguments before the Supreme Court because I do not think anyone would be more effective. I just do not happen to agree with the arguments because I think, in spite of his arguments, there is considerable risk left that the courts would decide otherwise.

The issue before us, however, is not whether we would personally agree with Senator HATCH's views on how a court should resolve a case. I agree with those views. We are not in the process of filing an amicus brief with the Supreme Court. We are writing words that will become the text of the Constitution of the United States. We are engaged—and I think we all ought to think about this very, very heavily—in the same awesome task that was undertaken by the Framers in Philadelphia during the Constitutional Convention, and the States will be making those same decisions if this amendment is passed and sent to them.

The issue before us is whether we have taken reasonable and prudent action in drafting the balanced budget amendment to ensure that it does not result in judicial management of the taxing and spending process. In my judgment, we will not have done so unless we adopt an amendment on judicial review similar to the Danforth amendment we agreed to last year and the Johnston amendment, which was defeated last week by 47 to 51.

My concerns are based upon three considerations.

First, the legislative history of the balanced budget amendment is, at best, ambiguous and, at worst, literally invites judicial intervention into the taxing and spending process.

Second, despite my high regard for the legal views of the Senator from Utah, I am constrained to note that there are other highly respected legal scholars who come to a different conclusion about the prospects of judicial intervention.

We cannot ignore respectable legal arguments based upon the hope that the arguments set forth in the Judiciary Committee report against the Court becoming unduly involved will prevail before the Supreme Court.

Finally, if we believe that judicial intervention is inappropriate, except as specifically provided by specific legislation, the only constitutionally certain means for eliminating the judicial role is to authorize the limitations in the text of the Constitution.

THE LEGISLATIVE HISTORY OF THE BALANCED BUDGET AMENDMENT

Mr. President, the legislative history of the balanced budget amendment contains a substantial amount of material indicating that Congress has contemplated a role for the courts:

The discussion in the report of the Judiciary Committee, on page 9, expressly declines to state that the amendment precludes judicial review. Instead, the report states:

> By remaining silent about judicial review in the amendment itself, its authors have refused to establish congressional sanction for the Federal courts to involve themselves in fundamental macroeconomic and budgetary questions, while not undermining their equally fundamental obligation to "say what the law is."

Mr. President, there is a vast difference between actually prohibiting judicial review as opposed to merely "refus[ing] to establish congressional sanction" for judicial review. An activist court, faced with a lawsuit based upon the balanced budget amendment, will have no trouble pointing out that Congress consciously decided not to prohibit judicial review.

The express actions of the Senate on this issue underscore the potential for such a ruling. Last year, the Senate adopted the Danforth amendment expressly restricting judicial review. This year, the Senate rejected a similar amendment offered by Senator JOHNSTON. While the defeat of an amendment does not necessarily provide conclusive legislative intent of a desire to achieve the opposite result, it constitutes powerful evidence of intent when the issue is separation of powers and the Congress specifically rejects a proposal to frame the constitutional amendment in a manner that would protect the prerogatives of the legislative branch.

The intent to provide for judicial review is highlighted by the remarks of Senator HATCH, floor manager of the amendment, during the debate on the Johnston amendment. During the debate on February 15, he made a number of statements reflecting an understanding that the courts could be involved in budget decisions, including the following:

> [I]f the Senator writes the courts out of * * * this balanced budget amendment, he will be writing people out that we cannot foresee at this time—I do not know—who may have some legitimate, particularized injury to themselves that will enable them to have standing and a right to sue.
>
> We do not want to take away anybody's rights that may develop sometime in the future.
>
> Now we have people in both bodies who want the courts involved * * *. Can we satisfy those who do not want the courts involved in this to the exclusion of those who do?
>
> I might add that some do like the courts involved in some of these areas.
>
> Congress should not, as the distinguished Senator from Louisiana proposes, cut off all judicial review * * *. A litigant in such a narrow circumstance, if he or she can demonstrate standing, ought to be heard.

Similar statements were made by Senators BROWN, THOMPSON, SANTORUM, and CRAIG.

The legislative history in the House is even more of a problem. As Senator LEVIN noted on February 15, Representative SCHAEFER, a lead sponsor of the House amendment, has said:

> A member of Congress or an appropriate administration official probably would have standing to file suit challenging legislation that subverted the amendment.
>
> The courts * * * could invalidate an individual appropriation or tax Act. They could rule as to whether a given Act of Congress or action by the Executive violated the requirements of this amendment.

Representative SCHAEFER's statements echoed those set forth in a document prepared by an ad hoc group known as the Congressional Leaders United for a Balanced Budget Amendment, which was included in the RECORD last year by Senator CRAIG on March 1, 1994. The statements by a lead sponsor in the House represent a wide open invitation for the unelected, life-tenured members of the judicial branch to make fundamental policy decisions on budgetary matters.

Mr. President, I have the highest respect for the judiciary. As a general matter, the judiciary has treated questions involving the power to tax and spend as political questions that should not be addressed by the judicial branch. There will be a fundamental difference, however, when the balanced budget amendment becomes part of the Constitution, the fundamental law of the land.

Our constituents view the balanced budget amendment as a means to address taxation and spending decisions over which they feel less and less control. They would be sorely disappointed, if not outraged, if the result of the amendment is to transfer the power to tax and spend from elected officials to unelected, life-tenure judges.

CONTRASTING VIEWS ON THE ISSUE OF JUDICIAL INTERVENTION

The Judiciary Committee report, which reflects the committee's and Senator HATCH's thoughtful legal views, sets forth three basic arguments in support of the proposition that an amendment to the balanced budget amendment is not necessary to restrict judicial review:

> (1) limitations on Federal courts contained in article III of the Constitution, primarily the doctrine of "standing"; (2) the deference courts owe to Congress under both the "political question" doctrine and section 6 of the amendment itself, which confers enforcement authority on Congress; and (3) the limits on judicial remedies to be imposed on a coordinate branch of government—limitations on remedies that are self-imposed by courts and that, in appropriate circumstances, may be imposed on the courts by Congress.

There are other views, however, from individuals who have served at the highest levels in the Justice Department in both Republican and Democratic administrations, as well as from distinguished legal scholars.

President Reagan's Solicitor General, Prof. Charles Fried of Harvard Law School, has testified that:

> [M]ost constitutional scholars agree that recent Supreme Court jurisprudence would favor allowing a fair range of issues relating to the implementation of the amendment in the form now before you to become the subject of litigation and court determination.

Professor Fried also observed that:

> [T]he amendment would surely precipitate us into subtle and intricate legal questions, and the litigation that would ensue would be gruesome, intrusive, and not at all edifying.

Professor Fried cautioned against reliance on the political question doctrine to limit judicial review under a balanced budget amendment:

> I cannot be confident that the courts would treat as a political question a demand by a taxpayer or by a member of Congress that further spending * * * should be enjoined * * * I cannot be confident that the courts would stay out of this.

The current Assistant Attorney General for Legal Counsel, Walter Dellinger, who previously served as a professor law at Duke, testified last month that:

> [T]his amendment, once part of the Constitution, may be read to authorize, or even mandate, judicial involvement in the budgeting process. When confronted with litigants claiming to have been harmed by the government's failure to comply with the amendment, or by impoundment undertaken by the President to enforce the amendment, courts may well feel compelled to intervene. * * *.
>
> The proposal appears to contemplate a significant expansion of judicial authority: state and federal judges may be required to make fundamental decisions about taxing and spending in order to enforce the amendment. These are decisions that judges lack the institutional capacity to make in any remotely satisfactory manner.

Mr. Dellinger specifically addressed the possibility that the courts could mandate increases in Federal taxes:

> [The amendment] fails to state whether federal courts would or would not be empowered to order tax increases in order to bring about compliance. In Missouri v. Jenkins, [495 U.S. 33 (1990)] the Supreme Court held that a federal district court could mandate that a state increase taxes in order to fund a desegregation program * * *. Once the outcome of the budgeting process has been specified in a constitutional amendment, a plaintiff with standing might successfully argue that he or she had a right to have a court issue whatever relief is necessary to remedy the constitutional violation. The failure of the amendment to preclude such powers might even be thought to suggest, in light of Jenkins that the possibility deliberately was left open.

Mr. President, I recognize, as Senator HATCH has argued, that Jenkins arose under the 14th amendment, which guarantees due process and equal protection, and not under a balanced budget amendment. The problem, however, is that the Supreme Court in Jenkins authorized a lower Federal court to mandate the imposition of taxes by a State, even though the imposition of taxes by the Judiciary was not contemplated by the Framers of the 14th amendment of the congressional legislation implementing the 14th amendment.

Justice Kennedy, concurring in the result in Jenkins, rejected the majority's conclusion that a court could order a State to raise taxes, citing the very concerns that motivate my amendment:

> Our Federal Judiciary, by design, is not representative or responsible to the people in a political sense; it is independent. * * * It is not surprising that imposition of taxes by an authority so insulated from public communication or control can lead to deep feelings of frustration, powerlessness, and anger on the part of taxpaying citizens. 495 U.S. at 69.

Those are the very concerns that should compel us to ensure that the Federal Judiciary does not assert similar powers to mandate the issuance of Federal taxes.

Mr. Dellinger outlined other types of suits that could arise:

> [I]t is possible that courts would hold that either taxpayers or Members of Congress would have standing to adjudicate various aspects of the budget process under a balanced budget amendment. Even if taxpayers and Members of Congress were not granted standing, the amendment could lead to litigation by recipients whose benefits, mandated by law, were curtailed by the President in reliance upon the amendment, in the event that he determines that he is compelled to enforce the amendment by impounding funds. In addition, a criminal defendant, prosecuted or sentenced under an omnibus crime bill that improved tax enforcement or authorized fines or forfeitures, could argue that the bill "increased revenues" within the meaning of Section 4. Surely such a defendant would have standing to challenge the failure of the Congress to enact the entire bill—not just the revenue-raising provisions by the constitutionally required means [under the Balanced Budget Amendment] of a majority rollcall vote of the whole number of each House of Congress. Budget bills that include enforcement provisions could prove similarly vulnerable.

Prof. Cass Sunstein, a well-known constitutional expert and the Karl N. Llewellyn Distinguished Service Professor of Jurisprudence at the University of Chicago Law School, sent me a letter yesterday commenting on this debate. I ask unanimous consent that the letter be included in the RECORD at the conclusion of my remarks.

Professor Sunstein, who makes it clear that he is not an opponent of the balanced budget amendment, argues forcefully for an constitutional provision restricting judicial review. He observes that:

> Senator Hatch's arguments are of course reasonable, and it is to be hoped that courts would follow those arguments; but courts could find a sufficient basis in the text of the proposed amendment and in precedent to engage in judicial management under the amendment.

In his letter, Professor Sunstein notes:

> There is a legitimate risk that the balanced budget amendment would produce a significant increase in judicial power. If it comes to fruition, this risk could compromise the democratic goals of the amendment.

Prof. Kathleen Sullivan of Stanford University Law School also wrote to me yesterday commenting on the need for an amendment restricting judicial review. According to Professor Sullivan:

> There are at least three categories of litigants who might well be able to establish standing the challenge violations of the Amendment. First, taxpayers might claim that their rights to a balanced budget are violated, for example, by projections that outlays will exceed receipts. * * * Second, members of Congress might well have standing to claim that congressional actions have diluted the vote they were entitled to exercise under the amendment. * * * Third, persons aggrieved by actions taken by the government in claimed violation of the amendment might well have standing to challenge the violation.
>
> Each of these claims poses plausible claims of injury in fact, and none of them poses insurmountable problems of redressability. In most of them, in fact, simple injunctions can be imagined that would redress the plaintiffs' claims.

I ask unanimous consent that a copy of Professor Sullivan's February 27, 1995, letter to me be included in the RECORD at the conclusion of my remarks.

STATUTORY LIMITATIONS ON JUDICIAL REVIEW MUST BE GROUND IN THE CONSTITUTION

Mr. President, there have been suggestions that my amendment is not necessary because a constitutional amendment is not needed to enable Congress by statute to restrict judicial intervention in the future. If my judicial review amendment is not passed and the constitutional amendment is ratified, I hope that my colleague and friend Senator HATCH will take the lead in making these arguments. I would hope that his arguments would prevail, but I do not believe that we should take the enormous risk that the courts would not agree.

In the first place, until we determine that there is a majority in favor of such a proposition, there is no guarantee that such limitations would be placed in the implementing legislation. I would like to believe that a conservative institution would not find it difficult to preclude judicial management of the budget process. I had much greater faith in the belief until the Johnston amendment was defeated February 15. Reviewing that debate, and the various statements by leading Members about the potential for judicial review, I do not believe it is responsible for us to postpone that decision.

Second, I am not certain that there will be a majority in favor of any specific proposition. Some favor a complete ban on judicial relief. Some favor declaratory judgments. Others appear to favor standing for Members of Congress. Still others believe that the rights of individuals or groups should be subject to vindication. Again, let's vote now and uphold the longstanding conservative principle that judges shouldn't be involved in taxing and spending decisions.

Third, I am not persuaded by the argument that section 6 of the amendment, which states that "Congress shall enforce and implement this article by appropriate legislation," precludes judicial review. Section 6 is not a grant of exclusive power—it does not state that "only Congress" shall enforce the legislation. In light of the legislative history that I have discussed earlier, there is no basis for concluding that section 6 was intended to exclude the Judiciary from enforcing the act. As Professor Sullivan noted in her February 27 letter to me:

> The proposed Amendment, as did [the 13th, 14th, and 15th] Amendments gives Congress authority to legislate, but it does not oust the courts, who need not defer to Congress in these matters.

Fourth, although I agree that the courts have sustained certain statutory limitations on judicial review of statutory and common law rights, there is no case in which the Supreme Court has held that Congress could cut off all avenues of judicial review of a constitutional issue. As noted in the highly respected analysis of the Constitution prepared by the Congressional Research Service:

> [T]hat Congress may through the exercise of its powers vitiate and overturn constitutional decisions and restrain the exercise of constitutional rights is an assertion often made but not sustained by any decision of the Court.

In *Webster* v. *Doe*, 486 U.S. 592 (1988), for example, the Supreme Court emphasized that a "'serious constitutional question' * * * would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim."

Charles Fried, Solicitor General in President Reagan's administration, has stated:

> [S]ection 6, as it is written, does not allow Congress to so limit jurisdiction, and it seems to me that if Congress tried to limit jurisdiction in this way without an express authorization, which there is not in this bill, that limitation itself might well be unconstitutional

Professor Sunstein, in his February 27 letter to me, expressed similar concerns:

> If your proposed change, or some version of it, is not added, it is by no means clear that Congress can forbid judicial involvement by statute. Courts are quite reluctant to allow Congress to preclude judicial review of constitutional claims. . . . Courts would be especially reluctant, perhaps, to preclude judicial review of an amendment specifically designed to limit Congress' power to provide for budget deficits. One could easily imagine a judicial decision invalidating implementing legislation that denies a judicial role, on the theory that the balanced budget guarantee—without your amendment—is best understood to contemplate a firm judicial check on congressional activity.

THE RESPONSIBILITY OF CONGRESS

Mr. President, the report of the Judiciary Committee indicates there is little likelihood of judicial involvement in the taxing and spending process under the budget amendment, and they cite the history of this country in that regard. The difference is that now, if this amendment is in the Constitution, it will be a different Constitution than has framed the history of our country.

Mr. President, others including leading constitutional authorities from both the Republican and Democratic Parties believe there is a reasonable likelihood the amendment could transform the courts into the forum for managing the budgetary process.

To me, the risk is too high. In the face of conflicting legal views by respected authorities, it is our responsibility to act. If we believe, as I do, that we should not risk subjecting the budget process to judicial management, then we should adopt my amendment.

I have modified that amendment now. The amendment very simply—and I am not quoting it, but the very simple essence of the amendment is that the judicial power of the United States shall not extend to any case or controversy arising under this article except as may be specifically authorized by legislation adopted pursuant to this section.

In other words, Mr. President, the Congress will decide the jurisdiction of the courts. The courts will not decide it on the basis of constitutional interpretation. We can change the implementing statute if it does not work. We can mold it later. We can mold the statute after we have decided what the enforcement mechanism here is because those two things have to be considered together.

So it is my hope that this amendment, which is now modified, will be accepted by the managers of this bill and it will be accepted by my colleagues. If it is, then I plan to support this overall constitutional amendment because I think it is enormously important that we have a mandate to the Congress of the United States to get this budget and our fiscal house in order. Nothing else has worked. This is the last resort.

I wish we had not reached this point. I wish we had been able to use our normal political process, because I do not like amending the Constitution of the United States. However, I do believe it is the last resort.

Mr. President, I am concerned about other areas that my colleagues are concerned about. I am concerned about Social Security. I am concerned about economic emergency. But my bottom line has been and is today that it is my fervent hope this judicial article, this judicial amendment will be put into this constitutional amendment so there is no doubt about the intent of Congress and the authority of Congress in managing the taxing and spending of this great country.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

UNIVERSITY OF CHICAGO LAW SCHOOL,
Chicago, IL, February 27, 1995.

Hon. SAM NUNN,
U.S. Congress, Washington, DC.

DEAR SENATOR NUNN: As a teacher of constitutional law, I am writing to endorse your remarks about the balanced budget amendment on the Senate floor on Thursday. There is a legitimate risk that the balanced budget amendment would produce a significant increase in judicial power. If it comes to fruition, this risk would compromise the democratic goals of the amendment.

It is certainly not clear that current political question and standing doctrines would bar judicial involvement under the proposed amendment. Issues involving spending and taxation do not necessarily involve political questions, and the balanced budget amendment, unaccompanied by a change of the sort you propose, would increase the risk that political questions would become legal questions. The political question doctrine is extremely narrow in the aftermath of Baker v. Carr, 369 US 186 (1962), and it is certainly possible that a court would find, in the amendment, "judicial administrable standards" for the grant or injunctive relief. Under existing law, no one can rule out the possibility that the political question doctrine would be held inapplicable to the balanced budget amendment. Cf. Michael v. Anderson, 14 F3d 623 (DC Cir 1994).

Taxpayers and citizens as such would probably lack standing to enforce the amendment, but as you stated, it is certainly possible to think of potential litigants with direct financial interests at stake who would claim that, if the amendment were not followed, and if the budget was not balanced, they would suffer from an "injury in fact" sufficient to trigger judicial review under Lujan v. Defenders of Wildlife, 112 S. Ct. 2130 (1992). At the very least, it can be said that costly and time-consuming debates about justiciability would ensue, and we cannot reasonably rule out, in advance, the prospect of undemocratic and unprecedented judicial involvement in the budgetary process.

In this light your proposal—limiting the judicial role—seems to me to make a great deal of sense. You are certainly correct to say that the legislative history of the balanced budget would not rule out judicial management. The legislative history of a constitutional amendment is relevant, but it does not resolve the question of constitutional meaning. Senator Hatch's arguments about likely judicial deference are of course reasonable, and it is to be hoped that courts would follow those arguments; but courts could find a sufficient basis in the text of the proposed amendment and in precedent to engage in judicial management under the amendment.

If your proposed change, or some version of it, is not added, it is by no means clear that Congress can forbid judicial involvement by statute. Courts are quite reluctant to allow Congress to preclude judicial review of constitutional claims. See Webster v. Doe, 486 US 592 (1988), allowing review of employment decisions by the Central Intelligence Agency in the face of a claim that a discharge of a homosexual employee was unconstitutional. *Webster* shows that even in highly sensitive areas, judges will be likely to allow review, in part because serious constitutional issues would be raised by an effort to insulate constitutional claims from judicial scrutiny.

Courts would be especially reluctant, perhaps, to allow Congress to preclude judicial review of an amendment specifically designed to limit Congress' power to provide for budget deficits. One could easily imagine a judicial decision invalidating implementing legislation that denies a judicial role on the theory that the balanced budget guarantee—without your amendment—is best understood to contemplate a firm judicial check on congressional activity. I add that you are entirely correct in your reading of Missouri v. Jenkins, 495 US 33 (1990), which is not limited to fourteenth amendment cases, and which refers to "a long and venerable line of cases in which this Court held that federal courts could issue the write of mandamus to compel local governmental bodies to levy taxes adequate to satisfy their debt obligations." Id. at 55. (While it is unlikely that courts would specifically order Congress to raise taxes under the proposed amendment, I share your concern about the issue, and think it would be best to avoid any reasonable risk that they might do so.)

I should add that I have not opposed the balanced budget amendment as such, and that I am writing as a teacher of constitutional law who is concerned that any amendment to this effect ought not to increase the power of the federal courts over an area in which they do not belong. Your proposed change—expecially the suggestion to the effect that "the judicial power of the United States shall not extend" to enforcement of the amendment except as authorized by statute—seems to me an admirable effort to deal with this problem. If some such revision is not included, there is a legitimate risk that the proposed amendment would transfer considerable power over budgetary matters from Congress to the Supreme Court or to lower federal courts. I very much hope that steps will be taken to ensure that this does not happen.

Sincerely,

CASS R. SUNSTEIN.

STANFORD LAW SCHOOL,
February 24, 1995.

Re proposed balanced budget amendment.

Senator SAM NUNN,
U.S. Senate, Washington, DC.

DEAR SENATOR NUNN: I have had the opportunity to review your comments yesterday in the floor debate regarding the role of the courts in cases that might arise under the proposed Balanced Budget Amendment to the Constitution. My views on the subject are very similar to your own, and I have taken the liberty of sending you the following thoughts, which were prompted by the testimony of former Attorney General William P. Barr before the Senate Committee on the Judiciary on January 5, 1995.

In that testimony, Mr. Barr argued that "the courts' role in enforcing the Balanced Budget Amendment will be quite limited." While I have great respect for Mr. Barr, and while I found his testimony to be considered and thoughtful, I must respectfully state that I disagree with him. I continue to believe that, as I testified before the Senate Appropriations Committee on February 16, 1994, the Balanced Budget Amendment in its current draft form is likely to produce numerous lawsuits in the federal and state courts, and that neither Article III justiciability doctrines nor practices of judicial deference will operate as automatic dams against that flood tide of litigation.

Let me begin with the doctrines of justiciability under Article III of the Constitution. Mr. Barr argues that "few plaintiffs would be able to establish the requisite standing to invoke federal court review." This is by no means clear. There are at least three categories of litigants who might well be able to establish standing to challenge violations of the Amendment.

First, taxpayers might claim that their rights to a balanced budget are violated, for example, by projections that outlays will exceed receipts. True, taxpayers are generally barred from suing the government for the redress of generalized grievances. But the Supreme Court a quarter of a century ago held that there is an exception to the general bar on taxpayer standing when the taxpayer claims that a government action "exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power." *Flast v. Cohen*, 392 U.S. 83 (1968). Mr. Barr suggests that this exception may be limited to Establishment Clause challenges, but there is nothing in the principle stated in Flast that so confines it. If anything, the proposed Balanced Budget Amendment more clearly limits congressional taxing and spending power than does the Establishment Clause. The Amendment is not confined, as Mr. Barr suggests, merely to the power of Congress to borrow. Thus taxpayers would have an entirely plausible argument for standing under existing law.

Second, members of Congress might well have standing to claim that congressional actions have diluted the vote they were entitled to exercise under the Amendment. For example, suppose that the Congress declined to hold a three-fifths vote required to approve deficit spending under section 1, or a rollcall vote required to increase revenue under section 4. This might occur, for example, because of a dispute over whether outlays really exceeded receipts, or over whether revenue was really being increased, because the meaning of those terms might be controversial as a matter of fact. Declining to implement the supermajority voting requirements in such a context, however, might be plausibly claimed to have diluted a Member's vote. This is arguably analogous to other circumstances of vote dilution in which the lower courts have held that Members of Congress have standing. See, e.g., *Vander Jact v. O'Neill*, 699 F.2d 1166, 1168–71 (D.C. Cir. 1982), cert. denied, 464 U.S. 823 (1983).

Third, persons aggrieved by actions taken by the government in claimed violation of the Amendment might well have standing to challenge the violation. For example, consider a criminal defendant charged under a law claimed to cost more to enforce than the government can finance through expected receipts. Or suppose that the President, believing himself bound by his Oath to support the Constitution, freezes federal wages and salaries to stop the budget from going out of balance. In that circumstance, a federal employee might well challenge the President's action, which plainly causes her pocketbook injury, as unauthorized by the Amendment, which is silent on the question of executive enforcement.

Each of these circumstances poses plausible claims of injury in fact, and none of them poses insurmountable problems of redressability. In most of them, in fact, simple injunctions can be imagined that would redress the plaintiffs' claims. Thus, contrary to Mr. Barr's prediction, the doctrine of standing is by no means certain to preclude federal judicial efforts at enforcement of the Amendment. And further, as Mr. Barr concedes, federal standing doctrine will do nothing to constrain litigation of the proposed Amendment in state courts, which are not bound by Article III requirements at all.

Nor is the political question doctrine likely to eliminate all such challenges from judicial review. True, the Supreme Court has held that a question is nonjusticiable when there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it." *Baker v. Carr*, 369 U.S. 186 (1962). But the proposed Amendment implicates neither of these kinds of limitation. It does not reserve enforcement exclusively to the discretion of the Congress, as, for example, the Impeachment or Speech and Debate Clauses may be read to do. And it presents no matters that lie beyond judicial competence. Rather, here, as with apportionment, the question whether deficit spending or revenue increases "exceed whatever authority has been committed, [would] itself [be] a delicate exercise in constitutional interpretation," and thus would well within the ordinary interpretive responsibility of the courts. See *Baker v. Carr*, at 211.

Let me turn now from doctrines of justifiability to practices of judicial deference. Mr. Barr argues that, as a prudential matter, "a reviewing court is likely to accord the utmost deference to the choices made by Congress in carrying out its responsibilities under the Amendment," especially in light of the enforcement clause in section 6. This is by no means clear. The Reconstruction Congress expected that enforcement of the Thirteenth, Fourteenth and Fifteenth Amendments would be undertaken primarily by the Congress, and reflected that expectation in the Enforcement Clauses specifically included in those Amendments. But we have seen time and time again in our history that judicial review has played a pivotal role in the enforcement of those Amendments nonetheless. The proposed Amendment, as did those Amendments, gives Congress authority to legislate, but it does not oust the courts, who need not defer to Congress in these matters. Courts rightly have not hesitated to intervene in civil rights cases, even though those cases involved grave structural questions as well as questions of individual rights.

Finally, Mr. Barr argues that courts will, again as a matter of prudence and practice rather than doctrine, "hesitate to impose remedies that could embroil [them] in the supervision of the budget process." He is correct to observe that a direct judicial order of a tax levy such as that in *Missouri v. Jenkins*, 495 U.S. 33 (1990), is highly exceptional. But even if that is so, courts could issue a host of other kinds of injunctions to enforce against conceivable violations of the proposed Balanced Budget Amendment. For example, a court could restrain expenditures or order them stayed pending correction of procedural defaults, or a court could enjoin Congress simply to put the budget into balance while leaving to Congress the policy choices over the means by which to reach that end. Thus, there is little reason to expect that prudential considerations will keep enforcement lawsuits out of court, or keep judicial remedies from intruding into political choices.

In sum, the draft Balanced Budget Amendment in its present from has considerable potential to generate justiciable lawsuits, which in turn would have considerable potential to generate judicial remedies that would constrain political choices. Thank you for considering these remarks in the course of your current deliberations.

Sincerely,

KATHLEEN M. SULLIVAN.

Mr. HATCH. Mr. President, I appreciate the very kind remarks of the Senator from Georgia. With the Senator's permission, I would like to place in the RECORD, a copy of the written comments on the issue of judicial review and the balanced budget amendment that I prepared for his review. Mr. President, I so ask unanimous consent.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BALANCED BUDGET AMENDMENT AND JUDICIAL REVIEW

I. PRELIMINARY COMMENTS

The balanced budget amendment ("BBA" or the "amendment"), H.J. Res. 1, creates a constitutional procedure, a mechanism if you like, that requires Congress to adopt, or at a minimum, at least to move toward a balanced budget.

For instance, section 1 of H.J. Res. 1 requires that total outlays of the United States not exceed receipts unless three-fifths of the whole number of both Houses waives the requirement. Section 2 prohibits the raising of the debt ceiling unless three-fifths of the whole number of both Houses of Congress waives the requirement; and section 4 requires that there be no revenue increases unless approved by a majority of the whole number of each House of Congress (51 Senate; 218 House). Consequently, the BBA does not create a "right" to a balanced budget, much as the First Amendment recognizes a right to free speech. What it does do is establish a procedure which restricts Congress' budgetary authority by creating a strong presumption in favor of a balanced budget which can be overcome by a three-fifths vote of each Chamber of Commerce.

This is amply shown by section 6 of the BBA, which provides that "Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts." Thus, there is no absolute requirement that Congress balance the budget to the penny. Congress may rely on estimates and is mandated to implement and enforce the amendment through some statutory scheme such as establishing, for example, a contingency or "rainy day" fund, providing for automatic sequestration, or delegating to the President limited rescissionary authority. This is a strong indication that the Congress, and not the courts or the President, is the branch that is authorized to enforce the amendment.

The import of all of this is that the judiciary will be loathe to interfere in economic and budgetary matters, in what is a quintessential "political question." These are matters committed to Congress by Article I of the Constitution and the BBA does not disturb that allocation of powers. Courts have no ascertainable standards to determine exactly what the budget numbers ought to be, whether the budgetary figures are "good faith" estimates, or which spending program ought to be cut. In other words, there are no "justiciable" standards for the courts to provide broad based relief that interferes with the budgetary process. Whether one talks in terms of standing, justiciability, separation of powers, or the political question doctrine, courts will not be authorized to interfere with Congress' Article I powers—which, after all, are exclusively delegated by the Constitution to the legislative branch.

Furthermore, section 6 of the amendment, as well as Article III of the Constitution, provide authority to Congress to limit the jurisdiction of the courts. In this way, the equitable powers of the courts may be restricted in such a way that shields Congress' Article I spending, taxing, and borrowing powers.

Below are detailed responses to your concerns over particular judicial review and presidential impoundment issues arising out of the enforcement of H.J. Res. 1.

II. STANDING

You have stated that it is not difficult to contemplate scenarios where standing to sue under the BBA could occur. For instance, in your February 23, 1995, floor statement contained in the Congressional Record, you cite Assistant Attorney General Dellinger's example that a criminal defendant would have standing to challenge a forfeiture if a new forfeiture provision, which would raise revenue, was passed by a voice vote instead of a rollcall vote as required by the BBA.[1] I respectfully disagree.

I believe that the Dellinger example is faulty: criminal sanctions and fines are simply not commonly understood to be revenue or tax measures and as such would not be subject to the BBA. The basic point I want to make, however, is not that a court cannot ever find standing, but that standing would be highly improbable and that the courts, in an improbable cause where standing is found, could not provide relief that interferes with the budgetary process due to other jurisprudential doctrines such as justiciability and the political question doctrine.

As you know, as a preliminary obstacle, a litigant must demonstrate a standing to sue.[2] The sometimes arcane nature of the standing doctrine has enabled courts to avoid difficult and contentious decisions on the merits.[3] At a minimum, however, the Court traditionally has taken the position that Article III standing requires allegation of a "personal stake" in the outcome of a controversy sufficient to guarantee concrete (as opposed to speculative) adverseness.[4] Although application of the standing doctrine still divides the Court, all Justices would agree that to establish "personal stake" in the outcome of a case challenging the BBA, a litigant must show some actual or threatened concrete injury and that the injury is likely to be redressed if a court grants relief.[5] In suits involving the BBA, litigants seeking to meet the above general standing requirements fall into three categories: citizens, taxpayers, and Members of Congress.

A. Citizen suits

The most important recent Supreme Court pronouncement on the standing doctrine is contained in *Lujan* v. *Defenders of Wildlife*.[6] There, in an opinion by Justice Scalia, the Court in reviewing its own precedents made clear that standing has three elements: (1) the litigant must have suffered an "injury in fact" which is concrete, particularized, actual and imminent and not hypothetical,[7] (2) there must be a casual connection between the injury and conduct complained of, e.g., the injury must result from actions of the complained party and not a third party,[8] and (3) it must be likely, as opposed to speculative, and the injury must be "redressable" by a favorable court decision.[9]

Turning to the three-part test, it is doubtful that a citizen or citizen associations could demonstrate the "injury in fact" prong of the standing test because it is well settled that a mere interest in the constitutionality of a law or executive action is noncognizable.[10] Moreover, it is doubtful that a litigant could demonstrate that the challenged law was the one that "unbalanced" the budget:[11] in a sense, every spending program could be said to do so. And it is beyond cavil that a congressional reduction of a spending program, or eliminating it altogether, is not considered a constitutional harm and thus not actionable.[12]

As to the third prong, "redressability", this prong subsumes justiciability and the political question doctrine and will be discussed in greater detail below. Suffice it to say that except in highly unlikely circumstances, it is nearly certain that a judicial remedy which interferes with congressional control over the budgetary process or Congress' Article I powers would violate the separation of powers doctrine.

B. Taxpayer standing

In *Flast* v. *Cohen*,[13] the Court announced a liberalized standing test for taxpayers. Under this "double nexus" test, taxpayer standing requires that the taxpayer-plaintiff: (1) challenge the unconstitutionality of the law under the Taxing and Spending Clause of the Constitution, and (2) demonstrate that the challenged enactment exceeds specific limitations contained in the Constitution. Professor Tribe has testified that some taxpayers' suits to enforce the BBA would satisfy this test because the proposed amendment would be a specific constitutional limitation on congressional taxing and spending power. There are three counters to this argument: (1) recent Court decisions appear to have severely limited the *Flast* doctrine;[14] indeed, the Court seems to limit *Flast* to Establishment Clause situations,[15] (2) implementing legislation would be enacted not for some illicit purpose that violates some specific provision of the Constitution, but to effectuate a balanced budget, and (3) the *Flast* test is not a substitute for the *Lujan* test, meeting the *Flast* test only establishes the "harmed in fact" first prong of *Lujan*[16] and, as explained below, it is doubtful that *Lujan*'s "redressability" prong can be met by taxpayer-plaintiffs. This conclusion is supported by the *Lujan* decision itself, whereby taxpayer standing cases are discussed in context of concrete harm.

C. Congressional standing

The final possible route to standing in cases challenging the BBA, congressional standing, also seems to have little chance of success. It must be pointed out that the Supreme Court has never addressed the question of congressional standing and that the Circuit courts are divided on this issue.[17] However, the D.C. Circuit recognizes congressional standing in the following limited circumstances:[18] (1) the traditional standing tests of the Supreme Court are met, (2) there must be a deprivation within the "zone of interest" protected by the Constitution or a statute (generally, the right to vote on a given issue or the protection of the efficacy of a vote),[19] and (3) substantial relief cannot be obtained from fellow legislators through the enactment, repeal or amendment of a statute ("equitable discretion" doctrine). Although there is an argument to be made that in certain limited and far-fetched circumstances (e.g., where Congress ignores the three-fifths vote requirement to raise the debt limitation) the voting rights of legislators are nullified and therefore there would be standing, the court could equally invoke the equitable discretion doctrine to dismiss the action because the Member of Congress could obtain relief by appealing to his other colleagues for a vote for reconsideration of the issue.

In other circumstances challenging the enforcement of spending measures, Members of Congress would be subject to the same exacting standards as citizens.

III. JUSTICIABILITY AND THE POLITICAL QUESTION DOCTRINE

Faced with a case challenging appropriations that allegedly cause outlays to exceed total receipts, federal courts historically would inquire first whether the litigant had standing and would then evaluate the content of the claim pursuant to the political question doctrine.[20] Although it is uncertain whether the doctrine rests upon prudence,[21] or inheres in the Constitution,[22] the doctrine is generally understood as "essentially a function of the separation of powers."[23]

The Court in *Baker* v. *Carr*,[24] set out a lengthy test to determine when courts should dismiss an action on political question grounds. Since *Baker*, the Court has narrowed the political question doctrine to two elements: (1) whether there is a demonstrable commitment of the issue to a coordinate political department, and (2) whether there is a lack of judicially discoverable and manageable standards for resolving the issue ("justiciability").[25] Essentially identical to the "redressability" issue discussed above, analysis of the first prong reveals significant separation of powers concerns. Any significant relief (outside of a congressional standing suit for declaratory judgment) would require placing the budget process under judicial receivership (e.g., injunctive relief setting a pro-rata budget cut or the nullification of any measure after outlays exceed receipts). This relief interferes with congressional Article I powers. In other words, federal courts may not exercise Congress' spending and taxing authority, such authority being exclusively delegated to Congress, a coordinate branch of the federal government, by the Constitution. Concerning the justiciability prong, budgetary, spending, and tax policies are quintessential areas of governance where there is a lack of judicially discoverable and manageable standards.[26] Certainly, there are no available standards for courts to determine which spending programs to cut or to declare unlawful.

There is another related justifiability issue: whether the granting of equitable or declaratory relief so interferes with the congressional budget process that courts should abstain from granting such relief as a matter of prudence.[27] This is another theory by which courts can be constrained from interfering with congressional spending and taxing powers under the BBA.

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[1] Footnotes at end of article.

Finally, there is an issue whether courts could simply grant declaratory relief[27] adjudicating an executive action or legislative act unconstitutional and leaving remedial action to the political branches. Outside of the bizarre,[29] courts generally will not grant declaratory relief to avoid the political question doctrine or where injunctive relief is not available.[30]

IV. THE CONCERN OVER JUDICIAL TAXATION

I know that you are concerned that the Supreme Court's 5-4 holding in *Missouri* v. *Jenkins*[31] is an invitation for courts to raise taxes in the event that there is an imbalanced budget. In this case, the Supreme Court in essence upheld a lower court remedy ordering state or county political subdivisions to raise taxes to support a court ordered school desegregation order. Intentional segregation, in violation of the Fourteenth Amendment's Equal Protection Clause, had been found by the lower court in a prior case against the school district.

The fear is that the BBA would allow a federal court to order Congress to raise taxes to reduce a budget deficit. This is virtually impossible. First, *Jenkins* is a Fourteenth Amendment case. Under Fourteenth Amendment jurisprudence, federal courts may[32] perhaps issue this type of remedial relief against the States, but not against Congress—a coequal branch of government. The Fourteenth Amendment, of course, does not apply to the federal government. Second, separation of powers concerns, as well as the political question doctrine, argue against courts arrogating to themselves congressional power by imposing taxes. This was implicitly recognized by the *Jenkins* Court which stated that the situation before the Court was not one in which it was asked to order a co-equal branch of government—Congress—to raise taxes. Indeed, the Court in *Jenkins* noted that the case before them was a Fourteenth Amendment case involving state action and not "an instance of one branch of the Federal Government invading the province of another."[33] Third, Congress cannot be a party-defendant. To order taxes to be raised, Congress must be a named defendant. Presumably, suits to enforce the BBA would arise when an official or agency of the executive branch seeks to enforce or administer a statute whose funding is in question in light of the BBA.[34] Consequently, there is no real "analogy" that a court can make between the *Jenkins* case— which involved state action under the Fourteenth Amendment—and a situation involving the enforcing of a federal statute implementing the BBA.

V. STATUTORY PROTECTION OF CONGRESSIONAL POWER

I think it just wrong that Congress cannot and will not protect its institutional prerogatives. The Framers of the Constitution designed a constitutional system whereby each branch of government would have the power to check the zeal of the other branches. In James Madison's words in The Federalist No. 51:

"[T]he great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition."

Under the enforcement mechanism of the BBA,[35] the Congress could limit the type of equitable relief granted by federal courts and thereby limit court intrusiveness into the budget process and Congress' exercise of its Article I powers. It is well established that this authority may also arise out of Article III's delegation to Congress to define and limit the jurisdiction of lower federal courts.[36] Congress may not, however, use its authority to limit or define jurisdiction in a manner that violates specific provisions of the Constitution or denies any relief whatso-ever.[37] Congress may also limit judicial review to particular special tribunals with limited authority to grant relief.[38]

Use of Congress' authority under section 6 of the Amendment or Article III of the Constitution to limit the remedies a court may provide, does not mean in any way, as you suggested in your floor speech, a "cut off all avenues of judicial review of a constitutional issue." This I have readily conceded above is beyond congressional power. What it does mean is that Congress may protect its Article I prerogatives by limiting—not eliminating—the scope of remedies that courts may render.

VI. PRESIDENTIAL IMPOUNDMENT

A good deal of the "standing" examples you provided in your floor statement are really concerns over presidential impoundment.[39] I want to initially say that there is nothing in H.J. Res. 1 that authorizes or otherwise allows for impoundment. Nor is it the intent of the amendment to grant the President any impoundment authority under H.J. Res. 1. Indeed, H.J. Res. 1 imposes one new duty, and corresponding authority, on the President: to transmit to Congress a proposed budget for each fiscal year in which total outlays do not exceed total receipts.[40]

In fact, there is a "ripeness" problem to any attempted impoundment: up to the end of the fiscal year the President has no plausible basis to impound funds because Congress under the amendment has the power to ameliorate any budget shortfalls or ratify or specify the amount of deficit spending that may occur in that fiscal year.

Moreover, under section 6 of the amendment, Congress must—and I emphasize "must"—mandate exactly what type of enforcement mechanism it wants, whether it be sequestration, rescission, or the establishment of a contingency fund. The President, as Chief Executive, is duty bound to enforce a particular requisite congressional scheme to the exclusion of impoundment. That the President must enforce a mandatory congressional budgetary measure has been the established law since the nineteenth century case of *Kendall* v. *United States ex rel. Stokes*, 37 U.S. (1 Pet.) 54 (1838).[41] The *Kendall* case was given new vitality in the 1970s, when lower federal courts, as a matter of statutory construction, rejected attempts by President Nixon to impound funds where Congress did not give the President discretion to withhold funding.[42]

The position that section 6 implementing legislation would preclude presidential impoundment was seconded by Attorney General Barr at the recent Judiciary Committee hearing on the balanced budget amendment. Testifying that the impoundment issue was in reality incomprehensible, General Barr concluded that "the whip hand is in Congress' hand, so to speak; under Section 6 [the] Congress can provide the enforcement mechanism that the courts will defer to and that the President will be bound by."

What we have here then, is an argument based on a "mere possibility" or fear of impoundment. I strongly believe that the President is not given any new authority under the BBA to impound funds, and that the mandatory enforcement implementing legislation would preclude any real impoundment possibilities. This was all but conceded by Assistant Attorney General Dellinger in his testimony on the BBA before my Committee. I also want to emphasize that because section 6 of the amendment allows Congress to rely on estimates, the fact that there might be some budgetary shortfall in a given fiscal year's budget does not necessarily render that budget out of compliance with the BBA.

VII. OTHER CONCERNS

Finally, I want to address two additional concerns that you have expressed in your floor statement. First, I have to disagree with your statement that state balanced budget litigation is widespread. In fact, there are very few reported cases. We also have to take note that state balanced budget amendments are very different than H.J. Res. 1, in that there is usually a distinction made between state capital and operating budgets which sometimes results in litigation over the meaning of "state debt" and "capital expenditure." Also, many state courts do not have standing or justiciability requirements as barriers to bringing a lawsuit.[43]

Finally, concerning the statements of noted experts, such as Judge Bork, that there could indeed be judicial enforcement of the BBA. My response is that Judge Bork—who is a very close friend—and whose contentions are contained in a letter of January, 1994, has greatly exaggerated fears of judicial activism in a BBA context. In fact, he admits that there would probably be no standing to bring a challenge to actions taken under the amendment. The substance of his argument is "what if" courts took jurisdiction; what would stop them from interfering in the budgetary process. He did not consider at all in his letter, however, the well-accepted precept that implementing legislation could curtail the excesses of judicial activism.

FOOTNOTES

[1] The other "standing" examples you provide for in your February 23 floor statement implicate presidential impoundment and will be addressed below.

[2] An issue prior to standing is identification of the proper party defendant. The appropriate defendant in a case involving the BBA is the person acting unconstitutionally under the law, almost always an executive branch official, since that branch is charged with the administration of the law. See *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163-66 (1803); *Reigle* v. *Federal Open Mkt. Comm.*, 656 F.2d 873, 879 n.6 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981). Another issue is "ripeness." Because under the BBA Congress may correct any budgetary shortfalls right up to the end of the fiscal year, potential plaintiffs are prevented from litigating until that time—another daunting hurdle litigants face in challenging congressional measures implementing the BBA.

[3] See, e.g., *Valley Forge Christian College* v. *Americans United, Inc.*, 454 U.S. 465, 475 (1982) ("We need not mince words when we say that the concept of 'Art. III standing' has not been defined with complete consistency . . . by this Court. . . .").

[4] E.g., *Baker* v. *Carr*, 369 U.S. 186, 204 (1962).

[5] It also is now clear that standing is an Article III requirement that can not be waived by Congress or the courts. See *Valley Forge*, 454 U.S. at 488 n.24; *Simon* v. *Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41 n.22 (1976).

[6] 112 S.Ct. 2130 (1992). *Lujan* involved legal challenges to regulations promulgated under the Endangered Species Act of 1973. Conservation and environmental groups argued that standing inhered in anyone alleging an interest in studying or seeing endangered animals anywhere on earth and anyone with a professional interest in such animals. Suffice it to say that the Court held that there was no showing of "injury in fact".

[7] Citing, *Warth* v. *Seldin*, 422 U.S. 490, 508 (1975) and *Los Angeles* v. *Lyons*, 461 U.S. 95, 102 (1983).

[8] Quoting, *Simon*, 426 U.S. 26, 41–42.

[9] Quoting, *Simon*, 426 U.S. at 38, 43.

[10] E.g., *Frothingham* v. *Mellon*, 262 U.S. 447 (1923) (allegations that amount to a "generalized grievance" are not judicially cognizable.

[11] This too would therefore be a nonjusticiable "generalized grievance". See Id.

[12] Government is not under a duty to provide benefits, and, thus, Congress may cut or eliminate any program consistent with the protection of equal protection or individual rights. *Overton* v. *John Knox Retirement Tower, Inc.*, 720 F.Supp. 934, 937 (M.D. Ala. 1989).

[13] 392 U.S. 83 (1968).

[14] The test has suffered through application. The Court subsequently required detailed particularized pleading challenging specific spending measures promulgated under Article I, Section 8's Spending and Taxing Clause. These measures must violate specific provisions of the Constitution, See, e.g., *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U.S. 208 (1974); *United States* v. *Richardson*, 418 U.S. 166 (1974). Litigants have not been successful in recent times applying the *Flast* test.

[15] See *Valley Forge*, 454 U.S. 464 (1982). Indeed, in *Flast*, Justices Stewart and Fortas perceived the nexus test as simply a means of limiting federal taxpayer's suits to Establishment Clause challenges. *Flast*, 392 U.S. at 114–15.

[16] In *Valley Forge*, 454 U.S. at 471–82, the Court implicitly views the *Flast* test as a measure of a taxpayer's constitutionally required actual injury.

[17] Compare *Harrington* v. *Bush*, 553 F.2d 190 (D.C. Cir. 1977) (congressman seeking declaratory and injunctive relief against C.I.A. for allegedly illegal activities lacks concrete injury requisite for standing), with *Harrington* v. *Schlesinger*, 528 F.2d 455 (4th Cir. 1975) (same facts, opposite result).

[18] *Reigle* v. *Federal Open Market Committee*, 656 F.2d 873 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981).

[19] See *Coleman* v. *Miller*, 307 U.S. 433 (1939) (state senators denied the efficacy of their votes when Lieut. Governor by statute was allowed to break tie vote by casting ballot); *Kennedy* v. *Sampson*, 511 F.2d 430 (D.C. Cir. 1974) (challenging illegal use of Presidential pocket veto).

[20] The *Lujan* "redressability" prong of its standing test essentially merges the justiciability and the political question doctrine. Accord *Valley Forge*, 454 U.S. 464 (1982) (where the Court makes clear that separation of powers consequences play a vital role in the standing calculus).

[21] See Bickel, The Supreme Court, 1969 Term—Foreword: The Passive virtues, 75 Harv. L. Rev. 40, 46 (1961).

[22] See Wechsler, Toward Neutral Principles of Constitutional Law, 73 Harv. L. Rev. 1,9 (1959).

[23] *Baker* v. *Carr*, 369 U.S. 186, 217 (1962).

[24] Id.

[25] See, e.g., *Nixon* v. *United States*, 113 S.Ct. 732 (1993).

[26] While the BBA does, indeed, contain some "process" standards (e.g., the requirement of a three-fifths vote in each chamber to increase the debt ceiling), it is doubtful that standing could be found to enforce even such standards.

[27] See Henkin, Is There a Political Question Doctrine?, 85 Yale L. J. 597 (1976) (where Professor Henkin argues that the political question doctrine boils down to the discretionary equitable power of courts not to dispense relief). See *Colegrove* v. *Green*, 328 U.S. 549 (1946) (courts have duty to avoid constitutional issues where resolution will clash with the political branches of government).

[28] Declaratory relief is available under the Federal Declaratory Judgment Act, 28 U.S.C. sections 2201–2202.

[29] Where, for instance, both Chambers of Congress ignore the constitutional majority provision to raise taxes, presents the measure to the President, and the President refuses to veto the subsequent unlawful measure. The aggrieved taxpayer who sees his pay check decrease could probably receive declaratory relief.

[30] See *Colgrove* v. *Green*, 328 U.S. at 552 (where Justice Frankfurter opines that declaratory relief should not be granted in situations where injunctions are inappropriate).

[31] 495 U.S. 33 (1990).

[32] This power was hotly contested by the dissenters in *Jenkins* and may not command a majority today.

[33] 495 U.S. at 67.

[34] See *Reigle*, 656 F.2d at 879 n.6 ("When a plaintiff alleges injury by unconstitutional action taken pursuant to a statute, his proper defendants are those acting under the law . . . and not the legislature which enacted the statute," citing, *Marbury* v. *Madison*, 5. U.S. (1 Cranch) 137, 175–80, (1803)). Illustrative of this point is *Powell* v. *McCormack*, 395 U.S. 486 (1969), where Congressman Adam Clayton Powell was "excluded" by the House from taking his seat. Powell sued the enforcement official—Speaker McCormack, under whose jurisdiction the Sergeant-at-Arms was—and not the House of Congress as a whole. In contrast, Members of Congress have absolute immunity to suit for actions taken on the floor of the Chamber when acting in a legislative capacity, such as voting for or against a measure. See U.S. Const. art. I, sec. 6 ("Speech or Debate Clause").

[35] Section 6 of H.J. Res. 1 mandates that Congress promulgate enforcement legislation.

[36] E.G., the Norris-LaGuardia Act, 29 U.S.C. sections 101–115 (denial of court use of injunctions in labor disputes); the Federal Anti-Injunction Statute, 28 U.S.C. section 2283 (prohibition on enjoining state court proceedings); the Anti-Injunction Provisions of the Internal Revenue Code, Int. Rev. Code section 7421(a) (prohibition on enjoining the collection of taxes).

[37] E.g., *United States* v. *Bitty*, 298 U.S. 393 (1908); *Lauf* v. *E.G. Shinner & Co.*, 303 U.S. (1938). Furthermore, the BBA does not create an individual "right" akin to the First Amendment's Free Speech Clause. As stated above, there is no right to a balanced budget much as the Twenty-first Amendment repealing prohibition creates no right to drink alcohol; the BBA is simply a procedural limitation on Congress' taxing, spending, and borrowing powers which creates a presumption in favor of a balanced budget that may be overcome by a three-fifths vote of the whole number of each House.

[38] E.G., the Emergency Price Control Act, which established a special Emergency Court of Appeals vested with exclusive authority to determine the validity of claims under that Act. The Court in *Yakus* v. *United States*, 319 U.S. 182 (1943), upheld the constitutionality of this limited judicial enforcement mechanism. Accord *Dames & Moore* v. *Regan*, 453 U.S. 654 (1981) (upholding constitutionality of executive order, promulgated pursuant to congressional delegation of power, establishing Iranian-United States Claims Tribunal as exclusive forum to settle claims to Iranian assets).

[39] For example, you quote Walter Dellinger's example where a social security beneficiary would have standing to challenge a presidential order reducing benefits. The other Dellinger example given is a similar one, with welfare payments being substituted for social security payments, A twist is added, wherein a state would have standing to sue if a President does not impound funds. I, in all respect, believe these examples to be gross exaggerations of the law. First, a President must faithfully execute the law pursuant to his oath of office, and, therefore, must enforce these social spending programs. Second, neither a state nor an individual would have standing to challenge a spending program, as explained above. How are they individually harmed by the enforcement of the programs? Finally, and ironically, if the first example challenging impoundment somehow prevailed in litigation, it would be a vindication of congressional prerogatives over the budget.

[40] H.J. Res. 1, sec. 3.

[41] In *Kendall*, Congress had passed a private act ordering the Postmaster General to pay Kendall for services rendered. The Supreme Court rejected the argument that Kendall could not sue in mandamus because the Postmaster General was subject only to the orders of the President and not to the directives of Congress. The Court held that the President must enforce any mandated—as opposed to discretionary—congressional spending measure pursuant to his duty to faithfully execute the law pursuant to Article II, section 3 of the Constitution.

[42] E.g., *State Highway Commission* v. *Volpe*, 479F.2d 1099 (8th Cir. 1973).

[43] These factors were recognized by Asst. Attorney General Dellinger to me in a letter dated January 9, 1995, This letter also corrected a misstatement made to Senator Brown whereby Mr. Dellinger had erroneously contended that there was an avalanche of state litigation over their balanced budget requirements. Mr. Dellinger in the letter now admits that:

"Senator Brown is correct that there has not been a significant amount of litigation in the states interpreting their balanced budget provisions, and that this is a factor that weighs against the argument that there would be an avalanche of litigation under a federal balanced budget amendment."

Mr. HATCH. I yield 5 minutes to the distinguished Senator from Louisiana.

Mr. BREAUX. I thank the Senator for yielding his time.

Mr. President, my colleagues, amendments to the Constitution cannot be passed by the Congress alone. It is a partnership arrangement. The process must also include ratification by the various States. Three-fourths of the States, 38 States, must also join with the Congress in ratifying any proposed amendment to the Constitution before it comes part of the Constitution.

In order for me to justify not even voting to send this proposal to my State of Louisiana and the various other States for them to debate and to vote on this measure, I must be convinced that on its face this amendment is such bad public policy that it must die here in Washington. Is this amendment perfect? No, it certainly is not. Its faults are many and they raise serious concerns in a number of areas.

No. 1, can unelected Federal judges who are appointed for life raise taxes and cut programs to enforce this measure? The Nunn and Johnston amendments address this particular question. I understand that there are those this morning who are willing to correct it with the adoption of the Nunn amendment which would go a long ways to correcting this very serious problem. The question of how can the States cast an intelligent vote on ratification without having the right to know in advance, for instance what will happen to them if it is ratified, is a very serious concern that needs further debate and consideration. Are programs, such as those that have trust funds as a means of funding programs, like the Social Security Program, in danger of being cut under this amendment? There needs to be further discussion and further debate on that particular issue.

The answers to these questions are not clear and more debate, not less, must occur. It is an issue that has generated a great deal of justified emotion. National polls and polls of my State of Louisiana indicate that approximately 75 percent of American people support a balanced budget amendment. But the polls also indicate, at the same time, that they do not support the balanced budget amendment if it means that there will be cuts in Social Security, or there will be cuts in Medicare, or there are likely to be cuts in some other favorite program of our constituents.

I voted for a balanced budget amendment to the Constitution in the past as I believe the long-term debt of our Nation is a critical problem that, so far, we have been giving to our children and to our grandchildren. We have made good efforts on reducing the deficits, as we have in 1993 in adopting President Clinton's deficit reduction plan which cut the deficit by $500 billion over 5 years. I might add we made that very difficult decision without a single Republican vote. But more needs to be done, and if this amendment passes there will be many more and difficult decisions to make. It will not be easy.

I cannot vote to kill this effort today, here in Washington. Our States must be involved. They should have the right to bring this measure up in our State legislatures, debate it, and then have the right and indeed the obligation to vote on it. For me to vote no here in Washington is to say to my State of Louisiana, and the other States, that I know so much more than you on this particular issue that I now vote no so that you cannot vote at all. I will not do that. So today I will vote yes on the balanced budget amendment and send it to the States for ratification and consideration.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

UNANIMOUS-CONSENT AGREEMENT

Mr. HATCH. Mr. President, I ask unanimous consent that it be in order for me to move to table the following amendments en bloc, and the ordering of the yeas and nays be in order, with one show of seconds.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia

Mr. BYRD. Mr. President, I ask the Senator to clarify his request to make sure that the request does not include the tabling of several amendments listed en bloc.

Mr. HATCH. As I understand it, what we are trying to do is make sure the motions to table on each of these amendments will be in place. They can be called up separately.

I modify my unanimous-consent request to make that clear.

Mr. LEAHY. Reserving the right to object, then, now that the unanimous consent has been modified, will the Chair restate it, please?

The PRESIDING OFFICER. It is the Chair's understanding that the Senator has requested to move to table each individual amendment en bloc, and to order the yeas and nays en bloc, but that the votes would actually be taken individually. Is that correct?

Mr. HATCH. That is correct. I now move to table the following amendments.

Mr. LEAHY. I am still reserving my right to object.

Mr. HATCH. Sure.

Mr. LEAHY. Those votes would occur beginning this afternoon, is that correct?

The PRESIDING OFFICER. It is the Chair's understanding that they would take place this afternoon.

Mr. LEAHY. I have no objection.

Mr. HATCH. Mr. President, with that understanding I now move to table the following amendments and motion and ask for the yeas and nays: The Kennedy amendment No. 267, Nunn amendment No. 299, Levin amendment No. 273, Levin amendment No. 310, Levin amendment No. 311, Pryor amendment No. 307, Byrd amendment No. 252, Byrd amendment No. 254, Byrd amendment No. 255, Byrd amendment No. 253, Byrd amendment No. 258, Kerry motion to commit to budget committee.

The Nunn amendment is as modified.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. Excuse me—that is right. I withdraw that last statement. Just the amendments I read the numbers for.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I want to personally chat with the distinguished Senators from Georgia and Louisiana. I have listened to their comments carefully and will agree that we would take the amendment of the distinguished Senator from Georgia, as modified—hopefully by a voice vote. It will save us all time but nevertheless to accommodate the distinguished Senator. And hope that would, of course, allow us to proceed from there.

Mr. NUNN. I thank my friend from Utah and my friend from Illinois, and also Senator CRAIG and Senator LOTT and others who have worked hard making this amendment acceptable.

The Senator from Washington State, Senator DORGAN, and I have had some conversations also. Some of the language in this amendment now as is modified has been suggested by the Senator from Washington.

Mr. President, I think this is enormously important, as I said. I will not repeat my remarks but I appreciate the fact that the managers of the bill have agreed to accept this amendment or to recommend its acceptance to the Senate. I urge my colleagues to vote for the amendment. Assuming as I do assume that the amendment will be part of this constitutional amendment, then I will vote for the final passage on the constitutional amendment and I urge my colleagues to join in that effort.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Mr. President, there are a number of Senators who have expressed concerns about a voice vote on this amendment. Given the fact that it has been the subject of debate and people are on record on this amendment during the course of the last several weeks of debate, I suggest that we have a rollcall, just to provide Senators the opportunity to express themselves on this amendment.

But that is consistent with the unanimous-consent request. I urge we do that.

At this time I yield 7 minutes to the distinguished Senator from North Dakota.

Mr. DORGAN. Mr. President, I thank the Senator from South Dakota for yielding the time. Twelve years ago I was a member of the House Ways and Means Committee when we wrote a piece of legislation called the Social Security Reform Act, one of the most significant, important, and useful things we did during the entire decade of the 1980's. We raised payroll taxes on both the employees and employers, we did a whole series of things to make the Social Security system work for, we thought then, 50 years. And we solved it for that period of time.

During the writing of that bill, which I participated in, I expressed great concern about the fact that the surpluses that we designed to occur in the Social Security system would be misused unless we protected them. We created surpluses. This year the surplus alone is $69 billion and the question is, is it being protected? The answer is no.

All during the discussion of this constitutional amendment, and on previous occasions when we have debated it, I have raised this question. Unfortunately, following an hour and a half discussion yesterday with the proponents of this legislation, it appears that this question will not be resolved. I indicated two concerns, one of which has now been resolved, for which I am appreciative: The enforcement issue. I think that resolved that concern.

But I am also concerned about the Social Security trust fund. Does anyone in this room believe that it is appropriate to use Social Security trust funds for other purposes? That is what is happening. That is what will happen under the imprimatur of the Constitution if the balanced budget amendment is passed with this language.

The way to correct this problem is with the Reid amendment. We had a vote on that and lost. The way to correct it is with the substitute offered by Senator FEINSTEIN. We will have a vote on that, and I expect that will lose.

The other way to correct it is for the proponents to bring up implementing language today, before we pass the constitutional amendment, which defines expenditures and receipts as not including Social Security, and that will solve the problem as far as I am concerned. Pass the Reid amendment or pass the Feinstein substitute, either of which will solve this problem as far as I am concerned. If that does not happen, when the final roll is called, I will be voting against this amendment, and I want people to understand why.

This is three-fourths of a trillion dollars. This is not a $10 or $20 billion issue. It is three-fourths of a trillion dollars and deals with the promise between those who work and those who have retired and deals with the agreement that we made in 1983 about how we would protect the future of the Social Security system in this country. We can protect it in this constitutional amendment to balance the budget. It is our decision. The will of the Senate will be expressed to determine whether we do that or do not. I am told that it is not possible to protect Social Security because there are not sufficient votes for it. If that is the case, then it is not possible for me to vote for this constitutional amendment to balance the budget. If between now and the end of the day people say that is possible, I say, fine, let us do it then. And then I will revisit this issue.

But I just want people to understand that my notion of this issue has not changed. It is an enormously important consideration. Social Security is one of the most important things this country has ever done. The 1983 reform act was one of the most significant pieces of legislation in the last decade and a half. And the question is whether we are going to be true to our word and stand for the solvency of the Social Security system for the long term.

On the broader question, do we need a balanced budget amendment? You had better believe we do. We need greater balanced budget discipline, whether it is a constitutional amendment or whether some new legislative initiative. We are sinking in a sea of debt. Yes, we need to do this. But you do not pull yourself out of a sea of debt by inappropriately spending three-forths of a trillion dollars of Social Security revenue. One is not a tradeoff for the other.

I will simply not vote for a constitutional amendment to balance the budget unless this problem is solved in one of two ways: either pass the implementing legislation to redefine what is meant by receipts and outlays before we pass the constitutional amendment, or pass the Reid amendment as embodied in Senator FEINSTEIN's substitute. One or the other is satisfactory to me. If it appears neither will be done, those who count votes should understand I will then vote no on the constitutional amendment.

I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I yield.

Mr. DASCHLE. Mr. President, how much time do we have remaining?

The PRESIDING OFFICER. We have about 8 minutes 10 seconds.

Mr. DASCHLE. I yield the remainder of my time to the distinguished Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished leader.

Mr. President, I compliment the distinguished Senator from Georgia [Mr. NUNN] on his efforts to cure a major flaw in this constitutional amendment to balance the budget. I shall vote for his amendment. Nevertheless, Mr. President, I do not feel that this amendment by Mr. NUNN will effectively bar the courts from intervening in cases or controversies that will arise outside this or even inside the article. Let us read the amendment. The "judicial power of the United States." Mr. President, that language does not appear to say anything about the State courts. In fact, by omitting any reference to State courts, the language impliedly invites them to come in.

> The judicial power of the United States shall not extend to any case or controversy arising under this article.

"Under this article." Suppose the case or controversy arises under some other article, under the takings clause, under the obligations of contract clause, or under the due process clause. The Supreme Court of the United States, if it construes a case or controversy as affected by this amendment, is going to take into consideration the whole document, the four corners of the Constitution and the other amendments thereto. And if there is a John Marshall on that court, he will find a way because, after all, the major purpose of this constitutional amendment is to bring into balance the outlays and receipts annually of the United States.

The amendment goes on to say—Mr. President, may we have order in the Senate? Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. We will not proceed until we have order in the Senate, please.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I will read the Nunn amendment again.

> The judicial power of the United States shall not extend to any case or controversy arising under this article, except as may be specifically authorized by legislation adopted pursuant to this section.

Mr. President, we say here that the judicial power of the United States shall not extend to any case or controversy arising under this article except as may be specifically authorized by legislation adopted pursuant to the article.

We all know that legislation that may be adopted to implement the article may change from Congress to Congress. A subsequent Congress can amend or repeal the implementing language enacted by a previous Congress.

So what we are setting up here is a situation in which uncertainty will continue to be a key factor in the judgments that are to be reached, not only uncertainty within the government itself but by the people. We are leaving it to the Congress to pass legislation authorizing thus and so, perhaps authorizing the courts to enter into this kind of case or that kind of case or another sort of controversy. So we are left with the same uncertainty with this amendment as we are without it.

Mr. President, the proposed language by Mr. NUNN seeks to—and it may effectively do so up to a point—eliminate court jurisdiction over legitimate claims raised under the balanced budget amendment. This means, in effect, that the Nunn amendment confers no right not to be convicted under a statute passed, for example, in violation of section 4 of the amendment. Section 4 reads:

> No bill to increase Federal revenue shall become law unless approved by a majority of the whole number of each House by rollcall vote.

Of course, the Constitution requires that bills that raise revenues originate in the other body. If a person is convicted under a criminal statute that originates in this body, but the contents of which criminal statute result in an increase in revenues, then the defendant who seeks relief will do well on the basis of a bill which raises revenue—even though it was a criminal statute under which he was indicted and convicted—which did not originate with the other body.

The Nunn amendment confers no right not to be convicted under a statute passed in violation of any of the sections of this amendment.

The Nunn amendment may, in certain cases, take away the right of an injured citizen to challenge any cuts in benefits—mandated by law—ordered by a President who is seeking to enforce the amendment by impounding funds. As to due process, this amendment is writing the due process clause out of the Constitution, as far as such claims are concerned. I have already indicated that citizens could be convicted of a crime in violation of the Constitution, or taxed in violation of the Constitution. Yet, Congress would have the power to deny these citizens access to the courts in which to vindicate their rights.

The courts could refuse to hear challenges to unconstitutional actions. It is unclear, Mr. President, whether this amendment can be raised as a defense. While the amendment seeks to bar plaintiffs from access to the Federal courts to claim a violation of their rights, it is not clear whether the proposed language also would bar governmental actors—for example, the President of the United States—from raising the balanced budget amendment as a defense. Here is an example: Suppose the President cuts Social Security. The plaintiff might sue, but he does not sue under the balanced budget amendment but under a statute. The President raises the defense that the balanced budget amendment justifies his action. How would a court rule? Would the court rule that the case should be dismissed because of the balanced budget amendment? But then, all the President has to do to escape scrutiny is to invoke the amendment. Would the court rule that the plaintiff wins because the court has no power to review the defense? Then other plaintiffs could bring similar actions and the budget would go unbalanced.

Mr. President, let us say that the Nunn amendment is effective in barring intervention by the Federal courts into cases or controversies arising "under this article." Even then, the result could be a shift to the President of unreviewable power to impound funds. The Federal courts would be barred by this amendment from reviewing the President's action, despite the Framers' view that the power of the purse should be left in the hands of the Congress, the closest representatives of the people. And if Congress should respond to Presidential impoundment by granting the courts the power to review such actions, then the courts would again be embroiled in the budget process and, quite possibly, in the unseemly role of a conscripted ally of one branch against the other.

So, Mr. President, even if this amendment is effective in accomplishing the goal that the distinguished Senator from Georgia seeks, it seems to me that it creates a greater impetus to the flow of legislative power and the control of the purse from the legislative branch to the President. The amendment provides that the courts, in essence, may be authorized to intervene based on implementing legislation that may be passed or may not be passed and may be changed from Congress to Congress. And thus, it gives authority for the Congress to transfer legislative powers to the courts.

Subsequent legislation to implement the article may be vetoed. That would require two-thirds of both Houses to override the President's veto. Even if it becomes law, a subsequent Congress can change the law. The provision may be read as granting Congress the power to confer sweeping legislative powers over taxing and spending priorities on the courts, in the guise of implementing legislation.

This is a mess. Congress may very well, in implementing legislation, decide just to hand the whole mess over to the courts of the land. Such legislation would abdicate Congress' fundamental responsibility over taxing and spending and transfer it to unelected judges, and thus decrease the accountability of the Federal Government to the taxpayers. The courts would be blamed for making the tough choices, though it may be 2, 3 or 4, 5 years down the road. But by then the fingerprints of the proponents of this amendment would be cold, and the mess would be left in the hands of the courts. The courts would be blamed for making the tough choices, which should be the responsibility of the elected officials.

Assuming, Mr. President, that the amendment would be effective in stripping court jurisdiction and assuming further that Presidential impoundment is not the result—and those are large assumptions—the amendment would be an empty promise inscribed in the fundamental charter of our Nation.

Mr. President, the proponents of this amendment have thus far tabled all amendments. Their ears have been deaf to the pleas of those Senators who have sought to protect the Social Security trust fund. There was no give on that amendment. There was no give on amendments that would deal with the ups and downs, the rises and the falls in the economy—no give on that. But suddenly, here comes an amendment that the proponents on the other side of the aisle seem to be willing to take. What about all of the other amendments that they have rejected?

If the Nunn amendment is included in this overall constitutional article, then the balanced budget constitutional amendment as amended goes back to the House. If the House does not accept the Nunn language, then the balanced budget amendment will go to a conference. The whole balanced budget amendment may then be rewritten in that conference. When that conference report comes back to the Senate, it may not look like the balanced budget amendment that is presently before the Senate. Senators would certainly not have the opportunity to debate at length a conference report on a constitutional amendment that had been measurably changed in the conference process.

Mr. President, I see many slips between the cup and lip in connection with this amendment. It is well-intentioned. I intend to vote for it. But, Mr. President, it demonstrates the farce that we are about to vote on later today—the farce in the form of this constitutional amendment to balance the budget. It is a mess! It is a "quick fix", and there is no way to fix this quick fix. The Nunn amendment clearly demonstrates that.

I reserve the remainder of my time.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Utah has 38 minutes under his control.

Mr. HATCH. Mr. President, I yield 4 minutes to the distinguished Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, today the Senate stands poised to vote on one of the most important measures that will come before this Congress. Indeed, for many in this Chamber, the vote on the balanced budget amendment will be the most important vote they cast in their career, and I urge each of my colleagues to support it.

As I have stated on this floor before, I chose a career in public service because, throughout my life, the public—through government—helped broaden my opportunities. I am fundamentally committed to ensuring that future generations have the same opportunities I enjoyed. Every child born in this country—whether black or white, whether rich or poor—should have the chance to achieve his or her dreams. Every person should have a chance to contribute to society, to the maximum extent their talent or ability will allow.

Government should play an active role in expanding people's opportunities. The Government should invest in technology and infrastructure, in job creation and training, and in education, in order to raise the people's living standards. The Government should help unemployed Americans get back on their feet, should help those who want to work to find jobs, should ensure that high-quality, affordable health care is available to all Americans, and should protect our environment. Government is not the enemy of society; it should be a partner, an instrument of the people's will, and a facilitator of our public interest. But if the Government does not get its fiscal house in order—if we don't act now to stop our runaway deficit spending—the Government will have little money left to provide for the public interest. Only the holders of the treasury bonds will be assured of any Government assistance.

As I learned through my work on the Entitlements Commission, unless we get the deficit under control, we will be leaving our children—and our children's children—a legacy of debt that will make it impossible for them to achieve the American dream of living a better life than their parents.

There is simply no way to get around the fact that our present spending trends are not sustainable in the long term. In 1963, Mandatory spending—the combination of entitlement programs and interest on the national debt—comprised 29.6 percent of the Federal Budget. By 1983, that number has almost doubled, to 56.3 percent. Ten years later, in 1993, mandatory spending was 61.4 percent of the annual budget. Let me underscore that: today, mandatory spending—entitlements, plus interest on the national debt—comprise almost two thirds of the entire Federal Budget.

But what about the future? If we don't act now, by the year 2003—8 years from now—mandatory spending will comprise 72 percent of the Federal Budget, 58.2 percent for entitlement programs, and 13.8 percent for net interest on the national debt. Obviously, if we are spending 72 percent of budget on mandatory spending, there is not much left over for defense, education, or infrastructure.

Consider this example. In real terms, AFDC benefits have actually declined since 1970. The significance of that fact should not be lost on anyone. We are spending ourselves into a deeper and deeper hole, yet people are not better off as result.

I have heard many opponents of the balanced budget amendment question the need to tackle the deficit immediately. America is not, they maintain, in the midst of a budgetary crisis. In the short term—the next 7 years—that's perhaps true. The country can probably continue on its current irresponsible path for a few years into the next century. But, after that, it will no longer be possible to ignore the basic demographic and health care cost trends driving the increases in Federal spending. We simply will not be able to continue on our current path, and expect the Federal Government to function as a partner of the people well into the next century. And, if we wait to act until crisis comes, any action we take will be that much more painful, and that much less effective.

The entire Federal deficit for the current fiscal year—estimated at $176 billion—represents the interest owed on the huge national debt run up during the 1980's. This year, and next year, the budget would be balanced if not for the reckless supply-side economics that caused the deficit to balloon from its 1980 level of about $1 trillion to its current level of more than $4.7 trillion. If we had acted in 1980 to tackle the deficit, rather than adopting programs that merely fed its rapid growth, the problems we face today—in terms of demographics, and the aging of the baby boomers—would seem much more manageable. In 1980, interest on the debt was $75 billion—that is a lot of money, Mr. President, but it is nowhere near the $950 billion we currently pay. How much better off we would be if, in 1980, congress had possessed the courage to make the difficult choices, and balance the budget. Not passing the balanced budget amendment will not make our problems go away. Our ability to meet our priorities will be much greater if we enact the balanced budget amendment now, if we tackle the tough problems now, instead of waiting until the country is on the brink of financial ruin. If we need any convincing about the need to address the deficit now, in 1995, we should just look at the consequences of our failure to address it then, in 1980.

But I disagree that deficit spending is the most effective way to accomplish that. In 1966, when our deficit totaled $3.7 billion, 2.6 percent of our budget went toward funding long-term investment. Now, with our budget deficit about to hit $268 billion, our long-term investment has shrunk to 1.8 percent of the budget. The reason, I think, is obvious—more and more of our funds must be devoted to paying interest on the debt, leaving less and less for investment.

I have heard opponents of House Joint Resolution 1 state that we should not be tinkering around with the Constitution. Well, I couldn't agree with them more. The years I spent studying law at the University of Chicago gave me a deep appreciation for the Constitution. I believe the U.S. Constitution to be the finest exposition of democratic principles ever written. I make that statement fully aware that, in its original form, the Constitution included neither African-Americans nor women in its vision of a democratic society. But it changed to better realize the promise of America. The beauty of the Constitution is that it can, through a deliberate, cumbersome, and sometimes painful process, be amended to reflect the changing realities, and meet new challenges faced by our Nation. This current problem—the problem of our growing fiscal disorder—is too important not to act on today. Who could be opposed to affirmatively stating in the Constitution that current generations must act responsibly, so that future generations will not be forced to bear the burden of their irresponsibility? What could be more important than the fiscal integrity of our Nation? As another of our Founding Fathers, Thomas Jefferson once said, "We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves." Why is that proposition not important enough to be included in the Constitution?

Last year I had the honor of reading George Washington's farewell address to the Nation on the floor of the Senate. In that address, Mr. Washington left us with some words of wisdom that, I believe, support the notion of a balanced budget amendment. I would like to quote those here today:

> As a very important source of strength and security, cherish public credit. One method of preserving it is to use it as sparingly as possible, avoiding occasions of expense by cultivating peace, but remembering, also, that timely disbursements, to prepare for danger, frequently prevent much greater disbursements to repel it; avoiding likewise the accumulation of debt, not only by shunning occasion of expense, by my vigorous exertions, in times of peace, to discharge the debts which unavoidable wars may have occasioned, not ungenerously throwing upon posterity the burden which we ourselves ought to bear.

Finally, Mr. President, I would like to take head on the political implications of this debate, because it is an important political question for the Congress. I am not a signatory of the Contract with America. Indeed, I agree with Senator BYRD; the only contract with America that matters to me is the U.S. Constitution.

But I want to be clear that this issue is not a partisan one. It reflects philosophical differences that have little to do with party lines. The senior Senator from my State of Illinois, Senator SIMON, has been one of the chief advocates of the balanced budget amendment for years. Senator SIMON's liberal credentials are without question. He is, and has always been, a Democrat—he was at one time even a candidate for our Presidential nomination. so this is not a Republican versus Democrat debate. Nor is this a battle of the conservatives against the liberals. I am proud to call myself a liberal, for the simple reason that I believe government has a positive and constructive role to play in promoting the public good. I do not believe government is the enemy of progress. I believe it can promote progress. In my lifetime, I have seen firsthand the positive contributions a commitment to the American dream of equality and opportunity can make, I would not be here but for the struggles of people of good will to make the American dream a reality. And it is precisely because I so value their struggles that I believe we must take the steps that a commitment to providing opportunity requires. We have a duty to use our decisionmaking power in a manner that preserves freedom and opportunity for all Americans, not only in this generation, but in every generation to come.

Poor people are not helped by the deficits and out-of-control spending habits we cannot seem to shake. Its interesting as I listen to the debate that swirls around the issue of the balanced budget amendment and Social Security. The reason that debate is so intense, Mr. President, is that current recipients of Social Security—and even those of us in the baby boom generation who will be collecting checks in the not so distant future—have an absolute expectation that Social Security will provide for us in our retirement. The same cannot be said for those in our younger generations. When you speak to people who are my son Matthew's age, they have absolutely no faith that Government will be there for them when they need it, that it will help them enjoy retirement security or affordable health care or a high standard of living. And why should they, Mr. President? Since my son was born in 1977, he has never seen a balanced budget. He has no idea what it means to live under a Federal Government that spends within its means. He has heard politician after politician promise to balance the budget, yet has only seen the deficit skyrocket.

That cynicism grows deeper and deeper every day, despite pronouncements of politicians that a brighter day is just around the corner. The fact is, with current budget trends, a brighter day is not around the corner. What lies ahead, if we fail to act, is slower economic growth, greater debt, fewer options and higher taxes. The time has passed for us to realize that by failing to act, we are indeed making a choice—a choice that involves throwing away most of our options for dealing with our fiscal problems. The only way we will be able to turn current budget trends around is to face reality with the help of the balanced budget amendment.

Mr. President, I want to take this debate back to the beginning—to the Constitution. The Constitution states, in its preamble:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and to secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Mr. President, I believe that this constitutional preamble sets the stage for the vote we will soon cast on this balanced budget amendment, and tells us the direction in which we should go.

This Constitution gives Congress the power to protect Social Security, to respond to fiscal emergencies, and to foreclose judicial interference in budgeting. It gives us the power to do everything necessary to respond to concerns that have been raised in opposition to this balanced budget amendment.

Unfortunately, absent the balanced budget amendment, the Constitution does not give us what we now lack—the will to make the difficult decisions necessary for us to get our fiscal house in order. That is what the balanced budget amendment is calculated to do. It will impose on Congress the fiscal discipline to do what we should have done years ago, what George Washington exhorted us to do in his farewell address to the Nation, and what the preamble to this Constitution tells us to do.

This is not a partisan debate, or at least it shouldn't be. The essence of this debate boils down to whether each individual Senator, regardless of party, believes we have a fundamental obligation to our posterity, and a fundamental obligation to the American people, to abide by the Constitution that we are all sworn to uphold.

Mr. President, I call upon my colleagues to take the pledge by voting for this amendment that we will deficit spend no more, that we will be responsible for the debts that we incur, that we will be responsible for the budgets we pass, and that we will be responsible to future generations, and not saddle them with debt. I call on my fellow Senators to transcend the hysteria and fear that has fueled the opposition to this balanced budget amendment, and respond instead to our hopes, and to the responsibility that we are given as Members of this U.S. Congress to get our fiscal house in order, to discharge our debts, and not to ungenerously throw upon posterity the burdens which we ourselves ought to bear.

Mr. President I thank the Senator from Utah for his yielding, and I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I yield 4 minutes to the distinguished Senator from Virginia.

Mr. ROBB. Mr. President, I will be brief. My views are already known to most of the Members of this body. I support the balanced budget amendment reluctantly—as a bad idea whose time has come. What I really support are the balanced budgets this amendment seeks to achieve.

I support the amendment because I do not believe we are ever going to have the will to actually balance our budgets without it and that out failure to do so puts our future in doubt and demands extraordinary and uncommon action by this Congress.

Let me begin by saying that I endorsed this amendment more than a decade ago, not because I believed then or now, that it will, in and of itself, bring our budget into balance, but because it establishes both a call to action and a destination—and because it takes away an excuse for not making the hard choices we are going to have to make with or without the amendment. It forces us to confront—head-on—the fiscal disaster we have created, and it will force an essential discipline in our budget process that has been sadly absent.

President Clinton deserves enormous credit for the $500 billion deficit reduction package, which passed this body in 1993. It took courage and he did not have the bipartisan help he deserved. But it was not enough.

Mr. President, during the course of this debate, I have heard many thoughtful and sincere arguments in opposition to this amendment. This morning, I would like to address just two of them—whether or not the amendment will result in deep cuts to important programs and whether or not the amendment is worthy of constitutional consideration.

Mr. President, those who oppose this amendment because it will lead to painful cuts are arguing not against the amendment, but against actually balancing the budget. None of the choices are easy.

But to oppose this amendment because of the difficult choices it will force, is to say to the American people that we do not have the will to govern responsibly and live within our means.

Making these choices means establishing essential priorities for our Nation, identifying effective programs, that provide hope and opportunity for our people, programs that defend our freedom at home and abroad, and programs that invest in a better tomorrow for our children and our grandchildren.

Protecting these priorities means: saying "no" to less critical spending; and having the fortitude to turn to the revenue side when we cannot responsibly cut spending any more; and refusing to enact new tax cuts we cannot afford and tackling entitlement reform, the 800 pound gorilla of the 21st century.

If we do not, Mr. President, if we continue on our present course and speed, entitlements and interest on the debt—and nothing more—will absorb the entire tax revenue base of the Federal Government by the year 2012. It will absorb all of it, with nothing left for national defense or any other Federal program.

How then do we invest in our children?

Interest payments on the national debt will not ever put a single poor child through college. Interest payments on the national debt will not ever provide nutrition for a disadvantaged pregnant woman, special education for a child with disabilities, or the only hot meal of the day for a 6-year-old living in poverty.

I support this amendment, reluctantly, Mr. President, not because I want to endanger programs that provide real opportunity for our children, but because I fear for the strength and security of the world we leave them, and their children if we do not act today.

A child born today will be 17 years old—a senior in high school—the year entitlements and interest on the debt begins to absorb all our tax revenue.

What kind of a nation will that child inherit? Will it even resemble the world of unlimited possibilities that our parents left us?

Today, we make that decision, Mr. President. Today, we decide the future of the class of 2012. Today, we either begin to assume the responsibility for our own debt or we leave it to our children and our grandchildren.

Our Founding Fathers would be dismayed to know that we have reached the point where amending their Constitution is necessary to protect the strength and security of future generations of Americans. And if we had governed with the political courage of our forefathers, we would not be facing a fiscal crisis of such enormous proportion.

But I would argue, Mr. President, that paying our own bills is not a trivial matter. Protecting our ability to invest in the kind of America we want for our children, is not a minor academic argument. Tripling our debt in 15 years is not an inconsequential act. Mr. President, $6 trillion is not trivial.

To me our own lack of will in paying our bills trivializes our Constitution—and this institution—far more than a balanced budget amendment.

To the children graduating from high school in 2012, an amendment to balance our Federal budget will be more important to the kind of country they inherit than the last amendment we added to the Constitution. That amendment, the 27th, ratified in May, 1992, required intervening elections before congressional pay raises go into effect.

The legacy of debt we leave our children, can never be trivial nor inconsequential. It violates a sacred obligation that has passed through generations of Americans, an obligation which has endured since the birth of our democracy and the adoption of our Constitution. That obligation is to leave a future brighter than our past. If we do not act today we are violating that obligation.

Mr. President, I yield the floor and I thank the manager.

Mr. HATCH. Mr. President, we are down to our last half-hour. It is my honor to yield 4 minutes to the distinguished Senator from South Carolina, who was the first to ever fight for a balanced budget amendment on our side and who deserves a lot of credit if this amendment passes.

Mr. THURMOND. Mr. President, we have seen the national debt and deficits rise because, in large part, the Federal Government has grown. It has grown tremendously out of reason.

The first $100 billion budget in the Nation occurred in 1962. This was almost 180 years after the Nation was founded. Yet it took only 9 years, from 1962 to 1971, for the Federal budget to reach $200 billion. Then, the Federal budget continued to skyrocket: $300 billion in 1975, $500 billion in 1979, $800 billion in 1983, and the first $1 trillion budget in 1987. The budget for fiscal year 1995 was over $1.5 trillion.

Federal spending has gripped the Congress as a narcotic. It is time to break the habit and restore order to the fiscal policy of the Nation. It is incumbent upon this body to send the balanced budget amendment to the American people for ratification. I am pleased that we have reached agreement to vote on final passage today.

I want to say this: The federal debt is $4.8 trillion. How did it come about? Big government, big spending, not following sound fiscal policy at all. The annual interest on this debt—the annual interest we pay for which we get nothing, it just goes down the drain—$235 billion. That is the second largest item in the budget.

The average annual deficit for each year during this decade has been $259 billion. It is unreasonable. How are we going to stop it? I have been here 40 years. We have balanced the budget only one time in 32 years. The budget has been balanced only eight times in the last 64 years. When are we going to stop it? When are we going to stop spending more than we take in? When are we going to stop putting this debt on our children and grandchildren and generations to come.

I say to Members that we must take action. Today is the day to do it. Today is the day to pass this amendment and let the American people know we mean business and we are going to protect this country. We have to protect it from this big spending just like we have to protect it in time of war. Either can ruin this Nation.

Now, I want to mention this: The leadership in both houses have stated that Social Security will be protected in the implementing legislation once the balanced budget amendment is adopted. I have long supported our senior citizens and believe that the promise of Social Security is not to be broken. The Federal debt is the greatest threat to Social Security. Adoption of the balanced budget amendment and strong language in the implementing legislation will ensure the viability of Social Security.

The Senate should pass this amendment. My home State of South Carolina has a balanced budget requirement. We have abided by it for years. We do not run any deficits. Why? Because we have the mandate of a balanced budget by constitutional provision. That is what we are trying to get here. We also have a statute.

I say to Members, if we do not pass this amendment today, we will miss a great opportunity. There is no one piece of legislation we can pass this year or any year to come that is more important than this balanced budget amendment. I hope we pass it today. It is for the good of America. It is for the good of our country. We ought to do it without delay. I yield the floor.

Mr. HATCH. Mr. President, I yield to the distinguished Senator from Tennessee for 1 minute.

Mr. THOMPSON. Thank you, Mr. President.

Mr. President, there is nothing more basic to human nature than looking out for the interests of those we bring into this world. Yet we are not doing that in this country. On the contrary, we are creating an economic disaster for the next generation, a debt that they will never be able to dig out of and the prospects of living in a second-rate country.

We are doing this not because of some great depression. We are doing this not because of some great war. We are doing this not because of some natural disaster. We are doing this simply because we have lacked the will to make the tough decisions.

Mr. President, through the history of the course of this country, in times of crisis, leaders of both parties have banded together to face that crisis and overcome it. We must do so again this very day because, indeed, it is a crisis we face. We must do so by passing this balanced budget amendment.

The people's voice could not be more clear on this matter. They have spoken in the polls. They have spoken through their legal, elected representatives in the House. They stand ready to speak again in State legislatures throughout this Nation once we have done our duty. Let it not be said that it was the Senate of the United States of America that stifled the strong, clear voice of the American people. I yield the floor.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Maine.

Ms. SNOWE. I thank the Senator.

Mr. President, Robert Louis Stevenson once said, "These are my politics: To change what we can to better what we can." With today's vote, we have the chance to do both.

Like so many other times in this great Nation's history, we are standing today before the American people on the cusp of monumental change. We have inherited the challenges and the responsibilities of leadership of previous generations of Americans, Americans who have stood in this Chamber and voted for difficult votes that molded the image of their generation.

In this century alone we had women's suffrage, the declaration of World War II, and civil rights laws. Each of these events ended the status quo of one generation and ushered in a new beginning for the next.

The prophetic nature of this debate cannot be understated in the annals of America's history. This is a defining moment for our generation. This is our chance to be remembered for what is just and right in our time. This is our last chance to roll back the years of indebtedness.

This legacy of debt is not just an imbalance between revenues and expenditures. It is an imbalance between trust and responsibilities. The last time the Congress balanced its budget was when America put a man on the noon.

If there is one thing that we have learned in the last 26 years, it is this: We cannot balance our budget in the absence of a stronger force than politics.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Arizona.

Mr. KYL. Mr. President, outside the Senate Chamber on the Capitol grounds, the debt clock is ticking: an additional $9,600 every second, $576,000 every minute, $35 million every hour, and $829 million every day. That is nearly $1 billion in additional debt the Federal Government is accumulating each and every day. It is a catastrophe waiting to happen.

The choice before the Senate today is clear. We can defuse that time bomb of debt by passing the balanced budget amendment and begin to make the tough decisions necessary to put our Nation's fiscal house in order, or we can bury our collective heads in the sand and pretend that spending $1 billion a day beyond our means will not have devastating economic consequences.

But we ought to be honest with the American people: Without the balanced budget amendment, there is no plan to balance the budget—not in 5 years, not in 10 years, or ever. The budget that President Clinton submitted to the Congress earlier this month proposes $200 billion deficits as far as the eye can see. The President has no plan to balance the budget.

Although the new Congress is poised to make significant cuts in spending, there is no assurance that when the pain begins to be felt in a few years, it will not opt to mitigate pain by resuming Federal borrowing as Congresses in the past have done. That is why Gramm-Rudman failed several years ago. It is why nothing less than the balanced budget amendment will succeed in the future.

Mr. President, this is a debate about the future, about preserving what is best in America. It is about protecting senior citizens on Social Security. It is about letting our families keep what they earn. It is about protecting our children's future.

I am hopeful today when this day ends the U.S. Senate will have passed the balanced budget amendment.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Ohio.

Mr. DEWINE. Mr. President, the passage of a balanced budget amendment will do more to bring about the fundamental change that the American people voted for in 1994 than anything else that we can do. This is a vote about our future. This is a vote about our children.

Let me share some sobering facts. When my parents graduated from high school in the early 1940's, the debt on each child that graduated was about $360 dollars. By the time my wife and I graduated in the mid-1960's it was up to $1,600. When my children, Patrick and Jill and Becky, graduated in the mid-1980's, it was up to almost $9,000.

If we continue to go the way we have been going, by the time my grandson, Albert, graduates in the year 2012, it will be up to almost $25,000.

Mr. President, this is a defining moment. We vote today to change the Government. We vote today to carry out the mandate that was given to this Congress in 1994.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Wyoming.

The PRESIDING OFFICER (Mr. CRAIG). The Senator from Wyoming is recognized for 1 minute.

Mr. THOMAS. Mr. President, I am proud to rise today to urge the passage of House Joint Resolution 1, the balanced budget amendment to the Constitution. I am profoundly convinced that the future of our Government, indeed the future of our country, depends upon reaching a measure of financial responsibility. I am equally convinced that failure to pass this amendment will result in continued deficit spending and added burdens of debt and interest payments.

As Members of this body, we are honored to be trustees in the area of public policy for those who we represent, for the people of the United States. The financial stewardship of this Congress has not met the test of fiscal and moral responsibility.

I am persuaded that the people of Wyoming demand that Congress respond to their voice in November. They called for smaller Government, less expensive Government. The test of good Government is the responsiveness of that Government to the will of the people. We have that opportunity today.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 1 minute.

Mr. SANTORUM. Mr. President, we see here 11 freshmen who were elected in the last election, and sophomores who are with us. You do not see this many Members in the Senate—at least I do not usually when I have gotten up to speak.

We are here because we got the message. We are here because the American people sent us on a mission. They sent us on a mission to make Government leaner, smaller and more efficient, and this balanced budget amendment is the vehicle by which all of that happens.

If this does not pass, all those things that the people voted for on November 8 will not happen. But let me tell you something, the balanced budget amendment will pass. Oh, it may not pass today —I think it will—but it may not. But it will pass. The people who will stand in the way of this balanced budget amendment today will not be around long to stand in the way the next time. It will pass. It is just a matter of when.

It is a matter of when we are going to be able to look in the eyes, as I do, of my 2-year-old little boy and my 3-year-old little girl and say that "it is time to look out for your future, too. It is time that someone stands up and cares about you and your opportunities."

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Minnesota.

Mr. GRAMS. Mr. President, at the State capital building in St. Paul, MN, lawmakers presented Gov. Arne Carlson with this petition yesterday. It says:

> We, the undersigned officials, duly elected by the citizens of the great State of Minnesota, commit our support to congressional passage of the balanced budget amendment and its ratification by the Minnesota State Legislature.

Our petition is signed by 81 representatives on the Federal and State level, Republicans and Democrats, who are concerned that this debt that we are heaping onto the backs of our children is not just wrong, it is criminal.

I ask unanimous consent that this document be printed into the RECORD.

There being no objection, the petition was ordered to be printed in the RECORD, as follows:

MINNESOTANS FOR A BALANCED BUDGET AMENDMENT

(As of February 25, 1995)

We the undersigned officials, duly elected by the Citizens of the Great State of Minnesota, commit our support to congressional passage of the Balanced Budget Amendment and its ratification by the Minnesota State Legislature:

United States Senator Rod Grams.

Governor Arne Carlson.

U.S. Representative Gil Gutknecht (IR–1st CD).

U.S. Representative David Minge (DFL–2nd CD).

U.S. Representative Collin Peterson (DFL–7th CD).

U.S. Representative Jim Ramstad (IR–6th CD).

State Senate Republican Leader Dean Johnson.

State House Republican Leader Steve Sviggum.

State Senator Charlie Berg (DFL–District 13).

State Senator Joe Bertram, Sr. (DFL–District 14).

State Senator Florian Chmielewski (DFL–District 8).

State Senator Dick Day (IR–District 28).

State Senator Steve Dille (IR–District 20).

State Senator Dennis Frederickson (IR–District 23).

State Senator Paula Hanson (DFL–50).

State Senator Terry Johnston (IR–District 35).

State Senator Sheila Kiscaden (IR–District 30).

State Senator Dave Kleis (IR–District 16).

State Senator Dave Knuston (IR–District 36).

State Senator Cal Larson (IR–District 10).

State Senator Arlene Lesewski (IR–District 21).

State Senator Warren Limmer (IR–District 33).

State Senator Bob Lessard (DFL–District 3).

State Senator Tom Neuville (IR–District 25).

State Senator Ed Oliver (IR–District 43).

State Senator Gen Olson (IR–District 34).

State Senator Mark Ourada (IR–District 19).

State Senator Pat Pariseau (IR–District 37).

State Senator Martha Robertson (IR–District 45).

State Senator Linda Runbeck (IR–District 53).

State Senator Kenric Scheevel (IR–District 31).

State Senator Dan Stevens (IR–District 17).

State Senator Roy Terwilliger (IR–District 42).

State Senator Jim Vickerman (DFL–District 22).

State Representative Ron Abrams (IR–District 45A).

State Representative Hilda Bettermann (IR–District 10B).

State Representative Dave Bishop (IR–District 30B).

State Representative Fran Bradley (IR–District 30A).

State Representative Sherry Broecker (IR–District 53B).

State Representative Tim Commers (IR–District 38A).

State Representative Roxann Daggett (IR–District 11A).

State Representative Steve Dehler (IR–District 14A).

State Representative Jerry Dempsey (IR–District 29A).
State Representative Ron Erhardt (IR–District 42A).
State Representative Don Frerichs (IR–District 31A).
State Representative Jim Girard (IR–District 21A).
State Representative Bill Haas (IR–District 48A).
State Representative Tom Hackbarth (IR–District 50A).
State Representative Elaine Harder (IR–District 22B).
State Representative Mark Holsten (IR–District 56A).
State Representative Virgil Johnson (IR–District 32B).
State Representative Kevin Knight (IR–District 40B).
State Representative Le Roy Koppendrayer (IR–District 17A).
State Representative Ron Kraus (IR–District 27A).
State Representative Philip Krinkie (IR–District 53A).
State Representative Peggy Leppik (IR–District 45B).
State Representative Arlon W. Kindner (IR–District 33A).
State Representative Bill Macklin (IR–District 37B).
State Representative Dan McElroy (IR–District 36B).
State Representative Carol Molnau (IR–District 35A).
State Representative R.D. Mulder (IR–District 21B).
State Representative Tony Onnen (IR–District 20B).
State Representative Mike Osskopp (IR–District 29).
State Representative Dennis Ozment (IR–District 37A).
State Representative Erik Paulsen (IR–District 42B).
State Representative Tim Pawlenty (IR–District 38B).
State Representative Dick Pellow (IR–District 52B).
State Representative Walt Perlt (DFL–District 57A).
State Representative Jim Rostberg (IR–District 18A).
State Representative Alice Seagren (IR–District 41A).
State Representative Steve Smith (IR–District 34A).
State Representative Doug Swenson (IR–District 51B).
State Representative Howard Swenson (IR–District 23B).
State Representative Barb Sykora (IR–District 43B).
State Representative Eileen Tompkins (IR–District 36A).
State Representative H. Todd Van Dellen (IR–District 34B).
State Representative Tom Van Engen (IR–District 15A).
State Representative Barb Vickerman (IR–District 23A).
State Representative Charlie Weaver (IR–District 49A).
State Representative Steve Wenzel (DFL–District 12B).
State Representative Gary Worke (IR–District 28A).

Mr. GRAMS. Mr. President, whether by fax or phone or during our conversations together in town halls, Minnesotans, just like the rest of America, are demanding action on this balanced budget amendment.

If this Senate is going to do the will of the people as we were elected to do, then this balanced budget amendment will pass and the final vote would be 100–0. Mr. President, let us make February 28, 1995, the day we finally take responsibility for the uncontrolled spending of Congress in the 1980's. Let us make February 28, 1995, the day that we, the Congress, keep our promise to the American taxpayers and deliver a balanced budget amendment.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 1 minute.

THREE WORST EXCUSES AGAINST THE BALANCED BUDGET AMENDMENT

Mr. ASHCROFT. Mr. President, here are the three worst excuses that have been made against voting for the balanced budget amendment in this Chamber.

Bad excuse No. 1: We do not need a balanced budget amendment because Congress already has the authority to balance the budget.

Of course, we have the authority to balance the budget. What we need is a prohibition against doing what is wrong. The Constitution is not needed to protect Americans from Congress doing what is right. Americans need the Constitution to protect them from Congress doing what is wrong: Spending the money of the next generation.

The first five words of the Bill of Rights are, "Congress shall make no law." These words shield the people from Congress. Now we need to protect the rights and resources of the next generation from debts incurred by Congress.

Bad excuse No. 2: Before we have a balanced budget amendment, we must specify every detail about how we will achieve it. When President Kennedy made the commitment to send a man to the Moon, he did not lay out the design for the Apollo spacecraft or the booster rocket. He did not decide which astronaut would be the first man to set foot on the Moon. No, President Kennedy called America to greatness, he challenged people to a higher standard, because it was critical to our future.

Today, we need to challenge America to greatness again, because balancing our budget is essential for our future.

Bad excuse No. 3: A supermajority requirement is undemocratic because it gives a minority the right to block the will of the majority.

What is undemocratic is that this Congress spends the resources of the unrepresented next generation. No taxation without representation was the cry of our Founding Fathers, and it is my cry on behalf of unrepresented generations yet to come.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HATCH. Mr. President, I yield 1 minute to the junior Senator from Tennessee.

The PRESIDING OFFICER (Mr. GRAMS). The junior Senator from Tennessee is recognized for 1 minute.

Mr. FRIST. Mr. President, 4 months ago, I was elected to the U.S. Senate with the mandate to aggressively treat problems that have been readily diagnosed by the American people. The national debt is a malignant cancer growing every second of every day, consuming the health and vitality of this Nation.

The future hard work and dreams of our children are being sacrificed every day to feed this cancer. Conventional treatment has failed.

Congress has demonstrated a lack of discipline to rein in Federal spending. The President has said he will tolerate increasing the debt from $18,000 to $24,000 for every individual.

But there is a cure: The balanced budget amendment.

Clearly, we are mortgaging the future of our children if we do not take action today. I want the children of America to inherit a prosperous future, not a legacy of debt. For this reason, I urge my colleagues to join me in supporting the balanced budget amendment.

I yield the floor.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 1 minute.

Mr. ABRAHAM. Mr. President, I will undoubtedly cast many hundreds of votes during my tenure in the Senate, but it is unlikely I will cast any more important vote than the one I will make later today.

With that vote, I will seek to amend the Constitution of our Nation to require that our national budget be balanced. There are many reasons why I will vote this way, but first among them is my conviction that our responsibility to secure the economic future of our country can only be fulfilled if we adopt this amendment.

Last night, when I said good night to my 20-month-old twin daughters, I thought about the country they will inherit when they grow up. I will not bequeath to them and their generation a legacy of debt.

For too long, this Congress has failed to meet this responsibility to future Americans. The failures have occurred on both sides of the political aisle, and so now the solution must be bipartisan as well.

I call on my colleagues to provide Betsy and Julie Abraham, and the other children of this country, the future they deserve—a future in which they will have the fullest opportunity to realize the promise of America.

Mr. President, I urge this Senate to adopt this amendment to the Constitution.

Mr. HATCH. Mr. President, I yield the distinguished Senator from Oklahoma 1 minute.

The PRESIDING OFFICER. The Senator is recognized.

Mr. INHOFE. Mr. President, for weeks on end now we have been debating this issue, and I think we know what the arguments are.

The other night I took to the floor and spent 1 hour and 10 minutes diffusing the 11 arguments that have been given against the balanced budget amendment. The bottom line is that those are not real arguments. The bottom line is that those individuals who are going to use arguments against the balanced budget amendment really do not want to cut spending.

Mr. President, the American people do. Let us look at what happened on last November 8. Last November 8, using the two indices of the stimulus bill for spending hikes and the National Taxpayers Union rating for tax increases, virtually everyone in the House and the Senate that was defeated on November 8 voted for the stimulus increase—that is the spending increase—and was rated either a "D" or an "F" by the National Taxpayers Union.

The bottom line is the big spenders and the big taxers do not want a balanced budget amendment, but the American people do. And we have the unique opportunity to give them what they asked for on November 8.

Mr. HATCH. Mr. President, I am really impressed that all 11 new Members to the Senate have spoken for the balanced budget amendment. It shows the difference between what has gone on in the past and what is really going to go on in the future.

I hope our colleagues pay attention, because this is the wave of the future, and we have to pass this balanced budget amendment.

I yield 1 minute to the distinguished Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for 1 minute.

Mr. BENNETT. Mr. President, I am impressed by the unanimity of this freshman class. I am reminded of one great truth around here, and that is that people who come to Washington and stay a long time sometimes—and I underline sometimes because it is not universal. I see many Members on the floor for whom it is not true—sometimes lose touch with the people back home. It is always the most dangerous political thing that can happen to a Member of the Senate, is to lose touch. My father got to the Senate because his predecessor became too important in Washington to pay attention to the people of Utah. My colleague, the senior Senator from Utah, became a Senator because the man he defeated got out of touch. He was just reelected for a fourth term, indicating that has not happened to him.

But the 11 Members who have come here now, who are the most recent people to face the voters, come unanimously in favor of the balanced budget amendment. When I return home to Utah and conduct my efforts to stay in touch, I find, again, unanimously the voice of the people are demanding that we do this. So I rise to say I think the people in this body should listen to the people of the country who are telling us overwhelmingly this is what they want, and as their representatives here it is time for us to give them what they want.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I yield 1 minute to the distinguished Senator from New Hampshire.

Mr. SMITH. Mr. President, I say to my colleagues, I have only been around here 5 years. I am hardly considered a veteran. But I have never seen a more impressive display in my time in the Senate, indeed in all the years I have spent in the Congress, both the House and the Senate. This is a very personal appeal, talking about their children on behalf of the millions of other American children, and what this is going to do to them in the future. That kind of unanimity, speaking on behalf of the elections in November as you have, is something I hope my colleagues who are still on the fence will hear.

This is much bigger than any one Senator or any one Senator's views. This is the American people at stake here. This is the economic future of America. All this talk we hear about how we are going to get it done, we do not need the amendment—we are not getting it done.

This has been a crusade for me since the first day I ran for Congress and announced I was running in 1979. I am just proud to be with you, all of you, and appreciate what you have done.

If this passes it will be because of you.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HATCH. Mr. President, I yield a minute to the distinguished Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, let me commend my colleagues, not only for their statements but for their clarity, the clarity they have brought to this argument, that they campaigned on. They did not just forget their campaign promises. They are committed to cutting down the size of Government.

We must pass the balanced budget amendment. Those who oppose this amendment will face the wrath of the people. We must force the Federal Government to live within its means. The Federal Government spends too much and taxes too much.

Today, as we vote on this amendment, it is ironic that the Denver International Airport is finally opening—more than 16 months late and $3 billion over its original budget.

This $4.9 billion boondoggle demonstrates why we need the balanced budget amendment. It demonstrates why we need less government, not more.

If you have any question about the balanced budget amendment, take a look at the Denver airport.

The FBI, SEC and the Denver district attorney are investigating allegations of fraud and public corruption involving the construction of DIA.

This airport is a monument to Government waste and mismanagement. The FAA has already poured almost $700 million of Federal dollars into this white elephant. How much more will be needed to keep this airport from crash landing?

In 1989, when Denver voters approved the construction of DIA, the politicians promised that the new airport would cost $1.7 billion and have 120 gates. The airport's price tax has now reached almost $5 billion, and the airport has only 87 gates. What happened to gates 88 to 120?

The taxpayers have a right to know why DIA's cost increased by $3 billion while the airport shrunk in size? Where did the extra $3 billion go?

The Denver airport was built on the expectation of 56 million passengers per year. But a total of only about 32 million passengers will fly in and out of Denver this year.

It is outrageous that Denver travelers will reportedly have to pay $40 extra on every round-trip ticket to support this airport.

Why was this Taj Mahal of the Rockies ever built? Why wasn't Denver's existing airport, Stapleton, simply expanded? Who is to blame for this folly?

The new Denver airport was built with almost $4 billion in municipal bonds. In the wake of the Orange County debacle, the Banking Committee is looking into the adequacy of disclosure to DIA bondholders.

Were bondholders adequately advised of DIA's projected revenues and costs? Was information about Denver's faulty baggage system withheld? What is the long-term viability of DIA? Will DIA's bondholders be paid in full?

The airport's bonds have a junk rating. Standard & Poor's says that "DIA faces major ongoing uncertainties that could lead to inadequate capacity to meet timely debt service payments." Will Denver's taxpayers have to pick up the tab if the airport defaults?

As we vote on the balanced budget amendment, we must remember the Denver airport. We must remember what happens when taxpayers' money is wasted on grandiose schemes. We must force Government to live within its means.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from Utah.

Mr. HATCH. Mr. President, this has been a very good debate. I appreciate our friends and colleagues and the others who have spoken. There are a number of others who would like to speak.

Frankly, I would like to yield the remainder of our time to a person who I think has fought his guts out for this amendment, who I think has shown a great deal of courage, who I know has been badgered both ways, and for whom I have the utmost respect in this matter. That is the distinguished Senator from Illinois.

Mr. SIMON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes and 45 seconds.

Mr. SIMON. Mr. President, I thank Senator HATCH, Senator CRAIG, and everyone who has played a part in this. I got on the Dirksen elevator the other day and right after me came in Senator JOHN CHAFEE and he said, "What a horrible debt we are imposing on future generations." That sums it all up.

We heard precisely the same arguments in 1986. We had $2 trillion worth of debt and now we have $4.8 trillion worth of debt. This year we will spend $339 billion on interest. We will spend twice as much as what we spend on our poverty programs, 11 times as much as we spend on education, 22 times as much as we spend on foreign economic assistance. In fact, we spend twice as much money on foreign aid for the wealthy in terms of interest on bonds that are held overseas than we spend on foreign aid for the poor.

Will it be painful if we pass this? Yes. There is going to be some pain. There is going to be infinitely more pain for this Nation and a lowered standard of living if we continue to have these huge deficits. The pain we are asked to impose upon ourselves is small compared to some of the steps that, for example, Margaret Thatcher took in Great Britain to turn that country around.

If you assume no change in interest rates, and every projection is that if we pass this, interest rates are going to go lower—but if you assume no change in interest rates, and no deductions on Social Security, it means that we can grow 1.7 percent a year in income. Put another way, in the year 2002, it is anticipated we will have about $300 billion more in income than we are spending this year. We can have a gradual growth, but we will have to have restrained growth.

I have read the editorials, Mr. President, as have you, criticizing this. It is interesting that not a single editorial has mentioned economic history. Take a look at this chart right here. This is the latest CBO estimate of where we are going in deficit versus national income, GDP. Historically, as nations have come around 9 or 10 or 11 percent, right around here, they have started monetizing the debt, started the printing presses rolling, started devaluing their currency. Those who vote against this are taking the chance that we can be the first nation in history to go up to this kind of debt without monetizing the debt. But what a huge gamble with the future of our country. As responsible Members of this body we should not be making that gamble.

I have heard a lot of about Social Security on the floor of the Senate today and these past days. I want to protect Social Security. The only way you can protect Social Security is to make sure we do not devalue our currency. I think it is vital for the future of our Nation and our children and generations to come that we pass this constitutional amendment.

The PRESIDING OFFICER. The remaining time is under the control of Senator BYRD.

Mr. BYRD. Mr. President, I thank the Chair.

Mr. President, I note that we have the entire Republican response team on the floor here today. They are out in full numbers. I have thought heretofore, when only one or two members of the response team came to the floor, that the other seven might be compared with the Seven Sleepers of Ephesus, to whom Gibbon referred in his magnificent magisterial work, "The Decline and Fall of the Roman Empire." But they are all here today. They really did not sleep as long as the Seven Sleepers, who slumbered 187 years, from the reign of Decius, who reigned from 249 to 251 A.D., until the reign of Theodosius II, who reigned from 408 to 450 A.D. Congratulations to the Republican response team. They have worked hard and acquitted themselves well.

Mr. President, it may be of historical interest to some Senators, as it is to me, that on this very day 200 years ago, the Congress was debating public debt legislation—on February 28, 1795—just as we are today, on February 28, 1995.

I will ask to include in tomorrow's RECORD, for the information of Senators, the materials pertinent to that debate, and to the statute that resulted therefrom.

Mr. President, rarely have I seen in all my years in the Senate a measure so flawed as the one before us today. If adopted, this constitutional amendment will surely create more mischief, generate more surprise consequences, and spin-off more unfortunate crises than has any other single legislative proposal in the history of this Nation. How something that seems so simple and straightforward to the casual observer can be so truly diabolical and destructive in nature confounds conventional wisdom. But a closer look reveals the impossible nature of this oft-touted but little understood amendment.

Section VI of the amendment states that "The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts." The amendment is immediately rendered unworkable with those 20 words in section VI. If one looks at the history of budget forecasts, it quickly becomes apparent—and no one would know this better than the distinguished Chairman of the Budget Committee, Senator DOMENICI—that forecasting budget receipts and outlays is not unlike forecasting the weather. Both are far from exact sciences, although the local weatherman probably hits the bull's eye with much more frequency than even our best budget prognosticators.

Under Section VI of this balanced budget proposal, erroneous and changing budget forecasts would have us dealing with the budget almost continually. Planned spending enacted before the fiscal year could have to be changed one or more times during the fiscal year. In a constantly fluctuating economy, where outlays and receipts alter with business cycles, as well as with unemployment, earthquakes, fires, and overseas conflicts, requiring rigid end-of-year budget balance, to be determined by estimates is nothing short of a recipe for utter chaos. As if that were not enough, the problem of inaccurate estimates is compounded by the text of Section II. Section II requires that the limit on debt held by the public not be increased absent a three-fifths vote. Since an increase in debt closely correlates with an excess of outlays over receipts, the amendment actually requires Congress to take two actions to allow for a deficit in any given fiscal year: pass a law to increase the debt limit, and pass another law for a specific deficit for the year.

To further elaborate on the "shop of horrors" which this amendment offers, let us discuss for a moment the principle of majority rule. This amendment would, for the first time, I believe, overturn the principle of majority rule. The budget of this Nation and critical economic decisions that relate to that budget could, at the most critical of times, be placed in the hands of a minority. Minorities are not elected to control the Nation's policies. Majorities are charged with that duty. Yet, this amendment would actually hand a minority the power to determine economic policy, and it would hand that power over during times of domestic or foreign economic crises, natural disasters, international turmoil, recessions, or other economic emergencies. That makes no sense. It makes no sense at all.

Moreover, the amendment's wording in section II—"The limit on the debt of the United States held by the public shall not be increased. . . .," allows the Federal Government to keep borrowing from the trust funds, including the Social Security trust fund, because "debt held by the public" refers to externally-held debt, not internally-held debt. So, we can keep putting IOU's into the trust funds and borrowing to mask the true size of the deficit, without ever having to make good on our

IOU's. In the case of the Social Security trust fund, when the baby boomers reach retirement age and the revenues in the trust fund drop because fewer people are working and paying into the fund and more people are drawing benefits out of the fund, how will we ever be able to replace the nearly $3 trillion which we have borrowed?

The amendment is so full of flaws, so reflective of flabby thinking, so arrogant in its disregard for the traditional checks and balances and separation of powers, that its consequences could be nothing short of a calamity.

The amendment so blurs and smudges the historical balance among the three branches that it renders our traditional constitutional structure to a mere shadow of its former clarity. Congress's traditional power of the purse is seriously hamstrung by the yearly supermajority requirements to waive the provisions of the amendment, and by the possibility of unchecked impoundments of appropriated funds by the Executive. The President's flexibility on budgetary matters is also seriously impaired because he must present a balanced budget every year whether he deems it wise or not.

The courts will either gain tremendous power over both branches and over matters of budget policy or be rendered largely impotent, depending upon how the implementing legislation, if there ever is any, is written, and depending upon the course of events. One thing is certain: uncertainty will reign.

One additional thing is certain. The ghost of John Marshall was not looking over the shoulders of the authors of this most unfortunate amendment.

There is no reason to spoil our grandest historical document with this macabre twisting of the balance of powers. We can begin to address budget deficits right now by passing legislation to further reduce the deficits, and without waiting on any constitutional amendment to provide us cover for the hard choices we were elected to make.

Political cover has its place and can be helpful in some situations, but this cover is far too costly. Destroying the Constitution is too high a price to pay for political cover.

We can cut the deficit without this amendment. But, I fear that the paramount concern of some is whether, absent this amendment, they can vote to cut deficits and be re-elected. That is hardly a noble reason to proceed to rewrite our carefully preserved national charter, preserved for us with blood and protected through the statesmanship and the courage of the past membership of this and the other body through 200 years of time. It is now up to the Members of this current Senate to live up to the standard of patriotism and courage set by our predecessors on important and critical matters throughout our history. There will be no more important vote any of us will ever cast.

Before this day has passed, each of us will be tested as to strength of character and fealty to our sworn oath as Senators.

I hope, Mr. President, we will not, in this critical moment, be found wanting. The amendment will have consequences which no one can predict—no one. We have tried to explore some of those consequences throughout the 30 days of debate which have been consumed on this proposal. But it seems that the more one studies the amendment, the more flaws become apparent.

I am confident that should we go on another 30 days, additional flaws and problems would very likely be found. However, here we are at the 11 hour, witnessing desperate—desperate —last-minute efforts to salvage this amendment through a cut-and-paste process designed only to win votes and to somehow shove this extremely perilous proposal through the Senate. Have we lost all of our senses? What other flaws are we writing into the Constitution with this quick editing process which is currently going on on the Senate floor? What other checks and balances are we compromising with this insane bidding war for votes?

So here we are at the last minute, the 11th hour, the 59th minute of the 11th hour, and there is this hurried, desperate effort to find a way to garner another vote. Cut and paste. Change. We see this frenetic exercise being carried on here, all the hurry at the last moment now to try to patch over some of the flaws that have been brought to light.

Careful consideration has been thrown to the four winds, and all that seems to matter at this point now, Mr. President, is a victory for the proponents, at all costs. We are not filling in a crossword puzzle. We are not trying this word or that word out to win a prize. We are writing a constitutional amendment. John Marshall said: "Let us not forget that it is the Constitution we are expounding." I add my own modest footnote by saying that it is the Constitution that we are amending. We are writing a constitutional amendment—something that will affect the representative democracy for generations of Americans through the coming ages. I regret the rather tawdry attempt at the last-minute tinkering being made to try to salvage a proposal that is so flawed that it ought to be immediately rejected by the Senate. I hope that we will come to our senses and defeat this patched-up, pulled-together "Frankenstein" before it is too late.

Mr. President, on March 2, 1805—that is only 2 days away from being exactly 190 years ago—Aaron Burr, after he had presided over the impeachment trial of Samuel Chase and before leaving the Senate Chamber for the last time, spoke to the Members of that body over which he had presided for 4 years. The speech was one which left many of the Senators of that ancient day in tears. As we come to a close of this debate very soon, his closing words should ring in the ears of today's men and women who serve in this body. Aaron Burr said, with regard to the U.S. Senate: "This House is a sanctuary—a citadel of law, of order, and of liberty; and it is here—it is here, in this exalted refuge—here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagog or the usurper, which God avert, its expiring agonies will be witnessed on this floor."

Mr. President, the decision which the Senate will make before this day's sun has set can very well turn out to be the prophetic end of Burr's words. I have cast 13,744 votes in this Senate since I came to the Senate, now going on 37 years ago. This does not include the more than 400 votes that I cast in the other body before I came to the Senate. But barring none, this is the most important vote of my political career on Capitol Hill. It is important, because we are tampering with the Constitution of the United States, an immortal document that has served us well over a period of 206 years. And we are reaching a critical point in the history of this country and in the history of the Constitution when we face the awful prospect of an amendment, which has been rushed through the other body in 2 day's time, and which has the support all over this country of the overwhelming majority of the American people—because they have not been duly informed of its contents and of the ramifications that will flow from its adoption and ratification. It is said that there is only one vote that stands between the Senate and the Constitution and that awful end which Burr prognosticated which would be witnessed on this floor. "If the Constitution be destined ever to be destroyed by the sacrilegious hands of the demagog or the usurper, which God avert, its expiring agonies will be witnessed on this floor."

Mr. President, I pray to God that Senators will rise to the occasion—I have seen this Senate demonstrate courage and character before, and I hope it will do so today—and that Senators will cast their vote to protect for their children and their children's children throughout all the ages to come, this unique Constitution that was written by those illustrious men, like Hamilton and Madison and the other Framers who sat in Philadelphia in 1797, lacking only 2 years, Mr. President, of being 210 years ago.

Mr. President, I close with the urgent plea that we remember Marshall's admonition. Let us not forget that it is a Constitution that we are expounding and let us not forget also, Mr. President, that it is a Constitution that we are amending.

God save the United States of America! God save the Constitution of the United States! May this Senate rise to do its duty in order that our children may have cause to honor the memories of their fathers as we have cause to honor the memory of ours.

The PRESIDING OFFICER. The time has expired.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I ask unanimous consent to proceed for just 30 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Mr. President, I know time has expired. I asked for 30 seconds to express my very profound gratitude to the distinguished Senator from West Virginia for his powerful statement on behalf of the Constitution.

I know of no Member of the Congress who has a deeper, more enduring dedication to the Constitution than does the Senator from West Virginia. I take his wise and moving words to heart. I am privileged to serve with him. I want to thank him for standing resolutely on this floor day in and day out and eloquently championing the basic, fundamental document of our Republic—the Constitution—which has served us so well for 206 years.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I ask unanimous consent to proceed for 30 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I just want to join my colleague from Maryland in commending our beloved colleague from West Virginia.

However the Senate decides this afternoon, I can speak with a great deal of certainty that the children, grandchildren, great grandchildren, and great-great-grandchildren of the distinguished Senator from West Virginia will indeed be proud of how he has stood for his country and has stood for the Constitution. I am deeply proud to stand with him.

I have cast no vote in the past 20 years that will be as important as the one I cast this afternoon. I am proud to cast my vote along with that of the Senator from Maryland and the Senator from West Virginia in defending our Constitution from this assault.

Mr. BYRD. Mr. President, I ask unanimous consent for 30 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I wish to express my thanks to the Senator from Maryland and the Senator from Connecticut for their constant and vigilant defense of our Constitution of the United States against this assault that is being made on the Constitution.

I thank them for their vigor, for their constant diligence, and for their spirit of defense of a great Government.

RECESS UNTIL 2:15 P.M.

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:34 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SANTORUM).

The PRESIDING OFFICER. The Senate will now come to order.

Mr. DOLE. Mr. President, let me indicate to my colleagues the first vote will be a 20-minute vote. All subsequent votes will be 10 minutes.

It is my hope that it will not take 10 minutes on each vote. I urge my colleagues on both sides to stay on the floor. There will be 17, 18, 19, or 20 votes, and we can complete action on the votes, hopefully by 5 o'clock, if we all stay right here. There will not be time to go anywhere else. I urge my colleagues to stay on the floor.

VOTE ON MOTION TO TABLE AMENDMENT NO. 274

The PRESIDING OFFICER (Mr. THOMPSON). Under the previous order, the vote now occurs on the motion to table amendment No. 274 offered by the Senator from California [Mrs. FEINSTEIN].

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Massachusetts [Mr. KERRY] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 60, nays 39, as follows:

[Rollcall Vote No. 80 Leg.]

YEAS—60

Abraham
Ashcroft
Bennett
Bond
Brown
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Exon
Faircloth
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Hatch
Hatfield
Helms
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kerrey
Kyl
Lott
Lugar
Mack
McConnell
Moseley-Braun
Murkowski
Murray
Nickles
Packwood
Pressler
Robb
Rockefeller
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner

NAYS—39

Akaka
Baucus
Biden
Bingaman
Boxer
Bradley
Breaux
Bryan
Bumpers
Byrd
Conrad
Daschle
Dodd
Dorgan
Feingold
Feinstein
Ford
Glenn
Graham
Harkin
Heflin
Hollings
Inouye
Johnston
Kennedy
Kohl
Lautenberg
Leahy
Levin
Lieberman
McCain
Mikulski
Moynihan
Nunn
Pell
Pryor
Reid
Sarbanes
Wellstone

NOT VOTING—1

Kerry

So the motion to lay on the table the amendment (No. 274) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 291

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment No. 291, offered by the Senator from Wisconsin [Mr. FEINGOLD].

The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Massachusetts [Mr. KERRY] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 81 Leg.]

YEAS—99

Abraham
Akaka
Ashcroft
Baucus
Bennett
Biden
Bingaman
Bond
Boxer
Bradley
Breaux
Brown
Bryan
Bumpers
Burns
Byrd
Campbell
Chafee
Coats
Cochran
Cohen
Conrad
Coverdell
Craig
D'Amato
Daschle
DeWine
Dodd
Dole
Domenici
Dorgan
Exon
Faircloth
Feingold
Feinstein
Ford
Frist
Glenn
Gorton
Graham
Gramm
Grams
Grassley
Gregg
Harkin
Hatch
Hatfield
Heflin
Helms
Hollings
Hutchison
Inhofe
Inouye
Jeffords
Johnston
Kassebaum
Kempthorne
Kennedy
Kerrey
Kohl
Kyl
Lautenberg
Leahy
Levin
Lieberman
Lott
Lugar
Mack
McCain
McConnell
Mikulski
Moseley-Braun
Moynihan
Murkowski
Murray
Nickles
Nunn
Packwood
Pell
Pressler
Pryor
Reid
Robb
Rockefeller
Roth
Santorum
Sarbanes
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner
Wellstone

NOT VOTING—1

Kerry

So the motion to lay on the table the amendment (No. 291) was agreed to.

VOTE ON THE MOTION TO TABLE AMENDMENT NO. 259

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the motion to lay on the table the amendment numbered 259 offered by the Senator from Florida [Mr.

GRAHAM]. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Massachusetts [Mr. KERRY] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 59, nays 40, as follows:

[Rollcall Vote No. 82 Leg.]

YEAS—59

Abraham
Ashcroft
Baucus
Bennett
Bond
Brown
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Faircloth
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Hatch
Hatfield
Heflin
Helms
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kerrey
Kyl
Lott
Lugar
Mack
McCain
McConnell
Moseley-Braun
Murkowski
Nickles
Packwood
Pressler
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner

NAYS—40

Akaka
Biden
Bingaman
Boxer
Bradley
Breaux
Bryan
Bumpers
Byrd
Conrad
Daschle
Dodd
Dorgan
Exon
Feingold
Feinstein
Ford
Glenn
Graham
Harkin
Hollings
Inouye
Johnston
Kennedy
Kohl
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moynihan
Murray
Nunn
Pell
Pryor
Reid
Robb
Rockefeller
Sarbanes
Wellstone

NOT VOTING—1

Kerry

So, the motion to lay on the table was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 298

The PRESIDING OFFICER (Mr. ABRAHAM). Under the previous order, the question is on a motion to table amendment No. 298, offered by the Senator from Florida [Mr. GRAHAM].

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 43, as follows:

[Rollcall Vote No. 83 Leg.]

YEAS—57

Abraham
Ashcroft
Bennett
Bond
Brown
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Faircloth
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Hatch
Hatfield
Helms
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kerrey
Kyl
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Packwood
Pressler
Robb
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner

NAYS—43

Akaka
Baucus
Biden
Bingaman
Boxer
Bradley
Breaux
Bryan
Bumpers
Byrd
Conrad
Daschle
Dodd
Dorgan
Exon
Feingold
Feinstein
Ford
Glenn
Graham
Harkin
Heflin
Hollings
Inouye
Johnston
Kennedy
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moseley-Braun
Moynihan
Murray
Nunn
Pell
Pryor
Reid
Rockefeller
Sarbanes
Wellstone

So the motion to lay on the table the amendment (No. 298) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 267

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment numbered 267 offered by the Senator from Massachusetts [Mr. KENNEDY].

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 62, nays 38, as follows:

[Rollcall Vote No. 84 Leg.]

YEAS—62

Abraham
Ashcroft
Bennett
Bond
Brown
Bryan
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Exon
Faircloth
Feinstein
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Hatch
Hatfield
Heflin
Helms
Hollings
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kyl
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Packwood
Pressler
Reid
Robb
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner

NAYS—38

Akaka
Baucus
Biden
Bingaman
Boxer
Bradley
Breaux
Bumpers
Byrd
Conrad
Daschle
Dodd
Dorgan
Feingold
Ford
Glenn
Graham
Harkin
Inouye
Johnston
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moseley-Braun
Moynihan
Murray
Nunn
Pell
Pryor
Rockefeller
Sarbanes
Wellstone

So the motion to lay on the table the amendment (No. 267) was agreed to.

VOTE ON MOTION TO TABLE MOTION TO REFER

The PRESIDING OFFICER. Under the previous order, the question now occurs on agreeing to the motion to lay on the table the motion to refer House Joint Resolution 1, offered by the Senator from Arkansas [Mr. BUMPERS].

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 63, nays 37, as follows:

[Rollcall Vote No. 85 Leg.]

YEAS—63

Abraham
Ashcroft
Baucus
Bennett
Bond
Boxer
Brown
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Faircloth
Frist
Gorton
Graham
Gramm
Grams
Grassley
Gregg
Hatch
Hatfield
Heflin
Helms
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kyl
Lott
Lugar
Mack
McCain
McConnell
Moseley-Braun
Murkowski
Nickles
Nunn
Packwood
Pressler
Reid
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner
Wellstone

NAYS—37

Akaka
Biden
Bingaman
Bradley
Breaux
Bryan
Bumpers
Byrd
Conrad
Daschle
Dodd
Dorgan
Exon
Feingold
Feinstein
Ford
Glenn
Harkin
Hollings
Inouye
Johnston
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moynihan
Murray
Pell
Pryor
Robb
Rockefeller
Sarbanes

So the motion to lay on the table the motion to refer House Joint Resolution 1 was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Let me caution all Members to stay on the floor. From now on the vote will end in 10 minutes regardless. Members have been cautioned to be on the floor. We would like to complete action. We have lost about 10 or 15 minutes waiting throughout the afternoon. That will not happen again. Ten minutes, that is it.

VOTE ON MOTION TO TABLE AMENDMENT NO. 299

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment No. 299, offered by the Senator from Georgia [Mr. NUNN].

The yeas and nays have been ordered and the clerk will call the roll.

The result was announced—yeas 61, nays 39, as follows:

[Rollcall Vote No. 86 Leg.]

YEAS—61

Abraham
Ashcroft
Baucus
Bennett
Bond
Brown
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Faircloth
Frist
Glenn
Gorton
Gramm
Grams
Grassley
Gregg
Hatch
Hatfield
Heflin
Helms
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kyl

Lott
Lugar
Mack
McCain
McConnell
Moseley-Braun
Murkowski
Nickles
Packwood
Pressler
Reid
Robb
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner

NAYS—39

Akaka
Biden
Bingaman
Boxer
Bradley
Breaux
Bryan
Bumpers
Byrd
Conrad
Daschle
Dodd
Dorgan
Exon
Feingold
Feinstein
Ford
Graham
Harkin
Hollings
Inouye
Johnston
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moynihan
Murray
Nunn
Pell
Pryor
Rockefeller
Sarbanes
Wellstone

So the motion to lay on the table the amendment (No. 299) was agreed to.

Mr. HATCH. Mr. President, I ask for the yeas and nays on the Nunn amendment.

The PRESIDING OFFICER. Is there a sufficient?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON AMENDMENT NO. 300, AS MODIFIED

The PRESIDING OFFICER. Under the previous order, the question occurs on amendment No. 300, as modified, offered by the Senator from Georgia [Mr. NUNN].

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 92, nays 8, as follows:

[Rollcall Vote No. 87 Leg.]

YEAS—92

Abraham
Akaka
Ashcroft
Baucus
Bennett
Biden
Bingaman
Bond
Boxer
Bradley
Breaux
Bryan
Bumpers
Burns
Byrd
Campbell
Chafee
Coats
Cochran
Cohen
Conrad
Coverdell
Craig
D'Amato
Daschle
DeWine
Dodd
Dole
Domenici
Dorgan
Exon
Faircloth
Feinstein
Ford
Frist
Glenn
Gorton
Graham
Grams
Grassley
Gregg
Hatch
Hatfield
Heflin
Helms
Hollings
Hutchison
Inhofe
Inouye
Jeffords
Johnston
Kassebaum
Kempthorne
Kennedy
Kerrey
Kerry
Kohl
Kyl
Lautenberg
Levin
Lieberman
Lott
Lugar
Mack
McConnell
Mikulski
Murkowski
Murray
Nickles
Nunn
Packwood
Pell
Pressler
Pryor
Reid
Robb
Rockefeller
Roth
Santorum
Sarbanes
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner
Wellstone

NAYS—8

Brown
Feingold
Gramm
Harkin
Leahy
McCain
Moseley-Braun
Moynihan

So the amendment (No. 300), as modified, was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 273

The PRESIDING OFFICER. Under the previous order, the question is on the motion to table amendment No. 273 offered by the Senator from Michigan [Mr. LEVIN].

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER (Mr. FRIST). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 62, nays 38, as follows:

[Rollcall Vote No. 88 Leg.]

YEAS—62

Abraham
Ashcroft
Baucus
Bennett
Bond
Brown
Bryan
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Faircloth
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Harkin
Hatch
Hatfield
Heflin
Helms
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kyl
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Packwood
Pressler
Reid
Rockefeller
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner
Wellstone

NAYS—38

Akaka
Biden
Bingaman
Boxer
Bradley
Breaux
Bumpers
Byrd
Conrad
Daschle
Dodd
Dorgan
Exon
Feingold
Feinstein
Ford
Glenn
Graham
Hollings
Inouye
Johnston
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moseley-Braun
Moynihan
Murray
Nunn
Pell
Pryor
Robb
Sarbanes

So the motion to table the amendment (No. 273) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 310

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment No. 310, offered by the Senator from Michigan [Mr. LEVIN].

The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 57, nays 43, as follows:

[Rollcall Vote No. 89 Leg.]

YEAS—57

Abraham
Ashcroft
Bennett
Bond
Brown
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Faircloth
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Hatch
Hatfield
Heflin
Helms
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kyl
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Packwood
Pressler
Reid
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner

NAYS—43

Akaka
Baucus
Biden
Bingaman
Boxer
Bradley
Breaux
Bryan
Bumpers
Byrd
Conrad
Daschle
Dodd
Dorgan
Exon
Feingold
Feinstein
Ford
Glenn
Graham
Harkin
Hollings
Inouye
Johnston
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moseley-Braun
Moynihan
Murray
Nunn
Pell
Pryor
Robb
Rockefeller
Sarbanes
Wellstone

So the motion to lay on the table the amendment (No. 310) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 311

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table the amendment No. 311 offered by the Senator from Michigan [Mr. LEVIN].

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 100, nays 0, as follows:

[Rollcall Vote No. 90 Leg.]

YEAS—100

Abraham
Akaka
Ashcroft
Baucus
Bennett
Biden
Bingaman
Bond
Boxer
Bradley
Breaux
Brown
Bryan
Bumpers
Burns
Byrd
Campbell
Chafee
Coats
Cochran
Cohen
Conrad
Coverdell
Craig
D'Amato
Daschle
DeWine
Dodd
Dole
Domenici
Dorgan
Exon
Faircloth
Feingold
Feinstein
Ford
Frist
Glenn
Gorton
Graham
Gramm
Grams
Grassley
Gregg
Harkin
Hatch
Hatfield
Heflin
Helms
Hollings
Hutchison
Inhofe
Inouye
Jeffords
Johnston
Kassebaum
Kempthorne
Kennedy
Kerrey
Kerry
Kohl
Kyl
Lautenberg
Leahy
Levin
Lieberman
Lott
Lugar
Mack
McCain
McConnell
Mikulski
Moseley-Braun
Moynihan
Murkowski
Murray
Nickles
Nunn
Packwood
Pell
Pressler
Pryor
Reid
Robb
Rockefeller
Roth
Santorum
Sarbanes
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner
Wellstone

So the motion to lay on the table the amendment (No. 311) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 307

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment No. 307, offered by the Senator from Arkansas [Mr. PRYOR].

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 63, nays 37, as follows:

[Rollcall Vote No. 91 Leg.]

YEAS—63

Abraham
Ashcroft
Bennett
Bingaman
Bond
Brown
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Exon
Faircloth
Feinstein
Frist
Gorton
Graham
Gramm
Grams
Grassley
Gregg
Hatch
Hatfield
Heflin
Helms
Hollings
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kyl
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Nunn
Packwood
Pressler
Reid
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner

NAYS—37

Akaka
Baucus
Biden
Boxer
Bradley
Breaux
Bryan
Bumpers
Byrd
Conrad
Daschle
Dodd
Dorgan
Feingold
Ford
Glenn
Harkin
Inouye
Johnston
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moseley-Braun
Moynihan
Murray
Pell
Pryor
Robb
Rockefeller
Sarbanes
Wellstone

So the motion to lay on the table the amendment (No. 307) was agreed to.

VOTE ON THE MOTION TO TABLE AMENDMENT NO. 252

The PRESIDING OFFICER. Under the previous order, the question occurs on the motion to lay on the table amendment No. 252 offered by the Senator from West Virginia [Mr. BYRD].

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 69, nays 31, as follows:

[Rollcall Vote No. 92 Leg.]

YEAS—69

Abraham
Ashcroft
Baucus
Bennett
Biden
Bingaman
Bond
Brown
Bryan
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Conrad
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Exon
Faircloth
Feinstein
Frist
Gorton
Graham
Gramm
Grams
Grassley
Gregg
Hatch
Hatfield
Heflin
Helms
Hollings
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kohl
Kyl
Lott
Lugar
Mack
McCain
McConnell
Moseley-Braun
Murkowski
Nickles
Nunn
Pressler
Reid
Robb
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner

NAYS—31

Akaka
Boxer
Bradley
Breaux
Bumpers
Byrd
Daschle
Dodd
Dorgan
Feingold
Ford
Glenn
Harkin
Inouye
Johnston
Kennedy
Kerrey
Kerry
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moynihan
Murray
Packwood
Pell
Pryor
Rockefeller
Sarbanes
Wellstone

So the motion to lay on the table was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 254

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment No. 254, offered by the Senator from West Virginia [Mr. BYRD].

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 68, nays 32, as follows:

[Rollcall Vote No. 93 Leg.]

YEAS—68

Abraham
Ashcroft
Baucus
Bennett
Bingaman
Bond
Brown
Bryan
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Conrad
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Exon
Faircloth
Feinstein
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Harkin
Hatch
Hatfield
Heflin
Helms
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kohl
Kyl
Lott
Lugar
Mack
McCain
McConnell
Moseley-Braun
Murkowski
Nickles
Nunn
Packwood
Pressler
Reid
Robb
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner

NAYS—32

Akaka
Biden
Boxer
Bradley
Breaux
Bumpers
Byrd
Daschle
Dodd
Dorgan
Feingold
Ford
Glenn
Graham
Hollings
Inouye
Johnston
Kennedy
Kerrey
Kerry
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moynihan
Murray
Pell
Pryor
Rockefeller
Sarbanes
Wellstone

So the motion to lay on the table the amendment (No. 254) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 255

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment No. 255, offered by the Senator from West Virginia [Mr. BYRD].

The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER (Mr. COATS). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 62, nays 38, as follows:

[Rollcall Vote No. 94 Leg.]

YEAS—62

Abraham
Ashcroft
Baucus
Bennett
Bond
Brown
Bryan
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Conrad
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Faircloth
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Hatch
Hatfield
Heflin
Helms
Hollings
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kyl
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Packwood
Pressler
Reid
Robb
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner

NAYS—38

Akaka
Biden
Bingaman
Boxer
Bradley
Breaux
Bumpers
Byrd
Daschle
Dodd
Dorgan
Exon
Feingold
Feinstein
Ford
Glenn
Graham
Harkin
Inouye
Johnston
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moseley-Braun
Moynihan
Murray
Nunn
Pell
Pryor
Rockefeller
Sarbanes
Wellstone

So the motion to lay on the table the amendment (No. 255) was agreed to.

MOTION TO TABLE AMENDMENT NO. 253

The PRESIDING OFFICER. Under the previous order the question now occurs on the motion to table amendment No. 253 offered by the Senator from West Virginia [Mr. BYRD].

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 63, nays 37, as follows:

[Rollcall Vote No. 95 Leg.]

YEAS—63

Abraham
Ashcroft
Bennett
Biden
Bond
Brown
Bryan
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Exon
Faircloth
Feinstein
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Hatch
Hatfield
Heflin
Helms
Hollings
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kyl
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Nunn
Packwood
Pressler
Reid
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner

NAYS—37

Akaka
Baucus
Bingaman
Boxer
Bradley
Breaux
Bumpers
Byrd
Conrad
Daschle
Dodd
Dorgan
Feingold
Ford
Glenn
Graham
Harkin
Inouye
Johnston
Kennedy
Kerrey

Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moseley-Braun
Moynihan
Murray
Pell
Pryor
Robb
Rockefeller
Sarbanes
Wellstone

So the motion to lay on the table the amendment (No. 253) was agreed to.

VOTE ON MOTION TO TABLE AMENDMENT NO. 258

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table amendment No. 258 offered by the Senator from West Virginia [Mr. BYRD].

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 75, nays 25, as follows:

[Rollcall Vote No. 96 Leg.]

YEAS—75

Abraham
Ashcroft
Baucus
Bennett
Biden
Bingaman
Bond
Bradley
Brown
Bryan
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Dorgan
Exon
Faircloth
Feingold
Feinstein
Frist
Gorton
Graham
Gramm
Grams
Grassley
Gregg
Harkin
Hatch
Hatfield
Heflin
Helms
Hollings
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kohl
Kyl
Lott
Lugar
Mack
McCain
McConnell
Moseley-Braun
Murkowski
Murray
Nickles
Nunn
Packwood
Pressler
Reid
Robb
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner
Wellstone

NAYS—25

Akaka
Boxer
Breaux
Bumpers
Byrd
Conrad
Daschle
Dodd
Ford
Glenn
Inouye
Johnston
Kennedy
Kerrey
Kerry
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moynihan
Pell
Pryor
Rockefeller
Sarbanes

So the motion to table the amendment (No. 258) was agreed to.

VOTE ON MOTION TO TABLE THE MOTION TO COMMIT

The PRESIDING OFFICER. Under the previous order, the question now occurs on the motion to table the motion to commit House Joint Resolution 1, offered by the Senator from Massachusetts [Mr. KERRY].

The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 63, nays 37, as follows:

[Rollcall Vote No. 97 Leg.]

YEAS—63

Abraham
Ashcroft
Baucus
Bennett
Biden
Bond
Brown
Bryan
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Exon
Faircloth
Frist
Gorton
Graham
Gramm
Grams
Grassley
Gregg
Harkin
Hatch
Hatfield
Heflin
Helms
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kyl
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Packwood
Pressler
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner
Wellstone

NAYS—37

Akaka
Bingaman
Boxer
Bradley
Breaux
Bumpers
Byrd
Conrad
Daschle
Dodd
Dorgan
Feingold
Feinstein
Ford
Glenn
Hollings
Inouye
Johnston
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moseley-Braun
Moynihan
Murray
Nunn
Pell
Pryor
Reid
Robb
Rockefeller
Sarbanes

So the motion to lay on the table the motion to commit was agreed to.

Mr. MACK addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

MOTIONS WITHDRAWN

Mr. MACK. Mr. President, I ask unanimous consent that motions offered by Senator DOLE be withdrawn.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The motions were withdrawn.

MOTION TO RECONSIDER VOTES EN BLOC

Mr. MACK. I ask unanimous consent that I may move to reconsider and table all previous votes en bloc at this time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MACK. I move to reconsider and table en bloc the previous rollcall votes.

The motion was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia is recognized for 15 minutes.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the Chair.

Mr. President, I first would like to commend the proponents of the constitutional amendment for their spirited defense of this balanced budget amendment, misnamed though it is. I cannot commend them, however, on the content of their proposal. I believe that the proposal is inherently flawed, wrong-headed and worth absolutely nothing in terms of real deficit reduction. But I do believe that the debate has been enlightening, and I also believe that an adequate amount of time has been accorded to a thorough discussion of the amendment. So I thank Senator HATCH and Senator DOLE and all of the proponents for the time that we have deliberated. And I thank them for their spirited defense of the amendment.

I also commend Senator SIMON. He obviously believes so wholeheartedly in this proposal that one must admire his constancy.

There have been many profiles in courage, Mr. President, and they will very soon make themselves manifest. But the profiles in courage displayed by Senator MARK HATFIELD and Senator TOM DASCHLE must not pass unnoticed—must not pass unnoticed—as we near the end of this long debate. Both of these Senators, and others who likewise will have displayed great courage in voting against this amendment, have lived up to the highest standards imagined by the Framers when they devised the marvelous institution of the Senate and envisioned Senators as men who would be able to withstand pressure, lift themselves above the political fray, and, according to their consciences, do the right and the honorable thing, regardless of political cover.

Mr. President, I ask for attention in this Senate, and I do not want the time to be charged against me.

The PRESIDING OFFICER. The Senate will be in order. The time will not be charged against the Senator from West Virginia. He will suspend while the Senate comes to order.

I ask that all Senators and staff please take the conversations off the floor.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the Chair.

Mr. President, I have spent most of my adult life in service to my country. No small part of that time has been engaged in trying to protect the Framers' views of the powers of the legislative branch, and particularly in attempting to thwart attacks on the powers of the U.S. Senate. I am so thoroughly in awe of the genius of the Framers, their foresight, their judgment, their tempered wisdom, that I would make any political sacrifice to protect the Constitution from permanent harm.

But we have entered an age, Mr. President, when reverence for our Constitution and for the wisdom of history have rather gone out of fashion. Talk shows, public opinion polls, bumper sticker slogans, and a so-called political Contract With America are the order of the day. There is little patience with going against the tide, and one man's courage may be judged as nothing more than foolhardy if that courage jeopardizes his chances for reelection.

Yet, I remain a believer in the old values. I believe that a solemn oath binds one. I believe that courage is eventually rewarded and has its own reward in any event. And I believe that preserving the constitutional system intact for future generations, insofar as the constitutional system itself is concerned, is the most solemn and important thing that a Member of this body can ever do.

There are those who would scoff at these old-fashioned views. There are those who would put efficiency, expediency and political agenda before any considerations of courage, fealty to an oath, loyalty to a higher purpose, or the preservation of the genius of a 200-year-old charter.

"Change" is the watchword of the day—change, merely for the sake of change, is suddenly a virtue above all others, a goal to be achieved at all costs. But I will never, never, never bow to those messengers of expediency or to the managers of any political party's agenda when basic principles are at stake.

The hurricanes may blow, the tides may rise, but there still remain those of us who will never, never bend, because we believe it is our sworn duty not to yield to attacks on our constitutional system of mixed powers and checks and balances.

So whatever the final outcome of this vote, I will retire to my bed tonight satisfied that I have done all that one man can do to live up to the oath that I have taken over and over again to protect the written framework of our representative democracy.

If the amendment should pass, I shall fervently hope that the States will have the wisdom that the Senate could not find to reject this dangerous and unwise proposal. If the amendment should fail, I shall be enormously proud of this body to which I have devoted so much of my life. And, most particularly, I will be proud of those Senators who set their sails against the wind and who chose the harder course in order that our venerable Constitution might be saved for yet a little while longer.

Our cherished liberties were not easily won, and they are not easily maintained. The preservation of our hard-won freedoms always has a price. But we who serve here are charged with the awesome duty of preserving those freedoms for generations yet unborn. The bruising battle that we have just been through demonstrates, once again, that we who have the honor of calling ourselves United States Senators must be ever vigilant to guard what has been bequeathed to us by wise men—men of vision, men of courage, men of character.

The political seas may churn and boil, but our solemn duty as Senators must always be to drown out the noise and keep faith with our own inner voices. The Senate, from time to time, is the very last bulwark against the too-hot passions that rail in this land. However various Senators may vote today, it is my hope that each of us will take away from this debate some lessons learned and wisdom gained. As in no other institution of this great and marvelous democracy—in the Senate, one individual can make a difference. Service here is difficult and it is demanding. It requires the very best of one's nature and the most assiduous cultivation of one's character. When the battle is over and the roar of the debate has subsided, whether one's side has won or lost is not the final thing. In the final analysis, service here boils down to one quality. Horace Greeley expressed it best when he said:

> Fame is a vapor, popularity an accident; riches take wings, and those who cheer today may curse tomorrow—only one thing endures; character!

Mr. President, to all those who have stood straight and tall in the fight I salute them with the words "morituri te salutamus." And may they, like I, feel as did the Apostle Paul in writing his second Epistle to Timothy, when he said: "I have fought a good fight, I have finished my course, I have kept the faith."

Mr. President, I ask unanimous consent that a series of pertinent commentaries from the press be printed in the RECORD.

There being no objection, the commentaries were ordered to be printed in the RECORD as follows:

[From the Washington Post, Feb. 28, 1995]

THE URGENCY OF POLITICAL COURAGE

It is hard to decide which would be worse: if the balanced budget amendment that the Senate is voting on today functioned as its sponsors intend, thereby locking the country into what would often be an ill-advised economic policy; or if Congress found a way to duck the command, thereby trivializing the Constitution and creating a permanent monument to political timidity.

Take the second possibility. The Constitution of the United States is remarkable because no country in the world has taken its written Constitution so seriously. It is a concise Constitution, and it has not been amended lightly. Other countries have acted as if their constitutions were merely pieces of legislation to be changed at will, but not the United States.

The balanced budget amendment marks the intrusion of the worst kind of legislative politics onto our constitutional tradition. For about a decade and a half, for mostly political reasons, Congress has not found the fortitude to come even close to balancing the budget. Instead of doing what it should and voting the spending cuts and taxes to narrow the deficit, Congress wants to dodge the hard choices by changing the Constitution. But as Sen. Daniel P. Moynihan argued on "Meet the Press" this Sunday: "My proposition is that you avoid trying to pretend a machine will do this for you. . . . You have to do it yourself." With or without the amendment, only Congress will get the budget balanced. And who is to say that the amendment, which becomes effective only in 2002, won't delay Congress from making the hard decisions until it is against the wall of its mandate, give it yet another excuse? "Gosh, we passed the balanced budget amendment," the unfailingly inventive members will be inclined to say, "and it goes into effect in just a few years. Isn't that enough? What do you want us to do? Balance the budget?"

Sen. Sam Nunn, whose vote could prove decisive, has argued forcefully that this amendment could lead to the judiciary's making decisions on spending cuts and tax increases that ought only be made by the legislative branch. Last night, Sen. Byron Dorgan, another whose vote had been in doubt, voiced a similar reservation. Supporters of the amendment are now trying to win their votes by arguing that legislation could be passed to protect against judicial supremacy. But surely Mr. Nunn's first instinct was right: No legislation can supersede the Constitution. If the amendment itself does not protect against judicial interference, there is no guarantee as to how a court will act. And if, on the other hand, there is no enforcement mechanism for the amendment, then why pass it in the first place? It becomes an utterly empty symbol, which is exactly what the United States Constitution has never been and never should be.

As bad as this prospect is, an effective balanced budget amendment might be even worse. By requiring three-fifths votes to pass unbalanced budgets, it would enshrine minority rule. And while deficits in periods of prosperity make little sense, modest deficits during economic downturns have been powerful engines for bringing the economy back to prosperity. This amendment, if it worked as planned, would shackle government to economic policies that are plainly foolish. Since government revenues drop during recessions and since payments for benefits such as food stamps and unemployment compensation increase, the amendment would require Congress by constitutional mandate to pursue exactly the policies that would only further economic distress: to raise taxes, to cut spending, or do both.

Moreover, as Mr. Moynihan and others have pointed out, the amendment could one day lead to the devastation of the banking system. This might happen because a balanced budget amendment could stall or stop the government from meeting its obligations to protect the depositors of banks that failed during an economic downturn. Mr. Moynihan is not exaggerating when he says that "everything we have learned about managing our economy since the Great Depression is at risk."

Voting against this amendment should be easy. It has been said that were today's vote secret, the amendment would certainly fail. But the political pressures on the undecided senators—Mr. Nunn, Mr. Dorgan, John Breaux, Kent Conrad and Wendell Ford—are immense and largely in the amendment's favor. These senators have an opportunity only rarely given public figures: to display genuine courage on an issue of enormous historical significance. They should seize their moment and vote this amendment down.

[From the New York Times, Feb. 28, 1995]

WHY FEAR DEBT?

(By Robert Heilbroner)

It is doubtful that the balanced-budget amendment, which the Senate votes on today, would be effective, even if ratified. The reason is there are many ways of placing expenditures outside the budget—Social Security, for example. What is not doubtful is that the real cause for worry is a balanced, not an unbalanced, budget.

Here's why: Deficit spending is legitimate when it is used to protect the future well-being of the nation.

Though one hears much about "living beyond our means," very few people can concisely define deficit spending. In fact, it means one and only one thing: borrowing. A deficit refers to the amount the government has borrowed. If there is no borrowing, there cannot be a deficit. That introduces a ray of light into the darkness for it makes us ask whether there might be circumstances in which the Government ought to borrow.

Suppose a law enjoined households from any borrowing. That would cut down gambling losses, but it would also prevent families from buying houses by taking out mortgages. Similarly, a prohibition on all business borrowing might eliminate a few extravagances, but it would cripple private investment. In the same way, a blanket injunction against Federal borrowing might cause the Government to eliminate waste, but it also would make much public investment impossible.

That would mean goodbye to such improvements as bridges, tunnels, highways, public-health research centers and other undertakings that would normally be considered public-sector business but could not be financed by taxation, because, as is the case with mortgages and business capital expenditures, the outlay is too large to be charged against one year's income.

What about the Federal debt?

We hear pious declarations about the need to remove the burden of our profligacy from the shoulders of our innocent children. I often wonder how my own children would feel if they opened my safe deposit box at my death to find it stuffed with Government debt—bonds. Would my heirs feel I had burdened them unfairly, as they transferred the bonds to their own safe deposit boxes?

In a word, whatever its problems—and a debt, like all borrowing, always poses financial management considerations—a national debt also serves a vital purpose. It provides the only asset in which households, insurance companies, corporations, banks and, not least, pension funds, including Social Security, can invest whatever assets need to be placed in the least risky of all financial instruments.

Do not forget, there is no income-producing investment other than Government securities that enjoys the power of the Government to assure that it will be redeemed at full face value.

Obviously, these arguments are not an excuse for Government profligacy any more than the legitimacy of consumer or corporate debt is an excuse for mindless private borrowing. But these arguments do suggest that the Government needs to depict its borrowing in a more understandable way. Specifically, it should have what it does not now have: a formal capital budget in which its expenditures for investment are identified. Such an accounting method would reassure the anxious public that at least an identifiable part of the "deficit" represents borrowing for purposes that most would approve.

Since there is no such accounting system, all public borrowing is deemed to be the work of the devil—when, properly understood, it may be crucial to the future strength and vitality of the nation.

[From Business Week March 6, 1995]

THE WRONG WAY TO BALANCE THE BUDGET

(By Christopher Farrell)

In the early days of the American republic, financial panics often led to steep declines in economic activity. Yet the last time a financial crisis triggered an economic collapse was the Great Depression. In the half-century following World War II, financial blowups have had minimal impact, and the economy has enjoyed a relatively smooth ride.

Now, Congress confronts the possibility of returning us to the chaotic days of yore. In the coming weeks, after years of debate, the Senate will decide whether to require the federal government to balance its budget. Many GOP lawmakers back the amendment. They shouldn't. The Balanced Budget Amendment would strip away much of the government spending that cushions the economy in hard times—just when disinflation and the prospect of deflation are raising the odds of financial crises.

The U.S. economy is a remarkably stable system, in large part because of the government's expansive safety net. Federal deposit insurance, for example, prevented the collapse of the savings-and-loan industry in the late 1980s from turning into a depression of the 1990s. A market collapse in Mexico sparks jitters in the U.S. but not much more.

Needed Net. Impose the Balanced Budget Amendment, however, and the system breaks down. Today, as soon as the economy begins to slump, government tax collections fall, and government transfer payments, such as food stamps, increase. The result is higher deficit spending during recessions—but these automatic stabilizers also put more money into the hands of Americans precisely when they most need it.

A Balanced Budget Amendment, by contrast, would require an explicit vote of Congress to run a larger deficit to counteract an economic slow-down. Given the current climate against deficits, politicians may be reluctant to approve large-scale deficit spending until a recession is well under way. The result? Bigger swings in the economy and a far more volatile financial system.

This at a time when changing economic conditions are creating a world where stability will be particularly in demand. For years, the powerful interaction of inflation hawks at the Federal Reserve Board, bond-market vigilantes, and the new world economic order have been exerting a firm downward pressure on prices. As a result, "we are a lot closer to the edge of deflation than we have been in some time," says Edward E. Yardeni, chief economist at C.J. Lawrence Inc.

The Fed, for one, is pursuing an austere monetary policy toward its goal of wringing inflation out of the economy. By almost any measure, the U.S. money supply is growing at an anemic rate—hardly fertile ground for price increases. Similarly, bond-market investors send interest rates sharply higher on any hint of inflation news. "The bond market will do whatever is necessary to make sure inflation won't take off," says Charles I. Clough Jr., chief investment strategist at Merrill Lynch & Co.

Meanwhile, with the collapse of communism and the embrace of freer markets by much of the developing world, the supply of goods, services, capital, and labor is soaring. White-hot domestic and international competition helps explain why last year's inflation rate in the U.S., measured by hourly compensation, was the lowest since 1949—easily offsetting price increases of many commodities and crude-materials prices. Disinflation is here to stay.

Vicious Cycle. So what? In a world of low inflation, the risk from unexpected financial crises soars. A stock market crash, a bank failure, or a drop in the dollar's value could send asset prices plunging. Suddenly, interest payments become onerous. Credit contracts. This is the sort of vicious cycle that was common in the pre-World War II era—and that deficit spending later eased. "The stability of our economy is drastically diminished when the federal government is powerless to intervene to prevent a disastrous debt deflation," says Hyman P. Minsky, an economist at the Jerome Levy Economics Institute at Bard College.

The Balanced Budget Amendment wouldn't leave us completely defenseless. The Fed always can open the money spigots to offset the immediate impact of a financial panic, much as it did following the stock market crash of 1987. But monetary policy is a tool best used to control inflation, not to counteract the cyclical ebbs and flows of the economy and financial markets. Getting the government's finances in order makes sense. But the Balanced Budget Amendment is a dangerous step back into the 19th century.

[From the Baltimore Sun, Feb. 28, 1995]

RISKY CONSTITUTIONAL AMENDMENT

"The last thing we want to do is turn over taxing and spending to the federal courts," Sen. Sam Nunn told Ross Perot Sunday night, in explaining why he wants to amend the Balanced Budget Amendment to forbid courts to get involved in any "case or controversy" arising out of Congress' failure to balance the budget. "I don't think we want to vest [judges] with spending and tax decisions. I think that would stand the Constitution on its head. I think the taxpayers of this country would be in revolt the first time a federal judge came down and said, 'You're mandated to increase taxes by $50 billion.'"

You bet taxpayers would be in revolt. But what could they do?

Nothing without Senator Nunn's modification, which will be voted on today before the vote on the Balanced Budget Amendment itself (and maybe nothing with it). Senator Nunn fails and then the main amendment passes and ultimately becomes part of the Constitution, judges would soon be rewriting the budget, based on lawsuits demanding that this tax be raised and that one lowered, etc. And citizens whose benefits were cut would also be in court, arguing that welfare should go down but not agricultural price supports, etc.

That is what is really at stake if the Balanced Budget Amendment as now written becomes the law of the land.

Sen. Orrin Hatch, leading the effort for the amendment, says Senator Nunn's concerns can be met with legislation. We dispute that, and so do most legal scholars—from Robert Bork on the right to Laurence Tribe on the left. The result would likely be hundreds, if not thousands of lawsuits around the country," Judge Bork has written. And Professor Tribe says, "Someone who has been cut off from a program, a taxpayer—these people will be able to go to court. No question about it."

This nation has never constitutionalized its taxing and spending process, so saying with complete confidence what judges would do is in a sense speculation. But there is a record worth noting. In states which have balanced budget requirements in their constitutions, judges have taken over the legislative and executive function regarding spending and taxing a result of lawsuits. That has happened in recent years in New York, Georgia, Wisconsin, California and Louisiana.

We have made it clear that we oppose the Balanced Budget Amendment for many reasons, including the prospect of judges taking over the budgeting process. So even if the Nunn amendment is added, we would oppose it. And Senator Nunn and others who dread judicial control of taxing and spending better be careful. Even seemingly clear language in an amendment doesn't guarantee hands off. There's always a risk.

As Sen. Howell Heflin, a former chief justice of the Alabama Supreme Court recently put it, "Every constitutional amendment that has ever been adopted has had to be interpreted, has had the court to have to look at it and make some kind of interpretation."

[From the Washington Post, Feb. 28, 1995]

How States Handle Debt May Not Work for Nation—Staying in Balance Requires Some Juggling

(By Dan Morgan)

If the Senate approves today a constitutional amendment requiring a balanced federal budget, 48 states will say, "Welcome to the club."

Only Vermont and Wyoming do not have some kind of similar statutory or constitutional requirement, and state officials have been among the loudest critics of the federal debt spree.

But studies of how these requirements work in practice show that states can find their ways around them when necessary. And some experts question whether the states are a good model for the federal government to be copying, given their vastly different responsibilities and fiscal systems.

"It is naive to believe that since states balance their budgets, the federal government should be able to do so as well," said Steven D. Gold, director of the Center for the Study of the States, who testified before the House Budget Committee in 1992. "States do not always balance their budgets. Many states avoid deficits only by using funds carried from previous years, or by relying on gimmicks that often represent unsound policy."

A 1993 study by the General Accounting Office for Congress, found that 10 states had carried over end-of-year deficits or borrowed money to finance such deficits in the previous three years. "Furthermore," the report noted, "some states reported balanced budgets at year end at least in part through one-time budget strategies," such as dipping into cash reserves, delaying payments to suppliers or using their accounting tricks.

States balance their budgets most of the time. But they have also been known to sell assets, temporarily reduce pension contributions and accelerate tax collection in order to stay within the letter of budget law.

Despite a requirement that the governor submit a balanced budget to the legislature, California has had at least four deficits since 1983, and its fiscal predicament "clearly shows that a balanced budget provision is no panacea—in fact, at present it seems almost an irrelevancy," Gold told the Budget Committee. Since then, California's financial plight has worsened.

States with large, persistent operating deficits, including Louisiana, New York, and Connecticut, have issued bonds to finance the shortfall, a device that is permitted under some state balanced budget requirements.

Most of the 35 constitutional and 13 statutory balanced budget requirements on the books of the states apply only to state general funds—the operating budgets that pay for basic, day-to-day governmental services out of revenues from taxes, fees and sometimes lottery proceeds.

Outside of this, however, states borrow heavily to finance longer-term needs for buildings, roads, education and other infrastructure. They also maintain numerous "off budget" public authorities (for ports, highways, pensions and mineral extraction, for example) that issue bonds and incur debts.

Some experts say that longstanding political tradition, and fear of a downgraded credit rating, exert at least as much pressure on governors to run tight fiscal ships as the balanced budget requirements.

Because of these pressures, governors often take harsh austerity measures that would face far more resistance in Washington. During the 1991 recession, 23 states did not give workers salary increases; 17 states cut welfare benefits and many cut funding for higher education. According to Gold, a widespread response to state fiscal stress has been to increase tuition at state colleges, enabling state governments to reduce contributions to higher education.

Some say this kind of austerity, if extended to the federal budget because of the sanctions of a balanced budget amendment, would increase the severity and pain of economic downturns in a way that has not been true since the Depression.

State balanced budget requirements "generally have worked for state and local government," said Philip M. Dearborn, director of government finance research at the U.S. Advisory Commission on Intergovernmental Relations. "But there is a substantial difference between the management of states and of the federal government."

(During today's session of the Senate, the following morning business was transacted.)

COMMENDING DR. ROBERT D. REISCHAUER

Mr. DOMENICI. Mr. President, today brings to an end the very distinguished term of the third Director of the Congressional Budget Office—Dr. Robert D. Reischauer. He has served in that office with the highest degree of professionalism. Under some very difficult conditions in his 6 years as Director he has been able to maintain the independence and high respect all of us have for the CBO. He has always given his best, and called them as he saw them—sometimes to the chagrin of both sides of the aisle.

In the 21 years of the CBO there have been only three Directors. The first, Dr. Alice Rivlin, followed by Dr. Rudy Penner and then Dr. Robert Reischauer. Dr. Reischauer will now be followed in the high tradition of those Directors by Dr. June O'Neill. Quite frankly, one of the difficulties in finding someone to replace Bob's expired term was the very high standards of professionalism and objectivity Bob and his predecessors have brought to that office.

This is as it should be. The CBO directorship is a critical position and one that must provide objective, nonbiased, and professional analysis to the Congress—not an easy task in this day of instant communications and many well funded, organized lobbyists' "think tanks." Just being able to sort out the wheat from the chaff has become a full time responsibility of the CBO. Over the years we have also given CBO more responsibilities as in the recent case of the unfunded mandates legislation. Of course, we have not necessarily always given them more resources to go along with the additional workload.

Last evening the U.S. Senate adopted by unanimous consent, Senate Resolution 81, commending Dr. Reischauer for his long and faithful service to the Congress and the American public. The resolution was cosponsored by myself and the ranking member of the Budget Committee, the distinguished majority and minority leaders of the Senate, all the members of the Senate Budget Committee, and many others. I am sure, had time and resources permitted we would have had 100 original cosponsors.

The resolution we adopted unanimously last evening can only be considered a very small token of the Senate's appreciation of Dr. Reischauer's service to the Congress. In this arena today, where making decisions about complicated, complex, and difficult public policy issues that can affect the future course of this country, Dr. Reischauer has been a clear and concise voice. We may not have always agreed with Dr. Reischauer's analysis, but we always respected his analysis. He always gave his best. He always was fair and honest in his analysis. Somehow, I think wherever Bob Reischauer's career now takes him, that mantle of honesty and integrity will always go with him.

I now wish him and his family the best and I congratulate him for his public service and a job well done.

HARRY V. McKENNA FUNERAL—THE PASSING OF A PIONEER

Mr. PELL. Mr. President, I rise to share with my colleagues the news that Harry V. McKenna died last week and I recently returned from his funeral in Rhode Island.

Harry McKenna was not only the dean of broadcast journalism in our State for many decades, he was a premier broadcast journalist whose high standards remain a challenge for his successors.

Harry became the touchstone for Rhode Island politicians until his retirement in 1983. It seems you would not be taken seriously as a candidate, unless you were interviewed by Harry McKenna.

When I first ran for the Senate, almost 36 years ago, my first public interview was with Harry. His weekly "Radio Press Conference" ran for 32 years and was Rhode Island's longest-running news broadcast.

I was saddened when I learned of his death and I was touched by the gathering that honored him at his funeral. He was a good friend and an exemplary journalist.

After he retired, I missed him. Now I miss him even more.

My wife's and my deepest sympathy go to his wonderful wife, Julie, and his children and grandchildren.

I ask unanimous consent that the text of an obituary that appeared in the Feb. 22, 1995 issue of Providence (RI) Journal be printed in the RECORD.

There being no objection, the obituary was ordered to be printed in the RECORD, as follows:

HARRY V. MCKENNA; DIRECTED NEWS PROGRAM ON LOCAL RADIO

(By S. Robert Chiappinelli)

CRANSTON—Harry V. McKenna, the former WEAN news director who became an institution himself while interviewing Rhode Island's movers and shakers, died yesterday at the Roger Williams Medical Center.

Mr. McKenna, of *107 Grace St., was the husband of Jule (Lister) McKenna.*

A large man with a resonant voice, blustery style, and in later years, a shock of white hair, Mr. McKenna was called the dean of Rhode Island news correspondents.

His weekly *Radio Press Conference* ran for 32 years and was Rhode Island's longest-running news broadcast.

"He had kind of a special place," former Gov. J. Joseph Garrahy recalled yesterday. "He always sat at the right-hand corner of my desk at a press conference."

After each press conference, Mr. McKenna would collar the willing governor for a special telephone interview for WEAN.

"We had a wonderful relationship," Garrahy said.

Mr. McKenna, a member of the Rhode Island Heritage Hall of Fame, won respect both among politicians and fellow members of the press.

"For more than three decades, Rhode Island radio audiences tracked the course of state government and politics through the WEAN news reports of Harry McKenna," James V. Wyman, Journal-Bulletin vice president and executive editor, said.

"His familiar deep voice resonated with authority and credibility as he applied his aggressive style to interviews with key governmental officials," Wyman said.

"Harry's approach to newsgathering was both straightforward and relentless. But he was known and respected for his fairness."

Mr. McKenna joined the Journal-Bulletin in 1944 as nightside police and fire reporter. In 1949, he was named WEAN news director and was the station's news and public affairs director when he retired. More than 1,400 persons attended his retirement party in February, 1983.

John P. Hackett, former Journal-Bulletin chief editorial writer and longtime political writer who often teamed with Mr. McKenna on Radio Press Conference, said he was a skilled interrogator who frequently knew the answer to a question before he asked it.

"He was a good newsman," Hackett said. "He dug up more stuff. He'd pass tips on to me."

Mr. McKenna was in great demand as a master of ceremonies for community dinners, Hackett said, and his introductions would be a show in themselves.

"Before he got through," Hackett said, "he would have recognized everyone in the audience."

M. Charles Bakst, Journal-Bulletin political columnist, said: "He was a throwback to the days when radio coverage of the State House was an important part of the daily scene, and governors deferred to him, giving him extensive interviews and a seat of honor at press conferences."

"He was a big man who could get angry and sound tough, but who also had a playful, generous, patient side," Bakst said.

Mr. McKenna had served on the board of directors of the Associated Press Broadcasters Association, was a former international vice president of the Radio and Television News Directors Association, and was the first president of the Rhode Island Press Club.

In 1973, he caused a stir with a taped telephone interview with underworld informant Vincent "Big Vinnie" Teresa from a secret location. Teresa alleged that there was widespread corruption in the Providence Police Department, and said New England crime boss Raymond L.S. Patriarca had exerted influence on the department.

Mr. McKenna was chairman of the Traffic Safety Commission of Cranston for 20 years. He also served in numerous community organizations.

Besides his wife he leaves two daughters, Constance A. McKenna, and Deborah E.M. Brody, both of Cranston; a son, Robert W. McKenna of Warwick, and five grandchildren.

The funeral will be held Saturday at 8:30 a.m. from the Hoey Funeral Home, 168 Academy Ave., Providence, with a Mass of Christian Burial celebrated by Bishop Louis E. Gelineau at 10 at St. Matthew Church, Elmwood Avenue. Burial will be in Swan Point Cemetery in Providence.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, as I pointed out yesterday in this daily report—which I began 3 years ago—Federal debt has risen to astronomical proportions. As of the close of business yesterday, Monday, February 27, the Federal debt stood at $4,839,489,402,270.31—or $18,370.79 on a per capita basis.

Mr. President, anyone even remotely familiar with the U.S. Constitution knows that no President can spend a dime of Federal tax money that has not first been authorized and appropriated by Congress—both the House of Representatives and the U.S. Senate.

Mr. President, I am convinced today, as I was back in 1973, that it is the absolute responsibility and duty of Congress to control Federal spending. The U.S. Senate has a momentous challenge later today in lowering this enormous debt by approving a balanced budget amendment to the U.S. Constitution and sending it to the 50 States for ratification.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 3 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 257. An act to amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–442. A communication from the Chairman of the Farm Credit Administration, transmitting, pursuant to law, the report of the 1995 salary structures; to the Committee on Agriculture, Nutrition, and Forestry.

EC–443. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report on military expenditures for countries receiving U.S. assistance; to the Committee on Appropriations.

EC–444. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 94-2; to the Committee on Appropriations.

EC–445. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report of a violation of the Antideficiency Act; to the Committee on Appropriations.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HELMS, from the Committee on Foreign Relations:

Herman E. Gallegos, of California, to be an Alternate Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Lee C. Howley, of Ohio, to be a Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Isabelle Leeds, of New York, to be an Alternate Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Frank G. Wisner, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Career Minister, for the personal rank of Career Ambassador in recognition of especially distinguished service over a sustained period.

Robert E. Rubin, of New York, to be United States Governor of the International Monetary Fund for a term of five years; United States Governor of the International Bank for Reconstruction and Development for a term of five years; United States Governor of the Inter-American Development Bank for a term of five years; United States Governor of the African Development Bank for a term of five years; United States Governor of the Asian Development Bank; United States Governor of the African Development Fund;

United States Governor of the European Bank for Reconstruction and Development.

Jeanette W. Hyde, of North Carolina, to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to Antigua and Barbuda, and as Ambassador Extraordinary and Plenipotentiary of the United States of America to St. Kitts and Nevis, and as Ambassador Extraordinary and Plenipotentiary of the United States of America to Grenada.

Nominee: Jeanette W. Hyde.

Post: Ambassador to Antigua and Barbuda to St. Kitts & Nevis, and to Grenada.

Contributions, Amount, Date, Donee.

1. Self, Jeanette W. Hyde's Federal Campaign Contributions: 1990–94:

1. Price for Congress Committee—$400 (1990).
2. Gantt for Senate Committee—$1,000 (1990.
3. Gore for Senate Committee—$1,000 (1990).
4. Americans for Kerry Committee—$250 (1991).
5. David Price Reelection Committee—$1,000 (1991).
6. Committee to Reelect Terry Sanford—$500 (1991).
7. Gephardt for Congress Committee—$250 (1991).
8. Clayton for Congress Committee—$500 (1992).
9. David Price for Congress Committee—$1,000 (1992).
10. Committee to Reelect Terry Sanford—$1500 (1992).
11. Committee to Elect Bill Clinton President—$1,000 (1992).
12. Braun for Senate Committee—$1,000 (1992).
13. NC Democratic Campaign (Federal Account)—$5,000 (1992).
14. DNC Victory Fund (Finance Council Membership)—$5,000 (1992).
15. DNC Victory Fund—$5,000 (1992).
16. DSCC—$200 (1992).
17. Clayton for Congress Committee—$150 (1993).

Spouse, Wallace N. Hyde's Federal Campaign Contributions, 1990–94:

1. David Price for Congress—$500 (1990).
2. Gantt for Senate Committee—$1,000 (1990).
3. Clark for Congress Committee—$500 (1990).
4. Democratic House and Senate Council—$1,500 (1990).
5. Gore for Senate Committee—$1,000 (1990).
6. Bill Clinton for President—$250 (1991).
7. David Price for Congress Committee—$300 (1991).
8. Clark for Congress Committee—$400 (1991).
9. Stevens for Congress Committee—$300 (1991).
10. Gephardt for Congress Committee—$250 (1991).
11. Democratic House and Senate Council—$1,500 (1991).
12. Bradley for Senate Committee—$1,000 (1991).
13. Americans for Kerry Committee—$250 (1991).
14. Terry Sanford for Senate Committee—$2,000 (1992).
15. Bill Clinton for President—$750 (1992).
16. Stevens for Congress Committee—$500 (1992).
17. DNC Victory Fund—$7,000 (1992).
18. Friend of Clayton and Watt for Congress—$200 (1992).
19. Democratic House and Senate Council—$1,500 (1992).
20. Democratic House and Senate Council—$625 (1993).
21. DNC Business Leadership Council—$10,000 (1994).
22. Sandy Sands for U.S. Congress—$1,000 (1994).
24. Gene Stucky for U.S. Congress—$500 (1994).

3a. Children and spouses Names; None.

3b. Stepchildren and spouses names, Martha Hyde Jones, None; Dan Jones (spouse), none; Charlie W. Hyde, none; Barbara Hyde White, none; Joseph White (spouse), none.

4. Parents names, Gurney C. Wallace, deceased; Effie W. Wallace, none.

5. Grandparents names, Nettie B. Whitlock, deceased; Jones J. Whitlock, deceased.

6. Brothers and spouses names; none.

7. Sisters and spouses names, June W. Smith, none; John G. Smith (spouse), none; Wanda W. Dobbins, none; Ralph A. Dobbins (spouse), none.

Martin S. Indyk, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Israel.

Nominee: Martin S. Indyk.

Post: U.S. Ambassador to Israel.

Contributions, Amount, Date, Donee.

1. Self, None.
2. Spouse, $200.00, 1992, DNC.
3. Children and spouses names, None.

Johnnie Carson, of Illinois, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Zimbabwe.

Nominee: Johnnie Carson.

Post: U.S. Ambassador, Republic of Zimbabwe.

Contributions, Amount, Date, Donee.

1. Self, None.
2. Spouse, None.
3. Children and spouses names, Elizabeth, Michael, Katherine, None.
4. Parents names, Dupree Carson, Aretha Carson, None.
5. Grandparents names, All deceased.
6. Brothers and spouses names, Ronald Carson, Gregory Carson, None.
7. Sisters and spouses names, Barbara Carson Latimer, None.

Bismarck Myrick, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Lesotho.

Nominee: Bismarck Myrick.

Post: Lesotho.

Contributions, amount, date, donee.

1. Self, Bismarck Myrick, $100, 1993, Jean W. Cunningham (for the House of Representatives).
2. Children and spouses, Bismarck Myrick, Jr., none; Wesley Todd Myrick, none; Allison Elizabeth Myrick, none.
4. Parents, Elizabeth Lee Land, deceased; Maceo Lee Myrick, deceased.
5. Grandparents, Emmanuel Myrick, deceased.
6. Brother and spouse, James M. Lee, none.
7. Sisters and spouses, Carol Myrick Kitchen, none; Steve Kitchen, none; Emily D. Thomas, none.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. McCAIN:

S. 479. A bill to provide for administrative procedures to extend Federal recognition to certain Indian groups, and for other purposes; to the Committee on Indian Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. McCAIN:

S. 479. A bill to provide for administrative procedures to extend Federal recognition to certain Indian groups, and for other purposes; to the Committee on Indian Affairs.

THE INDIAN FEDERAL RECOGNITION ADMINISTRATIVE PROCEDURES ACT OF 1995

• Mr. McCAIN. Mr. President, today I am introducing the Indian Federal Recognition Administrative Procedures Act of 1995.

The Indian Federal Recognition Administrative Procedures Act provides for the creation of the Commission on Indian Recognition. The Commission will be an independent agency of the executive branch and will be composed of three members appointed by the President. The Commission would be authorized to hold hearings, take testimony and reach final determinations on petitions for recognition. The bill provides realistic timelines to guide the Commission in the review and decisionmaking process. Under the existing process in the Department of the Interior, some petitioners have waited 10 years or more for even a cursory review of their petition. The bill I am introducing today requires the Commission to set a date for a preliminary hearing on a petition not later than 60 days after the filing of a documented petition. Not later than 30 days after the conclusion of a preliminary hearing, the Commission would be required to either decide to extend Federal acknowledgement to the petitioner or to require the petitioner to proceed to an adjudicatory hearing.

To ensure fairness, the bill provides for appeals of adverse decisions to the U.S. District Court for the District of Columbia. To ensure promptness, the bill authorizes adequate funding for the costs of processing petitions through the Commission and to assist petitioners in the development of their petitions. This bill will also provide finality for both the petitioners and the Department of the Interior.

The Department has had a process of one type or another for recognizing Indian tribes since the 1930's. Great uncertainty has existed about how or when this process might be concluded and how many Indian tribes will ultimately be recognized. I believe that it is in the interests of all parties to have a clear deadline for the completion of the recognition process. Accordingly, the bill requires all interested tribal groups to file their petitions within 6 years after the date of enactment and the Commission must complete all of its work within 12 years from the date of enactment.

This bill is similar to the bills which I have introduced in each of the last three Congresses. It is also similar to a bill which passed the House of Representatives in the 103d Congress, H.R. 4462, and which has been reintroduced in this Congress by Representative FALEOMAVAEGA, H.R. 671. The major differences between the bill I am introducing today and H.R. 671 are; First, H.R. 671 would make naive Hawaiians and Alaska Native villages eligible to petition for recognition while this bill does not; second, H.R. 671 would create a part-time Commission, while this bill creates a full-time independent entity in the executive branch, and H.R. 671 would not sunset the Commission or the recognition process while this bill would terminate the Commission and require the process to be completed in 12 years.

From the earliest times, the Congress has acted to recognize the unique government-to-government relationship with the Indian tribes. There are and always have been some Indian tribes which have not been recognized by the Federal Government. This lack of recognition does not alter the fact of the existence of the tribe or of its retained inherent sovereignty; it merely means that there is no formal political relationship between the tribal government and the Federal Government and that the enrolled members of the tribe are not eligible for the services and benefits accorded to Indians because of their status as members of federally recognized Indian tribes.

Over the years, the Federal courts have ruled that recognition, while solely within the authority of the Congress, may also be conferred through actions of the executive branch. Both the President and the Secretary of the Interior have historically acted in ways which the courts have found to constitute recognition of Indian tribes. And beginning in 1954, it was the established policy of the Congress to officially sanction the termination of the Federal/tribal relationship. This misguided policy was only effectively ended in 1970 when President Nixon called for the beginning of an era of self-determination and the end of termination.

In 1978, the Department of the Interior promulgated regulations to establish criteria and procedures for the recognition of Indian tribes by the Secretary. Since that time tribal groups have filed 147 petitions for review. Of those, 31 have been resolved and 75 are letters expressing an intent to petition, and 7 require legislative authority to proceed. The remainder are in various stages of consideration by the Department. During this same time, the Congress has recognized nine other tribal groups through legislation.

In 1978, 1983, 1988, 1989, and 1992, the Committee on Indian Affairs held oversight hearings on the Federal recognition process. At each of those hearings the record clearly showed that the process is not working properly. The process in the Department of the Interior is time consuming and costly, although it has improved somewhat in recent years. Some tribal groups allege that Interior Department's process leads to unfair and unfounded results. It has frequently been hindered by a lack of staff and resources needed to fairly and promptly review all petitions. At the same time, the Congress extends recognition to tribes with little or no reference to the legal standards and criteria employed by the Department. The result is yet another layer of inconsistency and apparent unfairness.

The record from our previous hearings reveals a clear need for the Congress to address the problems affecting the recognition process. I believe that the bill I am introducing today will go a long way toward resolving the problems which have plagued both the Department and the petitions over the years.

Mr. President, I ask unanimous consent that the full text of the Indian Federal Recognition Administrative Procedures Act of 1995 and a section-by-section summary be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 479

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Federal Recognition Administrative Procedures Act of 1995".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to establish an administrative procedure to extend Federal recognition to certain Indian groups;

(2) to extend to Indian groups that are determined to be Indian tribes the protection, services, and benefits available from the Federal Government pursuant to the Federal trust responsibility with respect to Indian tribes;

(3) to extend to Indian groups that are determined to be Indian tribes the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States;

(4) to ensure that when the Federal Government extends acknowledgment to an Indian tribe, the Federal Government does so with a consistent legal, factual, and historical basis;

(5) to establish a Commission on Indian Recognition to review and act upon petitions submitted by Indian groups that apply for Federal recognition;

(6) to provide clear and consistent standards of administrative review of documented petitions for Federal acknowledgment;

(7) to clarify evidentiary standards and expedite the administrative review process by providing adequate resources to process petitions; and

(8) to remove the Federal acknowledgment process from the Bureau of Indian Affairs and transfer the responsibility for the process to an independent Commission on Indian Recognition.

SEC. 3. DEFINITIONS.

Unless the context implies otherwise, for the purposes of this Act the following definitions shall apply:

(1) ACKNOWLEDGED.—The term "acknowledged" means, with respect to an Indian group, that the Commission on Indian Recognition has made an acknowledgment, as defined in paragraph (2), for such group.

(2) ACKNOWLEDGMENT.—The term "acknowledgment" means a determination by the Commission on Indian Recognition that an Indian group—

(A) constitutes an Indian tribe with a government-to-government relationship with the United States; and

(B) with respect to which the members are recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) AUTONOMOUS.—

(A) IN GENERAL.—The term "autonomous" means the exercise of political influence or authority independent of the control of any other Indian governing entity.

(B) CONTEXT OF TERM.—With respect to a petitioner, such term shall be understood in the context of the history, geography, culture, and social organization of the petitioner.

(4) BUREAU.—The term "Bureau" means the Bureau of Indian Affairs of the Department.

(5) COMMISSION.—The term "Commission" means the Commission on Indian Recognition established pursuant to section 4.

(6) COMMUNITY.—

(A) IN GENERAL.—The term "community" means any group of people, living within a reasonable territorial propinquity, that are able to demonstrate that—

(i) consistent interactions and significant social relationships exist within the membership; and

(ii) the members of such group are differentiated from and identified as distinct from nonmembers.

(B) CONTEXT OF TERM.—Such term shall be understood in the context of the history, culture, and social organization of the group, taking into account the geography of the region in which the group resides.

(7) CONTINUOUS OR CONTINUOUSLY.—With respect to a period of history of a group, the term "continuous" or "continuously" means extending from the first sustained contact with Euro-Americans throughout the history of the group to the present substantially without interruption.

(8) DEPARTMENT.—The term "Department" means the Department of the Interior.

(9) DOCUMENTED PETITION.—The term "documented petition" means the detailed, factual exposition and arguments, including all documentary evidence, necessary to demonstrate that such arguments specifically address the mandatory criteria established in section 5.

(10) GROUP.—The term "group" means an Indian group, as defined in paragraph (12).

(11) HISTORICALLY, HISTORICAL, HISTORY.—The terms "historically", "historical", and "history" refer to the period dating from the first sustained contact with Euro-Americans.

(12) INDIAN GROUP.—The term "Indian group" means any Indian, Alaska Native, or Native Hawaiian tribe, band, pueblo, village or community within the United States that the Secretary does not acknowledge to be an Indian tribe.

(13) INDIAN TRIBE.—The term "Indian tribe" means any Indian tribe, band, pueblo, village, or community within the United States that—

(A) the Secretary has acknowledged as an Indian tribe as of the date of enactment of this Act, or acknowledges to be an Indian tribe pursuant to the procedures applicable to certain petitions under active consideration at the time of the transfer of petitions to the Commission under section 5(a)(3); or

(B) the Commission acknowledges as an Indian tribe under this Act.

(14) INDIGENOUS.—With respect to a petitioner, the term "indigenous" means native to the United States, in that at least part of the traditional territory of the petitioner at the time of first sustained contact with Euro-Americans extended into the United States.

(15) LETTER OF INTENT.—The term "letter of intent" means an undocumented letter or resolution that—

(A) is dated and signed by the governing body of an Indian group;

(B) is submitted to the Commission; and

(C) indicates the intent of the Indian group to submit a petition for Federal acknowledgment as an Indian tribe.

(16) MEMBER OF AN INDIAN GROUP.—The term "member of an Indian group" means an individual who—

(A) is recognized by an Indian group as meeting the membership criteria of the Indian group; and

(B) consents in writing to being listed as a member of such group.

(17) MEMBER OF AN INDIAN TRIBE.—The term "member of an Indian tribe" means an individual who—

(A)(i) meets the membership requirements of the tribe as set forth in its governing document; or

(ii) in the absence of a governing document which sets out such requirements, has been recognized as a member collectively by those persons comprising the tribal governing body; and

(B)(i) has consistently maintained tribal relations with the tribe; or

(ii) is listed on the tribal membership rolls as a member, if such rolls are kept.

(18) PETITION.—The term "petition" means a petition for acknowledgment submitted or transferred to the Commission pursuant to section 5.

(19) PETITIONER.—The term "petitioner" means any group that submits a letter of intent to the Commission requesting acknowledgment that the group is an Indian tribe.

(20) POLITICAL INFLUENCE OR AUTHORITY.—

(A) IN GENERAL.—The term "political influence or authority" means a tribal council, leadership, internal process, or other mechanism which a group has used as a means of—

(i) influencing or controlling the behavior of its members in a significant manner;

(ii) making decisions for the group which substantially affect its members; or

(iii) representing the group in dealing with nonmembers in matters of consequence to the group.

(B) CONTEXT OF TERM.—Such term shall be understood in the context of the history, culture, and social organization of the group.

(21) PREVIOUS FEDERAL ACKNOWLEDGMENT.—The term "previous Federal acknowledgment" means any action by the Federal Government, the character of which—

(A) is clearly premised on identification of a tribal political entity; and

(B) clearly indicates the recognition of a government-to-government relationship between that entity and the Federal Government.

(22) RESTORATION.—The term "restoration" means the reextension of acknowledgment to any previously acknowledged tribe with respect to which the acknowledged status may have been abrogated or diminished by reason of legislation enacted by Congress expressly terminating such status.

(23) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(24) SUSTAINED CONTACT.—The term "sustained contact" means the period of earliest sustained Euro-American settlement or governmental presence in the local area in which the tribe or tribes from which the petitioner claims descent was located historically.

(25) TREATY.—The term "treaty" means any treaty—

(A) negotiated and ratified by the United States on or before March 3, 1871, with, or on behalf of, any Indian group or tribe;

(B) made by any government with, or on behalf of, any Indian group or tribe, from which the Federal Government subsequently acquired territory by purchase, conquest, annexation, or cession; or

(C) negotiated by the United States with, or on behalf of, any Indian group in California, whether or not the treaty was subsequently ratified.

(26) TRIBE.—The term "tribe" means an Indian tribe.

(27) TRIBAL RELATIONS.—The term "tribal relations" means participation by an individual in a political and social relationship with an Indian tribe.

(28) TRIBAL ROLL.—The term "tribal roll" means a list exclusively of those individuals who—

(A)(i) have been determined by the tribe to meet the membership requirements of the tribe, as set forth in the governing document of the tribe; or

(ii) in the absence of a governing document that sets forth such requirements, have been recognized as members by the governing body of the tribe; and

(B) have affirmatively demonstrated consent to being listed as members of the tribe.

(29) UNITED STATES.—The term "United States" means the 48 contiguous States, and the States of Alaska and Hawaii. Such term does not include territories or possessions of the United States.

SEC. 4. COMMISSION ON INDIAN RECOGNITION.

(a) ESTABLISHMENT.—There is established, as an independent commission, the Commission on Indian Recognition. The Commission shall be an independent establishment, as defined in section 104 of title 5, United States Code.

(b) MEMBERSHIP.—

(1) IN GENERAL.—

(A) MEMBERS.—The Commission shall consist of 3 members appointed by the President, by and with the advice and consent of the Senate.

(B) INDIVIDUALS TO BE CONSIDERED FOR MEMBERSHIP.—In making appointments to the Commission, the President shall give careful consideration to—

(i) recommendations received from Indian tribes; and

(ii) individuals who have a background in Indian law or policy, anthropology, genealogy, or history.

(2) POLITICAL AFFILIATION.—Not more than 2 members of the Commission may be members of the same political party.

(3) TERMS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), each member of the Commission shall be appointed for a term of 4 years.

(B) INITIAL APPOINTMENTS.—As designated by the President at the time of appointment, of the members initially appointed under this subsection—

(i) 1 member shall be appointed for a term of 2 years;

(ii) 1 member shall be appointed for a term of 3 years; and

(iii) 1 member shall be appointed for a term of 4 years.

(4) VACANCIES.—Any vacancy in the Commission shall not affect the powers of the Commission, but shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the member was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of the term of such member until a successor has taken office.

(5) COMPENSATION.—

(A) IN GENERAL.—Each member of the Commission shall receive compensation at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day, including traveltime, such member is engaged in the actual performance of duties authorized by the Commission.

(B) TRAVEL.—All members of the Commission shall be reimbursed for travel and per diem in lieu of subsistence expenses during the performance of duties of the Commission while away from their homes or regular places of business, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(6) FULL-TIME EMPLOYMENT.—Each member of the Commission shall serve on the Commission as a full-time employee of the Federal Government. No member of the Commission may, while serving on the Commission, be otherwise employed as an officer or employee of the Federal Government. Service by a member who is an employee of the Federal Government at the time of nomination as a member shall be without interruption or loss of civil service status or privilege.

(7) CHAIRPERSON.—At the time appointments are made under paragraph (1), the President shall designate a Chairperson of the Commission (referred to in this section as the "Chairperson") from among the appointees.

(c) MEETINGS AND PROCEDURES.—

(1) IN GENERAL.—The Commission shall hold its first meeting not later than 30 days after the date on which all members of the Commission have been appointed and confirmed by the Senate.

(2) QUORUM.—Two members of the Commission shall constitute a quorum for the transaction of business.

(3) RULES.—The Commission may adopt such rules (consistent with the provisions of this Act) as may be necessary to establish the procedures of the Commission and to govern the manner of operations, organization, and personnel of the Commission.

(4) PRINCIPAL OFFICE.—The principal office of the Commission shall be in the District of Columbia.

(d) DUTIES.—The Commission shall carry out the duties assigned to the Commission by this Act, and shall meet the requirements imposed on the Commission by this Act.

(e) POWERS AND AUTHORITIES.—

(1) POWERS AND AUTHORITIES OF CHAIRPERSON.—Subject to such rules and regulations as may be adopted by the Commission, the Chairperson may—

(A) appoint, terminate, and fix the compensation (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, or of any other provision of law, relating to the number, classification, and General Schedule rates) of an Executive Director of the Commission and of such other personnel as the Chairperson considers advisable to assist in the performance of the duties of the Commission, at a rate not to exceed a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code; and

(B) procure, as authorized by section 3109(b) of title 5, United States Code, temporary and intermittent services to the same extent as is authorized by law for agencies in the executive branch, but at rates not to exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(2) GENERAL POWERS AND AUTHORITIES OF COMMISSION.—

(A) IN GENERAL.—The Commission may—

(i) hold such hearings and sit and act at such times;

(ii) take such testimony;

(iii) have such printing and binding done;

(iv) enter into such contracts and other arrangements, subject to the availability of funds;

(v) make such expenditures; and

(vi) take such other actions,

as the Commission may consider advisable.

(B) OATHS AND AFFIRMATIONS.—Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(3) INFORMATION.—

(A) IN GENERAL.—The Commission may secure directly from any officer, department, agency, establishment, or instrumentality of the Federal Government such information as the Commission may require to carry out this Act. Each such officer, department, agency, establishment, or instrumentality shall furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Commission, upon the request of the Chairperson.

(B) FACILITIES, SERVICES, AND DETAILS.—Upon the request of the Chairperson, to assist the Commission in carrying out the duties of the Commission under this section, the head of any Federal department, agency, or instrumentality may—

(i) make any of the facilities and services of such department, agency, or instrumentality available to the Commission; and

(ii) detail any of the personnel of such department, agency, or instrumentality to the Commission, on a nonreimbursable basis.

(C) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(g) TERMINATION OF COMMISSION.—The Commission shall terminate on the date that is 12 years after the date of enactment of this Act.

SEC. 5. PETITIONS FOR RECOGNITION.

(a) IN GENERAL.—

(1) PETITIONS.—Subject to subsection (d) and except as provided in paragraph (2), any Indian group may submit to the Commission a petition requesting that the Commission recognize an Indian group as an Indian tribe.

(2) EXCLUSION.—The following groups and entities shall not be eligible to submit a petition for recognition by the Commission under this Act:

(A) CERTAIN ENTITIES THAT ARE ELIGIBLE TO RECEIVE SERVICES FROM THE BUREAU.—Indian tribes, organized bands, pueblos, communities, and Alaska Native entities that are recognized by the Secretary as of the date of enactment of this Act as eligible to receive services from the Bureau.

(B) CERTAIN SPLINTER GROUPS, POLITICAL FACTIONS, AND COMMUNITIES.—Splinter groups, political factions, communities, or groups of any character that separate from the main body of an Indian tribe that, at the time of such separation, is recognized as an Indian tribe by the Secretary, unless the group, faction, or community is able to establish clearly that the group, faction, or community has functioned throughout history until the date of such petition as an autonomous Indian tribal entity.

(C) CERTAIN GROUPS THAT HAVE PREVIOUSLY SUBMITTED PETITIONS.—Groups, or successors in interest of groups, that prior to the date of enactment of this Act, have petitioned for and been denied or refused recognition as an Indian tribe under regulations prescribed by the Secretary.

(D) INDIAN GROUPS SUBJECT TO TERMINATION.—Any Indian group whose relationship with the Federal Government was expressly terminated by an Act of Congress.

(E) PARTIES TO CERTAIN ACTIONS.—Any Indian group that—

(i) in any action in a United States court of competent jurisdiction to which the group was a party, attempted to establish its status as an Indian tribe or a successor in interest to an Indian tribe that was a party to a treaty with the United States;

(ii) was determined by such court—

(I) not to be an Indian tribe; or

(II) not to be a successor in interest to an Indian tribe that was a party to a treaty with the United States; or

(iii) was the subject of findings of fact by such court which, if made by the Commission, would show that the group was incapable of establishing one or more of the criteria set forth in this section.

(3) TRANSFER OF PETITION.—

(A) IN GENERAL.—Notwithstanding any other provision of law, not later than 30 days after the date on which all of the members of the Commission have been appointed and confirmed by the Senate under section 4(b), the Secretary shall transfer to the Commission all petitions pending before the Department that—

(i) are not under active consideration of the Secretary at the time of the transfer; and

(ii) request the Secretary, or the Federal Government, to recognize or acknowledge an Indian group as an Indian tribe.

(B) CESSATION OF CERTAIN AUTHORITIES OF SECRETARY.—Notwithstanding any other provision of law, on the date of the transfer under subparagraph (A), the Secretary and the Department shall cease to have any authority to recognize or acknowledge, on behalf of the Federal Government, any Indian group as an Indian tribe, except for those groups under active consideration at the time of the transfer whose petitions have been retained by the Secretary pursuant to subparagraph (A).

(C) DETERMINATION OF ORDER OF SUBMISSION OF TRANSFERRED PETITIONS.—Petitions transferred to the Commission under subparagraph (A) shall, for purposes of this Act, be considered as having been submitted to the Commission in the same order as such petitions were submitted to the Department.

(b) PETITION FORM AND CONTENT.—Except as provided in subsection (c), any petition submitted under subsection (a) by an Indian group shall be in any readable form that clearly indicates that the petition is a petition requesting the Commission to recognize the Indian group as an Indian tribe and that contains detailed, specific evidence concerning each of the following items:

(1) STATEMENT OF FACTS.—A statement of facts establishing that the petitioner has been identified as an American Indian entity on a substantially continuous basis since 1871. Evidence that the character of the group as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence that the Commission may rely on in determining the Indian identity of a group may include any one or more of the following items:

(A) IDENTIFICATION OF PETITIONER.—An identification of the petitioner as an Indian entity by any department, agency, or instrumentality of the Federal Government.

(B) RELATIONSHIP OF PETITIONER WITH STATE GOVERNMENT.—A relationship between the petitioner and any State government, based on an identification of the petitioner as an Indian entity.

(C) RELATIONSHIP OF PETITIONER WITH A POLITICAL SUBDIVISION OF A STATE.—Dealings of the petitioner with a county or political subdivision of a State in a relationship based on the Indian identity of the petitioner.

(D) IDENTIFICATION OF PETITIONER ON THE BASIS OF CERTAIN RECORDS.—An identification of the petitioner as an Indian entity by records in a private or public archive, courthouse, church, or school.

(E) IDENTIFICATION OF PETITIONER BY CERTAIN EXPERTS.—An identification of the petitioner as an Indian entity by an anthropologist, historian, or other scholar.

(F) IDENTIFICATION OF PETITIONER BY CERTAIN MEDIA.—An identification of the petitioner as an Indian entity in a newspaper, book, or similar medium.

(G) IDENTIFICATION OF PETITIONER BY ANOTHER INDIAN TRIBE OR ORGANIZATION.—An identification of the petitioner as an Indian entity by another Indian tribe or by a national, regional, or State Indian organization.

(H) IDENTIFICATION OF PETITIONER BY A FOREIGN GOVERNMENT OR INTERNATIONAL ORGANIZATION.—An identification of the petitioner as an Indian entity by a foreign government or an international organization.

(I) OTHER EVIDENCE OF IDENTIFICATION.—Such other evidence of identification as may be provided by a person or entity other than the petitioner or a member of the membership of the petitioner.

(2) EVIDENCE OF COMMUNITY.—

(A) IN GENERAL.—A statement of facts establishing that a predominant portion of the membership of the petitioner—

(i) comprises a community distinct from those communities surrounding such community; and

(ii) has existed as a community from historical times to the present.

(B) EVIDENCE.—Evidence that the Commission may rely on in determining that the petitioner meets the criterion described in clauses (i) and (ii) of subparagraph (A) may include one or more of the following items:

(i) MARRIAGES.—Significant rates of marriage within the group, or, as may be culturally required, patterned out-marriages with other Indian populations.

(ii) SOCIAL RELATIONSHIPS.—Significant social relationships connecting individual members.

(iii) SOCIAL INTERACTION.—Significant rates of informal social interaction which exist broadly among the members of a group.

(iv) SHARED ECONOMIC ACTIVITY.—A significant degree of shared or cooperative labor or other economic activity among the membership.

(v) DISCRIMINATION OR OTHER SOCIAL DISTINCTIONS.—Evidence of strong patterns of discrimination or other social distinctions by nonmembers.

(vi) SHARED RITUAL ACTIVITY.—Shared sacred or secular ritual activity encompassing most of the group.

(vii) CULTURAL PATTERNS.—Cultural patterns that—

(I) are shared among a significant portion of the group that are different from the cultural patterns of the non-Indian populations with whom the group interacts;

(II) function as more than a symbolic identification of the group as Indian; and

(III) may include language, kinship or religious organizations, or religious beliefs and practices.

(viii) COLLECTIVE INDIAN IDENTITY.—The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.

(ix) HISTORICAL POLITICAL INFLUENCE.—A demonstration of historical political influence pursuant to the criterion set forth in paragraph (3).

(C) CRITERIA FOR SUFFICIENT EVIDENCE.—The Commission shall consider the petitioner to have provided sufficient evidence of community at a given point in time if the petitioner has provided evidence that demonstrates any one of the following:

(i) RESIDENCE OF MEMBERS.—More than 50 percent of the members of the group of the petitioner reside in a particular geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent social interaction with some members of the community.

(ii) MARRIAGES.—Not less than 50 percent of the marriages of the group are between members of the group.

(iii) DISTINCT CULTURAL PATTERNS.—Not less than 50 percent of the members of the group maintain distinct cultural patterns including language, kinship or religious organizations, or religious beliefs or practices.

(iv) COMMUNITY SOCIAL INSTITUTIONS.—Distinct community social institutions encompassing a substantial portion of the members of the group, such as kinship organizations, formal or informal economic cooperation, or religious organizations.

(v) APPLICABILITY OF CRITERIA.—The group has met the criterion in paragraph (3) using evidence described in paragraph (3)(B).

(3) AUTONOMOUS ENTITY.—

(A) IN GENERAL.—A statement of facts establishing that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the time of the petition. The Commission may rely on one or more of the following items in determining whether a petitioner meets the criterion described in the preceding sentence:

(i) MOBILIZATION OF MEMBERS.—The group is capable of mobilizing significant numbers of members and significant resources from its members for group purposes.

(ii) ISSUES OF PERSONAL IMPORTANCE.—Most of the membership of the group considers issues acted upon or taken by group leaders or governing bodies to be of personal importance.

(iii) POLITICAL PROCESS.—There is a widespread knowledge, communication, and involvement in political processes by most of the members of the group.

(iv) LEVEL OF APPLICATION OF CRITERIA.—The group meets the criterion described in paragraph (2) at more than a minimal level.

(v) INTRAGROUP CONFLICTS.—There are intragroup conflicts which show controversy over valued group goals, properties, policies, processes, or decisions.

(B) EVIDENCE OF EXERCISE OF POLITICAL INFLUENCE OR AUTHORITY.—The Commission shall consider that a petitioner has provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders or other mechanisms exist or have existed that accomplish the following:

(i) ALLOCATION OF GROUP RESOURCES.—Allocate group resources such as land, residence rights, or similar resources on a consistent basis.

(ii) SETTLEMENT OF DISPUTES.—Settle disputes between members or subgroups such as clans or moieties by mediation or other means on a regular basis.

(iii) INFLUENCE ON BEHAVIOR OF INDIVIDUAL MEMBERS.—Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior.

(iv) ECONOMIC SUBSISTENCE ACTIVITIES.—Organize or influence economic subsistence activities among the members, including shared or cooperative labor.

(C) TEMPORALITY OF SUFFICIENCY OF EVIDENCE.—A group that has met the requirements of paragraph (2)(C) at any point in time shall be considered to have provided sufficient evidence to meet the criterion described in subparagraph (A) at such point in time.

(4) GOVERNING DOCUMENT.—A copy of the then present governing document of the petitioner that includes the membership criteria of the petitioner. In the absence of a written document, the petitioner shall be required to provide a statement describing in full the membership criteria of the petitioner and the then current governing procedures of the petitioner.

(5) LIST OF MEMBERS.—

(A) IN GENERAL.—A list of all then current members of the petitioner, including the full name (and maiden name, if any), date, and place of birth, and then current residential address of each member, a copy of each available former list of members based on the criteria defined by the petitioner, and a statement describing the methods used in preparing such lists.

(B) REQUIREMENTS FOR MEMBERSHIP.—In order for the Commission to consider the members of the group to be members of an Indian tribe for the purposes of the petition, such membership shall be required to consist of established descendancy from an Indian group that existed historically, or from historical Indian groups that combined and functioned as a single autonomous entity.

(C) EVIDENCE OF TRIBAL MEMBERSHIP.—Evidence of tribal membership required by the Commission for a determination of tribal membership shall include the following items:

(i) DESCENDANCY ROLLS.—Descendancy rolls prepared by the Secretary for the petitioner for purposes of distributing claims money, providing allotments, or other purposes.

(ii) CERTAIN OFFICIAL RECORDS.—State, Federal, or other official records or evidence identifying then present members of the petitioner, or ancestors of then present members of the petitioner, as being descendants of a historic tribe or historic tribes that combined and functioned as a single autonomous political entity.

(iii) ENROLLMENT RECORDS.—Church, school, and other similar enrollment records identifying then present members or ancestors of then present members as being descendants of a historic tribe or historic tribes that combined and functioned as a single autonomous political entity.

(iv) AFFIDAVITS OF RECOGNITION.—Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying then present members or ancestors of then present members as being descendants of 1 or more historic tribes that combined and functioned as a single autonomous political entity.

(v) OTHER RECORDS OR EVIDENCE.—Other records or evidence identifying then present members or ancestors of then present members as being descendants of 1 or more historic tribes that combined and functioned as a single autonomous political entity.

(c) EXCEPTIONS.—A petition from an Indian group that is able to demonstrate by a preponderance of the evidence that the group was, or is the successor in interest to, a—

(1) party to a treaty or treaties;

(2) group acknowledged by any agency of the Federal Government as eligible to participate under the Act of June 18, 1934 (commonly referred to as the "Indian Reorganization Act") (48 Stat. 984 et seq., chapter 576; 25 U.S.C. 461 et seq.);

(3) group for the benefit of which the United States took into trust lands, or which the Federal Government has treated as having collective rights in tribal lands or funds; or

(4) group that has been denominated a tribe by an Act of Congress or Executive order,

shall be required to establish the criteria set forth in this section only with respect to the period beginning on the date of the applicable action described in paragraph (1), (2), (3), or (4) and ending on the date of submission of the petition.

(d) DEADLINE FOR SUBMISSION OF PETITIONS.—No Indian group may submit a petition to the Commission requesting that the Commission recognize an Indian group as an Indian tribe after the date that is 6 years after the date of enactment of this Act. After the Commission makes a determination on each petition submitted prior to such date, the Commission may not make any further determination under this Act to recognize any Indian group as an Indian tribe.

SEC. 6. NOTICE OF RECEIPT OF PETITION.

(a) PETITIONER.—

(1) IN GENERAL.—Not later than 30 days after a petition is submitted or transferred to the Commission under section 5(a), the Commission shall—

(A) send an acknowledgement of receipt in writing to the petitioner; and

(B) publish in the Federal Register a notice of such receipt, including the name, location, and mailing address of the petitioner and such other information that—

(i) identifies the entity that submitted the petition and the date the petition was received by the Commission;

(ii) indicates where a copy of the petition may be examined; and

(iii) indicates whether the petition is a transferred petition that is subject to the special provisions under paragraph (2).

(2) SPECIAL PROVISIONS FOR TRANSFERRED PETITIONS.—

(A) IN GENERAL.—With respect to a petition that is transferred to the Commission under section 5(a)(3), the notice provided to the petitioner, shall, in addition to providing the information specified in paragraph (1), inform the petitioner whether the petition constitutes a documented petition that meets the requirements of section 5.

(B) AMENDED PETITIONS.—If the petition described in subparagraph (A) is not a documented petition, the Commission shall notify the petitioner that the petitioner may, not later than 90 days after the date of the notice, submit to the Commission an amended petition that is a documented petition for review under section 7.

(C) EFFECT OF AMENDED PETITION.—To the extent practicable, the submission of an amended petition by a petitioner by the date specified in this paragraph shall not affect the order of consideration of the petition by the Commission.

(b) OTHERS.—In addition to providing the notification required under subsection (a), the Commission shall notify, in writing, the Governor and attorney general of, and each federally recognized Indian tribe within, any State in which a petitioner resides.

(c) PUBLICATION; OPPORTUNITY FOR SUPPORTING OR OPPOSING SUBMISSIONS.—

(1) PUBLICATION.—The Commission shall publish the notice of receipt of each petition (including any amended petition submitted pursuant to subsection (a)(2)) in a major newspaper of general circulation in the town or city located nearest the location of the petitioner.

(2) OPPORTUNITY FOR SUPPORTING OR OPPOSING SUBMISSIONS.—

(A) IN GENERAL.—Each notice published under paragraph (1) shall include, in addition to the information described in subsection (a), notice of opportunity for other parties to submit factual or legal arguments in support of or in opposition to, the petition.

(B) COPY TO PETITIONER.—A copy of any submission made under subparagraph (A) shall be provided to the petitioner upon receipt by the Commission.

(C) RESPONSE.—The petitioner shall be provided an opportunity to respond to any submission made under subparagraph (A) prior to a determination on the petition by the Commission.

SEC. 7. PROCESSING THE PETITION.

(a) REVIEW.—

(1) IN GENERAL.—Upon receipt of a documented petition submitted or transferred under section 5(a) or submitted under section 6(a)(2)(B), the Commission shall conduct a review to determine whether the petitioner is entitled to be recognized as an Indian tribe.

(2) CONTENT OF REVIEW.—The review conducted under paragraph (1) shall include consideration of the petition, supporting evidence, and the factual statements contained in the petition.

(3) OTHER RESEARCH.—In conducting a review under this subsection, the Commission may—

(A) initiate other research for any purpose relative to analyzing the petition and obtaining additional information about the status of the petitioner; and

(B) consider such evidence as may be submitted by other parties.

(4) ACCESS TO LIBRARY OF CONGRESS AND NATIONAL ARCHIVES.—Upon request by the petitioner, the appropriate officials of the Library of Congress and the National Archives shall allow access by the petitioner to the resources, records, and documents of such entities, for the purpose of conducting research and preparing evidence concerning the status of the petitioner.

(b) CONSIDERATION.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, petitions submitted or transferred to the Commission shall be considered on a first come, first served basis, determined by the date of the original filing of each such petition with the Commission (or the Department if the petition is transferred to the Commission pursuant to section 5(a) or is an amended petition submitted pursuant to section 6(a)(2)(B)). The Commission shall establish a priority register that includes petitions that are pending before the Department on the date of enactment of this Act.

(2) PRIORITY CONSIDERATION.—Each petition (that is submitted or transferred to the Commission pursuant to section 5(a) or that is submitted to the Commission pursuant to section 6(a)(2)(B)) of an Indian group that meets one or more of the requirements set forth in section 5(c) shall receive priority consideration over a petition submitted by any other Indian group.

SEC. 8. PRELIMINARY HEARING.

(a) IN GENERAL.—Not later than 60 days after the receipt of a documented petition by the Commission submitted or transferred under section 5(a) or submitted to the Commission pursuant to section 6(a)(2)(B), the Commission shall set a date for a preliminary hearing. At the preliminary hearing, the petitioner and any other concerned party may provide evidence concerning the status of the petitioner.

(b) DETERMINATION.—

(1) IN GENERAL.—Not later than 30 days after the conclusion of a preliminary hearing under subsection (a), the Commission shall make a determination—

(A) to extend Federal acknowledgment of the petitioner as an Indian tribe to the petitioner; or

(B) that provides that the petitioner should proceed to an adjudicatory hearing.

(2) NOTICE OF DETERMINATION.—The Commission shall publish in the Federal Register a notice of each determination made under paragraph (1).

(c) INFORMATION TO BE PROVIDED PREPARATORY TO AN ADJUDICATORY HEARING.—

(1) IN GENERAL.—If the Commission makes a determination under subsection (b)(1)(B) that the petitioner should proceed to an adjudicatory hearing, the Commission shall—

(A)(i) make available appropriate evidentiary records of the Commission to the petitioner to assist the petitioner in preparing for the adjudicatory hearing; and

(ii) include such guidance as the Commission considers necessary or appropriate to assist the petitioner in preparing for the hearing; and

(B) not later than 30 days after the conclusion of the preliminary hearing under subsection (a), provide a written notification to the petitioner that includes a list of any deficiencies or omissions that the Commission relied on in making a determination under subsection (b)(1)(B).

(2) SUBJECT OF ADJUDICATORY HEARING.—The list of deficiencies and omissions provided by the Commission to a petitioner under paragraph (1)(B) shall be the subject of the adjudicatory hearing. The Commission may not make any additions to the list after the Commission issues the list.

SEC. 9. ADJUDICATORY HEARING.

(a) IN GENERAL.—Not later than 180 days after the conclusion of a preliminary hearing under section 8(a), the Commission shall afford a petitioner who is subject to section 8(b)(1)(B) an adjudicatory hearing. The subject of the adjudicatory hearing shall be the list of deficiencies and omissions provided under section 8(c)(1)(B) and shall be conducted pursuant to section 554 of title 5, United States Code.

(b) TESTIMONY FROM STAFF OF COMMISSION.—In any hearing held under subsection (a), the Commission may require testimony from the acknowledgement and research staff of the Commission or other witnesses. Any such testimony shall be subject to cross-examination by the petitioner.

(c) EVIDENCE BY PETITIONER.—In any hearing held under subsection (a), the petitioner may provide such evidence as the petitioner considers appropriate.

(d) DETERMINATION BY COMMISSION.—Not later than 60 days after the conclusion of any hearing held under subsection (a), the Commission shall—

(1) make a determination concerning the extension or denial of Federal acknowledgment of the petitioner as an Indian tribe to the petitioner;

(2) publish the determination of the Commission under paragraph (1) in the Federal Register; and

(3) deliver a copy of the determination to the petitioner, and to every other interested party.

SEC. 10. APPEALS.

(a) IN GENERAL.—Not later than 60 days after the date that the Commission publishes a determination under section 9(d), the petitioner may appeal the determination to the United States District Court for the District of Columbia.

(b) ATTORNEY FEES.—If the petitioner prevails in an appeal made under subsection (a), the petitioner shall be eligible for an award of reasonable attorney fees and costs under section 504 of title 5, United States Code, or section 2412 of title 28 of such Code, whichever is applicable.

SEC. 11. EFFECT OF DETERMINATIONS.

A determination by the Commission under section 9(d) that an Indian group is recognized by the Federal Government as an Indian tribe shall not have the effect of depriving or diminishing—

(1) the right of any other Indian tribe to govern the reservation of such other tribe as such reservation existed prior to the recognition of such Indian group, or as such reservation may exist thereafter;

(2) any property right held in trust or recognized by the United States for such other Indian tribe as such property existed prior to the recognition of such Indian group; or

(3) any previously or independently existing claim by a petitioner to any such property right held in trust by the United States for such other Indian tribe prior to the recognition by the Federal Government of such Indian group as an Indian tribe.

SEC. 12. IMPLEMENTATION OF DECISIONS.

(a) ELIGIBILITY FOR SERVICES AND BENEFITS.—

(1) IN GENERAL.—Subject to paragraph (2), upon recognition by the Commission of a petitioner as an Indian tribe under this Act, the Indian tribe shall—

(A) be eligible for the services and benefits from the Federal Government that are available to other federally recognized Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States; and

(B) have the responsibilities, obligations, privileges, and immunities of such Indian tribes.

(2) PROGRAMS OF THE BUREAU.—

(A) IN GENERAL.—The recognition of an Indian group as an Indian tribe by the Commission under this Act shall not create an immediate entitlement to programs of the Bureau in existence on the date of the recognition.

(B) AVAILABILITY OF PROGRAMS.—

(i) IN GENERAL.—The programs described in subparagraph (A) shall become available to the Indian tribe upon the appropriation of funds.

(ii) REQUESTS FOR APPROPRIATIONS.—The Secretary and the Secretary of Health and Human Services shall forward budget requests for funding the programs for the Indian tribe pursuant to the needs determination procedures established under subsection (b).

(b) NEEDS DETERMINATION AND BUDGET REQUEST.—

(1) IN GENERAL.—Not later than 180 days after an Indian group is recognized by the Commission as an Indian tribe under this Act, the appropriate officials of the Bureau and the Indian Health Service of the Department of Health and Human Services shall consult and develop in cooperation with the Indian tribe, and forward to the Secretary or the Secretary of Health and Human Services, as appropriate, a determination of the needs of the Indian tribe and a recommended budget required to serve the newly recognized Indian tribe.

(2) SUBMISSION OF BUDGET REQUEST.—Upon receipt of the information described in paragraph (1), the appropriate Secretary shall submit to the President a recommended budget along with recommendations, concerning the information received under paragraph (1), for inclusion in the annual budget submitted by the President to the Congress pursuant to section 1108 of title 31, United States Code.

SEC. 13. ANNUAL REPORT CONCERNING COMMISSION'S ACTIVITIES.

(a) LIST OF RECOGNIZED TRIBES.—Not later than 90 days after the first meeting of the Commission, and annually on or before each January 30 thereafter, the Commission shall publish in the Federal Register a list of all Indian tribes that—

(1) are recognized by the Federal Government; and

(2) receive services from the Bureau.

(b) ANNUAL REPORT.—

(1) IN GENERAL.—Beginning on the date that is 1 year after the date of the enactment of this Act, and annually thereafter, the Commission shall prepare and submit a report to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives that describes the activities of the Commission.

(2) CONTENT OF REPORTS.—Each report submitted under this subsection shall include, at a minimum, for the year that is the subject of the report—

(A) the number of petitions pending at the beginning of the year and the names of the petitioners;

(B) the number of petitions received during the year and the names of the petitioners;

(C) the number of petitions the Commission approved for acknowledgment during the year and the names of the acknowledged petitioners;

(D) the number of petitions the Commission denied for acknowledgment during the year and the names of the petitioners; and

(E) the status of all pending petitions on the date of the report and the names of the petitioners.

SEC. 14. ACTIONS BY PETITIONERS FOR ENFORCEMENT.

Any petitioner may bring an action in the district court of the United States for the district in which the petitioner resides, or the United States District Court for the District of Columbia, to enforce the provisions of this Act, including any time limitations within which actions are required to be taken, or decisions made, under this Act. The district court shall issue such orders (including writs of mandamus) as may be necessary to enforce the provisions of this Act.

SEC. 15. REGULATIONS.

The Commission may, in accordance with applicable requirements of title 5, United States Code, promulgate and publish such regulations as may be necessary to carry out this Act.

SEC. 16. GUIDELINES AND ADVICE.

(a) GUIDELINES.—Not later than 90 days after the first meeting of the Commission, the Commission shall make available to Indian groups suggested guidelines for the format of petitions, including general suggestions and guidelines concerning where and how to research information that is required to be included in a petition. The examples included in the guidelines shall not preclude the use of any other appropriate format.

(b) RESEARCH ADVICE.—The Commission may, upon request, provide suggestions and advice to any petitioner with respect to the research of the petitioner concerning the historical background and Indian identity of such petitioner. The Commission shall not be responsible for conducting research on behalf of the petitioner.

SEC. 17. ASSISTANCE TO PETITIONERS.

(a) GRANTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services may award grants to Indian groups seeking Federal recognition as Indian tribes to enable the Indian groups to—

(A) conduct the research necessary to substantiate petitions under this Act; and

(B) prepare documentation necessary for the submission of a petition under this Act.

(2) TREATMENT OF GRANTS.—The grants made under this subsection shall be in addition to any other grants the Secretary of Health and Human Services is authorized to provide under any other provision of law.

(b) COMPETITIVE AWARD.—The grants made under subsection (a) shall be awarded competitively on the basis of objective criteria prescribed in regulations promulgated by the Secretary of Health and Human Services.

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

(a) COMMISSION.—There are authorized to be appropriated to the Commission to carry out this Act (other than section 17)—

(1) $1,500,000 for fiscal year 1996; and

(2) $1,500,000 for each of fiscal years 1997 through 2008.

(b) SECRETARY OF HHS.—To carry out section 17, there are authorized to be appropriated to the Department of Health and Human Services for the Administration for Native Americans $500,000 for each of fiscal years 1996 through 2007.

SECTION-BY-SECTION SUMMARY OF THE INDIAN FEDERAL RECOGNITION ADMINISTRATIVE PROCEDURES ACT OF 1995

SECTION 1. SHORT TITLE.

This section provides that the Act may be cited as the "Indian Federal Recognition Administrative Procedures Act of 1995".

SEC. 2. PURPOSES.

This section provides that the purposes of the Act are: to establish a procedure to extend Federal recognition to Indian groups; to extend to Indian groups that are found to be Indian tribes the protection, services, benefits and privileges and immunities which are available pursuant to the Federal trust responsibility and to those Indian tribes with a government-to-government relationship with the United States; to ensure that a consistent legal, factual and historical basis is utilized to determine when acknowledgement should be extended to an Indian tribe; to establish a Commission on Indian Recognition; to provide clear and consistent standards of administrative review of petitions for acknowledgement; to clarify evidentiary standards and provide adequate resources to process petitions; and to remove the Federal acknowledgement process from the Bureau of Indian Affairs.

SEC. 3. DEFINITIONS.

This section provides definitions for the following terms: "acknowledged", "acknowledgement", "autonomous", "Bureau", "Commission", "community", "continuous or continuously", "Department", "documented petition", "group", "historically, historical, history", "Indian group", "Indian tribe", "indigenous", "letter of intent", "member of an Indian group", "member of an Indian tribe", "petition", "petitioner", "political influence or authority", "previous federal acknowledgement", "restoration", "Secretary", "sustained contact", "treaty", "tribe", "tribal relations", "tribal roll", and "United States".

SEC. 4. COMMISSION ON INDIAN RECOGNITION.

Subsection (a) of this section authorizes the establishment of the Commission on Indian Recognition as a three member independent agency of the Executive Branch.

Subsection (b) provides that Commission members are to be appointed by the President with the advice and consent of the Senate. Indian tribes may make recommendations to the President and the President shall consider individuals with backgrounds in Indian law or policy, anthropology, genealogy or history in making appointments to the Commission. Commissioners will serve for a term of four years, except in the case of the initial commissioners, whose terms shall be staggered. Vacancies in the Commission will be filled in the same manner as original appointments. Commissioners are to be paid at a rate equivalent to level V of the Executive Schedule and are to be reimbursed for all travel and per diem expenses. Commissioners are to be full-time employees of the Federal Government and cannot be otherwise employed by the Federal Government during their service on the Commission. The Chairperson of the Commission is to be designated by the President at the time the Commissioners are nominated.

Subsection (c) provides that the first meeting of the Commission will occur no later than 30 days after all of the Commissioners have been confirmed by the Senate. Two members of the Commission will constitute a quorum for the conduct of business. The Commission is authorized to adopt any rules necessary to govern its operation, organization and personnel. The principal office of the Commission is required to be in the District of Columbia.

Subsection (d) requires the Commission to carry out the duties assigned to it and to meet the requirements imposed on it by this Act.

Subsection (e) authorizes the Chairperson of the Commission to appoint, terminate and fix the compensation of an Executive Director of the Commission and such other personnel as the Chairperson considers advisable to assist in the work of the Commission. The Chairperson is also authorized to procure temporary and intermittent services. In general, the Commission is authorized to hold hearings, take testimony, enter into contracts and take such other actions as the Commission may consider advisable. Any member of the Commission may administer oaths to witnesses appearing before the Commission. The Commission is authorized to secure such information as it may need to carry out this Act from any officer or entity of the Federal Government. Other federal departments and agencies are authorized to provide personnel and facilities or services to the Commission on a nonreimbursable basis. The Commission is also authorized to use the U.S. Mails on the same terms and conditions as other Federal departments and agencies.

Subsection (f) provides that the Federal Advisory Committee Act does not apply to the Commission.

Subsection (g) provides that the Commission shall terminate 12 years after the date of enactment of this Act.

SEC. 5. PETITIONS FOR RECOGNITION

Subsection (a) of this section provides that any Indian group, subject to the exceptions in this section, may submit to the Commission a petition requesting that the Commission recognize the Indian group as an Indian tribe. Indian tribes already recognized by the United States, splinter groups or factions of such Indian tribes, groups which have previously been denied recognition groups which were terminated by an Act of Congress, and groups which have been denied recognition by a Federal court are not eligible to petition the Commission for recognition. Not later than 30 days after all members of the Commission have been confirmed by the Senate, the Secretary is required to transfer to the Commission all petitions pending before the Department of the Interior that are not under active consideration. All authority of the Secretary to recognize or acknowledge an Indian group as an Indian tribe, except for those groups under active consideration, shall cease on the date of transfer to the Commission. All petitions transferred to the Commission shall be considered as having been submitted to the Commission in the same order they were submitted to the Department.

Subsection (b)(1) provides that a petition must be readable and contain detailed, specific evidence showing that the petitioner has been identified as an American Indian entity on a substantially continuous basis since 1871. The Commission can determine the Indian identity of a group based on any one or more of the following: Identification as an Indian entity by the Federal Government; a relationship of petitioner with a state government or a unit of local government based on the Indian identity of the petitioner; identification as an Indian entity by public or private records, by anthropologists or historians, newspapers, books, other Indian tribes and Indian organizations, or foreign governments.

Subsection (b)(2) provides that the petition must contain a statement of facts establishing that the membership of the petitioner comprises a distinct community which has existed from historical times to the present. The Commission can determine the existence of an Indian community based on one or more of the following items: marriages within the group; social relationships and interaction within the group; shared labor or economic activity; discrimination or other social distinctions by nonmembers; shared ritual activity and cultural patterns; collective Indian identity continuously over a period of more than 50 years; and a demonstration of historical political influence.

Subsection (b)(2) further provides that the Commission shall find that the petitioner has provided sufficient evidence of a community if the petitioner has provided evidence that demonstrates any one of the following: more than 50% of the members of the group reside in a particular geographic area exclusively composed of members of that group and the remainder of the group maintains consistent social interaction with some members of the community; not less than 50% of the marriages of the group are between members of the group; not less than 50% of the members of the group maintain distinct cultural patterns including language, kinship or religious beliefs and practices; and distinct community social institutions encompassing a substantial portion of the members of the group.

Subsection (b)(3) requires the petition to contain a statement of facts establishing that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times. The Commission may rely on one or more of the following items to determine if the petitioner is an autonomous entity: the group is capable of mobilizing a significant number of its members and member resources for group purposes; most of the group considers issues acted upon by the group leadership to be of personal importance; there is widespread knowledge and involvement in political processes by most group members; and there are intragroup conflicts which show controversy over valued group goals, properties, policies and processes.

Subsection (b)(3) also provides that the Commission shall determine that a petitioner has provided sufficient evidence to demonstrate the exercise of political influence or authority by demonstrating that leaders or other mechanisms exist to accomplish the following: allocation of group resources; settlement of disputes between members or subgroups; influence the behavior of individual members; and organize or influence economic activities among the members.

Subsection (b)(4) provides that the petition must include a copy of the governing document of the petitioner that includes the petitioner's membership criteria or a description of the governing procedures and membership criteria.

Subsection (b)(5) requires the petition to contain a list of all of the petitioner's current members and a statement describing the methods used to prepare such list. A group's membership must consist of established descendancy from an Indian group that existed historically or from historical Indian groups that combined and functioned as a single autonomous entity. Evidence of tribal membership shall include the following items: descendancy rolls prepared by the Secretary; state, federal or other official records; church, school and similar enrollment records; and affidavits of recognition by tribal elders, leaders or the tribal governing body.

Subsection (c) provides that a petition from a group that is able to demonstrate by a preponderance of the evidence that the group was or is the successor in interest to a party to a treaty; or a group acknowledged by the Federal Government as eligible to participate in the Indian Reorganization Act; or a group for which the United States holds lands in trust; or a group that has been denominated a tribe by an Act of Congress or an Executive Order shall only have to prove continuity of its existence as an Indian group from the date of such event rather than from the date of 1871.

Subsection (d) provides that no petitions can be submitted to the Commission after the date that is 6 years after the date of enactment of this Act.

SEC. 6. NOTIFICATION OF RECEIPT OF PETITION.

Subsection (a) of this section provides that 30 days after a petition is submitted or transferred to the Commission, the Commission shall send a written acknowledgement of receipt to the petitioner and publish a notice of such receipt in the Federal Register. With regard to a petition that is transferred to the Commission from the Secretary, the Commission shall also advise the petitioner whether the petition meets the requirements of Section 5 of this Act and, if necessary, provide the petitioner with 90 days to submit a petition to the Commission which does meet the requirements of Section 5.

Subsection (b) provides that the Commission shall provide written notification to the Governor, attorney general and each federally recognized Indian tribe located in the state in which the petitioner resides.

Subsection (c) provides that the Commission shall publish the notice of the receipt of each petition in a major newspaper or general circulation in the town or city located nearest the petitioner. These notices shall include a statement of the opportunity for any interested parties to submit factual or legal arguments in support of or in opposition to the petition. A copy of any such statements shall be made available to the petitioner by the Commission and the petitioner shall be afforded an opportunity to respond to such statements from other parties.

SEC. 7. PROCESSING THE PETITION.

Subsection (a) requires the Commission to conduct a review of all documented petitions which it receives. The review shall include consideration of the petition, supporting evidence and the factual statements contained in the petition. The Commission may also initiate other research relative to an analysis of the petition and consider such evidence as may be submitted by other parties. Upon a request by a petitioner, the Library of Congress and the National Archives shall allow the petitioner access to their resources, records and documents to conduct research and prepare evidence concerning the status of the petitioner.

Subsection (b) provides that petitions shall be considered on a first come, first served basis, determined by the date of the original filing, except for those petitions which meet the requirements of Section 5(c) which shall receive priority consideration.

SEC. 8. PRELIMINARY HEARING.

Subsection (a) provides that not later than 60 days after the Commission receives a documented petition, it shall set a date for a preliminary hearing. At the preliminary hearing the petitioner or any other concerned party may provide evidence concerning the status of the petitioner.

Subsection (b) provides that not later than 30 days after the conclusion of a preliminary hearing, the Commission shall either decide to extend Federal acknowledgement to the petitioner or to require the petitioner to proceed to an adjudicatory hearing.

Subsection (c) provides that if the Commission requires an adjudicatory hearing then it must: make appropriate records of the Commission available to the petitioner and provide such guidance as the Commission considers necessary to assist the petitioner in preparing for the hearing. Not later than 30 days after the conclusion of the preliminary hearing, the Commission is required to make available to the petitioner a written list of any deficiencies or omissions the Commission relied upon in the preliminary hearing. The scope of the adjudicatory hearing is limited to the list of deficiencies or omissions and the Commission cannot make any additions to the list after it is issued to the petitioner.

SEC. 9. ADJUDICATORY HEARING.

Subsection (a) provides that the adjudicatory hearing shall be held not late than 180 days after the preliminary hearing.

Subsection (b) provides that the Commission may require testimony from the acknowledgement and research staff of the Commission or from other witnesses. All such testimony shall be subject to cross examination by the petitioner.

Subsection (c) provides that the petitioner can provide such evidence as the petitioner considers appropriate.

Subsection (d) provides that not later than 60 days after the conclusion of an adjudicatory hearing the Commission shall make a determination concerning the acknowledgement of the petitioner as an Indian tribe. The determination shall be published in the Federal Register and shall be delivered to the petitioner and every other interested party.

SEC. 10. APPEALS.

Subsection (a) provides that not later than 60 days after the publication of a determination by the Commission, the petitioner may appeal the determination to the United States District Court for the District of Columbia.

Subsection (b) provides that petitioner may be awarded attorney fees and costs if the petitioner prevails on the appeal.

SEC. 11. EFFECT OF DETERMINATIONS.

This section provides that a determination by the Commission that a petitioner is recognized by the United States as an Indian tribe will not have the effect of depriving or diminishing: (1) the right of any other Indian tribe to govern its reservation as such reservation existed prior to the recognition of the Indian group; (2) any property right held in trust by the: United States for such other Indian tribe as such property existed prior to the recognition of such Indian group; or (3) any previously or independently existing claim by a petitioner to any such property right held in trust by the United States for such other Indian tribe prior to the recognition of the Indian group.

SEC. 12. IMPLEMENTATION OF DECISIONS.

Subsection (a) provides that upon recognition by the Commission of an Indian group as an Indian tribe, the Indian tribe shall be eligible for the benefits and services made available to Indian tribes by the Federal Government because of their status as Indian tribes with a government-to-government relationship with the United States. Newly recognized Indian tribes shall also have the responsibilities, obligations, privileges and immunities of such Indian tribes. The programs, services and benefits available to Indian tribes shall only become available to a newly recognized tribe upon the appropriation of funds.

Subsection (b) provides that not later than 180 days after an Indian group is recognized by the Commission, officials of the BIA and IHS shall consult with and develop in cooperation with the Indian tribe a determination of the needs of the Indian tribe and a recommended budget required to serve the tribe. The appropriate Secretary will forward the recommended budget to the President for inclusion in the President's annual budget request to the Congress.

SEC. 13. ANNUAL REPORT CONCERNING COMMISSION'S ACTIVITIES.

Subsection (a) provides that 90 days after the first meeting of the Commission and annually thereafter the Commission shall publish in the Federal Register a list of all Indian tribes that are recognized by the Federal Government and receive services from the BIA.

Subsection (b) provides that the Commission shall submit an annual report on its activities to the Congress prior to January 30 of each year. Each such report shall contain the number of petitions pending and the names of the petitioners; the number of petitions approved or denied during the year and the names of the petitioners and the status of all petitions pending on the date of the report.

SEC. 14. ACTIONS BY PETITIONERS FOR ENFORCEMENT.

This section authorizes any petitioner to bring an action in the Federal courts to enforce the provisions of the Act, including any time limitations within which actions are required to be taken.

SEC. 15. REGULATIONS.

This section authorizes the Commission to promulgate and publish regulations to carry out the Act.

SEC. 16. GUIDELINES AND ADVICE.

Subsection (a) provides that not later than 90 days after the first meeting of the Commission, the Commission shall make available to Indian groups suggested guidelines for the format of petitions.

Subsection (b) provides that the Commission may provide any petitioner with suggestions and advice with respect to research concerning the historical background and Indian identity of the petitioner.

SEC. 17. ASSISTANCE TO PETITIONERS.

Subsection (a) authorizes the Secretary of the Department of Health and Human Services to award grants to Indian groups seeking recognition as Indian tribes to enable such groups to conduct research and prepare the documentation necessary to submit a petition under this Act.

Subsection (b) provides that grants shall be awarded competitively on the basis of objective criteria prescribed in regulations which are published by the Secretary of HHS.

SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

Subsection (a) authorizes $1.5 million to be appropriated to the Commission to carry out this Act for each fiscal year from 1996 through 2008.

Subsection (b) authorizes $500,000 to be appropriated to HHS for the fiscal years 1996 through 2007 to carry out the grant program authorized in Section 17 of this Act.•

ADDITIONAL COSPONSORS

S. 190

At the request of Mr. PRESSLER, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 190, a bill to amend the Fair Labor Standards Act of 1938 to exempt employees who perform certain court reporting duties from the compensatory time requirements applicable to certain public agencies, and for other purposes.

S. 198

At the request of Mr. CHAFEE, the name of the Senator from New Hampshire [Mr. GREGG] was added as a cosponsor of S. 198, a bill to amend title XVIII of the Social Security Act to permit Medicare select policies to be offered in all States, and for other purposes.

S. 304

At the request of Mr. SANTORUM, the names of the Senator from North Carolina [Mr. HELMS], the Senator from Alabama [Mr. SHELBY], and the Senator from Michigan [Mr. ABRAHAM] were added as cosponsors of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

S. 351

At the request of Mr. HATCH, the name of the Senator from California [Mrs. BOXER] was added as a cosponsor of S. 351, a bill to amend the Internal Revenue Code of 1986 to make permanent the credit for increasing research activities.

AMENDMENT NO. 299

At the request of Mr. NUNN the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of amendment No. 299 proposed to House Joint Resolution 1, a joint resolution proposing a balanced budget amendment to the Constitution of the United States.

AMENDMENT NO. 300

At the request of Mr. CONRAD his name was added as a cosponsor of amendment No. 300 proposed to House Joint Resolution 1, a joint resolution proposing a balanced budget amendment to the Constitution of the United States.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FOREIGN RELATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, February 28, 1995, at 2 p.m. to hold a business meeting to vote on pending nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

TRIBUTE TO STATE REPRESENTATIVE KATHY HOGANCAMP

• Mr. McCONNELL. Mr. President, I rise today in honor of an inspiring Kentucky leader—Kathy Hogancamp, State representative for Kentucky's Fourth District.

Representative Hogancamp's resiliency determination, and strong sense of community service is clearly reflected in the course of her career prior to political service. She is a former teacher, and also served as an official of the U.S. Department of Health and Human Services and Department of Education from 1985 to 1991. Most recently, Kathy applied her master's degree in guidance and educational psychology in her work as a private tutor.

As our Nation struggles to recapture the initiative and stamina essential to reviving the American Dream, Kathy Hogancamp exemplifies what self-empowerment and the courage to make a difference truly mean. Since age 17, Kathy has been wheel-chair bound. Yet, she has never allowed her physical limitations to deter her work in serving her community and fulfilling her Christian mission. Kathy believes that character and intellect are far more important than her physical condition. Her optimism and drive to achieve are the basis of her personal philosophy—if there are obstacles to overcome, then overcome them.

In 1994, Kathy Hogancamp set out to win Kentucky's Fourth District House seat. Despite the odds in a predominately Democratic district, Hogancamp won the confidence of the voters and the title of State representative. Representative Hogancamp's campaign reflected the needs and interests of her district, not herself, as her platform focused on cutting taxes and revising the Kentucky Education Reform Act.

In February, Representative Hogancamp encountered a challenge that tested her will and strength as a serious automobile accident left her battered and bruised in the hospital. I am pleased to tell the Chamber that Kathy is recovering quite well and is eager to return to her duties as State representative. Mr. President, I want to share with my colleagues her thoughts on public service and sense of responsibility in her role as a lawmaker and community leader. It is my hope that her words will serve to remind us what our role as Members of the U.S. Senate means to our constituents and the future of our Nation.

Mr. President, I ask that the Paducah Sun's February 14, 1995, article on Representative Hogancamp be printed in the RECORD.

The article follows:

[From the Paducah Sun, Feb. 14, 1995]

REP. HOGANCAMP RESOLVED, UPBEAT SINCE LAST BRUTAL BRUSH WITH DEATH

(By Donna Groves Haynes)

Bruised, battered and lying in a hospital bed, state Rep. Kathy Hogancamp still radiates strength and determination.

"That's the way God built me," said Hogancamp, who has been paralyzed since a car wreck 23 years ago and is now recovering from serious injuries sustained in a van wreck Feb. 7 near Beaver Dam.

"I could have decided to be a couch potato when I was 17 and would have been justified in doing so," Hogancamp said in an interview from her hospital room Monday. "I made the decision to make something of my life because I do believe I have something to give back to our culture."

Now after a second serious car crash, Hogancamp is displaying the same resilience. "I've learned that accidents do strike twice, and God still has His hand on my head," she said.

Doctors do not expect Hogancamp's mobility to be any more impaired than it was before the wreck. "It's just all the logistics—getting a new (wheel) chair, a new car . . . new makeup," she said jokingly, referring to the fact that her personal belongings were strewn over about a 30-foot area in the wreck.

Over the weekend, Hogancamp was moved out of intensive care and into a private room. Although she has been told she could be released Thursday, Hogancamp added, "but I don't trust doctors."

Even in the hospital, Hogancamp was beginning to talk about business again. When U.S. Sen. Mitch McConnell called Monday to ask her how she was feeling, she volunteered to speak at the upcoming Lincoln Day festivities "if at all possible."

Hogancamp views her latest ordeal as a "wake-up call from God," an attempt on His part to ensure she is properly motivated in her legislative endeavors. "God had to get my attention again, a second time, telling me to stay on the track. When you reach adulthood, it's easy to slip into lifeless faith, I had not escaped that.

"He was saying to me; 'I put you in this position of responsibility. Don't blow it.'"

Asked if she ever wanted to question, "Why me?" Hogancamp explained that she learned from the Biblical character Job that that would be futile. "Job never got his question answered. He just saw God, and his question paled in comparison.

"It's an insignificant question. You can waste your life on it. You just need to take what you can from your past and move on. A lot of the things I learned when I was walking are helpful to me now. I used to be in speech and drama. That helped me learn to write a heck of a speech."

Although Hogancamp is alert and making jokes, she realizes she has a long road of recovery ahead of her. "I'm a lot more recovered upstairs than my body is," she said. "My whole body is one big bruise."

Among her more serious injuries are a few cracked ribs and a compound fractured wrist. But because it's her left wrist, Hogancamp made light of that. "It's not my major make-up hand anyway," she said.

Hogancamp is optimistic that the wrist injury will not prevent her from using an adaptive device to write on her computer.

And she believes her injuries could even result in some benefits. "It banged up my legs pretty good, so much so that I may end up sitting straighter. It banged me around so much, I may end up with better posture. Isn't that ironic?"

Hogancamp said she remained conscious as the van tumbled out of control Tuesday night. "Bright lights, going round and round and wondering, 'When is this going to end?' I've never done drugs, but that's got to be close to what a drug experience would be."

When the van finally came to rest, Hogancamp found herself face down in the mud with her body twisted. She could see that her left wrist was severely mangled, but, being paralyzed, had no idea what her other injuries might be.

Still, she said, her faith helped her to remain calm. "I knew if God had brought me that far, it wasn't going to be the end."•

TRIBUTE TO ALEX MANOOGIAN

• Mr. LEVIN. Mr. President, this Friday, March 3, 1995, the Armenian General Benevolent Union of Detroit is holding a tribute banquet honoring Mr. Alex Manoogian. Mr. Manoogian is one of the most inspiring people I have ever met. This Friday evening at St. John's Armenian Church in Southfield, MI, the Republic of Armenia will award him the National Hero of Armenia Award and an honorary doctorate degree from Yerevan State University.

As an appropriate tribute to Mr. Manoogian's stature, the president of the Armenian Parliament, His Excellency Babken Ararktsian will be the keynote speaker.

Alex Manoogian's life is an affirmation of the American dream. And yet the key to understanding the meaning of his vast worldly success is to know of the love, fidelity, and loyalty that Alex Manoogian has held in his heart for his family, his people, and his community.

He was born in Asia Minor in 1901, and came to America in 1920. Settling in Detroit in 1924, he founded his own company in 1928 which has grown into the multinational Masco Corp.

He was married to Marie Tatian in 1931. In over 60 years of marriage they were blessed with two loving children and six adoring grandchildren. To understand the depth of his love of family and his embrace of the Armenian community is to understand the magnanimous actions of his remarkable life.

His involvement and generosity have created or expanded hospitals, museums, libraries, universities, schools, and other important institutions throughout the world. Close to home, it is his former residence, donated to the city of Detroit, that is the official residence for the mayor of Detroit.

Mr. President, the positive impact of his life cannot be overestimated, and his legacy will live forever through the countless people around the world that have been changed by, and benefited from, the vast array of cultural, educational, humanitarian, and charitable institutions that have thrived as the result of his efforts.

His awards and honors have been many, and his international renown is well-deserved. His life has been a tribute to all that is possible and good in this great country, his adopted home. And the loyalty for and love of his heritage have been the guiding light and beneficiary of his remarkable life. It is an honor to know him, and an honor for me to pay tribute to him.•

AMERICAN HEART MONTH

• Mr. GORTON. Mr. President, I stand in support of February, American Heart Month. February 1995 marks the 32d annual American Heart Month. To convey the importance that all Americans participate in the battle against cardiovascular diseases, including heart attack and stroke, in 1963 the U.S. Congress passed a joint resolution requesting that the President proclaim each February as American Heart Month. But the battle has not been won, cardiovascular diseases remain America's No. 1 killer and a major cause of disability.

During American Heart Month, the American Heart Association and its more than 3.7 million volunteers canvass neighborhoods nationwide distributing educational materials and soliciting public support for the AHA mission, the reduction of disability and death from cardiovascular diseases, including heart attack and stroke. The American Heart Month theme this year is "Life. It's What We're Fighting For," highlighting the value of biomedical research and its significance in daily life for many Americans. AHA-sponsored activities and information during this American Heart Month focus on the importance of current medical research projects in the fight against cardiovascular diseases and outline some medical miracles responsible for longer and healthier lives of millions of Americans. Through these educational efforts, the AHA hopes to enhance public support and knowledge about the critical nature of biomedical research in the battle against cardiovascular diseases.

Since 1949, the American Heart Association has invested about $1.3 billion in medical research and hopes to reach the $2 billion mark by the year 2000. The AHA reports that it will contribute about $94 million in support of almost 2,900 medical research projects across this country in 1995.

American Heart Association-supported research has produced some significant results, such as CPR, life-extending drugs, bypass surgery, pacemakers and other surgical techniques to repair heart defects. In addition, four physicians who received the Nobel Prize in Physiology or Medicine had been supported, at one time, by the AHA, including Dr. Edwin G. Krebs of the University of Washington in Seattle. Doctor Krebs and Dr. Edmond H. Fischer, also of the University of Washington in Seattle, both were awarded the 1991 Nobel Prize in Physiology or Medicine for their discovery of how proteins in the body are switched on to perform functions within cells.

I can personally attest to the benefit of medical research. According to the American Heart Association, each year 1.5 million Americans suffer a heart attack—that is approximately 1 heart attack every 20 seconds. As my colleagues know, unfortunately, last November, I suffered a heart attack. But, thanks to medical research, I am living a healthy, productive life.

As a recent beneficiary of medical research, I welcome this opportunity to salute the American Heart Association for their research support and public and professional education and community service programs to advance the battle against heart attack and stroke. I am particularly proud of the contribution of the American Heart Association Washington affiliate. The AHA Washington affiliate in 1994–1995 will support about $797,332 on research being conducted at the following research facilities in Washington: University of Washington, Washington State University, Children's Hospital in Seattle, VA Medical Center, and the Fred Hutchinson Cancer Research Center.

However, I am still concerned about the federal commitment to the battle against cardiovascular diseases, including heart attack and stroke. The American Heart Association estimates that about 1 in 4 Americans suffers from cardiovascular diseases that will cost this Nation approximately $138 billion in medical expenses and lost productivity in 1995. But, the fiscal year 1993 National Institutes of Health budget for research on heart disease and stroke is only $855 million, representing a research investment of less than 1 percent of the expenditures for these diseases.

Again, I encourage my colleagues to reaffirm our dedication to the fight against cardiovascular diseases. A significant growth in Federal resources is needed to take advantage of promising research projects in this area.

I ask that this year's Presidential proclamation be printed in the RECORD.

The proclamation follows:

[Proclamation 6768 of February 10, 1995]

AMERICAN HEART MONTH, 1995

(By the President of the United States of America)

A PROCLAMATION

Throughout history, the heart has been a symbol of health and well-being. Yet nothing now overshadows Americans' health as much as heart disease—the leading cause of death among men and women. Diseases of the heart and blood vessels kill nearly a million Americans each year, most from the effects of atherosclerosis, the narrowing and stiffening of blood vessels from the buildup of plaque that usually begins early in life.

Today, Americans are enjoying the rewards of the progress humanity has made in understanding and treating cardiovascular disease. Advances in diagnosis make it possible to see the heart beat without the use of invasive procedures. Thousands of heart attack victims are being saved by the rapid administration of drugs to dissolve blood clots. Soon, gene therapy may be able to prevent the smooth muscle cell multiplication that contributes to the narrowing of blood vessels. Perhaps most important, we have greater understanding of how to prevent the development of heart disease. By controlling blood pressure and blood cholesterol, being physically active, and not smoking cigarettes, more Americans can have the chance to lead long, healthy lives.

The Federal Government has contributed to these successes by supporting research and education through the National Heart, Lung, and Blood Institute. Through its commitment to research, its programs to heighten public awareness, and its vital network of dedicated volunteers, the American Heart Association also has played a crucial role in bringing about these remarkable accomplishments.

Yet the heart has not revealed all of its mysteries. No one knows why heart disease begins. And, while it is known that heart disease develops differently in men and women, the reasons for those variations are still being studied. About 50 million Americans continue to suffer from hypertension, a major cause of stroke, and 1.25 million Americans have heart attacks every year.

Conquering these diseases requires unwavering national and personal commitment. On the national level, the Federal Government will continue to support research into the prevention, diagnosis, and treatment of heart disease. On the personal level, Americans can take steps to prevent heart disease from striking their families, including teaching their children heart-healthy habits. Working together, we can make the tragedy of heart disease a nightmare of the past.

In recognition of the need for all Americans to become involved in the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963 (77 Stat. 843, 36 U.S.C. 169b), has requested that the President issue an annual proclamation designating February as "American Heart Month."

Now, Therefore, I, William J. Clinton, President of the United States of America, do hereby proclaim February 1995 as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating cardiovascular disease and stroke.

In Witness Whereof, I have hereunto set my hand this tenth day of February, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

WILLIAM J. CLINTON.•

LOUIS E. CURDES

• Mr. LUGAR. Mr. President, I rise today to pay tribute to the outstanding life and service of Louis E. Curdes. Mr. Curdes, who recently passed away at his home in Fort Wayne, IN, served his country with honor, and was a recognized hero of World War II.

Mr. Curdes demonstrated his skill and valor during his first 2 weeks as a fighter pilot in World War II, when he shot down a total of five German planes to become a flying ace. Several months later, when his plane was damaged in fighting, he was forced down in Italy and spent months in war prisons, until his eventual escape and walk to freedom.

Late in the war, Louis Curdes saw action in the South Pacific. He shot down aircraft from Japan and Italy, as well as Germany. Two of the Italian aircraft he shot down are displayed at the Smithsonian Air and Space Museum.

In 1963, Mr. Curdes retired as a lieutenant colonel after 22 years of service in the U.S. Air Force. He earned numerous medals including the Distinguished Flying Cross, Purple Heart, and Air Medals. Upon his retirement, he began Curdes Builders Co., and devoted his life to his family and work in Fort Wayne, IN.

Mr. President, it is with great respect that I call to my colleagues' attention the contributions Louis Curdes made to his country. He is truly an example and inspiration for all who follow him.•

HOMICIDES BY GUNSHOT IN NEW YORK CITY

• Mr. MOYNIHAN. Mr. President, I rise today, as I have done each week of the 104th Congress, to announce to the Senate that during the past week, 6 people were murdered by gunshot in New York City, bringing this year's total to 95.

Today I received a letter from Sarah Brady, chairman of Handgun Control Inc., which brought some very welcome news. The letter, which not coincidentally arrives on the 1-year anniversary of the implementation of the Brady law, announces the results of a new survey unequivocally proving that the Brady law is working. Conducted jointly by the International Association of Chiefs of Police and Handgun Control, Inc., the survey of 115 law enforcement agencies in 27 States reveals that background checks in those jurisdictions prevented the sale of guns to over 19,000 persons prohibited by law from purchasing firearms. Mrs. Brady also informs me that, according to Bureau of Alcohol, Tobacco, and Firearms estimates, the Brady law has prevented some 70,000 persons nationwide from illegally purchasing firearms.

Mr. President, this demonstrates that Congress can make a difference in the fight to reduce gun violence. I hope it will convince the Senate to adopt future measures to address this terrible problem.

I ask that the letter from Mrs. Brady be printed in the RECORD.

The letter follows:

FEBRUARY 27, 1995.

Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOYNIHAN: Thanks to you, it's working. The results are in! Tuesday, February 28, 1995 marks the first anniversary of the implementation of the Brady Law and a new survey confirms that the new law is helping to keep guns out of the wrong hands.

Attached for your review are the results of a survey conducted by the International Association of Chiefs of Police (IACP) and Handgun Control, Inc. The survey found that background checks in 115 state and local jurisdictions, covering all or part of 27 states, stopped 19,000 felons and other prohibited persons from obtaining handguns.

While that is no national reporting requirement, the Bureau of Alcohol, Tobacco and Firearms estimates that background checks in the past year stopped 70,000 convicted felons and other prohibited persons from making an over-the-counter purchase of a handgun. Forty-thousand of those denials came from "new" states which did not previously meet the requirements of the Brady Law. As a result of these background checks, hundreds of arrests have been made of those wanted on outstanding warrants.

If you have any questions regarding this information, please do not hesitate to call HCI's Marie Carbone.

On behalf of Jim and myself, please accept our deepest appreciation for all that you did to make these results possible.

Sincerely,

SARAH BRADY,
Chair.•

RULES OF THE SENATE SPECIAL COMMITTEE ON AGING

• Mr. COHEN. Mr. President, today I am filing the committee rules of the Senate Special Committee on Aging. I ask that the rules be printed in the RECORD.

The rules follow:

SPECIAL COMMITTEE ON AGING—JURISDICTION AND AUTHORITY

(S. Res. 4 §104, 95th Cong., 1st Sess. (1977)[1]

(a)(1) There is established a Special Committee on Aging (hereafter in this section referred to as the "special committee") which shall consist of nineteen Members. The Members and chairman of the special committee shall be appointed in the same manner and at the same time as the Members and chairman of a standing committee of the Senate. After the date on which the majority and minority Members of the special committee are initially appointed on or after the effective date of title I of the Committee System Reorganization Amendments of 1977, each time a vacancy occurs in the Membership of the special committee, the number of Members of the special committee shall be reduced by one until the number of Members of the special committee consists of nine Senators.

(2) For purposes of paragraph 1 of rule XXV; paragraphs 1, 7(a)(1)-(2), 9, and 10(a) of rule XXVI; and paragraphs 1(a)-(d), and 2 (a) and (d) of rule XXVII of the Standing Rules of the Senate; and for purposes of section 202 (i) and (j) of the Legislative Reorganization Act of 1946, the special committee shall be treated as a standing committee of the Senate.

(b)(1) It shall be the duty of the special committee to conduct a continuing study of any and all matters pertaining to problems and opportunities of older people, including, but not limited to, problems and opportunities of maintaining health, of assuring adequate income, of finding employment, of engaging in productive and rewarding activity, of securing proper housing, and when necessary, of obtaining care or assistance. No proposed legislation shall be referred to such committee, and such committee shall not have power to report by bill, or otherwise have legislative jurisdiction.

(2) The special committee shall, from time to time (but not less often than once each year), report to the Senate the results of the study conducted pursuant to paragraph (1), together with such recommendation as it considers appropriate.

(c)(1) For the purposes of this section, the special committee is authorized, in its discretion, (A) to make investigations into any matter within its jurisdiction, (B) to make expenditures from the contingent fund of the Senate, (C) to employ personnel, (D) to hold hearings, (E) to sit and act at any time or place during the sessions, recesses, and adjourned periods of the Senate, (F) to require, by subpoena or otherwise, the attendance of witnesses and the production of correspondence, books, papers, and documents, (G) to take depositions and other testimony, (H) to procure the services of individual consultations or organizations thereof, in accordance with the provisions of section 202(i) of the Legislative Reorganization Act of 1946, and (I) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

(2) The chairman of the special committee or any Member thereof may administer oaths to witnesses.

(3) Subpoenas authorized by the special committee may be issued over the signature of the chairman, or any Member of the special committee designated by the chairman, and may be served by any person designated by the chairman or the Member signing the subpoena.

(d) All records and papers of the temporary Special Committee on Aging established by Senate Resolution 33, Eighty-seventh Congress, are transferred to the special committee.

RULES OF PROCEDURE

(139 Cong. Rec. S1929 (Daily ed. Feb. 18, 1993))

I. CONVENING OF MEETINGS AND HEARINGS

1. MEETINGS. The Committee shall meet to conduct Committee business at the call of the Chairman.

2. SPECIAL MEETINGS. The Members of the Committee may call additional meetings as provided in Senate Rule XXVI (3).

3. NOTICE AND AGENDA:

(a) HEARINGS. The Committee shall make public announcement of the date, place, and subject matter of any hearing at least one week before its commencement.

(b) MEETINGS. The Chairman shall give the Members written notice of any Committee meeting, accompanied by an agenda enumerating the items of business to be considered, at least 5 days in advance of such meeting.

(c) SHORTENED NOTICE. A hearing or meeting may be called on not less than 24 hours notice if the Chairman, with the concurrence of the Ranking Minority Member, determines that there is good cause to begin the hearing or meeting on shortened notice. An agenda will be furnished prior to such a meeting.

4. PRESIDING OFFICER. The Chairman shall preside when present. If the Chairman is not present at any meeting or hearing, the Ranking Majority Member present shall preside. Any Member of the Committee may preside over the conduct of a hearing.

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[1] As amended by S. Res. 78, 95th Cong., 1st Sess. (1977), S. Res. 376, 95th Cong., 2d Sess. (1978), S. Res. 274, 96th Cong., 1st Sess. (1979), S. Res. 389, 96th Cong., 2d Sess. (1980).

II. CLOSED SESSIONS AND CONFIDENTIAL MATERIALS

1. Procedure. All meetings and hearings shall be open to the public unless closed. To close a meting or hearing or portion thereof, a motion shall be made and seconded to go into closed discussion of whether the meeting or hearing will concern the matters enumerated in Rule II.3. Immediately after such discussion, the meeting or hearing may be closed by a vote in open session of a majority of the Members of the Committee present.

2. Witness Request. Any witness called for a hearing may submit a written request to the Chairman no later than twenty-four hours in advance for his examination to be in closed or open session. The Chairman shall inform the Committee of any such request.

3. Closed Session Subjects. A meeting or hearing or portion thereof may be closed if the matters to be discussed concern: (1) national security; (2) Committee staff personnel or internal staff management or procedure; (3) matters tending to reflect adversely on the character or reputation or to invade the privacy of the individuals; (4) Committee investigations; (5) other matters enumerated in Senate Rule XXVI (5)(b).

4. Confidential Matter. No record made of a closed session, or material declared confidential by a majority of the Committee, or report of the proceedings of a closed session, shall be made public, in whole or in part or by way of summary, unless specifically authorized by the Chairman and Ranking Minority Member.

5. Broadcasting.

(a) Control. Any meeting or hearing open to the public may be covered by television, radio, or still photography. Such coverage must be conducted in an orderly and unobtrusive manner, and the Chairman may for good cause terminate such coverage in whole or in part, or take such other action to control it as the circumstances may warrant.

(b) Request. A witness may request of the Chairman, on grounds of distraction, harassment, personal safety, or physical discomfort, that during his testimony cameras, media microphones, and lights shall not be directed at him.

III. QUORUMS AND VOTING

1. Reporting. A majority shall constitute a quorum for reporting a resolution, recommendation or report to the Senate.

2. Committee Business. A third shall constitute a quorum for the conduct of Committee business, other than a final vote on reporting, providing a minority Member is present. One Member shall constitute a quorum for the receipt of evidence, the swearing of witnesses, and the taking of testimony at hearings.

3. Polling.

(a) Subjects. The Committee may poll (1) internal Committee matters including those concerning the Committee's staff, records, and budget; (2) other Committee business which has been designated for polling at a meeting.

(b) Procedure. The Chairman shall circulate polling sheets to each member specifying the matter being polled and the time limit for completion of the poll. If any Member so requests in advance of the meeting, the matter shall be held for meeting rather than being polled. The clerk shall keep a record of polls; if the Chairman determines that the polled matter is one of the areas enumerated in Rule II.3, the record of the poll shall be confidential. Any Member may move at the Committee meeting following a poll for a vote on the polled decision.

IV. INVESTIGATIONS

1. Authorization for Investigations. All investigations shall be conducted on a bipartisan basis by Committee Staff. Investigations may be initiated by the Committee staff upon the approval of the Chairman and the Ranking Minority Member. Staff shall keep the Committee fully informed of the progress of continuing investigations, except where the Chairman and the Ranking Minority Member agree that there exists temporary cause for more limited knowledge.

2. Subpoenas. Subpoenas for the attendance of witnesses or the production of memoranda, documents, records, or any other materials shall be issued by the Chairman, or by any other Member of the Committee designated by him. Prior to the issuance of each subpoena, the Ranking Minority Member, and any other Member so requesting, shall be notified regarding the identity of the person to whom the subpoena will be issued and the nature of the information sought, and its relationship to the investigation.

3. Investigative Reports. All reports containing findings or recommendations stemming from Committee investigations shall be printed only with the approval of a majority of the Members of the Committee.

V. HEARINGS

1. Notice. Witnesses called before the Committee shall be given, absent extraordinary circumstances, at least forty-eight hours' notice, and all witnesses called shall be furnished with a copy of these rules upon request.

2. Oath. All witnesses who testify to matters of fact shall be sworn unless the Committee waives the oath. The Chairman, or any Member, may request and administer the oath.

3. Statement. Any witness desiring to make an introductory statement shall file 50 copies of such statement with the Chairman or clerk of the Committee 24 hours in advance of his appearance, unless the Chairman and Ranking Minority Member determine that there is good cause for a witness's failure to do so. A witness shall be allowed no more than ten minutes to orally summarize his prepared statement.

4. Counsel:

(a) A witness's counsel shall be permitted to be present during his testimony at any public or closed hearing or depositions or staff interview to advise such witness of his rights, provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Chairman may rule that representation by counsel from the government, corporation, or association creates a conflict of interest, and that the witness shall be represented by personal counsel not from the government, corporation, or association.

(b) A witness who is unable for economic reasons to obtain counsel may inform the Committee at least 48 hours prior to the witness's appearance, and it will endeavor to obtain volunteer counsel for the witness. Such counsel shall be subject solely to the control of the witness and not the Committee. Failure to obtain counsel will not excuse the witness from appearing and testifying.

5. Transcript. An accurate electronic or stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. Any witness shall be afforded, upon request, the right to review that portion of such record, and for this purpose, a copy of a witness's testimony in public or closed session shall be provided to the witness. Upon inspecting his transcript, within a time limit set by the committee clerk, a witness may request changes in testimony to correct errors of transcription, grammatical errors, and obvious errors of fact; the Chairman or a staff officer designated by him shall rule on such request.

6. Impugned Persons. Any person who believes that evidence presented, or comment made by a Member or staff, at a public hearing or at a closed hearing concerning which there have been public reports, tends to impugn his character or adversely affect his reputation may:

(a) file a sworn statement of facts relevant to the evidence or comment, which shall be placed in the hearing record;

(b) request the opportunity to appear personally before the Committee to testify in his own behalf; and

(c) submit questions in writing which he requests be used for the cross-examination of other witnesses called by the Committee. The Chairman shall inform the Committee of such requests for appearance or cross-examination. If the Committee so decides, the requested questions, or paraphrased versions or portions of them, shall be put to the other witness by a Member of by staff.

7. Minority Witnesses. Whenever any hearing is conducted by the Committee, the minority on the Committee shall be entitled, upon request made by a majority of the minority Members to the Chairman, to call witnesses selected by the minority to testify or produce documents with respect to the measure or matter under consideration during at least one day of the hearing. Such request must be made before the completion of the hearing or, if subpoenas are required to call the minority witnesses, no later than three days before the completion of the hearing.

8. Conduct of Witnesses, Counsel and Members of the Audience. If, during public or executive sessions, a witness, his counsel, or any spectator conducts himself in such a manner as to prevent, impede, disrupt, obstruct, or interfere with the orderly administration of such hearing the Chairman or presiding Member of the Committee present during such hearing may request the Sergeant at Arms of the Senate, his representative or any law enforcement official to eject said person from the hearing room.

VI. DEPOSITIONS AND COMMISSIONS

1. Notice. Notices for the taking of depositions in an investigation authorized by the Committee shall be authorized and issued by the Chairman or by a staff officer designated by him. Such notices shall specify a time and place for examination, and the name of the staff officer or officers who will take the deposition. Unless otherwise specified, the deposition shall be in private. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness's failure to appear unless the deposition notice was accompanied by a Committee subpoena.

2. Counsel. Witnesses may be accompanied at a deposition by counsel to advise them of their rights, subject to the provisions of Rule V.4.

3. Procedure. Witnesses shall be examined upon oath administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Committee staff. Objections by the witnesses as to the form of questions shall be noted by the record. If a witness objects to a question and refuses to testify on the basis of relevance or privilege, the Committee staff may proceed with the deposition, or may at that time or at a subsequent time, seek a ruling by telephone or otherwise on the objection from a Member of the Committee. If the

Member overrules the objection, he may refer the matter to the Committee or he may order and direct the witness to answer the question, but the Committee shall not initiate the procedures leading to civil or criminal enforcement unless the witness refuses to testify after he has been ordered and directed to answer by a Member of the Committee.

4. FILING. The Committee staff shall see that the testimony is transcribed or electronically recorded. If it is transcribed, the witness shall be furnished with a copy for review. No later than five days thereafter, the witness shall return a signed copy, and the staff shall enter the changes, if any, requested by the witness in accordance with Rule V.6. If the witness fails to return a signed copy, the staff shall note on the transcript the date a copy was provided and the failure to return it. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record to the testimony, and the transcript shall then be filed with the Committee clerk. Committee staff may stipulate with the witness to changes in this procedure; deviations from the procedure which do not substantially impair the reliability of the record shall not relieve the witness from his obligation to testify truthfully.

5. COMMISSIONS. The Committee may authorize the staff, by issuance of commissions, to fill in prepared subpoenas, conduct field hearings, inspect locations, facilities, or systems of records, or otherwise act on behalf of the Committee. Commissions shall be accompanied by instructions from the Committee regulating their use.

VII. SUBCOMMITTEES

1. ESTABLISHMENT. The Committee will operate as a Committee of the Whole, reserving to itself the right to establish temporary subcommittees at any time by majority vote. The Chairman of the full Committee and the Ranking Minority Member shall be ex-officio Members of all subcommittees.

2. JURISDICTION. Within its jurisdiction, as described in the Standing Rules of the Senate, each subcommittee is authorized to conduct investigations, including use of subpoenas, depositions, and commissions.

3. RULES. A subcommittee shall be governed by the Committee rules, except that its quorum for all business shall be one-third of the subcommittee Membership, and for hearings shall be one Member.

VIII. REPORTS

Committee reports incorporating Committee findings and recommendations shall be printed only with the prior approval of the Committee, after an adequate period for review and comment. The printing, as Committee documents, of materials prepared by staff for informational purposes, or the printing of materials not originating with the Committee or staff, shall require prior consultation with the minority staff; these publications shall have the following language printed on the cover of the document: "Note: This document has been printed for informational purposes. It does not represent either findings or recommendations formally adopted by the Committee."

IX. AMENDMENT OF RULES

The rules of the Committee may be amended or revised at any time, provided that not less than a majority of the Committee present so determine at a Committee meeting preceded by at least 3 days notice of the amendments or revisions proposed.•

RULES OF PROCEDURE OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

• Mr. ROTH. Mr. President, I herewith submit a copy of Rules of Procedure adopted by the Committee on Governmental Affairs pursuant to rule XXVI, section 2, Standing Rules of the Senate, and ask that they be printed in the RECORD at this point.

The Rules of Procedure follow:

RULES OF PROCEDURE OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS

(Pursuant to rule XXVI, Sec. 2, Standing Rules of the Senate)

RULE 1. MEETINGS AND MEETING PROCEDURES OTHER THAN HEARINGS

A. Meeting dates. The Committee shall hold its regular meetings on the first Thursday of each month, when the Congress is in session, or at such other times as the chairman shall determine. Additional meetings may be called by the chairman as he deems necessary to expedite Committee business. (Rule XXVI, Sec. 3, Standing Rules of the Senate.)

B. Calling special Committee meetings. If at least three members of the Committee desire the chairman to call a special meeting, they may file in the offices of the Committee a written request therefor, addressed to the chairman. Immediately thereafter, the clerk of the Committee shall notify the chairman of such request. If, within three calendar days after the filing of such request, the chairman fails to call the requested special meeting, which is to be held within seven calendar days after the filing of such request, a majority of the Committee members may file in the offices of the Committee their written notice that a special Committee meeting will be held, specifying the date and hour thereof, and the Committee shall meet on that date and hour. Immediately upon the filing of such notice, the Committee clerk shall notify all Committee members that such special meeting will be held and inform them of its date and hour. (Rule XXVI, Sec. 3, Standing Rules of the Senate.)

C. Meeting notices and agenda. Written notices of Committee meetings, accompanied by an agenda, enumerating the items of business to be considered, shall be sent to all Committee members at least three days in advance of such meetings, excluding Saturdays, Sundays, and legal holidays in which the Senate is not in session. In the event that unforeseen requirements or Committee business prevent a three-day notice of either the meeting or agenda, the Committee staff shall communicate such notice and agenda, or any revisions to the agenda, as soon as practicable by telephone or otherwise to members or appropriate staff assistants in their offices.

D. Open business meetings. Meetings for the transaction of Committee or Subcommittee business shall be conducted in open session, except that a meeting or series of meetings on the same subject for a period of no more than fourteen calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in clauses (1) through (6) below would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the Committee or Subcommittee members when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of foreign relations of the United States;

(2) will relate solely to matters of Committee or Subcommittee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations. (Rule XXVI, Sec. 5(b), Standing Rules of the Senate.)

Notwithstanding the foregoing, whenever disorder arises during a Committee or Subcommittee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the chairman to enforce order on his own initiative and without any point of order being made by a member of the Committee or Subcommittee; provided, further, that when the chairman finds it necessary to maintain order, he shall have the power to clear the room, and the Committee or Subcommittee may act in closed session for so long as there is doubt of the assurance of order. (Rule XXVI, Sec. 5(d), Standing Rules of the Senate.)

E. Prior notice of first degree amendments. It shall not be in order for the Committee, or a subcommittee thereof, to consider any amendment in the first degree proposed to any measure under consideration by the Committee or Subcommittee unless a written copy of such amendment has been delivered to each member of the Committee or Subcommittee, as the case may be, and to the office of the Committee or Subcommittee, at least 24 hours before the meeting of the Committee or Subcommittee at which the amendment is to be proposed. This subsection may be waived by a majority of the members present. This subsection shall apply only when at least 72 hours written notice of a session to mark-up a measure is provided to the Committee or Subcommittee.

F. Meeting transcript. The Committee or Subcommittee shall prepare and keep a complete transcript or electronic recording adequate to fully record the proceeding of each meeting whether or not such meeting or any part thereof is closed to the public, unless a majority of the Committee or Subcommittee members vote to forgo such a record. (Rule SSVI, Sec. 5(e), Standing Rules of the Senate.)

RULE 2. QUORUMS

A. Reporting measures and matters. A majority of the members of the Committee shall constitute a quorum for reporting to the Senate any measures, matters or recommendations. (Rule XXVI, Sec. 7(a)(1), Standing Rules of the Senate.)

B. Transaction of routine business. Five members of the Committee shall constitute a quorum for the transaction of routine business, provided that one member of the minority is present.

For the purpose of this paragraph, the term "routine business" includes the convening of a meeting and the consideration of any business of the Committee other than reporting to the Senate any measures, matters or recommendations. (Rule XXVI, Sec. 7(a)(1), Standing Rules of the Senate.)

C. Taking testimony. One member of the Committee shall constitute a quorum for taking sworn or unsworn testimony. (Rule XXVI, Sec. 7(a)(2), and 7(c)(2) Standing Rules of the Senate.)

D. Subcommittee quorums. Subject to the provisions of sections 7(a)(1) and (2) of Rule XXVI of the Standing Rules of the Senate, the Subcommittees of this Committee are authorized to establish their own quorums for the transaction of business and the taking of sworn testimony.

E. Proxies prohibited in establishment of quorum. Proxies shall not be considered for the establishment of a quorum.

RULE 3. VOTING

A. Quorum required. Subject to the provisions of subsection (E), no vote may be taken by the Committee, or any Subcommittee thereof, on any measure or matter unless a quorum, as prescribed in the preceding section, is actually present.

B. Reporting measures and matters. No measure, matter or recommendation shall be reported from the Committee unless a majority of the Committee members are actually present, and the vote of the Committee to report a measure or matter shall require the concurrence of a majority of those members who are actually present at the time the vote is taken. (Rule XXVI, Sec. 7(a)(1) and (3), Standing Rules of the Senate.)

C. Proxy voting. Proxy voting shall be allowed on all measures and matters before the Committee, or any Subcommittee thereof, except that, when the Committee, or any Subcommittee thereof, is voting to report a measure or matter, proxy votes shall be allowed solely for the purposes of recording a member's position on the pending question. Proxy voting shall be allowed only if the absent Committee or Subcommittee member has been informed of the matter on which he is being recorded and has affirmatively requested that he be so recorded. All proxies shall be filed with the chief clerk of the Committee or Subcommittee thereof, as the case may be. All proxies shall be in writing and shall contain sufficient reference to the pending matter as is necessary to identify it and to inform the Committee or Subcommittee as to how the member establishes his vote to be recorded thereon. (Rule XXVI, Sec. 7(a)(3) and 7(c)(1), Standing Rules of the Senate.)

D. Announcement of vote. (1) Whenever the Committee by roll call vote reports any measure or matter, the report of the Committee upon such a measure or matter shall include a tabulation of the votes cast in favor of and the votes cast in opposition to such measure or matter by each member of the Committee. (Rule XXVI, Sec.7(c), Standing Rules of the Senate.)

(2) Whenever the Committee by roll call vote acts upon any measure or amendment thereto, other than reporting a measure or matter, the results thereof shall be announced in the Committee report on that measure unless previously announced by the Committee, and such announcement shall include a tabulation of the votes cast in favor of and the votes cast in opposition to each such measure and amendment thereto by each member of the Committee who was present at the meeting. (Rule XXVI, Sec. 7(b), Standing Rules of the Senate.)

(3) In any case in which a rollcall vote is announced, the tabulation of votes shall state separately the proxy vote recorded in favor of and in opposition to that measure, amendment thereto, or matter. (Rule XXVI, Sec. 7(b) and (c), Standing Rules of the Senate.)

E. Polling. (1) The Committee, or any Subcommittee thereof, may poll (a) internal Committee or Subcommittee matters including the Committee's or Subcommittee's staff, records and budget; (b) steps in an investigation, including issuance of subpoenas, applications for immunity orders, and requests for documents from agencies; and (c) other Committee or Subcommittee business other than a vote on reporting to the Senate any measures, matters or recommendations or a vote on closing a meeting or hearing to the public.

(2) Only the chairman, or a Committee member or staff officer designated by him, may undertake any poll of the members of the Committee. If any member requests, any matter to be polled shall be held for meeting rather than being polled. The chief clerk of the Committee shall keep a record of polls; if a majority of the members of the Committee determine that the polled matter is in one of the areas enumerated in subsection (D) of Rule 1, the record of the poll shall be confidential. Any Committee member may move at the Committee meeting following the poll for a vote on the polled decision, such motion and vote to be subject to the provisions of subsection (D) of Rule 1, where applicable.

RULE 4. CHAIRMANSHIP OF MEETINGS AND HEARINGS

The chairman shall preside at all Committee meetings and hearings except that he shall designate a temporary chairman to act in his place if he is unable to be present at a scheduled meeting or hearing. If the chairman (or his designee) is absent ten minutes after the scheduled time set for a meeting or hearing, the ranking majority member present shall preside until the chairman's arrival. If there is no member of the majority present, the ranking minority member present, with the prior approval of the chairman, may open and conduct the meeting or hearing until such time as a member of the majority arrives.

RULE 5. HEARINGS AND HEARINGS PROCEDURES

A. Announcement of hearings. The Committee, or any Subcommittee thereof, shall make public announcement of the date, time and subject matter of any hearing to be conducted on any measure or matter at least one week in advance of such hearing, unless the Committee, or Subcommittee, determines that there is good cause to begin such hearing at an earlier date. (Rule XXVI, Sec. 4(a), Standing Rules of the Senate.)

B. Open hearings. Each hearing conducted by the Committee, or any Subcommittee thereof, shall be open to the public, except that a hearing or series of hearings on the same subject for a period of no more than fourteen calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated in clauses (1) through (6) below would require the hearing to be closed, followed immediately by a record vote in open session by a majority of the Committee or Subcommittee members when it is determined that the matters to be discussed or the testimony to be taken at such hearing or hearings—

(1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of foreign relations of the United States;

(2) will relate solely to matters of Committee or Subcommittee staff personnel or internal staff management or procedure;

(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(4) will disclose the identity of an informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets of financial or commercial information pertaining specifically to a given person if—

(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(6) may divulge matters required to be kept confidential under other provisions of law or Government regulations. (Rule XXVI, Sec. 5(b), Standing Rules of the Senate.)

Notwithstanding the foregoing, whenever disorder arises during a Committee or Subcommittee meeting that is open to the public, or any demonstration of approval or disapproval is indulged in by any person in attendance at any such meeting, it shall be the duty of the chairman to enforce order on his own initiative and without any point of order being made by a member of the Committee or Subcommittee; provided, further, that when the chairman finds it necessary to maintain order, he shall have the power to clear the room, and the Committee or Subcommittee may act in closed session for so long as there is doubt of the assurance of order. (Rule XXVI, Sec. 5(d), Standing Rules of the Senate.)

C. Full Committee subpoenas. The chairman, with the approval of the ranking minority member of the Committee, is authorized to subpoena the attendance of witnesses or the production of memoranda, documents, records, or any other materials at a hearing of deposition, provided that the chairman may subpoena attendance or production without the approval of the ranking minority member where the chairman or a staff officer designated by him has not received notification from the ranking minority member or a staff officer designated by him of disapproval of the subpoena within 72 hours, excluding Saturdays and Sundays, of being notified of the subpoena. If a subpoena is disapproved by the ranking minority member as provided in this subsection, the subpoena may be authorized by vote of the members of the Committee. When the Committee or chairman authorizes subpoenas, subpoenas may be issued upon the signature of the chairman or any other member of the Committee designated by the chairman.

D. Witness counsel. Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing or deposition to advise such witness while he or she is testifying, of his or her legal rights; provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Committee chairman may rule that representation by counsel from the government, corporation, or association or by counsel representing other witnesses, creates a conflict of interest, and that the witness may only be represented during interrogation by staff or during testimony before the Committee by personal counsel not from the government, corporation, or association or by personal counsel not representing other witnesses. This subsection shall not be construed to excuse a witness from testifying in the event his counsel is ejected for conducting himself in such manner so as to prevent, impede, disrupt, obstruct or interfere with the orderly administration of the hearings; nor shall this subsection be construed as authorizing counsel to coach the witness or answer for the witness. The failure of any witness to secure counsel shall not excuse such witness from complying with a subpoena or deposition notice.

E. Witness transcripts. An accurate electronic or stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. the record of his or her testimony whether in public or executive session shall be made available for inspection by the witness or his or her counsel under Committee supervision; a copy of any testimony given in public session or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be provided to any witness at his or her expense if he or she so requests. Upon inspecting his or her transcript, within a time limit set by the chief clerk of the Committee, a witness may request changes in the transcript to correct errors of transcription and grammatical errors; the chairman or a staff officer designated by him shall rule on such requests.

F. Impugned persons. Any person whose name is mentioned or is specifically identified, and who believes that evidence presented, or comment made by a member of the Committee or staff officer, at a public hearing or at a closed hearing concerning which there have been public reports, tends to impugn his or her character of adversely affect his or her reputation may:

(a) file a sworn statement of facts relevant to the evidence or comment, which statement shall be considered for placement in the placement in the hearing record by the Committee;

(b) request the opportunity to appear personally before the Committee to testify in his or her own behalf, which request shall be considered by the Committee; and

(c) submit questions in writing which he or she requests be used for the cross-examination of other witnesses called by the Committee, which questions shall be considered for use by the Committee.

G. Radio, television, and photography. The Committee, or any Subcommittee thereof, may permit the proceedings of hearings which are open to the public to be photographed and broadcast by radio, television or both, subject to such conditions as the Committee, or Subcommittee, may impose. (Rule XXVI, Sec.5(c), Standing Rules of the Senate.)

H. Advance statements of witnesses. A witness appearing before the Committee, or any Subcommittee thereof, shall provide 100 copies of a written statement and an executive summary or synopsis of his proposed testimony at least 48 hours prior to his appearance. This requirement may be waived by the chairman and the ranking minority member following their determination that there is good cause for failure of compliance. (Rule XXVI, Sec.4(b), Standing Rules of the Senate.)

I. Minority witnesses. In any hearings conducted by the Committee, or any Subcommittee thereof, the minority members of the Committee or Subcommitee shall be entitled, upon request to the chairman by a majority of the minority members, to call witnesses of their selection during at least one day of such hearings. (Rule XXVI, Sec. 4(d), Standing Rules of the Senate.)

J. Full Committee depositions. Depositions may be taken prior to or after a hearing as provided in this subsection.

(1) Notices for the taking of depositions shall be authorized and issued by the chairman, with the approval of the ranking minority member of the Committee, provided that the chairman may initiate depositions without the approval of the ranking minority member where the chairman or a staff officer designated by him has not received notification from the ranking minority member or a staff officer designated by him of disapproval of the deposition within 72 hours, excluding Saturdays and Sundays, of being notified of the deposition notice. If a deposition notice is disapproved by the ranking minority member as provided in this subsection, the deposition notice may be authorized by a vote of the members of the Committee. Committee deposition notices shall specify a time and place for examination, and the name of the Committee member or members or staff officer or officers who will take the deposition. Unless otherwise specified, the deposition shall be in private. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness' failure to appear or produce unless the deposition notice was accompanied by a Committee subpoena.

(2) Witnesses may be accompanied at a deposition by counsel to advise them of their legal rights, subject to the provisions of Rule 5D.

(3) Oaths at depositions may be administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Committee member or members or staff. If a witness objects to a question and refuses to testify, the objection shall be noted for the record and the Committee member or members or staff may proceed with the remainder of the deposition.

(4) The Committee shall see that the testimony is transcribed or electronically recorded (which may include audio or audio/video recordings). If it is transcribed, the transcript shall be made available for inspection by the witness or his or her counsel under Committee supervision. The witness shall sign a copy of the transcript and may request changes to it, which shall be handled in accordance with the procedure set forth in subsection (E). If the witness fails to sign a copy, the staff shall note that fact on the transcript. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed with the chief clerk of the Committee. The chairman or a staff officer designated by him may stipulate with the witness to changes in the procedure; deviations from this procedure which do not substantially impair the reliability of the record shall not relieve the witness from his or her obligation to testify truthfully.

RULE 6. COMMITTEE REPORTING PROCEDURES

A. Timely filing. When the Committee has ordered a measure or matter reported, following final action the report thereon shall be filed in the Senate at the earliest practicable time. (Rule XXVI, Sec.10(b), Standing Rules of the Senate.)

B. Supplemental, minority, and additional views. A member of the Committee who gives notice of his intention to file supplemental, minority or additional views at the time of final Committee approval of a measure or matter, shall be entitled to not less than three calendar days in which to file such views, in writing, with the chief clerk of the Committee. Such views shall then be included in the Committee report and printed in the same volume, as a part thereof, and their inclusion shall be noted on the cover of the report. In the absence of timely notice, the Committee report may be filed and printed immediately without such views. (Rule XXVI, Sec. 10(c), Standing Rules of the Senate.)

C. Notice by Subcommittee chairmen. The chairman of each Subcommittee shall notify the chairman in writing whenever any measure has been ordered reported by such Subcommittee and is ready for consideration by the full Committee.

d. Draft reports of Subcommittees. All draft reports prepared by Subcommittees of this Committee on any measure or matter referred to it by the chairman, shall be in the form, style, and arrangement required to conform to the applicable provisions of the Standing Rules of the Senate, and shall be in accordance with the established practices followed by the Committee. Upon completion of such draft reports, copies thereof shall be filed with the chief clerk of the Committee at the earliest practicable time.

E. Impact statements in reports. All Committee reports, accompanying a bill or joint resolution of a public character reported by the Committee, shall contain (a) an estimate, made by the Committee, of the costs which would be incurred in carrying out the legislation for the then current fiscal year and for each of the next five years thereafter (or for the authorized duration of the proposed legislation, if less than five years); and (2) a comparison of such cost estimates with any made by a Federal agency; or (3) in lieu of such estimate or comparison, or both, a statement of the reasons for failure by the Committee to comply with these requirements as impracticable, in the event of inability to comply therewith. (Rule XXVI, Sec. 11(a), Standing Rules of the Senate.)

Each such report shall also contain an evaluation, made by the Committee, of the regulatory impact which would be incurred in carrying out the bill or joint resolution. The evaluation shall include (a) an estimate of the numbers of individuals and businesses who would be regulated and a determination of the groups and classes of such individuals and businesses, (b) a determination of the economic impact of such regulation on the individuals, consumers, and businesses affected, (c) a determination of the impact on the personal privacy of the individuals affected, and (d) a determination of the amount of paperwork that will result from the regulations to be promulgated pursuant to the bill or joint resolution, which determination may include, but need not be limited to, estimates of the amount of time and financial costs required of affected parties, showing whether the effects of the bill or joint resolution could be substantial, as well as reasonable estimates of the recordkeeping requirements that may be associated with the bill or joint resolution. Or, in lieu of the forgoing evaluation, the report shall include a statement of the reasons for failure by the Committee to comply with these requirements as impracticable, in the event of inability to comply therewith. (Rule XXVI, Sec. 11(b), Standing Rules of the Senate.)

RULE 7. SUBCOMMITTEES AND SUBCOMMITTEE PROCEDURES

A. Regularly established Subcommittees. The Committee shall have three regularly established Subcommittees. The Subcommittees are as follows:

Permanent Subcommittee on Investigations.

Oversight of Government Management and the District of Columbia.

Post Office and Civil Service.

B. Ad hoc Subcommittees. Following consultation with the ranking minority member, the chairman shall, from time to time, establish such ad hoc Subcommittees as he deems necessary to expedite Committee business.

C. Subcommittee membership. Following consultation with the majority members, and the ranking minority member of the Committee, the chairman shall announce selections for membership on the Subcommittees referred to in paragraphs A and B, above.

D. Subcommittee meetings and hearings. Each Subcommittee of this Committee is authorized to establish meeting dates and adopt rules not inconsistent with the rules of the Committee except as provided in Rules 2(D) and 7(E).

E. Subcommittee subpoenas. Each Subcommittee is authorized to adopt rules concerning subpoenas which need not be consistent with the rules of the Committee; provided, however, that in the event the Subcommittee authorizes the issuance of a subpoena pursuant to its own rules, a written notice of intent to issue the subpoena shall be provided to the chairman and ranking minority member of the Committee, or staff officers designated by them, by the Subcommittee chairman or a staff officer designated by him immediately upon such authorization, and no subpoena shall be issued for at least 48 hours, excluding Saturdays and Sundays, from delivery to the appropriate offices, unless the chairman and ranking minority member waive the 48 hour waiting period or unless the Subcommittee chairman certifies in writing to the chairman and ranking minority member that, in his opinion, it is necessary to issue a subpoena immediately.

F. Subcommittee budgets. Each Subcommittee of the Committee, which requires authorization for the expenditure of funds for the conduct of inquiries and investigations, shall file with the chief clerk of the Committee, not later than January 10 of the first year of each new Congress, its request for funds for the two (2) 12-month periods beginning on March 1 and extending through and including the last day of February of the two following years, which years comprise that Congress. Each such request shall be submitted on the budget form prescribed by the Committee on Rules and Administration, and shall be accompanied by a written justification addressed to the chairman of the Committee, which shall include (1) a statement of the Subcommittee's area of activities, (2) its accomplishments during the preceding Congress detailed year by year, and (3) a table showing a comparison between (a) the funds authorized for expenditure during the preceding Congress detailed year by year, (b) the funds actually expended during that Congress detailed year by year, (c) the amount requested for each year of the Congress, and (d) the number of professional and clerical staff members and consultants employed by the Subcommittee during the preceding Congress detailed year by year and the number of such personnel requested for each year of the Congress. The chairman may request additional reports from the Subcommittees regarding their activities and budgets at any time during a Congress. (Rule XXVI, Sec. 9, Standing Rules of the Senate.)

RULE 8. CONFIRMATION STANDARDS AND PROCEDURES

A. Standards. In considering a nomination, the Committee shall inquire into the nominee's experience, qualifications, suitability, and integrity to serve in the position to which he or she has been nominated. The Committee shall recommend confirmation, upon finding that the nominee has the necessary integrity and is affirmatively qualified by reason of training, education, or experience to carry out the functions of the office to which he or she was nominated.

B. Information Concerning the Nominee. Each nominee shall submit the following information to the Committee:

(1) A detailed biographical résumé which contains information relating to education, employment and achievements;

(2) Financial information, including a financial statement which lists assets and liabilities of the nominee and tax returns for the 3 years preceding the time of his or her nomination, and copies of other relevant documents requested by the Committee, such as a proposed blind trust agreement, necessary for the Committee's consideration; and,

(3) Copies of other relevant documents the Committee may request, such as responses to questions concerning the policies and programs the nominee intends to pursue upon taking office.

At the request of the chairman or the ranking minority member, a nominee shall be required to submit a certified financial statement compiled by an independent auditor.

Information received pursuant to this subsection shall be made available for public inspection; provided, however, that tax returns shall, after review by persons designated in subsection (C) of this rule, be placed under seal to ensure confidentiality.

C. Procedures for Committee inquiry. The Committee shall conduct an inquiry into the experience, qualifications, suitability, and integrity of nominees, and shall give particular attention to the following matters:

(1) A review of the biographical information provided by the nominee, including, but not limited to, any professional activities related to the duties of the office to which he or she is nominated;

(2) A review of the financial information provided by the nominee, including tax returns for the three years preceding the time of his or her nomination;

(3) A review of any actions, taken or proposed by the nominee, to remedy conflicts of interest; and

(4) A review of any personal or legal matter which may bear upon the nominee's qualifications for the office to which he or she is nominated.

For the purpose of assisting the Committee in the conduct of this inquiry, a majority investigator or investigators shall be designated by the chairman and a minority investigator or investigators shall be designated by the ranking minority member. The chairman, ranking minority member, other members of the Committee and designated investigators shall have access to all investigative reports on nominees prepared by any Federal agency, except that only the chairman, the ranking minority member, or other members of the Committee, upon request, shall have access to the report of the Federal Bureau of Investigation. The Committee may request the assistance of the General Accounting Office and any other such expert opinion as may be necessary in conducting its review of information provided by nominees.

D. Report on the Nominee. After a review of all information pertinent to the nomination, a confidential report on the nominee shall be made by the designated investigators to the chairman and the ranking minority member and, upon request, to any other member of the Committee. The report shall summarize the steps taken by the Committee during its investigation of the nominee and identify any unresolved or questionable matters that have been raised during the course of the inquiry.

E. Hearings. The Committee shall conduct a public hearing during which the nominee shall be called to testify under oath on all matters relating to his or her suitability for office, including the policies and programs which he or she will pursue while in that position. No hearing shall be held until at least 72 hours after the following events have occurred: the nominee has responded to prehearing questions submitted by the Committee; and the report required by subsection (D) has been made to the chairman and ranking minority member, and is available to other members of the Committee, upon request.

F. Action on confirmation. A mark-up on a nomination shall not occur on the same day that the hearing on the nominee is held. In order to assist the Committee in reaching a recommendation on confirmation, the staff may make an oral presentation to the Committee at the mark-up, factually summarizing the nominee's background and the steps taken during the pre-hearing inquiry.

G. Application. The procedures contained in subsections (C), (D), (E), and (F) of this rule shall apply to persons nominated by the President to positions requiring their full-time service. At the discretion of the chairman and ranking minority member, those procedures may apply to persons nominated by the President to serve on a part-time basis.

RULE 9. PERSONNEL ACTIONS AFFECTING COMMITTEE STAFF

In accordance with Rule XLII of the Standing Rules of the Senate and the Congressional Accountability Act of 1995 (P.L. 104-1), all personnel actions affecting the staff of the Committee shall be made free from any discrimination based on race, color, religion, sex, national origin, age, state of physical handicap, or disability.●

ORDER OF BUSINESS

Mr. BIDEN. Mr. President, my vote on the motion to table amendment No. 253 should have been "no." I was mistaken on the sequence of the amendments before us today. I believe that a simple majority, as now provided in the Constitution, is appropriate for decisions to increase revenues. I do not believe that we—or future generations—should be constrained in the options available to keep the budget in balance.

(Ms. SNOWE assumed the Chair.)

Mr. HATCH. Madam President, I yield 3 minutes to the distinguished Senator from Idaho.

The PRESIDING OFFICER. Under the previous order, the Senator from Utah has 15 minutes.

The Senator from Idaho is recognized for 3 minutes.

Mr. CRAIG. Madam President, thank you. Let me thank the Senator from Utah for yielding. There are so many people that I would like to thank this evening who have been direct participants in what I believe to have been one of the most important debates that the Senate of the United States has engaged in—at least in my tenure and in the tenure of many of our Senators.

I certainly would like to thank the Senator from Utah for his leadership on this issue and a good many others who have been directly responsible for bringing this most important issue and statement to the floor. I also thank the Senator from Illinois, PAUL SIMON, for his stalwart leadership in pursuit of the fiscal responsibility that most of us aspire to, which the Constitutional amendment would allow.

But tonight, let me talk to my colleagues here in the Chamber, for I believe we suffer the wrong idea. Somehow tonight, those who plan to vote against this amendment believe that their vote against it is like the passage of the vote for or against a bill that oftentimes comes to the floor. It is not that kind of vote.

Article V of our Constitution—the very organic document that we attempt to offer out an amendment to tonight—says this very clearly: "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose an amendment."

So tonight we are not voting on an amendment to pass it or to fail it. We are voting on an amendment to propose it to the citizens of this country, to allow them to decide what the organic law of this land will be about.

And anyone who suggests tonight that they will stand in opposition to this amendment stands in opposition to the right of the people of their State to say, "Yes, we support it," or "No, we don't." And that is the fundamental issue.

So I ask you to search your soul tonight and decide whether you, as a Senator of the U.S. Senate, are going to stand in the way of the citizens of your State, if you know better than they, if you really have a better vision than the average citizen of this country that supports you and elects you and sends you to this Congress to represent their interest.

But in this instance, you are not allowed to do that. You are not allowed to say, "I know better." What you can say is, "I propose."

Let us allow tonight the right of the citizens to decide. The Constitution is a basic document. It protects the people's right. Tonight we want to protect the people's right against an overburdening debt structure that has denied this country the kind of economic freedom that all Americans are entitled to.

I ask all of you to join with us tonight in proposing to the citizens of this great Nation a constitutional amendment for their decision.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I yield 5 minutes to my distinguished colleague and prime cosponsor of this amendment, the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Madam President, and my colleagues, first, let me pay tribute to Senator BYRD, who is a very worthy foe and certainly one of the most distinguished Members of this body.

I also appreciate the leadership of Senator HATCH on this, Senator CRAIG, and my colleagues on this side, Senator HEFLIN, Senator ROBB, Senator MOSELEY-BRAUN, Senator EXON, Senator CAMPBELL, and I should be mentioning others.

If we had a proposal in here that said, two decades after we balance a budget, we are going to have an average increase in income of every American of 36 percent, we would vote for it overwhelmingly. And yet that is precisely what the General Accounting Office says will happen if we balance the budget in this country.

Data Resources, Inc., one of the two top econometric forecasters in this country, says if we balance the budget, the prime rate will go down 2.5 percent and we will have an increase in national income of 2 percent. CBO says at least 1 percent growth in income. The Wharton School in Philadelphia says the prime rate will go down 4 percent. We have an opportunity to do these things that can help our economy immensely. And I hope we do not muff that opportunity.

I heard a reference from Senator BYRD to history. It is important to remember that Thomas Jefferson, in 1787, said, "If I could add one amendment to the Constitution, it would be to prohibit the Federal Government from borrowing."

And remember the rallying cry of the American Revolution—taxation without representation.

What are we doing to our grandchildren and generations to come? If that is not taxation without representation, nothing is.

And talk about history, I have not heard one opponent talk about economic history here. I have not read one editorial talking about economic history. The reality is the history of nations is that when they pile up debt and they get around 9, 10 or 11 percent of deficit versus national income, they start monetizing the debt. They start the printing presses rolling.

CBO says we are headed for 18 percent. We can take a chance that we will be the first nation in history to go up 18 percent without monetizing the debt, but we are taking a huge, huge gamble.

The Declaration of Independence. We are making, every year as we add to the deficit, a declaration of dependence. We now owe roughly $800 billion in our bonds to other countries. If the SIMON family gets too deeply into debt, we start losing our independence; and if a nation does, it starts losing its independence.

Senator DODD and I are old enough to remember 1956, when three nation friends of ours—Israel, France, and Great Britain—went in and seized the Suez Canal, which President Nasser had taken. They did it because they were our friends; thought they could get by with it, and it was just before an election. President Eisenhower said, "This is wrong."

But something else happened we did not know about, or most of us did not know about until sometime later. The United States threatened to dump the British pound sterling. And without firing a shot, the troops of Great Britain, France, and Israel withdrew.

We are in that situation.

Talk about American foreign aid. We now spend twice as much in foreign aid to the wealthy through interest and bonds than we do in foreign economic assistance to poor people. This year, the current estimate is $339 billion on interest, 11 times as much on interest as education, twice as much on interest as all our poverty programs combined, 22 times as much on interest as foreign economic assistance. It gets worse each year, and it will continue to get worse unless we pass this amendment.

The PRESIDING OFFICER. The Senator has used his 5 minutes.

Mr. SIMON. I ask unanimous consent for 30 more seconds.

Mr. HATCH. I yield 30 seconds to the Senator.

Mr. SIMON. I would simply point out, is there going to be pain if we pass this? Yes. But it is very interesting, there were polls by the Wirthlin Group which showed 76 percent of the population favors this, and 53 percent said they favor it, but they also believe it is going to cause them pain.

The American people are yearning for leadership. Tonight, my friends in the Senate, let us give it to them.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I yield 2½ minutes to the distinguished Budget Committee chairman, Senator DOMENICI.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Mexico.

Mr. DOMENICI. I thank the distinguished chairman, Senator HATCH, for yielding me 2½ minutes.

Madam President, fellow Senators, this is a historic night. We have never been so close to putting our Nation's fiscal house in order as we will be in 40 minutes. It is on our shoulders, but I can tell you that our children and grandchildren, whether they are present, whether they are listening, whether they are capable of listening or they are too small, they will either thank us tonight for doing something for them or they will wonder where we were when they needed us most.

The truth of the matter is there are many risks, but the status quo will not work. For those who come to the floor and raise the risks of a balanced budget, the risks of this amendment, they should be asked what are the risks of doing nothing. I am convinced that the status quo, with reference to fiscal policy for our Nation, means that the legacy for our children is very close to zero.

I want to close by quoting Laurence Tribe, a very liberal constitutional scholar. He was testifying on the balanced budget. I asked him whether or not it made sense to do something like this. And listen carefully to what he said:

> Given the centrality in our revolutionary origins of the precept that there should be no taxation without representation, it seems especially fitting in principle that we seek somehow to tie our hands so we cannot spend our children's legacy.

That is the issue. Do we spend our children's legacy or do we leave a legacy to them? Plain and simple. That is the issue.

I thank the Senator for yielding, and I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I yield 1 minute to the distinguished Senator from Nebraska, the ranking member of the Budget Committee.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nebraska.

Mr. EXON. I thank my friend and colleague, the manager of the bill.

Let me be brief. I just want to say that I have listened to what Senator SIMON just said about the debt that continues to consume America. Even if we pass this in the next half-hour—which I hope and urge we do—we are still at least 8 years away from beginning to cut down the national debt. That shows how far we are behind the curve.

I just wish to say, Madam President, that it has been a real experience in working with the many people on both sides of the aisle. I hope we have the 67 votes in the next few minutes when we cast this historic vote. I think this amendment must be approved.

I yield back the remaining time.

The PRESIDING OFFICER. There is no remaining time.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, as a Member of the Senate, I have had the great honor of voting on many historic bills, but few in the history of the Senate are as significant as this one. It is so rare that we have a vote that so dramatically and directly affects the future of our children and our grandchildren. This vote is clearly a vote for future generations.

This vote is especially significant because of who it will help and who it will hurt. It will help our children and our grandchildren. By removing the onerous burden of debt that we have been accumulating on their shoulders, we are helping to level the generational playing field. It will restore the American dream for another generation of Americans.

Who does this vote hurt if we prevail? For starters, the politics-as-usual crowd, the special interest groups, and those with vested interests in the status quo, all those groups who keep feeding at the trough and who think the gravy train will never run out of gas.

The balanced budget amendment means no more pork for the special interests. And while I am at it, I want to give the special interests and those with vested interests in the status quo one piece of advice: Pack your bags and hit the road. The show is over.

Do Members know who else is hurt by the balanced budget amendment? You may find this hard to believe—everyone in this Chamber. Gone are the days when politicians can take the easy way out. Gone are the days when politicians can say "Pass it; we will worry about how to pay for it later." We can no longer pass anything that we cannot come up with the money for. It is called accountability, and it starts right here, right now.

That is why I am so proud to have been a part of this debate. And when I see my grandchildren I can look them in the eye and tell them that today marks a new beginning in their lives. I can smile, knowing that when it comes time for them to go to college, to train for a career, to buy a house, to raise a family, they will be able to do so. The American dream will live on for another generation.

To the President of the United States, I have a caution for him: Mr. President, you have joined forces with the special interests. Let me ask you one simple question. How can you look your daughter, Chelsea, in the eye after what you are trying to do here? How can you justify the trillions of dollars of red ink that you and others who are voting against this have subjected the children of America to?

Madam President, over the next several months, we will be working late into the evening, examining every single line of the Federal budget, searching for waste, fraud and abuse, cutting programs that have outlived their usefulness, and finding the money for those that still work. It will all be worth it. For our grandchildren, it is worth it.

Madam President, I want to thank everybody who has participated. I want to pay tribute to the distinguished Senator from West Virginia for the dignified manner in which he has conducted his opposition to this amendment. I want to pay great tribute to my friend from Illinois, Senator SIMON, and to my friend from Idaho, Senator CRAIG, and all the others who have worked so hard on this floor, especially those 11 brandnew Senators. They have made a real difference here. They have shown Members that this is the new way.

Adopting this amendment is what we have to do. We have to do so to have a future for our children and grandchildren. We can no longer afford to spend this country into bankruptcy. I want to thank all of the loyal and dedicated staff people and those who have worked so hard during this debate and in preparation for it.

And above all, I thank all those who will vote for this amendment this evening. I urge my colleagues to vote for it. It is one of the most important votes we will ever cast. Our national life depends upon it. The salvation of this country depends on it. And the future of our children depends on it.

The PRESIDING OFFICER. The Chair now recognizes the Democratic leader, who has the next 15 minutes.

Mr. DASCHLE. Madam President, this has been a good debate. It has been a long and historic debate. But it has not been a debate about a balanced budget.

No one supports the current debt or deficit. Every Senator believes, as I believe, that deficit spending must end. We heard the figures. We have debated how we got to this point. We have noted all of our efforts so far. I have not heard anyone argue for doing nothing. The debate has been about how we achieve what we all say we want, and over what time period, and whether or not to accomplish what we say we all want, we amend the Constitution for the 28th time.

During this debate, we have heard many who have argued eloquently that there is no purpose in amending the Constitution for this reason. Our colleague, the senior Senator from New York, emphasizes over and over again that while 1 machine can do the work of 100 men and women, no machine can replace the need to take fundamental responsibility.

No provision in the Constitution can create a formula for automatic deficit reduction. Nothing we do here will embolden Senators to make decisions which we are otherwise unable to make for ourselves.

This debate has also underscored the role the Federal Government plays within our economy. No one can deny that fiscal policy has moderated the extraordinary consequences of a deep recession.

This countercyclical strategy employed since World War II has had profoundly positive consequences for the economy during our lifetimes. We have seen them. We have seen the charts. We have seen all of the arguments made on the other side, and nothing will dissuade me that the fiscal policy initiated since World War II has had the desired result.

Many who will vote no today will do so out of legitimate fear that our ability to counter economic downturns will be severely jeopardized—severely jeopardized—with the passage of this amendment.

There are also many who believe that fiscal policy should never be written into the Constitution because it does not belong there. They have argued that, like the thousands of other amendments proposed in 200 years, this, too, should be defeated.

Many Members have listened to the logic of many of these arguments and appreciate each and every one. Many Members have also decided that the time has come for a balanced budget amendment—that the question of a constitutional amendment is before Members for a good reason.

But we also question the wisdom of the amendment that is now presented to the Senate, and we are deeply troubled by the attitude of many of our Republican colleagues that we take this amendment or there will be no amendment at all. We are troubled, really, for three reasons: First, it is our belief that this ought to be our very best effort. We cannot come back later as we can with statutes. We cannot come back later and say, if we could only change that phrase or that paragraph or even that word. That is not something we can do with the Constitution. We will have to admit that we made mistakes in drafting, and, if we have, we will have to live with them for all time. This is going to be with us a long, long time. Even the prohibition amendment was with us for 13 years, long after we came to the conclusion that it, too, was a mistake.

Second, this debate has been politicized, unfortunately. The RNC has used this debate as a membership drive. In fact, in my State of South Dakota, they are interrupting ads with programs, there are so many these days. The practical ramifications of this amendment, as well, as currently drafted, are profound, and we ought to realize that. We ought to understand the ramifications of this particular language, regardless of how we view the constitutional amendment itself. Let Members look at this language. Let Members examine this draft, and let each and every one ask, are we prepared, tonight, to put it into the United States Constitution?

This amendment could pass by 70 votes, yet it will fail perhaps by two tonight. Why? Not because two-thirds of a majority opposes the concept of a balanced budget amendment—I am sure that two-thirds and more support it—but because some of us have a grave concern about the specific draft our Republican colleagues tonight insist upon, a draft which is filled with promise but devoid of details.

That was the reason I offered, many weeks ago, the Right to Know amendment requiring that we spell out the details, insisting that we know how we get from here to there, recognizing the importance of a blueprint, of a glidepath, knowing that, as you cannot build a house without a blueprint, you cannot balance the budget without one, either.

Today the chairman of the Finance Committee indicated that Medicare and Medicaid may be cut by $400 billion over the course of the next several years. This is a detail that happens to be very important, that we recognize may be part of the mix. If we are not willing to spell it out, if we are not willing to put on paper the details, then, indeed, I think we are asking for a pig in the poke, and we are asking for it in the U.S. Constitution.

The Republicans promise, even though they are unwilling to spell it out, to leave Social Security untouched. But while they argue we need to put a balanced budget requirement into the Constitution for purposes of certainty, they are unwilling to do so for Social Security. Without the promise in writing, we cannot require future Congresses to comply with our expectations.

I will predict tonight, if this amendment passes, that the Social Security trust fund will be used, and that is wrong. The American people oppose it. We have made a commitment to them now for over 60 years. We compound the deficit reduction problem, and we mask the size of the deficit, but we invite the cynicism of the American people all over again. If we are prepared to reduce the deficit using Social Security trust funds, what confidence should they have in us with any future decision, after we have made the commitment that has stood for this long?

In my view, the amendment is also especially lacking when it comes to enforcement and the role of the courts. Something this important should not be unresolved. In spite of the best efforts of the senior Senator from Georgia, as written, it is very likely we will see a constitutional crisis as Congress and the courts face off on the very question of jurisdiction in the years ahead.

It is also unfortunate that the Federal Government cannot be allowed to function budgetarily like virtually everyone else does. We should not treat investment and operating costs alike, and yet that is exactly what we will require as a result of the actions taken in this body now for the last several weeks.

No one does that at any level of Government, no one does that in business, no one does that in their family budgeting. We should not do it either. And yet tonight, by the action taken on this amendment, we will be, if indeed the amendment passes, requiring the Federal Government to do something no one else does.

Madam President, the bottom line, regardless of whether we are talking about Social Security, a capital budget, the right to know, enforcement, or any one of a number of the issues that we have raised for the last several weeks, the bottom line is this: We can do better. This is not the best we can do. This is a shoot-now-ask-later approach, and we will regret it. That could destroy the very fabric upon which this Nation was built. And I hope—I just hope—that we all come to the realization of what the stakes are as we cast our vote tonight. It is, as others have said, one of the most critical votes we will cast, a vote which could change not only the budget but the economy and the perception of the very Constitution itself. Let us take care to do it right. Let us defeat this amendment and go back to the drawing board before it is too late. Future generations are counting upon us tonight to do just that.

I retain the remainder of my time and yield the floor.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senate majority leader.

Mr. DOLE. Madam President, do I understand the Democratic leader retains the remainder of his time? Are there additional requests?

Mr. DASCHLE. Madam President, I was anticipating others who may ask for time, but if there is no other request for time, I yield it back.

The PRESIDING OFFICER. Is the Senator yielding back?

Mr. DASCHLE. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senate majority leader is recognized for 15 minutes.

Mr. DOLE. Madam President, the Senator from South Dakota asked earlier for 1 minute, which I am prepared to allow.

Mr. DOLE. Madam President, for those who follow this debate, we have had 19 days of consideration. We have had 115 hours 54 minutes of debate. That does not include votes or quorum calls or morning business, where a lot of the morning business was directed at the balanced budget amendment. So we have had a lot of debate. I just say that for the RECORD for some who think maybe we have not been on this long enough.

My view is we are down to about one vote—one vote. Maybe it is 68; maybe it is 66. I think we do stand at the crossroads in American history. I think this vote is one of the most important many of us will have cast in decades because now we have an opportunity to do it, and we have not had that opportunity before. In fact, this may be the single most important vote we cast in our careers.

I will say at the outset, and I think the figures I quoted indicate, we do not take amending the Constitution lightly. This certainly has been considered at length. Everybody has had an opportunity to say just about everything they wanted to say. I think we also must understand that there was never a more serious time when Washington needed the discipline, when Congress needed the discipline, that the Constitution and only the Constitution can impose.

We heard a lot of talk about laws that were passed, and we passed since 1969—the last time we passed a balanced Federal budget—we passed seven different laws containing balanced budget requirements. And despite all the speeches and the good intentions and everything else that went with it over the past quarter of a century, the Federal debt has grown each year and every year.

Why is it so important to balance the budget? There are probably a lot of reasons that have been stated on this floor from people who oppose and people who support the balanced budget amendment. Oh, it is important to balance the budget and maybe it is even important to vote for the balanced budget amendment if you are in a tough race for reelection. But in 1969, the American taxpayers paid $12.7 billion for interest on the national debt. This year interest on the national debt will devour a staggering $234 billion, more than all the Government spent on agriculture, crime, crime fighting, veterans, space and technology, infrastructure, natural resources, the environment, education and training—all of that and more was spent for interest on the debt.

We have gone through this debate where some are trying to scare America's senior citizens, but by doing what we hope we can do in about 20 minutes, by passing a constitutional amendment with 67 votes, we take the opposite view, that we are protecting the very programs that they try to scare seniors with—Medicare and Social Security.

What they fail to mention is the national debt threatens every program. Every program is threatened—Medicare, Medicaid, Social Security, agriculture, nutrition programs, you name it. If the debt continues to escalate, as it will, each year interest payments are going to be larger and larger and consume more and more of its share of the Federal dollar.

According to President Clinton's budget, interest on the debt is going to consume 16 percent of every Federal dollar. And anyone who is still not convinced need look no further than President Clinton's recent budget, which essentially gave up on ever balancing the budget and ever balancing the Nation's books.

In 1992, Candidate Clinton seized on the $292 billion deficit, the highest in history, and he campaigned against the deficit. He was successful. He agreed to cut it in half. Now, 2 years into his administration, his own budget abandons the pledge, predicting a deficit of $196.7 billion next year and roughly $200 billion a year through the year 2000. In each of the next 5 years, the amount the Federal Government collects in taxes is projected to rise, but spending will go up much more.

The picture only gets worse in the next century when the deficit is projected to rise to $421 billion—$421 billion—by the year 2005. So we are going to double it, we are going to double it if we fail to take action in the next few moments.

If there was any message last November—and different people heard different messages; some did not hear any message at all and some are here, and some will be voting. There was a revolution last November. The American people said, "Stop. Stop. Wait a minute. We want less Government, we want to rein in Government, we want to dust off the 10th amendment, we want to return power to the States and power to the people, and one way to do that is to rein in Federal spending and not increase Federal taxes."

So the American people—Democrats, Republicans, Independents, voters generally—sent us a message. I am not certain what the precise message was, but I think the general message was, as I stated, "Rein in the Federal Government."

I believe adoption of this amendment is a big step in that effort. If we are ever going to rein in the Federal Government, rein in spending, we need help. We do not have the will in this body to do it. Oh, I have heard all the speeches, and then I checked the voting records and they do not match.

Oh, I hear speeches. I hear speeches at night when I cannot sleep.

People on the Senate floor say all we have to do is make these tough decisions. But then when the tough decision comes, oh, that is too tough, or it is not tough enough, or any other excuse to duck. We cannot wait for statutory changes. We cannot count on them. They have not worked, as I said, since 1969. I think the American people want us to stand up to the special interests and they want us to do the right thing.

Many say, oh, well this is the easy way out. You all vote for the balanced budget amendment. Then you go out and say, well, I voted for the balanced budget amendment. Then you continue to vote for all the spending programs.

I do not think so. My view is, if we adopt this amendment and three-fourths of the States ratify it, it is going to fundamentally change the way we do business in the Congress and all over Washington.

So this is an amendment whose time has come. Thomas Jefferson said in 1789:

> The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves.

Now, if you think about that for a moment, this was just 1 year after the new Constitution went into effect. Thomas Jefferson himself was pondering whether a constitutional amendment requiring a balanced budget was needed.

So, Madam President, the time for a balanced budget amendment to the Constitution has come. Since our first Constitution went into effect in 1788, a total of 27 amendments have been adopted. The first 10, commonly referred to as the Bill of Rights, made the United States a model for the world by limiting the powers of Government and securing rights for individuals and States. The Bill of Rights was proposed to the legislatures of the several States by the first Congress on September 25, 1789, and ratified by December 15, 1791.

I think there is a common thread that runs through all the amendments that have been adopted, whether it is the first 10, the Bill of Rights—there is a common thread. Most have either limited the power of Government or provided constitutional protection to groups of Americans. And I believe the balanced budget amendment would do both. By limiting the Federal Government's ability to borrow, it will help provide constitutional protection to future generations of Americans and those who are not adequately represented in our current system.

Nobody has contacted me on behalf of the 5-year-olds or the 10-year-olds or the 15-year-olds about their future. Nobody is lobbying for them. They are waiting for us.

I do not believe we can continue to mortgage America's future. If we continue current tax-and-spend policies, we are going to saddle that future generation with lifetime tax rates, effective rates of more than 80 percent. So if we want to take away representation of our children and our grandchildren, if we want to take away the discipline, if we want to have it one way in an election year and another way in the next year, then we can vote against the balanced budget amendment.

As I look around the Chamber, I see Democrats and Republicans saying, wait a minute; it is time we act. This is a bipartisan effort. We need Democrats and Republicans to make this happen. It is not going to happen unless it is bipartisan.

We also took an oath of office to support and defend the Constitution of the United States against all enemies, foreign and domestic. Well, I consider the rising debt and the interest rates to be sort of a domestic enemy, and I think that simple oath illustrates why the balanced budget amendment is so important. We have not been successful in the past. We have not balanced the budget in the past because the Federal budget never became a national priority, and if you want to make it a national priority, we adopt a balanced budget amendment and say we are going to have a balanced budget by the year 2002. That makes it clear to everyone in this body that balancing the budget is not only a national priority but also a constitutional duty and that every Senator will be sworn to uphold and defend this amendment to the Constitution. That is the way it works. That is the way it should work.

So we have had a healthy debate, as I have said, of 115 hours, or 116 hours, plus a lot of other morning business hours. I certainly wish to commend my colleague, Senator HATCH, who has been on this floor day after day after day, and my colleague, Senator CRAIG, who every morning in my office has had a meeting with the group to work on the balanced budget amendment, trying to find out what we need to address, how we can pick up one more vote. And if anybody ever questioned anybody's motives, you cannot question the motives of the Senator from Illinois, Senator SIMON. He has been for the balanced budget as long as I have known him. He can go any way he wants. He is not running again. This is not politics to PAUL SIMON. This is a commitment he has made to the people of Illinois and a commitment he has made to his colleagues on both sides of the aisle. So I appreciate the efforts made by my friend from Illinois.

Certainly the Senator from West Virginia deserves our thanks, hopefully not to overdo that. He has made a great contribution to the debate. In fact, I have been saying around the country that Senator BYRD is the expert, and I say it with admiration; he is a master of the game. He also understands Roman history, at least he understands it better than the rest of us because we never question what he says about Roman history. I am trying to get C-SPAN to give college credit to those who watch it. And it would be deserved because the Senator from West Virginia does understand it, and certainly he has contributed to this debate.

Then let me just have the last word. I think everybody has said out here from time to time that the Constitution is a living document, and that is why it includes article V, which outlines the process for proposing and ratifying constitutional amendments. The Founding Fathers did not make amending the Constitution easy, and the action we take today, if we succeed, is not the last word. And if we fail, it is not the last word, because the final word of whether or not there is going to be a balanced budget goes outside Washington, goes away from this body and out to our respective States.

I will say to those who still maybe have not quite decided which way to go—there may be two or three of those, maybe four—maybe you are not quite certain, but certainly you have some confidence in your State legislature, wherever it may be. Why not give them a chance? It takes three-fourths of the States to ratify. Why not say that we have some confidence in the people who live in our respective States and deal on a daily basis with problems that affect our constituents, too, because the Founding Fathers said in the final analysis it is going to be determined by the people, by those who are closest to the people, and those are the men and women who serve in statehouses around the country.

I think we ought to remember that as we vote. The Founding Fathers did not put the final authority in the hands of Congress; they put it in the people, members, men and women, State legislators who are closest to the people.

So I remind my colleagues as we prepare to vote here of just a few facts. I think many Senators referred to these earlier. Depending upon which poll you use—and polls change from time to time—about 80 percent of the American people favor the balanced budget amendment. Now, maybe 80 percent are wrong and the 20 percent are right. It has happened in the past. But these polls have been consistent—71, 75, 78, 81, somewhere between 75 and 80 percent. Three hundred Members of the other body voted for a balanced budget amendment, 72 Democrats and 228 Republicans. They joined together to give us this historic opportunity. And I would state what every Member already knows, that adoption of this amendment, if it is adopted, is only the first step in securing our Nation's financial future. Whatever happens, we are going to have to make difficult choices.

Republicans will begin work on a detailed 5-year plan to put the budget on a path of balance by the year 2002, and our plan will not raise taxes. Our plan will not touch Social Security. Everything else, from agriculture to zebra mussel research, will be on the table.

So, Madam President, as George Washington reminded us in his farewell address:

> The basis of our political system is the right of the people to make and alter their institutions of government.

The time has come for us to exercise that right. So I would just say, let us get prepared for this fundamental change. It is going to come. If not tonight, it will come maybe next month or the next month or the next year. It is not going to be business as usual in Washington.

So I just urge my colleagues to vote for this amendment—it will take 67 of us—and send it back to the States for ratification. Let those closest to the people then decide if we spelled out how we will reach the balanced budget amendment. Let us not take that judgment away from them.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Madam President, I move that the Senate stand in recess until 10 a.m.——

Mr. BYRD. Before the distinguished leader makes his motion, would he explain to the Senate why we are going out and why we are not having the vote, as we all anticipated we would be having a vote?

Mr. DOLE. Let me explain to my friend from West Virginia that we still think there is some chance of getting this resolved by tomorrow morning, because we could have 67 votes or maybe more.

We have been on this now for 115 hours. I do not know how many days. Everybody has had a right to debate. We are up to the critical time of the vote. This Senator wants to make every effort he can to see if we can reach the 67 votes. If we fail, we will fail, and it will be 10 o'clock or perhaps noon tomorrow morning.

Madam President, I renew the motion.

Mr. BYRD. Madam President, would the Senator allow me 5 minutes before he makes that motion?

The PRESIDING OFFICER. Debate is not in order at this point.

Mr. BYRD. Madam President, I ask unanimous consent to speak for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Madam President, I thank the distinguished majority leader for allowing me to have this privilege to address this question before he makes the motion to adjourn.

Madam President, I think this is a sad spectacle. We have had 30 days of debate. Both sides have poured out their hearts, have worked hard, and we came to the moment that we thought we were going to have a rollcall vote. We entered into an agreement to that effect. Now, if we had known that we were going to reach this kind of a travesty, this Senator would never have agreed to that unanimous-consent request.

Madam President, the Framers intended that, before the people at the State level should have an opportunity to ratify a constitutional amendment, it must be approved by both Houses of the Congress by a two-thirds vote, and it was here that the amendment was supposed to be probed and examined and carefully studied before it was sent on its way to the States.

Now, here is what we see: We see the sad spectacle of Senators on the other side trying to go over until tomorrow in order to get another vote for this amendment. It should be obvious to everyone that the main object here is to get that vote, as the distinguished majority leader says.

It boils down to an insatiable, insatiable desire to get a vote for victory. We are tampering with the Constitution of the United States! This is no place for deal-making, back-room huddles. No wonder the people have such a low estimation of the Congress. Going to make deals in the back room. I do not imply by what I am saying—I do not want to cast any aspersions on any Senator in particular.

But this is a process that we have worked our way through. We were told there would be a vote. We have waited on a vote. Up here the press is gathered. They want to see the outcome of this debate.

(Disturbance in the visitors' galleries.)

The PRESIDING OFFICER. The Chair will remind the occupants of the galleries there will be no expressions of approval or disapproval.

Mr. BYRD. Madam President, this has every appearance of a sleazy, tawdry effort to win a victory at the cost of amending the Constitution of the United States.

We have had our chances, why do we not vote? I hope we will vote, Madam President. Let us not wait until tomorrow. Now is the time for the decision. That is what we were told.

I deplore this tawdry effort here to go over until tomorrow so that additional pressures can be made on some poor Member in the effort to get this vote. Laugh if you must. Laugh! This is no laughing matter. We are talking about the Constitution of the United States. We were ready for a vote. Obviously, the proponents on the other side felt they were going to lose. We cannot win them all. We cannot lose them all. I think it is a sad day for the U.S. Senate if this is the way that we are going to go about amending the Constitution of the United States.

I thank the distinguished majority leader. I hope we will vote tonight.

Mr. DOLE. I ask for 5 minutes to respond and then I will make the motion. This is probably, as I said in my statement, the most important vote we will cast around here, maybe in our careers.

We do not take amending the Constitution lightly. But to suggest that somehow this is unprecedented, tawdry, whatever, in my view, is out of bounds. We have every right to use the rules to determine if we have the votes or if we can pick up votes, and I intend to do that. We have been on this amendment 115 hours, plus 20-some hours of quorum calls and votes. Nobody complained about that.

What about the 80 percent of the American people? Do you think they care whether we vote at 7 o'clock or 7:30 or 10 o'clock in the morning, the 80 percent who want this passed? Do Members think they feel the way the Senator from West Virginia feels? Absolutely not.

Now, we have some obligation to ourselves. Obviously, nobody is trying to put the arm on anybody around here. We have not made house calls. We have not knocked on the doors. We have gone in their offices. But we have good-faith negotiations going, and maybe they have helped. That is fine. If they have ended, there are still other options.

So I just suggest, Madam President, this is an important vote. If I thought there was one more vote tomorrow morning or two more votes or three more votes next week, I would make every effort I could to secure those votes, just as the distinguished Senator from West Virginia has done time after time after time in this body.

I think the sad spectacle is that we may lose this vote, whether it is tonight—it is not going to be tonight—whether it is tomorrow or later, where people who voted for the amendment before their election, vote against it after their election. What are the American people to think? What are the American people to think about any Member in this body? They sent us a loud and clear message last November, and as I said, nobody knows what the precise message was, but generally, it was to rein in the Federal Government, to give power back to the people and back to the States. That is what this amendment does.

So, in my view, by postponing this vote, we will attempt to reflect the will of 76 to 80 percent of the American people and not the will of 20 percent. We may fail this time. I quoted earlier statements of Jefferson and Washington who had a little knowledge about what the Founding Fathers had in mind and who suggested themselves that there might come a time we would have to amend the Constitution. We should not pile up a debt on the next generation as we continue to do.

I want to commend, again, those who worked on both sides of the aisle. This has been bipartisan, and it should be, and it still can be. I know the President is very strongly opposed to the balanced budget amendment. I know he has called Members. I know what happens when your President calls. We have gone through it on this side. It puts a lot of pressure on a Senator or a Member of Congress.

We have tried to improve the conditions by accepting or agreeing to an amendment offered by the distinguished Senator from Georgia, Senator NUNN. I just hope that all Senators will think about this overnight. Somebody could decide to vote the other way. We take a gamble. We might lose a vote. But in my view the gamble is worth taking. The risk is worth taking. I know the Senator from West Virginia——

Mr. HOLLINGS. Will the distinguished Senator yield for a question?

Mr. DOLE. No, I will not yield for a question.

I know the Senator from West Virginia feels strongly about this amendment, and he has a right to feel strongly about it. It does not mean he is right. He might be wrong. We may be right. If we cannot determine that tonight or tomorrow night we will determine it the next time the voters have a chance to speak.

RECESS UNTIL 10 A.M. TOMORROW

Mr. DOLE. Madam President, I move that the Senate stand in recess until 10 a.m., Wednesday, March 1.

The motion was agreed to, and at 7:41 p.m., the Senate recessed until Wednesday, March 1, 1995, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate February 28, 1995:

THE JUDICIARY

Peter C. Economus, of Ohio, to be U.S. District Judge for the Northern District of Ohio, vice Frank J. Battisti, resigned.

Joseph Robert Goodwin, of West Virginia, to be U.S. District Judge for the Southern District of West Virginia, vice Robert J. Staker, retired.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Henry W. Foster, Jr., of Tennessee, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service, for a term of 4 years, vice M. Joycelyn Elders, resigned.

HOUSE OF REPRESENTATIVES—*Tuesday, February 28, 1995*

The House met at 9:30 a.m. and was called to order by the Speaker pro tempore [Mr. DICKEY].

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
February 28, 1995.

I hereby designate the Honorable JAY DICKEY to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

MORNING HOUR DEBATES

The SPEAKER pro tempore. Pursuant to the order of the House of January 4, 1995, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 30 minutes, and each Member except the majority and minority leader limited to not to exceed 5 minutes.

The Chair recognizes the gentleman from New York [Mr. SOLOMON] for 5 minutes.

ANNOUNCEMENT OF INTRODUCTION OF FLAG AMENDMENT

Mr. SOLOMON. Mr. Speaker, today marks the beginning of a grassroots movement to end the despicable acts of desecration to our national symbol, the American flag. On the west steps of the Capitol, a bipartisan group of Congressmen from the House and Senate will indicate their support for an amendment to the Constitution prohibiting such destruction of our flag. This announcement comes in conjunction with the Citizens Flag Alliance, a coalition of 89 civic and veterans organizations who have been pursuing this legislation for over 2 years.

In that regard, Mr. Speaker, allow me to emphasize that the introduction of this resolution is not in response to changes that have occurred within Washington. However, it is in response to a massive surge from outside the beltway among concerned Americans who wanted to effect this change for some time. As evidence of the effect of this movement, 46 State legislatures have passed memorializing resolutions calling on Congress to pass this amendment protecting the flag.

Mr. Speaker, we have a duty to respond to this overwhelming public outcry to protect our flag. To that end, today I will join with over 150 of my colleagues in the House and nearly 30 Senators, in introducing legislation which does just that. At this time, I would like to invite those colleagues interested in backing this historic and long overdue resolution to join these cosponsors and thousands of veterans and other supporters at 10:30 this morning on the west terrace of the Capitol.

Mr. Speaker, today marks the beginning of the grassroots movement which will ultimately put an end to the destruction of Old Glory.

In those 89 organizations that I have mentioned, they cover, of course, every major veterans organization in this Nation. It includes others from the private sector such as the Benevolent and Protective Order of Elks, the Grand Lodge of Fraternal Order of Police, the Grand Lodge of Masons, the Knights of Columbus, union organizations such as the Laborers' International Union of North America, the National Alliance of Families, and the National Grange.

Mr. Speaker, I could go on and on listing all 89, but time will not allow that.

Again, I would just call attention to the membership that we are having this rally on the Capitol steps, the west terrace, at 10:30 this morning. I invite you all to come and join this historic effort.

Mr. Speaker, I submit for the RECORD the complete list of the Citizens Flag Alliance, Inc. member organizations.

CITIZENS FLAG ALLIANCE, INC. MEMBER ORGANIZATIONS

AMVETS (American Veterans of WWII, Korea and Vietnam); African-American Women's Clergy Association; Air Force Association; Air Force Sergeants Association; Alliance of Women Veterans; American GI Forum of the US, Founding Chapter; The American Legion; American Legion Auxiliary; American Merchant Marine Veterans; American War Mothers; Ancient Order of Hibernians; Association of the U.S. Army; Baltic Women's Council; Benevolent & Protective Order of Elks; Congressional Medal of Honor Society of the USA.

Croatian American Association; Croatian Catholic Union; Czech Catholic Union; Czechoslovak Christian Democracy in the U.S.A.; Enlisted Association National Guard of the U.S.; Fleet Reserve Association; Forty and Eight; Fox Associates, Inc.; Gold Star Wives of America, Inc.; Grand Lodge, Fraternal Order of Police; Grand Lodge of Masons of Oklahoma; Hungarian Association; Hungarian Reformed Federation of America; Italian Sons and Daughters of America; Knights of Columbus; Korean American Association of Greater Washington; Laborers' International Union of N.A.; MBNA America.

Marine Corps League; Marine Corps Reserve Officers Association; Military Order of the Purple Heart of the USA; Moose International; National Alliance of Families; National Association for Uniformed Services; National Center for Public Policy Research; National Cosmetology Association; National Federation of Hungarian-Americans; National Federation of State High School Associations; National Flag Foundation; National Grange; National Guard Association of the U.S.; National League of Families of Am. Prisoners and Missing in SE Asia; National Officers Association (NOA); National Organization of World War Nurses; National Service Star Legion; National Vietnam Veterans Coalition; and Native Daughters of the Golden West.

Native Sons of the Golden West; Navy League of the U.S.; Navy Seabee Veterans of America; Navy Seabee Veterans of America Auxiliary; Non-Commissioned Officers Association; PAC Pennsylvania Eastern Division; Polish American Congress; Polish Army Veterans Association (S.W.A.P.); Polish Falcons of America; Polish Falcons of America—District II; Polish Home Army; Polish National Alliance; Polish National Union; Polish Roman Catholic Union of North America; Polish Scouting Organization; Polish Western Association; Polish Women's Alliance; RR Donnelley & Sons, Company; Scottish Rite of Freemasonry—Northern Masonic Jurisdiction; Scottish Rite of Freemasonry—Southern Jurisdiction; and Sons of The American Legion.

The Orchard Lakes Schools; The Retired Enlisted Association (TREA); The Travelers Protective Association; The Uniformed Services Association (TUSA); U.S. Marine Corps Combat Correspondents Association; U.S. Pan Asian American Chamber of Commerce; Ukrainian Gold Cross; Women's Army Corps Veterans Association; Women's Overseas Service League; and Woodmen of the World.

THE FEDERAL EMPLOYEE HEALTH BENEFITS ACCESS ACT

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentlewoman from Colorado [Mrs. SCHROEDER] is recognized during morning business for 5 minutes.

Mrs. SCHROEDER. Mr. Speaker, I had been wondering when to introduce the bill that I introduced last year. When I got a letter today explaining the AMA's position on health care and preexisting conditions I decided this was the day.

You see, the AMA has a dictionary where they are talking about menopause as a preexisting condition. But when they were asked why they were defining that, they said they were only saying what the insurance companies were saying, and the insurance companies are saying that is why they consider menopause a preexisting condition and are denying payment.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

If this continues, pretty soon women are going to be a preexisting condition, and no woman is going to get health care. But we know that this is going on with men, with women, with children, with families, and we have a true, true health care crisis.

This letter is what inspired me today to reintroduce my Federal employee health benefits bill that I introduced last year. It is very simple. It only says every American should be entitled to the same choices that we as Members of Congress have, the President has, and over 9 million Federal employees, retirees and their families have.

That means once a year you get a catalog of a whole series of choices. You are in a very large group. There are no preexisting conditions. Whether it is menopause or anything else, you can be in that pool, and it has been tremendously cost effective. I think that this is one thing we could certainly do that would make life a lot better for small employers, for self-employed people, and for many Americans.

One of the things we learned from the health care debate was that most Americans are really very poor consumers of health care. And why not? They have no choice anyway. Their only choice is what their employer can get, if he can get anything, or what they can get, if they can get anything. They do not have the catalog and the options we all have once a year under open season.

Now, this does not cost the Federal Government anything. All you do is get the catalog, figure out what you want, and then you have to pay the premium or you and your employer share the premium, or whatever works out, whatever your negotiated position is. But it gets you a wide range of choices. It gets you much better prices. It gets a much better cost relationship, and I think it is time we do it.

It is in the spirit of this Congress, which has been putting itself under the laws it makes for other people, and it is time we now open the door to many of the benefits that we have, that we now know because of the last 2 years' historic health care debate that other people do not have. This would be a terrific stress reliever for an awful lot of American families who are either locked into their job because they cannot get health care, or lost their job and cannot get health care, or many, many other things.

So I really hope that this body takes this bill very seriously, and that we pass it out of here, and we at least give people choices. That makes all the sense in the world.

Mr. Speaker, I would ask to put this letter from the American Medical Association in the RECORD on preexisting conditions and menopause.

Mr. Speaker, today I am introducing the Federal Employee Health Benefits Access Act. The purpose of this bill is simple: to give the general public access to the same health care benefits as Members of Congress.

We recently passed legislation requiring Congress to comply with the same laws that we pass for the rest of the country. Well, it is about time we gave everyone the same health care we get.

The Federal Employee Health Benefits Program provides health care to nearly 9 million Federal employees, retirees, and their families. It is a proven plan and model for the rest of the country. Enrollees are offered coverage at group rates, are not barred from coverage on the basis of a preeexisting health condition, and are free to enroll in a plan of their choice during an annual open season.

My bill requires health carriers under the Federal Employee Health Benefits [FEHB] Program to offer to the general public the same benefits that Federal employees and members of Congress receive. This means that small businesses and individuals will have access to the same deductibles, maximums, coverage, treatment, and quality care that every Member in this Chamber gets. Under the bill, health care plans available to the general public would be community rated and would not result in an increase cost or less of benefits to Federal employees.

FEHB access allows Americans to choose the plan that is right for them. It does not require a standard package of benefits. Rather, it maintains one of the most important features of the current FEHB Program—the ability to pick a plan that fits the needs of each individual or family.

The Federal Employee Health Access Act also contains some important cost savings provisions.

First, it requires that insurance carriers use standardized claims forms. This will reduce administration waste as well as save time and money.

Second, it requires insurance carriers to provide enrollees with information about advanced directives or "living wills." The use of living wills gives patients an opportunity to make critical decisions about their treatment. It can also save millions of unnecessary medical bills.

And finally, my bill establishes a demonstration project that allows enrollees the option to choose arbitration in order to settle malpractice disputes. Individuals who choose this option would either pay reduced premiums, copayments, or deductibles. Many health insurance plans already require participants to use alternative dispute resolution for malpractice claims. But, unlike my plan, they are not voluntary and they do not pass any of the savings on to enrollees.

The Federal Employee Health Benefits Access Act is a common sense proposal that makes health care available and affordable to every American. If it works for Members of Congress, why can't it work for the rest of the country?

I urge my colleagues to cosponsor the Federal Employee Health Benefits Access Act.

AMERICAN MEDICAL ASSOCIATION,
Chicago, IL, February 13, 1995.

Dr. CAROL C. NADELSON, M.D.,
Editor in Chief, American Psychiatric Press, Inc., Washington, DC.

DEAR DOCTOR NADELSON: Thank you for your recent letter demonstrating the misuse of an American Medical Association [AMA] statement on menopause. I appreciate having the benefit of this information.

The statement quoted by the insurance company is not AMA policy, but rather is a definition taken from one of the AMA's many consumer books. The purpose of the AMA's consumer books is to educate the public about common medical conditions, not to serve as rationale for classification of conditions by the insurance industry. While the cited definition is supported by the medical literature, the AMA regrets that its statement is being used by the insurance industry to deny payment for treatments. In addition, I wish to assure you that the AMA supports equal rights for men and women and does not advocate any position that would lead to the discrimination of women in terms of their health care.

Again, thank you for sharing your concerns with me. I hope this information is helpful.

Sincerely,

JAMES S. TODD, M.D.

SUPPORT RISK ASSESSMENT AND COST-BENEFIT ACT

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Georgia [Mr. NORWOOD] is recognized during morning business for 5 minutes.

Mr. NORWOOD. Mr. Speaker, I rise today in support of H.R. 1022, the Risk Assessment and Cost-Benefit Act. This legislation is necessary because of the immense cost piled onto the American economy by Federal bureaucrats. This bill establishes requirements for regulators to use risk assessment and cost-benefit analysis in creating the rules we live under. It requires development of peer review for regulations. It subjects decisions of agencies to judicial review. It requires the President to set regulatory priorities. It is a necessary step that we must take to free the American economy from burdensome regulations, but we have the opportunity to do better * * * to give small business the power to fight the bureaucrats on their own.

Mr. Speaker, this legislation will do the most for the small businesses that can afford new regulations the least. H.R. 1022 would help small business by allowing these companies to direct their scarce resources toward achieving the maximum environmental cleanup for the least cost. Small businesses are often more severely impacted by costly regulation than large businesses because the cost to comply with these regulations represents a larger percentage of the small business's operating expenses and profits. If a Federal agency is required to perform a risk analysis on regulations that impact small business, small business is likely to be better able to afford to comply with the resulting rule. H.R. 1022 will result in fewer small businesses being financially bankrupted because of excessively expensive regulations.

The wood preserving industry, which is very important to my district, is made up mainly of small businesses. This industry could have been devastated in 1991 when the Environmental Protection Agency issued a hazardous waste listings regulation, under the Resource Conservation and Recovery Act. The tools of risk assessment and cost-benefit analysis were not applied in this act. The budget for the 1992 fiscal year stated that this RCRA regulation would have cost the wood preserving industry $5.7 trillion per premature death averted. This huge monetary amount would prevent one cancer case every 2.9 million years. That's one death every 2.9 million years. The regulation's costs, as noted in the 1992 budget, were so outrageous that the wood preserving industry was able to gain congressional support for a request that EPA work with the industry to craft a more cost-effective regulation. The negotiations resulted in a cost-effective regulation that was protective of human health and the environment. The wood preserving industry, with its heavy small business component, was able to stay alive and facilities were able to comply with the regulation.

Mr. Speaker, we cannot expect every industry to be able to rally support to save themselves from such bureaucratic nightmares. Mr. Speaker we should not expect every industry to be able to rally support to save themselves from such bureaucratic nightmares. We must give them the power to take on Federal regulators head on. We can do that if we approve the Barton amendment later today. The Barton amendment would give the average citizen the right to challenge Federal regulations themselves. It would force bureaucrats to review existing rules for their cost-benefit. Mr. Speaker, industries should not have to come to us to save them from overzealous bureaucrats. By passing the Barton amendment, we give individual American citizens the power to fight for themselves.

The main principle of our regulatory reform system must be common sense. The Risk Assessment and Cost-Benefit Act will force Federal bureaucrats to focus their regulatory efforts on what will benefit Americans the most. It will prevent Federal bureaucrats from forcing industries to spend millions, even billions of dollars without proving the responsibility of that action. It will force Federal bureaucrats to give cost-effective solutions the same consideration and the same weight as the extravagant ideal solutions they pursue today. This we must do. But, Mr. Speaker, I also hope my colleagues will realize that this is but a first step. We must also give our citizens the power to fight the bureaucrats themselves. I urge my colleagues to vote "yes" on the Barton amendment and empower individual Americans.

CONTRACT WITH AMERICA TOUGH ON CHILDREN AND ELDERLY

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from California [Mr. MILLER] is recognized during morning business for 5 minutes.

Mr. MILLER of California. Mr. Speaker, there was great celebration by the Republicans on the 50th day of their Contract With America of the first 100 days that they had programmed to rewrite the Federal Government and its rules and regulations. Yet on the 51st and 52d day we found out what this contract was really about. It was a contract on the elderly and the children of this Nation, between the actions taken in the Committee on Education and Labor and the actions taken in the Committee on Appropriations.

We saw in the Committee on Appropriations in the rescissions bill to cut money out of existing programs, 63 percent of all the cuts affect low-income Americans, children, and seniors. These same people are only responsible for 12 percent of the discretionary spending within the budget. That means three times the amount is being cut from these programs for elderly housing, to help elderly people pay their heating bills, and nutrition for our children, and the most vulnerable, and that is pregnant women at risk of giving birth to a low-birth-weight child and a newborn child born at low birth weight that needs nutritional help at the first moments of life. That is what the Contract With America has become, a Contract on America's children.

In this morning's Washington Post, Louis Sullivan, the Secretary of HHS under President Bush, writes an article about the importance of the Women, Infants, and Children Program. This is a program that has now been in existence 20 years. It may be the most successful program in the world in combating low-birth-weight babies, premature births, and the results that flow from those two events.

This has been our insurance policy to protect the taxpayers against the hundreds of thousands of dollars that a premature birth of a low-birth-weight baby will cost those taxpayers in the first few days and weeks of life. This has been a program that has reduced the incidence of low-birth-weight births by some 33 percent among the participants in that program. This is a program that does that for about $1.50 a day, and this is a program that the Gingrich Republicans and the Committee on Education and Labor lockstep voted to cut the money from last week.

So as we move into the second 50 days of the contract, we see a much meaner, a much more callous approach to the children of this Nation. What is at stake here? What is at stake here is the ability of thousands of women who have been medically certified to be at nutritional risk and at risk of giving birth to a low-birth-weight baby of having a successful pregnancy. What these cuts mean, and the cuts in the Committee on Appropriations last week, is that this year 100,000 pregnant women and newborn infants will not be allowed to participate in this program that has had dramatic success in helping the brain development of these children, in helping carry these fetuses to term, and having healthy pregnancies.

That is what the Republicans' contract wants to do. That is what Speaker GINGRICH instructed the Committee on Education and Labor to do. Many of those Republicans privately were saying they hate to do this, this should not be done, they know it is wrong, but this is what the contract calls for. They have a greater allegiance to the contract, a public relations stunt drawn up by a pollster, than they do to America's children and to the pregnant women of this country that run the risk of having a pregnancy go wrong and to have to suffer all that that means.

What we are trying to assure with the Women, Infants, and Children Program is that these pregnant women will have the same joy I had at the birth of my two sons, the same joy that I had at the birth of my granddaughter; a healthy pregnancy and the kind of care that a woman needs before she delivers that birth, so that she can experience that joy, so that family can have that, and not have to experience the sadness of having a low-birth-weight baby and the critical care that must be delivered in the intensive care and the neonatal intensive care units of our hospitals around this country.

Yet we see that those are the ones that the Gingrich Republicans have focused in on like a laser. They went immediately to those programs to cut that out. Out of the child nutrition programs and the WIC programs, we see over $7 billion over the next 5 years being taken out of those programs. This year we see $25 million directly taken out of the Women, Infants, and Children Program. Surely—surely the voters of America, the Republicans of America, do not believe that the first efforts in trying to balance the budget should be on the backs of these poor children, of these women at risk in their pregnancies, and of these newborn infants that are struggling, struggling to hold on to life, because we were not able to give them the attention during the pregnancy that we should have.

□ 0950

Surely that is not what this is all about. Nor should it be allowed to stand. People should call their Members of Congress and tell them that they want this 20-year program of success maintained. We are talking about

$1.50 a day during the term of that pregnancy. That should not be on the chopping block out of humanity and out of caring for these children and for these pregnant women.

"THE PROJECT"

The SPEAKER pro tempore (Mr. DICKEY). Under the Speaker's announced policy of January 4, 1995, the gentleman from Kentucky [Mr. WHITFIELD] is recognized during morning business for 5 minutes.

Mr. WHITFIELD. Mr. Speaker, I rise today with great concern about an article which appeared in Sunday's Washington Post. Since I read articles in most newspapers with great skepticism, I hope that facts set out in this article are not true.

According to the article in the Washington Post, a prominent Democratic Congressman at a recent Washington dinner party enthusiastically discussed what he referred to as "The Project"—a coordinated, calculated effort designed to politically destroy Speaker NEWT GINGRICH.

A week later, another Member of the Democratic Party, in a keynote address to a party convention in Boca Raton, disclosed that the House Democratic leadership had embarked on a day-by-day plan to investigate the House Speaker, harass the Speaker, and drive him from office.

According to the article, members of the Democratic leadership in the House meet on a weekly basis for this purpose. Mr. GEPHARDT is represented at the meetings and the White House is also kept informed.

The Democratic National Committee also publishes a weekly "Newt Gram" trashing the Speaker.

Two senior liberal Democratic Members of Congress—not a part of "The Project"; that is, Newt bashing—said "Our party attacks GINGRICH because we don't have anything else to say."

If it is true, what a tragedy—the National Democratic Party and its leaders deliberately working on "The Project" to destroy another political leader.

Our great Nation faces many serious issues crying out for a solution. It is almost incomprehensible that a handful of Democratic leaders would be consumed with such a destructive compulsion for revenge.

It is not surprising that in so many issues we have debated on this floor during the last month that a handful of Democrats have used similar tactics to polarize America. Pitting the poor versus the middle class—and the middle class versus wealthy members of our society—in effect using scare tactics.

We are all Americans and we must develop solutions that will benefit our entire society not just one part of our society. The American people not only deserve but demand that Members of Congress devote their time and energy trying to solve very serious national issues instead of trying to destroy another political leader because they do not agree with his political philosophy.

The election box is the proper place to decide philosophical differences, not some sinister plan referred to as "The Project."

EFFECTS OF THE CONTRACT WITH AMERICA ON WOMEN AND CHILDREN

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Texas [Mr. GENE GREEN] is recognized during morning business for 5 minutes.

Mr. GENE GREEN of Texas. Mr. Speaker, I appreciate the gentleman's comments, but let us talk issues instead of speak personality.

When the Republicans talked about the contract for America, they did not tell anyone it would be women and children first. The first round of cuts were in the school breakfast and lunch programs. The second round of cuts include funding for safe and drug-free schools and the summer jobs program.

The Speaker may not believe liberals and even call some of us liars. This report that I will insert in the RECORD from the Houston Post talked about the "foes are lying about children." He says they are lying this last weekend.

Well, I am a Member from Texas. I am not lying about what my Texas State agency and my school district told me about the school lunch and breakfast program.

We would sustain a cut of almost 4 percent for our lunch and breakfast programs. I would hope we could tone down the rhetoric and talk about issues. I share the concern of my colleague who just spoke.

Again, we could see a definite cut of 4 percent in our Texas program and a half-million dollars in the Houston independent school district, the largest school district in the State of Texas.

The school breakfast and lunch programs, as estimated by the Texas Education Agency, will lose for the children of Texas $261 million in 1996. On the Committee on Economic and Educational Opportunities, we tried to strike the nutrition programs from the Republican reform bill, but we were outvoted on a party line vote by the Republican majority. I will go to that in a few minutes. Let us look at what this new amended contract for America talks about, not only cutting children nutrition programs and the WIC Program. Let us see now; we are having $11 million for two new executive airplanes for the Army that they did not request, $20 million more for a new runway for a base that is on the base closure commission list, a million dollars for a bike trail in North Miami Beach.

One thing that is apparent in this new amended Contract With America, there is no clause that our children will have a hot nutritious meal or a clause that our children will have a safe and drug-free school or that our children may have a summer youth job program.

Let me continue with the children's nutrition. A TV consumer reporter in Houston just last night said that it took the Republican majority 40 years to gain control of the House but only took them 40 days to cut food to children. The school-based nutrition grant program overall funding would be $104 million less in fiscal year 1996; $101.3 billion would be transferred out of the block grant in 1996 for nonfood programs, which would compromise the health of children.

The school-based nutrition block grant would eliminate the standards that guarantee America's children access to healthy meals.

There was an amendment adopted in the committee last week that said for the first year the States can all come up with 50 nutritional grant programs, but at the end of that year there would be some national standards. Well, we already have some national standards that apply whether you are in Texas or New York or California. We are building in additional costs into this program by having 50 States to develop their nutrition plans and then have to comply with some national standards.

The new school-based nutrition block grant would not respond to recessions or recoveries. If this bill had been enacted in 1989, it would have resulted in the 70-percent reduction in funding for school meals in 1994 alone. Between 1990 and 1994, the number of free lunches served to low-income children increased by 23 percent. During that period, the number of free meals served in child care centers increased by 45 percent. The block grants would not respond to the change in the school population, which is expected to increase by 4 to 6 percent. In the State of Texas alone we would lose 4 percent of our funding. Every September and all during the year we have new children who show up at our doors and qualify for these programs. We are not only cutting 4 percent, but if those new children show up, they would not have it.

Yesterday morning, before I left Houston, I went to a nutrition program in the Heights part of my district at the Field Elementary School. That is a school that has 90 percent of their children have free or reduced lunch. What 4 percent would we cut from those 90 percent of those children and next year when we have at least 20 more kids who show up or are qualified, are we going to tell that principal or that teacher or that food service worker, who does a hard job there, that they cannot serve those children?

There are reforms we can do in the program, but not cutting off the meals that those children have. I saw that meal. They had cereal. They had the option of orange juice and milk. A number of kids actually drank both the orange juice and the milk. They had some little sausages.

I noticed this last Friday the Committee on Agriculture cut the effort for the Food Stamp Program.

I am glad they are concerned about that, but I know we have some concern about the food stamp abuses. But I know I saw those children eating that food. I would hope that the Republican majority would see the err of their ways on school nutrition and also change that, Mr. Speaker.

Mr. Speaker, I include for the RECORD the article to which I referred.

[From the Houston Post, Feb. 26, 1995]

SCHOOL LUNCH DEBATE SERVES UP HOT RHETORIC BUT FEW COLD FACTS—HOW KIDS WOULD FARE UNDER CHANGE UNCLEAR

(by Wendy Koch)

WASHINGTON.—Uncle Sam would no longer guarantee poor kids a free school lunch if a Republican measure now gaining momentum in Congress becomes law.

Instead, states would be free to decide who gets what.

Democratic critics say kids would suffer because funding would fall, and states won't have enough money in case a recession strikes. Republicans argue kids would benefit because the system would be more efficient.

But no one really knows—yet.

The GOP bill, which scraps the 49-year-old school lunch program, passed a House committee last week but needs the approval of the full House—considered likely—and the Senate—expected to be more difficult.

Even if it passes, its impact will depend on how each governor handles the new responsibility of feeding kids.

Still, there's no shortage of red-hot rhetoric.

Democrats have accused Republicans of trying to starve kids. "There are an awful lot of poor kids, and some not-so-poor kids, who will go home hungry," says Wisconsin Rep. Dave Obey, senior Democrat on the House Appropriations Committee.

"Absurd," responds Michigan's GOP Gov. John Engler, a leading proponent of giving states greater flexibility to administer programs. He says it's "offensive" to say Republicans would harm kids.

The school lunch program serves 24 million children every day. Lunch is free for those whose parents earn less than 130 percent of the poverty line and is heavily discounted for those whose parents earn less than 185 percent. It sets a small subsidy, 20 cents a lunch, for all other kids.

The school breakfast program serves about 5 million children daily and operates similarly.

Every child who meets the eligibility criteria is guaranteed a free meal if his or her school participates in the program. If a recession hits, federal funding increases to meet greater demand.

The meals must meet federal dietary standards, nationally recommended for all Americans.

The Republican measure, part of the effort to reform welfare, would end the federal guarantee that poor kids get meals. With that goes the nutritional guidelines.

It would instead lump school meal programs together and give states a set payment, or block grant, to administer as they choose. It also would allow states to set their own dietary standards.

The measure would allow legal immigrants—but not illegal ones—to get subsidized meals.

Proponents argue that by cutting the middleman—federal bureaucrats—less money would be wasted on paperwork and more would be spent on meals for poor kids.

They say their block grants would increase funding by 4.5 percent annually—more than the rate of inflation.

Yet Democrats say the increase is less than they would receive under the current system, which adjusts for the rising number of eligible school-age kids. And thus, they call it a cut.

"Every state will get less funding," says Walt Haake, a spokesman for the U.S. Agriculture Department. Overall, USDA estimates funding will be $309 million less next year and $2 billion less over five years.

He criticizes the GOP bill for allowing states to use up to 20 percent of their school lunch money for other programs.

Critics also say governors of poorer states—even if they wanted to help kids—would have a tough time meeting the greater demand in a recession because their funding would not automatically adjust.

"That is the unknown, and the scary part," says Tami Cline, director of nutrition for the American School Food Service Association, which represents the administrators of school meals.

Yet Republicans bristle at the notion that governors, who face re-election, won't be responsive.

"Why would state and local officials do that?" asks Kelly Presta, majority spokesman for the House Economic and Educational Opportunities Committee, which passed the bill.

[From the Houston Post, Feb. 26, 1995]

GINGRICH: FOES LYING ABOUT KIDS

ROSWELL, GA.—House Speaker Newt Gingrich lashed out at political opponents Saturday, saying anyone who claims Republicans want to hurt children is lying.

"They're going to argue meanness. They're going to argue Republicans are for the rich. And they're going to argue Republicans want to hurt children," he told a gymnasium full of loyal constituents here during a 2½-hour town hall meeting.

"It will be a deliberate, malicious lie. And they will repeat it, and repeat it and repeat it."

The Georgia Republican was addressing recent criticism from Democrats who charge that GOP proposals to end federal nutrition programs for children as well as Medicaid benefits for the poor would victimize the weakest members of society.

"Any liberal who tells you that we are cutting spending and hurting children is lying—L-Y-I-N-G," said the House speaker.

H.R. 1022, RISK ASSESSMENT/COST-BENEFIT ANALYSIS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Ohio [Mr. GILLMOR] is recognized during morning business for 5 minutes.

Mr. GILLMOR. Mr. Speaker, I strongly support H.R. 1022, the risk assessment cost-benefit analysis bill. This legislation very simply puts common sense into the way the Government regulates.

All of us have heard the horror stories from businesses and municipalities about the Federal regulations and the way that they have strangled their budgets only to have miniscule benefits result.

Earlier today I hope my colleagues had the opportunity to review a dear colleague I circulated to all of them concerning the city of Columbus, OH. In it I noted that Federal regulations currently require the municipal water systems keep atrazine levels in drinking water below 3 parts per billion. A human being would have to drink 3,000 gallons of water a day with three parts per billion atrazine to equal the dose found to be cancerous in rats.

The U.S. Environmental Protection Agency, under its constitutionally mandated authority, sets this level by using the most exposed individual risk assessment model, which assumes a person is to be exposed to atrazine every day for 70 percent years. To show how absurd this regulation is, to consume enough water to come even close to causing any health risk, an individual would have to drink 38 bathtubs full of water every day. City officials in Columbus found that compliance with this regulation would require a new $80 million water purification plant. For the same amount of money 3,700 teachers could have been hired at the average State teacher's salary.

To further show how wasteful this three parts per billion Federal requirement is, consider the following: The U.S. EPA developed a health advisory for atrazine which states that a child could drink water containing 100 parts per billion for 10 days or 50 parts per billion for 7 years with no adverse effects.

Mr. Speaker, it is for reasons like this that I am supporting H.R. 1022. I believe it is reasonable to ask our Federal regulating bodies to prepare a cost-benefit analysis of proposed regulations. I support the idea of providing alternatives without making expense the sole determinant of the best strategy.

I believe that the peer review activities for more costly regulations are a good way to ensure the efficacy and the efficiency of our Federal rulemaking process. H.R. 1022 contains all of these provisions and makes the Federal Government a legitimate problem solver, not a problem maker.

Some of my colleagues who have opposed this legislation say it will create a new bureaucratic mess and will benefit lawyers more than individuals. I must say that I find their arguments to be basically an attempt to cover up the regulatory mess they instituted.

Risk assessment and cost-benefit analysis using the best available data and input will bring out the best governing decisions.

Mr. Speaker, this regulation protects the environment and public health because it means resources will be used to combat real environmental and public health risks and not be wasted on frivolous regulations and requirements.

MORE ON CUTS AFFECTING WOMEN AND CHILDREN

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Illinois [Mr. DURBIN] is recognized during morning business for 5 minutes.

Mr. DURBIN. Mr. Speaker, this morning I would like to share a few stories with you that I think are appropriate when you look at the debate which we are facing here in Washington, not only this week but for the next several weeks.

They are about some children. They are kids that I remember but I do not know their names. Let me tell you why.

The first child I remember was in St. John's Hospital in Springfield, IL in my district. I was invited to come to the unit there where premature infants are being cared for and of course you put on a gown and a mask and walk in with the nurse and the doctor. And they pointed to a tiny little isolette with a little baby in there, no larger than the size of my hand, a baby that had its eyes taped shut and had more tubes and monitors in its small body than were imaginable.

The story of course was that that baby was born too soon and as a result would be in this intensive care unit for at least a month and maybe longer with the hopes that when she did come out at the end, she would then be able to grow like a normal baby and lead a normal life.

The heroic efforts that were being undertaken for that infant are repeated every day across America. Unfortunately, repeated too many times.

Several years ago we took a look at the incidence of low-birth-weight babies in our country and found some shocking results. It turns out that the infant death rate in America was higher several years ago than in most industrialized countries in the world. Think about it. Our country, with the best medical resources, was still having children born of low birth weight with problems that really haunted them, many of them for the rest of their lives. When I talked to the head of the medical school, Dr. Richard Moy in Springfield, IL at the SIU Medical School, he said, "Congressman, the saddest part of it, this is entirely preventable; this is entirely preventable. If we can bring mothers in early in their regular pregnancy, give them prenatal care, we have the medical knowledge to deliver a healthy baby in virtually every case."

So the Federal Government, which is often the butt boy and the target of so many criticisms, decided to really invest money to reduce the number of low birth weight babies. The program we chose is one that has been around for awhile. It is called the WIC Program, the Women, Infants and Children's Supplemental Feeding Program. And we decided to take some of our precious Federal tax dollars and put it into our most precious asset, these children who will be tomorrow's leaders, our kids.

And you know what, it is working. It is working because now 40 percent of the infants in America are being brought into the WIC Program, kids especially vulnerable from low income families. I am proud to tell you that we are seeing the infant death rate in this country go down. Surely we still have low-birth-weight kids but not as many as we would without the WIC Program.

The reason I tell you this story and tell you the story about this little infant is that we are now debating whether or not to cut the money for that WIC Program. That is right, whether or not we are going to cut the money for the program that is trying to keep fewer low-birth-weight babies being born in America. In the name of a balanced budget, in the name of cutting spending, in the name of reducing the Federal role, we are going to cut this program.

My friends, the Republicans on the other side say it is the way to save money. Do you really save money with a low-birth-weight baby? Do you know how much it cost at St. John's Hospital several years ago for that low-birth-weight baby? At least $1,000 a day. So a pregnancy, which ordinarily would cost $1,500 to $2,000 under normal circumstances ended up with a baby that costs us, as taxpayers, $30,000 a month with the hopes that that little girl would come out of that experience and lead a normal life and not need more care afterward.

What a false economy. Yet the Republicans argue that reducing the money for WIC is what America really needs and really wants for its future.

Let me shift to another child, a child I saw in my own hometown again, at a school breakfast program. A happy child, a kid who was having fun, who got to school early so that she could get that little lunch or little breakfast, rather, and have her day ahead of her. She was happy and bouncing around and having a good time of it. I talked to a teacher about the school breakfast program and school lunch program. I said, what do they mean to you? And she said they mean everything. Did you ever consider the chore that faces a teacher trying to teach a child who is hungry? That child is listless, stares at its hands, stares at the floor, cannot concentrate. I do not have a chance, she said, in terms of teaching that child.

So we invest each year in the basics of providing nutrition for school lunch programs and school breakfasts so that kids can go through that learning experience and come out happy, healthy, and learning. The Republicans have told us we need to cut that program, too. I hope we keep those images in mind as we get into this budget debate. We certainly cannot have a strong America without strong children. It is a false economy for us to cut programs for children, and I hope that the Gingrich Republicans will think twice before they make these cuts.

□ 1010

THE 2-PERCENT SOLUTION

The SPEAKER pro tempore (Mr. DICKEY). Under the Speaker's announced policy of January 4, 1995, the gentleman from Colorado [Mr. ALLARD] is recognized during morning business for 5 minutes.

Mr. ALLARD. Mr. Speaker, the House of Representatives passed the balanced budget amendment last month. Today, the Senate will decide the fate of this critical reform. Whether the vote is yes or no, Congress will still need a statutory mechanism to ensure that spending is put on a glidepath to balance by the year 2002. I propose the 2-percent solution.

Shortly, I will introduce legislation to establish caps that will limit overall spending growth to 2 percent a year. If this level is exceeded in any year, an across-the-board sequester will kick in and force the necessary cuts, excluding Social Security and certain other contractual obligations.

With 2 percent growth the Federal Government can balance the budget of 2002 and still spend $1 trillion more over the next 7 years than it would under a 7 year freeze. Two percent growth will allow us to enact the tax cuts of the Contract With America and achieve the first balanced budget in 33 years.

Two weeks ago, I attended a Budget Committee field hearing outside of the beltway to hear the views of our constituents. Over 1,000 people showed up and the message was clear—cut spending. Just do it. Balance the budget. That is what the Republican majority plans to do.

During the debate on the balanced budget amendment, the rhetoric was thick with charges that the Congress does not need a constitutional amendment to balance the budget, all we need to do is offer a balanced budget. Well, the need for the balanced budget amendment is shown clearly by the President's just released budget.

The President's budget is a lost opportunity to do what he called for in his State of the Union speech, a balanced budget without the need for a constitutional amendment. In the President's budget, there is no entitlement reform, no welfare reform, and spending in most major departments goes up. Department of the Interior spending is up; HUD and the Labor Department get an increase in spending; the EPA gets an increase in spending; the Energy Department gets a spending increase even though the administration once talked about abolishing the Department; and even the National Endowment for the Arts and the National Endowment for the Humanities get increases.

The bottom line is not a balanced budget, it is $200 billion deficits as far as the eye can see.

This is not what the average American is looking for. America wants a balanced budget. Unfortunately, the President has left the heavy lifting to the Republican Congress. Our goal is not $200 billion deficits, but a balanced budget with zero deficits. We must lead and meet the challenge and produce a budget that makes the tough cuts.

During the balanced budget debate, some questioned whether we can ever balanced the budget. Opponents like to point to the fact that over $1.2 trillion in spending must be reduced. This huge number is used to show how painful it would be to actually enforce a balanced budget amendment by 2002.

This argument could only occur inside the beltway. Though Republicans abolished baseline budgeting on opening day, much more must be done before the terms of the debate are changed.

Baseline budgeting is the process of assuming automatic spending increases every year. If Congress appropriates anything less than the baseline spending growth, there has been a cut. I suspect most Americans believe a cut is when you spend less than you did the year before, not less than you thought you would spend.

The current debate about a balanced budget amendment demonstrates why this issue of baseline budgeting is so important. Every nickel of the $1.2 trillion that must be cut is projected baseline growth.

As the chart next to me shows, the CBO projects that spending growth will average 5.3 percent a year through 2002. Under this scenario Federal spending will grow from $1.5 trillion this year to $2.2 trillion in 2002, and the deficit in 2002 will be well in excess of $300 billion.

Of course, this assumes Congress does nothing to alter current spending patterns. If Congress instead manages to hold overall spending growth to 2 percent per year, the payoff for this discipline will be the first balanced budget in 33 years. And as I noted earlier, $1 trillion more will still be spent over those 7 years than if spending had been frozen.

So let me answer the doubters. There is no doubt about it, we can balance the budget by 2002. It can be done in a reasoned and responsible manner—by holding overall spending growth to 2 percent a year.

It is not my intention to suggest that this will be easy. It will be difficult, particularly for those programs that are growing rapidly. But this is Congress' job, it is what the American people want.

Over the last three decades Congress has dropped the ball on the budget. This is why we need the balanced budget amendment and the 2-percent solution. With them we can build a secure future for our grandchildren.

A SCORCHED EARTH POLICY IN THE REPUBLICAN'S WAR ON CHILDREN

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Massachusetts [Mr. OLVER] is recognized during morning business for 3 minutes.

Mr. OLVER. Mr. Speaker, legend has it that Republicans know more about making profitable investments than Democrats, but with the Contract on America, that legend becomes a vicious myth.

The Republicans want to slash funding for children's foster care, and children's adoption assistance, and child abuse prevention, and children's care while parents have to work, and preschool children's Head Start, and Drug Free Schools for Children, and children's health care, and children's school lunches, and prenatal nutrition, which has saved billions of dollars by reducing the number of low birthweight babies born in this country, as the gentleman from Illinois [Mr. DURBIN] spoke so eloquently about just a few minutes ago.

These extremists are not even happy with hungry children. They want to cut every penny of home energy assistance, so thousands of children are going to go to bed cold as well as hungry.

Mr. Speaker, Americans should understand exactly what is going on with this extremist agenda. This is not about thoughtful, even-handed deficit reduction. It goes much further than the elimination of bureaucracy or waste. This is a scorched earth policy in the Republican war on children.

The radical right extremist agenda is to wash their hands of any responsibility for the welfare of the American family, shift that responsibility to the States, and at the same time, cut billions of dollars needed by the States to adequately protect children; protect their health, their safety, their schooling, and their stomachs.

It is even a myth that these cuts reduce the deficit. Our radical right is willing to hurt children so they can buy fantasy projects like the star wars antiballistic missile system, and so they can shovel out massive tax breaks to the very wealthiest few Americans.

Children cannot vote, so they are being trashed, and it is shameful. The health, the schooling, and the safety of children should be the first priority for every Member of Congress whose job it is to build a better nation. It is shameful to throw the responsibility to the States and then cut the dollars the States need to meet it.

When they cannot meet it, we will all find out that turning our backs on children is a terrible way to invest in America's future.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the House will stand in recess until 12 noon.

Accordingly (at 10 o'clock and 17 minutes a.m.) the House stood in recess until 12 noon.

□ 1100

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore [Mr. ZELIFF].

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

For all the opportunities, O God, that lie before us and every person, we offer our thanks; for all the possibilities for knowledge and understanding, we are grateful; for friends and family and colleagues who support us and help show the way, we express our gratitude. May we be so fervent in our tasks, gracious God, that we will be worthy of the calling we have been given to be of service to other people in doing the deeds of justice and by providing leadership in the cause of peace and reconciliation for every person. Bless us this day and every day, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Ohio [Mr. HOBSON] come forward and lead the House in the Pledge of Allegiance.

Mr. HOBSON led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will take 20 1-minutes on each side.

THE CONTRACT: BACK TO THE DRAWING BOARD

(Mr. GEPHARDT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEPHARDT. Mr. Speaker, for 2 months now, this Congress has been held hostage by the extremist trickle-down manifesto known as the Contract With America. Democrats have been saying all along that the American people do not need this contract. What they need are good jobs at good wages, more police to fight the scourge of violent crime, and access to affordable health care.

Republican pollsters who wrote the contract thought they knew better, but a New York Times poll published today makes it perfectly clear. If the Republicans really want to follow the will of the people, it is time to go back to the drawing board. First of all, more than half of all Americans have not even heard of the contract. So much for the Republican mandate. And on issue after issue, we find a wholesale rejection of the contract's extremist planks.

Americans overwhelmingly want the Federal commitment to 100,000 cops on the beat that the Republicans voted down. Americans overwhelmingly oppose a balanced budget amendment that puts Social Security on the chopping block as the contract does. Americans overwhelmingly oppose welfare reform that is tough on children but weak on work.

I suppose that is the problem with the Republican politics-of-opinion polls. When you live by the poll, you also die by the poll.

Based on today's poll results, I would offer these final words on the Contract With America: May it rest in peace, and now let us get down to the real business of the American people.

REPUBLICAN CONTRACT WITH AMERICA

(Mr. HOBSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HOBSON. Mr. Speaker, our Contract With America states the following:

On the first day of Congress, a Republican House will require Congress to live under the same laws as everyone else; cut committee staffs by one-third; and cut the congressional budget.

We kept our promise.

It continues that in the first 100 days, we will vote on the following items: A balanced budget amendment—we kept our promise; unfunded mandates legislation—we kept our promise; line-item veto—we kept our promise; a new crime package to stop violent criminals—we kept our promise; national security restoration to protect our freedoms—we kept our promise; Government regulatory reform—we are doing this now; welfare reform to encourage work, not dependence; family reinforcement to crack down on deadbeat dads and protect our children; tax cuts for middle-income families; Senior Citizens' Equity Act to allow our seniors to work without Government penalty; commonsense legal reform to end frivolous lawsuits; and congressional term limits to make Congress a citizen legislature.

This is our Contract With America.

Mr. Speaker, this is our contract, we are doing it and living up to it, and I believe it is alive and well.

POLL DOUSES CONTRACT AND GINGRICH REVOLUTION

(Mr. BONIOR asked and was given permission to address the House for 1 minute.)

Mr. BONIOR. Mr. Speaker, every morning Republicans come to this floor and read NEWT GINGRICH's Contract With America.

But this morning's New York Times throws a bucket of ice water on both the contract and the Gingrich revolution.

In a poll released this morning, the American people say that the contract is:

Too extreme, too mean spirited, and out of touch with the priorities of the American people.

When asked what our priorities should be the American people say: jobs, health care, and crime.

Yet, after 55 days of Republican rule, and after casting over 150 votes, we have not passed a single amendment that deals with jobs or health care.

And nearly 6 of 10 Americans say the Republican idea to pull 100,000 police off the streets is a bad idea.

Mr. Speaker, this poll confirms what we have always known: The Contract With America will not make a dime's worth of difference in the lives of middle-class families.

Republicans can talk about the contract all they want.

But the longer we go, the more it becomes clear: Americans do not like what they are hearing.

COMMON SENSE NEEDED IN REGULATORY PROCESS

(Mr. BALLENGER asked and was given permission to address the House for 1 minute.)

Mr. BALLENGER. Mr. Speaker, did you hear the one about the guy who was fined by OSHA for not having a comprehensive hazardous communication plan for his employees—all two of them.

How about the $100,000 spent on a study of quiet areas in restaurants.

Or the OSHA fine levied against a small business because they had a can of Pledge in a work trailer with no material safety data sheet on hand.

And, one of my favorites, the construction company that was fined because workers were not using disposable cups.

These are all great stories—and they would be very entertaining if they did not symbolize such a job crunching, budget busting, competition killing, business breaking, economic catastrophe in America.

It is time to restore common sense and civility to the regulatory process. The cost of doing nothing is too high for individuals and businesses in America. Let us act now.

IN SUPPORT OF CHILDREN'S NUTRITION PROGRAMS

(Ms. BROWN of Florida asked and was given permission to address the House for 1 minute.)

Ms. BROWN of Florida. Mr. Speaker, yesterday I had an opportunity to speak to 95 3-year-olds and today I speak in their behalf, for the school lunch program that has worked well since 1946. It is not broken. America's children are our most important resource for the future.

Mr. Speaker, studies show that if a child is hungry, taxpayer dollars are wasted because hungry kids cannot learn. According to the Children's Defense Fund, millions of children will go hungry by cutting school lunches, food stamps, child care, Head Start meals, and WIC programs. Republican doubletalk that "cuts to school lunches" are not "cuts," but block grants to States, and deceives the American people. As a 10-year veteran of the Florida legislature, I can tell you that sending Federal dollars to the States as block grants does not ensure that these funds will go to child nutrition programs.

Republicans seem to think they can fool some of the people, some of the time. But you cannot fool all of the people all of the time. The American people cannot be fooled. The Contract on America is a contract on children, the elderly and the hardest working Americans.

The school lunch program works, it feeds hungry children. As the saying goes, "If it's not broke, don't fix it."

FEDERAL REGULATIONS SHOULD USE COMMON SENSE

(Mr. NORWOOD asked and was given permission to address the House for 1 minute.)

Mr. NORWOOD. Mr. Speaker, allow me to read a few OSHA rules written about chain saws for the logging industry. The chain saw shall be fueled at least 20 feet from any open flame; the chain-saw operator shall be certain of footing before starting to cut; prior to felling any tree, the chain-saw operator shall clear away brush or other potential obstacles which might interfere with cutting the tree; the chain saw shall be carried in a manner that will prevent operator contact with the cutting chain. Mr. Speaker, Federal regulators should use common sense, not regulate common sense. If American taxpayer's hard-earned money is going to pay for someone to write rules like these, then I know where the budget chain saw should be put to use next.

MALICE: SAYING NO TO A DECENT LUNCH FOR CHILDREN

(Mr. GUTIERREZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GUTIERREZ. Mr. Speaker, my colleagues talk about a "second Reagan Revolution."

Well, they are right—when it comes to providing decent food and nutrition to the children of America.

In the mid-1980's, millions of children suffered because the Federal Government cut funding for the school lunch program.

Now, today, to pay for more defense spending and tax giveaways to the rich contributors to the Republican Party, we are going to let kids go hungry again.

Maybe what we need is a revolution that reaches back a little farther in Republican Party history.

In 1865, facing an enemy far more dangerous than our Nation's school children, our greatest President—a Republican President—stated that we would heal our Nation's wounds "with malice toward none, with charity for all."

I say to my colleagues in the majority—saying no to a decent lunch for our Nation's children is malice, pure and simple.

With malice toward none, with charity for all.

How empty and distant those words seem to the party of Abraham Lincoln today.

THE TOP 10 LIST

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Mr. Speaker, from the home office in Scottsdale, AZ, the top 10 excuses liberal Democrats have for not voting for the balanced budget amendment.

No. 10, we might really have to slow spending.

No. 9, the dog ate my homework.

No. 8, fiscal responsibility phobia.

No. 7, the devil made me do it.

No. 6, if so many of the American people want it, it cannot be any good.

No. 5, contract-envy.

No. 4, it wasn't me, it was a space alien with a remarkable resemblance to me.

No. 3, I did what?

No. 2, let's feed big government bureaucrats instead of little school children.

And the No. 1 excuse liberal Democrats have for not voting for the balanced budget amendment, they want early retirement in the next election.

CONGRESS SHOULD PUT AMERICAN INTERESTS FIRST

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, while one House committee voted to forgive a $50 million loan for Jordan, another House committee voted to kill hundreds of thousands of American youth jobs in our communities, kill the home-ownership counseling program that saves the family home and saves taxpayers $35,000 on every foreclosure. They also voted to kill all veterans' outpatient clinics that treat millions of American veterans.

Now think about it. Fifty-three billion dollars for Mexico but pink slips for American youth. Twelve billion dollars for Russia, but, ladies and gentlemen, mortgage foreclosure for American families. Fifty million dollars for Jordan, but cuts in health care for American veterans.

Think about it. No wonder America's bankrupt. Congress is either brain-dead or they're starting to drink some of that Boris vodka.

I say, ladies and gentlemen, take care of our own people before you take care of everybody all around the world. Beam me up on these cuts.

SUPPORT THE BALANCED BUDGET AMENDMENT

(Mr. LATOURETTE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LATOURETTE. Mr. Speaker, it is no coincidence that the work and far-reaching goals of the 104th Congress are being compared to that of the Congress of 1933. Not since that time has Congress accomplished so much in so little time, when Franklin Delano Roosevelt presided over our Nation and steered the Congress to pass a bold new agenda called the New Deal, much of it during the first 100 days of his administration.

As we compare what happened then to what is taking place on the floor of this great House now, I am reminded of the prophetic words of FDR when he said, "It is common sense to take a method and try it. If it fails, admit it frankly and try another, but above all, try something."

"Above all, try something." Those four simple words cut right to the heart of the objectives of this Congress, the Contract With America, and in particular the balanced budget amendment. Only what we are proposing is to try something that works, something done by almost every State in the Union not to mention households and business.

For far too long, the U.S. Congress has been trying a method of balancing the budget which, quite simply, is a resounding failure.

Today the other body has an opportunity to do something magnificent for the future of this country, to do as FDR said, admit frankly that what we have tried in the past has failed and to try something new.

□ 1115

REPUBLICAN CONTRACT FAILS TO ADDRESS NATION'S CORE CHALLENGE

(Mr. KLINK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KLINK. Mr. Speaker, it is time we talk about this so-called Contract on America. Income has not increased as a result of this contract. Not one single job has been created because of this contract. No family in America is more secure as a result of the progress made on the Republican contract. The quality of life has not been improved for hard-working middle-class Americans because of this contract.

The bottom line is the contract has no meaningful impact on the lives of average Americans. The Republican contract fails to address our Nation's core challenge and that is raising our standard of living as a people.

In western Pennsylvania, cities like Beaver Falls, Aliquippa, and New Castle have up to 25 percent of their households living in poverty. Yet the contract will whack people on Social Security, whack Medicare, whack school lunches. This truly is a Contract on America, Mr. Speaker.

CONSTITUTIONAL AMENDMENT TO BAN AMERICAN FLAG DESECRATION

(Mr. QUINN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. QUINN. Mr. Speaker, it is with great pleasure that I rise today to join many of our colleague here in the House in support of a constitutional amendment to ban the desecration of the American flag.

Mr. Speaker, I just left an announcement on the left side of the Capitol with a group of Members, House Members, Senate Members, Republicans and Democrats, and hundreds of thousands of veterans from all over the country who are in support of this amendment.

The amendment states that "The Congress and the States shall have the power to prohibit the physical desecration of the Flag of the United States." Almost every State, 46 of the States in this country have asked us to do just that.

Let us give the States and the American people what they want and what our flag deserves.

Our Stars and Stripes stands for the principle of democracy. It represents all the hard fought battles for freedom and preservation of the American way of life. I call on my colleagues to join Representative JERRY SOLOMON, Representative SONNY MONTGOMERY, myself, and others to cosponsor this legislation in the coming weeks.

A SAD DAY FOR VETERANS

(Mr. VOLKMER asked and was given permission to address the House for 1 minute.)

Mr. VOLKMER. Mr. Speaker, today is the 56th day of the imperial speakership.

Mr. Speaker, 9 months ago a majority of my colleagues recognized the debt owed our veterans, and the need to ensure they receive proper and adequate medical care. Today I must rise to inform my colleagues that the contract we have with our Nation's veterans has been labeled expendable by the Republican majority, and I am here to issue a warning to the Nation's veterans that our contract pledged to our veterans is up for renegotiation under the Republican contract on America. Last week an appropriations subcommittee slashed $206 million from the Veterans Administration and eliminated funding for six veterans care facilities as a way to help pay for the tax cuts promised to the rich in their contract on America. Mr. Speaker, it is a sad day in America when we place the desires of wealthy special interests over the needs of men and women who risked their lives to defend America.

AMERICA NEEDS THE BALANCED BUDGET AMENDMENT

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, today as we face final congressional action on passing the balanced budget amendment, it is a moment of national truth. Will we squirm and wiggle and sidestep our responsibility, will we cop out with politically palatable excuses or will we take the action because if we vote no today how much easier will it be to continue to vote for deficit spending?

Since 1969 we have not had a balanced budget. And every Democrat and Republican who has voted for this deficit spending has had a good excuse to do so. But it is time to stop this.

We need a balanced budget amendment. We can think of, and taxpayers above all can think of 4½ trillion reasons to vote for a balanced budget amendment.

Ladies and gentlemen of America, watch today carefully. It is a critical day in the history of our Nation.

BALANCE THE BUDGET WITHOUT JEOPARDIZING CHILDREN

(Mr. HINCHEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HINCHEY. Mr. Speaker, the majority party of the House of Representatives has declared war on our Nation's children.

The leadership has taken their campaign against working Americans to one of its lowest points yet attacking the most vulnerable in our society—millions of American children who rely on school lunches for a well balanced meal every day.

The most profound effect will be upon the ability of our children to learn. Undernutrition effects a child's behavior and performance.

In support of a 1969 expansion of school nutrition programs, President Nixon once said: "A child ill fed is dulled in curiosity, lower in stamina, distracted from learning." What has happened to the Republican Party?

In my home State of New York, more than 1,700,000 children currently participating in the school lunch program will be affected by a cut in funding.

We can do better than to try to balance the budget by jeopardizing the health and nutrition of 13 million American children who depend on the School Nutrition Program each day for a balanced meal.

THE BATTLE LINES ARE DRAWN

(Mr. TIAHRT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIAHRT. Mr. Speaker, the American people are clearly seeing where the battle lines are drawn. The Democrats will defend the Great Society of Lyndon Johnson and the $4.5 trillion we have already been spending on a failed system.

Republicans are working to transform the welfare state into a work-for-benefits system.

Democrats will fight to keep the money flowing for the beltway bureaucrats here in Washington.

The Republicans will keep the money flowing back to the States like Kansas to help the American people.

The liberal Democrats have accused the Republicans of being mean-spirited because Republicans want to change the system that promotes destruction to the family, hurts children and that seriously undermines the future of our Nation.

The Republicans will work to change a system that has failed the American people completely.

The battle lines have been drawn. May the best ideas win.

SUPPORT FOR THE RISK ASSESSMENT AND COST-BENEFIT ACT

(Mr. STENHOLM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STENHOLM. Mr. Speaker, as a long-time supporter of small business, I rise in support of H.R. 1022, the Risk Assessment and Cost-Benefit Act. It's simple: Risk anlaysis is good for small business.

Small business has had to contend with a literal blizzard of Government regulation in virtually every aspect of their operations. It is not just one or two big or major impacts from regulations, it is also death by a thousand cuts. It is the cumulative burden of paperwork, planning, and other compliance requirements that are often overlooked in the process of creating Federal regulations that are especially burdensome to smaller businesses. Mechanisms like those contained in H.R. 1022 will help to ensure that Government considers the total impact of the cumulative regulatory burden.

The small businesses impacted by many new regulations, especially in the environmental and worker safety area, do not have the resources to challenge or assess the increasingly scientific methods or exposure assumptions used by Federal agencies to justify new regulations.

Discussion and provision of regulatory options and risk scenarios early in the regulation development process will help small business by focusing resources and providing at least some assistance in an analysis process they cannot hope to shoulder on their own behalf.

In short, small business needs H.R. 1022 so that Federal agencies will be compelled to develop cost-effective regulations that will allow small businesses to both comply and remain economically viable.

THE REPUBLICAN CONTRACT WITH AMERICA IS ALIVE AND WELL

(Mr. DREIER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, wishful thinking is all there is to the statements that were made by the minority leader and the minority whip, wishful thinking based on the New York Times poll that came out this morning which had people raising some understandable concerns about the Contract With America. The reason for that is that it has not been understood appropriately.

Is there really a desire on the part of Republican Members of this House to ensure that young children are not able to gain lunches at school? Absolutely not. We believe that it can be done better.

The arrogance which is regularly shown by Members of the minority party in this House that only those of us here in Washington, DC, are in a position to make that decision is I believe reprehensible. The people who elected us also elected Governors, State legislators, city council members and school board members, and we believe that by eliminating this massive bureaucracy here which oversees the School Lunch Program we can better address those needs.

The Contract With America is alive and well and has the support of the American people; 80 percent of them support our balanced budget amendment which we hope will pass in the other body later today.

STAND UP FOR THE FREEDOM THE FLAG STANDS FOR

(Mr. SKAGGS asked and was given permission to address the House for 1 minute and to revise an extend his remarks.)

Mr. SKAGGS. Mr. Speaker, today several Members announced the introduction of an amendment to the Bill of Rights. While its purpose, to protect and encourage respect for the flag, is something we can all endorse, it means, a Government mandate, would do tragic violence to one of our most cherished freedoms: the first amendment guarantee of free speech.

The flag of our country stands for values and ideals that are enormously important and it is a symbol that we all cherish.

One of the things the flag stands for is a people and a government strong enough to tolerate diversity and to make room even for unpopular views. That is what the Bill of Rights and the first amendment is all about.

Respect for the flag does and will always flow from our patriotism, our love of country, but it is time again for us to stand up for what the flag stands for, the freedoms that we cherish in this land.

REPUBLICANS TRUST LOCAL LEADERS TO MAKE DECISIONS

(Mr. LINDER asked and was given permission to address the House for 1 minute.)

Mr. LINDER. Mr. Speaker, Georgia's Governor Zell Miller favors the Republican school lunch plan. Nineteen of the Nation's governors want the money and the flexibility to feed the children of their State.

It does not take a straight A student to conclude that if we do not feed the Federal bureaucrats we can feed many more children.

Republicans trust local leaders to make better spending decisions than the Federal Government. The creativity of the Governors, State legislatures and parents will be critical to our block grant programs. They will decide where their money is spent. Imagine that. Individuals and localities, not the Federal Government, will decide how to spend their own money. That is what the November revolution was all about. This is the kind of change that we promised and it truly frightens the pencil-pushers in Washington. Money is power, and the Republicans aim to return that money and power to the States and the people.

Governor Miller—a Democrat—said it best, "Give us the money. We can use it more effectively and efficiently than any Federal bureaucrat."

EXPLAINING THE SCHOOL LUNCH PROGRAM TO CHILDREN

(Ms. SLAUGHTER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, in light of recent committee action I cannot help but be struck by the irony that next week is National School Breakfast Week. I cannot help wonder what I am saying today to students at Barnard School in Greece, NY, when I go to their breakfast and say what I heard this morning was the Republican contract said that if you give school lunches and school breakfasts it helps to break up American families.

What am I going to say to a group of homeless students tomorrow, students who would not be in school today if the Congress had not provided for their education? Do I explain to them that Congress no longer believes that they are worthy of our support?

Should I say to the school children in the city of Rochester, NY, where over 35,000 students are eligible for free or reduced-priced lunches that they need a more effective lobby? Should I say to the homeless students that perhaps if they were to tie their needs to that of the agricultural industry, they could expect their program to be preserved?

Mr. Speaker, we all love to talk about how our children are our future, but with the recent actions of this body, our children must be wondering how they are supposed to be prepared for it.

SCARE TACTICS

(Mr. CUNNINGHAM asked and was given permission to address the House for 1 minute.)

Mr. CUNNINGHAM. Mr. Speaker, I am tired of the scare tactics the Democrats are using. I legislated and helped write the school nutrition block grants. We had Governors that came before us and the welfare system has failed. I took and separated the school breakfast and school lunch program out of the welfare grants with our contract. I also separated Women, Infants and Children and increased them by 4½ percent, increased them a billion and one-half dollars, yet the Democrats are saying we cut the program. What we did is limit the growth to 4½ percent from 5.2 percent. We did not cut, we increased it a billion and one-half dollars.

What we did cut on this side of the aisle is big Government bureaucracy rules and regulations and made it cheaper to support those programs, and what they do not want to happen is to lose their little fiefdoms. That is what they are upset about. We support the children's nutrition program, and separated and increased the program. Even 80 percent of the money that goes to WIC is more than under the old plan.

□ 1130

MANY AMERICANS DUBIOUS ABOUT THE CONTRACT

(Ms. JACKSON-LEE asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE. Mr. Speaker, many Americans are dubious about this contract on America, but I tell you one thing, they are not doubtful about their children. They know what they want for their children, education and an opportunity to learn and, yes, they want school breakfasts and school lunches.

Mr. Speaker, I rise to share the great concern of many of my constituents who have made it clear to me they want me to fight to protect America's children from the unprincipled and draconian budget cuts proposed by the Republican majority.

Texas will lose at least $1 billion through these cuts. While planning tax cuts and their sacred other cuts which will cause deficits to soar, my colleagues from the other side of the aisle have decided to declare war on America's children.

Mr. Speaker, included with various assaults on child nutrition contained in title V of H.R. 4 is a proposal to eliminate competitive bidding on infant formula purchases under existing programs. According to the Department of Agriculture, competitive bidding saved the States $1 billion.

Let me say, Mr. Speaker, that we must concern ourselves with all of America's children. Feed the children. Let us not feed our egos.

HONORING OUR CONTRACT WITH AMERICA

(Mr. HOKE asked and was given permission to address the House for 1 minute.)

Mr. HOKE. Mr. Speaker, day after day after day they come to the well of the House, the four horsemen of the liberal apocalypse: demagogery, distortion, obstruction, and hypocrisy.

The doomsday prophets of the lost battalion of the left, with chilling contempt and complete disregard for the will and wisdom of the American people, they ignore the call for change that sounded across this Nation last November. The question becomes: How long will they remain dead to the urgent pleas for a new direction and blind to the overwhelming evidence against the failed liberal agenda of the welfare state? How long will they pay headlong allegiance to a philosophy of unlimited government and limited personal freedom, more spending, higher deficits, and more bureaucratic regulation of our lives, our economy, our future? How long will they go on trivializing and reducing the national debate to its lowest common denominator? How long will they persist with the politics of fear and with scare tactics calculated to incite class warfare and divide Americans one against another?

It is time to end the futile mission of the lost battalion of the left and honor our Contract With America.

FEDERAL FOOD ASSISTANCE

(Mrs. CLAYTON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CLAYTON. Mr. Speaker, for more than 50 years this Nation has had a commitment to its children. In less than 50 days some have moved to abandon that commitment, and by doing so, to abandon our children.

This Nation is strong not because of its military might or its technology. This Nation is strong because of its compassion. We care about those among us who are weak; the young, the old, the poor, the frail, and the disabled.

If our citizens are weak, we are weak as a nation.

Last year we spent just $26 per American taxpayer for AFDC programs. Child nutrition programs represented just one-half of 1 percent of the total Federal budget outlay of 1994. The average food stamp benefit is served for 75 cents per meal, just 75 cents.

Children are not driving up our deficit. Senior citizens are not the cause of our economic woes. Programs for the poor do not represent pork.

Indeed, confronting hunger in America is a serious matter, not a partisan matter. It is a moral matter. It is irresponsible to put children's and our senior citizens' health at risk.

THE FOLKS AT HOME DO A BETTER JOB THAN THE FEDERAL GOVERNMENT

(Mrs. CUBIN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CUBIN. Mr. Speaker, I want everyone to understand, and I want them to understand clearly, spending for the school meal programs will actually increase next year by at least 4 percent.

In addition, cutting an entire layer of Washington bureaucracy and limiting administrative costs of these programs by 2 percent will give more money to be spent on food programs.

Listen to this, the Republican proposal spends more money on the school lunch program and the school breakfast programs.

Now, let us talk about who really cares here. There are 535 people in this organization in Washington here who make decisions for the whole country. There are three people who really care about the people in Wyoming, and the number of delegates that you have in your States that really care or know you. There are thousands of people in the State of Wyoming who care about feeding children, who care about our future, who care about our seniors, and those folks at home are responsive, and they will do a better job feeding our children than the Federal Government will.

CONTRACT OUT OF STEP WITH THE AMERICAN PEOPLE

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO. Mr. Speaker, no matter how many of my colleagues on the other side of the aisle want to get up and tell us that what they did last week is untrue, they are, in fact, cutting the child nutrition programs. They are cutting the breakfast program. They are cutting the school lunch programs. Do not let them get away with it.

Mr. Speaker, as the American people learn more about the uncaring and extreme agenda of the Gingrich revolution, they are realizing that the Contract With America is not worth the laminated paper it is written on.

This New York Times poll released today confirms what Democrats have been saying—that we need to focus on crime, jobs, and health care. Those are the core challenges of our time.

But, instead of fighting crime by taking guns off our streets, the Gingrich revolution promises to overturn the assault weapons ban.

Instead of focusing on job creation, the Gingrich revolution promises to cut programs like the Summer Youth Program that creates public-private partnerships that put kids to work during the summer.

Instead of focusing on health care reform, the Gingrich revolution has produced legislation that will decimate the Medicare Program, hurt seniors, and shut down hospitals.

Contrary to what they want to say, Gingrich Republicans may walk in lockstep toward their 100 days, they are clearly out of step with the American people.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The PRESIDING OFFICER (Mr. ZELIFF). The Chair would like to remind our colleagues not to interrupt or interfere with other Members' speeches.

REPUBLICAN MAJORITY OUT OF THE MAINSTREAM

(Mrs. LOWEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. LOWEY. Mr. Speaker, today's New York Times poll demonstrates that the new right-wing Republican majority is thoroughly out of the mainstream and completely out of touch.

On issue after issue the American people overwhelmingly reject the extremist proposals being offered by the right-wing Republicans.

Just look at the Republican agenda: They refused to protect Social Security from the budget ax, they gutted legislation to put 100,000 new police on the beat, they promise to cut student loans, and they slashed school lunches for hungry children.

To middle-class parents struggling to send their children to college the Republicans say: Tough luck. They tell 7-year-old children who cannot afford a school lunch: Go hungry. To seniors worried about Social Security the Republicans say: Take our word for it—the check's in the mail.

Mr. Speaker, Democrats know that the American people want sensible change—not a radical right-wing revolution. It is time for the Republican reign of terror to end.

THE BRADY ANNIVERSARY

(Mr. SCHUMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHUMER. Mr. Speaker, I rise proudly today to celebrate the Brady law.

Unlike so much of the ideological silliness that is being rammed through this House to meet the new majority's train schedule, the Brady law was carefully weighed in the legislative balance. The Brady law works.

The Brady law is saving lives.

Because of the Brady law, men, women, and children all over America are living today. These are living, breathing Americans who—without question—would have been murdered by handguns if the Brady law did not exist.

Before the Brady law, convicted felons could walk into gun stores all over America, slap down their money, and walk out with a handgun. Those guns killed thousands of innocent people.

The Brady law stopped that madness. In 1 year alone it stopped at least 15,000 illegal gun sales, and probably as many as 40,000.

I am proud I sponsored this commonsense life-saver. And I warn the NRA and its allies who want to repeal Brady and put guns back into the hands of convicted felons.

Get ready for the fight of your life.

Because the American people demanded the Brady law. The American people want the Brady law to keep saving lives.

The American people will fight to keep it.

SAVE THE SCHOOL LUNCH PROGRAM

(Mr. GENE GREEN of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GENE GREEN of Texas. Mr. Speaker, obviously I am not going to talk about the Brady bill, being from Texas.

But let me talk about school lunch programs and the importance of making sure that we save that program.

In the Houston Independent School District next year we would lose a half-million dollars for the school lunch and breakfast program. In the State of Texas, we would lose $261 million in a 4-percent cut. The first round of cuts included the school breakfast and lunch programs. The second round of cuts last week from the Committee on Appropriations included funding for safe and drug-free schools.

I think this is a war on schools and a war on education and a war on children, and I would hope that we would then look at this Contract With America and see whether providing increased funding, including $11 million for two new airplanes the Army did not request, $20 million for a new runway for a base that is on the Base Closure Commission, $1 million for a bike trail in North Miami Beach, I think we see the priorities have changed.

We are taking money away from breakfast and lunch programs and providing it in this new Contract on America.

PROVIDING VFW MEMBERSHIP ELIGIBILITY TO VETERANS WHO SERVED IN SOUTH KOREA

Mr. HYDE. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 257) to amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. MONTGOMERY. Mr. Speaker, reserving the right to object, and I shall not object at a later time, I yield to the gentleman from Illinois [Mr. HYDE], the chairman of the Committee on the Judiciary, for an explanation of the bill.

Mr. HYDE. Mr. Speaker, this is genuinely noncontroversial legislation. S. 257 would amend the Federal charter of incorporation granted by Congress to the Veterans of Foreign Wars in 1936. Specifically, this legislation would amend the eligibility requirements for membership in the VFW, so as to include those servicemen and servicewomen who served "honorably on the Korean peninsula or in its territorial waters for not less than 30 consecutive days, or a total of 60 days, after June 30, 1949." This would recognize the heroic service and sacrifice of the American troops who have served in Korea, including those stationed in the demilitarized zone between North and South Korea.

This measure has already passed the other body on February 10, 1995. The principal sponsors of the counterpart House bill (H.R. 623) are the gentleman from Arizona [Mr. STUMP], the distinguished chairman of the Veterans' Affairs Committee; the gentleman from New York [Mr. SOLOMON], the distinguished chairman of the Rules Committee; and the gentleman from Mississippi [Mr. MONTGOMERY], the distinguished former chairman of the Veterans' Affairs Committee. All of these colleagues have been instrumental in moving this legislation forward.

Mr. MONTGOMERY. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Arizona [Mr. STUMP], the distinguished chairman of the Committee on Veterans' Affairs.

Mr. STUMP. Mr. Speaker, I rise in strong support of S. 257, a bill to amend the congressional charter of the Veterans of Foreign Wars. Recently, I introduced identical legislation in the House, H.R. 623, along with my good friends, SONNY MONTGOMERY and JERRY SOLOMON.

This legislation would allow virtually all veterans who have served in Korea to be eligible for VFW membership. We are all familiar with the extremely dangerous nature of duty along the DMZ and the constant threat of war in Korea. Clearly, those veterans of Korean service after June 30, 1949, who served honorably for not less than 30 days or a total of 60 days, should be able to belong to the VFW.

But under the VFW's current charter, only veterans who received an expeditionary badge are eligible to belong to the VFW. Many veterans who served honorably in Korea cannot belong to the VFW because they did not receive the required expeditionary badge due to restrictive DOD eligibility criteria. The VFW's initiative to include these veterans of Korean service among its membership is most commendable.

Mr. Speaker, today I mostly want to take time to thank the distinguished chairman of the Judiciary Committee, HENRY HYDE, and his staff for their expeditious consideration of this bill.

The Judiciary Committee has been working extremely long hours for several weeks. I sincerely appreciate their taking the additional time to consider this matter of great importance to the VFW.

Mr. MONTGOMERY. Mr. Speaker, further reserving the right to object, I rise in support of this measure and commend the gentleman from Illinois [Mr. HYDE] and the gentleman from Michigan [Mr. CONYERS] for expediting the vote on this measure.

As they are well aware, I joined the gentleman from Arizona [Mr. STUMP] and the gentleman from New York [Mr. SOLOMON] in sponsoring this bill which is now before us.

Mr. Speaker, the Veterans of Foreign Wars is one of the most highly regarded of the many veterans' service organizations that exist today. The VFW is a volunteer organization, and this bill would simply make more veterans who served overseas in Korea eligible to join the organization.

Mr. Speaker, with that brief statement, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 257

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act of May 28, 1936 (36 U.S.C. 115), is amended to read as follows:

"SEC. 5. A person may not be a member of the corporation created by this Act unless that person—

"(1) served honorably as a member of the Armed Forces of the United States in a foreign war, insurrection, or expedition, which service has been recognized as campaign-medal service and is governed by the authorization of the award of a campaign badge by the Government of the United States; or

"(2) while a member of the Armed Forces of the United States, served honorably on the Korean peninsula or in its territorial waters for not less than 30 consecutive days, or a total of 60 days, after June 30, 1949."

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RISK ASSESSMENT AND COST-BENEFIT ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 96 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1022.

□ 1145

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1022) to provide regulatory reform and to focus national economic resources on the greatest risks to human health, safety, and the environment through scientifically objective and unbiased risk assessments and through the consideration of costs and benefits in major rules, and for other purposes, with Mr. HASTINGS of Washington in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Monday, February 27, 1995, the amendment offered by the gentleman from Idaho [Mr. CRAPO] had been disposed of and the bill was open for amendment at any point.

Six hours and fifty-six minutes remain for consideration of amendments under the 5-minute rule.

Are there further amendments to the bill?

AMENDMENT OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TRAFICANT: At the end of section 106 (page 18, line 25), add after the period the following:

For the purposes of this section, the term "non-United States-based entity" means—

(1) any foreign government and its agencies;

(2) the United Nations or any of its subsidiary organizations;

(3) any other international governmental body or international standards-making organization; or

(4) any other organization or private entity without a place of business located in the United States or its territories.

Mr. TRAFICANT (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. TRAFICANT. Mr. Chairman, this is a compromise version of my amendment that fits in with the intent of the committee. I agree with the Chair that we must identify what in fact a non-United States-based entity is. I believe that that definition should be in the bill itself as we did with the gentleman from Idaho, Mr. CRAPO's, piece of legislation.

So, with that, what I am saying is a non-United States-based entity is any foreign nation or government and its agencies, United Nations or any of its subsidiary organizations, other international governmental bodies or standards-making organizations or any other organization or private entity without a place of business located in the United States or its territories.

That, basically, I think, captures the intent of the committee and defines the parameters that are safe enough for our country and for the world to understand.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the distinguished gentleman from Pennsylvania [Mr. WALKER], chairman of the committee.

Mr. WALKER. I thank the gentleman for yielding.

Mr. Chairman, the gentleman has in fact provided, I think, a very useful clarifying amendment. The amendment does track language that was in the report in a manner similar to what the gentleman from Idaho [Mr. CRAPO] presented last evening on emergencies.

I think the amendment offered by the gentleman from Ohio [Mr. TRAFICANT] is very helpful. I congratulate the gentleman for his vigor in pursuing this issue, he pursued it in committee. I think he has come up with language which is very helpful, and we are prepared to accept the gentleman's amendment.

Mr. TRAFICANT. I thank the gentleman from Pennsylvania and his staff for the assistance we have received on their side of the aisle.

Mr. BILIRAKIS. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the distinguished gentleman from Florida [Mr. BILIRAKIS].

Mr. BILIRAKIS. I thank the gentleman for yielding to me.

Mr. Chairman, on behalf of the Committee on Commerce, the amendment is accepted. I too want to commend the gentleman from Ohio for his wisdom and diligence, really. It takes some diligence sometimes because there is no question that we were not able to afford as much time to this legislation as we ordinarily would like. Without the gentleman's amendment, who knows what the future might bode in terms of the definition of what was meant by the intent of the legislators.

So I commend the gentleman and thank him for his contribution.

Mr. TRAFICANT. I thank the gentleman, and also the fact his discussions on the World Health Organization and some of those other bodies makes an awful lot of sense.

Mr. Chairman, I urge support of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. TRAFICANT].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. OXLEY

Mr. OXLEY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. OXLEY: Page 37, after line 2, insert:

(b) STATE, LOCAL, AND TRIBAL PRIORITIES.—In identifying national priorities, the President shall consider priorities developed and submitted by State, local, and tribal governments.

Page 37, line 12, after "report" insert "and priorities developed and submitted by State, local, and tribal governments.".

Mr. OXLEY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. OXLEY. Mr. Chairman, this would merely add to the priority-setting provision in title VI of the bill to require the President to consider public health priorities developed by State and local governments.

The National Governors' Association recommended this amendment to me after it reviewed the bill.

It gets the priority-setting process closer to where the priorities really are, at the State and local levels.

This is noncontroversial amendment that I think improves the bill and is supported by the State governments.

In support of my amendment, I would point out some language that exists currently in the bill in section 17, where we talk about guidelines in consultation with State and local governments, in section 109, study participants may include people from State and local governments, and then in section 202, no final rule shall be promulgated unless the incremental risk reduction would be likely to jeopardize the incremental costs incurred by State and local governments.

I think, Mr. Chairman, you can see from the tenor of the language already in the bill that the amendment fits very well into the goals of the legislation where we take into consideration State and local governments.

As I indicated, the National Governors' Association asked me to offer the amendment on their behalf, which I have done.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman has offered a very worthwhile amendment, it is a good addition to the priority section and will ensure Federal officials are not operating in a vacuum.

Mr. Chairman, I am prepared to accept the amendment.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from Indiana [Mr. ROEMER].

Mr. ROEMER. I thank the gentleman for yielding to me

Mr. Chairman, we have viewed this amendment on our side, and we see that it makes some valuable contributions to the legislation, and we are happy to accept it. We note the good contributions from my friend, the gentleman from Ohio [Mr. OXLEY], with the President considering the priorities developed at the State and local levels.

Mr. Chairman, we accept the amendment.

Mr. OXLEY. I thank the gentleman.

Mr. CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. OXLEY].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. ROEMER

Mr. ROEMER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ROEMER: Strike section 401 (page 34, lines 2 through 19) and insert the following:

SEC. 401. JUDICIAL REVIEW.

Nothing in this Act creates any right to judicial or administrative review, nor creates any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. If an agency action is subject to judicial or administrative review under any other provision of law, the adequacy of any certification or other document prepared pursuant to this Act, and any alleged failure to comply with this Act, may not be used as grounds for affecting on invalidating such agency action, but statements and information prepared pursuant to this title which are otherwise part of the record may be considered as part of the record for the judicial or administrative review conducted under such other provision of law.

Strike section 202(b)(2) (page 29, line 24 through page 30, line 6) relating to substantial evidence and strike "(1) IN GENERAL.—" in section 202(b) (page 29, line 18).

Mr. ROEMER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. ROEMER. Mr. Chairman, I offer this amendment on behalf of myself and the gentleman from New York [Mr. BOEHLERT] as a bipartisan amendment to provide commonsense legal reform.

I rise as someone who has been a strong supporter of risk assessment, somebody who believes that, with diminishing resources at the Federal level, that we need to apply those diminished resources, monetary resources, in the most commonsense way possible to promote new public policies, especially as they relate to the environment and to other rulemaking procedures through our Federal agencies.

We are at a time, Mr. Chairman, where we do not have the ability nor the resources to go about throwing money at all kinds of problems, whether it be attaining clean air or clean water, and where we have attained 95 percent clean air or clean water and then mandating that we go ahead and clean up the remaining 2, 3, 4 percent and finding that that did not have a substantial risk to the population and that the money involved in cleaning that air or water would have been a substantial waste of taxpayers' money.

That simply is what we are trying to do in passing risk assessment cost-benefit analysis. It provides some common sense to rulemaking and to public policy-making at the Federal level.

Mr. Chairman, I strongly support this amendment.

Mr. Chairman, I strongly supported this legislation as a member of the majority last year when we had to fight the rules put forward by our own party that were considering elevating the EPA, and many of us made the argument if you are going to elevate EPA and give them more authority and more money, let us make sure they apply risk assessment and cost-benefit analysis procedures. We fought against rules proposed by our side.

So I am a very strong supporter of this legislation. However, the judicial review section of this bill opens up the legal process to all new forms of litigation. Just as we were arguing, Mr. Chairman, that because you can regulate does not mean it makes common sense to regulate, we apply the same standard with the Roemer-Boehlert amendment to legal reform, that because you can sue does not mean you should go forward and sue.

This bill opens up judicial review to a host of new rulemaking processes, not just at the end of the rulemaking, where we would like to keep it and maintain it, but it allows you several bites out of the apple now, not just one bite of litigation at the end but several bites during the rulemaking process.

This will hurt businesses, it will hurt environmental groups, it will cost more money, and it runs counter to the very kinds of things we are trying to do in this bill by using common sense.

If we are going to use common sense in rulemaking and limit regulations, let us use common sense in legal reform.

Now, if you love the Superfund bill and you think that makes consultants and the lobbyists rich, you are going to love this part of judicial review. This could be called the Full Employment Bill for Lawyers and Lobbyists, if this provision on judicial review is maintained.

Let me explain in two areas why I think this should be changed and would be changed by the Roemer-Boehlert bipartisan amendment.

First of all, the new standard established under this bill is substantial evidence of compliance. Now, I am not a lawyer, but merely reading those words in the bill, "substantial evidence," on pages 29 and 30, shows you have a new threshold and criterion to establish. Right now, we have the threshold of it simply being not arbitrary and capricious. That is what the court would rule on, not arbitrary and capricious.

Now, when you set this new standard of substantial evidence of compliance and open this up throughout the rulemaking process, we have the courts then taking over in science, in rulemaking, in regulation, delaying this process all throughout the course of litigation.

The CHAIRMAN. The time of the gentleman from Indiana [Mr. ROEMER] has expired.

(By unanimous consent, Mr. ROEMER was allowed to proceed for 2 additional minutes.)

Mr. ROEMER. This drives up costs, diverts scarce resources that we are trying to maintain with the sensible cost-benefit analysis, and it builds in hosts of delays that could in fact hurt businesses.

Let me give you my second example. Not only is there a new higher standard that will allow all kinds of litigation, but let us say you are a business and you are applying through the Food and Drug Administration for a new pharmaceutical patent, and you are 2 years ahead of your competitor. Instead of waiting for the Food and Drug Administration to promulgate at the end their final rule, which would now be under the current law under judicial review, under this bill's judicial review, a competitor of that business, a competitor could delay the Food and Drug Administration from considering that business's application, delay this process, and hurt what was a natural advantage established by the private sector in developing that patent; it would delay them unfairly, catch up with them through the delay of 2 years and really use judicial review in a sense that we do not want to see it utilized.

So, Mr. Chairman, let me conclude by saying this is a bipartisan amendment. This received Republican votes in committee. The issue is common sense to the real reform process, not just as I have supported in the past, common sense on effectiveness and risk assessment; and finally, it uses the standard of not arbitrary and capricious, which is a much better standard than substantial evidence of compliance which this bill would establish.

Do not create a new cottage industry of lawyers in this town. Please support the bipartisan amendment offered by myself and the gentleman from New York [Mr. BOEHLERT].

Mr. BOEHLERT. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, today's debate on judicial review is really a debate about Congress abrogating its responsibilities to the courts and, in so doing creating what can only be characterized, as my coauthor of this amendment has described, a full employment opportunity for lawyers.

As we did with such litigation nightmares like Superfund, we are creating potential for litigation that will choke our Nation's courtrooms and cost the American taxpayers and the Federal Government millions of dollars.

□ 1200

The Congressional Budget Office has estimated that the implementation of this legislation will cost in the neighborhood of $250 million. By keeping the current judicial review language that is found in H.R. 1022 in place, our society will likely spend far more than this on unnecessary litigation. To date billions of dollars have been spent on Superfund litigation, more than has actually been spent on cleaning up Superfund sites. We do not want to duplicate that.

If we do not adopt the Roemer-Boehlert amendment, we will end up spending more of the taxpayers' dollars and industry's resources on litigation than we are spending on doing risk assessments—once again, shades of Superfund. And, incidentally, who is going to pick up the tab? It is going to be the consumer who will pay the ultimate price.

Under current law the Administrative Procedures Act provides the regulated community with a clear and often-used tool for seeking relief from poorly crafted regulations.

If an agency has overstepped its bounds in writing regulations, this Congress through oversight committees and the control of every nickel that an agency receives has at its fingertips the ability to ensure that agencies promulgate reasonable regulations. But through H.R. 1022 we are saying that we cannot control, or will not make the effort to control, Federal agencies that are disregarding congressional intent. We are failing to do our job, so we are going to pass the burden of being vigilant on to the courts and the American people. I do not think that is the appropriate way to proceed.

Such an approach will clog Federal courtrooms, costing taxpayers millions of dollars and delaying actions on other activities that are of real importance to the safety of the American people. H.R. 1022 would create over 50 new specific procedures that will be reviewable by the courts.

This legislation was introduced to reduce burdens and relieve gridlock. We certainly want to reduce burdens and relieve gridlock, but the judicial review provisions here fly in the face of these very worthy goals.

The Roemer-Boehlert amendment, while maintaining current judicial review procedures for final agency actions, holds that risk assessments guidelines under this act are not reviewable. Without this clarification, H.R. 1022 can be manipulated by those with a vested interest in a particular regulatory proposal to impede the regulatory process.

Regulations, many of which are critical to the health and safety of every American, could be delayed for years in a quagmire of endless litigation. Judges should be engaged in making legal decisions and scientists should be making decisions on issues of science. A vote for the Roemer-Boehlert amendment preserves those roles and ensures that our courtrooms do not become a forum for regulatory delay.

The American people want timely, well-reasoned, cost-effective decisions on how regulations should be used. Dumping the burden of sorting out what regulations should go forward on the courts achieves none of these goals.

The need to prevent H.R. 1022 from generating mountains of frivolous litigation is an issue important to Members on both sides of the aisle, as evidenced by a "Dear Colleague" on this issue sent out by the gentleman from Louisiana [Mr. HAYES], myself, and 18 other distinguished Members of this body. This was a true bipartisan effort.

Mr. Chairman, a vote for the Roemer-Boehlert amendment is a vote to prevent the costly, unnecessary proliferation of litigation that the American people have expressed their unhappiness with.

Mr. Chairman, let me close by adding something here that I think is very important. We are always looking for legitimate case studies, examples that we can point to and say, "This is how it works." Let me share this with my colleagues.

Had H.R. 9 been in effect 25 years ago, it would have barred one of the most effective environmental health initiatives ever undertaken anywhere—the removal of lead from gasoline.

The CHAIRMAN. The time of the gentleman from New York [Mr. BOEHLERT] has expired.

(By unanimous consent, Mr. BOEHLERT was allowed to proceed for 2 additional minutes.)

Mr. BOEHLERT. Mr. Chairman, the phaseout of lead is widely accepted to have had tremendous benefits for our society, with children's average blood levels falling about 75 percent since the phaseout began in the mid-1970's. But substantial evidence of the relationship between lead and gasoline in our children's blood became available as a result of phaseout rules. It did not exist when the regulations were being developed. If the regulations had not been imposed, lead levels would not have fallen, creating a vicious circle of continued exposure and regulatory paralysis. In addition, the manufacturers of leaded gasoline additives could have delayed the regulation almost indefinitely by arguing that reducing lead exposure from other sources would have been more flexible.

Mr. Chairman, I am a strong supporter of risk assessment and the knowledge that it is an idea whose time has come. When we talk about billions of dollars being spent across this country for regulation, for the implementation of regulations, that is right, we do spend billions of dollars to implement regulations to guarantee the safety of our food supply, to make sure that the air we breathe is reasonably clear, and to make sure the water we drink is reasonably pure. We have had too many horror stories out there across America where things go wrong, and we do not want things to go wrong when we are dealing with the public's health and safety.

So I think we have a reasonable amendment here on the subject of judicial review and I urge my colleagues to give it the very serious consideration that it deserves.

Mr. Chairman, I might point out that in a bipartisan way, Republicans and Democrats alike have analyzed this, and there is a growing body of us on both sides of the aisle who think this amendment should go forward and that it would be a constructive addition to the bill.

Ms. HARMAN. Mr. Chairman, I move to strike the last word, and I rise in support of the Roemer-Boehlert amendment.

Mr. Chairman, I am proud to cosponsor this amendment and would identify precisely with the comments of my colleague from New York, Mr. BOEHLERT. It feels very good to have a Member from the other side reach for some of us here who have been supporting much of the program of the contract but who feel that some of it needs some correction. In the area of judicial review I feel very strongly a correction is needed to this bill, and I would say that many of us who support risk assessment would be extremely comforted if this correction were made. It would make it much easier for us to support the legislation on final passage.

Mr. Chairman, I have been a lawyer for over 26 years, most of that time in private practice, and I know that H.R. 1022's judicial review provisions will quickly turn regulatory reform, which we all support, into a lawyer's paradise by providing for interim judicial review. And that is what we are talking about here, interim judicial review of risk assessment and cost-effective analyses. H.R. 1022 will allow any individual to cause regulatory gridlock. This is any individual, as I say.

While one of the bill's goals is to improve the science underlying risk assessment, it is ironic that ultimately judges, not scientists, as the last speaker has pointed out, will become the final arbiters of cutting-edge risk-assessment science.

Some Members argue that H.R. 1022's judicial review provisions are necessary to guarantee enforcement of the bill. Mr. Chairman, nothing could be further from the truth. We in Congress, a Republican-controlled Congress, continue to have oversight of Federal regulatory agencies. This Member is not ready to abdicate that responsibility.

While the Roemer-Boehlert amendment would prohibit interim judicial challenges, it does nothing to alter the Administrative Procedures Act, which provides for judicial review of final agency actions.

Let me point out that legal review will still be possible at the right time in the process, even with the passage of the Roemer-Boehlert amendment. Under such review, risk assessment and cost-benefit analyses will continue to be part of the record and will, therefore, be subject to court scrutiny.

Mr. Chairman, without the Roemer-Boehlert amendment, H.R. 1022 will soon become, as the gentleman from Indiana [Mr. ROEMER] has said, the "Full Employment for Lawyers and Lobbyists Act," and ultimately the taxpayers will be left footing the legal bills.

Mr. Chairman, let us adopt this bipartisan, good-spirited, and very sensible course correction to a risk analysis bill that many of us would like to support.

Mr. OXLEY. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, let me first say that I have great respect for the two gentlemen offering the amendment, but I have to say that, based on the debate we had last night, this is more of the same. This bill, not the amendment but the bill, is about accountability. It is about making the regulators accountable to somebody.

The reason we are here today is because the regulators over these last 40 years have been essentially unanswerable to anybody when these regulations come pouring out of the Federal Register. So the bill is about trying to get some accountability in the process, and I fear, and I know, that this amendment basically strips away that accountability and allows those regulators to run roughshod over businesses and industry in this country that are trying to create jobs and trying to create products.

My friend, the gentleman from Indiana, I think, is in error and totally misrepresents or misreads the bill or the provisions in the bill when he says that we are going to provide more than one bite of the apple.

Let me refer the gentleman to the language in title IV under Judicial Review, the section he seeks to amend. I quote as follows from line 7:

"The court with jurisdiction to review final agency action under the statute granting the agency authority to act shall have jurisdiction to review.* * *" Then it goes on in line 13 again to talk about final agency action, and that indeed is the target here that we are trying to emphasize.

This is really a business-as-usual amendment for the bureaucrats, and I am sure that most of the Members have probably gotten some entreaties from the bureaucrats asking them to support this amendment.

By the way, Mr. Chairman, this amendment was offered by the gentleman from Illinois [Mr. RUSH] in our committee. It was defeated on a bipartisan vote.

I think this amendment, if it were to be adopted, would essentially gut this bill. It would make it unenforceable and would provide no particular accountability. There is no hammer for some kind of regulation unless we have judicial review. Judicial review is really at the heart of what we are talking about.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I am pleased to yield to my friend, the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, the gentleman, I think, misrepresents both the intent and the effect of this amendment. Certainly if the Roemer-Boehlert amendment was adopted, judicial review would be alive and well. It just is not pervasive through the process.

What we are saying is that we still have OMB's ability for oversight, we have congressional oversight, and we have the Administrative Procedures Act. All this is still intact. We just do not want to see the expansion of new thresholds put in, and the ability to litigate throughout the rulemaking process.

Mr. OXLEY. Mr. Chairman, if I could take back my time, I guess essentially the gentleman says that he is satisfied with the status quo and what is going on in terms of what is happening out in the regulatory world. This bill is designed to limit and to get some common sense back in this regulatory process. If the gentleman would concede to me that he is willing to allow the existing regime to take place in all those statutes he has mentioned, I would say, fine, let us have an argument about that.

□ 1215

But do not try to essentially gut this particular bill and say we are going to rely on the existing statutes, when in fact those existing statutes, particularly the regulations that have emanated from them, have been a tragedy, have gone far beyond even the necessity for what the bill called for, the original bill called for, and in my estimation your amendment really does damage the bill.

Mr. ROEMER. If the gentleman will further yield, just as it would be a tragedy, as the gentleman from Ohio knows, to continue to let regulations tie up this country in terms of its scarce resources and its public policy debate, it is an equal travesty not to use common sense to reform the legal aspect here and to allow litigation to proliferate and explode.

That is what the bill will allow to happen. We are trying to prevent that. Let us use common sense both in limiting bureaucracy and regulation, and in applying common sense to legal reform.

Mr. OXLEY. Reclaiming my time, Mr. Chairman, I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding. The gentleman from Indiana has referred to common sense. Common sense tells you that using OMB for the last 20 years or so has been disastrous.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. OXLEY] has expired.

(By unanimous consent, Mr. OXLEY was allowed to proceed for 2 additional minutes.)

Mr. OXLEY. Mr. Chairman, I yield to the gentleman from Pennsylvania.

Mr. WALKER. Common sense will tell you using OMB for the last 20 years or so has not worked. Congressional oversight over the last 40 years has not worked. If we want to provide common-sense standards, look at what is happening. Common sense tells you the standards that the gentleman wants us to rely upon have not worked. We have ended up with a regulatory nightmare, and the gentleman wants to preserve that nightmare.

His admonition here just a moment ago is that those are what would be available to us if, in fact, his amendment passes. The fact is, even some of the standards under present law would not be available to us under the gentleman's amendment.

Mr. OXLEY. Mr. Chairman, reclaiming my time, the gentleman from Pennsylvania is absolutely right. This is a status quo amendment. If you are happy with the existing status quo as far as regulations are concerned, then you want to support this amendment. But let me read the language of the Roemer amendment: "Nothing in this act creates any right to judicial or administrative review, nor creates any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person."

Then it goes on to say, "If any agency action is subject to judicial or administrative review under any other provision of law, the adequacy of any certification or other document prepared pursuant to this Act, and any alleged failure to comply with this Act, may not be used as grounds for affecting or invalidating such agency action * * *."

It essentially means bureaucrats, keep on turning out those regulations, and we do not have any way if this amendment passes to have any accountability whatsoever. I think that is a travesty. We basically have rejected this argument last night in the Brown amendment, and I think that this is essentially part of the Brown substitute. It should be rejected just like the Brown substitute was last night, and I yield back the balance of my time.

Mr. MINGE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, there is really a deep problem with the legislation and the provision that we are considering at this point in time, and that is a question of judicial review. Historically, in this country the courts have vacillated between micromanaging administrative agencies in rare circumstances, and adopting an essentially hands-off approach. The standards for judicial review of rulemaking has essentially been one that grants very substantial deferences to the agency process. This is review of rulemaking as opposed to adjudicatory procedures within the agency.

The legislation that we are considering extends the requirements for rulemaking to include peer review, to include risk analysis, cost-benefit analysis. These are very far-reaching extensions. And the question that is before the body is if we have such far-reaching extensions, what is the role of judicial review in this context? Because essentially what we have now are three different documents that the court could review. First, it would have the rule itself and whatever agency explanation there is for the rule. Second, there would be the risk assessment. Third, there would be the peer review.

Now, assuming that all of these steps, all of these documents are necessary as a part of the process, the question is should we take this to its logical extreme and have the courts then comparing the rule with the risk analysis and with the peer review process, and the courts ultimately deciding how should that peer review process and the risk analysis be interpreted by the agency in the preparation of the final rule.

I submit that at this point we are taking historic action to begin with by extending the risk analysis and the peer review process to all agency rulemaking. To take this to the further point of having full and complete judicial review of how that risk assessment and peer review was conducted and how it was considered by the agency, would in my opinion result in the courts' micromanaging the administrative process.

Now, you may say this is desirable, because we feel the agencies have defaulted. I submit that that fails to recognize at least two critical considerations. First of all, most of the agency rulemaking that is so controversial in this country did not come full-blown from the heads of the agencies themselves. Instead, these rules can be traced back to acts of Congress which in amazing detail told the agencies what they were supposed to do. And if we only would look at what we did in Congress, we would better understand why the American public is so frustrated with what our administrative agencies have done.

Second, we fail to recognize that this tool of judicial review can be used and abused by every interest group in our society that is unhappy with the rule, both to challenge the rule on the merits and to delay its implementation. Litigation quite often is an exercise in delay. Litigation is quite often used by the loser, who decides that that group or he or she cannot win in the political process, so now they will resort to the courts.

Sometimes these groups are environmental, consumer, conservation and similar groups. Other times they are business groups. And if we provide full opportunity for any group that feels aggrieved by a rule to relitigate the rulemaking process in court, we are going to find that we have hamstrung effective decisionmaking in the executive branch of government.

Now, this may, indeed, be the goal of some Members of this body, but I know that in my visits with the business and financial community in my district, that they find that a very significant part of the rulemaking process is important for the well-being of their industry, and they want Government that works and works effectively and is fair, but they do not want Government that is ineffective and incompetent.

So I urge that this amendment be adopted, that we take a go-slow approach, and not take this to the opposite extreme where the pendulum will simply be returning in the other direction and we will be revisiting this only a regular basis.

Mr. GILCHREST. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment. The rigid discussion here is about who has the responsibility of overzealous regulators and who has defaulted on that responsibility, has it been the regulators or has it been Congress? Who has not taken the accountable, responsible position to follow the law through the regulatory process to see how it has impacted on business, on industry, on the private sector, on environmental regulations, on all of these things? Who has reneged on their responsibility?

I would tell you in this room today that it is the Congress that has reneged on the responsibility to follow through, to see where the regulations have gone too far.

Who should the regulators be responsible to then? Should they be responsible to the courts, or should they be responsible to us, Members of Congress? And I would tell you emphatically that the regulators who we appoint, who we give responsibility to, who we determine what their latitude is, ultimately the responsibility of the regulators is not the courts, it is the Congress.

Mr. Chairman, if there is an irony here in this bill, it is that at the same time that the House committees are considering legislation to deal with the real problem of excessive litigation in our society, we are about to pass a bill which is going to throw final decisions of resolving these problems in the courts. The defendant will be the Government, and the legal bills will be paid by the taxpayer.

I am not opposed to efforts to put cost-benefit analysis into the regulatory process. I am not opposed to that, and I may very well support this bill with some of the modifications, including this. But allowing parties to challenge final regulations on the benefit of cost-benefit is certainly not a step toward more efficient government.

Opponents of this amendment will argue that judicial review is the only way to force the agencies to implement risk assessment. I disagree. We, the Congress, through the oversight responsibilities of these regulatory agencies, are eminently capable of making the agencies do exactly what we want them to do, and it is our ultimate responsibility, we, Members of Congress, and not the courts.

I know the supporters of the bill included the amendment out of fear, and this is real fear and this is historical fear, this is the real thing, that the agencies would simply ignore the requirements of the bill, and I am sure that judicial review language is well-intentioned.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I just wanted to go back. I do not want the gentleman to get too far away from the point he made earlier. Are final agency rules available for judicial review now? Under existing law, when final rules are made, are they eligible for judicial review at the present time?

Mr. GILCHREST. The answer is yes, but it has not been done sufficiently enough so the idea that we should have judicial review in this context for cost-benefit analysis is appropriate.

Mr. WALKER. If the gentleman will yield further, I am confused. The gentleman says we are going to add a whole new wave of litigation. The fact is the exact standard in the bill, that final agency regulations and rules are in fact subject to judicial review is in fact the law right now. If we do not do it in this bill, that backtracks from where the law is right now. The gentleman appears to be looking to backtrack.

Mr. GILCHREST. Mr. Chairman, reclaiming my time, the judicial review section of this bill is in my judgment a much more onerous requirement that has not been in the law in the past.

Mr. WALKER. If the gentleman would yield further, could the gentleman tell me where this is more onerous than the present law is?

Mr. GILCHREST. Let me give an example of the practical effect of this provision as it now exists and has not existed in the past. This provision will provide parties who are opposed to regulatory actions with the means to delay or stop them, regardless of whether the agency complied with the bill. Anyone opposed to a regulation need merely challenge the propriety of the cost-benefit analysis to tie the regulation up in court, and every analysis would be subject to challenge.

There are 60 different ways that this challenge can be litigated. Just let me read some of the proposed challenges. Does risk assessment appropriately address the reasonable range of scientific uncertainties? If no single best estimate to risk is given, does risk assessment include an appropriate discussion of multiple estimates? If a risk assessment includes multiple estimates of risks, are the assumptions, inferences, and models associated with such multiple estimates equally plausible? There are 60 of these things.

Mr. Chairman, I would request the Members support the Roemer-Boehlert substitute.

Mr. BILIRAKIS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. The other side has made an awful lot of arguments in support of the amendment, trying to defeat the judicial review provisions of the bill. One of the arguments that was made was that it takes two bites from the apple.

I would like to read maybe pertinent sentences, if you will, of section 401, Judicial Review. "Compliance or noncompliance by a Federal agency with the requirements of this Act shall be reviewable pursuant to the statute granting the agency authority to act or, as applicable, that statute and the Administrative Procedure Act. The court with jurisdiction to review final agency action," underlined, "final agency action under the statute granting the agency authority to act shall have jurisdiction to review, as the same time, the agency's compliance with the requirements of this Act. When a significant risk assessment document or risk characterization document subject to title I is part of the administrative record in a final agency action," and then it goes on.

□ 1230

The point of the matter is that if we had underlined final agency action, maybe the point would have gotten across. There is not any attempt under this legislation to have more than one bite at the apple. It is the final agency action that is reviewable and only that.

I would go further here. It was said by my very close friend, my colleague, we came into the Congress together, we are very close friends, disagree on this issue, the gentleman from New York [Mr. BOEHLERT], he is my close friend, but anyhow basically he referred to the environmental revolution, I suppose, that has taken place over the last 20 years and how many of those good things would not have taken place were this type of language in effect at that point in time.

He used the illustration of the lead gasoline ban. In truth, a recent article published by the Harvard Center for Risk Analysis shows that risk assessment and cost-benefit analysis, the same procedures, the same procedures required in our bill were central to the EPA's lead gasoline ban.

I quote,

> EPA chose not to use the traditional methods of regulatory toxicology and instead employed modern methods of risk assessment in phasing out lead in gasoline.

The point I think is that this is considered to be such a terrible, radical way to go. In all of our hearings, in all of our markups, throughout all of our days of markups, the other side who opposed this legislation basically got up and said, well, we agree with risk analysis, with risk assessment, with cost-benefit analysis. The gentleman from Maryland just made the same comment. Well, if there is an agreement, then what is wrong with this bill?

I would suggest to Members that it is very possible that if we had this legislation in effect at that point in time, that quite a few, if not all of the environmental radical revolutions that took place over the years probably would have taken place in any case.

A point that I guess was not made as yet is that the gentleman's amendment would remove the substantial evidence test. Under the Administrative Procedures Act, final agency action as we know is only overturned when it is arbitrary and capricious. Of course, that is, I think most everyone would agree, very deferential to the agency because of the very high burden for people to bear to prove that an agency is acting in an arbitrary and capricious manner.

Of course. The legislation applies a substantial evidence test, which means that an agency must present substantial evidence that it complied with the act. I see nothing wrong with that. The bill substitutes a substantial evidence test for the arbitrary and capricious test so that the agencies must really demonstrate to a court that they are complying with the act's cost-benefit requirements.

Mr. Chairman, for all of those reasons I oppose the amendment.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. BILIRAKIS. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, just reading through the report, it certainly appears from the report language that such things as risk assessment guidelines, are they subject to judicial review under this new language?

Mr. BILIRAKIS. In terms of the final agency action, yes.

Mr. ROEMER. So that is new, that does expand the scope.

Mr. DOYLE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from Indiana [Mr. ROEMER] cosponsored by the gentleman from New York [Mr. BOEHLERT] and also cosponsored by myself and several other of us who serve on the Science Committee.

This amendment is necessary to ensure that the regulatory process does not become an eternal playground for lawyers. In asking agencies to use the tool of risk assessment, we are trying to ensure that regulation is based on sound science. As currently written, passage of this bill will allow any party to litigate agency actions before they have even been completed. Judicial review can be used to interfere in the scientific process and delay timely consideration of new medicines and other products.

Currently, the courts can review a final agency action on the basis of whether the action was arbitrary and capricious. In this law, we are requiring agencies to use over 50 new specific procedures in carrying out risk assessment and cost-benefit analysis. If an agency's action does not meet these new criteria, that error will be considered by the courts as part of their review of a final agency action.

I believe that our Nation needs to use risk assessment and cost-benefit analysis, but they are relatively new processes which will undoubtedly be refined with the passage of time. The inclusion in the bill of a National Peer Review Board and Office of Management and Budget review of risk assessment and cost-benefit analysis will provide adequate guidance and oversight to ensure that these tools are being properly utilized. The idea that lawyers and judges are somehow equipped to assess the quality of scientific procedures is almost humorous.

Without this amendment, we will permit any party to engage in dilatory tactics by going to court to force an agency to provide substantial evidence that it is complying with each criteria outlined in this bill. If we demand that an agency justify its action before it has completed that action, nothing will ever get accomplished. In order to move our economy forward with new medicines, chemicals, pesticides, and other products, we will have to assign an attorney to every Federal bureaucrat because everything we try to do to improve our economic well-being and our overall quality of life will be litigated to death before the process gets off the ground.

Under this amendment, judicial review will still exist, but it will occur at the end of the process. And as a gentleman from the Republican side pointed out during our consideration of this amendment in the Science Committee, this is the same arrangement that was agreed on for the unfunded mandates legislation. So if you supported the judicial review provisions of the unfunded mandates bill, you should be able to support this amendment.

I am not a scientist or a lawyer, but I can assure you that litigation is not an essential component of the scientific process. Let us keep the lawyers out of the laboratories and judges from gauging the quality of science. Let the professionals make scientific and technical determinations. Once their action is complete, there will still be plenty of opportunity for the lawyers to work their magic. Vote for this amendment and stop the insanity.

Mr. McINTOSH. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I believe that the judicial review provision of this bill is one of the key features in protecting the regulated community, average Americans, from the threat of over regulations and regulations that do not meet the test of good science and cost-benefit analysis.

The question has been raised about whether we will create a plethora of legal actions and increase the problem in the United States of too many lawsuits. The key difference here is that what this provision does is allow citizens to challenge the Government when they have not followed their own law and their own requirements. It is very different from a situation where we are creating lawsuits between citizens in the private sector.

Historically, if we look at two acts that had very broad general application, the NEPA Act and the Regulatory Flexibility Act, NEPA contained a judicial review provision which allowed members of the private sector to require agencies to do an environmental impact statement. Now, only when that was established as a matter of law did that law become effective. Government agencies had to determine what their actions would do to affect the environment. It has become a very successful act in terms of requiring Government to be responsive to environmental concerns.

The Regulatory Flexibility Act, however, did not contain a judicial review provision and for years now agencies have had routine boilerplate that says, yes, we have complied with the regulatory flexibility provisions that require us to give small business special consideration in reducing regulatory burdens.

The clear examples that these two show is that without judicial enforcement, without allowing citizens to be able to keep a check on their government agencies, provisions that they have to live by will be ignored at least in their intent, if not in fact.

So for that reason, I strongly support the judicial review provisions in this bill and would urge all of my colleagues to vote against the amendment.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment offered by my good friend, the gentleman from Indiana [Mr. ROEMER], and urge its defeat. The amendment and the bill have one thing in common. The amendment and the bill refer to the judicial review that is already available in the statutes that create the regulatory authority that is affected by this bill.

Currently the law permits judicial review of agency actions across a broad span of regulatory authority. That judicial review occurs at the final option of the agency. Nothing has changed in this bill in that regard.

There is still a judicial review provided by the current law for agency actions at the end when the agency makes a final determination.

The only difference between this amendment and the bill is where this amendment says that in that agency action judicial review no question can be raised regarding the adequacy of certification or other documents prepared pursuant to this act. And here is the most important and relevant part, and any alleged failure to comply with this act may not be used as grounds for affecting or invalidating the rule.

What this amendment says, in effect, is that you can have judicial review of the agency's action but the agency's failure to follow this law is not grounds in that judicial review for affecting or invalidating the rulemaking by the agency. In short, this amendment says it is OK for the agency to violate the law, not to follow risk assessment and cost-benefit analysis, to ignore the will of this Congress, the will of the people of this country expressed in its representative body, to ignore it completely and do what they have been doing for years and that is never do a proper risk assessment, cost-benefit analysis.

What purpose is there in passing such an amendment, if it is not to defeat the very purposes of the bill? If an agency never has to answer in court for its failure to follow the law in this country, what on earth are we here doing passing laws requiring agencies to follow the law? If we, in the same law we pass, say it is OK not to follow the law, what are we doing here? The bottom line is, if you believe in this law, if you believe that agencies ought to do relevant and important risk analysis, risk characterizations, and they do what all of us hope this Nation will begin to do, consider cost in the equation and look for the least-cost alternatives by which we regulate our society and in all these important areas, if you really believe in that principle, how can you possibly vote for an amendment that says in the judicial review of whether or not the statute has been followed, it does not matter whether the agency followed the statue, it will have no effect upon the judicial interpretation of the rulemaking by the agency?

If on the other hand you believe in this bill, you must defeat this amendment, because this amendment literally defeats the bill.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, I would just say to the gentleman from Louisiana, who I know is a strong supporter of this legislation, what the Roemer-Boehlert amendment concentrates on is the final action, the substance of what that agency finally promulgates as a rule, not all the little piddly procedures that go into making that rule that this bill opens up as possible action on judicial review. We are focused on the final action and the substance, not the procedure and the processes.

Mr. TAUZIN. Reclaiming my time, the gentleman's amendment does not just say do not look at the procedure. The gentleman's amendment says that the alleged failure to comply with this act, the alleged failure to conduct risk assessment, the alleged failure to do a cost-benefit analysis has nothing to do with the court's ability to say that this rulemaking is invalid.

☐ 1245

Mr. Chairman, the gentleman's amendment says it does not matter whether you did not even follow any procedure, whether you ignore this law completely, the rulemaking is still going to be valid because the judicial department cannot review the agency's failure to follow this act. That is what the gentleman's amendment does.

If it did only what the gentleman said, I might understand this amendment. It goes well beyond that. It says clearly "any alleged failure to comply with this act." What does a common, normal reading of that mean? It means if you did not follow the act, if you did not do risk assessment cost analysis at all, by any procedure, the alleged failure to follow this act does not make any difference. Therefore, the agency can ignore this law and go on its way, and no judicial review will ever happen.

Mr. Chairman, if we want that effect in this bill, just vote against the bill, do not ask us to pass this amendment.

Mr. BILBRAY. Mr. Chairman, I rise to strike the requisite number of words.

Mr. Chairman, I oppose this amendment. We have an amendment that is trying to say that we will not enforce the regulations, or not allow the citizens to enforce the process to be able to identify what is true risk, what is true benefit. I think one of the concerns I have is that if we applied this amendment to every environmental regulation and every environmental law in this country, I think both sides of the aisle would agree that it would gut the public health protection aspects of the laws of this Nation. I think that that is the intent of this amendment, is to gut this bill, not to protect it, not to enhance it.

Mr. Chairman, all I have to say is that those who stood in this House and spoke about the concerns about the lawyer full employment act, I sure hope to see them standing in line to support us as we get into tort reform. I think that is a problem. I agree with my colleagues that that is a major problem, one we must address, but this is not the source of the problem. That is going to be another day, another battle, another agenda.

The source of the problem here is that we need that dose of reality in our environmental and public health strategy to make sure we protect the public health. What this amendment will do is say that the public would not have the right to be able to draw on the facts of the process to come to conclusions; that the judicial system would not be able to consider the fact that flawed data causes flawed results.

Mr. Chairman, garbage in, garbage out. If the science that goes into making the conclusion is not sound, then the result is not going to be sound, and we have to look at the process as we get into it. I think the result is absolutely essential. I agree with my colleague that the result is what really matters.

However, to judge the result we have to look at the evidence as it was being developed. If we ignore good science in the development of a strategy, we are ignoring the public's health and we are ignoring good public strategy. Therefore, Mr. Chairman, I ask strongly that this amendment either be defeated or we have the guts to stand up and say "This is what we want to do across the board, we want to do this with all our environmental regulations, we want to eliminate judicial review and deny the public the ability to look at how bureaucrats come to these conclusions," but do not do it just with this bill. Have the guts to do it with all the bills that have been passed for the last 40 years through this House, because without that then we are picking up this alone.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. BILBRAY. I yield to the gentleman from Indiana.

Mr. ROEMER. I just want to say, Mr. Chairman, the gentleman is impugning that many of us are saying we want to gut this bill. Much before this gentleman entered this body, Members on this side were working to pass this legislation last year. We do not intend to gut this bill. We have been working hard in a bipartisan way to pass risk assessment.

Second, Mr. Chairman, the gentleman's comments are very interesting in that they admit that the gentleman wants evidence from the rulemaking process entered into judicial review. That is what we are saying should not happen. We are saying, look at the substance in the final rule, not all the evidence that goes in through the past 3 or 4 years in the rulemaking.

Last, I would just say to the gentleman that we are not eliminating judicial review. We still have OMB oversight, we have peer review, substantial peer review and sunshine. We have congressional oversight. We still have the Administrative Procedures Act.

All that will make sure that that process works. We are not eliminating judicial review.

Mr. BILBRAY. Reclaiming my time, Mr. Chairman, on the items that are being used to make the determination, the gentleman is. The trouble is when we eliminate that judicial review of the merits of the components to come to the conclusion, we are then denying all the facts to be on the table when these things are being considered.

I would just like to say to my colleague, I am not impugning his intention. I am pointing out the fault of his strategy when it comes down to this, that the fact is that we do have a judicial system that is part of the environmental strategies of this country. It has always been, right from the beginning.

Without that review you will then be saying that one group of environmental strategy will have judicial muscle throughout the entire process and one part from now on will not be allowed to flex that muscle, will not have access to that.

Mr. ROEMER. Mr. Chairman, will the gentleman further yield?

Mr. BILBRAY. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, is the gentleman then saying, in terms of evidence, did a certain agency read a scientific review article; were the laboratories in sufficient cleanliness or shape for this rule to be promulgated?

Are we really trying to open up this kind of minutiae for judicial review of the evidence put together in the final rulemaking? We are going to see an explosion of litigation.

The CHAIRMAN. The time of the gentleman from California [Mr. BILBRAY] has expired.

(By unanimous consent, Mr. BILBRAY was allowed to proceed for 1 additional minute.)

Mr. BILBRAY. Mr. Chairman, what we are saying is if and when those details are considered, they should be considered to see if that is minutiae that would have determined or could determine fact from fantasy.

If the gentleman is scared of judicial review looking at that fact or fantasy, then please understand that every other environmental law that we have on the books goes through the same process in the courts one way or the other. The trouble is it does not look at the cost-effectiveness, it just looks at how the process was followed going towards the execution of the law.

What has happened now is we are trying to add this reasonable clause in, that it is a mandate that Government not only try to do something, it tries to do it intelligently. That is all we are asking.

Mr. OLVER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support the Boehlert-Roemer amendment, and to assert in the strongest possible terms that this is not an attempt to gut the bill. It is not the intent to gut the bill.

Mr. Chairman, I think this issue is really very simple: Do we want more lawyers and more litigation at every state of the creation of Federal regulations, or do we want better science involved in our risk assessment program.

I am one of that half a handful of physical scientists among this membership, and I can tell the Members that scientists are really not meant to be exhibit A in a court battle as to what the precise level is at which a given chemical may cause cancer, chemical or any substance may cause cancer. Science is not capable of telling what that level is.

One of the purposes of this bill, I think, is to point out that there are uncertainties over what the exact risks of a given substance or activity may be. In fact, Dr. Graham, from the Harvard Center for Risk Analysis, while he was testifying in favor of this bill, nevertheless said, and I quote, "We are not able to validate or know for sure whether or not the prediction of the model in fact proved to be correct."

Even after the fact, we cannot know the right answer for a given cost-benefit analysis.

Mr. Chairman, with the bill without the amendment offered by the gentleman from Indiana [Mr. ROEMER] and the gentleman from New York [Mr. BOEHLERT] what we would have, on court battles on cost-benefit analysis and risk assessments, and we would have thousands of those court battles, both sides are going to be able to find legitimate scientists, perhaps armies of them, who are willing to contest the validity of a single cost-benefit analysis.

By encouraging the judicial review of every one of these cost-benefit analyses, this bill makes the court the final arbiter of disagreements within the scientific community, while the Roemer-Boehlert amendment brings a measure of sanity by saying, Yes, the courts will review the entire, the final, the whole record, but should not get into the minutiae of the scientific debates involved in the risk assessment and the cost-benefit analysis.

Mr. Chairman, I do not believe that this amendment weakens the bill. In fact, I would assert it does not weaken the bill. Lawsuits under the bill can just as well increase regulation as to decrease it, and certainly colleagues from California would know that it was not the EPA that decided to impose the Clean Air Act, the Federal implementation plan in that State.

EPA was forced to do so as a result of a review in Federal court by environmental organizations, and there are going to be a great many public interest groups willing to sue individuals, public interest groups willing to sue the Federal Government, to require implementation of even stronger regulations.

What we are going to end up with, Mr. Chairman, is a great deal of expenditure of time and money and energy, and to what purpose? Who will be better off for spending all of that money on the individual points in the final regulation, in the final rule that is being made? Certainly not Americans who want to see reasonable cleanups without endless wrangling.

Mr. Chairman, I do not think industry will benefit, since they will lack any ability to rely on agency decisions and plans for the impact of regulations that are subject to incessant court challenges and court reviews.

I submit, Mr. Chairman, that the only beneficiaries are really going to be the lawyers, the lawyers on both sides of these issues, who are surely going to be the beneficiaries if we do not adopt the Boehlert-Roemer amendment.

Mr. Chairman, let us limit the fun that the lawyers have in this process and support the Roemer-Boehlert amendment.

Mrs. MORELLA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Roemer-Boehlert amendment. H.R. 1022 contains new, expansive language on court review which was actually not in the Committee on Science markup.

This language would direct the courts to examine the scientific basis of the risk assessment. They would have to follow section 104 and 105, which would hold the rules unlawful if they did not do that.

Mr. Chairman, the courts, I believe, lack the expertise. They are not scientific experts. They lack the expertise; they lack the time; they lack the interest, also, to do this for hundreds of regulations which would come before them.

Mr. Chairman, in the Committee on Science markup, the gentleman from Pennsylvania [Mr. WALKER] promoted the sort of one-bite-at-the-apple concept, and saying that the Administrative Procedures Act would apply. The Roemer-Boehlert amendment I think would make this the case explicitly, that only final action is reviewable.

Therefore, Mr. Chairman, I rise in support of the amendment.

Mr. WALKER. Mr. Chairman, will the gentlewoman yield?

Mrs. MORELLA. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, there is no difference in the bill than what we did in the committee. We have expanded the language to some extent, simply to spell out what we were doing in terms of the Administrative Procedures Act, but we are doing exactly what the Administrative Procedures Act now requires agencies to do under the bill, so I would say to the gentlewoman that I worked very hard to protect the Committee on Science's position with regard to judicial review.

I think we have done that. I think the Committee on Commerce and the Committee on Science are very much in agreement on this.

Mr. Chairman, I simply would not want it on the record that what we have done here is in any way different from what the Committee on Science decided to do. That is not the case.

Mrs. MORELLA. Mr. Chairman, the gentleman did a great job in committee. My understanding is, however, that what we are saying is that the Administrative Procedures Act would apply, would be lawful, unless there are arbitrary and capricious, unlawful statements that occur.

Right now in the bill the agency would have to prove with substantial evidence that the activity was environmentally risky.

Mr. WALKER. If the gentlewoman will continue to yield, substantial evidence is in the Administrative Procedures Act.

Mrs. MORELLA. Yes, arbitrary and capricious.

Mr. WALKER. If the gentlewoman will continue to yield, if I understand the gentlewoman, Mr. Chairman, what she is objecting to is if the agency takes arbitrary and capricious action, she does not believe that that should be subject to somebody's review?

Mrs. MORELLA. Mr. Chairman, that should be subject to review.

Mr. WALKER. Mr. Chairman, if the gentlewoman will yield further, the Roemer amendment prevents that. It says specifically—and I will read, "* * * any alleged failure to comply with this Act, may not be used as a grounds for affecting or invalidating such agency action"—it does not matter how egregious it is.

The Roemer amendment wipes it out. The Roemer amendment says you cannot do it.

□ 1300

Mr. BOEHLERT. Will the gentlewoman yield?

Mrs. MORELLA. I believe it relies on the APA. I yield to the gentleman from New York, one of the sponsors.

Mr. BOEHLERT. We have got the Administrative Procedures Act. We know that. That is the vehicle to challenge any final rulemaking, and we have got the arbitrary and capricious standard. What this would do is subject the whole risk assessment process to judicial review, which means we would be tied up—talk about the full employment act for lawyers, we would be tied up in courts forevermore at a cost of millions and millions and millions of dollars for everybody involved. That is why we so strongly object to it. I thank the gentlewoman for yielding.

Mrs. MORELLA. Already over $100 million is going to be exhaustively peer-reviewed. So we certainly, I think, need the Roemer-Boehlert amendment.

Mr. WALKER. Mr. Chairman, will the gentlewoman yield again?

Mrs. MORELLA. I yield to the gentleman from Pennsylvania.

Mr. WALKER. One of the problems is, what we have just heard from everybody is they do not want the Administrative Procedures Act to apply to this act. They want the Administrative Procedures Act to be out there applying to other things, but they do not want the Administrative Procedures Act to apply to this act.

Mrs. MORELLA. The final action.

Mr. WALKER. The standard we have set is a standard which is exactly similar to the Administrative Procedures Act.

Mr. BOEHLERT. Mr. Chairman, if the gentlewoman will yield further, what we want is we want the Administrative Procedures Act to apply to the final rule. We want to have a system where a final rule which is wacko, which does not make any sense, does not pass the commonsense test, we want to have a way to challenge that.

But we do not want to have a way—all through this risk assessment process, if an agency comes up with a rule that makes sense, that addresses public health and public concerns, we do not want to be able to throw out that rule because somewhere along the process somebody did not fill out a form on page 12, line 3, section 2.

The CHAIRMAN. The time of the gentlewoman from Maryland [Mrs. MORELLA] has expired.

(At the request of Mr. WALKER and by unanimous consent, Mrs. MORELLA was allowed to proceed for 2 additional minutes.)

Mrs. MORELLA. I continue to yield to the gentleman from Pennsylvania.

Mr. WALKER. The fact is that the language in the bill says substantially comply so that we can deal with the problem, but the gentleman seems to be ignoring the language of his own amendment.

I simply would point out that the language within the Roemer amendment says any alleged failure to comply with this act may not be used as grounds for affecting or invalidating the agency action.

You cannot even get to where the gentleman says he wants to be under the amendment that you have before us.

Mr. ROEMER. Mr. Chairman, will the gentlewoman yield?

Mrs. MORELLA. I yield to the gentleman from Indiana.

Mr. ROEMER. It has been said over and over and over again, there is nothing in the Roemer-Boehlert amendment that would erode the Administrative Procedures Act. If that is passed and put into effect and we try to mitigate the litigation that is going to simply explode as a result of this new expansion under judicial review, there is no risk to this doing any kind of threat to the Administrative Procedures Act, and you still have the ability of OMB, peer review panels, and a host of other sunshine to be shone upon the regulations in the final action.

Mr. CRAPO. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I think it is important that we clear up some of the argument that is being made here today, and perhaps we ought to start by reading the amendment, itself. I understand the reading of the amendment was suspended earlier.

But if we want to find our whether this amendment eliminates judicial review entirely, whether this amendment basically guts the bill, let's read the amendment.

It says, "Nothing in this act creates any right to judicial or administrative review, nor creates any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person."

It goes on to say, "If an agency action is subject to judicial or administrative review under any other provision of law, the adequacy of any certification or other document prepared pursuant to this Act and any alleged failure to comply with this Act may not be used as grounds for affecting or invalidating such agency action."

I do not know how you can more clearly state that you are saying we are passing this bill but it cannot be enforced, it creates no rights for judicial review, and if there does happen to be judicial review under some other law, nothing in this act shall give anybody any rights for any protection under the very provisions which we are putting into effect.

The fact is that this statute is critical. It is a process that America has needed badly to require our administrative agencies to review the effectiveness of their conduct. They must assess the risk which they are addressing, assess the cost of meeting that risk in their regulation, and determine whether the cost is justified by the benefit that is intended to be gained.

If we cannot put that into law and then require that the agencies meet that test when they are promulgating regulation, then we are truly fooling the American people when we tell them that we are trying to somehow bring the agencies under control in the rulemaking process.

If that is not enough, the amendment goes on to say that it strikes the substantial evidence standard in the judicial review that this act contains.

Let's clarify what we are talking about here. If we do not have the substantial evidence standard in this legislation, that means that when there is judicial review, and, by the way, I will back up a minute.

It has been argued that we do not want to open up the opportunity for the courts to look at the entire administrative record and see what has gone on.

Ladies and gentlemen, that is exactly what happens right now, under the administrative review that is given to each rule as it is reviewed under the previous statutes that authorized those rules.

What we are saying is that in final agency action, not at each stage but in final agency action, when the rule is already being reviewed, when the entire administrative record is already being reviewed, it must also be reviewed for purposes of cost-benefit analysis.

We are going further to say that the standard of review shall be substantial evidence. The court must look to see whether the agency acting had substantial evidence to document its claim that there was or was not a cost-benefit to the rule which it is enforcing.

What this amendment seeks to do is to make it so the agency can get by with whatever it wants if it can simply meet an arbitrary and capricious standard.

That means that all the court has to do is to say that there was a little slim piece of evidence in this record that justified what the agency wanted to do and so it was not arbitrary or it was not capricious, but it does not have to look further to see whether the weight of the evidence was on one side or the other.

There is already going to be the administrative review of these agency rules under the Administrative Procedures Act which governs the statute which generate the rules themselves. What this statute does is say that when that review takes place, then there must be administrative review also of the cost-benefit analysis and that cost-benefit analysis must be justified by substantial evidence in the record that is already under review.

That is eminently reasonable, and all you have to do is read the words in this amendment to see that it is clearly a killing amendment. It is saying, "We've got a right here, we are creating a great statute that allows us to have cost-benefit analysis, but we don't want any agency to have to be forced to follow it, we don't want any person in America to have any right created under this statute to have the agency follow this legislation, and we want to be darned sure that it is not enforceable if anybody goes to court."

Last, there has been the argument made here that this is going to generate mounds and mounds of additional litigation across the country. Again, this legislation authorizes judicial review only when there is final agency action under a rulemaking which is already under way under a previous statute.

That means that there is already going to be agency review under each review required by this statute. It is not going to increase litigation.

Mr. WALKER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, this is the ultimate old order amendment. This is an attempt to step back to the idea that big government has solutions to all of our problems and if we would only listen to big government, big government will always tell us the right things to do.

This is an amendment by people who do not want to see middle-class Americans use the law against the Government but are perfectly happy to see the Government use the law against middle-class Americans. That is exactly the effect of adopting the Roemer amendment.

You adopt the Roemer amendment, you say the lawyers of the Government can go out and pound the middle-class Americans all they want, but middle-class Americans are not allowed to in any way use the law to protect themselves against Government. I think that is the reverse of what we should be doing.

First of all, let me tell you, anyone who tells you that they are for risk assessment and they are for cost-benefit analysis and then supports this amendment is trying to make a fool of you. There is no way that you can say that you are for risk assessment and you are for doing all these things but, "Oh, by the way, let's not make it enforceable."

Because the ultimate effect of this amendment is to say, "Let's not have any enforcement of it."

To suggest that judicial review is being able to take it to OMB or being able to take it to the Congress, that is not judicial review. It does not even fit the title. All that says is that you can take it back into the political establishment in hopes that the politicians will always be too nervous to do anything that is real.

What we have done here is we have tracked the Administrative Procedures Act, we know what the effect of this would be, and we do not believe that there is any way here of exploding litigation. That is not what we are seeking to do at all. But we do believe that there needs to be some kind of assurance that when agencies are doing the procedures necessary for risk assessment and cost-benefit analysis, they in fact do what they are supposed to do under the law.

This idea that minor flaws in the process will bring about major litigation is just absolutely clearly wrong. The proponents of this amendment have not bothered to read what is under the judicial review section on page 34 of the bill, because what it says is that the documents, if they do not substantially comply, then the fact is that there is no judicial review. We have a substantial compliance test under the bill.

This idea that we are going to explode a whole bunch of litigation on minor points, it is completely dealt with. No minor discrepancies are in fact going to be the cause for litigation.

I would also go back to pointing out that the legislative language that the gentleman from Indiana and the gentleman from New York bring us here, maybe it does not do what they intended it to do, but the fact is that it is misdrafted and it is a bad amendment.

Because if in fact they are clear in what they are saying here on the floor, their amendment is specifically opposite of that. Their amendment is meant, by words, to wipe out any chance whatsoever to have even the most egregious procedural flaw nonreviewable.

The agency can do anything they want. They can disobey the law, they can completely set the law aside, they can go ahead and do anything they want, and under the language of your amendment, what you say is that that cannot be used as a grounds for affecting or invalidating such agency action.

I cannot believe that you are standing up saying you are for risk assessment and then offering an amendment that says that you can do all these things in an agency and so on, you can violate the law in any way you want, and nobody can ask you about it. Nobody can review it. Nobody can change it. "Go ahead, bureaucrats. Do your thing. Whatever it is you bureaucrats want to do, it's OK with us. It's fine. We love it. Just continue to regulate like you've been regulating. Continue to pound America the way you've been pounding America. Continue to wipe out the small businessmen the way you've been wiping out the small businessmen because they shouldn't have any rights under this act at all."

If that is what you want to do, your language certainly accomplishes it.

I would suggest, also, that the gentleman from New York told us that if H.R. 9 had been in effect, we would not be able to do the things that we have done in the past such as the Clean Air Act. That is specifically refuted by John D. Graham who is director of the Center for Risk Analysis at Harvard School of Public Health. He makes a statement in this morning's newspaper indicating that both the air bag standard for automobiles and the phaseout of lead in gasoline, each of which transpired during Republican administrations, involved substantial uncertainty yet both were approved after cost-benefit analysis.

The fact is that the standards under this bill would have been used in those instances and it would have resulted in regulation.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from New York.

Mr. BOEHLERT. I would point out that with lead particularly——

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. WALKER] has expired.

(At the request of Mr. BOEHLERT and by unanimous consent, Mr. WALKER was allowed to proceed for 3 additional minutes.)

Mr. WALKER. I continue to yield to the gentleman from New York.

Mr. BOEHLERT. I would suggest that the substantial evidence test would not have been passed and that is why we would have had the problem today with lead in gasoline, for example.

The substantial evidence did not come until after we had the test to prove the point.

Mr. WALKER. Substantial compliance is in the legislation we have before us.

Mr. BOEHLERT. The substantial evidence test is, yes, but the substantial evidence test was not applicable 25 years ago and had this legislation that you are proposing right now been applicable 25 years ago, we would not have had that standard.

Mr. WALKER. We have substantial compliance in the bill that is before you. That is exactly my point.

Under the bill that is before us, we have substantial compliance in here which is exactly what the gentleman is suggesting.

Mr. BOEHLERT. But what I point out to the gentleman is this. That we are after the final rule. If the final rule does not pass the commonsense test, there is a way to do with it under the Administrative Procedures Act.

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What the gentleman is suggesting is all during the risk assessment process the lawyers would just line up one behind the other and challenge everything that happens during the risk assessment process.

Mr. WALKER. The gentleman is specifically wrong. If he goes and checks he will find out that ours applies to the final agency action. That is where our judicial review takes place, is with final agency action as well. It does not allow judicial review at each phase along the way; it simply says there is review possible on the final agency action.

Read the amendment; read what is the judicial review in the bill.

Mr. BOEHLERT. That is where we are, and the gentleman makes my point, and he makes it in a very glib way, I might add. The fact of the matter is the gentleman wants to challenge the risk assessment process every step of the way. We are saying we will challenge the final rule if it does not make sense, it is not cost-effective, and if it does not protect women, infants and children, we will check that.

Mr. WALKER. The gentleman is specifically wrong. The gentleman is absolutely and specifically wrong. There are no challenges all the way along the way. Under our amendment it is involved with the final agency rule. The final agency rule is what we try to do.

The gentleman whips out even the ability to even review the final agency rule. The gentleman from Indiana is shaking his head. Read your amendment, read your amendment. It says in the legislation, failure to comply with this Act "may not be used as grounds for affecting or invalidating such agency action." That is the final rules the gentleman is talking about. You cannot invalidate it even if the agency has absolutely disobeyed the rule. The gentleman is knocking out the ability to do this thing, so you have totally obliterated the ability for judicial review.

Do not tell us that you have not done it; it is specific to your language.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I am happy to yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, we are talking about the final rule on the risk assessment, not the regulation, which is what we want to challenge, the final regulation if it does not pass the common-sense test.

Mr. WALKER. But the gentleman should read his own amendment.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. WALKER] has again expired.

(At the request of Mr. BOEHLERT and by unanimous consent, Mr. WALKER was allowed to proceed for 2 additional minutes.)

Mr. WALKER. Mr. Chairman, let me read to the gentleman his own bill. His own amendment says, "If an agency action is subject to judicial or administrative review under any other provision of law, the adequacy of any certification or other document prepared pursuant to this Act, and any alleged failure to comply with this Act, may not be used as grounds for affecting or invalidating such agency action." That is exactly the opposite of what the gentleman just told us.

Mr. BOEHLERT. Mr. Chairman, there again we both agree we are reading the same thing, but if the gentleman says what I am saying is wrong often enough, that does not mean he is right. The fact of the matter is we want final review of the regulation, not the risk assessment.

Mr. WALKER. I am saying to the gentleman from New York I am simply reading back his own words to him that he would commit to law.

Mr. BOEHLERT. I agree 100 percent, the words are exactly as the gentleman read them, but his interpretation is wrong.

Mr. WALKER. My interpretation is not wrong because I will tell the gentleman the bottom line is what this would do. The bottom line is what this would do is it would assure that we would have even weaker laws than we do right now. The fact is because of what the gentleman is going to do here he would wipe out the ability that people now have to take action. And so, he is invalidating law. What he is saying is with regard to this particular compliance law, we simply will not allow the public in, that the agencies can have all of the lawyers that they want on their side but the public cannot have any lawyers on their side; the people cannot bring actions against the Government, but the Government can continue to bring action against the people. That is what the amendment is all about.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Idaho.

Mr. CRAPO. Mr. Chairman, I think it is important to point out, as the chairman has pointed out, that the regulatory action we were talking about in this bill occurs only when the final rule has been promulgated and the rule is already under review. I read from the judicial review portion of this statute. It says, "The court with jurisdiction to review the final agency action under the statute granting the agency authority to act." That is the authority to issue the rule, "shall have jurisdiction to review, at the same time, the agency's compliance with the requirements of this Act."

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. WALKER] has again expired.

Mr. CRAPO. Mr. Chairman, I ask unanimous consent the gentleman from Pennsylvania be allowed to proceed for 2 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Idaho?

Mr. BROWN of California. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard by the gentleman from California.

Mr. BROWN of California. I have been sorely tempted by the inaccuracies that have been forthcoming. But I withdraw my objection for the time being.

The CHAIRMAN. Is there objection to the request of the gentleman from Idaho?

There was no objection.

The CHAIRMAN. The gentleman from Pennsylvania is recognized for 2 additional minutes.

Mr. CRAPO. Mr. Chairman, if the gentleman will continue to yield, the legislation we are debating goes further to say that "When a significant risk assessment document or characterization document subject to title I is part of the administrative record in a final agency action, in addition to any other matters that the court may consider in deciding whether the agency's action was lawful, the court shall consider the agency action unlawful if such significant risk assessment document or significant risk characterization document does not substantially comply with the requirements of this section."

The point is when agencies promulgate a rule it does so under statutory authority. When it has finalized its statutory authority and has promulgated a rule, then and only then does this allow the requirements of this statute to be brought in under administrative review. It does not allow a piece-by-piece administrative review and does not increase litigations by one case over what is already the situation in current law.

Mr. WALKER. The gentleman is absolutely correct.

Mr. BOEHLERT. Mr. Chairman, will the gentleman from Pennsylvania yield?

Mr. WALKER. I am happy to yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, let me stress, I want to add this for about the 16th time, the rule is reviewable, but the risk assessment process is not. That is what we want to have accomplished as a result of what we are doing today.

Mr. WALKER. But the gentleman is not tracking his own language in that. We want in fact the rule and that is what we want to do. But the agency cannot, the agency is not allowed under our procedure to totally violate all of the procedures. Under what the gentleman is suggesting they are allowed to violate all of their procedures and, oh, by the way, then you can have a review.

That is not possible. That makes no sense, and I would suggest to the gentleman that that is exactly where his amendment takes us.

So, I would simply point out that under the Administrative Procedures Act this is something which would be backtracked on.

Mr. BROWN of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am reminded of an old legal adage which goes something like this: If the facts are on your side, you pound on the facts; if the law is on your side, you pound on the law; if neither are on your side, you pound on the table. And I sense an awful lot of pounding on the table going on here.

I agree with the gentleman from New York [Mr. BOEHLERT] that the gentleman from Pennsylvania [Mr. WALKER] is extremely glib in his exposition and he is also extremely emphatic and does a lot of pounding on the table.

I would like to call all of my colleagues' attention to an article in the Post this morning which describes in great detail some of the aspects of this legislation, and the point that it particularly makes is that a great deal of the risk assessment, risk characterization, cost-benefit analysis is very tenuous in its scientific basis. It is difficult and in some cases impossible to characterize risk, to assess risk or to make cost-benefit analyses that come anywhere close to the mark. You can be a thousand percent off, and one reason that you do not want all of these processes, assessment characterization and cost-benefit analysis subjected to judicial review is exactly that. You can tie up the process for ages on something that there is no answer to. And it would be extremely undesirable to have that happen.

It is the intention of this amendment to preclude that kind of an effect from happening. It is perfectly okay to review the adequacy of these various processes at the time of the final rule, but I call to Members' attention the fact that the agency itself has the right to waive many of these things when it finds that there is no way of achieving it.

For the court to be able to review the adequacy of something that could be and may have already been waived because there is no way to achieve it is just a ridiculous waste of time.

I do not want to belabor this. I think there has been adequate attention to it. But I am disturbed at the frequent repetition of nonfacts as horror stories.

I had hand delivered to me on the floor a few minutes ago a letter from the Administrator of the EPA which states her concern over some of the misstatements made yesterday. I am not going to read it. I will include the letter and the examples in the RECORD.

In addition to that, I have another half a dozen which I have personally investigated, and I attempted yesterday to respond to some of the more obvious ones on the floor, but was unable to cover them. I have another half dozen, and I will place those in the RECORD after the Administrator's letter outlining the ones that she was concerned about.

I urge upon all of my colleagues not to pound on the table quite so much, and to be a little bit more assured of the facts as we proceed with what has otherwise been what I consider to be a very helpful debate.

The material referred to follows:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, February 28, 1995.

Hon. JOHN D. DINGELL,
Hon. GEORGE E. BROWN JR.,
House of Representatives,
Washington, DC.

DEAR CONGRESSMEN DINGELL AND BROWN: I am concerned that during the course of the Floor debate on H.R. 1022, The Risk Assessment and Cost-Benefit Act of 1995, there have been mischaracterizations of policies and actions taken by the Environmental Protection Agency. I am writing in an effort to ensure that the debate before Congress is based on full facts. I will address several of the issues that have been used in this debate.

First, I would like to point out that I have already changed the way EPA does business. EPA has instituted major reforms in its rulemaking processes and programs. Since coming to EPA, I have worked diligently to instill common sense into the Agency's efforts to protect public health and the environment, by moving beyond one-size-fits-all regulatory approaches. This commitment has been translated to concrete action by our Common Sense Initiative. It addresses comprehensively a new, more cost effective framework for six leading industrial sectors. A further demonstration of this change is our Brownfields effort to turn contaminated urban areas into productive redevelopment sites. The very practical approach that we've taken in resolving implementation issues in the Clean Air Act also demonstrates the new EPA. These administrative solutions we have developed in partnerships with State and local governments for implementing the Clean Air Act show our success.

I am committed to flexibility and consensus—driven by firm public health protection goals, but flexible means for achieving them. EPA has made major improvements to its science program through directing its research program toward risk reduction and new policies to assure peer review of science used in decision making. And the Clinton Administration has made it clear we would support risk assessment legislation that is fair, effective and affordable.

Unfortunately the proponents of H.R. 1022 have not only failed to recognize these improvements, but in floor debate have put forth as the rationale for H.R. 1022 a series of examples that purport to represent EPA's decision making processes as severely flawed. In fact, these tales are fraught with misinformation and sometime involve decisions made over a decade ago—many are flatly wrong. Among the numerous misstatements these proponents have made are:

It was stated that EPA set a drinking water standard at 2-3 parts per billion (ppb) of arsenic in drinking water, while shrimp has a level of 30 ppb.

This is not the standard that EPA set. EPA set a standard for arsenic in drinking water of 50 ppb. And the arsenic in shrimp is not scientifically comparable to that in drinking water. The arsenic in drinking water is toxic—the type in shrimp is not.

A "Dear Colleague" letter stated that someone would need to drink 38 bathtubs of water to experience a risk from atrazine in drinking water.

This is inaccurate. Even at the standard set by the EPA, drinking just two liters of water per day results in a one in 100,000 cancer risk, which is equivalent to a projected 2600 additional cancers. Not only are people exposed to atrazine through drinking water, but through ingestion of pesticide residues as well, thereby potentially increasing the risks of exposure. In addition, two other pesticides found on food and in drinking water may cause risks to farmworkers and consumers via the same mechanism, and their risks should be considered collectively.

It was said on the floor that EPA requires the City of Anchorage, because its wastewater is already so clean, to add fish wastes so that its sewerage can achieve sufficient reductions to meet Clean Water Act requirements.

This is incorrect. EPA has never required Anchorage to do this. Anchorage already has a lower reduction requirement because it has been granted a waiver from the stricter reduction limits. Anchorage now successfully meets this standard with existing equipment and would be required to add extra capacity only if it faces an increase in population, as would any city. Anchorage chose to accept fish waste at the request of fish processors because it is a more cost effective way to manage these wastes.

It was alleged that EPA regulates "white out" correction fluid and caused extensive record-keeping problems for a small business in California as a result.

This is wrong. EPA has never regulated "white out". The State of California did require warning labels on products that contain certain chemicals through a Proposition.

Despite these inaccuracies, I am hopeful that the House debate on risk can focus on our common goals. We are working to be strong proponents of quality science and prioritizing government resources toward the most significant public health and environmental problems. Our concern is that this legislation, in its current form, will undermine these laudatory goals by elevating simplistic slogans to unworkable public policy—a policy that will instead freeze science, lead to tremendous regulatory gridlock, impulsively sweep away carefully thought through health and environmental frameworks, and empower the courts to resolve fundamental public policy issues.

I appreciate your efforts to focus discussions on H.R. 1022 on the significant issues this proposal presents.

Sincerely,

CAROL M. BROWNER,
Administrator.

RESPONSE TO CONGRESSMAN WALKER ON ASBESTOS

Congressman Walker alleged that children have a 1 in 2 and one half million lifetime cancer risk from asbestos. He further alleged that EPA required removal of asbestos from schools and that it would have made more common sense to allow management in place.

The Congressman is misinformed: EPA did take a risk based approach to the problem of asbestos in schools.

Lets look at the history of this rule. EPA's approach to asbestos in schools has evolved with the science:

As early as 1982 EPA, required removal of friable asbestos, or asbestos that is crumbling and therefore releasing fibers that could be breathed into children's lung where they could cause cancer. The Agency offered other approaches like encapsulation for intact asbestos.

In 1985 EPA provided updated guidance (the "purple book") which placed more emphasis on "management in place," but also recommended removal.

From 1987–1990 EPA conducted new studies based on a new method (electron microsposy) for monitoring asbestos before, during, and after removal.

As the science improved, EPA's approach evolved:

In 1990, based on EPA's studies, EPA released new guidance ("purple book") which recommended management in place whenever possible and removal only to prevent exposure in building renovation and remodeling (the NESHAP regulation).

In 1992 EPA completed a study of the asbestos-in-schools bill (AHERA). The vast majority of asbestos actions (85%) involved management in place, not removal.

RESPONSE TO ALLEGATION FROM CONGRESSMAN BILIRAKIS ON MSWLF BENEFITS

I would like to respond to Congressman Bilirakis's allegation that the recent revised criteria for Municipal Solid Waste Landfills cost $19.1 trillion per life saved. This is an unsound manipulation of EPA's analysis, presents an exaggerated and one sided view of the benefits of the regulation, and is a good example of precisely why the use of net benefits in this way is be misleading.

First, the cost per cancer case avoided was inflated by using economic maneuvering to minimize lives saved in the future by discounting. If you refer to EPA's analysis, you'll see that for one set of landfills (which would provide disposal to our nation for 30 years), EPA estimated that 2 cancer cases would be avoided at a present value cost of $5.7 trillion.

Second, and more importantly, Bilirakas's estimate completely disregards other benefits associated with the rule. EPA identified a very important other benefit from the Municipal Landfill regulation: that of avoided permanent contamination of one of our nation's precious natural resources, i.e., groundwater. Even with EPA's conservative cost estimates, which did not include remediation of contaminated groundwater, but simply importing water from another source, EPA estimated that without the regulation, US taxpayers would spend a present value of $270 million to import water to replace groundwater which had been contaminated by one set of landfills.

RESPONSE TO CONGRESSMAN LONGLEY ON MAINE INSPECTION/MAINTENANCE PROGRAM

Rep. Longley asserted that EPA imposed a requirement for motor vehicle inspection and maintenance (I/M) program for Maine without conducting the required scientific studies and in violation of the law.

EPA in fact violated no laws relating to the imposition of the I/M program in Maine. Maine is a part of the Northeast Ozone Transport Region established by Sec. 184 of the Clean Air Act. Congress determined in Sec. 184 that ozone in the U.S. northeast is a regional, not a local, problem, and that certain measures should be adopted throughout that region regardless of the particular local air quality conditions.

In particular, the Congress mandated that each metropolitan area with a population greater than 100,000 adopt and implement an enhanced I/M program. As with all other areas in the region, EPA required Maine to adopt enhanced I/M for its larger metropolitan areas.

RESPONSE TO CONGRESSMAN SOLOMON'S ALLEGATION THAT EPA WILL SHUT DOWN THE PULP AND PAPER INDUSTRY

In debate on the House floor Congressman Solomon alleged that EPA's rule to reduce dioxin emissions from the Pulp and Paper Industry will shut down the industry because of the high cost of complying with the rule.

This is untrue:

EPA proposed this rule in 1992. After reviewing the extensive public comments, the EPA is now extensively revising its original approach. The rule now regulates no one because it has not yet been finalized. How can any one say its shutting anyone down? In addition, EPA is listening to the industry and working to resolve these problems before the final rule comes out. I think that's a healthy sign of the way rules should be developed: As the President said last week: Consultation—not confrontation, as the increased judicial review in this bill will cause.

Just as the comment period envisions, the Agency has since, for well over a year, pursued an extensive and exhaustive process of consultation with all affected stakeholders, including industry and environmentalists to respond to substantial evidence presented to it of the need to change the proposed rule.

The pulp and paper industry, including the industry's trade association and individual paper companies, have been active and much-listened-to participants in these revisions.

The proposed pulp and paper Cluster Rule is being specifically revised in response and in recognition of the many concerns, comments and factual data brought to the Agency by numerous participants in this consultation process.

This process of proposal, public comment and revision in response to important data brought to regulatory agencies by the outside participants is exactly the way the regulatory process is supposed to work. To cite a proposal that is likely to be dramatically different from the final product of this process, as if that proposal was actually being imposed on that regulated community as the final product, is a grossly misleading characterization.

RESPONSE TO CONGRESSMAN BILIRAKIS' ALLEGATION CONCERNING ALAR AND APPLES

In debate on the House floor, Congressman Bilirakis stated that Alar was never shown to be carcinogenic in either mice or rats, and that only UDMH, a breakdown product had ever been shown to cause cancer. Furthermore, he stated that one would have to drink 19,000 quarts of apple juice daily to be at risk.

This is mistaken:

UDMH, a potent carcinogen, is formed from Alar both in the fruit (apples), and when Alar is ingested by people. It is formed in the body, and is carried by the blood stream throughout the body, where it can wreak its toxic effects.

It is only sensible that such highly toxic breakdown products should be considered when assessing whether or not a chemical can cause cancer in humans. Doing this is well established scientifically, and is recognized as valid by toxicologists, as well as by scientists from many other disciplines.

In the case of Alar and UDMH, it is not necessary to ingest 19,000 quarts of apple juice to increase the risk of cancer, a much smaller amount was calculated to be risky. This is particularly important, because it is young children who often drink large quantities of apple juice, and whose young, growing bodies, may be particularly sensitive.

Clearly, we do not want ourselves or our children to be exposed to doses of a chemical that have been shown to be overtly toxic and capable of causing cancer. As a result, we use scientifically accepted principles to extrapolate to levels at which risk assessments indicate that the risk is less.

Finally, it should be pointed out that the economic impact of the Alar crisis was caused not by an EPA regulation or decision, but rather, by a public interest group publishing its concerns about these exposures.

RESPONSE TO ALLEGATION FROM CONGRESSMAN BILIRAKIS ON BENEFITS OF WOOD PRESERVING

I would like to respond to Congressman Bilirakis's allegation that the wood preserving hazardous waste listing resulted in a cost of $7 trillion per life saved. The 7 trillion dollar per statistical life associated with the wood preserving listing is a perfect example the distortion and misinformation that cost benefit analysis can impose on the regulatory development process. EPA's estimates of the cost effectiveness were nowhere near this amount—remember there are many ways to calculate cost/benefit ratios and there is no clear consensus on the proper method.

What is of greatest concern is that the 7 trillion number ignore noncancer health benefits which could include avoidance of liver disease or birth defects. The 7 trillion also ignore adverse water quality impacts on ecosystems such as wetlands, rivers, and lakes that the agency determined would be severely impacted if wood preserving wastes continued to be uncontrolled.

What is also of interest is that the Agency in developing this rule was particularly concerned about small business impacts; worked with the SBA; did extensive analysis of the industry; and between proposal and final worked closely with the wood preserving industry and others to carefully tailor the regulation to achieve a sound environmental outcome with minimal economic impact. In fact, most telling of EPAs work in this regard was this rule stands as one of the few rules promulgated under RCRA that the agency was not sued on! Cost benefit outcomes are clearly no measure of and in fact often misstate regulatory quality, environmental outcome, or economic impact.

RESPONSE TO REP. SALMON'S COMMENTS ON ARIZONA'S AUTOMOBILE INSPECTION/MAINTENANCE PROGRAM

Claim 1: States have no discretion in implementation of the "I/M 240" auto inspection/maintenance program.

Response: This is not true. States have a great deal of flexibility and discretion in the design of auto inspection/maintenance programs.

Arizona was not required to adopt the high-end I/M 240 program but chose to do so.

Arizona chose I/M 240 because the State found the program extremely cost-effective and preferable to putting tighter controls on factories, and other stationary sources.

I/M 240 controls pollution at $500/ton, where controls on other sources cost $2000–10,000/ton.

Claim 2: People had to wait in line 4–5 times as long.

Response: This problem has gone away. Waiting lines were a problem only during the first week of the program in December. There are no long lines now.

Claim 3: Program increased costs 4 times.

Response: The old Arizona program cost consumers $6 per year. The new program costs $24 every 2 years, or $12 per year.

Bottom line: The new program is more effective, more convenient, less frequent, only $6 more per year, and clearly preferable to putting more expensive controls on other sources.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. BROWN of California. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, I would like to say we are all arguing back and forth as legislators and attorneys about our interpretation of this amendment. The gentleman from Pennsylvania [Mr. WALKER] just cited John Graham, the director of the Center for Risk Analysis at Harvard School of Public Health, and I think he is a good referee. He just cited him saying good things about this legislation. Here is what Dr. Graham said in the Post this morning: "I'm not too crazy about this idea of opening up all regulations to judicial challenge."

Now, that is somebody that the gentleman from Pennsylvania [Mr. WALKER] cited. That is precisely what we are trying to do with this amendment, is not open up all of these things to judicial review, have one bite of the apple at the end of the process, just as the Administrative Procedures Act does right now. And I think the distinguished ranking member for yielding.

Mr. ROHRABACHER. Mr. Chairman, I move to strike the requisite number of words.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to my colleague from Pennsylvania.

Mr. WALKER. Mr. Chairman, I think that it is interesting to note that if we read Dr. Graham's statement, he says he is not too crazy about the idea of opening up all regulations to judicial challenge. The fact is we are not opening all of it up to judicial challenge. I think what he is probably referring to is all of the past regulations and so on. We are not doing that, this bill does not do that at all.

Second, it seems somewhat interesting to me that we now have the argument that if we have no knowledge about things we ought to go ahead and regulate, but because we have no knowledge we ought not be able to do risk analysis and do the cost-benefit analysis; that the lack of knowledge should increase our ability to regulate, but should not increase our ability to review.

That strikes me as exactly the opposite of what the public has been saying now for some time. They would like us to regulate on the basis of knowledge. And to have the argument on the floor that the lack of knowledge means that the regulations should go forward is to me the inverse of what we ought to be endorsing in the U.S. Congress.

Mr. ROHRABACHER. Mr. Chairman, we should not lose sight of what this is all about. What has happened is that the American people over the last 10 years, and over the last 20 years, have seen that enormous power has been granted to unelected officials in Washington, DC. What we have seen is that Washington, DC, has absorbed and centralized enormous powers and it is not in the hands of elected officials, but instead in the hands of the bureaucracy, in the hands of people who never put themselves before the electorate.

This is an attempt to try to readdress or to redress that issue, to bring some balance back to Washington, DC, to the democratic process, to respect the rights of our people who feel that they are being basically ordered around, that they are being driven out of business, that they are being damaged by the mandates of people who have never been elected.

If a citizen believes that he or she is being hurt or suffering damage because an unelected official, someone in an agency has not followed the new rule that we are setting down which says they should be basing their decisions on good science, there should be peer review of the decisions, we should make sure that there is a risk assessment and that there is a cost-benefit analysis. If an agency is not following those rules, and one of our citizens feels that the decision that they have made is hurting them, we are just saying they should have redress.

☐ 1330

This is the way citizens have protected their rights throughout our country's history. If the Government is not following the law, whether it is the bureaucracy or elected officials, our citizens have felt they could go to the courts to seek a solution to their problems to prevent themselves from being hurt and being damaged by an agency that is not following the rules as set down by the Congress. This makes all the sense in the world.

Gutting this from the Republican proposal is a way to basically restore the power to the bureaucracy to do whatever they damn well want to do because they have got the best motives and the best intentions. Well, best of intentions do not cut it. The American people know what the best intentions of the bureaucracy are all about. The best of intentions of the bureaucracy are to say we have got to rip the asbestos out of the walls of our schools to protect our children, and find out that tens of billions of dollars have been wasted that should have gone to the education of our children instead of having gone and been spent by public officials with the best of intentions, directing our people to do exactly the opposite thing they should be doing.

We expect a procedure to be followed. We expect there to be cost-benefit, risk-benefit analysis. We expect there to be peer review. That is what is in the legislation, and we expect that if the unelected official, the bureaucracy, is not following the law as we are setting it down, the citizens of this country will have a right to appeal that through the judicial process. That is what this debate is all about.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, I want to say to the gentleman you have stated, I think very well, some of the same objectives that I share. Certainly I want peer review.

The CHAIRMAN. The time of the gentleman from California [Mr. ROHRABACHER] has expired.

(At the request of Mr. BOEHLERT and by unanimous consent, Mr. ROHRABACHER was allowed to proceed for 2 additional minutes.)

Mr. BOEHLERT. Mr. Chairman, if the gentleman will yield further, I want peer review. I am not sure I would want O.J. sitting on his own jury, for example, so we have some questions about that. There are a number of questions we have, but in the final analysis, we want what you want.

But I am concerned. I am thinking of offering an amendment requiring a cost-benefit analysis on the entire bill, because I do not think anyone has the first clue on how much this is going to cost in terms of litigation.

I am wondering if there is anyone, the gentleman or anyone advocating passage of this legislation as is, if anyone has an idea how much thei is this going to cost American industry, American families, in terms of dollars and cents.

Mr. ROHRABACHER. Reclaiming my time to answer, we know how many hundreds of billions of dollars are being wasted right now. We do know in California, because of unreasonable regulation by unelected officials, hundreds of homes were burned down because, why, they were not permitted to clear the brush away from their homes because it might hurt the habitat of a few little birdies, and those birdies, by the way, flew away, and their homes were burned as well. We think that that type of regulation, we need a cost-benefit analysis of that regulation, and if, indeed, that cost-benefit analysis is not given by the agency, that the homeowner who might lose his home has a right to appeal this to the courts, and the fact is, by the way, in terms of O.J., we do expect every citizen in this country to be judged by his peers, and that includes maybe having people who are O.J. Simpsons or whoever it is, peers, to be able to be part of the decisionmaking process. That is what democracy is. That is what our Government has been all about.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, the specter of the cost of this is often raised by people who simply do not want to do it. The fact is there is just as good a chance that we will, in fact, end up saving money, because we will have higher-quality legislation based upon good science and based upon a cost-benefit analysis before we do it. So you get higher quality regulation, and it costs you a little bit less, it costs you less money.

The CHAIRMAN. The time of the gentleman from California [Mr. ROHRABACHER] has again expired.

(By unanimous consent, Mr. ROHRABACHER was allowed to proceed for 2 additional minutes.)

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to my friend, the gentleman from Maryland.

Mr. GILCHREST. This is an extraordinary period of time where all of us are almost to the point of agreeing that regulations have been too onerous in the past.

But the gentleman made a comment about people in California that were not able to get the brush away from their homes because of a rat that was placed under the Endangered species Act, and I have heard that argument before on the floor. It simply is not true. The Fish and Wildlife and the State game people worked with the people in the area that happened to be the most flammatory, most fire-prone area on the face of the Earth. They allowed them to clear the brush up to a point even sometimes 1,000 feet away from the house. The point is during that fire, a year or so ago, flaming cinders were flying at 80 miles an hour more than a mile away, so the argument you had to protect the endangered species in lieu of their houses burning down simply is not true.

Mr. ROHRABACHER. Well, if I could just answer that by saying in the particular case you are talking about, that may or may not have been the case. You may be accurate in that sense.

We have had lots of brushfires in California, and we are very aware of the nonsense that comes down from regulators in the name of protecting endangered species, maybe not in that particular case, but I will tell you there are numerous cases in the Laguna Beach fire, and I am not sure if that is the one you are referring to or not, the people who have had their homes burned down believed that a nonsensical rulemaking process by unelected officials caused them to lose their homes. We think there should be a judicial application of that.

Mr. GILCHREST. That is the area where they could clear the brush. That is what I was referring to.

Mr. ROHRABACHER. In fact, in Laguna Beach, we feel, the way I read it, is they could not.

Mr. BILBRAY. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to the gentleman from California.

Mr. BILBRAY. There has been a major problem in trying to clear and grub around residential areas. Now, the incidence of wind, homes were lost. That may be debatable. But the fact is there has been obstructionism to the protection of homes through the firebreaks, and the coastal sage shrub, because it has been identified as an endangered species habitat, is a major problem.

Mr. ROHRABACHER. If people are going to lose their homes, they should be able to go to court to challenge those people making those decisions. That is what this debate is about.

The CHAIRMAN. The time of the gentleman from California [Mr. ROHRABACHER] has again expired.

(At the request of Mr. BOEHLERT and by unanimous consent, Mr. ROHRABACHER was allowed to proceed for 2 additional minutes.)

Mr. BOEHLERT. If the gentleman will yield further, I have great regard for the gentleman. We serve on the committee together. We oftentimes agree. But it concerns me when we have stories, apocryphal stories, that are told. You know, I think President Reagan, and I love him dearly, is still searching the country for that welfare queen who was driving around in a Cadillac living high on the hog.

Mr. ROHRABACHER. She was actually living in the bureaucracy.

Mr. BOEHLERT. The story told is simply not so.

The General Accounting Office concluded,

> The loss of homes during the California fire was not related, not related to the prohibition of disking in areas inhabited by the Stephens kangaroo rat.

I can go on at great length, and it is more than we would care to hear about on that story.

Mr. ROHRABACHER. The gentleman is talking about one fire at one time. We in California know there are lots of fires, and many of them have been attributed because people cannot clear the brush.

Mr. BOEHLERT. I understand. It is very clever to sort of give a story. Everybody thinks we are just heartless if you are for the Roemer-Boehlert amendment, that you are against women, infants, and children and everything under the Sun. It simply is not so. We are for the American people. What we are trying to prevent is endless litigation.

We want the ability to challenge rules that do not pass the commonsense test. But we do not want to challenge the process. Some bureaucrat screws up on a bad day and go in and challenge the whole rule simply because something happens during the risk-assessment process, that we do not find acceptable, and that is what we are saying.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. ROHRABACHER. I yield to the gentleman from Pennsylvania.

Mr. WALKER. There is nothing in the legislation as it is that says if some bureaucrat has a bad day that it is going to foul up the whole process, because again, if you read, unless there is substantial compliance and so on, that the requirements of section 104–105, it just does not apply.

Mr. ROHRABACHER. The bureaucracy, basically there is a feeling out in America, that the bureaucracy people whom they do not elect are making decisions that in the end may impact on whether they will be able to feed their families, whether they can live in their home safely or not, and if we determine today, and that is what we are talking about, today, that they should be able to appeal to a court if those unelected officials are not doing their job as is laid out by elected officials.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana [Mr. ROEMER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. ROEMER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 192, noes 231, not voting 11, as follows:

[Roll No. 177]

AYES—192

Abercrombie
Ackerman
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bishop
Blute
Boehlert
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Castle
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
Davis
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Gilman
Gordon
Green
Gutierrez
Hall (OH)
Hall (TX)
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
Klug
LaFalce
Lantos
Leach
Levin
Lewis (GA)
Lincoln
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Mineta
Minge
Mink
Moakley
Mollohan
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pomeroy
Porter
Poshard
Rahall
Ramstad
Rangel
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roukema
Roybal-Allard
Sabo
Sanders
Sawyer
Saxton
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Thompson
Thornton
Thurman
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Vento
Visclosky
Volkmer
Waters
Watt (NC)
Waxman
Weldon (PA)
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—231

Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bevill
Bilbray
Bilirakis
Bliley
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Chabot
Chambliss
Chapman
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gillmor
Goodlatte
Goodling
Goss
Greenwood
Gunderson
Gutknecht
Hamilton
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Jacobs
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Oxley
Packard
Parker
Paxon
Petri
Pickett
Pombo
Portman
Pryce

Quillen
Quinn
Radanovich
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Royce
Salmon
Sanford
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—11

Chenoweth
Duncan
Gonzalez
Graham
Hunter
Lipinski
Miller (CA)
Rush
Smith (WA)
Velazquez
Ward

□ 1357

The Clerk announced the following pairs:

On this vote:

Mr. Rush for, with Mrs. Chenoweth against.

Mr. Ward for, Mrs. Smith of Washington against.

Mr. LEWIS of California changed his vote from "aye" to "no."

Mr. SKAGGS changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments?

AMENDMENT OFFERED BY MR. SMITH OF MICHIGAN

Mr. SMITH of Michigan. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SMITH of Michigan: Page 5, after line 18, insert the following new section:

SEC. 5. AVAILABILITY OF INFORMATION AMONG FEDERAL AGENCIES

Covered Federal agencies shall make existing databases and information developed under this Act available to other Federal agencies, subject to applicable confidentiality requirements, for the purpose of meeting the requirements of this Act. Within 15 months after the date of enactment of this Act, the President shall issue guidelines for Federal agencies to comply with this section.

□ 1400

Mr. SMITH of Michigan. Mr. Chairman, the amendment before this body is simply an amendment calling on the different agencies that might be working on associated risk assessment to share that information and for the President to develop the guidelines on the basis for which they share that information.

I would just like to mention that, as a former Michigan OSHA commissioner, 1 of 9 commissioners, I was tremendously frustrated as a member of that commission on having the direction to sit around a table and develop all of the things we could think of to make the workplace safer.

Let me just say that risk assessment has been supported by both sides of this aisle, Democrats and Republicans, for several years. I am delighted it is coming to a culmination. I am offering an amendment to bring the best available information for risk assessments and cost-benefit analysis to the decisionmakers.

A quick look though at the Federal Government directory reveals that there are dozens of Federal offices whose purpose is to collect statistics, and data, and information, and the Members here may think that Federal agencies already share information, but I have found that this is not the case. Recently negotiations between the U.S. Department of Agriculture and the EPA were fruitless, and the individual Administrators were unwilling to share that information, and it ended up having to go to the Secretaries to demand the kind of relationship where one agency would share basic database information with another agency, and in that particular case it was on pesticides, and we ended up showing the information that USDA had ended up showing EPA that the risks were much lower than they assumed. It seems to me this gets to the heart of H.R. 1022's objective of common sense regulation.

Mr. Chairman, I hope this body will support this amendment.

Mr. BROWN of California. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Michigan. I yield to the gentleman from California.

Mr. BROWN of California. Mr. Chairman, I want to commend the gentleman for his excellent amendment. I can assure him from long experience there is a breakdown in data sharing quite frequently amongst the agencies. This should help correct it, and on our side we would be glad to see it.

Mr. SMITH of Michigan. Mr. Chairman, I thank the gentleman from California.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Michigan. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, the gentleman from Michigan [Mr. SMITH] has identified what is a very relevant problem, has corrected it, I think, with the wording of his amendment, and we are pleased to accept the amendment as well.

Mr. SMITH of Michigan. Mr. Chairman, I thank the gentleman.

I have quite a bit of experience in the need for regulatory reform.

As a former Michigan OSHA commissioner, I cannot begin to explain the frustration I had being a member of the OSHA who were continually asked to think of additional safety measures.

The group was asked to develop recommendations not based on safety needs—but on a continuous volume of safety regulations.

I fully support H.R. 1022's efforts to bring realistic risk and economic information into regulatory decisions.

In addition, I am offering an amendment to bring the best available information for risk assessments and cost-benefit analyses to the decisionmakers. A quick look at the Federal Government Directory reveals that there are dozens of Federal offices whose purpose is to collect statistics, data, and information.

You may think that Federal agencies already share information but I have found that this is not the case.

Recently negotiations were needed just to get USDA and EPA to share agricultural data. This data was needed to refine risk assessments—to show that pesticide use was actually much lower than EPA had assumed. How can we expect better regulation if agencies refuse to share taxpayer funded research?

This gets to the heart of H.R. 1022's objective of commonsense regulation.

This amendment takes into account that some information is confidential for business and security reasons. But if we are to be assured good regulation, we must have the Federal agencies share crucial information.

H.R. 1022 requires agencies to consider all of the pertinent information for commonsense regulation—my amendment makes sure they get that information.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. SMITH].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. MARKEY

Mr. MARKEY. Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. MARKEY: Page 31, strike line 23 and all that follows down through line 5 on page 32 (all of section 301(a)(3)) and insert:

(3) shall exclude peer reviewers who are associated with entities that may have a financial or other interest in the outcome unless such interest is disclosed to the agency and the agency has determined that such interest will not reasonably be expected to create a bias in favor of obtaining an outcome that is consistent with such interest.

Mr. MARKEY. Mr. Chairman, this is a quite simple amendment, and it goes towards the objective of curing what is a very glaring error which has been built in.

Mr. Chairman, the problem with this legislation is that it, unbelievably, allows for the corporate insiders, the lobbyists, the scientists, of companies that are, in fact, with financial interest in the regulation which is being considered, to be able to sit on the peer review group which is going to be evaluating that risk, that regulation which will be put on the books.

Here is the language from H.R. 1022 that we are considering out here on the floor today. Here is what it says. It says that peer review panels, quote, shall not exclude peer reviewers merely because they represent entities that may have a potential interest in the outcome, provided that interest is fully disclosed to the agency.

Well, what that means, my colleagues, is that the Gucci-clad lobbyists that are surrounding this building right now wondering how the legislation is going to turn out will have the capacity to actually serve on the peer review panels. So, after they get done sitting in our committees, listening to and lobbying on the legislation itself, they are then able to put themselves on the peer review panel and ultimately insert their views into the record, and, if they are unsuccessful, to then turn over to their own corporate lawyers their dissents that can be used as the basis for an appeal in the courts if they are unhappy with the regulations.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, I ask the gentleman, "Do you think that's why they call this the job creation and wage enhancement act? Is this a full employment act for lobbyists to serve on peer review committees in those rare times when we're not meeting?"

Mr. MARKEY. There is absolutely no question that right now law firms all across this country are looking at new real estate space to hire the new junior attorneys who are going to have to come on board in order to begin the process of appealing each and every part of this process and for their service on the peer review panels for every regulation which is going to be put on the books.

Now let us take this example. Let us look at the example of a nuclear power plant that is very concerned that a new regulation might go on the books which will ensure that all cracked or rotting pipes in nuclear power plants are, in fact, replaced so that the pipes do not break, and the water is lost, and the nuclear core is exposed without proper water.

Now under this regulation the nuclear industry will be able to put their own doctor, Dr. Pangloss in fact; Dr. Pangloss will be placed on the panel, and Dr. Pangloss of course always wears his rose-colored glasses when he is looking at regulatory changes that could impact on the nuclear industry. Well, Dr. Pangloss would, in the words of Voltaire, say, "Well, all is for the best in that this is the best of all possible worlds. There is nothing wrong with our industry, and therefore no new regulations need to be placed upon the nuclear industry."

Now, Mr. Chairman, all of his fellow Dr. Panglosses on the panel, all the other nuclear scientists on the panel, will agree, of course, with Dr. Pangloss.

Now should the regulators proceed with the adoption of the regulation notwithstanding the objection of Dr. Pangloss and all of the other nuclear scientists who have been present on this panel, notwithstanding their obvious conflict of interest? The nuclear industry lawyers who are hired can then sue the agency using the Panglossian dissent as exhibit A in their lawsuits saying that the regulation should be invalidated.

Now this conflict of interest is so obvious and at such odds with the whole history of peer review panels in the history of our country that it should be removed.

The entire process here has other problems as well. It excludes automatically an industry lobbyist if, in fact, there is only one company that is being reviewed for a regulatory change. That would be such an obvious conflict of interest. However, the lobbyists and the scientists for its competitors can serve on the peer review panel, so if the regulation is put in place, and it may hurt the competitors or it may help the competitors if this one company is now restrained, they serve on the——

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

(By unanimous consent, Mr. MARKEY was allowed to proceed for 2 additional minutes.)

Mr. MARKEY. Now although a single company with a hundred percent cannot put a hundred percent interest in that particular regulation, cannot have its lobbyist serve on the panel, what if there are two companies and one company happens to be 90 percent of the entire industry, and one other company 10 percent? In that instance, the industry lobbyists and scientists for that company with 90 percent control can put their own lobbyist on the peer review group as this scientific evaluation is going on. Absolutely unnecessary and in fact something which is going to compromise the integrity of any evaluation that is going to be made.

Now let us think about, as we move down the line as well, why we should not do it. Quite simply because on the books right now there is a law. There is a law. It is 18 U.S.C. 208 which includes penalty of 2 years, or imprisonment, or a $10,000 fine if, in fact, peer reviewers who participate personally and substantially in Government decisions have a conflict of interest unless that conflict is explicitly waived by the agency.

That is the law today. It has served our country very well. We do not want these peer review panels to be packed with the very people who have a financial conflict of interest.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from Texas.

Mr. DOGGETT. I ask, Do you mean to tell me that you can get 2 years of hard time right now for doing what this piece of legislation now authorizes and approves as a conflict of interest, a conflict of interest that, I gather from your remarks, is mandated by this statute?

Mr. MARKEY. Right now under the law any person who has this kind of a conflict is absolutely prohibited, and if they try to get around it without getting an exemption, then they do face the penalty of 2 years in jail or a $10,000 fine, and I think that changing that kind of a law that has protected our country quite well from conflict of interest is something that we should very seriously deliberate on before the vote this afternoon.

☐ 1415

Mr. OXLEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition of the amendment. We had a long debate about this provision and this amendment in the committee. It was defeated handily on a bipartisan vote. This is nothing else but a smokescreen, a red herring. Essentially it says, if the Markey amendment were to be adopted, then if you know anything at all about the subject matter at hand, then you cannot be on the peer review panel. You are essentially eliminated because you know something. It kinds of reminds me, Mr. Chairman, of the First Lady's Health Care Task Force, where to be qualified you did not know anything about health care or be a participant in any of the health care delivery systems.

I would suggest to my friend from Massachusetts that the language of the bill is very clear on peer review. Let me read it to my friend. Peer review panels "shall be broadly representative and balanced and to the extent relevant and appropriate, may include representatives of State, local, and tribal governments, small businesses, other representatives of industry, universities, agriculture, labor, consumers, conservation organizations, or other public interest groups and organizations."

That is a pretty broad category that is included.

Now, we had testimony from a Professor Lave from Carnegie Mellon who has served on numerous peer review panels. I asked the professor directly during the testimony exactly what happens to those folks who would be perceived as using that information to their own benefit or their company's benefit, and Professor Lave said "We simply beat the H out of them."

The point is that we, that the people who testified, virtually every individual who testified told our committee that the peer review process under this bill makes common sense, it allows people who know what they are talking about to participate in this, and that in fact this is the most appropriate way to get the broadest possible input into the peer review process.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, this is a terrible amendment. You can consider it a good amendment only if you want to keep the thinking we have kept for the last 40 years. That is precisely the cycle that we want to break.

No, God forbid that we have somebody on the review boards that knows what they are doing. Our good friend from Massachusetts mentioned the power plants. Well, who do we want sitting on the review board? Do we want somebody sitting on the review board that knows nothing about the power plants, or do we want somebody there that knows what they are doing and what they are talking about? Certainly the people in Congress do not know enough or they would not have been passing these laws for the last 40 years.

I just walked over to the dictionary and what is a peer? It is a person who is equal to another in ability, qualifications, age, background and social status. That is what Webster's has to say about it. And that is what this language is saying.

But the reason I want to take this time, and I am delighted you yield me this time, is because I am really concerned about what these regulations are doing to the people you and I are representing. OSHA has come out with a rule, I could not believe this at our last town hall meeting on Saturday, has come out now with a rule, if you are building a little three bedroom ranch, like you have in your place in Ohio, or Wisconsin or Massachusetts, in order to put on shingles or put on roof boards, you have to encase this house now with a net. That costs thousands of dollars and additional time.

When you put on shingles, you have to have mountain climbing equipment. I mean, you talk about common sense? And who has to pay for it? The poor guy that is working in the mills that has to pay the mortgage, he has to pay additional thousands of dollars so the regulators in Washington can live high off the hog. No. The time for this legislation is long past.

Listen to in this. In the last 2 years, the current administration has put out 125,000 pages of additional regulation. That is staggering. Who is paying for that? The people you are representing.

Now, the prestigious industrial counsel said more than 1,000 businesses and their tens of thousands of hard-working employees, have estimated that our Nation's regulations bill now amounts to $600 billion a year. Let me repeat that. The regulations that the people in this Congress, the majority, have put on the people of this country, is $600 billion each year. That comes out to $2,000 for every man, woman, and child in America.

If you want to give the people a tax break, or give the people a break, give them a break with these regulations. Take a look at what OSHA is doing to your people, the people that you are representing. Take a look at what these regulations are doing to our economy.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. OXLEY] has expired.

(By unanimous consent, Mr. OXLEY was allowed to proceed for 2 additional minutes.)

Mr. OXLEY. Mr. Chairman, let me simply point out there is no difference between serving on a peer review panel and having expert witnesses in court. We have expert witnesses in court day after day in this country. Many of them are paid for their services, but they provide expert testimony. They are not going to foul the process by the fact they become expert witnesses.

We have to understand in the peer review process, Mr. Chairman, that is what experts are for, to give their best information. Nothing is withheld from the public. They understand that they have to reveal their employment and whatever particular ax they may have to grind.

But that I think is a cynical attempt on the part of the sponsors of the amendment to basically say anybody who has any interest in the issue is somehow going to take advantage of that and take advantage of the system. That is just an entirely unrealistic viewpoint of what this peer review process is all about.

Mr. Chairman, I yield back the balance of my time.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I cannot believe that my Republican colleagues do not understand the language of the bill, and I cannot believe that they do not understand the language of the amendment. The language of the amendment corrects an obvious error in the bill. The bill provides that peer reviewers may not be excluded simply because they represent entities that have a potential interest in the outcome. That is really what is at question here. Is peer review going to be conducted by people who have an interest in the outcome?

Then it goes on to say, "provided the interest is fully disclosed and, in the case of a regulatory decision affecting a single entity, no peer reviewer representing such entity may be included in the panel."

What is the practical result of this language on the question of whether or not PCB's should be regulated in a special way, or whether clean air emissions, or water pollutants, or a particular kind of contaminant should be permitted in the food or drugs that are sold in this country, or whether a question involving safety in the workplace should be dealt with because of the presence of a particular pollutant or a particularly hazardous practice? In those instances, if it affected the entire industry, the entire panel, the entire panel of peer reviewers could be composed of people who had a financial interest, if only they had disclosed what that particular interest was.

Now, I ask my colleagues, do you want to have peer review conducted by people who have an interest in the outcome? I think not. The amendment offered by the gentleman from Massachusetts [Mr. MARKEY] says that peer reviewers shall be excluded if they are associated with entities that have a financial or other interest in the outcome, unless such interest is disclosed to the agency and the agency has made a determination that such interests will not reasonably be expected to create a bias in favor of obtaining an outcome that is consistent with the special interest that is held by that peer reviewer.

That is something which permits us to obtain the necessary expertise of people who know something on the subject, if they have an interest. But it also provides a very careful screen through which rascals may not proceed, and in which we can have a reasonable assurance that the protections which are here for the people in peer review of important scientific and technical questions will be done in such a way as to assure that the result will not be tainted with the determination or an inclination on the part of the reviewer to secure on behalf of himself and the special interests which he serves a result favorable to that particular interest.

Without this amendment, the entirety of the panel may be composed of people who have a financial interest in the matter. I will repeat that, because I saw somebody nodding a no. Without this amendment, the entire panel may be composed of people who have a particular interest in the result.

I think for this Congress to pass legislation which would sanctify such a consequence is a great shame. Shame on us, shame on the country. And the consequences of peer reviews which is tainted in this evil way will not only jeopardize the faith of the people in this body, but will justifiably jeopardize the faith of the American people in the peer review system we are authorizing under this legislation which we consider today.

I urge my colleagues to consider not only the consequences of this legislation as it is written here, but the consequences of a tainted peer review conducted under the provisions of the bill without the protection of the amendment offered by the gentleman from Massachusetts [Mr. MARKEY].

I would urge my colleagues to think about what can happen to the American people. And while they are thinking on that particular matter, I would urge them to reflect on what this means to them in the future when some opponent gets up at election time and says, "Why was it that you supported a proposal in the Congress which permitted special interest peer reviews to override the Food and Drug Administration or the Environmental Protection Agency or OSHA or any other agency charged with protection of the public interest? And why was it, why was it, that you permitted a peer review panel to be set up which could be composed entirely of special interest representatives?" Think on it, my colleagues, and vote wisely.

Mr. BARTON of Texas. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I am on the two committees that have reported this legislation to the floor, and I think we need to make a few basic points. No. 1, I do not even think the gentleman from Massachusetts [Mr. MARKEY], the author of this amendment, is opposing the peer review, because he lets the first two subparagraphs stand. He is substituting subparagraph (3), and I want to read the paragraph that he is substituting for. It says, in the bill, "shall not exclude peer reviewers with substantial and relevant expertise merely because they represent entities that may have a potential interest in the outcome, provided that the interest is fully disclosed to the agency and in the case of a regulatory decision affecting a single entity, no peer reviewer representing such entity may be included on the panel."

Well, we are trying to do, I think, in the bill what the gentleman from Massachusetts [Mr. MARKEY] is attempting to do, but we do say that they are not automatically excluded given, No. 1, that they fully disclose what their interest is, and, No. 2, if it is a decision that only affects their interest, affects their entity, then they are not going to be on the panel at all.

Now, the gentleman from Massachusetts says we shall exclude. We say shall not automatically. The gentleman from Massachusetts [Mr. MARKEY] says they shall be excluded unless they disclose their interest, and the agency reasonably determines they are not going to create a bias in favor of obtaining an outcome.

Well, we both want to disclose. We just change the burden of proof to say they are not automatically going to be excluded unless the decision directly affects the entity they represent, in which case they would be excluded.

Well, as I read the amendment of the gentleman from Massachusetts [Mr. MARKEY], that exclusion does not stand. If I read it correctly, they could actually even impact a decision that directly affects them if the agency says it is OK.

In some ways what we have in the bill is stronger, except for the fact that we say the burden of proof is not in the beginning automatically to exclude them. In your burden of proof, they are automatically excluded.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. BARTON of Texas. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Mr. Chairman, is the gentleman referring to the language at the end of the subsection (3) that deals with single entities that are excluded from having peer reviewers represent them?

Mr. BARTON of Texas. Yes. No peer reviewer representing such entity may be included on the panel if the decision affects that single entity that they represent.

□ 1430

Mr. MARKEY. Do not forget, in that language itself, we do not exclude the competitors to the entity, which could have, which could have a financial interest in the outcome as well. So although we have excluded the company that might have the most direct financial interest, we have not excluded their competitors from stacking the panel with their own scientists. They should not be allowed to participate either, if there is bias.

The point of this provision is that there is an obvious bias if you are the only company affected. The truth is, it is additional bias amongst other companies if their competitor would not have this——

Mr. BARTON of Texas. Mr. Chairman, my comment was directly on the specific entity, the specific entity. And under the language in the bill, if that entity, if they represented a specific entity, they are automatically excluded. Under the gentleman's language, they are not.

Mr. MARKEY. Mr. Chairman, if the gentleman will continue to yield, I would be more than willing to accept the gentleman's language to exclude any single entity. I would be more than willing to accept that language.

Mr. BARTON of Texas. I am rising in opposition to the gentleman's amendment. I support the provision that is in the bill. I am just trying to point out that we have got, I believe, that the bill as stands has the protections that the gentleman is trying to attempt, because we require full disclosure.

Mr. MARKEY. Again, the point here is that there is a palpable conflict of interest when you are the only company that is going to be directly affected by the regulation. But the truth is, there is built-in bias for companies when there are three or four or five that are going to be affected by the regulation.

Here we basically say that they cannot, "shall not" be excluded.

Mr. BARTON of Texas. Automatically.

Mr. MARKEY. You are building in a mandate that they not be excluded merely because their lobbyist happens to be someone that has an interest in the outcome. We are saying that that is not a high enough standard that can be established in order to protect the public health and safety.

Mr. BARTON of Texas. Reclaiming my time, Mr. Chairman, I thank the gentleman for his comments. The point is, we do not feel they should automatically be excluded.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BARTON] has expired.

(By unanimous consent, Mr. BARTON of Texas was allowed to proceed for 1 additional minute.)

Mr. BARTON of Texas. Mr. Chairman, we do not automatically exclude people because they happen to represent an interest that has an interest in the pending rule or regulation and the peer review. We understand that there are many of these rules and regulations that are so technically complex that we have to have experts. As long as we fully disclose and guarantee that if the regulation specifically affects a single entity they are not going on the panel, for example, given the fact that in subparagraphs 1 and 2 we are providing for a broad range of peer review, that it is not just this one individual, that we think the bill as is should stand. We get the outcome the gentleman from Massachusetts is attempting to obtain, but we do not put the burden of proof on the peer reviewer.

Mr. DOGGETT. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Markey amendment.

This reduces the danger of conflict of interest that is inherent in this bill. The concept of peer review, of having a jury of one's peers, in this case scientific peers, to review the work and ensure we have good science is a very good concept. But what we have here is not true peer review but, as the gentleman from Massachusetts has pointed out, phony peer review. Because we are going to ensure that lobbyists, when they finish their work in this great Capital, can go out and sign up for the peer review committee.

I know the gentleman from Massachusetts had some further words on that subject.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Mr. Chairman, for those who are listening right now, think about it in these terms: for every regulation that is placed upon the books or has been placed upon the books by any of these agencies, there are 25 experts in America on the subject who could potentially qualify for the peer review group. Twenty of them have no conflict of interest; five of them have a conflict of interest.

The history of this country has been that the agency selects amongst the 20 that have no conflict of interest so that the public can be sure that the health and safety regulation has in fact been analyzed by people who are not going to financially benefit.

Under the amendment which I have proffered, if in fact the company that has a conflict of interest has a Nobel laureate with a de minimis stake in the company, then they could make an exception saying there is no bias for that Nobel laureate. But throughout the history of our country, every time there is a regulation put on the books, they always select from the 20 with no conflict of interest. We have a lot of experts in America on a lot of subjects.

The misimpression being left by the authors of the legislation is that in fact there will be no experts that will be allowed to participate. Just the opposite is the case. We will have just as many experts as we have ever had, but we will ensure that, as we have in the past, they will not have a financial conflict of interest. In that way the public can be sure of the outcome.

I think that the misrepresentation that goes on with regard to the amendment and these horrific examples of regulations that have been placed upon the books, assume that they would not be placed upon the books if, in fact, the lobbyist for the company that was going to be affected by the regulation could serve on the peer review group. In fact, as we know, if that had been the case throughout the history of our country, we would have had no regulations to protect the health and safety of this country because the drug companies and the chemical companies and the nuclear industry and every other industry would have packed every one of these peer review groups.

Let us not, for God's sake, leave any misimpression for anyone who is listening that there are not plenty of independent experts available to serve on every single panel that would ever be constructed by every single agency. Let us not for a second again think that if in fact the Markey amendment is accepted that the first thing that they would decide is that a single company would, and the only company that could be affected by a particular regulation, of course, would be in a clear conflict of interest and bias, if their scientists and their lobbyists sat on the panel. So to a certain extent the gentleman's amendment, while clarifying, is redundant in terms of what is already offered as a real protection inside of the Markey amendment.

This is a conflict of interest, clear and simple, loaded with potential for lawsuits from here to eternity, if, in fact, the Markey amendment is not adopted.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, I thank the gentleman for yielding. Here is the question.

This conflict of interest, when the regulator is paid for partially by fines that he levies, is that not a conflict of interest?

Mr. DOGGETT. I thought the best example on conflict of interest was the last one the gentleman had with the silly regulation about covering the net over the house, because there are a lot of Members here on both sides of aisles that are concerned about eliminating silly regulations.

But under the bill as you propose it, OSHA has to have somebody from the net manufacturer on the peer review committee to decide whether it is reasonable to put a net over the house. That is what the gentleman from Massachusetts [Mr. MARKEY] is trying to prevent.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from Massachusetts.

Mr. MARKEY. The example which the gentleman uses is absolutely ridiculous. When a regulator fines a company for polluting, the money does not go back to the regulator. The money goes back to the Federal Treasury. When a lobbyist is on a peer review panel, proposing that a regulation pass, he gets rich if that regulation is blocked.

The CHAIRMAN. The time of the gentleman from Texas [Mr. DOGGETT] has again expired.

(At the request of Mr. BARTON of Texas and by unanimous consent, Mr. DOGGETT was allowed to proceed for 2 additional minutes.)

Mr. BARTON of Texas. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from Texas.

Mr. BARTON of Texas. In the gentleman's earlier comment, he said that the bill is going to create phony review panels or at least has the potential to create phony review panels. I would ask if the gentleman has read subparagraph 1 where it says, panels consisting of experts shall be broadly representative and balanced, and then it goes on to say, represent State, local, tribal governments, small business, other representatives of industry.

Do you not believe that that paragraph which remains intact under the Markey amendment is going to ensure that there is a true review panel?

Mr. DOGGETT. Certainly that paragraph, which was read by the distinguished chair of the committee last night in suggesting that I had misrepresented what this legislation does, which I certainly had not, is the kind of general claim for a lack of bias in these panels. But we cannot just read that one section. We have to move down to the next section, and that is where we tell each one of these agencies that they cannot keep a lobbyist off of these peer review committees. They have to put them on. It is not a may or a maybe. It is a shall not. It is a commandment to every one of these regulatory agencies that they cannot keep off these panels lobbyists.

As the distinguished former chair of the Committee on Commerce indicated, while there may have to be balance, there is nothing in this legislation that prevents an agency from having every single member on the panel being someone who has a financial interest. They may have somebody who is a consumer, but they may still have a financial interest in this.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from Massachusetts.

Mr. MARKEY. They do have a balance requirement in the law. It has to be a balanced panel. But the balance, for example, for a nuclear regulation could be they have a nuclear manufacturer. They have a nuclear chemist. They have a nuclear waste disposal company. They have a nuclear, nuclear, nuclear. They all have conflicts of interest, but it is balanced in its conflicts although they all are against the public health and safety.

Mr. BARTON of Texas. Mr. Chairman, if the gentleman will continue to yield, they also have State government, local government, small business.

The CHAIRMAN. The time of the gentleman from Texas [Mr. DOGGETT] has again expired.

(By unanimous consent, Mr. DOGGETT was allowed to proceed for 1 additional minute.)

Mr. DOGGETT. Mr. Chairman, this is like saying we are going to have a jury of our peers for the O.J. trial, and we will have a fair cross section of peers for that, but we are also going to let the lawyers for one side or the other serve on the jury panel. What we want is good science, not good advocacy.

I could not disagree more with the gentleman earlier who said, well, we have got all these paid experts in court going back and forth. It will not be any different than that.

That is the problem. In too many of these cases, you get whatever degree of expertise you pay for. We are not interested in paid science. We are not interested in advocacy. We are interested in balance and in keeping those who have an axe to grind off of these peer review committees. That is what the amendment of the gentleman from Massachusetts is designed to accomplish and why I rise in support of his amendment.

Mr. WALKER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I think we ought to be clear about what we are doing here.

Some Members just have not bothered to read the language in the bill. It requires an independent and external peer review. "Independent" means that there does have to be some degree of work to make certain that the people are independent. Then it also says that they shall provide, it does not make it voluntary, "they shall provide for the creation of peer review panels consisting of experts," not Gucci shoe lobbyists, but experts and shall be broadly representative and balanced. So much of what we have heard here today just does not bear to the language that we begin with when we set forth the section.

Why did we go down and put a section in that says we shall not exclude peer reviewers with substantial and relevant expertise? In large part because the testimony before our committee anyhow was somewhat different from the way the gentleman from Massachusetts portrays it.

The fact is we are creating a system now where we are likely to be looking at things that involve a good deal of technical expertise, that involve a good deal of technical knowledge. We may, in fact, be writing regulation that at some point, for instance, affects an ecosystem such as the Chesapeake Bay. We might want to have the premier experts on the Chesapeake Bay as part of a peer review panel. That premier expert might be someone who works for the University of Maryland that might have a direct interest in the outcome of something with regard to the Chesapeake Bay but under the gentleman's amendment would be excluded from the panel.

And so the fact is that what we are doing is assuring, under the gentleman's amendment, that the dumber you are about the issue, the more likely you are to be able to participate in the peer review.

I am not certain that that is what we want to set up. I think what we want to set up is exactly what we do in the bill to assure that those people who have some knowledge about the issue are, in fact, involved in the peer review.

The gentleman from Texas suggests that this is somewhat analogous to a jury. It is not a jury. These are people who are reviewing technical data. They do not determine the outcome. They simply review the technical data to find out whether or not it was honestly arrived at.

It seems to me that that is where we want to have some people who are very knowledgeable about the subjects. And yet what there is an attempt to do here is to take knowledgeable people out of the process.

I understand why the gentleman from Michigan [Mr. DINGELL] and the gentleman from Massachusetts [Mr. MARKEY] and the gentleman from Texas [Mr. DOGGETT] and so on come up with this kinds of language. They are opposed to this bill. They do not like it. They do not want this bill. They are going to vote against it. They will do everything possible to destroy it.

□ 1445

One of the things they are attempting to do here is destroy it by assuring that it becomes unworkable, and it becomes unworkable when in fact what you have is the dumbness test for peer review, rather than the smartness test.

Mr. DOGGETT. Will the gentleman yield, Mr. Chairman?

Mr. WALKER. The gentleman interrupts me in the middle of my speech, but I am happy to yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, will the gentleman do us the courtesy by just taking away that argument completely by excluding lobbyists from these peer review panels?

Mr. WALKER. I would say to the gentleman that I am perfectly willing to exclude lobbyists, but we did exclude them when we said we had to have experts as a part of it.

This idea of lobbyists is in fact a term being thrown around by gentlemen who want to play to public sentiments, and so on.

Mr. DOGGETT. Mr. Chairman, I agree, we have a little expertise among the lobbyists, but some of them are scientists, and some do come here on bills like this and offer their testimony.

Mr. WALKER. Some of the ones who are true scientific experts might actually be someone we would want to have review.

Mr. DOGGETT. So the gentleman wants them on these peer review panels?

Mr. WALKER. As far as I am concerned, we can exclude lobbyists. I want to have experts.

Neither the amendment of the gentleman from Massachusetts [Mr. MARKEY] nor what is in the bill is anything but permissive. Both permit people to participate.

It is just that with the gentleman from Massachusetts, what they want is an insider game to be played where only the agency gets to choose, the agency gets the choice here, and what they are going to do is pick the people who like the agency bias.

The gentleman from Massachusetts [Mr. MARKEY] wants to make certain if this law goes into effect what we get is exactly the same kind of regulations we have always gotten, those kinds of regulations that the agency wanted in the first place, where they set out to do something good and end up doing something harmful because they did not get broadly relevant expertise in the review.

We want to change that. We want to go to a new order solution that changes things in a way that makes some degree of sense. Most of all in this, Mr. Chairman, what we are trying to do is to make certain that where we get down to those narrow activities that involve some real technical expertise, that we can in fact bring people onto panels who are truly knowledgeable about those subjects.

I would be happy to narrow the focus of the language in the bill in a way that gets to that subject matter.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. WALKER] has expired.

(By unanimous consent, Mr. WALKER was allowed to proceed for 1 additional minute.)

Mr. WALKER. Mr. Chairman, If in fact what we need to do is just make certain that there is language to assure that the only time this applies is if there are no other experts available, I am perfectly willing to modify the language in the bill to do that.

However, with the gentleman's amendment, what we do is we exclude people who might have relevant expertise to bring to a highly technical subject, and do it in a way that I do not think makes any sense.

Mr. Chairman, I would hope this amendment would be rejected. Dumbness should not be the standard for peer review, it ought to be a smartness test.

Mr. MARKEY. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman is recognized for 5 minutes.

There was no objection.

Mr. MARKEY. Mr. Chairman, I do not want to prolong the debate, except to, here at its conclusion, make a simple point, once again. We do not want any of these agencies to exclude experts. We do not want anyone who can contribute to an evaluation of any of these scientific questions to not be able to serve on any of these peer review panels.

The issue is bias. If in fact the scientist, the lawyer, the lobbyist who is being offered as an expert has a bias on that issue, we are arguing that they should not serve on that peer review panel unless the agency determines that there is a significant contribution that can be made, and the bias is incidental.

Mr. BLILEY. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I am glad to yield to the gentleman from Virginia.

Mr. BLILEY. Mr. Chairman, I am glad to hear the gentleman make the statement. I wish we could have had his support in the last Congress, when EPA was doing its risk assessment on secondary smoke and there was a gentleman on our risk review panel that I pointed out from California who was a leading antismoking crusader, but I did not hear anything from the gentleman.

I thank him for yielding to me.

Mr. MARKEY. Mr. Chairman, if I may reclaim my time, I think it is noteworthy that in our language we make it clear that it is not just financial, but other interests in the outcome, which would qualify as bias. We would want the agencies to look at other interests as well that may not be financial.

That is why I deliberately included those words after the full committee markup when that subject was raised, because I agree with the gentleman, where there is bias, regardless of whether there is a financial interest, there should be an ability to remove those people from the panel.

However, that is the whole point. It does not really make any difference whether you are going to get rich because the regulation is coming out your way, or your whole career is obviously so tainted by a pattern of behavior that that person should be excluded as well.

Mr. Chairman, I understand that there are some people who want industry lobbyists to serve on the panel, who want a biased position to be represented as part of these hearings. That is what the bill allows.

The amendment bans that. It puts up a wall, and if Members want, I will add in the extra language which I have which keeps out bias other than financial, so that the gentleman can legitimately object when in fact there are those who have other interests.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, before we talked about OSHA, and this is important because it is something relevant that is happening in our society today. When OSHA pays its staff, when OSHA pays its bills, does that not come out of the fines they impose? The answer is yes. OSHA is hiring new people. OSHA is out there levying fines.

Mr. MARKEY. Mr. Chairman, if I may reclaim my time, let us not confuse whether or not other people are hired at agencies with the issue of whether or not the person gets personally enriched by a decision which is made. No Federal employee can profit, by law, from any decision which they make. There is absolutely a total prohibition against that.

I do not think it is proper to equate that situation with a Federal regulator with the lobbyists' interests which a chemical, a tobacco, a drug, or a toy manufacturing concern would have with the promulgation of a regulation and personal enrichment of the individual.

Mr. ROTH. If the gentleman will continue to yield, Mr. Chairman, I think the gentleman is being a little too disingenuous. I think it is relevant. If OSHA hires additional people, they have to levy additional fines.

Just the last couple of weeks ago when OSHA put out their latest regulation, they promulgated the rule on day 1 at 7 o'clock in the morning, and at 8 o'clock they were imposing fines. There was no publication that this is a new rule.

I say that there is a conflict of interest in these industries, in these agencies.

Mr. MARKEY. Mr. Chairman, if I may reclaim my time one final moment, the point is if there is a lobbyist, if there is a scientist, we will not even call them lobbyists, we will just say employees of the company, if they have stock options in the company that personally enrich them if a regulation does not go on the books, let us not kid ourselves, there is a tremendous bias with regard to how the individual will view that regulation going forward.

If a Federal regulator passes a regulation, he does not personally or she does not personally find any monetary remuneration because of the passage of that regulation or defeat of that regulation. One might say they have a professional stake, no question about it, but they do not have a financial concern, and that is really the whole heart of this debate.

I urge anyone listening, if they do not believe people should have a financial stake, please vote for the Markey amendment. It still allows for every other expert in every field to serve on the peer review panels.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I am glad to yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, I think I heard the gentleman say a little while ago that he is sensitive about the concern.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

(At the request of Mr. WALKER and by unanimous consent, Mr. MARKEY was allowed to proceed for 2 additional minutes.)

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, the gentleman has indicated that he is sensitive to the concern that there might be areas where you have a particular expert that serves and there could be some modest conflict of interest or something, and that is what he tried to correct in his amendment.

I think maybe he is even, from what he said, sensitive to the fact of what we heard in the committee, that there are in fact people who might have expertise in very, very narrow technical areas that would have to be included in these peer reviews if the peer review is going to be done in a good sense.

Mr. Chairman, let me ask the gentleman, as I said, I am willing to narrow the scope of the amendment. What if we put language up front in the amendment that said "Unless there are available peer reviewers with the equivalent or superior expertise and experience and no potential interest in the outcome, they shall not exclude peer reviewers."

In other words, the only way that the provisions in the bill would apply is if there were absolutely no other kinds of peer reviewers with the kind of expertise that is needed in order to make these judgments; then we would have language that would say where there would be no potential interest in the outcome.

Let me ask the gentleman, is that something that the gentleman would be willing to accept to solve the committee's problem, as well as his?

Mr. MARKEY. Mr. Chairman, if I may reclaim my time, the amendment which I have offered already provides that flexibility to the Federal agency. It allows for the agency to make a determination that the interest would not be reasonably expected to create a bias, and therefore, to allow that expert to testify.

Mr. WALKER. The problem with the gentleman's amendment, Mr. Chairman, if he will continue to yield, is that it presupposes that these people are bad people and should not be brought in.

What we are suggesting is that maybe there is a need for some language that would suggest that if there are other kinds of peer reviewers available that have no interest, the agency ought to look to those people, but if there was nobody else, the agency should have the discretion.

I wonder if the gentleman would go along with that.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

(At the request of Mr. WALKER and by unanimous consent, Mr. MARKEY was allowed to proceed for 1 additional minute.)

Mr. MARKEY. Mr. Chairman, again, I think the gentleman is heading in the right direction, but it is not enough, and it is already covered by the language which I have in my amendment. We make it a ban, but a ban which can be waived by the agency if they need the experts.

By the way, that is how every Federal agency today now operates. We are not changing anything, we are not adding anything new here. There are peer review groups today, there have been for 50 years, and they have always used experts. They will continue to use experts.

The only change we are debating here today is whether or not people with financial conflicts of interest should be able to serve on the panel. That is the only thing in the debate.

Historically, they have always had the latitude of waiving, if they want to, under the U.S.C. 208 that allows for the Federal agency to let those people in if they needed them, so the law is already there to do it. I do not know why we are changing it at all.

Again, to avoid the conflict of interest, and again, if I may in conclusion just say to the gentleman from Pennsylvania [Mr. WALKER], it is not with the intention of killing this legislation that we are offering the amendments. It is just the opposite, it is to improve it before it does become the law of the land.

Mr. BILBRAY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. I understand the concern of my friend, the gentleman from Massachusetts [Mr. MARKEY], that there may be a major problem here.

However, let me just sort of quote a representative of the Environmental Defense Fund, who stated at testimony before the Committee on Commerce, "I think in principle there are probably very few exclusions that I would make, as long as members of peer review panels are experts in their area and there is an appropriate balance."

I wish to say to my friend, the gentleman from Massachusetts, that I have seen different peer review processes work. It is essential to get everybody who has expertise to be included in the process, and not to exclude them.

I think what the gentleman fears with regard to conflicts, the conflicts come from many directions. I would not feel it would be appropriate that just because somebody happens to be employed by the Lung Association and actively involved in that process, that they should somehow be treated as if they are tainted and unacceptable to the review process.

In fact, Mr. Chairman, as long as we understand that there is an agenda, and where they come from, it is a major contribution, because in reality we want those who may come from different spectrums to be at the table to build the consensus.

There may be those that are scared of what may be termed the extremes finding consensus. I think we should not only not fear it, we should embrace the fact that consensus is what we want to find on these issues, and that is where we can.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. BILBRAY. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Mr. Chairman, again, we are not excluding the companies that are affected. They can still participate legally by commenting upon the regulation, by meeting with the regulators, by participating in any number of ways.

What we are talking about here is, as the gentleman from Texas calls it, the jury over here on the peer review panel. Except for that one part of the process, they are allowed to fully participate in making their case and in ensuring that all the evidence and information is before the agency.

Mr. BILBRAY. Mr. Chairman, reclaiming my time, the fact is, as the gentleman said, except for participating in that process, they can participate in the rest of the process. The gentleman and I know this is the core of being able to be proactive rather than reactive.

I do not care if you are a representative of the industry or a representative of an environmental group, to be involved in the initial process is absolutely essential for not only your agenda, be it one way or the other, but for the process itself and the finished product.

□ 1500

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts [Mr. MARKEY].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MARKEY. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This will be a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 177, noes 247, not voting 10, as follows:

[Roll No. 178]

AYES—177

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Boehlert
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Franks (NJ)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gordon
Green
Hall (OH)
Hall (TX)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
LaTourette
Levin
Lewis (GA)
Lincoln
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Menendez
Mfume
Mineta
Minge
Mink
Moakley
Mollohan
Montgomery
Morella
Murtha
Nadler
Neal
Ney
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Pomeroy
Poshard
Rahall
Rangel
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Slaughter
Stark
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Tejeda
Thompson
Thornton
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—247

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Moorhead
Moran
Myers
Myrick
Nethercutt
Neumann
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Thomas

Thornberry
Thurman
Tiahrt
Torkildsen
Upton
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—10

Gonzalez
Gutierrez
Hunter
Lantos
Lipinski
Meek
Miller (CA)
Rush
Vucanovich
Ward

□ 1517

The Clerk announced the following pairs:

On this vote:

Mr. Rush for, with Mrs. Vucanovich against.

Mr. BAESLER changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. BARCIA. Mr. Chairman, on roll No. 178, the Markey amendment to H.R. 1022, I intended to vote "no", and inadvertently voted "yes". I would like the RECORD to reflect this, and as such I submit the following February 24 correspondence to my colleagues for the RECORD to illustrate my support.

SUPPORT PEER REVIEW IN RISK ASSESSMENT

We strongly support requiring Federal regulations to be based on sound scientific principles, and urge our colleagues to support the peer review provisions of title III in H.R. 1022. This provision would establish a systematic program for sound scientific review of risk assessments used by agencies when promulgating regulations addressing human health, safety, or the environment. We believe that peer review is a critical component of sound science, and is necessary for accurate risk assessment analyses involving complex issues.

We spend an exorbitant amount complying with regulations. These costs totaled a whopping $581 billion in 1993, and ultimately increased the price for every good and service purchased by the American people. These regulatory costs are nothing more than a hidden tax on American consumers and business.

Some critics of the risk assessment provisions in H.R. 1022 believe those organizations or sectors impacted by a regulations should not be allowed to serve on their review panels. This notion, however, subverts the very intention of sound science—to base decisions on all relevant and available information without color or prejudice.

Peer review panels should include scientists from affected sectors as well as consumer interests and any outside interest. Doing so will allow risk-based analyses to maintain balance and flexibility, thereby ensuring agencies use sound science in their decisionmaking.

Some critics have suggested that including interested parties in the peer review process compromises the integrity of human health, safety, or environment regulations. However, the precedent for peer review already exists. Congress has consistently supported legislation requiring the use of comprehensive peer review panels for environmental and safety issues.

For example, the Science Advisory Board [SAB], created under the 1969 National Environmental Policy Act, was established to conduct peer reviews for EPA regulations. To be a member of the SAB you must have the proper education, training, and experience; there are no restrictions on affiliation. Further, the National Advisory Committee on Occupational Safety and Health as mandated under the Occupational Safety and Health Act is to be composed of "representatives of management, labor, occupational safety and occupational health professionals and the public." The Energy Policy Act, which Congress passed in 1992, requires a peer review panel on electrical and magnetic fields. This peer review panel must contain representatives from the electric utility industry, labor, government, and researchers.

Peer review is a commonsense approach that must include all interested parties, and as such we urge you to support the peer review provisions in title III of H.R. 1022.

AMENDMENT OFFERED BY MR. BARTON OF TEXAS

Mr. BARTON of Texas. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BARTON of Texas: Page 36, after line 2, insert the following new title, redesignate title VI as title VII, and redesignate section 601 on page 36, line 4, as section 701:

TITLE VI—PETITION PROCESS

SEC. 601. PETITION PROCESS.

(2) PURPOSE.—The purpose of this section is to provide an accelerated process for the review of Federal programs designated to protect human health, safety, or the environment and to revise rules and program elements where possible to achieve substantially equivalent protection of human health, safety or the environment at a substantially lower cost of compliance or in a more flexible manner.

(b) ACCELERATED PROCESS FOR CERTAIN PETITIONS.—Within 1 year after the date of enactment of this Act, the head of each Federal agency administering any program designed to protect human health, safety, or the environment shall establish accelerated procedures for accepting and considering petitions for the review of any rule or program element promulgated prior to the effective date of this Act which is part of such program, if the annual costs of compliance with such rule or program element are at least $25,000,000.

(c) WHO MAY SUBMIT PETITIONS.—Any person who demonstrates that he or she is affected by a rule or program element referred to in subsection (b) may submit a petition under this section.

(d) CONTENTS OF PETITIONS.—Each petition submitted under this section shall include adequate supporting documentation, including, where appropriate, the following:

(1) New studies or other relevant information that provide the basis for a proposed revision of a risk assessment or risk characterization used as a basis of a rule or program element.

(2) Information documenting the costs of compliance with any rule or program element which is the subject of the petition and information demonstrating that a revision could achieve protection of human health, safety or the environment substantially equivalent to that achieved by the rule or program element concerned but at a substantially lower cost of compliance or in a manner which provides more flexibility to States, local, or tribal governments, or regulated entities. Such documentation may include information concerning investments and other actions taken by persons subject to the rule or program element in good faith to comply.

(e) DEADLINES FOR AGENCY RESPONSE.—Each agency head receiving petitions under this section shall assemble and review all such petitions received during the 6-month period commencing upon the promulgation of procedures under subsection (b) and during 15 successive 6-month periods thereafter. Not later than 180 days after the expiration of each such review period, the agency head shall complete the review of such petitions, make a determination under subsection (f) to accept or to reject each such petition, and establish a schedule and priorities for taking final action under subsection (g) with respect to each accepted petition. For petitions accepted for consideration under this section, the schedule shall provide for final action under subsection (g) within 18 months after the expiration of each such 180-day period and may provide for consolidation of reasonably related petitions. The schedule and priorities shall be based on the potential to more efficiently focus national economic resources within Federal regulatory programs designed to protect human health, safety, or the environment on the most important priorities and on such other factors as such Federal agency considers appropriate.

(f) CRITERIA FOR ACCEPTANCE OF PETITIONS.

(1) IN GENERAL.—An agency head shall accept a petition for consideration under this section if the petition meets the applicable requirements of subsections (b), (c), and (d) and if there is a reasonable likelihood that the revision requested in the petition would achieve protection of human health, safety or the environment substantially equivalent to that achieved by the rule or program element concerned but a substantially lower cost of compliance or in a manner which provides more flexibility to States, local, or tribal governments, or regulated entities.

(2) FINAL AGENCY ACTION.—If the agency head rejects the petition, the agency head shall publish the reasons for doing so in the Federal Register. Any petition rejected for consideration under this section may be considered by the agency under any other applicable procedures, but a rejection of a petition under this section shall be considered final agency action.

(3) CONSIDERATION.—In determining whether to accept or reject a petition with respect to any rule or program element, the agency shall take into account any information provided by the petitioner concerning costs incurred in complying with the rule or program element prior to the date of the petition and the costs that could be incurred by changing the rule or program element as proposed in the petition.

(g) FINAL AGENCY ACTION.—In accordance with the schedule established under subsection (e), and after notice and opportunity for comment, the agency head shall take final action regarding petitions accepted under subsection (f) by either revising a rule or program element or determining not to make any such revision. When reviewing any final agency action under this subsection, the court shall hold unlawful and set aside the agency action if found to be unsupported by substantial evidence.

(h) OTHER PROCEDURES REMAIN AVAILABLE.—Nothing in this section shall be construed to preclude the review or revision of any risk characterization document, risk assessment document, rule or program element at any time under any other procedures.

SEC. 602. REVIEWS OF HEALTH EFFECTS VALUES.

Within 5 years after the enactment of this Act, the Administrator of the Environmental Protection Agency shall review each health or environmental effects value placed, before the effective date of title I, on the Integrated Risk Information System (IRIS) Database maintained by the Agency and revise such value to comply with the provisions of title I.

SEC. 603. DEFINITIONS.

As used in this title:

(1) The term "Federal agency" has the same meaning as when used in section 110.

(2) The terms "rule" and "program element" shall include reasonably related provisions of the Code of Federal Regulations and any guidance, including protocols of general applicability establishing policy regarding risk assessment or risk characterization, but shall not include any permit or license or any regulation or other action by an agency to authorize or approve any individual substance or product.

Mr. BARTON of Texas (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. BROWN of California. Mr. Chairman, I reserve a point of order against the amendment.

Mr. BARTON of Texas. Mr. Chairman, I am very happy to offer this amendment on behalf of myself, the gentleman from Louisiana [Mr. TAUZIN], and the gentleman from Idaho [Mr. CRAPO].

The basic point of this amendment goes to the thrust of the bill. Under the bill that is before us today we are putting in place a mechanism by which we can do a valid scientific risk assessment. We are putting in place a process by which new laws and rules and regulations that flow from them, there has to be a scientific risk assessment done.

The bill before us today, however, does nothing to require a review of existing rules and regulations. The economy today is laboring under a burden of somewhere between 400 and 600 billion dollars' worth of the existing regulations and costs the average American family about $6,000 per year.

If Members think that some of the existing rules and regulations should be reviewed, if Members believe that some of the existing rules and regulations should be subject to review, then they should vote for this amendment. If Members think that every existing rule and regulation that is on the books today is sacrosanct and should not be reviewed, vote against the Barton-Tauzin-Crapo amendment, because what the amendment does is set up a very structured process by which any affected party out in the country can petition the relevant agency for a particular rule or regulation to be reviewed.

It has to be a major rule as defined under the bill, in other words, has a cost impact of $25 million or more on an annual basis.

We allow a 6-month window by which parties petition the affected agency. We then allow the 6-month window for the agency to consolidate the petitions and decide which if any of the petitions have merit. Then we allow an 18-month period for the rules and regulations that do have merit that need to be reviewed, and as each of these windows opens and shuts, the first 6 months' window to petition, when it closes then you have a second 6-month window open up. Altogether there are 8 years' worth of windows for the petition, there are 8 years' worth of windows for agencies to review the petition and then there are 9½ years of windows for the agencies to actually make a decision on a petition process.

We have done everything we can in drafting the amendment to make sure that there are no frivolous petitions offered. We require that when the petitioner comes forward that they supply document that there is an alternative that will have the same amount of impact on either a most cost-effective basis to society or give more flexibility to State and local governments.

We do not try to supersede any of the other procedures in place that may allow for rules and regulations to be reviewed under some other natural process.

Our amendment has tremendous support. The Alliance for Reasonable Regulation supports it. There are over 1,500 organizations in that alliance. The Chemical Manufacturers Alliance supports our amendment, the National Federation of Independent Businesses support our amendment. Altogether there are over 3,000 groups around the country that are strongly supporting this amendment.

Again, the bottom line is if Members think the existing rules and regulations that are on the books today need to be reviewed then the petition process, if adopted, is the only thing that guarantees such a review may occur.

If Members think everything that has been passed in the past 100 years is OK, then Members would vote against it.

Mr. BLILEY. Mr. Chairman, will the gentleman yield?

Mr. BARTON of Texas. I yield to the gentleman from Virginia, the distinguished chairman of the committee.

Mr. BLILEY. Mr. Chairman, I support the gentleman's amendment. I think it is reasonable. I think there ought to be some way for citizens to appeal what they consider to be unreasonable rules. There then ought to be a mechanism to consider this appeal. I think the gentleman has answered both questions in a very nice way, and I urge support of the amendment.

Mr. BARTON of Texas. I thank the distinguished gentleman for his support.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield for a question?

Mr. BARTON of Texas. I yield to the gentleman from California.

Mr. WAXMAN. Mr. Chairman, I want to see how this works. An aggrieved party petitions for a rule to be reopened; then who makes the decision in that first instance?

Mr. BARTON of Texas. There is a 6-month period for all petitions to be received by that particular agency. The agency will consolidate those petitions if they are similar in nature, and then the agency makes a decision as to whether to accept the petition.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BARTON] has expired.

(At the request of Mr. WAXMAN and by unanimous consent, Mr. BARTON of Texas was allowed to proceed for 2 additional minutes.)

Mr. BARTON of Texas. If in the petition the petitioner has shown that there is adequate documentation to show that there is reasonable cause that the petition should be reviewed, then the agency has to review it.

Mr. WAXMAN. The agency must review at that point?

Mr. BARTON of Texas. But based on the petitioner presenting evidence. You cannot just say I think it all ought to be looked at; there are very substantial evidentiary requirements that are required for the petition.

Mr. WAXMAN. And if the agency still disagrees, what happens then?

Mr. BARTON of Texas. You have 6 months in which to present your petition and then the agency has 6 months to look at the petition. The agency then makes a determination. If it is a negative determination that says no, we do not want to review it, the agency has to publish reasons why it reached the negative determination and show that it had substantial evidence to prove that it should not review the regulation.

Mr. WAXMAN. Is that challengeable in court?

Mr. BARTON of Texas. It is challengeable under the existing laws. We do not put in a new burden of proof in terms of judicial review.

Mr. WAXMAN. Under the Administrative Procedures Act.

Mr. BARTON of Texas. That is correct. If the agency says yes, we are going to review it, then there is an 18-month period during which the agency has to review it. It is not an open-ended review. We create an 18-month period, once they have made the decision they shall review it. Then there is 18 months in which they have to review it, so they cannot let it go on indefinitely.

Mr. WAXMAN. The gentleman indicated they would have to come up with the same result in some other way. How is that spelled out in the gentleman's amendment?

□ 1530

Mr. BARTON of Texas. In the "purpose" it says,

> The purpose of this section is to provide an accelerated process for the review of Federal programs designated to protect human health, safety, or the environment and to revise rules and program elements where possible to achieve substantially equivalent protection of human health, safety, or the environment at a substantially lower cost of compliance or in a more flexible manner.

The CHAIRMAN. Does the gentleman from California [Mr. BROWN] insist on his point of order?

Mr. BROWN of California. Mr. Chairman, the gentleman withdraws his point of order.

Mr. BROWN of Ohio. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, if the gentleman from Texas [Mr. BARTON] would engage in a colloquy and answer a couple of questions, in the committee report from the Committee on Energy and Commerce, I say to my friend from Texas, the language in the section 3401, in paragraph 2, "any person may petition" was the language that the Committee on Energy and Commerce adopted. The Committee on Science, Space, and Technology adopted no language whatsoever on looking back like that. The language you have adopted is any person who demonstrates that he or she is affected by a rule may submit a petition.

What is the difference?

Mr. BARTON of Texas. Mr. Chairman, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Texas.

Mr. BARTON of Texas. Mr. Chairman, the difference is the language that we adopted in the Committee on Energy and Commerce, the gentleman from Massachusetts [Mr. MARKEY] wanted to substitute any person, which would literally be anybody breathing in this country. In consultation with people both for the amendment and opposed to the amendment after the markup in the Committee on Energy and Commerce, we decided to seek a middle ground between any person and a person who has a direct financial interest, so the standard we chose was an affected person. Now, an affected person is still a very broad definition. It is somebody affected in a cost way by the rule or regulation or living in an area that is affected by the consequences of the regulation.

So an affected person is not quite as broad as any person, but it is still a very broad definition.

Mr. BROWN of Ohio. Reclaiming my time and posing another question, the CBO scored or estimated $250 million for the cost of this bill, moving, raising the threshold from $25 to $100 million. It would cost the Government $250 million.

Have you calculated, or has CBO calculated, the difference in cost, the additional cost in bureaucracy and litigation and hiring more employees and all of that to do a lookback at all of these cases over the next 8 years, a lookback at all of these regulations that could be brought up?

Mr. BARTON of Texas. If the gentleman will yield further, first of all, we do require that anybody that petitions be able to show that there is going to be substantially lower cost of compliance and more flexible cost of compliance. So on a net basis we think it is going to save money on a net basis.

No. 2, we do not require that any additional employees be retained to do this review. We happen to believe that there are enough Federal employees in the affected agencies that can do the review.

So I am not going to prevaricate and say that I have done an extensive cost analysis of our amendment. But we do not believe that it is going to bear an additional cost to society. In fact, we think it will save money.

Mr. BROWN of Ohio. Reclaiming my time, I think that is the reason this amendment in the end makes no sense. It is a question of, again, as much as the rest of the bill does, it is more lawyers, more litigation, more employees working for these agencies because they are going to be swamped with petitions.

Business after business after business is going to file against regulations that have been handed down; consumer groups, citizen groups, environmental groups, other people are going to open up these rules, again, rules that have already been agreed to, rules that businesses are living under, rules that the public benefits from in many cases, clean air, clean water, pure food, safe consumer products, all of that, and we are opening this up again. It is more bureaucracy, more layers of government, more costs.

At the same time it is more judicial review, and it is again another reason that this bill in the whole is a problem, and this amendment particularly takes the bill that is already loaded down with too much bureaucracy and litigation and loads it down even further, and it loads it down for the next 8 years, for the next 16 6-month periods, if you will, and ends up putting us behind the eight ball more.

For us not to calculate the cost and just say, yes, Government is going to be able to do that, is simply misleading the public and misleading the other Members of this House.

Mr. BARTON of Texas. If the gentleman will yield further, I make a couple of points on his point. No. 1, if the bill passes, there are not going to be as many new rules and regulations promulgated. I think that is a given. So there are going to be people that have time to do that.

No. 2, in the petition, the system that we set up, we require that as part of the petition the information be shown that which shows that the rule or program element concerned can be administered at a substantially lower cost of compliance or in a manner which provides more flexibility to the States. So we are attempting, you know, nothing is certain in this life except death and taxes, But we are attempting.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. BROWN] has expired.

(By unanimous consent, Mr. BROWN of Ohio was allowed to proceed for 1 additional minute.)

Mr. BARTON of Texas. If the gentleman will yield further, we put language in the amendment where we are attempting to mandate there be a lower compliance cost.

Mr. BROWN of Ohio. I am not a lawyer, but you can drive a truck through that kind of language, and anybody that feels harmed or hurt in any way by a regulation, whether it is a business that is trying to run around a regulation and wants to dispose of waste in Lake Erie or an environmental group that thinks they have been wronged by a regulation, they always can find a way to fit their complaint into that language and open this back up. There will be plenty of rules and regulations suggested or handed down by agencies that will go through all of this 23-step process. It will cost all of us as taxpayers more money, and it is simply not being honest with the public to say that it is not really going to cost more money, because in the end it is going to cost government a whole lot more money. It is going to mean more judicial review, more expense, more litigation, more government, more bureaucracy. It simply does not make sense.

Mr. CRAPO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I speak on behalf of the amendment.

Mr. Chairman, I think we are once again faced with a critical decision in the debate as it is setting up here; it is showing the basic difference in philosophy in how we are going to approach the critical concerns in this country about Federal regulation.

This process will change the bill in a very fundamental and important way. The bill, as it now stands, stops the Federal regulators from continuing the abusive growth of Federal regulations in unjustified ways for the future.

This process, the petition process, allows a look back at some of the existing regulations. It has already been said in debate on this floor that the existing regulatory burden we face in this country is the issue that is bringing us to this debate itself. If all we do is protect ourselves against future abuses, we fail to look back at the very reason that brings us to the floor for this debate, and that is the existing Federal regulatory bureaucracy that is crushing our economy and invading the lives of Americans in almost every aspect of their lives.

It has been discussed today that we have, and I have seen studies that show the burden on the American economy from the Federal regulatory system is anywhere from $400 billion to over $1 trillion, and that is every bit as real as a tax, as the taxes collected from the taxpayer every April.

We have got to recognize that we must allow us to look back and correct the abuses in the regulatory system.

The arguments being made against it are the same as well. First, it is thrown up this is going to allow for more lawyers to get into the act and for us to have more litigation. It seems that every time we want to correct the abuse in the Federal regulatory system, the counterargument is, well, that we take lawyers.

The fact is we have got to decide as a Congress whether we want to move forward and create the mechanism for people to fight back against the regulatory abuse and the explosion of regulations in this country, or whether we want to say because we are afraid that it might take some legal review that we are going to take no action. I do not think that is a justification.

The argument has been made that it is going to open up rules that businesses and people across this country are already adjusted to living under, and we ought to leave it alone.

Frankly, as I have said, that is the very reason we are here. Yes, people in this country are living under those rules and regulations, but, no, they are not happy; no, it is not right for this Congress to just wink its eye at what has happened in the past and say we are going to go on in the future and let what now stands be unchecked and unreviewed.

And then it is said, well, this legislation lets any person bring a proposal before the agencies for review. Well, frankly, I think that any person ought to have, who is affected by these regulations, the ability to bring it forward and have it reviewed.

But we have provided in the bill for protections. Every 6 months the agency is entitled to collect the various petitions, organize them, and assemble them and review them under a specific regulation to which they apply. We have a funneling system put in place that will keep the agencies from being inundated by repeated petitions. They collect them all in a 6-month period and act on them one at a time.

Mr. Speaker, this legislation is critical. You could say it is the core of the issue we are facing here today. We have got the vehicle there. Let us allow us now to look back.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, there is an old saying, "Be careful of what you ask for, because you might get it." And I would urge my colleagues to keep that saying in mind, because if you ask for this, you very well just might get it.

What is this amendment going to require of the Government? And what rights is it going to permit? Is this going to permit somebody to petition who is aggrieved in business, who feels he has been wronged with regard to a regulation which is imposing unnecessary costs on him? Yes, it is. But it is also going to permit Ralph Nader, the Sierra Club, the Natural Resources Defense Council, and ordinary individuals to do the same, because the language of the amendment says, "Any person," any person without limitation as to who. And they can submit this petition each 6 months for 8 years, 15 times, and if they do not get what they want the first time, they can resubmit it, and in resubmitting it, they can again ask for the same relief.

And when the agency has decided whether they are or are not entitled to the relief they have sought with regard to having the matter reopened, it is a final action. Now, for the benefit of my colleagues who do not understand these things, "a final action" is a word of art in the Federal law which says that that final action then is reviewable in court.

So let us look. Any chemical company is subject to having a reopening on any of their additives or any of their agricultural pesticides every 6 months for 8 years. They can be in court constantly and can be harassed under the provisions of this particular amendment.

The auto industry, on fuel efficiency or auto safety or clean air, can be in court constantly, and the subject of whether or not they are entitled to have a particular regulation that is in place remain in place or be subject to having it reopened by some outsider is settled by this amendment. What it says is anybody who wants to can go in and force this process and can then, on the conclusion of the action of the regulatory body in approving or disapproving, have the matter opened to litigation by any person who has an interest.

Now, let us look at an electrical utility. Let's suppose an electrical utility has gotten a particular ruling from the EPA with regard to emissions of sulfur. That particular judgment is open to review every 6 months for 8 years, and again it is subject not only to regulatory action of the agency but to judicial review. Imagine the harassment that can take place of the American electrical utility industry or any other industry in this situation.

Let us go to others. A food additive, or fluoridation of water in a community, comes open at every turn, because that regulation is subject to this particular provision. The individuals affected can demand that this be done every 6 months for 8 years, and every American water company, every American municipality that delivers water is going to be subject to being sued under this and to have the whole matter carried through not only the entire administrative process but then subject to judicial review as often as a complainant may want. Every 6 months it can be done.

I do not think this body wants anything of this character to be put in place. There are regulations in place which make sense, and there are regulations in place which do not, but if you are going to address the ones that do not make sense, I would beg you to understand that this is not just limited to one particular regulation, or one particular kind of regulation which might be hostile to industry, or which might cost too much, nor is this legislation going to be used only by responsible citizens or American businessmen concerned about competitiveness, but malefactors and irresponsible parties as well.

It is going to open the door of the regulatory process to every crackpot, nut, special interest group that you might care to name, and they are going to run all the way from the environmental extremists to the right wing reactionaries, and all the way from crackpot left-wing advocates to reactionaries who think that industry is being excessively hurt by sensible regulations.

□ 1545

The result of the adoption of this amendment, very frankly, is not only going to be to bring the administrative process in this Government to a halt by compelling tremendous relitigation, reexamination of every existing rule but it is going to go further. It is going to harass and drive American industry to its knees.

Mr. STUPAK. Mr. Chairman, I move to strike the requisite number of words, and I rise to engage in a colloquy with the gentleman from Virginia [Mr. BLILEY].

Mr. Chairman, I would like to ask my colleague a series of questions that relate to the impact of this bill on the Great Lakes States, because my district has more shoreline than any other district except Alaska.

As you know, the Army Corps of Engineers operates and maintains approximately 12,000 miles of commercial navigation channels; it maintains 297 deep draft harbors and 549 shallow draft harbors. Under the River and Harbors Act of 1899, the Corps of Engineers issues permits to private contractors for most harbor dredging. In addition, the Corps of Engineers issues general and regional permits for dredging—for instance, in New York and New Jersey.

Under title I, dealing with risk assessment, on page 8, beginning on line 5 and ending on line 9, it says that this title applies to "any proposed or final permit condition placing a restriction on facility siting or operation under Federal laws administered by the Environmental Protection Agency or the Department of the Interior."

Later in the same title, on page 25, on lines 12 and 13, the U.S. Army Corps of Engineers is listed as a "covered Federal agency"; I assume for purposes of the rest of the title.

My question to the gentleman is: Does this bill apply to individual, regional, or general permitting actions by the Corps of Engineers for dredging?

Mr. BLILEY. Mr. Chairman, will the gentleman yield?

Mr. STUPAK. I yield to the gentleman from Virginia [BLILEY].

Mr. BLILEY. I thank the gentleman for yielding.

Mr. Chairman, individual, regional, or general permitting actions by the Corps of Engineers for dredging under the Rivers and Harbors Act are not included as significant risk assessment or characterization documents for purposes of title I. The corps could, by rulemaking, add such actions to the scope of title I but the act does not mandate this outcome. Title II applies to major rulemaking and such major rulemakings may subsequently affect the permit program.

Mr. STUPAK. In addition to dredging activities, the Corps of Engineers has 376 projects under construction. Does this bill apply to construction projects under the jurisdiction of the Army Corps of Engineers?

The corps also owns or operates 273 navigation lock chambers, including one in my district—the Poe Lock System at Sault Ste. Marie, MI. Does this bill apply to the lock systems under the jurisdiction of the Army Corps of Engineers?

Mr. BLILEY. The bill does not apply to construction projects or operations of lock systems per se. The bill only addresses regulatory programs to protect health, safety, or the environment.

Mr. STUPAK. As I said, I am concerned about the impact of H.R. 1022 on the Great Lakes. As you may know, the Great Lakes shoreline covers more than 11,000 miles—a distance equal to almost 45 percent of the Earth's circumference.

About 25 million people get their drinking water from the Great Lakes and the St. Lawrence River, and each day, 655 billion gallons of Great Lakes water are used for various purposes. Ninety-four percent of this water produces 20 billion kilowatt-hours of electricity by passing through hydroelectric plants.

Which brings me to my next question. In 1986, a Russian-flagged ship introduced into the Great Lakes a nonindigenous species—the zebra mussel. Zebra mussels attach themselves to hard surfaces like pipes, making them very difficult to remove. They quickly gang up on a desired target, clogging water intake and distribution systems.

These animals have cost municipal and industrial water facilities millions of dollars in cleanup and control costs. They've disrupted Great Lakes recreation, causing thousands of dollars in damage to boats, docks, buoys, and beaches. Over the next decade, scientists estimate that the cost of the zebra mussel invasion for Great Lakes water users could go as high as $5 billion.

And they're spreading beyond the Great Lakes. The flood of 1993 has helped the mussel spread as far south as Louisiana; it pushed the zebra mussel over levees, up rivers and drainage ditches and into sewage treatment plants and other riverside facilities.

Section 1201(f) of the Nonindigenous Aquatic Nuisance Prevention and Control Act authorizes the National Oceanic and Atmospheric Administration to conduct research to find a solution to the problem of nonindigenous species like the zebra mussel, sea lamprey, and European ruffe.

My question to the gentleman is: Does this bill apply to research projects conducted by NOAA?

Mr. BLILEY. Research projects, themselves, do not fall into the mandatory definition of significant risk assessment or characterization documents. If such a document were used as a basis for a major rulemaking or report to Congress, then title I would apply for the rulemaking or report to Congress. NOAA, however, can add risk assessment or characterization documents to coverage through a new rulemaking.

If title I requirements applied, they would require disclosure, best estimates, and comparisons. These requirements are broadly viewed as important benchmarks which should be followed for all risk assessments and characterization.

Mr. STUPAK. Mr. Chairman, I thank the gentleman from Virginia for engaging me in a colloquy and creating this legislative history.

Mr. GRAHAM. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, of all the things that I have had a chance to vote on, I am more excited in voting on this amendment than just about anything we have done here, because to me the November 8 election said something pretty strong, that we feel distant from our government. The gentleman from Michigan talked about groups that were extreme in nature being able to talk to their government. I think one of the reasons we had such an extreme change in the way the country is being run is because people felt very alienated from this country, they felt alien from regulatory bodies that could pass on huge costs of doing business in private and public life, and nobody could ask commonsense questions.

Of all the things that I voted on in this Congress, I am very proud to support the opportunity for average citizens, not crackpots, not nuts, to be able to come and talk to their government in a meaningful fashion, something that has been lost in this country.

There are triggers in this bill. It has to have a $25 million effect in the aggregate before you can petition your government. Twenty-five million dollars is still a lot of money in South Carolina, and still a lot of burden to bear in this country. And when $25 million gets to be nothing, then we really do have a problem here.

The exciting thing to me, Mr. Chairman, about this amendment is it allows average, everyday citizens, people trying to make a living, trying to pay the bills, to come to their government and ask them to give answers to commonsense questions, making the government accountable, having to explain why they regulate the way they do, having to explain the benefit and, yes, the cost. That is something that is missing in government in 1995, and, yes, this amendment will bring government back to the people more than anything I can think of.

I would ask every Member of this body who believes that the U.S. Government has gotten distant from its people to vote for this amendment which allows you to petition your government to answer your questions. What a novel concept in democracy.

I move very urgently that we pass it.

Mr. WAXMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

I want to point out that a good part of the debate, at least yesterday, was on the point this bill was going to be prospective. We are not going to open up all the laws on the books now to protect the public health and environment.

This particular amendment specifically goes backward and says we are going to look at and review Federal programs designed to protect human health, safety or the environment, to revise rules and program elements, where possible, to achieve certain results.

Now I want to give a real-life example of what is likely to happen under the circumstances under this proposal so that we can understand that this is a likely result that I think the proponents of this amendment would not want to see happen.

Under the Clean Air Act, in order to achieve the pollution reductions of

VOC's, which cause ozone, there is a requirement that there be a strategy to reduce pollution on those that cause the pollution.

The pollution caused by big polluters, like automobiles or smokestacks or factories, the reduction is anywhere from $2,000 to $10,000 per ton, according the testimony from the head of the Environmental Protection Agency.

But if you ask that the reductions not be from the major polluters but from individuals by requiring them to spend money to be sure that their older vehicles achieve the reduction requirements or achieve what their cars are supposed to achieve by way of emission reductions, the Environmental Protection Agency has told us that would be nearly $500 a ton. Now, that could mean that the auto industry, or a factory or a big polluter can come into EPA and complain about the regulations that have been imposed on them by their own States and say that, "We don't think it is reasonable because you can achieve an equivalent reduction but going after individual drivers and owners of vehicles." And they will be right because it is more cost effective to achieve the same pollution reduction.

But what we have to ask ourselves is, is that the result we would want to see? If individuals are going to have to bear the costs to repair their cars, the older the car the more polluting it will be and therefore the more it may cost to repair it. That means, often, low-income people will have to spend that money. But it is a more cost-effective way to achieve the result.

I would like to ask the gentleman from Texas [Mr. BARTON], who is the proponent of this amendment, would he want to see a regulation that imposes controls on a major polluter be relieved of that responsibility by having the burden placed on individuals to bear the costs because it would be a less costly may to achieve the same results?

Mr. BARTON of Texas. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from Texas.

Mr. BARTON of Texas. I thank the gentleman for yielding.

Mr. Chairman, I point out that we do not change the law, we do not change the Clean Air Act. The Clean Air Act specifics that if a certain percent of environmental increase in air quality is going to come from stationary sources, we do not change that, but we could under this amendment——

Mr. WAXMAN. Reclaiming my time, the gentleman is wrong on that point, because the Clean Air Act says you achieve the reduction and achieve it any way that the State thinks is appropriate. They develop an implementation plan. They can develop a mix of strategies; they do not have to go after stationary sources for a certain amount or vehicles for a certain amount. They factor in all the sources of pollution.

The point I am making is they may well have decided to tell a factory to spend a couple of thousand dollars per ton in order to achieve the reductions from a major source. But that major source can now come in and say, "Wait a second, you can get the same result from an individual car owner at a less expensive rate, and we demand that you do that."

As I read that the gentleman's amendment, the EPA would have to go along with that petition.

Mr. BARTON of Texas. If the petitioner, in the gentleman's case, the mobile source industry, shows substantial evidence they can achieve the same result with greater flexibility and lower costs, EPA does have to agree to review it. Then it has to make a final decision, and it has to prove that final decision with substantial evidence. Then the current law kicks in on the review.

Mr. WAXMAN. My point is that, using the criteria the gentleman set out in his amendment, they are going to establish that case that they do not have to have the burden placed on them as a major polluter because they can achieve the same result by requiring individual consumers who own vehicles, through an inspection and maintenance program, to achieve those same reductions, but at a cheaper rate.

Therefore, as I read the gentleman's amendment, they would be mandated to grant that petition.

Mr. BARTON of Texas. But the bottom line is we want cleaner air at lower cost or more flexibility. And I think we both agree on that.

Mr. WAXMAN. But I do not think that is the bottom line because I do not think the major polluters ought to get out from under by shifting the burden on individual citizens, since ordinary people that are going to have to pay the cost out of their pockets, many of whom would not be able to repair their cars sufficiently to achieve the standard, and that is why I object to this amendment.

□ 1600

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, members of the committee, on a visit to the British parliament recently I learned something rather interesting about a phrase we use in America, a phrase called "in the bag," and when we say something is in the bag, we normally mean it is completed, it is a done deal.

Mr. Chairman, the phrase comes from something that refers to this amendment and is appropriate to the discussion of why this amendment is vitally important and why it should be passed.

In the history of the British parliament and the fight for democracy with the monarchs in Great Britain the concept of petitioning the government for redress was a very important concept, one that was won at great cost and great loss of life in that struggle between monarchy and tyranny and the rights under a democracy. The British Parliament has come to respect that right to petition as such a strong right that it now includes in its construction a bag, literally a bag, that is placed at the door of the Parliament, and, when a petition arrives from the people of Great Britain and is accepted by the Parliament, that petition goes in that bag. Hence the expression "It's in the bag."

The expression means it is a done deal, the Parliament can no longer ignore the wishes, the petition, of the people of the country. The government must respond to the people in their request for some action, some redress of wrongs, some correction of some grievance, and so it is with the Barton-Crapo-Tauzin amendment.

Mr. Chairman, this amendment literally does the same thing for the people of America. It says that when the people of this country who are affected by rules and regulations of this Government honestly believe and can substantiate with documentation to that effect, that our Government has passed a rule or regulation which unduly burdens their life which could be amended to provide the same equivalent protection to safety, health, and the environment as the old regulation does, which could be revised so that they could live with it with less cost, fewer job losses, fewer plant closures, fewer property damages, fewer impacts upon small businesses; if there is a way to have the same protection, and yet do it with less of an impact of regulation in our lives, this amendment says the people shall have the right to petition the Government and that petition is in the bag. Government cannot ignore it, but it must act upon it in a given and expressed time period where the Government must review it.

Now it does not say that the Government must take the action that I petitioned them to take. It simply says, "If I support my petition with enough documentation to justify a request that substantial protection, the same equivalent protection provided under the old rule, can be made available with a more flexible rule, one that will cost our citizens less, one that will employ, in fact fewer lost jobs in our society, one that will shut down fewer plants, one that will let us continue to be a productive society and yet have the same safety, health and environmental protection as the old rule, that the Government cannot ignore that petition. It is in the bag, and the Government must consider it.

Now let me read to my colleagues the most important section in our amendment. It says that the purpose is to revise rules and program elements where possible to achieve substantially equivalent protection of human health, safety or the environment at a substantially lower cost of compliancy or a much more flexible manner.

Mr. Chairman, those are the goals of this thing, and that is the only basis upon which petitions can be filed and accepted by the Government agency. I ask,

> Who among you would not want our Government to review its rules to find out if we can have the same protection and still have people employed in this country? Who among you would not want our government to review its rules to make sure that small businesses did not have to shut down, that mills don't have to close, that our country can go on working and producing food and fiber for our families and have the same equivalent protection?"

Mr. Chairman, that is what this amendment does. It says when the people of our country affected by the rules this Government makes petitions this Government to look over its rules and to see whether or not there is not a better way to do it, that the Government ought to hear it and the Government ought not deny those petitions. It ought to accept them, take them into the bag, if my colleagues will, and give us a chance to get a better rule.

That is all it says, that is all it does, and anyone who opposes this amendment, says that they are just happy as a lark with any old rule that puts people out of work, and costs us too much in small businesses, and creates to much of a problem in our society, and we are not going to do anything about it. If risk assessment cost analysis has value for the future, it also has value for citizens who want to petition this Government about wrongs and to redress those wrongs with a petition process that looks back at an old rule that could be made better. This is all this does.

Mr. Chairman, I want to call to my colleagues' attention one last section of the amendment that is probably equally important. It says that nothing in this section shall be construed to preclude the review of revision of any risk assessment or risk characterization document, rule or program element at any time under any other procedures. It says in effect that while we create the accelerated review process where Government has to take account of the petitions filed by people in this country, that we still reserve the right of our people to petition this Government and to seek changes under any other procedures, any other rights guaranteed under our Constitution, protected.

In fact, Mr. Chairman, under that Constitution is a right bought and paid for with many, many lives in the history of the struggle for democracy against tyranny. The right to petition Government is what we are debating today on this amendment.

I say to my colleagues, "Those of you who believe in that right, who believe that Government ought not ignore the wishes of the people of this country when they petition Government, ought to vote for this amendment."

Mr. STEARNS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I would say to my colleagues we could almost call the Barton amendment the hallelujah amendment because for many of us who have been in the private sector and have worked all our lives trying to live with all the regulations, the fact that we can now finally petition the Federal Government, hallelujah! So I compliment my colleague for what he is doing here.

We have heard examples from the gentleman from California [Mr. WAXMAN], these hypothetical examples, but let me give my colleagues a clear example that has occurred which could have been petitioned, it could have been redressed, and it could have been stopped:

In the early 1980's, Mr. Chairman, Government scientists argued that asbestos exposure could cause thousands of deaths. Congress responded by passing a sweeping law which led cities and States to spend between $15 and $20 billion to remove asbestos from public buildings. However 3 years ago EPA officials acknowledged further research. Ripping out the asbestos had been a mistake. In fact they pointed out that this mistake had really raised the exposure of the public to the dangerous asbestos fibers which became airborne during removal.

To the EPA it was a mistake. To the American taxpayers it was a $20 billion mistake. Wasted. I ask, "Wouldn't it have been nice, colleagues, to have had a second chance at that rule, to have the opportunity to petition the EPA to change its needless rule to save the American taxpayers $20 billion?" Again and again examples like that are going to occur.

To those colleagues that are watching on television, we need to pass this amendment, hallelujah amendment.

I want to conclude. Last term I was involved as a ranking member of a committee called Commerce, Consumer Protection and Trade. We had discussion on redesigning a 5-gallon bucket that is used for painting and hauling water. The Consumer Product Safety Commission analyzed it because a few children got caught in it, and their heads got caught in it because of negligence by the parents. They issued—the Consumer Product Safety Commission issued—a 101-page report. In the report the staff notes that one of their suggestions to the industry was making the bucket so that they deliberately leak. It is being objected to by the bucket makers. Naturally the bucket maker is a little concerned about designing a bucket that deliberately leaks. According to the report, quote, industry representatives claim that they do not envision any use for a bucket that leaks.

My colleagues, now is the time to pass the hallelujah amendment. I compliment my colleague, the gentleman from Texas, for what he is doing.

Mr. NORWOOD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support the amendment.

Mr. Chairman, I also would like to congratulate the gentleman who produced this amendment in a bipartisan fashion. I think that this probably is the most exciting thing that I have witnessed in my 54 days in Congress.

There are two parts of this amendment that I believe are very important.

What have we been doing for 2 days? For 2 days we have debated the changes needed with the rules and regulations that have been oppressive to the American people.

Why did we ever write H.R. 1022? Because the American people have finally said that they have had enough of a bureaucracy that tells them what to do from morning until night.

What is my standing in this bill, in this debate? Well, I have only been a Congressman for 54 days. I have not had the last 10–15 years writing legislation in terms of our air quality. But I have lived in the economy of this country, and I have lived under the impressive oppressive rules and regulations that this great large bureaucracy in Washington, DC, feels that they know best how I should live.

Part of the problem is I guess I am a rebel. I am much like those rebels who opposed the king, who did not want to be told what to do from the minute they get up to the minute they go to bed, and I do not want to be told what to do from the Federal Government, 435 elected officials and millions of bureaucrats.

This bill is not, my colleagues, necessarily just about General Motors and Dow Chemical. I agree with my friend from South Carolina when he says that this is a bill for the people, and it excites me every time I read this part of the bill, and if I may, Mr. Chairman, I will.

Any person who demonstrates that he or she is affected by a rule or program element referred to in subsection B may submit a petition.

That is what is important here. People at home do not believe they have any control over their lives. They believe we want to control their lives right up here. This will give them great good feelings to know that they, as an individual, can petition their government to change what we are doing.

I heard earlier this afternoon the question asked what does it require of the Government, what does this amendment require of the Government. I ask, "Who amongst you is standing up and saying, 'What does this rule require of the small business man?'" I am ready to hear a little bit more of that in this body than just what does it require of the Government.

I ask each of my colleagues to consider strongly passing and voting for this amendment, and I congratulate the gentleman from Texas [Mr. BARTON] and the gentleman from Louisiana [Mr. TAUZIN] and the gentleman from Idaho [Mr. CRAPO]. I think this is exciting legislation.

Mr. STENHOLM. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the Barton-Tauzin-Crapo amendment. Too often we hear about how Washington works in a vacuum. Too often, when the American public thinks of Washington, they think of government bureaucrats sitting behind a desk doing their own thing. To often they see a government which thinks it has all the answers. Too often they also see a government that is afraid to admit when it is wrong.

Well, Mr. Chairman, maybe we do not have all the answers. Maybe we did make some mistakes in the past. Maybe someone else knows something we do not. And maybe, just maybe, it is time we started listening and then acting.

This amendment establishes a process for agencies to update old regulations using the most current scientific data. The public would be able to submit scientific data to Federal agencies and have those agencies check the findings of old rules against new information.

Right now, when a private party asks a Federal agency, particularly EPA, to review new data and possibly modify the current understanding of a particular substance or activity, there is no guarantee that the study will even be looked at. And often it isn't.

This amendment simply requires agencies to consider and respond to new information in an open and timely manner. It keeps the scientific underpinnings of regulations evergreen.

This amendment is really about continuous improvement. It is about making government respond to scientific changes and advancements. Mr. Chairman, it's about common sense—regulations should be based on the best available information. I strongly urge my colleagues to support the Barton-Tauzin-Crapo amendment.

☐ 1615

Mr. WALKER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. We have heard a lot of compelling arguments as to why we ought to do this particular amendment, and many of them make a great deal of sense. The fact is that many people are disturbed about regulations that are already on the books.

I personally am concerned about making the regular legislation before us work, because I feel very strongly that putting a process into place that brings good science and common sense and smart actions into the process is in fact the right thing to do. But I also know that if you take the step too far, that makes this into a litigious bill that in fact destroys our ability to do all of that kind of work, and we will in fact destroy that which we are attempting to do out here.

Now, I want Members to think for a moment about that whole cart of regulations that was rolled in on the floor when we were debating another bill the other day, stacks and stacks of books and paper, of Federal Registers of all the regulations that were done in just 1 year, and virtually every one of those regulations has somebody out there that does not like them.

Now, you think of all those pages and pages and pages of regulation, and then you think of all the people that have some complaint about each of those regulations, and you think about the numbers of petitions that could potentially be filed and the amount of litigation that is going to come from all of those filings, and all of a sudden you are going to have these agencies at a point where they will not be able to do some of the things we want them to do; namely, to put into effect a process for good science and common sense.

I would like to see this process work. I do not want to pass a bill that is simply an employment policy for lawyers. That is what I am afraid this amendment does. I am afraid that our attempts thus far to limit the amount of litigation that would be necessary under the bill are in fact undermined by what we do with this amendment, and I do not want to turn this bill into a lawyers' employment act.

The amendment by opposing reachback does something different from what we have done in the bill thus far. We have made a prospective bill. We have said that from now on in we are going to require regulations to come under the kinds of reviews that we have. The reviews that are in the bill are in fact designed for that kind of prospective status. You undermine our ability to do that when you pass this particular amendment.

The fact is that we can get to a lot of the regulations and the laws that are presently on the books over the next several years as this process rolls forward. Put the bill into effect that sets up a good process, and what you will have then is a series of bills coming up for reauthorization. At every one of those reauthorizations the bill then becomes covered under what we have brought to the floor today. That seems to me to be the right kind of process.

I know that the big guys, the National Association of Manufacturers, the chemical manufacturers, the petroleum people and so on, they all want this amendment. They have all worked very, very hard. But I have got to tell you, I think that it stands the possibility of being the exact kind of lawyers' employment bill that will destroy exactly the things that we are trying to accomplish here.

I would hope the Members would reject this. I think it is being done with good intent. I realize there is a body of regulation out there we would all like to get to, but let us get a process that works. Let us make this thing work as a way of demonstrating then that we can handle the whole body of regulation. There are literally tens of thousands of pages of regulation.

I have got to tell you one other thing that bothers me. I agree with some of the Members who have stood up and talked about the fact that any person can bring an action under this bill, and that sounds like a great American tradition. Trouble is, "any person" also includes foreigners, my friend, any person who wants to bring some damage to this whole process. But remember we are in a global environment, and by doing that, it also means any foreign interest can make a determination they are going to come in and disrupt regulations that may in fact in some cases protect our businesses.

It seems to me that is not something we want to do just haphazardly on the floor. I have got a concern that we are doing something here that we may not understand the full implications of. I would like to think that we could do this bill the right way, and it seems to me doing it the right way is to reject the amendment.

Mr. BROWN of California. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from California.

Mr. BROWN of California. Mr. Chairman, I appreciate the gentleman yielding. His eloquence in opposition to this has moved me to rise in order to compliment him for his good judgment.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. WALKER] has expired.

(At the request of Mr. BROWN of California and by unanimous consent, Mr. WALKER was allowed to proceed for 2 additional minutes.)

Mr. WALKER. I yield to the gentleman from California.

Mr. BROWN of California. It was my feeling initially that this bill might not be germane to the legislation because as the gentleman correctly points out, this is an effort, through the improvement of risk assessment, characterization and cost-benefit analysis, to improve prospectively the regulatory process. This goes way beyond that to retrospectively in effect seek to review every kind of regulation that is on the books.

But I was persuaded by the ambiguity of the Parliamentarian that this might be germane.

Mr. WALKER. Parliamentarians are often ambiguous.

Mr. BROWN of California. It is true that the impact of this amendment overwhelms the impact of the rest of the bill, and it is more appropriately considered in connection with other efforts at regulatory reform.

It was also my feeling, since you and I are primarily concerned with the nonregulatory aspects, that others should carry the burden of opposing this. But I think that it is appropriate that we suggest that this would in effect hamstring the entire, not improve, hamstring the entire regulatory process.

Now, some have said that most Members would not like that. I think there are Members here who do want to hamstring the Federal Government in every way that they can. While I can understand that, I cannot support it. My only reason for possibly supporting this would be that I guarantee you it would cause the bill to be vetoed if it ever were to get through.

Mr. BARTON of Texas. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Texas.

Mr. BARTON of Texas. I thank the gentleman and certainly respect his opposition. I would like to see if the gentleman could tell me where there is additional litigation required by the petition process, because we do not preclude any potential litigation.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. WALKER] has expired.

(At the request of Mr. BARTON of Texas and by unanimous consent, Mr. WALKER was allowed to proceed for 3 additional minutes.)

Mr. WALKER. I yield to the gentleman from Texas.

Mr. BARTON of Texas. Mr. Chairman, we do not add anything in the petition process that requires litigation or precludes litigation that could exist under current law.

Mr. WALKER. Mr. Chairman, reclaiming my time, first of all to bring the process in the first place, you are going to require it to come in in a form that can in fact be done by the agencies, and the agencies, in collecting all of this material and so on, are going to have to put it in a form that legally reflects the regulations. So right away you set up that process.

Ultimately, I assume, it is my understanding that under the bill you subject it to the same judicial review that is already in the bill. You do not include judicial review in your petition, but in relating to the rest of the bill, you bring it to the stage of judicial review. So all of that regulation, all of that cart of regulations brought on to the floor the other day, if all of that was challenged, it would also be subjected at some point to judicial review.

So while it is not stated in your amendment, the effect of your amendment is to dramatically increase the amount of regulation that would come under judicial review.

Mr. BARTON of Texas. Mr. Chairman, if the gentleman would yield further, I would respectfully disagree with that, because we set up a process that is fairly circumscribed as to what has to be in the petition, the time frame the petitions can be reviewed, and we do have a date certain in which if the agency determines to take a petition, that they have to consider it and make a ruling. So none of that is litigious.

Mr. WALKER. Mr. Chairman, reclaiming my time, but under that ruling, under the provisions of the bill, this is a final action subject to judicial review at that point.

Mr. BARTON of Texas. Mr. Chairman, if the gentleman will continue to yield, the bottom line, and I respect the gentleman for letting me ask some questions, we simply have to have a way to at least review existing rules and regulations that allows America to come in and request this. We disagree on that.

Mr. WALKER. No. But I understand that. But we have some idea of what we are dealing with in terms of regulations. For instance, we know that in a period of time in the early nineties, about 2000 EPA regulations were written. We know how many of those fall over the $100 million mark. We have some idea how many fall over the $25 million mark. We have some idea how much we are going to be dealing with over the next few years as these agencies write the regulations.

What we do not know under the gentleman's process, since any person can come in and complain about anything ever done in the regulatory sense of the Federal Government, we have no idea how that may explode.

Mr. BARTON of Texas. We have the same requirements. It has to be the $25 million threshold. We do not change that. We require quite a bit of documentation in the petition process. We also require they show it would be cost effective.

Mr. WALKER. All of that documentation process is going to involve attorneys and all kinds of people in order to do the appropriate documentation. That to me is litigation. The idea that any citizen is going to be able to pop out of the woodwork and bring it in, the gentleman describes it correctly, that is not really going to happen. You are going to have monied interests that are going to be involved here.

Mr. EHLERS. Mr. Chairman, I rise to oppose the amendment and support the comments made by the committee chairman, who spoke just a few moments ago, although I come at it from a somewhat different angle, speaking from my scientific background.

Mr. Chairman, I simply want to repeat a warning I gave during our discussion of this bill in the Committee on Science. Risk assessment is in fact an idea whose time has come. It is a good idea. But at the same time, let us not assume that this is a panacea, that it is going to resolve regulatory difficulties, and that everyone is going to agree with the results and say hallelujah, this is wonderful, and now we can do this and save money and still protect the environment.

It is difficult to do. There are many factors involved which are not fully understood, as we can see just from the debate here over the past day. It is not going to be a panacea, it is going to be difficult to implement. The number of people who truly understand risk assessment and how it proceeds is limited in this Nation, and we have a considerable amount of expertise to build up.

In other words, I support the bill. I am anxious to see it go into effect. I hope it works as well as I think it will. But I believe that we have to evaluate how well it works and get a better handle on it before we try to broaden it too much. For that reason, I oppose this amendment, even though I do commend the gentleman from Texas [Mr. BARTON] because the amendment is indeed better than the original version that was contained in the Committee on Commerce version of the bill.

I believe that as written, and given the nature of the backlog of cases out there that people are concerned about, this amendment would result in overwhelming the process and perhaps in fact very likely making the entire risk assessment process unworkable. I think it is very important to put this bill in place, prove that it does work when properly applied, and develop the experience and expertise that we need to really make risk assessment work and work well.

We will have ample opportunity in the future to broaden the process, to adopt the petition process, and to go back and review other regulations. But I truly worry that we will overwhelm the system, we will overwhelm the process, we will overwhelm the people who are available to do risk assessment, unless we proceed carefully and first of all establish the process according to the bill, demonstrate that it works, and then it is going to become, if we succeed, as I hope we do, so self-evident that this process should be used in all cases, that in fact we should go ahead and apply it to other cases.

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In other words, I oppose the amendment because I believe it is going to be deleterious to the bill and deleterious to the goals of the sponsor of the amendment.

I urge the defeat of the amendment and the passage of the bill.

Mr. DELAY. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, H.R. 1022 is a good bill. It will dramatically change the way regulations are promulgated in this country and bring some common sense into the process. However, there is one serious flaw—it does nothing to improve regulations that were promulgated under standards lacking in cost-effectiveness or based on poor science. The Barton-Tauzin-Crapo amendment addresses this problem.

The current cost of regulation on the economy is conservatively estimated to be $500 billion annually. This translates into $10,000 for a family of four. To put it another way, 10 cents out of every dollar goes to pay for the cost of regulation. The current lack of risk assessment and cost/benefit analysis means resources are being used inefficiently and only adding to this burden.

We need to address the issue not only of unreasonable prospective regulations, but also of those that are currently weighing down the economy. Under this amendment, any party affected by a major regulation or risk assessment covered in H.R. 1022 can ask the Federal agency to review its rule to take into account new information on risk and/or cost.

The review is only available in cases where the petitioner demonstrates that existing regulations are not cost-effective methods of addressing the targeted risks. The point of this amendment is to give citizens the opportunity to find better ways to achieve the same protections currently provided.

Some concerns have been raised about the potential for increased lawsuits as a result of this process. Several points should be made in response:

In the first place, remember that a petition process already exists under the Administrative Procedures Act, complete with judicial review. The Barton amendment simply expedites the process for the agencies covered by this bill.

Further, no new rights to go to court are created by this amendment. Citizens retain their right to judicial review under the petition process currently in the APA.

To prevent frivolous petitions, the amendment sets up many hurdles. The burden is placed on the petitioner to provide the scientific and economic evidence to support the rule revision. The result is that few petitions are likely to be offered.

Additionally, because petitions can be filed only to decrease costs imposed by regulations or to make them more flexible, antibusiness interests are not likely to file petitions. Nor can antibusiness interests use this amendment to increase the costs or make regulations more inflexible.

The bottom line is this: H.R. 1022 establishes improved risk assessment and cost/benefit standards for new regulations; why should we leave untouched the scores of current regulations that fall short of these standards? Instead, we should allow citizens to petition agencies with their ideas for revising existing regulations to achieve the same amount of protection at a lower cost of compliance, in a more flexible manner, and using sounder science.

There are many who have had years of experience complying with these regulations and seeing firsthand the inefficiencies of how they work—or do not work. Where they can identify a way to do things better for less cost, we should welcome the opportunity to take advantage of their experience to make the process more efficient and more effective.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Chairman, the gentleman referred throughout his remarks to American citizens. The gentleman would grant that the language in the bill would give the same rights to foreign citizens as Americans citizens, would it not?

Mr. DELAY. Mr. Chairman, yes, I would assume so.

Mr. WALKER. Mr. Chairman, I thank the gentleman.

Mr. DELAY. I find no problem with that. If foreign citizens are creating jobs in this country and are being regulated by this country, they ought to have the right to petition, if they have a better idea on how to save costs and implement these regulations in a more efficient way.

The CHAIRMAN. The time of the gentleman from Texas, [Mr. DELAY], has expired.

(On request of Mr. COLEMAN, and by unanimous consent, Mr. DELAY was allowed to proceed for 1 additional minute.)

Mr. DELAY. Mr. Chairman, I yield to the gentleman from Texas [Mr. COLEMAN].

Mr. COLEMAN. Mr. Chairman, I thank the gentleman from Texas for yielding to me.

Being in opposition to H.R. 1022, in many ways I viewed this as really a character of many of the valuable aspects of risk assessment.

Instead of imposing a $100 million threshold before setting into play the complex cost-benefit analysis proposed by the bill, this bill sets a $25 million threshold; is that correct?

Mr. DELAY. Mr. Chairman, that is correct. We set a $25 million threshold because we said if you set a $100 million threshold, you eliminate 95 percent of the regulations that we are trying to bring good, efficient cost-benefit analysis to.

Mr. COLEMAN. Mr. Chairman, if the gentleman will continue to yield, I notice the Wall Street Journal pointed out that the bill "is harder on Federal regulators than even industry thinks wise."

I just thought I would point that out. Another little problem which I consider a missed opportunity.

Mr. DELAY. Mr. Chairman, that is one of the fallacies of the arrogance of the elite into thinking that it is more important for the bureaucrats to have an easier time to impose regulations rather than American citizens.

Mr. COLEMAN. Mr. Chairman, I thank the gentleman for yielding to me.

I rise today in opposition to H.R. 1022, the Risk Assessment and Cost-Benefit Analysis Act. I do so with some reluctance, because I made a concerted effort to find reasons to vote in favor of this legislation. I am a firm believer in the benefits of cost-benefit analysis. Indeed, when I worked in the Texas State Legislature, we operated under the principles of cost-benefit analysis, and the results were quite positive.

Under such a system, we were required to determine whether the costs imposed by our legislation would be more than offset by the benefits to public health, safety, and economic well-being. I strongly support such a system. I know that it eliminates wasteful and unnecessary regulation, and that it lends greater legitimacy and force to those regulations that provide important safeguards for human health and the environment. I know the Congress needs to pass a similar bill. But once again, I find myself confronted with a bill that I simply cannot support.

The current administration has already made substantial gains in streamlining and improving the Federal regulatory process. Under an Executive order issued in September of 1993, every regulation with an economic cost of over $100 million is subject to an agency cost-benefit analysis. This is an important first step, and there is a great deal that we can do to further this efforts. We need to give greater consideration to the views of those affected by regulations, including those who must perform regulatory tasks. We need to move away from litigation as the solution to the regulatory nightmare, and instead solve the problems at their source: the regulatory agencies. We need to show flexibility in our evaluation of existing regulations. The administration supports such initiatives. We have the opportunity to draft legislation that will complement this endeavor. H.R. 1022 represents a missed opportunity.

The bill before us today is, in many ways, a caricature of many of the valuable aspects of risk assessment. Instead of imposing a $100 million dollar threshold before setting into play the complex cost-benefit analysis proposed in this bill, H.R. 1022 sets a $25 million threshold. The Wall Street Journal noted on February 9 that in this respect, the bill "is harder on Federal regulators than even industry thinks wise." The $25 million threshold is simply too low. It will impose a costly and time-consuming examination process on regulations with economic effects so minor that they do not warrant this level of scrutiny. That translates into the squandering of taxpayer dollars.

Additionally, rather than eliminate the legalistic nightmares often associated with regulations, this bill will compound them. By allowing judicial review for regulations deemed noncompliant with the terms of H.R. 1022, we are inviting years of litigation on numerous regulations. This will not be good for business; it will not be good for the environment; it will not be good for human health. No one will really benefit from the glut of court cases that will occur as the result of this bill. And we have rejected an amendment that would prevent this litigation explosion.

Furthermore, under the guise of giving increased consideration to the views of affected groups and front-line regulators, this bill allows for review panels with inexcusable biases. Those industries with large financial interest in regulatory issues at stake would, under the terms of the bill, participate on a Federal peer review panel. Major polluters will now play a legitimate role in illustrating why their financial interests are more important than clean air or water. Peer review should not be skewed so far in favor of powerful industrialists. Yet that is the situation created by H.R. 1022.

Finally, I have stated that we should look with critical eyes upon past regulations, and see what can be fixed. But H.R. 1022 fails to take a rational course of action with respect to this aspect of regulatory reform. Instead, it threatens all of the progress that we have made over the past few decades through regulation. The bill ensures that in cases where the new law conflicts with old regulations, the old regulations are systematically superseded. This puts important legislation such as the Clean Air Act and the Safe Drinking Water Act at risk.

In the name of numerical scientific analysis, we are threatening to gut regulations which, through the years, have had extremely positive effects on the lives of the people of this country. In short, Dr. Gibbon, Director of the Office of Science and Technology Policy testified the bill "would place the safety of all Americans in the hands of recipe-following number-crunchers whose idea of public health is the bottom line on a ledger sheet—the very antithesis of what we should be doing."

I am not ready to give up on regulatory reform. I believe there is still time for an effective and prudent bill to be passed by this body. We still have the opportunity to work with the Senate in crafting a piece of legislation that will stop the relentless regulatory regime. We can still create a law that will allow us to work with the Clinton administration in their efforts to change the regulatory system.

I would like to have the future opportunity to vote in favor of a more carefully framed risk assessment and cost-benefit analysis act. But I am disappointed that the rush to meet the 100-day deadline of the Republican contract has resulted in such shortsighted legislation, which I believe will put many Americans at risk. Therefore, I am voting against H.R. 1022.

Mr. LARGENT. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of this amendment.

Mr. Chairman, there has been a lot of questions, a lot of debate, a lot of rhetoric about whether this amendment would in fact increase the amount of litigation in this country. There is no question about that. It certainly would increase the amount of litigation. There is good reason for that.

Who would question in this body that there have been a number, a large number of laws, regulations and rules that have been enacted in this country that are both egregious and punitive, that have had the law of unintended consequences take place.

And if I have the picture correct on the arguments as to why this bill should be defeated, it is this, that Mr. Constituent, Mrs. Constituent, the reason I had to vote against the Barton amendment was that we have passed so many laws and so many rules and so many regulations that are egregious and punitive and that are wrong and that have had unintended consequences that we now are afraid that there is going to be so many legal actions taken that we have to vote against the Barton amendment because we have overwhelmed you with this type of rules and regulations and so now we are afraid of the brunt of your anger and the brunt of your legal actions against the Government for the rules that we have passed that we cannot allow you the opportunity to redress those situations.

I want to speak and give one particular example from my district. As I campaigned before the election in November, I had the opportunity to talk to a gentleman in my district who is the CEO of a large oil and gas company that owns and operates an oil refinery in Louisiana. And he said in their budget over the next 5 years they have budgeted $1.5 billion to meet EPA standards as they impact their oil refinery in Louisiana.

And his comment was this, we have no problem with the goal that the EPA establishes for us for clean air and clean water for those citizens that live in and near the community that our refinery operates in, but the problem we have is this, we have no problem with the goal. But the problem is the rules that establish how we reach the goal are so rigid that in fact if we could use our own ingenuity, our own enterprise and left to our own device, that we could meet or exceed the goals established by the EPA and cut the cost $1.5 billion, we could cut the cost in half, save $750 million.

You want to know what the cost of this regulation is, the cost of this amendment? It is that we will improve the efficiency and the effectiveness of the business community, thereby increasing the number of jobs. We talk a lot about improving the living conditions and the wages of the common man. That is what this amendment is all about, is by relieving the regulatory burden that we have already placed upon the backs of our business community and the industries in this country today, we want to give them an opportunity to relieve themselves of the burden, the law of unintended consequences, thereby creating more jobs, improving the standard of living. That is what the Barton amendment is all about, and that is why I rise in support of the Barton amendment today.

Mr. BARTON of Texas. Mr. Chairman, will the gentleman yield?

Mr. LARGENT. I yield to the gentleman from Texas.

Mr. BARTON of Texas. There has been some talk that somehow it is just the big business interests that support this amendment. The American Petroleum Institute does support it. The Chemical Manufacturers Association does support it. But the National Federation of Independent Businesses, which is a small business organization, supports it. And if you look at the list, the Alliance for Reasonable Regulation and you look through all the companies that support the bill, they also specifically support the Barton-Tauzin-Crapo amendment. There is some companies in here, while I am not personally cognizant of them, I do not think Barney Machinery Co. is a big business. I do not think the American Lawn Mower Co. is a big business. So it is small business, the people that exist, and as the gentleman pointed out, have to live day to day under these regulations that are supporting this very important amendment.

Mr. TIAHRT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, with all due respect to my chairman of the Committee on Science, I rise in support of the Barton amendment, because I think that it is important to stop the Government regulation and the strangulation that is happening to the American jobs. This Barton amendment is going to allow the average American citizen to rise against regulations. It sets up a process that allows them to have a voice in this, because I think many of these regulations were developed, they implemented using some type of a risk assessment approach that would be somewhere between a 5-year weather forecast and voodoo.

Unfortunately, it has not stopped the long arm of big Government from getting into my home State of Kansas. There is a heavy equipment dealership in Kansas City, KS. Dean runs it, and he has fallen subject to the net of CERCLA, which is the Comprehensive Environmental Response Compensation Liability Act. His name showed up on a 1972 ledger. This came up last December so it had been brewing for some time, 22 years, but he had $127 worth of waste that was put into the now closed Doepke-Holliday landfill in Kansas City, KS.

The company had shipped some paper cardboard boxes, some similar debris. It was not hazardous waste. Yet the law places a burden on Dean to prove it. Because Dean and 17 other companies are minimal contributors to this landfill, the EPA has given them the option of paying $10,000 to $20,000 each to settle potential cleanup problems. If they do not pay this amount of money, then they will run the risk of paying that portion of the bill later on which could be as high as $10 million.

So this current regulation is putting them under a problem. They would like to fight against this problem, this regulation. But under current law they have not.

We talked about the increased amount of litigation that would go on here. I think there are safeguards in place. I have another man in my district that would really like to get at some current regulations. He recently sent me a Privacy Information Act that was given to him by the ATF when he applied for a gun license. He is not going to be able to fight this even under the Barton amendment because he will not be able to prove the $25 million threshold as a safeguard that is in place. But under this form it says that the information that he will provide to this Federal U.S. Government bureaucracy says that they may disclose this information to a foreign government. And he is upset by that and would like to fight it. But because of the safeguards that are in place, there will be no court action on this one issue.

So I think that there are safeguards in place. I think it allows the average American citizen to fight against the loss of his job by grouping together inside the guidelines, and I would stand here in support of this amendment.

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The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. BARTON].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. DINGELL. Mr. CHAIRMAN, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This is a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 206, noes 220, not voting 8, as follows:

[Roll No. 179]

AYES—206

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Barton
Bass
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Deal
DeLay
Dickey
Dicks
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehrlich
Emerson
Ensign
Everett
Ewing
Fields (TX)
Flanagan
Forbes
Franks (CT)
Franks (NJ)
Frisa
Funderburk
Gallegly
Geren
Gillmor
Goodlatte
Goodling
Gordon
Graham
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson, Sam
Jones
Kasich
Kim
King
Kleczka
LaHood
Largent
Latham
LaTourette
Laughlin
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Meehan
Metcalf
Mica
Mollohan
Montgomery
Myers
Myrick
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Peterson (FL)
Pombo
Poshard
Pryce
Quillen
Quinn
Radanovich
Riggs
Rogers
Rohrabacher
Rose
Roth
Royce
Salmon
Sanford
Scarborough
Schaefer
Seastrand
Shadegg
Shuster
Sisisky
Skeen
Skelton
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Thurman
Tiahrt
Upton
Vucanovich
Waldholtz
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Wilson
Young (AK)
Young (FL)
Zeliff

NOES—220

Abercrombie
Ackerman
Andrews
Baldacci
Barrett (WI)
Bartlett
Bateman
Becerra
Beilenson
Bentsen
Bereuter
Berman
Blute
Boehlert
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Bunning
Cardin
Castle
Clay
Clayton
Clinger
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Coyne
Danner
Davis
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dingell
Dixon
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Frank (MA)
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Gibbons
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Gunderson
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
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Kildee
Kingston
Klink
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Knollenberg
Kolbe
LaFalce
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Lewis (GA)
Lincoln
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Mascara
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McCarthy
McDermott
McHale
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Roybal-Allard
Sabo
Sanders
Sawyer
Saxton
Schiff
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Schumer
Scott
Sensenbrenner
Serrano
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Skaggs
Slaughter
Smith (MI)
Spratt
Stark
Stokes
Studds
Stupak
Taylor (MS)
Thompson
Thornton
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Walker
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Wamp
Waters
Watt (NC)
Waxman
Weldon (PA)
Williams
Wise
Wolf
Woolsey
Wyden
Wynn
Yates
Zimmer

NOT VOTING—8

Gonzalez
Gutierrez
Hunter
Lipinski
Miller (CA)
Pickett
Rush
Ward

☐ 1703

Messrs. DEUTSCH, OWENS, MARTINEZ, MANZULLO, TOWNS, NETHERCUTT, MOAKLEY, JOHNSON of South Dakota, and DOYLE changed their vote from "aye" to "no."

Messrs. HYDE, ROTH, BURTON of Indiana, and KASICH, and Ms. PRYCE changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. HAYES

Mr. HAYES. Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. HAYES: On page 8, at the end of line 3, add the following:

"Nothing in this Section (iii) shall apply to the requirements of Section 404 of the Clean Water Act."

Mr. HAYES. Mr. Chairman, this is an amendment that simply furthers the purposes of this act, the purposes which I wholeheartedly support in regulatory reform.

It merely says that under the permit section that there are some permits like section 404 of the Clean Water Act that ought to be clearly distinguished from some of the language of the bill in its application.

I have spoken to the majority, and I would certainly yield to the distinguished chairman for any comments he may have.

Mr. BLILEY. Mr. Chairman, we in the Committee on Commerce see what the gentleman from Louisiana is attempting to do. We in the majority have examined the gentleman's amendment and agree that there was no intention to include wetlands permits under the Clean Water Act. Section 404 is also sometimes coordinated with the

Corps of Engineers. An exclusion would be consistent with the colloquy I had earlier today with the gentleman from Michigan [Mr. STUPAK].

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. HAYES. I yield to the gentleman from Pennsylvania.

Mr. WALKER. This is the gentleman's amendment on page 8, is that correct?

Mr. HAYES. That is correct, yes, sir.

Mr. WALKER. We have no objection to the amendment.

Mr. HAYES. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana [Mr. HAYES].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. BOEHLERT

Mr. BOEHLERT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BOEHLERT: Page 29, strike line 18 and all that follows through line 6 on page 30, and insert in lieu thereof the following:

(1) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to modify any statutory standard or requirement or to alter any statutory or judicial deadline. No failure or inability of an agency to make the certifications required under this section shall be construed to bar an agency from acting, or to authorize an agency to fail to act, under other statutory authorities.

(2) FAILURE TO CERTIFY.—In the event that the agency head cannot make any certification required under this section, the agency head shall report to Congress that such certification cannot be made and shall include a statement of the reasons therefore in such report and publish such statement together with the final rule.

Mr. BOEHLERT (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. BOEHLERT. Mr. Chairman, I would like to point out at the outset, this amendment has bipartisan support and is strongly endorsed by every environmental and consumer advocate group that is identified with this legislation. That is critically important.

H.R. 1022 makes regulations that are being issued pursuant to existing laws subject to risk and cost-benefit analysis. I agree with the authors of H.R. 1022 that these analyses should be done. By conducting the analysis outlined in H.R. 1022, agencies will be assessing regulations in a manner which should lead to more reasonable regulations, and that is something we all want, more reasonable regulations.

However, H.R. 1022 carries the use of risk and cost-benefit analysis one step too far. Under this bill, critically important health and safety regulations could be stopped if one of the many elaborate analyses required under this measure could not be certified.

This means that existing statutes debated and approved by Congress could be, in effect, gutted because some administrative bureaucrat could not certify, for example, that the regulations was the most flexible regulation option. Existing law would be superseded by the supermandate language of H.R. 1022.

Let me read this language. It appears on page 29 of the bill, lines 18 through 23.

Nothwithstanding any other provision of Federal law, the decision criteria of subsection (a) shall supplement and, to the extent there is a conflict, supersede the decision criteria for rulemaking otherwise applicable under the statute pursuant to which the rule is promulgated.

What my amendment would do, Mr. Chairman, is ensure that risk assessments and cost-benefit analyses are done. However, when there is a conflict between a regulation arising from legislation debated and approved by this Congress and an assessment done by some bureaucrat, the head of the relevant agency will report the conflict to Congress.

Congress, the people's elected body, will then examine the conflict and, where appropriate, amend the statute giving rise to the regulation. The U.S. Congress, not some nameless, faceless bureaucrat, will decide our Nation's health, environment and safety policies.

I would like to now read the amendment that the gentleman from Louisiana [Mr. HAYES] and I are offering.

Section 1. Rule of Construction. Nothing in this Act shall be construed to modify any statutory standard or requirement or to alter any statutory or judicial deadline. No failure or inability of an agency to make the certifications required under this section shall be construed to bar an agency from acting, or to authorize an agency to fail to act, under other statutory authorities.

Section 2. Failure to Certify. In the event that the agency head cannot make any certification required under this section, the agency head shall report to Congress that such certification cannot be made and shall include a statement of the reasons therefor in such report and publish such statement together with the final rule.

Mr. Chairman, this amendment has broad bipartisan support, and for good reason. It provides for risk assessment to be used in a manner that improves our laws, not gut them on an ad hoc basis. We support taking a hard look and revising where warranted existing health, safety and environmental standards. But the way to accomplish this is through a statute-by-statute examination, not through a shotgun approach that will likely do more damage than good to the American people.

I urge my colleagues to join the bipartisan coalition led by the gentleman from Louisiana [Mr. HAYES] and myself is assuring that risk assessments are used effectively. I urge support of the Boehlert-Hayes amendment. We have a very, very important responsibility in this House. Let me stress, every single environmental agency that has examined this proposed legislation and this amendment is supportive of this effort as is every consumer advocate group.

Ms. ESHOO. Mr. Chairman, I rise in strong support of the Boehlert amendment which ensures that the risk assessment bill does not override existing laws.

The Boehlert language is necessary to safeguard critical safety and health regulations and the people which these regulations are designed to protect.

Mr. Chairman, despite the good intentions of this bill, the Boehlert amendment is needed because this legislation is poorly drafted, hastily reviewed, and now before us without a clear understanding of its consequences.

Let me give my colleagues one ominous example of what we are faced with here:

During the Commerce Committee markup of the bill, I offered an amendment which highlighted the unintended dangers posed to women's health by this bill, specifically breast cancer.

What I did was subject one bill—the Mammography Quality Standards Act—to the requirements of the risk assessment bill. Not only did this example show how dangerous this bill is to women's health and mammography standards, it demonstrated how little the framers understand it and the effects it will have on current laws and regulations.

The Mammography Quality Standards Act helps ensure sound mammography services by regulating facilities which provide mammograms.

Under the bill considered by the Commerce Committee, the FDA, which implements the mammography act would have needed to perform a series of complex, costly, and time-consuming risk assessments and cost-benefit analyses before those regulations could take effect.

As a result, this important law could have gone unenforced or been subject to lengthy court procedures.

Mr. Chairman, breast cancer is already the second leading cause of death in American women and 50,000 women die each year from this disease.

We all know that without a known cure, the key to battling this devastating killer is early detection. Mammograms can detect breast cancer up to 2 years before a woman or her doctor can feel a lump and if the disease is found at these early stages, it is 90–100 percent curable.

Prior to passage of the Mammography Quality Standards Act, there were no national, comprehensive quality standards for mammograms that applied to all facilities.

Quality needs to be assured at these facilities—studies show that faulty diagnoses or early tumors due to poor image quality or incorrect interpretations result in delayed treatment, more costly medical procedures, and higher mortality rates.

Mr. Chairman, when I offered my amendment at the Commerce Committee I asked if the mammography bill would be affected by the risk assessment bill. With the assistance of the majority counsel, the majority response was "yes" the risk assessment bill would affect provisions of the Mammography Quality Standards Act.

Despite this acknowledgement by the majority, my amendment to exempt critical women's health protections from this drawn out process was defeated along party lines. In fact, one of my Republican colleagues said he could not support the amendment because it would prevent us from setting appropriate priorities—in other words, there might be higher priorities than providing women with good-quality mammograms; there might be higher risks than the deadly disease of breast cancer.

After the committee reported out the bill, I received a memo from the chairman of the Health and Environment Subcommittee informing me that after taking another look at the bill, the Mammography Quality Standards Act would not be subject to the requirements of the risk assessment bill because it is administered by the Department of Health and Human Services which is not subject to the requirements of the bill. The chairman said in the memo that the point would be clarified in the committee's report.

This point was never clarified in the committee's report.

And upon checking myself, I learned that although HHS has statutory authority over the bill, the FDA, which is subject to the bill, implements the Mammography Quality Standards Act and therefore has administrative authority over the bill.

□ 1715

The large bells went off. The reason why I take this time to explain all of this, which is a long story but a very important one, is that if we take the laws of the land today, and have to subject them to the language, and I only use this one example, the Mammography Standards Act, it does not pass muster.

So I pay tribute to my colleague from New York and to the bipartisanship of this effort with this amendment. I think it is needed. I hope I have given a very good example of why it is needed.

Mr. WALKER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I oppose this amendment and I do so for much the same reason that I opposed the previous amendment. In the case of the previous amendment there was an attempt to reach back, and in my view that does not make good sense in terms of this legislation. But this legislation is designed to do regulations prospectively, and that is what the author of this amendment now comes to us and tells us we should not be able to do. He says that under the laws that presently exist, even amendments written in the future ought not be covered by the provisions of the bill that we are passing.

I just think that makes no sense. It seems to me that if in fact we are going to require good science on legislation that we pass now, we ought to require good science on things that were passed before. If we are going to require cost-benefits on legislation we pass now, we ought to require cost-benefit analysis on things that were passed before.

This is not anything talking about regulations already in place. This is talking about regulations that the agencies are going to write in the months and years ahead. And it seems to me that the provisions of this bill should apply to those kinds of things.

All we are requiring is risk assessments and cost-benefit analysis that are objective and unbiased. We are saying that the incremental risk reduction benefits of a major rule will be likely to justify and be reasonably related to the incremental cost of the rule and that regulation is either more cost-effective or provides more flexibility to State and local government or regulated entities or other options.

That is all this bill is about, and all we are saying is regulations which are pursuant to the laws that are presently in place ought to meet that kind of criteria.

In short, this legislation would supplement and if inconsistent with prior law would supersede the requirements of prior law when that prior law prohibits regulators from considering the criteria just described.

Regulators should be forced to justify their laws. Why? We have already seen the kinds of things that too often happen and could be stopped if we had good patterns. For instance, under the Safe Drinking Water Act, Columbus, OH, must monitor a pesticide that is only used to grow pineapples. I do not know how many pineapples are grown in Columbus. That is probably some overkill that is in the laws. Maybe some of that overkill could be utilized in better ways.

The Superfund Program has cleaned up fewer than 20 percent of the hazardous wastes sites at a cost of $25 million per site. Much of this money has been used to clean up sites that pose no health risks. According to EPA's own data, only 10 percent of the Superfund sites pose actual health risks. The other 90 percent pose hypothetical risks dependent upon future behavior.

Now once again, I think we ought to have some criteria that judges that, and if what we are doing is spending our money to clean up hypothetical problems rather than real problems, maybe we ought to get real, maybe we ought to start cleaning up real problems and have some process by which we evaluate that.

There is the now famous incident where EPA required a hazardous waste dump site to be cleaned up to a point where a child with a teaspoon eating the dirt could eat a teaspoonful of dirt for 70 years under the provisions of the agreement.

Well, I do not know, I mean kids in my area I know do from time to time go out and eat some dirt. Most of them, though, sometime before they reach age 70 stop that behavior. And it seems to me that once again we have a regulation that was written in a way that makes no sense. We ought to require regulators to have a higher standard.

Mr. OXLEY. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I am happy to yield to the gentleman from Ohio.

Mr. OXLEY. Mr. Chairman, I thank the gentleman for yielding. He points out a very interesting issue that we are going to be dealing with, wrestling with in our committee as far as Superfund is concerned, and the gentleman is absolutely right. The cleanup standards are beyond belief. They have driven the cost of the Superfund Program skyward when we are not really getting the cleanup where needed. It is based on poor science, it is based on politics, it is based on scare tactics instead of real science. And this bill is to address those kinds of inconsistent, very expensive kinds of propositions in the regulations.

So, if the amendment were to be adopted, it would destroy the ability to really solve the problem of these new regulations that are coming about.

We want to do them by each program and we will be doing those within the Superfund Program, but obviously if you believe in the regulatory madness that is going on right now, you would support this amendment.

I suggest quite the contrary, so I appreciate the gentleman pointing out the Superfund Program. It is an excellent example of these regulations run amok.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. WALKER] has expired.

(By unanimous consent, Mr. WALKER was allowed to proceed for 1 additional minute.)

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, I thank my chairman for bringing this up, but I want to point out that if the agency cannot certify all of the things that are required in H.R. 1022, then the agency has to come back to the Congress and the Congress, the people's representative body, would make the determination.

Mr. WALKER. But all we are saying in terms of prospective regulations is why do we have to have the extra step of coming back to the Congress for every regulation that is issued? Under present law they have to comply with these regulations. There is no need to come back to the Congress. All we want to say is for any new regulations written under old law there should be no need to come back to the Congress. All of this is going to come back to the Congress anyway because we are going to go back to reauthorization approaches. The gentleman wants to add an extra step with regard to old law and I think that makes the risk assessment more inflexible and does not make any sense in terms of where we are headed.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I am happy to yield to the gentleman from New York.

Mr. BOEHLERT. I would point out if the rule the gentleman is advocating were applicable 25 years ago, we would not have had the progress we have had with lead in gasoline.

Mr. WALKER. I just absolutely disagree with that. The head of the Harvard School of Public Health, the risk analysis portion, says absolutely the opposite. Lead-based gasoline would have been approved under science-based application.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to this amendment. If I were trying to draft an amendment that very clearly defeated this bill, I could not have done a better job than the author of this amendment.

This bill provides for two requirements in the law basically. It says that when a new rule is going to be promulgated by an agency it needs to do two things. It needs to do a risk assessment and it needs to do a cost analysis.

Now if I were drafting an amendment designed to kill this bill I would see to it that I gave the agency a chance to avoid both of those requirements, and guess what? This amendment does exactly that.

If the agency currently is writing rules under a statutory requirement that costs cannot be considered in the implementation of those rules, and many of our regulatory laws have such a provision, the endangered species is a good example. It says that once a species is listed you have to cover it, regardless of costs, regardless of how many people are put out of jobs, regardless of how many businesses have to shut down, regardless of how much private property has to be put out of commerce. It says you protect that species regardless of the cost of it.

So, if you were operating under a statutory requirement that says do this and you do not have to worry about costs, under this amendment you would be protected in that statutory requirement. You would never have to do a cost analysis.

Let us assume that you want to avoid doing a risk assessment as well. Under this amendment the author has included words to say that nothing in this act shall be construed to modify or to alter any statutory or judicial deadline. Here is the way you avoid risk assessment under this deal. You simply say we are under a statutory deadline. We do not have time to do a risk assessment, cost-benefit analysis. We have to meet this deadline, therefore, we have promulgated this rule without the benefit of risk assessment, cost-analysis.

How do you avoid it under a judicial deadline? Let me tell my colleagues how cleverly some of these agencies work. Friends of the Earth sued our Interior Department recently and sued the Department on a claim that the Interior Department was not listing species fast enough. There were 4,000 candidates for listing before the Interior Department, by the way, nominated by a single biologist in most cases, and they were not moving fast enough to list these species. So Friends of the Earth filed a suit, and guess what our Interior Department did? It did not contest the suit, it did not go to court and argue that we really have to do a scientific study before we list a species. It instead went into closed doors, behind chambers and agreed to a consent judgment that said okay, we give up; we are going to list 200 new species within the next 18 months, regardless of whether we do any scientific review of whether those species ought to be listed as threatened or endangered. We automatically list 250 new species and under this amendment you have to meet this new judicial deadline of 18 months so we cannot do a risk assessment, cost-benefit analysis of that rule listing 250 new species which may not be threatened, may not be endangered, but the Interior Department has consented to judicial judgment agreeing to do so.

□ 1730

If I wanted to defeat this bill, if I wanted to make sure you never did risk assessment, if I wanted to make sure all the statutes that say you cannot take cost into account are not changed by this bill, I would adopt this amendment. This amendment says you do not have to take cost into account. If the statute says that currently, this amendment says you do not have to do risk assessment if you do not have time. This amendment says you do not have to worry about risk assessment, cost-benefit analysis if you are operating under a consent judgment that you agreed to, so list 250 new species even though they may not be threatened or endangered.

This amendment ought to be defeated.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to the gentleman from New York.

Mr. BOEHLERT. Let me stress to my colleague from Louisiana that I am fully supportive of risk assessment and cost-benefit analysis. Let us make that very clear at the outset. But if the agency involved could not make the certification required under H.R. 1022, that agency would have to report to Congress, and the People's House would make the ultimate determination, not some bureaucrat in the bowels of some building downtown. The People's House, the Congress.

Mr. TAUZIN. The problem, if I can respond, is this House has already spoken in many of these regulatory statutes, and in many cases unfortunately those statutes were written in another day and time. Those statutes say you cannot take cost into account. This bill would change that. It would say from now on you take cost into account. You provide the same level of protection. You simply try to do it with the least-cost option. You do it with more flexibility.

If this amendment is adopted, you go back to the old law. This bill to create risk-assessment, cost-benefit-analysis requirements is defeated by this amendment. This amendment ought to be defeated.

Mr. BARTON of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to point out that the substitution the gentleman from New York is attempting to offer, if he offers it successfully, in my opinion, it really guts the intent of this bill, because the whole reason that we are doing risk assessment is to say that we ought to put in process a basis, a system, that uses scientifically valid risk-assessment principles in a forward way in terms of new laws and new rules and in terms of existing law.

If there is something underway already, they have to use these principles that we put in the legislation, and the amendment offered by the gentleman from New York [Mr. BOEHLERT] very, very plainly states that nothing in the act shall be construed to modify any statutory standard or requirement in existing law.

He also eliminates the substantial-evidence test that has been put into the legislation that says when we do risk assessment in the future, promulgate a new rule or regulation, you have to show there is substantial evidence proving it should be done.

So there are a number of reasons that I think this is an unwise substitution. I oppose it. I would hope my colleagues would oppose it.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. BARTON of Texas. I yield to the gentleman from New York.

Mr. BOEHLERT. Let me stress what is said in my amendment under that section entitled "Failure to Certify," it says in the event that the agency head cannot make any certification required under this section, the agency head shall report to Congress that such certification cannot be made and shall include a statement of the reasons therefor in such report and publish such statement together with the final rule.

Then Congress would work its will. We are the people elected by the citizens of America. We have the public trust in hand.

Mr. BARTON of Texas. Reclaiming my time, what we have said in this act of Congress that is before us, H.R. 1022, we are saying in earlier sections that we want scientifically valid risk assessment to be used in the future, and we say in this section notwithstanding any other provision of Federal law, we want it to be used from now on if there is a conflict.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. BARTON of Texas. Mr. Chairman, I am happy to yield to the gentleman from Pennsylvania [Mr. WALKER], who just defeated me on my amendment.

Mr. WALKER. Mr. Chairman, well, the gentleman and I are together on this one.

Mr. BARTON of Texas. Hallelujah.

Mr. WALKER. But the question is here what happens in terms of regulations, and the gentleman from New York keeps reading this statement about coming to Congress. All they are doing is reporting to Congress. The final rule goes ahead despite the fact it is in violation of the cost-benefit analysis, so the gentleman has come up with a way of reporting to the Congress that we, the agency are going to disobey the law and the heck with you. That is exactly the kind of arrogance that we are hoping to stop with the bill that we are writing.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. BARTON of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I think it is even worse than that. If you read the language, it says no failure or inability of an agency to make the certification is required under this section. The language of the line just above it says you are not required to do it. You are not required to do a cost-benefit analysis if it is going to alter any statutory requirement, for example, you have to consider cost. You are not required to do it if you are under an agency deadline. You are not required to do it if you are under a judicial deadline. If you are not required to do it, you do not have to issue any certifications either. It is a very clever set of language. If you read it together, it makes pretty good sense. If you can make sense out if it, it kills the bill. It ought not pass.

Mr. BARTON of Texas. That is why I am opposed to it. The gentleman from Pennsylvania [Mr. WALKER] is opposed to it.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. BARTON of Texas. I yield to the gentleman from New York.

Mr. BOEHLERT. Let me tell you the case about Milwaukee, the cryptosporidium when 104 people died, 400,000 people were made ill because they drank the water from a public water system in one of our Nation's premier cities.

I would suggest if we are able to determine the likely cause of that problem to protect other cities and other millions in the future, and there was a proposed rulemaking and somewhere along the line some bureaucrat screwed up, you would say then stop everything, we cannot go forward.

Mr. BARTON of Texas. Reclaiming my time, on section 3, line 5, page 4, it says the situation that the head of an affected Federal agency determines to be an emergency, the act does not apply.

Mr. WALKER. If the gentleman will yield further, the gentleman is absolutely correct. He cites exactly the right chapter, and the fact is that that is an emergency situation that was raised by the gentleman from New York that certainly would covered under the provisions of the bill, and the agency head would be permitted to go forward without doing anything that is required under our bill.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BARTON] has expired.

(By unanimous consent, Mr. BARTON of Texas was allowed to proceed for 2 additional minutes.)

Mr. BOEHLERT. Mr. Chairman, if the gentleman will yield further, I would point out that the dire emergency is behind us, not prospective, and what we are trying to do is prevent something like Milwaukee occurring again. We cannot foresee a dire emergency in the future.

But if we analyze what happened in Milwaukee and we are trying to protect future millions in other cities and we come up with a proposed rulemaking that somewhere along the way something went awry during the development of that rule and someone made a mistake, we would stop everything in its tracks and say, sorry, millions of Americans, we cannot protect your water supply, we cannot protect you because somebody made a mistake and we cannot do it.

Mr. BARTON of Texas. Reclaiming my time, what we are saying is we can protect you but we want to use sound science to promulgate rules in the future and rules in the present that are based on existing law.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, we are being called upon today to legislate on the basis of anecdote and to pass a bill of rather doubtful benefit to the society on the basis of anecdote.

My good friend, the chairman of Committee on Science, got up and talked about a pineapple pesticide which was used. This is required to be tested by the EPA. Why? Because it has been widely used in some 40 States in crops until 1979. It is highly persistent. It is a carcinogen, and it has been found in the drinking water of 19 States, one of which would be Hawaii.

I think we ought to look at what it is we are doing. If we are talking about cost-benefit analysis, let us have some cost-benefit analysis. Let us try and understand what this bill is really about.

The bill is really about cost. I have been as critical of the EPA and other agencies for the inadequacy and the impropriety of their science. I am the only fellow around here who held hearings to denounce the misbehavior of EPA in terms of bad science, but let us talk about what we are concerned with here.

This is a draconian bill. They have talked about science and peer review, but mostly, again, what has been discussed here has been cost.

The question is that are we going to supersede all health, safety, and environment and other regulations if they cost too much?

Well, let us look, and let us look at what really counts, and that is the benefits: Public health, public safety, safe and a wholesome environment. How can we tell that the benefit and the costs can be properly equated? What is the cost-benefit analysis that is going to determine the price of a healthy child? What is going to determine what is a safe workplace, and what is this worth to the American society?

We have talked about infestation of microorganisms in water in a major U.S. city. What is the price of a clear glass of water? What is the price and the cost of the benefit of 400,000 people who do not get sick or 100 people who do not die? What is the price of a safe airplane ride to the American citizen? What is the price of a safe workplace? What is the price of a clean Lake Erie in which you can fish and swim? That lake was about to be a dead lake. What is the price of seeing an eagle flying overhead, and how are we to fix the cost-benefit ratio for removal of DDT from the society and that eagle flying above us which was about to be wiped out because of that?

We are talking about the overturn of standards that have been regarded by the American people for years, indeed, for scores of years, and as the basis of their safety, as the basis of a healthy environment.

People rely on these standards every time they get a drink of water, every time they take an airplane ride, every time they get in a car, every time they walk out of their house to breathe. Go to California now and look at the situation in Los Angeles. The air is safe, the air is clean. Why? because we passed legislation which did it.

Was it as good as it should have been? No. I was roundly castigated for years because I sat on that legislation until we could work out a situation where it was going to make good sense.

This House passed that legislation. That legislation says you will not consider costs in determining the safety of standards and regulations.

This legislation is going to put that at risk and raise questions about it. The bill is purported to be about assessment of risk, but what this bill, again, is really about is just simply pulling the plug.

I know my colleagues who support this legislation would say they do not support the idea we pull the plug on life, but today, without this amendment that is exactly what we are going to be doing. We are going to be pulling the plug on health standards. We are going to be pulling the plug on standards which protect the environment and which enable us to live with safety and with comfort with the environment of which we are a part.

Now, I think it is better for our citizens to have the current law. If we have to address the problem of legislation to deal with the problem of inadequacy of cost assessment, and I think we have to do it, then let us do it by addressing the problem under amendment of each of the specific statutes that are involved here. Why? Because here we are seeking to add one enormously complex set of regulatory practices on top of another set of regulatory practices which we complain.

As I have pointed out to my colleagues in earlier comments, what we are doing is not just stopping legislation and regulations which are going to protect the health and safety and the welfare of the American people, but also which are going to adversely impact upon regulations and changes in regulations which will be of benefit to business.

I urge my colleagues to adopt the amendment and to reject the bill.

Mrs. MORELLA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of this amendment, which would strike the supermandate provision contained in H.R. 1022. I have reviewed H.R. 1022, and I have grave reservations about the bill in its current form. There is no question that we do need to reevaluate our environmental, health, and safety laws in order to reduce regulatory burdens and costs and to improve the protection of our citizenry. This reevaluation should be undertaken carefully and deliberately, on a statute by statute basis, with a full airing of views by all interested groups.

This is not however, the approach that is taken in H.R. 1022. H.R. 1022 would explicitly supersede every environmental and safety law on the books. This bill would prevent any new regulation from being issued unless the agency could muster substantial evidence that the benefits of any strategy chosen will be likely to justify, and be reasonably related to, the incremental costs.

We all believe that agencies should execute the mandates of this body in the most cost-effective manner possible. However, the cost-benefit test embodied in H.R. 1022 would make it extremely difficult for an agency to take any rulemaking action whatever—whether good, or bad, or indifferent. Unless the agency was prepared to show in court that the benefits from a rule justified its costs, the agency would be unable to move forward. Agencies would be compelled to place a dollar value on the survival of an endangered species, the purity of a river, the breathability of our air. If the balance sheet did not come out even, or if a judge disagreed with the agency evaluations, then the regulation would be held unlawful under the bill before us.

Make no mistake: H.R. is retroactive in its effect, whether or not it contains a reach-back petition process for reopening existing rules. H.R. 1022 is retroactive because for key statutes like the Clean Air Act, most of the regulations mandated by Congress have not yet been issued by the agencies. According to the Congressional Research Service, EPA has yet to promulgate 75 percent of the air toxics rules required by the act. These 75 percent of the clean air standards would fall within the purview of H.R. 1022 and most likely would never be issued at all if this bill passes in its current form.

The Clean Air Act is but one of many laws that would be superseded by H.R. 1022. Laws governing hunting and fisheries management, the Atomic Energy Act, the Safe Drinking Water Act, the Poison Prevention Packaging Act—these are just a few of the laws whose fate is in the balance today. Who among us can say with any degree of confidence what would be the effect of this risk/cost/benefit bill on these important statutes?

Enviromentalists, consumer organizations, and labor unions are not the only groups to oppose H.R. 1022. Industry too has some significant misgivings about this legislation. Several major manufacturers have told us, over the past several days, that H.R. 1022 goes too far. Industry does not want a rollback of environmental regulation; industry does not want to risk another popular backlash against its activities. In the recent Newsweek article on this bill, an official of Occidental Petroleum is quoted as saying, "This reminds me of 1981, when industry shot itself in the foot." Industry has invested billions of dollars in emissions control equipment already: To rescind the rules that made that equipment necessary is to squander industry's prior investment.

Mr. Chairman, in enacting the past 25 years environmental legislation, Congress has reflected the widespread public belief that protection of public health and the global environment are objectives of paramount importance to society. In my opinion, the public at large continues to hold these views.I therefore urge adoption of this amendment.

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Mr. BROWN of California. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

I will confess I am not an expert on regulatory proceedings, but based upon what I have heard here this evening and on our earlier expressions that this method of revising badly needed risk assessment and cost-benefit analysis should really be applied on a department-by-department basis in order to achieve the maximum effect.

I think that this amendment moves us in that direction.

What the basic point that it seems to me needs to be made is that in H.R. 1022 we have a valuable new process that is set into place which would help us make better regulatory decisions, but it requires that there be a certification process according to the criteria which result from this which override existing law.

Now, it is my view that it is not desirable to override the existing law, for the reasons set forth far more eloquently than I can by the gentleman from Michigan [Mr. DINGELL] and others, that what we really need is to reconsider existing law and see if the original basis for that law's criteria—that is, whether or not it should not require cost-benefit analysis or risk assessment—still are valid. We can then proceed, ourselves, to make the judgment that is necessary to either correct the law or to bring it into accordance with the decision criteria resulting from the operation of H.R. 1022.

This is a more moderate approach. I agree with that. It certainly is not satisfactory to those who want a revolution today. But I can feel much more comfortable with this kind of a process because I have been a party to putting into effect most of these regulatory laws over the last 30 years.

On the air pollution legislation, for example, I should not have to repeat this, but 30 years ago this was the key to getting elected to Congress in California, to promise to cure air pollution, and I made that promise, and I failed to do so. But I have supported every effort to do so that has been made in Congress.

And I think most of what we have done has been reasonable and valuable, and in southern California I can certify today we are far better off than we were 30 years ago or 20 years ago or 10 years ago.

Now, we seek to pass this all-encompassing legislation which contains many valuable additions which I fully support, but we put into this a provision that says if the process results in decision criteria which are different from existing law, it overrides the existing law. And I think that is unwise.

I think we need to reconsider the existing law, and the amendment provides for that, through the reporting process to Congress. But I think we should be very reluctant to override much of the health and safety and other legislation that we have passed.

The gentlewoman from California spoke eloquently of the impact upon mammography standards, for example. I think we should be very careful to be put into the position of having the women of this country say the Congress neglected or showed no concern for the importance of proceeding with the laws that we put into place already, and proposing to override them through the effect of this risk assessment and cost-benefit analysis legislation.

So I am very strongly supportive of the legislation offered by the gentleman from New York [Mr. BOEHLERT]. I join the gentleman from Michigan [Mr. DINGELL] in fearing for the consequences of the legislation before us unless it is amended in such a fashion, and I hope that you can all support the amendment of the gentleman from New York.

Mr. OXLEY. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, let us first of all make something very clear; that is, the supermandate language in this bill is the guts of the legislation. If you are against the supermandate, you are against the bill; then vote for the Boehlert amendment. But if you want to have a reasonable risk assessment and cost-benefit analysis bill, then vote against the Boehlert amendment and vote for the bill.

That is basically as simple as it can be. The gentleman from Louisiana [Mr. TAUZIN] made it very clear, and he is right, that if you are against the bill, you want to vote for this amendment. So I think most Members recognize it is important we look forward in dealing with these kinds of legislation and give the opportunity for the Congress to set these kinds of standards. That is exactly what we get elected to do.

I want to point out for the edification of the Members that we tried to carefully deal with the question that came up in our committee about mammography screening.

The gentlewoman from California who has spoken earlier raised that issue. We worked very hard to make certain that that was taken care of. I want to stress that in the language in the legislation, on page 5, line 14, section 4:

> Program designed to protect human health. The term "program designed to protect human health" does not include regulatory programs concerning health insurance, health provider services, or health care diagnostic services.

Now, the last time I looked, mammography screening would be covered under health care diagnostic services. So I put that issue to rest.

We listened to the gentlewoman from California and others in our committee. That issue is not an issue in this amendment, nor is it an issue in this bill because we took care of it, as a result.

Now, we spend some $430 billion to $700 billion on regulations. Does it not make sense, since we have already defeated an amendment that would look back that would keep us from looking back, to now take a look at an opportunity to take the new regulations that are coming out and apply reasonable cost-benefit analysis and risk assessment to those regulations?

That really is the issue. The question is do you want to do that, or do you not? Do you want to stick with the status quo of these old regulations that are in many ways totally not based on science, or do we want to simply give regulators an opportunity to use good science? That is really what this is all about.

Now, if we are going to believe our friend from New York, we are going to say we are just going to walk in place, we are going to, essentially, freeze the decisionmaking process and go back to what cost billions of dollars. I do not think that makes a whole lot of sense, and that is why the Boehlert amendment should be defeated, because it goes against the heart of what we are trying to do here, the very heart of this supermandate language.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from New York.

Mr. BOEHLERT. I thank the gentleman for yielding to me.

Mr. Chairman, I stress that I too favor cost-benefit analysis and risk assessment. What this amendment points out is that there are going to be disagreements in the future sometime and where there is a failure on the part of the agency to be able to certify all the certifications required in the bill, then that agency has to report back to the Congress, the people's House, and we debate it and we make the necessary changes.

Mr. OXLEY. Mr. Chairman, I have perhaps less confidence that that particular procedure will work. If they report back, they report back.

The gentleman from Michigan [Mr. DINGELL] said he has had a lot of hearings about some of the abuses in the regulatory process. It is true we have had a lot of hearings, but until today we have not done very much about it. Today we have a chance to strike a blow for reasonable regulations. That is why this bill is so important, and that is why, in my humble estimation, the amendment of the gentleman from New York cripples our ability to do that.

Mr. BOEHLERT. If the gentleman would yield further, I want to increase the comfort zone a little bit by telling the gentleman that we are part of the new majority now, so things will be different now and in the future, in the Congress, in the way Congress responds to agencies.

Mr. OXLEY. I am concerned that we get an overburdened effort. That is what the job is, it is for those regulators to make those regulations based on good science. That is what we want them to do. We do not want them to dump their problems into the Congress' lap. We are going to be authorizing Superfund, I say to my friend from California, we are going to be reauthorizing other programs, and that is clearly one of our goals.

But it seems to me that in the overall scheme of things, we are dealing with regulations, this bill now, this bill now is a chance to get some common sense into that procedure, and then when we start to reauthorize these kinds of regulations and the regime that is used in the regulations, the regulators will be very used to them and they are going to be able to come up with a good response.

Mr. HAYES. Mr. Chairman, I move to strike the requisite number of words, and I rise reluctantly, but not reluctant in support of the gentleman's amendment.

Mr. Chairman, I say reluctantly rise because there is no one in the course of the last several years who has seen more of the consequences injurious to people by having regulators make rules not reflective of laws made by their elected officials and to make those rules without any correlation to actual risk and without any consultation of actual cost.

So I rise reluctantly because I am in strong support of a legislative initiative, in support of the chairmen of both committees to which it was referred. But here is the problem I have and why I welcome the amendment offered by the gentleman from New York [Mr. BOEHLERT]: This is breaking ground on important new legislation. In doing, section 202 of the bill establishes a prohibition for the issuance of a rule that has not been certified to comply with the section's decision criteria. That is fine. But the decision criteria listed and described are described in terms that are not duplicated in any other Federal law.

The point I am making is they are standards with which I happen to agree. It is an initiative on which I happen to be supportive. But it is new, and therefore it will be at variance with existing application of standards.

The bottom line, I am saying, is there will always be a conflict between H.R. 1022 and other laws. And an administrative proceeding is going to leave a judge without previous decisions to look to for interpretation of this new language.

Now, that being the case, we would wonder why we do not have a fallback and a recognition there should be a safety valve. And the answer is, once again, in the committee, a fallback was placed. There is language under one title of the bill dealing with risk assessment, saying, "Hold it, here is a safety net. When there is a conflict we have got some exceptions, and we are going to make sure this escape clause works."

But for some reason that language is not incorporated in both titles of the bill. It is omitted in the one dealing with cost analysis.

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I am simply saying, "If you recognize the one, you ought to recognize the other, and we ought to have the sanity added so that, when we have this legislation go forward, and I believe this legislation should and will go forward, then we have not done untold harm to untold beings."

Mr. Chairman, there was a terrible news report earlier, a few days ago, about a hospital, I believe was in Florida, where an incredible and horrendous event occurred in which the wrong foot was amputated.

Let me tell my colleagues, "If we don't have some legislative language to be certain that the goal of this assessment, the goal of cost assessment, has a means by which we can actually enter into administrative law and review, and do so in the same process, we are going to cut off the wrong foot in the name of risk assessment." I, for one, do not want to be part of that process.

I do want to be part of a signing ceremony at the White House where the President hands a pen and says, "Here is a bill for the kind of risk assessment that you and others have been fighting for for 8 years." I want to be there for that event. I do not want to be going home to explain why I supported unintended consequences that were never envisioned by the best of intentions.

Mr. Chairman, I rise in reluctant—but strong—support of this amendment to keep from overriding, at this time, in a one-size-fits-all fashion, the statutory standards of virtually every Federal law protecting health, safety and the environment.

I do so reluctantly because, as my colleagues know, I have long been a proponent of real risk assessment and cost benefit reforms. I am an original cosponsor, along with BUD SHUSTER and 14 other Transportation Committee members on a bipartisan basis, of legislation amending the Clean Water Act to add strong, new risk assessment and benefit-cost requirements.

I stood shoulder-to-shoulder last Congress with most of my colleagues on the other side of the aisle and with many Democrats in working to have real risk assessment language added to the EPA Cabinet bill. As the Science Committee's Investigation and Oversight Committee Chairman, I held the first hearing of the 103d Congress stating the need for more and better risk assessment in our public policy decisionmaking process.

There should be no doubt in the minds of H.R. 1022's managers, or others, that I support their efforts to build risk assessment and cost-benefit analysis into our laws to prevent wasteful, counterproductive regulations.

In spite of this, or, more accurately, because I feel so strongly on this subject, I support this amendment based on the fear that the supermandate being proposed in H.R. 1022 is likely to be worse than the regulatory waste that we are attempting to address.

I believe—and I don't say this lightly—that we are on the verge of committing the legislative equivalent of the terrible incident that occurred a few days ago in a Florida hospital. In this incident, which was widely reported by the media, a patient went into surgery to have an injured leg amputated. The doctors, though well-intentioned, removed the wrong leg by accident. My point is that it is the result and not the intentions that matter, and I firmly believe that the results of H.R. 1022's supermandate language may prove to be disastrous.

The supermandate approach being taken in H.R. 1022 is flawed substantively, procedurally and tactically. Perhaps most alarming, however, is that no one on this floor—or anywhere else, I submit—can provide us with any meaningful explanation of how the bill's supermandate language is going to affect the individual statutes that underpin our system of health, safety and environmental protections.

From a substantive perspective, section 202 of the bill prohibits the issuance of any rule that has not been certified to comply with that section's decision criteria. These criteria are listed and described in terms not duplicated in any other Federal law pertaining to health, safety or the environment. Subsection (b) of section 202 provides, however, that H.R. 1022's decision criteria supersede current law whenever there is a conflict between the two. Because every Federal health, safety and environmental statute contains standards and criteria that are at odds with today's bill, there will always be a conflict between H.R. 1022 and the other laws. All that remains to be determined is which conflicts can be described and which interest groups will benefit from these pre-ordained conflicts. The pursuit and debate of these conflicts will grind our legitimate regulatory processes, and our already-clogged courts to a complete halt as contestants—industry or public interest group; competitors within an industry; or private property owners and environmental organizations—take their controversies to the courts based on their own conflict-based arguments stating why H.R. 1022 should prohibit the rule in question from being promulgated.

For a group of well-intentioned legislators, whom I am certain want to cure the ills our constituents suffer because of overregulation, this bill's approach is insane. It's worse than cutting off the wrong leg. It's like cutting off both legs to make sure you get the problem, wherever it is.

My second reason for supporting this amendment is procedural. There is absolutely no good reason for us to be taking, at this time, the extraordinary and extreme step represented by the supermandate language. If we were in the last two weeks of the 104th Congress, then at least there would be an argument that there was not time to make changes properly. But we haven't even finished the second month of this Congress, and there will be plenty of opportunity in the next 18 months to address overregulation problems in a more reasonable, tailored and understood fashion.

We will be reauthorizing the Clean Water Act, the Safe Drinking Water Act, Superfund, and the Endangered Species Act this Congress. As each of these bills move through committee and the floor, we should include the kind of risk assessment and cost-benefit provisions that make sense in light of particular structure, standards and experience of each statute. Where overregulation problems are being experienced with statutes not expected to be reauthorized this Congress, appropriations bills will be available as legislative vehicles to carry necessary corrections. And if, for some reason, there is a more pressing need, Speaker GINGRICH has announced that we will soon be having "Correction Days" each month to do away with the most destructive and least useful Federal regulatory requirements.

My third reason for supporting the amendment is tactical. The rushed, shotgun approach of H.R. 1022's supermandate language is producing a public relations backlash, reflected in numerous media stories like Time magazine's, "Environmental Chain Saw Massacre," last week, that may do serious damage to our shared objective of incorporating risk assessment and cost benefit principles into the body of our Nation's laws. Taking the overbroad supermandate approach of H.R. 1022 may result in "throwing the—risk assessment/cost-benefit—baby out with the bath water." That would be a tragedy.

Finally, Mr. Chairman, it is no comfort at all to me to hear from some of the supermandate language, "Don't worry Jimmy, the Senate will fix it." We here in the House of Representatives are not staff for the real legislators in the Senate. Under the Constitution, we have an equal responsibility—indeed a duty—to develop laws in the best interest of our great Nation. It is a complete abdication of our constitutional obligation, as well as of the duty we own our constituents to pass legislation in the House that we know is defective.

H.R. 1022's supermandate provision is seriously defective. It must be amended. Please join us in our efforts to do just that.

Mr. HASTERT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am going to be very simple and very brief. I say to my colleagues:

You've heard a lot of discussion, you've heard a lot of legal language, you've heard a lot of lawyers talk on this piece of legislation, but very simple what this bill does, and what this amendment does, and what the, quote unquote, supermandate does, is allow, when we have to authorize or reauthorize pieces of legislation, that the regulation that comes out of that is based on the new law, that we actually can do cost based regulation. So all the discussion here, when you boil it down, is saying, whether you take an old law, whether it's the Clean Water Act or the Clean Air Act, and when you apply new law to that or reauthorize it, is that the regulations that come out of that hence forward are the same type of regulations under the same type of regulation writing that comes out of any new law that we'd write. So, if you want consistency, and if you want fairness, and if you want the ability for this country not be overwhelmed by old legislation and old regulation, you simply say that we do not pass this amendment that guts, quote unquote, supermandate, but what it does is allow us to go forward when we write, when we reauthorize, old bills or old pieces of legislation, and we write new regulation out of it that is very simple, very concise and very consistent.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. HASTERT. I yield to the gentleman from New York.

Mr. BOEHLERT. I would like to point out to the chief deputy whip that this year Congress is going to consider the reauthorization of the Clean Water Act, the Safe Drinking Water Act, the Superfund legislation, the Endangered Species Act. That is the time for this Congress to make the changes during that reauthorizing process.

Mr. HASTERT. Absolutely, and, reclaiming my time, if the gentleman understands when we do those that, if we change that bill, or we write it, the regulations henceforth will be under the language of this bill, and that only seems sensible to do.

Mr. BOEHLERT. Mr. Chairman, if I may ask the gentleman to yield one more time, well, I think then we have got some area of common ground, some agreement. We want the Congress, the elected Representatives of the people, to be making the decisions, the important decisions, not some nameless, faceless bureaucrat.

Mr. HASTERT. If the gentleman from New York will listen for a second, Mr. Chairman, I would say, "You know, we don't write the regulation. We write the law. We write the policy. And regulation that follows is done by the bureaucrats, you know, down the street. And what we're saying is when we write the regulation, that the regulations they write are based on the law that we're trying to establish here, and it's only fair that we do this, or we set this policy, and when you reauthorize and new legislation that comes forward from reauthorization is written on the same type of language and basis."

Mr. WAXMAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in favor of the amendment. This supermandate in this legislation is about the most far-reaching proposal, has sweeping impact on existing environmental laws.

Now those laws are up occasionally for renewal, and, when we revisit those laws, we ought to deal with problems in those laws, but under this legislation they are going to supersede all those laws as if they did not exist.

The gentleman from Louisiana [Mr. HAYES] said that all the precedents, all the court decisions interpreting the statutes involved, would be thrown out. They would have to look at it in the light of this one bill.

This is what they call one-size-fits-all. Forget whether the Clean Air Act operates in a health based standard, or the Toxic Substances Act is a risk assessment bill, or some other legislation were designed to have a technology standard. Whatever those laws might have said on those points, we are going to ignore, and we are going to let this bill supersede those laws.

Mr. Chairman, what is really at stake is a rollback of protections for people. The reason those laws were designed the way they were is based on the historical experiences.

For example, in the Clean Air Act we had a law saying that, if there are toxic air pollutants, they ought to do a risk analysis before they set a standard, and so, when we had toxic pollutants that cause cancer, or birth defects, or neurological problems, in 1970 to 1990 the law was to do a risk based standard, and EPA could not figure out how to do that. So, after 20 years only seven standards were set for pollutants.

Finally in 1990 we said in the Clean Air Act, "This doesn't make any sense. Let's require the use of the technologies that will reduce these pollutants that cause such enormous harm," and that made a lot of sense, and, after the law was adopted in 1990, we have seen an enormous amount of progress in protecting people from tons and tons of these toxic air pollutants.

In the urban areas of our cities we have a health based standard, and we say, "Let's achieve the health based standard set of strategies to do it," and we have a law that has been working, it has been successful, but with the supermandate under this legislation we would not have a health based standard anymore. It would have to go to a cost-benefit analysis.

The point that I want to make is really what is at stake are all these existing laws. If someone does not like the Clean Air Act, or the Toxic Substances Act, or the Endangered Species Act, when those bills come up for renewal let us fight the fight out. Let us debate those issues, not adopt something that has such sweeping consequences.

Now we have to ask why are we facing something with such sweeping consequences. It is one of two, and maybe a combination of the two, motives. One is to, I think, not having thought through what the implications are going to be, or the second is, if they thought through very carefully what the implications will be, and those that have thought it through would like to weaken all of those environmental laws. I think this legislation before us is seriously flawed in that it goes back to existing laws, weakens them.

I say to my colleagues, "If you want to say for the future we ought to do cost-benefit analysis, risk assessment, as a tool, that's fine, but not to take that analysis and tie up things for years."

In the toxic substances law, not under the clean air law, but the toxic substances law, they spent a decade trying to set one standard, and they finally set one standard, and it was challenged in court and then thrown out because not the standard was flawed, because they challenged the analysis.

Economists can come up with different points of view when they look at an analysis. Everyone knows economists disagree with each other. But we are going to allow courts and judicial review to throw out laws and regulations to enforce those laws based on whether the analysis met some court's viewpoint.

Mr. HASTERT. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from Illinois.

Mr. HASTERT. Mr. Chairman, I thank the gentleman from southern California, my good friend, and let us talk about the Clean Air Act for just a second.

When we wrote the Clean Air Act in 1990, there was a provision in there for employer trip reduction. It was based off technologies that were going on in southern California, in my State, in Texas and other—Pennsylvania and other States around the country. It has not worked, but yet that technology is in the law, and what we are saying, if we reauthorize that, that ought to be looked at as a cost-benefit analysis. If it does not——

Mr. WAXMAN. If I can reclaim my time, Mr. Chairman, just to tell the gentleman, I don't disagree with you, if you want to look at that issue on a cost-benefit analysis. But why take the whole Clean Air Act, which by the way was adopted by a vote of 401 people in the House voted aye, 25 voted no? There was an initiative by President

Bush and signed by him. Why take that whole law and toss it out because you have a supermandate in this risk bill?

Mr. Chairman, I do not want to see this bill override, and destroy, the progress this Nation is finally making, after decades of inaction, to protect the American people from cancer-causing air pollution. This savings amendment would allow that progress to continue.

From 1970 to 1990, the Nation conducted a full-scale experiment in the use of risk assessment to regulate toxic chemicals. During those years, the Clean Air Act directed EPA to use risk assessment to control air pollutants that can cause cancer, birth defects, neurotoxicity, and respiratory disease. More than 2.5 billion pounds of toxic chemicals were released into America's air every year, according to industry's own right-to-know records from the late 1980's.

By 1990 everyone—industry, environmentalists, the States, and EPA—was united in agreement that this experiment had failed. Over a 20-year period EPA was paralyzed in endless debates over risk assessments and cost-benefit analyses for cancer risks. In all this time, EPA managed to set standards for only seven toxic air pollutants.

In 1990, Congress replaced the failed risk-based approach with a technology-based system that even many industries agree is proving to be practical, effective, and affordable. In the 4 years since 1990, EPA has achieved many times what was accomplished in the prior 20 years.

Since 1990, EPA has taken steps that will eliminate more than 1 billion pounds of toxic emissions annually from nearly a dozen types of industrial emitters, including chemical plants and steel industry coke ovens.

H.R. 1022 would erase this breakthrough in a single stroke: It would reinstitute the paralysis that reigned from 1970 to 1990.

The 1990 Clean Air Act amendments establish a practical, affordable technology-based approach to controlling air toxics sources. The law lists 189 toxic air pollutants, establishes a clear footing for technology-based standards, and sets a detailed schedule for action.

This approach is bringing clear results. Since 1990, EPA has set standards for nearly a dozen major industries, reducing toxic emissions by more than 1 billion pounds per year.

EPA has also proposed standards for municipal waste incinerators and medical waste incinerators that will reduce emissions of dioxin—one of the most toxic chemicals known—by more than 99 percent. The standards will also cut thousands of tons of mercury, lead, cadmium, and other highly toxic pollutants.

The reason so much progress has been made so fast is that the act establishes a simple, workable criterion for standards: all major facilities of a given type must upgrade their pollution controls at least to the quality that has been achieved by the better-controlled facilities already in operation.

Risk assessment still plays a role. It is used to add or remove chemicals or sources from the lists that require regulatory control. It will also be used, at the turn of the century, to see if high risks remain after the technology-based first step. If so, the act calls for further progress through risk-based control measures.

H.R. 1022 would return us to 20 years of risk-based paralysis. The bill's risk assessment and cost-benefit decision-making criteria would supersede the 1990 Clean Air Act's technology-based approach. These requirements are even more onerous than those that failed before 1990.

Under these criteria, lives of the most exposed and most vulnerable Americans may not be worth saving. EPA would protect the most exposed or most vulnerable Americans only if the extra lives saved—compared to the next weaker standard—justify the extra cost to industry.

What's worse, Americans' right to protection from cancer-causing air pollution could depend on what region they lived in or what company they lived next to.

These daunting requirements would effectively hogtie the future efforts to continue reducing toxic air pollutants. The data simply are not available to perform risk assessments for 189 different toxic emission sources emitted in innumerable combinations from hundreds of different kinds of facilities.

In short, unless we pass this savings clause, both the industries that release toxic air pollutants and the Americans who still breathe them would be condemned again to the 1970–1990 situation of paralysis by analysis.

The CHAIRMAN. The time of the gentleman from California [Mr. WAXMAN] has expired.

Mr. OLVER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Hayes-Boehlert amendment. In fact, I offered a similar amendment in the Committee on Science a week or so ago. This, I think, is a fairly straightforward issue.

I agree with the purpose of the amendment which is namely that, when the results of a cost-benefit analysis under this new law, H.R. 1022, appear to conflict with an existing statutory requirement, the existing law should not be overwritten except by a specific new act of Congress. Without this amendment, Mr. Chairman, H.R. 1022 has the potential to reach back to eviscerate every law on the books designed to protect peoples' health and/or environment.

Congress already has a process, as has been pointed out, for fixing laws which are not working as we wanted them to do, and that is the reauthorization process. Hopefully we will reauthorize the Clean Water Act, the Superfund law and a number of others this year, and many of them have been criticized for requiring extensive and expensive remedies not consistent with cost-benefit criteria. But the right time to deal with that is during the reauthorization process.

Mr. Chairman, this becomes fish-or-cut-bait time. Did Congress mean it when Congress decided by huge votes to reduce sewage pollution in our rivers, or are we going to reopen and reverse those gains? Did Congress mean it when Congress decided to reduce industrial air pollution, or are we going to reopen that issue at this time and reverse those gains?

Mr. Chairman, ultimately this Congress in those cases has the responsibility to determine the necessary levels of protection for public health and environmental protection, and in the reauthorization process that is the time to make that decision, not reaching back through the provisions of H.R. 1022 to do that aside from the reauthorization process.

In a few weeks, we have the so-called Personal Responsibility Act on the floor of this House. I challenge every member of this House to show some personal responsibility. Reject this blind, blanket overhaul of our laws and do the hard work of making changes statute-by-statute.

Support the Hayes-Boehlert amendment.

Mr. DELAY. Mr. Chairman, this amendment would create two different classes of regulations for the purposes of risk assessment and cost/benefit analysis—the first would be the post-H.R. 1022 class, and the second would be the pre-H.R. 1022 class.

The post-H.R. 1022 class of regulations would be subject to modern risk assessment and cost/benefit analysis procedures based on sound science, while the pre-H.R. 1022 class of regulations would be promulgated under outdated, inefficient, and inflexible procedures with sometimes no attention paid to their cost on the economy.

Does this make sense?

The American people have asked us to establish a reasonable regulatory system based on scientifically sound risk assessment with attention paid to the costs versus the benefits incurred. That is what this bill accomplishes.

Some are claiming that the bill will roll back all of our health, safety, and environmental protection regulations. Those who would make this claim have unfortunately resorted to scare tactics.

As the chairman of the Commerce Committee, Mr. BLILEY, has written, "Nothing in the bill itself changes a single existing health, safety, or environmental regulation currently on the books. This bill only applies to new regulations and situations where the agency revises an old regulation through a public notice and comment process."

H.R. 1022 is not a supermandate—instead, it establishes consistent, clear standards under which all new regulations will be promulgated. The Boehlert amendment would gut this bill and I urge a "no" vote.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. BOEHLERT].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BOEHLERT. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 181, noes 238, not voting 15, as follows:

[Roll No 180]

AYES—181

Abercrombie
Ackerman
Andrews
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Blute
Boehlert
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Castle
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Gilman
Gordon
Goss
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
Klug
LaFalce
Lantos
Lazio
Levin
Lewis (GA)
Lincoln
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Meyers
Mfume
Mineta
Minge
Moakley
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Porter
Poshard
Rahall
Ramstad
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roukema
Roybal-Allard
Sabo
Sanders
Sanford
Sawyer
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Thompson
Thornton
Thurman
Torkildsen
Torricelli
Towns
Tucker
Velazquez
Vento
Visclosky
Volkmer
Waters
Watt (NC)
Waxman
Wise
Woolsey
Wyden
Wynn
Yates
Zimmer

NOES—238

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Boehner
Bonilla
Bono
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gillmor
Goodlatte
Goodling
Graham
Green
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson, Sam
Jones
Kasich
Kim
King
Kingston
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Menendez
Metcalf
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Portman
Pryce
Quillen
Quinn
Radanovich
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Royce
Salmon
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Traficant
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff

NOT VOTING—15

Baesler
Brewster
Cox
Gonzalez
Gutierrez
Hunter
Lipinski
Livingston
Miller (CA)
Mink
Rangel
Rush
Torres
Ward
Williams

□ 1830

The Clerk announced the following pairs:

On the vote:

Mr. Rush for, with Mr. Cox against.

Mr. Ward for, with Mr. Livingston against.

Messrs. McINNIS, SKELTON, and ROHRABACHER changed their vote from "aye" to "no."

Mr. KENNEDY of Massachusetts changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments to the bill?

AMENDMENT OFFERED BY MR. WALKER

Mr. WALKER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WALKER: Page 30, after line 23, insert:

SEC. 204. ENVIRONMENTAL CLEAN-UP

For purposes of this title, any determination by a Federal agency to approve or reject any proposed or final environmental clean-up plan for a facility the costs of which are likely to exceed $5,000,000 shall be treated as major rule subject to the provisions of this title (other than the provisions of section 201(a)(5). As used in this section, the term "environmental clean-up" means a corrective action under the Solid Waste Disposal Act, a remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and any other environmental restoration and waste management carried out by or on behalf of a Federal agency with respect to any substance other than municipal waste.

Page 4, after line 18, insert the following new section and redesignate section 4 as section 5:

SEC. 4. UNFUNDED MANDATES

Nothing in this Act itself shall, without Federal funding and further Federal agency action, create any new obligation or burden on any State or local government or otherwise impose any financial burden on any State or local government in the absence of Federal funding, except with respect to routine information requests.

Page 16, beginning on line 8, after "uncertainties" add:

"Sensitive subpopulations or highly exposed subpopulations include, where relevant and appropriate, children, the elderly, pregnant women and disabled persons."

Mr. WALKER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. Under the rule, there are 8 minutes remaining for debate. The gentleman from Pennsylvania [Mr. WALKER] will be recognized for 4 minutes, and a Member on the other side will be recognized for 4 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Chairman, I yield myself such time as I may consume.

I will try to go quickly so we might be able to get to another amendment, if this could be taken on a voice vote.

This amendment is offered by myself, the gentleman from Ohio [Mr. OXLEY], the gentleman from Pennsylvania, [Mr. SHUSTER], the gentleman from Louisiana [Mr. TAUZIN], and the gentleman from Pennsylvania [Mr. CLINGER]. What is says is that we are going to include environmental cleanup under 1022. We want to be sure the cleanup dollars are used wisely; subjecting major cleanups to this legislation will go a long way in doing that. Also, there is some concern about any kind of unfunded mandates. The mandates are some of the most costly of mandates when we deal with the environment. Accordingly the Conference of Mayors, of the top 10 most burdensome unfunded mandates on State and local governments, 7 are environmental mandates. H.R. 1022 speaks to ease the burden of regulation. We certainly do not want to add to it. CBO was not able to cost out what, if any, costs may be passed onto the States. With this amendment that I am offering on behalf of the gentleman from Pennsylvania [Mr. CLINGER] and myself, we offer protection against unfunded mandates.

There is also some concern about definitions of the bill that refer to sensitive subpopulations. That is included in this language as well to make certain that sensitive subpopulations would include children, elderly, pregnant women, and disabled persons. It clarifies what is in the committee report.

Mr. Chairman, I yield to the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Chairman, I thank the gentleman for yielding to me.

I also am in support of this legislation. I also support the amendment en bloc and want to thank my colleague, the gentlewoman from Arkansas [Mrs. LINCOLN] for her good work on this and also the gentleman from New York [Mr. TOWNS], a member of our committee.

These amendments make a good deal of sense. They track the specifics of this bill very well.

I also want to thank the gentleman from Pennsylvania [Mr. SHUSTER] for his work on this.

Mr. WALKER. Mr. Chairman, I yield to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, I simply want to say I support this amendment. It ought to be passed.

Mr. WALKER. Mr. Chairman, I yield to the gentleman from California [Mr. CONDIT].

Mr. CONDIT. Mr. Chairman, I rise in support of the amendment and the bill.

Mr. WALKER. Mr. Chairman, I yield to the gentlewoman from Arkansas [Mrs. LINCOLN].

Mrs. LINCOLN. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, this is an amendment that has been worked out with Mr. OXLEY and Mr. CLINGER. Last month many of us supported H.R. 5, a bill that would ease the amount of unfunded mandates on the States. This amendment is aimed to ensure that provisions in this bill achieve the goal set forth under the unfunded mandates bill by not adversely affecting States. It has the full support from the National Conference of State Legislatures and the State of Arkansas.

As you well know, States often act as agents of the Federal Government in enforcing Federal statutes. For example, under the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, and the Resource Conservation and Recovery Act, to name a few, the States are delegated the authority to carry out the requirements of the statutes and enforce their provisions. Because H.R. 1022 as written explicitly requires risk assessments for documents prepared by or on behalf of a covered Federal agency in the implementation of a regulatory program designed to protect human health, safety, or the environment, States might be required to conduct risk assessments when carrying out the provisions of Federal statutes. Such documents include the issuance of permits under the Clean Water Act and the Clean Air Act.

Over 40 States have delegated authority over the Clean Water Act's section 402 permitting program. Under this bill, States acting on behalf of the Federal Government might be forced to conduct risk assessments for each permit they issue. States neither have the financial nor the personnel resources to take on such a burden.

The ultimate financial impacts of this bill on the States are unknown. Even in the committee report, CBO was unable to calculate the potential costs. CBO stated that the effect of this bill on State and local governments was "unclear." "CBO has no basis for predicting the direction, magnitude, or timing of such impacts."

Because of the ambiguity associated with the potential costs and burdens placed on the States under the mandates of this bill, we have agreed to this amendment to protect States against unfunded mandates. This amendment requires further Federal action along with Federal funding in order for States to comply with the requirements under this act.

I encourage my colleagues to support this commonsense amendment.

Ms. MCCARTHY. Mr. Chairman, this amendment will alleviate concerns that have been raised in both the Science and Commerce Committees by myself and the Congresswoman from Arkansas regarding the placement of risk assessment and cost-benefit analysis requirements on State and local governments.

This amendment hopes to clarify that enactment of this bill will not place unfunded mandates on State and local government jurisdictions. This savings clause is needed because as currently written, the bill is unclear on the question of whether State and localities will have to engage in costly risk assessments and cost-benefit analyses. It should be remembered that States often act as agents for the Federal Government in administering laws such as the Clean Air Act and the Safe Drinking Water Act.

In fact, the Commerce Committee report states on page 50 that if we enact H.R. 1022, the "affect on budgets of State and local governments is unclear." This bipartisan amendment, supported by the National Conference on State Legislatures, would make clear that the bill will not impose an unfunded mandate on States and local governments. Therefore, I urge my colleagues, who overwhelmingly supported the passage of the unfunded mandate bill last month, to support this amendment.

Mr. TOWNS. Mr. Chairman, I would like to thank my dear colleague from Pennsylvania, Mr. WALKER, for including the amendment dealing with subpopulations offered by myself and the gentlelady from California [Ms. LOFGREN]. Also, I would like to thank the gentleman from Ohio [Mr. OXLEY] for his support in getting this amendment in.

This amendment seeks to cure one of the many problems that arise when we try to put good and responsive science into law. Risk assessment may help improve regulatory decisions, but good risk assessment doesn't guarantee good regulatory decisions. Risk assessment should supplement the regulatory goal of safeguarding public health, but should not stand alone in the analysis.

This bill requires that a number of numerical estimates be made; yet it expresses those estimates in a crude way that fails to take account of the special needs of vulnerable subpopulations such as children, the elderly, and disabled individuals.

It is the concern for these vulnerable subpopulations that encouraged me to sponsor this amendment.

As we have learned in recent years, averages and best estimates often tell us almost nothing about the way in which a risk will have an impact on real people. On average a drug or device, a chemical or compound may be safe and effective, however, it may have terrible unsafe or ineffective consequences for special subpopulations such as the elderly, children, pregnant women, disabled people, or individuals with certain chronic illnesses.

Those who are vulnerable in our society need to be concerned about health care expenditures, salary loss for a lengthy illness, and years of work lost to premature death. And this is all because they have no option to choose the level of risk to which they are exposed to a health hazard. I believe that science cannot always explain complex or unusual relationships between the exposure to hazards and the potential health effects to all people.

This amendment simply says that when numerical risks are provided, estimates shall also be provided for these subpopulations where such estimates are relevant.

I urge adoption of this amendment.

Mr. WALKER. Mr. Chairman, I reserve the balance of my time.

AMENDMENT OFFERED BY MR. BROWN OF CALIFORNIA TO THE AMENDMENT OFFERED BY MR. WALKER

Mr. BROWN of California. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. BROWN of California to the amendment offered by Mr. WALKER: At the end of the amendment, insert the following:

Page 4, strike lines 5 through 9 (all of paragraph (1) of section 3) and insert the following and redesignate paragraphs (2) through (4) as paragraphs (3) through (5), respectively:

(1) A situation that the head of the agency considers an emergency.

(2) A situation that the head of the agency considers to be reasonably expected to cause death or serious injury or illness to humans, or substantial endangerment to private property or the environment unless prompt action is taken to avoid death or to avoid or mitigate serious injury or illness to humans, or substantial endangerment to private property or the environment.

Mr. BROWN of California (during the reading). Mr. Chairman, I ask unanimous consent that the amendment to the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BROWN of California. Mr. Chairman, this is a very simple amendment.

Mr. Chairman, I yield to the gentleman from Ohio [Mr. BROWN] to explain.

Mr. BROWN of Ohio. Mr. Chairman, I rise in support of this amendment which the gentleman from California [Mr. BROWN], the gentlewoman from Texas [Ms. JACKSON-LEE], and I are offering. This amendment allows a critical element to the protection of our public health and safety to continue.

This amendment ensures that agencies be provided the flexibility to act rapidly in the event of a serious threat to public health or public safety.

Our history is replete with examples where the prompt action by a Federal agency prevented death or prevented serious injury.

In Lorain County, OH, in northeast Ohio in the 13th district, the Centers for Disease Control and the Environmental Protection Agency are currently working with the Ohio Department of Public Health to avoid calamity from the use of a deadly pesticide in a residential area in Elyria. Within days these agencies were working together to mitigate the contamination, to relocate families, and to clean up the problem.

Without this amendment, agencies will spend more time in risk analysis and litigation than responding to these urgent situations.

In addition, while lawyers will have full employment, many of our constituents could become seriously ill or die waiting for Federal action.

The CHAIRMAN. The Chair will allocate 30 seconds to the proponents. If there is a Member on the other side that wants to have permission to speak, the gentleman from Pennsylvania [Mr. WALKER] may close.

Mr. BROWN of Ohio. Mr. Chairman, I ask for support of the Brown amendment.

Mr. BROWN of California. Mr. Chairman, I yield to the gentlewoman from Texas [Ms. JACKSON-LEE].

Ms. JACKSON-LEE. Mr. Chairman, let me say that the American people should not have to wait for agencies to study risks for months before acting to abate serious and in some cases life-threatening conditions.

Last year, for example, the FDA received a report from Canada of two cases of salmonella poisoning in infants using a particular infant formula manufactured in the United States.

We have to be able to save our infants and be responsive in having this provision to provide for our American citizens.

Mr. Chairman, the Brown-Jackson-Lee amendment to H.R. 1022 would allow agencies to take rapid response actions to address significant threats from toxic chemicals or discharged oil, without the need to wait for lengthy risk assessments to be completed. The amendment would expand section 3(l) to exempt from risk assessment requirements from not only classic emergencies, but also those situations where prompt action is needed to avoid death, illness, or serious injury to the environment.

The American people shouldn't have to wait for agencies to study risks for months before acting to abate serious, and in some cases, life-threatening conditions.

For example, the amendment would allow, without the delay of additional studies: repacking corroding drums before they leak; quickly relocating those people living in dangerously contaminated areas that require cleanup—moving them out of harm's way; stopping the spread of contaminants from leaking underground storage tanks before drinking water is affected; acting promptly to save wildlife and beaches harmed by oil spills; and quickly supplying alternate drinking water where community water has been contaminated with toxic chemicals.

Often these are not classic emergency situations, but they are always situations where fast action is critical to preventing greater harm to surrounding communities and the environment. Would we not want agencies to be free to respond quickly to such serious situations?

Taking timely action before the contamination spreads would also serve to avoid more costly cleanups in the future, saving money for both taxpayers as well as industry.

This amendment makes good economic sense, and it makes good sense. I ask for your support.

Mr. MANTON. Mr. Chairman, I want to thank my colleague, Mr. BROWN, for offering this amendment designed to ensure that Federal agencies maintain the ability to respond quickly to serious risks to the public's health and safety.

In particular, I am concerned about how H.R. 1022's copious risk assessment requirements would impact the safety of our Nation's water supply.

The central importance of a safe drinking water supply was reinforced for me last November when cryptosporidium, the parasite which caused more than 100 deaths in Milwaukee in 1993, was detected in New York City's water supply.

There are few if any among us who are willing to accept a risk of significant exposure to serious disease through our water supply. I am pleased that my city of New York aggressively monitors for cryptosporidium through a watershed protection strategy. As of today, the New York City water supply is in avoidance, meaning that our water meets EPA standards for avoidance of cryptosporidium parasite.

There are no Federal regulations which cover this deadly parasite. However, New York City has tested for this pathogen since 1992 as part of a cooperative effort with EPA.

Unfortunately, there is a dearth of data about how to avoid illness from cryptosporidium, which has only been a reportable disease since March 1994.

The bill before us today would require a rigid approach to addressing unusual and new health problems, like cryptosporidium. H.R. 1022 would require agencies like EPA to complete more than 20 risk assessments before working with localities to address new-found hazards.

H.R 1022 would effectively tie the hands of cities like New York which currently are working jointly with EPA to address urgent situations like this public health issue. Furthermore, H.R. 1022 would lead to unnecessary and potentially life-threatening delays in regulatory action to protect the people of New York.

I want to congratulate my colleague for offering this amendment designed to allow EPA, the Centers for Disease Control, and other agencies the flexibility they need to work with localities to respond quickly to serious threats to health or safety.

I urge my colleagues to join me in supporting this critical amendment.

The CHAIRMAN. The time of the gentleman from California [Mr. BROWN] has expired.

PARLIAMENTARY INQUIRIES

Mr. BROWN of Ohio. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. BROWN of Ohio. Mr. Chairman, on what basis does the Chair rule that in this 10-hour rule that the Committee on Rules has generously given us and under the 5-minute rule for our time, that the time of the gentleman from California [Mr. BROWN] is taken away and part of it is given to someone else when he did not yield? Under what parliamentary rule is that, Mr. Chairman?

The CHAIRMAN. The Chair has discretion and the right to reallocate time when there is a limitation on time.

Mr. BROWN of Ohio. Mr. Chairman, under what rule is that? Would the Chair cite the rule?

The CHAIRMAN. Rule XXIII.

Mr. BROWN of Ohio. Mr. Chairman, a further parliamentary inquiry. It looks to me that it is past 6:40. I call for a vote, Mr. Chairman.

The CHAIRMAN. The Chairman recognizes the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Chairman, the amendment to the amendment ought to be opposed.

Mr. BROWN of Ohio. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. BROWN of Ohio. Mr. Chairman, we were told by the Parliamentarian that 6:40 is the final time.

The CHAIRMAN. That is correct.

Mr. BROWN of Ohio. Under what rule may we exceed 6:40?

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. BROWN] to the amendment offered by the gentleman from Pennsylvania [Mr. WALKER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BROWN of Ohio. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. The Chair announces that there will be a 5-minute vote on the Walker amendment, if a recorded vote is ordered.

The vote was taken by electronic device and there were—ayes 157, noes 263, not voting 14, as follows:

[Roll No. 181]

AYES—157

Abercrombie
Ackerman
Andrews
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gordon
Green
Hall (OH)
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Mineta
Minge
Moakley
Moran
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Pomeroy
Rahall
Rangel
Reed
Reynolds
Richardson
Rivers
Rose
Roybal-Allard
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Thompson
Thornton
Torricelli
Traficant
Tucker
Velazquez
Vento
Volkmer
Waters
Watt (NC)
Waxman
Wise
Woolsey
Wyden
Wynn
Yates

NOES—263

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thurman
Tiahrt
Torkildsen
Towns
Upton
Visclosky
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—14

Baesler
Brewster
Gonzalez
Gutierrez
Hunter
Lipinski
Martinez
Miller (CA)
Mink
Rush
Torres
Ward
Williams
Wilson

☐ 1858

Mr. TAYLOR of Mississippi changed his vote from "aye" to "no."

So the amendment to the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. WALKER].

The amendment was agreed to.

Mr. YOUNG of Alaska. Mr. Chairman, H.R. 1022, the Risk Assessment and Cost-Benefit Act of 1995, is long overdue. I agree with the bill's authors that it is essential that a cost-benefit analysis be performed on the thousands of Federal regulations that are prepared each year. Without this measure, the Federal Government would simply continue to create, without any accountability, a growing mountain of new Federal requirements. In far too many cases, these regulations provide little, if any, benefit to our economy, our environment, or our Nation as a whole.

While H.R. 1022 is not a perfect product and it will be refined throughout the legislative process, there are several very sound provisions which I would like to highlight.

First, the term "major rule" has been defined to cover any regulation that is likely to result in an annual cost of $25 million or more. It is, therefore, highly unlikely that this bill would require a full blown cost-benefit analysis for annual and routine housekeeping regulations like those that simply open or close various fisheries or stipulate the dates, hunting times, and bag limits for migratory bird species. Concerns about the effects on these types of activities by the regulatory moratorium bill passed last week required us to exempt them from the moratorium. The concern is not present here.

Second, although this legislation does require cost-benefit analyses for major rules, it does not mandate an outcome nor does it prevent the implementation of any regulations once a department or agency has certified the impact of a proposed rule. The fundamental goal of this legislation is to allow the American people and their elected representatives to know the true cost of a proposed Federal regulatory action. With this information, which is often currently lacking, policymakers can make rational decisions that prioritize and balance the diverse needs of this Nation.

Finally, this legislation contains a phase-in provision before the requirement of a cost-benefit and risk-assessment analysis kicks in. By postponing the effective date, Federal agencies will have at least 18 months to gear up to perform these important analyses in a scientific and unbiased manner.

I compliment the sponsors of this measure for providing this transition period. I am confident that because of this language, there will not be any unnecessary or unanticipated burdens placed on the executive branch of our Government.

The requirement of cost-benefit and risk-assessment analyses is neither a new nor a radical idea. The Army Corps of Engineers has, for instance, been performing these studies for many years. I believe it is time for the rest of the Federal Government to get with the program.

Mr. JOHNSON of South Dakota. Mr. Chairman, H.R. 1022, the Risk Assessment and Cost-Benefit Act is flawed legislation and needs to be much improved by the Senate and by the conference committee before I could vote for it on final passage. Nonetheless, I support the general thrust of requiring risk assessment and cost-benefit tests for Federal regulations and I will vote for this bill today as a means of allowing the debate to continue. The current version of this legislation would lead to costly increases in Federal bureaucracy, an enormous increase in litigation and possibly a risk for health and safety concerns. I am disappointed that the House leadership seems to be more concerned over making political statements with this bill than in crafting legal language which would actually serve the public interest. I do, however, believe that this issue should be moved on to the

Senate and conference committees for, hopefully, more deliberate and responsible consideration. I will not vote for this legislation at that time unless it has been significantly improved.

Mr. CONDIT. Mr. Chairman, as many of you are already aware I am a strong proponent of risk assessment and cost-benefit analysis.

I have formed this opinion because I recognize that we do not have infinite resources and we cannot address every risk to health, the environment or society.

How then should we determine which risks to address?

The way things are being done today has to change. Risks are regulated in a complete absence of scientific fact. Tonight's news magazine show becomes tomorrow's regulation. Never mind that there might be 20 problems that are more pressing—they haven't been on TV yet.

In 1987 EPA experts conducted a review of what they felt were the greatest risks. When they collected all of the opinions, they produced a report titled "Unfinished Business." This report concluded that what experts felt were the greatest risks had funding priority and the smallest risk had the highest funding priority.

Another problem is the approach to regulations in one agency might not resemble that of another. For example, a resources for the future expert was attempting to determine the amount of lives that would be saved by an EPA regulation. Using the EPA method he determined that 6,400 deaths would be prevented. However, when the same researcher used the same data with the FDA method, he came up with a figure of 1,400.

To put this in perspective, it is absolutely necessary to assess the risk, determine how much it is going to cost to address it and how great the benefit is if we do it. And this must be done consistently throughout the Federal Government.

This is not some far-out concept, this is simply common sense.

I have been very active in this area and worked hard to convince people in the administration that we need a policy on this. During the 103d Congress I successfully added an amendment to the Agriculture reorganization bill which creates an Office of Risk Assessment.

I think the time to act is now. H.R. 1022 presents the 104th Congress with a real opportunity to begin assessing risks in a coherent and consistent manner. People need to understand the purpose and price of regulations—and they need to be done in an understandable manner. As it is done today, regulations are complex and written in an inconsistent manner.

Supreme Court Justice Stephen Breyer is a great supporter of risk assessment. In his book on the topic "Breaking the Vicious Circle" he made the following observation:

> When we treat tiny, moderate and large too much alike, we begin to resemble the boy who cried wolf. Who now reads the warnings on aspirin bottles, or the pharmaceutical drug warnings that run on for several pages? Will a public that hears these warnings too often and too loudly begin too often to ignore them?

This is exactly what I am talking about. We need to restore some credibility to our regulatory process. H.R. 1022 helps this process along. As it stands today, when you say the words Federal regulation, people cringe. It should not be that way.

Mr. PORTMAN. Mr. Chairman, one of the goals of the Contract With America is to generate economic growth and encourage job creation. Relieving the regulatory burden on individuals and businesses is essential to achieving this objective. Today, the House of Representatives took a step in this direction by requiring Federal bureaucrats to assess the cost of their actions.

Washington bureaucrats are costing us $430 billion a year with regulations that often do more harm than good. They are coming up with $50 solutions for $5 problems. It's time for common sense in Washington.

Last year 69,000 pages of Federal rules and regulations were published. The process of regulating has become an industry in lawyers, lobbyists, and special interests.

These rules and regulations—9 feet of regulations, if laid end-to-end—impact every aspect of Americans' lives. The rules are often contradictory, and frequently conflict with State, county and local rules.

Specifically, H.R. 1022 would ensure that risk assessments are objective, unbiased, and subject to peer review. The cost these rules will eventually have on Americans must be taken into account, alternatives to complicated rules that might be more cost-effective must be considered, and a sound reason for the regulation in the first place must be demonstrated.

This legislation would simply require that the Federal bureaucracy assess the costs of their actions on the rest of us. We are living in an era of declining revenues, and we must make choices and set priorities. And our Government—bureaucrats as well as elected officials—must be accountable.

The problem is that we now tend to direct our resources to relatively low-risk concerns while other, more serious concerns receive little attention. Since there's no standarized method of risk-assessment to be used throughout the Government, policymakers are unable to prioritize regulatory strategies in a common-sense manner. This bill allows us to concentrate scarce dollars where they will do the most good, and analyze alternatives to achieve the goal of public safety at the lowest possible cost.

Mr. BENTSEN. Mr. Chairman, I rise today in opposition to House Resolution 1022, the Risk Assessment and Cost-Benefit Act. I am extremely disappointed with the lack of full consideration of this important piece of legislation.

I support regulatory reform. In particular, I support cost-benefit analysis and risk assessment as tools to develop rational regulations. I have spoken with small business owners, oil and chemical companies, and other constituents who have relayed to me their stories of frustration over the regulatory process. I've also talked to constituents who are concerned about health, safety, and the environment their kids will grow up in. Our job is to find the appropriate, delicate balance between the interests of commerce, industry, and the environment. This legislation is too quick of a fix to solve such a complex problem.

Reforming Federal regulations will help our economy to grow. The time-consuming process of filling out environmental impact statements or hundreds of pages of small business loan forms are good examples of why reform is necessary. But this bill doesn't guarantee regulations that are sensible. On the contrary, conducting across-the-board risk-assessments will lengthen the review process, transform simple rules into complex monstrosities, and cost taxpayers millions.

Given time for thorough consideration, I believe that this body might have crafted a sensible compromise. Unfortunately, this is not that bill. Mr. Chairman, I must add that I cannot support a process which limits debate to only 10 hours and restricts the number of amendments allowed for consideration. This is not full and fair disclosure. The American people expect and deserve a full airing of these important issues in the Congress, and not this reckless, hasty display.

Once again, the job of fair and bipartisan legislating is left to the other body. That is a terrible shame, because regulatory reform is deserving of much more thorough consideration.

Ms. PELOSI. Mr. Chairman, H.R. 1022 is regulation by strangulation. If you think government red tape has been tied in knots, just wait until you experience the results of this Republican red flag against public health and safety and the environment.

The cumbersome imposition of regulations on top of regulations will only serve to delay approval of anything to protect public health and safety and the environment. The resulting delay will threaten the lives of many and the future of all Americans. In our daily lives, the delay will translate into unregulated food and chemical products and in the longer term, the risk will be the loss of our national patrimony.

Once again, the contract is placing financial interests over the interests of American public. A CNN/Time poll taken at the end of January determined that Americans consider environmental protection one of the most important problems—23 percent—or very important—65 percent. Only 23 percent of the people surveyed believed that protection from pollution had gone too far.

The risk in risk assessment is great. You cannot put a price on preventing illness, saving lives or preserving natural lands. Common sense should be brought to this debate on dollars and cents. A petroleum industry official had this comment about H.R. 1022:

> This reminds of 1981, when the industry shot itself in the foot * * * Business not only lost but managed to engender much of the strident public environmental sentiment that later resulted in far stricter laws.

H.R. 1022 does not discriminate between regulations—ones where the process should be re-examined or streamlined and ones that should be eliminated. The indiscriminate overriding of existing protections throws out the good with the bad.

Like other components of the Republican regulatory reform package, H.R. 1022 represents another opportunity for special interests to paralyze the Federal regulatory process at the expense of average, taxpaying Americans.

In this case, Mr. Chairman, less government means more government. The layers of bureaucracy that will be added to the regulatory process by H.R. 1022 will put more lives in harm's way. If you want to vote for more government and less public health and environmental protection, then you have the right bill in front of you. If you want to vote for government reform, you will need to look elsewhere.

I urge my colleagues to vote for less government—vote "no" on H.R. 1022.÷

Mrs. COLLINS of Illinois. Mr. Chairman, I have many of the same concerns about H.R. 1022 as I did about the regulatory moratorium bill and the unfunded mandates bill when they were considered on the House floor. Rather than improving the efficiency of Government, these bills establish complex procedures and endless possibilities for legal challenge.

Each of these bills, for example, provides for judicial review of agency decisions. this simply means that clever lawyers can tie up regulations and other agency actions in litigation for months, even if an agency thinks it has acted within its authority.

This is an especially critical problem for health and safety matters that may need to be exempted from requirements risk assessment, cost benefit analysis, and peer review under H.R. 1022. With the courts looking over their shoulders, agencies may be inhibited from acting quickly when quick action is needed to save lives.

I do not believe that making it more difficult for agencies to protect the public health and safety is something the American people, nor I hope most of my colleagues, would support.

I also believe it is wrong to force all regulations to go through the same type of risk assessment, cost-benefit analysis, and peer review, as provided in H.R. 1022.

If we let risk assessment become our goal, rather than a tool to achieve our goal, then risk assessment itself can be harmful and an obstacle to serving the public interest.

What happened in the early years of the AIDS outbreak is a good example. In the early 1980's, a few scientists proposed that AIDS could be transmitted to others through transfusions of blood from a person with the AIDS virus.

The Food and Drug Administration and the blood products industry thought there would be alarm and panic, if the public were warned of this possibility. Instead, they insisted they had to be absolutely sure before they could say anything publicly.

As a result, all kinds of risk assessments were done—Comparison risks, substitution risks, as well as cost benefit analysis. For more than 2 years, the proposal that AIDS could be transmitted through transfusions was analyzed before evidence was so overwhelmingly conclusive, that the FDA and the blood products industry finally issued their warnings to the public.

During that 2-year period, tens of thousands of people were exposed to AIDS contaminated blood. Had the blood banks initiated their policies earlier to screen for AIDS contaminated blood, countless lives could have been saved.

The lesson to be learned from the FDA's experience is that agencies need flexibility. A one-size-fits-all approach to risk assessment and cost benefit analysis can be harmful and contrary to the public interest. We need to be encouraging agencies to evaluate possibilities, but we do not want to insist that they continue to perform risk assessment and cost benefit analysis in order to satisfy some requirement of law, when what they are looking for might be right in front of their eyes.

For this reason, I oppose H.R. 1022 and believe that rather than reducing regulatory burden, its most significant effect will be to prevent Federal agencies from performing their most important function: protecting the public health and safety.

I urge may colleagues to oppose this legislation.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. KNOLLENBERG) having assumed the chair, Mr. HASTINGS of Washington, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1022) to provide regulatory reform and to focus national economic resources on the greatest risks to human health, safety, and the environment through scientifically objective and unbiased risk assessments and through the consideration of costs and benefits in major rules, and for other purposes, pursuant to House Resolution 96, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. DOGGETT

Mr. DOGGETT. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. DOGGETT. I am, most definitely, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. DOGGET moves to recommit the bill H.R. 1022 to the Committee on Science with instructions to report the same back to the House forthwith with the following amendments:

Amend the heading of section 301 (page 31, line 2) to read as follows:

SEC. 301. PEER REVIEW PROGRAM AND PROHIBITION OF CONFLICTS OF INTEREST.

Strike paragraph (3) of section 301(a) (page 31, line 23 through page 32, line 5) and insert the following:

(3) shall exclude peer reviewers who have a potential financial interest in the outcome:

Mr. DOGGETT. Mr. Speaker, this is a short amendment, 13 words, and it is a short presentation on it after a lengthy debate in which one Member after another has attempted to clean up this bill.

Mr. Speaker, throughout the course of this lengthy debate, one Member after another has sought to clean up this bill and has been thwarted at every turn. There is one recurring theme throughout the debate, and, that is, whether we are going to turn the public's business over to special interests and their lobbyists.

All this very simple motion to recommit does is to send the bill back to recommit it to the committee to put in a conflict of interest provision instead of committing it and our Government to special interests.

That is what the American people want. They are tired of special interests coming to this House and getting special treatment while the hard-working families across this Nation get only the leftovers.

Mr. Speaker, this is supposed to be a bill about science, about risk assessment. But it has not really worked out that way. Because what this bill has ended up being is a matter of placing the risk on ordinary Americans as far as their health and safety and placing the benefits in the hands of a few. One of the things we can do about it is to try to sever the ties that bind the special interests to this bill and give us not good science but good special treatment for the few. That is what this conflict of interest amendment is about.

The House needs to know that a vote against this motion to recommit is a vote to mandate that registered lobbyists will rule, perhaps with a veto power, in these peer review committees.

I thought that perhaps the gentleman from Pennsylvania was going to do something about this. He talked about the possibility of doing something about it during the course of the amendment offered by the gentleman from Massachusetts this afternoon, but we have had plenty of time. We had some time in committee, and nothing has been done about it.

This bill as written for the first time will mandate that an agency of this Federal Government charged with protecting public health and safety cannot, shall not, indeed, exclude a lobbyist for a special interest group from serving on a peer review committee, exercising a potential veto power over regulations to protect the public health and safety.

I do not believe there has been a day recently that I have not received a letter from some lobbyist promoting this bill. They can salivate over the prospects under this bill. Every one of these letters has begun by telling me about the desire for good science, but when all was said and done, all they really wanted was delay and reduction of regulations.

That is why I am sure, Mr. Speaker, that the distinguished Republican Senator from Rhode Island, Senator CHAFEE, has described this bill in its current form as a prescription for gridlock and indeed it is.

What we can do at least is clean it up through this motion to recommit so that there is not this kind of blatant conflict of interest. That is all this one-sentence amendment and a new title on conflict of interest will do.

With this recommittal and the amendment, we will see that the peer review process is not converted from being an objective scientific process into only the best science that money can buy, and we will not let the special interests capture the whole regulatory process.

Think about what that means and take the practical example of tobacco. Two or three decades after we first heard about the dangers of tobacco and cancer, we still cannot find a single tobacco company study that shows there is any link. They have had some of the best scientists that money can buy but when they are asked whether there is any link between tobacco and cancer, you can see them, they are just scratching their heads again, saying, "Well, there might be, but not until my retirement vests."

That is the kind of scientists that this bill mandates have to be on peer review panels across this country, and it is wrong.

We began with a desire for good science, good science over good politics, good science over silly regulations, some of which have come out under Democratic administrations and some of which have come out in 12 of the last 14 years under Republican administrations. What we have gotten is not good science but good protection for special interests. We can do something about that. We can rewrite this bill to attack special interests, to attack silly regulations, all in the same process. If you believe that we ought not to turn over our Government to special interests, vote in favor of this motion to recommit and do something about it with a strong conflict of interest provision.

Mr. WALKER. Mr. Speaker, I rise in opposition to the motion to recommit.

Mr. Speaker, this is an amendment similar to an amendment that was turned down by a vote of 247 to 177 earlier.

What this does is make certain that the peer review process would fail because it assures that only those who know nothing about the subject would serve on the peer review panels. It is one of those dumb and dumber amendments that probably should not come before the House.

I yield to the majority whip, the gentleman from Texas [Mr. DELAY].

Mr. DELAY. Mr. Speaker, I think the chairman has pretty well summed it up very quickly. Let me just say that in all of this cry for special interests being part of the peer review process, what the author of the motion to recommit wants to happen is his special interests get to serve on the peer review panels rather than our special interests. They want to load the system so that they can continue to control and manipulate the American economy and the American business men and women. That is what is going on here.

For years they get a study and they make sure that the conclusion is written before the study is even done on these regulations. That is what they want to continue. They want to load the system with their special interests, with their environmental extremist groups, or with the labor unions, or the other special interests, the Ralph Nader groups, the Public Citizens, they want to load them up.

What we want is a peer review process that brings everybody into the process and gets all points of view, particularly those people that have to deal with these oppressive regulations. They should have a say in this process and that is what we want.

Vote "no" on the motion to recommit.

Mr. Chairman, a New York Times article from a couple of years ago summed up perfectly the prevailing criticism of Congress' and EPA's choice of priorities:

> In the last 15 years, environmental policy has too often evolved largely in reaction to popular panics, not in response to sound scientific analysis of which environmental hazards present the greatest risks. As a result . . . billions of dollars are wasted each year in battling problems that are no longer considered especially dangerous, leaving little money for others that cause far more harm.

No one who supports this bill wants to harm children or hurt our environment—the fact of the matter is, every time you get out of bed and start a new day you are faced with risks, and every day you make decisions about whether to accept those risks based on an analysis of the costs versus the benefits associated with them.

Likewise, the Federal Government must set priorities on how to spend its limited resources. There is no way the Government could ever protect everyone from every risk there is, and I don't believe Americans expect that. Risk assessment and cost/benefit analysis will both help us focus on those areas that are the greatest threat to the public, and provide the data needed to make those tough budgetary choices.

When granting a tolerance for a new pesticide or an air pollutant, EPA's standard is protection against a lifetime risk of one in a million for cancer. For a little perspective, the chance of death by lightning is 35 times as great; by accidental falls, 4,000 times as great; and in a motor vehicle, 16,000 times as great.

Just to demonstrate the need for reform, I'd like to present a few examples of how our system has gone haywire:

First, under the Clean Water Act, if flooding creates pools of water on someone's property as the result of a clogged-up drainage system, the owner may not clear the clog to drain the new wetland without Government permission.

Second, EPA regulations require that municipal water treatment plants remove 30 percent of organic material before discharging treated water into the ocean. Because water in Anchorage, AK is already very clean, the town has had to recruit local fish processors to purposely dump 5,000 pounds of fish guts into its sewage system each day so that it would have something to clean up and meet EPA's requirement.

Third, the Cleveland Plain Dealer, a newspaper company, wanted to build a new production plant near Lake Erie, a plant which would bring 400 new jobs to the otherwise abandoned inner-city industrial area. But because of cleanup costs of $200,000 for residual chemicals, the newspaper chose to build the plant in cleaner suburbs.

Another socially conscious Cleveland developer also wanted to develop a 200-acre industrial park downtown, but discovered he would have to spend $200 million just to clean up the property before beginning construction. He abandoned the project.

I think everyone would agree that these are not the intended consequences of Federal rules and regulations, and yet these things continue to happen over and over again. What we want is to bring some common sense and sound science into the process, so that regulations will serve the people, rather than people serve the regulations.

Vote "no" on this motion to recommit.

Mr. WALKER. Mr. Speaker, I yield to the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Speaker, this amendment really is not about the peer review process. That was dealt with in the Markey amendment. The Markey amendment went down as it should have.

The provision in this bill provides for everybody of every interest, labor and environmental groups and business groups and everyone, to participate in the peer review process, and they have to report any potential conflict of interest. That is what makes this bill so strong.

But really the opponents of this bill who are trying to hide behind the motion to recommit are worried about three strikes and you're out, changing a $25 million coverage to $100 million, changing the enforceable law in not allowing judicial review, and providing for prior law to prevent consideration and to change the risk and cost-benefit analysis.

This is an effort to try to stifle the ability to change the way Washington works in its regulatory process. Members should vote against the motion to recommit.

Mr. WALKER. Mr. Speaker, I yield to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Speaker, I too want to urge a vote against this motion to recommit.

The bill as presently constructed says that anyone with any interest in the rule has to disclose that interest, whether you have an interest from an environmental standpoint, whether you have an interest from wherever you are coming from, from a labor or management standpoint. It allows all of those with expertise to serve on the panel provided you disclose your interest. That is they way it ought to be.

This motion to recommit will defeat that provision of the bill. We need to defeat this motion to recommit.

Mr. WALKER. The gentleman from Louisiana is absolutely correct. The bill calls for peer review panels that are broadly representative and balanced and include representatives from State and local governments, industries, small businesses, universities, agriculture, labor, consumers, conservation organizations, and public interest groups.

We ought to keep that kind of broad language and reject that which the gentleman from Texas has offered.

Mr. DINGELL. Mr. Chairman, I rise in support of the motion to recommit. During the final minutes of consideration of H.R. 1022, Mr. WALKER amended the bill to apply all of the cost-benefit and other decisionmaking criteria to cleanups of our Nation's hazardous and radioactive waste site. Previously the bill applied only to major rulemakings above $25 million and did not impact cleanups.

The Walker amendment which was offered without time for debate, will have profound adverse consequences for Superfund cleanups, for transferring property back to communities at closing military bases, and for the Department of Energy's program to dispose of high-level nuclear waste at Yucca Mountain and the WIPP facility in New Mexico.

This amendment was adopted with no hearings by the committees of jurisdiction. It will slow down cleanups by years while the new factors are grafted onto the existing program. For Members with closing military bases or property in urban cities awaiting redevelopment—you can forget reutilizing the property for economic redevelopment if the amendment is retained in the bill.

State laws which are now integrated into a process for deciding the appropriate level of cleanup will be preempted. Cleanups under the Walker amendment will be based strictly on a Federal cost/benefit analysis.

Litigation opportunities will abound. How do the new criteria work with the existing law? Do cleanups still have to be protective of human health and the environment? How do factors like cost-effectiveness, cost-benefit, and flexibility apply in the context of cleanup? All are rich opportunities for lawyers and litigation while no cleanup occurs.

Support this motion, allow cleanups to go forward, and let the committee's of jurisdiction reform the Superfund Program in a comprehensive manner.+

□ 1015

The SPEAKER pro tempore (Mr. KNOLLENBERG). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. DOGGETT. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule XV, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the question of passage.

The vote was taken by electronic device, and there were—ayes 174, noes 250, not voting 10, as follows:

[Roll No 182]

AYES—174

Abercrombie
Ackerman
Andrews
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Boehlert
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gordon
Green
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Montgomery
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Pomeroy
Poshard
Rahall
Rangel
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Slaughter
Stark
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Tejeda
Thompson
Thornton
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—250

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Moorhead
Moran
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Thurman
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—10

Browder
Gonzalez
Gutierrez
Hunter
LaTourette
Lipinski
Martinez
Metcalf
Rush
Ward

□ 1931

The Clerk announced the following pair:

On this vote:

Mr. Rush for, with Mr. Metcalf against.

Mr. PARKER changed his vote from "aye" to "no."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. KNOLLENBERG). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. BROWN of California. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 286, noes 141, not voting 7, as follows:

[Roll No 183]

AYES—286

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson (SD)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Towns
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—141

Abercrombie
Ackerman
Andrews
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Boehlert
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Clay
Clayton
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Coyne
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Furse
Gejdenson
Gephardt
Gibbons
Hall (OH)
Harman
Hastings (FL)
Hilliard
Hinchey
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Mink
Moakley
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Rahall
Rangel
Reed
Richardson
Rivers
Roybal-Allard
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Thompson
Torres
Torricelli
Tucker
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOT VOTING—7

Gonzalez
Gutierrez
Hunter
Lipinski
Martinez
Rush
Ward

□ 1940

Mr. VISCLOSKY changed his vote from "aye" to "no."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. WARD. Mr. Speaker, due to the fact that I had to be in my district on official business, I missed several rollcall votes during consideration of H.R. 1022, Risk Assessment and Cost Benefit Act of 1995, on February 28, 1995. Had I been present, on rollcall vote 177, I would have voted "aye." Had I been present, on rollcall vote 178, I would have voted "aye." Had I been present, on rollcall vote 179, I would have voted "noe." Had I been present, on rollcall vote 180, I would have voted "aye." Had I been present, on rollcall vote 181, I would have voted "aye." Had I been present, on rollcall vote 182, I would have voted "aye." And on final passage of the bill, had I been present, on rollcall vote 183, I would have voted "noe."

PERSONAL EXPLANATION

Mr. GUTIERREZ. Mr. Speaker, at the end of the afternoon of Tuesday, February 28, 1995, I was unavoidably absent from this Chamber and therefore missed rollcall votes Nos. 178, 179, 180, 181, 182, 183—all votes regarding amendments and final passage of H.R. 1022—the Risk Assessment and Cost Benefit Act of 1995. I want the RECORD to show that if I had had the opportunity to be in this Chamber when these votes were cast, I would have voted the following way: rollcall vote No. 178, "yea"; roll call vote No. 179, "nay"; rollcall vote No. 180, "yea"; rollcall vote No.181, "yea"; rollcall vote No. 182—"yea"; rollcall vote No. 183, "nay."

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 925, PRIVATE PROPERTY PROTECTION ACT OF 1995

Mrs. WALDHOLTZ, from the Committee on Rules, submitted a privileged report (Rept. No. 104–61) on the resolution (H. Res. 101) providing for the consideration of the bill (H.R. 925), to compensate owners of private property for the effect of certain regulatory restrictions, which was referred to the House Calendar and ordered to be printed.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 70

Mr. TORRES. Mr. Speaker, I ask unanimous consent to remove my name as a cosponsor of H.R. 70.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

APPOINTMENT OF MS. JUNE ELLENOFF O'NEILL AS DIRECTOR OF THE CONGRESSIONAL BUDGET OFFICE

The SPEAKER pro tempore. Pursuant to the provisions of section 201(a)(2) of the Congressional Budget and Impoundment Control Act of 1974, Public Law 93–344, the Chair announces that the Speaker and the President pro tempore of the Senate on Wednesday, February 22, 1995 did jointly appoint Ms. June Ellenoff O'Neill as director of the Congressional Budget Office, effective March 1, 1995, for the term of office beginning January 3, 1995.

ANNOUNCEMENT BY THE CHAIRMAN OF THE COMMITTEE ON RULES ON AMENDMENTS TO H.R. 956, THE COMMON SENSE LEGAL REFORM BILL

(Mr. SOLOMON asked and was given permission to address the House for 1 minute.)

Mr. SOLOMON. Mr. Speaker, I wish to announce to House Members that the Rules Committee is planning to meet on Tuesday, March 7, to grant a rule which may restrict amendments for the consideration of H.R. 956, the Common Sense Legal Standards Reform Act of 1995.

Any Member contemplating an amendment to H.R. 956—the product liability bill—should submit 55 copies of the amendment and a brief explanation to the Rules Committee, no later than 3 p.m. on Friday, March 3.

Members should use the Office of Legislative Counsel to ensure that their amendments are properly drafted and should check with the Office of the Parliamentarian to be certain their amendments comply with the Rules of the House.

It is the intention of the Rules Committee to make the text of H.R. 1075 in order as a substitute to the reported text of H.R. 956 for amendment purposes. This new text reflects the work of both the Judiciary Committee and the Commerce Committee on this issue. The copies of H.R. 1075 can be obtained from the majority offices of the Commerce Committee or the Judiciary Committee. Legislative Counsel will draft all amendments to this revised text.

☐ 1945

PERMISSION FOR CERTAIN COMMITTEES AND SUBCOMMITTEES TO SIT TOMORROW, MARCH 1, 1995, DURING 5-MINUTE RULE

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the 5-minute rule; The Committee on Banking and Financial Services; The Committee on Economic and Educational Opportunities; The Committee on Government Reform and Oversight; The Committee on House Oversight; The Committee on International Relations; The Committee on Transportation and Infrastructure; and The Committee on Veterans Affairs.

Mr. Speaker, it is my understanding that the minority has been consulted and that there is no objection to these requests.

The SPEAKER pro tempore (Mr. KNOLLENBERG). Is there objection to the request of the gentleman from Texas?

Mr. FRANK of Massachusetts. Mr. Speaker, reserving the right to object, I just want to concur that these are the lists of committees that the minority was consulted on, and we have no objection.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

HOUR OF MEETING ON TOMORROW, MARCH 1, 1995

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 10 a.m. on tomorrow.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. FRANK of Massachusetts. Mr. Speaker, reserving the right to object, once again I would acknowledge that this was discussed with the minority.

The minority has no objection.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

NOTICE OF INTENT TO TAKE UP RESOLUTION OF INQUIRY ON MEXICAN PESO CRISIS

(Mr. ARMEY asked and was given permission to address the House for 1 minute.)

Mr. ARMEY. Mr. Speaker, let me just take this moment to report to the House, pursuant to the agreement that I made with the minority leader last week, that we would give Members a day's notice before we take up the resolution of inquiry on the Mexican peso crisis, and we do intend to take that up late tomorrow afternoon or tomorrow evening. I wanted to notify the body of that at this time.

CLARIFICATION OF WAIVER WITH RESPECT TO RESOLUTION OF INQUIRY ON THE MEXICAN PESO CRISIS

(By unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 1 minute.)

Mr. FRANK of Massachusetts. Let me address the majority leader. It was my understanding that in order to do that, it would require a waiver of the 3-day layover rule. Is the majority leader asking for that permission?

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Texas.

Mr. ARMEY. I thank the gentleman for yielding.

GRANTING OF PERMISSION ON REQUEST TO WAIVE THE THREE-DAY LAYOVER RULE

Mr. ARMEY. Mr. Speaker, I ask unanimous consent to waive the 3-day layover rule with the point that the minority has agreed to that.

The SPEAKER pro tempore. Is there objection to the request to the gentleman from Texas?

Mr. FRANK of Massachusetts. Mr. Speaker, reserving the right to object, I have never thought that waiving the 3-day rule was a big deal, like my friends on the other side. I am glad to welcome them to the position that occasionally waiving that rule is a perfectly reasonable thing to do. I think the gentleman for doing it explicitly. I does seem a bad idea to me to waive it implicitly.

But since this is also cleared with the minority and since this precedent of waiving a 3-day rule when it is inconvenient is not such a bad one, Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. BURTON of Indiana. Mr. Speaker, reserving the right to object, I would like to ask the majority leader a question. This resolution of inquiry does not preclude any other legislative action pertaining to the Mexican bailout program?

Mr. ARMEY. If the gentleman would yield, no, it does not.

Mr. BURTON of Indiana. I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 926, REGULATORY REFORM AND RELIEF ACT

Mr. McINNIS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 100 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 100

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 926) to promote regulatory flexibility and enhance public participation in Federal agency rulemaking, and for other purposes. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed ninety minutes, with sixty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and thirty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Small Business. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill. The committee amendment in the nature of a substitute shall be considered by title rather than by section. Each title shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. KNOLLENBERG). The gentleman from Colorado [Mr. McINNIS] is recognized for 1 hour.

Mr. McINNIS. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio [Mr. HALL], pending which I yield myself such time as I may consume.

During consideration of this resolution, all time is yielded for the purpose of debate only.

Mr. Speaker, House Resolution 100 is a very simple resolution. It is an open rule providing for 90 minutes of general debate. Sixty minutes shall be equally divided between the chairman and the ranking minority member of the Committee on the Judiciary. Additionally, 30 minutes is to be equally divided and controlled by the chairman and ranking minority member of the Committee on Small Business. After general debate, the bill shall be considered for amendment under the 5-minute rule. Finally, this resolution provides one motion to recommit, with or without instructions. This open rule was reported out of the Committee on Rules by voice vote.

This open rule demonstrates that the new majority intends to honor its commitment to have a more fair and open legislative process. The resolution provides the House with an opportunity to review the bill, debate it, and yes, if necessary, to amend the legislation. To date, 83 percent of the rules reported out of the Committee on Rules have been open, or modified open, rules. This is a dramatic contrast between the 44 percent of open, or modified open, rules reported out of the committee during the 103d Congress.

The legislation is designed to improve the Federal regulatory system by: First, strengthening the Regulatory Flexibility Act of 1980, second, amending the Administrative Procedure Act to require the preparation of regulatory impact analyses whenever a major rule is promulgated by a Federal agency, and third, directing the President to prescribe regulations for the executive branch aimed at protecting citizens from abuse and retaliation in their dealing with the regulatory system.

One particular provision of this legislation is very important. By deleting the prohibition against judicial review contained in section 611 of the Regulatory Flexibility Act, we will prevent Federal agencies from merely including boilerplate provisions certifying that a proposed regulation will not have a significant impact upon a substantial number of small entities. Even the National Performance Review, which was chaired by Vice President GORE, made the deletion of the ban against judicial review its primary recommendation with respect to the Small Business Administration. I am pleased to see this provision included in the legislation. I urge my colleagues to support the rule, and the underlying legislation.

Mr. Speaker, I insert into the RECORD the following:

THE AMENDMENT PROCESS UNDER SPECIAL RULES REPORTED BY THE RULES COMMITTEE,[1] 103D CONGRESS V. 104TH CONGRESS

[As of Feb. 27, 1995]

Rule type	103d Congress		104th Congress	
	Number of rules	Percent of total	Number of rules	Percent of total
Open/modified-open[2]	46	44	15	83
Modified closed[3]	49	47	3	17
Closed[4]	9	9	0	0
Totals	104	100	18	100

[1] This table applies only to rules which provide for the original consideration of bills, joint resolutions or budget resolutions and which provide for an amendment process. It does not apply to special rules which only waive points of order against appropriations bills which are already privileged and are considered under an open amendment process under House rules.

[2] An open rule is one under which any Member may offer a germane amendment under the five-minute rule. A modified open rule is one under which any Member may offer a germane amendment under the five-minute rule subject only to an overall time limit on the amendment process and/or a requirement that the amendment be preprinted in the Congressional Record.

[3] A modified closed rule is one under which the Rules Committee limits the amendments that may be offered only to those amendments designated in the special rule or the Rules Committee report to accompany it, or which preclude amendments to a particular portion of a bill, even though the rest of the bill may be completely open to amendment.

[4] A closed rule is one under which no amendments may be offered (other than amendments recommended by the committee in reporting the bill).

SPECIAL RULES REPORTED BY THE RULES COMMITTEE, 104TH CONGRESS

[As of Feb. 27, 1995]

H. Res. No. (Date rept.)	Rule type	Bill No.	Subject	Disposition of rule
H. Res. 38 (1/18/95)	O	H.R. 5	Unfunded mandate reform	A: 350–71 (1/19/95)
H. Res. 44 (1/24/95)	MC	H. Con Res. 17	Social Security	A: 255–172 (1/25/95)
		H.J. Res. 1	Balanced budget amendment	
H. Res. 51 (1/31/95)	O	H.R. 101	Land transfer, Taos Pueblo Indians	A: voice vote (2/1/95)
H. Res. 52 (1/31/95)	O	H.R. 400	Land exchange, Arctic National Park and Preserve	A: voice vote (2/1/95)
H. Res. 53 (1/31/95)	O	H.R. 440	Land conveyance, Butte County, CA	A: voice vote (2/1/95)
H. Res. 55 (2/1/95)	O	H.R. 2	Line item veto	A: voice vote (2/2/95)
H. Res. 60 (2/6/95)	O	H.R. 665	Victim restitution	A: voice vote (2/7/95)
H. Res. 61 (2/6/95)	O	H.R. 666	Exclusionary rule reform	A: voice vote (2/7/95)
H. Res. 63 (2/8/95)	MO	H.R. 667	Violent criminal incarceration	A: voice vote (2/9/95)
H. Res. 69 (2/9/95)	O	H.R. 668	Criminal alien deportation	A: voice vote (2/10/95)
H. Res. 79 (2/10/95)	MO	H.R. 728	Law enforcement block grants	A: voice vote (2/10/95)
H. Res. 83 (2/13/95)	MO	H.R. 7	National security revitalization	PQ: 229–100; A: 227–127 (2/15/95)
H. Res. 88 (2/16/95)	MC	H.R. 831	Health insurance deductibility	PQ: 230–191 A: 229–188 (2/21/95)
H. Res. 91 (2/21/95)	O	H.R. 830	Paperwork Reduction Act	A: v.v. (2/2/95)
H. Res. 92 (2/21/95)	MC	H.R. 889	Defense supplemental	A: 282–144 (2/22/95)
H. Res. 93 (2/22/95)	MO	H.R. 450	Regulatory Transition Act	A: 252–175 (2/23/95)
H. Res. 96 (2/24/95)	MO	H.R. 1022	Risk assessment	A: 253–165 (2/27/95)
H. Res. 100 (2/27/95)	O	H.R. 926	Regulatory Reform and Relief Act	

Codes: O-open rule; MO-modified open rule; MC-modified closed rule; C-closed rule; A-adoption vote; PQ-previous question vote. Source: Notices of Action Taken, Committee on Rules, 104th Congress, as of Feb. 27, 1995.

Mr. Speaker, I reserve the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I yield myself such time as I may consume and I ask unanimous consent to revise and extend my remarks.

Mr. Speaker, I would like to commend my colleague from Colorado, Mr. McINNIS, as well as my colleagues on the other side of the aisle for bringing this resolution to the Floor. H. Res. 100 is an open rule which will allow full and fair debate on the Regulatory Reform and Relief Act. As my colleague from Colorado has ably described, this rule provides 90 minutes of general debate, 60 minutes for the Committee on the Judiciary and 30 minutes for the Committee on Small Business.

Under this rule, germane amendments will be allowed under the 5-minute rule, the normal amending process in the House of Representatives. Most importantly, there is no overall time cap required by the rule which will ensure that all Members, on both sides of the aisle, will have the opportunity to offer their amendments. I am pleased that the Rule Committee was able to report this rule without opposition in a voice vote and I plan to support it.

Although I do support the rule, I am concerned about the broad nature of this legislation, and I want to explore its actual impact on the regulatory process before casting my vote on the bill itself. I am well aware of the need to make the regulatory process more sensitive to the reality of running a small business. I was a small businessman myself and can sympathize with the overwhelmingly difficult task of conforming to government requirements. Certainly reform needs to be taken and the regulatory process simplified.

However, I am troubled by the fact that this bill makes no attempt to identify specific problem areas and correct them. Rather, it utilizes a blanket approach by requiring complicated, costly and time-consuming studies on any major rule with an annual effect on the economy of $50 million. For the past 20 years, every Administration, Republican and Democratic alike, has defined a major rule with a $100 million benchmark. Lowering the threshold in this way will only create more work and paper for the bureaucracy at a time in which we are reducing government.

Another problem with this legislation is that it is very costly. EPA alone estimates it will cost taxpayers up to $1.6 million for each Regulatory Impact Analysis and risk assessment. In addition, regulations could be delayed for up to 2 years. While a delay of this length may not be harmful in some areas, it is not acceptable for rules that pertain to true health and safety—drinking water, airplane safety, disaster assistance, food protection, and many others.

Mr. Speaker, I hope the amending process will enable improvements to be made to this legislation. We need regulatory reform. But we need to slow down and do this in a deliberative way so that our reform is sensible and responds to real problems, not rhetoric.

Finally, Mr. Speaker, as I indicated before, we have an open rule on this bill which I will support. I urge my colleagues to join me in voting for it.

Mr. McGINNIS. Mr. Speaker, I yield such time as may consume to my friend, the chairman of the Committee on Rules, the gentleman from New York [Mr. SOLOMON].

Mr. SOLOMON. I thank the gentleman from Colorado for yielding me this time. The gentleman is a very valuable new member of the Committee on Rules, and we appreciate his being there.

Mr. Speaker, I rise today in support of another completely open rule from the Committee on Rules. I rise further to enthusiastically support this bill. H.R. 926 is the fourth of five bills that make up what was H.R. 9, the Job Creation Wage and Enhancement Act in the Contract With America. This bill improves that bill, which was signed into law by President Jimmy Carter on September 19, 1980.

Later this week the House will take up H.R. 925, the Private Property Protection Act, which is the last of the regulatory reform bills and which is the one that really excites me. I cannot wait to get this bill onto this floor and get it passed after all these years.

Mr. Speaker, I have said this often in the past 2 weeks, but I will say it again: Legislation like the measure before this House today is exactly why I came to Congress 16 years ago. The Federal regulatory process is just as out of control today as it was in 1978 and, as a matter of fact, perhaps it may be even worse.

Mr. Speaker, we in this Congress must change the philosophy of the Federal Government to regulate every facet of our lives. Throughout our deliberations we must be conscious of the small businessman. I will say to my friend, TONY HALL, I was a small businessman too when I came here, so-called little guy, who just happens to create 75 percent of all the new jobs in America every single year, 75 percent of the new jobs.

H.R. 926 will help free the small businessman from these kind of burdensome, job-killing regulations and direct the President to enact a citizens regulatory bill of rights, something he does not appear to want to do.

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Mr. Speaker, H.R. 926 amends the Regulatory Flexibility Act which sought to ensure that agencies fit regulations and informational requirements to the scale of the business or organization or governmental jurisdictions subject to regulation.

This is based on the idea that the size of an entity significantly affects the cost of regulatory compliance. In other words, what that means is, regulations have a greater cost on smaller business than they do on larger business.

This bill also will require Federal agencies to produce a regulatory impact analysis for regulations with an economic impact of more than $50 million, which means that the Federal Government will be more aware of the effect proposed rules will have on business.

For example, the EPA is threatening thousands of jobs in upstate New York in the district which regulates, that sets emission standards for the pulp and paper industry. The EPA regulations were created without a cost-benefit analysis. Now, the costs of the same regulations are now threatening to close paper mills in my hometown of Glens Falls, NY, killing jobs and placing many hard-working people on the unemployment roles.

Let me tell my colleagues, in upstate northern New York, where it is so cold there are few jobs up there, we cannot afford to lose one more much less thousands.

I would like to finish my statement by pointing out that there appears to be a great deal of consensus on this bill. I understand that both Republican and Democrat amendments were adopted in the committee, that the bill was favorably reported out of committee by a voice vote and that the rule was unanimously voted out of the Committee on Rules. That does not always happen. But when we have an open rule like this, it is a pleasure to bring it to the floor.

With that, I urge strong support of the rule on this much-needed bill.

Mr. McINNIS. Mr. Speaker, I reserve the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I have no requests for time, and I reserve the balance of my time.

Mr. McINNIS. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Pennsylvania [Mr. GEKAS], a member of the Committee on the Judiciary who chairs the subcommittee that reported this legislation.

Mr. GEKAS. Mr. Chairman, I thank the gentleman for yielding time to me.

The gentleman from Colorado, aided and abetted by the gentleman from Ohio and later by the gentleman from New York have very amply outlined the parameters of the legislation in the debate that is forthcoming as we begin the process again tomorrow.

What I wanted to add to their preview is what has been generally understood, that this is from the very beginning a bipartisan effort, at least to bring the issue to the floor.

In the committee, where hearings, extensive hearings were held, the testimony was such that it actually created the basis for the final language that appears in this legislation.

Members will recall that the original bill, which we changed as bit, had reference to an executive order issued by then-President Reagan. It formed the level of provisions that were found in the bill that was referred to our committee. But we, working together, were able to provide a new bill reflecting the best of the executive orders, adding some zest of our own into the process and listening very carefully to the witnesses on the whole host of issues that found themselves resolved in the final language.

This does not mean that all of the issues were resolved. The gentleman from Rhode Island [Mr. REED] and I have agreed that there is going to be disagreement. We also have agreed that jointly we are going to offer an en bloc amendment that will satisfy some of the other problems which we encountered and which we jointly decided to resolve.

After that, who knows what is going to happen, but in the final analysis, when we have completed this bill, we will have gone a long way in bringing to fruition another part of the Contract With America which just happens to coincide with the will of many of the Members on the Democratic side who never even knew about the Contract With America and who are not, of course, signatories of the Contract With America, but who have the joint feel for the necessity to do something about regulatory reform.

We will begin tomorrow. I will end by thanking now in advance, because I might be angered by the time debate is over tomorrow, but I will now thank the gentleman from Rhode Island for his cooperation and all those who will be participating.

I will save my anger for those who oppose me tomorrow.

Mr. REED. Mr. Speaker, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Rhode Island.

Mr. REED. Mr. Speaker, I, too, want to thank the gentleman for his cooperation today, and I look forward to tomorrow and for a vigorous debate.

Mr. GEKAS. Vigorous and vitriolic, maybe.

Mr. REED. And educational.

Mr. HALL of Ohio. Mr. Speaker, I yield back the balance of my time.

Mr. McINNIS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. KNOLLENBERG). Under the Speaker's announced policy on January 4, 1995, and under a previous order of the House, the following Members are recognized for 5 minutes each.

FACTS ON WIC AND THE SCHOOL LUNCH PROGRAM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. CUNNINGHAM] is recognized for 5 minutes.

Mr. CUNNINGHAM. Mr. Speaker, I have got an article here from the Washington Times, and it says "Democrats Lie About Lunch." And I would like to submit it for the RECORD, and I would like to explain what the article means.

First of all, there has been a lot of politically motivated criticism and partisan purposeful misrepresentation of the facts. And I think it has gotten to the extreme level, Mr. Speaker. What we have done is kill the big Federal bureaucracy versus putting Government control where it does the most good, and that is at the effective, closest level to the people and taking it out of Washington. And a lot of the Clinton liberals do not like that.

Facts: The school-based block grant ensures that increased funding levels for the school breakfast and lunch, that funding level is increased by 4.5 percent. CBO had originally requested or taken a look and said the average growth is about 5.2 percent. There was a large concern and they wanted to put the nutrition programs in with the welfare block grant.

As the subcommittee chairman, I determined that if we did that, we would hurt those nutrition programs. So I separated the school breakfast and the school lunch program and guaranteed that 80 percent of it would be spent on the most needy children, those children, 185 percent and below poverty level. That protected those.

The States and the Governors also wanted a 20 percent remaining to be flexible, that they could either add, if that particular State needed it, to the school breakfast or school lunch program or other nutritional programs. For example, what may work for Tommy Thompson in Wisconsin may be a little bit different than Governor Wilson of California, but it gives them the flexibility. We increased the spending level by 4.9 percent.

I would like to submit this chart also for the RECORD, Mr. Speaker. It shows incrementally, for example, in 1995, for the school breakfast program, it was $4.59 billion. In 1996, it is $4.7. In 1997, it is 4.9. In 1998, it is 5.1. And in 1999, it is 5.4. And in the year 2000, it is 5.6. As you can see, each year we have increased spending for the school breakfast and lunch program. Also for the Women, Infants and Children Program that we have increased funding and, again, if we would have block granted it with the welfare block grants, it would have been in competition and I protected it.

[Chart not reproducible in the RECORD.]

Mr. CUNNINGHAM. I also mandated that 80 percent of the funds in that block grant must go to the WIC Program. And the 80 percent funding is more money than current law gives to the WIC Program. Why? Because the WIC Program in California and most States across the country is very effective and it is the Women, Infants and Children Program.

For example, currently it is 3.5. In 1996, under our block grant, it goes to 3.7, this is from 3.5. That is not a cut, my colleagues. In 1997, it is 3.8; in 1998, it is 4.0; 4.1 in 1999, and in the year 2000, 4.2, nearly 4.3. That is not a cut.

I would like to submit this for the RECORD also, Mr. Speaker.

What the other side would have you believe is that we are actually trying to kill and cut children's nutrition programs. It is not true. The Governors came to us and said there was 366 welfare programs, very noneffective, if you look. And the American people understand that those programs have failed. The monumental paperwork, the Government bureaucracy, the reporting documents. I listened to State Senator Hoffer from the State of Colorado and he said they literally in the State have two full computer system programs and computers dedicated to just the reporting data of the children's nutrition program. We have eliminated that. We have made it easier for the States to work. And so that we do not build State bureaucracies, we have limited the administration of States to 2 percent. In the case of WIC because it is more demanding, 5 percent. And what we are doing is getting the dollars to the kids.

We are growing kids, not Federal bureaucracies. I think that is important also. I included the language to make sure that the nutrition standards were maintained. But yet, the gentleman from Wisconsin [Mr. GUNDERSON], and the gentlewoman from New Jersey [Mrs. ROUKEMA], and the gentleman from Michigan [Mr. KILDEE], came and said, can we add language to ensure, even stronger language, that we maintain those nutritional levels? Both those amendments were accepted in the committee. They passed with bipartisan support.

But yet they still say we are killing the programs. Let me tell you what we are doing. We limit Federal bureaucracy, paperwork, increase local flexibility. We allow for the expansion of the children's nutrition programs. And that is a fact, Mr. Speaker. It is backed up with facts and figures.

Mr. Speaker, I include for the RECORD the documents to which I referred.

[From the Washington Times, Feb. 28, 1995]

DEMOCRATS "LIE" ABOUT LUNCH

(By Nancy E. Roman)

Democrats continued to spin the GOP's proposed "cuts' to the school-lunch program yesterday as "mean-spirited" and "cruel," herding a troop of preschoolers from Cheverly Early Childhood Center into the Capitol to make the point.

Rep. Steny H. Hoyer, Maryland Democrat, said if the Republican plan succeeds, it will "roll back years of progress."

Vermont Gov. Howard Dean, M.D., said it is "despicable" and accused Republicans of targeting nutrition programs for children because they cannot vote.

In fact, under the Republican proposal, the federal school lunch program will grow by 4.5 percent or $203 million. In the current budget year, the federal government spends $4.5 billion. Republicans would spend $4.7 billion.

The "cuts" that have received so much press attention, refer to a reduction in the 5.2 percent average increase in the school-lunch program, as projected by the Congressional Budget Office. The GOP increase is 4.5 percent.

Rep. John Boehner, Ohio Republican and chairman of the Republican Conference, called talk of cuts in the school-lunch program "the biggest lie in Washington, D.C., this last week."

"What we're doing is guaranteeing that states will get more money," he said.

Republicans propose to spend 4.5 percent more on school lunches in 1996—an average of 4 percent more every year for the next five years. They hope that by eliminating federal paperwork, the states will be able to serve even more free and subsidized lunches.

"If they [the governors] can't take more money and do a better job, they should step down," said Rep. Bill Goodling, Pennsylvania Republican and chairman of the committee that crafted the bill.

The failure to get that message out foreshadows the trouble Republicans face when they get to real cutting necessary to balance the budget.

"It points out the job we are going to have to do in going over the heads of special-interest groups who want to portray whatever we do as a cut," said Brian Cuthbertson, press secretary for Rep. John Kasich, chairman of the House Budget Committee.

He said he routinely explains to reporters that even after budget cuts, some programs will grow.

"I had to explain that to a local reporter from Columbus, Ohio, on Friday," he said. "I said, 'Would it surprise you to learn that it is not being cut? That we are gong to spend more on school lunches?'"

The reporter said "Oh," Mr. Cuthbertson recalled.

"Let's focus on facts," Rep. Steven Gunderson, Wisconsin Republican and welfare-reform point man, said when House Economic and Educational Opportunities Committee was marking up its welfare reform last week. The "toughest accusation" that can be made about the block-grant approach "is that it reduces growth."

Mr. Hoyer said because of an expected increase in children using the school lunch program, a 4 percent increase in overall spending amounts to a cut.

The Democrat barrage continued yesterday with Donna E. Shalala, secretary of health and human services, telling members of the American Public Welfare Association conference: "Cruel is the only way to describe provisions that would abolish nutrition programs for children, deny benefits to children of teen mothers, and reduce assistance to thousands of abused, neglected and abandoned children."

Senate Minority Leader Tom Daschle, South Dakota Democrat, said he, too, is appalled.

"How ironic that in the name of reducing the debt on our children, we take their meals instead," he said.

Ed Gillespie, spokesman for House Majority Leader Dick Armey, said it has been difficult to counter the Democratic assault on the Republican bill as stealing food from the mouths of children.

"I don't know what else you can do when the Democrat Party has a concerted strategy to lie to the American people other than to tell the truth," he said.

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IN MEMORY OF SHAWN LEINEN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Colorado [Mr. MCINNIS] is recognized for 5 minutes.

Mr. McINNIS. Mr. Speaker, I stand before you to advise the House of news that another police officer has fallen in the line of duty. The officer, Shawn Leinen, was 27 years old and married to Susan Leinen, who is 6 months pregnant with their first child. Shawn was an officer with the Denver Police Department, and on seven separate occasions, he was cited for professionalism as an officer. He loved his duties and understood the risks, but always kept the risk as secondary, having it overridden by protection of the citizens.

Shawn was brave, not foolish; Shawn was honest, energetic, and even praised by individuals whom he had previously arrested.

His death was senseless and as a former police officer, myself, it is hard not to feel deep bitterness and want for retribution against the 16-year-old kid who is now only a suspect. This death was not just senseless, but cold-blooded murder.

Shawn's widow, Susan, sits alone tonight, but she must know that Shawn's sacrifice, his call to duty, is recognized by the people who he protected. Their child will be born without its father, but will soon understand that dad was a hero. Our tears are in part for Susan's task in passing to that young child a response to the question, "Why?" Maybe our remembrance here in the Halls of Congress will assist in that effort. Maybe our thoughts and sympathies here in the Halls of the Capitol of this Nation will help Susan, as a policeman's widow, find some comfort in her days ahead.

Mr. Speaker, our men and women in blue have again suffered a loss, but in their loss their resolve becomes only more firm.

May God be with Shawn his widow, Susan, both their families and with that small yet-to-be-born child.

DEALING WITH AMERICA'S DRUG PROBLEM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. TOWNS] is recognized for 5 minutes.

Mr. TOWNS. Mr. Speaker, I rise to talk about the Contract With America. As we look at the Contract With America, there is one thing that for some reason as I look at it and I examine it is left out. We have left out dealing with the drug problem. The drug problem is something that is not going to go away. We must address it.

As we look at what is happening in many of our urban areas and we look in terms of our prisons, we find that many of the people who are in prison have been involved in drugs. But at the same time for some reason or another, we do not want to spend the kind of money that we need to spend to be able to address the drug problem.

We have people who will come into our district offices seeking help, and we cannot provide help for them because there is no place for them to go because there are no funds available for them to be able to go and get treatment.

I recognize that there is no one solution to the problem and that we need to have several types of treatment programs, but for some reason we have sort of ignored this problem.

I know that some districts have a greater problem than others, but I think the time has come when we need to look at what is happening in the United States of America and that regardless of where you are in terms of your district, if you have the problem now, I think you need programs to begin to work with it. And for some reason you do not have it, I would like to say to you, "It's coming. It's on its way to you right now."

I would hope that the people who do not have the problem would come and rally with the people who do have the problem to begin to come up with some solutions to the drug addiction problem.

We are spending a lot of money on the back end that if we would address this problem on the front end, we would not have to spend the money on the back end.

It costs a lot of money to keep a person in prison, when we could spend the money to be able to detoxify a person and to be able to assist them in terms of counseling and to hope to put them back on the road to work.

We talk about welfare reform, we talk about health care reform, we talk about all the different types of reform, but at the same time we still do not spend the kind of time talking about dealing with the drug problem.

The Speaker came up with an idea, and I must admit that I like the idea very, very much, that he is going to encourage Members from various districts to go and visit other districts. In other words, he is going to encourage people from the rural areas to go into the urban areas and to visit those areas. I think that is an excellent idea and I think that is one that should take place and should take place right away, because I think that there are some Members in the House that do not realize what is happening in some of the urban areas. That is the reason why that sometimes that when you feel that you need support, that you are not getting support, that they do not understand the problems you are having in those areas.

I am hoping that people in the urban areas will go into the rural areas and take a look at what is happening there and be able to give the assistance that needs to be given in the rural areas.

America is not the same. It is different in terms of its regions. The cost of living, when we talk about wages and we talk about increasing the minimum wage. Some people say, "Well, it's not necessary." But then if you come from a high cost-of-living area, it is very necessary.

I think that we have to sit down, take a look at where we are to begin to address some of these problems. I think that the best way to do it would be able to look at this drug problem and say, "Well, let's face it, there is a region that has a serious problem. We're going to give them the necessary resources to be able to address the problem and to be able to help them to be able to work it through." Because if not, eventually they would have to incarcerate the person and it would cost a whole lot more.

Recognizing that there is a dispute going on about the best possible treatment for addicts, I understand that. But I think that the treatment that the person will respond to is the kind of treatment that we should be able to get them into.

Some people say the methadone maintenance program does not work. There are some people who have responded to the treatment of methadone maintenance, and if they have responded to it, I think we should work it out where we would have funds available to set up programs for people that could benefit from that particular treatment.

Then I think the drug-free program, some people can benefit from that. I think that we should be able to set it up where they can go into that. Then if they need cyclaozine or whatever it is to be able to provide the kind of treatment they need, that we should be able to provide that care for them.

I think the worst thing in the world that is happening now, that for an addict to walk into a facility and say, "I would like to be treated," and then after you talk to them, you find out that a waiting list of a year, a year and a half, or 2 years.

My goodness, what will happen to a person who has to wait to get treatment, to get care for 2 years? I think the time has come when we should roll up our sleeves and be able to provide the kind of necessary care for people that have those problems.

TRIBUTE TO AFRICAN-AMERICANS DURING BLACK HISTORY MONTH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut [Mr. FRANKS] is recognized for 5 minutes.

Mr. FRANKS of Connecticut. Mr. Speaker, the following is my tribute to African-Americans during Black History Month.

At one time teaching a black child how to read was against the law. For blacks to congregate other than for church was against the law. For blacks to vote was against the law. Our forefathers proved their imperfection by claiming that blacks were not to be counted as full human beings.

Just 40 plus years ago, the separate-but-equal schools debate was going on which led to the historic desegregation of our schools. Terms like inferior, discrimination, States rights, racism, segregation, civil rights were part of the lingo of the past, or are they, Mr. Speaker?

States rights. States argued that if they did not want to treat a black child fairly, it was fine. If a State wanted blacks to use separate water fountains, it was fine. If a State wanted blacks to use separate lavatories, it was fine. Thanks to the Federal Government, we have come a long way.

The logic of blacks being inferior was the reason why blacks were not allowed to go to school with white children. Some would say that today being inferior is the reason why blacks should not be admitted into certain schools with whites. For those who hold those beliefs, both ideas would restrict blacks from receiving the highest quality education, and that, Mr. Speaker, would be wrong.

Both then and to a degree now some would like people to believe that blacks are inferior to whites. They would want people to believe that God made lesser people. They would produce one study after another to try to convince the masses that blacks are doomed to their fate because they just do not have the same abilities as whites.

Mr. Speaker, they fail to note that children with college-educated parents do better on standardized tests than children of non-college-educated parents. It is very simple.

They refuse to appreciate that strong family values, education, a willingness to work hard, and the availability of opportunities can help strengthen all of our Nation's people.

As an example, Mr. Speaker, my mother graduated from high school but my father only had a sixth-grade education. He could barely read or write. Yet today, three of my sisters hold doctorate degrees, one of my brothers is a colonel in the Army, and my other brother is a schoolteacher in Ansonia, CT. Mr. Speaker, I am the only one in my family with one college degree.

Let us remember that we help our Nation by strengthening our weakest link, not by crushing it. Being compassionate toward the less fortunate is not a liberal or a conservative concept, because we are all Americans.

I thank the voters of the Fifth Congressional District of Connecticut, a 90-percent white district, for three times electing me, an African-American, to serve in this august body representing them.

Mr. Speaker, in conclusion, I would like to thank all the African-American leaders who have waged a fight for equality and justice over the decades. We must not forget our history, or else we may be subject to repeating it again.

IN SUPPORT OF FORT McCLELLAN, ALABAMA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Alabama [Mr. BROWDER] is recognized for 5 minutes.

Mr. BROWDER. Mr. Speaker, I know something about chemical warfare. I represent Fort McClellan, AL, home of the chemical school that trains our Army, Navy, Air Force, and Marine personnel at the only live agent chemical defense facility in the free world.

I represent Anniston Army Depot, home of a huge stockpile of dangerous deteriorating chemical weapons which pose a threat to more than 100,000 civilians who live or work in the impact zone of those weapons.

I serve on the House Committee on National Security as a specialist on chemical warfare, chemical weapons, and chemical defense.

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I chaired a congressional study of the chemical weapons threat and what our country needs to do to counter that threat.

I have worked with the administration at home and abroad to facilitate progress on the Chemical Weapons Convention which would ban chemical weapons and the Bilateral Destruction Agreement which commits the United States and Russia to destroy our huge stockpile of old chemical weapons.

I have worked with the Chemical Weapons Convention Preparatory Commission at The Hague to support implementation of the Chemical Weapons Convention and the Bilateral Destruction Agreement.

I have traveled to Russia several times to monitor their chemical weapons and help military and civilian leaders meet the requirements of the Chemical Weapons Convention and Bilateral Destruction Agreement.

To repeat, I know something about chemical warfare. And Mr. Speaker, I tell you that to demonstrate that while what I am about to say involves my own congressional constituency, my outrage goes beyond parochialism to our national and international security.

I am convinced that Secretary of Defense William Perry's recommendation to the Base Realignment and Closure [BRAC] Commission—specifically the proposal to close Fort McClellan, AL—is a mistake with significant and dangerous ramifications.

With this recommendation, the Pentagon jeopardizes the American soldier's ability to survive chemical warfare, breaks faith with the 100,000 Alabamians at risk from their neighboring stockpile of aging chemical weapons, and seriously undermines the Chemical Weapons Convention and Bilateral Destruction Agreement.

Mr. Speaker, time does not allow me to go into this discussion any further tonight but I will return for other special orders on other nights to point out what is wrong with this recommendation, and why it is significant, and dangerous for our world, and I will return to detail what I intend to do to correct this situation.

PROGRESS IN HAITI

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. FOGLIETTA] is recognized for 5 minutes.

Mr. FOGLIETTA. Mr. Speaker, yesterday I returned from Haiti. When I arrived there on Saturday I was emotionally overcome by what I saw. On my last visits to Haiti, prior to the return by President Aristide, I walked into the airport and there were soldiers with assault rifles, no citizens, no activity whatsoever, and few people standing around the airport, and as I walked into the town itself I had drawn empty stares, stares of fright.

The people of Haiti that I saw when I returned were a totally different situation. I walked into the airport and I saw happy people, smiling people, ladies dressed in native costumes, bands playing, stalls selling trinkets, but most of all, the people of Haiti were no longer afraid.

Upon reflection I realized that the drawn faces carried a look of hopelessness, of impending death, of a life without direction or inspiration on my prior visits. These looks were reminiscent of photographs of men and women who suffered in concentration camps in the Second World War.

For close to 3 years the people of Haiti were imprisoned in an island concentration camp. The names of the criminals who operated the camps were different, but atrocities committed in these places were very similar.

These nightly arrests, systematic executions and random beatings were taking place only 500 miles from our border and as a result of this brutality people were willing to risk their lives by taking to the high seas in leaky boats to escape. Sadly, hundreds of these men, women and children will not live to see the day that they could walk freely on the streets of their native country.

However, thanks to the actions of President Clinton and the American men and women in uniform who have served and who continue to serve in Haiti, people no longer live in fear. Democratic government and the rule of law have returned to Haiti. The army which under the direction of the murderous dictators, Cedras and Francois terrorized and murdered innocent Haitians has been abolished and a civilian-controlled police force is now being trained.

Much remains to be done in Haiti. It will take time and hard work to reverse the decades of violence, desperate poverty and fear which have plagued that country, and, much of the work is being undertaken by the Haitian people.

On my visit to Haiti this weekend, I saw more than just smiles. I saw Haitians cleaning their streets and their neighborhoods. I saw Haitians rebuilding small businesses and street vendors hawking their wares. I saw Haitians fixing and cleaning schools and classrooms.

Since his return, President Aristide has facilitated this change by preaching a message of reconciliation and peace. The Haitian people are responding. They are rebuilding their lives—not resorting to revenge against their former oppressors. Unlike Somalia, our soldiers are greeted with hugs—not rock throwing mobs.

Our mission to Haiti is one of the great military success stories of our time. Our troops have done a miraculous job. As our troops liberated Dachau and Auschwitz some fifty years ago, tho not as horrific the men and women of our armed forces liberated an island concentration camp in the Carribean.

We have done the right thing in Haiti. You can see it in the neighborhoods, in the schools, you can see it in the churches and most of all you can see it on the smiling faces of the people of Haiti, for they are no longer afraid.

EFFECTS OF THE RESCISSION BILLS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. NADLER] is recognized for 5 minutes.

Mr. NADLER. Mr. Speaker, I am here today to protest the mean-spirited and draconian rescissions that have been reported out of the Labor, Health and Human Services, and Education and the VA/HUD and Independent Agencies Appropriations Subcommittees.

An excellent statement released yesterday by ACT–UP expresses quite directly the severity of these cuts.

> Two House Subcommittees voted to rescind funding for AIDS programs that is already in the pipeline. The VA/HUD Appropriations Subcommittee voted to eliminate all $188 million allocated for HOPWA, the Housing Opportunities for People with AIDS Program, eliminate all 3,000 Section 8 rental assistance vouchers set-aside for HIV-positive people, and cut $2.7 billion in general Section 8 vouchers. The Labor/HHS Appropriations Subcommittee cut $13 million from the Ryan White CARE Act, which pays for medical care and services for people with HIV, and cut $23 million from the Centers for Disease Control and Prevention's HIV prevention program.
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> The HUD funding cuts alone mean that New York City will lose $41.7 million, Upstate New York $2.2 million and Long Island $1.2 million. In New York City, 700 units now housing over 1,000 people with AIDS and HIV disease and their family members will be lost.

Mr. Speaker, these severe slashes in housing funding will touch a wide range of American people—families, children, and seniors—but perhaps the most striking examples of heartlessness is putting sick and dying people out on the streets. It is, Mr. Speaker, nothing but immoral. I am absolutely appalled at the insensitivity to human life that I have seen over the past 50 or so days here in the Congress. We must put an end to this slashing and burning of America's middle and low-income people and families, and of the most needy members of our society.

For more than a decade, the devastation of the AIDS pandemic has affected every American community and has touched most Americans in some way personally. AIDS cuts across gender, ethnic, racial, and socio-economic lines. The rate of increased infection is alarming. Ryan White CARE funding is essential for AIDS service providers to keep pace with the pandemic to continue and provide effective and cost-efficient HIV-related medical and social services.

Mr. Speaker, according to a recent and very disturbing, New York Times article,

> AIDS has become the leading cause of death among all Americans aged 25 to 44 . . . this number has surpassed unintentional injury, which dropped to second place in this age group.

Since AIDS was first identified in the early 1980's, more than 440,000 cases have been documented and more than 250,000 AIDS-related deaths have resulted in the United States. More than 1 million people in the United States are believed to be HIV-positive, but have not yet contracted AIDS.

The Congressional district I represent in New York City is among the hardest hit by AIDS. With over 65,000 cases of AIDS—the highest number of any city in the country—in fact, more than 40,000 more cases than the next highest city, New York City has been the city most affected. Additionally, New York State, has approximately 20 percent of the Nation's AIDS cases, 81,386 cases. Ryan White funding is absolutely vital to many New Yorkers living with HIV/AIDS.

But the AIDS crisis goes far beyond New York—Americans in communities across the Nation have felt the effects of AIDS in some way.

Mr. Speaker, the impact of the AIDS epidemic is felt by everyone, from all walks of life. As the number of people living with HIV and AIDS continues to rise and access to private health care remains an obstacle to treatment, Ryan White Comprehensive AIDS Resources Act and Housing Opportunities for People with AIDS funds are more critical than ever. Slashing these programs will interrupt early intervention and health care to thousands of Americans living with AIDS and will merely escalate the pain and suffering that millions of people with AIDS experience.

I call on my good colleagues in Congress to unite against these immoral attacks by the big bad wolf. If we are not careful they will come and huff and puff and blow our houses down. We can not allow our Nation's seniors, children, families and people with AIDS to be put out in the streets.

Mr. Speaker, I urge my colleagues to take a leadership role and join me in speaking out and working to oppose these Draconian, and mean-spirited cuts.

CLOUDS OVER THE WHITE HOUSE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Indiana [Mr. BURTON] is recognized for 60 minutes as the designee of the majority leader.

Mr. BURTON of Indiana. Mr. Speaker, over the past year to year and one-half, we have seen some very disturbing things come out of this administration. A lot of people that the American people put their confidence in have left under a cloud.

Let me just mention a few of them. Webster Hubbell, the second most powerful person in the Justice Department, a very close personal friend of President Clinton, he was Associate Attorney General. He left the Justice Department after having been accused of fraudulent billing practices in his old law firm and he pled guilty to Federal crimes and he is under indictment right now, and I understand he is plea bargaining. He was the second most important, if you will, person in the Justice Department, and he himself is indicted and will probably go to prison unless he plea bargains his way out of that. He was the person who helped influence, in my opinion, helped influence the decision not to indict Ron Brown when they sent the associate justice down to the Miami grand jury about a year ago, and instead of letting the local U.S. attorney down there handle the case, they came back and said they did not indict Mr. Brown because of the Vietnamese affair, because they did not have enough evidence. There was not enough evidence to indict. They did not say they did not have evidence, they said there was not enough to indict.

David Watkins, a White House official, was forced to resign after using Marine helicopters to go play golf. He also was accused of sexual harassment by a Clinton campaign worker, and the campaign, the Clinton campaign settled and attempted to receive Federal matching funds, your tax dollars, to pay for the settlement. They were trying to get taxpayers' moneys as matching funds to help pay this sexual harassment suit. He left under a cloud.

Richard Altman, the Deputy Treasury Secretary, he resigned after congressional hearings exposed the improper contacts he had with the White House officials about the Whitewater investigation.

Bernard Nussbaum, the chief White House counsel, the right-hand legal man at the White House for President Clinton, he resigned after improper contacts with the Treasury Department over the Whitewater investigation came out. He is also the person who went into Vince Foster's office and took files out right after they found Vince Foster dead under suspicious conditions over at Fort Marcy Park. Mike Espy, the Agriculture Secretary, he resigned under investigation by independent counsel for accepting illegal gifts. Joycelyn Elders, the Surgeon General, resigned after advocating legalization of drugs and teaching masturbation in schools.

There are other Clinton administration nominees that were controversial who were not confirmed, Lani Guinier, Morton Halperin. Morton Halperin could not be confirmed as Assistant Secretary of Defense. What did they do? Because of his leftist policies, they took him over to the White House, put him in the NSC, National Security Council, advising the President where he would not have to be confirmed. Zoe Baird and Kimba Wood, nominees for Attorney General, they withdrew them after they investigated them.

Those are just a few of the nominees and people in the administration who left under a cloud. This administration has had a policy of picking people that had not been thoroughly examined and people who have come, we have come to find out, have done some things very questionable, of very questionable nature.

Now, I want to talk about Secretary of Commerce Ron Brown. He was the fellow about 1½ years ago or 2 years ago that was accused of taking a $700,000 bribe from the Vietnamese Government to normalize relations with that country. The FBI conducted a 6-hour lie detector on his chief accuser, a man named Ben Lee, and the man passed it. They even put a bug on this man. Yet when Webster Hubbell was over at the Justice Department in the No. 2 position after President Clinton took office, they took the FBI off of the case, and when the press got so hot on this issue and a grant jury was impaneled down in Miami, the Justice Department, again, Webster Hubbell was still second in command over there, they sent one of the assistants down to conduct the grand jury investigation instead of having it done locally, and they did not have enough evidence to indict. That was the Vietnamese affair.

Now, we have a lot of other problems with Mr. Brown, Secretary of Commerce. I doubt if any Cabinet Secretary in recent history has had as many bad investments and delinquent loans as Commerce Secretary Ron Brown. He and his business partners have on several occasions borrowed large sums of money through shell corporations to avoid personal responsibility for the loans, and then failed to repay them.

Ron Brown is now the subject of a second Justice Department investigation into his finances. In 1993, the Justice Department investigated allegations that he was offered this $700,000 bribe to have the embargo against Vietnam lifted even though we did not have a full accounting of the 2,300 POW–MIA's, and we still do not have that.

The Justice Department did not indict Mr. Brown in that case, but they did not exonerate him either. They said they just did not have enough evidence to indict him.

The Justice Department has launched a second investigation, this one into Secretary Brown's financial relationship with a lady named Nolanda Hill. Under the independent counsel law, the Attorney General has 90 days to recommend to a three-judge panel whether to appoint an independent counsel.

Now, let me give you some highlights of Secretary Brown's bad debts and forgiven loans. The first one is really interesting. NBC, the National Broadcasting Co., forgave a $10 million loan to Ron Brown. The Washington Post reported this weekend that NBC has agreed to forgive a $10 million loan to one of Ron Brown's companies, Albimar Communications.

In 1988, NBC agreed to sell Washington, DC, radio station WKYS–FM to Albimar Communications for $42½ million. Albimar was formed by Ron Brown, Secretary of Commerce, and his partners, Bertram Lee and James Kelly, husband of former D.C. Mayor Sharon Pratt Kelly.

To make the deal possible, NBC loaned Albimar and Ron Brown $10 million, because Brown, Lee, and Kelly are all black. NBC received a $15 million tax break for minority business people as a result of the sale.

The House just voted to rescind this tax break with some justification, I might add. The investment quickly went sour, and Ron Brown and his partners became seriously delinquent on the loan from NBC.

Earlier this year, Brown, Kelly, and Lee agreed to sell WKYS to another company for an $8.5 million loss. The key to the deal was NBC forgiving the $10 million loan.

Now, here are some questions that the Congress and this Government need to have answered. First, was this arrangement with NBC approved by the Office of Government Ethics? And if it was not, why not?

Second, is it legal for a sitting Cabinet Secretary in a Presidential administration to receive a financial windfall of this magnitude from a major corporation over which he has some control? Agricultural Secretary Mike Espy is being investigated for accepting a pair of football tickets from a company regulated by his agency, much less than the $10 million loan that was forgiven I just talked about from NBC.

Third, does NBC have an interest in any matters pending before the Commerce Department? Now, it is hard to believe that a major broadcasting company would not have something pending before the U.S. Commerce Department, and here they are forgiving a $10 million loan to the Secretary of Commerce. NBC is owned by RCA, Radio Corporation of America. How many Federal agencies are considering regulatory matters that RCA has a stock in, cellular phones, all kinds of new technologies that are being developed by RCA and other corporations that go before the Commerce Department? And do those companies that NBC is affiliated with, do they have any interest in things pending before the Commerce Department?

Fifth, what did NBC and RCA expect to get in return for forgiving this loan, if anything?

Now, this is not the only thing Ron Brown has been involved in. First International, Inc., and Corridor Broadcasting cost the taxpayers $40 million. In the 1980's Ron Brown and Democratic activist Nolanda Hill formed a corporation named First International Communications.Nolanda Hill owned a second corporation named Corridor Broadcasting. Corridor operated out of the same office as First International and used all of the same computers, the same phones, and the same office equipment.

Corridor Broadcasting defaulted on $40 million in loans and left the taxpayers holding the bag. While it could not repay these loans, it was paying, at the same time they could not repay the loans to the taxpayers, it was paying $12,000 a month in interest to Ron Brown and Nolanda Hill through First International. They were in the same office using the same phones, same computers, and everything else.

Ron Brown said he did not know anything about what was going on with Corridor Broadcasting. It was in the same office, and Corridor Broadcasting, which defaulted on a $40 million obligation to the taxpayers, was paying $12,000 a month in interest to Ron Brown's company. Although Ron Brown invested none of his own money in the company and the company had no known successful ventures, Nolanda Hill paid Secretary Brown, now get this, she paid him $400,000 for his share of the company. He put no money into the company, no investment whatsoever. The company that was paying the freight, Corridor Broadcasting, Inc., Corridor defaulted. The taxpayers are soaking up $40 million in losses.

Ron Brown made no financial investment in the company that was in the same office, and yet he was paid $400,000, and the company went defunct. The company went belly up, and he gets $400,000. For what? That is the question. For what?

Now, Ron Brown, in addition to the $400,000, had $190,000 in personal debts. According to Secretary Brown's lawyer, part of the payout from First International was $190,000 Nolanda Hill spent in 1994 paying off Ron Brown's debts. She paid off $190,000 of his debts. He paid no money for the company, got $400,000 out of it, and she pays $190,000 off on his personal debts.

Question: To whom did Secretary Brown owe the $190,000? This is information that the Congress and the public deserves to know.

And then there was another company in that same office. This is the third company in the same office called Know, Inc. In 1992 Nolanda Hill, through a third shell company, called Know, Inc., loaned Ron Brown $78,000. Brown used this money to repay a personal debt to the National Bank of Washington. This was done just before his confirmation hearings before the U.S. Senate. After his nomination had been confirmed, now get this, Nolanda Hill forgave this debt also, so he got $190,000 that she forgave, paid for, I assume out of the $40 million that they defaulted on, $190,000 she loaned him, and forgave or paid, and $78,000 she loaned him and forgave, and then $400,000 he got for no investment. Boy, I want to tell you, that is the kind of investment I would like to make.

Now, I serve on the Committee on Government Reform and Oversight, and the chairman of that committee is Chairman CLINGER, and he and the staff of our committee have conducted an investigation, and he has contacted Attorney General Janet Reno and asked there be a special investigator, special counsel, appointed, independent counsel, to investigate allegations against Ron Brown. This investigation has developed specific allegations which the committee believes are sufficient to warrant the appointment of an independent counsel, Mr. CLINGER said. The allegations are divided into five categories: First, submission of incomplete, inaccurate, and misleading financial disclosure statements; second, supplementation of salary; third, potential conflicts of interest; fourth, misinformation to Congress, and fifth refusing to respond to Congress.

Now, let us go through these allegations real quickly. The first allegation, Secretary Brown failed to report his interest in and income from First International Communications, Limited Partnership, on his annual incumbent financial disclosure form. Why did he not put that on that report? The factual basis for the allegation is this; Secretary Brown's annual incumbent financial disclosure report, signed May 16, 1994, failed to identify an interest in First International Communications, Limited Partnership. He did not even tell he was involved in that corporation, and he got $400,000 for it for no investment. Although it is unclear whether the Secretary still held an interest in First International Communications, Limited Partnership, on December 31, 1993, the Secretary received three $45,000 payments from First International Communications, Limited Partnership, during that year 1993. The first two checks dated April 15 and July 21 state that the checks were for "Partnership distribution." Distribution of what? The company was going under. They had no assets except what was in that office that was owned also by Corridor, Inc., and yet he has getting all this money for no investment.

The third check, dated October 15, simply says "Distribution." Secretary Brown should have reported these payments as income during 1993 even though he no longer held an interest in the partnership at the end of that year.

(B) First International Communications Corp. and First International, Inc., allegations, Secretary Brown failed to accurately describe the basic activities of First International on his new entrant financial disclosure report. On his new entrant financial disclosure report signed January 1, 1993, Secretary Brown stated First International "is a company that provides international and domestic consulting and investment services." Contrary to the Secretary's contention, the committee's evidence indicates First International was not involved in any sort of consulting or investment services at all. He misled what the intent of the company was on his report.

Rather, its primary source of income was interest generated by a promissory note worth approximately $875,000 payable by Corridor Broadcasting. I would like to know where that $875,000 came from.

Despite having defaulted on federally insured loans in excess of $40 million by 1993, Corridor Broadcasting apparently continued to pay monthly interest payments of approximately $12,000 to First International on the $875,000 note. In short, while the American taxpayers were forced to absorb more than $40 million of Corridor's indebtedness, Corridor continued to pay $12,000 a month to Mr. Brown's company.

Third, well, let me give you some factual basis on that real quickly. According to his annual incumbent financial disclosure report, Secretary Brown divested his interest in First International December 15, 1993, receiving between $250,000 and $500,000. We believe it was around $400,000.

Secretary Brown states in exchange for his share of First International he received direct payment of $135,000 and on and on and on. I covered a lot of this already. I will not go into it again.

(D) purchase of a town house. Allegation: On his annual incumbent financial disclosure report, Secretary Brown failed to report either the execution of a promissory note or a gift of $108,000 used as downpayment for a town house located in Washington, DC. According to his annual incumbent financial disclosure report in 1993, Secretary Brown had a mortgage of $250,000 to $500,000 on a town house located at 4303 Westover Place in Washington, DC. The mortgage was held by First Federal Savings and Loan of Rochester. In addition, Secretary Brown disclosed $5,000 to $15,000 in rental income generated by this property in 1993.

Although this townhouse is the residence of Secretary Brown's friend, Lillian Madsen, the deed of trust lists Ronald H. Brown and Michael Brown, his son, as owners of the property. Other relevant real estate documents indicate that a down payment of $108,000 was made to purchase the property.

As reported by U.S. News & World Report in February of 1995, Brazilian businessman Jose Amaro Pinto Ramos arranged for a substantial loan for a down payment on the townhouse to be made to Lillian Madsen through a bank in Paris, France. Ramos claimed he never spoke to Secretary Brown about the loan, and he was unaware that the Secretary owned the property. Unaware?

According to the deed of trust now in effect, Ronald Brown and Michael Brown jointly own the property, subject only to the first mortgage of $252,000. No second mortgage or other encumbrance is listed on the property. Thus the Browns are the owners of $108,000 equity down payment. If Ms. Madsen provided the down payment, ifMs. Madsen provided the $108,000 down payment which is now owned by the Browns, the Secretary should have reported that down payment as a gift or as income. Where did she get $108,000 to pay down on that?

You know, it was alleged Ron Brown got $700,000 in payment from the Vietnamese Government to normalize relations with Vietnam. The FBI verified that there was an electronic transfer of funds from the North Vietnamese Communist Government to a bank in Singapore just like the accuser, Mr. Bun Lee said. So maybe that $700,000 was paid. The money was transferred. There was a large sum of money transferred to a bank in Singapore, just as the accuser said.

On the other hand, if Ronald Brown or Michael Brown arranged some sort of off-the-record agreement to eventually repay Ms. Madsen, Secretary Brown should have reported that agreement as a liability on his annual incumbent financial disclosure report.

Funds provided by Ms. Madsen were not reported as a gift, as income, or as a liability on Secretary Brown's annual incumbent financial disclosure reports.

Next allegation: Secretary Brown failed to report on his financial disclosure report that his interest in Boston Bank of Commerce Associates was a general partnership. Secretary Brown's new-entrant financial disclosure report does not identify Boston Bank of Commerce Associates as a general partnership. According to the Office of Government Ethics, the fact that the Boston Bank of Commerce Associates is a general partnership was discovered in April 1993. According to ethics law, the known interests of a general partner are imputed to the other owners, the other general partners. One of Secretary Brown's partners in Boston Bank of Commerce Associates provided Digital Equipment Corp. stock as capital in return for his partnership share. Thus imputing an interest in Digital to Boston Bank of Commerce Associates and the Secretary.

Upon discovery, an apparent screening process was instituted to bar the Secretary from taking official action that would affect Digital.

Albimar Communications, Inc., allegations: Secretary Brown failed to report on his new-entrant financial disclosure report and his annual incumbent financial disclosure report that his interests in Albimar Communications was a general partnership. According to both of his financial disclosure reports, Secretary Brown held an interest in Albimar Communications, which owns a radio station, WKYS, in Washington, DC. I have already gone into that. That is the loan that was forgiven, $10 million, by NBC.

Payment of Secretary Brown's personal debt obligation, allegation: Secretary Brown failed to accurately report the future income he knew he would receive in 1994 on his annual incumbent financial disclosure report. According to his own incumbent report, Secretary Brown divested himself of his interest in First International on December 15, 1993, receiving, we believe, around $400,000. They say between $250,000 to $500,000 in this report. Secretary Brown claimed his divestiture of First International, which allegedly occurred on December 15, 1993, included, in part, the payment of some of his personal debt obligations. The evidence shows that the debt obligations were paid by or through Noland Hill, but on December 15, 1993; rather the payments were made during the summer of 1994, specifically nine payments totaling $190,995, against various debt obligations of Secretary Brown, were made to the following entities on the following dates—and they are all listed here.

I can go on and on and on and on. I would like to submit the rest of these things for the RECORD. I pretty much covered that. But these are things that need to be investigated, if not by the Justice Department, through an independent counsel, they ought to be investigated by the Congress itself. But I talked to Representative CLINGER today, and if the Justice Department does not ask for an independent counsel, it is my belief that we will hold hearings on this and Congress will get to the bottom of it. In other words, we are going to let an independent counsel, if he is duly appointed by a three-judge panel after being asked by Attorney General Reno, we will let it go that route. But if it does not, then the House of Representatives, I believe, will hold hearings and call Mr. Brown to testify to answer these allegations and questions.

The second thing I want to talk about before I get to my good friend, the gentleman from Pennsylvania [Mr. FOX], is something that happened today in Little Rock, AR. The special prosecutor, a special prosecutor appointed by the three-judge panel to replace Mr. Fiske, today indicted a man named Neal T. Ainley, who is a bank president in Little Rock, AR. He was president of the Perry County Bank in Perryville, AR, from 1989 until March 1994.

According to this indictment, he loaned $180,000 to Mr. Clinton during the 1990 gubernatorial campaign. That money was used by the Clinton campaign to buy or try to get some votes. It is alleged that some black ministers were the beneficiaries of a lot of this money that was used in order to get out some of the votes in critical precincts in Arkansas.

The interesting thing about this is, right after the election took place and Mr. Clinton was reelected Governor, the owner of the bank became the secretary of transportation for the State, secretary of the highway department in Little Rock. And he, along with the bank officials, according to the indictment, helped repay the $180,000 loan that Mr. Clinton incurred during the campaign.

The question is where did that $180,000 come from? Did it come from highway contractors that the new head of the highway department twisted their arms in order to get those moneys to repay those loans? Where did that money come from? That is something that needs to be looked into.

I am sure Mr. Star is doing that.

I might say at this point that Mr. Starr is doing an outstanding job as the independent counsel, and I think everybody in the country ultimately will see that and owe him a great debt of gratitude.

But there are so many cases like that in Arkansas; there is another bank down there where was a $400,000 loan that was given to try to get legislation through the Arkansas State Legislature, and that money was never repaid either by the person that borrowed the money. And it was in the Clinton administration.

Here you have $180,000 borrowed that was repaid by a person who got a job in the administration, running the highway department and the person that got the job at the highway department was the owner of the bank that loaned the money.

It sure does smell bad.

Then we come to the Mexican bailout, which 80 percent of the American people oppose. January 31, President Clinton and Treasury Secretary Robert Rubin announced a $49.8 billion—$49.8 billion; that is not millions, that is billions, three extra zeros—$49,800,000,000 bailout package for Mexico.

The package included $20 billion in loans and loan guarantees from the Treasury Department's exchange stabilization fund, which was established in the 1930's to protect the value of the dollar and not other currencies. This exchange stabilization fund was established to protect the dollar in the international financial markets against an assault from other currencies, to protect the dollar. We are using $20 billion of it to protect the Mexican peso, which is in a free fall right now. So the United States taxpayer is underwriting the Mexican Government's economic mistakes. The key underwriters of Mexico's dollar-denominated bonds, called tesobonos, have been the major United States investment banking firms. Treasury Secretary Robert Rubin, and this is very important, Treasury Secretary Robert Rubin was formerly cochairman of the Goldman-Sachs Investment Co. from 1992 to 1994. Goldman-Sachs was the largest United States underwriter of Mexican bonds. Although Rubin divested himself of his interest in Goldman-Sachs, there is still a conflict of interest. There was $5.17 billion in investments made by Goldman-Sachs into the Mexican markets, more than double the other companies, the next two highest companies that invested in Mexico.

When Secretary Rubin joined the White House staff in 1993 as Chairman of the National Economic Council, he recused himself, stepped aside for 1 year on all issues affecting Mexico. At that time, he was with the National Economic Council. Now he is the Treasury Secretary, and the Treasury Secretary has sole control over the exchange stabilization fund, where they took that $20 billion out of to give to Mexico. The only person that could stop him from doing that is the President himself, and yet he did not recuse himself this year. He did 2 years ago, when he did not have any power. Now, as Secretary of the Treasury, he can send $20 billion down there, he does not recuse himself, he stays involved.

Now, there are a lot of questions that arise from that. Why did not he recuse himself? Could it be because of $5.17 billion that he had his clients invest in Mexico was under assault? That many of the people he recommended put their money into these Mexican financial instruments were going to lose their shirt because the peso was in free fall? And that he might be held responsible? He said he had a very large insurance policy to protect him against suits emanating from his recommendations. But, you know, I used to sell insurance, and I can tell you, if you got a million-dollar policy or $10 million or even a $50 million policy, it costs an arm and a leg. Here we are talking about not $50 million but $5,000,000,000, $5 billion. And if he were sued because of making—giving bad financial advice and investing in very bad speculative securities in Mexico, he probably could have been sued and it could have wiped out not only maybe his company, in large part, but himself and his whole personal fortune.

So he had a vested interest, a vested interest in making sure that the money got down to Mexico to try to stabilize the peso in that economy. He should have recused himself. That is why there should be a complete congressional investigation.

I understand the Committee on Banking is going to do that. We had a press conference today, and the chairman of the Subcommittee on Banking said they were going to call Mr. Rubin before them to ask questions about these things.

Now, let me tell you some other things about Mr. Rubin. Employees of his company, Goldman-Sachs, especially Mr. Rubin himself, contributed heavily to the Clinton campaign and the Democrat Party. Goldman-Sachs employees and families were responsible for the largest contribution the Clinton campaign got in 1992 from a single firm, almost $100,000.

Robert Rubin and his wife contributed $275,000 to the New York Host Committee for the Democrat National Convention in 1992. A Washington lobbyist for Goldman-Sachs, Michael Berman, was instrumental in setting up President Clinton's legal defense fund and is actively soliciting contributions to it. The fund was established to pay his expenses, President Clinton's expenses in the sexual harassment lawsuit filed by Paul Cobin Jones.

So this company, Goldman-Sachs, and Mr. Rubin are tied inextricably together, and they are the largest investor in Mexico, investing so much of their clients' funds down there and now he is trying to stabilize the Mexican economy, which will help protect his investors' money. If that is not a conflict of interest, I do not know what is. Yet he did not recuse himself and says he did nothing wrong.

This is something that is very, very serious. Mr. Rubin and the administration are evidently using the United States taxpayers' money not to the tune of $20 billion but overall to the tune of about $55 billion to help stabilize the Mexican economy, and that is a real crap shoot because if that economy continues to go like it is, the American people, taxpayers, might very well have to pay the $55 billion. And it will not be worth a dime.

They say that they are going to use the oil sales of Mexico to guarantee repayment of the loan, but there are so many financial obligations against the Mexican Government, not to mention what is coming out of the United States from the exchange stabilization fund and these other funds that if they went under, if they had an economic collapse down there, they could not repay all of these loans. And I doubt seriously if the United States of America would ask them to pay out of their oil sales because they would need that money for current expenses. How would the government, how would the country survive if they did not have any income coming in? They would not have, if we took away something like their oil sales.

So this whole Mexican bailout in a debacle. They could not get it through the Congress of the United States. They could not get the votes so unilaterally the President and Mr. Rubin decided to do it. Now we find out that there may have been some ulterior motives for Mr. Rubin taking this action and President Clinton for going along with it. It is a real mess. I think that my colleagues and I ought to take a hard look at this.

Mr. Speaker, I yield to the gentleman from Pennsylvania. [Mr. FOX].

Mr. FOX of Pennsylvania. Mr. Speaker, with the gentleman's permission, I would like to ask a few questions based on the discussions you have had here in the House this evening about the very important questions dealing with Secretary Brown and as well the crisis that we have now in Mexico and with the intervention of the United States precipitously by the President without any congressional involvement.

Let me first ask you, with regard to Secretary Brown and the Clinton administration, is it your opinion that the lawyers resigning and the Cabinet members leaving under a cloud, does this tell you anything unusual about the Clinton administration, whether or not there was sufficient investigations done?

Mr. BURTON of Indiana. Well, we have found through our investigation, we used to have what was called the Republican Study Committee. I chaired that. We did extensive investigation into Whitewater, Whitewater Development Corp. and the Arkansas Development Financial Authority and a lot of other things. We have found an awful lot of questionable activity that took place under the Clinton administration in Arkansas. And a lot of the people who were involved in the Clinton administration in Arkansas were brought to Washington by President Clinton to help in his administration.

If you look at the things that we are finding out about many of those people, some of their activities, like Webster Hubbell, his illegal activities were taking place prior to the time he came to be in the administration. It seems to me that the President, when he was Governor, would have known or should have known about some of the activities of these people, because he surrounded himself with them during the entire time he was Governor, which was over a long period of time, over 10 years. So it is inconceivable that he could not have known at least something about these people.

It is unfortunate that he brought them to Washington, because now they are leaving. As one of my colleagues said today, it is like a rusty door on rusty hinges. It is about to fall over. It does a disservice not only to the administration but to the entire country.

Mr. FOX of Pennsylvania. What about the $700,000 bribe? What was the final upshot of that case.

Mr. BURTON of Indiana. The $700,000 alleged bribe, the man who made the allegation was a man named Binh Ly who was working with a Korean or a Vietnamese agent named Mr. Hao. Mr. Ly and Mr. Hao went to Vietnam to try to normalize relations with that government, tried to work out some kind of a normalization relationship. Mr. Ly wanted to do it because he is a patriot. He believed that they ought to get away from the Communist regime and get to free enterprise over there. He thought this was a way to do it.

When he got over there, he found out from Mr. Hao that there was an alleged $700,000 payment to be made to Mr. Brown as a first installment, a first installment on payments to him as a good-faith installment to get him to help use his position in the government to normalize relations with Vietnam.

We found many cases where Mr. Brown or people on his staff at the Commerce Department did take action at various high level meetings over at the White House to try to get the normalization process started. As you know, they were successful. We are on a path toward complete normalization with Vietnam, even though we have never gotten a full accounting on the POW/MIAs that were left behind and we never did find out if the $700,000 wasreally paid, because Mr. Hubbell and Janet Reno, they sent one of their top lieutenants down there to whitewash the grand jury investigation in Miami, I believe.

As a result, we do not know whether the money was paid. The FBI did say, however, that what Mr. Ly said in the lie detector test, which he passed, took 6 hours, that the money that was alleged to have been sent from the Vietnamese Government to a bank in Singapore could very well have happened because there was a large transfer of funds from the Vietnamese Government to a bank in Singapore at the same time that all this took place. So Mr. Brown could have received that money.

Mr. STOCKMAN. Mr. Speaker, if the gentleman will yield, do I understand you correctly, where we have possible prisoners in Vietnam, we have somebody working for the White House willing to sell out their country for $700,000? Is that correct?

Mr. BURTON of Indiana. That is the allegation that was made because there are still people who believe there are POW/MIAs that may still be alive over there. A lot of people who served in Vietnam believe that. Even if they are not alive, we had a commitment from every single President since the Vietnam war who has said we would not do business or normalize relations with Vietnam until we had a complete accounting. Of the 2,300 that are still unaccounted for over there, I would say probably 2,000 still are unaccounted for. And yet we are normalizing relations. American industry is being allowed to invest over there. Mr. Brown is playing a very key role in getting that down.

The allegation that Mr. Ly made was that the $700,000 was just a down payment and that Mr. Brown was supposed to get royalties or a percentage of the oil that was developed from the oil fields off the shore of Vietnam, which is supposed to be the third largest oil field in the world.

We are talking about tens and hundreds of millions of dollars.

Mr. STOCKMAN. I just personally find that offensive that we could have our boys back there possibly still in the field before we got a total accounting, that some individual was willing to sell out his country for $700,000.

Mr. BURTON of Indiana. I am sure it was more than that. But the bottom line is that when the grand jury investigated Mr. Brown, they did not exonerate him. They said they did not have enough evidence to indict. And when the FBI was pulled off the case, I believe at the request of the Justice Department and Web Hubbell and Janet Reno, I think they did a real disservice to the country and to those families that have those 2,000 or 2,300 people still left unaccounted for over there.

Mr. FOX of Pennsylvania. Mr. Speaker, I know the Members of the House would like to know as well as the public, what is it with regard, if we have delinquent loans and we have forgiven loans which are questionable and we have failure to file with the government authorities on limited partnerships with the Secretary of Commerce here, in your opinion, do you think that we have sufficient evidence or information so that the independent counsel could be appointed?

Mr. BURTON of Indiana. Yes. I think that the gentleman from Pennsylvania, Chairman CLINGER, of the Committee on Government Reform and Oversight, made a very, very strong case when he wrote to Janet Reno this week, when he asked her, he cited case after case after case after case where there are allegations of wrongdoing and breaking of the law by Mr. Brown. And he said that he would allow her to and he urged her to pick an independent counsel through the three-judge panel. And if she does that and we get a truly independent counsel to investigate these allegations, then he felt like there would not be a necessity for the Congress to conduct hearings.

However, as I said before, if that does not take place, I talked to Chairman CLINGER today, and I am convinced or under the impression that we will hold hearings if we do not get that independent counsel.

Mr. FOX of Pennsylvania. If there would not be an independent counsel, in your opinion, you believe that the Committee on the Judiciary or the Government Reform and Oversight Committee would have the right to do its own investigation.

Mr. BURTON of Indiana. The Committee on Government Reform and Oversight, I think, would have jurisdiction in this case. And I think we would be the committee that would hold the hearings. I would urge the chairman to do that, and I believe he will.

Mr. FOX of Pennsylvania. Mr. Speaker, on this latest indictment, we have Neal Ainley that is connected to a questionable campaign loan back to the Clinton administration.

Mr. BURTON of Indiana. Yes. That was a $180,000 non-secured loan, and that loan was made by this Mr. Neal Ainley. He was president of this bank in Perryville, AR, called the Perry County Bank. And this guy, I do not know, he may be the scapegoat, I do not know.

The thing that is interesting is, as I said before, the owner of the bank, not the president, but the owner of the bank became the head of the State Highway Department. And he assisted, as I understand it, the bank officials in raising the money to pay off the loan.

And all I can think of is some of the highway scandals I heard of before where highway contractors were urged to cough up money to take care of various needs of administration officials in other States. And it seems to me a $180,000 loan that was made by a bank and then the owner of that bank becomes a State highway official, the top dog there, and then he helps repay the loan, it seems to me he had to get that money from someplace so we ought to investigate where that money came from.

Mr. FOX of Pennsylvania. I know that you and Congressman STOCKMAN have been very much at the forefront of the public outcry about this whole Mexican bailout. I wanted to ask you a couple of questions so that we can have our colleagues understand where we are at this point.

In your opinion, is the Clinton $20 billion loan guarantee an overreaching by the executive branch without congressional intervention whatsoever, an obligation that should have been to the American people first in forming the Congress, and that the executive branch, through the President, should not have taken action?

Mr. BURTON of Indiana. Yes. It is an absolute travesty, in my opinion, that the American people were not listened to and that the people's House and the Senate were not consulted about this bailout.

The fact of the matter is, and I wanted to congratulate Mr. STOCKMAN for his hard work in trying to bring this issue to the floor, I think he will prevail to get it to the floor, but the fact of the matter is, I was one of the people that worked on the initial legislation that was being drafted to try to work out the kinks to be able to help stabilize the economy in Mexico. And some of the things that we put in there in the legislation before we would guarantee the loan was that there had to be at least about 30 percent of the loan put into American banks in the form of negotiable securities so if the Government of Mexico defaulted, we could get right off the top real fast 30 percent of the loan back. And if we did that in a timely fashion, we probably would not suffer any loss and the taxpayer would suffer no loss in this country, even though we did help stabilize the economy down there.

In addition to that, we have provisions in the bill that said Mexico could no longer help the Communist Government of Cuba. Right now the Mexican Government, through direct or indirect financial assistance to Castro, are giving him $200 million to $400 million a year. We guaranteed these loans, and they continue to do business with Castro. We have an embargo against Castro, 90 miles from our shore, the last bastion of communism in the world. And here the Mexican Government is helping Cuba to a large degree, and we are bailing them out. And I would not be a bit surprised if some of the money that we are giving to them to bail them out is not funneling its way over to Castro to keep him afloat. So we put a provision in there that said that no money could get to Castro. We also put a provision in there that said that we had to protect our borders and Mexico had to help. They had to work with us on both sides of the 1,980-mile border between us and Mexico to keep illegal aliens from coming out. And we alsohad a provision in there to send prisoners in United States jails, and we have hundreds, probably have a couple hundred thousand of them, back to Mexico for execution of sentence, because it is costing the American taxpayers $30,000 to $35,000 apiece to keep them incarcerated here. So we had a lot of provisions in the bill to protect the taxpayer.

Now, the President and Mr. Rubin and the Mexican officials said, we do not want any conditions on the money. Get that. They did not want any conditions on the money.

And so we said, you are not going to get the votes in the Congress to pass that, or the Senate, and the American people are not going to support a loan bailout unless there is protections on the money.

We can guarantee we are going to get at least so much of our money back and that these other provisions in there to protect our borders and to stop them from doing business with Castro and in violation of the embargo. So what happens is the President says, hey, if we cannot get Congress to do it, I will do it myself. And he used the Exchange Stabilization Fund in violation of what we believe the law is because that money is supposed to only be used to stabilize the dollar. And he is using it to stabilize the peso. So he did an end around the American taxpayer and the Congress of the United States.

Mr. STOCKMAN. I would like to understand that. He transferred from what I understand, Rubin transferred $7 billion as opposed to the loan guarantees already $7 billion. He originally asked for $40 billion. It is up now to $53 billion. And this thing keeps spiraling out of control. And today shocking news that was reported over the Mexican airwaves, I do not know if it is true or not, but the brother of the former president of Mexico participated in the assassination down there in Mexico. That is going to drive the markets down further. I think we have just been ripped off, and the American taxpayer is going to end up paying for this failure of Clinton to realize that this is a bad deal. This is a ripoff, and originally it was loan guarantees. Now it is outright payments to Mexico. This is a travesty.

Mr. BURTON of Indiana. I think the gentleman is absolutely right, $7 billion has already gone down there. The peso continues to drop. And every time it drops, that means its relationship to the dollar drops, which means that they are going to have to use this money to bail themselves out. And that $7 billion is very likely done. We might as well have burned it up in the middle of the street. It is not saving the Mexican economy. The taxpayers of this country, 80 percent of them did not want us to do it anyhow. So since the President cannot get it down through Congress, he does it by himself. This is not a dictatorship.

Mr. STOCKMAN. Not only that, the people of Mexico were opposed to it. The people in the United States were opposed to it. This is like a shotgun wedding where both participants did not want to participate. This is just outrageous. The day they announced the agreement, the stock market and peso dropped. That shows you that both business and government oppose this deal.

It is ridiculous that we are proceeding with this and continuing after all the signs in the market.

Rubin is a smart guy. He knows what the markets say is true and the markets are speaking and they say this is a bad deal, yet Rubin is proceeding with it. The reason he is proceeding with it is because it is not his money, it is the taxpayers' money.

Mr. BURTON of Indiana. Yet the one thing we talked about earlier, you and I talked about at the press conference today, is questions need to be answered about why Mr. Rubin was so insistent that we use the exchange stabilization fund and that $20 billion to send down there. A lot of people think it was because he was trying to protect his former company and his own hindquarters because he advised those people to put their money down there to the tune of $5.17 billion. And if he did it for that reason, that is certainly a violation.

Mr. STOCKMAN. He knows what is in that blind trust. He says it is a blind trust, but he just put it in that blind trust. He knows what is in there.

Mr. BURTON of Indiana. The people who may be paying attention in their offices, other Congressmen, need to know what you are talking about. He said he put his money into a blind trust so he did not know what that money was being invested in. But Goldman Sachs and he are very close. He was a partner in that company, and you are absolutely right, he does know in my opinion.

Mr. STOCKMAN. He is a financial expert. He knows exactly what is in there.

Mr. FOX of Pennsylvania. Mr. Speaker, if the gentleman will yield, I appreciate what Congressman STOCKMAN and you have brought out here. But I think the problem the American public wants to know about is not only do we have a contract, or loan guarantees without Congress' intervention, we do not have the Border Patrol with the illegal immigration you spoke of, we do not have the reduction that we want to see in the illegal drug sales, and we also do not have, I do not think, any guarantee that the collateral is sufficient.

Mr. BURTON of Indiana. The collateral is not sufficient. Anybody who really knows what is going on with the oil sales in Mexico and that kind of a deal will tell you that if they were to default, and it is very likely that they will at least on a large part of this loan, or gift or whatever you want to call it, if they default, for us to take the revenues from their oil production, that State-owned oil company down there, would leave that company with no money to operate the government. There would be absolute chaos down there, and we would probably see millions more people coming across that border because of the destabilization of the economy.

So that money that is being guaranteed from those oil sales to seb repay this loan in the event of a default, I do not think is going to be there. So the American taxpayer really in my opinion has no collateral whatsoever for this $53 billion or $54 billion loan bailout.

Mr. FOX of Pennsylvania. As a result of your work on the committee, there is going to be, with the help of Congressman KING, an information request of the White House with regard to 80 or 90 pieces of information on what documentation they have to use the stabilization fund, what legal authority they are operating under, and when we get that information, what do you think we should be doing next?

Mr. BURTON of Indiana. I think that information is essential, but in addition to that, we need to get Mr. STOCKMAN's bill to the floor which would stop this loan program completely. Because we represent the American people. And we cannot take care of a lot of the problems we have in this country. Right now, we are cutting spending dramatically. Six subcommittees of appropriations I understand last week cut $17 billion out of programs here in the United States. That is $17 billion. And while we are cutting U.S. programs, as we should, to get this Government under control and to reduce the size of Government, we are spending up to $53 billion bailing out Mexico with no collateral. It makes absolutely no sense. None whatsoever.

Mr. STOCKMAN. Mr. Speaker, if the gentleman will yield, I would like to point out, too, that there is some critical factor here. The first request, a lot of people do not know this. There had already been $17 billion put into the Mexican economy, they came back and asked for $40 billion, now it is up to $53 billion.

My question is, at what point do we say, $100 billion, $200 billion, at what point do we say we are throwing good money after bad?

This is a clear indication to me that the economy down there is unraveling. It is kind of like Visine, you stick it in your eye, it gets the red out but it comes back with a vengeance.

We are just postponing in my belief the inevitable, which is that the company and the bonds, the tesebonos, are going to default and I think we need to take that bitter pill now instead of having the American taxpayer take the bitter pill. I think it is outrageous.

Mr. BURTON of Indiana. I agree with my colleague entirely, and I cannot believe if there is a default on the loan that our Government and the people we represent are going to stand still for pouring good money after bad.

Mr. STOCKMAN. It is over $100 million per district. I tell you, $100 million, I could run a darn good campaign on that, too.

Mr. BURTON of Indiana. I hope everyone got that; $100 million for every congressional district in the country is going down there.

Mr. FOX of Pennsylvania. If the gentleman will yield, I would ask you or Congressman STOCKMAN, what would be the effect of your legislation with regard to this loan guarantee by the President which has been done?

Mr. STOCKMAN. What it would do is stop any loan guarantee, anything at all in the form of any kind of payments to the country of Mexico. This is not a racist thing. It has nothing to do with that. It is a financial deal. And the finances of it is that it is wrong for America.

In fact, I will tell you, it is on both sides of the aisle that oppose this, and I bet you if we put the bill to the floor, it would pass with flying colors with very little opposition.

This is a bill that just says, enough is enough. We gave them already billions and billions of dollars. We had the Brady bill, we had many other bills of rescue packages since 1982. In fact, seven packages, all have been rescuing Mexico, and each time we come back to the well.

We need to say to a country which has socialized industry, a lot of people do not know that. They have a nationalized oil industry, they have a nationalized, they are just unnationalizing their telephone company.

By the way, Rubin was the negotiator to unnationalize that. That is incredible. We are going through these series of processes and we are not looking at what the country is doing.

Let's face it. Just today we found out that the brother is connected to the murder. This country is not the same country as the United States. We are dealing with a totally different Third-World country. We are not even bailing out Orange County. Yet we are bailing out Mexico. I just find it appalling. But the bill would stop it all.

Mr. BURTON of Indiana. Your bill would stop it immediately.

Mr. STOCKMAN. Immediately. The only way that he could get around it is if Clinton vetoed it.

Mr. BURTON of Indiana. The interesting thing about Mr. Rubin is that one of the clients that he represented was the Mexican Government itself. I mean, that was one of his clients when he was with Goldman Sachs.

Mr. STOCKMAN. I think he is still representing them.

Mr. BURTON of Indiana. Right. And here he was representing the Mexican Government with his company Goldman Sachs and now as Treasury Secretary, he is putting all this money down there, taxpayers' money. There is a conflict, there is no question.

Mr. STOCKMAN. He came before our committee, and I asked him, I said, "Who is the No. 1 adviser to the President on this issue?"

He said, "I am."

I said, "Did you receive any calls from outside interests?"

At first he said no. He said, "Yes, I think I did."

I think we need to know who that was and what they discussed.

Mr. BURTON of Indiana. He did not testify the outside person?

Mr. STOCKMAN. No, he did not.

Mr. BURTON of Indiana. Were any of them the people that paid him $26 million in salary last year?

Mr. STOCKMAN. That is all you need is one phone call from them.

Mr. BURTON of Indiana. Anything else from my colleague?

Mr. FOX of Pennsylvania. Yes, I would ask the Congressman, at this point where can the public help you and help us move forward in this debate?

Mr. BURTON of Indiana. I would say to my colleague and all of the Members here, if their constituents were interested, I would urge them to contact their Congressman, their Senator, and the White House and say, we want an up-or-down vote in the U.S. House of Representatives just like the votes are taken on any appropriation bill, any spending bill. There needs to be an up-or-down vote on whether or not our Congressmen and our Senators want to send this amount of money to Mexico as a bailout. And if the American people scream loudly enough, then I think there is a real possibility that Mr. STOCKMAN's bill will not only come to the floor but it will pass the House and pass the Senate and we will stop this nonsense very quickly.

There is a question about what is going to happen if we cut off these funds. There could very well be some upheaval down there. But I believe that upheaval is likely to take place, anyhow, and what we are doing is throwing good money after bad and the American taxpayer is going to lose this money and they are still going to have these problems.

If they are going to have those problems, anyhow, we might as well let them happen and deal with them as they happen and save the taxpayer this money.

Mr. STOCKMAN. I would like to point out that $53 billion would buy an incredible fence.

Mr. BURTON of Indiana. I am not sure that we want to build a fence between us and Mexico. But you are absolutely right.

Mr. STOCKMAN. Who is going to get us out when we collapse? We are arguing on the floor every day over a billion dollars. Yet we are doing $53 billion. We are arguing over $100 million. We are talking about, we are being accused of cutting school lunches. Yet we turn around and give $53 billion. I think the upheaval will happen here if we collapse and we cannot handle ourselves.

Mr. BURTON of Indiana. I think the American people, it is hard for them to comprehend 53,000 million. It is not 53 million, it is 53,000 million dollars total that you are talking about. And the American people, I think many people cannot comprehend that amount of money. But when you think about the national debt being what it is and the deficit being what it is and what we are going to face in the next few years if we do not get control of spending and here we are taking all this money that could be used to reduce the deficit or be used for projects here in the United States like in Orange County where they have got a terrible problem, or maybe in your district, yours or mine, and we are sending it down there, the American people I think would be very, very upset.

The problem is, they need to know about it and they really have not I think heard enough about this issue.

Mr. STOCKMAN. I am offering to pay my staff now in pesos. I think it is a fair deal.

Mr. BURTON of Indiana. Very good.

Mr. FOX of Pennsylvania. I think the fact is that your dialog tonight with our colleagues here on the House floor and hopefully Members of the public who may be listening along here in the gallery will find that in fact this dialog is important, because here we have an opportunity to look at America's needs first. And while we are looking to trim our government here in the Contract With America, let's look to see what America's needs are first and when we get involved with any other country, and we can do that, let's do it in a way that Congress has the involvement, that Congress is going to be obligated and we have the opportunity to make the conditions that are important to protect our American citizens.

It did not take place in this instance because the White House, I believe, had an overreaching.

Mr. BURTON of Indiana. They usurped the authority of the spending house of the Congress, the U.S. House of Representatives.

We spend about $13 or $14 billion a year all over the world in foreign aid, $13 or $14 billion, maybe $15 billion total in foreign aid and our constituents holler to high heaven when we have town meetings about the foreign aid. They say, "Why are you sending that money overseas when we have these problems here at home?"

And that is $14 billion. Here in one country we are talking about as much as $53 billion or almost four times, about four times what we are spending in all the foreign aid all around the world. So this is really a debacle. And the President has taken this upon himself without any act of the Congress.

One of the things that is interesting about President Clinton is that he decided to go into Haiti when he knew the Congress would not support that. If you have been to Haiti, you know it is a real mess and we are going to spenda billion and a half dollars at least down there.

In the Mexican bailout, he took that action unilaterally. There have been other cases where the Congress was not consulted where we should have been. It just seems to me that a message needs to be sent down to the White House very clearly that this is a republic, not a dictatorship, and the President should not be doing these things unilaterally and we need to express that very clearly.

That is why it is extremely important tomorrow when we have our Republican conference that we get all of our colleagues there to try to make sure that we are allowed to bring a bill to the floor so we can have an up-or-down vote on this issue.

Mr. STOCKMAN. It is H.R. 480, by the way.

Mr. BURTON of Indiana. H.R. 480. You have me on as a cosponsor, I hope?

Mr. STOCKMAN. Yes, sir, right there at the top.

Mr. BURTON of Indiana. Very good.

Mr. STOCKMAN. I just want to thank the gentleman for bringing this to light and your efforts and your guidance. As a freshman we oftentimes do not know what to do here. We are real frustrated.

I know I was talking with the gentleman from Pennsylvania, and we were pleased that you helped on the leadership on this and really told us which way to go. A lot of times, you are new here, you do not know it. You have really taken this thing forward. I just want to thank you publicly for your leadership and for your guidance on this. I really appreciate it.

Mr. BURTON of Indiana. I appreciate that very much. But if it was not for you introducing the bill and working so hard getting all those cosigners on that letter, we would not be at this point right now. But the battle is not over. We need to fight very hard in the next few days to bring a bill to the floor so we can have an up-or-down vote. If we do that, get it to the floor, it will pass and it will pass, as you said, handily.

Mr. FOX of Pennsylvania. I also wanted to join the gentleman from Texas in acknowledging our appreciation for your leadership in this. We look forward to working with you in committee for a positive result for the people.

Mr. BURTON of Indiana. Thank you very much.

As we conclude, Mr. Speaker, this special order, let me just say there are a lot of issues we have raised tonight. I hope my colleagues will pay attention to all of those as well as anybody else that might be paying attention.

There are so many things that have been going wrong with this administration that need to be corrected. We as a Congress need to exert our oversight rights to make sure that the American people are well-represented.

Mr. Speaker, I include the following for the RECORD:

Re Request for an Independent Counsel to Investigate the Financial Holdings and Activities of Secretary of Commerce Ronald H. Brown.

Hon. JANET RENO,
Attorney General, U.S. Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL RENO: For over a year, I, as then-Ranking Member of the Government Operations Committee and now as Chairman of the Government Reform and Oversight Committee, have been conducting an investigation into the financial holdings and activities of Secretary of Commerce Ronald H. Brown, pursuant to my authority under Rules X and XI of the House of Representatives. And, for over a year, in response to direct questions posed to the Secretary, I have received inaccurate, incomplete, and misleading responses, or no response at all.

This investigation has developed specific allegations which the Committee believes are sufficient to warrant the appointment of an Independent Counsel. As you have previously determined that Secretary Brown is a "covered individual" under the Independent Counsel Act, 28 U.S.C. §591 et. seq., the Committee requests that you add the allegations set forth in the attached appendix to those matters already under review as part of your preliminary investigation.

The allegations are divided into five categories: (I) Submission of Incomplete, Inaccurate and Misleading Financial Disclosure Statements; (II) Supplementation of Salary; (III) Potential Conflicts of Interest;÷ (IV) Misinformation to Congress, and; (V) Refusing to Respond to Congress. Under each category are specific allegations followed by a factual basis for each assertion and the relevant statutory and regulatory citations. In some instances, the factual basis for an allegation is reiterated under more than one category because the facts support multiple allegations.

As requested in Deputy Assistant Attorney General John Keeney's letter of February 23, 1995 to me, I will provide to your office copies of the documents obtained to date in the investigation of Secretary Brown. These documents serve as the underlying support for the allegations set forth in the attached appendix. I expect to complete that process not later than March 10, 1995.

Some of the information obtained during our investigation was provided by confidential sources. These documents will be identified for your information. Because I pledged anonymity in consideration of this material, I am not prepared to reveal the identity of the sources at this time.

Please understand that the Committee will continue its investigation. As new information is developed, and adequately substantiated, we will provide it to you. Although I do not presently plan to hold hearings on this matter, I reserve the right to schedule hearings as circumstances warrant.

Please feel free to contact me if you have any questions. I appreciate your cooperation in this matter.

Sincerely,

WILLIAM F. CLINGER, Jr.,
Chairman.

Enclosure.

THE MORAL IMPLICATIONS OF ASSAULT ON AFFIRMATIVE ACTION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from New

York [Mr. OWENS] is recognized for 60 minutes as the designee of the minority leader.

Mr. OWENS. Mr. Speaker, all of the members of the Congressional Black Caucus are very concerned about the latest development with respect to an announcement that affirmative action and the elimination of all aspects of affirmative action has been placed on the agenda of the Republican Party.

That concern is expressed in many different ways. Several of my colleagues were here yesterday, and they talked about the details of affirmative action from a very legalistic perspective. Several of them are lawyers and they understand the legal wranglings related to affirmative action, some are very familiar with the history of affirmative action laws, and they gave an interesting and useful background on affirmative action.

They make their contribution in their way, and I am, on the other hand, concerned about affirmative action from another point of view, the moral implications of the assault on affirmative action that is being projected by the Republican Party, by their leadership.

I am concerned about the fact that when you couple an assault on affirmative action with the nastier parts of the Contract With America, and the Contract With America is just beginning to manifest itself in all of its barbarity, and I use that word deliberately, because the aspects of the Contract With America which are going forward now have to do with taking school lunch programs away, limiting school lunch programs, and denying the entitlement to a free lunch to children in need.

□ 2145

It has to do with rescissions which are taking place to wipe out the summer youth program, one of the most practical, successful and much needed programs that we have, employing teenagers, young people during the summer. There are all too few jobs already, but in the rescission process the committees have begun to eliminate, first they want to water down this year's program and cut that drastically and then they want to eliminate it completely and on it goes. There are education programs, child nutrition programs, programs that are very vital to poor people and certainly vital to the people in my district that are being cut.

And this is just the beginning. It is the beginning of a process of finding in the budget the money needed to give a tax cut which would go mostly to people who are very well off. It is a revision of a process of finding money in a budget in order to increase the defense budget, and if there is any part of the budget that does not need to be increased, certainly it is the defense budget. I think a recent poll shows that the American people in their great wisdom, the common sense of the American people is astonishing, they have in a poll indicated, a large percentage, I think about 60 percent indicated that things should stay the way they are. I do not want to quote the numbers but the overwhelming percentage of people who responded to the poll felt that things should at least stay the way they are or there should be a cut in defense.

The smallest group of people who responded, the smallest category of people who responded were people who wanted the defense budget increased. So the leadership of the majority party here is out of step with the common sense and the wisdom of the American people. But their being out of step and having the power, of course, they have the votes, does not mean they are going to cease the folly of increasing the defense budget at the expense of much needed programs like school lunch programs and summer youth employment programs.

So, I am very troubled by those cuts, and those cuts are not a game of Republican versus Democrats. The Republicans make one move, Democrats make another. These are cuts which go to the heart of what the Federal Government is all about in terms of providing a safety net for people who are most in need.

We are going to snatch away this safety net, we are going to kick people out into the streets. We are going to do some horrendous things in an attempt to balance the budget and in an attempt to find money for greater defense expenditures and for a tax cut for people who need a tax cut least of all.

Those are terrible prospects. But when you add to that an announcement that we are going to have an assault on affirmative action, we are going to make affirmative action a major issue in the coming 1996 election campaign, it means that the Contract With America authors and the people who signed the contract, the leadership promoting the contract, the people who are pushing these tremendous domestic cuts and the defense increase, they are not willing to take their package and go to the American people and say well, this is the way we see it, we agree, we disagree with the Democrats, we are in charge now, we are able to push our program through and, therefore, you pass judgment on it. I think it would be fair, although I profoundly disagree with the tremendous budget cuts and I disagree with the thrust and essence of the Contract With America, I still think it is a legitimate opposition program, and the opposition, I call them the elite, oppressive minority. The elite oppressive minority, should take their program to the people and have them pass judgment on it at the ballot box.

But when the elite oppressive minority decides that it wants an insurance marker, it wants to guarantee victory by moving into another arena, by attacking affirmative action, already we have an attack on immigrants, now we are going to add an attack on affirmative action, we are adding something to the brew, we are pouring poison into the situation, and saying that we are going to resort to exacerbating racial tensions and playing on racial fears in order to win the 1996 election. It is race-baiting, it is the oldest trick in the world. It is scapegoating and it is going to be, you know, Willy Horton to the maximum degree.

We are going to have a situation where people do not think about the budget cuts. They will not think about the merits of the Contract With America. It will just be gut reactions to a racist appeal. That is the way I see the announcement that affirmative action is now going to be a major target between now and 1996.

I hope we do not go that way. I hope that the leadership of the majority party here in the Congress will reconsider. I hope that we will go forward and have a contest in 1996 which will be on the merits of the programs offered by the Contract With America, authors and signers versus the Democratic Party, its President, the opposition here in Congress, and that we will have a decent election based on what is best for America and having people make that choice.

I do not think we will have a decent election. I think we will go down the road toward disaster if we wage a full-scale attack on affirmative action and we make the next election a racial referendum.

It is something that is very tempting. The easy road to power or the easy road to a consolidation of power is very tempting. The people who are the cause of the problems in Yugoslavia, the Serbians, the Serbians who put in motion ethnic cleansing, they wanted an easy road to power, the easiest road to power to exacerbate and excite people's racial fears and to pray on racial tensions.

The people in Rwanda, the Hutus, the Hutus sought an easy road to power by exacerbating the differences between the two tribes and the Tutsis. All that started as a matter of political expediency and they were using it to consolidate power. It got out of hand and it became such a frenzy until it spilled over into the streets and people went out and massacred people. It is estimated that 500,000 people were massacred. The Hutus massacred 500,000 Tutsis. It all started with some egomaniac in power, politicians in power who wanted to consolidate their power and made an appeal to the worst in people in order to do that.

You might say well, your exaggerating, that could never happen here. No, it could not happen here, overnight certainly, and it will not happen here between now and 1996. But whenever the easy route to power is taken, whenever you choose to play on racial fears, there is no way you can guarantee you are going to be able to turn it off when the time comes to turn it off.

The appeal to racial fears at this point in our history I think would be a disaster, and I want to take the time to make my appeal. You know, 100 seems to be a magic number, so if I have to come here to the floor 100 times to make 100 appeals for justice and 100 appeals for us to turn aside from this course of action, then I will do that because I think it is just that important, I think it is just that dangerous that the movement toward racism in our next election will set in motion something that would be disastrous for our country.

At a time of maximum prosperity in the richest nation that has ever existed in the history of the world, as we move into the 21st Century Americans must not yield to destruction of our society through the use of a barbaric political process. If we cannot do it any other way we certainly should not resort to playing on racial fears.

When you combine an assault on affirmative action with a Republican Contract With America, you create a kind of scorched Earth approach to the reordering of our society. Government by an elite minority, for the benefit of the elite minority, becomes the driving philosophy. We would have to call it the way we see it. I do not think it is exaggerating to say that we have a high-technology, a group that has a great knowledge of high-technology, and they will use electronic witchcraft to promote this oppressive elite minority. And now they want to spread, use that power to spread a racist, anti-immigrant brew throughout the minds of America, to poison the minds of the American voters.

The goal of this oppressive minority is to turn democracy on its head by stampeding the majority into voting against its own interests. Assaults on affirmative action, attacks on immigrants, these are actions which are the key elements of a stampeding kind of approach to politics. You do not want people to think, you would want them to feel a gut reaction and act as a result.

I think all poor and disadvantaged people whose needs inconvenience the needs, and the programs which serve poor and disadvantaged people inconvenience this oppressive elite minority, I think they become targets as a rule of wanting to get them out of the way, they become the targets of a rather ruthless set of actions.

The rescissions that have been announced, the bills that are moving through committees that block grant school lunch programs, and block grant child care programs, and block grant child nutrition programs, and WIC Programs—block grants become a kind of a swindle. We know from experience that when the Federal Government moves from entitlements at the Federal level to block grants at the local level it means that you are setting up a situation where the responsibility to provide for all of those in need will be taken away. You do not have to have an entitlement. If you have a block grant, the State will spend as much money as it has and when the money runs out, no matter how great the need is, it will not spend any more, and the people will have to do without, whether it is hungry children or people in need of child care or any other block-granted function.

So the block grant is not just an administrative move, it is not an administrative convenience. The block grant is a swindle that is perpetrated. You start the block grant with an amount of money at one level and you stop. And as the years go by, the block grant is cut. It automatically is cut because no money is added to it to keep up with inflation, and then, of course, sometimes the Committee on Appropriations actively begins a process of cutting. This is the history of block grants, so we have no reason to believe that block grants are not just another way to swindle people out of their entitlements. People who are in great need will be forced to go without as a result of the block grants being instituted.

The most specific and the most intensely pursued target of the oppressive elite minority are not just the poor and the disadvantaged. That in general is the way this is being approached, is that all poor and disadvantaged people become obstacles in the way. Their needs inconvenience this oppressive elite minority that is in charge. But among the poor and the disadvantaged, the minority that becomes the group that becomes the biggest target and the most intensely pursued target becomes the American of African descent. The Americans of African descent, the people who are the descendants of slaves, are in a very special category. It is not that we are the only beneficiaries of affirmative action; affirmative action, of course, benefits a lot of other people other than African-Americans. You know, women are the beneficiaries of affirmative action, Asians, Hispanics, a number of people benefit from affirmative action.

□ 2200

And they will be hurt in the process. But I think the drive and the focus and the intensity of the move is focused on African-Americans, and that is the way we see it, and that is why we are responding with such intensity.

It was the African-American population, the descendants of slaves, who fought the battles during the civil rights era during the fifties and sixties, and we fought for the Civil Rights Act, the Voting Rights Act. We fought for set-asides. We have pressured and pushed and gotten Presidents to issue Executive orders on affirmative action. We have been on the cutting edge, and we are the driving force, so any attempt to wage an assault on affirmative action is an assault on African-Americans, people of African descent. That is the primary thrust of what is happening here.

The Contract With America, which started by focusing on the destruction of all poor and working families, has now added an assault on affirmative action to its blitzkrieg. This new aggression makes it crystal clear the primary objective, the No. 1 target, of the oppressive elite minority are African-Americans, the descendants of slaves.

If you crush the African-Americans, if you crush the core of the resistance to the planned tyranny of the oppressive minority, this is the merciless logic, crush them first, this is the merciless logic of the opposition, and when the blacks are silenced, the other components will fall in line.

Some people will acquiesce after the blacks are silenced. They will acquiesce with a guilty conscience, but they will acquiesce. Many others will find it convenient and comfortable to be bought off or sell out. This is a scenario we see.

In the 1996 election, they will turn the election into a racist election. You stampede people into a situation where you consolidate power not on the basis of the programs that you have come forward with or your ideology or your achievements, but on the basis of deep-seated primitive racial fears.

While others stumble about in confusion, I think African-Americans clearly see what is happening. We see the enemy converging down upon us. Our intense reaction is based on the fact that we understand. We are not going to wait until it unfolds, and, you know, the details are in place. The very fact that at this particular moment you get an attack on affirmative action, a concerted assault, tells us a great deal, and we understand the implications.

The Contract With America is a contract against us to begin with, and then the assault on affirmative action continues that attack. The combination of budget cuts and assaults on affirmative action are definitely designed to bombard the African-American community until it becomes a kind of political Hiroshima, beat it to death. The goals of this oppressive minority, the goal of the oppressive elite minority which is in charge now, is to paralyze us and incapacitate us. They want to bring African-Americans to the point where they are incapable of ever counterattacking.

We cannot finish the fight that we have begun for full rights, and we cannot pursue the fight that we started for equal justice if we are the subject of this kind of ruthless attack in 1996. The goal of the ruthless elite, this oppressive minority, is to terminate our vanguard role, to destroy our leadership position in the struggle for justice and opportunity, which African-Americans have traditionally occupied.

The situation is that serious, and I would like to plead to the leadership of the Republican Party, the leadership in control of this House, to drop their agenda for the assault on affirmative action. I would like to plead for a different approach to winning the 1996 election in line with the merits of your case and not igniting a racial war that none of us will be able to control.

I would like to also, if you are determined to pursue affirmative action and the assault on affirmative action, I would like to also make an appeal for you to take a close look at why we need affirmative action. Affirmative action is a set of activities and programs which are designed to, in the present again, compensate for past wrongs. Affirmative actions are put forth by nations and groups and not by individuals.

Individuals who are living now may not have been guilty of the wrongs that led to the implementation of affirmative-action policies, just as the average German alive today is not in any way guilty for what Hitler did in World War II. Nevertheless, his nation is responsible, and his nation pays reparations to those people who were victims. The Nation is a continuing entity in the same way America, the United States of America, is a continuing entity, and we are responsible for the wrongs that were done to a group of people, the African-Americans who were brought here against their will and thrown into slavery.

I appeal to all concerned to take a hard look at slavery and not make us force the issue of an examination of slavery and what the implications are. We ought to be concerned about what we did to African-Americans. We ought to be concerned about the descendants of the victims of those crimes. We ought to be concerned about the fact that certain people are the descendants of the beneficiaries of the slave industry.

Slavery was an industry, and it went on for 200 years in America. And, therefore, I think, you know, great masses of people were wittingly and unwittingly beneficiaries of the economy that was generated by slavery. It made America richer faster. It built a lot of the institutions that we have, not just in the South. They hang slavery around the neck of the South and leave it there, but in New York City we had one of the largest slave ports in the country, I think the third largest place where you had slaves brought in in the early days of America, which was New York City. It was a port where slaves came in in large numbers, and New York City was built by slave labor.

Large numbers of slaves were imported into that area. So it is not just one area of the country. It is the whole country benefited from the slave industry.

I think it is fitting and proper to discuss slavery and the crimes involved in slavery as we look at affirmative action. Affirmative action is designed to correct past wrongs. Past wrongs, the most immediate past wrongs were 100 years after the Emancipation Proclamation and after the 13th amendment when we had a long history of discrimination, oppression, Klu Klux Klan, lynchings and all kind of things happened for a whole 100 years after slavery was ended.

But before that, you had 200 years of slavery.

When you put it all together, there is a need to do something, to atone for those sins and to compensate for those crimes.

Slavery in America lasted for more than 200 years. The slave industry, as I said before, encompassed more than half the world. It was not just America. It permeated the lives of the citizens of all of the nations of Europe, Africa, South America, North America. Slavery was a dominant driving force at the heart of the economy of the Western World for more than 100 years.

At that period of history the slave trade and slave labor was far more valuable than gold, diamonds, oil. Slave labor was a primary means for the accumulation of vast amounts of capital. Slavery was a monstrous, enduring, all-encompassing, overwhelming crime, and it occupies a unique place in human history. In duration, no other crime of that kind against a group has lasted for so long, more than 200 years, that America's slavery lasted.

In volume, the number of people involved and the amount of human misery generated and the amount of murder and other phenomena, torture, not other phenomenon matches this global crime.

Now, as I spoke here last week, I mentioned in the process that merely crossing the Atlantic, large numbers of slaves perished, and I started that as an introduction to my discussion of slavery as a background for justifying affirmative action.

Large numbers of people perished crossing the Atlantic. It was just a figure that I thought was interesting. I mentioned that 200 million people perished in the Atlantic slave crossings, because that is a figure I have heard repeatedly, given by certain historians and lecturers, and this aroused a lot of interest.

So I want to just take a moment before I continue to mention the fact that I had gotten a large amount of inquiries and a large amount of comments about the statement about the large number of people who had perished in the crossing, just crossing the Atlantic, a large amount of slaves.

There were people who called who merely wanted to use racial epithets and let off steam, and I want to tell them I do not appreciate that. I prefer for you to keep your dirt at home. We are not interested in your racial epithets.

You know, other people who called seriously wanted to know, you know, how such a large figure was generated. On some well-known TV show, they ridiculed the number and talked about it and generated a lot of interest, and I am glad that we started a dialog about slavery.

□ 2210

I am glad that the process has begun. The figure of 200 million certainly was questioned. I got serious people, some historians and experts who were upset about the fact that that figure was being used. But they also, some of those same experts who called and discussed it, said that they understood where I got the figure from, that there are a set of people, historians and experts on the subject, supposed to be experts, who take the position that the number was that high. In fact I really read it as recently as last June in a New York Times column, if you want to know where the figure came from.

It is not just from the column that I referred to, I had heard it many times from various people whom I heard talking. I did not know there was so much controversy. I did not even think about the fact that the figure seems to be a little large due to the fact that the capacity of the slave ships was limited and all the other things. I just have heard it mentioned so many times I recited it as a fact.

In this New York Times column that appeared on June 19, 1994, just this past summer, there was a statement which explains some of what has been happening. It let me know that among the people who are supposed to know the subject very well, there is a lot of disagreement.

I will read one quote from the article. It says,

> Estimates of how many blacks were lost at sea in roughly 400 years of the slave trade in the Americas vary widely. Some place the figure between 100 and 200 million; others say perhaps as many as 14 million. Whichever is true, many historians note that the number of enslaved Africans who died at sea was so great that sharks learned to follow the slave routes because they fed on the bodies thrown overboard.

That is an article in the New York Times, June 19, 1994, page 25, column 1. It is a longer article about the whole matter of slaves who perished at sea.

But among the historians, there is a great deal of controversy. I do not want to get into the middle of that. Some say one of reasons you have such wild estimates, differences are so great, is that some historians and experts are estimating the number of people who were lost due to slavery over a period of 400 years, not just the 200 years that the North American slave trade existed, but the period of slavery extended over 400 years. They are not looking at just slavery as it affected North America but also the slave ships that went to South America, the Caribbean, and all over. That is how they get some of the divergence in their totals, the differences in their totals.

They also say many experts refused to accept the records that are available and that the citations of some historians who have looked at the record that are available from the British and the French, Portuguese and the Spanish, that these records are a joke, that they are not reliable, that slavery has always been a kind of a bandit unground operation. Even during the period when it was regulated—most of the time it was not regulated—but during the period when nations attempted to regulate slavery, the records were ridiculous because they made rules and nobody checked or tried to enforce them.

The British, for instance, had a rule that any slave ship could only carry slaves in relation to their tonnage. It could only carry a certain number of slaves.

The size of ships determined the number of slaves it would carry. Therefore, the number of slave berths on the ship had to be in accordance with the tonnage of the ship. Immediately, it was noted that most of those same ships, they doubled the number of slaves that they carried regardless of the berths.They crowded, put two people into every berth for one. That kind of practice was a regular practice. They noted that when they recorded their cargoes, they just told the lies and they did not record their cargoes. Sometimes when they arrived in parts, what they recorded as the number of slaves on board had nothing to do with the real number, and some ships off loaded slaves before they got into ports where they kept records. Pirates took ships, in many cases, and did not obey any regulations, and they landed cargoes in various places. On and on it goes.

There were so many holes in the recordkeeping until these people have estimates that are far greater than most conservative estimates say, the records were ridiculous and could not be relied upon. That was the matter of legal slavery, there was illegal slavery.

After the practice was outlawed, there was no attempt to regulate it, it was just outlawed, it went on for many, many years, decades after it was outlawed. There were no regulations, and nobody attempted to abide by regulations. So you have wildly gyrating numbers.

I would say this is a debate that I will leave to the historians and experts on slavery. I did not mean to get off on that tangent. I think I will stop counting at 10 million or 20 million. You know, when you are dealing with human beings, human suffering, human murder, 10 million, 20 million, that is enough for me. I will not argue about the rest.

My example was that here was such a horrendous crime, starting with the slave trade and the delivery of the cargo from one continent to another, that we ought to take a close look at it as we deliberate about affirmative action.

It was one of the most cruel and inhuman tortures ever inflicted on mankind, this transport from Africa to New World in packed slave ships. It was only the beginning of the kind of torture and pain and suffering that the slaves endured. When they arrived at the markets in America, of course they were sold at auction, they were declared property of the slave owner, and once that happened, the daily lives of the slaves in America was as bad as any torture that the devil in hell could heap upon the backs of the worst sinners.

In their daily routine, slaves were forced to endure hunger, filth, rape, torture, murder. The life of a slave was often treated with less sanctity than the life of a horse. Day after day, week after week, month after month, year after year, more than 200 years in America, the crimes against slaves went on and on. It was a unique kind of human destruction. The object of the slave industry was not to incinerate or destroy the body of the slave, the object of America's slavery was to obliterate the soul of the slave. They wanted to keep the body, make it a more efficient beast of burden, but they wanted to destroy the human soul. Slave owners were seeking to breed, to condition, to train the world's most efficient beast of burden, enhance and build up the slave body but destroy and obliterate the slave's soul. This was the monstrous mission of the slave economy. It was illegal to teach a slave to read. Strict punishment was inflicted upon anyone who tried to teach a slave to read.

No sense of family was permitted to slaves. Slave children were regularly sold away from their mothers. Most slaves were never allowed to know who their fathers were. And on and on it goes.

I am not interested in giving a lecture on slavery. What my concern is is that as we look at affirmative action, the set-asides, all the kinds of things that we have done in the very recent past, in the last three decades, in the last three decades we have taken some steps to begin to deal with the impact, the fallout, the results; some of the results, that is, of what was done during that period.

□ 2220

This is only in the last three decades. So after three decades of taking steps which were positive steps, removing the barriers of segregation, establishing set-aside programs, establishing affirmative action programs, promoting diversity in the marketplace, we have done some wonderful things in the last three decades. But we had two centuries of the institution of slavery. After that 100 years, another century of oppression.

My point is, we as Americans, black and white, should take a closer look at the origin of the wrongs, the nature of the wrongs, the nature of the crime, the nature of the since that affirmative action is seeking to overcome. We should take a closer look and we should perhaps establish a commission to look at slavery and is implications, to look at maybe the need to go beyond affirmative action, do something different from affirmative action, maybe reparations. There is a bill that is introduced every year by my colleague, JOHN CONYERS, which deals with setting up a commission to study reparations, just to study the possibility of reparations for the descendants of slaves because the descendants of slaves are descendants of victims. Maybe we should take a close look at that. Maybe we should do that in some kind of reasonable way and not shout at each other about it. If we have an assault on affirmative action on the one hand and demagogues in the streets trying to arouse people's racial fears, then we will have to answer with other shouts and screams about the victimization and the cruelty, and I do not think it is the best way to approach this. Let us look at it in a reasonable atmosphere. Let us look at it with a commission. Let us take a look at whether affirmative action meets the need.

The President has said he wants to review affirmative action programs. My answer to that is, good, my response to that is, good, Mr. President. Review affirmative action programs, and you may find there is a need to strengthen many of them or you may find that many of them are not adequate to accomplish the purpose we want to accomplish and we want to do something stronger, something beyond the affirmative action.

I hope that we could enter that kind of dialog and could have a look at affirmative action in a positive way instead of the use of affirmative action as a weapon, the use of affirmative action as a short cut to power, the use of affirmative action to poison the atmosphere, the use of the assault on affirmative to whip people into a frenzy and to have American voters stampede on election day against their own interests.

Let me just take one more step that I am sure will not be a pleasant one for most of you. In examining slavery, you are going to find many, many very interesting things. Maybe we ought to have parents teach their kids about slavery and not have them learn about it in the streets because there are horrors that need to certainly be discussed in gentle tones. We are very concerned at this point, some people have made us very concerned about teenage pregnancy. Teenage pregnancy is always an evil in my opinion. It is a double evil because you destroy the life of a child who is the mother, not prepared for that kind of responsibility, and you certainly destroy the life or run the risk of destroying the life of the child who has to be raised by a child. No one would like to see teenage pregnancies reduced as much as I would or people who have large numbers of pregnant teenagers in their districts. No one would like to see welfare not be used as a tool to perpetuate teenage pregnancies. I think that there have been some abuses in this area. There is a need to take a hard look at it and to approach it in a reasonable manner and try to do the things that are positive to end large numbers of teenage pregnancies.

I think that the wrong way to approach it is to demonize teenage mothers and make them all monsters, teenage mothers suddenly become monsters and some people sort of imply that it is a threat to the moral fabric of America, these teenage pregnancies. I think that there was a time when teenage pregnancies were a threat to the moral fabric of America.

I am just going to close with an example of the kind of way in which teenage pregnancies were once a threat to the moral fabric of America. During slavery, teenage pregnancies were promoted by slave owners. During slavery, it benefited the industry to have teenagers become pregnant as fast as possible. During slavery, every girl who was a slave was expected to become a mother as fast as possible.

The horrors of this need to be considered. We had a threat to the moral fabric of the Nation. We should be thankful that we ended slavery. We should be thankful that there was an Abraham Lincoln. We should be thankful that there was a 13th amendment, the Emancipation Proclamation. We should be thankful that we, in 1995, are out of all of that grotesque, those grotesque practices, because they were horrendous and unbearable and it was a threat to the Nation.

But the people who are in control of the present society and who determine what happens to teenage mothers in many cases need to hear that they are in control. If teenagers had some hope, if teenage males as well as teenage females could look forward to a future where a job was possible, if they could look forward to going to college, those who have what it takes and those who qualify, that they are going to be able to get into college without having to have that determined about whether or not their parents have money, if they are going to be able to enjoy the benefits of the Pell grants which are being threatened, enjoy the benefits of certain other higher education programs that we have right now which are being threatened by the budget cuts, if they are going to be able to look forward to getting jobs when they come out of college because we have an economy which is doing the things necessary to keep the quality of life at a certain level and, therefore, you need people for that purpose, then we would have a different story in terms of teenage pregnancies, if young people could look forward to a better life.

There is a great concentration of teenage pregnancy among black youth, black teenagers. But I assure you, just like every other social ill in America, if we do not attend to it, if we do not provide some hope for black teenagers, the same kind of problem will drift into the white community and the other ethnic groups. It will result in the same, it will have the same result. No hope, an economy which offers no hope, a world which does not care about allowing people to develop to their fullest capacity, that will produce the same results in any ethnic group eventually.

But the present situation that we control, we are not providing any jobs. We have just taken steps to cut off teenager summer jobs. The Department of Labor has just transferred from the category of jobs for urban youth, they have transferred that money, large amounts, into a category for displaced workers. Displaced workers need it. We ought to have the guts to go at the appropriate amount for displaced workers and not take the money away from teenage youth in the cities to go to displaced workers or anybody else. All of these policies add up to a control of the economy, a control of the society which determines the lives of these teenagers.

In a less direct way, slave owners determined the lives of teenagers. Slave owners had direct control of the life of their slaves. They had direct control of the lives of the teenage girls. And here is how they behaved. And here is something we still, a crime we still have to atone for.

"When a girl became a woman"—I am reading from a book called Bullwhip Days, "Bullwhip Days, the Slaves Remember." It is an oral history and Bullwhip Days was compiled by the Federal Writers Project. During the depression, the WPA funded writers to do projects so the Federal Writers Project went out and they interviewed slaves. They determined that there were a limited number of slaves who still were alive. People who had been born slaves, lived as slaves. They went out and they interviewed them. They recorded the interviews. And then the results of those interviews, some of those, these are excerpts that were taken from those interviews of actual slaves. So I am going to read in the next few weeks from Bullwhip Days.

I am just going to read a small section of it today dealing with teenage pregnancy. "When a girl became a woman," this is the voice of a slave talking, "when a girl became a woman, she was required to go to a man and become a mother. The master would sometimes go and get a large hale, hardy Negro man from some other plantation to go to his Negro woman. He would ask the other master to let this man come over to his place to go to his slave girls. A slave girl was expected to have children as soon as she became a woman. Some of them had children at the age of 12 and 13 years old. Negro men six feet tall went to some of these children."

Slave masters were in control of the lives of the teenagers. Part of the industry was to make the teenagers pregnant.

□ 2230

That was from a slave named Hilliard Yellerday.

From the voice of Hannah Jones, Hannah Jones talks in very crude terms:

> Ben Oil had a hundred niggers. He just raised niggers, on his plantation. His brother-in-law, John Cross, raised niggers, too. He had a hundred and twenty-five niggers. He had a nigger farm. His older brother-in-law, old man English, had a hundred niggers. Dey all hes' had nothin' else but niggers.

That was what their business was, raising niggers. Hannah Jones.

Lewis Jones, the voice of Lewis Jones:

> My mammy am owned by Massa Fred Tate and so am my pappy and all my brudders and sisters. How many brudders and sisters? Lawd A'mighty! I'll tell you, 'cause you asks, and dis nigger gives de facts as 'tis. Let's see; I can't lect de number. My pappy have twelve chillun by my mammy and twelve by anudder nigger, name' Mary. You keep de cout. Den, dere am Lisa. Him have ten by her. And dere am Mandy. Him have eight by her. And dere am Betty. Him have six by her. Now, let me 'lect some more, I can't bring de names to mind, but dere am two or three others what have jus' one or two chillun by my pappy. Dat am right—close to fifty chillun, 'cause my mammy done told me.

"You've got to understand, the master told my pappy that he is the breeding nigger." He is the breeding nigger. Lewis Jones.

Finally, I close with John Smith, another slave. The voice of John Smith:

> My master owned three plantations and three hundred slaves. He started out wid two 'oman slaves and raised three hundred slaves. One wuz called "Short Peggy," and the udder wuz called "Long Peggy." Long Peggy had twenty-five chilluns. Long Peggy, a black 'oman, wuz boss ob de plantation. Master freed her after she had twenty-five

chilluns. Just think o'dat—raising three hundred slaves wid two 'omans. It sho' is de trufe, do.'

And that was the voice of John Smith.

Every time a teen-aged daughter or granddaughter or great granddaughter of these two women became of age, they had to become pregnant and have children as part of the slave industry.

I think pregnancy, teenage pregnancy under those conditions, was a threat to the moral fiber of America. If it had continued, of course, this Nation would have gone down, down, down, and not been able to supply the moral leadership for the free world.

We ended that kind of condition, but the results of it en masse, it was not just done in this one plantation. It was all across the South, breeding farms, and nobody ever talks about this.

It is just one aspect of the crime of slavery, one aspect that needs to be brought to light, and you can take a look at it. We may take a look at rape, we may take a look at torture, we may take a look at murder, we may take a look at all the efforts made to deny the slaves the right to learn to read and write even after they were freed. We may take a look at the Ku Klux Klan. I hope we do not have to take a look at all these things in defense of affirmative action, to prove how great the wrong was.

But if affirmative action and programs like affirmative action exist to correct past wrongs, then people need to understand how deep and how broad and how ugly those wrongs were as part of the discussion.

If we are going to have a discussion to eliminate and erase, if we are going to denigrate and castigate people who are the beneficiaries of affirmative action today, then take a look at their ancestors and what they had to go through. They are descendants of the victims, and there are other people who are descendants of the beneficiaries. People benefited. They got rich from slavery. The economy boomed in many places. The descendants of the beneficiaries now want to further punish and persecute the descendants of the victims.

This is an odd way, perhaps you think, to approach the discussion of affirmative action. But I think that it has to be done if we are not to commit a sin, an error, a set of crimes greater than even slavery was.

If we set off racial wars, if we play on racial fears, if we heighten the race fears in the country just to win the next election, we may set in motion something we can never stop.

In one election we had Willie Horton, now we are going to have an assault on affirmative action. If they keep working these appeals to race, where do we go from there?

We have seen what happened in Serbia when people played the race card. We have seen what happened in Rwanda when people, leaders, demagog played the race card. We have seen what happened in Germany when demagogues played the race card, the religion card, sent one group off after another in a scapegoating process.

That is the direction we are headed in, and some of us are alarmed, so alarmed that we come to you with these very unpleasant discussions. We need to take a look at what wrongs were committed and be chastened by that as we go forward.

Let's stop the people who want to destroy America with race-baiting. Let's stop the assault on affirmative action now.

OUR DEMOCRACY DOES NOT ADDRESS OUR MOST SENSITIVE AND IMPORTANT ISSUES

The SPEAKER pro tempore (Mr. Foley). Under a previous order of the House, the gentleman from Vermont [Mr. Sanders] is recognized for 60 minutes.

Mr. SANDERS. Mr. Speaker, I am delighted to be joined by Representative Maurice Hinchey of the 26th District of New York State.

Mr. Speaker, I think that one of the problems in our democracy is that we have a tendency not to address some of the most sensitive and important issues. We seem to get a little bit consumed with O.J. Simpson and soap operas and the baseball games and so forth. Yet the country faces enormous pressures, enormous problems, and we really do not get into them very often in any great depth.

Let me begin the discussion with Representative Hinchey by raising a question, if I might, and, that is, many people in this country are concerned today about the degree to which in fact this Nation remains a democracy in which ordinary people are able to control their lives and control the future, as opposed to big-money interests which have such a profound impact on the political and economic life of this country.

Representative Hinchey, do you have some thoughts on that?

Mr. HINCHEY. I think it is obvious that we still have a democracy electorally. Everyone is encouraged, they are allowed and encouraged to participate in the electoral process. But more and more we are seeing a decline of economic democracy, and I think that the concentration of wealth in the hands of fewer and fewer people is becoming more apparent almost yearly. I think that that has been particularly so over the course of the last 20 years. We have witnessed the decline of the middle class. We have witnessed a growing underclass in America, and obviously the concentration of wealth in the hands of fewer and fewer people.

Also, the concentration of the ability to distribute information, the ownership of the instruments of communication in our society has become more and more concentrated, particularly over the course of the last decade.

For example, we have had laws in this country up until fairly recently which said that if you owned a major newspaper in a particular city, you were not then to own a major television station, a radio station.

The idea behind that, of course, was to prevent single individuals or single corporate individuals from controlling the means of communications or the means of distribution of information in a particular media market.

That, unfortunately, was done away with in the decade of the 1980's. So what we are seeing now, and we have seen evidence of it here, I think, in this Congress, the relationship between some mass media moguls and the Speaker of this House currently, the concentration of the ability to distribute information in the hands of fewer and fewer people, and I think that is a means of eroding democratic principles and the idea of democracy.

Mr. SANDERS. Let me ask you, you have been here now for over 2 years, I have been here for over 4 years. Is it your impression that if you were to turn on the television tonight and watch CBS or NBC that you would get an accurate understanding of, in fact, what is taking place in the U.S. Congress?

Mr. HINCHEY. No, I don't think so. And I think that that is very unfortunate.

The abdication of responsibility by the major networks to provide real information and real news is evident certainly in the period of my adulthood. I can recall a time when news broadcasts back in the 1960's and even in the 1970's were real, material broadcasts.

The networks competed with each other in a way to try to distribute the best quality information through their news vehicles and a variety of important news items in their major newscasts, in the evening, and then late at night.

We have seen recently the transformation of media news into more of a tabloid kind of presentation of information, sort of titillating things, having to do with a variety of things that do not really relate to the most important aspects of what is occurring in our country, politically, culturally, and economically.

□ 2240

Mr. SANDERS. If I may. There are some writers who have pointed out that increasingly the media, the corporate media, is owned by fewer and fewer larger multinational corporations. It is of concern to me, for example, that NBC is owned by the General Electric Corp., a company which is a major manufacturer of military hardware, a company which has a very poor labor relations record, a company which for a period of time under the Reagan administration paid very, very, little in taxes. The Fox network is owned by the huge international media corporation run by Rupert Murdoch who runs and controls media in several countries around the world.

I think there is increasingly a danger not only in the United States but around the world that the people are getting their information from fewer and fewer people who will not tell people I think the truth, but will use their ownership of the media to protect their own private interests.

As the gentleman knows, there has been a lot of discussion about the November 8 election in which the Republican Party took control of both the House and the Senate, but what is not often I think pointed out enough is that in that election 62 percent of the American people did not bother to vote. And that all over this country we have tens and tens of millions of people, primarily working people and low-income people, who are feeling enormous pain these days; they often do not have health insurance, they are working for low wages, their kids are unable to afford to go to college. For the first time in the history of the modern United States their children will have a lower standard of living than they do, yet with all of these problems, people do not go out and vote, because, I think, to a large degree they have given up on the political system, they do not see politics and government as it is presently constituted as a mechanism for them to improve their lives. Is that something the gentleman observes in his district?

Mr. HINCHEY. I think so. I think it is something you can observe, a phenomena that is occurring across America in various places to one degree or another. More and more people are disaffected from the political process because they believe it is irrelevant to their lives, and there are few things that are happening, frankly, in this Chamber on a routine basis over the course of the last couple of months, there are few things that have happened here that are going to make in any way a material difference in the lives of any people.

The kind of activity that has been going on here is not going to create one job, is not going to raise the standard of living of one person, is not going to make a material difference in the lives of anybody in this country, and that I think is very unfortunate.

I think also the assault that we have seen on the public broadcasting system is also one that is alarming, because in the public broadcasting system we have the last vestiges of an attempt by the communications media to really communicate information that is relevant, that is important, that means something to people, and in a very serious way.

Mr. SANDERS. I found it interesting that in the last month, as you know, the Speaker of the House, who is leading the effort to defund public television and public radio, held a fund raiser for his own private television network, and do you recall how much it cost a plate to attend that fund-raiser?

Mr. HINCHEY. I am not really certain but I remember it was an extraordinary amount.

Mr. SANDERS. Fifty thousand dollars a plate. It must have been a really good dinner for $50,000, but this is money that came from obviously some of the very wealthiest people in America who wanted to give the Speaker and his friends the opportunity to communicate with America, with their particular point of view. But at the same time, by accepting that money, they are in the process of trying to shut down the public broadcasting system. I suspect that that is not just a coincidence.

Mr. HINCHEY. I do not think it is a coincidence at all. I think there is a very direct relationship to that and I suspect there is a very direct relationship between the book contract we have seen and the controversy around that with regard to the Speaker and his relationship to Mr. Murdoch. And it has been alleged there are some of these people who are interested, if they could manage to achieve it in some way, of taking over the public broadcasting system, because as I indicated and I think as anyone who has thought about it for 30 seconds realizes, the public broadcasting system is unfortunately, unfortunately because there ought to be many more aspects of this in American life, but unfortunately the last system that really attempts to communicate anything that is meaningful about what is happening in the American political process, and that is meaningful in an economic way to the lives of the vast majority of the American citizens.

Mr. SANDERS. When I turn on the television and I sometimes go surfing as they say with the flipper and I am amazed that you can have a cable network, not a network but cable system with 20, 30, 40 channels and how little there is of value on any of those stations. We get a great deal of violence, we get our share of soap operas, we get old movies, we get all kinds of stuff, but it is amazing to me how little of television today is actually reflecting the reality of the lives that tens and millions of working people are living. The truth of the matter is in our country today we just do not talk about the pain that so many people are going through, just trying to get through the day.

I think that one of the reasons that so few low-income people participate in the political process is that literally they almost do not have the energy to do it. If you go out and you work for 40 or 50 hours a week, if you have kids to take care of, if you have a car that you have got to keep running, if you have to worry about the electric bill and the telephone bill, you know, you do not have a lot of free time to participate in the political process.

And I think the more that people are hurting, the more they are obliged to pay attention to their own most basic needs and the needs of their families. Meanwhile, our wealthy friends can go flying around the country to go to meetings, they have large staffs of people.

I find it very interesting and very alarming, when you talk about the role of money in politics, just some of the events that have taken place in the last month or two. We talked for a moment about the fact that Mr. GINGRICH was able to have a fund-raiser for his television network for $50,000 a plate. Several weeks ago the Republican Party had a fund-raiser, they brought people together and in one night they raised $11 million for the Republican Party. Senator PHIL GRAMM who is one of the candidates seeking the Republican nomination for President held a fund-raiser, and on one night be raised over $3 million.

One does not have to be a genius or a great political scientist to figure out why people are throwing so much money at political candidates. They are not donating that money, they are investing that money. They feel that if they can elect certain people, they will benefit from the decisions that those people make once they are office. And I think we are beginning to see that in terms of the Contract With America that we are debating virtually every day on the floor of the House.

Representative HINCHEY, how do you see the relationship between big money and the Republican Contract With America?

Mr. HINCHEY. Well, I think the contract is first of all a very elitist document. It is elitist in the sense that whatever benefits are going to accrue as a result of the passage of these items that are contained in the contract, should any of them actually become law, will accrue to the richest 1 percent or the richest 5 percent perhaps of the American population.

It is also a very radical document. It is radical in the sense that it is a departure in many ways from the historical context of the American experience going back over the 206 years of our history, and particularly over the course of the last 50 years when there has been a concentration and an effort really by both parties, more or less, to try to achieve a greater sense of economic justice and economic prosperity for the vast majority of Americans. Going back to the Eisenhower administration, and even during the Nixon administration, this country continued to make economic progress, and the middle-class people had jobs and had economic opportunity.

□ 2250

That is not part of this agenda. In fact, over the course of recent history, we have seen a loss in the standard of living, a loss of economic opportunity, a loss of availability of jobs, particularly decent-paying jobs that have associated with them the kinds of benefits that we are accustomed to, medical benefits and pension benefits and things of that nature. We have seen a dramatic decline in those jobs.

Mr. SANDERS. If I may, I think the major point that we should be discussing on the floor of this House every single day and that should be discussed at length on the television and on the radio is why it is that over the last 20 years we have become a significantly poorer country, why the standard of living of working people has declined, why the gap between the rich and the poor has grown wider, why we have lost some 3 million manufacturing jobs as large corporations throw American workers out on the street and head to Mexico or to China, why it is that more and more people lack health insurance or are underinsured, why it is we have that. I wonder how many Americans know this. We have in the United States today by far the highest rate of childhood poverty in the industrialized world. Over 22 percent of the children in America are living in poverty. Many of our elderly people are living in poverty.

The new jobs that are being created are significantly lower-wage jobs than was the case even 15 years ago, especially for the young men and women who are just graduating college. Why is all of this happening?

Clearly those are the issues that we should be discussing, but unfortunately, we spend very little time doing that.

Mr. HINCHEY. I think obviously you are right. These are the issues that concern me, and these are the issues that we ought to be talking about here in this institution, in this Chamber, in this room. We ought to be talking about the economic conditions that are afflicting the American people more and more.

We have seen a stagnation in the standard of living of the vast majority of the American people, and even a decline in that standard of living substantially over the course of the last 20 years, going back to 1973, and especially since 1979, and I think that that is clearly associated with the decline in manufacturing jobs and other productive jobs, manufacturing, construction, the kinds of jobs that add value to material things and, therefore, create wealth. We have lost most of those jobs, many of those jobs, such that only 26 percent of the American work force today is engaged in those productive kinds of activities such as manufacturing, mining, and construction.

When you contrast that with those statistics for other countries, you find that of the major industrial powers, we now have among the smallest percentage of people working in those kinds of occupations, and that is why we have had the decline in wealth and a decline in the standard of living of the majority of Americans.

People are insecure. They do not know if their job is going to be there tomorrow or next week or next month. They worry deeply about the availability of meaningful employment for their children. They worry substantially about whether or not their children are going to enjoy the same standard of living that they have enjoyed, and they fear, in fact, their children's standard of living is going to be less than theirs. That is a dramatic departure from the experience of this country, particularly over the last 50 years since the Second World War.

Mr. SANDERS. In a few moments, I hope we can get to the issue of trade and our current trade policy, because I think that relates very much to the circumstances you are talking about.

Let us get back to the Contract With America. It seems to me that the essence of what the Contract With America is about are several things: No, 1, our Republicans want to provide very, very substantial tax breaks, primarily for the wealthiest people in this country. People earning over $100,000 a year would get at least half of the tax breaks, and as I understand it, people earning $200,000 a year or more would get about one-third of the tax breaks. These are the people whose incomes have soared during the last decade, who, in many instances, are already not paying their fair share of tax, but these are the people who are targeted for the major tax breaks under the Republicans.

The second point that I think we should consider in the Republican Contract With America is that these folks who are talking about the need to move toward a balanced budget, balanced budget in 7 years, first, they are talking about huge tax breaks for the wealthy and, second of all, they are talking about a major increase in military spending, tax breaks for the rich and increase in military spending.

Last week we had a rather vigorous debate here right on the floor of the House when our Republican friends suggested they wanted to bring back the star wars program; again, no one is clear about how much more money they want for it. We were not specific about the dollars. I think the estimate is another $30 or $40 billion for star wars alone, let alone for some other military programs.

Mr. HINCHEY. It sounds eerily familiar, tax cuts for the very rich, substantial increases in military spending, balanced budget amendment.

In the words of the great American philosopher, Yogi Berra, "Deja vu all over again." It is 1981 all over again. It is the same prescription that brought us record budget deficits, the same prescription that brought us record debt, the budget deficit, and debt that we are trying to dig our way out of.

The irony is, the inexplicable irony is that the same people in this House who pushed through those budgets in the 1980's that brought us that incredible debt fueled by those budget deficits year after year after year are now going back to try to bring us the same kind of disastrous economic policies now in the last few years of the decade of the 1990's, the same kind of prescription that is going to bring us the same disastrous consequences.

Mr. SANDERS. If the Contract With America is going to provide tremendous tax breaks for the wealthy, and if it is going to provide enormous profits for military contractors and the others who are involved in star wars, and if we are to move toward a balanced budget within 7 years, clearly it does not take a Ph.D. in economics to figure out something has got to give. You cannot move toward a balanced budget, give tax breaks to the rich, expand military spending without making savage cutbacks in a wide variety of areas.

And in the last week or two, we have finally begun to get some of the specifics as to where those rather savage cuts are going to come.

Do you want to say a word on that?

Mr. HINCHEY. Yes, I would.

But first let me remind ourselves and anybody who might be watching this that during the debate on the balanced budget amendment in this House, we attempted to pass an amendment that would exclude Social Security which would take Social Security off the table, and an attempt to balance the budget so Social Security would not be in jeopardy. That amendment failed here. The majority party in this House defeated that amendment, so we can sense from that where lies one of the sources from which they intend to derive the revenue to balance this budget after the year 2002.

Also, Medicare, the Medicare Program which is a health care program for our elderly citizens, the majority leader in the other House of this institution, when he was a Member of the House of Representatives, voted against Medicare. It is no surprise why he is against national health insurance and why he is for the balanced budget amendment today. They are going to go after Social Security. They are going to go after Medicare.

Already we have seen them going after programs that affect the most vulnerable Americans, children, for example. They are cutting away at the school lunch program. There is going to be less availability of school lunches. They want to put it in a block grant, reduce the amount of money that is available for it, and send it down to the States. We know the consequences of that.

The school lunch program is going to be less effective. Fewer children are going to benefit from it. Their learning is going to decline as a result of that. Their health is going to decline as a result of that, and we are going to have a weaker America.

So those are the programs they are after, the WIC program, the food stamp program. That is where they are going to get the money for their tax cut for their wealthy friends.

Mr. SANDERS. That is right. I think we should be very clear about what is going on.

In this instance, we are not being rhetorical or cute by saying that literally we are talking about food coming out of the mouths of hungry children in order to provide tax breaks for some of the wealthiest people in this country, and I think that is, you know, there has been a whole lot of discussion about family values. I do not think that cutting back on school breakfast programs, school lunch programs, and in my State of Vermont, the WIC Program, which is the women and infants and children program by which low-income pregnant women are provided good nutrition and little kids are provided good nutrition, to eliminate that program and put it into the block grants is, to me, just incomprehensible.

Furthermore, I think, as you know, and I know this affects your district which also has some cold winter as my district does, as the State of Vermont does, last week one of the subcommittees on Appropriations proposed, voted to, to eliminate the LIHEAP program, which is a program that provides fuel assistance for low income people in our districts where the weather gets 20 below zero. This is a serious matter. It is a question of whether people stay alive or not.

Many of the recipients of that program in the State of Vermont are elderly people. So once more, tax breaks for the rich, increases in military spending, and star wars, and cutbacks for the most vulnerable people in our Nation.

□ 2300

Mr. HINCHEY. You are precisely correct. The HEAP, the Home Energy Assistance Program, is a program that assists primarily elderly people. It helps them heat their homes in the wintertime. When you live at the latitude that we do in New York and Vermont, we know the winters get quite cold.

Elderly people are particularly susceptible to hypothermia. It does not have to stay too cold for too long for the life of an elderly person to become in jeopardy and for them to lose that life. So this HEAP program is literally, for people like that a matter of life and death.

In another sense, though, the hypocrisy of the agenda of the majority party in this House is becoming more and more apparent. Their attack on the WIC program, which the gentleman mentioned, is a clear indication of that.

The WIC Program is one of the most effective and efficient programs that we have, domestic programs that we have in the country. It has been shown statistically that for every dollar spent on the WIC Program we spend as a Nation, the American taxpayer saves $4. How does that happen? It happens in this way: The WIC Program provides nutrition for pregnant women, lactating mothers, and small infants. If a pregnant woman gets proper nutrition during her pregnancy, she is much less likely to give birth to a low-birthweight baby or a child that encounters other postnatal problems. When a child is born of low birthweight or has some other postnatal problem, all of the resources of the medical institution wherein that child is born are brought to bear to save that child's life. That requires an expenditure of ten's of thousands, if not, in some instances, hundreds of thousands of dollars. How much wiser to spend a few dollars to insure good nutrition for pregnant women in this country.

This attack on WIC, mind you, is coming from people who profess to be pro-life, who profess themselves, sanctimoniously, as the guardians of the infants and small children. While they say that out of one side of their mouth, they are attacking children, pregnant women, and the most vulnerable, and people least able fend for themselves in this society, children, elderly people, pregnant women. Those are the ones they are going after to get the money for their tax cuts for their wealthy friends.

Mr. SANDERS. I think the gentleman is exactly right. He has characterized the WIC program exactly right. It is not only the right thing to do, it is the cost-effective, sensible thing to do. How much more sensible it is to keep low-income pregnant women healthy so they can give birth to healthy babies rather than have them give birth to low-birthweight babies and spending thousands of dollars to keep those babies alive. The WIC program has been shown time and time again to be a very successful and fully effective program.

I must say that to understand fully what goes on in this Congress, we should examine the decency, the propriety of people who contribute or accept $50,000-a-plate contributions and then go out and cut back on programs for low-income pregnant women and hungry kids.

We have talked about the impact of the Contract With America on the elderly, on children. But there are other constituencies who are also going to be affected by the Contract With America.

One of the areas the contract is pointing its ugly finger at right now is at the young college students in America. Time and time again we hear on the floor of this House, we hear the leading business people of this country, we hear the President, we hear anybody who knows anything about what is going on in the international global economy, make the sensible and correct point that this country will not survive economically unless we have a well-educated workforce.

The competition in Europe, in Asia, against as is very, very powerful. We need to have a well-educated workforce. Everybody agrees with that.

Second of all, what everybody agrees with is that if young people are not able to get a college education, if they simply go out into the workforce with a high school degree, it is increasingly difficult to make a living.

The new jobs that are being created for high school graduates are paying significantly lower wages than they paid 15 years ago.

So, given that reality that we need a well-educated work force, that the jobs out there for high school graduates are low-paying, what sense in the world does it make to be cutting back drastically on the student grants and loan programs that enable millions of middle-income and working-class and low-income families to be able to afford to send their kids to college?

We are talking about cutbacks in the Pell Grant program, cutbacks in the Stafford Loan Program, cutbacks in the work-study program, all of which will make it extremely hard for young people to go to college because the cost of higher education today is very high.

Imagine how difficult it would be if we did not have the Federal assistance which currently exists. It doesn't make a whole lot of sense to me.

Mr. HINCHEY. It does not make any sense. I cannot help but wonder what has happened to the great Republican Party, a party which had care and concern for the middle-class people of this country, particularly. Even Richard Nixon, when he was President, commented on the school lunch program, and he did so by saying that he knew a child would be able to learn much better if he has good nutrition. That child will be stronger, be able to accept knowledge easier, to learn, he will be able to be a better participant in school. President Nixon knew the value of the school lunch program.

In my State, Nelson Rockefeller was responsible for the establishment of the State University of New York. He took a system of scattered and disparate normal schools and small colleges and brought them together in the most magnificent way and created one of the best State university systems in the Nation and one of the best public systems of higher education anywhere in the world. This was done by a great Republican Governor.

Now we found Republicans in this House, the majority party in this House, attacking public education in the way that the gentleman described, hacking away at Pell grants, hacking away at new student loans, depriving more and more people of the opportunity to get a good education.

Back in my State, the new administration in New York wants to raise the tuition at the State university system by over $1,000, $1,300. It is going to price out of the opportunity for higher education many middle-income people, concentrated more and more in the hands of wealthier and wealthier people. That is not what Nelson Rockefeller wanted that State university to be. He wanted it there for all people regardless of their income. And this new Republican Party inexplicably has gone far to the right and is destroying some of the basic elements of this society which were created by good, solid, responsible Republicans in prior times.

Mr. SANDERS. It seems to me to be very sad to be contemplating the likelihood, the reality that if these trends continue, that higher education in America, which at good schools today costs $25,000, $28,000 a year, that if the Federal Government is not helping out middle class, the working-class families, higher education will simply be an avenue open only to the very wealthy. That seems to me to be a terrible thing not only for millions of families but a terrible thing for this country as well.

Let me shift for a moment. We have talked about the impact of the Contract With America on those families hoping to send their kids to college. What about veterans? I find it interesting and I just this morning actually met with Secretary of Veterans Affairs Jesse Brown, who I think is doing an excellent job in advocating for the rights of veterans, who is deeply concerned about the rescission, the cutback of money already appropriated, which took place just last week, of some $200 million for veterans already.

□ 2310

He and I think many of us share the concern that next year under the Republican proposals there will be major cutbacks in veterans programs, including programs and money needed by the VA hospitals. It seems to me that we can disagree about the wisdom of this or that war. But if you are going to ask a young man or woman to go to war, to put his or her life on the line, you are signing, talk about a contract, there is not a deeper contract than you can sign. When the government declares a war and says, go out, you have made a contract in perpetuity, I think, with that individual. They cannot do more than put their life on the line. And it seems to me in absolute disgrace that anyone would contemplate, when the elderly now in our VA hospitals who fought in World War II, who fought in Korea, who need the help, to say to those people, we have a real deficit problem here, guys, we are going to have to cut back on your needs. Thanks for putting your life on the line. But now you are somewhat disposable. That seems to me to be very wrong.

Mr. HINCHEY. I think absolutely so. There is no class of Americans to whom we owe a greater debt of gratitude than those who served in the military, particularly during times of conflict, during times of war, when they put themselves in jeopardy, put their lives on the line, were certainly in danger of that at any moment. We need to live up to our responsibilities to our veterans.

The majority party in this House has just slashed away at veterans benefits. Outreach programs for veterans at veterans hospitals are going to be virtually eliminated if we pass what they have reported out of the committee so far. That is just one example of the way that they are striking away at veterans benefits.

But the irony of it is that while they attack the veterans and the benefits and the responsibilities and obligations that we as a country owe to veterans, they wrap themselves in the flag by talking about a constitutional amendment against burning the flag. There was a great British parliamentarian who once observed that patriotism is the last refuge of a scoundrel. I have a friend who says that patriotism is often the first refuge of a scoundrel.

I think that we may be seeing a little bit of that here in this proposed flag amendment, because I think that they are using this proposed flag amendment to hide their real agenda, which is to slash away at veterans benefits, to deprive veterans of what we owe them really for what they have done for this country, and take that money, again, to use it for tax cuts for the wealthiest Americans. It is a scandalous part, only one of many scandalous parts of this so-called Contract on America.

Mr. SANDERS. You and I are members of the Progressive Caucus. The Progressive Caucus has brought forth a number of alternative ideas to the contract, and maybe it would be useful if we talked about some of the ideas and some of the legislation that we are working on.

Recently, as you know, the president has come out to increase the minimum wage. You and I have supported legislation for several years which would raise the minimum wage to an even higher level. I introduced legislation 4 years ago which would raise the minimum wage to $5.50 an hour. It seems to me that at a time when the purchasing power of the minimum wage today is 26 percent less than it was in 1970, in other words, our low-wage workers are significantly poorer and worse off than they were 25 years ago, that the time is long overdue, that we should be saying that if you are going to work 40 hours a week in the United States of America, you should not be living in poverty.

Does that not make sense to you?

Mr. HINCHEY. It makes a great deal of sense to me. It makes it even more difficult for me to understand how the majority leader in this House can say that he would like to see the minimum wage done away with completely. If he had anything to say about it, that is what would happen. He also said that he would fight with every fiber of his being an increase in the minimum wage.

Well, look what has happened to the minimum wage. The president has proposed a modest increase from where it is now, at $4.25 an hour, to $5.15 an hour over the course of 2 years.

If the minimum wage had kept pace with the cost of living in our country over the course of the last several years, it would at this moment as we stand here today, the last day of February 1995, the minimum wage would be more than $6 an hour. So even what the president is proposing will not take us to where the minimum wage ought to be at this moment, let alone where it ought to be 2 years from now.

The minimum wage is a basic standard from which we attempt to elevate the standard of living of all Americans by placing a floor under the salary that should be paid for someone's labor. What more can a person give outside of family experience to someone else but their labor? They ought to be compensated for that appropriately. And in this, the wealthiest nation in the world, with the biggest economy in the world, we ought to be able to pay our workers at a rate that will afford them a decent standard of living.

Mr. SANDERS. I think we should point out that one of the additional reasons why we need to raise the minimum wage is that many, many of the new jobs that are currently being created are, in fact, low-wage jobs. They are often part-time jobs. They are jobs without any health care or any other benefits. And it seems to me that if anyone is going to talk about welfare reform or anything else, we must make sure that in this country that those people who are working for a living have the right to live in dignity, have the right after 40 hours of work to keep their heads above poverty.

I think you and I are going to go forward as vigorously as we can to demand hearings here in the House and in the Senate and pass the minimum wage. The President's bill does not go as far as I would like to see it go, but it is a step forward which would impact not only on those workers making $4.25, but obviously those workers making $4.50, $5 or $5.20 an hour as well.

Mr. HINCHEY. And workers who are making higher levels than that because it will have a tendency to push up the wages of others as well. Because as we discussed earlier in our colloquy here this evening, we have seen the standard of living of Americans not keep pace with the cost of living or advance ahead of the cost of living but actually decline so that people are living today in a more difficult circumstance. The vast majority of Americans are having a tougher time making ends meet, paying the electric bill, as you said before, paying the rent, paying the mortgage, worrying about how they are going to put their kids through school. It is a more difficult proposition today as a result of the declining standard of living and one of the aspects of that is the failure of the minimum wage to keep pace with the cost of living.

Mr. SANDERS. What particularly outrages me is that there is no country in the world where the gap not only between the rich and the poor but between the chief executive officers of the large corporations and their workers is as wide as it is in the United States. The last figure that I saw was that at a time when the CEO's are seeing tremendous increases in their incomes and workers incomes are declining, the gap is now 150 to one. I do not think, you used the words economic democracy a moment ago, I do not think that is what this country is supposed to be. It is not supposed to be an oligarchy. It is supposed to be a country in which we have a solid middle class where people who are working for a living are able to earn enough money to pay the bills and to raise their kids with a little bit of dignity.

I think we should also point out, because the media does not do this terribly often, that one of the reasons that European and Scandinavian companies are coming to the United States today is that they find in America today the opportunity, unbelievable as it may sound, to hire cheap labor. For the same reason that American companies go to Mexico and China, some of the European companies are coming to America where you can get skilled, hard-working people who will work for 7 bucks an hour, $8 an hour, with very limited benefits. And clearly in Europe, workers earn a lot more than that.

I think another point that I want to make, there was an article in, I think it was Newsweek recently, maybe it was Time, where they talked about the stress that the average American family is under. People are working longer and longer hours, having less vacation time. I think that is an issue that we should address as well.

Mr. HINCHEY. Well, I think it is very clear that the working conditions here in the United States have deteriorated. The quality of the jobs is not keeping pace with what it ought to be. The level of benefits are far lower than they are in European countries where in many European countries it is customary for a person working in the first year to get 4 weeks vacation and some countries, Australia, it is even 6 weeks vacation. But here in the United States it is, you are lucky to get 2. And more importantly, more and more American companies are moving toward a situation where they hire part-time employees so that they do not have to provide benefits such as pension systems, things of that nature, health insurance. And that is one of the reasons why we have a larger growing number of people in the United States who are without health insurance. And that is one of the principal driving forces, forcing up the cost of health care for all the rest of us.

It is a major part of our economic problems over the course of the next several years. We need to get a handle, get control of our health care costs. And we cannot do it, because one of the reasons we cannot do it is because so many more people are without health insurance. And when they get health care they get it under the most expensive circumstances.

So these are all part of pieces, part of a larger entity that has to do with what we ought to be doing in this House, and that is working to improve the standard of living of the majority of American people, making education more accessible to middle class working people, making good jobs available to middle class working people, jobs that pay a decent salary and provide health insurance and other reasonable benefits, the kinds of things that we have taken for granted in the past and which are being taken away from us insidiously as a result of the failure of this Congress to operate the way that it ought to.

□ 2320

If it was operating in the best interests of the American people, that is what it would be doing. It would be developing programs to create jobs and improve the standard of living, and making sure that when people work, they are compensated appropriately for that work and included in that compensation is basic health insurance and other kinds of fundamental benefits.

Mr. SANDERS. Maybe when we talk about the decline in the standard of living of working people and the shrinking of the middle class, I think it ties, and we might want to end our discussion on this note, it ties into the whole issue of trade which has gotten a lot of attention recently in terms of the passage of NAFTA and GATT.

NAFTA was passed some 14 or 15 months ago. We were told that with the passage of NAFTA, many new jobs would be created here in the United States. It would improve the Mexican economy. Fifteen months have come and gone.

What is your impression about the impact of NAFTA?

Mr. HINCHEY. I think we could spend, I tell the gentleman from Vermont [Mr. SANDERS], more than an hour on that discussion alone here this evening.

But to make it brief, the effects have been frankly what you and I and others who voted against NAFTA predicted they would be. We said at that time that the peso was overvalued, that the Mexican economy was riddled with corruption and that if we were to pass NAFTA, it was really not a trade agreement but an investment agreement, it would siphon off investment capital from the United States down to Mexico and there would be a net loss of jobs from this country, and that is precisely what we have seen.

We have seen a loss of 10,000 jobs, a net loss of 10,000 jobs from the United States to Mexico as a direct result of NAFTA. And we have seen the collapse of the Mexican economy.

Our trade policies since 1979 and perhaps as early as 1973 have been a disaster for this country. We have taken it on the chin. We have been a sap for other countries. We have a built-in trade deficit now which is of historic proportions. That trade deficit means that we are subsidizing good jobs in other countries while we lose those good jobs here in America.

We need to reverse our trade policies and focus on our own domestic economic needs. Trade is important only to the extent that it provides value to the United States, that it helps us improve the standard of living of the American people, that it provides more jobs for Americans.

Our trade policies have taken us precisely 180 degrees in the opposite direction. That has been going on now for nearly 20 years. No wonder we are suffering the economic circumstances we are. That is a major part of our problem.

Mr. SANDERS. I agree. And there is no question that with a $150 plus billion trade deficit, what that translates into is millions of decent manufacturing jobs that should exist in this country but that do not.

When we talk about the global economy, I think what we have got to deal with is the fact that major corporations would much prefer to go to China where they could pay workers 20 cents an hour in an undemocratic society where workers cannot form free unions, where the environmental conditions or the workers' conditions are very, very bad.

Obviously what has happened is companies have invested tens of billions of dollars in China. They have invested huge amounts of money in Mexico, in Malaysia, in countries where desperate people are forced to work for starvation wages, and at the same time they have thrown American workers out on the street.

We must demand and create a process by which large American corporations reinvest in America and put our people back to work at good wages. Clearly as you indicate, current trade policy is doing exactly the opposite.

Mr. HINCHEY. I want to thank you very much for giving me the opportunity to join you in this discussion this evening and for focusing the discussion exactly where it ought to be focused, on the economic issues, on ways that we can take in this Congress to improve the standard of living of American people.

There is nothing more important for me. I know that is true with you. We have got to make sure as best we can that it becomes equally important for a larger number of people who serve in this Congress.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. HUNTER (at the request of Mr. ARMEY), for today and on Wednesday, March 1, 1995, on account of family medical reasons.

Mr. WARD (at the request of Mr. GEPHARDT), for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. NADLER) to revise and extend their remarks and include extraneous material:)

Ms. KAPTUR, for 5 minutes, today.
Mr. HOYER, for 5 minutes, today.
Mr. TOWNS, for 5 minutes, today.
Mr. BROWDER, for 5 minutes, today.
Mr. FOGLIETTA, for 5 minutes, today.
Mr. MFUME, for 5 minutes, today.
Mr. NADLER, for 5 minutes, today.

(The following Members (at the request of Mr. NORWOOD) to revise and extend their remarks and include extraneous material:)

Mr. CUNNINGHAM, for 5 minutes, today.
Mr. MCINNIS, for 5 minutes, today.
Mr. SMITH of Michigan, for 5 minutes, on March 1.
Mr. FRANKS of Connecticut, for 5 minutes, today.
Mr. SHAYS, for 5 minutes, on March 1.
Mr. KINGSTON, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(Mr. BROWN of California and to insert extraneous material in the RECORD in the Committee of the Whole on today, on H.R. 1022.)

(The following Members (at the request of Mr. NADLER) and to include extraneous matter:)

Mr. FRANK of Massachusetts.
Mr. MFUME.
Mr. FROST.
Mr. LAFALCE.
Mr. HASTINGS of Florida.
Mr. FOGLIETTA.
Mr. DIXON.
Mr. HOYER.

(The following Members (at the request of Mr. NORWOOD) and to include extraneous matter:)

Mr. MARTINI.
Mr. GOODLING.
Mrs. MORELLA
Mr. PORTMAN.

ADJOURNMENT

Mr. HINCHEY. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 25 minutes p.m.), under its previous order, the House adjourned until tomorrow, Wednesday, March 1, 1995, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

418. A letter from the Administrator, Panama Canal Commission, transmitting a draft of proposed legislation entitled, "Panama Canal Commission Authorization Act, Fiscal Year 1996", pursuant to 31 U.S.C. 1110; to the Committee on National Security.

419. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report involving U.S. exports to a variety of overseas entities, pursuant to 12 U.S.C. 635(b)(3)(i); to the Committee on Banking and Financial Services.

420. A letter from the Director, Defense Security Assistance Agency, transmitting the price and availability report for the quarter ending December 31, 1994, pursuant to 22 U.S.C. 2768; to the Committee on International Relations.

421. A letter from the Assistant Secretary of State for Legislative Affairs, transmitting copies of original reports of political contributions by nominees, Ambassadors-designate and members of their families, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on International Relations.

422. A letter from the Chairman, Board for International Broadcasting, transmitting the Board's annual report on its activities, as well as its review and evaluation of the operation of Radio Free Europe/Radio Liberty for the period October 1, 1993, through September 30, 1994, pursuant to 22 U.S.C. 2873(a)(9); to the Committee on International Relations.

423. A letter from the Auditor, District of Columbia, transmitting a copy of report entitled, "Operational Review of the Escheated Estate Fund—How It Does Not Serve The Poor," pursuant to D.C. Code, section 47-117(d); to the Committee on Government Reform and Oversight.

424. A letter from the Comptroller General of the United States, General Accounting Office, transmitting the list of all reports issued or released in January 1995, pursuant to 31 U.S.C. 719(h); to the Committee on Government Reform and Oversight.

425. A letter from the Chair, Federal Labor Relations Authority, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(e); to the Committee on Government Reform and Oversight.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. YOUNG of Alaska: Committee on Resources. H.R. 517. A bill to amend title V of Public Law 96-550, designating the Chaco Culture Archaeological Protection Sites, and for other purposes (Rept. 104-56). Referred to the Committee of the Whole House on the State of the Union.

Mr. YOUNG of Alaska: Committee on Resources. H.R. 536. A bill to extend indefinitely the authority of the Secretary of the Interior to collect a commercial operation fee in the Delaware Water Gap National Recreation Area, and for other purposes; with amendments (Rept. 104-57). Referred to the Committee of the Whole House on the State of the Union.

Mr. YOUNG of Alaska: Committee on Resources. H.R. 606. A bill to amend the Dayton Aviation Heritage Preservation Act of 1992, and for other purposes (Rept. 104-58). Referred to the Committee of the Whole House on the State of the Union.

Mr. YOUNG of Alaska: Committee on Resources. H.R. 694. A bill entitled the "Minor Boundary Adjustments and Miscellaneous Park Amendment Act of 1995"; with an amendment (Rept. 104-59). Referred to the Committee of the Whole House on the State of the Union.

Mr. YOUNG of Alaska: Committee on Resources. H.R. 562. A bill to modify the boundaries of Walnut Canyon National Monument in the State of Arizona; with an amendment (Rept. 104-60). Referred to the Committee of the Whole House on the State of the Union.

Mrs. WALDHOLTZ: Committee on Rules. House Resolution 101. Resolution providing for the consideration of the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions (Rept. 104-61). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. HERGER:

H.R. 1070. A bill to designate the reservoir created by Trinity Dam in the Central Valley project, CA, as "Trinity Lake"; to the Committee on Resources.

By Mr. BARRETT of Nebraska:

H.R. 1071. A bill to direct the Secretary of the Army to deposit $1,400,000 into the judgment fund of the Department of Justice to cover those costs of the project for flood control, Lost Creek, Columbus, NE, which are in excess of the $4,000,000 limit on projects carried out under section 205 of the Flood Control Act of 1948; to the Committee on Transportation and Infrastructure.

By Mr. FRANKS of Connecticut:

H.R. 1072. A bill to amend the Internal Revenue Code of 1986 to provide tax incentives to encourage corporations to provide financing and management support services to small business concerns operating in urban areas designated as enterprise zones; to the Committee on Ways and Means.

By Ms. FURSE (for herself, Mr. GEJDENSON, Mr. NETHERCUTT, and Mr. LIPINSKI):

H.R. 1073. A bill to amend title XVIII of the Social Security Act to provide for coverage of diabetes outpatient self-management training services under part B of the Medicare Program; to the Committee on Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. FURSE (for herself, Mr. GEJDENSON, Mr. NETHERCUTT, and Mr. LIPINSKI):

H.R. 1074. A bill to amend title XVIII of the Social Security Act to provide for uniform coverage under part B of the Medicare Program of blood-testing strips for individuals with diabetes; to the Committee on Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HYDE (for himself and Mr. BLILEY):

H.R. 1075. A bill to establish legal standards and procedures for product liability litigation, and for other purposes; to the Committee on the Judiciary, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GOODLING (for himself, Mr. UNDERWOOD, Mr. MCDADE, Mr. GENE GREEN of Texas, Mr. FATTAH, Mr. GRAHAM, Mr. SHUSTER, Mr. PAYNE of Virginia, Mrs. MORELLA, Mr. BARCIA, Mr. FOX, Mr. ROMERO-BARCELO, Mr. BORSKI, and Mr. FALEOMAVAEGA):

H.R. 1076. A bill to amend the Internal Revenue Code of 1986 to allow the installment method to be used to report income from the sale of certain residential real property, and for other purposes; to the Committee on Ways and Means.

By Mr. HANSEN (for himself, Mr. YOUNG of Alaska, Mr. REGULA, Mr. HEFLEY, Mr. TORKILDSEN, Mr. COOLEY, Mrs. SMITH of Washington, and Mr. SHADEGG):

H.R. 1077. A bill to authorize the Bureau of Land Management; to the Committee on Resources.

By Mr. LAFALCE:

H.R. 1078. A bill to amend title XVIII of the Social Security Act to provide for coverage of beta interferons approved by the FDA for self-administration for treatment of multiple sclerosis under the Medicare Program, and for other purposes; to the Committee on Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MINETA (for himself, Mr. LIVINGSTON, and Mr. SAM JOHNSON):

H.R. 1079. A bill to require the Secretary of the Treasury to mint coins in commemoration of the 150th anniversary of the founding of the Smithsonian Institution; to the Committee on Banking and Financial Services.

By Mr. MINGE (for himself, Mr. VENTO, Mr. OBERSTAR, Mr. PETERSON of Minnesota, Mr. LUTHER, Mr. GUTKNECHT, and Mr. SMITH of New Jersey):

H.R. 1080. A bill to authorize States and political subdivisions of States to control the movement of municipal solid waste generated within their jurisdictions; to the Committee on Commerce.

By Mr. OBERSTAR:

H.R. 1081. A bill to amend the Shipping Act of 1984 to reform certain ocean shipping practices, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. ROBERTS:

H.R. 1082. A bill to amend the Internal Code of 1986 to provide that certain cash rentals of farmland will not cause recapture of the special estate tax valuation; to the Committee on Ways and Means.

By Mr. ROTH:

H.R. 1083. A bill to amend the Internal Code of 1986 to promote travel and tourism; to the Committee on Ways and Means.

By Mrs. SCHROEDER:

H.R. 1084. A bill to amend title 5, United States Code, to make the Federal Employees Health Benefits Program available to the general public, and for other purposes; to the Committee on Government Reform and Oversight, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SMITH of New Jersey (for himself, Mr. OXLEY, Mr. PALLONE, Mr. MINGE, Mrs. ROUKEMA, and Mr. SAXTON);

H.R. 1085. A bill to amend the Solid Waste Disposal Act to provide congressional authorization for State and local flow control authority over solid waste, and for other purposes; to the Committee on Commerce.

By Mrs. SMITH of Washington:

H.R. 1086. A bill to direct the Secretary of the Army to complete work for the protection of Point Chehalis as part of the operation and maintenance of the project of navigation, Grays Harbor and Chehalis River, WA; to the Committee on Transportation and Infrastructure.

By Mrs. MORELLA (for herself, Mr. DIXON, Mr. JACOBS, Mr. HASTINGS of Florida, Ms. PELOSI, Mr. STOKES, Mrs. KENNELLY, Mr. LIPINSKI, Mr. GILMAN, Mr. STARK, Mr. FROST, Mrs. MINK of Hawaii, Mr. DELLUMS, Mr. HYDE, Mrs. SCHROEDER, Mr. FALEOMAVAEGA, Mr. TOWNS, Ms. SLAUGHTER, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. VELAZQUEZ, and Mr. RANGEL);

H.J. Res. 70. Joint resolution authorizing the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr. in the District of Columbia or its environs; to the Committee on House Oversight.

MEMORIALS

Under clause 4 of rule XXII.

18. The SPEAKER presented a memorial of the Senate of the Commonwealth of Pennsylvania, relative to the Low-Income Energy Assistance Program [LIEAP]; jointly, to the Committees on Commerce and Economic and Educational Opportunities.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII.

Ms. LOFGREN introduced a bill (H.R. 1087) for the relief of Nguyen Quy An and Nguyen Ngoc Kim Quy; which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 28: Mr. LAHOOD.

H.R. 40: Mr. ORTON, Mr. NETHERCUTT, Mrs. SEASTRAND, Mr. WALSH, Mr. FIELDS of Texas, Mr. TALENT, Mr. PAXON, Mr. EMERSON, Mr. CHRYSLER, and Mr. HOSTETTLER.

H.R. 70: Mr. BILBRAY.

H.R. 200: Mr. ROEMER, Mr. CANADY, and Mr. VISCLOSKY.

H.R. 246: Mr. BASS, Mr. HOEKSTRA, Mr. GRAHAM, Mr. BARRETT of Nebraska, Mr. HUTCHINSON, Mr. NORWOOD, and Mr. GREENWOOD.

H.R. 315: Ms. LOFGREN.

H.R. 325: Mr. BENTSEN, Mrs. WALDHOLTZ, Mrs. SEASTRAND, Mr. COX, Mr. QUINN, Mr. DREIER, Mr. HANCOCK, Mr. KLUG, Mr. PETRI, Mr. STEARNS, Mr. NETHERCUTT, Mr. BACHUS, Mr. ROGERS, Mr. LEWIS of California, and Mr. HAYES.

H.R. 328: Mr. HAYES.

H.R. 353: Mr. RICHARDSON, Mr. FALEOMAVAEGA, and Mr. EVANS.

H.R. 354: Mr. BAKER of Louisiana and Mr. WICKER.

H.R. 363: Mr. NADLER and Mr. SERRANO.

H.R. 394: Mr. KIM, Mr. FALEOMAVAEGA, Mr. WELDON of Florida, Mr. CHAPMAN, Mr. HERGER, and Mr. LEWIS of California.

H.R. 427: Mr. PETE GEREN of Texas, Mr. STENHOLM, Mr. FOLEY, Mr. FIELDS of Texas, and Mr. MCKEON.

H.R. 502: Mr. RIGGS, Mr. KIM, Mrs. MEYERS of Kansas, Mr. SMITH of Texas, and Mr. JOHNSTON of Florida.

H.R. 526: Mr. DOOLITTLE, Mr. WELLER, Mr. LAHOOD, and Mr. REGULA.

H.R. 580: Mr. MCCRERY and Mr. TAYLOR of North Carolina.

H.R. 645: Mr. FROST and Mr. TUCKER.

H.R. 662: Mr. BACHUS and Mr. ALLARD.

H.R. 699: Mr. PETE GEREN of Texas, Mr. BREWSTER, and Mr. RICHARDSON.

H.R. 710: Mr. ENGEL.

H.R. 736: Mr. BAKER of Louisiana and Mr. LAHOOD.

H.R. 739: Mr. WELDON of Florida, Mr. STOCKMAN, Mr. COX, Mr. HERGER, and Mr. SHUSTER.

H.R. 743: Mr. HUTCHINSON, Mr. DEAL of Georgia, Mr. KLUG, and Mr. MILLER of Florida.

H.R. 773: Mr. KNOLLENBERG, Ms. RIVERS, Mr. ROYCE, Mr. BEILENSON, Mr. SCHUMER, Mr. GUNDERSON, Ms. SLAUGHTER, Mr. MARKEY, Mr. SHAYS, Mr. KLUG, and Mr. RICHARDSON.

H.R. 774: Mr. EHLERS, Mr. FIELDS of Texas, and Mr. CALVERT.

H.R. 789: Mr. MCKEON and Mr. LIPINSKI.

H.R. 791: Mr. GOSS and Mr. BARTON of Texas.

H.R. 793: Mr. WICKER.

H.R. 849: Mr. CUNNINGHAM, Mr. WELDON of Pennsylvania, Mr. VENTO, Mr. PALLONE, Mr. FROST, Mr. LANTOS, Mr. JOHNSTON of Florida, Mr. HUTCHINSON, and Mr. KLINK.

H.R. 860: Mr. SENSENBRENNER and Mr. WHITFIELD.

H.R. 862: Mr. SMITH of New Jersey.

H.R. 911: Mr. PASTOR.

H.R. 922: Ms. LOFGREN, Mr. PALLONE, and Mr. BORSKI.

H.R. 930: Mr. FILNER.

H.R. 939: Mr. EMERSON and Mr. STUPAK.

H.R. 940: Mr. DEFAZIO, Mr. BORSKI, and Mr. JOHNSTON of Florida.

H.R. 941: Mr. PAYNE of Virginia, Mr. TORRICELLI, Ms. WATERS, Mr. YATES, Mr. JOHNSTON of Florida, Ms. ESHOO, Mr. WARD, Mr. MORAN, Mr. MILLER of California, Mr. GEJDENSON, and Mr. ACKERMAN.

H.R. 966: Mr. MILLER of California and Mr. MARTINEZ.

H.R. 971: Mr. OBERSTAR and Mr. GEJDENSON.

H.R. 1021: Mr. RICHARDSON.

H.R. 1024: Mr. LAHOOD.

H.R. 1033: Mr. TOWNS and Mr. SMITH of New Jersey.

H. Con. Res. 18: Mr. KLINK, Ms. KAPTUR, Mr. DELLUMS, Mr. EVANS, Mr. NEY, and Ms. MCKINNEY.

H. Con. Res. 21: Mr. DEFAZIO, Mr. PALLONE, Ms. ROYBAL-ALLARD, Mrs. SCHROEDER, and Mr. WOLF.

H. Res. 30: Mr. SHAW, Mr. ACKERMAN, Mr. THORNBERRY, Mr. ALLARD, Mr. FOLEY, Mr. NADLER, Mr. OLVER, Mr. DAVIS, and Mr. MEEHAN.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 70: Mr. TORRES.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 925

OFFERED BY: MR. CANADY OF FLORIDA

AMENDMENT NO. 6: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Private Property Protection Act of 1995".

SEC. 2. FEDERAL POLICY AND DIRECTION.

(a) GENERAL POLICY.—It is the policy of the Federal Government that no law or agency action should limit the use of privately owned property so as to diminish its value.

(b) APPLICATION TO FEDERAL AGENCY ACTION.—Each Federal agency, officer, and employee should exercise Federal authority to ensure that agency action will not limit the use of privately owned property so as to diminish its value.

SEC. 3. RIGHT TO COMPENSATION.

(a) IN GENERAL.—The Federal Government shall compensate an owner of property whose use of any portion of that property has been limited by an agency action that diminishes the fair market value of that portion by 10 percent or more. The amount of the compensation shall equal the diminution in value that resulted from the agency action.

(b) DURATION OF LIMITATION ON USE.—Property with respect to which compensation has been paid under this Act shall not thereafter be used contrary to the limitation imposed by the agency action, even if that action is later rescinded or otherwise vitiated. However, if that action is later rescinded or otherwise vitiated, and the owner elects to refund the amount of the compensation, adjusted for inflation, to the Treasury of the United States, the property may be so used.

SEC. 4. EFFECT OF STATE LAW.

No compensation shall be made under this Act if the use limited by Federal agency action is proscribed under the law of the State in which the property is located (other than a proscription required by a Federal law, either directly or as a condition for assistance). If a use is a nuisance as defined by the law of a State or is prohibited under a local zoning ordinance, that use is proscribed for the purposes of this subsection.

SEC. 5. EXCEPTIONS.

(a) PREVENTION OF HAZARD TO HEALTH OR SAFETY OR DAMAGE TO SPECIFIC PROPERTY.—No compensation shall be made under this Act with respect to an agency action the primary purpose of which is to prevent an identifiable—

(1) hazard to public health or safety; or

(2) damage to specific property other than the property whose use is limited.

(b) NAVIGATION SERVITUDE.—No compensation shall be made under this Act with respect to an agency action pursuant to the Federal navigation servitude, as defined by the courts of the United States, except to the extent such servitude is interpreted to apply to wetlands.

SEC. 6. PROCEDURE.

(a) REQUEST OF OWNER.—An owner seeking compensation under this Act shall make a written request for compensation to the agency whose agency action resulted in the limitation. No such request may be made later than 180 days after the owner receives actual notice of that agency action.

(b) NEGOTIATIONS.—The agency may bargain with that owner to establish the amount of the compensation. If the agency and the owner agree to such an amount, the agency shall promptly pay the owner the amount agreed upon.

(c) CHOICE OF REMEDIES.—If, not later than 180 days after the written request is made, the parties do not come to an agreement as to the right to and amount of compensation, the owner may choose to take the matter to binding arbitration or seek compensation in a civil action.

(d) ARBITRATION.—The procedures that govern the arbitration shall, as nearly as practicable, be those established under title 9, United States Code, for arbitration proceedings to which that title applies. An award made in such arbitration costs (including appraisal fees). The agency shall promptly pay any award made to the owner.

(e) CIVIL ACTION.—An owner who does not choose arbitration, or who does not receive prompt payment when required by this section, may obtain appropriate relief in a civil action against the agency. An owner who prevails in a civil action under this section shall be entitled to, and the agency shall be liable for, a reasonable attorney's fee and other litigation costs (including appraisal fees). The court shall award interest on the amount of any compensation from the time of the limitation.

(f) SOURCE OF PAYMENTS.—Any payment made under this section to an owner, and any judgment obtained by an owner in a civil action under this section shall, notwithstanding any other provision of law, be made from the annual appropriation of the agency whose action occasioned the payment or judgment. If the agency action resulted from a requirement imposed by another agency, then the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency. For this purpose the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency. If insufficient funds exist for the payment or to satisfy the judgment, it shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year.

SEC. 7. LIMITATION.

Notwithstanding any other provision of law, any obligation of the United States to make any payment under this Act shall be subject to the availability of appropriations.

SEC. 8. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to limit any right to compensation that exists under the Constitution or under other laws of the United States.

SEC. 9. DEFINITIONS.

For the purposes of this Act—

(1) the term "property" means land and includes the right to use or receive water;

(2) a use of property is limited by an agency action if a particular legal right to use that property no longer exists because of the action;

(3) the term "agency action" has the meaning given that term in section 551 of title 5, United States Code, but also includes the making of a grant to a public authority conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency;

(4) the term "agency" has the meaning given that term in section 551 of title 5, United States Code;

(5) the term "State" includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States; and

(6) the term "law of the State" includes the law of a political subdivision of a State.

H.R. 925

OFFERED BY: MR. TAUZIN

AMENDMENT NO. 7: In section 3(a) after "agency action" the first place it appears insert ", under a specified regulatory law".

Add at the end of section 3(a) "If the diminution in value of a portion of that property is greater than 50 percent, at the option of the owner, the Federal Government shall buy that portion of the property for its fair market value.".

In section 4, strike the first sentence and amend the second sentence to read "If a use is a nuisance as defined by the law of a State or is already prohibited under a local zoning ordinance, no compensation shall be made under this Act with respect to a limitation on that use."

In the heading for section 8, strike "Rule" and insert "Rules".

At the beginning of section 8, strike "Nothing" and insert

(a) EFFECT ON CONSTITUTIONAL RIGHT TO COMPENSATION.—Nothing

At the end of section 8, insert the following:

(b) EFFECT OF PAYMENT.—Payment of compensation under this act (other than when the property is bought by the Federal Government at the option of the owner) shall not confer any rights on the Federal Government other than the limitation on use resulting from the agency action.

In section 9, after paragraph (4) insert the following:

(5) the term "specified regulatory law" means—

(A) section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(B) the Endangered Species Act of 1979 (16 U.S.C. 1531 et seq.);

(C) title XII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.); or

(D) with respect to an owner's right to use or receive water only—

(i) the Act of June 17, 1902, and all Acts amendatory thereof or supplementary thereto, popularly called the "Reclamation Acts" (43 U.S.C. 371 et seq.);

(ii) the Federal Land Policy Management Act (43 U.S.C. 1701 et seq.); or

(iii) section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604);

Redesignate succeeding paragraphs accordingly.

H.R. 925

OFFERED BY: MR. CONYERS

AMENDMENT NO. 8: Page 3, after line 11, insert the following:

(c) AMERICANS WITH DISABILITIES ACT OF 1990.—No compensation shall be made under this Act with respect to an agency action pursuant to the Americans With Disabilities At of 1990 (42 U.S.C. 1201 et seq.).

H.R. 926

OFFERED BY: MR. EWING

AMENDMENT NO. 5: Page 2, line 11, strike "180 days" and insert "one year notwithstanding any other provision of law", in line 24, strike "(2)(A)" and all that follows through "(B)" in line 4 on page 3, and beginning in line 7 strike the dash and all that follows through line 13 and insert "one year notwithstanding any other provision of law".

H.R. 926

OFFERED BY: MR. FRANKS OF NEW JERSEY

AMENDMENT NO. 6: Page 13, line 10, before the period insert the following: ", and a statement of whether the rule will require persons to obtain licenses, permits, or other certifications including specification of any associated fees or fines".

H.R. 926

OFFERED BY: MR. HEFLEY

AMENDMENT NO. 7: Page 2, line 15, strike "small entities" and insert "entities", in line 18, strike "small entity" and insert "entity", on page 3, strike lines 15 through 17 and redesignate the succeeding paragraphs accordingly, and in line 24 on page 3, strike "small entities" and insert "entities".

EXTENSIONS OF REMARKS

OCEAN SHIPPING REFORM ACT OF 1995

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mr. OBERSTAR. Mr. Speaker, today, I am introducing the Ocean Shipping Reform Act of 1995. There has been a great deal of discussion lately about the future of the Federal Maritime Commission and the Shipping Act of 1984. Some are suggesting that both the Federal Maritime Commission and the Shipping Act of 1984 be scrapped. I do not agree with that approach, but I do recognize that significant changes are needed at the Commission and in the Shipping Act of 1984. The bill I am introducing today accomplishes those changes.

The Shipping Act of 1984 sets out the legal framework that governs ocean liner cargo transportation. With a broad grant of antitrust immunity, conferences of oceanliner companies meet to establish common rates for the shipment of freight across the oceans. These rates are filed with the Federal Maritime Commission and made public. While broad grants of antitrust immunity are usually antithetical to the way the United States expects business to operate, I see no consensus within our ocean carrier and shipping industries, nor internationally, that immediate wholesale removal of antitrust immunity will bring the competitive benefits some expect. In fact, there was considerable testimony at the hearing held in the Subcommittee on Coast Guard and Maritime Transportation on February 2 that U.S. commercial interests could be harmed in doing so.

My approach is straightforward. Continue the present system of ocean carrier conferences with immunization from the antitrust laws. Within that framework, give shippers and conference carriers increased flexibility to enter into certain business arrangements not encumbered by conference agreements, procedures, or vetos of other conference carriers.

Within the ocean shipping industry there is the concept of service contract which is a contract between a shipper and a carrier or a conference of carriers in which a minimum quantity of cargo over a fixed period of time is shipped at a certain rate and level of service. Typically, this translates into a large volume/long-term arrangement at a reduced rate below the filed tariff. These sorts of contracts are permitted and recognized in the law, but the carrier conferences are permitted and recognized in the law, but the carrier conferences are allowed to restrict and even prohibit their use. This bill would prohibit a conference or a conference carrier from limiting the ability of another member of the conference from entering into or performing under a service contract. This will provide shippers and conference carriers, that elect to, the opportunity to enter into arrangements outside of the conference.

Also in the carrier conference system, there is the concept of independent action. Under the Shipping Act of 1984, carriers can charge a rate different than the conference filed tariff, if notice is given to the conference and filed with the Federal Maritime Commission 10 days in advance of that independent action for a different rate. The bill would shorten that 10-day notice to 2 days. Again, this would provide shippers and carriers with a great deal more flexibility to enter into arrangements with much reduced interference by other conference members. By shortening the notice period, a rate different than the conference rate can be made effective before the other conference members have a lengthy period in which they could convince and pursuade the independent action taker to not take the independent action.

The bill also provides a new declaration of policy. Section 2 of the Shipping Act of 1984 sets out the purposes of the act. Among the purposes are establishment of a nondiscriminatory regulatory process; provision of an efficient and economic ocean transportation system; and encouragement of the development of an economically sound and efficient U.S.-flag liner fleet. This bill would add a new declaration of policy—promotion of the growth and development of United States exports through competitive, nondiscriminatory, and efficient ocean transportation. There are some who believe that the Shipping Act of 1984 is too oriented toward the interests of the carriers at the expense of the shippers. This provision in the bill would give strong policy guidance to the Federal Maritime Commission that in administering the act that the interests of U.S. exporters should be just as paramount in its mind as the interests of the carriers.

The bill also directs the Secretary of Transportation to develop and implement a negotiation strategy to persuade foreign governments to divest themselves of ownership and control of ocean common carriers. Government ownership and control of oceanliner companies puts our carriers at a tremendous disadvantage in the international marketplace. While there is little we can do to force foreign governments to get out of the business of oceanliner shipping, it certainly should be the U.S. Government policy to bring that issue to the negotiating table when it is engaged in trade and commercial discussions with our trading partners. Over time, I am confident that progress can be made in this area to the benefit of U.S. carriers and the shipping public.

These changes to the Shipping Act of 1984 represent significant steps toward a more competitive and deregulated environment in the ocean transportation business, and I urge people to consider them in that regard.

Finally, the bill would make some significant reforms at the Federal Maritime Commission itself. Government agencies are downsizing and rightsizing across the board in the effort to reduce Government spending. The Federal Maritime Commission needs to contribute to this effort just as all other Government agencies are doing. There has been discussion of outright eliminating the Commission all together. This would be unwise since it provides important benefits to the public. This bill would direct the Commission to reduce its employees by 15 percent over the next 2 fiscal years. The Commission is a relatively small agency with a relatively small budget—$19 million, much of it offset with the collection of fees and fines. Despite its small size, it still needs to be a part of the overall effort to reinvent and streamline Government. Simply abolishing the Commission so that an agency's skin can be hung on the wall is not a proper way to carry out the public's need to have a smaller government. Steps need to be taken, but they need to make good public policy sense.

The bill also directs the Federal Maritime Commission to devote a greater proportion of its resources to protecting U.S. shippers and carriers against restrictive and unfair practices of foreign governments and foreign-flag carriers. U.S. interests are under a constant barrage by foreign interests trying to hinder their ability to do business. The Commission has done a good job of policing these practices, but I believe that the waterfront of abuses is so vast that if more resources were directed to this area, further progress could be realized in leveling the trade playing field. The bill directs that the Commission submit a plan to Congress to reorient its resources in this regard within 90 days of enactment of this legislation.

This proposed bill is just that—a proposal. There are issues that are not addressed in this bill, that may well need to be addressed. There are issues even within the context of the specific proposals upon which the bill is silent or needs further thought and deliberation before a more refined position is developed. An example would be in the service contract area. Should the terms of service contracts continue to be made public? In my bill as drafted they would be, but this is not a closed issue in my mind. Similarly, is there a need for phase-in of changes to the Shipping Act? Also, I do not address tariff filing in the bill, so as drafted, the current system would continue. But again, I believe there may well be ways that the public can learn about what is happening in the marketplace without a government based tariff filing system. I am open on this issue and others. There may also be other ways to craft the legislative language to accomplish the purposes of this bill, and I am open to suggestions here as well.

I very much look forward to working with Transportation and Infrastructure Committee Chairman SHUSTER and Coast Guard and Maritime Transportation Subcommittee Chairman COBLE, ranking Democratic Members NORMAN Y. MINETA and JAMES A. TRAFICANT,

● **This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.**

Matter set in this typeface **indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.**

and other members of the committee to develop legislation on the Shipping Act and the Federal Maritime Commission.

TRIBUTE TO DON PIERSON

HON. MARTIN FROST

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mr. FROST. Mr. Speaker, I would like to take a moment to recognize Mr. Don Pierson, an outstanding individual whose bold approach towards life and its challenges epitomizes the values Texans hold dear.

Mr. Pierson was born on October 11, 1925, in Abilene, TX. Throughout his fascinating life, Mr. Pierson has pursued many careers and professional endeavors. For example, he has been a land developer, a local hotel owner, a car dealer, a pilot, a cable television pioneer, and a city mayor.

This list of successful ventures proves Mr. Pierson to be a man of initiative, resourcefulness, and ingenuity—a true Texan in every sense of the word. Texans respect the kind of vision and strong character that Mr. Pierson possessed and exhibited.

Mr. Pierson's numerous accomplishments speak to all of us. They remind us of the possibilities and opportunities which remain within our reach if we are willing to accept the corresponding risks and obstacles in order to pursue and attain them.

I am honored to have the opportunity to recognize this truly admirable individual.

BLACK HISTORY MONTH

HON. WILLIAM J. MARTINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mr. MARTINI. Mr. Speaker, as this year's Black History Month comes to a close, it is appropriate to remember its origins. The celebration dates back to 1926, when Dr. Carter G. Woodson set aside a period of time in February to celebrate the heritage and accomplishments of black Americans. It took 50 years, but in 1976, February was officially declared Black History Month.

In the last decade, black Americans have increasingly received recognition for their achievements. In 1983, Guion S. Bluford Jr. became the first black astronaut to travel into space. And just this month, Dr. Bernard A. Harris became the first black astronaut to walk in space. In literature, both Alice Walker and Toni Morrison received the Pulitzer prize in 1983 and 1988, respectively. Most notably, Army Gen. Colin Powell became the first black Chairman of the Joint Chiefs of Staff, and his heroic leadership and steadfast confidence during the Persian Gulf conflict not only won a war, but reassured a Nation.

When commenting on the present, let us not forget the black Americans of the past who helped set the stage for today's achievements. The theme of this year's Black History Month is "Reflections of 1895: Douglas, DuBois, Washington," in honor of the famous black Americans of the 19th century. Each championed the rights of African-Americans in the United States, although at times they disagreed on the means of achieving their common ultimate goal. Frederick Douglas, a freed slave, devoted his life to the cause of freedom and equality for all Americans. W.E.B. DuBois, who also gained freedom from slavery, is best known as one of the founders of the National Association for the Advancement of Colored People, and an outspoken advocate for education. Booker T. Washington, who took a different approach to education, nonetheless shared DuBois' desire for a more integrated and conciliatory society. Although these three great men differed on means, their goal was the same: justice and equality for all black Americans.

The accomplishments of black Americans are great indeed, and span every sector of society; we should not wait until February of each year to remember their many accomplishments. But in celebrating African-American accomplishments, it is imperative that we emphasize the word American as much as the word African. For just as surely as George Washington and Amelia Earhart are vital parts of every black American's heritage, so too are Dr. Martin Luther King, Jr. and Thurgood Marshall vital parts of our national heritage.

We should recognize great blacks, therefore, not because they are black, but because they are great individuals. If we are to move forward as the world's most diverse and successful multicultural Nation, we must stop defining each other by the color of our skin, and strive to judge one another by the content of our character.

ANGOLA NEEDS WORLD'S HELP

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mr. HASTINGS of Florida. Mr. Speaker, I read with great interest the following article on Angola. So that all of my colleagues will have the opportunity to see this important piece. I would like to insert it into the CONGRESSIONAL RECORD.

[From the Christian Science Monitor, Jan. 25, 1995]

ANGOLA NEEDS THE WORLD'S HELP IN MAKING PEACE TRIUMPH

(By Jose Eduardo dos Santos)

It was with great satisfaction that I read the recent bipartisan congressional letter to President Clinton declaring that "the United States has a strong national interest in a stable peace agreement in Angola." I share the view in Congress that the Lusaka Accords are the "last, best hope for peace in Angola."

The letter accurately notes that the treaty also offers a promise of stability and prosperity in our region along with opportunities to expand U.S. exports to Angola.

I have called on all Angolans to make a pact in the defense of peace and absolute respect for national reconciliation so that we may reconstruct our war-ravaged country and vivify the soul of our people. It is a gigantic task, but I am confident we can show that we are equal to it, and are capable of making peace triumph.

PROXY BATTLES OF THE COLD WAR OVER

But we cannot achieve this difficult goal alone. Generations have been born and have grown up knowing nothing but conflict, first with colonial rulers and then among ourselves. If peace is to set down roots, it will need the nurturing of the international community, led by the U.S.

The cold-war superpowers who once used our differences in their proxy battles are now trying to forget their old differences. But they must not forget old obligations. We look to them now as partners. We were once a wealthy country and we can make ourselves one again—but not overnight, or alone.

Secretary General Boutros Boutros-Ghali has said, "It is imperative that immediate action now be taken to implement the comprehensive agreement signed in Lusaka." Mr. Clinton gave me his written assurance, "Once a peace agreement in reached, the United States government will be prepared to do all it can within the United Nations and bilaterally to ensure its successful implementation." Many of our friends, both old and new, implored us to take unpopular risks in the negotiations with the National Union for the Total Independence of Angola (UNITA). In response to their urgings, we went that extra mile. We have done that and now we turn to them to help us make that peace a success.

The Security Council's decision to deploy a contingent of about 500 cease-fire observers is welcome, but we need prompt dispatching of at least 7,000 peacekeepers to ensure that all provisions of the agreement are adhered to. The UN and the international community cannot skimp on this vital aspect of the peace process. We want our former enemies to know from these credible sources that we are sincere in word as well as deed, and I am sure they feel the same way. Peacekeepers will help instill confidence among past foes.

To repeat 1992's tragic mistake of trying to "make peace on the cheap" would doom our Nation and all of southern Africa to more war and bloodshed. The cost of providing peacekeepers and launching national reconciliation is only a fraction of the cost of making war and caring for the victims.

The national healing process must begin with caring for the hurt, the hungry, and the homeless. We urgently need portable hospital facilities that can rapidly be dispatched to the hard-hit areas like the devastated cities of Cuito, Huambo, Uige, and Melange.

THE NEED TO CLEAR MINES

The fighting is over, but we urgently need help to clear millions of antipersonnel mines strewn throughout our Nation, so that our farmers may till our fertile fields, our children may attend school and play safely outdoors, and all our citizens can travel in peace to and from their jobs and homes.

Before the war, we were known as a country with abundant mineral and agricultural resources. We were self-sufficient in most food stuffs. Our exports ranged from crude oil and uncut diamonds to coffee and tobacco textiles and shoes.

Now we must repair and rebuild as we heal our wounds and our wounded. We need technical assistance to rebuild our infrastructure, we need international peacekeepers to enforce our cease-fire, we need foreign investment to restore our industrial base, we need equipment and expertise to clear away the deadly debris of war. We also need loans and credits to stimulate our economy, as well as debt relief and restructuring.

SAVIMBI INVITED FOR TALKS

We have launched our democracy. Our elected National Assembly is at work and soon we will hold the final round of our presidential elections. Meanwhile, our former foes will be joining us in governing the nation by assuming positions of major responsibility. They will be Cabinet ministers, provincial governors, mayors, ambassadors and much more. The two former enemy armies will join together in a national defense force as most former combatants are demobilized.

I have invited UNITA leader Jonas Savimbi to meet with me at any time and any place in Angola so we may show our people we are fully engaged together in national reconciliation and reconstruction.

A new page is being turned in Angola's history. It presents new challenges for Angolan political leaders, government officials, and ordinary citizens as we try to reconstruct a third time from the rubble and ruins of the tragedy that devastated Angola. We call upon the United States and the international community to join us in our historic task of making peace work not just for ourselves but for a continent that is struggling hard to spread the blessings of peace and democracy to all its citizens.

MARTIN LUTHER KING, JR. MEMORIAL WITHIN THE DISTRICT OF COLUMBIA

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mrs. MORELLA. Mr. Speaker, I rise today to reintroduce legislation to authorize the establishment of a memorial, on Federal land within the District of Columbia, to Martin Luther King, Jr.

Alpha Phi Alpha, which Dr. King joined in Boston on June 22, 1952, is one of the oldest African-American fraternities in the Nation. With more than 700 chapters in 42 States, its members include some of the most prominent leaders and distinguished officials within the United States. The fraternity wishes to honor Dr. King's remarkable role with a memorial in the Nation's Capitol. It is the fraternity's belief that a memorial will provide a tangible recognition that will assist in passing Dr. King's message from generation to generation. Alpha Phi Alpha will coordinate the design, construction, maintenance and funding of the monument. The bill provides that the monument be established entirely with private contributions and at no cost to the Federal Government. The Department of the Interior, in consultation with the National Capital Park and Planning Commission and the Commission on Fine Arts, will select the site and approve the design.

I am very pleased to recognize Dr. Martin Luther King, Jr. as one of our Nation's greatest leaders in the ongoing struggle to achieve full equality for all of our citizens. In a very short lifespan of 39 years, this man created a moral, political and religious revolution that is indelible within the minds and hearts of Americans. As a man of peace, Dr. King recognized that along with freedom comes a strong measure of responsibility and accountability from all Americans. He showed us that civil rights is not just a struggle for the rights of black Americans, but a struggle to ensure the rights of all Americans. His gospel often proclaimed that injustice anywhere is a threat to justice everywhere.

Dr. King's mission is still unfinished. Racism and inequality, distrust and misunderstanding continue to divide us as a Nation. We must continue to challenge the American conscience and strive to create economic and civil equality for all of our citizens. For the future youth of our country, a memorial will provide a tangible reminder of our Nation's history and to our relentless struggle to eliminate injustice and prejudice.

Mr. Speaker, Dr. King dedicated his life to achieving economic and civil equality for all Americans, through nonviolent means. I believe that he made an indelible impression, of what one individual can do, on the minds and hearts of all Americans. I believe that a memorial would provide a tangible symbol to our Nation's youth of this country's commitment to economic, social, and legal justice. I therefore urge my colleagues to join me in this effort to ensure that the essential principles of justice and equality among our citizenry are never forgotten.

TRIBUTE TO SAN DIEGO POLICE OFFICER PATRICK R. MILLER

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mr. FILNER. Mr. Speaker, and colleagues, I rise today to pay tribute to a hero in my district who helps his community day after day, week after week, year after year. This hero is San Diego Police Officer Patrick R. Miller.

Officer Miller is a man who is fulfilling his life's dream. Since childhood, he desired to become a police officer—and that dream became reality 6 years ago after successfully being accepted and completing the police academy. Officer Miller furthered his career by graduating from the highly competitive Special Weapons and Tactics [SWAT] Academy last spring.

Officer Miller is praised by his fellow officers and community residents as a model police officer—one who treats people as human beings, while doing his job with precision and professionalism.

On the morning of February 2, 1995, Officer Miller was shot five times during a routine traffic stop. He was very seriously wounded. Fortunately, Officer Miller survived the incident and is recovering from his injuries.

Officer Miller has proven to be a respected and hard working police officer for the city of San Diego. I wish him a quick and complete recovery—and a speedy return to the duties he performs so well.

I salute Officer Patrick R. Miller for his hard work, dedication, and tenacity. He is an excellent example of the impact that one person can have on the community.

LEGISLATION TO PROVIDE MEDICARE COVERAGE FOR MULTIPLE SCLEROSIS TREATMENTS

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mr. LAFALCE. Mr. Speaker, today I am reintroducing a bill which is truly vital to the hundreds of thousands of people in this country suffering from multiple sclerosis, a physically debilitating disease. The Multiple Sclerosis Home Treatment Act of 1995 would provide Medicare beneficiaries with reimbursement for the cost of beta-interferons, the most effective treatments for MS we have ever seen and the only type of MS treatment approved by the FDA.

Mr. Speaker, before I describe my bill I would like to tell you a little bit about multiple sclerosis and the difficult consequences of the disease for its victims and their families.

MULTIPLE SCLEROSIS: A SNAPSHOT

It has been estimated that today between 250,000 and 350,000 Americans have MS. The disease usually strikes at the prime of productive life—most people are diagnosed between age 20, and age 40. For reasons which are unknown as yet, women comprise an estimated 73 percent of the MS population.

Although the cause of the disease has yet to be specifically determined, we do know that in MS the central nervous system is attacked, resulting in inflammation and breakdown of the protective covering of the nerves in the brain and spinal cord, and the formation of scarring lesions in those areas.

The disease concurrently results in a multitude of debilitating symptoms such as fatigue, impaired vision, loss of muscle coordination, tremors, and bowel and bladder dysfunctions. MS is most often characterized by recurrent and progressively more acute attacks of these symptoms, called exacerbations, between periods of relative physical stability. Exacerbations can and often do result in hospitalization.

The long-term effects of MS vary. Some people experience more complete recovery between exacerbations—relapsing-remitting MS—while others experience significant physical deterioration—relapsing—or chronic-progressive MS.

Still, MS is a disease of physical debilitation. People with MS often experience a loss of ability to perform simple daily tasks. In many cases the physical consequences of MS force the individuals to quit their jobs and leave the work force, requiring them and their families to make tough financial choices while continuing to address health care needs. An estimated 27 percent of people with MS are bedridden at least 1 out of every 14 days.

BETASERON: A BREAKTHROUGH TREATMENT

Last year, the Food and Drug Administration approved a treatment, beta-interferon 1-b—trade name, Betaseron—for use in relapsing-remitting MS. The FDA approved Betaseron through their newly created fast-track approval process, demonstrating the agency's recognition of both the importance of a treatment for MS and the success of Betaseron.

Betaseron is a type of beta-interferon, a protein genetically engineered to resemble similar proteins in humans. The most significant aspect of Betaseron for MS patients is that it reduces the formation of new lesions in the brain, an occurrence widely thought to be connected with the progression of the disease.

On a day-to-day basis the results of Betaseron treatments are also proving dramatic. For example, Mr. Kevin Cloy of Middleport, NY, is a constituent and friend of mine. Mr. Cloy is 32 years old, and was diagnosed with MS in 1990. He was forced to quit his job due to the disabling effects of MS. In December 1993, Mr. Cloy became one of the first people to receive Betaseron treatments.

The change in his physical condition has been remarkable. The frequency of his exacerbations has significantly decreased, and his physical condition has stabilized enough that he no longer feels the need to be wheelchair-bound. Although he still remains at home during the day, he can return to doing simple tasks like walking to the mailbox. He is hopeful that the Betaseron treatments will allow him to return to the work force someday soon.

NEED FOR MEDICARE COVERAGE

Unfortunately, because Betaseron is a high-technology, genetically engineered treatment, it is also prohibitively expensive. Betaseron is injected under the skin at home every other day, and the injections cost approximately $1,000 per month.

The expense of Betaseron is a grave problem for all people with MS, but especially for those like Kevin Cloy who are forced to leave the work force due to their MS-induced disability. Not only must they deal with the financial constraints of a lost income, but they also lose the coverage of any employer-provided health insurance as well. They generally become eligible for Medicare, but as we all know, Medicare does not cover prescription drugs and self-administrable treatments.

Mr. Cloy's situation again illustrates the problem. In March of last year, after Mr. Cloy left his job, he became eligible for Medicare and lost his private insurance coverage, thereby also losing coverage for prescription drugs.

When he became eligible to receive Betaseron treatments, he was therefore faced with a difficult choice—either expend all of his family's resources to pay for Betaseron, and eventually become destitute enough to be eligible for Medicaid—which does cover prescriptions—or go without Betaseron, a treatment which has changed his life.

Mr. Cloy has done everything feasible to avoid making that choice. He has drained his family's savings as much as possible in order to pay for Betaseron. Last spring, the residents of Middleport even organized a fundraiser for Kevin at a local restaurant. The fundraiser was successful, but the money raised only covers about 9-months worth of treatments.

Mr. Speaker, since the first introduction of my bill last year which would have provided Medicare coverage for Betaseron, I have heard from people across the Nation who have MS, from New York to California, from Arkansas to Illinois. Their stories have been chronicled in major newspapers like the Philadelphia Inquirer and the Orlando Sentinel. These people have experienced the very beneficial effects of Betaseron, and they are desperate for a solution to this problem of access.

NEW SCIENTIFIC DEVELOPMENTS

Last year, I introduced legislation to provide Medicare coverage for Betaseron, in order to help these people and their families. This year, I am expanding the bill to cover all beta-interferons, a consequence of recent exciting scientific developments.

Another constituent and friend, Dr. Lawrence Jacobs, who is an esteemed researcher at the Multiple Sclerosis Center at Millard Fillmore Hospital in Buffalo, recently announced with his partner, Dr. Salazar of the National Institutes of Health, the development of a new beta-interferon which is promising to be more effective than Betaseron. This new substance would be used as an alternative to Betaseron.

The new beta-interferon, which will soon be before the FDA for formal approval, has been affirmatively proven to reduce the progression of the disease. The new substance better mirrors natural substances produced in our bodies, and therefore also produces less side-effects for the patients. It is also being developed to be injected once a week, instead of every other day.

Mr. Speaker, the preventive health aspects of beta-interferons are obvious. We can stop or significantly reduce the progression of the disease. We can substantially reduce the number of attacks these people experience. Since as estimated 41 percent of hospitals stays of MS patients are covered by Medicare, we can also clearly reduce those costs to Medicare.

Moreover, we can reduce all of the other health care costs which are a consequence of a severe disability—physician visits, clinic visits, home health care, medical equipment, physical therapy—the list goes on and on. We may even be able to move many of these people back in to the work force, allowing them to leave Medicare altogether, a clear savings to taxpayers.

I believe that providing access to these beta-interferons is an excellent example of the successes of preventive health care. In slowing the progression of MS, and allowing these individuals to lead more productive lives, these treatments provide benefits which, in the long term, may far exceed the cost of the injections.

It is time we act to make these critical treatments available to all of those people with MS whose disabilities are so severe that they have lost their jobs and their private health insurance. I urge the Congress to adopt this important legislation.

RED INK GREATER THREAT THAN RED ARMY

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mr. FRANK of Massachusetts. Mr. Speaker, one of the gravest errors that the Republican majority is in the process of making is to increase military spending over what we have already voted while it proposes serious cuts in important domestic programs. And for those who do not share my sense that these programs should be preserved, the increase in defense spending can be seen as a threat to further deficit reduction, or even to tax reductions for those who prefer that course. In any case, spending money that we do not need on the military at a time when we are short of resources is an error. For this reason, I will from time to time be sharing with my colleagues knowledgeable commentary from national security experts who are pointing out that it is a grave error to increase military spending, and that in fact, given the collapse of the Soviet Union, the severe weaknesses of the Russian military, the untapped ability of our Western European and East Asian allies to do far more in the area of military spending, we in fact can afford to make further reductions in the military without in any way endangering national security or the well-being of the men and women who have so gallantly volunteered to defend us.

Recently, one of the most distinguished experts in the national security field, former Director of Central Intelligence William Colby, wrote an article in the Hill on February 22 pointing out how unwise it is to increase—and even maintain—the current level of military spending. Mr. Colby's tenure as Director of Central Intelligence began in the Nixon administration and extended into the administration of Gerald Ford, so he can hardly be dismissed as the voice of Democratic liberalism. His hard-headed, persuasive argument for military spending reductions is an important contribution to our budget debate and I ask that it be printed here.

WHICH IS GREATER SECURITY THREAT: RED ARMY OR RED INK?

(By William E. Colby)

The Cold War is over, but you wouldn't know it from America's defense budget or from Republican calls for more defense spending. The once fearsome Red Army no longer threatens Europe at the Fulda Gap in North Germany. Instead, it hardly is able to enter a medium sized Chechnya city against lightly-armed partisans, even with the advantage of air power and heavy artillery.

But the U.S. defense budget still siphons off some $250 billion from the national economy as political leaders talk about a balanced budget (but don't act to produce), promise middle income tax cuts instead of building savings, and vie to cut domestic and foreign programs. U.S. defense expenditures still amount of well over twice the $121 billion spent by the eight other nations that conveivably could pose a threat to U.S. national interests, and over three times what Russia spends on its reduced, rusting and hapless military.

One would think that an intelligence assessment of dangers for the U.S. in the years ahead, and a strategic review of how we should respond, would focus on some of the obvious threats looming ahead in the economic field, which has now replaced military competition as the main arena of conflict in the post-Cold War world.

The most obvious danger is the national debt and its servicing costs, which threaten the economy and will crush almost all discretionary spending unless economically depressing and politically unpalatable new taxes are imposed. Similarly, the inexorable march of the Cold-War-era baby boomers toward senior-citizen status clearly threatens the Social Security system and will mean a generational conflict with a younger generation saddled with the bills. The sloshing of trillions of panicky dollars through global electronic markets, as just occurred with Mexico, is spreading to other emerging economies is today's real threat to the nation's economy—and security.

And it is not that the defense budget is beyond challenge, for need or for specifics. Former Secretary of Defense Les Aspin's "bottom up review" assumed two regional wars on the scale of the Gulf War, conducted simultaneously, without allies, with no build-up period and with rotation capability for a long engagement—an obvious gold-plated invitation to the "bottom" of the military to plan forces at about the current levels. A bit of top-down guidance might have insisted on a more realistic scenario.

The review did not question some of the sacred cows of current planning: another attack submarine (against which fleet?); a better attack fighter (when our present ones are the best in the world); the Cold War B–2 bomber when modernized B–52's were the main muscle used in the Persian Gulf; a surfeit of aircraft carriers to "show the flag" when Aegis cruisers demonstrated their capability to hit an office complex in Baghdad from the Red Sea and the Persian Gulf; continued land and sea-based nuclear missiles aimed at the open ocean in numbers far above the 100 or so that respected defense experts agree is sufficient for deterrence.

If to these are added 20 more B–2's designed to penetrate Soviet airspace after a nuclear exchange, six huge C–17 airlifters when C–5's can carry what needs to go by air and heavy tanks should go by sea or be prepositioned to be available in real quantity, and new Trident submarine-launched strategic missiles, one can see that the mindset of the planners is clearly to continue to prepare for and deter the now-outdated massive threat from the Soviet Union. At least 24 budget conscious Republican congressmen deeped sixed the SDI, recognizing that the more proximate threat of a nuclear weapon arriving in the U.S. would we in the hold of a nondescript freighter.

The real post-Cold War world calls for the deployment of new kinds of "secret weapons" such as the diplomatic efforts of former President Jimmy Carter, who has already averted violence in Haiti and North Korea and at least has tried in Bosnia. It calls for programs to reduce the population growth bomb which is already exploding in Asia and Africa. And it calls for carefully planned and conducted anti-terrorist operations with formerly hostile nations and services.

It also calls for more "competition" between the expenditures to fight a Cold War better and the need to keep our nation's economy strong and targeted on the real threats—and opportunities—of the future.

TRIBUTE TO THE HONORABLE DWIGHT EVANS

HON. THOMAS M. FOGLIETTA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mr. FOGLIETTA. Mr. Speaker, on this last day of Black History Month, I wanted to congratulate the Honorable Dwight Evans for his great accomplishments as a public servant in the city of Philadelphia and in the State of Pennsylvania. Dwight Evans is making history every day for his constituents.

Dwight represents the 203d Legislative District in the Pennsylvania House of Representatives. Throughout his life, Dwight has contributed greatly to the city of Philadelphia. He has made these contributions in many different capacities, but has never failed to make significant improvements in his community.

Prior to his membership in the Pennsylvania State Legislature, Dwight was responsible for revitalizing the abandoned Ogontz Plaza in Philadelphia, turning it into an economically viable shopping district. He was also responsible for bringing a police ministation to the Ogontz Avenue area, making it a safer place for members of the community. We are working together to develop the Southeastern Pennsylvania Regional Employment and Training Center.

More, recently as the chairman of the House Appropriations Committee in Pennsylvania, Dwight has been able to provide day care services for children, adequate funding for youth programs, and the improvement of educational services to children.

In 1994, Dwight Evans ran as the first African-American candidate for the Governor of Pennsylvania. He surprised the pollsters and the experts, but not those of us who know him by coming in second. He was also endorsed by most of the major daily newspapers in the Commonwealth.

As we mark the end of Black History Month, I would like to recognize and congratulate Dwight Evans for his excellent accomplishments. It is important that we look back at history, but it is also important that we applaud the men and women who are making progress today and tomorrow.

H.R. 450

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mrs. COLLINS of Illinois. Mr. Speaker, last week we were given a real clear picture of what the new Republican majority that now controls the Congress really cares about.

During the consideration of H.R. 450, Members had two opportunities to vote on amendments that would have excluded from the moratorium regulations the Fish and Wildlife service needs to issue in order to establish hunting seasons for ducks and waterfowl.

I offered the first amendment which, in addition to the hunting season regulations, also exempted several other important matters, such as:

Rules the FEC has issued to prohibit personal use of campaign funds; rules to make it harder for aliens to stay in the United States on the basis of meritless petitions for political asylum; rules giving preference to the elderly in section 8 housing; rule pertaining to elimination of drug use in Federal housing; rules designating empowerment zones and enterprise communities; rules compensating Persian Gulf veterans with disabilities from undiagnosed illnesses; and rules for the development of a data base for child molesters, as required by the crime bill.

The Republican majority argued against amending their bill to make it clear that these important regulations could be excluded from the moratorium. They claimed there was nothing to worry about.

Yet, later in the day, they chose to support an amendment which only exempted the hunting season regulations, and none of the other regulations—not for veterans, not for the protection of children against child molesters, and not for the elderly.

I have nothing against duck hunting, but I think it is a sad day when this Congress cares more about guaranteeing there is a duck hunting season, than whether our children are safe, and the elderly and disabled veterans are properly cared for.

BLACK HISTORY

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mr. HOYER. Mr. Speaker, for the last 14 years, I have been the proud sponsor of an Annual Congressional Black History Month Breakfast. Each year, it has been a privilege to hear the remarks of many distinguished guest speakers and this morning was no exception. The honored speaker for this year's breakfast was the Honorable Eric Holder, U.S. attorney for the District of Columbia. I found Mr. Holder's remarks insightful, thought provoking, and timely. Therefore, I am proud to submit his statement for the RECORD.

BLACK HISTORY SPEECH

(By Eric Holder)

In discussing black history we must always be cognizant of its continuing nature and we are obligated to assess where black America stands at the time of that discussion. Though I would like to talk today about the concept of, and importance of, black history I would also like to discuss the black present. The past and the present are inextricably bound and to understand either, one must comprehend both. History should be used as a tool in trying to understand a present that seems at times to be frightening and illogical. It is my belief that the seeds of our inner cities present distress are found in the manner in which this nation has dealt with its black population over the years. But we must also acknowledge that this same population has done much in recent years to contribute to its present negative condition. The study of black history is a means by which we can understand and plan for a better black future. To look forward one must also look back.

Let me start with the present. Black America today stands at a crossroads. A valiant past filled with courage and struggle is being replaced with a present replete with irresponsible behavior and an almost passive acceptance of negative actions in general and of violence in particular. Black Americans, like too many others in our society, have become all too willing to blame others for their situation. It is definitely true that government has not done all that it could, or should, have done in the recent past. But a study of black history indicates that we have frequently had to deal with governmental indifference or outright hostility. This did not stop our striving in the past, cannot be used an excuse in the present, and must not inhibit our growth as a people in the future. We black Americans must commit ourselves to responsible behavior and do all that we can to retard the growth of the culture of violence that so grips many of our communities.

It is time for black America to come to grips with the crime and violence problem that destroys so many promising, young black lives. Put quite simply, it is time for black people to begin to identify with, and work with, the forces that are fighting to make our streets safe. The preoccupation with criminal defendants and the abject neglect of criminal victims is in some ways a moral indictment of our community. This concern was understandable in a past where people of color were systemically, routinely and legally denied the rights to which they were obviously entitled. But in a present where at least the legal impediments to equality have been largely erased, such concerns are largely misplaced. I am not naive, however. Black people must be ever vigilant to insure that all of our people, criminal defendants included, are always treated in the same constitutional manner as all other Americans. But for too long we have sought to excuse that which we know to be wrong and in the process have ignored the real pain suffered by members of our own community. The overwhelming majority of crime committed by black defendants is directed at other black people. Over 90% of the nation's black homicide victims, for example, were killed by other black people. This is truly a sad part of black history but is an aspect of our existence in this country that must be explored and honestly discussed if the next chapters in our story are to be filled with hope and progress.

We must also strive to curb other voluntary conduct that threatens the very existence of our people. The plagues of AIDS and unwed births that so affect the black community, for example, are the products of irresponsible sexual conduct. Because this conduct is voluntary it can, and should, be rather easily controlled. I understand that in things sexual and personal we must tread lightly but is it not painfully clear that by being just a little more responsible these problems could be cured? We must insure that we do all we can to reduce the rate of black unwed births in our nation that now stands at 67%—two out of every three black babies are born into this condition. In some parts of Washington that figure rises to over 80%—four out of every five babies. This plague tears at the fabric that has traditionally bound us together. It inhibits the development of the black community by stunting the growth of both the mother and the child itself. A recent study showed that women who became mothers when they were married, over 21 and high school graduates gave birth to children who lived in poverty about 10% of the time. By contrast, women who were under 21, high school dropouts and not married gave birth to children 79% of whom lived in poverty. There is little dispute that there is a direct line between poverty and the social problems that so bedevil us. As you can see, at least a part of the poverty problem is self inflicted and could be controlled by self restraint.

In the current discussion about unwed births, welfare reform and values we too frequently focus on women as if they created children without the assistance of men. We must never stigmatize the women in our community who valiantly struggle against great odds to raise good kids and we must always love all of our children whatever the marital status of their parents. But we must recognize that this is a problem. And we must acknowledge the irresponsibility of men in this situation. When I was a judge at the District of Columbia Superior Court it was striking to me to find that virtually every young man who came before me in a criminal case did not have a man who was meaningfully involved in his life. As the United States Attorney for this city I have been struck by the way in which children have responded to the men in our office, both black and white, in our outreach efforts. We have programs with elementary schools in the city and it is in some ways sad to see our youngsters, black youngsters, cling to the men in my office for the support and guidance they should be receiving from their fathers at home. In any discussion of our situation we must focus more on absentee fathers. We cannot hope to have our young boys grow up to be good men without role models to emulate. And the best role model is not an athlete, not an entertainer and not a United States Attorney. The best role model is a father at home who devotes himself to the child he has brought into the world. An army of these kind of fathers would probably do more to cure our social problems than all the government programs we might ever devise. We must somehow force the concept of family back into the consciousness of the men who are now too willing to create children but not willing to help raise them.

Moving from a partial examination of the black present to a look into the black past one finds that the history of black America and the history of this nation are inextricably tied to each other. It is for this reason that the study of black history is important to everyone-black or white. For example, the history of the United States in the nineteenth century revolves around a resolution of the question of how America was going to deal with its black inhabitants. The great debates of that era and the war that was ultimately fought are all centered around the issue of, initially, slavery and then the reconstruction of the vanquished region. A dominant domestic issue throughout the twentieth century has been, again, America's treatment of its black citizens. The civil rights movement of the 1950's and 1960's changed America in truly fundamental ways. Americans of all colors were forced to examine basic beliefs and long held views. Even so, most people, who are not conversant with history, still do not really comprehend the way in which that movement transformed America. In racial terms the country that existed before the civil rights struggle is almost unrecognizable to us today. Separate public facilities, separate entrances, poll taxes, legal discrimination, in essence an American apartheid, all were part of an America that the movement destroyed.

In addition, the other major social movements of the latter half of this century-feminism, the nation's treatment of other minority groups, even the anti-war effort are all tied in some way to the spirit that was set free by the civil rights movement. Those other movements may have occurred in the absence of the civil rights struggle but the fight for black equality came first and helped to shape the way in which other groups of people came to think of themselves and to raise their desire for equal treatment. Further, many of the tactics that were used by these other groups were developed in the civil rights movement.

And today the link between the black experience and this country is still evident. While the problems that presently afflict the black community may be more severe, they are an indication of where the rest of the nation may be if corrective measures are not quickly taken. For example, the rate of white unwed births has risen dramatically in recent years, continues to rise and now stands at almost 30%. The level of violence now found in once quiet suburbs is alarming and further demonstrates that our past, present and future are linked. It is not safe for this nation to assume that unaddressed social problems in the poorest parts of our country will not ultimately affect the larger society.

Black history is extremely important because it is American history. Given this, it is in some ways sad that there is a need for a black history month. Though we are all enlarged by our study and knowledge of the roles played by blacks in American history, and though there is a crying need for all of us to know and acknowledge the contributions of black America, a black history month is a testament to the problem that has afflicted blacks throughout our stay in this country. Black history is given a separate and clearly not equal treatment by our society in general and by our educational institutions in particular. [It is only given a month (the only month with 28 days!) of recognition.] As a former American history major I am struck by the fact that such a major part of our national story has been divorced from the whole. In law, culture, science, sports, industry and other fields, knowledge of the roles played by blacks is critical to an understanding of the American experiment. For too long we have been too willing to segregate the study of black history. There is clearly a need at present for a device that focuses the attention of the country on the study of the history of its black citizens. But we must endeavor to integrate black history into our culture and into our curriculums in ways in which it has never occurred before so that the study of black history, and a recognition of the contributions of black Americans, become commonplace. Until that time, Black History Month must remain an important, vital concept. But we have to recognize that until black history is included in the standard curriculum in our schools and becomes a regular part of all our lives, it will be viewed as a novelty, relatively unimportant and not as weighty as so called "real" American history.

I was invited to speak to you today because some consider me, the first black person to be named United States Attorney for the District of Columbia, a part of black history. We do a great disservice to the concept of black history recognition if we do not acknowledge that my appointment cannot be viewed in isolation. I stand on the shoulders of many other black Americans, all of whom should be widely known to all Americans: admittedly, the identities of some of these people, through the passage of time, have become lost to us—the men, and women, who labored long in fields, who were later legally and systemically discriminated against, who were lynched by the hundreds in this century and those others who have been too long denied the fruits of our great American culture. But the names of others of these people should strike a resonant chord in the historical ear of all in our nation: Frederick Douglas, W.E.B. DuBois, Walter White, Langston Hughes, Marcus Garvey, Martin Luther King, Malcolm X, Joe Louis, Jackie Robinson, Paul Robeson, Ralph Ellison, James Baldwin, Maya Angelou, Toni Morrison, Ralph Bunche, Rosa Parks, Marion Anderson, Emmit Till. These are just some of the people who should be generally recognized and are just some of the people to whom all of us, black and white, owe such a debt of gratitude. It is on the broad shoulders that I stand as I hope that others will some day stand on my more narrow ones.

Black history is a subject worthy of study by all Americans. To truly comprehend this country you must have knowledge of its constituent parts. Black Americans have played a pivotal role in the development of this nation. Perhaps the greatest strength of the United States is the diversity of its people. But an unstudied or misunderstood diversity can become a divisive force. An appreciation of the unique black past, acquired through the study of black history, will help lead to understanding and compassion in the present, where it is so sorely needed, and to a future where all of our people are truly valued.

TRIBUTE TO LASHAUN QUARLES

HON. JACK QUINN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mr. QUINN. Mr. Speaker, I am very pleased and proud to rise today to salute LaShaun Quarles, an eighth grader who attends St. Aloysius School in Cheektowaga, NY.

LaShaun was chosen as the first place winner of a Black History Contest which I sponsored to help commemorate Black History Month. Students throughout the congressional district were encouraged to highlight some of the important contributions African-Americans have made to our Nation.

LaShaun chose Marcus Garvey as a figure whom she believes is vitally important to the history of the United States. A panel of judges found LaShaun's essay to be most inspirational and knowledgeable.

LaShaun's admiration for Marcus Garvey and appraisal of his principles is worthy of our attention. I commend her essay to you and ask that it be placed in the RECORD.

WHY MARCUS GARVEY IS IMPORTANT TO THE UNITED STATES

(By LaShaun Quarles, St. Aloysius, Grade 8)

Marcus Garvey was a man who founded a most significant movement in African American freedom. Garvey traveled around the world forming the Universal Negro Improvement Association (UNIA) and teaching African Americans that black is beautiful.

I found Garvey's principles to be interesting. I learned a great deal from them. One of Garvey's principles includes "never spend all of your earnings." It is very important to save a little of what you earn. I have observed a number of young African Americans spending a great deal of money on clothes, Nikes, etc. We need to begin to save a portion of our money towards our education and future. Reading about Garvey has encouraged me to save even more of my money.

Another one of Garvey's principles is to "have pride in your race." In a world where black is often hated, he taught us that black is beautiful. Not having pride in your race destroys our self-esteem and confidence. We as people must learn to love and appreciate ourselves and recognize the beauty of being African. Garvey was against skin bleaching and hair straighteners. He felt that God made us dark skin with coarser hair for a reason, and that we should keep ourselves looking natural. I realize that some young people within my community need to have more pride in their race and not be concerned about changing their physical appearance. If you choose to change something about yourself, it should be because you want to and not because you feel your friends will have more respect for you.

Good character is a good principle also. Back in the early 1900's when Caucasians met an African America, they would automatically think that the person was bad news, but if you have a good personality, it will usually come naturally for a person to like you. I realize that you should always take time to know a person before passing judgement. As I look within my community, I realize that some kids judge people based on how they look or how they are dressed. We will often find better friends if we look for a good character.

Another principle that Garvey talked about was "obey the rules of society." This is an important principle because so many people do not obey rules. Many young African Americans go to jail because they broke a law. We have rules in society for a reason, if there were no rules, there would be no order in society. We have rules in school, and they are there so that we may be more disciplined and prepared for life.

"Never stop learning" is another principle that Garvey stressed. I realize that it is necessary that I stay in school, if I am to reach my goal of becoming a lawyer. I hope that all young people continue their education. With education, kids most likely will not resort to selling or using drugs, because they would realize the negative consequence of their actions.

Reading about Marcus Garvey has encouraged me to continue to have high self-esteem and pride in my race, not so that I may hate other races, but respect them as human beings with feelings. Marcus Garvey was a courageous man, and he not only helped me to discover the principles that I will use to guide my own life, but it teaches me about my African American heritage and about America itself. I think it is very crucial for us to know the heroes of our history.

TRIBUTE OF CHIEF WILLIAM "BILL" BAKER

HON. JULIAN C. DIXON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mr. DIXON. Mr. Speaker, on Friday, March 10, 1995, family, friends, and colleagues of Chief of Detectives William "Bill" Baker will pay tribute to him at a retirement dinner in his honor at the Hotel Intercontinental in Los Angeles. This affair will follow—by 4 days—Bill's official retirement from the Los Angeles County Sheriff's Department where he has served with great distinction for nearly four decades. I am honored and pleased to have this opportunity to salute Bill and to share with my colleagues in the House of Representatives a brief retrospective of his outstanding career.

During his exemplary career in the Los Angeles County Sheriff's Department, Bill has held a variety of assignments, including commander of the court services division; technical services division; field operations region II; and the detective division. As a commander, he commanded field operations region II, and as a captain, he directed operations at the West Hollywood, Altadena, and Lennox Stations. Other assignments have included an investigative position in the narcotics bureau as well as patrol assignments at the Lennox and Firestone Stations. In addition, Chief Baker served as sheriff's department's civil service advocate.

Bill's advancement through the ranks is especially noteworthy. He joined the sheriff's department at a time when opportunities for minorities were—at best—scarce. But Bill was not your typical individual. He was eager to learn the ropes and possessed the commitment and tenacity to assume the important responsibilities that would eventually lead him to a stellar 36-year career with the sheriff's department.

Along the way, he earned a masters degree in public communications from Pepperdine University, and masters and bachelor of sciences degrees in criminal justice from the California State University, Los Angeles. In addition, he graduated from the prestigious Federal Bureau of Investigation's National Academy, located in Quantico, VA.

In recognition of his exemplary career in law enforcement, Chief Baker has received numerous awards and honors, including the Los Angeles County Valor Award, the Criminal Courts Bar Association, and the California city of Lawndale Distinguished Service Award.

Along with the myriad contributions he has made in law enforcement, Chief Baker has also devoted considerable time to several outside organizations. He has chaired and/or served on several boards, such as the Criminal Justice Committee of the National Conference of Christians and Jews; the Southern California Chapter of the National Organization of Black Law Enforcement Executives; and the United Way South Central Youth Violence Roundtable Committee. From 1980 to 1988, he was an associate professor of criminal justice at California State University at Los Angeles.

Mr. Speaker, I am proud to recognize and salute Chief William "Bill" Baker's superior career in law enforcement. He has established a legacy of excellence that the law enforcement community and all Angelenos can look to with great pride and admiration.

Please join me in wishing Bill best wishes for a long and healthy retirement, and in extending congratulations to him as he enters another chapter in his life—one that we trust will be filled with many hours listening to swinging and melodious jazz and making plenty of trips to the racquet ball courts. Join me also in acknowledging his lovely wife, Pearl, and their adult children, Arlyce and William.

SALUTE TO WHITESBORO AND GUNTER GIRLS BASKETBALL TEAMS

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mr. HALL of Texas. Mr. Speaker, I rise today to pay tribute to two groups of outstanding young athletes in the Fourth District of

Texas—the high school girls basketball teams from Whitesboro and Gunter—who recently won their regional championships and will play in the State basketball tournament in Austin later this week. I would like to take this opportunity to congratulate these players on their outstanding achievement and to wish them well in the State competition.

The Whitesboro Lady Bearcats will represent their 3A region in the State tournament for the first time since 1953, and the Gunter Lady Tigers will play in the 2A State tournament for the first time in the school's history. The citizens of Whitesboro and Gunter are understandably proud of their outstanding teams, and I share their enthusiasm.

Reaching this level of competition requires much hard work and dedication on the part of all members of the teams. Basketball is both a physical and mental sport and also requires much team work. It helps build character, and these girls have demonstrated that they have the talent and character—and the heart—to succeed. They are winners on the playing court, and the skills that they have learned also will serve them well in life.

Mr. Speaker, it is a privilege to recognize the Whitesboro Lady Bearcats and Gunter Lady Tigers and to join their many fans in giving them our heart-felt best wishes as they represent their schools and communities in the Texas State tournament. I know that they are prepared to give their best efforts—for their schools and for themselves—as they play in this final round of competition. It would be an honor to have both the 3A and 2A girls basketball State champions from my district, but whatever the outcome, they are already winners.

TRIBUTE TO JOSEPH A. CAVANAUGH, FORT ORD PROJECT COORDINATOR

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mr. FARR. Mr. Speaker, I am delighted to honor Mr. Joseph A. Cavanaugh today, an outstanding public servant and citizen from Monterey, CA, on the occasion of his retirement as project coordinator for the Fort Ord Reuse Authority [FORA].

From his service in the Peace Corps, helping Tanzanians learn English and develop their communities, to his work as project coordinator for the Fort Ord Reuse Authority, Joe has helped people develop their communities and gain the skills they need to help themselves. His career in public service spans 30 years of work as a teacher, planner, researcher, and community organizer in California and throughout the United States.

In the community assistance arena, Joe has had a long and successful career. In 1964 he worked as a Peace Corps volunteer in east Africa where he helped local residents develop their community, including constructing a bridge and developing a local water system. He then went on to help plan and direct several Vista programs, on both a regional and national level.

Joe continued his work in community planning and development as community development director for the cities of Boulder, CO and Lawndale, CA. In my central coast California district, Joe served for 8 years as a community redevelopment and economic development coordinator for Monterey County. Most recently, Joe served as the executive staffmember of the Fort Ord Reuse Authority [FORA]. When the closure of Fort Ord was announced in 1991, the local community faced the loss of one of the largest employers in the region. Rather than simply accept this plight, however, the community organized itself to find uses for the closing base which would benefit everyone. With Joe's skillful leadership and direction, the Fort Ord Reuse Group, the predecessor to the newly created Fort Ord Reuse Authority, successfully worked with Monterey County and surrounding impacted communities to develop a reuse plan that has turned a potential catastrophe into an economic and educational center which serves as a national model for the reuse of closed military installations.

I commend Joe for his commitment to public service, and for helping thousands of people develop and strengthen themselves and their communities. I thank him for his contribution to the economic development in my district, which has ensured healthy, enriched local communities for years to come, and I call upon my colleagues in the House to salute Joe Cavanaugh with me on his outstanding career and for a job well done.

IN HONOR OF SAM LAMPARELLO, THE 1995 BAYONNE CHAPTER OF UNICO "MAN OF THE YEAR"

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 28, 1995

Mr. MENENDEZ. Mr. Speaker, I rise today to pay tribute to Sam Lamparello, who is being honored as the 1995 Man Of The Year by the Bayonne chapter of Unico National. A dinner dance will be held in his honor on March 4, 1995.

Sam Lamparello is an Italian immigrant, who came to the United States with his parents when he was just 2 years old. He grew up in Bayonne and worked with his father in the family ice business. Upon graduation Sam Lamparello became an apprentice machinist with the American Radiator Co. He was later voted the president of local 447, United Electrical Radio and Machine Workers Union. However, during his second term as president he decided to pursue his life-long dream.

Sam Lamparello took all his life savings and founded the Beacon Oil Co. He struggled tremendously, working out of his mother's basement. In those first years he served as a driver, serviceman, salesman and installer. he was later joined by his brothers, and together they managed to turn Beacon Oil Co. into a successful business.

Sam Lamparello has always been eager to serve his community. He was a member of the Hudson County Gold Seal Fuel Dealers and then in 1953 he joined Kiwanis and UNICO. While a member of these organizations, Sam Lamparello organized and chaired many fundraising events. Sam Lamparello was also appointed to the Bayonne traffic committee and the Bayonne Red Cross board.

For his great dedication to the community, Sam Lamparello has been awarded many honors, including the National Conferences of Christian and Jews Brotherhood award [1966] and the Gold Seal Fuel 1969 Man of the Year award. in 1964, he was named Jerseyan of the Week by the Newark Star Ledger.

Despite everything he has accomplished, Sam Lamparello was determined to keep on helping those that were less fortunate than he. For 12 years he was a member of the United Fund of Bayonne and chairman of the 1968–69 fundraising drive. Sam Lamparello was a member of the board of directors at the YMCA, where he also served as president for 16 years. During his term in office, he had the largest fund drive ever and in the process helped more than 40,000 children.

Sam Lamparello is still an active member of UNICO, Kiwanis and the YMCA board of directors. He also serves on the First Savings Bank of New Jersey board of directors and the Bayonne Hospital board of directors.

Sam Lamparello is a wonderful man and a true humanitarian. I am honored and proud to have such a man of great stature and heart as one of my constituents. Again, I offer my congratulations to Sam Lamparello for being named Man of the Year and for offering his time and kindness to those in need.

SENATE—*Wednesday, March 1, 1995*

(Legislative day of Wednesday, February 22, 1995)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Our prayer this morning will be offered by a guest Chaplain, Father Paul Lavin, of St. Joseph's Catholic Church, Washington, DC.

PRAYER

The guest Chaplain, the Reverend Paul Lavin, offered the following prayer:

In Psalm 51 (verses 1–3) we read:

Have mercy upon me, O God, according to thy lovingkindness: according unto the multitude of thy tender mercies, blot out my transgressions.

Wash me thoroughly from mine iniquity, and cleanse me from my sin.

For I acknowledge my transgressions: and my sin is ever before me.

Let us pray:

Almighty Father, as so many of the Members of this Senate join millions of our fellow citizens in accepting ashes as a public sign of our desire to understand more deeply the meaning of salvation and to reflect that salvation in the way we live, help each of us to recognize Your gifts to us and help us to use those gifts for the good of our families, for the good of this Senate, for our fellow citizens, and for all Your people. Amen.

The PRESIDENT pro tempore. The distinguished majority leader is recognized.

Mr. DOLE. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COVERDELL). Without objection, it is so ordered.

PERMITTING USE OF THE ROTUNDA OF THE CAPITOL

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 20, just received from the House.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 20) permitting the use of the rotunda of the Capitol for a ceremony to commemorate the days of remembrance of victims of the Holocaust.

Mr. LAUTENBERG. Mr. President, I rise today to express my support for House Concurrent Resolution 20, which would permit the use of the Capitol rotunda to commemorate the Days of Remembrance of Victims of the Holocaust.

It has now been more than 50 years since Adolf Hitler mounted his systematic effort to destroy the Jewish people. Today, many survivors of the Holocaust are aging or have died. Soon, they will no longer be able to share their first-hand accounts of Hitler's savagery.

Now more than ever, we must redouble our efforts to remember the terror of the Third Reich, and to teach our children important lessons about the need for tolerance and the dangers of intimidation.

The Days of Remembrance is a weeklong commemoration of the Holocaust. On April 27, an international day of commemoration, there will be a ceremony on the Capitol rotunda consisting of speeches, readings, and musical presentations, to honor and remember the 6 million innocent victims of the Holocaust. As a humane and tolerant society, we must stamp on our souls the haunting memories of these victims: men and women, young and old, who were tortured and killed not because of something they did, but simply because of who they were.

Mr. President, we are all familiar with the adage that those who do not learn from history are doomed to repeat it.

Our duty to those who died on the trains, in the fields and in the gas chambers, is to make sure that their story is told from generation to generation. We must study and reflect on the atrocities of the Nazis, in order to make sure that this dark chapter of history is never repeated.

It is a painful study, Mr. President, but it is the only way we can sanctify the memory of the victims and make sure that their suffering is never forgotten.

Mr. President, there is often a temptation to obscure the dark passages to humanity, but we know that we cannot be true to history unless we reveal them. The Days of Remembrance are a time for us to undergo this painful reflection and I laud my colleagues for passing this important resolution.

Mr. DOLE. Mr. President, I ask unanimous consent that the resolution be agreed to, and the motion to reconsider the vote be laid upon the table.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 20) was agreed to.

REPORT ON THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES—MESSAGES FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 23

Under the authority of the order of January 4, 1994, the Secretary of the Senate, on March 1, 1995, during the recess of the Senate, received the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Armed Services:

To the Congress of the United States:

As required by section 603 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, I am transmitting a report on the National Security Strategy of the United States.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *February 28, 1995.*

ANNUAL REPORT OF THE DEPARTMENT OF ENERGY—MESSAGES FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 24

Under the authority of the order of January 4, 1994, the Secretary of the Senate, on March 1, 1995, during the recess of the Senate, received the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Energy and Natural Resources:

To the Congress of the United States:

In accordance with the requirements of section 657 of the Department of Energy Organization Act (Public Law 95–91; 42 U.S.C. 7267), I transmit herewith the 13th Annual Report of the Department of Energy, which covers the years 1992 and 1993.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 1, 1995.*

ADDITIONAL STATEMENTS

AN INVESTMENT IN AFRICA

• Mr. FEINGOLD. Mr. President, as the Congress begins to debate the foreign aid budget this year, U.S. assistance and involvement in Africa is once again in question.

It would be a grave mistake for the United States to disengage completely from Africa, particularly at this point. As the success stories of South Africa, Namibia, Mozambique, and other African nations in transition tell, there is potential for great gains in Africa—both politically and economically. At the same time, even recent history demonstrates that if we ignore Africa, conflicts and problems can explode into political, economic, and humanitarian disasters for which we all pay the price.

On this note, I commend to my colleagues an article which appeared in the New York Times this weekend entitled, "In Africa, West Can Pay Now or Later." It charts several reasons for international involvement in Africa in the global context, and documents some reasons for U.S. investment in the continent.

Though some would like to write off Africa as irrelevant to U.S. interests, it is impossible to argue that what happens in a continent of close to 1 billion people has no effect on us. An investment in Africa of money, diplomacy, and attention today will help develop political stability, which in turn will yield economic benefits for Africans and international trading partners: Together political and economic developments will help reduce the number and level of tragedies we have witnessed in Africa.

Reducing the Federal deficit is in our national interest and should be our top priority. But a wholesale abandonment of U.S. investment in regions of the world such as Africa is not in the U.S. interest. We need to make sensible decisions about necessary U.S. investments. In the long run, our populations, the environment, universal human rights, and international markets will benefit greatly from a relatively small investment today.

I ask that the text of the article be printed in the RECORD.

The article follows:

[From the New York Times, Feb. 26, 1995]

IN AFRICA, WEST CAN PAY NOW, OR LATER

(By Howard W. French)

ABIDJAN, IVORY COAST.—Having struggled across the Sahara, 250,000 starving Sudanese refugees assemble on the Moroccan coast, hoping to cross the Straits of Gibraltar to Europe. As an armada of camera crews film them, the refugee's leader launches this challenge to European Union coastal guards who would stop them: "All we ask of you is, watch us die."

The event is pure fiction, the final scene of a 1990 BBC television drama. But development experts say it neatly illustrates a stark choice looming for the industrialized world: Pitch in more energetically to bring Africa into the global economic fold, or wait and watch as the continent decends into a quickening spiral of disaster.

AN EXPLODING POPULATION

With its population due to double to about 1.2 billion in less than 30 years, and expected to reach 2 billion by 2050, an Africa in crisis could well become the desperate stage for a mass emigration the likes of which have never been seen.

Despite such warnings, however, the West seems to have grown only more indifferent to Africa's fortunes. Some American congressmen have recently likened aid to the continent to throwing money into a rathole; Britain has said it will cut its contributions to Africa through the European Union, and even France is grappling with ways to reduce obligations to its former possessions.

In response, frustrated development experts and new democratic leaders in Africa have argued that would be far cheaper to help the continent out of its problems now than to rescue it later.

To get a sense of scale, it helps to look at two examples where extremely rapid population growth rates—well over 3 percent a year—are expected by United Nations statisticians between now and the year 2000. They are Nigeria, which in the early 1990's had 116 million people and a gross national product per capita of only $350, and Kenya, which had 25 million people and produced just $340 per person.

Nevertheless, the experts on Africa recognize that in an era of austerity at home, arguments about investing abroad today to prevent crisis tomorrow have limited appeal. They now argue that traditional aid grants are not necessarily the answer. "The most effective thing that could be done for Africa right now doesn't involve new money, but systematic debt relief," said Thomas Callaghy of the University of Pennsylvania. "You could write off all of Africa's debts tomorrow, and it wouldn't affect international financial markets." But then, "When you look at what has just happened in Mexico you realize just how hard a thing this is to sell politically."

If Africa's approaching peril is not enough to motivate the West to act with greater generosity, many hope that old-fashioned appeals to profit might. Whether it was spices or gold or slaves or vast quantities of gems and minerals, the continent has always been a rich, if risky, El Dorado for the venturesome outsider.

WHY DO INVESTORS HESITATE BEFORE AFRICA'S NEW OPPORTUNITIES?

Following Ghana's independence, Kwame Nkrumah, its first president and a pioneer of the continent's ultimately disastrous fling with socialism, defined the historical problem, noting the "paradox" that Africa's "earth is rich, yet the products that come from above and below the soil continue to enrich, not Africans predominantly, but groups and individuals who operate to Africa's impoverishment."

Now, throughout much of the continent, several years of dramatic efforts to remove barriers to trade and investment, trim bureaucracies and rejoin the global economy have mostly swept away the legacy of three decades of Mr. Nkrumah's brand of socialism. Ghana and Uganda are prominent examples, and investment in South Africa can at last be viewed as an investment in the continent as a whole.

Because of these changes, Africa's riches are again up for grabs. But so far, the international business community has largely disappointed the development experts. Mali, for example, can't find a partner to help finance a new power company, even though companies from the United States, Australia and Canada rush to explore for gold and diamonds and oil there. Their hope is for the kind of quick extraction of wealth that led to the continent's early disenchantment with capitalism.

If Africa still requires a more cooperative form of economic involvement, development experts say, it is because the years under socialism did little to alleviate deep social problems that include an undereducated population whose needs grow faster than weak governments can possibly cope with, poor roads and communications, a lack of managerial expertise, and most of all a shortage of capital.

So Africa is in a bind: major foreign private investment in productive new industries is unlikely unless these problems are solved first, but the only sources of help to fix them is overseas.

"People cling to the myth that if only these countries would get their policies right, everything would be okay," said James Gustave Speth, the administrator of the United Nations Development Program. "There is no reason to believe that Africa can't make it, but right now this is a continent that is bleeding and without substantial outside help, there is no hope."

In addition to cutting debt burden, economists say the West should drop barriers to goods like textiles that are often entry level transformation industries for developing countries. In this, they say, there could be a payoff for the West as well.

"Aid to Africa is not welfare," J. Brian Atwood, the administrator of the United States Agency for International Development, wrote recently in The International Herald Tribune. "Africa is today what Latin American and Asian markets were a generation ago. It is the last great developing market." But what many see as a sensible management of long-term interests collides with political expediency. "Putting people on their feet is just good business sense" said Edward V.K. Jaycox, vice president of the World Bank. "But it is a question of old-fashioned industrial structures in the north, where a lot of people are engaged in activities that they are loath to give up." By that he meant something very much like what Mr. Nkrumah used to say: If the West really wants to see an Africa healthy for investment, it should stop raiding the gold veins and diamond mines and open not just its wallets but its markets as well.●

ORDER OF BUSINESS

Mr. ROTH. Mr. President, today I rise as a proud cosponsor of the constitutional balanced budget amendment, and I urge its adoption. I hope that today, we will be able to enlist the support of the 67 Senators necessary to pass this balanced budget amendment.

The time has come to put an end to out of control Federal spending that has taken money from the private sector—the very sector that creates jobs and economic opportunity for all Americans.

The President's recent budget proposals for next year offer clear evidence of the lack of political will to make the hard choices when it comes to cutting Government spending. I strongly disagree with President Clinton's decision not to fight for further deficit reduction this year.

The American people are crying out for a smaller, more efficient Government. They are concerned about the trends that for too long has put the interests of big Government before the interests of our job-creating private sector. They are irritated by the double standard that exists between how our families are required to balance their checkbooks and how Government is allowed to continue spending despite its deficit accounts.

It's clear, Mr. President. The time has come to heed the will of the people. It is our duty, not only to heed their will, but to act in their best interest. And this amendment is in their best interest.

The President's budget maintains deficits of $200 billion over the next 5 years, and the deficits go up from there. His budget does not take seriously the need for spending restraint—restraint that would put us on a path toward a balanced budget by the year 2002.

In fact, Bill Clinton proposes spending over $1.5 trillion in fiscal year 1995 to over $1.9 trillion in the year 2000. In other words, the only path that the president proposes is one that leads to higher Government spending and ever increasing deficits.

Mr. President, my decision to cosponsor this legislation was not made lightly. The U.S. Constitution is our Nation's most sacred document. Dozens of countries have modeled their constitutions around the principles espoused in ours. Many of the emerging democracies around the world recognize the profound simplicity and timelessness contained in that hallowed document.

Any amendments to the Constitution should be made with care, and with careful consideration of the intended outcome.

I believe the outcome of a balanced budget for our Nation is one of the most important steps we can take to ensure the economic opportunities for prosperity for our children and for our children's children.

As a nation—and as individuals—we are morally bound to pass opportunity and security to the next generation. This is what a balanced budget amendment will help us do. As Thomas Paine has written, no government or group of people has the right to shackle succeeding generations with its obligations. A balanced budget amendment will help us prevent the shackling of future generations.

As chairman of the Senate Governmental Affairs Committee I have outlined a plan to reduce the Federal bureaucracy, eliminate out-dated and wasteful Government programs, and to strengthen Government's ability to better serve the taxpayers.

In January I kicked off a series of hearings on "Government Reform: Building a Structure for the 21st Century." It is my belief that as we move into the 21st century, so should our Government. Innovative technologies should allow us to cut out many layers of management bureaucracy, and reduce Federal employment. Programmatic changes should also occur.

Last month, I released a report that I asked the GAO to examine the current structure of the Federal Government. The GAO examined all budget and Government functions and missions. They did not conduct in-depth analysis, but simply illustrated the complex web and conflicting missions under which agencies are currently operating.

The GAO report confirms that our Federal behemoth must be reformed to meet the needs of all taxpayers for the 21st century. I am convinced that it is through a smaller, smarter Government we will be able to serve Americans into the next century.

Deficit spending can not continue. We can no longer allow waste, inefficiency, and overbearing Government to consume the potential of America's future. I am committed to spending restraint as we move to balance the budget by the year 2002. And I ask my colleagues—and all Americans—to support our efforts.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the minority leader.

Mr. DASCHLE. I would ask that I use part of the leader time accorded to me this morning to make a statement as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

Mr. DASCHLE. Mr. President, we have had 4 weeks of hard-fought and very earnest debate. The issues are serious and the stakes are high. We are proposing to amend our Constitution for only the 28th time now in more than two centuries. The debate has been vigorous. Virtually every Senator has spoken from virtually every perspective. Persuasive arguments have been made by both Democratic and Republican Senators, and I respect the positions which my colleagues have adopted even in those cases where I do not share their position. I recognize that each Senator has reached his or her position with thought and care and the best of motives.

There is something upon which we all agree, and upon which we have agreed since the debate began; that is, the underlying need to reduce the deficit and balance the budget. We need to put the budget on a glidepath to balance, and we are agreed that for the sake of working families and the future economic strength of the Nation we must move toward a balanced budget.

One thing we should all agree upon is that regardless of the outcome of the final vote, we will work together to develop a deficit-reduction package that will put the budget on a glidepath to balance. I stand ready to work with my colleagues on the other side of the aisle to achieve that goal.

Now, the question is how best to continue the effort that we have begun throughout this decade, an effort begun in 1991 with a significant deficit reduction proposal, and again in 1993 with $600 billion of additional deficit reduction. The question is can we achieve what we all say we want with the balanced budget proposal before us? The question is how best to achieve a balanced budget using the methods that we have available to us. And where we differ is whether the amendment that is now pending reflects our best effort to amend the Constitution and achieve our goal of a balanced Federal budget.

Amending the Constitution is not a frivolous undertaking. We will not be able to come back next year and fix our drafting mistakes. Many of us have concluded, regretfully, that this is not our best effort. In fact, in our view, our best efforts were rejected. To strengthen the amendment, we offered amendments, but they were defeated essentially along partisan lines, amendments that we felt ought to have been considered more carefully by our colleagues on the other side, amendments like the right-to-know proposal which laid out the blueprint that we all agree is necessary if, indeed, we are serious about reaching our goal in a short period of time.

In a matter of 7 years, we proclaim today, if we pass this amendment, we will have a balanced Federal budget. But we all recognize privately that, unless we have a blueprint, we simply cannot achieve that goal in any meaningful way without using smoke and mirrors, without a blueprint.

The American people have stated very clearly their desire to see a blueprint, and indeed that is what we tried to offer as we considered this amendment many weeks ago. Some of us suggested that we provide for a capital budget so the Federal budget would work like the budgets of virtually every business, every State, every family in this country. We wanted to preserve the ability to respond to national security or economic emergencies, something that we have attempted to address in amendments as well. We tried to protect against unconstitutional Presidential impoundments and preserve the integrity of Congress' power of the purse. We tried to protect veterans' health programs and pensions.

Finally, we tried to protect Social Security, to make certain that all those commitments we made verbally on the Senate floor and in the media about protecting Social Security would in fact be kept when the amendment became part of the U.S. Constitution. On Social Security alone we had a number of different votes, different ways to make certain that the solemn commitment to protect the money in the trust fund would not be broken by a future Congress. We ran into a stone wall and, as a result, Social Security, despite Republican claims to the contrary, is legally and realistically available for cuts. We know that. And the Social Security trust funds are completely vulnerable to being raided.

Those who support the idea of a balanced budget amendment worked to improve this proposal so that it would be balanced and that we could in conscience vote for it without relying upon those trust funds for the next 7 years. But those efforts, too, were rejected.

We are still committed to balancing the budget. As supporters of this proposal have told television reporters outside the Senate Chamber, passage in this Chamber will not bring the budget one penny closer to real balance. Only we can do that. There is no machine that ultimately is incorporated in this Constitution that will force us to do what we are unable to do today. That is up to us. It is important that we understand that. It is we who must take that responsibility and no one else.

Some will attempt to characterize a vote against this flawed amendment as a vote against balancing the budget, but that is not what this vote is about. As I said, we all agree on the importance of balancing the budget. But this amendment simply does not do the job.

For the past month the Republican majority has been trying to pass their balanced budget amendment and claim a political victory. They have refused to listen to those of us who support an amendment but have had concerns about the language, rejecting our proposals time after time after time. They have refused to listen to the people of this country who have a right to know about how we are going to balance the budget. And, most important, they have refused to join us as we insist on real protection for Social Security, putting their political contract ahead of a solemn contract with the American people.

I yield the floor.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

Mr. DOLE. Mr. President, leaders' time was reserved?

The PRESIDING OFFICER. Yes.

THE BALANCED BUDGET AMENDMENT

Mr. DOLE. Mr. President, I will make a motion here in a moment to have the Senate stand in recess subject to the call of the Chair.

I would also indicate, though I did not raise the question last night about rule XIX, I think my colleague from West Virginia came close if not being in violation of rule XIX, which states: "No Senator in debate shall directly or indirectly, by any form of words impute to another Senator or to other Senators any conduct remotely unworthy or unbecoming a Senator." I would ask that—some of the "tawdry" references, "sleazy" references, in my view were uncalled for.

This is a very important vote. I believe there are 66 votes for the amendment, Democrats and Republicans. We need 67. Or we need 66, if there are only 99 voting.

I thought a lot about what procedure to follow after we recessed last evening. I thought about the hard work of the Senator from Utah, Senator HATCH; the Senator from Illinois, Senator SIMON; and other Democrats and Republicans who have worked and worked and worked for months and months and weeks and weeks and days and days and hours and hours in an effort to gain the support of 67 of our colleagues.

This must be bipartisan; there are only 53 Republicans. As I said last night, if you want to take a look at total nonpartisanship, take a look at Senator SIMON. He is leaving the Senate. He can do most anything. If he had any political motives, I assume—you can say, in most cases, Members have political motives—but in this case you cannot. He feels strongly about the amendment. We feel strongly about protecting Social Security. We have made a number of suggestions to Members on the other side about protecting Social Security, but it is never quite enough, never quite enough, never quite enough.

I must say, it seems to me to be in the interest—not in our interest—in the interest of the American people; 76 to 80 percent of the American people support the balanced budget amendment. And they could care less whether we voted last night or vote today or tomorrow or next week or the next week. They know the country is in danger of economic collapse unless we do something.

The American people are very sophisticated. They listen to radio. They read the newspapers. They watch television. They watch C–SPAN. This is no time for retreat. This is a time, as far as this Senator is concerned, for all of us who believe in the balanced budget amendment on both sides of the aisle to try to find one more vote—not in some back room deal, as alleged last night by the Senator from West Virginia—but by a recognition that if we do nothing—it probably will not make any difference to us or our families, but what about the 80 percent of the American people out there who want us to balance the budget? They balance their budgets. They balance their budgets in their businesses and in their homes, and they do not understand this business-as-usual attitude in Washington.

We are going to continue to try to find one vote. If we fail on that, then I, when the vote is cast, if it ends up 66, I will change my vote and I will enter a motion to reconsider. That motion to reconsider is not debatable. It can be called up any time by the leader, and I think sometime about next September might be appropriate to reconsider this whole issue. We do not want to do it too quickly, but maybe let it—leave it out there a year. Let us see what happens as we get nearer the election and the American people are a little agitated at Congress, as they should be.

I just suggest if anyone in this Chamber on either side of the aisle can find one more vote—or send someone on vacation, who might be on the other side—we need your help. The American people need your help. This is not a battle—this is a victory—victory for whom? Not for BOB DOLE. Not for PAUL SIMON. Not for LARRY CRAIG. Not for ORRIN HATCH. Not for JIM EXON. This will be a victory for the people. That is what this is all about. Give America back to the people.

Dust off the 10th amendment. Unless the power is reserved to the Federal Government, give it back to the States and give it back to the people.

We are going to continue every way we can to make this happen.

Mr. President, I move the Senate stand in recess subject to the call of the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Mr. President, I object.

The PRESIDING OFFICER. The Chair recognizes the minority leader.

Mr. DASCHLE. Mr. President, I only object so as to respond, if I could, using the remainder of my leader time. How much time do I have available?

The PRESIDING OFFICER. The Senator has 3 minutes.

Mr. DOLE. That is all right. Whatever you need.

Mr. DASCHLE. Mr. President let me respond to the distinguished minority leader. I do not know that I have learned all the rules of this place as well as he has, but I thought that a deal was a deal.

I thought in good faith that when we negotiated an agreement which required unanimous consent that a deal was a deal and that our word was our bond. The word that I was given over a week ago was that we would have a vote last night. The vote was not going to be if we had so many votes we keep the deal. The vote was we are going to keep our deal. We will have a vote, and that will be the end of it.

I recognize the right of any Senator to change his vote and make a motion to reconsider. That is always within the prerogative of any Senator. And the majority leader is certainly within his rights to do that. But to say today that we are going to change the rules and that we are going to nullify an agreement that we had in good faith last week makes me wonder whether or not we will ever get another agreement

during this Congress. It makes me wonder whether in good faith we can negotiate and come to some arrangement with regard to the consideration of any bill in the future.

So this portends some very serious ramifications, and I hope that we all recognize it. I thought we had a deal. I thought we had an agreement. I thought we were going to go to a vote. If we are not going to go to a vote, if we are going to delay that vote and bring it up some other time, I think it is imperative that we have the notice of the majority leader in advance so all Members can be forewarned.

But I must say that I am deeply disappointed and that this kind of instant rulemaking is unacceptable.

I yield the floor and reserve my right to consider the proposal by the majority leader again.

Mr. DOLE. I thank the Senator from South Dakota.

RECESS UNTIL TOMORROW

Mr. DOLE. Mr. President, I am going to modify the proposal to move that the Senate stand in recess until noon on Thursday, March 2.

The motion was agreed to, and the Senate, at 10:22 a.m., recessed until tomorrow, March 2, 1995, at 12 noon.

HOUSE OF REPRESENTATIVES—*Wednesday, March 1, 1995*

The House met at 10 a.m.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Teach us, O gracious God, to be responsive to the prayers and blessings and support that other people share with us. When we truly examine our lives, we see how those about us have favored us with both material and spiritual gifts and we, too, often only accept the gift and never offer our appreciation to the giver. Remind us always, O God, to be grateful for the support and advocacy of other people in our daily lives so we will respond with a true spirit of thanksgiving. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Missouri [Mr. VOLKMER] come forward and lead the House in the Pledge of Allegiance.

Mr. VOLKMER led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT AS MEMBER OF THE UNITED STATES DELEGATION OF THE MEXICO-UNITED STATES INTERPARLIAMENTARY GROUP

The SPEAKER. Pursuant to the provisions of 22 U.S.C. 276h, the Chair appoints the following Member of the House as a Member of the United States Delegation of the Mexico-United States Interparliamentary Group for the 1st session of the 104th Congress:

Mr. KOLBE of Arizona, chairman.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will recognize Members for 20 1-minute speeches on each side.

The Chair recognizes the gentleman for Ohio [Mr. HOKE].

CONTRACT WITH AMERICA

(Mr. HOKE asked and was given permission to address the House for 1 minute.)

Mr. HOKE. Mr. Speaker, our Contract With America states the following:

On the first day of Congress the Republican House will require Congress to live under the same laws as everyone else, cut committee staffs by one-third, and cut the congressional budget. We have kept our promise.

It continues in this way. That in the first 100 days we will vote on the following items:

A balanced budget amendment; we kept our promise, we passed it.

Unfunded mandates legislation; we kept our promise.

Line-item veto; we kept our promise.

A new crime package to stop violent criminals; we kept our promise.

National security restoration to protect our freedoms; we kept our promise.

Government regulatory reform; we are doing this right now.

Welfare reform to encourage work, not dependence; family reenforcement to crack down on deadbeat dads and to protect our children; tax cuts for middle-class, middle-income families; Senior Citizens Equity Act to allow our seniors to work without Government penalty; common sense legal reform to end frivolous lawsuits; and term limits to make Congress a citizen legislature.

Mr. Speaker, this is our Contract With America.

QUESTIONING THE CREATION OF A FREE TRADE ZONE IN ISRAEL AND THE APPOINTMENT OF THE SPEAKER'S WIFE

(Mr. VOLKMER asked and was given permission to address the House for 1 minute.)

Mr. VOLKMER. Mr. Speaker, just last week one of our colleagues gave much needed criticism to several former higher ranking Government officials who now represent foreign interests. I rise today to protest the job given to the wife of our Speaker by a group of American investors who want to create a free trade zone in Israel. What does a free trade zone mean? It means companies operating within the zone can import duty free and then export to the United States duty free. In other words, export American jobs to Israel so they can produce products that can come back to the United States to compete with American made products.

The Speaker's wife, Marianne Gingrich, reportedly is paid $30,000 annually plus commissions on each American company she convinces to leave the United States. For instance, a 10-percent commission on a $100 million factory would be $10 million to the Speaker's wife. Why did this job go to the Speaker's wife? Four and a half million here, 10 million there. How many millions before an independent counsel is named to investigate the Speaker's shady deals.

INCREASES, NOT CUTS, CLAIMED FOR THE SCHOOL LUNCH PROGRAM

(Mr. TIAHRT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIAHRT. Mr. Speaker, we have been falsely accused by our opponents and by the media of cutting nutrition programs through the Contract With America. The GOP has developed a plan, and it is a good plan. I have a graphic representation of that here. It talks about proposed spending.

In fiscal year 1995 for the school lunch program we are increasing spending from $4.5 to $4.7 billion. That is a $200 million increase in spending on nutrition programs. Yet we have been accused of trying to starve children.

Under the Women and Children's Nutrition Program we are increasing from $3.47 to $3.68 billion. This is a $200 million increase.

I just want to tell the people in America that the Contract With America is not a contract on America. We have a plan to feed those who are truly in need. We have a plan to cover those who have problems in our society. I think it is a good plan. I intend to support it, and I encourage others to support it.

CHINA POLICY RAISES QUESTIONS ABOUT INTELLIGENT LIFE IN WASHINGTON

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, everybody knows that China is ripping America off. They now enjoy a $38 billion trade surplus, laughing all the way to a Chinese bank.

To me that is unbelievable, but what is more unbelievable is that China is then rewarded with most-favored-nation trade status.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

But what can even be more troubling in all this is that with that $35 billion, China builds Silkworm missiles. Then China takes those Silkworm missiles and sells them to Iran. Then Iran takes those Silkworm missiles and threatens the gulf, and then the Pentagon says to Congress, "We need more money to protect the gulf from those Silkworm missiles that Iran has that were made in China."

Beam me up, Mr. Speaker. Now NASA is on an unmanned space mission to the moon. I think NASA should redirect and have an unmanned space mission to Washington, DC, and try to find out if there is any intelligent life left in the Nation's Capital.

A LOVE AFFAIR WITH THE FEDERAL BUREAUCRACY

(Mr. NORWOOD asked and was given permission to address the House for 1 minute.)

Mr. NORWOOD. Mr. Speaker, why the Democratic love affair with the bureaucracy? What motivates the Democrats to fight so hard to save it?

As part of our welfare reform package, we Republicans have proposed increasing money for school nutrition programs and giving it directly to the States, thereby cutting out the bureaucracy. Yet, the Democrats have lied about the Republican plan to save the bureaucracy. Why?

Well, a good investigator always follows the money. When we do, we find that the eight largest Federal Government employee PAC's in the last five election cycles contributed $17.1 million to Democratic candidates, but only $1.9 million to Republican candidates. That is about a 9-to-1 ratio favoring the Democrats.

Could this be why the Democrats fight so hard and misinform so much? Are they really committed to the children, or to the bureaucracy that fills their electoral coffers?

The Republican plan, Mr. Speaker, will put more money where it is needed most.

WELFARE—A COLOSSAL FAILURE IN THE WAR ON POVERTY

(Mr. BALLENGER asked and was given permission to address the House for 1 minute.)

Mr. BALLENGER. Mr. Speaker, with all the distortion, deceit, and deception coming from the other side of the aisle on the issue of welfare reform, I think it is time to remind my Democrat colleagues that welfare has been a colossal failure.

Since 1965, we have spent $5 trillion on welfare, an amount greater than our total national debt. An amount greater than the cost of winning World War II—even in constant, inflation-adjusted dollars.

But far from winning the War on Poverty, we have spent $5 trillion and poverty has won, or at least is winning.

Consider the sad facts. Since the end of World War II, poverty in America had been declining at a rapid and steady rate. But as welfare spending increased in the late 1960's and early 1970's, the poverty rate leveled off and began climbing, reversing a decades long trend in the other direction.

So why do the Democrats fight so hard to preserve a system that has been such a failure? Why do they want to perpetuate a system that has trapped so many in a cycle of dependency? Why are they so wedded to the old order?

SCHOOL LUNCHES

(Ms. ESHOO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. ESHOO. Mr. Speaker, it is said in every war the first casualty is the truth and this is certainly the case in the Republican revolution.

While the GOP claims that its budget cuts will not hurt American children, the truth is that children are the ones in the direct line of fire.

Mr. Speaker, 43 percent of the children in my district—18,625 children—will be impacted by the Republicans' cuts in the School Lunch Program.

A lunch may be something my colleagues on the other side of the aisle take for granted, but for some of these children it is their only meal of the day.

This meal provides the nourishment they need to learn and perform better so they can become productive citizens.

The mantra of the day is block grants. Well this one needs to be closely examined. The truth is there will be less money in the block grants and the Governors don't have to use this money for school lunches.

To make matters worse, the Republicans have eliminated national nutritional standards which prevented ketchup from being counted as a vegetable.

Mr. Speaker, the mean-spirited attacks on our children must stop. I urge my colleagues to oppose these devastating cuts—for our children and for the future of our country.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Edwin Thomas, one of his secretaries.

NUTRITION PROGRAMS FEED CHILDREN, NOT BUREAUCRATS

(Ms. PRYCE asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. PRYCE. Mr. Speaker, to listen to the Democrats speak, one would think the Republicans are ogres, taking food out of the mouths of babes. They have called us cruel; they have called us despicable.

Mr. Speaker, what is despicable is their tactics. They are deceiving the American people, and they know it. There are absolutely no cuts in the School Lunch Program under the Republican welfare plan. Let me say that again. There will be no cuts in the School Lunch Program.

As a matter of fact, the funding for the program will actually increase by $203 million, an increase of 4.5 percent. Furthermore, the Republican plan guarantees that 80 percent of the funds will actually go to feed hungry children, while 2 percent can be spent on administrative costs.

Our proposal will make sure that the money will go where it is needed, into food for children, not pay checks for bureaucrats. Democrats seem more concerned about feeding bureaucrats than feeding children.

Mr. Speaker, the debate should not involve using scare tactics to defend the status quo. Our children are more important than that.

□ 1015

COLOR-BLIND JUSTICE

(Mr. FLAKE asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mr. FLAKE. Mr. Speaker, I am overjoyed at all of the discussions that we are having about a color-blind society. A color-blind society starts with color-blind justice.

Yesterday, the U.S. Commission on Sentences released a study. That study said that crack sentences put more blacks in prison. It must be understood that the disparity in the law that allows for a person with 5 grams of crack cocaine to serve a term of 5 years versus a person who serves 5 years who has 10,000 grams of powder cocaine is an injustice. It is unfair.

I would call on my Republican colleagues and others in the Democratic Party to join with me. Let us work toward a color-blind society, but let us start with the reality that color-blind justice must be a part of what makes this process workable.

When we get to that point, I think we can all agree that we are moving toward the kind of society that was intended from the beginning. This American democracy is an inclusive one.

FEDERAL SCHOOL LUNCH PROGRAM

(Mr. JONES asked and was given permission to revise and extend his remarks.)

Mr. JONES. Mr. Speaker, finally, the truth has prevailed. For the past week, House Republicans have been accused of not caring for children and for future American generations. Opponents believe that we are going to dismantle the Federal School Lunch Program. That is simply not true.

We realize that children are better able to learn when fed a nutritious meal on a regular basis. Under our proposal, the program will grow by 4.5 percent, and in the current budget year we will spend $4.7 billion, yet another increase for children.

Since January, we have been busy passing a balanced budget amendment, a line-item veto, and even a new and improved crime package for the benefit of our children. In the coming weeks, we will work on a welfare reform package, a commonsense legal reform measure, and finish streamlining the Federal regulatory maze.

We will continue to create a brighter future for our country's most important resource—our children.

NO FREE LUNCH

(Mr. GUTIERREZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GUTIERREZ. Mr. Speaker, the Republicans have said "no more free lunches." But, to whom have they said this? To themselves or to the Washington special interests? No. To well-paid lobbyists or well-connected contractors? No.

Instead, they have said "no more free lunch"—no lunch at all—to the millions of children who depend on the Federal Government's School Lunch Program. Mr. Speaker, we need congressional reform, like a gift ban, because we can only represent our constituents if we share the experiences that they go through everyday. And this latest cruel cut shows that we have very little in common with our youngest, most vulnerable constituents.

Yes, it is business as usual in Washington, even though outside the beltway, belts will be worn a little tighter than usual.

Members of Congress and lobbyists can keep their three-martini lunches, while our poorest children can't even get three square meals.

So, I say to the Republicans, you defend your elegant lunches with lobbyists who make millions, and we Democrats are going to defend the modest lunches that feed millions of children.

THE EFFECT OF THE DEFICIT ON OUR CHILDREN

(Mr. McINNIS asked and was given permission to address the House for 1 minute.)

Mr. McINNIS. Mr. Speaker, after hearing some of the comments earlier this morning, let me tell Members that the children that are in the direct line of fire are in the direct line of fire because they have got something called the Federal deficit which is about to explode in their lap.

If we want to help the children of the future, we better do something about this deficit and we better be prepared to address the bureaucracy on the food School Lunch Program.

Do not let the Democrats on the fringe left parade around and say we are taking food out of the children of this country. We are not doing that.

We are just saying we have got to change the status quo. We need to introduce something called business management 101 to operate that program.

That program is going to be run much efficiently under Republican control and a lot more kids are going to get fed under Republican control than the Democrats ever dreamed.

In addition to all that, we are going to get that next generation out of the Federal deficit like the Democrats want to end it.

WELFARE ISN'T A LUXURY

(Ms. FURSE asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. FURSE. Mr. Speaker, I am appalled at the mean spirit of my Republican colleagues. I rise today to call on them to get over their stereotypes of welfare. They should listen to experts like Joe Livingston from southwest Portland:

> As a medical student at Oregon Health Sciences University, I see poverty all of the time, and it reminds me of my own experiences growing up. I was the child of a teenage parent. There were times in our lives when my mother could not make ends meet and we went on welfare.
>
> I find it terrifying that many in Congress feel it is good for the country to decide that if young women have children outside of marriage they should be abandoned. Teenage mothers do not need our government to punish them; they need help. Their young children do not need Congress to judge them as bastards; they need food and shelter.

THE TRUTH ABOUT REPUBLICANS AND CHILDREN

(Mrs. CUBIN asked and was given permission to address the House for 1 minute.)

Mrs. CUBIN. Mr. Speaker, I am standing here today, and I am going to come back and I am going to stand here every day until we get this bill passed or until they start telling the truth.

The truth is, if Members wanted to know who cares about feeding children in America, the Republicans care.

I am a mother. I have served school lunches myself. I have cooked the food. I have taken the food there to serve it. There is no one in Washington who wants to take care of the school children in Wyoming and across the country more than I do and more than my colleagues do.

The truth of the matter is, my colleagues, that we are spending more money for school lunches. We are allowing the people who really care about the people who knows what their needs are in the States to make the decisions that affect those children.

We are allowing families to take over feeding their children again. The School Lunch Program does not just feed poor children. It feeds people's children who do not need money in order to supplement the cost. That is wrong.

We need to take care of the people who need it, and that is best decided at the States.

THE EFFECT OF REPUBLICAN CUTS ON THE STATE OF CALIFORNIA

(Mr. MILLER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MILLER of California. Mr. Speaker, the gentlewoman in the well just preceding me got it all wrong, because the truth is, according to the Los Angeles Times, that California loses a billion dollars in school lunch money that would go to directly buy means for young children in our schools who need it or they risk being hungry every day—a billion dollars.

The Republicans want to talk about how they are cutting the bureaucracy in Washington. The School Lunch Program is run in the States. It is run by local people, local school districts, and the billion dollars comes out of the lunches of children.

The article goes on to say that the billion dollars comes out of the pocket of working parents who have their children in family day care, because those children will now lose the $3 a day so we are talking about 30,000 day care centers in California that will lose this money, and that means that they will simply have to drop out and parents will not be able to afford day care.

We are talking an additional $60 a month for day care. That is where the billion dollars is. That is the loss of California. That is the truth outside the beltway.

REFORMING WELFARE

(Mr. CHABOT asked and was given permission to address the House for 1 minute.)

Mr. CHABOT. Mr. Speaker, we have been hearing a lot of griping from the other side of the aisle over Republican efforts to overhaul the current welfare system. It seems that every time Republicans suggest a positive idea for change, the Democrats immediately start yelling no. What I find interesting is that the Democrats have not introduced any legislation of their own. They have no bill. All they are doing is defending with all their might the status quo and the liberal welfare state that they built up over the last 40 years.

Mr. Speaker, I believe the American people want change. They are sick and tired of paying for a system that has produced failure, crime and decay.

We have heard the voters, the mandate that they gave for smaller government, a less costly government, a more efficient government. By reforming welfare, we are giving the American people what they demand.

SCHOOL LUNCH CUTS

(Mr. WISE asked and was given permission to address the House for 1 minute.)

Mr. WISE. Mr. Speaker, at Berkeley Heights Elementary School this week they do not think of the School Lunch Program as welfare. They think of simple nutrition and simple common sense. Those who say that there is no cut, apparently they have not spoken to those in their States as I have who know that, who have read their legislation and know that the Republicans are proposing cuts, real cuts that will mean the folding of School Lunch Programs across the country.

Reputable groups say it could be as much as $7 billion, because what is done is you put the programs, the nutritional programs like school lunch, school breakfast, emergency food supplements, Women, Infants and Children all into one block grant. Then what you do is you make people fight to compete over those. You also remove the standards that have been so important. Remember the days of ketchup and relish being a vegetable. You do not have to worry about that anymore because you just take the whole lunch tray so you do not have to worry what is on it anymore.

I also have great concerns about making this a block grant. Because when you put Women, Infants and Children and all the others together, you make the pregnant mother compete with her children in school for supplement and you make the day care toddler compete with his brothers and sisters in elementary school for lunch.

DEMOCRATS AND BUREAUCRATS

(Mr. CHAMBLISS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHAMBLISS. Mr. Speaker, how many times have we heard that money is the root of all evil? I do not know if it is the root of all evil, but it does appear to be the root of the disinformation campaign being waged by the Democrats to, get this, defend the current welfare system.

A quick perusal of campaign finance records shows that the eight largest Federal employee unions gave a whopping nine times more to Democratic candidates than Republican candidates over the last five elction cycles.

Once we know that fact, it is easier to understand the Democrats' attack on the Republican plan to increase spending on the school lunches while decreasing the Federal bureaucracy.

Once we know that fact, it is no surprise that the Democrats have decided to cast their lot with the bureaucrats instead of the recipients of the School Lunch program, namely the children at schools like R.B. Wright school in my hometown where my wife has taught for 20 years.

Once we know that fact, it is easy to understand why the American people chose Republicans on November 8 to conduct welfare reform.

SUPPORT FOR WIC

(Mr. DURBIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DURBIN. Mr. Speaker, I wish some of my Republican friends would just spend a few minutes visiting a WIC clinic, just a few minutes, to see the real faces of women and their children who come to those clinics each day and with the help of a system that is very successful raise healthy children who really are tomorrow's future.

For the Republicans it is just statistics. It is just welfare. But for the rest of America, it is the real life that we lead.

There was an amendment before the committee which suggested we should continue to have competition and bidding for infant formula under that program. The competition and bidding that Democrats push save American taxpayers over $1 billion a year. And yet the Republicans, on a partisan vote, rejected that. The Wall Street Journal reported yesterday why, because the four largest infant formula companies in this country stand to gain $1 billion more in profits because the Republicans walked away from this cost efficiency which Democrats have pushed.

Forty percent of the infants in America today are in the WIC Program. We cannot have a strong America if we do not have strong children. Let us stick with the programs that work.

END CONDEMNATION WITHOUT COMPENSATION

(Mr. SMITH of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Speaker, tomorrow the 104th Congress will have the opportunity to right a fundamental wrong occurring every day across America. It is called condemnation without compensation.

If the Government wants to put a highway in your front yard, it has to pay you compensation for using your property. That is only fair.

If the Government wants to impose a regulation converting private land into a wildlife sanctuary or a wetlands preserve, it should also have to pay you fair compensation. In both cases, the private property owner is being asked to sacrifice his land for the public good. It would not be fair to force the unfortunate landowner to shoulder the entire burden.

Too often today, that is just what happens—American families, farmers, and businessowners are stripped of private property by Government regulations. But, unlike with condemnation, these forgotten Americans are never compensated.

The Private Property Protection Act of 1995 would put an end to condemnation without compensation. I urge my colleagues to stand up for these forgotten Americans and support this legislation.

□ 1030

THE SPEAKER GIVES SCHOOLCHILDREN CHECKS FOR LEARNING WHILE TAKING AWAY SCHOOL LUNCH PROGRAM FUNDING

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO. Mr. Speaker, over and over again on the floor of this House we have heard from the Members of the majority party. We have heard them talk about their concern for America's children. They claim that it is our children that they are fighting for.

However, when it comes to one of our most crucial and direct commitments to children, the School Lunch Program, the Republicans were eager and willing to sacrifice our children on the alter of their capital gains tax cut. Today the hypocrisy grows even greater.

The Speaker of this House will be visiting a school in Anacostia, the Moten Elementary School, to give out checks as a part of his Earning for Learning Program. Children get $2 for every book that they have read.

However, while he doles out the cash payments, the fact is that these children will be suffering a devastating loss at the hands of the Speaker; 397 of the 422 children in this school take part in the School Lunch Program. Since the funds will be slashed, these kids will not have the money that they need to have that program, and many of them in fact will go hungry.

We know what that does to learning. In the words of Richard Nixon, who strongly supported this program, "a child, ill fed, is dulled in curiosity, lower in stamina, distracted from learning."

Please, we must have the School Lunch Program. The Speaker is talking out of both sides of his mouth.

REPUBLICAN PROGRAMS ARE PUBLIC-SPIRITED, NOT MEAN-SPIRITED

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Mr. Speaker, the old, tired party-line from the liberal Democrats is that Republicans want to take food from the mouths of children. Mr. Speaker, it is typical of the liberals. It is pathetic, but predictable.

Mr. Speaker, these liberal Democrats really have no choice but to come out here and distort the truth. They know as well as anybody that the liberal message and these old, tired attempts at solving the problems from the liberal side of the aisle have been rejected.

The American people have seen the consequences of these policies. They know that the only people who have benefited from 40 years of one-party control by my friends on the other side have been bureaucrats, trial lawyers, and Federal regulators.

For the liberals to come here and suggest that the new majority wants to steal food from babies is lower than a gross distortion, it is absolutely and patently false. Mr. Speaker, with a generous increase in allowances for food lunch programs, Republicans are not taking food from kids. We are, however, taking power from the Federal Government and returning it to the front lines in this war on these problems.

If my friends on the other side want to come to this well and distort the facts, and tell us something else about the numbers, other than what is factual, that is their choice. However, we are not going away. This new majority is not mean-spirited, it is public-spirited.

REPUBLICAN PROGRAMS TAKE MONEY FROM CHILDREN'S PROGRAMS AND GIVE IT TO THE FAT CATS

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, the mean-spirited Republicans continue right on. They are trying to become information-proof, as this goes along. All sorts of newspapers, all sorts of people involved in the program, people administering the program, everybody, not just Democrats, are saying they are making very serious cuts in the School Lunch Program in their new war on kids.

Why are they cutting these children? They are cutting these children because they need money to pay the fat cats. They are not sending it to the front lines, they want to return money to the fact cats. Let us be perfectly honest. That is not in America's tradition. Cutting kids, the poorest in the Nation, to pay the wealthiest in the Nation is absolutely wrong.

If people disagree with me, and they write here and disagree with me, I ask them to please send their picture. I want to see what those kinds of Americans look like that say they thing this is right.

I think it is time we started looking at the facts, stop trying to be information-proof, and protecting a policy that they are just upset we found out about and are exposing.

URGING REPUBLICANS AND DEMOCRATS TO WORK TOGETHER TO CHANGE FAILED SOCIAL PROGRAMS AND TRULY PROTECT AMERICA'S CHILDREN

(Mrs. WALDHOLTZ asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. WALDHOLTZ. Mr. Speaker, according to the Census Bureau, the poverty rate in 1966 was 14.7 percent. Since then, the American people have witnessed one of the greatest expansions of the Federal Government in American history, mostly social programs, aimed at eliminating poverty.

However, it is time to admit the experiments of the 1960's, however well-intentioned, have failed; not just a little failure, but a great, big failure. The biggest failure is not in the money that we have lost, it is in the lost and broken lives.

Again, Mr. Speaker, according to the Census Bureau, the poverty rate in 1966 was 14.7 percent. In 1992, it was 14.5 percent. Mr. Speaker, virtually everyone in this body knows that the current welfare system is not really helping people in need. We are going to feed hungry schoolchildren. We are going to ensure proper nutrition for mothers and children in need. We are also going to help people in need by changing a welfare that is not working.

Mr. Speaker, let us work together in a deliberate, responsible, honest debate to truly protect our children.

EXTREME RIGHT-WING RADICAL REPUBLICAN PROPOSES PROHIBITING THE RIGHT TO ABORTION FOR AMERICA'S MOST VULNERABLE, VICTIMS OF RAPE AND INCEST

(Mrs. LOWEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. LOWEY. Mr. Speaker, we see the actions of the extreme, mean-spirited Republican majority every day cut school lunch, cut student loans, cut drug-free schools, and tomorrow the extreme Republican majority will introduce an amendment to prohibit the most vulnerable in our society, victims of rape and incest, from terminating an abortion; it is hard to believe, the most vulnerable, victims of rape and incest.

In fact, the majority of the American people think that that should be legal.

Mr. Speaker, I want to congratulate the gentleman from Georgia, NEWT GINGRICH, in saying that he would speak out against the Istook amendment and vote against the Istook amendment. I do hope he can contain the extreme right wing radical part of his Republican majority.

ELIMINATING THE SOCIAL DRUG

(Mr. BURR asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURR. Mr. Speaker, no one can dispute the fact that our current welfare system is in shambles. Many years ago, the Federal Government took responsibility for the disadvantaged away from communities and, after spending billions of dollars every year for 30 years, made the situation worse.

Now, by opposing the block grant concept, my Democrat colleagues and the Clinton administration are trying to convince the American people that big brother Government knows what's better for a community than the people who live there. They call this proposal mean spirited and callous. In reality, the only mean spirited thing in this whole debate is the current state of our welfare system.

Finally, Mr. Speaker, I think I understand why my colleagues oppose these reforms. They are simply afraid to admit the Great Society failed. But, now is the time for us to move on and begin transforming our welfare system from a social drug promoting dependence to a program that enables the participants to become productive members of society.

HOW MANY TIMES DO WE HAVE TO PAY?

(Mr. SKAGGS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SKAGGS. Mr. Speaker, before we take up the takings bill, I ask everybody to look at the story of Colorado's Summitville Mine. This was an active gold mine, using a cyanide leaching technique to extract ore. But a couple of years ago the mine's poorly designed holding ponds broke, overflowed, and a very, very toxic flow went down Alamoosa Creek in southern Colorado.

About a year and a half later, the foreign company which owned the mine declared bankruptcy and left. At the request of the State, EPA took over the cleanup.

Here is the kicker. The companies that now own the site are claiming that EPA's effort to clean up is a taking of their property, for which they deserve compensation.

Under the Constitution, this claim would be laughed out of court. But if we pass this takings legislation, it is exactly the kind of claim that American taxpayers would be forced to pay.

The public has already paid twice for Summitville: First, the environmental disaster, and now the EPA cleanup. Let us not have to pay a third time. They have got to be kidding.

More on the Summitville disaster on special orders tonight.

URGING BIPARTISAN SUPPORT FOR A GOOD JOBS MEASURE, THE TRAVEL AND TOURISM RELIEF ACT

(Mr. ROTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, I have a proposal I think can bring our liberal and conservative friends together, because if we want to do something for working people in America, if we want to create jobs, jobs, jobs, I have a bill for us to sign onto. I am introducing the Travel and Tourism Relief Act.

The travel and tourism business is the second largest employer in America. More than 11 million people in this country are employed directly or indirectly by the tourism, and travel and tourism industry amounts to nearly 15 percent of America's gross domestic product, generating more than $800 billion a year in expenditures.

Travel and tourism is the Nation's single largest export. More than 50 million visitors come to the United States each year, generating about $71 billion in revenues. With taxes at their current level, tourism also generates approximately $50 billion for the State and local governments.

Under my bill, Mr. Speaker, the travel and tourism industry will grow and it will help our local communities. I urge my colleagues on both sides of the aisle to support our working people and small business owners by backing the Travel and Tourism Relief Act. Together we can secure a prosperous future for communities across America.

Mr. Speaker, this bill helps kids. This bill helps moms and dads. Rather than a government handout, this bill creates jobs for the American people. I ask Members to sign on.

REPUBLICAN PROPOSALS TOUGH ON CHILDREN, TOUGH ON VETERANS, AND TOUGH ON SENIOR CITIZENS, IN ORDER TO PAY FOR TAX BREAKS FOR THE WEALTHY

(Mr. STUPAK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STUPAK. Mr. Speaker, this morning we have heard a lot about the Republican plan to cut $17.3 billion from the budget, the rescission package. Where are they going to cut? The Women, Infant and Children Program, school lunches, the Day Care Lunch Program. They are tough on kids.

Who else are the Republicans tough on? They are going to be tough on the veterans, because they want to cut $50 million out of veterans' facilities. Those veterans who need medical help are going to lose $50 million.

They are going to be tough on our senior citizens. Two million senior citizens will lose the LIHEAP Program to help them heat their homes. In my district tonight in northern Michigan it is predicted to be 20 below zero, but we are going to be tough on those people. How about housing for seniors? One million seniors will lose housing under the $17.3 billion rescission package they propose.

Tough on seniors, tough on veterans, tough on kids. Where is the money going to go? Is it going to go to deficit reduction? No. Is it going to reduce the debt? No. It is going to go for the Contract With America, to pay for the tax breaks for the wealthy, those who make more than $180,000. That is where the money is going.

CHANGES INSTITUTED BY NEW REPUBLICAN PROPOSALS WILL RESTORE THE REAL AMERICAN DREAM

(Mr. GANSKE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GANSKE. Mr. Speaker, this session of Congress deserves to be called historic for many reasons: For its hard work, for keeping its promises, for making real changes that America wants. Many of these votes have been passed by widely bipartisan measures.

In just a few more days Congress is going to do something that the American people have wanted for decades. We are going to fix the failed welfare system. Welfare is not going to be a way of life. It is no longer going to trap one generation after another generation after another generation.

A new generation of Americans is going to find out that the American Dream is more than a welfare check. The American Dream starts with children being children, not having children; with staying in school, not dropping out; with finishing high school, not getting high; with work, not welfare.

The changes we will offer for the welfare system will embrace the American Dream. Our changes will reaffirm faith in ourselves by reaffirming one of the basic tenets of the American way of life—individual responsibility. So hold on for a few more days, America. Help is on the way.

THE REPUBLICANS PERMIT FREE LUNCHES FOR THEMSELVES, BUT NOT FOR AMERICA'S CHILDREN

(Mr. BRYANT of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BRYANT of Texas. Mr. Speaker, what is most appalling about the efforts of Speaker GINGRICH and his lockstep Republican chorus to deprive 13 million American children of their School Lunch Program is that the Republicans refuse to give up the freebie lobby lunch program which they themselves are able to enjoy under the current rules of the House.

While the lockstep Republicans gladly jeopardize the nutrition and education of children in America, they have repeatedly refused to even allow a vote in this House to outlaw the free lunches, free gifts, free football and theater tickets, and free golf vacations that they are able to accept from the special interest lobbyists seeking to influence their decision.

Mr. Speaker, the bottom line is that if the Republicans have their way, there will be no free lunch for kids who cannot afford one, but there will be sumptuous free lunches for Congressmen at the finest restaurants in Washington, paid for by special interest lobbyists.

While lobby freebies may win tax breaks for special interests, eliminating the School Lunch Program will in the long run increase the burden on every American taxpayer. It is clear where Republican priorities are. They will let the lobby moochers keep their free lunches and eliminate the School Lunch Program for America's kids.

□ 1045

SUPPORT RESOLUTION OF INQUIRY REGARDING MEXICAN BAILOUT

(Mr. STOCKMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STOCKMAN. Mr. Speaker, I come before the House today a little bit surprised to see that we are giving away billions of dollars to a country in which the president has been implicated in the murder of another presidential candidate. We are talking about real tax dollars and real money, and I am proud to say that I am going to reach across the aisle and support the Kaptur amendment today to ask some serious questions from our President.

We are planning to give away $53 billion without any oversight from Congress. It is the people's money and the people need to speak and say where we stand. I stand here saying that Congress needs to know what Clinton is doing with the money from an organization which has no oversight by Congress. I plan to support the Kaptur amendment.

SUPPORT HOUSE RESOLUTION 80, INQUIRY REGARDING MEXICAN BAILOUT

(Ms. KAPTUR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. KAPTUR. First let me thank the gentleman from Texas for the bipartisan nature of an important resolution on which we will vote this afternoon. I wish to draw my colleagues' attention to it.

Mr. Speaker, today the American people are going to win the first vote being allowed in this Congress on the misguided taxpayer-backed bailout of the Government of Mexico.

As a result of a procedure we employed to force the leadership of this House to let us vote on the first step in getting to the bottom of this, the House this afternoon will vote on House Resolution 80, a bipartisan resolution of inquiry which requires the administration to answer key questions regarding its $52 billion bailout of Mexico.

I ask my colleagues to vote "yes" on the previous question and "yes" on House Resolution 80. Get answers to questions for your constituents such as who are the private creditors who will benefit from this rescue package? How solid is Mexico's pledge of oil collateral? Demand answers for your constituents.

This will be the first vote in many to follow, I hope, so we can get to the bottom of who our taxpayers are being asked to bail out.

CALL FOR APPOINTMENT OF AGRICULTURE SECRETARY

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, today is the first day of March. Today is the first day of Lent. Today is the first day of the third month that we do not have a U.S. Secretary of Agriculture.

Is having a Secretary of Agriculture important? Apparently not to this administration. Or maybe it is agriculture issues that are not important to this administration.

And what are agriculture issues? Food stamps, nutrition, School Lunch Programs, to name a few. Yes, that is right. For all the bureaucratic bellyaching over School Lunch Programs, neither the President nor the Senate Democrats have pushed for the confirmation of a new Secretary of Agriculture.

Could there be a slight disconnect here, Mr. Speaker? And what else besides the School Lunch Program is in jeopardy or up for grabs? The 1995 farm bill, the Delaney clause, the Market Promotion Program, minor use pesticides. But forget these. How about every item on your table, everything you buy at the grocery store?

Is it not important enough to the American consumers for the President and the U.S. Senate to confirm a new Secretary of Agriculture?

CONTRACT WITH AMERICA CALLED HIT ON SCHOOLCHILDREN

(Mr. TUCKER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TUCKER. Mr. Speaker, in the parlance of lexicography, a contract is something that is a promise to be upheld or fulfilled. But in the common vernacular, a contract is also something that we understand is a hit that is put out on someone.

Mr. Speaker, we have heard a lot about the contract on America and it is exactly that. It is a hit on America. But today we understand who that hit is really on. When we read an article in the L.A. Times today that the Agriculture Department tells us that there is going to be a $1 billion hit on schoolchildren in terms of the School Lunch Program elimination, we understand what the contract on American really is.

Yesterday, Mr. Speaker, on Capitol Hill there were more people walking the halls than you could ever imagine, and that is just the beginning.

Yes, the first day of March is the first day of the beginning of the end of the Republican contract on America, because the chickens have come home to roost and we finally understand who the hit is on and it is on the 13 million American children of this country.

BLOCK-GRANT PROPOSAL LOSER FOR MISSOURI

(Ms. McCARTHY asked and was given permission to address the House for 1 minute.)

Ms. McCARTHY. Mr. Speaker, I am for the balanced budget and I am for welfare reform. Last weekend in my district, I met with concerned child care advocates at a place called Cradles and Crayons which takes care of the medically fragile children in my community. The room was packed with school nutritionists, child care providers, administrators, parents, and concerned citizens. I listened and I learned. They are unanimous in their concern regarding how we balance the budget and reform our welfare system, and their particular concern was with this proposal for block grants for children's programs, particularly the Children's Nutrition Program.

Their historical experience has been that when the Federal Government block grants, that usually means less money. Their outrage was around a program such as school lunches and that a program that had worked for over 40 years would be in jeopardy as a result of this block-grant concept. In the Independence district alone, Harry Truman's home district, they were going to lose $500,000 under the block-grant proposal put forward by the Republicans. The story was the same in Grandview, in Raytown, all over my district. The State of Missouri would lose lunches for 150,000 children.

Mr. Speaker, the message was clear: "If it ain't broke, don't fix it." Congress needs to balance its budget but not on the bellies of our children.

FEDERAL FOOD ASSISTANCE

(Mrs. CLAYTON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CLAYTON. Mr. Speaker, WIC works.

It is a program that services low-income and at-risk women, infants and children.

Pregnant women, infants 12 months and younger and children from 1 to 5 years old, are the beneficiaries of the WIC Program.

For every dollar this Nation spends on WIC prenatal care, we save up to $4.21.

The budget cutting efforts we are experiencing are aimed at reducing the deficit.

The deficit is being driven by rising health care costs.

When we put money into WIC, we save money in Medicaid.

The equation is simple.

Those who have a genuine interest in deficit reduction can help achieve that goal by investing in WIC.

The WIC Program embraces the unborn; provides nurturing and care; is devoted to maternal health; helps ensure life at birth; and promotes the growth and development of millions of our children.

And, it saves us money.

WIC works. Let us keep it working.

INTRODUCTION OF THE CHECK CASHING ACT

(Mr. FIELDS of Louisiana asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. FIELDS of Louisiana. Mr. Speaker, today, I rise with great concern for our consumers. Today, I rise to introduce the Check Cashing Act of 1995.

The check cashing industry is growing by leaps and bounds, charging excessive rates in some instances, with no one to watch out for consumers. Mr. Speaker, this industry has more than doubled to a multibillion-dollar business in the past 8 years. In 1993 it was estimated that more than 150 million checks were cashed by check cashing outlets with a face value totaling more than $45 billion.

My bill only asks that States develop a system to license or register check cashing outlets and that financial institutions cash Government checks. Today, too many of our constituents are paying up to 20 percent of the face value of a check to get their money. This is absurd and uncalled for.

Mr. Speaker, we must work to give our communities every opportunity to improve themselves. With many banks denying consumers check cashing capability and check cashing outlets preying on them our Nation's financial services opportunities are bleak for many low- to moderate-income Americans.

Mr. Speaker, today a head of a household that earns a $300 pay check is subject to spending up to 20 percent, $60 of that check, just to gain access to the hard earned dollars. This $60 is taking away from food for children, rent for a roof over a families head, and transportation to and from work. This is unacceptable and must be stopped.

I hope my colleagues will join me in supporting this legislation and my efforts to provide equal opportunities to all communities.

ANNUAL REPORT OF DEPARTMENT OF ENERGY FOR 1992 AND 1993—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore (Mr. BURTON of Indiana) laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Commerce.

To the Congress of the United States:

In accordance with the requirements of section 657 of the Department of Energy Organization Act (Public Law 95–91; 42 U.S.C. 7267), I transmit herewith the 13th Annual Report of the Department of Energy, which covers the years 1992 and 1993.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 1, 1995.*

REPORT ON NATIONAL SECURITY STRATEGY OF THE UNITED STATES—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on National Security.

To the Congress of the United States:

As required by section 603 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, I am transmitting a report on the National Security Strategy of the United States.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *February 28, 1995.*

ANNUAL REPORT OF DEPARTMENT OF TRANSPORTATION FOR FISCAL YEAR 1993—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Transportation and Infrastructure.

To the Congress of the United States:

In accordance with section 308 of Public Law 97–449 (49 U.S.C. 308(a)), I transmit herewith the Twenty-seventh Annual Report of the Department of Transportation, which covers fiscal year 1993.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 1, 1995.*

REGULATORY REFORM AND RELIEF ACT

The SPEAKER pro tempore. Pursuant to House Resolution 100 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 926.

□ 1055

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 926) to promote regulatory flexibility and enhance public participation in Federal agency rulemaking, and for other purposes, with Mr. BARRETT of Nebraska in the chair.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Pennsylvania [Mr. GEKAS] will be recognized for 30 minutes, the gentleman from Michigan [Mr. CONYERS] will be recognized for 30 minutes, the gentlewoman from Kansas [Mrs. MEYERS] will be recognized for 15 minutes, and the gentleman from New York [Mr. LAFALCE] will be recognized for 15 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we have good news for our country here today, because we are going to be considering a bill that will go a long way when enacted to bring about job creation and wage enhancement.

Mr. Chairman, for too long, burdensome and complex rules coming out of Washington have strangled small business, have been a drag on free enterprise, have been a drag on job creation, have been a drag on wage creation, have been a drag on the economy. Today what we are about here today is a first step to slay that dragon, to bring about sanity in the rulemaking process of the national bureaucracy, of the Federal bureaucracy.

How do we go about accomplishing that? Well, a bold attempt was made in 1980 during the administration of President Jimmy Carter when there was passed a Regulatory Flexibility Act. That did bring about at least a sense of more involvement by the small business community in the rulemaking process that so adversely had affected it previously.

We are here to say today that even that bold attempt that started in 1980 has not fulfilled the promise that it was expected by the small business community to lift the burden of regulations from their shoulders so that they can venture out into new enterprises and create more jobs. Rather, the reverse took place. There was even more of a vivid flurry of regulations and burdens that came down on their shoulders.

Mr. Chairman, we here today in title I of this particular bill will deal directly with small business. We are targeting small business. We are going to be embracing small business to give them more input into what transpires in the rulemaking process. That in itself would be worth the whole effort of what we do here today, but we go farther. We do something that is so exquisite for the small businessperson, that we have a great, good feeling about it.

We are for the first time providing by law, if this bill is enacted, judicial review. That means that where the previous act, the one I just alluded to from the Jimmy Carter era, prohibited judicial review, we go the other way and overtly provide for judicial review.

What does this mean? It means that for the first time in a whole host of rulemaking processes across the Federal bureaucracy, when a rule is promulgated and it disaffects or adversely impacts against a small business entity or groups of entities, then there will be the possibility of challenging that rule and what it does to the small business community in court.

That is a major step. It is just an afterthought on the part of this Member? No. It is just a whim on the part of the small business community? No. It is an absolute necessity. It has been confirmed and reconfirmed in people who are advocating some kind of reform in this arena for a long period of time. Even Vice President GORE has come out in his interpretation of the reforms that are necessary for judicial review. That by itself again would justify passage of this bill and enactment of it into the law of the land.

□ 1100

But we go further. We also provide in title I, this is extremely important for the small business community, that the Small Business Administration advocate and chief counsel must receive notice of a proposed rule. What does that do? That allows him or her acting for the small business community, within this Small Business Administration, which is the key administrative bureau of small business, to have advanced notice of a rule and then bring into play all of the concerns and the worries that the small business community might have in the face of such a rule. That is an excellent advance that we are making by what is included in title I.

Then we go to title II. Title II would require for the first time for all business, not just small business, but for all business, a regulatory impact analysis that would accompany these very strident rules that have for too long been plaguing the business community.

What am I talking about here? Well, a rule has an impact, and when what we want to call a major rule has an adverse impact on the economy worth more than $50 million, then on that basis our bill calls for the issuance of a regulatory impact analysis to give advance notice to the business community, the very people who are going to have to be guided by this rule or are adversely impacted by this rule, an opportunity to come back and be able to challenge the findings of this analysis and thus have a full participation in the deliberations that take place in the promulgation of a rule, rather than to sit back and just take what is coming to them and then be helpless, possibly, in combating the rule that will have so blatantly impacted them adversely. So title II will afford the business community this extra forum that would be required.

But how did we accomplish this? What we did was not dream up criteria by which we ought to be defining this analysis that the rulemaking agency must apply, but rather we incorporated by new language, but nevertheless incorporated into our bill, in title II, seven strong criteria that have to be included in this analysis drawn from the Executive order that President Reagan during his time issued on this very same subject. So we are combining the history of the Jimmy Carter administration and regulatory flexibility with the Executive order of Ronald Reagan in the regulatory impact analysis area, and combining them to make a strong bill that would bring back a sense of accomplishment on the part of the small business community as they seek to open new markets and to expand their ability to create jobs and to lift wages as they become more successful.

These criteria will be discussed, I know, in different ways as we proceed with the debate, but I can safely tell my colleagues that it will be a great stride forward when we complete the business of the day.

Title III, which the gentleman from Rhode Island [Mr. REED], the ranking member on the minority, and I jointly responded to the concerns that were expressed during the hearings, that has taken on a different configuration from that which we first felt was necessary, but I am sure at the end of the day that the Members of the House will be satisfied with how we have approached title III and the segments of Executive responsibility that are contained therein.

In short, it is a good day for small business here today. Let us get on with helping them avoid the burden of undue and cumbersome regulations.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to begin by commending both the subcommittee chairman, the gentleman from Pennsylvania [Mr. GEKAS] and the ranking member, the gentleman from Rhode Island [Mr. REED], for their diligence in improving legislation that started off in a pretty sorry state and has now reached the nearly acceptable level but still needs a little bit more work, and I would like to explain this for just a few minutes in beginning the general debate.

The language in the bill providing for a so-called regulatory Bill of Rights could have had a devastating impact on the Federal Government's ability to enforce the laws fairly and efficiently, and now we have revised language that I praise my colleagues on the Judiciary Committee for improving, which is included in title III, seeking employee guidelines which are more responsive to the needs of private parties, and represents a vast improvement. So I am here to praise them as well as to point out some areas in which we hope there will be improvements.

Similarly, I recognize that the gentleman from Pennsylvania has worked with us in a bipartisan fashion to improve and narrow the scope of title I of the bill relating to regulatory flexibility analysis, and I am not surprised at his cooperative spirit. We have worked for many many years together on the Judiciary and other committees. Unfortunately, title II of the legislation requiring agencies to complete complex new regulatory impact analyses continues to be problematic. We have got trouble in this area in title II, and I am hoping that it may be repaired on the floor here today.

As a result of a number of recent changes made by statute and Executive order, agency rulemakers must now consider nine separate analyses when issuing rules. That is a few too many, and while each of these additional required analyses is well intentioned and in isolation may be beneficial, collectively they have contributed to making the rulemaking process far more lengthy and complex.

In an effort to make the regulatory system responsive to the needs of businesses, title II of the bill would impose even further and more complex requirements on the regulatory process. And that is not what we are here to do. That is not the great day that all America and small business in particular have been waiting for.

I am concerned about title II's defining a major rule as a rule likely to result in an annual effect on the economy of $50 million or more. Every President since Gerald Ford has used the $100 million level for defining major rules, thereby preventing costly and needless analysis for rules such as the Interior Department's opening of hunting season or the Department of Veterans Affairs recognizing the gulf war syndrome.

I also believe that the judicial review under title II should be limited to challenges of a final rule or the agency's failure to perform the required analysis. The unrestricted judicial review in title II would result in endless litigation, as every element of an impact analysis could be challenged by literally countless numbers of people.

And finally, I believe that the legislation is deficient in failing to provide for greater sunshine in the regulatory process.

Later today I will offer an amendment which would require that communications between an agency and OMB and Government officials and private parties be recorded and made available to the public. This change would help provide for greater accountability and avoid the perception of secret, behind-the-scene dealings, which has plagued us in earlier years.

I am hopeful that the bill's language can continue to be refined along these lines in a cooperative fashion. If amendments along these lines are approved, we will make for a much better bill in H.R. 926 while making the regulatory process more responsive and more streamlined.

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland [Mr. BARTLETT].

Mr. BARTLETT of Maryland. Mr. Chairman, I rise in strong support of this legislation and the poster here is just one reason for that. These are the taxes and regulations that our restaurant people have to live with. Whenever we see a tragedy we frequently ask for a moment of silence. I think when Members see the tragedy of what this does to our small business people we need a long, long moment of silence.

This speaks for itself. I will not go over any of the details of this. Let me just note one instance of the inanity that occurs here. One of our restaurant people told us that OSHA came in and threatened them with fines because their workers were not using a protective glove when slicing carrots. The health people came in and threatened them with a fine if the workers did use the protective glove for slicing carrots because the protective glove could not be adequately sanitized in their view.

Clearly when we look at this long, long list of taxes and regulations, this represents a burden on our restaurant people that they just cannot bear.

I strongly support this bill. It starts us in the although modest application, it really halts our march in the wrong direction and starts us back in the right direction.

I advise, recommend, strong, strong support of this bill for this and many many other reasons.

Mr. REED. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to first thank the gentleman from Pennsylvania, Chairman GEKAS. We were able to work together in a cooperative and bipartisan process and although we have some principal disagreements, I believe the legislation has been made better because we were able to work together constructively and cooperatively, and at the end of today regardless of the outcome I think we can be very proud of this bipartisan process.

Both of us agree that steps need to be taken to make the regulatory process more sensitive to the needs of small businesses. Small businesses lack the staff and resources to track the daily comings and goings of the Federal Register. They are less likely to have their interest represented by trade associations and lobbyists and may have a more difficult time meeting the costs imposed by regulators. Costs that seem minuscule to General Motors are insurmountable to some small businesses throughout the United States.

Title I addresses this concern by strengthening the Regulatory Flexibility Act which direct agencies to consider the impact of their regulations on small entities and, where possible, make special considerations for small businesses.

I want to thank my colleagues, the gentleman from Missouri, IKE SKELTON, and the gentleman from Illinois, TOM EWING, for working so hard on this issue and for sharing their expertise with us when they testified before the subcommittee.

The core of title I is based on their bill, H.R. 830 from the last Congress.

Mr. SKELTON, as chairman of the Small Business Subcommittee on Exports Tourism and Special Problems, found that those agencies that complied with the Regulatory Impact Act had done so successfully. They established procedures that saved time, money, and litigation headaches.

Unfortunately, other agencies have been able to escape compliance and they have been able to do that because regulatory flexibility analysis did not include judicial review.

We are remedying that situation today and I join the gentleman from Missouri [Mr. SKELTON] and the gentleman from Illinois [Mr. EWING] in support of this section of the bill.

The regulatory flexibility analysis in an important weapon in our efforts to reduce the regulatory burden on small businesses and we need to ensure that it is implemented governmentwide.

I also support title III of the bill. This title would create a code of conduct for regulators in their dealings with the American people and it emanated from a proposal made originally by the gentleman from Texas [Mr. DELAY]. It has been thoroughly reviewed and we have reached I think a very sensible position in the bill in title III's provisions which I support with enthusiasm.

However, I do have serious concerns about title II, especially now that we have completed action on H.R. 1022. Initially, both H.R. 1022 and H.R. 926 were part of the same contract bill, H.R. 9. Unfortunately, their provisions overlap and conflict. I think it is a mistake to pass both bills in the hopes that the Senate will sort out these conflicts and inconsistencies, a step that undermines the ability of Members of this House to act on these issues sensibly with some type of overall cohesive purpose.

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The rulemaking process has been criticized as overly prescriptive, expensive and overburdened with useless paperwork. Title II exacerbates these problems by creating a costly, time consuming process that does nothing to streamline Government or roll back redtape. The New York Times just published a diagram of the rulemaking steps required by this bill, entitled "A Rule Making Maze." It resembled a Rube Goldberg contraption in its inticracy and complexity.

My colleague from Florida, JOHN MICA, just sent around a "Dear Colleague" containing an excerpt from Philip Howard's book, "The Death of Common Sense." I wanted to quote from it, because I think it makes my point:

> Important, often urgent projects get held up by procedural concerns. Potentially important breakthroughs in medicine wait for years at the Food and Drug Administration. Even obviously necessary safety projects can't break through the thick wall of process. (Here he cites New York's difficulty in extending a runway at La Guardia airport that is too short for safe landings) . . . The irony he points out of our obsession with process is that it has not prevented sharp operators from exploiting the governments contracting system, as the weapons procurement scandals of the 1980's showed us. Its dense procedural thicket is a perfect hiding place for those who want to cheat * * *".

Title II is exactly what he is talking about. It extends the time line for regulations by about 2 years by establishing a series of procedural hurdles, sweeps administrative rules, such as the regulations that open duck hunting season, into costly regulatory impact analysis, and enables sharp business owners to stall regulatory changes that benefit themselves by letter writing campaigns and filing multiple lawsuits. All of these procedures will apply to deregulation, as well as regulation. They will apply to new regulations that aim to help small business become more competitive. I do not believe that 2 years from now Members will want to read in their local paper that we forced the Department of the Interior to spend several hundred thousand dollars to perform a regulatory impact analysis, followed by the costs of defending lawsuits by animal rights activists, when they are simply trying to open duck hunting season, or to replay this scenario when we try to prevent fisheries from being overfished, or to compensate veterans for gulf war syndrome.

We will have amendments today that address some of the flaws in title II, and I hope Members from both sides of the aisle will listen to the arguments and vote to improve this legislation.

I think we can make progress to create, I hope, a bill that we can all support. But we have principal disagreements which we will debate vigorously on the floor today.

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield 4 minutes to the gentleman from Illinois [Mr. EWING].

Mr. EWING. Mr. Chairman, my thanks to Chairman GEKAS for the time he has given us and my thanks to the chairman and to Chairman JAN MEYERS of the Small Business Committee for all of the support and help they have given us in developing this legislation, to Congressman IKE SKELTON and Congressman REED on the other side of the aisle for their support.

I think probably most of us understand what the problem is, but I think these figures are very meaningful. Federal statutes and rules now run to 100 million words. If we were to read all of these it would take 8 years. Of course, no one is going to do that.

Regulatory costs in our economy are now at $600 billion and climbing; that is $6,000 per household.

Small business and small units of government have been at the mercy of the Federal regulators for many years. And probably the most often voiced complaint that I receive when I talk to my constituents is about this overregulation.

In 1980 this Congress passed a bill, the Regulatory Flexibility Act, in an effort to rein in the bureaucracy and the regulations. But it had no teeth in it. It specifically prevented judicial review. There has been strong and persistent bureaucratic opposition to meaningful reform of the Regulatory Flexibility Act. Yet three Presidents of both parties have ordered the bureaucracy to follow the Regulatory Flexibility Act but to no avail.

Last Congress, in the 103d Congress, the gentleman from Missouri [Mr. SKELTON] and I put together a coalition of small business groups that support legislation to improve the Regulatory Flexibility Act, to add judicial review. This was backed by 254 Members of that Congress on both sides of the aisle. But unfortunately the leadership of that Congress, not the Members, refused to call that bill, and it became, because it died at the end of that Congress, a part of our Contract With America. I believe that turning a deaf ear to the demands of responsible, reasonable citizens in this country to revise our overly bureaucratic, overblown, excessive, intrusive, and destructive regulatory system was a major factor not only in the result of the November 8 election but to the dissatisfaction which the American people have expressed with their Federal Government.

I strongly support the legislation before us, and particularly title I which does contain the improvements in the Regulatory Flexibility Act to grant judicial review. In addition, agencies must circulate proposed rules to the chief counsel for the advocacy of Small Business Administration, giving that agency 30 days to comment on how these would affect small entities.

And finally, the bill includes a sense of Congress that the chief counsel for advocacy of SBA should be able to file amicus briefs in actions in the Federal court.

Mr. Chairman, I strongly support this legislation and am glad to have the opportunity to speak in its favor today.

Mr. REED. Mr. Chairman, I yield 5½ minutes to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. I thank the gentleman from Rhode Island [Mr. REED] for yielding time to me.

I want to start by congratulating the gentleman from Rhode Island [Mr. REED] for taking what was a terrible bill and working with the other side to improve it into what is now a bad bill, and I would be the first to concede that it is an improved bill, but it is still bad.

Let me express a series of concerns that I have about this bill. First of all, yesterday we passed a bill which requires a cost-benefit assessment of any new regulations that the Federal Government puts in place. So I am wondering what is the purpose of this new process that we are putting here, first of all?

Second, this bill goes several steps beyond that by giving small businesses an implied veto over rules and regulations and standing in court to contest such regulations if the small business is adversely affected, whatever that means.

Third, this bill gives the Small Business Administration Chief Counsel for Advocacy, that is probably somebody the American people have never heard of, the obligation to review and comment and get involved in litigation with respect to rules and regulations. It takes nobody out of the process. Understand, now, we have the department, the agency of government, we have the CBO, we have the Justice Department, now we have the SBA involved in the process. We keep adding on to the bureaucracy, and nobody is taken out of the process.

Now, let me talk to you about the problems that I have with the bill. No. 1, it assumes that all rules that are promulgated by government are bad. You start with that assumption. Take this retaurant example that the previous speaker talked about. When I go into a restaurant and I look up and I see an A grade rating, my friends, that gives me a great deal of comfort as a member of the public. Under this rule, if we require some A grade rating, B grade rating, whatever it is, although I think that is done at the State level, if under this bill we did it at the Federal level, we would then adversely affect some restaurants. They would then end up in litigation in the courts, tying up the court system.

No. 2, this bill gives small businesses unprecedented standing. The people in this country have had standing in the court. Now are are giving small businesses some kind of standing out here where they can come in, create more litigation, and I submit to the American people that that sends a terrible message that business now has some standing that even ordinary people cannot even get to. This is another step away from empowerment of the people and creates another bureaucracy which is, in effect, welfare for businesses, do away with welfare for the people, give welfare to the businesses.

Third, this bill creates an entirely new level of bureaucracy in the process.

Fourth, this bill will result in protracted and extended and unprecedented litigation. At the same time we are moving toward tort reform which takes away rights from the people to have access to the courts, we are moving in this direction all of a sudden to give more access to the courts, more standing to businesses.

Fifth, this bill will not allow us to get to who is actually having influence in the process. We offered an amendment, the gentleman from Michigan [Mr. CONYERS] did, in the committee which would have required agencies to tell who is commenting on these regulations, who is actually getting involved, who is exerting influence on the regulators to draw these regulations. You would think that my colleagues, if they are concerned about protracted regulation, would have been anxious to know who is involved in the process, but no such luck.

Let me just say that the final concern I have about this bill is that nobody knows what it is going to cost. We passed a bill yesterday to deal with regulations that was estimated to cost $250 million. Who has any idea what this monstrosity is going to cost the American people? And here we are, my colleagues, saying we are trying to cut back on government, and we are cutting back on government by increasing, not reducing, bureaucracy and costs.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey [Mr. FRANKS].

Mr. FRANKS of New Jersey. Mr. Chairman, I first want to congratulate Chairman GEKAS for doing an extraordinary job with this bill. What he is going to be doing is providing meaningful and long overdue relief, particularly to small businesses throughout America who are being crushed by the weight of regulation.

We are suffocating job growth. We are diminishing economic opportunity oftentimes through well-meaning but badly constructed rules and regulations.

Mr. Chairman, a lot of the suggestions embodied in title II of this bill do not come from any think tank in Washington, DC, or any so-called experts. They came as a result of the efforts of the manufacturing task force of this House formed under the auspices of the Northeast-Midwest Congressional Coalition 2 years ago and cochaired by the gentleman from Massachusetts [Mr. MEEHAN] and myself. We met with literally scores of small manufacturers throughout our 18-State region and they made recommendations to us in terms of specific items that they wanted regulators to consider before finally issuing their regulation.

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Mr. Chairman, because of his extraordinary efforts on behalf of this bill, I would like to yield the remainder of my time to the cochairman of the congressional manufacturing task force, the gentleman from Massachusetts [Mr. MEEHAN].

Mr. MEEHAN. I thank the gentleman for yielding. Mr. Chairman, I rise today in support of the regulatory impact analysis provisions in H.R. 926. In 1993, Representative BOB FRANKS and I established the first ever congressional manufacturing task force. We traveled around the country to hold hearings and spoke to small and mid-sized companies to find out what they needed to maintain competitiveness.

Each time we held a hearing, each time we met with small businesses, we heard the same thing. Overlapping, burdensome regulations are killing manufacturers ability to stay competitive and have created the perception of Government hostile to business.

Last year, the Federal Register issued over 69,000 pages of new regulations—the third highest total ever. Congress must act to change this. By requiring regulators to assess the impact of new regulations, we will streamline—not eliminate—regulations so they are more effective. The goal is to cause regulators and regulated parties to have full knowledge of the likely impact of a regulatory action before it is made final.

Mr. REED. Mr. Chairman, I yield 1 minute to the gentlewoman from California [Ms. LOFGREN].

Ms. LOFGREN. I thank the gentleman for yielding this time to me.

You know, as a member of the committee, I enjoyed going through this bill, and I think many of the goals are worthy ones.

One concern I have, however, is that I believe we have failed to account for the immutable law of unintended consequences. I believe it is our job to make sure that, when we act legislatively, we know what the outcome will be and we do not get blind-sided by an outcome that we did not intend or expect.

One of the issues I intend to raise by way of an amendment later today has to do with allowing for emergency action and defining what that might be.

This was an amendment offered in the committee, withdrawn with the pledge that we would work through and try to deal with the issue. Unfortunately, given the press of time and our agenda, that has not yet occurred.

I am concerned we do not want to preclude, for example, the release of useful drugs, a cure for cancer, because of the regulatory scheme provided in this bill.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from South Carolina [Mr. INGLIS], a member of the subcommittee.

Mr. INGLIS of South Carolina. I thank the chairman of the subcommittee, the gentleman from Pennsylvania [Mr. GEKAS], for yielding this time to me.

Mr. Chairman, I rise in strong support of this bill. I believe what this is all about is making it more difficult for Washington to regulate the activities out there in America. And that is a good thing, because what has built up in this country is a mindset based on taxation, regulation, and litigation. We are going to deal with the litigation portion next week, with legal reform items; we are going to deal with the taxation part of that trilogy a little after that. This week we are dealing with the regulatory part of that terrible trilogy so weighing down this country.

I believe this is a good step toward reining in some of those regulators, to making them have some justification for their additional regulations. That certainly will make sense out there in America where businesses, particularly small businesses, are collapsing under the weight of this tremendous pressure from the regulators. So I am very excited to support this bill. I commend the chairman of our subcommittee for doing an excellent job in bringing the bill to us.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. FLANAGAN], a member of the subcommittee, who has played an active part in the development of this legislation.

Mr. FLANAGAN. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise in strong support of H.R. 926, the Regulatory Reform and Relief Act, sponsored by the gentleman from Pennsylvania [Mr. GEKAS].

H.R. 926, which is the product of hard work and consensus by Mr. GEKAS and members of the Judiciary Committee, is in my opinion one of the most important features of the Republicans' Contract With America. It tackles head-on many of the problems that have been caused by the Congress and the Federal bureaucracy during the past 30–40 years, and I urge all my colleagues to vote in favor of this legislation.

Mr. Chairman, American taxpayers, small business owners, farmers, ranchers, and regional government officials are suffering under the weight of high taxes and excessive and intrusive government regulations. H.R. 926 is a step towards reversing this trend by rolling back the tide of ill-conceived regulations, and making bureaucrats more accountable for the burdens they impose on both the wage payer and the wage earner.

Under H.R. 926, Federal agencies will be required to perform regulatory impact analyses whenever a major rule—that is, a rule which has an effect on the economy of $50 million or more—is promulgated. This language will go far in reducing the burdens placed on all entrepreneurs, especially small business owners whose companies employ two-thirds of the American work force and fuel the Nation's economy. Furthermore, with the enactment of this bill, business people and their employees will be a step closer in having a Government that acts more like their friend, and not as their worst enemy.

Mr. Chairman, before I yield back my time, I would like to take a moment to express my sincere appreciation to Mr. GEKAS and his staff. Since the start of the 104th Congress, Mr. GEKAS has bent over backward to accommodate those Members who have had reasonable suggestions for perfecting this bill. Whether Republican or Democrat, committee chairman or lowly freshman Member, Mr. GEKAS and his staff worked in a congenial and bipartisan fashion unequal to anything else I have seen so far in this body.

Again, Mr. Chairman, I urge all my colleagues to vote in favor of H.R. 926.

Mr. REED. Mr. Chairman, I yield 3 minutes to the gentleman from Missouri [Mr. VOLKMER].

Mr. VOLKMER. I thank the gentleman from Rhode Island for yielding this time to me.

Mr. Chairman, I would like to elaborate a little bit on some of the things that the gentleman from North Carolina [Mr. WATT] has alluded to in his remarks.

You know, when we take the bill that we just passed last night and add to it to the bill that we have today, we have a total cost to the taxpayers of $400 million. This means, to me, according to CBO estimates, that you are going to have to add that many more work hours in the Federal bureaucracy in order to do the risk assessment, the regulatory impact analysis, plus the other few things that are thrown in.

Where do all these bureaucrats come from? They do not come from the sky, they do not grow on trees, they are hard-working American taxpayers, folks. They work hard just like everybody else out there, whether you are a truck driver, a lawyer, a doctor, or anybody else. They are trying to do their job.

But what is really going to happen? Do you really believe, is there anybody in this House, anyone from the Speaker on down, from the gentleman from Pennsylvania [Mr. GEKAS] or the gentleman from Illinois [Mr. FLANAGAN], or anybody, who can tell me that this Congress is going to appropriate the additional funds necessary to the Small Business Administration, to EPA, to the other of our Federal agencies, the Food and Drug Administration and all the rest of them, in order to perform the tasks they are going to be required to fulfill under this bill and the bill we passed just yesterday? No. It is not going to happen.

The money is not going to be there. The additional bureaucrats are not going to be added. As a result, they are not going to be able to do the work that is imposed on them. Then what will the other party say? The other party will say they are not doing their job, "We passed the legislation, and they are not doing their job."

Well, folks, they cannot do their job, they cannot do it unless you give them the money. And you are not going to give them the money because you are already taking away from the kids, the veterans, the elderly. All those programs are being cut in a rescission bill in order to give it to the wealthy in income tax cuts. That is where you are giving the money. You are not going to help them be able to fulfill this legislation.

You tell me in what bill when you are going to appropriate the additional money that is required under the CBO estimate in this bill. You are not going to do it.

I would like to have the gentleman from Louisiana [Mr. LIVINGSTON], the chairman of the Committee on Appropriations, come up here and tell us they are going to provide the additional funds, because I do not think it is going to be done.

Mr. REED. Mr. Chairman, I yield 3 minutes to the gentleman from Missouri [Mr. SKELTON].

Mr. SKELTON. Mr. Chairman, I thank the gentleman from Rhode Island for yielding this time to me.

Mr. Chairman, this is the culmination of a great deal of effort that I have been personally working on for more than a decade.

At the outset, let me thank and compliment my colleague, the gentleman from Illinois, Mr. EWING, for his efforts, for together we have cosponsored legislation regarding the original Regulatory Flexibility Act for some time. I also thank the gentleman from Pennsylvania, Mr. GEKAS, the ranking subcommittee member, the gentleman from Rhode Island, Mr. REED, the gentlewoman from Kansas, Chairman MEYERS, and the ranking member, the gentleman from New York, Mr. LAFALCE.

I applaud their efforts and again thank TOM EWING for the opportunity of getting this hearing.

The Regulatory Reform and Relief Act, which had my support and on which I worked, was signed into law back in 1980.

Later I was chairman of the House Small Business Subcommittee, and I held hearings on this in the mid-1980's concerning how the Regulatory Flexibility Act was working. We got mixed reviews. As chairman of that, I found that most agencies were making an honest, diligent effort to comply with the law. Others came before us and testified and said, "It does not apply to us," or they were giving it, as we say back home, a lick and a promise.

We put out a report that found that those complying with the law found that they were actually writing better regulations when they considered the impact on small businesses.

Also, they found and concluded that it saves these agencies time, saves them money when good regulations are written from the beginning rather than waiting to have them questioned by small businesses.

We need to make adjustments in the law, to improve it, to give it teeth. That is why the portion that Mr. EWING and I have been working on throughout the last few years deals with judicial review and primarily states that the agencies should understand that they can actually be challenged if they write regulations that are more than cursory—take more than cursory consideration of the impact on small businesses.

It is unlikely that many cases would ever come to court because the threat, the sword of Damocles that would be hanging over them. I think it would be a very, very important step, and that is why I fully support the efforts for judicial review and a change in the law as set forth in this proposal.

Mr. GEKAS. Mr. Chairman, before I recognize our next speaker, I want to personally commend the gentleman from Missouri [Mr. SKELTON] for his decade of interest in this vital issue and to point out to the Members that his testimony and his involvement has played an important role in bringing this matter to the full House today.

Mr. Chairman, I yield 2 minutes to the gentleman from Georgia [Mr. BARR] who has also played a significant role in the development of the issues that have now been brought to the floor.

Mr. BARR. I thank the gentleman for yielding this time to me.

I thank the gentleman from Pennsylvania [Mr. GEKAS] for the fine work that he has provided, not only to those who have the honor of serving on his subcommittee and addressing the issues of regulatory reform but also to the people of this country who labor in our small businesses all across this great land who have been crying out for this relief for so long but who for so long have been denied the relief they need to manage their businesses in a way that meets the needs of their consumers, responsibly meets the needs of their consumers, meets the needs of their shareholders, meets the needs of citizens all across this land who benefit from the products and services that our businesses provide.

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Those consumers and those citizens have for too long labored and have seen higher prices for products, products not being able to get on the market, and higher prices for the provision of necessary Government services, all of which can be directly traced to burdensome, many times unnecessary, and frequently ill-thought-out Federal regulations.

Under the leadership of the chairman of the Subcommittee on Commercial and Administrative Law, the gentleman from Pennsylvania [Mr. GEKAS], we have taken one step, only one step, but an important step, toward regulatory reform and regulatory flexibility.

It has been a very responsible first step, Mr. Chairman. We listened very carefully to the evidence and the testimony that was presented to us in subcommittee hearings. In some instances we took the material that was received and incorporated that into amendments to the bill that we now have before us. In other instances, based on information presented by some folks from the administration, we have deferred action, recommended deferring action in some important areas.

But I think this administration and the American people and those on the other side of the aisle who continue to defend the status quo must know that even as important as H.R. 926 is that we will be considering today, there is further work that must be done to ensure that our Federal regulators respect the rights of citizens and businesses, and that they extend them relief, and that they be stopped from running roughshod over our businesses and our citizens.

Mr. REED. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Chairman, I am one Democrat who believes regulations have gone too far. They kill American jobs. It has gotten to the point that it is so bad that if a dog urinates on a side lot, it may be declared a wetlands.

I recommended for years that Congress should ship the EPA to Japan, Taiwan, Korea, and China, and then we would not have a trade problem because the EPA would screw them up too.

But in any event, I think the Democrats should have done this in the past. I am going to support the bill. I have two amendments, and people are saying they may not necessarily apply to in fact the Administrative Procedures Act. But in my research I have found that there are no safeguards in the event that situation should develop.

My two amendments would do two things, and I would like the majority party here to pay attention to this.

This bill would exempt certain emergencies, certain deadlines imposed by statute, and certain monetary activities that are listed in the bill. The Traficant amendment just say two things: For any future action or any ambiguous action for a trade program in America that is less than aggressive, who might at some point creatively try to find a loophole to continue not to in fact enforce and provide sanctions where necessary, the Traficant amendment would first say that no rule or regulation that is in existence that can be used for trade sanctions to combat illegal trade, that we would exempt that and put it in the exemption part of the bill. The other one deals with the possibility in the future of the collection of taxes from foreign subsidiaries, people who take our money out of or country and run, and there could be absolutely no possibility by any stretch of the imagination where creative minds could be used to apply this bill at some point down the line. And it would exempt from that the IRS collection actions on these foreign subsidiaries who many times come and take our jobs, take the profits, and run away with them.

Let me say this, Mr. Chairman: These are safeguard amendments. They are the types of amendments we should be doing. We should be preventing the opportunity for abuse, and that is one of the reasons why we are in fact eliminating regulations.

I recommend this to the handlers of this bill. This makes the bill a better bill, and I ask for the support of Members on these amendments.

Let me say one other thing: The trade representative's office which is concerned about this does agree that sanctions are not the result of rulemaking. But one thing we can be sure of, there is no reason the Congress of the United States should allow any loophole where illegal trade sanctions can at some point have their backs turned by our trade people. We have seen too much of that.

With that, Mr. Chairman, I thank the gentleman for the time, and I would appreciate having my amendments be approved and accepted without prejudice.

I would be glad to talk to the majority staff further about these issues.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. CHABOT], who is a member of the subcommittee and who participated in the hearings and the entire development of this legislation.

Mr. CHABOT. Mr. Chairman, I rise in strong support of this bill.

I find it incredible that some on the other side of the aisle are so adamant in defending and preserving the massive Federal bureaucracy that has grown over the years. Maybe it is understandable that they defend this huge bureaucracy since they created it. The challenge now is to reduce and simplify a government that has grown completely out of control.

H.R. 926 aims to curb the ruinous practices of Federal agencies that unduly restrain the creative energies of small business. Small business is the backbone of America's economy. America's small businesses have had enough. They desperately need, in fact they are demanding immediately, that we relieve the overbearing regulatory agencies that have grown up.

Opponents of H.R. 926 incorrectly assume that hardworking Americans and small businesses should bear the destructive brunt of the cost of this regulatory process. Nobody I know of in Cincinnati, especially small business owners, shares that opinion.

If we want the regulatory process to be a burden, let us not make it a burden on small business; let us make it a burden on the Federal Government. Let us strengthen regulatory flexibility by giving aggrieved small businesses the ability to seek judicial review. Let us enlarge the public's role in the rulemaking process. Let us force regulatory agencies to conduct regulatory impact analyses. Let us protect Americans who report abusive practices of regulatory agencies from catastrophic reprisals.

What does all this mean to the average American citizen? It means that when they go to the store, products will not be so expensive; they will be more in the reach of average Americans. It means jobs for American citizens, because so many of the jobs that are created in this country are created by small business. And most importantly, it means a better standard of living for the American people.

Mr. REED. Mr. Chairman, may I inquire as to how much time I have remaining?

The CHAIRMAN. The gentleman from Rhode Island [Mr. REED] has 3½ minutes remaining.

Mr. REED. Mr. Chairman, I yield 3 minutes to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Chairman, I thank my colleague for yielding this time to me.

Mr. Chairman, I rise in support of this legislation and would like to briefly address title I of the bill that deals with the Regulatory Flexibility Act. I and a number of other Members on both sides of the aisle were troubled with the original language in the Contract With America with respect to the Regulatory Flexibility Act.

That original language would have applied the provisions of the Regulatory Flexibility Act to big business as well as the country's small businesses. We felt that the Regulatory Flexibility Act was supposed to respond to the kinds of problems the majority has been talking about. A lot of our small businesses do go through bureaucratic water torture when they run up against some of these regulations, and the Regulatory Flexibility Act is supposed to be a fast-track process for adjusting regulation to the needs of small entrepreneurs. But the Contract With America would have changed all that. We want what amounts to an HOV lane for entrepreneurs so that the Federal Government responds to their concerns.

So fortunately, on a bipartisan basis, working with the chairman of the committee, the gentlewoman from Kansas [Mrs. MEYERS], the gentleman from New York [Mr. LAFALCE], the gentleman from Virginia [Mr. SISISKY], the gentleman from Missouri [Mr. SKELTON], and the gentleman from Illinois [Mr. POSHARD], there has now been a bipartisan agreement worked out with all the relevant committees that regulatory flexibility provisions will apply just to small business. In my view, this is the way to ensure that the Federal bureaucracy is sensitive to America's entrepreneurs. That is what is in the public interest.

Mr. GEKAS. Mr. Chairman, may I ask again, at the risk of boring the Chair, how much time we have left?

The CHAIRMAN. The gentleman from Pennsylvania [Mr. GEKAS] has 6 minutes remaining.

Mr. GEKAS. Mr. Chairman, that gives me ample time to bring to the floor the giant legislator, the gentleman from Illinois [Mr. HYDE]. I yield 5 minutes to the gentleman from Illinois, who is the chairman of the full committee and the leader of the effort to bring this legislation to the floor.

Mr. HYDE. Mr. Chairman, the fundamental goal of the Regulatory Reform and Relief Act (H.R. 926) is to reduce the inevitable growth of costly regulations imposed upon our society. The bill achieves this by ensuring enforcement of current law to protect small business, the Regulatory Flexibility Act—and by encouraging greater public participation in our rulemaking process through the imposition of impact analysis on agency rulemaking. It is our hope that through the achievement of this goal, a less inhibited atmosphere will exist, which will allow U.S. commerce to thrive.

The amendments before us to the Regulatory Flexibility Act are important because they would provide small businesses with a means to effectively enforce the goals/purposes of that law.

The Regulatory Flexibility Act was first enacted in 1980. Under its terms, Federal agencies are directed to consider the special needs and concerns of small entities—small businesses, small local governments, farmers, et cetera—whenever they engage in a rulemaking subject to the Administrative Procedure Act.

Under the law, each time an agency publishes a proposed rule in the Federal Register, it must prepare and publish a regulatory flexibility analysis of the impact of the proposed rule on small entities, unless the head of the agency certifies that the proposed rule will not "have a significant economic impact on a substantial number of small entities."

From the beginning, the problem with this statute has been the lack of availability of judicial review as a mechanism to enforce the purposes of the law.

Right now, if agencies do not do a regulatory flexibility analysis or fail to follow the other procedures set down in the act, there is no sanction.

For years, small business groups have sought judicial review in the Regulatory Flexibility Act as a means of "keeping the regulatory agencies honest." Our colleague and friend from Illinois, TOM EWING, has been a leader in this effort.

H.R. 926 would amend the Regulatory Flexibility Act, specifically providing for judicial review. In instances where an agency should have undertaken a regulatory flexibility analysis and did not, or where the agency needs to take corrective action with respect to a flexibility analysis that was prepared, small entities are authorized to seek judicial review within 180 days after promulgation. A court can then give an agency 90 days to take corrective action. If the agency fails to take the necessary corrective action within 90 days, the court is given the authority to stay the rule and grant such other relief as it deems appropriate.

H.R. 926 is aimed at humanizing the Federal regulatory process. This is an important aspect of the Contract With America—to provide affected parties—such as small businesses, small local governments, farmers and others—with a mechanism to ensure that the impersonal Washington bureaucracy takes into consideration the impact that a new rule or regulation can have on their businesses and their everyday lives.

Title Z of H.R. 926 deals with regulatory impact analyses. This language would require Federal agencies to complete a regulatory impact analysis when drafting a major rule.

Major rule is defined under the legislation as a rule likely to result in an annual effect on the economy of $50 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse impacts on competition, employment, investment, productivity, or the ability of U.S.-based enterprises to compete domestically or internationally.

The bill lists a number of specific criteria which Federal agencies have to consider as a part of their regulatory impact analysis. These include a requirement that the agency describe the necessity and legal authority for the rule; a description of the potential costs of the rule; an analysis of alternative approaches, that could substantially achieve the same regulatory goal; a statement that the rule does not conflict with any other rule or regulation; a statement as to whether or not the rule would require onsight inspections—or whether or not the rule would require the maintenance of any records subject to inspection—and an estimate of the costs to the agency for the implementation and enforcement of the rule.

The bill encourages public hearings on important regulations.

The bill makes it clear that the Director of the Office of Management and Budget will oversee the Federal regulatory process in an effort to ensure consistency and broad based fairness.

It is important to note that the provisions of this section would not apply to major rules if it would conflict in any way with deadlines imposed by statute or by court order.

The bill also requires that the Director of OMB submit a report to Congress no later than 24 months after the date of enactment of this act containing an analysis of Federal rulemaking procedures and an analysis of the impact of the regulatory process on the American public.

Mr. Chairman, regulatory flexibility was a good idea when it was enacted in 1980. Unfortunately, we haven't seen its potential because our courts could not enforce it. Regulatory impact analysis by Federal agencies was a good idea in 1981 when President Reagan required it through Executive order. Unfortunately, Executive orders are not permanent and those impact analyses are no longer enforced. This legislation will ensure enforcement of both of these tools. This legislation is long overdue.

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Mr. REED. Mr. Chairman, I yield myself the balance of my time.

This has been the process of working together cooperatively over the last several weeks to develop legislation that will meet the needs of small businesses throughout the United States and meet the needs of taxpayers throughout the United States, to develop a regulatory system which is streamlined, efficient and provides for the protection of the public good. And we have reached, I think, major accommodations in terms of language.

Today I hope we can reach additional accommodations in terms of providing a system that will protect the public good and save money.

I am encouraged by the process. I hope in the next few hours we can make changes that will make this legislation even better for the benefit of all of our citizens.

Again, I thank and commend the gentleman from Pennsylvania for his help and effort during this process.

Mr. GEKAS. Mr. Chairman, I yield myself the balance of my time.

I thank the gentleman from Rhode Island for all his cooperative efforts in the past. I just wanted to end our portion of general debate by pointing out to the Members on the other side that as they consider their amendments and as they consider their opposition to certain portions of the bill as it now is drafted, to think of the people in their district, the working people.

They, by most chances, work for a small business. They are the people who are going to be helped most by this piece of legislation. We are not against rules. We are not against regulation. We simply want to make sure that the small business which does the hiring of your constituents, which keeps wage earners on the payroll, that those small businesses will not have to go out of business or fire people or lay off people because of the burdensome regulations that sweep down on them from Washington.

That is the purpose of this bill. Think of your working people, your constituents, and then you will think twice about trying to defend against this bill or offering amendments which will weaken it.

We want to make our working people work for a small business that will have the greatest opportunity to expand, to hire more people, to enhance wages, to increase prosperity for the community in which they operate. That is the purpose of this bill.

When you start attacking business, you are attacking the opportunity for your working people, your constituents to keep on trucking with their jobs.

The CHAIRMAN. All time for the Committee on the Judiciary has expired.

The gentlewoman from Kansas [Mrs. MEYERS], the chairman of the Committee on Small Business, is recognized for 15 minutes.

Mrs. MEYERS of Kansas. Mr. Chairman, I rise today in support of H.R. 926.

Mr. Chairman, I yield 1 minute to the gentleman from Colorado [Mr. HEFLEY].

Mr. HEFLEY. Mr. Chairman, when President Jimmy Carter signed the original Regulatory Flexibility Act back in 1980, it was applauded as a new, strategic weapon in the war against excessive regulation.

American businesses soon discovered that Reg Flex was less a strategic weapon and more a water pistol. Sure, you could aim it at excessive regulations and pull the trigger, but nothing much happened.

Reg Flex lacked the striking power to challenge the bureaucrats. It failed even to drown out their laughter as they ignored the law.

As a weapon for curbing regulatory abuses, Reg Flex was a dud.

Today, we are giving punch to Reg Flex. By allowing America's businesses to challenge abusive regulations in the courts, we are finally forcing Federal bureaucrats to comply with the law. If they want to issue a new major rule, they first have to account for its impact on American business.

Mr. Chairman, the Regulatory Reform and Relief Act is a major step forward in the battle for control of America's businesses. It's the strategic weapon we've been promising America's businesses all along, and I look forward to its passage.

The CHAIRMAN. The gentleman from New York [Mr. LAFALCE] is recognized for 15 minutes.

Mr. LAFALCE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the legislation before us, H.R. 926, the Regulatory Reform and Relief Act, includes in title I amendments to the Regulatory Flexibility Act, legislation of longstanding and great importance to the small business community, and an issue which has had broad bipartisan support in this and previous Congresses.

Since 1980, when it was signed into law, the Reg Flex Act, as it is know, has been a key tool in reducing the regulatory burden on small businesses. The Reg Flex Act requires that Federal agencies perform a good faith analysis of the compliance requirements new regulations may impose on small enterprise and to minimize the impact. The theory behind the Reg Flex Act is that the burden of Federal regulatory requirements fall disproportionately heavy on small entities, which have less opportunity to spread the costs of regulatory compliance.

As the former chairman of the Committee on Small Business and now its ranking minority member, I know that some of the changes to the Reg Flex Act that we will be voting on have been sought by small business advocates, both in and out of Congress, for some time. Indeed, Committee on Small Business chairman, the gentlewoman from Kansas, JAN MEYERS, and I were leading supporters and cosponsors of legislative efforts in the last Congress to strengthen the original act.

The most frequently cited Reg Flex revision sought by small businesses is before us today in H.R. 926; namely to allow small business owners to pursue a course of judicial review to force Federal agencies to comply with the Regulatory Flexibility Act and, thereby, put real enforcement teeth into the act.

H.R. 926 also contains two other provisions amending the Reg Flex Act, both involving the chief counsel for advocacy of the Small Business Administration, the individual charged with monitoring compliance with the act and reporting his or her findings to the president and the Congress annually.

The first provision requires that proposed rules be sent to the chief counsel for advocacy at least 30 days before the publication of a general notice of proposed rulemaking in order to give the chief counsel time to advice the rulewriting agency on the effect of the proposed rule on small agencies.

I caution that given the limited resources of the chief's counsel's office, this admirable provision will prove quite difficult to implement both intelligently and effectively.

The other section concerning the chief counsel for advocacy is language noting that it is the sense of the Congress that the chief counsel should be permitted to as amicus curiae in any action or case brought in court for the purpose of reviewing a rule. This is a restatement of the Congress' intent that the chief counsel has and should feel free to exercise the right to intervene in those instances where it might be deemed appropriate in the rulemaking process in behalf of small businesses.

I am agreeable to the Reg Flex provisions in H.R. 926. Generally, they are balanced and constructive and should make for a stronger and more effective act.

Mr. Chairman, I reserve the balance of my time.

Mrs. MEYERS of Kansas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in support of H.R. 926, the Regulatory Reform and Relief Act and would like to focus my remarks on title I which provides and clarifies procedures for judicial review of agency compliance with the Reg Flex Act.

The Regulatory Flexibility Act became law in 1980. It was the result of efforts of many small businesses throughout this country. I might say, Mr. Chairman, that this has been a really bipartisan effort throughout. In fact, when this issue was before the House last year, it passed by 380 to 36. It had been amended in the Senate and it was before the House on a motion to instruct, and it passed by an enormous count.

The issues of regulatory relief and regulatory flexibility for small entities were a dominant theme in many hearings before the House Committee on Small Business and other committees in the late 1970's. However, moreover, the issue of more flexible regulations for small business was a top priority at the 1980 White House Conference on Small Business and at the State conferences which led up to that national conference.

Enactment of the original Reg Flex Act was soundly based on two premises: That Federal agencies often do not recognize the impact that their rules have on small businesses and, the second one, that small businesses are disproportionately disadvantaged by Federal regulations.

This is because they do not have the economy of scale and because large businesses may have an office manager or an accountant of an attorney right on their staff, whereas the work of understanding the regulations and filling out the paperwork are done by the small businessman or woman himself or herself.

The Reg Flex Act was enacted to obtain Federal agency recognition of these effects and consequently to reduce them.

The intention of the act was to have agencies approach the entities they regulate with an eye to their size and take this into account in drafting rules, rather than approaching rulemaking with a one size fits all attitude.

When the Reg Flex Act is properly complied with, the primary goals of the Administrative Procedures Act should also be satisfied, because the use of regulatory flexibility should cause agencies to write better rules. Unfortunately, that is the problem. Many agencies have failed to comply with the letter and the spirit of the Reg Flex Act.

At numerous hearings before the House Committee on Small Business, the issue of lackluster compliance with the Reg Flex Act by many agencies has been brought up time and again because there was no enforcement mechanism. Because the original Regulatory Flexibility Act contained a built-in prohibition against judicial review of agency compliance with the act, many agencies viewed compliance as strictly voluntary. This situation of agency compliance needs to be addressed and is correctly addressed by the amendments to the Reg Flex Act contained in title I of H.R. 926.

In addition to providing for judicial review, title I provides Federal agencies to work more closely with the Office of Advocacy of the Small Business Administration during the drafting of new rules.

Finally, the bill contains a sense of Congress provision that the SBA chief counsel for advocacy be allowed to appear as amicus curiae for the purpose of reviewing a Federal rule. The right of the SBA chief counsel for advocacy to file amicus briefs was contained in the original Reg Flex Act. However, the Department of Justice has historically resisted the implementation of this right.

The sense of Congress provision contained in this bill reiterates the intention of Congress on this important issue.

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After over 14 years of mediocre compliance with this important small business provision, it is time to stand up and be counted in favor of making needed improvements to the Regulatory Flexibility Act, and I urge my colleagues to vote "yes" on H.R. 926.

Mr. Chairman, I reserve the balance of my time.

Mr. LAFALCE. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. BENTSEN].

Mr. BENTSEN. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of the bill and the provisions making changes to the Regulatory Flexibility Act. I believe that a primary means to accomplish mandatory compliance of reg flex would be to provide small business owners the opportunity to challenge Federal agencies' rulings in court. This bill adds this provision to reg flex. This step will assure that agencies will consider and adequately address the impact of their regulations on smaller entities.

I am also encouraged with the bill's provision to strengthen the SBA counsel of advocacy. This bill requires that agencies provide the SBA chief counsel with an advance copy of the rule 30 days before publishing a general notice of proposed rulemaking in the Federal Register. The bill further strengthens the SBA Office of Advocacy by giving the SBA chief counsel the authority to file amicus briefs in litigation involving Federal rules. This will give the chief counsel the opportunity to express his office's views with respect to the effect of rules on small businesses.

As a member of the Small Business Committee, I was delighted to see the involvement of small businesses in efforts to improve and strengthen the Regulatory Flexibility Act. It was clearly apparent that the small business community's diligent efforts in working with chairwoman MEYERS and Congressman LAFALCE was instrumental in addressing and eliminating the shortfalls contained in title VI of House Resolution 9, and thus creating the bill we have before us.

Interaction between the Small Business Committee an small business owners is imperative. It should be continued so that Congress does not enact future laws that negatively affect our Nation's small businesses.

Mrs. MEYERS of Kansas. Mr. Chairman, I yield 1 minute to the gentleman from Illinois [Mr. MANZULLO].

Mr. MANZULLO. Mr. Chairman, I rise in strong support of the provisions contained in title I of H.R. 926 dealing with the Regulatory Flexibility Act.

The title I provisions would put real teeth into the Regulatory Flexibility Act by allowing judicial review of regulations. This will permit small businesses to challenge agencies when they propose regulations that will stymie economic growth. I strongly support this legislation and would like to recognize my friend, the gentleman from Illinois, TOM EWING, for all the hard work he has done on this issue.

The goal of blocking unnecessary Federal regulation of the economy is a worthy one. Many in Congress naively believe that no matter what costs they impose on business, these companies can merely absorb them. I do not share their view.

I understand that each new mandate or regulation means higher costs, more failed enterprises, and fewer jobs for ordinary Americans.

The bipartisan support of this measure speaks volumes about its merit. Both the SBA and Vice President AL GORE support its passage and legislation introduced in the last Congress dealing with this issue garnered 255 cosponsors.

Mr. Chairman, I strongly urge my colleagues to support this measure and inject some measure of fairness into the regulatory process.

Mr. LAFALCE. Mr. Chairman, I reserve the balance of my time.

Mrs. MEYERS of Kansas. Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee [Mr. WAMP].

Mr. WAMP. Mr. Chairman, I thank the gentlewoman for yielding time to me.

Mr. Chairman, I would like to offer my strong support for provisions in H.R. 926 to add judicial review to the Regulatory Flexibility Act.

Enacted in 1980 with strong bipartisan support, the Regulatory Flexibility Act was intended to force agencies to consider the impact of regulations on the Nation's small businesses, and consequently reduce them. The problem with the original bill, Mr. Chairman, is it has never been enforced. Agencies are essentially allowed to ignore the intent of the Reg Flex Act.

Small businesses are the backbone of this country, employing more than 53 percent of the work force, and contributing to much of our country's economic growth. Between 1989 and 1993, small business job growth more than offset net job loss in big businesses.

The Government should be doing everything in its power to promote small business growth. Instead, it imposes the same regulations on the smaller entities that it does on big businesses. This is yet another example of the Government's one-size-fits-all approach that does not work.

To reinforce the bipartisan nature of this provision, I would like to point out that Vice President GORE's first recommendation for reinventing the role of Government in small business is to establish judicial review for the Regulatory Flexibility Act. I could not agree more with the Vice President on this issue.

We held a number of hearings and a markup of this legislation in the Small Business Committee, and I am proud to be a part of this bill as reported.

Mr. Chairman, as a third generation small businessperson, I appeal to this body to do the right thing for the working people in America and give small business people a fighting chance.

It is my hope, Mr. Chairman, that by allowing judicial review, the threat of enforcement along will force agencies to not only consider the impact of their regulations on small businesses, but to significantly reduce them.

Mrs. MEYERS of Kansas. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. PORTMAN].

Mr. PORTMAN. Mr. Chairman, I thank the gentlewoman from Kansas [Mrs. MEYERS] for yielding time to me. I also thank the chairman of the committee for all her good work on this legislation, and particularly on the Regulatory Flexibility Act.

Mr. Chairman, I rise in strong support of H.R. 926, the underlying legislation, especially title I, because I think it significantly improves the Regulatory Flexibility Act. At town meetings and letters, meetings in the district, telephone calls, and so on, and during my work last year with the gentlewoman from Kansas [Mrs. MEYERS] in the Committee on Small Business, I have heard again and again from small business constituents about them being overburdened with Federal paperwork, regulations, and compliance procedures.

The Reg Flex Act was enacted in 1980 to get at this problem, but there is ample evidence that it has not worked. The bill before us today makes necessary changes in the act, so it will work as intended. Let me be specific. I think none of these changes is more important than judicial review.

Currently there is a blanket prohibition, as I think has been discussed previously on the floor, for any kind of judicial review of agency compliance with the requirements of the law. This is an exception, it is a very rare exception, that is made in this legislation. As a result, frankly, agencies are not forced to follow the procedures in the act. Compliance has become essentially voluntary.

As a result, during this 15-year period that the act has been in effect, its requirements have all too often been ignored. H.R. 926 corrects this serious flaw by allowing judicial review. It gives teeth to the legislation. The result of noncompliance with the Reg Flex Act has cost our small businesses in my State and yours billions of dollars over the last 15 years.

At the same time, let me make it very clear that by adding judicial review, it will not be the lawyers' haven that many on this floor will say. I have looked at the case law, and it clearly shows that courts are deferential to agencies. The courts do not, the courts do not get behind the agency analysis. Once the analysis has been done as required, the courts do not go behind that analysis to determine whether it is correct or not.

Mr. Chairman, furthermore, judicial review is unlikely to slow down the regulating process, since judicial stays and injunctions are very rare. Judicial review will not stop all regulations, will not tie up the system. What it will do is it will send agencies a very strong signal, that they are, yes, to meet the reasonable requirements that Congress has said are relevant in the rulemaking process. I urge my colleagues to support 926.

Mrs. MEYERS of Kansas. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. EWING], who has done such good work on this judicial review.

Mr. EWING. Mr. Chairman, I would say to the gentlewoman from Kansas [Mrs. MEYERS], the chairman of the Committee on Small Business, without her strong support and that of her ranking member, the gentleman from New York [Mr. LAFALCE], we would not be here today.

I certainly appreciate that, and want that to be clearly stated, that the gentlewoman has been one of the strongest supporters of the improvement to the Regulatory Flexibility Act. I certainly appreciate it. I am pleased to be here today and take part in the gentlewoman's part of this debate.

Mr. Chairman, it has been mentioned earlier that the Vice President had as the No. 1 item on his reinventing government putting judicial review in the Regulatory Flexibility Act. Mr. Chairman, I do believe, and while this is my opinion, that the Vice President came out with that recommendation in all good faith, it appeared to have less emphasis as the bureaucrats expressed their opinion and began to try and stifle this movement.

I cannot emphasize too strongly that it is time for this Congress to take control of this issue and not leave it to the bureaucrats, who certainly do not want judicial review, or to be required to meet the provisions of the Regulatory Flexibility Act.

Mr. Chairman, on the issue of excessive litigation coming out of judicial review, first of all, small business does not have the money to consistently go to court and to cause the major Government agencies any great problem. They can only do it when it really matters.

In fact, Mr. Chairman, the Vice President's own report on this matter said:

> Judicial review is not expected to lead to a large number of lawsuits. No basis for suits would exist if agencies conducted an appropriate regulatory review. As a practical matter, most regulations to which small entities have significant objections are already in litigation.

Mrs. MEYERS of Kansas. Mr. Chairman, may I inquire how much time remains on our side?

The CHAIRMAN. The gentlewoman from Kansas [Mrs. MEYERS] has 2 minutes remaining.

Mrs. MEYERS of Kansas. Mr. Chairman, I yield 1 minute to the gentleman from Missouri [Mr. TALENT].

Mr. TALENT. Mr. Chairman, I thank the gentlewoman for yielding time to me.

Mr. Chairman, I would just like to join the other Members who have expressed support for this improvement of the Regulatory Flexibility Act, really making it effective. This is an act Congress passed in 1980, again with the intention of saying to the bureaucracy, "Look, if you feel you have some overriding goal in terms of the environment or worker safety that you need to accomplish, look and see the impact on small business which produces the jobs and the flow of goods and services the country depends on, and do it in a way that has the least negative impact on costs and on job growth in the country."

It is a very commonsense bill. It did not work because we did not place a check in the system that was effective in making them do it. I just want to make one broader observation here. When people build the businesses, the small businesses of the United States, they are building part of the backbone of the private society of this country. They are exercising, really, an unalienable right.

It is one thing if we feel that some overriding policy requires that we intrude on what they are trying to do for themselves and their employees in America. It is another thing when we let agencies act arbitrarily and capriciously, in a manner that unnecessarily undermines the efforts they are engaged in.

This bill is an attempt to stop that. I support it. I thank the gentlewoman for yielding time to me.

Mr. LAFALCE. Mr. Chairman, I yield such time as he may consume to the gentleman from Virginia [Mr. SISISKY].

Mr. SISISKY. Mr. Chairman, I thank the gentleman from New York for yielding time to me.

Mr. Chairman, today we have a chance to strike another blow for small business in America. Today we have a chance to put aside partisan politics and really change the way Government does business.

The rest of our statement is going to be repetitive, what everybody says, so I am going to be kind to the House today and simply say I rise in support of H.R. 926.

Mr. Chairman, today we have a chance to strike another blow for small business in America.

Today we have a chance to put aside partisan politics and really change the way Government does business.

And in the process, we will help small business do what they do best—create more new jobs.

If we really want to reinvent Government, we have to constantly think of ways for Government to perform its necessary functions without imposing a crushing burden on small businesses.

If you ask small businesses what they think about reinventing Government, I Think most would say that easing the burden of Government regulations and paperwork is a good place to start.

We have already made some headway in this direction. Last week, this House passed H.R. 830, the paperwork reduction bill, by unanimous vote.

The bill before us today, H.R. 926, deserves the same kind of overwhelming bipartisan support.

The original Regulatory Flexibility Act recognized that the burden of Federal regulations is heaviest for small business. That's why the Reg Flex Act forced Federal agencies to analyze the impact of proposed regulations on small business. Under reg flex, the agencies then have to find ways to lessen that impact as much as possible.

Unfortunately, Reg Flex Act has not been the tool for small business that some of us hoped it would be. Agencies have too often paid lip service to these requirements or ignored them completely. The attitude of too many agencies have been that compliance with reg flex is voluntary.

It is no mystery why reg flex has not been as successful as it should be. It has no enforcement mechanism.

And the solution is no mystery either. Small businesses need to be able to sue and make noncomplying agencies take these requirements seriously. H.R. 926 put teeth into the Reg Flex Act by providing for judicial review, and it states that Office of Small Business Advocacy should be allowed to submit legal briefs in any court challenges to final agency rules.

Since small businesses are responsible for creating most of the new jobs in today's economy, it only makes sense to do what we can to promote small business job creation. Minimizing the burden of Government regulations on small businesses does just that. It is a reform that both Democrats and Republicans can enthusiastically support.

We can be proud that this reg flex bill, along with the Paperwork Reduction Act reauthorization, have been genuinely bipartisan efforts. Congressman EWING's bill in the last Congress boasted a bipartisan roster of 260 cosponsors.

I strongly urge my Democratic and Republican colleagues to give their wholehearted support to H.R. 926.

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Mr. Chairman, 85 percent of all new jobs in America are created by small businesses. The economic impact of regulation in our country ranges as high as $500 billion. With these facts in mind, it is crucial that we not overregulate small businesses. Reg flex makes this a law, and title I of H.R. 926 ensures that this law is observed. I urge my colleagues to vote "yes" on H.R. 926.

Mr. LAFALCE. Mr. Chairman, I yield the balance of my time to the gentlewoman from Kansas [Mrs. MEYERS] so that she might close debate.

Mrs. MEYERS of Kansas. Mr. Chairman, I would just like to say in closing that this is a bill of tremendous importance to small business. I would like to thank the gentleman from Illinois [Mr. EWING] for his work on judicial review and thank everyone for the bipartisan spirit that has carried this bill this far. The gentleman from Missouri [Mr. SKELTON] the gentleman from Virginia [Mr. SISISKY] and the gentleman from New York [Mr. LAFALCE] on the minority side have worked for many years on judicial review, and I strongly support it and urge my colleagues to vote for H.R. 926.

Mr. RICHARDSON. Mr. Chairman, small business owners in New Mexico have made it clear to me that redtape and regulatory burdens are cumbersome. Whether or not we should provide help for these businesses, the driving force in today's economy, is not the question.

The question before us today is how to best enforce the laws that we have enacted in the past.

Before I read this legislation, I envisioned a battle of ideas that would propel government into the 21st century: lower bureaucracy, greater efficiency.

Instead we get legislation that creates more jobs for lawyers in Washington. Busy work for bureaucrats: the height of cynicism, establishing new rules to prevent the implementation of new rules.

Forget partisan gain and the Contract With America, this legislation is a copout. A missed opportunity to work with the executive branch.

The Clinton administration, and the Vice President's National Performance Review in particular, has made significant strides in downsizing and streamlining the way government operates.

Already the re-inventing Government initiative has yielded practical benefits and fiscal discipline which benefits all Americans.

Furthermore, the President has already ordered each Federal agency to examine their respective rules and regulations and subject them to scrutinization.

Consider that this legislation exempts the Federal Reserve in an effort to protect monetary stability. Are we to assume that the Federal role in banking conduct is without fault and free from perfecting legislation?

We all understand that rules and regulations, by their very nature, constrain free-market business ventures. But congress has a responsibility to lead and craft policy that promotes the long-term interests of the Nation.

Can we honestly say that this is the best way to enforce policy?

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the Committee amendment in the nature of a substitute printed in the bill shall be considered by titles as an original bill for the purpose of amendment, and each title is considered having been read.

During consideration of the bill for amendment, the Chairman of the Committee of The Whole may accord priority in recognition to a member who has caused an amendment to be printed in the designated place in the Congressional RECORD. Those amendments will be considered as having been read.

The Clerk will designate section 1.

The text of section 1 is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Regulatory Reform and Relief Act".

The CHAIRMAN. Are there any amendments to section 1?

The clerk will designate title I.

The text of title I is as follows:

TITLE I—STRENGTHENING REGULATORY FLEXIBILITY

SEC. 101. JUDICIAL REVIEW.

(a) AMENDMENT.—Section 611 of title 5, United States Code, is amended to read as follows:

"§611. Judicial review

"(a)(1) Except as provided in paragraph (2), not later than 180 days after the effective date of a final rule with respect to which an agency—

"(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities; or

"(B) prepared a final regulatory flexibility analysis pursuant to section 604,

an affected small entity may petition for the judicial review of such certification or analysis in accordance with the terms of this subsection. A court having jurisdiction to review such rule for compliance with the provisions of section 553 or under any other provision of law shall have jurisdiction to review such certification or analysis.

"(2)(A) Except as provided in subparagraph (B), in the case where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 180 day period provided in paragraph (1), such lesser period shall apply to a petition for the judicial review under this subsection.

"(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection shall be filed not later than—

"(i) 180 days; or

"(ii) in the case where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 180-day period provided in paragraph (1), the number of days specified in such provision of law,

after the date the analysis is made available to the public.

"(3) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be adversely affected by the final rule.

"(4) Nothing in this subsection shall be construed to affect the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

"(5)(A) In the case where the agency certified that such rule would not have a significant economic impact on a substantial number of small entities, the court may order the agency to prepare a final regulatory flexibility analysis pursuant to section 604 if the court determines, on the basis of the rulemaking record, that the certification was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(B) In the case where the agency prepared a final regulatory flexibility analysis, the court may order the agency to take corrective action consistent with the requirements of section 604 if the court determines, on the basis of the rulemaking record, that the final regulatory flexibility analysis was prepared by the agency without observance of procedure required by section 604.

"(6) If, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (5) (or such longer period as the court may provide), the agency fails, as appropriate—

"(A) to prepare the analysis required by section 604; or

"(B) to take corrective action consistent with the requirements of section 604,

the court may stay the rule or grant such other relief as it deems appropriate.

"(7) In making any determination or granting any relief authorized by this subsection, the court shall take due account of the rule of prejudicial error.

"(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(5)) shall constitute part of the whole record of agency action in connection with such review.

"(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply only to final agency rules issued after the date of enactment of this Act.

SEC. 102. RULES COMMENTED ON BY SBA CHIEF COUNSEL FOR ADVOCACY.

(a) IN GENERAL.—Section 612 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(d) ACTION BY THE SBA CHIEF COUNSEL FOR ADVOCACY.—

"(1) TRANSMITTAL OF PROPOSED RULES AND INITIAL REGULATORY FLEXIBILITY ANALYSIS TO SBA CHIEF COUNSEL FOR ADVOCACY.—On or before the 30th day preceding the date of publication by an agency of general notice of proposed rulemaking for a rule, the agency shall transmit to the Chief Counsel for Advocacy of the Small Business Administration—

"(A) a copy of the proposed rule; and

"(B)(i) a copy of the initial regulatory flexibility analysis for the rule if required under section 603; or

"(ii) a determination by the agency that an initial regulatory flexibility analysis is not required for the proposed rule under section 603 and an explanation for the determination.

"(2) STATEMENT OF EFFECT.—On or before the 15th day following receipt of a proposed rule and initial regulatory flexibility analysis from an agency under paragraph (1), the Chief Counsel for Advocacy may transmit to the agency a written statement of the effect of the proposed rule on small entities.

"(3) RESPONSE.—If the Chief Counsel for Advocacy transmits to an agency a statement of effect on a proposed rule in accordance with paragraph (2), the agency shall publish the statement, together with the response of the agency to the statement, in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule.

"(4) SPECIAL RULE.—Any proposed rules issued by an appropriate Federal banking agency (as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or the Office of Federal Housing Enterprise Oversight, in connection with the implementation of monetary policy or to ensure the safety and soundness of federally insured depository institutions, any affiliate of such an institution, credit unions, or government sponsored housing enterprises or to protect the Federal deposit insurance funds shall not be subject to the requirements of this subsection.".

"(b) CONFORMING AMENDMENT.—Section 603(a) of title 5, United States Code, is amended by inserting "in accordance with section 612(d)" before the period at the end of the last sentence.

SEC. 103. SENSE OF CONGRESS REGARDING SBA CHIEF COUNSEL FOR ADVOCACY.

It is the sense of Congress that the Chief Counsel for Advocacy of the Small Business Administration should be permitted to appear as amicus curiae in any action or case brought in a court of the United States for the purpose of reviewing a rule.

The CHAIRMAN. Are there any amendments to title I?

AMENDMENT OFFERED BY MR. EWING

Mr. EWING. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. EWING: Page 2, line 11, strike "180 days" and insert "one year notwithstanding any other provision of law", in line 24, strike "(2)(A)" and all that follows through "(B)" in line 4 on page 3, and beginning in line 7 strike the dash and all that follows through line 13 and insert "one year notwithstanding any other provision of law".

Mr. EWING. Mr. Chairman, the amendment which I offer would very simply amend the bill to change the statute of limitations for filing an action under the Regulatory Flexibility Act from 6 months to 1 year. H.R. 926 has only a 6-month statute of limitations. Because many small businesses are not aware that they have a problem with the regulation in that short a period of time, I believe it is very important that we extend this for a 1-year period.

The Senate version of this reform legislation also has the 1-year limitation in it. My amendment also guarantees that the 1-year statute of limitations will be there notwithstanding any other legislative provisions which might govern.

Small business needs to have this type of protection. They do not have a number of lawyers, accountants, and staff people to be reviewing all of the regulatory mandates and regulatory provisions that are put out by the bureaucracy. Business needs to know and needs to have the time to review these regulations, and this amendment will allow for the proper time. A 1-year statute of limitations is very reasonable. The NFIB feels this is a very important vote and they have keyed this vote. It is supported by most small business groups in the country.

I ask for the approval of this amendment.

Mr. VOLKMER. Mr. Chairman, I rise basically in opposition to the amendment because I do not understand the reasoning why and I do not think the gentleman from Illinois has fully explained other than NFIB is for it and some small businesses are for it and, therefore, that is the way we should do it.

I would like to question basically this whole provision under judicial review, where it puts an agency. Let's look at it for a minute from the other side instead of just looking at it from one side. Let's try looking at it from both sides.

I have an agency here that has just finalized a regulation and has promulgated it in the Federal Register. It is sitting out there and some businesses are going ahead and they are following it and they are going to abide by it because they think the agency has done the right thing. Then they are proceeding on that line, they have made these changes, whatever changes are required in their business operations, et cetera.

Then under this amendment, and the way I read the rest of the bill all the way down, section 611 under judicial review, and I do not know if the gentleman from Illinois or the gentlewoman from Kansas has entertained this thought, that during this time, while all these other businesses are doing what they should be, I have got about 10 or 11 of them out there that, "No, this isn't quite right. I don't like it. They didn't do it right as far as I'm concerned."

So I decide, and the rest of them decide that they are going to request——

Mr. EWING. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. Let me finish up what is going to happen as I see what is happening from both sides. That there is going to be a judicial review, and the judicial review is going to occur where?

Well, let us say it is an agency that the law says that judicial review under a regulation shall occur in any court of appeals. Well, I happen to live in Missouri and my court of appeals is in the fifth circuit, and I file mine in St. Louis. We have another business in the State of California, or the State of Oregon that wants to have a review because they do not like it, so they file in San Francisco. We have another one that does not like it in Florida and they file for judicial review in Miami, and on and on it goes.

I have got about 7, 8, 10 cases pending at the same time on the same regulation, and it is all over whether or not the certification or analysis was done in accordance with the terms of this subsection. It has nothing to do with the basic substance of the regulation itself.

What happens when the court of appeals in Missouri says, "We're going to stay that, and we're going to have a full hearing on it." All these other businesses that have already complied and abide, they do not know what is going to happen now because all of a sudden the regulation is put in abeyance. All the changes that they have made in their operations are no longer or may be necessary for the future.

Then the court of appeals in California, they decide they are going to make a decision on this first and they find that everything was proper and the certification was proper, the analysis called for in the bill was fully done by the agency and everything was proper. But 2 days later, the court of appeals in Chicago, or wherever, says, "No, it wasn't done properly." Then the one in Miami says, "Yes, it was." Then the one in San Francisco again says, "No, it wasn't." Maybe the one in New York will say, "Yes, it was," or maybe they will say, "No, it wasn't."

You tell me where small business is right now when all this is going on.

Mr. EWING. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Illinois.

Mr. EWING. I thank the gentleman for yielding. I know how effectively you do represent small businesses in your district as most Members of this body do.

Let me say two things: What you have described is the legal system in America. But this law does not require a court to order a stay on the implementation of the rule.

Mr. VOLKMER. I did not say it did. It permits.

Mr. EWING. It permits.

Mr. VOLKMER. It permits.

Mr. EWING. And so does the law permits that in most cases. But the courts do not do it unless there is considerable evidence of the reasonableness of having that stay.

The CHAIRMAN. The time of the gentleman from Missouri [Mr. VOLKMER] has expired.

(By unanimous consent, Mr. VOLKMER was allowed to proceed for 5 additional minutes.)

Mr. EWING. If the gentleman will continue to yield, let me say that the important part of having the longer statute of limitations is that many of the small businesses you represent so well will never know there is a problem until the regulator shows up on their doorstep with a fine or a citation. They will not know that they needed to make an appeal of this ruling. That is why we give them time, because they do not have a battery of lawyers and accountants and executives to be watching this all the time. We are talking about little businesses.

Mr. VOLKMER. I thought NFIB represented those people. They have a good work force right here in Washington, DC. You mean they cannot follow what is going on and let their members know? They let them know everything else that is going on.

Mr. EWING. I am sure that they will let them know.

Mr. VOLKMER. They do everything they can to influence the Members up here how to vote on every piece of legislation that they can think about that may affect small business and how it will. Sometimes they do not think through, of course, and maybe they will not think through this example.

Mr. EWING. If the gentleman will yield again, I will respond to that, because not every small business belongs to the National Federation of Independent Business.

Mr. VOLKMER. Correct.

Mr. EWING. I am as interested in them certainly as I am those that belong to the organization. Yes, there is no requirement that businesses have to join any organization.

We need to be concerned in this country about the really little people who are out there doing their work, creating jobs, helping keep our economy going, and they have no idea about this Federal bureaucracy. They do not have anybody looking after it for them. We need to do that. You do it and I do it. We need to have a law that is friendly to them.

Mr. VOLKMER. You really believe that by giving them a year, that for sure every small businessperson out here is going to be visited by a person from that regulatory agency to talk about this regulation within the year?

Mr. EWING. If the gentleman will yield further, no, I do not believe that. I think it is a reasonable time, though. Maybe 2 years would have been more reasonable.

Mr. VOLKMER. Why not make it 5 years?

Mr. EWING. I would not oppose that. But, you see, we are trying to be reasonable here with something that is acceptable, to all parties. I do not think a year is an excessive length of time. That regulator probably is not going to come out there with helpful hints. They are going to come out there with a fine or they are going to come out there with a citation.

Mr. VOLKMER. As long as we are discussing this, what is the gentleman going to do about the small businesses that did know about it, that do keep up with regulations, and they have gone ahead and implemented the changes that are required in it, in their operations, what are you going to do about them?

Mr. EWING. Well, that is the way our system works. You may do things, if you are in business, as I have in my business and found out later that the law was changed or even that it was overturned in some court action.

Mr. VOLKMER. I mean, would you not get a little upset, though, if you for 6 months had done something that you thought the law required you to do and in good faith you had made those changes and then you found out that later on a court of appeals somewhere that you did not know ever had anything to do with it said, "No, you don't have to follow that regulation anymore"?

Mr. EWING. If the gentleman would yield further, if I know what my rights are and I have the right to have judicial review of that regulation and I choose not to do it, I have made that decision as an independent businessman.

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If a fellow independent business person chooses to use judicial review, then I would say, "God bless you."

Mr. VOLKMER. What is the gentleman's answer to having more than one judicial reviewing going on simultaneously?

Mr. EWING. I think that the courts have the ability to consolidate those. I really do not believe that we are going to see judicial review. The gentleman was all over the country in his comment. I really do not see we are going to see judicial review filed in every appellate court around the Nation. Small business does not have the money.

Mr. VOLKMER. Now wait a minute. How big is a small business? What is the top you can have and be a small business? I mean we are not talking about little bitty people. I know little bitty people belong to small business, but we also have small businesses that are not so little. They have their own staff of lawyers. Oh yes, they are small business.

Mr. EWING. But there are many small businesses that do not have a staff.

Mr. VOLKMER. And that.

Mr. EWING. But are you not interested in those people? I know you are.

Mr. VOLKMER. I am interested in all of them, all of them, not just little ones.

The CHAIRMAN. The time of the gentleman from Missouri [Mr. VOLKMER] has expired.

(By unanimous consent, Mr. VOLKMER was allowed to proceed for 1 additional minute.)

Mr. VOLKMER. Mr. Chairman, the gentleman just said that the small business out here is not going to be familiar with the regulations. And I daresay that that same small business is not going to know a court suit has been filed, whether it is in Miami or San Francisco or wherever, if it is in Chicago, and therefore they are going to file their own, are they not? They are not just going to wait around and look around all over the country to see if anybody else files a lawsuit.

Mr. EWING. I think the gentleman probably understands how the system works, and as a lawyer I know if I had had a client like that, one of the first things I would check is whether any other suits had been filed anywhere in the country. And that information is certainly available in our current computer age.

Mr. VOLKMER. So now the gentleman is going to say that the attorney is going to do it, and he is not going to say, "Well those judges out in the Court of Appeals out in the circuit, they are too dang liberal. I do not want them; I want mine, I have more conservative judges," et cetera? Come now, the gentleman has been in law practice, I have been in law practice. Now the people shop around for the best deal they can get. The gentleman is telling me I am wrong?

Mr. GEKAS. Mr. Chairman, will the gentleman yield a moment?

Mr. VOLKMER. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I do not see any difference on the gentleman's argument on what is being proposed by the Ewing amendment than what actually is prevailing under current law. Under the current law there is granted 60 days, for instance under one statute for judicial review, which has to by that statute itself take place in Washington, DC, in the circuit court of this area, or in Oregon, or wherever.

Now, just following the gentleman's argument, should we not change that law as it is now to accommodate this inability to be uniform around the country that the gentleman is saying that this amendment will create?

Mr. VOLKMER. It is not just this amendment, it is how it affects everything else in the bill. This amendment does not actually affect where the venue is, but the venue is everywhere. This amendment affects judicial review. Judicial review of what? Would the gentleman from Pennsylvania tell me what under this provision under 611 is going to be reviewed?

Mr. GEKAS. Whether or not the regulatory agency complied with the mechanism for the review of the regulations and its flexibility. The regulatory flexibility analysis.

Mr. VOLKMER. Not the substance of the rule.

Mr. GEKAS. And the substance.

Mr. VOLKMER. No, no.

Mr. GEKAS. The substance does not change.

Mr. VOLKMER. Wait a minute, is the gentleman telling me the way he reads this bill, if I ask for judicial review that I have to have a judicial review of both?

Mr. GEKAS. No.

Mr. VOLKMER. No, no.

Mr. GEKAS. No.

Mr. VOLKMER. No.

Mr. GEKAS. I said that.

Mr. VOLKMER. So we have a little bitty thing here, we can ask for judicial review? No substance? Procedure, procedure.

Mr. EWING. Mr. Chairman will the gentleman yield?

Mr. VOLKMER. Yes, I yield to the gentleman from Illinois.

Mr. EWING. The judicial review we are talking about here is for the requirements on the regulating agencies contained in the Regulatory Flexibility Act. That is not upon the merits of the regulation, it is whether they followed the provisions of this act.

I believe that the courts of this country are wise enough if there are two appeals, to combine them. The courts are not trying to proliferate these types of cases. And they are not going to look with any great favor on somebody who comes in on a substantive issue and then comes back 6 months later and tries to raise it in the same court on a procedural issue under the Regulatory Flexibility Act.

Mr. VOLKMER. They can.

Mr. EWING. They can, but the courts were not born yesterday. They are pretty bright people.

Mr. VOLKMER. You are not, you do not tell the courts they have a right to refuse to review the matter on appeal because the plaintiffs have before appealed on a substantive matter. The gentleman does not say anything about that. So someone could do just what the gentleman is saying.

Mr. EWING. The courts have discretion. One of the problems I think we face around here sometimes is we try and take all discretion away from the courts. We appoint bright men and women to be our Federal judges. They can make these decisions, and they can see when someone is taking advantage of the situation.

Mr. VOLKMER. I have one other question before I yield back the balance of my time. I asked it during general debate and I have not received an answer to this date from anybody. Now I will ask the gentlewoman from Kansas, chairman of the Small Business Committee, and I am afraid the gentleman from Illinois who is chairman of Judiciary is not here.

The CHAIRMAN. The time of the gentleman from Missouri [Mr. VOLKMER] has again expired.

(By unanimous consent, the gentleman from Missouri, Mr. VOLKMER, was allowed to proceed for 2 additional minutes.)

Mr. VOLKMER. There is a statement in the CBO estimate, CBO estimates that enactment of this bill would add at least $150 million annually to the cost of issuing regulations? Can the gentleman tell me whether or not the majority plans to appropriate the amount of money, additional money to each individual agency required in order to implement the provisions of this bill for this year?

Mrs. MEYERS of Kansas. Mr. Chairman, if the gentleman will yield, I think that is title II of the bill. Our hearing was on title I. I will defer to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, if the gentleman will yield.

Mr. VOLKMER. Yes, I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I simply want to state to the gentleman we are going to debate, thankfully, and we are going to have a full exposition on costs or noncosts of implementing this legislation, but as the gentlewoman says, this is in title II that the gentleman is really visiting. Right now we are on the Ewing amendment.

Mr. VOLKMER. I am on title II. I am into the total cost of the bill. Does the gentleman mean to tell me that if there are appeals out there by small business on every agency rule under this bill that it is not going to cost agencies any more money? They are going to defend those without any costs, without any lawyers?

Mr. GEKAS. We believe that the cost is negligible. We are able to demonstrate that and will in good time. We are not asking the bureaucracy to do any more than they are supposed to do now. We are asking them to help the small businessmen by doing their job in providing analysis for these rules that are choking our small businessmen. That is all we are doing.

We think that the manpower is there, the expertise is there, if only they are willing to do so. And the gentleman and I have been struggling for a long time for small business people to make the agencies do their job. The cost will be negligible, their duty will be enhanced and they will be able to do a better job in the present circumstances.

The CHAIRMAN. The time of the gentleman from Missouri [Mr. VOLKMER] has expired.

(By unanimous consent, Mr. VOLKMER was allowed to proceed for 1 additional minute.)

Mr. VOLKMER. Mr. Chairman, what I just heard is the gentleman disagrees with the CBO estimate.

Mr. GEKAS. No.

Mr. VOLKMER. The gentleman does not disagree with it?

Mr. GEKAS. Not necessarily.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I appreciate the gentleman yielding. The estimate done by the CBO was collected from the agencies, agencies that do not want this legislation, agencies that probably have overinflated the costs as they estimate them to be.

I will answer the gentleman's question; yes, the majority will appropriate the right amount of moneys to the agencies to do their job, which as we will show the gentleman tomorrow, in our ability to take fiscal responsibility we will make the agencies live within their budgets and probably small budgets.

Mr. VOLKMER. Basically what the gentleman is telling me is that he is going to impose on the agencies additional work of yesterday's bill, the risk analysis, OK, and this bill, and yet not give them any manpower to do it with.

Mr. DELAY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me just finish that conversation a little bit. Yes, we are trying to impose on the agencies to do their job, as the Congress outlines it to be done and try to not impose these kinds of costs on small business people in America. That is what this regulatory reform is all about, is to take the burden off of the small businesses, off the American families, and put it on these regulatory agencies, and make them do their jobs and do them with a little common sense and with good science.

Mr. Chairman, the Regulatory Flexibility Act is law. It was passed in 1980, so that the Federal agencies would review the potential impact of new regulations on small businesses and consider that impact as regulations are promulgated. The problem is that the Regulatory Flexibility Act has no teeth in it, has not been used, and there is no way to enforce compliance with the Regulatory Flexibility Act.

H.R. 926 puts teeth into the act by allowing judicial review of agency compliance with it. Unfortunately, this bill only gives small businesses this 6 months to file these suits under the RFA.

I am a small businessman, although I just sold my company a couple of months ago. I am intimately familiar with the regulatory burdens that are placed on our Nation's entrepreneurs. From the very day I opened up my business, and even before that day, I had to deal with regulators knocking on my door and piling on the paperwork. By experience as a small business owner I also know that 6 months is not long enough to adequately judge the impact of a regulation on a small business.

Let me describe a small business to Members, as some of the lawyers on the other side of the aisle cannot seem to understand what a small business is. I will describe my small business to Members. As owner of that business when I was actively involved in that business, I was the janitor, the accountant, the lawyer, the person that practices before regulatory bodies. I was the counselor, I was the health care expert, I was the service technician, I was the trouble shooter and yes, I was a member of the NFIB, by the way, I was a member of the NFIB. But because I was having to work 12 to 18 hours a day, 6 to 7 days a week to build a business, create jobs and realize my American dream, I did not get to read the NFIB bulletins every time they came into my office.

What did get my attention was when the regulators came into my office, or when I read something in the paper of what new regulation the Federal Government is piling on top of me; then I would have loved to have had the opportunity to cause that agency to review the potential impact of a new regulation on me and my business. But I can guarantee Members it takes longer than 6 months, it takes longer than a year sometimes for small businesses to realize that these regulations are going to have an impact on them.

But I think a year is a reasonable time, because maybe I only have a convention of the pest control industry once a year; maybe when this regulation is promulgated and I only have 6 months to go, I have not been to my convention and go to a seminar to tell me that there was this regulation imposed upon me, but within a year, I will have the opportunity or I should take the responsibility to read the NFIB bulletins, to go to the seminars held by my industry, to go to the conventions held by my industry, or maybe go to the local Pest Control Association's dinner that is held monthly and find out that this regulation is happening to me.

Therefore, within that year I will have an opportunity to take advantage of this bill.

In fact, many small businesses do not even know that a new regulation exists 6 months after it is in effect, much less know how it impacts their business. For the Regulatory Flexibility Act to function as it was intended back in 1980, I believe small businesses should have 1 year to challenge regulation flexibility analysis, notwithstanding shorter deadlines currently under other laws. Only with an adequate time period to determine the effect of the new regulation and how it compares to an agency's review under the Regulatory Flexibility Act will the purpose of the act be achieved: much needed flexibility and considerations for the impact regulations have on struggling small businesses.

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Do not render meaningless the Reg Flex Act. Vote "yes" on the Ewing amendment.

The CHAIRMAN. The time of the gentleman from Texas [Mr. DELAY] has expired.

(At the request of Mr. WATT of North Carolina and by unanimous consent, Mr. DELAY was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I wanted to go back to the issue of the cost of what we are doing here, and I understand the gentleman, as the majority whip, is familiar with the pay-as-you-go rules and the budgetary rules under which we operate here.

There is a provision, language, on page 21 of the analysis of the CBO which says, "Enactment of title I," and we are talking about title I now, not title II, "of H.R. 926 could result in additional lawsuits against the Federal Government requesting judicial review of Federal agency compliance with the requirements of the Regulatory Flexibility Act. To the extent the additional lawsuits were successful and the plaintiffs were awarded attorneys' fees, enactment of H.R. 926 could result in additional direct spending because these fees are paid from the claims, judgment, and relief acts account."

Now, the question I want to pose to you, I heard the gentleman say that we get into the cost considerations of this bill under title II. It seems to me that that puts us into the cost considerations, and the pay-as-you-go rules, as I understand them, not under title II, but under title I.

Has that issue been addressed? Was there a waiver of the rules to bring that issue, this bill, to the floor in light of that provision?

The CHAIRMAN. The time of the gentleman from Texas [Mr. DELAY] has again expired.

(At the request of Mr. WATT of North Carolina and by unanimous consent, Mr. DELAY was allowed to proceed for 2 additional minutes.)

Mr. DELAY. I appreciate it, and I will yield to the chairman.

I just want to know, I know the gentleman wants to protect the Federal Government from being sued by American citizens.

Mr. WATT of North Carolina. I mean, this is not disingenuous.

Mr. DELAY. Mr. Chairman, I will respond to the gentleman's statement.

I know the gentleman wants to protect the Federal Government from being sued by small businesses and American citizens. I do not. I want the American citizens to have the opportunity to sue the Federal Government when they are imposing regulations.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. I want to complete the statement that the gentleman from North Carolina began by reading the remainder of the paragraph which he omitted: "CBO cannot estimate either the likelihood or the magnitude of the direct spending, because there is no basis for predicting either the outcome of possible litigation or the amount of potential compensation," meaning that when I said that the bulk of the argument that we are yet to engage will be in title II with respect to cost, this as to title I is a negligible item.

Further, we are not certain as we stand here that even what they claim, that is, that the attorneys' fees would be payable, may not be payable at all when one sues the Federal Government. What statutes provide for the payment of attorneys' fees is not made clear here and does not cover all of the situations, and it still ends with saying there is no way to estimate it.

But here is the real thing, this is what the gentleman from Texas said, if they do their job in the first place and they comply with the requirements of our analysis and they do the things that are necessary, the lawsuits will start to shrink. They will shrink from the number that exist today, because we will have predictability in the marketplace. The small businessman will know ahead of time if they do their job right, the agencies, what they may or may not do. So in time even these initial costs will be minimized.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

I was planning to wait for a while to get into this debate, but the question has come up how do we know whether there is going to be litigation, how do we know there is going to be fees, because there are statutory provisions in our laws that say that Equal Access to Justice Act provides for that. We cannot sidestep that issue simply by saying we do not know whether there is going to be any litigation, and we do not know whether there is going to be any award of attorney's fees.

In response to the majority whip, let me make it clear that my purpose is not in cutting off litigation against the Federal Government. My purpose is the same one that everybody else here has avowedly said they believe in which is getting to a balanced budget, and if we have pay-as-you-go rules and if we continuously bring bills to the floor which violate those pay-as-you-go rules and continue to mount additional responsibilities and burdens on the Government, then we are going to either get further and further away from a balanced budget or we are going to find some other ingenious way such as taking away school lunches or some other program to fund the balancing of the budget.

I talked about the budget implications of this. It is clear to me that my Republican colleagues have no interest in complying with the pay-as-you-go rules, nor in balancing the budget, and so that is an issue that I am putting behind me. I want to go back to the amendment itself.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Missouri.

Mr. VOLKMER. On the budget issue now, especially with the words that the gentleman from Texas has said before, I know that the gentleman from North Carolina, I know him well, I know he represents his constituents better than anybody else in this House, of representing their constituents, you are one of the top ones representing your constituents, your small business people. There is no question about that.

You have no trepidation at all about your citizens or any citizen of the United States filing suit against the Federal Government, do you?

Mr. WATT of North Carolina. That is right.

Mr. VOLKMER. None whatsoever? In fact, if they have been wronged, they should file suit against the Federal Government? Correct?

Mr. WATT of North Carolina. That is correct.

Mr. VOLKMER. The only thing you are concerned about, and let me follow this up if I may before the gentleman interrupts again, I would appreciate it if the gentleman would let me finish this train of thought, when they do file suit and they win, they get their attorney's fees in most instances?

Mr. WATT of North Carolina. I certainly hope so.

Mr. VOLKMER. Those attorney's fees come out of the Federal budget? Correct?

Mr. WATT of North Carolina. That is correct.

Mr. VOLKMER. All you are saying to everybody in this House is we should not really legislate in a vacuum, because that is what is going on? They are legislating like this bill is the only thing that is before us and ignoring the implications of this bill on all other laws of the United States and how it works with those other laws?

Mr. WATT of North Carolina. Reclaiming my time, because we spent a lot of time talking about the budgetary impact of this. That is really not what is on the floor at this point. I got dragged into this budget debate kind of from the back side.

Let me go back to the underlying amendment and debate the underlying amendment which is to extend the time from 180 days to 1 year for this litigation to take place which I would submit to the House relates in part to the litigation issue and the cost issue, because the longer people have to file lawsuits, the more likely they are likely to file lawsuits, and the more costly it can be.

But that is not the point I want to make. The point I want to make is that I thought the purpose of this bill was to get our agencies to make more humane regulations and rules and to be more sensitive about what they are doing.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(By unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. I would submit to you that where we are going with this is that you are making it impossible for agencies to promulgate any rules by extending this period of time that can have any degree of finality to them, and the objective that we are trying to get to is to get to a point where if a rule is promulgated, it can be determined what impact it has on a small business quickly. If the rule has an adverse impact on the small business, the small business ought to raise it quickly, and the Government ought to try to correct it quickly.

If we stretch this process out for an entire year and allow businesses to wait 364½ days before they raise the issue, then we will never be able to get to any final rules that make sense or even in the context of the bill that you are talking about.

So I think this expansion of the 180 days to 365 days, as opposed to contracting it to a shorter period of time, really points out to me the clear purpose that the underlying bill has, which is to do away with any kind of regulations and feeds this assumption that I started off making in the general debate that the assumption seems to be by the other side that every rule that a Federal agency makes is bad.

I would remind my colleagues that every rule that a Federal Government agency makes is pursuant to a bill that the Congress of the United States has passed.

Mr. LAHOOD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the Ewing amendment to H.R. 926.

For too long, more than 15 years, regulations have been thumbing their noses at small business when it comes to issuing regulations. Many agencies have ignored the Regulatory Flexibility Act, because they knew they could not be challenged in court for not considering small business and not complying with the act.

The original intent of the Reg Flex Act was to help ease the regressive one-size-fits-all regulatory process. Regulators are supposed to analyze the impact of the regulations they produce on small business and take steps to modify these regulations by taking into account small business' limited resources. But, as I have stated, the regulators find a loophole, and regulations go out, regardless of the impact they may have on small business.

The bill, H.R. 926, will do away with this never-mind attitude of Federal regulators by allowing judicial review and judicial enforcement. More importantly, the Ewing amendment will strengthen the judicial review component and recognize small business' special needs in addressing regulations.

Furthermore, the Ewing amendment will give small business 1 year, notwithstanding any other law, to appeal a regulation if the Reg Flex Act was ignored. Some current rules and regulations, like OSHA and clean air, have as little as 30 to 60 days for appeal. To me, these time periods totally disregard small business' limited resources.

I can't imagine any small business in my district being able to identify how a regulation impacts them in 30 days. In fact, I believe many small businesses would be hard pressed to know that a regulation has been put into effect in 30 to 60 days, let alone to even read the Federal Register.

Mr. Chairman, past Congresses have totally ignored small business concerns with regulations. But this new Congress will stand up and listen to the job generators of this country.

In my district, and many other districts across this Nation, small businesses are the consistent job creators.

Simply put, small business is not equipped to deal with excessive regulations. Walk into any small business on main street and look for the accounting department or the legal department or the human resources division. You will not find them. Hence, the need for regulatory flexibility.

This is why I support the Ewing amendment. It upholds the original intent of the Reg Flex Act—allowing small business flexibility in confronting regulations.

I urge my colleagues to vote "yes" on the Ewing amendment.

□ 1315

I also want to make note of the fact that there are letters from the chief of staff of the White House, Leon Panetta, dated October 7, 1994, upholding the kind of legislation that we are trying to pass, a letter dated October 8, 1994, from the President of the United States upholding the type of legislation we are trying to pass here; a letter from the administrator-designee dated October 8, 1994, upholding the type of legislation we are trying to pass, and a letter to Congressman EWING from the Vice President of the United States which suggests strongly that he believes we are headed in the right direction in this legislation.

EXPRESSING APPRECIATION TO THE MAJORITY AND MINORITY LEADERSHIP

(By unanimous consent, Mr. FOGLIETTA was allowed to proceed out of order for 1 minute.)

Mr. FOGLIETTA. Mr. Chairman, I rise to thank the leadership, specifically the Speaker and the majority leader, for adhering to a request I made on behalf of those of us who attend Mass at noon on today, Ash Wednesday, for suggesting to the Chair and debaters that no votes be called between 12 and 1 o'clock. I was able to get to Mass without missing the vote.

I thank the chairman, the leadership, and the people who are involved in this debate.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. FOGLIETTA. I yield to the gentleman.

Mr. VOLKMER. I would like to tell the gentleman that I appreciate his being able to attend Mass and get his ashes. I was here and was unable to perform that function which I would like to have performed.

Mr. FOGLIETTA. I will tell the gentleman that there is another Mass at 6:30 p.m., this evening.

Mr. VOLKMER. 6:30? I think we might still be here. That is the problem. We will have to wait and see. I appreciate the gentleman informing me of that.

Mr. LAHOOD. Mr. Chairman, I yield to the gentleman from Missouri [Mr. VOLKMER].

Mr. VOLKMER. Mr. Chairman, I would like to ask the gentleman from Illinois [Mr. LAHOOD] in the letters that the gentleman read, is there any one of those that said that there should be 1 year in which to exercise judicial review of these functions, the certification and performing the regulatory flexibility requirements?

Mr. LAHOOD. I would be happy to read the letters for the gentleman.

Mr. VOLKMER. Do those letters say that one thing?

Mr. LAHOOD. Reclaiming my time, the first letter, from the Chief of Staff of the White House, Mr. Panetta, in a paragraph, he says that, "The nominee for Administrator of the Small Business Administration has been a principal champion of judicial review of 'reg flex'."

Now, I have not read the entire letter, obviously. That is the letter from the Chief of Staff of the White House.

From the President we have a letter dated October 8, 1994.

The CHAIRMAN. The time of the gentleman from Illinois [Mr. LAHOOD] has expired.

(On request of Mr. VOLKMER and by unanimous consent, Mr. LAHOOD was allowed to proceed for 5 additional minutes.)

Mr. LAHOOD. This letter I referred to is obviously last year's: "Toward that end, my Administration will continue to work with Congress and the small business community next year for enactment of a strong judicial review that will permit small businesses to challenge agencies and receive meaningful redress when agencies ignore the protections afforded by this statute." That is from the President of the United States, addressed to Senator Wallop, by the way.

This is a letter, as I indicated, from the administrator-designee with similar language, which I would be happy to share.

Another important letter is from the Vice President of the United States to Congressman EWING in which he says, "We remain committed to securing this important reform during the next Congress and will work with Congress for the enactment of strong judicial review for small businesses."

I have to assume by these letters that they know the Congress has good sense, with good legislators, and will adopt good amendments that, like that which Mr. EWING has put forth here today, that will provide enough time for small business people of our districts to review these and have an opportunity to challenge them.

I know we all appreciate the support from the administration and their designees.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. LAHOOD. I yield to the gentleman from Missouri.

Mr. VOLKMER. I thank the gentleman.

Mr. Chairman, I too agree with the thrust or the purpose of the legislation, just like those letters do. But I have a serious doubt as to whether or not you should extend the review period for this one purpose to 1 year and what effect that will have on small businesses as a result of that.

The gentleman in his statement talked about the small businesses getting this impact on them by certain regulation, whatever that regulation may be, and then wanting to be able to review it. Well, gentlemen, most regulation, substantive regulation, is reviewable for most of them for a period of 90 days, that is all.

Mr. LAHOOD. Reclaiming my time, as I said in my statement, there are some agencies that are as little as 30, and sometimes 60, days. The gentleman from Missouri knows as well as I do because we represent similar districts. The small business people are basically people who employ 5, 10, 15 people. They work hard. They work long hours. They provide the jobs. They do not have time or the legal expertise to go through and figure out what kind of mandates or imprimaturs, or however you want to characterize the laws that we are passing on them. They need time.

I am sure the gentleman from Missouri, having represented the same kind of district as the gentleman from Illinois [Mr. EWING] and myself, across Illinois and across Missouri, knows these small business people simply do not have the time. They are providing the jobs, they are working hard, they are working long hours to make a living.

Mr. VOLKMER. The gentleman is correct.

Mr. LAHOOD. We heap all of these regulations on them, and they need the time. That is why the Ewing amendment is so important to them, to give them the time to do it.

Mr. VOLKMER. I would like to point out to the gentleman and somehow I cannot seem to get across to the gentleman, and maybe not to anybody on the other side, that all you are giving to that small business on this extra time is a review of the provisions of this bill. That is all, not the substantive regulation.

Mr. LAHOOD. That is all, that is right. That is right. That is why the gentleman should be voting for it.

Mr. VOLKMER. No, no. You are fooling the small business people.

Mr. LAHOOD. I submit, all of the people of our districts, the small business people, would love for you to give them additional time to review these lousy regulations.

Mr. VOLKMER. The gentleman is not doing that. That is my point to you. You are not giving them additional time to review the substance of the regulation. You stand there and act like it does.

Mr. LAHOOD. I guess what it comes down to, then, I say to the gentleman from Missouri [Mr. VOLKMER], when it comes to the vote, he and I disagree on this, but the small business people, if we pass it, which I think we will, I believe that we will pass it, will then have the additional time they need.

The letters referred to follow:

THE WHITE HOUSE,
Washington, October 7, 1994.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, DC.

DEAR SENATOR WALLOP: Your particular question about the Administration's position on judicial review of actions taken under the Regulatory Flexibility Act has come to my attention.

As you have discussed with Senator Bumpers, the Administration supports such judicial review of "Reg Flex."

The Administration supports a strong judicial review provision that will permit small businesses to challenge agencies and receive meaningful redress when they choose to ignore the protections afforded by this important statute.

In fact, the National Performance Review endorsed this policy to ensure that the Act's intent is achieved and the regulatory and paperwork burdens on small business, states, and other entities are reduced.

Ironically, Phil Lader, our nominee for Administrator of the Small Business Administration (whose nomination was voted favorably today by a 22–0 vote of the Senate Small Business Committee) has been a principal champion of judicial review of "Reg Flex." In his capacity as Chairman of the Policy Committee on the National Performance Review, Phil vigorously advocated this position. I know that, if confirmed, as SBA Administrator, he would join us in continued efforts to win Congressional support for such judicial review.

Sincerely,

LEON E. PANETTA,
Chief of Staff.

THE WHITE HOUSE,
Washington, October 8, 1994.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, DC.

DEAR SENATOR WALLOP: My Administration strongly supports judicial review of agency determinations under the Regulatory Flexibility Act, and I appreciate your leadership over the past years in fighting for this reform on behalf of small business owners.

Although legislation establishing such review was not enacted during the 103rd Congress, my Administration remains committed to securing this very important reform. Toward that end, my Administration will continue to work with the Congress and the small business community next year for enactment of a strong judicial review that will permit small businesses to challenge agencies and receive meaningful redress when agencies ignore the protections afforded by this statute.

As you know, the National Performance Review endorsed this policy to ensure that the Act's intent is achieved and the regulatory and paperwork burdens on small business, states, and other entities are reduced.

Again, thank you for your continued leadership in this area.

Sincerely,

BILL CLINTON.

OCTOBER 8, 1994.

Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, DC.

DEAR SENATOR WALLOP: The Administration supports strong judicial review of agency determinations under the Regulatory Flexibility Act that will permit small businesses to challenge agencies and receive strong remedies when agencies do not comply with the protections afforded by this important statute.

In fact, the National Performance Review publicly endorsed this policy to ensure that the Act's intent is achieved and the regulatory and paperwork burdens on small businesses, states, and other entities are reduced.

As Chairman of the Policy Committee of the National Performance Review, under Vice President Gore's leadership I vigorously advocated this position. I have continued to champion this policy within the Administration.

If confirmed as Administrator of the U.S. Small Business Administration, I will join the Congress and the small business community in continued efforts to pass legislation for such judicial review.

Thank you for your leadership on this important issue to small business.

Sincerely,

PHILIP LADER,
Administrator-Designate,
U.S. Small Business Administration.

THE VICE PRESIDENT,
Washington, November 1, 1994.

Hon. THOMAS W. EWING,
U.S. House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE EWING: Thank you for contacting me regarding the Regulatory Flexibility Act.

As the President and I have made clear, we strongly support judicial review of agency determinations rendered under the Regulatory Flexibility Act. We remain committed to securing this important reform during the next Congress and will work with Congress for the enactment of strong judicial review for small businesses.

We also understand that it will be important to continue our work with small businesses to ensure that such an amendment provides a sensible, reasonable, and rational approach to judicial review, as recommended by the National Performance Review. As you know, the National Performance Review recommended that which was (and continues to be) sought by the small business community—i.e., an amendment that furthers the intent of the Act and reduces the paperwork burdens on small businesses.

The President and I look forward to working with Congress on this matter and appreciate your leadership in this area.

Sincerely,

AL GORE.

Mr. REED. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, all of us on both sides, at least the vast majority, believes judicial review is very, very important. That is a concept that has been embraced by both the majority and the minority and that forms the core of title I.

But I think it is important to understand specifically what title I does and why this amendment, I do not think, aids in adequate judicial review. In fact, it might create a situation where the system can be exploited to get 1, 2, 3, bites of the apple rather than an efficient system which allows everyone—small business people, ordinary American citizens—to go ahead and make sure regulations are sensible.

Judicial review is part of title I. It is triggered by a claim that procedurally the agency did not effectively institute a regulatory flexibility analysis. An agency director, when trying to promulgate regulations, must consider the impact on small business under the regulatory flexibility analysis or decide there is no significant impact and certify such a fact.

At that point, when that decision is made under the present statute, an affected entity has 180 days to appeal. The remedy is a determination by the court whether or not the agency performed its procedural duty, i.e., it did confront the regulatory flexibility analysis or no such analysis was required.

The problem with extending this time period for one year is the problem that was alluded to by my colleague from Missouri [Mr. VOLKMER] that the substantive challenge to regulations, the actual regulations, those rules and regulations that the small business owners object to, when someone comes into their shop or business facility, those substantive regulations have to be challenged in a much shorter time period. Specific statutes allow 30, 60, 90 days.

What this amendment would do is create the anomalous situation where a substantive challenge has already been made, it may have failed, yet still there is a procedural challenge simply on whether or not the agency performed the regulatory flexibility analysis.

I would also like to point out to my colleagues that the specific language of the bill includes consideration of this regulatory flexibility analysis when regulations are challenged substantively in a court of law.

On page 5, and I will quote, "In an action for the judicial review of a rule," i.e., this rule is bad, it does not meet the substance, it fails the substance, it imposes undue costs on small business, we can do it a better way. In such a review on the merits, any regulatory flexibility analysis in such rule, including an analysis, pursuant to subsection A(5), "shall constitute part of the whole record of agency action in connection with such review."

Therefore, a judge considering an appeal of a regulation, not just the procedure but, "Are these regulations good or bad," as my colleague from Illinois pointed out, that is what small business people are alarmed with. They do not care about the procedure. They are listening to this debate and they are saying, "What are we debating about? If regulation hurts me, I don't just want to go back and do a flexibility analysis and say let us do something along the way. I want to fix the regulation."

Well, this legislation, as it stands today, not only allows but makes part of the record of review the record of the flexibility analysis.

So what I would suggest is that the 180-day limit here provides an adequate time to review that one procedural preliminary step. Failing that, there is ample opportunity throughout the process to decide whether or not the agency has conducted an adequate review and it published, more importantly, a rule.

I just hasten to add, the bottom-line test for our constituents is not that we followed scrupulously and minutely all these turns in the regulatory process, the bottom line is do these regulations make sense in the context of the business?

The point the gentleman from Missouri [Mr. VOLKMER] tried to make is if they do not make sense, simply having this option out there for a year is not going to provide a remedy.

The other point I would like to make about this process is that there is a real value to finality, there is a real value to having small business, medium business, large business, individuals, say at a date certain these are the regulations that are in effect.

I am not going to invest in a $200,000 septic system or water purification system and find out 30 or 60 days later that the regulations have been challenged and clouded because they failed to take a reg-flex step a month ago.

The CHAIRMAN. The time of the gentleman from Rhode Island [Mr. REED] has expired.

(By unanimous consent, Mr. REED was allowed to proceed for 2 additional minutes.)

Mr. REED. I yield to the gentleman from Illinois [Mr. EWING].

Mr. EWING. I thank the gentleman for yielding.

I would say to the gentleman that he has made an excellent point. He has laid out the argument beautifully, I think, and I appreciate his strong support for the bill even though we may disagree on the amendment.

The point is that the statute of limitations in different statutes vary all over the place. So the 180 days does not match most of any of those. So you are still going to have the dual period.

So the gentleman's argument there really does not hold water unless we are going to take it back and reduce the statute to whatever the underlying statute is.

Mr. REED. Reclaiming my time, as the statute is drafted, as it exists today, it is 180 days or the lesser period allowed under substantive review statute. What we tried to do is to combine these judicial protests, reviews, appeals, into one or two at the moment, and not have an endless string of procedural delays.

The other thing I would suggest also, and I think this is very important, is that we are very conscious of, and I know I think I speak for myself and the majority, we are conscious of the different time limits with respect to the statute. That is why we specifically include at page 5 making the regulator flexibility part of the record on final review.

□ 1330

Therefore, when someone comes in and challenges that rule, and the gentleman from Texas [Mr. DELAY] has indicated he wants the Americans to be able to challenge rules, so do we, but we want to be able to do it efficiently in one forum so we can go ahead and get all the bang for the buck.

So I think we have addressed the variable lengths of review in this language. I am every comfortable with it as written. I applaud the gentleman for trying to push it further. But as I indicated in my remarks, I think that will simply cost more money and be really an opportunity for exploiting the system, slowing things down, and I know the duty of what we have been sent here to do, get good regulations for people.

The CHAIRMAN. The time of the gentleman from Rhode Island [Mr. REED] has expired.

(By unanimous consent, Mr. REED was allowed to proceed for 1 additional minute.)

Mr. REED. Mr. Chairman, I yield to the gentleman from Illinois [Mr. EWING].

Mr. EWING. Mr. Chairman, I think my response to those two points, and they are good points, is that we are still concerned about the small business who does not have notice. In the 90 days, the 180 days, the 60 days, it is too short a notice. I would make it all 1 year. I would move it out so that we are friendly to our constituents and our taxpayers and our small business people. That is really where we ought to be headed, not drawing it back.

What we have had is years of everything on the side of the regulator. Now it is time that the regulated have rights, and that is what we are trying to do here.

Mr. REED. Reclaiming my time, I appreciate the sentiments of the gentleman. I believe the 180 days is a very reasonable, responsible balance between the view the gentleman proposed, whether is it multiple appeals for substantive challenges to the legislation or the procedural rule. And I believe if we stick to that we will be in good shape.

AMENDMENT OFFERED BY MR. VOLKMER TO THE AMENDMENT OFFERED BY MR. EWING

Mr. VOLKMER. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. VOLKMER to the amendment of Mr. EWING: Strike the words "one year" wherever they appear in the amendment and insert in lieu thereof "90 days".

Mr. VOLKMER. Mr. Chairman, the purpose of this amendment is to continue the dialog and try to point out to the members of the committee that what we are trying to do here is not take anything away from small business people, but to try to provide some total consistency in our whole legislation, in the laws that we have on the books.

Now, it will not do completely that, because some of the substantive regulations must be appealed within less than 90 days. But this would mean that for those that provide substantive appeal within 90 days, you would have appeal on this question of procedure within the same 90 days. That is basically what it is meaning to do.

Now, I have heard here, it is almost like we are legislating this bill, and this bill does not have any impact on any of the law that we have on the books, nor do any of the laws that we have on the books have any impact on this bill if it becomes law.

We cannot legislate in a vacuum. As a result, we must look to see what the other laws are that also apply to the process.

The gentleman from Rhode Island [Mr. REED] has done a lot better that I have. It was interesting to listen to the gentleman from Illinois in the well, the gentleman from Peoria, talk about the small businessman. He wants to get these regulators off his back because they are passing these regulations that are putting him out of business.

The appeal provided in this bill does not do that. It does not have anything to do with that, not one solitary thing. And I do not understand people up here thinking that if you put a No. 1 on a blackboard, that really that is a No. 10. No. 1 is a No. 1. It is not a No. 10.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I am just wondering what effect the gentleman's amendment would have on the current law that under the Sawtooth National Recreational Area statute, there are 180 days to appeal to the district court of Idaho. Just think about that for a minute. Then Panama Canal tolls, six years apply.

Mr. VOLKMER. What does your 1 year do to the 6 years?

Mr. GEKAS. We have to work on that. But immediately on the question of the small businessman, because there are very few businessmen that are involved in the Panama Canal tolls I am told, at any rate, the other one that we have here has 120 days, for instance. The 180 days that we have in the bill are commensurate with this, and the Ewing amendment has none of the ones that are already part of the law. Yours does. In shrinking to 90 days the Sawtooth capacity to appeal a rate flex, you are giving them only 90 days, where they now have 180 days on the substantive part.

So you did not think it through.

Mr. VOLKMER. Sawtooth Recreational Area, where is that? Sawtooth in Idaho. I feel sorry, but I will talk to the gentlewoman from Idaho and the gentleman from Idaho and maybe we can make a exclusion for them.

Mr. GEKAS. I will tell them to vote against your amendment. The point is we want to oppose your amendment because it is mixing it up and confuses the issue more, even more than when you consider the Ewing one, which expands and allows the small businessman to have ample time to appeal something that impacts it.

Are you for judicial review? You are?

Mr. VOLKMER. Sure.

Mr. GEKAS. We are all for judicial review. No matter what time we set, there is going to be this elongated period, even the gentleman will have to agree, to elongate the period within which the small businessman who is disaffected can seek redress. That is all we are trying to do.

Mr. VOLKMER. Sure.

Mr. GEKAS. We are all for judicial review. No matter what time we set, there is going to be this elongated period, even the gentleman will have to agree, to elongate the period within which the small businessman who is disaffected can seek redress. That is all we are trying to do.

Mr. VOLKMER. What redress though?

Mr. GEKAS. On a reflex portion of the procedural part. But why do you trivialize that? That annoys me, that you trivialize it.

Mr. VOLKMER. I am not trivializing it.

Mr. GEKAS. In my judgment you do, and that is what the debate is all about.

Mr. VOLKMER. Reclaiming my time, the gentleman acts like I am trivializing it. I am not, because what I keep repeating is because I have heard it here during the debate, I have heard it here during the debate on this amendment, and I keep hearing that what we are going to do is we are going to stop these regulators by this bill of passing substantive regulation that impacts on small businesses.

The CHAIRMAN. The time of the gentleman from Missouri [Mr. VOLKMER] has expired.

Mr. VOLKMER. Mr. Chairman, I ask unanimous consent to proceed for 5 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

Mr. BURTON of Indiana. Mr. Chairman, reserving the right to object, I would just like to ask the gentleman under my reservation, how much more time do you guys anticipate spending on this amendment?

Mr. VOLKMER. I really do not know. I mean, it is just not up to me. I am only one person. I would like to take the rest of my time. I may not take the full 5 minutes. I just asked for 5 minutes so I do not get cut off. I would like to make my speech.

Mr. BURTON of Indiana. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. The gentleman from Missouri is recognized for 5 minutes.

Mr. VOLKMER. Mr. Chairman, what I started to say is I continuously hear that with this legislation the small business people are not going to have to worry about regulators regulating their business any more, because they are going to have a year in which to appeal those regulations. That is a lot of hogwash. It is not true. Everybody admits it is not true. So why do we keep saying it?

Well, sometimes we keep saying things to make small business people think they are going to get more than they are going to get out of this bill. They do not get any substantive review out of this bill. Let us admit it.

Mr. EWING. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Illinois.

Mr. EWING. I do not think you have heard one person get up and say that this affected substantive review. You are the one that is saying it. You are the one that is confusing the issue, sir, not us. You are the one. This only deals with appeal of the Regulatory Flexibility Act and its provisions, and no one on this side has said that it has anything to do with substantive.

Mr. VOLKMER. Mr. Chairman, recognizing that, it will go back to the other things that I talked about before, about substantive review, and most of that is within the 90 days, and that is the purpose of this amendment, to try and get some uniformity, rather than have the courts having cases. And I have said it before when we first discussed the gentleman from Illinois' amendment, that under this bill, and I am sure the Committee on Small Business never even considered, never even considered, any of these provisions. I have been told that the Committee on the Judiciary did not even talk about venue at all when they were discussing this legislation. It was not even discussed.

Yet it now appears that you could have a multiplicity of lawsuits over just this one item, not over substantive review, and it can take place, if the gentleman from Illinois' amendment is passed, it can take place up to a year after the regulation has gone into effect.

Now, stop and think about that for a minute. Does the gentleman, as the gentleman from Rhode Island has pointed out, you have had a case, XYZ company has appealed the regulation from EPA. It has been reviewed by XYZ company on the seventh circuit, fifth circuit, any circuit. It has been reviewed.

They review this provision. They find that the regulators followed all procedures not only under this act, but under the law for which the regulation was proposed. That has been done. That takes place and the court of appeals handles that and hands down its decision within 9 months.

But that is not the end. That is no finality. Under the gentleman from Illinois' amendment, another private business, or 10 private businesses throughout this country, in different circuit courts, can file suit under this to say that it did not happen, that they did not follow this act, the Regulatory Flexibility Act, and they could get a stay. Under this bill they can get a stay of the total regulation, even though another circuit court had said that everything was fine.

That is what you have, the total under the bill. You cannot legislate in a vacuum, and that is what is occurring here.

We are also, like I said before, as far as the budgetary matters, I have not heard anyone yet say how you are going to pay for all this, but I have heard that maybe we are going to make sure that the regulators live within the money we are going to give them, which basically means that you are going to do the job whether we give you the money or not. And that is not the way it works, folks. I think you better stop and realize if you are going to impose a whole bunch of additional duties and responsibilities on people, you have to expect to give them a little bit to help them out.

Mr. Chairman, I yield back the balance of my time.

Mr. MCINTOSH. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, first let me commend the Committee on the Judiciary for the work on this bill. It is a very important and vital piece of legislation. I also want to commend the gentleman from Illinois [Mr. EWING] for bringing this amendment to the floor.

I have some personal experience with the Regulatory Flexibility Act and how it operates in the agencies from the time I worked with Vice President Quayle at the Competitiveness Council. Often times the impact statements were a pro forma matter. The agency would use boiler plate and never really consider the impact on the small businessmen.

In fact, regulations almost always have a disproportionate burden for small businesses because they do not have the capital, the resources in terms of personnel, to be able to comply with all of the different requirements of those regulations. So this act is very important to protect them, and we cannot allow the agencies to ignore its provisions, which they have for years now.

I also think it is vitally important that small businesses be given adequate time to seek their remedies in court, because unlike large corporations, they do not have large in-house corporate counsel staff who can monitor these regulations.

□ 1345

They have to wait until they are finally enacted and promulgated and start to apply to them. They may get lucky if someone brings it to their attention that there is a problem with one of these regulations during the time of the year when they are trying very hard to keep their small business operating, employing new individuals and producing a product without the benefit of a huge corporate legal staff.

I think it is very important that we have this amendment. The National Federation of Independent Businesses has keynoted this amendment and believes it is critical for small businesses everywhere. I commend the gentleman from Illinois [Mr. EWING], for offering it. I would urge that it be kept at the full year in order to give small businesses adequate time to be able to respond to these situations.

Mr. REED. Mr. Chairman, I move to strike the requisite number of words.

I yield to the gentleman from Missouri [Mr. VOLKMER].

Mr. VOLKMER. Mr. Chairman, I ask unanimous consent to withdraw my amendment to the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. TALENT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I appreciate the indulgence of the House. I will try not to speak very long. The distinguished gentlewoman who chairs the Committee on Small Business is not here, and I cannot say I speak for her or I speak for the committee, but I would just like to make a couple of comments that I think might summarize the views of the committee which, again, unanimously supported this legislation.

First of all, we have been talking here about procedure and substance. And I guess when you get into a bill like this which lawyers have worked on, you talk about things like that. Of course, the bill is procedural in the sense that it is part of administrative procedure. But it has a very important substantive, real impact on real small business people in the real world. Let us not argue over whether it is substantive or procedural. The point is, this change in the Regulatory Flexibility Act is of very great importance in helping real small business people produce goods and services and produce the jobs on which the economy depends.

What it basically says is it represents the verdict of the Congress in the last 14 years in which we have recognized that what we tried to do in 1980 has not worked because the agencies have basically ignored it. What we said in 1980 was, look, when you are passing a regulation, do it in the way that is the least burdensome and the least intrusive on small business. And they have not done that, Mr. Chairman.

They have not done that because there has been no procedure in the review. What the bill does is say, basically say, courts may review the agency decision as to whether it needed a regulatory flexibility analysis and, second, if it issued one, whether the agency was what the lawyers call arbitrary and capricious in deciding that its regulation could not have been done in a way that was less burden on small business. That is a real standard of review.

It has real teeth. It means that agencies out there are going to be doing things in ways that cost fewer jobs, that create more opportunity for more small business people and, therefore, for more Americans.

The point I want to make is whether it is procedural or substantive, and I respect the gentleman here for arguing that point from the standpoint of this amendment, it is very important to people. I wanted to reaffirm that.

As to the amendment of the gentleman from Illinois, I read what he is saying as basically saying this. If for some reason or other a small business person, either because they inadvertently or they sleep on their rights or they, for good reason or bad reason, they do not challenge the rule in a way that other statutes allow them to challenge the rule within 180 days, they still have another 180 days to raise these appeals under the Regulatory Flexibility Act. It gives them a little extra leeway under this particular provision.

I think the gentleman is doing it because this probably alone among all the protections in the Administrative Procedures Act applies only to small business people. Small business people maybe are less able than larger businesses to recognize when their rights may be at stake and to file suit. I think is a reasonable change.

Personally, I am going to support it. The point I wanted to make is whether you call this bill procedural or substantive, it is an important bill that creates real extra opportunity in jobs, in growth for real people out there and harmonizes our regulatory statutes to some degree with the spirit of enterprise and the spirit of America.

Mr. TRAFICANT. Mr. Chairman, I move to strike the requisite number of words.

I rise in support of the Ewing amendment. I think for years we have been in the face of small business. I think it is time that we lighten up a little bit. I think it makes good common sense, and we should support the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. EWING].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. EWING. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count for a quorum.

Does the gentleman withdraw his point of order?

Does the gentleman withdraw his request for a recorded vote?

Mr. EWING. I do, Mr. Chairman.

The CHAIRMAN. The request for a recorded vote is withdrawn.

Mr. EWING. Mr. Chairman, it was my understanding that the Chair questioned whether I had withdrawn my point of order on a quorum call. No, unless the Chair is going to grant me a vote. I demand a recorded vote.

The CHAIRMAN. The Chair asked if the gentleman wanted to withdraw his request.

Mr. EWING. I though the Chair was going to grant the vote on the amendment, the recorded vote.

The CHAIRMAN. The gentleman is renewing his request for a recorded vote.

Mr. EWING. I am, Mr. Chairman.

The CHAIRMAN. Does the gentleman withdraw his point of no quorum?

Mr. EWING. Yes, Mr. Chairman.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 420, noes 5, not voting 9, as follows:

[Roll No. 184]

AYES—420

Abercrombie
Ackerman
Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boucher
Brewster
Browder
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Bunning
Burr
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coburn
Coleman
Collins (GA)
Collins (MI)
Combest
Condit
Conyers
Cooley
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
DeLay
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fazio
Fields (LA)
Fields (TX)
Filner
Flake
Flanagan
Foglietta
Foley
Forbes
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hinchey
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E.B.
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McCollum
McCrery
McDade
McDermott
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Meehan
Meek
Menendez
Metcalf
Meyers
Mfume
Mica
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Rangel
Reed
Regula
Reynolds
Richardson
Riggs
Rivers
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Roybal-Allard
Royce
Sabo
Salmon
Sanders
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schroeder
Schumer
Scott
Seastrand
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stark
Stearns
Stenholm
Stockman
Stokes
Studds
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thompson
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Upton
Velazquez
Vento
Visclosky
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Williams
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Yates
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—5

Andrews
Ford
McKinney
Nadler
Watt (NC)

NOT VOTING—9

Brown (CA)
Burton
Collins (IL)
Gonzalez
Hunter
Johnston
Moakley
Rush
Waters

□ 1410

Messrs. LUCAS, CLEMENT, and OWENS changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there additional amendments to title I?

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WATT of North Carolina: Page 2, line 23, after the word "analysis." insert the following: "The United States District Court for the District of Columbia shall have exclusive jurisdiction over any such action."

Mr. WATT of North Carolina. Mr. Chairman, first of all, I want to thank the gentleman from Illinois [Mr. EWING] and the gentleman from Missouri [Mr. VOLKMER] for laying the factual backdrop for this debate on this amendment.

I believe the result of the earlier debate on the amendment that was just voted on will substantially shorten the period that will be necessary for people to understand this amendment.

Mr. Chairman, in that earlier debate, it was very obvious that there are two kinds of court litigations that can take place dealing with rules and regulations that have been promulgated by a Federal agency. One has to do with the substance of the regulation itself, in which case that litigation can take place in whatever timeframe it needs to take place, and can deal with whether a regulation is a good regulation or a bad regulation, or has some substantive impact on the small business.

□ 1415

The second kind of litigation would be the kind of litigation that is contemplated under this bill, and that is, in effect, a procedural kind of litigation.

Under title I of the bill, and you have got to listen and review the words carefully, the agency is required to certify that any rule that it promulgates would not have a significant economic impact on a substantial number of small entities or that they have prepared a final regulatory flexibility analysis pursuant to section 604 of the law.

If the agency so certifies, or if they do not prepare this final regulatory flexibility analysis, then a small business is given the right to go into court and ask the court to force them to do one of those two things.

This has nothing to do with the substance of the regulation. What it has to do with is whether the agency has certified that the rule that they have promulgated would not have a significant economic impact on a substantial number of small entities, or whether the agency has prepared a final regulatory flexibility analysis.

The effect of my amendment would be to make that determination on the procedural issue, whether the agency has complied with those two requirements, a question that would be determined in the U.S. District Court in the District of Columbia.

This is not—I repeat, this is not, please listen, Members—this is not on the substance of regulations. This is on the procedural question of whether the agency has made a certification that is contemplated under this bill.

Why do I offer this amendment? If we do not have this amendment, what we could conceivably have is litigation throughout the United States, in the District courts of North Carolina, California, New York, Idaho, Hawaii, Puerto Rico. All over our Nation we could have this single question being litigated by different businesspeople.

One court in North Carolina might say, "Oh, yes, the agency has complied with this procedural requirement."

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(By unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 3 additional minutes.)

Mr. WATT of North Carolina. The court in California might issue a different ruling that says, "Oh, no, the agency has not complied." We might have 50 different, 100 different, 1,000 different pieces of litigation going on on the same issue, the agency required to defend in all of these different locations, use its resources to defend litigation all over the country on the same single issue, and the court system will not even have a way to determine whether they are entering inconsistent determinations.

On the question of the procedure itself, not on the substance of whether it is a good or bad regulation, that issue ought to be litigated in one particular court. It will do away with the proliferation of litigation. It will provide for a consistent determination on this one issue by one court, and then the agency can either move on, go back and revise or do what it is supposed to do under this bill, and there will not be this proliferation of litigation.

I think this amendment makes patently good sense. I will not browbeat this issue to death. But I would ask my colleagues to agree.

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Rhode Island.

Mr. REED. The gentleman from North Carolina has raised a very excellent point and I think it goes to making the system more efficient, more predictable, and more comprehensible. If there are opportunities to challenge regulations, and we are just talking about the procedure for doing a regulatory flexibility analysis throughout the country, you would have various conclusions and also, frankly, you would be requiring to send agency lawyers from Washington all around the country, which the taxpayers are paying, when in fact they could simply take their own vehicle or a cab or a subway to the district court here in Washington and litigate this issue.

Again, we have to recognize what we are talking about here is not the substance of any of these rules. We are talking about a determination of whether the agency acted arbitrarily or capriciously in not doing a regulatory flexibility analysis or in doing one that was so insufficient that it demonstrated such arbitrary and capricious behavior. I think this amendment is a wise one. I would hope that the gentleman from Pennsylvania might accept it.

Mr. WATT of North Carolina. Mr. Chairman, I would just say, it will not be only the agency's attorneys that will be all over the country. The Justice Department will get involved in this under section 102. The SBA's counsel will be involved in it, is entitled to be involved in it.

We could be creating a substantial nightmare all across the country on a single simple procedural issue. I hope they will agree.

Mr. GEKAS. Mr. Chairman, not only will I not agree to the amendment, I, as forcefully as I can, urge the Members to oppose this amendment.

What I have heard last to come out of the arguments both from the gentleman from Rhode Island [Mr. REED] and the gentleman from North Carolina [Mr. WATT] is we have got to convenience the Justice Department and agency lawyers so they can walk to the District Court to defend these suits while at the same time the corollary being that the small hardware store owner from Boise, ID, has to come to D.C. to make his rights heard. Or the restaurant owner from Sacramento has to come to Washington, DC, to seek justice and access to the court, or his lawyers would have to.

Again, we see a pattern here, and this is very important, of again looking at the rights of the agencies on whom we are imposing these duties while at the same time not conveniencing or looking to the rights of the small businessman who is affected.

As to the substance of Mr. WATT's referral to the different results or different postures that these cases might take in different parts of the national scene, well, that is the law now in so many different respects. Some of the underlying statutes in which judicial review is accorded substantively simply states that the place for, just to give an example, the place for appeal for bank holding company act regulations is the court of appeals. Another one to the district court.

If under the gentleman's proposal we were consistent, as he wants us to be, on how we are going to do these kinds of appeals, we would have everything in D.C., and all the agencies would have to do is walk across the street, and there would be nothing for the district courts anyplace or the circuit courts or the courts of appeals to do anyplace else. It is a bad idea.

In my judgment, the gentleman from North Carolina [Mr. WATT] either affirmatively or by inadvertence is committing legicide; he is killing the bill, because what happens is that the small businessman will become even more remote from his day in court. The small businessman under this will have nothing to do with the possibility of carrying his complaint to the seat of Government in Washington while esconced in triple redtape in New Mexico, or in Oregon.

I really urge the Members to reject this amendment out of hand. Let's get a vote.

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Rhode Island.

Mr. REED. The gentleman makes a point, a suggestion that our interest is to protect in some way the bureaucrats. That is not the point at all. I think the gentleman realizes that those small businesspeople out in Iowa and throughout this country pay the taxes that support this Government and that will be called upon to send these individuals around the country to argue these disputes.

The other point I would raise, because the gentleman brought up the Bank Holding Company Act, there is an example where a small businessman, perhaps, might want to challenge a regulation, any type of regulation, and yet he would have to go, or she would have to go to the location of the Federal court of appeals, which we only have seven circuits. They are not in every community.

What the gentleman from North Carolina [Mr. WATT] is suggesting to do, I think, is a cost-efficient, sensible approach to make sure that we can save taxpayers' dollars; we can get one resolution.

Again, I remind all of the Members that we are talking about now a check on whether this flexibility analysis is done. I thank the gentleman for yielding.

Mrs. CLAYTON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would say that this particular overall bill comes out of the Committee on Small Business and as a Member of the Committee on Small Business, I see an advantage to this, particularly as we were looking at providing judicial review.

It seems like what the gentleman from North Carolina [Mr. WATT] has proposed is to perfect the bill. A careful reading of your bill would suggest that without his amendment, you would not achieve the very thing you want to achieve. That is, efficiency for small business.

Usually small businesses are not all the time represented by the individual entity themselves but represented by associations of that. There is an economy of savings, if people knew for certain where they were to make the procedure that not only imparts for the Government but also those who bring it, the plaintiff, who are charging the administrative rule.

I would like the gentleman from North Carolina [Mr. WATT] just to explain what his intent of savings was for those who are bringing the complaint in the first place.

Mr. WATT of North Carolina. Mr. Chairman, will the gentlewoman yield?

Mrs. CLAYTON. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I appreciate the gentlewoman yielding.

Let me just respond to the implication that this is somehow designed to disadvantage small businesses.

I cannot think of anything that would disadvantage small businesses more than for 1,000 individual small businesses to be around the United States litigating the same procedural issue that could be decided in one location in 1 day. I mean, either the agency has done what it is supposed to do under this bill, which is certify it, make the certification, or prepared the regulatory flexibility statement, or it has not.

We do not need 1,000 different small businesses using their resources in different courts throughout the United States to make that kind of determination.

The suggestion that I am trying to disadvantage small businesses just does not compute with me. Either the gentleman does not understand the impact of my amendment or he does not understand the impact of his own bill.

The bill has nothing to do with the underlying regulation itself. It has to do with whether an agency has certified two things, and that is what the litigation would be about.

I want to make sure that the gentleman understands and that we put this in perspective. What would the gentleman suggest that we do, that an agency do if one court in California said, "You have not done what you are supposed to do under this statute" and another court in New York says, "You have done what you're supposed to do under the statute"? Then what would the agency do under those circumstances?

Mr. GEKAS. Would the gentlewoman yield so I can respond to that question?

Mrs. CLAYTON. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. I thank the gentlewoman for yielding.

It would occur just as it now occurs under the law of the courts, in which in many circumstances when four district courts simultaneously are handling an issue, sometimes the one who gets it first and is acting on it first will act as an estoppel for the rest until that decision is made.

□ 1430

That is one recourse that is now available.

Second, it is possible in certain different kinds of issues with the same being involved in different areas of the country that they can join the case. That happens day after day and the gentleman knows it. There is no different aspect to this.

Mr. WATT of North Carolina. If the gentlewoman would yield, why would we want to put small businesses to that expense when one small business could litigate the issue of whether this kind of certification has been made or whether final regulatory flexibility analysis has been issued by the agency, why would we want to put 2,000 small businesses to that expense of trying to consolidate cases, and pull this together when one determination by a court would be adequate?

Mr. GEKAS. Mr. Chairman, will the gentlewoman yield?

Mrs. CLAYTON. Yes, I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I repeat, a cluster of small businessmen in Idaho or all over the country under our bill have to go to the court that is mentioned in the underlying judicial review statute on substantive issues, even for reflection accord, and they would have the same.

The CHAIRMAN. The time of the gentlewoman from North Carolina [Mrs. CLAYTON] has expired.

(At the request of Mr. WATT of North Carolina and by unanimous consent, Mrs. CLAYTON was allowed to proceed for 3 additional minutes.)

Mrs. CLAYTON. Mr. Chairman, I thank the gentleman and I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, they would have the same aspect of jointure of the appeals or the estoppel that would apply if one court wanted to wrangle with the issues first and then the other courts would follow suit. All those things fall into place. And to force this group of Idaho businessmen to come to Washington is not in the best interests of the courts, which then makes D.C. courts swamped. Here is a D.C. court then that if we walk across the street we cannot get in the door, it is so crowded.

Mr. WATT of North Carolina. If the gentlewoman will yield, I do not know how one lawsuit in the District of Columbia is going to swamp the District of Columbia District Court, because once one lawsuit is filed in the District of Columbia, this determination can be made in that lawsuit for the whole Nation. We are not going to need all of these different groups coming in here to make that determination.

Let me just say I have no intention of requesting a recorded vote on this. I hope the American business people and the American people are listening, because what you are doing makes absolutely no sense. On a procedural issue, we are going to tax and use the resources of business people all across America simply because my colleagues here will not even read their own bill and understand what their own bill provides for, and what this simple, straightforward amendment would do in terms of cost savings.

Now we talk about how the American people are disgusted with what we are doing here. If the American people are looking at this, they ought to be disgusted, and in the bill we come out with, the American people are going to get exactly what they deserve. I have no intention of asking for a recorded vote on this. You all can vote it down, if you do not want your bill to improve; let us leave it disgusting and costly to the American taxpayers, and to small businesses, and you go out there and tell them why you wrote such a shoddy piece of legislation.

Mr. GEKAS. I will, thank you.

Mrs. CLAYTON. Let me just conclude to say that this is I think an opportunity to perfect a bill and we should take the opportunity to do that. Sometimes we are so anxious to say that our original drafting is perfect, we do not even consider things. I think this is an opportunity to perfect the bill, to achieve the very goals you want to.

Again I say I come from the Small Business Committee and voted for this and hope to vote for the final version. This is an opportunity to make sure that cost efficiency works both for small business as well as for the Government. It consolidates our efforts in doing this and I urge Members to support the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. WATT].

The amendment was rejected.

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WATT of North Carolina: Strike from page 6, line 24 through page 7, line 11 and insert in lieu thereof the following language:

"(4) SPECIAL RULE.—No proposed rules issued by an appropriate federal banking agency (as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or the Office of Federal Housing Enterprise Oversight, shall be subject to the requirements of this subsection."

Mr. WATT of North Carolina. Mr. Chairman, again, I will not belabor this. It is quite obvious that my colleagues here have no interest in improving this bill. They are just marching right straight down the line, and I will make the point in this amendment that what we are trying to do is exempt Federal banking agencies from the provisions of this bill. They exempt them for monetary policy issues.

I submit to my colleagues that there are issues that banking regulators, Federal banking agencies deal with that are equally as important to small businesses as monetary policy issues. There are issues that have to do with assuring that banks are investing and lending without discrimination. There are issues having to do with the Community Reinvestment Act. There are a number, a range of issues that have an equal footing, and I submit that these issues should be exempted from the effect of this bill on the same basis that the monetary policy issues are exempted.

Mr. GEKAS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I ask the Members to vote no to reject the thrust of this amendment and to vote no in final consideration of this amendment.

We have made it abundantly clear from the very beginning, and I say this advisedly to the gentleman from North Carolina, if I could have his attention in the preliminary remarks I want to make here, the gentleman from North Carolina seems to express rather forcefully and implies very strongly that somehow we are bound to go straight down the line, as he says, as if we are commanded to do certain things. He overlooks or denigrates then the sense of cooperation that the gentleman from Rhode Island and I have tried to put into this, recognizing Democrat amendments, working to put things together. I want him to know that, that his accusation, if that is what it is, or whatever implication he wants to have people derive from it, that somehow we are going to do the orders of somebody without regard to the Democrats or the minority is dead wrong, and I want him to know that, No. 1.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield on that issue?

Mr. GEKAS. Yes; I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. If I denigrated the hard work of the gentlemen, minority or majority on this bill, I had no intention of doing that. But you cannot stop in the middle of the process and say we have got a product that is perfect in the legislative process, and quit trying to work on it and put your blindfolds on and keep marching down the road without improving the bill.

Mr. GEKAS. Reclaiming my time, there has been nothing perfect on this floor since I have been here except when they extended congratulations to me on one of my birthdays; that is about the only thing.

Mr. TALENT. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Missouri.

Mr. TALENT. Mr. Chairman, very briefly I would like to make a point in keeping with the point the gentleman made that this particular provision which the gentleman from North Carolina seeks to amend was added in the Small Business Committee and carefully worked out by Members on both sides of the aisle and adopted by consensus. So I just want to emphasize the point the gentleman made, this was the result of a bipartisan agreement in the Small Business Committee.

Mr. GEKAS. I just want to point out for the record and so the Members would recognize where we are on this, that we acceded to the banking exception and we did on the strength largely of the assertions by the chairman of the Committee on Banking and Financial Services, the gentleman from Iowa [Mr. LEACH], who was very much concerned that the safety and soundness portions of fiscal policy would be affected adversely if they would have to comply with the text of our bill. So we narrowly exempted those kinds of rules and regulations that would be couched in that soundness of the fiscal policy out of the Committee on Banking and Financial Services. But the gentleman who is the chairman of the Committee on Banking and Financial Services agrees with us, that all other regulations, banks, and financial institutions should be subject to the thrust of our main bill for the protection of the small businessman and the consumer and the taxpayer, and the workers who work for small business who are affected adversely by the impact of some of these regulations.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield on that point?

Mr. GEKAS. Yes; I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I just want to make it clear that I would submit to the gentleman that working out a deal on this with the chairman of the Committee on Banking and Financial Services or even with the bank regulators themselves does not get the people who are adversely affected by this. They are the poor people who did not have a representative in that room.

Mr. GEKAS. Reclaiming my time, two members of the Committee on Banking and Financial Services from the gentleman's side who are members of the Committee on the Judiciary concurred in what we are trying to do here, so they who have historically—and I will discuss this with the gentleman afterwards—have always taken into account these concerns the gentleman has expressed here, also agreed that these would be proper exemptions to the exemption.

Mr. WATT of North Carolina. If the gentleman will yield, I offered this amendment in the Committee on the Judiciary and, as I recall, everybody on our side voted in favor of this amendment in the committee.

Mr. GEKAS. The majority prevailed.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. WATT].

The amendment was rejected.

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WATT of North Carolina: Page 2, line 7, insert "(1)" after "(a)" and insert "(b)" after "611".

Page 2, strike line 9.

Page 2, line 2, strike "(a)" and insert "(b)".

Page 4, line 24, insert close quotation marks after the period and a period following and insert after line 24 the following:

(2) Section 611(c) of title 5, United States Code, is amended to read as follows:

Page 5, line 1, strike "(b)" and insert "(c)".

Page 5, line 5, insert close quotation marks and a period following and after line 5 insert the following:

(3) At the end of section 611(c) of title 5, United States Code, insert the following:

Page 5, line 6, strike "(c)" and insert "(d)".

Mr. WATT of North Carolina (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. WATT of North Carolina. Mr. Chairman, this amendment has a very simple purpose.

It is designed to ensure that we do not inadvertently create a right of judicial review for issues and entities other than those set out with great particularity in title I.

The right to judicial review in title I is intended to protect the right of small entities to have their interests considered during the development of a rule.

If an agency improperly certifies that a rule would not have a significant economic impact on a substantial number of small entities or fails to prepare a final regulatory flexibility analysis that is required under section 604 of title 5, an effected small entity would have the right to seek judicial relief within the framework established by title I.

I know that the committee did not intend to create a right of relief that goes beyond the text of the bill, but I fear that may be the unintended consequence if we pass this legislation, as drafted.

This problem is the result of the drafters' decision to replace current section 611(a) of title 5, which states that a determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review, except as otherwise provided later in the section.

If we retain that provision and style the remainder of the text of title I as an exception to the rule against judicial review, we will make absolutely clear that the right to judicial review and the remedies described in title I are the limits of what Congress intends to provide in the way of judicial review.

This is not an academic point.

Under the Regulatory Flexibility Act, an agency's duties are not limited to those activities for which a right of judicial review is explicitly described in title I.

For example, section 602(a) of title 5, which is part of the act, requires each agency to publish a "regulatory flexibility agenda" during the months of October and April of each year.

[The semi-annual Reg/Flex "Agenda" is to contain a brief description of the subject of any rule under consideration which is likely to require a regulatory flexibility analysis; the objectives and legal basis for the rule; and an approximate schedule for completing action on any rule for which the agency has issued a general notice of rulemaking. However, an agency is neither required, nor precluded from considering or acting on any matter either listed or not listed on the Agency's agenda.]

Also part of the Regulatory Flexibility Act of 1980 is section 610 of title 5, United States Code, which requires the agencies to conduct periodic reviews of its rules.

While I am quite sure that the committee did not intend to provide judicial review of agency decisions under these sections, the way the legislation is drafted, a court would have no way of knowing that was the case.

Indeed, because this legislation drops the general restriction on judicial review, we could wind up with the courts declaring that the right of judicial review of matters not specifically dealt with in title I is even more expansive than the approach established by title I.

There is absolutely no reason for the House to pass this legislation without having resolved this ambiguity.

My amendment would retain the current text of section 661(a) and make the judicial review provisions of title I an exception to the general rule against judicial review.

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I have no anticipation that anybody is going to worry about this, and we are going to go ahead and pass this bill like it is. I have no intention of requesting a recorded vote. If you want to leave this like it is, leave it ambiguous, then vote against the amendment.

Mr. GEKAS. Mr. Chairman, I rise in opposition to the amendment.

We oppose the amendment, and we ask all the Members to oppose it, to vote "no."

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. WATT].

The amendment was rejected.

The CHAIRMAN. Are there further amendments to title I? If not, the Clerk will designate title II.

The text of title II is as follows:

TITLE II—REGULATORY IMPACT ANALYSES

SEC. 201. DEFINITIONS.

Section 551 of title 5, United States Code, is amended by striking "and" at the end of paragraph (13), by striking the period at the end of paragraph (14) and inserting a semicolon, and by adding at the end the following:

"(15) 'major rule' means any rule subject to section 553(c) that is likely to result in—

"(A) an annual effect on the economy of $50,000,000 or more;

"(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or

"(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; and

"(16) 'Director' means the Director of the Office of Management and Budget.".

SEC. 202. RULEMAKING NOTICES FOR MAJOR RULES.

Section 553 of title 5, United States Code, is amended by adding at the end the following:

"(f)(1) Each agency shall for a proposed major rule publish in the Federal Register, at least 90 days before the date of publication of the general notice required under subsection (b), a notice of intent to engage in rulemaking.

"(2) A notice under paragraph (1) for a proposed major rule shall include, to the extent possible, the information required to be included in a regulatory impact analysis for the rule under subsection (i)(4) (B) and (D).

"(3) For a major rule proposed by an agency, the head of the agency shall include in a general notice under subsection (b), a preliminary regulatory impact analysis for the rule prepared in accordance with subsection (i).

"(4) For a final major rule, the agency shall include with the statement of basis and purpose—

"(A) a final regulatory impact analysis of the rule in accordance with subsection (i); and

"(B) a clear delineation of all changes in the information included in the final regulatory impact analysis under subsection (i) from any such information that was included in the notice for the rule under subsection (b).".

SEC. 203. HEARING REQUIREMENT FOR PROPOSED RULES; AND EXTENSION OF COMMENT PERIOD.

(a) HEARING REQUIREMENT.—Section 553 of title 5, United States Code, as amended by section 202, is further amended by adding after subsection (f) the following:

"(g) If more than 100 interested persons acting individually submit request for a hearing to an agency regarding any rule proposed by the agency, the agency shall hold such a hearing on the proposed rule.".

(b) Extension of Comment Period.—Section 553 of title 5, United States Code, as amended by subsection (a), is further amended by adding after subsection (g) the following:

"(h) If during the 90-day period beginning on the date of publication of a notice under subsection (f) for a proposed major rule, or if during the period beginning on the date of publication or service of notice required by subsection (b) for a proposed rule, more than 100 persons individually contact the agency to request an extension of the period for making submissions under subsection (c) pursuant to the notice, the agency—

"(1) shall provide an additional 30-day period for making those submissions; and

"(2) may not adopt the rule until after the additional period.".

(c) Response to Comments.—Section 553(c) of title 5, United States Code, is amended—

(1) by inserting "(1)" after "(c)"; and

(2) by adding at the end the following:

"(2) Each agency shall publish in the Federal Register, with each rule published under section 552(a)(1)(D), responses to the substance of the comments received by the agency regarding the rule.".

SEC. 204. REGULATORY IMPACT ANALYSIS.

Section 553 of title 5, United States Code, as amended by section 203, is amended by adding after subsection (h) the following:

"(i)(1) Each agency shall, in connection with every major rule, prepare, and, to the extent permitted by law, consider, a regulatory impact analysis. Such analysis may be combined with any regulatory flexibility analysis performed under sections 603 and 604.

"(2) Each agency shall initially determine whether a rule it intends to propose or issue is a major rule. The Director shall have authority to order a rule to be treated as a major rule and to require any set of related rules to be considered together as a major rule.

"(3) Except as provided in subsection (j), agencies shall prepare—

"(A) a preliminary regulatory impact analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director at least 60 days prior to the publication of notice of proposed rulemaking, and

"(B) a final regulatory impact analysis, which shall be transmitted along with the final rule at least 30 days prior to the publication of a major rule.

"(4) Each preliminary and final regulatory impact analysis shall contain the following information:

"(A) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms and the identification of those likely to receive the benefits.

"(B) An explanation of the necessity, legal authority, and reasonableness of the rule and a description of the condition that the rule is to address.

"(C) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs.

"(D) An analysis of alternative approaches, including market based mechanisms, that could substantially achieve the same regulatory goal at a lower cost and an explanation of the reasons why such alternative approaches were not adopted, together with a demonstration that the rule provides for the last costly approach.

"(E) A statement that the rule does not conflict with, or duplicate, any other rule or a statement of the reasons why such a conflict or duplication exists.

"(F) A statement of whether the rule will require on-site inspections or whether persons will be required by the rule to maintain any records which will be subject to inspection.

"(G) An estimate of the costs to the agency for implementation and enforcement of the rule and of whether the agency can be reasonably expected to implement the rule with the current level of appropriations.

"(5)(A) the Director is authorized to review and prepare comments on any preliminary or final regulatory impact analysis, notice of proposed rulemaking, or final rule based on the requirements of this subsection.

"(B) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary impact analysis or notice of proposed rulemaking and shall refrain from publishing its preliminary regulatory impact analysis or notice of proposed rulemaking until such review is concluded. The Director's review may not take longer than 90 days after the date of the request of the Director.

"(6)(A) An agency may not adopt a major rule unless the final regulatory impact analysis for the rule is approved or commented upon in writing by the Director or by an individual designated by the Director for that purpose.

"(B) Upon receiving notice that the Director intends to comment in writing with respect to any final regulatory impact analysis or final rule, the agency shall refrain from publishing its final regulatory impact analysis or final rule until the agency has responded to the Director's comments and incorporated those comments in the agency's response in the rulemaking file. If the Director fails to make such comments in writing with respect to any final regulatory impact analysis or final rule within 90 days of the date the Director gives such notice, the agency may publish such final regulatory impact analysis or final rule.

"(7) Notwithstanding section 551(16), for purposes of this subsection with regard to any rule proposed or issued by an appropriate Federal banking agency (as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or the Office of Federal Housing Enterprise Oversight, the term 'Director' means the head of such agency, Administration, or Office.".

SEC. 205. STANDARD OF CLARITY.

Section 553 of title 5, United States Code, as amended in section 204, is amended by adding after subsection (i) the following:

"(j) To the extent practicable, the head of an agency shall seek to ensure that any proposed major rule or regulatory impact analysis of such a rule is written in a reasonably simple and understandable manner and provides adequate notice of the content of the rule to affected persons.".

SEC. 206. EXEMPTIONS.

Section 553 of title 5, United States Code, as amended by section 205, is further amended by adding after subsection (j) the following:

"(k)(1) The provisions of this section regarding major rules shall not apply to—

"(A) any regulation that responds to an emergency situation if such regulation is reported to the Director as soon as is practicable;

"(B) any regulation for which consideration under the procedures of this section would conflict with deadlines imposed by statute or by judicial order; and

"(C) any regulation proposed or issued in connection with the implementation of monetary policy or to ensure the safety and soundness of federally insured depository institutions, any affiliate of such institution, credit unions, or government sponsored housing enterprises regulated by the Office of Federal Housing Enterprise Oversight.

A regulation described in subparagraph (B) shall be reported to the Director with a brief explanation of the conflict and the agency, in consultation with the Director, shall, to the extent permitted by statutory or judicial deadlines, adhere to the process of this section.

"(2) The Director may in accordance with the purposes of this section exempt any class or category of regulations from any or all requirements of this section.".

SEC. 207. REPORT.

The Director of the Office of Management and Budget shall submit a report to the Congress no later than 24 months after the date of the enactment of this Act containing an analysis of rulemaking procedures of Federal agencies and an analysis of the impact of those rulemaking procedures on the regulated public and regulatory process.

AMENDMENT OFFERED BY MR. GEKAS

Mr. GEKAS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Gekas: Page 16, after line 18, insert the following:

SEC. 208.

Effective Date.—The amendment made by this title shall apply only to final agency rules issued after rulemaking begun after the date of enactment of this Act.

Page 9, line 15, insert "a summary of" before "a final".

Page 9, line 21, strike the close quotation marks and the period following and add after that line the following.

The agency shall provide the complete text of a final regulatory impact analysis upon request.

Page 9, line 21, strike the close quotation marks and the period following and insert after that line the following:

"(5) The issuance of a notice of intent to engage in rulemaking under paragraph (1) and the issuance of a preliminary regulatory impact analysis under paragraph (3) shall not be considered final agency action for purposes of section 704.".

Page 10, line 8, strike out "any rule" and insert "any major rule" and in line 18, strike out "proposed rule" and insert "proposed major rule".

Page 14, line 16, strike "publish" and insert "adopt".

Page 15, line 22, strike "and", page 16, line 3, strike the period and insert "; and", and insert after line 3 on page 16 the following:

"(D) any agency action that the head of the agency certifies is limited to interpreting, implementing, or administering the internal revenue laws of the United States.".

Mr. GEKAS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. GEKAS. Mr. Chairman, at an appropriate time, I want to yield to the gentleman from Rhode Island to further concur in what we are attempting to do here. This is a bipartisan en bloc amendment, and the product of the ongoing negotiations between the minority and the majority in the whole series of questions that we jointly raised.

One of the important parts here is that to cover the IRS situation, which we will get to in a little bit of time, but by and large, these are technical amendments, but all intended to reduce the friction that could arise if we did not agree on them.

Let me start off by just saying some of the contents of this bill, as I say, are rather technical. For instance, the changes that we intend to make to the Administrative Procedures Act will apply only to informal rulemakings which begin after the date of enactment of this legislation. You would think that that is generally understood, but this makes it clear, but it is still a technical amendment.

Another one is that we would allow an agency to provide a summary of the final impact analysis to be included in the statement of basis and purpose for final major rule, and this would be in the economy of what printing materials would require and the Federal Register printing, et cetera.

Another one is that in no way should we consider that a preliminary regulatory impact analysis, as required by this legislation, shall be considered final agency action for purposes of judicial review. We make that clear. That is a technical amendment. I would have thought that that could be accomplished simply because of the language that we have or the reporting language, but this clears it up. It is another technical amendment.

Finally, the en bloc amendment to which other reference has been made by other Members includes an exemption provision of the bill's provision to exempt the IRS from the impact analysis requirements.

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Rhode Island.

Mr. REED. Mr. Chairman, I concur with the gentleman. We have worked with these issues which are very important, but technical, together with the majority and minority staffs. I think we have reached a good balance between the need to make this a streamlined, effective procedure, and this amendment is a good one, and I would urge passage, and I believe that the gentleman would also recognize my colleague, the gentleman from Ohio.

I would also urge that his proposal be supported.

AMENDMENT OFFERED BY MR. TRAFICANT TO THE AMENDMENT OFFERED BY MR. GEKAS

Mr. TRAFICANT. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. TRAFICANT to the amendment offered by Mr. GEKAS: At the end of the Gekas amendment, strike the period and insert: ", including any regulation proposed or issued in connection with ensuring the collection of taxes from a subsidiary of a foreign company doing business in the United States."

Mr. TRAFICANT. Mr. Chairman, more than likely this bill may extend, and probably does, to cover that provision, but sometimes when we deal with these international matters there seems to be some roadblock somewhere in some procedure somewhere that just seems to reduce the impact of our efforts to try and resolve some of these differences we have.

Now, very simply, this additional safeguard language ensures that companies who use the superior productivity of the American worker and earn millions of dollars out of our economy, then take much of that money back home, at least pay some of their taxes here. We do not tie the IRS, and we let the IRS know the Congress of the United States wants them to address these matters with the subsidiaries.

I ask the gentleman accept the amendment. It is common sense. It specifies it.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I thank the gentleman for yielding.

We, too, believe, as the gentleman from Ohio has asserted in his opening remarks, that we have already covered the situation which he intends to implement here, but we see it, at worst, as being surplusage, at best as being more explicit in the coverage that we intend.

The gentleman from Rhode Island and I have both concurred in that result.

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Rhode Island.

Mr. REED. Similarly, we concur and accept your perfecting amendment, I say to the gentleman from Ohio [Mr. TRAFICANT].

Mr. GEKAS. If the gentleman will yield further, we accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. TRAFICANT] to the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS].

The amendment to the amendment was agreed to.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS], as amended.

The amendment, as amended, was agreed to.

PARLIAMENTARY INQUIRY

Mr. GEKAS. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. GEKAS. Mr. Chairman, are we now in title II? Are we all agreed that title I has been disposed of?

The CHAIRMAN. Title II continues to remain open for amendment.

AMENDMENT OFFERED BY MS. LOFGREN

Ms. LOFGREN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. LOFGREN: Page 16, line 11, strike the close quotation marks and the period following and insert after line 11 the following:

"(3) For purposes of paragraph (1), the term 'emergency situation' means a situation that is—

"(A) immediately impending and extraordinary in nature, or

"(B) demanding attention due to a condition, circumstance, or practice reasonably expected to cause death, serious illness, or severe injury to humans or substantial endangerment to private property or the environment if no action is taken.".

Ms. LOFGREN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from California?

There was no objection.

Ms. LOFGREN. Mr. Chairman, this morning I mentioned my intention to offer an amendment to define emergencies. I did offer an amendment in committee, and the gentleman from Pennsylvania [Mr. GEKAS] and I agreed that we would work together to come up with a resolution and, in fact, in all fairness to the gentleman from Pennsylvania [Mr. GEKAS], I had language, and the language before us now certainly bears his imprint more than mine. I think it is acceptable.

I would note that in the committee report, emergency is now defined in a circular manner, specifically exempts an impact analysis requirement of this legislation any regulation that responds to an emergency situation, defining an emergency as an emergency, and this language gives us further guidance.

I would like to just make clear, since demanding attention in section B is, if not vague, at least not precise, that it would be the intention of this body that in the following circumstance or hypothetical, for example, if a cure for cancer was found, in order for that drug to be released by the FDA to cure cancer victims, there needs to be a regulatory action. The cure for cancer would certainly have an impact on small business entities around the country. No one wants to stop the cure for cancer from being released.

This would allow those procedures to move forward under the definition, if I am hearing the minority counsel correctly, and I would offer this amendment, and I hope, I believe, that it is acceptable.

Mr. GEKAS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the gentlewoman's amendment is perfectly acceptable to us, and as she said, it is itself a product of the communication that has existed between her office and mine and fills a need we think that was evident in yesterday's debate on another bill in which the same kind of constriction was implemented in the final version of that bill.

So we are prepared even further in the report language that will accompany the conference report which is yet down the line to incorporate even further the sentiments that have been expressed by the gentlewoman.

We accept the amendment, and ask for a vote.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from California [Ms. LOFGREN].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TRAFICANT: Page 15, line 22, strike "and", in line 3 on page 16 strike the period and insert "; and", and add after line 3 the following:

"(D) any regulation proposed or issued pursuant to section 553 of title 5 of the United States Code in connection with imposing trade sanctions against any country that engages in illegal trade activities against the United States that are injurious to American technology, jobs, pensions, or general economic well-being.".

Mr. TRAFICANT (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. TRAFICANT. Mr. Chairman, in our discussion with the U.S. Trade Representative, my amendment basically would exempt any regulation proposed or issued pursuant to section 553 of title V of the code, which is the Administrative Procedures Act in connection with imposing trade sanctions against any country that engages in illegal trade activities against America that are injurious to our technology, jobs, pensions, or general economic well-being.

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The effect of this amendment, although the Trade Representative said that general rulemaking is, in fact—that sanctions are not the result of rulemaking action, they could not be definitive to define any and all areas.

My amendment would serve to say that under the Administrative Procedures Act there shall be no trade rulemaking, and if by any chance there is, that would fall into that loophole, then the safeguard provision would say that they are not going to have their hands tied in responding, when necessary, to such activity. But it clarifies the Administrative Procedures Act and the aspect within that law.

Let me just say this to the Members, one of the things that we found in dealing at times with the trade aspect through the executive branch—and this is not, in fact, a slap at the Clinton administration, from my experience both Democrat and Republican administrations at times have been a little soft in some of these areas—this will clarify that, in fact, it ensures that sanctions are not covered by the Administrative Procedures Act of 1946, but in the event there are some areas that fall between the cracks, which they could not answer, this amendment would be a further safeguard.

Mr. GEKAS. Mr. Chairman, would the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Pennsylvania [Mr. GEKAS], chairman of the subcommittee.

Mr. GEKAS. I thank the gentleman for yielding to me.

Mr. Chairman, the gentleman has made it clear to us what he intends and we have made it clear to him that we believe that we had covered this situation. But so long as the gentleman continues to agree that his amendment will cover those issues that are pursuant to 553 of the Administrative Procedures Act, as he says, we are in accord, and I accept the amendment.

Mr. TRAFICANT. I appreciate that. It does clarify those positions.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. TRAFICANT].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. FRANKS OF NEW JERSEY

The CHAIRMAN. Are there further amendments to title II?

Mr. FRANKS of New Jersey. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. FRANKS of New Jersey: Page 13, line 10, before the period insert the following: ", and a statement of whether the rule will require persons to obtain licenses, permits, or other certifications including specification of any associated fees or fines".

Mr. FRANKS of New Jersey. Mr. Chairman, this amendment makes a small but important change to the regulatory impact analysis, found in title II of the bill.

Under this particular amendment, regulators proposing a major new rule would have to state up front whether that rule will require anyone to obtain licenses, permits, or other certifications.

Furthermore, agencies would be compelled to report whether they plan to impose fines or fees as part of their rule.

This amendment, as well as the entire regulatory impact analysis, is designed to cause regulators and regulated parties to have full knowledge at the outset of the intended effect of a proposed rule.

Not only will adoption of this amendment cause regulated parties, especially small businesses, to know a rule's potential impact, but it will provide for a better understanding of regulatory changes at the earliest stages of the process and, thereby—and I think this is most important—thereby reduce the incidence of fines, litigation, and noncompliance.

Mr. Chairman, I urge its favorable consideration.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. FRANKS of New Jersey. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. I thank the gentleman for yielding to me.

Mr. Chairman, I am delighted to say that I accept the thrust of the amendment that the gentleman offers, and it is in perfect keeping with what we learned in the testimony from the various businessmen who appeared before us on the various, sometimes anecdotes but nevertheless strong indications of how they were hurt in the process in the past.

We like the amendment, and we urge favorable consideration.

Mr. REED. Mr. Chairman, I move to strike the last word and say that we have looked at the amendment. It simply requires a further specification in the regulatory impact analysis of certain provisions for the proposed regulation, including whether the individual would have to obtain licenses, permits, or other certification and a discussion of the question of fees or fines.

It strikes me that most of these provisions would be outlined in the basic law governing the particular activity. I do not see any particular harm by specifying the regulatory impact analysis. It tends, I would think, to simply do what is done elsewhere. But I at this point, subject to further review and perhaps if we have comments, working with the gentleman from New Jersey as we move through the process, would be prepared, I think, to accept the amendment unless someone else has a more persuasive argument at the moment.

I believe at this time we are prepared to accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey [Mr. FRANKS].

The amendment was agreed to.

The CHAIRMAN. Are there further amendments to title II?

AMENDMENT OFFERED BY MR. REED

Mr. REED. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. REED: Page 13, beginning in line 2, strike "the least costly approach" and insert "the most cost-effective approach".

Mr. REED (during the reading). Mr. Chairman, I ask unanimous consent the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

Mr. REED. Mr. Chairman, this amendment goes to a very important issue, the issue of the standard by which the regulator will choose a particular process of regulation, a particular path to implement the law that

that individual has been entrusted with by the Congress.

The present language of the bill requires that the regulator adopt the least costly approach. It has a rather superficial appeal. We all want things to be done at the lowest cost. But I think the problem is that this particular expression, "least costly" approach, fails in any way to require a consideration of the benefits.

What I think we have learned over the last several decades in terms of regulatory reform is that regulations, laws, should balance cost and benefits. Preoccupation with just benefits leads, in many cases, to excessively expensive regulations. On the other hand, a preoccupation with just the lowest cost could lead to a situation where we do not get the most for our dollar.

A very simple example would be that there could be two different approaches to achieve a regulatory goal. One might be costs, say, that require, for example, $3 to achieve. That would be in contrast to something that cost $3.20. Yet the $3.20 approach yields, 7, 8, 9 times the benefit. I think we all can understand that language. That is why cost-benefit analysis, not just cost analysis, is so critical.

The problem I have with the legislation is it does not make sensible, reasonable people make a judgment about regulations to consider the benefits, to take not the least costly approach but the most cost-effective approach, one that for the dollar gets the biggest benefit.

I honestly believe that is what the American people want us to pursue. You know, the old saying, "penny-wise and pound-foolish." I believe that is exactly what the present language in the bill would require all of our administrators to be, penny-wise and pound-foolish, get the cheapest approach even if it gives marginal benefits, but ignore, in fact, legislatively be unable to adopt, an approach that may be marginally more costly but significantly more beneficial to the whole country.

So I would very much urge that we consider this provision. I would be very generally interested in the comments of the chairman as to whether we could at this point, or going forward, really, work on getting in the bill not this least costly analysis, but a true cost-benefit analysis.

Mr. GEKAS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I reluctantly oppose the amendment, not because there is any strong visceral reaction to it, but we have the least language in it. I think we are playing with words here.

But if we look at it as non-lawyers for a moment the general populace, the people most affected by this legislation, the small business men, the employers of our working constituents, when they look at this, least costly is exactly what is most understandable.

We all want it to be cost-effective, but while we are doing that, we want it to be least costly. I do not know how to argue this except to say that it is so minute that I ask the gentleman to withdraw the amendment and to then convince me separately later on how we can join in conference to better implement his thoughts on it.

This is not worth fighting about, but if the gentleman wants to fight, I am going to protect my language out of ego, if nothing else.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, when amendments of this kind are rejected by the other side, it forces me to raise the question again: What is the purpose that we are trying to achieve here? Is the purpose to make our Government and the regulations and rules that we adopt more reasonable, or is the purpose to do away with rulemaking and regulations?

I hate to keep questioning the purpose of this bill. I had thought that the underlying purpose of the bill was to try to encourage Federal Government agencies to approach rulemaking and regulation-making in a reasonable way, to try to reduce the burden that these agencies are imposing on the American people, but not to do away with the value and the purposes that sound rulemaking accomplishes in the public interest.

So when I see a simple cost-benefit approach, which is what this amendment contemplates, being rejected by my colleagues out of hand, then I start to question what are we trying to do here?

If we are trying to do away with every rule and regulation that the Federal Government has that my colleagues in this body do not like because many of them serve a public interest, a public purpose that they do not support even though they are in the interest of our Nation, then at least my colleagues ought to be honest enough to stand up and say that to the American people.

Do not try to do with subterfuge what you cannot and will not be honest with the public on and do directly. If you want to do away with regulations or some law that you do not like, bring it into the body here and let us debate the merits or lack of merits of that particular law. Do not come in through the back door and try to undercut the law by undercutting rules and regulations that are promulgated pursuant to that law.

I submit that it is just gutless for us to come into this body and say to the American people that we have got a regulatory process that is out of control and we will not bring that regulatory process back into control by cutting back on the laws themselves that are generating the regulations.

I do not know of any Federal Government agency—I want to repeat it again—that is out there just making up some rules and regulations and promulgating them pursuant to something other than a congressionally approved law.

If we did our job and specified in some reasonable way what the law says instead of delegating our responsibility to the government agencies, then they would not have to guess and write a bunch of regulations that we should have written into the law.

□ 1515

And if they step beyond the ambit of a law that we have passed in promulgating regulations, then we ought to have the guts to snatch them back within the law, but not undercut what they are doing by undercutting their regulation, but by revoking the law. This makes no sense, and I encourage my colleagues to support this amendment.

Mr. BARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the whole purpose of this title is to streamline and make less costly the whole process of regulations in this country, less costly to the people to whom government is supposed to serve, less costly to the businesses in which we all have an interest in ensuring that they operate very properly with due regard for the safety of the public.

What we have done and what this committee has come up with here in the language "least costly" is about as straightforward as anybody, save the gentleman from North Carolina, could hope to come up with. There is no subterfuge here. As a matter of fact, if one were looking for words that provided a lot more wiggle room a lot more word smithing, then one might want to use the words "most cost effective" because those are words that are fraught in the context of this title with what it intends to do, whose words are fraught with a lot more ambiguity than the words "less costly."

So I am somewhat surprised by the gentleman from North Carolina [Mr. WATT] arguing that the words "least costly" are not clear, are somehow designed to allow some sort of subterfuge or back-door approach here. This could not be more straightforward, and they are certainly in keeping, Mr. Chairman, with the overall intent of this title.

Mr. VOLKMER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I was going to ask the gentleman from Georgia [Mr. BARR] a question. Maybe the gentleman from Pennsylvania [Mr. GEKAS] will be glad to answer the question in regard to this very provision.

Mr. Chairman, I say to the gentleman, Assuming that you had a regulation being proposed to meet a certain goal to do a certain thing, OK, whether it's in the area of safety, area of health, automobile emissions, whatever you want to call it, and there are several ways that this can be done, methodologies in which through rule making you can achieve that goal or near that goal. But the least costly to, let's say, automobiles, to the automobile industry or to the consumers, would be a methodology that doesn't achieve that goal but is the least costly to the automobile industry. Let's say you wanted to reduce emissions that are polluting our air and are causing people to be sick and die, and everything else, by 10 percent, and let's say the Congress required you to do that. Now does that mean that the 10 percent requirement, if the Congress requires it, is the end and it's the least costly to get to 10 percent, or is it least costly to do an emissions reduction?

Does the gentleman understand my problem?

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I say to my colleague, Well, I think you are overlooking the language of the paragraph that precedes the use of the words "least costly approach" because by that time we've gone through a whole series of things like including market based mechanisms that can substantially achieve the same regulatory goal at a lower cost and explanation of the reasons why such alternative approaches were not adopted. Then, after we do all that, which implies that all the reasonable approaches were taken to try to make this work, then, when you put that into its proper perspective, we then follow up with a demonstration that, putting all of this together, we're going to use the least costly approach together with——

Mr. VOLKMER. Together with the demonstration——

Mr. GEKAS. To say the least costly cost effective approach, where there are several cost effective ways to do it, we would still want to put in "least costly, cost effective" if the gentleman knows what I mean.

Mr. VOLKMER. Right, least costly approach to remedying the goal; is that correct?

Mr. GEKAS. Correct.

Mr. VOLKMER. So, in other words, if the least costly idea to achieve near the goal is not sufficient, if the purpose is to regulate as far to achieve a certain goal——

Mr. GEKAS. If the gentleman would continue to yield, the statute calls for the agencies to do X, Y, and Z. Once we apply these little formulas and try to get a marketplace approach to all of this, and we have choices ahead of us, we want to make the least costly approach choice. That is what this is all about.

I say to the gentleman, it's nothing to worry about, HAROLD.

Mr. VOLKMER. Well, I have a little bit to worry about because I am afraid if it does not do exactly what the gentleman says it does, I have got to worry about the——

Mr. GEKAS. I have already asserted to the gentleman from Rhode Island that following—before we get to conference he and I are going to be discussing this language.

Mr. VOLKMER. Fine.

Mr. REED. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will be briefer than 5 minutes. I appreciate the chairman's offer to work with us on this issue. This is an important issue. We have worked to date to try to narrow the language and make it more effective. I think what has been said before by my colleagues though indicates that this is a very important issue, and let me just respond very briefly to the tenor of some of their remarks.

First, there needs to be some discussion, I think, and obviously a discussion about small business and how they are oppressed, et cetera, but I would like to make the point that small business people do not run their companies simply to minimize costs. In fact, there are a lot of businesses out of business today because that is all they did. What they tried to do is maximize profit, and that is taking into consideration not only the cost, but how well they are doing, how well they are serving their customers, et cetera, so to have a single factor analysis at least cost is, I think—I am skeptical of this, and skepticism has prompted this amendment and prompted a continuing dialogue with the gentleman from Pennsylvania, and we can discuss these things in very theoretical terms, but it helps, I think, to focus on very practical, pragmatic terms.

For example, the FAA requires deicing of aircraft. There is probably least costly ways to de-ice an aircraft than having the truck go two or three times with the fluid and having all these procedures which I just observed flying down here 3 days ago, and thank goodness. I say to my colleague, you could probably prove to the FAA that somebody with a squeegee brush on the wing might be cheaper than the truck, and the capital investment, et cetera. The point though is that the FAA is not constrained just on least cost. They want to have a cost that justifies the benefits of some approach that is cost effective, so I think this is a very valuable discussion. I think it is a discussion that makes a great deal of sense and in the spirit which the gentleman from Pennsylvania has offered to continue this dialogue to seek language that might not be most cost effective might be another way to phrase it. But to get to the point where, and I think this is the fear of some of my colleagues, that an agency would feel that they have a very good solution like de-icing airplanes today, but they cannot use it because they have to use something that is just cheap, but not good.

Mr. Chairman, I would in this spirit ask unanimous consent to withdraw the amendment and continue to work with the gentleman from Pennsylvania [Mr. GEKAS].

The CHAIRMAN. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

AMENDMENT OFFERED BY MR. CHAPMAN

Mr. CHAPMAN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CHAPMAN: PAGE 12, LINE 5, STRIKE "AND", IN LINE 8 STRIKE THE PERIOD AND INSERT ", AND", AND INSERT AFTER LINE 8 THE FOLLOWING:

"(C) a renewal regulatory impact analysis, which shall be prepared and transmitted to the Director within 7 years after the publication of the final rule and every 7 years thereafter.

Page 12, line 9, strike "and final" and insert ", final, and renewal".

Page 13, insert after line 15 the following:

"(H) In addition, in the case of an analysis under paragraph (3)(3), the agency shall consider the benefits and costs, if any, associated with each of the following:

"(i) The extent to which the rule impedes domestic competition or international competitiveness.

"(ii) The extent to which capital investments already expended in complying with the rule have been reviewed.

"(iii) The extent to which information requirements under the rule can be reduced, particularly for small business.

"(iv) Whether the rule is clear and certain regarding who is required to comply with the rule.

"(v) Whether the rule is crafted to minimize needless litigation.

"(vi) Whether the rule is fashioned to maximize net benefits to society, particularly whether the rule evaluated risk and cost benefits on an industry-by-industry and sector-by-sector basis.

"(vii) Whether the total effect of the regulation across Federal agencies has been examined.

Page 13, line 17, strike "or final" and insert ", final, and renewal".

Page 15, redesignate sections 205 through 207 as sections 206 through 208 and insert before line 1 on that page the following:

SEC. 205. RENEWAL REVIEW REQUIRED.

Section 55 of title 5, United States Code, as amended in section 204, is amended by inserting after subsection (i) the following:

"(j) The head of each agency shall conduct a renewal regulatory impact analysis of each major rule of the agency issued after the date of the enactment of the Regulatory Reform and Relief Act in accordance with subsection (i)(3)(C) and shall issue a report on the findings of such analysis with recommendations for termination or extension of the effectiveness of such major rule, any appropriate modification to such major rule to be extended, or any appropriate consolidation of such major rule. Such report shall be submitted to Congress not later than 60 days before the termination date for such major rule as determined under this subsection.

Such major rule shall terminate 7 years after it was initially published as a final rule or after it was last reviewed under subsection (i)(3)(C) unless the head of the agency in its report under this subsection recommends that such major rule be extended.".

Page 15, line 5, strike "(j)" and insert "(k)".

Page 15, line 14, strike "(k)" and insert "(l)".

Mr. CHAPMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. CHAPMAN. Mr. Chairman, I will only take a minute to explain both the amendment and the history that leads up to my offering the amendment today, and I do so recognizing that I have worked on this amendment with my colleague, the gentleman from Florida [Mr. MICA], who joins us today on the House floor to discuss what I know we believe to be a very, very important missing link, if my colleagues will, in the reform of our regulatory scheme that the House is considering this week.

We had intended yesterday to offer an amendment to the bill under consideration at that time that would provide for the periodic review of all existing regulation and prospectively the review of new regulations on a 7-year rotating basis. It is my belief that not only should we apply the criteria in this legislation and criteria that are contained in our amendment to regulations that are promulgated and adopted in the future, but that we ought to apply those same common sense criteria to the regulations that currently exist on the books of the Federal agencies today.

I believe that one of the things that will help enforce and have a good application of those criteria would be a provision that would sunset Federal regulations unless they are so reviewed, not only prospectively, but also currently, on the books. So yesterday our amendment would have provided for a review of all existing regulations and a review on a 7-year basis of new regulations with the threat to the agency of that regulation sunsetting unless that review were performed under a very common sense criteria.

We ran out of time, Mr. Chairman, yesterday before we could get our amendment offered, but I believe that amendment does, and in fact I know it does, enjoy strong bipartisan support.

So today on this legislation this amendment is not as broad in scope as that we had hoped to be able to offer, but it still contains the basic components of that approach to regulatory review in that it would require, it would require the agencies, to conduct a review under the criteria that the gentleman's bill provides a very—my common sense criteria that tracks almost directly the criteria that were contained in the amendment we were to offer yesterday, but it also continues to provide that the agencies that currently have regulations between now and 7 years from now review every single regulation currently on the books applying the gentleman's same criteria outlined in this bill and again with a provision that, if that review does not occur, then the regulations not reviewed would sunset.

This is the best way I know, and I believe that we can force Federal agencies to stay up to date, to look at times change as conditions change, as governments' functions change and as industry and technology changes to make sure, to make sure that we are applying up-to-date, common sense regulatory solutions to the problems that the agencies have in administering the laws that we pass.

So I believe it is a very common sense amendment because it does simply two things. It requires that all existing regulation undergo the same scrutiny that the gentleman's bill would provide for new regulations, and it also provides that regulations would terminate, would sunset, if that review does not occur on a 7-year basis.

So, I offer that amendment. I believe it is an improvement to the bill.

Mr. Chairman, I reserve the balance of my time, but I know the gentleman from Florida [Mr. MICA] would have some comments on this.

Mr. MICA. Mr. Chairman, I move to strike the last word.

□ 1530

Mr. MICA. Mr. Chairman, I am really pleased to join one of the leaders in regulatory reform, the gentleman from Texas [Mr. CHAPMAN], to offer this amendment today. I think what we need to do is stop and look and see where we have been and what we have done over the past couple of days.

Actually it is quite monumental in the area of regulatory reform. Only a matter of months ago, a year ago, it was almost impossible to discuss some of the issues, let alone vote and pass some of the measures we have passed in the past few days here on the floor of the House.

But we have passed here a moratorium, a temporary moratorium on regulations until we get other measures in place.

We passed risk assessment regulation, which is long overdue, setting some general guidelines and parameters, which will provide a tool for assessing risk and then using cost and benefit to see how we can do a better job in the regulatory process.

Then today we have been discussing regulatory flexibility and regulatory impact analysis. Some of that gets a little bit heavy, but all we have been trying to do is make some common sense out of the regulatory process.

The amendment my colleague is offering and I am offering with him today says let us have a periodic review of regulations. None of the measures that we have looked at in the past few days dealing with regulatory reform have really addressed that issue. We think it is critical that we look forward and periodically review all of the mass of regulations that are pending.

For example, right now there are over 4,300 regulations pending or being considered by the various Federal agencies. I do not want to get back into the look-back, which I think we need to address, but do you know in the last 20 years we have adopted 1,055,000 in the Federal Register of regulations? That is what we need to do, is go back and look at what we have done. What we are offering today is prospective, but even the President of the United States has recognized the need, and I hope we prompted his action.

Let me quote from the February 22 Washington Post: "Clinton said he was ordering Federal regulators to examine each rule they administer to see what has become obsolete and to produce by June 1st rules that can be discarded."

What we are saying here is we would like to do that for the future. Of course, we would like to do that for the past and we think it needs to be done, and we should really have a hearing, have an opportunity to do just that.

But again, what we are asking for here in this amendment is a return of common sense, a periodic review of outdated regulations, a periodic review of regulations that should be terminated, and a periodic review of regulations that make us less competitive, that put people out of business, that send jobs overseas.

So that is the basis for our request today. It is my understanding, too, that my colleague and I have agreed that we will agree in a few moments here to withdraw our amendment, but I do want to compliment, first of all, the chairman for his agreeing with us today to conduct full hearings on this issue and that we can go back and look at what needs to be done retroactively, and we need to look at what goes forward as far as review of these regulations.

Mr. Chairman, I thank the gentleman for his leadership, I thank the gentleman from Pennsylvania [Mr. WALKER], the gentleman from Virginia [Mr. BLILEY], the gentleman from Texas [Mr. DELAY], the gentleman from Louisiana [Mr. TAUZIN], the gentleman from California [Mr. CONDIT], the gentleman from Louisiana [Mr. HAYES], and again the gentleman from Pennsylvania [Mr. GEKAS], and our Speaker, the gentleman from Georgia [Mr. GINGRICH], for their leadership on these regulatory reform issues, and on what we have accomplished and hope to accomplish by offering this amendment, and also withdrawing this amendment today, but with the opportunity to address this as the next stop in the regulatory reform process.

Mr. GEKAS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I must say, and I felt this from the first moment that we had preliminary discussions with the gentleman from Texas [Mr. CHAPMAN], this is a very attractive amendment, one that if it had been the subject of our hearings and had the gentleman presented it in a fashion that it would have blended in with our legislation, and I would have been happy to consider it in the final implementation of this legislation. I still feel that way. It is going to occur. I am positive of that.

But in the interests of a proper approach to the entire process here, I am most appreciative of your willingness to withdraw the amendment on the basis that we will revisit the subject matter, we will accommodate hearings or whatever it takes to bring it back to the House in a proper form.

Mr. CHAPMAN. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Texas.

Mr. CHAPMAN. Mr. Chairman, if I may, with the assurances of the chairman, and let me say with very much thanks to the chairman for his commitment to give us an opportunity to make a factual case for this amendment before his committee, we will withdraw our amendment and look forward to that hearing process, because we believe that not only will our amendment appear attractive, we believe there is sound legal and factual basis for this kind of addition to the commonsense regulatory reform measures the House has been considering.

Mr. Chairman, with the gentleman's leadership in that kind of hearings, I believe we can revisit this issue here in this Chamber. I believe this is something that the House would likely look very favorably upon, and I am anxious to hasten the time when we would do so. I thank the gentleman for his pledge of cooperation.

Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

AMENDMENT OFFERED BY MR. REED

Mr. REED. Mr. Chairman, I offer an amendment, the amendment at the desk, which is designated amendment B.

The Clerk read as follows:

Amendment offered by Mr. REED: Page 8, line 11, strike out "50,000,000 or more;" and insert "100,000,000 or more; and" and strike lines 12 through 20.

Mr. REED (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

Mr. REED. Mr. Chairman, this is a critical amendment if we want to have a reasonable, cost-effective regulatory reform bill. I must from the outset say that we have made great progress already discussing this issue, and the issue essentially is what is the threshold for a major rule in the context of title II.

That is a very important issue, because once a rule has been declared a major rule, then an agency must do a rather elaborate and potentially expensive regulatory impact analysis. To the extent that all rules are major rules, then regulatory agencies will be spending lots of money thinking up alternative approaches and all sorts of paperwork and doing very little in terms of serving the American people directly by carrying out the duties of their agency.

This is a very, very important principle that we must I think establish. Initially the legislation proposed a very, very low threshold, a million dollar effect on an individual in the United States. It has been raised to $50 million, but frankly that $50 million still in my view and that of many Members does not constitute a truly major rule. Let me tell you why.

Years ago when President Ford first by Executive order instituted the regulatory impact analysis approach, he chose as the benchmark for a major rule $100 million. Today, in 1995, that $100 million would be somewhere between $300 and $400 million in today's dollars. So you can see not only has the major rule threshold shifted and slipped down, but in fact this legislation would bring it down from the current $100 million to $50 million. Every succeeding President, President Ford, President Carter, President Reagan, all chose a very simple, clearly understood threshold, $100 million, because they knew and they understood that valuable resources in terms of doing studies cannot be dissipated for every rule that the Federal Government does.

In fact, if that is the process, if that is what takes place, we will actually trivialize all we are doing today. Indeed, in testimony before the committee, C. Boyden Gray, who was the counsel to President Ford and chairman of Citizens for a Sound Economy, recommended that the threshold remain at $100 million. That is simply the purpose of my amendment, to move the threshold from $50 to $100 million and make it a clear, simple, bright line test, $100 million.

The current language of the bill, although an improvement, still contains some vague terms about impacts that would make the rule major. All I think this will do is require judges and courts to make endless determinations of whether or not a particular rule has an impact on employment that is major or significant, an impact on competitiveness, et cetera.

What I think we are about today is trying to develop a system that is simple, cost effective, makes sense, and is reasonable. The best way to do this is pick an objective, sensible, reasonable target, $100 million. If it was good enough for President Bush and President Reagan, and currently President Clinton's Executive order, I think it should be good enough today. We are not trying to advance the ball. We are not trying to raise the threshold to $500 million, which as I pointed out before would be the equivalent of the same measure used by President Ford when he started this process.

The consequences could be very real if we continue this $50 million threshold. Rules which most Americans would consider to be innocuous, routine, would require expensive analysis. Rules, for example, on raising and lowering drawbridges over naval waters, things that are done every year by the regulatory authorities, could require each year a $1 million or several hundred thousand dollar analysis. That does not make sense.

One final point: We have in the language of the bill given the Director of OMB the authority to declare any rule, regardless of its impact, its financial impact, a major rule. I think that is a sufficient escape clause to confront those situations in which it might be $99.9 million, or might even be $9 million in impact, but it is an important rule to a major part of this country and major sector.

So I urge all my colleagues to save money, to make sure that this works, to make sure that this process does not result in the trivialization of the regulatory impact analysis, that we support this amendment, raise the level to $100 million, and continue the sensible policies of President Ford, President Reagan, President Carter, and now President Clinton.

Mr. GEKAS. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Rhode Island [Mr. REED].

Mr. Chairman, as the gentleman has said, this is an important amendment only because it is one that is devastating to the entire purpose of the bill in the first place. If indeed the gentleman's complaint is that, why change it from $100 million where it found its way into the Clinton Executive order, to the Reagan Executive order, and before that to the Ford Executive order, why the gentleman asks, if it was good enough for them should it not be good enough for us, the answer is implicit in the question.

The hue and cry of the business community, the bombast that we have received as Members of Congress, the complaints that have been issued from every corner of the Nation on these issues, has come about because the $100 million many times was never reached and no consideration was given to a rule for analysis, because it never reached that kind of majority, major emphasis that the major rule required.

That is why people are saying my gosh, if it has to be $100 million, it is a useless rule, because we never get to a point where we can have the benefit of an analysis on which we can act or react.

So that is implicit in the rationale of why we fashioned a threshold that is lower than $100 million, so that we can include more rules in the process, so that we can include, by including more rules, more individuals who are disaffected by the adverse rule.

That is the gravamen of this bill. The other thing we have to keep in consideration, this is important to us, and I think the gentleman from Rhode Island acknowledges it as well, that we started out with $1 million as the threshold, and I, who am admittedly an advocate for small business, found that very attractive. But when title II is considered to apply to all business, small, medium, large, gigantic, all these businesses have one thought in mind: They want to increase competitiveness.

□ 1545

They want to have rules that make sense. They want analysis that will help them respond and, indeed, not just help them respond to a rule but to help the agency fashion a better rule, to impact upon the rulemaking process itself. This is a long way toward expanding the economy and exploding the initiatives that the free enterprise system accords our businessmen and our entrepreneurs. And the working people, the people who benefit most by a small business expansion, are the ones who are absolutely the trickle-down beneficiaries of what we attempt to do here.

I love that term "trickle down" when it obtains to the benefit of the working people who, when they see their employer expand the business and hire two more people and raise wages because they are loosened up from the exasperating rules and regulations. That is the thrust of this bill. To raise it back to $100 million would be to make a top-only type of rule possible for the jointure of the businessman's will and determination in the formation of that rule. I oppose the amendment.

Mr. GENE GREEN of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support the Reed amendment. Let me, before I get into my remarks, respond that the, I never heard trickle down, Mr. Chairman, referred to in a positive way, particularly from this side of the aisle. But the chairman's opposition to the amendment talks about that it did not work under President Ford, Carter, Reagan or Bush or President Clinton. But the OMB has the authority to, under any rule, to designate as a major rule that would truly have significant regulations and so we would not have it fall through the crack based on $50 or $100 million.

So we would hope that the OMB would be able, whether they are under President Clinton or under President Ford or Carter and the other President, they could have made that designation and decision instead of being stuck by an arbitrary dollar figure.

My support for the amendment talks about the dollar figure and recognizing what the sponsor of the amendment, my colleague from Rhode Island, talked about, that if we used $100 million in 1975, it is different than 1995 and reflects that the need for it. But even more so, I have some concern about the amendment. It also addresses a provision in the bill on page 8 where the language that says, not only the $50 million that we would change to $100 million but striking out lines 12 through 20, some of the language in that bill.

I am concerned on this bill but for a number of bills. Let me say that I supported the bill yesterday. I voted for the bill yesterday that in title II had $100 million in it. I know there was other thresholds in the bill yesterday, but the risk assessment bill yesterday also had $100 million even in title II. But the provisions in this bill that we are striking out have some language, I think, that it will be hard for a court to decide, particularly in section C where it says, "significant adverse effects on competition, employment, investment, productivity." We are writing a statute here. That needs to not be so subjective.

I think, where are we going to define "significant adverse effects"? The oil crisis of 1980's in Texas had very significant adverse effects on Texas economy, but oftentimes we could not get the response that we needed out of the various agencies to loosen up on some of the regs that would have us be able to compete better.

The provisions of the amendment not only are good because it raises from 50 to 100 and reflects more 1995 dollars, but it also strikes out lines 12 through 20 that gives other criteria that, frankly, the OMB can make that decision already without putting in there language that is not defined in the bill as far as I can see and very difficult to define anyway.

Major increases in costs or prices for consumers, we can define that many times. Again, major increases sometimes affect certain geographic areas of the country where it may not others. That is why I rise to support the amendment and think that it is a good amendment and makes this bill much easier to support, Mr. Chairman.

Mr. FRANKS of New Jersey. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it seems to me that if a rule or regulation coming from an agency in Washington has a severe impact in a given region of the country or has the net effect of increasing cost for local governments, perhaps a class of small local governments across the country, then it seems to me that this Congress would want to trigger a regulatory impact analysis so we can learn more about the consequences of the regulatory action that is being contemplated. Yet under the amendment of the gentleman from Rhode Island, that criteria would be stricken. The fact that it would have a disproportionate impact on a particular region or on local governments would not trigger the imposition of the requirement of a regulatory impact analysis.

Another example, Mr. Chairman, that really troubles me is if a rule or regulation has a potential unintended consequence of killing off jobs by having an impact on a new industry that is growing in this country. And inadvertently a regulatory action might have an impact on that industry in such a way as to reduce employment. Then, again, under this amendment, that adverse impact on employment would be insufficient per se to trigger the regulatory impact analysis.

Mr. NADLER. Mr. Chairman, will the gentleman yield?

Mr. FRANKS of New Jersey. I yield to the gentleman from New York.

Mr. NADLER. Would not the gentleman say that if it was unintended and unanticipated, this impact on some new industry, by definition "unanticipated" means no one foresaw it. The escape valve is not the language that the gentleman's amendment repeals. The escape valve is the ability to go to OMB and say, hey, we have got this problem. How about calling this a major rule because we did not, you did not, nobody anticipated this problem, but here it is now?

Mr. FRANKS of New Jersey. Reclaiming my time, Mr. Chairman, I would merely seek to say that these adverse impacts should be reviewed by the rulemaking agency and we ought not to merely surrender to the director of the OMB, as if he is going to be some kind of regulatory czar who is the gatekeeper of whether or not we are going to be requiring this regulatory impact analysis.

I think what this system needs is uniformity across the board from every rulemaking agency and not the ability of a particular class of rule makers in an agency to say, the OMB director did not trigger the regulatory impact analysis, therefore, I felt there was no need to engage in one.

We ought to put this responsibility squarely on the shoulders of those who seek to change the regulatory status quo by issuing a new regulation.

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. FRANKS of New Jersey. I yield to the gentleman from Rhode Island.

Mr. REED. The legislation itself and perhaps for good or bad makes the

OMB director a regulatory czar. At page 143, an agency may not adopt a major rule unless the final regulatory impact analysis for the rule is approved or commented upon by the director of OMB. So I mean, specifically, the OMB director is involved in this process. The gentleman from New York is making a very good point.

That is, I think, the appropriate way to respond to some of your concerns. Indeed, some of your concerns demonstrate some of my fears, which is a very able, articulate and thoughtful attorney can find in every rule some of the consequences you made. And my concern ultimately is if every rule is a major rule, then in a sense there are no major rules. We have taken the process and we have to do analysis for everything. We do not have the resources to do that. I think, again, as I know we disagree, we disagree in principle that a bright line $100 million represents an efficient practical way to do what we want to do, which is make sure the big rules that impact on people at sectors and regions get addressed and the other rules can go to routinely.

Mr. FRANKS of New Jersey. Reclaiming my time, Mr. Chairman, I would merely say that the requirement of the regulatory impact analysis is designed to give protection to those parties that would be regulated and also knowledge to the rule makers that their activities are going to have a social and financial impact on the regulated community. It is in the public's interest that we know as much about that social impact and that financial impact as we possibly can before the rule is finally adopted.

I think it is best to have this regulatory impact analysis apply within reason to the broadest possible category of potential rules.

Mr. NADLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think the problem that is sought to be addressed by this amendment is very simple. This bill could have one of two purposes. Either it is an honest attempt to elicit more information about the effects of a rule, of a major rule before that rule is effective, analogous to the environmental impact statement in environmental law, or it is a disingenuous attempt to thwart all Federal rulemaking because of a desire to let corporations not have to worry about new Federal rules because of a feeling that there are enough or too many Federal rules.

We do not want to see anymore, so let us bog down all the new Federal rules, the proposed ones, in litigation, let us bog them down in impact analysis. Let us make every rule have to have an impact analysis and then tie it up in litigation. It is one or the other.

I submit, Mr. Chairman, that the gentleman's amendment would make it clear that it is the former and not the latter. Because then you would have a clear guideline, a very modest guideline, one quarter. The chairman said that the reason we had to get away from the $100 million of President Ford and President Reagan is because the hue and cry of the business community was that that was too high or too low, that too many, that too much escaped it. That you did not have enough analysis.

But that is now $300 to $400 million. What the gentleman's amendment is proposing is a rule of $100 million which is a quarter of what it was under President Ford, because President Ford's $100 million is today worth $300 to $400 million. So we are reducing it by 75 percent. That seems adequate.

But second of all, let us look at the other key to the definition. A major rule would be defined as something that seems likely to result in a major increase in cost or prices for consumers, individual industries, Federal, State, local governments or geographic regions.

What does that mean? What is a geographic region? The South Bronx? The entire State of New York? New York City? If a rule has a particular impact only on the South Bronx, do you need an impact analysis that is going to cost $1½ million or $2 million for the entire country? What does that mean?

I will tell you what it means, about 5 years of lawsuits on that question.

What does a major increase in cost or prices mean? Does that mean a 15-percent price increase? Does it mean a 5-cent increase in a $1 item, a 5-cent increase in a 15-cent item. I tell you what it means. It means 5 years of high-priced litigation on that question.

You then say, it is a major rule if it seems likely to result in significant adverse effects on competition, employment, et cetera, et cetera. What does significant adverse affects mean? I will tell you what it means. Five years of high-priced litigation is what it means.

Mr. Chairman, if we are seeking to bog down any Federal agency and rulemaking, if we are seeking to enable companies to litigate everything and to tie it up in litigation forever, then this is a fine provision. But if this is an honest bill, if we want major rules that have real impacts to be subject to impact analysis, then the gentleman's amendment solves the problem, a $100 million clear rule, a heck of a lot less than President Reagan's and President Ford's threshold, because in their day it is $300 to $400 million in today's dollars, and the ability of the OMB director when something is unanticipated to reach down and say, that is a major rule even though it is only $25 million or some other figure under $100 million.

☐ 1600

That is enough. To do anything more is to greatly increase the risk of tremendous litigation on every question, to almost beg for it. Open-ended phrases once gone into practice to be interpreted by the courts would sweep an enormous number of regulations that do not warrant and could not conceivably profit from a full-blown cost-benefit analysis into this bill, and it would lead to endless litigation.

Again, Mr. Chairman, this amendment will answer, and how the majority, frankly, determines, this amendment will answer one question: what is the intent of this bill. Is it an honest attempt to deal with major rules and give it a regulatory analysis, in which case we will see a yes vote on this amendment, or is it a disingenuous attempt?

The CHAIRMAN. The time of the gentleman from New York [Mr. NADLER] has expired.

(By unanimous consent, Mr. NADLER was allowed to proceed for 30 additional seconds.)

Mr. NADLER. On the other hand, Mr. Chairman, is it a disingenuous attempt to block most Federal rulemaking and to give major corporations subject to Federal rulemaking the ability to tie anything they do not like up in litigation for years by putting into the language of the bill such vague, indeterminate language as to invite litigation?

Mr. Chairman, I submit the answer, if we see the majority vote against this amendment, we will know the answer to that question.

Mr. GEKAS. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman from Pennsylvania [Mr. GEKAS] is recognized for 5 minutes.

There was no objection.

Mr. GEKAS. Mr. Chairman, I am constrained to try to point out something to the gentleman from New York [Mr. NADLER] and the gentleman from Rhode Island [Mr. REED], if I could have his attention. This is something that means a lot to me.

When we conducted the hearings, if the gentleman will recall, we paid attention to every single word that was uttered by the witnesses. As a result of the hearing and as a result of the testimony, for instance, on title III by the Justice Department, we sat back and looked at that legislation again that we had proposed, and we felt that we had to change it radically.

The point is that I paid strict attention to what the witnesses said, and felt constrained to do something to alter our original purpose in it. By the same token, I gave tremendous credibility to the business people witnesses that we had sitting to tell us about the threshold, which is the issue we are discussing here right now.

One of them, a witness, just like the Justice Department witness on title III, this witness was talking about, and his name was Cornelius Hubner, from American Felt and Filter Co., who speaks for thousands of people just like him, he said "In fact, even more stringent requirement could be written in the legislation to reduce the threshold of affected persons from 100 to 50 or 25, and reduce the threshold of expenditure from $1 million to $100,000;" not the 50 that I want, he wants $100,000.

The point is, I would not deign to try to make it $100,000, but I want to give credibility to this man. I want to honor the hue and cry of the business community, the job creators, the hirers of the people the gentlemen represent, the people in their districts, and to base the final language of this bill on the testimony or the range of testimony that was given to us by the business people who are most affected by this.

Give me credit for trying to do the job that we were asked to do by giving vent to what the testimony was, and try to do the best to reflect the best, and to reject the worst, of what the testimony was that was presented.

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Rhode Island.

Mr. REED. Mr. Chairman, I give the gentleman from Pennsylvania [Mr. GEKAS] great credit to this process of witnessing to the witnesses, and trying to adjust the form of the legislation.

I believe Mr. Hubner was the only business person who spoke specifically about the threshold, and in fact, the witness that I heard with most sort of persuasive force was C. Boyden Gray, who is a representative of the business community, the president of Citizens for a Sound Economy, which is one of the groups that represents the business community.

In Mr. Gray's written testimony, and also in his verbal testimony, he said "$100 million is a central threshold."

Mr. GEKAS. Reclaiming my time on that point, Mr. Chairman, I knew the gentleman was going to say that. He did not exactly say that. He said "One could move it up to $100 million," something like that, but all of these figures are arbitrary. We have to choose an arbitrary figure.

Again, Mr. Chairman, we take the $100,000 that one wants and the $100 million that the gentleman from Rhode Island wants, and we have to strike a figure. The $100,000 person does not want the $100 million, and you do not want the $100,000, of course. It is not unreasonable to strike a well-balanced compromise at $50 million. That is what I am saying.

Mr. REED. If the gentleman will continue to yield, I appreciate the gentleman's attempt to balance this. I think it is not only in good faith, but he is talking about the range of voices that we heard in the hearing, but I am persuaded by Mr. Gray, and I believe he was much more definitive in his selection of $100 million.

In response to my question to Mr. Miller, the former director of OMB, candidate for the Senate in the State of Virginia, recently, and someone else who is involved in the business community, he sort of said "Sure, $100 million that is fine. We cannot have every regulation," and I am paraphrasing, but clearly there was no objection to the $100 million threshold.

The other point I would say again, reiterating, is that this is a threshold that has been on the books for 20 years, that has been part and parcel of both Republican and Democratic administrations.

I do not think also that dropping this $50 million threshold will give relief to the small business people that the gentleman is very sincerely trying to protect. Frankly, Mr. Chairman, there are rules that well be picked up that apply only to multimillion-dollar enterprises.

Mr. GEKAS. Seizing back my time, Mr. Chairman, the gentleman will acknowledge that reducing to $50 million will bring an additional body of rules in that then, just by the very force and nature of their existence, would occupy the space of more business people.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first of all, I want to say as a member of the Committee on the Judiciary, I want to compliment both the gentleman from Pennsylvania [Mr. GEKAS] and the gentleman from Rhode Island [Mr. REED] because I am not on their subcommittee, but my overall view was the two of them had the most thoughtful markup, and did make a very, very good faith effort on this bill.

I think we should really thank them, because so much of what has gone through, it has been hard to even see the ink dry before it is out of the committee.

Mr. Chairman, I think part of what the gentleman from Rhode Island is saying is that all the Members very thoughtfully in title I struck the indirect issue, and that he is afraid that if we do not adopt his amendment, we will be doing, indirectly, what they did directly in title I by striking the indirect area.

That sounds roundabout, but I think that is exactly what he is leaning on. If we leave it the way it is, there will be so many things that will require both this risk assessment, or the regulatory impact analysis, that it could be a real job generator in those areas, but it will be a real cost generator, and it will be a thing that will slow down regulations that a lot of people think should be more pro forma, or they may be for safety or whatever.

Coming from an area that just opened its airport, let me say, one of the things might be something that would establish air traffic lanes for airplanes. I would certainly hate to think we would have to sit around and wait for some kind of risk assessment analysis or whatever.

We could think of all sorts of other things that come along, such as change for education funding programs. We could miss a cycle because of that. There are any number of regulations that come out of the Federal Government.

I think this subcommittee tried very hard to reach a reasonable compromise, and I really want to thank the gentleman from Rhode Island, because I think what he is saying is that when he saw $100 million being used as the cutoff by President Ford and President Reagan and President Bush and President Clinton, and by C. Boyden Gray recommending that in his role as chairman of the Citizens for a Sound Economy, that sounds reasonable, and that sounds like a reasonable cutoff.

If we do not do this, everybody will want to claim that their rule is a major rule, or it has that kind of impact, and we will just be all tied in knots, spending all sorts of money, and losing all sorts of time.

Mr. Chairman, I also think we have to realize that as we are downsizing government, when we do things like this, we are going counter to what we are trying to do in downsizing, because we are putting a lot of burdens on agencies that we are trying to get down to bare bones. To add this is another burden which only adds frustration, adds cost, and adds delay.

As we try to find a way to make government more user-friendly, and that is the bottom line here, how do we make it more user-friendly, and yet make sure that what we do does not harm our intended goal, this seems to be a very appropriate follow-on to what the subcommittee did in title I.

I would just hope, Mr. Chairman, we could adopt this amendment by voice. I think it makes a lot of sense, and again, I say, and I mean it very sincerely, I think this subcommittee tried harder than any other to really get to the bottom of this and understand what the different words meant, and what the different impacts would be.

I congratulate the gentleman from Rhode Island and the gentleman from Pennsylvania, and I just hope somehow we can get a consensus here, move forward, because I think this $100 million cutoff threshold impact makes a tremendous amount of sense.

Ms. JACKSON-LEE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first of all, I would like to add my applause and congratulations to the gentleman from Pennsylvania [Mr. GEKAS] and the gentleman from Rhode Island [Mr. REED] for what I think has been a very conciliatory and very strong effort at something that we have been talking about in the Committee on the Judiciary, as a member of that committee, a bipartisan bill.

I would simply say to the gentleman from Pennsylvania, I would like to focus on a narrow part of the discussion, and I rise to support the amendment offered by the gentleman from Rhode Island [Mr. REED] in terms of the threshold being moved to $100 million.

I would like to emphasize, Mr. Chairman, in particular that these words should be really directed towards the small business community, which all of us have in our community or in our particular districts and throughout the Nation. We know that the business of America is business. We can certainly applaud the efforts that small businesses have made in contributing to the economy, and certainly, to the job market in this Nation.

However, if we would look at what we are trying to do here, it is to make their lives easier. We are talking about some 21 million small businesses in this Nation, some 8 million of them being those who are self-employed. The $100 million threshold we are talking about is an aggregate figure. We should not be looking that one single business, small or medium, or one single self-employed that has to prove $100 million. It is an aggregate figure that allows us to be more reasonable and more fiscally responsible in how these regulations and this particular legislation will be applied.

In particular, the regulatory impact analysis and risk assessment analysis can cost up to $1.6 million, so, for example, if there was an inquiry and a petition being made, which I certainly do agree with, if the threshold was not moved, we are talking about spending $1.6 million on every one of those particular inquiries. That would mean that we would have the occasion to read in our newspaper of agencies spending $100,000 every time they wanted to issue a rule.

Let me give the Members an example. If they wanted to do it—we voted for the ducks the other day. Suppose they wanted the rule on opening hunting season, or if they wanted to do it on preventing fisheries from being overfished or compensating veterans who are suffering from the gulf war syndrome, or changing the formula for education funding programs, or raising and lowering drawbridges on inland waterways, or establishing traffic lanes for airplanes, and certainly, in the community that I come from where we are near a very strong port, we have some difficulties sometimes with raising and lowering bridges, and also some difficulties with some major incidence that cause a slow-up on our very busy port.

The question then becomes, let us narrow it to what it is. It is an aggregate figure that applies to all of the impact. It does not burden one individual business, that they would have to prove that that was the overall impact on their single business. It would be an aggregate impact on all of the businesses.

Then, Mr. Chairman, if I might, as it relates to the provisions that relate to the other language to the provisions that relate to the other language of sections B and C, one thing about the Administrative Procedures Act that we learned in first- or second-year law classes is the need to be as precise as we possibly could, and to avoid vagueness.

I certainly appreciate the direction in which this legislation is going, but some of these words and phrases are extremely broad and might cause a great deal of difficulty in refining and detailing, so we would never bring closure to this process of regulation.

We certainly want to stop the burden on our small businesses, but we also want to bring closure to this process so we can go on with the business of governing and they can go on with the business of their business, which is making money, I hope, and employing citizens around this Nation.

I would simply argue, Mr. Chairman, that the threshold is one that is reasonable, because it is not a threshold that someone has to prove singly, it is the aggregate impact, and I would think that out of 21 million businesses, you could prove an aggregate of a $100 million impact.

The last sections, B and C, I would find great difficulty in bringing what we would want to have happen, the process to close because of the vagueness.

□ 1615

Mr. SCHUMER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me say as we go through them that many of these bills in the contract deal with the relationship between Government and business. Like many on my side of the aisle, and I suppose a good number on the other side of the aisle, I find myself on these particular ones in a quandary.

There is a germ of an idea in many parts of the contract. There have been instances where Government regulations went too far, became too removed, became too immutable. There have been many instances where for a small amount of good, a lot of bad was done.

The trouble I find time and time and time again with the bills that are before us is they do not seek a balance, they do not seek to redress the balance and move the pendulum back to the middle, but they seek to go all the way over. In fact, some of them seem to have been written by the very businesses they regulate, and I am sure most of my colleagues would agree that would be a bad practice if it had ever happened.

This bill is one that is far more moderate. This bill is one that I think does try to seek a balanced ground. It did not start out that way but through the good efforts of the gentleman from Rhode Island and the gentleman from Pennsylvania and some just facts in the hearing process when we learned that parts of the bill, other parts of H.R. 9 might exempt Keating from being prosecuted because he would be informed that he might be and he would have his lawyer sitting in everywhere, and we did amendments to correct that.

I would say that the bill strikes a pretty good balance. It realizes the excesses of the past and yet does not react overboard.

I would say in all due respect to my good friend the gentleman from Pennsylvania, he is seeking to push things too far again. The $100 million level makes a good deal of sense in this area. This is a middle ground. One hundred million dollars was used by President Ford. In today's dollars, that would be $300 to $400 million.

It was used by President Reagan in his Executive order, H.R. 9. That would be $170 or $180 million today. In testimony before the subcommittee chaired by the gentleman from Pennsylvania, C. Boyden Gray, the former White House counsel and chairman of Citizens for a Sound Economy, recommended the threshold remain at $100 million. Mr. Gray is not a crazy wild-eyed environmentalist or an anti-business crusader. He is a very staid, rational, essentially conservative gentleman, He, too, recommended the $100 million.

So I say to my colleagues, why push things down further? There are as the gentlewoman from Texas and the gentlewoman from Colorado documented hundreds and hundreds of regulations that have rather minor impact and yet would be affected. Metaphorically but actually as well, why should we spend the millions of dollars it takes to do one of these reviews every time we open up the duck hunting season? These are the kinds of things that we are talking about.

So I would say to my colleagues, yes, this is a good bill. This is a bill that makes a great deal of sense. But by moving to $100 million, we keep that sort of moderate, centrist approach which is in my opinion what the American people have wanted. By moving to 50, we bring the bill too far over, and, therefore, I would urge that we keep the $100 million level.

I thank the gentleman from Rhode Island for his leadership on this issue.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to be brief and make four very quick points and then yield to the gentleman from Rhode Island.

First of all, I would hope that one of the objectives that we are trying to achieve by this legislation is to save the taxpayers money. It seems to me that it makes sense for us not to be doing major studies, paperwork, and so forth anytime any minor rule is promulgated. It ought to be restricted to major rules and rules which have major impact, and I would think that the $100 million figures has a lot more sense in that regard than his $50 million figure does which is in the bill.

Second, I do not think anybody could argue that President Reagan or President Bush or President Ford were wild-eyed liberal people. The $100 million figure was sufficient for them, and I always thought of them as being rather conservative myself, and I do not know why we are trying to cut back on the conservative-liberal scale, so to speak.

It is like the gentleman from New York [Mr. SCHUMER] said, we are trying to swing the pendulum all the way to the opposite end and in a way we are overreacting here.

The third point I would make quickly is that since President Reagan and President Ford were there, the cost of living has gone up substantially. So that what would have been a $100 million figure in their administration actually should now probably be $130 million or $150 million, quite conceivably. It would have gone up, certainly not gone down.

Then finally as the chairman of the committee has indicated, this is an arbitrary figure. There is nothing scientific about this. What we ought to be striving toward is a figure that makes the most sense and the criteria in determining whether it makes the most sense, one of those criteria at least, the primary criteria ought to be were we saving the taxpayers money?

I yield to my colleague, the gentleman from Rhode Island [Mr. REED].

Mr. REED. I thank the gentleman from North Carolina for yielding. I echo his sentiments. I think he has expressed very eloquently the major points we have been talking about this afternoon.

I would just like to briefly say that again we are trying to create a responsive, streamlined process that saves the American people money and aggravation, particularly businesspeople.

What I would regret very much is that 6 months, a year from now, if this legislation becomes law, if we saw articles about a Federal agency spending $1.6 million proposing a regulation and doing a regulatory impact analysis for a regulatory matter that was, say, much less than that. You can pick out an abundant amount of examples, raising, lowering bridges, setting time zones. All these things potentially could have a $50 million impact triggering this procedure, but I think the American people would say why are we spending money doing something we have done year in and year out which has very little effect at all on small business or most Americans or if it does have an effect it is not at all deleterious or harmful.

I think again we have to be very, very careful. If we stick with what seems to be working, which is the $100 million threshold, I believe we will have a bill that is better than the present model and one that we can support strongly.

Again, I would urge everyone to support the amendment to raise the threshold to $100 million.

Mr. GEKAS. Mr. Chairman, I move to strike the requisite number of words in order to engage in a colloquy with the gentleman from Rhode Island.

The CHAIRMAN. Without objection, the gentleman from Pennsylvania [Mr. GEKAS] is recognized for 5 minutes.

There was no objection.

Mr. GEKAS. Mr. Chairman, I want to inform the Members here and in their offices and wherever they may be working at the moment that we are nearing the end of the legislation at hand.

As I understand it—and this is where I ask the gentleman from Rhode Island [Mr. REED] to correct me—after this vote is taken, whether by voice vote or by recorded vote, whatever, then we are at a point where we can move to final passage; is that correct?

Mr. REED. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Rhode Island.

Mr. REED. I thank the gentleman from Pennsylvania [Mr. GEKAS] for yielding.

Mr. Chairman, I believe that when we complete this vote, and I would at this point request a recorded vote when it is in order to do so, we are very close to final passage. I believe the gentleman might have colloquy with another Member.

Mr. GEKAS. That is correct.

Mr. REED. There very well might be an issue that I would raise but not with the anticipation of calling for a vote or actually formally presenting an amendment, but I would like to reserve that right, if I may.

I am also told that the ranking member, the gentleman from Michigan [Mr. CONYERS] has an amendment and he is not here yet, but I am sure he will be here. I cannot speak for the ranking member.

Mr. GEKAS. The gentleman threw cold water in my face now. I thought that we were going to be in good-faith compliance with the wishes of Members to wind this down.

At any rate, we have an idea that we are winding down. I am ready, then, to call for the Members to vote "no" on this amendment and to proceed to final passage.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Rhode Island [Mr. REED].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. REED. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This will be a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 159, noes 266, not voting 9, as follows:

[Roll No. 185]

AYES—159

Ackerman
Andrews
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Boucher
Brown (FL)
Brown (OH)
Bryant (TX)
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Pomeroy
Rahall
Rangel
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Thompson
Torres
Torricelli
Towns
Traficant
Tucker
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Williams
Woolsey
Wyden
Wynn
Yates

NOES—266

Abercrombie
Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign

Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thurman
Tiahrt
Torkildsen
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wise
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—9

Brown (CA)
Gonzalez
Hunter
Istook
Kleczka
Moakley
Rush
Thornton
Velázquez

□ 1644

The Clerk announced the following pair:

On this vote:

Mr. Moakley for, with Mr. Istook against.

Ms. DANNER and Mr. WISE changed their vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments to title II?

AMENDMENT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CONYERS: Page 9, line 21, strike the close quotation marks and the period following and insert after line 21 the following:

"(5) In a rulemaking involving a major rule, the agency conducting the rulemaking shall make a written record describing the subject of all contacts the agency made with persons outside the agency relating to such rulemaking. If the contact was made with a non-governmental person, the written record of such contact shall be made available, upon request to the public.".

Mr. CONYERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Chairman, I rise in support of the sunshine amendment that would require that there be a written record of any contacts between agency persons and persons outside of an agency during the rulemaking process. The necessity for this rule has come from long experience for those of us who have served on the Committee on Government Operations or the Committee on the Judiciary.

Mr. Chairman and Members, in connection with this sunshine amendment, Justice Brandeis once said there is no better antiseptic than sunshine in order to prevent the misdeeds of government, and that is exactly what this amendment is about.

While we are trying to seek accountability in the regulatory process, we should ensure that what often goes on behind the scenes and off the record is accountable also. That is all that this is about. Regulations are public law and should not be conducted in secrecy.

Now, in truth we have an Executive order that covers this, and what we are doing is putting it into the law, nothing more, nothing less. The amendment would ensure that the regulatory process is open and accountable and that there are records of those who seek to influence regulations from behind the scenes.

This is not an abstract matter. It is the real world. It comes out of many years in which special interests were able to shape regulations regardless of whatever new procedures were put in place without any record or trace of their involvement, and what we are trying to do is make sure that we know everybody that had a hand, a meeting, a phone call involved in the shaping of these all-important rules.

Ladies and gentlemen, the Government is already living in this sunshine. As I have already indicated, President Clinton's Executive Order 12866 has already put in place many of the sunshine requirements that we are proposing here today.

The amendment before the House would do two things. First, it would require that all communications between an agency and the Office of Management and Budget during the consideration of this rule be recorded. During past administrations there were countless examples of the OMB informally rewriting agency rules before they were submitted to them for review, only there was no way for congressional committees to conduct oversight of this process because no records were kept of this highly influential and highly secret process. We want sunshine.

Second, my amendment would require that all communications, including oral ones between Government officials involved in a particular regulation and private parties, be recorded and that such a record be publicly available. This is to prevent what we have seen in the past as backdoor channels whereby favorite special interests were able to profoundly influence regulations behind the scenes without any public record.

Is there anybody here that would not want this kind of openness to be a part of the law that we are passing here today?

It is a terrible abuse of the principles of openness that the Administrative Procedures Act symbolizes.

We on this side of the aisle continue to be concerned about the possibility of perverting the requirement for openness and accountability in the regulatory process by allowing ex parte or third-party contacts to be off the record at critical stages of the regulation process.

Congressional investigations over the years have repeatedly documented the profound impact that such secret contacts have had on important regulations affecting public health and welfare. Remember the Clean Air Act where we had all kinds of problems in terms of behind-the-scenes activity in which we found out that the Clean Air Act, the rules on it, were being negotiated secretly? The Nutrition Labeling Act with the Food and Drug Administration had the same problem. We had the biodiversity accord scuttled during the summit in Rio because of outside, behind-the-scenes undermining of the U.S. support. We had the guidelines on disabled access to public housing weakened as a result of backdoor intervention that was not recorded and not very well known. I have a long list that goes on and on.

We believe that it is consistent with the spirit of the Administrative Procedures Act that should be kept when Government officials involved in writing regulations meet with private parties, attempting to influence the outcome of those regulations, and it might not always be illegal or subversive. It could be a good-faith meeting.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. CONYERS] has expired.

(At the request of Mr. DOGGETT and by unanimous consent, Mr. CONYERS was allowed to proceed for 2 additional minutes.)

Mr. CONYERS. What I am saying now is that every meeting or call between the private sector and the OMB or the White House may not be subversive or ill-motivated. It may be a perfectly legitimate attempt to get a position or something on the record. What we want to know before the rule comes out is what happened, and that is what this does.

Mr. DOGGETT. If the gentleman will yield, if I understand, all you are really trying to do is take an Executive order that is in place now and put it into the statute, so we will be assured that any future administration would follow this principle of sunshine.

Mr. CONYERS. Precisely, that and no more, and we continue the rule in the Administrative Procedures Act which does not cover these kinds of activities once it leaves the agency and goes to OMB and to the White House and elsewhere in the executive branch.

Mr. DOGGETT. I have some other questions for you, but the most obvious question is why would anybody be against this? Surely this is an acceptable amendment, and it will not be necessary for us to talk further if it is acceptable to the sponsors of the legislation. Surely they do not have any argument against this.

Mr. CONYERS. Surely. We debated it in the full committee with not the complete success that got it or that would have gotten it included in the bill.

I would just like to make a couple of concluding remarks.

Because even the Reagan administration, what I have not quoted recently, in the so-called Graham memorandum governing regulatory review procedures by OMB, recognized the need to address the problem of secret off-the-record contacts.

Mr. GEKAS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the gentleman from Michigan characterizes his amendment as a sunshine amendment. It is more like a sunstroke amendment. It paralyzes everybody with whom it comes into contact.

Having said that, in my characteristic way, even though I believe that this is trying to kill a fly with a sledge hammer, I find no great reason to oppose it. It simply will pile the agency up with more memos and more graphs that it has to contain in the file.

I am not saying to the gentleman that, as this bill moves farther, that I will not be consulting with him with an idea of how we can make the amendment better. I have some ideas. But for now, I will accept the amendment with no promise to him that I am going to stay in concert with him on this issue.

Mr. CONYERS. Mr. Chairman, will the gentleman yield to me?

Mr. GEKAS. I am happy to yield to the gentleman from Michigan.

Mr. CONYERS. I thank you for your unwavering, steadfast, and totally committed support that you bring from the other side to this amendment. And I assure the gentleman that we on the Judiciary Committee will work to keep the kinds of recording activities that this suggests to a minimum. We are talking about recording a phone contact or a meeting, not a complete recall of the entire transaction.

Mr. GEKAS. Reclaiming my time, by that statement, the gentleman acknowledges that this may be overinclusive. We will work to see what exactly the gentleman thinks might have to be required to be kept in the agency file.

Ms. JACKSON-LEE. Mr. Chairman, if the gentleman will yield, Mr. Chairman, let me just thank you very much for adding to, I think, what was offered as a conciliatory amendment, not to burden small businesses or to burden any other process under this legislation but simply it is a two-way street. I want to add my support to this amendment. It is to list not only those who are in the private sector but I think you will find it constructive that you would also list contacts from those from other government agencies or the executive branch or the White House, because that, too, has on occasion the opportunity to influence what goes on.

☐ 1700

So, consider it a sunshine, not to burden the private sector or small businesses but as well as the gentleman has gleaned from it by his willingness to accept it, as well as a protection of the private sector from government intrusion.

So they too have knowledge of who is weighing in on various regulations. I think it is an excellent amendment. I appreciate the gentleman from Pennsylvania [Mr. GEKAS] in his receptiveness for what I think will add to the process by providing that sunshine on the issue.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. GEKAS. Seizing back my time, I yield further to the gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. I thank the gentleman for yielding further.

Mr. Chairman, having worked with the gentleman from Pennsylvania [Mr. GEKAS] on a variety of committees in the Committee on the Judiciary over a dozen years or more, I say it is true that his record as committee chairman in this new role—where I have not witnessed him before—on judiciary, it is true that his record as being a committee chairman in this leadership position that he is discharging it in a very excellent way and he deserves the accolades on that subject.

Mr. GEKAS. Mr. Chairman, I thank the gentleman from Michigan for his kind remarks.

Mr. Chairman, I would say to the Members we should vote in acceptance of this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. CONYERS].

The question was taken, and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. BONIOR. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 406, noes 23, not voting 5, as follows:

[Roll No 186]

AYES—406

Abercrombie
Ackerman
Allard
Andrews
Bachus
Baesler
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Becerra
Beilenson
Bentsen
Berman
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonior
Bono
Borski
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coleman
Collins (GA)
Collins (IL)
Collins (MI)
Condit
Conyers
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fazio
Fields (LA)
Fields (TX)
Filner
Flake
Flanagan
Foglietta
Foley
Ford
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hinchey
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lightfoot
Lincoln
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McCollum
McCrery

McDade
McDermott
McHale
McHugh
McInnis
McKeon
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Meyers
Mfume
Mica
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myrick
Nadler
Neal
Neumann
Ney
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Rangel
Reed
Regula
Reynolds
Richardson
Riggs
Rivers
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Roybal-Allard
Royce
Sabo
Salmon
Sanders
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schroeder
Schumer
Scott
Seastrand
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Spence
Spratt
Stark
Stearns
Stenholm
Stockman
Stokes
Studds
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thompson
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Upton
Velazquez
Vento
Visclosky
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Waters
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Williams
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Yates
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—23

Archer
Armey
Baker (CA)
Bereuter
Bonilla
Coburn
Combest
Cooley
DeLay
Doolittle
Ehlers
Forbes
Hancock
Hayworth
Johnson, Sam
King
Linder
McIntosh
Molinari
Myers
Nethercutt
Stump
Wicker

NOT VOTING—5

Gonzalez
Hunter
Moakley
Rush
Souder

□ 1719

Messrs. BAKER of California, LINDER, COBURN, COOLEY and HAYWORTH changed their vote from "aye" to "no."

Mrs. MYRICK and Messrs. NEUMANN, MANZULLO, BARR, and ROYCE changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. VOLKMER

Mr. VOLKMER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. VOLKMER: On page 8, line 12, strike "major" and insert "five percent".

Mr. VOLKMER. Mr. Chairman, before I get into the amendment, I wish to commend the gentleman from Pennsylvania, the gentleman from Rhode Island and others, including members of the Committee on Small Business, who have worked very diligently on this legislation, however I guess one of my biggest problems is that I happen to have a bad habit, I guess, up here when I read the bills, and, as I read this bill, I find that there is something in here that I do not quite understand, and I am talking to the gentleman from Rhode Island and other Members that are on this side of judiciary. I find that the matter was not even discussed in committee because of limited time in markup, and I have come to the conclusion that the use of the word "major" where it is used is purely subjective, and it may mean something to the gentleman from Pennsylvania, and a completely different something to me, and a completely different something to the gentleman from Rhode Island or anybody else in this Chamber, and, as far as the regulatory bodies, it would mean different things to different people, and what it means to me is that, being so ambiguous, that we end up possibly with a bunch of lawsuits over it, and I do not think that is what the gentleman really wants and I do not want. Nobody wants that in here.

So, this is an attempt, and I will agree that it may not be the right figure, that 5 percent may not be a right figure, but it is an attempt to bring to the gentleman from Pennsylvania another what I consider a major problem. The bill says a major rule means any rule subject to section 553c or Administrative Procedures Act is likely to result in an annual effect on an economy of 50 million or more. I have no objection to that, none whatsoever. That makes sense. That is pretty easily readily identifiable, but then it goes on to say a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions.

Now what is a major increase in costs or price?

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, as the gentleman may recall, part of the drafting of our final bill here was as a result of lifting from the executive order issued by president Reagan and during his administration covering this same subject matter. Now since that time, right up until the time that we are having this colloquy, the agencies have built up a body of experience and files that have from time to time interpreted "major." Now right or wrong, Mr. Chairman, there is a definition lurking out there among the agencies which they have applied or refused to apply because they determined it was not major. Now we are drawing on that body of experience in incorporating that phraseology into this language.

Further, Mr. Chairman, I would say that what the gentleman complains of, that it is ambiguous and so forth, occurs in every bill we have ever offered here, and the final arbiter, as in this legislation and what we specifically project for this legislation, those final arbiters result in judicial review. That is what we want. So where the individual small business person or an agency, executive director, conflict on what is major, the courts will finally decide that. So it is a reasonable effort here to give an alternative to the agencies to determine what is or what is not a major increase as we——

Mr. VOLKMER. That is again, I think, one problem, and I will not deny that has happened to other legislation that has passed through this body, that this body and the other body does not really want to address the issue. It is passed on to the regulators, and then we leave it up to them to decide, and then, if they do not decide right as far as some individuals who are being affected by the regulations are concerned, they file suit, and we end up in a court, and we let the court decide.

Well, Mr. Chairman, I ask, why can't we decide? Why can't we write it so we know what it means, and they know what it means, and everybody else knows what it means?

Mr. GEKAS. Mr. Chairman, if the gentleman would yield?

Mr. VOLKMER. Yes.

Mr. GEKAS. The gentleman has spoken eloquently in defense of the $50 million which is a stated amendment, and so we agree with him; no one can dispute that line. But the major increase or even a major rule or other phraseologies that we imply in this bill are always subject to court review, and any bill that my colleague has ever sponsored, any paragraph within that, is subject to judicial review. That is why we have it.

Mr. VOLKMER. Well, Mr. Chairman, what I have proposed in my amendment is less subject to a substantive determination than what we have here.

Mr. GEKAS. Mr. Chairman, will the gentleman yield on that?

The CHAIRMAN. The time of the gentleman from Missouri [Mr. VOLKMER] has expired.

(By unanimous consent, Mr. VOLKMER was allowed to proceed for 3 additional minutes.)

Mr. VOLKMER. But the gentleman has admitted that the agencies—and I will not deny that they themselves have now over the period of years said what they think major means. Now I do not know that every agency agrees with each other as to what major means, and I do not say that the 5 percent increase that I put in cost of prices is the right amount, but it is much—it is like the 50 million. Whatever figure goes in, whether it is 5 percent, 10 percent, 20 percent, 15 percent, 12 percent or whatever it is that we want to do, that is really easily ascertainable. That is very easily ascertainable.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. VOLKMER. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, the gentleman states as a fact that it would be easily ascertainable, but I think that that could be as much subject to judicial review as the word "major." In "major" we have a body of experience and files for a dozen years which can help the courts interpret 5 percent. Does that mean the overall cost? Does that mean profit cost? Does that mean 5 percent of the total package, 5 percent of a shipment? Does it mean 5 percent of the geographic region's products? So 5 percent itself is subject to judicial review and interpretation. When the consumer on the one hand says one thing, and the agency head says something else, and the small businessman says something different than what the 5 percent is that they are applying, and, as a matter of fact, our version has more precedent upon which the final decision can be made by the judge.

So, Mr. Chairman, I ask the gentleman to withdraw the amendment or I am going to ask the Members to soundly defeat this just to keep a kind of balance in what is already a part of the Executive order that we have transplanted from the Reagan Executive order to our bill.

□ 1730

Mr. VOLKMER. Mr. Chairman, I disagree with the gentleman. All I am attempting to do is make a little more sense out of a matter that the gentleman agrees it is left to the bureaucrat to make determination, and readily agrees with this language bureaucrats will continue to make the determination, not Members of Congress, and that if they do not make it the way some people agree to do, you have nothing but the Federal courts, so the judges make the decision. They may even disagree, depending on the rulemaking.

Mr. Chairman, at this time I think the House should decide whether they want a definitive matter in here or subjective. The gentleman says that the 5 percent is just subjective. I do not believe so. I think if I look at a price in a store or anyplace else and I can say that it is a 5-percent increase or a 3-percent increase or a 10-percent increase, I can figure it out better than if I see it is a major or minor increase.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take the 5 minutes, but I do want to say that while I do not agree with the 5-percent figure in the gentleman's amendment, it does raise a significant issue. The gentleman thinks the figure ought to be 5 percent. I would probably think it ought to be 25 percent, and I think that really points up the issue that the gentleman is making here and bringing to us.

The problem is there is no definition of what that means in this bill, and the very sponsors of the bill who are saying we are trying to cut down on the authority of regulators and agencies to promulgate regulations come right around the corner and now say we are going to leave the definition of what is major up to the very regulators which we distrust.

So here we are again delegating responsibility, abdicating, I might say, responsibility that we ought to take as a body to define what we mean in a law to agencies, and then next month, next year, we will be right back here second-guessing the way they have exercised that authority that we have delegated to them. And this is a vicious circle we are engaged in.

Mr. VOLKMER. Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Missouri?

There was no objection.

AMENDMENT OFFERED BY MR. REED

Mr. REED. Mr. Chairman, I offer an amendment designated amendment A.

The Clerk read as follows:

Amendment offered by Mr. REED: On page 16, line 11, insert the following:

"SEC. 207. JUDICIAL REVIEW

Section 553 of Title 5, United States Code, as amended by section 206 is further amended by adding after subsection (k) the following:

(l)(1) When an action for judicial review is instituted—

(A) any regulatory impact analysis for such rule shall constitute part of the whole record of agency action in connection with the review; and

(B) the reviewing court may order an agency to prepare a final regulatory impact analysis for any final rule that the agency or the Director determined was a major rule (other than a rule described in subsection (k)) and for which the agency failed to prepare such analysis.

(2) Except as provided in (1), a regulatory impact analysis prepared for a major rule pursuant to subsection (i) and the compliance or noncompliance of an agency or the Director with the provisions of subsections (i) through (k) shall not be subject to judicial review."

Page 16, line 12, strike "207" and insert "208".

Mr. REED (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

Mr. REED. Mr. Chairman, first let me say it is my intention to discuss briefly this amendment, because it is important, and then ask unanimous consent to withdraw it.

This amendment focuses on the issue of judicial review in title II of this legislation. It is an important issue because I think we are all concerned about having an economical judicial review process. The language now is not specific enough, and I would in this amendment make it more specific by making it clear that the review process would only be commenced upon final regulation of a rule and not somewhere or anywhere within the process itself.

I think that leads to a more efficient adjudication of the rules, it allows for a more coherent review by the judicial authorities, and it saves money for the American taxpayers.

In addition, this amendment would limit the review with respect to the regulatory impact analysis to the procedural aspects. Was it performed, did the agency act arbitrarily and capriciously in performing that analysis. It would not invite, encourage, require a battery of experts to battle over every detail, whether the tests should have been done on cats, dogs, are applicable to large people or small people, et cetera.

This is important legislation, and I would ask the gentleman from Pennsylvania [Mr. GEKAS] that as we consider this bill in the future that we would once again return to this issue of judicial review and ask with your good offices if we could once again study it.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. REED. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I feel very strongly about the element of judicial review and have some trepidations about agreeing with the gentleman on any part of what you have just said. I am willing and want to discuss further the ramifications of what the gentleman is discussing here for some future debate with you.

I must tell the gentleman, judicial review in my judgment is the heart and soul of this legislation, and I will not be a party to shrinking it. But to improve the language, I would be glad to meet with the gentleman.

Mr. REED. Reclaiming my time, I am very sensitive to shrinking anything. So I do not want to shrink judicial review. I am a supporter of judicial review. I just want to make sure the review is efficient, cost effective, and reaches the merits on a final point and not several points in the process.

I believe with the gentleman's proffer of working together, we can work out these details. I hope I can persuade the gentleman this language or some version will be an improvement and not a detriment.

Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

The CHAIRMAN. Are there further amendments to title II?

If not, the Clerk will designate title III.

The text of title III is as follows:

TITLE III—PROTECTIONS

SEC. 301. PRESIDENTIAL ACTION.

Pursuant to the authority of section 7301 of title 5, United States Code, the President shall, within 180 days of the date of the enactment of this title, prescribe regulations for employees of the executive branch to ensure that Federal laws and regulations shall be administered consistent with the principle that any person shall, in connection with the enforcement of such laws and regulations—

(1) be protected from abuse, reprisal, or retaliation, and

(2) be treated fairly, equitably, and with due regard for such person's rights under the Constitution.

The CHAIRMAN. Are there any amendments to title III?

If not, are there any other amendments?

Mr. GEKAS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I simply want to say we are winding down on this legislation. I want to again thank the gentleman from Rhode Island [Mr. REED] for his superb cooperation, and the minority members of the subcommittee. I would like to thank my staff, Ray Smietanka, Roger Fleming, and Charlie Kern, and even the gentleman from Alaska, who is watching these proceedings. I thank everybody in sight.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. If there are no further amendments, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HASTERT) having assumed the chair, Mr. BARRETT of Nebraska, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 926) to promote regulatory flexibility and enhance public participation in Federal agency rulemaking, and for other purposes, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted in the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. GEKAS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 415, nays 15, not voting 4, as follows:

[Roll No 187]

YEAS—415

Abercrombie
Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Beilenson
Bentsen
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Borski
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coburn
Coleman
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fazio
Fields (LA)
Fields (TX)
Filner
Flake
Flanagan
Foglietta
Foley
Forbes
Ford
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McCollum
McCrery
McDade
McDermott
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Meehan
Meek
Menendez
Metcalf
Meyers
Mfume
Mica
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Reed
Regula
Reynolds
Richardson
Riggs
Rivers
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Roybal-Allard
Royce
Sabo
Salmon
Sanders
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schroeder
Schumer
Scott
Seastrand
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stark
Stearns
Stenholm
Stockman
Stokes
Studds
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thompson
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Upton
Velazquez
Vento
Visclosky
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Williams
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Yates
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—15

Becerra
Bonior
Collins (IL)
Collins (MI)
Conyers
Dellums
Hastings (FL)
Hinchey
Johnston
McKinney
Nadler
Rangel
Waters
Watt (NC)
Waxman

NOT VOTING—4

Gonzalez
Hunter
Moakley
Rush

□ 1758

Mr. HASTINGS of Florida and Mrs. COLLINS of Illinois changed their vote from "yea" to "nay."

Mr. MARKEY changed his vote from "nay" to yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mrs. COLLINS of Illinois. Mr. Speaker, I was on the floor talking and omitted voting on rollcall 184.

If I had been paying attention, I would have voted "aye" on rollcall 184.

□ 1800

ANNOUNCEMENT BY THE CHAIRMAN OF THE COMMITTEE ON RULES

(Mr. SOLOMON asked and was given permission to address the House for 1 minute.)

Mr. SOLOMON. Mr. Speaker, the Rules Committee will be meeting on Friday, March 3, to grant rules for the consideration of H.R. 988, The Attorney Accountability Act, and H.R. 1058, The Securities Litigation Reform Act. H.R. 1058 was initially reported by the Commerce Committee as title II of H.R. 10 (Report 104-50, Part 1).

Each rule may include a provision giving priority in recognition to Members who have caused their amendments to be printed in the amendment section of the CONGRESSIONAL RECORD prior to their consideration—though this would not be mandatory.

The amendments must still be consistent with House rules and are given no special protection by being printed.

If Members are interested in priority recognition they may wish to print their amendment to H.R. 988 in the RECORD prior to Monday, March 6 and their amendment to H.R. 1058 prior to Tuesday, March 7, when these bills are tentatively scheduled for consideration. It is not necessary to submit amendments to the Rules Committee or to testify.

Members should use the Office of Legislative Counsel to ensure that their amendments are properly drafted to the bill as reported from the committees of jurisdiction. Amendments should be titled, "Submitted for printing under clause 6 of rule XXIII" and submitted at the Speaker's table.

REQUESTING INFORMATION FROM THE PRESIDENT CONCERNING ACTIONS TAKEN TO STRENGTHEN THE MEXICAN PESO AND STABILIZE THE ECONOMY OF MEXICO

Mr. LEACH. Mr. Speaker, by direction of the Committee on Banking and Financial Services, and pursuant to the order of the House, I call up House Resolution 80 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 80

Resolved, That the President is hereby requested to provide to the House of Representatives, not later than 14 days after the adoption of this resolution, the following documents:

(1) Any document concerning the assured source of repayment to the United States for any short-, intermediate-, or long-term credit facility made available to Mexico after December 31, 1994.

(2) Any document concerning the net worth of Pemex, the historical annual revenues of Pemex, the projected annual revenues during the 5-year period beginning on the date of the adoption of this resolution, and the extent to which the proceeds from the sale of Mexican oil to customers within Mexico or outside of Mexico—

(A) are required to be paid to the Government of Mexico as taxes or as payments in lieu of taxes; or

(B) have been pledged as collateral for the repayment of any loans or other extensions of credit to the Government of Mexico or to Pemex other than any credit facility described in paragraph (1).

(3) Any document concerning the value of any oil the proceeds from the sale of which are pledged to assure the repayment of any financial assistance provided by the United States to Mexico, the documentation received by the United States in connection with such pledge, and the manner in which the United States may exercise any rights under such pledge to obtain the proceeds as repayment for losses incurred.

(4) Any document concerning any assurances given by the Government of Mexico to the United States Government with respect to changes in past economic policies or the adoption of a new economic plan.

(5) Any document concerning the decision by the President to use the assets of the exchange stabilization fund established under section 5302 of title 31, United States Code, in connection with any short-, intermediate-, or long-term credit facility made available to Mexico after December 31, 1994.

(6) Any document concerning the criteria used by the President or the Secretary of the Treasury in making any decision to use the assets of the exchange stabilization fund to respond to any economic, balance of payments, or exchange crisis in any country and the facts on which such determinations were made with respect to Poland, in 1989, and to Mexico in December of 1994 and early 1995.

(7) Any document concerning how the use of the assets of the exchange stabilization fund as a source of credit to Mexico compares with all prior uses of the assets of the fund since 1945 for all other countries under section 5302 of title 31, United States Code, with regard to—

(A) the dollar amount of each transaction;

(B) the type of the transaction, such as loan, loan guarantee, or swap agreement (as defined in section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act);

(C) the purpose of the transaction, such as whether it was to support the United States dollar, to support a foreign currency, or any other purpose;

(D) the duration, in years, of the transaction during which any credit was or is permitted to remain outstanding;

(E) any security or collateral pledged to assure repayment with respect to each such transaction; and

(F) the existence of any agreement involving the International Monetary Fund or the Board of Governors of the Federal Reserve System in connection with each such transaction and the terms of each agreement by such Fund or Board.

(8) Any document concerning debts owed by the Government of Mexico and any entity owned or controlled by the Government of Mexico to United States public or private creditors which are outstanding as of the date of the adoption of this resolution, the status of each such debt (including whether such debt has been refinanced), and the collateral or security pledged to assure repayment of such debt.

(9) Any document concerning an accounting of all the fund flows through the exchange stabilization fund established under section 5302 of title 31, United States Code, during the 24-month period ending on the date of the adoption of this resolution, including the identification of the amount of and purpose for each transaction involving such fund during such period.

(10) Any document concerning the balance of available assets in the exchange stabilization fund as of the date of the adoption of this resolution.

(11) Any document concerning the amount by which the total principal amount of loans, loan guarantees, and other extensions of credit which the President has announced will be made available to Mexico exceeds the total amount of available assets in the exchange stabilization fund established under section 5302 of title 31, United States Code, and the means for covering the shortfall, if any.

(12) Any document concerning the departure of the International Monetary Fund from the Fund's customary guidelines for country assistance, including any recommendation made by the President or any other officer or employee in the executive branch to the Fund regarding the amount of financial assistance the Fund was preparing to make available to Mexico, and any reciprocal agreement made by the executive branch to the Fund for making such assistance available in any amount greatly in excess of the customary guidelines.

(13) Any document concerning the factual circumstances pursuant to which the Bank for International Settlements has become a lender to individual countries beyond the Bank's customary role as a clearinghouse for central banks.

(14) Any document concerning the financial obligations of the Board of Governors of the Federal Reserve System to the Bank for International Settlements.

(15) Any document concerning the relationship among the Board of Governors of the Federal Reserve System, the Bank for International Settlements, and the central banks of other countries which are affiliated with such Bank in any manner with regard to assigning or apportioning the ultimate liability for any loss incurred in connection with the extension of credit by such Bank to the Government of Mexico.

(16) Any document, including minutes, concerning any meeting between the President and any Members of Congress concerning the proposed actions of the President, as announced on January 31, 1995, to strengthen the Mexican peso and support economic stability in Mexico.

(17) Any document concerning any discrepancy between the amount the President announced is available in the exchange stabilization fund established under section 5302 of title 31, United States Code, and the amount shown as being available in such Fund in the monthly statement of the public debt of the United States on December 31, 1994.

Mr. LEACH (during the reading). Mr. Speaker, I ask unanimous consent that the resolution be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

COMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE

The SPEAKER pro tempore (Mr. GOODLATTE). The Clerk will report the committee amendment in the nature of a substitute.

The Clerk read as follows:

Committee amendment in the nature of a substitute: Strike out all after the resolving clause and insert in lieu thereof the following:

That the President is hereby requested to provide to the House of Representatives (consistent with the rules of such House), not later than 14 days after the adoption of this resolution, the following documents in the possession of the executive branch, if not inconsistent with the public interest:

(1) Any document concerning—

(A) the condition of the Mexican economy; and

(B) any consultations between the Government of Mexico and the Secretary of the Treasury (or any designee of the Secretary), the International Monetary Fund, or the Bank for International Settlements.

(2) Any document containing—

(A) a description of the activities of the central bank of Mexico, including the reserve positions of such central bank and data relating to the functioning of Mexican monetary policy;

(B) information regarding the implementation and the extent of wage, price, and credit controls in the Mexican economy;

(C) a complete documentation of Mexican tax policy and any proposed changes to such policy;

(D) a description of all financial transactions, both inside and outside of Mexico, directly involving funds disbursed from the exchange stabilization fund and the International Monetary Fund, including transactions with—

(i) individuals;

(ii) partnerships;

(iii) joint ventures; and

(iv) corporations;

(E) a list of planned or pending regulations of the Government of Mexico affecting the private sector of the Mexican economy; and

(F) any efforts to privatize public sector entities in Mexico.

(3) Any document concerning any legal analysis with regard to the authority of the President or the Secretary of the Treasury under section 5302 of title 31, United States Code, the Bretton Woods Agreements Act, the Special Drawing Rights Act, the Gold Reserve Act of 1934, or any other law or legal authority to use the stabilization fund to implement the President's proposed Mexican support package.

(4) Any document concerning any legal opinion regarding the applicability or nonapplicability of the provisions of the Federal Credit Reform Act of 1990 to the exchange stabilization fund.

(5) Any document concerning any agreement between the United States and the Government of Mexico (or any other appropriate Mexican entity) to provide assured sources of repayment for all payments by the United States in connection with any short-, intermediate-, or long-term credit facility made available to Mexico after December 31, 1994.

(6) Any document concerning the implementation by the President and the Secretary of the Treasury (or any designee of the Secretary) of the authority under section 5302 of title 31, United States Code, with respect to any credit facility described in paragraph (5).

(7) Any document concerning efforts by the international community to stabilize the economy of Mexico and the current status of negotiations with other countries to improve the capacity of international institutions to handle similar crises.

(8) Any document concerning the extent to which Mexico is complying with the terms and conditions agreed to in connection with the exercise of the authority under section 5302 of title 31, United States Code, with respect to any credit facility described in paragraph (5), including any document concerning the extent to which—

(A) the Government of Mexico has agreed to use the proceeds of any loan which has been made, or any security for which any guarantee has been issued, through any such facility to help strengthen the Mexican peso and help stabilize financial and exchange markets by facilitating the refinancing or redemption of short-term debt instruments issued by the Government of Mexico;

(B) the Government of Mexico has agreed to provide—

(i) a comprehensive financial plan which includes a description of the intended use of any such loan or security; and

(ii) ongoing reports on the implementation of the financial plan while any such loan or security is outstanding;

(C) the Government of Mexico is respecting the autonomy of the central bank of Mexico and the mandate of such bank to seek stability with respect to the purchasing power of the Mexican peso;

(D) the central bank of Mexico is pursuing a noninflationary monetary and credit policy that controls credit expansion and the growth of the Mexican money supply in order to maintain the Mexican peso as a strong currency;

(E) the central bank of Mexico is providing on a periodic basis to the Board of Governors of the Federal Reserve System and other appropriate governmental entities information necessary to make an assessment with respect to the policy described in subparagraph (D), including central bank money supply and monetary policy data;

(F) the Government of Mexico is implementing the privatization policy established by such Government to transfer enterprises currently owned or controlled by the Government to private ownership;

(G) the Government of Mexico continues to permit entry of foreign direct investment into Mexico and the repatriation of investments from Mexico by United States nationals; and

(H) the Government of Mexico is pursuing market-oriented measures to stem the flow of domestically owned capital from Mexico.

(9) Any document concerning any analysis of the resources which the International Monetary Fund has agreed to make available in response to the Mexican financial crisis.

(10) Any document concerning—

(A) the percentage of the resources which the International Monetary Fund has agreed to make available in response to the Mexican financial crisis which are attributable to capital contributions to such Fund by the United States; and

(B) the extent to which the participation of the International Monetary Fund in international efforts to strengthen the Mexican peso and stabilize the economy of Mexico is likely to require additional contributions to such Fund by the member states of the Fund, including the United States.

(11) Any document concerning any agreement between the United States and the Government of Mexico detailing the fee structure and the terms and conditions under which loans, loan guarantees, and other financial support may be made available to Mexico through the stabilization fund established under section 5302 of title 31, United States Code, including—

(A) any document concerning background materials on the assessment of the Mexican economy and any United States Government rationalization for pressing the central bank of Mexico to increase interest rates from 40 percent to 50 percent;

(B) any document concerning the framework agreement entered into on or about February 21, 1995, which serves as the umbrella accord for the provision of any such loan, loan guarantee, or other financial support;

(C) any document concerning the medium-term exchange stabilization agreement entered into on or about February 21, 1995, which specifies the terms and conditions for medium-term swap transactions between the United States and Mexico;

(D) any document concerning the guarantee agreement entered into on or about February 21, 1995, which specifies the terms and conditions for the issuance of guarantees by the United States of debt securities issued by Mexico; and

(E) any document concerning the oil proceeds facility agreement entered into on or about February 21, 1995, which establishes a mechanism to provide an assured source of repayment of United States resources.

(12) Any document concerning the assured source of repayment to the United States for any short-, intermediate-, or long-term credit facility made available to Mexico after December 31, 1994.

(13) Any document concerning the net worth of Pemex, the historical annual revenues of Pemex, the projected annual revenues during the 5-year period beginning on the date of the adoption of this resolution, and the extent to which the proceeds from the sale of Mexican oil to customers within Mexico or outside of Mexico—

(A) are required to be paid to the Government of Mexico as taxes or as payments in lieu of taxes; or

(B) have been pledged as collateral for the repayment of any loans or other extensions of credit to the Government of Mexico or to Pemex other than any credit facility described in paragraph (12).

(14) Any document concerning the value of any oil the proceeds from the sale of which are pledged to assure the repayment of any financial assistance provided by the United States to Mexico, the documentation received by the United States in connection with such pledge, and the manner in which the United States may exercise any rights under such pledge to obtain the proceeds as repayment for losses incurred.

(15) Any document concerning any assurances given by the Government of Mexico to the United States Government with respect to changes in past economic policies or the adoption of a new economic plan.

(16) Any document concerning the decision by the President to use the assets of the exchange stabilization fund established under section 5302 of title 31, United States Code, in connection with any short-, intermediate-, or long-term credit facility made available to Mexico after December 31, 1994.

(17) Any document concerning the criteria used by the President or the Secretary of the Treasury (or any designee of the Secretary) in making any decision to use the assets of the exchange stabilization fund to respond to any economic, balance of payments, or exchange crisis in any country and the facts on which such determinations were made with respect to Poland, in 1989, and to Mexico in December of 1994 and early 1995.

(18) Any document concerning how the use of the assets of the exchange stabilization fund as a source of credit to Mexico compares with all

prior uses of the assets of the fund since 1945 for all other countries under section 5302 of title 31, United States Code, with regard to—

(A) the dollar amount of each transaction;

(B) the type of the transaction, such as loan, loan guarantee, or swap agreement (as defined in section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act);

(C) the purpose of the transaction, such as whether it was to support the United States dollar, to support a foreign currency, or any other purpose;

(D) the duration, in years, of the transaction during which any credit was or is permitted to remain outstanding;

(E) any security or collateral pledged to assure repayment with respect to each such transaction; and

(F) the existence of any agreement involving the International Monetary Fund or the Board of Governors of the Federal Reserve System in connection with each such transaction and the terms of each agreement by such Fund or Board.

(19) Any document concerning debts owed by the Government of Mexico and any entity owned or controlled by the Government of Mexico to United States public or private creditors which are outstanding as of the date of the adoption of this resolution, the status of each such debt (including whether such debt has been refinanced), and the collateral or security pledged to assure repayment of such debt.

(20) Any document concerning an accounting of all the fund flows through the exchange stabilization fund established under section 5302 of title 31, United States Code, during the 24-month period ending on the date of the adoption of this resolution, including the identification of the amount of and purpose for each transaction involving such fund during such period.

(21) Any document concerning the balance of available assets in the exchange stabilization fund as of the date of the adoption of this resolution.

(22) Any document concerning the amount by which the total principal amount of loans, loan guarantees, and other extensions of credit which the President has announced will be made available to Mexico exceeds the total amount of available assets in the exchange stabilization fund established under section 5302 of title 31, United States Code, and the means for covering the shortfall, if any.

(23) Any document concerning the departure of the International Monetary Fund from the Fund's customary guidelines for country assistance, including any recommendation made by the President or any other officer or employee in the executive branch to the Fund regarding the amount of financial assistance the Fund was preparing to make available to Mexico, and any reciprocal agreement made by the executive branch to the Fund for making such assistance available in an amount greatly in excess of the customary guidelines.

(24) Any document concerning the factual circumstances pursuant to which the Bank for International Settlements has become a lender to individual countries beyond the Bank's customary role as a clearinghouse for central banks.

(25) Any document concerning the financial obligations of the Board of Governors of the Federal Reserve System to the Bank for International Settlements.

(26) Any document concerning the relationship among the Board of Governors of the Federal Reserve System, the Bank for International Settlements, and the central banks of other countries which are affiliated with such Bank in any manner with regard to assigning or apportioning the ultimate liability for any loss incurred in connection with the extension of credit by such Bank to the Government of Mexico.

(27) Any document concerning any discrepancy between the amount the President announced is available in the exchange stabilization fund established under section 5302 of title 31, United States Code, and the amount shown as being available in such Fund in the monthly statement of the public debt of the United States on December 31, 1994.

(28) Any document concerning conditions which were put on the credit facilities made available to Mexico through the exchange stabilization fund or the Board of Governors of the Federal Reserve System that were requested by members of the investment community.

Mr. LEACH (during the reading). Mr. Chairman, I ask unanimous consent that the committee amendment in the nature of a substitute be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

The SPEAKER pro tempore. The gentleman from Iowa [Mr. LEACH] is recognized for one hour.

Mr. LEACH. Mr. Speaker, under the Rules and the rule of the House, I have been granted as chairman of the committee of jurisdiction 60 minutes for purposes of debate only. It is my intention to divide the time equally with my distinguished colleague, the gentleman from New York [Mr. FLAKE].

Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the House of Representatives has before it House Resolution 80, a privileged resolution of inquiry introduced by the gentlewoman from Ohio, Ms. KAPTUR, and modified by the committee of jurisdiction, particularly under the leadership of Mr. KING, who introduced a resolution of similar intent.

House Resolution 80 requests the President to provide the House with documents relating to the administration's use of the Exchange Stabilization Fund [ESF] and the administration's proposal to stabilize the Mexican peso.

The documents are to be provided no later than 14 days after the adoption of the resolution by the House.

According to rule 22, clause 5, of the Rules of the House of Representatives, House Resolution 80 is considered to be a resolution of inquiry, which requires the committee of jurisdiction to act on the resolution within 14 legislative days after its introduction. House Resolution 80 was introduced and referred to the Committee on Banking and Financial Services on February 10, 1995, with action taken on February 23, 1995.

Under the rules and precedents of the House, a resolution of inquiry is the means by which the House requests information from the President of the United States or the head of one of the executive departments.

According to "Deschler's Procedure" it is a "simple resolution making a direct request or demand of the President or the head of an executive department to furnish the House of Representatives with specific factual information in the possession of the executive branch."

The effectiveness of a resolution of inquiry derives from the comity extended by one branch of government to another, and not from any legal obligation.

Under Rule 22, the practice of the House gives a resolution of inquiry a privileged status. To enjoy the privilege a resolution should call for facts rather than opinions, should not require investigations, and should not present a preamble.

Turning from procedure to substance and the implicit policy question at issue in the resolution—the President's decision to utilize up to $20 billion in resources from the ESF to help stabilize the Mexican currency and financial system—it is my view that the U.S. government has sufficient legal authority to enter into the framework agreements signed with the Government of Mexico on February 21. Nevertheless, Members on both sides of the aisle have reflected differing views on this sensitive issue of judgment.

Whatever one's perspective on the legal basis of Administration decision-making, the scale of the proposed ESF swap and guarantee arrangements with Mexico are of such an unprecedented magnitude that unprecedented accountability is in order. It is therefore the obligation of Congress and the Committee of jurisdiction in particular to review how Mexico got into this dilemma and what obligations the U.S. Government has undertaken to resolve the crisis. It is also the obligation of this Congress to assess why and how Mexico lost its way and whether the U.S. government failed to recommend or insist that Mexican officials follow a less bumpy road.

In this regard, let me stress this resolution of inquiry is of a fact-finding nature. It looks to the basis of policy without having the effect of changing administration commitments. Nothing, in other words, in this approach jeopardizes the stabilization package itself. But there should be no doubt that many citizens of the United States as well as of Mexico wonder if their governments let them down and question whether, in a new interrelated financial world, elitist decisions beyond effective citizen control hold consequences for their families' standards of living.

There also should be no doubt that if the U.S. Government had failed to act, an international economic crisis could have been precipitated which would have had extraordinary job loss consequences in America and around the world.

Hence the rationale for this resolution, as well as language in the Committee report suggesting bipartisan Member interest in ongoing, detailed reporting by the Executive Branch on implementation of the United States and international financial package for Mexico.

Here it is the view of this Member that in Mexico a government of thoughtful economists made thoughtless economic mistakes. While Mexican policymakers were thoroughly correct in pursuing fiscal and macroeconomic reforms designed to foster an open market economy, the government of Mexico also chose to ignore economic reality throughout most of 1994 in order to put off tough economic decisions which might have included a higher interest rate or more restrained money supply environment or, lack thereof, devaluation of the peso prior to a presidential election.

In this context, one of the lessons of the Mexican financial crisis would appear to be that putting off resolution of economic problems of a potentially systemic nature generally increases economic costs, in this case dramatically. Mexico's attempt to protect the value of what the markets determined to be an overvalued peso cost their treasury approximately $25 billion, and substituting (dollar-indexed) tesebonos for (peso-denominated) cetes cost Mexico a comparable sum. Using public monies to protect the pride and ambitions of Mexican politicans thus cost the Mexican people almost $50 billion, and precipitated a run on the peso that has unfortunate consequences for real personal purchasing power and broader economic growth.

Here in Washington, post mortem assessments of the Mexican crisis have featured a clash of two divergent economic perspectives.

One group of eminent economists has argued that Mexico's decision to devalue the peso was inappropriate and should have been avoided at all costs.

While most Americans as well as Mexicans favor a strong Mexican currency, the trouble is the government of Mexico squandered some $25 billion in foreign reserves and incurred another $25 billion liability defending the peso against market forces. The U.S. government might well have incurred similar liabilities in December 1994 if it had also attempted a desperate defense of a fixed peso valuation of 3.5 to the dollar, in the aftermath of the Mexican government's decision to increase, to the extent that it did, the money supply in 1994.

The establishmentarian economic view, on the other hand, is far more congenial to a floating or flexible exchange rate policy. But here too there is a problem for policymakers, in that officials in Mexico City refused to allow greater exchange rate flexibility on a timely basis, presumably out of concern for electoral backlash. Washington, it would appear, capitulated to the Mexican government's perspective: perhaps out of a desire to subtly influence the Mexican election; perhaps out of a desire to avoid destabilizing shocks in the context of consideration of NAFTA, ratification of the Uruguay Round, and the December 1994 summit of the Americas in Miami; or perhaps because Washington simply didn't know that the Mexican central bank had increased the peso supply in 1984 at a far greater clip than the Federal Reserve had allowed the money supply in the United States to grow.

Whatever the reason and whatever economic camp one is in, Washington clearly erred in turning a blind eye or flinching before Mexican decision-making. Any defense of the Mexico City-Washington policy in 1994 with respect to the peso is rooted in a catch-22: a policy of fixed exchange rates failed, while a policy of flexible exchange rates was implemented in such an untimely and confidence-shattering manner as to precipitate a financial crisis.

The reason this discourse matters and the reason this resolution of inquiry is in order is to make clear that abstract macroeconomic decision-making holds real consequences for real people, in this case the American taxpayer as well as the Mexican public. When the American taxpayer is made liable, especially by decisions made outside the normal legislative process, it is incumbent that disclosure of all relevant facts and perspectives be full and complete. Accordingly, I urge passage of the King-Kaptur resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. FLAKE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I commend the Chairman of the Banking Committee, as well as the many Members on both sides of the Committee and in the House who tirelessly worked on the issue of the Mexico loan guarantee.

House Resolution 80, the Mexico loan guarantee inquiry, was reported out of the Banking Committee last week and has been agreed to by the leadership on both sides of the aisle and both sides of the Capitol.

I must say that some members of the Banking Committee felt that the resolution was not necessary in light of the current monthly reporting requirements to the Committee. For instance, the Committee is provided with a monthly activity report on the Economic Stabilization Fund which any Member may access.

However, on the whole, I believe that the Committee was able to reach an agreement that may be acceptable to most Members. Therefore, as the ranking member of the Subcommittee on Domestic and International Monetary Policy, I support the resolution.

Mr. Speaker, I reserve the remainder of my time.

Mr. LEACH. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Speaker, the Clinton administration's use of the Economic Stabilization Fund to aid the Mexican economy is unprecedented and demands oversight and accountability, especially in light of recent revelations about the political and economic corruption permeating the country of Mexico. Sailing into these unchartered waters with guarantees of $20 billion in loans is a rather daunting responsibility. However, Congress held numerous hearings on how the United States Government should handle the economic crisis in Mexico and could not reach any consensus on how to resolve the situation. I firmly believe that the executive branch had very little choice but to use the Economic Stabilization Fund to ease growing tensions in the global financial markets and to restore confidence in the Mexican economy and other emerging economies.

Although the administration's use of the ESF to aid Mexico is unusual, I believe that there is sufficient legal authority for it to do so and I am pleased that this is an issue that the resolution addresses by specifically requiring a legal opinion from the Treasury Department. The resolution also seeks a range of documentary materials, from the President including those that concern the status of the Mexican economy, contacts between the Mexican Government and the Treasury Secretary or international lending organizations, disbursements from the Exchange Stabilization Fund, and the oil revenue guarantees offered by the Mexican Government.

Given the large amount of money that is being committed by our Government to aid Mexico, it is not unreasonable to ask the executive branch to account for how the funds are being disbursed to calm any suspicions that the American public has over the administration's package.

I support House Resolution 80 because it gives Congress the tools to ensure the accountability of the executive branch as it implements its plan to stabilize the Mexican economy. Finally, I believe that it is critical to the more than 700,000 United States citizens that rely on jobs related to exports to Mexico.

Mr. FLAKE. Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentlewoman from Ohio [Ms. KAPTUR] a former member of the Committee on Banking and Financial Services, who is the underlying sponsor of this resolution.

Ms. KAPTUR. Mr. Speaker, I thank the gentleman from New York for yielding time to me, Mr. Speaker, I also thank the gentleman from Iowa [Mr. LEACH] and I rise in strong support of House Resolution 80, our resolution of inquiry to investigate the $52 billion Mexican rescue package.

Members of Congress should not have had to fight this hard nor wait this long to achieve this first vote on a matter of such profound economic and political consequence to our people and to our continent.

Having gotten this far, Mr. Speaker, despite fierce opposition from the leadership of this House and the administration is a clear initial victory for the American people and our tax-paying public over powerful, monied interests who would wish to muzzle our voices.

I will be entering in the RECORD an article that appeared in the Washington Post today on page C–1, in confirmation of what I am saying.

Today's vote will be a victory for every working family that obeys the laws, pays the taxes, and fights the wars. Today's vote should signal a political change to those powerful special interests that have for too long written the rules of banking and trade, who have given away our jobs, and then had to call on our U.S. Treasury to bail out their mistakes.

Let me remind my colleagues, this is a first vote. We must continue our efforts and pass other bills strictly proscribing the authority of the executive branch over the Exchange Stabilization Fund, so that it can no longer be used as an unauthorized form of back door foreign aid.

I am proud that this House and this Committee on Banking and Financial Services will go on record today as the first branch to begin doing its job. The recent action by the U.S. Treasury is absolutely unprecedented in both magnitude and duration. It is 20 times larger than the largest prior use of this particular fund.

Never has it been the will of Congress to provide the Executive Branch with unlimited authority of this sort. In the past, we have used the fund for intervention in exchange markets and for very short-term loans, usually bridged to a guaranteed repayment in hard currency.

No amount of United States taxpayer money will solve Mexico's problems, which are rooted in deep-seated political corruption, as today's papers remind us, the lack of rule of law, and mismanaged economic programs for decades.

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Thus Congress through this resolution must demand answers for our people to questions like, what is the full extend of United States taxpayers' exposure to the deepening crisis in Mexico?

Since Mexico owes nearly $200 billion, how deep can the United States promise extend?

Which United States creditors will benefit from the rescue package with which Mexico still holds outstanding debts?

How solid is Mexico's oil pledge as collateral and how solvent is Pemex?

Will there be new U.S. appropriations required to the IMF and the Bank for International Settlements?

The American people have a right to know how their money is being risked and spent. Nothing is more important than the integrity of our Constitution, the prerogatives of this House which protect the interests of all Americans rather than the rich and powerful few.

Let me say there, four men do not make a House of Representatives.

If this rescue package is as necessary as we are being told it is, then we deserve to have our questions answered.

As economist Jeff Faux reminds us, there have been other moments in our history when Washington's best and brightest led the Nation step by step into a disaster. Remember the Vietnam war, when we were assured at each stage of the escalation that the new expansion would solve the problem?

With Mexico first came the Brady debt buyout plan, then came NAFTA, now comes the bailout.

As with Vietnam, we have a domino theory. If the peso is not propped up, investor confidence will collapse throughout the world, throughout Latin America.

As in Vietnam, commonsense questions go unanswered. If the loan is so secure, why are private banks not willing to put up the money?

As in Vietnam, the mistakes of elites are being paid for by the ordinary people of both countries, lost jobs, lost incomes, lost hopes, lost business.

And as with Vietnam, we have had to fight a war in this Chamber to even get this vote.

I urge my colleagues to vote "yes" on this resolution requesting the executive branch to provide the House not later than 14 days after the adoption of this resolution the information we are seeking.

We must work the will of the people here today. Vote "yes" on House Resolution 80.

Mr. Speaker, I include the following for the RECORD:

[From the Washington Post, March 1, 1995]

FUND USED FOR PESO FACES SCRUTINY

(By Clay Chandler)

When Treasury Secretary Robert E. Rubin and Federal Reserve Board Chairman Alan Greenspan went to Congress in January asking approval for a $40 billion, U.S.-led bailout for Mexico, several Republican lawmakers offered what they thought was a better idea: Rather than risk a messy political brawl, why not tap the Exchange Stabilization Fund, a little-known Treasury Department reserve over which Rubin had almost sole control?

At a late-afternoon meeting in the office of House Speaker Newt Gingrich (R-Ga), Rubin, Greenspan, and Treasury Undersecretary Lawrence H. Summers dismissed the suggestion as impossible, participants recall.

But three weeks later, with its bailout proposal mired on Capitol Hill and the Mexican government hurtling toward bankruptcy, the administration abruptly changed its view.

On Jan. 31, President Clinton announced he was extending the Mexican government an unprecedented $20 billion in loans and loan guarantees—some of them for as long as 10 years—by drawing on the very Exchange Stabilization Fund (ESF) Rubin had said could not be used.

Now lawmakers are calling for hearings over whether the administration's use of the obscure Treasury fund violates the law. The Exchange Stabilization Fund "is not the president's personal piggy bank," Senate Banking Committee Chairman Alfonse M. D'Amato (R-N.Y.) thundered in a Senate speech last week.

On that January afternoon and in subsequent discussions, Rubin, Greenspan and Summers argued that using the fund would stretch the limits of the law and precedent, participants recall. The fund's primary purpose, they said, was for short-term currency transactions to bolster the dollar—not to rescue cash-strapped foreign governments. In any case, they calculated the $25 billion fund was too small to address Mexico's problem by itself.

But as events unfolded, administration officials reconsidered. A last-minute $18 billion offer from the International Monetary Fund, along with the money in the ESF, provided the credit administration officials deemed necessary to stabilize the peso.

"They needed a way out . . ." a House Republican involved in the discussions said of the change: "They obviously looked at the ESF at the outset and said, 'There's no way.' But when pressed, they went back and said, 'We haven't been sufficiently creative in our interpretation of the law.'"

The night before Clinton announced the new rescue plan, Gingrich, House Banking Committee Chairman Jim Leach (R-Iowa), Senate Majority Whip Trent Lott (R-Miss.) and Sen. Robert F. Bennett (R-Utah) met and agreed that the administration's bailout plan was in deep trouble. One of the lawmakers telephoned Rubin and raised use of the fund again, according to Treasury and congressional sources.

Rubin said Greenspan and others had advised him it would be politically unwise to tap the fund without congressional approval. "What if I told you that no one in Congress is going to complain?" the lawmaker asked.

"That would change things entirely," Rubin replied, the sources said.

But now, members of Congress are complaining. D'Amato has vowed to make the fund's legal status a focus of hearings later this month.

Last night, a Treasury Department official lamented that "many members of Congress are now criticizing us for what [other] members asked us to do" earlier.

Most of the past fund loans to foreign governments have been for less than $1 billion. The 1934 law establishing the fund restricts loans to foreign governments to six months unless the president "gives Congress a written statement that unique or emergency circumstances require the loan or credit be for more than six months."

Clinton has deemed the Mexican case an emergency, arguing the Latin nation has broad commercial and social links to the United States and a Mexican default might have triggered a global financial meltdown.

Many legal experts doubt opponents could overturn the administration's decision to lend ESF money to Mexico on strictly legal grounds. The fund is "under the exclusive control of the secretary," the statute states, adding, "decisions of the secretary are final and may not be reviewed by another officer or employee of the government."

That is not likely to silence congressional critics. D'Amato is likely to use hearings to question whether the funds for Mexico are really foreign aid—a use expressly prohibited by law.

In a 14-page brief to D'Amato's committee, Treasury Department General Counsel Edward S. Knight said, "Treasury has taken steps to assure that there is a source of repayment" of the Mexican loans. But the lending agreement Rubin signed with Mexico's government last week describes the Mexican oil proceeds that secure the U.S. loans as "assured sources of repayment" rather than collateral—an artful turn of phrase opponents say reflects the shakiness of U.S. claims on Mexico should the country fail to repay its debts.

Last week, Senate Majority Leader Robert J. Dole (R-Kan.), who initially endorsed the use of the ESF, expressed concern about using the fund to prop up the Mexican banking system. "The Treasury Department needs to be very careful in the use of funds from the Exchange Stabilization Fund," Dole said in a statement. "I am not convinced that thrusting the United States into the middle of a Mexican banking crisis is prudent or necessary."

Mr. LEACH. I yield 1½ minutes to the distinguished gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. I thank the gentleman for yielding me the time.

Let me say this. This is one small step in the right direction, one very small step. I think it is important for us to get the information from the administration. This is a $20 billion bailout. The Republicans made a Contract With America and Clinton made a contract with Mexico. But I guess what really bothers me is that this is going to be tough on the American taxpayer and the people of Mexico. It is a win-win for the billionaires. There are more billionaires per capita in Mexico than any other country in the world and they are coming out in great shape. They took $3 billion out of Mexico before the devaluation. We also find out that Templeton, the day before the collapse, took their money out of Mexico. All the smart money left Mexico. But Clinton put American taxpayers' dollars into Mexico. That is what bothers me. I think it is important to point out that this is working Americans' taxpayer dollars.

Mr. Speaker, all the smart money got out of Mexico. Then our Government went into Mexico. It is like rowing out to the *Titanic* and getting onto the ship and wondering why everybody else is going the other way. This is not smart policy. We are never going to see this $20 billion. This is a stabilization fund. What happens if our dollar gets into trouble? We could have used these billions of dollars to shore up our dollar. What happens when our dollar goes down as it has gone down in the past? What are we going to do to shore up the dollar? This is going to have far-reaching implications.

Mr. FLAKE. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. I thank the gentleman from New York [Mr. FLAKE] for yielding me the time. I rise in support of House Resolution 80 introduced by our colleague, the gentlewoman from Ohio.

Mr. Speaker, earlier in this session we had the opportunity to in fact uphold the Speaker's ruling that this measure and debate, should be considered by the committee, should be worked on and deliberated on by the committee, and I think the committee product has improved the measure and reviewed the contents of it.

The plain intent of this particular inquiry resolution is to deliver information to the House of Representatives and to the American people. I think that is appropriate.

I think in the past when Members have asked questions in committee, I have found that there often is a rather careless attitude with regard to the response of those questions from the members of the committee and specifically even when asked at open hearings, that the answers come back frankly in a fashion that does not provide timely information to the Members.

Mr. Speaker, I support the actions of the administration in terms of attempting to deal with the solution or find a solution to the problem with regards to the Mexican economy. I was no fan of NAFTA. I was no fan of some of the interventionist activities. But I think what this intervention points out is the dynamic nature and the related nature of the global economy. Certainly one that is south of our border in Mexico, with significant ramifications on the United States economy that demands our attention.

Whether this is the best way to go, through the Exchange Stabilization Fund, Mr. Speaker, or through some other international facility, I think that really needs to be explored. It is clear to me that this was not the first solution proposed. In fact, they tried, and that is to say, the administration and the other economic entities, the Federal Reserve Board at the Federal level, tried a number of solutions to solve this serious problem.

One solution would have been a loan guarantee proposal acted upon by the Congress, and Congress would have had a debate upon that measure. But the necessity of acting, the urgency of acting, and the importance to the American people eclipsed this proposal. Literally hundreds of thousands of jobs depend upon the economic success of Mexico in the United States, work in the United States depends upon the viability of the Mexican economy.

I am well aware, and I would agree with my colleagues that point out the political instability and the social problems in Mexico. In fact, it was the very nature of those concerns that we would like to have seen structured in any type of loan guarantee and agreement. But I am hopeful that these issues will be taken into consideration.

This is not only about monetary policy and the peso. It is about people in Mexico. It is about human rights. It is about labor. It is about the myriad of other issues that affect the Mexican country. We all want to see Mexico be successful and to play a positive role.

The problem with Mexico is not that it is unable or does not have a sound economy. It has serious, serious problems as a growing and developing nation. It is a sound economy. Mexico has a liquidity problem in terms of short-term debt that has caused this crisis, and I am confident based on the type of agreement that has been reached that we will get our dollars back and these will be legitimate loans.

I think Congress is entitled to the information requested in this resolution of inquiry. We ought to have such data. I commend the gentleman, the chairman LEACH and the ranking member FLAKE for their work on this matter and urge support for the resolution.

Mr. LEACH. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Georgia [Mr. BARR].

Mr. BARR. Mr. Speaker, from one end of this deal to the other, it does not pass the smell test. It just does not fit, it does not work, the pieces do not fit, and what we have heard from this administration is just a lot of double talk.

This resolution, if it passes, will force this administration to answer the questions about this deal from the very beginning. Does it even have basis in fact? Does it even have basis in law? And at the other end, Mr. Speaker, where are the guarantees, where is the road map that leads us to recover these moneys when and if this deal goes bad?

Mr. Speaker, this is an essential first step in forcing this administration to come clean on the Mexican bailout. Now, not tomorrow, not mañana, but now. They have to come clean and let this Government and this American people know what they are doing, why they have done it, why and on what basis they are proceeding.

Mr. FLAKE. Mr. Speaker, I yield 2 minutes to the gentleman from Vermont [Mr. SANDERS], a distinguished member of the Committee on Banking and Financial Services.

Mr. SANDERS. Mr. Speaker, as cosponsor of the original Kaptur resolution and as somebody who offered I think a very important amendment as a part of the Committee on Banking and Financial Services markup for this bill, I strongly support this resolution.

There are three basic points that I would like to make:

No. 1, at a time when Members of Congress are proposing cutbacks in School Lunch Programs, in Breakfast Programs, in programs which hurt the most vulnerable people in our society, because the claim is we do not have enough money to provide those programs, it seems to me to be absolutely irresponsible to put one penny at risk in attempting to bail out the unstable Mexican economy and the unstable Mexican Government. We have more than enough problems here at home. Let us pay attention to those problems.

Second of all, not only is the concept of the bailout wrong, it is an absolute outrage that the President and the Republican leadership would suggest that they can make the bailout going through the Exchange Stabilization Fund and not come to the U.S. Congress for a debate and a vote. It is no secret why they did not come to Congress for a vote, and the reason is, they would have lost that vote.

The third point that I would want to make is, as important as this resolution of inquiry is, it is only, and must be understood to be only a first step. We have got a long way to go.

My sincere hope is that the gentleman from Iowa [Mr. LEACH] will allow my legislation, H.R. 867, to be considered by the Committee on Banking and Financial Services and come to a vote on the floor. What that bill would require is that this bailout package and other uses of the Exchange Stabilization Fund must be approved by the U.S. Congress and the people before one penny could be spent.

Mr. LEACH. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona [Mr. KOLBE] who as always has exerted enormous leadership on every issue that affects the state of Mexico.

Mr. KOLBE. I thank the gentleman for yielding me the time.

Mr. Speaker, I rise in support and thank the gentleman the chairman of the Committee on Banking and Financial Services for the outstanding work that he has done on this. I rise in support of this resolution of inquiry. We should know the facts, we should get the information. We can make policy only when we have good information in front of us and this should be a necessary step.

But there has been a lot of I think loose facts thrown around on this floor, a lot of misinformation in the last few days on this subject, and I would like to just concentrate my remarks on one area tonight rather than talking specifically about the loan guarantees or the package that has been negotiated, the suggestions of the connection between what we are doing here or what has happened in Mexico and that of free trade itself or the North American Free-Trade Agreement.

The peso crisis in Mexico was caused by bad monetary policy in that country, not by free trade, not by NAFTA. Mexico has been running a trade deficit for a number of years. Trade deficits do not cause a currency to fall in value. Mexico could finance a trade deficit just as we have been financing a trade deficit for 20 years now, because foreign investment continues to flow into the country in order to finance it.

Unfortunately, what happened in 1994 was a series of three political crises, boom, boom, boom, which hit Mexico, and caused the problem, combined with the rise of interest rates in this country which caused investment to stop flowing into Mexico, to start flowing out.

There obviously was a solution to it. The correct but the difficult choice for the Mexican Central Bank would have been to contract the Mexican money supply to reflect the fall in investment. However, that would have caused a recession, a big recession during an election year. I am sure it is not unknown to Members of this body that we, or the administration, have jawboned the Fed from time to time to try to hold down interest rates in an election year.

There is more independence perhaps for our Fed than there is for the Central Bank in Mexico though it now has constitutional guarantees of independence, but in any event for political reasons, they did not bring down the interest rates. They should have. The answer to the problem in Mexico is that they should depoliticize the monetary policy as they have their trade policy.

□ 1830

Mr. FLAKE. Mr. Speaker, I yield 1½ minutes to the distinguished gentleman from North Carolina [Mr. WATT], a member of the Committee on Banking and Financial Services.

Mr. WATT of North Carolina. Mr. Speaker, I voted against NAFTA and might therefore be expected to be upset about the United States being in this predicament and about the administration bailing out Mexico. I am upset. I do think the administration ought to give Congress the facts about this bailout, but I think this resolution goes too far.

There is a delicate balance between the branches of Government. The executive branch is required to give us facts but the precedents do not give us the right to demand opinions. This resolution does that in several respects.

While it is important for us to get the facts, it is also important for someone to stand up for our Constitution and to remind us that the separation of powers is an important part of our form of government.

As usual, I will stand for our Constitution, even though I agree with the spirit of this resolution. This resolution simply goes too far.

Mr. LEACH. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Maryland [Mr. BARTLETT].

Mr. BARTLETT of Maryland. Mr. Speaker, I rise in strong support of House Resolution 80.

Mr. LEACH. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. STEARNS].

Mr. STEARNS. Mr. Speaker, does an economy exist to serve a society or vice versa? Argentina's Minister for Finance put it well when he said that each unit of currency is an explicit contract between the government and the ordinary holder of currency. It is supposed to remain stable through a specified period of time.

Following that logic, a purposeful devaluation breaks that contract. If that is so, Mexico has breached this contract and I submit some questions should be answered. And I compliment the chairman of the Committee on Banking and Financial Services for his resolution.

The Mexican Government should not get any more money, not one cent because they have broken their contract with their people. Please take a look at my chart and see how the rate of the peso to dollar has dropped every month since 1994, including a significant plunge from 3.45 to 4.0 in December alone. In January it dropped 5.58 and on February 21, after the announced signing of the President's loan package of $20 billion. The Mexican markets tumbled still lower, and frankly, my friends, I have a little ribbon at the bottom there because I think the market is going to go even further.

Officials in Mexico concede now there has been no indication of a turnaround in investor confidence since last week's signing of the United States $20 billion loan guarantee package. The Government of Mexico must be charged with addressing the irregularities in its own contract before asking the United States, American citizens to support any further bailout.

The President of Mexico might find it convenient to blame the devaluation on the rebels, investor pullout, political instability or some other factor, but it has become evident that there were clear signs of deficits indicated early in 1994. The administration should have known that. For whatever reason, be it political gain for whatever reason or the financial gain of Wall Street, now the average working American and the average working Mexican now must pay for this devaluation.

So I support the resolution, and I am glad it finally came to the House floor.

Mr. FLAKE. Mr. Speaker, I yield 2 minutes to the gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Speaker, I thank the gentleman for yielding me this time.

No relationship to NAFTA? I heard it early on the floor. The United States has entered into an agreement to ship $20 billion to Mexico. We are propping them up through the Bank for International Stabilization, the International Monetary Fund.

How much taxpayer money is at risk? No relationship to NAFTA? This is all about the failed NAFTA, and a bunch of people trying to cover their derrieres because the things we predicted would come about if we entered into this agreement have come about.

What authority was used to enter into this agreement? Never before in the history of the Economic Stabilization Fund, 60 years, has this kind of credit been extended to a foreign power. In fact, when it was first suggested by the Republican leadership to the administration that they use the Economic Stabilization Fund they said it was impossible. It was only later that the administration switched its position.

What terms? Twenty billion dollars. How much of the BIS money is our money? How much of the IMF money is our money? How much are the U.S. taxpayers on the line in this backdoor bailout?

What security? The oil security, the oil funds that are already totally pledged by the company that has no money even to make capital investments because they are so oversubscribed to meet other obligations in Mexico? That is security?

Who benefits? We need the names of each and every business and individual who receives a disbursement that is related to these bailout funds. The American taxpayers have that right.

We will begin to answer some of those questions, only begin with this resolution of inquiry. We must go further. We need to restrict the use of this fund in the future to supporting the U.S. currency and the interests of the United States of America, not foreign authoritarian regimes that are creating billionaires and disasters south of our border.

Mr. LEACH. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New York [Mr. KING], who has probably contributed as much to this resolution as anybody, along with the gentlewoman from Ohio [Ms. KAPTUR].

Mr. KING. Mr. Speaker, I thank the gentleman for yielding me this time.

At the very outset I want to commend Chairman LEACH for his leadership in this and the gentlewoman from Ohio, Ms. KAPTUR, for the leadership she has shown, indeed, the bipartisan spirit of the Committee on Banking and Financial Services which brought this resolution to the floor.

Mr. Speaker, this is a critical time in America's history and if you are on one side of NAFTA or the other the fact is this resolution is imperative, because this will allow the American people to see exactly what went on, to see exactly what American policy has been toward Mexico, what Mexican policy has been, what the role of the IMF has been, what the role of the Treasury Department has been, and also exactly what authority the President had to use the funds. These are very real, serious questions.

I think the President should have shown more leadership. If he thought this was in the national interest then the President of the United States had the obligation to go to the American people and make sure they understood where he was coming from. The fact was he did make an arrangement which the American people see to be behind closed doors, so it is absolutely imperative this resolution be adopted so all documents and all data are made available to the American people.

I urge adoption of the resolution.

Mr. FLAKE. Mr. Speaker, I yield 1 minute to the gentleman from Indiana [Mr. VISCLOSKY].

Mr. VISCLOSKY. Mr. Speaker, I urge adoption of House Resolution 80.

As an original cosponsor of the Kaptur resolution of inquiry, I am very concerned about maintaining the balance of power between the executive and legislative branches of government. I am also very concerned about safeguarding this institution's prerogative of the purse.

Today's vote is our first real opportunity to protect America's wallets and reclaim our constitutional authority regarding the Mexican bailout. Given the magnitude of the Mexican bailout and the exposure of the American taxpayers I believe that congressional approval should have been sought originally. Sure, it would have been a tough sell. But coming in after something goes wrong will be impossible.

Barring that, the disclosure called for in this resolution of inquiry is eminently reasonable.

I urge passage of the resolution so that we can find out what the Mexican bailout really means for the American taxpayers.

Mr. LEACH. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Pennsylvania [Mr. FOX].

Mr. FOX. Mr. Speaker, this resolution is certainly vital to all of the interests of individuals in every single State. The fact is that we saw an action by the President without any kind of congressional involvement regarding the problems dealing with Mexico and with the drug trafficking and with the immigration problems. This resolution will give us for the first time the information behind the President's request for the funds, behind the President's $20 billion guarantee of funds for Mexico.

Frankly, it is appropriate. We need to know on what basis the President has made these assertions, why he has used the money, and what is really happening with it and in fact what is happening with Mexico and what is going forward.

Congress deserves to have the answers, and by moving forward with the resolution, the American people will have those answers to go about our business.

Mr. FLAKE. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Speaker, the Treasury was there, the Federal Reserve was there, the International Monetary Fund was there, the Bank of International Settlement was there, the Exchange Stabilization Fund was there. The banks of Mexico and their representatives were there. Basically, Wall Street and their representatives were there. Everyone was there at that table except the American people, because the Congress of the United States keeps turning the other cheek and the White House just keeps servicing all of the cheeks they can in Congress.

Beware, Congress, a new autocracy is emerging in what was once a democracy in America. Think about it.

A President declared war in Vietnam, a President enacted two major trade agreements, NAFTA and GATT, without a two-thirds vote of the Senate, and now a President is bailing out another sovereign country, and I do not blame the President. I blame Congress, from Johnson through Clinton, for taking the power of the people and the Constitution and handing it to the White House, giving it to the White House, and then complaining for what they do.

Thomas Jefferson is rolling over in his grave. We are not Members of Congress. We are nothing more than trustees. Now we are going to give him a line-item veto. He makes book with 34 Senators, he does not even call Mr. FLAKE, he does not call Mr. LEACH. He does not need to anymore.

We have gone too far, Congress, and I do not blame the President. I blame Congress, and this should not have happened without the people's representatives, duly elected, being there to approve it. And that President was going to ask, but our congressional leaders, both Republican and Democrat, gave him the wink, gave him the nod, and said go ahead on it because it is too hot for us.

Well, let me tell you what is so hot, folks. We are just turning over the Constitution and shredding it about as good as they did in Iran-Contra.

I am just one voice here but I will not have any congressional leaders giving a wink and a nod with my vote, and I am not going to surrender my voting card to anybody around here.

This new autocracy within our democracy is real. I think it is time that we get down to business. I want to commend the gentlewoman from Ohio who has done a great job, and the gentleman from Iowa [Mr. LEACH], who has been very fair. I am going to support this resolution, but it is not enough. In the future, ladies and gentlemen, the President should be scared not to confer with the Congress of the United States and get its blessing through a duly recorded vote. If we learned anything about Vietnam that is the lesson we should have learned.

Mr. LEACH. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Indiana [Mr. BURTON], chairman of the Latin American Subcommittee of the Committee on International Relations.

Mr. BURTON of Indiana. Mr. Chairman, I thank the gentleman for yielding me this time. Let me just say I concur with much of what my colleague from Ohio just said. The fact of the matter is none of this should have happened in the first place. It should have been brought before the Congress for an up or down vote right from the get-go, but unfortunately the President found that he did not have the votes to pass it. Eighty percent of the American people did not want this to take place. And so what did they do? They did an end run around the Congress of the United States and they used the Exchange Stabilization Fund, I believe illegally, to bail out Mexico. As has been said here before, the peso continues to drop.

Let me just tell Members something. I believe, and I think I have heard today, that $7 billion has already been sent to Mexico, and while this resolution today, this resolution of inquiry is absolutely essential so we can get the facts for the American people, it certainly is not enough and we need to act very expeditiously in this Chamber to cut off additional funds from going down there.

What I am afraid is going to happen is this resolution of inquiry is going to go on for weeks and months before we get all of the facts, and more and more and more of American taxpayer dollars are going to go down there during the interim.

We need to bring legislation to this floor immediately, cutting off any more money going to Mexico until we get the answers to these questions. We have got it backward. We should stop the money from going down there first, then get the answers to the questions before we send one more dime down there.

☐ 1845

I fear the $7 billion that has already been sent is down a rat hole, and we are talking about another $45 billion on top of it, not $45 million, folks, 45 thousand-million-American dollars. The taxpayers of this country do not want it.

That country is in real economic turmoil, and we simply cannot afford to use taxpayers' dollars to bail them out, especially when we do not have all the facts.

Mr. FLAKE. Mr. Speaker, I yield 2 minutes to the gentlewoman from Missouri [Ms. DANNER].

Ms. DANNER. Mr. Speaker, this agreement to provide $20 billion dollars of taxpayer money for loans and loan guarantees to Mexico is simply an end-run around the wishes of the American people. In fact, if the United States' share of the total $50 billion package is included, the amount of our financial exposure is substantially higher than $20 billion.

Unless there is a fundamental change in the stability of Mexico, this package will, at best, delay the final day of reckoning. Each time the United States comes to Mexico's rescue, it encourages the Mexican Government to continue to make irresponsible economic decisions.

Just as some see welfare as encouraging reckless behavior, so too does this $20 billion welfare check given to Mexico. Unlike welfare, however, this money will ultimately go to the Wall Street and international investors who, until this crisis erupted, were receiving handsome returns on their investments. These individuals did not share their profits with the American taxpayers, but they wish to shift any losses!

The American people know when their pocket is being picked and they resent it, as do many of us in the Congress.

Mr. LEACH. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from North Carolina [Mr. FUNDERBURK].

Mr. FUNDERBURK. Mr. Speaker, I rise in strong support of House Resolution 80 and I urge the House to quickly get to the bottom of the deal between Wall Street and the PRI regime in Mexico City.

Mr. Speaker, on November 8, the American people voted for less taxes and smaller more efficient government. They expect no less in our conduct of foreign policy. The people of my district instinctively recognize that the proposed bailout of Mexico is a massive subsidy for the disastrous economic decisions made by Wall Street and dishonest Mexican politicians.

Mr. Speaker, this is not the first time we have "rescued" Mexico. Each time we have "saved" the Mexican economy, the Mexican government refused to reform itself. Remember, the same party has ruled Mexico for 80 years. The government is rife with corruption, just yesterday the brother of the last President of Mexico was arrested for masterminding the assassination of a reform presidential candidate. What there is of a modern economy is dominated by state owned monopolies. The latest Mexican administration promised it would never turn its back on its investors. But what did it do. One week into office, the Mexican Government pulled the plug on the peso, sending its value plummeting by 30 percent and leaving Wall Street holding the bag. Rather than pay for their mistakes, the financiers now demand that the taxpayers bail out Mexico to pay off their own bad investments.

Mr. Speaker something is seriously wrong here. What sort of message is sent when Washington insists that holders of high risk securities are bailed out by the taxpayers? When the Secretary of the Treasury worked for Goldman Sachs, his firm didn't share with the people the massive profits it earned when it was making a fortune speculating in Mexico in the 1980's. The same system which rewarded his old firm should also work to penalize his former colleagues who gambled and lost—once again—on the Mexican government. And I ask Mr. Speaker, why was a man whose former company is the largest underwriter of Mexican stocks allowed the keys to the people's treasury.

Mr. Speaker, if Mexican corruption was not enough, what does this administration have to say about the PRI's ties to Cuba. According to the Wall Street Journal, Mexico's state run communications, textile, and oil monopolies have invested billions in Castro's economy. The Mexican government is rushing to buy into everything Castro has to sell. Mexico's investments in Cuba appear to be all that is keeping Castro afloat and yet there are many in this town who see nothing wrong with letting Mexico City off the hook while it conducts business as usual with Havana.

Mr. Speaker, we have had enough of broken Mexican promises on trade, monetary, and free market reforms. I have heard from the people in my district. They are angry. I say this respectfully but, they tell me that if the new Republican majority quietly goes along with the Clinton bailout, it should be prepared to suffer a backlash from the voters. As I have noted on this floor, Main Street Dunn, North Carolina has had enough of picking up the cost for other peoples' rashness. It is finally time to end the folly of taxpayer funded giveaways to regimes which do nothing but thumb their noses at the American people.

There must be a vote in this Chamber on the White House unilateral action to fund the bailout, but today, Mr. Speaker, let us support the King-Kaptur resolution as the first step in the process of getting to the bottom of the bailout.

Mr. LEACH. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. FOLEY].

Mr. FOLEY. Mr. Speaker, in 1920 Will Rogers said, "Let Wall Street have a nightmare, and the whole country has to help them get back in bed again." Well, Wall Street had a nightmare in December. The nightmare started as poor monetary policy in Mexico. The peso plunged, bond prices dropped. Wall Street speculators were left holding bad investments, and now, just like Will Rogers said 75 years ago, we are going to help get them back in bed.

We are bailing out Mexican bankers and Wall Street millionaires. But what are we doing for the people in America?

In Washington, the symbolic center of our country, we tell our Mayor, Marion Barry, to go up to New York and borrow money for himself; Orange County, CA, we tell them, "Sorry, folks, the administration is too busy helping things south of the border." Never mind Orange County faces a $3 billion loss, or a thousand county-funded jobs at risk, jobs and services for American citizens. Our own people struggle while we plead special interests and bail out Mexico.

What has Mexico become? The 51st State? What conditions have been made a part of this agreement?

Let me tell you one of them. We are requiring Mexico to have a surplus by 1995. The same administration failed to do that and criticizes a balanced budget in this country.

Mr. FLAKE. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. KLINK].

Mr. KLINK. Mr. Speaker, I thank the gentleman for yielding me this time and for his kindness in this matter.

As an original cosponsor of this resolution, I rise today in strong support of House Resolution 80. I join my dear friend, the gentleman from the State of Ohio [Mr. TRAFICANT], in stating it is high time Congress step forward and do what duty demands of Congress. It is high time that we on the floor of this House debate the Mexican bailout.

It is not up to the President of the United States to have the ability to commit billions upon billions of dollars as he has done in this instance without congressional approval. This, ladies and gentlemen, is a reverse Robin Hood action. This is stealing from the poor to give to the rich. This is taking from poor taxpayers, giving to rich Wall Street investors, who went down to Mexico after NAFTA was approved, and when the peso was devalued, they lost some of their investment. Now we are being asked to go down there and bail them out.

But at the same time, as the gentleman from Vermont [Mr. SANDERS] pointed out a little bit earlier, we are saying we have to cut back on educational funds, we have to cut down on school lunches, and we have to cut down on veterans' benefits, but we have got all kinds of billions of dollars to take down to Mexico.

I ask, where was all this money, where was this concern from Washington, DC, when the steel industry collapsed in this Nation? When was there as American bailout when the glass industry, the electronics industry, and many other industries across this country went down? When was there an American bailout? When did we bail our the American people of this country?

Yet we are being told this is for the benefit of the American taxpayers.

We are now willing to provide all of this money to a country that is rife with human-rights abuses. It has a banking industry that appears to be heavily involved in international drug trade, and may well be on the brink of civil war and whose national leaders, according to the front page of today's paper, are going around plotting each other's assassination.

This resolution today is the first step in answering some very important questions. Will Mexico be able to make good on their end of the deal? What will Mexico do to prevent another crisis? Who is really benefiting from this bailout?

Mr. LEACH. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Ohio [Mr. CHABOT].

Mr. CHABOT. Mr. Speaker, I rise to oppose President Clinton's Mexican bailout schemes and to support this factfinding resolution.

It is time the White House came clean. What did the Clinton administration know about Mexico, and when did they know it? Who are the private speculators who benefit from this deal?

The American taxpayers have a substantial interest in this bailout, and they deserve some honest answers from this administration.

As a member of the Committee on International Relations, I frankly was appalled when high administration officials ducked our hearings on this scandal, but apparently they wanted to keep the public in the dark. The administration's handling of this matter smacks of a backroom deal. In fact, it stinks.

President Clinton has tried to go behind our backs. So it is time to go over his head right to the American people. This House represents the taxpayers. We are responsible for spending decisions, or at least that is what the Constitution says.

Let us win one for the American people. Pass this resolution.

Mr. LEACH. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Speaker, I support this resolution.

But let us not kid ourselves. We do not need more information., We need to stop this bailout. We have the power in Congress to stop it, and we are not. Instead, we are asking for information.

The American people see what we are trying to do here in the last few weeks. We have been trying to balance the budget. Here we are, we are struggling. We are struggling to cut spending here and cut spending there, trying not to hurt our own people, trying to cut down on some programs, knowing that our people have come to depend upon them, but realizing that a balanced budget is so important both to our own people but to their children. It is important for us to balance our budget, yet we are cutting programs on which our people and their children depend.

It is a betrayal of the interest of our own people, the American people, for us to cut spending here in the Congress of the United States while sending other funds in the tens of billions of dollars to Mexico or to give it to Wall Street speculators. The American people have a right to expect more from us.

If we are not watching out for their interests, who is watching out for their interest?

Spending tens of billions of dollars without so much as a vote of Congress is a violation of everything that this democratic government is supposed to be about, and it is a violation and betrayal of the trust that has been put in us by the American people. Our people have borne the burden for other people in this world for far too long. Now we insult them after the cold war is over, after they bore the burden of the cold war, after they bore the burden of stopping Nazism and Japanese fascism, and now we insult them by asking for information instead of asking for a direct vote in stopping this bailout and the use of tens of billions of dollars that should be going to the benefit of our people, but instead are going to Wall Street speculators and foreigners.

It is a disgrace.

Mr. FLAKE. Mr. Speaker, I yield 2½ minutes to the gentlewoman from Ohio [Ms. KAPTUR].

Ms. KAPTUR. Mr. Speaker, I would ask the gentleman from California [Mr. ROHRABACHER] if he would be kind enough to take a microphone. I would like to enter into a colloquy with him, and perhaps the gentleman from Texas [Mr. STOCKMAN].

I think it is maybe perhaps important for us to explain to the membership and to the listening public that the only way we could get any vote on this matter was to enter a privileged resolution 2 weeks ago asking the Committee on Banking and Financial Services to discharge this bill to the floor. They had 14 days in which to do that, and we thank the chairman, the gentleman from Iowa [Mr. LEACH], and the ranking member, the gentleman from New York [Mr. FLAKE], for doing that.

Our wish would be to have a straight vote on disallowing the use of the Exchange Stabilization Fund for this purpose and to stop appropriated moneys and those funds from outflowing without a vote of Congress. We want a vote.

The fact is our own leadership on both sides of the aisle have not agreed to give us that vote. So I think it is important for the membership to understand this is a base hit. It is not a home run, but at least we are at first base.

Mr. ROHRABACHER. Mr. Speaker, will the gentlewoman yield?

Ms. KAPTUR. I yield to the gentleman from California.

Mr. ROHRABACHER. I agree with you. There is an elite in the United States of America who think that they own this country, and they do not own this body.

We may be spending tens of billions of dollars right now, but the people will be heard. This is the first step toward making sure that the people's voice holds sway in Washington, DC, and the Nation's Capital.

Those Americans who are listening to us right now should make sure that they contact their Representative and write the White House and make sure that the leaders here in Congress and in the executive branch get the message that we have got to stop shoveling money south of the border, stop paying off Wall Street speculators.

They want a balanced budget. The American people want a balanced budget. And we are betraying everything that they want.

The SPEAKER pro tempore. The Members are advised to address the Chair, not the listening audience.

Mr. ROHRABACHER. Just to finish this, they should be contacting their representative in the White House. We can get a vote on this, and we can turn it around.

□ 1900

Ms. KAPTUR. I yield the remaining time to the gentleman from Texas [Mr. STOCKMAN].

However, prior to that, I mention on page C-1 of the Washington Post today House Speaker NEWT GINGRICH, Treasury Secretary Rubin, Alan Greenspan, Undersecretary Lawrence Summers were heavily involved in this agreement. We need to know what their involvement was, as well.

Mr. STOCKMAN. Mr. Speaker, I just want to tell the gentlewoman from Ohio [Ms. KAPTUR] how grateful we are to her to get this ball rolling. I think for many Members of Congress it has been a real frustration, and the gentlewoman has taken the lead in that effort.

Mr. LEACH. I yield such time as he may consume to the distinguished gentleman from Florida [Mr. GOSS].

Mr. GOSS. I thank the gentleman from Iowa for yielding time to me.

Mr. Speaker, I rise in support of the resolution of inquiry on the President's aid package to Mexico, and I urge support for the resolution of the gentleman from Iowa.

Mr. Speaker, I rise in support of the resolution of inquiry into the President's aid package to Mexico. Immediately following the announcement of the first $40 billion proposal, I notified Secretary of the Treasury Robert Rubin of some specific concerns I have with regard to the implementation of NAFTA, the bailout proposal, and United States relations with Mexico. These included the question of having adequate guarantees to protect United States taxpayers and interests, the question of why a $40 billion aid package for Mexico and Mexicans took a higher priority than NAFTA casualties in the United States, and the concern that Americans were being asked to bail out Mexico so that Mexico can continue to bail out Fidel Castro's brutal regime in Cuba. While Secretary Rubin has responded to my letter, his response failed to directly address the specific points I raised. In fact, there are a lot of unanswered questions about this deal and many Americans, myself included, remain deeply troubled by the fact that the administration did not make its case for the bailout to the Congress. While the executive branch has the authority to make the bailout deal with Mexico, I support Chairman LEACH's resolution because there is a clear need for congressional oversight of the process. Mr. Speaker, it is time for some real answers from the Clinton administration.

Mr. LEACH. Mr. Speaker, I yield 2 minutes to the distinguished chairman of the Committee on International Relations, the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support House Resolution 80 requesting the President to submit information to the House concerning the actions of this administration to support the Mexican peso.

Its adoption will ensure that we will have the documents we need to evaluate the condition of the Mexican economy and the use of the funds from the Treasury Department's Exchange Stabilization Fund.

With this information, the Congress and the American people can be the judge of whether this unprecedented financial support package is warranted in light of our close relations with Mexico.

Opponents and proponents alike of the $20 billion economic support package for Mexico agree that this measure is needed to determine what other institutions, such as the International Monetary Fund, and the Bank for International Settlements are doing to assist the United States in bringing Mexico back to financial health.

Next week, the International Relations Committee will hold its third round of hearings on the Mexican economic crisis with high-level officials from the Treasury and the State Department with the goal of requiring this administration to put on the record the results of its intensive discussions with the Mexican Government in such areas immigration, democratic reform, law enforcement, drug interdiction and the extent of Mexico's commercial relations with Cuba.

Our efforts in this hearing will further the same goals advanced by the authors of this legislation. They will both lead to a broad public inquiry into the proposed economic package to Mexico. I urge the adoption of this resolution.

Mr. LEACH. Mr. Speaker, I yield 1 minute to the distinguished gentleman from South Carolina [Mr. SANFORD].

Mr. SANFORD. I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in support of this resolution because I think it is an appropriate first step in our beginning to correct this misallocation of U.S. taxpayer funds.

I think at the core, what we are dealing with is a constitutional issue because, in the past, Congress has made other loans, whether to Lockheed, Chrysler or New York City or Israel, but in every instance we came on down to the floor of this House and argued that point.

Now, for the first time, we are talking about having the President go out and appropriating funds. If you look at the Exchange Stabilization Fund, what you find is that in the past it has been used for about 2½ months. Now a longer period, 40 times longer, of 10 years.

Now, in the past we have seen loan amounts of about $250 million. In this case, it is something like 80 times greater than that, with a loan of $20 billion.

It does not pass the commonsense test, and I think this resolution moves us in the right direction.

Mr. LEACH. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Texas [Mr. STOCKMAN].

Mr. STOCKMAN. I thank the gentleman for yielding this time to me.

Mr. Speaker, I am very happy that this bill is here today, but I think it was so eloquently stated that this is only the first base. This Congress is responsible to the American people, and we have been left out of the process.

When people call us and tell us how they feel and we turn our backs, they know the institution is broken. Yet time and time again we are called upon to do the right thing, and we run and hide. We have been working very hard to get this vote, an up or down vote, to cut off funding, and yet they are not allowing us to vote. That is wrong.

We need to do the right thing here and the right thing for America and allow us to speak the will of the people. I think the will of the people will say no money for a country in which its president's brother was willing to participate in an assassination. The government is corrupt, the system is corrupt, and we do not need to subsidize it with American dollars.

Mr. FLAKE. Mr. Speaker, I yield 2 minutes to myself for the purpose of yielding to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. I thank the gentleman for yielding to me.

Mr. Speaker, I had spoken earlier, and I again reiterate my support for this resolution of inquiry. I think it is important that this House of Representatives, with this new majority on this day, is standing up for the prerogatives of the House of Representatives and for the Congress in general.

I think many of us have been concerned that the actions, while maybe well-intentioned, have tended to, in fact, question or limit or shed the powers of Congress which are so necessary as such powers come from the people we represent and provide us the opportunity to exercise the responsibilities that we have sworn to uphold.

I think the issue here, Mr. Speaker, is one of great concern with regard to the Exchange Stabilization Fund. This fund, as Members know, the dollars there have been appropriated in years past, and those dollars obligated at the prerogative of the administration and other executive officers who in fact, expend and use these funds. The United

States/Mexican agreement is a use of the E.S.F. fund that is unprecedented. However, going back some 20 years, Congress has granted this utilization to deal with exchange and other types of economic problems that are occurring in global markets around the world.

These issues, what happens south of the border, are very important to our economy. Upholding the U.S. economy in this manner is a legitimate and significant concern to the administration and the American people. The administration, in this particular case, had sought to have a less far reaching initiative to deal with Mexican peso crisis. In one instance, the President did submit a request for guaranteed loan for the Government of Mexico and for this particular problem.

I think it should be pointed out that none of these dollars, many of these dollars will not, in fact, be outstanding, that they are loans, they are safeguarded with Mexican assets. We are hopeful. According to the agreement signed, or the intention signed, by President Clinton, Senate Majority Leader DOLE, Speaker GINGRICH, Leader GEPHARDT, and by Leader DASCHLE, these issues will, in fact— and they do agree that the provisions of this agreement—will be workable.

I would hope many of my colleagues are going to be satisfied with the information and answers from the questions they pose.

Mr. FLAKE. Mr. Speaker, I yield 1½ minutes to the distinguished committee chairman for the purpose of yielding to the gentleman from Tennessee [Mr. DUNCAN].

Mr. LEACH. Mr. Speaker, I yield to the distinguished gentleman from Tennessee [Mr. DUNCAN].

Mr. DUNCAN. Mr. Speaker, I thank both gentlemen for yielding.

Mr. Speaker, I rise in strong opposition to the President's bailout of Mexico and in strong support of this resolution. I am proud to be an original cosponsor.

I especially want to commend the work of the gentlewoman from Ohio [Ms. KAPTUR] on this resolution.

Mr. Speaker, our first obligation should be to the American taxpayers, not to the taxpayers of Mexico.

Mr. Speaker, Lawrence Kudlow, the economics editor for National Review, wrote recently:

> Voters who want smaller and more frugal government at home, with a new emphasis on personal responsibility, expect no less in our policy dealings abroad. Broken Mexican promises on trade, money, and free market reforms should not be rewarded with a big government bailout. Sound money and sound fiscal policies are the only lasting answers.

Mr. Speaker, A.M. Rosenthal, the New York Times columnist, who would, I am sure, classify himself as a political liberal, said:

> Could it be that the Administration had so enthusiastically promoted Mexico that it would have been terribly embarrassing—an election coming up and all—to disclose that Mexico suddenly could not go on backing up its pesos and bonds unless the United States offered heavy loans to bail out investors?
>
> This mess was created by the cowardice of bureaucrats and the mistakes of investors, theirs and ours. Americans would be foolish—I am being exquisitely polite today—if they agreed to any loan before they found out which American and Mexican investors would be the big beneficiaries.

I say let us stand up for the taxpayers of this country and not bail out the billionaires on Wall Street and in Mexico.

Mr. LEACH. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Kentucky [Mr. BUNNING].

Mr. BUNNING of Kentucky. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in very reluctant support of this resolution.

Mr. Speaker, I rise today in very reluctant support of this resolution which amounts to after-the-fact oversight of Mr. Clinton's end run around the Congress. I only wish that Members of Congress had an opportunity to vote on a bill to force Mr. Clinton to cancel his dictator-style use of the taxpayers' money.

Unfortunately, we are forced to settle for this too little, too late resolution that is even less than a slap on the wrist for an unprecedented power grab by the President. It sickens me that this body is going along quietly with it.

For anyone who was not watching, the President could not get enough support in Congress to go along with his scheme to put the American taxpayer on the line to bail out the Mexican Government. So, he went ahead on his own and raided the exchange stabilization fund to the tune of $20 billion to subsidize the bad decisions of the Mexican Government and big Wall Street investment firms.

Now, after the dirty deed has been done, we offer up a resolution to request a few documents from the White House and the Treasury. We will go through the motions of reviewing what Mr. Clinton and Treasury Secretary Rubin have done and in the meantime the American taxpayer is left holding the IOU.

I am certain that Secretary Rubin had no concern for the financial interests of his old partners at Goldman, Sachs & Co., one of the big Wall Street investment firms, when this deal was brokered. I am sure that his only motive was to serve his country.

Mr. Speaker, I will be interested to see the President's explanation of how he has the authority to obligate billions of dollars without congressional approval. His actions seem to fly directly in the face of the Constitution and they undoubtedly are not what the Congress and the American people wanted.

In fact, the President would seem to have many questions to answer. How can he justify raiding the exchange stabilization fund which was designed to protect the dollar? What does he intend to do if, after taking $20 billion of the $27 billion in the fund, the dollar gets into trouble in the foreign exchange markets? How does he intend to replenish the fund? What actions will he take to make sure that Mexico changes its economic practices to insure that there is no repeat of the peso disaster? The list could go on ad nauseam.

As representatives of the American people we are entitled to answers to these questions. The President may well have broken the law in obligating the funds from the exchange stabilization fund and Congress is obliged to raise the issue and thoroughly investigate.

I applaud my good friend from Alabama, SPENCER BACHUS, the chairman of the Banking Oversight and Investigations Subcommittee, for calling for hearings into this matter. This little half-hearted resolution should not be the end of the inquiry. It is barely the beginning.

Good intentions are not the same as good results no matter how much Mr. Clinton and his followers wish that it was so. His supposedly good intentions appear to this Kentuckian to be a bold-faced grab at congressional power. We cannot and must not let that challenge to congressional control of the purse go unanswered.

I will vote for this feeble resolution but only in anticipation that it is the first step toward resolving this constitutional conflict, not the last.

Mr. LEACH. Mr. Speaker, I thank the gentleman, and I yield 30 seconds to the distinguished gentleman from North Carolina [Mr. COBLE].

Mr. COBLE. I thank the gentleman from Iowa for yielding this time to me.

Mr. Speaker, I just came onto the floor. I have heard none of the debate, but I say to you that many people have blamed this chaos on NAFTA. NAFTA has nothing to do with it. This involves sloppy fiscal mismanagement in Mexico and should be cleaned up there.

I have referred to this episode as Pesogate. And I think the time has come to open wide Pesogate to allow us to closely examine every minute detail surrounding it.

I thank the gentleman from Iowa for yielding, and I thank the gentlewoman from Ohio for her work in this effort.

Mr. FLAKE. Mr. Speaker, recognizing the majority's right to close, I would like to yield the remaining time to myself for closing debate.

Mr. Speaker, today I realize why so many people have risen and made, in spite of their support for this particular resolution, have also stated correctly that there are many problems in America that need to be resolved. It is my hope that, as we have been able to come together and put together a bipartisan bill for purposes of moving ourselves to the point of the right position for those of us who are Members of Congress, we might also do the same thing as we look at the many problems which are endemic to the communities here in America.

I think, as we talk about loan guarantees in particular and we look at ways by which we might be able to solve and resolve many of the crises existing in our urban communities, which is America's Third World country, and some of them even in our rural communities, there is a necessity for us to also have the same kind of aggressiveness and same kind of vigilance as we try to solve the problems here at home.

I think most Americans would be more than willing to support any enterprise that we develop that would assist our neighbors. But I think good charity indeed begins at home, and because of that many of our citizens would be more comfortable in supporting even an endeavor like this if they were not losing jobs, if they did not see their communities deteriorating, if they did not see their children starving, if they did not see educational systems that are in a state of shambles, if they did not see all around the criminal element which has been allowed to run rampant in our streets.

If we make the best uses of our resources, it seems that we ought to start at home, which means providing a level of stability for every citizen so they understand that the responsibility of government is to try to bring them the quality of life that is consistent with our talking about our being a democracy.

More importantly, even as we export that democracy to other countries abroad, we ought to do all in our power to make sure that it is the essence of a quintessential nation which understands the process by which all citizens are included.

If we can do that, I believe we can move forward better supporting other nations. I would support this resolution along with others, Mr. Speaker, and I would hope that the day will come when we take the same attitude as it relates to our own country.

Mr. Speaker, I yield back the balance of my time.

Mr. LEACH. Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts [Mr. BLUTE].

Mr. BLUTE. I thank the gentleman for yielding, and I rise in support of the resolution.

Mr. LEACH. I yield such time as he may consume to the gentleman from South Carolina [Mr. GRAHAM].

Mr. GRAHAM. I thank the gentleman for yielding.

[Mr. GRAHAM addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. LEACH. Mr. Speaker, I yield 1 minute to the gentleman from Oklahoma [Mr. ISTOOK].

Mr. ISTOOK. I thank the gentleman for yielding so that I may engage in a colloquy with the gentleman from Iowa.

Mr. Chairman, I would like to confirm the intent of some disclosure requirements under this legislation. Currently, monthly reports by the Treasury Department do not detail "all transactions," as stated in Federal law, but limit the reporting to balance sheet information.

My question is: Does the gentleman concur that paragraph 20 of this legislation is intended to secure for all Members of this House the details of all Exchange Stabilization Fund transactions during the past 24 months?

□ 1915

Mr. LEACH. I would respond, yes, that is the clear intent of paragraph 20.

Mr. ISTOOK. And further inquiry, Mr. Speaker, different official reports show a $4.5 billion discrepancy between the assets and liabilities reported of the exchange stabilizing fund as of the close of the last fiscal year on September 30, 1994. My question is, do you concur that resolving any discrepancy as of the end of the calendar year 1994, as stated in paragraph 27, will necessarily require that the Treasury Department also provide us with documents that we hope will explain and resolve the $4.5 billion discrepancy as of September 30, 1994?

Mr. LEACH. I would fully concur with the gentleman's assessment.

Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from Idaho [Mrs. CHENOWETH].

Mrs. CHENOWETH. While the Clinton administration attempts to placate congressional and befuddlement through oil collateral and independent banks and other financial mismanagement and financial considerations, no talk is heard about breaking monopolies. There are many unanswered questions that we have about this package, and while this resolution is a resolution that I not only support, but I was honored to cosponsor and will vote for it, we also need to forge ahead and pass H.R. 807, the gentleman from Texas [Mr. STOCKMAN] resolution, which would put a halt to this subversion of the Constitution and prevent any more money going south to Mexico. An economy should serve the people, not bound it. The United States ought not to be supporting this debacle, and funds should be stopped immediately.

Mr. LEACH. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. DE LA GARZA].

[Mr. DE LA GARZA addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. LEACH. Mr. Speaker, in conclusion let me state that an original cosponsor of this resolution, the gentleman from California [Mr. HUNTER] had hoped to be here today, but he is, unfortunately, in San Diego tending to an illness of his wife.

Mr. Speaker, let me just conclude by saying this resolution represents a desire for greater accountability related to one of the first crises of the new economic order. In the background of this debate is macroeconomic decisionmaking as it relates to the intertwining of global economies. In the background also is the refusal of this Congress in a timely fashion to respond to the administration request to act on a bipartisan basis to this particular crisis.

Mrs. COLLINS of Illinois. Mr. Speaker, I rise in support of House Resolution 80 and urge my colleagues to do the same.

This legislation is quite straightforward. It simply requests the President to provide to Congress, within 14 days of the adoption of this resolution, documentation comprehensively detailing the facts behind the $20 billion United States bailout of the Mexican economy. Is it really too much to ask that the American people be fully informed of how their hard-earned dollars are about to be used and what methods have been employed to secure this deal? It think not.

This body was never allowed to debate the Mexican-aid package, never allowed to fully consider the supposed need for this aid or the ramifications of relief actions on the part of the United States, never allowed to bring this issue to a vote. In short, Mr. Speaker, the Congress and the American people were never given the ability to decide what really is in the best interests of our Nation in this matter.

At a time when some members of this institution are drastically slashing discretionary spending and placing Social Security, Medicare, and Medicaid and vital safety-net programs on the chopping block, the United States is providing a security blanket abroad. When the GOP alleges that we supposedly cannot afford to provide a hot lunch for our grade school youngsters, when loans for our own children to attend college or resources for our blighted urban areas to be revitalized are in jeopardy, this country is nonetheless floating a check to Mexico without revealing what safeguards and conditions are in place, if any. How about investing these billions in targeted funds to our cities, our children, our unemployed, sick, and elderly? I seriously question the priorities outlined by this deal, Mr. Speaker.

I strongly suggest that my colleagues vote for accountability, vote for openness, vote for the right of this body to exercise its full constitutional authority on behalf of the American people we represent—vote for House Resolution 80.

We need to let the sun shine on the Mexico bailout once and for all, Mr. Speaker. The American people demand and deserve it.

Mr. COSTELLO. Mr. Speaker, I rise today to support the resolution before the House which would ask the President to provide, within 14 days, a broad range of documents relating to the financial rescue package the President is extending to Mexico.

I have opposed the Mexico loan bailout since the day it was proposed by President Clinton and endorsed by Speaker GINGRICH and Senate majority leader DOLE. I still believe there is significant evidence Mexican officials improperly inflated the peso to ensure positive economic results from our passage of the North American Free-Trade Agreement. This was just one of the reasons I opposed NAFTA. Unfortunately, it could now mean that U.S. taxpayers' dollars are at risk.

This resolution will enable the appropriate committees to examine the documents the Clinton administration and Mexican officials recently signed through the Treasury Department's exchange stabilization fund. It is important that Congress, in its oversight role, have an opportunity to closely examine the documents involved in the $20-billion assistance package.

Mr. POSHARD. Mr. Speaker, I rise in support of this resolution to ascertain the facts with respect to the bailout of the Mexican Government after the devaluation of the peso.

Only when we have the appropriate facts will we be able to determine whether this was in the best interest of our own country. This country, through the NAFTA, has inextricably bound itself to the well-being of the Mexican economy.

We are now so heavily invested in Mexico with American taxpayer pension and retirement funds that we can not afford to let the Mexican economy fail.

We should never have allowed ourself to get into this position. Only through a complete reevaluation of the facts can we be able to determine an appropriate course for the future.

Mr. RICHARDSON. Mr. Speaker, let me discuss this Kaptur resolution and why I think it is unwise. It is not necessary because it embarasses the President and the executive branch unnecessarily.

The United States took the lead in developing a support package for Mexico in order to protect United States jobs, exports, immigration concerns, and security interests that would be threatened if Mexico collapsed.

Mexico is our third largest export market.

More than 700,000 United States jobs depend on sales to Mexico.

A Mexican collapse would probably send illegal immigration up sharply—that's what happened when Mexico experienced economic troubles in 1982, and apprehensions along the border rose by 30 percent.

A Mexican collapse could spill over to harm emerging financial markets. These are the fastest growing markets for our exports—we don't want them to pull back on the economic reforms they've gone through over the past decade. America's hopes for increased demand in these markets for U.S. products and the good jobs this would bring would be disappointed.

THE AGREEMENTS

The United States negotiated good, viable agreements based on strong Mexican commitments to pursue economic reforms, solid safeguards to ensure we are fully repaid, and controls to make sure our support does what it's supposed to do—restore Mexican financial stability to protect United States jobs, exports, immigration concerns and security interests threatened by a Mexican collapse.

Some claim that the agreements put U.S. money at risk. But, in fact, the United States is only offering support in a way that is financially prudent, to make sure we get our money back.

First, United States support is contingent on Mexico's own commitment to pursuing the rigorous economic policies needed for Mexico to regain financial stability.

Mexico is now committed to a stringent program, based on a tight monetary policy with negative real money growth, budget cuts that will move them into surplus, and further privatization and reform to set the stage for strength.

Our agreements with Mexico build upon and add to those commitments, by spelling out many of the steps they will take—assuring the independence of their central bank, and using monetary policy to stabilize their currency, so that they regain their access to market finance quickly.

Second, the United States will not disburse resources without careful controls on how our support would be used, and without a system for assuring repayment of all Mexican obligations to the United States.

The United States will be disbursing support in stages, and will not disburse any tranche of support unless we agree with how the Mexicans plan to use it, and are confident that Mexico is meeting all its obligations.

Mexico must live up to important transparency and reporting requirements. The United States Government will have all the information necessary to know how Mexico's economy is doing and whether our support is in jeopardy.

Other controls have been built into the agreements. In some cases, Mexico's obligations can be accelerated if we determine that they are not complying with key terms and conditions.

Most important, no United States support will go out unless it is backed by proceeds of Mexican crude oil and oil products exports.

Finally, Mexico will pay fees that should provide more than enough cover for risk. In fact, fees and interest rates charged to Mexico will rise the more support we disburse, to encourage them to turn to market sources of finance first.

It is in our best interest to make sure that these agreements work. That means that Congress must have the information it needs to be confident that Mexico is meeting its obligations and fulfilling its commitments.

At the same time, we must be careful not to pursue access to information so zealously that we jeopardize the success of these agreements, limit the ability of the United States to conduct important international financial transactions or impose onerous reporting requirements.

THE KAPTUR RESOLUTION

The administration is clearly committed to keeping Congress informed about the status of the agreements with Mexico, Mexico's record of compliance to these agreements, and information on the use of the Exchange Stabilization Fund.

Treasury has already proposed that it provide us, on a regular basis, documents that meet those objectives. These include augmented monthly financial statements of the ESF and detailed quarterly reports on the implementation of the Mexican program. Administration officials are also willing to provide briefings upon request to any member of Congress.

Treasury has already provided Members with copies of the four agreements signed on February 21 and an opinion of Treasury's General Counsel concerning the authority of the Secretary of the Treasury to use the ESF for the Mexican support package.

We should continue to work with the administration toward a reasonable and realistic policy of disclosure because the proposed resolution is neither.

First, the Kaptur resolution is directed to the President rather than the Secretary of the Treasury. Questions of principle are much more likely to arise if the resolution is directed to the President.

The Treasury Department has been the center of activity within the United States Government for the Mexican program. Thus, the resolution would be more likely to result in more documents being produced if it were directed to the Secretary of the Treasury rather than the President.

Second, is not at all clear that the extensive document request contained in the resolution is consistent with the ESF statute.

This statute vests exclusive control of the ESF in the Secretary of the Treasury subject to the approval of the President.

And, it provides that decisions of the Secretary are final and may not be reviewed by another officer or employee of the Government.

Third, the breadth and scope of the current request is extremely burdensome and would demand considerable resources at taxpayer expense, without improving our oversight.

It is not realistic to expect that such a vast array of documents be assembled in a 14-day timeframe.

In particular, what appears to be a request for all documents related to the use of the Exchange Stabilization Fund since 1945 seems extremely onerous and smacks of a fishing-expedition mentality rather than a reasonable request for useful information.

Finally, the Kaptur resolution would limit the ability of the United States to engage in transactions vital to the orderly movements on international exchange operations in the future because this depends on protecting the confidential nature of information provided by foreign financial officials.

The resolution does not contain any assurances that the confidentiality of documents provided to the House will be maintained.

Congress has affirmed the need for a confidential component to the ESF on a number of occasions.

In order to use ESF resources effectively, the Secretary of the Treasury must be able to obtain confidential and highly sensitive financial information from foreign government officials.

If the Secretary loses access to confidential information, efforts to address instability could be undermined.

This inability to address exchange market problems could subsequently put the U.S. economy at risk and threaten U.S. jobs.

Since the creation of the ESF in 1934, Congress has considered on a number of occasions, even as recently as 1990, whether to curtail the Secretary of the Treasury's discretion with respect to the ESF. On each such occasion, the Congress decided not to take action.

Mr. GONZALEZ. Mr. Speaker, there is no doubt that the House could obtain all the information requested in this resolution, through the normal processes employed by our committees. However, there are some who apparently feel the need to stress their opposition to the efforts to stabilize Mexico's economy, through means of this resolution. In other words, the real agenda here is not a request for information, but a protest by some against actions that had to be taken, in our own national interest, despite the kind of opposition that such leadership always seems to inspire.

What comes to mind is the immense opposition that President Roosevelt faced when he recognized the reality that the United States would have to help its allies in their fight against Nazi Germany. It was a case of necessity, and his proposals to provide aid, modest as they were, gave rise to the most militant, the most blind, and the most zealously hateful opposition that can be imagined. But he was right, and he prevailed. America had no choice but to accept its responsibility.

That is the case today. We are not, thank God, fighting a war. But what we are fighting against is international economic instability. What we are fighting against is a needless loss of jobs in our own country, a needless deterioration of our own living standards, and a needless surge in illegal immigration. That is what we are fighting against, through the President's actions to stabilize and strengthen the economy of Mexico.

I do not expect the know-nothings and Clinton haters to heed this, any more than the Roosevelt haters heeded his patient calls to wake up to the dangers all around. But this is the truth: The lower the peso falls, the more jobs we lose. The more the peso falls, the less we can sell to Mexico, so we lose jobs. And the more the peso falls, the less Mexico can do for its own people, whose living standards will in turn tumble. And in desperation, those people will flee across our borders, no matter what we do to try and stop it. Moreover, the greater the desperation is within Mexico, the more likely it is that open conflicts will break out there—again, causing people to flee to this country, as we have seen so many times before, whether it was Hitler's programs, the Irish potato famine, or the civil war in El Salvador, or any one of the conflicts that have driven people to these shores. And finally, the lower the peso falls, the harder it is for American goods to compete against Mexican exports—and so we lose jobs again.

Stabilizing Mexico helps that country—but it also helps us. And this help is a low risk proposition that is more likely than not to return a profit to the Treasury. It is a policy that helps us, and it is a policy that we had better hope works—for ourselves, for our own standard of living and for our own markets.

I understand the strong feelings that the opponents of this program have. But I deplore the personal attacks that some have lodged against the Secretary of the Treasury, and I am saddened by the short-sightedness of those who do not comprehend what the stakes are in this matter, nor the vital importance that the success of this stabilization effort has for us and our people. I feel certain the administration will provide all the information it can, in response to the resolution. Let us go ahead and pass this, but let us also understand that it reflects the inability of some people to understand the situation, and the unwillingness of others to support a policy that they know is right, even though they have said it is right. History remembers the little minds who railed against Roosevelt's international leadership; it will also remember the little minds that rail against a policy that is necessary, makes sense, and in the long run, very much in our national interest.

Mr. BARTLETT of Maryland. Mr. Speaker, I rise today in strong support of House Resolution 80, the inquiry into the President's aid package to Mexico.

It is regrettable that President Clinton decided to bypass Congress after Members of Congress refused to act quickly on the loan guarantees for Mexico. You see, Mr. Speaker, the President may know this but let me remind him. As Members of Congress, we are directly accountable to our constituents. Admittedly, the 104th Congress has moved quickly since receiving its November 1994 mandate, but I assure you that neither Congress nor the President received a mandate from the American people to express mail a $20 billion check to Mexico with no return address.

What is most frustrating about the President's action is that he made another defective foreign policy decision without addressing the very questions that were first raised. House Resolution 80 is the first step to answering questions about the bailout, including who will actually benefit from these loans, what collateral Mexico can use to secure their payments, what economic reforms Mexico will institute to ensure that this does not happen again, and how a Mexican bailout will affect American taxpayers.

I support this important resolution because I will continue to oppose this donation to Mexico, let us call it what it is, until we have appropriate guarantees from their country and until we know everything that the White House knew before the collapse regarding Mexico's economic situation. I take pride in representing my constituents, who are adamantly opposed to this bailout and I resent that the President preempted my opportunity to vote accordingly.

Mr. Speaker, the President supplied so few details when he first asked Congress to bailout Mexico it was as if he wanted the American public to blame Congress for the conception of this poor foreign policy decision. Even after he told the Mexicans that the check was in the mail, President Clinton made little attempt to give Members of Congress the information addressing our concerns and those of our constituents. Well, after today Mr. Speaker when constituents question the bailout, I no longer have to respond to them like schoolboy trying to convince the teacher that my dog really did eat my homework. If President Clinton will not volunteer these answers, then we will force him to provide us with the cheatsheet, because the American people deserve answers.

I urge Members of Congress to support House Resolution 80.

Mr. LEACH. Mr. Speaker, in this context I move the previous question on the committee amendment and on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. GOODLATTE). The question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the resolution, as amended.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. BURTON of Indiana. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 407, noes 21, not voting 6, as follows:

[Roll No. 188]

AYES—407

Abercrombie
Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coburn
Coleman
Collins (GA)
Collins (IL)
Collins (MI)
Combest
Condit
Cooley
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeFazio
DeLauro
DeLay
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Doggett
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fazio
Fields (LA)
Fields (TX)
Filner
Flake
Flanagan
Foglietta
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Gallegly
Ganske
Gejdenson
Gekas
Geren
Gibbons
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hinchey
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, Sam
Johnston
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martinez
Martini
Mascara
McCarthy
McCollum
McCrery
McDade
McDermott
McHale
McHugh
McInnis
McIntosh
McKeon
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Meyers
Mfume
Mica
Miller (CA)
Miller (FL)
Mineta

Minge
Mink
Molinari
Mollohan
Montgomery
Moorhead
Morella
Murtha
Myers
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Oxley
Packard
Pallone
Parker
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Reed
Regula
Reynolds
Riggs
Rivers
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Sabo
Salmon
Sanders
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schroeder
Schumer
Scott
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stark
Stearns
Stenholm
Stockman
Stokes
Studds
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thompson
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torricelli
Towns
Traficant
Tucker
Upton
Velazquez
Vento
Visclosky
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Williams
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—21

Becerra
Beilenson
Berman
Conyers
de la Garza
Dixon
Ford
Frank (MA)
Gephardt
Johnson, E. B.
Matsui
Moran
Pastor
Rangel
Richardson
Roybal-Allard
Serrano
Torres
Waters
Watt (NC)
Yates

NOT VOTING—6

Dooley
Gonzalez
Hunter
Moakley
Peterson (MN)
Rush

□ 1944

Mr. RANGEL, Mr. RICHARDSON, Ms. ROYBAL-ALLARD, Mr. BEILENSON, and Mr. MATSUI changed their vote from "aye" to "no."

Mr. FAZIO changed his vote from "no" to "aye."

So the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION FOR CERTAIN COMMITTEES TO SIT TOMORROW, THURSDAY, MARCH 2, 1995, DURING 5-MINUTE RULE

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the 5-minute rule.

The Committee on Banking and Financial Services; the Committee on Economic and Educational Opportunities; the Committee on Government Reform and Oversight; the Committee on International Relations; the Committee on National Security; the Committee on Resources; the Committee on Science; the Committee on Small Business; and the Committee on Transportation and Infrastructure.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

The SPEAKER pro tempore (Mr. GOODLATTE). Is there objection to the request of the gentleman from Texas?

There was no objection.

PROCEEDING WITH GENERAL DEBATE PENDING A VOTE ON HOUSE RESOLUTION 101

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that the House may proceed to general debate in the Committee of the Whole as though under House Resolution 101 during any postponement of proceedings on that resolution pursuant to clause 5 of rule I.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. BONIOR. Mr. Speaker, reserving the right to object, I will not object, but I ask the gentleman from Texas if this means that this will be the last recorded vote for this evening?

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. BONIOR. I yield to the gentleman from Texas.

Mr. ARMEY. Mr. Speaker, the gentleman did get the attention of the body. Yes, without objection to this unanimous consent, we will have had our last vote for the evening. However, that would mean that those Members interested in the debate on the rule and on the general debate for the bill, H.R. 925, private property, should be advised that we would be holding those two debates yet this evening. Any Member not participating in either of those two debates would be free to go home for the evening. We would begin them tomorrow, as soon as the 1-minutes are over, with the vote on the rule, which is House Resolution 101.

Let me say, again, it is an unusual request. It is an unusual procedure, not something that we would expect to be a habit in the future. But certainly it is something that by the minority's agreement, we were able to do so folks can get home tonight. We will then begin with a vote on the rule tomorrow, and I would remind Members who want to participate either on the debate on the rule or H.R. 925, the private property bill, that those debates will take place tonight.

Mr. BONIOR. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE JOINT RESOLUTION 2

Mr. ROYCE. Mr. Speaker, I ask unanimous consent to remove my name as a cosponsor of the joint resolution, House Joint Resolution 2.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE JOINT RESOLUTION 2

Mr. McINTOSH. Mr. Speaker, as the language of joint resolution, House Joint Resolution 2 has been substantially altered in markup, I ask unanimous consent to have my name removed as a cosponsor of the legislation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

PRIVATE PROPERTY PROTECTION ACT OF 1995

Mrs. WALDHOLTZ. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 101 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 101

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions. The first reading of the bill shall be dispensed with. Points of order against consideration of the bill for failure to comply with section 302(f), 308(a), 311(a), or 401(b) of the Congressional Budget Act of 1974 are waived. General debate shall be confined to the bill and the amendment recommended by the Committee on the Judiciary and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule for a period not to exceed twelve hours. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. Points of order against the committee amendment in the nature of a substitute for failure to comply with clause 7 of rule XVI, clause 5(a) of rule XXI, or section 302(f), 311(a), or 401(b) of the Congressional Budget Act of 1974 are waived. No amendment to the committee amendment in the nature of a substitute shall be in order unless printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII before the beginning of consideration of the bill for amendment. Amendments so printed shall be considered as read. Points of order against the amendment specified in the report of the Committee on Rules accompanying this resolution to be offered by Representative Canady of Florida or a designee for failure to comply with clause 5(a) of rule XXI are waived. Pending the consideration of that amendment and before the consideration of any other amendment, it shall be in order to consider the amendment thereto specified in the report of the Committee on Rules to be offered by Representative Tauzin of Louisiana or a designee. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. After passage of H.R. 925, it shall be in order to consider in the House the bill (H.R. 9) to create jobs, enhance wages, strengthen property rights, maintain certain economic liberties, decentralize and reduce the power of the Federal Government with respect to the States, localities, and citizens of the United States, and to increase the accountability of Federal officials. All points of order against the bill and against its consideration are waived. It shall be in order to move to strike all after section 1 of the bill and insert a text composed of four divisions as follows: (1) division A, consisting of the text of H.R. 830, as passed by the House; (2) division B, consisting of the text of H.R. 925, as passed by the House; (3) division C, consisting of the text of H.R. 926, as passed by the House; and (4) division D, consisting of the text of H.R. 1022, as passed by the House. All points of order against that motion are waived. The previous question shall be considered as ordered on the motion to amend and on the bill to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentlewoman from Utah [Mrs. WALDHOLTZ] is recognized for 1 hour.

Mrs. WALDHOLTZ. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from California [Mr. BEILENSON], pending which I yield myself such time as I may consume.

During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, I yield such time as she may consume to the gentlewoman from Ohio [Ms. PRYCE].

Ms. PRYCE. Mr. Speaker, I rise in strong support of the rule.

Mr. Speaker, as my distinguished colleague from Utah ably explained in her opening remarks, this rule provides for the fair and orderly consideration of one of the most significant regulatory reform proposals to be debated on the House floor in recent memory, and that is the fundamental idea of compensating private property owners when the use of their property is limited by over-reaching Federal regulations.

This is a very complex issue, Mr. Speaker, and the legislation before us has understandably prompted legitimate concerns about the future of Federal rulemaking. To afford Members amply opportunity to discuss changes in the bill, this rule provides for 1 hour of general debate, followed by up to 12 hours of amendment under the 5-minute rule.

While I know the minority would prefer to have unlimited debate on this legislation, I am confident that the rule provides the minority with an ample block of time to manage as they see fit in order to organize and prioritize amendments they would bring to the House floor.

The rule also enables the House to consider two very important amendments. First, in the continuing effort to be more fiscally responsible, the rule makes in order a substitute to be offered by the gentleman from Florida [Mr. CANADY]. This substitute, which requires only a single waiver of House rules, pursues essentially the same goals as the bill reported by the Judiciary Committee, but it links compensation for property owners to the availability of appropriations.

The rule also allows the gentleman from Louisiana [Mr. TAUZIN] to amend the Canady substitute by narrowing the scope of the legislation to apply only to the Endangered Species Act, wetlands regulations, water rights, and parts of the 1981 Food Security Act.

These amendments reflect bipartisan efforts to reach a compromise, and I urge my colleagues to consider them very carefully.

The notion of protecting private property rights is not a new concept. It has its roots in our Nation's most sacred document, our Constitution. But those rights have steadily been eroded by excessive regulations which force farmers, ranchers, and other property owners to bear the full burden of the law, which the public receives the benefits and pays none of the costs.

If the fifth amendment is going to be worth more than the paper it is written on, then private property protection must be strengthened.

A strong system of property rights in America is an essential means of protecting individual liberty, and the bill before us provides the appropriate balance between the power of government, the rights of individuals, and the betterment of our society.

Mr. Speaker, I urge my colleagues to support both the rule and the bill, and I yield back the balance of my time.

Mrs. WALDHOLTZ. Mr. Speaker, I yield myself such time as I may consume.

□ 2000

Mr. Speaker, I reserve the balance of my time.

Mr. Speaker, for too long the Federal Government has trampled on the rights of private property owners. Federal agencies have made rules and taken actions that have severely impacted private citizens, drastically reducing the value of their homes and property. Yet because of restrictive interpretations by the Courts of the "takings" clause of the Constitution, these citizens have had no means of redress to be compensated for their losses.

This bill will change that and protect the interests of private citizens where the government restricts the use of their property. H.R. 925 requires that the Federal Government compensate a property owner when a limitation placed on the use of their property by a federal agency action causes the fair market value to be reduced by 10 percent or more. If a Federal agency refuses to compensate a property owner for their losses, the bill allows the owner to seek compensation through the courts. Further, the bill recognizes the need to protect public health and safety by exempting actions taken by an agency that would prevent identifiable hazards to the public.

Under amendments to be offered under this rule, the compensation to the private citizen will not come out of a new fund to be established, or through more deficit financing, but directly from the budget of the agency that harmed the property. In other words, this bill is based on the radical idea that people harmed by the Government's actions deserve to be compensated and that the agency that caused the harm should pay for it out of their existing budget.

This idea is so radical that our current budget rules do not even allow us to consider this legislation without waiving certain budget rules. So, we've got to waive certain budgetary procedures just to be able to bring this bill to the floor for debate. The budget waivers will simply clarify a disagreement over the technical interpretation of the rules necessary to bring the bill to the floor for debate. Accordingly, we have crafted a rule that is admittedly somewhat technical in nature, as it waives certain budget rules against both the committee bill and the committee substitute.

The Canady substitute, which is made in order under this rule, clarifies our intent to pay for losses to property by simply reallocating current agency spending rather than create new entitlement authority. Accordingly, neither that amendment nor the Tauzin amendment, which will be considered as an amendment to the Canady amendment, require budget waivers. As a result, Mr. Speaker, the intent of our budget rules is preserved by the structure of this rule, despite technical waivers necessary to consider this important legislation.

The rule makes in order the committee substitute from the Judiciary Committee and provides for 1 hour of general debate followed by up to 12 hours of amendment under the 5-minute rule. The rule makes it in order to first consider the Tauzin amendment to the Canady amendment and requires that all amendments to the committee substitute be preprinted in the CONGRESSIONAL RECORD. The rule also provides for one motion to recommit with or without instructions.

Section 2 of the rule provides that after passage of H.R. 925, it will be in order to consider H.R. 9, and then combine the text composed of four regulatory reform bills as passed by the House. Those bills are H.R. 925, H.R. 830, the Paperwork Reduction Act, H.R. 926, the Regulatory Reform and Relief Act, and H.R. 1022, the Risk Assessment and Cost-Benefit Act. This allows us to send one bill to the Senate for consideration, as was done last year with the crime bill.

This modified-open rule provides for fair and open debate. This rule will allow for a total of 14 hours of floor debate on this bill—1 hour for the rule, 1 hour for general debate, and 12 hours for amendments. Fourteen hours is more than adequate to discuss the merits of this legislation.

I am sure some Members on the other side of the aisle will question the time limit. We discussed it in the Committee on Rules and I am sure we will discuss it more here. But I am confident that the 12-hour time limit will give the minority adequate time for consideration of amendments. Of course, it will require a prudent management of time to ensure that the most important amendments receive priority consideration, but Mr. Speaker, managing our time wisely is one of the responsibilities we all must shoulder in order to accomplish the people's business.

I know some concern may be expressed about the preprinting requirement. However, Members have not been shut out from offering amendments to the bill. While the pre-printing requirement applies to the committee substitute because of the critical nature of clarifying the budget impact of the means of payment, Members had sufficient notice of this requirement. Further, that requirement does not apply to amendments to the Canady and Tauzin amendments, which it is anticipated will shortly become the base text of this legislation. Members of this body will have ample opportunity to offer their amendments on the floor.

Mr. Speaker, since there is a good chance that the Canady substitute may be adopted, Members are encouraged to re-draft their amendments to be offered to the Canady substitute rather than the base bill. In that way the time of the House will be saved and Members will be protected against having their amendments nullified by the adoption of Canady.

Mr. Speaker, the Private Property Protection Act is a very important bill and this is a fair rule for its consideration. I urge my colleagues to support both the rule and the bill.

Mr. BEILENSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we are opposed to this rule, and to the bill it makes in order, the so-called Private Property Protection Act of 1995.

Mr. Speaker, this rule contains the same kind of time restriction on the amendment process that has been used for the consideration of five other bills the House has considered recently.

Although we do appreciate the fact that the majority proposed lengthening the time for the amendment process from the usual 10 hours to 12 hours, we are still concerned that Members who want to offer amendments to this bill may be denied that opportunity.

In fact, we were advised that 15 hours would be needed just to accommodate the minority members of the Judiciary Committee who wanted to offer amendments. The 12-hour limit—which is actually a 9- or 10-hour limit on debating amendments themselves, because it includes time spent on recorded votes—will most certainly deny some Members the opportunity to offer the amendments they wish to present.

Mr. Speaker, we understand the desire of the majority to have H.R. 925 considered in a timely manner. And, as our Republican colleagues have frequently pointed out, rules issued by the Rules Committee when Democrats were in the majority often did place time limits on amendments. What we take issue with is not whether the time caps exist, but whether they are fair.

When we issued rules with time limits, in earlier Congresses they did not preclude any Member from offering an amendment. We have two charts which show the contrast between what happened under rules with time limitations during the 103d Congress, and what has happened during this Congress.

Mr. Speaker, I include for the RECORD information regarding floor procedures in the 104th Congress and the amount of time spent on voting under the restrictive time cap procedure in the 104th Congress.

The material referred to is as follows:

FLOOR PROCEDURE IN THE 104TH CONGRESS

Bill No.	Title	Resolution	Process used for floor consideration	Amendments in order
H.R. 1	Compliance	H. Res. 6	Closed	None.
H. Res. 6	Opening Day Rules Package	H. Res. 5	Closed; contained a closed rule on H.R. 1 within the closed rule	None.
H.R. 5	Unfunded Mandates	H. Res. 38	Restrictive; Motion adopted over Democratic objection in the Committee of the Whole to limit debate on section 4; Pre-printing gets preference.	N/A.
H.J. Res. 2	Balanced Budget	H. Res. 44	Restrictive; only certain substitutes	2R; 4D.
H. Res. 43	Committee Hearings Scheduling	H. Res. 43 (OJ)	Restrictive; considered in House no amendments	N/A.
H.R. 2	Line Item Veto	H. Res. 55	Open; Pre-printing gets preference	N/A.
H.R. 665	Victim Restitution Act of 1995	H. Res. 61	Open; Pre-printing gets preference	N/A.
H.R. 666	Exclusionary Rule Reform Act of 1995	H. Res. 60	Open; Pre-printing gets preference	N/A.
H.R. 667	Violent Criminal Incarceration Act of 1995	H. Res. 63	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 668	The Criminal Alien Deportation Improvement Act	H. Res. 69	Open; Pre-printing gets preference; Contains self-executing provision	N/A.
H.R. 728	Local Government Law Enforcement Block Grants	H. Res. 79	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 7	National Security Revitalization Act	H. Res. 83	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 729	Death Penalty/Habeas	N/A	Restrictive; brought up under UC with a 6 hr. time cap on amendments	N/A.
S. 2	Senate Compliance	N/A	Closed; Put on suspension calendar over Democratic objection	None.
H.R. 831	To Permanently Extend the Health Insurance Deduction for the Self-Employed.	H. Res. 88	Restrictive; makes in order only the Gibbons amendment; waives all points of order; Contains self-executing provision.	1D.
H.R. 830	The Paperwork Reduction Act	H. Res. 91	Open	N/A.
H.R. 889	Emergency Supplemental/Rescinding Certain Budget Authority	H. Res. 92	Restrictive; makes in order only the Obey substitute	1D.
H.R. 450	Regulatory Moratorium	H. Res. 93	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 1022	Risk Assessment	H. Res. 96	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 926	Regulatory Flexibility	H. Res. 100	Open	N/A.
H.R. 925	Private Property Protection Act	H. Res. 101	Restrictive; 12 hr. time cap on amendments; Requires Members to pre-print their amendments in the Record prior to the bill's consideration for amendment, waives germaneness and budget act points of order as well as points of order concerning appropriating on a legislative bill against the committee substitute used as base text.	1D.

Note: 71% restrictive; 29% open. These figures use Republican scoring methods from the 103rd Congress. Not included in this chart are three bills which should have been placed on the Suspension Calendar. H.R. 101, H.R. 400, H.R. 440.

AMOUNT OF TIME SPENT ON VOTING UNDER THE RESTRICTIVE TIME CAP PROCEDURE IN THE 104TH CONGRESS

Bill No.	Bill title	Roll calls	Time spent	Time on amends
H.R. 667	Violent Criminal Incarceration Act	8	2 hrs. 40 min.	7 hrs. 20 min.
H.R. 728	Block grants	7	2 hrs. 20 min.	7 hrs. 40 min.
H.R. 7	National security revitalization	11	3 hrs. 40 min.	6 hrs. 20 min.
H.R. 450	Regulatory moratorium	13	3 hrs. 30 min.	6 hrs. 30 min.
H.R. 1022	Risk assessment	6	2 hrs.	8 hrs.

MEMBERS SHUT OUT BY A TIME CAP 104TH CONGRESS

This is list of Members who were not allowed to offer amendments to major legislation because the 10 hour time cap on amendments had expired. These amendments were also pre-printed in the CONGRESSIONAL RECORD. This list is not an exhaustive one. It contains only Members who had pre-printed their amendments, others may have wished to offer amendments but would have been prevented from doing so because the time for amendment had expired.

H.R. 728—Law Enforcement Block Grants—10 Members: Mr. Bereuter, Mr. Kasich, Ms. Jackson-Lee, Mr. Stupak, Mr. Serrano, Mr. Watt, Ms. Waters, Mr. Wise, Ms. Furse, Mr. Fields.

H.R. 7—National Security Revitalization Act—8 Members: Ms. Lofgren, Mr. Bereuter, Mr. Bonior, Mr. Meehan, Mr. Sanders(2), Mr. Schiff, Ms. Schroeder, Ms. Waters.

H.R. 450—Regulatory Moratorium—15 Members: Mr. Towns, Bentsen, Volkmer, Markey, Moran, Fields, Abercrombie, Richardson, Traficant, Mfume, Collins, Cooley, Hansen, Radanovich, Schiff.

H.R. 1022—Risk assessment—3 Members (at least three other Members had amendments prepared but were not allowed to offer them Mr. Doggett, Mr. Mica, Mr. Markey; Mr. Cooley(2), Mr. Fields, Mr. Vento.

The Republican stall: The ayes were called and amendments were passed by voice vote on the following votes during consideration of the Regulatory Moratorium bill. However, recorded votes were aksed for.

Mr. Clinger asked for a vote on the Norton Amendment as amended by McIntosh which passed on a vote of 405–0.

Mr. Clinger asked for a vote on Hayes amendment which passed on a vote of 383–34.

Mr. Tate asked for a vote on his amendment which passed on a vote of 370–45.

TIMECAPS IN THE 103D CONGRESS

I. Time caps specifically excluded voting time in the 103rd in 4 out of 5 cases

In the 103rd Congress, there were 5 bills considered under rules with time caps on the amendment process; four in 1994 and one in 1993. All four of the time caps from last year specifically excluded voting time. The single exception in the 103rd, from 1993, was H.R. 1036, ERISA Amendments Act. The Rules Committee asked for amendment in advance and received only 2 (Reps. Fawell and Berman). On the floor, Mr. Fawell offered his; it was defeated. Mr. Berman did not offer. No other amendments were offered and the total consumed by the amendment process (including votes) was about one hour and 15 minutes.

II. The test of whether a time cap is restrictive is not the amount of time allotted but whether Members are excluded from offering germane amendments.

In the 103rd Congress, no bills considered under a time cap consumed the entire amount of time.

Bill	Rule	Time cap	Floor time consumed
H.R. 1036	H. Res. 299	4 hour	75 min.
H.R. 2108	H. Res. 428	3 hour	2 hrs 25 min.
H.R. 3433	H. Res. 516	3 hour	80 min.
H.R. 4799	H. Res. 551	4 hour	70 min.
H.R. 5044	H. Res. 562	4 hour	3 hrs 20 min.

III. Bottom line: look at Committee of the Whole rising.

In the 103rd Congress, there was not a single case in which the full time allotted was consumed. That means no one in the 103rd Congress was shut out by a time cap. No Member with a germane amendment to a bill considered under a time cap was denied the opportunity to offer because the time has expired.

Before the Committee rose, on each of the time-cap rules in the 103rd Congress, the Chair asked, "Are there any additional amendments?" and then said, "If there are no further amendments, under the rule the Committee rises."

In the 104th, on each and every time-cap rule so far, the Chair has been forced to state that all time for consideration of amendment has expired. In each and every case, there were identifiable Members with preprinted amendments that were shut out—3 on risk assessment, 15 on regulatory moratorium; 8 (with 9 amendments) on defense revitalization; 10 on law enforcement block grants. Who knows how many others who did not print their amendments in advance were shut out?

Mr. BEILENSON. Mr. Speaker, as these charts show, last Congress, no Members were precluded from offering amendments under rules with time limits on amendments; this Congress, at least 36 Members have been denied the opportunity to offer amendments to five bills which have been considered recently, even though their amendments were preprinted in the CONGRESSIONAL RECORD.

During consideration of this rule in the Rules Committee yesterday, we offered an amendment to strike the 10-hour time limit on the amendment process, since it was our first preference not to have any time limit at all. That amendment was rejected on a straight party-line vote.

We also offered an amendment to exclude time spent on recorded votes from the ten-hour limit that was originally proposed. Instead of accepting that change, the rule was amended to provide for twelve hours for the amendment process.

While we appreciated getting 2 more hours, the inclusion of the time it takes to hold recorded votes is still a problem for us. If voting time is not excluded, sponsors of amendments are put in the uncomfortable position of having to choose between seeking a recorded vote, or foregoing a recorded vote in order to increase the likelihood that other Members will get a change to offer their amendments. It is simply not fair to put Members in that position.

The argument that was made against excluding voting time from the time limit was that such a change would encourage dilatory tactics—that opponents of the bill would call for recorded votes on every amendment. But, in fact, by not excluding voting time, a parliamentary tactic of another sort can be employed by the bill's proponents—and, in fact, has been.

Three times during consideration of amendments to the Regulatory Transition Act, Members who agreed with the outcome of the amendments on voice vote nonetheless called for recorded votes in order to consume time allotted for considering amendments.

Mr. Speaker, we have other objections to the rule besides the time limit.

First, we have very serious concerns about the Budget Act waivers that are included in this rule. This rule contains four waivers of the Budget Act against consideration of the bill and three against consideration of the committee substitute. In both cases, two of the waivers represent violations of the most important safeguards that our Budget Act provides against increasing federal budget deficits.

One of those safeguards is Section 302(f), which prohibits consideration of measures that would cause the appropriate subcommittee or program-level ceiling to be breached. This is the provision which keeps committees from reporting bills that spend more money than they are allocated to spend under our budget resolution.

The other important safeguard is Section 311(a), which prohibits consideration of legislation that would cause the new budget authority or outlay ceilings to be breached. This is the provision that keeps the House from considering legislation that exceeds total spending allowed under the budget resolution.

This bill requires these waivers because in its current form, as Mrs. WALDHOLTZ correctly pointed out, it creates a new entitlement—a new expenditure of an unknown amount to compensate property owners who are able to claim that their property has been subjected to a regulatory taking.

Although the Canady substitute would eliminate the need to waive the Budget Act, I think it is important for Members to understand that the legislation made in order by this rule seriously violates the rules we have established to prevent us from spending more money than we have agreed to spend under our existing budget resolution.

Moreover, the Canady substitute, while technically eliminating the entitlement to compensation, will not change the fact that this legislation could be extremely expensive. The Statement of Administration Policy on this bill states that "preliminary estimates indicate that the effect of this bill would be to increase the deficit by at least several billion dollars during fiscal years 1995–1998."

We also object to the procedure for amending this bill that will result from making the Judiciary Committee substitute in order as original text, rather than the Canady substitute. In effect, the rule cuts off one degree of amendment, which limits the opportunities to change the Canady substitute.

Members need to be ready to offer amendments both to the Canady substitute, and to the Judiciary Committee substitute, which is the original text. This is a parliamentary situation that could cause a great deal of confusion—and cost some precious time—as we work through the amendment process.

Finally, Mr. Speaker, we have grave reservations about the bill itself that this rule makes in order.

As we will hear in the ensuing debate, the Private Property Protection Act would severely limit the government's ability to respond to the public's demand for laws ensuring health and safety, and we believe it will have severe and unintended policy and fiscal consequences.

Mr. Speaker, I urge a "no" vote on this rule.

Mr. Speaker, I reserve the balance of my time.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.J. RES. 2

(By unanimous consent, Mr. HILLEARY was given permission to speak out of order.)

Mr. HILLEARY. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of House Joint Resolution 2.

The Speaker pro tempore (Mr. GOODLATTE). Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mrs. WALDHOLTZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, before I yield to the chairman of the Committee on Rules, I would like to correct something that is perhaps a misstatement by my colleague on the Committee on Rules, the gentleman from California [Mr. BEILENSON].

That is that I did not believe that the base bill created an entitlement, but there was a question as to interpretation of the language. That is the reason that we are bringing forward a rule that requests budget waivers, so that in the case it was determined through a reading of the bill with which a number of us disagree that entitlement was created by this bill, that we can consider the bill and move to an amendment that will clarify that no entitlement is being created.

I wanted to clarify that before we move forward.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. SOLOMON], chairman of the Committee on Rules.

Mr. SOLOMON. Mr. Speaker, I thank the gentlewoman, for yielding time to me.

Mr. Speaker, I will not take time to explain the rule, because it has been more than adequately explained by the gentlewoman from Utah. I would like, however, to speak later about the merits of the bill this rule makes in order, but first I would like to speak to the fairness issue.

Mr. Speaker, this modified open rule for the Property Protection Act is the 19th rule issued by the Rules Committee on legislation in this 104th Congress.

Of those 19 rules, 16 or 84 percent have been open or modified open rules and only 3 have been modified closed.

Compare this, if you will, to the 103d Congress in which only 44 percent of the rules were open or modified open and 56 percent were closed or modified closed.

And yet the Democrat minority this year, the same people who foisted all those restrictive rules on us, are now complaining about modified open rules that only place an overall timecap on the amendment process.

Mr. Speaker, I have gone back and looked at the first 17 rules issued by the Rules Committee in this Congress and the last Congress to find-out how different the amendment process has been on this House floor.

What I found is truly an eye-opening contrast between the way the Democrats ran things and the way we Republicans are running things.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I am glad to yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I would just like to ask the chairman to reiterate one very important figure. Would my colleague share again the number of open and modified open rules that we have had in the 104th Congress, juxtaposed to what happened in the 103d Congress?

Mr. SOLOMON. Mr. Speaker, again, with the amendments that we have offered under the rules we brought to this floor, truly 84 percent of them were open, 84 percent have been open, compared to 70 percent that we closed down last term.

Mr. DREIER. In the 103d Congress. I thank my friend for yielding. It is a very important point that needs to be reiterated.

Mr. SOLOMON. Mr. Speaker, let me just dramatize that a little bit, without taking up too much time.

In the Democrat-controlled 103d Congress, again, let me just say that if we look at those first 17 rules in the last Congress, we will find that there were just 4 that were open and the other 13 were closed or modified.

In the Democrat-controlled Congress, of those 13 rules on which the Committee on Rules made amendments in order, listen to this, only 52 amendments were allowed, while 219 amendments filed with the committee were denied. That means that 219 Members of this Congress were literally gagged, and many of them from Members on the Democrat side of the aisle, conservative Democrats.

While my minority colleagues like to lament about how many amendments could not be offered due to the time caps, I suspect it is nowhere near the 219 shut out by the Committee on Rules in the last Congress on the first 17 rules.

Moreover, if you take a very close look at the amendments offered in this Congress, I think you will see that the Democrats are doing quite well, especially the conservative Democrats who are smiling like Cheshire cats, I see one sitting over here right now, look at that smile on his face, because they are no longer gagged by their own Democrat leadership.

Of the 180 amendments offered, 49 were by Republicans and 181 by Democrats. Of those 180 amendments, 94, or roughly half, were adopted, and listen to this, including 50 by Democrats. In other words, 53 percent of the amendments adopted in this Congress have been offered by Democrats and just 47 percent by Republicans, so I do not really understand all this whinning and complaining from the other side about how they are somehow being unfairly treated in this amendment process, when they have offered 73 percent of the total amendments considered and can take credit for 53 percent of the amendments adopted.

Mr. Speaker, let me just conclude by saying to those who complain that the glass is only one-fifth empty. I want them to cheer up and consider just how full that glass really is. We are all benefiting from a legislative process that is both fuller and more open then it has ever been in some two decades. Think about that.

I am very proud of our leadership and of our Committee on Rules for allowing such an open and deliberative process in this new House.

Mr. Speaker, I include for the RECORD the following extraneous material:

AMENDMENTS OFFERED TO BILLS IN HOUSE UNDER SPECIAL RULES, 104TH CONGRESS

Bill and subject	Rule and type	Amendments offered	Adopted	Rejected
H.R. 5—Unfunded Mandates	H. Res. 38—Open	53 (R:7;D:46)	17 (R:7;D:10)	36 (R:0;D:36)
H.J. Res. 1—Balanced Budget	H. Res. 44—Mod Closed	6 (R:2;D:4)	2 (R:2;D:0)	4 (R:0;D:4)
H.R. 101—Land Transfer	H. Res. 51—Open	0	0	0
H.R. 400—Land Exchange	H. Res. 52—Open	0	0	0
H.R. 440—Land Conveyance	H. Res. 53—Open	0	0	0
H.R. 2—Line Item Veto	H. Res. 55—Open	17 (R:3;D:14)	6 (R:2;D:4)	11 (R:1;D:10)
H.R. 665—Victim Restitution	H. Res. 60—Open	1 (R:0;D:1)	1 (R:0;D:1)	0
H.R. 666—Exclusionary Rule	H. Res. 61—Open	6 (R:0;D:6)	5 (R:0;D:5)	1 (R:0;D:1)
H.R. 667—Prisons	H. Res. 63—Mod. Open	23 (R:11;D:12)	14 (R:11;D:3)	9 (R:0;D:9)

AMENDMENTS OFFERED TO BILLS IN HOUSE UNDER SPECIAL RULES, 104TH CONGRESS—Continued

Bill and subject	Rule and type	Amendments offered	Adopted	Rejected
H.R. 668—Alien Deportation	H. Res. 69—Open	5 (R:4;D:1)	5 (R:4;D:1)	0
H.R. 728—Law Block Grants	H. Res. 79—Mod. Open	19 (R:7;D:12)	13 (R:6;D:7)	6 (R:1;D:5)
H.R. 7—National Security Act	H. Res. 83—Mod. Open	17 (R:5;D:12)	11 (R:4;D:7)	6 (R:1;D:5)
H.R. 831—Health Deduction	H. Res. 88—Mod. Closed	1 (R:0;D:1)	0	1 (R:0;D:1)
H.R. 830—Paperwork Reduction	H. Res. 91—Open	5 (R:2;D:3)	3 (R:2;D:1)	2 (R:0;D:2)
H.R. 889—Defense Supplemental	H. Res. 92—Mod Closed	1 (R:0;D:1)	0	0
H.R. 450—Regulatory Transition	H. Res. 93—Mod. Open	15 (R:2;D:13)	11 (R:2;D:9)	4 (R:0;D:4)
H.R. 1022—Risk Assessment	H. Res. 96—Mod. Open	11 (R:6;D:5)	6 (R:4;D:2)	5 (R:2;D:3)
H.R. 926—RegFlex	H. Res. 100—Open			
H.R. 925—Property Protection	H. Res. 101—Mod. Open			
Totals		180 (R:49;D:131)	94 (R:44;D:50)	86 (R:5;D:81)

Source: Congressional Record, Daily Digest.

Mr. SOLOMON. Mr. Speaker, I yield to the gentleman from California.

Mr. DREIER. I thank my friend for yielding.

Mr. Speaker, I would simply like to compliment him on an excellent statement; the fact that within the past 56 days we have seen the kind of openness when it comes to amendments, debate, the opportunity to participate in the process that has not existed for years and years and years, not just the 103d, Congress, but for, unfortunately, several Congresses before that.

Mr. Speaker, I think Members on both sides of the aisle have been able to benefit from that degree of openness. I think it is very unfortunate that some in the minority today are trying to claim that we have been more restrictive than they have been, and I think that the very important figures that the chairman of our committee has provided clearly show that the openness has existed under the 104th Congress, and I know under his leadership it is going to continue.

Mr. SOLOMON. The gentleman can count on it.

Mr. Speaker, let me rush to the bill itself because it is so very important.

On this particular rule today we begin consideration of one of the most important elements of the Contract With America, and that is, the Private Property Protection Act, more commonly known as the takings bill.

Mr. Speaker, the fifth amendment to the United States Constitution includes the following language: "nor shall private property be taken for public use without just compensation." The problem is that the courts have interpreted that language so narrowly that it does not adequately protect private property owners from loss in value due to some burdensome Federal regulations.

The bill before us today is designed to establish as policy of the Federal Government the proposition that no law and no agency action should limit the use of privately owned property so as to diminish its value, and this is the key, "Without fair compensation for that lost value."

☐ 2045

Mr. BEILENSON. Mr. Speaker, for the purposes of debate only, I yield 4 minutes to the distinguished gentleman from Minnesota [Mr. SABO].

Mr. SABO. Mr. Speaker, I rise in strong opposition to this rule because of the long list of Budget Act waivers it contains.

These Budget Act waivers are needed because H.R. 925 creates a massive new entitlement program.

Under the bill, property owners who successfully claim that the value of their property has been diminished by a government regulatory action would be entitled to compensation. The new right to payments would be enforceable through binding arbitration or in court. Payments would be required even for regulatory actions that the government is absolutely required to take under other existing laws.

The cost of this new entitlement program is difficult—if not impossible—to calculate with precision, but the cost could be extremely large. Under the bill, landowners would have an incentive to apply for all sorts of Federal permits—even for actions they never previously planned to take. If any of the permits were denied, the landowner would be entitled to a check.

Compensation would be due even when the Government was simply denying permission for an activity that the landowner knew would not be allowed when he acquired the land.

The Office of Management and Budget states that "preliminary estimates indicate that the effect of the bill would be to increase the deficit by at least several billion dollars during fiscal year 1995 through 1998."

The Congressional Budget Office cost estimate says that CBO has not yet completed its analysis of the costs of this legislation, but that those costs could be significant.

The report of the Rules Committee acknowledges that H.R. 925 creates a new entitlement, and that this entitlement requires numerous Budget Act waivers. In fact, the rule is waiving almost every major provision of the Congressional Budget Act.

It waives section 302(f)—the point of order against bills that breach the allocations of spending authority to committees. It waives section 311(a)—the point of order against bills that breach the ceiling on total spending set by the budget resolution. It waives section 308—the rule that requires committee reports on new entitlement bills to disclose and justify the new entitlement.

And finally it waives section 401(b)—the point of order against new entitlements effective before the start of the new fiscal year.

This rule marks at least the fifth time this year that our Republican colleagues have asked us to waive or circumvent the Budget Act.

Ironically, many of the same Republicans who denounced Budget Act waivers in previous Congresses are now supporting waivers in this Congress.

We should not be repeatedly waiving our basic budget controls—and especially not for bills like H.R. 925 that have the potential to be huge budget busters. I therefore urge defeat of this rule.

Mrs. WALDHOLTZ. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Florida [Mr. GOSS], my colleague on the Committee on Rules.

Mr. GOSS. Mr. Speaker, I thank the gentlewoman from Salt Lake City, UT, for yielding me this time.

Mr. Speaker, the conflict between private property and "public well-being" is as old as government itself. The takings issue is a complicated subject that cannot be resolved with one bill; in fact, it's fanciful to believe that the legislative branch of the Federal Government alone can solve all our private property rights problems.

Land use and zoning cases by their nature are unique, and are best considered on a case-by-case basis at the local level, sometimes with the assistance of the courts, not through some one-size-fits-all Federal formula. Mr. Speaker, the rule we are considering is itself unique—and probably not one we can expect to see on this floor very often. But after we get past the technicalities, it is clear that this rule is well crafted to allow a fair debate on the takings issue—as we promised in the Contract With America. I am pleased that this rule allows us to immediately consider two improvements to H.R. 925: the Canady substitute and the Tauzin amendment.

The substitute offered by my friend from Florida fixes several of the potential budget conflicts in the bill, including an important clarification that H.R. 925 would not, repeat not, create a new entitlement whatever ambiguity there may have been. The Tauzin amendment will limit the scope of the bill to just four specific areas: endangered species, wetlands, water draining and food safety.

In addition, the Rules Committee voted to extend the open amendment process to 12 hours, a full dozen, and I hope that colleagues will take advantage of that time to make further improvements to this bill. For instance, I am very concerned about the practicality and affordability of the 10-affected-property threshold in this bill; I intend to offer an amendment to raise this threshold to 30 percent of total parcel market value.

I also look forward to debating the Gilchrest/Wyden proposal, which focuses on the negative impact that questionable development can have on individuals' private property rights—questionable development that could be allowed, if not encouraged, under H.R. 925.

Messrs. PORTER/EHLERS/FARR may offer a measure that would replace the potentially costly and unwieldy compensation formula in H.R. 925 with comprehensive Federal agency reporting requirements.

Mr. Speaker, I have much front-line experience with the takings issue—from zoning board, planning commissions city council, county commission, State planning boards, court cases, and Federal agency hearings, ad infinitum. I confidently predict that this will not be the last takings debate we have in this body. As the coming debate will show, there are very unhappy people on both sides of this issue. H.R. 925 is not a magical fix because there is no magical fix—trying to strike a balance is as close as we will come to a real solution. I urge support of the rule so that we can move forward with this important debate.

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Speaker, I thank the gentleman from California for yielding me this time. I want to commend the gentleman from Florida, the previous speaker, for his balanced statement. It seems to me, Mr. Speaker, when most Americans look at the title of the bill, they see this sweeping name, "the Private Property Protection Act," and they walk away and believe that this bill protects all of our citizens. The fact of the matter is that this legislation protects only a limited group of private property owners, those property owners whose use or development of their property is regulated by the Federal Government.

The typical homeowners in our country, and there are 65 million of them, want to continue to enjoy the use of their property even when the Federal Government is not involved in regulating it. I believe that the typical homeowner is not fairly represented in this legislation, and on a bipartisan basis, the gentleman from Maryland [Mr. GILCHREST] and I will try to correct this legislation to make sure that the voice of that typical homeowner is heard.

One way that we could go about doing that, and making sure that the typical homeowners got a fair shake would be to expand the exceptions when compensation is not paid. Right now the legislation provides two exceptions when agencies do not have to pay compensation for agencies' actions that diminish the value of private property. The first is when the agency action prevents a public health or safety hazard, the second is when it prevents damage to specific property.

It would also be helpful to make sure that these 65 million typical homeowners in our country get a fair shake to create a third exception when agencies do not have to pay compensation, and this would apply when the agency's action would prevent or restrict any activity likely to diminish the fair market value of private homes.

This amendment would enable agencies to avoid having to make a Hobson's choice of either restricting development and incurring liability to the developer or allowing the development to proceed and have those homeowners in our country suffer the devaluation of their property.

When agencies take action to protect the value of private homes they would not incur liability to developers whose ability to develop their property is limited by the agency's action.

In contrast to H.R. 925, this approach also provides protection for homeowners in situations where there has been no physical damage to homeowners' property but the market value is likely to be diminished by development activity adjoining the home. This would be the kind of situation where we would have the filling of a wetland that would increase the risk of flooding the homes, but there has not yet been any damage.

What it comes down to, I would offer to may colleagues, is that the gentleman from Maryland [Mr. GILCHREST] and I hope that this legislation can have a bit more balance.

I would like to stipulate, and my seatmate from Louisiana on the Committee on Commerce has made this case over the year, that there are takings and there are takings that warrant compensation. But let us before we finish this bill make sure that the 65 million typical homeowners who use their property in a fashion that is not regulated by the Federal Government get the same voice in this legislation as those developers and others who also deserve a fair treatment and likely to get it under this bill.

Mr. Speaker, I look forward to working with my colleagues to ensure that this legislation has a bit more balance, and that the voice of the typical homeowner is heard.

Mrs. WALDHOLTZ. Mr. Speaker, I am pleased to yield such time as he may consume to the gentleman from Florida [Mr. CANADY], the author of the amendment that will show this is not a new entitlement, that this is not a budget buster that requires agencies to pay out of existing funds for the harm that they cause.

Mr. CANADY of Florida. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, I rise today in support of the rule on H.R. 925.

Regulatory restrictions on private property have increased dramatically in the 20th century, but the question of who pays for the public benefit that ensues from the regulations has not been adequately addressed. H.R. 925 is the answer to the question of who should pay for benefits to the general public.

The act provides for the Federal Government to pay compensation to those individual property owners who are singled out to bear the cost of intrusive regulation that benefits the public at large.

I believe the rule allows a generous amount of time for amendments and encourages a productive floor debate on amendments to this important legislation.

Under the rule we will first take up a substitute amendment which I will offer, and then we will consider Mr. TAUZIN's amendment to my substitute. Together, these amendments form a bipartisan compromise on the Private Property Protection Act.

The compromise sets the threshold diminution in property value required for compensation at 10 percent of the portion of property affected and allows a property owner to force the Federal Government to buy the portion of property affected outright if that portion's value is diminished by 50 percent or more.

The compromise also narrows the scope of the legislation to cover only agency actions taken under the Endangered Species Act, wetlands regulations, and specific statutes relating to water rights.

Members on both sides of the aisle who value property rights support this compromise legislation.

I urge my colleagues to support this open rule so that we can move forward with consideration of this important issue.

□ 2030

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the distinguished gentleman from Michigan [Mr. CONYERS], the ranking minority member on the Committee on the Judiciary.

Mr. CONYERS. Mr. Speaker, I rise to oppose this rule.

At a time when the Senate is considering passage of the balanced budget amendment, here comes the new majority proposing a massive new spending program. The only way it can do that is to waive nearly every budget rule.

This rule waives budget rules restricting new entitlements. The rules say that a committee cannot enact new entitlement authority beyond that allocated by the budget resolution. This rule waives that budget discipline requirement in the Budget Act.

Current rules requires legislative reports accompanying legislative reports on bills creating new authority to fully explain the entitlement implications. This rule waives that requirement.

Budget Rules require that any new entitlement spending conform with total outlays or make the proper adjustments. This rule waives that.

Budget rules prevent new entitlements too late in a fiscal year to make other needed budgetary offsets. This rule waives that.

Want some more? Let us try the appropriations side.

House rules prevent appropriations authority in legislative bills. This rule waives that.

House rules require germaneness of amendments and substitutes. Republican members have argued the need for strict adherence on germaneness for decades. This rule waives germaneness requirements.

Mr. Speaker, the only people being "taken" by this taking bill are the American people. This bill will be a massive raid on the Treasury. Its costs are so incalculable, that even CBO said that its costs, while unscorable because of the speculative nature of future agency actions, could be enormous. The bill will allow for potentially tens of thousands of claims against the Government, legitimate and illegitimate, and for endless attempts to raid the U.S. Treasury just when Congress has promised to bring it into balance.

The bill would also require a vast new bureaucracy. Someone is going to have sift through the thousands of claims against the Government. Administrative proceedings will have to be held to adjudicate claims. New bureaucracy will spring up everywhere. At a time when the Clinton administration has reduced the Federal bureaucracy beyond that accomplished by any Republican presidency, this bill will create a massive new bureaucracy to process what could easily become hundreds of thousands of claims that would ensure any such act.

Better this bill be entitled the "Bureaucrats and Lawyers Relief Acts?" Just for the price of a 32-cent stamp, anyone who believes that any governmental action reduced his property value by more than 10 percent could trigger a vast bureaucracy into motion to determine how much compensation should be paid. Imagine all the new jobs for assessors, evaluators, arbitrators and—of course—lots and lots of lawyers. There will be mounds of new paperwork and swirls of new red tape: all leading clearly to more government, not less.

And what bothers me most is the likelihood that many of these claims could be fraudulent ones. This bill sets up the possibility that greedy land speculators could make false claims on the United States saying that actions deprived them for use of property that they never intended to use in the stated fashion.

Mr. Speaker, if you want to waive every budget rule imposing discipline, if you want to raid the Treasury, increase bureaucracy, set up a situation for swindlers scheming against the U.S. Government, then this rule is for you.

Mrs. WALDHOLTZ. Mr. Speaker, I yield 3 minutes to the gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Speaker, I support the rule because I think it offers an opportunity for us to debate this most controversial bill and this most controversial topic. I will say a couple of things before we get lost in the debate as to the importance of some of the issues that will be raised, I am sure, tonight and tomorrow. All of us understand that the fifth amendment protects property rights. I say, "If your property is taken away for the public good, you should be compensated. There is no question about that. The question, I guess, arises, if your property is regulated to prevent public harm, should you be compensated? My judgment on this, based on the fifth amendment, is that you should not be compensated."

Now there is something else that may get lost in this debate, and that is the importance because we are going to focus in a little while on wetlands and endangered species. Let us not throw the baby out with the bath water. Wetlands provide an invaluable service to us in this country for a number of reasons: filtration into waterways. It offers habitat for a variety of species. It is, at last in my district, very important economically.

Also there is the fact of biodiversity and how useful that is to maintain the quality of our lives in many areas, one of which is medicine. Biodiversity offers us a whole series of opportunities to cure diseases like cancer, dreaded problems of depression, glaucoma, heart disease. All of these come from the natural environment. So, when we are talking about the endangered species, when we are talking about the takings bill tomorrow, it is vitally important for us to understand the nature of our existence on this planet, and let us not give away the thing that we need to hold on to, the quality of our life, and that is biodiversity on the planet.

Tomorrow the gentleman from Oregon [Mr. WYDEN] and I will be offering an amendment which seeks to provide home owners. If we are going to be to the point where we are going to compensate people through this legislation, we also need to make sure that we provide home owners with a means to obtain compensation from polluters whose action adversely affects their property. In cases where federally permitted polluting action has direct impact on a person's home, that person should be able to be compensated by the polluter who reduced the value of their property. If we are going to provide compensation to people whose property values are compromised by Federal requirements that they not pollute, then the least we can do is to provide compensation to those whose property values are hurt by the resulting pollution.

Mr. Speaker, I cannot imagine a bill which fails to protect the property rights of the Nation's 65 million home owners can seriously be called a property rights bill. Our constituents have the right to be secure in the knowledge that the Federal Government will protect their property from the polluting effect of others.

I say to my colleagues, "When we deal with this issue, let's deal with it in a very comprehensive way. Let's understand that the Endangered Species Act protects biodiversity, which is the quality of our lives, yet there are many good positive functions for wetlands, and there are many more home owners out there who don't seek Federal permits that should be protected by our actions."

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentleman from California [Mr. FARR].

Mr. FARR. Mr. Speaker, I rise in strong apposition to the rule.

We are here tonight to debate the rule. I think in the opening we heard how complex this rule has been. What was not explained is that this rule really violates the law.

The bill is a very serious issue. It opens a major debate and changes existing law. The existing law deals with takings, this bill deals with givings, and in that it is a budget buster. It is the biggest waiver in the history of the Budget Act. It is a violation of the Budget Act. If we are serious about the issue, then we have got to be honest about the consequences.

The Committee on Rules knew this bill was so controversial that they just waived all of the provisions. The bill, as reported by the committee, creates an entitlement because it creates a right to payment regardless of whether appropriations are available on the budget. The basic rule of the Budget Act is that new entitlements have to be provided for in the budget resolution or they have to be paid for. This bill does neither.

Accordingly, Mr. Speaker, it violates, the rule, section 302(f), the basic rule that any new spending bills have to be within the committee spending allocation. The Committee on the Judiciary has zero allocation for entitlement authority.

Section 311(a) is the rule against bills that breach the total ceiling on spending set by the budget resolution. We have no cost estimates.

It violates section 308, the reporting requirement. Every bill must have a spending report. I say, "When you have a bill, committee report, it should compare the spending, disclose and justify new spending, but the Committee on the Judiciary report on the Canady bill does really none of these things. The explanation in the report is that the CBO report was not complete, but duty lies with the committee, not with the CBO."

It violates section 401(b) which prohibits new entitlements before October 1.

OMB cost estimates are that several billion dollars during the fiscal years 1995–98 will occur. In fact, Mr. Speaker, let me read the Executive Office of the President, the Office of Management and Budget, and their statement on here is that the administration strongly supports property rights and is continuing to implement regulatory reforms that will provide relief to property owners. However H.R. 925, as reported by the Committee on the Judiciary, would impose, without regard for the Government's important role in protecting the general welfare, an arbitrary compensation requirement for reductions in property values attributable to regulatory or other actions by Federal agencies. This is unacceptable and an extreme requirement.

First, it seriously undermines the Federal Government's ability to protect the general welfare. Second, it imposes an almost unlimited fiscal burden upon the American taxpayer. Third, it creates a potentially costly new direct spending program as well as a new and costly Federal bureaucracy to evaluate compensation claims. Fourth, it supplements 200 years of constitutional jurisprudence under the fifth amendment.

For these reasons the administration strongly opposes H.R. 925. The administration is prepared to work with Congress to provide relief and does not impose new burdens on the American taxpayer which would create new bureaucracy, or costly spending programs, or threaten the public welfare.

Pay-as-you-go scoring: H.R. 925 would affect direct spending. Therefore it would be subject to pay-as-you-go requirements of the Omnibus Reconciliation Act of 1990. Preliminary estimates indicate that the effect of the bill would be to increase the deficit, increase the deficit by at least several billion dollars in the fiscal year 1995 through 1998.

The bill does not contain provisions to offset the increased deficit spending. Therefore, if the bill were enacted, its deficit effect would contribute to a sequester of the mandatory programs. Such a sequester would force automatic reductions in Medicare, veterans readjustment benefits, various programs providing grants to States, child support administration, farmer income and price support payments, agricultural export promotion, student loan assistance, foster care and adoption assistance, and vocational rehabilitation.

This estimate is based upon a preliminary analysis and is likely to increase as agencies analyze the bill's full effect. Thus final scoring of this legislation may deviate from this estimate.

In closing I urge defeat of the rule.

□ 2045

Mrs. WALDHOLTZ. Mr. Speaker, I am pleased to yield three minutes to my colleague the gentleman from Farmington, UT [Mr. HANSEN].

Mr. HANSEN. Mr. Speaker, most of us who have come to this place have come out of the city councils, the county commissions, the state legislative bodies. In those particular bodies we had the right to practice eminent domain. If we needed some place for a water system or a road or whatever it my be, we would have that ground in a matter of minutes and we would take that ground over. But it may take months and years before we paid the property owner. We would haggle it in court, but eventually we would have to pay the person because we took his land.

Today we are now looking at things where people have thought of a way around that. We have the 1973 Endangered Species Act; we have the Wetlands Act. And now we take a person wherever he may be in this United States and we walk in and say we just found the desert tortoise on your ground, or there is a wetland there.

In my little State of Utah there is a grape farmer, a fourth generation farmer in a little place called Clearfield, poor old Joe Jenson. Joe made the mistake of letting his irrigation system break, and in two years there were wetlands around.

For four generations they farmed that area, but in swaggered the Corps of Engineers with the swagger stick and said "Mr. Jenson, if you farm this, we are going to charge you $17,000 thousand a year." Mr. Jenson said "I have been doing this for years. My father and grandfather did it. What are you talking about?" But Mr. Jenson is no longer farming his property.

All up and down this great country, in the Mississippi Delta and other areas, you hear more horror stories on the takings for wetlands or endangered species than you do on food stamps. Every day there is a new one in my office.

Let us not be deceived by saying this is a raid on the budget. This is a raid on people who own ground, and they have a right to use it. Little by little the extremists have taken this over, and no longer can we use it the way we wanted to.

Government trying to take property for their use without paying, this is not new. The first recorded attempt at a taking occurs in the Bible, in I Kings, Chapter 21. King Ahab wanted Naboth's farm, but he would not sell it to the king. So Queen Jezebel by official decree ordered him stoned to death, and Ahab had his farm.

Well, now, the only difference in this story I want my colleagues to see is they first wanted to buy it. They first wanted to pay for it. But, no, they would not take it, so they took it away from him.

In walks the Secretary of Interior in my little place in Cedar City, Utah, and says, "Sure, we will buy it from you." And the man said, "I paid 30 thousand dollars an acre for it 10 years ago, and I intend to develop it." They say, "It is not worth that anymore because we found the slimy slug," or whatever it is on it, I can't remember the species, "but we found that on the property, so therefore we will give you $600 for it."

You people say that is a raid on the budget? You are taking the man's farm. You are taking the man's property. My goodness gracious, is not this Constitution supposed to take care of people, the private property owner?

Mr. Speaker, I rise in support of this great rule we have got here and also of the bill. Let us take care of these people that we have pushed around and not given them just compensation.

Mr. BEILENSON. Mr. Speaker, I yield 3 minutes to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. I thank the gentleman for yielding to me.

Mr. Chairman, I rise in support of the rule under which we are finally going to take up the issue of private property rights in this body in an affirmative way that I hope will lead to a victory for the private property owners of America against the uncompensated takings by the Federal Government.

The opponents of this rule have complained that the rule waives the rules on entitlements, budgets and appropriations. Let me tell you why. It is the Fifth Amendment of the Constitution which creates the entitlement here. It says "Nor shall private property be taken for public purposes without just compensation."

Property owners in America are entitled to that compensation when their property is taken by virtue of the civil right guaranteed in the fifth amendment of the Bill of Rights of the U.S. Constitution.

To my friend from Maryland who says he does not think they deserve compensation, he happens to disagree with the Supreme Court in the case of Lucas, which said that the right of compensation for wetlands taken is guaranteed under that fifth amendment. He disagrees with the case of Dolan versus the City of Tigert, a Supreme Court decision of just last year, which said in effect that the right to receive compensation for government takings by regulation is a right as sacred as the rights guaranteed of free speech, free religion, free press, assembly, and all the sacred civil rights contained in our Bill of Rights; no less sacred than any one of the others. In fact, the Court said it is not a distant cousin. It is entitled to the same respect and dignity as any one of those other rights. So maybe my friend has not read the Supreme Court decision.

When we debate this bill tomorrow, I will be offering an amendment, an amendment to limit this bill to the central acts that we have been debating for the last several Congresses when my friend the gentleman from Texas, JACK FIELDS, and I, have led the effort to get this body one day to consider the obligation of this government to compensate private property owners for government regulatory takings.

We will offer an amendment to limit the scope of this bill to the issues we have debated for several Congresses now in an effort to get it before this floor. The bills involved the Endangered Species Act and the wetlands controls under the 404 section of the Corps of Engineers Clean Water Act, and the sodbusters provision of the Food Security Act. And we will also provide in our amendment protection for water rights out West, which to westerners are as sacred as land rights are to easterners.

Let me tell my friend from Oregon who spoke earlier, this bill protects every property owner in America, particularly the small property owners who cannot afford a trip to the Supreme Court, as some have had to do, at $500,000 of court costs and legal fees. Every property owner ought to have a chance at home to get the remedies and the rights he is due or she is due under our Constitution and the Fifth Amendment. That is why we will debate tomorrow. I hope this rule passes and we get that chance.

Mr. BEILENSON. Mr. Speaker, I yield the balance of my time to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Speaker, I rise in opposition to the rule and to the bill. This rule I think makes a mockery of the deliberate consideration of matters before this House. This is an issue of significant importance, but yet the Committee on Rules and the committees of this House have chosen to in fact have a deliberate consideration of the various issues that are inherent in this. It touches the most important and fundamental rights of citizens and people of this country.

The problem is, as has been stated, not only is it inconsistent with the Budget Act that we have that was passed in 1974, and subsequently amended, to try and provide and steer the policy path of prudence and protection of the taxpayers' pocketbook in that property right, but it also of course violates the appropriation measures and the idea of appropriating directly on the House floor here, as well as the germaneness rules of this House.

It baffles I think the mind, boggles the mind, that the committees of the House could not sit down and write this up. I mean, we are patching together here two or three amendments made in order which are not germane in terms of trying to understand what the policy direction and some degree of clarity of what is intended here.

The fact is what is going on, of course, is we have split up and subdivided many of the topics and trying to put them back together this way regards to some political contract that is being wrapped in the virtue of property rights. Quite candidly, I think it is a rather transparent veil that hangs over it in terms of what the impact and what the goals are here that is going on.

What is happening is these issues on their merits to be dealt with should be forthrightly dealt with. If you are concerned about the Wetlands Act, I would suggest that the measure, the new majority has the authority to bring that up in the House and debate it, or the Endangered Species Act.

The fact of the mater is the Republican contract, which is so proudly proclaimed a contract with the people, does not in fact mention the word "environment." Yet as you look through the fabric of that contract and the specifics, time and time again a goodly portion of it has a significant adverse impact on what constitutes 25, 30, 40 years of environmental law.

I would just suggest to my Republican colleagues, the new majority in this House, that in all deference, these are not Democratic laws. The reasons that we stayed in a position of responsibility is because we often did respond to these laws which are very important and very significant to the people we represent.

I would just suggest you ought to deal with these issues forthrightly. I think there is a very substantial change that is being perpetrated here in terms of the public, and that is, of course, increasing the cost of doing business. These regulations represent very often, this assault regulation, these regulations represent the wheels on the vehicle that puts laws into effect. Can you not put laws into effect unless we can sit here and precisely write in detail all of that?

My good friend and colleague Mo Udall used to say there are two kinds of people in Washington, those that don't know and those that don't know they don't know. The Members of the House will be well-advised to recognize the limitations we have and the responsibilities that we give to the Executive in terms of putting laws into effect. These rules and regulations that are being beat about the head these days are the basis of putting laws into effect.

What we are doing here, of course, is trying to write regulations and specifics for the Court with regards to the fifth amendment of the Constitution. I would say in doing that, cutting it out of whole cloth, so-to-speak, and defining what constitutes a property right, a takings, we are doing a great injustice in terms of putting a burden on the Federal Government and limiting its ability to carry out the public good in this country. If that public good is manifested in environmental and regulatory laws, and I know the amendments you have you are going to specifically target in on the environmental laws specified in the Tauzin amendment. I understand that. But I think in terms of doing it and attempting to superimpose this particular ruling and takings, we are doing great injustice and causing great expense on the taxpayers. We should not have to pay the polluters, in essence pay them so they will not pollute, Mr. Speaker. I would ask Members to defeat this rule and this bill.

[From the Minneapolis Star Tribune, Feb. 25, 1995]

ENVIRONMENT—DID AMERICA VOTE TO TRASH REGULATION?

Did the Republican triumph in last fall's elections mean that voters wanted to eliminate major environmental, public health and safety protections? According to polls and common sense, the answer is no. Instead, the public wants less bureaucracy and more flexible regulation. What they will get if Congress passes the bills sprouting from HR 9, the so-called "Job Creation and Wage Enhancement Act," is less protection for the public, more bureaucracy and higher costs.

Federal regulation and bureaucracy can be burdensome and senseless, as with "one size fits all" regulations that impose identical landfill design requirements for dry Arizona and swampy Louisiana. Sometimes the cost to remove the last few parts per billion of a toxic compound from a water supply simply does not justify the expense. And red tape can be voluminous. Business groups have good reason to target reduction of regulations as their top legislative priority.

Reasonable regulations must take appropriate risk-benefit calculations into account. And reasonable regulations must be based on hard science, not public hysteria or political influence. But the solution to an occasional problem is not a wholesale abrogation of 35 years of legislation that has demonstrably improved public and environmental health. Yet that's what the convoluted bills growing out of HR 9 could do. Consider:

Risk/benefit analysis? HR 926 requires an assessment of regulatory costs—but not benefits—before a rule can be promulgated. Health benefits may be difficult to quantify, but it's stupid to leave them out. "Radical" organizations such as the American Lung Association are dismayed at the public health disaster such mindless accounting will bring, reminding Congress that current, successful pollution regulations were created only after extensive local efforts failed to curb pollution.

Less bureaucracy? Adding 22 or 23 additional analytical exercises prior to any rulemaking action involves more bureaucracy, not less.

Tort reform to reduce the influence of lawsuits and lawyers? This legislation offers a feast for lawyers wishing to impede regulatory processes. The law allows numerous new avenues for lawsuits including—wildly—suits against individual regulators.

Save money? EPA director Carol Browner estimates that compliance within her agency alone would require nearly a thousand additional employees and $200 million annually. The cost to business and public inefficiency would be much higher.

Cut entitlements? HR 925 would create a whole new entitlement, requiring reimbursement of landowners if their property value was reduced by 10 percent due to a regulation. That's a huge new fiscal burden, and of course no mention is made of requiring private property owners to share with taxpayers the financial benefits they routinely receive as a consequence of government actions.

The bills resulting from HR 9 are overt efforts to gum up Washington, not make it more efficient. Congress should reject such wholesale, ideologically based trashing of this nation's environmental laws, then go about saving business from inappropriate regulation the old-fashioned way: with common sense, one regulation at a time.

Mrs. WALDHOLTZ. Mr. Speaker, most of the debate tonight has centered on budget waivers, and it is appropriate that when we decide to waive the requirement of the Budget Act in a rule, that we take it very seriously.

The new Republican majority in fact takes the budget so seriously that we enacted rule XI, clause 4(e) that states as follows: "Whenever the Committee on Rules reports a resolution providing for the consideration of any measure, it shall to the maximum extent possible specify in the resolution the object of any waiver of a point of order against the measure or against its consideration."

We take this seriously, Mr. Speaker. And because we took it seriously, we outlined in this rule every budget waiver that we are asking this body to consider so that we can consider this very important legislation.

But, Mr. Speaker, it has been alleged tonight that this is the most serious waiver of the budget rules that has ever happened to this House. Nothing could be further from the truth.

Mr. Speaker, I refer the House to the survey of activities of the House Committee on Rules of the 103d Congress, the last Congress. In that Congress, 193 rules were offered to this House and passed. Of those 193 rules, 114 rules waived all of the rules of the House. All of the rules of the House, including the Budget Act. This does not even begin, Mr. Speaker, to be the most egregious example.

Now, why are we trying to waive budget rules tonight? Not because we intend to create a new entitlement. We do not. Not because we are going to allow this to be a budget buster. It is not. The reason that we are trying to waive these rules tonight is to allow us to bring forward legislation that will address this, and to make in order an amendment that will make it clear that the authors of this bill did not intend to create a new entitlement, did not intend to add 1 more dollar to the budget deficit or appropriate 1 more dollar to agencies.

What they did intend and what the amendments will establish is that agencies who take the property of private citizens of the United States will have to pay for that property out of their existing budgets.

So, Mr. Speaker, we ask tonight to waive these rules to allow us to bring forward legislation that will make it clear that we are not creating a new entitlement, that we are not adding 1 more dollar to the budget deficit that is far too high already, and that we are not appropriating a single extra dollar to agencies to pay for their invasion of the rights of private citizens.

□ 2100

What we are doing is bringing forward a rule that allows us to get to this radical idea of making agencies pay through existing funds for the actions that they take. That is the intent of this rule. That is the intent of this legislation, and that is what this rule will provide.

Let me address one other thing, Mr. Speaker. It has been suggested that one of the greatest failings of this bill is there is no estimate from the CBO as to how much this bill will cost.

Mr. Speaker, when these amendments pass that are made in order specifically under this rule, there will be no additional cost. But I would suggest, Mr. Speaker, that the fact that the Congressional Budget Office today does not even know how much we are costing private citizens every year through taking their property is the best argument there is for passing this bill, because the Government of the United States, which is here to protect these private citizens, is taking hundreds of thousands, if not millions or billions of property away from private citizens every year without compensating them.

We do not even know, Mr. Speaker, how much we are costing them because we have been so cavalier in the past.

Mr. Speaker, this is a fair rule. It is a rule that will allow us to enact the intent of the authors to make agencies compensate citizens through existing funds.

I urge my colleagues to support this rule and the bill.

Mr. Speaker, I include for the RECORD the following information.

THE AMENDMENT PROCESS UNDER SPECIAL RULES REPORTED BY THE RULES COMMITTEE,[1] 103D CONGRESS V. 104TH CONGRESS

[As of March 1, 1995]

Rule type	103d Congress		104th Congress	
	Number of rules	Percent of total	Number of rules	Percent of total
Open/Modified-open[2]	46	44	16	84
Modified Closed[3]	49	47	3	16
Closed[4]	9	9	0	0
Totals:	104	100	19	100

[1] This table applies only to rules which provide for the original consideration of bills, joint resolutions or budget resolutions and which provide for an amendment process. It does not apply to special rules which only waive points of order against appropriations bills which are already privileged and are considered under an open amendment process under House rules.

[2] An open rule is one under which any Member may offer a germane amendment under the five-minute rule. A modified open rule is one under which any Member may offer a germane amendment under the five-minute rule subject only to an overall time limit on the amendment process and/or a requirement that the amendment be preprinted in the Congressional Record.

[3] A modified closed rule is one under which the Rules Committee limits the amendments that may be offered only to those amendments designated in the special rule or the Rules Committee report to accompany it, or which preclude amendments to a particular portion of a bill, even though the rest of the bill may be completely open to amendment.

[4] A closed rule is one under which no amendments may be offered (other than amendments recommended by the committee in reporting the bill).

SPECIAL RULES REPORTED BY THE RULES COMMITTEE, 104TH CONGRESS

[As of March 1, 1995]

H. Res. No. (Date rept.)	Rule type	Bill No.	Subject	Disposition of rule
H. Res. 38 (1/18/95)	0	H.R. 5	Unfunded Mandate Reform	A: 350–71 (1/19/95).
H. Res. 44 (1/24/95)	MC	H. Con. Res. 17	Social Security	A: 255–172 (1/25/95).
		H.J. Res. 1	Balanced Budget Amdt	
H. Res. 51 (1/31/95)	0	H.R. 101	Land Transfer, Taos Pueblo Indians	A: voice vote (2/1/95).
H. Res. 52 (1/31/95)	0	H.R. 400	Land Exchange, Arctic Nat'l. Park and Preserve	A: voice vote (2/1/95).
H. Res. 53 (1/31/95)	0	H.R. 440	Land Conveyance, Butte County, Calif	A: voice vote (2/1/95).
H. Res. 55 (2/1/95)	0	H.R. 2	Line Item Veto	A: voice vote (2/2/95).
H. Res. 60 (2/6/95)	0	H.R. 665	Victim Restitution	A: voice vote (2/7/95).
H. Res. 61 (2/6/95)	0	H.R. 666	Exclusionary Rule Reform	A: voice vote (2/7/95).
H. Res. 63 (2/8/95)	MO	H.R. 667	Violent Criminal Incarceration	A: voice vote (2/9/95).
H. Res. 69 (2/9/95)	0	H.R. 668	Criminal Alien Deportation	A: voice vote (2/10/95).
H. Res. 79 (2/10/95)	MO	H.R. 728	Law Enforcement Block Grants	A: voice vote (2/10/95).
H. Res. 83 (2/13/95)	MO	H.R. 7	National Security Revitalization	PQ: 229–100; A: 227–127 (2/15/95).
H. Res. 88 (2/16/95)	MC	H.R. 831	Health Insurance Deductibility	PQ: 230–191; A: 229–188 (2/21/95).
H. Res. 91 (2/21/95)	0	H.R. 830	Paperwork Reduction Act	A: v.v. (2/2?/95).
H. Res. 92 (2/21/95)	MC	H.R. 889	Defense Supplemental	A: 282–144 (2/22/95).
H. Res. 93 (2/22/95)	MO	H.R. 450	Regulatory Transition Act	A: 252–175 (2/23/95).
H. Res. 96 (2/24/95)	MO	H.R. 1022	Risk Assessment	A: 253–165 (2/27/95).
H. Res. 100 (2/27/95)	0	H.R. 926	Regulatory Reform and Relief Act	A: voice vote (2/28/95).

SPECIAL RULES REPORTED BY THE RULES COMMITTEE, 104TH CONGRESS—Continued

[As of March 1, 1995]

H. Res. No. (Date rept.)	Rule type	Bill No.	Subject	Disposition of rule
H. Res. 101 (2/28/95)	MO	H.R. 925	Private Property Protection Act	

Codes: O-open rule; MO-modified open rule; MC-modified closed rule; C-closed rule; A-adoption vote; PQ-previous question vote. Source: Notices of Action Taken, Committee on Rules, 104th Congress.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. KLUG). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BEILENSON. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, further proceedings on this vote will be postponed.

Pursuant to the order of the House of today and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 925.

☐ 2102

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, with Mr. SHUSTER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the order of the House of today, the bill is considered as having been read the first time.

Under the rule, the gentleman from Florida [Mr. CANADY] will be recognized for 30 minutes, and the gentleman from Michigan [Mr. CONYERS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. CANADY].

Mr. CANADY of Florida. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise tonight in support of H.R. 925—a bill which provides a reasonable means of redress for landowners who are subjected to Federal regulation which substantially reduces the value of their property.

We can appropriately begin our consideration of H.R. 925 by referring to a recent court decision. Chief Judge Loren Smith of the Court of Federal Claims recently voiced his concern over the inadequacy of the law of takings at addressing the impact of regulation on private property rights. In Bowles v. United States, Judge Smith stated:

> This case presents in sharp relief the difficulty that current takings law forces upon both the federal government and the private citizen. The government here had little guidance from the law as to whether its action was a taking in advance of a long and expensive course of litigation. The citizen likewise had little more precedential guidance than faith in the justice of his cause to sustain a long and costly suit in several courts. There must be a better way to balance legitimate public goals with fundamental individual rights. Courts, however, cannot produce comprehensive solutions. They can only interpret the rather precise language of the fifth amendment to our Constitution in very specific factual circumstances. . . . Judicial decisions are far less sensitive to societal problems than the law and policy made by the political branches of our great constitutional system. At best courts sketch the outlines of individual rights, they cannot hope to fill in the portrait of wise and just social and economic policy. (Bowles v. United States 31 Fed. Cl. 37 (1994).

H.R. 925 is aimed at filling in "the portrait of wise and just social and economic policy" with regard to private property rights.

It will establish a mechanism which represents in the words of Judge Smith a "better way to balance legitimate public goals with fundamental individual rights."

It provides a workable way to ensure that property owners receive compensation when Federal regulation causes a significant reduction in the market value of the owners' property.

It is important to understand some things this bill does not do.

The bill expressly prohibits compensation for any agency action undertaken to prevent an identifiable hazard to public health and safety or identifiable damage to specific property other than the property whose use is limited.

Contrary to the claims of some critics, this bill will not pay polluters to stop polluting.

The bill provides that any payment made under the act shall be paid from the annual appropriation of the agency whose action resulted in the limitation on the use of the property.

If the agency does not have sufficient funds to compensate the owner, the agency head is required to seek the appropriation of such funds in the next fiscal year. Contrary to the claims of some opponents of the bill, it does not create a new entitlement. This point is made clear beyond any doubt in the amendment in the nature of a substitute which I will offer.

H.R. 925 will force agencies to recognize that when they limit the use of an owner's property, there are economic consequences. Agencies will have to weight the benefits and costs of their actions carefully—paying close attention to the impact of those actions on individuals and the general public. Agencies also will be more accountable to Congress, and therefore, will be more likely to carry out the true intent of the statutes they are charged with enforcing—rather than continually extending their bureaucratic reach.

Supreme Court Justice Joseph Story many years ago stated that, "One of the fundamental objects of every good government must be the due administration of justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature and the rulers."

H.R. 925 will help to ensure that private property is not subjected "to the will or caprice of" agencies. I urge my colleagues to support this important legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

The opposition to this measure comes from the view of compensating private property owners under the Constitution's taking clause when Government regulation results in reducing the fair market value of private property by more than 10 percent. This is a serious departure from long-established Supreme Court doctrine in an effort that, I think, is very clear and is getting clearer the more this debate goes on, to undermine the Government's ability to promote the common good by providing for clean skies, fresh water, and safe and fair work places that the American people have come to expect.

The result of such a measure passing would be, as one witness testified, hard-working American taxpayers will be forced to watch as their hard-earned wages are collected by the Government, as taxes are paid out to corporations and large landowners as takings compensation. And all this at a time when the Government downsizing is the rallying cry with the new majority in the contract.

This measure senselessly creates a vast new bureaucracy and a new entitlement program with so much uncertainty that endless litigation is a distinct likelihood.

Oh, yes, there is another motivation for takings legislation, to undermine the enforcement of one of the Nation's most important civil rights laws, the Americans with Disabilities Act, which will surely occur once a measure of this drastic nature is brought into our law.

This measure radically expands subtle Supreme Court law and leads to an absurd result and windfalls to investors of every stripe.

For centuries now the courts have grappled with the essential questions arising from the few words in the fifth amendment which drives the takings law. What uses are public and how much compensation is just and what is property and what amounts to a taking? In the Armstrong versus the United States case, the Court described the takings clause underlying purpose:

> The fifth amendment's guarantee that private property shall not be taken without just compensation was designed to bar the government from forcing some people alone to bear burdens which in all fairness and justice should be borne by the public as a whole.

In several subsequent cases, there have been further definitions of the ways that a taking can occur. We proceed in this general debate absolutely stunned at the way we would turn this concept of taking on its head.

Mr. Chairman, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, I yield 4 minutes to the gentleman from Texas [Mr. SMITH].

Mr. SMITH of Texas. Mr. Chairman, I thank the gentleman from Florida for yielding time to me.

Mr. Chairman, there is a giant sucking sound in America in 1995. It is the governmental grabbing of private property through ruinous regulation.

Our farmers in the Midwest and across the Great Plains are unable to use their farmland because the Government calls their dry lands "wetlands."

Property owners on the east coast are denied the right to build homes for their families because bureaucrats oppose construction.

Across Texas, homeowners, ranchers, and farmers are warned they may not be able to use private land if a golden-cheeked warbler decides to nest there.

And in southern California, ranchers, farmers, and homeowners are denied access to water because of a fairy shrimp upstream.

These are today's forgotten Americans. Their rights are trampled by a government that forces them to shoulder the entire costs of ruinous regulations. These citizens are denied the productive use of farms, ranches, and businesses acquired after a lifetime of hard work.

And many of those who claim to speak for society's neglected and left out are strangely silent and often hostile to the plight of these citizens.

Mr. Chairman, today help has arrived. Through a bipartisan effort in the people's House, these Americans will be forgotten no longer. The people who do the work, pay the taxes, and pull the wagon will have the same rights as the golden-cheeked warbler, fairy shrimp, and blind cave spider.

The private property rights legislation we are considering stands for a fundamental and very simple principle of basic fairness: If a landowner is prevented from using a portion of his or her land in order to provide a public benefit like a wetlands reserve or wildlife preserve, the costs of acquiring these benefits should be shared by the public as a whole. It's not fair to force the individual landowner to shoulder the entire burden.

The Private Property Protection Act of 1995 will not eliminate our Nation's environmental laws. It won't prevent the protection of endangered species or preservation of wetlands. It will permit us to protect as many endangered species and as many wetlands as we the people are willing to pay for.

The Private Property Protection Act of 1995 is about fairness, accountability, and shared responsibility. It's about holding the Federal Government to standards of public accountability. And it's about putting people first.

On November 8, 1994, the American people demanded that their government reduce its size, scope, and burden. Regulatory burdens imposed in the name of protection of the environment are among the most onerous. The Private Property Protection Act of 1995 would relieve those burdens, fulfill the American people's mandate, and restore freedom and fairness to all Americans.

□ 2115

Mr. CONYERS. Mr. Chairman, I am pleased to yield 4 minutes to the gentleman from California [Mr. FARR].

Mr. FARR of California. Mr. Chairman, I rise on the general debate on the bill, and I think we really ought to take a very close look at this, because this bill shifts the law, really shifts the law from an issue which has been long held in our Constitution, that when the Government takes something, they ought to pay for it.

Certainly that is the role of our courts, to determine, if landowners and Government regulators cannot agree on it, exactly what that taking process is and what the value is.

This bill shifts that. Just in the bill itself, it says that this bill relates to diminishing the fair market value of the property by 10 percent. Let me repeat that again. This bill goes to any action that diminishes the fair market value of the property by 10 percent.

That, Mr. Chairman, is absolutely ridiculous. What is the fair market value? Who determines fair market value? Is it what we thought we would make if we got a big windfall in a big development? Is that the fair market value: expectation?

What is the price of that? What is 10 percent? My God, when you went out and bought a house, there was an appraisal on that house. You probably did not pay full price. You bargained it down. But this bill says no, if the value of the owner is diminished by 10 percent, then you trigger a taking.

This legislation is going to cost State, Federal, and local governments billions of tax dollars. It is going to increase the government bureaucracy, not only for the government agencies to try to figure out what a taking is and whether 10 percent is diminished, but then the argument will be carried out by appraisers, land appraisers, lawyers.

This is a wonderful bill for lawyers, because it is going to guarantee a full-time employment act for them. It is going to clog our court systems. It is going to create a new entitlement program.

Just think, you can own a piece of land and you know that land may be thousands of acres, but you have a couple of acres that are in a wetland. Maybe you have a couple of acres that are in that habitat of an identified endangered species; not the whole property, just that couple of acres.

You can say, "All right, I want to do all my development right on those couple of acres." You know that the government will prohibit you from taking, and you can then trigger and say, "That is a taking. You have taken my land. Compensate me for it. Then I am going to use that compensation to build all over the rest of the land." That indeed is going to create chaos.

Mr. Chairman, I think we ought to look at the people that are down in the trenches. I have been there as a county supervisor dealing with land use regulation and master plans and zoning and elements of those master plans that require that the zoning be consistent.

I have dealt with the State legislature in those issues when I was in the California State Legislature, a very complex State. Look at the people down in the trenches. What do the State legislatures say about it? The National Conference of State Legislators' policy resolution passed this last year strongly opposes any legislation or regulations at the national level that would, one, attempt to define or categorize compensable takings under the fifth amendment of the U.S. Constitution, or, two, interfere with the State's ability to define and categorize regulatory taking requirements requiring State compensation.

Let us look at the League of Cities, all the cities in the United States; these are the people that do this land-use regulation at the local level. They oppose this.

Let us look at the State attorneys general, who have to go to court and defend what State and local governments have done. The attorneys general oppose this legislation.

Virtually everybody who knows anything about land-use planning at the local level opposes this legislation. It is a bad bill, and I urge Members to defeat it.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee [Mr. BRYANT].

Mr. BRYANT of Tennessee. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I rise today in support of H.R. 925.

It is time Congress injected some substance into the spirit of the fifth amendment.

Perhaps James Madison put it best when he said "No land or merchandise shall be taken directly even for public use without indemnification to the owner."

I could not agree more.

And neither could the people of middle and west Tennessee who I represent.

Time and again, I hear from propertyowners who have seen their land values decline.

This is thanks to the propensity of this Government to regulate and mandate and to effectively limit the use of this property.

I have a good friend, Anthony Bolton, from my hometown of Henderson, TN, who is experiencing this right now.

He and his family own about 500 acres on the Forked Deer River in west Tennessee.

The land used to consist of about 50 acres in production with the other 450 acres in prime hardwood.

But a beaver built a dam, and that's where their nightmare began.

The 500 prime acres have since become nothing more than a muddy swamp, with no real economic value.

Now rather than earning money with the land, he instead only gets to pay its taxes.

Why? Because the Federal Government says they can't remove the beaver dam because it has created a wetland.

Where is the common sense in this?

Why does this Government deem it necessary to place unnecessary financial burdens on hard-working taxpayers?

It is time we reverse these unfair burdens on America's landowners.

That is exactly what H.R. 925 will do.

This legislation will not take away the sovereignty of this Government.

It will begin to put the constitutional rights of landowners before the rights of spotted owls, woodpeckers, and kangaroo rats. And yes, beavers too.

If we as a government and society want to conserve something, that is fine.

But we should not place that entire burden on the shoulders of property owners.

Mr. Chairman, the issue before us is paramount.

There are few rights more important in this republic than the right to own property.

It is indeed one of the basic elements on which our Founding Fathers crafted our Constitution.

Therefore, it is imminently fair to compensate a property owner for the taking of their property by declaring it a wetland or a sanctuary for endangered species.

Why can't we put this commonsense philosophy into law?

I urge my colleagues to support H.R. 925.

The Anthony Boltons of this country deserve it.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from New York [Mr. NADLER], a member of the committee.

Mr. NADLER. Mr. Chairman, I rise in opposition to this bill. It is a truly radical piece of legislation and goes against the entire thrust of the constitutional history of the United States Government for the last 200 years.

Mr. Chairman, the Supreme Court has said that in construing the takings provision of the fifth amendment, the court has defined that, "Elimination of the most profitable use of the property is not a taking."

It has stated that, "A reduction of property value occasioned by government regulation must generally be severe or total for there to be a taking; a mere diminution in the value of property, however serious, is insufficient to demonstrate a taking."

It is not a taking if "the property owner retains some viable use of the property (as measured by the owner's reasonable investment backed expectations)." Those are all from the Supreme Court.

Why? Why have the courts consistently read the fifth amendment this way? The answer is because to read it any other way, to read it the way this bill would read it, would totally undermine the ability of the Federal Government, or if applied to local government, of local governments, to protect the general welfare. The Federal Government was instituted to protect the general welfare.

With this bill, Mr. Chairman, we say that if the Federal Government wants to protect the air or the water or any other environmental aspect, or anything else, in a way that imposes any kind of burden on the piece of property, then it may not do so unless it will compensate for the change in value of that property, which would be infinite, almost infinite.

I note that this bill does not provide, and the gentlewoman from Utah [Mrs. WALDHOLTZ] says it has no fiscal impact because the agency would have to pay from its own money. How could an agency pay from its own money when any action that may impose a burden on the property may impose it on hundreds or thousands or millions unpredictably?

The philosophy of this legislation is radical because it says that private property is absolute and that the rights of the public are greatly subordinate. Teddy Roosevelt said to the contrary. President Roosevelt, the great Republican President, said, "Every man holds his property subject to the general right of the community to regulate it to whatever degree the public welfare may require it."

I have carried this around in my pocket for the last 12 years, waiting for an appropriate occasion to read it, and this is the appropriate occasion, to remind the people here that the proper philosophy of government is that private property is not absolute. The right of the public ultimately is superior, and that to legislate this bill would say that the public welfare has no bearing in this country.

Mr. CANADY of Florida. Mr. Chairman, I yield 5 minutes to the gentleman from Texas [Mr. FIELDS].

Mr. FIELDS of Texas. Mr. Chairman, I rise in support of this legislation, and specifically, I rise in support of an amendment that will be offered tomorrow by the gentleman from Louisiana [Mr. TAUZIN] and myself.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana, to clear up a statement made earlier, that was made in error.

Mr. TAUZIN. Mr. Chairman, one of the things that is going to happen, I suppose, in this debate is that we are going to be debating the old bill, the bill that was filed in some other year, perhaps, or some other bill that is not before us.

The bill that will be before us tomorrow, that would have been today, is a bill that applies only to Federal statutes and only gives a cause of action for recovery for takings under Federal statutes, not State statutes, not local statutes, city statutes.

The bill will only cover the right of property owners to be compensated when Federal regulations take away their property. Tomorrow, the gentleman from Texas [Mr. FIELDS] and I will be offering an amendment to even limit the Federal statutes we are dealing with to a very few, the Endangered Species Act, wetlands regulations under 404, and sodbuster provisions and Federal statutes dealing with water rights.

It will be those limited Federal statutes only, so the objections of Attorneys General and cities and counties and States to us meddling with their problems with taking laws are objections that are not well founded when it comes to the bill that will be before us tomorrow.

Mr. FIELDS of Texas. Mr. Chairman, people are probably wondering why are we standing here at this later hour debating this issue. This is a significant issue, because we are talking about something that is basic and fundamental to all Americans. That is the ability to not only own but to beneficially use our private property.

I got involved in this issue because of some specific instances in my home State of Texas. I had a road that was very important, that needed to be built, connecting a major subdivision called Kingwood in Tuskakita with a major beltway system. Local property owners came together and donated the property for that road.

All of sudden, some people walked through and said, "That road cannot be built becuase we see what we think is an abandoned eagle's nest." My family had lived in that area since the 1860's. We had never seen an eagle's nest. We hope eagles are there. No one could prove it was an abandoned eagle's nest, but because of that, the property owners had to mitigate, as if the eagle flew back to that one specific tree, if it was an eagle, rebuilt the nest, reestablished, climbed down the tree, and then walked a distance to Lake Houston.

We thought that was the problem and that it was over. The landowners had given up more of their property.

Then as we begin to go further with the road, someone walked in and said, "Oh, my gosh, you have upland hardwood, wetlands." For me it was a little hit hard to understand that if something was upland, how it could be a wetland. The property owners came together, mitigated once again.

Then we though the road was going to be built. Then someone walked in and said, "Oh, my gosh, you've got prairie dawn," which is a dressed-up word for bitter weed. The property owners played the game one more time and said, "We will find property to mitigate." They found property without the prairie dawn, but someone said, "This property does not have prairie dawn, but it is conducive for the growth of prairie dawn."

It took approximately 5 years to finally get the permits needed to built a very short piece of road. It just is not that problem. North of us we have a red cockaded woopecker. If that lands on your property and a colony is established, you lose the ability to use your property.

West of us in Travis country there is the black-capped vireo, the golden-cheeked warbler. That has cost Travis county in Austin, TX, literally hundreds of millions of dollars in property value. The local ranchers in the hill country cannot cut their cedar because of those particular species.

One last example, a darter in the Comel Springs and also in New Braunsfels, the springs there, have forced the city of San Antonio to look for a new water supply that could end up costing that city billions of dollars, with the farmers and ranchers west of there having to have there wells permitted, their use restricted, and at some point in the future of total abrogation of their rights.

Mr. Chairman, this is not right. Their must be reform. The most important thing that has been lost by the conservation community, they have lost most of the hospitality and the cooperation of the landowner.

□ 2130

Without that cooperation, species will not be saved, and wetlands will not be preserved.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 4 minutes to the gentleman from Colorado [Mr. SKAGGS]. I presume that will leave me with 15 minutes for tomorrow?

The CHAIRMAN. The gentleman is correct.

The gentleman from Colorado [Mr. SKAGGS] is recognized for 4 minutes.

Mr. SKAGGS. Mr. Chairman, I want to thank the ranking member for yielding the time to me.

In a 1-minute speech this morning I told you, in brief, the story of the deadly Summitville Mine—Colorado's worst environmental disaster in a decade. Tonight I'd like to tell you more about that catastrophe, and about the insult that this takings bill would add to that injury.

For about 6 years, Summitville was an active gold mine near Del Norte, CO, in the spectacular San Juan Mountains. Like many such mines, the Summitville operation used cyanide to leach the gold from the ore that was taken from the site.

In 1991, during the spring run-off from the melting winter snowpack, the mine's poorly designed holding ponds overflowed, sending a poisonous surge of cyanide, heavy metals, and other toxins into Alamosa Creek. The contamination was so severe that fish and other river creatures were killed for 17 miles downstream. Lesser effects of the contamination were felt more than 50 miles downstream. We don't yet know the extent of the lasting environmental consequences—on other wildlife, on downstream farmers, on drinking water supplies.

A year and a half later, Summitville Consolidated Mining Company, the foreign-owned company that leased the property and had been running the mine, declared bankruptcy and walked away, avoiding all responsibility and liability for preventing further contamination. We were left with an environmental time bomb, with no protection against future overflows or collapse of the impoundments holding the cyanide wastes. The companies that owned the land—Aztec Minerals, Gray Eagle Mining, and South Mountain Minerals—did nothing to step in to protect the environment, or their downstream neighbors, or even their own property.

At the request of the State of Colorado, the Environmental Protection Agency took over, designated the mine a Superfund site, and began emergency action to prevent more poison from finding its way downstream.

So the American people have already paid twice for this disaster. First, we've suffered environmental damages. Second, we're paying for the EPA to prevent future spills, an effort which is costing the taxpayer about $30,000 a day, more than $50 million so far.

Now here's where insult is added to the injury. The corporate owners are now suing the Federal Government, claiming that EPA's emergency cleanup amounts to a governmental taking of their property. They claim that they should be compensated because the Government's cleanup of the abandoned, leaking, poisonous mine on their property is keeping them from using it to turn a profit.

So the bizarre scenario we're faced with is corporate landowners and a foreign mining company abdicating all responsibility for an environmental catastrophe, refusing to lift a finger to protect or clean up their own property, and running for the hills. And when the Government steps into the emergency to clean up the property, the companies show up in time to sue the Government for its trouble.

This is the sort of mindlessness the Republicans want to encourage with the takings bill.

Of course, the irony of this is that the Constitution is already perfectly clear in saying that private property owners are protected from genuine takings. The fifth amendment says that property can't be "taken for public use, without just compensation," and the courts have made plenty of consistent rulings on what this means. As recently as 1994, in Dolan versus City of Tigard, the Supreme Court held that a city government could not require a hardware store owner to build a bicycle pathway on her property as a condition for getting a permit to increase the size of her store and build a parking lot. And if the city did require it, she'd have to be compensated.

Under the Constitution, this ridiculous Summitville suit, which is a money grab, and not a genuine taking, would be thrown out of court. But if the takings bill passes, the suit would no doubt prevail, and every American taxpayer would pay for this catastrophe a third time when they're forced to write a check to Aztec Minerals, Gray Eagle Mining, and South Mountain Minerals.

If the takings bill passes, here's the choice we'd face at Summitville: EPA could continue to contain the chemicals at the plant, and protect the people and environment downstream. The companies who are suing the Federal Government would win their ridiculous suit, and the taxpayers would be forced to pay them who knows how much money. Or, in order to avoid the lawsuit, EPA could stop the containment efforts, pull up stakes, and let cyanide run down the river. That's the choice—the absurd, incredible choice.

Mr. WOOLSEY. Mr. Chairman, I rise today in strong opposition to H.R. 925, the Private Property Act. My colleagues in the House of Representatives who support the Contract on America claim that H.R. 925 is to protect small private property owners from the Federal Government. In fact, this takings legislation has little to do with protecting small private property owners. The truth about H.R. 925 is that it provides a new entitlement program for wealthy special interests at a high cost to taxpayers and environmental protection.

The right to own private property is a right that is cherished by the American people. That's why it is protected by the Constitution. Under the fifth amendment, if the Government takes land to build a highway or school, of course it must pay for it. But the fifth amendment's protection isn't enough for the corporate special interests. They want Congress to pass H.R. 925 because it provides that any regulation that limits their right to make as much money as possible from their property is a taking, regardless of the impact this might have on the health and safety of their neighbors, the general public, or the environment. The true agenda of the supporters of H.R. 925 is to increase profits for special interests and weaken valuable laws to protect our health and environment.

Mr. Chairman, H.R. 925 will have a chilling effect on the implementation of environmental regulations. Most likely, Federal agencies will choose not to implement or enforce regulations because they will not be able to afford the high price of compensation required by H.R. 925. The Endangered Species Act and the Clean Water Act are just two of the many important environmental laws that will be jeopardized by this legislation.

Mr. Chairman, I strongly urge my colleagues to oppose this back door attack on environmental protections by voting against H.R. 925.

Mr. CANADY of Florida. Mr. Chairman, may I inquire as to the amount of time remaining for each side?

The CHAIRMAN. The gentleman from Florida [Mr. CANADY] has 14½ minutes remaining, and the gentleman from Michigan [Mr. CONYERS] has 15 minutes remaining.

Mr. CANADY of Florida. Mr. Chairman, I reserve the balance of my time.

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mrs. WALDHOLTZ), having assumed the chair, Mr. SHUSTER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, had come to no resolution thereon.

THE CASE FOR MAINTAINING NUTRITION FEEDING PROGRAMS

(Mr. FALEOMAVAEGA asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous material.)

Mr. FALEOMAVAEGA. Mr. Speaker, it has been my privilege in recent years to listen and to observe some of the most lively and historical debates in this Chamber on issues that affect the lives and well-being of all the citizens of our great Nation.

Certainly the 104th Congress is no exception, and we are again at the crossroads to deliberate fully—and hopefully—the merits of the important issues that are now before us.

Mr. Speaker one of these issues is whether our national government should just eliminate the several social and nutritional programs currently in place, and just "block grant" the funding to States and let the State governors conduct the redistribution of the resources since they supposedly know better where the needs are.

I want to share with my colleagues an article that appeared in yesterday's Washington Post, written by Dr. Louis Sullivan, former U.S. Secretary of the Department of Health and Human Services during the administration of President George Bush. Dr. Sullivan's statements are quite profound—in my humble opinion—as he clearly reminded all of us here in this Chamber to examine the merits of these programs, and let's not rush into a feeding frenzy by just cutting and slashing these programs without meaningful review and examination.

In the WIC Program, for example, Dr. Sullivan states:

> . . . This prescriptive program has enjoyed bipartisan support since it was established by such leaders as Senator Bob Dole and the late Senator Hubert Humphrey. By providing necessary nutrition to pregnant women, lactating mothers and one-third of all children born in the United States, WIC—quite simply—works. . . .
>
> In the case of WIC, nutrition requirements guide the program toward better health, and Medicaid savings, while avoiding the potential confusion associated with creating a complex web of 50 different State rules. . . .

Mr. Speaker, someone once said that haste makes waste. As we deliberate on the fate of these social and nutritional programs that affect the lives of millions of families, women and children throughout America—let's tread carefully and let's not appeal to political expediency and convenience as the basis of how we make decisions in this important institution of our national government.

[From the Washington Post, Feb. 28, 1995]

ONE FOR OUR CHILDREN

(By Louis W. Sullivan)

As the nation engages in debate over the future role and direction of the Federal Government's activities in a host of programs, there is much that can be learned about federal-state cooperation and cost effectiveness in the example of one program that delivers tremendous benefits to some of the most vulnerable in our society.

The WIC Program—the Special Supplemental Nutrition Program for Women, Infants and Children—has a 20-year track record demonstrating how Federal programs implemented by States can achieve important national goals, while saving taxpayers billions of dollars in preventable health care costs. In the drive to streamline and improve government programs, the need for WIC and WIC's success should not be obscured.

This prescriptive program has enjoyed bipartisan support since it was established by such leaders as Sen. Bob Dole and the late Senator Hubert Humphrey. By providing necessary nutrition to pregnant women, lactating mothers and one-third of all children born in the United States, WIC—quite simply—works. The program serves nearly 7 million mothers and children each month at a cost of less than $1.50 a day for each participating child. For that small amount, this program results in significant Medicaid savings that far outweigh the program's costs—by a ratio of 3-to-1, according to several studies. That is clearly an overwhelming return on a small national investment.

WIC's well-documented success is founded in its rock-solid nutrition standards. The foods offered must achieve requirements for iron, calcium, Vitamin A, Vitamin C and protein. Goals for these nutrients were selected based on firmly documented scientific evidence that increasing the intake of these nutrients at key junctures in fetal development and in infants' lives would improve health, reduce low birthweight and lower infant mortality.

There is no question that the societal costs of undernourished children are stunning. During my tenure as secretary of the U.S. Department of Health and Human Services, I recall visiting neonatal intensive care facilities at hospitals in Fort Lauderdale and in Detroit. In both facilities, I was saddened to observe low birthweight infants who had been hospitalized for the first six months of their lives. Hospital bills for these tender babies had already exceeded hundreds of thousands of dollars. I've always believed that the frequency of these perilous beginnings of life could be reduced by proper nutrition at critical stages in an infant's development.

Those compelling experiences aided me in formulating one of our major undertakings at HHS—development of the Healthy people 2000 initiative. By establishing health promotion and disease-prevention goals for the nation, we sought to achieve realistic concrete results by the year 2000. These included goals of reducing infant mortality, reducing the incidence of low birthweight and increasing early prenatal care. Our efforts were motivated by persuasive research documenting savings of $14,000 to $30,000 for every infant born without low birthweight.

The results of WIC's short-term nutrition intervention are compelling evidence that this type of preventive care works. A USDA study of WIC children found a 33 percent reduction in infant mortality and as much as a 23 percent reduction in premature births. A 1992 GAO study found a reduction of as much as 20 percent in low birthweights among WIC participants. The Centers for Disease Control and Prevention documented a dramatic reduction in childhood anemia among WIC participants. What's more, the GAO study found that WIC's role in connecting participants to health care providers produced an improvement in immunization rates among WIC participants.

Perhaps the wisest provision of WIC is that it is administered by caring people at 9,000 clinics who teach young mothers how to eat properly and how to feed their children properly. With convenient, nutritious food, WIC serves as an in-home laboratory for proper eating. For many mothers, WIC is often their first course in nutrition.

Among my concerns as we reform our welfare system is that we may inadvertently strip programs of the national standards and guidelines that make them work. In the case of WIC, nutrition requirements guide the program toward better health, and Medicaid savings, while avoiding the potential confusion associated with creating a complex web of 50 different state rules. Our children's health is not defined by state boundaries. Our nutritional standards should not be either.

As we come to grip with the changes voters demanded three months ago, we must find ways to more effectively achieve national policy goals with fewer dollars. WIC has been a real success story, and it should be used as a model and not lost, in the block grant debate.

[From the Washington Post, Feb. 28, 1995]

CHEWING ON A POOR IMAGE

(By Mary McGrory)

Can Republicans blush? Now is the time if they can.

White House Chief of Staff Leon E. Panetta believes it is possible and is embarked on a campaign to shame them for their moves against the poor in the string of slash-and-burn votes that made them look—as one of them said on background—"more like the party of Herbert Hoover than Abraham Lincoln."

Panetta is taking the cuts personally. He worked on many of the nutrition programs himself during his 17 years in the House. He worked with many Republicans who voted to dump them and replace them with block grants to states.

"I wake up in the night and I say they can't be doing this in the '90s. These are programs they have never criticized. Why are they messing with programs that work? This is worse than Reagan trying to call catsup a vegetable. They're saying catsup is a meal, they're trying to get rid of the whole meal."

Republicans protest that they have been misunderstood and misrepresented by the Democrats. They admit they have a perception problem, but say that just because a Republican-led House Appropriations subcommittee voted to repeal the school lunch program and transferred money to the states to feed children doesn't mean they don't care about hungry kids. And they say booting the Women, Infants and Children feeding program to the states doesn't mean heartlessness. They increased funding—which critics say can be used for other purposes at the discretion of the governors.

While they were in the grip of this revolutionary fervor, the Republicans also dumped the summer jobs program, which Labor Secretary Robert B. Reich rightly says is an insurance policy for urban peace, and have issued an eviction notice to the National Service Corps, the new program that lets young people be idealistic while earning money for college.

But the tumbrels did not roll for the Food Stamps program. Somehow, it escaped. House Agriculture Committee Chairman Pat Roberts (R-Kan.) convinced House Republican leaders that food stamps should be spared the guillotine, although the "Contract With America" had prescribed it. This was the first domestic setback for the November victors, who lost a foreign policy round two weeks ago when balky freshmen refused to finance a revival of a "Star Wars" antimissile system.

Panetta speaks dryly of the miraculous deliverance of food stamps. While it is a good sign and shows some recognition of the need for the safety net, he says that "farm organizations may have had more to do with that than concern for kids."

Unfortunately, the school lunch program has no lobby, no PACs, no clout. But Panetta says that it isn't only liberal Democrats who will stick up for the $11 billion program which feeds breakfast and lunch to children who otherwise would have to try to learn Latin on empty stomachs. Panetta has sent out a call to the educational, religious and business organizations that want to convince Republicans that America did not vote to take bread out of children's mouths last November.

Panetta does not want to wait for the expected Senate reversal of the House rampage. He thinks it has to be stopped now, before the full House votes. The conventional wisdom is that if the House is "Hellzapoppin," the Senate is reason, but Panetta wants to scotch right now the idea that it is okay for "a government to attack its own people."

He wants people to remember the '80s, when President Ronald Reagan assaulted the school lunch program on the grounds that he wanted to target the truly needy, of course. "What happened," says Panetta, is "that 1,000 school cafeterias shut down. The schools could not afford to keep them open, and 1.2 million children did not get school lunch."

The fad of deifying governors and insisting that states can do everything better is not new. Panetta remembers from his days as a California congressman when LEAA (Law Enforcement Assistance Administration) was the rage and sheriffs used federal grants to buy hunting trucks instead of hiring new deputies.

He will try to rally his old House colleagues. He hopes they will offer a stream of corrective amendments. Sample: House Speaker Newt Gingrich (R-Ga.) should divert the additional $600,000 he requested for office expenses to school lunches.

One governor entirely of the Panetta persuasion is Howard Dean of Vermont, the Democrat who is chairman of the National Governors' Association. He stormed through the Capitol, holding news conferences, calling the cuts ludicrous and a vote on them "a test of decency."

"You cut out school lunches, you cut down their chances to learn and you increase the risk they'll end up in foster homes or prison," says Dean, who was voted by the conservative Cato Institute as the fourth most conservative of the nation's governors.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members are recognized for 5 minutes each.

MAKE THE IMMIGRATION AND NATURALIZATION SERVICE MORE RESPONSIBLE

Mr. KLINK. Madam Speaker, the United States Government in all of its ineptitude is keeping an 18-month-old child from being able to live with her family. Our Government is keeping 18-month-old Heather Corbett in Poland while her family lives in Butler County, north of Pittsburgh.

The Corbetts are like many families who for one reason or another choose to adopt a child. Heather Michell Corbett was born Dominika Katarzyna Hrabia. Her birth mother was unmarried and her father Jacek Hrabia is married, but to another woman. Both parents have consented that Heather Michelle, as she is now known, would be adopted by Dennis and Cindy Corbett of Butler, PA. In fact they gave their consent to the adoption in open court on November 8, 1993.

But to this day—after 1 year and four months have passed—Heather Michelle has not been able to travel to her new home in Butler, PA. The reason—the Immigration and Naturalization Service will not give the child a visa to travel to America. Now understand this is the same INS that cannot protect our borders, as they allow thousands of illegal aliens from coming to this country every day—many with criminal records. Yet when it comes to this young child and her family no visa can be given, no rule can be stretched, no solution can be found to allow this young family to be together.

If Heather's birth mother had abandoned her at birth, she could get a visa, but because both her birth mother and birth father cared enough to see that she got into foster care and was adopted by loving caring parents, the child and the loving caring parents are being kept apart by the INS.

This situation has caused the Corbetts tremendous stress financially and emotionally. Mrs. Corbett has spent time traveling between Butler, PA, and Poland taking care of family members at both ends.

Mr. Speaker, the building blocks of this great Nation are our families. If the family is not strong the Nation cannot be strong. Dennis and Cindy Corbett want to bring Heather Michelle home where she will be loved and will grow to be a contributing member of our society, but the Immigration and Naturalization Service says that because the child was not abandoned or deserted by the natural parents, because they specifically said the Corbetts should be the adoptive parents, Heather Michelle Corbett, age 2, cannot come to America.

Drug dealers and murderers cross our borders every day. The INS is helpless to stop them, but now they have found someone they can stop and it doesn't matter what is wrong or right, it only matters to the INS that their rules are kept by the letter in this case, no matter how innocent the people are who are being hurt.

This is no more that bureaucratic child abuse and the INS are the bullies that are perpetrating that abuse. And now, Mr. Speaker, you and others are aware and if we do not take action to make the INS more responsible we share in that abuse.

I want to share with you, Madam Speaker, a letter that I received from Heather Michelle's grandmother, and she signed this letter June 14 of 1994.

We have been working very hard for a long time trying to bring this situation to some conclusion, we have tried everything that we can, and virtually we have run into a roadblock with the INS. The letter says:

June 14, 1994.

Mr. Ron Klink I am writing to you regarding Cindy and Dennis Corbett of 195 Pineteck Road, Butler, PA. 16001, the adoptions visa of Heather Corbett. I am Cindy mother and it has been a physical and emotionally strain for me as well as the rest of the family. I am a widow and live alone so I depend on Cindy for moral support as well as financial decisions. It has also been a physical and emotional strain on Cindy living in Poland not knowing their language. It is also unfair for Heather. She has done no wrong and in being punished. It has also been a financial strain and emotional strain for Dennis being separated from Cindy. Thank you for your help and support for Cindy, and Dennis but try again.

Madam Speaker, I just say to the Members of this House when we find this kind of problem in the Federal Government, that is why more than half of this House of Representatives was elected brandnew Members since 1990, because the people of this country do not want to see our government fail these families. They do not want to see these bureaucratic rules and red tape tie up innocent people, and that is exactly what happens.

NEUTRAL COST RECOVERY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan [Mr. SMITH] is recognized for 5 minutes.

Mr. SMITH of Michigan. Madam Speaker, the great 18th century political economist David Hume warned legislators against passing any legislation which impedes commerce and industry. Unfortunately, our current laws regarding taxation of capital, that is, the machines and equipment and facilities and buildings used by our Nation's businesses, are exactly what David Hume was talking about.

As a result, we all have lower wages, we have less efficient tools, we have fewer factories, and we have trailed our competitors around the world in productivity growth.

I am the sponsor of a vital piece of the Contract With America that will solve this problem. Estimates by economic researchers are that it will boost the growth of our gross domestic product by 25 percent, that it will create more than 2.5 million jobs, and will increase the average worker's wages by more than $4,500 per year.

□ 2145

The name that is given to my bill is not as catchy as most. It is neutral cost recovery. This explains what the bill does from a technical tax standpoint, but from an economic effect standpoint it should be called green thunder. It is what Steven Entin, resident scholar at the Institute for Research on the Economics of Taxation, called, and I quote, a win/win proposal that deserves prompt passage, end of quote.

As we work ardently on fulfilling the Contract with America, we should keep in mind that nearly three quarters of the contract's increase in economic activity, our country's gross domestic product, comes from neutral cost recovery. While it may not be as well known as the rest of the contract, and it may not have the first blush appeal, it is crucial to our Nation's economic growth.

What is this neutral cost recovery which will do so much for economic growth? It is a change in the way we tax capital, the way we tax buildings and equipment that we work in and with. Under my bill businesses would be able to deduct the first $25,000 of investment in machines and buildings in the first year of purchase and index the depreciation of the rest of the value for inflation. It would allow businesses to continue with a current tax treatment or to choose the neutral cost recovery method. When choosing neutral cost recovery, businesses that currently choose the 200 percent declining balance method could shift to a 150 percent declining balance in return for being able to match depreciation for tax purposes more closely with economic depreciation of the assets.

Neutral cost recovery is not arbitrary. Unlike what we have tried to do in past years, it allows all businesses to deduct the full present value of the purchase of a capital asset regardless of the years of life. Unlike current law, it would not be biased and penalize a business for buying new machinery or equipment, and it would not bias against the construction of new buildings and factories.

What does this mean to you? If you are a wage earner, it means you will have better tools to work with, better and newer buildings to work in, higher wages and greater job opportunities. If you are a small business owner, you will be able to invest in a new building or new equipment and get a deduction which effectively allows you to treat those purchases like any other business cost. If you are a decision maker in a large corporation, you will be able to expand your company and meet the foreign competition on a more equal tax footing. This happens because neutral cost recovery reduces the cost of that machinery, that equipment, those facilities, by an estimated 16 percent.

According to the National Academy of Sciences, private investment in plant and equipment in the United States has fallen to less than 10 percent of gross domestic product, and most of that goes to replace the old capital rather than equipment that embodies entirely new capabilities, the state of the art equipment. Our low rate of investment can be increased quickly through expensing and the use of neutral cost recovery.

Madam Speaker, our future and that of our children depend upon the seed corn which we are setting aside today, the quality of tools and equipment that we are buying in our investment in factories. The provision in the Contract with America that I am proud to sponsor, neutral cost recovery, will provide us and our children and grandchildren with a stronger, wealthier America.

THE STORY OF THE SUMMITVILLE MINE

The SPEAKER pro tempore (Mrs. WALDHOLTZ). Under a previous order of the House, the gentleman from Colorado [Mr. SKAGGS] is recognized for 5 minutes.

Mr. SKAGGS. Madam Speaker, when the House suspended debate on the takings bill, I had gotten about halfway through the story of the Summitville Mine in Colorado. Just to recount quickly, Madam Speaker, this was a cyanide leaching gold mine that ended up spilling the holding ponds of cyanide laced liquids downstream in the Alamosa Creek creating a monumental disaster. After Summitville Mine went bankrupt, the owners of the land that had leased it to the mining company took back over, and even though EPA was on site trying to prevent further environmental disaster from occurring, these lands owners, Aztec Minerals, Gray Eagle Mining and South Mountain Minerals, have now sued the Federal Government claiming that EPA's actions to intercede here constitute a taking.

Madam Speaker, it does not take much more than the story of Summitville to illustrate the bureaucratic, fiscal and environmental nightmare that we'd be getting if we pass the takings bill and enable this sort of idiocy to be duplicated nationwide—as it absolutely would be.

We've heard a great deal from the Republicans about how concerned they are about entitlement programs. But this bill would create the mother of all entitlements, to benefit the Nation's largest corporations whenever they're inconvenienced by environmental or public health regulations. Under this bill, the companies that own the Summitville Mine would be among hundreds of huge corporations demanding a handout from the American taxpayer.

We've heard a great deal from Republicans about the evils of Big Government. So their answer is to create an enormous new bureaucracy—to carry out the land appraisals that would be mandated every time companies complain about compliance with an environmental law—and to handle the flood of frivolous lawsuits and to write out the checks to the corporations and landowners.

We've heard a great deal from the Republicans about their desire to send power back out to the States and to the people. So they give us this bill, and create a big new national program to manage.

We've heard from the Republicans about the need for a government that works better. So their answer is to create a regulatory "gotcha," where the EPA will be reluctant to pass or enforce even the tamest of regulations, or clean up even the worst disaster, for fear of the lawsuits this legislation will encourage.

And, of course, we've heard about the need to cut spending. But now they're trying to pass a new law to mandate the spending of billions of taxpayer dollars every year—to go mainly to this country's biggest corporations and largest landowners. A huge new Federal corporate welfare program, in other words.

Remember, these are the same Republicans who are looking to cut billions from housing for the poor, and nutrition programs for our kids, and student loan programs, and a hundred other programs that benefit the working people of this country.

I believe that if we pass this bill, we're going to see the absurdity of false takings claims like the one at the Summitville mine repeated over and over and over.

If you're concerned about the deficit, if you're concerned about entitlements, if you're worried about bureaucracy and red tape, and if you're worried about taxpayers, you should be very worried about this takings bill.

WE ARE GOING TO BALANCE THE BUDGET

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut [Mr. SHAYS] is recognized for 5 minutes.

Mr. SHAYS. Madam Speaker, I wanted to take this time to kind of just register my concern and to just discuss a little bit the commitment I think we have on this side of the aisle to get our financial house in order, and my purpose for speaking is not to take a partisan tone, but to just express a tremendous amount of concern about what is really shaping up to be a battle between the White House and Congress over something that, if we work together, would be extraordinarily helpful for our Nation. I speak of the fact that, when President Clinton was elected, he found that he had a national debt of $4.3 trillion, and he felt that he had worked out a plan to bring our annual deficits down, but we are going to see under his 5-year plan that he presented to Congress just last month that our national debt by the year 2000 will be $6.7 trillion, that it will go up $2.3 trillion, or 54 percent, during this period of time.

What concerns me is the fact that there are some who are saying, well, this is a smaller percentage, but it is a smaller percentage on a larger base, and so this two trillion, 2.3 trillion, will be the largest increase ever experienced at any time in our history, and I look now and think what are we going to do to resolve this? What opportunities do we have as Republicans and Democrats to get together?

One of the things that the President deserves high marks on is the fact that we have, in fact, started to get a handle on what we call discretionary spending, what we vote out of the Committee on Appropriations, and this has resulted in some hope for the fact that at least with what we spend in defense and what we spend in nondefense that we are starting to show the kind of restraint that we need. We have simply decided that we will not add to discretionary spending. We have not in the last few years, and we are destined to keep it at a freeze for the next few years, but where we see the challenge is with, in fact, entitlements which constitute half of our budget, Social Security, Medicare, Medicaid, and what we refer to as other entitlements.

The concern that I have is that the President has really taken a hard position that he is not going to touch entitlements, which is really the same old story. Republicans have not wanted to cut defense, and they did not. Democrats have not wanted to slow the growth of entitlements, and they did not. And Republicans and Democrats for 20 years got together and voted out budgets with large deficits so that we saw the national debt just continue to go up, and up, and up, and up.

The challenge we have today is that the fastest part of our budget are entitlements that are growing at 10 percent annually. I am talking particularly of Medicare and Medicaid. We need to slow the growth of Medicare and Medicaid to about 5 percent annually. We are going to spend 5 percent more next year than we did the year before, and 5 percent the year after. We are going to see Medicare and Medicaid grow. But if we cannot get those numbers down, we will never ever get our financial house in order.

I look at this budget, and I see that our foreign affairs expenditures are actually going down each year. I see the defense is going down each year. I see the domestic discretionary spending is basically at a hard freeze. Then I look at Medicare, and Medicaid, and other entitlements, food stamps, AFDC, and they are going up at triple the amount of inflation. What an opportunity we have to work together as Republicans and Democrats to get our financial house in order, but the kind of response we are getting when we start to try to make logical changes.

I happen to think the welfare state is dead. I think that 12-year-olds having babies, I think that 14-year-olds who are out selling drugs, 15-year-olds killing each other, 18-year-olds who cannot read their diplomas, 25-year-olds who have never had a job, 30-year-olds who are grandparents, is the legacy of the welfare state. It is dead. It is not going to be allowed to continue, and what I am pledging as one Member of Congress is that I believe that we Republicans in particular are going to get our financial house in order, and I speak as someone who is a moderate Republican, and I would like to think I am extremely moderate, someone who comes more from the center than from the right or left, and I can tell you that we have absolute conviction that we are going to work together to get our financial house in order. We are going to balance the budget.

□ 2200

Mr. HAYWORTH. Madam Speaker, I ask unanimous consent to rescind the 1-hour special order granted earlier this evening to the gentleman from California [Mr. HORN] for March 3.

The SPEAKER pro tempore (Mrs. WALDHOLTZ). Is there objection to the request of the gentleman from Arizona?

There was no objection.

CONTRACT WITH AMERICA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. HAYWORTH] is recognized for 5 minutes.

Mr. HAYWORTH. Madam Speaker, my friends from California tell me the swallows return to Capistrano. My friends from Ohio tell me the buzzards return to Hinkly. And, Madam Speaker, as you and I have come to discover during our brief time here in the Congress of the United States, and indeed as the people of this Nation are discovering, Madam Speaker, liberal Democrats again and again come to the well of this House and distort and exaggerate and basically tell falsehoods about the aims of this new Republican majority with reference to our Contract With America, and especially when it comes to nutrition programs in the public schools.

It is amazing as we take a look at the publications from around the country, and I would simply point out to those assembled here, Madam Speaker, a very interesting article penned by Nancy Roman in today's Washington Times. I hesitate to read the headline because it contains a three-letter word that I really do not want to use in the course of this discourse, and yet it is part of the RECORD. The headline reads "Democrats Lie About Lunch." And the thrust of this article, to read the subhead line really sums it up. Madam Speaker, it is worth repeating and articulating so that the people of this Nation will really know the facts behind this debate. Quoting from the subhead line in today's Washington Times:

"The GOP's school lunch program will grow by $203 million. The government spends $4.5 billion. The GOP would spend $4.7 billion."

In other words, Madam Speaker, according to simple mathematics, we see an actual increase in this school lunch program of $200 million. Simply stated, Madam Speaker, there is no cut, there is no cut. There is an increase in spending.

Now, in fairness to the way this town works, to the way the guardians of the old order have done their accounting for the past four decades, we should point out that there is some form of reduction, but it is only a reduction in the overall increase. Only in Washington would you call an increase reduced in some way, shape, fashion or form, acute.

Indeed, as we have looked at the challenge we face in putting our fiscal house in order, I believe that fair minded people, Madam Speaker, from both sides of the aisle realize that one of the problems we have had continually is in this creative form of accounting, which would call that increase acute.

I listened with great interest to my good friend from Connecticut, who stood before this House moments ago and talked about a cooperative effort to change the spending habits in this Nation. And I respect my good friend from Connecticut because he authored what again inside this beltway was a revolutionary concept, but to the rest of us throughout the country, Madam Speaker, was a very simple, rational, logical concept. And that is that the people who serve in this House, which we call the people's House, should live under the same laws as everyone else in this country.

I salute my friend from Connecticut for spearheading that fundamental tenet of self-government so vital to this House and so dominant, indeed being the cornerstone of reform as adopted in our rules package when we were sworn in here earlier this year. I applaud his cooperative spirit. In fact, I would say that that cooperative spirit is what we hope to build upon in the days ahead, and we call on our good friends across the aisle to end the discourse and move forward in the constructive debate.

LEGAL IMMIGRATION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from California [Mr. BECERRA] is recognized for 58 minutes as the designee of the minority leader.

Mr. BECERRA. Thank you, Madam Speaker.

Madam Speaker, I would like to talk tonight about a subject which has gotten some attention in this country, and these days we see it perhaps grabbing more and more of the attention not just of this Congress and of legislators, but of the American people, and it is a subject which is dear to my heart and which I believe needs more clarity and more discussion, because it affects human beings and it affects Americans.

The subject is that of immigrants. Not immigrants who come into this country without permission, without documents to be here, not so-called illegal immigrants, but legal immigrants, those who have come in through application, waited, in some cases 10 or 15 years, to come to this country, and have now received the permission of this country to come and reside and make this their home and ultimately become U.S. citizens.

These are the lawful permanent residents in this country, and we have approximately 9 million residing in this country, some who just got here and are waiting the 5 years before they can become U.S. citizens, others who have been here for decades and working and doing what most people in this country do, and that is paying their taxes and abiding by the laws and raising their families.

I would like to discuss legal immigrants because it happens that in this process here in Congress of discussing reforms and in discussing the Republican contract on America, one of the proposals, a welfare reform proposal, proposes to use legal immigrants to fund the cost of this reform proposal within welfare. I think it is important not only that my colleagues have a chance to hear and understand more about legal immigrants, but quite honestly, the greater public should have a chance as well.

So I would like to do a little bit here by discussing legal immigrants and perhaps do some personal discussions as well as some factual discussions and providing some data as well.

Let me begin by giving a couple of examples of people who I happen to know in some cases, others that I know of and have been told about, and I think are worth sharing with you today.

Mr. King Tam and Mrs. Tsui Kung Tam are two legal permanent residents in this country. Both came into the United States back in the 1960's. Mr. Tam and Mrs. Tam came from China, Mrs. Tam actually from Hong Kong, and as they arrived in this country they found right away they had to retrain themselves for jobs here in the United States. Mr. Tam went from a cabinetmaker to a cook, Mrs. Tam from a salesperson to a seamstress. They have lived their entire life and they still do in Chinatown in Los Angeles, CA. They have raised three children. All three have graduated from college; David from UCLA as an engineer, Linda from Cal State University of Los Angeles with a business degree, and Mai Li from Cal State, Los Angeles, with a degree in finance.

Each one of them had a chance to undertake the opportunity to go to college, they had a chance to receive some student loans and some grants, and they worked every year while they were in school to try to pay their way through as well. Never has the Tam family been on welfare.

This is a family that in some cases, like son David, is providing volunteer services outside of his job with Habitat For Humanity, helping to build homes for people who cannot afford them on their own, and tutoring students. They have done in many ways what we all would love to be able to say at the end of our lives, that we have contributed to society.

I should give a story about Mrs. Tam, who is very active in the community. Mrs. Tam quite some time ago found that there was quite a bit of traffic in one busy intersection in the Chinatown area, so busy in fact that at one point a child was killed. She became very active and pushed and pushed until finally she was able to get a four-way stop sign installed in that intersection.

Now, let me tell you a little bit more about the Tams. The Tams were never rich, as you can tell from their jobs. They had to work very hard to do what they did for their children and also to raise children that were able to go on to college. The Tams mentioned, actually I should say that in discussions with a gentleman, a dear friend by the name of Don Toi, who is an activist and been a community organizer and a businessman in the Chinatown area for years and is sort of the person people turn to in Chinatown in Los Angeles for so much.

He mentioned that these are kids who he knows who made use of school lunch programs because, again, their parents worked very hard, but were never rich. They were able to take advantage of the Chinatown teen post center the Chinatown area which provided recreational and diversion activities for the kids. They were each, all three kids were participants in the summer youth employment program, so they had a job. That was their first time learning how to fill out an employment application. And they were able, of course, to earn a little bit of money to help pay for their education.

Now, the Tams never had enough money to buy health insurance to provide themselves with adequate health care, but they were able to make use of county hospitals and clinics and pay a small fee for the services. David at one point when he was about 13 broke his arm, but his family did not have enough money to go to a private doctor, so they had to use the county clinic. He was fortunate to have his arm reset.

I mention this because Mr. Toi mentioned a very interesting story to me. Right around the time that David broke his arm, there was another young man in the Chinatown area who also had a broken limb, a broken leg. His family, however, perhaps did not make use or know how to make use of those facilities that were available, and they did not do a very good job, the family did not, of making sure their son was treated. It turned out that he ended up with a limp.

This is significant because Don tells me that this young man, young boy at the time, he was about 14, he was a straight A student, he was doing very well, and after that, he developed a nickname, and in Chinese the nickname is Bai. That means crip. That is a short version of "cripple." And quickly things started deteriorating for this young man, to the point where he became involved in a gang. Not just any gang, but the Wa Ching Gang, which is notorious, not just in the Los Angeles Chinatown area, but throughout the western region of the United States, because it is a very sophisticated gang.

He has been in trouble in the past, and much of this Don says occurred after he had this problem with the limp. Unfortunate, because he was apparently a very bright student.

I mention that because here you have an example of a young man who was able to take care of his broken limb, and another who didn't, and the path that their two lives took.

Mai Li, the Tam's daughter, had a hearing problem a while back. Now, at one point the schools and teachers were classifying her as a slow learner, perhaps mentally retarded, and certainly mentally regressed. So what the Tams did, because they knew about the clinic, they were able to take her to get some preventive health services, and they found out she had a hearing problem.

As I mentioned to you before, Mai Li now is a graduate from Cal State Los Angeles University, she has a degree in finance and is now an auditor, by the way, for the State Board of Equalization in California, which is the equivalent of the IRS here in the Federal Government. She clearly has no, we are hoping, we are certain now she has no particular mental impairment, because obviously she has a very important job. But clearly she had a chance to take advantage of services made available to her, and for which the Tams were paying, if not directly for the full price of the medical care, clearly through their taxes they were paying as workers through payroll taxes, the many property taxes, business taxes if they had a business. They were paying their taxes.

Now, let me move on and tell you a little bit about another family. This family is the Rodriguez family. Juan and Delores Rodriguez came to the United States in 1956 from Mexico. Mr. Rodriguez served in the U.S. Army from 1956 until 1960. In fact, he was drafted into the Army 6 months after entering this country. After an honorable discharge, he worked as a stockbroker clerk. Later he went on to earn his MBA and he opened his own stockbroker firm. He now works as an internal auditor. Mr. Rodriguez became a U.S. citizen in 1984. Mrs. Rodriguez is still a legal resident and she has been a homemaker raising five children and doing a very good job at it and working very hard at that.

□ 2215

She has been a PTA volunteer. She has been a schoolroom mother, a Cub Scout den mother and a church volunteer. This family, the Rodriquez family, has never been on welfare either.

As I mentioned, they have five kids. Four are U.S. citizens. One is a legal resident. Ed, the child Edward, is a transportation planner who I know very well. Juan is a college professor at California State University. Victor is an investment banker as well, and Carol is an environmental specialist with the California Coastal Conservancy. And Miriam is a homemaker, five children, five law-abiding individuals, four of them U.S. citizens.

Finally, let me tell you about one other individual. This individual is named Claudia. Claudia actually happens to live in Washington, DC. She came to this country when she was 14 with her parents.

She enrolled in a community youth center shortly after coming. And before long, she was developing tutoring programs for other young people in this area. She work very hard in school, and she was encouraged to go on to apply to college.

At the age of 17, she did so, and she applied for student loans. Now, until Claudia turns 18, she is ineligible, like any other person under the age of 18, to become a U.S. citizen. But she is now someone who not only wishes to become a U.S. citizen but also intends to go on and further her career.

I mention these folks because they are important to us. These people in every respect to what they all consider to be the right thing by anyone in this country, citizen or not, law-abiding, pay taxes, they serve in the military defending this country in time of war. They do everything we would want any upstanding person to do, but there is a difference here, because the fact that they may not be U.S. citizens means that under the welfare reform proposal under the contract for America, these individuals would not qualify for benefits for which they have paid taxes. That, to me, seems to be a contradiction of the American dream and the American work ethic.

Let me do this. Let me talk about immigrants a bit more and give some summary and some background on what we mean by the population of immigrants.

People often ask, how many immigrants, legal immigrants are thee in this country? If you take a look, in our country of about 260 million people, about 3.8 percent are lawful permanent residents, legal immigrants. That amounts to about 9 million people in this country who at some point after about 5 years are eligible to become U.S. citizens.

Now, I will mention later, if I have a chance, that when we talk about folks who are receiving welfare, it is interesting to note that this population of legal immigrants actually has a lower usage rate of welfare than the U.S. citizen population. U.S. citizens, there are about 3.7 percent of the entire U.S. citizen population which is on welfare. That is about twice as much, almost twice as much as for legal immigrants being on welfare. So clearly, even though they are eligible to receive welfare benefits, they are less likely than U.S. citizens to use them.

Now, let me move on and talk a little bit about what others have said about immigrants, because I do not want to just tell you what I think about immigrants.

We have had a lot of folks tell us that we should take these services away from legal immigrants because they happen to not be U.S. citizens. They are not eligible to vote.

These are people, let me show you a chart, these are people who have been recognized as contributors by not just one individual or a group of individuals but by a lot of very important individuals. Even the Council of Economic Advisors for President Bush in 1990 recognized that when they said that immigrants are more likely than the native population citizen to be self-employed and start new businesses. I am sorry. That was said by Commissioner Doris Meissner, who at the time in 1990 was with the Carnegie Endowment for International Peace.

What the President's advisors in 1990 said was that the long-term benefits of immigrants, as you can see here, greatly exceed any short run costs.

What we are saying really, in these two quotes, is very consistent with what we have found. That is, that for the most part you have able-bodied people coming in as legal immigrants, ready to work. They do so. And they start contributing right away. And because you are talking about folks who are, for the most part, had to go through quite a bit to get in this country, whether it was waiting 15 years or trying to make the trek by themselves or with family, they are ready to be industrious. And that is reflected in both the quotes that you see from the Council of Economic Advisors, that President Bush had, and also from Miss Doris Meissner and Mr. Robert Bach.

As I said, Miss Meissner happens to be the INS Commissioner, the Immigration and Naturalization Service Commissioner.

Other things that have been said, the Urban Institute, which is known for doing extensive studies and did an extensive study for the administration recently to determine the effects of immigration and the numbers of immigrants, found in its study that for every increase of 100 people in the native population, in the citizen population, employment grew by 26 jobs. For every increase of 100 in the immigrant population, employment grew by 46 jobs. The Urban Institute further reports that immigrants actually complement native workers rather than substitute or displace native workers.

That is important, because people say they are taking all our jobs. Most studies find that that is not the case.

Immigrants make it possible for industry to survive here in the United States. Without their manpower, many businesses would have no choice but to shut down or perhaps move overseas.

Do immigrants, as I said before, really pay taxes? Of course, they do.

A lot of analysis has been done on this particular subject as well. Let me show you a chart that quotes a report by the periodical Business Week back in 1992.

As you can see, Business Week, in this report, cited the fact that immigrants, while they earn in this country about $240 billion and they pay taxes to the tune of about $90 billion, their use of welfare is about $5 billion. Again, that is consistent with what President Bush's Council of Economic Advisors found to be the case, and it is consistent with what we have found in the past history with immigrants, that they work very hard to produce.

Madam Speaker, I yield to the gentleman from Texas, Mr. GENE GREEN.

Mr. GENE GREEN of Texas. Madam Speaker, I thank the gentleman for the opportunity to be here tonight and talk about some of the issues involving legal immigration. I am glad you differentiated between illegal and legal immigration. Because the two stories you told of the families, I think anyone in this chamber, not just tonight but when we are actually here, could relate to that because we all have family or friends who we know who have come here as legal residents and worked their way into becoming full-fledged citizens.

During that time that they are legal residents, they also experience the same thing as someone who is here as a citizen. They experience job growth, as you have shown. They pay taxes. They raise their children. But they also may have problems. They may be laid off, whether they be in Texas or California or anywhere else. And because of that, they are here legally, they should also benefit from the services of the system that we have.

You and I sit on the Economic and Educational Opportunity Committee that considered and marked up a portion of the welfare reform bill last week and the Republican version of the welfare reform bill. I had an amendment during that time that we did not get to that would have said, the bill obviously exempted anyone from any public service who is a legal resident, who is not a full citizen. I had an amendment that would have exempted legal immigrants, would have allowed them to be eligible for these programs if they at least paid taxes for five years over and above being a legal resident. We did not get to consider that amendment because, one, we had a two-day markup on probably the most important bill that we may see this session, and so our amendment was cut off, and I hope when we do get to that legislation in the next two weeks, we will see it. We also had an amendment that was available that maybe the Ways and Means Committee, in their section, will deal with it. But even a legal immigrant who is in the United States, who laid their life down maybe for our country would be ineligible for benefits under the bill that came out of our committee.

I know the other committees may be addressing it. I hope they do so we do not have to tell a veteran in my district in Houston that may have fought in World War II, may be a legal citizen and yet they cannot go and have a senior citizen nutrition meal because they are not 79 years old.

I think there are some travesties in that bill. I am glad you asked for this time tonight to talk about it.

I wanted to add to a little bit of what you have said. In that bill, a legal immigrant would be ineligible for Pell grants, for example, even though they pay taxes and their families may have paid taxes to the Federal Government. As you said, 240 billion in earnings and 90 billion in taxes and only 5 billion in social services or welfare. So they have paid taxes. A good example of that bill, 111 legal residents in Houston participating in Pell grants right now would be ineligible for those programs. These are legal residents who very well may have paid their taxes, and we were trying to provide that ability for.

Like I said earlier, it seems ironic that we would, in our bill that came out of committee, that a legal immigrant would be ineligible for a hot meal at a senior citizen center or a meals on wheels. Under the bill, they would be eligible if they are 79 years old, I believe. Hopefully, we will be able to address that again when that bill comes up next week or the week after. Or maybe it could be addressed in the other committees that have jurisdiction. But these centers, I have a number of them in my district, they do not check people's citizenship much less whether they are legal or illegal, because that is not their job. They are mainly concerned about providing a hot meal and the social contact that we need for these seniors that is provided under the Older Americans Act.

Let me remind my colleagues that we are not talking about someone who broke the law. We are not talking about somebody who came here illegally. We are not talking about somebody who is just taking jobs as we are worried about. We are talking about somebody who has admitted, who may have waited, as you said, for many years to gain legal residence, who obeyed the rules and still is not allowed to partake of some of the good things that maybe our country may provide them, whether it be low income housing, income energy assistance, or even job training for adults and disadvantaged youth. Someone who comes here legally and because of the downsizing that we see all over our country, they may be out of a job and they would not be eligible for some of the job training that we have and that we are trying to expand more and even consolidate so it is more effective.

I guess the difference is we are trying to ask Congress to differentiate between someone who is here legally, who obeyed the rules, and someone who is not here legally.

And that is all we are saying. Do not tell a senior citizen that you cannot have a hot meal even though you may have lived here 30 years and raised your family and have, like you said, some great examples of young people who have grown up in the country and obviously productive citizens. And their family would not be eligible to have a hot meal at their local community senior citizen center. Several times during the discussion, members of the committee, particularly from the majority side, said that we have limited resources and we should provide for citizens first. And, of course, that assumes we are pitting our citizens against legal residents. As if any of us would say, we are going to support withholding assistance to citizens to help a legal immigrant.

I think that is not what we are all about. We are about providing the services to people who are here legally, whether you are born here or whether you are here as a legal immigrant. We should not argue with the citizen, argue citizen over legal immigrant. We should try to discuss the needs of the people on our committee, particularly when we are talking about a welfare reform bill or a reform bill that deals with social services.

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If a person cannot afford their electricity bill during the summer or their heating during the winter, we should not mandate that the local agency play the INS agent. For one thing, if that person is here legally, whether it be in L.A. or Houston or anywhere else, are we really going to ask that HLNP in Houston or some agency to verify their papers? That is just not the case. It could work, and work efficiently.

I think we are building even more cost into our cost, and particularly after November 8 we surely do not want to build more government bureaucracy.

Restricting legal immigrants from assistance also does not affect that they pay into the system, again, as you said, they pay taxes just like everyone else. They pay sales taxes in Texas, they pay school taxes. If they rent, I have people all the time who say they do not pay any taxes. The last time I looked, even rental property has to pay property taxes, and if they pay whatever they pay per month, their property taxes are built into it, because as someone who owns property, hopefully I do not lose money on renting that property.

Mr. BECERRA. If we can engage in a colloquy, Mr. Speaker, I think that is an important point. One, we have to stress again that what we are talking about here is people who have a legal right now to be in this country, and eventually will become U.S. citizens.

We are not talking about folks who have come across this country clandestinely or without permission of this government. They are people who have been told by the people of the United States, "You are here, you are allowed to stay here permanently and become U.S. citizens."

We are not talking about visitors on a visa, or about students who come on a visa to stay and then have to go back. We are talking about people who have been told by this country, "Yes, you can come now and make this your permanent home and become U.S. citizens."

They are people who are saying, "We are coming with the intention of coming permanently. That is why we have waited," in some cases, "10 or 15 years, because we are asking for a visa to stay here permanently, not for a visa to visit as a student or tourist."

Then the point about taxes. In every respect, a legal immigrant is like any U.S. citizen except in perhaps two or three situations. Obviously, they cannot yet vote because they are not citizens. They cannot hold certain classified Government jobs, for example, with the CIA. They cannot, obviously, be Members of Congress.

But except for a few things like that, they do everything that citizens do. They have every obligation that citizens have. They have to conduct themselves and comport themselves under the laws the way every citizen must, so that if they own a home they pay the same property taxes.

If they have a business, they must pay the same business taxes. If they work, they must pay the same payroll, social security, all the different taxes, FICA, everything we see in a pay stub deduction they must have deducted, as well; unemployment insurance, they pay that as well.

In every respect they do that. They pay the local taxes, States taxes for schools, et cetera, so in every respect, they are the same. In fact, there is no way to distinguish between a citizen and a legal immigrant unless somehow you can ask them for some verification of their status to try to prove citizenship.

Mr. GENE GREEN of Texas. Mr. Speaker, if the gentleman will continue to yield, these are people who had permission to come here, like the gentleman said. If we want to say, today, March 1st, we are not going to let any more people come in legally, if that is the decision this Congress wants to make, or the American people want to make, but not tell someone who has invested not only their life in some cases, and particularly with our veterans, they could have invested their life in defense of our country and not make them eligible even though they have paid the bill just like everyone else.

I always use the example that our forefathers were not citizens of our country. All of us came from somewhere. I am glad my great-great-grandmother happened to be born in Baltimore Harbor, because that made my great grandmother a citizen. I guess we have to recognize that, that we are a nation of immigrants, because every one of us came from somewhere. Even Native Americans walked across the Alaska bridge to come here.

We need to remember that when we are talking about it and not say that someone is here legally, because for many years we had no immigration controls at all. When a lot of our forefathers came, if you could make it here, that was fine, because we were building a country.

We are still building a country, but we have immigration controls, and we are asking people to abide by the law, and yet these people who have abided by the law, we are now saying, No matter how many years you have invested in this country that you wanted to come here, nobody forced you to come here, that you have invested, now we are going to take these benefits away, or take something away from you.

Mr. BECERRA. Mr. Speaker, I would like to give some examples about what the Contract With America's welfare reform proposal would do to certain individuals and families. Let me give some examples.

A pregnant woman who is a legal immigrant would not be eligible for the Women, Infants, and Children's Program, called WIC, which gives, in some cases, infant formula—it helps a woman who just had a child, a U.S. citizen child, even though she is preparing to give birth or if she already gave birth, as I said, to what would be a U.S. citizen.

A 7-year-old child would be denied foster care and adoption assistance if, by some accident, her parents happened to die. Because, solely because, she would be a legal immigrant and her parents had expired, she would not be eligible for any foster care or adoption services under the Contract With America.

A 23-year-old woman, again, legally present in the United States, who may have been forced to flee her home from an abusive husband would be denied services coordinated by a battered woman's shelter under the Contract With America's welfare proposal.

A 35-year-old man granted political asylum because the country he was fleeing might have tortured him or was intending to torture him, in some capacity this gentleman's life was in danger and that is why he was granted political asylum, it could have been because of religious beliefs, political beliefs, but he has now been granted by this country refuge because he has proven that he was in danger of losing his life, that person legally in this country would be ineligible to receive canned goods from the food bank run by his local church under this welfare reform proposal by the Republican Contract With America.

Two more examples: A legal immigrant, again, who served in the armed services and fought in the Persian Gulf War could be ineligible to receive Social Security, excuse me, Supplemental Social Security income benefits, even if he was disabled during the line of duty.

Finally, let us take a 60-year-old woman who may have emigrated to this country legally when she was 15 years of age. She worked in this country, say, all her life, and somehow was rendered incapable of continuing to work because of, say, a heart condition. She would not qualify for any Medicaid under the welfare proposal that the Republicans have in their Contract on America.

Those are the types of things that we face in this particular proposal which make no sense, because we are not talking about people who are somehow sloughing off, taking advantage of this country, not paying taxes, breaking the laws. They are in every respect abiding by the laws of this country and contributing, yet we are now telling them that they will be excluded simply because of the distinction between citizenship and not yet getting there.

Mr. GENE GREEN of Texas. Mr. Speaker, let me give an example, like the gentleman did. I have a family that I grew up with. Their children are my same age now. They have lived here all their life.

Their mother is still alive. She is not a citizen, she is here legally. The children were all born here. The children are now in their forties, and they are law enforcement officers, they are managers of business, they are superintendents at companies, and those children are providing—and that mother raised those children here. They pay taxes with their father, and they have lived here, and yet to tell that elderly senior citizen that now, I'm sorry, you are 77 years old, and even though your children are hard-working and paying lots of taxes, because I know their income, that she is not going to be able to have the socialization and the hot lunch with the senior citizen center that is 7 blocks from her house.

I do not think that is the Americanism that we all understand, and the compassion for people, and also the feeling that we have for everyone who, again, tries to obey the law and is a productive citizen. That is why I think hopefully the committees will change, the other committees, because we were not able to in ours, because of the abbreviated session, and I don't know if we would have had the votes anyway, even if we had the time to have the amendment.

But I hope when it comes to the House floor we will at least make that correction so we can address it for legal immigrants, and particularly for legal immigrants who are also veterans, who again have put down their lives and sacrificed their time in defense of the freedoms that they now enjoy, but we may be taking some of them away if we pass this bill.

Mr. BECERRA. Mr. Speaker, I thank my colleague from Texas for coming down tonight at this late hour to participate in this special order. I appreciate his words. He has always been there to talk about families and people, and it is clear that he has a concern for people who are contributors to this society. I thank him for adding some very eloquent words to this particular discussion.

Mr. Chairman, I would like to discuss a little bit more about welfare, more of the specifics about welfare. What most of us know as welfare includes a number of different programs, from AFDC, which is Aid to Families with Dependent Children, to Supplemental Security Income to Medicaid and food stamps.

AFDC costs the Federal Government about $16.5 million. SSI is about $26 billion. Medicaid is $82 billion. That is, of course, medical services to the aged, the blind, and the disabled. Food stamps is about $25.5 billion. If we add up those programs, they amount to about 1 percent of the Nation's budget, annual budget.

Mr. Speaker, folks think of that as welfare, when we talk about welfare, but most people do not recognize other things as welfare. Welfare is really government assistance of some form or another, whether it is AFDC to a woman with a child who is poor, or in many cases, most of us do not think of it this way, but I know I own property.

I own a home. I am able before April 15 of every year to deduct the interest I pay on my mortgage from my taxes. I am also able to deduct the property taxes I pay on that home from my taxes, and I get to reduce the tax load that I have by that particular deduction.

In essence, I have reduced the amount of taxes the government collects, which makes it necessary, of course, to collect from some other source, or have that budget deficit. That in a sense is assistance that is offered to me, because I am subsidized by the Federal Government for the purchase of my home.

Mr. Speaker, most folks do not think of the mortgage interest deduction or the property tax deduction as welfare. We think of them as incentives that we have to purchase property, to own property, and ways to make it possible for families to, obviously, buy a home.

Most people would find it very difficult to purchase a home and actually maintain that residence if they found that they had to pay the full amount and actually pay it off in less than 30 years, so we have ways to try to encourage home ownership, which I hope most families growing these days and becoming participants in society have a chance to do, even though it is becoming tougher and tougher these days to do it.

However, that is an example of something that could be considered public assistance or government assistance that most folks do not consider obviously welfare. We never classify that as welfare.

However, let me say that the mortgage interest deduction by itself, without the property tax deduction, amounts to about $51 billion. that is what we will probably see deducted from tax forms from people's taxes just in 1955.

By the way, Mr. Speaker, 44 percent of that deduction, 44 percent, about $23 or so billion of that $51 billion, goes to taxpayers with incomes in excess of $100,000 or more.

Compare that, Mr. Speaker, $51 billion just in the mortgage interest rate deduction that I get to participate in, and anyone who owns a home gets to participate in, with some of the proposals in the majority party's Contract on America welfare reform proposal.

They are talking about cutting school lunch programs, they are talking about cutting back student loan programs, and there you are talking about sums that are even less than what we are talking about for the mortgage interest rate deduction.

We have subsidies for agricultural products and crops. In my mind, what concerns me greatest is this idea that we see floating around these days of cutting taxes at a time when we have a large deficit, where we are trying to balance the budget, and at the same time, we have discussions about a capital gains tax cut.

The capital gains tax is something that is used by people who own capital, certain types of capital. If you happen to own a big tractor or a bulldozer and a construction company, that is capital. If you happen to sell it, you would be able to reduce your taxes on the capital gains, on the gain from that particular product or that equipment, by a certain amount if a capital gains tax cut were actually implemented.

Mr. Speaker, the Republicans are talking about a capital gains tax cut of about $200 billion over the next five years. That means that somewhere we are going to have to find the money to make up for the $200 billion.

When we put that on top of the $1.2 or so trillion deficit that we have to make up over the next seven years or so, you see that the task is monumental, to try to balance the books.

When you see proposals to cut capital gains taxes which will benefit mostly those who make over $100,000, about 70 percent of the benefits will go to those who make over $100,000, you will see that it is going to be difficult to swallow having to cut a program that would make a legal immigrant who has paid taxes ineligible for services that he has already paid for.

That, I think, shows a contradiction that we are going through right now, the reason I wanted to have a chance in this special order to discuss the whole issue of legal immigrants.

What we have to do is come up with some reasonable approaches to fund welfare. We have to come up with things that will help us change the way we provide welfare assistance. We have to streamline, obviously, the process. We have to make it workable, so that ultimately, people will work and be off of welfare, but we have to attack the problem where the problem lies.

Why go after legal immigrants who, as we can see from the studies, the empirical data, all of which show that immigrants by far contribute much more than they ever consume. Not only that, but if you are going to attack a population for purposes of welfare reform, why attack the group that is making least use of welfare? It does not make any sense. But that is the direction some of the Members of Congress would seem to want to head in, and I think that is unfortunate because what we find is that rather than have reform we are ending up with expediency, and to me that does not make the best sense; this is not the way to legislate.

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I believe when we have a chance to closely look at the issue, especially the issue with regard to legal immigrants, we are going to see that rather than try to dissuade or punish people who are showing industry and entrepreneurship, the American dream, that are trying to do the things that make us America, what we will see is there will be I hope a change of heart and a recognition that what we must do is tackle the problem, and with welfare that means of course making sure we put people on a program where we tell them here is the plan, you have to follow this plan. You may need some assistance now, so we are going to give you some assistance. You may need some education, you may need some training and we are going to give you that. And once that is done, we want you to work. And you are going to work, because that is why you are on welfare, to transition off of welfare back to being a productive, paying member of society.

And when we do that, when we provide that training and the education, if the person happens to lack some skills and education is necessary, and if the person maybe has a child, maybe provide the child care to let the person get to school or get to work, and make some health care available so a person does not have to worry about the child getting sick or the individual getting sick, when we can transition them off and see them become productive, then we have true welfare reform. And in the process of coming up with that program we have to come up with the financing for it, and in coming up with the financing for it we should be addressing the issues that relate to welfare, not going after a population that is demonstrating in every respect the American dream.

I think that is where we have to head and I hope that is where we will head, and perhaps by having full, open discussions on this we will head in that direction.

That is my hope, and I hope to have a chance over the course of the next days and weeks as we discuss welfare reform to bring this issue closer to the fore so people can have an opportunity to understand it, recognize it, and then act based on full, complete and accurate information.

Ms. PELOSI. Mr. Speaker, I thank the gentleman from California [Mr. BECERRA] for calling this special order tonight on the subject of immigrants and welfare benefits. As we debate the complex and sometimes heated issues surrounding immigration generally, I am hopeful that the tone of this discussion will be both reasonable and balanced.

Furthermore, I hope that this special order, and others to follow, will deflate some of the politically-charged myths surrounding the immigration debate.

One of the myths often cited to support the contention that immigrants cost more than they contribute is that they are heavy users of welfare. The facts, however, are very different. When refugees are excluded, statistics show that immigrants of working age are considerably less likely than native-born residents of working age to receive welfare.

Only 3.9 percent of immigrants, who come to the United States to join family members or to work, rely on public assistance, compared to 4.2 percent of native-born residents.

The failure to differentiate between the legal status of refugees—who are explicitly entitled to public benefits upon arrival—and other immigrants contributes greatly to continuing misperceptions and to proposals of potentially ineffective policies.

It should also be noted that those legal immigrants who seek public assistance must meet much tougher standards for the major programs than native-born residents, while undocumented immigrants are ineligible for any public assistance except emergency medical care under Medicaid and some nutrition programs.

Another one of the myths surrounding immigrants and welfare benefits is that these benefits act as a magnet which attract immigrants to the United States. According to an INS report on the legalized alien population, this is simply untrue.

Fully 64 percent of legal immigrants come to the United States to join family members, 14 percent come because U.S. employers need their skills, and 16 percent are fleeing political persecution. Very few immigrants come to the United States seeking public assistance.

Undocumented immigrants legalized under the amnesty program come to the United States for the same reasons: to join close family members—62 percent, to work—94 percent, and to flee repression—28 percent, not to use public services like welfare.

Mr. Speaker, most of the Republican welfare reform proposals would hurt U.S. citizens and their sponsored relatives. Some of these proposals involve outright bans on more than 60 Federal programs for legal immigrants who have not yet become citizens.

One of these proposals would require Federal programs to report to the INS all legal immigrants who receive benefits for more than 1 year. These immigrants would be considered public charges by the INS and therefore subject to deportation.

I urge my colleagues to examine the facts and not the myths surrounding the debate on immigrants and welfare benefits.

The facts are these, Mr. Speaker, and they speak for themselves.

Immigrants pay more in taxes than they receive in benefits. According to the Urban Institute, legal and undocumented immigrants combined, pay approximately $70.3 billion per year in taxes and receive $42.9 billion in services such as education and public assistance.

Legal immigrants' Social Security deductions help keep the Social Security system solvent. Because immigrants tend to be young and have years of work ahead of them, they are significant contributors to the Social Security system.

The combined total of all immigrants' income came to $285 billion according to the 1990 census. This was 8 percent of all income earned in the United States, and equal to immigrants' share of the population—7.9 percent. Immigrants spend much of their income on U.S. goods and services, helping to spur the U.S. economy forward.

Undocumented immigrant workers provide tax dollars to the United States because undocumented workers are subject to payroll deductions and income taxes, they help to support programs like unemployment insurance and Social Security, even though they themselves are not eligible for benefits from these programs. In 1990, undocumented immigrants paid $2.7 billion in Social Security and $168 million in unemployment insurance.

Once again, I thank Mr. BECERRA for his leadership on this important issue.

RETURNING DECISIONMAKING TO THE STATES AND LOCALITIES

The SPEAKER pro tempore (Mrs. WALDHOLTZ). Under the Speaker's announced policy of January 4, 1995, the gentleman from Maryland [Mr. EHRLICH] is recognized for 30 minutes as the designee of the majority leader.

Mr. EHRLICH. Madam Speaker, I rise to enter into a colloquy with my colleague from California. Madam Speaker, cliches are very popular in politics as we all know, particularly in election years. Everyone is pro-small business, everyone loves the family, everyone is tough on crime, everyone likes the middle class, cares about the middle class, wants to support the middle class.

The problem, Madam Speaker, is that right here in the House of Representatives is where the rubber meets the road, and cliches are know longer good enough. This is where the votes occur, this is where the lines are drawn in the sand and this is where positions are taken that we must defend come every other November.

Right now the tough votes with respect to regulatory reform are being taken every day in this House. It is part of the Contract With America, it is a very important part of the Contract With America, but it is also what the people want.

I direct a comment to my colleague from California. I was amazed, Madam Speaker, that in the course of our campaign we targeted the small business community, we went around top strip shopping malls and would ask owners what is the number one issue for you ma'am, or sir. And I thought the answer I would receive would concern itself with the legal environment in the State of Maryland, or the availability of capital, or employee problems. But, Madam Speaker, by far and away the No. 1 problem that the small business community in the second district has is the regulatory burden that government at all levels has placed upon it. And this was surprising to me.

And I direct a question to my colleague from California. Did he also find this to be the case in his campaign?

Mr. RADANOVICH. If I may, if the gentleman will yield, I would like to tell the audience a bit of a story that happened in my district with regard to small business. There was a killer in my district. My name is GEORGE RADANOVICH from the San Joaquin Valley in California. A little to the south of me, not necessarily in my district but very close, there was a killer on the loose and the Federal Government swooped down on this person one day and came down on this killer as he was disking his farm there in Kern County, CA and arrested the man. He was, as I said, out on a tractor disking his field as he was preparing it for the crop he was hoping to harvest a few months later. This man was the killer. They arrested him and they took the weapon at the scene of the crime. And the weapon itself was a tractor and in disking what he had done was he had killed five rats, and this was under the Endangered Species regulation. Actually, he is in court right now facing I believe a 6-year sentence and a $100,000 fine, and what he did was he killed five rats while he was trying to go about the business of farming on the ground that he owned.

This is the kind of legislation, Madam Speaker, that we are running into in our districts, and it is not so much, granted you know the way that they are dealing with this issue is a real problem, but the whole point of the problems in endangered species legislation or any regulation is where it is coming from.

And I think we heard plenty today and over the past few weeks when we are trying to get rid of some of the regulations that come out of this body, what we are trying to do is send it to the local level so that at the local level those regulations will begin to make a little bit of sense. When the far-reaching arm of Washington reaches down from 3,000 miles away and abducts a farmer for disking his own field or killing rats, it is a pretty good indication of the fact that regulation from Washington does not work very well. Food programs from Washington do not work very well, crime programs from Washington do not work very well in Fresno.

What we need to do and I hope what we are doing by block granting is getting those funds into the district and placing them into the proper hands for people to take care of the problem locally, because I do not know, nobody in this body knows how to take care of crime better in Fresno than my mayor, Jim Patterson, and my police chief, Ed Winchester and my sheriff, Steve Magarian. Those guys know it the best, and that is the problem I have with regulation coming out of this floor out of Washington, DC.

My colleague from Maryland has some similar examples as well, and I am sure he would like to be able to relate them. I have a whole list of these too.

Mr. EHRLICH. I know you know, but I only have all night. Actually we do not have all night, and I thank the gentleman from California.

I think the American people are finding out that one of the themes behind the Contract With America was this devolution of power back from the Federal Government to the States, to the local, because as the gentleman so eloquently stated, the locals know better. They know what best to do with the money that the taxpayers generate. And in this way we can cut out the middle-man and in fact send them the same amount of money and get better service, and that is what this whole thing is all about.

I know the gentleman is familiar with some of the more dramatic numbers, Madam Speaker, that have been generated over the last few years. The number of pages in the Federal Register reached 64,914 in 1994, the most since 1980. Federal regulatory agencies currently employ 131,412 people at an annual cost of $11.9 billion, both record numbers.

The Clinton regulatory plan released last November, which I know the gentleman is familiar with, shows that the administration plans to pursue 43,000 additional regulatory actions after FY 1995 and beyond. In the last 6 months of FY 1994 alone, the Federal Government completed 767 rules and regulations. The Clinton Administration's National Performance Review stated that the compliance costs imposed by Federal regulations on the private sector alone were "at least $430 billion per year or 9 percent of our gross domestic product," and as the gentleman knows, one of the frustrating parts of this debate is the fact that we have not focused in on the job loss. We zero in on costs, we talk about anecdotes, we have our anecdotes, the other side has their anecdotes, but we do not quantify. And I am not sure it is quantifiable, the extent to which overregulation costs us jobs in this economy.

Mr. RADANOVICH. Madam Speaker, if the gentleman will yield, I have another tale of what happens in my district. I also represent grazing land in the Sierra National Forest. Part of my district allows, over the past 20 years, cattleman to do summer grazing in the Sierras by permit. There are people who have been up there and using the same ground over a 20-year period.

Let me tell you, Madam Speaker, what is happening in my district right now, and this is through the National Environmental Policy Act which requires a biological study now for everybody who goes up in there. Remember, these people have been up there for the past 20 years. And they are gearing up for their season which when the snow melts will start this spring. They are being told through this National Environmental Policy Act that they have to do a biological study. This requires thousands of dollars, it requires months to do. If they were to do it now, it would be ready in the winter of the following year. They could be locked out of 1 year in the Sierra Nevadas.

My cattleman in my area are facing the fact of having to sell down the herds they have built up over many many years and taking capital gains losses over that, simply because a rule that stated that these people have to go through biological studies that will take months instead of being flexible to allow that to happen over a period of maybe 1 or 2 years, knowing the fact that they have been up there for the last hundreds of years and the Sierras are still there, that they cannot demonstrate any flexibility. That represents a loss of business and a loss of jobs, and again it is just another example of laws and regulations coming out of Washington that are better served coming out at the local level because they make more sense.

Mr. EHRLICH. If the gentleman will yield, the point is very well-taken. When we talk about regulations sometimes we forget it is the American consumer in fact who actually pays the cost, not just with respect to job loss but also increased prices at the grocery store for instance, because it is at the supermarket where the impact of all of the regulations we have been talking about on this floor for the last week hit home.

I was shocked when the Food Marketing Institute, for instance, which represents supermarkets and grocery wholesale ears described to me all of the regulations that go into the distribution of grocery products to consumers.

I think the gentleman will agree we have the most efficient food distribution system in the world, bringing customers a wide variety of goods at lowest possible prices despite the best efforts of bureaucrats and regulators to add layers of inefficiency and costs to the process, but it is acronym city and that is the problem. We have the USDA, we have FDA, we have the FTC, we have the ICC we have the DOT, we have OSHA, we have EPA, we have the DOI, we have the CPSC and who knows what other collection of letters and acronyms that govern and micromanage, in my view, the way this particular industry operates.

Most of the regulations are well-intended; we all know that. I think we can all agree with the other side with respect to that point. Some are necessary. But all of them add up to a staggering amount of paperwork and we are going to get into that in a minute I know, and red tape and costs that often makes food distributors feel as though their primary business is satisfying government regulators and not meeting consumer demands. And if the gentleman would let me just have another 20 seconds I will throw an example in here, and I know the gentleman has a lot of anecdotes he wants to share with the American people and I also want to hear them, but let us begin with the basic food group, fruits and vegetables.

Does the gentleman know under PACA, the 65-year-old Perishable Agricultural Commodities Act, retailers and wholesale grocers are forced to pay a fee for the privilege of selling fresh and frozen products in their own stores? Grocers pay millions of dollars in license fees, and that is what they are, license fees, for this outdated, inefficient, and unfair program.

Five years ago an advisory committee recommended changes to PACA. No changes have been implemented.

□ 2300

I have in my hand, in fact, a letter from a constituent in Maryland. He owns a small chain of grocery stores right around the corner from where I live with my wife. PACA costs his four stores alone $1,600 a year; his contribution, one grocer in Maryland's contribution, to the $500 billion annual cost of Federal regulation in the grocery industry alone.

It gets crazier.

Mr. RADANOVICH. Madam Speaker, if the gentleman would yield, I have another story.

I think in my district an article was written recently in our local paper that talked about the hand "Biting the Hand that Feeds Us" was the name of this article in Fresno, and it talked about how we are biting the hand of big Government that is feeding my valley to the tune of about $4.6 billion a year, and the article went on to say that it covers the various benefits, quote unquote benefits, that come from Washington into the district to the tune of about $4.6 billion. That includes everything, pensions, AFDC, farm subsidies, the whole bit. You name it. Four point six billion dollars in there.

And the tone of the article, which is quite interesting, was the fact that we are—you know, can the valley survive a hit of $4.6 billion, and went on to say how, no, we cannot, we cannot survive without the help of the Federal Government. In a small sentence at the end of the article it did say, however, that $5.3 billion left the valley to come to Washington, and so the point that was never made was that $5.3 billion was paid in taxes from my district. My district got $4.6 billion less. Now there is a discrepancy there of about $700 million, and I would like to make the case that if that, those dollars, never left Fresno, solving the same problems, they would have $700 million more to deal with on the local level, and, my colleagues, that is what I think we are trying to get at here in Washington when we are talking about regulatory control.

No. 1, the regulations do not make sense from Washington. No. 2, you give the money back to the States and let them deal with their own problems. They got more money to begin with, and they are going to be much more reasonable in their regulation.

It boils down to me, too, of trusting other people.

Mr. EHRLICH. Madam speaker, I thank the gentleman, and I know many people on our side have thousands of anecdotes we would love to share with the American people. We have all been doing that on talk radio, C-Span, in newspapers, in town meetings with our constituents.

Just a short one for you:

What about the cardboard boxes that contain grocery products that we all buy? The Department of Labor has fined grocers literally millions of dollars, and they are still doing it because a 1954 regulation named the Hazardous Occupation Order No. 12 prohibits 16- and 17-year-olds from even tossing a cardboard box into a baler. Has the administration revised the law to keep up with the safety design standards found in all modern balers? No. Does the administration have any data to justify its unrelenting enforcement? No.

Last year, before we got here, 72 Members of Congress, Democrats and Republicans alike, asked the administration to address this issue. Still no action, and that goes back to the earlier point, the job loss. We need to focus in on that in the course of our debate over this whole issue of regulatory reform in our country.

Do you agree?

Mr. RADANOVICH. I agree with you, and I have got another tale to tell:

Madam Speaker, water is an important commodity in our district. We have a network of dams that supply agricultural water and also water to our cities. Under a different majority in 1992 we had what is called the CVPIA, which is the Central Valley Project Improvement Act. During that time there was a study to be initiated on one of the major streams in my district that was dammed, and the study would require $5 million allocated for that study as well to study the establishment, reestablishment, of a fishery, and what the study was intended to show in 1996 was a way that we could take water from agriculture and reestablish a fishery that had disappeared with the establishment of the dam in the 1960's. The study was supposed to say that any project that came up with that, those results, had to be reasonable, prudent and feasible, and so since 1992 they began their study, and just the mere consideration of this study, which everybody knew would bankrupt agriculture in the valley for the amount of water that would have to be taken from agriculture to replenish this stream, my farmers were facing decrease in land values. They were not getting loans at the bank simply because of the mere thought of doing something like this. Everybody knew that it was going to take so much water that it would literally destroy agriculture in my valley.

Thank God the other day we were able to stop this study, but it is just another example of somebody's idea of, yes, it would be very nice to have fish back in the San Joaquin River. You put a price tag to that with these ideas that come out of Washington. You can quickly find that they are neither reasonable, prudent and feasible, and you do not have to spend $5 million finding that out.

And the list goes on, and again I think that it drives home the point that we in Washington and these Members of Congress on both sides of the aisle are going to have to realize that America can trust not only us, but every other elected official all the way down to dog catcher in Main Street USA to successfully deal with problems and allow them to do that. I think that is what the evolution is all about, and I think that is what block granting is all about. It is by Members of Congress admitting that they do not know, they do not know every detail of the problems in every little town and downtown America.

Mr. EHRLICH. Madam Speaker, if the gentleman would yield on that point, just a short question.

All the horror stories that we hear, regardless of the issue, welfare, crime, regulation, at the very foundation of these horror stories, or these alleged horror stories, or these fear-mongering stories, it seems to me is implicit distrust of the State governments in this country, of local governments in this country, and concomitant with that is the thought that only the Federal Government can do it right, and we cannot trust in this country any other level of government.

Mr. RADANOVICH. In the recent crime bill, which is interesting because it illustrates this point, during the debate on the crime bill which were block granting funds down to the State level, and hopefully to the local level and back into the jurisdictions where they can solve their problems, a comment was made by someone on the other side of the aisle saying the very same thing, that we cannot trust. What we cannot do is trust the people on the local level to properly implement those funds.

And I am sitting here thinking I have got prime problems in Fresno, CA. That is the heart of my district. It is a wonderful place, but it has got a problem with crime, and I am sitting here thinking I am going to trust this person on the other side of the aisle who has never been to Fresno, I guarantee it, to know how to solve problems in my community. By the way, midnight basketball would not work there—and not trust the people, the good people that are really on the frontlines trying to solve the problems, and to trust them to do it, and I mean I do not even know enough about how to solve crime in Fresno.

What I do is I rely on the people that the citizens of those communities elected to solve those problems and give them every resource that I can unencumbered, and it is this basic mistrust that is why I wanted to give that argument. It is that basic mistrust of local and State officials is what the problem the other side of the aisle has.

Mr. EHRLICH. Let alone the private sector; G-d forbid we would trust the private sector.

In fact, and I do not think the gentleman from California saw this, just the roofers in my district, just one small industry in the Second Congressional District in Maryland, sent to me 50 pages of petitions asking me to support House Bill 450. Can you imagine if we magnify, if we multiply, this times all the small business people in this country who are crying out for help who cannot afford to hire a lawyer to represent them in an administrative action or a legal proceeding or cannot afford the plane fare to come here in Washington and plead their case?

I know the gentleman from California wants to comment on this, but it seems to me that we need House Bill 450. We need the moratorium. Let us inventory all these regulations. We are not saying they are all bad; some are absolutely required. We have built in emergency exceptions, as the gentleman will recall from the debate last week. We need cost-benefit analysis and risk assessment. Since when did this become such a radical thought? When did looking at the relative costs and looking at the relative benefits, in addition to the absolute risk that a particular regulation brings into question, when did that become such a radical thought in this government?

□ 2310

I think the gentleman will also agree that the Regulatory Flexibility Act, House Bill 926 we debated today with respect to judicial review, is an idea whose time has come; paperwork reduction on the floor last week, is an idea whose time has come, making it stronger; and, of course, private property protection. Since when did the idea that government should pay for infringing on your right, your constitutional right, to enjoy your own private property, when did that become a radical thought in this country, I would ask the gentleman?

Mr. RADANOVICH. If the gentleman will yield, I guess I want to respond by saying that we on this side of the aisle, the gentleman from Maryland and I, are both freshmen, we are new here, but everybody on this side of the aisle has been accused of hating mom and kids and apple pie and dogs and everything else. The point that we are trying to get across to the American people is that we have more resources to solve problems if they depend less on 435 elected officials and begin to depend more on the thousands of elected officials all across the land. That is when we will start getting regulation that makes sense, and people will begin respecting this body once we begin to respect other elected officials on the local level to do the right thing. Because I have no question, I am here to do the right thing, and I do not question any other Member of this House to say that they are not doing the right thing, because I believe they are. But the fact of the matter is we have got to begin to trust in the elected system and that the people that sent us here also sent other people to other posts and we can allow them to have the responsibility to do their jobs, and keeping tax dollars in districts.

Mr. EHRLICH. I think the gentleman makes a good point. No one questions motive.

Mr. RADANOVICH. I get tired of hearing I hate apple pie, mom, and kids.

Mr. EHRLICH. It is fear mongering. you see it played out time and time again in the national politics everyday that we have the Contract With America on the floor of this House. Because the problem is, and I think some people either do not want to admit this, they still deny it, they do not want to confront it, is that the American people voted for fundamental change in this country on November 8th. And we are here, me and you, we are a tangible result of that change. And it is not a partisan issue, but it is a conservative issue. The people that the American people sent to this House this time are willing to challenge the fundamental assumptions that this Government and this House in fact has operated under for the last 40 years. We are ready to return power to the states, we are ready to return power to the local governments, and we are ready to return power to the people. That is what we campaigned on, and that is what we intend to deliver, Madam Speaker. I know the gentleman from California has a lot of anecdotes he would like to share.

Mr. RADANOVICH. I think I got my point across. I just needed to say that. I think American needs to hear the fact we are here trying to do some good, and I think we are. But until we start relying on other people in this country, you know, it is going to get worse.

Mr. EHRLICH. It is that concept of personal responsibility.

Madam Speaker, we appreciate the opportunity to talk about this issue tonight, and we will at this point yield back the remainder of our time.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. KLINK) to revise and extend their remarks and include extraneous material:)

Mr. KLINK, for 5 minutes, today.

Mr. SKAGGS, for 5 minutes, today.

Mr. MILLER of California, for 5 minutes, today.

Mr. BROWDER, for 5 minutes, today.

Mr. TOWNS, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. OWENS, for 5 minutes, today.

(The following Members (at the request of Mr. HAYWORTH) to revise and extend their remarks and include extraneous material:)

Mr. BRYANT of Tennessee, for 5 minutes, today.

Mr. WELDON of Florida, for 5 minutes each day, on March 1, 2, and 3.

Mr. GRAHAM, for 5 minutes, today.

Mrs. SEASTRAND, for 5 minutes, today.

Ms. ROS-LEHTINEN, for 5 minutes, on March 2.

Mr. KIM, for 5 minutes, on March 3.

Mr. KINGSTON, for 5 minutes, today.

Mr. HEFLEY, for 5 minutes, on March 2.

Mr. HAYWORTH, for 5 minutes, today.

Mr. FOX of Pennsylvania, for 5 minutes, today.

Mr. SMITH of Michigan, for 5 minutes, on March 2.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. KLINK) and to include extraneous matter:)

Mr. MINETA.

Mr. HAMILTON.

Mr. VISCLOSKY.

Mr. ANDREWS of New Jersey.

Mrs. MALONEY.

Mr. DELLUMS.

Mr. CARDIN.

Ms. WOOLSEY.

Ms. ESHOO.

Ms. DANNER.

Mr. KLECZKA.

Mr. BRYANT of Texas.

Mr. UNDERWOOD.

Mr. POSHARD.

Mr. BECERRA.

Mr. FOGLIETTA.

Mr. NADLER.

Mrs. COLLINS of Illinois.

(The following Members (at the request of Mr. HAYWORTH) and to include extraneous matter:)

Mr. ARCHER.

Mr. HOUGHTON.

Mr. GILMAN.

Mr. ROGERS.

Mrs. SEASTRAND.

Mr. MYERS of Indiana.

Mr. PETRI.

Mr. SOLOMON.

Mr. KIM.

Mr. HEFLEY.

(The following Members (at the request of Mr. EHRLICH) and to include extraneous matter:)

Mr. BLILEY.

Mr. PACKARD.

Mr. BEVILL.

Mr. PAYNE of New Jersey

Mr. De la Garza.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 257. An act to amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea.

ADJOURNMENT

Mr. EHRLICH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 15 minutes p.m.), the House adjourned until Thursday, March 2, 1995, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

426. A letter from the President and chairman, Export-Import Bank of the United States, transmitting the semiannual report on the tied aid credits, pursuant to Public Law 99–472, section 19 (100 Stat. 1207); to the Committee on Banking and Financial Services.

427. A letter from the Secretary of Energy, transmitting a draft of proposed legislation entitled, "Nuclear Waste Disposal Funding Act"; to the Committee on Commerce.

428. A letter from the Assistant Secretary (Civil Rights), Office for Civil Rights, transmitting the annual report summarizing the compliance and enforcement activities of the Office for Civil Rights and identifying significant civil rights or compliance problems, pursuant to 20 U.S.C. 3413(b)(1); jointly, to the Committee on Economic and Educational Opportunities and the Judiciary.

429. A letter from the Secretary of Transportation, transmitting a draft of proposed legislation entitled, "Coast Guard Authorization Act for fiscal years 1996 and 1997," pursuant to 31 U.S.C. 1110; jointly, to the Committee on Transportation and Infrastructure, National Security, Commerce, the Judiciary, Resources, and Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. MOORHEAD: Committee on the Judiciary. H.R. 988. A bill to reform the Federal civil justice system; with an amendment (Rept. 104–62). Referred to the Committee of the Whole House on the State of the Union.

Mr. BLILEY: Committee on Commerce. H.R. 917. A bill to establish procedures for product liability actions; with an amendment (Rept. 104–63 Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. DeFAZIO:

H.R. 1088. A bill to amend the Internal Revenue Code of 1986 to provide that the employment taxes shall not apply to amounts paid by certain State funds as compensation for unpaid wages; to the Committee on Ways and Means.

By Mr. CREMEANS:

H.R. 1089. A bill to ensure that the acquisition of lands for inclusion in the National Forest System does not result in reduced property tax revenues for the county in which the acquired lands are located; to the Committee on Agriculture.

By Mr. BILIRAKIS:

H.R. 1090. A bill to provide a minimum survivor annuity for the unremarried surviving spouses of retired members of the Armed Forces who died before having an opportunity to participate in the survivor benefit plan; to the Committee on National Security.

By Mr. BLILEY (for himself, Mr. Goodlatte, Mr. Bateman, and Mr. Wolf):

H.R. 1091. A bill to improve the National Park System in the Commonwealth of Virginia; to the Committee on Resources.

By Mr. CARDIN (for himself and Mr. Levin):

H.R. 1092. A bill to amend the Internal Revenue Code of 1986 to provide that the depreciation rules which apply for regular tax purposes also shall apply for alternative minimum tax purposes; to the Committee on Ways and Means.

By Mr. de la GARZA (for himself, Mr. Holden, Mr. Farr, Mr. Brown of California, Mr. Pastor, and Mr. Stenholm):

H.R. 1093. A bill entitled "Food Stamp Program Integrity Act of 1995"; to the Committee on Agriculture, and in addition to the Committees on Ways and Means, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DURBIN (for himself, Mr. Skeen, and Mr. Gunderson):

H.R. 1094. A bill to amend the Food Stamp Act of 1977 to reduce fraud by establishing forfeiture applicable to property exchanged, used in, or resulting from trafficking in food stamp benefits; to the Committee on Agriculture.

By Mr. FIELDS of Louisiana:

H.R. 1095. A bill to establish a State system of licensing or registering persons engaged in a business which regularly and primarily charges fees for cashing checks, and to provide for insured financial depository institutions to cash checks issued by States of the United States; to the Committee on Banking and Financial Services.

By Mr. FRANKS of Connecticut:

H.R. 1096. A bill to assure compliance with the guarantees of the 5th, 14th, and 15th amendment to the Constitution by prohibiting the intentional creation of legislative districts based on race, color, or language minority status of voters within such districts; to the Committee on the Judiciary.

By Mr. GRAHAM (for himself, Mr. Tauzin, Mr. Ballenger, Mr. Jones, and Mr. Taylor of North Carolina):

H.R. 1097. A bill to terminate the Office of the Surgeon General of the Public Health Service; to the Committee on Commerce.

By Mr. HEFLEY (for himself, Mr. Herger, and Mr. Fields of Texas):

H.R. 1098. A bill to provide for the elimination of the Department of Housing and Urban Development, and for other purposes; to the Committee on Banking and Financial Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HOUGHTON (for himself, Mr. Brewster, Mr. Shaw, and Mr. Jacobs):

H.R. 1099. A bill to amend the Internal Revenue Code of 1986 to limit the applicability of the generation-skipping transfer tax; to the Committee on Ways and Means.

By Mrs. MALONEY (for herself, Mr. Johnson of South Dakota, Mr. Meehan, Mr. Torricelli, Ms. Rivers, Ms. Lowey, Mr. Barrett of Wisconsin, Mr. Serrano, Ms. Woolsey, and Mr. Fattah):

H.R. 1100. A bill to establish a temporary commission to recommend reforms in the laws relating to elections for Federal office; to the Committee on House Oversight, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MORAN (for himself, Mr. Davis, and Mrs. Morella):

H.R. 1101. A bill to abolish the Board of Review of the Metropolitan Washington Airports Authority, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. PETRI (for himself, Mr. Obey, Mr. Sensenbrenner, Mr. Roth, Mr. Gunderson, Mr. Kleczka, Mr. Klug, Mr. Barrett of Wisconsin, and Mr. Neumann):

H.R. 1102. A bill to amend the Federal Water Pollution Control Act to reserve a portion of the funds made available for capitalization grants for water pollution control revolving funds for the purpose of making grants to States that set aside amounts of State funds for water pollution control in excess of the amounts required under such act, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. POMBO (for himself, Mr. Doolittle, Mr. Foley, Mrs. Thurman, Mr. Pastor, and Mr. Farr):

H.R. 1103. A bill entitled "Amendments to the Perishable Agricultural Commodities Act, 1930"; to the Committee on Agriculture.

By Mr. SANFORD (for himself, Mr. Deal of Georgia and Mrs. Chenoweth):

H.R. 1104. A bill to protect and enforce the equal privileges and immunities of citizens of the United States and the constitutional rights of the people to choose Senators and Representatives in Congress; to the Committee on House Oversight.

By Mr. SCHUMER:

H.R. 1105. A bill to amend the Truth in Lending Act to require additional disclosures with respect to credit card accounts, to require a study of the competitiveness of the credit card industry, and for other purposes; to the Committee on Banking and Financial Services.

By Mr. STUDDS:

H.R. 1106. A bill to deauthorize a portion of the project for navigation, Falmouth, MA, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. VISCLOSKY:

H.R. 1107. A bill to direct the Secretary of the Army to develop a watershed management plan for the Lake George area of Indiana, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. McNULTY (for himself and Mr. Shays):

H.J. Res. 71. Joint resolution proposing an amendment to the Constitution of the United States repealing the 22d article of amendment, thereby removing the restrictions on the number of terms an individual may serve as President; to the Committee on the Judiciary.

By Mr. OBERSTAR (for himself, Mr. Burton of Indiana, Mr. Lipinski, Mr. Young of Alaska, and Mr. Smith of New Jersey):

H.J. Res. 72. Joint resolution proposing an amendment to the Constitution of the United States with respect to the right to life; to the Committee on the Judiciary.

By Mr. SANFORD (for himself, Mr. Klug, Mr. Brownback, Mr. Ensign, Mr. Souder, Mr. Salmon, Mr. Davis, Mr. Stockman, Mr. Cooley, Mr. Thornberry, Mr. Bryant of Tennessee, Mr. Largent, Mr. Neumann, Mr. McIntosh, Mr. Latham, Mr. Foley, Mr. Graham, Mrs. Cubin, Mr. Ganske, and Mr. Hostettler):

H. Res. 102. Resolution requiring the transfer to private sector providers of responsibility for certain administrative and maintenance entities and functions of the House of Representatives, and for other purposes; to the Committee on Rules, and in addition to the Committee on House Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII,

Mr. ROTH introduced a bill (H.R. 1108) to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade and on the Great Lakes and their tributary and connecting waters in trade with Canada for each of two barges; which was referred to the Committee on Transportation and Infrastructure.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 65: Mr. Riggs and Mr. Cramer.

H.R. 70: Mr. Andrews.

H.R. 78: Mr. Weldon of Florida.

H.R. 103: Ms. Brown of Florida.

H.R. 104: Ms. Lofgren.

H.R. 109: Mr. Gallegly and Ms. Slaughter.

H.R. 159: Mr. Hancock, Mr. Hostettler, Mr. Bilbray, and Mr. Saxton.

H.R. 240: Mr. Spence and Mr. Burr.

H.R. 246: Mr. Funderburk.

H.R. 303: Ms. Woolsey, Mr. Riggs, and Mr. Cramer.

H.R. 328: Mr. Forbes and Mr. Jefferson.

H.R. 359: Mrs. Chenoweth.

H.R. 482: Mr. Herger and Mr. Schaefer.

H.R. 491: Mr. Stump.

H.R. 495: Mr. Neumann, Mr. Zeliff, and Mr. Bartlett of Maryland.

H.R. 564: Mr. Lipinski.

H.R. 595: Mr. Bonilla.

H.R. 598: Mr. Dickey, Mr. Kleczka, Mr. Petri, Mr. Saxton, Mrs. Johnson of Connecticut, Mr. Ganske, Mr. Thornberry, Mr. Bilbray, and Mr. Weller.

H.R. 692: Mr. Coleman, Mr. Thompson, and Mr. Olver.

H.R. 698: Mr. Sensenbrenner, Mr. LaHood, and Mr. Spence.

H.R. 789: Mr. Andrews and Mrs. Roukema.

H.R. 809: Mr. Canady.

H.R. 822: Mr. Wicker, Mr. Gutknecht, and Mr. Bachus.

H.R. 838: Mr. Minge.

H.R. 844: Mr. Frost, Mr. Lightfoot, Mr. Cooley, Mr. Johnson of South Dakota, and Mr. Ewing.

H.R. 860: Mr. Goss, Mr. Royce, and Mr. Hefley.

H.R. 887: Mr. Peterson of Minnesota.

H.R. 895: Mr. Gutknecht, Mr. Romero-Barcelo, Ms. Lofgren, and Mr. Knollenberg.

H.R. 939: Mrs. Kelly.

H.R. 971: Ms. Furse.

H.R. 977: Mr. Dornan.

H.R. 1010: Mr. Tejeda, Mr. McDermott, Mr. Underwood, Mr. Greenwood, Mr. Scott, and Mr. Evans.

H.R. 1023: Mr. Weldon of Pennsylvania.

H.R. 1029: Mrs. Schroeder, Mrs. Johnson of Connecticut, Mr. Manton, Mr. Weller, Ms. Lowey, Mr. Underwood, and Ms. Lofgren.

H.R. 1047: Mr. Shuster.

H. Con. Res. 12: Mr. Funderburk, Mr. Pallone, Mr. Boehner, and Mr. Pete Geren of Texas.

H. Res. 25: Mr. Royce, Mr. Emerson, and Mr. Nethercutt.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.J. Res. 2: Mr. Hilleary, Mr. McIntosh, and Mr. Royce.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 925

Offered By: Mr. Bryant

Amendment No. 9: Amend section 9 (relating to definitions) to read as follows:

SEC. 9. DEFINITIONS.

For the purposes of this Act—

(1) the term "property" means land and includes the right to use or receive water;

(2) a use of property is limited by an agency action if a particular legal right to use that property no longer exists because of the action;

(3) the term "agency action" has the meaning given that term in section 551 of title 5, United States Code, but also includes the making of a grant to a public authority conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency;

(4) the term "agency" has the meaning given that term in section 551 of title 5, United States Code;

(5) the term "specified regulatory law" means—

(A) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(B) the Endangered Species Act of 1979 (16 U.S.C. 1531 et seq.);

(C) the Coastal Zone Management Act (16 U.S.C. 1451 et seq.);

(D) title XII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.); or

(E) only with respect to an owner's right to use or receive water—

(i) the Act of June 17, 1902, and all Acts amendatory thereof or supplementary thereto, popularly called the "Reclamation Acts" (43 U.S.C. 371 et seq.);

(ii) the Federal Land Policy Management Act (43 U.S.C. 1701 et seq.); or

(iii) section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604);

(6) the term "State" includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States; and

(7) the term "law of the State" includes the law of a political subdivision of a State.

H.R. 925

Offered By: Mrs. Collins of Illinois

Amendment No. 10. Page 3, line 7, after "damage" insert "or loss in value".

H.R. 925

Offered By: Mr. Goss

Amendment No. 11. Page 2, line 5, strike "10" and insert "30".

H.R. 925

Offered By: Mr. Goss

Amendment No. 12. Page 1, line 17, strike "10" and insert "30".

H.R. 925

Offered By: Mr. Miller of California

Amendment No. 13. Page 2, line 3, after "owner of property" insert "who is a small property owner".

Page 5, after line 24, insert the following:

(5) the term "small property owner" means an owner of property of 10 acres or less, of which a portion has been diminished in value by the limitation.

Redesignate succeeding paragraphs accordingly.

H.R. 925

Offered By: Mr. Miller of California

Amendment No. 14: Page 3, after line 11, insert the following:

(c) Information Relating to Rights.—No compensation shall be made under this Act with respect to an agency action of an agency that, upon request, furnishes information to owners of private property, affected by agency action, with respect to their rights, under the fifth article of amendment to the Constitution of the United States, relating to just compensation for property taken for a public purpose.

H.R. 925

Offered By: Mr. Miller of California

Amendment No. 15: Page 2, after line 17 insert the following:

(c) Limitation.—The amount of compensation made under this Act shall be decreased by an amount equal to—

(1) the total of any Federal subsidies associated with the property arising from below-fair-market pricing of Federal irrigation water contracts, grazing leases, and other similar Federal programs; and

(2) the total of any payments associated with the property received by the owner from the Department of Agriculture or any other Federal agency.

H.R. 925

Offered By: Mr. Mineta

Amendment No. 16: In section 2(a) strike "any portion of" and "of that portion".

At the end of section 6, add the following:

(g) DETERMINATION OF VALUE.—In determining the diminution of value of property, any limitation on the use of the property that existed, or was formally proposed by an agency, at the time the property was acquired by the owner shall be taken into account. The computation of the fair market value of the property before the limitation on use was imposed shall exclude any component of that fair market value attributable to Federal agency action, including any Federal financial assistance. The value of the entire parcel of the property shall be the value to which any percentage threshold requirements under this Act are applied.

H.R. 925

OFFERED BY: MR. PORTER

AMENDMENT NO. 17: Page 3, after line 11, insert the following:

SEC. 6. EFFECT OF PRIVATE PROPERTY IMPACT ANALYSIS.

(a) IN GENERAL.—No compensation shall be made under this Act with respect to any agency action for which the agency has completed a private property impact analysis before taking that agency action.

(b) CONTENT.—For the purposes of this section, a private property impact analysis is a written statement that includes.—

(1) the specific purpose of the agency action;

(2) an assessment of the likelihood that a taking of private property will occur under such action; and

(3) alternatives to the agency action, if any, that would achieve the intended purpose and lessen the likelihood of a taking of private property.

(c) PRECLUSION OF JUDICIAL REVIEW.—Neither the sufficiency nor any other aspect of a private property impact analysis made under this section is subject to judicial review.

(d) EFFECT ON OTHER RIGHTS.—The fact that compensation may not be made under this Act by reason of this section does not affect the right to compensation for takings of private property for public use under the fifth article of amendment to the Constitution.

(e) DEFINITION.—As used in this section, the term "taking of private property" means an action whereby property is taken in such a way as to require compensation under the fifth article of amendment to the Constitution.

Redesignated succeeding sections accordingly.

H.R. 925

OFFERED BY: MR. PORTER

AMENDMENT NO. 18. Page 3, after line 11, insert the following:

SEC. 5. EFFECT OF PRIVATE PROPERTY IMPACT ANALYSIS.

(a) IN GENERAL.—No compensation shall be made under this Act with respect to any agency action for which the agency has completed a private property impact analysis before taking that agency action.

(b) CONTENT.—For the purposes of this section, a private property impact analysis is a written statement that includes.—

(1) the specific purpose of the agency action;

(2) an assessment of the likelihood that a taking of private property will occur under such action; and

(3) alternatives to the agency action, if any, that would achieve the intended purpose and lessen the likelihood of a taking of private property.

(c) PRECLUSION OF JUDICIAL REVIEW.—Neither the sufficiency nor any other aspect of a private property impact analysis made under this section is subject to judicial review.

(d) EFFECT ON OTHER RIGHTS.—The fact that compensation may not be made under this Act by reason of this section does not affect the right to compensation for takings of private property for public use under the fifth article of amendment to the Constitution.

(e) DEFINITION.—As used in this section, the term "taking of private property" means an action whereby property is taken in such a way as to require compensation under the fifth article of amendment to the Constitution.

Redesignated succeeding sections accordingly.

H.R. 925

OFFERED BY: MRS. SCHROEDER

AMENDMENT NO. 19: Page 2, line 8, after the period, insert "The amount of compensation made under this Act shall be decreased by an amount equal to any increase in value of the property that resulted from any agency action.".

H.R. 925

OFFERED BY: MRS. SCHROEDER

AMENDMENT NO. 20: At the end of section 3(a) insert "The amount of compensation made under this Act shall be decreased by an amount equal to any increase in value of the property that resulted from any agency action.".

H.R. 925

OFFERED BY: MR. WATT OF NORTH CAROLINA

AMENDMENT NO. 21: Page 3, lines 2 and 3, change the heading to read:

"(a) CIRCUMSTANCES IN WHICH NO COMPENSATION SHALL BE AWARDED.—"

Page 3, after line 8, add the following:

"No compensation shall be made under this Act with respect to an agency action which is reasonably related to or in furtherance of the purposes of any law enacted by Congress, unless such law is determined to be in violation of the United States Constitution."

Page 4, strike lines 19–25 and page 5, strike lines 1–8.

H.R. 925

OFFERED BY: MR. WATT OF NORTH CAROLINA

AMENDMENT NO. 22: Page 4, strike lines 19–25 and page 5, strike lines 1–8.

H.R. 925

OFFERED BY: MR. WYDEN

AMENDMENT NO. 23: Page 5, after line 8, insert the following:

SEC. 6. HOMEOWNER PROPERTY IMPACT ANALYSIS.

(a) IN GENERAL.—No compensation shall be made under this Act with respect to any agency action if the agency has completed a homeowner property impact analysis of such action before taking that agency action and if the analysis indicates that the agency action would prevent or restrict any activity likely to diminish the fair market value of private homes.

(b) CONTENT.—For the purposes of this section, a homeowner property impact analysis is a written statement that includes.—

(1) the specific purpose of the agency action;

(2) an assessment of the likelihood that the agency action would prevent or restrict any activity likely to diminish the fair market value of a private home; and

(3) alternatives to the agency action, if any, that would achieve the intended purpose and lessen the likelihood of reductions in the value of private homes.

(c) PRECLUSION OF JUDICIAL REVIEW.—Neither the sufficiency nor any other aspect of a homeowner property impact analysis made under this section is subject to judicial review.

(d) DEFINITIONS.—As used in this section—

(1) The term "homeowner" means the owner of a private home.

(2) The term "private home" means any owner occupied dwelling, including any multi-family dwelling and any condominium.

Redesignate section 6 as section 7.

H.R. 925

OFFERED BY: MR. WYDEN

AMENDMENT NO. 24: Page 3, line 8, strike the period and insert ", or".

Page 3, after line 8, insert:

with respect to an agency action that would prevent or restrict any activity likely to diminish the fair market value of any private homes.

Page 5, after line 24, insert the following new paragraph and redesignate paragraphs (5) and (6) on page 6 as (6) and (7):

(5) the term "private home" means any owner occupied dwelling, including any multi-family dwelling and any condominium.

EXTENSIONS OF REMARKS

VIRGINIA NATIONAL PARKS ACT

HON. THOMAS J. BLILEY, JR.

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. BLILEY. Mr. Speaker, today I am pleased to introduce legislation that responds to the concerns of Virginians regarding national parks in the Commonwealth. The Virginia national parks bill confronts a number of Virginia's pressing park issues, addressing Shenandoah National Park, Richmond National Battlefield Park, Shenandoah Valley National Battlefields, and Colonial Parkway.

First, my bill addresses constituent concerns about the expansion of Shenandoah National Park and Richmond National Battlefield Park. These two parks share an unusual status in that they are each a relatively small park with a much larger authorized boundary. The result of this situation is that, unlike the vast majority of national parks, these parks can expand whenever they want, without congressional approval or proper representation of local communities' interests.

While Shenandoah National Park includes 196,000 acres of land, its enormous 1926 authorized boundary includes 521,000 acres, enveloping parts of many surrounding communities. Similarly, while Richmond National Battlefield is composed of several small sites surrounding Richmond, its sprawling 1936 authorized boundary includes about 250 square miles of the metropolitan area.

Many citizens and local governments within the authorized boundaries of both the Shenandoah and Richmond parks fear that there is a cloud hanging over local property titles and that the parks could expand without a fair consideration of the local communities' concerns. My bill would put to rest these fears by amending the two parks' authorized boundaries to conform to the land that the National Park Service currently owns. This legislation doesn't preclude future expansion of these parks. It simply gives the people most affected by park expansion a proper voice in the decision. I believe that these provisions will relieve the longstanding tensions between these parks and their neighbors and promote more cooperative and fruitful relationships.

Another provision of my bill responds to a Virginia General Assembly resolution asking for legislation to allow for the maintenance of secondary roads inside Shenandoah National Park. Since the park's inception in 1935, Virginia has maintained and operated secondary roads in the park under a series of temporary-use permits. These permits have recently expired and the National Park Service has not renewed them, leaving the State without permission to maintain the roads. Many of these secondary highways are regularly traveled by school buses and are badly in need of repairs and safety improvements. My bill returns these roads to the State so that they can be properly maintained.

The legislation I introduce today also incorporates the provisions of the Shenandoah Valley National Battlefields Partnership Act, legislation sponsored by Congressman WOLF, which passed the other body last year. This legislation conserves for future generations 10 Civil War battlefields of the Shenandoah Valley. Importantly, the act accomplishes these goals without infringing on the rights of private property owners. This legislation establishes partnerships between Federal, State, and local governments and the private sector to conserve and interpret the legacy of some of the most vital battlefields of the Civil War.

Another provision of my bill authorizes the National Park Service to buy a small plot of land for the Colonial Parkway near Jamestown.

The Virginia national parks bill addresses the concerns of Virginians on a variety of issues pertaining to national parks and I welcome the support of my colleagues in cosponsoring this legislation.

LAKE GEORGE, IN, WATERSHED MANAGEMENT PLAN

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. VISCLOSKY. Mr. Speaker, today, I am introducing legislation to authorize the development of a comprehensive watershed management plan for northwest Indiana's Deep River Basin, which includes Deep River, Lake George, Turkey Creek, and other related tributaries. The communities of Hobart, Lake Station, and Merriville, IN, would greatly benefit from the implementation of this plan.

The sediment cleanup of Lake George was first authorized in the Water Resources Development Act of 1986, Public Law 99–662, and the project has received Federal funding since 1990. The project includes flood control, environmental enhancement, and recreational development for an area that comprises the 282-acre Lake George, Turkey Creek, and Deep River in the vicinities of Hobart and Lake Station, IN.

However, the successful completion of the Lake George project is dependent upon a detailed, comprehensive investigation of the watershed, beyond the scope of the existing Lake George study authority. The legislation I am introducing today would facilitate the evaluation of how to sufficiently control the current and long-term sediment quality and quantity, address chronic flooding problems and the safety of Lake George Dam, and ensure the proper management of endangered wetlands.

In addition, a comprehensive watershed management plan is essential to determine the placement of sediment traps for the authorized Lake George project. Taxpayer dollars would be saved by instituting effective land use management techniques and trapping sediments before they reach Lake George. It is possible that sediment flow could be relieved in the unauthorized tributaries. In sum, future costs could be drastically reduced by developing and implementing a comprehensive management plan, which would result in less costly sediment traps and much needed flood relief for the communities of Hobart and Lake Station, IN. Additionally, the development of a comprehensive plan could alleviate the need for a costly redredging of Lake George in the future.

It is my hope that this bill will enhance our ongoing efforts to develop and implement sound, reasonable, and long-term solutions to the watershed management problems faced by the Lake George area, as well as the rest of northwest Indiana. I would hope to have your support, and the support of my other colleagues in the House of Representatives, in advancing this important legislation.

COUNTRY OF ORIGIN MARKING REQUIREMENT FOR SEMICONDUCTORS

HON. BILL ARCHER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. ARCHER. Mr. Speaker, on February 15, I introduced H.R. 947, a bill which would exclude semiconductors and their containers from the country of origin marking requirements under existing trade law. Semiconductors, as classified under headings 8541 and 8542 of the Harmonized Tariff Schedule of the United States, include diodes, transistors, integrated circuits, and microassemblies.

Country of origin markings for semiconductors present both cost and compliance problems for U.S. industry. While the cost of marking semiconductors is not great when amortized over a production run, the cost is significant in absolute terms. In addition, most of these components are small and therefore, difficult to legibly mark with the requisite producer identification, grade, quality, electrical values, and other symbols, making compliance with these marking requirements very arduous.

One of the original intents of country of origin marking was as a consumer protection measure. However, only a tiny fraction of semiconductors are sold at retail. In general, semiconductor customers are unconcerned about semiconductor origin marking, since they are usually manufacturers who incorporate them into other products without reference to such marking. These customers are concerned about the semiconductor's quality,

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

which is more a function of its producer than its origin.

U.S marking requirements create difficulties for manufacturers trying to serve both U.S. and European Union [EU] markets. The basis for determining the country of origin for semiconductors differs between the United States and the EU for those semiconductors that are not wholly produced within one country. Therefore, these producers may violate the EU law when shipping semiconductors to the EU that are marked according to U.S. standards. The reason is that EU member states, while not requiring marking, do require that a product not be mislabelled.

For example, the producer may diffuse circuit patterns on a wafer in one country, mount and encapsulate the chips in a second country, and import the semiconductors to the United States for final testing. These products may then be sold to domestic manufacturers or foreign purchasers. In this case, the United States considers the semiconductor the origin of the second country, and under current law, it must be marked accordingly. The EU, on the other hand, considers the country of origin to be the first country. In order not to violate EU law, the producer would have to remove the U.S. required marking before export from the United States, which is a possible violation of U.S. law.

The Semiconductor Industry Association and the American Electronics Association, trade associations which represent the users and producers of semiconductors, support the exemption of semiconductors from country of origin marking requirements not only because of the cost savings, but also because of conflicting rules among our major trading partners. To answer concerns about government's need to know the country of origin for the purposes of administering its national laws, these semiconductor purchasers and users are committed to the development of a uniform coding system to satisfy international origin requirements. Therefore, the effective date of this legislation will be January 1, 1996 to allow for the development of this system.

For all the aforementioned reasons, existing country of origin requirements serve no useful purpose and simply add to the cost of producing and selling semiconductors in the international market. Elimination of these requirements is a simple, effective solution to these problems.

CHERRY HILL COMMUNITY SERVICE AND INVOLVEMENT PROGRAM

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. ANDREWS. Mr. Speaker, I rise today to share with you a unique program that will encourage the youth of my district to give something back to their community. I am proud to introduce the Cherry Hill Community Service and Involvement Program.

Designed exclusively by students, this program is about helping people. Students will go into the community and work 53 hours of service with various organizations earning 2.5 credits, the equivalent of a semester elective. They will also participate in 12 hours of public policy forums. The program is designed to teach students the skills needed to participate in their community. It also introduces the students to the world of public policy so that they may make informed decisions as a member of the community.

The uniqueness of the program lies within its structure. It is the first service program in New Jersey that was written, researched and implemented by the students at Cherry Hill West High School. This allows the students to have a say in public policy, participate in and take responsibility for their community as they emerge into adulthood. The goal is to make young people productive and active in their community as adults.

I congratulate the students of Cherry Hill West High School on their courage and dedication to embark on such an endeavor. I know that the talents of the students will come through and benefit the entire Camden County area. I encourage other members of this body to endorse similar programs in their districts.

REAL REGULATORY RELIEF

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. PACKARD. Mr. Speaker, Republicans continue to move forward with an agenda that strives for less spending, less regulation, and less taxes. We must work to roll back costly and burdensome Federal regulations that suffocate American taxpayers and small businesses. Our Republican Contract With America favors a common sense approach to our regulatory system.

Big Government one-size-fits-all regulations hit at the very heart of our economy impeding growth and job opportunity. Regulations act as hidden taxes on employment. Employers wasting time and money complying with excessive regulation cannot hire new employees or invest in machinery and equipment to make workers more productive. Instead, burdensome regulations create jobs for lawyers and destroy jobs for manufacturers.

Regulations cost the economy an estimated $600 billion in 1994. That amounts to a $6,000 tab for every household in the country. Frankly Mr. Speaker, Americans just do not think they are getting their money's worth.

The Regulatory Reform and Relief Act, H.R. 926, introduces rationality to an out of control regulatory system. Republicans have designed a regulatory system that makes sense and requires regulatory agencies to estimate the cost to businesses of regulatory compliance.

Mr. Speaker, it is time to add a level of accountability to the regulatory system. The Regulatory Reform and Relief Act will ensure that bureaucrats consider the burdens they impose on American taxpayers and workers, and ultimately the economy. Once bureaucrats are forced to open their eyes to the real world we live in, the regulations they impose will make sense and cost less.

AMENDMENTS TO THE GENERATION-SKIPPING TRANSFER TAX

HON. AMO HOUGHTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. HOUGHTON. Mr. Speaker, I am joined today by several of my colleagues, including Mr. BREWSTER, Mr. SHAW, and Mr. JACOBS, in introducing legislation to add two amendments to the generation-skipping transfer tax [GSTT] law which we believe were unintentionally omitted by Congress at the time the original provisions were enacted. This bill was sponsored in the 103d Congress by Mr. BREWSTER, and I have taken the liberty of including his statement of introduction, with minor changes, to introduce the bill in this Congress.

The amendments concern the predeceased parent exclusion of the GSTT law. The exclusion applies to direct gifts or bequests from a grandparent to a grandchild where the grandchild's parent, the transferor's child, is deceased at the time of the transfer. Where this situation occurs, there is no generation-skipping, since the child is dead; therefore it is not appropriate to add a GST tax on top of ordinary estate or gift taxes, and the predeceased parent exclusion properly excludes such transfers from the GST tax.

Our bill would expand the predeceased parent exclusion to apply to gifts by persons without lineal descendants and to trust gifts.

First, gifts or bequests by a childless individual to collateral descendants would be treated the same as transfers by persons with lineal descendants. Accordingly, the exclusion would be extended to apply to transfers made by a childless individual to his or her grandnieces and grandnephews in the situation where that individual's siblings and nieces and nephews are all deceased at the time of the transfer.

Second, the bill applies the predeceased parent exclusion to transfers made through a trust. Under current law, the predeceased parent exclusion is limited, unintentionally, we believe, to direct gifts and bequests, and does not apply to trust gifts even if the parent of the receiving beneficiary was deceased at all relevant times. In addition to other trusts, this provision particularly affects certain charitable trusts where the charity would have an interest for a period of years before distributing property to the individual beneficiaries. In the situation where the beneficiary's parent is dead, and was dead when the trust was created, there is certainly no generation skipping involved which would justify the levy of an additional tax. It is important to note, that these trusts are significant sources of financial support for many charities, and should not be discouraged, unintentionally, where not necessary for the policy of the underlying tax provisions. The bill would remove this obstacle.

The terminations, distributions, and transfers to which this bill would apply are those occurring on or after January 1, 1995, which would be generation-skipping transfers as defined in section 2611 of the Internal Revenue Code and subject to the GST tax, except for the application of the predeceased parent exclusion as amended by this legislation.

The proposed legislation has substantial support from charities, both large and small, and of all types, for example, social service providers, museums, libraries, hospitals, and universities, from around the country. In September 1993 testimony before the Subcommittee on Select Revenue Measures of the Ways and Means Committee, the administration indicated they did not oppose the measure. We would welcome other Congressmen as cosponsors of this legislation.

HONORING JOHN M. STUMBO

HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. ROGERS. Mr. Speaker, I rise today to honor a special friend to Prestonsburg, Floyd County, and all of eastern Kentucky, John M. Stumbo. John, who served as judge-executive of Floyd County since 1983, passed away recently at the age of 67.

A World War II veteran in the Army, Judge Stumbo was a leader who was concerned with our young people and worked to achieve a better way of life in eastern Kentucky.

Nicknamed "Lightning," an obvious contrast to his slow-talking, deliberate manner, Judge Stumbo entered Floyd County's political scene in the early 1950's as a member of the county board of education. He held that post for 31 years, serving the last three decades as the board chairman.

After his service as board chairman, he was appointed judge-executive by then-Governor, John Y. Brown in 1983, following the death of Judge Larry Lafferty, Jr. He was reelected in 1985, 1989, and again in 1993.

Weathering many storms during his 44 years in the public eye, Judge Stumbo was a recognized force in eastern Kentucky politics.

As Floyd County's leader, he led the effort to develop a countywide network of fire hydrants, which served as a model for other counties. Also under his leadership, Floyd County became one of the first counties in the State to enact mandatory participation in a solid waste disposal system. And, at the time of his death, a new county jail is under construction and a new courthouse in the planning stages.

He promoted our region's strength, twice heading the Kentucky Coal Council, pushing the natural resources that bless eastern Kentucky.

And, as chairman for the Big Sandy Area Development District for 4 years, he showed his devotion to economic development by playing an instrumental role in building the Big Sandy Regional Airport. Finally, his appointment of a county-financed economic development authority in the late 1980's was unique to eastern Kentucky.

We will miss Judge John M. Stumbo. He committed five decades of his life to public service in Floyd County and eastern Kentucky. His legacy will long be remembered.

THE 75TH ANNIVERSARY OF BALLSTON SPA V.F.W.

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. SOLOMON. Mr. Speaker, it is my pleasure to commemorate the anniversary of Veterans of Foreign Wars Post No. 358. This post, I am proud to say, is based in Ballston Spa, NY of my congressional district, and is celebrating a remarkable 75th year in existence.

The V.F.W., Mr. Speaker, has been an organization of exceptional merit and service to the needs of many veterans. It is only appropriate that those brave men and women who placed themselves in harms way overseas be represented by such an able organization. The members of Post No. 358 have been receiving just such outstanding service for 75 years now. It is comforting to know that those who served the needs of our country and fought for the principles and ideals of America all over the globe can depend on the support of an organization like Post 358 back home in upstate New York.

Mr. Speaker, the service of Post 358 in Ballston Spa is worthy of significant recognition. This post, and others like it, are the reason I fought so hard to attain Department level status for Veterans' Affairs. When Ronald Reagan signed that legislation into law, veterans were finally afforded the degree of national consideration they deserve. The efforts of V.F.W. Posts like this one, Mr. Speaker, having served the needs of veterans since 1920, assured veterans the assistance and recognition they deserved prior to approval of this Government Department and continue to encourage fair consideration of veterans' issues. For this, Mr. Speaker, we own Post 358 a tremendous debt of gratitude.

SALUTING THE EFFORTS OF GEORGE CHIMPLES

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mrs. MALONEY. Mr. Speaker, I rise today to bring to the attention of my colleagues an important event which will take place in my district on Saturday, March 4th. On that day, the Kardamylian Society of New York will honor noted philanthropist and industrialist George Chimples. He will be honored during the society's 60th annual dinner dance that will take place at the Grand Prospect Hall in Brooklyn.

Mr. Speaker, George Chimples is a prominent member and leader of the Greek-American community and is closely involved with the affairs of the Greek Orthodox Church. He serves as an Archon of the ecunemical patriarchate of Constantinople, and for the last 17 years, he has chaired the Finance Committee of the Archdiocese of North and South America. He also serves as the national vice chairman of the United Hellenic American Congress. George is a great friend to the Greek-American community and his kindness and generosity inspires us all.

George Chimples has been granted many awards for his tireless efforts on a variety of needy causes and has been a major benefactor to the establishment of countless churches and educational institutions. I am very impressed with George's achievements on the behalf of others. George Chimples has truly earned recognition for his distinguished philanthropy, and I hope all of my colleagues here will join the Kardamylian Society of New York in congratulating him for his tremendous accomplishments.

CLEAN WATER LEVEL OF EFFORT GRANTS

HON. THOMAS E. PETRI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. PETRI. Mr. Speaker, today, along with the other Members of the Wisconsin delegation, I am introducing the Level of Effort Clean Water Bonus Fund Act of 1995. This bill would amend the Clean Water Act to set aside 20 percent of the amount provided annually for federal capitalization grants under the State Revolving Loan Fund [SRF] Program and use those funds to provide grants to States that have devoted financial resources to the SRF or other wastewater treatment grant programs beyond the minimum required under the program.

States which have made clean water a top priority and have invested resources toward wastewater treatment beyond what is required under the Clean Water Act naturally have seen significant improvement in their water quality. Unfortunately, since Federal funds are distributed through a formula which is based in large part on needs, these States find that the Federal response to their hard efforts is to reduce their Federal funds. States which have not devoted the resources necessary to make real improvements in their water quality, for lack of effort or other reasons, will receive an increase in Federal funding.

This is an approach which does not make sense to me. Too many of our Federal programs contain disincentives for States to invest their own funds beyond the minimum required. An incentive grant program would recognize the hard budget choices and efforts made by States which overmatch the required SRF contribution and it would encourage other States to invest greater resources in this program in the future. I believe this is a more rational policy than rewarding States which do less by giving them more Federal money.

As Congress begins the Clean Water reauthorization process, I hope that we will take a look at how we spend our Federal dollars and use those dollars to provide incentives to States so that overall spending on clean water will increase, and our water quality will improve as well.

WELSH-AMERICANS

HON. PAT DANNER

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Ms. DANNER. Mr. Speaker, today is a very special day for our country's Welsh-American population. On March 1 of each year, Welsh-Americans gather to celebrate the great tradition of St. David's Day.

This holiday recognizes the life and legend of St. David, a Welshman who lived in the most holy manner possible. His crowning achievement was when he was canonized by Pope Calliztus II in 1120 A.D. as the Patron Saint of Wales.

At the time of his death, it is said his last words were, "Be joyful brothers and sisters. Keep your faith and do the little things you have seen and heard with me." Then, as the story has it, angels carried his soul to heaven.

His guidance has served as a model for people of Welsh dissent worldwide for more than 8½ centuries. Here in America, we have been truly graced by the Welsh community, which has produced a long list of outstanding Americans, including Thomas Jefferson and Abraham Lincoln.

For our Nation's entire Welsh-American community, I wish them a happy St. David's Day.

URGING SUPPORT FOR H.R. 1079, THE SMITHSONIAN INSTITUTION COMMEMORATIVE COIN ACT

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. MINETA. Mr. Speaker, yesterday—along with our colleagues, Mr. LIVINGSTON of Louisiana and Mr. JOHNSON of Texas—I introduced H.R. 1079, the Smithsonian Institution Sesquicentennial Commemorative Coin Act. Mr. LIVINGSTON, Mr. JOHNSON, and I are privileged to serve as members of the Smithsonian's Board of Regents and to be involved in the planning process for the Institution's 150th anniversary celebration, which will take place next year.

Created as a Federal trusteeship by act of Congress, the Smithsonian Institution is today the largest research and museum complex in the world. The various museums of the Smithsonian were visited more than 25 million times last year while thousands more utilized the vast repository of knowledge and artifacts to assist in myriad research and scholarly activities.

As a preeminent national cultural institution, the Smithsonian is charged with preserving and interpreting human culture and the physical and biological worlds through conservation of the national collections that represent our cultural heritage, active presentation of exhibitions and public programs, and scholarship in the arts, science, and history.

ESTABLISHMENT AND HISTORY

James Smithson, 1765–1829, a British scientist who never visited the United States, drew up his will in 1826 naming his nephew, Henry James Hungerford, as beneficiary. Smithson stipulated that should the nephew die without heirs—as he did in 1835—the estate would go to the United States to found "at Washington, under the name of the Smithsonian Institution, an establishment for the increase and diffusion of knowledge among men."

On July 1, 1836, Congress accepted the legacy bequeathed to the Nation by James Smithson and pledged the faith of the United States to the charitable trust. In 1838, following approval of the bequest by the British courts, the United States received Smithson's estate—105 bags of gold sovereigns, then the equivalent of $515,169. On August 10, 1846, an act of Congress signed by President James K. Polk established the Smithsonian Institution in its present form and provided for the administration of the trust, independent of the Government itself, by a Board of Regents and the Secretary of the Institution. The Board of Regents is comprised of the Vice President of the United States, the Chief Justice of the United States, three Members of the Senate, three Members of the House of Representatives, and nine citizen members appointed by a joint resolution to Congress.

SIZE AND SCOPE OF THE SMITHSONIAN COLLECTIONS

From that initial bequest an open-ended mandate of James Smithson, the Smithsonian has grown to include 14 museums, the National Zoological Park, and research facilities located in 8 States and the Republic of Panama.

The total number of objects, works of art, and specimens at the Smithsonian is estimated at 140 million, most of which are in the National Museum of Natural History—about 120 million specimens. Another significant portion of the Institution's collections is the National Postal Museum's philatelic collection which comprises more than 16 million objects.

Many artifacts are donated to the Smithsonian by individuals, private collectors, and Federal agencies; others come to the collections through field expeditions, bequests, exchanges with other museums and organizations, and purchases. More than 480,000 objects and specimens were acquired to 1993.

Artifacts not on display are stored in collection study areas in the museums and are either loaned to other museums or used for research. Air and spacecraft are conserved and stored in the Paul E. Garber Facility in Suitland, MD, about 6 miles from the National Mall. Suitland is also home to the Smithsonian's Museum Support Center which houses research collections and will also be the site of the National Museum of the American Indian's research collections center.

THE SESQUICENTENNIAL ANNIVERSARY

The Smithsonian's sesquicentennial commemoration in 1996 provides the opportunity to both celebrate the past great accomplishments of the Institution while also looking to its future role and mission as it prepares for the next millennium. The central goal of the 150th anniversary year commemoration, however, will be to increase the sense of ownership and participation in the Smithsonian by all Americans. The Smithsonian is truly an institution of the people as the Nation's designated steward for the preservation and exhibition of the national collections. The 150th anniversary activities will focus on forging a stronger relationship between the institution and its benefactors and beneficiaries—the American people.

During 1996, the Smithsonian will undertake a series of programs and stage a number of events that will commemorate its founding and explore new ways in which it can serve the public in the future. These activities, while extensions of the existing framework of Smithsonian programs, will require significant financial resources. Recognizing the existing budget constraints under which the Federal Government must operate, the Smithsonian's Board of Regents concluded it would not seek any additional appropriated funds in support of sesquicentennial programming. Rather, turning to the private component of the public-private partnership, the Smithsonian will concentrate its efforts to raise support and funding for the anniversary programming for non-Federal sources.

COMMEMORATIVE COINS

One avenue available to the Institution in raising a significant amount of the necessary funds is through the issuance of coins commemorative of the anniversary year. The coins would be issued on August 10, 1996, exactly 150 years from the actual date of the act of Congress which established the Smithsonian Institution. The issue of Smithsonian sesquicentennial commemorative coins will provide an opportunity for the American public to obtain a valued memento while at the same time supporting the Institution mandated to preserve its cultural and historical patrimony. Just as importantly, the funds derived from the issuance and sale of these commemorative coins would transfer the financial responsibility for sesquicentennial activities from the American taxpayer to voluntary collectors.

Funds raised through the coin sale will enable the Smithsonian to showcase its 150-year service to the Nation and will also, hopefully, help the Institution meet the anticipated budgetary challenges which could threaten the current level of service to the public. It will assist in continuing education programs that reach all strata of our society. In addition, the legislation would authorize that 15 percent of the total proceeds remitted to the Institution would be designated to support the National Numismatic Collection at the National Museum of American History. This component of the legislation is strongly supported by the numismatic community and in a very tangible way demonstrates appreciation for their support of all congressionally authorized commemorative coin programs.

Without exception, we all have constituents who visit, communicate with, and otherwise benefit from the Smithsonian every day. From eager first graders to learned scholars and researchers to our senior citizens, the public is consistently served by the vast resources and expertise of the Smithsonian and its staff. Successful enactment of this legislation will guarantee the American people the benefits and wonder of, as well as continued free access to this multifaceted institution.

Mr. Speaker, I urge all my colleagues to join with me and with Congressmen LIVINGSTON and JOHNSON in sponsoring this legislation, so important and beneficial to Americans throughout our great country.

IN MEMORY OF RUBYE ODESSA CAESAR

HON. THOMAS M. FOGLIETTA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. FOGLIETTA. Mr. Speaker, it is with great sadness that I rise to announce the passing of Mrs. Rubye Odessa Caesar. I would like to take this opportunity to pay tribute to a great woman who made significant contributions to the people and communities of the city of Philadelphia.

Mrs. Caesar first moved to the city of Philadelphia in the early 1960's with her husband. The Caesars were active members of the New Central Baptist Church and later the Good News Baptist Church. After her husband's death in 1974, Mrs. Caesar continued her activity at Good News. She received much recognition and many awards for her devotion to her church.

In addition, Mrs. Caesar contributed greatly to her community working as a volunteer with the Headstart Program and working to stop gang activity in North Philadelphia. Mrs. Caesar worked hard to improve her community and was especially proud of the establishment of the Lower Tioga Community Council Emergency Food Referral and Kitchen Cupboard, one of her greatest accomplishments, which will live on into the future.

Mrs. Caesar provided for and nurtured many young people in Philadelphia as a crossing guard and as a foster parent. She also served as the judge of elections for the 43d ward, 10th division and helped organize many voter registration drives. Mrs. Caesar always responded to calls for help from many political leaders and candidates.

Although she suffered from many illnesses, Mrs. Caesar maintained a positive spirit and believed that more work could always be done to improve the community.

I ask my colleagues to join me in extending our most sincere condolences to her brother Mr. Joseph Battle, Sr., her sisters Mrs. Lois Wyatt and Mrs. Doris Elizabeth Eaddy, her sisters-in-law, her children, Mr. Eddie Reni Battle, Ms. Serita Caesar, Ms. Jeanette Mash-Battle, Mrs. Tanya Irene Stewart Caesar and Mrs. Arlene Daniels Caesar. Mrs. Caesar is also survived by her companion of many years, Mr. Eldridge Robbins, and many grandchildren and other family members. Mrs. Caesar will be greatly missed by all who knew and loved her.

TRIBUTE TO RAYMOND "RED" FULARCZYK

HON. GERALD D. KLECZKA

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. KLECZKA. Mr. Speaker, it is with great pride that I rise today to pay tribute to my long-time friend, Raymond "Red" Fularczyk.

Red and I have a lot in common. We were both born in Milwaukee and attended Don Bosco High School, on the city's south side. Over the years, we have shared a commitment to the working men and women of Wisconsin and our Nation. For example, Red joined the Teamsters at the tender age of 16, and became a union steward just a few short years later. In 1968, he joined the staff of Teamsters Local 200. Throughout the years, Red served as the local's president and secretary-treasurer. He was the principal officer of Joint Council No. 39 until 1990, when he joined the staff of the Central Conference and became director of the Food, Dairy and Warehouse Division and secretary-treasurer.

Red's desire to further serve the American worker manifested itself in his political activities. An ardent supporter of workers' rights, he has always backed candidates on the municipal, county, State, and national levels who shared his views. A true bipartisan, Red was appointed by Wisconsin's Governor to represent labor on the State's Jobs Council Committee.

In continuing his service to the citizens of the Milwaukee area, Red was on the board of directors of both the Milwaukee War Memorial and the Performing Arts Center.

I am pleased to add to the many tributes and commendations Red has received and will continue to receive throughout his retirement.

Congratulations on a job well done. Best wishes as you spend more time with your family and many friends.

CRIME LEGISLATION

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, March 1, 1995, into the CONGRESSIONAL RECORD.

CRIME LEGISLATION IN THE 104TH CONGRESS

Crime ranks as the biggest perceived problem in the country. Although overall crime rates have decreased, most Americans still believe crime should be a priority of the federal government. While law enforcement, courts, and prisons are dealt with primarily by state and local governments, Congress has taken a number of steps in recent months to assist in these efforts.

Last fall, Congress passed anticrime legislation that authorized $30.2 billion in assistance over the next six years, with 75% of the funds for law enforcement and prisons, and 25% for local crime prevention efforts such as drug education programs or domestic violence shelters. The centerpiece of this law is the program to put thousands of new police officers on the streets. Ninth District sheriffs and police chiefs recently received some $2.5 million for 44 additional police officers. More assistance will be available in coming months. Indiana is also eligible for funds to increase prison capacity and establish military-style youth boot camps.

The House recently considered a series of six additional crime-related bills, which were based on proposals in the House leadership's "Contract with America".

VICTIM RESTITUTION ACT

This bill would require those convicted of a federal crime to pay damages to their victims. Current law permits such restitution, but does not require it. Compliance with court-ordered payments would be a condition of probation, parole, or release. This bill passed with my support.

CRIMINAL ALIEN DEPORTATION ACT

This bill would reimburse state and local costs for incarcerating illegal immigrants who have committed crimes. It also would make it easier for the government to deport criminal aliens to their country of origin. With my support, the House passed this bill by a large margin.

EFFECTIVE DEATH PENALTY ACT

Many Hoosiers believe that excessive, drawn-out appeals have made the death penalty ineffective as a deterrent to crime. The reforms in this bill would place a one-year limit for death row inmates to file federal appeals of state sentences. However, the bill does not go far enough to ensure that competent lawyers are appointed to argue death penalty cases. A large percentage of appeals result from mistakes made by inexperienced lawyers. Serious death penalty reform must deal with this problem. I supported this bill, but hope the Senate will pass more comprehensive reforms.

EXCLUSIONARY RULE REFORM ACT

The Fourth Amendment to the Constitution protects citizens against "unreasonable searches and seizures". In general, evidence obtained in violation of these procedures is excluded from trial unless 1) police officers had a search warrant and 2) believed they were acting in "good faith" compliance with the Fourth Amendment. The bill would create a broad loophole in the Fourth Amendment by permitting virtually all evidence obtained without a search warrant. Constitutional safeguards are not always popular with a public fed up with criminals going free on technicalities, but there have been many recent cases in which law enforcement agencies have violated civil rights in unreasonable searches. I have serious concerns about the implications of this bill on individual liberty, and did not support the bill.

PRISON FUNDING

Like last year's legislation, this bill encourages states to adopt measures to increase the average time served in prison. Half of the grants would be reserved for states that enacted "truth-in-sentencing" laws. I support such laws. However, this bill would eliminate funding for drug courts and change the grant formula to reduce Indiana's share of federal money. It also runs counter to the spirit of the unfunded mandates bills passed earlier this year, by requiring states to rewrite their criminals laws before receiving federal support. This bill would reduce Indiana's funding, and I did not support it.

LAW ENFORCEMENT BLOCK GRANTS

This bill would eliminate the current community policing program and replace it with a $10 billion block grant program for a variety of law enforcement purposes. Funds would be allocated on a formula based on the average number of violent crimes in a local jurisdiction.

I did not support this bill for two main reasons. First, law enforcement block grants have a long history of abuse. Under a similar program in the 1970s, local governments spent funds on yachts, airplanes, military tanks, and other frivolous uses. It was repealed in 1982. Such abuse is expensive to prevent. This bill includes $300 million—about 3% of the total funds—for the Justice Department to police local governments for abuse. Second, the community policing program has been very successful, and one-half of the money is designated for small communities and rural areas. It should not be eliminated. The block grant formula in this bill would provide less funding for Indiana's counties and rural communities. I believe more police officers on the beat, along with keeping criminals in prison, is a most effective way to fight crime. The administrative cost of the police grant program is just 0.08% of the total fund—which means less money in Washington and more money in local communities.

CONCLUSION

The House-passed proposal deserve a mixed review. The provisions for victim restitution, alien deportation, and death penalty reforms are long-needed, and they received my strong support. I am hopeful the Senate will take quick action. However, I am concerned about the exclusionary rule bill, which encroaches on important Constitutional protections against government intrusion. The funding provisions for prisons and block grants would hurt the Ninth District and Indiana, and block grants only increase the likelihood of fraud and abuse.

I have some doubts whether crime can be fought effectively with federal legislation. The primary responsibility for fighting crime belongs to state and local governments, and previous efforts from Washington have not generally been considered effective. But the public demand for action against crime is understandable, and Washington should do its part to help local and state officials reduce the threat of violent crime.

INTRODUCTION OF THE AMT DEPRECIATION RELIEF ACT OF 1995

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. CARDIN. Mr. Speaker, today I am introducing legislation to provide much-needed relief to American companies who currently are being penalized for investing in new plant and equipment.

Under the 1986 Tax Reform Act, Congress established an alternative minimum tax system for corporations. The purpose of the AMT was to prevent profitable corporations from escaping Federal income tax liability by making excessive use of tax preferences.

Unfortunately, the AMT has turned out to have a very different impact than was intended. Instead of ensuring that profitable companies do not escape Federal taxation, the AMT has worked, in many cases, as a trap, especially for capital intensive manufacturing companies.

The problems with the AMT arise principally because of depreciation differences. Under the regular tax system, companies are permitted to depreciate investments in plant and equipment under an accelerated system designed to encourage investment.

Regular tax depreciation schedules are structured to encourage companies to invest in new equipment and to enhance productivity. The effect is to help keep U.S. companies competitive by providing accelerated recovery of costs.

Under the AMT, however, we turn around and take away the tax incentives we have offered to encourage investment under the regular tax. The effect is that through the regular tax, we tell U.S. companies that we want them to invest in productivity-enhancing plant and equipment. Then, under the AMT, we tell them that if they act according to those incentives, and according to the dictates of their own competitive position, we will punish them. It makes no sense, and we should change the law.

The legislation I am introducing today will eliminate depreciation as a preference under the alternative minimum tax. That is, in determining AMT tax liability, for both recovery periods and methods of calculating depreciation, companies will compute depreciation as they currently do under the regular tax.

Removing the separate AMT calculation of depreciation will eliminate a significant source of complexity in the Tax Code. No longer will companies be forced to conduct two separate sets of depreciation computations. No longer will companies be penalized for implementing investment strategies warranted by their own economic circumstances because of concerns related to the AMT.

Largely because of the AMT, U.S. companies currently enjoy less favorable cost recovery provisions than their foreign competitors. By eliminating depreciation as an AMT preference, we can remove the disadvantage American companies face.

I urge my colleagues to join me in supporting fairness, simplicity, and sensible tax policy by cosponsoring the AMT Depreciation Relief Act of 1995.

PUBLIC BROADCASTING SERVES THE PEOPLE

HON. TOM BEVILL

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. BEVILL. Mr. Speaker, I favor reducing the Federal Government and I know that many popular Federal programs have been cut and will be cut more to achieve this worthy purpose.

But, I am very concerned that we could go too far. Some people say we should kill all Federal funding for public broadcasting. I think this is going too far.

Public television and radio stations have provided essential services to our Nation for many, many years. Many rural areas depend on public broadcasting to get the news and in-depth reporting on national and world issues.

The children's programming is highly educational, emphasizes strong family values and has the additional benefit of being commercial-free. I know parents and children appreciate that.

Public broadcasting serves as the benchmark for good taste and quality programming throughout the broadcasting world. I urge my colleagues not to throw this all away under the guise of deficit reduction.

I want to reduce the role of government in our lives and I want to balance the budget. I agree that these are goals that cannot be met without making hard budget choices.

But, I believe it would be a false savings to eliminate all Federal funding for the Corporation for Public Broadcasting, especially when this funding helps generate millions in private donations.

The private sector, which already contributes generously, certainly cannot be expected to do more.

I urge my colleagues to use some common sense in making our choices for cuts. Let's be careful we don't go overboard and kill programs which represent the best that America has to offer.

REMARKS OF THE HONORABLE RONALD V. DELLUMS IN SUPPORT OF THE DAVIS BACON ACT

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. DELLUMS. Mr. Speaker, I rise today to respond to a February 5, 1995, Washington Post column by George Will, which calls for the repeal of the Davis-Bacon Act, because it supposedly discriminates against minorities and women seeking employment in the construction industry.

Mr. Will's contentions about the history and application of the Davis-Bacon Act as racist are totally wrong. His column is clearly based on a thoroughly discredited so-called study by the extreme right wing CATO Institute, that contends that Davis-Bacon is a Jim Crow law enacted to exclude black workers from Federal construction projects—and that it's repeal will improve the economic opportunities of minorities.

Both of Mr. Will's contentions are utterly without merit.

Mr. Will's column calls for the repeal of a law which protects the wages of all construction workers, including minorities and women. The Will column attempts to justify repeal of Davis-Bacon by asserting that reducing the wages of minority and female workers is somehow in their interests. The column proceeds to claim that the costs of Davis-Bacon hurt inner cities the most because they prohibit contractors from employing local workers who still need to learn job skills.

The truth is that minority and female workers have entered the construction industry in increasing numbers over the past 15 years. Because they are often the newest members of the industry, they are particularly vulnerable to wage cutting practices the Davis-Bacon Act is designed to prohibit. Norman Hill, president of the A. Philip Randolph Institute, has characterized women and minority workers as "particularly vulnerable to exploitation such as the Davis-Bacon Act of 1931 is designed to prohibit."

Congressman Bacon and Senator Davis were both Republican's. It was signed into law by Herbert Hoover—not widely known as a friend of unions. The law guarantees that all workers on a construction project paid for by the Federal Government get the same money for doing the same work. Because of this crucial labor protection, a Government construction contractor can't pay some workers less than others for doing the same job.

This member opposes the repeal of the Davis-Bacon Act, which I would remind Mr.

Will is exactly the same position as his hero, President Ronald Reagan.

TRIBUTE TO MABEL GERTRUDE HOLMES

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. PAYNE of New Jersey. Mr. Speaker, I rise today to bring to the attention of my colleagues a tribute that was paid to one of America's great educators, the late Ms. Mabel Gertrude Holmes. On Friday, the city of Elizabeth, NJ, recognized the achievements of Ms. Holmes. Born in Virginia, Ms. Holmes first moved to Elizabeth in 1906. During an era when most African-Americans were denied opportunity, she earned a B.S. in elementary education from the Newark Normal School in 1921 and went on to receive an M.S. in education from New York University. Ms. Holmes put her education to great use, she taught second graders at Continental School No. 3 for 28 years. Elizabeth is fortunate to have had this dedicated educator and concerned citizen as one of its leading residents for so many years.

In 1949, Ms. Holmes became the first African-American to serve as the principal of a school in the city of Elizabeth. She served in an exemplary manner in that position for 14 years. Ms. Holmes also served as a member of the Elizabeth Board of Education from 1966–69. In Elizabeth, the name Mabel Gertrude Holmes will always be synonymous with education. She served her community well and for a very long period of time. Many lives were touched and improved by this kind and compassionate woman from Smedley, VA.

Mabel G. Holmes is an excellent role model for our young people and it is appropriate that she is being remembered during Black History Month. An educator and humanitarian, her life of service to her community is an inspiration to us all. Mr. Speaker, I urge my colleagues to join with me in recognition of a truly special woman, the late Mabel Gertrude Holmes.

SALUTE TO MRS. VIRGINIA RUFFIN

HON. THOMAS M. FOGLIETTA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. FOGLIETTA. Mr. Speaker, I rise to salute Mrs. Virginia Lavenia Taylor Ruffin whose 100th birthday will be celebrated on March 5 at the "Neighbor's Place" in Philadelphia, PA. Born on March 5, 1895, Mrs. Ruffin, a resident of North Philadelphia, has contributed a great deal to her church and community throughout her lifetime.

Mrs. Ruffin has been an active member of the Haven Methodist Church for more than 50 years as a nurse's aide and a bright star member. In addition, she has been very active in her community. As a block captain in her North Philadelphia neighborhood, Mrs. Ruffin sponsored bus trips and picnics for children and organized neighborhood cleanups. While she is troubled by the dangers of today's society, Mrs. Ruffin has high hopes for the future of our Nation.

Mr. Speaker, I join with Ms. Ruth Birchett, the Heritage Community Economic Development Corp., and the friends of Mrs. Ruffin in wishing her a very happy 100th birthday.

PERSONAL EXPLANATION

HON. XAVIER BECERRA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. BECERRA. Mr. Speaker, I would like to take this opportunity to explain my absence from the House on Friday, February 24 and Monday, February 27, 1995.

As I have stated previously, my wife and I are faced with a trying family medical situation which has required my presence at home in Los Angeles as often as possible and, unfortunately, at times when the House is in session. We are expecting our second child this May, and under doctor's orders, my wife has been limited to bed rest until she has completed her pregnancy.

Regretfully, I missed a number of recorded floor votes during this brief absence from Washington. For the record, I would like to indicate my position on each amendment and bill:

Tate amendment to H.R. 450, the Regulatory Transition Act of 1995 (rollcall 167)—"No."

Wise amendment to H.R. 450 (rollcall 168)—"Aye."

Green amendment to H.R. 450 (rollcall 169)—"Aye."

Waxman amendment to H.R. 450 (rollcall 170)—"Aye."

Fattah amendment to H.R. 450 (rollcall 171)—"Aye."

Volkmer amendment to H.R. 450 (rollcall 172)—"Aye."

On motion to recommit with instructions (rollcall 173)—"Aye."

On final passage of H.R. 450 (rollcall 174)—"No."

On agreeing to the resolution (rollcall 175)—"No."

Brown (CA) substitute to H.R. 1022, Risk Assessment and Cost-Benefit Act (rollcall 176)—"Aye."

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ELIMINATION ACT OF 1995

HON. JOEL HEFLEY

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. HEFLEY. Mr. Speaker, French economist Jean-Baptiste Say is famous as the author of Say's Law, sometimes summarized as "Supply creates its own demand." In economic circles, this law is still the subject of debate.

Here in Washington, however, the Department of Housing and Urban Development has been proving Say's Law for the past 30 years. We keep increasing spending on public housing, and the problem just gets worse.

Contrary to popular belief, housing assistance was not cut during the Reagan years. Discretionary Federal assisted housing outlays have grown from $165 million in 1962 to $5.5 billion in 1980 and $23.7 billion in 1994, resulting in 55 percent more families being assisted today than in 1980.

Has this dramatic growth solved the problem? No. Today, after HUD's budget has grown by over 400 percent in 15 years, only 30 percent of the families eligible to receive housing assistance are doing so.

And what kind of housing are they receiving? The 1992 report on severely distressed public housing found many public housing residents afraid to leave their own homes due to prevalent crime while others were living in decaying conditions that threatened their safety and health.

Three decades of HUD and homeownership is down, homelessness is up, and millions of low-income Americans are condemned to live in substandard housing which would be unacceptable if it were owned by anyone else.

Quite simply, HUD has failed its mission of providing decent, low-income housing to America's poor. On the other hand, it has done an excellent job of providing jobs to over four thousand Washington bureaucrats who oversee the hundred of programs within the Department.

For these reasons, today I am introducing legislation to abolish HUD by January 1, 1998 and consolidate its existing programs into block grants and vouchers.

If it is truly the job of government to subsidize low-income housing, then let's do it without the middle-man. Rent vouchers allow low-income people to choose their own home, rather than have some bureaucrat choose it for them. Block grants give money directly to the States and local governments—that much closer to the taxpayers who pay the bills.

It is time to admit that Uncle Sam makes a lousy landlord and end this 30-year experiment in socialist domestic policy. As Bill Clinton said in his State of the Union Address, "The old way of governing around here actually seemed to reward failure."

Let's stop rewarding HUD's failure by abolishing HUD and eliminating the unnecessary bureaucracy. The alternative is to continue investing in instant ghettos and Federal bureaucrats. That's a solution we've tried for 30 years, and it just hasn't worked.

CONGRATULATIONS STANLEY E. GREATHOUSE ON 31 YEARS OF SERVICE TO THE WAYNE-WHITE COUNTIES ELECTRIC COOPERATIVE

HON. GLENN POSHARD

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. POSHARD. Mr. Speaker, I rise today to congratulate Mr. Stanley E. Greathouse on 31 years of dedicated service to the Wayne-White Counties Electric Cooperative. On March 12, 1995 friends and family will gather at Orchardville School in Wayne County, IL to honor Stanley for his years of service and wish him a wonderful retirement.

Born December 11, 1916 Stanley has dedicated his life to serving his neighbors. Growing up Stanley attended a one-room school in Orchardville, rode a horse to high school, and worked on a farm to pay his way through Southern Illinois University at Carbondale. After graduating from Southern, Stanley returned to that one-room school where he taught for 4 years and later became its principal, all the while cultivating grain and tending livestock on his farm. In addition to his work as an educator and farmer Stanley has served the spiritual needs of his community. He has served as pastor to the Polar Creek Branch of Reorganized Church of Latter Day Saints and has served as president of its board of directors.

Stanley's career with the Wayne-White Counties Electric Cooperative began in 1964 when he became a member of its board of directors. Since that day Stanley has set the standard of excellence in helping to improve the lives of local residents. Through his positions on numerous boards Stanley has worked diligently for the development of rural electrification, a fight that I am sure he will continue long into retirement. Stanley's three decades of official service to the rural electrification effort will be hard to duplicate.

Stanley Greathouse has served his community in countless ways. Whether as an educator, spiritual leader, farmer, or advocate for rural electric initiatives he has always championed the needs of rural communities. The people who know him understand that he simply strives to make life better for his neighbors.

I am proud to join with the hundreds of well wishers, friends, and family members who are gathered to wish Stanley a splendid retirement from the Wayne-White Counties Electric Cooperative. I am honored to represent this distinguished gentleman in Congress. His is an example for all to admire.

TRIBUTE TO NEWTON CATTELL ON HIS RETIREMENT

HON. JOHN T. MYERS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. MYERS of Indiana. Mr. Speaker, in the popular press, the term "lobbyist" connotes both good and bad. The typical lobbyist is said to represent special interests who are at odds with the will of the American people. And indeed, there are some like that. On the other hand, real lobbyists include our constituents, interested citizens, and persons who represent commercial and nonprofit institutions whose knowledge and insight enables us to legislate wisely.

I rise, Mr. Speaker, to recognize one of those real lobbyists, Newton Cattell, who will retire at the end of this month. My colleagues deserve to know of his valuable contributions both to our Nation's institutions of higher learning and to the Congress. When Newton retires, we will miss him dearly for he has represented universities to this Congress longer than any other individual.

I have known Newton since 1983 when some of our great midwestern universities formed the Midwestern Universities Alliance, a consortium of public land-grant universities. Newton has been its director from its inception and has kept midwestern Members of Congress informed about the state of higher education in their region and the needs of the institutions, their students, and faculties.

Newton's lobbying activities on behalf of colleges and universities go back to 1968 shortly after passage of the 1965 Higher Education Act. It was then that Penn State, where he worked at the time, asked him to seek funding for the new legislation. To that end, Newton regularly visited with the Pennsylvania Members and their staffs. Among others, our colleagues JOE MCDADE and BOB WALKER still remember Newton's entreaties.

In 1978, Newton accepted the position of executive director for Federal relations at the Association of American Universities. His expertise in research and graduate education served him well in this job and in representing some of America's great research universities.

It was the Midwestern Universities Alliance that gave Newton his greatest challenge. In addition to Indiana and Purdue, which are my State universities, the members of the alliance include Minnesota, Wisconsin, Ohio State, Missouri, Iowa State, and Nebraska. Under Newton's direction, the future of these midwestern universities has been enhanced and a common legislative agenda developed.

Newton is a good friend. A good husband to Maddy, a good father to four children and an incredible grandfather to nine grandchildren. He's a solid citizen and a solid sailor. In his retirement, he'll do it right, not casting about but smoothly sailing into new waters with that ever present on course attitude and a steady hand on the wheel. And first mate Maddy, who served as his executive assistant for the last 10 years, will trim the sails. May they always have following winds and a pleasant sea and come back to warm friends and good family.

Congratulations, Newton, you've earned it.

THE MANY GIFTS OF MILTON TOBIAN

HON. JOHN BRYANT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. BRYANT of Texas. Mr. Speaker, for most of his life, Milton Tobian has devoted himself to others—to his country, to his family, to his faith, to combatting discrimination, to overcoming poverty and injustice, to fostering good government and progressive education, to the elderly, to those suffering the ravages of AIDS or the cruelty of Parkinson's disease, to less fortunate human beings.

On Saturday, March 4, 1995, at a benefit celebration for the Trinity Ministry to the Poor in Dallas, TX, "The Many Gifts of Milton Tobian" will the recognized and honored.

Rarely has an event been so well named.

No one who knows Milton Tobian—and I am privileged to have counted him among my friends for a quarter of a century—can think of him without first thinking of his selflessness.

We can think of his gifts to his community and his fellow beings, because those loving gifts have been his avocation.

The dictionary should have a picture of Milton Tobian beside its definition of humanitarian.

Perhaps Milton Tobian's devotion to worthy causes is a product of his background. His grandparents fled oppression in Russia and found freedom in Texas.

As a graduate of Rice University at 19, Milton immediately entered Navy Midshipmen's School and became the youngest World War II naval officer in the South Pacific when he was assigned to the U.S.S. *Lewis Hancock*.

In spite of his gallant service to his country in wartime, Milton Tobian has preferred the wars he waged right here at home.

In his war for the kind of education he knew should be available to every child, he helped found the League for Educational Advancement in Dallas. The victories he won included desegregation of the Dallas School Board, the establishment of kindergartens, and the School Lunch Program for impoverished children.

In his war against prejudice and discrimination as the longest tenured member of the Texas Advisory Committee to the U.S. Commission on Civil Rights and a driving force behind the Texas Conference of Churches' commission on Christian-Jewish relations, he helped win critical battles for civil rights and cooperation among long-divided racial and religious groups.

In his war for good government, Milton Tobian agreed to leave his successful business to establish the first statewide organization of Common Cause, the public interest watchdog group. From cramped headquarters with few resources, Milton Tobian was instrumental in remarkable victories—Texas' first open meetings and open records laws, campaign finance and lobbying reform, utilities regulation, and the toughest consumer protection law in the Nation. His efforts helped make Texas the model for Common Cause organizations and their legislative agendas nationwide.

For a decade, until his retirement in 1987, Milton Tobian's crusade was as southwest regional director of the American Jewish Committee.

But Milton Tobian's wars for causes good and noble continue unabated. In retirement, he has battled for senior citizens, children with AIDS, sufferers of Parkinson's disease, the homeless, the poor.

Milton Tobian has more energy, more talent, and more compassion than public spirited citizens half his 72 years of age.

Generations of Americans, Texans, and Dallasites have benefited from the high standards, the tireless efforts, and the downright goodness of Milton Tobian. Never seeking personal recognition or applause for his good works, he has earned and deserves nothing less than our sincere thanks for "the many gifts of Milton Tobian."

TRIBUTE TO BEVERLY A. GUIDRY

HON. JAY KIM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. KIM. Mr. Speaker, I rise today to join with my friends at the College of Osteopathic Medicine of the Pacific, the African-American Student National Medical Association and the Chicano-Latino Medical Student Association who will be gathering to honor Ms. Beverly A. Guidry on March 25, 1995.

As assistant dean for student affairs, financial aid and admissions at the College of Osteopathic Medicine of the Pacific in Pomona, CA, as well as in her other professional and civic roles, Ms. Guidry has served men, women, and children of color with distinction and resolve.

Among Ms. Guidry's past endeavors, she has worked as community relations director for the city of Pomona, CA; executive liaison for an international consortium of African and African-American business developers; job developer for Operation Second Chance, a community job-placement service for the needy; and as publisher of the Inland Empire Minority Business and Professional Directory.

In addition to her current responsibilities as assistant dean at COMP and advisor to both the African-American Student National Medical Association and the Chicano-Latino Medical Student Association, Ms. Guidry has been given national prominence and recognition as Chair of the National Nomination Committee of the National Association of Medical Minority Educators and the Student Affairs Officers Section of the American Association of Colleges of Osteopathic Medicine.

Ms. Guidry's record of community service includes leadership positions with the Pomona Valley NAACP, the Pomona Fair Housing Council, and the Pomona/Los Angeles Urban League. In 1994 she was honored as a West End YWCA Woman of Achievement.

Throughout her career, Ms. Guidry has served as an example and inspiration to us all by providing and creating opportunity for those traditionally underrepresented in civic, educational and professional walks of life. It is my privilege and distinct pleasure to join with her friends and colleagues who will honor her on March 25 for such noble dedication.

CONGRATULATIONS TO JESUS CHAMORRO FOR 22 EXCELLENT YEARS OF GREAT TALK RADIO

HON. ROBERT A. UNDERWOOD

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. UNDERWOOD. Mr. Speaker, in my home district of Guam, we have many fine radio personalities and journalists. However, we are blessed with Jesús Chamorro, the only talk show host using our indigenous language, the Chamorro language. His real name is Jesús Charfauros, but for reasons which will be clear as you read this tribute, we have changed his name.

While experts warn that the world's 6,000 languages are dying off, people like 'Sus work to preserve the Chamorro language here on Guam. A graduate of our local University of Guam with a degree in public administration, he began his entertainment career emceeing Chamorro talent shows in niteclubs. Then he started the "Chamorro Hour and Chamorro News," in 1972.

To be sure, some credit must be given to one of the island's communications corporations, namely KUAM, for keeping "The Jesús Chamorro Show" on the airwaves for the last 22 years. Of course, many in the corporate community deserve praise, because he continues to have loyal sponsors. These patrons know 'Sus Chamorro has a large number of faithful listeners. This diligent audience joins 'Sus every weekday morning at 8 a.m. and is considered the "grassroots" of our island community. The 'Sus Chamorro Show is more like an electronic village meeting and the listeners include our most treasured assets, our elders.

The mornings are very alive with 'Sus at the phone. This is morning talk radio at its finest. For 2 hours beginning at 8 a.m., 'Sus engages, encourages, stimulates, and informs. 'Sus Chamorro is one of the most well known voices throughout all segments of Guam's varied communities. He has been concerned with island issues for many years now, and Guam is enhanced by his show and his concern.

A recipient of the Guam Excellence in Media Award in 1990, 1991, and 1992 and honored with the Governor's Award for "Preservation of Culture, "Jesús Chamorro has become a fixture on Guam. Couple his listening audience with his four accomplished children and his ten grandchildren, and surely the values and wisdom of 'Sus Chamorro will be passed on from this generation into the future.

Yes, we the Chamorro speaking radio listeners on Guam are fortunate indeed. With small languages like Chamorro, the world is a more interesting, more beautiful place.

While, according to the experts, many of the small languages are on the verge of dying out, on Guam we still have faith. We teach the Chamorro language to our children in our schools. We speak Chamorro in our homes. We are proud of our Chamorro language and culture.

Our hope is imbedded in the career of people like Jesús Chamorro. The naysayers continue to predict extinction, but we continue to enjoy him, and we wish for many years to come.

Si Yu'os Ma'ase, Jesús.

SPEECH BY WILLIAM B. GOULD IV

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Ms. ESHOO. Mr. Speaker, I rise today to insert into the CONGRESSIONAL RECORD a speech made by William B. Gould IV, who is Chairman of the National Labor Relations Board, the Charles A. Beardsley Professor of Law at Stanford University, and one of my most outstanding constituents. His remarks before the Military Order of the Loyal Legion of the United States are a fascinating discourse on the significance of President Lincoln's views on labor law and their relationship to the service of African-Americans in the U.S. military during the Civil War. The impressive historical scholarship in this speech is greatly enhanced by Chairman Gould's effective use of passages from the diary of his great grandfather, William B. Gould, who served for over 3 years in the U.S. Navy during the conflict. I urge my colleagues to put Chairman Gould's speech on their reading lists.

LINCOLN, LABOR, AND THE BLACK MILITARY: THE LEGACY PROVIDED

(Delivered by William B. Gould IV, February 11, 1995)

"I heard the glad tidings that the Stars and Stripes have been planted over the Capitol of the Confederacy by the invincible Grant. While we honor the living soldiers who have done so much we must not forget to whisper for fear of disturbing the glorious sleep of the men who have fallen. Martyrs to the cause of Right and Equality."—Diary of William B. Gould, April 15, 1865.

These are the words of my great-grandfather written 130 years ago at the time of Appomattox. They reflect the thoughts and passion of one of our country's black naval veterans of the Civil War and his commitment to the military initiatives waged by President Lincoln.

It is meet and right that we come here this evening to honor the memory of Abraham Lincoln, the sixteenth President of the United States, properly known throughout the world as the Great Emancipator. The New World's central political and social achievement, the Emancipation Proclamation which President Lincoln authored, transcends the ages and future generations. And his ideas about democracy and the rights of all people constitute the central vision of the American democratic system today.

As the sons of Union officers who fought in the Civil War, you know better than most that this 186th anniversary of Lincoln's birthday marks anew the ongoing struggle to free our country from the legacy of the odious institution of slavery so that all people may live out their lives and fulfill their aspirations without the actuality or fear of arbitrary limitation.

One of my law professors used to say that the "greatest constitutional decision ever rendered occurred when Pickett's charge failed at Gettysburg." The legacy of Appomattox and all that led to it resonates throughout our society to this evening here in Washington as part of the unceasing struggle against all arbitrary barriers which afflict mankind.

And both Gettysburg and Appomattox produced the great Civil War amendments to the Constitution, which reversed the infamous *Dred Scott* decision in which the Supreme Court declared blacks to be property constitutionally. The amendments, in turn, have provided our country with the historical framework for both the Supreme Court's great *Brown* v. *Board of Education*, 1954 ruling condemning separate but equal as a denial of equal protection and also the modern civil rights movement as well as the legislation that it produced. Similarly, Title VII of the Civil Rights Act of 1964, our most comprehensive anti-discrimination legislation relating to the workplace, is a lineal descendant of the previous century's developments.

I am not a Lincoln or Civil War scholar. Indeed, I find the amount of literature about both subjects to be daunting—and, accordingly, I know that you do not expect a scholarly examination of President Lincoln from me. But there are matters which have and do involve me both practically and professionally with Lincoln and his times.

The first is that I am the fourteenth Chairman of the National Labor Relations Board and, as such, administer an agency and interpret a statute which both seek to implement some of Lincoln's most basic views on labor.

The second is that I am the great-grandson of the first William Benjamin Gould who, along with seven other "contraband" (seized property—the appellation which General Benjamin Butler gave to escaped slaves) set sail in a small boat from Cape Fear, North Carolina and boarded the *USS Cambridge* on September 22, 1862, the day that President Lincoln announced his intent to issue the Emancipation Proclamation. You will know that the Proclamation states in relevant part:

"And I further declare and make known, that such persons of suitable condition [the freed slaves held by those in rebellion], will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service."

And thus it was that William B. Gould joined the United States Navy and served as landsman and steward on the North Atlantic Blockade and subsequently served on vessels visiting Britain, France, Belgium, Portugal and Spain, chasing the Confederate ships which were built by their undercover allies.

In 1864 the American Minister Charles Francis Adams had notified the British government that if the *Alabama* and the *Georgia*—two iron clad "rams" built by the British for the Confederacy—were allowed to go to sea, this would be construed by the United States as a declaration of war. William B. Gould sailed with the steam frigate *Niagara* for the European station to join other vessels such as the *Kearsarge* to keep, in my great-grandfather's words, a "sharp lookout" for these vessels. The *Niagara's* destination was the Bay of Biscay where she eventually engaged in battle.

William B. Gould's service ended on September 29, 1865 when he made the following entry in his diary:

"At the Navy Yard [Charlestown, Massachusetts] at five Oclock I received my Discharge being three years and nine days in the service of Uncle Samuel and glad am I to receive it . . . [pay] of four hundred and twenty four dollars. So end my service in the Navy of the United States of America."

I did not know the first William B. Gould for he died—in Dedham, Massachusetts where he resided from 1871 onward—thirteen years before my birth. I did not know my grandfather, William B. Gould, Jr., a Spanish-American War veteran, for he was to die nine years later in 1932. But the third William B. Gould was my greatest inspiration in my most formative years—and my belief is that the values and culture which he attempted to transmit to me were very much a part of the lives of the first two gentlemen to whom I have referred.

Truly then, President Lincoln's views and policies have had a major impact upon my own life.

As Chairman of the National Labor Relations Board, I have a responsibility to implement a statute which promotes the right of employees to band together for the purpose of protecting or improving their own working conditions, to join unions, to engage in collective bargaining and to be free from various forms of discrimination. This statute, enacted as part of President Franklin D. Roosevelt's New Deal in 1935, is one of the country's proudest achievements, expressing the policy that the protection of "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection" should be encouraged.

In recent years, a number of scholars and critics, like myself, took note of the fact that the statute has not been working well in implementing these objectives because of poor administrative processes and ineffective remedies. Some of these matters can be and are being cured by us at the Board and some can be only addressed by Congress. I hope to do what I can to make continued progress in the former category before I depart from Washington and return to California a few years down the road when my term ends.

I enthusiastically support the views contained in the preamble and have made my position known in books, articles, and speeches. In many respects, the fundamentally similar views of President Lincoln were a precursor of our own 1935 legislation.

Recall what Lincoln said to the New York Workingmen's Democratic Republican Association on March 21, 1864:

"The strongest bond of human sympathy, outside of the family relation, should be one uniting all working people, of all nations, and tongues and kindreds."[1]

As the Presidential campaign of 1860 unfolded, Lincoln stated his philosophy in these terms:

"When one starts poor, as most do in the race of life, free society is such that he knows he can better his condition; he knows that there is no fixed condition of labor for his whole life . . . I want every man to have the chance—and I believe a black man is entitled to it—in which he can better his condition—when he may look forward and hope to be a hired laborer this year and the next, work for himself afterward, and finally to hire men to work for him! That is the true system."[2]

In the same speech, Lincoln makes clear that the right to strike is integral to a democratic society, a policy reflected in the language of Sections 7 and 13 of the National Labor Relations Act and in the Norris-LaGuardia Act of 1932 which preceded it. Just a few weeks ago, President Clinton took note of one of our law's limitations in his statement criticizing the Bridgestons/Firestone Company's use of permanent striker replacements, noting that such tactics show the need to enact legislation prohibiting such a denial of the fundamental right to strike.

It bears note that Lincoln's view of labor and the right to strike ran against the tide of laissez-faire thinking which predominated in the previous century—thinking which has reared its head again toward the close of this century, one of its forms being the repressive striker replacement weapon of which President Clinton spoke. President Lincoln supported the right to strike and spoke out in the spring of 1860 in support of a well-organized strike conducted by the boot and shoe workers in New England. Lincoln regarded the right to strike by free labor as a "virtue, not a failing, of free society," as G.S. Boritt has written in "Lincoln and the Economics of the American Dream."[3]

Boritt also notes that during the Civil War several delegations of strikers from the Machinists and Blacksmiths Union of New York visited the White House and spoke to the President about their position. States Boritt:

"The labor representatives took great comfort from their interview, reasoning that although their employers refused to deal with them, Lincoln received them. 'If any man should again say that combinations of working men are not good,' they concluded, 'let them point to the Chief Magistrate.' They even quoted the President as saying 'I know that in almost every case of strikes, the men have just cause for complaint.' It is rather likely that the union men quoted Lincoln correctly."[4]

Of course, Lincoln's view of labor was closely related to his view of slavery. Again, in 1860 he said: "'Owned labor' would compete with free labor so as to 'degrade' the latter." And, in an earlier and lengthy speech to the Wisconsin State Agricultural Society in Milwaukee on September 30, 1859, he noted that the so-called "mud-sill" theory was that a hired laborer is "fatally fixed in that condition for life" and thus his condition is the same as that of a slave.[5]

But as Lincoln noted, this theory proceeded upon the assumption that labor and education were incompatible and that one could not improve oneself and one's family through free labor. Lincoln's view was antithetical to all of this. He held the view that workers should be able to rise to new horizons.

And this view is closely related to another held by the President which has similar contemporary implications. Because Lincoln believed that all people could improve themselves and thus rise out of their station if opportunity were afforded them, unlike other proponents of the rights of labor, he did not see the working class as a well-defined unit, notwithstanding his endorsement of its use of the strike to defend its interests and act jointly in its dealings with employers. To some extent, said Professor Boritt, Lincoln shared the view that there was a harmony between the capital and labor and that it ought to be promoted so as to enhance the ability of workers to rise out of their class.

Again, these views resonate with us today as Congress considers proposals to enhance employee participation and proposed amendments to the National Labor Relations Act which will achieve this goal. I believe that President Lincoln would be sympathetic with contemporary efforts to promote employee involvement in the workplace and thus enhance our industry's global competitiveness—so long as such reforms do not interfere with the ability of the workers and unions to defend their own positions, a proposition that I have long advanced.[6]

The view that an individual was not "fatally fixed" in a particular condition forever constitutes the philosophy which prevailed in the Civil War and through the Emancipation Proclamation and the enactment of the Thirteenth Amendment which Lincoln sponsored before his assassination. Again, this is reflected anew in last month's State of the Union address by President Clinton when, in advocating new minimum wage legislation, he said that the worker who works must have his "reward" and that the job of government is to "expand opportunity . . . to empower people to make the most of their own lives. . . ."

This is what is at the heart of modern democracy and the Bill of Rights for workers in the private sector which are continued in the National Labor Relations Act and similar statutes. And this has been the assumption behind the struggle for equality which has attempted to make good on the promise of emancipation in the previous century.

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[1] Footnotes are at end of speech.

My great-grandfather, a mason who worked with his mind and hands and established a business as a contractor, employing other workers in Dedham, Massachusetts, benefited from the above-noted philosophy and the quoted portions of the Emancipation Proclamation. Said William B. Gould on March 8, 1863, two months after its issuance:

"Read . . . the Proclamation of Emancipation . . . verry [sic] good."

The policy, of course, had evolved in fits and starts. As Benjamin Quarles has noted in "The Negro in the Civil War," General Butler was the first to devise a policy of acceptance of blacks who wanted to fight with the North. This was, as Quarles noted, the most "insistent" problem faced by the Lincoln Administration in 1861 and 1862. It emerged, as he has noted, after the Union defeat at Bull Run which was attributable "in part to the Confederate military defenses constructed by slaves. . . ."

Congress enacted legislation which provided for the forfeiture of all slaves whose masters had permitted them to be used in the military or naval service of the Confederacy. Quarles notes that the 1861 legislation "strengthened the hand of the small band of Union officers from the beginning had been in favor of freeing the slaves." Two military initiatives—one designed by John C. Fremont in July 1861, "The Pathfinder," and the other undertaken by Major General Dave Hunter in the summer of 1862—were both rescinded by Lincoln out of his concern with preserving the allegiance of the border states.

The Confiscation Act enacted on July 17, 1862, declaring free all slaves who were owned by those in rebellion was the next step in the process. This had the effect of increasing the number of fugitives in whom the United States Navy expressed a particular interest so as to make use of the information that they could provide about enemy locations and movements. As summer became fall the problem became more "insistent."

Three days after my great-grandfather boarded the USS *Cambridge* came this report of Commander G.H. Scott regarding the blockage of Wilmington:

"Fourteen contrabands have reached the 'Monticello' and 'Penobscot' and several the 'Cambridge' within a few days, and as the vessels have not room for them, will you please direct what disposition shall be made of them?"

We know what disposition was made of William B. Gould. On October 3, 1862, he said:

"All of us shipped today for three years, first taking the Oath of Allegiance to the Government of Uncle Samuel."

Thus he, and eventually I, benefited from both the Confiscation Act and the new policy expressed in the Emancipation Proclamation which was not to be effective for another three months. His service was made possible because of it. This was then his opportunity—and his observations, hopes and views are chronicled in the diary which he kept between 1862 and 1865.

On the perils of the seas and their storminess, he says:

"[T]he gale still blows fresh and the seas running very [sic] high. We shipped several through the night and one—fill'd the Ward Room with Water. I have got ducked awfully last night. It was worth something to be upon the Deck. Although there is much danger in a storm there is something very sublime to hear the roar of the storm. The hissing of the Waves, the whistling of the Rigging and the Cannon like report of the torn sail and above all the stern word of the commander and the—sound of the boatswain's pipe all adds to the grandeur of the scene. For there is something grand in a storm. Allnight with eager eyes both Officers and Men paced the deck watching our Foretopsail, feeling in a measure secure as long as we could sail at all. It has stood through the night. There was no sign of the storm abating [sic]. All the galley fire is out and nothing to eat is the cry and almost nothing to wear on account of the Water. Shine out fair sun and smote the Waves that we may proceed on our course and all be saved."

And on December 25 and December 27 of 1862, he had this to say about the loneliness of his work off New Inlet:

"This being Christmas I think of the table at home . . . cruised around as usual. Fine weather but very lonesome in the absence of news and we all had the Blues."

While on the North Atlantic Blockade with the USS *Cambridge* he says on November 17, 1862:

"A sail was reported close under the land right ahead. We gave chase. When within range of our boat we told them good morning in the shape of a shot for her to heave to."

But then he describes the difficulties that arose:

"To this [the shot] they took no notice. We sent another which fell under her stern . . . the ship stood for the Beach. Shot after shot was set after her but they heeded not . . . we immediately manned the first cutter and sent her . . . to board and destroy her. We also sent two other boats to lend assistance . . . [after sending a line to these boats so that they could return to the main ship] . . . they got the Boat all ready to come out when a body of Rebel Soldiers dashed over the hill at the double quick and all were prisoners. We could see them from the ship marching off our men and dragging the boats after them. We lost eleven men and three officers. Rather a bad day's work."

But the fortunes of war were not all negative as testified to by him in this entry in the summer of 1864 off Portugal:

"[W]e made a steamer and stood for her. She kept on her course without any until we got within 5 miles of her when she suddenly changed her course. We beat to Quarters and Fired a shot. She showed the English collors [sic]. We Fired another. When she came to be boarded her and found her to be the Rebel Privateer 'Georgia' from Liverpool on her way to refit a cruiser. But the next cruise that she makes will be for Uncle Samuel . . . this capture makes a crew feel verry [sic] proud."

While in the English Channel:

"[W]e took on board an English Pilot who brought the thrice glorious news of the sinking of the 'Alabama' by 'Kearsarge' off Cherbough . . . [A]though we have been disappointment to us in not getting a shot at the 'Alabama' we are satisfied that she is out of the way."

And in 1864 while serving on the *Niagara* he said about the people that he saw in Spain:

"[I]t looks very strange in this country which nature has lavished with riches that there should be so many Poor People."

And again on the shameful treatment of black soldiers on his ship:

"Yesterday about 900 men of the Maryland (colored) regiment came on board (they being transfered to the Navy) and took dinner then departed for Portsmouth, New Hampshire. They were treated very rough by the crew. They refused to let them eat out of the mess pans and call them all kinds of names. One man [had] his watch stolen from him by these scoundrels. In all they were treated shamefully."

On the proposed colonization of blacks to Africa or the Caribbean:

"We see by the papers that President [Johnson] intimates colonization for the colored people of the United States. This move of his must and shall be resisted. We were born under the Flag of the union and never will we know no other. My sentiment is the sentiment of the people of the States."[8]

All of this ended in 1865 and provided William B. Gould with his chance at life. Sometimes I think about his thoughts as he walked the streets of Wilmington a young man and what would have been had he stayed in North Carolina and the events of those four critical years had not taken place. Most certainly his great-grandson would not be here today addressing you as Chairman of the National Labor Relations Board.

I am privileged to have this opportunity in 1995 to contribute to the public good in the most inspirational and progressive Administration in Washington since the 1960s—one which is unabashedly committed to the principles of those who fell 130 years ago.

My hope is that I can reflect well upon the first William B. Gould and the chance that he made for me by rising out of his "fixed station," to use Lincoln's words, and I am all too aware of the limitations of time as we move rapidly toward a new millennium.

As William B. Gould said on December 31, 1863, in New York harbor:

"We are obliged knock off on the account of the storm. It blew very hard from South East. The old year of '1863' went out furiously as if it was angry with all the world because it had finished the time allotted to it. Sooner or later we must follow."

My first major impression during my first trip outside of the United States in 1962, as a student at the London School of Economics, is of the grand and majestic statue of President Lincoln which sits in Parliament Square today. Now I live in Washington within a mile of the great Lincoln Memorial in which his brooding historical omnipresence is made so manifest.

You and I, the entire nation and the world honor President Lincoln and his policies tonight. Both personally and professionally they are with me always as is the legacy provided by him and so many others in what my great-grandfather called:

"[T]he holiest of all causes, Liberty and Union."[9]

FOOTNOTES

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[1] Basler, Roy P., Editor, "The Collected Works of Abraham Lincoln," Volume VII, page 259, (1953).

[2] Ibid., Volume IV, pp. 24–5.

[3] Boritt, Gabor, S., "Lincoln and the Economics of the American Dream," page 184, (1978).

[4] Ibid., page 185.

[5] Basler, Roy P., Editor, "The Collected Works of Abraham Lincoln," Volume III, pp. 477–8 (1953).

[6] Of course, I advanced such ideas in the context of proposals for comprehensive labor law reform. See W. Gould, "Agenda for Reform: The Future of Employment Relationships and the Law," pp. 109–150 (1993).

[7] B. Quarles, "The Negro in the Civil War," pp. 59–61, 64 (1953). On blacks in the U.S. Navy see generally, D. Valuska, "The African American in the Union Navy: 1861–1865," (1993).

[8] Of course, President Lincoln had earlier proposed colonization within the context of compensated emancipation.

[9] Diary May 6, 1864. The full text actually states, "[H]eard of the departure of one battalion of the 5th Regiment Massachusetts Cavalry from Camp Meigs

for Washington, D.C. May God protect them while defending the holiest of all causes, Liberty and Union." As William B. Gould III wrote in an entry adjacent to the diary: "Camp Meigs was in Readville, Massachusetts, about two miles east of where William B. Gould made his home at 303 Milton Street, East Dedham, Massachusetts."

THE FOOD STAMP INTEGRITY ACT OF 1995

HON. E de la GARZA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mr. DE LA GARZA. Mr. Speaker, I am today introducing the Food Stamp Program Integrity Act of 1995. This bill is a comprehensive package of reforms, developed by the U.S. Department of Agriculture, targeting fraud and abuse in the Food Stamp Program. It will allow USDA to focus its resources on the small number of retailers who abuse their privilege of participating in the Food Stamp Program. It will expand the current authority of USDA to screen retailers when they apply to participate in the Food Stamp Program, and enhance penalties when retailers defraud the program. It will expand forfeiture authority to allow the seizure of retailer property used or derived from illegal food stamp trafficking. It will increase access to retailer documents to verify the legitimacy of the stores applying to participate in the program.

I believe that this bill can be a vehicle to fashion a program integrity title to food stamp welfare reform, which will be marked up at the Agriculture Committee next week.

THE CORPORATE WRONGDOERS PROTECTION ACT

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 1, 1995

Mrs. COLLINS of Illinois. Mr. Speaker, many people may have heard of or read the best-selling book "The Hot Zone" recently. This thriller details the true story of rare and lethal viruses that have the potential to destroy a significant percentage of the human population in a very short time span.

Well, there is a related type of virus spreading these days on Capitol Hill. It also has the potential to claim countless victims throughout our Nation, perpetrating injuries as serious as any disease or epidemic.

But this virus is one of gross misinformation. What is spreading so rapidly is the fallacy that the GOP's "Contract With Corporate America" product liability legislation, H.R. 917 and H.R. 956, would not hurt consumers.

The fact is, these bills would decrease product safety for all consumers, but, in particular, it would devastate and devalue American women.

Particular provisions within the legislation touted by the majority would shield manufacturers of products like DES, silicone breast implants, and IUD's from punitive damages as long as they receive FDA approval—even when their actions were outrageous and hundreds of women were injured as a result.

These bills would also restrict the recovery of noneconomic damages, so that a highly paid male corporate executive with a 3-month-long injury would be more fully compensated than a woman whose principal injury is the permanent loss of reproductive capacity, or an injured woman who has chosen to stay at home and raise her children.

H.R. 917 and H.R. 956 would also do nothing to restrict the use of secrecy agreements or protective orders that prevent the public from learning about unsafe products, as was the case with the secrecy agreements that kept Dow Corning's information about the dangers of its silicone breast implants hidden from the public eye for so many years. How many women must be severely injured from the same product before we become outraged and take action?

The bottom line is clear: if Congress passes this legislation, women would suffer. Women would face harsher odds when taking the chance of trying a drug or medical device. Women would find that the concepts of justice and full compensation have been significantly carved. Women would find that their safety is less important to manufacturers than corporate profits. Women would find that they are less equal in the eyes of the law.

These are disasters that must not be allowed to occur. If any product liability measure is to advance through Congress, we must be sure that it is first altered so as to protect the safety of America's mothers, sisters, and daughters.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, March 2, 1995, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

MARCH 3

9:30 a.m.

Appropriations

VA, HUD, and Independent Agencies Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the National Credit Union Administration, the Neighborhood Reinvestment Corporation, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation-Inspector General.

SD-138

10:00 a.m.

Appropriations

Foreign Operations Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for foreign assistance programs, focusing on security cooperation in Europe.

SD-192

Judiciary

To hold hearings to examine proposals to reform Federal habeas corpus regulations, focusing on the elimination of prisoners' abuse of the judicial process.

SD-226

MARCH 6

10:00 a.m.

Joint Library

Organizational meeting to consider pending committee business.

SR-301

2:00 p.m.

Appropriations

Treasury, Postal Service, General Government Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Office of National Drug Control Policy.

SD-192

Energy and Natural Resources

To hold hearings on S. 333, to direct the Secretary of Energy to institute certain procedures in the performance of risk assessments in connection with environmental restoration activities.

SD-366

Joint Printing

Organizational meeting to consider pending committee business.

H-164, Capitol

MARCH 7

9:00 a.m.

Finance

To hold hearings on the FCC tax certificate program.

SD-215

9:30 a.m.

Armed Services

To resume hearings on proposed legislation authorizing funds for fiscal year 1996 for the Department of Defense and the future years defense program.

SR-222

Budget

To hold hearings to examine various privatization initiatives.

SD-608

Energy and Natural Resources

Parks, Historic Preservation and Recreation Subcommittee

To hold joint hearings with the House Committee on Resources' Subcommittee on National Parks, Forests, and Lands to review the health of the National Park System.

SD-366

Environment and Public Works

Drinking Water, Fisheries, and Wildlife Subcommittee

To hold hearings on S. 191, to revise the Endangered Species Act of 1973 to ensure that constitutionally protected private property rights are not infringed until adequate protection is afforded by reauthorization of the Act, and to protect against economic losses from critical habitat designation, and other proposed legislation to institute a moratorium on certain activities

under authority of the Endangered Species Act.
SD–406

Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to review the legislative recommendations of the Veterans of Foreign Wars.
345 Cannon Building

10:00 a.m.
Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Commerce.
S–146, Capitol

Governmental Affairs
Business meeting, to mark up S. 219, to ensure economy and efficiency of Federal Government operations by establishing a moratorium on regulatory rulemaking actions.
SD–342

Judiciary
To hold hearings to examine the jury process, focusing on the search for truth in trials.
SD–226

Indian Affairs
To hold oversight hearings to review Federal programs which address the challenges facing Indian youth.
SR–485

2:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Labor.
SD–192

MARCH 8

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Geological Survey, Department of the Interior.
SD–116

Energy and Natural Resources
To hold oversight hearings on domestic petroleum production and international supply.
SD–366

Governmental Affairs
To resume hearings on proposed legislation to reform the Federal regulatory process, to make government more efficient and effective.
SD–342

Small Business
To hold hearings on the proposed "Regulatory Flexibility Amendments Act."
SR–428A

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for rural economic and community development services of the Department of Agriculture.
SD–138

Banking, Housing, and Urban Affairs
To resume oversight hearings on the condition of credit unions.
SD–538

1:30 p.m.
Foreign Relations
East Asian and Pacific Affairs Subcommittee
To hold hearings to examine intellectual property rights with regard to the People's Republic of China.
SD–419

2:00 p.m.
Energy and Natural Resources
Forests and Public Land Management Subcommittee
To hold oversight hearings on Forest Service appeals.
SD–366

Select on Intelligence
To hold closed hearings on intelligence matters.
SH–219

2:30 p.m.
Indian Affairs
To hold oversight hearings to examine the structure and funding of the Bureau of Indian Affairs.
SR–485

MARCH 9

9:30 a.m.
Agriculture, Nutrition, and Forestry
To hold hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on cost issues of certain farm programs.
SR–332

Energy and Natural Resources
Business meeting, to consider the nomination of Wilma A. Lewis, of the District of Columbia, to be Inspector General, Department of the Interior; to be followed by a closed briefing on international aspects of petroleum supply.
S–407, Capitol

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Transportation Safety Board.
SD–192

Judiciary
To hold hearings on S. 227, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions.
SD–226

2:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Health and Human Services.
SD–138

Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Secret Service, Federal Law Enforcement Training Center, and the Financial Crimes Enforcement Network, Department of the Treasury.
SD–192

2:30 p.m.
Commerce, Science, and Transportation
Aviation Subcommittee
To hold hearings to examine activities of the Denver International Airport.
SR–253

MARCH 10

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Science Foundation, and the Office of Science and Technology Policy.
SD–138

Joint Economic
To hold hearings to examine the employment-unemployment situation for February.
SD–562

MARCH 13

9:30 a.m.
Finance
To hold hearings on the consumer price index.
SD–215

MARCH 14

9:00 a.m.
Judiciary
To hold hearings to examine proposals to reduce illegal immigration and to control financial costs to taxpayers.
SD–226

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on wetlands and farm policy.
SR–332

Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense.
SD–138

Appropriations
Energy and Water Development Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Energy Office of Energy Research.
SD–192

MARCH 15

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Smithsonian Institution.
SD–116

Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD–366

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for farm and foreign agriculture services of the Department of Agriculture.
SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Justice.
Room to be announced

2:00 p.m.
Appropriations
Energy and Water Development Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bonneville Power Administration.
SD–192

MARCH 16

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on taxpayers' stake in Federal farm policy.
SR–332

10:00 a.m.
Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Bureau of Investigation and Drug Enforcement Agency, both of the Department of Justice.
S–146, Capitol

Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Highway Administration, Department of Transportation.
SD–192

2:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Education.
SD–192

MARCH 22

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Fish and Wildlife Service, Department of the Interior.
SD–192

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Natural Resources Conservation Service, Department of Agriculture.
SD–138

MARCH 23

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Railroad Administration, Department of Transportation, and the National Passenger Railroad Corporation (Amtrak).
SD–192

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Alcohol, Tobacco and Firearms and the United States Customs Service, Department of the Treasury.
SD–192

3:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Institutes of Health, Department of Health and Human Services.
SD–138

MARCH 24

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Housing and Urban Development.
SD–138

MARCH 27

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Executive Office of the President, and the General Services Administration.
SD–138

MARCH 28

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Land Management, Department of the Interior.
SD–116

MARCH 29

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Food Safety and Inspection Service, Animal and Plant Health Inspection Service, Agricultural Marketing Service, and the Grain Inspection, Packers and Stockyards Administration, all of the Department of Agriculture.
SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Judiciary, Administrative Office of the Courts, and the Judicial Conference.
S–146, Capitol

MARCH 30

9:30 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans Affairs to review the legislative recommendations of AMVETS, American Ex-Prisoners of War, Vietnam Veterans of America, Blinded Veterans Association, and the Military Order of the Purple Heart.
345 Cannon Building

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Aviation Administration, Department of Transportation.
SD–192

MARCH 31

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on agricultural credit.
SR–332

Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Veterans Affairs, the Court of Veteran's Appeals, and Veterans Affairs Service Organizations.
SD–138

APRIL 3

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Internal Revenue Service, Department of the Treasury, and the Office of Personnel Management.
SD–138

APRIL 4

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on market effects of Federal farm policy.
SR–332

Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Park Service, Department of the Interior.
SD–138

APRIL 5

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Aeronautics and Space Administration.
SD–192

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Agricultural Research Service, Cooperative State Research, Education, and Extension Service, Economic Research Service, and the National Agricultural Statistics Service, all of the Department of Agriculture.
SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Immigration and Naturalization Service, and the Bureau of Prisons, both of the Department of Justice.
S–146, Capitol

APRIL 6

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Emergency Management Agency.
SD-138

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of the Treasury and the Office of Management and Budget.
SD-116

APRIL 26

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for energy conservation.
SD-116

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Food and Consumer Service, Department of Agriculture.
SD-138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Legal Services Corporation.
S-146, Capitol

11:00 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for fossil energy, clean coal technology, Strategic Petroleum Reserve, and the Naval Petroleum Reserve.
SD-116

APRIL 27

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Transit Administration, Department of Transportation.
SD-192

MAY 2

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Forest Service of the Department of Agriculture.
SD-138

MAY 3

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Environmental Protection Agency, the Council on Environmental Quality, and the Agency for Toxic Substances and Disease Registry.
SD-192

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Agriculture.
SD-138

MAY 4

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Coast Guard, Department of Transportation.
SD-192

MAY 5

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for Environmental Protection Agency science programs.
SD-138

MAY 11

10:00 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Indian Affairs, Department of the Interior.
SD-116

1:00 p.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Indian Health Service, Department of Health and Human Services.
SD-116

MAY 17

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of the Interior.
SD-192

SENATE—*Thursday, March 2, 1995*

(Legislative day of Wednesday, February 22, 1995)

The Senate met at 12 noon, on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Our prayer will be delivered by Father Paul Lavin, pastor of St. Joseph Catholic Church on Capitol Hill in Washington, DC.

PRAYER

The guest Chaplain, the Reverend Paul Lavin, offered the following prayer:

Lord God, by the mouth of Your prophet Amos You tell us:

I hate and despise your feasts, I want no more of your burnt offerings, Let me have no more of the din of your chanting, no more of the strumming of your harps. But let justice flow like water, and integrity like an unfailing stream.

Help us understand that our only feast acceptable in Your sight will be our assistance to the poor and support of the oppressed. Let the practice of justice be the song of our Nation and let each of us offer a contrite and humble heart. Then when we lift up our voices in song to You our hearts will be clean and You will love our song.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished majority leader is recognized.

SCHEDULE

Mr. DOLE. Mr. President, at 2 o'clock, leader time having been reserved, the leaders will each have 10 minutes, followed by a vote on the balanced budget amendment.

RECESS UNTIL 2 P.M.

Mr. DOLE. I now move that the Senate stand in recess until 2 p.m. today.

The motion was agreed to, and at 12:02 p.m., the Senate recessed until 2 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ASHCROFT).

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The Senate resumed consideration of the joint resolution.

The PRESIDING OFFICER. Under the previous order, the Democratic leader is recognized.

Mr. DASCHLE. Mr. President, this debate has now continued for more than a month. There have been many conflicting statements and some misunderstandings, but no one should misinterpret this vote. It is not a vote on balancing the budget or reducing the deficit. Democrats have been committed to that for a long time, and our record is very, very clear. We demonstrated that in 1990 on a very tough vote. And, without any help from Republicans, we again demonstrated that in 1993; $600 billion of deficit reduction later, we find ourselves here this afternoon. We are prepared to continue that commitment for as long as it takes to put this debt behind us for good.

So no one should be misled by the political rhetoric about our position. We will do what we have already done. We will work to bring down the debt with or without a constitutional amendment.

This debate really should not even have to be about the need for a constitutional amendment. By my count, there are over 70 Senators who favor one. More than two-thirds of this body favor writing a balanced budget requirement into the U.S. Constitution, and I am one of them.

What this debate is all about is what that amendment should say. And what our Republican colleagues have said is that it has to be this version, this amendment, or no amendment at all. That is what this debate has been about.

Can we improve upon this amendment? Can we make sure that it is our best effort? We have made a number of suggestions that, in our view, would have vastly improved the language that we are about to vote on today. We proposed that we lay out just how we achieve our goal before we begin doing so, as any other undertaking of this importance and magnitude would require. The majority said, "No, we'll do that later. Trust us. Somehow it will all work out."

We proposed changes that deal with national emergencies. The majority said, "No, we'll do that later."

We proposed changes to put the Federal Government on the same level as other governments as we make important budgetary decisions. The majority said, "No. We'll probably have to do that later."

We proposed changes to give the Federal Government the ability to deal with recessions. The majority said, "No."

Most importantly, we proposed that Social Security not be used to pay off the debt. We have argued that we have not solved anything if we create one debt to erase another. If we go further into debt to senior citizens, even more than we have already, to bring down the debt to all taxpayers, then what have we accomplished? And, more importantly, perhaps, what have we lost?

I believe we will have lost our credibility. We will have lost our commitment to working people who are counting on us this afternoon. We will have lost our only real hope of balancing the budget correctly.

So let me make it very clear. The vast majority of Democrats support a balanced budget. Many support a constitutional amendment to require one. But virtually no Democrat supports using the Social Security funds that we now have to do so. It is wrong. We all know it is wrong. Republicans know it, and Democrats know it.

Originally, Republicans said it was wrong, but they just did not want to put it in writing. They wanted the certainty of a constitutional amendment to balance the budget, but they were unwilling to provide the same constitutional certainty for Social Security. Given that unwillingness, a significant number of my colleagues were left with no choice. In spite of our best efforts to find a provision that Republicans could accept, we were left with no choice but to vote against this version of an amendment. So this was their choice. This amendment could have passed by more than 70 votes.

All we ask is that we not rob the bank to pay the debt; that we not take Social Security funds away to do something that we know we must do. Too many people have put too much money into the bank for anyone to do that now. That has been our message—protect current and future Americans who are dependent upon Social Security, and we will find the votes to pass this amendment. We will do it today. The Republicans said, "No. No, it is this amendment or no amendment at all."

Already there is talk about using this amendment for political purposes. Frankly, I am disappointed to hear that. It makes me wonder whether this was just another political ploy, another bumper sticker creation, courtesy of the Republican National Committee, or something real, something which merits being added to the Constitution of the United States.

If it is politics—as I suspect this threat to bring the amendment back right before the next election may be—then I say, let us do it, let us have it out then, too.

The one thing the American people really understand when they see it is politics. And they do not like it, not when it comes to amending our Constitution, not when it is something this important. And they will not want to see us rob Social Security then any more than they do right now.

So, Mr. President, let me emphasize, let me make sure no one misunderstands, Democrats want to work to find a meaningful way to reduce the deficit. We all understand the critical nature of this vote, no matter how many times we will be called upon to cast it. We stand ready to work to reduce the debt to zero, just as we have already done. We have done it before. We will do it again.

But we also stand ready to keep our commitments to all working Americans. We will do that today, too, and we will do it again. As we cast our vote, future generations are counting upon all of us to do no less.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. First, let me announce that, after the vote, the Armed Services Committee will meet in the President's room to report out some nominations.

Mr. President, let me just be brief, because I think we have said about all we can say about the balanced budget amendment. We will vote today. There have been a couple of matters arise since Tuesday and I think a few points bear repeating.

I have said many times before that the Senate cannot operate if there is any lack of trust between the majority and minority leaders. And I have had such relationships with Senator MITCHELL, Senator BYRD, and with Senator DASCHLE.

The distinguished Democratic leader did say, however, that he thought maybe not having the vote on Tuesday may have damaged that relationship. I believe that is not the case. As the Democratic leader knows, Senator HATCH and Senator SIMON spent much of Tuesday in discussions, which ultimately led to the amendment by the Senator from Georgia, Senator NUNN. And we even had discussions since that time. In fact, as late as 5 o'clock last night, there was some kind of a suggestion put forward by a number of Democrats who had voted for a balanced budget amendment before and now are in opposition.

So I think the point is that we did use that time and did try to come together, as the Democratic leader has just suggested. But I think now we have reached a firm decision and it is time for a vote. The time for a vote has arrived.

I must say, I have been a little bit amused, I guess you would say, about all this talk on the other side about Social Security, particularly after most every Democrat in 1993 voted to increase taxes on Social Security recipients to the tune of about $25 billion, affecting millions and millions of retired people. So I must say I was a bit amused when I saw all the gnashing of the teeth.

I also would put in the RECORD at this point this year's budget resolution, the one that many of my colleagues voted for and are now voting against. The only difference is we changed the date of 2001 that Senators voted for last year. It is now 2002. And we also added the Nunn language.

I ask unanimous consent that both of these resolutions be made a part of the RECORD. If anybody wants the facts, the facts are there.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATE JOINT RESOLUTION 41, BALANCED BUDGET AMENDMENT TO CONSTITUTION AS VOTED ON BY THE U.S. SENATE, MARCH 1, 1994

SECTION 1: Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

SECTION 2: The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the number of each House shall provide by law for such an increase by a rollcall vote.

SECTION 3: Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year, in which total outlays do not exceed total receipts.

SECTION 4: No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

SECTION 5: The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

SECTION 6: The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts. The power of any court to order relief pursuant to any case or controversy arising under this Article shall not extend to ordering any remedies other than a declaratory judgment or such remedies as specifically authorized in implementing legislation pursuant to this section.

SECTION 7: Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except those for repayment of debt principal.

SECTION 8: This article shall take effect beginning with fiscal year 2001 or with the second fiscal year beginning after its ratification, whichever is later.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION AS AMENDED BY SENATOR NUNN

ARTICLE —

SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

SECTION 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

SECTION 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year, in which total outlays do not exceed total receipts.

SECTION 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

SECTION 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. the provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each house, which becomes law.

SECTION 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts. The judicial power of the United States shall not extend to any case of controversy arising under this Article except as may be specifically authorized by legislation adopted pursuant to this section.

SECTION 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

SECTION 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.

Mr. DOLE. And there was nothing in the resolution last year that protected Social Security. All this talk about protecting Social Security is a cover for the taxes that were increased on Social Security benefits by the very people who are announcing, "Oh, no; we cannot touch Social Security." We want the record to be clear on that issue, as people look at it in the next few months. There will be ample time to look at it in the next few months.

On January 26, the Senate voted 83 to 16 to adopt a sense-of-the-Senate amendment stating we should not raise Social Security taxes or cut Social Security benefits in order to balance the budget. On February 9, the Senate adopted a motion reaffirming that commitment by a vote of 87 to 10. The House had done the same by a vote of 412 to 8. No doubt about it, there is clearly strong, bipartisan support to protect Social Security.

So all these other machinations and all the games that have been played in the last few days was an effort. I do not know what the effort was all about. I guess maybe to tell people, "Well, I voted one way last year, but this is a different year, and things have changed." Well, nothing has changed in the amendment. That is why I want the amendments put in the RECORD, so the American people know precisely that some people voted for one thing, and against the same thing the next year. That is fine. We have a right to change our mind.

It seems to me that if we increase taxes on Social Security beneficiaries $24.6 billion that probably is a cause for some concern. And not a single Republican in either the House or the Senate joined in that new tax on senior citizens. Not a single Republican.

Let me again state for the RECORD that later this year, Republicans will put forward a detailed 5-year plan to put the budget on the path of balance by the year 2002. Our plan will not raise taxes and our plan will not—will not—touch Social Security. I do not know what other assurances some people need. Maybe they do not really want assurances.

Make no mistake about it, everything else—every other spending program—will be on the table. If this amendment fails, you are still going to get the tough votes. We will offer the plan that we would have offered if this amendment had passed, and then we will see where everybody falls out, see how strongly they feel about spending cuts—not tax increases, but spending cuts.

When all is said and done, it all comes down to one question: Does the Senate of the United States trust the American people? Well, 98 percent of Republicans do, and less than 30 percent of Democrats do. That is how it adds up: 14 out of 47, and 52 out of 53. So we trust the American people by almost 98 percent.

We are not changing the Constitution if we pass this amendment. The Founding Fathers did not give Congress that power. Instead, they reserved that power to the States and to the people, and by passing this amendment, we are in effect authorizing a national debate on the merits of a balanced budget amendment to the Constitution. That is all we do. And, over the years, we will have the pros and cons because all 50 States chosen by people in our States are going to make that determination—Democrats and Republicans and State legislatures in 50 States.

There is a word for that process. It is called democracy. It is called democracy. Nobody is going to predict with any certainty what the final outcome will be. Republicans control both Chambers in 19 States, Democrats control both Chambers in 18 States, and in 12 States each party controls one Chamber. Nebraska has a nonpartisan legislature.

It will be tough to get 38 out of 50 States to approve this amendment. I will do my best if it passes to convince the Kansas Legislature to adopt the amendment. I know the President will do his best to sway the people the other way. Even though 80 percent of the American people want this, President Clinton knows best. "This is not what you want," he is saying to the American people. "You want something else: Higher taxes, higher debt."

Thomas Jefferson himself envisioned such a process when he wrote:

> I know no safe depository of the ultimate power of society but people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education.

If there is one man who knows as much about the Constitution as Thomas Jefferson, it is probably Senator ROBERT BYRD. On August 4, 1982, in announcing his support for the balanced budget amendment, Senator BYRD said:

> Under our democratic system, to put a question of this magnitude directly to the people is a wise and proper action. Therefore I will vote for this amendment—and thus vote to put this question directly to the American people. I cannot doubt that their ultimate decision will be the right one.

Nothing has changed since, except the debt has gotten bigger. We have not exercised the will of the Congress. It has gotten bigger. I think the American people are enlightened enough to make this decision. I happen to believe what some still think about this revolutionary principle—revolutionary principle—"Trust the people." We do not want to trust the people—98 percent of us do. I am willing to trust the American people to make the right decision. Those who oppose the amendment are not.

That is what this debate is all about. Returning power to the people, returning power to the States. That is what the American people say they want. They want to make decisions. We are not going to give them that opportunity. We will take that away from them if we do not adopt this amendment. What we are saying is, in effect, if the amendment fails, "Washington knows best. This is business as usual; we know what you want. Don't tell us you know what you want, because we know better. Eighty percent of the people don't have any idea what they are talking about." That is the attitude that spurred last November's revolution.

Finally, I ask my colleagues to listen to the words Thomas Jefferson spoke in his first inaugural address:

> Sometimes it is said that man cannot be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the forms of kings to govern him? Let history answer this question.

Mr. President, history will remember how we respond to that question today. As for me, and as for a lot of our colleagues on both sides of the aisle, the answer is "democracy, democracy." The answer is, "Trust the people; trust the people." We trusted them when they voted for us. But the election is over now. Promises that were made are in the ashcan. They do not mean anything now, because I have been elected, we have been elected.

I just suggest we ought to pass this amendment; we ought to send it to the States. And we ought to say to the State legislatures, "Make the decision." And if 38 ratify the amendment, it becomes part of the Constitution. If 38 do not, it fails. So I urge my colleagues, there is still time to repent. There is still time.

The PRESIDING OFFICER. The clerk will report the joint resolution.

The assistant legislative clerk read as follows:

> A joint resolution (H.J.Res. 1) proposing a balanced budget amendment to the Constitution of the United States.

Mr. DOLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient.

The yeas and nays were ordered.

Mr. DOLE. I ask that Senators remain at their desks, and vote from their desks.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the joint resolution to be read a third time.

The joint resolution was read a third time.

The PRESIDING OFFICER. The joint resolution, having been read the third time, the question is, Shall the joint resolution pass?

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 65, nays 35, as follows:

[Rollcall Vote No. 98 Leg.]

YEAS—65

Abraham
Ashcroft
Baucus
Bennett
Biden
Bond
Breaux
Brown
Bryan
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Coverdell
Craig
D'Amato
DeWine
Domenici
Exon
Faircloth
Frist
Gorton
Graham
Gramm
Grams
Grassley
Gregg
Harkin
Hatch
Heflin
Helms
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kohl
Kyl
Lott
Lugar
Mack
McCain
McConnell
Moseley-Braun
Murkowski
Nickles
Nunn
Packwood
Pressler
Robb
Roth
Santorum
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner

NAYS—35

Akaka
Bingaman
Boxer
Bradley
Bumpers
Byrd

Conrad
Daschle
Dodd
Dole
Dorgan
Feingold
Feinstein
Ford
Glenn
Hatfield
Hollings
Inouye
Johnston
Kennedy
Kerrey
Kerry
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moynihan
Murray
Pell
Pryor
Reid
Rockefeller
Sarbanes
Wellstone

The PRESIDING OFFICER. On this vote, the yeas are 65, the nays are 35. Two-thirds of the Senators voting not having voted in the affirmative, the joint resolution is not passed.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. I enter a motion to reconsider the vote by which the constitutional amendment was defeated.

The PRESIDING OFFICER. The motion will be received.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

MORNING BUSINESS

Mr. DOLE. I ask unanimous consent that there now be a period for the transaction of morning business until 3:15 p.m., with Senators allowed to speak for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

BASE CLOSURE COMMISSION

Mr. COHEN. Mr. President, as if in executive session, I ask unanimous consent that at 4:15 p.m. the Senate go into executive session to consider the Defense Base Closure and Realignment Commission, Executive Calendar Nos. 12 through 17, and the nomination of Major General Robles, en bloc under the following time limitation: 30 minutes equally divided between the majority leader and Senator NUNN; further, that at the conclusion or yielding back of time, with no intervening debate or action, the Senate immediately vote on the confirmation of the nominations en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I would ask for order.

The PRESIDING OFFICER. The Senate will be in order.

Senators will please remove their conversations to the Cloakroom.

The Senator from Illinois.

Mr. SIMON. Thank you, Mr. President.

BREAKING THE SPENDING ADDICTION

Mr. SIMON. Mr. President, I wish to thank several people, and then I would like to take a couple of minutes for a brief comment on what has just taken place.

I wish to thank Senator HATCH, who has been great to work with, who has been a real leader on this. Senator CRAIG came over from the House and was like a breath of fresh air working on all of this. Senator THURMOND through the years provided leadership.

On our side, Senator HEFLIN was very helpful. I have to acknowledge a former Senator who helped prior to this time, Senator DeConcini; my colleague from Illinois, Senator CAROL MOSELEY-BRAUN has been superb; Senator CAMPBELL; Senator ROBB. And I also want to pay tribute to the leader of the opposition, with whom I sincerely differ on this, Senator BYRD. He is a powerful and highly respected opponent.

I also want to thank Congressman CHARLIE STENHOLM and the House Members for all the work they did, and very specifically Aaron Rappaport from my staff, and all the other staff members on my staff and the other staffs who spent so much time on this.

Mr. President, this is a sad day in the history of our Nation. We have narrowly missed the opportunity to give generations to come a brighter future. Presented the chance to break our addiction to economic gluttony, by the narrowest of margins, we have determined that we do not have the will to kick the habit. Like a pregnant woman whose child to be will suffer from a cocaine addiction, we cannot summon the will to break our debt addiction even though we know it will harm our children.

We will break our addiction sometime in the future, the Senate said in 1986, when it also failed to pass the balanced budget amendment by one vote. The national debt then was $2 trillion. We can solve our problem without a constitutional amendment, voices on the Senate floor urged then and, of course, we have not. Now the debt is $4.8 trillion instead of $2 trillion, and the attractive siren song of the opposition is the same.

It would have been easier to break the habit in 1986 than in 1995, and it is easier in 1995 than it will be in 1999. Each year, the grip of the addiction grows, and each year we spend more and more on interest and less and less in ways that help the most vulnerable in our society.

We are headed toward monetizing our debt and devaluing our currency, the steps nations take historically as they pile up too much debt. No nation has come close to accumulating the amount of peacetime debt that we have. When and if monetizing our debt occurs, everyone in our society will suffer.

Ironically, among those who will suffer the most are those on Social Security, because of the devaluation of the U.S. Treasury bonds which secure the Social Security retirement trust funds. I say ironically because much of the opposition to the balanced budget amendment has been mounted in the name of Social Security. The threat to Social Security is the debt, and the real way to protect Social Security is this balanced budget amendment. Instead of giving our economy a lift with lower interest rates that come with the reduced deficit, the Senate has made a decision to stumble along and have higher interest rates.

There are at least two proposals to move us on a glidepath toward a balanced budget by the year 2002 without a constitutional amendment. I probably will support one of them, though it is unlikely the goal will be achieved without the discipline of the constitutional amendment. But even if the goal is achieved, because there is not the long-term assurance to the financial markets that a constitutional amendment offers, interest rates will not be reduced as much. The Nation will pay a staggering interest penalty for which we will get nothing other than higher interest rates. Those who purchase bonds combine the need for a small profit margin plus a hedge against inflation. We have just increased the cost of the hedge against inflation.

Because the trade deficit is tied into the budget deficit, we will continue to export more American jobs, and our standard of living, that could rise significantly, will at best move up modestly, perhaps decline. With higher interest rates there will be less investment that would create more industrial and construction jobs.

Is it impossible to kick the debt habit? No. But each year that goes by it becomes more difficult and at some point it becomes politically impossible. I do not know where that point is nor does anyone else. We have done today what most addicts do—postpone the tough decision. Future generations will not look upon this day with pride.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I associate myself with the excellent remarks of the distinguished Senator from Illinois. I do not think anybody could have said it better. I do not think anybody could have said it more clearly. I personally feel he has done us a great honor in making these remarks and in pointing out the future of our country—what we are going to go through if we do not ultimately pass this balanced budget amendment—I would say within the near future.

I also want to pay tribute to him for his stalwart steadfastness in standing up for this balanced budget amendment. It has not been easy for him on his side of the floor, with only 13 other of his 47 Democrat colleagues. I know what he has gone through. I pay tremendous tribute to him as one of our great leaders for this cause at this time.

Mr. President, I also would like to pay tribute to my colleague Senator CRAIG for the long hours and efforts he has made as the leader of our rapid response team. He has worked tirelessly his whole congressional career, both in the House and here in the Senate, to try to pass a balanced budget constitutional amendment.

There are many others who are too numerous to mention. The distinguished senior Senator from South Carolina, Senator THURMOND, has been our leader on the balanced budget amendment ever since I got here. Senator HEFLIN on the other side of the floor, Senator EXON, who worked so hard, and many, many others. I do not want to leave anybody out, but let me leave it at that.

I want to pay tribute to my colleague from West Virginia. Unlike, I think, a number of others—a number of others—he has sincerely believed in his position and he has advocated it with force and with strength and, frankly, deserves credit for winning this battle. I want to pay tribute to him as a floor leader and an acknowledged master of floor debate and as somebody for whom I have a great deal of respect. I do so because of the way he has conducted himself and the way he has handled his side of the debate in this matter. You have to have respect for opponents who believe in what they are doing.

But having said that, if there is something I feel particularly badly about, it is that a handful of Senators and the President have won this battle and the American people have lost. That is my opinion and I acknowledge that. Everybody knows how sincerely I feel about this issue as well. The people have lost this skirmish today. But this battle is not over.

I just want the American people to understand that one of the things I feel worst about in this whole debate is that some have tried to bring Social Security into the debate to frighten our senior citizens, as though that was really a part of this debate. I do not think there is a senior citizen in this country, not one that I know of who cares for his or her country, who does not understand that when you are talking about a balanced budget amendment to the Constitution, you can have no mere statutory programs exempted from or referred to in the text of the basic governing document of our country. It has never been done, and it is not right. If you attempt to carve out a special exception to the basic law of the land for a specific group of statutory beneficiaries, you will divide the country and hurt everybody else who does not belong to that special interest group. Ironically, in this case, you would hurt those beneficiaries too. The biggest threat to Social Security is our Government's profligacy. And an exemption for Social Security would lead some to try to use the trust fund to pay for other popular programs or create a loophole to keep deficit-spending. And it would keep the debt going up, which would ultimately harm those on fixed incomes and risk the viability of the trust funds.

Having said that, I do not think there is a senior citizen in this country presently on Social Security, who understands the importance of our country and how to keep it great, who would not be willing to sacrifice to keep it great if they were so called upon. And I believe they would not want to have a specific carve-out of any statutory programs—no matter how important—in the text of the Constitution. We just don't do that in the Constitution. To make Social Security part of this debate in the way it was by some, I felt, was beneath the dignity of the Senate. Some were sincere, I will acknowledge that. But let us be clear, for three or four decades now we have taken Social Security funds and counted them as receipts to the Federal Government in the budget system, we certainly have since President Johnson established the unified budget system—under both Democrat and Republican Senates and Presidents. For people to make Social Security and the unified budget a political football I think was just plain, downright wrong. To frighten our senior citizens for mere political purposes is despicable.

Having said that, just so everybody in this country understands, this is only battle No. 1. This is not over. We lost today, 66 to 34. We had 99 percent of all Republicans in both Houses voting for the balanced budget amendment. One percent did not. Less than 33 percent of the Democrats voted for it. So we have a clear delineation, as far as I am concerned. But I praise the 14 Democrats who did vote for it here today because they are heroes, in my eyes.

The reason the vote was 65 to 35 is because our distinguished majority leader, knowing that this war is not over, over the balanced budget amendment, he had to switch his vote and vote "no" so that he could make the procedural motion to reconsider the vote so that the amendment can come back again—perhaps before the end of this year, certainly before the end of next year.

This is just vote one on the balanced budget amendment. There definitely will be another vote. And if the American people understand this issue and they really want to do something about it, they should start letting those who voted against the amendment know how they feel. They should start letting them know now. I call on all senior citizens to start telling their representatives and the special interest lobbyists, "Quit playing games with Social Security, and do what is right for the country," and if they do so and we pass the balanced budget amendment, Social Security, as the distinguished Senator from Illinois has wisely spoken, will then be secure.

The only way to make Social Security secure—it seems to me the only way—is to keep a strong economy. And with business as usual—without the balanced budget amendment—we are not going to be doing that.

Mr. President, an effort such as the one we have been involved in over the past month requires the time, talent, and commitment of a large number of people. While I cannot name them all, I would like at this time to extend my gratitude to the Senators and staff who were so instrumental on this.

Let me first thank our majority leader for his pivotal role.

Senators SIMON, CRAIG, and THURMOND, of course, have my admiration and my thanks.

I am also especially proud of all of our new Senators who have graciously and effectively played a major role: Senators LOTT, DOMENICI, COVERDELL, and SMITH, and all 11 of our new Senators, Senators ABRAHAM, ASHCROFT, DEWINE, FRIST, GRAMS, INHOFE, KYL, SANTORUM, SNOWE, THOMAS, and THOMPSON have also joined in leading our effort over this past month. And Senator NUNN has been, as always, a studious and effective proponent.

Finally, I would like to single out some of the staff members who worked so long and hard on this matter: David Taylor (Dole); Aaron Rappaport and Susan Kaplan (Simon); Damon Tobias and Alan Kay (Craig); Thad Strom (Thurmond); Andrew Effron (Nunn); Bill Hoagland and Austin Smythe (Domenici), and David Hoppe and Alison Carroll (Lott).

Lastly, Mr. President, I would like to thank the very special people who have worked with me on this issue: Shawn Bentley; Larry Block; Sharon Prost; Mark Disler; Manus Cooney; Steve Tepp; Jason Adams, and Steven Schlesinger. They have all worked long and hard hours in the most dedicated fashion, and I love them for their devotion to duty and our country.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I will not detain the Senate. Mr. President, I do not expect to take 7 minutes. However, I ask unanimous consent that, in the event I should need an additional 2 minutes, I not be interrupted and that I have them.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank the Chair. I thank my colleagues.

Mr. President,

The way a crow

Shook down on me
The dust of snow
From a hemlock tree
Has given my heart
A change of mood
And saved some part
Of a day I had rued.

I congratulate the Senate today. The debate has been constructive, the occasion has been historic, and the issue has been decided in favor of the sanctity of the Constitution of the United States of America.

The debate has been full and extensive, in the best tradition of the Senate, and such debates have become more infrequent in recent years. I believe the outcome is the right result because of the thoroughness and length of the debate. I hope that this indicates a return to the long tradition of real debate on great national issues.

There was no way to cure the ills of this amendment. It was fatally flawed from the outset. There is virtually no way such an amendment can be written without rearranging the carefully constructed balance of powers hammered out by the giant intellect and wisdom of the Framers over 200 years ago, or jeopardizing our Nation's economic or national security in times of crisis or peril.

There are no statutory fixes that can solve the Social Security trust fund problem or any of the other many difficulties inherent in the language of this constitutional amendment. Statutes can never cure a constitutional amendment's flaws. The Constitution supersedes all legislation that is inconsistent therewith. It is the final arbiter, regardless of what promises are made or what legislation is enacted.

So, this unwise and dangerous proposal has been rejected, as it should have been. The proposal has never been well understood by the people. It seems simple, and espouses a worthy goal, but it neither guarantees a balanced budget nor tells the people how one will be achieved.

We hear claims that 80 percent of the American people want this amendment. But the proponents conveniently ignore the deeper probing of those polls, which show that the 80 percent figure is a hollow number, which dissolves when questions about how the amendment would actually be applied are posed. People do not want the Social Security trust fund to be raided. And it has become clear that the trust fund would be looted, should this amendment ever scar the Constitution. The amendment was and is a seductive, but false and dangerous promise—nothing more.

We have before us, now, both a responsibility and an opportunity with the defeat of this constitutional amendment. We have a responsibility not to delay serious progress on deficit reduction, as the amendment would have allowed us to do. We also have an opportunity to put partisan bickering aside and begin to take steps to get our fiscal house in order. That is what the American people truly want to see. They want us to put the posturing and bickering aside and get down to business together.

So, I eagerly await the majority's plan for deficit reduction. And, I trust that every Senator on this side of the aisle is ready to play a cooperative and constructive role in developing a plan that can become a reality. This has been a bruising debate, but it is time to let the fires cool, and come together for the Nation. Let us begin.

Before I close, I want to commend Senator HATCH for his fair and judicious handling of this matter.

I also wish to again express my admiration for the statesmanlike leadership of Senator TOM DASCHLE. His is a bright and courageous spirit. And, Senator MARK HATFIELD has written his own "profile in courage," as have Senators DORGAN, CONRAD, BINGAMAN, HOLLINGS, FEINSTEIN, and FORD. Senators DODD, SARBANES, MOYNIHAN, BOXER, KENNEDY, REID, LEVIN, BUMPERS, and JOHNSTON have helped greatly to clarify and enlighten the debate on this side of the aisle, as have many others.

But, a special word should go to Senator PAUL SIMON. A more sincere proponent of this proposal is not to be found. Today's outcome was not a loss for the distinguished senior Senator from Illinois. His belief in this solution, his absolute commitment to his cause, and his gentle and fair deportment throughout this debate have added nothing but additional lustre to the fine legacy he leaves here in the Senate. I thank him for being the man that he is. I am proud to serve with him, and deeply honored to call him my friend.

I shall be telling this with a sigh
Somewhere ages and ages hence:
Two roads diverged in a wood, and I—
I took the one less traveled by,
And that has made all the difference.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I thank the distinguished Chair.

Mr. President, I ask unanimous consent to include in the RECORD a letter dated March 1, 1995, to the distinguished majority leader along with an accompanying compromise proposal concerning Social Security which I and four of my colleagues delivered to the distinguished leader yesterday afternoon at 5 o'clock. Had we voted on this proposal, we could have passed the balanced budget amendment in a flash.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, March 1, 1995.

Hon. ROBERT J. DOLE,
Majority Leader,
U.S. Senate, Washington, DC.

DEAR MR. LEADER: We have received from Senator Domenci's office a proposal to address our concerns about using the Social Security trust funds to balance the Federal budget. We have reviewed this proposal, and after consultations with legal counsel, believe that this statutory approach does not adequately protect Social Security. Specifically, Constitutional experts from the Congressional Research Service advise us that the Constitutional language of the amendment will supersede any statutory constraint.

We want you to know that all of us have voted for, and are prepared to vote for again, a balanced budget amendment. In that spirit, we have attached a version of the balanced budget amendment that we believe can resolve the impasse over the Social Security issue.

To us, the fundamental question is whether the Federal Government will be able to raid the Social Security trust funds. Our proposal modifies those put forth by Senators Reid and Feinstein to address objections raised by some Members of the Majority. Specifically, our proposal prevents the Social Security trust funds from being used for deficit reduction, while still allowing Congress to make any warranted changes to protect the solvency of the funds. The prior language of the Reid and Feinstein amendments was not explicit that adjustments could be made to ensure the soundness of the trust funds.

If the Majority Party can support this solution, then we are confident that the Senate can pass the balanced budget amendment with more than 70 votes. If not, then we see no reason to delay further the vote on final passage for the amendment.

Sincerely,

BYRON L. DORGAN.
ERNEST F. HOLLINGS.
WENDELL H. FORD.
HARRY M. REID.
DIANNE FEINSTEIN.

ARTICLE —

SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year unless three-fifths of the whole number of each House of Congress shall provide by law for a specific excess of outlays over receipts by a rollcall vote.

SECTION 2. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

SECTION 3. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year in which total outlays do not exceed total receipts.

SECTION 4. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

SECTION 5. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes an imminent and serious military threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

SECTION 6. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

SECTION 7. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal. The receipts (including attributable interest) and outlays of the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds (as and if modified to preserve the solvency of the Funds) used to provide old age, survivors, and disabilities benefits shall not be counted as receipts or outlays for purposes of this article.

SECTION 8. This article shall take effect beginning with fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later.

Mr. HOLLINGS. Mr. President, I have included this information at this point because it marks the first opportunity that we have had to clear the record. I would like to clarify what I think were misleading statements made earlier by some of my colleagues on the other side of the aisle. Mr. President, in 1982 I worked with the distinguished Senator from Utah and voted for a balanced budget amendment that time. It was not identical to the balanced budget amendment voted on today.

Mr. President, I am a senior citizen as is my colleague, Senator THURMOND. We, at age 72, have to take the benefits. And I can tell you, our contemporaries are not worried about receiving our benefits, because the books show almost one-half trillion dollar surplus in Social Security reserves. Indeed, seniors are more concerned about the fight to come on Medicare. So let us put to rest the notion that we are trying to frighten senior citizens. Rather, what we are attempting to do is to try and keep a solemn trust with middle America. Everybody says we need to do something for middle America. It is middle America that is paying for me to receive Social Security benefits now, and it is middle America who, come their time in the next century, will be taxed again when they become eligible to receive benefits.

The issue here should be about stopping government deficits and not simply moving the general fund deficit over to the Social Security deficit. Some of my colleagues on the other side of the aisle have specifically articulated the latter idea. Indeed, my friend, the Senator from Mississippi said on "Face the Nation" on February 5:

> Nobody—Republican, Democrat, conservative, liberal, moderate—is even thinking about using Social Security to balance the budget.

Mr. President, I agree with the Senator from Mississippi. But the actions of some of my Republican friends seem to indicate otherwise. Like John Mitchell, the former Attorney General, used to say, "Watch what we do, not what we say." Just last evening on "Larry King Live," the distinguished Senator from Texas, Senator GRAMM, said:

> I think we ought to balance the budget counting Social Security first, and then if we want to balance it without counting it, do it second.

Clearly, this statement reflects an intent to use Social Security surpluses.

In addition, the chairman of the Senate Budget Committee, Senator DOMENICI, has said: "You can't leave the biggest American program off budget." However, my friend, the distinguished Senator from New Mexico, voted to leave it off budget both in committee in July 1990 and later on the floor in reference to the Hollings-Heinz amendment which passed 98 to 2, and was signed into law by President Bush.

I ask unanimous consent that the law be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BUDGET ENFORCEMENT ACT

Subtitle C—Social Security

SEC. 13301. OFF-BUDGET STATUS OF OASDI TRUST FUNDS.

(a) EXCLUSION OF SOCIAL SECURITY FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President,

(2) the congressional budget, or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EXCLUSION OF SOCIAL SECURITY FROM CONGRESSIONAL BUDGET.—Section 301(a) of the Congressional Budget Act of 1974 is amended by adding at the end the following: "The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.

Mr. HOLLINGS. Next, Mr. President, I refer to Senator GRASSLEY of Iowa who said:

> The leadership of the House of Representatives and the Senate have promised not to touch the Social Security retirement program for at least 5 years.

Do they have it in mind after 5 years? On March 1, my distinguished colleague, Senator CRAIG said:

> Without access to the Social Security surpluses, you would create a much higher hurdle in trying to balance the budget.

That is true, but not requiring that higher hurdle means that you are going to use Social Security funds.

Finally, on February 5, 1995, the distinguished majority leader, Senator DOLE said:

> I also believe that we can't keep Social Security off the table forever.

Mr. President, that is not the promise we made in 1983. When this Senator and others raised Social Security FICA taxes, we promised otherwise. We must keep the contract made by President Roosevelt in 1935; we must keep the promise made back in 1983 that these taxes would not be used to pay for foreign aid, welfare, or any other Government program; and we must continue in our resolve to keep our commitment to middle America intact.

I thank the Chair.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I will be brief because several other Senators want to speak this afternoon. I did want to comment and thank a variety of people who have worked so closely with myself and Senator HATCH of Utah and Senator PAUL SIMON of Illinois, in attempting to pass this important amendment, so that we can propose it to the citizens of our country for their consideration.

Let me, first of all, recognize Damon Tobias on my staff, who literally has become "Mr. Constitutional Amendment on the Balanced Budget" as he has worked for me over a good number of years and is recognized for his authority and expertise in the area. Throughout all of these efforts for the last good number of months, he has been assisted by Alan Kay on my staff, and recently by a legislative fellow Roy Fairchild, and an intern, Dean Sorensen, who have done a tremendously masterful job in cooperation with all the rest of my staff, in being able to supply to the Senate a vast array of information and facts that deal with this most important issue, and to assemble them in a way that was readily usable so we could debate this, now for nearly 5 full weeks, without breaks in the debate and with ample material to supply the RECORD and to hopefully have given the citizens of our country ample information in making a choice that I had hoped we would have the wisdom to give them.

But the vote turned out otherwise today. So we will be back again to revisit this issue—next week or next month or next year. And we will, for a very simple reason, Mr. President: There is not a Senator on this floor who has the right to deny the American people an opportunity to change their law—not our law but their law—the Constitution, the organic act that governs our country and, most importantly, Mr. President, the very law that governs us.

I will have to admit there has been a display of knowledge here that verges on all knowledge and all knowing, that this is the seat of wisdom, and from this seat, all decisions for America and Americans will be made.

I suggest to those who serve here that that will be denied. There will come a day—and it will be very soon—when Americans will speak again to those who deny them the opportunity to change their Nation in a way they see fit to change it, to protect the Social Security system, to assure that the Government governs properly but, most importantly, to look to the future and to honor the future.

Today we saw a Senate that looked backward. We saw a Senate that said that the past is better than the future. Are we going to be guardians of the past, or are we truly going to be the visionaries of the future? I suggest that the American people, in November, were talking of our future. They were most assuredly not talking of our past—for the past is $4.8 trillion of debt.

This body—all of us, all Senators alike—has to take the responsibility for that debt. And today and for the last 5 weeks, we have struggled to give one moment of time in history to the American people. So they could choose how we would handle that debt. Yet, the central power and the central wisdom prevailed today. I suggest that it is not the wisdom of the American people, nor was it their wish.

So ORRIN HATCH, LARRY CRAIG and, hopefully, PAUL SIMON, before he retires, will have an opportunity to come to the floor of the Senate again, once the American people have recognized that President Clinton denied them that opportunity today, that he once again backtracked away from his pledge to the American people that he would progressively and in a positive sense bring down the deficit. This year, in his budget resolution, he walked away and denied what was once a promise and a pledge.

I suggest that the American people will not be denied, and they will have the opportunity to change the organic law like other Congresses in the past have seen the wisdom to allow them that choice.

I am amazed, Mr. President; I am absolutely amazed that even one Senator would not allow the citizens of his or her State the right to make a choice. But that was denied today—falsely denied, wrongly denied. I suggest that those citizens, in the long-term, will not be denied.

It has been a tremendous opportunity for me and for all of those colleagues who have joined with me in this issue and in this debate. And I would agree with the Senator from West Virginia, it has been a positive debate. It has been most constructive, and all ramifications of the issue have been thoroughly brought to this floor, some falsely, some under improper clothing or dress, some presented in ways that were illusionary and not fact.

But the reality is that in the end this is an issue that will not go away and it will ultimately prevail.

Mr. President, I want to thank all of those who have joined with me, and most assuredly my staff, for their tremendous dedication as we brought this issue to the floor.

And I wish to thank the majority leader of the U.S. Senate, BOB DOLE, for offering the tremendous leadership and taking the kinds of risks that must be taken as a leader to allow the American people their right to govern us.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

EXTENDING MORNING BUSINESS UNTIL 4:15 P.M.

Mr. LOTT. Mr. President, I ask unanimous consent that the period for morning business be extended until 4:15 p.m. today, under the same terms and conditions as previously ordered.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I yield 1 minute to the distinguished Senator from Delaware.

PARLIAMENTARY INQUIRY

Mr. BIDEN. Mr. President, I have a parliamentary inquiry.

I am a supporter of this amendment. I voted for the amendment, and I will vote for it again if it comes up in a similar form that it came up now.

But I have a parliamentary inquiry. When the majority leader changed his vote from "yes" to "no" and did not make the motion to reconsider, is it within the province of the majority leader at any time at any place as long as the Senate is in session to move without debate to the motion to reconsider?

The PRESIDING OFFICER. Yes, it is.

Mr. BIDEN. Mr. President, may I have another 60 seconds?

Mr. DASCHLE. I yield the Senator an additional 60 seconds.

Mr. BIDEN. Mr. President, I am for this amendment. There has been a little bit of blood that has been spilled on the floor here in the last couple of days, especially when the unanimous consent to vote at a certain time was obviated by our being pushed into a recess, a legitimate parliamentary move, but one that sort of violated the spirit of what everyone thought was going to happen.

I hope and I plead with the majority leader that when he moves to reconsider—and I will be with him; I will be for this under the following circumstance: as long as we all know it is going to be done and everyone is here. If the majority leader called for a motion to reconsider knowing that there were absences that would affect the outcome of this vote, I would, on a matter of procedure, change my vote to prevent that happening. I do not think that is the majority leader's intention, but I do not want to mislead anybody. I think this is so important that this has to be dealt with straight up, with all 100 Senators, unless they are ill, in the hospital and cannot make it, that every consideration should be given to every Senator to be able to vote.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

BALANCED BUDGET CONSTITUTIONAL AMENDMENT

Mr. DASCHLE. Mr. President, a number of people have spoken, and I know others are waiting to speak. I do not want to be long.

Let me just say what I have said on several occasions, that we owe the American people our best effort. Before this amendment was to go out to be voted upon by the American people, we owed it our best effort. The amendment that was pending prior to the last vote is not our best effort. Accordingly, the Senate has acted wisely in refusing to endorse this particular proposal to amend our Constitution.

Those who stood against it did so for good reasons. Supporters refused to guarantee that Social Security would be protected.

The prospects for this amendment were entirely in the hands of the majority. It was their choice.

Until 2 days ago, Senators were asked to bet on the chance that a new and different Senate 7 years from now would honor promises made by Members of this Senate.

Two days ago, for the first time, the majority conceded that they indeed intend to do exactly what we and seniors feared—use the Social Security trust funds to balance the budget. In a last-minute attempt to secure one more vote for this proposal, they offered to stop raiding the trust funds in 2012. The offer was later modified to 2010 and, finally, to 2008.

They missed the point. Those of us fighting to protect Social Security believe the retirement funds Americans have paid into the Social Security trust funds should be left untouched, period. Every American who has paid into the system has a right to expect those funds to stay there and be available to them when it is their turn to collect them.

For the majority to agree to stop using those funds to buy down the debt after virtually all those funds are gone reflects a cynicism that is solely disappointing. As the Senator from north Dakota has stated so well, balancing the budget by depleting the Social Security trust funds is not balancing the budget at all.

During this debate, 43 motions and amendments were offered, many of which would have substantially improved the proposals. Forty-two were rejected, essentially along partisan lines.

We offered language to guarantee the future of the Social Security System. Several Democratic Senators stated explicitly they would support the amendment if Social Security were protected.

We offered language to protect against unconstitutional Presidential impoundments; language to give States a right to know what this amendment would mean to them; language to protect veterans' health and pension benefits; language to preserve our ability to respond to economic and national security emergencies. All of those proposals were rejected.

This is no ordinary debate because it is our Constitution we are being asked to amend. When the stakes are so high, the substance so serious, the proposed changes well-tested, the out-of-hand rejection of those amendments is extremely disappointing. That is the reason the amendment failed.

Finally, supporters of this amendment refused, for the full 4 weeks that it has been debated, to come forward and offer any realistic outline of a plan by which a balanced budget could be credibly produced in 2002.

Yet, outside this Chamber, supporters of the balanced budget amendment have been willing to say that passing the balanced budget amendment will not balance the budget at all.

That is right. It will not.

Recently, when he was asked whether the Congress would approve the balanced budget amendment, Speaker GINGRICH said, "For as long as I'm allowed to serve as Speaker, whether we do or not, the House will make decisions based on achieving a balanced budget in 2002 with or without the balanced budget amendment."

The majority leader restated his intention to do that today.

The Speaker's words reflect the fact that the ability to balance or unbalance the budget remains unchanged: it is in the hands of the majority in the Congress.

Indeed, a failure to act as he has promised will serve to confirm that the purpose of this debate was to create a rationale for not moving to balance the budget any time soon; that the debate's purpose was to be able to say, we're waiting for the States to ratify.

One month from today, on April 1, the Budget Committee is required by law to report a budget resolution to the Senate. Two weeks later, by April 15, the Congress is required, by law, to give final approval to a budget resolution for the coming year.

In 44 days, Congress must have debated, conferenced, and given final approval to a budget for fiscal year 1996. That is an obligation of this Congress, not the 107th.

That is a responsibility for all of us serving now, not people who will serve in the year 2002. It is what our job is this year, not some other person's job in some future time.

Nothing has changed the magnitude of the job ahead of us.

I have said consistently since the beginning of this debate and the beginning of this session that it is our desire to work cooperatively, particularly in getting the deficit under control.

The Republican majority is in control of the Congress. I hope the Republican majority will adhere to the time requirements of the Budget Act, which are a matter of law. The budget resolution must be written, and action completed soon. Committees need to know their authorized allocations for programs. We should be getting down to work on the budget now, because we do not have much time.

We have 44 days.

The budget is not going to be balanced in 2002 unless the responsible people in 1995 start to focus on their share of the work.

It is time we stopped worrying about the responsibilities of future Congresses and started to discharge the responsibilities that belong to each of us as Members of this Congress this year.

I yield the floor.

Mr. LOTT. Mr. President, I ask that I have 2 minutes following the distinguished Democratic leader to respond to a number of things that have been put in the RECORD in the last few minutes that should not be left unanswered.

The PRESIDING OFFICER (Mr. INHOFE). Is there objection? Without objection, it is so ordered.

Mr. LOTT. Mr. President, I beg the indulgence of my colleagues who have been here on the floor waiting to speak. I would like to take this opportunity to respond, for just a few minutes, to a few things that have been said.

First, the Senator from Delaware raised some concerns about the distinguished majority leader's intention for the motion to reconsider.

He said he would be inclined to support that, but it was essential that there be notice given before that vote could occur. Frankly, I think it is out of order to even imply that the majority leader would do anything other than give ample notice. That is just what he did today. We had the vote shortly after 2 o'clock. It was agreed to. Notification was given.

I want to assure my colleagues that the distinguished majority leader does not participate in sneak tactics. He will notify the Chamber when there will be a vote on a motion to reconsider the balanced budget amendment to the Constitution.

But I do warn my colleagues, that vote will come again. Today the American people lost. The liberals who want to keep on spending just the way they have for the 22 years I have been watching them here in the Congress, the same old tax-and-spend liberals, won today. But there will be another day for the people to try again with the balanced budget amendment. Under this motion to reconsider, they will have that opportunity sometime during the remainder of this 104th Congress.

Now, with regard to what the distinguished Democratic leader just had to say, some Senators continue to imply that there is some difference between this year's balanced budget amendment and the one we voted on last year. They are the same. Some Senators now say they opposed the amendment because they were worried about Social Security. Where were they last year? They supported the same amendment.

So I would like to ask unanimous consent that the statements of Senator DASCHLE, Senator FORD, Senator HOLLINGS, Senator DORGAN, and Senator FEINSTEIN from last year—what they had to say last year about this very same language—be placed into the RECORD at this point.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

In this debate on a balanced budget amendment, we are being forced to face the consequences of our inaction. Quite simply, we are building a legacy of debt for our children and grandchildren and hamstringing our ability to address pressing national priorities * * * To remedy our fiscal situation, we must stop spending beyond our means. This will not require the emasculation of important domestic priorities, as some suggest.—Senator Thomas Daschle, (D–SD), Cong. Rec., S–1981, February 28, 1994.

I hear so much about if 40-some-odd Governors can operate a balanced budget, why can't the Federal Government * * * I operated under it. It worked * * * I think implementation of this amendment will work. I think we can make it work * * * I do not understand why it takes a brain surgeon to understand how you operate a budget the way the States do * * * This is an opportunity to pass a balanced budget amendment that will work and will give us a financially sound future, not only for ourselves but for our children and our grandchildren.—Senator Wendell Ford, D–KY, Cong. Rec., S–2058, March 1, 1994.

I could offer my colleagues 3.5 trillion reasons for a balanced budget amendment to the Constitution; that is the number of deficit dollars added to the national debt since 1981. But I will rest my case with one simple reason: It ought to be a minimal moral obligation of our national government to match its income with its expenditures on an annual basis * * * so that additional debt is not passed on to future generations.—Senator Ernest Hollings, D–SC, Cong. Rec., S–2075, March 1, 1994.

This deficit is not about some unusual investment that is going to yield enormous potential rewards. This is a structural operating budget deficit that represents a permanent, continual imbalance between what we raise and what we spend, and the Congress and the American people have conspired together in a way in our political system that prevents us from dealing with it. This constitutional amendment, no matter what one

> thinks of it, will add to the pressure that we reconcile what we spend with what we raise, and that we begin to assure a better economic future with economic growth and hope and opportunity for our children once again.—Senator Byron Dorgan (D–ND), Cong. Rec., S–2068, March 1, 1994.
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> If in their heart of hearts they believe we are not going to be able to balance the budget under the current process, then I believe they should support the balanced budget amendment. At least that is the conclusion to which I have come. Without a constitutional amendment, a balanced budget just is not going to be achieved.—Senator Dianne Feinstein, D–CA, Cong. Rec., S–1831, February 24, 1994.

Mr. LOTT. Yet those Senators today voted against the balanced budget amendment.

Now, Mr. President, what has happened during this debate? What will happen when we get to the serious budget votes? Will some Senators say, "Oh, yes, we want a balanced budget, but we have a right to know what will happen for years into the future," which is what they said a week ago. Will they say again, "We must have some further guarantees on Social Security," or else they won't even vote for deficit reduction now.

I will venture a prediction. I predict that they will say, "Exempt this group from any cuts, and exempt that group." And when we get to the budget resolution, they will say, "Oh, yes, by all means cut spending, but not here. Not there. Somewhere else."

Where will their votes be when we get to the real deficit reduction effort? Will they be saying, "Exempt my State, or exempt my region, or exempt this special interest"? Or will they be willing to cast the tough votes so that we can stop the $200 billion-a-year deficits that President Clinton has proposed, not just for this year, but for as far as the eye can see?

Today advocates of the balanced budget amendment lost. But within 2 months, the Senate will have to face tough choices about spending, tough choices about specific programs. The Nation will be watching to see the votes that will then be cast by those who today profess devotion to a balanced budget, while voting against the amendment that would have achieved it.

Mr. JEFFORDS. Mr. President, I thank the Chair.

(The remarks of Mr. JEFFORDS and Mr. LEAHY pertaining to the introduction of S. J. Res. 28 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

PEACE AND FREEDOM

Mr. COHEN. Mr. President, yesterday the majority leader gave a very important speech at the Nixon Center for Peace and Freedom and outlined what he called the five global realities that affect our vital interest and dictate what it will take to maintain leadership throughout the world.

First, the golden age of capitalism. From India and Latin America to China and Russia, 4 billion people formerly under some form of socialism are striving to establish market economies. This offers great opportunities for America and American business, but requires American leadership to protect our interests and ensure adherence to the rules of the international trading system.

Second, the new world energy order. Senator DOLE correctly noted that the security of the world's oil and gas supplies will remain a vital national interest. At the same time, Iran and Iraq remain hostile threats in the oil-rich gulf, while other energy rich areas in Eurasia are subject to disorder. He makes the insightful observation that "in this new energy order, many of the most important geopolitical decisions—ones on which a nation's sovereignty can depend—will deal with the location and routes for oil and gas pipelines." I would add that we are already seeing in the case of Azerbaijan, over which Moscow is trying to regain effective control in order to determine the route through which Azeri oil will flow. Senator DOLE concluded that "our strategy, our diplomacy and our forward military presence need readjusting" to meet this reality.

Third, the spread of weapons of mass destruction. The majority leader issued a clarion call yesterday that "we must prepare now for the future," in which weapons of mass destruction will become more widespread, greatly affecting our vital security interests. He wisely asked "what would we have done—or not done—if Iraq had one or two nuclear weapons in 1990? A chilling question and one which we could face in just a few years as a real, not a hypothetical question, with regard to Iran or North Korea. In response to this threat, Senator DOLE quite rightly focused on the possibility of preventive military action and the need for missile defenses to protect America and our allies.

Fourth, increase in extremist religious and ethnic movements. The majority leader highlighted the many areas in which religious or ethnic passions have led to conflicts and identified those that pose a threat to American interests. America cannot become complacent he wisely warned his audience.

Fifth, rivalry with Russia. In perhaps in most important observations, Senator DOLE warned that "geopolitical rivalry with Russia did not end with the demise of Soviet communism." Quoting Henry Kissinger, he noted that the Soviet threat was one of both communism and imperialism, and while communism was defeated the trend toward imperialism remains. While an early supporter of President Yeltsin, Senator DOLE warned against "the Clinton administration's misguided devotion to a "Russia First" policy, which has turned into a "Yeltsin First" policy, and he quoted President Nixon who told the Duma "when we have differences, we should not assume they will be overcome by a good personal relationship even at the highest level." To buttress his case, the majority leader listed numerous examples of how Moscow has taken actions in recent months that are in conflict with U.S. interests.

To address this situation, Senator DOLE prescribed a "new realism" about Russia. This would not mean a return to the cold war past, he noted, but would require "developing a more honest relationship, one that does not paper over important policy differences with an appeal to personal ties."

In conclusion, Senator DOLE reaffirmed the need for American leadership to secure peace and freedom for future generations of Americans.

In an article just published in the current issue of Foreign Affairs, Senator DOLE builds on these themes and defines his vision for the future American role in the world and 10 principles to guide our international relations. He also provides an incisive critique of the Clinton administration's foreign policy and how and why it has, in Senator DOLE's view, failed in various respects.

I will merely quote the final paragraph of his article:

> As the United States approaches the next century, two principles should remain constant: protecting American interests and providing American leadership. The end of the Cold War has provided us with a historic opportunity. Such an opportunity should not be forfeited in favor of the pursuit of utopian multilateralism or abandoned through intentional isolationism. We have seen the danger to America's interests, prestige, and influence posed by both of these approaches. Instead, we must look to the lessons of the Cold War to guide our future foreign policy: Put American interests first and lead the way. The future will not wait for America, but it can be shaped by an America second to none.

Mr. President, I think that in yesterday's speech and this new article with the majority leader has provided us with a clear vision and practical proposals for guiding American foreign policy. I would urge my colleagues to give the most careful attention to both these documents, and I ask unanimous consent to have them printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FOREIGN POLICY—WINNING THE PEACE: AMERICAN LEADERSHIP AND COMMITMENT

(By Senate Majority Leader Bob Dole)

I can't help but think back to the day in January of 1994, when President Nixon made his last visit to the United States Capitol.

The occasion was the 25th anniversary of his inauguration as President. And over 100 past and present Senators and Congressmen—Republicans and Democrats alike—attended a lunch honoring President Nixon that Bob Michel and I hosted.

At the conclusion of the lunch, President Nixon stood—and without a note in his hand—delivered one of the most compelling speeches many of us could remember.

As always, he talked politics, and he also shared some personal reflections on his life and career. But the majority of his remarks were devoted to his life's passion—foreign policy.

President Nixon served as our guide, leading us on an around-the-world tour, offering his unique perspective on the strengths and weaknesses of our allies and adversaries, and on the future as he saw it.

In his remarks, he repeated a statement that he made again and again during the last year of his life. He said, "The Soviets have lost the Cold War, but the United States has not yet won it."

Those words were true then—and are just as true today. And while the title of this conference—"After Victory"—has a nice ring to it, I believe the declaration may be a bit premature. It is, after all, possible to win the war and lose the peace—as the years between World War I and World War II demonstrate.

WORLD STILL UNCERTAIN

Don't get me wrong. The stage is set. We are the world's only superpower. And the words spoken by Nikita Khrushchev in that famous "kitchen debate" were dead wrong. Not only will America's children never live under communism—neither will Russia's children. Still, there are far too many gains to consolidate, and far too many uncertainties in the world to say that a final peace has been won.

For example, there is a resurgent Russia, asserting its position around the globe. China has international ambitions of its own, and is in the midst of a leadership transition. There are international terrorists—often state-supported. There are global crime syndicates. There are extremist movements based on religion or ethnic origin. While none of these compare to the challenge of the Soviet empire, each of these can pose threats to important American interests.

FIVE GLOBAL REALITIES AFFECT AMERICA'S INTERESTS

It seems to me these multifaceted threats should be viewed in the context of five clear global realities which affect America's fundamental interests. Only by recognizing these realities—and dealing with them with the same commitment which led to the defeat of Soviet Communism—will America truly be able to claim victory.

REALITY NO. 1: THE "GOLDEN AGE OF CAPITALISM"

The first new reality is that the whole world is plunging headlong into what David Hale of the Kemper Organization in Chicago has termed a "new golden age of capitalism."

I remember when Lech Walesa told me that the definition of a communist economy was "100 workers standing around one shovel." Now, in places like Poland, Russia, India, Latin America, and even China—four billion people formerly under some form of socialism are now fighting with everything they can lay hands on to not just grab a shovel—but to build shovel factories.

There are now more than 30 stock markets in the developing world, and capitalization of the four-year-old Shanghai securities exchange has reached $30 billion. Deng Xiaoping himself has said that no one cares any more what color the cat is, as long as it catches mice. The bottom line is that everyone wants to trade, and everyone wants to create and use capital on a world-wide basis.

While this new "golden age of capitalism" offers great opportunity for America, we must remember that many of the countries so eager to enjoy the benefits of membership in the world trading system may not fully understand or accept the rules and discipline that go with it.

A trade war was averted with China, but other threats to U.S. commercial interests will surely arise in the coming months and years, and our continued vigilance and leadership will be required.

REALITY NO. 2: THE "NEW WORLD ENERGY ORDER"

The second inescapable reality of the post-20th century world is that the security of the world's oil and gas supplies will remain a vital national interest of the United States and of the other industrial powers.

The Persian Gulf—the heartland of world energy for half a century—is still a region of many uncertainties. Saudi Arabia has been weakened financially. Iran and Iraq continue to exhibit great hostility to the West and pose threats to their neighbors. And the boundaries of the oil and gas heartland are being redrawn to the north, to include the great hydrocarbon deposits of the Caucasus, Siberia, and Kazakhstan.

In this "new energy order," many of the most important geopolitical decisions—ones on which a nation's sovereignty can depend—will deal with the location and routes for oil and gas pipelines. In response, our strategy, our diplomacy and our forward military presence need readjusting.

REALITY NO. 3: SPREAD OF WEAPONS OF MASS DESTRUCTION

The third inevitable reality for America—and for the world—is the fact that while the Berlin Wall may have crumbled, weapons of mass destruction haven't.

Listen to just a partial roll call of countries and groups that already possess nuclear, biological or chemical weapons: North Korea. Iraq. Iran. Libya.

Have any of these nations earned our trust? And given their past behavior, is it any surprise that there are startling signs that a world wide black market in nuclear weapons has emerged?

All this is taking place as talks to review the global treaty limiting the spread of nuclear weapons will soon begin. Even if the Nuclear Non Proliferation Treaty is extended indefinitely, however, we must avoid falling into a false sense of security. We must prepare now for the future.

Iraq, Iran, and North Korea all illustrate the failures of traditional non-proliferation efforts, which depend largely on the cooperation of other states.

Only after Desert Storm did the West learn just how far Iraqi nuclear ambitions had progressed. And instead of announcing that the United States will veto any efforts to ease or end U.N. sanctions on Iraq, the administration dispatches an envoy to plead with the Europeans for cooperation. Where would such timidity have gotten us in the Cold War?

Iran also appears poised for a great leap forward in its nuclear program—thanks to a cash-hungry Russia doing for Iran what the Clinton Administration has done for North Korea.

And make no mistake about it, the Agreed Framework with North Korea has little prospect of successfully addressing the North Korean threat, and apparently, has already been violated by Pyongyang.

American leadership in addressing these non-proliferation challenges is essential if additional states are not to choose the nuclear option. It's worth asking: What would we have done—or not done—if Iraq had one or two nuclear weapons in 1990? Preventive military action as a non-proliferation policy tool cannot be ruled out.

There are defensive options, however, that could provide the United States and our allies with protection against accidental and limited ballistic missile strikes. Pursuing an effective ballistic missile defense capability should be a top priority for U.S. defense policy now and for the foreseeable future.

REALITY NO. 4: INCREASE IN EXTREMIST RELIGIOUS AND ETHNIC MOVEMENTS

The fourth new global reality is the increase in violence due to extremist religious and ethnic movements in many parts of the globe.

Some of these movements, like the tribal warfare in Rwanda, or conflicts in Burma or West Africa have little direct impact on American interests.

However, some of the instability and turmoil due to ethnic and religious violence *is* important for American interests—and could lead to the disintegration of key states. Serbian genocidal aggression in the Balkans, for example, threatens to spill over to Macedonia, Albania, and beyond. American and European inaction in the face of that aggression cannot help but embolden other radical "ethno-nationalists" by giving them a green light for ethnic cleansing.

The Indian rebellion in Mexico coupled with financial uncertainty has resulted in genuine security concerns on our southern border—and make no mistake that illegal immigration is a security threat.

A key NATO ally in Turkey faces Islamic extremism and a separatist ethnic movement. Violent Islamic fundamentalists threaten the government in Algeria, and have launched an assault on Egypt. How long would the Camp David Treaty be honored if fundamentalists took power in Egypt?

Islamic terrorists seek to destroy the peace process between Israel and the PLO—and may be having some success. With support from Iran and others, Islamic terrorists also demonstrated at the World Trade Center that America is not immune from attack.

And ethnic turmoil in the former Soviet Union cannot be ignored, as warfare has occurred in five former republics. And the Chechens may be just one of many ethnic groups willing to use violence to alter boundaries originally set by Joseph Stalin.

In short, the list of world "hot spots" is far too lengthy for anyone to conclude that America can become complacent.

REALITY NO. 5: RIVALRY WITH RUSSIA

And this leads to the fifth global reality we must face: the fact that geopolitical rivalry with Russia did not end with the demise of Soviet Communism.

On his last trip abroad, President Nixon spoke before the Russian State Duma, and he foreshadowed a change in Russian-American relations, saying: "Russia is a great power, and Russia as a great power must chart its own course in foreign policy * * * When we have differences, we should not assume they will be overcome by a good personal relationship even at the highest level."

And as we have seen time and time again, the foreign policy course that Russia is charting, is one that is often in conflict with American interests.

For example:

Russia stepped in the middle of the North Korea agreement by offering to provide nuclear reactors—which would have the clear effect of killing the U.S. brokered deal.

Russia continues to threaten prospective NATO members over alliance expansion, thereby confirming the need to enlarge NATO sooner rather than later.

In December 1994, Russia vetoed a sanctions resolution on Serbia in the U.N. Security Council, its first substantive veto since the height of the Cold War in 1985.

Russia persists in supplying weapons and nuclear technology to the rogue regime in Iran.

Russia continues to maintain an intelligence facility and support personnel in Cuba, thereby prolonging Castro's oppression.

Russian pressure, subversion and intimidation of the sovereign states in the "Near Abroad" follows a historical pattern set long before the Bolsheviks took power in 1917.

As Dr. Kissinger said last month before the Senate Armed Services Committee, "* * * what we dealt with in the Cold War was both communism and imperialism, and while communism was defeated, the trend toward imperialism still exists."

Let me be clear in saying that no one has been more supportive of President Yeltsin than I. In June 1991, I went to Andrews Air Force Base to meet President Yeltsin virtually alone, since the United States State Department believed Gorvachev was the "only game in town."

But just as it was wrong to place too much focus on Gorbachev in 1991, it is wrong in 1995 to ignore that fact that President Yeltsin has made serious errors, has moved toward authoritarian rule, and has lost the political support of virtually all reform-minded Russians.

The Clinton Administration's misguided devotion to a "Russia First" policy—which has turned into a "Yeltsin first" policy—resulted in the loss of a tremendous opportunity to state American concerns forcefully *before* thousands were slaughtered in Chechnya.

NEW REALISM ABOUT RUSSIA

A "new realism" about Russia and its prospects for the future does not mean a return to the Cold War past. It does mean developing a more honest relationship, one that does not paper over important policy differences with an appeal to personal ties.

New realism means emphasizing the significance of Russia's 1996 elections, and of the pivotal importance of a peaceful, democratic transition of power.

And new realism means that developments like arms sales to Iran, violence in Chechnya, and U.N. vetoes on behalf of aggressors should not be excused, ignored and minimized. Our differences with Russia should be identified—they should be negotiated when possible and condemned when necessary. Such an approach would ultimately serve both the Russian and the American people better than defending, denying and rationalizing Russian misdeeds.

TESTS FOR AMERICAN LEADERSHIP

Let me conclude by sharing with you words that Richard Nixon spoke at the announcement of the creation of the Center for Peace and Freedom in January 1994.

"Some are tired of leadership. They say (America) carried that burden long enough. But if we do not provide leadership, who will? The Germans? The Japanese? The Russians? The Chinese? Only the United States has the potential . . . to lead in the era beyond peace. It is a great challenge for a great people."

Ladies and gentlemen, President Nixon was right. Leadership does come with a price tag. But it is a price worth paying.

Dealing with the five realities I have outlined will test America's resolve and her leadership. If we fail those tests—if we refuse the mantle of leadership—any declaration of victory will be a long time coming.

But I am an optimist. Like Richard Nixon, I believe in America and In American leadership. I believe we will pass our tests, and in doing so, we can claim the biggest victory of all—we will have secured the future of our great republic, and of peace and freedom, for generations to come.

SHAPING AMERICA'S GLOBAL FUTURE

(By Bob Dole)

It is now a cliché that America is the world's only superpower. But Americans would do well to reflect on how we got to this point—and on how unprecedented our status is in American history. America has always been blessed with security, protected by two oceans, our two land borders safe from invasion since the mid-nineteenth century. Never before, however, has America been so alone at the pinnacle of global leadership.

It was not always this way. America fought three major wars in this century-World War I in Europe; World War II in Europe, Africa, and Asia; and the Cold War across the globe. In each of these conflicts, Americans were asked to give their blood and treasure in support of U.S. interests and ideals overseas. Three times this century, America rose to the occasion.

It is sometimes said that Americans win the war and lose the peace. Clearly that was true after World War I, when Wilsonian idealist ambitions overran American interests, and when protectionism, isolationism, and decline were the result. Yet after the defeat in 1945 of Nazism in Europe and Japanese militarism in Asia, we rose to the challenge of winning the peace through American leadership. New multilateral institutions were established: the United Nations, the World Bank, and the International Monetary Fund. They were important, but they were insufficient. What made the difference was American will and power as reflected in the Marshall Plan, the Truman Doctrine, and the establishment of the North Atlantic Treaty Organization (NATO). These and other related actions cemented the American commitment to Europe and signaled America's determination to oppose Soviet expansionism.

It was American leadership and commitment—supported by our allies throughout the world—that led to the overwhelming victories in the Cold War: the crumbling of the Berlin Wall in 1989 and the breakup of the Soviet Union in 1991. For more than four decades, the central purpose and chief objective of American national security policy was the containment of Soviet communism. Who can doubt that U.S. policy played a central role in the disintegration of Soviet communism? The great success of America and its democratic allies in the Cold War is something to be proud of, and the costs of the victory should not be forgotten. While historic event occurred barely three years ago, myths contradicting the facts of why and how the Cold War was won have already surfaced.

Myth #1: Foreign policy was easier during the Cold War. While a common enemy often did serve to unite the United States and its allies during the Cold War, it is difficult to argue that security policy was easier when the Soviet Union was ready, willing, and able to oppose American interests. A nuclear-armed superpower committed to undermining the West created more difficult and demanding foreign policy challenges than any faced since 1991. No current challenge, for example, rivals the magnitude of the Cuban Missile Crisis of 1962 or the Yom Kippur War of 1973—either of which could have escalated to thermonuclear war.

Myth #2: The Cold War was supported by a great bipartisan consensus. In large part because of the historic partnership between President Harry Truman and Senator Arthur Vandenberg, the late 1940s saw considerable bipartisan cooperation in creating a new international security system. But "politics stopping at the water's edge" lasted only for two decades—until the Vietnam War. While there were partisan disagreements in the 1950s, for example over "who lost China," it was the war in Southeast Asia that shattered the bipartisan consensus on waging the Cold War. In the 1970s, even Republicans were divided over the wisdom of pursuing the Nixon-Kissinger policy of détente. Moreover, in the later years of the Cold War, debates over the nuclear freeze, the Strategic Defense Initiative (SDI), opposing communist aggression in Central America, or using force to defend U.S. interests reflected very little bipartisanship. Despite the broad bipartisan agreement at the beginning of the Cold War, precious few "Scoop Jackson Democrats" were around by its end.

Myth #3: The doves were right. Unlike the revisionist history written by some in the Clinton administration, the "doves" were wrong all along in the Cold War. Why?

The doves advocated spending less on defense and doing less with American armed forces. In the end, as former Soviet leaders now reveal, American defense spending and activism in Afghanistan, Poland, and elsewhere were critical to the Soviet demise.

The doves argued for toning down anti-Soviet rhetoric no matter how accurate it was (remember the shock at President Ronald Reagan's proper characterization of the Soviet Union as the "Evil Empire"?). More significantly, they preferred the resignation of U.S. policy to the permanent existence of the Soviet Union. Fortunately, the doves' self-fulfilling prophecy was not heeded.

The doves opposed SDI and supported the nuclear freeze and other arms control measures, arguing that weapons, not ideology and intentions, posed the threat to the United States.

The doves opposed the Reagan Doctrine of supporting freedom fighters opposing communist regimes around the world.

The breakup of the Soviet empire in 1991 came faster and happened more completed than virtually anyone envisioned. If the doves' policies had prevailed, however, that day would have been delayed for years, if not decades—and may never have come. The fall of the Soviet empire was not inevitable, nor was it foreordained by impersonal forces of history; rather, it was the leadership, actions, and sacrifices of the West that brought victory in the Cold War.

Debunking the mythologies of the Cold War does not automatically lead to prescriptions for a post-Cold War foreign policy. Our Cold War victory allows the United States to be more selective in its involvement around the world, but it is not a license for America to withdraw from the world. Exhaustion after a great conflict is natural, but American withdrawal would jeopardize the gains of the last 40 years, and it would inevitably mean less prosperity and less security for the American people.

Nevertheless, in the wake of the Soviet Union's defeat, numerous observers have suggested America should withdraw from the world. First, some claim America cannot be involved in the world because we do not have the resources—the "declinist" school. We won the Cold War and remain the only global power but, in the perverse logic of the declinists, this adds up to weakness.

The declinists have multilateralist cousins who promote a view that America must work with and within international organizations because we do not have the resources to act on our own. Other multilaterialists believe America does not have the legal or moral authority to act without the sanction of international organizations. The declinists—and their multilateralist kin—ignore the strength of America and underrate the power of American leadership. It is true that America must be strong domestically to be strong abroad, but America has the ability to do both if resources are used wisely and decisions are made soundly.

This is not necessarily the view in the current administration. The declinists and multilateralists are alive and well in the Clinton administration. First came the "Tarnoff Doctrine" of May 1993, when the State Department's undersecretary for political affairs, Peter Tarnoff, argued for retrenchment because the United States lacked the resources, inclination, and will to lead. Then there was the "Halperin Doctrine" expressed in these pages in the Summer of 1993, in which a current National Security Council staff member, Morton Halperin, argued that the United States should use force to defend its interests in cases like Grenada and Panama only with prior multilateral approval.

There are also protectionists who argue that America should engage in trade with the world only on a one-way basis—shutting our doors to foreign products in the vain hope that foreign doors will remain open to American products. American industries do not need protection, they need competition. Where there is truly free trade, U.S. businesses have prospered and the U.S. economy has grown.

Finally, some argue that America should not get involved in the world. Historically, the isolationists have had adherents on the Left who believe America will corrupt the world, and on the Right who believe the world will corrupt America. There are no serious and immediate threats to vital American interests, the isolationists say. While that may be true now, retreat from the world is the surest way to invite the emergence of such threats in the future. The fact is that America must remain firmly engaged in the world. If we do not protect our interests, no one else—neither other countries nor international organizations—will do the job for us. The various approaches of the declinists, multilateralists, protectionists, and isolationists all would make a dangerous world even more so.

TWO FAILURES OF VISION

We have witnessed two efforts to "reinvent" American foreign policy since the end of the Cold War: President George Bush's New World Order and the Assertive Multilateralism, or Engagement and Enlargement, of President Bill Clinton. Unfortunately, neither effort has been successful.

The New World Order—whatever it was meant to be—rapidly became a new world disorder; instead of strengthened collective security, enhanced international organizations, and a new partnership of nations, there was expansion of violent ethnic and religious unrest, proliferation of weapons of mass destruction, international aggression, and civil war. The flaw of the New World Order approach was its assumption that the end of the Cold War meant the end of international tension that could lead to hot war. President Bush and his advisers may be excused for over-optimism in the wake of the stunning multilateral coalition they built—under the United Nations auspices—to defeat Saddam Hussein's aggression. In retrospect, however, Operation Desert Shield/Desert Storm may have been the high point of post-Cold War U.N. collective security efforts. Just as United Nations action in Korea in 1950 was possible only because the Soviet Union was absent for the crucial authorizing vote, United Nations action in the Persian Gulf was possible only because the Soviet Union was inclined to cooperate with the West in the final months of 1990. Such cooperation is rapidly becoming a thing of the past as Russia pursues its traditional objectives in the "near abroad" and around the globe. In this regard, the first substantive United Nations Security Council veto exercised by Russia since 1984 (during the height of the Cold War) came in December 1994 on the issue of tougher sanctions against Serbia and may be the beginning of a trend.

Despite the conceptual flaws of the New World Order, to hear the current administration complain about its foreign policy inheritance is surprising and often merely an excuse for poor performance. In my view, no administration has ever received a stronger foreign policy inheritance. The legacy of 12 years of Reagan-Bush foreign policy included millions liberated in Central and Eastern Europe, finally closing the book on the post-World War II era after four decades; 15 independent states to replace the Soviet empire, and no near-term threat from Russia; a defeated Iraq in the Persian Gulf, and a newly invigorated peace process in the Middle East; the dramatic expansion of democratic governments around the world—best illustrated in the Western Hemisphere (where only Cuba and Haiti were exceptions to the democratic tidal wave); free trade agreements negotiated with Canada and Mexico (the North American Free Trade Agreement), nearly negotiated with the world (the Uruguay Round of the General Agreement on Tariffs and Trade), and outlined for the Western Hemisphere (Enterprise for the Americas); and a growing Asia-Pacific Economic Cooperation (APEC) forum for U.S. relations with Asia and the Pacific Basin. All added up to an America more secure and stronger than at any time in our history, and the only global power on earth.

In the two years since the end of the Bush administration, much has changed. In the minds of many, U.S. foreign policy has been marked by inconsistency, incoherence, lack of purpose, and a reluctance to lead. American lives have been risked, and lost, in places with little or no connection to American interests. From Bosnia to China, from North Korea to Poland, our allies and our adversaries doubt our resolve and question our commitments.

FIRM PRINCIPLES

The failures of Assertive Multilateralism/Enlargement lie not just in its execution or communication—they lie in its very conception. The following 10 principles, which should guide American foreign policy, have been ignored or misapplied by the Clinton administration.

WHILE MUCH HAS CHANGED, MUCH REMAINS THE SAME

The successful end of the Cold War has not changed the core interests of America:

Preventing the domination of Europe by a single power,

Maintaining a balance of power in East Asia,

Promoting security and stability in our hemisphere,

Preserving access to natural resources, especially in the energy heartland of the Persian Gulf,

Strengthening international free trade and expanding U.S. access to global markets, and

Protecting American citizens and property overseas.

These interests cannot be protected without American involvement in the world. Many states and many movements opposed to American interests are awaiting American withdrawal.

In addition to our interests, America has core ideals that we have supported throughout our history: freedom, democracy, the rule of law, observance of human rights, and deterring and responding to aggression. Too much has been made of the tensions between American interests and American ideals. Some went so far as to suggest that we should set aside our values during the Cold War to follow a policy of moral relativism. Nothing would have been more ill-conceived. The Cold War was won precisely because of the convergence of our interests and ideals. By preventing Soviet expansion into Europe, we stopped the domination of the continent by a hostile power and prevented the enslavement of millions more Europeans under communist rule.

Our interests and ideals converge in support for free-market economies and democratic pluralism as well. Capitalist democracies tend to make better trading partners and stronger allies, and also treat their own people and their neighbors better than authoritarian, closed societies. To retain the support of the American people and to protect the future of our children, American foreign policy must continue to combine the protection of American interests and the promotion of American ideals. That is our tradition.

AMERICAN LEADERSHIP IS ESSENTIAL

The United States, as the only global power, must lead. Europe—as individual states or as a collective—cannot. China, Russia, India, Brazil, and Japan are important regional powers, and some may be potential regional threats. But only the United States can lead on the full range of political, diplomatic, economic, and military issues confronting the world.

Leadership does not consist of posing questions for international debate; leadership consists of proposing and achieving solutions. The American attempt in May 1993 to discuss lifting the Bosnian arms embargo with NATO allies, for example, was simply wrong: It was a discussion, not a U.S. initiative, and was readily perceived by the Europeans as a half-hearted attempt lacking President Clinton's commitment. By comparison, if President Bush had followed a similar course after Iraq's invasion of Kuwait in 1990, Saddam Hussein would still be in Kuwait today—if not in Saudi Arabia—and he would very possibly be armed with nuclear weapons.

Leadership is also saying what you mean, meaning what you say, and sticking to it. That includes a willingness to use American force when required. To state that North Korea "cannot be allowed to develop a nuclear bomb" and then one year later to sign an agreement that ignores the issue of the existing arsenal is confusing to the American people and to our allies. To threaten to withdraw most-favored-nation trading status from China because of human rights violations and then to extend such status months later—despite no change in Chinese human rights practices—makes the world wonder why the linkage was made in the first place. To introduce a resolution in the U.N. Security Council to lift the arms embargo on Bosnia-Herzegovina, while top administration officials claim the war is over and the Serbs have won, severs any link between the words of U.S. policymakers and their deeds.

U.S. SOVEREIGNTY MUST BE DEFENDED, NOT DELEGATED

International organizations—whether the United Nations, the World Trade Organization, or any others—will not protect American interests. Only America can do that. International organizations will, at best, practice policymaking at the lowest common denominator—finding a course that is the least objectionable to the most members. Too often, they reflect a consensus that opposes American interests or does not reflect American principles and ideals. Even gaining support for an American position can involve deals or tradeoffs that are not in America's long-term interests. Acquiescence in Russian activities in Georgia and other border states, for example, may be too high a price for Russian acceptance of U.S. positions.

The choices facing America are not, as some in the administration would like to portray, doing something multilaterally, doing it alone, or doing nothing. These are false choices. The real choice is whether to allow international organizations to call the shots—as in Somalia or Bosnia—or to make multilateral groupings work for American interests—as in Operation Desert Storm. Subcontracting American foreign policy and subordinating American sovereignty encourage and strengthen isolationist forces at home—and embolden our adversaries abroad.

INTERNATIONAL BUREAUCRATS ARE NO SUBSTITUTE FOR ALLIES

The United States should not look to the United Nations first, but to itself and its allies—preserving alliances inherited from the Cold War and leading to create new ones where necessary. Who could doubt that NATO has the power to address the tragic aggression against Bosnia? Instead, a misnamed "United Nations Protection Force" provides convenient "hostages" to the aggressors, thereby protecting them from NATO power. Substituting the judgment of international civil servants for NATO military professionals has severely damaged the credibility of the Atlantic Alliance.

Allies will not simply do our bidding in one area and ignore our policies in another. It was folly to pursue a policy of economic sanctions against North Korea while publicly criticizing China on human rights concerns and Japan on trade issues. And after proposing sanctions and gaining support from South Korea and Japan, allowing a freelance mission by a former president to reverse the policy suggests that America is not to be taken at its word. Alliances and allies require careful attention, not just episodic engagement.

DO NOT CONFUSE U.S. HOPES AND DESIRES WITH U.S. INTERESTS

The core interests outlined above have been played down, and sometimes superseded, by the desires of Clinton administration policymakers. Pollution or overpopulation in West Africa or South Asia are problems, but their effect on American interests is peripheral, at best. Famine and disease in Somalia or Rwanda are tragic. America should help in humanitarian disasters, consistent with our resources, and in a manner that does not undermine our military readiness. But events in Rwanda or Somalia have a marginal—at most—impact on American interests.

The promotion of free markets and fostering of democratic institutions are in America's interest, but they are not absolute goals. When democratic institutions are manipulated by enemies of America—as in the case of radical Islamic fundamentalists in Algeria—our long-term interests must take precedence over the short-term ideal of enlarging democracy. Likewise, when deviations from free-market trading principles threaten a key strategic alliance in the Western Pacific, such a trade dispute must be handled more carefully than one with a trading partner that is not also a strategic ally.

ALLOCATE RESOURCES BASED ON INTERESTS

Just as hopes and desires about the world have clouded American attention, American resources have been misallocated. Sometimes dollars speak louder than words. For example, nearly $2 billion will be spent on occupation and nation-building in Haiti, where American interests are marginal; yet only a small fraction of that amount has been spent supporting a free market and democratic transition in the strategically critical country of Ukraine. And defense dollars are spent on environmental projects and defense "conversion," while military readiness, modernization, and personnel lack sufficient funding. Foreign aid and defense dollars should be instruments of national policy to enhance American security; they should not be squandered on nonessential programs.

USE ALL THE TOOLS OF STATECRAFT

Diplomacy without force is empty, and force without diplomacy is irresponsible. The fundamental relationship between diplomacy and force is not understood by the current administration. In Somalia and in Haiti (until saved by the Carter-Powell-Nunn mission), we saw force without diplomacy. In Bosnia, we see a clear example of diplomacy without force: Hollow threats are followed by countless concessions to the aggressor.

This administration has displayed a basic discomfort with American military power—unless that power is exercised pursuant to United Nations authorization. In Haiti, the 1823 Monroe Doctrine has been replaced with the Halperin Doctrine—unilateral action only after multilateral approval. An unfortunate precedent has been set in seeking prior United Nations support for what an American president proclaimed was in America's interests—interests that should not be second-guessed, modified, or subject to the approval of international organizations.

Failure by the administration to appreciate military assistance as a tool of diplomacy has resulted in dramatic reductions in such programs. Despite presidential doctrines from Truman to Nixon to Reagan advocating help for victims of aggression who are willing to help themselves, and despite campaign promises to the contrary, President Clinton refuses to lift the illegal and immoral arms embargo on Bosnia. One need only contrast this refusal to the significant military and political impact of providing Stinger antiaircraft missiles to the anti-Soviet resistance in Afghanistan. Finally, covert and overt political action can also further U.S. interests, providing important options between diplomacy and sending to the Marines.

REBUILD AMERICAN MILITARY POWER

America does not need the same defense posture in 1995 that it had in 1985. But just because American defense spending is a bargain does not mean that defending America is free. U.S. defense spending has been cut too far, too fast. The current administration initially planned to cut $60 billion in defense—but then added plans to slash $127 billion over 5 years. Despite these deep cuts—and a recent conversion to supporting higher levels of defense spending—the Clinton administration's thirst to commit U.S. military forces abroad has not declined. As a result, for the first time since the "hollow Army" of the 1970s, three American divisions were not ready for combat in late 1994. Soldiers who expect and deserve 12 months in between overseas tours are given half that. My old unit from World War II, for example, the 10th Mountain Division, has spent three straight Christmases overseas: deployed to Somalia in December 1992 (only weeks after cleaning up from Hurricane Andrew), and deployed again in September 1994 to Haiti—just six short months after returning from their tragic encounter in Somalia.

Furthermore, we cannot keep asking our men and women in uniform to do more with less. It is nothing short of scandalous when American enlisted soldiers have to work second jobs or receive food stamps to meet the needs of their families. And we cannot keep undermining our military force posture for "humanitarian operations" that do nothing to enhance American security.

America must take both a short-term and a long-term view of its military readiness. Not only must we have the ability to fight and win today, we must constantly prepare to fight and win future wars. The Clinton cuts to the defense budget create the grave risk that we will not make the investment necessary to re-equip and reorient our forces toward tomorrow's challenges. During the Cold War, we concentrated on blocking a Warsaw Pact invasion of Europe and deterring a nuclear attack on America, which meant that our doctrine, training, and equipment all were based on those threats.

In the future we will face new threats in places and under circumstances we cannot easily predict. To deal with them we will need unprecedented flexibility, agility, and mobility: no more gearing up for the central front in Europe with lavish prepositioning of equipment and a large permanent troop presence. In the future we will have to get to remote theaters of conflict quickly and with the most effective systems our technological prowess will enable us to field.

But the transition to a smaller, quicker, and more effective force will require a solid industrial base and will cost money: for a robust and well-targeted research and development program; for new weapons systems capable of breathtaking accuracy; for the capability to "stand off" and fire from safe distances, beyond the reach of enemy forces; and for training American troops to be the most powerful and best protected in history. If the money is not there, we will be forced to make do with what remains of our old Cold War force, even though it is the wrong force for the future.

Finally, we need to rely on our capabilities and not place our trust solely in multilateral regimes to ensure our security. For example, effective ballistic missile defenses would do more to enhance American and allied security by providing real protection against limited and accidental strikes than would nonproliferation policies, which rely on the goodwill and cooperation of others to halt the spread of nuclear technology and weapons of mass destruction to rogue states.

AMERICANS LIVES SHOULD BE RISKED ONLY FOR AMERICAN INTERESTS

Placing American soldiers, sailors, airmen, and marines in harm's way is the gravest decision a president can make. After the disaster in Mogadishu on October 3-4, 1993, some observers concluded the American public will no longer tolerate casualties. In fact, the "Somalia syndrome" stems from the shock of seeing American bodies dragged through the dust when the American people thought that Operation Restore Hope was about feeding the hungry—not about nation-building or enforcing U.N. arrest warrants. American lives should not be risked—and lost—in places like Somalia, Haiti, and Rwanda with marginal or no American interests at stake. Such actions make it more difficult to convince American mothers and fathers to send their sons and daughters to battle when vital interests are at stake. The American people will not tolerate American casualties for irresponsible internationalism. And like overreliance on the United Nations, such adventures ironically end up reinforcing isolationism and retreat.

BE CREATIVE: DO NOT CLING TO THE CONVENTIONAL WISDOM

In June 1991, I went to Andrews Air Force base to meet a Russian opposition politician arriving for an informal visit. The only "official" representative of the U.S. government there was a mid-level State Department official. The view of the foreign policy establishment and the Bush administration was that Mikhail Gorbachev was the "only game in town." That Russian politician, Boris Yeltsin, later told me that he never forgot my willingness to see him.

Especially now that the certainties of the Cold War are gone, traditional views about foreign policy should be reexamined; some will remain valid while others may not. The conventional view of foreign aid, for example, is that it must be maintained in about the same amounts in about the same programs to demonstrate that America is not retreating from the world. But it is hard to see how the billions of dollars of international aid spent in Rwanda or Somalia before their civil wars, for example, advanced any U.S. interest. Support for the peace process in the Middle East has paid great dividends, but much of the rest of the foreign aid program simply feathers the nests of old-boy contractors and further discredits "development" theories. Foreign aid should be transitional, to help an ally through a crisis or to help a developing country develop; it should not lead to a permanent state of dependency. Reform and reductions in the U.S. aid program are the overseas equivalent of welfare reform at home.

The world of 1995 and beyond is still a dangerous place. There are many new and emerging threats as we approach the millennium. A resurgent Russia filling a vacuum in Central Europe or looking for a foreign diversion from internal secessionist struggles; a revitalized Iraq threatening the oil fields of Saudi Arabia; a fundamentalist Iran seeking to dominate the Persian Gulf; a nuclear-armed North Korea threatening South Korea and Japan with ballistic missiles—all are scenarios that the United States could face in the near and medium terms. Islamic fundamentalism sweeping across North Africa could overwhelm the successes to date in achieving peace in the Middle East. A fourth conflict between India and Pakistan could escalate into the world's first nuclear war. Nuclear-armed terrorist states like Libya or Iran, emboldened by the North Korean example and armed with missiles from Pyongyang, could threaten allies in the Middle East or Europe. Economic competition between Japan and China could take a military turn. Radical "ethno-nationalists," religious militants, terrorists, narcotics traffickers, and international organized crime networks all pose threats to states in regions of the world where America has core interests. While the collapse of Somalia or Rwanda may not affect those interests, the disintegration of states like Egypt, Indonesia, Mexico, or Pakistan would.

American leadership, however, can overcome the challenges of building a just and durable peace after the Cold War. The words of President Dwight Eisenhower's first inaugural address are as true today as they were in 1953:

> To meet the challenge of our time, destiny has laid upon our country the responsibility of the free world's leadership. So it is proper that we assure our friends once again that, in the discharge of this responsibility, we Americans know and we observe the difference between world leadership and imperialism; between firmness and truculence; between a thoughtfully calculated goal and spasmodic reaction to the stimulus of emergencies.

As the United States approaches the next century, two principles should remain constant: protecting American interests and providing American leadership. The end of the Cold War has provided us with a historic opportunity. Such an opportunity should not be forfeited in favor of the pursuit of utopian multilateralism or abandoned through intentional isolationism. We have seen the danger to America's interests, prestige, and influence posed by both of these approaches. Instead, we must look to the lessons of the Cold War to guide our future foreign policy: Put American interests first and lead the way. The future will not wait for America, but it can be shaped by an America second to none.

THE BALANCED BUDGET AMENDMENT

PROTECTION FROM BIG SPENDERS? THE PEOPLE LOST BY ONE VOTE

Mr. HELMS. Mr. President, there are two disappointing things to mention today. The first is my regular daily report on the latest available disclosure of the total Federal debt, this time as of the close of business yesterday, Wednesday, March 1, stood at $4,848,389,816.26.

If this debt were to be paid off today, with every man, woman, and child in the country paying his or her proportionate share, each of us would have to fork over $18,404.57. Of course, since millions of Americans pay no taxes at all, the average share of the Federal debt would be far greater than the per capita amount referred to above.

The other sad thing? It is, of course, the Senate's failure today to approve a constitutional amendment requiring Congress to balance the Federal budget. If just one more Senator had voted today in favor of the amendment, it would have been approved by 67 Senators, exactly enough to pass the amendment and send it to the 50 States for ratification.

Don't look for a balanced Federal budget anytime soon. But one day it will come. The American people will demand it.

REDUCE THE DEFICIT WITHOUT AMENDING THE CONSTITUTION

Mr. WELLSTONE. Mr. President, over the course of the last 3 weeks, we have heard many arguments for and against the proposed balanced budget amendment to the Constitution. Those arguments were made in good faith, and I know they reflect a broad commitment by those on both sides of this question to bringing the deficit down to reasonable levels. But the balanced budget amendment is an empty promise, not a policy. It has little immediate political cost and very high poll ratings—hence its popularity. But enacting it would be a serious mistake. We should reject it in favor of a real, long-term deficit reduction program.

Since 1936, when Minnesota's own Harold Knutson revived the idea of a balanced budget constitutional amendment that has been originally rejected by the Constitution's Framers, Congress has debated various versions. The real question before us today, as it was 50 years ago, is whether we should weld onto the Founding document of our democracy, the U.S. Constitution, a budget gimmick that would do more harm than good to the economic well-being of our Nation, and our citizens.

As I have consistently argued, in my judgment we do not need to amend the U.S. Constitution to balance the Federal budget. Instead, we must continue to make tough choices on actual legislative proposals, as I have done, to cut wasteful and unnecessary post-cold-war defense spending, to continue to reduce low priority domestic spending, to completely restructure the way we finance and deliver health care in this country—in both the public and private sector—and to scale back special tax breaks for very wealthy interests in our society who have for a long time not been required to pay their fair share. That approach is the only responsible, fair way to bring our annual Federal deficits, and the much larger Federal debt, under control.

For the last 15 years or so, that is what the Congress has been unwilling to do, and that is the source of a lot of frustration in the country. Congress has been unable to muster and sustain a majority to make difficult budget choices. We have seen illustrated here in the Senate over and over again a central problem: The political gap between the promise to cut spending, and actual followthrough on that promise. I make this point because I want to underscore that many of those who have been beating their chests the hardest about a balanced budget amendment have often been among those who have consistently voted against these actual deficit reduction proposals. We cannot give over our budget-balancing responsibilities to a machine, a mechanism. That responsibility is ours.

Of course, I support balancing the Federal budget in a responsible, fair way. Despite all of the rhetoric today, we all at least agree on that basic goal. That's why some of us have voted consistently to reduce actual Federal spending when we've had the chance over the last few years on this floor. Not gimmicks, not smoke and mirrors, not deficit reduction formulas that never identify precise cuts, but actual reductions in Federal spending contained in actual amendments to appropriations bills. Votes on those proposed cuts have been important indicators of our willingness to make tough choices. This is where the budget rubber has met the road.

The President's $500 billion deficit reduction package in the 103d Congress, which I supported and which was approved without a single Republican vote, was a major downpayment toward balancing the budget. But Democrats had to do it alone. When we cut, the Republicans ran. While we acted, they talked. Still, much more must be done.

But now, instead of real budget choices we are presented with a gimmick that I do not believe will work to balance the budget, and that if it does work as it's designed, could do serious harm to the U.S. economy. It will also serve to reduce pressure in the next few years to actually reduce the deficit further, allowing Members of Congress to declare a temporary victory without cutting significantly from the Federal deficit. And then the reckoning will come, when we are up against the wall at the end of this century and have to balance the budget in just a few short years with massive spending cuts in all Federal spending, including Social Security and Medicare.

If that's true, then why is the amendment so popular, at least in the abstract? In recent years, the borrow-and-spend policies of the 1980's and early 1990's have come home to roost, rekindling public support for drastic measures. But just so that we don't lose our historical perspective in this debate, I think it's important to recognize that the problem of huge Federal budget deficits is a relatively recent one, going back only to the early 1980's. It's just not true, as some amendment proponents imply, that the Federal Government has been spending way beyond its means for decades.

The Reagan and Bush administrations gave America by far its 10 largest budget deficits in our history. The huge tax cuts and large defense increases of that era are still costing us. Whatever your party affiliation or perspective on enacting this amendment, that is indisputable. If it were not for the interest costs on the debt accumulated during the 1981–92 period, the Federal budget would be in balance in 1996 and headed toward surplus thereafter.

I am not trying to explain away large deficits over the last decade or so, but simply to point out that they are, more than anything else, a direct result of the misguided and now thoroughly discredited fiscal policy called supply side economics. Despite the urgings of some of our colleagues in the new House leadership, and some of the provisions of the Republican Contract for America, we must not turn down that supply-side road again.

Opposing the amendment has not been easy, or politically popular. But since I have spoken several times on various amendments that have been proposed over the course of the last few weeks, let me try to summarize one last time my major reasons for voting against this amendment.

AMERICANS HAVE A RIGHT TO KNOW HOW THE AMENDMENT WILL AFFECT THEM

Throughout this debate, I've argued that the people of Minnesota—and all Americans—have an enormous stake in the outcome of this debate, and that they have a right to know how the spending cuts required by the amendment could affect them and their families. I offered an amendment to one of the first bills before the Senate this year urging proponents of the constitutional amendment to detail the over a trillion dollars in cuts they would make to balance the budget by 2002, before it is sent to the States for ratification. This is simple "truth-in-budgeting;" it's the least we could have expected from proponents.

Indeed, the Minnesota State Legislature and Governor Carlson agree. And they sent a Minnesota mandate to Washington to prove the point. The legislature recently passed overwhelmingly a resolution, signed by the Governor, urging those of us here in Congress to continue our efforts to reduce the Federal budget deficit, and requesting financial information on the impact the balanced budget amendment would have on our State. By rejecting the amendment, which I introduced to provide the information to all the States that the Minnesota Legislature was seeking, the Senate sent States a chilling message.

Another major right-to-know amendment, offered by Senator DASCHLE, was also defeated. Despite the straightforward logic of this approach, these amendments were rejected on virtual party-line votes.

And so if we pass this constitutional amendment today, we would be sending it to the State legislatures for ratification without giving them, or the millions of American families whom they represent in each State, any idea of how we intend to cut over a trillion dollars from the Federal budget between now and the year 2002, or how it will affect their lives and the lives of their children and grandchildren. Families will not be told how deep the Medicare, Medicaid, school lunch, higher education, or Social Security cuts will be; at least not before we vote on the amendment.

That is, I think, a gross abdication of our sworn responsibility to serve those we represent, and a slap in the face to those who count on us for truth-in-budgeting. Recent polls show that over 80 percent of Americans believe we should be straight with them about how we intend to balance the budget under this amendment before we act on it. Even so, balanced budget proponents have rejected the right-to-know and instead offered Americans a ruse, an exercise in budget deception. In so doing, they have seriously breached the standard of public accountability that Americans should be able to expect from their leaders. In addition, there are a number of sound fiscal policy arguments against the amendment; I will raise just two examples.

AMENDMENT WOULD DEEPEN ECONOMIC RECESSIONS AND WORSEN DISASTERS

Consider the potential risk that the spending cuts required by the amendment could push soft economy into a recession, or in a worse case, deepen an existing recession and push us into a depression. Now when the economy slips into recession, Federal spending helps to cushion the fall by increasing unemployment insurance and other assistance programs for low- and moderate-income people. At the same time, income tax collections drop because people and businesses are making less money in a recession.

But under the amendment, Congress would be forced, perversely, to do the opposite: raise taxes, cut spending, and push the economy into an economic freefall. The so-called automatic economic stabilizers like unemployment insurance that have proven so useful in recent decades would be gone, and we would instead effectively enshrine in the constitution the economic policies of Herbert Hoover. With fiscal policy enjoined by the amendment, sole responsibility for stabilizing the economy would rest with the Federal Reserve. And with their almost exclusive focus on fighting inflation these days, more often than not they end up protecting Wall Street investors—not average working families.

As I have suggested, the amendment is an attempt to enshrine an economic dogma which would cripple our ability to offer pragmatic responses to changing economic conditions. Because our efforts to change the balanced budget amendment to take this problem into account also failed, this serious flaw remains.

Coupled with the absence of any exception for emergency disaster spending, that was included in a proposed amendment defeated last week, the lack of economic foresight this reflects is almost breathtaking to me. In just a few days, we will consider an emergency spending bill to help pay the Federal share of the California earthquake last year. The cost of this disaster is now up to $15 billion.

In the last two decades, the Federal Government has spent $134 billion in Federal disaster relief, including $33 billion in the last 5 years alone. Under a balanced budget requirement, what would we do in the face of a huge flood, earthquake, or other disaster that cost scores of billions of dollars in relief aid? How long would it take to garner the three-fifths votes necessary in both Houses to pay for it? And what special legislative prizes would opponents require for their votes? Those are all open to questions.

AMENDMENT COULD PUT FEDERAL DEPOSIT INSURANCE AT RISK

Another open question is the impact of the amendment on bank deposits. I am sure balanced budget amendment supporters don't intend to put the life savings of American families at risk, or to threaten the stability of the banking system. And yet that is precisely what this amendment would do. Since the Depression, the FDIC has insured depositors against bank failures. That limit is now up to $100,000 per account. And right now those guarantees cover private savings of about $2.7 trillion—that's a whole lot of money that's guaranteed by the U.S. Government. Some have observed that the balanced budget amendment could put the full faith and credit of the United States embodied in such guarantees at risk.

AMENDMENT DOES NOT SEPARATE DAY-TO-DAY EXPENSES FROM INVESTMENTS

Most Americans believe that a balanced budget, like a balanced checkbook, is a good idea. They argue that America, like a family, should always balance its budget. But this overlooks a key fact: The household budgets of most middle class Americans have substantial debt, either for a car, a home, or a college education for their kids.

This reflects a central problem with the amendment. It ignores the difference between two different types of spending: investments for the future, and "operating," or day-to-day, spending. Taking out a mortgage on a home is investing in your family's future; taking one out to pay for next year's vacation is not. This is acknowledged by most State governments, many of whom are required to balance their operating budgets—but not their investment budgets.

American business agrees; incurring debt to invest and expand a business has long been a hallmark of business strategies for sustained growth. With governments, as with families or businesses, borrowing isn't inherently bad; it depends what you're borrowing for. With families, businesses or State governments, the central question is: Will the debt we incur improve our long-term economic prospects? If this principle applies to household or business budgets, why shouldn't it apply to the Federal budget? Nonetheless, an amendment to address this problem was rejected.

NO PROTECTIONS FOR THE SOCIAL SECURITY TRUST FUNDS

This balanced budget amendment fails to protect the Social Security trust funds from being raided to balance the Federal budget. We tried to make sure that for the purpose of calculating the deficit under the balanced budget amendment, the huge surpluses in the Social Security trust fund would not be counted. In that effort, too, we failed; our proposed Social Security amendment was defeated. Make no mistake what this means: Despite the promises of the proponents that they will not balance the budget on the backs of Social Security recipients, they have refused to explicitly protect this program in the language of the constitutional amendment itself. In fact, they fought hard to defeat our Social Security amendment. That is as good an indication of their future intentions regarding Social Security as anything we have seen.

A SHELL GAME THAT WILL REQUIRE STATES TO RAISE TAXES

There is another problem with this constitutional amendment. For many in Minnesota, it will likely mean an increase in personal income, sales, and property taxes needed to offset the loss in Federal aid from crime control to higher education, roads and bridges to farm programs, rural economic development to Medicare. This shell game, in which costs are simply shifted from the Federal Government onto the States, would force Minnesota to fund these efforts on its own. A recent Treasury Department study concluded that an increase of between 9 and 13 percent in Minnesota taxes would be required to make up the difference. In reality, a vote for the balanced budget amendment is really a vote for a trickle-down tax increase.

A STANDARD OF FAIRNESS

I think it's a simple question of fairness. If this constitutional amendment passes, in the next 7 years we are going to have to make $1.48 trillion in spending cuts and other policy changes—assuming that we enact Republican-proposed tax cuts for the wealthy and defense increases. If we don't, we'll still have to make about $1.2 trillion in cuts. If we make these cuts to meet the balanced budget amendment requirement and timetable, then we should make sure that wealthy interests in our society, those who have political clout, those who hire lobbyists to make their case every day here in Washington, will be asked to pay their fair share. At least they should bear as much of the burden as regular middle class folks that we represent, who receive Social Security or Medicare or Veterans benefits, or who receive student loans to send their kids to college and offer them a better future.

That's just common sense, and I had hoped that during this debate we would signal that we would apply such a standard of fairness. For example, too often in discussions about low-priority Federal spending which ought to be cut, one set of expenditures has been notoriously absent. That is tax breaks for wealthy and well-positioned special interests. But that, too, was rejected by the constitutional amendment's proponents when I offered an amendment urging simply that we make sure such special tax breaks are on the table as we move forward in our deficit reduction efforts. Tax subsidies are heavily skewed to corporations and the relatively few people with very high incomes, while Government benefits and services go in far larger proportions to the middle class and the poor.

In the last few weeks, this issue of fairness has emerged more and more clearly to me, more by its absence than by its presence. It looks to me as though the current standard, at least as it has been applied so far in the published plans of balanced budget proponents, will not require much, if any, sacrifice from special interests in our society who have enjoyed certain tax breaks, benefits, preferences, deductions and credits that most regular middle-class taxpayers don't enjoy.

EFFORTS TO SCRUTINIZE TAX BREAKS FOR WEALTHY BLOCKED

But while the constitutional amendment's proponents don't seem to mind that it could require States to raise State taxes by large margins, they are adamantly opposed to making sure that wealthy corporations and others pay their fair share of the deficit reduction burden.

It is a fact, often overlooked, that we can spend money just as easily through the Tax Code, through what are called "tax expenditures," as we can through the normal appropriations process. Spending is spending, whether it comes in the form of a government check or in the form of a tax break for some special purpose, like a subsidy, a credit, a deduction, or accelerated depreciation for this type of investment or that. These tax expenditures—in some cases they are tax loopholes—allow some taxpayers to escape paying their fair share, and thus make everyone else pay at higher rates. These arcane tax breaks are simply special exceptions to the normal rules, rules that oblige all of us to share the burdens of citizenship by paying our taxes.

The General Accounting Office issued a report last year titled, "Tax Policy: Tax Expenditures Deserve More Scrutiny." It makes a compelling case for subjecting these tax expenditures to greater congressional and administration scrutiny, just as direct spending is scrutinized. The GAO noted that most of these tax expenditures currently in the Tax Code are not subject to any annual reauthorization or other kind of systematic periodic review. They observed that many of these special tax breaks were enacted in response to economic conditions that no longer exist. In fact, they found that of the 124 tax expenditures identified by the committee in 1993, about half were enacted before 1950. Now that does not automatically call them into question. It just illustrates the problem of their not being very carefully looked at in any systematic way over very long periods of time. Many of these industry-specific breaks get embedded in the Tax Code, and are not looked at again for years. And yet we refused by roll call vote to even commit to consider them as we move forward in our efforts to balance the Federal books.

When we begin to weigh, for example, scaling back the special treatment for percentage depletion allowances for the oil and gas industry against cutting food and nutrition programs for hungry children, we may come out with quite different answers than we have in the past about whether we can still afford to subsidize this industry. The nonpartisan Congressional Budget Office estimates that eliminating this particular tax break would save $4.9 billion in Federal revenues over 5 years.

And this is not an isolated example. The Congressional Joint Tax Committee has estimated that tax expenditures cost the U.S. Treasury over $420 billion every single year. And they estimate that if we don't hold them in check, that amount will grow by $60 billion to over $485 billion by 1999. Now some tax expenditures serve important public purposes, like supporting charitable organizations, and should be retained. But many of these must be on the table along with other spending as we look for places to cut the deficit.

I could not find any hint of interest in cutting corporate tax breaks in the Republican contract, I think because many of the benefits of these tax breaks go to very high-income people with wealth and power and clout in our society, and to corporations with high-powered lobbyists. They're the ones for whom the contract provides an estimated $169 billion windfall that would resurrect the tax-shelter industry and effectively slash corporate rates.

At a time when we are talking about potentially huge spending cuts in meat inspections designed to insure against outbreaks of disease; or in higher education aid for middle class families; or in protection for our air, our lakes, and our land; or in highways; or in community development programs for States and localities; or in sewer and water projects for our big cities; or in safety net programs for vulnerable children, we should be willing to weigh these cuts against special tax loopholes on which we spend billions each year. And yet we could not even agree to put these on the table along with everything else as we move forward in our efforts to reduce the deficit.

ENSHRINES MINORITY RULE

Constitutional and congressional scholars have observed that the balanced budget amendment gives a veto power to a small minority of either the House or the Senate in key budget decisions, a profoundly antidemocratic shift away from our proud, 200-year-old tradition of majority rule. The need to win approval from three-fifths of both Houses to waive the balanced budget requirement in a recession would give added power to members whose votes might be needed to avoid plunging the country into a deeper downturn.

Thus, the price of an agreement to let the Government run even a modest deficit during a recession, and to provide recession-related unemployment benefits, might be a capital gains cut or other tax break touted by its backers as a "growth incentive." As we saw in the 1980's, these tax breaks usually prove to lose revenues and increase the deficit over the long term, which in turn could lead to additional program cuts in subsequent years to bring the budget back into balance.

WEAKENS OUR ABILITY TO INVEST

As I have observed, the balanced budget amendment would largely deny to the Federal government a basic practice that most businesses, families, and States and local governments use—borrowing to finance investments with a long-term payoff. Borrowing to finance new investments is standard business practice. A business that failed to modernize because it could not borrow would soon be left behind.

We must continue to invest in our people. Our economy is creating new jobs at a near-record pace—over 5 million in the last 2 years alone—yet it doesn't give much help to those ordinary working families who are at the bottom, or in the struggling middle class. As one Iron Ranger in Minnesota recently told me, "All these jobs being created doesn't do me much good if I have to hold three of them to keep my family together." His comment reflects the anger and economic insecurity many Americans feel because their personal economic experience doesn't jibe with what Government statistics tell them—that unemployment is down, inflation is in check, and economic growth and productivity are booming. Despite these statistics, standards of living and real wages of workers remain flat, or in slight decline; many are just one downsizing away from layoff, and feel less secure. We must invest in the skills and futures of our people if we are going to turn this situation around.

The amendment would force a scaling back of Government investment in areas where economists stress more investment is needed: infrastructure, education and training, early intervention programs for children, research and development. There is growing evidence we invest too little in these areas and that such under-investment has contributed to our Nation's weak economic performance in recent years.

It is true that for too long the Federal Government has been undisciplined in its borrowing, and that is what threatens our fiscal future. We have a responsibility to future generations to get our fiscal house in order, and to do it the Federal Government has to reprioritize spending in relation to this central question of investment, by re-examining programs across the board and eliminating or scaling back those that are wasteful and unnecessary. We must redesign cumbersome Federal structures to meet the challenges of the information age, of rapidly changing demographics, of our decaying inner cities. We should do this in a way that's fair, open and accountable, without the budget smoke and mirrors that have too often fogged the real choices facing voters.

Let me say a word about the impact that systematic disinvestment would have on working families, children and the elderly in my State, because ultimately that is what this whole debate is about.

THE IMPACT OF THE AMENDMENT ON MINNESOTA FAMILIES

Throughout this debate, I have tried to ask myself basic questions about the impact of this balanced budget amendment on the families in Minnesota whom I represent. I think it would inflict on Minnesotans serious harm, and that is why I cannot in good conscience support it. That is ultimately the deciding factor for me.

I've already talked about the shell game that this amendment would require by shifting the costs of government from the Federal to the State level, and forcing States to raise income, property and sales taxes—in Minnesota's case by about 13 percent, according to the Treasury Department. But what about the actual spending cuts? How would they be distributed? Who would have to sacrifice, and who would benefit?

Over 7 years, under the balanced budget amendment and accompanying Republican proposals, Minnesota would lose nearly $5.9 billion in Federal Medicare funds, Medicaid cuts would total nearly $3.7 billion, elementary and secondary education would lose $1.5 billion, and Federal law enforcement would lose $143.7 million. Minnesota farmers also would likely lose billions in farm payments, causing a serious decrease in family farm income. And it's not just rural areas that would be hit. The two largest urban counties in my State, Hennepin and Ramsey Counties, would alone lose about $10.3 billion in total Federal aid over 7 years.

In addition, despite Republican promises to temporarily protect this program, large cuts in Social Security benefits to Minnesotans—an estimated $2,000 annually per beneficiary—should also be expected if this program is slated for across-the-board cuts.

These are very large cuts, and they will have a major impact on the people of my State. I have heard from elderly couples in Minnesota on fixed incomes, terrified about the impact of the amendment on their Medicare funding. And they have reason to be fearful. I have sat with homeless men and women, Medicaid recipients, who are threatened with going without even the most basic health care under the amendment. Instead of this approach, we owe it to these people to do real comprehensive health care reform.

Despite the claims of some that opponents of the amendment are exaggerating the threat posed by these huge spending cuts, this is for real. I am not making this up. In fact, just the other day, Finance Committee Chairman PACKWOOD said that he thought we would have to make up to $550 billion in cuts in Medicare alone to meet its requirements—not to mention the huge cuts in Medicaid he acknowledged would be necessary. And it could go much higher than that, depending on budget decisions made in other areas.

Finally, let me say a word about the process by which this amendment has been considered. In recent weeks, balanced budget amendment proponents have rejected virtually every single good faith effort to improve the constitutional amendment. Amendments to prevent a raid of the Social Security trust funds, to exempt earned veteran's benefits, to strike the majority requirements, to prevent harm to hungry and homeless children, to separate investment from day-to-day operating budgets, to provide for exceptions for major disasters and economic recessions—and many others—were defeated.

I believe that if the Senate passes this amendment today, as we look back on this debate from the midst of a serious recession, major disaster, or even undeclared national security emergency, this unwillingness by proponents to accept even modest, reasonable changes in the amendment will prove seriously misguided.

While at first look this amendment appears to make sense and is widely popular, amending our Constitution in this way would be a mistake with potentially serious fiscal, economic, and social consequences and would seriously alter our democratic process. We can and should balance the budget without gimmicks and without changing the Constitution. I intend to continue to vote to do that. I urge my colleagues to join me in that effort, and to vote no on the balanced budget amendment. I yield the floor.

Mr. LEVIN. Mr. President, I want deficit reduction and I am willing to work for it. That is why I supported the President's deficit reduction package in the last Congress. But while I have stood up for real deficit reduction, what I am not prepared to do is to write into the Constitution language that is more likely to lead to disillusionment and constitutional crisis than to a balanced budget.

I see five flaws in the proposed amendment. First, the proposed amendment would not balance the budget, it would just say that a future Congress has to pass a law to enforce a balanced budget. Why wait? Unless and until we make the tough choices needed to cut spending or raise revenues, we will not have a balanced budget, whether or not we pass the proposed constitutional amendment and whether or not the States ratify it. We will instead have passed what could turn out to be a cynicism-deepening illusion.

The proposed constitutional amendment says that starting no earlier than 2002, Congress has to have a law enacted which enforces a balanced budget. Why wait? Why wait to do the hard work of passing implementing laws and doing the actual budgeting? That's a dodge which allows some to say we are cured before we have taken the medicine. It puts a giant loophole in the Constitution to cover over congressional weakness.

In May 1992, Robert Reischauer, the Director of the nonpartisan Congressional Budget Office, testified before the House Budget Committee that a balanced budget amendment is not a solution; it is "only a repetition in an even louder voice of an intention that has been stated over and over again during the course of the last 50 years." Dr. Reischauer stated:

> It would be a cruel hoax to suggest to the American public that one more procedural promise in the form of a constitutional amendment is going to get the job done. The deficit cannot be brought down without making painful decisions to cut specific programs and raise particular taxes. A balanced budget amendment in and of itself will neither produce a plan nor allocate responsibility for producing one.

Dr. Reischauer further stated:

> Without credible legislation for the transition that embodies an effective mechanism for enforcement, government borrowing is not going to be cut. But the transitional legislation and the enforcement mechanism are 95 percent of the battle. If we could get agreement on those, we would not need a constitutional amendment.

The public understands this. They know the difference between promises and action. Let me tell you what some of the commentators are saying about the balanced budget amendment back in my home State. Here is what the Detroit Free Press said on January 15:

> You wouldn't take seriously any politician who promised to be faithful to his spouse, beginning in 2002, so why do so many people take seriously the proposed balanced-budget amendment?
>
> It's the same kind of empty promise to be good—not now, but later. Putting it in the Constitution isn't likely to confer on Congress the spine or the wisdom to fulfill it.
>
> * * * [T]he way to cut the budget is to cut the budget, not to promise to do it sometime in the future. * * * Gluing a balanced budget amendment onto the Constitution only postpones the moment of truth.

And here is what the Battle Creek Enquirer said on January 29:

> If a balanced budget is such a good idea, we say to Congress: "Just do it!" After all, waiting until a constitutional amendment mandates it will just delay a balanced budget—perhaps by years.
>
> This Congress isn't likely to give the nation a balanced budget, that's for certain. But, by touting the need for this amendment, it sure can talk like a Congress that already has * * * [I]t's all an illusion.

"Just do it!" That's what the American people want, Mr. President. They know the difference between promises and action, and they want the latter. A constitutional amendment can promise a balanced budget, but it cannot deliver a balanced budget. Only concrete action by the Congress can do that.

Put another way, Mr. President, the proposed constitutional amendment has no effective enforcement mechanism. The amendment relies on a future Congress to act to implement and enforce it. That is the bottom line. This is the same reed that proved so weak in the 1980's when the President and the Congress quadrupled the national debt from $1 trillion to $4 trillion.

The argument has been made that we have tried everything else, why not a constitutional amendment. We can't depend on legislation, the argument goes, so let's try a constitutional amendment.

So what does this amendment do? It depends on the same kind of legislation to be enacted which its sponsors say has not previously been effective.

When we were debating this amendment in 1986, Senator HATCH acknowledged the following:

> [T]here is no question that Congress would have to pass implementing legislation to make it effective. * * * It would be the obligation of Congress, after the amendment is passed by both Houses and ratified by three-quarters of the states to * * * enact legislation that would cause this to come about.

And again, CBO Director Reischauer pointed out that:

> Without credible legislation for the transition that embodies an effective mechanism for enforcement, government borrowing is not going to be cut. But the transitional legislation and the enforcement mechanism are 95 percent of the battle. If we could get agreement on those, we would not need a constitutional amendment.

Just a few weeks ago, on January 30, Senator HATCH stated:

> "* * * [U]nder section 6 of the amendment, Congress must—and I emphasize must—mandate exactly what type of enforcement mechanism it wants, whether it

be sequestration, rescission, or the establishment of a contingency fund.

In fact, the committee report accompanying this constitutional amendment itself states that it "* * * must be supplemented with implementing legislation".

Mr. President, I have offered an amendment to the constitutional amendment to require this Congress to address this issue by adopting legislation to implement and enforce a balanced budget requirement now. Without my amendment, there are no real teeth in the promise of a balanced budget contained in the proposed amendment.

Alexander Hamilton states in Federalist Paper No. 15, "If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advice or recommendation."

If congressional weakness is the reason for this amendment—and it is—then Congress will use the loopholes in this amendment to evade the responsibility which it sets forth. My fear is that this amendment will give us an excuse to duck the hard choices, as Congress has often chosen to do, until it would become effective in 2002—at the earliest. I am afraid that upcoming Congresses will say "the balanced budget amendment will take care of our problems, so we don't need to address them now."

Dr. Reischauer, in his 1992 testimony, listed a number of loopholes that Congress could use to get around an apparently rigid balanced budget rule:

Using timing mechanisms and other budget gimmicks to achieve short-run budget targets, including such actions as shifting pay dates between fiscal years, accelerating or delaying tax collections, delaying needed spending until future fiscal years, and selling government assets;

Basing the budget on overly optimistic economic and technical assumptions; and

Creating off-budget agencies that would have authority to borrow and spend but whose transactions would not be directly recorded in the budget.

That is what we did in the 1980's. We used optimistic estimates or "rosy scenarios". Here are some of those estimates. In 1981, our estimates were off by $58 billion. In 1982, our estimates were off by $73 billion. In 1983, our estimates were off by $91 billion, and on and on. In 1991, they were off by $119 billion—$119 billion in 1 year. You talk about a loophole. This one is big enough to drive a $119 billion deficit through. That is how big this loophole is.

The sponsors of the amendment say that the real enforcement mechanism is in section 2. That section provides that it will take 60 percent of the votes, a supermajority, to increase the debt ceiling. So if our estimates are too rosy—if, for instance, we follow the 1980's model of estimates in order to evade the constitutional requirement, then, we are told, we can fall back on the requirement that the debt limit can only be increased by a 60 percent vote in each House.

As Senator GRAHAM of Florida has pointed out, however, the so-called debt limitation provision in the proposed amendment would allow us to run deficits in the first decade and a half of the next century of as much as $120 billion a year, masked by taking that money from the Social Security trust fund, without that counting toward the deficit. The proposed amendment applies the 60-vote requirement to "the limit on the debt of the United States held by the public". So the debt held by the Social Security Administration isn't covered and the usual majority rule would apply to raising that debt limit.

In any case, history has proven the debt limit is a weak reed to rely on, because when you vote on whether or not to increase the debt limit, you are voting whether or not to bring down the Government of the United States. We have to pay our legitimate debts, however many votes it may take. If we don't do that, we are finished economically. To make that point, let me quote from a July 8, 1987 letter from Secretary of the Treasury James A. Baker III to the Chairman of the Senate Finance Committee:

> I cannot overemphasize the damage that would be done to the United States' credit standing in the world if the Government were to default on its obligations, nor the unprecedented and catastrophic repercussions that would ensue. Market chaos, financial institution failures, higher interest rates, flight from the dollar and loss of confidence in the certainty of all United States Government obligations would produce a global economic and financial calamity. Future generations of Americans would have to pay dearly for this grave breach of a 200-year-old trust.

Mr. President, we are not going to achieve a balanced budget by threatening not to raise the debt ceiling, because that is a nuclear weapon aimed at the economy of this country. You don't balance the budget by threatening suicide, and that is what a failure to pay our debts would be. If we do not pay our debts, this country's economy is finished. So whether it takes the usual majority or 61 votes, it doesn't matter. We will have to increase the debt ceiling, because after the debts have been incurred, we won't have any choice.

Mr. President, my second problem with the amendment is that if a later Congress does adopt effective enforcement legislation, it would be putting in the hands of a minority of Senators, representing as little as 15 percent of the population, critical decision-making power over the economy of this Nation. Under the proposed amendment, it is intended that outlays not exceed receipts, and the debt limit not be increased, unless three-fifths of both Houses of the Congress agreed. The economic future of our country should not be put in the hands of a minority by a constitutional amendment which would be so difficult to change if it went awry.

My third problem with the amendment is that it would put the Social Security trust fund at risk. By my count, during this debate the Senate has rejected at least three amendments to protect the Social Security trust fund. As the senior Senator from Florida explained, Mr. President, that means that we will continue running deficits of at least $120 billion a year for more than a decade after this amendment would go into effect, and will conceal these deficits by taking the money from the Social Security trust fund. The money in that trust fund is exactly that—money that we have collected in trust. I cannot vote for a constitutional amendment which allows the use of that money to cover up huge deficit spending. That's simply wrong.

My fourth problem with the amendment is that, if effectively implemented, it would preclude the use of deficit spending to cushion the impact of a recession. A balanced budget amendment would force the Federal Government to raise taxes and cut spending in recessions, to offset the loss of revenue caused by declining income. These policies would deepen the impact of a recession and could even turn a mild recession into a depression.

Indeed, the Treasury Department has done a study showing that, were it not for countercyclical deficit spending, roughly one and a half million more people would have been unemployed in the 1991–92 recession. Mr. President, we should not ignore the real world hardships caused by recessions and we should not act in a way which could cause millions of Americans to lose their jobs.

Finally, Mr. President, I am troubled by the fact that the proposed amendment is intentionally ambiguous on the role of the President in carrying out the amendment. The resolution of this crucial issue will determine how the amendment will affect the checks and balances placed in the Constitution by our Founding Fathers.

With regard to Presidential impoundment, the Senator from Utah, Senator HATCH, says the President would have no power to impound funds unless expressly granted by Congress, but the sponsors refuse to make this explicit in the amendment itself.

There are some, including Members of this Senate, who already believe that the President has inherent impoundment powers under article II of the Constitution. Would not that argument be reinforced by a constitutional amendment prohibiting outlays from exceeding receipts, in view of the President's duty to preserve, protect, and defend the Constitution?

Former Reagan administration Solicitor General Charles Fried has testified that such a power would exist. He stated:

> Now, the command of section 1 is very unqualified. Total outlays shall not exceed total receipts unless you have the three-fifths vote. It seems to me that command would give the President—any President—a far better claim to impound funds than that which was asserted some years ago by President Nixon, because the President's warrant would not be drawn from, as President Nixon said it was, inherent powers of the Presidency. He could point to the Constitution itself. He would say that they shall not exceed, and he swears an oath to see that the laws are faithfully executed, and I would think his claim to impound would be very strong. Not only his claim, but he would argue with considerable plausibility his duty to do so.

So again, the record is, at best, unclear.

The question whether the President could enforce the amendment by impoundment would not be an insurmountable problem, had the majority not chosen to make it so. For instance, when we approved a balanced budget amendment in the Senate in 1982, we included language proposed by the Senator from New Mexico, Mr. DOMENICI, to ensure that the amendment could not be construed to grant the President impoundment powers.

This year, however, the sponsors of the amendment decided to remain silent on this issue. That is not the way we should address the question of amending the Constitution. This is the Constitution we are talking about, and we need to know what the amendment we are considering means in this critical area.

In conclusion, Mr. President, the proposed amendment provides too easy an excuse for Congress not to act now to reduce the deficit and it doesn't force congressional action later either.

It lets us off the hook now, and there is no hook later.

It's based on the argument that a constitutional amendment is needed because previous laws calling for a balanced budget didn't work. But its success, by its own terms in section 6, is dependent upon a future Congress enacting a similar law.

The amendment before us, in other words, is unlikely to reduce the deficit, but is likely to increase public cynicism about the willpower of Congress to act.

We can and we should adopt enforcement legislation to achieve a balanced budget now, with or without a constitutional amendment.

There is only one way to balance the budget now, or in 2002—and that is with the willpower to make the tough choices. I hope we will defeat this constitutional amendment and instead show the will power to make the tough choices and enact enforcement legislation actually needed to balance the budget.

Mrs. MURRAY. Mr. President, I voted against House Joint Resolution 1, the so-called balanced budget amendment.

I voted no because this amendment is a 10-second political sound bite with decades of economic implications. It will handcuff future generations to an economic blueprint this Congress dictates in 1995. And, worst of all, it makes a mockery of the most important document this country has ever produced.

I am a member of the Budget Committee. When I came to the Congress 2 years ago, I faced the largest debt ever amassed by any country in the history of civilization. More debt was created during the 12 years of Republican administrations in the 1980's and early 1990's than in the entire 200 years preceding them.

I strongly support putting this country's economic house in order. Mr. President, I support a balanced Federal budget. The people of this Nation deserve nothing less. But this amendment does not get us there. Words on a piece of paper cannot balance the budget, only legislators like you and I can.

We have to make tough choices as we correct the fiscal mismanagement of the 1980's. We have to balance the budget with surgical cuts; with a scalpel, not a meat cleaver.

Mr. President, we have made some very tough decisions. I was one Member of this body who voted for a plan—a plan with specific cuts and common sense—which reduces the deficit by $505 billion over 5 years. Program-by-program, cut-by-cut. Most of the Members of the Senate who voted against the deficit reduction plan now support this constitutional amendment.

Mr. President, where are the specifics? What will they cut? Which taxes will they raise? Who will be hurt? The American people have a right to know. Under this amendment, we have no idea.

For example, will they cut out funding for the Federal Government's obligation to clean-up the Hanford Nuclear Reservation in my home State of Washington? Will they eliminate the home mortgage deduction? Will they cut Head Start, or WIC, or Ryan White? Will they stop guaranteeing student loans? Will they block further assistance to our depressed timber communities, or job training for laid-off aerospace workers?

Mr. President, just this week, we have seen some examples of how careless cuts can be when they are made with a meat cleaver. The rescissions package coming before the Senate soon is a mean-spirited and irrational piece of legislation. As nasty as those cuts are, they still do not get us to a balanced budget. Instead, they damage those we can least afford to harm: our children.

If this body is serious about deficit reduction, we should resume the debate on health care reform. Even cutting every discretionary program will not get us to a balanced budget. We must control the growth of health care costs. I find it ironic that many of the same Senators who opposed the health care reform bill last year now support this constitutional amendment.

This so-called balanced budget amendment is dangerous. It will remove all our flexibility in dealing with emergencies—economic troubles like recessions, or even natural disasters like volcanic eruptions, earthquakes, flooding, hurricanes, and massive fires. My home State has experienced many such disasters recently. If this amendment had been part of the Constitution, how would my friends and neighbors have coped?

Mr. President, I believe many of our colleagues would want to help in these emergency situations. That is why the Congress is the proper venue for deciding these issues—our Founding Fathers thought so, too.

This constitutional amendment throws our responsibility to the courts. The courts will decide if funding is appropriate. Supreme Court justices are not responsible to the people of my home State; they are not elected by anyone. They are not sent to the Nation's capital to tend to the needs of my constituents.

Mr. President, we have amended the Constitution only 17 times since we adopted the Bill of Rights. We have never changed the Constitution lightly. With each previous amendment, the American people voted to expand rights and outline responsibilities—we have never inserted an economic plan into the Constitution. This amendment sets a terrible precedent.

I voted in favor of several amendments to the House Joint Resolution 1. I could see that the resolution had considerable support, and I wanted to make sure that if it did indeed pass, we protected our most vulnerable populations; that we maintained the integrity of the Social Security trust fund; that we continued our fight against violent crime; that we respected our veterans; and that we exempt natural disasters from cuts.

I also believe that we should display common sense and work to reduce the massive deficit before we enacted sweeping, across-the-board tax cuts.

These safeguards all failed—every one of them. All attempts at tempering the resolution, or placing some sensible priorities into the legislation, were killed.

Mr. President, this is bad policy, and I cannot support any measure that will handcuff our country's economic policy. When I stand in this Chamber, I remember that I am not only a U.S. Senator but also a mother.

It might be popular to vote yes, but I won't worry about my own personal popularity until I know my children's economic future is safe. I do not believe we should trivialize our Constitution in order to give politicians a reason to make the kind of choices they should be making anyway.

This resolution will hurt our country and handcuff future generations. Amending the U.S. Constitution is not worth the gamble. For these reasons, Mr. President, I did not support House Joint Resolution 1.

Mr. PRESSLER. Mr. President, since 1981, there have been eight balanced budget amendment measures that have been approved by the Senate Judiciary Committee and reported to the Senate. Three of these measures have received floor consideration.

In 1982, the Senate passed Senate Joint Resolution 58 by a 69-to-31 vote. This marked the first time either House of Congress had approved such a measure. Although a substantial majority of the House of Representatives voted in favor of a counterpart of Senate Joint Resolution 58, the 236-to-187 margin fell short of the necessary two-thirds vote.

In 1986, the Senate rejected a balanced budget amendment (S.J. Res. 225) by a vote of 66-to-34, thus failing to achieve the necessary two-thirds majority by a single vote.

Then during 1994, the Senate defeated Senate Joint Resolution 41 by a vote of 63-to-37, 4 votes short of the two-thirds necessary for adoption.

Since coming to the Senate in 1979, I consistently have cosponsored and supported balanced budget amendment measures, and have voted for adoption of these measures at each and every opportunity. I strongly support the proposed amendment before us which was approved by the House of Representatives. With our vote today, the Senate will choose between a failed status quo or a new road toward true fiscal accountability.

Mr. President, there is compelling need for a balanced budget amendment to the Constitution. The Federal Government has run deficits for 23 years in a row and for 54 of the last 62 years. As a result, our national debt has spiraled to more than $4.8 trillion. The gross annual interest on the debt exceeds $300 billion.

Moreover, if we maintain the status quo—as reflected in the President's budget request for fiscal year 1996—the national debt would increase to more than $6.7 trillion in 2000. Mr. President, is this the kind of legacy we want to impose upon our children and grandchildren?

The harsh fact is that up until now we have tried every legislative means possible to lower deficit spending and achieve tax revenues in excess of outlays. In the past 10 years, we have seen Gramm-Rudman, Gramm-Rudman II, the 1990 budget amendment, and the failed 1993 budget plan. These well-intended measures have failed to move us closer to a balanced budget. Even if it were to succeed for one budgetary cycle, what assurances are there for continued balanced budgets and surpluses sufficient to eliminate our national debt?

There must be a measure beyond Federal statute and outside the present legislative process that would require continued balanced Federal budgets. That is why a constitutional measure is necessary.

The constitutional amendment before the Senate today would prohibit deficit spending except during any fiscal year in which a declaration of war is in effect or when the country is engaged in an urgent national security crisis. Also, the limit on deficit spending and the limit on the national debt may be waived by a recorded vote of three-fifths of the whole number of each House.

It seems that if the limits on deficit spending and the national debt could be waived by a simple majority vote of the House and the Senate, the purpose of the constitutional amendment would be nullified. It is clear more than a majority should be required to waive the amendment. Year after year huge deficits have been incurred by simple majority votes.

Requiring a supermajority vote is not unique. The Constitution currently has nine supermajority requirements on specific actions or measures. These supermajorities include: ratification of treaties; veto overrides; expulsion of a Member of the Senate or the House; impeachment of the President, Vice President, and other Federal civil officers and judges; waiver of disability of certain persons who engaged in rebellion against the United States; election of a Vice President by the Senate; and amendment of the Constitution. Also, supermajorities are provided for in each House under its constitutional right to determine the rules of its proceedings.

Measures such as a declaration of war or an amendment to the Constitution were rightly considered by the framers to be the most serious of policy commitments. They believed a broader consensus was needed for these beyond a simple majority. The framers also imposed supermajority requirements to ensure that the fundamental rights of individuals were not overrun by the tyranny of a majority. Mr. President, we have reached a point in our history that any serious thought of further mortgaging the future of our children and grandchildren should require a broader consensus than a simple majority. It is for them that we must get our fiscal house in order. It is for them that we must pass this balanced budget amendment.

The proposed amendment would take effect within 2 years after ratification by three-fourths of the States, or by 2002, whichever comes later. It is significant that 48 States, including my home State of South Dakota, have constitutional provisions limiting their ability to incur budget deficits. Such constraints have proven workable in the States.

It is not surprising that a large majority of persons throughout the country who have been polled on this issue support a balanced budget amendment. Certainly, a large majority of South Dakotans from whom I have heard and with whom I have met urge that this resolution be adopted. They know it is the only way to achieve balanced Federal budgets and reduction of the national debt. I hope, Mr. President, our colleagues will bring that about.

Mr. LEAHY. Mr. President, during the past few days, I have been dismayed at the attempts of the proponents of this constitutional amendment to find a fix to pick up a vote or two in order to obtain passage. It may make for high drama, but it also makes for bad law. This is the United States Constitution that they are seeking to amend and its provisions should be carefully crafted, studied and considered. Back rooms and political dealmaking have no place in amending the Constitution.

At the center of these desperate negotiations has apparently been a belated effort to jerryrig some type of budget resolution or implementing legislation to protect the Social Security trust fund from being used to balance the budget under this so-called balanced budget amendment. This is absurd.

The language of House Joint Resolution 1 is very clear. Section 1 states: "Total outlays for any fiscal year shall not exceed total receipts for that fiscal year.* * *" And section 7 states: "Total receipts shall include all receipts of the U.S. Government except those derived from borrowing. Total outlays shall include all outlays of the U.S. Government except for those for repayment of debt principal." The undisputed reading of this language is that the Social Security trust fund will be covered by this constitutional amendment.

In addition to the unambiguous language of the constitutional amendment itself, the legislative history of House Joint Resolution 1 makes it clear that the Social Security trust fund is not protected. In fact, the proponents have fought back all efforts in the Senate Judiciary Committee to amend the same language in Senate Joint Resolution 1 and all amendments offered here on the Senate floor over the past month.

During Senate Judiciary Committee consideration of this constitutional amendment, Senator FEINSTEIN offered an amendment to exclude funds going in and out of the Social Security trust fund from the definition of total receipts and total outlays. Unfortunately, a majority of members of the Senate Judiciary Committee tabled Senator FEINSTEIN's amendment by a vote of 10 to 8 on January 18, 1995.

During the Senate debate on House Joint Resolution 1, Democrats offered two separate amendments to take Social Security off the table. Senator REID offered an amendment to this constitutional amendment that would have legally protected the Social Security trust fund by excluding it from the definitions of total outlays and total receipts in section 7 of House Joint Resolution 1. But that amendment was tabled by a vote of 57 to 41 on February 14, 1995.

Just a few days ago, Senator FEINSTEIN offered a substitute balanced budget amendment that again would have legally protected the Social Security trust fund by excluding it from the definitions of total outlays and total receipts in the substitute amendment. Again, the proponents of this constitutional amendment tabled the Feinstein substitute amendment by a vote of 60 to 39. Whether the Tennessee Valley Authority is exempted and placed "off budget" may be in doubt, but there is no doubt that the Social Security trust fund is included by the proponents of this constitutional amendment.

Trying to craft some type of subsequent, legislative fix is folly. No court in the country would enforce a statute that tries to overrule the clear language of a constitutional amendment and the clear legislative history supporting that language. The only way to protect the Social Security trust fund from this so-called balanced budget amendment is to write that protection into the text of House Joint Resolution 1 itself. There is no other legally sound or enforceable way.

Moreover, any follow-up legislative effort to protect Social Security could be changed at any time by subsequent legislation and would offer no permanent protection. Unlike an amendment to the Constitution of the United States, a simple majority of Senators, or in the case of legislation changing the Budget Act 61 Senators, could change legislation trying to take Social Security off the tale. The legislation would fall far short of the protection of having something enshrined in the Constitution, which the Founding Fathers purposely made difficult to amend.

If proponents are finally willing to offer real protection for Social Security, why do it with only a budget resolution or statute? And if that is good enough for Social Security, why not cut the deficit through the same mechanism?

Let us be honest with the American people. The real reason the proponents of this so-called balanced budget amendment refuse to protect Social Security in the constitutional amendment itself is that they have no intention of protecting Social Security. Proponents of this constitutional amendment plan to use the annual surpluses in the Social Security trust fund to mask the true deficit. To make it easier to thump their chests that the budget is balanced, the supporters of this constitutional amendment hope to raid the $705 billion in annual surpluses in the Social Security trust fund that will accumulate between now and 2002.

It was most revealing that their recent offer to compromise with Senators CONRAD and DORGAN on this point was to stop counting the surpluses in the Social Security trust fund in 2012, or about the time that those surpluses are projected to dry up.

Let us put an end to this foolishness. Either protect Social Security in the language of House Joint Resolution 1 or not, but quit playing games with the Constitution of the United States. I have argued since this measure began being considered that we needed to tackle the important questions of implementing legislation first. But the proponents of this measure have refused. They remain prepared to leave every concern and serious problem for later.

But their mantra, that fundamental flaws in the constitutional amendment itself can be fixed in implementing legislation, rings hollow. Even if we believed their sudden change of heart on these mattes signalled a real change in philosophy, some problems created by the amendment cannot be corrected in mere implementing legislation. The Constitution defines the ground rules, and the Constitution overrules any contradictory implementing legislation.

Let us bring this sorry spectacle to an end. Let us vote to defeat the so-called balanced budget amendment. Maybe then the Senate could get past this slogan of an amendment and let us get on with real business, making the tough choices needed to take real action to reduce the deficit.

Mr. BIDEN. Mr. President, last week I announced my decision to support the balanced budget amendment.

I rise today to explain my choice.

Considering amendments to our Constitution is one of the Senate's most profound responsibilities. Our Nation has made only 17 such changes since the Bill of Rights was ratified over 200 years ago.

But in recent decades a structural imbalance has occurred in the way the Federal Government finances its operations. Each year, we find ourselves deeper and deeper in debt, with no reasonable prospect for constraining either the deficit or the debt.

We cannot balance our budget. Or, more precisely, we will not.

As I considered the balanced budget amendment as a possible solution to this problem, I had to first answer an important question—Is this an issue worthy of constitutional consideration?

From the point over 10 years ago when I offered my own constitutional amendment to balance the Federal budget, up to my vote for Senator REID's balanced budget amendment last year, I have held that this is an issue worthy of constitutional consideration.

The decision to encumber future generations with financial obligations is one that can rightly be considered among the fundamental choices addressed in the Constitution.

If this issue meets the test of constitutional significance, Mr. President, then is House Joint Resolution 1 the way to address it?

Mr. President, many of my colleagues, whose very valid concerns I have shared, have honored this Chamber with an eloquent presentation of the problems this particular amendment could cause.

I will respond to some of those arguments later.

But none of their arguments has overcome my concern for the future of our Nation's economy—for the country we will pass on to our children.

After so many years of seeking alternative solutions, I can see no other reasonable prospect for sharply curtailing the debt than the adoption of this amendment into our Constitution.

Mr. President, it is one thing to have deficits of $20 to $40 billion per year, which we could live with for the foreseeable future. But it is quite another thing to have deficits of $200 to $400 billion. And just 6 years from now, Mr. President, $400 billion is just what our deficit will be, not counting the surplus in the Social Security trust fund.

Under these extraordinary circumstances, it seems reasonable to me to require an extraordinary majority of Congress to continue deficit spending.

Even if this amendment passes and is ratified by the States, I know that we will continue to have some deficits. It is the potential size of deficits that bothers me; there is nothing sacred about a balanced budget.

But if we do decide to add to our national debt, it should be for important reasons, such as managing recessions or natural disasters—or securing the future well-being of our children—for reasons that can command the support of three-fifths of both Houses.

Over a decade ago, Mr. President, we strayed from the course that had, since the end of World War II, shrunk the national debt as a share of our economy. Since the early 1980's, we have foolishly, and significantly, increased our national debt year after year.

In 1980, Federal debt held by the public totalled $710 billion, and the interest we paid on the debt was $52 billion. This year, that debt has reached $3.6

trillion, and our interest payments will be $234 billion.

Recognizing the folly of this course, in 1984 I proposed a freeze on every program of the Federal Government—across the board. Although I wrote the plan with two Republican Senators, we received little support for the proposal, from either side of the aisle.

By the way, I am convinced, Mr. President, that had we acted then, the harm to many of the programs that I hold dear, responsibilities that moved me to enter public life, would have been softened.

As it is, without the freeze—that we were warned would harm so-called liberal programs—I have had to watch as those programs have gone through the wringer.

In 1981, when we lost control of the deficit, human services programs were 8.6 percent of Federal outlays. A decade later, they were 6.9 percent, a 20-percent reduction in their share of spending.

In 1981, education, training, employment and social services were 3.7 percent of Federal outlays. Over the next decade, as deficits and interest payments grew, they shrank to 2.3 percent, a 40-percent cut in their share of Federal spending.

After failing to pass the freeze, in the hope of restoring some discipline to our finances and reducing the deficit, I supported the Gramm-Rudman process, that put caps on the amount of deficit allowed, and required a balanced budget.

But the requirements changed every year; the only constant in the process was the annual increase in the national debt, and the guarantee of annual deficits.

And in 1993, we passed an historic budget agreement at the beginning of the Clinton administration, that will cut $500 billion from our deficits over 5 years. The healthy economy that followed passage of that plan has meant even more deficit savings.

If I thought that we could sustain this trend, Mr. President, I would withhold my support for this amendment.

But, what was the political response to that serious deficit reduction plan? It was denounced by those who now claim they want to attack the deficit.

That plan was passed by a single vote in both Houses, without one Republican vote. Moreover, that plan has been used by so-called deficit hawks to defeat the very Members of Congress who had the courage to vote for it.

And now we see again a plan by the new majority for tax cuts, defense increases—including star wars—and, of course, the promise of a balanced budget.

Mr. President, I've read this story before. We are all living out the consequences of the first time we tried that program.

It is clear now that there are no options left before us to turn the short-term success of the 1993 budget plan into a longer-term program to bring down future deficits.

And there are no other options to force those who voted against deficit reduction back then to face the consequences—requiring them to look at everything including revenues rather than continue the charade that the only thing we need to do to balance the budget is to cut foreign aid and AFDC.

Because they—and we—have been so successful in misleading the American people about the problem, those aspects of the Government's responsibilities that I entered public life to support have already been badly harmed as a consequence of these gigantic deficits: children, education, fighting crime and drugs, supporting organizations that promote international stability.

And those areas of the budget that need help the least—tax loopholes for the privileged, exotic weapons systems, people who aren't middle class or poor but who make money off of their programs—those have done the best.

I offer as evidence the recent votes in the House. Now, without the balanced budget amendment, our fiscal disarray is the pretext for cuts in school lunches, infant nutrition, the successful and effective Head Start Program, and educational programs that our future depends on. Do my friends who share my values—who share my indignation at this disregard for those least able to help themselves, this shortsighted slighting of the future—do they really believe that if we were to vote down the balanced budget amendment that those legislative priorities would change?

I am convinced—reluctantly—that unless we use this opportunity to try to restore control over our finances, we will not be able to re-establish our priorities.

Our fight is not—or should not be—against making deficit spending a more difficult choice.

Our fight, with or without a balanced budget amendment, is against those who would walk away from Government's responsibilities and who will sacrifice the future for short-term political advantage.

Despite the shrinkage in those programs in recent years, we still face a future of increasing national debt, and rising annual deficits, and those programs and responsibilities I feel most strongly about will continue to take the hits.

This year alone, we will pay $234 billion in interest on the debt. By 1997, interest will be $270 billion—more than either our defense or domestic spending.

If this trend is unsustainable—and it is—and if the hard choices we make are turned against us—and they are—What, then can we do?

I have concluded, Mr. President, that there is nothing left to try except the balanced budget amendment, forcing everything onto the table, and requiring us to justify why some areas have escaped the budget ax so far.

But what of the many arguments against this amendment—concerns that I have shared in the past. Let me explain my thoughts on some of those concerns today.

Mr. President, one of the strongest practical arguments raised against the balanced budget amendment is that it will cost us our ability to respond to recessions.

There are two points that I want to make in regard to that serious charge. First, the sad fact is that we have already lost that flexibility—by making deficits the norm in good times and in recessions. Until we regain control of our finances, deficits will remain an unintended consequence of our budget process, not a selective policy choice.

Second, Mr. President, even under the constraints of this amendment, it is possible to provide that flexibility. In Delaware, we have built a two percent surplus into each year's budget, to assure that we can cover unforeseen events that could raise spending or reduce revenues.

We could do that with the Federal budget, and restore its important stabilizing role, a role that is now lost in the annual red ink. This is not something that appears to be a realistic option in the near term, but if that is the only way to restore the effect of automatic stabilizers in the Federal budget, we will be able to choose that option.

This amendment will make automatic stabilization more difficult, but it will remain our choice to restore that function of the Federal budget to its former effectiveness.

There are other concerns that I share with my colleagues who oppose this amendment.

Together, we tried to make this a better proposal. I believe that this amendment could be improved by changes I have supported here on the floor and in the Judiciary Committee.

We tried to keep the Social Security trust fund off budget, where it is now, and where it should stay. We failed to pass that amendment, and this will allow us to continue to mask the current deficit with funds that are needed to meet future obligations.

I believe that this failure takes us further from the truth about our real deficit problems, and further from the truth about the very real problems in the Social Security system itself.

But let me stress for those who are concerned about the effect of this amendment on the Social Security system—this change in our Constitution does not, by itself, cut a dime from current benefits.

Under current rules, Social Security is now off budget, but by law its surpluses still go to purchase the accumulating pile Treasury bonds that we will have to pay off in the future.

Taking Social Security out of the balanced budget amendment would not change that aspect of the system, or prevent tampering with the commitments we have made in the past.

My concern, in addition to the ways in which that accumulating surplus will distort our definition of the budget, is that this amendment will increase the temptation to use the Social Security system to make the rest of the budget appear more balanced.

This is a valid reason to try to insulate Social Security from that temptation—but not reason to renounce what I have concluded is our last chance to restore control over our country's financial future.

We also tried, Mr. President, to assure that the real costs of a balanced budget amendment, and not just its surface allure, are apparent to the citizens who will be asked to ratify it in the coming months.

And we tried to provide a capital budget—to treat public investments the way families, businesses, and States treat their investments. And we failed.

But I want the record to show that we are not prohibited by this amendment from devising a capital budget. I predict that events and experience will show us that a capital budget is essential to setting priorities, and that we will find a way to fit such a process into our budget system.

We tried to avoid a potential shift in the constitutional balance of powers by ensuring that only the Congress would enforce a balanced budget, Mr. President, and we tried to avoid tying up the courts with constitutional questions about the President's role in enforcing a balanced budget.

Mr. President, I believe that these constitutional issues remain the greatest risk we will take when we add this amendment to our Constitution.

Now, with the acceptance of Senator Nunn's amendment, Mr. President, some of my concern on that issue has been relieved.

So where do we stand?

We can vote for this less than perfect amendment, that requires 60 percent majorities to permit deficits—and I predict that we will choose to permit those deficits, but smaller deficits, and less frequently, than before.

Or, Mr. President, we can continue to add every year to the debt burden of future generations.

We will steal today from the next generation, squeezing out the savings and investment that could increase future wealth.

We will continue to tie our own hands, to restrict our own ability—indeed, our responsibility—to set priorities in our annual budget process.

This year, interest on the national debt will cost the United States $234 billion; the entire domestic discretionary budget will be $253 billion.

By the time this amendment is intended to become law, in the year 2002, interest on the debt will be $344 billion, larger than every other category in the budget except for Social Security.

Given that prospect, Mr. President, I choose to take a chance on the balanced budget amendment.

I hope that reverence for the Constitution and the procedural roadblocks in the amendment will establish an ethic of budget balance and a new, responsible, tradition will grow from the action we take here today.

But only history will tell.

But I have sufficient confidence in our citizens and in our political institutions that we will learn from any flaws that remain in this amendment, and will make the best of its virtues.

Two hundred years of American history tells me it is right to have that confidence.

But at the end of the day, Mr. President, I am willing to take the first step today down this new path. I will vote for the balanced budget amendment, but I will do so with my eyes open.

It is not the panacea some of its proponents have advertised, but neither is it the plague its opponents have portrayed.

For me, it as a reluctantly chosen opportunity to regain responsible control over our affairs.

And I hope that the record of my words and actions on this amendment will help my fellow citizens, both in my State of Delaware and in the other States, as they consider its ratification.

I hope that they consider fully the record of debate we have worked to establish here in the Congress. That record should make us all, on both sides of this profound issue, proud.

Mr. NUNN. Mr. President, on Wednesday, March 1, a story in the Washington Post discussing my judicial review amendment to the balanced budget amendment referred to the views of Prof. Kathleen Sullivan of the Stanford Law School. The views of Professor Sullivan, as reported in the Post, could be viewed as critical of my amendment limiting judicial review. That would not be an accurate reflection of Professor Sullivan's views.

I received a letter from Professor Sullivan yesterday in which she notes:

> I have had the opportunity to read your remarks in the floor proceedings yesterday, and agree with you completely that it would be imprudent to pass the [Balanced Budget] Amendment in the mere unfounded hope that courts would not entertain lawsuits arising under it. Addressing the judicial review issue squarely, as you did, is plainly a step in the right direction.

I ask unanimous consent that the text of the letter from Professor Sullivan and the article in the Post be printed in the RECORD.

Mr. President, I am pleased that the Senate overwhelmingly adopted the amendment to limit judicial review under the balanced budget amendment. My amendment will ensure that no court interjects itself into the balanced budget process except as specifically authorized by Congress.

I look forward to working with the chairman of the Judiciary Committee, Senator HATCH, in drafting implementing legislation, including implementing legislation on the subject of judicial review. To the extent that Congress exercises the authority in the amendment to regulate the judicial role, there are ample precedents for statutory provisions to ensure that judicial review does not interfere with the taxing and spending powers of Congress. These could include, for example, providing exclusive jurisdiction in the Federal courts or in a designated Federal court; removal to Federal court of any case filed in a State court; and restriction of the remedies, if any, that a court could grant.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STANFORD LAW SCHOOL,
March 1, 1995.

Senator SAM NUNN,
U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: Congratulations on your success yesterday in persuading your colleagues of the danger that the Balanced Budget Amendment, in its unamended form, would unwisely transfer constitutional authority from the Congress to the courts. I have had the opportunity to read your remarks in the floor proceedings yesterday, and agree with you completely that it would be imprudent to pass the Amendment in the mere unfounded hope that courts would not entertain lawsuits arising under it. Addressing the judicial review issue squarely, as you did, is plainly a step in the right direction. I am glad that you found my letter useful in addressing this issue.

You may have read me quoted in the Washington Post this morning as saying that your amendment renders the Balanced Budget Amendment more an "exhoration" than an "enforceable requirement" along the lines of many other constitutional provisions. While this quote is accurate, it leaves out my further comment to the reporter that the Balanced Budget Amendment is, for that very reason, better with the Nunn Amendment than without it. While I continue to believe that there are strong reasons not to tamper with the existing constitutional machinery in this area at all, I believe that any measure that reduces the net transfer of power from the legislative to the judicial and executive branches is desirable.

Very truly yours,
KATHLEEN M. SULLIVAN.

[From the Washington Post, Mar. 1, 1995]

DOLE DELAYS BUDGET AMENDMENT VOTE

ONE SUPPORTER SHORT OF PASSAGE, GOP PRESSED HOLDOUT DEMOCRATS

(By Eric Pianin and Helen Dewar)

Senate Majority Leader Robert J. Dole (R-Kan.) last night abruptly put off a final vote on the proposed balanced budget amendment after GOP leaders failed in a desperate daylong bid to pluck the critical 67th vote from among wavering Democrats.

Faced with almost certain defeat, Dole delayed the vote—until today or perhaps later in the week—to buy time while Republicans stepped up efforts to win over one of a handful of Democrats, particularly North Dakota Sens. Kent Conrad and Byron L. Dorgan, who have demanded changes in the measure to protect Social Security as well as other safeguards.

Sen. Robert C. Byrd (D-W.Va.), a leading opponent of the measure and a senior figure in the Senate, lashed out at Dole for postponing the vote, charging that Republicans appeared to be engaging in "a sleazy, tawdry effort to win a victory at the cost of amending the Constitution of the United States." Byrd charged that Dole's action flouted a unanimous agreement to hold the critical vote yesterday, following more than a month of intense debate.

"This is a sad spectacle," Byrd said.

"I think the sad spectacle is that we may lose this vote," Dole retorted.

Dole refused to back down, saying there was still a chance Republicans could recruit at least one more senator to help pass the amendment by the two-thirds majority required. He said that in the wake of last fall's elections, when Republicans swept to control of Congress pledging to balance the budget and make dramatic changes in the face of government, the Senate owed it to the American people to make one more try.

"We still think there's some chance of getting this resolved by tomorrow and getting 67 votes," Dole said. "If we fail, we fail."

Dole's decision came after an extraordinary day of back-room dealing in which Dole, Senate Judiciary Committee Chairman Orrin G. Hatch (R-Utah) and other leaders pleaded with and cajoled every Democrat they could collar.

Republican leaders had assumed until early yesterday that the key to winning passage of the amendment was appeasing Sen. Sam Nunn (Ga.), a highly influential Democrat who had threatened to oppose the measure unless it was changed to prohibit the courts from intervening in future congressional tax and budget matters.

But even after Dole and other GOP leaders relented and the amendment was revised to satisfy Nunn and one other waffling Democrat, Sen. John Breaux (La.), Republican vote counters still came up one vote shy of the two-thirds majority.

In the end, it came down to whether Republicans could win the support of one or both of the Democrats from North Dakota. While the packed Senate chamber buzzed with anticipation during a half hour quorum call last evening, Conrad moved back and forth between the Republican and Democratic cloakrooms, conferring with each side.

Conrad had vowed to oppose the constitutional amendment unless it were rewritten to guarantee that the budget would not be balanced by using the Social Security trust fund. He also has advocated other changes, including language to ensure that Congress has some flexibility in responding to economic crises.

At one point, Conrad, Dorgan, Sen. Wendell H. Ford (Ky.) and other Democratic holdouts rejected a pledge from Dole and House Speaker Newt Gingrich (R-Ga.) that Congress would pass the Social Security guarantee in later legislation. But Republicans said they were still discussing ways of trying to guarantee passage of the bill protecting Social Security.

Hatch said last night that for a while it appeared Republicans could reach agreement with Conrad on the Social Security issue, but talks broke down when Conrad said he also wanted an exclusion for economic emergencies. Republicans said they hoped to pick up Dorgan's support if Conrad agreed to back the amendment.

Last night's dramatic developments capped five weeks of heated debate and political maneuvering over the amendment, which requires a three-fifths majority of both houses before Congress could spend in excess of projected revenue, except in times of war.

The House approved the amendment in late January, 300 to 132. While the overwhelming support in the House reflected the broad popular appeal of the measure in the abstract, Senate Democrats, who hold the balance of power in passing or defeating it, have played on voter concerns that Social Security, Medicare and other politically sensitive programs would become vulnerable if the amendment were adopted.

Others warned that it would dangerously alter the balance of power in Washington, hamstringing Congress in times of economic crisis and giving the president the upper hand in controlling spending.

"The amendment is so full of flaws, so reflective of flabby thinking, so arrogant in its disregard for the traditional checks and balances and separation of powers that its consequences could be nothing short of calamity," Byrd said. Senate Minority Leader Thomas A. Daschle (D-S.D.) described it as a "shoot-now, ask-later approach" that Congress will regret.

Nunn's provision was the only change that Democrats succeeded in making in the amendment; Republicans said they agreed to it after getting assurances that the House will accept it.

The provision would be unique in the Constitution. By removing the balanced budget requirement from the jurisdiction of federal courts, it would enable only Congress to enforce the amendment's provisions.

"This is like tying yourself to the mast but ensuring that you can untie yourself any time," said Stanford University law professor Kathleen M. Sullivan. Laws "only work when there is pressure. [The Nunn amendment] renders the balanced budget amendment an exhortation to the Congress to be good, rather than an enforceable requirement."

The tension-filled day began with an early morning meeting in which Hatch and Sen. Paul Simon (D-Ill.), a major proponent of the measure, told Nunn they would accept his proposal, reflecting a decision reached by Dole the night before that this was the only way to win passage of the amendment.

On the floor, Breaux, another of the Democrats who had been uncommitted, announced he would vote for the constitutional amendment as long as it was changed to include Nunn's proposal. In a soft voice, Hatch then said he would be willing to accept Nunn's proposal. The night before, Hatch had fervently vowed to oppose any change in the amendment's language, even if that meant its defeat. Nunn thanked Hatch and said he would now vote for the amendment.

But Nunn had hardly sat down before Dorgan was on the floor, saying he could not vote for the amendment unless Congress made clear in advance that it was not going to tap the Social Security trust fund for revenue to balance the budget.

While Democrats were resisting Republican entreaties, Senate GOP freshmen trooped into the chamber, sitting in a group in the back two rows, a visible reminder of the political earthquake that brought them to Congress and the balanced budget amendment to the forefront of the agenda of the new GOP majority.

Sen. Rick Santorium (R-Pa.) got right to the heart of their political message: "The people who will stand in the way of this balanced budget amendment today will not be around long to stand in the way next time. It will pass. It is just a matter of when."

Mr. CRAIG. Mr. President, I rise in support of House Joint Resolution 1, the bipartisan, bicameral, consensus balanced budget amendment to the Constitution.

There are many individuals who deserve special recognition for their efforts on behalf of this amendment—more than it is possible to include here at one time.

I want to begin by commending the former chairman of the Judiciary Subcommittee on the Constitution, the senior Senator from Illinois [Mr. SIMON]. He has toiled for many years in this vineyard. In this area, and in many others, Congress will miss his courage and leadership—and we all will miss his warmth—when he retires at the end of the 104th Congress. His staff, particularly Aaron Rappaport on the Judiciary Committee, have always been professional, hardworking, and invaluable to this effort.

It would not have been a debate on the balanced budget amendment without the able leadership of the President pro tempore of the Senate, Senator THURMOND of South Carolina. He has always been ahead of his time, as he was some 40 years ago when he first arrived in this body and became a principal sponsor of the balanced budget amendment.

I also want to recognized the chairman of the Judiciary Committee, Senator HATCH of Utah, and his skilled and helpful staff. Senator HATCH is an estimable constitutional lawyer, a skilled floor manager, and a long-time leader in this effort.

On the committee, on the floor, and at every step, the Senators from Alabama [Mr. HEFLIN] and Illinois [Mrs. MOSELEY-BRAUN] have poured much time and dedication into this effort for years.

Many more Senators deserve recognition. I think almost every one who votes "aye" today on final passage has done a lot of additional work on behalf of this amendment. I don't know when I've seen so many give so much for so worthy a cause.

Finally, I must recognize our distinguished majority leader, Senator DOLE of Kansas, the principal sponsor of Senate Joint Resolution 1, this measure as introduced and reported in this body. Without his guidance and leadership, the movement to pass this amendment would have faded long ago. I also appreciate the long hours and capable work put in by this staff over these recent, arduous weeks.

This extraordinary accomplishment, a bicameral, bipartisan, consensus version of the most important legislation, never could have come this far without the leadership and courage of my former colleagues in the other body, Representatives CHARLIE STENHOLM of Texas and DAN SCHAEFER of Colorado. When the House made history last month by passing this amendment for the first time in its history, it could not have happened without the blood, sweat, and dedication of these two statesmen.

Representative STENHOLM was my cofounder, 11 years ago, of CLUBB—Congressional Leaders United for a Balanced Budget, an informal bicameral group formed to keep this amendment alive after a decisive House defeat in 1982. Pete Wilson of California was our first Senate cochair. Former House CLUBB cochair JIM INHOFE of Oklahoma is now a Member of this body, as are other veteran House leaders, including Senators SNOWE of Maine and KYL of Arizona.

In language as well as congressional support, the language before us today has a long and distinguished pedigree.

Outside Congress, this amendment is supported by a great groundswell of public support and grass roots activism.

Otherwise the balanced budget amendment would not have come back after losing in the House in 1982 and the Senate in 1986. Otherwise it would not have come to the floor of one Chamber or the other a combined total of seven times in the last 5 years—in 1990 in the House, in 1992 in both bodies, in 1994 in both bodies, and this year in both.

While a great many citizens, taxpayer groups, public interest organizations, and trade associations have supported this movement over the years, particular emphasis should be given to the work of the National Taxpayers Union and, particularly, within that organization, to Mr. Al Cors, the chairman of the nationwide Balanced Budget Amendment Coalition.

I ask unanimous consent that, Mr. President, that at the end of my statement I may include correspondence from that Coalition supporting House Joint Resolution 1, as well as from other organizations.

THIS IS THE VOTE THAT COUNTS; DO WE TRUST THE PEOPLE?

Mr. President, when the 55 delegates to the Philadelphia Convention of 1787 convened at Independence Hall, they came with 55 perfect Constitutions for the young republic. They emerged with one version that, from any one of their points of view, was less than perfect.

But more than 200 years of history have shown that imperfect version, full of compromise and an occasional complication, has been eminently workable, has endured, and has remained a model for the world.

No matter how any of my colleagues may have voted on any amendment earlier, you now have a chance to pass an amendment that unites the underlying principle of virtually all versions of the balanced budget amendment.

No matter what any one of my colleagues would have wanted in your perfect version of such an amendment, we now have just one balanced budget amendment remaining before us.

The only effective balanced budget amendment is the one that passes.

Your constituents will understand, and I know you understand: Vote no, and you kill the only chance for an amendment, here and now.

Vote yes, and you will carry forward one of the great debates of our age. This amendment will go back to the House of Representatives, and from there to every State capital.

That's what this vote is really about—engaging the American people in the most sweeping public debate about the appropriate size, scope, and role of the Federal Government since the original Bill of Rights was sent to the States by the First Congress.

The question is clear: Do we trust the people with that debate? Do we trust the 80 percent of the people who demand this amendment? Do we trust the voters who demanded last November that the Federal Government change its ways?

This Senator does trust the American People.

That's why we have this process of amending the Constitution—because the Constitution is the people's law, not the government's law, and because the people have a right to take part in such a momentous debate.

FUNDAMENTAL RIGHTS, LIMITS ON GOVERNMENT

Before I start responding to points made in debate over the last few days, I want to refocus us on why we are here considering this amendment, in the first place.

A constitution is a document that enumerates and limits the powers of the government to protect the basic rights of the people. Within that framework, it sets forth just enough procedures to safeguard its essential operations. It deals with the most fundamental responsibilities of the government and the broadest principles of governance.

Our balanced budget amendment, House Joint Resolution 1, fits squarely within that constitutional tradition.

The case for the balanced budget amendment can be summed up best as follows:

The ability of the Federal Government to borrow money from future generations involves decisions of such magnitude that they should not be left to the judgements of transient majorities.

The right at stake is the right of the people—today and in future generations—to be protected from the burdens and harms created when a profligate government amasses an intolerable debt.

The Framers of the Constitution recognized that fundamental right. I return once more to the words of Thomas Jefferson, who explicitly elevated balanced budgets to this level of morality and fundamental rights when he said:

> The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves.

Woodrow Wilson said, "Money being spent without new taxation . . . is as bad as taxation without representation."

Mr. President, deficit spending is taxation without representation. Americans are told that deficit are Uncle Sam's way of giving them a free lunch, providing $1.18 worth of government for just $1.00 in taxes. In reality, taking gross interest into account, the government has to spend $1.19 for every $1.00 of benefits, goods, services, and overhead in the budget.

THE DEBT IS THE THREAT

Even as we speak, we are adding to the Federal debt: $829,440,000 a day, 34,560,000 an hour, 576,000 a minute, and 9,600 a second.

In its January baseline, the Congressional Budget Office projects that annual Federal deficits will grow from $176 billion this year to more than double that amount, $351 billion, in fiscal year 2003, and to $421 billion by fiscal year 2005.

Deficits are really the cruellest tax of all, since they never stop taking the taxpayers' money. Americans are paying now, with a sluggish economy, for the Government's past addiction to debt. According to the Federal Reserve Bank of New York, the deficits of the 1980's already have depressed our standard of living by 5 percent. Unless things change, the next generation will pay even more dearly.

According to the National Taxpayers Union, for each year with a $200 billion deficit, a child born today will pay $5,000 in additional taxes over his or her lifetime.

The President's own fiscal year 1995 Budget, in its "Analytical Perspectives" volume, projects that future generations will pay as much as 82 percent of their lifetime incomes in taxes, under the current policies of borrow-and-spend.

In 1992, the nonpartisan General Accounting Office issued its report, "Budget Policy: Prompt Action Necessary to Avert Long-Term Damage to the Economy." At that time, GAO projected that failure to take action on the deficit and the growing debt would produce a stagnant—even slightly declining—standard of living for Americans in the year 2020. In contrast, GAO said that simply balancing the Federal budget by 2001, and keeping it balanced, would raise our children's standard of living by 36 percent.

GAO and the Congressional Budget Office now project lower deficits, as a result of their scoring of last year's budget plan. However, the intermediate- and long-term deficit outlook has done no better than decline form cataclysmic to intolerable.

The current CBO baseline looks a great deal like—indeed, a little worse than—GAO's muddling through scenario report, in which the deficit is held at 3 percent of gross domestic product.

Under this muddling through scenario, our children's standard of living in 2020 would be 7 percent lower and the Federal debt would be 3 times larger than if the budget is balanced by 2001.

Our national economic policy should not be one of muddling through.

Even that scenario is based on somewhat optimistic assumptions. Interest rates are now near a 30-year low. If they bounce back upward some, the cost of interest payments on the debt will explode. Senator MURKOWSKI had a chart out here on the floor during this debate that displayed that graphically.

So, we must keep in mind that small changes for the worse in our economic picture over the next few years will make the deficit picture far worse.

Today, Federal budget deficits are the single biggest threat to our economic security. The Federal debt now totals $4.8 trillion, or about $18,500 for every man, woman, and child in America, and is growing.

As deficits grow, as the national debt mounts, so do the interest payments made to service that debt. Besides crowding out other fiscal priorities, these amount to a highly regressive transfer of wealth. About 20 percent of these payments go overseas.

Interest on the Federal debt is largely a transfer from middle-income taxpayers to large institutions, banks, corporations, wealthy individuals and foreign investors.

In fact, interest payments to wealthy foreigners make up the largest foreign aid program in history. According to the President's budget, in fiscal year 1994, the U.S. Government sent $44.5 billion overseas in interest payments. That's more than twice as much as all spending on actual international programs, including foreign aid and operating our embassies abroad, which totalled about $21 billion. Also in fiscal year 1994, 33.9 percent—$62.6 billion—of the dollars borrowed from the public came from overseas.

Annual gross interest on the debt now runs about $300 billion, making it now the second largest item of Federal spending, and equal to about half of all personal income taxes.

THE FRAMERS' ASSUMPTIONS

The Framers thought that the limited size and enumerated powers of Government, the limits on the money supply created by a gold standard, the moral imperative of the unwritten constitution, and the House's exclusive power to originate bills raising revenue all would protect this right. Jefferson would have preferred to put this protection in the Constitution. But others at the time viewed the idea that a restraint on indebtedness would be needed as being beyond belief.

Times have changed, as have the nature of government, monetary policy, and politics. The original constraints that protected the people from a profligate government, all of which had constitutional status, have all but dissolved. It's now about 60 years past time to replace them.

POLITICAL WILL

Critics of the balanced budget amendment argue that all we need is the political will, the leadership to balance the budget. That argument ignores the reality that the way the Federal Government makes its economic and political decisions has changed fundamentally over the last two generations.

The system is broken. The Government has spent more than it has taken in for 57 of the last 65 years. The budget was last balanced in 1969, and in 1960 before that. We are not talking here about some short-term failure of will that was cured with the last election or will be cured with the next one.

The impetus to borrow and spend has become a structural one in our system of government. It is a constitution-class crisis that demands a constitution-class solution.

NOT NARROW POLICY, BUT PERFECTING DEMOCRACY

The balanced budget is not narrow economic or fiscal policy. It is structural, systemic change that would help perfect representative democracy.

Over the last two generations, the political and budget processes have evolved in such a way that virtually all of the political rewards are for spending more and borrowing more. Narrow, highly organized, interest groups mobilize to reward spending increases for specific constituencies. The more general, public interest in restraining the size and fiscal appetite of government has been put at a systematic disadvantage.

The only way to put the general public interest back on a level playing field with the special interests is to make it harder to borrow and spend.

That's what our amendment does. For the first time, it creates accountability by requiring that deficits occur only when Members of Congress cast an identifiable vote to run a deficit.

By providing for accountability and by restoring the general public interest to a stronger representative voice, our amendment actually perfects our democratic process.

The essence of this reform is that we finally restore the principle that the government should grow no larger than the people are willing to pay for and we should pay for all the government we demand.

It's often said that Congress underestimates the wisdom of the people. Well, the people have spoken once again, and it's time for Senators to realize that, today, as is usually the case, good policy is good politics. The American people understand the balanced budget amendment, they want Congress to pass it, and they are right.

MAJORITY RULE

One of the curious objections raised against the balanced budget amendment is that it would threaten majority rule.

Those that dwell on the difficulty of getting three-fifths majorities to unbalance the budget or raise the debt limit are missing the point: They are still thinking, "What do we need to do in order to keep deficit spending?"

That's why we put supermajorities in the amendment—not just to make it harder to deficit spend and increase the debt, but to deter Congress from deficit spending in all but legitimate and extraordinary circumstances. Under our amendment, when you balance the budget, you don't have to worry about mustering a supermajority.

Such a requirement is consistent with other provisions in the Constitution. Freedom of speech is protected by a supermajority requirement. So is freedom of religion. So is the right to keep and bear arms and every other right in the Constitution.

Because it takes supermajorities to amend the Constitution, every right protected in the Constitution by limiting the power of government is protected by supermajorities.

In addition, as has been noted by both sides in this debate, specific supermajorities are written into several procedures in the Constitution, including treaty ratification and overriding vetoes.

In our amendment, we create procedural restraints on the Federal Government to protect the right of the people to be free from excessive government debt. We use 60 percent supermajorities instead of two-thirds or absolute prohibitions because we foresee that the process will need to be flexible on occasion.

The Framers wanted to protect majority rule for the transaction of most of the Government's business. But sometimes, to protect fundamental rights or the integrity of specific process, they employed supermajority requirements to protect against, in the words of the Federalist Papers, a tyranny of the majority.

Let's look at the will of the majority from one more angle.

Two-thirds to four-fifths of the American people want the balanced budget amendment. Clear majorities of Congress want it. If it doesn't pass today, if it doesn't go the American people for a full public debate, it will be because a minority has blocked it here.

DISASTER ASSISTANCE

Some are concerned about whether requiring a three-fifths vote to deficit spend would thwart efforts to deal with natural disasters. From 1978–94, supplemental disaster appropriations topped $7 billion in only 1 year, 1992. We generally are talking about a very small portion of the Federal budget.

As Senator SIMON and others have suggested, creating a small disaster revolving fund, or for that matter, just planning to run small surpluses, would be sufficient to meet such needs.

On the other hand, Congress also has a history of dealing promptly and compassionately in such situations. Only one time over the last 15 years did a disaster bill fail to clear either body with less than a 60 percent majority. That was in 1992, in the House, amid much contention over the Budget Enforcement Act firewalls, the balanced budget amendment and other issues. And that bill fell only one vote short of 60 percent.

Congress is not going to turn its back on natural disaster victims under this amendment. To suggest it will is to ignore reality and history.

SEPARATION OF POWERS

Perhaps the most curious concern I have heard raised about the Simon-Hatch-Craig amendment is that it would transfer powers from the legislative branch to the Executive or the courts.

Let's look at the amendment. That doesn't occur in section 6, which begins with the words, "The Congress shall enforce and implement this article * * *."

This transfer doesn't appear later in section 6, which recognizes the need of Congress to use estimates in implementing legislation, obviously foreclosing some of the more inventive scenarios that might tempt Executive or court action.

It certainly doesn't appear in the clarifying language that the amendment's authors have added to section 6 to make sure that no one thinks the courts can raise taxes or construct equitable remedies.

There's no lint-item veto in here. There's no delegation of Congress' legislative power, implied or explicit, to anyone else.

In the same way that the first amendment begins with the words, "Congress shall make no law * * *," this amendment restricts the power of the entire Government by making it harder to enact something into law.

The balanced budget amendment does not change in any way the balance of power among the branches of government. It is absolutely consistent with the spirit, the style, and the operations of the rest of the Constitution.

SLASH-AND-BURN SCENARIOS FOR PRIORITY PROGRAMS

During the course of this debate, as seems to happen every time a balanced budget amendment comes to the floor, the Treasury Department and various special interest groups did a disservice to serious public debate by releasing so-called studies that they tried to make look legitimate by attaching tables of numbers.

In reality, they were scare tactics, using dubious assumptions, and filled with manufactured numbers.

Such studies rely on sometimes questionable economic assumptions. But in every case, they did not look to the long-range benefits of balanced budgets. And in every case, they assumed a mindless, across-the-board, meat-ax approach to budget changes.

One of the chief benefits of the balanced budget amendment is that it will make Congress and the President set priorities. You don't have to set priorities when you don't have a credit limit. In an effort to scare as many people as possible, and attract as much attention as possible, these studies, including one issued by the Treasury Department, imply that the President and Congress have no priorities and would not select or change priorities under the amendment.

To this Senator, what their arguments really say is, these opponents are afraid that the amendment will work and that, when the Government must set priorities, the American people may not agree with their priorities.

Balanced budgets will produce a stronger economy, better able to sustain its defense capabilities while meeting its other needs. And I am confident that the people will demand, and willing to risk that Congress will deliver, an adequate defense budget.

DRI/McGraw-Hill, which is one of the world's leading nonpartisan economic analysis and forecasting firm has called on Congress to approve the balanced budget amendment.

DRI believes BBA is the path to the benefits of a balanced Federal budget. Their report, released just a few weeks ago, said, in part:

> A major argument for the Constitutional amendment is the credibility it may lend to the process. This credibility may permit a sharper drop in bond yields and thus an earlier boost in the economy.

The firm strongly endorsed the balanced budget amendment during a recent news conference on Capitol Hill.

They predicted that 2.5 million new jobs could be created by 2002 as more resources are freed up for private investment, interest rates drop, and businesses can afford to expand, buying more equipment and training.

The firm says the amendment should lower borrowing costs for businesses, encouraging private investment. Real nonresidential investment could grow by 4 to 5 percent by 2002, absent the $200 billion in Federal deficits which currently soak up capital.

The balanced budget amendment is the best friend of those who rely on essential Government programs, and of all other Americans. Interest payments on the Federal debt are already crowding out discretionary spending. As DRI said:

> The current generation does not need to sacrifice its living standard to protect that of future generations from an unbearable federal debt. Budget balance demands neither recessions nor the dismantling of the federal government.

The amendment would relieve, rather then intensify, budget pressures in part through lower interest rates, according to DRI:

> A "virtuous cycle" of lower structural deficits, lower federal debt, and lower interest rates can create half the required long-term deficit reduction through lower federal interest payments.
>
> The lower interest rates and reduced borrowing would cut interest costs for the federal government; in fact, by 2002 half the savings in our budget simulations come from lower interest costs.

Lower interest rates mean the real glide path to a balanced budget will involve less short-term pain than some have warned. Even the Treasury Department, for example, in its study, which did not take into account the positive economic impact of balancing the budget, assumed interest cuts would provide less than a quarter of total savings in fiscal year 2002.

DRI/McGraw-Hill predicts that in the course of creating 2.5 million new jobs following passage of the BBA, increased business activity will allow the Federal budget to be balanced 2 years ahead of schedule. This could also provide the opportunity for an even more gradual glide path to a balanced budget, moderating spending slow-downs.

> Cutting federal spending and balancing the budget will greatly benefit the U.S. economy in the long run. Shifting spending from personal and government consumption toward private investment raises the national capital stock, our proportionate domestic (rather than foreign) ownership of wealth, and thus our standard of living. (Source: DRI/McGraw-Hill Special Report, February 1995).

Finally, DRI/McGraw-Hill is convinced that balancing the Federal budget is in the best economic interest of the United States. They put it in concrete terms:

> Balancing the budget clearly helps the U.S. economy. By the end of the 10 year forecast, real DGP is up $170 billion, or 2.5% from its baseline level. This is far from trivial and translates to about $1000 per household at today's prices.

THOMAS JEFFERSON—REVISITED

I turn one more time to the words and works of Thomas Jefferson.

Jefferson balanced the budget in all 8 of his years in the White House. He reduced the national debt by half during his first term and set policies in motion that resulted in a national debt of a mere $38,000—that's 38 thousand—in 1834 and 1855.

Jefferson's Louisiana Purchase has been tossed about as an example of how going into debt can be beneficial. But let's look at what we can learn from his experience.

It's true that the Louisiana Purchase was twice the size of the Federal budget in 1803, as noted by the Senator from West Virginia [Mr. BYRD]. But the Federal budget was only 1.63 percent of gross national product at the time.

Relative to the size of the gross domestic product, the Louisiana Purchase would translate into just under $225 billion in today's dollars probably because the Federal deficit last year was $203 billion.

Jefferson and his successors sold the land acquired from France and made a profit for the Federal Government.

Every year the Federal Government is borrowing the equivalent of a Louisiana Purchase. And what are we getting for it? Nothing except a higher bill for interest costs and a legacy of crushing debt to leave behind for our children.

OTHER ISSUES, CONCLUSION

There are many other issues relating to this amendment, too numerous to discuss in the time allotted. To address those as a matter of legislative history, I ask unanimous consent to insert various other materials in the RECORD.

As for those additional facets of the debate, I want to note that, with our approximately 4,000 pages of legislative history over the last 15 years, every question has been answered, every objection has been dealt with.

This amendment has a history, it has a pedigree. It is the bipartisan, bicameral, consensus that has been looked at by constitutional scholars, economists, public interest groups, and members of both bodies.

This is our one chance to vote, up or down, to send a balanced budget amendment to the House and then to the people.

I'll turn one last time to the words of Thomas Jefferson, when he wrote, in a 1798 letter to John Taylor:

> * * * constitution. I would be willing to depend on that alone for the reduction of the administration of our government to the genuine principles of its constitution; I mean an additional article, taking from the federal government the power of borrowing.

And again, in 1798, he wrote:

> If there is one omission I fear in the document called the Constitution, it is that we did not restrict the power of government to borrow money.

Just 3 years ago, 38 states ratified the 27th amendment, concerning variations in congressional pay, as proposed by James Madison 200 years ago.

It just goes to prove that occasionally it's time to turn to a new idea, and sometimes the answer is to turn to a classic.

Today, Mr. President, my colleagues, it's time to add Mr. Jefferson's amendment to the Constitution, right behind that of his friend, Mr. Madison. We could hardly be in better company, we could hardly seek wiser guidance, in contemplating this addition to our Constitution.

Thomas Jefferson also said:

> I am not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of the their barbarous ancestors.

If you want to ignore the lessons of the last 35 years of excessive debt, vote no on this amendment.

If you are willing to leave our children a stagnant or declining standard of living, vote no on this amendment.

If you want to continue the failed status quo, vote no on this amendment.

If you agree with Jefferson that, "as new discoveries are . . .", then vote yes on the balanced budget amendment.

If you trust the American people, and understand their demand that government change its ways, then vote yes on the balanced budget amendment.

If you want today to be the first day of new hope and opportunity for our Nation, our economy, and our children, then vote yes on the balanced budget amendment.

I ask unanimous consent that I may have printed in the RECORD numerous supporting materials, including letters and statements of endorsement from citizens' groups, information on public support of the balanced budget amendment, substantive analyses prepared by outside groups, and supporters here within Congress, fact sheets, and newspaper articles.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE BALANCED BUDGET AMENDMENT
COALITION,
Washington, DC, February 6, 1995.

DEAR SENATOR: The undersigned organizations strongly urge you to vote for and support the Balanced Budget Amendment, S.J. Res. 1, introduced by Senators Dole, Hatch, Simon, Thurmond, Heflin, Craig, Moseley-Braun and others. This bipartisan proposal (over 40 total Senate cosponsors) has already passed the Senate Judiciary Committee on a 15 to 3 vote and is now being considered on the Senate floor.

The framers of the U.S. Constitution assumed each generation of Americans would pay its own bills—and that the federal budget would, over time, remain roughly in balance. According to Thomas Jefferson, "we should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves."

In today's era of mass media, special interest politics, and expensive and sophisticated election campaigns, the checks and balances established 200 years ago are not up to the job of controlling the federal deficit. Recent Congresses and presidents have proven themselves incapable of acting in the broader national interest on fiscal matters. Whenever Congress considers spending cuts that could help balance the budget, only a few Americans are aware of it, and fewer still express their views about it. By contrast, those who stand to lose from budget restraint—typically the beneficiaries and administrators of spending programs—are well aware of what they stand to lose. They mount intensive lobbying campaigns to stop fiscal restraint.

This pro-spending and pro-debt bias has led to 25 straight unbalanced budgets. It took our nation 205 years—from 1776 to 1981—to reach a $1 trillion debt. Now, just 14 years later, the debt is $4.8 trillion. Each year, interest payments rise as the overall debt grows. These payments have been one of the fastest-rising items in the federal budget—they now account for the entire deficit, all by themselves. A succession of statutory remedies has failed to stem this historic and highly dangerous turn of events.

S.J. Res. 1 is a sound amendment that has evolved through years of work by the principal sponsors. It provides the constitutional discipline needed to make balanced federal budgets the norm, rather than the rare exception (once in the past 34 years), and it offers the proper flexibility to deal with national emergencies.

In addition to requiring a three-fifths majority vote to deficit spend or increase the federal debt limit, S.J. Res. 1 is designed to make raising federal taxes more difficult. It would require the approval of a majority of the whole number of both the House and Senate—by roll call votes—in order to pass any tax increase. This adds much-needed accountability.

Unless action is taken now, higher federal spending and debt will continue to cripple our economy and mortgage our children's future. We urge you to support S.J. Res. 1, the Balanced Budget Amendment.

Sincerely,

National Taxpayers Union; International Food Service Distributors Association; National Association of Wholesale-Distributors; American Legislative Exchange Council; National Association of Manufacturers; National Association of Home Builders; The Seniors Coalition; Financial Executives Institute; Concerned Women for America; The Business Roundtable; American Farm Bureau Federation; American Furniture Manufacturers Association; United We Stand America; United Seniors Association, Inc.; Howard Jarvis Taxpayers Association; Independent Bakers Association; Citizens for a Sound Economy; Council for Citizens Against Government Waste; Traditional Values Coalition; Automotive Service Association; National Retail Federation; National Truck Equipment Association; Truck Renting and Leasing Association.

National-American Wholesale Grocer's Association; U.S. Chamber of Commerce; National Cattlemen's Association; Associated Builders and Contractors, Inc.; National Ready Mixed Concrete Association; U.S. Business and Industrial Council; National Federation of Independent Business; National Association of Realtors; Small Business Survival Committee; Christian Coalition; The Concord Coalition; Printing Industries of America; International Council of Shopping Centers; Motorcycle Industry Council, Inc.; American Tax Reduction Movement; International Mass Retail Association; Texaco, Inc.; U.S. Federation of Small Business; American Machine Tool Distributors Assn.; Union Pacific; Common Sense for America; Americans for

Tax Reform; American Bakers Association.

[IRET—Congressional Advisory, Feb. 27, 1995]

Keynes Is Alive, But not Well, in Washington

(By Norman B. Ture, President)

Opponents of a Balanced Budget Amendment assert that recessions will be deeper and more prolonged if the amendment prohibits the federal government from running budget deficits. According to this Keynesian article of faith, increases in federal spending relative to federal tax revenues expand total—government, household, and business—spending and thereby produce increases in total production, employment, and income.

Much of this increase in government spending and decrease in government tax revenues occurs automatically as the economy moves into recession. With falling output, employment, and income, payroll and income taxes decrease, while government outlays for such things as unemployment compensation and food stamps go up. These so-called "automatic stabilizers" allegedly cushion the decline in households' and businesses' disposable incomes, allowing them to maintain higher spending levels than they otherwise would be able to undertake. Moreover, according to this argument, the federal government should take action to increase other spending and/or to reduce taxes to fortify the automatic bolstering of disposable income.

The argument is wrong analytically. It is also rejected by history. It should be rejected by the Senate as the basis for deciding the fate of the Balanced Budget Amendment.

It is certainly true that the government's revenues automatically decline and certain of its outlays automatically increase during a recession. These automatic fiscal changes, however, don't—can't—increase total real spending. The resulting gap between government spending and government revenues has to be financed, either by the government's borrowing the difference or by resorting to the monetary printing press. If the government borrows the money to finance the deficit, the lenders' disposable incomes—the amount of their current after-tax incomes available to purchase consumption products or business assets—is reduced by the amount they lend the government—the same amount as the increase in the disposable incomes of other people. No net increase in income available for spending occurs.

The same thing is true if the government takes discretionary actions to increase its spending and/or to cut taxes. The government's borrowing to make up the difference between its additional outlays and reduced revenues cancels any increase in disposable income that allegedly would be produced by running a deficit.

Of course, the government might resort to the money printing press to finance the deficit. This might lead to an increase in nominal aggregate demand but only at the cost of pushing up the price level. Real disposable income and spending would increase only if people were fooled and failed to spot the inflationary erosion of their actual incomes and purchasing power.

Public policy makers should not disregard Abe Lincoln's famous homily in making their policy decisions. They should, instead, rely on some homely, basic truths. Increases in the nation's income can't be produced by fiscal sleight of hand. Increases in real income depend on increases in real output. Increases in real output depend on increases in production inputs and/or in the efficiency of their use. Increases in production inputs depend on increases in the real rewards for supplying them.

Budget deficits will not maintain, let alone increase, real disposable income unless they result from fiscal actions that increase incentives for people to work, save, invest, innovate, start new businesses or expand existing enterprises.

History is no kinder to the Keynesian fiscalism than analysis. The record of the economy's aggregate performance reveals no evidence that budget deficits, *per se*, allay or moderate recessionary developments, or, indeed, that they exert any expansionary influence. Even the least demanding statistical tests of a relationship between federal budget outcomes and gross domestic product reject the notion that budget deficits are significant in moderating recessionary forces.

In this era of heightened concern about the federal government's preempting too much of the nation's production capability and misdirecting its use, opposition to curbing the growth in government spending and federal deficits by imposing a budget-balancing constitutional requirement is truly bizarre. Basing that opposition on the Keynesian fiscal mythology is even weirder. It is to be hoped that the U.S. Senate will base its decision about a Balanced Budget Amendment on consideration of the really relevant concern about how most effectively to discipline fiscal and budget policy decision making.

[American Legislative Exchange Council, Feb. 24, 1995]

More Than 200 Economists Publicly Support Balanced Budget Amendment

(By Kerry Jackson and Ian Calkins)

Washington, DC., February 24, 1995—By endorsing a letter outlining their support for the Balanced Budget Amendment (BBA), 219 economists from across the country have publicly recognized the threat federal deficit spending poses to America's future.

Included in the list are such prominent economists as Dr. Richard Vedder of Ohio University, Dr. William Niskanen of the CATO Institute, and Dr. Gordon Tullock of the University of Arizona. The list was solicited by the American Legislative Exchange Council (ALEC) in response to news reports that many economists are opposed to the BBA. ALEC, the nation's largest bipartisan membership organization of state legislators, instead believes economists recognize the harm in an annual spending deficit that has hit $200 billion and is growing. With support from roughly 3,000 member state legislators, ALEC has been at the forefront of the Balanced Budget Amendment issue for 20 years.

"This list represents the most respected and brilliant minds in the field of economics" said ALEC Executive Director Samuel A. Brunelli. "What that tells us is simply this: the Balanced Budget Amendment is sound economic policy."

Brunelli presented the letter and list Monday morning to Senator Paul Coverdell (R-Ga.) during a BBA Coalition meeting, where he reported the list was still growing as he left his office.

"There is a strong intellectual foundation in support of the Balanced Budget Amendment," Brunelli told Coverdell. "This is just a representative group of scholars who realize the danger reckless deficit spending has on our present and future economy."

By endorsing the letter, the economists are saying "there is no rational argument against the Balanced Budget Amendment. Simple observation of the fiscal record of recent years tell us that the procedures through which fiscal choices are made are not working." And they understand the "immorality of the intergenerational transfer that deficit financing represents cries out for correction."

They also acknowledge the BBA would produce an "increase in investor and business confidence, both domestic and foreign."

One of the primary arguments against the BBA is the prospect that states will be forced to bear an inequitable financial burden if costs are shifted in balancing the budget, making them unwilling to ratify the measure. ALEC, however, has addressed that problem in its recently published Issue Analysis: Up to the Challenge: Why State and Local Governments Can Flourish Under the Balanced Budget Amendment. The paper exposes the cost-shifting argument as groundless and goes on to outline a number of ways states can actually save money if the BBA were enacted. As a membership organization that is closely associated with state lawmakers, ALEC believes there is enough support among the states to ratify the BBA.

"Already 29 states have passed a resolution calling for a limited Constitutional Convention to write a BBA," Brunelli said. "That's more politically difficult legislation to pass than ratification, and it's only nine states shy of the number of states required to amend the Constitution."

Balanced Budget Amendment—An Open Letter To Congress, February 1995

It is time to acknowledge that mere statutes that purport to control federal spending or deficits have failed. It is time to adopt constitutional control through a Balanced Budget Amendment. In supporting such an amendment, Congress can control its spending proclivities by setting up control machinery external to its own internal operations, machinery that will not be so easily neglected and abandoned.

Why do we need the Balanced Budget Amendment now, when no such constitutional provision existed for two centuries? The answer is clear. Up until recent decades, the principle that government should balance its budget in peacetime was, indeed, a part of our effective constitution, even if not formally written down. Before the Keynesian-inspired shift in thinking about fiscal matters, it was universally considered immoral to incur debts, except in periods of emergency (wars or major depressions). We have lost the moral sense of fiscal responsibility that served to make formal constitutional constraints unnecessary. We cannot legislate a change in political morality, we can put formal constitutional constraints into place.

The effects of the Balanced Budget Amendment would be both real and symbolic. Elected policitians would be required to make fiscal choices within meaningfully-constructed boundaries; they would be required to weigh predicted benefits against predicted tax costs. They would be forced to behave "responsibly," as this word is understood by the citizenry, and knowledge of this fact would do much to restore the confidence of citizens in governmental processes.

It is important to recognize that the Balanced Budget Amendment imposes procedural constraints on the making of budgetary choices. It does not take away the power of the Congress to spend or tax. The amendment requires only that the Congress and the Executive spend no more than what they collect in taxes. In its simplest terms, such an amendment amounts to little more than "honesty in budgeting."

Of course, we always pay for what we spend through government, as anywhere else. But those who pay for the government spending that is financed by borrowing are taxpayers in future years, those who must pay taxes to meet the ever-mounting interest obligations that are already far too large an item in the federal budget. The immorality of the intergenerational transfer that deficit financing represents cries out for correction.

Some opponents of the Balanced Budget Amendment argue that the interest burden should be measured in terms of percentage of national product, and, so long as this ratio does not increase, all is well. This argument is totally untenable because it ignores the effects of both inflation and real economic growth. So long as government debt is denominated in dollars, sufficiently rapid inflation can, for a short period, reduce the interest burden substantially, in terms of the ratio to product. But surely default by way of inflation is the worst of all possible ways of dealing with the fiscal crisis that the deficit regime represents.

Opponents also often suggest that Congress and the Executive must maintain the budgetary flexibility to respond to emergency needs for expanding rates of spending. This prospect is fully recognized, and the Balanced Budget Amendment includes a provision that allows for approval of debt or deficits by a three-fifths vote of those elected to each house of Congress.

When all is said and done, there is no rational argument against the Balanced Budget Amendment. Simple observation of the fiscal record of recent years tells us that the procedures through which fiscal choices are made are not working. The problem is not one that involves the wrong political leaders or the wrong parties. The problem is one where those whom we elect are required to function under the wrong set of rules, the wrong procedures. It is high time to get our fiscal house in order.

We can only imagine the increase in investor and business confidence, both domestic and foreign, that enactment of a Balanced Budget Amendment would produce. Perhaps even more importantly, we could all regain confidence in ourselves, as a free people under responsible constitutional government.

Dr. Burton A. Abrams, University of Delaware.

Dr. Ogden Allsbrook Jr., University of Georgia.

Dr. Robert Andelson (Ret), Auburn University.

Dr. Annelise Anderson, Stanford University.

Dr. Terry L. Anderson, Political Economy Research Center.

Dr. Richard Ault, Auburn University.

Dr. Charles Baird, California State University-Hayward.

Dr. Charles Baker, Northeastern University.

Dr. Doug Bandow, Cato Institute.

Dr. Eric C. Banfield, Lake Forest Graduate School of Management.

Dr. Andy Barnett, Auburn University.

Dr. Carl P. Bauer, Harper College.

Dr. Joe Bell, SW Missouri State.

Dr. James Bennett, George Mason University.

Dr. Bruce L. Benson, Florida State University.

Dr. John Berthound, National Taxpayers Union.

Dr. Michael Block, University of Ariziona.

Dr. David Boaz, Cato Institute.

Dr. Peter J. Boettke, New York University.

Dr. Jeffrey Boeyink, Tax Education Foundation.

Dr. Cecil Bohanon, Ball State University.

Dr. Donald J. Boudreaux, Clemson University.

Dr. Samuel Bostaph, University of Dallas.

Dr. Dennis Brennen, Harper College.

Dr. Charles Britton, University of Arkansas.

Dr. Eric Brodin, Foundation for International Studies.

Dr. Richard C.K. Burdekin, Claremont McKenna College.

Prof. M.L. Burnstein, York University.

Dr. Henry Butler, University of Kansas.

Mr. Ian Calkins, American Legislative Exchange Council.

Dr. W. Glenn Campbell, Hoover Institute.

Dr. Keith W. Chauvin, University of Kansas.

Dr. Betty Chu, San Jose State University.

Dr. Will Clark, University of Oklahoma.

Dr. J.R. Clarkson, University of Tennessee.

Dr. Kenneth Clarkson, University of Miami.

Dr. J. Paul Combs, Appalachian State University.

Dr. John Conant, Indiana State University.

Dr. John F. Cooper, Rhodes College.

Mr. Wendell Cox, American Legislative Exchange Council.

Dr. Mark Crain, George Mason University.

Dr. Ward Curran, Trinity College.

Dr. Coldwell Daniel II, Memphis State University.

Dr. Michael R. Darby, U.C.L.A.

Dr. Otto A. Davis, Carnegie Mellon University.

Dr. Ted E. Day, University of Texas-Dallas.

Dr. Louis De Alessi, University of Miami.

Prof. Andrew R. Dick, U.C.L.A.

Dr. Tom Dilorenzo, Loyola College (MD).

Mr. James A. Dorn, Cato Institue.

Dr. Aubrey Drewry, Birmingham Southern College.

Dr. Gerald P. Dwyer Jr., Clemson University.

Dr. Robert B. Ekelund Jr., Auburn University.

Dr. Peter S. Elek, Villanova University.

Dr. Jerry Ellig, George Mason University.

Dr. John M. Ellis, University of California.

Dr. Kenneth G. Elzinga, University of Virginia.

Dr. David Emanuel, University of Texas-Dallas.

Dr. David J. Faulds, University of Louisville.

Mr. Richard A. Ford, Free Market Foundation.

Dr. Andrew W. Foshee, McNeese University.

Dr. William J Frazer, University of Florida.

Dr. Eirik G Furuboth, University of Texas-Arlington.

Dr. Lowell Galloway, Ohio State University.

Dr. David E.R. Gay, University of Arkansas.

Dr. Martin S Geisel, Vanderbilt University.

Dr. Fred R Glahe, University of Colorado.

Dr. Paul Goelz, St. Mary's University.

Dr. Robert Gnell, Indiana State University.

Mr. John C Goodman, National Center for Policy Analysis.

Dr. Kenneth V Greene, S.U.N.Y.—Binghamton.

Dr. Paul Gregory, University of Houston.

Dr. Gerald Gunderson, Trinity College.

Dr. James Gwartney, Florida State University.

Dr. Claire H Hammond, Wake Forest University.

Dr. Daniel J Hammond, Wake Forest University.

Dr. Ronald W Hanson, University of Rochester.

Dr. David R Henderson, Hoover Institution.

Dr. Robert Herbert, Auburn University.

Dr. A James Heins, University of Illinois.

Dr. John Heinke, Santa Clara University.

Dr. Alan Heslop, Claremont McKenna College.

Dr. Robert Higgs, Independent Institute.

Dr. P.J. Hill, Wheaton College.

Dr. Mark Hirschey, University of Kansas.

Dr. Bradley K Hobbs, Bellarmine College.

Dr. Randall Holcombe, Florida State University.

Dr. Steven Horwitz, St. Lawrence University.

Dr. Doug Houston, University of Kansas.

Dr. David A Huettner, University of Oklahoma.

Dr. William J Hunter, Marquette University.

Dr. Thomas Ireland, University of Missouri.

Dr. Jesse M Jackson Jr, San Jose State University.

Dr. Gregg A Jarrell, University of Rochester.

Dr. Thomas Johnson, North Carolina State University.

Dr. David L Kaserman, Auburn University.

Dr. Robert Kleiman, Oakland University.

Dr. David Klingaman, Ohio University.

Dr. W F Kiesner, Loyola Marymount University.

Dr. David Kreutzer, James Madison University.

Dr. Michael Kurth, McNeese State University.

Dr. David N Laband, Auburn University.

Dr. Everett Ladd, University of Connecticut.

Dr. Harry Landreth, Centre College.

Dr. Stanley Leibowitz, University of Texas—Dallas.

Dr. Dwight Lee, University of Georgia.

Dr. David Levy, George Mason University.

Dr. Dennis Logue, Dartmouth College.

Dr. Robert F Lusch, University of Oklahoma.

Dr. R Ashley Lyman, University of Idaho.

Dr. Jonathon Macey, Cornell University.

Dr. Yuri Maltsev, Carthage College.

Dr. Alan B Mandelstamm, Roanoke, Virginia.

Dr. George Marotta, Hoover Institute.

Dr. J Stanley Marshall, The James Madison Institute.

Dr. Merrill Mathews Jr, National Center for Policy Analysis.

Dr. Richard B Mauke, Tufts University.

Dr. Margaret N Maxey, University of Texas—Austin.

Dr. Thomas H Mayor, University of Houston.

Dr. Paul W McAvoy, Yale University School of Management.

Dr. Robert McCormick, Clemson University.

Dr. Paul McCracken, University of Michigan.

Dr. Myra J McCrickard, Bellarmine College.

Dr. J Houston McCulloch, Ohio State University.

Dr. Robert W McGee, Seton Hall University.

Dr. Mark Meador, Loyola College (MD).

Dr. Roger Meiners, Clemson University.

Dr. Lloyd J Mercer, University of California.

Dr. Richard Milam, Appalachian State University.

Dr. Dennis D Miller, Baldwin Wallace College.

Dr. Stephen Moore, Cato Institute.

Dr. John Moore, George Mason University.

Dr. John Moorhouse, Wake Forest University.

Dr. Laurence Moss, Babson College.

Mr. Bob Morrison, Tax Education Support Organization.

Dr. Timothy Muris, George Mason University.

Dr. J Carter Murphy, Southern Methodist University.

Dr. Gerald Musgrove, Economics America.

Dr. Ramon Myers, Stanford University.

Dr. Michael Nelson, Illinois State University.

Dr. William A Niskanen, Cato Institute.

Dr. Geoffrey Nunn, San Jose State University.

Dr. M Barry O'Brien, Francis Marion University.

Dr. David Olson, Olson Research Company.

Dr. Dale K Osborne, University of Texas—Dallas.

Dr. Allen M Parkman, University of Mexico.

Dr. E C Pasour Jr, North Carolina State University.

Dr. Timothy Patton, Ambassador University.

Dr. Judd W Patton, Bellevue College.

Dr. Sam Peltzman, University of Chicago Graduate School.

Dr. Garry Petersen, Tax Research Analysis Center.

Dr. Manfred O Petersen, University of Nebraska.

Dr. Steve Pejovich, Texas A&M University.

Dr. Timothy Perri, Appalachian State University.

Dr. William S Pierce, Case Western Reserve University.

Dr. Sally Pipes, Pacific Research Institute.

Dr. Yeury-Nan Phiph, San Jose State University.

Dr. Rulon Pope, Brigham Young University.

Dr. Robert Premus, Wright State University.

Dr. Jan S Prybyla, Pennsylvania State University.

Dr. Alvin Rabushka, Stanford University.

Dr. Don Racheter, Central College.

Dr. Ed Rauchutt, Bellevue University.

Dr. Robert Reed, University of Oklahoma.

Dr. John Reid, Memphis State University.

Dr. Barrie Richardson, Centenary College.

Dr. H Joseph Reitz, University of Kansas.

Dr. James Rinehart, Francis Marion University.

Dr. Mario Rizzo, New York University.

Dr. Jerry Rohacek, University of Alaska.

Dr. Simon Rottenberg, University of Massachusetts.

Dr. Roy J Ruffin, University of Houston.

Mr. John Rutledge, Rutledge & Company Inc.

Dr. Anandi P Sahu, Oakland University.

Dr. Thomas R. Saving, Texas A&M University.

Dr. Craig T Schulman, University of Arkansas.

Dr. Richard T Seldon, University of Virginia.

Dr. Gerry Shelley, Appalachian State University.

Dr. William Shughart II, University of Mississippi.

Mr. William E Simon, William E Simon & Sons.

Dr. Randy Simmons, Utah State University.

Dr. Daniel T. Slesnick, University of Tedas—Austin.

Dr. Frank Slesnick, Bellarmine College.

Dr. Daniel Slottje, Southern Methodist University.

Dr. Gene Smiley, Marquette University.

Dr. Barton Smith, University of Houston.

Dr. Lowell Smith, Nichols College.

Mr. Robert Solt, Iowans for Tax Relief.

Dr. John Soper, John Caroll University.

Dr. Michael Sproul, U.C.L.A.

Dr. Richard Stroup, Montana State University.

Dr. Michael P Sweeney, Bellarmine College.

Prof. Ronald Teeples, Claremont McKenna College.

Dr. Clifford Thies, University of Georgia.

Dr. Roy Thoman, West Texas State University.

Dr. Henry Thompson, Auburn University.

Dr. Mark Thornton, Auburn University.

Dr. Walter Thurman, North Carolina State University.

Dr. Richard Timberlake, University of Georgia.

Dr. Robert Tollison, George Mason University.

Prof. George W Trivoli, Jacksonville State University.

Dr. Leo Troy, Rutgers University.

Dr. Gordon Tullock, University of Arizona.

Dr. Norman Ture, Institute for Research on the Economics of Taxation.

Dr. Jon G. Udell, University of Wisconsin.

Dr. Hendrik Van den Berg, University of Nebraska.

Dr. T. Norman Van Cott, Ball State University.

Dr. Charles D Van Eaton, Hillside College.

Dr. Richard Vedder, Ohio University.

Dr. George Viksnins, Georgetown University.

Dr. Richard Wagner, George Mason University.

Dr. Stephen J K Walters, Loyola College (MD).

Dr. Alan R Waters, California State University.

Dr. John T Wenders, University of Idaho.

Mr. Brian S Wesbury, Joint Economic Committee.

Dr. Allen J Wilkins, Marshall University.

Dr. James F Willis, San Jose State University.

Dr. Gene Wunder, Washburn University.

Dr. Bruce Yandle, Clemson University.

Dr. Jerrold Zimmerman, University of Rochester.

[National Taxpayers Union, Dec. 29, 1994]

FACTS ABOUT THE NATIONAL DEBT

In FY 1995, interest payments on the National Debt are expected to be $310.0 billion. This is: the second largest item in the budget. (20% of all Federal spending); more than the total revenues of the Federal government in 1976; 92% of Social Security payments; $4,628 per family of three; $5,979 million per week, $854 million per day, $593,151 per minute, or $9,886 per second; 23% of all Federal revenues; and 52% of all individual income tax revenues.

The National Debt has now topped $4.75 trillion.

The Federal government has run deficits 56 out of the last 64 years and 33 out of the last 34 years.

The national debt has increased 1536% since 1960, 777% since 1975, 423% since 1980, 162% since 1985 and 49% since 1990.

During the 1960's deficits averaged $6 billion per year.

During the 1970's deficits averaged $35 billion per year.

During the 1980's deficits averaged $156 billion per year.

During the 1990's deficits averaged $248 billion per year.

It took over 200 years to accumulate our first trillion dollars in national debt. In the next four years, we will accumulate well over $1 trillion in additional debt.

[Congressional Leaders United for a Balanced Budget, Jan. 30, 1995]

THE REGRESSIVE EFFECT OF DEFICIT SPENDING—INTEREST PAYMENTS

While we hoard the crumbs, the whole loaf is being taken away from us.—Joe Kennedy, in testimony before the House Budget Committee.

Until we control our deficit problem, interest payments will continue to devour increasingly larger portions of the budget. Interest payments have increased from 6% of the budget in 1960 to more than 14% of the budget today. After adjusting for inflation, gross interest payments have increased by 97% since 1980. This explosion in debt payments has forced a corresponding reduction in the goods and services the government can provide. Until we bring the budget under control, interest payments will continue to devour a increasingly larger portion of the budget.

Interest payments will cripple the ability of future generations to make necessary investments in health care, education, and other programs. Interest payments will continue to crowd out funding for discretionary programs. GAO has estimated that interest payments will reach $400 billion dollars by the year 2020 if we fail to bring the deficit under control. The growth of interest payments and entitlement spending will force a half a trillion dollars of deficit reduction each year just to maintain a deficit path of three percent of GDP by the year 2020. All government programs would be subject to severe cuts every year under this scenario.

Interest payments already are crowding out worthy programs. Net interest will be over $235 billion this year. This money will not be available for federal investment, social programs or defense. Interest payments are: 8 times higher than expenditures on education; 50 times higher than expenditures on job training; 55 times higher than expenditures on Head Start; 140 times higher than expenditures on childhood immunizations.

Interest payments represent a transfer of wealth from middle-class taxpayers to upper-income individuals and foreign investors. Interest is paid to individuals who own Treasury Bills—primary the wealthiest 10% of citizens and institutional investors. Nearly 20% of interest payments are sent overseas to foreign investors. In 1993, the Treasury sent $41 billion overseas in interest payments.

[Congressional Leaders United for a Balanced Budget, Jan. 30, 1995]

FACTS ABOUT OUR NATIONAL DEBT AND INTEREST PAYMENTS

Our national debt currently exceeds $4.7 trillion—about $18,500 for every man, woman and child in the United States. (Source: Department of Treasury, Monthly Treasury Statement.)

The national debt has increased by $3.6 trillion since the Senate last passed (but the House defeated) the Balanced Budget Amendment in 1982. The debt has also increased by more than $160 billion since the House voted on the BBA in March 1994.

(Sources: Department of Treasury, Monthly Treasury Statement; FT '95 Budget of the United States, Historical Tables.)

Under current policies, future generations are projected to face a lifetime net tax rate of 82% in order to pay the bills that we are leaving them. (Source: FY '95 Budget of the United States, Analytical Perspectives.)

If we continue current policies into the next century, we may be forced to enact half-a-trillion dollars in deficit reduction each year just to restrain the deficit to three percent of GDP. (Source: General Accounting Office, Budget Policy: Prompt Action Necessary to Avert Long-Term Damage to the Economy)

In 1994, gross interest payments exceeded $296 billion. This is greater than the total outlays of the federal government in 1974. (Source: FY '95 Budget of the United States, Historical Tables.)

In 1994, gross interest payments consumed about half of all personal income taxes. (Source: National Taxpayers Union)

In FY '94 we spent an average of $811.7 million a day on gross interest payments. That's $33.8 million an hour, and $564,000 per minute. (Source: Congressional Budget Office, The Economic and Budget Outlook: Fiscal Years 1995–1999.

In 1993, the U.S. government sent $41 billion overseas in interest payments on Treasury bills held by foreign investors. This represents more than twice the amount of spending on all international programs. (Source: FY '95 Budget of the United States, Analytical Perspectives.)

Net interest payments in 1994 were five and a half times as much as outlays for all education, job training and employment programs combined. (Source: FY '95 Budget of the United States, Historical Tables.)

The drain on national savings caused by the deficit during the 1980's resulted in a loss of 5% growth in our national income. This translates into roughly three and a quarter million jobs lost. (Source: The New York Federal Resource Board, CBO)

[Congressional Leaders United for a Balanced Budget, Jan. 30, 1995]

THE ECONOMIC CONSEQUENCES OF MAINTAINING THE STATUS QUO

According to the Congressional Budget Office, under current policies the deficit will bottom out at $176 billion in FY 1995 before increasing again, reaching $284 billion in 2000 and $421 billion in 2004. In 1995, the year in which the deficit is the lowest, the deficit will equal 2.5 percent of Gross Domestic Product. The deficit will rise as a percentage of GDP, reaching 3.1 percent of GDP in 2000 and continuing to increase to 3.6 percent of GDP by 2005.

In June of 1992, the General Accounting Office released a study entitled *Prompt Action Necessary to Avert Long-Term Damage to the Economy*, which set out several scenarios for budget policy, including one that is remarkably similar to current budget projections—reducing the deficit enough to hold annual deficits to approximately 3 percent of GDP. The GAO found that this scenario, which it called the "muddling through option" would not be sufficient to avoid the severe economic consequences of deficit spending. Among the conclusions that GAO reached:

A failure to reverse current trends in fiscal policy "will doom future generations to a stagnating standard of living, damage U.S. competitiveness and influence in the world, and hamper our ability to address pressing national needs."

Simply maintaining a deficit at three percent of GDP "offers no escape either from progressively harder decisions or from an unacceptable economic future. It only postpones the date of a full confrontation with the underlying problem."

If we continue on the current "muddling through" path, by 2005 "the amount of deficit reduction that will be required to limit the deficit to three percent of GDP will increase exponentially. By the year 2020, it will require *a half a trillion dollars of additional deficit reduction each year* just to maintain a deficit path of three percent of GDP."

"The muddling through path requires one to make harder and harder decisions just to stay in place, partly just to offset the growing interest costs that compound with the deficit. . . . To select this path is to fend off the disaster of inaction, but it would lock the nation into many years of unpleasant and relatively unproductive deficit debates rather than debates about what government ought to do and should be done. It is death by a thousand cuts."

[From Government Waste Watch, Winter 1994]

THE BALANCED BUDGET AMENDMENT:—OUR ECONOMIC SECURITY IN THE BALANCE

(By Larry Craig and Paul Simon)

"The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, morally bound to pay them ourselves."

That statement, as relevant as today's headlines, was made almost 200 years ago by Thomas Jefferson. This perspective, once at the very foundation of our political system, urgently needs to be reasserted.

It should be, as early as February, when Congress takes up our Balanced Budget Amendment to the Constitution, S.J. Res. 41.

Our nation's founders saw a balanced budget and prompt repayment of debt not merely as issues of fiscal policy, but as a moral imperative. Failure to meet these goals was considered not simply economic folly, but a violation of the basic right of the people to be free from a profligate government.

Yet today, federal budget deficits are the single biggest threat to our economic security. The government has spent more than it has taken in for 55 of the last 63 years. The budget was last balanced in 1969. The result is a federal debt totaling $4.4 trillion, or more than $17,000 for every man, woman, and child in America, and growing.

WHAT ARE THE HARMS OF BUDGET DEFICITS?

Like every family and business, when the government borrows, it must make interest payments. Annual gross interest on the debt now runs about $300 billion, making it the second largest item of federal spending next to Social Security. This equals an incredible 57 percent of all personal income taxes.

Now in a sluggish economy, Americans are paying for the government's past addiction to debt. Unless things change, the next generation will pay even more dearly.

Last year, Congress's nonpartisan General Accounting Office (GAO) said that, under current trends, our children's standard of living in the year 2020 would stagnate at today's levels—extinguishing the prospect that each generation of Americans would be able to leave the next a legacy of greater opportunity. In contrast, GAO found that balancing the budget by 2001 would produce a 36 percent improvement in the nation's standard of living by 2020.

An added danger exists because the national government has a power that families and business don't: It can put the Treasury's printing presses in high gear, devalue the currency, and monetize the debt. Of course, the resulting inflation would depress the worth of people's incomes and assets and produce the same outcome: a lower standard of living.

WHY HAS IT BEEN SO HARD TO BALANCE THE BUDGET?

Our system of government has changed fundamentally: While almost all Americans want a balanced budget, there's no way to put this general public interest on a level playing field with the specific demands of mobilized, organized interest groups.

The unlimited ability to borrow naturally leads to unlimited demands to spend beyond our means. Every American belongs to at least one group that benefits from federal spending. And everyone would like to see his or her taxes held down. If they don't have to say "no," many elected officials see political peril in doing so.

That is, there's no way to make it a fair fight until we put a rule in place that the government can't break or amend with impunity, that guarantees we get no more government than we are willing to pay for, and calls on us to pay for all the government we demand.

HOW THE BALANCED BUDGET AMENDMENT WORKS

The amendment would prohibit federal outlays from exceeding receipts unless three-fifths of both houses of Congress specifically vote to run a deficit. Similarly, the limit on the national debt could be increased only with a 60-percent super majority vote. A "constitutional," or absolute majority on a roll call vote would be required to raise taxes, contrasted with the current requirement for only a simple majority of those present and voting—or even just a voice vote. The president would be required to balance the budget he or she submits to Congress.

By making it more difficult to continue deficit spending and by requiring specific recorded votes, the amendment would make Congress more accountable to the public. The difficulty in obtaining "super majorities" to increase borrowing or raise taxes would force the president and congressional leaders to find ways to live within the confines of the amendment.

WHAT DO THE AMENDMENT'S OPPONENTS HAVE TO SAY?

We have spent years working with colleagues, legal scholars, economists, and public policy groups like the Council for Citizens Against Government Waste to refine our amendment and find out how it would work. We have become more committed to passing the amendment, more certain of the need for it, and more confident of its appropriateness to become part of the Constitution, as we have seen every question answered and every criticism solidly rebutted. For example:

IT'S NOT NEEDED

Opponents argue that "political will" and budget process reforms should be sufficient to balance the budget. Perhaps they should be; in reality, they haven't been.

In 1978, 1979, 1982, 1985, 1987, and 1990, Congress enacted and presidents signed laws requiring balanced budgets. Every one was amended or ignored when push came to shove. After all, it is as easy to amend a law or waive a rule as it is to pass it. Amending the Constitution requires two-thirds majorities in Congress and ratification by three-fourths (38) of the states, formidable hurdles that have allowed the enactment of only 17 amendments since the original Bill of Rights in 1789.

IT WON'T WORK

Skeptics contend that presidents and congresses would evade the amendment by using accounting gimmicks, such as putting items off-budget. Our amendment is carefully drafted to avoid this kind of danger. For example, precise definitions ensure that no category of outlays or receipts can be placed outside the scope of the amendment.

IT WOULD WORK TOO WELL

Forgetting that they also said the amendment wouldn't work at all, opponents argue that it would put a "straitjacket" on the economy by preventing Congress from using fiscal policy to counteract economic downturns.

Our amendment anticipates the need for flexibility that could arise in the long term. During a true emergency, Congress should be able to muster the three-fifths vote needed to stimulate the economy through temporary deficit spending. Our amendment would ensure that such spending is the exception rather than the rule.

Years of unbalanced budgets, in good times and bad, have made deficits the greatest danger to our economic well-being. Keep in mind that most of the deficit spending this year went simply to pay interest on the debt. To the extent that deficits can stimulate the economy, today there's almost nothing left over to do so after making interest payments.

IT WOULD THWART THE WILL OF THE MAJORITY

The Constitution's framers wrote that one of the purposes of a constitution is to protect certain rights deserved by all Americans by placing these rights beyond the reach of a "tyranny of the majority."

The rights enshrined in the Constitution, such as freedom of speech and religion, represent absolute prohibitions on government action. Jefferson favored an absolute prohibition on government borrowing. Our amendment does not go that far. But it does recognize that to protect our children from a tyranny of debt, deficit spending should require more than a simply majority vote.

Moreover, our amendment requires a 60-percent majority in exactly one circumstance: when spending in the budget would exceed revenues. The amendment in no way affects the majority's ability to set budget priorities within a balanced budget. Therefore, the amendment would restore our system to working the way the framers of the Constitution intended.

GOOD PROGRAMS MIGHT GET CUT

Every dollar borrowed incurs interest costs which already result in significantly fewer dollars for high-priority programs and in higher taxes. In fact, if no federal debt ever had been accumulated in the first place, the government would run a $200 billion surplus over the 1995–1999 period.

Some worry, if the budget must be balanced, it will be done fairly. However, the government's escalating interest payments—with gross interest totaling $294 billion in 1993—are blatantly regressive. These represent a transfer of funds from the working middle class—who pay the bulk of federal taxes—to the large banks, corporations, and wealthy individuals who hold Treasury securities. About 15 percent of these payments go to rich investors of governments overseas.

The greatest unfairness is for the government to live off a giant credit card today and send the bill to the next generation amounting to a massive taxation without representation.

CONCLUSION

The best way to ensure the continued soundness of essential programs, stabilize the economy and pass on a legacy of economic opportunity to our children is to reverse the growth in the federal debt. Without a balanced budget amendment to the Constitution, it is unlikely we will ever find the discipline to restore this rationality to our budget decisions.

[From the Washington Times, October 1993]

ECONOMIC SECURITY IN THE BALANCE

(By Larry Craig and Paul Simon)

"Once the budget is balanced and the debts paid off, our population will be relieved from a considerable portion of its present burdens and will find out new motives to patriotic affection, (and) additional means for the display of individual enterprise."

That statement, as relevant as today's news, was made more than 150 years ago by President Andrew Jackson. This perspective on the federal government and the economic well-being of the people, once at the very foundation of our political system, urgently needs to be reasserted.

It should be, early in November when Congress takes up our Balanced Budget Amendment to the Constitution, S.J. Res. 41.

Federal budget deficits are not an abstract problem; they are now the single biggest threat to our nation's economic security. When the economy is unstable, seniors on fixed incomes suffer the most.

The government has spend more than it has taken in for 55 of the last 63 years; the budget was last balanced in 1969. The result is a federal debt totaling $4.3 trillion, or about $17,000 for every man, woman and child in America, and growing.

Like every family and business, when the government borrows, it must make interest payments. Annual gross interest on the debt now runs about $300 billion, making it the second-largest item of federal spending, next to Social Security. This amount equals an incredible 57 percent of all personal income taxes.

Every dollar borrowed incurs interest costs that result in significantly fewer dollars for high-priority programs and in higher taxes. With a growing population depending on Social Security, the best way to ensure its continued soundness is to stabilize the economy and reverse the growth in interest costs—which compete with Social Security for dollars—by balancing the budget.

The fiscal costs and economic drag of the federal debt imperil both seniors today and their children. Last year, Congress' nonpartisan General Accounting Office said that, if nothing changes, our children's standard of living in the year 2020 will stagnate at today's levels—putting an end to the American dream of each generation leaving the next a legacy of opportunity. In contrast, balancing the budget by 2001 would produce a 36 percent improvement in the nation's standard of living by 2020.

Who collects interest payments on the federal debt? About 15 percent goes overseas. Almost all of the rest goes to large banks, corporations, state and local governments, and wealthy investors. Thomas Jefferson objected to any federal indebtedness, fearing that taxes on farmers, laborers, merchants and their families would escalate forever to pay the interest on a growing debt.

Why has it been so hard to balance the budget? The unlimited ability to borrow leads naturally to unlimited demands to spend. Every American belongs to at least one group that benefits from federal spending. And everyone would like to see his or her taxes held down. If you don't have to say "no," then many elected officials see only political peril in doing so.

Our system of government has changed fundamentally: While almost all Americans want a balanced budget, there's no way to put this general, public interest on a level playing field with the specific demands of mobilized, organized interest groups.

That is, there's no way to make it a fair fight until we add to the Constitution a rule the government can't break, that guarantees we get no more government than we are willing to pay for and calls on us to pay for all the government we demand.

Fifty years before Jackson, Jefferson said, "We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves.... I wish it were possible to obtain a single amendment to our Constitution...an additional article, taking from the government the power of borrowing."

It's time to live up to Mr. Jefferson's vision.

[From CLUBB—Congressional Leaders United for a Balanced Budget, Revised January 30, 1995]

FACTSHEET: ALARMIST ATTACKS ON THE BALANCED BUDGET AMENDMENT

Yesterday, the Treasury Department released a study projecting several "horror story" scenarios of the kinds of policy decisions the Administration foresees might be necessary if the Balanced Budget Amendment, is added to the Constitution. The "results" of these studies were broken down by state. Other studies have been released by other organizations purporting to demonstrate the impact that a balanced budget amendment will have.

These studies actually send four messages: (1) Opponents fear the amendment will work; (2) The case against the amendment is so weak that opponents must resort to scare tactics; (3) The methodology used assumes arbitrary, across-the-board approaches; and (4) The study represents a failure to face up to long-term responsibilities and consequences.

(1) Opponents fear the amendment will work: Critics raise the specter of what budget policy options might be considered if Congress and the President must comply with a Balanced Budget Amendment. However, their arguments are directed against the deficit reduction that will be required to balance the budget.

The study ignores the impact on government services, program beneficiaries, and taxpayers from remaining on a course that will result in the federal debt increasing 90% over the next ten years, and annual spending on interest payments increasing by two-thirds. As Senator Paul Simon has pointed out, every dollar spent on interest payments is a dollar that can not go to valued programs.

Forcing the government to live within its means will require setting priorities and making some difficult decisions. This will not happen without the Amendment and it must happen to safeguard our future economic security.

(2) Scare tactics: As Rep. Olympia Snowe said in a 1994 Budget Committee hearing, people start pounding the table when they're

losing the argument. Arguments like those in the Treasury and Wharton studies rely on alarming individuals and groups about how severely they might be impacted. However, even if federal spending continued to increase 3.1% a year, it would fall into balance with revenues (as projected in CBO's January baseline) by the year 2002. Currently, spending is projected to grow an average of 5% a year through 2001.

If we act promptly, reasonable restraint, not massive spending cuts or tax increases, will take us to a balanced budget. However, CBO projects deficits again increasing rapidly after 1996. The longer we wait, the greater the pain of deficit reduction will become.

(3) Arbitrary, unrealistic methodology: The study assumes that Congress will abdicate its responsibility to set priorities and that the deficit reduction will occur in an across-the-board manner. This approach, which is common in such "horror story" reports regarding a BBA, implies that the President and Congress have no priorities and assumes they would not set priorities within a balanced budget framework. The Treasury Department study manufactures per-program and per-state numbers that likely bear no resemblance to the decisions Congress and the President eventually will make.

This very lack of priority-setting is at the root of the $4.7 trillion national debt; today, marginal programs are funded because they never have to compete with essential programs. Under the amendment, Congress and the President would be faced with a fiscal and political imperative to set priorities. Government could promise no more than the people were willing to pay for and we would pay for all the government we demand.

Treasury acknowledges that its "estimates are static in nature and reflect no macroeconomic feedback." Thus, the study does not discuss the long-term economic security, growth, and higher living standards that will result from balanced budgets and are at the core of the case for the amendment. In 1992, the non-partisan General Accounting Office compared the economic effects of balancing the budget by the year 2002 with a "muddling through" scenario that assumed policies to maintain deficits of 3% of GDP. GAO found that balancing the budget by the year 2000 would promote significantly greater economic growth than the muddling through option.

(4) Failure to take responsibility for the long term: CBO's preliminary budget projections found that the deficit will leap back upward to $421 billion by FY 2005. The deficit as a share of gross domestic product (GDP) would pass the 3% mark before the next century.

The preliminary CBO baseline resembles the "Muddling Through" scenario set out in GAO's 1992 report, Budget Policy: Prompt Action Necessary to Avert Long-Term Damage to the Economy. Under that scenario, by 2020, per capita GDP would be 7% lower and the federal debt three times larger than if the budget were balanced from the year 2001 on. Moreover, the annual deficit reduction required to maintain the deficit at 3% of GDP ("muddling through") would give rise to more than $500 billion a year by FY 2020.

Approaches like those taken by Treasury imply that Americans will find each and every federal program so indispensable, so sacred, that protecting every single program, every interest today, outweighs our children's standard of living and the government's ability to continue providing priority services and benefits in the coming years.

(Prepared by the Offices of Senator Larry Craig (202) 224-2752 Congressman Nathan Deal (202) 225-5211.)

[CLUBB—Congressional Leaders United for a Balanced Budget]

FACTSHEET: BALANCED BUDGET REQUIREMENTS IN THE STATES

Debate on a proposed Balanced Budget Amendment to the U.S. Constitution highlights the status of the states as "laboratories of democracy." While the supporters of H.J. Res. 1 do not argue that the federal Constitution should have a balanced budget requirement *because* the states have such restraints, the experiences of the states are instructive.

While they vary widely in form, 49 of the 50 states have significant balanced budget requirements.

It is also true that, while, standing alone, many of the state provisions appear to be less restrictive than H.J. 1 for the federal government, there are important institutional differences which dictate the terms of the federal proposal.

In 35 of the states, balanced budget requirements are written into constitutions. In 13 others they are statutory. Nine of those have constitutional debt limits that are usually interpreted as constitutional balanced budget requirements. In one (Wyoming), the unwritten imperative is strong enough that it is regarded as having "constitutional status."

But that's only a glimpse into the rich diversity through which states control indebtedness.

In 43 or more states, balanced budget requirements are supplemented by special executive branch budget powers. Twenty-one states have spending limits, 7 have revenue limits, and 3 have both. Fifteen require more than a simple majority to pass any budget.

Noteworthy differences include whether capital, trust fund, or other budgets are included under state balanced budget requirements.

There's a lot we can learn from specific state balanced budget initiatives and apply to the federal proposal.

The states can afford to exempt portions of their budgets because state bond ratings—generally applying to capital investments—serve as the ultimate disciplinarian. There are no bond rating services for the federal government in part because foreigners and others line up to bank on the full faith and credit of the U.S. government. In addition, some bond issues are subject to public referenda.

States sometimes mislead when defining a "deficit." That led to the language before Congress now, "Total outlays for any fiscal year shall not exceed total receipts for that fiscal year . . ."

The processes of defining and amortizing "capital investments" can be abused. For example, New York City, prior to its financial crisis in the s, wrote off spending for school textbooks by declaring their "useful life" to be 30 years.

Some states can use revenue and borrowing to meet balanced budget requirements. Under H.J. Res. 1, raising the debt limit requires a ⅗ majority to counter this state-proven tendency.

The imposition of budget discipline on states whether from balanced budget requirements or bond ratings has led to establishment of "rainy day" funds. Many states now set aside excess revenues in good times requiring less indebtedness during recessions.

Despite such diversity, the experience of the states shows that balanced budget requirements have had a salutary effect.

From 1980 to 1992, the states' outstanding long-term debt rose from $120 billion to $369 billion, a 208 percent increase; total state spending growth was about 4 percent greater than revenue growth. During the same period, federal debt grew from $905 billion to $4.002 trillion, a 340 percent increase; federal spending growth was about 38 percent greater than revenue growth.

The similarities between state and federal budget experiences support adoption of a federal balanced budget amendment; the differences demonstrate why H.J. Res. 1 is the approach best suited to the federal level.

That variance and relative complexity of state provisions contributed to the development of the one-page simplicity of the Stenholm/Smith federal amendment. An amendment to the U.S. Constitution should state a broad, fundamental principle and provide the bare bones of process necessary to enforce that principle.

The states' experiences demonstrate that exempting any portion of federal spending from a balanced budget amendment would create potential loopholes. The "higher authorities" that generally check abuses at the state level do not exist at the federal level. "Pet programs" could easily be pushed into whatever funding category was not covered by a BBA. Debt would continue to soar, and the Constitution would be affronted.

The federal government has no line item veto and a relatively weak rescission process. The lack of such supplementary means for imposing discipline is among the reasons why the federal BBA needs to be more restrictive than state counterparts. At the same time, a BBA is the single most important mechanism, and the most constitutionally elegant, for enforcing the fundamental principle that the people should be protected from the abuses of profiligate government borrowing.

SILVER SPRING, MD, *February 15, 1994.*

Hon. PAUL SIMON,
U.S. Senate,
Washington, DC.

DEAR SENATOR SIMON: I am pleased to have this opportunity to express my support for the Balanced Budget Amendment.

For 37 years I worked for the Social Security Administration, serving as Chief Actuary in 1947–70, and as Deputy Commissioner in 1981–82. In 1982–83, I served as Executive Director of the National Commission on Social Security Reform. And I continue to do all that I can to assure that Social Security continues to fulfill its promises.

The Social Security trust funds are one of the great social successes of this century. The program is fully self-sustaining, and is currently running significant excesses of income over outgo. The trust funds will continue to help the elderly for generations to come—so long as the rest of the federal government acts with fiscal prudence. Unfortunately, that is a big "if."

In my opinion, the most serious threat to Social Security is the federal government's fiscal irresponsibility. If we continue to run federal deficits year after year, and if interest payments continue to rise at an alarming rate, we will face two dangerous possibilities. Either we will raid the trust funds to pay for our current profligacy, or we will print money, dishonestly inflating our way out of indebtedness. Both cases would devastate the real value of the Social Security trust funds.

Regaining control of our fiscal affairs is the most important step that we can take to protect the soundness of the Social Security trust funds. I urge the Congress to make that goal a reality—and to pass the Balanced Budget Amendment without delay.

Sincerely,

ROBERT J. MYERS.

CLUBB—CONGRESSIONAL LEADERS UNITED FOR A BALANCED BUDGET

The following quotes are from a News Conference held by Senators Craig, Simon and Robb joined by former Senator Tsongas, and Robert Myers on February 7, 1995.

Concord Coalition co-chair and former Democratic Senator Paul Tsongas responded to President Clinton's budget proposal released Monday, which, as reported in the media, breaks Clinton's campaign ledge to cut deficits in half during his first term.

"The budget which came from the President yesterday said, I've given up; that as long as I am President of the United States there will never be a balanced budget. That is an astonishing statement."

Paul Tsongas, talking about Social Security and the BBA:

"It is embarrassing to be a Democrat and watch a Democratic President raise the scare tactics of Social Security."

"It pains me that the Democratic party should be the party that turns its back on the young."

Paul Tsongas talked about those who've supported BBA in the past, but who now say they will vote against a BBA without a Social Security exemption.

"It's flushing out those who never meant it, those whose cynicism I think is now going to be on display."

"The calculation is quite explicit, how do I somehow kill the Balanced Budget Amendment without having my fingerprints on the deed. And the use of Social Security is the chosen weapon."

"The question is, where is the cover? And the cover is the Social Security subterfuge."

"Those who vote to exclude Social Security are voting to kill the Balanced Budget Amendment. It is that simple, it is that clean and should be stated."

Senator Paul Simon (D–IL):

"Every time we have a deficit, we're borrowing from your six year-old. And what we're saying is let's stop borrowing from six year-olds."

Tsongas, responding to Simon:

"Eventually the six year-old will rebel, having been given massive debt by you and I."

Paul Tsongas' general comments on BBA and balancing the budget:

"Without the Balanced Budget Amendment the budget will never be balanced—that's a given. There is simply not the discipline and self will in this place to do it."

"This is not rocket science. It's not what is in your head or in your heart. It's what is in the lower part of your regions that is in question."

Tsongas responded to a question about how much budget cuts to balance the budget would hurt people across the country.

"If you don't do it now; if you let those numbers run themselves out for ten years, then you are looking at far more draconian measures."

THE SENIORS COALITION,
Fairfax, VA, March 1, 1995.

Hon. LARRY CRAIG,
U.S. Senate,
Washington, DC.

DEAR SENATOR CRAIG: I wanted to take just a moment to thank you for your dedication and extraordinary effort to get a Balanced Budget Amendment passed. We believe very strongly that a bankrupted country cannot care for its elderly, its young or its poor, and that a Balanced Budget Amendment is desperately needed at this time.

The Seniors Coalition commissioned The Luntz Research Companies to conduct a poll late last week to determine if public support for the Balanced Budget Amendment was still as strong as it had been at the end of January. I would like to share some of the results with you.

As far as we have been able to determine, this nationwide poll contains the most recent data available on the public's opinion of the Balanced Budget Amendment. The questions were asked as part of an omnibus national survey conducted of 1,000 registered voters from February 22nd to 23rd. The survey has a margin of error of ±3.1% at the 95% confidence level.

When people were asked if they supported the Senate passing the same Balanced Budget Amendment passed by the House of Representatives, an overwhelming 79% of respondents supported Senate passage of this measure. This figure is identical to the results of a Wirthlin poll conducted January 25th to 28th. Public support for the Balanced Budget Amendment has not fallen over this past month.

Of those supporting the Balanced Budget Amendment, 61% were strongly supporting the BBA and 18% were somewhat supportive of the BBA. Compared to the Wirthlin poll: 52% strongly favored and 27% somewhat favored a BBA at the end of January. This suggests that not only do people still support a BBA, but they do so with a stronger conviction.

When senior citizens were asked how they felt about the Balanced Budget Amendment, 80% of those age 55–64 and a strong 71% of those age 65+ supported the BBA. By geographic region, people in the Northeast support the BBA at 80%, those in the South by 79%, those in the Midwest by 76%, in the West by 78% and along the Pacific by 81%.

We were also curious to know how people would feel about their Senator if the Balanced Budget Amendment failed. Respondents were asked if they would vote for or against their Senator in the next election if he or she were the one to cause the BBA to fail by one vote. Nearly half, 46%, said they would vote against their Senator if this were the case. These were evenly split, 23% each, along the lines of definitely against or probably against. Comparatively, of the 34% who answered they would vote for their Senator, only 11% were firm in their conviction.

Senior citizens were consistent with this trend and 45% of those age 55–64 and 41% of those age 65+ indicated they would vote against their Senator if they blocked passage of the Balanced Budget Amendment. Of interest in these numbers is that seniors were lower than the general average of 34% in stating they would vote for their Senator under this scenario. Of those age 55–64, only 30% would vote in the affirmative and 31% of those age 65+ would vote to re-elect their Senator.

By geographic region, those that would vote against their Senator if they were responsible for the failure of the Balanced Budget Amendment was as follows: Northeast—43%; South—50%; Midwest—46%; West—45%; and Pacific—48%.

The respondents were also asked if they felt that those Senators who have claimed they want to learn more about the Balanced Budget Amendment were correct in opposing the BBA, or were they putting politics ahead of the national interest. An astounding 60% of the voters surveyed thought that politics was being put ahead of the national interest. This number held strong among seniors of all ages at 59% in both the 55–64 and 65+ categories.

In geographic regions, 58% of those in the Northeast, 65% of those in the South, 56% of those in the Midwest, 60% of the West and 58% of the Pacific thought that politics were taking precedence over the national interest.

The results of this poll clearly show that despite all the rhetoric and debate over the past month on what a Balanced Budget Amendment would mean for America, seniors—and voters in general—are still strongly committed to forcing Congress to balance its budget, and they want their Senators to do the right thing.

Sincerely,

JAKE HANSEN,
Vice President for Government Affairs.

THE SENIORS COALITION,
Fairfax, VA, March 2, 1995.

MEMORANDUM

Re The American Association of Retired Persons and the Balanced Budget Amendment.

To: All Interested Parties.

From: Kimberly Schuld, Legislative Analyst.

The AARP commissioned The Wirthlin Group to conduct a survey for them January 25–28, 1995 on a variety of questions pertaining to the BBA. Since then, the AARP and the National Council of Senior Citizens have been twisting the poll's results and methodology to claim that public support for a BBA is low—once Americans are told what the BBA will mean to them.

The key word here is TOLD. The poll utilizes a series of questions designed to lead people to a mis-informed and generally incorrect impression of what the BBA will do. Namely, the line of questioning implies that Social Security and Medicare will face drastic cuts, and state and lccal taxes will skyrocket as the federal faucet is turned off.

An AARP Press Release announcing the poll results states, ". . . most Americans do not understand the potential impact of the Balanced Budget Amendment and are adamantly opposed to using Social Security and Medicare to reduce the federal deficit."

Quite bluntly, the AARP has effectively provided a political scare campaign for those members of Congress wishing to avoid facing their constituents with the news that they want to vote against the BBA. We all know the arguments against excluding Social Security from the constitutional amendment, but the AARP has electrified the "third rail" to the political benefit (is it really?) of the White House.

ANALYSIS OF THE AARP/WIRTHLIN POLL

The poll consisted of sixteen questions to 1,000 adults, with a 200 oversample to adults 50 and older. The margin of error is ±2.8% at a 95% confidence level. A copy of the questions is attached.

The poll starts off with a question about the direction of the country and then asks: "Do you favor or oppose a balanced budget amendment to the U.S. Constitution that would require the federal government to balance its budget by the year 2002?" Favor: 79%. Oppose: 16%.

The next question tests how people perceive the budget can be balanced: spending cuts, taxes or both. This is followed by a question on equal percentage across-the-board cuts in every federal program.

The next two questions ask specifically if Social Security and Medicare should be included in across-the-board cuts. As could be expected, the respondents would favor exemptions for both programs. A key element to these two questions (#5 and #6) is the use of the word "exempt". The word "exempt" is not used anywhere in the poll except in relation to Social Security and/or Medicare. This sets up a connection in people's minds that these programs may be in graver danger than other government programs.

Question #7 sets up the respondent for the "truth in budgeting" excuse the Administration has been spinning. When offering people the choice between passing the BBA first, or identifying cuts first, the poll throws in "consequences" associated with cuts. The connotation is that there are going to be dire "consequences" to balancing the budget. This sets up the respondent to answer question #15 (open-ended) with a negative response on how they think the BBA will affect them personally.

Questions #8, #9 and #10 ask about whether respondents think it is necessary to cut Defense, Social Security and Medicare to balance the budget, or whether the budget could be balanced without these programs. As could be expected, the response for cutting Defense is overwhelming compared to SS and Medicare. The group of questions sets up a "good cop/bad cop" scenario in the mind of the respondent whereby they identify Defense as the "bad guy" as well as being reminded which party tends to support Defense. It is also important to remember that at the time this poll was taken the newspapers and network news broadcasts were full of stories about the Republicans wanting to increase Defense spending in the Contract With America.

Questions #11 and #12 address taxes; their role in the budget balancing process and reform ideas. This also serves to set up negative responses to question #15. In #11, 48% of the people believe there will have to be tax increases to balance the budget. Then the next question, they are asked to declare a preference for one of a variety of tax cuts. This conflict sets up a negative impression that tax cuts are good and the BBA is bad because there must be tax increases to accomplish its goal.

Question #13 throws together "programs for the poor, foreign aid, and congressional salaries and pensions". Respondents are asked how far these programs COMBINED would go toward balancing the budget if they were cut. By throwing these widely divergent programs together, the pollsters are setting up the respondent to believe that balancing the budget will mean higher taxes and cuts in taxpayer-financed programs.

Question #14 is the keeper. Respondents are asked if they still support a BBA with the following choices: Social Security should be kept separate from the rest of the budget and exempted from a BBA because it is a self-financed by a payroll tax or Social Security is part of the overall government spending and taxing scenario, thus should be subject to cuts along with the rest of the budget.

The results of this questions dramatically flip the BBA support from question #2: BBA with SS Exempt: 85%. BBA that cuts SS: 13%.

Question #16 now asks: "Do you favor or oppose the balanced budget amendment, even if it means that your state income taxes and local property taxes would have to be raised to make up for monies the federal government no longer transfers to your state?" Favor: 38%. Oppose: 60%.

This question ends the phone call on a gross mis-interpretation that dire consequences of doom and gloom are on the horizon, all at the voter's expense. This is exactly the type of question that re-reinforces the "angry voter" complex of the middle class family.

These anti-BBA results are achieved by planting the seed of doubt slowly but surely that:

1. It is the intention of BBA supporters to cut Social Security and Medicare.
2. It is the intention of BBA supporters to beef up Defense spending at the expense of everything else.
3. Taxes will inevitably go up with a BBA.
4. A BBA will have a negative direct impact on families "beyond the beltway."

Any time a Senator, Congressman, reporter or lobbyist starts to talk about poll results showing 85% of Americans oppose a BBA unless it exempts Social Security, bear in mind that the spin-meisters achieved this number by forcing the assumption that draconian Social Security cuts are a foregone conclusion.

Leaders from the Republican party, the Democratic party, the Administration and the President himself have all gone to great lengths to state that social security benefits are off the table.

Any member of congress who contends NOW that the new Republican leadership cannot be trusted to keep their hands off Social Security is also implicating their own party leaders and the President of the same un-trustworthiness.

TESTIMONY OF JAKE HANSEN, DIRECTOR OF GOVERNMENT AFFAIRS, THE SENIORS COALITION FOR THE JOINT ECONOMIC COMMITTEE, JANUARY 23, 1995

BALANCED BUDGET AMENDMENT: IMPERATIVE TO SOCIAL SECURITY

Mr. Chairman, this is not a new issue to The Seniors Coalition. Since our inception we have fought for a Balanced Budget Amendment. We have had experts on Social Security and an expert economist look at the issue, as well as hearing from thousands of our members. Their conclusion: give us a Balanced Budget Amendment.

During the elections and in recent debate, we have heard from many politicians that a Balanced Budget Amendment will destroy Social Security. However, the question is not "Will a Balanced Budget Amendment destroy Social Security", but rather "Can Social Security survive without a Balanced Budget Amendment?"

As you know, up until 1983, the Social Security system ran on a pay-as-you-go basis. That is, the amount of money going into the Trust Funds from payroll deductions was basically equal to the amount of money being paid to beneficiaries of the day.

In the late seventies, the economy was a disaster. Inflation was up, leading to higher cost of living payments than had been anticipated. Unemployment was up, meaning that less money was being paid into the system than had been anticipated. The result: Social Security was headed for bankruptcy at break-neck speed.

In 1983, a bi-partisan effort saved Social Security by changing the benefit structure and raising Social Security payroll taxes. This effort created a new—and potentially worse—problem: a rising fund balance in the Social Security Trust Funds. For the past ten years, more money has been pouring into the Trust Funds than is needed to meet today's obligations.

This balance has been "borrowed" by the federal government. Today, the federal government owes the Trust Funds about $430 billion. By the year 2018, according to the Social Security Board of Trustees, that figure will be a shade over three trillion dollars. At that time, the entire federal debt will be—who knows, eight, ten, twelve trillion dollars?

The point is, how will the government ever pay back the Trust Funds? They could: turn on the printing presses and monetize the debt, so that a Social Security check would buy a loaf of bread; borrow the money—hurting both the economy and the Federal Budget; make massive cuts in benefits; raise taxes, and thus, destroy the economy for everyone; or simply renege on the debt.

Mr. Chairman, The Seniors Coalition doesn't find any of these alternatives acceptable.

The Chairman of our advisory board, Robert J. Myers (often referred to as the father of Social Security) wrote of his support of a Balanced Budget Amendment last year and said: "In my opinion, the most serious threat to Social Security is the federal government's fiscal irresponsibility. If we continue to run federal defects year after year, and if interest payments continue to rise at an alarming rate, we will face two dangerous possibilities. Either we will raid the trust funds to pay for our current prolificacy, or we will print money, dishonestly inflating our way out of indebtedness. Both cases would devastate the real value of the Social Security Trust Funds."

The bottom line, is that if we want to protect the integrity of Social Security the only way is through a Balanced Budget Amendment.

With that said, the question becomes will just any old Balanced Budget Amendment do? The answer is, some are better than others, and some are absolutely not acceptable.

First, some people are suggesting that Social Security should be exempted. That should be something that an organization like ours would leap at. The fact is, we are concerned that such an Amendment would end up destroying Social Security as more and more government programs would be moved to Social Security to circumvent the Balanced Budget Amendment. We believe this would destroy Social Security, and will not support such an Amendment.

Our first choice would be a Balanced Budget Amendment that controls taxes as well as spending—such as the Amendment that has been presented by Congressman Barton. We support tax limitation and would like to see this Amendment voted on. We would urge every Member of Congress to vote for this Amendment.

If, this Amendment does not pass, then we willingly support a Balanced Budget Amendment such as the one offered by Senators Hatch and Craig. While I am concerned about taxes, I believe that last year's elections showed us that we, the people, do have the ultimate power. And, I believe that had we been forced to pay for all the government we were being given, we would have made massive changes much sooner.

Mr. Chairman, we believe that what is most important is that America be given a serious Balanced Budget Amendment as soon as possible. We will work with you and your colleagues in every way possible to make that happen. Thank you.

THE SENIORS COALITION,
Fairfax, VA, January 24, 1995.

MEMORANDUM

Re Balanced Budget Amendment.
To: Senator Craig.
From: Jake Hansen, Vice President for Government Relations.

The Seniors Coalition has supported a balanced budget amendment for several years. On behalf of our one million members nationwide, I am requesting your support of S.J. Res. 1 in the next few weeks.

It is vital that Congress pass a measure that would require the federal budget to be balanced. Our members feel that if the government were forced to evaluate its spending the way every family in America evaluates their own, this country would not be "heading down the wrong path." While there are a great many factors that contribute to this public perception, the bottom line for many Americans is that the government takes too much from them and spends too much on programs that do not work. The time to end the cycle of taxing and spending has come.

I also want to touch briefly on the role of Social Security in the balanced budget amendment. We feel that there is no reason to exempt Social Security from a balanced budget. In fact, such an exemption would create a serious policy and political crisis for Congress, and would lead to the destruction of the Social Security system.

If Social Security is exempted, the total force of balancing the budget will find its way to Social Security. There will be an overwhelming temptation to either redefine government programs as Social Security programs, or pull money out of the Trust Fund to balance the budget by cutting Social Security taxes to offset tax increases elsewhere. In fact, there would be nothing to stop Congress from "borrowing" as much money as it wanted from the Trust Funds to finance any other government program.

We feel confident that the political climate surrounding Social Security is enough to protect it, thus engaging in destructive policy in the name of protection will only lead us down the path of truly committing damage to the Social Security system.

What is most important is that America be given a serious balanced budget amendment as soon as possible.

BALANCED BUDGET AMENDMENT ALERT FROM THE SENIORS COALITION, JANUARY 26, 1995.

This morning the opponent of a BBA launched a full scale attack on the Balanced Budget Amendment with Social Security bombs. Seniors across the country are watching C-SPAN with renewed and unjustified fear. It is vital that their scare campaign be stopped.

Exempting Social Security from the Balanced Budget Amendment will destroy the Social Security system—NOT protect it.

Balancing the budget will create tremendous pressure and that pressure will blow through any available escape hatch. Whatever is exempted from the balanced budget requirement becomes that escape hatch!

As the total force of balancing the budget falls on Social Security, there will be overwhelming pressure to redefine many government programs as Social Security programs. This endangers its original purpose. There would be nothing to stop Congress from "borrowing" as much money as it wanted from the trust fund to finance any government program if Social Security is exempted from the Balanced Budget Amendment.

Exempting Social Security from the Balanced Budget Amendment would open a loophole in the requirement that would completely gut its effectiveness by allowing all social welfare and other programs (such as Medicare and Medicaid) to be financed off-budget, in deficit, as the "New Covenant Social Security."

Failure to pass a Balanced Budget Amendment will destroy Social Security.

Eventually, $400 billion plus will have to be returned to the Social Security trust fund to pay benefits to retired baby-boomers. Without starting a balanced budget process now, the battle over Social Security will be like nothing Congress has ever seen thirty years from now.

Without balancing the budget, Social Security benefits will always be subject to cuts, new taxes and means-testing. This permanently erodes any confidence in discussions of systemic reforms for future generations.

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60 PLUS,
Arlington, VA, February 9, 1995.

Hon. LARRY E. CRAIG,
U.S. Senate,
Washington, DC.

DEAR SENATOR CRAIG: I am writing to you to express the strong support of the 60/Plus Association for the Balanced Budget Amendment to the Constitution, which is now being considered by the U.S. Senate.

The 60/Plus Association is a two-year-old, nonpartisan, seniors advocacy group with more than 225,000 members. For the 103rd Congress, we presented the Guardian of Seniors' Rights award to 226 House and Senate Members.

The Balanced Budget Amendment is the best friend the Social Security system and our nation's seniors could have. The Senate should pass H.J. Res. 1, as passed by the House of Representatives in a strong bipartisan vote, and submit it immediately to the States for ratification.

Continued, growing deficit spending is the greatest threat to the integrity of the Social Security system and to the present and future benefits paid from Social Security trust funds. Past deficits have created a national debt of $4.8 trillion—an alarming 70 percent of our Gross Domestic Product. Gross interest payments now consume nearly one-fifth of total federal spending and will surpass Social Security as the largest item of spending by the end of the decade.

This national debt already has depressed the economy and lowered seniors' standard of living. As the costs of servicing that debt continue to climb and to squeeze all other budget priorities, they threaten the very existence of Social Security. Today's Social Security surpluses represent a commitment to seniors tomorrow. But a debtor bankrupted by an excessive debt load is not able to meet any of its commitments. Bitter experience has shown that only the Balanced Budget Amendment can save our nation from that fate.

While well-intentioned, these attempts to exempt Social Security from the discipline of the Balanced Budget Amendment are completely misguided. Instead of protecting seniors, exemptions like that in the Reid Amendment would allow the Social Security trust funds to run unlimited deficits. This would create an irresistible temptation to pay for all sorts of unrelated programs out of the trust funds, completely destroying the unique purpose for which they were created and rendering them insolvent.

The debt is the threat to Social Security and America's seniors. A "clean" balanced budget amendment, such as H.J. Res. 1. is their best protector. The 60/Plus Association urges you and your colleagues to pass their urgently needed legislation and resist the scare tactics of those who create any loopholes that would compromise either balancing the budget or protecting Social Security.

Former Senator Paul Tsongas summed it up best when he said he was "embarrassed as a Democrat to watch a Democratic President raise the scare tactics of Social Security."

In other words, it's "scare us old folks time again" as opponents drag a 30-year-old red herring across the trail.

Many seniors—including this one—vividly remember the scare tactics then—the LBJ TV ad—a giant pair of scissors cutting through a Social Security card—with the clear implication that a vote for Barry Goldwater and Republicans would mean the end of Social Security.

Seniors didn't buy that canard then, nor do they now, 30 years later, judging by the response we get from a vast majority of seniors.

Sincerely,

JAMES L. MARTIN,
Chairman, 60+.

NATIONAL TAXPAYERS UNION,
February 6, 1995.

[Legislative memo]

Re Balanced Budget Amendment—Critique of Amendment To Exempt Social Security and Scoring in NTU Annual Rating of Congress.
To: U.S. Senators.
From: David Keating, Executive Vice President.

An amendment to SJR 1 by Senators Reid, Feinstein, and others will propose to exempt Social Security trust funds (OASDI) from a balanced budget rule. A vote against this proposal will be heavily counted as a pro-taxpayer vote in our annual Rating of Congress.

NTU strongly supports prompt passage, early this year, of the best Balanced Budget Amendment (BBA) that can get the needed two-thirds vote. This means a genuine, effective BBA, not the dishonest "cover" substitutes offered by BBA opponents.

KEY REASONS WHY CONGRESS SHOULD NOT EXEMPT SOCIAL SECURITY FROM THE BALANCED BUDGET AMENDMENT

Exempting Social Security would render a Balanced Budget Amendment meaningless and endanger Social Security. It would give Congress an excuse to delay action on huge Social Security deficits that will occur as today's younger workers retire. Although the Social Security system currently collects more in taxes than it spends on benefits, this will change early in the next century and eliminate the effectiveness of the balanced-budget rule. At that time, other federal funds should be in a surplus position to prevent large government budget deficits that would harm the economy. But the Reid Amendment would only require a balancing of non-Social Security receipts and outlays, resulting in huge legal federal budget deficits at that time.

1. It would create a huge loophole in the Amendment and encourage Congress to raid trust fund revenues.—A future Congress that wished to circumvent the Amendment could, by a simply majority vote, authorize deficits by reducing trust fund taxes and revenues and increasing "operating" fund taxes and revenues by an equal amount. Trust funds could pay for Social Security benefits by running a deficit. This has the potential to be more than a $300 billion loophole.

2. Congress could also create deficits by channeling other programs aimed at aiding the elderly through the trust funds.—Candidates include veterans' benefits and pensions, which total over $20 billion a year. Supplemental Security Income at over $25 billion a year is another likely candidate, as is Medicare (over $110 billion) and the approximately three-fourths of Medicaid spending (or over $65 billion) that benefits the aged. A portion of funds spent on the retired poor by the Food Stamp, low-income home energy assistance, housing subsidy, and other social service programs might be transferred to newly exempt trust funds. Some or all of federal employee or military retirement programs may also become part of Social Security.

3. It would legalize an ANNUAL total budget deficit of over $2,000,000,000,000 ($2 trillion) in the year 2050!—Even if the Social Security exemption was faithfully observed, it would allow huge deficits in the Social Security trust funds in the next century that will occur under current policies as today's children retire.

4. Such loopholes could result in spending money from trust funds for other programs.—A future Congress and president that wished to circumvent the balanced-budget rule could do so simply by funding non-Social Security programs from trust fund accounts. There is nothing in the proposed exemption that would prohibit spending money from trust funds for non-retirement or non-disability programs. A simple majority of Congress could thus effectively circumvent any debt limit.

5. It would endanger Social Security.—Net interest on the national debt has grown from a mere 7.7 percent of federal spending in 1978 to 14 percent in 1995. Not only will interest begin to crowd out Social Security, but the continued buildup of debt will impair the ability of future taxpayers to refund moneys borrowed from the trust fund. Only an all-inclusive Balanced Budget Amendment will force Congress to balance the budget and create a sound environment for the future of Social Security.

IRET CONGRESSIONAL ADVISORY,
February 8, 1995.

A BALANCED BUDGET AMENDMENT MUST NOT EXCLUDE SOCIAL SECURITY

A few Senators who voted for a balanced budget amendment last year are saying they may oppose the amendment this year unless a special exemption for Social Security is attached to it. This may be a gambit to kill the amendment. Granting Social Security special constitutional status is not morally or economically justified, would greatly weaken the amendment, and ironically would add new burdens to the Social Security System in the long run.

The purpose of a balanced budget constitutional amendment is to compel Congress and the President to balance the federal budget. That means holding overall government expenditures at or below total government revenues. It does not mean holding some spending to no more than some revenues—with exemptions for national defense or the highway trust fund or medicaid or Social Security or any other program that might have a legitimate national purpose or powerful constituency.

Carving out Social Security benefits and taxes from the budget calculations would leave an especially large hole because Social Security benefits are the federal government's largest expenditure and second largest tax. Social Security benefits already exceed total national defense spending, formerly the largest expenditure category, and are growing much more rapidly; by the end of the decade federal payments of Social Security benefits will be about 60 percent greater than what the nation spends on national defense. On the tax side, the Social Security payroll tax is exceeded in size only by the individual income tax. Millions of individuals owe more in Social Security taxes than they do in income taxes. The employer share of the Social Security tax is, by itself, a bigger revenue source than the corporate income tax. A balanced budget amendment that leaves out Social Security would be seriously incomplete on both the expenditure and tax sides.

A Social Security exclusion would jeopardize passage of a balanced budget amendment in two ways. First, the exclusion would complicate the task of balancing the (redefined) budget in the near term. The Social Security trust fund is running a surplus for the time being. If Social Security were artificially removed from budget calculations, the deficit would suddenly appear bigger and reducing it to zero over the next several years would require extra large spending cuts or tax increases. That would make a balanced budget amendment appear more painful, which could scare away some potential supporters. Second, the version of the amendment with the exclusion gives political cover to opponents of a balanced budget amendment. Because a balanced budget amendment has strong public support, resisting it openly is politically risky. By putting forward the flawed version, which has no chance of passing Congress, opponents can to claim to voters that they back a balanced budget amendment even as they fight versions that would be more acceptable and effective. That is known as having your cake and eating it too.

In addition, as Senator Dole and others have cautioned, a Social Security exemption would create a giant loophole in the amendment. The contents of Social Security are defined by statute and can be modified by statute. If Social Security were excluded from the amendment while other spending were not, Congress could shield other programs from tough budget choices by passing statutes to shift them into Social Security. Under the pressure of dodging a constitutional amendment, some of the government programs that might be reclassified as part of Social Security are unemployment compensation, worker retraining, and spending on the earned income tax credit. And because Congress is inventive, this is just for starters.

At present, the Social Security trust fund is running a surplus. That would allow many other programs to be shifted into Social Security without busting its trust fund in the short run. When the baby boom generation starts retiring, however, Social Security will experience unsustainably large deficits under present benefit formulas. That looming crisis has nothing to do with a balanced budget amendment. It will be caused by the expanding number of retirees and other taxpayers. If the Social Security System has become a repository for myriad government programs when the demographic crunch arrives, the squeeze on the core program, benefits for the elderly, will come sooner and be harsher because of the extraneous spending that has become embedded in the Social Security System and is also making demands on its revenues.

Social Security projections under current budget formulas point to an enormously adverse impact on the availability of saving for private sector uses. Federal "entitlements", of which Social Security is the largest, already preempt much private saving, and, if nothing is done, entitlement spending will before very long consume all private saving. The core economic objective of a balanced budget amendment is to prevent federal budget developments from commandeering private saving. The Social Security System is projected to go into deficit early in the next century and thereafter fall deeper and deeper into debt, becoming the biggest federal government consumer of private saving. It makes no sense to enact a balanced budget amendment but allow Social Security to escape balanced budget discipline. To protect private saving from the inroads of federal deficits, a balanced budget amendment must apply to all government programs, including Social Security and other "entitlements".

A balanced budget amendment would force hard choices to be made regarding federal spending programs. Some defenders of a special exemption for Social Security assert that Social Security deserves privileged treatment. Although Social Security is politically popular (which in itself affords much protection), it is not clear on economic or moral grounds why Social Security should receive higher priority than other federal spending. For instance, is paying Social Security benefits a more noble or urgent federal government function than providing for the national defense, enforcing federal laws, or undertaking basic scientific research?

Treating Social Security benefits and taxes differently from all other government outflows and inflows would have some economic justification if Social Security were analogous to private saving, but it is not. Unlike private saving, Social Security payments are not voluntary choices reflecting individuals' preferences. As with other taxes, people can face fines and prison if they refuse to pay Social Security taxes.

With private saving, the funds are invested productively and the eventual payouts to savers come from the returns on those investments. Whereas many advocates of the Social Security program describe it as an efficient government-run saving program, it is, in reality, the largest Ponzi scheme in the history of the world. Social Security payroll taxes go to the U.S. Treasury, and the Treasury, after issuing IOUs to the Social Security trust fund, uses the taxes to help pay the government's current bills. That is not real saving. It is akin to a person earning income, writing himself a bunch of IOUs, putting those IOUs in a piggy bank, and then spending all the money. No matter how full of IOUs the piggy bank becomes, it will not hold even a dime of saving. In other words, the government no more directs Social Security revenues into productive investments than it does other tax revenues.

If a balanced budget amendment to the constitution is to be meaningful in subjecting federal budget policy to financial discipline, it must apply to all federal spending and revenues. It should not exempt the largest spending item and the second largest tax. The national issues the amendment addresses are too important to fall victim to a parliamentary ploy.

MICHAEL S. SCHUYLER,
Senior Economist.

CONGRESSIONAL LEADERS UNITED
FOR A BALANCED BUDGET,
January 24, 1995.

FACT SHEET—HOW THE BALANCED BUDGET AMENDMENT PROTECTS SOCIAL SECURITY

THE BBA WOULD PUT AN END TO THE RAPID GROWTH IN INTEREST PAYMENTS THAT THREATEN TO CROWD OUT SOCIAL SECURITY SPENDING

Interest payments on the federal debt have nearly quadrupled since 1980. Net interest payments in 1993 were $200 billion and are expected to exceed $300 billion annually by the end of the decade. Until we balance the budget, spiralling interest payments will continue to crowd out other spending, including Social Security.

BALANCING THE BUDGET WOULD AVERT THE THREAT OF RUNAWAY INFLATION

No industrialized nation has reached the level of debt we will face next century without monetizing the debt by printing more dollars. Monetizing the debt would lead to explosive inflation. Huge debt burdens contributed to ruinous inflation in Germany in the 1920's and several Third World nations in the 1980's. Runaway inflation would have a particularly severe impact on senior citizens living on a fixed income. It would not do any good to get a $1,000 retirement check if bread costs $100 a loaf.

THE BBA WOULD FORCE CONGRESS TO DEAL WITH DEFICITS IN TIME TO PREVENT A BUDGET CRISIS FORCING DRACONIAN CUTS EACH YEAR JUST TO "MUDDLE THROUGH"

The General Accounting Office has warned that if the amount of deficit reduction required just to limit the deficit to three percent of GDP would increase exponentially by the year 2005. By the year 2020, Congress would be required to enact a half a trillion dollars of additional deficit reduction each year just to retrain the deficit to three percent of GDP. No program—including Social Security—would be able to escape deep spending cuts under this scenario.

BALANCING THE BUDGET WOULD PROMOTE THE ECONOMIC GROWTH NECESSARY TO SUSTAIN THE SOCIAL SECURITY TRUST FUNDS

GAO, CBO and most economists warn that continued growth in deficit spending would result in lower productivity and deteriorating living standards. As real wages for taxpaying workers decline, there will be increasing resistance to the taxes necessary to meet the growing commitments of the Social Security program. GAO found that balancing the budget by the year 2001 would lead to the higher productivity and growth in real wages that would be necessary to support our commitments to the growing elderly population.

THE AMENDMENT WOULD HELP ENSURE THAT CONGRESS TAKES ACTION BEFORE THE SOCIAL SECURITY TRUST FUNDS BEGIN RUNNING YEARLY DEFICITS

Although the Social Security trust funds currently run a surplus, within a generation, they will face cash shortfalls. A balanced budget amendment would provide Congress and the President with the necessary incentive to take corrective action to deal with this threat and provide for the long-term solvency of the trust funds.

THE AMENDMENT PRESERVES STATUTORY PROVISIONS PROTECTING SOCIAL SECURITY

The current statutory protections for Social Security would not be eliminated by the BBA. For example, under current law, any legislation that would change the actuarial balance of the social security trust funds are subject to a point of order which requires a 3/5 vote to waive in the Senate. Under the 1985 Gramm-Rudman-Hollings Act and the 1990 Budget Enforcement Act, Social Security was completely protected from all sequesters. Social Security is not subject to the spending caps in the 1990 budget agreement. Given political realities, Congress would be likely set budget priorities in such a way that protections for Social Security are maintained or even enhanced.

EXEMPTING SOCIAL SECURITY WOULD OPEN UP A LOOPHOLE IN THE BBA AND TEMPT CONGRESS TO DEFUND THE TRUST FUNDS, THREATENING RETIREMENT BENEFITS AND THE TRUST FUND SURPLUSSES

Exempting the Social Security trust funds from the amendment would create a perverse incentive for Congress to use them as a source to fund new or totally unrelated programs, threatening the ability of the trust funds to fulfill their current obligations to retirees. For example, Congress could pay for current and new non-Social Security spending by simply depositing FICA taxes into general Treasury revenues, instead of into the trust funds. Congress also could pass legislation to shift spending for Medicare, other retirement programs, or any number of programs to the Social Security trust funds to avoid a 3/5 vote to unbalance the budget. Thus, non-Social Security outlays and receipts could be "balanced" simply changing program definitions and draining the Social Security trust funds.

THE CONSTITUTION IS NOT THE PLACE TO SET BUDGET PRIORITIES

A constitutional amendment should be timeless and reflect a broad consensus, not make narrow policy decisions. As noted above, the financial status of Social Security will change drastically, and perhaps quite unpredictably, in the next century. We should not place technical language or overly complicated mechanisms in the Constitution and undercut the simplicity and universality of the amendment.

CONGRESSIONAL LEADERS UNITED
FOR A BALANCED BUDGET,
January 18, 1995.

FACT SHEET—A BALANCED BUDGET AMENDMENT EXEMPTION WOULD IMPERIL SOCIAL SECURITY

A BBA EXEMPTION WOULD THREATEN THE REVENUES FOR THE SOCIAL SECURITY TRUST FUND

Placing the OASDI/Social Security trust funds outside the Amendment's deficit restrictions would provide a perverse incentive for a future Congress to shift FICA (and related income) taxes out of the trust funds. Portions of those taxes could be transferred to general Treasury accounts to balance the "operating" budget covered by the BBA, but at the cost of gutting the OASDI trust funds. The current stable revenue stream for Social Security could be critically diverted in small steps which would add up to disaster for the system. A precedent for this already exists: The income taxes on Social Security benefits in the 1983 "bailout" go directly into the trust funds, but higher income taxes imposed on Social Security retirees in 1993 are diverted to general Treasury revenues.

SOCIAL SECURITY COULD EASILY BE OVERWHELMED BY NON-SOCIAL SECURITY PROGRAMS MOVED TO SOCIAL SECURITY'S LEDGER IN AN ATTEMPT TO HIDE THEM BEHIND THE CLOAK OF ITS EXEMPT STATUS

It's easy to predict well-meaning efforts to protect a whole range of social programs by arguing they fall under the general intent of Social Security to provide a safety net. Contrary to the claims of those who want an exemption, funding for current Social Security would not be set aside for protection, but would be pilfered by reclassifying more and more programs as Social Security. This is an even greater threat than simply providing a loophole for deficit spending. As other programs intrude on Social Security, its stability will steadily erode.

A SOCIAL SECURITY EXEMPTION DEFEATS THE INTENT OF THE BBA BY PROVIDING THE GREATEST DEFICIT LOOPHOLE IN HISTORY

As if the direct threat to Social Security isn't enough, exempting it would create an enclave for additional federal debt while at the same time, government could proudly proclaim a "balanced budget." Projects which risk being assigned a low priority under the BBA could avoid facing scrutiny and be paid for by draining the Trust Funds. The Social Security deficit tomorrow could be bigger than the total deficit today.

THE DEBT IS THE THREAT

The greatest threat to Social Security is the federal debt itself. Gross interest payments on the debt already are nipping at the heels of Social Security as the second largest single item in the federal budget. Social Security is in no way immune to the increasing pressure interest payments place on every single federal spending item as the growing debt forces ever larger debt service costs.

EVERY CURRENT STATUTORY PROTECTION FOR SOCIAL SECURITY CAN CONTINUE UNDER BBA

Social Security is the best statutorily protected program in the federal budget. Those laws are perfectly compatible with a BBA and can remain in force, continuing to protect the system. The BBA takes away the major threats to Social Security so existing statutes can do their jobs. But if the federal budget does not have the spending restraint imposed on it by a Constitutional Amendment, we cannot guarantee that the statutes which protect Social Security now can be maintained.

CONGRESSIONAL LEADERS UNITED
FOR A BALANCED BUDGET,
January 30, 1995.

THE BALANCED BUDGET AMENDMENT—A NECESSARY AND APPROPRIATE ADDITION TO THE CONSTITUTION

THE AMENDMENT CORRECTS AN INSTITUTIONAL BIAS TOWARD DEFICIT SPENDING

Representatives may know that chronic deficits threaten the nation's long-term prosperity, but they also know that their short-term interest lies in spending more on the demands of various special interests. When faced from all sides with demands for more spending and less taxes, Congresses and Presidents have taken the easy way out by borrowing more money. A Balanced Budget Amendment corrects this bias by creating immediate political and economic consequences for running a deficit.

THE AMENDMENT PROTECTS RIGHTS DESERVING CONSTITUTIONAL PROTECTION

The ability to borrow money from future generations is a power of such magnitude that should not be left to the judgments transient majorities. Thomas Jefferson favored a Constitutional prohibition of federal indebtedness, fearing that taxes on farmers, laborers, merchants and their families would escalate forever to pay the interest on a growing debt. The threat of economic and political harm from deficit spending is the type of governmental abuse appropriately proscribed by the Constitution.

Even Professor Laurence Tribe of Harvard, a leading opponent of the amendment, told the Senate Budget Committee in 1992 that "The Jeffersonian notion that today's populace should not be able to burden future generations with excessive debt, does seem to be the kind of fundamental value that is worthy of enshrinement in the Constitution. In a sense, it represents a structure protection for the rights of our children and grandchildren."

THE AMENDMENT IS CONSISTENT WITH THE AMERICAN PRINCIPLE OF PROTECTING THE INTERESTS OF POLITICALLY UNDER-REPRESENTED GROUPS FROM MAJORITY ABUSE

The Constitution has always served to protect unrepresented minorities from the abuses of government. The framers of the Constitution were extremely concerned that the rights of the public would be trampled by the tyranny of the majority and crafted a Constitution that balanced the protection of minority rights against the principal of majority rule. Senator Byrd made an eloquent statement on behalf of this principal during a debate regarding the Senate filibuster, stating that "There have come times when the protection of minority is highly beneficial to a nation. Many of the great causes in the history of the world were at first only supported by a minority, and it has been shown time and time again that the minority can be right. So this is one of the things that's so important to the liberties of the people."

Living off a giant credit card and sending the bill to the next generation is a form of taxation without representation in a very real sense. Requiring a higher threshold of support for deficit spending will protect the rights of future generations who are not represented in our political system but will bear the burden of our decisions today.

Requiring a higher threshold of support for deficit spending will protect the rights of future generations who are not represented in our political system but will bear the burden of our decisions today. The ability to borrow money from future generations is a power of such magnitude that it should not be left to the judgments of transient majorities.

Thomas Jefferson agreed with BBA proponents that, "The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government." With what does a constitution deal, if not with "the fundamental principles of government?"

The BBA is based on exactly the same principles as the rest of the constitution.—It would protect the fundamental rights of the people by restraining the federal government from abusing its powers. Morally dubious things should be difficult to do. That's the underlying principle for requiring 3/5 votes in both Houses to approve deficit spending.

Conclusion.—Thousands of pages and hundreds of hours of committee testimony, floor debate, and committee reports have answered every question and concern about the BBA. The only reason left for voting against the BBA is if you believe that it's all right to leave our children a legacy of excessive—and growing—debt. The determination of BBA opponents shows that they fear what BBA supporters have promised all along: the amendment will work.

CONGRESSIONAL LEADERS UNITED
FOR A BALANCED BUDGET,
January 30, 1995.

WOULD THE BBA "END MAJORITY RULE?" NO. IT WOULD PROTECT FUNDAMENTAL RIGHTS.

A common criticism of the balanced budget amendment is that it would "end majority rule." Those who focus on the difficulty of achieving a 3/5 majority to approve deficit spending are missing the point about this amendment. They are stuck in the status quo, revealing their reverence to an outdated pattern of thought; that deficits are the norm. Or, alternately they betray preferences FOR deficit spending. The mind-set exposed is, what would we need to do under the BBA to continue deficit spending?

Opponents of requiring super majorities to approve deficit spending ignore one point, intentionally or otherwise: Under a balanced budget amendment simple majorities will continue to rule. The amendment does not affect the ability of a majority to spend on programs it deems important and to set budget priorities as it sees fit. Super majorities would come into play only when deficit spending looms because the majority abdicates its responsibility to produce a balanced budget. They would serve as a deterrent to irresponsible fiscal policy, while allowing necessary flexibility when a consensus emerges to deal with a national emergency.

Some opponents of the amendment write as though super majorities were a foreign concept to the framers of the constitution. One of their explicit purposes outlined in the Federalist Papers, was to put certain rights and powers beyond the reach of the "tyranny of the majority," and protect current minorities and future majorities from abuse by transient, coalescing "factions." The BBA is very much within that spirit.

Every right protected in the constitution is protected with super majority requirements. That's what is necessary to amend the explicit rights stated in the document.

Senator Byrd of West Virginia, a leading opponent of this measure, might himself have made our point best when he said, "There have come times when the protection of a minority is highly beneficial to a nation. Many of the great causes in the history of the world were at first only supported by a minority. And it has been shown time and time again that the minority can be right. So this is one of the things that's so important to the liberties of the people."

The unfettered power to deficit spend carries with it the temptation to exercise that power to the point of abuse. Incurring huge debts on behalf of our children really is a form of taxation without representation. Our children are a minority whose economic interests demand to be represented through the super majorities provided for in the balanced budget amendment.

[U.S. Chamber of Commerce, Washington, DC]

BALANCED BUDGET AMENDMENT: CONSTITUTIONAL ISSUES

The U.S. Chamber of Commerce, the nation's largest business federation, has endorsed S.J. Res. 1, the Balanced Budget Amendment to the U.S. Constitution. The Chamber believes that this measure will help move the federal government toward fiscal responsibility. This paper discusses the most significant constitutional and legal questions raised by this landmark legislation, along with some of the conclusions reached by the U.S. Chamber.

IS A BALANCED BUDGET REQUIREMENT APPROPRIATE SUBJECT MATTER FOR THE CONSTITUTION?

Some commentators have argued that a balanced budget requirement is a mere rule of accounting, incompatible with the broad principles embodied in the Constitution. It is worth noting that the Constitution already contains several narrowly-focused economic and fiscal provisions, including the requirement of "a regular statement and account of the receipts and expenditures of all public money" (Article I, Section 9) and the requirement that "duties, imposts and excises . . . [be] uniform throughout the United States" (Article I, Section 8).

Moreover, the Balanced Budget Amendment embodies two principle themes of the Constitution: limitation on federal power, and protection of politically under-represented groups against majoritarian abuse. Thomas Jefferson, who perceived the inherent tendency of central government to expand, supported a constitutional prohibition of federal borrowing as a means of protecting individual liberty. For most of the nation's history the growth of the federal government was held in check by an implicit policy against deficits, except during war or recession. In recent times, the erosion of this principle has created persistent structural deficits, removed the need to limit and prioritize programs, and led to an excessively large federal sector. The BBA requirement that federal operations be funded from current revenues restores an important principle of fiscal responsibility and limited government.

Likewise, the protection of groups with limited access to the political process has emerged as a major theme of Constitutional law.[1] Limitations have been placed on governmental actions which unfairly impact racial minorities, aliens and other "discreet and insular" groups.[2] Because future generations who will bear much of the burden of current policy lack input in to the electoral process, it may be that their interests are undervalued in federal budget decisions. The Balanced Budget Amendment seeks to ensure that the vital interest of young and future Americans are reflected in the decisions of Congress, embodying a principle of fairness and political inclusion consistent with the best provisions of the Constitution.

Footnote at end of article.

CAN THE DEFICIT PROBLEM BE SOLVED SHORT OF AMENDING THE CONSTITUTION?

Statutory attempts to impose fiscal discipline upon the federal government have failed, largely because Congress was able to change the rules in mid-game. The ambitious deficit reduction targets of the 1985 Gramm-Rudman-Hollings law were repeatedly modified when they conflicted with Congress' spending ambitious. Likewise, big-ticket items such as unemployment compensation payments and disaster relief are customarily designated as "emergency" spending, which exempts them from spending caps. Between 1980 and 1990, each year's actual spending exceeded the targets of that year's budget resolution by an average of $30 billion (the excess was $85 billion in 1990).[3]

Each statutory response to the deficit has shown the same vulnerability: hard-won budget rules can be waived or modified by a simple majority vote. Not surprisingly, a majority can usually be assembled to support more spending. The key advantage of a Constitutional amendment is that tough budgetary rules can be placed beyond the reach of simple Congressional majorities *S.J. Res. 1* requires yearly enactment of a balanced budget, unless Congress approves a specific deficit for that fiscal year by a three-fifths vote of each house. (A simple majority of each house can waive the balanced budget requirement during a time of war.) The supermajority requirement reflects the view that incurring a deficit should be an exceptional event that requires clear consensus. This legislation commits future Congresses to avoid structural deficits, while providing them the flexibility to respond to true emergencies.

IS THERE ANY PLACE FOR STATUTORY SOLUTIONS?

While the Balanced Budget Amendment mandates a zero deficit by FY 2002 (or the second fiscal year after enactment), it does not specify how to get there. The Chamber believes that enactment of a BBA will force Congress to take a close look at statutory mechanisms designed to reach that goal, and this will probably begin well in advance of final ratification by the states. In approving *S.J. Res. 41*, the Senate Judiciary Committee contemplated enactment of "legislation that will better enable the Congress and the President to comply with the language and intent of the amendment."[4] Additional budget process reforms may include tax and spending limitations, line-item veto authority, and the creation of an independent commission to recommend spending cuts. The BBA will thus lay the groundwork for further budget process reforms at the statutory level.

WILL CONGRESS AND THE PRESIDENT STILL HAVE THE FLEXIBILITY TO RESPOND TO NATIONAL EMERGENCIES?

S.J. Res. 1 does not prohibit Congress from running a deficit in a given year; it merely requires that this decision be approved by three fifths of each house. This degree or consensus is required for many important decisions, including the approval of a treaty, and override of a Presidential veto. In the BBA, the three-fifths requirement reflects the view that incurring a deficit should be an exceptional event that is carefully scrutinized. At the same time, this provision allows Congress and the President the flexibility to respond to genuine emergencies. Should large-scale domestic problems such as recessions or natural disasters alter budget needs, it will be possible to assemble a three-fifths consensus that recognizes this. In the case of foreign aggression, the balanced budget requirement can be suspended by a simple majority vote of each house.

WILL THE AMENDMENT THRUST THE COURTS INTO AN INAPPROPRIATE ROLE OF CUTTING PROGRAMS AND RAISING TAXES?

Some commentators have raised questions about the enforcement of a Balanced Budget Amendment. A primary concern is that Congressional efforts to meet the balanced budget requirement would be challenged in the courts, and the judiciary would be thrust into the role of weighing policy demands, slashing programs and increasing taxes. On the other hand, there is a legitimate and necessary role for the courts in ensuring technical compliance with the amendment. The Chamber believes that these concerns can be reconciled in implementing legislation, which draws upon existing legal principles.

In general, the courts have shown an unwillingness to interject themselves into the fray of budgetary politics. The New Jersey Supreme Court observed that "it is a rare case . . . in which the judiciary has any proper constitutional role in making budget allocation decisions."[5] The judiciary has remained clear of most budget controversies through doctrines of "nonjudiciability," including "mootness," "standing," and the "political question" doctrine.

A case is considered moot and can be rejected by the court, if the matter in controversy is no longer current (this will be a factor in many budgetary controversies, such as those based on unplanned expenditures or flawed revenue estimates which become apparent near the end of the fiscal year). The doctrine of standing limits judicial access to parties who can show a direct injury over and above that incurred by the general public. The logic is that the grievances of the public (or substantial segments thereof) are the proper domain of the legislature.[6] The U.S. Supreme Court has held that status as a taxpayer does not automatically confer standing to challenge federal actions,[7] and has barred taxpayer challenges of budget and revenue policies in the absence of special injuries to the plaintiffs.[8] The political question doctrine is a elated principle that the courts should remain out of matters which the Constitution has committed to another branch of government. The Supreme Court has held that a "political question" exists when a case would require "nonjudicial discretion."[9] This would be the case with many budgetary controversies, such as the choice to cut particular programs, which by their nature require ideological choices and the balancing of competing needs.

In contrast, courts have asserted jurisdiction over politically tinged controversies where they find "discoverable and manageable standards" for resolving them. In *Baker v. Carr*,[10] the U.S. Supreme Court reasoned that objective criteria guide judicial decisionmaking and limit the opportunity for overreaching. In the balanced budget context, the "discoverable and manageable standards" principle can help demarcate lines between impermissible judicial policymaking, and the needed enforcement of accounting rules and budget procedures.

In all likelihood, a strong framework of accounting guidelines will emerge from implementing legislation. The Senate Judiciary Committee has interpreted Section 6 of the bill to impose "a positive obligation on the part of Congress to enact appropriate legislation" regarding this complex issue.[11] Judiciary Committee staff on both the House and Senate side have indicated their intention that implementing legislation embrace stringent accounting standards that will minimize the potential for litigation. Should legitimate questions arise concerning the methods by which Congress balances the budget, these standards will also provide objective criteria which meet constitutional standards for judicial intervention.

The implementing package is also likely to establish guidelines for judicial involvement, defining what issues are judiciable and which parties have standing to challenge Congressional decisions. State budget officers, for example, could be given standing to contest unfunded federal mandates. The enforcement procedures, coupled with budget process and accounting guidelines, will operate against a backdrop of traditional legal principles to rationally limit judicial action. The effect should be to prevent judicial overreaching into legislative functions, while providing a check on Congressional attempts to evade the requirements of the BBA through procedural and numerical gimmickry.

FOOTNOTES

[1] See John Hart Ely, "*Toward A Representation-Reinforcing Mode of Judicial Review*," 37 Md. Law Review 451 (1978).

[2] *United States* v. *Carolene Products Co.*, 304 U.S. 144 (1938), footnote 4.

[3] Source: "*The Economic and Budget Outlook*," Congressional Budget Office (January 1993), p. 108.

[4] S. Rpt. 103–163, 103rd Congress, 1st Session (1993), p. 6.

[5] *Board of Education* v. *Kean*, 457 A.2d 59 (1982).

[6] *Flast* v. *Cohen*, 392 U.S. 83 (1968) (Harlan, J., dissenting).

[7] *Massachusetts* v. *Mellon*, 262 U.S. 447 (1923).

[8] *United States* v. *Richardson*, 418 U.S. (1974) (plaintiffs challenged a statute allowing the CIA to avoid public reporting of its budget); *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976) (plaintiffs challenged a Revenue Ruling granting favorable tax treatment to certain hospitals as inconsistent with the Internal Revenue Code).

[9] Id.

[10] *Baker* v. *Carr*, 369 U.S. 186 (1962).

[11] S. Rpt. 103–163, 103rd Congress, 1st Session (1993).

U.S. CHAMBER OF COMMERCE,
Washington, DC, 20062–2000.

THE ECONOMIC EFFECTS OF THE BALANCED BUDGET AMENDMENT

The U.S. Chamber of Commerce, the nation's largest business federation, endorses S.J. Res. 1, the Balanced Budget Amendment of the U.S. Constitution. The Chamber believes that this measure will help move the federal government toward fiscal responsibility. This paper discusses the most significant economic questions raised by this landmark legislation along with some of the conclusions reached by the U.S. Chamber.

Q. Why should we balance the federal budget?

A. There are several reasons why the federal budget should be balanced. Most fundamentally, the Balanced Budget Amendment would improve accountability in federal spending decisions. Government officials are generally inclined to increase government spending to improve services to their constituents. This, of course, is countered by their reluctance to raise taxes. But since borrowing can substitute for raising taxes, legislators find they can offer high level of services without the pain of raising the current level of taxes. Consequently, when it's time to make tough spending decisions, Congress finds it can dodge the question by just borrowing the difference. The proper counterweight to higher government spending—raising taxes—is circumvented by the seemingly painless act of federal borrowing. This leaves us with more government than taxpayers are willing to pay for. Over time, such borrowing leaves us with a bloated government sector and the problem of paying off the debt.

The Balanced Budget Amendment restores the proper balance between spending and taxes, and forces government officials to prioritize difficult spending choices. It improves the process whereby such decisions are made, forcing Congress to use much greater discipline.

Also, no matter whether the government finances its spending through taxes or borrowing, its still spending and therefore commanding economic resources. To those who believe in limited government and market systems, the *level* of federal spending is as much of a concern as how the amount is financed. Limiting government borrowing blocks the path of least resistance to government expansion, and so we expect that a Balanced Budget Amendment would act to limit the reach of government into the economy.

Q. Wouldn't Congress just raise taxes to close the deficit?

A. In a way. Congress already has. After all, the difference between Government borrowing and raising taxes is just a question of taxes today or taxes tomorrow. The important point is that, no matter how it's financed, the government is spending economic resources, and the amount of spending will surely be greater when government is allowed to use deficit spending.

And tax increases to close the deficit gap are being used now anyway—witness the tax increases in 1982, 1983, 1984, 1985, 1988, 1989, 1990 and 1993. In other words, we're already getting the tax increases. By requiring a balanced budget, we expect to place additional pressure on Congress to tackle the spending cuts that should be made.

To answer the question more directly. Congress can't just raise taxes, leave spending intact, and walk away—if it could, it would have done so a decade ago and spared us this long debate on deficit spending. So while it may raise some taxes to close the deficit, Congress will have to confront its voracious spending habit. The end result will be a lower level of government spending, and less government involvement in the economy.

In addition, a couple of provisions in the BBA make it more difficult to raise taxes. Under the amendment, tax increases require both a roll call vote (instead of anonymous voice votes) and a constitutional majority (which means 51 votes would be required in the Senate and 218 votes in the House to raise taxes, instead of a majority of those voting). This may not sound like much of a hurdle, but note that President Clinton's 1993 tax increase would have needed an additional two Senate votes under such a requirement. Instead, it passed after Vice President Gore's vote broke a 49–49 deadlock.

Finally, of course, congressmen and women would have to face the political consequences of raising taxes at the voting booth. Because a roll call vote would identify those who voted to raise taxes, legislators would be held to a higher level of accountability.

Q. What is the primary economic impact of running government deficits?

A. The worst thing about government deficit spending is that it distorts the economy's balance between saving and investment, producing adverse long-term productivity growth. The funds the government is borrowing have to come from somewhere, and generally they come from private saving and private investment. Throughout the 1980's and early 1990's, we've seen the saving rate fall from about 8% to consistently below 4%—too low to fuel the kind of investment we need to keep up our high productivity. Since long-term productivity growth is the key to rising standards of living, it's dangerous to be skimping on investment.

Federal borrowing is not inherently wrong or bad for the economy; it depends on how the funds are used. If the funds were being used exclusively to create stronger schools, better highways, safer bridges, and so forth, we would be increasing the productive capacity of the economy. This means that we would be creating the means by which future generations can create the wealth to pay back the borrowed funds. But if we're using those funds to provide ourselves with consumption-oriented short-term benefits that don't improve our long-term productive capacity, then we're raising our standard of living by lowering that of future generations. To quote NationsBank economist Mickey Levy: "Deficits matter most because they distort the way current national resources are allocated, generally favoring current consumption at the expense of private investment."[1]

Q. Are there other effects of deficit spending that harm the economy?

A. In a complex, interlocking, international economy, you can expect sustained deficit spending to cause other distortions as well. First, chronic government borrowing tends to put upward pressure on interest rates. Businesses seeking to raise capital and households applying for mortgages have to compete with the federal government in securing loanable funds. This increase in demand pushes interest rates up. Consequently, fewer loans are made to the private sector, and those that are made carry a higher interest rate. This is known as "crowding out," since government borrowing displaces some private borrowing.

Second, because our economy is increasingly linked to the global market, there are important international impacts related to the budget deficit.[2] Higher interest rates tend to raise the foreign exchange value of the dollar, meaning that our trading partners face price increases on the goods and services they buy from the U.S. This lowers our exports, pushing up our trade deficit. Many contend that one of the major forces behind the huge trade deficits of the 1980s was the federal budget deficit.

Third, the amount we're paying to service our national debt has grown almost fivefold since 1979—from $43 billion to $203 billion in 1994. As a share of total government outlays, interest payments on the debt have about doubled from 7.4% during the 1970s to over 14% currently. That means that for the same amount of revenue, there's less money for other government programs, whether it's for national defense, our court system, Head Start, or environmental clean-up. No matter what the budget priorities are, fewer funds are available.

To sum up, there are serious economic side-effects of deficit spending that Washington tends to ignore. In addition to restoring discipline to the spending decisions of Congress, the Balanced Budget Amendment seeks to remove the economic distortion caused by chronic deficit spending.

Q. Back to that notion of "crowding out" for a moment. If increased government borrowing leads to higher interest rates, as you claim, then why did interest rates fall during the 1980s just as the budget deficit was expanding?

A. The key to this apparent paradox is the behavior of inflation during the 1980s. After starting out the decade in the double-digits, the inflation rate fell sharply due to tighter monetary policy and, in mid-decade, the collapse of oil prices. Since expectations of future inflation are embedded in market interest rates this decline in inflation pushed interest rates down. This more than offset the impact of increasing federal deficits which were working at the same time to push interest rates up.

So while it's true that market interest rates fell significantly during the 1980's it's correct to say that they would have fallen even further had the federal budget been brought into balance. In fact later in this document we'll present results from an econometric study that show significally lower interest rates as a result of moving to a balanced budget.

Q. Doesn't government spending represent an investment in the economy, with highway and transportation construction, funds going to education, etc?

A. Some government spending can be regarded as "investment spending," meaning that funds spend now will generate stronger economic growth later. Spending on infrasrucutre—highways, bridges, dams, and mass transit, for example—and other programs such as education are often thought of that way, since they provide benefits over a long period of time. But the bulk of government spending goes to projects and programs that don't provide much of a return over time, but instead represent "current spending." Such programs include Social Security, Medicare, federal retirement programs, unemployment insurance, agricultural extension offices, and so forth. While many of these programs are desirable, we need to recognize that we're borrowing vast sums to pay for benefits that are only short-lived. If this generation believes that the current level of spending on entitlements such as Social Security is appropriate, that's fine, but the funding should therefore come from the current generation, not the next.

Because an extra dollar of private investment is generally more efficient that an extra dollar of government investment, our productive capacity generally grows less when funds are diverted away from the private sector. This means that productivity and wage growth will be held back, lowering our standard of living.

Q. Why a Balanced Budget Amendment now? After all, we've gotten along without it for 200 years.

A. Until about 1960 or so, running a balanced over time was almost an unwritten Constitutional amendment. The U.S. government ran deficits during the War of 1812, the severe recession of 1837–43, the Civil War, and the Spanish American War, to name a few episodes. But in other periods, the federal government ran surpluses to reduce its outstanding debt. On the whole, only emergencies justified running a deficit.

But since 1960, this informal rule apparently has gone by the wayside. In the past 34 years, the U.S. has avoided a deficit only once, when in 1969 there was a surplus of $3 billion. Given the chronic deficits we've come to expect, its time to make explicit through a Constitutional amendment the old implicit principle of government living within its means.

Q. Will passing a Balanced Budget Amendment really add discipline to the federal government?

A. Lawmakers have tried statutory measure to rein in government deficit spending, but they just haven't worked. For example, in 1985 Congress passed the Gramm-Rudman-Hollings deficit reduction bill, which was supposed to reduce the deficit to zero by fiscal year 1991 from the $293 billion deficit projected at the time for fiscal year 1991.[3] As it turned out, even with passage of GRH, we ended up with a $196 billion deficit in 1991 and a $289 billion deficit in 1992. That's because hard-won budget rules can be waived or modified by a simple majority vote. The Balanced Budget Amendment, on the other hand, requires a three-fifths vote of each house to enact a budget with a deficit (in times of war, only a simply majority is required).

It's clear that these statutory measures haven't worked, and so it's time to turn to the stronger medicine of a balanced budget amendment.

Q. Didn't we move to balancing the budget with the passage in August 1993 of President Clinton's budget package, the Omnibus Budget Reconciliation (OBRA)?

A. Washington made some progress in trimming the deficit in 1993 when it passed OBRA. The nonpartisan Congressional Budget Office estimated in September 1993 that OBRA will cut $433 billion of debt over the next five years from the projected baseline (i.e., pre-OBRA) level of debt.[4] But not only is the post-OBRA deficit still at $222 billion in FY 1998 (CBO January 1995 estimate), but it's also on the rise. By 2005, according to CBO, the deficit is projected to hit $421 billion. As a percentage of total output, that means the deficit rises from 2.7% of GDP in FY 1998 to 3.6% in FY 2004.[5]

Like the budget deals in the previous decade before it, OBRA clearly does not solve the deficit problem. That's why it's imperative to turn to a constitutional, rather than a statutory, remedy for our chronic deficit problem.

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[1] Footnotes at end of article.

Q. What's the relationship between the federal deficit and federal debt?

A. The federal deficit is the difference between the government's outlays and receipts in any one year, while federal debt is the total amount of government debt outstanding. The debt, in other words, is the total accumulation of deficits over the years. In 1994, the federal deficit was $203 billion, and the total federal debt by year-end was $4.64 trillion.[6]

Q. A federal debt of $4.6 trillion sounds like a lot, but is it historically high?

A. In absolute terms, it's the highest it's ever been. But because of inflation and the growth of our economy, it's best to answer this question by measuring the federal debt relative to the size of the economy; that is, to look at the ratio of debt to GDP. Today, the total debt held by the public is 52% of current GDP.[7] While that's less than half of 1946's 114% of GDP, we don't have as much to show for it. The debt then paid for victory in World War II, while the current debt is simply funding higher levels of consumption.

Moreover, this ratio is currently moving in the wrong direction. It's grown from below 30% during the 1970s to just over 40% during the mid-1980s, and now to over 50%. In contrast, the federal debt ratio in the postwar period was pruned from 114% to 68% by 1951, and generally kept falling until the early 1970s.

Q. So the federal debt's higher, and it's been growing for twenty years. But while some continue to feel economic discomfort from structural changes unrelated to the higher federal debt (such as the defense build-down and the commercial real estate overhang), the U.S. seems to be doing fine. What's the crisis?

A. The growing federal debt is not a problem that can be characterized as "a wolf at the door," which requires immediate attention. Instead, to use the analogy introduced by President Carter's top economist, Charles Schultze, it's a "colony of termites in the wall."[8] In other words, it's a serious long-term problem that can be ignored in the short-term. The damage—lower investment, lower productivity, slower wage growth, etc.—may be hard to perceive or even hidden by other economic forces, but that doesn't mean it's not occurring. The termites are still chomping away and must still be dealt with, because the destruction can be massive.

Q. Won't the Balanced Budget Amendment hamper government activity in times of a national emergency, such as a war?

A. The Amendment will not compromise America's ability to respond to national emergencies. In general, the Amendment can be suspended for a specific fiscal year whenever three-fifths of both Houses of Congress vote to do so. In wartime, this requirement is lowered to a simple majority.

Q. Won't balancing the budget cause a serious disruption of economic growth?

A. If the deficit were reduced all at once—from FY 1995's projected $162 billion to zero next year, for example—there indeed would be a severe disruption. Because the removal of so much fiscal stimulus in one year is not advisable, the Balanced Budget Amendment calls for the provision to become law in FY 1999 or two years after the ratification by three-quarters of the states, whichever is later. The Amendment does not provide a specific path for deficit reduction in the meantime, but Congress would have five years to implement the needed changes.

While we should expect some disruption—balancing the budget is not, in the short-term, an economic growth policy—we will see several long-term benefits after the budget is balanced. And the short-term distress can be mitigated, according to economic simulations performed in a 1992 study conducted by Laurence H. Meyer & Associates, a nonpartisan and highly regarded macroeconomic consulting firm based in St. Louis, Missouri. If we had started in 1993 and balanced the budget by 1998, using Federal Reserve policy to cushion the economy, the LHM&A model shows that total output would be between 1% to 1.6% higher in 2003.[9] Even 1% additional output means an economy that's $80 billion larger (measured in today's dollars).

Q. Does it make any difference whether Congress balances the budget using tax increases or spending cuts?

A. It makes a big difference. In the study cited above, LHM&A found that the highest gains from deficit reduction come from expenditure cuts. That is because increases in taxes create disincentives for labor and investment, mitigating some of the beneficial effects of deficit reduction on interest rates.

In the following table we report the results of two policy simulations conducted by LHM&A in which the budget is balanced, and compare it to the baseline case where policy is left as is.

The first column shows where the economy would be if no action were taken.

The second column shows where the economy would be if expenditures were cut by the entire amount necessary to balance the budget ("All Spending").

The final column shows the results of balancing the budget by raising spending and cutting expenditures by exactly the same amount ("Mix").

The two balanced budget scenarios assume that the Federal Reserve eases monetary policy enough to maintain the unemployment rate at the baseline level of 5.2%. The following table compares how the economy would look with and without deficit reduction by showing some of the results for the first five years.

THE ECONOMIC IMPACT OF BALANCING THE BUDGET

[The First 5 Years of Deficit Reduction]

	No deficit reduction	Deficit reduction scenarios	
	Baseline	All spending	Mix
Levels in the fifth year:			
Federal deficit ($ bill)	−251	0	−1
3-month T-bill rate (percent)	5.5	4.7	4.6
30-year Government bond yield (percent)	6.9	5.7	5.8
AAA corporate bond yield (percent)	7.1	5.8	5.9
Average annual growth, first 5 years (percent):			
Real GDP	2.6	2.8	2.7
Inflation	3.3	3.5	3.4
Real personal disposable income	2.3	1.7	1.5

Notice how interest rates are significantly lower in the scenarios where the deficit has been reduced. This is the fuel for the higher level of business investment. In fact, the inflation-adjusted value of the nation's plant and equipment (what economists call the real capital stock) is 2% higher after the first five years of deficit reduction, and 6% higher after ten years, when comparing the result of the "All Spending" scenario to the baseline. While those figures may sound small, they mean $120 billion worth of additional computers and manufacturing plants within five years, and $390 billion more in ten years. And it should be noted that the capital stock is almost 2% higher when the budget is balanced entirely through spending cuts rather than an equal mix of spending cuts and tax increases.

While inflation is a bit higher in the deficit-reduction scenarios (due to the Federal Reserve's cushioning), growth in real GDP (inflation-adjusted output) is stronger, on average, in the five-year period, as the deficit is reduced. Real personal disposable income grows at a slower rate (1.7% and 1.5% versus 2.3%) in the cases where the deficit is lowered. But note that it's stronger in the case where all of the deficit reduction comes from reductions in government spending. This shows that moving to a balanced budget will inflict some economic pain. The short-term pain is unavoidable, but it helps set the stage for stronger growth in the years after the deficit has been balanced.

Of course, the active participation of Federal Reserve is an important component of LHM&A's simulations, and it comes with the price tag of slightly higher inflation. But the important point is that the model suggests a path that the economy can follow to get to a balanced budget without severe economic hardship.

Another factor that would help the transition that's hard to model is the boost to consumer and business confidence we would expect to find once a credible balanced-budget plan were enacted. Business investment should be higher, and the return of resources from the public to the private sector as government spending cuts are carried out should improve overall productivity in the economy.

Q. Most of the states have some sort of balanced budget requirement. What has been their experience?

A. According to the National Association of State Budget Officers, the application of the state experience to the Federal experience is not clear-cut. The state balanced budget requirements are diverse and written so generally that they're subject to varying interpretations. According to their 1992 statement, the tradition of balanced budgets, rather than the enforcement provisions or the threat of lower bond ratings, plays the most important role in developing balanced budgets.[10]

FOOTNOTES

[1] Mickey D. Levy, *Deficitphobia: Right for the Wrong Reasons*, in "Economic and Financial Perspectives," CRT Government Securities Ltd., New York, December 1993, pg. 1.

[2] Benjamin M. Friedman, *U.S. Fiscal Policy in the 1980s: Consequences of Large Budget Deficits at Full Employment*, in "Debt and the Twin Deficits Debate," James M. Rock, ed. Mayfield Publishing Company, 1991.

[3] Laurence H. Meyer & Associates, *Balancing the Budget by 1991: The Gramm-Rudman-Hollings Proposal*, November 1985, pg. 5.

[4] Congressional Budget Office, *The Economic and Budget Outlook: An Update*, September 1993, pgs. 26–29.

[5] Congressional Budget Office, *The Economic and Budget Outlook: FY 1996–2000*, January 1995, pg. 58.

[6] Ibid, pg. 51.

[7] Congressional Budget Office, *Federal Debt and Interest Costs*, May 1993, pg. 92.

[8] Charles L. Schultze, *Of Wolves, Termites and Pussycats*, "The Brookings Review," Summer 1989, pgs. 26–33.

[9] Laurence H. Meyer & Associates, *Balancing the Budget: An Analysis of the Economic Effects of Deficit Reduction*, prepared for the Chase Manhattan Bank, December 1992, pg. 1.

[10] National Association of State Budget Officers, *State Balanced Budget Requirements: Provisions and Practices*, June 1992, pg. 3.

U.S. CHAMBER OF COMMERCE,
Washington, DC.

BALANCED BUDGET AMENDMENT: THE ROLE OF THE COURTS

Some lawmakers and commentators have raised questions about the enforcement of a Balanced Budget Amendment to the U.S. Constitution. A primary concern is that Congressional efforts to meet the balanced budget requirement would be challenged in the courts, and the judiciary would be thrust into a non-judicial role of weighing policy demands, slashing programs and increasing taxes.

On the other hand, there is a legitimate and necessary role for the courts in ensuring compliance with the amendment. Congress could potentially circumvent balanced budget requirements through unrealistic revenue estimates, emergency designations, off-budget accounts, unfunded mandates, and other gimmickry. Certainly, the track record of the institution under the spending targets of Gramm-Rudman-Hollings and other statutory provisions is no cause for optimism.

It is our view that the need to proscribe judicial policymaking can be reconciled with a constructive role for the courts in maintaining the integrity of the balanced budget requirement. Congress is expected to address technical issues such as accounting standards, budget procedures and judicial enforcement in followup implementing legislation. By drawing on the existing legal principles of "mootness," "standing" and "nonjudiciability," implementing legislation can define an appropriate role for the courts in making the amendment work. The net effect can be to prevent judicial assumption of legislative functions such as selecting program cuts, while allowing the courts to police a framework of accounting standards and budget procedures.

TRADITIONAL LIMITS ON JUDICIAL INTERVENTION

In general, the courts have shown an unwillingness to interject themselves into the fray of budgetary politics. The New Jersey Superior Court observed that "it is a rare case * * * in which the judiciary has any proper constitutional role in making budget allocation decisions."[1] The judiciary has remained clear of most budget controversies through the principles of "mootness" and "standing," as well as the "political question" doctrine.

A case is considered moot, and can be rejected by the court, if the matter in controversy is no longer current. In *Bishop v. Governor*, 281 Md. 521 (1977), taxpayers and Maryland legislators claimed that the governor's proposed budget violated the state's balanced budget law, because $95 million was contingent upon enactment of separate federal and state legislation. The Maryland Court of Appeals dismissed the case as moot because by that time the separate legislation had been approved, and the relevant fiscal year had elapsed. Mootness will be a factor in many potential challenges to Congressional action under a federal Balanced Budget Amendment, particularly those based on unplanned expenditures or flawed revenue estimates which become apparent near the end of the fiscal year.

The doctrine of standing limits judicial access to parties who can shoe a direct injury over and above that incurred by the general public. The logic is that the grievances of the public (or substantial segments thereof) are the proper domain of the legislature.[2] The U.S. Supreme Court has generally held that status as a taxpayer does not confer standing to a challenge federal actions[3], and has barred taxpayer challenges of budget and revenue policies in the absence of special injuries to the plaintiffs.[4] A state cannot sue the federal government on behalf of its citizens,[5] and it is doubtful that Members of Congress have standing to challenge federal actions in court.[6]

The political question doctrine is a related principle that the courts should remain out of such matters which the Constitution has committed to another branch of government. The U.S. Supreme Court has held that a "political question" exists when a case would require "nonjudicial discretion."[7] This would be the case with many budgetary controversies, such as the choice to cur particular programs, which by their nature require ideological choices and the balancing of competing needs. In theory, at least, Congress brings to this task a "full knowledge of political, social and economic conditions. * * *," as well as the legitimacy of elected representation.[8] The New Jersey Supreme Court recognized this in a case where local governments challenged funding decisions made by the governor and legislature, holding that the allocation of state funds among competing constituent groups was a political question, to be decided by the legislature and not the judiciary.[9] The Michigan Supreme Court has likewise held that program cutting decisions are a non-judicial function.[10]

A ROLE FOR THE COURTS

The courts have asserted jurisdiction over politically tinged controversies where they find "discoverable and manageable standards" for resolving them. In *Baker v. Carr*, the U.S. Supreme Court reasoned that objective criteria guide judicial decisionmaking and limit the opportunity for overreaching. In the balanced budget context, the "discoverable and manageable standards" principle can help demarcate lines between impermissible judicial policymaking, and the needed enforcement of accounting rules and budget procedures.

In all likelihood, a strong framework of accounting guidelines will emerge from implementing legislation. The Senate Judiciary Committee has interpreted Section 6 of the bill to impose "a positive obligation on the part of Congress to enact appropriate legislation" regarding this complex issue.[11] Judiciary Committee staff on both the House and Senate side have indicated their intention that implementing legislation embrace stringent accounting standards that will minimize the potential for litigation. Should legitimate questions arise concerning the methods by which Congress "balances" the budget, these standards will also provide objective criteria which meet constitutional standards for judicial intervention.

The implementing package is also likely to establish guidelines for judicial involvement, defining what issues are judiciable and which parties have standing to challenge Congressional decisions. Where Congress has defined standing within the relevant statute, the courts have generally deferred to this request for judicial input, and entertained suitable cases.[12] This approach has the advantage of defining appropriate controversies and plaintiffs more precisely. In the Balanced Budget context, the right to raise particular arguments could be delegated to specific public officials. State budget officers, for example, could be given standing to contest unfunded federal mandates.

We are satisfied that such enforcement procedures, coupled with budget process and accounting guidelines, will operate against a backdrop of traditional legal principles to rationally limit judicial action. The effect should be to prevent overreaching into legislative functions, while providing a check on Congressional attempts to evade the requirements of the BBA through procedural and numerical gimmickry.

Footnotes at end of article.

FOOTNOTES

[1] *Board of Education f. Kean*, 457 A.2d 59 (N.J. 1982).

[2] *Flast v. Cohen*, 392 U.S. 83 (1968), (Harlan, J., dissenting).

[3] *Massachusetts v. Mellon*, 262 U.S. 447 (1923). The courts have allowed taxpayer claims that public funds were used to support an unconstitutional purpose. The two important decisions in this area are both establishment of religion cases. *Flast v. Cohen*, 392 U.S. 83 (1968); *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464 (1982).

[4] *United States v. Richardson*, 418 U.S. 166 (1974) (plaintiffs challenged a statute allowing the CIA to avoid public reporting of its budget); *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976) (plaintiffs challenged a Revenue Ruling granting favorable tax treatment to certain hospitals as inconsistent with the Internal Revenue Code).

[5] *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

[6] *Goldwater v. Carter*, 444 U.S. 996 (1979).

[7] *Baker v. Carr*, 369 U.S. 186 (1962).

[8] *Id.*

[9] *Camden v. Byrne*, 82 N.J. 133 (1980).

[10] *Michigan Assn. of Countries v. Dept. of Management and Budget*, 418 Mich. 667 (1984).

[11] *S. Rpt. 103–163*, 103rd Congress, 1st Session (1993).

[12] Nowak, John E. et al. Constitutional Law, West Publishing Co. (1983), p. 87. In Lujan v. Defenders of Wildlife, 112 Sup. Ct. 2130 (1992), the Court voided a citizen suit under the Endangered Species Act, holding that Congress' power to define standing by statute is limited by Article III of the Constitution. The decision that citizen suit provisions must be carefully articulated and supported by clear legislative goals.

U.S. CHAMBER OF COMMERCE,
Washington, DC, Thursday, February 9, 1995.

U.S. CHAMBER THROWS SUPPORT BEHIND BALANCED BUDGET AMENDMENT

WASHINGTON.—The U.S. Chamber of Commerce today pledged to "pull out all the stops" to ensure passage of the balanced budget amendment.

In a press conference rallying support for the upcoming Senate vote, Chamber Senior Vice President Bruce Josten said, "We believe that passage of the balanced budget amendment is imperative if we are to restore the critical principle of fiscal responsibility and limited government. It is the lynch pin in our approach to taming government spending and shrinking government waste.

"Large and growing federal deficits reduce savings and investment, stymie income and job growth and lower productivity growth and our standard of living," Josten said. "Deficits result in the accumulation of government debt and ultimately lead to higher taxer.

"Together with the line-item veto and the prohibition on unfunded mandates, passage of this balanced budget amendment will place renewed emphasis on fiscal discipline, force Congress to cut spending and constrain its ability to raise taxes."

Josten promised the full extent of the Chamber's capabilities to "pull out all the stops and pledge to use every aspect of our broad grassroots organization to ensure the passage of a balanced budget amendment.

"We urge all the senators to vote for its passage and we will count it as a key vote in our chamber rating system," he said.

NFIB,
SMALL BUSINESS NEWS,
Washington, DC.

BALANCED-BUDGET AMENDMENT CRUCIAL TO SMALL-BUSINESS GROWTH

WASHINGTON, February 9.—Jack Faris, president of the National Federation of Independent Business, the nation's largest advocacy group for small business, urged small-business owners to write and call Congress to support the idea of adding a balanced-budget amendment to the Constitution.

Faris said Congress must heed broad-based public support for a balanced-budget amendment, especially that coming from the small-business sector.

"Small-business owners have voted overwhelmingly for a balanced budget and deficit reduction in several NFIB surveys," Faris said. "They understand that high deficits rob small businesses of available capital and mean less money for private investment. When small firms can't afford to expand and buy equipment, fewer jobs are created and less revenue is sent to the Treasury."

The 1994 deficit hit $223 billion, Faris said, pointing out that the public debt, the accumulation of each year's deficit, reached $4.7 trillion.

"It's inconceivable that a business could spend or borrow as irresponsibly as the federal government has," Faris said. "A small firm has to live within a budget. If owners spent and borrowed money like the federal government, they'd be out of business in a heartbeat."

The NFIB Education Foundation, the organization's research arm, found that federal taxes and frequent tax law changes rank among the top problems of entrepreneurs.

"Small-business owners voted in November in greater numbers than ever before to elect lawmakers who wouldn't conduct 'business as usual,' Faris said. "and a balanced-budget amendment would be a major step toward controlling the size of the federal government."

NFIB represents more than 600,000 small and independent firms. Small business makes up 99 percent of the private sector, hires approximately half of the country's workforce, and creates some two-thirds of all new jobs, according to NFIB.

[News release from Financial Executives Institute]

FINANCIAL EXECUTIVES INSTITUTE ANNOUNCES TOP 10 LEGISLATIVE AGENDA

MORRISTOWN, NJ, January 16, 1995.—Financial Executives Institute, a professional association of corporate financial executives, is prepared to work with the Congressional leadership to enact the initiatives contained in the "Contract with America." In a letter that outlines its legislative agenda for 1995, FEI urged its 14,000 members to support such "Contract" initiatives as deficit reduction, product-liability reform, regulatory reform, and capital-gains reform.

"For years we've been urging Congress to put a lid on spending and manage the taxpayers' money more wisely," says P. Norman Roy, president of FEI. "Now, we seem to have people in Congress who are determined to give the taxpayers good value for their tax dollars. It's a good start."

Heading FEI's agenda of ten key issues is passage of the Balanced Budget Amendment, which would prohibit federal outlays from exceeding total receipts. If the amendment passes, it will require a three-fifths majority in both houses of Congress for the federal government to incur a deficit. Despite strong Republican support, passage of the Amendment is not certain; passage will require a two-thirds majority in each house.

Other FEI "top ten" initiatives include:

Line-Item Veto—give the president the authority to strike any appropriation or specific tax provision from proposed legislation;

Product-Liability Reform—create uniform product-liability laws, covering state and federal actions;

Securities-Litigation Reform—limit the growth of lawsuits filed by class-action attorneys on behalf of shareholders whose stock prices have shown unusual market performance and make losing litigants responsible for winners' costs;

Tax Reform—allow individuals to exclude 50 percent of capital-gains income from taxes and reduce the corporate capital-gains tax to 17.5 percent. Also, explore alternatives to the current tax system, such as a flat rate with higher exemptions or replacing both corporate and individual taxes with value-added and/or personal-consumption taxes;

Regulatory Reform—eliminate regulations that stifle business initiative and competitiveness; also reduce paperwork and require federal agencies to calculate the costs and benefits of compliance;

Federal Financial Management Reform—strengthen the Chief Financial Officers Act, the goal of which is to get the government's fiscal house in order;

Entitlement Reform—resolve the long-term imbalance between the government's entitlement promises and its ability to pay for them and ensure the long-term solvency of Social Security and Medicare;

Health-care Reform—develop broad national agreement on a specific health-care reform initiative rather than leave the solution to the individual states, which could lead to multiple state rules and an onerous administrative burden for companies with multi-state operations;

Procurement Reform—Pass and implement the Federal Acquisition Streamlining Act of 1994, which is expected to save taxpayers $12.3 billion over the next 5 years by reducing cumbersome regulatory burdens and needless bureaucracy in the government's acquisition of products and services from the private sector.

Financial Executives Institute, the leading advocate for the views of corporate financial management, is a professional association of 14,000 senior financial executives from nearly 8,000 major corporations throughout the United States and Canada.

[News release from Associated Builders and Contractors, Inc., Rosslyn, VA, February 9, 1995]

ABC SUPPORTS BALANCED BUDGET AMENDMENT

Passage of the Balanced Budget Amendment (S.J. Res. 1) would promote much needed restraint in government taxation and spending, according to Charlie Hawkins, senior vice president of Associated Builders and Contractors.

"We can no longer tolerate the practice of freely granting exceptions to budget rules in order to accommodate funding demands. Congress must respond to the call to cease runaway spending and begin the kind of reform that the Balanced Budget Amendment dictates," Hawkins said.

Hawkins said the amendment would force the president and Congress to set priorities rather than to continually postpone making difficult choices. The prospect of having to move toward balanced budgets in the near future would have an immediate positive impact on the budget process and would provide a Constitutional gurantee that we will adhere to a deficit reduction plan, he said.

"Deficit spending should no longer be a way of life for the federal government. Every American family must live within its means and balance its budget. Forty-nine of the 50 states operate under some form of a balanced budget requirement—it makes sense that the federal government would compel itself to work with similar self-control," he said.

Hawkins added that the amendment should not include an exemption for Social Security. Such an exemption would put Social Security at risk by creating an incentive to link other programs to the entitlement program to exempt them from deficit calculations. "The best protection for Social Security is a balanced budget," he said.

Associated Builders and Contractors is a national association representing more than 17,000 construction and construction-related companies located in 80 chapters throughout the country.

NAW CALLS ON THE SENATE TO PASS THE BALANCED BUDGET AMENDMENT

WASHINGTON, DC, February 9, 1995.—The National Association of Wholesaler-Distributors (NAW) today called on the United States Senate to pass S.J. Res. 1, the Balanced Budget Amendment to the Constitution.

"On behalf of the 45,000 companies represented by NAW, we strongly urge every Member of the Senate to support S.J. Res. 1. An historic opportunity for national fiscal discipline has finally arrived, and we must seize it," said Dirk Van Dongen, NAW President.

"NAW and its member companies have actively supported a Constitutional Amendment for a balanced Federal budget for many years. After decades of uncontrolled Federal spending, our members again state the obvious: government budget discipline is essential. No longer should Federal outlays exceed receipts. Furthermore, we strongly believe that Congress should rely on spending restraints—not tax increases—to balance the budget, rather than further burdening hard-working American taxpayers."

"There is little doubt that for too long American companies have felt the effects of the Federal deficit; a deficit that is projected to begin growing again soon. Now is our best chance to show real leadership—to permanently rein in government spending. If we are unsuccessful, Federal debt and deficits—and politics—will continue to cripple our economy and mortgage our future. The Balanced Budget Amendment moves our country in the right direction and it unburdens our employers and employees along the way. The Senate should pass it and send it to the states without hesitation," concluded Van Dongen.

(NAW represents 45,000 companies through a federation of wholesale distribution firms and national, state and local associations.)

CITIZENS GROUP URGES SENATE TO PASS BALANCED BUDGET AMENDMENT

STATEMENT OF PAUL BECKNER, PRESIDENT CITIZENS FOR SOUND ECONOMY

WASHINGTON, DC.—On behalf of Citizens for a Sound Economy (CSE), I offer my strong support of the proposed balanced budget amendment to the Constitution. Our 250,000 members are among the 80% of Americans who believe it is time for the federal government to put its fiscal house in order by doing what every American family must do—balance its budget.

The federal government continues to be plagued by wasteful deficit spending; Congress appropriates money it does not have and should not spend. The American people are fed up with the status quo that has given them $200 billion deficits, a $4.8 trillion national debt, bigger government, higher taxes, and a reduced standard of living. The House of Representatives has acted. Now it is time for the Senate to do its part.

The balanced budget amendment is about so much more than November's elections or the "Contract with America." It is about Democrats and Republicans joining together to rise above partisan interests to act in the national interest. It is about the people's representatives finally standing up and saying, "Passing The Buck Stops Here."

I urge the Senate to do the right thing—for America and its future generations that we are so shamelessly willing to burden with our debt. Pass the balanced budget amendment. Pass it now.

CSE is a 250,000 member grassroots advocacy organization founded in 1984 to defend and promote America's free enterprise system.

COALITION URGES PASSAGE OF BALANCED BUDGET AMENDMENT IN THE SENATE "GET WITH THE PROGRAM," SAYS SMALL BUSINESS GROUP

WASHINGTON, DC.—The Small Business Survival Committee [SBSC] urged members of the United States Senate to swiftly pass the Balanced Budget Amendment to begin restoring fiscal sanity, as well as America's faith, in the federal government.

"It is no surprise that those Senators lined up against the Balanced Budget Amendment [BBA] are those who continue to support big government, and continue to view government as the solution—not the problem. President Clinton, Senator Robert Byrd and the "right to know" crowd are fighting a losing battle and should get with the fiscal accountability program," said SBSC President Karen Kerrigan.

SBSC and a coalition of organizations supporting passage of the Balanced Budget Amendment held a press conference today to collectively voice support for swift action in the United States Senate.

"I find it particularly insincere that Senators called for a "right to know" amendment, are the same Members who secretly stuff appropriation bills with pork and special interest programs, and continue to push funding for programs which have proven to be an abysmal failure. It seems to me that these practices are now in "the know," after years of hiding such fiscal abuse, and taxpayers want this to end," added Kerrigan.

The Small Business Survival Committee is a 40,000-member nonpartisan, nonprofit advocacy organization.

STATEMENT ON THE BALANCED BUDGET AMENDMENT

(By Grover G. Norquist)

Americans for Tax Reform, the national clearinghouse for the grassroots taxpayers movement, strongly supports the Balanced Budget Amendment to the United States Constitution.

In addition, as the organization which opposes all tax increases as a matter of principle, we are delighted to support the Constitutional amendment requiring a 60% supermajority to raise taxes, to be voted in the House of Representatives on April 15, 1996. We are grateful for the leadership of freshman Representatives John Shadegg (R-AZ) and Linda Smith (R-WA) on this issue. In addition, we are pleased to see the supermajority as a likely initiative issue in several new states next year. Voters will choose the next President of the United States in November, 1996 as they vote on these initiatives.

Tax increases are not the solution to reducing the budget deficit: they merely feed politicians' appetite for increased federal spending. However, politicians use the federal deficit as a bogus rallying cry for the supposed need to raise taxes. That is why a balanced budget requirement and a supermajority requirement are necessary to keep taxes down and control federal spending. The Balanced Budget Amendment shuts off one spigot feeding federal spending by prohibiting deficit spending. The supermajority amendment shuts off the other spigot by making tax increases difficult. Together, they shut the valve which finally chokes off runaway federal spending. In the nine states which currently have a supermajority requirement, spending growth has slowed dramatically.

Taxpaying Americans have been robbed of their prosperity in the last half-century by the explosion of federal spending, fueled by deficit spending and dramatic increases in taxes. As Congressman Joe Barton has pointed out, federal taxes went from 5% of a family's income in 1934 to almost 19% in 1994. It is time that we reign in the beast. It is time that taxpaying Americans finally have leverage over spending interests. That is why we are strongly in support of the Balanced Budget Amendment and the supermajority amendment.

FARM BUREAU CALLS FOR BALANCED BUDGET AMENDMENT

WASHINGTON, Jan. 5, 1995.—Passage of a balanced budget amendment should be the first step in a series of needed changes in the federal government's policies on taxation, spending and regulations, Farm Bureau told the Senate Judiciary Committee today.

"Farm Bureau has supported a balanced budget amendment to the U.S. Constitution for 15 years," said Utah Farm Bureau President Ken Ashby. "Farmers and ranchers believe a balanced budget amendment can help provide much needed budget discipline that, unfortunately, seems impossible to achieve in government today."

Ashby, who grows alfalfa, hay and grain, said a more hands-off approach of federal regulations on private economic activity and on state and local governments, in combination with a reduction in deficit spending, would benefit all Americans. He said if a balanced budget amendment is passed, Congress must not slow down on spending reform.

"These changes in public policies will take months of serious consideration and debate by the Congress," Ashby said. "You cannot do everything at once, and we do not expect you to. But we also do not want you to simply pass a balanced budget amendment and then go back to business as usual."

As part of the Farm Bureau proposal, Ashby called on the senators to push for a balanced budget amendment that would require a three-fifths "super majority" vote of both houses of Congress to ignore the balanced budget requirement. He said "this provision will elevate the scrutiny of proposed new spending and force Congress to go on record when it decides to increase spending."

He told the Judiciary panel that as a result of the 1990 farm bill and the 1990 Omnibus Budget Reconciliation Act, government payments to farmers have been reduced by approximately one-third. He recognized some cuts as necessary to reduce the Federal debt, but said farmers are not the only segment of the population that needs to pitch in.

"Farmers have not been entirely happy with these reductions but understand that cuts are necessary if a balanced budget is to be achieved," Ashby said. "Now it is time for all government programs, including social security and defense, to follow agriculture's example and contribute to spending control."

Farm Bureau, he said, also believes any amendment proposal should require the president to submit a balanced budget to Congress. Ashby said this provision would help spread the responsibility for balancing revenue and spending among the legislative as well as the executive branch.

Ashby told the panel that the current practice of allowing passage of tax increases by a majority of the members present on the floor of either house must change. He told the committee that a majority of the total membership of each house, recorded by a roll call vote, should be required for future tax increases, making them more difficult to achieve.

CHRISTIAN COALITION,
CAPITOL HILL OFFICE,
Washington, DC, February 24, 1995.

DEAR SENATOR: On behalf of the 1.5 million members and supporters of the Christian Coalition, we urge you to support the balanced budget amendment [BBA] to the Constitution.

The mounting national debt threatens our nation's economic future. Unless we act today to restore fiscal sanity, more private savings will be drawn away from investments necessary for lasting economic growth. Without a BBA, the nation will grow deeper in debt to foreign creditors, and the interest payments on the soaring debt will preclude other budget priorities. This is indeed a bleak legacy to leave our children and grandchildren.

Moreover, we do not believe that the American people are taxed too little. Rather we believe that the federal government spends too much. According to the Tax Foundation, federal, state and local taxes claimed 39.5 percent of the income earned by a median two-earner family in 1994. Every additional four year delay without a balanced budget could result in another trillion dollars of debt, and another $55 billion in annual interest costs. According to the National Taxpayers Union, these interest payments alone will cost today's child over $130,000 in extra taxes, on average, over his or her lifetime.

A balanced budget amendment is long overdue. We urge you to pass it now to secure a sound fiscal future for America's families.

Sincerely,

MARSHALL WITTMANN,
Director, Legislative Affairs.
HEIDI SCANLON,
Director, Governmental Affairs.

CONGRESS OF THE UNITED STATES,
Washington, DC, March 15, 1994.

DEAR COLLEAGUE: What did Thomas Jefferson get for $225 billion? The Louisiana Purchase, which became all or part of 15 States.

What are we getting for $223 billion? Absolutely nothing, except another year older and deeper in debt.

THOMAS JEFFERSON AND THE LOUISIANA PURCHASE

OVERVIEW—FEBRUARY 1994

When Balanced Budget Amendment (BBA) supporters have quoted Thomas Jefferson's sentiments against government debt, Sen. Byrd cited the Louisiana Purchase, arguing:

The purchase amount, $15 million, all borrowed, was almost twice the size of the total annual federal budget in 1804. The comparable figure would be translated into $2.8 trillion today—a "whopper" of a transaction.

Jefferson talked tough against going into debt before he was President, but obviously saw how the need for borrowing could arise once he became President.

Jefferson had virtually no association with writing the Constitution; Madison, who did, said that the wise incurring of debt could benefit posterity.

RESPONSES

To buy the Louisiana Territory, Jefferson did borrow an amount equal to twice the amount the federal government was spending annually at the time. However, total federal outlays amounted to only about 1.6% of gross domestic product in 1804 (compared to 22% in 1994). Jefferson's purchase was equal to a less than 3.5% of GDP, the equivalent of about $224.5 BILLION in 1993 dollars.

In other words, in GDP-adjusted terms, the Louisiana purchase cost Jefferson about the same amount the government now deficit-spends every year, and about the same amount the government spends on net interest payments just to service the debt every year.

The BBA follows both Jefferson's philosophy and his example. Obviously, his ultimate position was that debt was acceptable (1) for extraordinary needs and (2) if it was repaid.

S.J. Res. 41, requiring a ⅗ vote to deficit spend or raise the debt limit, provides both a norm of balanced budgets and the flexibility to meet extraordinary needs.

Jefferson reduced the federal debt by half during his first term.

Unlike today's general indebtedness, Jefferson paid for the Louisiana Purchase with a specific, dedicated note. The debt so incurred was paid off fully within 20 years, by 1823.

When Jefferson submitted the treaty and related legislation to Congress in 1803, he stated his expectations that: (1) The remaining national debt would be paid off before the Louisiana note came due; and (2) the then-current growth in revenues would enable retirement of the Louisiana debt in a relatively short time.

The Louisiana Purchase was a once-in-a-lifetime opportunity. Certainly you would expect to obtain a ⅗ vote for such an extraordinary and beneficial investment. And in fact, all of the relevant Congressional votes related to the Louisiana Purchase far exceeded the ⅗ margin required to borrow under S.J. Res. 41.

Madison, too, dedicated his Presidency to balanced budgets, promising "to liberate the public resources by an honorable discharge of public debt." In fact, he retained Jefferson's Treasury Secretary to continue Jefferson's responsible fiscal policies.

This year the federal budget deficit will be, adjusted for size of GNP, about equal to the amount that President Jefferson borrowed for the Louisiana Purchase.

But the government is not "investing" this $223 billion. Unlike that of 1804, 1994's borrowing is not buying us 306,573,740 acres of fertile prairies, navigable waterways, and abundant natural resources, to resell at a profit and with which to enrich the lives and well-being of our children. Today's borrowing is for current consumption, simply allowing government programs to spend beyond their income.

Every year, this generation's government is incurring additional debt of a magnitude that Jefferson and his generation felt was appropriate only for a once-in-a-lifetime endeavor.

The $15 million (in 1804 dollars) worth of bonds issued to finance the Louisiana Purchase was paid off completely within 20 years. In GNP-adjusted 1993 dollars, this purchase turned a $74 billion profit in land sales alone by 1823, and another $132 billion profit in land sales by 1834. These proceeds helped reduce the federal debt to $38,000—that's $38 thousand—in 1834 and '35, its lowest level before or since.

In contrast, over this past 20 years, the gross federal debt will have increased by 869 percent—from $484 billion in fiscal year 1974 to $4.69 trillion at the end of FY 1994, as projected by CBO. In fact, the red ink has flowed in 56 of the last 64 years.

The federal government has been accumulating debt so fast and in such massive amounts that American taxpayers are now servicing that debt with interest payments about equal—again, adjusted for size of GNP—to what Jefferson and the 8th Congress borrowed to double the size of the nation. (CBO-projected gross interest in FY 1994: $298 billion; Net interest: $201 billion.)

Jefferson's government invested. Ours has been eating the seed corn in increasing quantities for decades.

The above information on Jefferson's Louisiana Purchase has been drawn from two papers prepared at our request: Jefferson's Constitutional Dilemma with the Louisiana Purchase, by James M. Hamilton (Stenholm staff), and An Economic Analysis of the Jefferson Administration and the Louisiana Purchase, by William A. Duncan, PhD (National Taxpayers Union Foundation). Rather than send you a 22-page Dear Colleague, we invite you to contact any of us or Ed Lorenzen (5-6605), Andy Moore (5-6730), Donna Tobias (4-2752), or Aaron Rappaport (4-5573) for copies of these papers.

Sincerely,

CHARLES W. STENHOLM.
ROBERT F. SMITH.
LARRY E. CRAIG.
PAUL SIMON.
Congressional Leaders United for a Balanced Budget.

H.J. RES. 1, THE JEFFERSON AMENDMENT

For over 140 years in this nation, balanced federal budgets were part of the unwritten constitution just like the two party system and the workings of the electoral college. Modern necessity dictates change through a balanced budget amendment to the constitution. Jefferson foresaw this some 200 years ago:

"I am not an advocate for frequent changes in laws and constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy as civilized society to remain ever under the regimen of their barbarous ancestors." (The Jefferson Memorial, Washington, D.C.)

Quotes from the Framers and others on the evils of public debt:

"It is a miserable arithmetic which makes any single privation whatever so painful as a total privation of everything which must necessarily follow the living so far beyond our income. What is to extricate us I know not, whether law, or loss of credit. If the sources of the former are corrupted, so as to prevent justice the latter must supply its place, leave us possessed of our infamous gains, but prevent all future ones of the same character." (Jefferson, 1787)

"I place economy among the first and most important of republican virtues, and public debt as the greatest of the dangers to be feared." (Jefferson, 1816)

"If we run into such debts, as that we must be taxed in our meat and in our drink, in our necessaries and our comforts, in our labors and our amusements, for our callings and our creeds, as the people of England are, our people like them, must come to labor sixteen hours in the twenty-four, give the earnings of fifteen of these to the government for their debts and daily expenses . . ." (Jefferson, 1816)

I believe it may be regarded as a position warranted by the history of mankind that, in the usual progress of things, the necessities of a nation, in every stage of its existence, will be found at least equal to its resources. (Alexander Hamilton in the Federalist #30)

To liberate the public resources by an honorable discharge of public debts. (President James Madison, Stating one of the primary goals of his Administration)

Interest is now paid to capitalists out of the profits of labor; not only will this labor be released from the burden, but the capital, thus thrown out of an unproductive use, will seek a productive employment; giving thereby a new impetus to enterprise in agriculture, the arts, commerce, and navigation. (Samuel Inghams, Secretary of the Treasury under Andrew Jackson)

President Andrew Jackson, in proposing to effect substantial reductions in the war debt, observed:

We should look at the national debt, as just as it is, not as a national blessing but as a heavy burden on the industry of the country to be discharged without unnecessary delay.

President Benjamin Harrison described unnecessary public debt as "criminal."

[Even during unsatisfactory economic conditions,] * * * "the government should not be permitted to run behind its debt." (President William McKinley)

The nation must make financial sacrifices accompanied by a stern self denial in public expenditures until we have conquered the disabilities of our public finance * * * we must keep our budget balanced for each year. (President Calvin Coolidge)

"To preserve our independence, we must not let our rulers load us with perpetual debt. We must make our election between economy and liberty, or profusion and servitude." (Jefferson, 1816)

"There does not exist an engine so corruptive of the government and so demoralizing of the nation as a public debt. It will bring on us more ruin at home than all the enemies from abroad against whom this army and navy are to protect us." (Jefferson, 1821)

"The payments made in discharge of the principal and interest of the national debt, will show that the public faith has been exactly maintained." (Jefferson, 1801)

"The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves." (Jefferson)

"I wish it were possible to obtain a single amendment to our constitution. I would be willing to depend on that alone for the reduction of the administration of our government to the genuine principles of its constitution; I mean an additional article, taking from the federal government the power of borrowing." (Jefferson, 1798)

"The consequences arising from the continual accumulation of public debts in other countries ought to admonish us to be careful to prevent their growth in our own." (President John Adams in his Inaugural Address)

"Stewards of the public money should never suffer without urgent necessity to be transcended the maxim of keeping the expenditures of the year within the limits of its receipts. (President John Quincy Adams)

"As the vicissitudes of nations begat a perpetual tendency to the accumulation of debt, there ought to be a perpetual, anxious, and unceasing effort to reduce that which at any time exists, as fast as shall be practicable, consistent with integrity and good faith." (Alexander Hamilton)

"Once the budget is balanced and the debts paid off, our population will be relieved from a considerable portion of its present burdens and will find not only new motives to patriotic affection, but additional means for the display of individual enterprise." (President Andrew Jackson)

"After the elimination of the public debt, the Government would be left at liberty * * * to apply such portions of the revenue as may not be necessary for current expenses to such other objects as may be most conducive to the public security and welfare." (President James Monroe)

"Money being spent without new taxation and appropriation without accompanying taxation is as bad as taxation without representation." (President Woodrow Wilson)

If there is one omission I fear in the document called the Constitution, it is that we did not restrict the power of government to borrow money. (Thomas Jefferson, 1798)

A wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities. (Thomas Jefferson, First Inaugural Address, March 4, 1801)

The public debt is the greatest of dangers to be feared by a republican government. (Thomas Jefferson)

The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequences as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves. (Thomas Jefferson, Quoted by George Will in "It Ought To Be A Crime," Washington Post, April 30, 1992)

[Factsheet from Congressional Leaders United for a Balanced Budget]

CAPITAL BUDGETING—NOT A CAPITAL IDEA FOR THE CONSTITUTION

A Constitutional Amendment should reflect broad principles and should not contain narrow policy decisions such as defining a capital budget. There is wide disagreement among policymakers about what should be included in a federal capital budget. We should not place a concept such as capital budgeting in the Constitution when there is no consensus on what constitutes a capital budget.

State and local governments have a check on their use of capital budgets through bond ratings. If a state government were to abuse its capital budget, the states bond rating would drop and the state would be unable to continue to finance new capital expenditures for borrowing. In addition, many states require that bond issues be approved by the voters. These checks on the abuse of capital budgets would not exist under a federal capital budget, making it far more likely that a federal capital budget would be abused.

The justification that most businesses and state and local governments have for capital budgeting is that they occasionally need to make one-time, extraordinary expenditures that are amortized over a long period of time. The federal budget is so huge—$1.5 trillion in 1994—that almost no conceivable, one-shot project would make even a small dent in it.

Even the Federal Interstate Highway System, which has been called the largest peacetime undertaking in all of human history, was financed on a pay-as-you-go basis. President Eisenhower initially proposed that the Interstate System be financed through borrowing. However, Congress kept it on-budget and financed it through a gas tax at the suggestion of Senator Albert Gore, Sr. We are unlikely to have another capital expenditure of this magnitude in the foreseeable future.

While state capital spending is often placed off-budget, so are trust fund surpluses. According to a Price-Waterhouse study, state budgets would be roughly in balance if both capital expenditures and trust funds were included on budget.

Exempting a capital budget from budget restraints ensures that spending on capital investments—financed entirely by debt—will increase. The debt incurred as a result of these expenditures will crowd out spending on items other than physical capital.

Less than four percent of federal outlays are for non-defense physical investment. Given the relatively small and constant share that capital expenditure have in the federal budget, there is no need to remove capital expenditures from the general budget.

S.J. Res. 1/H.J. Res. 28 does not prevent the creation of a separate operating and capital accounts, but the total budget must remain in balance. This is consistent with the recommendations of GAO, which stated,

". . . the creation of explicit categories for government capital and investment expenditures should not be viewed as a license to run deficits to finance those categories . . . . The choice between spending for investment and spending for consumption should be seen as setting of priorities within an overall fiscal constraint, not as a reason for relaxing that constraint and permitting a larger deficit."

[Congressional Leaders United for a Balanced Budget—Revised January 30, 1995]

BALANCED BUDGET AMENDMENT—PROMOTING HONESTY IN BUDGETING

H.J. Res. 1/S.J. Res. 1, the bi-partisan consensus Balanced Budget Amendment to the Constitution, is written to foreclose loopholes or evasions in its implementation and enforcement, while allowing for necessary and beneficial flexibility. It also will have the salutary effect of providing incentives for more honest and accurate budgeting than now or in the past.

The general self-enforcing mechanism in the BBA: The 3/5 vote on the debt limit:

No matter what accounting techniques are used to depict a balanced budget, and regardless of any "rosy scenario" economic assumptions, smoke and mirrors, or honest estimating mistakes, if *actual* outlays exceed *actual* receipts, the Treasury ultimately would need to borrow in order to meet the government's obligations. This would require 3/5 votes in both the Senate and House to raise the debt limit.

The threat of a "train wreck" on the debt limit provides a powerful incentive for truth-in-budgeting, because Congress and the President could not escape the consequences of policies that increased the debt. Opponents who focus on the difficulty of achieving a 3/5 majority miss the point. They are still focused on what's necessary to run a deficit. The possibility of a 3/5 debt vote is a *deterrent*. Facing it is so undesirable that Congress and the President generally would do anything to avoid it—even balance the budget!

H.J. Res. 1/S.J. Res. 1 rules out loopholes and "gimmicks;" for example:

The amendment could not be evaded by moving items off-budget. H.J. Res. 1 does not require that a single document, a "budget," be written in balance. It deals with how *total* outlays conform to *total* receipts. Taking an item "off-budget" in statute still could be used to give that item priority over others or give it certain protections in the budget process (as has been done with Social Security), but would not affect the operation of the BBA. The amendment would remove the current incentive to move items off-budget for the purpose of masking a deficit. The possibility of a 3/5 debt limit vote would deter moving deficit spending "off-budget."

Definitions of terms could not be manipulated to evade the BBA. Terms such as "receipts," "debt," "revenue," "whole number," and "war" already appear in the Constitution and have long-established meanings. Others, such as "outlays," "debt held by the public," "budget," and "declaratory judgment" are universally and solidly understood, having been long-defined and used in OMB, CBO, Congressional, legal, and other documents. Committee reports and floor debates since 1981 have gone to great lengths to establish a legislative history for, and preventing misinterpretation of, these and other terms.

H.J. Res. 28/S.J.Res. 1 would promote honesty and accuracy in budget estimates:

Congress and the President *can not* plan for a coming fiscal year without making estimates. Section 1, requiring that *actual* outlays and receipts be in balance, and Section 6, allowing for the use of estimates, operate together as follows:

Section 6 says estimates may be used in preparing a budget plan;

Section 1 requires that such planned budgets be in balance;

Following such a budget plan, so long as it is reasonable to do so, complies with Section 1. This means Congress and the President need not re-open the budget throughout the fiscal year, simply because of month-to-month fluctuations in receipts or outlays. (E.g., A wave of last-minute tax payments could cause actual receipts to fall short of estimates in one month's and exceed them in the next.) Indeed, some previous versions have been criticized as inflexible because they lacked estimates language.

The threat of a 3/5 debt limit vote will enforce the accuracy of budget estimates.

The experience of our compliance with the caps on discretionary outlays enacted as part of the 1990 Budget Enforcement Act illustrates how budgetary restraints provide an incentive for sound estimates. Although Congress appropriates budget authority and must rely on estimates of outlays, it has complied with the outlay caps by taking care to ensure that the appropriations bills enacted did not pose a risk of breaching the outlay caps. A balanced budget amendment would provide a similar, but far stronger, incentive for improving *all* budget estimates.

To be safe, Congress should, and probably would, plan small surpluses in most years.

The BBA would be promoting honesty and accuracy in dealing with contingent liabilities:

Currently, there is no incentive for Congress and the President to tackle the politically difficult issues associated with contingent liabilities such as government pensions and savings and loan insurance. For example, Congress repeatedly postponed action on the S & L cleanup, even though that ultimately resulted in increased costs to the federal government. By restraining the government's ability to borrow, H.J.Res. 28/S.J.Res. 1 will provide a powerful incentive to deal with contingent liabilities promptly—before they result in unnecessary costs—and honestly.

EMERGENCY APPROPRIATIONS SHOULD NOT BE EXEMPTED FROM THE BALANCED BUDGET AMENDMENT

An amendment to override the balanced budget in case of disaster or national emergency is unnecessary.

According to the Congressional Budget Office, since 1978 there have been only seven years in which supplemental appropriations for natural disasters have exceeded $100 million. The incidence of natural disasters requiring large supplemental appropriations is historically unusual.

The text of the balanced budget amendment provides for the constitutional requirement for a balanced budget to be waived with a three-fifths vote of both Houses.

In the past five supplemental bills put before Congress, both Houses have voted with at least a three-fifths majority to approve the supplemental funding.

Congress has consistently voted to appropriate funds by at least three-fifths majority, in the case of national disaster, economic emergency and war.

In 1991 the Senate passed a bill to offset the costs of Desert Storm to various governmental agencies, as well as additional appropriations for food stamps, State unemployment compensation operations, veterans compensations and pensions, 92 to 8. It passed the House 365 to 43.

Later that year the Senate passed another supplemental bill providing disaster assistance funds to FEMA and to meet costs of Desert Storm, 75 to 17. The House passed the same bill 303 to 114.

In 1992 the Senate passed a bill appropriating emergency funds for hurricane Andrew and hurricane Iniki, 84 to 10. The House had already passed this bill 297 to 124.

In 1993, the Senate passed a bill for emergency relief for the major widespread flooding in the Midwest, by voice vote, the House passed it 400 to 27.

In the most recent emergency supplemental bill that went in large part to fund victims of the most recent Los Angeles earthquake, the Senate approved the measure 85 to 10, the House approved it 337 to 74.

EMERGENCY SUPPLEMENTAL VOTES FEBRUARY 1994

This is a summary of emergency supplemental appropriations from FY '78 through FY '94. The statistics are based on a review of funds appropriated to FEMA. There are a wide variety of disaster bailout funds, but this is the best measure because no broader study of federal disaster funding is available.

The measures cited here include two non-FEMA supplemental appropriations for the Small Business Administration and which appear on the dollar amount list in this section.

HISTORY OF DISASTER SUPPLEMENTALS AS OF FEBRUARY 1994

The table below from the Congressional Budget Office shows that in the sixteen years since 1978 there have been only seven years in which Supplemental Appropriations for Natural Disasters have exceeded $100 million. The incidence of natural disasters requiring large supplemental appropriations is historically unusual and the use of these funds has clearly not been a "budget buster."

CERTAIN SUPPLEMENTAL APPROPRIATIONS FOR NATURAL DISASTERS[1]

[By fiscal year, in millions of dollars]

	1978	1980	1989	1990	1992	1993	1994
P.L. 95–255:							
Disaster relief (floods)	300						
P.L. 95–284:							
SBA disaster loans (floods)	758	0	0	0	0	0	0
P.L. 96–304:							
FEMA (Love Canal, NY)	0	870	0	0	0	0	0
SBA disaster loans (Mt. St. Helens)	0	1,177	0	0	0	0	0
P.L. 101–100:							
FEMA disaster relief (HUGO)	0	0	1,108	0	0	0	0
P.L. 101–130:							
Loma Prieta:							
Stafford disaster relief	0	0	0	1,100	0	0	0
Federal-aid to highways	0	0	0	1,000	0	0	0
SBA disaster loans	0	0	0	500	0	0	0
Unanticipated needs	0	0	0	250	0	0	0
P.L. 102–229:							
FEMA disaster relief	0	0	0	0	943	0	0
Commodity Credit Corporation	0	0	0	0	1,750	0	0
P.L. 102–302:							
FEMA disaster relief	0	0	0	0	300	0	0
SBA disaster loans	0	0	0	0	195	0	0
Employment & training	0	0	0	0	500	0	0
P.L. 102–368:							
Commodity Credit Corporation	0	0	0	0	430	100	0
SBA disaster loans	0	0	0	0	357	0	0
FEMA disaster relief	0	0	0	0	2,517	0	143
Assisted housing	0	0	0	0	183	100	0
P.L. 103–76:							
Commodity Credit Corporation	0	0	0	0	0	1,050	0
Prior contingency; released 8/12/93	0	0	0	0	0	300	0
Borrowing authority	0	0	0	0	0	0	900
Economic development assistance	0	0	0	0	0	100	0
Corps of Engineers	0	0	0	0			
Flood control, Mississippi River	0	0	0	0	0	120	60
Federal-aid to highways	0	0	0	0	0	100	0
Community development grants	0	0	0	0	0	200	0
FEMA disaster loans	0	0	0	0	0	1,735	265
P.L. 103–121:							
SBA disaster loans (LA earthquake)	0	0	0	0	0	0	140
Total	1,058	2,047	1,108	2,850	7,175	3,805	1,508

[1] The estimates on this table are for major disasters where the appropriations exceeded $100 million.

TABLE 1.—HOUSE AND SENATE VOTES ON SELECTED APPROPRIATION MEASURES INCLUDING DISASTER FUNDS, FY1978–FY1994

[as of February 1994]

Fiscal Year/bill number/name (Public law number)	Final passage[1]	
	House	Senate
FY 1978:		
H.J. Res. 873, Supplemental (P.L. 95–284).	Voice[2]	
H.J. Res. 796, Supplemental (P.L. 95–255).	393–4[3]	Voice[3]
FY 1979:		
H.R. 4289, Supplemental (P.L. 96–38).	284–132	Voice
FY 1980:		
H.R. 7542, Supplemental (P.L. 96–304).	291–117	37–19
FY 1981:		
None		
FY 1982:		
None		
FY 1983:		
None		
FY 1984:		
None		
FY 1985:		
None		
FY 1986:		
H.R. 4515, Supplemental (P.L. 99–349)	355–52	Voice
FY 1987:		
None		
FY 1988:		
None		
FY 1989:		
H.J. Res. 407, Continuing Resolution, (P.L. 101–100[4]).	Voice[2]	
FY 1990:		
H.J. Res. 423, Supplemental (P.L. 101–130).	303–107[2]	
H.R. 4404, Supplemental (P.L. 101–302).	308–108	Voice
FY 1991:		
None		
FY 1992:		
H.R. 5620, Supplemental (P.L. 102–368).	Voice[5]	Voice[5]
H.R. 5132, Supplemental (P.L. 102–302).	249–168	Voice
H.J. Res. 157, Supplemental (P.L. 102–229).	303–114	Voice
FY 1993:		
H.R. 2667, Supplemental (P.L. 103–75).	Voice[5]	Voice[5]
FY 1994:		
H.R. 2519, Commerce, Justice, State (P.L. 103–121).	303–100	90–10
H.R. 3759, Supplemental (P.L. 103–211).	245–65	Voice

Sources: Library of Congress. Bill digest files in Scorpio (C103, C102, C101, CG99, CG96); Daily Digest. Congressional Record, v. 124, March 22, 1978, p. D 230, March 23, 1978 p. D 234, & May 12, 1978, p. D 403; Daily Digetst. Congressional Record, v. 132, June 24, 1986. p. D 433. U.S. Library of Congress. Congressional Research Service. Federal Funding for Disasters. Memorandum by Keith Bea, dated November 3, 1993.

[1] Votes on final passage are votes on conference reports, unless otherwise noted.

[2] No conference report, House agreed to Senate amendments.

[3] On initial passage, the House and Senate passed the same bill.

[4] This was a continuing resolution, which included supplemental appropriations.

[5] No conference report, both Houses considered amendments between the two Houses. All votes were voice votes.

CRS REPORT FOR CONGRESS,
April 30, 1992.

(By Robert Keith and Edward Davis)

A BALANCED FEDERAL BUDGET: MAJOR STATUTORY PROVISIONS

SUMMARY

During the remainder of the 102nd Congress, the House and Senate are expected to consider whether the Constitution should be amended to require a balanced Federal budget. Both chambers have addressed this issue in past years, but Congress has never enacted such an amendment for ratification by the States. Although the Constitution does not prescribe a balanced Federal budget, provisions have been enacted into law on several occasions stating this as a goal or policy of the Federal Government.

This report identifies and briefly discusses the major statutory provisions that pertain to the goal or policy of a balanced Federal budget. These provisions range in scope from a simple, one-line statement to a lengthy set of provisions involving complicated implementing procedures. Most of them state that a balanced Federal budget is a national goal, or require that the President include proposals or information applicable to such a goal in his annual budget submission and economic report to Congress, but do not establish procedures to enforce compliance. While most of the provisions remain in effect, some were applicable to fiscal-year periods that have expired and have been repealed.

The most well-known statute in this category is the Balanced Budget and Emergency Deficit Control Act of 1985, commonly referred to as the Gramm-Rudman-Hollings (GRH) Act. The 1985 GRH Act set forth annual deficit targets leading to a balanced Federal budget by fiscal year 1991 and established an automatic process for across-the-board spending cuts (known as "sequestration") aimed at keeping the deficit within the statutory targets. The detailed enforcement mechanism distinguishes the GRH Act from other balanced-budget statues.

The GRH Act was amended extensively in 1987 and 1990. The 1987 amendments postponed the balanced-budget goal until fiscal year 1993; the most recent amendments extend the sequestration process through fiscal year 1995, provide for adjustable deficit targets, and change the focus of the GRH Act from achieving budgetary balance to controlling the growth of discretionary spending and maintaining deficit neutrality regarding legislative changes in mandatory spending and revenues. During the period from fiscal year 1986 through fiscal year 1991 (when fixed deficit targets were in effect), the actual deficit exceeded the deficit target in the GRH Act by between about $6 billion (fiscal year 1987) and $205 billion (fiscal year 1991).

Other major statutes pertaining to the goal of a balanced Federal budget include: a law increasing the public debt limit in 1979, the Byrd Amendment of 1978, the Humphrey-Hawkins Act of 1978, the Revenue Act of 1978, the Revenue Act of 1964, and the Budget and Accounting Act of 1921.

INTRODUCTION

During the remainder of the 102nd Congress, the House and Senate are expected to consider whether the Constitution should be amended to require a balanced Federal budget. Both chambers have addressed this issue in past years, but Congress has never enacted such an amendment for ratification by the States.[1] Although the Constitution does not prescribe a balanced Federal budget, provisions have been enacted into law on several occasions stating this as a goal or policy of the Federal Government.

This report identifies and briefly discusses the major statutory provisions that pertain to the goal or policy of a balanced Federal budget. These provisions range in scope from a simple, one-line statement to a lengthy set of provisions involving complicated implementing procedures. Most of them state that a balanced Federal budget is a national goal, or require that the President include proposals or information applicable to such a goal in his annual budget submission and economic report to Congress, but do not establish procedures to enforce compliance. While most of the provisions remain in effect, some were applicable to fiscal-year periods that have expired and have been repealed.

GRAMM-RUDMAN-HOLLINGS ACT OF 1985

The most well-known statute in this category is the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99–177, Increase in the Public Debt Limit; 99 Stat. 1038–1101; December 12, 1985), commonly referred to as the Gramm-Rudman-Hollings (GRH) Act. The 1985 GRH Act set forth annual deficit targets leading to a balanced Federal budget by fiscal year 1991 and established an automatic process for across-the-board spending cuts (known as "sequestration") aimed at keeping the deficit within the statutory targets. The detailed enforcement mechanism distinguishes the GRH Act from other balanced-budget statutes.

The Act was modified extensively in 1987 by the Balanced Budget and Emergency Deficit Control Reaffirmation Act 1987 (Title I of P.L. 100–119, Increase in the Public Debt Limit; 101 Stat. 754–784; September 29, 1987), which extended the goal of a balanced budget to fiscal year 1993.

Most recently, the GRH Act was amended extensively by the Budget Enforcement Act (BEA) of 1990 (Title XIII of P.L. 101–508, Omnibus Budget Reconciliation Act of 1990; 104 Stat. 1388–573 through 1388–630; November 5, 1990). The BEA revised the deficit targets in the GRH Act, making the targets adjustable rather than fixed, and extended the sequestration process for two more years—through fiscal year 1995 (although the budget is not required, and is not expected, to be in balance by that time). Additionally, two new procedures enforceable by sequestration were established: (1) adjustable limitations on different categories of discretionary spending funded in the annual appropriations process and (2) a "pay-as-you-go" process to require that increases in direct spending (i.e., spending controlled outside of the annual appropriations process) or decreases in revenues due to legislative action are offset so that there is no net increase in the deficit.

The 1990 amendments changed the focus of the GRH Act from achieving budgetary balance to controlling the growth of discretionary spending and maintaining deficit neutrality regarding legislative changes in mandatory spending and revenues. This change in focus is reflected in Table 1, which shows the original and revised GRH deficit targets.

TABLE 1.—ORIGINAL AND REVISED DEFICIT TARGETS

[In billions of dollars]

Fiscal year	Original target	1987 revision	1990 revision	Revision in fiscal year 1993 budget
1986	171.9			
1987	144			
1988	108	144		
1989	72	136		
1990	36	100		
1991	0	64	327	
1992		28	317	
1993		0	236	419.4
1994			102	304.9
1995			83	300.5

Note: The targets set in 1990 and revised subsequently, unlike the targets set in 1985 and revised in 1987, do not reflect the Social Security trust fund surpluses or the Postal Service.

The GRH Act is linked to the Congressional Budget Act of 1974 (P.L. 93–344, as amended), principally by the requirement in Section 606 of the 1974 Budget Act that budget resolutions not recommend deficits in excess of the GRH Act targets. Additionally, the unadjusted deficit targets and discretionary spending limits are set forth in Section 601(a) of the 1974 Budget Act.

During the period that the GRH Act has been in effect, sequestration has been triggered five times—once each for fiscal years

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[1] For a discussion of House and Senate action on this issue, see: (1) "Congress and a Balanced Budget Amendment to the U.S. Constitution," by James V. Saturno, CRS Report 89–4 GOV, January 3, 1989, 19 pages; and (2) "Balanced-Budget Amendment Fails in House; Act OK'd," by George Hager, Congressional Quarterly Weekly Reports, vol. 48, no. 29, July 21, 1990: 2284–2285.

1986, 1988, and 1990, and twice for fiscal year 1991. The sequestration reductions made for fiscal year 1986 were voided by court action and later reaffirmed, the reductions for fiscal year 1988 were later rescinded, the reductions for fiscal year 1990 were modified substantially, and the reductions for fiscal year 1991 were applied in one instance to domestic discretionary programs and in another to international discretionary programs (the latter reductions were later rescinded). With regard to the other two fiscal years, sequestration was forestalled for fiscal year 1987 by the enactment of alternative deficit reduction measures and was avoided for fiscal year 1989 because the estimated deficit excess was less than the $10 billion margin-of-error amount.

During the period from fiscal year 1986 through fiscal year 1991 (when fixed deficit targets were in effect), the actual deficit exceeded the deficit target in the GRH Act (see Table 2). The overage ranged from about $6 billion for fiscal year 1987 to nearly $205 billion for fiscal year 1991.

TABLE 2.—ACTUAL DEFICIT COMPARED TO MAXIMUM DEFICIT AMOUNT: FISCAL YEAR 1986–1991

[In billions of dollars]

Fiscal year	Maximum deficit amount	Actual deficit	Actual deficit over target
1986	171.9	221.2	49.3
1987	144.0	149.8	5.8
1988	144.0	155.2	11.2
1989	136.0	153.5	17.5
1990	100.0	220.5	120.5
1991	64.0	268.7	204.7

Note: Deficit amounts are presented on a consolidated basis (including the transactions of off-budget entities—the Social Security trust funds and the Postal Service).

The major provisions of the Gramm-Rudman-Hollings Act and the 1974 Budget Act are codified in Titles 2 and 31 of the United States Code. The text of these laws is contained in publications of the House and Senate Budget Committees: (1) House Budget Committee, Congressional Budget and Impoundment Control Act of 1974 and Part C (and Sections 274 and 275) of the Balanced Budget and Emergency Deficit Control Act of 1985 and Subtitles C and E of Title XIII of the Budget Enforcement Act of 1990 as Amended Through December 31, 1990, committee print, serial no. CP-2, February 1991, and (2) Senate Budget Committee, Budget Process Law Annotated, committee print, S. Prt. 102-22, April 1991.

TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT (1979)

In 1979, Congress added two sections to a measure providing an increase in the debt limit (P.L. 96-5, Temporary Increase in the Public Debt Limit; 93 Stat. 8; April 2 1979). The provisions were intended to bring balanced budget proposals for fiscal year 1981 and 1982 before Congress for consideration by requiring both the Budget Committees and the President to submit them. Both sections were repealed on September 13, 1982, upon the enactment of P.L. 97-258, which recodified Title 31 of the United States Code ("Money and Finance").

Budget Committee Reports.—The first provision, Section 5, required the House and Senate Budget Committees to report balanced budgets by April 15 of 1979, 1980, and 1981. Section 5 stated:

Congress shall balance the Federal budget. Pursuant to this mandate, the Budget Committees shall report, by April 15, 1979, a fiscal year budget for 1981 that shall be in balance, and also a fiscal year budget for 1982 that shall be in balance, and by April 15, 1980, a fiscal year budget for 1981 that shall be in balance and by April 15, 1981, a fiscal year budget for 1982 that shall be in balance; and the Budget Committees shall show the consequences of each budget on each budget function and on the economy, setting forth the effects on revenues, spending, employment, inflation, and national security.

1979 Reports. In 1979, the House Budget Committee complied with the requirement by issuing Toward a Balanced Budget: Report Pursuant to Public Law 96-5 (House Report 96-96, April 13, 1979, 102 pages) and a companion committee print that included majority and minority staff reports. The Committee reported the budget resolution for fiscal year 1980 (H. Con. Res. 107) the same day, but it did not include recommendations for fiscal years 1981 or 1982 (House Report 96-95, April 13, 1979)

The Senate Budget Committee reported two budget resolutions for fiscal year 1980 (Senate Report 96-68, April 12, 1979); both resolutions included recommendations for fiscal years 1981 and 1982. The principal budget resolution, S. Con. Res. 22, proposed a surplus of $0.5 billion for fiscal year 1981 and $0.7 billion for fiscal year 1982. The second resolution, S. Con. Res. 23, was referred to as the "alternative congressional budget." It recommended a deficit of $18.2 billion for fiscal year 1981, but a surplus of $12.3 billion for fiscal year 1982.

The House and Senate agreed to a final version of H. Con. Res. 107 (the House adopted the Senate amendment of May 24, 1979) that recommended surpluses of $5.0 billion and $4.1 billion for fiscal years 1981 and 1982, respectively.

1980 Reports. In 1980, the House Budget Committee reported a budget resolution for fiscal year 1981 (H. Con. Res. 307, House Report 96-857, March 26, 1980) that recommended surpluses of $2.0 billion and $11.7 billion for fiscal years 1981 and 1982, respectively. The Senate Budget Committee reported a budget resolution (S. Con. Res. 86, Senate Report 96-654, April 9, 1980) that recommended a balanced budget for fiscal year 1981 (a deficit of zero) and a surplus of $10.0 billion for fiscal year 1982.

The final version of the budget resolution (H. Con. Res. 307) agreed to by the House and Senate (the Senate adopted the House amendment of June 12, 1980 to its amendment) recommended a surplus of $0.2 billion for fiscal year 1981. With respect to fiscal year 1982, the House recommended a surplus of $26.8 billion and the Senate recommended a surplus of $5.8 billion.

1981 Reports. In 1981, the House Budget Committee reported a budget resolution for fiscal year 1982 (H. Con. Res. 115, House Report 97-23, April 16, 1981) that recommended a deficit of $25.6 billion for that fiscal year, but a surplus of $25.8 billion by fiscal year 1984. The Senate Budget Committee reported a budget resolution (S. Con. Res. 19, Senate Report 97-49, May 1, 1981) that recommended a deficit of $48.8 billion for fiscal year 1982, but a balanced budget (a deficit of zero) for fiscal year 1984.

The House and Senate finally agreed on a budget resolution (H. Con. Res. 115, House Report 97-46, May 15, 1981) that recommended a deficit of $37.65 billion for fiscal year 1982, but a surplus of $1.05 billion for fiscal year 1984.

Alternate Budget Proposals of the President.—The second provision, Section 6, required the President to submit alternate proposals for a balanced budget if his budget submission for fiscal years 1981 or 1982 recommended a deficit for either fiscal year. Section 6 stated:

(a) If a budget which is transmitted by the President to the Congress under section 201 of the Budget and Accounting Act, 1921, would, if adopted, result in a deficit in fiscal year 1981 or in fiscal year 1982, the President shall also transmit alternate budget proposals which, if adopted, would not result in a deficit.

(b) Such alternate budget proposals shall be transmitted with the budget and, except as provided in subsection (c), shall be in such detail as the President determines necessary to carry out the purposes of this section.

(c) Alternate budget proposals for a fiscal year transmitted under subsection (a) shall include a clear and understandable explanation of specific differences between the budget and alternate budget proposals.

Fiscal Year 1981 Budget. President Carter submitted his budget for fiscal year 1981 to Congress on January 28, 1980. The President proposed a deficit for fiscal year 1981 of $15.8 billion and a surplus for fiscal year 1982 of $4.8 billion. The alternate proposals required by P.L. 96-5 were set forth on pages 319–326 of the budget and explored the impact of both $20 billion in revenue increases and spending reductions (including such options as a six-percent surtax on individual and corporate income, increased payroll taxes, the elimination of Federal pay raises, no real growth in defense, and holding cost-of-living increases in indexed programs to three-fourths of the increase in the Consumer Price Index).

On March 31, 1980, President Carter sent a package of budget revisions to Congress, calling for surpluses of $16.5 billion for fiscal year 1981 and $41.5 billion for fiscal year 1982.

Fiscal Year 1982 Budget. President Carter submitted his budget for fiscal year 1982 to Congress on January 15, 1981, shortly before leaving office. He proposed a deficit of $55.2 billion in fiscal year 1981 and $27.5 billion for fiscal year 1982. The alternate proposals required by P.L. 96-5 were included on pages 312–320 of the budget.

On March 10, 1981, President Reagan submitted to Congress revisions to the Carter budget for fiscal year 1982. The revised budget proposals recommended deficits for fiscal year 1981 and 1982 of $54.9 billion and $45.0 billion, respectively.

The actual deficits (on a consolidated basis) for fiscal years 1981 and 1982 were $79.0 billion and $128.0 billion, respectively.

BYRD AMENDMENT OF 1978

The "Byrd Amendment," named for former Harry F. Byrd, Jr. of Virginia, was included in the Bretton Woods Agreements Amendments Act of 1978 (Section 7 of P.L. 95-435; 92 Stat. 1053; October 10, 1978). In its original form, the Byrd Amendment stated: "Beginning with fiscal year 1981, the total budget outlays of the Federal Government shall not exceed its receipts."

Two years later, the Byrd Amendment was modified by the Bretton Woods Agreements Amendment Act of 1980 (Section 3 of P.L. 96-389; 94 Stat. 1553; October 7, 1980) to read as follows: "The Congress reaffirms its commitment that beginning with fiscal year 1981, the total outlays of the Federal Government shall not exceed its receipts."

In 1982, as part of the recodification of Title 31 of the United States Code (P.L. 97-258; 96 Stat. 908; September 13, 1982), the Byrd Amendment was restated in its current form: "Congress reaffirms its commitment that budget outlays of the United States Government for a fiscal year may not be more than the receipts of the Government for that year" (see 31 U.S.C. 1103 (Budget Ceiling)).

HUMPHREY-HAWKINS ACT OF 1978

The Full Employment and Balanced Growth Act of 1978 (P.L. 95-523), commonly known as the Humphrey-Hawkins Act, included two provisions (in the form of amendments to the Employment Act of 1946) that pertain to the goal of a balanced Federal budget. First, Section 103(a) of the Act (92 Stat. 1892-1893) amended the required elements of the President's annual economic Report to Congress to include numerical goals for certain measurements of economic activity consistent with, among other things, a balanced Federal budget. The amended provision of the Employment Act of 1946 (15 U.S.C. 1022, Economic Report of the President) states in part:

> The President shall transmit to the Congress during the first twenty days of each regular session * * * an economic report (hereinafter in this chapter referred to as the "Economic Report") together with the annual report of the Council of Economic Advisers, submitted in accord with section 1023(c) of this title, setting forth—
>
> (2)(A) annual numerical goals for employment and unemployment, production, real income, productivity, Federal outlays as a proportion of gross national product, and prices for the calendar year in which the Economic Report is transmitted and for the following calendar year, designated as short-term goals, which shall be consistent with achieving as rapidly as feasible the goals of full employment and production, increased real income, balanced growth, fiscal policies that would establish the share of an expanding gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities, *a balanced Federal budget*, adequate productivity growth, price stability, achievement of an improved trade balance, and proper attention to national priorities * * * [*Emphasis added;* other provisions relating to the Economic Report and the goal of obtaining a balanced Federal budget are contained in 15 U.S.C. 1022a and 1022b]

Second, Section 106 of the Act (92 Stat. 1895-1896) added a new section to the Employment Act of 1946 (15 U.S.C. 1022c, inclusion of Priority Policies and Programs in President's Budget), which states in part:

> To contribute to the achievement of the goals under the Full Employment and Balanced Growth Act of 1978, the President's Budget for each fiscal year beginning after October 27, 1978, shall include priority policies and programs, which shall include, to the extent deemed appropriate by the President, consideration of the following—
>
> (I) proper attention to balancing the Federal budget; * * *

REVENUE ACT OF 1978

The Revenue Act of 1978 (P.L. 95-600) called for a balanced budget in fiscal years 1982 and 1983. Section 3 of the Act (Policy With Respect to Additional Tax Reductions; 26 U.S.C. 1 note; 92 Stat. 2767), stated:

> As a matter of national policy the rate of growth in Federal outlays, adjusted for inflation, should not exceed 1 percent per year between fiscal year 1979 and 1983; Federal outlays as a percentage of gross national product should decline to below 21 percent in fiscal year 1980, 20.5 percent in fiscal year 1981, 20 percent in fiscal year 1982 and 19.5 percent in fiscal year 1983; *and the Federal budget should be balanced in fiscal years 1982 and 1983.* If these conditions are met, it is the intention that the tax-writing committees of Congress will report legislation providing significant tax reductions for individuals to the extent that these reductions are justified in the light of prevailing and expected economic conditions. [*Emphasis added*]

REVENUE ACT OF 1964

The Revenue Act of 1964 (P.L. 88-272) included a statement that Congress' action on the measure was intended to bring about a balanced budget, although no reference was made to a specific fiscal year. Section 1 of the Act (Declaration by Congress; 78 Stat. 19), stated:

> It is the sense of Congress that the tax reduction provided by this Act through stimulation of the economy, will, after a brief transitional period, raise (rather than lower) revenues and that such revenue increases should first be used to eliminate the deficits in the administrative budgets and then to reduce the public debt. To further the objective of obtaining balanced budgets in the near future, Congress by this action, recognizes the importance of taking all reasonable means to restrain Government spending and urges the President to declare his accord with this objective.

BUDGET AND ACCOUNTING ACT OF 1921

Section 202 of the Budget and Accounting Act of 1921 (P.L. 67-13; 42 Stat. 21; June 10, 1921) requires the President to make appropriate recommendations to Congress in the budget whenever the estimates of revenues and spending in the budget show a deficit or a surplus. In its original form, the section directed the President to recommend "new taxes, loans, or other appropriate action" to meet a projected deficit. When the section was restated in the 1982 recodification of Title 31 of the United States Code, the specific reference to new taxes and loans was removed. In its current form (31 U.S.C. 1105(c)), the section states:

> The President shall recommend in the budget appropriate action to meet an estimated deficiency when the estimated receipts for the fiscal year for which the budget is submitted (under laws in effect when the budget is submitted) and the estimated amounts in the Treasury at the end of the current fiscal year available for expenditure in the fiscal year for which the budget is submitted, are less than the estimated expenditures for that year. The President shall make recommendations required by the public interest when the estimated receipts and estimated amounts in the Treasury are more than the estimated expenditures.

Mr. **LEAHY**. Mr. President, I am proud of the action taken by the Senate today. This vote was what serving in the Senate is really about—having the courage to do what is right, refusing to pass the buck to the States, standing up to special interest groups and voting our conscience. Once it become obvious that proponents of this constitutional amendment planned to use the annual surpluses in the Social Security trust fund to mask the true deficit, the so-called balanced budget amendment was doomed.

If this vote had been a secret ballot, it would have been lucky to get 40 votes. This is a lesson in why you don't amend the Constitution by taking a poll.

I have commended many of my colleagues for voting against the so-called balanced budget amendment. In particular, I believe that the senior Senator from West Virginia [Mr. BYRD] and the senior Senator from Oregon [Mr. HATFIELD] should be commended. They were true profiles in courage and the country is indebted for their courageous leadership.

THE PROPOSED CONSTITUTIONAL AMENDMENT REQUIRING A BALANCED BUDGET

Mr. **ROCKEFELLER**. Mr. President, this has been a historic day in the U.S. Congress. This afternoon, each of us casted our vote on whether to attach an amendment to the U.S. Constitution that would require in the strictest possible terms a balanced Federal budget in the next 7 years. And I joined my fellow and senior Senator from West Virginia, Senator BYRD, who led a serious and important battle against the amendment, in voting against this idea. I voted to defend West Virginians from the flaws and dangers of this amendment, and to help ensure that our State is not forced once again to pay the costs of others' political agendas, past mistakes, and potential for reckless harm.

Today's vote was another victory for the idea that promises like Social Security should be kept. That Congress should focus on making real choices and setting priorities in dealing with the Federal Government's budget, instead of using the Constitution to blindly do the job.

I have no doubt this idea for a constitutional amendment will be pushed again. For that reason, I want to outline my concerns again.

This proposed constitutional amendment will affect the lives of every single West Virginian, and every single American—children, parents, and grandparents; seniors, workers, and students; our large and small businesses, and all their workers; the poor and the disabled—everyone. So it is critical that we fully understand what it proposes to do and how it will work.

I suggest that we all have to be able to answer a few key questions: First, can the constitutional balanced budget amendment accomplish its goal of bringing the deficit down to zero in 7 years? Second, how it will accomplish that goal? And third, what are the consequences of moving to a zero deficit over a short period of time? Who will sacrifice, what programs will be cut, what programs will be spared?

In short, who wins and who loses? That's what West Virginians tell me they want to know about the balanced budget amendment. They're willing to participate in a national crusade to get the deficit down—they supported the significant downpayment we made on reducing the deficit in 1993. As always, West Virginians are willing to do their fair share—but they want to know what that share will be. They want to know up front. And so do I. Before I give you my best answers to those three key questions, I want to note why the answers to these questions are essential.

West Virginia has been told to trust Washington's promises about balancing the budget and cutting taxes in the past, as recently as the early 1980's. We didn't have the say in the matter then, and we were devastated. We don't want to let that happen again. We remember very well what happens when the Federal Government claims it can reduce its own costs, and then ignores the costs it foists onto the States.

I remember well because I was Governor of West Virginia, when all too similar promises were made. I watched Congress promise to balance the budget while cutting taxes. I saw what happened in living Color. West Virginia's plants shut down and threw working families into foreclosures and bankruptcies. Our kids were forced to drop out of college because tuition money had to go to their families' mortgage payments and medical expenses. Our senior citizens had to keep their thermostats at 58 degrees because they could not afford heating oil. When I say I want to see the hidden details of this balanced budget amendment, it is not a political ploy or out of intellectual curiosity.

It is because I have a contract with West Virginia. This time around I am here in Congress, not working in the State House, and I insist that West Virginia be told how this is going to be done. I insist on behalf of the residents of West Virginia. West Virginians take their right to know so seriously that the West Virginia Legislature passed a bipartisan resolution on February 14, 1995, reaffirming the importance of their right to know the details of the balanced budget amendment.

The West Virginia resolution urged Congress to submit:

> [A] Balanced Budget Constitutional Amendment to the States for ratification only if Congress provides a detailed projection of what reductions will be made in the Federal budget and how these will affect the government and people of West Virginia, including, but not limited to, the effect on Social Security benefits, Medicare, Medicaid, education, highway moneys, including completion of the Appalachian corridor system, and other programs necessary to the health and well-being of the people of our State.

It's that simple. If you don't tell me how reaching a balanced budget is going to be achieved so I can share that information with West Virginia, you won't have my vote.

Democrats proposed just such an amendment. This amendment, the citizens' right to know amendment, would have given the States and their residents the right to know how we intend to reach a zero deficit by 2002. This improvement was offered by Senator DASCHLE on behalf of our Democratic Senate colleagues. It was summarily rejected, mostly on party lines, early in the debate on the balanced budget amendment.

I am both shocked and disappointed that a majority of Members serving in the U.S. Senate chose to deny the people whom they represent the right-to-know what it would take to reach a balanced budget. And I am forced to conclude what a number of Republican leaders have stated publicly is the case, they believe that if the people knew what it would take to balance the budget—they might not support the constitutional amendment.

The Senate also considered a proposed revision to this constitutional amendment to protect Social Security's trust funds. I voted for that idea, and watched my colleagues in support of the amendment proceed to vote to not protect Social Security. How can West Virginians—working people and seniors—trust their elected officials when they pay into a trust fund that's supposed to be dedicated only to Social Security, and see this rejection of the idea of keeping that promise. The failure of this constitutional amendment to protect Social Security is a reason alone to reject it.

In fact, surveys of public opinion show over and over again that support for this amendment plummets to 32 percent when they learn that Social Security could be cut. I want to be clear. The constitutional amendment before the Senate today could lead to cuts in Social Security, and if it had prevailed, I am sure it would result in cuts in Social Security.

Having said that, let us turn to the key questions: Can the amendment do what its exponents claim and how, and what does that mean?

Question 1—Can the constitutional amendment achieve a balanced budget by 2002?

A careful reading of the actual legislative language of the balanced budget amendment makes clear the amendment alone will do nothing to balance our budget. It will not make us any smarter or wiser, or fairer when it comes time to proceed with the actual budget bills required to make tangible progress toward deficit reduction.

This Congress does not need a constitutional amendment to perform its job of deficit reduction and fiscal prudence. Nothing in this provides Congress with any new authority to reduce the deficit, make tough budget cuts, or increase revenues. What the amendment says is that the Constitution requires Congress to balance the budget—and little more. Provisions are included which permit waiving the balanced budget requirements, but they have extraordinary hurdles attached to them in the form of supermajority rollcall votes. Other unprecedented provisions in this amendment would rewrite our Constitution's system of checks and balances, in addition to the provisions which upset the fundamental principles of majority rule.

The amendment does not lay out explicit definitions of what should or should not be counted in tallying up the deficit, or reducing it. It doesn't protect any program, not Social Security, not Medicare, not defense, not veterans, not children's programs, not disaster aid.

Congress already has the power to reduce the deficit. It doesn't need the algebra of fiscal policy written into the Constitution to do its job. And some of us in Congress, myself and my fellow West Virginian, the great Senator BYRD included, have stepped up to the plate and helped reduce the deficit. Congress has proven it can reduce the deficit on its own. We proved that in 1993 during the budget reconciliation debate—and we should all learn from that lesson. That congressional budget resolution, not a constitutional dictate, reduced the deficit. And Congress can and should reduce the deficit again. We should make our choices about how to do it prudently. We should take into consideration the benefits provided by certain Government programs and services, from Medicare to veterans benefits to public health programs to environmental protection. But continue on the path of deficit reduction we can and must.

In 1993, when the Vice President had to cast the final Senate vote for the President's budget to put us over the edge and ensure we made a sizeble downpayment on the deficit, Democrats voted to streamline and cut popular Federal programs, to ask individual Americans to contribute to our national effort to reduce the deficit, and to increase Federal revenues where appropriate.

That vote was about real deficit reduction—not a popular gimmick, not a quick constitutional fix that pretends to reduce the deficit, but is nothing more than a soundbyte so we can say we've resolved to get our financial house in order.

Should a balanced budget amendment pass this year, the national deficit for 1995 will be exactly the same tomorrow as it is today, even if this constitutional balanced budget amendment were to pass overwhelmingly. That fact seems to have been obscured by much of the talk surrounding this amendment.

The truth is that those who believe we need to start making the tough choices about how to reduce the deficit won't find any tough choices in the actual amendment. Indeed, I would argue that this amendment is an easy way out—it allows Members to declare their support for a balanced budget amendment, and lets them avoid the question of how we're going to do it. That's a copout in my book. And it is a huge step backward from the progress we made under the administration's 1993 budget that put us on the path to a reduced deficit with explicit, program-by-program cuts.

A specific budget plan that details how we will achieve a balanced budget is the only real way to reduce the deficit and balance the budget—with or without this constitutional amendment. We have seen no such plan from the Republican majority during the debate of this amendment, although the new majority leader has shared his speculation about the level of some cuts which might be necessary with some news organizations.

Just this week, the new chairman of the Finance Committee, Senator PACKWOOD, has speculated what kind of cuts would be necessary out of the health care programs for the elderly and disabled, and for poor children and pregnant women—$250 billion out of Medicare and Medicaid over the next 5 years, and some $400 billion over the full 7-year timeframe to reach balance. That's late breaking news from some of the Republican leaders and it raises real questions about why we have been provided with so little in terms of hard numbers to date.

I know West Virginia seniors, rural hospitals, the disabled, and doctors who care for Medicare and Medicaid patients will be significantly affected by the unprecedented cuts described by Senator PACKWOOD. But even as the new congressional leadership begins to give us real numbers about what will be required of certain programs—I have heard very little about how they are going to make those cuts—which providers' rates will be cuts, how much more seniors will pay out-of-pocket, if children can still count on receiving basic health care services, and so on. The lack of details has been astounding.

Question 2—How will we achieve the goal of a balanced budget in 7 years?

My answer to question 1 was that the constitutional amendment would not, of and unto itself, balance the budget. It merely says we have to do it. The only answer I can offer to question 2 is those in control of the numbers haven't told us how they will achieve the goal. They just say they will. They say "trust us." That is it. Thats all the detail you get from the amendment.

True, by thinking about the basic components of the Federal budget, you can start figuring out what programs will take major hits under a balanced budget amendment—the health programs, Medicare and Medicaid, Social Security if Congress reneges on its ephemeral promise to protect it. Even the staff of the Republican chairman of the Budget Committee, Senator DOMENICI's staff, has concluded that over $664 billion in cuts will be required in non-Social Security, non-defense mandatory entitlement programs to reach a zero deficit by the year 2002. That's nearly $100 billion in cuts every year if you spread it out. But they will not tell you how.

I want to take a moment to explain a couple of very important amendments to the balanced budget resolution, and my views of them. You will recall that the Democratic amendment to exempt the Social Security Program from the calculations of the constitutional balanced budget amendment was rejected by a majority of Members. I voted for that initial amendment to protect Social Security because I saw it as a way to protect Social Security—and other—people from unfair harm, from broken promises, and for the sound financial reason that Social Security has not contributed to our deficit problems. It is a trust fund.

During the amendment process, I also voted for additional protections for other vital programs as well, but that approach to protecting certain populations from the ravages of the balanced budget amendment failed.

Recognizing that a series of those protective amendments failed to win passage, I could not vote for the substitute balanced budget amendment offered by Senator FEINSTEIN. The amendment has the laudable goal of, once again, attempting to protect Social Security beneficiaries as I voted to do earlier in this process, but it still would have required a balanced budget in a 7-year timeframe. This amendment would still put a straitjacket on the country's economic and budget policy, it could still cause the devastating effects that the main proposal before us poses for West Virginians and the rest of Americans. It still could turn a period of high unemployment into a recession. In protecting Social Security, but serving as the same speeding train, the Feinstein amendment might also mow down benefits for war-injured veterans, Medicare payments that rural hospitals depend on to survive, the programs that help create jobs in our communities, funds for our schools. Had the Feinstein amendment prevailed, it would have forced even more draconian cuts in services and benefits where they shouldn't be made. You can be sure that I will fight as hard as anyone to protect Social Security, but slapping a balanced budget amendment onto the Constitution is not the way to do that.

Many Members also claim they want to protect defense from cuts as a result of the balanced budget, but haven't made any hard promises that they will do it. Other programs like veterans compensation and health care were not protected during the amendment process either—despite my offering what I believe to be a very surgical way to protect a special category of particularly needy and deserving veterans. It failed. Veterans have no guarantees that they are safe from the balanced budget's requirements for cuts.

And that leads us to question three.

Question 3—What are the consequences for our families, for our businesses, and for our States, of balancing the budget in 7 years?

Even if one accepts the lack of specific information regarding how we would actually reach a balanced budget, one of the things Congress is always responsible for doing is assessing the consequences of our actions. That's impossible to do without the detailed plan or road map of how we are going to get from here to there.

The amendment itself has been the subject of serious debate over the last few weeks in the U.S. Senate. Much of that debate has been a direct result of the tremendous effort and careful analysis of the senior Senator from West Virginia, ROBERT C. BYRD—we all owe him a debt of gratitude for the numerous illuminations he has provided. And I thank each of my colleagues for their various contributions and commentary on a whole list of amendments which have been offered as modifications to the amendment. I would like to be able to point to a single strengthening amendment beyond the limitation of how the courts can intervene in setting our budgetary and tax policies, but cannot.

But I do honestly believe that the Senate has come to understand what is decipherable from the text of the amendment, and the intent of its proponents, because of this debate—even though we have not been provided the critical road map which would show us how we would achieve the balance of the Federal budget. What we do know about how this amendment would work is troubling to me as well.

It astounds me to see Senators voting for this amendment without knowing how this amendment affects their States and our citizens, how vulnerable populations like children and seniors would fare under this amendment. I believe the citizens of West Virginia deserve to know how this amendment will affect their daily lives, the safety of the water they drink, the quality of the air they breathe, the health care services they need, the student loans their children need to make college affordable, and the roads which they drive on to get to and from work every day.

They deserve to know how this amendment will affect the basics of their daily lives—and because the majority voted down the right to know amendment offered by the minority leader they will not know. They cannot know because Congress does not know. All Congress knows is the amendment will constitutionally mandate us to find a way to make sure we do not spend any more than we take in every year—that's the only assurance in the entire amendment—every other provision is a maybe.

The cost-shifting that the balanced budget would cause to families and businesses in my State of West Virginia and in every State is mammoth. Statistics compiled by the Treasury Department, by the respected Wharton School, and by the Center for Budget and Policy Priorities, among others, give us a picture of how the amendment will affect our citizens even in the absence of detailed numbers, and program by program explanations.

The different analyses I have seen tell us that under the balanced budget amendment, in West Virginia, 22,000 jobs will be lost, personal income will drop, health care services will be limited, and State and local taxes will have to be increased by over 20 percent to compensate for lost Federal dollars.

The studies show that the State of West Virginia would have to raise its State and local taxes 20.6 percent across the board to compensate for the funds it would lose under the balanced budget amendment; that 22,000 jobs are projected to be lost in West Virginia as a result of the balanced budget amendment (in 2003); that personal income in West Virginia is projected to drop by 8 percent as a result of the balanced budget amendment (in 2003); that the balanced budget amendment and the House contract's fiscal agenda would result in a loss of $96 million in Federal grants in 1996—which is $53 per resident.

West Virginia would lose $322 million in 1998, $175 per resident of West Virginia.

West Virginia would lose $841 million in 2002, $457 per person in West Virginia.

West Virginia Medicare benefits would be cut by $824 million per year (by the year 2002), and total over $3 billion cumulatively.

West Virginia Medicaid funding would be cut by $488 million per year (by the year 2002).

Those projections provide a pretty stark picture of the consequences of this amendment. They tell me I cannot support this balanced budget amendment. And they raise a whole lot of additional questions about how this amendment will affect our national economy. How will the amendment affect West Virginia's economic recovery, and the economic future of our States? How will our most vulnerable populations fare under the amendment? How will defense be treated in the process? What kind of cuts, reforms, or increased revenues are necessary to take us from today's deficit, (which has steadily been reduced over the last 3 years for the first time since Harry Truman was President due to Democratic budget initiatives), to a zero deficit and how will we maintain that during natural disasters, recessions, or national security threats? How will we get from here to there?

These are more of the kind of questions that West Virginians have called my office asking me and my staff. These are the kind of questions I want hard answers to before I vote in favor of any balanced budget amendment. Because this is such a serious matter, amending the document which enshrines our Nation's guiding principles and which is our Nation's organic law, I would like to list a series of additional concerns about the amendment which the Senate debate of recent weeks has only served to highlight.

In some cases, we have had assurances from the amendments' proponents that some of these concerns will be met in implementing legislation, or because there is strong support for certain programs. But West Virginians have no guarantee of anything under this amendment. I cannot cast my vote on a constitutional amendment based on personal assurances of Members, even those from Members for whom I have the utmost regard. I have to cast my vote based on the actual language of the constitutional amendment and it remains deeply troubling to me.

First, I reiterate, nothing in the balanced budget amendment makes government more efficient, less wasteful, or stops unnecessary spending. Only specific legislation, like the President's own deficit reduction initiative, which passed without a solitary Republican vote, can do that. The debate makes it sound like this amendment is a magic bullet to our perplexing budget dilemmas.

Second, this amendment would result in big increases in State and local taxes. One Governor concludes that without seeing the plan for how balancing the budget will be accomplished, this amendment should be considered a vote to raise State and local taxes. He dubbed the existing amendment a "trickle down tax increase".

Third, the balanced budget amendment is bad economic policy. Basic economics tells us the size of the deficit is directly related to the health of the economy. The deficit rises when the economy weakens—but temporary increases in the deficit act as automatic economic stabilizers. When family and business incomes decline, their tax liabilities decline more than proportionately. The resulting deficit means the government is paying out more than it takes in, counterbalancing the fall in the economy. This is true on the spending side as well. For example, when workers lose their jobs, higher outlays for unemployment, Medicaid, and other programs help fill the gap in family budgets, and in overall economic activity, until the economy or people's individual situations improve. If a balanced budget were required every year, that cushioning effect would not be there.

A balanced budget amendment would force us to cut spending or raise taxes to eliminate increases in the deficit caused by a slowing economy. Our fiscal policies would make the natural swings in the economy more pronounced—recessions will be deeper and longer.

The proposed super-majority vote that would permit a deficit to exist during times of economic weakness is ineffective. Congress would have to be more prescient than private sector forecasters in order to develop the needed consensus to waive the strict balanced budget requirement.

Fourth, the amendment does not adequately address how it will be enforced—making it either unenforceable or turning over enforcement to the courts or the President. The amendment would fundamentally restructure the balance of power set forth in the Constitution and could still empower unelected judges to raise taxes or cut spending, despite a restriction placed on the courts in an amendment offered by Senator NUNN in the closing moments of this debate. If the amendment were deemed unenforceable, respect for the Constitution would be severely diminished and rule of law would be undermined.

The question of who will enforce this amendment has not been adequately answered by its proponents. Will it be the courts or the President—or is it intended not to be enforceable? Placing an unenforceable amendment in our Nation's charter would result in countless constitutional violations and make all other constitutional rights, by extension, violable as well.

Judicial involvement in the budgetary process would be unprecedented, even for declaratory judgments, and yet the balanced budget amendment significantly increases judicial authority. Under this amendment, judges may be the ones asked to make the hard choices about that the Congress is accountable for making today—and I strongly believe judges lack the institutional capacity to make those decisions. It's wholly inappropriate to shift that duty to them.

The Constitution's decision to give the "power of the purse" to the legislature was not made lightly. This amendment could transfer some of that power to the courts.

Fifth, rules for fiscal policy should not be written into the Constitution. The Constitution is a miraculous document precisely because it establishes transcendent national ideals and freedoms and the structure of our Government, without micromanaging its performance. It sets individual rights and creates a system of separation of powers, our checks and balances, which protect against any one branch of government becoming too powerful.

Fiscal policies respond to current economic conditions and the structure of the economy—those conditions and structures are constantly changing and should not be restricted to today's needs. Fiscal policy should reflect a constantly changing economic environment, not written in stone in the Constitution.

Sixth, the amendment violates our traditionally democratic principle of majority rule. The amendment requires a three-fifths supermajority vote to pass a law that allows deficit spending or a debt increase. For more than two centuries, the Constitution has only required a supermajority vote for measures vetoed by the President. Giving a minority the power to absolutely block legislative action would be an unprecedented undermining of majority rule. The wholesale transfer of power from the majority to the minority in cases where there is a recession, need to respond to an international or natural crisis, or to extend the Treasury's ability to borrow to pay the government's bills should not be permitted.

Seventh, the balanced budget amendment will create uncertainty about the reliability of government services and obligations. There is a real practical difficulty in insuring the government's budget is balanced every year. If estimates are inaccurate (as they can very well be) and mid-year revised projections show a deficit by year's end—where will the money to compensate for the deficit come from? Interest payments can't be defaulted on, cutting entitlement programs like Medicare with millions of beneficiaries count on would be extremely unpopular, especially in the circumstance that there is very little notice—which means discretionary programs would probably take the mid-year hit. Discretionary programs like student loans could be totally shut down.

In sum, this constitutional amendment is the most expansive amendment to our Constitution brought to a vote in both Houses in the last 206 years. The amendment is almost as long as the entire Bill of Rights, and it would embed fiscal policy in our Constitution. It's called the balanced budget amendment but does nothing more than say we should balance the budget—the amendment is misnamed, it should be called the "Let's Use the Constitution to Promise We Will Balance the Budget Amendment."

When the rhetoric of the virtues of financial responsibility or balance has to be translated into action which will cut the deficit, it will mean across the board cuts in programs which millions of Americans rely on for their health care and nutritional needs, to help send their children to college, to improve their highways and bridges, and to protect our environment. It dodges the toughest questions of how we can get our national health care costs, private and public, under control—and that is both a fundamental flaw of this amendment and a disgrace. In my judgment it will hurt West Virginians and have the harshest effect on the most vulnerable people in my State and in our country. I cannot in good conscience vote for this amendment.

But I can, and will, continue my efforts to reduce the deficit, and to make government programs more responsive to those they serve, and to eliminate duplication and waste as we strive to make government leaner and more efficient, and to manage the costs of priority government programs. A lion's share of that work will be in finally dealing with health care costs and access problems that we failed to address, in part, because the importance of comprehensive health care reform to getting our national deficit under control was not sufficiently understood.

I will continue to be willing to stand up and cast the tough votes if they are necessary to improve our Nation's overall economic health. But I cannot vote for this amendment because my constituents have been denied the basic information about how this amendment would affect their daily lives. In the absence of real information of its consequences, I have had to piece together the effects based on common sense assumptions of what will happen. I am dismayed that there has been a almost uniform refusal to improve this amendment to address the real concerns which have been raised.

It seems appropriate to reflect upon the words of our Founders. I close with the words of Thomas Jefferson who drafted the venerable Constitution which this amendment proposes to radically alter. Thomas Jefferson said:

> I know of no safe depository of the ultimate powers of society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion.

That is a perpetual responsibility of Congress and the business we should be getting about today.

THE 159TH ANNIVERSARY OF THE INDEPENDENCE OF TEXAS

Mrs. HUTCHISON. Mr. President, I think the relevance of what I am going to talk about today will be brought into what has just happened. The historic opportunity that we had that was missed actually falls on the 159th anniversary of the independence of Texas.

One of my predecessors in this Chamber, Sam Houston, led the Texas army to victory at San Jacinto on March 2, 1836, his birthday.

Today, Texans everywhere celebrate that historic victory, and now that we have joined ranks in the United States, we invite all to join us in honoring the victory at San Jacinto.

Texans also remember on this day the soldiers who did not live to see that victory, because they died a few days earlier at the Battle of the Alamo. One hundred eighty-four brave men held the Alamo for 13 days before falling to 6,000 Mexican troops.

Following a tradition begun by my recent predecessor, John Tower, on the birthday of our more distant predecessor, Senator Sam Houston, I would like to read a letter sent by the commander of the Alamo, Col. William Barret Travis, during the siege. I think it will serve as a reminder of how many people spilled blood to make our country what it is today:

> To the people of Texas and all Americans in the world—Fellow citizens and Compatriots—I am besieged by a thousand or more of the Mexicans under Santa Anna. I have sustained a continual Bombardment and cannonade for 24 hours and have not lost a man. The enemy has demanded a surrender at discretion, otherwise, the garrison are to be put to the sword if the fort is taken. I have answered the demand with a cannon shot, and our flag still waves proudly from the walls. I shall never surrender or retreat. Then, I call on you in the name of Liberty, of patriotism and everything dear to the American character to come to our aid with all dispatch. The enemy is receiving reinforcements daily and will no doubt increase to three or four thousand in four or five days. If this call is neglected, I am determined to sustain myself as long as possible and die like a soldier who never forgets what is due his own honor and that of his country. Victory or death. William B. Travis, The Alamo, 2/24/1836.

Today is a great day in the history of Texas. I am sorry that it is a sad day for America. It will be remembered as the day we did not declare independence from the debt accumulated over the last 34 years. We did not close the back door to become heroes of future generations, but while the Alamo is just a memory in our minds, we will be back to fight the battle of the balanced budget amendment. We will amend our Constitution, and we will do the right thing some day.

So while I am not able to celebrate the vote that just happened on this floor a few minutes ago, perhaps we will remember the lesson of the Alamo and perhaps we will remember that it was those who died at the Alamo, who thought they had failed to hold that bastion that paved the way for the success of the Battle of San Jacinto.

Mr. President, our Battle of San Jacinto has yet to come on the balanced budget amendment, but it will. It will come, and we will do what is right for the future generations of our country. The battle has just begun. Today was the Alamo and San Jacinto will follow.

Thank you, Mr. President.

Mr. THURMOND. Will the Senator yield?

The PRESIDING OFFICER. Will the Senator yield?

Mrs. HUTCHISON. Mr. President, I yield.

Mr. THURMOND. Mr. President, I want to commend the able Senator from Texas on what she has had to say about the Alamo. I am very pleased that South Carolina played a big part in that historic event. William Barret Travis, the commander at the Alamo, was born in Edgefield County in South Carolina, the county in which I was born. He was a brave soldier. He fought to the end. Every person there was killed.

James Bonham, another man prominent to the Alamo, was also born in

Edgefield County, SC. So we are proud that South Carolina has played a big part in the history of Texas. They saw they could not win over the Mexicans, they were overpowered. James Bonham asked for permission to go out in the countryside to search for reinforcements. He had to fight through the Mexican lines to get out. He could find no help. He fought to get back to the Alamo.

He came back to the fort and fought to his death. He knew they would die because they did not have enough support. Again, I want to commend the able Senator from Texas for telling us about the history of the Alamo.

Mrs. HUTCHISON. Mr. President, let me just say that the Senator from South Carolina, as usual, is right. The people of South Carolina did come and die at the Alamo. They were very much an important part of the independence of Texas.

I want to say that there were people from Tennessee, Kentucky, and Georgia who also played a major part. I would not be standing here today as the Senator from Texas but for the blood of those great men who migrated from the East and came over and were a very important part of the history of our Nation.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Wisconsin.

Mr. FEINGOLD. I thank the Chair.

(The remarks of Mr. FEINGOLD pertaining to the submission of S. Res. 83 are located in today's RECORD under "Submissions of Concurrent and Senate Resolutions.")

Mr. FEINGOLD. I yield the floor.

Mr. LEAHY. Mr. President, all of Vermont is saddened today by the loss of a great leader in agriculture, George Dunsmore.

George was a strong advocate for Vermont agriculture. He worked tirelessly promoting it here and abroad, and fighting for it in the legislatures of Montpelier, VT and Washington, DC.

In addition to serving in the State legislature, he had two tenures as Commissioner of Agriculture. Under his leadership the high quality image of Vermont food and agricultural products has flourished. George always looked for ways to find new markets for Vermont products. He knew that it was important for Vermont and New England to look beyond our Nation's borders to the export market.

George understood Vermont agriculture so well because he was a part of it. A dairy farmer in Franklin County, he worked both on the farm and in Montpelier for many years.

He also understood how Washington worked. He was a leader in the National Association of State Departments of Agriculture. He also served as the agricultural specialist for my good friend JIM JEFFORDS when he was a Member of the House of Representatives.

George was a strong supporter of the State's dairy industry and the Northeast Interstate Dairy Compact. I think it is fitting that Senator JEFFORDS and I introduce this measure, Senate Joint Resolution 28, today and do so in memory of him.

Whether he was defending the purity of Vermont's maple products, looking for new markets for our apple growers or fighting for higher prices for dairy farmers, George was always a true advocate for agriculture.

My deepest sympathies go to his wife Bette Ann, and their three children.

TO MY FATHER, BY PETER TORRIERI

Mr. SARBANES. Mr. President, I want to call the attention of our colleagues to a very moving poem by my good friend Peter Torrieri of Baltimore. "To My Father" is a tribute not only to those of Italian-American heritage, but also to all of those who crossed the seas to establish families in this great Nation of ours. The immigrant legacy, deeply rooted in our history as Americans, is a facet of our society that should inspire pride and honor.

Peter Torrieri's father, Domenico, came to America during the wave of immigration in the early 1900's. His dream of a better life for himself, his wife, and their children was one that he would see slowly come to fruition. The sacrifices made by the entire Torrieri family illustrate both the strong work ethic displayed by so many immigrant families and the bonds of love and devotion that connect their family.

Domenico Torrieri, then a young man far from his home of Abruzzo, labored day in and day out all for the benefit of his family. Peter's poem shows the highest respect and esteem for his father and for all of the fathers and mothers who made this pilgrimage to the New World, hopeful that their journey would lead them to a bright future.

Peter and his wife Mary are leaders in Maryland's Italian-American community, playing important roles in preserving and passing on their heritage to the next generation as well as working tirelessly on behalf of community, health and civic organizations. As the son of immigrants and as an American who remains deeply devoted to my ethnic heritage, I invite all of our colleagues to read Peter's poem, which pays homage to his father and to all those who sailed the seas in search of a new life in America.

I ask unanimous consent the poem be printed in the RECORD.

There being no objection, the poem was ordered to be printed in the RECORD, as follows:

TO MY FATHER

I praise you, my father, and all your brothers a million strong,
You, dauntless ones who crossed the ocean vast at the early dawn of the century,
Came from distant lands, and gained free access to our friendly shores,
You, challengers of water and wind and the unknown in search of bread and honest toil.
I praise you, Domenico, my father, who shared
Your scant bread with me and gave me the sweat of your brow.
I praise you and your brothers a million strong,
You, anonymous, unrecognized, unsung ones,
The laborers, the toilers, the workers, the builders of America.
I honor you, my father, and all your brothers a million strong,
You, amorphous neglected masses who slept on the earth bare,
Tamed the sooty demons in the coal mines, pushed the plows in the furrows,
Made the deserts bloom, and the stingy soils yield copious crops,
Hammered the spikes that held the rails that span the continent,
And raised the skyscrapers that flirt with the sky.
I honor you, my father, and all your brothers a million strong,
The laborers, the toilers, the workers, the builders of America.
I acclaim you, my father, and all your brothers a million strong,
You, red-eyed-from-soot-and-sweat, barechested smiths
Who wrought the steel that forged the spine and backbone of our mighty cities
And powerful industries and ships that sailed the seven seas;
Who dug the subways and laid the roadbeds of the spacious highways;
Who quarried the stones that raised the monuments, the cathedrals, the museums,
And the schools that taught brawn and brain, races and creeds to amalgamate.
I acclaim you, my father, and all your brothers a million strong,
The laborers, the toilers, the workers, the builders of America.
I bow before you, my father, in both humility and pride.
You were just sixteen when your mother, crying,
Gave you her blessings and kissed you goodbye.
Good-bye. You never saw your mother again alive.
You were still a boy when you waved farewell
To the seagulls on the Adriatic shores of Abruzzo,
A boy unbearded, unschooled, unskilled,
But unafraid of the heights and depths,
Driven only by unbending will to find your place in the sun.
I'll always remember you with love, my father,
The barrel-chested, broad-shouldered, five-foot-five
With thick, callus-gloved hands and sinewy biceps,
Face scorched by fierce summer suns and winter icy winds,
But face that greeted friends as well as strangers with a smile.
You, my father, and all your brothers a million strong
May have passed by unnoticed, unrecognized, unappreciated, and anonymous,
But in the juster spheres above, your names are carved on immortal granite.

Millions of you have come and gone
But Someone keeps making you and growing
you by the millions more,
Because that Someone loves you, my father,
And all your brothers a million strong.

SHERIFF JOHNNY MACK BROWN: A TRIBUTE

Mr. HOLLINGS. Mr. President, I would like to take this opportunity to pay tribute to a leader in the law enforcement field, Sheriff Johnny Mack Brown from Greenville, SC.

Sheriff Brown's community-oriented approach to law enforcement has proved an effective and innovative way to help maintain law and order. Thanks to Sheriff Brown, agencies from across the country travel to observe this concept of bringing law enforcement back into the community.

Mr. President, it gives me great pride to see South Carolinians hard at work insuring that our State remains a safe place to raise a family and conduct business. Sheriff Brown has taken a bold stance against crime.

"We must not, we cannot fall into the trap of believing we are there to do law enforcement work for the community. We are there to do law enforcement work with the community," advised Sheriff Brown in a 1993 newsletter for the National Sheriff's Association.

Johnny Mack Brown has been recognized as a leader by his colleagues both at the national and State level. In 1993 he served as president of the National Sheriff's Association and from 1989-91 he was commissioner for the Commission on Accreditation for Law Enforcement Agencies, Inc. And, under the leadership of Sheriff Brown, the Greenville County Sheriff's Department was the first to achieve accreditation from the commission in 1988. He also served as president of the South Carolina Sheriff's Association in 1983.

Mr. President, I am delighted to commend Sheriff Johnny Mack Brown's dedication to improving the community. His efforts will have a lasting effect not only in South Carolina but across the country.

Recently, the Greenville News wrote of the Greenville County sheriff's exemplary law enforcement methods as a model for the country. I ask unanimous consent that the article be made a part of the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NATIONAL STUDY LOOKS AT SHERIFF'S OFFICE

(By Bryan Gilmer)

The Greenville County Sheriff's Office is one of 12 law enforcement agencies nationwide being studied for its innovative use of community law enforcement strategies, a researcher said.

Community law enforcement includes getting law officers heavily involved with communities where they work a permanent beat. Then, rather than just responding to calls when trouble arises, the officer can work with community members to solve underlying problems that cause crime.

Gerald L. Williams, who teaches at Sam Houston State University in Huntsville, Texas, spent Thursday and Friday interviewing deputies and their commanders at the Sheriff's Office and touring the county.

In his research project, Williams and a colleague from the University of Kentucky are each examining six agencies. Their research is funded by a grant from the National Institute of Justice.

"This was the only sheriff's department that was selected," Williams said. "It's difficult to be objective when you come into an organization like this one and you see the wonderful things they're doing. It's difficult to remain distant and not become a real cheerleader."

Williams said he's gathered good information during his visit.

"One of the things that is really key to me is that I've been absolutely impressed with the amount of enthusiasm that exists in the people I've talked to, and a commitment toward community-oriented law enforcement here. There's a true sense of, 'We're going to make this work.'"

TRIBUTE TO COMMISSIONER TILLMAN HILL

Mr. HEFLIN. Mr. President, on March 16, a community committee will hold a special event to recognize the many contributions and hard work of Madison County, AL District One Commissioner Tillman Hill. Proceeds from this most-deserved event honoring an outstanding public servant will go to the Hazel Green Public Library Building Fund. Commissioner Hill opened this library at its temporary location in 1991.

The library is Tillman Hill's pride and joy, and it is entirely fitting and appropriate for his community to thank him by raising funds for the facility he has supported and been instrumental in establishing. He has always remembered his roots and has never forgotten his people's needs. Today, the Hazel Green Library checks out more books than any other rural branch in Madison County—over 40,000 volumes in 1994. Tillman's dream is to build a permanent building for the library on 2 acres of donated land. Plans for a 4,500 square foot facility have already been prepared.

Tillman Hill has dedicated his life to serving his community. He is a native son of Madison County, AL, born there, and having attended high school and college there. During the Korean war he was a noncommissioned officer with the 151st Engineering Battalion. Over the years, he has been a member of the Alabama Housing Authority; the Chamber of Commerce; the Jaycees; and the Lions Club. He is a past president of the Alabama Association of Counties.

Tillman is best known as a veteran county commissioner. He was first elected in 1976 and has served as a commissioner for 19 years. His quest to bring about a county building inspection function is only the most recent of his efforts that characterize his expertise and talent as a public official. Throughout his career, he has been the driving force behind many other special projects, including the Sharon Johnston Park; Chase Industrial Park; an expanded county water system; senior citizen and nutrition centers; low-interest housing loans; the restoration of historic cemeteries; and, of course, the Hazel Green Public Library. Since being appointed a Madison County license inspector by Alabama Governor Albert Brewer in 1969, Tillman Hill has been living proof that one individual's concern and commitment can make a tremendous and lasting difference in people's lives.

I am proud to commend and congratulate my good friend Tillman Hill for his many years of service—service which reflects great credit upon him, his community, and his State. The success of the Hazel Green Library will long serve as only one testament to his selfless determination and generosity. He truly embodies the very best of what public service is all about.

A TRIBUTE TO THE KNIGHTS OF MALTA FOR WORLDWIDE GOOD DEEDS

Mr. SPECTER. Mr. President, at a time when citizen participation and volunteerism are uniquely important in addressing problems of our society, with the contemplated reduction of governmental expenditures I consider it worthwhile to note the important humanitarian contributions of The Sovereign Order Of Malta and its American foundation, the American Knights and Dames.

Some of the important activities of The Knights of Malta have been called to my attention by a longstanding friend and distinguished Philadelphia lawyer, Mr. James Binns:

(1) This year the Order plans to support the Medical Research Center of New York University, for finding and improving the care, and prevention of Parkinson's Disease and Movement Disorders, which unfortunately affects more and more people every day.

(2) This year also, a 400-bed hospital and a byomedical university is now under construction in Frosinone, Italy, for all students from throughout the world.

(3) For Christmas 1994 the Order donated food, toys and clothing to an entire orphanage in Oradea, Rumania.

(4) In 1992 in the State of Nueva Esparta, Venezuela, the Order donated medical equipment to the Civil Defense and to the Firefighter. In 1993, substantial humanitarian help was sent by the Order to Fiume, Yugoslavia, through the Red Cross.

(5) In 1988 a "Proclamation" was signed by Prime Minister Yitzchak Shamir, with a special Ambassador of the Order, sent to Israel, to encourage the spirit of "Vatican II", that Jews and Christians are brothers and sisters under Almighty God. Further, to uphold through dialogue, commerce and diplomacy, the World Council of Nations to recognize the State of Israel's inherent rights through

Her Sovereign History in perpetuity, as stated in the United Nations Resolution of November 29, 1947.

(6) In 1984 in Rome, Italy, the Order collected over a million US dollars for the Institute, "Regina Elena", specializing in the research of the Hyperthermic Treatment of Cancer.

(7) In 1980 the Belgium branch of the Order donated medical assistance to Africa and a special machine to be utilized for the search of water.

(8) In 1978, in Salvador, Bahia, Brazil, an orphanage for 900 children, was founded with complete facilities, including a school up to the 8th grade.

These humanitarian contributions continue activities of The Knights of Malta which originated with the Order of St. John of Jerusalem in 1099 with assistance to the wounded when the first crusaders arrived at the Holy City.

After being expelled from Jerusalem in 1291, the Knights established a new headquarters of the Order at Limassol in Cyprus until 1309. They fortified the city and laid down the armaments regulations for the vessels carrying traders and pilgrims to the Holy Land. In doing so, the maritime power of the Order was established and the Mediterranean Sea was substantially liberated from pirates.

The Knights continuously played a significant role with the siege of the Island of Rhodes in 1309, the defeat of the Ottomans who attempted to seize Rhodes in 1480 and the later battle with the Ottomans in 1522 resulting in the Knights leaving for Candia in 1523. After the Holy Roman Emperor Charles V ruler of Spain and Sicily granted the Island of Malta to the Order, the Knights of Malta reigned over Malta until 1798. After the surrender of the Island to Napoleon Bonaparte in 1798, many of the Knights returned to their own countries forming different commanderies.

During the 19th and 20th centuries, The Knights of Malta sought to avoid political affairs in order to pursue philanthropic activities which its 40,000 members do to this day.

The Knights of Malta, with its unique history over nine centuries, have established a model for worldwide efforts which should inspire other individuals and organizations to do similar good deeds.

THE PEACE PROCESS IN NORTHERN IRELAND

Mr. PELL. Mr. President, last week, British Prime Minister Major and Irish Prime Minister Bruton took an important step toward lasting peace in Northern Ireland. The two leaders unveiled a framework document designed to serve as the basis for negotiations on Northern Ireland's future.

I believe it is important to note, as both Mr. Major and Mr. Bruton have, that the framework document is not a done deal or final settlement to be imposed, but a basis for talks among all the parties of Northern Ireland. This assurance should go a long way toward putting the various parties on the negotiating track.

Both the British and Irish Governments have signaled their willingness to make some difficult compromises in the name of enduring peace and reconciliation—compromises that cut to the heart of each country's traditional constitutional doctrines and that could cost each government political support at home. I believe that Mr. Major and Mr. Bruton should be commended for their courage. Similarly, Irish Foreign Minister Dick Spring, who was in Washington yesterday, deserves great credit for his efforts—in providing continuity and credibility to the process.

For its part, the British Government will propose changes to its constitutional legislation to ensure that the will of the majority of the people of Northern Ireland is respected in determining Northern Ireland's status. Similarly, the Irish Government will introduce and support proposals to end its constitutional claim to Northern Ireland. The document also proposes to create cross-border institutions, such as a North/South body with elected representatives from a Northern Ireland Assembly and the Irish Parliament.

The fate of the process now lies squarely in the hands of the various parties in Northern Ireland. I sincerely hope that they will not miss this historic opportunity to create a permanent peace. An editorial in Monday's Washington Post makes this point rather well, and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Feb. 27, 1995]

AGENDA FOR NORTHERN IRELAND

British Prime Minister John Major and his Irish counterpart, John Bruton, took an important first step last week in opening negotiations for the permanent resolution of the Ulster crisis. The leaders released a framework for talks that offers a set of opening suggestions they hope will lead to permanent reconciliation.

As usual, the Rev. Ian Paisley and his colleagues were not impressed. Blasting the agreement as a conspiracy to force Ulster Protestants into union with the Irish Republic, the 68-year-old hard-liner seeks to block talks before they begin. But other, younger men who might have stood with him in years past were more responsive. One leader of a Protestant paramilitary group rejected the Paisley position and announced that he is tired after 25 years of killing, and ready to talk. That sentiment was echoed by a Protestant member of the Senate of Northern Ireland whose own daughter was killed by an IRA bomb. If that view is widespread, there is reason for hope.

The framework announced is simply the opening move in what may be a protracted series of negotiations. Devised over 18 months of consultations between the British and Irish governments, the document suggests steps that could be taken to heal divisions in the province. The British, for example, want to create a new legislative assembly in Northern Ireland, with voting procedures that will protect the Catholic minority. The Irish government will support changes in that country's constitution that will revoke legal and political claims to the countries in the North. Both governments suggest the creation of a cross-border authority composed of elected legislators from Ulster and the Republic, which would work together on matters of common interest such as tourism, economic development and environmental regulation. "These are our ideas," Mr. Major stressed, "but the future is up to [the people of Northern Ireland.]"

That last assurance is critical. No steps will be taken without the consent of the governed. There will be parliamentary debates ahead, counterproposals, compromise and eventually referendums. But there is no rush so long as the cease-fire holds, as it now has for many months. Peace has given a whole generation of combatants an idea of what life should be like. Young people who, until last September never experienced a day free of fear that some indiscriminate killer or hidden bomb would destroy then don't want to see the old days return. Neither do most of their elders who have borne the full brunt of the violence.

INTERNATIONALISM OR ISOLATIONISM—A CHOICE FOR THE NEXT GENERATION OF AMERICAN LEADERS

Mr. PELL. Mr. President, in the opening words of a major foreign policy address last evening, President Clinton said that "we live in a moment of hope."

Mr. President, I concur with that sentiment. With the demise of the cold war, with the nascent friendship between the United States and Russia, and with the emergence of democratic trends across the globe, the world is experiencing a realignment in the fundamental relationship between States. It is, as the President suggests, a time of extraordinary opportunity for the United States.

I commend President Clinton for his rejection of an inward-looking course, and endorse his ambitious call to support international peacekeeping, to reduce the nuclear threat by extending indefinitely the Nuclear Non-Proliferation Treaty and implementing other arms control agreements, and to be an aggressive player in the global economy. I also ask unanimous consent that the President's speech be printed in the RECORD at the conclusion of my remarks.

The present circumstances call to mind the watershed period after World War II. Then, as now, the United States faced a stark challenge: whether to assume the mantle of international leadership and become engaged in the establishment of a new diplomatic order, or whether to retreat into isolation, comfortably sheltered by two great oceans from the turbulent world of European balance of power politics.

Due to the courage and foresight of our political leadership—visionaries such as Harry Truman, George Marshall, Dean Acheson, and Arthur Vandenberg—America chartered a firm course of internationalism, guided by the principle of containment of the Soviet Union. Recognizing the shortsightedness of isolationism, the United States chose not to repeat the mistakes it made in ignoring the League of Nations, and became a driving force behind and host of the new United Nations. Our decisions then, and in the ensuing decades, solidified our role as the preeminent power in world affairs.

The changes we have witnessed in the past 6 years are the direct result of the policies we, along with our allies, conceived, refined, and implemented during the course of the cold war. None of these changes, however, could have occurred without American leadership and engagement.

I am therefore troubled by the emerging desire, expressed both in Congress and in public fora across the Nation, to retreat from our international commitments and obligations. And nowhere is this sentiment more dangerous and ill-conceived than in the emerging obsession with the United Nations.

I am now and have been an ardent supporter of the United Nations since 1945, when I was part of the International Secretariat of the San Francisco Conference that drew up the U.N. Charter. In the years since then, I have tried to help to make the United Nations become the effective world organization—the very symbol of the international community of nations—that was envisioned in the charter.

I am not so naive as to profess that the United Nations has always lived up to its potential. The United States-Soviet rivalry tended at times to hamstring the Security Council, and U.N. history occasionally has been interspersed with examples of waste and ineffectiveness. But for every example of failure, I can think of numerous countervailing examples of success—Cambodia, El Salvador, Namibia, and countless others. And now that we are entering a new era of cooperation with Russia, the Security Council harbors even greater promise for becoming a first-rate arbiter of international conflict and discord. U.N. peacekeeping has helped to serve American interests in the Middle East, in Africa, in Latin America, and in Asia. And I know that there will be situations in the future where we will rely on the U.N. peacekeepers to support our foreign policy aims.

Now that we no longer are forced to dedicate such a sizable proportion of our resources to the containment of Russia, we can see before us an entire new range of opportunity for international cooperation and prosperity. But the growth industries and salient political issues of the future—be they in telecommunications, the exchange of information, the flow of capital, the sound use of our environmental resources, or the prevention of the proliferation of conventional and unconventional arms—are heading in a direction that transcends national boundaries. If the United States is to keep pace, it cannot afford to slide back into inward-looking detachment.

In his address, the President set out a challenging and crucially important arms control agenda. I was quite pleased to note the high priority he attaches to achieving the indefinite extension of the Non-Proliferation Treaty at the conference of the parties beginning next month. The President has decided to underscore the importance he attaches to the preservation of international barriers to nuclear proliferation by asking Vice President Gore to lead our delegation. The Vice President will be ably supported by Ambassador Thomas Graham, Jr., and other experts from the Arms Control and Disarmament Agency.

The President also reaffirmed his commitment to the quick completion of a complete ban on nuclear testing. Substantial progress has been made in the negotiations. With a dedicated effort, the remaining stumbling blocks can be overcome.

I was pleased also that the President attaches high priority to the ratification of the START II Treaty. The START I and START II effort is truly bipartisan, spanning three administrations. Under the leadership of Senator HELMS and Senator LUGAR, the Committee on Foreign Relations is in the process of wrapping up hearings started in the last Congress under my chairmanship.

In addition to these priorities, the President told his audience:

> There are other critical tasks we also face if we want to make every American more secure, including winning Senate ratification of the Chemical Weapons Convention, negotiating legally binding measures to strengthen the Biological and Toxin Weapons Convention, clarifying the ABM Treaty so as to secure its viability while permitting highly effective defenses against theater missile attacks, continuing to support regional arms control efforts in the Middle East and elsewhere, and pushing for the ratification of conventional weapons which, among other things, would help us to reduce the suffering caused by the tens of millions of anti-personnel mines. * * *

The President understands that this agenda is both far-reaching and imperative. He said:

> Now, in this year of decision, our ambition for the future must be even more ambitious. If our people are to know real lasting security, we have to redouble our arms control, nonproliferation and antiterrorism efforts. We have to do everything we can to avoid living with the 21st century version of fall-out shelters and duck-and-cover exercises to prevent another World Trade Center tragedy.

Mr. President, it is very important to understand that many aspects of arms control and nonproliferation are truly bipartisan. To be sure, Senators have and have had disagreements. Nonetheless, working together in a bipartisan fashion, we have moved steadily forward. During my chairmanship of the Committee on Foreign Relations, we were able to craft bipartisan bills, with the strong involvement of Senator GLENN and other Members, imposing effective sanctions against both nations and individuals engaged in reprehensible activities involving chemical, biological, and nuclear weapons-related activities.

It is indicative of the bipartisan nature of our arms control efforts that every treaty the committee and the Senate approved while I was privileged to be chairman won overwhelming support in the end. We were careful in every instance to resolve all legitimate concerns along the way to committee and floor consideration, and there was never a question with any of the arms control treaties voted out—including the Intermediate-Range Nuclear Forces Treaty, the Conventional Forces in Europe Treaty, the Threshold Test Ban Treaty, the Peaceful Nuclear Explosions Treaty, and the START II Treaty—that the approval would be well beyond the required two-thirds support.

Mr. President, I am gratified that President Clinton has embraced an ambitious agenda that will merit continued bipartisan support. He will thus be able to bring to fruition major initiatives of the Bush administration, as well as his own. The end result will assuredly be a safer, more stable world.

It is important to understand that these efforts represent a continuum in arms control that covers much of the post-World War II period. Presidents Eisenhower and Kennedy initiated the first efforts to curb nuclear testing, and each succeeding administration has built on the successes of its predecessors.

Mr. President, I wish that I could say that the major challenges of arms control and nonproliferation are behind us. Despite the many successes, the challenges ahead are formidable. I am extremely pleased that the President is able and willing to face these challenges. I trust that the Congress will continue a truly bipartisan effort to control, reduce, and even eliminate weapons of mass destruction.

Mr. President, we stand at the crossroads of history. The tenor of current political discourse—focused as it is on disengagement, withdrawal, and neoisolationism—suggests we are heading toward a colossal error in judgment. Those who seek to retreat into a Fortress America offer no constructive suggestion for filling the vacuum to be left by America's withdrawal. We would lose our political and moral authority, our ability to exercise influence in matters vital to our interests, and do grave harm to our standing as one of the greatest powers in history.

In his speech last night, President Clinton mentioned one of the most distinguished members ever to have served in this body—Arthur Vandenberg—who advanced the principle that politics should stop at the waters edge. But many of our interests, Mr. President, only begin there. I stand behind President Clinton's conviction that America can prosper in the next century only through international engagement and the assertion of leadership.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

[From the White House, Office of the Press Secretary, Mar. 1, 1995]

REMARKS BY THE PRESIDENT TO THE NIXON CENTER FOR PEACE AND FREEDOM POLICY CONFERENCE

The PRESIDENT. To Tricia and John Taylor, and all the people from the Nixon Center; our distinguished guests from Germany and from Russia; of course, to Henry Kissinger—I was thinking when he said we both spoke with accents, judging from the results of the last election, his native country is still claiming him more than mine is claiming me. (Laughter.) But I'm a big one for reconciliation. (Laughter.) And there's plenty of time to achieve it.

I am honored to be here tonight. Just a month before he passed away, President Nixon wrote me the last letter I received from him about his last trip to Russia. I told some people at the time that it was the best piece of foreign policy writing I had received, which angered my staff but happened to be the truth. (Laughter.) And as with all of our correspondence and conversations, I was struck by the rigor of his analysis, the energy of his convictions, and the wisdom of the practical suggestions that he made to me.

But more than the specifics of the letter, which basically argued for the imperative of the United States continuing to support political and economic reform in Russia, I was moved by the letter's larger message—a message that ran throughout Richard Nixon's entire public life and all of his prolific writings. President Nixon believed deeply that the United States simply could not be strong at home unless we were strong and prepared to lead abroad.

And that made a big impression on me. When I was running for President in 1992, even though there was this little sticker up on the wall of my campaign headquarters that said, "It's the economy, stupid," I always said in every speech that we had to have two objectives. We had to restore the American Dream for all of our people, but we also had to make sure that we move into the next century still the strongest nation in the world, and the world's greatest force for peace and freedom and democracy.

Tonight I want to talk about the vital tradition of American leadership and our responsibilities, those which Henry Kissinger mentioned and those which President Nixon recognized so well. Our mission especially I want to discuss—to reduce the threat of nuclear weapons.

Today if we are going to be strong at home and lead abroad, we have to overcome what we all recognize I think is a dangerous and growing temptation here in our own land to focus solely on the problems we face here in America. I want to focus on the problems we face here in America. I've tried to do it for the last two years. I look forward to working with this new Republican-led Congress in the next two. But not solely.

There is a struggle now going on between those of us who want to carry on the tradition of American leadership and those who would advocate a new form of American isolationism. A struggle which cuts curiously across both party and ideological lines. If we're going to continue to improve the security and prosperity of all our people, then the tradition of American leadership must prevail.

We live in a moment of hope. We all know that. The implosion of communism and the explosion of the global economy have brought new freedoms to countries on every continent. Free markets are on the rise. Democracy is ascendant. The slogan says, "after victory." Today, more than ever before, people across the globe do have the opportunity to reach their God-given potential. And because they do, Americans have new opportunities to reach theirs as well.

At the same time, the post-Cold War world has revealed a whole web of problems that defy quick or painless solutions—aggression of rogue states, transnational threats like overpopulation and environmental degradation, terrible ethnic conflicts and economic dislocation. But at the heart of all these complex challenges, I believe, lies an age-old battle—for power over human lives. The battle between the forces of freedom and tyranny, tolerance and repression, hope and fear. The same idea that was under attack by fascism and then by communism remains under attack today in different ways all across the world—the idea of the open society of free people.

American leadership is necessary for the tide of history to keep running our way, and for our children to have the future they deserve. Yet, there are some who would choose escapism over engagement. The new isolationists oppose our efforts to expand free trade through GATT or NAFTA through APEC and the Summit of the Americas. They reject our conviction that democracy must be nurtured with investment and support, a conviction that we are acting on from the former Soviet Union to South Africa. And some of them, being hypocritical, saying that we must trumpet the rhetoric of American strength; and then at the same time, they argue against the resources we need to bring stability to the Persian Gulf or to restore democracy to Haiti, or to control the spread of drugs and organized crime around the world, or even to meet our most elemental obligations to the United Nations and its peacekeeping work.

The new isolationists both on the left and the right would radically revise the fundamentals of our foreign policy that have earned bipartisan support since the end of World War II. They would eliminate any meaningful role for the United Nations which has achieved, for all of its problems, real progress around the world, from the Middle East to Africa. They would deny resources to our peacekeepers and even to our troops, and, instead, squander them on Star Wars. And they would refuse aid to the fledgling democracies and to all those fighting poverty and environmental problems that can literally destroy hopes for a more democratic, more prosperous, more safe world.

The new isolationists are wrong. They would have us face the future alone. Their approach would weaken this country, and generated build into a tidal wave. (Applause.)

If we withdraw from the world today, mark my words, we'll have to contend with the consequences of our neglect tomorrow and tomorrow and tomorrow. This is a moment of decision for all of us without regard to our party, our background or our accent. This is a moment of decision.

The extraordinary trend toward democracy and free markets is not inevitable. And as we have seen recently, it will not proceed easily in an even, uninterrupted course. This is hard work. And at the very time when more and more countries than ever before are working to establish or shore up their own freedom in their fragile democracies, they look to us for support. At this time, the new isolationists must not be allowed to pull America out of the game after just a few hours of debate because there is a modest price attached to our leadership. (Applause.)

We know now, as President Nixon recognized, that there must also be limits to America's involvement in the world's problems—limits imposed by clear-headed evaluation of our fundamental interests. We cannot be the world's policeman; we cannot become involved in every problem we really care about. But the choice we make must be rooted in the conviction that America cannot walk away from its interests or responsibilities.

That's why, from our first day in office, this administration has chosen to reach out, not retreat. From our efforts to open markets for America to support democracy around the world, to reduce the threat posed by devastating weapons and terrorists, to maintaining the most effective fighting force in the world, we have worked to seize the opportunities and meet the obligations of this moment.

None of this could have happened without a coalition of realists—people in both Houses of Congress and, importantly, people from both parties; people from coast to coast in our towns and cities and communities who know that the wealth and well-being of the United States depends upon our leadership abroad. Even the early leaders of our republic who went to great pains to avoid involvement in great power conflicts recognize not only the potential benefits, but the absolute necessity of engaging with the world.

Before Abraham Lincoln was elected President, our farmers were selling their crops overseas, we had dispatched the trade mission all the way to Japan trying to open new markets—some problems don't go away—(laughter)—and our Navy had already sailed every ocean. By the dawn of this century, our growing political and economic power already imposed a special duty on America to lead; a duty that was crystallized in our involvement in World War I. But after that war, we and the other great powers abandoned our responsibilities and the forces of tyranny and hatred filled the vacuum, as is well-known.

After the second world war, our wise leaders did not repeat that mistake. With the dawn of the Nuclear Age and the Cold War, and with the economies of Europe and Japan in shambles, President Truman persuaded an uncertain and weary nation, yearning to shift its energies from the front lines to the home front, to lead the world again.

A remarkable generation of Americans created and sustained alliances and institutions—the Marshall Plan, NATO, the United Nations, the World Bank, the IMF—the things that brought half a century of security and prosperity to America, to Europe, to Japan and to other countries all around the world. Those efforts and the special resolve and military strength of our own nation held tyranny in check until the power of democracy, the failures of communism, and the heroic determination of people to be free, consigned the Cold War to history.

Those successes would not have been possible without a strong, bipartisan commitment to American's leadership.

Senator Arthur Vandenburg's call to unite our official voice at the water's edge joined Republicans to Truman's doctrine. His impact was all the more powerful for his own past as an isolationist. But as Vandenburg himself said, Pearl Harbor ended isolationism for any realist.

Today, it is Vandenburg's spirit that should drive our foreign policy and our politics. The practical determination of Senators Nunn and Lugar to help Russia reduce its nuclear arsenal safely and securely; the support from Speaker Gingrich and Leader Gephardt, from Chairman Livingston and Representative Obey for aid to Russia and the newly-independent states; the work of Senators Hatfield, Leahy and McConnell, and Chairman Gilman, and Representative Hamilton for peace in the Middle East; the efforts of Senator Warner to restructure our intelligence—all these provide strong evidence of the continuing benefits and vitality of leadership with bipartisanship.

If we continue to lead abroad and work together at home, we can take advantage of these turbulent times. But if we retreat, we risk squandering all these opportunity and abandoning our obligations which others have entrusted to us and paid a very dear price to bring to us in this moment in history.

I know that the choice to go forward in a lot of these areas is not easy in democracies at this time. Many of the decisions that America's leaders have to make are not popular when they're made. But imagine the alternative. Imagine, for example, the tariffs and barriers that would still cripple the world trading system for years into the future if internationalists coming together across party lines had not passed GATT and NAFTA. Imagine what the Persian Gulf region would look like today if the United States had not stepped up with its allies to stop Iraqi aggression. Imagine the ongoing reign of terror and the flood of refugees at our borders had we not helped to give democracy a second chance in Haiti. Imagine the chaos that might have ensued if we had not moved to help stabilize Mexico's economy. In each case, there was substantial and sometimes overwhelming majority opinion against what needed to be done at the moment. But because we did it, the world has a better chance at peace and freedom. (Applause.)

But above all now, I ask you to imagine the dangers that our children and grandchildren, even after the Cold War is over, still can face if we do not do everything we can to reduce the threat of nuclear arms, to curb the terrible chemical and biological weapons spreading around the world, to counter the terrorists and criminals who would put these weapons into the service of evil.

As Arthur Vandenburg asked at the dawn of the Nuclear Age, after a German V–1 attack had left London in flames and its people in fear, "How can there be isolation when men can devise weapons like that?"

President Nixon understood the wisdom of those words. His life spanned an era of stunning increases in humankind's destructive capacity, from the biplane to ballistic missiles, from mustard gas to mushroom clouds. He knew that the Atomic Age could never be won, but could be lost. On any list of his foreign policy accomplishments, the giant steps he took toward reducing the nuclear threat must stand among his greatest achievement. As President, I have acted on that same imperative.

Over the past two years, the United States has made real progress in lifting the threat of nuclear weapons. Now, in 1995, we face a year of particular decision in this era—a year in which the United States will pursue the most ambitious agenda to dismantle and fight the spread of weapons of mass destruction since the atom was split.

We know that ours is an enormously complex and difficult challenge. There is no single policy, no silver bullet, that will prevent or reverse the spread of weapons of mass destruction. But we have no more important task. Arms control makes us not only safer, it makes us stronger. It is a source of strength. It is one of the most effective insurance policies we can write for the future of our children.

Our administration has focused on two distinct, but closely connected areas—decreasing and dismantling existing weapons, and preventing nations or groups from acquiring weapons of mass destruction, and the means to deliver them. We've made progress on both fronts.

As the result of an agreement President Yeltsin and I reached, for the first time in a generation Russian missiles are not pointed at our cities or our citizens. We've greatly reduced the lingering fear of an accidental nuclear launch. We put into force the START I Treaty with Russia that will eliminate from both our countries delivery systems that carry more than 9,000 nuclear warheads—each with the capacity to incinerate a city the size of Atlanta.

START I, negotiated by two Republican administrations and put into force by this Democratic administration, is the first treaty that requires the nuclear powers actually to reduce their strategic arsenal. Both our countries are dismantling the weapons as fast as we can. And thanks to a far-reaching verification system, including on-site inspections which began in Russia and the United States today, each of us knows exactly what the other is doing. (Applause.)

And, again, through the far-sighted program devised by Senators Nunn and Lugar, we are helping Russia and the other newly-independent states to eliminate nuclear forces in transport, safeguard and destroy nuclear weapons and materiel.

Ironically, some of the changes that have allowed us to reduce the world's stockpile of nuclear weapons have made our nonproliferation efforts harder. The breakup of the Soviet Union left nuclear materials dispersed throughout the newly-independent states. The potential for theft of nuclear materials, therefore, increased. We face the prospect of organized criminals entering the nuclear smuggling business. Add to this the volatile mix, the fact that a lump of plutonium the size of a soda can is enough to build a bomb, and the urgency of the effort to stop the spread of nuclear materials should be clear to all of us.

That's why from our first day in office we have launched an aggressive, coordinated campaign against international terrorism and nuclear smuggling. We are cooperating closely with our allies, working with Russia and the other newly-independent states, improving security at nuclear facilities, and strengthening multilateral export controls.

One striking example of our success is Operation Sapphire, the airlift of nearly 600 kilograms of highly-enriched uranium—enough to make dozens of bombs from Kazakhstan to the United States for disposal. We've also secured agreements with Russia to reduce the uranium and plutonium available for nuclear weapons, and we're seeking a global treaty banning the production of fissile material for nuclear weapons.

Our patient, determined diplomacy also succeeded in convincing Belarus, Kazakhstan and Ukraine to sign the Non-Proliferation Treaty and give up the nuclear weapons left on their territory when the Soviet Union dissolved. One of our administration's top priorities was to assure that these new countries would become non-nuclear nations, and now we are also achieving that goal. (Applause.)

Because of these efforts, four potential suppliers of ballistic missiles—Russia, Ukraine, China and South Africa—have been agreed to control the transfer of these missiles and related technology, pulling back from the nuclear precipice has allowed us to cut United States defense expenditures for strategic weapons by almost two-thirds, a savings of about $20 billion a year, savings which can be shifted to vital needs such as boosting the readiness of our Armed Forces, reducing the deficit, putting more police on our own streets. By spending millions to keep or take weapons out of the hands of our potential adversaries, we are saving billions in arms costs and putting it to better use.

Now, in this year of decision, our ambition for the future must be even more ambitious. If our people are to know real lasting security, we have to redouble our arms control, nonproliferation and antiterrorism efforts. We have to do everything we can to avoid living with the 21st century version of fallout shelters and duck-and-cover exercises to prevent another World Trade Center tragedy.

In just four days we mark the 25th anniversary of the Non-Proliferation Treaty. Nothing is more important to prevent the spread of nuclear weapons than extending the treaty indefinitely and unconditionally. And that's why I've asked the Vice President to lead our delegation to the NPT conference this April and to work as hard as we can to make sure we succeed in getting that indefinite extension.

The NPT is the principal reason why scores of nations do not now possess nuclear weapons; why the doomsayers were wrong. One hundred and seventy-two nations have made NPT the most widely subscribed arms limitation treaty in history for one overriding reason—it's in their self-interest to do so. Non-nuclear weapon states that sign on to the treaty pledge never to acquire them. Nuclear weapons states vow not to help others obtain nuclear weapons, to facilitate the peaceful uses of atomic energy and to pursue nuclear arms control and disarmament—commitments I strongly reaffirm, along with our determination to attain universal membership in the treaty.

Failure to extend NPT indefinitely could open the door to a world of nuclear trouble. Pariah nations with rigid ideologies and expansionist ambitions would have an easier time acquiring terrible weapons, and countries that have chosen to forego the nuclear option would then rethink their position; they would certainly be tempted to reconsider that decision.

To further demonstrate our commitment to the goals of the treaty, today I have ordered that 200 tons of fissile material, enough for thousands of nuclear weapons, be permanently withdrawn from the United States nuclear stockpile. (Applause.) Two hundred tons of fissile material that will never again be used to build a nuclear weapon.

A second key goal of ours is ratifying START II. Once in effect, that treaty will eliminate delivery systems from Russian and American arsenals that carry more than 5,000 weapons. The major reductions under START I, together with START II, will enable us to reduce by two-thirds the number of strategic warheads deployed at the height of the Cold War. At my urging, the Senate has already begun hearings on START II, and I am encouraged by the interest of the senators from both parties in seeking quick action. I commend the Senate for the action taken so far, and I urge again the approval of the treaty as soon as possible.

President Yeltsin and I have already instructed our experts to begin considering the possibility after START II is ratified of additional reductions and limitations on remaining nuclear forces. We have a chance to further lift the nuclear cloud, and we dare not miss it.

To stop the development of new generations of nuclear weapons, we must also quickly complete negotiations on a comprehensive test ban treaty. Last month I extended a nuclear testing moratorium that I put into effect when I took office. And we revised our negotiating position to speed the conclusion of the treaty while reaffirming our determination to maintain a safe and reliable nuclear stockpile.

We will also continue to work with our allies to fully implement the agreement we reached with North Korea, first to freeze, then do dismantle its nuclear program, all under international monitoring. The critics of this agreement, I believe, are wrong. The deal does stop North Korea's nuclear program, and it does commit Pyongyang to roll it back in the years to come.

I have not heard another alternative proposal that isn't either unworkable or foolhardy, or one that our allies in the Republic of Korea and Japan, the nation's most directly affected, would fail to support.

If North Korea fulfills its commitment, the Korean Peninsula and the entire world will clearly be less threatened and more secure. The NPT, START II, the Comprehensive Test Ban Treaty, the North Korean Agreement, they top our agenda for the year ahead. [There are other critical tasks we also face if we want to make every American more secure, including winning Senate ratification of the Chemical Weapons Convention, negotiating legally binding measures to strengthen the Biological and Toxin Weapons Convention, clarifying the ABM Treaty so as to secure its viability while permitting highly effective defenses against theater missile attacks, continuing to support regional arms control efforts in the Middle East and elsewhere, and pushing for the ratification of conventional weapons which, among other things, would help us to reduce the suffering caused by the tens of millions of anti-personnel mines which are plaguing millions of people all across this world.] (Applause.)

My friends, this is a full and challenging agenda. There are many obstacles ahead. We cannot achieve it if we give into a new isolationism. But I believe we can do no less than make every effort to complete it.

Tonight, let us remember what President Nixon told the joint session of Congress when he returned from his historic trip to Moscow in 1972. He said, "We have begun to check the wasteful and dangerous spiral of nuclear arms. Let us seize the moment so that our children and the world's children can live free of the fears and free of the hatreds that have been the lot of mankind through the centuries."

Now it is within our power to realize the dream that Richard Nixon described over 20 years ago. We cannot let history record that our generation of Americans refused to rise to this challenge, that we withdrew from the world and abandoned our responsibilities when we knew better than to do it, that we lacked the energy, the vision and the will to carry this struggle forward—the age-old struggle between hope and fear.

So let us find inspiration in the great tradition of Harry Truman and Arthur Vandenburg—a tradition that builds bridges of cooperation, not walls of isolation; that opens the arms of Americans to change instead of throwing up our hands in despair; that casts aside partisanship and brings together Republicans and Democrats for the good of the American people and the world. That is the tradition that made the most of this land, won the great battles of this century against tyranny and secured our freedom and our prosperity.

Above all, let's not forget that these efforts begin and end with the American people. Every time we reduce the threat that has hung over our heads since the dawn of the Nuclear Age, we help to ensure that from the far stretches of the Aleutians to the tip of the Florida Keys, the American people are more secure. That is our most serious task and our most solemn obligation.

The challenge of this moment is matched only by its possibility. So let us do our duty.

Thank you very much. (Applause.)

SECRETARY GENERAL'S MESSAGE ON 1994 UNITED NATIONS DAY

Mr. PELL. Mr. President, last year, during the ceremony for United Nations Day on October 24, 1994, United Secretary-General Joseph Verner Reed delivered a message at U.N. headquarters on behalf of Secretary-General Boutros Boutros Ghali. That occasion launched the Golden Anniversary celebration of the United Nations and was the first in a series of planned events that will continue well into this year.

As Ambassador Reed—whom, by the way, many of my colleagues will recall from his distinguished service in the U.S. Government—noted in his introductory remarks to the Secretary General's message.

Forty-nine years ago in San Francisco, the United Nations was launched as our world organization and began its long journey for a better world. The signators of the charter were fifty-one sovereign states, and today the United Nations comprises 184 member-states; the organization represents the world with all its problems and all its aspirations.

I had the honor of serving on the International Secretariat of the San Francisco Conference which drew up the U.N. Charter. I have since then held the hope that the United Nations would fulfill the noble thoughts expressed in the charter and have tried to promote ways to make the United Nations become a functional and effective alternative to international conflict and discord.

Because of my longstanding interest in and support for the United Nations, it is a particular pleasure for me to witness and participate in the events to celebrate its 50-year anniversary. I also sure the sentiment expressed by the Secretary General in his message that * * * with the active commitment of people, the United Nations can continue to play its indispensible role for peace and security, social and economic progress, and global human development.

Mr. President, I ask unanimous consent that Ambassador Reed's remarks and the Secretary-General's message be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MESSAGE OF THE SECRETARY-GENERAL OF THE UNITED NATIONS DR. BOUTROS BOUTROS-GHALI ON THE OCCASION OF UNITED NATIONS DAY 1994

Excellencies, Friends of the United Nations, Ladies and Gentlemen, it is an honour to represent the Secretary-General of the United Nations, Dr. Boutros Boutros-Ghali, at United Nations Day 1994 as we launch the year of the golden anniversary of our world organization here at headquarters, in this great world city—New York. Forty-nine years ago in San Francisco, the United Nations was launched as our world organization and began its long journey for a better world. The signators of the charter were fifty-one sovereign States, and today the United Nations comprises 184 member-States; the organization represents the world with all its problems and all its aspirations.

In this spirit, ladies and gentlemen, may I bring you the message from the Secretary-General:

United Nations Day has become a universally recognized time for celebration and reflection on the state of the world.

Today we all live in a global context. Societies which once felt able to stand alone, now see themselves interlocked with others. The great goals of peace, development and democracy increasingly are understood to require greater multilateral effort.

Without peace, nothing is possible. Without development, societies cannot look forward to the future. Without democracy, progress will not rest securely on a foundation of popular participation and commitment.

In the coming year, the United Nations calls upon the peoples and governments of the world to take charge of the development effort. This year, we shall review progress on the agreements reached at the United Nations Conference on environment and development held at Rio de Janeiro in 1992. We shall also continue to implement the decisions reached at the World Conference on Human Rights, held at Vienna in 1993.

At the World Summit for Social Development, to be held in Copenhagen 1995, we meet to find solutions to the development crisis faced by all nations, rich and poor. At the Fourth International Conference on Women, to be held in Beijing in September 1995, we meet to discuss the special role of women in development.

This year, as we prepare for the fiftieth anniversary of the United Nations, let us recall the opening words of the charter: "We the peoples of the United Nations * * *." We—all of us—are the United Nations. The United Nations is now, and increasingly will be, what we choose to make of it.

Knowledge about the United Nations is thus ever-more important for people everywhere. With the active commitment of people, the United Nations can continue to play its indispensable role for peace and security, social and economic progress, and global human development.

Let us take up the challenge of the next fifty years. It is in our power to use the United Nations as a force for fundamental transformation to a world of peace and enduring prosperity.

Let this day be the starting point for taking your United Nations on the road to the future.

This concludes the message from the Secretary-General.

I believe it is in the spirit of United Nations Day 1994 to say that fostering harmony through understanding among the peoples of the world continues to be the principal mission of the United Nations; that is so today even more than in the past. The year of the fiftieth anniversary of the United Nations offers a unique opportunity for governments, peoples and institutions around the world to set aside social, racial, political and religious differences and initiate a real and productive dialogue on the burning problems of the world as we move towards a new century. On this day, United Nations Day 1994, let us rededicate our energies and join our forces towards this goal.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

DEFEAT OF THE BALANCED BUDGET CONSTITUTIONAL AMENDMENT

Mr. THURMOND. Mr. President, this has not been a good day for the United States. I cannot imagine any piece of legislation that could have been offered in the Senate which would do this country more good than this balanced budget amendment which was defeated today, defeated by one vote.

Mr. President, we cannot keep on as we are. We have not balanced this budget but one time in 32 years—eight times in 64 years. How are we going to change it? We are putting a burden on our children and our grandchildren that is unbearable. It is not fair to this generation or the next generation that we permit this to happen.

The best way we can stop this spending—and the Congress is intent on spending—is to adopt a balanced budget amendment. We passed a statute years ago, and before the end of that year—Harry Byrd was the author of it—the Congress had gone beyond and spent more than that statute permitted. The only way under the Sun you are going to stop this spending—the only way, I repeat—is to pass a constitutional amendment to mandate—to mandate, to make—the Congress balance the budget. That is the only way you are going to stop it.

We refused to pass that today. We turned it down. I hope the American people will study this question and see what happened and bring pressure on this Congress to do what it ought to do, and that is to pass this amendment when it comes up again. And it will come up again. It will come up again probably this session. It may not pass again this session. It will come up again next session. But I predict it will pass either this session or next session. It has to pass if we are going to stop this spending. It has to pass if we are going to save this country from financial ruin. I hope people rise up and demand that such action be taken.

Mr. President, let me pay tribute before I yield the floor to Senator DOLE, the majority leader, and Senator LOTT, the assistant majority leader, for their leadership throughout this fight.

I also wish to commend Senator HATCH, the chairman of the Judiciary Committee, for the fine job he did, and Senator SIMON, who joined him as one of the principal authors, and Senator CRAIG, from Idaho, who did such a herculean job in trying to get this amendment passed, and Senator HEFLIN from Alabama, who was prominent in pushing this amendment. They all deserve to be commended. I thank all Senators who voted for it, but I especially wish to thank the leaders whose names I just mentioned. I also want to commend the staff of Senator HATCH for their exemplary and dedicated work on this legislation, Sharon Prost, Shawn Bentley, and Larry Block. Additionally, Damon Tobias of Senator CRAIG's office was tireless in his efforts to assist during consideration of this measure and too I commend Thad Strom, my chief counsel on the Judiciary Committee for his able assistance.

The PRESIDING OFFICER. The Senator from Alabama.

TRIBUTE TO BILL GARDINER

Mr. HEFLIN. I rise today with much sorrow to lament the passing of my great friend Bill Gardiner, who passed away on February 21, 1995 at the age of 68. William F. Gardiner, Sr., was my chief of staff in charge of my Alabama offices.

The U.S. Marine Corps has as its motto the latin words "Semper Fidelis," which mean "Always Faithful." These words are descriptive and indicative of the spirit and life of Bill Gardiner. He was always faithful to his principles and to his friends. He also possessed the unfailing values of hard work, patriotism, and spirituality.

He loved politics. He relished being in the political arena as much as anyone I have ever known. He enjoyed the bonding that brings people with common likes, dislikes, feelings, philosophies, and goals together. He thrived on the excitement of politics. He especially delighted in political gatherings. On many occasions, he would stay up all night cooking meat for a barbecue or some other event where politicians would gather.

He believed politics and public service were ways to bring about improvements in the quality of life of all people; a way to increase the standards of living for our citizens; a means of rectifying wrongs and injustices; and a way of improving the future for generations that would follow. These principles were his guideposts in his own public service.

As mayor of the city of Tuscumbia, AL he took a leadership role in improving its educational system. He used Federal money and programs to benefit the citizens of his community in many different ways, such as substituting decent and good housing for shacks in blighted areas and providing homes for the elderly. He expanded and improve the infrastructure of the city. Every municipal service, including police protection and fire-fighting, improved under his leadership.

He loved to be kidded about "Gardiner's Lake." A short time after he became mayor, a body of water was named for him. For generation after generation in Tuscumbia, every time a big rain came, a deep dip in Cave Street near the football stadium would become flooded with water that made traffic impassable for several days. Many of his friends kidded him about this body of water and jokingly named it "Gardiner's Lake." He vowed to eliminate this, and he soon did with superb drainage engineering. He made many other vast improvements to his city during his years as mayor.

He made mistakes like all of us do. At one point, he was persuaded to carry out an urban renewal program in the center of the city. Parking was substantially reduced, water fountains and pools were established, and a beautification project was created with a fish pond and series of flag poles at the Palace drugstore corner. Some wag soon labeled this project "Three Flags Over Palace." There were so many complaints about the loss of parking, the program was soon abandoned. Bill wasn't alone, however, because many mayors had the same unpleasant experience with urban renewal projects.

His year and a half as president of the Alabama League of Municipalities was a period he really cherished. He had sincere affection for mayors and councilmen from all over the State and they loved him in return. When he became my chief of staff, he renewed his closeness with the Alabama League of Municipalities and would come to Washington with Municipal groups for conferences with the National League of Cities. He was always in attendance at the State conventions of the Alabama League of Municipalities.

Bill and I went through many campaigns together. He was my campaign manager in my election for chief justice and my three elections for U.S. Senate. No one could ever hope to have a greater friend. In the words of the 66th Psalm, "We went through fire and through water." He was like a brother to me. His service as my chief of staff was superb. He was my eyes and ears in Alabama. I will indeed miss his outstanding judgment and motivation.

Bill spent approximately 35 years in public service, either as a public official or as my chief of staff.

He loved his friends and was always loyal to them. We know that loyal people themselves inspire loyalty among others, and Bill leaves behind many who were loyal to him. A great many of them were present at his funeral on February 23, 1995 at the First United Methodist Church in Tuscumbia. Those who attended, as well as many others who could not, were a testament to the kind of man that he was and to the kind of persons which he surrounded himself and depended on.

At the visitation the night before the funeral thousands of people came to the funeral home to express their affection to his family and pay their respects to him. People were lined up for blocks to get into the funeral home. Members of my staff who were there told me they waited in line for 2 hours in order to speak to his family. In the line were people from every walk of life, including farmers, garbage truck drivers, street cleaners, policemen, bankers, and government officials.

He was a fine family man. He loved to attend family reunions. He would tell me well in advance of a family reunion, "Now mark that period down because I will be gone." He would gather at family reunions with members of his family who had grown up in Farley, AL and reflect upon their younger days, imparting to the younger members of the family a spirit of unity and a desire to be of help to everyone.

He was completely devoted to his wonderful wife Betsy and their children, and he always put them first and foremost in his thoughts. Betsy's understanding always helped Bill in so many ways. She seemed to always know the right thing to say and do at the right time. She knew how to bring out the best in him. I firmly believe that his wonderful trait of loyalty was reinforced by her own loyalty to him. As his grandchildren grow and learn more about their "Big Daddy," they will be very proud of him.

At his funeral, as we said goodbye to Bill Gardiner, many of us were wondering silently how we would get along without him. We will really never find anyone to take his place. But we must persevere and be guided by his spirit of being always faithful. After all, that funeral was just as much a celebration of the life of a wonderful friend and family man who was an inspiration to all who knew him. We are all better because Bill Gardiner came our way.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the Senate made a mistake today in rejecting the balanced budget amendment. But make no mistake, that issue will be before the Senate before very long again. In failing by a single vote, the Senate rejected the overwhelming demand of the American people, as expressed in last November's election, that we need to exercise restraint in a constitutional context to live within our means. Today, on the motion for reconsideration entered by the majority leader, the procedural posture is now established so that the Senate can take up the issue again at any time.

It is my prediction that the American people will respond to today's vote by a forceful declaration to the 34 Senators who voted against the balanced budget amendment that the American people want the balanced budget amendment passed. The procedure of the Senate is such that, if any one of those 34 Senators changes his or her mind, the amendment may be brought again to the floor of the Senate on short notice, giving Senators an opportunity to be present so all may express themselves, and the amendment could be passed.

So my request, my plea to the American people, is to let your representatives, your U.S. Senators, the Senators who represent you in the U.S. Senate, know what your feelings are. A number of the Senators had been expected to vote in favor of the balanced budget amendment based upon prior votes or upon prior statements. I do not challenge in any way, shape, or form the good faith of any Senator who voted, in any respect, in any way. But there were six Senators who had previously voted in favor of the amendment and today voted against it. Those six Senators previously expressed themselves forcefully in favor of the principles of the balanced budget amendment, suggesting at least some indication of a favorable disposition. It is my thought that if their constituents express themselves, that there may well be a change of heart. Beyond that, there are 20 other U.S. Senators who might be persuaded to have a shift of position, based upon the will of the American people.

I do believe the principle behind the balanced budget amendment is sound. I do not say so lightly, because changing the Constitution of the United States is a very major act. But it has been demonstrated that not only the Congress of the United States, but the people of the United States, need a discipline to have a framework which requires us to live within our means. Every State has to live within its means—every county, every city, and every individual. If you and I do not live within our means, we wind up in a bankruptcy court. Within the context of the need for economy, constituents now come to us—and I am sure you, Mr. President, have had the same response in your State of Oklahoma as I have in my State of Pennsylvania—people are no longer asking for increases or even cost-of-living adjustments. But in many cases, they are saying, "Do not make the cut too big." In other cases, they are saying, "Do not zero out the program all the way in this year."

I think that mental attitude is very important. I think this amendment would have been a good thing for America, to have that kind of discipline imposed.

Mr. President, in the absence of any other Senator in the Chamber, I ask unanimous consent I may proceed up to 10 minutes for the purpose of introducing legislation.

THE PRESIDING OFFICER. The Senator from Pennsylvania is so recognized.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the introduction of S. 488 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. INHOFE addressed the Chair.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Oklahoma.

THE DEFICIT

Mr. INHOFE. Mr. President, during the time that I was privileged to sit in the chair, some comments were made that I think should be responded to.

A comment was made that we are doing something constructively about the deficit today. Reference was made that President Clinton's budget was dramatically cutting the deficit.

I was reminded of an article that anyone can find, if they wanted to get last December's Reader's Digest. It was called "Budget Baloney." In this article, they talked about how politicians refer to cutting deficits as if somehow they are going to bring the deficit and the debt under control. They used this example. They said if a guy has $5,000 but he wants a $10,000 car, all he does is say, "Well, I really want a $15,000 car, and I have effectively taken a $10,000 car and, therefore, cut the deficit by $5,000."

If we take to the conclusion of 5 years the budget that the President has submitted to us for the fiscal year coming up, it would increase the debt by $200 billion a year for the next 5 years. That is an increase in the debt at the end of that time by $1 trillion. I think the American people are aware of this. I think a few years ago they got tired of the smoke and mirrors that we were doing here in Washington and they became aware of what is really happening.

The second thing that was mentioned was the cuts—all of these draconian cuts that would be necessary, if we had been successful in passing the balanced budget amendment. I would suggest to you that there are ways of balancing the budget without having any cuts; that is, just limit the growth. There was a study made using the figures that were supplied by the Federal Government that, if we could put merely a 2-percent growth cap on Government spending, we would be able to bring the deficit down to zero at end of 6 years. This can be done. But Congress in both Houses has had historically an insatiable appetite to spend money that they do not have, and without the discipline that would be imposed upon them by a constitutional amendment for a balanced budget, it has been demonstrated that for 40 years they are incapable of that discipline.

The third thing that was talked about was the awareness of what is going on around the country. I suggest that there is not one Senator who would go home and misrepresent his or her position to his or her constituents. However, it has been quite evident that there are many people in some of the States who really believed that their Senator was in favor of a balanced budget amendment. Now, I think the good news in today's vote is they all know, and they know which Senators voted yes and which Senators voted no.

Last, during the debate, I put together a profile of those individuals who were in support of the so-called "right-to-know amendment" to the balanced budget amendment. That was the amendment that says show us exactly where the cuts are going to be for the next 7 years. I found that all 41 of those cosponsors had either a D or an F rating by the National Taxpayers Union. All 41 had voted for the stimulus bill, which was the largest spending bill increase that we have had in contemporary history.

And so the bottom line is, is it just a coincidence that those 41 who supported that amendment also were the big tax and spenders here in the U.S. Senate? No, I do not think so. In fact, I am having my staff, right now, look at the 34 who voted against it this time. And I suspect that we are going to find the same thing; that is, those 34, each one of whom was responsible for killing the balanced budget amendment today, I suspect, was a big tax and spender. When we find out, we will give this report tomorrow.

I yield the floor.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

THE ANNIVERSARY OF THE BATTLE OF IWO JIMA

Mr. GLENN. Mr. President, I rise today to add my voice to that of my colleagues who have made remarks commemorating the 50th anniversary of the heroic Battle of Iwo Jima, which began on February 19, 1945.

I made some impromptu remarks on this subject last week when my colleague from Arkansas delivered his remarks. It was one of the most moving moments on the floor of the U.S. Senate that I have participated in. We had the Senators here who had been marines at one time in their lives, and it was a very moving moment. Each of the other former marines in the Senate have stood on the Senate floor over the last several days to pay tribute to the extraordinary bravery of the men who fought so ferociously in the Battle of Iwo Jima. It was this grueling 36-day battle that gave rise to Admiral Nimitz' famous description that "Among the Americans who served on Iwo, uncommon valor was a common virtue."

This battle also exacted one of the greatest casualty tolls in the history of the Marine Corps. For that uncommon valor, more medals of honor—27 in all—were awarded for that action than for any other action in World War II. Out of those 27, 14 were awarded posthumously.

I was in World War II. I went in a few days after Pearl Harbor and started training. Fifty years ago, I had just returned to the United States from combat in the Pacific in the Marshall Islands, just when the Marine assault on the island of Iwo Jima began. Having participated in combat at that time in the Marshall Islands, we took our losses there, too, but nothing like Iwo, of course. But I understood the strategic importance this battle was to play in our island-hopping campaign in the Pacific. We watched that very closely, because I was in training, along with other members of the squadron I was in, to go back out again for the assault on Japan. Lying between Japan and our bomber bases in the Marianas was Iwo Jima, which would provide a critical base from which fighter escorts could protect our B-29's en route to the Japanese home islands.

Our B-29's had the range to make their way from the Marianas, but without fighter escorts, they went unprotected and too often fell victim to attacks by Japanese fighters.

Iwo Jima also would provide a haven for battle damaged bombers returning from their assaults on Japan. And taking Iwo Jima's three airfields would deprive the Japanese of a base from which they could intercept our bombers.

This was part of the overall strategy, the strategy of saying we needed bases that bring the Japanese to their senses to bomb, to bomb, to bomb, and hope that we could end that war before we would need to make an invasion. Estimates of that invasion were that if the Japanese fought with the tenacity they had throughout that war, we could lose as many as a million people in that conquest of Japan. So it was in that strategy that Iwo was of critical importance.

The challenge that 75,000 marines of the 3d, 4th, and 5th Marine Divisions faced was an awesome one. Iwo Jima, despite the heavy bombing it had endured in the hours leading up to the Marine assault, remained heavily defended by Japanese in caves and pill boxes and bunkers.

Just picture yourself coming to shore in a bobbing landing craft, coming in with shells landing and people being hit in the landing craft before it got there, and seeing other craft ahead of you that had already been hit. It was a very tough moment. The island provided no natural cover for attackers, and Marines were slowed by Iwo Jima's black sand beaches. It was a sand of large grain, where you would step up on the beach and try and go uphill, and you made two steps forward and went one step backward.

As I mentioned the other night, Mr. President, I did not participate in the Battle of Iwo Jima. But after the war, following assignment to China, my squadron flew through Iwo. We were there for several days and we walked that territory. I stood on those beaches and on the cliffs and was up on Mount Suribachi. I tried to imagine what it must have been like in those days.

Having seen the terrain, it is hard to imagine how anybody could have ever made it up those beaches. They were the only landing areas on the island, but above the beaches, the cliffs were literally honeycombed with caves, back in the rocks, interconnected so the defenders could go from one cave opening to another. From the caves, machine guns would come out and fire, and unless naval supporting gunfire was able to make an unlikely very direct hit on a tiny cave opening, the guns kept coming out and kept mowing people down, and mowing them down, and mowing them down.

As far as that gunfire, I remember one large Japanese gun that had been shooting at ships, and it accidentally had been hit directly by a shell while coming in from the sea. The whole end of that gun barrel was splayed out just like a banana that you would peel down, or like a flower petal spread out in different directions. It was a savage, savage battle. We were there, and my squadron mates and I walked in the caves and walked on the beaches just as the Japanese gunners were able to during that combat. How anybody ever got ashore with that kind of withering fire coming right down their throats, on top of them, is something hard to fathom. It was an experience being there even after the battle. The experience was vividly impressed on my memory to this very day. As they came ashore, the usual thing would be to hunker down in a fox hole or a crater. But here was Mount Suribachi looking down. There was no such thing as a fox hole. They were being fired upon out on the beach. It is no wonder there were so many casualties.

My visit to Iwo makes me appreciate just what is meant when it is said that the progress of the marines of the V

Corps was measured in yards, as Japanese defenders resisted to the death.

The Japanese were of a mood and psyche at that time, as they were through all of World War II, that they would rather be killed than give up. It was a Kamikaze mentality. We expected the assault on Japan, which we were training for, would be the same, and that, once again, emphasizes the importance of Iwo.

Yet, by February 24, 1945, 4 days after the onslaught began, the American flag waived from the summit of Mount Suribachi, the proud image that to this day symbolizes the unwavering resolve of the Marine Corps, of our Nation, and of the staggering sacrifices that were made by the marines in their relentless advance on Iwo Jima.

Uncommon valor was indeed a common virtue.

Just imagine you are there, and just think of the determination. You have flamethrowers, tanks, bulldozers, landing craft hit and on the beach and shot up and out of commission, and still you have to advance and neutralize and silence the fire from those hundreds and hundreds of enemy caves.

Well, by early March, the three Marine divisions had compressed the remaining enemy into isolated pockets of resistance. An awesome foe, the Japanese defenders fought with courage and determination, with the vast majority in their fanaticism, preferring death to surrender. The final pockets of resistance were finally eliminated, and the capture of the island was announced on March 26.

The casualty statistics are harrowing. Almost 7,000 Americans were killed, and more than 17,000 were wounded. But the assault and capture of Iwo Jima was of critical importance to final victory in the Pacific, and the island proved to be an important base from which to deliver more and heavier blows against the enemy. It also became the emergency landing field it had been envisioned to be.

And by the end of the war a total of 2,251 B–29 bombers, carrying 24,761 crewmen landed on Iwo Jima. A large number of these brave pilots and crewmen undoubtedly would have been lost if the land had not been taken.

Once again, you can imagine those planes coming in, shot up, battle damaged, wounded being taken out, planes repaired, wounded being given help, back to Guam or Saipan, and out again to pound Japan after being repaired.

Mr. President, I conclude my remarks by repeating the words of then Secretary of the Navy James V. Forrestal, who was present on the island during the campaign, when he expressed his "tremendous admiration and reverence for the guy who walks up beaches and takes enemy positions with a rifle and grenades or his bare hands."

We have had a lot of battles, Mr. President, battles we read about. The battle of Iwo Jima, like Bunker Hill, Gettysburg, Belleau Wood, and Normandy, was won literally not just by machines but by young Americans who wanted to live but were not afraid to die for their country.

People go off to war with the flags flying and bands playing and we think about liberty and the pursuit of justice and world community and all of these things we like to talk about, loyalty to country. But to the people on a beach, it is a matter of them and their fellow marines that they are trying to survive alongside. And it is that Marine training, which makes them more afraid of letting their fellow marines down than they are of getting hurt, that wins those battles. Sometimes they are killed. Sometimes it is hard to explain that kind of psychology, that kind of mentality that wins battles, particularly a battle as vicious and as tough as was Iwo Jima. But that Marine gung ho spirit of being more afraid of letting each other down in a battle than they are of getting hurt or killed themselves, while hard to explain, is what is so important in winning battles. It means that a person will take grenades over to somebody and expose himself to fire because his fellow marines need that kind of help. It is what you have seen in the squadron where people dive back in on a target a second time to split up antiaircraft fire. You would think that would be the most stupid thing anybody can do, but it is done because they see somebody in trouble.

So, Mr. President, to those brave Americans who paid the ultimate sacrifice on the black sand beaches of Iwo Jima and the rocky slopes of Mount Suribachi, "Semper Fi," and may God's blessings rest on our Corps, on our military, and on this United States of America.

Thank you, Mr. President I yield the floor.

Mr. NUNN. Mr. President, I enjoyed very much hearing the Senator from Ohio, Senator GLENN, who is a stalwart member of the Armed Services Committee and has been a stalwart defender of the United States his entire life, either as a member of the Marine Corps or in the space program or in his splendid service here in the U.S. Senate.

I heard him talk about Iwo Jima. All of us, I believe, are the beneficiaries of that reminder of the heroism that took place on Iwo Jima. And I might add that no one is better qualified to speak of heroism and patriotism and dedication than the Senator from Ohio, Senator GLENN, his plane having been shot five times when he was flying in the Marshall Islands, and I believe seven times his plane was shot when he was in Korea fighting for our country.

So I thank the Senator from Ohio for that beautiful tribute to those who were so brave and gave so much of themselves for their country on Iwo Jima and other places in the Pacific.

EXECUTIVE SESSION

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to consider Executive Calendar Order Nos. 12 through 17, and No. 34, en bloc, nominations to the Defense Base Closure and Realignment Commission.

The clerk will report the nominations.

The legislative clerk read the nominations of Alton W. Cornella, of South Dakota; Rebecca G. Cox, of California; General James B. Davis, U.S. Air Force, Retired, of Florida; S. Lee Kling, of Maryland; Benjamin F. Montoya, of New Mexico; Wendi Louise Steele, of Texas; and Josue Robles, Jr., of Texas, to be members of the Defense Base Closure and Realignment Commission.

The Senate proceeded to consider the nominations.

The PRESIDING OFFICER. Debate on the nominations is limited to 30 minutes, equally divided between the President pro tempore and the Senator from Georgia [Mr. NUNN].

The Chair recognizes the President pro tempore.

Mr. THURMOND. Mr. President, I previously expressed my support for the confirmation of Mrs. Cox, General Davis, Admiral Montoya, Mr. Kling, Mr. Cornella, and Mrs. Steele to be members of the Base Closure and Realignment Commission. I want to reiterate that support and add to it my support of General Robles.

Mr. President, I have no doubt that our former colleague, Senator Alan Dixon, can complete this process by himself, However, I believe both he and the Senate would rather see a group of individuals make decisions on the future of the Nation's military bases and our local economies. Therefore, I urge the Senate to confirm these nominations and let the 1995 Base Closure Commission proceed with its work.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I am pleased to join Senator THURMOND in urging my colleagues to support the seven nominees to be members on Defense Base Closure and Realignment Commission.

I agree with Senator THURMOND that each of these individuals are well-qualified to serve as members of the Commission.

Mr. President, I am certain that all of my colleagues are aware that the 1995 base closure process is well underway, as the Secretary of Defense presented his list of closure and realignment recommendations to the Defense Base Closure and Realignment Commission on February 28. In fact, the

Commission has conducted two hearings on the 1995 process with the Commission's chairman, Alan Dixon, conducting the hearings alone. And, as Senator THURMOND just reminded the Senate, former Senator Dixon, now Chairman Dixon, could act alone, if necessary, but that is not the way this process was set up. That is not the way we intended it. It is not the way the overall Congress intended it because we wanted all the commissioners. And so we are here today to try to confirm the other commissioners.

During those hearings that former Senator Dixon, now Chairman Dixon, just held, he stated more than once that he urged the Senate to act on the outstanding nominations at the earliest moment possible.

The 1995 commission has much work to do in the next few months, and the Senate should not impede on the commission's progress by further delaying action on these seven nominations. I do not doubt that Chairman Dixon could handle it alone, but I do not think he wants that, and I do not think any of us want that. I believe it is in the interest of the Nation that the Senate favorably act on the nominations before us today.

I urge my colleagues to approve the nominations.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I do not think it is any secret that I had some grave reservations about going forth with the nominations of the BRAC commissioners. I have withdrawn any objection I had. I do not intend to ask for a recorded vote.

Let me tell you how it is and why it is that I was concerned.

Two years ago, my State, New York, was a victim of one of the most outrageous, self-serving, manipulative, politically mean-spirited and inspired acts under the former BRAC commission. Not the kind of thing that would engender confidence in a process that was to be fair, that was to be open, that was to take into consideration everyone's concern. A process that would not lend itself to the political process as we know it. A process of putting forth your best case, seeing to it that people have an opportunity to be heard, recognizing that this was not easy and that, regardless of the wisdom of the decision, there were going to be areas in this country that would suffer.

Let me tell Members that what the process did was close Plattsburgh Air Force Base and build up McGuire Air Force Base, and that one of the moving forces behind this travesty was none other than the Chairman of the BRAC Commission. That does not inspire confidence.

In the 1993 round of closures, the Air Force proposed establishing an air mobility wing at Plattsburgh. They were going to put in an air mobility wing there. Their recommendation. It was not this Senator's. It was not anybody's in the community. They reasoned that the long runways and the vast apron at Plattsburgh were ideal for the large airlift aircraft.

Facilities at the base were new—new. Tens and tens of millions of dollars had been spent and the base was well laid out. To all observers it was the perfect match. But somehow the BRAC Commission saw it differently. They bullied the FAA into not objecting at the introduction to McGuire AFB of 70 to 80 large aircraft in the busiest air corridor in the world.

Now, Mr. President, it does not take one long to figure out that when we have one of the busiest commercial air corridors in the world, that is not the place where we put 70 to 80 large transports and say that that is going to be the mobility airbase. Not to mention the antiquated facilities. Not to mention the cost would be hundreds of millions of dollars in new construction.

The FAA did not object. After having created a tissue of false rumors and lies regarding Plattsburgh's crash zone and fuel delivery costs, the BRAC decided that, lo and behold, McGuire, the oldest, the most antiquated of the facilities, located in the middle of one of the heaviest traffic air corridors in the world, that that would be where the Air Force would move these planes.

They decided that McGuire, which the Air Force had initially recommended be downgraded to a reserve facility, obviously because of the traffic congestion in the air, that it be chosen as the new mobility hub.

Want to talk about politics in its rawest, nastiest, rottenest sense, that is it. That is the kind of thing that all Members have an obligation to avoid. The infamous proposal—by the way, because it took somebody with some ingenuity to suggest this—came from none other than one of the commissioners. That was H.T. Johnson, a former Air Force general. He harbored a grudge—well-known, well-known—and my distinguished colleagues on the floor, if they care to check into this will find out because there are no secrets in this business. H.T. Johnson did not like the then Air Force Chief of Staff Tony McPeak.

Can you imagine, here we now have these personalities, one former general is on the commission, does not like the then Air Force chief, and he knew that the Air Force and General McPeak were solidly behind the Plattsburgh proposal. So when H.T. Johnson came up with this plan, he did not have any trouble getting the Chairman of the Commission to quickly second it, to follow through on this deed, the commissioner himself having been a former Congressman from New Jersey, representing that district in which this move was made.

Now, that is not what this process is to be about. We understand that there will be difficult decisions. We understand that. There has not been anyone here who has not seen them, and we understand, and we lick our wounds and we go on and do the best we can, and we try to get a community to pick up the pieces.

I have to say, this outrage was buried in a host of other recommendations to Congress. Senator MOYNIHAN and myself raised our voices. If there was any solace in what took place, it was that New York retained Rome Lab, which was located at Griffiss Air Force Base. It was the premier command and control research and development facility in the country.

The Air Force said, "Well, we will keep this going for another 5 years." Now, even that, in this last round, is gone. So, having been victimized once, the Pentagon is now recommending the closure of that lab, when they said "Do not worry." And now they come back and put it on the list. And to add insult to injury, where do you think they call for realigning some of its work? Fort Monmouth, NJ.

Now, look, there is a moral obligation and a commitment that this lab was going to be kept and the State went forward—the State of New York—putting forth millions of dollars. We built a comprehensive scientific foundation linked with all of the universities: Rensselaer, Syracuse, Poly Institute, Rochester Institute, University of Rochester, Cornell. And now, instead of being an integral part of the Air Force's 5-year plan, nothing. Based on those assurances, New York gave millions of dollars to ease the operating costs and further facilitate the transfer of lab products to the private sector—and we can do it, and we can eventually take over the entire Government cost. Give us those 5 years and it will not cost the Federal Government anything.

But, no, no, let me tell members how serious our State is. We are cutting spending. We have a deficit of $5 billion. For the first time in 40 years the State is actually reducing spending. We will spend less this year than we did the previous year. Three percent less. I do not think there is another State in the country that is doing that, yet the Governor increased the budget allotments and saw to it that the funds for Rome lab would be continued.

The fact is that the Air Force deceived the Rome community into making investments in that lab, and now under their plan the hope for economic recovery is removed. It is morally wrong to do that to any community. If I saw that taking place in another community and my colleague addressed that and said, "Take a look and see what took place," where one general, former general, because of his dislike of another, moves to crush the plan which called for the location of the air mobility center at a major installation, only to have that major installation—which was the best—decimated, closed down, with the remaining lab over at Griffiss. It was promised we will keep this and now we come back 2 years later and we will take that out as well.

That does not inspire confidence in the integrity of the process. Having said that, I say I am tremendously encouraged at the qualifications, the candor, the ability, and the credibility first of all of the Chairman of the Commission, our former colleague Senator Dixon, and after having seen the quality of the other commission Members.

Now, it is not easy for a commission to then restore a base once the Air Force or any of the services have put it on the list and said they are targeted. They do not generally do that. Not as a rule. But I certainly hope that we can make a case based upon the situation that exists today, and based upon what was morally indefensible, and what was done to the community by the BRAC Commission of 1993. It is a sorry saga, but one I believe that has to be told. I would not have come forth and made this public at this time were it not for what took place this year, following the commitments that were made, and the expectations that we had to save this facility. That is why I do so. It is a sordid, dirty, little story.

But if anything, hopefully we can learn by that. I think we have a moral obligation to see to it that this facility is continued. The Governor has assured me that he will do everything in his power to give whatever aid in reducing costs to this facility and helping to move it into the private sector and in helping to keep it the premier lab that it is.

So, Mr. President, it is on that basis that I have withdrawn my objection because, obviously, I understand there are decisions that have to be made. The taxpayers and the Members of this Congress have an obligation to see that our money is wisely spent and husbanded. This is not easy. But I thought that it was important to lay these facts out and, hopefully, we can avoid a repetition of that kind of thing. Nobody and no community should ever be subjected to it.

I yield the floor.

Mr. THURMOND. I wish to thank the able Senator from New York.

Mr. BUMPERS. Mr. President, I did not intend to speak on this particular matter, but I heard the Senator from New York making some points. I do not know the particular situation in New York, but I know that the Senator and I share one thing in common, and that is the Pentagon's base closing nominations should not be considered as sacred by the Commissioners that we are about to confirm.

I have no intention of speaking at length or trying to block any of their nominations. As far as I know, they are all very honorable people, and I come not to resist them, not even to admonish them, but to make a point which I hope they will seriously consider, and that is that the Pentagon's decisions are not perfect. They are not made in the cosmos. They are made by human beings who are subject to error.

Needless to say, that I am upset about what they are doing in my State would be a gross understatement.

In 1991, I daresay that my State was one of the two or three hardest hit States on the loss of jobs as a percentage of our people. We lost Eaker Air Force Base, a strategic bomber base, and we lost what we call the Joint Readiness Training Center in Fort Chaffee, AR, which was moved to Fort Polk, LA.

Eaker Air Force Base was in Mississippi County, which is in the First Congressional District of my State, which happens to be one of the 10 poorest districts in the United States. I do not have to tell you what closing a very significant air base in that county did to that county and the surrounding area. But if you look at it in pure terms of dollars and cents, you could not argue with it. When Senator PRYOR, and some of the rest of us, went before the Base Closure Commission and pleaded for them to take into consideration the economic consequences, they said, "That is not a part of our mandate."

That county had always had, even with the air base there, a very much higher unemployment rate than the rest of our State. We cannot consider the economic consequences, which is the same thing as saying we are not interested in human beings; we are not interested in the trauma and the tragedy that people experience when they lose their jobs and wonder how they are going to put bread on the table for their children.

But it was closed. We might as well have been shouting in the rain barrel for all the attention we got from the Base Closure Commission.

As far as Fort Chaffee was concerned, we showed conclusively, we crunched the numbers time and time and time again, and presented them to the Base Closure Commission and said, "You are supposed to be saving money. You will save a lot of money by closing Eaker Air Force Base, even though you are creating unspeakable, horrible consequences for a lot of people who are going to be thrown into the streets, but in Chaffee's case you cannot even justify the savings." The figures we gave them which, in my opinion, were absolutely unassailable and are unassailable to this day, went unheard, unheeded. We might as well, again, have been shouting in a rain barrel.

Now we have this new list of bases for closing that have been nominated by some faceless group in the Pentagon. After we took that kind of a hit in our State in 1991, I daresay that with this base closure list we are again one of the two or three hardest hit of any State as a percentage of our population. Red River Army Depot and the Defense Logistics Agency Depot, sit side by side a few miles from Texarkana, which my colleagues know includes parts of Arkansas and Texas, as is near Louisiana; a city of 77,000 to 80,000 people, about 30,000 of whom are on the Arkansas side of the line.

Mr. President, since I have been in politics, I have stood with one leg in Texas and one leg in Arkansas 30 times. The line runs right through the Federal Building, half in Arkansas and half in Texas. Of the 4,100 people who work at the 3,600-acre Red River complex, 1,000 or so live in Arkansas. I know, as Deputy Secretary Deutch told me the other day, they do not consider economics, they do not consider red-blooded human beings who lose their jobs. Theirs is not to ameliorate that. Theirs is to look at hard, cold dollars-and-cents figures.

They did not cut these facilities in half, which would have been traumatic enough. They didn't try to figure out how can we eliminate this human drama, this tragic human drama unfolding by cutting their workload in half and leaving at least 2,000 people working there, or 3,000, or whatever.

I do not even know where they are going to transfer the work. I know there are two bases that do the same thing the Red River Depot does that are being left open that have never won the awards that Red River has won, such as the 1995 Presidential Quality Award. Red River is one of only six government facilities in the whole country to win that.

I listened to the Base Closure Commission hearings yesterday afternoon in my office, and the chairman, our former colleague, Senator Dixon from Illinois, asked did they take into consideration all of the achievement awards and the meritorious awards that Red River Depot had won? No, they did not. I regret the chairman said he had a tendency to agree with that.

Tell me, Mr. President, what is the purpose of people who have worked for the Federal Government trying to excel and be recognized for their excellent service if nobody is going to take it into consideration? What is that all about?

One other thing, Mr. President. What is it about these people who make these nominations that make them perfect and infallible, and their judgments and their decisions unquestioned? Do you think somebody on the Army or Navy or Air Force groups that made these recommendations does not have a brother-in-law working someplace? Do you think the fact that he has a brother-in-law working someplace does not play a role in his thinking about whether that base is going to be closed or this base is going to be closed?

That may be putting it a little strongly, but after all, we are all human beings, are we not? You may have a friend who gave your opponent money the last time, and it may have shocked you and you are not ever going to feel as kindly toward that guy again. That happens in the Pentagon too. Decisions are not always based on what is best according to the facts.

Fort Chaffee, AK, is also on the list. It stands to lose 350 jobs. It is near Fort Smith, which is a city of about 80,000 people. They can withstand it. But I can tell you, the 350 people who are going to lose their jobs cannot stand it. Think of a city, all of you. I hope all of my colleagues will think of a city in their States with 77,000 people, like the entire city of Texarkana, in Texas and Arkansas. And take away 4,100 jobs. That is 5 percent of the total population. Each one of those jobs represents a family. Compute that. It is devastating, and it is unnecessary. And if it does cost a few more bucks to keep the place open, say, at half strength, or something of that kind, maybe the Pentagon should have decided to do that. But nobody in the Pentagon tried to work anything out. The Pentagon simply said, "Close that sucker."

Mr. President, I am emotional about it because I have been here 20 years and have not fired very many people. The people I really had to let go in my office had to be let go. But I know that when you take somebody's livelihood away from them, you are taking away everything. So I am really bothered when people lose their jobs.

The reason I am talking now, and I will close on this, is because I want this Commission—whom we are about to confirm—to bear in mind that everybody who made these closure recommendations has something in the back of their minds that caused them to make them, other than just those cold dollars-and-cents figures that were coming out of a computer.

Do you think there is no politics in any of this? Do you think these are sacrosanct things that people with noble purposes and no other goal conjured up?

So, members of the Commission, I just want to say, do not think for a minute that you do not have a responsibility to look at these things—not rubberstamp them, look at them—count the figures over and over again, take into consideration whose lives are being affected and whose children are not going to be educated as a result of the loss of their jobs.

I hope this Commission will look especially look at the Pentagon's recommendation to close Red River Army Depot and Fort Chaffee. I know there are other Senators—Senator D'AMATO has already spoken, and others will. A lot of people feel put upon. But let me reemphasize, Arkansas took the biggest hit in 1991 of all but two other States, and we are being asked to take one of the biggest hits in this one. What is going on?

I yield the floor, Mr. President.

NOMINATION OF ALTON W. CORNELLA

Mr. BAUCUS. Mr. President, I am pleased that the Senate is today taking up the confirmation of this important group of nominees to serve on the Defense Base Closure and Realignment Commission.

In my home State of Montana, there have been some concerns expressed about one of these nominees, Mr. Alton W. Cornella of Rapid City, SD. Mr. Cornella has spent a number of years advocating for Rapid City's Ellsworth Air Force Base. And there has been concern that this may create a conflict with the interests of Malmstrom Air Force Base in Great Falls.

Frankly, when I first learned about this potential conflict, I was deeply concerned. The base closing process must be above politics and parochialism. And I would strongly oppose any nominee that I believe would not give Malmstrom and Montana an absolutely fair hearing.

That is why, last week, I called Mr. Cornella and spoke with him directly. He assured me that he would be impartial. Moreover, he agreed to recuse himself any decisions involving Ellsworth or any base deemed to be in competition with Ellsworth. These assurances are reflected in a letter Mr. Cornella recently sent to me. I ask unanimous consent that Mr. Cornella's letter be printed in the RECORD immediately following these remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BAUCUS. In closing, let me say that I found Mr. Cornella to be a man of integrity. I believe he aspires to serve on the Commission because he wants to render a public service for the entire Nation. And I wish him well in that endeavor.

EXHIBIT 1

AL CORNELLA REFRIGERATION SERVICE,
Rapid City, SD, February 27, 1995.

Hon. MAX BAUCUS,
U.S. Senate, Washington, DC.

DEAR SENATOR BAUCUS: Thank you for allowing me the opportunity to discuss with you your concerns about my potential role as a Commissioner on the Defense Base Closure and Realignment Commission.

It is my understanding that I must recuse myself from any matter that would have a direct and predictable effect on any of my financial interests. Alternatively, I could divest myself of any asset that gives rise to a financial conflict or seek a statutory waiver. I have had discussions with the Commission General Counsel about such potential financial conflicts of interests. Based on these discussions, I have announced my decision to recuse myself from any matters affecting Ellsworth Air Force Base, if I am confirmed. This would include recusal from any other base that is determined to be a competitor with Ellsworth. For example, if the recommendations of the Secretary of Defense place Malmstrom Air Force Base in competition with Ellsworth, either in closure or realignment of missions, then Malmstrom would come within the scope of such a recusal.

In accordance with the procedures established by the Senate Armed Services Committee, my financial interests will be reviewed at the time the Secretary's recommendations are published, and throughout the proceedings, to determine what conflicts exist and what action is appropriate to address any conflict. The Commission General Counsel, in conjunction with the Department of Defense General Counsel and the Office of Government Ethics, will conduct such reviews.

I have attached the statements that I provided to the Senate Armed Services Committee during the confirmation process.

Please let me know if I can provide any additional information.

Sincerely,

ALTON W. CORNELLA.

RESPONSES OF ALTON W. CORNELLA TO QUESTIONS FOR DEFENSE BASE CLOSURE AND REALIGNMENT NOMINEES FROM THE SENATE ARMED SERVICES COMMITTEE

POSSIBLE CONFLICTS OF INTEREST

Are you aware of any circumstances that might require you to rescue yourself from participating in the consideration of the proposed closure or realignment of a particular base or type of base? If so, please describe.

Yes. I served as the Chairman of Military Affairs for the Rapid City Area Chamber of Commerce. This included chairing a subcommittee called the Ellsworth Task Force or Defense Initiative. The purpose of the subcommittee was to provide a proactive approach to the perservation of Ellsworth Air Force Base, SD. I also own real estate in the area, and my firm has done business at Ellsworth Air Force Base. I will recuse myself on this base and any others determined as competitors by the General Counsel of the Defense Base Closure and Realignment Commission.

Have you ever participated on a compensated or uncompensated basis in any activity directed at precluding, modifying, or obtaining the closure or realignment of any base during the BRAC process? If so, please describe.

Yes. I served as Chairman of the Ellsworth Task Force on a uncompensated basis. The activity was directed at precluding the closure of Ellsworth AFB, SD. The base was not considered for closure in past rounds.

Have you been stationed at or resident in the vicinity of any base while the base was under consideration for closure or realignment during the BRAC process? If so, please describe.

Yes. I was a resident in the vicinity of Ellsworth AFB, SD when the base received additional missions and personnel from realignment under the 1993 BRAC process.

Do you or, to the best of your knowledge, does any member of your immediate family have any specific reason for wanting a particular base to be closed, realigned, or remain unchanged during the BRAC process?

My wife or I could suffer the same financial loss as any other member of the community if Ellsworth AFB, SD would be closed. For this reason, I will recuse myself on Ellsworth AFB and any other bases determined to be competitors by the General Counsel of the BRAC.

CONFLICT OF INTEREST FOR ALTON W. CORNELLA

This is in response to Senator McCain's request that each nominee review their own situation and provide a response for the record on his or her plans to deal with recusal or other conflict-related issues.

I will follow the procedure developed by the Committee and Executive Branch which was used by the 1991 and 1993 Commissions. At the time that the Secretary's March 1 proposed list is announced, the Commission's General Counsel, working with the DoD General Counsel and the Office of Government Ethics, will review my financial interests and advise me if any recusal or other remedial action, such as divestiture or waiver, is necessary. The Commission's General Counsel will then advise the Committee of the results of this review and any subsequent actions that I would take to remove myself from any potential conflict. The Commission's General Counsel will also establish a procedure providing for similar review of my financial interests and transmittal of this information to the Committee when the Commission considers action on installations that are not on the Secretary's March 1 list.

If I am advised that a conflict of interest exists and that a statutory waiver is not available, I will either divest myself of the interest or recuse myself from that particular installation affected by the holding. If the number of recusals impairs my ability to effectively participate in a significant number of Commission proceedings, I agree to resign my position as Commissioner.

At the present time, the Commission's General Counsel and I have determined that I have a financial interest in Ellsworth Air Force Base, South Dakota. I served as the Chairman of Military Affairs for the Rapid City Area Chamber of Commerce. I also served as Chairman of one of its subcommittees, the Ellsworth Task Force or Defense Initiative, which worked to preserve Ellsworth AFB. My firm has done business with Ellsworth AFB and I also own real estate in the area. My wife or I could suffer the same financial loss as any other member of the community should Ellsworth AFB be closed. For these reasons, I will recuse myself on Ellsworth AFB and any other bases determined to be competitors by the Commission's General Counsel.

A CALL FOR FAIRNESS IN BASE CLOSING

Mr. MOYNIHAN. Mr. President, my friend and colleague from New York has elucidated the travesty that befell Plattsburgh and our State 2 years ago. It was the most parochial of decisions made by that Commission, and one for which they will long be remembered. I still recall the findings of the BRAC staff on a screen overhead, showing clearly that Plattsburgh had greater military value than McGuire. But that did not trouble much of anyone on the dais.

This year the Commissioners have the opportunity, and the obligation, to improve on the record of the 1993 group. The Air Force has proposed to move the finest laboratory in the Defense research establishment, Rome Laboratory, to Hanscom Air Force Base near Boston and to the Army's electronics laboratory in Fort Monmouth, NJ. Rome Laboratory has produced three generations of scientists in its 45-year connection with central New York. According to the Air Force, moving half of it one State east and half of it one State south is expected to save $12 million per year. I have asked for an explanation of that claim, but say it is correct. For $12 million annually we are to give up the established relationships between the lab and the ellipse of universities and industry in the region that have helped Rome to its numerous successes. For $12 million annually we are to lose probably half the civilian staff of scientists who, by measure of similar situations with other labs, will leave the laboratory rather than move with it. This is shortsightedness of the highest order.

The return for moving Rome Laboratory is small. Only one other installation on the 1995 list, of all bases that will lose over 500 civilians, will get less of an annual and total return on the money saved per civilian lost. That is an Army ocean terminal. Closing it does not bring the immense loss of intangibles and productivity that moving a preeminent scientific institution does. This is not like moving the base laundry.

Most egregious about the Air Force recommendation is that 2 years ago the assistant secretary for installations put in writing that "the Air Force has no plans to close or relocate Rome Laboratory within the next five years." The people of Rome believed him. They trusted him. That was a mistake. They have spent 2 years planning the reuse of Griffiss Air Force Base, all of which was closed except for the laboratory, with the laboratory as the linchpin of their plans. They have lost 2 years in the redevelopment effort unless the commission sees the folly of the Air Force proposal.

Mr. President, my colleagues from New York and Arkansas have raised concerns I share about this process and the new Commission. I will be in touch with the new Commissioners shortly, and I hope they are aware of the standards they must restore.

Ms. MIKULSKI. Mr. President, the Department of Defense's recommendations on base closings would have a very serious impact on Maryland. Up to 1,700 jobs could be lost—and an additional 4,000 potential new jobs are at stake. The effect of these job losses on families and communities would be devastating. I won't forget these families as I fight for Maryland's bases.

But I will fight for Maryland's facilities based on their military value. There are three basic criteria that must be considered. These are the mission, merit, and value to the Nation of each base. In Maryland, my colleague PAUL SARBANES and I are working on a bipartisan basis with the rest of the congressional delegation. We are also working together with task forces in our local communities to make our best case based on those principles. When the BRAC examines the recommendations in Maryland, those are the principles on which we expect to compete. And we expect to prevail.

I am shocked that some of the recommendations that the Commission will be examining do not appear to be based on merit, mission, or value to the Nation. The Navy's new plan to move the Naval Sea Systems Command [NAVSEA] to Washington, DC—overturning the last Commission's instructions to move to White Oak, MD—is incomprehensible.

In 1993, the Department of Defense found that we would save tax dollars by relocating many of the White Oak personnel to make room for the Naval Sea Systems Command, which has been in leased space. Nothing has changed in the last 2 years to change that assessment. The strategic and budgetary reasons for the move have not changed. Already, many people have been transferred. Lives have been disrupted and new plans made. Now, the Navy's recommendation says that it was all just a big bait and switch game.

We are now beginning a new round of defense base closures by reexamining the decisions of the last round. The Navy is asking us to overturn decisions made by the 1993 BRAC, approved by the President and accepted by Congress. This is a perfect example of why people are frustrated with their government.

No one questions the merit of White Oak. Just yesterday, General Shalikashvili, Chairman of the Joint Chiefs of Staff, said that the loss of White Oak's hypervelocity wind tunnel "could eliminate a unique national capability, a capability that serves military research and development needs and that is used by other agencies such as NASA." That wind tunnel, along with a 1.75 million gallon testing tank, are irreplaceable one-of-a-kind facilities.

This time, the burden of proof must be on the Navy. They must show that the merit of their new proposal significantly outweighs the findings of previous BRAC commissions. They must show that their mission can be performed better, quicker, and cheaper in Washington instead of in White Oak. And they must show that the Nation will achieve real savings from this new proposal. Those are tough standards * * * but in 1993, those are the standards White Oak met. We will hold the Navy's new proposal to the same standards—and we don't think their numbers can add up or hold up.

The recommendation to close the Naval Surface Warfare Center in Annapolis is also a serious blow to Maryland and to the military. And it is another attempt to revisit decisions that were made during the 1993 BRAC.

Some of the Navy's most important research and development is done at the Annapolis site. We have one-of-a kind facilities, and a world class workforce in place and working at peak capacity. Their mission is more important now than ever before—it is focused on the kinds of ship systems our Navy will need in the 21st century. And once again, the reasons and numbers haven't changed. So PAUL SARBANES and I will once again be leading the charge to maintain this vital facility.

The Army's recommendations, too, must be examined by the same principles and standards. I am deeply concerned that the recommendation to close Fort Ritchie was made without fully examining all of the missions performed at this post, and has not taken a full accounting of the value to the Nation of those missions. This post is almost 100 years old—but has proven to be one of the Army's most versatile facilities. It has constantly adapted and upgraded its facilities to fit changing communications needs. Its facilities and workforce are unique—and must be maintained.

And nowhere does the concept of a full accounting become more important than at the Army Publications Distribution Center in Middle River. This center is competitive with the most technologically advanced private sector operations, yet the recommendation to close was flatout wrong when it said that they are not automated. I will push to make sure that one of the BRAC Commissioners visits this site, so that they can see this state-of-the-art facility first hand. With the facts in hand, I am confident that the Commission will recommend to the DOD that they revisit their recommendation entirely.

There are some silver linings for Maryland. The far-reaching and forward-thinking consolidation at the Naval Air Warfare Center, Patuxent River will continue. Pax River is the only Navy base in the country that can do aircraft acquisition, research, development, and training. This "one-stop-shop" is a crown jewel in the Navy. I will stand sentry during this BRAC process to ensure that the next century mission of Pax is not overlooked or undermined. And across southern Maryland, I am pleased that the value to the Nation of NESEA and the Naval Surface Warfare Center at Indian Head was acknowledged and maintained.

Another piece of good news is that additional jobs will be coming to both Aberdeen Proving Ground and Fort Meade. Each of these posts has a proud history of service and stand ready to make significant contributions as the military continues to reexamine the roles and missions they must perform in the new millenium.

Mr. President, before a serious consideration of the fate of Maryland's bases can begin, we must first confirm the nominations to the Base Closure and Realignment Commission. I fully support these nominees. They will be seeing a lot of me, because I will be fighting tooth and nail for Maryland's unique facilities and capabilities.

Mr. THURMOND. Mr. President, I yield back time on our side.

Mr. NUNN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Eleven minutes forty-four seconds.

Mr. NUNN. I yield back the time on this side.

The PRESIDING OFFICER. All time having been yielded back, the question is, Will the Senate advise and consent to the nominations on the Executive Calendar, Nos. 12 through 17 and No. 34, en bloc, Alton W. Cornella, of South Dakota; Rebecca G. Cox, of California; James B. Davis, U.S. Air Force, Retired, of Florida; S. Lee Kling, of Maryland; Benjamin F. Montoya, of New Mexico; Wendi Louise Steele, of Texas; Josue Robles, Jr., of Texas, to be members of the Defense Base Closure Realignment Commission?

So the nominations were confirmed.

Mr. NUNN. Mr. President, I move to reconsider the vote by which the nominations were confirmed.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I ask unanimous consent that the President be immediately notified of the Senate's action and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

ORDER OF PROCEDURE

Mr. THURMOND. Mr. President, on behalf of the majority leader, I wish to announce that there will be no further rollcall votes today.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. FRIST). Without objection, it is so ordered.

THE BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

Mr. BUMPERS. Mr. President, I had thought that I might wait until tomorrow to speak on the vote that occurred this afternoon, but I think perhaps now is as good a time as any simply to reflect on what happened today, what has happened in the past and what is likely to happen in the future.

First of all, taking Social Security out of the amendment was a perfectly legitimate issue and I supported the Reid amendment and I supported the efforts of the Senator from North Dakota to take it out, but that is not the real reason I voted against this amendment. I voted against it because I have a reverence for the Constitution of the United States. I do not want it trivialized. I do not want to put economic theory in it. I do not want to put an unenforceable requirement in it. I do not want to put a requirement in there which can be taken away by 60 votes. And I do not want to have the people expecting to see the budget balanced in the year 2002 when that is highly unlikely in any case and utterly impossible under the other provisions of the Contract With America. That would raise the cynicism level about Congress still higher.

What I want to do is put this Nation on a glidepath toward a balanced budget and stick with it. We could reduce the deficit $20 billion a year and not disrupt the economy. The economy could handle it. And if the American people saw us doing that, year after year, they would be happy, they would see that we are solving the problem.

It is true the polls show that about 70 to 80 percent of the people of the country favor the so-called constitutional amendment to balance the budget, but I promise you they favor it because they are frustrated and they think it is the last best hope. And, second, they think there is some magic machine in the amendment that will balance the budget if they just put it in the Constitution as the 28th amendment.

Unhappily, nothing could be further from the truth. This afternoon the argument was made, why not submit it to the people? It is a powerful argument. The people like that argument. But for just a moment let me give a couple of extra thoughts on that. Since this great Republic of ours was founded in 1789, there have been over 11,400 proposals by Members of Congress to change that document—11,400. And we have adopted 18 of them, counting the Bill of Rights as one—that is the first 10 amendments to the Constitution all adopted at the same time.

Since then, 17 amendments have been ratified out of 11,400 proposed. What if we took the argument that every time a constitutional amendment came up on the floor we had a duty to submit it to the people? The people would not have time to work. They would be so busy voting on constitutional amendments they would not have time to hold a job.

Why do the Members of this body think that James Madison and Ben Franklin and all the rest of the Framers, in 1787, when they crafted this document—why do they think they gave

Congress the first responsibility? And more important, why do they think they insisted that 67 percent of the Congress vote for it before it is submitted to the people? They did not say lay down in the aisle of the Senate and vote aye. They said we should deliberate. If they expected a two-thirds majority of both Houses to approve this thing before it went to the people of the country, surely to God they intended us to have a sensible debate on it. And we had one.

Mr. President, when you start tinkering with the Constitution of the United States, I belong to the "wait just a minute" club. I do not care how meritorious a proposal sounds. The Constitution has given this Nation 205 years of unfettered freedom the likes of which no other nation on Earth has enjoyed. And when you start trivializing the Constitution with amendments that are wholly unenforceable, people will lose their reverence for that sacred document. You see, I do not want just a balance-the-budget amendment that merely says we will balance the budget. I want actually to balance the budget. The people in my State and your State, they think that opposing a balance-the-budget amendment is like saying "I oppose a balanced budget."

Who in this body does not favor a balanced budget? No one, but there are some who are not quite as committed to it as others. But in 1993, in August, the President and the Democrats in the Congress proposed a $500 billion deficit reduction. We stood up and we said exactly what the people in the pool hall say, "I wouldn't mind paying taxes if they cut spending." So we raised taxes on the wealthiest 1.2 percent of the people in this country. You had to have an income of $180,000 to affected by it. I wish I were in that category, I would be tickled to death to pay those taxes. We raised taxes on 1.2 percent of the wealthiest people in the country to the tune of $250 billion over 5 years and we cut spending, dollar for dollar, $250 billion, for a total of $500 billion in deficit reduction. And, yes, we said in that same bill, in the future couples who make $44,000 a year and are on Social Security will pay taxes on 85 percent of that amount that exceeds $44,000.

Who thinks I enjoyed voting for that? I hated it. But you are not going to solve the deficit problem on people flipping hamburgers down at McDonald's. Justice Holmes said taxes are what you pay in order to live in a civilized society. So we passed that deficit reduction bill and we have now lowered the deficit for three straight years for the first time since Harry Truman was in the White House.

Mr. President, it has been said time and time again, and it is worth repeating: not one single Republican favored deficit reduction that day—not one. They said, "We hate taxes." I do, too, but I hate deficits as well. And on October 1, 1994, the deficit was $100 billion less than it would have otherwise been if we had not passed the deficit reduction package. You think about it. We cut the deficit $100 billion last year. And it will be down $110 to $120 billion this year from what it would have otherwise been.

The distinguished majority leader, whom I respect and admire and consider to be my friend, this afternoon said that the Senate walked away from the American people today. In August 1993, the Republicans ran away from the people of this country. Not one vote.

Mr. President, we have never put anything into the Constitution in 205 years that you can suspend with 60 votes in the U.S. Senate. You think about it. Anytime this amendment is adopted and subsequent thereto, 60 people in this body can say we vote for an unbalanced budget and those words will mean nothing. What if I came on this floor and said: Here is an amendment that says, the fourth amendment, which protects us against unlawful searches and seizures—can be suspended by 60 percent of the Congress? You would be home calling the carpenter to put some more locks on your door, never knowing when Congress might cast 60 votes to suspend your right to be protected from police who might want to knock your door down on any flimsy excuse they can find, or ne excuse at all.

Women are now permitted to vote as a result of the 19th amendment adopted in 1921. Can you believe the women have only had the right to vote in this country since 1921? Suppose we passed an amendment saying, with 60 votes of both Houses, we could suspend the right of women to vote. With 60 votes, we can suspend the right of due process. With 60 votes, we can suspend religious freedom, freedom of the press, freedom of speech. With 60 votes, we will put the poll tax back in. With 60 votes, we will take any right in the Constitution out of it. The people would be marching in the streets.

So where does that leave us on this amendment? We say, "Well, here is an amendment that requires us to balance the budget by the year 2002." How? I do not know. Well, can we go to court? No. We took care of that in order to accommodate the Senator from Georgia, Senator NUNN. The courts could not involve themselves in the budget unless Congress expressly gave them jurisdiction . Next question: Who can enforce this amendment? Search me. I do not know.

If you have an amendment that requires a balanced budget by the year 2002 and the courts are taken out in that same amendment, who does that leave you to enforce it? The same U.S. Congress that has refused to do it in the past. We are back to square one. You pass this amendment, and the American people will have been hoodwinked like they have never been hoodwinked before in the history of this Nation. That is right. We are right back where we started, with the U.S. Congress having to balance the budget, and with the right to ignore it with 60 votes. We have never put anything in the Constitution that was not absolute and inviolate. We act as if we are dealing with a State constitution around here. The balanced budget amendment is legislation all dressed up in the finery of the Constitution.

I remember that spectacle in 1993 where only the Democrats voted for a bill to actually reduce the deficit. It is the most significant thing that has happened since I have been in the U.S. Senate. Every fall, for 7 years, I have stood at this desk and offered amendment after amendment after amendment to cut spending. In 1993 I offered six amendments to kill or cut appropriations. Those amendments would have saved the taxpayers over $420 billion, including interest over the next 35 years, but 13 Republican votes was my highwater mark on those votes. It reminds me of the back bencher who hears the preacher say "Who all here wants to go to Heaven?" and replies, "I do, but not tonight."

I want a balanced budget, and I do not like to have to go home and tell the voters that we cut the spending that affects their job or affects something else important to them or raises their taxes. We just want to talk about it.

Here on this chart are the budget-cutting amendments I put in just the other day for this year. I want my colleagues to look at these right now because they are coming, I promise you. The space station, 5-year savings of $10 billion; long-term savings, $52 billion. The same people who will vote to cut food stamps, Medicare, put children in orphanages, will vote to spend every dime of that. The F-22 fighter, we do not need it. We can postpone it for at least 4 years; it will cost $6 billion next year; in 5 years, $24 billion. I will not go through all of them, but we could save $33 billion over the next 5 years, and $114 billion over the next 15 years just on the amendments that I have introduced.

Mr. President, if I get 13 votes on the Republican side this year for any of those, I will be absolutely amazed. Everybody wants to go to Heaven. But not just yet.

There is not one thing in this amendment that would require us to do anything between now and the year 2002. There is not one single enforceable thing about this that would require us to cut the deficit one dime between now and the year 2002.

I offered an amendment. I got 37 votes. The amendment I offered said that, starting this year, the budget resolution must contain a deficit smaller than last year. And, in addition to that, it must show us how we are going to reach a balanced budget by the year 2002; that would be difficult to achieve but at least my amendment would keep us honest.

I submit that the people of this country would be immensely gratified if they could go to bed tonight and realize that Congress is going to cut the deficit every year for the next 7 years, not wait until the year 2002. Do it now.

The Contract With America—and to the eternal credit of the Republicans in the U.S. Senate, they are not a party to that. They want us to spend $471 billion in tax cuts and defense increases between now and the year 2002, and then start dealing with the deficit.

Do you think I enjoy standing here and saying I am not going to support a so-called middle-class tax cut? Do you think the people of my State do not need tax relief? If you do what the Contract With America proposes, I will tell you where you wind up. You will wind up with a deficit that will choke a mule, that will cause interest rates to start soaring again, and the poor guy who would have otherwise gotten a tax cut that might buy him a pizza every Friday night will lose two pizzas every Friday on interest costs. And 74 percent of the people of this country agree that they would rather see the savings put into deficit reduction.

Over and over and over again, I heard people say the balanced budget amendment is very popular, that 75 percent of the people in this country favor it. When you get down to a little tax cut, I will be saying that 75 percent of the people would rather see this go on the deficit than into a middle-class tax cut. You say we must do what 75 percent of the people want on one thing. But on the next thing that 75 percent of the people want, you say something else.

Mr. President, I will tell you what ought to happen. The Republican and Democratic leaders ought to get together and say, look, we share a common goal, and that common goal is to keep faith with the American people. In order to do that, we have to start getting the deficit under control. You go back to your people and submit a list of cuts, and we will come up with our own cuts; then we will get back together and try to figure out what we can agree on. Once we agree on what we can cut, once we are convinced in our own minds that we are going to actually cut the deficit this year and the next year and the next year, the leaders, Democrats and Republicans, can go before the television cameras and say solemnly to the American people: Here is our contract. We all agree on it.

If we keep going like we are going, Mr. President, the Constitution and the American people both are going to lose mightily. I did not sign that contract. As far as I know, not a single one of the 100 Members of the U.S. Senate signed that contract. Can you believe that that contract would be as dramaticaly unrealistic as it is—we are going to have a constitutional amendment to balance the budget, provide $471 billion in tax cuts, and defense increases. Most of the people who signed that are wannabes, people running for Congress who will say anything, sign their name to anything, and worry about the details later, after they have been elected.

And they will do it in 100 days. We are supposed to be a deliberative body. If it takes 100 days, fine; if it takes 300 days, fine. These things are supposed to be seriously considered. 100 days? It would not have been unthinkable in this Senator's mind to spend half of that—which we almost did—on this amendment until the American people focused on it and understood precisely what the consequences were going to be.

I must say I was terribly chagrined when I realized that no change to the constitutional amendment was going to be adopted. We were presented with a constitutional amendment that was crafted by the House of Representatives and sent to the Senate, and they said here it is, do not change one word. Do not uncross one "t," do not undot one "i," do not change anything. Think of that, saying to Senators here, who represent the people of their States, who want to improve it or kill it or otherwise change it. And they say, no, you do not count. We have 52 votes locked up over here and we will table anything you try to do. What kind of deliberative body is that? It is like saying we do not care that we are dealing with this precious document and we do not care what you think.

That is not a fan you hear, Mr. President, that is the sound of James Madison whirling in his grave.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

Mr. NICKLES. Mr. President, I rise to make a couple comments concerning the balanced budget amendment vote today, because I think in my 14½ years in the Senate, it is probably the most important vote that we have cast. In my Senate career, we voted on a balanced budget amendment four times—three times for real; and once on a cloture vote to end debate on a balanced budget amendment which I offered.

We passed it once, in 1982. We passed it with 69 votes. It was a bipartisan vote. At that time, the majority leader of the Senate was Howard Baker. I remember his support for the amendment. We had the support of Ronald Reagan, who was President at the time. But we lost by just a few votes in the House of Representatives.

The reason we lost the vote today is because six people who voted for the balanced budget amendment a year ago voted against it today. They have the right to change their minds. Many of the people that voted against it today who voted for it last year said they wanted to protect Social Security. But when they voted for it last year, there was no specific protection for Social Security. Those individuals thought the balanced budget amendment was worthy of voting for last year, but they voted against it this year. They have that right, and I respect Senators for their votes. I also think they should be held accountable.

When people are running for reelection, they many times claim, "Oh, yes I have always voted for a balanced budget amendment."

But today we had a chance to vote for one for real. The one we voted on last year, in all likelihood, was not going to pass. The House tried it last year and they lost by a few votes. We lost by a few votes.

This year, the House passed it. This year, if the Senate had passed it and we worked out whatever small differences we had between the House and the Senate, it would have gone to the States and we would have found out whether 38 States would have ratified it. My guess is, they would. My guess is, we would have followed the advice of Thomas Jefferson. We would have enacted an additional amendment which would prohibit Congress from spending more than they take in. Thomas Jefferson was right.

Bob Dole was right when he made his comments. I want to compliment Senator Dole for his leadership. He has shown great patience. We spent over a month on this amendment. The House of Representatives debated it for 2 days. The Senate spent a month. Senator Dole indicated the willingness to spend another week if we could have picked up the necessary votes. But we might spend another 2 months and still not get 67 votes. Senator Dole can count votes. All of us can. Many of us were working, trying to make a difference, but we were not successful, mainly because six people changed their minds. They have the right to change their minds, but people need to know why we did not pass it.

In the November elections, we elected a lot of new people.

As a matter of fact, all 11 new Senators elected in the 1994 elections voted for it. But six people who voted for it in the past decided to vote against it.

That is the reason the amendment failed.

To pass a constitutional amendment is a high bar to jump over. It is not easy. You have to pass the constitutional amendment by two-thirds in both Houses, and then additionally it has to be ratified by three-fifths of the States. That is not easily done.

We have had 27 amendments to the Constitution, 10 of which were the Bill of Rights and were ratified very early in our history. We have only had 17 since then. Sixty-six Members of this body felt as though we should have the balanced budget amendment, as well. The American people have supported it. It was mentioned two or three times on the floor that 80 percent of the American people believe we should have it.

I have been here long enough to know we need a balanced budget amendment. I have served on the Budget Committee; I have served on the Appropriations Committee; and now I serve on the Finance Committee. I think we need the discipline. It would not be necessary if we had a strong majority of both bodies, being fiscally responsible Members. Maybe then we would not need a balanced budget amendment.

Mr. President, I am totally committed to trying to balance the budget, whether we pass the amendment or not. I think we ought to do it by the year 2002. So I hope that we will pass a budget resolution that will move Congress toward balancing the budget no later than the year 2002. I hope we can pass it in both the House and the Senate.

Maybe that will be the easy part. Then we will have to pass the implementing legislation to make it happen, pass what we call a reconciliation bill and all 13 appropriations bills. We will make Congress, for the first time, really cut entitlements. If we do not reduce the rate of growth of entitlements, we will never balance the budget.

Mr. President, the figures are not that complicated. We are spending about $1.5 trillion right now. We are taking in a little over $1.3 trillion. So we have a deficit of $200 billion per year. Unfortunately, President Clinton's budget does nothing to reduce the deficit. The deficit stays at least about $200 billion for the foreseeable future, and then escalates much, much higher in future years.

He does not touch entitlements; I had charts up earlier this week showing what the President has accomplished budgetwise. The President has said in his first 2 years, he has reduced the deficit by $600 billion, but the facts do not agree with him. The facts are that spending has not been cut in the President's first 2 years. Actually, spending went up, if we use the CBO baseline. And President Clinton mentioned, in his State of the Union speech, that we should use the Congressional Budget Office.

Spending has not been cut. Actually, spending for the first 4 years of his administration goes up, compared to what would have otherwise happened. So spending has gone up, not down. That is evidenced by the fact that we used to spend $1.3 trillion a couple years ago, and now we spend $1.5 trillion. Under the President's budget year we spent $1.6 trillion, and by the year 2000, we spend $1.9 trillion. Spending goes up every year.

The facts are, also, we can balance the budget if we limit the growth of spending to about 3 percent per year. The total amount of money that we spend, if we can limit that growth to 3 percent, we can balance the budget.

I did not say cut spending; I say limit the growth of spending. We will have to somehow ingrain this in people's minds. I can tell Members right now when we come up with a budget people will say, "Republicans, are slashing programs. You are insensitive. You are making tough decisions." We should be.

But I also say, Mr. President, even under the Republicans, and in spite of all the slashing that we will be accused of, Federal spending will continue to escalate. I would like for Congress to freeze Federal spending. We are spending $1.5 trillion. I would like for Congress to spend next year $1.5 trillion. If we have an increase in some programs, that means other programs will have to be reduced to pay for it. That is what I would like. If we kept spending $1.5 trillion, we could balance the budget before the year 2002.

Mr. President, we have to do it. I just hope that our colleagues, now that they have defeated this balanced budget amendment, will help us. Many people on the other side of the aisle said we do not need a balanced budget amendment. Many Members on this side of the aisle on the Budget Committee, on the Finance Committee, on the Appropriations Committee, I believe are committed to trying to balance the budget by the year 2002, because we think that is the right thing to do.

I can tell Members it probably will not be the right thing politically. We will expose ourselves politically. People will say, "You are slashing popular programs and you are not going to be popular if you cut this program or that program," and we will have to cut most all programs. I say cut. We will have to reduce the rate of growth in almost all programs if we are going to get there. I hope that we have the courage to do it. I think we need to do what needs to be done to make Congress balance the budget, regardless of whether or not we pass the balanced budget amendment.

I am really disappointed that we did not pass it today. I think if we would have passed it today, it would have changed the way we do business. I think people in the Budget Committee, in the Finance Committee, in the Appropriations Committee would say, "Wait a minute; this is a different era."

We stand right here in this Senate and put our hand on the Bible and swear to uphold the Constitution. That is the reason it is more important than a statute. That is the reason I think we would be more committed to abiding by that balanced budget amendment, regardless of the enforcement mechanism, because we are sworn to uphold the Constitution. I think we are serious when we take that oath.

A lot of our colleagues said that the amendment is not necessary. Well, we will try to do it, anyway. We will find out how sincere they are when we have the tough votes. We will find out what happens when we try to curb the growth of entitlements.

I will give an example. We have 336 different welfare programs—336—most of them stacked on top of each other. Many of which are counterproductive to our goals, if we want to try to help people, because it is making people become addicted to Federal programs—addicted to Federal assistance—not helping them climb up the economic ladder, but basically addicted to this idea that, "Hey, Government will take care of me, so why should I bother?" We have 152 different job programs. I know the Senator from Kansas is looking at consolidating many of those programs and giving them to the States to determine how best to manage them.

We have to curb programs like Medicaid, which has grown annually by 28, 29, 13, and 8 percent. We cannot continue to have rates of growth like that. We will have to curtail programs like the earned income tax credit that President Clinton is so proud of. His tax bill increased it dramatically. Three years ago, it cost $5 billion a year. In 3 years, it will cost $25 billion per year. These are astronomical rates of growth.

The EITC is an entitlement program. I read by one estimation that 40-some percent of the people in the District of Columbia are eligible for the earned income tax credit. That is absurd. It is a negative income tax under which Uncle Sam writes checks. It is rife with fraud. The IRS is now slowing the processing of returns because of fraud. A lot of people found out, "If I give you a few hundred dollars for your social security number, I can do your return and collect a $1,000 or $2,000 check from Uncle Sam." A lot of people are pulling that scam.

Food stamps—we have had unbelievable fraud and abuse in food stamps. The program's cost has compounded in growth well beyond inflation. We will have to take all programs, Mr. President, and look to scale many back substantially. If we want programs to grow more than 2 percent or 3 percent per year, we will have to cut other programs to make that happen.

I just hope we will have the courage to do it, in a bipartisan fashion. I hope that we will come up with a budget unlike President Clinton's, which projects $200 billion deficits forever. I hope that we will pass a program that will bring the deficits on a downward trend where we will be down to zero no later than the year 2002. That will not be easy. And maybe if we cannot do it—I hope we can, but maybe we cannot—people on the other side will realize they made a mistake in voting against the constitutional amendment to balance the budget. Maybe they will realize that we need that kind of discipline to be able to say no.

Congress will have to say no to Federal spending if we are ever going to get there. You are more popular as elected officials giving people money, cutting ribbons for more Federal spending, for XYZ school and XYZ projects, than taking away from them in taxation. You are more popular giving than taking away, and more popular spending than taxing.

I am really disappointed in the vote today. I think we need a constitutional amendment. I hope and expect that we will have the opportunity to vote again, and maybe they will hear from their constituents. I hope people across the country, when they find out that their elected Members voted against this amendment, will talk to their Members, and let them know how strongly they feel that this amendment should have passed.

If this is a democracy where people really have a chance to meet with their constituencies and listen to their constituencies, this amendment should pass, and I believe it will pass. I would like for it to pass this year. Maybe it will take another election. The American people spoke clearly in the elections in 1994. I believe they will be speaking very loudly in 1996, and maybe they will hold their elected Members accountable. Then maybe that will enable us to pick up the extra vote or two necessary to pass this amendment.

So, Mr. President, I am very sincere in saying I think this is probably the most important vote we have had in decades. It is unfortunate it did not pass today. It did not fail for a lack of effort or leadership on behalf of Senator DOLE. He showed great patience and, I think, great leadership. I also wish to compliment Senator HATCH and Senator CRAIG for the hours and hours that they spent on the floor. It is just unfortunate we were not successful.

I hope that the American people help us succeed, not just for Republicans in the Senate, not just for the idea of a balanced budget but really succeed for American taxpayers, for our children. People should not be confused about claims that, "I would vote for that except I want to protect the Social Security trust funds."

That is one of the most absurd arguments made on the floor of the Senate. How can they protect Social Security trust funds which do not exist? The Social Security trust fund is a falacy. There are no trust funds. There is not a bank account where any person in America can go look at the billions of dollars accumulating there. The trust fund is full of IOU's. And very soon, perhaps by the year 2013, we are going to be paying out more than is coming in.

At that point it is assumed that we will start cashing in on the trust fund IOU's. But what is really there? There is nothing in the trust fund but an IOU. How do we pay off Government IOU's? We borrow more money. By the year 2013, we are going to be paying more in social security benefits more than we take in from social security payroll taxes, and for each IOU we cash in to pay benefits we are going to have to borrow to pay off the IOU. That will put an enormous burden on younger generations.

I think my colleagues who say they voted against this amendment to protect the trust funds do not understand that there are no real trust funds, there is no bank account, there is no fund where money is actually accumulating. There is just a Government IOU, and that Government IOU is going to be paid for like we pay other Government IOU's. It is going to be paid for with additional borrowing.

Maybe that was the political cover they needed to excuse them from voting against this amendment, but it is very deceptive and very misleading. I think we have to be truthful with the American people.

Again, those same people who voted "no" today voted "yes" last year, and we had no special protection for social security. We had no such exemption for Social Security. I hope that the people will speak out loud and clear to their elected officials, and maybe we can reverse the result that we had on the floor today.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRESIDENT CLINTON'S LEADERSHIP IN REDUCING THE NUCLEAR THREAT

Mr. DASCHLE. Mr. President, yesterday, in a speech before the Nixon Center For Peace and Freedom's policy conference held here in Washington, President Clinton spoke eloquently about America's leadership role in the post-cold war era and the importance of America remaining engaged in world affairs. The President placed particular and appropriate emphasis on the need to continue to make strong efforts to reduce the threat of nuclear weapons.

The President's remarks regarding his concerns over the new isolationism creeping into the debate over American foreign policy and the outline of his ambitious agenda to reduce the international nuclear threat are especially significant for members of the Senate. In the coming weeks we will be beginning debate on major foreign policy issues and may vote this year on ratification of the START II treaty as well as consider the Chemical Weapons Convention.

As President Clinton has rightly pointed out, American leadership is vital to continued international efforts to promote peace and reduce the threat of nuclear weapons. Since the days when President Truman began American efforts to curtail the threat of nuclear war, every American President has worked to reduce that threat to world peace. President Clinton has sought to advance that goal and exploit the additional possibilities for peace and prosperity provided by the end of the cold war.

There have been some notable successes. For the first time in a generation, no Russian missiles are targeted on American cities. Under the START I treaty negotiated by President Bush and placed into force by President Clinton, the United States and Russia are dismantling thousands of nuclear weapons. Former Soviet republics that were potential nuclear powers have now pledged to rid their countries of nuclear weapons.

This year President Clinton has started a vigorous program to reduce the threat posed by weapons of mass destruction. He has called for an indefinite world-wide extension of the Nuclear Non-Proliferation Treaty. And he has urged the Senate to quickly ratify the START II treaty, and the Chemical Weapons Convention to ban poison gas. He has promised to push for conclusion of a Comprehensive Test Ban Treaty and to fight for a global ban on the production of nuclear material for weapons.

The President's efforts to keep America engaged as the world's leader in the pursuit of peace and in reducing the threat of nuclear weapons are of vital importance to the national security of the United States and deserve the support of every American.

I commend his remarks to my colleagues' attention, and I ask unanimous consent that they be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

REMARKS BY THE PRESIDENT TO THE NIXON CENTER FOR PEACE AND FREEDOM POLICY CONFERENCE

The President. To Tricia and John Taylor, and all the people from the Nixon Center; our distinguished guests from Germany and from Russia; of course, to Henry Kissinger—I was thinking when he said we both spoke with accents, judging from the results of the last election, his native country is still claiming him more than mine is claiming me. (Laughter.) but I'm a big one for reconciliation. (Laughter.) And there's plenty of time to achieve it.

I am honored to be here tonight. Just a month before he passed away, President Nixon wrote me the last letter I received from him about his last trip to Russia. I told some people at the time that it was the best piece of foreign policy writing I had received, which angered my staff but happened to be the truth. (Laughter.) And as with all of our correspondence and conversations, I was struck by the rigor of his analysis, the energy of his convictions, and the wisdom of the practical suggestions that he made to me.

But more than the specifics of the letter, which basically argued for the imperative of the United States continuing to support political and economic reform in Russia, I was moved by the letter's larger message—a message that ran throughout Richard Nixon's entire public life and all of his prolific writings. President Nixon believed deeply that the United States simply could not be strong at home unless we were strong and prepared to lead abroad.

And that made a big impression on me. When I was running for President in 1992, even though there was this little sticker up on the wall of my campaign headquarters that said, "It's the economy, stupid," I always said in every speech that we had to have two objectives. We had to restore the American Dream for all of our people, but we also had to make sure that we move into the next century still the strongest nation in the world, and the world's greatest force for peace and freedom and democracy.

Tonight I want to talk about the vital tradition of American leadership and our responsibilities, those which Henry Kissinger mentioned and those which President Nixon recognized so well. Our mission especially I want to discuss—to reduce the threat of nuclear weapons.

Today if we are going to be strong at home and lead abroad, we have to overcome what we all recognize I think is a dangerous and growing temptation here in our own land to focus solely on the problems we face here in America. I want to focus on the problems we face here in America. I've tried to do it for the last two years. I look forward to working with this new Republican-led Congress in the next two. But not solely.

There is a struggle now going on between those of us who want to carry on the tradition of American leadership and those who would advocate a new form of American isolationism. A struggle which cuts curiously across both party and ideological lines. If we're going to continue to improve the security and prosperity of all our people, then the tradition of American leadership must prevail.

We live in a moment of hope. We all know that. The implosion of communism and the explosion of the global economy have brought new freedoms to countries on every continent. Free markets are on the rise. Democracy is ascendant. The slogan says, "after victory." Today, more than ever before, people across the globe do have the opportunity to reach their God-given potential. And because they do, Americans have new opportunities to reach theirs as well.

At the same time, the post-Cold War world has revealed a whole web of problems that defy quick or painless solutions—aggression of rogue states, transnational threats like overpopulation and environmental degradation, terrible ethnic conflicts and economic dislocation. But at the heart of all these complex challenges, I believe, lies an age-old battle—for power over human lives. The battle between the forces of freedom and tyranny, tolerance and repression, hope and fear. The same idea that was under attack by fascism and then by communism remains under attack today in different ways all across the world—the idea of the open society of free people.

American leadership is necessary for the tide of history to keep running our way, and for our children to have the future they deserve. Yet, there are some who would choose escapism over engagement. The new isolationists oppose our efforts to expand free trade through GATT or NAFTA through APEC and the Summit of the Americas. They reject our conviction that democracy must be nurtured with investment and support, a conviction that we are acting on from the former Soviet Union to South Africa. And some of them, being hypocritical, saying that we must trumpet the rhetoric of American strength; and then at the same time, they argue against the resources we need to bring stability to the Persian Gulf or to restore democracy to Haiti, or to control the spread of drugs and organized crime around the world, or even to meet our most elemental obligations to the United Nations and its peacekeeping work.

The new isolationists both on the left and the right would radically revise the fundamentals of our foreign policy that have earned bipartisan support since the end of World War II. They would eliminate any meaningful role for the United Nations which has achieved, for all of its problems, real progress around the world, from the Middle East to Africa. They would deny resources to our peacekeepers and even to our troops, and, instead, squander them on Star Wars. And they would refuse aid to the fledgling democracies and to all those fighting poverty and environmental problems that can literally destroy hopes for a more democratic, more prosperous, more safe world.

The new isolationists are wrong. They would have us face the future alone. Their approach would weaken this country, and we must not let the ripple of isolationism that has been generated build into a tidal wave.

If we withdraw from the world today, mark my words, we'll have to contend with the consequences of our neglect tomorrow and tomorrow and tomorrow. This is a moment of decision for all of us without regard to our party, our background or our accent. This is a moment of decision.

The extraordinary trend toward democracy and free markets is not inevitable. And as we have seen recently, it will not proceed easily in an even, uninterrupted course. This is hard work. And at the very time when more and more countries than ever before are working to establish or shore up their own freedom in their fragile democracies, they look to us for support. At this time, the new isolationists must not be allowed to pull America out of the game after just a few hours of debate because there is a modest price attached to our leadership. (Applause.)

We know now, as President Nixon recognized, that there must also be limits to America's involvement in the world's problems—limits imposed by clear-headed evaluation of our fundamental interests. We cannot be the world's policemen; we cannot become involved in every problem we really care about. But the choice we make must be rooted in the conviction that America cannot walk away its interests or its responsibilities.

That's why, from our first day in office, this administration has chosen to reach out, not retreat. From our efforts to open markets for America to support democracy around the world, to reduce the threat posed by devastating weapons and terrorists, to maintaining the most effective fighting force in the world, we have worked to seize the opportunities and meet the obligations of this moment.

None of this could have happened without a coalition of realists—people in both Houses of Congress and, importantly, people from both parties; people from coast to coast in our towns and cities and communities who know that the wealth and well-being of the United States depends upon our leadership abroad. Even the early leaders of our republic who went to great pains to avoid involvement in great power conflicts recognize not only the potential benefits, but the absolute necessity of engaging with the world.

Before Abraham Lincoln was elected President, our farmers were selling their crops overseas, we had dispatched the trade mission all the way to Japan trying to open new markets—some problems don't go away—(laughter)—and our Navy had already sailed every ocean. By the dawn of this century, our growing political and economic power already imposed a special duty on America to lead; a duty that was crystallized in our involvement in World War I. But after that war, we and the other great powers abandoned our responsibilities and the forces of tyranny and hatred filled the vacuum, as is well-known.

After the second world war, our wise leaders did not repeat that mistake. With the dawn of the Nuclear Age and the Cold War, and with the economies of Europe and Japan in shambles, President Truman persuaded an uncertain and weary nation, yearning to shift its energies from the front lines to the home front, to lead the world again.

A remarkable generation of Americans created and sustained alliances and institutions—the Marshall Plan, NATO, the United Nations, the World Bank, the IMF—the things that brought half a century of security and prosperity to America, to Europe, to Japan and to other countries all around the world. Those efforts and the special resolve and military strength of our own nation held tyranny in check until the power of democracy, the failures of communism, and the heroic determination of people to be free, consigned the Cold War to history.

Those successes would not have been possible without a strong, bipartisan commitment to American's leadership.

Senator Arthur Vandenburg's call to unite our official voice at the water's edge joined Republicans to Truman's doctrine. His impact was all the more powerful for his own past as an isolationist. But as Vandenburg himself said, Pearl Harbor ended isolationism for any realist.

Today, it is Vandenburg's spirit that should drive our foreign policy and our politics. The practical determination of Senators Nunn and Lugar to help Russia reduce its nuclear arsenal safely and securely; the support from Speaker Gingrich and Leader Gephardt, from Chairman Livingston and

Representative Obey for aid to Russia and the newly-independent states; the work of Senators Hatfield, Leahy and McConnell, and Chairman Gilman, and Representative Hamilton for peace in the Middle East; the efforts of Senator Warner to restructure our intelligence—all these provide strong evidence of the continuing benefits and vitality of leadership with bipartisanship.

If we continue to lead abroad and work together at home, we can take advantage of these turbulent times. But if we retreat, we risk squandering all these opportunity and abandoning our obligations which others have entrusted to us and paid a very dear price to bring to us in this moment in history.

I know that the choice to go forward in a lot of these areas is not easy in democracies at this time. Many of the decisions that America's leaders have to make are not popular when they're made. But imagine the alternative. Imagine, for example, the tariffs and barriers that would still cripple the world trading system for years into the future if internationalists coming together across party lines had not passed GATT and NAFTA. Imagine what the Persian Gulf region would look like today if the United States had not stepped up with its allies to stop Iraqi aggression. Imagine the ongoing reign of terror and the flood of refugees at our borders had we not helped to give democracy a second chance in Haiti. Imagine the chaos that might have ensued if we had not moved to help stabilize Mexico's economy. In each case, there was substantial and sometimes overwhelming majority opinion against what needed to be done at the moment. But because we did it, the world has a better chance at peace and freedom.

But above all now, I ask you to imagine the dangers that our children and grandchildren, even after the Cold War is over, still can face if we do not do everything we can to reduce the threat of nuclear arms, to curb the terrible chemical and biological weapons spreading around the world, to counter the terrorists and criminals who would put these weapons into the service of evil.

As Arthur Vandenburg asked at the dawn of the Nuclear Age, after a German V-1 attack had left London in flames and its people in fear, "How can there be isolation when men can devise weapons like that?"

President Nixon understood the wisdom of those words. His life spanned an era of stunning increases in humankind's destructive capacity, from the biplane to ballistic missiles, from mustard gas to mushroom clouds. He knew that the Atomic Age could never be won, but could be lost. On any list of his foreign policy accomplishments, the giant steps he took toward reducing the nuclear threat must stand among his greatest achievement. As President, I have acted on that same imperative.

Over the past two years, the United States has made real progress in lifting the threat of nuclear weapons. Now, in 1995, we face a year of particular decision in this era—a year in which the United States will pursue the most ambitious agenda to dismantle and fight the spread of weapons of mass destruction since the atom was split.

We know that ours is an enormously complex and difficult challenge. There is no single policy, no silver bullet, that will prevent or reverse the spread of weapons of mass destruction. But we have no more important task. Arms control makes us not only safer, but it makes us stronger. It is a source of strength. It is one of the most effective insurance policies we can write for the future of our children.

Our administration has focused on two distinct, but closely connected areas—decreasing and dismantling existing weapons, and preventing nations or groups from acquiring weapons of mass destruction, and the means to deliver them. We've made progress on both fronts.

As the result of an agreement President Yeltsin and I reached, for the first time in a generation Russian missiles are not pointed at our cities or our citizens. We've greatly reduced the lingering fear of an accidental nuclear launch. We put into force the START I Treaty with Russia that will eliminate from both our countries delivery systems that carry more than 9,000 nuclear warheads—each with the capacity to incinerate a city the size of Atlanta.

START I, negotiated by two Republican administrations and put into force by this Democratic administration, is the first treaty that requires the nuclear powers actually to reduce their strategic arsenal. Both our countries are dismantling the weapons as fast as we can. And thanks to a far-reaching verification system, including on-side inspections which began in Russia and the United States today, each of us knows exactly what the other is doing.

And, again, through the far-sighted program devised by Senators Nunn and Lugar, we are helping Russia and the other newly-independent states to eliminate nuclear forces in transport, safeguard and destroy nuclear weapons and material.

Ironically, some of the changes that have allowed us to reduce the world's stockpile of nuclear weapons have made our nonproliferation efforts harder. The breakup of the Soviet Union left nuclear materials dispersed throughout the newly-independent states. The potential for theft of nuclear materials, therefore, increased. We face the prospect of organized criminals entering the nuclear smuggling business. Add to this the volatile mix, the fact that a lump of plutonium the size of a soda can is enough to build a bomb, and the urgency of the effort to stop the spread of nuclear materials should be clear to all of us.

That's why from our first day in office we have launched an aggressive, coordinated campaign against international terrorism and nuclear smuggling. We are cooperating closely with our allies, working with Russia and the other new-independent states, improving security at nuclear facilities, and strengthening multilateral export controls.

One striking example of our success is Operation Sapphire, the airlift of nearly 600 kilograms of highly-enriched uranium—enough to make dozens of bombs from Kazakhstan to the United States for disposal. We've also secured agreements with Russia to reduce the uranium and plutonium available for nuclear weapons, and we're seeking a global treaty banning the production of fissile material for nuclear weapons.

Our patient, determined diplomacy also succeeded in convincing Belarus, Kazakhstan and Ukraine to sign the Non-Proliferation Treaty and give up the nuclear weapons left on their territory when the Soviet Union dissolved. One of our administration's top priorities was to assure that these new countries would become non-nuclear nations, and now we are also achieving that goal.

Because of these efforts, four potential suppliers of ballistic missiles—Russia, Ukraine, China and South Africa— have all agreed to control the transfer of these missiles and related technology, pulling back from the nuclear precipice has allowed us to cut United States defense expenditures for strategic weapons by almost two-thirds, a savings of about $20 billion a year, savings which can be shifted to vital needs such as boosting the readiness of our Armed Forces, reducing the deficit, putting more police on our own streets. By spending millions to keep or take weapons out of the hands of our potential adversaries, we are saving billions in arms costs and putting it to better use.

Now, in this year of decision, our ambition for the future must be even more ambitious. If our people are to know real lasting security, we have to redouble our arms control, nonproliferation and antiterrorism efforts. We have to do everything we can to avoid living with the 21st century version of fallout shelters and duck-and-cover exercises to prevent another World Trade Center tragedy.

In just four days we mark the 25th anniversary of the Non-Proliferation Treaty. Nothing is more important to prevent the spread of nuclear weapons than extending the treaty indefinitely and unconditionally. And that's why I've asked the Vice President to lead our delegation to the NPT conference this April and to work as hard as we can to make sure we succeed in getting that indefinite extension.

The NPT is the principal reason why scores of nations do not now possess nuclear weapons; why the doomsayers were wrong. One hundred and seventy-two nations have made NPT the most widely subscribed arms limitation treaty in history for one overriding reason—it's in their self-interest to do so. Non-nuclear weapon states that sign on to the treaty pledge never to acquire them. Nuclear weapons states vow not to help others obtain nuclear weapons, to facilitate the peaceful uses of atomic energy and to pursue nuclear arms control and disarmament—commitments I strongly reaffirm, along with our determination to attain universal membership in the treaty.

Failure to extend NPT indefinitely could open the door to a world of nuclear trouble. Pariah nations with rigid ideologies and expansionist ambitions would have an easier time acquiring terrible weapons, and countries that have chosen to forego the nuclear option would then rethink their position; they would certainly be tempted to reconsider that decision.

To further demonstrate our commitment to the goals of the treaty, today I have ordered that 200 tons of fissile material, enough for thousands of nuclear weapons, be permanently withdrawn from the United States nuclear stockpile. Two hundred tons of fissile material that will never again be used to build a nuclear weapon.

A second key goal of ours is ratifying START II. Once in effect, that treaty will eliminate delivery systems from Russian and American arsenals that carry more than 5,000 weapons. The major reductions under START I, together with START II, will enable us to reduce two-thirds the number of strategic warheads deployed at the height of the Cold War. At my urging, the Senate has already begun hearings on START II, and I am encouraged by the interest of the senators from both parties in seeking quick action. I commend the Senate for the action taken so far, and I urge again the approval of the treaty as soon as possible.

President Yeltsin and I have already instructed our experts to begin considering the possibility after START II is ratified of additional reductions and limitations on remaining nuclear forces. We have a chance to further lift the nuclear cloud, and we dare not miss it.

To stop the development of new generations of nuclear weapons, we must also quickly complete negotiations on a comprehensive test ban treaty. Last month I extended a nuclear testing moratorium that I put into effect when I took office. And we revised our negotiating position to speed the conclusion of the treaty while reaffirming our determination to maintain a safe and reliable nuclear stockpile.

We will also continue to work with our allies to fully implement the agreement we reached with North Korea, first to freeze, then do dismantle its nuclear program, all under international monitoring. The critics of this agreement, I believe, are wrong. The deal does stop North Korea's nuclear program, and it does commit Pyongyang to roll it back in the years to come.

I have not heard another alternative proposal that isn't either unworkable or foolhardy, or one that our allies in the Republican of Korea and Japan, the nation's most directly affected, would fail to support.

If North Korea fulfills its commitment, the Korean Peninsula and the entire world will clearly be less threatened and more secure. The NPT, START II, the Comprehensive Test Ban Treaty, the North Korean Agreement, they top our agenda for the year ahead. There are other critical tasks we also face if we want to make every American more secure, including winning Senate ratification of the Chemical Weapons Convention, negotiating legally binding measures to strengthen the Biological and Toxin Weapons Convention, clarifying the ABM Treaty so as to secure its viability while permitting highly effective defenses against theater missile attacks, continuing to support regional arms control efforts in the Middle East and elsewhere, and pushing for the ratification of conventional weapons which, among other things, would help us to reduce the suffering caused by the tens of millions of anti-personnel mines which are plaguing millions of people all across the world.

My friends, this is a full and challenging agenda. There are many obstacles ahead. We cannot achieve it if we give in to a new isolationism. But I believe we can do no less than make every effort to complete it.

Tonight, let us remember what President Nixon told the joint session of Congress when he returned from his historic trip to Moscow in 1972. He said, "We have begun to check the wasteful and dangerous spiral of nuclear arms. Let us seize the moment so that our children and the world's children can live free of the fears and free of the hatreds that have been the lot of mankind through the centuries."

Now it is within our power to realize the dream that Richard Nixon described over 20 years ago. We cannot let history record that our generation of Americans refused to rise to this challenge, that we withdrew from the world and abandoned our responsibilities when we knew better than to do it, that we lacked the energy, the vision and the will to carry this struggle forward—the age-old struggle between hope and fear.

So let us find inspiration in the great tradition of Harry Truman and Arthur Vandenburg—a tradition that builds bridges of cooperation, not walls of isolation; that opens the arms of Americans to change instead of throwing up our hands in despair; that casts aside partisanship and brings together Republicans and Democrats for the good of the American people and the world. That is the tradition that made the most of this land, won the great battles of this century against tyranny and secured our freedom and our prosperity.

Above all, let's not forget that these efforts begin and end with the American people. Every time we reduce the threat that has hung over our heads since the dawn of the Nuclear Age, we help to ensure that from the far stretches of the Aleutians to the tip of the Florida Keys, the American people are more secure. That is our most serious task and our most solemn obligation.

The challenge of this moment is matched only by its possibility. So let us do our duty. Thank you very much.

MESSAGES FROM THE HOUSE RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 4 1995, the Secretary of the Senate, on March 1, 1995, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bill:

S. 257. An act to amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea.

Under the authority of the order of the Senate of January 4, 1995, the enrolled bill was signed on March 1, 1995, during the recess of the Senate by the President pro tempore (Mr. THURMOND).

MESSAGE FROM THE HOUSE

At 2:04 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House of Representatives has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1022. An act to provide regulatory reform and to focus national economic resources on the greatest risks to human health, safety, and the environment through scientifically objective and unbiased risk assessments and through the consideration of costs and benefits in major rules, and for other purposes.

The message also announced, that pursuant to the provisions of Public Law 84-372, the Speaker appoints as a member of the Franklin Delano Roosevelt Memorial Commission the following Member on the part of the House: Mr. LEWIS of California.

The message further announced that, pursuant to the provisions of 22 United States Code 276h, the Speaker appoints the following Member as a member on the part of the House of the United States Delegation of the Mexico-United States Interparliamentary Group for the First Session of the 104th Congress: Mr. KOLBE, Chairman.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 1022. An act to provide regulatory reform and to focus national economic resources on the greatest risks to human health, safety, and the environment through scientifically objective and unbiased risk assessments and through the consideration of costs and benefits in major rules, and for other purposes; to the Committee on Governmental Affairs.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on March 1, 1995, she had presented to the President of the United States, the following enrolled bill:

S. 257. An act to amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. SIMPSON, from the Committee on Veterans' Affairs:

Special Report entitled "Legislative and Oversight Activities During the 103d Congress by the Senate Committee on Veterans' Affairs" (Rept. No. 104-11).

By Mr. HATFIELD, from the Committee on Appropriations, with amendments and an amendment to the title:

H.R. 889. A bill making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes (Rept. No. 104-12).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on Armed Services:

Herschelle Challenor, of Georgia, to be a Member of the National Security Education Board for a term of 4 years.

Sheila Cheston,* of the District of Columbia, to be General Counsel of the Department of the Air Force.

Josue Robles, Jr.*, of Texas, to be a member of the Defense Base Closure and Realignment Commission for a term expiring at the end of the first session of the 104th Congress.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-446. A communication from the President of the United States, transmitting, pursuant to law, a report on the Selective Service System; to the Committee on Armed Services.

EC–447. A communication from Deputy Secretary of Defense, transmitting, pursuant to law, a report relative to the Defense Business Operations Fund; to the Committee on Armed Services.

EC–448. A communication from the Under Secretary of Defense, transmitting, pursuant to law, notice relative to the report on the manpower request for fiscal year 1996; to the Committee on Armed Services.

EC–449. A communication from the Secretary of Defense, transmitting, pursuant to law, the report on proposed obligations for facilitating weapons destruction and nonproliferation in the Former Soviet Union; to the Committee on Armed Services.

EC–450. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report on monetary policy; to the Committee on Banking, Housing, and Urban Affairs.

EC–451. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the report on the Stewart B. McKinney Homeless Programs; to the Committee on Banking, Housing, and Urban Affairs.

EC–452. A communication from Assistant Administrator for Weather Services, Department of Commerce, transmitting, pursuant to law, a report relative to the National Weather Service; to the Committee on Commerce, Science, and Transportation.

EC–453. A communication from the President of the National Railroad Passenger Corporation, transmitting, pursuant to law, the legislative report and the Federal Grant request for fiscal year 1996; to the Committee on Commerce, Science, and Transportation.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mrs. HUTCHISON:

S. 480. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Gleam*; to the Committee on Commerce, Science, and Transportation.

By Mr. BAUCUS:

S. 481. A bill to limit the amount of expenditures required under the Endangered Species Act of 1973 and other laws for the protection of fish and wildlife made by the Bonneville Power Administration that may be recovered from ratepayers, and for other purposes; to the Committee on Environment and Public Works.

By Mr. HOLLINGS (for himself and Mr. THURMOND):

S. 482. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for the vessel *Emerald Ayes*; to the Committee on Commerce, Science, and Transportation.

By Mr. HATCH (for himself, Mrs. FEINSTEIN, and Mr. THOMPSON):

S. 483. A bill to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for the other purposes; to the Committee on the Judiciary.

By Mr. GRAHAM:

S. 484. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to establish a national clearinghouse to assist in background checks of applicants for law enforcement positions, and for other purposes; to the Committee on the Judiciary.

By Mrs. HUTCHISON:

S. 485. A bill to amend the Solid Waste Disposal Act to provide and clarify the authority for certain municipal solid waste flow control arrangements; to the Committee on Environment and Public Works.

By Mr. HEFLIN (for himself, Mr. SPECTER, Mr. FORD, Mr. THURMOND, Mr. BUMPERS, Mr. BROWN, Mr. SIMON, Mr. SHELBY, Ms. MOSELEY-BRAUN, and Mr. COHEN):

S. 486. A bill to reorganize the Federal administrative law judiciary, and for other purposes; to the Committee on the Judiciary.

By Mr. McCAIN (for himself and Mr. INOUYE):

S. 487. A bill to amend the Indian Gaming Regulatory Act, and for other purposes; to the Committee on Indian Affairs.

By Mr. SPECTER:

S. 488. A bill to amend the Internal Revenue Code of 1986 to impose a flat tax only on the earned income of individuals and the business taxable income of corporations, and for other purposes; to the Committee on Finance.

By Mr. CAMPBELL (for himself and Mr. BROWN):

S. 489. A bill to authorize the Secretary of the Interior to enter into an appropriate form of agreement with, the Town of Grand Lake, Colorado, authorizing the town to maintain permanently a cemetery in the Rocky Mountain National Park; to the Committee on Energy and Natural Resources.

By Mr. GRASSLEY:

S. 490. A bill to amend the Clean Air Act to exempt agriculture-related facilities from certain permitting requirements, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BREAUX (for himself, Mr. HOLLINGS, Mr. INOUYE, Mr. COCHRAN, and Mr. CHAFEE):

S. 491. A bill to amend title XVIII of the Social Security Act to provide coverage of outpatient self-management training services under part B of the medicare program for individuals with diabetes; to the Committee on Finance.

By Mr. CHAFEE:

S. 492. A bill to authorize the Secretary of Transportation to issue a certificate of documentation for the vessel *Intrepid*; to the Committee on Commerce, Science, and Transportation.

S. 493. A bill to authorize the Secretary of Transportation to issue a certificate of documentation for the vessel *Consortium*; to the Committee on Commerce, Science, and Transportation.

By Mr. JEFFORDS (for himself, Mr. LEAHY, Ms. SNOWE, Mr. KENNEDY, Mr. COHEN, Mr. GREGG, Mr. DODD, Mr. SMITH, Mr. CHAFEE, Mr. KERRY, Mr. LIEBERMAN, and Mr. PELL):

S.J. Res. 28. A joint resolution to grant consent of Congress to the Northeast Interstate Dairy Compact; read the first time.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BROWN (for himself and Mr. HELMS):

S. Res. 82. A resolution to petition the States to convene a Conference of the States to consider a Balanced Budget Amendment to the Constitution; to the Committee on the Judiciary.

By Mr. FEINGOLD (for himself and Mr. BUMPERS):

S. Res. 83. A resolution expressing the sense of the Senate regarding tax cuts during the 104th Congress; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mr. MACK:

S. Res. 84. A resolution saluting Florida on the 150th anniversary of Florida statehood, and for other purposes; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HOLLINGS (for himself and Mr. THURMOND):

S. 482. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for the vessel *Emerald Ayes;* to the Committee on Commerce, Science, and Transportation.

"EMERALD AYES" CERTIFICATE OF DOCUMENTATION LEGISLATION

Mr. HOLLINGS. Mr. President, I am introducing a bill today to direct that the vessel *Emerald Ayes*, official number 986099, be accorded coastwise trading privileges and be issued a certificate of documentation under section 12103 of title 46, United States Code.

The *Emerald Ayes* was constructed in Canada in 1992, and is a sailing catamaran for use as a recreational vessel. It is 36.4 feet in length, 18.2 feet in breadth, has a depth of 9.4 feet, and is self-propelled.

The vessel was purchased by Dr. Stephen D. Michel of Mount Pleasant, SC, who purchased it with the intention of chartering the vessel for short sailing tours. However, because the vessel was built in Canada, it did not meet the requirements for coastwise license endorsement in the United States. Such documentation is mandatory to enable the owner to use the vessel for its intended purpose. He first sought to purchase a U.S.-built vessel, but this type of sailboat is not built by any U.S. shipbuilders. He has invested a considerable amount of money in this vessel, and without a Jones Act waiver for the boat, he will be forced to sell it.

The owner of the *Emerald Ayes* is seeking a waiver of the existing law because he wishes to use the vessel for charters. His desired intentions for the vessel's use will not adversely affect the coastwise trade in U.S. waters. If he is granted this waiver, it is his intention to comply fully with U.S. documentation and safety requirements. The purpose of the legislation I am introducing is to allow the *Emerald Ayes* to engage in the coastwise trade and the fisheries of the United States.

By Mr. HATCH (for himself, Mrs. FEINSTEIN, and Mr. THOMPSON):

S. 483. A bill to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes; to the Committee on the Judiciary.

THE COPYRIGHT TERM EXTENSION ACT OF 1995

Mr. HATCH. Mr. President, Congress has in recent years passed many significant copyright measures, but it is a rare occasion when we address the fundamental aspects of copyright protection, such as the nature of the works protected, the scope of rights recognized, or the duration of copyright.

Still, from time to time, it becomes clear that fundamental change is needed. I believe we are now at such a point with respect to the question of whether the current term of copyright adequately protects the interests of authors and the related question of whether the term of protection continues to provide a sufficient incentive for the creation of new works of authorship.

The current term of copyright is, in my view, inadequate to perform its historic functions of spurring creativity and protecting authors. Thus, I am filing today the Copyright Term Extension Act of 1995, which has the general purpose of increasing existing copyright terms by the addition of a further 20 years of protection. I am pleased to be joined in this effort by my colleagues on the Senate Judiciary Committee, Senator FEINSTEIN of California and Senator THOMPSON of Tennessee.

Mr. President, Congress has protected copyrights since the very first Congress, and the entire history of our copyright laws has been a history of everincreasing protection, both with respect to the nature of works protected, as well as with respect to the duration of protection. Still, in over 200 years, the copyright term has only been extended on three prior occasions.

In 1790, the first Congress set the maximum term of copyright protection at 28 years—a 14-year initial period that could be renewed for an additional 14 years. In 1831, we extended that period by 14 years—a 28-year initial period that could be renewed for an additional 14 years. In 1909, the major copyright reform act of that era extended the maximum term of copyright to 56 years—a 28-year initial term that could be renewed for an additional 28 years.

Most recently, the Copyright Act of 1976 fundamentally altered the way in which we measure copyright by protecting works throughout the life of their creator plus an additional 50 years. In so doing, we adopted the prevailing international standard of protection—a standard that was first recommended by the members of the Berne Convention for the Protection of Literary and Artistic Works in the Act of Berlin of November 13, 1908, and that was made mandatory for members of the Berne Union by the Act of Brussels of June 26, 1948.

For existing works, the Copyright Act of 1976 created a maximum term of 75 years of protection—a 34-percent increase in term of protection over the preceding maximum of 56 years. The 20-year increase in protection that the Copyright Extension Act of 1995 provides for existing works is a far more modest extension of copyright than that which we adopted in 1976, or, in fact, that which was implemented by the two previous congressional extensions of copyright term.

Every work created after the effective date of the Copyright Term Extension Act will be prospectively protected for the remainder of the author's life and for 70 years thereafter. Works in existence on that date will receive the identical protection, if their author is still living. As for the works of authors already decreased, my bill provides an additional 20 years of protection; provided, that the works have not, on the effective date of the bill, already gone into the public domain.

Those works whose term of protection under the current Copyright Act is not tied to the life of an author but is a fixed term of years, such as works made for hire, will also receive an additional 20 years of protection. Where they are protected for 75 years under present law, they will be protected for 95 years under the provisions of the Copyright Term Extension Act.

By providing this across-the-board extension of copyright for an additional 20 years, I believe that authors will reap the full benefits to which they are entitled from the exploitation of their creative works. In addition, there are significant trade benefits to be obtained by extending copyright in the United States to bring our law into conformity with the longer copyright term enjoyed by authors in other nations.

As I noted above, our current basic copyright term of life plus 50 years is prevailing international standard, one now also applicable to the members of the World Trade Organization through the implementation of the Agreement on the Trade Related Aspects of Intellectual Property Protection [TRIPS]. Despite the nearly universal adoption of the life-plus-50-year term of copyright, many have observed that the term itself, particularly the decision to give significance to 50 years, has achieved dominance perhaps more through imitation and acceptance than through an analytical belief that the life-plus-50-year term represents the ideal period of protection needed to appropriately reward and inspire creative activity. See, that is, Ricketson, "The Berne Convention for the protection of literary and artistic works: 1886–1986" p. 321.

> While the [Berne Convention's] prescriptions as to duration are quite precise, there has never been any real effort made to justify why, or to explain how, these terms have come to be adopted * * *

Even though the United States adopted the life-plus-50-year term of copyright only 19 years ago, and even though that term of protection has a nearly century-old history in the international arena, I do not believe that it should be accepted uncritically as an ideal or even sufficient measurement of the most appropriate duration for copyright term. Instead, we should be aware of the many nations that have historically provided longer terms of copyright as well as the recent developments to extend copyright in Europe. Also, we need to examine the real-life experience of creators, their reasonable expectations for exploiting their works, and the concerns and views of the descendants, heirs, and others whom the postmortem protection of copyright was designed to benefit.

Among the European nations, Germany and Spain have for some time recognized respectively terms of life plus 70 years and life plus 80 years, and Portugal has for much of this century provided a perpetual term of protection. In addition, it is common for bilateral agreements relating to copyright protection among particular nations to provide for terms of protection in excess of the life-plus-50-year standard.

As far as a general reconsideration of the life-plus-50-year term, it should be noted that as long ago as 1961 the permanent committee of the Berne Union began the process of reexamining the sufficiency of that term of protection. At the Stockholm Conference of 1967, a proposal to increase the copyright term to life plus 80 years was debated though not adopted. It is, however, easy to speculate that the failure to increase copyright term at that time may have been disproportionately influenced by the contemporaneous efforts in the United States to adopt a copyright act compatible with the existing minimum requirements of the Berne Convention. An extension of the minimum term at that time would, however meritorious, surely have made more difficult the eventual adoption of the Copyright Act of 1976 in the United States.

In the intervening years, the inadequacy of the life-plus-50-year term has become more apparent, and nations have acted to increase the duration of copyright. Most significantly, the nations of the European Union, pursuant to an October 1993, directive of the Council of the European Communities, are committed to reaching a life-plus-70-minimum term of protection by July of this year. It is thus fair to say that for a significant portion of the developed world—for the nations, moreover, that have traditionally been in the forefront of protecting authors' rights—the term of life-plus-70 has gained a broad acceptance.

I am pleased to be the author of the bill that I hope will bring American copyright law into accord with this developing international understanding as to the appropriate duration of copyright.

The benefits of extending copyright by 20 years will be felt in many areas. The vast majority of our European and other trading partners have obligated themselves to extend to our authors the full protection of their copyright laws—at least to the extent that America recognizes complementary rights. Of course, I should add that with respect to the minimum requirements for copyright protection, national treatment for U.S. authors is mandated by the Berne Convention as well as by the TRIPS agreement. But copyright protections in excess of the Berne minima will not be freely granted to U.S. authors on the basis of national treatment. Instead, the option allowed by the Berne Convention's "role of the shorter term" will no doubt be often employed by foreign states with the result that American works will be protected in those nations only to the extent that the works of their authors are protected in America—article 7(1) of the EC directive explicitly mandates rule of the shorter term treatment for the works of foreign authors.

After the European law goes into effect, American authors will be theoretically protected for an additional 20 years, but will in reality be unprotected for that entire period of time—unless American law is strengthened in the manner proposed by the bill I am filing today.

America exports more copyrighted intellectual property than any country in the world, a huge percentage of it to the nations of the European Union. Intellectual property is, in fact, our second largest export; it is an area in which we possess a large trade surplus. At a time when we face trade deficits in many other areas, we cannot afford to abandon 20 years' worth of valuable overseas protection now available to our creators and copyright owners. We must adopt a life-plus-70-year term of copyright if we wish to improve our international balance. It just makes plain common sense to ensure fair compensation for the American creators whose efforts fuel this important intellectual property sector of our economy by extending our copyright term to allow American copyright owners to benefit from foreign uses. By so doing, we guarantee that our trading partners do not get a free ride for their use of our intellectual property.

While we may be accustomed to a substantial American balance-of-trade surplus with respect to trade in works of intellectual property, we cannot afford to take this condition for granted. In a world economy where copyrighted works flow through a fiber optic global information infrastructure, American competitiveness demands that we adapt our laws—and adapt them quickly—to provide the maximum advantage for our creators.

Anonymous and pseudonymous works: I noted about that the copyright term extension provided by the bill I file today is not mandated by our treaty obligations. But it may be well to note parenthetically that at least in one respect the 20-year term extension does advance our ongoing efforts to fulfill our obligations under the Berne Convention. I am speaking of the term of protection applicable to anonymous and pseudonymous works. Article 7(3) of the Berne Convention mandates that such works be protected for at least 50 years after they are first made lawfully available to the public. Our current law protects those works for 75 years, yet §302(c) of the Copyright Act also establishes a maximum term of protection—100 years from the date of their creation—beyond which no anonymous or pseudonymous work will be protected, regardless of the date on which it may ultimately be made available to the public. My bill increases each of these terms by 20 years.

Since the Stockholm Act of July 14, 1967, the Berne Convention has recognized the need for an outer limit on the protection of anonymous and pseudonymous works by providing that, "The countries of the Union shall not be required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for fifty years." Art. 7(3). It has been argued that the American provision setting an outer limit of 100 years of protection for anonymous and pseudonymous works is in violation of the Berne Convention, see Nimmer, "Copyright" §9.01[D], at least with respect to works whose country of origin is not the United States. By increasing the maximum protection from its current 100 years to a period of 120 years, the Copyright Term Extension Act will at least serve to reduce greatly the number of potential situations in which our law may operate in violation of the Berne Convention. This for the reason that it is far more reasonable to presume that an author who created a work 120 years ago may have been deceased for 50 years, than it is to presume that the author of a work created only 100 years ago may have been deceased for at least 50 years.

Mr. President, that is the theoretical, one might say jurisprudential, background of the copyright issue before us today. But it may be well to consider this legal question in its practical aspect as well. What works are we talking about? Who is affected by this legislation?

Mr. President, this legislation matters and it matters to some of the most distinguished members of America's cultural and artistic community. If we examine the significance of this legislation just in the area of popular music alone, I believe we will see its importance.

Consider the following songs that fell into the public domain just 2 months ago at the end of 1994—works still widely performed in theaters and through media around the world:

"Swanee" by George Gershwin and Irving Caesar; "A Pretty Girl Is Like a Melody" by Irving Berlin; "Alice Blue Gown" by Joseph McCarthy and Harry Tierney.

In the preceding 2 years, the following standards also lost copyright protection, despite their continued popularity: "After You've Gone" by Henry Creamer and Turner Layton; "Till the Clouds Roll By" by Jerome Kern and P.G. Wodehouse; "Over There" by George M. Cohan; "Till We Meet Again" by Richard Whiting and Raymond Egan.

If the Copyright Term Extension Act of 1995 is not adopted this year in this session of Congress, the following songs will no longer be protected by copyright: "Look for the Silver Lining" by Jerome Kern and Bud DeSylva; "Avalon" by Al Jolson, Bud DeSylva, and Vincent Rose.

Within the next few years, if Congress does not act to adopt legislation such as that which I introduce today, the following musical works will also fall into the public domain: "Rahpsody in Blue" by George Gershwin; "My Buddy" by Walter Donaldson and Gus Kahn; "What'll I Do" by Irving Berlin; "Georgia" by Walter Donaldson and Howard Johnson; "It Had To Be You" by Isham Jones and Gus Kahn; "Showboat" by Jerome Kern and Oscar Hammerstein II.

All of these songwriters and composers are household names still, after 75 years. Indeed "Showboat" is back on Broadway, eight performances a week, nearly 70 years after its premiere.

But I would like to draw particular attention to the career of Walter Donaldson. He composed the songs cited above when he was in his twenties, and he died in 1947 when he was in his midfifties. He composed innumerable standards and will forever be linked to the extraordinary success of the 1927 film "The Jazz Singer" in which his songs were sung by Al Jolsen. The historical significance of that motion picture, the first sound film to be commercially released, can hardly be overstated.

If the present copyright law had been in effect in the 1920's, all of Walter Donaldson's compositions would fall into the public domain within the next 2 years. Yet these historical facts should not mislead us into thinking that the copyright status of his works is an academic issue. For it was Ellen Donaldson, the composer's daughter, who first alerted me to the importance of this issue only 2 years ago. I do not think she will mind my pointing out that she is now only in her early fifties. She remains extremely active in publishing and exploiting her father's music and in protecting his copyrights. Like the children of composers such as Richard Rogers, Irving Berlin, Richard Whiting, Hoagy Carmichael, and many, many others, her legitimate interest in her father's copyrights can be expected to continue for decades, certainly for another 20 years.

Mr. President, from interviews I have had with writers, authors, and artists of all kinds, and from the hearings we have held on issues of concern to authors in the Judiciary Committee over the past 18 years, I have come to the conclusion that the vast majority of authors expect their copyrights to be a potentially valuable resource to be passed on to their children and through them into the succeeding generation. I believe that they are reasonable in this expectation and that such a general expectation is what the Framers of the Constitution had in mind when they constrained the power of Congress to grant patents and copyrights only with the very broad and flexible requirement that such rights be granted "for limited times." Article I, section 8. When, however, we so often see copyrights expiring before even the first generation of an author's heirs have fully benefited from them, then I believe that is accurate to say that our term of copyright is too short and for a too limited time.

One could also cite demographic factors that point to the need for a longer term if copyright is truly to reflect the natural desire of authors to provide for their heirs. Principal among these would be the increasing lifespan of the average American, as well as the increasing fact of children being born far later, in a marriage than in past decades. Whatever the reason, the inescapable conclusion must be drawn that copyrights in valuable works are too often expiring before they have served their purpose of allowing an author to pass their benefits on to his or her heirs. I urge my colleagues to pass the Copyright Term Extension Act of 1995 to remedy this situation.

Mr. President, we in Congress are currently dealing with a number of fundamental issues that bring into question how we have done things in the Federal government over many years. These debates raise the question of the proper role of the Federal Government in sponsoring, stimulating, and, where appropriate, funding artistic activity across a wide range of fields. We are asking virtually every Federal program now in existence to justify its function. And, as a result, we hear much about the programs that do not work.

We hear all too little about the good that Government can do when it functions in a limited and effective way. I would submit that the copyright system—in the way that it rewards private initiative through governmental protection, all without the need for a regulatory bureaucracy—is a model for the best that government can do to improve the life of its citizens.

And when one considers that all works of creativity fixed by any method now known or later developed are invested from the moment of their creation with substantial rights that can be protected in any Federal court, then I think it becomes clear that the copyright system is something we should encourage and, where appropriate, extend.

Because the bill I introduce today does extend the benefits of copyright in an appropriate and obviously needed way, I am proud to be its sponsor. I urge my colleagues to give it their most serious consideration.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 483

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Term Extension Act of 1995".

SEC. 2. DURATION OF COPYRIGHT PROVISIONS.

(a) PREEMPTION WITH RESPECT TO OTHER LAWS.—Section 301(c) of title 17, United States Code, is amended by striking out "February 15, 2047" in each place it appears and inserting "February 15, 2067" in each such place.

(b) DURATION OF COPYRIGHT: WORKS CREATED ON OR AFTER JANUARY 1, 1978.—Section 302 of title 17, United States Code, is amended—

(1) in subsection (a) by striking out "fifty" and inserting in lieu thereof "seventy";

(2) in subsection (b) by striking out "fifty" and inserting in lieu thereof "seventy";

(3) in subsection (c) in the first sentence—

(A) by striking out "seventy-five" and inserting in lieu thereof "ninety-five"; and

(B) by striking out "one hundred" and inserting in lieu thereof "one hundred and twenty"; and

(4) in subsection (e) in the first sentence—

(A) by striking out "seventy-five" and inserting in lieu thereof "ninety-five";

(B) by striking out "one hundred" and inserting in lieu thereof "one hundred and twenty"; and

(C) by striking out "fifty" in each place it appears and inserting "seventy" in each such place.

(c) DURATION OF COPYRIGHT: WORKS CREATED BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANUARY 1, 1978.—Section 303 of title 17, United States Code, is amended in the second sentence—

(1) by striking out "December 31, 2002" in each place it appears and inserting "December 31, 2012" in each such place; and

(2) by striking out "December 31, 2027" and inserting in lieu thereof "December 31, 2047".

(d) DURATION OF COPYRIGHT: SUBSISTING COPYRIGHTS.—

(1) Section 304 of title 17, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1)—

(I) in subparagraph (B) by striking out "47" and inserting in lieu thereof "67"; and

(II) in subparagraph (C) by striking out "47" and inserting in lieu thereof "67";

(ii) in paragraph (2)—

(I) in subparagraph (A) by striking out "47" and inserting in lieu thereof "67"; and

(II) in subparagraph (B) by striking out "47 and inserting in lieu thereof "67"; and

(iii) in paragraph (3)—

(I) in subparagraph (A)(i) by striking out "47" and inserting in lieu thereof "67"; and

(II) in subparagraph (B) by striking out "47" and inserting in lieu thereof "67"; and

(B) in subsection (b) by striking out "seventy-five" and inserting in lieu thereof "ninety-five".

(2) Section 102 of the Copyright Renewal Act of 1992 (Public Law 102–307; 106 Stat. 266; 17 U.S.C. 304 note) is amended—

(A) in subsection (c)—

(i) by striking out "47" and inserting in lieu thereof "67";

(ii) by striking out "(as amended by subsection (a) of this section)"; and

(iii) by striking out "effective date of this section" each place it appears and inserting in each such place "effective date of the Copyright Term Extension Act of 1995"; and

(B) in subsection (g)(2) in the second sentence by inserting before the period the following: ", except each reference to forty-seven years in such provisions shall be deemed to be sixty-seven years".

SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

Mrs. FEINSTEIN. Mr. President, as always when it comes to matters of copyright law, the distinguished chairman of the Judiciary Committee has spoken well and to the point as to why extending the basic term of copyright protection by 20 years is both the right and the economically desirable thing to do, and to do without delay. As the bill's coauthor, I'd like to add just a few thoughts about our proposal to extend the length of copyright protection for only the fourth time since the Founding Fathers established such rights more than 200 years ago.

First principles come first. The fundamental animating principle of copyright protection was—and remains—assuring that the Nation's most creative individuals have and retain a sufficient economic incentive to continue to craft, work by copyrightable work, the incomparable mosaic of our Nation's cultural life. For many years now, such incentive has been considered to be the right to profit from licensing one's work during one's lifetime and to take pride and comfort in knowing that one's children—and perhaps their children—might also benefit from one's posthumous popularity. Indeed, it was to preserve that incentive that Congress adopted the current life plus 50 years term that is now the law.

Human longevity, however, is increasingly undermining this fundamental precept of copyright law, Mr. President, and with it the economic incentive deemed essential by the authors of the Constitution. We all had the great good fortune, for example, to have the incomparable Irving Berlin among us until 1989, when he died at the age of

101. By that time, however, Mr. Berlin had outlived the period in which he was entitled to royalties from the immortal "Alexander's Ragtime Band." Although not every American copyright owner will reach the century mark, Mr. President, it's clear that we as a Nation are living longer and more active lives.

Copyright law has in the past—and should now again—reflect that central fact of life. Accordingly, the Copyright Term Extension Act of 1995 uniformly extends the life of copyright protection in this country by 20 years, a modest extension relative to past adjustments, as Chairman HATCH points out. Writers, artists, filmmakers, composers, photographers, sculptors, and cartographers alike—and their children, all will benefit from this overdue adjustment. Perhaps more importantly, as the ultimate beneficiaries of the creativity that copyright protection is intended to assure, so will we all.

Second, Mr. President, as important as America's cultural enrichment is, the United States also stands to benefit dramatically on the world economic stage from extension of the current copyright term. As the tense and protracted negotiations with China just concluded underscored, intellectual property—the collective copyrightable output of America's creators of movies, music, art and other works—is an enormous asset to the Nation's balance of trade.

Indeed, in a recent Billboard magazine commentary, Prof. Arthur Miller of the Harvard Law School noted that, "In 1990, America's 'copyright industries' recorded $34 billion in foreign sales * * *." It's no wonder, Mr. President, that the Chinese preferred to appropriate American film and music for resale—two great exports from my State of California—rather than license American works.

By extending to life plus 70 years the basic copyright protection afforded in the United States for new works, Congress will assure comparable protection for American authors in the countries of the European Union, which will formally adopt the life-plus-70 standard this summer. If we do not act, Mr. President, those nations quite simply will not be required to provide American authors, artists and other copyright holders with more than the protection we afford their intellectual property holders here at home. Simply put, Mr. President, conforming our intellectual property laws with those of our trading partners in the service of American competitiveness is critical.

As Professor Miller aptly put it: "Unless Congress matches the copyright extension adopted by the European Union, we will lost 20 years of valuable protection against rip-off artists around the world." I'm certain that the tired, but successful team from the United States Trade Representative's office just returned from China will testify if asked, Mr. President, that the stronger our copyright laws here at home, the better the deal they can negotiate for American copyright holders abroad. Since America is—and is likely to remain—the world's principal exporter of popular culture, extension of the basic copyright term makes international dollars and sense.

Third, and finally, Mr. President, I want to note for the record the extraordinary support for this legislation within the intellectual property community. Not only do movie and music companies strongly back this bill as written, as one would expect, but book and music publishers, performing rights societies representing America's premier songwriters and composers, and major software producing firms all concur that Congress can and must pass this important legislation.

I want to thank Chairman HATCH and his staff once again, Mr. President, for another—to my mind—successful collaboration to protect and encourage the production of American intellectual property. Just as was the case with the digital performance rights legislation which we first introduced in the last Congress and jointly offered again recently, it is equity and economics which make the Copyright Term Extension Act of 1995 an important and worthwhile bill.

I commend it to my colleagues, and look forward to working with them and the copyright community at large to put it—as well as digital performance rights legislation—before the President by the end of this session of Congress.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Billboard magazine, January 14, 1995]

EXTENDING COPYRIGHTS PRESERVES U.S. CULTURE

(By Arthur R. Miller)

Beginning this summer, all member nations of the European Union will extend the length of copyright protection to the life of the author plus 70 years. Should we in America provide the same protection for our own writers, musicians, artists, computer programmers, and other creators of copyrighted items?

Some feel that we should not tamper with existing U.S. law, which provides copyright protection for life plus 50 years. But this status-quoism ignores some fundamental changes that have occurred in the 20th century.

One of the major reasons Congress originally adopted life-plus-50-years was to offer protection not only to the creator of the copyrighted works, but to his or her children and grandchildren—that is, to three generations in all. With people living longer today, an extension of the copyright term by 20 years would roughly correspond to the increase in longevity that has occurred during the 20th century.

In addition, Congress has already recognized the wisdom of extending copyright protection to match the terms guaranteed by other nations. That is exactly what Congress did in 1976 when it extended the copyright term to life-plus-50-years, in order to bring American law into line with the term then commonly recognized by other nations.

But beyond this, the main arguments for term extension are equity and economics.

If Congress does not extend to Americans the same copyright protection afforded Europeans, American creators will have 20 years less protection than their European counterparts—20 years during which Europeans will not be paying Americans for our copyrighted products. This situation would not only be unfair to creators of copyrighted works, but would be harmful economically to the country as a whole.

The export of intellectual property is growing at a tremendous rate because America dominates popular culture the world over. In 1990, America's "copyright industries" recorded $34 billion in foreign sales of records, CDs, computer software, motion pictures, music, books, scientific journals, periodicals, photographs, designs, and pictorial and sculptural works. Because the world is so eager for the products of America's copyright industries, they are one of the few bright spots in our balance-of-trade picture.

The question of copyright extension should be viewed in the larger context of bilateral and multilateral trade talks—including the Trade Related Intellectual Property Rights (TRIPS) negotiations under GATT. U.S. trade representatives have found that shortcomings in our own copyright law are used against us when we call for stronger protection for American works overseas. One can just hear the Europeans objecting in future negotiations: "How can you ask for better protection in Europe when you do not even grant the same term of protection we do?"

The need for strong copyright protection becomes more important every year as a weapon with which to fight the piracy of intellectual property. Overseas piracy of American copyrighted material has grown dramatically in recent years due to the availability of equipment that can make cheap copies of movies, videotapes, sound recordings, and computer programs. As more and more digital technology arrives on the scene, the problem will only become worse.

Indeed, China alone produced an estimated $2 billion worth of counterfeit recordings and computer discs last year. According to the International Federation of the Phonographic Industry, China now has as many as 26 factories capable of producing 62 million compact discs. China's domestic market accounts for only about 3 million discs, so the dimension of the loss to copyright owners is obvious. Unless Congress matches the copyright extension adopted by the European Union, we will lose 20 years of valuable protection against rip-off artists around the world.

It would not take long to see what harm can come from not changing our laws to match those of Europeans. America may be a young nation, but we have the world's oldest popular culture. Many wonderful motion pictures and songs—including Irving Berlin's "Alexander's Rag Time Band"—already have lost their copyright protection. Dozens, if not hundreds, of other valuable songs and motion pictures—the legacy of American culture—also will lose their protection in the next few years. For example, if Congress does not act soon, such classics as "After You've Gone," "I'm Always Chasing Rainbows," "A Pretty Girl Is Like A Melody," "Swanee," and "The World Is Waiting For The Sunrise" will fall into the public domain, and that is only the beginning.

Commentary writer Professor Lewis Kurlantzick (Billboard, Oct. 29, 1994) asserted that when copyrighted works lose their protection, they become more widely available. At first blush, this appears logical. But, paradoxically, works of art become less available to the public when they enter the public domain—at least in a form that does credit to the original. This is because few businesses will invest the money necessary to reproduce and distribute products that have lost their copyright protection and can therefore be reproduced by anyone. The only products that do tend to be made available after a copyright expires are "down and dirty" reproductions of such poor quality that they degrade the original copyrighted work. And there is very little evidence that the consumer really benefits economically from works falling into the public domain.

Kurlantzick also denigrates the importance of long-term copyright protection by stating that "a dollar to be received 75 years from now is worth a small fraction of one cent." But, he fails to see that the dollar value placed on future copyright advantages will increase more or less in proportion with the inflation rate. That is to say, if the dollar loses 90% of its value over the next 75 years, then the cost of goods and services will be roughly 90% higher in 75 years than it is today.

For all these reasons, it's clear why Congress should act. America can reap valuable benefits, at no cost to itself, if Congress enacts legislation to extend our copyright protection by 20 years. By harmonizing our laws with the EU, we can reduce our balance-of-trade deficit, encourage economic investment, strengthen our hand in dealing with intellectual piracy, and see to it that America's authors, composers, artists, and computer programmers receive the same level of protection afforded the creative people of other nations. Thus, copyright term extension makes economic sense, and it's equitable.

By Mr. GRAHAM:

S. 484. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to establish a national clearinghouse to assist in background checks of applicants for law enforcement positions, and for other purposes; to the Committee on the Judiciary.

THE LAW ENFORCEMENT AND CORRECTIONAL OFFICERS EMPLOYMENT REGISTRATION ACT OF 1995

• Mr. GRAHAM. Mr. President, I introduce the Law Enforcement and Correctional Officers Employment Registration Act of 1995, which will establish a national clearinghouse to assist in background checks on law enforcement applicants.

This legislation would establish a national data bank to provide quick, accurate and prior officer employment history on all applicants for law enforcement agencies. This clearinghouse has been called a Pointer File and simply maintains basic information of all certified officers, including names, dates of birth, social security numbers, dates of employment, and any decertifications. The Department of Justice would maintain and offer computer access to all criminal agencies.

The intent of my legislation is to help prevent what "Dateline NBC" has referred to as gypsy cops. These are police officers who have been dismissed or have been forced to resign from previous positions but conceal prior employment history in future job applications.

In the case of the beating death of Bobby Jewett on November 24, 1990, in West Palm Beach, FL, "Dateline NBC" was able to subsequently trace the prior employment histories of the two officers involved in the case through four States and eight different law enforcement agencies. Much of this had been concealed in their job applications.

As noted in a Tampa Tribune editorial in support of a clearinghouse,

> Few agencies, particularly those in rural areas and smaller towns, have the personnel and resources to conduct thorough background checks on police applicants. Not even the largest agencies always succeed in finding an officer's past if he or she is determined to hide it.

Florida Department of Law Enforcement Commissioner James T. Moore adds, "Experience has shown that, after being found guilty of misconduct, many problem officers resign or are fired, only to seek police jobs elsewhere. The clearinghouse system would allow a law enforcement agency to review each officer applicant's prior history as an officer." In order to protect the rights of officers, however, the clearinghouse would not contain information relating to causes of dismissal.

Thomas J. O'Loughlin, chief of police of Wellesley, MA, notes,

> The safety of the citizens of this Commonwealth and this Nation is either weakened or solidified by the character of the individuals that we entrust with the responsibility to protect. This legislation provides society with the necessary tools to ensure that individuals who have violated this trust do not simply relocate and once again commit grievous offenses against the public good, and it ensures that a complete and thorough background investigation will be completed prior to an individual assuming the public's trust to be a protector of society.

This legislation is essential to maintaining public confidence in the police. Further, the financial impact of office misconduct, as measured by the costs of civil liability litigation, is alarming. A 1992 survey of members of the National Institute of Municipal Law Officers found police liability to be the leading cause of soaring litigation costs since 1989. For the majority of law enforcement officers, this is also an issue of job integrity and job safety. The misdeeds of a few place others in an unfavorable light and also at risk.

It is safe to say that a history of past dishonorable service in other criminal justice agencies is the most compelling reason to reject an offer. However, this critical information is often unavailable. That is why the International Association of Chiefs of Police has endorsed this legislation.

In addition, the Florida Criminal Justice Standards and Training Commission adopted a unanimous resolution in support of such a program. I would like to thank these organizations, as well as Commissioner Moore, for their efforts to protect effectiveness and professionalism in law enforcement as well as the public's safety.

I urge my colleagues to join me in support of this important legislation.•

By Mrs. HUTCHISON:

S. 485. A bill to amend the Solid Waste Disposal Act to provide and clarify the authority for certain municipal solid waste flow control arrangements; to the Committee on Environment and Public Works.

THE MUNICIPAL WASTE FLOW CONTROL TRANSITION ACT OF 1995

• Mrs. HUTCHISON. Mr. President, on May 16, 1994 the U.S. Supreme Court handed down a decision in C&A Carbone versus Clarkstown, NY that has important implications for local municipal waste management planning.

At issue in the Carbone case was the constitutionality of local ordinances that enforce flow control. A flow control ordinance enables a local government to direct locally generated waste to a specific waste disposal facility. The waste disposal facility is typically a solid waste combustor that is owned by the local government.

In its Carbone decision the Court found that flow control was an unconstitutional interference in interstate commerce. In general, this ruling was a victory for taxpaying consumers who will benefit from the improved service and prices that result from competition for waste disposal services.

However, the Court's decision leaves local governments with flow control regimes in a vulnerable position. In most cases, flow control assures the financial feasibility of a locally owned or financed waste disposal facility. That is, municipal bonds were sold and facilities built in reliance on flow control guaranteed waste disposal income. Lacking this the financial feasibility of such disposal facilities and local governments is jeopardized.

At the end of the 103d Congress a number of my colleagues and I worked on a bill that would have grandfathered existing flow control arrangements. Unfortunately, the Senate did not complete action before adjournment.

If anything, the urgency of cushioning the effects of the Carbone decision on affected local governments has increased. Although there have not yet been any defaults, the risk of local and municipal bond market disruptions continues.

Today I offer legislation, the Municipal Waste Flow Control Transition Act of 1995, that is very similar to that supported by most of the affected parties at the end of the last Congress.

My bill preserves flow control for local governments that made substantial investments predicated on flow control authority before Carbone. It ensures flow control authority for the life of the affected facilities. However, my legislation would not permit new flow control arrangements, thereby assuring free competition and unfettered interstate commerce in the future.

Mr. President, we should protect the local governments and local taxpayers who are threatened financially by invalidation of their flow control ordinances. We can do so, as my bill does, in a straight forward fashion and, at the same time, assure that businesses and homeowners will have the benefits of a free market in the future.●

By Mr. HEFLIN (for himself, Mr. SPECTER, Mr. FORD, Mr. THURMOND, Mr. BUMPERS, Mr. BROWN, Mr. SIMON, Mr. SHELBY, Ms. MOSELEY-BRAUN, and Mr. COHEN):

S. 486. A bill to reorganize the Federal administrative law judiciary, and for other purposes; to the Committee on the Judiciary.

THE REORGANIZATION OF THE FEDERAL ADMINISTRATIVE JUDICIARY ACT

Mr. HEFLIN. Mr. President, I am pleased to rise in support of legislation entitled "the Reorganization of the Federal Administrative Judiciary Act." I am pleased to advise that I have been joined today by nine colleagues from both sides of the aisle and who are original cosponsors of this reform legislation. They are Senators SPECTER, FORD, THURMOND, BUMPERS, BROWN, SIMON, SHELBY, MOSELEY-BRAUN, and COHEN.

The purpose of this legislation is to reorganize and establish an independent corps of administrative law judges within the executive branch of Government. The bill is designed to address two critical issues which face our Nation. First, an independent corps is vital to the continued impartial resolution of issues and decision of cases arising under the administrative procedure act. Second, this bill streamlines the Federal bureaucracy in order to better meet the needs of the people of the United States. For these reasons, legislation needs to be adopted to improve this Nation's administrative system of justice.

In the 103d Congress, I introduced similar legislation, and on September 15, 1993, the Judiciary Committee considered this legislation, and ordered it favorably reported in the nature of a substitute to the Senate. On November 19, 1993, this bill was considered on the floor of the Senate and adopted a technical amendment which I offered and two valuable amendments offered by my colleagues Senator HANK BROWN of Colorado and Senator WILLIAM COHEN of Maine. The legislation I am introducing today is identical to the legislation which unanimously passed the Senate on November 19, 1993.

While the House of Representatives regretfully failed to consider S. 486 during the second session of the 103d Congress, I am hopeful, in light of the recent election results by which the American people expressed their support for leaner, more efficient, and less costly Federal Government, that the new Congress will favorably consider and adopt this legislation and send it to President Clinton for signature.

The primary objective of this legislation is to reorganize the Federal administrative judiciary to promote efficiency, productivity, and the reduction of overhead functions. It will provide for economies of scale to better serve the public in the resolution of administrative disputes. This goal will be accomplished by placing all ALJ's in a unified corps with a chief judge as the primary administrative officer. The chief judge will be responsible for developing programs and practices, which attain this objective. Those programs and practices will include the training of judges in more than one subject area. This training will permit the utilization of the skills and expertise of each judge across agency lines to meet the demands of the existing workload.

Generally, this bill would establish an independent corps for administrative law judges which would operate under the executive branch of the Government. The corps would be governed by a chief administrative law judge. Further, the corps would be divided into eight divisions, with each division governed by a division chief administrative law judge. The chief and division chief ALJ's would be Presidential appointments, by and with the advice and consent of the U.S. Senate.

The chief and division chief ALJ's would form a council. The council would be the policy making body for the corps. The council would have the authority to assign judges to divisions, appoint persons as administrative law judges, prescribe rules of practice and procedure for the corps, issue appropriate rules and regulations for the efficient conduct of the corps, and generally manage the day-to-day operations of the corps.

This bill provides explicit protection for ALJ's. The corps would continue to make appointments of administrative law judges from a register of qualified candidates maintained by the Office of Personnel Management. In order for an ALJ to be involuntarily reassigned to a new permanent duty station, an ALJ must receive a written explanation from the council stating that such a move is required in order to meet substantial changes in workloads. ALJ's would continue to hear and adjudicate the same types of cases which they presently decide. Further, ALJ's would continue to be assigned cases within their division on a rotating basis, taking into account issues of expertise and education. In addition, ALJ's would be given explicit authority to continue to act as special masters pursuant to Federal Rule of Civil Procedure 53(a). This bill also contains provisions for the removal and discipline of administrative law judges.

In the committee report (103–154) to this legislation, my colleague, Senator COHEN, expressed support for the concept of establishing an independent corps of administrative law judges within the executive branch of Government and for the concept which would reform and streamline the Federal bureaucracy in order to serve the American public. Senator COHEN did have legitimate concerns and offered excellent suggestions to improve and strengthen section 599(e) of the bill relating to removal and discipline of judges.

I have worked with Senator COHEN to strengthen and improve the removal and discipline provisions of the bill, and I believe these provisions are a balanced effort to make the provisions fairer to all interest parties concerned by insuring public members serve on the complaint resolution board—and its panels—to ensure objectivity and impartiality. This legislation is better because of Senator COHEN's participation and I greatly appreciate his cooperation.

This legislation will promote good government in an efficient and effective manner. The Congressional Budget Office [CBO] has prepared a report which estimates the legislation can save as much as $22 million a year in as few as 5 years. These are the types of savings the American people expect and deserve.

Since the reorganization of the Federal administrative law judges into a unified corps is expected to save the U.S. taxpayer substantial dollars, and in consultation with Senator HANK BROWN of Colorado, a provision offered by Senator BROWN is included in this legislation ensuring that agencies will reduce their budgets to reflect the projected savings from the removal of ALJ's from their agencies and report to Congress on their efforts.

The establishment of a unified corps of administrative law judges is not a unique concept. In fact, this type of legislation was first implemented in a number of States, and has been very successful. The individual States have been leaders in adapting and streamlining the administrative process to meet the changing needs of the American public. The adoption of similar Federal legislation merely builds upon the successful experiences of the States.

A final consideration which argues in favor of independence for ALJ's is the issue of public perception. For individuals who face the daunting prospect of being accused by a Federal agency of illegal activities, the fact that an administrative law judge who is an employee of that agency is hearing their case is hardly reassuring. The realities of the everyday world indicate that the key to public satisfaction and confidence in judicial decisionmaking is the issue of decisional independence. The creation of a unified corps of administrative law judges is likely to have the beneficial effect of greater public satisfaction with the administrative law system.

This legislation which I introduce today responds to concerns expressed by executive branch agencies, particularly the Department of Justice. This legislation is truly a reorganization of Federal administrative adjudication functions and not a radical departure from the principles of administrative law, which has concerned some members in the past. To the contrary, the substitute insures that the rule of law will prevail in administrative adjudications without impermissible influence.

The legislation specifically states that an agency's policymaking authority will not be changed nor will the administrative law judge's adjudicatory authority. The reorganization preserves the existing powers of both agency managers and the administrative law judges, while removing the tension that naturally arises between those two functions. The bill provides that enactment of the bill will effect no change in an agency's rulemaking, interpretative or policymaking authority in carrying out statutory responsibilities vested in the agency or agency head.

The bill clarifies that the reorganization of administrative law judges in a corps will give the new corps no policymaking authority for the agency, a past concern expressed by some members. In preserving the status quo of the present administrative system, the agency and its head retain the authority to review decisions of administrative law judges under any applicable provision of law. The policymaking role of ALJ's is not enlarged by enactment of the bill nor is their adjudicatory authority changed from current status. An agency head or secretary retains final authority to reverse ALJ decisions as provided by statute and makes the final decisions for the agency.

I look forward to working for passage of this reform legislation here in the Senate, and I hope my colleagues in the House of Representatives will likewise favorably consider and act on it, so that President Clinton can sign it into law before the end of the year.

Mr. President, I ask unanimous consent that the bill in its entirety be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 486

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reorganization of the Federal Administrative Judiciary Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) in order to promote efficiency, productivity, the reduction of administrative functions, and to provide economies of scale and better public service and public trust in the administrative resolution of disputes, Federal administrative law judges should be organized in a unified corps;

(2) the dispersal of administrative law judges appointed under section 3105 of title 5, United States Code, in every Federal agency that requires hearings to be conducted by administrative law judges, underutilizes the potential of administrative law judges to serve the public and assist the Federal courts as special masters and finders of fact in specific instances to help reduce the backlog of cases in Federal courts;

(3) the organization of administrative law judges in a corps will best promote their assignment to Federal agency needs as demand requires;

(4) a unified administrative law judge corps will better promote the use of information technology in serving the public; and

(5) an administrative law judge corps will, through consolidation, eliminate unnecessary offices and reduce travel and other related costs.

SEC. 3. ESTABLISHMENT OF ADMINISTRATIVE LAW JUDGE CORPS.

(a) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER VI—ADMINISTRATIVE LAW JUDGE CORPS

"§ 597. Definitions

"For the purposes of this subchapter—

"(1) 'agency' means an authority referred to in section 551(1);

"(2) 'Corps' means the Administrative Law Judge Corps of the United States established under section 598;

"(3) 'administrative law judge' means an administrative law judge appointed under section 3105 on or before the effective date of the Reorganization of the Federal Administrative Judiciary Act or under section 599c after such effective date;

"(4) 'chief judge' means the chief administrative law judge appointed and serving under section 599;

"(5) 'Council' means the Council of the Administrative Law Judge Corps established under section 599b;

"(6) 'Board', unless otherwise indicated, means the Complaints Resolution Board established under section 599e; and

"(7) 'division chief judge' means the chief administrative law judge of a division appointed and serving under section 599a.

"§ 598. Establishment; membership

"(a) ESTABLISHMENT.—There is established an Administrative Law Judge Corps consisting of all administrative law judges, in accordance with the provisions of subsection (b). Such Corps shall be administered in Washington, D.C.

"(b) MEMBERSHIP.—An administrative law judge serving as such on the date of the commencement of the operation of the Corps shall be transferred to the Corps as of that date. An administrative law judge who is appointed on or after the date of the commencement of the operation of the Corps shall be a member of the Corps as of the date of such appointment.

"§ 599. Chief administrative law judge

"(a) APPOINTMENT; TERM.—The chief administrative law judge shall be the chief administrative officer of the Corps and shall be the presiding judge of the Corps. The chief judge shall be appointed by the President, by and with the advice and consent of the Senate. The chief judge shall be learned in the law. The chief judge shall serve for a term of five years or until a successor is appointed and qualifies to serve. A chief judge may be reappointed upon the expiration of the term of such judge, by and with the advice and consent of the Senate.

"(b) VACANCIES.—(1) If the office of chief judge is vacant, the division chief judge who is senior in length of service as a member of the Council shall serve as acting chief judge until such vacancy is filled.

"(2) If 2 or more division chief judges have the same length of service as members of the Council, the division chief judge who is senior in length of service as an administrative law judge shall serve as such acting chief judge.

"(c) SPECIAL FUNCTIONS OF CHIEF JUDGE.—(1) In addition to other duties conferred on the chief judge, the chief judge shall be responsible for developing programs and practices, in coordination with agencies using administrative law judges, which foster economy and efficiency in the processing of cases heard by administrative law judges. These programs and practices shall include—

"(A) training of judges in more than one subject area;

"(B) employment of computers and software and other information technology for automated decision preparation, case docketing, and research;

"(C) consolidating hearing facilities and law libraries; and

"(D) programs and practices to foster overall efficient use of staff, personnel, equipment, and facilities.

"(2) In order to minimize costs—

"(A) all administrative law judges and support personnel shall, for at least 1 year after the date of the commencement of the operation of the Corps, continue to use the office space and facilities, at the agencies using such judges and personnel, available before such date, and

"(B) the chief judge shall phase in transfers of administrative law judges and support personnel to other facilities so that the cost of providing facilities for the Corps shall not exceed the cost of maintaining such judges and personnel in equivalent space available at agencies using the Corps.

"(d) REPORTS.—The chief judge shall, within 90 days after the end of each fiscal year, make a written report to the President and the Congress concerning the business of the Corps during the preceding fiscal year. The report shall include information and recommendations of the Council concerning the future personnel requirements of the Corps.

"(e) SERVICE AFTER TERM EXPIRES.—After serving as chief judge, an individual may continue to serve as an administrative law judge unless such individual has been removed from office in accordance with section 599e.

"§ 599a. Divisions of the Corps; division chief judges

"(a) ASSIGNMENT TO DIVISIONS.—Each judge of the Corps shall be assigned to a division by the Council, pursuant to section 599b. The assignment of a judge who was an administrative law judge on the date of commencement of the operation of the Corps shall be made after consideration of the areas of specialization in which the judge has served.

Each division shall be headed by a division chief judge who shall exercise administrative supervision over such division.

"(b) DIVISIONS.—The divisions of the Corps shall be as follows:

"(1) Division of Communications, Public Utility, and Transportation Regulation.

"(2) Division of Safety and Environmental Regulation.

"(3) Division of Labor.

"(4) Division of Labor Relations.

"(5) Division of Health and Human Services Programs.

"(6) Division of Securities, Commodities, and Trade Regulation.

"(7) Division of General Programs.

"(8) Division of Financial Services Institutions.

"(c) APPOINTMENT OF DIVISION CHIEF JUDGES.—(1) The division chief judge of each division set forth in subsection (b) shall be appointed by the President, by and with the advice and consent of the Senate, and shall be learned in the law.

"(2) Division chief judges shall be appointed for 5-year terms, except that of those division chief judges first appointed, the President shall designate 2 such individuals to be appointed for 5-year terms, 3 for 4-year terms, and 2 for 3-year terms.

"(3) Any division chief judge appointed to fill an unexpired term shall be appointed only for the remainder of such predecessor's term, but may be reappointed as provided in paragraph (4).

"(4) Any division chief judge may be reappointed upon the expiration of his or her term.

"(5) Any judge, after serving as division chief judge, may continue to serve as an administrative law judge unless such individual has been removed from office in accordance with section 599e.

"§ 599b. Council of the Corps

"(a) IN GENERAL.—The policymaking body of the Corps shall be the Council of the Corps. The chief judge and the division chief judges shall constitute the Council. The chief judge shall preside over the Council. If the chief judge is unable to be present at a meeting of the Council, the division chief judge who is senior in length of service as a member of such Council shall preside at the meeting.

"(b) QUORUM; VOTING.—One half of all of the members of the Council shall constitute a quorum for the purpose of transacting business. The affirmative vote by a majority of all the members of the Council shall be required to approve a matter on behalf of the Council. Each member of the Council shall have one vote.

"(c) MEETINGS.—Meetings of the Council shall be held at least once a month at the call of the chief judge or by the call of one-third or more of the members of the Council.

"(d) POWERS.—The Council is authorized—

"(1) to assign judges to divisions and transfer or reassign judges from one division to another, subject to the provisions of section 599c;

"(2) to appoint persons as administrative law judges under section 599c;

"(3) to file charges seeking adverse action against an administrative law judge under section 599e;

"(4) to prescribe, after providing an opportunity for notice and comment, the rules of practice and procedure for the conduct of proceedings before the Corps, except that, with respect to a category of proceedings adjudicated by an agency before the effective date of the Reorganization of the Federal Administrative Judiciary Act, the Council may not amend or revise the rules of practice and procedure prescribed by that agency during the 2 years following such effective date without the approval of that agency, and any amendments or revisions made to such rules shall not affect or be applied to any pending action;

"(5) to issue such rules and regulations as may be appropriate for the efficient conduct of the business of the Corps and the implementation of this subchapter, including the assignment of cases to administrative law judges;

"(6) subject to the civil service and classification laws and regulations—

"(A) to select, appoint, employ, and fix the compensation of the employees (other than administrative law judges) that the Council deems necessary to carry out the functions, powers, and duties of the Corps; and

"(B) to prescribe the authority and duties of such employees;

"(7) to establish, abolish, alter, consolidate, and maintain such regional, district, and other field offices as are necessary to carry out the functions, powers, and duties of the Corps and to assign and reassign employees to such field offices;

"(8) to procure temporary and intermittent services under section 3109;

"(9) to enter into, to the extent or in such amounts as are authorized in appropriation Acts, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), contracts, leases, cooperative agreements, or other transactions that may be necessary to conduct the business of the Corps;

"(10) to delegate any of the chief judge's functions or powers with the consent of the chief judge, or whenever the office of such chief judge is vacant, to one or more division chief judges or other employees of the Corps, and to authorize the redelegation of any of those functions or powers;

"(11) to establish, after consulting with an agency, initial and continuing educational programs to assure that each administrative law judge assigned to hear cases of that agency has the necessary training in the specialized field of law of that agency;

"(12) to make suitable arrangements for continuing education and training of other employees of the Corps, so that the level of expertise in the divisions of the Corps will be maintained and enhanced; and

"(13) to determine all other matters of general policy of the Corps.

"(e) OFFICIAL SEAL.—The Council shall select an official seal for the Corps which shall be judicially noticed.

"§ 599c. Appointment and transfer of administrative law judges

"(a) APPOINTMENT.—After the initial establishment of the Corps, the Council shall appoint new or additional judges as may be necessary for the efficient and expeditious conduct of the business of the Corps. Appointments shall be made from a register maintained by the Office of Personnel Management under subchapter I of chapter 33 of this title. Upon request by the chief judge, the Office of Personnel Management shall certify enough names from the top of such register to enable the Council to consider five names for each vacancy. Notwithstanding section 3318, a vacancy in the Corps may be filled from the highest five eligible individuals available for appointment on the certificate furnished by the Office of Personnel Management.

"(b) LIMITATION ON JUDGE'S DUTIES.—A judge of the Corps may not perform or be assigned to perform duties inconsistent with the duties and responsibilities of an administrative law judge.

"(c) REASSIGNMENTS; DETAILS.—A judge or staff member of the Corps on the date of commencement of the operation of the Corps, and all new judges and staff members appointed by the Council, may not thereafter be involuntarily reassigned to a new permanent duty station if such station is beyond the commuting area of the duty station which is the judge's or staff member's permanent duty station on that date. A judge or staff member of the Corps may be temporarily detailed, once in a 24-month period, to a new duty station at any location, for a period of not more than 120 days.

"§ 599d. Jurisdiction

"(a) IN GENERAL.—Any case, claim, action, or proceeding authorized to be heard before an administrative law judge on the day before the effective date of the Reorganization of the Federal Administrative Judiciary Act shall, on or after such date, be referred to the Corps for adjudication on the record after an opportunity for a hearing.

"(b) TYPES OF CASES.—An administrative law judge who is a member of the Corps shall hear and render a decision upon—

"(1) every case of adjudication subject to the provisions of section 553, 554, or 556;

"(2) every case in which hearings are required by law to be held in accordance with sections 553, 554, or section 556;

"(3) every other case referred to the Corps by an agency in which a determination is to be made on the record after an opportunity for a hearing; and

"(4) every case referred to the Corps by a court for an administrative law judge to act as a special master or to otherwise making findings of fact on behalf of the referring court, which shall continue to have exclusive and undiminished jurisdiction over the case.

"(c) REFERRAL OF CASES.—When a case under subsection (b) arises, it shall be referred to the Corps. Under regulations issued by the Council, the case shall be assigned to a division. The appropriate division chief shall assign cases to judges, taking into consideration specialization, training, workload, and conflicts of interest.

"(d) REFERRALS BY AGENCIES AND COURTS.—Courts are authorized to refer, subject to the approval of the majority of the Council and the parties in the court proceeding, those cases, or portions thereof, in which they seek an administrative law judge to act as a special master pursuant to the provisions of Rule 53(a) of the Federal Rules of Civil Procedure which shall continue to have exclusive and undiminished jurisdiction over the case. When a court has referred a case to an administrative law judge, the recommendations, rulings, and findings of fact of the administrative law judge are subject to de novo review by the referring court.

"(e) SATISFACTION OF OTHER PROCEDURAL REQUIREMENTS.—Compliance with this subchapter shall satisfy all requirements imposed under section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(f) APPLICATION OF AGENCY POLICY.—The provisions of this subchapter shall effect no change in—

"(1) an agency's rulemaking, interpretative, or policymaking authority in carrying out the statutory responsibilities vested in the agency or agency head;

"(2) the adjudicatory authority of administrative law judges; or

"(3) the authority of an agency to review decisions of administrative law judges under any applicable provision of law.

"§ 599e. Removal and discipline

"(a) IN GENERAL.—(1) Except as provided under paragraph (2), an administrative law judge may not be removed, suspended, reprimanded, or disciplined except for misconduct or neglect of duty, but may be removed for physical or mental disability (consistent with prohibitions on discrimination otherwise imposed by law).

"(2) Paragraph (1) shall not apply to an action initiated under section 1215.

"(b) RULES OF JUDICIAL CONDUCT.—No later than 180 days after the appointment and confirmation of the Council, the Council shall adopt and issue rules of judicial conduct for administrative law judges. Such code shall be enforced by the Council and shall include standards governing—

"(1) judicial conduct and extra-judicial activities to avoid actual, or the appearance of, improprieties or conflicts of interest;

"(2) the performance of judicial duties impartially and diligently;

"(3) avoidance of bias or prejudice with respect to all parties; and

"(4) efficiency and management of cases so as to reduce dilatory practices and unnecessary costs.

"(c) DISCIPLINARY ACTION BY THE COUNCIL.—An administrative law judge may be subject to disciplinary action by the Council under subsection (j). An administrative law judge may be removed only after the Council has filed with the Merit Systems Protection Board a notice of removal and the Merit Systems Protection Board has determined on the record, after an opportunity for a hearing before the Merit Systems Protection Board, that there is good cause to take the action of removal.

"(d) COMPLAINTS RESOLUTION BOARD.—Under regulations issued by the Council, a Complaints Resolution Board shall be established within the Corps to consider and to recommend appropriate action to be taken when a complaint is made concerning conduct of a judge of the Corps. Such complaint may be made by any interested person, including parties, practitioners, the chief judge, administrative law judges, and agencies.

"(e) COMPOSITION OF THE BOARD.—(1) The Board shall consist of—

"(A) 2 judges from each division of the Corps, who shall be appointed by the Council; and

"(B) 16 attorneys who shall be appointed in accordance with the provisions of paragraph (2).

"(2) The Council shall request a list of candidates to be members of the Board from the American Bar Association. Such list may not include any individual who is an administrative law judge or former administrative law judge.

"(3) The chief judge and the division chief judges may not serve on the Board.

"(4) No individual may serve 2 successive terms on the Board.

"(5)(A) Except as provided under subparagraph (B), all terms on the Board shall be 2 years.

"(B) In making the original appointments to the Board, the Council shall designate one-half of the appointments made under paragraph (1)(A) and one-half of the appointments made under paragraph (1)(B), as a term of 1 year.

"(6)(A) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for a position at the level of AL–3, rate C under section 5372 of this title for each day (including traveltime) during which such member is engaged in the performance of the duties of the Board. All members of the Board who are administrative law judges shall serve without compensation in addition to that received for their services as officers or employees of the United States.

"(B) The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

"(f) FILING AND REFERRAL OF COMPLAINT.—(1) A complaint concerning the official conduct of an administrative law judge shall be made in writing. The complaint shall be filed with the chief judge, or it may be originated by the chief judge on his own motion. The chief judge shall refer the complaint to a 5-member panel designated by the Council—

"(A) consisting of 3 administrative law judges appointed under subsection (e)(1)(A), none of whom may be serving in the same division as the administrative law judge who is the subject of the complaint; and

"(B) two members appointed under subsection (e)(1)(B), none of whom regularly practice before the division to which the administrative law judge, who is the subject of the complaint is assigned.

"(2) Any individual chosen to serve on the panel who has a personal or financial conflict of interest involving the administrative law judge who is the subject of the complaint shall be disqualified by the Council from serving on the panel. The Council shall replace any disqualified individual or vacancy with another member of the Board who is eligible to serve on the panel.

"(g) CHIEF JUDGE ACTION.—(1) After expeditiously reviewing a complaint, the chief judge, by written order stating his reason, may—

"(A) dismiss the complaint, if the chief judge finds the complaint to be—

"(i) directly related to the merits of a decision or procedural ruling; or

"(ii) frivolous;

"(B) conclude the proceeding if the chief judge finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events; or

"(C) refer the complaint to the Complaint Resolution Board in accordance with subsection (f).

"(2) The chief judge shall transmit copies of the written order to the complainant and to the administrative law judge who is the subject of the complaint.

"(h) NOTICE OF THE COMPLAINT.—The administrative law judge and the complainant shall be given notice of receipt of the complaint and notice of referral of the complaint to the panel.

"(i) INQUIRY AND REPORT BY PANEL.—(1) The panel shall inquire into the complaint and have authority to conduct a full investigation of the complaint, including authority to hold hearings and issue subpoenas, examine witnesses, and receive evidence. All proceedings of the Complaint Resolution Board shall be confidential. The administrative law judge who is the subject of the complaint shall have the right to be represented by counsel and shall have an opportunity to appear before the panel. The complainant shall be afforded an opportunity to appear at the proceedings conducted by the investigating panel, if the panel concludes that the complainant could offer substantial information.

"(2) In determining whether misconduct has occurred, the panel shall apply a preponderance of evidence standard of proof to its proceedings.

"(3)(A) Within 90 days after the referral of the complaint, the panel shall report to the Council on its findings of fact and recommendations for appropriate disciplinary action, if any, that should be taken against the administrative law judge.

"(B) If the panel has not completed its inquiry within 90 days after receiving the complaint, the panel shall request an extension of time from the Council to complete its inquiry.

"(C) A copy of the report shall be provided concurrently to the Council, the administrative law judge who is the subject of the complaint, and the complainant. The Council shall retain all reports filed under this section and such reports shall be confidential, except that a recommendation for disciplinary action shall be made available to the public.

"(4) The recommendations of the panel shall include one of the following:

"(A) Dismissal of all or part of the complaint.

"(B) Direct informal reprimand.

"(C) Direct formal reprimand.

"(D) Suspension.

"(E) Automatic referral to the Merit Systems Protection Board on recommendations of removal.

"(5) The recommendations of the panel are binding on the Council, unless the administrative law judge appeals to the Merit Systems Protection Board.

"(j) DISCIPLINARY ACTION.—Except as provided in subsection (a)(2), the Council shall take appropriate disciplinary action against the administrative law judge based upon the report of the panel within 30 days after receiving the report of the panel. Such disciplinary action shall be enforced by the Council and shall be final unless the administrative law judge files an appeal with the Merit Systems Protection Board within 30 days after receiving notice of such disciplinary action.

"(k) RECOMMENDATION FOR RELIEF TO AGENCY, DEPARTMENT, OR COMMISSION.—Based upon a finding of judicial misconduct by an administrative law judge, the Council shall have authority to recommend to the head of an agency, department or commission that action may be taken to provide relief to aggrieved individuals due to the judicial misconduct by an administrative law judge.".

(b) APPOINTMENTS OF DIVISION CHIEF JUDGES.—It is the sense of the Congress that the President should appoint as division chief judges under section 599a(c) of title 5, United States Code (as added by subsection (a) of this section), individuals who have served as an administrative law judge for at least 5 years.

(c) ADMINISTRATIVE PROVISION.—Except as provided under subchapter VI of chapter 5 of title 5, United States Code, the chief administrative law judge and the division chief judges appointed under such subchapter shall be deemed administrative law judges appointed under section 3105.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER VI—ADMINISTRATIVE LAW JUDGE CORPS

"Sec.
"597. Definitions.

"598. Establishment; membership.
"599. Chief administrative law judge.
"599a. Divisions of the Corps; division chief judges.
"599b. Council of the Corps.
"599c. Appointment and transfer of administrative law judges.
"599d. Jurisdiction.
"599e. Removal and discipline.".

SEC. 4. AGENCY REVIEW STUDY AND REPORT.

(a) STUDY.—The chief administrative law judge of the Administrative Law Judge Corps of the United States shall conduct a study of the various types and levels of agency review to which decisions of administrative law judges are subject. A separate study shall be conducted for each division of the Corps. The studies shall include monitoring and evaluating data and shall be conducted in consultation with the division chief judges, the Chairman of the Administrative Conference of the United States, and the agencies that review the decisions of administrative law judges.

(b) REPORT.—(1) Not later than 2 years after the effective date of this Act, the Council shall report to the President and the Congress on the findings and recommendations resulting from the studies conducted under subsection (a).

(2) The report under paragraph (1) shall include recommendations, including recommendations for new legislation, for any reforms that may be appropriate to make review of administrative law judges' decisions more efficient and meaningful and to accord greater finality to such decisions, except that all decisions subject, before the effective date of this Act, to review pursuant to section 205(g) of the Social Security Act (42 U.S.C. 405(g)) shall continue to be subject to such review pursuant to such section.

(3) The report under paragraph (1) shall also include recommendations for using staff more efficiently to decrease backlogs, especially in the area of social security disability cases.

SEC. 5. TRANSITION AND SAVINGS PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the administrative law judges of the Administrative Law Judge Corps established by section 598 of title 5, United States Code (as added by section 3 of this Act), all functions authorized to be performed on the day before the effective date of this Act by the administrative law judges appointed under section 3105 of such title before the effective date of this Act.

(b) USE OF AGENCY FACILITIES AND PERSONNEL.—With the consent of the agencies concerned, the Administrative Law Judge Corps of the United States may use the facilities and the services of officers, employees, and other personnel of agencies from which functions and duties are transferred to the Corps for so long as may be needed to facilitate the orderly transfer of those functions and duties under this Act.

(c) INCIDENTAL TRANSFERS.—The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, in connection with the functions transferred by this Act, are, subject to section 1531 of title 31, United States Code, transferred to the Corps for appropriate allocation.

(d) PAY OF TRANSFERRED PERSONNEL.—The transfer of personnel pursuant to subsection (b) or (c) shall be without reduction in pay or classification for 5 years after such transfer.

(e) AUTHORITIES OF DIRECTOR OF OMB.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this Act, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this Act.

(f) CONTINUED EFFECTIVENESS OF PRIOR ACTIONS.—All orders, determinations, rules, regulations, permits, contracts, collective bargaining agreements, recognition of labor organizations, certificates, licenses, and privileges which have been issued, made, granted, or allowed to become effective in the exercise of any duties, powers, or functions which are transferred under this Act and are in effect at the time this Act becomes effective shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Administrative Law Judge Corps of the United States or a judge thereof in the exercise of authority vested in the Corps or its members by this Act, by a court of competent jurisdiction, or by operation of law.

(g) PENDING PROCEEDINGS.—(1) Except as provided in subsections (d)(5) and (e) of section 599b of title 5, United States Code, this Act shall not affect any proceeding before any department or agency or component thereof which is pending at the time this Act takes effect. Such a proceeding shall be continued before the Administrative Law Judge Corps of the United States or a judge thereof, or, to the extent the proceeding does not relate to functions so transferred, shall be continued before the agency in which it was pending on the effective date of this Act.

(2) No suit, action, or other proceeding commenced before the effective date of this Act shall abate by reason of the enactment of this Act.

(h) REPORTS BY OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall monitor and report to the Congress—

(1) 60 days after the effective date of this Act, on the amount of all funds expended in fiscal year 1995 by each agency on the functions transferred under this Act and the amendments made by this Act;

(2) no later than October 1, 1995, on the amount of unexpended balances of appropriations, authorizations, allocations, and other funds transferred by all agencies to the Administrative Law Judge Corps under this Act and the amendments made by this Act; and

(3) 1 year after the effective date of this Act, and each of the next 2 years thereafter on—

(A) whether the expenditure of each agency that transfers functions and duties under this Act and the amendments made by this Act are reduced by the amount of savings resulting from the transfer of such functions and duties; and

(B) the Government savings resulting from transfer of such functions to the Administrative Law Judge Corps and recommendations to the Congress on how to achieve additional savings.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of fiscal years 1996, 1997, 1998, 1999, and 2000 to carry out the provisions of this Act and subchapter VI of title 5, United States Code (as added by section 3 of this Act) such amounts as may be necessary, not to exceed in any such fiscal year the total amount expended by all agencies in fiscal year 1995 in performing all functions transferred under this Act and the amendments made by this Act.

SEC. 7. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended as follows:

(1) Section 593(b) is amended—

(A) by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and

(B) by inserting the following after paragraph (3):

"(4) the chief administrative law judge of the Administrative Law Judge Corps of the United States;".

(2) Section 3105 is amended to read as follows:

"§ 3105. Appointment of administrative law judges

"Administrative law judges shall be appointed by the Council of the Administrative Law Judge Corps pursuant to sections 596 and 599c of this title.".

(3) Section 3344, and the item relating to section 3344 in the table of sections for chapter 33, are repealed.

(4) Subchapter III of chapter 75, and the items relating to subchapter III and section 7521 in the table of sections at the beginning of chapter 75, are repealed.

(5) Section 559 is amended—

(A) in the first sentence by striking "chapter 7" and all that follows through "7521" and inserting "subchapter VI of this chapter, chapter 7, and sections 1305, 3105, 4301(2)(E), and 5372"; and

(B) in the last sentence by striking "chapter 7" and all that follows through "7521" and inserting "subchapter VI of this chapter, chapter 7, section 1305, 3105, 4301(2)(E), or 5372".

(6) Section 1305 is amended—

(A) by striking "section 3105, 3344," and inserting "sections 3105,"; and

(B) by striking ", and for the purpose of section 7521 of this title, the Merit Systems Protection Board may".

(7) Section 5514(a)(2) is amended in the fourth sentence by striking ", except that" and all that follows through "administrative law judge".

(8) Section 7105 is amended—

(A) in subsection (d) by striking ", administrative law judges under section 3105 of this title,"; and

(B) in subsection (e)(2) by striking "under subsection (d) of this section" and inserting "under section 3105 of this title".

(9) Section 7132(a) is amended by striking "appointed by the Authority under section 3105 of this title" and inserting "appointed under section 3105 of this title who is conducting hearings under this chapter".

(10) Section 7502 is amended by striking "7521 or".

(11) Section 7512(E) is amended by striking "or 7521".

(b) OTHER PROVISIONS OF LAW.—

(1) Section 6(c) of the Commodity Exchange Act is amended—

(A) in the second sentence (7 U.S.C. 9)—

(i) by striking "Administrative Law Judge designated by the Commission" and inserting "administrative law judge of the Administrative Law Judge Corps"; and

(ii) by striking "Administrative Law Judge" and inserting "administrative law judge"; and

(B) by striking "Administrative Law Judge" each subsequent place it appears (7 U.S.C. 15) and inserting "administrative law judge of the Administrative Law Judge Corps".

(2) Section 12(b) of the Commodity Exchange Act (7 U.S.C. 16(b)) is amended by striking "Administrative Law Judges,".

(3) Section 274B(e)(2) of the Immigration and Nationality Act (8 U.S.C. 1324b(e)(2)) is amended by striking "are specially designated by the Attorney General as having" and inserting "have".

(4) Section 1416(a) of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1715(a)) is amended—

(A) in the first sentence by inserting ", subject to section 599d of title 5, United States Code," after "who may";

(B) by striking the second sentence; and

(C) in the third sentence by striking "his administrative law judges to other administrative law judges or" and inserting "administrative law judges carrying out functions under this title".

(5) Section 488A(b) of the Higher Education Act of 1965 (20 U.S.C. 1095a(b)) is amended in the third sentence by striking ", except that" and all that follows through "administrative law judge".

(6) Section 509(1) of title 28, United States Code, is amended—

(A) by striking "subchapter II" and inserting "subchapters II and VI"; and

(B) by striking "employed by the Department of Justice".

(7) Section 12 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 661) is amended—

(A) in subsection (e)—

(i) by striking "administrative law judges and other"; and

(ii) by striking ": *Provided*" and all that follows through the end of the subsection and inserting a period;

(B) in subsection (j) in the first sentence by striking "A" and all that follows through "Commission," and inserting "An administrative law judge to whom is assigned any proceeding instituted before the Commission shall hear and make a determination upon the proceeding and any motion in connection with such proceeding,"; and

(C) by striking subsection (k).

(8) Section 502(e)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 792(e)(1)) is amended by striking the second and third sentences and inserting the following: "Proceedings required to be conducted under this section shall be presided over by administrative law judges appointed under subchapter VI of chapter 5 of title 5, United States Code.".

(9) Section 166 of the Job Training Partnership Act (29 U.S.C. 1576(a)) is amended in the first sentence by striking "of the Department of Labor".

(10) Section 5(e) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 804(e)) is amended to read as follows:

"(e) Proceedings required to be conducted in accordance with the provisions of this Act shall be presided over by administrative law judges appointed under subchapter VI of chapter 5 of title 5, United States Code.".

(11) Section 113 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 823) is amended—

(A) in subsection (b)(2) by striking all that follows the second sentence;

(B) in subsection (d)(1) in the first sentence by striking "appointed by the Commission" and all that follows through "by the Commission," and inserting "to whom is assigned any proceeding instituted before the Commission shall hear and make a determination upon the proceeding and any motion in connection with the proceeding,"; and

(C) in subsection (e) in the first sentence by striking "its" each place it appears.

(12) Section 428(b) of the Black Lung Benefits Act (30 U.S.C. 938(b)) is amended by striking the seventh sentence.

(13) Section 321(c)(1) of title 31, United States Code, is amended—

(A) by striking "subchapter II" and inserting "subchapters II and VI"; and

(B) by striking "employed by the Secretary".

(14) Section 3801(a)(7)(A) of title 31, United States Code, is amended by striking "appointed in the authority" and all that follows through "such title;" and inserting "of the Administrative Law Judge Corps;".

(15) Section 19(d) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 919(d)) is amended by amending the second sentence to read as follows: "Any such hearing shall be conducted by an administrative law judge qualified under subchapter VI of chapter 5 of that title.".

(16) Section 21(b)(5) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 921(b)(5)) is amended by striking the first sentence.

(17) Section 7101(b)(2)(B) of title 38, United States Code, is amended by striking "7521" and inserting "599e".

(18) Section 8(b)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 607(b)(1)) is amended in the first sentence by striking "hearing examiners appointed pursuant to section 3105 of title 5, United States Code" and inserting "administrative law judges appointed under section 3105 of title 5, United States Code (as in effect on the day before the effective date of the Reorganization of the Federal Administrative Judiciary Act)".

(19) Section 705(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4(a)) is amended—

(A) by striking "administrative law judges,"; and

(B) by striking ": *Provided*" and all that follows through the end of the subsection and inserting a period.

(20) Section 808(c) of the Act of April 11, 1968 (42 U.S.C. 3608(c)), is amended—

(A) in the first sentence by inserting ", subject to section 599d of title 5, United States Code," after "The Secretary may";

(B) by striking the second sentence; and

(C) in the last sentence by striking "his hearing examiners to other hearing examiners or" and inserting "administrative law judges carrying out functions under this title".

(21) Section 806 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3787) is amended—

(A) in the first sentence by striking "appoint such hearing examiners" and all that follows through "United States Code," and inserting ", subject to section 599d of title 5, United States Code, request the use of such administrative law judges"; and

(B) in the second sentence by striking "hearing examiner or administrative law judge assigned to or employed thereby" and inserting "such administrative law judge".

(22) Section 401(c) of the Department of Energy Organization Act (42 U.S.C. 7171(c)) is amended by striking "appointment and employment of hearing examiners in accordance with the provisions of title 5," and inserting "referral of cases to the Administrative Law Judge Corps in accordance with subchapter VI of chapter 5 of title 5,".

(23) Section 303(c)(3) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1902(c)(3)) is amended by striking ", attorneys, and administrative law judges" and inserting "and attorneys".

(24) Section 304(b)(1) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1903(b)(1)) is amended in the first sentence by striking "employed by or".

(c) REFERENCES IN OTHER LAWS.—Reference in any other Federal law to an administrative law judge or hearing examiner or to an administrative law judge, hearing examiner, or employee appointed under section 3105 of title 5, United States Code, shall be deemed to refer to an administrative law judge of the Administrative Law Judge Corps established by section 598 of title 5, United States Code.

SEC. 8. OPERATION OF THE CORPS.

Operation of the Corps shall commence on the date the first chief administrative law judge of the Corps takes office.

SEC. 9. CONTRACT DISPUTES ACT.

Nothing in this Act or the amendments made by this Act shall be deemed to affect any agency board established pursuant to the Contract Disputes Act (41 U.S.C. 601 and following), or any other person designated to resolve claims or disputes pursuant to such Act.

SEC. 10. PAYMENT BY CERTAIN AGENCIES FOR ADMINISTRATIVE LAW JUDGE SALARIES AND EXPENSES.

Any agency which before the effective date of this Act paid the salaries and expenses of administrative law judges from fees charged by such agency shall on and after the effective date of this Act pay from such fees to the chief judge of the Administrative Law Judge Corps, or the designee of the chief judge, an amount necessary to reimburse the salaries and expenses of the Corps for services provided by the Corps to such agency.

SEC. 11. EFFECTIVE DATE.

Except as otherwise provided, this Act and the amendments made by this Act shall take effect 120 days after the date of the enactment of this Act.

By Mr. McCAIN (for himself and Mr. INOUYE):

S. 487. A bill to amend the Indian Gaming Regulatory Act, and for other purposes; to the Committee on Indian Affairs.

THE INDIAN GAMING REGULATORY ACT AMENDMENTS ACT OF 1995

• Mr. McCAIN. Mr. President, I am pleased to join today with the vice chairman of the Committee on Indian Affairs, Senator INOUYE, as the sponsor of the Indian Gaming Regulatory Act Amendments Act of 1995. I want to associate myself with Senator INOUYE's remarks regarding this legislation and the issue of Indian gaming. I commend Senator INOUYE for his outstanding leadership over the years on this complex issue.

The bill we are introducing today would provide for a major overhaul of the Indian Gaming Regulatory Act of 1988. It will provide for minimum Federal standards in the regulation and licensing of class II and class III gaming as well as all of the contractors, suppliers, and industries associated with such gaming. This will be accomplished through the Federal Indian Gaming Regulatory Commission which will be funded through assessments on Indian gaming revenues and fees imposed on license applicants. The bill also provides a new process for the negotiation of class III compacts which authorizes the Secretary of the Department of the Interior to negotiate compacts with Indian tribes in those instances where a State chooses not to participate in compact negotiations or where an Indian tribe and a State cannot reach an agreement on a compact. This process is consistent with recent Federal court decisions.

In addition, the bill is consistent with the 1987 decision of the U.S. Supreme Court in the case of California versus Cabazon Band of Mission Indians in that it neither expands for further restricts the scope of Indian Gaming. The laws of each State would continue to be the basis for determining what gaming activities may be available to an Indian tribe located in that State.

Since the enactment of the Indian Gaming Regulatory Act in 1988, there has been a dramatic increase in the amount of gaming activity among the Indian tribes. In 1993, Indian gaming was estimated to yield gross revenues of about $4 billion per year and net revenues were estimated at $750 million. Today, there are about 160 class II bingo and card games in operation and there are now over 110 tribal/State compacts governing class III gaming in 21 States. Indian gaming comprises about 3 percent of all gaming in the United States. Gaming activities operated by State governments comprise about 36 percent of all gaming and the private sector accounts for the balance of the gaming activity in the Nation.

Indian gaming has become the single largest source of economic activity for Indian tribes. Annual revenues derived from Indian agricultural resources have been estimated at $550 million and have historically been the leading source of income for Indian tribes and individuals. Annual revenues from oil, gas, and minerals are about $230 million and Indian forestry resources revenues are estimated at $61 million. The estimated annual earnings on gaming now equal or exceed all of the revenues derived from Indian natural resources. In addition, Indian gaming has generated tens of thousands of new jobs for Indians and non-Indians. On many reservations gaming has meant the end of unemployment rates of 90 or 100 percent and the beginning of an era of full employment.

Under the Indian Gaming Regulatory Act of 1988, Indian tribes are required to expend the profits from gaming activities to fund tribal government operations or programs and to promote tribal economic development. Profits may only be distributed directly to the members of an Indian tribe under a plan which has been approved by the Secretary of the Interior. Only a few such plans have been approved. Virtually all of the proceeds from Indian gaming activities are used to fund the social welfare, education, and health needs of the Indian tribes. Schools, health facilities, roads, and other vital infrastructure is being built by the Indian tribes with the proceeds from Indian gaming.

In the years before the enactment of the Indian Gaming Regulatory Act and in the years since its enactment we have heard concerns about the possibility for organized criminal elements to penetrate Indian gaming. Both the Department of Justice and the FBI have repeatedly testified before the Committee on Indian Affairs and have indicated that there is not any substantial criminal activity of any kind associated with Indian gaming. Some of our colleagues have suggested that no one would know if there is criminal activity because not enough people are looking for it. I believe that this point of view overlooks the fact that the act provides for a very substantial regulatory and law enforcement role by the States and Indian tribes in class III gaming and by the Federal Government in class II gaming. The record clearly shows that in the few instances of known criminal activity in class III gaming, the Indian tribes have discovered the activity and have sought Federal assistance in law enforcement.

Nevertheless, the record before the Committee on Indian Affairs also shows that the absence of minimum Federal standards for the regulation and licensing of Indian gaming has allowed a void to develop which will become more and more attractive to criminal elements as Indian gaming continues to generate increased revenues. The legislation we are introducing today provides for the development of strict minimum Federal standards based on the recommendations of Federal, State and tribal officials. While Indian tribes or States, or both, will continue to exercise primary regulatory authority, their regulatory standards must meet or exceed the minimum Federal standards. In the event that the Federal Indian Gaming Regulatory Commission determines that the minimum Federal standards are not being met, then the Commission may directly regulate the gaming activity until such time as the Federal standards are met. In addition, the Commission is vested with authority to issue and revoke licenses as well as to impose civil fines, close Indian gaming facilities or seek enforcement of the act through the Federal courts.

As many of our colleagues know, one of the areas which has caused the greatest controversy under the current law relates to what has come to be known as the scope of gaming. A related issue is the refusal of some States to enter into negotiations for a class III compact and their assertion of sovereign immunity under the 11th amendment to the Constitution when an Indian tribe seeks judicial relief as provided by the act. The bill we are introducing incorporates the explicit standards of the Cabazon decision to guide all parties in determining the permissible gaming activities under the laws of any State. State laws will continue to govern this issue. We have not proposed the preemption of the gaming laws of any State. In most States, the issue of scope of gaming has now been settled through negotiation or litigation. In a few States this issue remains unresolved, but appears headed toward resolution by the courts.

In the course of our work on the gaming issue in the 103d Congress, Senator INOUYE and I advanced various formal and informal proposals for Federal legislation to resolve the scope of gaming issue. In addition proposals were developed by State and tribal officials. However, we were never able to develop a consensus on any one proposal. While the Committee on Indian Affairs remains open to suggestions on this issue, it is apparent that obtaining a consensus may not be possible. This may be an area of the law best left to resolution through the courts.

With regard to the issue of the refusal of some States to negotiate and their assertion that the 1988 act violates the 11th amendment, the U.S. Supreme Court recently agreed to hear a case which raises that issue. As I noted earlier, the bill we are introducing today seeks to resolve this issue on terms that are consistent with recent decisions of the Federal courts.

Mr. President, I am sure that we will find many things to change in this legislation as it moves through the Senate. However, I believe that it provides a good foundation for our further consideration of this important issue. I want to emphasize that this bill is intended to stimulate discussion. I am looking forward to hearing from all interested parties with regard to their constructive suggestions for ways to improve the bill and move it forward.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 487

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Gaming Regulatory Act Amendments Act of 1995".

SEC. 2. AMENDMENTS TO THE INDIAN GAMING REGULATORY ACT.

The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) is amended—

(1) by striking the first section and inserting the following new section:

"SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Indian Gaming Regulatory Act'.

"(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

"Sec. 1. Short title; table of contents.
"Sec. 2. Congressional findings.
"Sec. 3. Purposes.
"Sec. 4. Definitions.
"Sec. 5. Establishment of the Federal Indian Gaming Regulatory Commission.
"Sec. 6. Powers of the Chairperson.
"Sec. 7. Powers and authority of the Commission.
"Sec. 8. Regulatory framework.
"Sec. 9. Advisory Committee on Minimum Regulatory Requirements and Licensing Standards.
"Sec. 10. Licensing.
"Sec. 11. Requirements for the conduct of class I and class II gaming on Indian lands.
"Sec. 12. Class III gaming on Indian lands.
"Sec. 13. Review of contracts.
"Sec. 14. Review of existing contracts; interim authority.
"Sec. 15. Civil penalties.
"Sec. 16. Judicial review.
"Sec. 17. Commission funding.
"Sec. 18. Authorization of appropriations.
"Sec. 19. Miscellaneous.
"Sec. 20. Dissemination of information.
"Sec. 21. Severability.
"Sec. 22. Criminal penalties.
"Sec. 23. Conforming amendment.
"Sec. 24. Definition of financial institutions.";

(2) by striking sections 2 through 19 and inserting the following new sections:

"SEC. 2. CONGRESSIONAL FINDINGS.

"The Congress finds that—

"(1) Indian tribes are—

"(A) engaged in the operation of gaming activities on Indian lands as a means of generating tribal governmental revenue; and

"(B) licensing such activities;

"(2) clear Federal standards and regulations for the conduct of gaming on Indian lands will assist tribal governments in assuring the integrity of gaming activities conducted on Indian lands;

"(3) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government;

"(4) while Indian tribes have the right to regulate the operation of gaming activities on Indian lands if such gaming activities are—

"(A) not specifically prohibited by Federal law; and

"(B) conducted within a State that as a matter of public policy permits such gaming activities,

Congress has the authority to regulate the privilege of doing business with Indian tribes in Indian country (as defined in section 1151 of title 18, United States Code);

"(5) systems for the regulation of gaming activities on Indian lands should meet or exceed federally established minimum regulatory requirements;

"(6) the operation of gaming activities on Indian lands has had a significant impact on commerce with foreign nations, among the several States and with the Indian tribes; and

"(7) the Constitution vests the Congress with the powers to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes, and this Act is enacted in the exercise of those powers.

"SEC. 3. PURPOSES.

"The purposes of this Act are—

"(1) to ensure the right of Indian tribes to conduct gaming activities on Indian lands in a manner consistent with the decision of the Supreme Court in California et al. v. Cabazon Band of Mission Indians et al. (480 U.S. 202, 107 S. Ct. 1083, 94 L. Ed. 2d 244 (1987)), involving the Cabazon and Morongo Bands of Mission Indians;

"(2) to provide a statutory basis for the conduct of gaming activities on Indian lands as a means of promoting tribal economic development, self-sufficiency, and strong Indian tribal governments;

"(3) to provide a statutory basis for the regulation of gaming activities on Indian lands by an Indian tribe adequate to shield such activities from organized crime and other corrupting influences, to ensure that an Indian tribal government is the primary beneficiary of the operation of gaming activities, and to ensure that gaming is conducted fairly and honestly by both the operator and players; and

"(4) to declare that the establishment of independent Federal regulatory authority for the conduct of gaming activities on Indian lands and the establishment of Federal minimum regulatory requirements for the conduct of gaming activities on Indian lands are necessary to protect such gaming.

"SEC. 4. DEFINITIONS.

"For purposes of this Act, the following definitions shall apply:

"(1) APPLICANT.—The term 'applicant' means any person who applies for a license pursuant to this Act, including persons applying for a renewal of a license.

"(2) ADVISORY COMMITTEE.—The term 'Advisory Committee' means the Advisory Committee on Minimum Regulatory Requirements and Licensing Standards established under section 9(a).

"(3) ATTORNEY GENERAL.—The term 'Attorney General' means the Attorney General of the United States.

"(4) CHAIRPERSON.—The term 'Chairperson' means the Chairperson of the Federal Indian Gaming Regulatory Commission established under section 5.

"(5) CLASS I GAMING.—The term 'class I gaming' means social games played solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

"(6) CLASS II GAMING.—

"(A) IN GENERAL.—The term 'class II gaming' means—

"(i) the game of chance commonly known as bingo or lotto including, if played in the same location, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—

"(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations;

"(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and

"(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards; and

"(ii) card games that—

"(I) are explicitly authorized by the laws of a State; or

"(II) are not explicitly prohibited by the laws of a State and are played at any location in the State, but only if such card games are played in conformity with any such laws (including regulations) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

"(B) EXCLUSIONS.—The term 'class II gaming' does not include—

"(i) any banking card games, including baccarat, chemin de fer, or blackjack (21); or

"(ii) gambling devices, as defined in paragraph (11), except for any class II game that is played under subparagraph (A)(i) with technologic aid that has been approved by the Commission.

"(C) TREATMENT OF CERTAIN GAMES.—Notwithstanding any other provision of this paragraph, the term 'class II gaming' includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that, on or before May 1, 1988, were actually operated in such State by an Indian tribe, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Commission (as defined in paragraph (8)).

"(7) CLASS III GAMING.—The term 'class III gaming' means all forms of gaming that are not class I gaming or class II gaming.

"(8) COMMISSION.—The term 'Commission' means the Federal Indian Gaming Regulatory Commission established under section 5.

"(9) COMPACT.—The term 'compact' means an agreement relating to the operation of class III gaming on Indian lands entered into by an Indian tribe and a State, that is approved by the Secretary, or an agreement relating to the operation of class III gaming that is negotiated by an Indian tribe and the Secretary, and approved by the Secretary.

"(10) ELECTRONIC, COMPUTER, OR OTHER TECHNOLOGIC AID.—The term 'electronic, computer, or other technologic aid', in connection with class II gaming, means a device, such as a computer, telephone, cable, television, satellite, or bingo blower, that, when used—

"(A) is not a game of chance or a gambling device;

"(B) merely assists a player or the playing of a game; and

"(C) is operated according to applicable Federal communications law.

"(11) ELECTRONIC OR ELECTROMECHANICAL FACSIMILE.—The term 'electronic or electromechanical facsimile' means any gambling device, as defined in paragraph (12).

"(12) GAMBLING DEVICE.—The term 'gambling device' means—

"(A) any gambling device, as defined in section 1(a) of the Act of January 2, 1951 (commonly referred to as the 'Gambling Devices Transportation Act') (64 Stat. 1134, chapter 1194; 15 U.S.C. 1171(a)), including any electronic or electromechanical facsimile; and

"(B) does not include a technological aid to class II gaming that is approved by the Commission.

"(13) GAMING-RELATED CONTRACT.—The term 'gaming-related contract' means any agreement for an amount of more than $50,000 per year—

"(A) under which an Indian tribe or an agent of any Indian tribe procures gaming materials, supplies, equipment, or services that are used in the conduct of a class II or class III gaming activity, or

"(B) financing contracts or agreements for any facility in which a gaming activity is to be conducted.

"(14) GAMING-RELATED CONTRACTOR.—The term 'gaming-related contractor' means any person who enters into a gaming-related contract with an Indian tribe or an agent of an

Indian tribe, including any person with a financial interest in such contract.

“(15) GAMING SERVICE INDUSTRY.—The term ‘gaming service industry’ means any form of enterprise that provides goods or services that are used in conjunction with any class II or class III gaming activity, in any case in which—

“(A) the proposed agreement between the enterprise and a class II or class III gaming operation, or the aggregate of such agreements is for an amount of not less than $100,000 per year; or

“(B) the amount of business conducted by such enterprise with any gaming operation in the 1-year period preceding the effective date of such agreement was not less than $250,000.

“(16) INDIAN LANDS.—The term ‘Indian lands’ means—

“(A) all lands within the limits of any Indian reservation; and

“(B) any lands—

“(i) the title to which is held in trust by the United States for the benefit of any Indian tribe; or

“(ii) the title to which is—

“(I) held by an Indian tribe subject to a restriction by the United States against alienation;

“(II) held by the United States for the benefit of an individual Indian; or

“(III) held by an individual subject to restriction by the United States against alienation; and

“(iii) over which an Indian tribe exercises governmental power.

“(17) INDIAN TRIBE.—The term ‘Indian tribe’ means any Indian tribe, band, nation, or other organized group or community of Indians that—

“(A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians; and

“(B) is recognized as possessing powers of self-government.

“(18) KEY EMPLOYEE.—The term ‘key employee’ means any individual employed in a gaming operation licensed pursuant to this Act in a supervisory capacity or empowered to make any discretionary decision with regard to the gaming operation, including any pit boss, shift boss, credit executive, cashier supervisor, gaming facility manager or assistant manager, or manager or supervisor of security employees.

“(19) MANAGEMENT CONTRACT.—The term ‘management contract’ means any contract or collateral agreement between an Indian tribe and a contractor, if such contract or agreement provides for the management of all or part of a gaming operation.

“(20) MANAGEMENT CONTRACTOR.—The term ‘management contractor’ means any person entering into a management contract with an Indian tribe or an agent of the Indian tribe for the management of a gaming operation, including any person with a financial interest in such contract.

“(21) MATERIAL CONTROL.—The term ‘material control’ means the exercise of authority or supervision or the power to make or cause to be made any discretionary decision with regard to matters which have a substantial effect on the financial or management aspects of a gaming operation.

“(22) NET REVENUES.—The term ‘net revenues’ means the gross revenues of an Indian gaming activity reduced by the sum of—

“(A) any amounts paid out or paid for as prizes; and

“(B) the total operating expenses associated with the gaming activity, excluding management fees.

“(23) PERSON.—The term ‘person’ means an individual, firm, corporation, association, partnership, trust, consortium, joint venture, entity, or gaming operation.

“(24) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

“SEC. 5. ESTABLISHMENT OF THE FEDERAL INDIAN GAMING REGULATORY COMMISSION.

“(a) ESTABLISHMENT.—There is established as an independent agency of the United States, a Commission to be known as the Federal Indian Gaming Regulatory Commission. Such Commission shall be an independent establishment, as defined in section 104 of title 5, United States Code.

“(b) COMPOSITION OF THE COMMISSION.—

“(1) IN GENERAL.—The Commission shall be composed of 3 full-time members, who shall be appointed by the President, by and with the advice and consent of the Senate.

“(2) CITIZENSHIP OF MEMBERS.—Each member of the Commission shall be a citizen of the United States.

“(3) REQUIREMENTS FOR MEMBERS.—No member of the Commission may—

“(A) pursue any other business or occupation or hold any other office;

“(B) be actively engaged in or, other than through distribution of gaming revenues as a member of an Indian tribe, have any direct pecuniary interest in gaming activities;

“(C) other than through distribution of gaming revenues as a member of an Indian tribe, have any pecuniary interest in any business or organization that holds a gaming license under this Act or that does business with any person or organization licensed under this Act;

“(D) have been convicted of a felony or gaming offense; or

“(E) have any financial interest in, or management responsibility for, any gaming-related contract or any other contract approved pursuant to this Act.

“(4) POLITICAL AFFILIATION.—

“(A) IN GENERAL.—Not more than 2 members of the Commission shall be members of the same political party. In making appointments to the Commission, the President shall appoint members of different political parties, to the extent practicable.

“(B) TRIBAL MEMBERSHIP.—At least 2 members of the Commission shall each be a member of a federally recognized Indian tribe. No 2 members appointed under this subparagraph shall be members of the same Indian tribe.

“(5) ADDITIONAL REQUIREMENTS.—The Commission shall be composed of the most qualified individuals available, subject to the following conditions:

“(A) CERTIFIED PUBLIC ACCOUNTANT REPRESENTATION.—One member of the Commission shall be a certified public accountant with not less than 5 years of progressively responsible experience in accounting and auditing, and a comprehensive knowledge of the principles and practices of corporate finance.

“(B) LAW ENFORCEMENT REPRESENTATION.—One member of the Commission shall be selected with special reference to training and experience in the fields of investigation or law enforcement.

“(6) BACKGROUND INVESTIGATIONS.—The Attorney General shall conduct a background investigation concerning any individual under consideration for appointment to the Commission, with particular regard to the financial stability, integrity, responsibility, and reputation for good character, honesty, and integrity of the nominee.

“(c) CHAIRPERSON.—The President shall select a Chairperson from among the members appointed to the Commission.

“(d) VICE CHAIRPERSON.—The Commission shall select, by majority vote, one of the members of the Commission to serve as Vice Chairperson. The Vice Chairperson shall—

“(1) serve as Chairperson of the Commission in the absence of the Chairperson; and

“(2) exercise such other powers as may be delegated by the Chairperson.

“(e) TERMS OF OFFICE.—

“(1) IN GENERAL.—Each member of the Commission shall hold office for a term of 5 years.

“(2) INITIAL APPOINTMENTS.—Initial appointments to the Commission shall be made for the following terms:

“(A) The Chairperson shall be appointed for a term of 5 years.

“(B) One member shall be appointed for a term of 4 years.

“(C) One member shall be appointed for a term of 3 years.

“(3) LIMITATION.—No member shall serve for more than 2 terms of 5 years each.

“(f) VACANCIES.—

“(1) IN GENERAL.—Each individual appointed by the President to serve as Chairperson and each member of the Commission shall, unless removed for cause under paragraph (2), serve in the capacity for which such individual is appointed until the expiration of the term of such individual or until a successor is duly appointed and qualified.

“(2) REMOVAL FROM OFFICE.—The Chairperson or any member of the Commission may only be removed from office before the expiration of the term of office by the President for neglect of duty, malfeasance in office, or for other good cause shown.

“(3) TERM TO FILL VACANCIES.—The term of any member appointed to fill a vacancy on the Commission shall be for the unexpired term of the member.

“(g) QUORUM.—Two members of the Commission shall constitute a quorum.

“(h) MEETINGS.—

“(1) IN GENERAL.—The Commission shall meet at the call of the Chairperson or a majority of the members of the Commission.

“(2) MAJORITY OF MEMBERS DETERMINE ACTION.—A majority of the members of the Commission shall determine any action of the Commission.

“(i) COMPENSATION.—

“(1) CHAIRPERSON.—The Chairperson shall be paid at a rate equal to that of level IV of the Executive Schedule under section 5316 of title 5, United States Code.

“(2) OTHER MEMBERS.—Each other member of the Commission shall be paid at a rate equal to that of level V of the Executive Schedule under section 5316 of title 5, United States Code.

“(3) TRAVEL.—All members of the Commission shall be reimbursed in accordance with title 5, United States Code, for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

“(j) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

“SEC. 6. POWERS OF THE CHAIRPERSON.

“(a) CHIEF EXECUTIVE OFFICER.—The Chairperson shall serve as the chief executive officer of the Commission.

“(b) ADMINISTRATION OF THE COMMISSION.—

“(1) IN GENERAL.—Subject to subsection (c), the Chairperson—

"(A) shall employ and supervise such personnel as the Chairperson considers necessary to carry out the functions of the Commission, and assign work among such personnel;

"(B) shall appoint a General Counsel to the Commission who shall be paid at the annual rate of basic pay payable for ES–6 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code;

"(C) shall appoint and supervise other staff of the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service;

"(D) may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for ES–6 of the Senior Executive Service Schedule;

"(E) may request the head of any Federal agency to detail any personnel of such agency to the Commission to assist the Commission in carrying out the duties of the Commission under this Act, unless otherwise prohibited by law;

"(F) shall use and expend Federal funds and funds collected pursuant to section 17; and

"(G) may contract for the services of such other professional, technical, and operational personnel and consultants as may be necessary to the performance of the Commission's responsibilities under this Act.

"(2) Compensation of Staff.—The staff referred to in paragraph (1)(C) shall be paid without regard to the provisions of chapter 51 and subchapters III and VIII of chapter 53 of title 5, United States Code, relating to classification and General Schedule and Senior Executive Service Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for ES–5 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code.

"(c) Applicable Policies.—In carrying out any of the functions under this section, the Chairperson shall be governed by the general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

"SEC. 7. POWERS AND AUTHORITY OF THE COMMISSION.

"(a) General Powers.—

"(1) In general.—The Commission shall have the power to—

"(A) approve the annual budget of the Commission;

"(B) promulgate regulations to carry out this Act;

"(C) establish a rate of fees and assessments, as provided in section 17;

"(D) conduct investigations, including background investigations;

"(E) issue a temporary order closing the operation of gaming activities;

"(F) after a hearing, make permanent a temporary order closing the operation of gaming activities, as provided in section 15;

"(G) grant, deny, limit, condition, restrict, revoke, or suspend any license issued under any licensing authority conferred upon the Commission pursuant to this Act or fine any person licensed pursuant to this Act for violation of any of the conditions of licensure under this Act;

"(H) inspect and examine all premises in which class II or class III gaming is conducted on Indian lands;

"(I) demand access to and inspect, examine, photocopy, and audit all papers, books, and records of class II and class III gaming activities conducted on Indian lands and any other matters necessary to carry out the duties of the Commission under this Act;

"(J) use the United States mail in the same manner and under the same conditions as any department or agency of the United States;

"(K) procure supplies, services, and property by contract in accordance with applicable Federal laws;

"(L) enter into contracts with Federal, State, tribal, and private entities for activities necessary to the discharge of the duties of the Commission;

"(M) serve or cause to be served process or notices of the Commission in a manner provided for by the Commission or in a manner provided for the service of process and notice in civil actions in accordance with the applicable rules of a tribal, State, or Federal court;

"(N) propound written interrogatories and appoint hearing examiners, to whom may be delegated the power and authority to administer oaths, issue subpoenas, propound written interrogatories, and require testimony under oath;

"(O) conduct all administrative hearings pertaining to civil violations of this Act (including any civil violation of a regulation promulgated under this Act);

"(P) collect all fees and assessments authorized by this Act and the regulations promulgated pursuant to this Act;

"(Q) assess penalties for violations of the provisions of this Act and the regulations promulgated pursuant to this Act;

"(R) provide training and technical assistance to Indian tribes with respect to all aspects of the conduct and regulation of gaming activities;

"(S) monitor and, as specifically authorized by this Act, regulate class II and class III gaming;

"(T) approve all management-related and gaming-related contracts; and

"(U) in addition to the authorities otherwise specified in this Act, delegate, by published order or rule, any of the functions of the Commission (including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting on the part of the Commission concerning any work, business, or matter) to a division of the Commission, an individual member of the Commission, an administrative law judge, or an employee of the Commission.

"(2) Statutory construction.—Nothing in this section may be construed to authorize the delegation of the function of rulemaking, as described in subchapter II of chapter 5 of title 5, United States Code, with respect to general rules (as distinguished from rules of particular applicability), or the promulgation of any other rule.

"(b) Right To Review Delegated Functions.—

"(1) In general.—With respect to the delegation of any of the functions of the Commission, the Commission shall retain a discretionary right to review the action of any division of the Commission, individual member of the Commission, administrative law judge, or employee of the Commission, upon the initiative of the Commission.

"(2) Vote needed for review.—The vote of one member of the Commission shall be sufficient to bring an action referred to in paragraph (1) before the Commission for review, and the Commission shall ratify, revise, or reject the action under review not later than the last day of the applicable period specified in regulations promulgated by the Commission.

"(3) Failure to conduct review.—If the Commission declines to exercise the right to such review or fails to exercise such right within the applicable period specified in regulations promulgated by the Commission, the action of any such division of the Commission, individual member of the Commission, administrative law judge, or employee, shall, for all purposes, including any appeal or review of such action, be deemed an action of the Commission.

"(c) Minimum Requirements.—Pursuant to the procedures described in section 9(d), after receiving recommendations from the Advisory Committee, the Commission shall establish minimum Federal standards—

"(1) for background investigations, licensing of persons, and licensing of gaming operations associated with the conduct or regulation of class II and class III gaming on Indian lands by tribal governments; and

"(2) for the operation of class II and class III gaming activities on Indian lands, including—

"(A) surveillance and security personnel and systems capable of monitoring all gaming activities, including the conduct of games, cashiers' cages, change booths, count rooms, movements of cash and chips, entrances and exits to gaming facilities, and other critical areas of any gaming facility;

"(B) procedures for the protection of the integrity of the rules for the play of games and controls related to such rules;

"(C) credit and debit collection controls;

"(D) controls over gambling devices and equipment; and

"(E) accounting and auditing.

"(d) Commission Access to Information.—

"(1) In general.—The Commission may secure from any department or agency of the United States information necessary to enable the Commission to carry out this Act. Unless otherwise prohibited by law, upon request of the Chairperson, the head of such department or agency shall furnish such information to the Commission.

"(2) Information transfer.—The Commission may secure from any law enforcement or gaming regulatory agency of any State, Indian tribe, or foreign nation information necessary to enable the Commission to carry out this Act. Unless otherwise prohibited by law, upon request of the Chairperson, the head of any State or tribal law enforcement agency shall furnish such information to the Commission.

"(3) Privileged information.—Notwithstanding sections 552 and 552a of title 5, United States Code, the Commission shall protect from disclosure information provided by Federal, State, tribal, or international law enforcement or gaming regulatory agencies.

"(4) Law enforcement agency.—For purposes of this subsection, the Commission shall be considered a law enforcement agency.

"(e) Investigations and Actions.—

"(1) In general.—

"(A) Possible violations.—The Commission may, at the discretion of the Commission, and as specifically authorized by this Act, conduct such investigations as the Commission considers necessary to determine whether any person has violated, is violating, or is conspiring to violate any provision of this Act (including any rule or regulation promulgated under this Act). The Commission may require or permit any person to file with the Commission a statement in writing, under oath, or otherwise as the Commission may determine, concerning all of the relevant facts and circumstances regarding the matter under investigation by the Commission pursuant to this subsection.

"(B) ADMINISTRATIVE INVESTIGATIONS.—The Commission is authorized, at the discretion of the Commission, and as specifically authorized by this Act, to investigate such facts, conditions, practices, or matters as the Commission considers necessary or proper to aid in—

"(i) the enforcement of any provision of this Act;

"(ii) prescribing rules and regulations under this Act; or

"(iii) securing information to serve as a basis for recommending further legislation concerning the matters to which this Act relates.

"(2) ADMINISTRATIVE AUTHORITIES.—

"(A) IN GENERAL.—For the purpose of any investigation or any other proceeding conducted under this Act, any member of the Commission or any officer designated by the Commission is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission considers relevant or material to the inquiry. The attendance of such witnesses and the production of any such records may be required from any place in the United States at any designated place of hearing.

"(B) REQUIRING APPEARANCES OR TESTIMONY.—In case of contumacy by, or refusal to obey any subpoena issued to, any person, the Commission may invoke the jurisdiction of any court of the United States within the jurisdiction of which an investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records.

"(C) COURT ORDERS.—Any such court may issue an order requiring such person to appear before the Commission or member of the Commission or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question, and any failure to obey such order of the court may be punished by such court as a contempt of such court.

"(3) ENFORCEMENT.—

"(A) IN GENERAL.—If the Commission determines that any person is engaged, has engaged, or is conspiring to engage, in any act or practice constituting a violation of any provision of this Act (including any rule or regulation promulgated under this Act), the Commission may—

"(i) bring an action in the appropriate district court of the United States or the United States District Court for the District of Columbia to enjoin such act or practice, and upon a proper showing, the court shall grant, without bond, a permanent or temporary injunction or restraining order; or

"(ii) transmit such evidence as may be available concerning such act or practice as may constitute a violation of any Federal criminal law to the Attorney General, who may institute the necessary criminal proceedings.

"(B) STATUTORY CONSTRUCTION.—The authority of the Commission to conduct investigations and take actions may not be construed to affect in any way the authority of any other agency or department of the United States to carry out statutory responsibilities of such agency or department.

"(4) WRITS, INJUNCTIONS, AND ORDERS.—Upon application of the Commission, each district court of the United States shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding any person to comply with the provisions of this Act (including any rules and regulations promulgated under this Act).

"SEC. 8. REGULATORY FRAMEWORK.

"(a) CLASS II GAMING.—For class II gaming, Indian tribes shall retain the right of such tribes to, in a manner that meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c)—

"(1) monitor and regulate such gaming; and

"(2) conduct background investigations and issue licenses to persons who are required to obtain a license under section 10(a).

"(b) CLASS III GAMING CONDUCTED UNDER A TRIBAL-STATE COMPACT.—For class III gaming conducted under the authority of a tribal-State compact entered into pursuant to section 12, an Indian tribe or a State, or both, as provided in a compact or by tribal ordinance or resolution, shall, in a manner that meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c)—

"(1) monitor and regulate gaming;

"(2) conduct background investigations and issue licenses to persons who are required to obtain a license pursuant to section 10(a); and

"(3) establish and regulate internal control systems.

"(c) CERTAIN OTHER COMPACTS.—For class III gaming conducted under the authority of a compact negotiated with the Secretary pursuant to section 12(a)(2), such compact shall provide that the Indian tribes or other appropriate entity shall, in a manner that meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c)—

"(1) monitor and regulate such gaming;

"(2) conduct background investigations and issue licenses to persons who are required to obtain a license pursuant to section 10(a); and

"(3) establish and regulate internal control systems.

"(d) VIOLATIONS OF MINIMUM FEDERAL STANDARDS.—

"(1) CLASS II GAMING.—In any case in which an Indian tribe that conducts class II gaming substantially fails to meet minimum Federal standards for class II gaming, after providing the Indian tribe notice and opportunity to cure violations and to be heard, and after the exhaustion of other authorized remedies and sanctions, the Commission shall have the authority to conduct background investigations, issue licenses, and establish and regulate internal control systems. Such authority of the Commission may be exclusive until such time as the regulatory and internal control systems of the Indian tribe meet or exceed the minimum Federal standards concerning regulatory, licensing, or internal control requirements established by the Commission.

"(2) CLASS III GAMING.—In any case in which an Indian tribe or a State (or both) that regulates class III gaming fails to meet or exceed minimum Federal standards for class III gaming, after providing notice and opportunity to cure violations and be heard, and after the exhaustion of other authorized remedies and sanctions, the Commission shall have the authority to conduct background investigations, issue licenses, and establish and regulate internal control systems. Such authority of the Commission may be exclusive until such time as the regulatory or internal control systems of the Indian tribe or a State, or both, meet or exceed the minimum regulatory, licensing, or internal control requirements established by the Commission.

"SEC. 9. ADVISORY COMMITTEE ON MINIMUM REGULATORY REQUIREMENTS AND LICENSING STANDARDS.

"(a) ESTABLISHMENT.—The President shall establish an advisory committee to be known as the 'Advisory Committee on Minimum Regulatory Requirements and Licensing Standards'.

"(b) MEMBERS.—The Advisory Committee shall be composed of 7 members who shall be appointed by the President, of which—

"(1) 3 members, selected from a list of recommendations submitted to the President by the Chairperson and Vice Chairperson of the Committee on Indian Affairs of the Senate and the Chairperson and ranking minority member of the Subcommittee on Native American and Insular Affairs of the Committee on Resources of the House of Representatives, shall be members of federally recognized Indian tribes involved in gaming covered under this Act;

"(2) 2 members, selected from a list of recommendations submitted to the President by the Majority Leader and the Minority Leader of the Senate and the Speaker and the Minority Leader of the House of Representatives, shall represent State governments; and

"(3) 2 members shall each be an employee of the Department of Justice.

"(c) RECOMMENDATIONS FOR MINIMUM FEDERAL STANDARDS.—

"(1) IN GENERAL.—Not later than 180 days after the date on which the Advisory Committee is fully constituted, the Advisory Committee shall develop and submit to the entities referred to in paragraph (2) recommendations for minimum Federal standards for the conduct of background investigations and the establishment of internal control systems and licensing standards.

"(2) RECIPIENTS OF RECOMMENDATIONS.—The Advisory Committee shall submit the recommendations described in paragraph (1) to the Committee on Indian Affairs of the Senate, the Subcommittee on Native American and Insular Affairs of the Committee on Resources of the House of Representatives, the Commission, and to each federally recognized Indian tribe.

"(3) FACTORS FOR CONSIDERATION.—While the minimum standards established pursuant to this section may be developed in light of existing industry standards, the Advisory Committee, and Commission in promulgating standards pursuant to subsection (d), shall give equal weight to—

"(A) the unique nature of tribal gaming as compared to non-Indian commercial, governmental, and charitable gaming;

"(B) the broad variations in the scope and size of tribal gaming activity;

"(C) the inherent sovereign right of Indian tribes to regulate their own affairs; and

"(D) the findings and purposes set forth in sections 2 and 3.

"(d) REGULATIONS.—Upon receipt of the recommendations of the Advisory Committee, the Commission shall hold public hearings on the recommendations. After the conclusion of the hearings, the Commission shall promulgate regulations establishing minimum regulatory requirements and licensing standards.

"(e) TRAVEL.—Members of the Advisory Committee appointed under paragraphs (1) and (2) of subsection (b) shall be reimbursed for travel and per diem in lieu of subsistence expenses during the performance of duties of the Advisory Committee while away from home or their regular place of business, in accordance with subchapter I of chapter 57 of title 5, United States Code.

"(f) TERMINATION.—The Advisory Committee shall cease to exist on the date that is 60 days after the date on which the Advisory Committee submits the recommendations under subsection (c).

"(g) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—All activities of the Advisory Committee shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

"SEC. 10. LICENSING.

"(a) IN GENERAL.—A license issued under this Act shall be required of—

"(1) gaming operations;

"(2) key employees of a gaming operation;

"(3) management- and gaming-related contractors;

"(4) any gaming service industry; and

"(5) any person who has material control, either directly or indirectly, over a licensed gaming operation.

"(b) CERTAIN LICENSES FOR MANAGEMENT CONTRACTORS AND GAMING OPERATIONS.—Notwithstanding any other provision of law relating to licenses issued by an Indian tribe or a State (or both) pursuant to this Act, the Commission may require licenses of—

"(1) management contractors; and

"(2) gaming operations.

"(c) STATEMENT OF COMPLIANCE.—

"(1) IN GENERAL.—The Commission may issue a statement of compliance to an applicant for any license or for qualification status under this Act at any time that the Commission is satisfied that one or more eligibility criteria for the license have been satisfied by an applicant.

"(2) CONTENTS OF STATEMENT.—A statement issued under subparagraph (A) shall specify the eligibility criterion satisfied, the date of such satisfaction, and a reservation by the Commission permitting the Commission to revoke the statement of compliance at any time on the basis of a change of circumstances affecting such compliance.

"(d) GAMING OPERATION LICENSE.—

"(1) IN GENERAL.—No gaming operation shall operate unless all required licenses and approvals for the gaming operation have been obtained in accordance with this Act.

"(2) WRITTEN AGREEMENTS.—

"(A) FILING.—Prior to the operation of any gaming facility or activity, each management contract for the gaming operation shall be in writing and filed with the Commission pursuant to section 13.

"(B) EXPRESS APPROVAL REQUIRED.—No such agreement shall be effective unless the Commission expressly approves the agreement.

"(C) REQUIREMENT OF ADDITIONAL PROVISIONS.—The Commission may require that an agreement referred to in subparagraph (A) includes any provisions that are reasonably necessary to meet the requirements of this Act.

"(D) INELIGIBILITY OR EXEMPTION.—Any applicant who does not have the ability to exercise any significant control over a licensed gaming operation may be determined by the Commission to be ineligible to hold a license or may exempt such applicant from being required to hold a license.

"(e) DENIAL OF LICENSE.—The Commission, in the exercise of the specific licensure power conferred upon the Commission by this Act, shall deny a license to any applicant who is disqualified on the basis of a failure to meet any of the minimum Federal standards promulgated by the Commission pursuant to section 7(c).

"(f) APPLICATION FOR LICENSE.—

"(1) IN GENERAL.—Upon the filing of the materials specified in paragraph (2), the Commission shall conduct an investigation into the qualifications of an applicant. The Commission may conduct a nonpublic hearing on such investigation concerning the qualifications of the applicant in accordance with regulations promulgated by the Commission.

"(2) FILING OF MATERIALS.—The Commission shall carry out paragraph (1) upon the filing of—

"(A) an application for a license that the Commission is specifically authorized to issue pursuant to this Act; and

"(B) such supplemental information as the Commission may require.

"(3) TIMING OF FINAL ACTION.—After an application is submitted to the Commission, the Commission shall take final action not later than 90 days after—

"(A) completing all hearings and investigations concerning the application; and

"(B) receiving all information required to be submitted to the Commission.

"(4) DEADLINE FOR HEARINGS AND INVESTIGATIONS.—Not later than 90 days after receiving the information described in paragraph (3)(B), the Commission shall complete the hearings and investigations described in paragraph (3)(A).

"(5) ACTION BY COMMISSION.—Following the completion of an investigation and hearing, the Commission shall either deny or grant a license to an applicant.

"(6) DENIALS.—

"(A) IN GENERAL.—The Commission may deny any application pursuant to this Act.

"(B) ORDER OF DENIAL.—If the Commission denies an application submitted under this section, the Commission shall prepare an order denying such application. In addition, if an applicant requests a statement of the reasons for the denial, the Commission shall prepare such statement and provide the statement to the applicant. The statement shall include specific findings of fact.

"(7) ISSUANCE OF LICENSES.—If the Commission is satisfied that an applicant is qualified to receive a license, the Commission shall issue a license to the applicant upon tender of—

"(A) all license fees and assessments as required by this Act (including regulations promulgated by the Commission under this Act); and

"(B) such bonds as the Commission may require for the faithful performance of all requirements imposed by this Act (including regulations promulgated under this Act).

"(8) BONDS.—

"(A) AMOUNTS.—The Commission shall, by rules of uniform application, fix the amount of each bond that the Commission requires under this section in such amount as the Commission considers appropriate.

"(B) USE OF BONDS.—The bonds furnished to the Commission under this paragraph may be applied by the Commission to the payment of any unpaid liability of the licensee under this Act.

"(C) TERMS.—Each bond required in accordance with this section shall be furnished—

"(i) in cash or negotiable securities;

"(ii) by a surety bond guaranteed by a satisfactory guarantor; or

"(iii) by an irrevocable letter of credit issued by a banking institution acceptable to the Commission.

"(D) TREATMENT OF PRINCIPAL AND INCOME.—If a bond is furnished in cash or negotiable securities, the principal shall be placed without restriction at the disposal of the Commission, but any income shall inure to the benefit of the licensee.

"(g) RENEWAL OF LICENSE.—

"(1) IN GENERAL.—

"(A) RENEWALS.—Subject to the power of the Commission to deny, revoke, or suspend licenses, any license issued under this section and in force shall be renewed by the Commission for the next succeeding license period upon proper application for renewal and payment of license fees and assessments, as required by applicable law (including regulations of the Commission).

"(B) RENEWAL TERM.—Subject to subparagraph (C), the term of a renewal period for a license issued under this section shall be for a period of not more than—

"(i) 2 years, for each of the first 2 renewal periods succeeding the initial issuance of a license pursuant to subsection (f); and

"(ii) 3 years, for each succeeding renewal period.

"(C) REOPENING HEARINGS.—The Commission may reopen licensing hearings at any time after the Commission has issued or renewed a license.

"(2) TRANSITION.—

"(A) IN GENERAL.—Notwithstanding any other provision of this subsection, the Commission shall, for the purpose of facilitating the administration of this Act, renew a license for an activity covered under subsection (a) that is held by a person on the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995 for a renewal period of 18 months.

"(B) ACTION BEFORE EXPIRATION.—The Commission shall act upon any license renewal application that is filed in a timely manner prior to the date of expiration of the then current license.

"(3) FILING REQUIREMENT.—Each application for renewal shall be filed with the Commission not later than 90 days prior to the expiration of the then current license. All license fees and assessments that are required by law shall be paid to the Commission on or before the date of expiration of the then current license.

"(4) RENEWAL CERTIFICATE.—Upon renewal of a license, the Commission shall issue an appropriate renewal certificate, validating device, or sticker, which shall be attached to the license.

"(h) HEARINGS.—

"(1) IN GENERAL.—The Commission shall establish procedures for the conduct of hearings associated with licensing, including procedures for denying, limiting, conditioning, restricting, revoking, or suspending any such license.

"(2) ACTION BY COMMISSION.—Following a hearing conducted for any of the purposes authorized in this section, the Commission shall—

"(A) render a decision of the Commission;

"(B) issue an order; and

"(C) serve such decision and order upon the affected parties.

"(3) REHEARING.—

"(A) IN GENERAL.—The Commission may, upon a motion made not later than 10 days after the service of a decision and order, order a rehearing before the Commission on such terms and conditions as the Commission considers just and proper if the Commission finds cause to believe that the decision and order should be reconsidered in view of the legal, policy, or factual matters that are—

"(i) advanced by the party that makes the motion; or

"(ii) raised by the Commission on a motion made by the Commission.

"(B) ACTION AFTER REHEARING.—Following a rehearing conducted by the Commission, the Commission shall—

"(i) render a decision of the Commission;

"(ii) issue an order; and

"(iii) serve such decision and order upon the affected parties.

"(C) FINAL AGENCY ACTION.—A decision and order made by the Commission under paragraph (2) (if no motion for a rehearing is made), or a decision and order made by the Commission upon rehearing shall constitute final agency action for purposes of judicial review.

"(4) JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction to review the licensing decisions and orders of the Commission.

"(i) LICENSE REGISTRY.—The Commission shall—

"(1) maintain a registry of all licenses that are granted or denied pursuant to this Act; and

"(2) make the information contained in the registry available to Indian tribes to assist the licensure and regulatory activities of Indian tribes.

"SEC. 11. REQUIREMENTS FOR THE CONDUCT OF CLASS I AND CLASS II GAMING ON INDIAN LANDS.

"(a) CLASS I GAMING.—Class I gaming on Indian lands shall be within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

"(b) CLASS II GAMING.—

"(1) IN GENERAL.—Any class II gaming on Indian lands shall be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this Act.

"(2) LEGAL ACTIVITIES.—An Indian tribe may engage in, and license and regulate, class II gaming on Indian lands within the jurisdiction of such tribe, if—

"(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person; and

"(B) the class II gaming operation meets or exceeds the requirements of sections 7(c) and 10.

"(3) REQUIREMENTS FOR CLASS II GAMING OPERATIONS.—

"(A) IN GENERAL.—The Commission shall ensure that with regard to any class II gaming operation on Indian lands—

"(i) a separate license is issued by the Indian tribe for each place, facility, or location on Indian lands at which class II gaming is conducted;

"(ii) the Indian tribe has or will have the sole proprietary interest and responsibility for the conduct of any class II gaming activity, unless the conditions of clause (ix) apply;

"(iii) the net revenues from any class II gaming activity may only be used—

"(I) to fund tribal government operations or programs;

"(II) to provide for the general welfare of the Indian tribe and the members of the Indian tribe;

"(III) to promote tribal economic development;

"(IV) to donate to charitable organizations;

"(V) to help fund operations of local government agencies; or

"(VI) to comply with the provisions of section 17;

"(iv) the Indian tribe shall provide to the Commission annual outside audits of the class II gaming operation of the Indian tribe, which may be encompassed within existing independent tribal audit systems;

"(v) all contracts for supplies, services, or concessions for a contract amount equal to more than $50,000 per year, other than contracts for professional legal or accounting services, relating to such gaming shall be subject to such independent audits and any audit conducted by the Commission;

"(vi) the construction and maintenance of a class II gaming facility and the operation of class II gaming shall be conducted in a manner that adequately protects the environment and public health and safety;

"(vii) there shall be instituted an adequate system that—

"(I) ensures that—

"(aa) background investigations are conducted on primary management officials, key employees, and persons having material control, either directly or indirectly, in a licensed class II gaming operation, and gaming-related contractors associated with a licensed class II gaming operation; and

"(bb) oversight of such officials and the management by such officials is conducted on an ongoing basis; and

"(II) includes—

"(aa) tribal licenses for persons involved in class II gaming operations, issued in accordance with sections 7(c) and 10;

"(bb) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment or licensure; and

"(cc) notification by the Indian tribe to the Commission of the results of such background investigation before the issuance of any such license;

"(viii) net revenues from any class II gaming activities conducted or licensed by any Indian tribal government may be used to make per capita payments to members of the Indian tribe only if—

"(I) the Indian tribe has prepared a plan to allocate revenues to uses authorized by clause (iii);

"(II) the Secretary determines that the plan is adequate, particularly with respect to uses described in subclause (I) or (III) of clause (iii);

"(III) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved;

"(IV) the per capita payments to minors and other legally incompetent persons are disbursed to the parents or legal guardians of such minors or legally incompetent persons in such amounts as may be necessary for the health, education, or welfare of each such minor or legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

"(V) the per capita payments are subject to Federal income taxation and Indian tribes withhold such taxes when such payments are made.

"(ix) a separate license shall be issued by the Indian tribe for any class II gaming operation owned by any person or entity other than the Indian tribe and conducted on Indian lands, that includes—

"(I) requirements set forth in subparagraph (C); and

"(II) requirements that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located; and

"(x) no person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming operation conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

"(B) TRANSITION.—

"(i) IN GENERAL.—Clauses (ii), (iii), and (ix) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

"(I) such gaming operation is licensed and regulated by an Indian tribe;

"(II) income to the Indian tribe from such gaming is used only for the purposes described in subparagraph (A)(iii);

"(III) not less than 60 percent of the net revenues from such gaming operation is income to the licensing Indian tribe; and

"(IV) the owner of such gaming operation pays an appropriate assessment to the Commission pursuant to section 17 for the regulation of such gaming.

"(ii) LIMITATIONS ON EXEMPTION.—The exemption from application provided under clause (i) may not be transferred to any person or entity and shall remain in effect only during such period as the gaming operation remains within the same nature and scope as such gaming operation was actually operated on October 17, 1988.

"(C) LIST.—The Commission shall—

"(i) maintain a list of each individually owned gaming operation that is subject to subparagraph (A)(x); and

"(ii) publish such list in the Federal Register.

"(c) PETITION FOR CERTIFICATE OF SELF-REGULATION.—

"(1) IN GENERAL.—Any Indian tribe that operates, directly or with a management contract, a class II gaming activity may petition the Commission for a certificate of self-regulation if that Indian tribe—

"(A) has continuously conducted such activity for a period of not less than 3 years, including a period of at least 1 year after the date of the enactment of the Indian Gaming Regulatory Act Amendments Act of 1995; and

"(B) has otherwise complied with the provisions of this Act.

"(2) ISSUANCE OF CERTIFICATE OF SELF-REGULATION.—The Commission shall issue a certificate of self-regulation if the Commission determines on the basis of available information, and after a hearing if requested by the tribe, that the Indian tribe has—

"(A) conducted its gaming activity in a manner which has—

"(i) resulted in an effective and honest accounting of all revenues;

"(ii) resulted in a reputation for safe, fair, and honest operation of the activity; and

"(iii) been generally free of evidence of criminal or dishonest activity;

"(B) adopted and implemented adequate systems for—

"(i) accounting for all revenues from the activity;

"(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

"(iii) investigation, enforcement, and prosecution of violations of its gaming ordinance and regulations;

"(C) conducted the operation on a fiscally and economically sound basis; and

"(D) paid all fees and assessments that the tribe is required to pay to the Commission under this Act.

"(3) EFFECT OF CERTIFICATE OF SELF-REGULATION.—During the period in which a certificate of self-regulation issued under this paragraph is in effect with respect to a gaming activity conducted by an Indian tribe—

"(A) the tribe shall—

"(i) continue to submit an annual independent audit as required by subsection (b)(3)(A)(iv); and

"(ii) submit to the Commission a complete résumé of each employee hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

"(B) the Commission may not assess a fee on such activity pursuant to section 17 in excess of ¼ of 1 percent of the gross revenue from such activity.

"(4) RESCISSION.—The Commission may, for just cause and after an opportunity for a hearing, rescind a certificate of self-regulation by majority vote of the members of the Commission.

"(d) LICENSE REVOCATION.—If, after the issuance of any license by an Indian tribe under this section, the Indian tribe receives reliable information from the Commission indicating that a licensee does not meet any standard established under section 7(c) or 10, or any other applicable regulation promulgated by the Commission, the Indian tribe—

"(1) shall suspend such license; and

"(2) after notice and hearing under procedures established pursuant to applicable tribal law, may revoke such license.

"SEC. 12. CLASS III GAMING ON INDIAN LANDS.

"(a) REQUIREMENTS FOR THE CONDUCT OF CLASS III GAMING ON INDIAN LANDS.—

"(1) IN GENERAL.—Class III gaming activities shall be lawful on Indian lands only if such activities are—

"(A) authorized by a compact that—

"(i) is approved pursuant to tribal law by the governing body of the Indian tribe having jurisdiction over such lands;

"(ii) meets the requirements of section 11(b)(3) for the conduct of class II gaming; and

"(iii) is approved by the Secretary;

"(B) located in a State that permits such gaming for any purpose by any person; and

"(C) conducted in conformance with a tribal-State compact that—

"(i) is in effect; and

"(ii) is—

"(I) entered into by an Indian tribe and a State and approved by the Secretary under paragraph (2); or

"(II) issued by the Secretary under paragraph (2).

"(2) COMPACT NEGOTIATIONS.—

"(A) IN GENERAL.—

"(i) COMPACT NEGOTIATIONS.—Any Indian tribe having jurisdiction over the lands upon which a class III gaming activity is to be conducted may request the State in which such lands are located to enter into negotiations for the purpose of entering into a tribal-State compact governing the conduct of class III gaming activities.

"(ii) REQUIREMENTS FOR REQUEST FOR NEGOTIATIONS.—A request for negotiations under clause (i) shall be in writing and shall specify each gaming activity that the Indian tribe proposes for inclusion in the compact. Not later than 30 days after receipt of such written request, the State shall respond to the Indian tribe.

"(iii) COMMENCEMENT OF COMPACT NEGOTIATIONS.—Compact negotiations conducted under this paragraph shall commence not later than 30 days after the date on which a response by a State is due to the Indian tribe, and shall be completed not later than 120 days after the initiation of compact negotiations, unless the State and the Indian tribe agree to a different period of time for the completion of compact negotiations.

"(iv) INABILITY TO MEET DEADLINES FOR NEGOTIATIONS.—

"(I) NOTIFICATION.—If the State and the Indian tribe find that the State and Indian tribe are unable to commence or complete compact negotiations within the applicable time periods provided in this subsection, the Indian tribe shall notify the Secretary.

"(II) PRESENTATION OF POSITIONS.—Upon receipt of a notice under subclause (I), the Secretary shall request that the tribe and the State present their respective positions, not later than 60 days after such request, regarding—

"(aa) the gaming activities that the tribe seeks to conduct that are permissible under this Act;

"(bb) the framework for regulation of tribal gaming; and

"(cc) such other matters as the Secretary may consider appropriate.

"(B) APPROVAL OF COMPACT.—Not later than 90 days after the date of expiration of the 60-day period specified in subparagraph (A), the Secretary shall approve a compact that meets the requirements of this section, and shall publish the compact in the Federal Register. The compact shall—

"(i) include provisions—

"(I) that best meet the objectives of this Act; and

"(II) for background investigations, internal controls, and licensing that are consistent with this Act (including regulations promulgated by the Commission pursuant to section 7(c)); and

"(ii) not violate—

"(I) any provision of this Act (including regulations promulgated by the Commission pursuant to this Act);

"(II) any other provision of Federal law; or

"(III) the trust obligation of the United States to Indians.

"(C) MANDATORY DISAPPROVAL.—Notwithstanding any other provision of this Act, the Secretary shall not have the authority to approve a compact if the compact requires State regulation of Indian gaming absent the consent of the State or the Indian tribe.

"(D) EFFECT OF PUBLICATION OF COMPACT.—Except for an appeal conducted under subchapter II of chapter 5 of title 5, United States Code, by an Indian tribe or a State associated with the publication of the compact, the publication of a compact pursuant to subparagraph (B) that permits a form of class III gaming shall, for the purposes of this Act, be conclusive evidence that such class III gaming is an activity subject to negotiations under the laws of the State where the gaming is to be conducted, in any matter under consideration by the Commission or a Federal court.

"(E) EFFECTIVE DATE OF COMPACT.—Any compact negotiated under this subsection shall become effective upon the publication of the compact in the Federal Register by the Secretary.

"(F) DUTIES OF COMMISSION.—Consistent with the provisions of sections 7(c), 8, and 10, the Commission shall monitor and, if specifically authorized, regulate and license class III gaming with respect to any compact that is approved by the Secretary under this subsection and published in the Federal Register.

"(3) PROVISIONS OF COMPACTS.—

"(A) IN GENERAL.—A compact negotiated under this subsection may include provisions relating to—

"(i) the application of the criminal and civil laws (including regulations) of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity in a manner consistent with sections 7(c), 8, and 10;

"(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws (including regulations);

"(iii) the assessment by the State of the costs associated with such activities in such amounts as are necessary to defray the costs of regulating such activity;

"(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

"(v) remedies for breach of compact provisions;

"(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing, in a manner consistent with sections 7(c), 8, and 10; and

"(vii) any other subject that is directly related to the operation of gaming activities and the impact of gaming on tribal, State, and local governments.

"(B) STATUTORY CONSTRUCTION WITH RESPECT TO ASSESSMENTS.—Except for any assessments for services agreed to by an Indian tribe in compact negotiations, nothing in this section may be construed as conferring upon a State or any political subdivision thereof the authority to impose any tax, fee, charge, or other assessment upon an Indian tribe, an Indian gaming operation or the value generated by the gaming operation, or any person or entity authorized by an Indian tribe to engage in a class III gaming activity in conformance with this Act.

"(4) STATUTORY CONSTRUCTION WITH RESPECT TO CERTAIN RIGHTS OF INDIAN TRIBES.—Nothing in this subsection impairs the right of an Indian tribe to regulate class III gaming on the Indian lands of the Indian tribe concurrently with a State and the Commission, except to the extent that such regulation is inconsistent with, or less stringent than, this Act or any laws (including regulations) made applicable by any compact entered into by the Indian tribe under this subsection that is in effect.

"(5) EXEMPTION.—The provisions of section 2 of the Act of January 2, 1951 (commonly referred to as the 'Gambling Devices Transportation Act') (64 Stat. 1134, chapter 1194, 15 U.S.C. 1175) shall not apply to any class II gaming activity or any gaming activity conducted pursuant to a compact entered into after the date of enactment of this Act, but in no event shall this paragraph be construed as invalidating any exemption from the provisions of such section 2 for any compact entered into prior to the date of enactment of this Act.

"(b) JURISDICTION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.—The United States District Court for the District of Columbia shall have jurisdiction over any action initiated by the Secretary, the Commission, a State, or an Indian tribe to enforce any provision of a compact entered into under subsection (a) or to enjoin a class III gaming activity located on Indian lands and conducted in violation of any compact that is in effect and that was entered into under subsection (a).

"(c) APPROVAL OF COMPACTS.—

"(1) IN GENERAL.—The Secretary is authorized to approve any compact between an Indian tribe and a State governing the conduct of class III gaming on Indian lands of such Indian tribe entered into under subsection (a).

"(2) REASONS FOR DISAPPROVAL BY SECRETARY.—The Secretary may disapprove a compact entered into under subsection (a) only if such compact violates any—

"(A) provision of this Act or any regulation promulgated by the Commission pursuant to this Act;

"(B) other provision of Federal law; or

"(C) trust obligation of the United States to Indians.

"(3) EFFECT OF FAILURE TO ACT ON COMPACT.—If the Secretary fails to approve or disapprove a compact entered into under subsection (a) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this Act and the regulations promulgated by the Commission pursuant to this Act.

"(4) NOTIFICATION.—The Secretary shall publish in the Federal Register notice of any compact that is approved, or considered to have been approved, under this subsection.

"(d) Revocation of Ordinance.—

"(1) IN GENERAL.—The governing body of an Indian tribe, in its sole discretion, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

"(2) PUBLICATION OF REVOCATION.—An Indian tribe shall submit any revocation ordinance or resolution described in paragraph (1) to the Commission. The Commission shall publish such ordinance or resolution in the Federal Register. The revocation provided by such ordinance or resolution shall take effect on the date of such publication.

"(3) CONDITIONAL OPERATION.—Notwithstanding any other provision of this subsection—

"(A) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in paragraph (1) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation, ordinance, or resolution is published under paragraph (2), continue to operate such activity in conformance with an applicable compact entered into under subsection (a) that is in effect; and

"(B) any civil action that arises before, and any crime that is committed before, the termination of such 1-year period shall not be affected by such revocation ordinance, or resolution.

"(e) Certain Class III Gaming Activities.—

"(1) COMPACTS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE INDIAN GAMING REGULATORY ACT AMENDMENTS ACT OF 1995.—Class III gaming activities that are authorized under a compact approved or issued by the Secretary under the authority of this Act prior to the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995 shall, during such period as the compact is in effect, remain lawful for the purposes of this Act, notwithstanding the Indian Gaming Regulatory Act Amendments Act of 1995 and the amendments made by such Act or any change in State law enacted after the approval or issuance of the compact.

"(2) COMPACT ENTERED INTO AFTER THE DATE OF ENACTMENT OF THE INDIAN GAMING REGULATORY ACT AMENDMENTS ACT OF 1995.—Any compact entered into under subsection (a) after the date specified in paragraph (1) shall remain lawful for the purposes of this Act, notwithstanding any change in State law enacted after the approval or issuance of the compact.

"SEC. 13. REVIEW OF CONTRACTS.

"(a) Contracts Included.—The Commission shall review and approve or disapprove—

"(1) any management contract for the operation and management of any gaming activity that an Indian tribe may engage in under this Act; and

"(2) unless licensed by an Indian tribe consistent with the minimum Federal standards adopted pursuant to section 7(c), any gaming-related contract.

"(b) Management Contract Requirements.—The Commission shall approve any management contract between an Indian tribe and a person licensed by an Indian tribe or the Commission that is entered into pursuant to this Act only if the Commission determines that the contract provides for—

"(1) adequate accounting procedures that are maintained, and verifiable financial reports that are prepared by or for, the governing body of the Indian tribe on a monthly basis;

"(2) access to the daily gaming operations by appropriate officials of the Indian tribe who shall have the right to verify the daily gross revenues and income derived from any gaming activity;

"(3) a minimum guaranteed payment to the Indian tribe that has preference over the retirement of any development and construction costs;

"(4) an agreed upon ceiling for the repayment of any development and construction costs;

"(5) a contract term of not to exceed 5 years, except that, upon the request of an Indian tribe, the Commission may authorize a contract term that exceeds 5 years but does not exceed 7 years, if the Commission is satisfied that the capital investment required, and the income projections for the particular gaming activity, require the additional time; and

"(6) grounds and mechanisms for the termination of the contract, but any such termination shall not require the approval of the Commission.

"(c) Management Fee Based on Percentage of Net Revenues.—

"(1) PERCENTAGE FEE.—The Commission may approve a management contract that provides for a fee that is based on a percentage of the net revenues of a tribal gaming activity if the Commission determines that such percentage fee is reasonable, taking into consideration surrounding circumstances.

"(2) FEE AMOUNT.—Except as provided in paragraph (3), a fee described in paragraph (1) shall not exceed an amount equal to 30 percent of the net revenues described in such paragraph.

"(3) EXCEPTION.—Upon the request of an Indian tribe, if the Commission is satisfied that the capital investment required, and income projections for, a tribal gaming activity, necessitate a fee in excess of the amount specified in paragraph (2), the Commission may approve a management contract that provides for a fee described in paragraph (1) in an amount in excess of the amount specified in paragraph (2), but not to exceed 40 percent of the net revenues described in paragraph (1).

"(d) Gaming-Related Contract Requirements.—The Commission shall approve a gaming-related contract covered under subsection (a)(2) that is entered into pursuant to this Act only if the Commission determines that the contract provides for—

"(1) grounds and mechanisms for termination of the contract, but such termination shall not require the approval of the Commission; and

"(2) such other provisions as the Commission may be empowered to impose by this Act.

"(e) Time Period for Review.—

"(1) IN GENERAL.—Except as provided in paragraph (2), not later than 90 days after the date on which a management contract or other gaming-related contract is submitted to the Commission for approval, the Commission shall approve or disapprove such contract on the merits of the contract. The Commission may extend the 90-day period for an additional period of not more than 45 days if the Commission notifies the Indian tribe in writing of the reason for the extension of the period. The Indian tribe may bring an action in the United States District Court for the District of Columbia to compel action by the Commission if a contract has not been approved or disapproved by the termination date of an applicable period under this subsection.

"(2) EFFECT OF FAILURE OF COMMISSION TO ACT ON CERTAIN GAMING-RELATED CONTRACT.—Any gaming-related contract for an amount less than or equal to $100,000 that is submitted to the Commission pursuant to paragraph (1) by a person who holds a valid license that is in effect under this Act shall be deemed to be approved, if by the date that is 90 days after the contract is submitted to the Commission, the Commission fails to approve or disapprove the contract.

"(f) Contract Modifications and Void Contracts.—The Commission, after providing notice and hearing—

"(1) shall have the authority to require appropriate contract modifications to ensure compliance with the provisions of this Act; or

"(2) may void any contract regulated by the Commission under this Act if the Commission determines that any of the provisions of this Act have been violated by the terms of the contract.

"(g) Interests in Real Property.—No contract regulated by this Act may transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists, all necessary approvals for such transfer or conveyance have been obtained, and such transfer or conveyance is clearly specified in the contract.

"(h) Authority of the Secretary.—The authority of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81) shall not extend to any contract or agreement that is regulated pursuant to this Act.

"(i) Disapproval of Contracts.—The Commission may not approve a contract if the Commission determines that—

"(1) any person having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, any individual who serves on the board of directors of such corporation, and any of the stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock—

"(A) is an elected member of the governing body of the Indian tribe which is a party to the contract;

"(B) has been convicted of any felony or gaming offense;

"(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this Act or has refused to respond to questions propounded by the Commission; or

"(D) has been determined to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

"(2) the contractor—

"(A) has unduly interfered or influenced for its gain or advantage any decision or process of tribal government relating to the gaming activity; or

"(B) has attempted to interfere or influence a decision pursuant to subparagraph (A);

"(3) the contractor has deliberately or substantially failed to comply with the terms of the contract; or

"(4) a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

"SEC. 14. REVIEW OF EXISTING CONTRACTS; INTERIM AUTHORITY.

"(a) Review of Existing Contracts.—

"(1) In general.—At any time after the Commission is sworn in and has promulgated regulations for the implementation of this Act, the Commission shall notify each Indian tribe and management contractor who, prior to the enactment of the Indian Gaming Regulatory Act Amendments Act of 1995, entered into a management contract that was approved by the Secretary, that the Indian tribe is required to submit to the Commission such contract, including all collateral agreements relating to the gaming activity, for review by the Commission not later than 60 days after such notification. Any such contract shall be valid under this Act, unless the contract is disapproved by the Commission under this section.

"(2) Review.—

"(A) In general.—Not later than 180 days after the submission of a management contract, including all collateral agreements, to the Commission pursuant to this section, the Commission shall review the contract to determine whether the contract meets the requirements of section 13 and was entered into in accordance with the procedures under such section.

"(B) Approval of contract.—The Commission shall approve a management contract submitted for review under subsection (a) if the Commission determines that—

"(i) the management contract meets the requirements of section 13; and

"(ii) the management contractor has obtained all of the licenses that the contractor is required to obtain under this Act.

"(C) Notification of necessary modifications.—If the Commission determines that a contract submitted under this section does not meet the requirements of section 13, the Commission shall provide written notification to the parties to such contract of the necessary modifications and the parties shall have 180 days to make the modifications.

"(b) Interim Authority of the National Indian Gaming Commission.—

"(1) In general.—Notwithstanding any other provision of this Act, the Chairperson and the associate members of the National Indian Gaming Commission who are holding office on the date of enactment of this Act shall exercise those authorities vested in the Federal Indian Gaming Regulatory Commission by this Act until such time as the members of the Federal Indian Gaming Regulatory Commission are sworn into office.

"(2) Transition.—Notwithstanding any other provision of law, the Commission shall exercise the authority conferred on the Commission by this Act, and until such time as the Commission promulgates revised regulations after the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995, the regulations issued under this Act, as in effect on the day before such date of enactment, shall apply.

"SEC. 15. CIVIL PENALTIES.

"(a) Amount.—Any person who commits any act or causes to be done any act that violates any provision of this Act or the rules or regulations promulgated under this Act, or who fails to carry out any act or causes the failure to carry out any act that is required by any such provision of law shall be subject to a civil penalty in an amount equal to not more than $50,000 per day for each such violation.

"(b) Assessment and Collection.—

"(1) In general.—Each civil penalty assessed under this section shall be assessed by the Commission and collected in a civil action brought by the Attorney General on behalf of the United States. Before the Commission refers civil penalty claims to the Attorney General, the Commission may compromise the civil penalty after affording the person charged with a violation referred to in subsection (a), an opportunity to present views and evidence in support of such action by the Commission to establish that the alleged violation did not occur.

"(2) Penalty amount.—In determining the amount of a civil penalty assessed under this section, the Commission shall take into account—

"(A) the nature, circumstances, extent, and gravity of the violation committed;

"(B) with respect to the person found to have committed such violation, the degree of culpability, any history of prior violations, ability to pay, the effect on ability to continue to do business; and

"(C) such other matters as justice may require.

"(c) Temporary Closures.—

"(1) In general.—The Commission may order the temporary closure of all or part of an Indian gaming operation for a substantial violation of any provision of law referred to in subsection (a).

"(2) Hearing on order of temporary closure.—

"(A) In general.—Not later than 30 days after the issuance of an order of temporary closure, the Indian tribe or the individual owner of a gaming operation shall have the right to request a hearing before the Commission to determine whether such order should be made permanent or dissolved.

"(B) Deadlines relating to hearing.—Not later than 30 days after a request for a hearing is made, the Commission shall conduct such hearing. Not later than 30 days after the termination of the hearing, the Commission shall render a final decision on the closure.

"SEC. 16. JUDICIAL REVIEW.

"A decision made by the Commission pursuant to sections 7, 8, 10, 13, 14, and 15 shall constitute final agency decisions for purposes of appeal to the United States District Court for the District of Columbia pursuant to chapter 7 of title 5, United States Code.

"SEC. 17. COMMISSION FUNDING.

"(a) Annual Fees.—

"(1) In general.—The Commission shall establish a schedule of fees to be paid to the Commission annually by gaming operations for each class II and class III gaming activity that is regulated by this Act.

"(2) Limitation on fee rates.—

"(A) In general.—For each gaming operation regulated under this Act, the rate of the fees imposed under the schedule established under paragraph (1) shall not exceed 2 percent of the net revenues of such gaming operation.

"(B) Total amount of fees.—The total amount of all fees imposed during any fiscal year under the schedule established under paragraph (1) shall equal not more than $25,000,000.

"(3) Annual fee rate.—The Commission, by a vote of a majority of the members of the Commission, shall annually adopt the rate of the fees authorized by this section. Such fees shall be payable to the Commission on a monthly basis.

"(4) Adjustment of fees.—The fees paid by a gaming operation may be adjusted by the Commission to reduce the amount of the fees by an amount that takes into account that regulatory functions are performed by an Indian tribe, or the Indian tribe and a State, pursuant to regulations promulgated by the Commission.

"(5) Consequences of failure to pay fees.—Failure to pay the fees imposed under the schedule established under paragraph (1) shall, subject to regulations promulgated by the Commission, be grounds for revocation of the approval of the Commission of any license required under this Act for the operation of gaming activities.

"(6) Surplus funds.—To the extent that revenue derived from fees imposed under the schedule established under paragraph (1) exceed the limitation in paragraph (2)(B) or are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming activity that is the subject of the fees on a pro rata basis against such fees imposed for the succeeding year.

"(b) Reimbursement of Costs.—The Commission is authorized to assess any applicant, except the governing body of an Indian tribe, for any license required pursuant to this Act. Such assessment shall be an amount equal to the actual costs of conducting all reviews and investigations necessary for the Commission to determine whether a license should be granted or denied to the applicant.

"(c) Annual Budget.—

"(1) In general.—For the first full fiscal year beginning after the date of enactment of the Indian Gaming Regulatory Act Amendments Act of 1995, and each fiscal year thereafter, the Commission shall adopt an annual budget for the expenses and operation of the Commission.

"(2) Request for appropriations.—The budget of the Commission may include a request for appropriations authorized under section 18.

"(3) Submission to congress.—Notwithstanding any other provision of law, a request for appropriations made pursuant to paragraph (2) shall be submitted by the Commission directly to the Congress beginning with the request for the first full fiscal year beginning after the date of enactment of this Act, and shall include the proposed annual budget of the Commission and the estimated revenues to be derived from fees.

"SEC. 18. AUTHORIZATION OF APPROPRIATIONS.

"Subject to section 17, there are authorized to be appropriated $5,000,000 to provide for the operation of the Commission for each of fiscal years 1997, 1998, and 1999, to remain available until expended.

"SEC. 19. MISCELLANEOUS.

"(a) Gaming Proscribed on Lands Acquired in Trust.—

"(1) In general.—Except as provided in paragraph (2), gaming regulated by this Act shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after the date of enactment of this Act, unless—

"(A) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on the date of enactment of this Act;

"(B) the Indian tribe has no reservation on the date of enactment of this Act and such lands are located in the State of Oklahoma and—

"(i) are within the boundaries of the former reservation of the Indian tribe, as defined by the Secretary; or

"(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in the State of Oklahoma; or

"(C) such lands are located in a State other than the State of Oklahoma and are within the last recognized reservation of the Indian tribe within the State within which the Indian tribe is presently located.

"(2) EXEMPTION FOR CERTAIN TRUST LANDS.—Paragraph (1) does not apply in any case in which—

"(A) the Secretary, after consultation with the Indian tribe and a review of the recommendations, if any, of the Governor of the State in which such lands are located, and any other State and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands—

"(i) would be in the best interest of the Indian tribe and the members of the Indian tribe; and

"(ii) would not be detrimental to the surrounding community;

"(B) lands are taken into trust as part of a settlement of a land claim;

"(C) the initial reservation of an Indian tribe is acknowledged by the Secretary under the Federal acknowledgment process or by an Act of Congress; or

"(D) lands are restored for an Indian tribe that is restored to Federal recognition.

"(3) EXEMPTION.—Paragraph (1) shall not apply to—

"(A) any lands involved in the trust petition of the St. Croix Chippewa Indians of Wisconsin that is the subject of the action filed in the United States District Court for the District of Columbia entitled St. Croix Chippewa Indians of Wisconsin v. United States, Civ. No. 86-2278; or

"(B) the interests of the Miccosukee Tribe of Indians of Florida in approximately 25 contiguous acres of land, more or less, in Dade County, Florida, located within 1 mile of the intersection of State road numbered 27 (also known as Krome Avenue) and the Tamiami Trail.

"(4) AUTHORITY OF THE SECRETARY.—Nothing in this section may affect or diminish the authority and responsibility of the Secretary to take land into trust.

"(b) APPLICATION OF THE INTERNAL REVENUE CODE OF 1986.—

"(1) IN GENERAL.—The provisions of the Internal Revenue Code of 1986 (including sections 1441, 3402(q), 6041, and chapter 35 of such Code) concerning the reporting and withholding of taxes with respect to the winnings from gaming or wagering operations shall apply to Indian gaming operations conducted pursuant to this Act, or under a compact entered into under section 12 that is in effect, in the same manner as such provisions apply to State gaming and wagering operations. Any exemptions to States with respect to taxation of such gaming or wagering operations shall be allowed to Indian tribes.

"(2) EXEMPTION.—The provisions of section 6050I of the Internal Revenue Code of 1986 shall apply to an Indian gaming establishment that is not designated by the Secretary of the Treasury as a financial institution pursuant to chapter 53 of title 31, United States Code.

"(3) STATUTORY CONSTRUCTION.—This subsection shall apply notwithstanding any other provision of law enacted before the date of enactment of this Act unless such other provision of law specifically cites this subsection.

"(c) ACCESS TO INFORMATION BY STATE AND TRIBAL GOVERNMENTS.—Subject to section 7(d), upon the request of a State or the governing body of an Indian tribe, the Commission shall make available any law enforcement information which it has obtained pursuant to such section, unless otherwise prohibited by law, in order to enable the State or the Indian tribe to carry out its responsibilities under this Act or any compact approved by the Secretary.";

(3) by striking section 20;

(4) by redesignating sections 21 through 24 as sections 20 through 23, respectively; and

(5) by adding at the end the following new section:

"SEC. 24. DEFINITION OF FINANCIAL INSTITUTIONS.

"Section 5312(a)(2) of title 31, United States Code, is amended—

"(1) by redesignating subparagraphs (X) and (Y) as subparagraphs (Y) and (Z), respectively; and

"(2) by inserting after subparagraph (W) the following new subparagraph:

"(X) an Indian gaming establishment;".

SEC. 3. CONFORMING AMENDMENTS.

(a) TITLE 10.—Section 2323a(e)(1) of title 10, United States Code, is amended by striking "section 4(4) of the Indian Gaming Regulatory Act (102 Stat. 2468; 25 U.S.C. 2703(4))" and inserting "section 4(16) of the Indian Gaming Regulatory Act".

(b) TITLE 18.—Title 18, United States Code, is amended—

(1) in subsections (c) and (d) of section 1166, by striking "section 11(d)(8) of the Indian Gaming Regulatory Act" each place it appears and inserting "section 12(a)(2)(B) of the Indian Gaming Regulatory Act";

(2) in section 1167—

(A) in subsection (a), by striking "National Indian Gaming Commission" and inserting "Federal Indian Gaming Regulatory Commission established under section 5 of the Indian Gaming Regulatory Act"; and

(B) in subsection (b), by striking "National Indian Gaming Commission" and inserting "Federal Indian Gaming Regulatory Commission"; and

(3) in section 1168—

(A) in subsection (a), by striking "National Indian Gaming Commission" and inserting "Federal Indian Gaming Regulatory Commission established under section 5 of the Indian Gaming Regulatory Act"; and

(B) in subsection (b), by striking "National Indian Gaming Commission" and inserting "Federal Indian Gaming Regulatory Commission".

(c) INTERNAL REVENUE CODE OF 1986.—Section 168(j)(4)(A)(iv) of the Internal Revenue Code of 1986 is amended by striking "Indian Regulatory Act" and inserting "Indian Gaming Regulatory Act".

(d) TITLE 28.—Title 28, United States Code, is amended—

(1) in section 3701(2)—

(A) by striking "section 4(5) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(5))" and inserting "section 4(17) of the Indian Gaming Regulatory Act"; and

(B) by striking "section 4(4) of such Act (25 U.S.C. 2703(4))" and inserting "section 4(16) of such Act"; and

(2) in section 3704(b), by striking "section 4(4) of the Indian Gaming Regulatory Act" and inserting "section 4(16) of the Indian Gaming Regulatory Act".

SECTION-BY-SECTION SUMMARY OF THE INDIAN GAMING REGULATORY ACT AMENDMENTS ACT OF 1995

Section 1. Short Title. This section provides that this Act may be cited as the "Indian Gaming Regulatory Act Amendments Act of 1995".

Section 2. Amendment to the Indian Gaming Regulatory Act. This section provides that the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) is amended by striking sections 2 through 19 and inserting the following new sections:

Section 1. Short Title; Table of Contents. Subsection (a) provides that this Act may be cited as the "Indian Gaming Regulatory Act".

Subsection (b) sets forth the table of contents for the Act.

Section 2. Congressional Findings. This section contains seven separate findings, including the following: Indian tribes are engaged in the licensing and operation of gaming activities as a means of generating tribal governmental revenue; clear Federal standards and regulations for the conduct of Indian gaming will assist tribal governments in assuring the integrity of gaming activities; a principal goal of Federal Indian policy is to promote tribal economic development, self-sufficiency and strong tribal government; Indian tribes have the right to regulate gaming activities on Indian lands if such activities are not prohibited by Federal law and are conducted within a state that permits such gaming activities and the Congress has the authority to regulate the privilege of doing business with Indian tribes in Indian country; the regulation of Indian gaming activities should meet or exceed federally established minimum regulatory requirements; gaming activities on Indian lands has had a substantial impact on commerce with foreign nations, among the several states and with the Indian tribes; and the Constitution vests the Congress with the power to regulate commerce with foreign nations, among the several states and with the Indian tribes and this Act is enacted in the exercise of those powers.

Section 3. Purposes. This section sets forth four purposes of the Act, including the following: to ensure the right of Indian tribes to conduct gaming operations on Indian lands consistent with the U.S. Supreme Court decision in the case of California v. Cabazon Band of Mission Indians; to provide a statutory basis for the conduct of gaming activities on Indian lands as a means of promoting tribal economic development and strong tribal governments; to provide an adequate statutory basis for the regulation of Indian gaming by tribal governments to shield the gaming from organized crime; ensure that the Indian tribe is the primary beneficiary of the gaming activities and to ensure that the gaming activities are conducted fairly by both the operator and the patrons; and to declare that the establishment of independent Federal regulatory authority and minimum regulatory standards for the conduct of gaming activities on Indian lands are necessary to protect such gaming.

Section 4. Definitions. This section contains definitions for the following terms:

"applicant", "Advisory Committee", "Attorney General", "Chairperson", "Class I Gaming", "Class II Gaming", "Class III Gaming", "Commission", "Compact", "Electronic, Computer, and Other Technologic Aid", "Electronic or Electromechanical Facsimile", "Gambling Device", "Gaming-Related Contract", "Gaming Related Contractor", "Gaming Service Industry", "Indian Lands", "Indian Tribe", "Key Employee", "Management Contract", "Management Contractor", "Material Control", "Net Revenues", "Person", and "Secretary".

Section 5. Establishment of the Federal Indian Gaming Regulatory Commission. Subsection (a) of this section provides for the establishment of the Federal Indian Gaming Regulatory Commission as an independent agency of the United States.

Subsection b. provides that the Commission shall be composed of 3 full-time members who are appointed by the President and confirmed by the Senate. Commission members are prohibited from pursuing any other business or occupation or holding any other office. Other than through distribution of gaming revenues as a member of an Indian tribe, Commission members are prohibited from engaging in or having a pecuniary interest in a gaming activity or in any business or organization that has a license under this Act or that does business with any person or organization under this Act. Persons who have been convicted or a felony or a gaming offense cannot serve as Commissioners. In addition, persons who have any financial interest in or management responsibility for any gaming contract or other contract approved pursuant to this Act are also ineligible to serve as Commissioners.

Subsection (b) also provides that not more than 2 members of the Commission shall be members of the same political party and at least two members of the Commission shall be members of federally recognized Indian tribes. One member of the Commission must be a certified public accountant with at least 5 years of experience in accounting and auditing as well as a comprehensive knowledge of the principles and practices of corporate finance. One member of the Commission must have training and experience in the fields of investigation or law enforcement. Any person under consideration for appointment to the Commission shall be the subject of a background investigation conducted by the Attorney General with particular emphasis on the person's financial stability, integrity, responsibility and reputation for good character and honesty.

Subparagraph (c) provides that the President shall select a Chairperson from among the members appointed to the Commission.

Subparagraph (d) provides that the Commission shall select a Vice Chairperson by majority vote. The Vice Chairperson shall serve as the Chairperson in the absence of the Chairperson and shall exercise such other powers as may be delegated by the Chairperson.

Subparagraph (e) provides that each member of the Commission shall hold office for a term of 5 years and no member can serve more than two terms of 5 years each. The initial appointments to the Commission will be made for staggered terms, with the Chairperson serving a full 5 year term.

Subparagraph (f) provides that Commissioners shall serve until the expiration of their term or until their successor is duly appointed and qualified, unless a Commissioner is removed for cause. A Commissioner can only be removed by the President for neglect of duty, malfeasance in office or for other good cause. Any member appointed to fill a vacancy shall serve for the unexpired term of the vacancy.

Subparagraph (g) provides that two members of the Commission shall constitute a quorum.

Subparagraph (h) provides that the Commission shall meet at the call of the Chairperson or a majority of the members of the Commission. A majority of the members of the Commission shall determine any action of the Commission.

Subparagraph (i) provides that the Chairperson shall be compensated at level IV of the Executive Schedule and other members shall be compensated at level V. All members of the Commission shall be reimbursed for travel, subsistence and other necessary expenses.

Subparagraph (j) requires the Administrator of General Services to provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

Section 6. Powers of the Chairperson. Subsection (a) provides that the Chairperson is the chief executive officer of the Commission.

Subsection (b) provides that the Chairperson can employ and supervise such personnel as may be necessary to carry out the functions of the Commission, without regard to the requirements of title 5 of the United States Code relating to appointments in the competitive service. The Chairperson is required to appoint a General Counsel and may procure temporary and intermittent services or request the head of any federal agency to detail any personnel of such agency to the Commission to assist in carrying out the duties of the Commission under this Act. The Chairperson is also authorized to use and expend federal funds and fees collected pursuant to this Act and to contract for such professional, technical and operational personnel as may be necessary to carry out this Act. Staff of the Commission are to be paid without regard to the requirements of title 5 of the United States Code related to classification and pay rates.

Subsection (c) provides that the Chairperson shall be governed by the general policies of the Commission and by such regulatory decisions and determinations as the Commission is authorized to make.

Section 7. Powers and Authority of the Commission. Subsection (a) provides that the Commission shall have the power to approve the annual budget of the Commission; promulgate regulations to carry out this Act; establish fees and assessments; conduct investigations; issue temporary and permanent orders closing gaming operations; grant, deny or condition or suspend any license issued under any authority conferred on the Commission by this Act; fine any person licensed pursuant to this Act for violation of any of the conditions of licensure under this Act; inspect the premises where Class II and III gaming operations are located; inspect and audit all books and records of Class II and III gaming operations; use the U.S. mail in the same manner as any agency of the U.S.; procure supplies and services by contract; contract with state, tribal and private entities to assist in the discharge of the Commission's duties; serve or cause to be served process or notices of the Commission; propound written interrogatories and appoint hearing examiners who are empowered to administer oaths; conduct hearings pertaining to violations of this Act; collect the fees and assessments authorized by this Act; assess penalties for violations of the Act; provide training and technical assistance to Indian tribes with respect to the conduct and regulation of gaming activities; monitor and regulate Class II and III gaming; approve all management-related and gaming-related contracts; delegate any of the functions of the Commission, except for rulemaking, to a division of the Commission or a Commissioner, employee or administrative law judge.

Subsection (b) provides that the Commission reserves the right to review any action taken pursuant to a delegation of its authority. The vote of one Commissioner is sufficient to bring a delegated action before the full Commission for review. If the Commission declines to exercise the right of review, then the delegated action shall be deemed an action of the Commission.

Subsection (c) provides that after receiving recommendations from the Advisory Committee pursuant to this Act, the Commission shall establish minimum Federal standards for: background investigations; licensing; the operation of Class II and III gaming activities, including surveillance, security and systems for monitoring all gaming activity, protection of the integrity of the rules for play of games, cash counting and control, controls over gambling devices and accounting and auditing.

Subsection (d) provides that the Commission may secure from any department or agency of the United States information necessary to enable the Commission to carry out the Act. The Commission may also secure from any law enforcement or gaming regulatory agency of any State, Indian tribe or foreign nation information necessary to enable the Commission to carry out this Act. All such information obtained by the Commission shall be protected from disclosure by the Commission. For purposes of this subsection, the Commission shall be considered to be a law enforcement agency.

Subsection (e) authorizes the Commission to conduct such investigations as the Commission considers necessary to determine whether any person has violated, is violating or is conspiring to violate any provision of this Act. In addition, the Commission is authorized to investigate such facts, conditions, practices, or matters as the Commission considers necessary or proper to aid in the enforcement, implementation or amendment of the Act. Any member of the Commission or any officer designated by the Commission is empowered to administer oaths and to subpoena witnesses and evidence from any place in the United States at any designated place of hearing. The Commission is authorized to invoke the jurisdiction of any Federal court to require the attendance and testimony of witnesses and the production of records. The failure of any person to obey an order of a Federal court to appear and testify or to produce records is punishable as a contempt of such court. If the Commission determines that any person is engaged, has engaged or is conspiring to engage in any act or practice which constitutes a violation of this Act, the Commission may bring an action in the Federal District Court for the District of Columbia to enjoin such act or practice or refer the matter to the Attorney General for the initiation of criminal proceedings. At the request of the Commission, each Federal district court shall have jurisdiction to issue writs of mandamus, injunctions and orders commanding any person to comply with this Act and any rules or regulations promulgated pursuant to the Act.

Section 8. Regulatory Framework. Subsection (a) provides that for Class II gaming

Indian tribes shall retain the right to monitor and regulate such gaming, conduct background investigations, and issue licenses in a manner which meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c) of this Act.

Subparagraph (b) provides that for Class III gaming which is conducted pursuant to a tribal/state compact, an Indian tribe or a state or both shall monitor and regulate such gaming, conduct background investigations, issue licenses and establish and regulate internal control systems in a manner which meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c) of this Act.

Subparagraph (c) provides that for Class III gaming conducted under the authority of a compact negotiated with the Secretary, such compact shall provide that the Indian tribe or other appropriate entity shall monitor and regulate such gaming, conduct background investigations, issue licenses and establish and regulate internal control systems in a manner which meets or exceeds minimum Federal standards established by the Commission pursuant to section 7(c).

Subsection (d) provides that in any case in which an Indian tribe conducts Class II gaming in a manner which substantially fails to meet the minimum Federal standards for Class II gaming, then the Commission shall have the authority to conduct background investigations, issue licenses and establish and regulate internal control systems after providing the Indian tribe an opportunity to cure violations and to be heard. The authority of the Commission may be exclusive and may continue until such time as the regulatory and internal control systems of the Indian tribe meet or exceed the minimum Federal standards established by the Commission.

Subsection (d) also provides that in the case of Class III gaming, if an Indian tribe or a state, or both, fail to meet or exceed minimum Federal standards for Class III gaming then the Commission shall have the authority to conduct background investigations, issue licenses and establish and regulate internal control systems after providing notice and an opportunity to cure problems and be heard. The authority of the Commission may be exclusive and may continue until such time as the regulatory and internal control systems of an Indian tribe or a state, or both, meet or exceed the minimum Federal standards established by the Commission.

Section 9. Advisory Committee on Minimum Regulatory Requirements and Licensing Standards. Subsection (a) authorizes the President to establish an Advisory Committee on Minimum Regulatory Requirements and Licensing Standards.

Subsection (b) provides that the advisory committee shall be composed of 7 members who shall be appointed by the President. Three members shall be members of federally recognized Indian tribes which are engaged in gaming under this Act and shall be selected from a list of recommendations submitted to the President by the Chairman and Vice Chairman of the Senate Committee on Indian Affairs and the Chairman and ranking minority member of the Subcommittee on Native American and Insular Affairs of the Committee on Resources of the House of Representatives. Two members shall represent state governments and shall be selected from a list of recommendations submitted to the President by the Majority Leader and the Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives. Two members shall be employees of the Department of Justice.

Subsection (c) provides that 180 days after the date on which the Advisory Committee is fully constituted it shall develop recommendations for minimum Federal standards for the conduct of background investigations, internal control systems and licensing standards. The committee's recommendations shall be submitted to the Committee on Indian Affairs of the Senate, the Subcommittee on Native American and Insular Affairs of the Committee on Resources of the House of Representatives, the Commission and to each federally recognized Indian tribe. The Commission and the Advisory Committee are required to give equal weight to existing industry standards, the unique nature of tribal gaming, the broad variations in the scope and size of tribal gaming activity, the inherent sovereign right of Indian tribes to regulate their own affairs and the Findings and Purposes set forth in sections 2 and 3 of this Act.

Subsection (d) provides that the Commission shall hold public hearings on the Advisory Committee's recommendations after they are received. At the conclusion of the hearings, the Commission shall promulgate regulations establishing minimum regulatory requirements and licensing standards.

Subsection (e) provides that the members of the Advisory Committee who are representatives of Indian tribes and states shall be reimbursed for travel and per diem during the performance of the duties of the Advisory Committee and while away from home or their regular place of business.

Subsection (f) provides that the Advisory Committee shall cease to exist 60 days after it submits its recommendations to the Commission.

Subsection (g) provides that the activities of the Advisory Committee are exempt from the Federal Advisory Committee Act.

Section 10. Licensing. Subsection (a) provides that licenses shall be required of gaming operations, key employees of a gaming operation, management- and gaming-related contractors, any gaming service industry, and any person who has material control over a licensed gaming operation.

Subsection (b) provides that the Commission may require licenses of management contractors and gaming operations notwithstanding any other provision of law relating to the issuance of licenses by an Indian tribe or a state, or both.

Subsection (c) provides that the Commission may issue a statement of compliance to an applicant for a license under this Act at any time that the Commission is satisfied that one or more eligibility criteria for the license has been satisfied by the applicant.

Subsection (d) provides that no gaming operation shall operate unless all required licenses and approvals have been obtained in accordance with this Act. Each management contract for a gaming operation must be in writing and filed with and approved by the Commission. The Commission may require that a management contract include any provisions that are reasonably necessary to meet the requirements of this Act. Any applicant for a license who does not have the ability to exercise any significant control over a licensed gaming operation may be determined by the Commission to be ineligible to hold a license or to be exempt from being required to hold a license.

Subsection (e) provides that the Commission shall deny a license to any applicant who is disqualified for failure to meet any of the minimum Federal standards promulgated by the Commission pursuant to section 7(c).

Subsection (f) provides that the Commission shall conduct an investigation into the qualifications of the applicant and may conduct a non-public hearing concerning the applicant's qualifications. After an application is filed with the Commission final action will be taken by the Commission to grant or deny the application not later than 90 days after completing all hearings and investigations and receiving all information required to be submitted. If an application is denied by the Commission, the applicant can request a statement of the reasons, including specific findings of fact. If the Commission is satisfied that the applicant is qualified to receive a license, then the Commission shall issue a license upon the tender of all license fees and assessments required by this Act and such bonds as the Commission may require for the faithful performance of all requirements imposed by this Act. The Commission is authorized to fix the amount of any bond it requires. Bonds furnished to the Commission may be applied by the Commission to any unpaid liability of the licensee. Bonds shall be furnished in cash or negotiable securities, by a surety or through an irrevocable letter of credit.

Subsection (g) provides that the Commission shall renew any license issued under this Act, subject to its power to deny, revoke or suspend licenses, upon proper application for renewal and the receipt of license fees and assessments. Licenses can be renewed for up to two years for each of the first 2 renewal periods and three years for each succeeding renewal period. A licensing hearing can be reopened by the Commission at any time. Any licenses in existence on the date of enactment of this Act may be renewed for a period of 18 months. Any application for renewal must be filed with the Commission not later than 90 days prior to the expiration of the current license. Upon renewal of a license, the Commission shall issue an appropriate renewal certificate.

Subsection (h) provides that the Commission shall establish procedures for the conduct of hearings associated with licensing including procedures for denying, limiting, conditioning, revoking or suspending any such license. After the completion of a licensing hearing the Commission shall render a decision and issue and serve an order on the affected parties. The Commission may order a rehearing on a decision on a motion made by a party or the Commission not later than 10 days after the services of a decision and order. Following a rehearing, the Commission shall render a decision, issue an order and serve it on the affected parties. Any licensing decision or order made by the Commission shall be final agency action for the purposes of judicial review. The United States Court of Appeals for the District of Columbia has jurisdiction to review the licensing decisions and orders of the Commission.

Subsection (i) provides that the Commission shall maintain a registry of all licenses granted or denied and shall make the information contained in the registry available to Indian tribes to assist them in the licensing and regulation of gaming activities.

Section 11. Requirements for the Conduct of Class I and Class II Gaming on Indian Lands. Subsection (a) provides that Class I gaming shall be within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

Subsection (b) provides that Class II gaming shall be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this Act. An Indian tribe may engage in and license and regulate Class II gaming on the lands within the jurisdiction of the tribe if: the gaming is located within a State that permits such gaming for any purpose by any person; such gaming is not otherwise specifically prohibited on Indian lands by Federal law; and the Class II gaming operation meets or exceeds the requirements of section 7(c) and 10. With regard to any Class II gaming operation, the Commission shall ensure that: the Indian tribe has issued a separate license for each place, facility or location at which Class II gaming is conducted; the Indian tribe has or will have the sole proprietary interest and responsibility for the conduct of any Class II gaming activity, except as provided elsewhere in the Act with regard to gaming operations by Indian individuals; and the net revenues from Class II gaming may only be used to fund tribal government operations or programs, to provide for the general welfare of the Indian tribe and its members, to promote tribal economic development, to donate to charitable organizations, to help fund operations of local government agencies or to comply with section 17 of this Act. The Indian tribe is required to provide the Commission with annual outside audits of its Class II gaming operation. Such audits shall include a review of all contracts for supplies and services equal to or more than $50,000 annually, except for contracts for legal and accounting services.

Subsection (b) further provides that the Commission shall ensure that the construction and maintenance of a Class I gaming facility and the operation of the gaming shall be conducted in a manner that adequately protects the environment and public health and safety. The Commission must also ensure that there is an adequate system for background investigations on all persons who are required to be licensed in accordance with sections 7(c) and 10 and notice to the Commission by the Indian tribe of the results of the background investigation before the issuance of any license. No license may be granted to any person whose prior activities, criminal record or reputation habits and associations pose a threat to the public interest or the effective regulation of gaming.

With regard to per capita payments, subsection (b) provides that such payments may only be made if: the Indian tribe has prepared a plan to allocate revenues to the public, governmental, economic development and social welfare purposes prescribed by this Act and the Secretary determines that the plan is adequate; the interests of minors and other legally incompetent persons are protected and preserved and the payments for such individuals are disbursed to their parents or legal guardians under a plan approved by the Secretary and the governing body of the Indian tribe; and the per capita payments are subject to Federal income taxation and Indian tribes withhold such tax.

With regard to Class II gaming operations on Indian lands which are owned by a person or entity other than the Indian tribe, subsection (b) requires the issuance of a separate license which includes the requirements of this section and requirements that are at least as restrictive as those established by state law governing similar gaming within the jurisdiction of the state within which the Indian lands are located. No person or entity, other than the Indian tribe shall be eligible to receive a tribal license to own a Class II gaming operation on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a state license to conduct the same activity within the jurisdiction of the state. Any individually owned Class II gaming operation that was in operation on September 1, 1986 shall not be barred by this Act if: it is licensed by an Indian tribe; the income to the Indian tribe from such gaming is not used for per capita payments; not less than 60 percent of the net revenues from the gaming operation is income to the Indian tribe; and the owner of the gaming operation pays an assessment to the Commission pursuant to section 17 for the regulation of such gaming. This exemption for certain individually owned games cannot be transferred to any person or entity and only remains in effect so long as the gaming activity remains within the same nature and scope as the gaming operation which was operated on October 17, 1988. The Commission is required to maintain and publish in the Federal Register a list of individually owned gaming operations.

Subsection (c) provides that any Indian tribe that operates a Class II gaming activity may petition the Commission for a certificate of self-regulation if that Indian tribe has continuously conducted such gaming activity for a period of not less than 3 years, including at least one year after the date of enactment of this Act, and has otherwise complied with the provisions of this Act. The Commission shall issue a certificate of self-regulation if it determines that the Indian tribe has: conducted its gaming activity in a manner which has resulted in an effective and honest accounting of all revenues; resulted in a reputation for safe, fair, and honest operation of the activity; been generally free of evidence of criminal or dishonest activity; and the Indian tribe has adequate systems for accounting for revenues, investigation and licensing of employees and contractors, investigation and enforcement of its gaming laws and has conducted the gaming operation on a fiscally sound basis. During any period in which a certificate of self-regulation is in effect, the Indian tribe shall continue to submit an annual independent audit to the Commission and a complete resume of each employee and contractor hired and licensed by the Indian tribe. The Commission cannot assess a fee on a self-regulated activity pursuant to section 17 in excess of one quarter of 1 percent of the net revenue from such activity. The Commission may rescind a certificate of self-regulation for just cause and after an opportunity for a hearing.

Subsection (d) provides that if the Commission notifies the Indian tribe that any license which has been issued by the tribe under this section does not meet any standards established under sections 7(c) or 10, then the Indian tribe shall immediately suspend the license and after notice and hearing to the licensee in conformity with the laws of the Indian tribe may revoke such license.

Section 12. Class III Gaming on Indian Lands. Subsection (a) provides that Class III gaming activities shall be lawful on Indian lands only if such activities are authorized by a compact that: is adopted by the governing body of the Indian tribe having jurisdiction over such lands; meets the requirements of section 11(b)(3) for the conduct of Class II gaming; is approved by the Secretary; is located in a state that permits such gaming for any purpose by any person; and is conducted in conformity with the tribal/state compact that is in effect. Any Indian tribe which has jurisdiction over the lands upon which a Class III gaming activity is to be conducted may request the state in which such lands are located to enter into negotiations for the purpose of entering into a compact to govern the conduct of Class III gaming activities. A request for negotiations shall be in writing and shall specify each gaming activity that the Indian tribe proposes for inclusion in the compact. The state shall respond to the request within 30 days of receipt. Compact negotiations shall commence not later than 30 days after the date on which a response by a state is due to the Indian tribe and shall be completed not later than 120 days after the initiation of negotiations unless the state and the Indian tribe agree to a different time period. If the state and the Indian tribe cannot commence or complete compact negotiations within the time periods provided in this Act, the Indian tribe shall notify the Secretary. After the Secretary receives the notice from the Indian tribe, the Secretary shall provide the state and the Indian tribe 60 days to present their positions on the gaming activities that are permissible, the framework for the regulation of the gaming, and such other matters as the Secretary may consider appropriate. Not later than 90 days after the date of the expiration of the 60 day period for the submission of the positions of the state and the Indian tribe, the Secretary shall approve a compact that meets the requirements of this Act and publish it in the Federal Register. The Secretary shall not approve a compact if the compact requires state regulation of Indian gaming without the consent of the state or the Indian tribe. The publication of a compact that permits a form of Class III gaming shall be conclusive evidence that such Class III gaming is an activity subject to the laws of the state where the gaming is to be conducted. Any compact negotiated under this subsection shall become effective on its publication in the Federal Register. The Commission shall monitor and, if authorized, regulate and license Class III gaming with respect to any compact that is approved by the Secretary.

Subsection (a) also provides that a compact may include provisions relating to the criminal and civil laws of the Indian tribe or the state; the allocation of criminal and civil jurisdiction between the state and the Indian tribe; the assessment by the state of the costs associated with such activities in such amounts as are necessary to defray the costs of regulating such activity; taxation by the Indian tribe of such activity in amounts comparable to the amounts assessed by the state for similar activity; remedies for breach of contract; standards for the operation of such activity and maintenance of the gaming facility; and any other subject that is directly related to the operation of gaming activities and the impact of gaming on tribal, state and local governments. Nothing in this Act may be construed as conferring on a state or political subdivision of a state the authority to impose any tax, fee, charge, or other assessment on an Indian tribe, an Indian gaming operation or the value generated by the gaming operation or any person or entity authorized by an Indian tribe to engage in a Class III gaming activity in conformity with this Act.

Nothing in subsection (a) impairs the right of an Indian tribe to regulate Class III gaming on the lands of the Indian tribe concurrently with a state and the Commission, except to the extent that such regulation is inconsistent with or less stringent than this Act. The Gambling devices Transportation

Act shall not apply to any gaming activity conducted pursuant to a compact entered into under this Act. The Federal District Court for the District of Columbia shall have jurisdiction over any action initiated by an Indian tribe, a state, the Secretary or the Commission to enforce a compact or to enjoin a Class III gaming activity located on Indian lands and conducted in violation of any compact.

Subsection (c) provides that the Secretary is authorized to approve any compact between an Indian tribe and a state governing the conduct of Class III gaming on the Indian lands of such Indian tribe. The Secretary may disapprove a compact entered into under this Act only if such compact violates any provision of this Act or any regulation promulgated by the Commission or any other Federal law or the trust obligation of the United States to Indians. If the Secretary fails to approve or disapprove a compact within 45 days after the compact is presented to the Secretary for approval, then the compact shall be considered to have been approved by the Secretary, but only to the extent that it is consistent with this Act and the regulations promulgated by the Commission. The Secretary shall publish notice in the Federal Register of any compact that is approved or considered to have been approved.

Subsection (d) provides that the governing body of an Indian tribe may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized Class III gaming on the Indian lands of the Indian tribe. Such a revocation shall render Class III gaming illegal on the Indian lands of such Indian tribe. The Commission is required to publish the revocation ordinance or resolution in the Federal Register and it shall take effect upon such publication. Any person or entity operating a Class III gaming activity on the date of such revocation may continue to operate such activity in conformity with a compact that is in effect for one year from the date of publication of the revocation.

Subsection (e) provides that with regard to compacts entered into and approved by the Secretary before the date of enactment of this Act shall remain lawful during the period such compact is in effect notwithstanding any amendments made by this Act or any changes made in state law enacted after the approval of the compact. Any compact entered into after the date of enactment of this Act shall remain lawful under this Act notwithstanding any change in state law enacted after the approval of the compact.

Section 13. Review of Contracts. Subsection (a) provides that the Commission shall review and approve or disapprove any management contracts for the management of any gaming activity and any gaming-related contract unless such gaming related contract is licensed by an Indian tribe consistent with the minimum Federal standards promulgated pursuant to section 7(c).

Subsection (b) provides that the Commission shall only approve a management contract if it determines that the contract provides for: adequate accounting procedures that are maintained and for verifiable monthly financial reports prepared by or for the governing body of the Indian tribe; access to the gaming operations by tribal officials who shall have the right to verify the daily gross revenues and income derived from the gaming activity; a minimum guaranteed payment to the Indian tribe that has preference over the retirement of any development and construction costs; an agreed upon ceiling for the repayment of any development and construction costs; a contract term of not more than 5 years unless the Commission determines that a term of 7 years is appropriate based on the capital investment required and the income projections for the gaming activity; and grounds and mechanisms for the termination of the contract.

Subsection (c) provides that the Commission may approve a management contract that provides for a fee of 30% of the net revenues of a tribal gaming activity, unless the Indian tribe requests a higher fee and the Commission determines that based on the capital investment required and the income projections a higher fee is justified. In no circumstance can a management fee exceed 40%.

Subsection (d) provides that the Commission shall approve a gaming-related contract only if the Commission determines that the contract provides for: grounds and mechanisms for the termination of the contract and such other conditions as the Commission may be empowered to impose under this Act.

Subsection (e) provides that not later than 90 days after the date on which a management contract or gaming-related contract is submitted to the Commission for approval the Commission shall either approve or disapprove the contract. The 90 day period may be extended for 45 days if the Commission notifies the tribe in writing of the reason for the extension. The Indian tribe may bring an action in the Federal District Court for the District of Columbia to compel action by the Commission if it does not act in a timely manner. Any gaming-related contract for an amount of $100,000 or less which is submitted to the Commission for approval by a person who holds a valid license that is in effect under this Act, shall be deemed to be approved if the Commission has not acted to approve or disapprove it within 90 days of its submission.

Subsection (f) provides that after providing notice and hearing, the Commission shall have the authority to require appropriate contract modifications to ensure compliance with this Act or may void any contract if the Commission determines that it violates any of the provisions of this Act.

Subsection (g) provides that no contract regulated by this Act may transfer or in any other manner convey any interest in real property unless specific statutory authority exists, all necessary approvals have been obtained and the conveyance is clearly specified in the contract.

Subsection (h) provides that the authority of the Secretary under 25 U.S.C. 81 shall not extend to any contracts or agreements which are regulated pursuant to this Act.

Subsection (i) provides that the Commission may not approve a contract if the Commission finds that: any person having a direct financial interest in, or management responsibility for such contract, and in the case of a corporation, any member of the board of directors or any stockholders who hold more than 10% of its issued stock is an elected member of the governing body of the Indian tribe which is a party to the contract; has been convicted of any felony or any gaming offense; has knowingly and willfully provided materially false statements to the Commission or the Indian tribe or has refused to respond to questions propounded by the Commission; or has been determined to be a person whose prior activities, criminal record, reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming. The Commission may also disapprove any contract if it finds that: the contractor has unduly interfered or influenced for its gain any decision or process of tribal government relating to the gaming activity; the contractor has deliberately or substantially failed to comply with the terms of the contract; or a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract.

Section 14. Review of Existing Contracts; Interim Authority. Subsection (a) provides that at any time after the Commission is sworn in and has promulgated regulations for the implementation of this Act the Commission shall notify each Indian tribe and management contractor who entered into a contract prior to the enactment of this Act that the Indian tribe is required to submit the contract to the Commission within 60 days of such notice. Any such contract shall be valid under this Act unless the Commission disapproves it under this section. Not later than 180 days after the submission of a contract for review, the Commission shall review it to determine if it meets the requirements of section 13. The Commission shall approve a contract if it determines that the contract meets the requirements of section 13 and the contractor has obtained all of the licenses required by this Act. If the Commission determines that a contract does not meet the requirements of section 13, the Commission shall provide written notice to the parties of the necessary modifications and the parties shall have 180 days to make the modifications.

Subsection (b) provides that the Commissioners who are holding office on the date of enactment of this Act shall exercise the authorities vested in the Federal Indian Gaming Regulatory Commission until such time as the members of that Commission are sworn into office. Until such time as the Federal Indian Gaming Regulatory Commission promulgates regulations under this Act, the regulations promulgated under the Indian Gaming Regulatory Act of 1988 shall apply.

Section 15. Civil Penalties. Subsection (a) provides that any person who violates this Act or the regulations promulgated pursuant to this Act, either by an act or an omission, shall be subject to a civil penalty of not more than $50,000 per day for each violation.

Subsection (b) provides that the Commission shall assess the civil penalties authorized by this Act and the Attorney General shall collect them in a civil action. The Commission may seek to compromise any assessed civil penalty. In determining the amount of a civil penalty, the Commission shall take into account: the nature, circumstances, extent and gravity of the violation; with regard to the person found to have committed the violation, the degree of culpability, any history of prior violations, ability to pay and the effect on ability to continue to do business; and such other matters as justice may require.

Subparagraph (c) provides that the Commission may order the temporary closure of all or part of an Indian gaming operation for substantial violation of this Act and the regulations promulgated by the Commission. Not later than 30 days after an order of temporary closure the Indian tribe or the individual owner of the gaming operation may request a hearing to determine whether the order should be made permanent or dissolved. Not later than 30 days after a request for a hearing, the Commission shall hold the hearing and render a final decision within 30 days after the completion of the hearing.

Section 16. Judicial Review. Any decision made by the Commission pursuant to sections 7, 8, 10, 14, and 15 shall constitute final agency decisions for purposes of appeal to the Federal District Court for the District of Columbia under the Administrative Procedures Act.

Section 17. Commission Funding. Subsection (a) provides that the Commission shall establish an annual schedule of fees to be paid to it by each Class II and III gaming operation that is regulated by this Act. No gaming operation may be assessed more than 2% of its net revenues and the Commission cannot collect more than $25 million in fees in any year. Fees are payable to the Commission on a monthly basis. The fees paid by a gaming operation may be reduced by the Commission to take into account that regulatory functions are performed by an Indian tribe, or an Indian tribe and a state. Failure to pay fees imposed by the Commission will be grounds for revocation of any license required under this Act for the operation of gaming activities. Any surplus assessments in any given year will be credited pro rata against such fees for the succeeding year.

Subparagraph (b) provides that the Commission is authorized to assess license applicants, except for Indian tribes, for the actual cost of all reviews and investigations necessary to determine whether a license should be granted or denied.

Subparagraph (c) provides that the Commission shall adopt an annual budget for each fiscal year. Any request for an appropriation pursuant to section 18 shall be submitted directly to the Congress.

Section 18. Authorization of Appropriations. This section authorizes an appropriation of $5 million for the operation of the Commission for each of the fiscal years, 1997, 1998 and 1999, to remain available until expended.

Section 19. Miscellaneous. Subsection (a) provides that in general, gaming regulated by this Act shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe unless: such lands are located within or are contiguous to the boundaries of the reservation of the Indian tribe; the Indian tribe has no reservation and such lands are located in the State of Oklahoma and are within the boundaries of the former reservation of the Indian tribe or are contiguous to other land held in trust by the United States for the Indian tribe; or such lands are located in a state other than Oklahoma and are within the last recognized reservation of the Indian tribe within the state in which the Indian tribe is presently located.

Subsection (a) further provides that the general prohibition on the use of lands taken into trust after the date of enactment of this Act for gaming does not apply if the Secretary, after consultation with the Indian tribe, other Indian tribes, state and local officials and a review of the recommendations of the Governor of the state in which such lands are located, determines that gaming on the newly acquired lands would be in the best interest of the Indian tribe and would not be detrimental to the surrounding community; or where lands are taken into trust as part of a settlement of a land claim; or the initial reservation of an Indian tribe is acknowledged by the Secretary under the Federal acknowledgement process; or where lands are restored for an Indian tribe that is restored to federal recognition.

Lastly, subsection (a) provides that nothing in this section may affect or diminish the authority and responsibility of the Secretary to take land into trust.

Subsection (b) provides that the provisions of the Internal Revenue Code with regard to reporting and withholding taxes on winnings and the provisions of the Bank Secrecy Act relating to the reporting requirements for cash transactions of $10,000 or greater will apply to Indian gaming operations which are regulated by this Act.

Subsection (c) provides that the Commission shall make available to a state or the governing body of an Indian tribe any law enforcement information it has obtained pursuant to section 7(d), unless otherwise prohibited by law, in order to assist the state or Indian tribe to carry out its responsibilities under this Act or any compact approved by the Secretary.

Section 24. Definition of Financial Institutions. This section amends section 5312(a)(2) of title 31, United States Code to include Indian gaming establishments.

Section 3. Conforming Amendments. This section provides for several amendments to titles 10, 18, 26 and 28 of the United States Code to conform them to the provisions of this Act.•

• Mr. INOUYE. Mr. President, I am pleased to join the esteemed chairman of the Committee on Indian Affairs today, in the introduction, for purposes of discussion, of a bill to amend the Indian Gaming Regulatory Act of 1988.

Mr. President, the impetus for the amendment of the Indian Gaming Regulatory Act arose a little under 3 years ago when a number of Governors of the several States called upon the President and the Congress to address the rulings of Federal district courts interpreting the act within the context of various State laws. In response, Chairman MCCAIN and I initiated a dialog involving Governors, attorneys general, and tribal leaders that we hoped would lead to a consensus with regard to the manner in which the act would be amended. Although the dialog did not yield that consensus, it did provide us with considerable guidance in formulating the amendments that we advance today for the consideration of all affected parties.

In the interim, there have been a number of rulings from the circuit courts of appeal that have clarified what has become known as the scope-of-gaming issue, and the Supreme Court has granted certiorari in litigation raising the issues associated with the 11th amendment and the doctrine of Ex parte Young. Nonetheless, the Indian Gaming Regulatory Act Amendments Act sets forth a process that does not entail litigation between State and tribal governments. In an effort to address the 10th amendment concerns of the States, the bill we introduce today removes any requirement for good-faith negotiations and provides for tribal-State compacting only if a State elects to engage in negotiations leading to a compact.

As Chairman MCCAIN has indicated, the 1995 Amendments Act provides authority for the establishment of minimum Federal standards for the regulation of Indian gaming, including background investigations, internal control and licensing standards. The States and the tribes would participate in the development of recommendations of these standards through an advisory committee, and the Federal Indian Gaming Regulatory Commission would hold hearings on those recommendations and promulgate regulations. It is in the capacity of assuring compliance with minimum Federal standards that the Commission will have a greater role to play in the area of class III gaming.

This is a matter that I believe bears some emphasis. Under existing law, the National Indian Gaming Commission's responsibilities lie primarily in the area of class II gaming. Class III gaming is regulated by the State and tribal governments. Thus, when comparisons are made by some between the regulatory capacity of Nevada or Atlantic City to the regulatory authority of the National Indian Gaming Commission, they are comparing two regulatory systems that oversee those activities that are typically associated with large casino operations with a regulatory system that is designed to monitor tribal regulation of bingo halls. I would hope that as the debate in the Congress on matters of Indian gaming proceeds, this stark disparity in the type of operation being regulated will not be lost.

Finally, in an effort to address the constitutional concerns associated with the Interior Secretary's authority to take land into trust for gaming purposes, the bill authorizes the Secretary to consult with the Governor of the State in which the land is located.

Chairman MCCAIN and I wrote to all parties in December of last year to advise them of our intent to introduce a bill to amend the Indian Gaming Regulatory Act early in the 104th session of the Congress, and to request their comments on the substitute amendment to S. 2230, a bill we introduced in the 103d session of the Congress. The National Governors Association [NGA] requested that we delay introduction of a new measure, and we indicated that we would delay introduction until March. Unfortunately, at the scheduled time of introduction, the committee has not had the benefit of the Governors' views on these matters—and so the bill we introduce today is substantially lacking in that respect. However, as Chairman MCCAIN has indicated, we look forward to working with all of the affected governments—Federal, State, and tribal—in the further refinement of this measure.

In conclusion, I want to thank the chairman of the Committee on Indian Affairs for his kind comments, and to commend him on his leadership of the committee in the 104th session of the Congress.•

By Mr. SPECTER:

S. 488. A bill to amend the Internal Revenue Code of 1986 to impose a flat tax only on the earned income of individuals and the business taxable income of corporations, and for other purposes; to the Committee on Finance.

THE FLAT TAX ACT OF 1995

Mr. SPECTER. Mr. President, I now turn to the introduction of the modified flat tax bill entitled the Flat Tax Act of 1995. This is a proposal which would simplify the filing of Federal tax returns, would provide for fairness among all taxpayers, and would stimulate economic growth in the United States. As these proceedings of the U.S. Senate are being watched on C-SPAN2, I am confident that thousands of Americans are sitting at their desks with an ear to television but an eye to their tax returns and they are poring over the complexities of the Federal tax laws.

This bill would permit the American taxpayer to file his or her return on a small, 10-line postcard. It would do so because it retains the principles of a flat tax, which have long been discussed but not really considered in sufficient depth and not acted upon by the American Congress. This flat tax would be a 20-percent rate, with deductions limited to interest on home mortgages up to $100,000 in borrowing and charitable deductions up to $2,500.

The entire return could be filled out on a simple 10-line postcard. This postcard would identify the taxpayer, specify the total amount of wages, salaries, pensions, and retirement benefits, list the deductions and exemptions, and allow taxpayers to compute their taxes on this simple postcard form.

Beyond simplicity, and the simplicity is of great importance, we now have reliable estimates that Americans spend some $5.4 billion a year on their tax returns. The Internal Revenue Service regulations have grown from 744,000 words in 1955 to some 5,600,000 words at the present time. The Internal Revenue Service is a mammoth bureaucracy, with annual spending of $13 billion on the IRS bureaucracy alone, with 110,000 employees in over 650 offices nationwide. The compliance costs to the American people are almost $200 billion a year.

We all know that the greatest impediment in confidence between the American Government and the American citizen is concern with the Internal Revenue Service. How often have you and I received those automatic computer printouts from the IRS, written them a letter, written them a second letter or multiple letters, and finally had a conference to work out some bureaucratic computer error? And most of the time, no additional tax is needed.

This legislation would liberate the American people to devote their time and energy to productive pursuits.

A second major advantage to my flat tax bill is that there would be an enormous increase in growth. This growth would occur because this flat tax would not impose any tax burden on interest, on dividends, or capital gains because all of those items of income would have been taxed at the source; that is, at the business level.

Another benefit of the flat tax is the projected growth in the economy. From the point of view of growth, reliable estimates are that we would have an increase in the gross national product of some $2 trillion during the course of a 7-year period—an increase of some 28 percent.

We would also benefit from increased savings, which would mean that the United States of America would be less dependent on borrowing from foreign sources. These increased savings would substantially change the great imbalance we have now, where we have massive interest payments on foreign debt flowing abroad.

Additionally, in terms of fairness, there would be a lesser tax on those in the lower brackets by having an increase in the personal allowance for $16,500 for married couples filing jointly, $9,500 for single taxpayers, $14,000 for single head of households, and an exemption of $4,500 for each dependent. That would be substantially more than under the present code and would enable a family of four earning $25,500 to pay no taxes at all. A family of four earning up to $30,000 a year would pay very minimal or no taxes at all. The effective tax rate would be as low as 12.7 percent for an average projection of a family earning $100,000 a year.

This proposal is revenue neutral based upon the computations made by Professor Hall and Professor Rabushka of Stanford's Hoover Institute. They have elaborately projected a national flat tax with no deductions and are calling for a rate of some 19 percent to have tax neutrality. This bill deviates from what Professors Hall and Rabushka have proposed by having the allowance of charitable contributions of up to $2,500 a year and the deduction for interest on home mortgages with a maximum borrowing of up to $100,000 a year.

The computations provided by the Joint Tax Committee show that the cost will be $35 billion a year to the Government for the interest deduction on borrowings up to $100,000 a year, and $13 billion for the charitable contributions up to $2,500 a year. The computation is that the additional 1 percent in my flat tax above Hall and Rabushka would cover those deductions.

I might say the computation is necessarily inexact because the model used by the Joint Tax Committee was on a national flat tax on individuals alone while this proposal is a national flat tax on both individuals and businesses. The Hall-Rabushka proposal is very similar to the proposal made by Congressman ARMEY last year with the differences being in the allowance here for interest and charitable contributions. Also, a difference between this plan and the flat tax plan of Congressman ARMEY is that Congressman ARMEY did not provide for automatic withholding.

Mr. President, my interest in tax policy is longstanding, originating during my law school days. Some of my early practice of law included some tax work. And years ago, I published an article on the subject in the Villanova Law Review raising an issue of fairness as to the pension and profit sharing deductions for professional associations contrasted with corporations.

This is a subject where I debated my former colleague, Senator John Heinz, almost 20 years ago in our contest for the Republican nomination to the U.S. Senate in 1976 based upon legislation which he had introduced in the House of Representatives where he had suggested very substantial cuts in a good many deductions.

Mr. President, in offering this legislation, it is not cast in stone, but I think it is high time that the U.S. Senate consider in some detail the benefits of this national flat tax proposal or the modified Flat Tax Act which I am suggesting today.

The benefits are very, very substantial in terms of simplicity, growth, and fairness.

Mr. President, as April 15 rapidly approaches—and as I present this floor statement—millions of Americans are spending their evenings poring over page after page of IRS instructions, going through their records looking for information and struggling to find and fill out all the appropriate forms on their Federal tax returns. At the same time, a patchwork quilt of deductions, credits, and special exceptions lets some Americans pay less than their fair share of taxes. Year after year, we continue to ask the same question—isn't there a better way?

Today I am introducing legislation that provides that better way. I am introducing legislation which will fundamentally revise the present Tax Code, with its myriad rates, deductions, and instructions. Instead, the legislation I offer today would institute a simple, flat 20 percent tax rate for all individuals and businesses. It will allow all taxpayers to file their April 15 tax returns on a simple postcard. This legislation is a vital first step in simplifying our Nation's Tax Code and redirecting our collective energies toward productivity and growth. This proposal is not in stone, but is intended to move the debate forward as the first such legislation to be introduced this term in the Senate, by focusing attention on three key principles which are critical to an effective and equitable taxation system: simplicity, fairness, and economic growth.

Over the years, I have devoted considerable time and attention to analyzing our Nation's Tax Code and the policies which underlie it. I began this study of the complexities of the Tax Code 40 years ago as a law student at Yale University. I included some tax law as part of my practice in my early years as an attorney in Philadelphia. In the spring of 1962, I published a law review article in the Villanova Law Review, "Pension and Profit Sharing Plans: Coverage and Operation for Closely Held Corporations and Professional Associations," 7 Villanova L. Rev. 335, which in part focused on the inequity in making tax-exempt retirement benefits available to some kinds of businesses but not others. It was apparent then, as it is now, that the very complexities of the Internal Revenue Code could be used to give unfair advantage to some; and made the already unpleasant obligation of paying taxes a real nightmare for many Americans.

I became interested many years ago in the practicality and simplicity of a flat tax as a way to reduce the burden on working Americans. My former Senate colleague, John Heinz, while he was in the House of Representatives, introduced H.R. 636, which would have eliminated numerous deductions, including the deductibility of home mortgage interest, charitable contributions, the investment tax credit, the oil depletion allowance and other exemptions, exclusions and deductions. Last fall, I had discussions with Congressmen RICHARD ARMEY, now the House majority leader, about his flat tax proposal, which he introduced as H.R. 4585. Since then, my staff and I have studied the flat tax at some length and have engaged in a host of discussions with economists and tax experts, including the staff of the Joint Committee on Taxation, to evaluate the economic impact and viability of a flat tax.

Based on those discussions, and on the revenue estimates supplied to us, I have concluded that a simple flat tax at a rate of 20 percent on all business and personal income can be enacted without reducing Federal revenues, and I offer such a bill today.

The flat tax will help reduce the size of Government and allow ordinary citizens to have more influence over how their money is spent because they will spend it and not the Government. With a simple 20-percent flat tax rate in effect, the average person can easily see the impact of any additional Federal spending proposal on his or her own paycheck. By creating strong incentives for savings and investment, the flat tax will have the beneficial result of making available larger pools of capital for expansion of the private sector for the economy—rather than more tax money for big Government. This will mean more jobs and, just as important, more better paying jobs.

As a matter of Federal tax policy, there has been considerable controversy over whether tax breaks should be used to stimulate particular kinds of economic activity, or whether tax policy should be neutral, leaving people to do what they consider best from a purely economic point of view. Our current Tax Code attempts to use tax policy to direct economic activity, but experience under that Code has demonstrated that so-called tax breaks are inevitably used as the basis for tax shelters which have no real relation to solid economic purposes, or to the activities which the tax laws were meant to promote. Even when the Government responds to particular tax shelters with new and often complex revisions of the regulations, clever tax experts are able to stay one or two steps ahead of the IRS bureaucrats by changing the structure of their business transactions and then claiming some legal distinctions between the taxpayer's new approach and the revised IRS regulations and precedents.

Under the massive complexity of the current IRS Code, the battle between $500-an-hour tax lawyers and IRS bureaucrats to open and close loopholes is a battle the Government can never win. Under the flat tax bill I offer today, there are no loopholes, and tax avoidance through manipulations will become a thing of the past.

The basic model for this legislation comes from a plan created by Professors Robert Hall and Alvin Rabushka of the Hoover Institute at Stanford University. Their plan envisioned a flat tax with no deductions whatever. After considerable reflection, I have decided to include limited deductions for home mortgage interest on up to $100,000 in borrowing and charitable contributions up to $2,500 in the legislation I offer today. While this modification undercuts the pure principle of the flat tax, and does continue the use of tax policy to promote homebuying and charitable contributions by retaining those deductions, I believe that those two deductions are so deeply ingrained in the financial planning of American families that they should be retained as a matter of fairness and public policy—and also political practicality. With those two deductions maintained, passage of a modified flat tax will be difficult; but without them, probably impossible.

In my judgment, an indispensable prerequisite to enactment of a modified flat tax is revenue neutrality. Professor Hall advised that the revenue neutrality of the Hall-Rabushka proposal, which uses a 19-percent rate, is based on a well documented model founded on reliable governmental statistics. The bill offered today raises that rate from 19 to 20 percent to accommodate retaining limited home mortgage interest and charitable deductions. A preliminary estimate by the Committee on Joint Taxation places the annual cost of the home interest deduction at $35 billion, and the cost of the charitable deduction at $13 billion. While the revenue calculation is complicated because the Hall-Rabushka proposal encompasses significant revisions to business taxes as well as personal income taxes, there is a sound basis for concluding that the 1-percent increase in rate would pay for the two deductions. Revenue estimates for Tax Code revisions are difficult to obtain and are, at best, judgment calls based on projections from fact situations with a myriad of assumed variables. It is possible that some modification may be needed at a later date to guarantee revenue neutrality.

This legislation offered today is quite similar to the bill introduced in the House by Congressman ARMEY, which was itself modeled after the Hall-Rabushka proposal and uses much of the same legislative language as the Armey bill. The flat tax offers great potential for enormous economic growth, in keeping with principles articulated so well by former Congressman Jack Kemp. This proposal taxes business revenues fully at their source, so that there is no personal taxation on interest, dividends and capital gains. Restructured in this way, the tax code can become a powerful incentive for savings and investment—which translates into economic growth and expansion, more and better jobs, and a rising standard of living for all Americans.

In this Congress, we have so far been concerned with the work of reducing the size and cost of Government, and this is work which is vitally important. But the work of downsizing Government is only one side of the coin; what we must do at the same time, and with as much energy and care, is to grow the private sector. As we reform the welfare programs and Government bureaucracies of past administrations, we must replace those programs with a prosperity that extends to all segments of American society through private investment and job creation—which can have the additional benefit of producing even lower taxes for Americans as economic expansion adds to Federal revenues. Just as Americans need a tax code that is fair and simple, they also are entitled to tax laws designed to foster rather than retard economic growth. The bill I offer today embodies those principles.

Professors Hall and Rabushka have summarized the advantages of their proposals as follows:

> The tax on families is fair and progressive—the poor pay no tax at all, and the fraction of income that a family pays rises with income. The system is simple and easy to understand. And the tax operates on the consumption-tax principle [encourages savings; discourages consumption]—families are taxed on what they take out of the economy, not what they put into it
>
> Our system rests on a basic administrative principle: income should be taxed exactly once, as close as possible to its source. Today's tax system violates this principle in all kinds of ways. Some kinds of income—like fringe benefits—are never taxed at all. Other kinds, like dividends and capital gains, are

> taxed twice. And interest income, which is supposed to be taxed once, escapes taxation completely in all too many cases, where clever taxpayers arrange to receive interest beyond the reach of the IRS.
>
> Under our plan, all income is taxed at the same rate. Equality of tax rates is a basic concept of the flat tax. Its logic is much more profound than just the simplicity of calculation with a single tax rate. Whenever different forms of income are taxed at different rates or different taxpayers face different rates, the public figures out how to take advantage of the differential.
>
> Limiting the burden of taxes on the poor is a central principle of tax reform. Some ideas for tax simplification and reform flout this principle—neither a federal sales tax nor a value-added tax is progressive. Instead, all citizens, rich and poor alike, pay essentially the same fraction of their spending in taxes. We reject sales and value-added taxes for this reason. . . .
>
> Exempting the poor from taxes does not require graduated tax rates rising to high levels for upper-income taxpayers. A flat rate, applied to all income above a generous personal allowance, provides progressivity without creating important differences in tax rates. Graduated taxes automatically create differences in tax rates among taxpayers, with all the attendant opportunities for leakage. Because it is high-income taxpayers who have the biggest incentive and the best opportunity to use special tricks to exploit tax-rate differentials, applying the same tax rate to these taxpayers for all of their income in all years is the most important goal of flat-rate taxation. . . .
>
> We believe that the simplicity of our system is a central feature. Complex tax forms and tax laws do more harm than just deforesting America. Complicated taxes require expensive advisers for taxpayers and equally expensive reviews and audits by the Government. A complex tax invites the taxpayer to search for a special feature to exploit to the disadvantage of the rest of us. And complex taxes diminish confidence in government, inviting a breakdown in cooperation with the tax system and the spread of outright evasion.

My plan, which like Representative ARMEY's is based on the Hall-Rabushka analysis, differs from the legislation introduced by Representative ARMEY in four key respects: First, my bill contains a 20-percent flat tax rate. Second, this bill would retain modified deductions for mortgage interest and charitable contributions, which will require a 1 percent higher tax rate than otherwise. Third, my bill would maintain the automatic withholding of taxes from an individual's paycheck. Lastly, my bill is designed to be revenue neutral, and thus will not undermine our vital efforts to balance the Nation's budget. The estimate of revenue neutrality is based on the Hall-Rabushka analysis together with preliminary projections supplied by the Joint Committee on Taxation on the modifications proposed in this bill

The key advantages of this flat tax plan are threefold: First, it will dramatically simplify the payment of taxes. Second, it will remove much of the IRS regulatory morass now imposed on individual and corporate taxpayers, and allow those taxpayers to devote more of their energies to productive pursuits. Third, since it is a plan which rewards savings and investment, the flat tax will spur economic growth in all sectors of the economy as more money flows into investments and savings accounts, and as interest rates drop. By contrast, there will be a contraction of the IRS if this proposal is enacted.

Under this tax plan, individuals would be taxed at a flat rate of 20 percent on all income they earn from wages, pensions, and salaries. Individuals would not be taxed on any capital gains, interest on savings, or dividends—since those items will have already been taxed as part of the flat tax on business revenue. The flat tax will also eliminate all but two of the deductions and exemptions currently contained within the Tax Code. Instead, taxpayers will be entitled to personal allowances for themselves and their children: $9,500 for a single taxpayer, $14,000 for a single head of household and $16,500 for a married couple filing jointly; and $4,500 per child or dependent. These personal allowances would be adjusted annually for inflation.

In order to ensure that this flat tax does not unfairly impact low income families, the personal allowances contained in my proposal are much higher than the standard deduction and personal exemptions allowed under the current Tax Code. For example, in 1994, the standard deduction is $3,800 for a single taxpayer, $5,600 for a head of household, and $6,350 for a married couple filing jointly, while the personal exemption for individuals and dependents is $2,450. Thus, under the current Tax Code, a family of four which does not itemize deductions would pay tax on all income over $16,500—personal exemptions of $9,800 and a standard deduction of $6,350. By contrast, under my flat tax bill, that same family would receive a personal exemption of $25,500, and would pay tax only on income over that amount.

My legislation retains the provisions for the deductibility of charitable contributions up to a limit of $2,500 and home mortgage interest on up to $100,000 of borrowing. Retention of these key deductions will, I believe, enhance the political salability of this legislation and allow the debate on the flat tax to move forward. If a decision is made to eliminate these deductions, the revenue saved could be used to reduce the overall flat tax rate from 20 to 19 percent.

With respect to businesses, the flat tax would also be a flat rate of 20 percent. My legislation would eliminate the intricate scheme of complicated depreciation schedules, deductions, credits, and other complexities that go into business taxation in favor of a much-simplified system that taxes all business revenue less only wages, direct expenses and purchases—a system with much less potential for fraud, "creative accounting," and tax avoidance.

Businesses would be allowed to expense 100 percent of the cost of capital formation, including purchases of capital equipment, structures and land, and to do so in the year in which the investments are made. The business tax would apply to all money not reinvested in the company in the form of employment or capital formation—thus fully taxing revenue at the business level and making it inappropriate to retax the same money when passed on to investors as dividends or capital gains.

Professors Hall and Rabushka summarize the benefits from this kind of flat taxation of business revenue as follows:

> The business tax is a giant, comprehensive withholding tax on all types of income other than wages, salaries, and pensions. It is carefully designed to tax every bit of income outside of wages, but to tax it only once. The business tax does not have deductions for interest payments, dividends, or any other type of payment to the owners of the business. As a result, all income that people receive from business activity has already been taxed. Because the tax has already been paid, the tax system does not need to worry about what happens to interest, dividends, or capital gains after these types of income leave the firm. The resulting simplification and improvement in the tax system is enormous. Today, the IRS receives over a billion Form 1099s, which keep track of interest and dividends, and must make an overwhelming effort to match these forms to the 1040s filed by the recipients. The only reason for a Form 1099 is track income as it makes its way from the business where it originates to the ultimate recipient. Not a single Form 1099 would be needed under a flat tax with business income taxed at the source.

Let me now turn to a more specific discussion of the advantages of the flat tax legislation I offer today.

SIMPLICITY

The first major advantage to this flat tax is simplicity. According to reliable studies, Americans spend approximately 5.4 billion hours each year filling out tax forms. Much of this time is spent burrowing through IRS laws and regulations, which, according to the Tax Foundation, have grown from 744,000 words in 1955 to 5.6 million words in 1994. The Internal Revenue Code annotations alone have grown to 21 volumes of mind-numbing detail and minutiae. Even those IRS forms which are intended to be simple are not—the instructions for the 1040EZ form—the so-called easy form—alone comprise 17 small-print pages.

Whenever the Government gets involved in any aspect of our lives, it can covert the most simple goal or task into a tangled array of complexity, frustration and inefficiency. By way of example, most Americans have become familiar with the absurdities of the Government's military procurement programs. If these programs have taught us anything, it is how a simple purchase order for a hammer or a toilet seat can mushroom into thousands of words of regulations and restrictions when the government gets involved. The Internal Revenue Service is certainly no exception. Indeed, it has become a distressly common experience for taxpayers to receive computerized printouts claiming that additional taxes are due, which require repeated exchanges of correspondence or personal visits before it is determined, as it so often is, that the taxpayer was right in the first place.

The plan offered today would eliminate these kinds of frustrations for millions of taxpayers. This flat tax would enable us to scrap the great majority of the IRS rules, regulations and instructions and delete literally millions of words from the Internal Revenue Code. Instead of tens of millions of hours of nonproductive time spent in compliance with—or avoidance of—the Tax Code, taxpayers would spend only the small amount of time necessary to fill out a postcard-sized form. Both business and individual taxpayers would thus find valuable hours freed up to engage in productive business activity, or for more time with their families, instead of poring over tax tables, schedules and regulations.

The flat tax I have proposed can be calculated just by filling out a small postcard which would require a taxpayer only to answer a few easy questions. The postcard would ask for the following information:

FORM 1—INDIVIDUAL WAGE TAX, 1995

Your first name and initial (if joint return, also give spouse's name and initial):

Your social security number:

Home address (number and street including apartment number or rural route):

Spouse's social security number:

City, town, or post office, state, and ZIP code:

1. Wages, salary, pension and retirement benefits:
2. Personal allowance (enter only one):
   $16,500 for married filing jointly
   $9,500 for single
   $14,000 for single head of household
3. Number of dependents, not including spouse, multiplied by $4,500:
4. Mortgage interest on debt up to $100,000 for owner-occupied home:
5. Cash or equivalent charitable contributions (up to $2,500):
6. Total allowances and deductions (lines 2, 3, 4, 5):
7. Taxable compensation (line 1 less line 6, if positive; otherwise zero):
8. Tax (20% of line 7):
9. Tax withheld by employer:
10. Tax or refund due (difference between lines 8 and 9):

Filing a tax return would become a manageable chore, not a seemingly endless nightmare, for most taxpayers.

CUTTING BACK GOVERNMENT

Along with the advantage of simplicity, enactment of this flat tax bill will help to remove the burden of costly and unnecessary government regulation, bureaucracy and redtape from our everyday lives. The heavy hand of government bureaucracy is particularly onerous in the case of the Internal Revenue Service, which has been able to extend its influence into so many aspects of our lives.

In 1994, the IRS employed over 110,000 people, spread out over 650 offices across the United States. Its budget was in excess of $13 billion, with some $7.1 billion spent annually just to administer the tax laws, and another $4 billion for enforcement. By simplifying the Tax Code and eliminating most of the IRS' vast array of rules and regulations, the flat tax would enable us to cut a significant portion of the IRS budget, including the bulk of the funding now needed for enforcement and administration.

In addition, a flat tax would allow taxpayers to redirect their time, energies, and money away from the yearly morass of tax compliance. According to the Tax Foundation, in 1994, businesses spent approximately $127 billion in compliance with the Federal tax laws, and individuals spent an additional $65 billion, for a total of $192 billion. Moneys spent by businesses and investors in creating tax shelters and finding loopholes could be instead directed to productive and job-creating economic activity. With the adoption of a flat tax, the opportunities for fraud and cheating would also be vastly reduced, allowing the Government to collect, according to some estimates, over $120 billion annually.

ECONOMIC GROWTH

The third major advantage to a flat tax is that it will be a tremendous spur to economic growth. Harvard economist Dale Jorgenson estimates adoption of a flat tax like the one offered today would increase future national wealth by over $2 trillion, in present value terms, over a 7-year period. The economic principles are fairly straightforward. Our current tax system is inefficient; it is biased toward too little savings and too much consumption. The flat tax creates substantial incentives for savings and investment by eliminating taxation on interest, dividends, and capital gains—and tax policies which promote capital formation and investment are the best vehicle for creation of new and high paying jobs, and for a greater prosperity for all Americans.

It is well recognized that to promote future economic growth, we need not only to eliminate the Federal Government's reliance on deficits and borrowed money, but to restore and expand the base of private savings and investment that has been the real engine driving American prosperity throughout our history. These concepts are interrelated, for the Federal budget deficit soaks up much of what we have saved, leaving less for businesses to borrow for investments.

It is the sum total of savings by all aspects of the U.S. economy that represented the pool of all capital available for investment—in training, education, research, machinery, physical plant, et cetera—and that constitutes the real seed of future prosperity. The statistics here are daunting. In the 1960's the net U.S. national savings rate was 8.2 percent, but it has fallen to a dismal 1.5 percent. In recent international comparisons, the United States has the lowest savings rate of any of the G–7 countries. We save at only one-tenth the rate of the Japanese, and only one-fifth the rate of the Germans, which is clearly reflected in the comparative growth rates of our economies over the last three decades.

An analysis of the components of U.S. savings patterns shows that although the Federal budget deficit is the largest cause of dissavings, both personal and business savings rates have declined significantly over the past three decades. Thus, to recreate the pool of capital stock that is critical to future U.S. growth and prosperity, we have to do more than just get rid of the deficit. We have to very materially raise our levels of private savings and investment. And we have to do so in a way that will not cause additional deficits.

The less money people save, the less money is available for business investment and growth. The current tax system discourages savings and investment, because it taxes the interest we earn from our savings accounts, the dividends we make from investing in the stock market, and the capital gains we make from successful investments in our homes and the financial markets. Indeed, under the current law these rewards for saving and investment are not only taxed, they are overtaxed—since gains due solely to inflation, which represent no real increase in value, are taxed as if they were really profit.

With the limited exceptions of retirement plans and tax-free municipal bonds, our current Tax Code does virtually nothing to encourage personal savings and investment, or to reward it over consumption. As William Schreyer wrote recently in the Harvard Business Review, "the budget deficit is only one part of a larger national problem: the U.S. saving deficit."

This bill will change this system, and address this problem. The proposed legislation reverses the current skewed incentives by promoting savings and investment by individuals and by businesses. Individuals would be able to invest and save their money tax-free and reap the benefits of the accumulated value of those investments without paying a capital gains tax upon the sale of these investments. Businesses would also invest more as the flat tax allowed them to expense fully all sums invested in new equipment and technology in the year the expense was incurred, rather than dragging out the tax benefits for these investments through complicated depreciation schedules. With greater investment and a larger pool of savings available, interest rates and the costs of investment would also drop, spurring even further economic growth.

Critics of the flat tax have argued that we cannot afford the revenue losses associated with the tremendous savings and investment incentives the bill affords to businesses and individuals. Those critics are wrong. Not only is this bill carefully crafted to be revenue neutral, but historically we have seen that when taxes are cut, revenues actually increase, as more taxpayers work harder for a larger share of their take-home pay, and investors are more willing to take risks in pursuit of rewards that will not get eaten up in taxes. As one example, under President Kennedy individual tax rates were lowered, investment incentives including the investment tax credit were created and then expanded, depreciation rates were accelerated, and yet between 1962 and 1967 gross annual Federal tax receipts went from $99.7 to $148 billion—an increase of nearly 50 percent. More recently under President Reagan, after his tax cuts in the early 1980's, Government tax revenues rose from just under $600 billion in 1981 to nearly $1 trillion in 1989. In fact, the Reagan tax cut program helped to bring about the longest peacetime expansion of the U.S. economy in history. There is every reason to believe that the flat tax proposed here can do the same—and by maintaining revenue neutrality in this flat tax proposal, as we have, we can avoid any increases in annual deficits and the national debt.

In addition to increasing Federal revenues by fostering economic growth, the flat tax can also add to Federal revenues without increasing taxes by closing tax loopholes. The Congressional Research Service estimates that for fiscal year 1995, individuals will shelter more than $393 billion in tax revenue in legal loopholes, and corporations will shelter an additional $60 billion. There may well be additional moneys hidden in quasi-legal or even illegal tax shelters. Under a flat tax system, all tax shelters will disappear and all income will be subject to taxation.

The larger pool of savings created by a flat tax will also help to reduce our dependence on foreign investors to finance both our Federal budget deficits and our private sector economic activity. Currently, of the publicly held Federal debt, that is, the portion was not held by various Federal trust funds like Social Security, nearly 20 percent is held by foreigners—the highest level in our history. By contrast, in 1965 less than 5 percent of publicly held national debt was foreign-owned. We are paying over $40 billion in annual interest to foreign governments and individuals, and this by itself accounts for roughly one-third of our whole international balance of payments deficit. These massive interest payments are one of the principal sources of American capital flowing abroad, a factor which then enables foreign investors to buy up American business. During the period 1980–91, the gross value of U.S. assets owned by foreign businesses and individuals rose 427 percent from $543 billion to $2.3 trillion.

The substantial level of foreign ownership of our national debt creates both political and economic problems. On the political level, there is at least the potential that some foreign nation may assume a position where its level of investment in U.S. debt gives it disproportionate leverage over American policy. Economically, increasing foreign investment in Treasury debt furthers our national shift from a creditor to a debtor nation, weakening the dollar and undercutting our international trade position. A recent Congressional Research Service report put it succinctly: "To pay for today's capital inflows, tomorrow's economy will have to ship more abroad in exchange for fewer foreign products. These payments will be a consequence in part of heavy Federal borrowing since 1982." With a flat tax in place, America's own supply of capital can be replenished, and we can return to our historic position as an international creditor nation rather than a debtor.

Professors Hall and Rabushka describe the pro-growth aspects of the flat tax in this way:

> Today's absurd system taxes entrepreneurial success at 60 percent while it actually subsidizes leveraged investment. Our simple tax would put the same low rate on both activities. A huge redirection of national effort would follow. And the redirection could only be food for national income. There is nothing wrong with shopping centers, apartment buildings, airplanes, boxcars, medical equipment, and cattle, but tax advantages have made us invest far too much in them, and their contribution to income is correspondingly low. Real growth will come when effort and capital flow back into innovation and the development of new business, the areas where confiscatory taxation has discouraged investment. The contribution to income from new resources will be correspondingly high.
>
> We project a 3 percent increase in output from increased total work in the U.S. economy and an additional increment to total output of 3 percent from added capital formation and dramatically improved entrepreneurial incentives. The sum of 6 percent is our best estimate of the improvement in real incomes after the economy has had seven years to assimilate the changed economic conditions brought about by the simple flat tax. Both the amount and the timing are conservative.
>
> Even this limited claim for economic improvement represents enormous progress. By 2002, it would mean each American will have an income about $1,900 higher, in 1995 dollars, as a consequence of tax reform.

As Professors Hall and Rabushka state it, the growth case for a flat tax is compelling. It is even more compelling in the case of a tax revision that is simple and demonstrably fair.

FAIRNESS

By substantially increasing the personal allowances for taxpayers and their dependents, this flat tax proposal ensures that poorer taxpayers will pay no tax and that taxes will not be regressive for lower and middle income taxpayers. At the same time, by closing the hundreds of tax loopholes which are currently used by wealthier taxpayers to shelter their income and avoid taxes, this flat tax bill will also ensure that all Americans pay their fair share.

A variety of specific cases illustrate the fairness and simplicity of this flat tax:

Case No. 1.—Married couple with two children, rents home, yearly income $30,000

Under Current Law	
Income	30,000
Four personal exemptions	9,800
Standard deduction	6,350
Taxable income	13,850
Tax due under current rates	2,081
Marginal rate (percent)	15.0
Effective tax rate (percent)	6.9
Under Flat Tax:	
Personal allowance	16,500
Two dependents	9,000
Taxable income	4,500
Tax due under flat tax	900
Effective tax rate (percent)	3.0

* * * Savings of $1,181 * * *

Case No. 2.—Single individual, rents home, yearly income $45,000

Under Current Law:	
Income	45,000
One personal exemption	2,450
Standard deduction	3,800
Taxable income	38,750
Tax due under current rates	7,900
Marginal rate (percent)	28.0
Effective rate (percent)	17.6
Under Flat Tax:	
Personal allowance	9,500
Taxable income	35,500
Tax due under flat tax	7,100
Effective rate (percent)	15.8

* * * Savings of $800 * * *

Case No. 3.—Married couple with no children, $140,000 mortgage at 9%, yearly income $70,000

Under Current Law:	
Income	$70,000
Two personal exemptions	4,900
Home mortgage deduction	12,600
State and local taxes	2,000
Charitable deduction	1,400
Taxable income	49,100
Tax due under current rates	8,815
Marginal rate (percent)	28
Effective tax rate (percent)	12.6
Under Flat Tax:	
Personal allowance	16,500
Home mortgage deduction	9,000
Charitable deduction	1,400
Taxable income	43,100
Tax due under flat tax	8,620
Effective tax rate (percent)	12.3

* * * Savings of $195 * * *

Case No. 4.—Married couple with two children, $240,000 mortgage at 9%, yearly income $120,000

Under Current Law:	
Income	$120,000

Four personal exemptions	9,800
Home mortgage deduction	21,600
State and local taxes	6,000
Retirement fund deductions	6,000
Charitable deductions	2,500
Taxable income	74,100
Tax due under current rates	15,815
Marginal rate (percent)	31
Effective tax rate (percent)	13.2
Under Flat Tax:	
Personal allowance	16,500
Two dependents	9,000
Home mortgage deduction	9,000
Charitable deduction	2,500
Taxable income	78,500
Tax due under flat tax	15,700
Effective tax rate (percent)	13.1

* * * Savings of $115 * * *

Case No. 5.—Married couple, no children, $1,000,000 mortgages at 9 percent on 2 homes, $500,000 income

Under Current Law:	
Income	$500,000
Personal exemptions at this level	0
Home mortgage deductions	90,000
State and local taxes	50,000
Retirement deductions	40,000
Charitable deductions	30,000
Taxable income	290,000
Tax due under current rates	91,144
Marginal rate (percent)	39.6
Effective tax rate (percent)	18.2
Under Flat Tax:	
Personal allowance	16,500
Mortgage deduction	9,000
Charitable deduction	2,500
Taxable income	472,000
Tax due under flat tax	94,400
Effective tax rate (percent)	18.9

* * * $3,256 higher taxes * * *

The flat tax legislation that I am offering will retain the element of progressivity that Americans view as essential to fairness in an income tax system. Because of the lower end income exclusions, and the capped deductions for home mortgage interest and charitable contributions, the effective tax rates under my bill will range from 0 percent for families with incomes under about $30,000 to roughly 20 percent for the highest income groups:

ANNUAL TAXES UNDER 20 PERCENT FLAT TAX FOR MARRIED COUPLE WITH TWO CHILDREN FILING JOINTLY

Income	Taxes owed	Effective rate (percent)
$25,500	None	0
$30,000	None	0
$40,000	$1,300	3.3
$50,000	2,900	5.8
$60,000	4,860	8.1
$70,000	6,820	9.7
$80,000	8,780	11
$90,000	10,740	11.9
$100,000	12,700	12.7
$125,000	17,600	14.1
$150,000	22,600	15.1
$200,000	32,600	16.3
$250,000	42,600	17.0
$500,000	92,600	18.5
$1,000,000	192,600	19.3

Note: Assumes home mortgage of twice annual income at a rate of 9 percent and charitable contributions up to 2 percent of annual income.

My proposed legislation demonstrably retains the fairness that must be an essential component of the American tax system.

CONCLUSION

The proposal that I make today is dramatic, but so are its advantages: a taxation system that is simple, fair and designed to maximize prosperity for all Americans. A summary of the key advantages are:

Simplicity: A 10-line postcard filing would replace the myriad forms and attachments currently required, thus saving Americans up to 5.4 billion hours they currently spend every year in tax compliance.

Cuts Government: The flat tax would eliminate the lion's share of IRS rules, regulations, and requirements, which have grown from 744,000 words in 1955 to 5.6 million words in 1994. It would also allow us to slash the mammoth IRS bureaucracy of 110,000 employees spread out over 650 offices nationwide.

Promotes economic growth: Economists estimate a growth of over $2 trillion in national wealth over 7 years, representing an increase of $1,900 in personal income for every man, woman, and child in America.

Increases efficiency: Investment decisions would be made on the basis of productivity rather than simply for tax avoidance, thus leading to even greater economic expansion.

Reduces interest rates: Economic forecasts indicate that interest rates would fall substantially, by as much as two points, as the flat tax removes many of the current disincentives to savings.

Lowers compliance costs: Americans would be able to save up to $192 billion they currently spend every year in tax compliance.

Decreases fraud: As tax loopholes are eliminated and the Tax Code is simplified, there will be far less opportunity for tax avoidance and fraud, which now amounts to over $120 billion in uncollected revenue annually.

Reduces IRS costs: Simplification of the Tax Code will allow us to save significantly on the $13 billion annual budget currently allocated to the Internal Revenue Service.

Professors Hall and Rabushka have projected that within 7 years of enactment, this type of a flat tax would produce a 6-percent increase in output from increased total work in the U.S. economy and increased capital formation. The economic growth would mean a $1,900 increase in the personal income of all Americans.

No one likes to pay taxes. But Americans will be much more willing to pay their taxes under a system that they believe is fair, under a system that they can understand, and a system that they recognize promotes rather than prevents growth and prosperity. The legislation I introduce today will afford Americans such a tax system.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 488

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INDIVIDUALS TAXED ONLY ON EARNED INCOME.

(a) IN GENERAL.—Section 1 of the Internal Revenue Code of 1986 is amended to read as follows:

"SECTION 1. TAX IMPOSED.

''(a) IMPOSITION OF TAX.—There is hereby imposed on the income of every individual a tax equal to 20 percent of the excess (if any) of—

''(1) the taxable earned income received or accrued during the taxable year, over

''(2) the standard deduction (as defined in section 63) for such taxable year.

''(b) TAXABLE EARNED INCOME.—For purposes of this section, the term 'taxable earned income' means the excess (if any) of earned income (as defined in section 911(d)(2)) over the foreign earned income (as defined in section 911(b)(1)).''

(b) INCREASE IN STANDARD DEDUCTION.—Section 63 of such Code is amended to read as follows:

"SEC. 63. STANDARD DEDUCTION.

''(a) IN GENERAL.—For purposes of this subtitle, the term 'standard deduction' means the sum of—

''(1) the basic standard deduction, plus

''(2) the additional standard deduction.

''(b) BASIC STANDARD DEDUCTION.—For purposes of subsection (a), the basic standard deduction is—

''(1) $16,500 in the case of—

''(A) a joint return, and

''(B) a surviving spouse (as defined in section 2(a)),

''(2) $14,000 in the case of a head of household (as defined in section 2(b)), and

''(3) $9,500 in the case of an individual—

''(A) who is not married and who is not a surviving spouse or head of household, or

''(B) who is a married individual filing a separate return.

''(c) ADDITIONAL STANDARD DEDUCTION.—For purposes of subsection (a), the additional standard deduction is $4,500 for each dependent (as defined in section 152) described in section 151(c)(1) for the taxable year.

''(d) INFLATION ADJUSTMENT.—

''(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1995, each dollar amount contained in subsections (b) and (c) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1994' for 'calendar year 1992' in subparagraph (B) of such section.

''(2) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.''

SEC. 2. INCOME TAX DEDUCTION FOR CASH CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Subsection (a) of section 170 of the Internal Revenue Code of 1986 (relating to charitable, etc., contributions and gifts) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

''(1) GENERAL RULE.—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) not to exceed $2,500 ($1,250, in the case of a married individual filing a separate return), payment of which is made within the taxable year.'', and

(2) by striking paragraph (3).

(b) Conforming Amendments.—

(1) Section 170(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(3) Termination of subsection.—This subsection shall not apply to taxable years beginning after December 31, 1995."

(2) Section 170(c) of such Code is amended by inserting "of cash or its equivalent" after "means a contribution or gift".

(3) Subsections (d) and (e) of section 170 of such Code are repealed.

(4) Section 170(f) of such Code is amended by striking paragraphs (1) through (7) and by redesignating paragraphs (8) and (9) as paragraphs (1) and (2), respectively.

(5) Subsections (h) and (i) of section 170 of such Code are repealed.

SEC. 3. LIMITATION OF HOME MORTGAGE DEDUCTION TO ACQUISITION INDEBTEDNESS.

Paragraph (3) of section 163(h) of the Internal Revenue Code of 1986 (relating to interest) is amended—

(1) by striking subparagraphs (A), (C), and (D) and inserting before subparagraph (B) the following new subparagraph:

"(A) In general.—The term 'qualified residence interest' means any interest which is paid or accrued during the taxable year on acquisition indebtedness with respect to any qualified residence of the taxpayer. For purposes of the preceding sentence, the determination of whether any property is a qualified residence of the taxpayer shall be made as of the time the interest is accrued.", and

(2) by striking "$1,000,000" each place it appears and "$500,000" in subparagraph (B)(ii) and inserting "$100,000" and "$50,000", respectively.

SEC. 4. MODIFICATION OF TAX ON BUSINESS ACTIVITIES.

Section 11 of the Internal Revenue Code of 1986 (relating to tax imposed on corporations) is amended to read as follows:

"SEC. 11. TAX IMPOSED ON BUSINESS ACTIVITIES.

"(a) Tax Imposed.—There is hereby imposed on every person engaged in a business activity a tax equal to 20 percent of the business taxable income of such person.

"(b) Liability for Tax.—The tax imposed by this section shall be paid by the person engaged in the business activity, whether such person is an individual, partnership, corporation, or otherwise.

"(c) Business Taxable Income.—

"(1) In general.—For purposes of this section, the term 'business taxable income' means gross active income reduced by the deductions specified in subsection (d).

"(2) Gross active income.—For purposes of paragraph (1), the term 'gross active income' means gross income other than investment income.

"(d) Deductions.—

"(1) In general.—The deductions specified in this subsection are—

"(A) the cost of business inputs for the business activity,

"(B) the compensation (including contributions to qualified retirement plans but not including other fringe benefits) paid for employees performing services in such activity, and

"(C) the cost of tangible personal and real property used in such activity.

"(2) Business inputs.—For purposes of subparagraph (A), the term 'cost of business inputs' means—

"(A) the actual amount paid for goods, services, and materials, whether or not resold during the taxable year,

"(B) the fair market value of business inputs brought into the United States, and

"(C) the actual cost, if reasonable, of travel and entertainment expenses for business purposes.

Such term shall not include purchases of goods and services provided to employees or owners.

"(e) Carryover of Excess Deductions.—

"(1) In general.—If the aggregate deductions for any taxable year exceed the gross active income for such taxable year, the amount of the deductions specified in subsection (d) for the succeeding taxable year (determined without regard to this subsection) shall be increased by the sum of—

"(A) such excess, plus

"(B) the product of such excess and the 3-month Treasury rate for the last month of such taxable year.

"(2) 3-month treasury rate.—For purposes of paragraph (1), the 3-month Treasury rate is the rate determined by the Secretary based on the average market yield (during any 1-month period selected by the Secretary and ending in the calendar month in which the determination is made) on outstanding marketable obligations of the United States with remaining periods to maturity of 3 months or less."

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall apply to taxable years beginning after December 31, 1995.

By Mr. CAMPBELL (for himself and Mr. Brown):

S. 489. A bill to authorize the Secretary of the Interior to enter into an appropriate form of agreement with, the town of Grand Lake, CO, authorizing the town to maintain permanently a cemetery in the Rocky Mountain National Park; to the Committee on Energy and Natural Resources.

THE ROCKY MOUNTAIN NATIONAL PARK GRAND LAKE CEMETERY ACT OF 1995

Mr. CAMPBELL. Mr. President, on January 26, 1915, Congress passed legislation creating a 265,726-acre Rocky Mountain National Park. In 1892, long before the park was created, the town of Grand Lake established a small, less than 5-acre community cemetery that lies barely 1,000 feet inside the western edge of the park. Apparently, in the early 1950's, the National Park Service took notice of the cemetery and issued the town a formal special use permit, which has been renewed over the years. In 1991, Rocky Mountain National Park apparently informed the town of Grand Lake that it would issue one final 5-year special use permit.

This 103-year-old cemetery has become part of the community's heritage. Grand Lake residents have very strong emotional and personal attachments to it and need to be assured of its continued use and designation as a cemetery. The current permit is due to expire in 1996. All parties have agreed that a more permanent solution was needed to meet the needs of the community and the resource preservation and protection intended by the establishment of the park.

Existing measures available to the National Park Service, including special use permit authority, do not provide for a permanent solution that satisfies both the park and the community. In addition, special uses apparently can only be permitted for a maximum period of 5 years. Given that the town and park agree that the small cemetery is a permanent use, continued renewal of a 5-year permit is not a realistic solution.

In an effort to avoid future difficulties, park and town representatives have agreed that this legislation would offer the best solution to this problem. Authorizing the continued existence of the cemetery with specific size and boundaries within the park also protects park resources. The community has expressed a strong willingness and desire to assume responsibility for permanent management of the cemetery. This legislation would authorize the development of an agreement to turn maintenance responsibilities for the cemetery and road over to the town, resulting in a financial savings to the park. It also recognizes the cultural significance of the cemetery and its strong ties with the history of the Grand Lake area, which includes the story of Rocky Mountain National Park.

This legislation would negate the need for repeated negotiations between the community and the National Park Service, and the chance for misunderstandings. The National Park Service and Grand Lake representatives have worked long and hard on developing this proposal. Enactment of this legislation would go a long way in maintaining and enhancing the spirit of cooperation and goodwill between park and community that has been achieved during the development of this resolution.

By Mr. GRASSLEY:

S. 490. A bill to amend the Clean Air Act to exempt agriculture-related facilities from certain permitting requirements, and for other purposes; to the Committee on Environment and Public Works.

THE CLEAN AIR ACT AMENDMENT ACT OF 1995

• Mr. GRASSLEY. Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 490

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITION OF POTENTIAL TO EMIT.

Section 302(j) of the Clean Air Act (42 U.S.C. 7602(j)) is amended—

(1) by striking "(j) Except as otherwise" and inserting the following:

"(j) Major Stationary Source and Major Emitting Facility.—

"(1) In general.—Except as otherwise"; and

(2) by adding at the end the following:

"(2) AGRICULTURE-RELATED FACILITY.—In this subsection, with respect to an agriculture-related facility, such as a grain elevator, a grain, feed, or rice mill, or a grain processing facility;

"(A) AIR POLLUTANT.—With respect to particulate emissions, the term 'air pollutant' shall include only particulate matter less than or equal to 10 microns in size.

"(B) POTENTIAL TO EMIT.—

"(i) IN GENERAL.—The term 'potential to emit' means the potential of a facility to emit during a 1-year period under maximum realistic operation of the facility.

"(ii) MAXIMUM REALISTIC OPERATION.—In determining the maximum realistic operation of an agriculture-related facility, the Administrator shall consider—

"(I) the cyclical or seasonal nature of the facility; and

"(II) in the case of a facility in operation on the date of the determination, the maximum hours of operation of the facility that actually occurred during any of the preceding 5 years.

"(iii) EQUIPMENT, TECHNIQUES, AND PROCEDURES.—The Administrator shall consider the effect of control equipment, techniques, and procedures in lowering the potential to emit of an agriculture-related facility.".

SEC. 2. EXEMPTION FROM PERMITTING REQUIREMENTS.

Section 502 of the Clean Air Act (42 U.S.C. 7661a) is amended—

(1) in the first sentence of subsection (a), by striking "any other source (including an area source) subject to standards or regulations under section 111 or 112,"; and

(2) by adding at the end the following:

"(j) EXEMPTION.—A source shall not be subject to any regulation or requirement under this section if the source is—

"(1) not a major source; and

"(2) subject to section 111 or 112.".●

By Mr. BREAUX (for himself, Mr. HOLLINGS, Mr. INOUYE, Mr. COCHRAN, and Mr. CHAFEE):

S. 491. A bill to amend title XVIII of the Social Security Act to provide coverage of outpatient self-management training services under part B of the Medicare Program for individuals with diabetes; to the Committee on Finance.

THE MEDICARE DIABETES OUTPATIENTS SELF-MANAGEMENT TRAINING ACT OF 1995

● Mr. BREAUX. Mr. President, diabetes is the third leading cause of death from disease in the United States. It is the leading cause of blindness in people aged 25 to 74 and the most frequent cause of nontraumatic lower limb amputations. Diabetes also greatly increases an individual's chances of succumbing to stroke or heart disease.

What is such a shame, Mr. President, is that diabetes is a condition that can generally be treated so that major complications do not occur. In some cases it can even be prevented. While there is no known cure for diabetes, individuals with the disease can lead completely normal lives—even extraordinarily productive lives—if they know how to balance their diet, get enough exercise, and manage their disease.

People with diabetes learn to take care of themselves through self-maintenance and education programs. Generally, classes are taken when an individual is diagnosed with the disease and periodically thereafter in order to keep up with the changes in their condition and to get the most up-to-date treatments available.

Appropriate preventive education services for those with diabetes have the potential to save a great deal of money that would otherwise go for hospitalizations and other acute care costs. Education also saves these individuals from a great deal of unnecessary pain and suffering. Studies by the American Diabetes Association and others have shown that the Medicare program could save $2 to $3 for every $1 spent on diabetes education.

Medicare currently covers these services in inpatient or hospital-based settings and in limited outpatient settings—specifically hospital outpatient departments or rural health clinics. Unfortunately, Medicare does not currently cover education services if they are given in any other outpatient setting, such as a doctor's office. Even the limited coverage of outpatient settings that is currently permitted under Medicare is subject to State-by-State variation according to interpretation by the program's fiscal intermediaries.

The Medicare Diabetes Outpatient Self-Management Training Act of 1995, which I am reintroducing today along with Senators CHAFEE, COCHRAN, INOUYE, and HOLLINGS, would provide for Medicare coverage for outpatient diabetes education on a consistent basis throughout the country. The bill would extend Medicare coverage of outpatient programs beyond hospital-based programs and rural health clinics. It would direct the Secretary of Health and Human Services to guarantee that coverage be available only for those services delivered through programs that meet stringent quality standards. Uniform payment would be achieved through implementation of new working guidelines.

This legislation is all about preventive medicine and is a sensible approach that should show savings for the Medicare Program in the long run. I hope that my colleagues will join me as cosponsors.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 491

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Diabetes Outpatient Self-Management Training Act of 1995".

SEC. 2. MEDICARE COVERAGE OF DIABETES OUTPATIENT SELF-MANAGEMENT TRAINING SERVICES.

(a) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (O) (as redesignated by section 147(f)(6)(B)(iii)(II) of the Social Security Act Amendments of 1994 (Pub. Law 103–432)); and

(2) by inserting after subparagraph (O) the following new subparagraph:

"(P) diabetes outpatient self-management training services (as defined in subsection (oo)); and.".

(b) DEFINITION.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

"Diabetes Outpatient Self-Management
Training Services

"(oo)(1) The term 'diabetes outpatient self-management training services' means educational and training services furnished to an individual with diabetes by or under arrangements with a certified provider (as described in paragraph (2)(A)) if—

"(A) the services are furnished in an outpatient setting by an individual or entity meeting the quality standards described in paragraph (2)(B); and

"(B) the physician who is managing the individual's diabetic condition certifies that the services are needed under a comprehensive plan of care related to the individual's diabetic condition to provide the individual with necessary skills and knowledge (including skills related to the self-administration of injectable drugs) to participate in the management of the individual's condition.

"(2) In paragraph (1)—

"(A) a 'certified provider' is an individual or entity that, in addition to furnishing diabetes outpatient self-management training services, provides other items or services for which payment may be made under this title; and

"(B) an individual or entity meets the quality standards described in this paragraph if the individual or entity—

"(i) meets quality standards established by the Secretary;

"(ii) meets applicable standards developed by the National Diabetes Advisory Board, including any revision of such standards by the organizations that participated in the original development of the applicable standards; or

"(iii) is recognized by the American Diabetes Association as being qualified to furnish the services.".

(c) CONSULTATION WITH ORGANIZATIONS IN ESTABLISHING PAYMENT AMOUNTS FOR SERVICES PROVIDED BY PHYSICIANS.—In establishing payment amounts under section 1848(a) of the Social Security Act for physicians' services consisting of diabetes outpatient self-management training services, the Secretary of Health and Human Services shall consult with appropriate organizations, including the American Diabetes Association, in determining the relative value for such services under section 1848(c)(2) of such Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1996.●

By Mr. CHAFEE:

S. 492. A bill to authorize the Secretary of Transportation to issue a certificate of documentation for the vessel *Intrepid*, to the Committee on Commerce, Science, and Transportation.

JONES ACT WAIVER LEGISLATION

● Mr. CHAFEE. Mr. President, today I am introducing legislation to issue a certificate of documentation for the vessel *Intrepid* under title 46, United States Code.

The *Intrepid* has a long and proud history in sailing, including representing the United States in the America's Cup and winning in 1967 and 1971. It is currently U.S.-owned and is the Flagship of the America's Cup Hall of Fame.

The *Intrepid* is a 12 meter yacht, 65 feet in length that was built at the Minneford Boat Yard in City Island, NY in 1967. At the time of its construction, the vessel employed the breakthrough technology of noted boat designer Olin Stephen. In a departure from the past, its design separated the keel and rudder, and added a trim tab on the trailing edge of the keel. Variations of this technology are still being used today.

Because the *Intrepid* was at one point sold to non-U.S. owners and thus became ineligible to participate in U.S. coastwise trade, the owners seek a waiver of the Jones Act. They plan to use the vessel only in limited commercial ventures, and the vessel's use will not adversely affect the coastwise trade in U.S. waters. If granted this waiver, *Intrepid*'s owners intend to fully comply with U.S. documentation and safety requirements.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 492

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION OF CERTIFICATE OF DOCUMENTATION.

Notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation for the vessel INTREPID, United States official number 508185.•

By Mr. CHAFEE:

S. 493. A bill to authorize the Secretary of Transportation to issue a certificate of documentation for the vessel *Consortium;* to the Committee on Commerce, Science, and Transportation.

JONES ACT WAIVER LEGISLATION

• Mr. CHAFEE. Mr. President, today I am introducing legislation to issue a certificate of documentation for the vessel *Consortium* under title 46, United States Code.

A recently formed Rhode Island corporation, Marine Consortium, Inc., has purchased the 102-foot Camper and Nicholson motoryacht, *Consortium*. It is a U.S. documented vessel homeported in Newport, RI, and is ideally suited for charter operation.

Because *Consortium* has a foreign built—British—hull, it cannot undertake charters in U.S. waters. Its owners seek a waiver of this Jones Act prohibition so that they may engage in charter operations this summer and in the future.

Operation of the *Consortium* would build upon the economic vitality of Newport County. Its owners have also offered to make the vessel available at no cost to the Newport Preservation Society, the Museum of Yachting, and the Save the Bay Foundation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 493

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION OF CERTIFICATE OF DOCUMENTATION.

Notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation for the vessel CONSORTIUM, United States official number 1029192.•

By Mr. JEFFORDS (for himself, Mr. LEAHY, Ms. SNOWE, Mr. KENNEDY, Mr. COHEN, Mr. GREGG, Mr. DODD, Mr. SMITH, Mr. CHAFEE, Mr. KERRY, Mr. LIEBERMAN, and Mr. PELL):

S.J. Res. 28. A joint resolution to grant consent of Congress to the Northeast Interstate Dairy Compact; read the first time.

NORTHEAST INTERSTATE DAIRY COMPACT

Mr. JEFFORDS. Mr. President, I rise today to strongly support the introduction of a joint resolution to grant the consent of Congress to the Northeast Interstate Dairy Compact. Congress is simply being asked to ratify a completed piece of legislation—legislation that passed overwhelmingly in each of the six New England States that the compact represents.

Mr. President, a great deal of time and effort has gone into creating the dairy compact, over 6 years in fact. The dairy compact represents a cooperative effort of six States working collectively to restore the traditional Federal-State balance to milk regulation. The compact has been carefully designed so that it will not adversely affect any other region of the country. Provisions have been set forth in the compact to protect the interests of farmers and processors outside the compact region. In addition, there is no cost to the Federal Government.

Mr. President, the dairy compact simply complements the Federal Milk Marketing Program. It would not supplant or replace Federal law. The compact regulates only fluid milk, which is milk for beverage use. Milk for manufacturing purposes such as cheese and ice cream would be absolutely exempt from the compact. We are talking about a very small amount of milk in a local market.

Just since 1984, almost a third of the 3,170 farms then operating in Vermont have shut down. In 1994 alone, Vermont lost 148 farms and if the downward trend of milk prices continues we will lose more this year. Vermont dairy farmers are receiving milk prices well below the cost of production. Current milk prices for farmers are as low as they were 10 years ago, yet the cost of production and price to the consumer has increased. Farmers and consumers would both benefit from the compact's ability to establish a more stable price structure for the milk they produce and purchase, removing the fluctuations in fluid milk prices, assuring the region a viable supply of locally produced milk.

The dairy compact is a unique partnership of the region's governments and the dairy industry supported by a broad coalition of organizations and people committed to maintaining the vitality of the region's dairy industry.

The joint resolution being introduced today, has strong support from both sides of the isle. All 12 Senators from the New England delegation, representing producing and consuming States have come together to cosponsor this joint resolution.

Mr. President, I can say with certainty, support for the dairy compact in New England is impressive. During the New England Governors' Conference winter meeting, all six New England Governors urged Congress to approve the dairy compact. A resolution of the New England Governors' Conference in support of congressional enactment of the northeast dairy compact was approved and signed by the chair of the New England Governors, Governor Steve Merrill of New Hampshire.

The Governors of the compact region speak for not only the farmers and consumers but for the States themselves and the rights of the States. Mr. President, the message to Congress from Governors nationwide has been clear. "Increase the flexibility of states and support legislation that promotes state and regional policy initiatives."

Well Mr. President, this thoroughly thought out compact provides the opportunity for a partnership between Congress and the States to strengthen this fundamental federalism movement. It maintains that the States' constitutional authority, resources, and competence of the people to govern, is recognized and protected.

Mr. President, I am certain that my colleagues will agree with me that dairy farmers deserve a fair price for their product. What does it say about our values when some of the hardest working people. our farmers, are underpaid and unappreciated? The people of New England have a right and deserve the chance to help themselves. The joint resolution that I am introducing today, along with Senator LEAHY and my colleagues from New England gives the region the tools to face the challenges of improving and stabilizing farm prices.

I urge my colleagues to respect this interstate cooperation and ratify the dairy compact.

Mr. President, I ask unanimous consent that this one page fact sheet that explains and addresses the compact appear in the RECORD.

Mr. President, I ask unanimous consent to have printed in the RECORD the resolution of the New England Governors' Conference.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NEW ENGLAND GOVERNORS'
CONFERENCE, INC.,
Boston, MA, February 13, 1995.
Hon. JAMES M. JEFFORDS,
Washington, DC.

DEAR SENATOR JEFFORDS: I understand the Northeast Interstate Dairy Compact awaits action by the full Senate. On behalf of the New England Governors' Conference, Inc., I write to ask your help in moving the Compact bill forward as quickly as possible.

The attached Resolution of the New England Governors' Conference, Inc. was adopted unanimously at our recent meeting in Washington, D.C.

The Dairy Compact has been enacted into law by the six New England states. We hope you will support this unique experiment in cooperative federalism. This Compact is a bipartisan, state-sponsored, regional response to the chronic problem of low dairy farm prices. If successfully implemented, the Compact will stabilize our region's dairy industry and reinvigorate this crucial segment of our rural economy, without cost to the federal government or adverse impact on the national industry.

Thank you for your consideration of this matter.

Very truly yours,
WILLIAM A. GILDEA,
Executive Director.

RESOLUTION 127—NORTHEAST DAIRY COMPACT

A Resolution of the New England Governors' Conference, Inc. in support of congressional enactment of the Northeast Dairy Compact.

Whereas, the six New England states have enacted the Northeast Interstate Dairy Compact to address the alarming loss of dairy farms in the region; and

Whereas, the Compact is a unique partnership of the region's governments and the dairy industry supported by a broad and active coalition of organizations and people committed to maintaining the vitality of the region's dairy industry, including consumers, processors, bankers, equipment dealers, veterinarians, the tourist and travel industry, environmentalists, land conservationists and recreational users of open land; and

Whereas, the Compact would not harm but instead complement the existing federal structure for milk pricing, nor adversely affect the competitive position of any dairy farmer, processor or other market participant in the nation's dairy industry; and

Whereas, the limited and relatively isolated market position of the New England dairy industry makes it an appropriate locality in which to access the effectiveness of regional regulation of milk pricing, and

Whereas, the Constitution of the United States expressly authorizes states to enter into interstate compacts with the approval of Congress and government at all levels increasingly recognizes the need to promote cooperative, federalist solutions to local and regional problems; and

Whereas, the Northeast Interstate Dairy Compact has been submitted to Congress for approval as required by the Constitution;

Now therefore be it resolved That the New England Governors' Conference, Inc. requests that Congress approve the Northeast Interstate Dairy Compact; and

Be it further resolved that, a copy of this resolution be sent to the leadership of the Senate and the House of Representatives, the Chairs of the appropriate legislative committees, and the Secretary of the United States Department of Agriculture.

Adoption certified by the New England Governors' Conference, Inc. on January 31, 1995.

STEPHEN MERRILL,
Governor of New Hampshire Chairman.

THE NORTHEAST INTERSTATE DAIRY COMPACT

Was adopted with near-unanimous support by the six New England state legislatures. It is backed by the New England Governors Conference, the region's consumer groups, dairy farmers and processors.

Establishes an interstate commission authorized to regulate New England dairy farm prices. The commission would help stabilize fluid milk prices for both consumers and farmers by establishing a pricing structure which would remove the price fluctuations that currently exist.

Assures control by the region's consumer states. Four of the six compact states, Massachusetts, Connecticut, Rhode Island and New Hampshire, are milk importing states. They joined the Compact because it promotes as well as protects the consumer interest.

Complements the federal milk marketing program. It would not supplant or replace federal law.

Does not discriminate against out-of-region farmers or processors. Milk will flow into and from the Compact region in exactly the same manner as occurs under federal law. Any farmer or processor, regardless of their location, may market milk in the compact region without competitive disadvantage.

Benefits out-of-region farmers equally with New England farmers. Thirty percent of New England's milk supply is produced by New York farmers. These farmers will receive the same Compact benefits as New England farmers.

Is strictly local in effect. The Compact regulates only fluid milk. Processors purchasing milk for manufacturing purposes such as cheese and ice cream would be absolutely exempt from the Compact.

Protects against the production of surplus milk. Provisions in the Compact and the Congressional enabling legislation ensure this result.

Was given a zero score by the Congressional Budget Office. It will operate without cost to the federal government.

Mr. LEAHY. Mr. President, I rise along with my good friend from Vermont, Senator JEFFORDS, and in fact the entire New England delegation. We rise to introduce a resolution to approve the Northeast Interstate Dairy Compact.

The compact is an agreement among the six New England States that has been approved by each of our States' legislatures. It needs approval, under the Constitution, of the Congress to take effect. Its intent is simple. It would rationalize the pricing of fluid milk in the New England States so our farmers can receive a fair price and so the consumers themselves can play a role in stabilizing these milk prices.

In fact, the roots of this compact are in the country's strong tradition of federalism. On January 27, 1995, this body overwhelmingly approved the unfunded mandates bill, which is currently in the House-Senate conference committee.

Now, throughout that debate, I heard Senator after Senator talk about giving more power back to our States. They said the Federal Government should not dictate to the States what they are supposed to do without providing the money. They said the States should have constraints lifted so they could take care of their own concerns.

The New England States are concerned about the dairy farmers in our area. They want to take more control of pricing fluid milk as a minimum price that is now set by a very complicated system of Federal milk marketing orders.

So, here is a chance for the Senate to show its support of the federalist principles it espoused in the unfunded mandates bill. This measure was approved last year by the Senate Judiciary Committee with the strong support of Senator KENNEDY, and Senator COHEN, but it ended in a filibuster at the end of last year.

All we are saying from New England, is that we have gotten the Governors together, Republicans and Democrats; the Senators together, Republicans and Democrats; legislatures made up of Republicans and Democrats all came together to agree on a procedure that affects only the New England States in the pricing and sale of fluid milk. We have done all this. We now come, as the Constitution requires, to the Congress to ask for the imprimatur of the Congress, the blessing of the Congress. We can go forward and handle our own affairs without the Federal Government telling us what to do.

The New England States want to improve the way milk is priced and the compact is the way to do it. Farmers are struggling as they receive prices at or below their cost of production. While farmers struggle with low prices, the consumers have not seen any benefit. While farm prices have declined 5 to 10 percent for the last decade, retail milk prices have increased nearly 30 percent. A recent USDA study shows that stable prices will help consumers.

The compact would create a commission made up of both farmers and consumers that would have the authority to adjust and stabilize fluid milk prices. The commission could raise prices so farmers receive a fair return for their work, but there are also strong consumer safeguards. Consumers are represented from each State and it would take four of the six New England States to approve any price increase. Any State could drop out of the compact after 1 year.

The compact is designed to work in conjunction with the New England Federal milk marketing order. The compact would work just as the Federal order does with all farmers supplying the market benefitting from any price increase. Milk would move into and out of the region just as it does now.

This compact is a model of cooperation—it is a partnership between the States and the Federal Government, between dairy cooperatives and milk processors and most importantly, between farmers and consumers.

In addition to the New England Governors Association, the National Association of State Departments of Agriculture, the National Grange, the National Farmers Organization, and dairy cooperatives from many regions in the country support this compact.

The New England States are asking for nothing from this body nor the Federal treasury—just the opportunity to act in concert for their common good. In the spirit of federalism I urge my colleagues to give this opportunity to the New England States and approve this compact.

• Ms. SNOWE. Mr. President, I am pleased to join my colleagues from New England in introducing this resolution to grant the consent of Congress to the Northeast Interstate Dairy Compact. The survival of many family dairy farms in Maine and the other New England States depends on prompt passage of this legislation.

As in many other rural regions of the country, agriculture is a cornerstone of Maine's economy. Within the agricultural sector, dairy farming usually ranks second or third in cash receipts every year. The dairy industry provides not only jobs for the farmers themselves, but for the people who sell farm machinery, service the machinery, sell fuel and feed, and provide other goods and services. Dairy farms also account for large shares of the municipal tax base throughout rural Maine, making them critical contributors to local schools and essential town services.

Unfortunately, all is not well in the Maine dairy industry. In 1978, Maine had 1,133 dairy farms. By 1988, that number had declined to 800. In 1991, there were 680. And by 1994, the number dwindled further to 606.

This precipitous decline in the number of dairy farms can be attributed to several factors, most notably to the fact that dairy prices are very low while costs remain high, and these same circumstances are driving farmers in other New England States out of business as well. In Maine, the average cost of producing milk is $17 per 100 pounds. The June 1994 Federal order price in the Northeast was $16.23 per hundred. For August of 1994, the market order price declined to $14.49. In 1993, the average milk price in the Northeast declined by 54 cents per hundred.

Milk prices simply have not increased in concert with production. Whereas the retail price for a gallon of milk in 1991 was $2.20 a gallon, that same gallon still retailed for $2.20 a gallon in 1994—without adjusting for inflation.

Another contributing factor in the loss of dairy farms is price volatility. Prices can decline by $2 per hundred in less than 3 months. These price swings add serious uncertainty to a farmer's daily existence, making it difficult for the farmer to plan strategically or to raise capital when needed.

The State of Maine attempted to address this serious problem by establishing a dairy vendor's fee that stabilized the price that farmers in Maine received for their milk. The vendor's fee enjoyed the strong support of both farmers and consumers in Maine, but a Federal court struck it down in 1994 as a violation of interstate commerce. According to the Maine Department of Agriculture, the inevitable result of the court's action will be an accelerating decline in family dairy farms.

Faced with similar problems throughout the region, the six New England States banded together to develop a joint regional solution. They negotiated an interstate dairy compact that will ensure a more reasonable and stable price for dairy farmers in the region. But it is a pricing program that also protects the interests of consumers in the region. As evidence of the balance and fairness achieved by the compact, both the net-producing and net-consuming States in the region all approved it with strong support.

The compact creates a regional commission which has the authority to set minimum prices paid to farmers for fluid, or class I milk. Delegations from each State comprise the voting membership of the commission, and these delegations in turn will include both farmer and consumer representatives. The minimum price established by the commission is the Federal market order price plus a small over-order differential that would be paid by milk processing plants. This over-order price is capped in the compact, and a two-thirds voting majority of the commission is required before any over-order price can be instituted.

Mr. President, until the court struck down the Maine dairy vendor's fee, milk in my State was priced by a mechanism that is similar to that which could be utilized by the compact commission. Maine's experience was uniformly positive. Farm prices were stable, and they were higher, but only modestly higher. No farmers got rich on the minimal adjustment provided by the over-order price under the vendor's fee program. It helped them keep their heads above water. Dairy processors and vendors maintained their business, and consumers did not see any significant increases in the price of milk. It was a win-win proposition for everyone in Maine, and I am confident that the compact will achieve the same success throughout New England without violating the Constitution's interstate commerce clause.

Although the compact affects only the participating States, the cosponsors decided to remove any doubt by including language in the resolution that provides explicit assurances to farmers and processors in States outside the region. These assurances further specify that the over-order price can only be established for class I fluid milk, that no new States can join the compact without the formal approval of both Houses of Congress, that out-of-region farmers who sell milk in the compact region will get the same price as farmers in the region, that the commission's pricing authority is strictly limited, and that the commission must develop a plan to ensure that over-order prices do not lead to increases in production.

In the debates held so far in this Congress, and surely in the debates to come, we have heard and will hear many Members argue that the States are often best-positioned to solve their own problems, and that they should be allowed to do so without interference from Washington. I couldn't agree more.

With the Northeast Interstate Dairy Compact bill being introduced today, Senators will have an opportunity to match words on this concept with deeds. The compact represents a regional response to a regional problem. It affects only those States that belong to the compact. Why should the Federal Government deny the States an opportunity to solve their own problems? The answer is that we shouldn't. We should praise the States for their self-reliance and ingenuity. I hope that Senators will recognize the value in this kind of State-based problem-solving, and support the compact when it comes to the floor for a vote.•

ADDITIONAL COSPONSORS

S. 22

At the request of Mr. DOLE, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 22, a bill to require Federal agencies to prepare private property taking impact analyses.

S. 96

At the request of Mr. HATCH, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 96, a bill to amend the Public Health Service Act to provide for the conduct of expanded studies and the establishment of innovative programs with respect to traumatic brain injury, and for other purposes.

S. 198

At the request of Mr. CHAFEE, the names of the Senator from Kentucky [Mr. MCCONNELL] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 198, a bill to amend title XVIII of the Social Security Act to permit medicare select policies to be offered in all States, and for other purposes.

S. 241

At the request of Mr. D'AMATO, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 241, a bill to increase the penalties for sexual exploitation of children, and for other purposes.

S. 250

At the request of Mr. MCCONNELL, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 250, a bill to amend chapter 41 of title 28, United States Code, to provide for an analysis of certain bills and resolutions pending before the Congress by the Director of the Administrative Office of the United States Courts, and for other purposes.

S. 256

At the request of Mr. DOLE, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of S. 256, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 295

At the request of Mrs. KASSEBAUM, the name of the Senator from Texas [Mrs. HUTCHISON] was added as a cosponsor of S. 295, a bill to permit labor management cooperative efforts that improve America's economic competitiveness to continue to thrive, and for other purposes.

S. 302

At the request of Mrs. HUTCHISON, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 302, a bill to make a technical correction to section 11501(h)(2) of title 49, United States Code.

S. 332

At the request of Mr. CONRAD, the name of the Senator from West Virginia [Mr. BYRD] was added as a cosponsor of S. 332, a bill to provide means of limiting the exposure of children to violent programming on television, and for other purposes.

S. 388

At the request of Ms. SNOWE, the names of the Senator from Tennessee [Mr. THOMPSON] and the Senator from Oklahoma [Mr. NICKLES] were added as cosponsors of S. 388, a bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes.

S. 390

At the request of Mr. KYL, his name was added as a cosponsor of S. 390, a bill to improve the ability of the United States to respond to the international terrorist threat.

S. 391

At the request of Mr. CRAIG, the names of the Senator from South Dakota [Mr. PRESSLER], the Senator from Utah [Mr. BENNETT], the Senator from Alaska [Mr. STEVENS], the Senator from North Carolina [Mr. FAIRCLOTH], and the Senator from Colorado [Mr. BROWN] were added as cosponsors of S. 391, a bill to authorize and direct the Secretaries of the Interior and Agriculture to undertake activities to halt and reverse the decline in forest health on Federal lands, and for other purposes.

S. 426

At the request of Mr. SARBANES, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of S. 426, a bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia, and for other purposes.

SENATE RESOLUTION 82—TO PETITION THE STATES TO CONVENE A CONFERENCE OF THE STATES

Mr. BROWN (for himself and Mr. HELMS) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 82

Whereas Article I of the Constitution of the United States of America provides that the Congress is vested with the authority to lay and collect taxes, to pay the debts of the United States, to borrow money on the credit of the United States, and to appropriate money from the Treasury;

Whereas for the past quarter century Congress has been unable to balance the Nation's budget in any year;

Whereas the President of the United States has submitted a budget which increases the deficit in future years;

Whereas Members of Congress have been unable to agree on language for an Amendment to the Constitution which would require a balanced budget; and

Whereas Congress has therefore attempted to deny the several States of the United States the opportunity to vote on a Constitutional Amendment requiring a balanced budget: Now, therefore, be it

Resolved, That Congress hereby petitions the several States of the United States of America to convene a Conference of the States for the express and exclusive purpose of drafting an Amendment to the Constitution of the United States requiring a balanced budget and prohibiting the imposition of unfunded mandates on the States, and that such States then consider whether it is necessary for the States to convene a Constitutional Convention pursuant to Article V of the Constitution of the United States in order to adopt such Amendment.

SENATE RESOLUTION 83—RELATIVE TO THE FEDERAL BUDGET

Mr. FEINGOLD (for himself and Mr. BUMPERS) submitted the following resolution; which was referred to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one committee reports, the other committee have 30 days to report or be discharged:

S. RES. 83

Whereas the Federal budget according to the most recent estimates of the Congressional Budget Office continues to be in deficit in excess of $190 billion;

Whereas continuing annual Federal budget deficits add to the Federal debt which soon is projected to exceed $5 trillion;

Whereas continuing Federal budget deficits and growing Federal debt reduce savings and capital formation;

Whereas continuing Federal budget deficits contribute to a higher level of interest rates than would otherwise occur, raising capital costs and curtailing total investment;

Whereas continuing Federal budget deficits also contribute to significant trade deficits and dependence on foreign capital;

Whereas the Federal debt that results from persistent Federal deficits transfers a potentially crushing burden to future generations, making their living standards lower than they otherwise would have been;

Whereas efforts to reduce the Federal deficit should be among the highest economic priorities of the 104th Congress; and,

Whereas enacting across-the-board or so-called middle class tax cut measures could impede efforts during the 104th Congress to significantly reduce the Federal deficit: Now, therefore, be it

Resolved, That it is the Sense of the Senate that reducing the Federal deficit should be one of the nation's highest priorities, that enacting an across-the-board so so-called middle class tax cut during the 104th Congress would hinder efforts to significantly reduce the Federal deficit.

Mr. FEINGOLD. Mr. President, today I am pleased to join with the senior Senator from Arkansas [Mr. BUMPERS] to submit a resolution expressing the sense of the Senate that enacting an across-the-board or so-called middle-class tax cut during the 104th Congress would hinder efforts to reduce the Federal deficit.

Mr. President, though I would certainly like to support a tax cut measure, especially one that provides a Well Deserved tax break to middle-class Americans, supporting that kind of proposal is simply not responsible right now, especially given the recent developments with respect to the balanced budget amendment.

During a month of telling debate on the proposal, we have not done one thing that will actually help us achieve the widely shared goal of a balanced budget.

Mr. President, it is time we did.

We have been making some headway in reducing the deficit.

President Clinton's 1993 deficit reduction package was a critical turning point in our fight to reduce the deficit, and we are now in the third straight year of progressively lower deficits.

However, we need to do more, and I firmly believe we not only undermine those needed future efforts but could also jeopardize the progress we have already made if we rush along now and do tax cuts.

Mr. President, let me emphasize that my opposition to tax cuts is bipartisan—the tax cut proposals of both parties are wrong.

I publicly opposed the President's proposed tax cuts the same day he even announced them.

An I think opposition to the tax cuts proposals of both parties has bipartisan support.

In fact, I would like to take this opportunity to publicly thank the Senator from Oregon [Mr. PACKWOOD], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Maine [Mr. COHEN] for their support of a similar effort that I made as part of the debate on the balanced budget amendment.

Their support was particularly heartening, and I think it reveals a growing consensus that deficit reduction must be a higher priority than tax cuts right now.

As part of his fiscal year 1996 budget, the President, has proposed about $63 billion in tax cut over the next 5 years, and that is a figure that grows to $174 billion over 10 years.

Even more troubling the Republican contract with America has proposed tax cuts totaling $196 billion over 5 years and the whopping figure of $704 billion over 10 years.

To me, all of those figures represent the cost of a lost opportunity.

The President's tax cuts are part of his budget package, and he has indicated that they are more than offset by $184 billion in spending cuts.

And at least some of those supporting the Republican Contract With America tax cut package have indicated they too would be offsetting the cost of those tax cuts with spending cuts.

However, even if they are fully offset—I hope we would agree that to be an absolute minimum requirement—we would do much better to forego those tax cuts.

Eliminating the President's tax cut proposals, while doing nothing else to his budget, would result in $72 billion in additional deficit reduction over the next 5 years—the $63 billion in foregone tax cuts plus $9 billion in interest savings.

Just doing that, and nothing more, would produce a Federal budget deficit of $170 billion in fiscal year 2000, $24 billion lower than the $194 billion projected as part of the President's budget.

In fact, the figures for the Contract With America tax cuts are very dramatic.

Assuming spending cuts are produced to offset that tax cut package, and then assuming we decided not to adopt those tax cuts, doing nothing else to the President's budget would result in $217 billion in additional deficit reduction over the next 5 years—$196 billion in foregone tax cuts plus $21 billion in interest savings.

Just doing that, and nothing more, would produce a Federal budget deficit of $114 billion in the year 2000, $80 billion less than what the President projected.

Over 10 years, just under this scenario, we would save $178 billion in interest costs alone by not adopting the Contract With America tax cut package, and could produce $882 billion in deficit reduction.

Let me conclude by noting that tax cut proposals are grounded in the old politics of the free lunch—promise the people a tax cut and a balanced budget.

It is the kind of politics that created the fiscal mess which now confronts us and undermined the American people's faith in their Government.

By resisting calls for tax cuts, we not only help alleviate pressure on the deficit, we also can begin to restore the lost confidence of the American people in their elected officials.

I hope other members will join Senator BUMPERS and me in persuading a majority of the Senate that it is irresponsible to cut taxes as we are trying to reduce the deficit and balance the Federal budget.

SENATE RESOLUTION 84—RELATIVE TO THE 150TH ANNIVERSARY OF FLORIDA STATEHOOD

Mr. MACK (for himself and Mr. GRAHAM) submitted the following resolution; which was considered and agreed to:

S. RES. 84

Whereas Florida became the first State explored by Europeans when Ponce de Leon led a Spanish expedition that made landfall along the east coast in the year 1513;

Whereas Pedro Menendez de Aviles, captain-general of an invading fleet, ousted the French settlement, Fort Caroline, at the mouth of the St. Johns River, proclaimed Spanish sovereignty over Florida, and on September 8, 1565, established St. Augustine, the oldest city in the United States;

Whereas Spain, France, and England played a significant role in the development and exploration of early Florida;

Whereas President James Monroe proclaimed the Adams-Onis Treaty in which Spain ceded Florida to the United States on February 22, 1821, and appointed General Andrew Jackson as the first provisional governor of Florida;

Whereas on March 30, 1822, the United States Congress created a territorial government for Florida, following the pattern set in the Northwest Ordinance of 1787 by providing for public education and orderly political steps toward greater self-government and eventual statehood as population increased;

Whereas 56 delegates representing the 30 counties of Florida assembled in 1838 in the Panhandle town of St. Joseph to frame the first constitution of the territory in preparation for Florida statehood, who were mainly planters and lawyers, were from 13 of the 26 States then in the United States and 4 foreign countries, included only 3 natives from Florida, included 3 delegates who would later become United States Senators, included 2 governors, and included 5 members of the Florida Supreme Court;

Whereas a bill to admit Florida as a State passed the House of Representatives on February 13, 1845, and the Senate on March 1, 1845;

Whereas President John Tyler signed a bill making Florida a State on March 3, 1845, making Florida the 27th State to be admitted into the United States;

Whereas Friday, March 3, 1995, marks the 150th anniversary of Florida becoming a State;

Whereas the admission of Florida to the United States has proved to be of immense benefit both to the United States and to the State of Florida;

Whereas 96 citizens of Florida have served the United States and Florida in the House of Representatives;

Whereas 30 citizens of Florida have served the United States and Florida in the United States Senate;

Whereas numerous citizens of Florida have served in the executive, judicial, and legislative branches of the Federal Government;

Whereas citizens of Florida have fought and died in service to the United States, and 22 citizens of Florida have won the United States highest award for bravery, the Congressional Medal of Honor, protecting freedom in the United States;

Whereas Florida is the fourth largest State and is rich in natural resources and talented people;

Whereas Florida, home of the Everglades National Park, is blessed with great natural beauty, clean waters, pure air, and extraordinary scenery;

Whereas Florida is a world leader in agriculture, commercial fishing, education, financial services, horse breeding, high technology, manufacturing, phosphate production, and tourism;

Whereas Cape Canaveral, location of the first United States satellite launch and the first manned spaceship flight to the Moon, continues to play a vital and leading role in the exploration and discovery of outer space by the United States;

Whereas a special postage stamp saluting the Sesquicentennial of Florida will be circulated throughout the United States during 1995; and

Whereas Florida is proud of its heritage and looks forward to its future: Now, therefore, be it

Resolved,

SECTION 1. SALUTE BY THE SENATE.

The United States Senate salutes the State of Florida on the sesquicentennial anniversary of Florida becoming a State Friday, March 3, 1995.

SEC. 2. COMMEMORATION BY CONGRESS.

The Senate calls on the joint Congressional leadership of Congress to agree on an appropriate time and manner to honor the State of Florida, in recognition of the achievements of all the men and women who have worked hard to develop Florida into a great State, from pioneer days to modern times.

SEC. 3. COMMEMORATION BY THE PRESIDENT.

The Senate calls on the President to issue a Presidential message calling on the people of the United States and all Federal, State, and local governments to commemorate the sesquicentennial anniversary of Florida becoming a State with appropriate ceremonies and activities.

SEC. 4. COPIES OF RESOLUTION.

The Secretary of the Senate shall send this resolution to the Florida Congressional delegation, the Governor of Florida, the National Archives, and the Florida Archives.

Mr. MACK. Mr. President, this week marks the anniversary of a very special event in the history of my State.

One hundred and fifty years ago on the 1st of March 1845, the U.S. Senate passed a bill admitting Florida to the Union as the 27th State. President John Tyler signed the bill into law on March 3, 1845.

Tomorrow, March 3, 1995, the State of Florida will celebrate its sesquicentennial.

Florida has a rich history stretching nearly five centuries.

The search for gold and glory brought Spanish explorer Juan Ponce de Leon to Florida during the Easter season of 1513.

He and his crew disembarked between present-day St. Augustine and Cape Canaveral to claim the land in the name of the King of Spain. Ponce de Leon called this new land Florida—a Spanish word meaning "full of flowers."

From discovery in 1513 to early 1821, Spain, France, and England played significant roles in Florida's exploration and development.

During the territorial period—1821 through 1845—Florida became one of the major cotton producing areas of the region. The struggle for statehood was a major political issue in Washington and throughout the territory of Florida.

David Levy (Yulee), who later became Florida's first U.S. Senator, led the fight to bring Florida into the Union.

Florida's admission to the Union and the contributions of its citizens have proven to be of immense benefit both to the United States and to the State of Florida.

As the United States has grown and prospered Florida has become a world leader in agriculture, commercial fishing, education, financial services, horse breeding, high technology, manufacturing, phosphate production, and tourism.

More than 20 million tourists visit Florida each year to experience the Sunshine State's great natural beauty, her pristine beaches, clean waters, pure air, and extraordinary scenery.

Each region of Florida has its own unique identity. There are vivid contrasts between the excitement of Cape Canaveral and Disney World, the cosmopolitan feel of south Florida, the tropical world of the Florida Keys, the natural beauty of the west coast, the mystery that is the Everglades, the citrus and cattle country of central Florida, and the deep South culture of north Florida and the panhandle.

The marvelous diversity of those who have migrated to Florida seeking a better life for themselves and their families have made the State a microcosm of America itself.

The dedication and innovation of Floridians, both past and present, inspire all of us in Florida as we prepare our State for the challenges of the 21st century.

AMENDMENTS SUBMITTED

THE DEPARTMENT OF ENERGY RISK MANAGEMENT ACT

LOTT AMENDMENT NO. 316

(Ordered referred to the Committee on Energy and Natural Resources.)

Mr. LOTT submitted an amendment intended to be proposed by him to the bill (S. 333) to direct the Secretary of Energy to institute certain procedures in the performance of risk assessments in connection with environmental restoration activities, and for other purposes; as follows:

At the end of the bill add the following:

SEC. 8. JUDICIAL REVIEW.

Any decision, regulatory analysis, risk assessment, hazard identification, risk characterization, or certification provided for under this Act is subject to judicial review in the same manner and at the same time as the underlying final action to which it pertains, in accordance with chapter 7 of title 5, United States Code. All data, estimates, information, reports, studies, explanations, and similar materials upon which any decision, regulatory analysis, risk assessment, hazard identification, risk characterization, certification, or peer review is based shall be made part of the administrative record for purposes of judicial review.

SEC. 12. PEER REVIEW.

(1) Peer Review by Independent External Peer Review Panels.

a. INITIATION OF PEER REVIEW.—The head of the Office of Information and Regulatory Affairs of the Office of Management and Budget may initiate a peer review under this section if he or she determines that such peer review is advisable because the assessments or analyses to be reviewed are matters of major importance due to their potential for direct or indirect health, safety, or environmental or economic impacts or because they would establish an important precedent.

b. ESTABLISHMENT AND MEMBERSHIP OF PANELS.—Peer reviews shall be conducted by panels consisting of members appointed by the head of the agency which conducted the risk assessment and cost-benefit analysis, in consultation with the head of the Office of Information and Regulatory Affairs of the Office of Management and Budget, the head of the Office of Science and Technology Policy, and other concerned Federal agencies, and officials of any affected state and local governments. Separate panels shall be established to review the benefits portion of the cost-benefit analysis; the cost-benefit review panel shall review the benefits portion of the cost-benefit analysis in consultation with the risk assessment review panel. Peer review panels shall be established within 90 days after a determination under subsection (a). Members of the panels shall—

1. be recognized and credentialed experts in the appropriate disciplines;

2. have recent professional experience conducting a risk assessment, an assessment of the cost of a regulation, or an assessment of the benefits of a regulation, as applicable to the panel for which they are selected;

3. have filed and made publicly available financial disclosure forms; and

4. have not been involved in a recent comprehensive analysis of the substance, condition, or activity under review, and have not recently taken a public position on the risks or costs to be reviewed.

c. TERMINATION.—A peer review panel shall terminate upon submission of the report with respect to the risk assessment or cost-benefit analysis for which the panel was established.

d. STANDARDS APPLICABLE TO PEER REVIEW.—

1. all peer reviews of the risk assessments conducted pursuant to this section shall have the purpose of determining whether the agency's risk assessment complies with the principles set out in this Act;

2. all peer reviews of cost-benefit analyses conducted pursuant to this section shall have the purpose of determining whether the cost-benefit analysis meets the standards set out in this Act.

e. COMPLETION PRIOR TO JUDICIAL REVIEW.—If the head of the Office of Information and Regulatory Affairs has initiated the peer review process pursuant to subsection a, or states in writing that initiation of the process is under consideration by that office, no suit for judicial review of a risk assessment or cost-benefits analysis or related agency action may be brought until after the peer review process has concluded or such official determines not to initiate the process; provided, however, that if such official does not indicate a determination within 30 days after stating that such matter is under consideration, a judicial review suit may be brought and the official will not thereafter have the authority to issue a determination to initiate the process.

(2) Procedures for Peer Review.

a. SUBMISSION TO PANEL.—Within 30 days after the establishment of a peer review panel, the head of the Federal agency shall submit to the panel all data and testing (including the details of the methodology) used by the agency for the assessment and analysis.

b. REPORT AND RECOMMENDATIONS.—

1. IN GENERAL.—Within 180 days after the date on which the head of the Federal agency submits data and testing under subsection a, each peer review panel shall transmit to the head of the agency a report and recommendations on whether the agency's risk assessment or cost-benefit analysis meets the applicable standards and principles specified in this Act.

2. CONTENTS.—A report and recommendations under this subsection shall either conclude that the agency's assessment or analysis meets the applicable standards, or shall set out its views on any significant deficiencies and its recommendations on how those deficiencies should be corrected.

3. COMMENTS AND APPENDIX.—Each peer review report and recommendations under this subsection shall include—

(A) all conclusions and recommendations supported by a majority of the members of the peer review panel submitting the report; and

(B) an appendix which sets forth the dissenting opinions that any peer review panel member wants to express.

c. OPENNESS OF PROCESS.—The proceedings of peer review panels under this section shall be subject to the relevant provisions of the Federal Advisory Committee Act 5 USC App. (1988), PL 92-463.

(3) Consideration and Incorporation of Peer Review Recommendations.

If a majority of a peer review panel established under this subtitle concludes that a risk assessment or cost-benefit analysis does not meet the applicable standards, the assessment, analysis or proposed major rule shall not be issued in final form unless the head of the agency either revises the risk assessment to include the findings and recommendations of the peer review panel and makes the recommended revisions or explains clearly the scientific basis for disagreeing with any of the panel's recommendations and not revising the assessment.

(4) Matters Requiring Peer Review.—At a minimum, there shall be submitted for peer review—

a. all major rules

b. all entries in the Integrated Risk Information System (IRIS), and the Toxic Release Inventory.

c. any risk assessment which has been used as a scientific rationale for regulatory actions by local or state governments.

SEC. 13. ADDITIONAL DEFINITION.

In this Act:

(11) SCIENTIFICALLY OBJECTIVE AND UNBIASED.—The term "scientifically objective and unbiased" means that the risk assessment, risk characterization or communication have not been significantly influenced by policy or value judgments or preferences, and that it clearly and accurately relates its descriptions and conclusions regarding risk (or absence of risk) to data or knowledge, including negative data, that are based on empirical observations, measurements, or testing that meet generally accepted scientific standards, and are substantially reproducible by similarly experienced scientists analyzing the same data independently.

SEC. 14. TOXIC RELEASE INVENTORY (TRI).

(1) Notwithstanding any other provision of Chapter 116, of Title 42, United States Code, the Administrator, Environmental Protection Agency may by rule add a chemical to the list described in Section 11023(c) only after the Administrator makes a risk assessment determination that the chemical causes significant adverse human health effects at concentration levels that are reasonably likely to exist beyond the facility site boundaries, the probability of exposure and potential harm to local residents.

(2) a. In making the risk assessment determination, the Administrator shall take into account the nature and frequency of the releases, the actual concentration, and the frequency of use of the chemical in general commerce.

b. The principles for risk assessment within this act should be applied to future listings on the Toxic Release Inventory.

(3) A chemical shall be deleted if the Administrator determines no later than 60 days after the enactment of this provision that based on the record there is insufficient evidence to establish the criteria described in this section.

(4) A chemical shall be deleted if the Administrator within 180 days of receipt of a petition described in Section 5, does not prepare a risk assessment as described in Section 5 which determines that the chemical causes significant adverse human health effects at concentration levels that are reasonably likely to exist beyond the facility site boundaries, the probability of exposure and potential harm to local residents.

SEC. 15. USE OF APPROVED RISK ASSESSMENTS.

The Administrator, Environmental Protection Agency shall not conduct or perform, or require any person to conduct or perform, as a condition for issuance of any permit, license, or any other form of approval (or condition to operate), any type of risk assessment that is not explicitly required as a condition for the issuance of such a permit, license, or approval by existing statutory or final regulatory provisions. The Administrator, Environmental Protection Agency shall not implement or enforce such a condition in any way nor deny or condition a permit, license, or approval based upon the results of such a risk assessment or the failure to conduct or perform such a risk assessment.

SEC. 16. "SEC 627. OF AMENDMENT 230—REGULATIONS; PLANS FOR ASSESSING NEW INFORMATION."

Change paragraph (b)(1) to read:

Review of the risk assessment, risk characterization, or risk communication for any major rule or issuance used by states or local governments as a scientific basis for regulatory action promulgated or prepared prior to enactment or prior to issuance of a final regulatory requirement by subsection (a) of this section shall be conducted by the head of the agency on the written petition of a person showing a reasonable likelihood that—

(A) the risk assessment is inconsistent with the principles set forth in section 625 and 626;

(B) the risk assessment produces substantially different results;

(C) the risk assessment is inconsistent with a rule issued under subsection (a);

(D) the risk assessment does not take into account material significant new scientific data or scientific understanding.

Mr. LOTT. Mr. President, I rise today to speak for the purpose of submitting an amendment to the Department of Energy Risk Management Act which was referred to the Senate Committee on the Energy and Natural Resources for consideration.

Mr. President, I send to the desk an amendment to the Department of Energy Risk Management Act (S. 333), and ask unanimous consent that it be printed in the RECORD.

First, let me say this is the year and this is the Congress that will establish a genuine link between real risks, as defined by sound science, and responsible public policy to address risk.

This will be done by including scientific data and an openness in the regulatory process. My solution is based on citizen involvement. So why do we hear all of these distortions and exaggerations reporting that America's health and safety will be placed in jeopardy and sacrificed. These emotional and often irrational overstatements are just not true.

What is so threatening about requiring knowledgeable scientists, who are independent of the Government, to participate in a peer review of the science? It makes sense to me to ensure that science-based rules are supported by scientist. But clearly, opponents of this provision believe that scientists are the problem. I find this curious. Peer review will certify the Government's practices. It replaces an unchecked monopoly over risk assessment methodologies with participation of scientists from academia.

What is so threatening about requiring the science to be unbiased and objective? I guess opponents of this legislation really want rules to have a bias which supports their political agenda. Accurate science must get in their way. How distressing. I said it last month on the Senate floor when S. 333 was introduced, but it is important to repeat the thought. Maybe those who like the flawed status quo really can be characterized as backing regulations which indeed are cavalier and arbitrary.

What is so threatening about requiring products listed on the Toxic Release Inventory [TRI] to actually be dangerous or, for that matter, even toxic? Presently, chemicals are listed simply because they appear frequently in the environment. In fact, many chemicals on the list are not toxic. EPA knows they are not. EPA has let the TRI misrepresent the toxicity of chemicals and permitted unnecessary anxiety within local communities. This is terrible public policy. Also, what is the problem in requiring a Federal agency to act promptly? To list or delist needs a fixed public schedule. Maybe it is too much to ask an agency to be responsive to American citizens.

What is so threatening about judicial review? Opponents complain that risk assessments would not be constructed by the courts. OK. That is better than what America has now. Currently, risks are set by arrogant bureaucrats who are invisible and not accountable to the public. At least in a court room risk decisions will be made in a public forum. The American people hold their courts in high esteem, and perhaps public participation is necessary to save risk assessment.

What is so threatening about emphasizing the need of State and municipal participation in setting priorities for addressing their health and safety risks? Providing a structured methodology for making difficult budgetary choices regarding health and safety matters would be helpful. Both the officials and the citizens can understand the risks they face together. And jointly they will be involved in selecting the risks to address. Cost benefit provisions will be a useful rational for public policy goal setting and in allocating funding.

What is so threatening about preventing abuse through indirect risk assessments? In the words of EPA's own Science Advisory Board, indirect risk assessment suffers from a general lack of measured input and very little validation of the models. By requiring that only approved risk assessments, we are saying that Federal agencies will only use assessments subjected to the rigors of this legislation. In fact, EPA has no legal basis to proceed with indirect risk assessments. Does it make scientific sense to let EPA hold permits and licenses hostage without the marketplace having its due process? Does it make sense for EPA to first demand and then use data which is short on scientific validation? Both are legally and scientifically reprehensible. We are a land governed by laws—not by bureaucrats who are not accountable to the public. Besides, Federal agencies must not regulate by press release.

The cost-benefit provisions of this legislation are important to evaluate regulatory effectiveness. This is especially useful since public funds are scare and finite. And, because governmental intrusion into our private lives must be minimized to only genuine risk. But the sad truth is the Government's decisions and actions are rarely cost effective. In fact, I recently read an article where an EPA official said that regulatory "efficiency is not of great importance." For him, his colleagues and this administration it may not be; but to millions of American taxpayers who pay the bills it is a big deal.

The importance of risk assessment and risk communication with public participation can not be underscored. This is especially true when we consider that billions and billions of taxpayer dollars are spent annually by all levels of government to deal with risk.

I believe the public has lost confidence in the Government's science. I further believe this has hurt the credibility of existing environmental and health rules. Saving an owl which is endangered in two States by destroying 30,000 jobs; only to discover this bird is thriving in a number of other States is not good science—it is an agenda. Ruining an entire apple harvest with a rush to judge without science on alar is not good science—it is regulatory abuse. Both illustrate a Government unchecked. That is what this legislation is about—provide an opportunity to challenge the Government.

Nothing in this amendment or the basic bill is excessively prescriptive. On the contrary, my legislative purpose is to ensure consistency and technical value when risk assessments are prepared. I firmly believe my legislative efforts will improve both the quality and visibility of risk assessment.

It is time to deal with scientific controversies surrounding the extrapolations of maximum tolerated dose to minuscule doses, animal to human etc. Many of the Government's regulatory actions will not stand up to public scrutiny—this is not the fault of this legislation. No, this is an error caused by Government's arrogant false science. I am for environmental, health and safety rules which address real problems, not regulatory abuse supporting a nonscientific agenda.

Risk assessment is a powerful tool which has been abused for years by a political agenda. No—it has been exploited. Both public confidence and public funds have been squandered chasing nonscientific solutions and nonrisks. Now is the time to transform our environmental and health policies with accountable scientific judgment.

Risk assessment reforms will help settle environmental and health decisions with science and technology, not with a political agenda. It will not eliminate controversies but it will open up the process to public participation. It will not end environmental laws, as we now know them. What it will do is make sure that the right information is on the table in the right form and at the right times to best incorporate both economic and ecological consequences in the decision making process.

My approach, through the basic bill (S. 333) and with this amendment, is to demand rigorous, consistent and continuous inclusion of the public in the development of health and safety public policy. Using a deliberative and transparent process has merits which exceed all the complaints I have heard from opponents who say it would create burdens.

My approach will strengthen our public policies, not destroy them. All I am mandating is sound science. I am not mandating bureaucratic burdens. If sound science principles are followed there will be no hassles or problems. However, I am not terribly sympathetic for a Federal agency which misbehaved and manipulated the public trust. They have placed burdens and expenses on Americans through false risks and unnecessary anxiety. This type of regulatory zeal must be stopped.

Plain and simple; this legislation will identify the underlying scientific assumptions used in the risk assessments so that all concerned parties can evaluate the judgments and conclusions. This process allows for full and open public debate which will neither threaten our democracy nor the health and safety of the American public who we all serve.

Opponents want to dismiss any risk assessment legislation as a form of technospeak to justify the destruction of the environment and health rules. But this "sky-is-falling" complaint strategy is spurious and disingenuous. This legislation will not remove one environmental or safety rule. It will, however, require the assumptions, methodologies and extrapolations to be part of the public record. Only if science supports different conclusions can the foundation for the rules be challenged.

I urge my colleagues to look at S. 333, the basic legislation which was introduced by Senators MURKOWSKI and JOHNSTON last month and this amendment. Both focus on removing risk misinformation and restoring public confidence in our rulemaking process. I believe it deserves your support.

It is time to get past partisan bickering and exaggerations.

It is time to end the false debate on the value of risk assessment and cost benefit analysis.

It is time to focus our health and safety policies with sound risk assessment methodologies.

It is time for Congress to act.

I thank my colleagues for their consideration.

NOTICE OF HEARING

COMMITTEE ON VETERANS' AFFAIRS

Mr. SIMPSON. Mr. President, I wish to announce publicly that the Committee on Veterans' Affairs will hold a hearing on Thursday, March 9, 1995, at 10 a.m. in SR–418, Russell Senate Office Building.

The committee has two purposes for holding this hearing. First, we will receive testimony on the nomination of Mr. Dennis M. Duffy to be the Department of Veterans Affairs' Assistant Secretary for Policy and Planning. Mr. Duffy currently serves as VA's Deputy Assistant Secretary for Congressional Liaison.

Second, the committee will hear testimony from officials of three Federal entities—the Department of Veterans Affairs; the Department of Labor, Veterans Employment and Training Service; and the Court of Veterans Appeals—on those entities' proposed budgets for fiscal year 1996. We also intend to receive testimony from representatives of veterans' service organizations concerning the fiscal year 1996 budget for veterans programs.

The committee would be pleased to receive written statements from members of the public concerning these matters. Such statements may be submitted to the Committee's offices. Members of the public may also contact Mr. William F. Tuerk, the committee's general counsel, if they have questions or need information concerning the subject matter of this hearing.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet immediately after the vote on the balanced budget amendment on Thursday, March 2, 1995, to consider the following nominations:

Sheila Cheston to be the general counsel of the Air Force;

Josue Robles, Jr. to be a Commissioner on the BRAC;

Herschelle Challenor to be a member of the National Security Education Board; and

Vincent Ryan to be a member of the board of directors on the Panama Canal Commission.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 2, 1995, at 3:30 p.m. to hold a hearing regarding United States Policy toward Iran and Iraq.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

F-22 ELECTRONIC COMBAT EFFECTIVENESS TESTING

• Mr. D'AMATO. Mr. President, what is it about F-22 electronic combat effectiveness testing that terrifies Air Force?

The fiscal year 1995 Senate Defense Appropriations Report 103-321 included the following language:

> The Committee is concerned that the F-22 test and evaluation master plan [TEMP] may not include sufficient electronic combat effectiveness testing before the onset of production. The Committee believes that it is important for the F-22 to demonstrate its capabilities in an offensive air superiority mission against a full array of likely threats. Those threats should include a modern integration air defense system, at a minimum on a simulated basis to the extent practicable, affordable, and cost effective.
>
> Therefore, the Committee directs that no more than 65 percent of the funds provided for the F-22 program for fiscal year 1995 may be obligated until the Assistant Secretary of the Air Force (acquisition) submits to the congressional defense committees a report outlining the cost and schedule impacts on the F-22 program, and the technical and operational advantages and disadvantages, of revising the TEMP to include significantly more thorough electronic combat effectiveness testing before initiation of: (1) pre-production vehicle procurement; (2) commitment to low-rate initial operational test and evaluation.
>
> This report shall include, as a baseline, thorough electronic combat testing at the real-time electromagnetic digitally controlled analyzer and processor [REDCAP] and the Air Force electronic warfare evaluation simulator [AFEWES], and an installed system test facility with a capable wide-spectrum radio frequency generator that is interfaced for real-time control from remote facilities and a high capability dome, visual system cockpit simulator.
>
> The report also shall identify the funding required between fiscal years 1996-99 to allow the electronic combat test facilities cited in the preceding paragraph to thoroughly undertake effectiveness testing on integrated avionics suites.

This report requirement was retained in Conference, though, as a courtesy of the House colleagues, the fence was dropped.

Well, March 1, 1995 has come and gone, but no report; however, there has been an interesting development. On February 28, 1995, the Air Force base closure and realignment recommendations were made public. The Air Force operates 10 major test and evaluation [T&E] facilities with a combined budget in fiscal year 1995 of $1.722 billion. Not one was recommended for closure; but two very small T&E facilities with a combined fiscal year 1995 budget of less than $20 million were recommended for closure: the Real-time Electromagnetic Digitally-Controlled Analyzer and Processor [REDCAP] and the Air Force Electronic Warfare Evaluation Simulator [AFEWES], the very facilities where Congress directed the Air Force to consider conducting F-22 electronic combat effectiveness testing. What is the Air Force afraid of?

The one facility mentioned in the Senate report that was not closed, the installation system test facility, belongs to the Navy. Apparently, the Air Force could not get at it.

The most perplexing thing about the aversion of the Air Force to proper testing of the F-22 is that the B-2 program is about to undertake tests at the REDCAP very similar to those being avoided by the F-22. The B-2 test program has been thorough to the point of exhaustive. Is the B-2 successful because it was thoroughly tested, or was it successful so it is being thoroughly tested? Either way, what lesson can we draw about the F-22?

When our needs are so many, and money so short, Congress can ill-afford to buy a pig in a poke. Congress gave the Air Force the opportunity to prove its claims regarding the F-22. The Air Force responded by trying to eliminate the facilities that could have rendered a judgment on the effectiveness of the F-22, Obviously, the Air Force has something to hide. If they will not test it, we will not buy it. Come budget time, I will lead the fight to strike F-22 funds.•

GREEK INDEPENDENCE DAY

• Mr. LAUTENBERG. Mr. President, I rise to support Senate Resolution 79, the resolution designating March 25, 1995, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. The resolution also asks the President to issue a proclamation calling upon the people of the United States to observe the designated day with appropriate ceremonies and activities.

March 25, 1995, marks the 174th anniversary of the beginning of the revolution which freed the Greek people from the Ottoman Empire. It is fitting that we celebrate this day together with Greece in order to reaffirm the common democratic heritage of Americans and Greeks.

The ancient Greeks forged the very notion of democracy, placing the ultimate power to govern in the people. As Aristotle said, "If liberty and equality, as is thought by some, are chiefly to be found in democracy, they will best be attained when all persons alike share in the government to the utmost."

Because the concept of democracy was born in the age of the ancient Greeks, all Americans, whether or not of Greek ancestry, are kinsmen of a kind to the ancient Greeks. America's Founding Fathers drew heavily upon the political and philosophical experience of ancient Greece in forming our Government. For that contribution alone, we owe a heavy debt to the Greeks.

The common heritage which we share has forged a close bond between Greece and the United States, and between our peoples. And it is reflected in the numerous contributions made by present-day Greek-Americans in New Jersey and across the country to our American culture.

I urge my colleagues to support this resolution as a tribute to these contributions, past and present, which have greatly enriched American life.•

TRIBUTE TO TOM AND GANIA TROTTER

• Mr. MURKOWSKI. Mr. President, I am pleased to pay tribute today to two eminent Alaskans, Tom and Gania Trotter, on the occasion of their retirement after many years of dedicated service to higher education in America, but most recently in their roles as president and associate to the president for development at Alaska Pacific University.

F. Thomas Trotter is a native of Los Angeles, CA. After serving in the U.S. Army Air Corps in World War II, he attended Occidental College and received his Ph.D. from Boston University. He served in numerous ministerial and faculty roles, and was elected to be the first dean of the School of Theology at Claremont College. In 1973, Dr. Trotter became general secretary of the Board of Higher Education and Ministry of the United Methodist Church. In this post, he gave oversight to 128 colleges and universities related to the denomination. During his administration, significant international programs were established including a United States-Japan consortium and the establishment of a new university in Zimbabwe. He has been the director of several businesses, including the Third National Bank of Nashville, is the recipient of 10 honorary degrees, and is a trustee of Dillard University. Dr. Trotter is the author of "Jesus and The Historian" and "Loving God With One's Mind."

Gania Demaree Trotter, a native of Anaheim, CA, is also a graduate of Occidental College and received an M.A. in Student Personnel Administration from Columbia University. A gifted musician, Mrs. Trotter was a choral director in California schools and churches and a member of the Robert Shaw Collegiate Chorale. She was director of development for the Blair School of Music of Vanderbilt University and is an experienced higher education administrator.

Dr. Trotter began his service to Alaska Pacific University as a trustee in 1974, and in 1987, he was selected as its eighth president. He worked diligently to improve curriculum design and financial growth. He introduced new undergraduate and graduate programs and thawed the ice curtain when he forged an agreement between APU and Far Eastern University in Vladivostok, Russia. The Carr Gottstein academic building, which has been a wonderful addition to the campus, was designed and constructed under President Trotter's careful oversight. During his tenure, Alaska Pacific University has been recognized in several national publications for its academic excellence.

Gania Trotter has supported the university and its mission with energy and grace both in development and community awareness. She has cultivated important relationships which will benefit the university and its students for many years to come. Mrs. Trotter has further distinguished herself in Alaska through her creative enthusiasm and civic involvement, most notably in the symphony, opera, and Catholic social services.

Tonight in Anchorage, several hundred friends and colleagues will gather to honor Tom and Gania for their years of selfless dedication to the education of Americans, a gift that will last for generations. I join many others in offering my sincere gratitude and best wishes to both of them.•

LINCOLN, LABOR AND THE BLACK MILITARY: THE LEGACY PROVIDED

• Ms. MOSELEY-BRAUN. Mr. President, William B. Gould IV—the Chairman of the National Labor Relations Board [NLRB]—celebrates the end of the first year of his first term today.

Mr. Gould recently delivered a speech entitled, "Lincoln, Labor, and the Black Military: The Legacy Provided," that makes an important contribution to the celebration of Black History Month. This speech analyzes President Abraham Lincoln's legacy on the development of democratic institutions and the protection of human rights in the United States. More specifically, this speech highlights the Great Emancipator's views on labor and the right to strike which were founded on the belief that "All people could improve themselves and thus arise out of their station if opportunity were afforded them."

Our Nation held its first, officially recognized, Black History Month in 1976. In reality, of course, the event dates back to 1926, when Carter G. Woodson, the noted historian and author, selected February to honor the achievement of black Americans because it was the month in which both Abraham Lincoln and Frederick Douglass were born.

There are still some who would simply like to forget the ugly history that surrounds race relations in this country, and who question the need for a month set aside to reflect on the accomplishments of African-Americans. But for me, each year the month of February provides me with an occasion to look back and survey the triumphs of African-Americans, often against overwhelming odds. It gives me a chance to give thanks to those who have gone before me, and who paved the way for me. And, more importantly, it provides me with the opportunity to reflect not only on how far we have come, but also on how far, in many respects, we still have to go.

Having spoken in favor of his nomination on the Senate floor 1 year ago today, I am pleased to see that Mr. Gould—the first African-American chairman of the National Labor Relations Board—also recognizes the importance of celebrating President Lincoln's birthday and Black History Month.

I am also encouraged by the fact that Mr. Gould continues to reaffirm his commitment to promoting "The right of employees to band together for the purpose of protecting or improving their own working conditions, to join unions, to engage in collective bargaining, and to be free from various forms of discrimination."

Mr. President, I would like to conclude my remarks by urging my colleagues to read Mr. Gould's speech and by wishing Mr. Gould all the best as he continues to serve his country as chairman of the National Labor Relations Board.

I ask that the text of Mr. Gould's speech be printed in the Record.

The speech follows:

Lincoln, Labor and the Black Military: The Legacy Provided

I heard the glad tidings that the Stars and Stripes have been planted over the Capitol of the Confederacy by the invincible Grant. While we honor the living soldiers who have done so much we must not forget to whisper for fear of disturbing the glorious sleep of the men who have fallen. Martyrs to the cause of Right and Equality.—Diary of William B. Gould, April 15, 1865

These are the words of my great-grandfather written 130 years ago at the time of Appomattox. They reflect the thoughts and passion of one of our country's black naval veterans of the Civil War and his commitment to the military initiatives waged by President Lincoln.

It is meet and right that we come here this evening to honor the memory of Abraham Lincoln, the sixteenth President of the United States, properly known throughout the world as the Great Emancipator. The New World's central political and social achievements, the Emancipation Proclamation which President Lincoln authored, transcends the ages and future generations. And his ideas about democracy and the rights of all people constitute the central vision of the American democratic system today.

As the sons of Union officers who fought in the Civil War, you know better than most that this 186th anniversary of Lincoln's birthday marks anew the ongoing struggle to free our country from the legacy of the odious institution of slavery so that all people may live out their lives and fulfill their aspirations without the actuality or fear of arbitrary limitation.

One of my law professors used to say that the "greatest constitutional decision ever rendered occurred when Pickett's charge failed at Gettysburg." The legacy of Appomattox and all that led to its resonates throughout our society to this evening here in Washington as part of the unceasing struggle against all arbitrary barriers which afflict mankind.

And both Gettysburg and Appomattox produced the great Civil War amendments to the Constitution, which reversed the infamous Dred Scott decision in which the Supreme Court declared blacks to be property constitutionally. The amendments, in turn, have provided our country with the historical framework for both the Supreme Court's great Brown v. Board of Education, 1954 ruling condemning separate but equal as a denial of equal protection and also the modern civil rights movement as well as the legislation that it produced. Similarly, Title VII of the Civil Rights Act of 1964, our most comprehensive anti-discrimination legislation relating to the workplace, is a lineal descendant of the previous century's developments.

I am not a Lincoln or Civil War scholar. Indeed, I find the amount of literature about both subjects to be daunting—and, accordingly, I know that you do not expect a scholarly examination of President Lincoln from me. But there are matters which have and do involve me both practically and professionally with Lincoln and his times.

The first is that I am the fourteenth Chairman of the National Labor Relations Board and, as such, administer an agency and interpret a statute which both seek to implement some of Lincoln's most basic views on labor.

The second is that I am the great-grandson of the first William Benjamin Gould who, along with seven other "contraband" (seized property—the appellation which General Benjamin Butler gave to escaped slaves) set sail in a small boat from Cape Fear, North Carolina and boarded the *USS Cambridge* on September 22, 1862, the day that President Lincoln announced his intent to issue the Emancipation Proclamation. You will know that the Proclamation states in relevant part:

"And I further declare and make known, that such persons of suitable condition [the freed slaves held by those in rebellion], will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service."

And thus it was that William B. Gould joined the United States Navy and served as landsman and steward on the North Atlantic Blockade and subsequently served on vessels visiting Britain, France, Belgium, Portugal and Spain, chasing the Confederate ships which were built by their undercover allies.

In 1864 the American Minister Charles Francis Adams had notified the British government that if the *Alabama* and the *Georgia*—two iron clad "rams" built by the British for the Confederacy—were allowed to go to sea, this would be construed by the United States as a declaration of war. William B. Gould sailed with the steam frigate *Niagara* for the European station to join other vessels such as the *Kearsarge* to keep, in my great-grandfather's words, a "sharp lookout" for these vessels. The *Niagara's* destination was the Bay of Biscay where she eventually engaged in battle.

William B. Gould's service ended on September 29, 1865 when he made the following entry in his diary:

"*At the Navy Yard [Charlestown, Massachusetts] at five Oclock I received my Discharge being three years and nine days in the service of Uncle Samuel and glad am I to receive it . . . [pay] of four hundred and twenty four dollars. So end my service in the Navy of the United States of America.*"

I did not know the first William B. Gould for he died—in Dedham, Massachusetts where he resided from 1871 onward—thirteen years before my birth. I did not know my grandfather, William B. Gould, Jr., a Spanish-American War veteran, for he was to die nine years later in 1932. But the third William B. Gould was my greatest inspiration in my most formative years—and my belief is that the values and culture which he attempted to transmit to me were very much a part of the lives of the first two gentlemen to whom I have referred.

Truly then, President Lincoln's views and policies have had a major impact upon my own life.

As Chairman of the National Labor Relations Board, I have a responsibility to implement a statute which promotes the right of employees to band together for the purpose of protecting or improving their own working conditions, to join unions, to engage in collective bargaining and to be free from various forms of discrimination. This statute, enacted as part of President Franklin D. Roosevelt's New Deal in 1935, is one of the country's proudest achievements, expressing the policy that the protection of "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection" should be encouraged.

In recent years, a number of scholars and critics, like myself, took note of the fact that the statute has not been working well in implementing these objectives because of poor administrative processes and ineffective remedies. Some of these matters can be and are being cured by us at the Board and some can be only addressed by Congress. I hope to do what I can to make continued progress in the former category before I depart from Washington and return to California a few years down the road when my term ends.

I enthusiastically support the views contained in the preamble and have made my position known in books, articles, and speeches. In many respects, the fundamentally similar views of President Lincoln were a precursor of our own 1935 legislation.

Recall what Lincoln said to the New York Workingmen's Democratic Republican Association on March 21, 1864:

"The strongest bond of human sympathy, outside of the family relation, should be one uniting all working people, of all nations, and tongues and kindreds."[1]

As the Presidential campaign of 1860 unfolded, Lincoln stated his philosophy in these terms:

"When one starts poor, as most do in the race of life, free society is such that he knows he can better his condition; he knows that there is no fixed condition of labor for his while life . . . I want every man to have the chance—and I believe a black man is entitle to it—in which he *can* better his condition—when he may look forward and hope to be a hired laborer this year and the next, work for himself afterward, and finally to hire men to work for him! That is the true system."[2]

In the same speech, Lincoln makes clear that the right to strike is integral to a democratic society, a policy reflected in the language of Sections 7 and 13 of the National Labor Relations Act and in the Norris-LaGuardia Act of 1932 which preceded it. Just a few weeks ago, President Clinton took note of one of our law's limitations in his statement criticizing the Bridgestone/Firestone Company's use of permanent striker replacements, noting that such tactics show the need to enact legislation prohibiting such a denial of the fundamental right to strike.

It bears note that Lincoln's view of labor and the right to strike ran against the tide of laissez-faire thinking which predominated in the previous century—thinking which has reared its head again toward the close of this century, one of its forms being the repressive striker replacement weapon of which President Clinton spoke. President Lincoln supported the right to strike and spoke out in the spring of 1860 in support of a well-organized strike conducted by the boot and shoe workers in New England. Lincoln regarded the right to strike by free labor as a "virtue, not a failing, of free society," as G.S. Boritt has written in *Lincoln and the Economics of the American Dream.*[3]

Boritt also notes that during the Civil War several delegations of strikers from the Machinists and Blacksmiths Union of New York visited the White House and spoke to the President about their position. States Boritt:

"The labor representatives took great comfort from their interview, reasoning that although their employers refused to deal with them, Lincoln received them. 'If any man should again say that combinations of working men are not good,' they concluded, 'let them point to the Chief Magistrate.' They even quoted the President as saying 'I know that in almost every case of strikes, the men have just cause for complaint.' It is rather likely that the union men quoted Lincoln correctly."[4]

Of course, Lincoln's view of labor was closely related to his view of slavery. Again, in 1860 he said: "'Owned labor' would compete with free labor so as to 'degrade' the latter." And, in an earlier and lengthy speech to the Wisconsin State Agricultural Society in Milwaukee on September 30, 1859, he noted that the so-called "mud-sill" theory was that a hired laborer is "fatally fixed in that condition for life" and thus his condition is the same as that of a slave.[5]

But as Lincoln noted, this theory proceeded upon the assumption that labor and education were incompatible and that one could not improve oneself and one's family through free labor. Lincoln's view was antithetical to all of this. He held the view that workers should be able to rise to new horizons.

And this view is closely related to another held by the President which has similar contemporary implications. Because Lincoln believed that all people could improve themselves and thus rise out of their station if opportunity were afforded them, unlike other proponents of the rights of labor, he did see the working class as a well-defined unit, notwithstanding his endorsement of its use of the strike to defend its interests and act jointly in its dealings with employers. To some extent, said Professor Boritt, Lincoln shared the view that there was a harmony between the capital and labor and that it ought to be promoted so as to enhance the ability of workers to rise out of their class.

Again, these views resonate with us today as Congress considers proposals to enhance employee participation and proposed amendments to the National Labor Relations Act which will achieve this goal. I believe that President Lincoln would be sympathetic with contemporary efforts to promote employee involvement in the workplace and thus enhance our industry's global competitiveness—so long as such reforms do not interfere with the ability of the workers and unions to defend their own positions, a proposition that I have long advanced.[6]

The view that an individual was not "fatally fixed" in a particular condition forever constitutes the philosophy which prevailed in the Civil War and through the Emancipation Proclamation and the enactment of the Thirteenth Amendment which Lincoln sponsored before his assassination. Again, this is reflected anew in last month's State of the Union address by President Clinton when, in advocating new minimum wage legislation, he said that the worker who works must have his "reward" and that the job of government is to "expand opportunity . . . to empower people to make the most of their own lives. . . ."

This is what is at the heart of modern democracy and the Bill of Rights for workers in the private sector which are contained in the National Labor Relations Act and similar statutes. And this has been the assumption behind the struggle for equality which has attempted to make good on the promise of emancipation in the previous century.

My great-grandfather, a mason who worked with his mind and hands and established a business as a contractor, employing other workers in Dedham, Massachusetts, benefited from the above-noted philosophy and the quoted portions of the Emancipation Proclamation. Said William B. Gould on March 8, 1863, two months after its issuance:

"Read . . . the Proclamation of Emancipation . . . verry [sic] good."

The policy, of course, had evolved in fits and starts. As Benjamin Quarles has noted in "The Negro in the Civil War," General Butler was the first to devise a policy of acceptance of blacks who wanted to fight with the North.[7] This was, as Quarles noted, the most "insistent" problem faced by the Lincoln Administration in 1861 and 1862. It emerged, as he has noted, after the Union defeat at Bull Run which was attributable "in part to the Confederate military defenses constructed by slaves. . . ."

Congress enacted legislation which provided for the forfeiture of all slaves whose masters had permitted them to be used in the military or naval service of the Confederacy. Quarles notes that the 1861 legislation "strengthened the hand of the small band of Union officers from the beginning had been in favor of freeing the slaves." Two military initiatives—one designed by John C. Fremont in July 1861, "The Pathfinder," and the other undertaken by Major General Dave Hunter in the summer of 1862—were both rescinded by Lincoln out of his concern with preserving the allegiance of the border states.

Footnotes at the end of article.

The confiscation Act enacted on July 17, 1862, declaring free all slaves who were owned by those in rebellion was the next step in the process. This had the effect of increasing the number of fugitives in whom the United States Navy expressed a particular interest so as to make use of the information that they could provide about enemy locations and movements. As summer became fall the problem became more "insistent."

Three days after my great-grandfather boarded the U.S.S. *Cambridge* came this report of Commander G.H. Scott regarding the blockade of Wilmington:

"Fourteen contrabands have reached the '*Monticello*' and '*Penobscot*' and several the '*Cambridge*' within a few days, and as the vessels have not room for them, will you please direct what disposition shall be made of them?"

We know what disposition was made of William B. Gould. On October 3, 1862, he said:

"*All of us shipped today for three years, first taking the Oath of Allegiance to the Government of Uncle Samuel.*"

Thus, he, and eventually I, benefited from both the Confiscation Act and the new policy expressed in the Emancipation Proclamation which was not to be effective for another three months. His service was made possible because of it. This was then his opportunity—and his observations, hopes and views are chronicled in the diary which he kept between 1862 and 1865.

On the perils of the seas and their storminess, he says:

"[T]he gale still blows fresh and the seas running very [sic] high. We shipped several through the night and one—fill'd the Ward Room with Water. I have got ducked awfully last night. It was worth something to be upon the Deck. Although there is much danger in a storm there is something very sublime to hear the roar of the storm. The hissing of the Waves, the whistling of the Rigging and the Cannon like report of the torn sail and above all the stern word of the commander and the—sound of the boatswain's pipe all adds to the grandeur of the scene. For there is something grand in a storm. Allnight with eager eyes both Officers and Men paced the deck watching our Foretopsail, feeling in a measure secure as long as we could sail at all. It has it stood through the night. There was no sign of the storm abateing [sic]. All the galley fire is out and nothing to eat is the cry and almost nothing to wear on account of the Water. Shine out fair sun and smote the Waves that we may proceed on our course and all be saved."

And on December 25 and December 27 of 1862, he had this to say about the loneliness of his work off New Inlet:

"This being Christmas I think of the table at home . . . cruised around as usual. Fine weather but very lonesome in the absence of news and we all had the Blues."

While on the North Atlantic Blockade with the U.S.S. *Cambridge* he says on November 17, 1862:

"A sail was reported close under the land right ahead. We gave chase. When within range of our boat we told them good morning in the shape of a shot for her to heave to."

But then he describes the difficulties that arose:

"To this [the shot] they took no notice. We sent another which fell under her stern . . . the ship stood for the Beach. Shot after shot was set after her but they heeded not . . . we immediately manned the first cutter and sent her . . . to board and destroy her. We also sent two boats to lend assistance . . . [after sending a line to these boats so that they could return to the main ship] . . . they got the Boat all ready to come out when a body of Rebel Soldiers dashed over the hill at the double quick and all were prisoners. We could see them from the ship marching off our men and dragging the boats after them. We lost eleven men and three officers. Rather a bad day's work."

But the fortunes of war were not all negative as testified to by him in this entry in the summer of 1864 off Portugal:

"[W]e made a steamer and stood for her. She kept on her course without any until we got within 5 miles of her when she suddenly changed her course. We beat to Quarters and Fired a shot. She showed the English collors [sic]. We Fired another. When she came to be boarded her and found her to be the Rebel Privateer 'Georgia' from Liverpool on her way to refit a cruiser. But the next cruise that she makes will be for Uncle Samuel . . . this capture makes a crew feel verry [sic] proud."

While in the English Channel:

"[W]e took on board an English Pilot who brought the thrice glorious news of the sinking of the 'Alabama' by 'Kearsarge' off Cherbough. . . . [A]lthough we have been disappointment to us in not getting a shot at the 'Alabama' we are satisfied that she is out of the way."

And in 1864 while serving on the *Niagara* he said about the people that he saw in Spain:

"[I]t looks very strange in this country which nature have lavished with riches that there should be so many Poor People."

And again on the shameful treatment of black soldiers on his ship:

"Yesterday about 900 men of the Maryland (colored) regiment came on board (they being transferred to the Navy) and took dinner then departed for Portsmouth, New Hampshire. They were treated very rough by the crew. They refused to let them eat out of the mess pans and call them all kinds of names. One man [had] his watch stolen from him by these scoundrels. In all they were treated shamefully."

On the proposed colonization of blacks to Africa or the Caribbean:

"We see by the papers that President [Johnson] intimates colonization for the colored people of the United States. This move of his must and shall be resisted. We were born under the Flag of the union and never will we know no other. My sentiment is the sentiment of the people of the States."[8]

All of this ended in 1865 and provided William B. Gould with his chance at life. Sometimes I think about his thoughts as he walked the streets of Wilmington a young man and what would have been had he stayed in North Carolina and the events of those four critical years had not taken place. Most certainly his great-grandson would not be here today addressing you as Chairman of the National Labor Relations Board.

I am privileged to have this opportunity in 1995 to contribute to the public good in the most inspirational and progressive Administration in Washington since the 1960's—one which is unabashedly committed to the principles of those who fell 130 years ago.

My hope is that I can reflect well upon the first William B. Gould and the chance that he made for me by rising out of his "fixed station," to use Lincoln's words, and I am all too aware of the limitations of time as we move rapidly toward a new millennium.

As William B. Gould said on December 31, 1863, in New York harbor:

"We are obliged knock off on the account of the storm. It blew very hard from South East. The old year of '1863' went out furiously as if it was angry with all the world because it had finished the time allotted to it. Sooner or later we must follow."

My first major impression during my first trip outside of the United States in 1962, as a student at the London School of Economics, is of the grand and majestic statute of President Lincoln which sits in Parliament Square today. Now I live in Washington within a mile of the great Lincoln Memorial in which his brooding historical omnipresence is made so manifest.

You and I, the entire nation and the world honor President Lincoln and his policies tonight. Both personally and professionally they are with me always as is the legacy provided by him and so many others in what my great-grandfather called:

"[T]he holiest of all causes, Liberty and Union.[9]

FOOTNOTES

[1] Basler, Roy P., Editor, *The Collected Works of Abraham Lincoln*, Volume VII, page 259, (1953)

[2] Ibid. Volume IV, pp. 24–5.

[3] Boritt, Gabor S., *Lincoln and the Economics of the American Dream*, page 184, (1978).

[4] Ibid., page 185.

[5] Basler, Roy P., Editor, *The Collected Works of Abraham Lincoln*, Volume 111, pp. 477–8 (1953).

[6] Of course, I advanced such ideas in the context of proposals for comprehensive labor law reform. See W. Gould, Agenda for Reform: The Future of Employment Relationships and the Law, pp. 109–150 (1993).

[7] B. Quarles, *The Negro in the Civil War*, pp. 59-61, 64 (1953). On blacks in the U.S. Navy see generally, D. Valuska, *The African American in the Union Navy: 1861–1865*, (1993).

[8] Of course, President Lincoln had earlier proposed colonization within the context of compensated emancipation.

[9] Dairy May 6, 1864. The full text actually states, "[H]eard of the departure of one battalion of the 5th Regiment Massachusetts Cavalry from Camp Meigs for Washington, D.C. May God protect them while defending the holiest of all causes, Liberty and Union." As William B. Gould III wrote in an entry adjacent to the diary: "Camp Meigs was in Readville, Massachusetts, about two miles east of where William B. Gould made his home at 303 Milton Street, East Dedham, Massachusetts."●

TRIBUTE TO JANIE G. CATRON

● Mr. McCONNELL. Mr. President, it should surprise none of her acquaintances that when Janie Catron retired from my office, her farewell statement was motivational as well as emotional. For those of us who have known and worked with Janie for years, her parting words were an affirmation of her remarkable drive and sense of purpose. For those whose association with her is relatively recent, it was a memorable primer on how to succeed through hard work.

Janie Catron was, officially, my eastern Kentucky field representative from the beginning of my first term in the Senate until her retirement this winter. But her official title did not do justice to the work she did. Janie was not just my representative in eastern Kentucky, she was the region's representative in my office. And she remains the staunchest advocate of that very special place. Anyone without a personal grounding in eastern Kentucky need only spend time with Janie to know that the people and the area are extraordinary.

I will not soon forget our travels over Appalachian mountain roads, the stunning vistas—notably unmarred by guardrails—framed by Janie's keen insight and observations as we drove to meet with constituents. Staffers, present and former, will long treasure the tours she arranged and the hospitality she and her husband, Frank, provided at their home in Corbin.

Janie fostered much of the cohesiveness which has made our office more than simply a collection of individuals. She has worked to instill a sense of shared purpose, responsibility, and loyalty. In fact, loyalty was the thrust of her farewell statement. It is a quality she has personified through deeds as well as words. It was never more evident than the day last November when she summoned the strength to speak through grief and deliver a stirring eulogy in the Mansfield Room during a memorial service for a member of our staff. In reflecting on this aspect of Janie, one could substitute the term "love" for loyalty because it is so clearly evident in her actions and achievements. Loyalty to and love of nation, state, party, family, friends and colleagues—a hallmark of Janie Catron and, if she has anything to say about it, qualities she will impart on others.

Born and reared in Pulaski County, KY Janie has stated that she was born a Democrat but changed her registration upon marrying a Republican. She has often said that she became a Republican by convenience and remained one out of conviction. As anyone who knew her would expect, however, Janie was not just a registered Republican—she was an outspoken, unabashed, active big-"R" Republican. This was rather bold in a State where, until recently, Republican were an endangered species.

Mr. President, on March 11, Janie Catron will be duly recognized when she is inducted into the Fifth Congressional District Republican Hall of Fame. When she receives this honor at the Fifth District Lincoln Day Dinner she will joining other notables such as the legendary Kentucky Senator John Sherman Cooper and Congressman Tim Lee Carter. It is a distinction well-deserved.

I am honored to have been associated with Janie these many years. Her departure leaves a void in my office that probably never will be filled because, by force of her personality and energy, Janie created a niche. I am confident that I speak for my entire office when I say we miss her and wish her well in future endeavors.•

TRIBUTE TO CHIEF RICHARD E. RILEY

• Mr. LAUTENBERG. Mr. President, I rise today to pay my respects to Chief Richard E. Riley who recently retired from the Morris County Prosecutor's Office.

Chief Riley retired after a long career in public service. He began his service in 1963 as a patrolman in the Dover Police Department. In 1968, he was appointed as an investigator with the Morris County Prosecutor's Office. In 1980, he was promoted to sergeant, and finally in 1990, he was appointed chief of investigations.

Throughout his long and distinguished career, Chief Riley was always known as a scrupulous investigator and a man of great integrity. He was best known for his work in the area of investigations, and received statewide respect for his diligent work in investigating the 1992 murder of Exxon executive Sidney Reso.

Chief Riley approached that very public investigation in the same way he approached all his work—with care, with compassion, and with meticulous concern for details.

Over the years, Chief Riley has been recognized repeatedly for his hard work and his tireless commitment to the safety of Morris County residents.

In 1974, he received a Prosecutor's Citation for Armed Robbery Investigation. In 1981, he received a Unit Command Citation for Gambling Investigation. In 1982, he received a Prosecutor's Command Citation for Narcotics Investigation.

He has also been honored with a Good Conduct Award, a Chief's Achievement Award and a Distinguished Service Award. And in 1985, Chief Riley was named Officer of the Year.

Mr. President, the retirement of Chief Riley will leave a great void in the Morris County Prosecutor's Office. But I know that his legacy of investigative excellence will live on in the office and throughout Morris County for many years to come.

We in New Jersey are very proud to count among our midst men and women like Chief Riley, who are committed to public service, to public safety and to the quality of life in our State.

I wish Chief Riley a very restful and exciting retirement, and I personally thank him for all he has done for the people of New Jersey.•

MEMORIALIZING WILLIAM LEONARD BLOCKSTEIN

• Mr. FEINGOLD. Mr. President, I rise to pay tribute to William Leonard Blockstein who died last week at age 69.

Bill was professor emeritus at the University of Wisconsin-Madison following a notable career there. Prior to his retirement in 1991, he was the Edward Kremers professor of pharmacy in the School of Pharmacy, clinical professor of Preventive Medicine in the Medical School, and professor and director of the health sciences unit of university extension.

Bill published over 400 papers on pharmacy education, continuing professional education, health planning, and consumer health education, and edited or coedited 15 books. In 1985, he received the American Pharmaceutical Association's Joseph P. Remington Medal, pharmaceutical science's most prestigious award.

But as distinguished a scientist as he was, Bill was an even better human being.

As one of his colleagues from the University of Wisconsin noted, Bill was a good friend to everyone. Marge Sutinen, the women he planned to marry this July, said that Bill was one of the most charitable men in the community, and indeed, his charity and friendship had no limits.

I had known Bill for years when I asked him to be the first senior intern in my Senate office, and he kindly consented. Though he did spend time advising me on health care issues—a subject on which he had considerable expertise—as many Members understand, working in a Senate office, especially as an intern, does not always involve the most glamorous of work. Bill, a nationally recognized scientist and emeritus professor at the University of Wisconsin pitched in on every task, cheerily helping out younger staffers and interns with any and all office chores.

Bill loved art, and was an avid supporter of the arts. He loved to travel, and I understand he was planning to travel to Sweden and Great Britain later this year. He was active in Friendship Force, a group that combined his altruism and desire for fellowship with that enthusiasm for travel.

He enjoyed being out with people, and especially loved to go dancing. He found pleasure in the cloths he wore—often proudly sporting a new tie or shirt around the office to the delight of the rest of us.

Bill's obvious pleasure in these and other things was contagious. It was simply not possible to be in the same room and not be infected by his enthusiasm.

Bill suffered more than his share of personal tragedy, including the death of his wife Liesl, killed by a drunk driver in 1986. But throughout that and other tragedies, Bill said that it was important to celebrate life every day.

He did just that.

No one did a better job of living than Bill Blockstein. I shall miss him a great deal.•

RETIREMENT OF DR. MORGAN R. REES

• Mr. CHAFEE. Mr. President, I wish to pay tribute to an outstanding civil servant. On February 28, 1995, Dr. Morgan R. Rees, Deputy Assistant Secretary for Planning, Policy and Legislation at the U.S. Army Corps of Engineers Civil Works, retired after a long and distinguished career of Federal service.

Dr. Rees joined the Army Corps of Engineers in 1969 as a Civil Engineering Project Manager in the New England Division. From 1973 to 1981, he served as the Chief of the Regulatory Branch in the New England Division. In 1981, Dr. Rees became the Chief of the Regulatory and Policy Section, Civil Works Directorate, Office of the Chief of Engineers. The following year, he was named Assistant for Regulatory Programs in the Office of the Assistant Secretary for Civil Works. Dr. Rees was promoted again in 1986 to the position of Deputy Assistant Secretary for Planning, Policy and Legislation.

Mr. President, as many in the Senate are aware, Dr. Rees played a major role for the Army in the passage of the landmark Water Resources Development Act of 1986. I have worked with him on the passage of each Water Resources Development Act since then. Dr. Rees' career record reflects the professionalism and dedication found at the U.S. Army Corps of Engineers.

I want to commend him for his many valued contributions to the Army, the Congress of the United States, and the Nation. On behalf of the Committee on Environment and Public Works, I want to wish him the very best in his future endeavors.•

PREVENTIVE ACTION IN BURUNDI

• Mr. FEINGOLD. Mr. President, in the past few months, political violence between Hutu rebels and the Tutsi-dominated military has intensified in the small central African nation of Burundi.

Extremist Tutsi gangs, seeking to destabilize the Hutu government, have been carrying out dead city operations, where residents are ordered to remain at home or shut down business, or risk violent attacks. Grenades are exploding in crowded city centers, including one which recently blew up a bus, and another which killed many civilians in a schoolyard. Scores of civilians have been murdered, and a Hutu provincial Governor, Fidele Muhezi, was assassinated on January 26. The U.N. High Commissioner for Refugees says that over 60,000 people have fled to Tanzania, including 30,000 last week alone.

These are tragedies in any context. In Burundi, they bear eerie resemblances to what happened in neighboring Rwanda in April of last year, which of course exploded in the bloodiest genocide ever recorded, in real time, on television. Given the close ties between the tribes in both countries, events in Rwanda influence happenings in Burundi.

Like Rwanda, Burundi's population is roughly 85-percent Hutu and 15-percent Tutsi. Like Rwanda, there is a long history of Hutu-Tutsi violence. Like Rwanda, the parties in Burundi have been pursuing peace through a power-sharing arrangement and democratic means. In Burundi, the agreement brought elections in which a Hutu was chosen President, but the Tutsis continued to dominate the military.

Already violence has erupted once since the peace process began when, in October 1993, President Melchoir Ndadaye was assassinated by Tutsis, and in retribution by both sides, up to 50,000 people were slaughtered. Almost 10,000 more people have died in ethnic violence since then. The current cycle of violence further threatens the peace plan. For example, the Tutsi opposition party has called for the coup d'etat of the government. This recent spate of violence is a result of extremist Tutsis, with little or no popular support, trying to seize power from Hutus, which they cannot get through democratic means.

For months, observers have been warning that Burundi will go the route of Rwanda if order and justice are not restored. Pierre Buyoya, the former Tutsi military ruler who initiated the democratization programs in Burundi, in fact, states in the Washington Post on February 6 that "Things are worse in Burundi than they were in Rwanda in April." Scholars have documented that historically, violence in Rwanda has foreshadowed violence in Burundi, and vice-versa.

A major reason this violence is so frightening is that many of the individuals responsible for the assassination of President Ndadaye and the subsequent killings have never been prosecuted. This impunity only reinforces the use of violence as a legitimate political tool, and could effectively help extremists achieve their goals.

In an effort to help contain this mounting chaos and to build democracy in Burundi, the United States should request the U.N. Security Council to establish a judicial commission of experts. This commission would assist the Burundi Government to investigate President Ndadaye's assassination and the mass murders in 1993. Legal officers, investigators, and judges from countries with legal systems similar to Burundi's, such as Mali, could work in this commission. A strengthened Burundi judicial system would demonstrate that there is no impunity for such heinous political crimes. International assistance is needed to do it.

I want to applaud the administration for its high-level attention to this problem. I commend President Clinton's personal plea on the Voice of America to the people of Burundi, urging them to "say no to violence and extremism" and work toward peace. I am also pleased that National Security Adviser Tony Lake and Secretary of State Warren Christopher have publicly expressed their concerns about Burundi and called for diplomatic intervention. These are calls which carry significant weight in Burundi, and if successful, will have contributed to prevention of a potentially horrible conflict. I want to make sure that they will get public credit for their efforts.•

Given the histories and the lessons of the very recent past, the United States and the international community should be responsive to calls for help when another Central African nation is on the brink of disaster. We have offered rhetoric that early preventive action can save millions of lives and billions of dollars later. Conflict resolution and preventive diplomacy is a new mantra in international relations. And it should be. Here is an opportunity to listen to the warning signs and respond in some way.

If we do, Burundi may be able to stem the recent spate of violence and continue its move toward democracy. If we do not, then Burundi risks becoming another Rwanda.•

SALUTING 150TH ANNIVERSARY OF FLORIDA STATEHOOD

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 84, submitted earlier by Senators MACK and GRAHAM, which would salute the 150th anniversary of Florida's statehood, and that the resolution be considered and agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table; that any statements relating to the resolution appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the resolution was agreed to.

The preamble was agreed to.

The resolution (S. Res. 84) and its preamble are as follows:

S. RES. 84

Whereas Florida became the first State explored by Europeans when Ponce De Leon led a Spanish expedition that made landfall along the east coast in the year 1513;

Whereas Pedro Menendez de Aviles, captain-general of an invading fleet, ousted the French settlement, Fort Caroline, at the mouth of the St. Johns River, proclaimed Spanish sovereignty over Florida, and on September 8, 1565, established St. Augustine, the oldest city in the United States;

Whereas Spain, France, and England played a significant role in the development and exploration of early Florida;

Whereas President James Monroe proclaimed the Adams-Onis Treaty in which Spain ceded Florida to the United States on February 22, 1821, and appointed General Andrew Jackson as the first provisional governor of Florida;

Whereas on March 30, 1822, the United States Congress created a territorial government for Florida, following the pattern set in the Northwest Ordinance of 1787 by providing for public education and orderly political steps toward greater self-government and eventual statehood as population increased;

Whereas 56 delegates representing the 20 counties of Florida assembled in 1838 in the Panhandle town of St. Joseph to frame the first constitution of the territory in preparation for Florida statehood, who were mainly planters and lawyers, were from 13 of the 26 States then in the United States and 4 foreign countries, included only 3 natives from Florida, included 3 delegates who would later become United States Senators, included 2 governors, and included 5 members of the Florida Supreme Court;

Whereas a bill to admit Florida as a State passed the House of Representatives on February 13, 1845, and the Senate on March 1, 1845;

Whereas President John Tyler signed a bill making Florida a State on March 3, 1845, making Florida the 27th State to be admitted into the United States;

Whereas Friday, March 3, 1995, marks the 150th anniversary of Florida becoming a State;

Whereas the admission of Florida to the United States has proved to be of immense benefit both the United States and to the State of Florida;

Whereas 96 citizens of Florida have served the United States and Florida in the House of Representatives;

Whereas 30 citizens of Florida have served the United States and Florida in the United States Senate;

Whereas numerous citizens of Florida have served in the executive, judicial, and legislative branches of the Federal Government;

Whereas citizens of Florida have fought and died in service to the United States, and 22 citizens of Florida have won the United States highest award for bravery, the Congressional Medal of Honor, protecting freedom in the United States;

Whereas Florida is the fourth largest State and is rich in natural resources and talented people;

Whereas Florida, home of the Everglades National Park, is blessed with great natural beauty, clean water, pure air, and extraordinary scenery;

Whereas Florida is a world leader in agriculture, commercial fishing, education, financial services, horse breeding, high technology, manufacturing, phosphate production, and tourism;

Whereas Cape Canaveral, location of the first United States satellite launch and the first manned spaceship flight to the Moon, continues to play a vital and leading role in the exploration and discovery of outer space by the United States;

Whereas a special postage stamp saluting the Sesquicentennial of Florida will be circulated throughout the United States during 1995; and

Whereas Florida is proud of its heritage and looks forward to its future: Now, therefore, be it

Resolved,

SECTION 1. SALUTE BY THE SENATE

The United States Senate salutes the State of Florida on the sesquicentennial anniversary of Florida becoming a State Friday, March 3, 1995.

SEC. 2. COMMEMORATION BY CONGRESS.

The Senate calls on the joint Congressional leadership of Congress to agree on an appropriate time and manner to honor the State of Florida, in recognition of the achievements of all the men and women who have worked hard to develop Florida into a great State, from pioneer days to modern times.

SEC. 3. COMMEMORATION BY THE PRESIDENT.

The Senate calls on the President to issue a Presidential message calling on the people of the United States and all Federal, State, and local governments to commemorate the sesquicentennial anniversary of Florida becoming a State with appropriate ceremonies and activities.

SEC. 4. COPIES OF RESOLUTION.

The Secretary of the Senate shall send this resolution to the Florida Congressional delegation, the Governor of Florida, the National Archives, and the Florida Archives.

MEASURE READ THE FIRST TIME

Mr. DOLE. Mr. President, I understand that Senate Joint Resolution 28, introduced earlier today by Senator JEFFORDS, is at the desk.

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the resolution for the first time.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 28) to grant consent of Congress to the Northeast Interstate Area Compact.

Mr. DOLE. And I now ask for its second reading.

Mr. FORD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The second reading will occur on the next legislative day.

ORDERS FOR FRIDAY, MARCH 3, 1995

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 10 a.m. March 3, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, and the time for the two leaders be reserved for their use later in the day; that there then be a period for the transaction of morning business not to extend beyond the hour of 1 p.m., with Senators permitted to speak therein not to exceed 5 minutes each, with the following exceptions: Senator CRAIG, 1 hour; Senator DASCHLE, 30 minutes; Senator LIEBERMAN, 20 minutes; Senator GRAHAM of Florida, 15 minutes; Senator GRAMS, of Minnesota, 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DOLE. Mr. President, for the information of all my colleagues, the next item the Senate is expected to consider is S. 244, the Paperwork Reduction Act. One amendment is expected to be offered. However, that amendment will not be available until Monday. Therefore, the Senate will conduct morning business only during tomorrow's session of the Senate. No rollcall votes will occur during Friday's session of the Senate.

Mr. FORD. Will the leader yield?

Could he give any indication of what Monday might be?

Mr. DOLE. I may be able to do that in the morning.

Mr. FORD. All right, fine. There is some interest in that.

Mr. DOLE. I think it depends on what happens on the Paperwork Reduction Act, and I will be able to make that announcement hopefully early tomorrow so people, if we do not have votes Monday, can make plans.

Mr. FORD. I thank the leader.

RECESS UNTIL 10 A.M. TOMORROW

Mr. DOLE. Mr. President, if there is no other business to come before the Senate, and no other Senator is seeking recognition, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 6:07 p.m., recessed until Friday, March 3, 1995, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 2, 1995:

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

ALTON W. CORNELLA, OF SOUTH DAKOTA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

REBECCA G. COX, OF CALIFORNIA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

GEN. JAMES B. DAVIS, U.S. AIR FORCE, RETIRED, OF FLORIDA, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

S. LEE KLING, OF MARYLAND, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

BENJAMIN F. MONTOYA, OF NEW MEXICO, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

WENDI LOUISE STEELE, OF TEXAS, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

JOSUE ROBLES, JR., OF TEXAS, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

HOUSE OF REPRESENTATIVES—*Thursday, March 2, 1995*

The House met at 10 a.m.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We pray, O God, that in the business of every day, we will use our time wisely so we will gain healthy and holy lives. Remind us that our value comes not only in action in the cluttered hours of work, but also in reflection and meditation and prayer and an awareness of Your abiding spirit in our lives. As we take some time for those precious moments of quiet deliberation and circumspection, may we grow in the assurance that Your power and Your peace are sufficient for our needs. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from New Jersey [Mr. MARTINI] come forward and lead the House in the Pledge of Allegiance.

Mr. MARTINI led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a concurrent resolution of the House of the following title:

> H. Con. Res. 20. Concurrent resolution permitting the use of the rotunda of the Capitol for ceremonies as part of the commemoration of the days of remembrance of victims of the Holocaust.

The message also announced that pursuant to section 2761 of title 22, United States Code, the Chair, on behalf of the President pro tempore, and upon the recommendation of the Republican leader, appoints Mr. STEVENS as chairman of the Senate delegation to the British-American Interparliamentary Group during the 104th Congress.

The message also announced that pursuant to section 201(a)(2) of Public Law 93-344, the Chair announces, on behalf of the President pro tempore of the Senate and the Speaker of the House of Representatives, the appointment of Ms. June Ellenoff O'Neill as Director of the Congressional Budget Office for the term of office beginning on January 3, 1995, effective March 1, 1995.

The message also announced that pursuant to sections 276d–276g of title 22, United States Code, the Chair, on behalf of the Vice President, appoints Mr. MURKOWSKI as chairman of the Senate delegation to the Canada-United States Interparliamentary Group during the 104th Congress.

The message also announced that pursuant to sections 276h–276k of title 22, United States Code, the Chair, on behalf of the Vice President, appoints Mr. KYL as chairman of the Senate delegation to the Mexico-United States Interparliamentary Group during the 104th Congress.

The message also announced that pursuant to sections 276h–276k of title 22, United States Code, as amended the Chair, on behalf of the Vice President, appoints Mr. DODD as vice chairman of the Senate delegation to the Mexico-United States Interparliamentary Group during the 104th Congress.

The message also announced that pursuant to sections 276a of title 22, United States Code, the Chair, on behalf of the Vice President, appoints Mr. BURNS as chairman of the Senate delegation to the Interparliamentary Union during the 104th Congress.

The message also announced that pursuant to sections 1928a–1928d of title 22, United States Code, the Chair, on behalf of the Vice President, appoints Mr. ROTH as chairman of the Senate delegation to the North Atlantic Assembly during the 104th Congress.

The message also announced that pursuant to sections 1928a–1928d of title 22, United States Code, as amended, the Chair, on behalf of the Vice President, appoints Mr. HEFLIN as vice chairman of the Senate delegation to the North Atlantic Assembly during the 104th Congress.

PARLIAMENTARY INQUIRY

Mr. VOLKMER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. VOLKMER. Mr. Speaker, is there a number of 1-minutes per side set for today?

The SPEAKER. The Chair believes the leaderships have agreed that there will be 10 on each side today.

Mr. VOLKMER. Mr. Speaker, may I plead with the Chair, since it is in the Speaker's power, and point out that we have a number of Members in excess of that who wish to speak. I will make a commitment to the Speaker and a promise to the Speaker that I will not call for any votes today, and that I will be a very nice person today if the Speaker would go to 15 on each side.

The SPEAKER. Let the Chair say to the gentleman from Missouri that we will try to accommodate him in the next few minutes. I am told this was worked out last night in terms of some Judiciary Committee policy that also involved doing a favor for the gentleman's side. I do not want to stand up here and make this decision. I realize this is not the most momentous decision we will make this year, but if the gentleman will just wait for a minute or two on his potential opportunity, which the gentleman from Pennsylvania [Mr. WALKER] and I used to cherish deeply, I suspect we will accommodate the gentleman. But I do not want to do that without checking with Mr. ARMEY. The majority leader has that prerogative, and I want to make sure he is happy with me.

Mr. VOLKMER. I thank the Speaker.

APPOINTMENT AS MEMBER OF THE FRANKLIN DELANO ROOSEVELT MEMORIAL COMMISSION

The SPEAKER. Pursuant to the provisions of Public Law 84-372, the Chair appoints as a member of the Franklin Delano Roosevelt Memorial Commission the following Member of the House: Mr. LEWIS of California.

REPUBLICAN CONTRACT WITH AMERICA

(Mr. TIAHRT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIAHRT. Mr. Speaker, we are on track in keeping the Contract With America. It is good policy, it is good government, and I am excited to be a part of it.

On the first day of Congress we required Congress to live under the same laws as everyone else in America. We also cut committee staffs by a third, and we cut the congressional budget. It is a promise that we kept.

During these 100 days we are now in, we have already passed the balanced

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

budget amendment, unfunded mandates, line-item veto, a new crime package, the National Security Restoration Act, and Government regulatory reform. We are keeping our promises. We are working hard to keep our promise to the American people.

In the future we are going to be working on welfare reform, on family reinforcement to crack down on deadbeat dads, a tax cut for middle American families, the Senior Citizens Equity Act to allow our senior citizens to work without Government penalty, commonsense legal reform, and term limits.

Mr. Speaker, we are going to keep our promises to America. This is our contract, it is good government, it is good policy, and it is about time.

THE REPUBLICAN WAR AGAINST SOCIAL SECURITY

(Mr. BONIOR asked and was given permission to address the House for 1 minute.)

Mr. BONIOR. Mr. Speaker, why have the Republicans declared war on Social Security?

In the Senate today, the balanced budget amendment is likely to fail because Republicans refuse to take Social Security off the chopping block.

In January, we offered a bill in the House to protect Social Security. Every Republican but six voted against it.

Last month, NEWT GINGRICH's think tank ran this editorial in their newsletter.

The headline reads, "For Freedom's Sake, Eliminate Social Security."

The article says, and I quote,

> As we bury the rest of the welfare state in preparation for the 21st century * * * it is time to slay the largest "entitlement" program of all—Social Security.

And let us not forget—the Speaker himself once offered a bill to eliminate the Social Security system as we know it.

Mr. Speaker, Franklin Roosevelt once called Social Security a sacred trust that must never be taken away.

But after just 55 days of Republican rule, Social Security is facing its greatest threat in six decades.

Republicans keep talking about a revolution.

But nobody ever told us that the real revolution would be a war on older Americans.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. QUINN). The Chair wishes to announce that agreement has been reached this morning that there will be 13 1-minutes on each side. That is a total of 13 on each side.

CHILDREN SUFFER HUNGER UNDER FAILED WELFARE SYSTEM

(Mr. LAHOOD asked and was given permission to address the House for 1 minute.)

Mr. LAHOOD. Mr. Speaker, I am pleased that there was an accommodation made on 1-minutes, and I hope that the gentleman from Missouri will abide by his word and not interrupt the good business of the House during the day.

Mr. Speaker, do you remember the incident in Chicago last year when authorities found 19 children living in squalor in a single apartment on the west side. Some of the children were eating food from the same bowl used by the family dog.

Kim King of the Cook County Public Guardian's Office had this to say in the aftermath of the incident:

> The welfare system is a humongous failure. There's no question about that. The welfare system condones having children and not being responsible for those children.

This, Mr. Speaker, is what liberalism's failed welfare system has wrought.

To those liberals who come down here to defend this system, I say you have a lot of explaining to do. And when they talk about taking the food out of babies' mouths, I have news for my liberal colleagues—it is already happening on a far grander scale than imaginable.

Yet you all have the nerve to take the well to call for more of the same.

PENTAGON MAKES PEACE WITH MORGAN COUNTY, WV; MILITARY FLIGHTS RESUMED

(Mr. WISE asked and was given permission to address the House for 1 minute.)

Mr. WISE. Mr. Speaker, today I am happy to announce that as of 10 a.m. this morning the skies over Morgan County, WV, are now open to Federal flights. Members may remember that after helping in the cleanup 2 years ago of a tragic military crash, the Morgan County Commission asked the Pentagon to reimburse it by almost $11,000.

After 2 years of being turned down, this small rural county passed a resolution banning military overflights. But peace is here. As I speak, in a ceremony in Martinsburg, Gen. Joseph Skaff is presenting a check for full payment. Following that, he will board a C-130 to resume regular flights over Morgan County.

Mr. Speaker, many worked hard for this day—General Skaff, Colonel Lloyd, the 167th in Martinsburg, and Lt. Col. Marcia Bachman. They all deserve special credit for breaking the impasse. Morgan County officials have shown consistent firmness and respect, and I appreciate the efforts of Members of Congress like the gentleman from Pennsylvania [Mr. MURTHA], who assisted me.

Rest assured, Mr. Speaker, when Members board a plane to head home this weekend, as they bank over Berkeley Springs and Paw Paw, they will once again fly the friendly skies of Morgan County.

ANTI-IMMIGRANT SENTIMENT GAINING IN AMERICA

(Ms. ROS-LEHTINEN asked and was given permission to address the House for 1 minute.)

Ms. ROS-LEHTINEN. Mr. Speaker, as a person who came to this country at the young age of 7 as a refugee fleeing the Communist dictatorship of Fidel Castro in Cuba, I know first hand the generosity and opportunities this great country has offered immigrants from around the world.

Unfortunately, I am afraid that today, an anti-immigrant sentiment is growing from an unreal perception that immigrants only come to the United States to take advantage of our generous society and become a burden on the state while never integrating nor becoming productive citizens.

Nothing could be further from the truth. Immigrants have contributed greatly to all facets of American life in the economic, cultural, and political fields.

I appeal to my colleagues to not be swayed by those who would place all of the problems of this Nation on the backs of immigrants. Let us look at immigrants for what they are: hard working, God fearing, law-abiding, honest residents, who like native born Americans, want to provide themselves and their children a better future.

A PLEA FOR FULL FUNDING OF SCHOOL LUNCHES

(Ms. WOOLSEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, 27 years ago I was a single, working mother with 3 small children forced to rely on AFDC and food stamps, in order to give my children the health care, child care, and food they needed.

Twenty-seven years later, I am shocked that the Republicans are talking about taking school lunches away from almost 7,000 children in my congressional district alone while they are refusing to take money away from pork barrel military projects like the F-22 fighter plane. Clearly, House Republicans are willing to punish children just so they can pay for their Contract on America.

In fact, Mr. Speaker, I have only one thing to say about the Republican plan: States don't get hungry, children do. And starving children is not the solution to balancing our budget.

Mr. Speaker, children cannot learn when they are hungry. It is time to talk about full funding for school lunches and full stomachs for our children.

ENDING WELFARE AS WE KNOW IT

(Mr. MARTINI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARTINI. Mr. Speaker, Americans are a generous, caring people. We also are realistic and result oriented. We want our private and public generosity to raise ladders of opportunity for those who have fallen behind. We intend our efforts to serve as a hand-up, not simply a handout.

It has been more than 50 years since the Federal welfare system was conceived. Today, Americans overwhelmingly agree it has been an expensive failure and, in many instances, has inflicted disastrous consequences on its recipients, and on our national well-being.

Finally, Congress has accepted the wisdom of the people. And in the next few days, the new Republican majority will bring to the House a number of proposals that will end welfare as we know it.

In its place, we will initiate an era of genuine human compassion, of opportunity, of personal responsibility and self-reliance and lifted hopes.

That, Mr. Speaker, is our Contract With America.

DEALING ON A TIMETABLE FOR SOCIAL SECURITY PHASEOUT

(Mr. KLINK asked and was given permission to address the House for 1 minute.)

Mr. KLINK. Mr. Speaker, I rise to salute some brave Senators who are standing up for our Constitution, standing up for Social Security, and standing up to a Speaker of the House who has called them liars and is intimating that they are perpetuating some mythical fraud.

In the rush to judgment on these contract issues that we are facing, we are being told, "Trust us. Go along with our 100-day schedule." We are also being told to go along with the fact that Social Security is not really going to be affected by the balanced budget amendment. But in the more deliberative conduct of the other body the mask has now come off.

Republicans now not only admit that they are attempting to pull the largest daylight robbery in the history of the Social Security fund, but in an effort to get that one last vote they need to pass the balanced budget amendment, they are now trying to negotiate for how long that theft will occur. Will it happen by 2012, 2010, or 2008?

Mr. Speaker, this is Monty Hall's "Let's Make a Deal."

□ 1015

PART OF THE PROBLEM

(Mr. JONES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JONES. Mr. Speaker, amid the cry from liberal Democrats regarding Republican welfare reform comes one clear message: The liberals are fighting hard for the bureaucratic status quo.

Instead of joining with reformers who want to make current programs more efficient, more effective, and more fair, liberals prefer to make baseless attacks on Republicans.

The liberals claim that our proposals would hurt children. Several studies have proven that our block-grant initiatives will cut a layer of bureaucracy while delivering more services for those in need.

The liberals are instead defending a group of bureaucrats who waste the taxpayer's money and drain precious resources from our Nation.

Someone once said: If you are not part of the solution, you are part of the problem. Clearly, defenders of the status quo are part of the problem that most Americans thought they solved in the last election.

SCHOOL LUNCH PROGRAM HELPS THOSE WHO NEED IT MOST

(Mr. BEVILL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEVILL. Mr. Speaker, I rise today to urge my colleagues to fight back attempts to end the National School Lunch Program. This is one of the best programs we have because it helps those who need help the most.

For 49 years, this program has helped the schoolchildren of this Nation. For many of these children, their school lunch is the most nutritious meal they get all day. This program has meant that poor children do not have to go hungry during the day.

I cannot imagine anything more mean-spirited than taking food away from hungry children. This is certainly no way to promote strong family values. And, it is certainly no way to promote better health and better educational opportunities. Hungry children have a hard time learning.

By proposing to end this national program, Congress essentially is saying to the States, "It's your problem now. Deal with it." I doubt that many States would have the financial ability to meet this need in difficult economic times. During the last recession, 1.2 million additional children received free school lunches. A block grant program certainly wouldn't take up the shortfall during a recession. States like Alabama which serve a large percentage of low-income children would be penalized.

Nationwide, more than 25 million school children participate in the National School Lunch Program. Approximately 56 percent of Alabama's schoolchildren receive free or reduced price school lunches. Approximately 87 percent of Alabama's schoolchildren receive free or reduced price school breakfasts. Under the proposed cuts, our State would lose an estimated $141.5 million by the year 2000 to feed these children, according to the U.S. Department of Agriculture.

I certainly think we can make the school lunch program more flexible and easier to administer for the States. But, under no circumstances should we jeopardize the health and well-being of our Nation's children. They are our most important national resource.

REFORM WELFARE NOW

(Mr. CHRYSLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHRYSLER. Mr. Speaker, it is time for us to be honest with the American people. It is time for us to say that after $5 trillion our Great Society experiments to end poverty have been an utter failure.

And while there are those who feel threatened by this honest assessment, mainly because their jobs or outdated way of thinking is finally being scrutinized, I submit these are well-intentioned people with well-intentioned programs that simply have not worked.

After billions of taxpayers dollars we have not ended poverty and in fact, the problems associated with poverty has worsened. Welfare programs should not be judged by how many people are on them, But instead, by how many people are off them.

Mr. Speaker, this situation must end and that is why this Congress must reform welfare now. I remember when our President as a candidate said: "We will end welfare as we know it." Instead of fighting us, instead of using disingenuous scare tactics, I encourage our President to join us in our efforts.

TEXAS INDEPENDENCE DAY

(Mr. GENE GREEN of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GENE GREEN of Texas. Mr. Speaker, today is a day for the State of Texas. It is Texas Independence Day. I wanted to ask the House to sing just one chorus of "Texas, Our Texas," but I did not get much response.

Unfortunately, I looked at it and looked at the Republican Contract on America and realized that they are celebrating giving women, children, and senior legal immigrants independence from nutrition programs. They are celebrating by putting in jeopardy Social Security.

Today is also Sam Houston's birthday, the first President of the Republic of Texas. But he was not born in Texas. Actually he was born in Virginia and was a Federal officeholder in Tennessee and in Texas.

But under the bill that passed out of the Economic and Educational Opportunities Committee last week, he would be ineligible for programs under that Republican bill. Because of the Republican bill, the USDA estimated that $1.3 billion would be cut over 5 years for the school breakfast and lunch programs. The Texas Education Agency estimated the welfare bill would cut school lunches in Texas $261 million.

DEMOCRATS DISTORTING REPUBLICAN WELFARE PROPOSAL

(Mr. EVERETT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EVERETT. Mr. Speaker, the current welfare system has been a nightmare for children. It is a fact that long-term welfare dependency harms children.

A study by Child Trends found that children in families dependent on welfare for long periods of time have more developmental problems than children dependent for only short periods. The problem is, most welfare recipients are long-term dependents. So it is no surprise to learn that 69 percent of children in chronically dependent welfare families score in the bottom third of all children on vocabulary and language skills tests.

The sad fact, Mr. Speaker, is that welfare is probably far worse for children than for anyone else involved, because it gets them into the same habits of dependency they are surrounded by, resulting in an almost unbreakable cycle of welfare.

And yet, my liberal Democrat colleagues come to this floor to deceive, to distort, and to disinform about the Republican proposal on the school lunch program. They are so concerned with protecting the bureaucracy that they are blind to the greater tragedy to children that is going on in my State of Alabama and right outside this Capitol. That is sad, Mr. Speaker.

BALANCED BUDGET AMENDMENT PUTS SOCIAL SECURITY AT RISK

(Mr. FRANK of Massachusetts asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FRANK of Massachusetts. Mr. Speaker, those who are arguing that the current form of the balanced budget amendment puts Social Security at risk are undeniably correct. The amendment says that in the year 2002 it will be mandatory that any surplus from Social Security be used to reduce the overall deficit elsewhere in the Federal Government for the purposes of achieving balance. What this means is that there will be a constitutional imperative to the Congress to cut Social Security expenditures if they need to do that to make up the deficit elsewhere.

That is not an academic threat. The Speaker of this House has demanded that the Bureau of Labor Statistics recalculate the Consumer Price Index. Reducing the Consumer Price Index has as its major impact saying that older people get less of a cost-of-living increase under Social Security.

So when the Republicans push a form of the balanced budget amendment that allows, indeed, compels, any surplus in Social Security to be used to offset a deficit elsewhere and simultaneously argues that we should cut the Consumer Price Index, which has as its major fiscal impact reducing the cost-of-living increase, we see why Senators are right to oppose this amendment in its current form.

LOOK BEYOND THE RHETORIC

(Mr. EWING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EWING. Mr. Speaker, the House Republicans work hard to change the way Congress does business. The minority party in both Chambers works hard to preserve the status quo. The balanced budget amendment, up for a vote today, hinges on the cooperation of Democratic Members. Without their help, the hopes of the American people will be dashed.

Unfortunately, the prospects do not look very bright. Of course, once the country goes broke we will have Social Security and all the other programs they complain about being cut. And as the Republicans attempt to reform welfare systems, they are being met by stiff resistance.

Mr. Speaker, I urge the American people to look beyond the rhetoric. The Republicans are trying to change the direction of this Government. We are trying to pass the balanced budget amendment. We are trying to reform a broken welfare system. Sadly, the Democratic Party now is left defending only the status quo.

DO NOT REPEAL THE NATIONAL SCHOOL LUNCH ACT

(Mr. KILDEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KILDEE. Mr. Speaker, in this contract hysteria, let us not lose sight of the things that came into being for a strong national purpose.

The voters in November did not mandate the destruction of a program that has worked well for half a century.

Repealing the National School Lunch Act, which has successfully fed hundreds of millions of hungry children since 1946, will affect children in public and parochial schools, regardless of income.

In 1981, the Reagan administration slashed over $1 billion from the school nutrition programs.

As a result, over 2,000 schools were forced to drop out of the program, leaving 2 million children without a nutritious school lunch. Under this block grant proposal, States would receive $2 billion less for school meals over the next 5 years.

Due to drastically reduced funding, a State may choose not to subsidize meals for children who pay full price, forcing the school to raise prices.

BLOCK GRANTING SCHOOL LUNCH PROGRAM WILL GIVE STATES MORE CONTROL

(Mrs. CUBIN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CUBIN. Mr. Speaker, I find myself compelled to rise and speak once again on behalf of truth and against the untrue accusations from the other side of the aisle.

In no uncertain terms, the Republicans in Congress do not intend to deprive school children of nutritious meals.

Less than a week ago a Wyoming newspaper's headlines read "GOP Hopes To Abolish School Lunch Programs. Democrats Say Children May Starve by the Thousands." Nothing could be further from the truth and the Democrats know it.

Funding for school lunch programs will increase by 4.5 percent each year over the next 5 years. That is not a figure that would lead a reasonable person to believe that the school lunch program will be eliminated.

Block granting the school lunch program will give the States more control to spend the funds where they are most needed. And by requiring States to use at least 80 percent of the funds for meals for low-income children, no one should be afraid that children will go hungry.

The school lunch program will not be eliminated. Now, eliminating the jobs of the Federal bureaucrats who micromanage the nutrition programs is an excellent idea. That is one way to save money in Washington for food for kids.

Let the Democrats take care of the bureaucrats—the Republicans will care for the children.

WELFARE REFORM SHOULD EMPHASIZE SELF-SUFFICIENCY THROUGH WORK

(Mr. ORTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ORTON. Mr. Speaker, I, like many of my colleagues and the majority of Americans, strongly favor welfare reform. It is crucial to transform the welfare system from one which fosters dependency to one based on self-sufficiency.

Yet, the plan moving through Congress lacks emphasis on the one element critical to welfare reform: work. A person entering this newly reformed system could spend 2 years before engaging in any activities that are geared toward work. That simply isn't good enough. It is not good enough for taxpayers, and surely it is not good enough for people receiving welfare benefits who are becoming more alienated from the labor market.

The goal of welfare reform should be to provide people with assistance in setting a path toward self-sufficiency through work.

I have filed H.R. 865, the Self-Sufficiency Act, patterned after a successful welfare reform program in Utah which has reduced the welfare caseload in one area by 30 percent in just 2 years. More importantly, this was accomplished by putting people to work in the private sector.

Let us reform welfare, but let us base it on work.

AN UP-OR-DOWN VOTE NEEDED ON AID TO MEXICO

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURTON of Indiana. Mr. Speaker, we are not going to take food out of hungry children's mouths, and we are not going to cut Social Security. That is baloney. But let me tell you something that really is happening, today. The President of the United States and the Secretary of the Treasury are sending $52 billion, $52 thousand million down to Mexico, without any act of Congress.

This is where the people's money is supposed to be spent, in the Congress of the United States. They could not get the votes to bail out Mexico in the Congress, so the President and the Secretary of the Treasury, who is protecting his own rear end in my opinion because he is a financial adviser, did an end run around the Congress of the United States.

They have already sent $7 billion, $7 thousand million down to Mexico, and that economy continues to go down into the tank. We need an up or down vote in this Congress on spending the taxpayers' money to bail out Mexico. The President is not a dictator. He should not be doing it unilaterally.

THE TRUTH ON SOCIAL SECURITY

(Mr. BROWN of Ohio asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROWN of Ohio. Mr. Speaker, once again the truth is revealed. Republicans want to cut Social Security today, and then abolish Social Security tomorrow. Listen to this editorial from American Civilization, the rule book for the extremist wing of the Republican Party.

> As we bury the rest of the welfare state in preparation for the 21st century, it is time to slay the largest government entitlement program of all, Social Security.

The Republicans say they will not cut Social Security and Medicare. Then when they get caught they admit they want to. Then they deny it, then they admit again they plan to cut Social Security and cripple Medicare. The Speaker should come clean on Social Security before he accuses others of lying about it.

In the one chance this year to save Social Security from major cuts, every Republican but six voted against an amendment to exempt Social Security. Social Security is a covenant between the American people and the Government. It should not be violated.

☐ 1030

DEMOCRATIC WHINING

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, every day the Democrat Party stands up and they weep and they whine and they mourn about the Contract With America. In fact, there has been so much crying on the left side of the aisle that the EPA has had to declare it a wetlands.

Because while the Republican Party is busy contracting with America, the Democrat Party is busy contracting from America.

The Democrats are outraged because issues that they have ignored and oppressed for 40 years can be brought up before the American people for a vote in 100 days. It has left them without an agenda. To them welfare works. Bureaucrats and regulations are good. Deficit spending is OK because amending the Constitution to keep America alive is somehow worse than balancing the budget.

Mr. Speaker, this revolution is not about NEWT GINGRICH. It is not about the Contract With America. It is not about the Republicans taking over Congress. It is about change and challenging the status quo. It has a momentum of its own. It is about less government, lower taxes, fewer regulations, and more personal freedom. I hope that they will join us.

IT'S MEAN

(Mr. VOLKMER asked and was given permission to address the House for 1 minute.)

Mr. VOLKMER. Mr. Speaker, I rise today seeking an answer. The House Appropriations Committee is meeting this morning to mark up legislation that would rescind selected appropriations that were authorized for fiscal year 1995. My question is: How do they justify some of these rescissions that have been proposed by the appropriations subcommittees?

We all realize that cuts have to be made in the Federal budget and that we have to rethink how we spend our constituents' tax dollars. But how can they be so mean-spirited as to make these cuts at the expense of the people we are trying to help.

Discretionary programs for low-income people account for 12 percent or $64 billion of the Federal Government's total discretionary spending; but as a result of proposals made by the appropriations subcommittees, these programs would bear 63 percent or almost $11 billion of the cuts. Of $17.5 billion that was cut by appropriations committees last week, $14.9 billion were cut from five departments: Education, Health and Human Services, HUD, Labor, and VA. To my thinking, that is just mean. It looks to me that these cuts are intended to justify the tax cut for the wealthy that the Republicans promised in their Contract on America.

FACTS ON SCHOOL LUNCH

(Mr. GANSKE asked and was given permission to address the House for 1 minute.)

Mr. GANSKE. Mr. Speaker, I rise today to let the American people know the truth about school lunches. I keep hearing that the Republican proposal from the Economic and Educational Opportunities Committee is going to take food out of the mouths of children. It is time the media and school lunch bureaucrats who keep feeding the American public these horror stories realize that the only horror here is that the facts are not getting to the American people.

Let me share a few facts with you.

Fact: Funding for school lunch programs will increase by 4.5 percent each year over the next 5 years.

Fact: Eighty percent of the funds in this block grant will be used to feed low-income children.

Fact: By eliminating mounds of Federal red tape and regulations, a school will be in a better position to put its money where the children's mouths are.

The American public needs and deserves to hear the facts. This program ensures that low-income children in our country will not go hungry. Opponents should stop stuffing people's ears with falsehoods and start filling our children's mouths with food.

DEBATE ON PROPERTY RIGHTS

(Mr. TAUZIN asked and was given permission to address the House for 1 minute.)

Mr. TAUZIN. Mr. Speaker, today we begin a historic debate, one that I and many Members of this House have long awaited, the debate on private property rights.

I want to remind the House that this debate started with Democrats. It was Democrats who put together the private property owners' bill of rights which has now been incorporated into the Republican contract. Democrats like the gentleman from Texas, GREG LAUGHLIN, the gentleman from Louisiana, Mr. HAYES, and the gentleman from California, Mr. CONDIT, and the gentleman from Texas, Mr. STENHOLM, and I together joined with our colleague, the gentleman from Texas, Mr. FIELDS. We have tried for years to bring this issue to the floor of the House.

Today that debate begins and we are delighted. Today we begin providing protections for every private property owner in America, guaranteed under the fifth amendment. We are not going to be debating big landowner rights. They can go to court today to enforce their rights. Today we enforce the rights of every small landowner in America to enjoy the same civil rights and liberties guaranteed under the fifth amendment. Today we give meaning and life to the fifth amendment protection that says, no private property shall be taken by this Government, by regulation or otherwise, without just compensation.

SCHOOL NUTRITION PROGRAMS

(Mr. HOKE asked and was given permission to address the House for 1 minute.)

Mr. HOKE. Mr. Speaker, do you know how much money we are cutting from the school nutrition programs? Zero, zip, zilch, zippo, zippola, niente, nada, nothing, nil, none, squat, the big goose egg. Here are the facts.

Under the Republican proposal, spending on school nutrition programs increases the next 2 years by 4.5 percent. Unlike the current program, which has lax or few standards, the Republican plan requires that 80 percent of the funds go to low income kids, those that need it the most. Yet, all the Democrats can do up here is come and whine and posture, whine and posture. So much that these days will undoubtedly come to be known as the days of whine and poses.

But the American people are not buying this snake oil. They know that the welfare system has been a disaster, not just for the taxpayers but for those poor people it was designed to help. They know that no amount of money can right the current system. It is too corrupt. It is too destructive. They know it needs to be fundamentally changed. That is what they elected us to do. And do it we shall.

NICHOLAS LEESON

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, Nick Leeson, a 28-year-old common man, now known as Tricky Nicky, singlehandedly bankrupted the Barings Bank of England. This is no ordinary bank. This bank financed the Louisiana Purchase and is known as the bank of kings and queens. Now, evidently, Mr. Speaker, the security at Barings was out for a spot of tea. But this is an unusual case, Mr. Speaker.

In the past, only millionaires and bankers and kings and queens could sting a bank. Not anymore. Evidently the common man has moved up from robbing the drug stores and the gas station and is now an equal member in the white collar advanced crime network opportunity program, my colleagues.

I said it all along, Mr. Speaker. Thanks to Tricky Nicky, we have come to see one thing. There is hope for the common man. After all, I never heard of the common man committing suicide by jumping out of a basement window. Think about that awhile. Maybe there is some hope left.

VOTE ON HOUSE RESOLUTION 101, PROVIDING FOR CONSIDERATION OF H.R. 925, PRIVATE PROPERTY PROTECTION ACT OF 1995

The SPEAKER pro tempore (Mr. QUINN). The unfinished business is the question of the vote on House Resolution 101.

The Clerk read the title of the resolution.

(For text of House Resolution 101, see page 6423 of the RECORD of Wednesday, March 1, 1995.)

The SPEAKER pro tempore. The vote is on the resolution on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 271, nays 151, not voting 12, as follows:

[Roll No. 189]

YEAS—271

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
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Browder
Brownback
Bryant (TN)
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Burr
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Buyer
Callahan
Calvert
Camp
Canady
Castle
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Chambliss
Chenoweth
Christensen
Chrysler
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Coburn
Collins (GA)
Combest
Condit
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Cox
Cramer
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Cubin
Cunningham
Davis
de la Garza
Deal
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
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Frelinghuysen
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Frost
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Gallegly
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Geren
Gilchrest
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Gilman
Goodlatte
Goodling
Gordon
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Greenwood
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Gutknecht
Hall (TX)
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Hostettler
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Johnson, Sam
Jones
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Lewis (CA)
Lewis (KY)
Lightfoot
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McCollum
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Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Morella
Murtha
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Norwood
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Payne (VA)
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Radanovich
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Regula
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Roberts
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Salmon
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Scarborough
Schaefer
Schiff
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
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Smith (TX)
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Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
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Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Vucanovich
Waldholtz
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Wyden
Young (AK)
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Zeliff
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Ackerman
Andrews
Baldacci
Barrett (WI)
Becerra
Beilenson
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Berman
Bishop
Bonior
Borski
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Brown (CA)
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Cardin
Chapman
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
DeFazio
DeLauro
Dellums
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Dixon
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Fattah
Fields (LA)
Filner
Flake
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Frank (MA)
Furse
Gejdenson
Gephardt
Gibbons
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)

Hayes
Hilliard
Hinchey
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kildee
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Lewis (GA)
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Lowey
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Miller (CA)
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Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Rahall
Rangel
Reed
Reynolds
Richardson
Rivers
Roemer
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
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Serrano
Skaggs
Slaughter
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Stark
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Thompson
Thornton
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Velazquez
Vento
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Volkmer
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Bilbray
Bryant (TX)
Clay
DeLay
Dicks
Dingell
Gonzalez
Metcalf
Moakley
Stokes
Torres
Towns

□ 1055

Mr. LEVIN, Mr. POMEROY, Mr. VOLKMER, and Mrs. MEEK of Florida changed their vote from "aye" to "no."

Mr. ROTH changed his vote from "no" to "aye."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PRIVATE PROPERTY PROTECTION ACT OF 1995

The SPEAKER pro tempore (Mr. QUINN). Pursuant to House Resolution 101 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 925.

□ 1058

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, with Mr. SHUSTER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Wednesday, March 1, 1995, 29½ minutes remained in general debate. The gentleman from Florida [Mr. CANADY] has 14½ minutes remaining, and the gentleman from Michigan [Mr. CONYERS] has 15 minutes remaining.

The Chair recognizes the gentleman from Florida [Mr. CANADY].

Mr. CANADY of Florida. Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois [Mr. PORTER].

□ 1100

Mr. PORTER. Mr. Chairman, any honest person must admit that there have been instances of regulatory overkill in our Government. But this legislation is legislative overkill in the extreme. It will turn on the litigation tap with an absurdly low threshold for compensation of 10 percent. It will mean, Mr. Chairman, that every single regulation will be the subject of a lawsuit and every application of every regulation will be the subject of a lawsuit. Why would the lawyers not want to take it to court, roll the dice and see if they can get a recovery?

I take a back seat to no one in this Chamber in terms of my fiscal conservatism, and I cannot support this bill because it will create a new entitlement that will cost Government so much money that no Republican ought to support it.

I will be offering, Mr. Chairman, an amendment with the gentleman from Michigan [Mr. EHLERS], the gentleman from California [Mr. FARR], and the gentleman from Texas [Mr. BRYANT] that is the essence of legislation introduced in the Senate by Majority Leader DOLE as Senate bill S. 22. It is his answer to the takings problem. It is legislation that is based upon an Executive order issued by Ronald Reagan. Our amendment, like Mr. DOLE's bill, Mr. Chairman, leaves takings under the Constitution, where they belong, unless the agency fails to do a private property taking impact assessment before issuing any regulation. If the agency fails to do an assessment, then the Canady-Tauzin compensation scheme applies.

We should follow the Constitution, Mr. Chairman. It has worked very well for the last 200 years.

Finally, let me say that the Canady-Tauzin approach is a minority mentality approach. We are in the majority in this Chamber today and if there is a problem with the Endangered Species Act, let's change the act. If there is a problem with the wetlands law, let's change the law. But let's not write an entire new entitlement program that will cost the Government hundreds of millions of dollars in expenses. Let's instead support the approach that we will offer in our amendment that says let's look at the impact of a regulation on private property, let's ensure that the Government knows very well what it does, and let's then follow the Constitution which has served us well. If the impact statement is not done, we can then go to the approach offered by the gentleman from Florida [Mr. CANADY] and the gentleman from Louisiana [Mr. TAUZIN].

I urge Members to support the Dole approach to the amendment I will offer later.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. SMITH].

Mr. SMITH of Michigan. Mr. Chairman, the point is that we need to make some changes. There is a problem in this country where we have started passing on unfunded mandates to cities and counties to let them pay for our philosophy changes. This is also a problem where we are passing mandates on to individuals to let them pay for our philosophical changes, while we are taking away people's property, sometimes by poorly written laws, sometimes by poorly written regulations, sometimes by overzealous Government agents.

I am a farmer from Michigan. Let me share with you a couple of farm stories. A vegetable farmer was ordered to stop farming when two endangered species were discovered on his farm. The farmer was told he would be allowed to return to farming if he gave the Government 1 square mile of his property and a mitigation fee of $300,000. When the farmer refused this offer, he was fined $300,000. That was 10 years ago. The farmer is still fighting.

A family of cabbage growers cannot farm 450 acres of its farmland because the Army Corps of Engineers declared this acreage to be a wetland. Because of the prohibitive court fees, the family could not afford to challenge the decision.

Close to me, a couple of odd miles away from my farm in Michigan, a farmer had almost one-quarter acre within the boundaries of his otherwise tillable land but that small little strip with a couple of cattails, the farmer had to drive 2 miles around to get to the other side because that farmer was not allowed to plow through it or have the penalties of losing his Federal farm program payments.

In closing, look, we have got a bill here. If it needs perfecting, we have got essentially an open rule. Let's come up with the amendments to make it better. The point is we have got to do something in this country because we are depriving a lot of people of their living because we are taking away their property.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, I thank the gentleman from Michigan [Mr. CONYERS] for yielding me the time.

Members of the House, this debate was opened by a discussion of a case entitled Bowles versus United States. My friend the gentleman from Florida [Mr. CANADY] called that case to our attention.

I want Members to know a little bit more about Mr. Bowles. Mr. Bowles was a member, in fact an officer of a conservation group in Brazoria County, TX. He was one of the good guys. The group was designed to watch the Corps of Engineers so it did not give permits it should not give out. He was a member of the Texas Nature Conservancy, a good guy. He bought a lot in Brazoria County in a subdivision in 1980. In 1984 when he came to build on that lot, he was told he needed a 404 permit from the Corps of Engineers, a wetlands permit. In 1984, the corps denied him the right to build on his lot even though neighbors had built up next to him all around that subdivision.

He then filed suit in the Court of Claims. Ten years later, in March 1994, Mr. Bowles was finally awarded a judgment against the Government of the United States for the value of his lot. For 10 years our Justice Department, our Government, our Justice Department, fought him in court day and night telling the court we should not have to pay him or if we had to pay him, we should pay him some diminished value of his lot, something like what it was worth after the Government regulated it.

When Judge Loren Smith wrote the decision just last year after 10 years of litigation, Judge Loren Smith said, "There must be a better way to balance legitimate public goals with the fundamental individual rights. Courts, however, cannot produce comprehensive solutions."

Judge Loren Smith begged us to have this debate today, begged us to set down the guidelines for Government compensation of private citizens whose property is taken because of Federal regulations. Judge Loren Smith's call for us to act is a call upon all of us to protect, for little landowners like Mr. Bowles, who fought for 10 years and never got past the Court of Claims, for their rights under the fifth amendment.

Most citizens cannot get it after 10 years in the Court of Claims. Most have to go all the way to the Supreme Court, such as Mr. Lucas did from South Carolina. Others are struggling. In the Florida Rock case, it started in 1978, it has been in the circuit court of appeals three times and has been remanded to the lower court. Citizens cannot afford a $500,000 trip through the court system to find out whether the Government took their property, took their farm, took their subdivision lot, took their ranch, took their forestry lands. We ought to have a simpler system for citizens who cannot afford big lawyers, cannot afford to spend 10 years in court, cannot afford $500,000 of court fees. We ought to have a better way for citizens in our country to get their basic rights under the Constitution.

Remember what the court said in Dolan. This is a sacred right, a civil right under the fifth amendment.

Mr. CANADY of Florida. Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee [Mr. WAMP].

Mr. WAMP. Mr. Chairman, I am compelled to take to the well today to speak about private property rights and the pending legislation, H.R. 925, because I believe few issues touch closer to the hearts of most Americans than their right to own their property. It is also the issue that is close to my heart, because I come from a real estate background—that is how I made my living before coming to Congress.

More importantly, it is one of the fundamental rights guaranteed to us by the Constitution, and I ran for Congress on a platform of upholding the Constitution, and, like the rest of my colleagues, took an oath upon taking office that I would uphold that Constitution.

I remind my colleagues of that oath and of the words immortalized in our Constitution, specifically amendments number 5 and 14:

> No person shall be deprived of life, liberty, or *property* [emphasis added] without due process of law; nor shall private property be taken for public use without just compensation.—5th Amendment (part of the Bill of Rights)

This sentiment is reiterated in the 14th amendment, extending that protection to our citizens from that actions of States:

> * * *nor shall any State deprive any person of life, liberty, or *property* [emphasis added], without due process of law (Section 1)* * *. The Congress shall have the power to enforce, by appropriate legislation, the provision of this article. (Section 5)

Clearly, the defining document of our Government seeks to protect the American Dream—to own property, to own land, to have a stake in something that is your own. Congress is supposed to make laws to protect that dream. Clearly, many of the laws Congress has made and the regulations that came out of those laws do just the opposite. H.R. 925, the takings bill, seeks to correct this situation, by treating regulations that render a person's property useless, unsellable, or even worse, into a liability, by treating those regulations as takings of private property and cause for compensation by the Government, as guaranteed by the fifth amendment. Such rules mean that the Government must think twice about the reclassification of land or other property, or at the very least compensate the owners—our citizens—when making those decisions.

Private Property: It is what separates us from those countries that pretended to be democratic, that pretended to be republics, that pretended to be representative, that pretended to be market oriented, that pretended, Mr. Chairman, to be free. I respectfully urge my colleagues to pass H.R. 925.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. I thank the gentleman from Michigan for yielding me the time.

Mr. Chairman, I came to talk a bit about the makings part. We are going to hear takings, takings, takings, but I think unless we pass my amendment, the taxpayer is going to be in the tub for a tremendous amount of money. Because what we forget is very often what the Federal Government is doing also increases the value of land by a significant amount.

There are many areas where I can talk about that. If you look at dredging harbors, if you look at propping up beaches, if you look at planting trees, if you look at creating national parks, building roads, creating accessibility, all of these things give the land around it a much higher value. Is it not interesting that we ignore that?

People will say to me, "Oh, yeah, but then you tax the increased value." Well, the Federal Government does not get that. That is the State government. I think many of the times when what we are going to hear is a taking, we could also flip that and find it as a making. In other words, what the Government might be doing is making the person's property much more valuable.

But the person can say, "Yeah, but I don't want to use it for that, I don't want to sell it for that. I want to instead be a shepherd and run sheep" rather than sell the land for something else. So they sue for their lack of ability to run sheep.

That is really phony. You are going to pay for that and you have also got land that is incredibly enhanced.

One of the areas that I thought I would bring to mind is in particular farm subsidies. I do not know if people are aware of this, but it has been proven over and over that farm subsidies annually add $83 billion to $111 billion a year in land values in the United States. That is a lot of money.

Obviously there is a difference between $83 billion and $111 billion, but whichever number you want to pick, economists say that if we did away with farm subsidies that come from the Federal Government, land properties would drop somewhere in that range.

Obviously it would be a disaster, because banks have money loaned on that basis and so forth. Farm subsidies enhance the average value of the average farm in America somewhere between $120,000 a year and $440,000 a year if you want to break it down to just the average farm in America.

☐ 1115

I think it is pretty ridiculous not to recognize this part of it, and I think if we are not careful when we get all done we are going to have one more thing which causes the American people to pay, pay, pay and they never get anything back, and we are going to find just a few people are very enhanced by this, and a few taxpayers are going to be left paying the billions.

I urge Members to listen to this debate very, very carefully.

Mr. Chairman, we will be spending a lot of time talking about takings. But, makings is the other side of this issue. Makings are when actions by Federal agencies increase the value of private land. Makings should be included in the takings debate. See, in many takings cases, the taxpayer will be paying twice. First, to increase the value of the property so that it is useful, then again to compensate the property owner who can't do exactly what they want with it.

The Federal Government engages in myriad activities on a daily basis that increase the value of private property, or make money for private property owners. For example, the Government increases property values when it creates a national park or forest adjacent to one's property. Likewise, when the Army Corps of Engineers creates harbors and navigation channels, restores beaches, or shores up coastlines; the Bureau of Reclamation brings irrigation water at subsidized costs to agricultural property; the Federal Highway Administration provides subsidized access to property that was otherwise inaccessible and previously valueless commercially; the Bureau of Land Management issues permits to graze cattle on Federal lands and the possession of those permits increase the property value of ranches. Federal regulatory action also safeguards property values by agency action to halt or prevent contamination or other degradation to property caused by activities of neighboring property owners.

The largest and most easily quantifiable making that that Federal Government creates for private property owners is the agricultural subsidy program. The taxpayer spends $10 billion on farm subsidies a year, and those subsidies increase the value of farm property by 15–20 percent. Because farming is not as much a family business as it used to be, and is now largely a corporate endeavor, this puts deep pockets in the overalls of a small number of already well-endowed taxpayers.

In other words, farm subsidies make $83 to $111 billion in land values for the 2.9 million farmland owners in the country. And over half of the Nation's farmland is owned by a mere 124,000 property owners. However, the larger the farm, the larger the subsidy.

Let me state that in another way: Farm subsidies enhance the value of the average farm by $120,000 to $440,000. When the farm programs began, 25 percent of the U.S. population lived on farms, and their annual income was less than half that of nonfarm households. Now less than 2 percent of the population lives on farms, and the average income of farm households is now greater than nonfarm households. While the family farm has so far evaded total extinction, the bulk of agricultural business is no longer the picture painted in American Gothic.

Farm subsidies make $1.5 to $2 billion for farmland owners in my State of Colorado in enhanced farmland values. Prices in California are enhanced by up to $8.6 billion. Farmland owners in Illinois and Iowa made up to $7 billion, and in Texas up to $10 billion. In fact, in 7 of the 17 States represented on the House Agriculture Committee, farm subsidy payments from 1985 to 1994 represented more than a quarter of the total farmland value in those States. All due to Government action.

If that weren't enough, under the "swampbuster" provision of the 1985 farm bill, we already pay farmland owners not to farm on wetlands. Not plowing wetlands is a precondition to receiving farm subsidies. Farmers who receive subsidies and then want to be compensated for not being able to farm wetlands, are double dipping.

If, under H.R. 925, we compensate farmers for limitations placed on their farmland by Federal regulation it will be the taxpayers, not the farmer's cows that will be milked.

The taxpayer has already paid an average of $10 billion a year into a program that makes farming more profitable, and as a result increases farmers' property values. Now you're asking the taxpayer to pay the farm owner again for a taking based on inflated land prices that the Federal Government created to benefit the farmer?

The only taking going on will be the farmland owners taking their loot to the bank.

Mr. CANADY of Florida. Mr. Chairman, I yield 3 minutes to the gentleman from Idaho [Mr. CRAPO].

Mr. CRAPO. Mr. Chairman, I appreciate the opportunity to address this important issue. People in America understand that our Constitution protects private property. It was one of the basic principles that our Founding Fathers knew must be protected if our Nation and the principles upon which our Nation was built were to survive.

So they put into the Constitution a protection that when the government comes to take the property, the private property of a citizen, that it must compensate them.

What they did not foresee was a regulatory bureaucracy of the kind that we have today that would figure out a new way to get around that protection. Instead of simply coming and taking the property, our Federal regulatory agencies have now developed numerous ways to simply regulate it in a way that gives the benefit to the State of what they need from the private property without actually taking it.

We are seeing regulations grow rapidly that impact the ability of a person to use his or her own private property. In fact there is a joke that has been said that now the right of private property these days is the right to pay property taxes and to use that property in the way that the State or the Federal Government tells you that you must use it.

We certainly are not to that point yet, but we are moving to that point dramatically, and the purpose of this act is to reassert the important principle of private property rights protection.

This act, as has been said, requires that when the Federal Government, through its agency action, regulates private property in a way that reduces its value, that then the Government must pay the private property owner for telling them they must use their private property or not use it in a way for the social benefit of the good of the country, and it must compensate for that private property right.

I know today during the debate we are going to see an assault on this bill. That assault is going to take the form of those who would say that it is going to cost too much.

Frankly, we have agencies today that do not look at the cost to the private sector, to the private property rights owners and, yes, this act is going to require them to look at it. But I am confident that creative people will figure out ways to accomplish the purposes of the agencies under the law without disregarding private property rights. And if it becomes absolutely necessary, that no other alternative can be found, then let us use the private property rights provision in this act to compensate for whatever may be done.

There is also going to be a subtle but nevertheless an attack on the concept of private property, and some will be so bold as to say it is a dated, antiquated notion and we ought to proceed and let our society proceed to undercut the benefit of that principle. You will not hear that said so directly today, but you will hear many arguments like the ones just heard that suggest that we should pay for the benefits that are provided by government to people as well as the decreases in the values.

We have to recognize today that the principle of private property rights was one of the key principles upon which this Nation was founded, and recognize it is critical, and I urge all Members in the Chamber to support it as we proceed.

Mr. CONYERS. Mr. Chairman, how much time is remaining on this side?

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] has 6 minutes remaining, and the gentleman from Florida [Mr. CANADY] has 7½ minutes remaining.

Mr. CONYERS. I yield myself such time as I may consume.

Mr. Chairman, the simple fact of the matter is the takings legislation is a budget buster. We have already been told by the Office of Management and Budget that it will increase the deficit by at least several billion dollars during the fiscal years 1995 to 1998 alone.

The bill contains no provisions to offset the increased deficit spending.

It creates, in effect, a new entitlement program that will surely drive up the deficit just as we are trying to do the opposite. That is why we had to have so many waivers of the budget bill to even get this measure up on the floor.

It will require a whole new class of Federal officials to evaluate claims and will lead to much more bureaucracy, redtape, and litigations that will be borne by ordinary American taxpayers.

In effect, H.R. 925 is a reverse Robin Hood. Ordinary Americans will end up paying to enrich wealthy speculators and the 65 million homeowners would lose because their tax dollars would go to pay off speculators or also their property values would fall because of reduced health, safety, and environmental protection that would otherwise go to their communities.

The takings legislation is supported by the mining companies, the developers, the industrial polluters. It is opposed by 30 State attorneys general. Forty States have already rejected takings legislation and even 9 have gone as far as to adopt the assessment legislation proposed and similar to the Porter-Farr measure.

Please, let us not be fooled by the biggest ripoff in the Contract With America. We do not need takings legislation that goes too far, as this does.

Mr. Chairman, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, I yield 1 minute to the gentlewoman from Washington [Mrs. SMITH].

Mrs. SMITH of Washington. Mr. Chairman, I think as we listen to the words today we have to listen very carefully, because we just heard that the takings legislation is a budget buster. Now let us think about that.

If they believe there is that much taking of American people's property that it is going to cost billions for the government to pay these property owners, we are basically standing here and saying that the government as we are standing is robbing the American people and violating the constitutional right to keep property, to own property which is unique in the United States.

We are a people that can own property free from the government taking it from us, or we used to be.

Now listen very carefully today. If they say that if we implement this bill it will cost billions of dollars, they have to also say very clearly that they are robbing the American people of billions of dollars every day and violating their constitutional rights.

Mr. CONYERS. Mr. Chairman, I yield myself as much time as I may consume.

Mr. Chairman, we have two points of view here, one that the American people are being robbed, and the second one is that the 65 million homeowners are going to be diminished because their tax dollars are going to go out to pay speculators on their property values.

I think that the attorneys general in the several States and the others who have joined in opposition to this bill are really more aware of the fact that this is going to hurt property owners rather than help them.

Forty States have rejected takings legislation, 32 attorneys general have opposed it, and this measure is opposed with letters that have just come in from throughout the government. From the Environmental Protection Agency we have a statement in opposition. The Interior Department has weighed in. We have comments from others as well that we are going to make available to the Members as we come across them. The Department of Justice has now taken a position. So we know where the interests of the ordinary homeowners lie; they lie in opposition to this big ripoff for speculators, for polluters and for mining interests in America.

Mr. Chairman, I reserve the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. SMITH].

Mr. SMITH of Texas. Mr. Chairman, I appreciate the gentleman from Florida yielding time to me.

Mr. Chairman, today is Texas Independence Day, a fitting occasion for us to consider the Private Property Protection Act of 1995. This bill stands for government accountability, freedom, and fairness, essential virtues for which our forebearers gave their lives.

As we consider this bill, it's worth remembering what this legislation does not do. It does not harm our ability to protect the environment. If someone thinks that preservation of the bald eagle, protection of the spotted owl, and conservation of certain wetlands are important, they ought to be important enough to pay for.

What is not fair is to ride roughshod over certain people's rights in order to obtain environmental benefits at zero cost. It's not right to ask individual landowners who own the property where the golden cheeked warbler may wish to, for example, to shoulder the entire costs of protecting the bird.

Private property rights are not about harming the environment. They are about fundamental fairness—asking the government to share the costs of public benefits.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from Mississippi [Mr. TAYLOR].

Mr. TAYLOR of Mississippi. Mr. Chairman, I would like to engage the sponsor of the bill in a colloquy. I am particularly much aware of the Federal flood insurance program, since a good portion of my district was devastated during Hurricane Camille, after Hurricane Frederick. As the gentleman knows from the Federal flood insurance program, the government goes in and sets a minimum at which your house can be built, so many feet off the ground, so that the people of this country are not turning around and reimbursing the same people over and over every time there is a high tide.

It has turned out to be I think a very good program and it has helped people like myself to be able to live where I live, but also set some reasonable guidelines as to how I can construct my house. I think it is a two-way street.

My question is when the Federal Government, through the Federal flood insurance program, comes in and says your minimum structure will look like this, your minimal floor will be so many feet off the ground so as to prevent it from flooding every time there is a high tide, does that constitute a taking, because it has increased the cost of my building my house?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, that issue, I think, will be clearly addressed by the Tauzin amendment which limits the scope of the coverage of the bill to identified Federal programs, and the programs that are identified there would not include the Federal flood insurance program. So any concern the gentleman would have I think would be entirely eliminated by the Tauzin amendment, and that is one of the reasons we supported the Tauzin amendment. I think it eliminates some concerns about unintended consequences that this legislation might have, because we identify the specific programs that are affected.

Mr. TAYLOR of Mississippi. But for the sake of getting this on the record, it is not the gentleman's intention through this legislation to ask the people of Iowa, the people of Kentucky, all those people who live in areas that do not flood, to subsidize people for building houses at sea level, knowing that every time there is a heavy rain, every time there is a high tide, they are going to be going in changing all the carpets and sheet rock and everything?

Mr. CANADY of Florida. That is absolutely not our intention. The gentleman is absolutely correct.

Mr. Chairman, I yield 30 seconds to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Chairman, I thank the gentleman for yielding me this time. I want to associate myself with the remarks of the gentlewoman from Washington [Mrs. SMITH] who spoke just a few minutes ago and to add to her commentary the point that this is not about tax dollars going to speculators, as has been indicated by the other side, but rather, passage of a bill that will act as a deterrent to this rampant takings picnic on which the agencies have embarked over the past years.

So, in the long run, there will be less tax money used for condemnations and eminent domain when the agencies realize that they should not undertake the odious form of takings that we have suffered too long.

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Mr. CANADY of Florida. Mr. Chairman, I yield 5 minutes, the remainder of my time, to the gentleman from California [Mr. POMBO].

Mr. POMBO. Mr. Chairman, I thank the gentleman for yielding.

I would like to close out this debate on general debate on why this bill has come up to the floor in the way it has and why it is here at all.

Several years ago, as a cattleman in the Central Valley in California, I was faced with the frustrations of dealing with the Federal Government and the ever growing bureaucracy, and as I became more and more involved with what was going on with our Federal Government, I made the decision to come here and to fight for the property rights of the people that I represent and the people across this country.

Over the last 2 years that I have been here, I have pleaded and I have begged and I have tried to compromise on every piece of legislation that has come through here that affects private property. And it is being in the minority party and what at that time was the minority mindset in Washington, not across the country, but here, it was defeated time and time again, and in our dealings with people like the gentleman from Louisiana [Mr. TAUZIN], the gentleman from Texas [Mr. FIELDS], and the gentleman from Texas [Mr. SMITH], who carried those issues for years, we were defeated over and over again. And we would say, "Look, if you guys do it this way, you are going to take away people's private property rights. You are making it almost impossible for someone to continue to farm, because their ranch is not worth anything anymore. You are forcing bankruptcies across this country because of the actions that are happening on this floor, because of the decisions that are made in the ivory towers in Washington that say that we know better than the people out in the States, that we know better than the people that are farming the land and ranching the land."

Well, you do not know better. Because my family has been on the same ranch for four generations, and we take care of it. And part of my heritage is the wildlife that is on that property, and we take care of it, and you are taking that away from us through your regulations and your laws that you have passed in this place in the past several years.

That is why this country stood up and said, "Enough is enough. If you take away someone's private property, you have got to pay them for that." Our forefathers understood that. That is why they put it in as a civil right in our Constitution that you cannot take away people's private property no matter what the goal.

Now, this bill, I admit, is a compromise. It is not what I wanted to do. I wanted to cover all private property, and I wanted to cover all Federal regulations. But I realize that we would not pass that. So we did compromise. We did narrow the scope.

The gentleman from Louisiana [Mr. TAUZIN] is going to bring up the amendment that narrows the scope. We compromised on what a threshold was. We compromised on what private property was. We narrowed this down dramatically, so that it only affected four major regulatory areas, and that it only had a threshold of 10 percent, because I contend that if you take away the value of someone's car, you ought to pay them for it.

I think that our forefathers were very clear about what they meant.

Now, we are hearing all of this talk about this is going to be a budget buster. In fact, I heard someone a few minutes ago say this is going to cost billions of dollars. Well, if it did cost billions of dollars, are you admitting that you are stealing billions of dollars worth of private property and not compensating for it? Is that what it is? Well, that is not OK. That is not all right.

If you take away someone's private property, you have to pay them for it, and you set up all the regulatory morass and all the judicial steps you want, it is still wrong, and we are trying to rectify that situation. We are trying to say that if you take away someone's private property, that you have to compensate them for it. It is a very simple concept that was grasped by our forefathers over 200 years ago that you cannot, as a tyrannical government, come in and take something away from an individual and not pay them for it.

This is probably the most important vote that we have in the Contract With America to me, and I believe that this has to pass, and it will pass.

I urge your support.

Mr. GEJDENSON. Mr. Chairman, I rise in opposition to H.R. 925 and urge my colleagues to defeat this ill-conceived measure. I want to thank the gentleman from Massachusetts [Mr. FRANK] and the gentleman from California [Mr. MILLER] for their efforts to point out the substantial flaws in this bill.

H.R. 925, as reported by the Judiciary Committee, requires the Federal Government to compensate any property owner whose property is devalued by 10 percent or more as the result of any agency action to limit its use in virtually any way. While the Federal Government has a special fund to pay compensation claims, this bill requires claims to be paid out of an agency's budget.

I have several concerns about this bill. First and foremost, it is at odds with the fifth amendment and decades of consistent Supreme Court decisions. I firmly believe that the Government must compensate property owners when it takes their property for public purposes as required by the fifth amendment. When we take a parcel of land to build a highway or for another project it is only appropriate to compensate the owner of that property.

However, the Supreme Court has consistently ruled that the right to compensation does not apply when the owner retains ownership of a parcel and can continue to derive economic benefit from it. The Supreme Court has ruled that compensation is required when a Federal action eliminates every conceivable use of a piece of property not just the most valuable possible use. In addition, the Court has held that a taking can only occur when the entire piece of property is affected not merely a portion of it. Furthermore, many lower courts have consistently ruled that a taking cannot occur if a landowner does not have a formal development plan at the time the restrictions are put into place.

Although some argue that the Court dramatically liberalized the definition of takings in the 1980's, a close review indicates that the major tenets remain unchanged. In Keystone Bituminous Coal Association v. DeBenedictis in 1987, the Court confirmed that the decision on whether or not a taking has occurred must be based on the effects of the action on the property as a whole. In the Lucas case in 1992, the Court reiterated the premise that a taking only occurs when all economic uses of a parcel are barred by a particular restriction. This bill sweeps longstanding precedent away and replaces it with a framework that the Supreme Court and lower courts have repeatedly rejected because it is at odds with what our Founding Fathers intended.

This leads to my second concern that the proponents of this legislation do not understand all its possible effects. They cannot tell us definitively what agency actions will or will not require compensation. The language of this bill is so vague and general that I believe it is impossible to determine which agency actions will be defined as working to prevent an identifiable hazard to public health and not require compensation. The bill does not define this concept and provides agencies with no guidance whatsoever. I believe that agencies will be so fearful of massive compensation claims that they will narrowly interpret this concept, thereby jeopardizing public health. The bill is purposefully vague to force agencies to constantly second-guess their actions and ultimately limit few activities.

Moreover, the bill's sponsors cannot tell us exactly how much it will cost the American taxpayer. The absence of accurate cost estimates is very disturbing to me especially as this body considers a multibillion rescission package which falls disproportionately on low-income Americans and a balanced budget amendment to the Constitution which could require us to cut the budget by more than $1 trillion over the next several years. While all these discussions about cutting government spending are going on, my Republican colleagues are moving forward with a bill that could cost the American people untold hundreds of millions of dollars. It is imperative that our colleagues understand that the costs of this bill will be borne by Americans coast to coast who will very likely be adversely affected by actions of other property owners. The vast majority of Americans will be required to pay a very small number of landowners not to take actions which could jeopardize public health, safety and the environment. It is outrageous to ask the American people to pay hundreds of millions of dollars to developers and large companies so that they won't take actions which put the public at risk.

Finally, this bill has the potential to undermine an agency's ability to carry out its statutory duties because it requires compensation from agency's budgets rather than from the existing Government maintained compensation fund. The bill does not mention limiting compensation if it would adversely affect an agency's ability to carry out its duties. Instead, it would require an agency to shift funds from programs to pay unprecedented compensation claims. Claims against the Environmental Protection Agency could divert funds from efforts to protect air and water quality and clean up Superfund hazardous waste sites. Claims against the Department of Interior could reduce funding for our national parks and recreation areas. While the bill allows agencies to come to Congress for additional money, it is disingenuous to suggest that funds will be forthcoming as we are moving to slash Federal spending. Once again, these funding provisions demonstrate that this bill is a veiled attack on regulatory action of virtually any type. Agencies are being given the unmistakable signal that they will be penalized if they attempt to regulate land use.

Mr. Chairmen. H.R. 925 is a massive new entitlement for a select few and will be paid for by ordinary Americans who will ultimately feel the effects of allowing landowners to fill wetlands or mine habitat of endangered species. Finally, H.R. 925 is a budget buster purely and simply. If we truly want to protect the American taxpayers, we should defeat this measure.

Mr. FAZIO of California. Mr. Chairman, I am on record as being a strong supporter of private property rights. Private property rights are an integral part of the protections guaranteed to us all by the Constitution of the United States.

Each of us in this Chamber can point to examples in our own districts where property rights have been stepped upon by overzealous governmental intrusions. There must be a change.

As a strong supporter of property rights, it is ironic that this legislation has been so difficult to embrace enthusiastically.

We can debate whether the American people know or care about the details of the Contract With America. In my view, those details are not permeating beyond the beltway.

Setting that question aside, the sketchy nature of the contract is an advantage for proponents of the unamended bill because this bill is not the bill Republicans set forth in the Contract With America. Simply put, the bill, as brought to the floor, represents an extreme position, not the more reasonable position set forth in the Contract With America.

The bill is more extreme than the bill introduced by the Senate majority leader. It's more extreme than the position taken by Ronald Reagan in his 1988 Executive order. And, the bill is more extreme than the Contract With America in two fundamental ways.

First, the bill requires the Federal Government to compensate owners of private property whenever a Federal agency's action decreases the fair market value of their property by 10 percent or more. The key here is the 10-percent figure.

On the other hand, the Contract With America called for compensation when the property value was diminished by one-third, which is 33 percent. The 33-percent figure in the contract was replaced with the 10 percent in the bill for purely political purposes.

The Republican leadership wants to set the mark so low that reasonable people who support property rights will have to give serious consideration to the impact of the 10-percent threshold.

Lowering the threshold to 10-percent flies in the face of two centuries of Supreme Court precedent. Both proponents and opponents of the bill agree that takings clause jurisprudence is too complicated and unclear. Nevertheless, the 10-percent threshold is not the answer. It was meant to force even the most staunch private property rights advocates like me to consider the crippling effect of the 10-percent rule.

Mr. TAUZIN from Louisiana is without a doubt the most adamant supporter of private property rights in this body. As a Member of the majority and now the minority, Mr. TAUZIN is recognized by Members of both parties as the leading advocate for property rights. Yet, even Mr. TAUZIN thinks that the 10 percent threshold is too restrictive.

Real reformers care more about giving small landowners regulatory relief than they care about political agendas. I want real improvement, not some purely symbolic act that is sure to die in the Senate.

Second, the bill differs from the Contract With America in the scope of the laws affected. The bill applies to any Federal law, not just those where there has been abuse. In contrast, the Contract With America was limited to the wetlands provisions of the Endangered Species Act, the Clean Water Wct, reclamation law, and the farm bill.

Again, those of us who want real reform believe that we should focus on the laws that are the real source of the our constituents' frustration. The bill's shotgun approach misses the real target—the laws where abuse has occured.

I am glad that this House considered and passed the Tauzin amendment.

By passing the Tauzin amendment, this House sent a strong signal that we want real reform. As amended, the bill now requires the Federal Government to compensate owners of private property whenever a Federal agency's action decreases the fair market value of their property by 50 percent or more.

In addition, the Tauzin amendment limits the scope of the bill to the major laws that have been abused—the Endangered Species Act, the Clean Water Act, reclamation law, and the farm bill.

My constituents have placed their trust in me to be their voice on these issues. This bill still needs more work. We will have an opportunity to make needed refinements if the Senate passes a similar version of this bill and brings it back to the House for conference.

My vote here on the floor of the House of Representatives is a great honor and tremendous responsibility—one that I take very seriously. I am voting for final passage of H.R. 925 in support of the community leaders, farmers, small business owners, and individual citizens in my district who have expressed their frustration with regulatory burdens.

Mr. MINETA. Mr. Chairman, I rise in strong opposition to the bill H.R. 925, the Private Property Protection Act of 1995.

Mr. Chairman, I firmly believe that property rights is one of the most important constitutional guarantees we have as Americans. I am pleased to say that we currently have a balanced system that adequately safeguards those rights.

To protect property owners against unreasonable Government regulation, the courts have developed, over a more than 70-year span, an extensive body of law to address the issue of regulatory takings. They have generally taken a fact-intensive, case-by-case approach to determine if regulatory limitations are severe enough to warrant compensation for the owner.

The courts have concluded that Government regulation would have to result in an almost total elimination of value of the entire property before they would find that a taking has occurred. This is the current constitutional standard as established by the Supreme Court.

Under this bill, a mere 10-percent reduction in the value of that portion of the property which is affected by a regulation would trigger compensation. The 10-percent cutoff is one of many provisions that are fertile grounds for litigation, especially in view of the variability in appraisals. For example, the courts will have to determine whether the diminution was 11 percent or only 9 percent.

This drastic lowering of the threshold would encourage developers to deliberately propose the most damaging use of property just to receive payments in exchange for more responsible and still profitable use.

Proponents of this bill in committee even rejected an amendment that would preclude payment to an owner who, at the time of acquiring the property, knew or should have known that the use of the property would be limited by an agency action. So now large land speculators can go scouring the country buying up properties that are likely to be regulated, with the expectation of demanding ransom from the Federal Treasury. Why should we create this entitlement to pay fraudulent claims?

At the other extreme, the bill imposes unreasonable restrictions on the use of private property. It does so by subjecting a subsequent purchaser to limitations on land use even where the condition that gave rise to the limitation no longer exists, and the purchase price reflects that. And there is no requirement that subsequent purchasers be notified that the property they are buying is subject to a limitation that can be lifted only if a previous owner disgorges compensation he has received in the past.

The exclusions for uses considered to be nuisances under State or local law, or for regulations to prevent identifiable public health or safety hazards or damage to neighboring properties, are inadequate to protect public health and safety. Federal environmental laws are often enacted because not all pollution is unlawful or is a nuisance under State or local law. Why do taxpayers have to bribe polluters in order to stop their anti-social behavior?

The bill puts the Federal Government in the untenable position of having to pay compensation no matter what course it adopts. Denying a landfill permit to the owner of the proposed site would trigger compensation. But granting the permit may prompt nearby residents to assert taking claims based on reduction in their property value.

Implementing the provisions in this legislation would mean creating a whole new bureaucracy to handle the anticipated mountain of claims. Imagine the red tape.

In addition, substantial resources are required for endless litigation—for example, over such things as whether or not a limitation falls within the exemptions. These costs, when added to the costs of compensation, make the possibility of balancing the budget a true fantasy.

This bill, therefore, advances a radical new theory that would severely constrain the Government's ability to protect public health and safety and the environment. It would create an entitlement for large property owners, tremendous windfalls for speculative developers, and perverse incentives for polluters. It would add layers of bureaucracy, realms of redtape, and enormous fiscal demands, without corresponding benefits.

That's why the National Conference of State Legislatures, the National Governors' Association, the National League of Cities, the Western Land Commissioners Association and 33 State attorneys general are all against this legislation.

Why are we not listening to the States, who strenuously oppose this legislation? States recognize that the Federal Government plays an important role in protecting citizens, and that the property rights of certain landowners must be balanced against the property and other rights of their neighbors.

As cautioned in testimony by the National Conference of State Legislatures, "Compensation-type taking legislation not only has the ability to weaken the Federal Government's resolve to apply its laws, but it also has the ability to financially cripple the Federal agencies which implement such laws."

We have been accepting States' views in considering other legislation recently. Why are States' views not equally deserving of our consideration today?

We should heed the States' advise and vote "no" on this bill.

Mr. EMERSON. Mr. Chairman, I rise today in strong support of both H.R. 925, and of the voices of private property owners that is being heard loud and clear by the conservative majority in Congress today. Clearly, the fifth amendment to the U.S. Constitution is one of the greatest liberties ever given to the free world. However, in recent years, private landowners have seen the Federal Government and radical preservationist groups infringing on private property rights protected by the fifth amendment.

The fifth amendment of the U.S. Constitution provides in part that "no person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation." Today, we continue to see a growing effort to make private property owners bear the burden and costs of government decisions—decisions that are ostensibly made in the interest of the public at large, but reach beyond the protection of public health and safety and other appropriate, historically sanctioned purposes.

Indeed, for too long, our private property protections have been eroded and our basic constitutional liberty—the protection of private property rights—has been undermined by a largely unelected, ivory-tower elitist class centered in Washington. Now, we have the opportunity to preserve our long-cherished liberties by supporting H.R. 925 and the Tauzin substitute.

The Supreme Court has recently shown outright support for private property right protections. Unfortunately, private land owners are still subject to harassment from elements of the Clinton administration. This very day, unelected Government officials from the EPA and the Interior Department in particular, along with the Washington environmental lobby are pushing the communitarian approach to governing, making private property owners bear the burdens and costs of what are really subjective government land-use decisions.

Mr. Chairman, plain and simply, private property rights are the foundation for all economic progress and this premise must be maintained. Farmers, ranchers, small businesses, and related enterprises must feel secure in the ability to retain the fruits of their labors—not further frustrated by being forced to grapple with further regulatory burdens. Protecting these liberties for generations of Missourians and Americans to come is my goal that we can help achieve through successful passage of H.R. 925.

Mr. RICHARDSON. Mr. Chairman, as approved by a Judiciary Subcommittee last week, H.R. 925 would allow any landowner claiming as little as 10 percent diminishment in their property value as a result of a Federal Government regulation to sue the Government for damages.

The Tauzin amendment is even worse. It maintains the 10 percent level and adds a new provision that would force the Federal Government to buy property from landowners if a regulation diminishes the value of the property by more than 50 percent.

This blanket coverage in H.R. 925 will cost Federal, State, and local governments billions of dollars in new taxes. American taxpayers just cannot afford this price tag.

H.R. 925 is a prime example of government bloat—it is a bureaucrats' job employment bill that jacks up costs, creates an even bigger government and increases redtape.

In short, Mr. Chairman, it wields a meat cleaver when a scalpel would be more appropriate.

This broad application of authority for landowners suits means that the Federal Government will be on the hook for billions of dollars in court fines from individuals who claim that any Federal regulation—even reasonable ones such as those that protect drinking water and clean air—has diminished the value of their property.

And of course, the people who would bear the brunt of this financial foolishness are the same people who elected us: the American taxpayers.

But passage of H.R. 925 will be a costly mistake for America for more than just budgetary reasons.

Takings means more than redtape, big government and bloated bureaucracy. It could also cost us basic protections that safeguard public health, protect workplace safety and ensure the value of our homes and our families.

For example, takings legislation could result in the weakening of Federal protections for safe drinking water, food inspection, and workplace safety standards, and would even affect local zoning regulations which protect the values of our homes and our property.

H.R. 925 replaces the Federal policy of the polluter pays with the people pay. The American people pay.

This takings legislation would require the Federal Government to pay people not to pollute.

For example, if a landowner decided to construct an incinerator on private property adjacent to a school or hospital and Federal regulations prohibited such construction, the Federal Government could be forced to pay the landowner not to construct the incinerator because such a prohibition represented a diminishment of the value of his property.

This takings bill is supported by big business, big developers, and big industrial polluters who have said by their support of this legislation that taxpayers should be forced to pay them to follow basic health and safety laws.

H.R. 925, does not explicitly limit compensation to property within the United States. It could require compensation for agency actions that affect property overseas.

H.R. 925 is not explicitly limited to property owned by individual American citizens. This could mean that H.R. 925 would require payments to domestic or foreign corporations. Not average Americans, not the little guy, but big corporations that are not necessarily even in this country.

H.R. 925 sets no limit on the amount to be paid for government limits on any individual property. This means that individuals could receive multiple compensation for different Government actions on the same property.

H.R. 925 is not a remedy for small landowners and average Americans, its an entitlement program for big businesses.

Even if we add the Tauzin language to H.R. 925, and I don't believe we should, this legislation would force the American taxpayer to sign a blank check that could bankrupt the U.S. Treasury.

The Congressional Budget Office and the Congressional Research Service have both estimated the cost of payments due to Government actions taken under the wetlands provisions of Section 404 of the Clean Water Act alone to be in the billions of dollars.

H.R. 925 is a solution in search of a problem. It should be renamed the Bureaucrat and Attorney Full Employment Act. It represents an assault on the Treasury that our pocketbooks cannot afford, and an assault on basic health and safety standards that our people will not stand for.

I urge a no vote on the Tauzin amendment and a no vote on this ill-advised sham reform legislation.

Mr. PACKARD. Mr. Chairman, for the past 40 years big government has ridden roughshod over our private property rights. The American people suffer the consequences as overzealous Federal bureaucrats administer costly, outdated regulations. Our Republican Contract With America works to restore our Founding Fathers' conviction that Government acts to protect our rights—not to violate them.

Ownership of private property lies at the heart of the human experience. Burdensome and costly regulations assault private property rights. Government intrusion devalues land and infringes upon the fundamental right of private citizens to own land.

Our Republican regulatory reforms work to compensate landowners when they are denied the reasonable use of their land by overreaching Federal regulations. The Private Property Protection Act, H.R. 925, allows property owners to seek compensation when a Federal regulatory action has reduced the fair market value of their property by 10 percent or more. This bill provides property owners with a more direct means of guaranteeing the constitutional right to compensation for property takings.

Private property owners have paid the tab for onerous Government regulations for too long. The regulatory burden will continue to rise if we do not act now. The Private Property Protection Act establishes a clear pay back procedure. It forces Federal agencies to prioritize their needs and makes them accountable to the needs of private property owners.

Mr. Chairman, the Private Property Protection Act ensures that landowner rights will be protected, not abrogated by Federal agencies. The new Republican-controlled Congress continues to work for a smaller, less costly, and less intrusive Government.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute now printed in the bill is considered as an original bill for the purpose of amendment and is considered as having been read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 925

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Private Property Protection Act of 1995".

SEC. 2. RIGHT TO COMPENSATION.

(a) IN GENERAL.—The Federal Government shall compensate an owner of property whose use of that property has been limited by an agency action that diminishes the fair market value of that property by 10 percent or more. The amount of the compensation shall equal the diminution in value of the property that resulted from the agency action.

(b) DURATION OF LIMITATION ON USE.—Property with respect to which compensation has been paid under this Act shall not thereafter be used to the limitation imposed by the agency action, even if that action is later rescinded or otherwise vitiated. However, if that action is later rescinded or otherwise vitiated, and the owner elects to refund the amount of the compensation, adjusted for inflation, to the Treasury of the United States, the property may be so used.

SEC. 3. EFFECT OF STATE LAW.

No compensation shall be made under this Act if the use limited by Federal agency action is proscribed under the law of the State in which the property is located (other than a proscription required by a Federal law, either directly or as a condition for assistance). If a use is a nuisance as defined by the law of a State or is prohibited under a local zoning ordinance, that use is proscribed for the purposes of this subsection.

SEC. 4. EXCEPTION.

(a) PREVENTION OF HAZARD TO HEALTH AND SAFETY OR DAMAGE TO SPECIFIC PROPERTY.—No compensation shall be made under this Act with respect to an agency action the purpose of which is to prevent an indentifiable—

(1) hazard to public health or safety; or

(2) damage to specific property other than the property whose use is limited.

(b) NAVIGATIONAL SERVITUDE.—No compensation shall be made under this Act with respect to an agency action pursuant to the Federal navigational servitude.

SEC. 5. PROCEDURE.

(a) REQUEST OF OWNER.—An owner seeking compensation under this Act shall make a written request for compensation to the agency action resulted in the limitation. No such request may be made later than 180 days after the owner receives actual notice of that agency action.

(b) NEGOTIATIONS.—The agency may bargain with that owner to establish the amount of compensation. If the agency and the owner agree to such an amount, the agency shall promptly pay the owner the amount agreed upon.

(c) CHOICE OF REMEDIES.—If, not later than 180 days after the written request is made, the parties do not come to an agreement, the owner may choose to take the issue to binding arbitration or seek compensation in a civil action.

(d) ARBITRATION.—The procedures that govern the arbitration shall, as nearly as practicable, be those established under title 9, United States Code, for arbitration proceedings to which that title applies. An award made in such arbitration shall include a reasonable attorney's fee and appraisal fees. The agency shall promptly pay any award made to the owner.

(e) CIVIL ACTION.—An owner who does not choose arbitration, or who does not receive prompt payment when required by this section, may obtain appropriate relief in a civil action against the agency. An owner who prevails in a civil action under this section shall be entitled to, and the agency shall be liable for, a reasonable attorney's fee and appraisal fees. The court shall award interest on the amount of any compensation from the time of the limitation.

(f) SOURCE OF PAYMENTS.—Any payment made under this section to an owner, and any judgment obtained by an owner in a civil action under this section shall, notwithstanding any other provision of law, be made from the annual appropriation of the agency whose action occasioned the payment or judgment. If the agency action resulted from a requirement imposed by another agency, then the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency. For this purpose the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency. If insufficient funds exist for the payment or to satisfy the judgment, it shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year.

SEC. 6. DEFINITIONS.

For the purposes of this Act—

(1) the term "property" means land and includes the right to use or receive water;

(2) a use of property is limited by an agency action if a particular legal right to use that property no longer exists because of the action;

(3) the term "agency action" has the meaning given that term in section 551 of title 5, United States Code, but also includes the making of a grant to a public authority conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency;

(4) the term "agency" has the meaning given that term in section 551 of title 5, United States Code;

(5) the term "State" includes the District of Columbia, Puerto Rico, and any other territory or possession of the Untied States; and

(6) the term "law of the State" includes the law of a political subdivision of a State.

The CHAIRMAN. The bill will be considered for amendment under the 5-minute rule for a period not to exceed 12 hours.

No amendment to the committee amendment in the nature of a substitute made in order as original text shall be in order unless printed in the portion of the CONGRESSIONAL RECORD designated for that purpose in clause 6 of rule XXIII before the commencement of consideration of the bill for amendment. Those amendments will be considered as having been read. Second degree amendments offered to the Canady amendment, if offered, are not required to be printed in the RECORD and must be read unless they happen to be so printed.

Pending the consideration of the amendment in the nature of a substitute printed in House Report 104-61 by the gentleman from Florida [Mr. CANADY] and before consideration of any other amendment thereto, it shall be in order to consider the amendment printed in that report by the gentleman from Louisiana [Mr. TAUZIN] or a designee.

Are there any amendments to the bill?

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA

Mr. CANADY of Florida. Mr. Chairman, I offer an amendment in the nature of a substitute made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment in the nature of a substitute offered by Mr. Canady of Florida: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Private Property Protection Act of 1995".

SEC. 2. FEDERAL POLICY AND DIRECTION.

(a) GENERAL POLICY.—It is the policy of the Federal Government that no law or agency action should limit the use of privately owned property so as to diminish its value.

(b) APPLICATION TO FEDERAL AGENCY ACTION.—Each Federal agency, officer, and employee should exercise Federal authority to ensure that agency action will not limit the use of privately owned property so as to diminish its value.

SEC. 3. RIGHT TO COMPENSATION.

(A) IN GENERAL.—The Federal Government shall compensate an owner of property whose use of any portion of that property has been limited by an agency action that diminishes the fair market value of that portion by 10 percent or more. The amount of the compensation shall equal the diminution in value that resulted from the agency action.

(b) DURATION OF LIMITATION ON USE.—Property with respect to which compensation has been paid under this Act shall not thereafter be used contrary to the limitation imposed by the agency action, even if that action is later rescinded or otherwise vitiated. However, if that action is later rescinded or otherwise vitiated, and the owner elects to refund the amount of the compensation, adjusted for inflation, to the Treasury of the United States, the property may be so used.

SEC. 4. EFFECT OF STATE LAW.

No compensation shall be made under this Act if the use limited by Federal agency action is proscribed under the law of the State in which the property is located (other than a proscription required by a Federal law, either directly or as a condition for assistance). If a use is a nuisance as defined by the law of a State or is prohibited under a local zoning ordinance, that use is proscribed for the purposes of this subsection.

SEC. 5. EXCEPTIONS.

(a) PREVENTION OF HAZARD TO HEALTH OR SAFETY OR DAMAGE TO SPECIFIC PROPERTY.—No compensation shall be made under this Act with respect to an agency action the primary purpose of which is to prevent an identifiable—

(1) hazard to public health or safety; or

(2) damage to specific property other than the property whose use is limited.

(b) NAVIGATION SERVITUDE.—No compensation shall be made under this Act with respect to an agency action pursuant to the Federal navigation servitude, as defined by the courts of the United States, except to the extent such servitude is interpreted to apply to wetlands.

SEC. 6. PROCEDURE.

(a) REQUEST OF OWNER.—An owner seeking compensation under this Act shall make a written request for compensation to the agency whose agency action resulted in the limitation. No such request may be made later than 180 days after the owner receives actual notice of that agency action.

(b) NEGOTIATIONS.—The agency may bargain with that owner to establish the amount of the compensation. If the agency and the owner agree to such an amount, the agency shall promptly pay the owner the amount agreed upon.

(c) CHOICE OF REMEDIES.—If, not later than 180 days after the written request is made, the parties do not come to an agreement as to the right to and amount of compensation, the owner may choose to take the matter to binding arbitration or seek compensation in a civil action.

(d) ARBITRATION.—The procedures that govern the arbitration shall, as nearly as practicable, be those established under title 9, United States Code, for arbitration proceedings to which that title applies. An award made in such arbitration shall include a reasonable attorney's fee and other arbitration costs (including appraisal fees). The agency shall promptly pay any award made to the owner.

(e) CIVIL ACTION.—An owner who does not choose arbitration, or who does not receive prompt payment when required by this section, may obtain appropriate relief in a civil action against the agency. An owner who prevails in a civil action under this section shall be entitled to, and the agency shall be liable for, a reasonable attorney's fee and other litigation costs (including appraisal fees). The court shall award interest on the amount of any compensation from the time of the limitation.

(f) SOURCE OF PAYMENTS.—Any payment made under this section to an owner, and any judgment obtained by an owner in a civil action under this section shall, notwithstanding any other provision of law, be made from the annual appropriation of the agency whose action occasioned the payment or judgment. If the agency action resulted from a requirement imposed by another agency, then the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency. For this purpose the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency. If insufficient funds exist for the payment or to satisfy the judgment, it shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year.

SEC. 7. LIMITATION.

Notwithstanding any other provision of law, any obligation of the United States to make any payment under this Act shall be subject to the availability of appropriations.

SEC. 8. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to limit any right to compensation that exists under the Constitution or under other laws of the United States.

SEC. 9. DEFINITIONS.

For the purposes of this Act—

(1) the term "property" means land and includes the right to use or receive water;

(2) a use of property is limited by an agency action if a particular legal right to use that property no longer exists because of the action;

(3) the term "agency action" has the meaning given that term in section 551 of title 5, United States Code, but also includes the making of a grant to a public authority conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency;

(4) the term "agency" has the meaning given that term in section 551 of title 5, United States Code;

(5) the term "State" includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States; and

(6) the term "law of the State" includes the law of a political subdivision of a State.

Mr. CANADY of Florida. Mr. Chairman, I rise in support of my amendment in the nature of a substitute to H.R. 925.

Supreme Court Justice Joseph Story many years ago stated that, "One of the fundamental objects of every good government must be the due administration of justice; and how vain it would be to speak of such an administration, when all property is subject to the will or caprice of the legislature and the rulers."

Section two of my substitute amendment establishes the general policy that no Federal law or agency action should limit the use of privately owned property so as to significantly diminish its value. It sends a clear message from Congress to Federal agencies that we aim to be a good government in which justice is fairly administered, and therefore, are determined that private property not be subjected to the will or caprice of any agencies.

The threshold diminution in property value required for compensation in my amendment is the same as the threshold in H.R. 925, but my amendment provides that the diminution in value applies to the portion of the property affected by the agency action.

My amendment also clarifies that the payment of compensation to a property owner must come from the appropriations of the agency whose action resulted in the limitation on the use of the property.

If the agency does not have sufficient funds to compensate the owner, the agency head is required to seek the appropriation of such funds in the next fiscal year. Contrary to the claims of some opponents of the bill, it does not create a new entitlement. This point is made clear beyond any doubt by the language of section 7 of my amendment. That section states unequivocally that "any obligation of the United States to make any payment under this Act shall be subject to the availability of appropriations."

The payment provision is vital to the legislation because it will force agencies to recognize that when they limit the use of an owner's property, there are economic consequences. Agencies will have to weigh the benefits and costs of their actions carefully—paying close attention to the impact of those actions on individuals and the general public. Agencies also will be more accountable to Congress, and therefore, will be more likely to carry out the true intent of the statutes they are charged with enforcing—rather than continually extending their bureaucratic reach.

The amendment also contains a provision which explicitly provides that nothing in the Act "shall be construed to limit any right to compensation that exists under the Compensation or under other laws of the United States." This makes abundantly clear that bills will not supplant remedies that are currently available to landowners.

Mr. TAUZIN will offer an amendment to my substitute amendment. Most importantly, Mr. TAUZIN's amendment will limit the scope of the bill to actions carried out under specified regulatory programs—namely, the Endangered Species Act, wetlands protection provisions, and particular programs that affect the right to use water.

Together, my amendment and Mr. TAUZIN's amendment form a bipartisan compromise on the Private Property Protection Act. The compromise places the threshold diminution in property value required for compensation at 10 percent of the portion of property affected, but also allows a property owner to force the Federal Government to buy the portion of property affected outright if that portion's value is diminished by 50 percent or more.

Members on both sides of the aisle who are committed to the protection of property rights support the compromise legislation. It provides a workable way to ensure that property owners receive compensation when federal regulation causes a significant reduction in the market value of the owner's property.

I urge my colleagues to support my substitute amendment.

Mr. Chairman, I believe this is long-overdue legislation. This legislation is being brought to this floor now after many years, after languishing in this Congress without so much as a hearing in the Committee on the Judiciary. We are moving on this because this is important to the people of America. It is important to vindicating individual rights, and I would urge my colleagues to support my substitute amendment as well as the Tauzin amendment as we move forward with consideration of this legislation.

AMENDMENT OFFERED BY MR. TAUZIN TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA

Mr. TAUZIN. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment. The text of the amendment is as follows:

Amendment offered by Mr. TAUZIN to the amendment in the nature of a substitute offered by Mr. CANADY of Florida: In section 3(a) after "agency action" the first place it appears insert ", under a specified regulatory law".

Add at the end of section 3(a) "If the diminution in value of a portion of that property is greater than 50 percent, at the option of the owner, the Federal Government shall buy that portion of the property for its fair market value.".

In section 4, strike the first sentence and amend the second sentence to read "If a use is a nuisance as defined by the law of a State or is already prohibited under a local zoning ordinance, no compensation shall be made under this Act with respect to a limitation on that use."

In the heading for section 8, strike "Rule" and insert "Rules".

At the beginning of section 8, strike "Nothing" and insert:

(a) EFFECT ON CONSTITUTIONAL RIGHT TO COMPENSATION.—NOTHING

At the end of section 8, insert the following:

(b) EFFECT OF PAYMENT.—Payment of compensation under this Act (other than when the property is bought by the Federal Government at the option of the owner) shall not confer any rights on the Federal Government other than the limitation on use resulting from the agency action.

In section 9, after paragraph (4) insert the following:

(5) the term "specified regulatory law" means—

(A) section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(B) the Endangered Species Act of 1979 (16 U.S.C. 1531 et seq.);

(C) title XIII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.); or

(D) with respect to an owner's right to use or receive water only—

(i) the Act of June 17, 1902, and all Acts amendatory thereof or supplementary thereto, popularly called the "Reclamation Acts" (43 U.S.C. 371 et seq.);

(ii) the Federal Land Policy Management Act (43 U.S.C. 1701 et seq.); or

(iii) section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604);

Redesignate succeeding paragraphs accordingly.

Mr. TAUZIN. Mr. Chairman, members of the committee, the statement of administration policy on the bill before us reads as follows: "The administration strongly supports private property rights and is continuing to implement regulatory reforms that will provide relief to property owners." It goes on to say, "H.R. 925, as reported by the Committee on the Judiciary, would impose," and it goes on to say, "an arbitrary compensation requirement that is unacceptable and extreme."

Let me say I agree with the position of the administration, at least insofar as it is stated in this policy. The bill, as reported by the Committee on the Judiciary, is, indeed, an extreme version of the private property rights bill that I and many other Democrats in joining with my great friend, the gentleman from Texas [Mr. FIELDS], and many Republican colleagues have been fostering for many years now as a bill to be brought to the floor of this House. It is extreme because it covers all Federal agency regulations, and it is written in, I think, an unworkable fashion.

I am pleased to join with the gentleman from Florida [Mr. CANADY] today in announcing that we have resolved our differences of opinion with regard to the bill reported by Judiciary, that the amendment I now offer will do several very important things.

First of all, it will limit the scope of the bill. It will no longer cover all Federal regulatory actions that may amount to takings. It will now cover only those Federal regulatory actions undertaken pursuant to two, and actually three, if you consider water rights a separate issue, three kinds of regulatory takings.

The two are the two that we have been discussing for many years, endangered-species takings, a proposition this House debated on the Desert Protection Act, and overwhelmingly said they wanted to ensure that property owners were fully compensated when endangered-species regulations took away the value of their property.

And, second, the wetlands regulations under either the 404 Corps of Engineers Clean Water Act regulations or the wetlands regulations under the sodbuster provisions of the Food Security Act.

And, last, the bill, the amendment, will focus the bill on the last area of takings covered by the bill, which will be takings of water rights. It is important to note that water out west is as important, in fact, much more important a property right than land is out east, and that this bill recognizes that and makes clear that Federal regulatory actions which diminish the value and take a person's water rights away are considered a taking which can be indeed, arbitrated and compensated under this bill.

It is important to note with this amendment we will be scoping down the bill to the two general areas that the bill has generally focused on for many years, wetlands takings and endangered-species takings as they affect land and water.

□ 1145

Second, the bill does a very important thing. It says that under the Republican version of the bill this year that we have agreed upon, when a compensation is made for only a partial taking, 10 percent or more of the value of the affected land or the water right, when a compensation is made for a partial taking, the government does not become a co-owner with the property owner in that proceeding.

The government simply has the rights which are guaranteed under the statutes that created the regulatory authority to insist that the owner not use land in the ways that, indeed, amounted to the taking of that value of the property.

The third change we make is another very important one. I call my colleagues' attention to it, particularly those who have been concerned about the bill's original overreach. It clearly says that even though you may have a wetland, even though you may have a piece of property that is affected by Endangered Species Act, if you cannot already use that property because under State law or city or local zoning laws you cannot, or because it is declared a nuisance under State law, then you will not be entitled to compensation for that which you could not do anyhow under legitimate zoning or nuisance authority.

Finally, the amendment will provide that when the diminution of value reaches that magical point of 50 percent or more, when the government owns more of your property than you do, when the government has more than 50 percent devalued the property you own, has told you that you cannot use it so much that the government now owns more of a right in that property than you own, when it reaches that point, as we had in our original bill, the owner will have the option to say to the government, "All right, you got me, you have taken my property. Compensate me. Here is the title."

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I am rising in opposition to the amendment, but I want to engage the gentleman from Louisiana

[Mr. TAUZIN] in a discussion because I think he overstated what the bill will look like if his amendment is adopted, and understated its effect.

Hr said, "I believe that if something is prohibited by State law, it would not be compensable."

But that is what the underlying bill says. His amendment would restrict that. His amendment would say that if it is restricted as a nuisance under State law, it would not be compensable but anything else restricted by State law would be compensable.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding.

The problem is that under the original bill reported by the Committee on the Judiciary, the committee reported a bill that covered all Federal regulations, and the Committee on the Judiciary also contained an exception saying that, as to all these Federal regulations, there had to be an exception for State laws that also regulated in those areas. Since we have toned the bill down, if you will, focused it on wetlands and Endangered Species Act taking, the courts have said that in these wetlands and endangered species taking areas, the exception is—to compensation—is nuisance or zoning laws. That is the court's interpretation. That is what this amendment does.

Mr. FRANK of Massachusetts. I take back my time to say that the gentleman clearly finds the court's interpretation is inadequate because this bill goes beyond the courts. The gentleman is entitled to do that. But having decided it is way beyond what the courts have said, you cannot come back and say, "Oh, but this policy, we didn't do it, we are just carrying out what courts did." But the fact is, and the gentleman has confirmed what I said, under the bill as it was reported out of the committee, the Committee on the Judiciary, in these areas, the compensation is denied if anything is illegal under State law.

If the gentleman's amendment is adopted, things that are illegal under State law could still be the basis for compensation unless they were illegal as nuisances. So if the State has outlawed something for reasons other than it is defined as a nuisance, it is entitled to compensation. By State law now. And it is very clear, and the law says on page 2, the underlying text of the bill, "No compensation shall be made under this act if the use limited by the Federal agency action is proscribed under the law of the State." The gentleman's amendment would strike that. It would leave in the part that says, "If the use is a nuisance as defined by the law of the State." So to there is a clear narrowing here of that exemption.

Mr. TAUZIN. I thank the gentleman. Again let me try to explain: The original bill also was broader, the exception was broader under the original bill because the original bill was broader. The original bill covered every Federal regulation.

Let me make one point if I can.

Mr. FRANK of Massachusetts. On this point.

Mr. TAUZIN. On this point.

Mr. FRANK of Massachusetts. But would the gentleman agree that this, in fact, narrows the exception?

Mr. TAUZIN. Yes, it narrows it as the bill narrows the focus——

Mr. FRANK of Massachusetts. No. I take my time back to say this. That is simply inaccurate, for this reason: The original bill did not say if it is against the law in all these other areas and if it is a nuisance in the wetland and environmental area.

What the gentleman has done is to narrow the scope of the law as it applies to the areas which would still apply because without that language, without that language, any State law violation would lead to no compensation even if it was under the Federal Wetland Act or Federal Endangered Species Act.

Under the gentleman's language, if you are proceeding under the Wetlands or Endangered Species or the agricultural subsidy program, anything that violated State law would not defeat the claim for compensation unless it was a State law that defines it as a nuisance.

Mr. TAUZIN. Will the gentleman yield further?

Mr. FRANK of Massachusetts. Yes.

Mr. TAUZIN. The problem is, if we do not straighten out this language as we straighten out the bill's focus, if I can make the point, Federal regulatory law in wetlands and endangered species areas can be and is, in fact, duplicated on the State level, in many cases. It is duplicated, in many cases, because some States carry out the Federal policy.

The point is, if under the court decisions you are only losing your right to use the property as a result of these wetlands and endangered species regulations, it should not matter that the State has duplicated those regulations. You ought to still be entitled to compensation.

Mr. FRANK of Massachusetts. Reclaiming my time, the gentleman's explanation is a very interesting one, and someday I will figure out what point he was explaining because it is not the issue I raised. The issue I raised is this: It says in the underlying bill with regard to wetlands and endangered species, if it violates State law, you do not get compensation, and the gentleman changes that. The gentleman's amendment says if it violates State law under the guise of a nuisance, you do not get compensation, but any other violation of State law will not defeat the claim for compensation.

Mr. TAUZIN. Will the gentleman——

Mr. FRANK of Massachusetts. No. I think we have made that clear enough. The gentleman has acknowledged that. He can discuss later and defend it later. But I think the point is clear.

The other problem I have with the amendment is this: In 1985, Congress said——

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has expired.

(By unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 1 additional minute.)

Mr. FRANK of Massachusetts. Mr. Chairman, since I yielded a good part of my time, I would like to make this one further point. Under the gentleman's amendment, one of the programs that will survive for compensation is if you have got property and you fill in a wetland or do something else that might be contrary to general conservation policies today, you lose your right to subsidy under the Agricultural Subsidy Program.

What the gentleman from Louisiana's amendment would do would be to restore that right. If, in fact, you have a piece of property that is ruled a wetland or otherwise, the Agriculture Department and others say should not be worked and you change the land and then plant on it, the gentleman from Louisiana says you can be eligible for a subsidy.

So we are not only talking about taking away the value, we are talking about the owner taking conscious action which enhances the value of the land in the nature of a Government subsidy.

Telling people they ought to be able to go and make these changes so they are eligible for agriculture subsidies seems to me a mistake.

The amendment in 1985 said they could not do that, the amendment passed under Ronald Reagan and the Republican Senate, as well as a Democratic House. I think that is a mistake.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has again expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 30 additional seconds.)

Mr. FRANK of Massachusetts. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman. The bill is designed to compensate for lost value as a result of changes or applications of Federal regulations on the land. It does not compensate for loss of subsidy.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has again expired.

(By unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 30 additional seconds.)

Mr. FRANK of Massachusetts. It clearly does. The value of the land would include your right to get a subsidy. If, in fact, that were not the case, why would you be trying to put it back in?

The fact is, if you are able to get Government subsidies in the tens of thousands of dollars for your crops per year, that land is more valuable. Clearly, what we are doing here is restoring peoples' rights to get back into a subsidy program. I think that ought to be clear. It is different from making them whole.

Mr. TAUZIN. If the gentleman would yield——

Mr. FRANK of Massachusetts. Whatever time I have.

Mr. TAUZIN. The point is, regardless of what the value of the land is and how it is calculated, loss of a subsidy does not trigger the arbitration proceeding under this bill.

Mr. FRANK of Massachusetts. It is taken into account. It does not trigger it, but it, in fact, will be taken into account, and land that gets an agriculture subsidy is worth more.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Tauzin amendment.

Mr. Chairman, first of all, I want to compliment my colleague from Louisiana, Mr. TAUZIN, for his continued work in what I consider to be one of the most important areas that this Congress will address during this contract period, because we are talking about a basic constitutional right that was not only envisioned by our forefathers but written into the Constitution.

I compliment my friend from Louisiana, and I also compliment our friend from Florida, Mr. CANADY, for his work because what he pointed out earlier was exactly the truth, that until there was this new majority, we did not have an opportunity to bring this type of legislation to the floor for debate.

So I am thankful we have the opportunity today to discuss issues that are extremely important.

I also point out, Mr. Chairman, there is a letter from the leadership, the Republican leadership, dated today, addressed to all our colleagues, saying, "We are writing to express our support for the Tauzin-amended Canady substitute." That is signed by all the leaders.

Mr. Chairman, you can talk about a lot of things in this particular debate, and sometimes you can lose, with the clouds and the smoke that are thrown up by those who do not want to see change in the private property rights area. So I think it is instructive to look specifically at some of the cases.

Last night, after I addressed the House on the floor, I got a fax from Ms. Nan Robbins, in Paris, TN, not one of my constituents.

But Ms. Robbins says, "Thank you for your support of the Private Property Protection Act. I watched C–SPAN tonight with some encouragement. I am a victim of the 404 Clean Water horror story. I wish I could tell all of my story to the entire Congress. I did send a letter to Billy Tauzin. Again, thank you for your support of the small, low- and middle-class people who cannot spend big bucks fighting government."

Well, the story of Ms. Robbins is one that the entire House needs to know. Here is a lady and her husband who owned 39 acres within the city jurisdiction of Paris, TN. They sold their property. They were told by the city officials there in Paris that they had to go and get a permit from Corps of Engineers. The Corps came out and walked the property with Mrs. Robbins—her husband is disabled and could not accompany them—and that bureaucrat said that they had wetlands.

Now, this is after property around Ms. Robbins had been filled. Now, that statement was made last March. To this particular time, Ms. Robbins has yet to get her permit. The sale of her property has been stopped.

I hold out to the entire House, Mr. Chairman, this is the type of abuse that we are trying to stop with what I think is good commonsense legislation.

Again I want to applaud the gentleman from Louisiana for what he has been able to do in working with those of us on this side of the aisle who have an interest.

I would ask the question: Are we returning with this legislation to what our forefathers originally intended, and that is the protection of private property rights and the enjoyment of the same, with this legislation? The answer is: Absolutely. The question is: Are we gutting major laws, such as the Endangered Species and Clean Water? The answer is: Absolutely not.

What we are doing through this legislation is forcing bureaucrats to make proper decisions. We are forcing cooperation and consultation with that private property owner.

Again I want to applaud the gentleman from Louisiana and applaud the gentleman from Florida for their efforts.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding.

In the little time the gentleman has left, I want to say a word about JACK FIELDS. He has been the principal cosponsor of this bill for many years. He was chiefly responsible for getting over 150 Members to sign a discharge petition on this effort last year.

JACK, all of the country, all of the property owners of America who are looking forward to this day, deeply appreciate the gentleman's great work.

Mr. FIELDS of Texas. I appreciate the comments of the gentleman from Louisiana.

□ 1200

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it may come as a surprise to Members of this body, but I really had contemplated whether to support this bill. I thought that we were engaged in a populist effort to get to a point where we were compensating the American people for the diminution in value of their property that the Federal Government was causing by laws and regulations. That is where the bill starts. That is where Mr. CANADY's substitute starts. I thought I was going to be able to come with a straight face and consider, do I support this, and consider the possibility of voting for this bill.

Now I come with the gentleman from Louisiana, Mr. TAUZIN's amendment, and we get to what this bill is really all about. It is not about compensating Americans whose value to their property has been diminished. It is about doing away with legislation and regulations that my colleagues in this body do not like, because it seems to me that we have now sold out if we adopt this amendment offered by the gentleman from Louisiana [Mr. TAUZIN], the whole underlying purpose of the bill, to compensate the American people for agency actions and regulations that diminish the value of their property.

Look, America, at what is happening. This amendment will only deal with the Clean Water Act and the Endangered Species Act. That is all they are trying to do, is undercut these regulations under these laws.

So when you hear Members on this floor talk about is this a budget buster, it is not about busting the budget if you amend the bill as has been proposed. It is about forcing the agencies that enforce these two specific pieces of legislation, forcing them not to promulgate any regulations that will effectuate those laws.

Mr. Chairman, I would say to my colleagues I do not know how we can start with one purpose, which is a healthy, genuine purpose, to compensate the American people, and sell out the whole idea to wipe out two pieces of legislation, the Endangered Species Act and the Clean Water Act, and then go back and tell the American people "We were up there fighting for you."

If you believe in compensating the American people for diminution in their values, then you believe in compensating them regardless of whether it is done by the Clean Water Act or the Endangered Species Act or any other act that we pass in this body.

So we have come to the point where we fleshed this thing out, we brought it out in the open now. At least we know what this bill is all about. It is our political opportunity to do away with these two pieces of legislation. And we are so gutless in this body that we will not, even with the new majority having the votes, they say, they will not bring these bills up and deal with them directly. They will say, "Oh no, it is not us. It is some agency over there across Washington that we are beating up on. It is the agency over there."

Understand, Members of this body, that no agency has written any regulations that are not pursuant to a piece of legislation.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(By unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. Mr. Chairman, I do not know of any agency in the Federal Government that is over there writing regulations, unless they are writing those regulations pursuant to statutes that we passed in this body. And if we do not like the regulations that they write pursuant to our statutes, then we ought to change the statutes. We ought to have the guts to stand up and say "We do not like the Clean Water Act, we do not like the Endangered Species Act, and we are going to do away with them," rather than coming and telling the American people that somebody else over there on the other side of town has done something that we do not like, even though they are acting pursuant to the authority that we gave them.

This is the ultimate opportunity, political opportunity, to pass the buck and beat up on some Federal agency that is doing exactly what we authorized them to do, and we ought to reject this amendment and either accept the underlying bill on the principle that it stands for, or vote it down. Do not pass the buck. Have the heart to do what you want to do up front with the American people.

Mr. LAUGHLIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is fitting that we gather here in Washington on the Potomac River on the 160th anniversary of the date that a group of Texans gathered at Washington on the Brazos in Texas to declare our independence from a repressive government in Mexico.

Five years ago the gentleman from Louisiana, my good friend, Mr. TAUZIN, and the gentleman from Texas, my good friend and colleague, Mr. FIELDS, and I filed a bill to protect the private property rights of the owners who had their rights taken from them in wetlands areas. So I think it is fitting that we are here at Washington on the Potomac on the anniversary of the Texas Declaration of Independence. So I rise in support of the Tauzin-Laughlin-Peterson-Fields-Danner amendment to the substitute that limits the scope of this legislation to a few specific regulatory laws.

The Framers of our Nation clearly recognized the need for protection of property rights as they laid out the foundation for American democracy. Furthermore, they understood the vital relationship between private property rights, individual rights, and economic liberty. Despite this, the rights of property owners have been progressively eroded away by actions of our Federal Government.

The most notable examples of the takings of landowner property values can be exemplified through restrictions imposed by its endangered species and wetlands regulations, which this amendment specifically addresses.

Under this amendment, the measures of compensation would apply only in cases involving restrictions on property imposed by Federal agency regulations contained in the clean water wetlands permitting program, the Endangered Species Act, swampbuster and sodbuster provisions, and the rights to receive and use water under the reclamation acts, Federal Land Policy and Land Management Act, and Forest and Rangeland Renewable Resources Planning Act.

Furthermore, this amendment is necessary because the courts are crying out for Congress to clarify this area of law. As Chief Judge Loren Smith of the Court of Federal Claims has stated in the case of Bowles versus the United States last year, "There must be a better way to balance the legitimate public goals with fundamental individual rights. Courts, however, cannot produce comprehensive solutions. They can only interpret the rather precise language of the fifth amendment to our Constitution in very specific factual circumstances. Judicial decisions are far less sensitive to societal problems than the law and policy made by political branches of our great constitutional system. At best our courts sketch the outlines of individual rights. They cannot hope to fill in the portrait of wise and just social and economic policy."

Mr. Chairman, I would hope that our colleagues would join me in supporting the amendment and provide private property owners with decision capability to employ their own lands. Just as the founders of this country understood in the Constitution and as the founders of the Republic of Texas understood of the importance in this Nation of private property rights, citizens all over America today are saying, "protect us from our own government. We want to exercise control over that property that we paid tax on."

Indeed, young men and women for over 200 years have served in the military forces and at times on the battlefield to protect these private property rights that we in Congress and Washington on the Potomac River should understand and protect today.

I urge support of this amendment.

Mr. GILCHREST. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. I am one of those veterans that fought overseas to protect property rights, but I think that this particular amendment and this particular bill overall goes a long way in changing the concept of the fifth amendment, because if people's property is taken away for the public good, then those people should be compensated.

But there is another side to the story that I do not think is entering the picture enough here this morning, and that is the value of certain Government regulations in the Endangered Species Act to protect biodiversity, and the value and the function of wetlands as far as a filtration tool holding on to problems so there are not floods.

I would not stand here and say there have not been problems with these two regulations. There are real horror stories that have to be corrected, especially in the West, whether it is a grizzly bear that ate somebody's sheep and the person was not compensated, whether it was a flood because they found an insect in the ditch and did not let anybody clear the ditch and the flood caused damage to people's homes, or wetlands, there are horror stories. But I do not think we should change the fundamental dynamics of the fifth amendment to the Constitution. We can correct these horror stories. And there are horror stories that happen, in the committees of jurisdiction.

Now, what is not being emphasized here—

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I just want to underline the point the gentleman made. You are going to be hearing about horror stories all day. As the gentleman is pointing out, this bill is not aimed at correcting horror stories. This bill affects those programs where they work exactly as they are supposed to. That is the central point. It is not the horror stories that are under attack here, it is the workings of these statutes exactly as they are being affected that is at point here.

Mr. GILCHREST. Mr. Chairman, reclaiming my time, I want to give some concrete examples of what these particular regulations, what the Endangered Species Act, for example, can do for us, some concrete examples to give you some understanding of the value of natural resources and why they should not become extinct.

According to Dr. Susan Mazer, who is a scientist in California:

> No scientist would have predicted, prior to their analysis in the laboratory, that the Pacific yew tree would prove an effective remedy for cancer, that the periwinkle would be

a potent remedy for Hodgkin's disease and leukemia, that yams would be the source of oral contraceptives, or that bacteria from deep sea thermal vents would lead to the discovery of DNA fingerprinting, a critical source of evidence in forensic criminology.

In the case of the rosy periwinkle, a road side weed (we laughed at the snail darter) parents of children with leukemia do not laugh at the road side weed, children have an 80-percent chance of being cured or have long term remission as a result of the medicine extracted from this plant. It is also important to note that the agent in the plant that cures the disease cannot be synthesized so we need to continue to have a healthy supply of the plant.

Other plant sources have been used for drugs which control tissue inflammation, Parkinson's disease, antidepressants, antibiotics, as well as other life-saving, anti-cancer agents. Cyclosporin is a complex molecule discovered in an obscure fungus, a powerful immunosuppressive agent, it is the basis of the organ transplant industry today.

Doctor E.O. Wilson commented in a paper recently published:

> Many disease organisms, such as a malaria parasite and staphylococcus bacteria, are acquiring genetic immunity against conventional therapeutic agents, and new antibiotics must now be sought elsewhere, most likely in little known species of plant, fungi, and insects if we do not extinguish them first.

□ 1215

Dr. Elliot Norse, a chief scientist for the Center for Marine Conservation, reminds us that when an astronaut goes into space, that astronaut has to carry with him a life support system in the cold void of that infinity. Planet earth is in that cold void of infinity. And unless we protect those resources which sustain life for us, then the quality of our life overall is going to be degraded.

This is not the right forum to correct the problems in the Endangered Species Act or the wetlands. Those things can be done in committee.

I urge a "no" vote on the amendment.

Mr. PETERSON of Minnesota. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support and am happy to cosponsor this amendment. I want to first of all congratulate the gentleman from Louisiana [Mr. TAUZIN], the gentleman from Texas [Mr. FIELDS], and all the others that have worked on this legislation for the last number of years to bring it to this point.

I would like to point out that there are a lot of Members on our side of the aisle that have been working on this for some time. I also would like to point out that, Mr. Chairman, that I do not agree that we want to undermine some of these statutes. I come from the point of view that the bill that was originally put together by the other side was too extreme. I think this amendment brings us back to where I am more comfortable with.

For those of you that, and I do not want them to take this the wrong way, because I am from Minnesota, a State that is controlled by the Democratic Party, and we are taking legislation in front of our legislature right now. I would just like to point out, we have the majority leader of the senate, the speaker of the house, some of the more liberal members of the Minnesota Legislature. And they have a measure I would like to read to my colleagues here.

It says that property owners can bring an action against the State for loss of value of 5 percent or more of their property or $1,000. And if the reduction is that amount, it requires the State to purchase the entire property at its fair market value. So you can see that we have in Minnesota something going on, if you want to call it extreme, it is more extreme than what we are talking about here in this legislation.

Mr. Chairman, we are not against wetlands. I am someone who has had a long history in conservation. I support wetlands legislation. The problem is, we have a system that is kind of run amok, that has too much power, in my opinion, on the side of the Government, that has left ordinary folks in a position to have to hire lawyers and go through the court process to protect their private property rights, which is something that we ought not to be doing in this country.

What we are doing here is bringing this back to the areas where the problems are. And that is, with the Clean Water Act 404 permit area, the wetlands area, the farm bill and the Endangered Species Act and the water rights issues out in the West.

I think that this amendment, although if I had a chance to write this the way that I would do it, it would not be exactly the way this amendment is put together, but I think that we can live with this. I think that it will be workable, and it will give us a chance to get started to change the way that we deal with what is happening out there in terms of putting these regulations on private property.

Mr. VOLKMER. Mr. Chairman, will the gentleman yield?

Mr. PETERSON of Minnesota. I yield to the gentleman from Missouri.

Mr. VOLKMER. Mr. Chairman, I wish to join with the gentleman from Minnesota, the gentleman from Texas, who spoke earlier and others, in very strong support of this amendment. This is one time when I have to leave my other friends within the Democratic Party, because of instances like the gentleman says, it has been alluded to here, there have been too many abuses.

Some people have said, why do not you just correct the basic law? I do not think that is going to solve the problem because the problem is basically, the way I see it is, is that the people that are actually making the regulations in this instance do not have what I call common sense.

I have got farmers out there in farmland that have less than an acre plot that have been designated as wetlands, swamp lands. The only time it gets wet in that field is when it rains and then it drains off or when there is snow melts and then it drains off. We have not seen any ducks on this land. We have not seen any waterfowl on that land for I do not know how long, ever.

And in another instance, I see that the gentleman from Massachusetts is over on this side. Another thing that concerned me, back when we were working as chairman of the forestry subcommittee and agriculture, we were working on the Northwest and the problems of the Northwest having to do with the spotted owl, what became apparent to me was that as that spotted owl left the Federal jurisdictions and went over to a private forest, that private forest had an endangered species in it. And the value of that forest was, before it may have been a life savings for somebody, just went down. And that person lost their whole livelihood as a result of that endangered species flying over there and making a nest in that area, at least potential.

The value of the property, at least we had testimony on it from some of the property owners out there, diminished.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. PETERSON] has expired.

(By unanimous consent, Mr. PETERSON of Minnesota was allowed to proceed for 2 additional minutes.)

Mr. VOLKMER. Mr. Chairman, if the gentleman will continue to yield, what concerned me is that basically what we have seen taking place is that people who have worked hard to have this property are now seeing it diminished in value or almost taken completely, not quite taken, so it is not actually a taking in the sense of the amendment, due process and all that, as far as the court is concerned. But they have lost a hunk of their money and they are hard-working taxpayers and it should not be right.

I agree with the gentleman, we need wetlands. We have wetlands. We have them all up and down the Mississippi. We have plenty of ducks, and we have got waterfowl. We have got goose hunting places in the State of Missouri, in the district of the gentlewoman from Missouri [Ms. DANNER]. We have plenty of room for that. So we support that.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. PETERSON of Minnesota. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for his comments and point out, the courts have said that a partial taking of your property is a taking under the Constitution. The court in Florida Rock, for example, said nothing in the language of the fifth amendment compels this court to find a taking only when the Government divests the total ownership of the property. It says the fifth amendment prohibits the uncompensated taking of private property without reference to the owner's remaining property interest, and it cited an example.

Indeed, if the Government took only 5 acres and left the property owner with 95, there would be no question that the owner was entitled to compensation for the parcels taken, plus even severance damages attributable to the remaining tract. The gentleman is right, partial takings should be compensable.

Mr. PETERSON of Minnesota. Reclaiming my time, I would like to close by saying that we have got some problems with the wetlands act. I ask everybody to work with us to try to get at some of these issues like the type one wetlands that the gentleman from Missouri was talking about. But this legislation is something that has been needed for a long time. I, again, commend the gentleman from Louisiana [Mr. TAUZIN], the gentleman from California [Mr. CONDIT], the gentleman from Texas [Mr. LAUGHLIN], and all the others that have been working on this for many years. I ask support for this amendment.

Mrs. SMITH of Washington. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support this bill and especially the amendment before us. It does not go as far as I would have liked to have gone, but I want a bill out of this area. We need a bill out of Congress.

In our area, we have the spotted owl. The constitutional interpretation right now is that if an owl flies and lands on your land, that owl gets all of your land and you are not compensated. That is unacceptable.

Currently in Washington we grow and use today more of it, timber, as a crop. Predominantly it is grown by mom and pop and small groups of small family operations. They grow it generation after generation so that they can make sure that they pay for their own retirement. They pay for their own children's college, and they take care of themselves like good Americans do.

The problem is, right now, with the Endangered Species Act, is that an owl can land. The owl gets thousands and thousands of acres of buffers around where the owl landed, and there seems to be no reasonableness to the law that says these folks just cannot use their land. The owl gets the land. They get nothing. And they are left with no recourse.

The important thing about this is it focuses at least on those people. It does not overturn the State laws. It does not overturn local land use laws. But it does say that if we are going to allow the Endangered Species Act to take these people's property, and we are not talking about big, wealthy folks, we are talking about my neighbors, that they have to think about it and compensate them.

The other interesting thing in our State, we found out that the owl is a critter that is growing or was quite prolific to begin with. They now know there are twice as many owls as they thought there might have been to begin with, when they decided to allow the owl to be an issue in licking up our forests.

So what this amendment does is it brings some reasonableness back in. I commend the gentleman for this amendment, because it gives my family some hope.

Mr. Chairman, I yield to the gentleman from Texas [Mr. SMITH].

Mr. SMITH of Texas. Mr. Chairman, as a member of both the Judiciary Committee and the Budget Committee, I would like to enter into a colloquy with the gentleman from Florida, the floor manager of this bill, regarding the intended budget status of this bill.

In sections 3 and 6 the bill would mandate Federal payment to an owner whose property had been adversely affected by Government regulations, however section 6(f) and 7 of the bill specify that the obligation to pay and the source of any payment under this bill is limited to available discretionary appropriations.

My question for the gentleman is this: Is it your understanding that the limitation on the obligation to pay and the source of payments in section 6(f) and 7 supersede the mandatory language contained in section 3 and 6, and thus any obligation pursuant to this bill would be fully subject to the availability of discretionary annual appropriations?

Mr. CANADY of Florida. Mr. Chairman, will the gentlewoman yield?

Mrs. SMITH of Washington. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, yes, it is my understanding that the language of sections 6(f) and 7 does limit the obligation to pay and the source of any payment under this legislation to discretionary annual appropriations, notwithstanding any other provision in the bill.

It is our intention to help compensate property owners for the harmful effects of Government regulations, not to create an uncontrollable entitlement.

Mr. SMITH of Texas. Mr. Chairman, if the gentlewoman will continue to yield, following up, does this mean that a judge, in a case brought by a property owner under the provisions of this legislation, would be constrained from awarding payment from what is known as the "judgment fund", which is beyond the control of the congressional appropriations process?

Mr. CANADY of Florida. Mr. Chairman, if the gentlewoman will continue to yield, no—I do not believe that the "judgment fund" would be an available source of payment as a result of a court order.

As the gentleman knows, section 6(f) of this substitute clearly states that payments under this legislation are to come from an agency's annual appropriations, and if the agency that issued the regulation in question does not have sufficient funds to satisfy the property owner's claim then the head of that agency must seek the necessary funds in its budget request for the following year.

Mr. SMITH of Texas. I thank the gentleman for that clarification.

Mr. DEFAZIO. Mr. Chairman, I move to strike the requisite number of words.

I would like to engage the author of the primary amendment in a few questions here, if I could.

As I understand it, the Tauzin amendment does not change the portion of the gentleman's substitute, which would require when a specified regulatory law diminishes the fair market value of that portion or any portion of a property by 10 percent or more; is that correct?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. DEFAZIO. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, that is correct.

Mr. DEFAZIO. Mr. Chairman, if I could ask a couple of hypothetical questions, if I had a 100-acre tree farm and the restrictions apply to 1 acre, that would be, if it took more than 10 percent of that 1 acre, that would be mandatorily compensable?

Mr. CANADY of Florida. Mr. Chairman, if the gentleman will continue to yield, that is correct, assuming that there was a right to compensation and that particular circumstance was not subject to any of the other exceptions under the bill.

Mr. DEFAZIO. Mr. Chairman, I am going by the four statutes referenced by the gentleman from Louisiana [Mr. TAUZIN]. If it was one tree on the 1 acre, on the 100 acres, and I could not harvest that tree because of Federal restriction, if I lost, if by being required to have that tree stand, I would lose 10 percent or more of the value, I would be compensated for that one tree?

□ 1230

Mr. CANADY. Let me say this, I think that is a situation we really would not see arising.

Mr. DEFAZIO. I am going to get to an actual example, if I could. One other example, and then I will explain. This is a little off track, so bide me here.

I am curious, does the gentleman support the constitutional amendment to ban the desecration of the American flag?

Mr. CANADY. If the gentleman will continue to yield, I do not believe we should protect the desecration of the flag.

Mr. DEFAZIO. There is an amendment pending to ban the desecration. Does the gentleman support that?

Mr. CANADY. Yes.

Mr. DEFAZIO. Reclaiming my time, Mr. Chairman, I want to go to an actual example, the bald eagle, one of the few successes we can point to under the Endangered Species Act.

The requirements in my part of the country were practical and simple. You had to leave one tree. You had to leave the nest tree. You could have 100 acres of land, but you had to leave one tree to recover the bald eagle. It has now recovered. That is a live and living symbol of the United States of America. I think it was worth saving the bald eagle.

The gentleman wants to save the textile symbol of the United States from desecration. That is the American flag. I want to save a living symbol, and that is the bald eagle. Under this legislation, we would have had to compensate every single person who saved one tree, one tree. Is that too much to ask?

I do not believe that is an unwarranted intrusion. Ten percent is an absurd threshold. Ten percent of any portion of your land, that is 1 tree out of 10, you get compensated. That is not right.

This is something that is taking the relief that is needed too far to hamstring and follow another agenda. This is the big developers' agenda. This is not going to help the little people of my district who have been having problems with the Federal Government.

This is going to take the developer who has a 10,000-acre development and is required to leave a little riparian strip, which in my State we have all agreed to do, but if he is required to do that under Federal aegis, it will be compensable action, even if the State law would have required and the Federal law would have required it.

Mr. Chairman, let me talk about the realities of appraisals. How do we get to 10 percent? We hire an appraiser. I tried to purchase a piece of property in my district with a willing seller. I got an appropriation to do it. The willing seller came up with an appraisal of $2.2 million.

The Forest Service, the purchasing agent, came up with a price of $750. They were at loggerheads. Even though I could have saved this, I had an appropriation, I could not get an agreement.

I said "How about we agree that the Forest Service and the owner choose another appraiser, and they will do that." They did that. Now we got a third appraisal. Do Members know what it was? $1.5 million. I had the owner with an appraiser at $2.2 million, I got the Forest Service with an appraiser at $600,000, and then we got the neutral appraiser at $1.5 million.

How are we going to say, under this bill, 10 percent variance in the value is compensable? All you have to do is hire two appraisers and the Federal Government has done nothing, and you are going to find a 10- or 20- or 30-percent variation. Therefore, I could just say because the Federal Government exists that I am compensated, because I have two appraisers that say "Well, the Clean Air Act," no, that is not right, we have eliminated it from the Clean Air Act, but any other acts covered here make this a compensable action.

This goes too far. What this situation cries out for is reauthorization of the Clean Air Act, a reauthorization of the Endangered Species Act, with needed reforms and amendments.

It requires a rifle shot, not a 10-gauge shotgun filled with 00 buck. That is what we are doing here, blowing a hole through these laws so we will not even be able to save the bald eagle next time it is endangered, or some other bird.

That I think is a worthy thing. If we are going to save that symbol, let us save a living symbol.

Mr. HAYWORTH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I yield to the gentleman from Texas [Mr. FIELDS].

Mr. FIELDS of Texas. Mr. Speaker, the eagles must be different in the Northwest than they are in Texas, because I have had two specific examples with abandoned nests. We are not even sure that the nests that were abandoned were eagles' nests.

In the one example I used last night, a road was stopped. Finally, the property owners had to mitigate by putting in an easement in perpetuity 4 acres, not just one tree.

The second specific example, across the lake an abandoned eagle's nest, so people were told, stopped the cutting of 100,000 dollars' worth of timber. Nobody was able to prove that an eagle was there. Someone said it was an abandoned eagle's nest; 100,000 dollars' worth of timber. That is not one tree.

I appreciate the gentleman yielding to me.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. HAYWORTH. I yield to the gentleman from Louisiana, on the other side of the aisle.

Mr. TAUZIN. Mr. Chairman, we need to correct the RECORD whenever we hear misstatements. The fact of the matter is the eagle was saved not under the Endangered Species Act, it was saved under FIFRA, Federal Insecticide and Rodenticide Act, which banned DDT. That is what saved the eagle, No. 1.

No. 2, the gentleman who spoke and said this bill is aimed at the the Government because the Government is there, whether it does something to your property or not, is absolutely wrong. This bill does not trigger compensation until the Government agency acts to regulate someone's property and diminishes the use of that property. Then the action is triggered. Then you go to an assessment of whether or not it has lost 10 percent or more value.

Finally, Mr. Chairman, let me refer back to what the court said here on partial takings. The courts have held that even relatively minor physical occupations are compensable, and it said that logically the amount of just compensation should be proportional to the value of the inherent interest taken as compared to the total property, but partial takings are compensable.

I thank the gentleman for yielding.

Mr. HAYWORTH. Mr. Chairman, I thank the gentleman and the author of the amendment from the great State of Louisiana.

The CHAIRMAN. The time of the gentleman from Arizona [Mr. HAYWORTH] has expired.

(By unanimous consent, Mr. HAYWORTH was allowed to proceed for 3 additional minutes.)

Mr. HAYWORTH. Mr. Chairman, before leading the Continental Army into the Battle of Long Island in 1776, Gen. George Washington told his troops:

> The time is now near at hand which must probably determine whether Americans are to be freemen or slaves; whether they are to have any property that they can call their own; whether their houses and their farms are to be pillaged and destroyed * * *

Two hundred and eighteen years later, Americans are again fighting for the right to have property they can call their own. Their enemy? Ironically, the same Government originally created to give people the freedom to own property. Government bureaucrats, acting without accountability, make decisions which, in effect, destroy households, farms, and businesses.

Currently, all landowners are unwillingly entered into a random sweepstakes drawing to select who will foot the bill for intrusive Government regulations. In this sweepstakes there are no letters from Ed McMahon informing them they have won a million bucks. Instead, landowners receive nasty grams from the likes of the Fish and Wildlife Service or the Environmental Protection Agency informing them that they own Mexican spotted owl habitat, and if they use it they could go to jail.

When Michael Rowe had finally saved up enough money to add an extension to his one-bedroom home on his 20-acre ranch in Winchester, CA, he was informed that his permit could not be approved because his property was in a kangaroo-rat study area. His only option would to hire a biologist at a cost of almost $5,000. If the biologist found a single rat, development of the property would be illegal and could result in a Federal prison sentence and up to

$100,000 in fines. The good news? If the biologist did not find a single rat, the Rowe family could develop their property if they paid the Federal Government nearly $40,000 to purchase a rat reserve elsewhere. In essence, the home was destroyed by Federal regulators before it even left the drawing board.

In supporting this legislation, we in Congress have the opportunity to reaffirm what Locke referred to as the "root of all liberty"—the right to own property.

This legislation requires the Federal Government to compensate landowners for an action by a Federal agency that reduces the value of their property. In simple terms, this legislation means: If the Federal Government deems it in the national interest to curtail a landowners use of his property then the Government, not an individual landowner, should pick up the tab.

Opponents claim that with the passage of this legislation we will see the end of 25 years of important health, safety, and environmental legislation. As we heard in a preceding speech, in a hypothetical, my colleagues on the other side know that the only thing that will end is decades of casting easy votes that might appease their special interest constituencies without having to consider the consequences. Some of these folks truly tremble at having to make the choice between what is truly in the national interest, and what is only in their narrow best interest.

Mr. Speaker, I urge my colleagues to support a return to the constitutional protections of private property.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. HAYWORTH. I am happy to yield to my good friend, the gentleman from North Carolina.

Mr. WATT of North Carolina. I thank the gentleman for yielding, Mr. Chairman.

Mr. Chairman, I simply want to inquire whether the gentleman was supporting the amendment of the gentleman from Louisiana [Mr. TAUZIN] or whether he was not supporting it. I could not tell from his statement.

Mr. HAYWORTH. I thank the gentleman for letting me clear this up.

I will end my remarks by saying I rise in strong support of the Tauzin amendment, and in strong support of the legislation.

Mr. MILLER of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. I do so mainly in one very specific case, and that is, the amendment as it is currently written includes the act of June 17, 1902, and all acts amendatory thereto and supplemental thereto, properly known as the Reclamation Act.

This is an act written in 1902 where the Federal Government engaged in massive subsidies to landowners throughout the West to help settle the West and bring the lands into productive capacity by extending water subsidies to them.

In the State of California, the Federal Government has spent some $8 or $9 billion building canals and shipping water from the far north to the south, and the same is true in Arizona and elsewhere.

What this amendment would now do is take what we basically have, which are contract rights with the growers, and say "if you sought to amend those, that could be adjudged as a taking." These people have a right to subsidize water based upon a contract, but now what you are doing is taking a contract and turning it into an entitlement. You are taking a contract which says and gives us the right to withhold water from those people in years of drought, as we have in California, over the last 6 or 7 years to say "We are going to hold back 30 percent of the water for next year, or for the health and safety of the State, for drinking water supplies to metropolitan areas."

Now, what you are saying is if this is a diminution of 10 percent of your land, which clearly it is, you have a right to compensation and to a taking. You are withdrawing the rights of the Federal Government and the right, more importantly, of the people of the State of California to manage the water supply within their State, because you are taking a contract, even if you shorten the contract, and in the new law we just said we want to go from 40-year contracts to 20-year contracts so we can manage the water supplies in the State of California on a more contemporary basis, in light of our population growth, the change in our economy and the need for water in our cities and suburbs for economic growth.

If we took that 20-year contract and made it a 10-year contract, that would somehow be a taking in the next law when that contract runs out. I think we have an unintended consequence here that locks us in, not only to billions of dollars in subsidies, but also locks us into a situation where we are now elevating what is a basic contract, and at the end of the contract, "You have no right to that, we can do with the water what we want," but that was the agreement, now elevating that into a taking if we do not extend the water.

The reason that is so important is that we have areas in the West where we have massive competition between agricultural interests and the urban interests, in Utah, in Colorado, in Arizona, and in California. What this law does is locks these contracts in now under the provisions of taking.

I would like to ask the author of the amendment, the gentleman from Louisiana, what is his understanding of this act as it pertains to the Reclamation Act of 1902?

Because as I read it, if we change the level of the subsidy, if we change the contract's terms, if we withhold water because of the drought or we reallocate water from the agricultural interests to the urban interests or from the urban interests to the agricultural interests, that those people all have a right to a taking under this provision, if the value of their land is diminished by 10 percent.

Mr. TAUZIN. If the gentleman will yield, Mr. Chairman, the understanding is that no diminution of subsidy triggers the action to compensation. Subsidies are not a regulatory act under this bill. It is a change in the property ownership, a change in the right to own or the value to own that triggers the action under this for compensation under the act.

Mr. MILLER of California. Currently the growers have a 40-year contract. If the Government, and the new term was changed from 20 years or 10 years, and the banks decide that you do not have a bankable interest, as some growers speculate the banks would say, is that a diminution of the property values?

Mr. TAUZIN. No, contractual changes are not. Agreements are not. It is only when the Government mandates a change, a regulation, that diminishes the value or subtracts from the property right that triggers the action for an arbitration and compensation under the bill.

Mr. MILLER of California. Let me ask in another case. We have a situation where irrigated lands, where water is brought to those lands under contract, and in some instances we have had to tell growers in the past, and very likely are going to have to tell them in the future, that they cannot irrigate of some of their lands because of toxic runoffs that have caused problems, both with the environment and with health.

If we tell those growers that they cannot irrigate those lands under that water, are we under the purview of the gentleman's bill?

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has expired.

(By unanimous consent, Mr. MILLER was allowed to proceed for 2 additional minutes.)

Mr. MILLER of California. Mr. Chairman, I yield to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, under both the bill and the amendment we proposed, if the use is proscribed for reasons of toxic runoff, nuisance, all those kinds of issues, then it is not a compensable diminution of use. It is only when the use is proscribed for purposes of, as we claim, ESA, wetlands protection, or changes in the ownership or value of the water right.

Mr. MILLER of California. In this case the toxic runoff, the reason it was stopped at one point, and it may have to be stopped again in the future, is because of its threat to the water quality in the San Francisco Bay delta.

□ 1245

Mr. TAUZIN. I understand. If the gentleman would further yield, there will be an amendment on the floor later on to apply the entire Clean Water Act under this bill. I will oppose that amendment for that reason. We have limited it to the wetlands protection of section 404, to the sodbuster wetlands provisions and to the water rights provisions as regulations in those acts we describe would affect the ownership or value of that water right.

Mr. MILLER of California. Can I ask the gentleman another question. Again the runoff from these lands cause duck hunters and others a great deal of consternation because of the impact it has had on the water fowl.

If it goes to the quality of the water in those wetlands, in protected wetlands or in private wetlands, is it covered under your provision?

Mr. TAUZIN. I would have to yield to the author of the main amendment. There was a provision as I understand that if the use is designed to prevent damage to neighbor's property as opposed to protection of a wetland or to protection of an endangered species, that that is an exempted use under the bill. If you would yield to him, I think we can get a clarification on that.

Mr. CANADY of Florida. If the gentleman would yield, I just bring your attention to section 5 of the substitute amendment, which provides a specific exception. It says that "no compensation shall be made under this Act with respect to an agency action the primary purpose of which is to prevent an identifiable hazard to public health or safety, or damage to specific property other than the property whose use is limited."

This is in here to deal with any sort of circumstance in which there is a hazard to public health or safety.

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has again expired.

(By unanimous consent, Mr. MILLER of California was allowed to proceed for 2 additional minutes.)

Mr. MILLER of California. Can the gentleman or the gentleman from Louisiana explain to me why, then, the Reclamation Act is included as one of the laws under this provision?

Mr. TAUZIN. I would be happy to tell the gentleman. Because it is one of the acts that has the potential of regulation to limit the value or the actual right to own water in the West, and because it has that potential, it is included as a regulatory action that could diminish the value indeed of an important property right.

Mr. MILLER of California. Without being argumentative, that sounds exactly contrary to what the gentleman just told me, because all of the water delivered under the Reclamation Act is delivered by virtue of contract. We enter into a contract for a specified period of years. If that contract is not renewed, you have no rights.

It sounds to me that we are bootstrapping people who now have a contractual right into a position that if that contract is not renewed, that somehow you have a takings, because the land is not worth upkus.

Mr. TAUZIN. If the gentleman will yield, the contract is a contract between the private property owner, the water right, and the Government.

If the Government by regulation changes that contract without the agreement of the owner, that indeed would amount to an action to trigger activities under this bill. If, however, the contract is followed, no one has lost any rights, there is no trigger to compel an arbitration for compensation.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Idaho.

Mr. CRAPO. I think it is important to look at the section in the bill that describes the right to compensation we are talking about here, in section 3 of the bill.

It creates the right of compensation to an owner of property whose use of any portion of the property has been limited by an agency action. We are talking about situations where an agency has limited the use of property, and that is defined in the statute.

Mr. MILLER of California. Let me reclaim my time and then see if the gentleman can answer. The agency, in this case the Bureau of Reclamation, tells people that they cannot have 30 percent of their water supply or in a dire drier year, they can only have 30 percent, they lose 70 percent, the use of their land in dry land farming is gone.

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has again expired.

(At the request of Mrs. SCHROEDER and by unanimous consent, Mr. MILLER of California was allowed to proceed for 2 additional minutes.)

Mr. CRAPO. Will the gentleman yield?

Mr. MILLER of California. Yes.

Mr. CRAPO. The definition of use of property is defined in the statute to say, when the use of property is limited by an agency action, if a particular legal right to use that property no longer exists because of the action.

You are talking about a contractual relationship between the United States and between an individual landowner, or in some cases between those who are participating in a reclamation project.

The change of the terms of a contract under the terms of that very contract is not going to be a limitation on use that results from an arbitrary or an independent action by an agency that limits the use of that property.

Mr. MILLER of California. I find it very suspect that this law is now included when it is so narrowly drafted and the rights are handed out based only on contract.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. I am concerned about the Colorado River Compact. What effect does this have on that? Does this have an effect on things like the Colorado River Compact, which has been around for a very long time?

Mr. MILLER of California. That is exactly the question, because the Bureau of Reclamation administers that the Reclamation Act guides many of the contractors to that compact. As the gentlewoman knows, in Arizona we have contractors who are going bankrupt, we are trying to reallocate water, and there are people who had expectations but really cannot afford the water. The question is now, are we creating a compensatory act by not giving them the water and giving it to the city of Tucson or to the city of Phoenix?

That is exactly the problem. I worry about ulterior motives here in the inclusion of the Reclamation Act because I do not know why it would be included when these are contractual relations except that I understand there are a number of people who are very unhappy with the reforms that were passed overwhelmingly on a bipartisan basis in the last Congress and signed by President Bush that would now like to roll back those reforms where we have just entered into an agreement between the State of California, the municipalities, the environmental organizations, and the farm organizations about the usage of water. Some people would like to see that undone.

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has again expired.

(By unanimous consent, Mr. MILLER of California was allowed to proceed for 2 additional minutes.)

Mr. MILLER of California. I think that those of us who would now understand and appreciate the historic relationships in multi-State compacts, especially those of you who are from the upper reaches of the Colorado, you are now laying over the top of reclamation law, law that has been on the books since 1902, you are laying over the top of that a whole series of actions that conceivably people can come in and ask for compensation when in fact what they are getting from the Government is a huge amount of subsidies and rights that basically have a genesis in contractual relationships.

Water usage is changing so dramatically in Arizona, New Mexico, California, and Nevada, we have gone from 70 percent of the people in Nevada now use 10 percent of the water, but 70 percent of the water goes to 10 percent of the people. Those equations are changing. They just changed in Utah by a vote of the people, but now the question of whether that can be carried out and the implementation of that is drawn into question by this amendment.

I would hope that at some point we could just strike the reclamation law.

Mr. TAUZIN. If the gentleman will yield, I would say again to the gentleman that if the contracts the Government makes with those owners of water rights are upheld and the contracts are not violated by the Government, nothing triggers this act.

It is only when by Government regulation the rights of an owner to water under those contracts are changed without their consent, are regulated and changed, in other words, the contract violated by the Federal Government. That is when the trigger occurs, that is when the owner would have a loss of value of property he was entitled to under that contract.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Minnesota.

Mr. VENTO. I thank the gentleman for yielding and the gentleman from Louisiana for his explanation.

I have been looking through the language of the underlying substitute in the amendment to try and decipher the language. It suggests here that anytime there is a qualification of use. Of course if the landowner agrees to the qualification or the ownership of the water in this case who owns the water right agrees to it, then apparently there is not any problem. But the issue is that very often this is not agreed to.

The CHAIRMAN. The time of the gentleman from California [Mr. MILLER] has again expired.

(At the request of Mr. VENTO and by unanimous consent, Mr. MILLER of California was allowed to proceed for 5 additional minutes.)

Mr. VENTO. If the gentleman from California would continue to yield to me, this really speaks to the issue of any type of qualification in terms of the use.

I might point out to my colleagues who think they recognize the qualifications of use that occur because of a development such as the salinization or other types of problems in terms of irrigation of land, that is one possibility, or you may have, for instance, if you are taking this water off of a national forest, which is included in here, the entire Forest Planning Act is included as a possibility, or off of the public domain lands, the BLM lands, the entire FLPMA law is included in this amendment in regards to water as I understand it, any time you are taking that water off national lands, you are dewatering that for other purposes, there may be exceptions in California. Sometimes it is coming from other private land. But anytime you would qualify the use of that because you may make a determination that it is having an adverse effect on that, even though somebody had that right, anytime you qualify it or, for instance, even during the year it changes and it has an effect in terms of at the water right that is on, you would have a problem here in terms of what is going on.

Mr. MILLER of California. I appreciate the remarks. I think he makes a good point. I appreciate that this is in contract law, but let us remember what we are talking about.

In parts of Arizona, and a good portion of California, we are talking about people who have received hundreds of millions of dollars in subsidies from the Federal taxpayers, in some cases to grow subsidized crops. Kind of an insanity.

These same people have spent millions and millions of dollars to prevent any change from taking place in the reclamation law in this Congress. Finally, 2 years ago, we were able to defeat that effort and pass reclamation reform.

These are the same people now who are suing the Government, suing the State, suing everybody to hold onto their rights, and what is their allegation? Their allegation is everything we want to do is in violation of their contractual rights. They have a compensatory action if in fact they can show it is a violation of their rights.

But basically what these people have done is sought to delay the implementation of any reforms in the California water system. Just as recently as a couple of months ago where all of the cities got together, all of the environmental groups got together, many of the agricultural groups got together, all of the economic community in our State said that we have to change the way that we allocate and use water in the State of California.

We have the same handful of people that got this amendment inserted into this provision of law saying they did not want to go along. No matter how good we think it is for the welfare of California, no matter how important they said it was because they said they would lower the bond ratings of the State of California if we could not reallocate our resources, we have some obstructionists there that think that what they had as a contractual right to a limited subsidy is now a God-given right and now what they want to do is under this amendment make that an entitlement. They want to make that subsidy an entitlement that we cannot in any way change whether it is because of drought, whether it is because of population, whether it is because of changing economic circumstances in that State.

The fact was this land was not worth spitting on until the Federal Government came along and plowed billions of dollars of taxpayers' money, and we would just like to be repaid. Then they can do whatever they want with the land.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. MILLER of California. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I would just like to point out to the gentleman, I think many of the things he is saying are valid. It is a valid discussion that we ought to have here on the floor.

But I just want to say to the gentleman that it was not my intent or others to try to get involved in your particular water fight. I am here today supporting a Tauzin amendment.

Mr. MILLER of California. I understand that. I commend the gentleman. I think this is a very important discussion. This discussion has been delayed too long on the issue the gentleman from Louisiana [Mr. TAUZIN] has raised.

But why is the reclamation act struck into this legislation? We are talking about a very narrow act for a very narrow group of people.

Mr. FIELDS of Texas. If the gentleman would yield to me, we have had private discussions about the excesses, and it is the excesses that I think bring us here today: The fountain darter in Texas that has abrogated our water rights as a State, the vireo and the warbler that has taken an entire area of central Texas and said you can't cut cedar, the abandoned eagles' nests that have shut down roads and shut down the cutting of forests. To me that is the reason we are here.

Mr. MILLER of California. Let me reclaim my time, and I have a great deal of respect for the gentleman.

That is not what this is about. This is about the excesses where a State and its population reach a consensus and whether or not you are going to provide a tool in this legislation so that people can obstruct that and obstruct it on the fallacy that somehow they have some value in their property that is there because of what they do as opposed to the billions of dollars in subsidy that flow down that canal every year from Shasta Dam down to Tulare Lake.

The fact of the matter is they do not have those rights, and my concern is we are now about to put the taxpayer of this country on the hook based upon very narrow interests that have rights under their contracts and now they are trying to bootstrap those into additional rights. I would hope we would oppose the amendment for that purpose.

Mr. DELAY. Mr. Chairman, I move to strike the requisite number of words.

What a stimulating debate. I was just absolutely excited to watch that debate go on, and I hate to step in, what I hope is not the end of the debate, but I am not sure that I follow it in the right schedule of things in this debate, because my statements are in support of the bill and in support of the amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. If the majority whip would get us more time under this restrictive rule, we could extend the debate more, so we would be glad to accommodate him if he would only get us a little more time.

Mr. DELAY. I think we have had a lot of time on this bill and it has generated a very stimulating debate.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I just want to make the point following the gentleman's debate on this issue before you make your statement in support of the bill, and that is that again we are not saying that the parties cannot contract water supplies any differently than they have contracted today. We are saying contracts are valid and contracts ought to be honored.

All we are saying in our provision is if the Federal Government invalidates a contract, violates it by depriving someone of water that they were guaranteed under the contract and if that supply of water is interrupted and it devalues their property, that is a taking under the fifth amendment.

You and I might like to agree to reallocate land values around the country or landownership around it. We do not have that right under the Constitution. If this Government takes land and property from people under the fifth amendment and violates a contract that entitles them to land or water, it is a taking of property, and that is all our bill provides for, the compensation for that taking. I thank the gentleman for yielding.

□ 1300

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield to me?

Mr. DELAY. I am glad to yield to my good friend and neighbor from Texas.

Mr. FIELDS of Texas. Mr. Chairman, I have great admiration for the majority whip, but in terms of sequencing I think he is coming at exactly the right time, because he has been the champion of regulatory reform, and as the gentleman knows and I both know in our area of Houston, TX, it is the Corps of Engineers and U.S. Fish and Wildlife Service that is making determinations as to how people can use and even enjoy their property. That is absolutely wrong and it is those excesses we are trying to stop. And I think the sequencing is perfect, and I look forward to the gentleman's remarks.

Mr. DELAY. I appreciate the gentleman making those remarks about what is happening with the Corps of Engineers and the Fish and Wildlife Service in Houston. It reminds me we have been working now for 2½ years to build a golf course in Lake Jackson, TX, where the Fish and Wildlife are claiming that footprints from cows are wetlands and we have to identify every footprint on this piece of property before we can get a permit. Footprints of cows are wetlands, it is just amazing to me and it is the reason we are coming together to try to pass this bill and try to bring some common sense to what is going on around the country.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I am glad to yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I wonder if giraffe prints would also be considered wetlands? Just an aside remark.

Mr. DELAY. I think giraffes are an endangered species in America and if you find a footprint it will probably be on the endangered species list.

The CHAIRMAN. The time of the gentleman from Texas [Mr. DELAY] has expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. DELAY was allowed to proceed for 3 additional minutes.)

Mr. DELAY. Mr. Chairman, in recent years the issue of property rights has been hotly debated, as a growing movement of property owners at the grassroots level feel that their rights are being seriously infringed upon. Some have characterized this movement as greedy, comprised of people who have no interest in the public good. I would like to go back to the beginning of the debate and bring some historical perspective into this discussion.

In 1772, Samuel Adams set out to "state the rights of the Colonists * * * as men, and as subjects; and to communicate the same to the several towns and the world." He began his task with the declaration that:

> The absolute rights of Englishmen and all freemen, in or out of civil society, are principally personal security, personal liberty, and private property.

Throughout the succeeding revolutionary period, these three rights were time and again recalled—life, liberty, and property. It was only in drafting the Declaration of Independence that Thomas Jefferson altered the phrase to read, "life, liberty, and the pursuit of happiness."

In later years, Jefferson explained why he chose those words. "A right to property," he said, "is founded in our natural wants, is the means with which we are endowed to satisfy those wants." To Jefferson, the pursuit of happiness and right to private property were inextricably linked. One could not be attained without the other.

Two centuries later, the institution of private property has lived up to Jefferson's expectations. America's agricultural productivity, leadership in medical and engineering technology, and wealth of entrepreneurial opportunity can all be tracted to the incentives inherently created by private property rights.

Unfortunately, however, numerous battles are being waged at this time because of the continued infringement by government on private property. Although the fifth amendment to the Constitution requires fair compensation to a property owner when the Government takes his land, courts have interpreted that provision narrowly and many property owners are not being adequately compensated.

For example, the Wall Street Journal describes the case of Marj and Roger Krueger, who spent $53,000 on a lot for their dream house in the Texas Hill Country. But they and other owners were barred from building because the golden-cheeked warbler was found in "the canyons adjacent" to their land.

Further, a current law with respect to regulatory "takings" is unclear, requiring courts to resolve claims without set standards.

It doesn't make sense that a person is compensated when the Federal Government wants to build a highway through his front yard, but is not compensated when the Government prohibits him from farming on his land because it is determined that a wetland needs protection. In both cases, private use of one's land is being sacrificed for the public good.

We can argue the merits of whether land should be used for one particular purpose or another, but everyone should agree that one person should not have to shoulder the full costs of achieving a particular goal, whether it be environmental protection or improved infrastructure. Further, a person is not greedy when he asks not to have to bear the entire burden.

The Canady-Tauzin substitute will set clear standards for Federal agencies to follow under the Endangered Species Act, wetlands, and water rights. In this way, property owners will be guaranteed fair compensation when their land is either restricted in use or reduced in value.

Ownership of property is a right protected by the Constitution, a precious right which should not be infringed upon except in the most grave of situations. When such situations arise, let us live by the tenets of the Constitution and grant property owners the compensation that they are due.

Mr. Chairman, I ask Members' support for the bill. I ask Members' support for the Tauzin amendment and I ask Members' support to stave off any amendments to the bill.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words.

Mr. VENTO. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I wanted to just direct my attention to the gentleman from Texas [Mr. DELAY], and I want to say we accept him as an able spokesman for his point of view, but certainly not as an editor to Thomas Jefferson's prose on the Constitution. But I do say he is persuasive in terms of his point of view.

Mrs. SCHROEDER. I thank the gentleman from Minnesota.

Mr. Chairman, I rise and come to the well because I am terribly concerned about what this does on the Colorado Water Compact. Earlier this year there were meetings in Colorado that were reported in the press, and I am trying to put this in the clearest way we know. The Colorado Water Compact has been around for almost 90 years. We are obviously upstream and there are many States downstream that count on us to send allocations to them, and as Members heard the gentleman from California speaking, California has been way overusing their allotment, Nevada has now got all sorts of problems, they want more water and so forth.

The person who was in the State from Nevada was saying this would be a wonderful thing for Nevada because they could then go tempt Colorado water people to sell water to Nevada, which means our State then would not have any water. They could sell it to the highest bidder.

Here is the problem, the way I read this, is there is nothing that the Secretary of Interior could do that would be right. If the Secretary of Interior would move to stop private water owners from selling their property and in the State of Colorado a water right is considered a private property right, if they move to stop them from selling that right to a Nevada or a California, then the property owner would be able to get the Federal Government to pay all of that.

If they did not intervene and they allowed the property owner to sell that right, then they would have suits from Colorado water owners saying the Federal Government had taken an action or not taken an action, that would lose their water rights.

So the way I read this, because it has got this section in the Tauzin amendment, there is absolutely nothing you could do under the Colorado compact law that the Federal Government would not have to pay for.

Mr. VENTO. Mr. Chairman, would the gentlewoman yield?

Mrs. SCHROEDER. I am delighted to yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I thank the gentlewoman for yielding. Is the gentlewoman suggesting that Colorado has overappropriated and California has overappropriated, in other words, they have actually given away or granted water rights that do not exist?

Mrs. SCHROEDER. Mr. Chairman, obviously we can have years of drought, and yes, we have overappropriated.

Mr. VENTO. I think it is a pretty well understood fact that some western States have in some cases overappropriated the water, for instance, as in the Colorado Basin.

If I can continue for a minute, I realize we are in a Colorado debate here, but the point is when we have overappropriated in these cases and the Federal Government has somehow become involved in this, either by being present or by being the Federal Government, even in terms of where there are compacts and other agreements between States, the suggestion is that insofar as the shortfall would occur in terms of somebody finally in getting their 10 percent, that the Federal Government would then be liable to pay the difference.

And we would be paying for nonexisting, nonexistent water actually under this, because somehow we have been compliant in terms of inaccurately describing and quantifying the amount of water, even though it is generally appropriated by these States as it is, unless we are dealing with the McCarran Act; we would have to then make up the shortfall and in the end be left holding the bag.

Mrs. SCHROEDER. What the Colorado Water Congress apparently decided was basically this 73-year-old compact would implode because there would be nothing to stop when the Federal Government will not have to pay.

Mr. ALLARD. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I am happy to yield to the gentleman from Colorado.

Mr. ALLARD. Mr. Chairman, this is not going to have an impact on the Colorado River Compact. This is an agreement between the States and the Federal Government and it is passed by the Congress. What is going to have an impact, and the gentlewoman may be aware, but in Colorado law we have a provision which says if you are a private owner of property that you cannot sell it outside the State of Colorado. It is Colorado law the gentlewoman is addressing and so much of what she is referring to here in this particular bill has to do with a Federal agency coming in and literally blackmailing water from individuals and States.

For example, the permit to bring water through the forests, reclaiming 30 or 40 percent of the water, it is taking of private property rights. It is water.

Mrs. SCHROEDER. I do not profess to be a water lawyer, I only figure that the Colorado Water Congress who follows this very carefully, would interpret it differently, and feels that because our State declares a water right to be a property right under this Federal law, if we did anything that would impact upon someone's property right it would be a taking. And therefore, we really could mess up the whole thing.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has expired.

(At the request of Mr. VENTO and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 3 additional minutes.)

Mrs. SCHROEDER. I thank the gentleman from Minnesota.

So I am reading what people who have a lot more expertise in this than I have said at this Water Congress, and I think we should take it very seriously.

Mr. ALLARD. Mr. Chairman, will the gentlewoman yield on that point?

Mrs. SCHROEDER. I am happy to yield to the gentleman from Colorado.

Mr. ALLARD. The Colorado Water Congress sets a policy and makes it available to all of our offices, and I have not seen any poll stating, and I do not believe one has been put out from the Colorado Water Congress that says this particular bill is going to interfere with interstate commerce or the Colorado River Compact, and certainly I would suspect that they would probably very strongly support what is in this bill.

Mr. VENTO. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I am delighted to yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Chairman, I appreciate the gentlewoman yielding. I think the recognition here of course in terms of Colorado's rights in many instances is to appropriate water, that they are actually appropriating this water, but somehow in terms of the Federal Government being involved, for instance if we reserved water rights under the McCarran Act, we could in essence by reserving those particular rights for whatever reason, whether it is a forest or public domain lands or wilderness, which under court interpretation has reserved water rights, then we would in essence by exercising that designation of land, by exercising that water right we would be taking water again for these other purposes which in essence could result in the overappropriation being compounded. And that in essence, then, is forcing the Federal Government, you are backing the Federal Government into this by putting us on line in terms of this particular issue where we have reserved water rights under the McCarran Act, so this makes us pay again for those particular, for that water or property which is the property I might add of the people of this country that are the owners in essence of these public lands, of the forests, of these public domain lands.

So the gentlewoman is exactly right. This is a dilemma; there is not an answer, there is not a question. You are putting in this particular legislation specifically changing language in terms of takings. Also we are not talking about takings here, we are redefining regulation and what constitutes a compensatable property, a compensatable sum under law. That is what is being done in this particular legislation. We are not talking about takings because that is a much higher threshold, and there obviously then and admittedly there is significant effort there to try to change that.

Mr. TAUZIN. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, let me reassert two facts that I hope should be abundantly clear. First of all, the basis on which we amend it as it comes out of committee does not affect State actions.

□ 1315

To take water rights away from people, local actions to do that are not covered by this bill. So the State of Colorado, if it wants to take water away from people, is going to have to answer in some other court regarding that action.

Mrs. SCHROEDER. This is under a Federal law. This is the Colorado Compact that is enforced federally, so that does not hold.

Mr. TAUZIN. If the gentlewoman will yield further, the second point, as long as the Federal Government keeps its contract with the owners of that water, as long as the Federal Government does not violate the contract, whatever the State does is something else, as long as the Federal Government keeps the contract, there is no trigger in this bill for compensation.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has again expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 2 additional minutes.)

Mrs. SCHROEDER. Mr. Chairman, the problem is that everything changes, and they cannot negotiate anything. They cannot negotiate anything for change, because it would become a taking.

Furthermore, because the water right is considered a property right, if the individual decided to sell their water to another State, this could be very, very critical.

Let me just say, I think this is all very confusing, and I am reading out of the Denver Post where it says spokesmen for Colorado, Wyoming, New Mexico, and Arizona held that the 73-year-old Colorado Water Compact could break down effectively if private water marketing is allowed. This could happen, they said, by people being able to do this, and the Federal Government being stuck by the taking.

I just want to finish my statement, if you do not mind. There was a wonderful article today in Roll Call that I think summarizes where we are. They said that we are moving to change these things so rapidly that it is like standing at the end of a conveyor belt with cream pies flying at you, and I think one of the reasons that no one is quite sure is we are changing things that have been around for a very long time. We are doing it so rapidly that we are all trying to make our best guesstimates.

This, I think, is really very frightening, because water is life out where we live. That is why I am very concerned about the gentleman including the Bureau of Reclamation and getting the Federal Government in under that.

Has the gentleman from Louisiana thought at all about taking that out?

Mr. TAUZIN. If the gentlewoman will yield further, first of all, the bill as it comes out of committee includes this and all Federal agencies and all Federal acts. We are limiting under this amendment to these acts, so the bill contains the total regulatory effect.

Second, the gentlewoman should not be concerned that anyone cannot renegotiate contracts under this bill. You are perfectly entitled in Colorado, Louisiana, anywhere else to renegotiate contracts with the Federal Government. This bill only says if the contract is violated, invalidated by the Federal Government, and that diminishes someone's rights.

Mr. ALLARD. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to rise in favor of the Tauzin amendment.

I think it is a good amendment. I think it moves us in the right direction as far as protecting private property rights. I think it is vital to the interests of the State of Colorado, because by recognizing water as a private property right, as the States do, we are saying to the Federal agencies that the States are in a better position to determine where one person's right begins and where another one ends, and we have, through Colorado water law and the doctrine of prior appropriations that has been adopted by most of the Western States, I think all of the Western States, and it recognizes there is a property right, and that that property right is going to be measured in a court. They take it to a water court in the States, and they determine exactly where one person's right begins and the other one ends.

And if nothing else, this amendment not only preserves private property ownership, but also recognizes the State's role, which is very important when we get into private property issues, particularly as they apply to water.

So I would just have to bring up a situation in the State of Colorado where we have cities, as well as individuals, but I will refer to cities who have purchased water or they have made, gained, water through annexation agreements, and this water was to be used for the purposes within the city, whether it is for open-space development or park development or municipal water supply, for drinking water or manufacturing or whatever. After the States had acquired this water, then the Federal Government changed the rules. They changed the rules and said all of a sudden, instead of automatically renewing permits that allowed the water to be transferred through the national forest, they were going to blackmail these cities to give them water for doing that, and it is the changing of the rules, not from private property, but by the agencies and traditionally they are doing that, and what they were requiring was 30 to 40 percent of the water would have to be left in that stream in a dry year.

And where were they going to get that water? They were going to get it from the cities who paid for it. They were going to get it from individuals who paid for it. It was obviously a taking, and that is the kind of problem that this particular amendment, as I see it, is trying to address our concerns, and so I think it is really very important.

The other thing I would like to make a point on, the Colorado Water Congress, they are a policy advisory board in the State, separate from State government. Usually when they take a position on water policy, we get a written comment on it. Now, there is not one individual that speaks for that particular congress. It is usually done by a lot of consultation.

As far as I know, they have made no recommendations on action on this particular piece of legislation or this water language. I would suspect that if they reviewed this water language, because it is made up of a lot of cities of which I brought the situation up as well as private property owners, that they would support the language that is on the floor of the House today.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. ALLARD. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. I think one of the reasons that they have not come up with a statement, and it was in the paper that they were debating it, is because this has all come at them rather fast, but I have another question.

Is the gentleman at all concerned that the Tauzin amendment strikes the beginning of section 4 in the bill on page 2 which says no compensation can be made under this act if the use limited by the Federal agency is prescribed under the law of the State in which the property is located? Does that not concern the gentleman vis-a-vis what we have been talking about? And I wonder why the gentleman from Louisiana did not strike that?

Mr. ALLARD. Reclaiming my time, I yield to the gentleman from Louisiana to explain that at this point.

Mr. TAUZIN. I will try to address that again as I tried to earlier.

The concern is now we are limiting the bill to these areas of wetlands takings and ESA takings or actions of the agencies here to deprive people of water rights, that to allow the State to duplicate the Federal proscription and, therefore, violate the person's right to receive compensation by simply duplicating the same proscription would, in fact, not be appropriate. The person who has lost his property, whose rights to use it, whose value is diminished because of some Federal statute should not lose the right to compensation just because the State has also duplicated that prohibition. Only when the State has other reasons to prohibit it should that occur.

Ms. DANNER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the opportunity is before us to seize the moment and restore the faith of millions of Americans through passage of the Tauzin-Laughlin-Fields-Danner-Peterson amendment to the Private Property Protection Act.

Surely our Government does not expect the American people to abandon their rights on an issue that was decided when our Constitution was conceived over 200 years ago. A government whose very conception was founded upon empowering words such as life, liberty, and the pursuit of happiness.

We must avail ourselves of every opportunity to recognize and understand not just the text of our Constitution, but how remarkable that document is—it's a bold and masterful plan for governance and individual freedom.

One of the basic tenets of our Constitution and a principle upon which our country is founded is an individual's right to own property.

In addition, pursuant to ensuring that right is not violated, the fifth amendment provides that the Government must justly compensate private property owners for property taken for public purposes.

Certainly, the past two decades are evidence of where our Government has gone astray. In this day of mounting and excessive Government regulation, all too often, private property owners lose the economic use of their property.

This amendment to H.R. 925 would further solidify the private property rights of millions of Americans across the country.

In situations where the Government regulates to the point that the property owner may not use his property, or that a portion of the property is devalued by 10 percent or more, the property owner must be justly compensated.

I urge my colleagues to support the Tauzin-Laughlin-Fields-Danner-Peterson amendment to H.R. 925.

Mr. TAUZIN. Mr. Chairman, will the gentlewoman yield?

Ms. DANNER. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentlewoman for yielding.

Mr. Chairman, I received a letter today that I want to read to the House. It is a letter from a young man named Patrick Becnel:

> My name is Patrick R. Becnel. I am twenty-eight years old and married with two children. I am a life long resident of Plaquemines Parish and a sixth generation citrus grower in the Jesuit Bend area.
>
> I have recently run into a serious problem in obtaining continued financing for my farm operation. The nature of this problem has been a letter from the Dept. of Corps. of Engineers. A wetland designation on a portion of my farming operation. (see attached) And there is a map.
>
> In an effort to obtain additional necessary financing the bank required an appraisal on my farming operation. The appraiser stated that due to a letter dated in November 1991, which is now expired, no value would be allocated to the portion of land subject to wetlands determination. This land is within the Plaquemines Parish maintained hurricane protection levee.
>
> We desperately and urgently request your assistance in this matter. My farming operation, which is my livelihood, is in serious jeopardy due to this situation.

This is typical of what we are debating here today, Government regulations that tell a young farmer, 28 years old, married with two children, that he can no longer get financing on his farm because of a letter sent to him by the Corps of Engineers in 1991, a letter expired even, that designated a portion of his land as a wetland. If we do not give this farmer and other Americans some redress, not here in Washington in the Court of Claims, not at the Supreme Court, but at home in an arbitration proceeding that gives him his rights, shame on us.

I thank the gentlewoman very much for yielding.

Mr. THOMAS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I had not planned on speaking on this amendment, but in listening to the discussion about California and somebody's re-creation of recent history about what happened in this House, I felt compelled to come down here and at least try to give a little balance to the CONGRESSIONAL RECORD that was being made by people who were perhaps folks who have not paid attention to what has been going on over the last several years, protesting a little bit too much, I think, about an amendment that says if the Federal Government violates a contract that it made with someone, the Federal Government is in the wrong.

And there was a discussion about the fact that the California water project, the Central Valley project, had been voted on by this House, and that an overwhelming bipartisan majority had already settled that question. And why in the world are we bringing it up again?

Now, one simple statement was missing in that entire dialog about how horrible it is that the Federal Government is entering into a contract with a private party, that the Federal Government has to honor that contract.

The changes that were made in the California water project law did not stand alone. We did not vote it up or down. It was a classic example of the arrogance and the way in which legislation had been managed for years by the now minority that was the majority at the time. When we decided the California water question, they rolled into the package the Central Utah project. The gentleman from Utah [Mr. HANSEN] stood here and kind of said, "I can't do anything about it," to this gentleman from California. "My project would be in jeopardy."

The Central Arizona project was rolled into that little package. The Buffalo Bill Dam in Wyoming was rolled into that package. A water project in New Mexico was rolled in; the San Luis Valley project in Colorado was rolled in; the Mid-Dakota project was rolled in; the Lake Andrews Wagner project in South Dakota was rolled in.

Are you beginning to get the picture? There was not a vote on the California project. There was a vote on the Mountain Park Master Conservancy District in Oklahoma; there was a vote on the Cedar Bluff project in Kansas. There was an Indian rights provision. Texas was involved with the Lake Meredith salinity control measure, and on and on and on, the classic way they were able to get their way by creating an omnibus package that would put a number of people in jeopardy if they would not do the bidding of the former chairmen of the committees and subcommittees in the 103d Congress.

So when somebody stands in this well and tells you that the House voted on the California project, I want the RECORD to be straight on that, and when someone stands in the well and simply cannot understand either the logic of the amendment offered by the gentleman from Louisiana or the underlying amendment, the substitute offered by the gentleman from Florida [Mr. CANADY], I will tell you why they cannot understand it.

□ 1330

They do not understand the logic of the sanctity of contract. We had an amendment to the Constitution, the 11th amendment, over this very question as to whether or not Government can abrogate its agreement under a contract.

The fact of the matter is the Government has been abrogating its agreements over and over again, aided and abetted by the former majority.

This is a slight midcourse correction. It is an attempt to tell people who enter in good faith into a contract with the Federal Government that, in fact, we are going to make sure the Federal Government keeps its word, and, if it does not, you will be compensated. That is simply the totality of this discussion.

So when you listen to folks say, "We don't understand why this is going on. We had a vote on the floor of the House," I want the record to show and for all of us to remember what used to go on around here. It is not going on around here anymore.

Mr. VENTO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the bill, H.R. 925, and the Canady-Tauzin amendment, which I believe is misguided legislation and amendments.

The bill, if enacted into law, will result in the biggest taxpayer bailout ever. This bill will dwarf the cost of things like the S&L bailout and will, in essence, establish a new welfare entitlement for land speculators, bankrupt developers, and other want-to-be entrepreneurs seeking to make a quick buck off the Federal Government.

I appreciate my colleagues' attempts to improve this deficient legislation, but alas they fall far short of sound policy and law.

During today's debate we continue to hear the personal stories of hardships caused by the enforcement of laws on individual landowners. I do not disagree that at times, of course, law and regulation have an uneven impact, consequences that are unfair. However, the solution is not in a radical rewrite of what constitutes a regulatory compensation of property rights. After all, the Constitution needs, and especially Thomas Jefferson needs, little help from most of us. These are simply not a panacea cure-all to Government regulatory problems, in specific laws, correcting the basic shortfall or even the specific shortfalls outlined in the Tauzin amendment. Property rights under the U.S. Constitution have protection that is significantly different from what is being sought in this policy proposed on the House floor today.

I might say, incidentally, the rate at which this body is attempting to change the Constitution, the fifth amendment could well be on its way to being repealed at this point.

Under the auspices of this amendment, a process already exists to reimburse individuals and companies for property right takings, and ample legal history is in place for the courts to act.

I would also point out that the courts have not been hesitant to act to protect individuals' rights. However, this bill, with its lowered and almost nonexistent standards to limit regulations and to make the Federal Government pay to govern, now declares open season on taxpayers' pocketbooks to enrich passive logical limitation on private land, to pay for bad business deals and speculative disasters, for the failed developer. The American taxpayer will be the sucker of last resort and the source of funds.

Building homes on swampland? Just get denied a permit, and you can stick the taxpayer with the bill. Is your riverboat sinking? Seek a dock permit, get denied, and you have hit the jackpot. A new way to win at the gaming business. Who else wins? Some of this is for big business. Armed with the threat of massive Federal taxpayer payoffs and a corps of lawyers, big business will be able to blackmail most agencies to yield to their will. Who loses? Obviously, the public. Either we pay with our tax dollars or the surrendering of the Federal Government's ability to enforce crucial environmental laws.

Mr. Chairman, we should reject this proposal in total. This bill throws out over 200 years of judicial history and protections for the individual property owner and sets in place a radical and ill-conceived concept. We do not know how this process will work. We do not know how much this bill will cost. But, apparently, the advocates will not let those serious questions and costs to the taxpayers stand in the way of their ideological political goals.

The question with regard to appraisals, the 10-percent difference in terms of a piece of property's land appraisal, is not unusual. You can get that by just asking two appraisers and then blame the difference on the government, and the government has to pay.

We had an example here of problems with the water rights. The legislation is designed to deal with specific problems with these laws, whether they be reclamation laws, the Endangered Species Act, or the other provisions that are touched under here, the Forest Planning Management Act or the entire law that governs the public domain, FLPMA. Then we ought to address those particular concerns.

There is a new majority here. These issues ought to be brought up, but what we are doing is superimposing this measure over a portfolio of law. This bill doesn't seek fair treatment, it seeks a change in the rules with regard to how we will govern or deal with these significant issues. This procedure greatly disadvantages those who are trying to regulate and implement the law to stop or delay them. Remember those regulators, those faceless, nameless bureaucrats some demean the public agent represent the people of this country and the implementation of the people's will. The Federal Government is standing in the place of the people in terms of achieving and advancing the various types of public policies. It is very important, I think, to recognize that and look at what happens in terms of the impact in these instances seeking the public good. So this proposal seeks to redefining and changing this procedure.

I might add, Mr. Chairman, there has been some indication about what the costs of this bill would be. In 1992, the gentleman from Louisiana's bill at that time, H.R. 1330, was brought before the Congressional Budget Office for a cost estimate.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. VENTO] has expired.

(By unanimous consent, Mr. VENTO was allowed to proceed for 2 additional minutes.)

Mr. VENTO. I thank the chairman.

Mr. Chairman, Mr. HAYES' bill on wetlands alone, and a bill that I might say had a very restrictive definition of wetlands, an estimate was made. An estimate was made on that particular bill with regard to what would the cost of the implementation of the bill be with regard to his specific provisions. The provisions of the measure were more limited than in the legislation before us.

In the CBO's estimate, excluding Alaska, excluding Hawaii, they estimated that the cost would be $10 billion to $15 billion in terms of cost, just for the provisions that deal with the wetland delineation process in H.R. 1330 of the 102d Congress.

As I said, I believe the restrictions that he had in the 1992 bill were much more limited. In fact, they calculated there were only about 100 million acres of wetlands, but the estimate dealt with touched on 9 million acres. It did not deal with Alaska, the wetlands in Alaska. That was the cost, that is what we were talking about, $10 to $15 billion.

Of course, the issue here is they say this bill does not appropriate, this bill isn't on entitlement according to the sponsors modifications. Mr. CANADY has made an effort to suggest that this would come only from appropriated funds. But how is the agency to carry out the responsibilities they have? In other words, in terms of paying for this, they have to say you take it from the agency, from other projects that they have to pay for it. The agencies entire budget could be wiped out by a single regulation action that would result in compensation being paid.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield to the gentleman.

Mr. TAUZIN. I thank the gentleman for yielding. First of all, let me correct the record. The bill covered endangered species as well as wetlands, No. 1. No. 2——

Mr. VENTO. Does the bill cover the reclamation provisions that the gentleman has?

Mr. TAUZIN. No, it did not.

Mr. VENTO. It did not.

Did the bill cover the public domain lands, the FLPMA lands?

Mr. TAUZIN. I am sorry?

Mr. VENTO. The gentleman's amendment, has the Federal Land Management Practices Act, [FLPMA] did it cover FLPMA?

Mr. TAUZIN. I am trying to tell the gentleman it covered endangered species and wetlands, and it was done at a time when the corps, in the 1989 agreement, was publishing a manual that said 60 percent of the State of Louisiana was going to be considered a wetland.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. VENTO] has again expired.

(By unanimous consent, Mr. VENTO was allowed to proceed for 2 additional minutes.)

Mr. VENTO. Mr. Chairman, I think this is an important discussion which the gentleman and I are having.

Mr. Chairman, I would just point out that in reviewing the letter, it indicated that there were 100 million acres but they only looked at 9 million acres that perhaps were being subject to this, and discounted Alaska and discounted Hawaii. But even under that particular provision, they came up with this figure of $10 to $15 billion.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield.

Mr. TAUZIN. I thank the gentleman.

Mr. Chairman, the amount that the Government is going to have to pay any landowner for taking his property is going to depend mightily on the actions of the agency from this date forward. If the agency wants to declare 60 percent of the State of Louisiana wetlands, I suspect it is going to be a very expensive propostion. If the agency wants to protect real wetlands and wants to protect habitat in circumstances where it does not have to take 21 counties of Texas for a single bird, it is going to have a much lower cost to that agency. It depends on the agencies and their regulatory practices.

Mr. VENTO. I appreciate the gentleman's observation. But I would say I do not think it covered that vast area. In fact, while they obviously identified 100 million acres of wetland, they only estimated 9 million acres of that might be affected, only a portion of that, excluding Alaska and Hawaii.

So this is a very conservative estimate by the CBO.

The point is, what the legislation says is that those dollars were not an entitlement, they must come from the agencies' appropriations.

I would suggest to my colleagues what does that mean, if it is the BLM or the Forest Service? If it is the Forest Service, you would have to completely—they would have no budget left to carry out the responsibility in terms of the law.

So I think the point I am trying to make is that if you want to change these laws, you ought to change it, you ought to deal with the Endangered Species Act or the wetlands laws on the floor.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield further?

Mr. VENTO. I am happy to yield.

Mr. TAUZIN. I thank the gentleman for yielding.

I point out that we purchased Louisiana for this Union for $14.5 million.

Mr. VENTO. And it was worth it, too, I might say.

Mr. TAUZIN. It definitely was. And if the Government wants to repurchase the State of Louisiana for the purpose of the gentleman or any other purposes, we are indeed willing to negotiate, but I suggest you pay a fair price.

Mr. VENTO. Part of that Louisiana Purchase was Minnesota, and I want to personally attest to its value.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. VENTO] has again expired.

(On request of Mr. THOMAS of California and by unanimous consent, Mr. VENTO was allowed to proceed for 1 additional minute.)

Mr. THOMAS. Will the gentleman yield?

Mr. VENTO. I yield to my colleague from California.

Mr. THOMAS. I thank the gentleman for yielding.

Mr. Chairman, in the course of his statement, the gentleman indicated that the amendment of the gentleman from Louisiana [Mr. TAUZIN] would be somewhat in the vicinity of $15 to $30 billion.

Mr. VENTO. If I may reclaim my time, that was only for the wetlands provisions.

Mr. THOMAS. Not this amendment. The previous amendment

Mr. VENTO. No, his amendment actually covered—that was a conservative estimate of just wetland cost of the regulatory compensation——

Mr. THOMAS. So, on a conservative estimate of $15 to $20 billion, but the other side of that coin, I would tell the gentleman, is that actions by this Government in regard to people who hold property put a burden on those private sector individuals to the tune of $15 to $20 billion. There was no discussion about priorities in terms of Government decisions. That is the problem.

Mr. VENTO. Reclaiming my time, I would just point out that the issue is, of course—the gentleman is redefining what value is. He is creating that value in the legislation, it is questionable whether it exists in reality.

Mr. TAYLOR of Mississippi. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, in my office I have a small bulldog that was awarded to me by a group for being a defender of the treasury.

I try as often as I can to try to save the taxpayers some money. I am trying to do that today by getting a clarification, hopefully, in law, so that this bill that is well-intended does not become the scam of 1995.

I would point out that the illustrations that many of you have given as far as wetland problems are real, and they have to be addressed, and I hope this bill will do that.

But I also see, in addressing those problems, the potential for multibillion-dollar losses to our country that I think have to be addressed.

This is an area of the district that I represent that adjoins Louisiana; it is a map of the Pearl River. The gentleman from Louisiana [Mr. LIVINGSTON's], district is right over here. It divides the State of Mississippi in the area that I represent.

As you can see, it is pretty hard to distinguish between the water and the land. This is a U.S. Geological Survey map. The reason for that is, when you get there, it is pretty hard to distinguish between the water and the land. It is a coastal marsh. With the wind blowing out of the north, you can pretty well walk across with a good pair of waders.

☐ 1345

But if the wind is blowing out of the south during the springtime, the only way you are going to get across is by boat. It is a true wetland.

Now, what I have trouble with, and I hope the gentleman from Florida [Mr. CANADY] can explain this to me, is if someone buys a tract of this, a lot of this land was purchased during the Depression for about 1 dollar an acre. Say someone goes to the owner of the land and there is a wink and a handshake and he says, "I want to pay you $5,000 per acre for that land because I want to put a shopping center there." And then he takes a napkin and draws on the back of that napkin and goes down to the nearest Corps of Engineers and says, "This is the plan for my shopping center. I want to put it right here, elevation, six inches." The Corps of Engineers is going to say—

> There is no way on earth you can do that. It is the mouth of the Pearl River. Every spring it is going to flood, and every time there is a wind out of the south, it is going to flood. You will bankrupt the Federal flood insurance program. You can't build there.

Under the provisions of this bill as I read them, the person could then sue the Federal Government for that $5,000 an acre he paid for it. Now, you and I may look at it and say he was foolish to pay $5,000 an acre. But when you consider the highest priced property in the State of Florida is right along the canals that used to be marshes, and some of the highest priced property throughout our country is waterfront property, that person could turn around and make a fairly intelligent argument that this is right here on the Mississippi Sound, it is waterfront property, and I ought to be entitled to my $5,000.

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Florida. Please tell me how we are going to keep people from abusing this bill?

Mr. CANADY of Florida. We are going to do that, because we grant them the right to compensation for the diminution in the fair market value of their property. What I am telling you is $5,000 in that case would be a sham. That is not the fair market value.

Mr. TAYLOR of Mississippi. I would ask the gentleman from Florida [Mr. CANADY] where is fair market value defined in this bill?

Mr. CANADY of Florida. That is a concept that is well defined in the law. We do not need a definition of that. That is defined in condemnation law already. That is there. There is no doubt about that. And the kind of circumstances you are describing are not going to result in compensation. I understand your concern, but I think it is not well founded.

Mr. TAYLOR of Mississippi. Mr. Chairman, reclaiming my time, let me ask the gentleman this: Is it fair market value if the 1 dollar an acre that the man bought it for during the Depression, is it fair market value for the $5,000 an acre that the man from the Midwest and does not know what a coastal marsh is worth, or he in good faith paid $5,000, or is it $50,000 an acre that it would be worth if he could build the shopping center? I would ask the gentleman from Florida [Mr. CANADY], with a rule of law, why are we so afraid to define something and why do not we define it in this bill?

Mr. CANADY of Florida. Mr. Chairman, if the gentleman will yield further, let me say this: I do not think anyone is afraid. No one is afraid to define this. It is already well-defined in the law and it is not going to cover the circumstances you are talking about.

This is an open amendatory process. If the gentleman has an amendment, that is something the House would consider. But I do not believe it is necessary, because that is a concept that is well-defined in the case law.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, the gentleman asked a very legitimate question, how do you determine the fair market value before and after the regulatory action takes place on the property. The courts have well-settled this issue. As the gentleman has indicated, if the gentleman wishes to incorporate that in the bill, that is fine. But the courts have held, and the arbitration proceeding called for in this act would follow those decisions, and I read from Florida Rock,

> The uncontroverted evidence of an active real estate market, you look at what a willing buyer, willing seller requirement in that real estate market produces as the fair market value on the date that the regulations took place.

If willing buyers and sellers are really out in those areas spending $5,000 an acre, I would be greatly surprised, and so would you. You know that is a sham price, so would the arbitrator. He would not award such a ridiculous amount.

The CHAIRMAN. The time of the gentleman from Mississippi [Mr. TAYLOR] has expired.

(By unanimous consent, Mr. TAYLOR of Mississippi was allowed to proceed for 4 additional minutes.)

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, what would happen would be that the individual who owned the property would go and get himself some kind of an assessor who would assay the value of the property. That individual would fix a value of the property after it was developed and before it was developed, a highly speculative process on which you could get a number of different people who would assess the value of that property quite differently depending on the assumptions they made and depending on a large number of other things, including highly speculative judgments as to the value of that property if it were in fact improved.

So what a fellow really would do under this legislation is to run in with two different estimates from a surveyor or an appraiser who would give him the best selection of choices that he felt would best enable him to come in and sue the Federal Government or to make claims against the Federal Government under this particular legislation, with consequences that the cost to the Federal Government would be ballooned enormously. The Office of Management and Budget says it would cost literally billions and billions of dollars, in response to a request that I made to them.

Am I correct in my assumption?

Mr. TAYLOR of Mississippi. Mr. Chairman, reclaiming my time, I would say to the gentleman from Michigan [Mr. DINGELL], it is well known I am not an attorney but I share your feelings that a clever attorney could certainly bill the United States for a lot of money if we do not define fair market value as being fair market value at the time of purchase, fair market value of the potential of the property. We have to have a definition of what fair market value will be and at what time it is estimated.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I raised this before on Agriculture. It has always been my understanding in a variety of capacities at State and local governments as well as the Federal that what they talk about is appraising the value of property at the highest and best use. That is, whatever you can legally develop the property to be at the time that you had it and before the regulations that you were challenged under, that is what sets the value of the property. Any subsequent regulation which restricted the way you could use the property in fact devalues the property.

Mr. TAYLOR of Mississippi. Reclaiming my time and addressing the author of this measure, the sponsor of this measure, would you accept that as the definition of fair market value? The fair market value at the time that it was purchased?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, we will be happy to work with the gentleman on an amendment. I am happy to look at that language. I do not want to get wedded to a specific language here. But we want it to be fair market value. If we can come up with a definition that we think is consistent with the case law on that, we will be happy to work with you.

Mr. TAYLOR of Mississippi. I would say to the gentleman, the reason I do this, and I do it in good faith, is that I have met with several members of the staff that helped you draft this, and came up with several different interpretations of what would really happen under these scenarios.

These are intelligent people. I have got to believe that intelligent lawyers would be the same way and intelligent jurors would be the same way. That generally means that given that uncertainty, the liability to the American taxpayer would be phenomenal, and we need to prevent that.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Louisiana.

Mr. TAUZIN. The gentleman's concern is a valid one. The intent of the bill is that the fair market value is the fair market value at the time the regulation takes place as opposed to what it is worth once the regulation imposes a use restriction.

Now, that is generally defined in compensation cases in areas where the Government shows up to take your land and build a road. It does not look at what your grandfather paid for it. It looks at what the value was on the day they showed up to buy it for a road.

The courts have said for example, I would say to the gentleman from Mississippi [Mr. TAYLOR], that aberrational prices, the one you just cited, aberrational means outside the norm established by general activity. The court does not consider that fair market value. Neither have the appraisers under general law that applies to condemnation proceedings.

So what I am telling the gentleman is the intent is to do exactly what happens in a general condemnation proceeding, look at the value right before the regulation is prescribed, and the value right after the use is denied.

The CHAIRMAN. The time of the gentleman from Mississippi [Mr. TAYLOR] has expired.

(By unanimous consent Mr. TAYLOR of Mississippi was allowed to proceed for 3 additional minutes.)

Mr. TAYLOR of Mississippi. Mr. Chairman, I want to thank the sponsor of the measure and the sponsor of the amendment. I hope I have as a result of this colloquy the word, as a gentleman, of the gentleman from Florida [Mr. CANADY], that before the end of this day, before the passage of this measure, that we will do everything humanly possible to have a definition of fair market value included in this measure.

Mr. CANADY of Florida. I give you my assurance we will work with you to develop such a definition.

Ms. FURSE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in strong opposition to this amendment, and do that on behalf of the Northwest salmon fishing industry. I believe that while we talk about private property protection, we should also provide that protection to small businesses and local economies that are dependent on healthy natural resources.

I have heard statements today that the American people support this legislation. Well, I do not think that is quite true. The American people in poll after poll have said that they support protection of water and clean air, and they support legislation that does that.

Mr. Chairman, as recently as 1988, the salmon fishing industry in the Northwest contributed more than $1 billion a year to our economy, 60,000 jobs. This includes men and women who fish commercially, sports fishers, charter boat owners, hundreds of small businesses that sell to that industry.

But unfortunately, decades of habitat destruction through logging, mining, grazing and shoreline development, dam building, irrigation diversions, have sent our valuable salmon populations plummeting toward extinction.

Last year, for the very first time in history, the ocean salmon fishery was closed on the coasts of Washington and Oregon. Our legendary spring chinook fishery has been closed in the Columbia River. What has the economic impact been? A 42-percent decline in America salmon-related jobs. A 46-percent decline in overall salmon-related economic output.

I absolutely cannot understand how any Northwest Member of this House could support this legislation in opposition to the direct economic interests of their constituents. Recently, I received a piece of literature from the Pacific Companies Federation of Fishermen's Associations. I will include that in the RECORD. I would like to read a few excerpts from it.

> Without a strong Endangered Species Act, the only available remedy for the species recovery is closing down the fishery. And they say the ESA is not the enemy, it is only the messenger. Listing a species is like dialing 911 when you need an ambulance. It should be used rarely, but where needed, it is nice to have.

Finally they say about the importance of wetlands—.

> All around the country our industry is utterly dependent on species which themselves require healthy watersheds and estuaries for their most critical life cycle. Yet all this has been put at risk by the continuing destruction of wetlands and watersheds for those species dependent upon them for their very existence.

What H.R. 925 and this amendment does, it would make our already devastated fishing communities pay twice. They have already paid once with their livelihoods, because upstream property owners have overlogged or they have closed the streams to fish or they have developed riparian wetlands. But now we are asking them to pay again, to open up their wallets and pay again, to compensate landowners when the Federal Government has attempted to protect what little is left of a healthy fishery habitat.

Why should these hard working American taxpayers have to compensate corporate polluters and developers? They have wiped out our small businesses and our resource-based industries.

It is the cumulative impact, Mr. Chairman, of hundreds of private property owners acting in their own self interests that jeopardizes the public interest in such things as clean water and healthy fisheries.

Yes, we should compensate when there is a direct taking, but the American taxpayer should not have to pay landowners not to pollute or to degrade our public resources, and water is a public resource.

I am a property owner myself, but I believe that although I have a private property right, I have a public property duty. If you care, if any of the Members here care about the American fishing industry, they should vote no on this amendment. This is not a takings bill, it is a corporate takeover bill.

Mr. CUNNINGHAM. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I do not plan on taking the full 5 minutes. But the gentlewoman talked about the salmon in Washington. I went all the way through campaigning in Washington and looked at some of the dams and looked at the problems they had on even the impellers of their little edge in there that they were saying were killing salmon, the small ones going down. Part of the problem is recording. You release fingerlings. They go out to sea, and then they come back, and they actually measure how many salmon come back up river, not how many the sharks get or anything else, but the actual number that get back.

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They also wanted to take and build this big venturi tube because they had a plan for $100 million to circumvent the dams up there that had no scientific basis, and it was going to cost them $100 million. The particular guy that runs the dam said, OK, we are going to save fish. They found out that there is this fish called a squawfish that eat their own body weight each day. Instead of $100 million, he took a group of high school kids for the summer and caught squawfish and saved about 90 percent of the fingerlings that went down and saved, this is big government's answer versus entrepreneurship.

They also want to take out a lot of the dams in Washington that have recreational value and storage of water and those kind of programs. But I look at, the President has just said, which I agree with, he wants to take a look, instead of just totally doing away with affirmative action. I think that is a reasonable view. But I think if you look at the reasons we have clean air, clean water, they have good purposes. But in many cases, those purposes have gone run amok. Same thing with the endangered species act and the wetlands.

I think that a reevaluation is what we are asking for, an economic impact where we do protect property rights of individual citizens in this country. Those are reasonable requests. But unfortunately, Mr. Chairman, there is many, many on the other side of the aisle, that do not want the reasonableness in any of those particular acts. They want to use it as a weapon, as a tool against our private citizens.

I know in the California desert plan, the property rights, and there was a portion of it that said that if you own property, they could take it and the Government would put you on a list because they are in arrears so much of paying for that taking. What happens is you could not build or improve your land over. You may be on there 10 years. The government then comes in and says, hey, now I want to give you fair market value after your land has been depreciated so much. That is not fair, Mr. Chairman.

I look in California at a fire that we had and hundreds of homes were burned. And one person said, I am going to grade regardless of what they tell me to save gnatcatchers because the brush, there is going to be a fire. That individual graded. The ones that were not allowed to are stuck with the law, their houses burned down.

I look in New Mexico at a young lad that was lost for 3 days in the wilderness and because it was a wilderness area, they would not let the helicopter land to pick up a child. He spent an extra night lost in the wilderness because a helicopter could not land in the wilderness.

I would think that Members would agree there are too many of these kinds of happenings, and we are looking for reasonableness, not extreme to where the people that want to concrete over the world or those that want to use the environmental issues as a leverage and as a weapon. I think that is the direction it is going.

Your take a look, look at the Colorado slag and what history has left. I mean that is a disaster. When you talk about property rights, miners have taken away our property rights to enjoy much of Colorado by the environmental damage they did.

Look at the Great Lakes. They cleaned that up. I look at the striper salmon on the eastern shore. I talked to my friend, the gentleman from Massachusetts [Mr. STUDDS]. I said, a long time ago I probably would have been one of those that fought against it; I would have been wrong, to my former chairman. I told him that in my long quest to become an environmentalist. He stated, "Well, DUKE, you've got a long way to go."

There are good things that we have done with all of these acts, but on the same measure, I think we need to have a reasonable approach to them. I do not think that is asking too much.

Mr. STENHOLM. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, about 2 hours ago, I came to the floor very angry. I had received what I perceived to be a very threatening phone call as a result of my support of this legislation from what I consider the primary reason why we are there today, and the gentleman from California was just speaking to the fact that most of us would like to see a reasonableness applied to the laws that affected our land, whether it be the environment, whether it be the Endangered Species Act, whether it be the rights of private property owners. We would like to see a reasonableness. But that is not what we have been seeing.

Just as I listened, with a great amount of interest and certain support of the eloquence in regard to the protection of the American eagle or the salmon, all very good stories and certainly not the intent of this Member in being part of seeing something that would undo those laws that have protected in a commonsense way, if that is the way it has been done, but I, too, could sit up and stand up today and talk about some unreasonable acts.

An act in my district that cost taxpayers over $3.5 million in the protection of a water snake when all we were trying to do was build him a lake.

These are the kinds of dumb things that we have had imposed upon us by the elitists of the environmental community who choose to overlook the fundamental reason why we are here today. That is the fifth amendment of the Constitution. If you are going to take someone's property, the Constitution guarantees compensation, period. But we have had an interpretation of current laws to such a degree that there are those among us who believe their cause, and that cause often is a snake or a fish or a bird or some individual very important cause to an individual or a group of individuals, that believe that their opinion supersedes the right of an individual property owner. That is why we are here today.

We have heard a lot of talk about the budget. I am very interested in that. This bill will not cost one dime. It will not cost one dime, because what it will do, it will cause us to begin to look realistically at the cost of that which we are about to impose by the various agencies. And I suspect that the reasonableness that the gentleman from California just spoke about, and this Member certainly believes in, that we will find reasonable solutions, because I find that it will be the rare exception of a property owner that will deny a reasonable application of protection for the environment or protection for an endangered species that is reasonable and can be arrived at in the same manner in which those on the other side continue to argue we will not do under this law.

This bill does not pay polluters to pollute. This legislation, in fact, it specifically says, regarding the health and safety of this country, "no compensation shall be made under this Act with respect to an agency action, the primary purpose of which is to prevent an identifiable hazard to public health or safety." There is a lot of red herrings out here, and that perhaps is a bad example to use today. But basically and simply, what we are talking about is returning to the actual application of the Constitution of the United States in saying that for whatever cause you are going to take my property, you must compensate me for it. Primarily we should start by saying it is in the public interest that we do certain things and have reasonable discussions and we would never even be here today.

I rise, again, in strong support of the Tauzin amendment. I believe that it will actually do what the opponents say it will not do, it will actually protect the environment and protect the endangered species in a way in which no one has even thought of as yet.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. STENHOLM. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Just to point out that one of the reasons people oppose this is, they say the American public can not be in support of this. Let me point out, Nations Business magazine just did a poll. The question was, should the Federal Government compensate owners when private property is restricted for environmental reasons? Do you know how many people responded yes? Ninety-two percent of Americans responding in that poll said yes. We ought to say yes today.

Mrs. CHENOWETH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to respond to some of the comments that were made by the gentlewoman from Oregon because I, too, come from the Northwest. My State has been severely impacted by the listing of the redfish lake sockeye salmon in the summer and fall Chinook salmon. My State has had a great fall as far as its economic abilities because of the listing of the endangered species.

One of the problems that we are seeking develop now is the fact that the issue really is not the fish. The issue really is control of the land, control of the land without due compensation and just compensation and due process.

When we look at the health of the fish, we look at the health of the Pacific salmon and the fact that through agency research, we were able to use a technique called chemical imprinting, and actually take the Pacific salmon and place the Pacific salmon, in spite of his anadromous fish instincts and the desire to spawn upstream and be able to reprogram the fish's brain and natural instinct through a process of chemical imprinting so we took the Pacific salmon and placed him in the Great Lakes. And right now some of the best salmon fishing can be found in the Great Lakes, an area that was once considered polluted.

In addition, Mr. Chairman, in the Great Lakes, they are now suffering, because the salmon has been so successful, a decline of the whitefish because the salmon is now competing for the environmental space.

The salmon runs and the anadromous fish runs in the great Northwest are a product of many things, least of which is the product of the Marine Mammal Protection Act. And because this body, several years ago, decided to pass the Marine Mammal Protection Act, it has thrown out of kilter the balance between marine mammals and fish. It is another product of the El Niño, which is a warming trend in the Pacific Ocean.

And so if we, as a body, could simply let science be free to do what science is best able to do, we could improve the fish.

Now, with regard to the taking of property, I rise in strong support of the Tauzin amendment. The value of property and fair market value is established by the dynamics of the market system. There are comparables that can be used on developed property or the potential of developed property, and there are appraisers who are licensed by the State to make sure that their appraisals will live up to the standards the State has imposed on them. They are trustworthy appraisers, and MIA appraisers can be depended upon.

So this whole concept of compensating people for the taking of their property should be one to slow down the Federal Government from taking of our property because, Mr. Chairman, if we do not stop this, this Nation will face a recession of great magnitude, because all wealth is acquired from the land. Unless we are able to take our creative energies and apply it to the land and bring out original wealth, this Nation will face economically.

Right now, Mr. Chairman, approximately 40 percent of our land base is under the control of the Federal Government. We cannot afford, as a nation, to have anymore under it.

I strongly support the Tauzin amendment.

Mrs. LINCOLN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, in representing a totally rural district in eastern Arkansas, I certainly have realized how critical private property rights are. I was raised in a seventh generation farm family in Arkansas Mississippi River Delta. And as a farmer, my father has taught me not only a tremendous reverence for land conservation but also a very big respect for fairness and equity in property rights.

In the past years we have seen some of our individual property rights diminished. I think that the efforts today in trying to restore that, those property rights as well as the individual constituency respect in the Federal Government and what we are here to do.

We see in this bill the efforts to put fairness back into our constituents' property rights. That is a very important issue. But also there is another issue. That is the fairness in terms of the financial implications this may have to our constituents as taxpayers.

I allude to a little bit of what my colleague from Mississippi [Mr. TAYLOR] was talking about. I would like to engage the gentleman from Florida [Mr. CANADY] and/or the gentleman from Louisiana [Mr. TAUZIN] in a colloquy on that issue.

I would first like to applaud them on working hard to make this bill and their efforts on behalf of our constituents in private property rights a much better bill, something that we can all be proud of.

I would like to engage them in the meaning of the fair market value as it is set forth in this bill and certainly in the amendment.

I would like to certainly qualify if it is your view, in terms of the fair market value, that it means the present day fair market value and not the potential market value of the real property in question?

Mr. CANADY of Florida. Mr. Chairman, will the gentlewoman yield?

Mrs. LINCOLN. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, the gentlewoman is absolutely correct in that regard.

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Mr. TAUZIN. Mr. Chairman, will the gentlewoman yield?

Mrs. LINCOLN. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, the answer is absolutely yes.

Mrs. LINCOLN. I know, for example, in many of the examples that I have gotten in from my constituents is a piece of property that perhaps contains the wetlands. For those of us living on the Mississippi River, that is a great deal.

Would it be valued according to the present use of the land surrounding the property, like farming, or, certainly, the residential purposes? It would not be valued according to the potential use of the land, like developing a golf course or resort area or things like that?

In terms of urban areas, a piece of land located in New York City, certainly that would be valued as is, but not according to the potential use of constructing a skyscraper or something other than that, is that correct?

Mr. CANADY of Florida. If the gentlewoman will yield further, that is absolutely right. In determining the value of property, the circumstances surrounding the property are absolutely essential to coming to the fair market value.

As we indicated before, there is a large body of case law on this subject, and this is something that has been dealt with by the courts repeatedly. However, we are happy to try to work with the gentleman from Mississippi [Mr. TAYLOR], as well as the gentlewoman, in developing a definition on that, if that is the will of the House.

Mr. TAUZIN. Mr. Chairman, if the gentlewoman will continue to yield, the case we opened this debate with, Bowles versus the United States of America, was a good example of exactly the question the gentlewoman raises; that is, what is the Government's obligation in regard to paying the fair market value of a piece of property that came under a wetlands regulation.

He had a lot in a subdivision. The Government for 10 years argued that they only owed him the value after they had told him he could not build on it, after they said "You cannot build a house on it."

He argued for a long time "This is a subdivision lot. My neighbors have built houses. If you tell me I cannot build a house, I should get the fair market value as a subdivision lot." He won after 10 years. What we are saying is it is the fair market value before the use regulation restricts the property, as compared to the fair market value after the use restriction. That is it, pure and simple.

If the gentlewoman recalls, we had the same debate on the Desert Protection Act last year. The arguments there were that when an endangered species occurs on a piece of property and it lowers the value of that property, that in that case, the person should be compensated for the value of his property before the endangered species restrictions were imposed upon his property, not after. That is the whole purpose of the act, to compensate him for the damage diminution by the imposition of the restriction.

The gentlewoman is correct, it is not the prospective value after you build houses and buildings and subdivisions, it is the value as an undeveloped piece of property before the regulation is imposed upon it, compared to the value right after.

Mr. WILLIAMS. Mr. Chairman, will the gentlewoman yield?

Mrs. LINCOLN. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, if I could, on the gentlewoman's time, ask the gentleman from Florida [Mr. CANADY] a question.

The gentleman mentioned something to the effect there is plenty of case law in effect. My question is, Mr. Chairman, moving, as I think this legislation does, even with the amendment, from access to the judiciary to a different appeals process entirely, how would the case law crosswalk with it?

The CHAIRMAN. The time of the gentlewoman from Arkansas [Mrs. LINCOLN] has expired.

(By unanimous consent, Mrs. LINCOLN was allowed to proceed for 1 additional minute.)

Mr. CANADY of Florida. Mr. Chairman, will the gentlewoman continue to yield?

Mrs. LINCOLN. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, the arbitrators who would be involved in this process would be governed by the same rules that would apply in the courts.

Mr. WILLIAMS. Mr. Chairman, will the gentlewoman yield further?

Mrs. LINCOLN. I yield to the gentleman from Montana.

Mr. WILLIAMS. That is not required under the act, is it, that the case law be crosswalked to the department as they try to mitigate for the appeals?

Mr. CANADY of Florida. Mr. Chairman, if the gentlewoman will yield further, that is what determines the definition of fair market value. That is the reference for determining fair market value. I do not think there is any question that that body of law that helps determine fair market value would be applicable in this context, as well as in the traditional context.

Mr. WILLIAMS. With congressional intent, and I assume we are making intent clear, Mr. Chairman.

Mrs. LINCOLN. Mr. Chairman, I first applaud the gentleman for working hard to make it a better piece of legislation, and I would encourage them all to work with both myself and the gentleman from Mississippi [Mr. TAYLOR] so we can codify that.

Mr. CALVERT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, there is no district in this Congress that has been more affected by private property right disputes than my district. I represent Riverside County where the Stephens kangaroo rat, several weeds, lizards, and bugs have seized control of the land.

No longer can private citizens use their property the way they wish, for fear of reprisals from the U.S. Fish and Wildlife Service. One notorious example of this occurred early last year when residents were not allowed to disk their property around their homes in order to protect the kangaroo rat.

The consequences of this was disastrous and outright irresponsible. Fires broke out in southern California that destroyed 25,000 acres and 29 homes near Winchester, CA. The irony of that fire is that it destroyed critical habitat area for the species we were supposed to be protecting.

I know my colleagues have heard this story before. However, I cannot repeat this story enough. This story is a perfect example of what can go wrong when the Government oppresses honest and hard working citizens.

These people deserve compensation for these extreme regulations. They deserve to be heard. They should be treated better than California's furry little friends. The Tauzin amendment would give power back to the people.

It would give compensation to landowners who bought their property, and then found a critter or weed was lurking around the corner ready to devalue the land. While my constituents support the protection of endangered species, they will not tolerate the Government's irresponsibility in handling this process, and ignoring a person's constitutional right to own and use the land which they paid for with their hard-earned dollars.

Mr. Chairman, it is about time that we put the rights and the welfare of the people before the rights of a weed, rat, or bug. I ask my colleagues to vote yea on the Tauzin amendment.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. CALVERT. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding to me, Mr. Chairman.

Mr. Chairman, I asked the gentleman to yield for the purpose of clarifying one part of the amendment we are offering. The amendment provides that when the excessive regulations of the Government exceed 50 percent of the value of the property, that the landowner then has a right to demand the Government purchase the property.

At that point "It is yours, take it, just pay me, here is the title." That provision does not in any way derogate from the landowner's right, if he chooses, simply to be compensated for the diminution of value. It is simply an additional right accorded under the amendment to the landowner, where the Government really owns more of the property than he does anymore, to seek actual compensation for the property, and then turn the title over to the Government.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have listened to this debate for a goodly period. I find myself troubled.

We have a perfectly good Constitution. It provides that when there is a taking there is compensation, if it is the Federal Government that does it. That has been the law on the books since the Constitution was first ratified. This now changes that law in a fashion which no one can properly predict.

I have been seeking for some while a proper statement from both the Congressional Budget Office and the Office of Management and Budget as to the cost of the proposal now before us, either the basic legislation or the amendment offered by my good friend, the gentleman from Louisiana [Mr. TAUZIN]. They do not know. They say there is no way that an intelligent cost estimate can be made, but that the cost would be billions and billions of dollars.

This should certainly be a warning to us that we should be very careful. First of all, the bill and the amendment are full of curious contradictions. The consequences of what they do is to impose enormous liabilities upon the taxpayers to redress grievances which are real and grievances which are not real, and to address circumstances which, in many instances, are in fact beneficial to the landowner, and where requirements of the laws would in fact protect other landowners from wrongdoing by the person who would seek relief and redress.

For example, Mr. Chairman, the question of building on a flood plain. Building on a flood plain imposes liabilities on the government if the Federal Government does not permit that. However, it also protects other landowners in the area from being flooded.

This legislation would require the Federal Government to compensate an individual for building on a flood plain and demanding redress from the Federal Government. I do not think that makes good sense.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield on that point?

Mr. DINGELL. I am glad to yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding.

I think the gentleman perhaps did not hear the discussion previously, Mr. Chairman.

Mr. DINGELL. I am discussing the basic legislation that is offered. I thank the gentleman for pointing that out.

Mr. TAUZIN. We are amending that to make sure that does not happen.

Mr. DINGELL. I understand that, but the amendment offered by my good friend, the gentleman from Louisiana [Mr. TAUZIN], suffers from its own defects, which are also substantial.

However, this is a most curious thing. It also says that where the Federal Government tells somebody they cannot build a nuclear power plant on a fault, the Federal Government has to compensate. Most curious. It sets up a circumstance where the Federal Government is going to have to hire legions of lawyers to process innumerable claims for compensations, real and imagined, bottomed on two estimates by appraisers of differing values, bottomed on some very interesting appraisals and estimates and assumptions.

I would urge my colleagues, Mr. Chairman, to think very carefully before this body adopts anything this hastily drafted, this hastily considered, and this hastily brought to this body for consideration. Remember that the Congressional Budget Office and the Office of Management and Budget have said no way, they have no way, no way of judging what the costs might be of this.

I have seen legislation like this come to the floor earlier in a great burst of good will. Remember one time we had legislation to compensate doctors and pharmaceutical manufacturers for their conduct under a swine flu bill, and for the manufacture of a swine flu vaccine? That was some years ago. That was in the days when $1 million was a lot of money.

We passed it. We agreed we would compensate the doctors for everything, and for the manufacturers of antitoxins and vaccines, for anything which occurred: bad manufacturing, rape in the parking lot, collapse of the building, fire, whatever it might be, as long as you were in there to get a shot.

The practical result of that was that the lawyers had a bonanza. We did not have any idea what the liability was. I would be happy to tell Members, I opposed the legislation, because I thought it was accepting an absolutely impossible liability.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 3 additional minutes.)

Mr. DINGELL. Mr. Chairman, we accepted that liability, and very shortly the lawyers were conducting seminars on swine flu law, and swine flu law was widely practiced by the legal bar, both by honest attorneys and, quite honestly, by shysters and ambulance chasers.

The practical result was that the Federal Government wound up with a liability of $5 or $7 billion, because the lawyers went out and said, "Here is how you do this thing." Then they went around and solicited clients. Then they rushed into court. Then they began collecting huge judgments against the Federal Government. The Federal Government hired enormous numbers of lawyers, and the Federal Government paid enormous sums of money.

Here nobody knows what the liability is. Here the only thing we know is that if the legislation discussed by my colleagues on the Republican side of the aisle is adopted, that if the Federal Government does anything that anybody can claim impacts on the worth or the value of their land, they can be absolutely certain that they are going to be in the Federal courts or before the Federal agency to demand that they be compensated, and they will get themselves a slick appraiser who will come forward with a slick appraisal of what the land is worth before and what the land is worth after.

We can bet that those slick appraisals are going to be done to assure that the Federal taxpayers come up with the most money they possibly can. Farmers are going to be paid under this for the costs of loss of value on land which has been enhanced in value by Federal irrigation projects.

Does that make sense? Not to me. Maybe on the other side of the aisle it does, but not over here. All I can tell my colleagues is, they are assuming liabilities that will gray the hair of everybody else. They are adding to a valuable constitutional protection an irresponsible, incalculable liability for the taxpayers who pay our salaries and who expect us to legislate wisely, and they are assuming responsibilities for claims by every slick lawyer acting on behalf of a slippery client over claims which may or may not have value, and which may or may not have worth.

If there is a good basis for legislating in this area, I say we should do it wisely and well, but not to simply come out with this kind of blank check where people can back an armored car up to the Treasury and walk off with a truckload of cash.

□ 1430

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Montana.

(At the request of Mr. WILLIAMS and by unanimous consent, Mr. DINGELL was allowed to proceed for 1 additional minute.)

Mr. WILLIAMS. My request is only for the purpose of not having us interrupted here and have to do so in another moment.

My colleagues, those of you new here who do not know me, I am from Montana, and this takings issue is big-time stuff out my way.

But if the gentleman in the well is right, and nobody on the floor now has more experience at this than the gentleman in the well, and I have not known him to be wrong since I have been here, then those of us who are concerned about takings ought to listen very closely, because the legacy that the sponsors of the bill may carry around for a long time is one of bureaucracy, legal obfuscation and delay and enormous cost to the taxpayer if the gentleman in the well is correct.

I have a feeling that the sponsors of this bill and the good sponsor of the amendment, the main amendment, although well-intentioned in trying to reach a position that many of us like myself from the West would find comfort in having in fact began to move legislation that will create the enormous problems that the gentleman in the well describes. We should be very careful.

Mr. TIAHRT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the right to own and use private property is a fundamental right to our system of self-governance. H.R. 925 and this amendment on the Private Property Protection Act is a crucial step in restoring the constitutional integrity of the takings clause.

The ability to own property enables citizens to exercise their autonomy over Government authority. That is why this right to own private property is enshrined in the Bill of Rights.

The fifth amendment states: "No person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."

Mr. Chairman, it could not be more clear. If the Government deprives someone of their property, then we must compensate them.

What do we hear from the opponents on the other side of the aisle? The passage of this bill is too expensive.

That is precisely the point. If it is too expensive to compensate property owners after implementing regulation, then perhaps we do not need the regulation. It is never too expensive to uphold the Constitution. Let's not limit the property owner's freedom.

On March 1 in the Kansas House they passed legislation to help protect property owners. The Speaker of the Kansas House, Tim Shallenburger, claimed that this legislation was long overdue, and he urges us to pass H.R. 925.

Mr. Chairman, the horror stories that rogue Government regulations have created go on and on and it is a shame. It is a shame that the madtom catfish can end three generations of a family business.

In Kansas the Shepard family has spent over 100 years, or three generations, scooping gravel near the Neosho River. But regulators went mad about the madtom catfish. They shut down the Shepards because the madtom inhabited the Neosho River and they thought the fish might be threatened, so their gravel-scooping days were over.

Many people like the Shepards have been deprived of the use of their land and have to fight just to get Government to consider their claim.

The passage of H.R. 925, as amended, will restore the true meaning of the takings clause of the fifth amendment and will restore sanity to the regulatory craze.

Mr. Chairman, we have fought an expensive cold war for many decades. What that fight was about was freedom. In September 1991, the Soviet Congress declared in article 24 of their Declaration of Rights:

> Every person enjoys property rights, including the right to own, use and dispose of property. The inalienable right to own property guarantees personal individual interests and freedoms.

Do the Russians have a higher respect for private property than some Members of Congress? I hope not.

H.R. 925 and this amendment must pass. It is the right thing to do and it is the right time to do it.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. TIAHRT. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I want to thank the gentleman for his excellent statement, particularly reminding us how important private property rights and ownership are to the exercise of liberties and freedoms in our society. It is the cornerstone of the free enterprise system. Other countries who have gone through the awful experience of communism only to return to that system must be watching us with some humor to see people fighting the very rights that have made us special and different and emulated around the world.

I want to point out what the court, said, our Supreme Court said in Doland versus the City of Tigard:

> We see no reason why the takings clause of the fifth amendment, as much a part of the

Bill of Rights as the first amendment or the fourth amendment, should be relegated to the status of a poor relation in these comparable circumstances.

In short it is as special, as sacred to our institutions of liberty as free speech, right of assembly, practice of religion, all the basic rights of our Bill of Rights.

Second, to point out that we are not creating this right on this floor today. It is a right inherent in our Constitution. We are not creating an obligation of this Nation to compensate. That is a right inherent in our Constitution.

All we are doing is saying that small individual landowners who cannot come to this Federal Court in Washington, DC, and spend 10 years of their lives and $500,000 of court costs and attorneys fees, who cannot do what big landowners are doing today, ought to have the same right to protections under that Constitution as those folks who can come to the court here in DC.

By golly, if we don't do that, we sacrifice an enormous part of that special package of Bill of Rights that our Founders knew were special and we have found out over generations makes us special, makes our country a great place to be. In fact, the place where most people would like to be. I thank the gentleman for yielding.

Mr. HAYES. Mr. Chairman, I move to strike the requisite number of words.

At one level, this afternoon's debate is about a statute, its words, its language, its construction, what it means individually as applied later by courts.

At a much greater and larger level, it is about a fundamental positioning of why each and every one of the persons who assemble in this room choose to do so, why they place themselves before a public for its endorsement to return here to represent their interests.

It is about that latter to which I would like to address a memory. He is a little man from Poland, about my dad's age. He sat very near where that rail is right by that door and watched the people's house that did not exist in Poland from whence he came. As he watched us last year deliberate an amendment involving property rights, he must have thought back to his arriving at this country, in Michigan, wishing no more than to work hard, to do well, and to be part of what had attracted him to this country.

In the late 1960's while I was in high school, he became part of the American dream, because Henry bought a little piece of property in Pennsylvania where he and his wife visited and where they some day planned to retire. That was 4 years before there was a Clean Water Act.

In 1971, before there was a Clean Water Act, the Corps of Engineers went to Henry who had paid 4 years of property taxes and 4 years of mortgage and said, "We'd like to dredge a pit and put some of the spoil on your property. It will help some day when you retire."

Two decades later, 21 more years of mortgage payments and interest, Henry retired. And the year I entered this Congress, he and his wife wished to enter that property to build their home. Instead, they got a cease and desist order from the U.S. Corps of Engineers. And the 70-year-old Henry Blaszkowski was told that after the fact we created the law where what you allowed the Corps of Engineers to do now means you have a wetland, even though it otherwise would not be and, therefore, you can't use this property.

The fundamental right to which I refer is whether as you stand in this well of this body to speak out on behalf of those who are aggrieved, you fear either that we will not write precisely the correct words so that we will not be able to do a perfect statute, and I suspect you are correct—we won't—but if we make an error today, I suggest to you that we err not on the side of the might of an endless bureaucracy, to a Henry Blaszkowski who did not have half a million dollars to try to reach the Supreme Court, to reach Mr. Madison's germane issue of right and takings in compensation, let's err against a mindless, faceless and thankless bureaucracy and on behalf of the Henry Blaszkowskis who now call America home.

In my case on behalf of those who occupy those bayous and inlets in coastal Louisiana and the 600,000 people who every 2 years have the right to tell me to get out and not be their Congressman, I want nothing more than for them to be given the same right with Federal agencies over whom they do not have the power of the ballot box and resources which they cannot otherwise match.

I want you to vote for an imperfect amendment and an imperfect bill in an imperfect world, because surely doing nothing is to say that you absolutely do not care.

Mr. McINTOSH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me commend the authors of this bill, the members of the Committee on the Judiciary, the gentleman from Florida [Mr. CANADY] and the gentleman from Louisiana [Mr. TAUZIN] for his amendment. They have done a tremendous job of crafting a consensus bill that can move forward in this House.

Many of us would have done slightly different things in the bill. I for one preferred the more broad coverage of all Federal laws that might present a takings of private property. But I have to say, they have done an excellent job of bringing this to the floor in a way that can secure passage and once again send a signal to the American people that we will stand up for their very basic liberties, in this case, the right to own property.

I wanted to bring to the body's attention two examples that come from my home State, one in my hometown. Mr. Bob Floyd is an 80-year-old farmer who one day went out to his field and discovered that his neighbor had accidentally broken the drainage tile in the adjacent property and a mudhole had started to develop. In came the Federal Government and told him that he could no longer use his land because it was a wetland, subject to regulation. The gentleman, Mr. Floyd, lost $50,000 in the value of his property, $8,000 in farm income, and thousands of dollars in fighting to preserve his family farm.

Another example is the tragic story of a southwestern Indiana farmer named Bart Dye. Mr. Dye stands to lose his farmland which has been in his family since 1865. The Fish and Wildlife Service considers the protection of two species, mussels in a river adjacent to Mr. Dye's land, and the possibility that someday a bald eagle may decide to land on his property, none have been sighted, no nests have been found, and as far as anyone can tell, there are no bald eagles that live in the neighborhood, but the potential that it may be a habitat for that species has threatened to rob Mr. Dye of the use of his farm and prevent him from ever owning it.

The choice here is very simple. These laws will stay on the books, the Government will be able to enforce them, but we must, in so doing, protect the private property rights of citizens who are affected by those laws. We will reestablish the basic principle that the property is owned by the citizen, not by the Government given to them for their custody, and that if the Government takes that property for a public use, they will receive fair and just compensation.

I urge the body to support the amendment and the underlying bill.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. McINTOSH. I yield to the gentleman from California.

Mr. POMBO. In one of your examples, you talked about, I believe it was Mr. Dye, who had what would be suitable habitat or potential habitat for an endangered species, and they want to restrict the use of his property, based on the fact that if an endangered species ever wanted to live there, it could.

Mr. McINTOSH. That is correct.

Mr. POMBO. Under this legislation, that would be a taking?

Mr. McINTOSH. Yes. The diminution in value, because he would be unable to farm, his farm would be a taking.

Mr. POMBO. If this legislation were to pass and in a few months when it is law, would Fish and Wildlife act in the same way and go out and just designate everything that they see as potential habitat and gain control of it? Or would they prioritize the areas?

Mr. McINTOSH. It is my expectation that they would prioritize it for areas which are, in fact, critical habitat for species such as the bald eagle, but leave citizens such as Mr. Dye alone in their private property and actually seek out those areas that are critical to preserve that habitat.

Mr. POMBO. If that were the case and they had to prioritize what was critical habitat and they did not go after Mr. Dye, if there was a cost to the bureaucrats and the Federal agencies of their actions and they did not go after Mr. Dye, what would it cost then?

□ 1445

Mr. McINTOSH. At that point there would be no cost to the bureaucracy because they would not have deprived him of his property rights.

Mr. POMBO. So it would not bust budgets and Mr. Dye would not be able to back his U-Haul trailer up to the U.S. Treasury to take money because the U.S. Agency would be forced to be responsible for the first time in 40 years?

Mr. McINTOSH. That is correct and that is the goal of this legislation.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. McINTOSH. I yield to the gentleman from Louisiana.

Mr. TAUZIN. That was an excellent discussion of how this bill does not have to cost money if the agencies start being responsible.

I want to give you a similar example. Mr. Spiller of Lake Fausse Point in Iberia Parish, LA, built a crawfish pond on his property, 80 acres. He was then told he did not apply for a 404 permit. He was told you need a 404 permit to do that. It is a wetlands. He said, well, of course it is a wetland; I want to raise crawfish. They said well, you still need a 404 permit, so he went and applied for a 404 permit. In the meantime EPA issued a cease and desist order and told him to take down the 35,000 dollars' worth of levees he had built in order to raise the crawfish, and that would cost another $4,000. He had to do that. It cost him $40,000 for nothing. And then he filed for his permit and EPA objected. Do you know why he was denied his permit to raise crawfish on that property? Because EPA decided and found that it was a natural habitat for red swamp crawfish. He was told he could not raise crawfish on the property because the crawfish were there already.

I mean we get those crazy kinds of applications of the law, and the crawfish, you know, is not like the bald eagle, it is not likely endangered except by Cajuns like me and Mr. HAYES. It is fairly well prominent in Louisiana. And I thank the gentleman for his comments.

Mr. DOOLEY. Mr. Chairman, I move to strike the requisite number of words. Mr. Chairman, I rise in support of the amendment of the gentleman from Louisiana [Mr. TAUZIN] and the bill that is on the floor. And I rise in support of it for really one basic reason, because we are talking about fairness, we are talking about equity. We are talking about if this Government determines that it is in the interests of our greater society to provide for protection of a species, to provide for amenities that can benefit our life and our environment, that the cost of providing for that enhancement should not be borne solely by those who own private property.

The basic principle is, if we are going to provide for benefits and the greater society is going to benefit from them, the greater society at large should bear those costs.

There have been some Members who have spoken that we are actually trying to change the Constitution with the amendment. Nothing could be further from the truth. What we are doing is basically building upon the precedents which have been set by the Supreme Court. But what we are trying to do is to ensure that that business owner on Main Street, that farmer in Illinois or that farmer in Louisiana or the farmer in California does not have to spend the legal fees, does not have to spend his time in the courts spending thousands of dollars in order to achieve the compensation for what is a taking by a regulatory action.

There are other comments that were made earlier about the fact this bill could bankrupt the country and there were some analyses that were made about a prior bill offered by the gentleman from Louisiana [Mr. TAUZIN] that dealt with wetlands, that it would cost the Government $15 to $20 billion if we were to provide for compensation and that is precisely the point we are trying to get at, is that $15 to $20 billion is now being borne by individuals, individuals that oftentimes do not have the resources, individuals who are working very hard to maintain a living for their family, to generate the income in order to send their children to college and in order to provide for a lifestyle which everyone should have the right to expect.

One other issue. There was some talk about the relationship to the Bureau of Reclamation being a part of this act. The bottom line is what we are talking about is that you cannot have the Government unilaterally abrogate a contract without compensation.

What we are trying to do is extend some of the same concepts that the private sector currently is mandated to comply with, that if you enter into a contract you are bound by that contract. If the Federal Government chooses to change an existing contract, they should be honor bound and mandated to provide a level of compensation for that.

I think that this is an appropriate extension of this act. I think by the passage of this legislation we are going to ensure a more judicious application of our environmental regulations, we are going to assure greater equity and greater compensation to all private individuals and private property owners.

Mr. FARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to speak today to those that have supported the Tauzin amendment. I want them to do two things. I want them to listen to this argument and to read the bill.

I want Members to think of this: All development, all land in the United States is somewhere, it is in some county or in some city. Anyone who wants to have any activity on that land starts at that level. They have got to go to a city council, board of supervisors, or whatever the requisite there to petition for change in that land, whether it is change in zoning or they want to develop it or whatever.

The Constitution of the United States for over 200 years has said in the fifth amendment no person shall be deprived of life, liberty, or property without the due process of law nor shall private property be taken for public use without just compensation. That did not just relate to the Federal Government. That did not just relate to the State government. That did not just relate to the county government. That did not just relate to the city government. It said no person shall be deprived of property by any government.

This issue in this bill speaks to the Federal Government, and why it is so difficult is because a lot of those Federal laws have become part of land-use management at the local level. Think of wet plains zoning back in the 1970's. We asked every city and county in the United States to figure out where the wet plains were, we had that as Federal law in order that they could qualify for Federal flood plain insurance. That was Federal law carried out by local government.

This bill as it came out of committee is in trouble. We have seen that today. In the last 2 hours we have heard about how much trouble it is in. In fact, the gentleman from Louisiana [Mr. TAUZIN] has here an amendment to try to improve the bill and even with that there have been arguments about how you determine fair market value.

The trouble with the gentleman from Louisiana, Mr. TAUZIN's bill, with his amendment, is he is dealing with four issues. Two of those issues, the wetlands and Endangered Species Act come up for reauthorization this year. If indeed those are the problems, then let us deal with them at that time. Let us not change what this law does.

And I want to ask those Members who are supporting the bill to read it, because as I said, the Constitution says you cannot take for public use without just compensation. That is what the law has been for 200 years. This bill says, this bill says no law or agency of the Federal Government that diminishes value, not takes, diminishes the value by 10 percent of any portion of your property, you must find just compensation.

This is a radical departure from where we have been in the law in the United States. This is why the argument is that is going to be opening the bank, the Federal Government, that is why the argument is we are going to have to create so much Federal bureaucracy about what the law says that agency, that portion, or that percent is all about. It is going to be a nightmare to implement.

Later on I am going to offer a bipartisan amendment that I think corrects all of this, but I think we are moving seriously with this Tauzin amendment into an area that is going to make this country in a lot of difficulty.

One of the comments the gentleman from Louisiana [Mr. TAUZIN] made is he said this bill is prospective, not retrospective, which is interesting to note because every speaker that has come up and talked about the problem talks about a problem that existed before this bill was introduced. This bill will not solve that problem, and it is interesting to note that those of my colleagues from California who talked about certain problems, as I looked at the list of supporters I never saw any planning commission, any county supervisors, any State legislator come in and support this bill in the form it has been presented.

This is a bill that hurts local government land-use zoning, despite the fact that the author says it does not, and let me just tell you why. Because on page 6, line 10 through 15, it says but it also includes the making of a grant to a public authority, conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency. So, if the State of California takes over the 404 permit process, as it is planning to do, and if the local county and city governments implement that planning process, they would be triggered by this bill. And, therefore, we are going to really, I think, mess up the ability for local government to come up with sound land-use planning. And I think that this amendment and the bill ought to be rejected.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FARR. I yield to the gentleman from Louisiana.

The CHAIRMAN. The time of the gentleman from California [Mr. FARR] has expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. FARR was allowed to proceed for 1 additional minute.)

Mr. FARR. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding. The gentleman makes the point that this gentleman said the bill was prospective; indeed it is. It is a new remedy for an old right and the new remedy is prospective, it starts as soon as this bill becomes law.

Mr. FARR. So all of those cases that were brought here on the floor today where people talked about problems they were having with their constituents, none of those constituents, under the conditions they brought, will benefit from the gentleman's legislation?

Mr. TAUZIN. If the gentleman will continue to yield, that is not so. The fact is that these regulations, these laws that are already on the books are going to continue to impede the use of property tomorrow and the next day. The right to seek compensation is already there; it is in the Constitution. All we are doing is creating a new remedy so that as these restrictions are applied to property from here on out, those new remedies become available but the right is a constitutional right and exists before we pass this bill.

Mr. FARR. The gentleman is changing the playing field because he is changing that from a right to discuss takings to a right saying that any portion that is affected or diminished.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The time of the gentleman from California [Mr. FARR] has again expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. FARR was allowed to proceed for 1 additional minute.)

Mr. TAUZIN. If the gentleman will continue to yield, the gentleman made the point that this is some kind of radical departure from the jurisprudence. A court in Florida Rock said,

> Nothing in the language of the fifth amendment compels a court to find a taking only when the government divests the total ownership of the property. The fifth amendment prohibits the uncompensated taking of private property without reference to the owner's remaining property interest.

In short, any partial taking that is compensable is a taking under the Constitution, is compensable yesterday, today, tomorrow. We are simply providing a new remedy, and I thank the gentleman for yielding.

Mr. CONDIT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I feel compelled today to rise and just make a couple of brief comments. I first would like to state that we have heard some discussion this morning about this bill, and this amendment, as though this is one of the first times we have heard it. This is not the first time we have visited this issue. This issue of private property rights has been around this Chamber, around the Capitol for a long time. And I feel compelled to commend the gentleman from Louisiana [Mr. TAUZIN] and the gentleman from Texas [Mr. FIELDS] who have been working long and hard on this issue.

Last year we had a vote on this floor on the Desert Act, which I think we debated for about 4 or 5 days, and we had 143 Democrats who voted in favor of full compensation if your property was taken because of an endangered species. So we have debated this issue. There have been people who have been working long and hard, and [Mr. TAUZIN] has been in the forefront and the leader of that issue.

We have also heard people say well, we should do this in a freestanding bill somewhere else, we ought to do this with reauthorization when it comes up, and those all have merit. It would be great if we could do that. But you know what, we did not do that.

The gentleman from Louisiana [Mr. TAUZIN] could not get a hearing on his bill in past years. We could not get reauthorization up before this House because this House clearly knew that if we did, we would pass private property right protection for the citizens of this country.

Let me tell Members, make no mistake what we are talking about here today is compensation. You take my property, you owe me something.

□ 1500

I worked long and hard for it. That is what the citizens of this country are saying. That is what the farmers in my district are saying. "If you keep me from making a living on my property, you owe me something." Pretty simple.

Most people in this country think that is already the law. They believe they are protected. Let me assure you, ladies and gentlemen out there, you are not.

We need to strengthen the law. We need to strengthen the fifth amendment, and that is what we are doing here today. We owe the gentleman from Louisiana [Mr. TAUZIN], the gentleman from Texas [Mr. FIELDS], the gentleman from California [Mr. POMBO], the gentleman from Florida [Mr. CANADY], and those, the gentleman from Texas [Mr. LAUGHLIN], who have been involved; we owe them a thanks for bringing this to our attention and for fighting the hard battle for a long period of time.

The fifth amendment to the United States Constitution seems clear enough; "* * * nor shall private property be taken for public use without just compensation."

Unfortunately, in the last 20 years, many Americans across the country have found that they cannot farm, ranch, or build homes on portions of their land. Why? They are blocked by State and Federal regulations. Steadily increasing regulation at all levels of government now touch every conceivable aspect of property use. Through its ability to regulate, the Government has increasingly tended to "take" the uses and benefits of a property rather than condemn it and pay its owner fair market value as is required by the fifth amendment.

This encroachment upon the right to own and use property in a reasonable manner has resulted in strong public and congressional support for efforts to protect private property rights. Already in this Congress eight bills have been introduced to address this issue. We have been debating private property rights for two Congresses now. Also, there have been numerous proposals that vary in their approach to solve the problem, but all are based on the idea that the current practice of "regulatory takings," where the cost of regulations which benefit our entire society are paid for by individual landowners, is simply not fair.

The U.S. Government is currently facing well over a billion dollars in outstanding "takings" claims. In addition, several of the largest takings judgments in history were handed down, including one totaling $120 million in 1990. In California alone, property owners who can afford legal costs are winning about 50 percent of their takings cases and according to a recently released report by the Congressional Research Service, property owners won regulatory takings cases before the Federal courts in 1990 more often than not. This is astonishing when you consider the Federal Government wins 9 out of 10 times in other areas of law. The basic questions we must ask is what good are Federal regulations if they are overturned in court?

The fact that property owners who can afford to mount legal battles against their own government and are winning in the courts is no consolation. For every property owner who wins such a battle, there are thousands who lack either the time or the money to defend their rights in court.

Mr. Chairman, I look forward to supporting H.R. 925 and the Tauzin amendment today and applaud this House for taking a vital first step toward restoring the rights of private property owners in this country.

Mr. STUDDS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, words are beguiling, especially when used by the Members of the new majority in this House.

If all I knew about the Contract With America were the titles of its respective component bills, I would be all for it: freedom, justice, and equality amendments of 1995, the commonsense amendments. I do not know if anybody knows what the title of this bill is. It is the Private Property Protection Act of 1995. Who could be against that?

Let me suggest, Mr. Chairman, that is not what this bill is about, and I commend the cleverness of the authors of the pending amendments, and particularly my good friend and colleague, the gentleman from Louisiana. He and I have fought this one out through many a long year.

But it is no accident what is before us. What is now before us is not some broad treatment of the question of property rights. It is not some reaffirmation of a constitutional right which is inherent for two centuries and is not changed by what we do or do not do today. What is before us is specifically directed at a couple of statutes in particular, the Endangered Species Act and the Wetlands Act.

Why do you suppose that is? Several people on the other side said earlier today that if this bill is very expensive, as others here have contended, then the American people are being robbed. Well, Mr. Chairman, that is true, but it is only true if you redefine robbery, and that is exactly what this bill purports to do.

Whatever in the world is meant by 10 percent of a portion of property is, among other things, a redefinition of robbery, and although the bill very wisely and cleverly exempts local zoning statutes, let me ask Members to contemplate the logical implications which underlie it.

To the extent that actions taken pursuant to these environmental statutes constitute takings, so precisely, and for exactly the same reasons, exactly the same way, do local zoning statutes constitute takings.

I own a piece of property in my district. My community says to me I cannot build within 70 feet of the sideline of that property. That is diminishing the value. I could have built something bigger there. I cannot build so many feet from the street. That further diminishes the value. I have to be so many feet back from the water. That further diminishes the value. I cannot build on more than 40 percent of my land. My God, how valuable it would be if only I could. And I cannot build more than three stories high. But if I put a skyscraper there, God knows what it would be worth. I cannot put, I do not know, what would I like to put there, a factory. I cannot even put a small shop or a bookstore there. That value is diminished considerably by a local zoning ordinance.

Now, if that is robbery, then I am willing to concede that what we are talking about in the statutes under assault here is robbery.

There have been a lot of horror stories cited here, and for all I know some of them are true, or variations of them, are true. Some of them are not, but I am willing to concede that some of them are. But this bill does not target horror stories.

As my colleague from Massachusetts said earlier in the day, this bill targets these statutes, and make no mistake about it. The absolute target of this bill is the statutes.

The real takings here, the real takings, if this bill becomes law, are two of our most important environmental laws in this land.

If that happens, who will compensate the American people? Who will compensate the American people for the loss of wetlands? And what are they worth? And how do you calculate that? And who will compensate the American people for the loss of diversity in species, and what are they worth? And how do you calculate that? What is the plant that gave us taxol worth? It is a cure potentially for breast cancer and ovarian cancer. What is that worth? If it is taken away from the American people, how do we compensate them for that? Is there a plant out there or an insect or something slippery and slimy which apparently people do not like much around here that has the cure for Alzheimer's in its genes or the cure for AIDS? How do we compensate for the potential loss of that? Do we really know what we are doing here?

The committees of jurisdiction of these two statutes have had no hearings on this. They have not even had a sequential referral for 1 minute of this bill in this Congress.

I know what the gentleman from Louisiana is going to say. Let me see if I can paraphrase it for him, perhaps not in the same accents, but he is going to probably suggest that in the last Congress, when I chaired the committee of jurisdiction over the Endangered Species Act, he, I would say on more than one occasion, asked if we might not be able to consider this.

I plead, in advance, guilty to the charge.

Mr. TAUZIN. Thank you, sir.

Mr. STUDDS. But I feel, let me say, I feel a little bit exonerated by that judgment by what has transpired here in the last 3 or 4 hours. Again, I do not mean to impugn the motives of any of the honorable gentlemen on the floor.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. STUDDS] has expired.

(By unanimous consent, Mr. STUDDS was allowed to proceed for 1 additional minute.)

Mr. STUDDS. Let me say again as forcefully and calmly as I can, I do not think it is stretching the point at all to suggest that the logic underlying this bill applies as well and as thoroughly to local zoning as it does to any statute which in any way diminishes the value of property at any level of government.

We need to make public policy decisions at all levels of government as to wherein lies the public interest and wherein lies the private interest.

When there is a conflict, we have some tough calls to make. But the fifth amendment to the Constitution has been there for a long time. It is going to be there whatever we do or do not do today, tomorrow, or next week. it does not need our help. What does need our help are the wetlands of our country, half of which have been gone since the first Europeans came here, the habitat for species, the cleansing of our waters, the flood protection, the nurseries of our fisheries; these are absolutely priceless. No dollar value can be put upon these natural resources. They are the ones at this point that need our protection.

Mr. PETE GEREN of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to first commend the gentleman from Louisiana [Mr. TAUZIN], the gentleman from

Texas [Mr. FIELDS], the gentleman from Louisiana [Mr. HAYES], the gentleman from Florida [Mr. CANADY], and the gentleman from Texas [Mr. LAUGHLIN], those who have labored for literally years to bring this issue in front of the Congress.

This is not a new issue. This is not an issue that was dreamed up as a result of the contract for America. This issue has been around, as my friend, the gentleman from California [Mr. CONDIT], mentioned a little earlier. Last year we voted on this; 143 Democrats voted for it. This issue has been with us, because it has been on the hearts of the people we represent for year after year after year.

As the power of the Federal Government has grown, this issue has become more and more important to those people. This issue has been in front of the Congress. It has been on the hearts and minds of Members of Congress because it has been on the hearts and minds of the citizens of this country for a long, long time.

This is a bill that is based on democratic principles—small "d" democratic principles. As the gentleman from Massachusetts said, the fifth amendment was here before we got here, and it will be here long after we are gone.

Unfortunately, the protections of the fifth amendment only have been available to those who could afford to buy the best legal services. You have got the little guy having to go up against the Corps of Engineers, the little guy that has had to go up against the Environmental Protection Agency. If that little guy cannot afford to hire $100,000 worth of lawyers, cannot afford to leave his work and fight this thing tooth and nail, he is probably going to get run over by the Environmental Protection Agency. He is probably going to get run over by this Federal Government.

He has protection under our Constitution, but it does not mean a darn thing if he cannot afford the legal talent to push his issue. That is what this bill is all about. This bill says that the little guy is going to have the same kind of rights, going to have the same opportunity to avail himself or herself of the protections of the fifth amendment as all of these other people who have been challenging these takings over the last few years who could afford that kind of high-powered legal talent.

It is important to note that in every case, when one of these takings has been challenged and it has been carried up through the court systems, the citizen won. The citizen won because the fifth amendment does protect the citizen. But if you cannot afford that lawyer, that protection is meaningless.

This bill today says that whether or not you can afford that kind of legal talent, we are going to ensure that the fifth amendment protects you. It is a basic democratic principle. It is democracy in its finest sense. It is a democratic principle, and I urge my colleagues to support this amendment.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. PETE GEREN of Texas. I yield to the gentleman from California.

Mr. POMBO. I would just like to point out in light of some of the recent testimony that we have heard, in a recent case that Chief Judge Loren Smith of the Court of Federal Claims, I would just like to briefly read something that he said:

> There must be a better way to balance legitimate public goals with fundamental individual rights. Courts, however, cannot produce comprehensive solutions. They can only interpret the rather precise language of the fifth amendment to our Constitution in very specific factual circumstances . . . Judicial decisions are far less sensitive to societal problems than the law and policy made by political branches of our great constitutional system. At best courts sketch the outlines of individual rights, they cannot hope to fill in the portrait of wise and just social and economic policy.

I would just venture to say what we are trying to do here today is fill in that portrait.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana [Mr. TAUZIN] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. FRANK of Massachusetts. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 301, noes 128, not voting 5, as follows:

[Roll No 190]

AYES—301

Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehner
Bonilla
Bono
Boucher
Brewster
Browder
Brown (OH)
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Clinger
Clyburn
Coble
Coburn
Coleman
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Frisa
Frost
Funderburk
Gallegly
Ganske
Gephardt
Geren
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hobson
Hoekstra
Holden
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson (SD)
Johnson, Sam
Jones
Kanjorski
Kasich
Kelly
Kennelly
Kim
King
Kingston
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Maloney
Manton
Manzullo
Martinez
Mascara
Matsui
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Mica
Miller (FL)
Minge
Molinari
Mollohan
Montgomery
Moorhead
Moran
Murtha
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Obey
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Royce
Salmon
Sanford
Sawyer
Schaefer
Schiff
Schumer
Scott
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Williams
Wilson
Wise
Wolf
Wynn
Young (AK)
Young (FL)
Zeliff

NOES—128

Abercrombie
Ackerman
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Boehlert
Bonior
Borski
Brown (CA)
Brown (FL)
Bryant (TX)
Cardin
Clay
Clayton
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
DeFazio
DeLauro
Dellums
Dingell
Dixon
Doggett
Ehlers
Engel
Eshoo
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Franks (NJ)
Frelinghuysen
Furse
Gejdenson
Gibbons
Gilchrest
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hinchey
Jackson-Lee
Jacobs
Jefferson
Johnson, E. B.
Johnston
Kaptur
Kennedy (MA)
Kennedy (RI)
Kildee
Kleczka
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren

Lowey
Luther
Markey
Martini
McCarthy
McDermott
McKinney
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Mineta
Mink
Morella
Nadler
Oberstar
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Rahall
Rangel
Reed
Reynolds
Richardson
Rivers
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Saxton
Scarborough
Schroeder
Serrano
Skaggs
Slaughter
Smith (NJ)
Stark
Stokes
Studds
Thompson
Torres
Torricelli
Towns
Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Woolsey
Wyden
Yates
Zimmer

NOT VOTING—5

Gekas
Gonzalez
Hoke
Lightfoot
Moakley

□ 1528

The Clerk announced the following pair:

On this vote:

Mr. Lightfoot for, with Mr. Moakley against.

□ 1528

Ms. MCKINNEY, Mr. COSTELLO, and Mrs. MEYERS of Kansas changed their vote from "aye" to "no."

Messrs. SAWYER, HILLIARD, and CLYBURN changed their vote from "no" to "aye."

So the amendment to the amendment was agreed to.

The result of the vote was announced as above recorded.

□ 1530

Mr. ALLARD. Mr. Chairman, I move to strike the last word so that I may enter into a colloquy as to the intent of the bill with the Tauzin amendment.

Mr. Chairman, I appreciate the opportunity to enter into a colloquy with my colleague, the gentleman from Florida [Mr. CANADY], as to the intent of the legislation as amended by the Tauzin amendment.

With respect to section 9 paragraph 5 subparagraphs (A), (B), and (C), section 404 of the Federal Pollution Control Act, the Endangered Species Act of 1979, and title XII of the Food Security Act of 1985 respectively of H.R. 925 as amended, am I correct in my understanding that agency actions, with respect to water under these laws can result in a compensable taking of property rights, specifically the taking of a water users right to use and receive water?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. ALLARD. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, the gentleman is correct. H.R. 925 as amended clearly protects water rights under section 404 of the Federal Pollution Control Act, the Endangered Species Act of 1979, and title XII of the Food Security Act of 1985. This section was clearly designed to protect all property rights outlined in section 9, paragraph (1).

Mr. ALLARD. Am I further correct in stating that section 9, paragraph (5), subparagraph (D) or H.R. 925 as amended, that the word "only" referred to in that subparagraph is a limitation on the Reclamation Acts, the Federal Land Policy Management Act, and section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, and not a limitation on enactments in subparagraphs (A), (B), and (C)?

Mr. CANADY of Florida. The gentleman is also correct on that point.

Mr. ALLARD. Mr. Chairman, I thank the gentleman for his clarifications.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. ALLARD. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I think it is important, as the author of the amendment just discussed, to add that I think he has received exactly the correct answers in this colloquy, and I concur ecactly with those answers.

Mr. ALLARD. Mr. Chairman, I thank the gentleman from Louisiana for his help in clarifying the record.

AMENDMENT OFFERED BY MR. PORTER TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mr. PORTER. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. PORTER to the amendment in the nature of a substitute offered by Mr. CANADY of Florida, as amended: Page 3, after line 11, insert the following:

SEC. 6 EFFECT OF PRIVATE PROPERTY IMPACT ANALYSIS.

(a) IN GENERAL.—No compensation shall be made under this Act with respect to any agency action for which the agency has completed a private property impact analysis before taking that agency action.

(b) CONTENT.—For the purposes of this section, a private property impact analysis is a written statement that includes.—

(1) the specific purpose of the agency action;

(2) an assessment of the likelihood that a taking of private property will occur under such action; and

(3) alternatives to the agency action, if any, that would achieve the intended purpose and lessen the likelihood of a taking of private property.

(c) PRECLUSION OF JUDICIAL REVIEW.—Neither the sufficiency nor any other aspect of a private property impact analysis made under this section is subject to judicial review.

(d) EFFECT ON OTHER RIGHTS.—The fact that compensation may not be made under this Act by reason of this section does not affect the right to compensation for takings of private property for public use under the fifth article of amendment to the Constitution.

(e) DEFINITION.—As used in this section, the term "taking of private property" means an action whereby property is taken in such a way as to require compensation under the fifth article of amendment to the Constitution.

Redesignated succeeding sections accordingly.

Mr. PORTER. Mr. Chairman, this amendment is offered by myself, the gentleman from Michigan [Mr. EHLERS], the gentleman from California [Mr. FARR], and the gentleman from Texas [Mr. BRYANT] to the amendment offered by the gentleman from Florida [Mr. CANADY], as amended by the gentleman from Louisiana [Mr. TAUZIN].

The Chairman, we have a Republican majority in the Congress, and yet we are about to support a measure that creates what is essentially a brandnew entitlement program that will lead to more bureaucracy, and redtape and endless litigation. This measure, if it were to pass into law, would make the Superfund legislation look pale by comparison in response to the amount of litigation that would be engendered. This is not what I, a Republican, was sent here to do, Mr. Chairman. I believe all of us, as Republicans, were sent here to cut Government spending, to eliminate bureaucracy and to end the tidal wave of litigation.

Mr. Chairman, everyone agrees that there have been instances of regulatory overkill, but this bill, as it has been amended, is legislative overkill. I believe that this bill will cost the Government untold amounts of money and will lead to the opening of a litigation tap that will be absolutely impossible to turn off. Every Federal regulation covered in this bill will likely be the subject of litigation for every piece of property affected by it.

Mr. Chairman, there is a better answer to this, there is a much better answer. Senator DOLE has the answer for us. He has introduced in the Senate S. 22, a bill that will address the concerns of private property owners. It is a codification of the Executive order issued by President Ronald Reagan in 1988, Mr. Chairman, and, like Senator DOLE's bill and the Reagan Executive order, our amendment will require agencies to do a private property impact assessment before issuing a regulation or taking agency action. Our amendment goes beyond the Reagan executive order in one critical way, Mr. Chairman, it requires that the public have access to that assessment. The amendment reaffirms citizens' rights to just compensation under the fifth amendment, and, if the agency fails to do the assessment, then compensation is payable under the terms of the amendment offered by the gentleman from Florida [Mr. CANADY] as amended by the gentleman from Louisiana [Mr. TAUZIN].

Mr. Chairman, we should follow the Constitution. It has worked for over 200 years. Yes, there are instances where it has not worked, but in general it has worked extremely well. If we have a problem with protecting wetlands in the regulations issued under them, let us reauthorize the Clean Water Act in a way that more fairly takes into account the concerns of the private property owner. If there are similar problems under the Endangered Species Act, let us rewrite the act to address those problems. But, Mr. Chairman, let us not write an entirely new entitlement program with an endless flow of litigation and huge costs to the Federal government that are entirely unnecessary.

Senator DOLE has the answer for us, and I commend the amendment to every Member.

Mr. CANADY of Florida. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Illinois [Mr. PORTER].

Mr. Chairman, I think it is very important that we understand exactly what the impact of this amendment would be, and to understand that we can just begin by reading in subsection A where it states in general no compensation shall be made under this act with respect to any agency action for which the agency has completed a private property impact analysis before taking that agency action.

Going beyond that, Mr. Chairman, I think it is important that we look at subsection C which follows in section 3. In subsection 3(c), Mr. Chairman, I think it is important that we note the provision for preclusion of judicial review. It says that neither the sufficiency, nor any other aspect of a private property impact analysis made under this section is subject to judicial review.

I say to my colleagues, When you put that section together with the first section that I referred to, you have an amendment here that absolutely guts the bill. It will render the compensation provisions of the bill entirely meaningless. All an agency will have to do is go through a sham of an analysis, and, if they've done that, there will be no right to compensation. It will not solve the problem we're trying to solve.

Now my good friend from Illinois has invoked the name of President Reagan—the names of President Reagan and Senator DOLE in support of this amendment, but in fact both Senator DOLE and President Reagan, I believe, would oppose the Porter amendment if they were present here on the floor today.

I have right here, which we have received today, letters from both Senator DOLE and from Roger Marzulla, President Reagan's Assistant Attorney General who authored the executive order requiring a takings impact analysis which was referred to earlier in the debate. Both Senator DOLE and Mr. Marzulla are indicating that the Porter amendment would be inconsistent with their goals in working for private property rights. As I said, the Porter amendment would gut the entire purpose of H.R. 925 to provide compensation to landowners burdened by overzealous regulation.

Let me quote. I will read the full text of the letter from BOB DOLE, the Republican leader of the U.S. Senate, to our Speaker. Senator DOLE says:

> As the author of legislation in the United States Senate to require the government to perform a taking impact analysis prior to taking any actions that might affect private property rights, I write to make clear that my bill differs significantly from the Porter Amendment to H.R. 925. One significant difference between my bill and the Porter Amendment is that the Porter Amendment specifically requires that no compensation shall be paid in cases when the takings impact analysis is performed. While my bill does not directly address the issue of compensation, I am an original co-sponsor of the Shelby/Nickles legislation which does require compensation be made.
>
> Best of luck on your efforts to pass meaningful legislation protective of private property rights.

Mr. Chairman, I would also like to read from a letter by Roger Marzulla, who I identified earlier as Assistant Attorney General in the Reagan administration who was responsible for the executive order on takings impact analysis. Mr. Marzulla says:

> Supporters of the Porter Amendment to H.R. 925, the Private Property Rights Act of 1995, suggest that this amendment would be consistent with President Reagan's "Takings Impact Analysis" set forth in Executive Order 12630. Nothing could be further from the truth. Executive Order 12630 simply requires federal agencies to complete a takings analysis prior to taking any action that might affect private property rights. The purpose of this Order was to avoid the destruction of lives and livelihoods by preventing the uncompensated taking of private property.
>
> Indeed, as chief architect of the Takings Executive Order, I can assure you that in no way was it ever intended that if the government went forward with action that did in fact violate the Fifth Amendment, the federal government was in any way relieved of its constitutional duty to pay just compensation to the affected property owner.

Mr. PORTER. Mr. Chairman, will the gentleman yield?

Mr. CANADY of Florida. I yield to the gentleman from Illinois.

Mr. PORTER. The gentleman does understand, I assume, that under the Porter amendment compensation would still be payable in accordance with the Constitution. The gentleman is not suggesting otherwise, nor are either of these two letters; are they?

Mr. CANADY of Florida. It is true that the right to compensation under the fifth amendment would be involved here, but the point is we are trying to have a workable way for individuals to receive compensation, and we have heard repeatedly today a quotation which I will repeat again from the chief judge of the Court of Claims concerning how the system in the courts is not working, and it bears repeating. He says the citizen likewise had little more Presidential guidance than faith in the justice of his cause to sustain a long and costly suit in several courts. Courts, however, cannot produce comprehensive solutions. He goes on to say judicial decisions are far less sensitive to societal problems in the law and policy made by the political branches of our great constitutional system. The political branches need to address this problem.

□ 1545

Mr. FARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of this amendment because the bill that we have just adopted, as amended, creates a massive hole in America's abilities to pay for its actions. We have just created an ability for anyone who feels that a portion of their property has been affected by a Federal decision can go into court and claim money for it.

As indicated by a letter from the administration, this creates new bureaucracies and it costs several billion dollars to have to pay for it. The amendment that I rise in support of essentially recognizes what I think everybody in this room has been talking about, that there is a remedy to the problem out there, but that remedy is not in the bill that is before you. It is actually in the amendment that we are debating right now.

That remedy says let us take a look at the way you make these decisions on property. Require Government to take a look at the likelihood that a taking of private property will occur if they develop a law or regulation or an agency action; to require the Government to assess the likelihood that a taking of private property will occur if indeed you develop that regulation; and to require the Government to look into alternatives to the agency's action.

So you sit down and are able to work out with the landowner, with the local government that is involved, a way in which you can reach your goals, mutually agreed upon, without having to cause the taxpayers to have to pay for it.

This is a very sensible bill. It is so sensible that a former President recommended that agencies should follow this process. It is so sensible that the majority leader in the Senate has introduced similar type legislation.

Why have both those Republican leaders gone that route, rather than adopt the bill or support the bill that is before you now? It is because they both know that the Tauzin amendment as just adopted will indeed bankrupt the American taxpayer.

Now, look at the bill as adopted. Who are the special interests supporting this? The National Mining Association, the Chemical Manufacturers Association, the National Association of Manufacturers, the American Petroleum Institute, the American Independent Refiners Association, American Forest and Paper Association, and International Council of Shopping Centers.

Those do not sound like small landowners to me. They are the ones that are supporting the bill that was just adopted in this House. We need this amendment to correct the error that was made, to make sure that we protect the taxpayers' dollars, and indeed put land use planning back in local hands and protect the rights of property owners.

Mr. Chairman, I ask for an aye vote on the Porter-Farr amendment.

Mr. ZIMMER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, in this latest vote in which the House adopted the Tauzin amendment, the proponents of H.R. 925 have put their cards on the table. Their concerns are basically about the Endangered Species Act, wetlands programs, and water rights legislation.

If you have substantive problems with these programs, and I have problems with some of these programs, then what we should do is amend the substantive legislation, or we can deauthorize them entirely. If you think the agencies that administer these programs have excess money, then let us defund those agencies to the extent necessary.

We can cut the programs and cut the funding. But it makes no sense at all to do what this legislation would do without the Porter amendment, which is create a new multibillion dollar entitlement program that goes way beyond what the Federal Constitution requires and far beyond what any Federal court has interpreted the fifth amendment to mean.

It guarantees unlimited litigation and oceans of red ink for the Federal taxpayer. The Porter amendment fixes this situation. The Porter amendment would make Federal regulators more sensitive to takings without creating a new takings entitlement.

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. ZIMMER. I yield to the gentleman from Florida.

Mr. CANADY of Florida. This issue of entitlement, we have discussed that and I understand the concern. But I want to point out in section 7 of my substitute amendment, there is language that makes clear beyond any doubt that we are not creating an entitlement in this bill. It is simply not so that we are creating an entitlement.

You may disagree with the bill, but let me read again the clear language here: "Notwithstanding any other provision of law, any obligation of the United States to make any payment under this act shall be subject to the availability of appropriations." We must appropriate the money.

Mr. ZIMMER. Mr. Chairman, reclaiming my time, I understand that and have read that provision. It is a promise. You say we may break the promise by not funding the program. I am telling you that the first funds to redeem this promise will come straight out of the regulatory agency, as you intend it to do, and then if that agency runs out of money, the Federal Government will either have to break its promise or pass a supplemental appropriation.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. ZIMMER. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I have heard the gentleman say two or three times that this is subject to appropriation. I am trying to figure out what that means, because if somebody goes into court and gets a judgment against an agency of the United States of America, and that judgment is in effect in the courts of this country against the United States, how can we not appropriate the money and get out of that unless this is simply a false promise to property owners. I do not understand how we could as a nation with integrity say that somebody can get a judgment under a law, your law in this case, this law that we are debating today, and then turn around and say no, we are not creating any obligation to pay that judgment.

Mr. CANADY of Florida. If the gentleman from New Jersey will yield further, as the gentleman from North Carolina [Mr. WATT] and I have discussed previously, the purpose of the structure we establish in here is to make the agencies conscious of the cost they are imposing on people in the private sector.

Furthermore, if they impose costs, to pay for them they must come back to the Congress to seek the appropriation for that purpose. Ultimately, that decision does come back to the Congress.

But at least we will be confronting the reality of what we are doing. Right now what is happening is that that cost is just being imposed on the private sector like it was not a cost.

Mr. ZIMMER. Mr. Chairman, reclaiming my time, the fact is these agencies are not rogue organizations, they are creatures created by Congress and the executive branch. And if we have problems with the substance of the regulations, we should modify the underlying legislation.

The Porter amendment would make Federal regulators more sensitive to takings without creating a new entitlement and would protect private property owners because the takings assessment mandated by the Porter amendment would be available to property owners. In this respect it goes further than the Reagan Executive order.

So we should not pass the buck to regulatory agencies.

The CHAIRMAN. The time of the gentleman from New Jersey [Mr. ZIMMER] has expired.

(At the request of Mr. WATT of North Carolina and by unanimous consent, Mr. ZIMMER was allowed to proceed for 2 additional minutes.)

Mr. ZIMMER. Mr. Chairman, we should not pass the buck or pass the blame to regulatory agencies. We should not pass the burden on to American taxpayers with this huge new Federal entitlement program. I strongly urge the adoption of the Porter amendment.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment. One of the reasons I rise in support of this amendment by the gentleman from Illinois [Mr. PORTER] and others is after we passed the Tauzin amendment, I think there is an awful lot of concern by the Army as to what happens here.

Listen very carefully, because people forget this. The Corps of Engineers is the one who is to enforce the Wetlands Protection Act under section 404 of the Clean Water Act. Now, under the Tauzin amendment, 404 of the Clean Water Act is still being covered under these takings. So when the Corps of Engineers goes out to do these things, the Army is very concerned that this is the deepest pocket of all and can really come back against them and really jeopardize their budget.

Right now the way the law is, is that if there is a judgment against the Army Corps of Engineers, it goes into the general fund. It does not come out of the military. But under this bill, it would have to come out of the agency's budget.

Now, how does the Army project what kind of claims they are going to have? How does the Army plan for this? I have several letters that I will leave over here at the desk that I think are very concerning for people who do not want to vote for this amendment, because I think this amendment is the one thing that might at least bring some rationality and some predictability to the process.

The first is a letter addressed to the Speaker, in which the Army is pointing out the problems that they will have and why they are against this bill overall. But they are pointing out if this passes, the Army's ability to carry on any essential civil works functions, such as responding to a flood or any other disaster, or protecting the public interest through development of water resources or projects for navigation, flood control, environmental restoration, and so on, is going to be severely impeded. And the way that I understand the Porter amendment is it is more predictable because it is more similar to what is happening now. So at least the Corps of Engineers and others would have some idea as to how the Clean Water Act would be moving.

Now, there will be many people saying "Oh, no, the Army is just screaming 'wolf.'" But I think when you read this, and you read it, you will find out the Army is not crying "wolf." They are really trying to get the EPA. But again under the statute, the EPA does not act under section 404, it is the Army Corps of Engineers that is directed to act. Therefore, they are the payor in all of these cases.

So there is also an information paper here from the Army that I will leave at the desk, talking about all the things that they are worried would happen. They are worried about its effect on readiness, what would happen in op tempos where they are out. Can people stop them from moving on missions because it might interfere? They are talking about the budgetary nightmares. They are talking about the civil works problems and the bureaucratic problem of not moving.

Since we are in this bill and since this bill may pass, I would hope that at least we could adopt this amendment, because it would be a bit more predictable as to what would happen.

But I am a little amazed that as we move through this contract, on the one hand we are trying to cut back people's claims on personal injuries, but we are moving out here into the private sector, and I sometimes wonder if we are not just trying to switch all of the tort attorneys into takings attorneys, because I would say if we do not adopt this amendment, what we are really doing is finding the deepest of all deep pockets, and I would advise any attorney in private practice to immediately forget any other sector but the takings sector, because you have got Uncle Sam standing behind it.

So I think the Porter amendment is a modification that would make it more predictable, and I would certainly think, although I understand the Army to be opposed to the whole bill, at least this would make it a little more predictable if it does pass.

Mr. Chairman, I will leave these two letters over here and hope people come read them, because I think they are very serious.

In our stampede to do things, I keep reminding people of Roll Call's article, saying it is just like we are running creme pies down a conveyor belt and expecting the Senate to bail us out. Read these first. Read these first, and then I hope you will vote for this amendment, and we will at least not make the mess for the Senate quite as deep as it will be if we do not adopt this amendment.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to this amendment and in support of the underlying bill. The opponents of this legislation, who are also the supporters of this amendment which will gut the bill, say that we do not need to do anything more with regard to private property rights than what is stated in the fifth amendment of the U.S. Constitution, which states I think very clearly, "Nor shall private property be taken for public use without just compensation."

□ 1600

I think that is very clear, when we use private property for public use, as we do in many of the pieces of legislation that are passed, the private property owner is entitled to compensation. The problem is that the U.S. Supreme Court and other lower courts have interpreted that in a fashion that they see fit to say that sometimes you get compensation and sometimes you do not.

The fact of the matter is that this Congress has the same responsibility that the Supreme Court has, to interpret the U.S. Constitution and pass laws in accord with the Constitution. And that is exactly what we are doing here. We are simply acknowledging that when you determine what private property is and when it is used for public purposes, then we have every bit as much right as the courts do to indicate our interpretation of that amendment so long as our interpretation is a constitutional interpretation.

Clearly, this statute is such a constitutional interpretation. So if we are going to be realistic about our responsibility to private property owners in this country, and this important principle embodied in the Constitution, then it is important that we take action to compensate people when their land is taken for public use purposes.

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Maryland.

Mr. GILCHREST. Mr. Chairman, I cannot agree with the gentleman more. I just would like to make a couple of quick points. One, I really do believe that the problem with the Endangered Species Act or wetlands should be dealt with in the authorizing committees and not in this fashion.

The fifth amendment is clear that if your property is taken away for the public good, that is taken, actually your property is then rendered useless to you, because the Government has taken that property entirely. If your property is taken away for the public good, you should be compensated fair market value.

The more sticky question comes when we see how the regulators regulate the laws that we pass, and that is, should you be compensated if your property is regulated to prevent public harm. That is the fine point that I do not think we should address on the House floor. We should leave that up to the courts. Any problem with over regulators should come from the reauthorizing committees.

Mr. GOODLATTE. Mr. Chairman, reclaiming my time, I strongly disagree with the gentleman's statement that we should leave that to the discretion of the courts. We have the same responsibilities that the courts have for interpreting the law. If we find that they are indeed acting contrary to the intent of Congress and what we think is contrary to the U.S. Constitution, then we should take action. I think the gentleman is quite wrong.

With regard to leaving this to the authorizing committees, in point of fact, the authorizing committee with regard to legislation related to the fifth amendment of the U.S. Constitution is the Committee on the Judiciary. We held hearings on this issue. We held an extensive markup on this issue. We have now come to the floor with authorizing legislation. As the chairman of the subcommittee has already indicated to the gentleman from New Jersey, this is not an entitlement. This is an authorization.

I think that it is entirely wrong to suggest that just because somebody cannot use their property for a very major purpose because of legislation that has been passed by the Congress or because of court interpretations of those legislation, that they are not entitled to compensation when there is a substantial reduction in value of the property, which this bill requires, that they should indeed be compensated.

Mr. GILCHREST. Mr. Chairman, I was not referring to the Committee on the Judiciary authorization of this bill. It is clear that they authorized this bill. I was referring to the authorizing committees that deal with the problems. We are going to be dealing with the problems that the Endangered Species Act and the clean water, section 404, and the wetlands——

Mr. GOODLATTE. Reclaiming my time. I would say to the gentleman that I commend him for that and encourage him to do that because I think after this legislation passes and becomes law, it will be very important and very necessary for you to do that, whereas previously it has not been necessary and has not been done.

Mrs. MORELLA. Mr. Chairman, I move to strike the requisite number of words.

Thank you, Mr. Chairman. I rise today in opposition to any legislation that would provide additional takings compensation beyond that allowed for under the fifth amendment to the U.S. Constitution.

I realize there are many citizens who believe they have been dealt with unfairly or uncaringly by Federal regulatory agencies. I strongly support initiatives that would grant them relief.

I support the Porter amendment, which requires new takings assessments and which will heighten regulators' awareness of these important issues. I support the concept of installing agency ombudsmen—to explain the laws, to handle complaints, and to nip disputes in the bud. And I support the settlement of property claims by new, nonjudicial mechanisms.

However, to support a new and broad-based system of takings compensation would be to support one of the most unwieldy, unworkable, and unneeded entitlement schemes that has ever come before this body.

H.R. 925 would force us to make an impossible choice: either we agree to bloat the Federal deficit and clog the Federal judiciary with takings claims or—more likely—we must abandon the enforcement of those laws most crucial to the protection of our Nation's wildlife and its remaining natural areas.

That is the choice before us today. It is a choice that none of us can make, and it is a choice none of us should have to make.

To understand the law, Justice Holmes reminds us, we must understand what the law has been. Private property rights are not absolute—not now, not ever. In saying so, I am not quoting from the latest Greenpeace bulletin—I am not quoting from John Muir or Karl Marx. I am quoting a principle of common law which has existed for almost 1,000 years.

From the time of King Henry the Second, in the year 1166 A.D., the Assize of Nuisance stated that a property holder could be held to account for "things erected, made, or done" on his land that gave trouble to others.

If a property holder's cattle strayed from his land causing damage, his neighbors could sue and force him to build an enclosure. If the landowner raised or lowered the water level on his property, and that act caused detriment to others, the landowner could be held liable.

If a man cast dung into the "ditches or waters which are next to any city, borough, or town," another citizen could sue and force the mayor or sheriff to take corrective or punitive action.

The nature of the nuisances and pollutants may have changed since the Middle Ages—the underlying principle has not. The principle that the polluter should pay is rooted in laws and customs that prevailed for centuries before Columbus sailed the Atlantic.

The bill before us today would fundamentally undermine these principles. It would undermine the property holder's responsibility for the public goods of which he is but a temporary steward.

A landowner does not own the air we all breathe, a landowner does not own the water that flows under his land and into our taps, a landowner does not own the eagle that lands in his tree.

Rather, these are public goods, and as such, they are the greatest and proudest possession of the American people. These public goods are for the property owner to respect and protect—they are not for him to sell back to the American people, their true and rightful owner, at the auction block.

I urge the defeat of the compensation bill, I urge passage of the Porter amendment, and I yield back the balance of my time.

Mr. CANADY of Florida. Mr. Chairman, will the gentlewoman yield?

Mrs. MORELLA. I yield to the gentleman from Florida.

Mr. CANADY of Florida. I thank the gentlewoman for yielding to me.

There is a large portion of what you have said in your statement that I wholeheartedly agree with. I would just point out to the gentlewoman that the substantive amendment which I have offered specifically provides that "no compensation shall be made under the act in circumstances where there is an identifiable hazard to public health or safety or damage to specific property other than the property whose use is limited."

I believe we have covered that. In addition to that, in the amendment of the gentleman from Louisiana [Mr. TAUZIN], there is specific language that says, "if a use is a nuisance as defined by the law of a State or is already prohibited under a local zoning ordinance, no compensation shall be made under this act with respect to limitation on that use."

So I believe that the general sorts of concerns that you have raised are concerns that we have been aware of and that we have covered in the legislation that we are proposing.

Mrs. MORELLA. I admire the fact that you have tried to take a bill that is unnecessary and help it, but I think it is still unnecessary. We still have an amendment in the Constitution which is working, and we have the courts to help to enforce it.

Mr. CANADY of Florida. The Chief Judge of the Court of Claims thinks it is not working.

Mr. NADLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support the Porter-Farr amendment which really is in contradistinction to some of the worst provisions of the Canady-Tauzin compensation bill.

This bill constitutes a fundamental reinterpretation of the fifth amendment. Contrary to the gentleman from Virginia, it is the court's duty to interpret the law. It is our duty to change the law if we do not like the court's interpretation. But we make the law. We change the law. The court interprets the law.

The courts have interpreted the fifth amendment in light of the common law over the centuries to mean that if the use of the land is precluded by the government, then that is a taking. If the value is diminished because some uses are precluded but substantial use is still permitted, that is not a taking.

To interpret it otherwise, as this bill would do, would force the Government to compensate a landowner for any change, almost any change in value which would occur from almost anything Government does.

It would establish a major entitlement program for landowners and establishes no money to pay for that entitlement. In effect, when an Army Corps of Engineers project has an effect on the value of nearby land, it would be up to the Secretary of the Army to pay for that. That would have priority over guns and tanks and missiles and readiness and troop payrolls, which makes no sense at all.

And the bill is based on a fundamental misconception. The gentlewoman from Maryland referred to the misconception. Property rights under Anglo-Saxon law, Anglo-American law are not absolute.

A great Republican President, Teddy Roosevelt, said, I quoted this last night but it deserves to be quoted again, "Every man holds his property subject to the general right of the community to regulate it to whatever degree the public welfare may require it."

That that may sound, these intelligent words of President Theodore Roosevelt, radical today just shows how far some of our colleagues have gone from the common sense and public welfare conception of the Constitution.

What this amendment would do, Mr. Chairman, is to say that we are going to vindicate landowners' rights by requiring that any agency, before undertaking any rule or action, must do an impact analysis to see what impact, if any, that will have on the value of land by necessity say it, almost any action government takes is going to raise the value of some land, decrease the value of other land. But this at least recognizes the need to address regulatory burdens on individual landowners. It is a positive step in support of private property owners, but without escalating the cost, the size or the inefficiency of government and without making it impossible for government to take almost any regulatory action, because that is what the underlying bill, as amended by the gentleman from Florida [Mr. CANADY] and the gentleman from Louisiana, [Mr. TAUZIN] would do.

Almost any regulatory action would be impossible because somewhere somebody's land value would be diminished. That would have to be compensated for and we all know there is no money for that. This amendment, based on President Reagan's executive order and on Senator DOLE's bill, is an intelligent, common sense, down-the-middle approach to say we have to recognize and minimize the impact on property values, but we are not going to subordinate the public welfare to any change in value on somebody's land.

Mr. EHLERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, approximately 12 years ago, I was elected to the Michigan legislature and rapidly became immersed in takings issues, because Michigan is the only State of the Union which has been delegated responsibilities for wetlands by the U.S. Government. Takings was a major issue, and my initial reaction was to do precisely what the bill before us does, and that is provide for immediate compensation to property owners whenever an area of their property was declared a wetland.

☐ 1615

However, in researching the issue, I discovered that there is an extensive 200-year history. Takings is a very complex legal issue. It has a long history, as I mentioned, but it has developed into a basically fair approach.

Generally, in takings cases, courts engage in a rigorous balancing process in which they consider a variety of factors, including the purpose of the law and the benefit or economic impact of the law. Precedent, established through zoning laws and the like, looks at the entire piece of property, not only the portion of the land that cannot be used as the owner desires.

I believe that H.R. 925, as written, will destroy centuries of U.S. and common law and will create immense legal and financial problems if implemented as it is currently written.

In addition, we discovered in Michigan most takings problems can be resolved by ensuring that regulators work with the constituency to achieve a solution. That should be the thrust of the law, and that, I believe, is the thrust of the Porter amendment.

Mr. Chairman, I would like to quote from a letter I received today from a gentleman who served as a Justice in the Michigan Supreme Court for several years, and currently is serving as mayor of the city of Detroit, one of the major American cities.

His comment about the bill before us is as follows:

> These takings bills pose a radically new and constitutionally unsound theory for litigation. Historically, takings' issues have been decided by the courts. The judiciary has crafted just and adequate protection for property owners based on the constitutions of the Federal and State Governments, weighing in each individual case a property owner's justifiable expectations of property use against the rights and interests of the public as embodied in governmental regulation. There is no reason to expand the "takings" theory, because a substantial body of case law that the courts have developed to enforce constitutional protections is sufficient.

That is the end of the quote from former Justice Archer. We, of course, have experienced takings in other forms; zoning laws, for example. I recently bought a house in Grand Rapids. My wife and I would like to add an addition in the back, and discovered we cannot build exactly as we had hoped because the city government has said "You cannot build anything on the rear 25 feet of the lot."

That property cannot be used as I wish, just as it often happens with wetlands conditions. However, we have established procedures for that. We have established laws that result in what is for the greater good of the public. Even though I may not build on that piece of property, that particular zoning law has increased the value of my property and the value of my neighbors' properties.

Mr. Chairman, as a former State legislator, I also took a look at what the States are doing, because I know this is an issue before the States. 25 State legislatures have considered a law like the one before us, and have rejected it. Nine States have adopted some type of takings legislation, similar to the law before us, but it is interesting that 6 out of the 9 have adopted legislation that is modeled after the Reagan executive order and the Porter amendment that is before us. In other words, they are taking the same approach that we are recommending in the Porter amendment.

One State which adopted a takings law actually had it repealed by the people of the State 2 years later. That is the State of Arizona. The legislature adopted it and the people through a referendum rejected it.

Based on the information I have given, the 200-plus years of constitutional law, a great deal of work on the takings issue, the States' experience in rejecting the approach in H.R. 925 and adopting the approach largely in the Porter amendment, I urge adoption of the Porter amendment, and urge that we help property owners meet the law and treat them fairly.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. EHLERS] has expired.

(At the request of Mr. CONYERS and by unanimous consent, Mr. EHLERS was allowed to proceed for 1 additional minute.)

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. EHLERS. I am pleased to yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I want to compliment the gentleman from Michigan [Mr. EHLERS] on his presentation. I agree with him. I am pleased that he would quote the former Justice of the Michigan Supreme Court, now the mayor of the city of Detroit, Dennis Archer.

Just to show the bipartisan nature of this amendment, I am quoting Ronald Reagan and Senator DOLE, so I think this amendment has just about everything going for it as far as bipartisanship is concerned. I compliment the gentleman for his contribution.

Mr. ABERCROMBIE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, speaking in favor of the Porter-Farr amendment, there has been anecdotal evidence, Mr. Chairman, offered on the floor with respect to the overall bill here, 925. I would like to add to it by way of example, I hope illustrative of what might really be involved and what parallel experiences others might have.

I am going to cite the example of water, Mr. Chairman. There is an assumption, an underlying assumption in this bill that questions about private property have already been resolved; that is to say, we know who owns what. I would suggest, Mr. Chairman, that is not always the case, not by a long shot.

I would also suggest that if we go over the history, as we have in Hawaii, on water rights, who exactly owns the land where water coursing is concerned, where the water goes? What is the natural course that water takes? What if it is diverted?

What if we have an historical situation, as we have in Hawaii, where plantations came into existence and literally changed the course of nature, took water from one place and took it to another place for economic purposes? The land which was owned or leased, in some instances, where sugar was grown, where pineapple was grown, did not have sufficient water. It was taken from elsewhere.

Now we have a situation in which we have to determine whether we are going to, as sugar lands, utilization of sugar lands declines, whether we are going to return the water to its original course. If that happens, what consequences are there for landowners?

In that context, in Hawaii and elsewhere in the country we have the question of watershed areas, we have the question of water conservation. We have, in fact, the question of how will water be used for municipal purposes, for private purposes, for household purposes.

Once this takes place, there are immediate consequences for the land. The gentlewoman from Colorado [Mrs. SCHROEDER] has brought before the body, and I think it deserves reiteration now, the questions that have been raised by the Acting Assistant Secretary of the Army for Civil Works, and I want to repeat that, the Assistant Secretary for Civil Works in the Army, addressed to Speaker GINGRICH, strongly opposing the bill because of some of the kinds of questions that I have raised in the private-public sector with respect to water and how it is used and whether or not private property can be seen as private, and that all questions concerning ownership that have to be resolved also exist in the wider sphere of public purpose, even going as far as to say what constitutes the national interest in terms of the military.

These things are not so easily decided. Quite the opposite. The reason I support, then, the Porter-Farr amendment is that this is an assessment bill. We have kind of gotten away from what the Porter-Farr amendment actually says. It is attempting to reduce some of the questions that have been raised by our friends on the other side in opposition to the Porter-Farr amendment.

This allows, in fact requires, that a private property impact analysis be made, all within the context of the fifth amendment. Mr. Chairman, let us not forget, the fifth amendment is not abandoned. I think the gentleman from Illinois [Mr. PORTER] raised that question in some of his previous commentary, that after all is said and done, and after all our interpretations are made, and I hope that everyone will grant that I am making mine in good faith, as I granted it to others that they are making it in good faith, that the fifth amendment must be satisfied. There can be no takings without just compensation under the fifth amendment.

What constitutes that just compensation and what constitutes that taking does now and will remain a question to be decided under the full protections of the fifth amendment. In the meantime, then, what we do legislatively is very, very important as to what will be presented to the court as a fifth amendment issue, a takings issue.

Therefore, I commend to the Members' attention, in conclusion, please look at the content of what the private property impact analysis says, and I think a lot of the fears and anxieties of those who favor not supporting the Porter-Farr amendment will be alleviated.

Mr. DOOLITTLE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this Reagan executive order which has been referred to, and which has not been very faithfully implemented, I might add, since it was promulgated, and this bill that we are considering are perfectly harmonious, and I believe will work very, very well together.

In fact, the Reagan executive order without this bill will not work nearly so well, and that is because if one is so unfortunate as to have the massive power of the Federal Government directed against himself, the average length of time to pursue a takings case is between 5 and 10 years, ranging in cost from $50,000 to $3½ million or more.

I have heard a lot of rhetoric about how this is a big bonus for big corporations and wealthy landowners. I would say, Mr. Chairman, the only ones that do not have a remedy in this country are the average people.

Sure, we have had the fifth amendment for 200 years, and there has been no effective remedy, really, to implement it for 200 years. We have had some very vague Supreme Court cases, and unless a person was big and wealthy and had a staff of attorneys, they could never afford to pursue their right for relief under the fifth amendment.

Finally, we are to the point today, thankfully, with the Contract With America and the changes that have occurred, where we can respond to the voice of the average citizen, and we can provide a remedy in order to make real the protections afforded by the fifth amendment to the U.S. Constitution.

We have heard today, I just cannot believe it, I hear the words "unwieldy, unworkable, radical," used about this piece of legislation, and these words spoken from the very mouths of those who have supported the Endangered Species Act and its bizarre conclusions, such as whereby the farmer who was unintentionally plowing his field and kills a rat, he stands now criminaly indicated because he has committed a taking of an endangered species. That sounds like it is pretty radical to me, pretty unwieldy, pretty unworkable.

Then we have this little critter, the fairy shrimp. This costs each new homeowner, and continues to cost today in the city of Roseville, in my district, $6,000 extra per house because of this creature which we are protecting. Radical? Yes. Unwieldy? Yes. Unworkable? Yes. That is what we seek of change by this very wise and judicious piece of legislation.

Mr. Chairman, we need this bill. I just want to point out, it has been implied that somehow we are going to impair defense readiness because the Army will have to respond to all these claims. I just want to point out that there are two funds. The defense readiness and all of that, the military stuff comes out of one fund, the defense appropriation, and the energy and water appropriation, a separate subcommittee, deals with the civil aspect of the Army, so there is no way this bill is going to impair defense readiness.

Mr. Chairman, I would urge this amendment to be defeated and the bill to be adopted.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Porter amendment, and in an effort to keep the U.S. Government from going bankrupt or pursuing any of the other alternatives that might result if this bill is passed. I have heard the argument here that this is not an entitlement program. I would submit to my colleagues that it is either an entitlement program or it is a fraud on the American people.

I have thought this thing through, and it seems to me that ther are four options that we have under this bill. The first option is if we apply it like it is written and we continue to apply the laws as they are written, and the regulations, we can bankrupt the Government, because everybody who has any decrease in value in their property will be making claims under this bill.

□ 1630

The second option is we can bankrupt an agency of Government which chooses to promulgate rules that are pursuant to statutes that this Congress has passed. We can have judgments entered against the agency and the agency can choose to continue to promulgate rules as we have directed them to do under our statutes, and if we do not appropriate some more money to fund these agencies or departments of Government, then ultimately that particular department of the Government will become bankrupt as opposed to the whole Federal Government becoming bankrupt.

The third option that we have under this bill is that we can work a tremendous fraud on the claimants who are coming into court by saying to them under this bill that we give you a cause of action but if you get a judgment against the Government or against the agency, that judgment is not going to be worth the paper it is written on because the Federal Government is going to refuse to pay the judgment.

The fourth option is that we can say to our Federal Government agencies that you will not promulgate any regulations in furtherance of the laws that this Congress has adopted because if you do, then you are going to have lawsuits against you.

With all respect to the gentleman from Texas [Mr. STENHOLM], at least he was honest enough to come to this floor and say that is exactly what he expects to happen, we are not going to have any more regulations promulgated, and that is the objective we are trying to achieve. At least that is honest with the American people.

What does the last option here do for respect for the laws of this country? It means we have got laws on the books that our departments cannot promulgate any regulations to enforce. Therefore, people's respect for the law goes down, and we already have a crisis in this country, we are told, about people's respect for the law. So we have got this vicious cycle going around.

The final point I want to make is you will recall several weeks ago I came into this body and I offered the exact language of the fourth amendment to the U.S. Constitution. My colleagues here by an overwhelming majority voted against the precise language of the fourth amendment. I did not bother to come back into this body today and bring the language of the fifth amendment. I guess my colleagues who have all stood up here and said this bill is in furtherance of the fifth amendment, if I had brought the exact language of the fifth amendment into this body and said, "Please vote the fifth amendment up or vote it down," I wonder what my colleagues would have done.

We are back here today saying we are furthering the Constitution when we are doing exactly the opposite thing.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(At the request of Mr. FRANK of Massachusetts and by unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 30 additional seconds.)

Mr. WATT of North Carolina. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. To answer your question about whether or not this body would vote for the fifth amendment, would you leave any of that self-incrimination stuff in your version?

Mr. WATT of North Carolina. Yes, I would.

Mr. FRANK of Massachusetts. Then the answer is, no, you would not get it.

Mr. GILCHREST. Mr. Chairman, I move to strike the requisite number of words and speak in support of the amendment.

I would just like to sort of clarify and frame the discussion that we are having here. We have had some problems with regulations, they have been described as regulatory takings. We have had problems probably to some degree at any rate all across the country. So we are attempting here to solve or find some reasonable cure, for an over, to some degree, in some people's minds, and to a certain extent that is true, regulatory insensitivity to private property.

What we have here, on the one hand, we have problems with property rights. Because if you find the little fairy shrimp on there, you cannot do something, and where is the value of that? On the other hand, we have jobs. Maybe you cannot lumber or timber or do something else in an area.

But on the other hand we have this crucial, critical thing called biodiversity which to a large extent is to be protected by the Endangered Species Act. So how do we as humans solve this particular dilemma? Do we solve it by talking and discussing with the regulators, with Members of Congress, with the landholders about what they can do with their property and still hold onto biodiversity for future generations? Or do we solve the problem by sterilizing debate, by saying that we are going to take care of this and if some regulator comes in there and wants to take your property or regulate your property, we are going to compensate you, flat out, the Federal Government will pay for you not to abide by the Endangered Species Act, or for protecting wetlands.

I think what we need to do, and I am coming from a position of what I do in my district, whenever we talk about wetlands in my district, or whenever there happens to be a beetle on the side of a hill, we try to get the Corps together, Soil Conservation, EPA, Fish and Wildlife, myself, the affected landholder, and we sit down and we discuss this issue. But unless we adopt the Porter amendment, there will be no more discussion of this issue. You will have the incentive for people not to want to talk to the regulator, not to want to talk to any State legislator or to their Congressman or anybody. The incentive will be dollars and cents. I do not think that is what we really want to do here. We want to solve the problem of some cases being insensitive with their regulation.

We ought to deal with this in the authorizing committee, of Resources, to fine-tune the Endangered Species Act. We ought to deal with this in the Committee on Transportation and Infrastructure to fine-tune the wetlands provisions of the Clean Water Act.

I want to make one other point. When we look at this little tiny thing here that no one would ever notice, I suppose, now, I do not know if this has any medicinal value at all, and I recognize there is a problem with overregulation, but I do not want to throw out the idea that we live on this planet in a very cold void called the universe that is infinite, and we as human beings, getting fundamental now, rely on the resources of this planet to keep us alive and to keep the future generations alive. I see that if we enter into this problem of takings in the way that we are dealing with it, that some of those resources are going to be diminished.

Before there was human impact on this planet, and I recognize we have to manage what with we do because we have people here, we cannot save every species and we cannot live in the wilderness like people did a thousand years ago.

Before there was human impact on species, we had about an average of one species per million become extinct every year, for millions and millions of years on average, except for 2 catastrophes, one of which was the dinosaurs, one species, per year, out of a million became extinct.

Now it is close to 10,000 species becoming extinct out of a million every single year. We have accelerated that process, and we do not know what the value of wetlands and biodiversity will do for future generations, but let us make sure that when we have this debate, we do not throw those things out. Those are important. We must continue to discuss them.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. GILCHREST. Am I out of time, Mr. Chairman?

The CHAIRMAN. The gentleman has 15 seconds.

(At the request of Mr. POMBO and by unanimous consent, Mr. GILCHREST was allowed to proceed for 3 additional minutes.)

Mr. GILCHREST. I yield to the gentleman from California.

Mr. POMBO. I originally came down here to ask you one thing, and as you continued, there is something else I have to ask you. You said that we had one species a year for a million years.

Mr. GILCHREST. I said that before there was human impact on biodiversity and ecosystems, there was one species for every million species on average, for every million species, you would have one species becoming extinct every year. That was before the human impact in the last, let's say 1,000 years.

In this particular decade, in an evaluation of our relationship with biodiversity or species on the planet, you have about 10,000 species, plants, insects, per 1 million becoming extinct every year. That is an acceleration.

Mr. POMBO. If the gentleman will yield, the study on the 10,000 was based on, if it is the same study I saw, was based on one island and what happened on that one island and extrapolated throughout the entire country.

Mr. GILCHREST. Reclaiming my time, the study you are talking about, there have been studies in the rain forests of Latin America, there have been studies in Indonesia, there have been studies all over the world, including the United States. The average is, now in the United States we would not have 10,000 species per every 1 million becoming extinct, but we have hundreds of species becoming extinct in the United States as a result of human impact.

What do we do, tell all the people to move? No. But you manage the resources with what you have. I yield to the gentleman.

Mr. POMBO. I do not know how in the world you can say that there is one species per million before human impact as humans were not here and I do not really follow that. But the main point I rose on——

Mr. GILCHREST. Reclaiming my time, the way you do that is through scientific discovery of the strata, of the biology of things, through research, through archaeology, through anthropology, through scientific techniques that can evaluate what species looked like throughout just about the course of time that the Earth has been here. There is a scientific technique to discover those kinds of things. I yield to the gentleman.

Mr. POMBO. The main reason why I came down here is because you and I have discussed this issue for a number of years about what to do. You have always said that you want to help, that you do want to protect people's private property and that that is an interest of yours. This amendment that is on the floor right now is purported to be the Reagan Executive order, or taken from the Reagan Executive order. I do not know if you even realize this or not, but the Executive order is still in existence. If this amendment passes, the only change in——

Mr. GILCHREST. Reclaiming my time, the Reagan order, the only thing that will happen, if this Porter amendment goes through, this will offer us an opportunity to do two things: One, to make sure that the agencies are much more sensitive to what happens, and we can reauthorize the Endangered Species Act——

The CHAIRMAN. The time of the gentleman from Maryland [Mr. GILCHREST] has expired.

(At the request of Mr. POMBO and by unanimous consent, Mr. GILCHREST was allowed to proceed for 1 additional minute.)

Mr. GILCHREST. When we reauthorize the Endangered Species Act, we can certainly address those problems that have happened. When we reauthorize the Clean Water Act, we can do that for wetlands. This Porter amendment makes sure, it reemphasizes, it directs the agencies so that they will be told by us and we have the responsibility, that you must inform that person as far as the impact of their property is concerned and the value of their property whether it is diminished or whether it is not diminished.

The fifth amendment still holds true. But my problem with this bill as it stands without the Porter amendment is that in my mind it is going to create a huge, litigating, bureaucracy that we cannot anticipate.

Mr. POMBO. If the gentleman will yield, what you are worried about is you want to protect what is happening right now, which is not working, and that is what we are trying to change. That is the whole problem.

Mr. GILCHREST. Reclaiming my time, I just do not want to make it worse.

The CHAIRMAN. The time of the gentleman from Maryland [Mr. GILCHREST] has again expired.

(At the request of Mrs. CHENOWETH and by unanimous consent, Mr. GILCHREST was allowed to proceed for 3 additional minutes.)

Mr. GILCHREST. I yield to the gentlewoman from the beautiful State of Idaho.

Mrs. CHENOWETH. Could the gentleman just define for me what biodiversity and ecosystems are?

Mr. GILCHREST. Biodiversity means all of the species on this planet that have evolved over millions of years that have created, literally, life on the planet.

We have air because of living organisms on this planet. We have purifying techniques in life forms on this planet for our atmosphere. We have animals in the oceans, for example, a whole range of species, from microorganisms right on up to whales that interact with each other that cause what we call the balance of nature. The planet Earth exists the way we know it, we breathe the air, drink the water, eat the food, we find medicines in the natural environment to cure diseases. This happens as a result of over millions of years of evolution of different species reacting with each other to form the planet Earth.

Mrs. CHENOWETH. Would the gentleman yield for a second question?

Mr. GILCHREST. Yes, I will.

Mrs. CHENOWETH. Mr. Chairman, I ask the gentleman from Maryland [Mr. GILCHREST], what is an ecosystem?

Mr. GILCHREST. An ecosystem in Idaho, for example, would be an area where you have a certain type of tree, a certain type of animal life, a certain type of insect and so on that has evolved in that particular area and depends on that type of vegetation, that type of a full range of other animals like—I do not want to bring up wolves now, but let's say a moose is going to eat a certain type of vegetation.

□ 1445

In my area an ecosystem on the Eastern Shore would be a little bit different because we have deer, we have geese, we have fox and so on. So ecosystem is different from one place to another, but an ecosystem is an area where you have animals, plants and insects that will depend on each other to survive.

Mrs. CHENOWETH. Mr. Chairman, then is it the gentleman's suggestion then if ecosystem means all of this, that it is the responsibility of the Federal Government of the United States of America to manage and fund and control all of this?

Mr. GILCHREST. No; I would not say it is the responsibility of the Federal Government to control all the ecosystems and I am not sure how much time I have, Mr. Chairman, but property owners, local government, people in general need to cooperate with each other to find solutions to some of these problems that are vexing this institution.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words and I rise in support of the amendment.

Mr. Chairman, I have good news for my colleagues. Rejoice, the fifth amendment is alive and well. It is in the hands of the courts which are vastly more competent to interpret it, to enforce it and to provide for justice to be properly administered to the American citizens, to see to it that where there is a taking it is compensated, and to do so in a thoughtful fashion in accordance with law, and on thoughtful consideration of the requirements of the Constitution and the precedents which have interpreted that great institution of this country.

The fifth amendment says no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation.

This amendment implements that language. It sees to it that Americans are treated fairly, according to 200 years of constitutional law; and that where there is a taking they are properly compensated.

It is remarkable to note the curious way in which this legislation has been considered, brought rapidly to the floor, without proper consideration of the facts that are associated with it. When I was a young Member, no bill was brought to the floor until we had an estimate as to the cost from the Office of Management and Budget.

As I mentioned earlier in my remarks, we sought the views of the Office of Management and Budget, and of the Congressional Budget Office to find out what this legislation is going to cost the taxpayers. Those two agencies responsible for the administration of the public monies, and estimates of expenditures and costs, were not able to tell my office either how much is at stake here, how much this is going to cost, nor were they able to tell us what programs were involved.

Happily, there is a possibility that there is some limitation as to the sweep and scope of the cost of this from the original bill, but that is not enough. What we really need to know is what this is going to cost, why is it that we are rushing out to spend the public monies?

I have heard great groaning and great distress from my colleagues on the Republican side of the aisle about the fact that the budget is out of balance. Let me tell my colleagues that if there is a budget busting piece of legislation in this session of Congress, or indeed in any session of Congress, this will rank in the top three or four. There is not anyone on this side of the aisle who can tell this body what this is going to cost.

And there are very few who could justify all of the strange and anomalous consequences that are going to flow from this, people who are going to be compensated for enrichment which they have already gotten which might be diminished by the same problem project which has contributed to their enrichment.

I can understand there are people out there complaining about the fact that there are Federal laws that say you cannot pollute, that say you cannot flood your neighbor's land, that you cannot build where good sense says you should not, and taxpayers would have to pay you and want to be paid for being denied the privilege of building where you ought not. It is not good sense, but I understand that, and there is no reason why we should listen to it. What we ought to do is legislate with the full awareness of costs, a full appreciation of what it is we are doing, and whether or not it is wise public policy, the programs which we are amending and the behavior of this body. That is good legislation, that is good sense. It is not being applied here.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Let me just reinforce what the gentleman says. I am the ranking minority member of the subcommittee that would have had jurisdiction over this if the minority had been willing to let it go to the subcommittee. Behind me is the ranking member of the committee that would have had jurisdiction over it if we had been allowed to discuss this in committee. But to reinforce what the gentleman said, the bill on which we had hearings disappeared when we went to markup; we had a very different version. So the language that is before us now, the Canady substitute as amended by the gentleman from Louisiana [Mr. TAUZIN], has never been before a committee for a hearing and in fact the great bulk of this has never been subjected to the markup process and that is why we do not have these answers because they did not want to subject it to scrutiny.

Mr. DINGELL. That seems to be consistent with the overall practices that we have observed with regard to legislation. I think that in almost every instance where we have dealt with questions which were involved in the contract in the 100 days we found that the legislation has changed faster than even the managers of the legislation could understand. And that they were incapable of explaining language which was in their own bill.

I think that good legislative practice deserved better protection of the public interests and requires better than the legislation we have before us.

Mr. BOEHLERT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in strong support of the amendment being offered by my good friend and colleague from Illinois, Mr. PORTER. The Porter amendment to H.R. 925 is well reasoned, and a fiscally responsible approach to the issue of regulatory takings.

The American people voted on November 8 for reasonable and responsible laws. As drafted, H.R. 925 passes neither of these tests.

As has been stated repeatedly, H.R. 925 is a budget buster. This legislation could require hundreds of billions of dollars in additional Federal expenditures, not tomorrow, not next week or next month or even next year, but over several years. I cannot support legislation that would increase the Nation's debt in such a sweeping and irresponsible manner.

Keep in mind we have got to be serious about addressing our Nation's budget crisis. We are spending $813 million every day just in interest on the national debt. It does not feed anybody or clothe anybody or educate anybody or indeed compensate anybody. It just services the national debt.

H.R. 925 is a budget boondoggle whose cost to the American taxpayers cannot be accurately estimated by any Member of this body. Not by the Congressional Budget Office, not by the Congressional Research Office, not by the author of this bill, not by the professional staff of the committee of jurisdiction.

We are being asked to venture forth into Rod Sterling's twilight zone.

Earlier this week this body passed legislation requiring Federal agencies to do risk assessments and cost-benefit analyses before proceeding with new regulatory actions. Ironically, many of the same proponents of conducting thorough cost-benefit analysis are before us today, asking us to support legislation that may cost the American taxpayers hundreds of billions of dollars over the long haul, without assessing the scope and impact of this far-reaching legislation.

The proponents refuse to admit the risk, and they fail to enlighten us as to the cost.

Now more than ever, we must take a hard look at the cost and implications of Government actions. The bill before us today needs such a hard look.

The Porter amendment assures us that we assess the costs and benefits of regulatory actions that may impact property values. The Porter amendment, which is based on legislation introduced by Senator DOLE and an Executive order issued by President Reagan, requires agencies to complete a private property taking impact assessment before issuing a regulation. This is a sensible way to determine if billions of dollars of taxpayers' money should be spent on compensation.

It is also worth noting that millions of dollars in litigation costs will also arise out of H.R. 925.

I would like now to share with you just a brief passage from an op-ed piece that appears in today's New York Times that outlines one of the many costly unintended consequences that could result if H.R. 925 is amended.

The op-ed piece states for their part landowners would be encouraged to shop for the highest possible appraisal of their loss, and lead to a new form of land speculation that had nothing to do with offsetting regulatory harms. That would lead to endless rounds of litigation over the necessity of compensation, the adequacy of economic appraisal and whether each side filled out the forms in the right order. That is not something we want.

We have heard about the Porter amendment guts this bill. The only thing being gutted is the taxpayers' wallet. We hear about shame; shame has been repeated over and over. The only shame I would submit is to suggest that the Constitution does not protect private property rights. It does in that sacred document in the Fifth amendment.

Let me point out there are a whole list of very respected opponents to this legislation. The National Council of State Legislatures, the National League of Cities, the National Governors Association. The only vote we have had on this recently was in the very conservative State of Arizona, where by a 60 to 40 margin the voters of Arizona rejected this.

The CHAIRMAN. The time of the gentleman from New York [Mr. BOEHLERT] has expired.

(By unanimous consent, Mr. BOEHLERT was allowed to proceed for 2 additional minutes.)

Mr. BOEHLERT. Mr. Chairman, the voters of Arizona rejected this. If the bill passes it will reverse decisions of very conservative members of the Supreme Court of the United States. In a 1993 decision, Chief Justice Rhenquist and Justice Scalia and every member of the Supreme Court reaffirmed 2 basic Fifth amendment principles. Takings can only be decided based on the impact on an overall parcel of property, not just the affected portion. And this is extremely important, particularly to this debate, Justice Rhenquist, Justice Scalia, and every member of the Supreme Court said diminution in the value of property is insufficient to demonstrate a taking.

I think the gentleman from Illinois [Mr. PORTER] is taking a very reasoned approach to a problem we all acknowledge, and I would urge that we follow his lead and support his amendment.

Mr. MILLER of California. Mr. Chairman, I move to strike the requisite number of words and I rise in support of the amendment.

Mr. Chairman, I rise in support of the Porter-Farr-Ehlers amendment. I think it is a well-reasoned amendment, for reasons my colleagues from New York just reiterated. It is also very fiscally responsible for those of us who are concerned about the Federal Treasury and potential raid on the Treasury that the underlying legislation holds out.

It is also a good amendment because it keeps in place what happens in most instances under the current laws, and under the current laws the matters between the enforcement of the Endangered Species Act, more importantly the enforcement with the Clean Water Act is a matter of negotiations between the landowner and the local agency and the Federal Government about how that land shall be developed or not be developed, and to bring it into compliance with the purposes of both the Endangered Species Act and the Clean Water Act.

We are all well aware, you cannot serve in the Congress of the United States and not be aware that we have had enforcement of these laws that defies common sense, that we have had enforcement of these laws that is about the arrogance of an agency. We have had enforcement over these laws and decisions rendered in many instances where there simply is a mismatch between the landowner and the agency, but this legislation comes in and says we will treat all situations as if that is the normal course of doing business under the law.

In fact, it is not, because the point is that there are thousands and thousands and thousands of projects that are approved every year where they have to comply with Clean Water, comply with Endangered Species, and we negotiate it out.

□ 1700

Now your suggestion is the landowners can simply cross their arms and say, "Pay me." That does not really help us in terms of the development that people want to see take place in their cities and their towns, and it means that we will have to reconsider projects because simply agencies will start to run out of money to comply with that act should they want to continue to go forward with those projects.

What we really ought to be doing, and over the last year, unfortunately, we were not able to do that, but I guess with the new majority, we will; the gentleman from Louisiana [Mr. TAUZIN], myself, and the gentleman from Louisiana [Mr. HAYES] and others have worked on an amendment to change procedures within the Clean Water Act to get people timely decisions. Most of the people I have been engaged in in the enforcement of the Endangered Species Act, what they want is a decision. They would like to have a decision, because time is money in their business, and then they would know what to do.

But these agencies drag them out and drag them out. But that goes to the underlying acts, especially with respect to Clean Water and how to make sure we can even up the negotiating positions of those parties.

But to come in at the end with the Tauzin amendment and suggest that in each and every case the issue is whether there is a taking or not is not so at all, because the vast majority of these cases, whether they are very large developments or small developments, have to do with negotiations between the landowner and the various entities pursuing or participating in the development plan for that piece of land.

And for that reason, I think we should strongly support the Porter-Farr-Ehlers amendment, and then get on, as a number of other people have suggested, get on with the reauthorization of the Endangered Species Act, with the reauthorization of the Clean Water Act, where many of us believe that structural changes have got to be made in that and definitional changes have got to be made in that, and we now have lands that the Clean Water Act is applied to and definitions of wetlands that leave us all speechless as to how that could have ever been the intent of the Congress.

I think in a number of instances it was not the intent of Congress. Those are the actions that have got to be taken to straighten out and preserve the environmental balance and the protection and the need for communities and landowners to be able to use and to develop their lands as they see fit.

So I would hope that we would take the Porter-Farr amendment as a stopgap approach to the rewrite of that legislation in your committee, Mr. Chairman.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let us cut through all of the rhetoric of this amendment and get to the real intention of the authors of this amendment, and that intention is, and I am going to quote, "to basically gut everything in H.R. 925."

People may ask the question, Mr. Chairman, is that my interpretation of the amendment and the intentions of the authors? And the answer is absolutely not.

Mr. Chairman, I am going to read from the Congressional Green Sheet of March 1. It says here a Farr aide said that this amendment would basically "gut everything in H.R. 925," which is what we are trying to do with this amendment. This is the aide to one of the authors, clear and simple, gut the private property rights bill.

Now, if you read subsection (a) of this amendment, and again I quote, "no compensation shall be made under this act with respect to any agency action for which the agency has completed a private property impact analysis before taking that agency action."

Mr. Chairman, no compensation does gut this legislation. The aide to the gentleman from California [Mr. FARR] is exactly correct. This particular amendment guts private property rights.

Now, I have heard speech after speech of how this is a budget-buster. That is why compensation should not be paid, if you listen to people on the other side of the argument.

No one that I know in Congress who supports private property rights wants another Federal spending program. No private property owner that I know wants compensation because of a wetland or an endangered species designation. Those of us who support private property rights and landowners want Federal bureaucrats to stay off of private property. We do not want them taking away the use of that property.

We feel that there is a constitutional right to use and enjoy one's private property. No one wants compensation for that.

So for us, those of us who have been involved in drafting the Tauzin amendment to the Canady substitute, we see compensation as a stick that forces the Government to make the right decision, not the bureaucratic frivolous decision that can be made with no compensation.

Now, I am going to say in regard to the authors, this bill does mandate a private property impact analysis before the Government takes the property, and I will credit the authors that alternatives have to be identified that lessen the likelihood of taking private property in the analysis that is done. That is positive. But, and I want to underline "but," after the analysis is done and even if alternatives are identified, there is nothing that forces the Government to take those identified alternatives. But worse, in Porter, judicial review is precluded for the private property taking analysis, and we have seen situation after situation where the biologist or the scientist of the Government, of a private landowner disagree, and yet under this, it is precluded. So if you disagree with a Government biologist on a takings determination, you cannot get that judicially reviewed the way this amendment is drafted, as it regards the Government's analysis.

So what is the worth of that to a private citizen? Absolutely nothing. And I think this is a sham amendment to private property owners.

So what does Porter-Ehlers-Farr do for the private property owner? It says your right to compensation for takings to private property for public use under the fifth amendment is there. Well, that is there now, and a citizen can go to Federal court today if there is a question about a taking with endless appeals at an average cost of over a half-million dollars to that private citizen if they want to try that particular action in Federal court.

How many average citizens can afford that type of expense? Not many. And that is why you have not had that many cases taken through the Federal court system.

This is a gutting amendment. People should make no mistake about it.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

(By unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 1 additional minute.)

Mr. FIELDS of Texas. If you are for those people making wetlands and endangered species decisions in your district, basically the Corps of Engineers and Fish and Wildlife involved in every property transaction and building permit, you should vote for this amendment. If you told your constituents back home you are for private property rights, you should vote against this amendment that, in the words of the author, guts the true intent of H.R. 925.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to express my support for this amendment.

With regard to the previous speaker, I want to express my skepticism that a staff member of a Member on the minority side somehow captured the gentleman from Illinois [Mr. PORTER], the gentleman from Michigan [Mr. EHLERS], and other Republicans and turned them to his or her will. This amendment was drafted by the gentleman from Illinois [Mr. PORTER] and his colleagues long before my colleague from California got involved.

But let us get back to the merits. First, I want to talk briefly about the procedures. We do not know a great deal about this bill. Questions about it have gone unanswered. There have been a great deal of uncertainties.

The chairman of the subcommittee has said we will have to get back to see if we can work that out to the gentleman from Mississippi. The problem is this bill has undergone none of the normal scrutiny of the legislative process. We had a hearing on the appropriate language, the relevant language, in the contract. That was a bumper sticker on a page. It had so little content it was an embarrassment even to them.

The chairman of the full committee, the gentleman from Illinois, tried to remedy that situation, so when we had the committee markup, there was no subcommittee markup, when we had a committee markup, he had a very different bill. It looked a little bit like the Tauzin bill, but still there were a lot of differences. That bill had a life of about an hour. It disappeared even before some of the species that our friend from Maryland has lamented.

Because back came something that was close to the original, and that went through the committee on a voice vote. Then when they realized that even by their standards that was too extreme to pass, they decided they had better make some kind of arrangement with the gentleman from Louisiana. So we got a fourth version of it, and the amalgam of the Canady substitute and the Tauzin amendment has never before been subjected to any legislative process. We are dealing with an extraordinarily complicated subject for the first time on the floor of the House this year without hearing and without any markup from the committee to which it was referred.

Now, we have the second issue, and that is the unwillingness of the sponsors to discuss what this bill will really do, because what they have talked about are those examples when the regulatory process itself may have gone astray, and things go astray, Members of Congress, and legislative processes and all kinds of things go astray. They have talked about what they call the horror stories, how this misapplication and that misapplication was involved.

But this bill, absent the amendment that we are now discussing, does not correct mistakes in the regulatory process. It applies, with its full force and effect, to those instances when the regulatory process is working perfectly and exactly as it was supposed to. This is a bill that deals with those instances when the Wetlands Act is being imposed to protect wetlands, because they have an important environmental purpose. Everyone acknowledges that wetlands have an important environmental purpose. They affect drinking water, a whole lot of things.

This bill deals with those instances, a great majority of instances, when the system is working exactly as it should. It deals with the Endangered Species Act when it is working exactly as it should.

Why do they talk about the exceptions? Because the real purpose is to undo the basic Wetlands and Endangered Species Acts, and if they want to do that, they should do that in those committees. They said, "Well, in the past, we did not have control of those committees." But they do now. Those committees now have majorities amenable to them, so they ought to be brought up in those committees.

Instead, you have got this now you see it, now you don't process. In fact, what they did in the Committee on the Judiciary was pull the old hidden bill trick, because the bill that finally came to the floor had very little relationship to the bills we had hearings on and the bills we debated, and, again, what they are doing is attacking the Wetlands Act and attacking the Endangered Species Act collaterally, not by changing the substance, but by making them impossible to enforce.

Because, again, I want to be very clear about this, this is not a bill that says where the Corps of Engineers, where the EPA, where the Interior Department has misapplied the law they have to pay, where they have exaggerated, where they have had bad science, they have to pay. This is a law that says that when any of the Federal agencies charged with administering these acts carries out the act exactly as it was meant to be carried out to protect wetlands, to protect endangered species, to do exactly those environmental things which we said we wanted done, they will have to pay and engage in this very lengthy process. That is why, both for procedural and substantive reasons, it is a grave error to try to rush this bill through here.

It is one more example of undue haste on a complex subject, the result of which will be the kind of legislation we now have.

This amendment would slow it down. The amendment, for a bill from the Committee on the Judiciary dealing with process, is the appropriate amendment.

If Members feel that, as part of the Wetlands Act and as part of the Endangered Species Act, they have been over-administered, then deal with them here. Do not do it by stealth in this bill.

Mr. CRAPO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is important that we respond to some of the arguments that are being made here, because some of them are just wrong, and others need to be clarified.

Let us go through some of them. First of all, it has been said repeatedly here this is a budget-busting measure. I think that is kind of an interesting argument. Remember what the bill does, it says when the Federal Government is diminishing the value of private property owned by private citizens in this country, that it must pay for it.

Those who are saying this is going to cost hundreds of billions of dollars must at least be concerned the Federal Government is causing hundreds of billions of dollars of loss of property value to people in this country by their actions. Yet they seem to say that does not need to be addressed.

Well, I do not know whether it is hundreds of billions of dollars that this act will cost or not, but if the Federal Government is doing that to the people of this country, then something should be done to stop it, and this bill addresses that.

Now, I do not think it is going to cost the Government that much money, because I believe there are a lot of creative people in this country, and when the regulators find out they cannot simply ignore private property rights any longer, then they are going to be able to look for other alternatives to accomplish the same solutions, alternatives that do not run roughshod over private property owners.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. Mr. Chairman, on that very point, that is what is happening in my congressional district with the red-cockaded woodpecker. The Government has come in and identified colonies of nests and begun to move those to Federal forestry land off of private property. That makes sense. That is the type of creative work the gentleman is talking about, and I really appreciate you making that point.

Mr. CRAPO. I thank the gentleman for that specific example.

That is the point. Today we have a Government that does not care enough about private property ownership and protecting that principle in our system of government, and this bill will force it or force them to pay for the social costs of running over those rights.

Then there are those who say that the fifth amendment protects our rights adequately, and we do not need to go beyond the constitutional protection. But one of the very speakers in support of this proposed amendment said the Supreme Court has already declared that under the fifth amendment the protection is against a total taking of your property.

□ 1715

It goes not against the taking or diminishing in value of the property. As I said earlier today, the Federal regulatory system we have has found out that if they do not take your whole property but just go in and regulate it to the point that you have to do with your own property what they tell you with it, then they can get around the fifth amendment requirement on takings.

I think the Founding Fathers of this country would have put something in if they had known what our regulatory system today was trying to do with regard to private property.

The point is the fifth amendment protects against takings. This statutory protection protects against diminishing in value.

Then there are those who say, well, this is just the Dole-Reagan approach. It has been said before, but I want to repeat, that Senator DOLE said in a letter that he sent us that this amendment which we are debating here, which is a killer amendment to the legislation we are bringing, does not represent his approach and that he supports the concept of compensation as this bill requires. And the person who sponsored, who drafted the letter——

Mr. PORTER. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from Illinois.

Mr. PORTER. I thank the gentleman for yielding.

Mr. Chairman, I have read the letter from Roger Marzulla and also the letter from BOB DOLE. And it is very evident from both letters, if you read the last paragraph of the Roger Marzulla letter, he says, "As chief architect of the Takings Executive Order, I can assure you that in no way was it ever intended that if the Federal Government went forward with action that did in fact violate the fifth amendment, the Federal Government was in any way relieved of its constitutional duty to pay just compensation."

Obviously, neither Senator DOLE nor Roger Marzulla understood the amendment. The amendment says, "No compensation shall be paid under this act," referring to the Canady-Tauzin legislation. If you read section (d) of the amendment, it says the fact that compensation may not be made under this act by reason of this section does not effect the right to compensation for takings of private property for public use under the fifth Article amendment to the Constitution.

So, what the amendment does is entirely different from what Senator DOLE thought it was, or Roger Marzulla. Both did not understand it.

Mr. CRAPO. Reclaiming my time, I think the gentleman's point about the fifth amendment is correct. Senator DOLE clearly said he supports separate legislation that does address compensation. Senator DOLE is saying although his initial letter does not address that issue, his sponsorship of two separate pieces of legislation should never be taken to mean that he does not support private property compensation.

Mr. PORTER. If the gentleman would yield further, there is one significant difference—there is the Dole letter I am reading—"One significant difference between my bill and the Porter amendment specifically requires that no compensation shall be paid in cases when the takings impact analysis is performed." That indicates that Senator DOLE does not understand the amendment. He did not understand that the compensation is still payable under the Porter amendment.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has expired.

(By unanimous consent, Mr. CRAPO was allowed to proceed for 3 additional minutes.)

Mr. CRAPO. I yield further to the gentleman from Illinois.

Mr. PORTER. I will finish up very briefly.

It is payable under the Constitution except if an impact analysis is not done. Then it is payable under the Canady-Tauzin approach. In either case, compensation is payable.

Mr. CRAPO. I understand the point. I want to continue on my time because I have a number of points to make on my time, and it is already running out.

Let me respond to that point by saying that the amendment—and I want to refer to the amendment—the amendment allows compensation only if an agency does not conduct a property impact analysis. If the agency does conduct that analysis, they do not have to compensate, regardless what the impact analysis said. Is that correct? And I yield to the gentleman.

Mr. PORTER. That is incorrect. The agency has to pay compensation under the Constitution.

Mr. CRAPO. OK. Except for the Constitution.

Mr. PORTER. Yes.

Mr. CRAPO. It applies only in a taking.

Mr. PORTER. In a taking of private property.

Mr. CRAPO. If the agency is successfully able to identify a way to impact the property without totally taking it, there is no compensation as long as they analyze it and say so.

Mr. PORTER. As long as they look at the regulation to see its impact on private property, they have looked at the specific purpose of the agency action, an assessment of the likelihood of the taking of private property will occur under the action, alternatives to the agency action that would achieve the intended purpose and lessen the likelihood of the taking the private property. If they have done that kind of thorough analysis, then they escape the provisions of Canady-Tauzin and must pay compensation under the Constitution.

Mr. CRAPO. I understand the point. But we still have a difference of opinion on this in terms of whether it is viable, because we have agencies being required it do an analysis but no penalty, no requirement that they are to be reviewed. In fact, under the very amendment we are talking about, there is no judicial review to be sure the agency is conducting the analysis properly. All the agency has to do is conduct an analysis to avoid the problem of compensation.

Mr. Chairman, the point I make here is that we have a basic difference in philosophical point of view. There are those who want to say the constitutional protection against a taking, a total taking of the property, is sufficient if we add to it a requirement that the agency study what they are doing, with no requirement that the agency must compensate or that the agency must be subject to review.

The basic difference here is this: Our agencies today have shown, and I think here is where the philosophical difference lies, I believe our agencies have shown the American people that they do not give enough consideration to private property rights.

There are those who are willing to trust the agency with simply reviewing that issue without requiring that when the agency reaches a conclusion that there is no better way to do this to impact private property, then even in that case, when there has been a review, if society's requirement so deems that that person's property should be diminished in value for society's purposes, then that should be compensated. That is the basic philosophic debate we are having today, and that is why we must not support this amendment.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has expired.

(At the request of Mr. FIELDS of Texas and by unanimous consent, Mr. CRAPO was allowed to proceed for 2 additional minutes.)

Mr. CRAPO. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I want to make sure I understand this, if the gentleman will yield.

As I understand the amendment as drafted, if an impact analysis is done, which, by the way, is a positive step, particularly from the fact that they look for alternatives, there is no compensation directly from the government but you have your constitutional right for a taking, which means you go as a private landowner, spend half a million dollars in Federal court with endless appeals, questioning biologists. It is just a sham. If you are for the system as it is, vote for this; if you are for private property rights, you had better vote against it or you had better have good explanation for your constituents if you said you are for property rights.

Mr. CRAPO. That is right. Let me clarifly one point. We have to understand, in this debate, the difference between protections under the U.S. Constitution and what this statute seeks to do. The Supreme Court has made it clear that the constitutional protections relate to what amounts to a full taking of the property. And when the Federal agencies do not fully take your property but simply regulate what you can do with your property to a lesser extent than actually taking it from you, the constitutional provisions under the Supreme Court decisions provide no protection. This statute is intended to fill that void and provide compensation when your property is diminished in value but not totally taken.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has again expired.

(By unanimous consent, Mr. CRAPO was allowed to proceed for 2 additional minutes.)

Mr. CRAPO. I Would yield further.

Mr. EHLERS. Mr. Chairman, Mr. Chairman, with your leave, I would like to comment on what the gentleman has said and also the gentleman from Texas. There is a very important point here that has not been emphasized in the debate.

The example of the gentleman from Texas about the red cockaded woodpecker is a good example of how it should be done. We had a similar situation in Michigan with the Courtlands Warbler a number of years ago. Once again we established areas within the national forest and within State forests and solved the problem without impacting private property owners.

The reason I mention this is that the portion of the Porter-Farr amendment which has not received emphasis in the debate is the part that requires the agency, as part of their private property impact analysis, to include alternatives to the agency action if indeed that would achieve the intended purpose and lessen that likelihood of a taking of private property, which is precisely what happened in Texas, which is precisely what happened in Michigan.

I can tell you from our experience, with takings in Michigan that once we turn the bureaucracy around and say, "No, you cannot just simply say 'no' to some alternatives, you have to sit down with the property owner when they have a permit, you have to sit down with them and discuss alternatives with them." That solved virtually all of the problems that we had. Instead of just simply saying "no," they have to look at alternative under this amendment. That is precisely what we did in Michigan, which solved the problems to a very great extent with wetlands, sand dunes, and other problems. It is something that the bureaucrats should have the sense enough to do in the first place without being told. But we told them and this amendment tells them, and it really takes care of most of the problems.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I thank the gentleman for yielding.

Mr. Chairman, let me just respond to the gentleman from Michigan.

First of all, I appreciate his sincerity. I have a feeling that he and I could probably sit down and work out most of the problems in a commonsense manner. The problem with the question on this amendment, though, is while it is mandated that those alternatives should be studied and brought forward, there is no mandate that the alternatives be implemented. So, in the red cockaded woodpecker example, instead of saying here we have an alternative, "We are still going to take your property." There is no compensation. If you want to go to the Federal courts for half a million dollars, you can do that.

The CHAIRMAN. The time of the gentleman from Idaho [Mr. CRAPO] has expired once again.

(By unanimous consent, Mr. CRAPO was allowed to proceed for 1 additional minute.)

Mr. CRAPO. I thank the chairman.

Mr. Chairman, I want to address the comments which have just been made. It is correct that this amendment would be better than nothing, but it is much worse than the current statute we are considering. The reason is, as was said by the gentleman from Texas, there is no mandate in this amendment that the least oppressive or least intrusive alternative be selected. There are times when the agency is actually bound by statutory provisions that this Congress passes that require the agency to run roughshod over private property rights. In those cases, after there has been a congressional action or after there has been a full agency review, when it is decided private property rights must be diminished for some social purpose, there should be compensation, and this amendment does not allow for that compensation.

Ms. LOFGREN. Mr. Chairman, I move to strike the requisite number of words. I just want to make one point after listening to the debate here.

I think it is worth pointing out that the amendment provides the remedy to a landowner who feels they have been abused and their land has been taken and the remedy is to go to court. That is the same remedy that is provided in the underlying bill on line 10, page 4.

Ultimately, if you do not agree with the Federal Government, you are going to have to sue to get justice. I do not think there is anything inherently wrong with that.

I did want to say a few things as a member of the committee. I believe in the fifth amendment. As a matter of fact, as part of the Bill of Rights, I think it is a very important component of our rules of law and justice here in America. I personally have had some very unhappy run-ins with the Army Corps of Engineers in California, and I am not much of a fan of the Army Corps, but having spent the brief time the Committee on the Judiciary, which we had in marking up this bill, I would like to note that I fear that much mischief will be done by this bill, and I assume it is not mischief intended by the authors or proponents of the action, but when you think back to our law school training, the black acre and white acre, if the white acre is wet, any developer worth his salt is going to make sure that the development potential is focused on what is compensable by the Federal Government.

All of the developers that I know in California have not become successful by being stupid. There are sharp characters out there, good businessmen, they know how to play the angles, and that is why they have survived in business. And they will, and I understand why, there is nothing in this bill or law that would preclude them from coming down to the Federal Government because, "Come on down, we got some free money for you right here under this bill."

I really do believe this amendment should be supported, although I am not entirely pleased with every aspect of it.

I note the law in the area of takings is moving toward a more moderate approach with the Nolan case and the Dolan case, and now noting the regulatory impact must be proportional. I believe the court is going to move further in that area.

My concern with the underlying bill and the large reason why I am supporting this amendment is once again we will have a law of unintended consequences moving forward.

I believe this is an entitlement program that is virtually open-ended. At least we ought to make it a block grant, like we are doing with the school lunch program, to stem the loss.

I have many friends and associates and also supporters who are active in the private property movement in California who called me up and said that we should not support this, this is too extreme. They think the 10-percent limit is way too extreme. They think the Federal Government is going to bleed money off of this bill. I feel the same and would urge support of the amendment.

Mr. CRAPO. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield briefly to the gentleman.

Mr. CRAPO. I thank the gentlewoman for yielding.

I would just ask one question. I thought the gentlewoman said at the beginning of her debate that under this amendment, there would be a right for judicial review or the opportunity to go to court.

Ms. LOFGREN. Certainly.

Mr. CRAPO. As I read it, the amendment says neither the sufficiency nor any other aspect of a private property impact analysis under this section is subject to judicial review.

Ms. LOFGREN. Yes, but if you continue on, there is a note that the fact that compensation may not be due under this act by reason of the section does not affect the right to compensation for takings of private property for public use under the fifth amendment to the Constitution.

□ 1730

Mr. CRAPO. So what the gentlewoman is saying is, "You still have a right to go to court for a taking under the Constitution."

Ms. LOFGREN. Reclaiming my time, yes, I am. The argument made was that somehow this was unfair because those who felt that they had a wrong would have to go to court. I point out under the existing bill, unless the agency agrees, or the arbitration is successful, the individual still has to go to court. So the remedy ultimately is no different under the bill before us or under the amendment before us.

Mr. PORTER. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield to the gentleman from Illinois.

Mr. PORTER. I think we ought to make clear that the preclusion of judicial review goes to reviewing the impact analysis. It does not affect anything else. In addition, we ought to be clear that the impact analysis is not something that is kept internal to the agency. That document is made public so that the private landowner would know exactly what is in it.

The CHAIRMAN. The time of the gentlewoman from California [Ms. LOFGREN] has expired.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, Members of the committee, when one of the sponsors of this amendment was quoted as saying this amendment will gut the bill and that is what we intend to do, he knew what he was talking about. This bill is designed to give property owners whose property is taken away from them by Federal regulation under the named statutes now a right to get justice at home, to get compensation at home, from the very agency, the very agents of this Federal Government who took their property away from them in the first place.

I say,

> This amendment literally leads you right back to court if you want compensation. It literally says that anytime an agency doesn't want you to have the advantage of this bill to get justice at home, all they have to do is do some kind of an impact analysis. It doesn't even have to be a good one, doesn't have to be a sufficient one, doesn't have to be at all relevant even. It just has to be an impact analysis. The property owner can't go to court and say, "You haven't done a good analysis." That's proscribed in this amendment. It can't go to court to say, "They're playing with me again, they won't compensate me, they're about to regulate me, and they did this silly analysis that has nothing to do with what is going to happen to me." They can't go to court and say, "They're playing with me again." All he or she can do is do what they can do today which is to spend a half million dollars through the Federal court systems, 10 years of litigation, and maybe never even reach the Supreme Court. Ten years Mr. Bowles in Texas spent, and he never got out of the Court of Claims, just got a judgment March of 1994.

My colleagues, there was a time in America when we in our society said, "You have to sit in the back of the bus," said to some of us, "You can't eat at a lunch counter," said to some of us, "You can't vote in America," and some of those same people said, "Oh, but there is a Constitution. Don't worry about it. If somebody has a problem with that, take it to court."

There are others, many of us, who rose in indignation in the 1960's and said,

> Wait a minute, that's wrong. No society ought to tell, under our Constitution, anyone that you got to go to court, the Federal court, to get a right to sit in the front of the bus, eat at a lunch counter, go to school, to vote, in this country.

So, Mr. Chairman, we passed civil rights laws. We passed the laws so that no child in America had to go to Federal court to get their civil rights.

Now let me tell my colleagues what the Supreme Court said in Dolan versus the City of Tigard:

We see no reason why the takings clause of the fifth amendment of the Constitution, as much a part of the Bill of Rights as the first amendment or the fourth amendment, should be relegated to the status of a poor relation in these comparable circumstances.

In short, we are dealing with a civil right. Property owns no rights; we do. Our Constitution does not give property some rights, it gives citizens rights, and the Bill of Rights was not written for a farm, or a forest, or even a home or backyard. It was written for people in this country.

And Dolan said, "This civil right, to be compensated for the taking of your private property, is as sacred as free speech, as sacred as the right of assembly or the practice of free religion in our country," and for those of my colleagues who support this amendment, who come to this floor and say they want all the citizens to go to Federal court to get their rights under the fifth amendment, it is the equivalent of telling every citizen of this country: "If you want civil rights, file a lawsuit. Don't count on Congress to define your civil rights and to make sure you're protected at home."

The bill, as it is written without this amendment, will give small landowners who cannot afford a trip to the Supreme Court a chance to get their civil rights, and my colleagues ought to stand for that proposition in this Congress just as we stood in the 1960's for citizens to have their civil rights. The bill without this amendment will do what the bill with this amendment tells them all, "Go back to court. You'll get played with again."

I say to the gentleman from Illinois, "Mr. PORTER, if I have time, I will yield in a minute."

If the fabric of the relationship between this Government and the people who have created it has been torn in the last several decades, I believe it has been torn for one word and one word more important than any other.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has expired.

(On the request of Mr. DELAY and by unanimous consent, Mr. TAUZIN was allowed to proceed for 5 additional minutes.)

Mr. TAUZIN. Mr. Chairman, I believe the fabric of the relationship between those who created this Government and this Government has been ripped apart for one word more than any other. The word is "arrogance." There is a reason why people in this country believe Government is no longer their servant, it has become their master. There is a reason why people in this country do not trust Government agents on their private property anymore. There is a reason why people in this country, and business, and industry fear the Government representatives even when they call him for help because they know the Government agency is coming around to find them, to regulate them, to somehow make their life more difficult instead of serving them as it once did, and the word that turns most Americans so angry at this body and this Government is that word "arrogance," and it was epitomized at home for me in Ascension Parish just a couple of years ago.

I had a family move into my district from out of State. They bought a home in Ascension Parish. Their names were the Chaconases. They bought their home from a family called the Gautreaus. The Gautreaus built their home. They built it first checking with the Corps of Engineers to see if it was all right to dig a pond and to use the material from the pond as a foundation for the home. The Corps said, "No problem." They built the home. Then they built another home across the street and sold that first home as an investment to the Chaconases. Oh, but guess what happened in the meantime. The Corps of Engineers showed up because some neighbor did not like the drainage situation in the area and reported him to the EPA.

Mr. Chairman, the Corps of Engineers showed up and said to the Chaconases, new owners, "You may have to take down part of your home because it's built on a wetland," and the Chaconases said, "What's going on here? Did anybody notice me before I bought this home that it was a wetland?" The answer was no. They filed suit against the Gautreaus.

The Gautreaus got involved and said, "What's going on here? You told me I could build that home, dig that pond. What's happening here?"

The Gautreaus were told, "Well, guess what. The road, the only road going to both of your homes, is also located, we think, on a wetland. It's got to come out, too."

And Mr. Gautreau, with all the innocence of a citizen who believes in government as a friend, who believes that these people were going to try to help him out of this mess, said, "Wait a minute. If you take away my road, how am I going to get to my house?"

And that official of this U.S. Government who is paid by the taxes that Mr. Gautreau spends each year, sends to this Government, has the arrogance, the audacity, to tell that man, "Take a helicopter. You want to get home after noon, after work, you've sweated and toiled and sent your tax dollars to this government, take a helicopter because we're taking your road."

Mr. colleagues, Mr. Gautreau ought not to have to come to this Federal court here in Washington to file a suit against that kind of arrogance. Mr. Gautreau ought to have the confidence and the trust of this Congress working behind him. He ought to have this bill which says he can get justice at home. He ought to be able to go to that Corps of Engineers office in New Orleans and the EPA office in New Orleans, say, "You did this to me. Now you pay for my property damage you caused me. You give me enough money to relocate if I can't live here. If my home is built on a wetlands that is so important to so many of you in America, save it for God's sake. But pay me the decent value for my property, and let me relocate my family where I don't have to take a helicopter to go home."

That is why this amendment needs to be defeated, because the Gautreaus of America and the Chaconases of America were victimized under this system and ought to have a right to justice, civil right justice, at home and not to have to come to the court in Washington, DC, any more than we made any citizen in the 1960's have to come to Washington to file a suit here.

Mr. PORTER. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to the gentleman from Illinois.

Mr. PORTER. How does the individual get his rights asserted under the bill under the gentleman's amendment? He does not have to go to court——

Mr. TAUZIN. Reclaiming my time, Mr. Chairman, I say to the gentleman [Mr. PORTER] under our amendment you deal with the agency at home just as the Gautreaus did, and, when the agency at home tells you that you can't use your property, you have to take your lane down, you have to destroy the house you built and bought, if you have to do all of that, you go to that agency, and you say, All right, if my property is so important for the rest of you in America to take it from me, which you have a right to do under wetlands protection, under—" let me finish—under endangered species protection, then let's go to arbitration and find out how much you've cost me and the arbitrator then takes account of what the appraised value of Mr. Gautreau's home was and the appraised value of the home across the street, the Chaconases', and they calculate the appraised value before the regulators came to visit him, they calculate the appraised value after they have been told to take it down, and then they get paid——.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has expired.

Mr. DELAY. Mr. Chairman, I ask unanimous consent that the gentleman from Louisiana [Mr. TAUZIN] get 3 additional minutes.

Mr. FRANK of Massachusetts. Mr. Chairman, reserving the right to object, we are stuck with their 12-hour rule which I am not crazy about, but we have already used up more than 6 hours on two amendments, and I am reluctant to have this go on. I will not object at this point, but I would ask that people understand they have put to a rule which already limits this important bill. This is an example of the unfairness of a 12-hour type rule. We are on the second amendment. I do not think anyone thinks anyone has been dilatory. We have had serious debate. Members have engaged each other. But while we have been trying to deal with this very complex issue we used up, as we started at about 11:25, 11:35, more than 6 hours. So, if they keep this up, we have other people who have important amendments.

I am not going to object further. I am going to have to object if people keep extending it, but I wanted to make it very clear the reason is that they are insisting on debating this very complex subject under such a restrictive rule that I cannot allow this because other people who have important amendments are going to be constrained, and I hope they will, on the majority side, take this into account in the future so they will not be restricting the debate this much.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. The gentleman from Massachusetts withdraws his reservation of objection, and without objection the gentleman from Louisiana [Mr. TAUZIN] is recognized for an additional 3 minutes.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to the gentleman from Texas.

Mr. DELAY. Mr. Chairman, I can just answer the gentleman from Massachusetts [Mr. FRANK] very quickly in that I am taking this time so that I do not have to take 5 minutes, but I just want to compliment the gentleman from Louisiana. That was one of the most eloquent speeches on this issue, and many other issues for that matter, that I have heard. The gentleman understands this issue better than any man in the House, and any woman in the House, and understands it so well. He has been pushing for property rights for American citizens for many years. He is part of this American revolution that we are experiencing right now.

We have made great progress with this American revolution. We passed the balanced budget amendment, we passed the line-item veto, we worked to rein in unfunded mandates, and this week we passed several very important regulatory reform measures. Today in this legislation we take a giant step forward by protecting private property interests.

Unfortunately, Mr. Chairman, the amendment offered by the gentleman from Illinois [Mr. PORTER] is a giant step backward. Make no mistake about it, the Porter amendment will deal a devastating blow to the rights of private property owners. It creates an enormous loophole which will prevent government agencies from being accountable for the costs they impose on American citizens.

□ 1745

A single landowner would still be forced to shoulder the entire burden of regulations as long as agencies perform an impact analysis. But this impact analysis will be used by Federal bureaucrats to dodge responsibility for their regulations. And in the end, if the Porter amendment is adopted, the bureaucrats will get the land while the private property owners will once again get the shaft.

Mr. Chairman, the issue here is very simple: Do you support the rights of private property owners or do you support the power of government bureaucracies. My constituents as well as the constituents of the gentleman from Louisiana are sick and tired of the heavy hand of the Federal Government. They want relief from bureaucrats, not more power for the Federal bureaucracy.

Mr. Chairman, I urge my colleagues to defeat the Porter amendment and score a victory for the private property owners of this country.

Mr. SHADEGG. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in strong opposition to the Porter amendment and in support of the legislation as it stands before us. The Porter amendment, at least it has been acknowledged, will gut this bill, and that much and to that degree only has there been candor.

This bill is about the protection of private property rights, and I am personally outraged about the tone of the debate. First, we hear that it is too costly. You tell me when in America it is too costly to live up to the U.S. Constitution and the guarantees in that Constitution? You tell me when it is too costly.

It is not too costly to live up to the cost of the Endangered Species Act the Wetlands Act or the plethora of other laws we have pummeling the American people everyday. They are not too costly. And when they went through this body, we were told there would be no cost to them at all. Now we discover there are massive costs to them. But the opponents of this legislation call it too costly to pay those whose property rights they are taking.

Second, we are told it is too bureaucratic. I ask again, since when is it too bureaucratic to live up to the words of the U.S. Constitution which promise to each American citizen he will be compensated when his private property is taken?

But I could not stand silent any longer than when people took to the floor and cited my home State of Arizona in support of the Porter amendment and in support of defeating the legislation we have before us. It is critical that we set the RECORD straight. The fact is that the people of Arizona did not defeat a Private Property Takings Compensation Act like we have before us in the Canady and Tauzin bill. What in fact they defeated was a bill very much like the Porter amendment.

What was put before the people of Arizona was not a private property takings compensation piece of legislation which would have said to people whose property was taken by government regulation. They did not have that before them.

What they had before them in the initiative which we recently debated in Arizona was a phenomenally bureaucratic piece of legislation very much like the Porter amendment which said what we ought to do is have a lot of government bureaucrats study the issue and do an analysis. At the end of the day it provided no remedy. The people of Arizona said that is not sufficient.

The people of Arizona believe in the fifth amendment. They believe it is not time for further bureaucracy, it is not time for an impact analysis, it is not time to empower bureaucrats to study the issue and, having studied the issue, no matter now valid the study, to deny people their private property rights. Rather, they want compensation. If, in fact, there are great and worthy purposes to be served by wetlands takings, by ESA takings, then so be it. But the people whose property is taken then deserve not bureaucracy, not words, but compensation for the property they have surrendered.

Mr. Chairman, I urge the defeat of the Porter amendment.

Mr. HASTINGS of Florida. I move to strike the requisite number of words.

Mr. Chairman, as I listen to the debate, I become genuinely concerned that all of us need to tone down a bit, for the reason that no one here wishes that anybody's property be taken without fair and just compensation. But I do believe that the Porter amendment would provide for that, and I do not believe that my good friend from Louisiana means to establish the rather extraordinary bureaucracy that likely will come into existence in order to be able to implement what is a well-intentioned bill.

Mr. Chairman, I yield to the gentleman from California.

Mr. FARR. Mr. Chairman, I want to point out the difference between the Porter amendment before you and the Tauzin amendment that you have adopted. If you are really interested in trying to solve the problem of the property owner, you will listen very carefully.

Because what the Porter amendment says is government, take a look before you do anything. The Tauzin amendment does not ask government to do anything except to act, and then to come back and bite you by suing you in court.

The Porter amendment says write down, government, what you are going to do and tell us what the impact will be. Is there a likelihood that there will be a taking? If so, write it down. Give us an assessment of the likelihood that that taking will occur under such action and write it down. The Tauzin amendment does not require that.

The alternatives that the government has to look to that would achieve the intended purpose and lessen the likelihood of taking the property, the Porter amendment does that. The Tauzin amendment does not.

Then you go to the other end and you say all right, what does Tauzin do? It says government, after you have done your action, the property owner has up to six months to write a letter and claim compensation for the portion of their property that has been taken. And if they are not satisfied, if the government does not pay them off right away, then what do you do? You go into the exact same court for the exact same reasons on the exact same issues that you go into court for the Porter amendment. The remedy is the same. It is the fifth amendment of the United States Constitution, and that is not changed by either of the bills.

To get some idea that the landowner is going to be more easily compensated, that the process is going to be cheaper, that the end result is going to be better under the Tauzin amendment, is absolutely wrong, and that is why the Porter-Farr amendment makes such good sense.

It is sense because it reaches a solution for the problem that occurs on the land by the landowner. It requires government to look before it leaps, to think before it acts, and to realize that if there is compensation need, to indeed pay for it. It is a much more sensible process to problem solving. If indeed that is what we were elected to do, then you will you support the Porter amendment.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. HASTINGS of Florida. I yield to the gentleman from California.

Mr. POMBO. Mr. Chairman, I wanted to ask one of the authors of the amendment a question on that. That is that at a recent Committee on Agriculture hearing on private property rights that the gentleman was in attendance at, the question of the Reagan Executive order did come up. One of the people that was testifying happens to be Roger Marzullo, the author of that particular Executive order. The question was put out whether or not it was still in force, and the answer was yes, it has never been rescinded. And when we asked does the current administration, as well as the Bush administration, did they feel that they were implementing the Reagan Executive order, the answer came back yes.

Now, if that is true, that it has never been withdrawn, then all we are doing by adopting something like the Porter amendment is reaffirming what we have now and telling the agencies to do what they claim to be doing now.

Mr. FARR. Mr. Chairman, if the gentleman will yield further, that is only partially correct. This bill takes it a lot further. One, it requires that the Government write it down, the analysis; two, that they publish it.

Mr. POMPO. That is in the Reagan Executive order.

Mr. HASTINGS of Florida. Mr. Chairman, reclaiming my time, the problem we have is making law by anecdote. As I have listened to the various speakers talk about rather extreme situations, each of those situations may very well have facts that are not put before us at a given time. For example, if there is a landfill that a person uses their property on, it may very well result in a different kind of result.

Mrs. CHENOWETH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I guess one of the things that strikes a freshman when they come to this very distinguished body is the fact that somehow the process just does not meet the reality. The process just does not meet the human misery that Government action has caused to happen, the human misery so adequately described by the gentleman from Louisiana [Mr. TAUZIN] and the human misery that I want to begin to impart to this body.

I had a client in Morrisville, PA, whose name was John Poszgai. Mr. Poszgai was a freedom fighter born in Hungary. When he was a young man he was a lieutenant in the Hungarian Army. He was a tank commander when the Russians came rolling into Hungary and the Hungarians, with a spark and desire to fight for freedom, were crying out to America to help them. And yet the Hungarian freedom fighters fought on their own.

When the Russian commanders took a bullhorn and told John Poszgai and the other tank commanders to turn fire on his own men, he instead turned fire on the Russians. The desire for freedom and liberty always burned very strongly in this man's heart and spirit.

We know what happened to the Hungarian freedom fighters in the late 1950's. But John Poszgai was able to escape with his life. He was able to set up a home, become a naturalized citizen in Morrisville, PA, and went to work for International Harvester. A man who would never dream he could come to American made the American dream come true. Yet here he found himself in America with the full rights and privileges, including owning property, as you and I have.

He was, of course, as I said, a naturalized citizen and very proud of his citizenship. John Poszgai's desire to be a good American far exceeded his ability to speak good English, but nevertheless he always paid his taxes, he raised his family, and he worked hard. And when International Harvester pulled out of Morrisville, PA, John Poszgai set up a truck repair store, using all the savings he had next door to his home, Mr. Chairman.

Morrisville is the industrial-commercial section of Philadelphia, and he was able, he and his Hungarian wife, were able to raise their two girls and put them through college.

Gloria and Victoria Poszgai were so thrilled when they graduated from an American college because of the hard work of their father, laboring in the fields as many of us have done, as many of us who understand the lay of the land and the ability to work and produce. And Mr. Poszgai and his wife received a present from their two daughters. On a billboard that the two girls rented after they graduated from college the girls wrote "Thank you, mother and father. Thank you for helping us make the American dream come true, because you have. Thank you, from Vickie and Gloria Poszgai."

The American dream didn't die there. There was a 14 acre parcel of property across the street from where the Poszgais lived. It had historically been used as an old dump. Mr. Poszgai checked with planning and zoning and the property, the 14 acre parcel of property, had been zoned as commercial and industrial, although illegally used as an old dump. The only cloud on the title was a ditch that ran counter, cater-corner across that property, for the purpose of exhausting rain water that had collected in the gutters of the streets at Morrisville across this property. But over the years an adjacent property owner had thrown about 7,000 tires out on this property.

The CHAIRMAN. The time of the gentlewoman from Idaho [Mrs. CHENOWETH] has expired.

Mrs. CHENOWETH. Mr. Chairman, I ask unanimous consent to proceed for 3 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Idaho?

Mr. FRANK of Massachusetts. Mr. Chairman, reserving the right to object, I just want us to understand again, and I am not going to object, but that is what your restrictive rule has forced us to. We have several more important amendments. The time is being eaten up by this process. I hope people on the other side asking for extra time, cutting into the time of other people who want amendments, will remember that the next time they vote for a rule which so restricts us on so important a piece of legislation.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Idaho?

There was no objection.

Mrs. CHENOWETH. Mr. Poszgai went in after mortgaging everything he had and buying up this 14-acre parcel of property, he cleaned it up, took 7,000 tires off the property, and was immediately charged with criminal violations of the Clean Water Act. He was arrested in his place of business and hauled off because he had destroyed a wetland by taking the tires off of his property.

Now, this is a Hungarian immigrant who had very little money. He did not even have a lawyer before. He was taken to court after his home was searched for guns, Mr. Chairman.

□ 1800

How in the world could a Federal Government even reason that there was reasonable cause to believe that a gun was used in the commission of a crime which was to remove 7,000 tires from private property? But nevertheless his home was searched. He stood trial. The judge narrowly instructed the jury about their only responsibility was to determine if Mr. Poszgai had destroyed a wetland or not.

The jury came back and said, yes, Mr. Poszgai had destroyed a wetland. This judge sentenced him to three years in Allenwood Federal Penitentiary, fined him $200,000, told him that he had to dig down on half of his property so that it became wetlands, this federal judge in Philadelphia. That is the reality of what we are trying to fight.

When I first met Mr. Poszgai, he was at Allenwood Federal Penitentiary. He finally served his sentence out. But that is what is happening to our people out there. That is what this bill will remedy, I support the bill, and I oppose the Porter amendment.

Mr. VENTO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, listening to the comments of my colleague sounds like we are going to legislate by anecdotes. I take seriously some of the concerns that are raised about the individual circumstances, but certainly across the depth and breadth of this country, in terms of enforcing zoning codes, enforcing land use qualifications, if somebody chooses to in fact continue to oppose those and in such an unreasonable and unworkable manner, obviously it ends up with long appeals. It leaves one thinking you want to change the Constitution of the United States in terms of what constitutes a taking. I expect that you are going to be finding yourself in court for a long time at great expense. If you accept those precedents, in terms of what that means, then it obviously puts certain other limits on you.

But, Mr. Chairman, I rise because I want to, reluctantly, I rise to support the Porter amendment. I know my colleague's efforts in this effort are sincere, both the gentleman from Illinois Congressman, [Mr. PORTER] and the gentleman from Michigan [Mr. EHLERS] and the gentleman from California [Mr. FARR] but I am concerned about it because I think this is basically and fundamentally really a bad bill in terms of the 10 percent, the appraisal issues, and then of course then we have narrowed it down so now we are only focusing on what is the heart and soul of this. And that is to, in other words, stop the environmental laws, specifically the Endangered Species Act, with the lands, reclamation law. That is what this is really all about. That is what this is after.

While the word environment is not mentioned in the contract, the Republican Contract With America, the fact is that that has been the focus. We know that in terms of the regulations and the vendettas against the EPA. As I say to my colleagues, these did not become law because simply the Democratic majority for 40 years helped to write these. These are law because the American public wants them. Very often they are written on a bipartisan basis. I would like to really reclaim the word "conservative" and try to find some conservation in the conservatives in this body, because that is at the heart and soul. That is what the word means, is to conserve and to take care of the resources of this land for future generations. But that seems to be somehow lost in this new neo-conservative definition. I think that is a word we need to reclaim.

I would say further, Mr. Chairman, that this particular measure provides a screening device, a way to filter through and to get at the heart of it, to make the agencies look at whether or not in fact there is a takings, to go through a specific criteria in terms of stating that is outlined in the amendment. Then I think that is a useful activity in terms of avoiding the types of conflicts and the overreaching.

I would be certainly willing and understand that in some cases regulations do have an uneven effect. Sometimes they are unfair. And clearly, as legislators, that is why we are here day in and day out, year in and year out. We have not worked ourselves out of a job. We need to improve and work on many of these laws that affect the people that we represent.

That is what we spent the better part of our times doing, but trying to do this by some sort of a panacea, some sort of an overreaching, overarching activity which does not interpret the Constitution, I do not think any of us are equal to the task of improving on the Madisons and the Jeffersons in that particular sense. But what you are putting in place here is regulatory compensation. You are saying that the Government is going to have to pay to govern.

I would just ask you to look, you say that this bill is not an entitlement because you subject it to appropriations. But you force the agencies in exercising the responsibility under law to take the money out of their coffers as they have it or from other agencies. That is going to require an appropriation and/or a cease and desist of the implementation of those particular laws.

We know, for instance, with the wetlands legislation, even a modest version of it, that the cost would be $10 to $15 billion. That is a CBO estimate, when they were making estimates on this. They cannot even estimate the cost of this. But if your goal is to stop the implementation of these laws, then you do not worry about that, because there is not any money. Then you can stop it.

I would further say that if you are going to monitor what constitutes a 10 percent limitation on property, that somebody has to do that. If you buy these types of rights, as they are paid out, year in and year out, you literally have tens of thousands of small ownership that you have to monitor to make certain that those landowners do not use that. Imagine the bureaucracy that you would have to have in order to monitor.

I can tell my friends and colleagues, observing the types of easements on various lands owned by land management agencies, that the cost of managing those easements is far more expensive, for instance, than if we had bought the land outright in the first instance, is far more expensive because of the annual type of cost. They are contested. I would further make the observation that most law that deals with property and property law is uniquely State law.

I would ask my lawyer colleagues if I am correct in this, as you know, just a poor old science teacher from Minnesota, but most law that deals with property law is State law. So what you are doing in this instance is inviting the U.S. Congress to override and to set a precedent which will have to be followed by the States in terms of property law.

I do not think it is a good practice. You can move it in this direction, but we can come back at some particular time and move it in a different direction.

Mr. TRAFICANT. Mr. Chairman, I move to strike the requisite number of words.

I would like to say this to the managers of this bill. There are certain amendments that have been agreed to on both sides. I think the managers of this bill should sit down, bring those out, get them out of the way and put some time limits on the remaining amendments.

Mr. PORTER. Mr. Chairman, since it is my amendment, I move to strike the requisite number of words.

The CHAIRMAN. The gentleman from Illinois [Mr. PORTER] already has addressed the body. Without objection, the gentleman is recognized for 5 minutes.

There was no objection.

Mr. PORTER. I will take just 2 of the 5 minutes.

Mr. Chairman, let me summarize by saying, the legislation as it presently stands would take egregious bureaucratic action of a few cases and replace it with egregious legal action in every single case. An agency which does anything that affects private property would find itself in court. Every single regulation or the application of every single regulation would mean a lawsuit and ultimately the payment probably of compensation.

If the sponsors of the legislation think that there is too much going to court under the fifth amendment, I suggest that the way this legislation becomes law, every regulation you go to court, arbitration, we will delay it, yes, but you go to court. This is a lawyer's bill like no other lawyer's bill I have ever seen.

I suggest to the Members that the amendment that we have offered is a reasonable amendment. It was introduced by Senator DOLE as a piece of legislation in the Senate. It is built on the Reagan executive order except it goes beyond the executive order to make the assessment available to the property owner and to the public.

It maintains compensation under the Constitution for the taking of private property unless the agency fails to do the private property impact assessment on any agency action. Issuing a regulation or dealing with property in any way, there has to be an impact assessment. If they do not do it, then this legislation, the Canady-Tauzin, applies.

I commend it to the Members. I think it is a reasonable amendment. I think it handles the problem.

Ms. JACKSON-LEE. Mr. Chairman, I move to strike the requisite number of words.

I want to add my support to the amendment to H.R. 925, the Porter-Farr-Ehlers amendment, and to indicate that this is the fairest way to deal with property takings on behalf of citizens of the United States.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. PORTER] to the amendment offered by the gentleman from Florida [Mr. CANADY], as amended.

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. PORTER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 186, noes 241, not voting 7, as follows:

[Roll No. 191]

AYES—186

Abercrombie
Ackerman
Andrews
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bishop
Blute
Boehlert
Bonior
Borski
Boucher
Brown (FL)
Brown (OH)
Cardin
Castle
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Ehlers
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)

Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Gilman
Greenwood
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hinchey
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
Klug
LaFalce
Lantos
LaTourette
Lazio
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McDade
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Mineta
Minge
Mink
Mollohan
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Porter
Quinn
Rahall
Ramstad
Rangel
Reed
Reynolds
Richardson
Rivers
Roemer
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Saxton
Schiff
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Slaughter
Smith (NJ)
Spratt
Stark
Stokes
Studds
Stupak
Thompson
Thornton
Torkildsen
Torres
Towns
Tucker
Velazquez
Vento
Visclosky
Walsh
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Williams
Wise
Woolsey
Wyden
Wynn
Yates
Zimmer

NOES—241

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bevill
Bilbray
Bilirakis
Bliley
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Franks (CT)
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gillmor
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson, Sam
Jones
Kasich
Kim
King
Kingston
Knollenberg
Kolbe
LaHood
Largent
Latham
Laughlin
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Portman
Poshard
Pryce
Quillen
Radanovich
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Royce
Salmon
Sanford
Scarborough
Schaefer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thurman
Tiahrt
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Wamp
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff

NOT VOTING—7

Baesler
Brown (CA)
Bryant (TX)
Gonzalez
Kleczka
Moakley
Torricelli

□ 1827

Mrs. SMITH of Washington and Messrs. McCOLLUM, ROSE, and HILLIARD changed their vote from "aye" to "no."

Mrs. KELLY and Messrs. SCHIFF, RUSH, and FROST changed their vote from "no" to "aye."

So the amendment to the amendment in the nature of a substitute, as amended, was rejected.

The result of the vote was announced as above recorded.

□ 1830

AMENDMENT OFFERED BY MRS. SCHROEDER TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mrs. SCHROEDER. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mrs. SCHROEDER to the amendment in the nature of a substitute offered by Mr. CANADY of Florida; as amended: At the end of section 3(a) insert "The amount of compensation made under this Act shall be decreased by an amount equal to any increase in value of the property that resulted from any agency action."

Mrs. SCHROEDER. Mr. Chairman, actually the concept of this amendment is really fairly simple. It is rather a taxpayer protection amendment to make sure there would be no double-dipping under the takings requirement we are debating today.

Mr. Chairman, we all know that public property is one of America's basic foundations, and also we are concerned about the public good. That is why this issue is so difficult. But there are many areas where Federal action enhances the value of the property, and it enhances the value of the property but the person is also able to say that they get money back for a taking.

Mr. Chairman, again I would think that this amendment would not be objectionable by anyone because it is really a very simple concept, and, that is, that we want to make sure that we do not see on some magazine program on television how somebody has been able to use this law to make all sorts of extra money.

Let me give Members some examples how this could be done. Under the Tauzin amendment, the swamp-buster provision of the farm bill could be a taking, and that is very interesting. If you do not plow up wetlands, that is a precondition to receiving farm subsidies that we are already paying farmers not to farm. So if we were to consider then the bill also of the takings part, you would see someone getting a double dip. The farmer could get a double dip in his subsidy for not plowing and also the loss because it has been declared part of the wetlands. I do not think that is what anybody intends. I do not think that they want to doubly benefit people.

We over and over talk about how the Government takes property, but the Government has taken many actions in which we have readily enhanced the value of property.

Let me cite a few, because I think often we have forgotten that in this debate. I suppose the No. 1 issue would be the water issue. When the Bureau of Reclamation is out there, and that is under this bill. As you know, the sole mission of the Bureau of Reclamation is to provide cheap irrigation water for farmers. As you can imagine, the value of the land before they come in is a whole lot lower than it was after they come in. But since 1902, the Federal Government subsidized almost 86 percent of all the irrigation construction costs and therefore enhance the value of this farmland.

People will say, well, folks pay property tax on that enhanced value, but they pay it to the State, not the Federal Government. So the Federal taxpayer has worked very hard in upping those values of the land because it is considered part of the public good, and I do not think we want to see them also be able to ascertain that they were harmed in some manner because of that.

This is kind of a commonsense amendment, that if someone is pleading harm, at least you look to see whether the overall value went up.

You can do this in any number of other areas, too. When you look at highways, you can say a Federal highway goes through, and people can say that that was very disruptive. However, if you look at the value of land, we constantly find the value of land goes up the nearer it gets to a Federal highway because of access coming into it.

So we would not want to be able to say that they had diminished the value by having a highway go through for some usage but we also find that the overall increase went up.

One of my favorite stories from Colorado has to do with ski areas. When the ski areas would come in through the national forests, and most of our ski areas are in national forests, obviously they dump into valleys and most of the valleys were privately owned. So we had some people claiming that they were displaced shepherds, or displaced cow herders.

I suppose that is true, but the value of their land had increased so radically because they were now owners of land that became very, very valuable for condominium owners and ski resort areas and all sorts of other things, that to just focus on that one issue, I think we would look silly.

I think this should be a very simple concept, where we are talking solely about looking at what the Federal Government also does to increase the value.

Some other areas that I talked about earlier, the Army Corps of Engineers, when they create harbors, when they do navigation channels, when they restore beaches, when they shore up coastlines.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has expired.

(At the request of Mr. VOLKMER and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 2 additional minutes.)

Mrs. SCHROEDER. I thank the gentleman from Missouri.

Basically what I am saying, Mr. Chairman, is that I do think when we are looking at this whole issue of takings, we have to look at the whole picture. I think everyone knows that if the Army Corps of Engineers is helping protect your property from flood, there is a value to that. I go back to the earlier letters that I had from the Army talking about how they felt if we did not have some of these commonsense things, it could almost stop what the Corps of Engineers does.

First of all, under this bill, any money would go directly out of the Army's budget. But I think we ought to at least look at the public good they are talking about and see if that particular property was enhanced in value, maybe not value to the individual owner but the overall price to that public good, or to that individual owner before we start assessing money that we think the taxpayer should be paying back.

I just think this is an easy, easy one. I would hope that this could be approved.

Mr. VOLKMER. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Missouri.

Mr. VOLKMER. I was listening to the statement of the gentlewoman from the beginning, and I thought the gentlewoman said something that perhaps is very minute but needed to be corrected for the record, something about farmers being paid not to farm?

Mrs. SCHROEDER. No, I was saying that under the 1985 farm bill, you could as a precondition for receiving farm subsidies in some areas, they were paying farmers not to plow under wetlands. So you would not want them to be getting money under that 1985 bill that I understand is there and then also have that considered a taking.

Mr. VOLKMER. We do not pay farmers not to farm anymore. We have a CRP program that pays farmers not to use that land for CRP, but that does not decrease the value of the land. They get a payment on the CRP. Environmentalists and everybody agrees on that program that it is a good program.

Mrs. SCHROEDER. That is right. But that is part of my point.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has again expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 1 additional minute.)

Mrs. SCHROEDER. We have, and I think it is right, in the farm bill these incentives to be environmentally sane, is how we work on that. But then if we also say later on that the farmer can then also claim this as a takings while they are also getting——

Mr. VOLKMER. No, this is a voluntary program. It is a voluntary program. The farmer comes in and asks that the land be. So it is not a taking.

Mrs. SCHROEDER. That is exactly my point. You could do that and do the other, too, and I think you just want to make sure that you look at the whole thing, so you make sure someone is not double-dipping. This is just a sensible anti-double-dipping that is possible, the way I read the two laws together.

Mr. CANADY of Florida. Mr. Chairman, I rise to speak in opposition to the amendment.

Mr. Chairman, I think it is very important that we focus on the exact wording of this amendment and its very, very broad scope. The amendment says, "The amount of compensation made under this act shall be decreased by an amount equal to any increase in value of the property that resulted from any agency action."

The important thing to note is there we are not talking about the same agency action that resulted in the diminution of value, because, of course, if that agency action had one impact that would tend to increase the value and another that tended to decrease the value, that would all be netted out in determining what the actual diminution of value was that was caused by that.

What this will deal with is any agency action, no matter how unrelated to the agency action in question that caused the diminution, and any agency action that occurred at any time in the history of the Republic. If there happened to be a road in which the Federal Government was involved in the neighborhood, if there were any public works in the vicinity that were ever participated in or constructed with the use of Federal funds through an action of a Federal agency, that would be included in this. So what we would be talking about under this amendment is providing an offset for benefits that have been provided over the whole history of this country to the general public in that particular vicinity, against the costs that are being imposed on an individual property owner. I do not think that is fair.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. CANADY of Florida. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. The gentleman is correct, and I guess we just disagree in what is fair. Because it is the taxpayer that is supporting the different Federal agencies, and I think that if one agency action has greatly increased the value of it, to then allow them to say on another area that it was a taking, we at least look at it.

Mr. CANADY of Florida. Reclaiming my time, what we are talking about here, though, are benefits that are provided to the general public and one thing we have to remember is that the individuals we are going to try to penalize in these circumstances are also taxpayers. They were paying taxes to help provide that benefit to the general public, of which they were beneficiaries, along with all the other people who might be in the vicinity. But to then come along and say, well, we are going to offset those benefits and that benefit you derived against this imposition that we are putting on you individually, at this point I do not think it is fair because they have already paid as taxpayers for those benefits they received as part of the general public. I believe the general public now should pay the cost of the burden that is placed on them as individuals as a result of its Government regulation.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield again?

Mr. CANADY of Florida. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. I think, though, it is much more specific than the gentleman thinks, in that it says any increase in value to the property.

Mr. CANADY of Florida. Reclaiming my time, the gentlewoman said that my analysis of this was correct. Now, if you want to differ with my analysis at this point, I would like to know what has changed your mind in the last minute?

Mrs. SCHROEDER. If the gentleman will yield, I will explain it. Analysis part A was correct, in that any agency increasing the value, you could look at the whole picture. But part B, I thought you were intimating that this was some generic overall thing, and I am saying, no, it is more specific than that. Whatever the agency action was, whichever agency it was, if you look at that, it must have increased the value of the property. So it is not a general public thing, it is this property that we are talking about.

Mr. CANADY of Florida. Reclaiming my time, there are all sorts of agency actions that benefit the general public that will also increase the value of individual property owners. That is what much of public works is about. It benefits the general public but as a consequence also benefits individual property owners. These are benefits that are provided to all members of the public and what you want to do here is penalize these individuals who have been singled out for imposition of regulations because they have benefited just like everybody else. The important thing to remember here is they were paying taxes like everybody else, also, for those general benefits.

□ 1845

Mrs. SCHROEDER. Mr. Chairman, if the gentleman will yield again, basically all I am saying is they cannot have it both ways. And I think that that makes sense.

Mr. CANADY of Florida. Reclaiming my time, the gentlewoman is really saying they cannot have it either way.

Mrs. SCHROEDER. No.

Mr. CANADY of Florida. You want to penalize them because they receive benefits like everybody else and I just do not think that is fair.

And another important thing I think you have to focus on here is there is no time limit on this. There is no time limit. We are talking about benefits that that property might have derived from the very beginning of the republic, and I do not think that makes sense.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is very important that the membership committee clearly understand what this amendment does and what it does not do. This amendment does not say that you take into account all of the pluses and minuses of the Government agency's action that is in question, reducing the use or the value, or changing the use of your property.

This amendment does not say that you weigh those pluses and minuses; the bill already does that. It says you look at the value of the property before and you look at the value of the property after. If the agency action has helped to increase the value and also decreased it in some way, those are going to be balanced out by the appraisal and the arbitration process, and you are going to get a commensurate measuring, a balancing of the positive and the negative effects of that agency's action on your property.

That is already in the bill. And so that is a concern you do not need to pass an amendment to do it, it is already in the bill.

Let us talk about what this amendment does do. This amendment requires the arbitration panel, the agency, to look at every single agency action in America that may have some impact on your property and may have helped its value out some time or other.

It will require that agency to do the most extensive and elaborate analysis of all Government agency actions ever done in the history of this country on your single piece of property. It is going to have to find out, for example, whether all of the roads built in America have enhanced the value of your particular piece of property; it is going to have to look at all of the harbors that were built, all of the drainage, all the levees, all the drainage, all of the public works that were accomplished in the history of this republic. It is going to have to look at how much we spent on defense because defending your property is certainly a Government action that enhances its value.

I mean this will be the most expensive, extensive review ever in the history of this country.

If this bill did not have in it, if it did not have in it provisions to make sure that when the appraisers look at the value of your property before and after their action, that you literally shake out the pluses and minuses and compensate for the difference, then maybe we would need that kind of amendment to do that, but it is already in the bill.

This amendment is clever; this amendment is absolutely devious. This amendment literally has the effect of saying that homeowners, property owners, farmers, ranchers, people on forestry land, anyone who might otherwise have a claim for a government taking is going to be defeated in that claim, because when this amendment gets through adding up all of the things that the Government has ever done in the history of this country in government action that may have enhanced the economic life of our country and thereby enhanced the value of our oaths properties.

By the way, all of the things which are paid for already, some of which we borrowed money to pay for, and are still paying at great interest rates with those borrowed funds, when it gets through doing all of that, let me tell you, you will have become so old, and your children will have become so old, your grandchildren will become so old that by the time you get the award, if you get any, the interest on that award will be astounding.

I suggest this is a clearer but a killer amendment. It ought to be defeated.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to my friend, the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman from Louisiana for yielding, and I enjoy listening to him talk, but let me tell you it is not quite as broad as the gentleman points out. Let me point out the second part is what I think we are talking about.

Mr. TAUZIN. Why is it not as broad as I have defined it? Would the gentlewoman tell me why the amendment which says any agency actions which have affected the property is not as broad as I have described it?

Mrs. SCHROEDER. The way I understand what my colleague is saying, he is saying if there is a mortgage deduction, everybody is benefited by an IRS mortgage deduction, so they could take that into account.

Mr. TAUZIN. I suppose if Alan Greenspan ever did us a favor in this country and lowered interest rates, that would be an agency action that enhanced our values, but I am telling you we cannot count all of these things in America at these arbitration proceedings and if the gentlewoman insists on doing that she kills this bill.

Mrs. SCHROEDER. If the gentleman will yield again, what I am trying to say is I think there are generic things that go all across the board to all taxpayers, that is one thing. I think clearly a reasonable, prudent person would read this as saying we are talking about agency actions that specifically increase the value of that piece of property, because they were near a dam or they were near an airport or they were near something. Now it is not all pieces of property because they are not all near that.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, just to follow the conversation of my good friend from Louisiana, I have no doubt that the gentlewoman has a noble objective, and I am also thinking she probably has some specifics in mind that at some point we might be able to support, and to meet the objective of stopping double dipping is something that we should certainly consider.

But in my community I was trying to think of how we could be impacted, various pieces of property, and we do have an interstate highway system that goes through the area. Every piece of property was enhanced. I do not know if that is what was envisioned by this particular amendment.

We also have an airport in the area, and when that airport was first opened and finally the construction was finished, every piece of property was enhanced in value.

There are numerous flood control projects in the area, some are very specific, and when those flood control projects have been developed and actually brought to completion, the property value in those particular areas have gone up. But that does not diminish the fact that all of the area that I am talking about has wetland problems, all of the areas that I talk about have had endangered species designations, and it would seem to me in reading the amendment and trying to be fair to the gentlewoman, that much of this is extremely general. And as I read this, I do not know how this would be interpreted by an agency trying to make a determination. And if the gentlewoman would like for me to yield, I will yield.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman for yielding. If you start out with land and it is valued very cheaply at like $10, and say a highway goes through or a harbor comes in or irrigation comes in and it suddenly goes way up in value so it is like now $300 an acre, which has been known to happen in many places, and then let us say there is some other Federal action that they claim is harmful, you ought to at least include what the Federal Government did to increase it if you have got those records from $10 to $300, if the gentleman sees what I am saying.

The other piece I am concerned about is I spoke earlier saying I worry that what we are going to do is send a message tonight to all lawyer wannabes, they ought to run out and study takings law because this is going to be the most profitable form of law ever.

You know and I know the cases in the past of someone who had an airport built by their house, their house went way up in value, but they said they wanted to live in the House and could not bake angel food cakes.

Mr. FIELDS of Texas. I appreciate the gentlewoman's explanation, but it really does not answer the fear I have, because the property I have been talking about is property that in many instances has been held for a long period of time by families. They have not gone out and solicited government to be going out with a road or airport or flood control project, but if they are subject to a wetland or endangered species designation they do have a right to a fair market value of that property. They did not have an intent to use the Federal Government in one instance to enhance their property and the Federal Government comes in in another instance and causes a diminution of the value.

Again, I have to oppose this amendment. Again, I think the purpose and objective of the gentlewoman is noble, but I do not see this objective being met with this particular general amendment.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Colorado [Mrs. SCHROEDER] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended.

The amendment to the amendment in the nature of a substitute, as amended, was rejected.

AMENDMENT OFFERED BY MR. GOSS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mr. GOSS. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The Clerk read as follows:

Amendment offered by Mr. GOSS to the amendment in the nature of a substitute offered by Mr. CANADY of Florida, as amended; In section 3(a), strike "any portion" and all that follows through "10 percent" and insert "that property has been limited by an agency action, under a specified regulatory law, that diminishes the fair market value of that property by 30 percent".

Mr. GOSS. Mr. Chairman, this is a very straightforward amendment. I do not think it will take a lot of time. It is in no way mischievous, it is exactly what it pretends to be and that is to change the threshold trigger for when a taking takes place.

In the legislation that we have before us, the ultimate trigger probably will be 10 percent of any affected portion of property. That could be at just about any part of the property. It is a very low percentage point, it is 10 percent or less triggers an automatic taking.

What I am proposing we do is we go back to a number we understood on the total parcel itself rather than determine what the affected portion is and we change the number to 30 percent. I offer this amendment in an attempt to bring a more reasonable standard to the Private Property Protection Act which we are dealing with here.

Let me say from the outset that I agree with the bill's sponsor that private property rights are a basic constitutional right and that in the light of some of the excesses we have seen in Federal regulation reaction that these rights certainly deserve more protection. And I commend my friend from Florida, and the gentleman from Louisiana, Mr. TAUZIN, especially for their great efforts to finally bring the bill off the shelf where the previous congressional leadership had placed it, hoping it would never see the light of day, but now we have to deal with it as we should.

I have some very grave concerns about the standard that H.R. 925 sets, as I said, including this 10-percent devaluation threshold on the affected property.

Under the Canady-Tauzin substitute to H.R. 925 a property owner must show only a 10-percent devaluation of a portion of his or her property to qualify for automatic compensation.

Mr. Chairman, I have grappled with the issue of planning and zoning at the city, county, State, and Federal level for a long time. I have been on the front lines for over 20 years and I am afraid that the 10-percent standard is neither practicable nor affordable.

As yesterday's New York Times Sarasota Herald-Tribune points out, I think wisely, a 10-percent difference in the appraised value on any land so easily arises from market factors, from different appraisal methods, for any number of reasons that have little or nothing to do with Federal regulations. Ten percent is within the margin of error, as they would say.

In my district of southwest Florida, land values fluctuate greatly every day and as anyone with experience in Florida real estate will tell you, the price, the actual price in the marketplace of a parcel of land sometimes has very little to do with its value. Nevertheless, there are customers.

To be workable, we must have a higher standard than the one in the bill before us, in my view and I think in the view of many others as well.

My amendment to raise the threshold to 30 percent of the entire property is an attempt to find a reasonable workable standard that everybody can define and clearly understand.

My other major concern with the 10-percent standard is that it is probably not affordable. But who could really tell whether it is or not. Mr. Chairman, one obvious outcome of the 10 percent on any affected portion is that the Federal Treasury could be flooded with claims both legitimate and otherwise that the low threshold for what I will call spot takings will encourage. As a strong fiscal conservative I have real trouble trying to support legislation that apparently invites such substantial costs, especially when we are already facing $200 billion-plus annual deficits and $5 trillion national debt.

There are other reasons to impose a higher threshold to trigger compensation. One that frankly comes to my mind is the burden we are probably going to be transferring to State and local government. There is clear evidence, especially in fast growth, low-lying waterfront areas that there is a coordinated relationship between Federal regulations and local land use regulations.

□ 1900

Simply put, local governments in some States rely on Federal regulations to help achieve community land use plans and goals. Of course, we should restrain any level of government from promulgating overzealous regulations, but that does not mean we should cripple the Federal Government's ability to use reasonable regulations which protect and provide for legitimate public health, safety, and welfare objectives in partnership with State and local government.

Mr. Chairman, I still feel that fundamental land use planning and zoning decisions should be made at the local level.

Interference from the Federal Government either to limit private property rights or to set a rigid formula for them is unwise and probably unworkable. However, if we are going to try to have a single Federal standard for private takings, then we must insure that this standard is both practical and affordable.

The CHAIRMAN. The time of the gentleman from Florida [Mr. GOSS] has expired.

(By unanimous consent, Mr. GOSS was allowed to proceed for 1 additional minute.)

Mr. GOSS. The 10 percent of affected area threshold is neither, in my view. Trying to do a quick and definitely unscientific overview of case law, I think it is fair to say that 30 percent of total market value is a whole lot closer to what our society has generally and traditionally accepted as qualifying as takings. Certainly that is true in the judiciary, and certainly the 10 percent of affected area threshold, in the Canady substitute, is a major departure, and likely a costly departure, I am afraid, into the unknown.

I am not arguing for consistency in the judicial branch in this, but I am stating that encouraging a nationwide frenzy of spot takings claims is poor legislation.

I urge my colleagues to join me in voting to raise the threshold to 30 percent of the entire parcel of land. We can understand that. We can deal with it. I think it will work.

Mr. CONYERS. Mr. Chairman, I rise to strike the requisite number of words.

I want to make sure we are talking about the 10 percent threshold going to 30 percent?

Mr. GOSS. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Florida.

Mr. GOSS. My amendment calls for a 30 percent trigger for the total market value, for the market value of the total parcel.

Mr. CONYERS. And that changes the 10 percent that is presently in the bill?

Mr. GOSS. Yes. That changes 10 percent to 30 percent.

Mr. CONYERS. And that would reduce a number of, a large number, of claims that might be, while they may not be called frivolous, they certainly might not have the merit that the 30 percent threshold would have?

Mr. GOSS. I believe the gentleman's assessment is exactly correct.

Mr. CONYERS. I compliment the gentleman, and I wish I could tell him we accept the amendment on this side, but I do not have that authority.

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Minnesota.

Mr. VENTO. I want to commend the gentleman from Florida for bringing forth this amendment. I think it points up, and I think the debate here should have brought to mind some problems with the issue. For instance, just the variation in terms of appraisal would itself lend itself to a great deal of variation in any area. That is one area where we know appraisals can come in such wide ranges in terms of the legislation being workable.

Second, each State, of course, defines the rights and the uses of land in a different way and, of course, this itself again enters in new variations in terms of what is going on.

I think unless we are going to completely hamstring the agencies in their ability to carry out some legislation like this, some sort of litigation, some sort of guidance ought to be provided. I think that from my point of view, it seems to me this regulatory compensation which is being provided in this bill for some specific laws is being cut from whole cloth. This is a entirely new allocation and definition of what constitutes compensation from the U.S. taxpayers.

Unless we are going to open up the coffers without limit, I think we have to provide much more guidance than that which has been provided in the underlying legislation. It is seriously flawed. The legislation is seriously flawed. They do not know how they are going to administer it. They do not know how they are going to pay for it.

One would, I think, only be left with the conclusion that the effort here is, of course, to really pull the rug out from under the laws that we are talking about, and in doing so, superimposing a really radical new concept of regulatory compensation. They, or course, have left behind the health regulators now, they have left aside the safety regulations, and in the highway department, they have left aside those that affect energy issues. The only ones that are left are these focused, targeted in on these environment laws, the Wetlands and Endangered Species Acts, the issue in terms of water rights that are included in this legislation. And so they have targeted it.

So I think the gentleman's amendment may make this more workable. I still think it is a flawed concept. I think we ought to be careful, but I think this actually makes it more workable.

Mr. DAVIS. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Virginia.

Mr. DAVIS. Mr. Chairman, I would just want to say I want to support the amendment offered by the gentleman from Florida.

I have been in local government for 15 years. During that time I have sat through hundreds of zoning cases, literally hundreds of condemnation cases, sat through a number of appraisals that have come across our desks, and looked at the variations, and 10 percent is clearly within that margin of error.

Many, many times we get three appraisals, and they are all over 10 percent apart from each other. I think without this amendment you almost raise the presumption that any action could reduce property by 10 percent.

Any we know that market conditions, interest rates, financing mechanisms, the seasons, school districts, all of these which, extraneous to the governmental regulation, could reduce, actually could reduce the property values by 10 percent. Thirty percent looks to me like a reasonable threshold. It is beyond the margin of error. It addresses the anecdotal horror stories that we have heard on this floor that I think need to be addressed.

Without this, I think the legislation raises the presumption that any regulation will adversely affect the property values by 10 percent. That is just within the margin of error. That has been my experience.

I support the gentleman's amendment.

Mr. CONYERS. I thank the gentleman.

I would say, in closing, that this corrects a very serious problem that is in the bill. Ten percent is, frankly, shocking.

I think this makes it more attractive. There are still a lot of problems, but I want to compliment the gentleman from Florida for bringing this forward, and I hope that bipartisan support would carry this amendment through to a successful conclusion.

Mr. POMBO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take the entire 5 minutes, but I just would like to rise in opposition, because when we originally came up with this bill that we have been working on and all of the changes that have been made to it, in order to get it through committee and get it to the floor, when we originally started, we were at zero, because I felt that it was important that Federal agencies not come in and take people's private property.

I am not comfortable going to 30 percent. I felt that it was a moderate, modest compromise to put in a threshold, because in the Constitution it does not say the Federal Government can take 10 percent of your land before they have to compensate you. They say that they cannot take your land, period.

So the whole idea of putting in a threshold, I fought against, and because it was brought to my attention that appraisals can vary by 10 percent and market conditions can force things one way or the other, that we need to put in some kind of a threshold because of the other parts of the bill that make it easier to be compensated, I agreed to go to 10 percent. I agreed that that would be a modest and moderate way of attempting to get at the problem.

Now, to stretch that and go to 30 percent, what we are saying is that the Government can take 29 percent of your property in order to qualify under the provisions of this bill.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. POMBO. I yield to the gentleman from Michigan.

Mr. CONYERS. Did I understand you to say that you were originally at 1 percent and you went to 10 percent?

Mr. POMBO. The original way, a year and a half ago, when we first started working at this, was at 1 percent, yes.

Mr. CONYERS. You have come a long way, baby, and maybe you can keep on moving down the road. We think 30 percent is pretty low.

Mr. POMBO. Reclaiming my time, I think we went far enough when we went to 10 percent. I mean, I was trying to be nice about that.

In regard to another comment that was made about zeroing in on environmental laws, I would just like to point out that when this was before Judiciary, that it was all Federal regulations; the compromise that was worked out involved the Federal regulations that provide about 90 percent of our problems. The other 10 percent we are going to have to take care of in other legislation. But the whole attempt here is being undermined, I believe, by moving the threshold to 30, because the Constitution is clear that you cannot take private property without compensating for it, whether at 10 or 30 or 50 or whatever number you want to plug in.

And because we are setting up a different method of being reimbursed, a different method of being compensated, I felt that it was important that we do that.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman and members of the committee, the courts have struggled very greatly with this question of partial takings. The most definitive statement occurs in the case of Florida Rock. I have quoted it several times here.

Florida Rock was on a third trip to the circuit court of appeals. It started in 1979. It still had not been finished.

But in the lastest expression, the court said that nothing in the language of the fifth amendment compels the court to find taking only when the Government divests the total ownership of the property. The fifth amendment prohibits the uncompensated taking of private property without reference to the owner's remaining property interests.

It went on to talk about the Supreme Court decision in Lucas, a wetlands case decided by the Supreme Court in which Mr. Lucas was ordered to be compensated for the value of his beachfront lot that had been regulated, and in that case by a State action. The court said that in Lucas the Supreme Court touched upon the question, but concluded that the facts before it did not call the question to order, because the State of South Carolina had conceded that they took all the value from this man's land.

The court found a categorical taking, and thus did not have to decide the partial-taking question. They went on in Florida Rock to say the following, Justice Stevens, writing separately, criticized as arbitrary the notion a landowner whose property is diminished at 95 percent should recover nothing, where an owner whose property is diminished a hundred percent should recover the land's full value. Justice Scalia also wrote saying that the analysis errs in the assumption the landowner whose depravation is one step short of complete is not entitled to compensation.

The Supreme Court clearly has not yet dealt with this difficult area, but the Florida Rock case did. It said no such conceptual problem exists when the taking is by physical occupation. If an owner of a property owns a 100-acre tract, for example, and the Government shows up and takes 95 acres for a public park, no one would argue that the 5 acres remaining somehow precludes the property owner from claiming entitlement to just compensation for the loss of the 95, and in Florida Rock, it went on to say, and listen to this carefully, indeed, if the Government took just 5 acres and left the property owner with 95, there would be no question that the owner was entitled to compensation for the parcel that was taken, with severance damages even attributable to the remaining tract. In short, the court said a taking as low as 5 percent is compensable under the fifth amendment to the Constitution.

Indeed, if the Government showed up tomorrow on your property or mine and said that it wanted one of our acres, a half of our acres to build a road, would it matter how big an acreage we have? We would get compensated under the condemnation proceedings, and we should under the fifth amendment.

And so the court in Florida Rock made it clear partial takings of some percent of your value are, indeed, compensable.

Now, what is the gentleman from Florida offering? He is offering a 30 percent threshold, and he does not apply it to the parcel that is affected by the regulation. It is now 30 percent of the whole of the property, pretty much like the original bill that was filed that said 10 percent of the whole of the property.

What is wrong with that? Well, can you imagine the gaming that is going to occur under such an amendment? Thirty percent of what whole? How many acres? If I have got a hundred acres today and I have only got 5 acres taken, can I sell part of my acreage away and qualify? Can I give some of it to my brother-in-law and let him file the claim? Can we do some kind of, you know, sweetheart deal with a counter letter that says I really have not sold it, just to qualify of the 30 percent figure?

You see, 30 percent of a whole opens it up to all kinds of gaming. Ten percent of the whole would have done the same thing. Thirty percent threshold, if I read Florida Rock, is awfully high, but more importantly, 30 percent of a whole just does not work.

As much as I know my friend just wants to raise the threshold, when he applied the threshold to the whole of the property, he created a mess. He created a situation where every landowner can game the system away, and we will be in court interminably arguing whether somebody is trying to defraud the government by gaming the system, claiming they own less than the whole of their property.

Mrs. CUBIN. Mr. Chairman, I move to strike the requisite number of words. I will be very brief.

Mr. Chairman, I want to bring this down to terms that we can all relate to in a real sense rather than a theoretical sense.

First of all, I need to say this legislation is needed to remedy a fundamental wrong, and that is that the Federal Government forces property owners to shoulder the entire cost of public benefits such as preserving wetlands, conserving endangered species, and that sort of thing.

□ 1915

Now when we talk about the difference between 10 and 30 percent for compensation, I want to give you an example of something that happened in my district. There is a home builder in the area in the Jackson Hole trying to provide some badly needed housing. But the EPA came in and the Corps of Engineers came in, both of whom administer section 404 of the Clean Water Act, and they stopped all development. There were 6 houses practically complete. They threatened to tear them down. Three more foundations had been poured. They would not allow those houses to be built. In fact, they had to remove the foundations.

Twenty-two homes in all were planned for this, and the whole thing came to a stop. Even at 10 percent, the owner would have lost over $250,000.

Now, when we go to 30 percent, we are talking about a $750,000 loss. It is not unusual to have a farm or a ranch that is valued at $300,000. Again, 10 percent is a huge loss, but 30 percent can put them out of business.

I stand opposed to the Goss amendment, and I hope it will be defeated.

Mr. DELAY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will try not to take the 5 minutes. I know we want to move ahead to the next amendment.

I just have to strongly rise to oppose my friend from Florida's amendment. I hesitate to do so because I know the gentleman from Florida [Mr. GOSS] is a strong Member and a well-thinking Member. I have to speak on this amendment.

I understand the argument about it is easier to prove a 30-percent loss of value than it a 10-percent loss of value. But I have to tell you something: I do not care if it is easier for the bureaucrats to determine whether it is 10 percent or 30 percent. I am interested in that homeowner, that farmer, that person that loses the value of that property because some bureaucrat or some agency has imposed a regulation on them. And I can guarantee you that if my house lost 10 percent of its value because of some action by the Federal Government, by the oppressive Federal Government, I will know that it is 10 percent but I can participate in the process and be able to bring forth my substantiation for a 10 percent loss in value.

What you are talking about is loss of value from 30 percent on is okay, but if you lose 29 percent or less of value, we do not care. The Federal Government does not care, this House does not care. So you just eat the loss of value of the 29 percent.

Mr. GOSS. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from Florida.

Mr. GOSS. I thank the gentleman for yielding.

Mr. Chairman, that is not entirely true. You lose the automatic taking, you do not lose your constitutional right for less than 30 percent.

Mr. DELAY. Well, it is the same thing. What we are doing, what the gentleman is doing, is making it easier on the bureaucrats and easier for them to hide and manipulate and game the system.

I just think this is unfortunate. If you are strongly for property rights, if you are strongly for the rights of the property owner to be protected from loss of value of the property, then you will vote against the Goss amendment.

Mr. Chairman, earlier today I spoke of the historical basis for including the right to property in our Constitution. Federal overregulation has severely infringed on this right, and landowners are rebelling. Tonight we are fighting for the rights of private property owners to receive fair compensation for the loss of the use of their land.

As it stands currently, H.R. 925 requires the Federal Government to compensate a private landowner if regulations reduce the value of the property by 10 percent or more. The Goss amendment would raise that threshold to 30 percent.

Now, there is something here I don't quite understand. If you believe in the principle that property owners should receive compensation if the value of their land is reduced due to federal regulation, there is something strange about placing a percentage threshhold on that right.

I think property owners should receive compensation if government action reduces the value of their land by any percentage. However, I understand the difficulty involved in accurately appraising land value and believe 10 percent is a reasonable threshhold.

Raising that threshhold to 30 percent means if the value of your land is reduced by one quarter, you're out of luck. You simply can't use one fourth of your land or you lose one fourth of its market value if you choose to sell it.

The Supreme Court has said that the fifth amendment of the Constitution is designed to prevent the government from requiring a few individuals to "bear public burdens which, in all fairness and justice, should be borne by the public as a whole." If you believe in this principle, you must vote "no" on the Goss amendment.

Mr. DOOLITTLE. Mr. Chairman, I move to strike the requisite number of words.

I too rise, and I respect my colleague from Florida [Mr. GOSS], but I am very concerned about the effect of this amendment.

When you think about it, the fifth amendment obviously is designed to protect the individual from the oppressive acts of government. Think about your own house for a minute. Say it is worth $200,000, to take maybe an average; some will be worth less than that and some will be worth much more than that. But if we take the $200,000 figure, under the provisions of this amendment, we are saying the government can come in and can take away nearly 30 percent of that value, $60,000, and they can do it without your having any remedy except the traditional constitutional remedy, which has basically failed to work for the common man or woman in this country.

The remedy of filing an action and working your way through the Federal court system, we know it takes up to 10 years, up to $500,000 in attorneys fees. You know what? If you are a big corporation, it is great; you have a staff of legal counsel who routinely handle matters and it just becomes part of the cost of doing business, which all the rest of us pay for as consumers.

But if it is your property, if it is your $200,000 value, we are saying under this amendment, "Go ahead, government, we know that you are weak, we know that you need the help, we want to help you. So go ahead, take $60,000 of the value, no problem. We know you need it."

Mr. Chairman, the government is not weak, the government is strong, the government is powerful, the government has an unlimited checkbook because it is our money as taxpayers, an unlimited checkbook to run people through the system, with their staff of attorneys paid at Government expense.

We need to keep the value at 10 percent. Yes, we acknowledge a line has to be drawn for the purposes of his bill. But we think that line ought to be at 10 percent. Ten percent loss is significant. But, Mr. Chairman, a loss of 30 percent more often than not is not loss of the person's profit, his or her entire profit in the value of the property is out the window if the long arm of the Government decides to reach out and regulate you in a fashion that destroys 29.9 percent of the value of your property.

So, Mr. Chairman, I would strongly urge our Members to oppose this amendment and to support the underlying legislation.

Mr. WYDEN. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from Florida.

Mr. GOSS. I thank the gentleman for yielding. I will be very brief and not take advantage of his generosity.

I did want to say that the question of the Florida Rock case is certainly an interesting illustration. That is not the only case in the case law, as I think we all know. But I am not going to stand here and practice law without a license, but I think anybody who has done some work understands that the Supreme Court has done everything they cannot to come to a final decision on this, because it has been just as hard for them as it is for us, and this remains sort of a case-by-case situation.

The reason we went to total property is because it is very easy to get an agreed-upon market price for a total parcel. It is very difficult to talk about whatever an affected area is on a percentage basis because we have three or four separate areas that may be involved in a low-lying piece of property, endangered species, 404, we may have several affected pieces of property. Once we have determined what the affected pieces of property are or what the fair market value of those are, then we figure out what the value is and we can tell what the 10 percent of that is. That is a long, complicated, new process that is going to create, in my view, another bureaucracy.

I think what we are trying to do is provide precision definitions so that private property owners know exactly what they are entitled to, under what circumstances, and so the Government regulatory agencies know with precision what happens if they get the 30 percent, they have a problem on their hands.

I think it is fair because the other constitutional remedies certainly provide for anything less than the 30 percent as they do today.

Mr. DOOLEY. Mr. Chairman, I move to strike the requisite number of words.

I rise in support of the Goss amendment. I stand behind no one in my efforts to protect private property rights, but those of us in this delegation also have an obligation to protect interests of taxpayers. With the 10-percent threshold, we have established in this bill, we are creating the opportunity to create a tremendous windfall that, for those of us who are interested in protecting private property rights, ensuring they are going to receive some compensation, if we leave it at that 10 percent, we are going to ensure that this whole system of compensation will implode, because 1 year after this bill would be passed and enacted, we are going to have so many cases and examples of people throughout this country who are gaming the system at 10 percent because they are going to be able to find an appraiser, a lawyer who is going to be able to market a service that they are going to go out to landowners who have seen, because of market fluctuations, a decline in value, and they are going to be able to tell you that on a contingency basis, "I will go out and work your case, take it to an arbitration panel, and if I win on that and get compensation for 10 percent, I will take a portion of that fee."

We are going to be creating a nightmare. The amendment offered by the gentleman from Florida [Mr. GOSS] is bringing some reason to this; it is ensuring that there has to be a threshold large enough that it cannot be used—that has to be greater than what can be normal and traditional fluctuations in the marketplace.

We all know, those of us in farming such as myself, we have seen fluctuations in market values over 10 percent every year. For those of us who have been involved in the Endangered Species Act, we have also seen cases in California in the last several years where we have had droughts where you have had the listing of endangered species, and how are you going to differentiate between what is the lowering of the value from the drought and because of the delisting of a species? There is no way you can do that. At 30 percent, we provide some reason and some balance.

I think this is a reasonable compromise and makes this legislation far more effective.

Mr. BARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would respectfully say to the last speaker the nightmare is here, the nightmare is here because we have had year upon year of Government agencies coming in and running roughshod over property owners of this country.

The bill before us right now tells the Government in two words something that the voters and the taxpayers and landowners of this country have been voiceless to tell the Government for generations now, and those two words are, "Back off."

This bill tells the Government, "Back off." If you have a legitimate claim to this property, no matter how much you take, you have to pay a legitimate price to the property owner for that. Under the amendment that my distinguished friend from Florida is proposing, the gentleman from Florida, that "Back off" becomes, "Please don't." We need to hold the line here, we need to stand up for property rights. That is what brought us to this Congress. Let us not fail the American people. We need to defeat this amendment and support the underlying legislation.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. GOSS] to the amendment offered in the nature of a substitute by the gentleman from Florida [Mr. CANADY], as amended.

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. GOSS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 210, noes 211, not voting 13, as follows:

[Roll No. 192]

AYES—210

Abercrombie
Ackerman
Andrews
Baldacci
Barcia
Barrett (WI)
Bass
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bilbray
Bilirakis
Bishop
Blute
Boehlert
Bonior
Borski
Boucher
Brown (FL)
Brown (OH)
Cardin
Castle
Clay
Clayton
Clement
Clinger
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Davis
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Ehlers
Engel
English
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Foley
Forbes
Ford
Fowler
Frank (MA)
Franks (NJ)
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Gilman
Gordon
Goss
Green
Greenwood
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Hobson
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
Klug
Kolbe
LaFalce
Lantos
Lazio
Leach
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martini
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Mollohan
Moran
Morella
Nadler
Neal
Nethercutt
Oberstar
Obey
Olver
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Porter
Portman
Poshard
Pryce
Quinn
Rahall
Ramstad
Rangel
Reed
Regula
Reynolds
Richardson
Rivers
Roemer
Ros-Lehtinen
Rose
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sanford
Sawyer
Schroeder
Schumer
Scott
Serrano
Shaw
Shays
Skaggs
Slaughter
Smith (NJ)
Spratt
Stark
Stokes
Studds
Stupak
Taylor (MS)
Thompson
Thurman
Torkildsen
Torres
Towns
Tucker
Upton
Velazquez
Vento
Visclosky
Walsh
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Williams
Wise
Wolf
Woolsey
Wyden
Wynn
Young (FL)
Zimmer

NOES—211

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bateman
Bevill
Bliley
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehrlich
Emerson
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Fox
Franks (CT)
Frelinghuysen
Frisa
Frost
Funderburk
Gallegly
Ganske
Gekas
Geren
Gillmor
Goodlatte
Goodling
Graham
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hoekstra
Hoke
Holden
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson, Sam
Jones
Kasich
Kim
King
Kingston
Knollenberg
LaHood
Largent
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Mica
Molinari
Montgomery
Moorhead
Murtha
Myers
Myrick
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Quillen
Radanovich
Riggs
Roberts
Rogers
Rohrabacher
Roth
Royce
Salmon
Saxton
Scarborough
Schaefer
Seastrand
Sensenbrenner
Shadegg
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Tiahrt
Traficant
Volkmer
Vucanovich
Waldholtz
Walker
Wamp
Watts (OK)
Weldon (FL)
Weller

White
Whitfield
Wicker
Wilson
Young (AK)
Zeliff

NOT VOTING—13

Baesler
Brown (CA)
Bryant (TX)
Gonzalez
Horn
Hoyer
Laughlin
Martinez
Moakley
Owens
Schiff
Torricelli
Yates

□ 1945

The Clerk announced the following pair:

On this vote:

Mr. Moakley for, with Mr. Horn, against.

Mr. KIM and Mr. SAXTON changed their vote from "aye" to "no."

Mrs. THURMAN and Mr. BARCIA changed their vote from "no" to "aye."

So the amendment to the amendment in the nature of a substitute, as amended, was rejected.

The result of the vote was announced as above.

PERSONAL EXPLANATION

Mr. HOYER. Mr. Chairman, I wish to have it noted that I was unavoidably absent on rollcall No. 192. Had I been present, I would have voted "aye."

Mr. CANADY of Florida. Mr. Chairman, I move to strike the last word.

Mr. Chairman, it is my intention to move to rise at 9:35 p.m. at the completion of 10 hours of debate under the 5-minute rule.

Mr. CLINGER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise to engage in a colloquy with the gentleman from Indiana [Mr. MCINTOSH] regarding his amendment with the gentleman from Tennessee [Mr. BRYANT] to the Tauzin amendment.

Mr. Chairman, the amendment would broaden the scope of the bill's compensation provisions to all of the Clean Water Act, rather than just the section 404 permitting program.

Is it the gentleman's intent, I say to the gentleman from Indiana, to address concerns about EPA's nonpoint source management program?

Mr. MCINTOSH. Mr. Chairman, if the gentleman will yield, that is correct. The gentleman from Tennessee [Mr. BRYANT] and I have an amendment where property owners, members of the agriculture community, and others who are increasingly concerned about the impact of a Federal nonpoint source program on private property rights would receive protection.

In fact, the American Farm Bureau has expressed similar concerns about not only section 319, but the Coastal Zone Management Act as well. They support efforts to address these issues in the context of H.R. 925.

Mr. CLINGER. I share the gentleman's concerns and appreciate his leadership on this issue. As the vice chairman of the Transportation Infrastructure Committee and speaking on behalf of my chairman, the gentleman from Pennsylvania [Mr. SHUSTER], who is presently serving as the Chair, I can assure the gentleman that he is committed to a thorough review of the nonpoint source pollution programs and any other EPA program that might adversely affect private property rights in the context of the Clean Water Act.

In fact, our committee has scheduled a markup of a comprehensive Clean Water Act reauthorization over the next several weeks.

Wetlands reform and flexible nonpoint source pollution programs, both as part of the Clean Water Act and the Coastal Zone Management Act, will be very much a part of the debate. To the extent our hearings and review on nonpoint source pollution indicate a need to impose specific provisions on takings and compensation, we will be happy to work with the gentleman from Indiana, the Farm Bureau, and any other interested party.

Mr. MCINTOSH. I thank the gentleman from Pennsylvania.

Mr. BRYANT of Tennessee. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. I yield to the gentleman from Tennessee.

Mr. BRYANT of Tennessee. Mr. Chairman, I would respectfully withdraw my amendment.

AMENDMENT OFFERED BY MR. WYDEN TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mr. WYDEN. Mr. Chairman, I offer an amendment to the Canady substitute.

The Clerk read as follows:

Amendment offered by Mr. WYDEN to the amendment in the nature of a substitute offered by Mr. CANADY of Florida, as amended:

In section 5(a)(2) strike the period and insert ", or".

At the end of section 5(a), insert:

with respect to an agency action that would prevent or restrict any activity likely to diminish the fair market value of any private homes.

In section 9, insert the following new paragraph after paragraph (4), and redesignate subsequent paragraphs accordingly;

(5) the term "private home" means any owner occupied dwelling, including any multi-family dwelling and any condominium.

Mr. WYDEN. Mr. Chairman, most of our citizens look at the title of this legislation. It has a sweeping name, the Private Property Protection Act. When you look at the sweeping title of this bill, one assumes that all American property owners are protected. In fact, this legislation protects only a limited group of private property owners, those property owners whose use or development of their property is regulated by the Federal Government.

The typical homeowner that we all represent, and there are 65 million of them, live in an already-constructed home, they use their property in a typical fashion, and they are not regulated by the wetlands law, the endangered species law, the reclamation law, and the various laws outlined in this bill, and that is why those 65 million typical homeowners are not protected under the legislation.

I believe that these typical homeowners are going to be surprised that they are not protected. I think they deserve consideration, and it is why I offer this amendment on behalf of myself and the gentleman from Maryland [Mr. GILCHREST], a bipartisan amendment, to make sure that the typical homeowner gets a fair shake and that some needed balance is brought to the legislation.

As written now, the legislation provides exceptions when agencies do not have to pay compensation for agency actions that diminish the value of private property. This amendment that I offer with the gentleman from Maryland simply adds another exception when compensation does not have to be paid, so as to make sure that typical homeowner gets a fair shake.

We stipulate that you would not have to pay compensation when the regulated property owner's activity would actually decrease the value of those homeowners that live in the adjoining area. This amendment would enable Federal agencies to avoid a Hobson's choice of either restricting development and incurring liability to the developer, or allowing the development to proceed, even when this will cause a typical homeowner to suffer a devaluation their property.

Let me use an example very briefly. A property owner wants to develop a 10-unit subdivision. If the Corps of Engineers tells us the developer of the proposed subdivision that one of the units is a wetland and cannot be developed, under the legislation the Corps is liable to pay compensation. The corps's only choices are to write a check or let the developer fill in the wetland. To conserve scarce funds, the Corps often decides to let the developer fill the wetland. Wetlands often help control flooding by acting as sponges to soak up rainfall. When a wetland is filled, the excess water has to find someplace to go, and that could be the basement of one of the neighbors of a homeowner who lives downstream from the development.

Under the bill as it stands now, even if the corps knows that allowing the developer to fill in the wetland might increase the risk of flooding to the homeowner downstream, the corps would have to pay compensation to the developer if it denies the permit.

Under this amendment, the corps could deny the permit to fill in the wetland without incurring any liability, if it was determined that denying the permit was the lesser of the evils, that greater damage would be done to those homeowners who live downstream.

I would also like to note this would help the corps to preserve its limited budget for flood control and other important activities.

Mr. Chairman, I want to thank the gentleman from Maryland [Mr.

GILCHREST] who worked with me on this legislation. We feel with this amendment the bill can protect the 65 million typical homeowners and be a true Private Property Protection Act.

Mr. GILCHREST. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I think this is well crafted, well thought out. It gives some consideration to the problem of all property rights for all Americans and not just a few.

Just to make a comment, as we go through this debate and as we begin to ensure the protection of all Americans against insensitive, overregulated bureaucrats, I think we must continue to keep two things in mind: One, all Americans, and not just those few who are filing for Federal permits, all Americans must know that their property is to be protected not just from takings by regulations, but protected from pollution from other people that develop.

□ 2000

The other thing I think we have to keep in mind is the fact that when we manage, I think we would all agree that when we manage where we live, that we cannot manage as if there are no people. I think that is where we got into some problems around the country: "Let us manage this, and you cannot do that and you cannot do that because we have a certain species that we do not want to become extinct."

We all know we cannot manage thinking there are no people, but by the same token, we cannot manage thinking there are no species out there that support the resources that support people on the planet.

Mr. Chairman, if we believe people should be compensated when their property is devalued, then let us not fool around. This amendment is based on a bill whose purpose is to ensure that people are compensated in cases where their property is devalued by polluting actions of others.

That bill, our bill, H.R. 971 is the Homeowners Protection Act. Unfortunately, the entire Homeowners Protection Act would not be germane to this bill. Get that, the Homeowners Protection Act, which protects private property, is not germane to this bill; and I hope Members do not miss the irony, protecting homeowners is not germane to a private property rights bill?

However, for today, the amendment that we are now offering is the best we can do. The amendment simply says that agencies need not provide compensation in cases where the proposed regulation is designed to prevent actions which would reduce the value of other private property. In other words, the amendment says that we should not pay people, we should not pay people to refrain from polluting other people's property.

How can any bill entitled the Private Property Protection Act not contain that? You and your property should not be paid to refrain from polluting somebody else's property.

Most environmental law is designed to prevent people from using their property in such a manner that they adversely affect other private property or public property. In my district, every time someone develops a wetland, they increase the amount of runoff into the Chesapeake Bay, thereby very often increasing the toxic levels of nitrogen in the water. This reduces the value of the homeowners who live near the water, because the water is not that clean or productive, and it certainly reduces the value of a person's right to go fishing there.

Mr. Chairman, I ask my colleagues, if they are for all property rights and all people, support the Wyden amendment.

Mr. CANADY of Florida. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I want to point out to all the Members the specific provision that is contained in section 5 of my substitute amendment. In that provision we are covering the sort of situation that the gentlemen who are proposing this amendment are concerned about.

I will say that they go beyond, far beyond, what we do to protect landowners from hazards to the public health or safety or damage to their specific property. What this amendment in effect does is really get the Federal Government into making zoning type decisions and distinctions between properties that are more appropriate for a local zoning board to be making.

By saying that the agency will consider whether a particular permitting action would restrict any activity likely to diminish the fair market value of private homes, they are in fact engaged in the sort of decision-making that a local zoning authority should be engaged in.

Mr. Chairman, the important matter to understand here is that State nuisance laws and other State laws already will provide protection for the interests that are sought to be protected here, and that we should not be establishing this zoning type of consideration at the Federal level.

Mr. WYDEN. Mr. Chairman, will the gentleman yield on that nuisance point?

Mr. CANADY of Florida. I am happy to yield to the gentleman from Oregon.

Mr. WYDEN. Mr. Chairman, what troubles me is this legislation creates a Federal express line where the developer and commercial interests can come in and have their claims addressed, but when it is the typical homeowner, under this bill we say "Sorry, Charlie, you do not get in the same place as the commercial interests. Go to the State and local level and see if things will work out."

That is the reason I think this bill has a double standard, one set of rules for the commercial interests, another set of rules for the typical homeowner, and why we seek to promote some balance.

I thank the gentleman for yielding.

Mr. CANADY of Florida. Mr. Chairman, I think the point we need to understand here is that people have a right to use their property. The presumption the gentleman seem to be operating off of is that people do not have a right to use their property, they do not have a right to the value of their property.

I simply disagree with that. The philosophy behind this bill is that people do have a right to their property. When the Federal Government is going to impose restrictions on them that prevent them from using their properties, and those restrictions significantly diminish the value of that property, they are entitled to compensation.

I understand there is a difference of opinion on that subject. I think what is happening here, Mr. Chairman, is we are clouding that issue. I will not say it is an attempt, but I think the effect of what is going on here is to obfuscate that critical issue, when the interest that the gentleman purports to be protecting, and the gentleman from Oregon, Mr. WYDEN, is my friend, and I accept his good faith in this, however, the interests that the gentleman is attempting to protect here are interests that are already protected by local zoning ordinances.

Let me point out, Mr. Chairman, that the interests that we are attempting to protect do not receive that same sort of protection. I think that is something that is important to understand.

Mr. WYDEN. Mr. Chairman, will the gentleman yield further?

Mr. CANADY of Florida. I yield to the gentleman from Oregon.

Mr. WYDEN. Mr. Chairman, there are instances, of course, where the impacts of pollution are dispersed over a large area that are not covered under local ordinances. There are instances of pollution being dispersed across State lines.

Mr. CANADY of Florida. Reclaiming my time, Mr. Chairman, I think it is important to understand the impact of the Tauzin amendment. The gentleman is talking about pollution. The gentleman is talking about things that are not covered by this bill to begin with.

If the gentleman will look at the scope of the programs we are covering here, the sort of horribles that the gentleman is trotting forth are not possible. We are not going to provide compensation in those circumstances.

Mr. WYDEN. If the gentleman will yield further, I would like to stipulate that I think there are takings, and there are certainly takings that warrant compensation. What I am concerned about is we are not factoring in the consideration for the other people getting hurt.

Mr. CANADY of Florida. Reclaiming my time, what I would like the gentleman to stipulate is that the scope of this bill is such, based on the Tauzin amendment, that we are not going to get into the kind of problems that the gentleman is talking about. It is just not covered.

If the gentleman will look at those particular programs, he will see we are not talking about programs that deal with controlling pollution. That is not covered in this bill.

Mr. WYDEN. If the gentleman will continue to yield, I laid out a problem involving wetlands not covered under the law.

Mr. CANADY of Florida. Mr. Chairman, the bill is very clear on that point. I think what we have here is a red herring that is being raised. I understand what is going on, but I think it is unfortunate that we are not focusing on what the bill actually does. I have no problem with criticizing the bill, but let us focus on what this actually does.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment. If this amendment passes, if it becomes part of this bill and it becomes law, the gentleman we began this debate discussing, Mr. Bowles in Texas, will lose his case. It took him 10 years to get the claims court to say that the Federal Government took his property when it said he could not build his house. All he wants to do is build a house on a subdivision lot next to two neighbors who have houses on their subdivision lot.

The gentleman from Maryland [Mr. GILCHREST] needs to pay, I hope, some attention to this. Mr. Bowles is not asking to pollute anybody. To use his property to build a house is not pollution, and to associate all the legitimate uses people put their property to pollution is something the courts have refused to do.

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I am happy to yield to the gentleman from Maryland.

Mr. GILCHREST. Mr. Chairman, I do not think the courts have refused to do that. I think the courts have, to a certain extent, adequately dealt with that under the fifth amendment, but just because someone wants to build a house does not mean they are going to pollute anything. As you say, that depends on where the house is built.

Mr. TAUZIN. Let me reclaim my time, Mr. Chairman, and quote from the Court of Claims in the Florida Rock decision, again: "Government may not circumvent the takings clause by defining an activity as pollution and rendering it noxious by fiat." It said in Florida Rock that you cannot get away with that anymore. You cannot tell people in America they cannot farm their land, they cannot build houses on their land, because you consider it pollution.

The court says that protecting wetlands is not protecting against pollution, necessarily. It said in that case, Mr. Chairman, that protecting wetlands for the good of all Americans, which is a good and worthwhile goal, is a public responsibility, not the responsibility of the few landowners in America who happen to own the wetlands.

If we want to protect the wetlands against uses that Mr. Bowles would like to put his lot to in the subdivision of Bresoria County, when all his neighbors built houses, if we want to prevent him from doing that in the guise of protecting wetlands, then we need to pay for that policy, not Mr. Bowles.

The reason Mr. Bowles would lose his case under this amendment is that his two neighbors would suffer when he built his house. Both neighbors would lose some right of view. Their property would be affected by the fact that another residence is close to it.

Under this amendment, there is no test for the diminution of value of the adjacent property owner. Any diminution of value, however significant, is enough to trigger the denial of the property owner's claim for compensation under this act.

In other words, if Mr. Bowles, who fought for 10 years for compensation, should now be faced with this act as amended by my friend, the gentleman from Oregon, what he would find is that the court would say "Sorry, the Congress said that because your house now obstructs the view of your neighbor's, it has diminished their value to some extent. We are not authorized to provide compensation for you under the private property rights bill passed by the Congress in 1995," and so it would be for many other claimants. Claimants who perhaps have very large claims against the government for taking their property would find that those very large claims are lost because of some very small, diminutive, insignificant, almost, diminution of some neighbor's property.

The current bill provides for remedies. It currently says that even though you have a wetlands claim against the Federal Government under this bill, if the action, the activity you want to undertake is forbidden by a legitimate zoning law on the local level, you will not get compensated.

It presently provides that if the activity you are interested in is prohibited by a nuisance law in your State, such as flooding your neighbor, dumping, indeed, pollutants or toxins on your neighbor, if you intend to do that, or if your activity would do that, that you will not receive compensation.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has expired.

(By unanimous consent, Mr. TAUZIN was allowed to proceed for 30 additional seconds.)

Mr. TAUZIN. Mr. Chairman, if the purpose of the government's action in denying the permit is not to protect wetlands in general for the rest of us, is not really to protect endangered species for all the rest of us, but if the purpose is to deny your right to damage your neighbor, that is already in the bill as an exception to compensation.

You do not need this amendment. This amendment will deny legitimate claims for de minimus effects on neighbors. It is not the right thing to do. We ought to defeat it.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I yield to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Chairman, I thank the gentleman for yielding to me.

First, if the gentleman from Louisiana feels his legislation already takes care of things, I cannot understand why he is objecting so strenuously to mine. I want to make it clear that this legislation now sets out a double standard that treats development interests better than the typical homeowner. Development interests get compensated if their property values are merely diminished, but the neighboring homeowners have to meet a higher standard, requiring physical damage to their properties for the exemption in the bill to apply.

What I would say to my colleagues is if they vote against this amendment, they are saying that developers can come to government agencies and get permits where the developers are going to be hurting neighboring homes, your constituents. When the constituents come to you and complain, and there are far more of them than there are of the developers, you should be ready to tell them why the developer's right to develop is more important than that typical homeowner's right to enjoy their home.

That is what this amendment is all about, trying to provide some balance. The gentleman from Louisiana [Mr. TAUZIN] is right in saying that there are examples of takings that warrant compensation, but there are also examples where in that process, the typical homeowner, who lives every day in a fashion that is not regulated by the wetlands law or the reclamation law, can be hurt in the process.

We are saying in considering compensation, factor in that typical homeowner. I would suggest to my colleagues that if they vote against this amendment, when they have problems in their community, there are homeowners who are going to come and ask why you rejected this opportunity to provide them some protection.

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Maryland.

Mr. GILCHREST. I thank the gentleman for yielding.

In response to the gentleman from Louisiana, the agency, in this case the corps, their action prohibits the filling of wetlands, not building the house. Under the amendment, the wetlands destruction, not the house, is the thing that devalues the property.

The other question is does the government, do we the people, have the responsibility to have people feel that they have some sense of public safety, some sense of security.

□ 2015

In the real world, there are problems with filling wetlands, with the people downstream, and I do not care if it is 2 miles downstream, I do not care if it is 300 or 400 miles downstream, there has to be some sensitivity when that regulatory agency gives a permit to build, and that will happen because there certainly will not be enough money in the Federal Government to provide all the money for the takings claims that will result as a result of this legislation. The person downstream who has a pond that is going to be silted over as a result of the destruction of a wetland, that person needs to be brought into the process.

The gentleman from Florida [Mr. CANADY] said earlier that most of that has to do with local zoning ordinance, where do you have your commercial activity, where do you have your residential activity. I think at least in part he is absolutely correct and I would hope that the spinoff, or the result of this legislation, would send a signal to local zoning boards that they had better make sure that they have an understanding that if they are going to manage the growth of their own towns and communities, they have much more responsibility into doing that now if this legislation passes.

The last comment I want to make, the gentleman from Oregon [Mr. WYDEN] and I want to make sure that all property owners are protected under this legislation, and we hope that our colleagues will give us an "aye" vote on this amendment.

Mr. FIELDS of Texas. Will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I appreciate the gentleman yielding.

I was just going to propound a question to the gentleman from Oregon [Mr. WYDEN], because I was lost just a moment ago. I do not see two different types of property rights in this particular piece of legislation. If you are talking about a developer, a developer has a right to assert their property right just as a residential homeowner. The residential homeowner, however, cannot come and assert a right against someone else's property when that property has been taken either through an endangered species designation or a wetland declaration. The gentleman lost me with that example.

Mr. WYDEN. Will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Oregon.

Mr. WYDEN. Let me say again that while most people think all property owners are protected under the bill, the only property owners that are protected are those who are operating under some kind of Federal permit, such as a wetland.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(At the request of Mr. FIELDS of Texas and by unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. I continue to yield to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. More important, what I think highlights the lack of balance, and I use that word specifically, because there are takings, what highlights the lack of balance is, our friend, the gentleman from Florida, said that the homeowner, instead of getting this express lane, that this bill sets up for the developer, that their consideration is taken care of at the Federal level, the gentleman from Florida says, "Sorry, Charlie, to the homeowner, you go try and get a fair shake at the local level. We won't be interested in you at the Federal level."

Mr. GILCHREST. If the gentleman will yield, I would just like to say, does one property owner have the right to degrade the value of another piece of property, of someone else's property? If you do not think they have the right to do that, you ought to vote for the Wyden amendment.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. If I, as an adjoining property owner, do something to diminish your right as an adjoining property owner, I have a civil cause of action. But what we are talking about here is the homeowner, if there is a taking of that homeowner because of a wetland or an endangered species declaration, that homeowner has the exact same right as the property developer if they have a wetland or endangered species declaration. There is no difference.

Mr. WYDEN. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Oregon.

Mr. WYDEN. I make my point. You are talking about property owners that want to develop. There are property owners in America, folks, 65 million of them who just want to live in their homes. They are senior citizens, they are low-income people. They are not developers.

I know that some of my colleagues think that all Americans are covered under this, but only people who want to operate under some kind of Federal permit are covered. That is not the 65 million typical homeowners.

Mr. DEFAZIO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, what I just heard was the developer has an absolute right with 10 percent diminishment of any part, tiny fraction of his property under Federal regulation if it goes to the Wetlands Act, Clean Water Act, Endangered Species Act or others. But that the adjoining or downstream property owner has a right of civil action. So what we are saying here is we are creating two categories. If you are a major developer, you have an absolute right to reimbursement by Federal taxpayers if there is a tiny diminishment of the optimal development value of your land, but if you are an adjoining or downstream property owner, you can go to court.

That is what I just heard the gentleman say, civil right of action. I was a county commissioner. We had a gentleman who had an island in the river. He drove a giant belly scraper out there, a D-9 Cat, and he was just terraforming the land, and this was not allowed under our State land use law but the State land use law had trouble prosecuting him. We had to bring in the Feds to put a stop to that development. The people who wanted that development stopped were the adjoining farm downstream, because he said, "You know what happens when he builds those berms and he does that? My land floods, I get all these road seeds and pollution and sediment on my land and it ruins my land."

But you are saying to my farmer downstream and where we use the Clean Water Act for an enforcement, my farmer downstream is now going to have to go to court as opposed to getting the Federal Government to enforce this.

Mr. FIELDS of Texas. If the gentleman will yield, that is not what I am saying. What I am saying is if I as a property owner impact your property, you have a civil cause of action against me for damages.

What we are talking about in this particular piece of legislation, if the Federal Government comes in through a regulatory act and takes your property because of an endangered species declaration or a wetland designation, you have the same right that I have whether you are a developer, a farmer, a private homeowner. There is no distinction.

Mr. DEFAZIO. If I could reclaim my time, the case I am talking about was an individual who was attempting to develop his island and he was restricted by Federal law, by the Clean Water Act, from doing that, and it was the downstream property owners who wanted the action stopped, and the only way they could get him stopped was an action by the Federal Government.

Under this bill, as I understand it, if the Federal Government took that action to restrict those activities which harmed everybody downstream, that gentleman would have to be compensated. It certainly diminished his development value more than 10 percent.

Mr. WYDEN. Mr. Chairman, will the gentleman yield?

Mr. DEFAZIO. I yield to my colleague the gentleman from Oregon.

Mr. WYDEN. I want to come back to the fact that this legislation tries to ensure that pro-development interests get a fair shake. But now we also have to make sure that typical homeowners who are not development interests get a fair shake as well.

I am just struck by the fact that my colleagues are willing to say that the typical homeowner, 65 million of them, are supposed to be satisfied to go off and see what happens at the local level and people who want to develop their property get this Federal Express lane and rapid consideration of their claims. That is not my vision of balance.

Mr. DEFAZIO. I am just trying to get to what was a real-life example. It was a county commissioner, we did use the Clean Water Act to get an enforcement action against this individual, and he obviously felt very aggrieved. He gave lots of money to my opponent.

But the fact is that as I understood the gentleman, my downstream property owners now would have a civil right of action and this gentleman would get compensated by the taxpayers for not doing the egregious development that was going to harm the downstream people.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. DEFAZIO. I yield to the gentleman from Texas. I am trying to get an understanding.

Mr. FIELDS of Texas. Under this legislation, you would be deprived of using the Federal Government to stop an individual's beneficial use and enjoyment of their property. If that person was to lose——

Mr. DEFAZIO. Reclaiming my time, in this case what you are defining as beneficial use is for one person. There were quite a few people downstream who saw it as a detrimental use because it had a negative impact on their property.

Mr. FIELDS of Texas. If the gentleman would yield, what I am saying is a private property owner, a larger developer, has exactly the same rights under this particular piece of legislation. There is no distinction.

Mr. DEFAZIO. Reclaiming my time, again we are back to the point where in this case, Mr. McNutt was his name, and his island in the McKenzie River, I can be very specific, would have a right to be compensated by the Federal Government because he did not engage in development that was detrimental to his neighbors under Federal regulation. If that is the case, this is creating an extraordinary problem.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is important that we get this debate back on the subject matter. The subject matter of this legislation is to protect individual private property owners. There is no intent in this legislation to create a distinction between someone who might be described as a developer and a private homeowner. That is not the intent. The intent is to recognize that everyone has a right under the Constitution to enjoy private property. If the Federal Government comes in and denies the beneficial use and enjoyment of that property through a taking, and under this particular piece of legislation it is specific, weltlands, endangered species, and also some water rights.

We say that if there is a loss, there is a taking, that compensation is given.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding, and I thank him for taking time that I might jump in here.

The gentleman is abundantly correct. Property owners are being described derogatorily tonight in this amendment debate as developers. Mr. Bowles in Texas was not a developer. All he wanted to do was build his house, and that was the filling of the wetland that was denied him, just to build his house next to his neighbors. That was the so-called filling of wetlands that became a deniable permit application that caused Mr. Bowles to spend 10 years in court. He loses under this amendment. He never gets compensated.

Let me tell Members what the court said on that subject matter, again in Florida Rock. This is the Court of Claims:

> It is impossible to use one's property in a society without having some impact positive or adverse on others. Courts do not view the public's interest in environmental and aesthetic values as a servitude upon all private property but as a public benefit that is widely shared and therefore must be paid for by all.

The court cited a list of other laws passed by this Congress in years past, environmental laws where Congress specified some sort of compensation. For example, the Wilderness Act, the National Trails Systems Act, the Wild and Scenic Rivers Act, and the Water Back Act.

What the court said there, I tell the gentleman from Texas [Mr. FIELDS], was that what these regulatory schemes have in common is that in each case, the propertyowner's interest has been considered and accommodated, not sacrificed on the altar of a public interest.

What you do when you adopt this amendment is you tell Mr. Bowles, who is not a developer, you tell the farmer I talked about earlier who is not a developer, you tell the Cachoneses and the Gautreauxs in Ascension Parish who are not developers, who are homeowners, you tell them that they cannot get recovery because of this little quirk that was adopted on the House floor late one night that said if developing their property, building on it has any significant, insignificant even, impact upon their neighbors, they cannot recover under the fifth amendment their legitimate compensation rights.

Mr. FIELDS of Texas. Reclaiming my time, the gentleman from Louisiana makes an excellent point. The cases that I have cited today, whether it was an abandoned eagle's nest, the people who have been hurt were not developers. They were just average property owners. The farmers and ranchers in the hill country of Texas who have been affected by the warbler and the vireo, who cannot cut cedar, those are not developers. Or the people west of San Antonio who have had their water rights abrogated and were affected by a fountain darter in two springs, those were not developers. These are average citizens who just want to enjoy the basic constitutional right given to them by our forefathers.

I will be glad to yield to my friend the gentleman from Oregon.

Mr. WYDEN. I thank the gentleman for yielding.

Under this legislation as it is written now, if the developer hurts a huge number of private property owners downstream, that developer can still get compensation.

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Does the gentleman support that?

Mr. FIELDS of Texas. the individual who is developing a piece of property or building a home on a piece of property or have a home on a piece of property already built, they have the same rights. If the Government walks in and takes the value of that property to the limits set out in this legislation, they are due compensation. If I hurt you as an adjoining landowner or if I hurt your downstream interest, you have a cause of action against me in court. The Federal Government has not stepped in and given me any particular advantage.

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Maryland.

Mr. GILCHREST. Mr. Chairman, I would like to ask the gentleman just one question. This is what seems to me, without this amendment, this is what the bill, or this goes to the heart of the bill, without this amendment; should we compensate someone to keep them from polluting someone else's property? That is the question.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

(By unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 30 additional seconds.)

Mr. FIELDS of Texas. Mr. Chairman, we are not talking about pollution. We are talking about endangered species and wetlands declaration, and we are saying that when an individual loses the benefit of their property and it is taken by the Federal Government, there is compensation that is given. You know, people can talk about collateral things to try to cloud the issue. This issue is about basic property rights and the protection thereof.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon [Mr. WYDEN] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended.

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WYDEN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 165, noes 260, not voting 9, as follows:

[Roll No 193]

AYES—165

Abercrombie
Ackerman
Andrews
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Boehlert
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Coyne
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
Eshoo
Evans

Farr
Fattah
Fazio
Fields (LA)
Filner
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Gordon
Goss
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
LaFalce
Lantos

Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Mineta
Mink
Mollohan
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Porter
Poshard

Rahall
Reed
Reynolds
Richardson
Rivers
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott

Serrano
Shays
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Thompson
Thurman
Torres
Towns
Traficant

Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Zimmer

NOES—260

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell

Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gillmor
Gilman
Goodlatte
Goodling
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson, Sam
Jones
Kasich
Kim
King
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade

McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas

Thornberry
Thornton
Tiahrt
Torkildsen
Upton
Volkmer
Vucanovich
Waldholtz

Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White

Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff

NOT VOTING—9

Bryant (TX)
Chenoweth
Flake

Gonzalez
Martinez
Moakley

Rangel
Torricelli
Yates

□ 2048

The Clerk announced the following pair:

On this vote:

Mr. Moakley for, with Mrs. Chenoweth against.

So the amendment to the amendment in the nature of a substitute, as amended, was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. KELLY. Mr. Chairman, on rollcall No. 193, the amendment offered by Mr. WYDEN, I inadvertently voted "aye." I intended to vote "no."

AMENDMENT OFFERED BY MR. MINETA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE, AS AMENDED, OFFERED BY MR. CANADY OF FLORIDA

Mr. MINETA. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The Clerk read as follows:

Amendment offered by Mr. MINETA to the amendment in the nature of a substitute, as amended, offered by Mr. CANADY:

In section 3(a), strike "any portion" and all that follows through "10 percent" and insert "that property has been limited by an agency action, under a specified regulatory law, that diminishes the fair market value of that property by 20 percent".

Mr. MINETA. Mr. Chairman, because of the plan to rise at 9:35 tonight, I ask unanimous consent that all debate on this amendment end at 9:20 p.m. and that the time available be equally divided and controlled by myself and a Member opposed to the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. DELAY. Mr. Chairman, reserving the right to object, has this been cleared with the leadership?

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. DELAY. I yield to the gentleman from California.

Mr. MINETA. I thank the gentleman for yielding.

Mr. Chairman, I have spoken to the gentleman from Florida [Mr. CANADY] about it, and he is the floor manager on the other side.

Mr. DELAY. Mr. Chairman, I would have to object.

The CHAIRMAN. Objection is heard.

The gentleman from California [Mr. MINETA] is recognized for 5 minutes.

Mr. MINETA. Mr. Chairman, we have just debated and voted on the Goss amendment, which would have altered the 10 percent threshold in the substitute and made it 30 percent instead.

The amendment I am offering with the gentleman from Virginia [Mr. DAVIS] is exactly the same as the Goss amendment except that instead of 10 percent, my amendment would provide a 20 percent threshold. In all other respects, this is the Goss amendment. If you voted for the Goss amendment, you should vote "yes" on my amendment.

If you would have voted for Goss but thought that the 30 percent was a little too high, then you should vote "yes" on the Mineta-Davis amendment.

Mr. DAVIS. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I yield to my very fine colleague from Virginia [Mr. DAVIS].

Mr. DAVIS. I thank the gentleman for yielding.

Mr. Chairman, I am pleased to speak for the gentleman's amendment.

I supported the Goss amendment, which took the 10 percent threshold to 30 percent. This moves it to 20 percent, but it is much more reasonable.

I have been in local government for 15 years, and I have sat through hundreds of zoning cases, through a number of condemnation cases and appraisals, and a 10 percent variation, a 10 percent difference is within the margin of error that we see every day with appraisers coming out and appraising the same property.

The 10 percent threshold currently in the bill makes this ripe, nationally, for all kinds of litigation anytime a regulation comes out. Twenty percent threshold is a much more reasonable threshold. Anything from market conditions, interest rates, school boundaries, variations affect property appraisals more than 10 percent in appraisals. We see this every day. Those may be technically exempt from this bill because they are local decisions, but the marginality in appraisings of property vary even with the season.

The fact that a regulation comes in and then appraisals come in showing a 10 percent difference I think puts this at a dangerous threshold. To preserve this bill and make it credible, we need the legislation to raise the threshold to 10 percent. The presumption here would be to raise it to a 20 percent level. I think it is reasonable. I am happy to support the amendment. I hope my colleagues who supported the Goss amendment will support this, and others who thought that might have been too high at 30 percent, I remind you this legislation says 33 percent. It would come down to the 20 percent level.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I yield to my colleague from Idaho.

Mr. CRAPO. I thank the gentleman from California.

Mr. Chairman, I ask this question of either of the sponsors of the amendment. And I ask those in the Chamber to please listen to the answer to this question because I think it is very important.

The question that I have has been discussed by both of the sponsors of the amendment in discussing it that they are changing the percentage from 10 percent to 20 percent.

The question I have is: Does it also change—excuse me—from 30 percent to 20 percent.

Mr. DAVIS. From 10 percent to 20 percent.

Mr. CRAPO. My question is: Does it apply to the total?

Mr. DAVIS. It applies to the total property, not just to a portion.

Mr. CRAPO. That is the question. Does that change also that portion of the act which simply is talking about the specific property impacted to say we are talking about all of the property owned by the property owner?

Mr. DAVIS. The answer is "yes."

Mr. MINETA. It is the same as the Goss amendment. In this instance, it just changes it from 30 percent to 20 percent, and the Goss amendment had 210 votes.

Mr. DAVIS. The answer is that instead of the small parcel which could be covered under the existing legislation, a 10 percent diminution of that, that this is the entire property.

Mr. CRAPO. That is a bigger difference, then, than simply changing the percentage from 10 percent to 20 percent as in the bill.

Mr. DAVIS. I think it is reasonable.

Mr. MINETA. Reclaiming my time, I reiterate again that this is the same as the Goss amendment. In that regard, there is no change.

So, Mr. Chairman, I feel this is a fair and equitable amendment. It does not gut the bill. Just as there were 210 who voted for the Goss amendment, I think the same people ought to be voting to make sure that the Mineta-Davis amendment in this instance to change it to 20 percent should pass.

Mr. BARR. Mr. Chairman, I move to strike the last word.

Mr. Chairman, with all due respect to my good friend and learned colleague from Virginia, those of us who just voted a few moments ago or just a little bit ago against the Goss amendment did not vote against the Goss amendment because it was 30 percent versus 29 or 28 or 25 or 27; we voted against it because we believe that the fifth amendment to our Constitution should not be up for bid. We are engaged right now in a bidding war. 30 percent, 20 percent, 10 percent, next we will have an amendment for 15 percent.

The point, Mr. Chairman, is we need to listen to the people of this country who spoke loud and clear and very explicitly on this issue in the November 8 election. That is why many of us are in this Chamber this evening. Those people, citizens, voters, property owners across this land said property rights mean something. Those voters spoke loud and clear, they said we want you in the Congress to uphold the Constitution of this land. It does not say that the Government can take 40 or 50 or 30 or 29 or 20 percent of your property with impunity, without any compensation. It says if the Government takes a piece of property, and this body is now debating a bill, a piece of legislation that finally brings that home to the people, to the property owners of this country, we should not be engaged in the unseemly business this evening of auctioning off the fifth amendment.

□ 2100

This amendment is defective, as was the prior amendment, and it ought to be defeated so that we again stand up and say to the property owners of this country, "No longer shall the Government be able to run roughshod by diminishing the value of your property."

Tell the Government to back off, to let property owners rely on the Constitution. This amendment ought to be defeated.

Mr. DAVIS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would just take 2 minutes, and I say to my friend from Georgia, and he is my friend on this, "We're not in an auction. It's already a 10-percent threshold. We're not starting from ground zero, and 10 percent is what my friend feels is a reasonable number and members of the committee feel is reasonable, but 10 percent is a margin of error when you compare any two or three appraisals. I've looked at hundreds of these through my time in local government, and any time a regulation comes into play, and you can put the appraisals together, show a 10-percent loss, we're in court on litigation, paying with Federal dollars for efforts that in many cases have nothing to do with the regulation. I think 20 percent is a much more reasonable level, gets us beyond that traditional margin of error, and it's for that reason that I support this amendment."

Mr. Chairman, I yield back the balance of my time.

Mr. CRAPO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it is very important for those who are considering this legislation to understand we are not talking about simply the issue of whether to change the percentage from 10 percent to 20 percent in this bill. There is a much more critical change that is being made that was not discussed in the previous bill—it was not understood very well, I think, in the last debate, and I think it has got to be critically understood in this debate.

The bill, as it now stands, says that when the Federal Government seeks to regulate property, if they are going to single out a piece of the property and call that piece of the property a wetland or address a specific portion of one's property to cause them to fill Federal requirements in the way they use their property, then it is that property that is singled out, that is looked at to see whether the Federal Government is impacting its value.

This amendment would change that and in a dramatic way increase the burden that is faced by the property owner in a way that probably will make it so that the Federal Government does not have to worry about compensating property owners in most of the cases that we deal with because the property that is being impacted would have to be mixed, if my colleagues will, with all of the other property owned by that property owner.

That means, just to give my colleagues an example, if a person owned a 100-acre farm, a small farmer owned a 100-acre farm, and the Federal Government came out and said, "One of the acres on your farm is a wetland, and we're going to require you to stop farming on that 1 acre or require you to do something with that 1 acre," even if the Federal Government took the entire acre, this amendment would not allow for compensation to be made because the impact would have to be mixed in with the other 99 acres. In fact, the Federal Government under this amendment could literally take 29 of his entire 100 acres entirely, and he still would not be entitled to any compensation by the Federal Government for that impact on his property.

This is a massive change in this legislation. It is not a 10-percent to 20-percent change, and the Members of this House need to understand what is being done here to change the entire direction of this statute.

Mr. Chairman, I think it is also important that we remember the reason that we are here tonight. We are not here tonight because there is a concern about big developers. We are not here tonight because we are concerned about big large property owners around the country. Those who are large developers or large property owners can defend themselves very adequately in our current court structure. It is onerous, it is expensive to them, but they have the resources to fight back. It is the rest of America that is being overridden by the Federal regulatory bureaucracy that we are here to try to defend.

We are here trying to say that, when the Federal Government comes out to the private property owners in this country and says that they have to use their property in a way that benefits the whole, that there is some social purpose that we are going to say is so important that private property owners have to lose the use of their property or have to be forced to use their property in a certain way, that that social goal should be compensated. We are not talking here so much about whether the Government has the right to take the entire property. We are talking about whether the Government has the right to regulate our property to the point that we cannot use it for the purposes that we intended and then force us not to have to obtain compensation as long as we own enough property that they can mix it in and say they have not taken more than 30 percent of the entire value of what we own.

Mr. Chairman, it is critical to us in America that we recognize the importance of protecting this strong statement in favor of private property rights in telling the people of America that we would not water it down to let nearly a third of the value of their entire holdings be taken before we will permit that.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words.

I think we are in need of this sort of an amendment. It comes from the former chairman of the House Committee on Public Works, the ranking minority member who fully understands this well, and we are in great danger of getting into a de minimis situation where we will all be overwhelmed with litigation, and to better make this case, Mr. Chairman, because of his expertise I now yield to the gentleman from California [Mr. MINETA].

Mr. MINETA. Mr. Chairman, the important thing is that since the discussion of the Goss amendment a number of Members have come up to me to ask whether or not there is going to be anything further in terms of a change. It seems to me that 20 percent is a fair and equitable compromise, and frankly the kinds of arguments we are hearing now were the same ones that we heard earlier on the Goss amendment, and I am frankly ready and willing to go with a vote right now.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Texas who is going to please the assembly, and I am delighted to be an accomplice in his happy news.

Mr. DELAY. Mr. Chairman, I appreciate the gentleman from Massachusetts [Mr. FRANK] yielding to me.

If Members will listen up, if Members will listen up, there will not be any more votes tonight. We will continue to debate on the Mineta amendment, but we will rise before we take any more votes tonight.

Mr. FRANK of Massachusetts. Let me take back my time to announce to the Members, and let me do the color. My colleagues have now heard the play by play. This means we are ahead because we wanted to go to a vote now, but the gentleman, as the whip, has got some work to do. So we are not going to be able to vote on this tonight so the whip can do some whipping, and I say to my colleagues, "If you go home early, you won't be whipped. I just want you to understand that."

So, Mr. Chairman, now that people understand the state of play, we will come back tomorrow morning and vote on the 20 percent.

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield further to the gentleman from California.

Mr. MINETA. Again, Mr. Chairman, it seems to me that the amendment offered by my colleague, the gentleman from Virginia [Mr. DAVIS], and I is a fair and equitable compromise.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield back the balance of my time.

Mr. BRYANT of Tennessee. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to weigh in also on this issue. I must stand up in strong opposition to this amendment, and, as has been alluded to earlier in the speeches, I am a strong supporter of the fifth amendment rights to protect property owners and their right to their land, and what we are talking about here is the equivalent to taking of property as if they bought it. The type of taking that we are talking about is simply no different than if we signed the deed of property over, and in fact it is even worse in that we still own the property and have to pay taxes on it.

I simply state that the people ought to be rightful and fully compensated, and I agree with the gentleman from Georgia who says this should not be a bidding war. What we are doing here is a 100-percent taking. They are entitled to 100 percent. The fifth amendment talks about the 100 percent. I think 10 percent is the minimum we ought to allow in this situation.

My good colleague, the gentleman from Virginia, talks about the appraisals and the variances in those, and I think the 10-percent margin certainly allows for that variance. I say, "I, too, believe that, if you're going to take the property, you ought to be compensated 100 percent for it."

Mr. MICA. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Tennessee. I yield to the gentleman from Florida.

Mr. MICA. Mr. Chairman, I really did not plan to speak on this, but I have to address my colleagues and say, "You might just as well take a gun and go and rob people of their life savings under the pretenses of the amendment that's being offered here."

Mr. Chairman, we have to really look at what is being done here. People who have worked their entire life for home, or for property, or for business, and they are saying that we can come in, the government can come in, and take 20 percent of it before they are due any compensation. that is just not right. That is just not right.

The way this bill is structured with its current language does give the citizens some recourse, and if my colleagues are going to say that government can come in and regulate our lives, can steal from us in this fashion, then they support this amendment, but again I say to my colleagues, "You go back and explain to your constituents, your moms and your pops who have worked all their lives, people who have acquired a piece of property—most people today don't even have 20 percent equity in their home, or their business or their property—but you're going to say that the U.S. Government can come in and take that property from you without compensation."

Until we get to the 20-percent level, Mr. Chairman, is that fair, is that just, is that the way we want to treat the men, and women and wage earners of this country?

I can give my colleagues good examples of businesses that I have worked in and property that I have been involved in in which I do not even have 10-percent profit after working 20 years, but it is okay for the Federal Government to come in, pass regulations to deprive me of the use of that property, the use of it, the property that I have worked and slaved for or that my mom and dad have worked for, to protect their property.

Again I think that we have got to look at this just like any other situation where the government comes in and ruins property, takes property and fails to compensate us for that property, and that is why I strongly support the 10 percent provision.

I do not support the amendment that is being offered by my colleague today.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I was kind of thinking that we were stalling for 9:35 and that somebody might want to make a motion to rise. We have debated this at some length now, and I do not know that anybody can add anything else to it.

We have acknowledged that there will not be another vote tonight, so maybe somebody could make the motion to rise and my colleagues could quit talking about something that has been debated for the last hour and a half.

Mr. Chairman, I yield back the balance of my time.

□ 2115

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I appreciate the statement made by my friend just a moment ago, but some of us are concerned about this amendment, and we do not want to leave it unanswered tonight, because this amendment does sound seductive. It sounds palatable. It sounds as if it is a compromise. And someone mentioned just a moment ago, it sounds as if we are auctioning off a basic constitutional right, until you stop and realize that some of us believe that any taking, any loss whatsoever, should be compensated by the Federal Government.

But as was explained earlier by the gentleman from California [Mr. POMBO] in the debate, he put the 10-percent figure in the legislation as a sensible offer to settle some loss by the property owner, a loss that was greater than just some de minimis loss.

I think it is important for people to understand that this is a visceral issue with many of us. We have seen the effects of takings, both in terms of endangered species and in wetland declarations, and the effect this has had on families, property owners, basic property owners, average men and women in our congressional districts.

I think it is important to think about this just a moment. I literally have thousands of small property owners in my Congressional District, people who own, say, 100 acres. When you talk about the loss of 10 percent, which is in this legislation, that is a lot to swallow by some people, a tenth of their property. But when you bump that up, double it to another 10 percent, arriving at 20 percent, that is even more difficult. And we are taking about property that has been in some families for generations. My family is an example of that.

I think it is also important to look at some of the large effects, some things that have happened. Judge Bunton, a Federal Judge in Texas, ruled that Texas had to develop a plan to regulate the flow of water in the Comel Srpings and the San Marco Springs. They did this for a one inch fountain. The ruling presented a real problem because the Edwards Aquifer, which was affected by this particular decision, was the sole source of drinking water for one and a half million residents of San Antonio, which is our Nation's 9th largest city. It has been estimated that complying with the judge's ruling could result in a 68 percent reduction in available water. It would have a devastating effect on San Antonio, Baxer County, and six other adjacent jurisdictions, not to name the farmers and ranchers west and in that particular area.

When I start thinking about 10 percent or 20 percent, how do you allocate some of the costs of a decision like that, because there is no alternative source of water to replace the Edwards Aquifer. It is estimated it would take five to ten years for significant amounts of non-aquifer water to become available at a cost of $500 million to $1.5 billion. That is clearly unacceptable.

Furthermore, if you look at some of the initial estimates of trying to maintain water flow at the Comel Springs based on the worst case scenario of a drought, you could have an expense of $9.6 billion annually in spending; $5.2 billion in an annual reduction in total output for the City of San Antonio, a $3.3 billion annual reduction in personal income in San Antonio, a $2.6 billion annual reduction in wages and salaries, a $1.3 annual reduction in retail sales. You can lose 136,000 jobs in San Antonio because of one Federal court decision based on endangered species, a decision that goes to the heart of basic and fundamental water rights in our particular state.

How do you go about allocating all of these costs, whether it is 10 percent or 20 percent? So when some people say it is insignificant and here we are at a late hour on the floor of the House of Representatives trying to suggest that an amendment to ratchet that percentage from 10 to 20 percent does not have an effect, causes no harm, I find that hard to deal with.

I come back to what I said earlier: What do we say to our constituents? I think that is an important question that all of us must answer now, because we are going to have to answer that question when we go before our rotary clubs, our chambers, our town meetings.

Mr. WAMP. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I came to the well today to explain that I had derived my livelihood before I came to Congress in the real estate industry, in the private sale of real estate from one individual to another. And I want to kind of bring this into perspective as we are talking tonight about private property owners and even some talk of developers earlier tonight, because I want to share with you when you are talking about how much property is this debate about.

Well, one acre of land, roughly 42,000 square feet of property, let's say we have one acre of land in Tennessee, 20 percent of one acre of land in Tennessee in my home city is about a building lot, about enough property to get a building permit to build your home on it. Twenty percent of land is a lot of land. We are talking about a building lot out of a simple acre of land in Chattanooga, Tennessee. That is too much. Ten percent in a lot of ways is too much.

So from a private property standpoint, from the little guy who may own a piece of land, a small piece of land, 20 percent is simply too much, and 10 percent is still an awful lot of land that the Federal Government can take before they have to justly compensate that landowner.

That is the private property owner's perspective. I am here tonight to defend the developers who earlier tonight were kind of under fire. I do not know what is wrong with developing property in this country. At one point I think that was a pretty good thing to do. I would like to see it be a good thing to do again.

So from a developer's standpoint, in my home city of Chattanooga, the Austin family, a distinguished family, developing a shopping center, they went and got an option on the property, and I know they had a big supermarket tenant that was coming into this shopping center.

I know the story. They went before the planning commission, they got it all approved. They had a small wetlands, I think it was 4,000 square feet, in some multiacre site, a little small portion of this. I mean, the whole deal, a $1 million land sale, down the tubes because of the Federal Government intervention.

At what point do we say wait a second here? We have got more Federal Government than we need. And I am here to say developing property is a good thing. People who build, who create in this country, we have got to protect private business people in this country, protect the real estate industry.

The great American dream is to own your own property, and we have got to protect the small guy and the landowner. We have to protect business people out there trying to create jobs and help other people in this country as well.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. WAMP. I yield to the gentleman from California.

Mr. POMBO. I would like to ask the gentleman a question. I heard you say you were in the real estate market, you were a realtor. In your travels throughout your business, have you ever known anybody to buy a piece of property, a home, a single-family home, with 10 percent down or 15 percent down? Have you ever run across that at all?

Mr. WAMP. With 15 percent down payment on the property? That is correct.

Mr. POMBO. What would happen if we took 19 percent of their value away?

Mr. WAMP. They would not be able to sell that property, and it would just stymie the industry, and it would be a very inequitable situation we would be agreeing, and I wholeheartedly agree with your argument.

Mr. POMBO. The Federal Government would have in effect taken away their entire equity in the land and the bank would own what was left.

Mr. WAMP. All of their equity, and most of the property in this country is leveraged at a very high level to begin with. So you are cutting into the equity, the savings, and the investment of the citizens of this country.

Mr. POMBO. Do you think that maybe small property owners may be hurt by losing 20 percent of their property?

Mr. WAMP. The little people are going to be hurt. That is why I drew the correlation of one acre of land, a little small property owner, who maybe they want to subdivide that property and sell a building lot off a piece of property they inherited from their parents, and they want to be able to do that. The Federal Government could intervene here and take a small portion, the whole value of their property and all of their equity could be lost because of more Federal Government than our Founding Fathers ever bargained for.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. WAMP. I yield to the gentleman from Idaho.

Mr. CRAPO. Mr. Chairman, I would like to ask the gentleman from Louisiana if he would engage with me in a colloquy.

Earlier today as we were discussing how this bill operates, the question of whether there is going to be a clear requirement that the agencies pay whatever the level is came up. Section 7 entitled "Limitations" basically states that this act will be subject to the availability of appropriations. As I understand it, that means that we are not trying to create an entitlement that runs without the oversight of Congress.

The question then comes, does the agency have to pay? I understand that the previous section of the act says the head of the agency may transfer or reprogram appropriated funds, and if insufficient funds exist for payment to satisfy the judgment, it will be the duty of the agency to seek an appropriation.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment, and would observe that we had a debate on a 30-percent threshold, that for some reason did not generate nearly as much resistance as the debate now on the 20-percent threshold. For some reason, the later we go in the evening, the more emotional the debate becomes. But this was thought to be a compromise effort coming down from 30-percent. The resistance seems to be growing the longer that we go on with the discussion.

I want to commend the gentleman from California [Mr. MINETA], because what he has done is very important. It signals the possibility of bipartisan agreement on a very important part of this bill. I would urge that we still consider strong support of the bill.

Mr. DAVIS. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Virginia.

Mr. DAVIS. Mr. Chairman, let me just put into perspective to my friends, I think we are all for property rights. My affairs in local government overturned one of the largest downzonings in northern Virginia history that took away property rights. It is the basis of Western civilization, the right to own and enjoy property.

The problem with the bill as it is currently written is any part of a larger parcel that is affected with a 10-percent diminution in value then is in line to get the appraisals and go get paid by the Federal Government. Almost every regulation that comes down that affects a parcel of property is going to affect it 10-percent, because the variance in appraisals is more than 10-percent on any given day when you take it.

That is the problem. That is what we are trying to remedy. Now, is this perfect? No. It is not perfect. But we have seen no resistance on the other side to try to tinker with this and change what right now is going to put every regulation, put property owners affected by every regulation in line, because it does not take much to get a 10-percent change. It just takes two appraisers. That has been my experience year after year.

That is my concern. That is what we are trying to remedy. We are not trying to stop people from developing their property. The 20-percent threshold to me seems reasonable. We had 50 Republicans vote for 30-percent earlier on. I appreciate the efforts to try to bring this to a bipartisan conclusion.

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from California.

Mr. MINETA. I thank the gentleman for yielding.

Mr. Chairman, we are getting on toward 9:35, and I just wanted to have one last thought here if possible. Everyone who has spoken against the Mineta-Davis amendment voted no on Goss. On the other hand, 210 Members voted aye. Those 210 Members I assume, if they are consistent in their politics, will vote aye tomorrow.

Now, how can Members on the other side of the aisle vote for 30 percent and not for 20 percent? Others who did not vote because they were not here or voted no because of the 30-percent figure have come up to me in support of our modest effort and this modest change. So it seems to me that tomorrow all of us will have the chance to put us over the top and have the Mineta-Davis amendment accepted.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding.

It may well be. I would tell the gentleman from California [Mr. MINETA] that some of these Members walked in without hearing the debate, did not know that it was 30 percent of the whole of the property instead of the affected area, and may in fact want to vote against this amendment, too.

□ 2130

Mr. CONYERS. Mr. Chairman, I reclaim my time. That is a possibility, but there are also a lot of other possibilities. I think it is very clear, Mr. Chairman, that a 30-percent threshold would be supported by the same people that would now be asked to support a 20-percent threshold.

Mr. RIGGS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman I intend, for my colleagues' benefit, to engage the gentleman from Florida [Mr. CANADY], the distinguished subcommittee chairman, in a colloquy that does not pertain to the amendment at hand.

Mr. Chairman, I am a strong supporter of the Private Property Protection Act, and very much opposed to the amendment presently pending before the House. I believe this is one of our most important provisions of the Contract With America.

I do, however, have one concern. I think it is important to engage in a colloquy to clarify one aspect of the legislation.

Section 2 of the statute requires payment of compensation to the owner of property when the use of that property has been limited by agency action. Section 6 of the bill then defines "property" to include "the right to use or receive water."

As the gentleman knows, water is the heart of the West. The needs of a varied group of users, including residents, commercial and industrial interests, farmers, fishermen, and Indian tribes are governed by a complex set of laws and agreements. Often these laws and agreements are managed by the Bureau of Reclamation.

While users are often guaranteed a certain allotment of acre feet of water every year, there is usually a contractual provision anticipating shortage situations. A drought or other circumstance may necessitate of Bureau of Reclamation to reduce a user's allotment. Such a decrease by agency action is expressly not deemed a breach of contract because the action is anticipated by contract, and should not be viewed as a taking requiring compensation.

Mr. Chairman, I take this opportunity to make certain that this legislation is not intended to supersede these existing contractual provisions. Can the distinguished subcommittee chairman and the manager of the bill provide assurance that water allocation actions by the Bureau of Reclamation and other actions by the Bureau of Reclamation and other Federal agencies that are expressly anticipated by contractual or similar legal arrangements will not be considered compensable agency actions under the bill?

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. RIGGS. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, I can assure the gentleman that the intent of the statute is not to provide compensation to water users in such circumstances. Where a user is guaranteed an allotment of water, but that allotment is reduced in a way that is recognized and anticipated by the user's contract with the Government, the reduction would not be a limitation under this bill requiring compensation.

Mr. RIGGS. Mr. Chairman, I thank the gentleman for his clarification and for his hard work on this legislation.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. RIGGS. I yield to the gentleman from Idaho.

Mr. CRAPO. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I would say to the gentleman from Louisiana [Mr. TAUZIN], we just got yielded some time. Maybe we can finish that now.

Mr. Chairman, the gentleman knows the provisions I am looking at. I am looking at the provisions in sections 6 and 7 that talk about payment.

My question is, Mr. Chairman, to the gentleman, are we assured in this statute that an agency must pay compensation when a judgment has been rendered or when a claim has been accomplished under the statute?

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. RIGGS. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, absolutely. In fact, the legislation specifically says that the agency must provide money out of its own appropriated funds for the payment of these claims and give the agency the right to reprogram money within its budget to do that.

If it does not do that, Congress, of course, has the authority to make sure it does the next time it visits this Congress.

Mr. CRAPO. Just to follow up on that, Mr. Chairman, if an agency failed to pay a claim and then stated their reason was they did not have money in their claim fund or whatever part of their budget was allocated to payment of claims, as I read the statute, it says that if there are insufficient funds in the agency's budget, that the agent shall transfer or reprogram any appropriated funds available to the agency to accomplish that.

So, as I read that, Mr. Chairman, that would mean that in the very next budget cycle, when the agency had a full budget, so to speak, that they would be required to reprogram funds out of their budget to satisfy this obligation, is that correct?

Mr. TAUZIN. Mr. Chairman, if the gentleman will continue to yield, as I understand that obligation, it would become the first obligation of the agency in the next fiscal year, and they would be obligated to reprogram money to do that.

Mr. CRAPO. In that context, then, the agency would not be able to continuously, budget cycle after budget cycle, dodge the obligation of payment here by simply programming funds around or saying that the funds were insufficient?

Mr. TAUZIN. I suspect an agency might try, but the law says they cannot, and I suspect that a lawsuit would lie against them for mandamus by some citizens, or perhaps even this Congress might want to do something with an agency that wants to violate the law every year.

Mr. CRAPO. Mr. Chairman, I would ask the gentleman one other question. On section 5, as we have talked earlier today, subsection 2 says, "No compensation is made under this act with regard to damage to specific property, other than the property whose use is limited." We have debated that language here in other contexts, but I wanted to make it clear, Mr. Chairman, that this was not a wide exemption for all kinds of different arguments to be made by the agency that there is some specific property benefited, is that correct?

Mr. TAUZIN. If the gentleman will continue to yield, that is correct, Mr. Chairman. If the gentleman reads the language, it says that the primary purpose of the agency regulations denying the activity was in fact to prevent harm to someone else.

The CHAIRMAN. The time of the gentleman, Mr. RIGGS, has expired.

Mr. CANADY of Florida. Mr. Chairman, I move that the committee do now rise.

The CHAIRMAN. The question is on the motion offered by the gentleman from Florida [Mr. CANADY].

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. MCHUGH) having assumed the chair, Mr. SHUSTER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, had come to no resolution thereon.

PERMISSION FOR CERTAIN COMMITTEES TO SIT TOMORROW, FRIDAY, MARCH 3, 1995, DURING 5-MINUTE RULE

Mr. BONILLA. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the five-minute rule: the Committee on Commerce, the Committee on Economic and Educational Opportunities, the Committee on the Judiciary, and the Committee on Transportation and Infrastructure.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

Mr. WISE. Mr. Speaker, reserving the right to object, the minority simply wants to say it has been consulted in all these cases and does agree.

Mr. Speaker, I withdraw my reservation of objection.

Mr. SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members are recognized for 5 minutes each.

FEDERAL FOOD ASSISTANCE

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from North Carolina [Mrs. CLAYTON] is recognized for 50 minutes.

Mrs. CLAYTON. Mr. Speaker, a compelling case can be made against the proposal to convert Federal nutrition programs into block grants.

That case will be made tonight.

Over the next 2 hours, the American public will hear from many of our colleagues about the dangers of certain provisions of H.R. 4, the Personal Responsibility Act.

That is the bill that contains provisions to slash school lunches and breakfasts.

That bill will remove thousands of women, infants, and children from the WIC Program. National nutrition standards will be eliminated by the bill. And States will be able to transfer as much as 24 percent of nutrition funds for nonnutrition uses.

But, the impact of this proposed bill goes even deeper.

Retail food sales will decline by $10 billion, farm income will be reduced by as much as $4 billion, and unemployment will increase by as many as 138,000.

The security of America's economy is at stake.

From grocery stores, large and small, to the farmer and food service worker—everyone will suffer. Most States will lose money.

But, the case becomes even more compelling when viewed in a broader context.

The House Appropriations Committee is pushing a recession package that, when combined with the proposed cuts in the nutrition programs, will squeeze those most in need in ways we have not seen in America, since the Great Depression of the 1930's.

Nearly $2 billion will be cut from education programs, including money for drug free schools and educational support for the disadvantaged.

Also $3 billion will be cut from programs that move teenagers from school to work, including complete elimination of the Summer Jobs Program.

Our seniors and veterans do not escape this blind axe.

Billions will be cut in federally assisted senior citizen housing. The 2 million needy senior citizens who benefit from the Fuel Assistance Program may go cold. That program will be completely eliminated.

That committee's bill cuts $50 million in funds for veterans' medical equipment and facilities.

Billions of the money saved by these cuts will go to the top 3 percent wage earners in the United States in the form of a 50-percent cut in the capital gains tax.

They want capital gains cuts. We want an increase in the minimum wage. They want block grants. We want healthy Americans.

They want a full plate for those with money. We want to restore Federal food assistance programs. And, we will. The nutrition of our citizens should not be left to chance.

Mr. Speaker, all of the nutrition programs are important.

I would like to highlight one of them to demonstrate the poor judgment of those pushing passage of H.R. 4.

That is the WIC Program. WIC works.

It is a program that services low income and at risk women, infants, and children.

Pregnant women, infants 12 months and younger, and children from 1 to 5 years old, are the beneficiaries of the WIC Program.

For every dollar this Nation spends on WIC prenatal care, we save up to $4.21.

The budget cutting efforts we are experiencing are aimed at reducing the deficit.

The deficit is being driven by rising health care costs.

When we put money into WIC, we save money in Medicaid. The equation is simple.

Those who have a genuine interest in deficit reduction can help achieve that goal by investing in WIC.

The WIC Program embraces the unborn; provides nurturing and care; is devoted to maternal health; helps insure life at birth; and promotes the growth and development of millions of our children.

And, it saves us money.

WIC works. Let's keep it working.

The Committee on Economic and Educational Opportunities has proposed radical changes in the school lunch and WIC programs.

If these changes stand, 275,000 women, infants, and children will be removed from the WIC Program. Nutritious meals served in 185,000 family day care centers will be eliminated. School food programs will be reduced by $309 million.

In contrast, the Agriculture Committee has proposed keeping the Food Stamp Program as an entitlement. The committee is to be commended.

It seems inconsistent, however, to retain food stamps as an entitlement, a program that has had some problems with fraud and abuse, while block granting the WIC and school lunch programs.

Mr. Speaker, last year, we spent just $26 per American taxpayer for the AFDC Program.

Child nutrition programs represented just one-half of 1 percent of total Federal outlays in 1994. The average food stamp benefits is 75 cents per person, per meal. Seventy-five cents. Children aren't driving our deficit.

Senior citizens are not the cause of our economic woes. Programs for the poor do not represent pork.

That is why I maintain that H.R. 4, the Personal Responsibility Act of 1995, is irresponsible.

Mr. Speaker, this Nation is strong, not just because of its military might or its technology.

This Nation is strong because of its compassion.

We care about those among us who are weak—the young, the old, the poor, the frail, the disabled. If our citizens are weak, we are weak.

I hope the American people will pay close attention to the statements by our colleagues this evening.

Change for the sake of improvement is good. Change for the sake of change is not. Something different does not necessarily create something better. Most of us support welfare reform because the current system does not serve us well.

However, the nutrition programs do not need the kind of sweeping change as proposed by the proponents of H.R. 4.

A compelling case against that proposal can and will be made tonight.

And, at the end of the presentations, I ask all to judge for themselves who will be helped and who will be hurt by the proposal to block grant our nutrition programs?

□ 2145

CALL FOR A BALANCED BUDGET

The SPEAKER pro tempore (Mr. McHUGH). Under a previous order of the House, the gentleman from Michigan, (Mr. SMITH) is recognized for 5 minutes.

Mr. SMITH of Michigan. Mr. Speaker, Thomas Jefferson, in a letter to Elbridge Gerry in 1799, wrote:

> I am for a government rigorously frugal and simple, applying all the possible savings of the public revenue to the discharge of the national debt; and not for a multiplication of officer and salaries merely to make partisans, and for increasing by every device, the public debt, on the principle of its being a public blessing.

I agree with Mr. Jefferson wholeheartedly, and I suspect that most other Americans do as well. Today, the Federal debt is in excess of $4.7 trillion and growing at a rate of $200 billion to $300 billion per year. As the CATO institute has pointed out, this is both an economic and a moral problem. The economic problem is that deficit financing is the ultimate form of hidden taxation. Federal borrowing injects a huge prospending bias into the budget process by allowing politicians to hand out a dollar of Government spending to voters, while only imposing 80 cents of taxes. Nobel Laureate James Buchanan in a 1977 book with his colleague Richard Wagner, alerted us to this problem. In their book Democracy in Deficit, Buchanan and Wagner argued strongly for a balanced budget amendment in order to contain the spending bias of a Government able to increase its expansion into the economy without the political restraints of raising taxes.

Unbridled Federal spending will eventually lead to what economists call monetizing of the debt, which in plain English means that the Government pays for its debt by increasing the money supply. That cheats the lenders and causes inflation. This hidden tax, which Adam Smith called the worst form of taxation, strikes most heavily on those who save. As every senior citizen knows, their security can be wiped out in short order by even moderate inflation. At 8 percent inflation, the Government can effectively take away half of the money one has saved over a lifetime of work in about 9 years.

The moral argument for a balanced budget is that federal borrowing is taxation without representation. Recall the words of the Declaration of Independence which refers to the repeated injuries and usurpations of King George because he imposed taxes on us without our consent. Can't our children make this same claim against a Congress that saddles them with interest payments that are already at $339 billion annually? None of our children and grandchildren currently have a say in the political process that is now putting their future at risk.

On January 26, the House of Representatives passed a balanced budget amendment. Today, it was narrowly defeated in the Senate. This amendment would have imposed much-needed fiscal discipline on Congress and it would have taken away our ability to spend recklessly while sending the bills to our children and grandchildren.

Without this amendment, it will be much more difficult to balance the budget, but I for one am willing to make the hard choices. I call on my colleagues to stop deficit spending, and I call on all citizens to commit themselves to do their part, to sacrifice some of the many things they get from government, so we can balance the budget, look our kids in the eye, and tell them that we will no longer force them to pay future taxes to enhance our current standard of living. As a nation of people who look to the future, and care about our children as much as we care about ourselves, we can make the commitment to balance the budget, and keep that commitment.

IN SUPPORT OF FEDERAL NUTRITION PROGRAMS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. BONIOR) is recognized for 5 minutes.

Mr. BONIOR. Mr. Speaker, let me tell you a story about why the Federal nutrition programs are so important.

Let me tell you about a school in my county.

Not long ago I met with some teachers from a grade school.

They told me that before we instituted the Federal breakfast program that kids came to school late, if they came at all, they were disruptive in class, their attention spans were bad, and they weren't learning.

But then we instituted the Federal breakfast program.

Kids actually showed up a half an hour early and lined up just to get into the school for the breakfast.

As a result, the kids settled down, their learning ability went up, and test scores went up.

It was a tremendous success.

That story is repeated every single day in schools all over America. Every time a kid comes to school hungry, Every time a kid needs to be fed, no matter what his background, whether his parents are poor or middle class. This program makes sure they get a good, nutritious meal.

I can't understand why anybody would want to put that at risk.

If we've learned anything the past 50 years, it is simply this: a third grader can't learn if his stomach speaks louder than the teacher leading class. It's just that simple.

But the changes made by Gingrich Republicans last week in committee will put this program at serious risk.

As a result, I'm afraid we're going to see a diminished quality of learning in our school systems.

Let's be clear what the Republicans voted to do last week.

They voted to cut the school lunch and school breakfast program, to put all that money into Federal block grants, and send them to the States.

And here's what that means. As the school lunch program now works, any hungry child who needs a breakfast or lunch gets one.

If tough times come along and more children need to be fed—then they get the food they need.

Since 1946, the program has operated predictably and smoothly—and worked very well. But by putting this money into block grants, and turning complete control over to the States, all that changes.

Under this formula, each State gets a limited amount of money. When the money runs out, kids stop getting fed.

If tough times hit, under the new formula, kids will get turned away.

To make matters worse, by putting this money into block grants, you put them in direct competition with other programs.

And we all know what's going to happen.

Kids don't have a constituency on Capitol Hill. They don't have as many lobbyists working for their funding. We all know that when push comes to shove, kids are going to be left out in the cold.

Republicans claim this new formula will reduce bureaucracy. But they seem to forget that by turning this program over to the States, you are in effect opening the door to 50 different sets of guidelines—rather than one standard. And that means 50 new bureaucracies.

Mr. Speaker, there's no reason why kids in Michigan should get any less for lunch than kids in Texas.

But by turning this program over to the States, that's exactly what we'll get.

The reason this program was instituted in 1946 was because many recruits to the military were found to have nutrition problems.

But over the past 50 years, this program has helped make our kids healthier and stronger and fed those who would otherwise go without.

I can understand fixing a program if it's broken. But this program is working fine. It's feeding hungry children. And there's no reason why we should put that at risk.

Mr. Speaker, I thank my colleague the gentlewoman from North Carolina for her leadership on this.

Mrs. CLAYTON. Mr. Speaker, will the gentleman yield?

Mr. BONIOR. I yield to the gentlewoman from North Carolina.

Mrs. CLAYTON. I was just wondering, as you say, less kids would be fed. I have records from the U.S. Department of Agriculture, and you will suffer 279 less young people being fed under your program.

I did not know whether you were aware of that, to back up your statement that kids would not be served, the impact of that.

Mr. BONIOR. I know the cuts in dollars to the State of Michigan and as it will affect other States in this country, that there will be hundreds of thousands of youngsters in America who will not get the nutrition they need to perform well in school.

SUPPORT UNRESTRICTED LEGAL IMMIGRATION

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Florida [Ms. ROS-LEHTINEN] is recognized for 5 minutes.

Ms. ROS-LEHTINEN. Mr. Speaker, my parents and I arrived in this country in the early 1960's after escaping the totalitarian dictatorship of Fidel Castro in Cuba with the dream of starting a new life in freedom. Soon after arriving, my family and I were able to learn why this great country was seen around the world as the land of opportunity. After much hard work, my parents were able to settle into their new home and provide us children with the foundations for our future prosperity. That same dream of freedom and democracy that my parents had is still shared by the immigrants who arrive to this country today.

Unfortunately, I am afraid that today, across the Nation and in some of our political leaders, there is a current which runs against this desire. The current, instead, runs in favor of severely restricting and even ending legal immigration. This movement is fed by the incorrect notion that immigrants are attracted to the United States because of our social programs and soon after arriving, they become a burden on the State.

Mr. Speaker, the facts do not back this notion. The reality is that immigrants have made positive contributions to virtually all sectors of American life. In the economic spectrum especially, immigrants have clearly been prominent participants in the growth of the U.S. economy. For example, in my hometown of Miami, the number of businesses, large and small, owned by Cubans has grown from barely 900 in 1967, to over 28,000 in 1990. As a matter of fact, 18 percent of all small businesses are started by immigrants. This is the entrepreneurial spirit and personal initiative we in this country admire, and which the Founding Fathers of the United States tried to instill to future generations.

Moreover, it has been estimated that legal immigrants pay a combined $70.3 billion a year in taxes while receiving $42.9 billion in services. Add to this the immense amount of human capital which legal immigrants bring to this country and there is little doubt that refugees have been an integral part of the U.S. economic success story.

Mr. Speaker, it will be a sad day in U.S. history when we no longer look at immigration as positive for our Nation's prosperity. No other country can share stories like that of Pablo Fonseca, a Cuban who arrived in the 1980 Mariel boatlift and just 2 years later had already graduated from Miami-Dade Community College with high honors. He then proceeded to the University of Florida and later obtained his dentistry degree from the University of Indiana while winning numerous honors and awards. Today, Dr. Fonseca is a practicing dentist, full of admiration and gratefulness for this country. As he himself said, "This great country is a place of unlimited opportunities. As long as you try hard and you know where you are going, the sky's the limit."

Or the story of Edith Bolt, a Nicaraguan who arrived in Miami in 1985 as a teen with no knowledge of English. After graduating from Miami Beach Senior High School in 1989 and attending Miami-Dade Community College for 2 years, Edith proceeded to graduate magna cum laude with a bachelor's degree in finance from Florida State University. Today, she works in the action-packed world of finance as a credit analyst for a Miami bank.

Or the story of Winy Joseph, a young woman from Haiti who also knew no English but through ESL courses was able to learn the language. Today, Winy attends Miami-Dade Community College and plans to continue her studies in the field of international relations.

And finally the story of Jorge Sierra, another Cuban who emigrated in 1992 to the United States at the young age of 21 without knowing a word of English. Today he is a fluent English speaker who has successfully obtained a degree in computer science and works as a software developer.

Mr. Speaker, these are just four stories of the thousands which show the determination and hard work of immigrants in their drive to forge a new life of success. More importantly, these are the stories that make America great, that separate this country from all others. Where else can the daughter of Cuban refugees who fled their homeland in search of a new life become a member of the National Government? Only in America.

Mr. Speaker, I dare say that all my colleagues in this body know of many immigrant success stories. Whether it is the small businessowner, or the son or daughter of an immigrant who is now a doctor or a lawyer after much hard work from the parents; all of us know of immigrants who have succeeded through honest, hard work. To turn our backs on these American residents who share the same dreams and hopes as native born Americans would be detrimental to this country and would betray the spirit of freedom and opportunity of which we are so proud.

□ 1000

CHILD NUTRITION PROGRAMS

The SPEAKER pro tempore (Mr. MCHUGH). Under a previous order of the House, the gentlewoman from Connecticut [Ms. DELAURO] is recognized for 5 minutes.

Ms. DELAURO. Mr. Speaker, I have listened to my Republican colleagues over the last several days get up here and tell the American people that by cutting the School Lunch Program that they will be able to feed more children. I think it is time to set the record straight.

In the fantasy world of the Republicans, higher food prices and larger school enrollments simply don't exist. But they do exist in the real world and current law allows funding for child nutrition programs to keep pace automatically, especially during difficult economic times. This is where the Republicans' block grant proposal fails and where our kids would get hurt.

Republicans argue that their proposal would increase child nutrition program funding by 4.5 percent every year. But this is deliberately misleading. Their so-called increases would not keep pace with food price inflation and rising program enrollments. Under the Republicans' plan, according to the Center for Budget Priorities estimates, school-based nutrition programs would be cut by $190 million in 1996 and $2.3 billion over 5 years. Family-based nutrition programs would be cut by $680 million in 1996 and $4.6 billion over 5 years.

The Republicans say their plan frees up more money for food by making the programs less bureaucratic. This is preposterous. The Republicans' proposal would actually make the programs more bureaucratic by creating 50 new bureaucracies to administer 50 new programs. This will only increase administrative costs for the States, and ultimately mean less food for children. The fact is the Republicans would not be cutting Federal bureaucracy, they would simply be cutting Federal funding.

I am especially concerned about the impact this block grant proposal would have on the School Lunch Program—a program that serves free and reduced priced lunches to over 104,000 children in my home State of Connecticut every day.

I met today with two special people who run a program in my district called Boys Village. This program provides community-based and day treatment services for at-risk children. Every day, Boys Village feeds breakfast and lunch to all the children enrolled in its program. To help do this, they receive $30,000 a year from the National School Lunch and Breakfast Programs.

The budget for this remarkably successful program is small. If funding for its nutrition programs was substantially reduced, or eliminated, which is possible under the Republicans' proposal, Boys Village would have to make some tough choices.

Those are not pleasant choices, Mr. Speaker. And they're choices that all School Meal Programs will be forced to make. They will have to either eliminate meals, increase prices, or reduce the quality and quantity of the well-balanced, nutritious meals that kids currently receive.

Newt Gingrich, who spoke so highly of the Boys Town of yesteryear, should wake up and see what the Boys Villages of tomorrow will be like if he has his way. They will not feature the smiling faces of the movie version. It will be more like the Dickens' version, with hungry children holding out their tin cups and begging for more.

Child Nutrition Programs in this country will be a pale imitation of what they are today. Enrollment will decrease, nutritional standards will diminish, and the health of our children will suffer.

It is a vision of hungry kids who are not healthy, alert, and ready to learn—all this so the Republicans can pay for tax breaks for the wealthy. This Republican scheme must be stopped. I urge my colleagues to keep up the fight.

Mrs. CLAYTON. Mr. Speaker, will the gentlewoman yield?

Ms. DELAURO. I yield to the gentlewoman from North Carolina.

Mrs. CLAYTON. Would you just comment on the fact that most of the time when we think about changing things, we want to correct them; do you see anything wrong with the school lunch and the WIC program? Is there fraud or something we know that is going on that it is not effective? Why are we changing the school lunch program? Is there some reason that would help us understand? Are we improving it? Why are we changing it?

Ms. DELAURO. My colleague has put her finger really on the crux of this issue. I say do not listen to all of us tonight, listen to us, but talk to the people in our districts who run these programs. These are successful programs. They work. They are living up to the objectives that they were created for, and it is foolish for us to unravel these very fine programs and create difficult problems for our youngsters and, quite frankly, for our economy in the future.

And once again, I thank the gentlewoman from North Carolina.

REPUBLICAN SCHOOL LUNCH PROGRAM INCREASES FUNDING

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. FOX] is recognized for 5 minutes.

Mr. FOX of Pennsylvania. Mr. Speaker, the school lunch program under the Republican majority proposal will actually increase the current $4.5 billion budgeted to $4.7 billion for fiscal year 1996.

The other side of the aisle would have you believe the school lunch program will be eliminated. This is pure fiction.

Republicans propose to actually increase by 4.5 percent more on school lunches in 1996 and 4 percent for each year thereafter for the next 5 years.

They key to delivering more to our local schools is accomplished by eliminating the Federal bureaucrats and their involvement, and directly sending aid to the States for our local students. Through this block grant, the weight of the unnecessary Federal paperwork will be eliminated.

Now, the Federal Government——

Mr. POMEROY. Mr. Speaker, will the gentleman yield?

Mr. FOX of Pennsylvania. I will when I complete my statement.

The SPEAKER pro tempore. The gentleman will not yield at this time.

Mr. POMEROY. The full 5-minute statement or the sentence?

Mr. FOX of Pennsylvania. Now, the Federal Government, Mr. Speaker, wastes 15 percent of the school nutrition money——

Mr. POMEROY. Mr. Speaker——

The SPEAKER pro tempore. The time is controlled by the gentleman from Pennsylvania.

Mr. POMEROY. Mr. Speaker, point of clarification, I am not sure when the gentleman is going to yield to me for my question.

The SPEAKER pro tempore. The gentleman controls the time, and he has declined to yield.

Mr. POMEROY. Does the gentleman yield? He said he would yield.

Mr. FOX of Pennsylvania. Mr. Speaker, I would like to continue my speech.

The SPEAKER pro tempore. The gentleman controls the time.

Mr. POMEROY. The gentleman did not yield.

Mr. FOX of Pennsylvania. Mr. Speaker, it wastes 15 percent——

Mr. Speaker, do I have the floor?

The SPEAKER pro tempore. The gentleman from Pennsylvania controls the time.

Mr. POMEROY. Does the gentleman yield?

The SPEAKER pro tempore. The Chair has repeatedly stated that.

Mr. POMEROY. He said he would yield.

Mr. FOX of Pennsylvania. I did not say that. I said I would yield at the end of my speech.

The SPEAKER pro tempore. The gentleman controls the time and has refused to yield.

Mr. FOX of Pennsylvania. Thank you, Mr. Speaker.

Now, the Federal Government wastes 15 percent of the school nutrition funds for administrative costs alone, and under the majority Republican proposal, more children will be fed, and only the bureaucrats of Washington, DC, will be the ones disappointed.

The successes of our school lunch program at Penn Dale Middle School in Lansdale, Montgomery County, was observed by me firsthand on Monday.

Motivated students are involved in planning menus, dedicated faculty are working closely with home economics classes, and most of all, Dorothy Irvin, as our food service coordinator, is doing an outstanding job working with principal Donald Venema to make the program work.

They have understood that what we have discussed here is more money for the school district, more money for the program.

In summation, Mr. Speaker, we believe the key to the school lunch program and the proposal we have before the Congress now will have more dollars spent on direct services for children and less on the administrative paperwork that helps no one, and I believe, Mr. Speaker, it is in the best interests of everyone.

CHILDHOOD NUTRITION PROGRAMS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California [Ms. ROYBAL-ALLARD] is recognized for 5 minutes.

Ms. ROYBAL-ALLARD. Mr. Speaker, Americans want streamlined and efficient government, but they also expect Congress to be fair and responsible.

They did not ask us to achieve these goals at all costs, especially if it means jeopardizing the future of our defenseless children.

Republicans claim their proposals to cut crucial nutrition programs are aimed at bureaucrats, but the real victims of these deadly cuts are the children of America.

The pain and suffering of childhood hunger can be seen in each of our 50 States.

Children who pass out on the school playground because of hunger;

Children who have learned the heartbreaking skill of stretching one packet of cheese flavoring for three meals of macaroni and cheese; and

Children who literally sob from the pain of stomach cramps because they have not eaten since the previous day.

These scenarios are not grossly exaggerated fictional accounts concocted to illustrate my point.

They are actual examples of childhood hunger in this country recently documented in the Los Angeles Times of children without the benefit of nutrition programs.

These tragic scenarios will become more frequent and more severe if Republican proposals to block grant vital nutrition programs are approved. For they will limit the money that will be available to feed our children.

Scientific evidence reveals that children are far more susceptible to the harmful effects of nutrient deprivation than previously known and, according to physicians, results in lifelong damage.

Once physical growth and cognitive development have been impaired, the damage is often irreversible.

The highly effective WIC and the national school lunch programs protect children from the physical and mental ravages caused by hunger.

As a direct result of Federal nutrition programs, growth stunting has declined by 65 percent according to the USDA.

The General Accounting Office reports that the WIC program saves $3.50 in special education and Medicaid costs for every prenatal $1 it spends.

In my home State of California, almost 2½ million children participate in these nutrition programs.

The future of these and other children is now endangered by the irresponsible and heartless cuts proposed by the Republican majority.

Teachers in the Los Angeles Unified School District, as in school districts throughout this country, support the school breakfast and school lunch program.

They know first-hand that children who are well-nourished are more alert, more attentive and more eager to learn as contrasted with hungry children who are listless and can barely raise their heads from their desks.

While children will be the first victims of the Republicans' callous and ill-conceived program cuts, all Americans will ultimately pay the price when our young people cannot fulfill their academic potential and cannot grow into productive workers.

As a result, our Nation will no longer be a global competitor.

To deny food to our children is a betrayal of our values and our future as the richest Nation on Earth.

It is imperative that we maintain this safety net of nutrition for America's Children.

How can we in good conscience afford to do less?

Mrs. CLAYTON. You had emphasized the value of nutrition for education. I just wanted you to expand on that in terms of the value of nutrition to reduce the cost of health care. Part of, obviously, why nutrition is valuable is to make sure young people are healthy, and when they are not healthy, the cost of health care goes up.

Ms. ROYBAL-ALLARD. Absolutely. If you talk to teachers throughout this country, they will tell you when children go to school hungry, not only do they not learn, but they are much more susceptible to disease and, therefore, the cost of health care is also increased.

Mrs. CLAYTON. I was thinking in this atmosphere of reduction and deficit reduction, it seems to be pound-foolish and to be penny-wise in trying to cut back on nutrition programs when you put at risk not only kids' learning abilities but also raise the cost of health care. It seems like if we were trying just to reduce the budget, we have chosen the wrong program, the WIC program, to do that or the school lunch program to do that.

□ 2215

Ms. ROYBAL-ALLARD. Absolutely, because in the long run I guess it is going to cost society much, much more.

REPUBLICANS STARVING CHILDREN TO PAY FOR THEIR CONTRACT ON AMERICA

The SPEAKER pro tempore (Mr. McHugh). Under a previous order of the House, the gentlewoman from California [Ms. Woolsey] is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, first I would like to thank the gentlewoman from North Carolina [Mrs. Clayton] for organizing tonight's special orders. She is so appreciated.

Mr. Speaker, I know personally the fear of not having enough money to buy food for my children. Twenty-seven years ago I was a single working mother with three small children forced to rely on Aid For Dependent Children and food stamps in order to give my children the health care, child care and food they needed. That experience never leaves me, Mr. Speaker. It is the basis for my commitment to make sure that every child enters the classroom safe, healthy and ready to learn, and without nutrition programs this will not be possible.

That is why I am shocked that at the same time Republicans are talking about taking school lunches away from almost 7,000 children in my congressional district, Mr. Speaker, they are refusing to cut pork barrel military projects like the F-22 fighter plane.

Health care providers, parents and teachers all know that the school lunch program is crucial to our children's education and to their health. In fact, the school lunch program is the source of more than one-third of the recommended daily allowance for the children it serves. Clearly, Mr. Speaker, eliminating Federal school meal programs, cutting funds and giving what is left over to the States is no way to take care of our children. Rather we should be talking about full funding our school lunch programs and full stomachs for our kids.

In fact, I have only one thing to say to this pea-brain plan. States do not get hungry, children do, and the public is not going to allow the Republicans to starve children just so they can pay for their Contract on America.

REPUBLICAN PROPOSALS ARE PLACING THE WELL-BEING OF OUR CHILDREN IN JEOPARDY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. Bishop] is recognized for 5 minutes.

Mr. BISHOP. Mr. Speaker, I would like to express my deep concern over Republican proposals that would excessively cut nutrition programs—proposals which could jeopardize the future of our children and our ability to compete in the global economy.

Our country has had a long-standing, bipartisan commitment to ensuring an adequate nutritious diet for our most vulnerable citizens. Members on both sides of the aisle have always before recognized that the country's strength depends on having a healthy, productive population, and nutrition programs contribute substantially to that goal.

The School Lunch Program was started in 1946 as a national security measure in response to the large number of men enlisting in the armed forces who were found to be malnourished. Other Federal nutrition programs, such as the Food Stamp Program and WIC, were developed in response to findings of widespread hunger in the late 1960's. In 1967, for example, the Field Foundation sponsored a study that was shocking to much of America. It found that hunger and poverty were shortening the lives of many thousands of young people in parts of the rural south. And if it was happening in the rural south, it was certainly also happening in many urban areas of the country where poverty was prevalent.

Federal nutrition programs have made a big difference in improving the lives of needy children and their families. These programs have given children access to better diets, which, in turn, has led to better health and a greater ability to learn in school and become productive citizens.

I have seen the results of the nutrition programs in my own State. In Georgia, more than 400,000 low-income children per month receive the benefit of food stamps which help their families purchase nutritious food. More than 200,000 Georgia children receive help for school breakfasts and more than 450,000 receive help for school lunches.

These programs provide a vital safety net. Last year, for example, the Food Stamp Program provided emergency help for many families who lost their homes and their livelihoods in the flooding which struck parts of the area of Georgia I represent. Countless stories can be told of how nutrition programs have literally saved families during times of emergency.

Some of the untested reform proposals being discussed in Congress would threaten to slash nutrition funding for school children, for mothers and infants, for the elderly. If these programs can be better managed, fine. But simply slashing the level of funding or capping it arbitrarily would inevitably lead to increased hunger and all of the suffering and costs that are associated with poor nutrition. We can ill afford, Mr. Speaker, to place the health and well-being of our children, our economy and the country as a whole in jeopardy by turning back the clock on the gains that have been made over the past half century.

Let us cut short the Republican plans to cut short the nutrition programs so vital to America's women, infants, children and seniors.

Mr. Speaker, I yield to the gentlewoman from North Carolina [Mrs. CLAYTON].

Mrs. CLAYTON. Mr. Speaker, I was just looking at this report from the U.S. Department of Agriculture and looked at the State of Georgia and noted that over 108,000 persons will have less nutrition than they have now. These include school aged children, pre-school children, as well as school children in special programs. That is 108,000 less in Georgia, and I know the gentleman would be concerned about that so I wanted to bring that to his attention.

Mr. BISHOP. Mr. Speaker, I am happy the gentlewoman pointed that out because I come from a district that has some of the poorest counties anywhere in the United States, and we have numerous individuals and families that suffer from malnutrition, and we have low birth weight babies that are born which ultimately has to be paid for by Medicaid, and it is a lot easier and a lot cheaper on society and on our taxpayers if we pay for a $6,000 delivery as opposed to a $150,000 delivery with incubation for that low birth weight baby.

Mrs. CLAYTON. I agree.

THE WIC PROGRAM IS WORKING

The SPEAKER. Under a previous order of the House, the gentleman from Texas [Mr. STENHOLM] is recognized for 5 minutes.

Mr. STENHOLM. Mr. Speaker, I have spent all of my life in the food processing end of the business. I have spent the last 16 years of my life learning more about the consuming side our food industry. In the last few days I have spent a lot of time talking to the school lunch room administrators, school superintendents back home in my district, and they confirmed a belief that I already had, that our school lunch and breakfast programs are not broken, and I am puzzled why some seek to fix them.

But tonight I want to spend a few minutes talking about a program that I have become very supportive of, and that is the WIC Program. When I first heard of it, Mr. Speaker, I was supportive because it did one thing that was sort of important. It fed children. But 4 years ago in the House Committee on the Budget I had an experience of sitting and listening to four CEOs of four of the larger corporations of America who had come before the Committee on the Budget for one purpose that day, and that was to convince us in the Congress to fully fund the WIC Program, not just 40 percent or, at that time, 30 percent, but to fully fund it, and I listened with quite a bit of attention and some considerable interest. I listened to those CEOs first say that they hire tens of thousands of young men and women every year to work for them in their respective businesses, and they had to retrain 70 percent of all of those who came to them, and they said, and I paraphrase what they basically told us that morning, but it was that at first we looked at our school system, we looked at our kindergartens, our grade schools, our middle schools, our high schools, our colleges, where we were fumbling the ball, but the more we looked, the more we came to the conclusion that we were really fumbling the ball by not giving every child born in America a healthy start. They came to us that morning and suggested that, if we had to cut anywhere, even in feeding programs, to cut anywhere other than the WIC program because unless a child has a healthy start from the womb through the first 3 or 4 years of its life, that child will be a health problem the rest of its life. With all odds it will be an educational problem. Eventually it will become a crime problem, and we only have to remember the discussions we have had in this body not too long ago about how much we are spending on crime.

Mr. Speaker, those were the words of four CEOs, and those words should be listened to with a great deal of interest as we debate the priority settings that are going to be necessary.

As my colleagues know, I, too, lament the fact that we failed to pass the balanced budget constitutional amendment today. But even if we were spending only that amount of money that we have today provided for us, not borrowing $200 billion, I would still be here tonight saying of the 1,300,000,000 we will spend that we have that the WIC program is one that we should, in fact, be prioritizing, certainly not cutting. We perhaps ought to be looking for ways in which we could increase that program because it is one of the better investments we could make.

We have already heard that every dollar we spend on WIC provides from $1.92 to $4.21 in Medicaid savings. Those are demonstrated factual savings that have been confirmed and reconfirmed by so many who also believe in this program.

So I commend the gentlewoman from North Carolina [Mrs. CLAYTON] for getting us together tonight and talking about the need for taking another look, and I would encourage my colleagues on the other side of the aisle to take another look at the feeding program reductions, particularly though to take a look at the idea or the suggestion that WIC should be cut. I believe that, if my colleagues will look at the facts and not listen to only the whims of the current desires, that they will find, as I have done, and those four CEOs came to the conclusion 4 years ago, the WIC program is a good program, it is working, it needs to be increased in funding if we possibly can find it, but it certainly does not need to be cut.

Mr. Speaker, I yield to the gentleman from Georgia [Mr. KINGSTON].

Mr. KINGSTON. As the gentleman has spent a considerable amount of time trying to balance the budget, he knows that the WIC program in the rescission bill is cut 2 percent, and the money that was cut is money that the WIC program is not using.

Mr. STENHOLM. Well, I do not know that to be a fact. In fact, regardless of the numbers that we might talk about, et cetera, we are still only going to be providing for what percent of the children?

Mr. KINGSTON. Well, 2 percent of the money that is being cut from WIC represents money that the WIC program was not using.

Mr. STENHOLM. But we are only feeding 40 percent of the possible children, so it would seem to me rather than making that cut we ought to be looking for ways to make the program work better and reach out to the other 60 percent of the children that we are not feeding.

□ 2230

SCHOOL NUTRITION PROGRAMS

The SPEAKER pro tempore (Mr. MCHUGH). Under a previous order of the House, the gentleman from North Dakota [Mr. POMEROY] is recognized for 5 minutes.

Mr. POMEROY. Mr. Speaker, I am not much of a statistician, but when we are talking about children and nutrition, this is what I think it is all about. The opening statement of the National School Lunch Act of 1946 includes the words, "It is hereby declared as a matter of national security to safeguard the health and well-being of the Nation's children to provide for the establishment of nonprofit school lunch programs."

Even in 1946, our Nation realized there was a significant need to invest in the health and diets of its citizens, most particularly its kids.

Since the implementation of the National School Lunch Act and the Food Stamp Act, these and other food assistance programs have received broad support from the people of this country and the results are in. We have gotten our money's worth. Successful health outcomes have resulted. Growth stunting has decreased 65-percent. Low birth weight has plummeted. Iron deficiency anemia among preschoolers has been dramatically reduced. These successes can be seen in the WIC program, the school lunch and breakfast programs, and the child and adult food care programs.

Now, some lawmakers in Washington want to significantly reduce the funds and fundamentally change the way we extend quality nutrition to kids and other deserving Americans. The proposal being debated that we have been discussing this evening would scrap several well-working nutrition programs, cut funding, and send the reduced amount back to the States. They call it block granting. I call it blockheaded.

The designers of this program intend for these block grants to reduce the Federal spending on domestic food aid, give the States more power. States would be allowed to consolidate and target the programs.

I am all for State power and flexibility. I think that is a good idea. But if this block granted proposal becomes law, many nutrition programs that we now have will have to compete against one another for the reduced funds that would be available. Imagine being the State administrator, forced to pick between programs for seniors versus programs for infants, school age children versus day-care kids. These are all worthy nutrition recipients, competing for support that under the proposal would be dramatically below what we have extended presently and for the past several years.

The U.S. Department of Agriculture released numbers just Monday that indicated my State, North Dakota, would alone see a total reduction of $53 million over the next 5 years. Now, this is a cut that goes far below any so-called bureaucratic or paperwork savings that they claim would result. This is taking meals from seniors, lunches from school children, milk from toddlers at day-care centers.

Certainly North Dakota under its block grant authority, like any other State, wants to do well by the nutrition for our citizens. I trust the State officials to look after that. But under this reduced funding level, cuts will be certain, meals will be withdrawn.

You know, at the age of 41 last year I became a father for the first time? I am now the parent of a 16-month-old beautiful little girl, and it has given me in particular an interest in what is available for day-care, because I know all over the country we got parents really worried about quality day-care and affordable day-care.

Last weekend I met about over a dozen parents and day-care providers in North Dakota, and they told me that the access they have to the child and adult food program, one of several, by the way, being eliminated under the block grant program, has been vitally important to them. They have written in fact across the State of North Dakota over 300 letters from day-care providers, and what they tell me says an awful lot about how ill-advised these program changes are.

Let me quote to you from these letters. One woman who provides day-care writes,

> The meals eaten at day-care are the healthiest meals some of our children have each day. I do not feel that the discretionary funding for children's nutrition programs will have a positive effect on our children. In fact, it may harm many. We would be in direct competition with other programs within our State that receive the funding.

A parent writes,

> Without the food program to assist her, my day-care provider, as well as many others, will not be able to keep taking care of the children and still make enough money to make ends meet. She has considered raising her prices to help make up the cost of assistance if the program is no longer available. If she does raise her hourly wage, some families will not be able to afford to pay her the price she requests.

These and other testimonials from those most directly affected show that consolidation of the day-care feeding programs are a terrible idea, they will raise costs for parents, they will reduce the quality of nutrition for our kids, and they must be stopped.

DON'T HURT THE CHILDREN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Louisiana [Mr. FIELDS] is recognized for 5 minutes.

Mr. FIELDS of Louisiana. Mr. Speaker, today I had a very, very important visit from my district. I had a visit from a very, very young kid, whose name is Jonathan Edwards. He is a kindergarten student. He is 6-years of age. He walked into my office and he had some little red buttons, and he pinned a little red sticker on each member of my staff. He walked into my office and he indeed stuck one on me. And it indicated "Don't hurt the children." Don't hurt the kids.

I gave him a big hug and we talked about some of the things that were taking place in Baton Rouge, and we also talked about what is taking place here in Washington. He walked out of the office, Mr. Speaker, and I could not help but think about what is taking place right here in Washington, DC as this little kid tried to make some sense of what is taking place here in the midst of this debate.

I thought about Healthy Start, and I thought about the cut of $10 million in a program that is so important to our young people. I thought about the WIC Program, $25 million will be cut; 50 to 100 thousand expected mothers will be taken away from this program. I thought about the fact there are so many babies that die, Mr. Speaker, after they are born, because their parents do not have proper prenatal care. And I was looking at little Jonathan, and it made me think what shameful condition in this country when we take money away from mothers who want to have productive children, who want to bring birth to kids who can live and who can survive.

Then I thought about educational cuts, $1.7 billion in educational programs, and I could not help but think about the $500 million that we cut in the program called Drug Free Schools and Communities. And how can we, Mr. Speaker, cut $500 million, totally eliminate drug free schools in communities, when drugs in our schools and communities are going up and not coming down?

What are we saying to our children? Just say no to drugs? Or just say no to drugs is the moron's answer to the drug problems? And it was that simple, we would not even need schools. We would simply tell kids, just say yes to math, just say yes to science. But that is not the answer to the drug problem. We must teach kids drug education.

Then I could not help but think about the fact we are cutting $100 million from elementary and secondary infrastructure, school infrastructure. We have jails and prisons in this country, Mr. Speaker, that are in better condition than our schools. You take a school in my own Parish, Red River Parish, where the ceilings are leaking everyday. Every time it rains, students cannot stay in the classroom because the ceilings are leaking, not to mention the fact that the air conditioner does not work during the summertime and the heat does not work during the wintertime.

This same Congress, just when we took away $100 million of money for infrastructure for schools, we just appropriated $10.5 billion for jails. So if you are a prisoner in this country you have great air condition, the ceilings do not leak, and you have an opportunity to be in a building that is built well and well maintained.

Then I thought about the $28 million from the Dropout Program that was cut. Realizing that 86 percent of the people in this country who are in jail are high school dropouts, there is a serious correlation between education and incarceration. But yet we find the need in this Congress to cut $28 million from the Dropout Program.

Then I thought about the summer jobs program. I guess that irked me almost the most, because I thought the Contract With America was to take people off of the welfare roles, but not to take kids off of the payrolls; to take innocent kids in the summertime who finished school, and all they have to do and look forward to is a summer job, to totally eliminate that program. Now we are going to have kids on the streets, more crime indeed. Kids who go and work during the summer will not be able to do it this summer if this rescission package stays as it is today. These kids take that money and buy their school clothes. Many of them help their parents.

Then I thought about, lastly, but certainly not least, the school lunch program. And I take a moment of personal privilege on the school lunch program because I am indeed a person who went through school and who benefitted from the school lunch program. And to think that this Congress would have the audacity and unmitigated gall to take school lunches away from innocent children, when in jails, when prisoners in jail today get three square meals a day. It is popular to feed a prisoner in this country, but it is not popular and is not correct to feed a child.

Then what really irks me, Mr. Speaker, at the time we take food out of the innocent kids' mouths, we give $1.2 billion in food aid to foreign countries. At the time we take away summer jobs, we give $2.3 billion to economically support other countries.

So I hope that my colleagues defend these children and defend what is right and take this opportunity to defeat this rescission package when it comes to the floor.

PARLIAMENTARY INQUIRY

Mr. KINGSTON. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. KINGSTON. Mr. Speaker, since the other side has obviously a coordinated effort here to really have not just a series of 5-minute special orders, but a number of them, could we please be tight on the time? Because there are folks on this side of the aisle who want to keep in the spirit of the 1 hour here and 1 hour there. I would ask perhaps without a ruling from the Chair that, and I suppose Mrs. CLAYTON is in charge, that you could be a little tighter on your time so we could have the chance to talk, unless you want to yield some time to us?

The SPEAKER pro tempore. In response to the gentleman's parliamentary inquiry, the Chair would state for Members who have spoken this evening on both sides of the aisle, the Chair has attempted to remind them of that 5-minute limit, and will continue to do so.

EFFECT OF CONTRACT WITH AMERICA ON CHILDREN

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New York [Mrs. MALONEY] is recognized for 5 minutes.

Mrs. MALONEY. Mr. Speaker, if passed, the Republican contract's war on children will have a devastating impact on New York City.

The Republican contract would cut assistance for children across the board including large reductions in: school lunches and breakfasts, nutrition programs, food stamps, medical care, education, and housing programs.

In the contract's plan to cap the Food Stamp Program, New Yorkers would lose $300 million in the first year alone. A food stamp reduction of that magnitude could prevent as many as 190,000 children from receiving assistance.

In the contract's plan to lower child nutrition costs, New York State stands to lose $70 million in assistance by 1996, and $600 million by the year 2000.

This contradicts the overwhelming evidence that child nutrition programs lower the possibility of low birthweight and anemia in children.

In the contract's plan to eliminate the school lunch and school breakfast programs, over 800,000 children in New York City will be forced to pay more for breakfast and lunch.

I would really like to know where are they going to get that money to eat.

Schools will have to choose either to cut back on the quality of food or simply not provide lunches for children who need to eat.

There is even talk that the Summer Meals Program might be eliminated altogether.

Mr. Speaker, even President Richard Nixon supported school nutrition programs when he stated, "A child ill fed is dulled in curiosity, lower in stamina, distracted from learning."

These cuts are callous and mean-spirited. They not only affect child nutrition programs, but they also affect many other well deserving programs.

The contract would cut Medicaid and Medicare by $33 billion over the next 7 years.

In an effort to dismantle Federal nutrition programs, the Republicans voted to expand the profits of four U.S. drug corporations of up to $1 billion by elminating a competitive bidding process for infant formula. As a result, these four companies can raise their prices and pad their profits.

What does that say about our family values?

The Republicans voted to cut $1.3 billion in heating assistance to needy families while at the same time voting for a $6.5 million pork-barrel visitor center with a complete heating system for a Republican's district in Oregon.

What does that say about our family values?

The Republicans voted to eliminate 185,000 meals a day for children in family day care homes while at the same time voted to continue spending tens of billions of dollars on the F-22 fighter.

What does that say about our family values?

It has become very clear that the Republicans are forcing children to pay the heaviest burdens for their pet projects.

Mr. Speaker, the Republican recently proposed budget cuts inflicts even more damage to programs for children. Their plan has proposed:

A $10 million cut for Healthy Start—a program which gives needed pre-natal care to expectant mothers.

A $25 million cut for the Women, Infant, and Children [WIC] program that would knock 100,000 expectant women and newborn children out of a program which provides badly needed nutrition assistance.

A $100 million cut for foster care.

Mr. Speaker, why was there not a single Defense Department or pork barrel project considered?

The petrified pork civilian marksmanship program still wastes $2 million a year for free ammunition and recreational shooting.

What ever happened to America's family values? This plan is headed in the wrong direction.

FOOD FOR AMERICA'S CHILDREN MUST HAVE PRIORITY OVER SUPPORT FOR FOREIGN GOVERNMENTS

The SPEAKER pro tempore (Mr. MCHUGH). Under a previous order of the House, the gentleman from Alabama [Mr. HILLIARD] is recognized for 5 minutes.

Mr. HILLIARD. Mr. Speaker, the children of Alabama, like those of the rest of the Nation, depend on the food programs of the Federal Government. Some come from very needy families who cannot afford to feed their children.

In my district, one of the poorest in the Nation, these food programs for kids make the difference between health and sickness, or between the ability to concentrate or become distracted from their class studies. These programs make the difference between a successful student and one who fails.

In the 7th district of Alabama, nearly two-thirds of students served cannot afford to pay. Even field kids who cannot afford to pay for their breakfast meal under Federal guidelines receive food. Mr. Speaker, this is a catastrophe. We must take care of our kids. We must protect our kids. Cutting food programs will literally take food out of the mouths of young kids. This we cannot afford to do.

Mr. Speaker, we must prepare for the future. Those of us who wish to balance the budget do not wish to balance the budget on the backs of kids. There are so many other ways and methods we could make cuts in order to balance the budget.

Mr. Speaker, last year we spent $4 billion defending Japan. Japan paid the United States $2 billion of that $4 billion we spent. We will spend $2.4 billion over the next five years that will be taken from the food program for the support of Japan.

Mr. Speaker, last year we spent $18 billion defending Europe. We will take $2.4 billion from the food program over the next 5 years.

Mr. Speaker, one year of defending Germany or defending China or defending the world will support the food program in this country for 5 years. I submit that we should take priorities, and that the number one priority should be our children.

Mr. Speaker, most of us would love to balance the budget. Each one of us, regardless of our party, believe in balancing the budget, but we cannot balance it at the expense of our children. I am opposed to including children's nutrition programs in block grant form. I am opposed, because I realize that, like my State, which is a deficit State, that money will be used for other purposes, directly or indirectly.

Let me say, Mr. Speaker, exactly how that would happen. If the money is sent directly to the State, and it is not earmarked just solely for food programs, but for other indirect costs associated with administering that program, then that money will be spent for highways, it will be spent for roads and bridges, it will be spent for other programs, and it will happen in this manner.

The money will go to the States, earmarked for the administration of the food program. Instead of buying food supplies, that money will be used to pay salaries of workers. At the present time, Mr. Speaker, the Federal program pays for the food supplies, and the State program matches it by paying salaries of the workers.

I am certain that the State will not pay the salaries of the workers. Therefore, the money that ordinarily will go for food supplies will go toward partially paying the salaries of the workers, and the workers' salaries that have been paid by the State, what will happen to that money? Mr. Speaker, you know and I know that it will be used to build highways, to build bridges, to repair roads, or for any other emergency that may occur.

I have been in the State government for 18 years. We have many trust funds in the State of Alabama. I have seen us raid those trust funds for other purposes than those intended by the fund itself, so I know what will happen. I suggest it will happen every day, all across America. There will not be just 50 programs, but every State will have a program. That program, Mr. Speaker, would not be sufficient to feed the children, to feed the kids, to feed the students in our country.

Mr. Speaker, the children, the kids, the students in this country deserve our very best. They deserve to be treated better than we treat them, and they deserve to be treated in terms of priority above the defense of Japan and above the defense of Europe.

IN THE WORLD OF NEWT GINGRICH, WE TURN OUR BACKS ON CHILDREN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts [Mr. Olver] is recognized for 5 minutes.

Mr. OLVER. Mr. Speaker, first of all, I want to thank the gentlewoman from North Carolina [Mrs. Clayton] for organizing this time. We are all indebted to the people of North Carolina for your leadership on issues of equity, such as this.

Mr. Speaker, we cannot protest enough what is really going on right now in this people's House of Representatives. I hope there are some parents out there who have put their children to bed and are listening to tonight's discussion. If your child eats breakfast at school, eats a hot school lunch, eats at day care while you work, or has cereal or milk or orange juice purchased with WIC coupons, or eats any food from a food bank, perhaps at the end of the month when money is tight, or has a meal that is purchased with food stamps, and I know that food stamps do not just help people who receive welfare payments, but also help millions of full-time workers to make ends meet, if your child uses any of these, your child is at risk.

The new Republican majority in this House is waging a full-scale war on America's children. The first goal of this war is to cripple the effort to end hunger among America's children, and that is a cruel move. Thus far, Republicans have staged this battle on two fronts: first, in their welfare reform bill, the Personal Responsibility Act.

That bill turns all Federal child nutrition services into State block grants. I have already said that many of the children who benefit today are not even on welfare, but that does not seem to matter. Now, the idea of block grants is not all bad. We have other block grants for community services and community development that go to the States and work well. But look again. This is not just a shift in who runs the current nutrition services, it is really a dangerous shell game.

The Republicans washed their hands of any responsibility for the welfare of America's children, shifted that responsibility to the States, and at the same time cut billions of dollars needed by those States to adequately feed those children.

The second front of this war is the rescissions bill which was approved by the Committee on Appropriations just today. The Republicans today cut $25 million from the WIC program. WIC provides nutrition to pregnant women that reduces the risk of having low-birthweight babies, thereby saving heartbreak and billions of dollars. WIC helps mothers buy infant formula for their babies, milk and juice for their preschool children.

These are a child's formative years, when good nutrition is crucial. Today's cut is just the beginning. Republicans expect to cut at least $10 billion from Federal aid for childhood nutrition. It is a total myth that these cuts are being made to reduce the deficit.

The Republicans are willing to hurt children so they can buy fantasy projects like the Star Wars antiballistic missile system and so they can shovel out massive tax breaks to the very wealthiest of Americans. They want to give $55 billion in tax cuts to families with more than $200,000 of income per year.

Mr. Speaker, children cannot vote or make political contributions, so they are being trashed. It is shameful. The health of children should be one of the first priorities of every Member of Congress. We are supposed to be building a better Nation, but in the world of Newt Gingrich, we will shamefully throw that responsibility to the States, then cut the dollars that the States need to meet it.

In the world of Newt Gingrich, we will turn our backs on children. That is a terrible way to invest in our future.

WE CANNOT BALANCE THE BUDGET ON THE BACK OF THE NATION'S SMALLEST AND WEAKEST CITIZENS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Texas [Ms. Jackson-Lee] is recognized for 5 minutes.

Ms. JACKSON-LEE. Mr. Speaker, I rise this evening to again raise my voice on behalf of my constituents and in behalf of America's children.

My conscience and the conscience of the Nation tell me that the unprincipled and unreasonable cuts to long-standing child nutrition programs proposed by my Republican colleagues are simply insensitive and yes they are immoral.

Those advocating these cuts are prepared to disregard the very health and nutritional well-being of some of America's poorest children.

While resisting lobby reform that would restrict the ability of high-rolling lobbyists to wine and dine without regulation Members of Congress and their staffs at posh, Washington restaurants, nutrition-cut advocates are prepared to literally snatch food from the mouths of the most vulnerable among us.

Mr. Speaker, included with various assaults on child nutrition contained in title 5 of H.R. 4 is a proposal to eliminate competitive bidding on infant formula purchases under existing programs.

According to the Department of Agriculture, competitive bidding saved the states one-billion-dollars in 1994, helping them feed an additional one-point-five-million infants * * * better fed babies are healthier babies * * * and healthier babies consume far fewer health care resources.

So the cost-benefit analysis is clear * * * Federal infant feeding programs—as currently administered—are a huge success, period.

Now you can bet the GOP proposal has the big formula producers very happy, but what horrible consequences await our Nation's babies born to poor mothers?

And what about cuts to school lunch and breakfast programs?

In my hand, I have a letter I received last month from both the dean of Tufts University Medical School and the President of the American Academy of Pediatrics.

Together, they represent a non-partisan group of medical educators and pediatricians known as the Physicians Committee on Childhood Hunger.

Mr. Speaker, these physicians—who have dedicated their lives to caring for all our Nation's children—share my grave concerns about proposed block-granting of child nutrition programs.

They write, and I quote, "Proposals to block grant these programs, remove Federal nutrition standards, and reduce available funding, all pose a direct threat to the well-being of American children."

Cutting the budget deficit they add, "at the expense of the Nation's children . . . is unacceptable."

Unacceptable in deed, Mr. Speaker. We can surely do better than that.

In my home State of Texas alone, again according to the Department of Agriculture, these mean-spirited cuts to school and pre-school programs will reduce available funds by more than $65 million in fiscal year 1996.

And Texas' children would suffer more than $671 million worth of cuts through fiscal year 2000.

Nationwide, poor and hungry babies and kids would be forced to go without a whopping $7.3 billion of healthy, nutritious food through fiscal year 2000.

Yes, Government must become more efficient and Members of Congress from both parties must come to terms with a growing national debt that also threatens the futures of our children and grandchildren.

But I for one, Mr. Speaker, refuse to go quietly while some in this body seek to balance the budget on the backs of our Nation's smallest and weakest citizens while tax cuts for the strongest and best fed among us are being considered. Don't Hurt the Kids!

Mr. Speaker, I include the letter for the RECORD.

(The letter referred to follows:)

TUFTS UNIVERSITY,
SCHOOL OF MEDICINE,
February 17, 1995.

Hon. SHEILA JACKSON-LEE,
House of Representatives, Washington, DC.

DEAR CONGRESSWOMAN JACKSON-LEE: We wish to share with you an important message concerning child nutrition from physicians representing every state in the nation.

Deans of medical schools, public health schools, and members and officers of the American Academy of Pediatrics are working together as the "Physicians Committee on Childhood Hunger," the Committee's purpose is to insure that American children do not experience increased hunger and malnutrition as the result of proposed policy changes now before Congress.

The Committee is a nonpartisan medical group, united in the belief that it would be medically unwise for Congress to weaken existing federal food and nutrition programs that have been carefully developed over three decades. Proposals to block grant these programs, remove federal nutrition standards, and reduce available funding, all pose a direct threat to the well-being of American children.

Whatever steps Congress takes to address federal budget deficits, doing so at the expense of the nation's children—many of whom already suffer from preventable insults to their health—is unacceptable. We look forward to working with Congressional leaders from both parties to maintain and strengthen these critical federal food programs.

Sincerely,

MORTON A. MADOFF, M.D.,
Dean, Tufts University School of Medicine
GEORGE COMERCI, M.D.,
President, American Academy of Pediatrics

PHYSICIANS COMMITTEE ON CHILDHOOD HUNGER

WILL CONGRESS PRODUCE MORE HUNGRY CHILDREN?

For nearly fifty years Congress has shown a bipartisan commitment to alleviate the worst of human suffering in our nation, especially hunger. Now radical new proposals could end this commitment. If adopted they would weaken every U.S. nutrition program—jeopardizing school lunches for young children, hot meals for the elderly, and nutritional supplements for infants.

One proposal in the "Contract with America" would cut or cripple the very anti-hunger programs that Republicans and Democrats in Congress developed. It would end all federal nutrition programs, replacing them with reduced grants to the states. The problem? Deep cuts in anti-hunger programs at a time when hunger already threatens millions of Americans, especially children. The consequences would be unacceptable.

1. DENYING ADEQUATE FOOD TO CHILDREN CAN PRODUCE LIFELONG DAMAGE

In today's dollars-and-cents climate, everything has a cost. But the costs of a hungry childhood are excessive. Even a period of mild malnutrition can have lifelong effects.

A growing body of scientific evidence reveals that children are far more susceptible to the harmful effects of nutrient deprivation than previously understood. What was once considered relatively mild undernutrition can produce deficits that last a lifetime. And once physical growth and cognitive development are impaired, the damage can be irreversible. Children may carry this damage throughout their schooling and into the workforce. The price of this tragedy is paid by everyone: children who cannot reach their potentials, workers who are not as productive, a nation that is not as competitive.

It makes no sense to let this occur. Hunger is morally offensive and economically unwise.

2. CHILDREN CANNOT FIND FOOD IN SHRINKING PUBLIC BUDGETS

Right now, federal nutrition programs precisely pinpoint people who need help. Kids have to qualify for food, but once they do, they get it. Proposals now before Congress would change this.

Funding cuts and block grants would remove access to federal food programs for millions of poor children. In their place, fifty different programs would be set up, one in each state. Federal funding would be cut by 12% in the first year alone. Poor children would be lopped off programs in every state. Kids—who cannot lobby or vote—would have to compete for shrinking public funding against powerful special interests. Kids would lose. And health care costs would rise even higher to address the needs of more hungry children, *costs which could be avoided if food programs are not cut.*

3. PROPOSED CHANGES WOULD INCREASE THE NUMBER OF HUNGRY CHILDREN

Children will pay the price of shortsighted deficit reduction. Converting successful federal nutrition programs into reduced state grants will result in deep funding cuts—nearly $31 billion by the year 2000. If the proposed Balanced Budget Amendment also passes, cuts will be even greater. In hard times, when tax revenues fall, there will be more hunger but less help.

Drastic changes in the nation's nutrition programs would make them insensitive to economic needs in a particular year. They would no longer insure that those in need could be protected. In fact, by their very nature proposed changes would not guarantee where assistance goes. And Congress could cut critical food programs further at any time.

"IF IT'S NOT BROKEN, DON'T FIX IT"

The nation's nutrition programs are cost-effective and target the truly needy. According to the General Accounting Office, one program alone (Special Supplemental Food Program for Women, Infants and Children) saves $3.50 in special education and Medicaid costs for every prenatal $1 invested. Other research shows that children who get a school meal perform better academically.

The existing programs work, and they work well. The only problem is that they are not reaching enough of those in need. Proposed changes would mean that they never will.

For the richest nation on earth to deny food to its own children is a shortsighted betrayal of our values and our future. It is also unnecessary. In the name of our nation and its children, we call upon reason to prevail in Congress.

□ 2300

IN SUPPORT OF CHILDRENS NUTRITION PROGRAMS

The SPEAKER pro tempore (Mr. MCHUGH). Under a previous order of the House, the gentlewoman from Florida [Ms. BROWN] is recognized for 5 minutes.

Ms. BROWN of Florida. Mr. Speaker, earlier this week, I spoke with 95 little 3-year-olds in my district. Tonight, I rise on their behalf.

The school lunch program has worked well since 1946—it's not broken. America's children are our most important resource for the future.

Studies show that if a child is hungry, taxpayer dollars for education are wasted because when kids are hungry they can't learn. According to the Children's Defense Fund, millions of children will go hungry by cutting funds for school lunches, food stamps, child care, Head Start meals, and WIC programs. Republican double-talk says "cuts to school lunches" aren't "cuts," but block grants to States. That deceives the American people. As a 10-year veteran of the Florida legislature, I can tell you that sending Federal dollars to the States as block grants does not ensure that these funds will go to child nutrition programs.

This school lunch program began after the start of World War II when young men tried to enlist in the military and were rejected because they were malnourished and couldn't pass the physical. President Truman wisely determined that producing healthy youngsters was in the national interest. It still is today.

Congress should not be cutting child nutrition and child care. These cuts take food out of the mouths of hungry children. No big federally subsidized defense contractor has seen a dime threatened. No wealthy individual has seen his special tax breaks cut. In fact, the reason they're making all these cuts is so that the wealthy can get additional capital gains benefits on the backs of suffering children.

Republicans seem to think they can fool some of the people, some of the time. But you can't fool all of the people all of the time. The Contract on America is a contract on children, the elderly, veterans and the hardest working Americans.

The school lunch program works, it feeds hungry children. As the saying goes, "If it's not broke, don't fix it."

IN SUPPORT OF FEDERAL NUTRITION PROGRAMS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey [Mr. PAYNE] is recognized for 5 minutes.

Mr. PAYNE of New Jersey. Mr. Speaker, first I would like to commend the gentlewoman from North Carolina for the special order.

Mr. Speaker, tonight I rise in support of America's children because the Contract With America is an all-out assault on America's children.

Last week, in this Chamber's Committee on Economic and Educational Opportunities, the former Education and Labor Committee, I offered two key amendments which would have protected the most vulnerable members of our society.

One of my amendments would continue to guarantee free meals to children who are under 130 percent of poverty which was repealed in H.R. 999, the Welfare Reform Consolidation Act. My amendment was unilaterally defeated by the Republican supporters of the so-called "contract".

Restoring free meals for children at or below 130 percent of poverty would have continued a policy set in 1974 to help protect the health and well-being of low-income children. The Republican plan as detailed in H.R. 999 will curtail access to the main source of nutrition for some youngsters. Overall funding for the school-based block grant will be capped at a 4.5 percent rate of increase per year.

Under the current law, the rate of increase for fiscal year 1996 would be 5.2 percent, which is still not enough to meet current needs. It is unbelievable that we would risk letting children go hungry in this country under the cloak of fiscal responsibility. And I do not think that most Americans want to shred a critical safety net for children and infants.

If this proposal becomes law, it will be left up to the States or school district to decide whether or not to provide any free meals at all; States will not be required to serve meals to children who cannot afford to pay for them we know that hungry children cannot learn, because hunger impairs their ability to learn.

At a time when much lip service is given to improving education through the use of high-technology learning along the information superhighway, it seems very contradictory to take away such basics as the school lunch program.

I think every American should have deep concerns about what the termination of funding for feeding programs for children says about the direction this Nation is heading.

These are children who did not choose or ask to be born into a situation of poverty. These are children who cannot approach the legislators and legislatures, to let the folks who are making the decisions know that these policies are harmful and damaging to them. And these policies punish them for circumstances over which they have no control. Americans have always been proud of our spirit of concern for one another and compassion for people who are less fortunate than we are.

Has that been wiped out by the Contract With America?

Mr. Speaker, I yield to the gentlewoman from North Carolina [Mrs. CLAYTON].

Mrs. CLAYTON. I thank the gentleman for yielding.

Just to remind the audience, these are faces of real people. Mr. Speaker, I believe tonight the case has been made against H.R. 4, particularly the case of the provision to eliminate nutritional programs. We are more than Members of Congress, Mr. Speaker. We are actually public servants and we must remember that our first responsibility is not to the parties that we are members of but to the people we represent.

At the end of each day, Mr. Speaker, we must be honest with the facts, who have we helped and who have we harmed. Have we helped the few or have we helped the many?

I think President Kennedy had it right 34 years ago when he stated, "A country that cannot help the many who are poor cannot protect the few who are rich." No party or no person has an exclusive on family values and personal responsibility. Those are standards that each of us hold absolutely dear.

□ 2310

And if we do, we care about children.

Mr. Speaker, thank you for the time. I thank the gentleman for yielding to me, and I thank him for his participation.

Mr. SABO. Mr. Speaker, I rise today to express my strong opposition to the welfare provisions contained in the Contract With America, and to express the fears my constituents have communicated to me about cuts to nutrition assistance programs. I would also like to thank Congresswoman CLAYTON for organizing this debate.

The Contract With America would transfer control over Federal programs which provide a safety net to poor children to the States, while at the same time transferring only a portion of the money needed to provide these vital services. Many programs would suffer under this proposal, including those which provide protective services to abused children, those which provide child care assistance to the working poor, and those which provide nutrition assistance to the undernourished.

Approximately 13 percent of the children in Minnesota live below the poverty line, and it is estimated that 160,000 children go hungry as a result. Children who do not receive nutritious meals suffer from poor health and diminished performance in school. I have fought to support successful programs like the National School Lunch Program and the Supplemental Food Program for Women Infants and Children [WIC] which were created to combat childhood hunger and give young people the opportunity to succeed.

One woman living in Minneapolis recently wrote me that the National School Lunch Program has served as a last line of defense for her family against hunger. Since her husband left, she has had difficulty making ends meet. Nevertheless, she can be confident that her two young daughters will receive at least one carton of milk and one nutritious meal a day when we cannot afford to purchase these items.

This family's experience demonstrates the need for a reliable safety net. Nutrition assistance programs like these have represented our nation's acceptance of the basic responsibility we have to care for our children.

The welfare provisions contained in the Contract With America represent a fundamental shift in our Nation's policy toward young people. The contract asserts that we, as a nation, should abdicate responsibility for providing basic protective services, basic support services, and basic nutrition to children in need.

Those who support the contract would have us believe these proposals were crafted in the name of reducing bureaucracy. I am not deceived by such rhetoric. One Federal bureaucracy would be replaced by 50 State bureaucracies. The only thing that would really be reduced is a child's access to a healthy meal.

My home State, Minnesota, is expected to lose $18 million in Federal nutrition funding under the welfare provisions included in the Contract With America. This is a daunting sum of money for a State which already faces a hunger problem. Currently, 1 in every 16 Minnesotans seeks help from food shelves, receiving an annual total of 4 million pounds of food. For example, Minnesota FoodShare, an organization which provides food to needy families throughout the State, would have to dramatically increase their efforts. They would have to generate 17.6 million more pounds of food, or six times the amount of current contributions, to compensate for these lost Federal funds. Clearly, Minnesotans would suffer if these welfare provisions are adopted.

True welfare reform does not destroy a child's safety net. Rather, it makes it possible for families to become self-sufficient. Full-time workers should be able to provide food, shelter, and the basic necessities for their families without being forced to turn to the Federal Government. I have proposed raising the minimum wage by 50 percent to $6.50 an hour. Individuals can only move away from public assistance programs once they are empowered to help themselves. I believe increasing the minimum wage is a key element of any welfare reform.

I strongly urge my colleagues to reject the welfare provisions contained in the Contract With America.

Mr. MOAKLEY. Mr. Speaker, I rise today to express my strong opposition to the Republican proposal to end the Supplemental Nutrition Program for Women, Infants and Children, better known as WIC.

Since its inception, WIC has been a model nutrition and food program. For infants, WIC reduces low-birth weights and lowers infant mortality rates by 25–66 percent among Medicaid beneficiaries. For children, WIC increases readiness to learn, improves diets and increases rates of immunization against childhood disease. For women, it significantly increases access to adequate prenatal care and improves their dietary intake.

Study after study has proven that WIC is not only successful in achieving its goals of good nutrition and health for children, but is also cost-effective. Every dollar spent on pregnant women in WIC saves up to $4 in Medicaid for newborns and their mothers. For every very low birthweight prevented, Medicaid costs were reduced on average from $12,000 to $15,000. The only problem WIC has faced over the years is that it has always been underfunded. Doesn't it make more sense to invest in preventive programs to keep women and their kids healthy than to spend thousands later to keep a premature baby alive because it lacked the care it needed early on?

If WIC is block granted, my own State stands to lose $2.7 million in Federal funding for WIC—which translates into approximately 5,200 women and children being denied WIC services. This will mean local WIC programs will be forced to turn away nutritionally at-risk children and postpartum women. More children will be denied food and health care so that our wealthiest Americans can get a tax break. It's becoming clearer to me who the Republicans made their contract with and where their priorities are.

In my own district, I know first hand how successful WIC has been and how it has helped countless families stay healthy. I know of a young mother of five in Taunton, MA, named Dorothy who is not on welfare, receives WIC so that she can feed her family. If this small investment is denied, she and her family will suffer immeasurably.

Mr. Speaker, I am well aware of the need to get our Nation's finances in order and I intend to work with our new leadership to try to achieve this noble goal. But, I would respectfully suggest that keeping our kids and young mothers well fed and healthy is an infinitely wiser investment for our country than this star wars weapons fantasy—which unfortunately seems to be making an expensive comeback.

I would urge my colleagues to show a little forethought and little heart, as we decide the fate of our country's most precious resource—our children.

GENERAL LEAVE

Mrs. CLAYTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order.

The SPEAKER pro tempore (Mr. McHUGH). Is there objection to the request of the gentlewoman from North Carolina?

There is no objection.

THE REPUBLICAN NUTRITION PLAN

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Georgia [Mr. CHAMBLISS] is recognized for 30 minutes as the designee of the majority leader.

Mr. CHAMBLISS. Mr. Speaker, I have with me today, tonight, my colleague from the 10th District of Georgia, Mr. NORWOOD, and also my distinguished colleague from the First District of Georgia, Mr. KINGSTON.

I yield to the gentleman from Georgia [Mr. KINGSTON].

Mr. KINGSTON. I thank the gentleman. You know, it is too bad, after listening to all the last hour, the people of America had to listen to, and I am sure no one is watching C–SPAN right now, and we cannot respond. I also will point out to the viewers back home that we had a room full of Democrats in here about 30 minutes ago, now they are all gone, now that we have some floor time to talk about some of their ridiculous and absurd bellyaching about protecting bureaucrats.

All we know is that we are going to cut programs to cut out bureaucracy, and all the whining and gnashing of teeth over here to protect bureaucracies, and you know, as you listen to it, everything works. Every program is a good one, and everyone is efficient, and it is saving America, and it is doing this, it is doing that. Why, if we did not have these programs that, you know, America would just cease to exist. It is funny.

Because there are thousands and thousands of programs in America, and I'll be doggoned if the Democrat side of the aisle cannot defend every single one of them.

You two are new up here. You came for change. You came because of the failed promises of more government, more taxes, more regulations did not work.

And is that the message? I would ask of maybe our friend from the 10th District, from the Augusta area, is that what the folks in the 10th District want, more government?

Mr. NORWOOD. I thank the gentleman. I know we gathered here tonight because we were going to talk a little bit about our first 57 days in Congress, and, of course, we have to change what we were going to talk about because we realize everybody on C–SPAN that has been watching for the last hour has been inundated with a great deal of information.

Mr. KINGSTON. If the gentleman will yield, I can promise you nobody was watching that for an hour. They have gone on back down. We have got to win back some people.

Mr. NORWOOD. Presuming there are one or two, I have to tell you, I wondered tonight, as I listened, has any country, any nation on Earth ever, ever spent more money for the poor than the United States of America? And in doing that, what we basically do is we take money from one human being and give it to another which there is nothing in our Constitution that suggests that we have to do that. We do that because, I think, we all do care about those that are less fortunate.

Now, let me just make one other comment about the information. One of the things we could do in Congress that would really help us is that we could get factual information, or perhaps make the Members be responsible for what they say and make sure that what they say is the truth.

But so much of the information that we have heard tonight comes from the U.S. Department of Agriculture and their report that they have put out on the nutritional programs is a report put out by a lot of people who know that they are going to be out of work.

Mr. KINGSTON. Absolutely. If the gentleman would yield, and those, many of those appointees, are Clinton administration big government bureaucrats, political appointees, who are making $70,000–$80,000 a year, and your committees are cutting that out. The USDA, everybody complains about the USDA. They are one of the biggest misinformation bureaus I have ever seen on this school lunch thing. It is absolutely irresponsible what they are doing. You have got a School Lunch Program that is going to go up 4½ percent each year. It is going to cut out bureaucrats. It is going to consolidate programs. It is going to streamline the system so you can feed more hungry children.

And who but the Government would complain about that?

Mr. CHAMBLISS. You know, a revolution occurred in this country November 8, 1994, and the reason that revolution occurred is because the American people are sick and tired of the bureaucrats in Washington running their lives on a daily basis from a personal and a business standpoint.

You know, I am somewhat appalled that the folks on the other side of the aisle who spent the last, and it was not an hour, gentlemen, it was an hour and a half, that we had to listen to this berating of starving children and starving mothers, which is simply misinformation that is being put out from the other side. But those folks represented a total, if I counted correctly, somewhere between 15 and 20 States.

You know, what we, as Republicans, are trying to do is we promised the American people that if you elect a majority of Republicans to the House of Representatives on November 8, 1994, we are going to return your government back to you, and that is exactly what we are doing. We are doing that with this program. We are taking the bureaucrats from Washington out of the picture, and we are returning the program to the States.

I have the confidence in the States that were represented here tonight. I have the confidence in the counties that were represented here tonight on the other side of the aisle that those folks are much more capable of determining what is best for North Carolina, for California, and in our case, for Georgia. They know what is best in their local States and their local counties than the bureaucrats in Washington do.

I was interested, in coming up here on Monday of this week, and looking at the Atlanta Constitution. Our Governor of the State of Georgia, who is a Democrat, came out in wholehearted support of our plan to modernize the School Lunch Program.

Mr. KINGSTON. And he has said that, "Give me the money. I will do a better job than those bureaucrats in Washington."

Mr. NORWOOD. Because he knows he will. Our school superintendent realized that there are 110 Federal employees sitting in Atlanta, GA, directing the food program in Georgia, the lunch program, and she realizes full well that if we will block grant this money back to the States, we are going to cut some bureaucrats out of that group.

Let me mention to the gentlemen, you were talking about earlier, a lot of countries call what was going on as propaganda. It is spreading misinformation. For example, when they were talking about, they keep saying that we are going to cut the money that goes to feed the children as if this is a contest over who is most compassionate, who cares most about the WIC Program, who cares most about the School Lunch Program. But, you know, we are spending $5.9 billion this year on our food programs, not including, not including food stamps, and it is going to rise next year. It is going to rise to $6.1 billion. It is rising 4.5 percent.

Mr. CHAMBLISS. I would like you to reemphasize that, because as I recall, the School Lunch Program came through your committee, did it not?

Mr. NORWOOD. It did.

Mr. CHAMBLISS. We listened to an hour and a half discussion from folks on the other side of the aisle tonight, and anybody who watched that would remember, I hope, that not one single dollar figure was mentioned. They never mentioned how much money was being spent. All they talked about was cuts. Would you just talk about again what you said about the money that is being spent this year and the amount of money that is going to be spent next year on the very program they are complaining about?

Mr. NORWOOD. I will be very happy to. I want to make it very clear we are going to spend in 1995 $5.9 billion. We are going to increase that spending next year to $6.1 billion, and we have also made absolutely sure that 80 percent of this money goes to feed low-income families.

Mr. KINGSTON. If the gentleman will yield, I also found it ironic, serving on the Committee on Appropriations and the subcommittee that oversees USDA, not one of the people, not one of the speakers who was whining about some of these cuts have appeared to our committee to protest it where the work was being done. Now, there were television cameras on. I think that I have got to say that, but where the work was being done, not one of them showed up to the committee and came up with an alternative. But suddenly, you know, after the fact, they are jumping up there.

I also wanted to point out to you guys, because you talked about some things, campaign promises that you made and so forth; it is interesting to note of the previous speakers, I just pulled a list of who voted for the balanced budget amendment. It just so happened that nine of the speakers over here, the last ones, and I do not remember all the speakers, not one of them voted for a balanced budget amendment, and, you now, you can say what you want, but I think that basically tells a major philosophical difference here.

Mr. NORWOOD. Well, probably the big difference is that we care more about the WIC Program than they do, because the greatest threat in the world to the WIC Program is this country going bankrupt. I mean, I have wondered for a long time why we have not been able to balance our budget, and you cannot really tell that from C-SPAN. But sitting on this floor tonight, I see why in the last 25 years the party in control of the budget who writes the checks, the Democratic Party, has not balanced the budget one time, and I can clearly see tonight why they will not. That is all we are trying to do so we can save the WIC Program.

Mr. KINGSTON. How many kids are you going to feed when you are bankrupt?

Mr. NORWOOD. I do not think any.

Mr. KINGSTON. You cannot do that. That is why we always have to bail out Somalia, Rwanda, and all the other countries in the world, because they mismanaged their resources. America has managed it. We have some food.

□ 2320

America has managed it, and we have some food. You are talking about cutting, you are talking about spending the cutting. One of the things that is amazing to me is, out of the thousands of programs, they are all efficient, they are all critical, and every one of those programs has a defender in the U.S. Congress, and, yes, it is bipartisan, it is Republicans and Democrats. But the thing that we have got to do is say no.

Now today, as my colleagues all know, the U.S. Senate voted down the balanced budget amendment. I believe it is a very sad day for America, because of that, because if we cannot say yes to the balanced budget amendment, I can promise my colleagues they cannot say no to voluntary fiscal restraint.

Mr. CHAMBLISS. Exactly right, Mr. KINGSTON, and I could not help while listening to this looking at these photographs of those children that they were parading up here for the sole purpose of trying to arouse the emotion of the people that they are trying to appeal to, but really those pictures were very appropriate to be here. We should have had pictures of children here because it is the children of this country that we need to look out for, and, if we continue to spend money the way we have spent it for the last 25 years, we are going to leave a bankrupt country for our children and our grandchildren.

That is what the balanced budget amendment is all about. That is what we kept hearing during the course of our campaign over the last 2 years. The people in this country are simply tired of the bureaucrats in Washington spending their money unwisely, and that is what we have got to stop.

And I agree with the gentleman. One of the greatest moments I have ever lived was on January 25 in this very Chamber, and I believe it was about this time of night when we watched the 300 votes add up on the wall over here that voted for the balanced budget amendment. That was a great victory for the American people. Today it was a very sad day when the Senate failed to vote for the balanced budget amendment, and I certainly hope that we are going to get that amendment called back up on the Senate side and a very much of a wrong rectified there.

Mr. NORWOOD. Even if they do not call it back up, it is going to tell the

American people who to vote out of the Senate in 1996.

I mean I know the message sent to me was that we want to stop the spending. The American people know we owe $5 trillion. They know we are borrowing over $250 billion every year, and they know that math does not work.

These children in the pictures are in trouble all right, but it is not because we are not funding WIC, and it is not because they are not going to get their school lunch program. It is because in 20 years they are not going to have a way to make a living because we are broke.

Mr. KINGSTON. Well, it is amazing to me that people who say, "I don't want to monkey with the Constitution"; the Constitution is so sacred that to them it seems to preempt the fact that the country is going bankrupt, and that does not make sense because that kind of thinking will not work.

Now the balanced budget amendment, welfare reform, is part of the Contract With America. The other thing which I know both of my colleagues have been leaders on is deregulation of business because, if we really want to help the economically disadvantaged, we are going to create an atmosphere for entrepreneurs because the businessowners create the jobs, the small mom and pops, and I know my colleagues have been leaders in getting business deregulation, and we passed that bill last week.

Can the gentleman tell us something?

Mr. NORWOOD. That is in my Committee on Commerce, and I want make very clear that when we hear some Members here talking, talking about business, they are talking about Amoco, and they are talking about G.M. When I talk about business, I am talking about the mom and pops, the 5 employees, the 3 employees or 10 employees. The small business people are the ones that have been killed with the rules and regulations that just continue to grow.

I mean I think the stack now is about 14 feet tall with all the rules and regulations, and what we are basically doing is we are saying to Federal Government, "No longer can you run roughshod over us with people not elected to office, meaning bureaucrats," and they are going to have to do a risk analysis, and they are going to have to do a cost-benefit analysis on each rule and regulation before they pass them down to us.

But, Mr. KINGSTON, the really exciting part about that is that people will now have a way to voice their concern with this Government because there will be a process of petition, there will be a process of peer review, where we can say, "Wait a minute, that rule makes no sense, that rule is not smart, and it ruins my business," and if they do not listen to that, then we will have legal standing, and I am excited about that because we are going to get this crowd of bureaucrats inside the Beltway to listen to us unless we do have——

Mr. KINGSTON. Well, the gentleman from Georgia [Mr. NORWOOD] on the subject of Government regulations and Government knows best. I know that as a dentist he practices dentistry, and I asked my dentist the last time I was there how many rubber gloves his office used today. One hundred, and he said they never did a cost-benefit analysis on it.

Mr. NORWOOD. That is a hundred for each hand.

Mr. KINGSTON. But he says, "You know, we would not deny that it's good, but there's never been a proven case of a dentist giving somebody a disease from the hand."

Mr. NORWOOD. Of course, thanks to the Federal Government, we cannot ask anybody if they have AIDS. If the gentleman can make sense out of that, tell me after the program. But I will tell the gentleman the dentists in this country are paying now somewhere in the neighborhood of $30,000 a year in extra costs thanks to OSHA.

Mr. KINGSTON. And the dentists have to pass on to their consumers.

I know the gentleman from Georgia [Mr. CHAMBLISS] is a small businessman in Moultrie, GA, and I know, running a small business as he does down there, the Government is all over him even though he is not a Fortune 500 that I know of.

Mr. CHAMBLISS. There is no question about it. I happen to be part owner of a motel in Moultrie, GA, and unfortunately my motel has to comply with exactly the same rules and regulations as General Motors does. We are not nearly as equipped to do that as General Motors, but OSHA demands the same from us that they demand from General Motors.

As the gentleman knows, one thing about my district is it is primarily rural, primarily agricultural, and there is no group of individuals in this country or no segment of the business of this country that is more overregulated than our farmers. Those guys have to spend more time in ASCS offices today complying with rules and regulations that come down from Washington than they do on their tractors, and unfortunately they are not allowed to do what they do best for the most part, and that is produce the world's finest crops and agricultural products.

So we have got to put some common sense back into regulations that are issued out of Washington, and that is exactly what we did last week and this week. We have been dealing with regulatory reform, and we are putting common sense back into the daily lives of folks from a regulatory standpoint.

Mr. NORWOOD. I am afraid—I do not want us to miss a couple of more details about the nutritional programs before we get off that. But one of the things that will make this work is that the amount of increase is 4.5 percent a year for the next 5 years which gives the school lunch program more money to work with, but the administrative costs will come down. In fact we capped them at 2 percent. That is all of that money that they can spend for administrative costs, and what we really truly believe is that we are going to have more food for the children and their lunch programs, and that is what it is all about, that is what the whole purpose of the program is, not to pay bureaucrats.

And I want to talk about WIC one more time because I have had a visit with a lot of people in my hometown who worked within the WIC programs, and they are absolutely excited about the possibility of them deciding a little bit how their program might work best, but, as my colleagues know, there were about 80 programs in this country for nutrition, and we have block granted them and brought them down, and the WIC program, the money that we have got for the family nutrition block grant, we have guaranteed that 80 percent of that goes to WIC.

And I think the gentleman told me just today that WIC is not using all the money we are sending them now. Did I hear the gentleman say that?

Mr. KINGSTON. That is correct. What actually is happening on WIC, there is $25 million in the budget that is a carryover. They are not using that. It is money left over. It represents 2 percent.

Now we got a deficit of over $200 billion. Each year we spend $200 billion more than we bring in. Under the President's recently introduced budget just 3 weeks ago that deficit goes on for 5 years and increases the debt another $1 trillion, and our national debt is about $4.8 trillion right now.

□ 2330

So here is a 2-percent cut in a program on money that they are not using, and you would think that the sky is falling.

Mr. NORWOOD. Are we being bad because we are cutting money that they cannot spend because they have got so much they are spending it all up? What is going on with that?

Mr. CHAMBLISS. Isn't that what November 8 was all about? Didn't the American people tell us on November 8 that we want you doing a better job of spending our tax money? Make cuts where cuts are necessary; where cuts aren't necessary, don't make the cuts. But please do a better job of spending our tax money wisely. I think that is a classic example.

Mr. KINGSTON. Let me ask you this. You are both freshmen, closer to the people than people that have been here a long time.

Mr. NORWOOD. I have been working with the people for the last 30 years. I am a lot closer.

Mr. KINGSTON. You already made the statement one of your surprises was the propaganda you get, and we have to admit it comes from both sides of the aisle. Do you feel that way too, Mr. CHAMBLISS?

Mr. CHAMBLISS. Absolutely. I will tell you about one other interesting fact that occurred to me shortly after I got here, and it was somewhat of a surprise. I was somewhat idealistic when I came here. I thought coming in with 72 other freshmen Republicans, that we would be able to have a real impact upon what is done in this very Chamber. And I think we are having an impact. But the problem that I saw very quickly is that the bureaucracy in Washington is layer after layer after layer of bureaucracy. And exactly what we are doing by block granting money back to the States is doing away with that bureaucracy. That is the way you cut spending. That is way you cut Government intervention. And we are making those inroads in cutting that bureaucracy.

Mr. NORWOOD. It is called cutting bureaucrats and cutting paperwork and spending our money on what we are trying to do, which is to feed children.

Mr. KINGSTON. I think the gentleman raises a good point. Let me ask you this: Balanced budget amendment, you both support it; line item veto, you both support it; strengthening America's military, and a very difficult decision on cutting the military budget some, you both support it. We are going to have a tax bill coming up today, another $17 billion cut. It will have to be probably passed on the backs of freshmen like you because we will not get any support from the more liberal Members who want to defend every program.

That is going to be hard on you, because you are going to have your constituents coming up and saying don't cut this or that. Are you ready for it? Is that what you heard that your mission is from the people back home?

Mr. NORWOOD. It is going to be a lot harder on us if we don't. I know they told me in that election that they want this budget balanced, they want us to deal with this debt, and they want it done by cutting spending. The important thing I believe is that we do it fairly. You have to take a little bit from everywhere across the board. Yes, you are right we do gets visits, you know that, every 15 minutes all day long, with somebody saying you got to balance that budget, but leave my program alone.

Well, that will not work, and everybody knows that will not work. But we must do this very, very fairly and intelligently and across the board. Again, I point out in the nutritional programs, feeding the children, we didn't cut. We increased it 4.5 percent.

Mr. CHAMBLISS. The gentleman makes a very good point, that everybody who comes to talk to us about their program has a good program. There are a lot of good programs up here. But those same people will also tell you that we understand you got to balance the budget, and we want you to treat us fairly.

That is the message that we were given on November 8, the message being that look, we know there are good programs out there. We know you have got to continue spending in some of those programs. But we know also that unless wholesale cuts are made, and those cuts go to reduce the deficit, we are never going to balance the budget in this country, and we are never going to get rid of that $4.5 trillion. What we have been assigned to do by the people of this country is to not single out any segment of the country or industry or any segment of people. We have got to be equal in our cuts, we have got to treat everybody fairly, and, most importantly, the cuts that we make have got to go toward reduction of the deficit and not toward funding other social programs out there.

Mr. NORWOOD. Earlier today when we were listening to this litany of half-truths, one of the statements that kept coming up is that well, we want a capital gains tax so we can give it to our rich friends, and that will keep us from funding the nutritional programs. Well, first, I think we have already decided that we are funding the nutritional programs.

But I think it is pretty important to understand that a cut in capital gains very well will help reduce the deficit, not add to the deficit. But our friends from the other side who have been there so long, I think 40 years or so, they have been there so long they do not realize that a cut in capital gains tax is not for the rich, it is for many, many average Americans.

Mr. KINGSTON. I think it is important to point out that the last round of serious tax cuts took place in the early 1980's under the Reagan administration. As a result of that, 18 million new jobs were created, we had the longest peacetime prosperity that America has ever had, and revenues doubled from 1980 to 1990. Now, unfortunately, revenues were outpaced by spending.

Mr. NORWOOD. By a Democratic Congress who had control of the checkbook.

Mr. KINGSTON. The Democrats did have the Congress, but the Republicans had the Senate for a while and the Republicans had the White House. So I think that we can take the blame equally. Both parties are to be blamed. But the fact is if we know it is going to happen, shame on us to let it happen again. We know we are going to get increased tax revenues because of capital gains tax, because less regulations on business will create more jobs, but it will also create more revenues. Shame on us for not holding the line on spending.

Mr. CHAMBLISS. The gentleman makes a very good point, that every time we have had a tax cut in this country, tax revenues have gone up. That is what tax cuts are all about. When we make tax cuts, we give tax incentives to the business community to expand their businesses. And when they expand their businesses, they create jobs. When they create jobs, they add taxpayers to the roles. Those taxpayers are new sources of revenue for this country that we have never had before. And when we increase those revenues, that more than offsets the tax cuts that are given out there.

Mr. NORWOOD. You would sort of think that the other side, after 40 years, would catch on that you sort of got to take care of the goose that lays the golden egg, and the goose is free enterprise, people that work out there using their own money, not sending it up here to Washington.

Mr. KINGSTON. Let me ask you something now. I know both of you guys started out your morning at least at 9 o'clock, because that is when I saw you at your first meeting, although you probably had three more by then. Many mornings by 9 o'clock we have been to two or three different meetings. It is now 11:30 and we need to wrap it up. We have folks still waiting to talk.

Was one of your surprises the long hours, how many hours you work? Speaking as newcomers, what have been your surprises? Then I think we better say good-night before we get run out of here.

Mr. CHAMBLISS. I was used to working long hours practicing law in south Georgia.

Mr. KINGSTON. He ain't going to tell the truth. I got a lawyer and doctor telling me how hard they work.

Mr. NORWOOD. One of the things I have been thinking about doing, Mr. KINGSTON, is see if you drop a bill to get us paid by the hour up here.

Mr. CHAMBLISS. Minimum wage.

Mr. NORWOOD. I start my day everyday at 6:30, and generally it ends at midnight. I think that is wonderful, because I was sent here to do a job, and I was sent here to win, and there is just not too many hours in the day I am not willing to give to it, particularly as long as we are winning. I have never seen Americans with as big a smile as on their faces as I have in the last 6 weeks going home.

Mr. CHAMBLISS. Absolutely. Let me just say, Mr. KINGSTON, I started my morning at the prayer breakfast on the House side, and you weren't there. We missed you this morning.

Mr. NORWOOD. We prayed for you.

Mr. KINGSTON. You prayed for me. I appreciate it.

Mr. CHAMBLISS. I just want to echo what my good colleague, Dr. NORWOOD, says there, that the people in my district are really excited about what is going on up here right now. We took an unprecedented step on September 27, 1994, when we signed the Contract With America. Never before had a political party promised in writing what it was going to deliver to the American people.

We have lived up to what we said we were going to do in that contract. The people in my district are excited about what is going on up here. They are telling me every time I go home "keep it up. Keep doing what you are doing." That is what we are going to do. We are going to do what we said we were going to do in that contract, and we are going to do it within that 100 days.

Mr. NORWOOD. I think we are going to do what we were told do. The Contract With America is not NEWT GINGRICH's contract, it is a contract taken from the people of this country when they told us last summer what they wanted to do. We are going to do it, too.

Mr. KINGSTON. I think you are right, I think this is not about NEWT GINGRICH, it is not even about the Contract With America, or the Republican majority. It is about a change and challenge in the status quo.

We, the American people, want less Government, less regulations, more personal freedom. We want a Government that works. I think that has a momentum all by itself right now.

Mr. Speaker, I have enjoyed being with the gentleman.

Mr. CHAMBLISS. I enjoyed this colloquy, Mr. Speaker.

LOOKING FORWARD TO A SOCIETY WHERE ALL CARRY THEIR OWN WEIGHT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut [Mr. FRANKS] is recognized for 5 minutes.

Mr. FRANKS of Connecticut. Mr. Speaker, I look forward to the day when we as Members of Congress are not debating the virtues or faults of block grants and entitlements for food and nutrition programs, housing, or child care programs. Mr. Speaker, I look forward to the day when people and their families and/or their extended families are carrying their own weight totally.

I look forward to living in a society, Mr. Speaker, where no one receives something that they have not earned, a society where people work for money and people support their children. I think our Founding Fathers would be amazed that we would be discussing concepts so basic for able-bodied men and women. For most Americans, if we do not work, we do not get paid.

The Bible says "You will reap what you sow." The Bible also says "God helps those that help themselves." However, thanks to our current welfare system, these statements are not true.

Mr. Speaker, I look forward to the day that if one is given something without working or paying for it, it would be deemed as a loan that would be paid back, not a bottomless pit of money distributed with no strings attached.

I realize, Mr. Speaker, that everyone hits bumps in the road, and there should be ways to assist people at such times. However, when this happens, people should be willing or forced to take a job, work for the State temporarily, or get a welfare loan that would be paid back or worked off.

Block grants or entitlements, people should be merely entitled to an opportunity to succeed. Yes, Mr. Speaker, I look forward to the day when the word "welfare" is used as frequently as the word "dinosaur."

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. WISE) to revise and extend their remarks and include extraneous material:)

Mr. OWENS, for 5 minutes, today.

Mr. TOWNS, for 5 minutes, today.

Mr. FILNER, for 5 minutes, today.

Mrs. CLAYTON, for 5 minutes, today.

Mr. BONIOR, for 5 minutes, today.

Ms. DELAURO, for 5 minutes, today.

Ms. ROYBAL-ALLARD, for 5 minutes, today.

Mr. FRANK of Massachusetts, for 5 minutes, today.

Mr. BISHOP, for 5 minutes, today.

Mr. STENHOLM, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Ms. PELOSI, for 5 minutes, today.

Mr. PASTOR, for 5 minutes, today.

Ms. MCKINNEY, for 5 minutes, today.

Mrs. MEEK of Florida, for 5 minutes, today.

Mr. POMEROY, for 5 minutes, today.

Mr. JOHNSON of South Dakota, for 5 minutes, today.

Mr. FIELDS of Louisiana, for 5 minutes, today.

Mr. MASCARA, for 5 minutes, today.

Mrs. MALONEY, for 5 minutes, today.

Mr. HILLIARD, for 5 minutes, today.

Mr. OLVER, for 5 minutes, today.

Ms. JACKSON-LEE, for 5 minutes, today.

Ms. BROWN of Florida, for 5 minutes, today.

Mr. MOAKLEY, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

(The following Member (at the request of Mr. BONILLA) to revise and extend his remarks and include extraneous material:)

Mr. WHITFIELD, for 5 minutes, on March 3.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. WISE) and to include extraneous matter:)

Mrs. MEEK of Florida.

Mr. POMEROY.

Mr. BARCIA.

Mr. BONIOR.

Mr. ACKERMAN.

Mr. MONTGOMERY.

Ms. MCCARTHY.

Mr. VISCLOSKY.

Mr. SCHUMER.

Mr. HAMILTON.

Mr. NADLER.

Mr. KLINK.

Mr. FILNER.

Mr. HILLIARD.

Mr. FAZIO.

Mr. WARD.

Mr. MINGE.

(The following Members (at the request of Mr. BONILLA) and to include extraneous matter:)

Mr. COMBEST.

Mr. SOLOMON, in two instances.

Mr. ZELIFF.

Mr. SMITH of New Jersey, in two instances.

Mr. QUINN, in two instances.

Mr. MCINTOSH.

Mr. GILMAN.

Mr. HASTERT.

Mr. BONILLA.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. FOX of Pennsylvania, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. FRANKS of Connecticut, for 5 minutes, today.

ADJOURNMENT

Mr. FRANKS of Connecticut. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 44 minutes p.m.), the House adjourned until tomorrow, Friday, March 3, 1995, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

430. A letter from the Director, Standards of Conduct Office, Department of Defense, transmitting a report of individuals who filed DD Form 1787, Report of DOD and Defense Related Employment, for fiscal year 1993, pursuant to 10 U.S.C. 2397(e); to the Committee on National Security.

431. A letter from the Deputy Under Secretary of Defense (Environmental Security), transmitting a letter concerning the annual report on the progress DOD has made concerning environmental compliance at military installations; to the Committee on National Security.

432. A letter from the President, Export-Import Bank, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

433. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report involving U.S. exports to various countries, pursuant to 12 U.S.C. 635(b)(3)(i); to the Committee on Banking and Financial Services.

434. A letter from the Chairman of the Board, National Credit Union Administration, transmitting the office's pay structure for fiscal year 1994 and fiscal year 1995, pursuant to Public Law 101–73, section 1206 (103 Stat. 523); to the Committee on Banking and Financial Services.

435. A letter from the Secretary of Housing and Urban Development, transmitting a report entitled, "Effect of the 1990 Census on CDBG Program Funding"; to the Committee on Banking and Financial Services.

436. A letter from the Executive Director, Thrift Depositor Protection Oversight Board, transmitting a report on the status of various savings associations, pursuant to 12 U.S.C. 1441a(k); to the Committee on Banking and Financial Services.

437. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the 1995 international narcotics control strategy report, pursaunt to 22 U.S.C. 2291(b)(2); to the Committee on International Relations.

438. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the President's certification of the 29 major illicit narcotics producing and transit countries pursuant to section 490 of the Foreign Assistance Act; to the Committee on International Relations.

439. A communication from the President of the United States, transmitting a report regarding United States Armed Forces in Somalia (H. Doc. No. 104–42); to the Committee on International Relations and ordered to be printed.

440. A letter from the Director, U.S. Information Agency, transmitting a draft of proposed legislation to authorize appropriations for fiscal years 1996 and 1997 for the U.S. Information Agency, and for other purposes, pursuant to 31 U.S.C. 1110; to the Committee on International Relations.

441. A letter from the Comptroller General of the United States, transmitting a report on independence of legal services provided to inspectors general appointed by the President; to the Committee on Government Reform and Oversight.

442. A letter from the Special Assistant for Management and Administration, Executive Office of the President, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

443. A letter from the Chairman, Merit Systems Protection Board, transmitting the 16th annual report on the activities of the Board during fiscal year 1994, pursuant to 5 U.S.C. 1209(b); to the Committee on Government Reform and Oversight.

444. A letter from the Chairman, National Endowment for the Arts, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

445. A letter from the Executive Secretary, National Security Council, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

446. A letter from the Director, Peace Corps, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

447. A letter from the Chairman, Railroad Retirement Board, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

448. A letter from the Chairman, Securities and Exchange Commission, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

449. A letter from the Executive Director, Thrift Depositor Protection Oversight Board, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

450. A letter from the Director, U.S. Trade and Development Agency, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

451. A letter from the Director, U.S. Information Agency, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

452. A letter from the Secretary of the Interior, transmitting the Department's views on H.R. 925; to the Committee on Government Reform and Oversight.

453. A letter from the Secretary, Department of Transportation, transmitting a report on tanker safety and liability, pursuant to Public Law 102–241, section 32 (105 Stat. 2222); to the Committee on Transportation and infrastructure.

454. A letter from the Secretary, Department of Veterans Affairs, transmitting the 1994 annual report, pursuant to 38 U.S.C. 214, 221(c), 664; to the Committee on Veterans' Affairs.

455. A letter from the Chairman, Prospective Payment Assessment Commission, transmitting the annual report on the Prospective Payment Assessment Commission, pursuant to 42 U.S.C. 1395ww(e)(6)(G)(i); to the Committee on Ways and Means.

456. A letter from the U.S. Trade Representative, transmitting a draft of proposed legislation to authorize appropriations for fiscal years 1996 and 1997 for the Office of the U.S. Trade Representative; to the Committee on Ways and Means.

457. A letter from the Under Secretary of Defense, transmitting the DOD implementation plan of matching of disbursements to obligations before payment, pursuant to Public Law 103–335, section 8137; jointly, to the Committees on National Security and Appropriations.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. HYDE: Committee on the Judiciary. H.R. 956. A bill to establish legal standards and procedures for product liability litigation, and for other purposes, with an amendment; referred to the Committee on Commerce for a period ending not later than March 7, 1995, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(e), rule X (Rept. 104–64, Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. THORNTON:

H.R. 1109. A bill to improve budgetary information by requiring that the unified budget presented by the President contain information which facilitates consideration of choices between spending which is consumption oriented, spending which is of a development character, and spending which is in the nature of a capital investment, and for other purposes; to the Committee on Government Reform and Oversight.

By Mr. ALLARD (for himself, Mr. Herger, Mr. Crane, and Mr. Duncan):

H.R. 1110. A bill to amend the Congressional Budget Act of 1974 and the Balanced Budget and Emergency Deficit Control Act of 1985 to limit the rate of growth of Federal outlays to 2 percent per year; to the Committee on the Budget, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DORNAN (for himself, Mr. Hyde, and Mr. Funderburk):

H.R. 1111. A bill to clarify the war powers of Congress and the President in the post-cold war period; to the Committee on International Relations, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BREWSTER (for himself, Mr. Young of Alaska, Mr. Coburn, Mr. Istook, Mr. Largent, Mr. Lucas, Mr. Watts of Oklahoma, Mr. Abercrombie, Mr. Baesler, Mr. Baker of California, Mr. Ballenger, Mr. Barcia, Mr. Barrett of Nebraska, Mr. Bonilla, Mr. Browder, Mr. Camp, Mrs. Chenoweth, Mr. Coble, Mr. Condit, Mr. Cramer, Mr. Crapo, Ms. Danner, Mr. Deal of Georgia, Mr. DeLay, Mr. Dickey, Mr. Dooley, Mr. Edwards, Mr. Fields of Texas, Mr. Ganske, Mr. Pete Geren of Texas, Mr. Gene Green of Texas, Mr. Hall of Texas, Mr. Hancock, Mr. Hayes, Mr. Herger, Mr. Hobson, Mr. Laughlin, Mr. Lipinski, Mr. McInnis, Mr. Montgomery, Mr. Ney, Mr. Orton, Mr. Ortiz, Mr. Parker, Mr. Peterson of Minnesota, Mr. Poshard, Mr. Roberts, Mr. Rose, Mr. Schaefer, Mr. Schumer, Mr.

SMITH of Michigan, Mr. STENHOLM, Mr. TANNER, Mr. TAUZIN, Mr. THORNTON, Mrs. THURMAN, Mr. VOLKMER, and Mr. ZELIFF):

H.R. 1112. A bill to transfer management of the Tishomingo National Wildlife Refuge in Oklahoma to the State of Oklahoma; to the Committee on Resources.

By Mr. BURTON of Indiana:

H.R. 1113. A bill to suspend until January 1, 1998, the duty on Fluridone aquatic herbicide; to the Committee on Ways and Means.

By Mr. EWING (for himself, Mr. COMBEST, Mr. KLINK, Mr. HOEKSTRA, Mr. MARTINEZ, Mr. PASTOR, Mr. FAWELL, and Mr. BONILLA):

H.R. 1114. A bill to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compacters that meet appropriate American National Standards Institute design safety standards; to the Committee on Economic and Educational Opportunities.

By Mrs. LOWEY (for herself, Mrs. MORELLA, Mrs. CLAYTON, Ms. MCKINNEY, Ms. LOFGREN, Mr. FROST, Mr. BEILENSON, Ms. PELOSI, Ms. WATERS, and Mr. SERRANO):

H.R. 1115. A bill to amend title IV of the Social Security Act to reduce teenage pregnancy, to encourage parental responsibility, and for other purposes; to the Committee on Ways and Means.

By Mr. MONTGOMERY (for himself, Mr. STUMP, Mr. BUYER, Ms. WATERS, Mr. EVANS, Mr. CLYBURN, and Mr. MASCARA):

H.R. 1116. A bill to amend title 10, United States Code, to increase the educational assistance allowance with respect to skills or specialties for which there is a critical shortage of personnel; to the Committee on National Security.

By Mr. PARKER:

H.R. 1117. A bill to provide for the establishment of the Margaret Walker Alexander National African-American Research Center; to the Committee on Economic and Educational Opportunities.

By Mr. POMBO (for himself and Mr. DOOLITTLE):

H.R. 1118. A bill to amend title 10, United States Code, to prohibit any Federal grant or contract from being awarded to any institution of higher education that does not allow the Secretary of Defense to maintain or establish Senior Reserve Officers' Training Corps units at that institution; to the Committee on National Security.

By Mr. RAMSTAD:

H.R. 1119. A bill to amend the Internal Revenue Code of 1986 to revise the treatment of deferred compensation plans of State and local governments and tax-exempt organizations; to the Committee on Ways and Means.

By Mr. ZELIFF (for himself, Mr. KASICH, Mr. MICA, Mr. MCCOLLUM, Mr. SHAYS, Mr. ZIMMER, Mr. INGLIS of South Carolina, Mr. GILCHREST, Mr. HOKE, Mr. RAMSTAD, Mr. TALENT, Mr. COX, Mr. SOLOMON, Mr. SMITH of Michigan, Mr. HANCOCK, Mr. BLUTE, Mr. HERGER, Mr. BASS, Mr. DOOLITTLE, Mr. BURR, Mr. JONES, Mr. FUNDERBURK, Mr. RADANOVICH, Mr. DORNAN, Mrs. SEASTRAND, and Mr. STEARNS):

H.R. 1120. A bill to provide for the consolidation of Federal employment assistance programs, to provide increased notice of the availability of the earned income tax credit, and to repeal the temporary FUTA surtax; to the Committee on Economic and Educational Opportunities, and in addition to the Committees on Ways and Means, Agriculture, and Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. McCOLLUM:

H.J. Res. 73. Joint resolution proposing an amendment to the Constitution of the United States with respect to the number of terms of office of Members of the Senate and the House of Representatives; to the Committee on the Judiciary.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

19. By the SPEAKER: Memorial of the Legislature of the State of Wyoming, relative to repealing the Gun-Free Schools Act of 1994; to the Committee on Economic and Educational Opportunities.

20. By the SPEAKER: Memorial of the House of Representatives of the State of New Mexico, relative to block grants; to the Committee on Economic and Educational Opportunities.

21. By the SPEAKER: Memorial of the Legislature of the State of Wyoming, relative to the Conference of the States; to the Committee on the Judiciary.

22. By the SPEAKER: Memorial of the Legislature of the State of Wyoming, relative to health reform matters; jointly, to the Committees on Ways and Means, Commerce, and Economic and Educational Opportunities.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 24: Mr. LOBIONDO.

H.R. 44: Mr. MCDADE, Mr. LIPINSKI, Mr. DOYLE, Mr. SAXTON, Mr. GEJDENSON, Mr. RIGGS, Mr. WELLER, Mr. CRAMER, Mr. MURTHA, and Mr. KILDEE.

H.R. 70: Mr. CLEMENT.

H.R. 127: Mr. BONIOR, Mr. WELDON of Florida, Mr. WARD, and Ms. KAPTUR.

H.R. 195: Mr. EMERSON, Mr. BARRETT of Wisconsin, Mr. ZIMMER, and Mr. FROST.

H.R. 218: Mr. STEARNS.

H.R. 303: Mr. BEREUTER.

H.R. 312: Mr. ROYCE.

H.R. 326: Mr. BAKER of Louisiana and Mr. HERGER.

H.R. 330: Mr. KLUG.

H.R. 371: Mr. MONTGOMERY and Mr. LEWIS of California.

H.R. 373: Mr. PACKARD.

H.R. 438: Mrs. CHENOWETH and Ms. LOWEY.

H.R. 493: Ms. MCKINNEY and Mr. JOHNSTON of Florida.

H.R. 530: Mr. BOEHNER, Mr. FAWELL, Mr. HUTCHINSON, Mr. BURTON of Indiana, Mr. BAKER of Louisiana, Mr. KLUG, Mr. FIELDS of Texas, Mr. GILLMOR, Mr. FORBES, Mr. SOLOMON, Mr. MCINTOSH, Mr. TRAFICANT, Mr. BALLENGER, Mrs. MEYERS of Kansas, Mr. REGULA, Mr. HASTINGS of Florida, Mr. CALVERT, Mr. MONTGOMERY, Mr. BUYER, Mr. JACOBS, and Mr. LAHOOD.

H.R. 539: Mr. MCCRERY and Mr. MONTGOMERY.

H.R. 582: Mr. FOX and Mr. LUCAS.

H.R. 607: Mr. FRANK of Massachusetts, Mr. CHRYSLER, Mr. SOLOMON, and Mr. EHRLICH.

H.R. 674: Mr. SERRANO.

H.R. 682: Mr. JONES, Mr. HUTCHINSON, Mr. HAYES, Mr. UPTON, Mr. CALVERT, and Mr. NETHERCUTT.

H.R. 753: Mr. ROHRABACHER, Mr. BURR, Mr. BAKER of Louisiana, Mr. GUTKNECHT, Mr. BARCIA of Michigan, and Mr. FORBES.

H.R. 762: Mr. KLINK.

H.R. 783: Mr. CRAPO, Mr. WELLER, Mr. EVERETT, and Mr. BOUCHER.

H.R. 809: Mr. LIPINSKI.

H.R. 840: Mr. JONES.

H.R. 852: Mr. SMITH of New Jersey, Ms. PELOSI, Mr. LIPINSKI, Mr. FRAZER, and Mr. BEILENSON.

H.R. 860: Mr. STOCKMAN.

H.R. 873: Mr. PETERSON of Minnesota, Mr. REED, Mr. MOORHEAD, Mr. SOLOMON, Mr. MINGE, and Mr. CLEMENT.

H.R. 881: Mrs. CLAYTON, Mr. EVANS, and Mr. NADLER.

H.R. 936: Mr. RANGEL and Mr. OWENS.

H.R. 939: Mrs. ROUKEMA.

H.R. 969: Mr. UNDERWOOD and Mr. HANSEN.

H.R. 982: Mr. PAYNE of Virginia, Mr. BAESLER, and Mr. TAUZIN.

H.R. 1066: Mr. VISCLOSKY, Mr. ZIMMER, and Mr. UNDERWOOD.

H. Con. Res. 10: Mr. SOUDER, Mr. TORRES, Mr. BACHUS, Mr. FILNER, Mr. PACKARD, Ms. WOOLSEY, and Mr. DICKS.

H. Con. Res. 12: Mr. MONTGOMERY, Mr. FALEOMAVAEGA, and Mr. ROYCE.

H. Res. 45: Ms. WOOLSEY, Mr. LIPINSKI, Mr. JOHNSON of South Dakota, and Mr. DEFAZIO.

EXTENSIONS OF REMARKS

SMITHSONIAN SLAPS OUR HEROES IN THE FACE

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. SOLOMON. Mr. Speaker, it is tragic that a museum funded by public dollars dare revise our history and distort the facts surrounding the use of atomic bombs on the Japanese cities of Hiroshima and Nagasaki in World War II. While this was an extreme use of force, it was used reluctantly against a mischievous and unyielding empire. It is certainly appropriate to include this exhibit regardless of the present sentiment toward such weapons since it culminated in the end of the war and placed the United States at the forefront of the free world.

Indeed, Mr. Speaker, if the Smithsonian wanted to revise the *Enola Gay* exhibit, they might start by acknowledging this action actually saved many American, and even Japanese, lives for that matter. In fact, as we paid tribute to the marines who fought the historic battle of Iwo Jima this past week, Mr. Harwit and others at the Smithsonian would have done well to ask these survivors the likelihood of a Japanese surrender without use of these devastating bombs. Then, Mr. Speaker, they could ask these heroes if the Japanese would have been likely to surrender upon being faced with a massive and superior invasion force.

As supposed historians, these people need not ask such insulting and embarrassing questions, but simply look at the facts. Clearly, the Japanese actions at Iwo Jima and other island invasions indicated they would not give up until the last of them was killed. Now, I ask the learned scholars at the Smithsonian, what kind of toll would have been extracted by an invasion of the Japanese mainland? I for one cringe to think of the loss of lives such an act would have rendered and would be ashamed to face those who gave their lives at places like Iwo Jima. After all, Mr. Speaker, these heroes directly enabled the air raids which ultimately broke the Japanese will and allowed democracy to triumph over imperialism.

Mr. Speaker, at this time I would like to submit an editorial from the spring 1995 edition of the Marine Corps League describing the insult such irreverent action is to our service people.

SMITHSONIAN'S INSULT

Fifty years ago this August the United States dropped the atomic bomb that forced Japan to surrender, ending World War II. Fifty-four years ago come December 7, the Japanese made their sneak attack on Pearl Harbor that caused the United States to enter World War II. The two events cannot be separated. Without the first event, there could not have been the second. And any historian—or museum—who views it otherwise is either ignorant or deceitful. But when that museum is the Smithsonian's Air and Space Museum and the historian is its director, Martin Harwit, the ignorance and the deceit are shameful.

The Smithsonian's planned exhibit of the *Enola Gay* is so blatantly distorted that it insults every American Marine, Sailor, and Soldier who fought in the Pacific. In World War II Marines did not suffer insults gladly from the enemy. Neither should we do so today from Smithsonian revisionists like Mr. Harwit.

We join the American Legion and other veterans organizations in condemning the Smithsonian's planned *Enola Gay* exhibit. We echo the statement by U.S. Representatives Peter Blute, Sam Johnson, and Stephen Buyer that Harwit should be fired. We endorse the Washington Post editorial that calls for the Smithsonian to clean up its mess.

If it does not, Congress should shut off the millions the Smithsonian gets every year from taxpayers like us. That wouldn't be too high a price to pay for being insulted, would it? After all, we did win the war, didn't we?

—*The Editors*

IN RECOGNITION OF PAUL E. FITZPATRICK

HON. JACK QUINN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. QUINN. Mr. Speaker, I rise today in recognition of Paul E. Fitzpatrick. Mr. Fitzpatrick is a constituent who represents the very best of community spirit and activism.

Paul Fitzpatrick has been recently honored as the first ward Irishman of the Year. This award, with its admirable criteria and distinguished history, is a testament to Mr. Fitzpatrick's achievements.

The Irishman of the Year award has been received by the likes of former mayor of Buffalo, James Griffin, and former Doorkeeper of the House of Representatives, James T. Molloy.

Mr. Fitzpatrick is employed as a recreational therapist at the West Seneca Developmental Disabilities Service Office. In this position, Mr. Fitzpatrick provides recreational and leisure activities for the developmentally disabled both on the campus of the developmental center and in various community settings.

In addition to helping disadvantaged youths, Mr. Fitzpatrick is the head coach of the Timon-St. Jude varsity football team. Mr. Fitzpatrick has won over 100 games and successfully led his teams to 11 division championships.

On the football field and off, Mr. Fitzpatrick has proven himself to be a dedicated community activist always willing to help others. His countless successes and his years of service are evidence of his sincere devotion to bettering the community.

EULOGY FOR DETREVILLE ELLIS

HON. G.V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. MONTGOMERY. Mr. Speaker, on January 31, 1995, E. DeTreville Ellis, colonel, U.S. Army (retired) was buried at Arlington National Cemetery. He was buried with full military honors, most appropriate for a man who served his country with great distinction for so many years.

At the time of his death, Colonel Ellis was 104 years of age, the oldest living graduate of West Point. General Eisenhower and General Bradley were two of his classmates—the class of 1915. He also was a graduate of the University of South Carolina, Harvard Business School, the Command and General Staff School, and the Army War College.

During World War I, Colonel Ellis served in the 2d Cavalry on the Mexican border and as assistant chief of staff with the 10th Infantry Division. In World War II, he served in the Office of the Assistant Secretary of War. He was commanding officer of the European Quartermaster Depot during the Berlin Airlift. He received the Army Commendation Ribbon with Oak Leaf Cluster. Colonel Ellis retired from active duty in 1950.

Mr. Speaker, DeTreville Ellis was a unique individual. He lived his life to the fullest, always helping others. He loved the military and West Point. But most of all, he loved his family and many friends. Survivors include a sister, Julia Hamlin, Summerville, SC; a son-in-law, Tracy E. Mulligan, Jr., Chevy Chase, MD; two grandsons, Tracy Ellis Mulligan and John R. Mulligan, both of Silver Spring, MD; six great-grandchildren, Tracy, Rebecca and Joseph Mulligan and Sharon, Christopher and Dennis Mulligan, and a host of nieces, nephews, cousins and friends. He will be greatly missed.

The following eulogy, written by Colonel Ellis' grandson, Tracy Ellis Mulligan, was delivered by U.S. Army Chaplain, Maj. Stephen D. Turner, at the Fort Myer Chapel, January 31, 1995:

EULOGY FOR E. DETREVILLE ELLIS, COLONEL, USA (RET.), MARCH 12, 1890–JANUARY 22, 1995

It is altogether fitting that the funeral service for E. DeTreville Ellis be held in an Army chapel. It is even more fitting that there be many people in attendance, those from his roots in South Carolina, from West Point, from his wife's family, from the Army, from the organizations in which he participated and from the friends and family with which he was so involved.

He was born on James Island, South Carolina at a time when the leaders of the business, of government and of the military were veterans of the Civil War.

He went to a one room schoolhouse, by horse and buggy, studied by kerosene lanterns and knew an extended family including

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

his Ellis and Lebby grandparents. At Age 16½ he went to college at the University of South Carolina in Columbia, working to pay his way through and graduating in 1910.

He won a competitive examination for entrance to the United States Military Academy at West Point. Among the 164 who graduated in the class of 1915 were Generals Eisenhower and Bradley. All of whom were in F Company, all of whom were imbued with the West Point creed of Duty, Honor, Country.

Three days after graduation, he married Laura Harris, a yankee from Pittsburgh, and they "pulled together in double harness" until her death in 1974. It might be noted that Mrs. Ellis taught Chaplain Miller, presiding here today, at his 2nd grade Sunday school class.

After graduation, he served in the combat arms of the Army, first in the 2nd cavalry, and then in the infantry. While in the sixteenth cavalry on the Mexican border, he commanded and trained, as he put it with quiet humor, "a troop of 108 men who had never seen a horse and 108 horses who had never seen a man." It became among the best troops in the regiment.

After World War I, he transferred to the Quartermaster Corps, held responsible positions in the Army, and attended the various schools until his retirement in 1950. He graduated from the Industrial College, the Command and General Staff School, the Army War College, and the Harvard Business School, developing associations he maintained for many years. He also played a great deal of polo. Two assignments which he recalled as highlights were service in the Assistant Secretary of War Office for 3½ years just prior to World War II, where he was involved in the inner workings of the Army, and as Commanding Officer of 20,000 people of the European Quartermaster Depot in Giessen Germany just after WW II.

Upon retirement, he invested wisely in the stock market, which gave him the ability to travel widely and continue his life long involvement with people. He returned to South Carolina each year, visiting relatives of various and increasing generations, West Point classmates, and Army friends. He even visited those descendants who served in the Navy, although he naturally continued to root for Army in the annual football game.

While in his 70's, he wrote two books on the family history, including genealogy, pictures and extracts of hundreds of family letters and documents going back beyond the American Revolution. His forward states, "This book was started for my daughter, grandsons, nieces, nephews and their families in order that they might learn something about their ancestors and the part they played in the history of the States and Country during the past 3½ centuries". He presented copies of his books to hundreds of people, refusing any payment.

He and his wife, Laura, maintained an extensive correspondence over many decades. These included not only his generation but those of the new one, two, and three generations of family and friends. He typically typed on a portable typewriter, retaining a carbon copy and any incoming correspondence. He placed his correspondence, tens of thousands of documents, at the South Carolina Library in Columbia for posterity.

He was always involved with people, especially at important points in their lives. He was secretary and scribe of his West Point class, and was on the Board of Directors of the Army Mutual Aid Association. He helped numerous widows and their children in burial arrangements including many at Arlington, social security affairs, and other matters associated with the loss of a loved one. Valuing education, he began in 1921 to help family members through college.

He began polo while at West Point and while he was an expert horseman, he drove cars from the Model T Ford until he gave up driving at age 96. In the 1960's and 70's, when younger relatives arrived at his annual June 15th anniversary parties with long hair and beards, he welcomed them, and conversed about history. Perhaps they were similar in appearance to the Civil War veterans of his boyhood. When he received a microwave oven at age 101, he learned to use it, saying it was a good invention. On his last night in a nursing home, at age 104, he exercised in his wheelchair, conversed with family and went to dinner in the dining room. He was a man who adapted to change. He survived the loss of his wife, Laura Harris Ellis, and remarried, at age 91, Winnie Robinson, widow of a classmate. He survived all of his West Point classmates and became the oldest living graduate in the history of West Point.

DeTreville Ellis brought people together, was involved with their lives in the daily happenings and in their significant events.

It is altogether fitting that there are people here from family—nephews, grandchildren, son-in-law, grand-nephews, niece, great grand-nieces, great grand-nephews, great grandchildren, cousins—West Point, the Army, neighbors and friends.

He lived the values of Duty, Honor, Country and of family. The people with whom he was involved, who knew him and those who knew of him were enriched by his presence.

IN SUPPORT OF THE BUREAU OF ATF

HON. CHARLES E. SCHUMER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. SCHUMER. Mr. Speaker, the Bureau of Alcohol, Tobacco and Firearms and its professional law enforcement agents have come under vicious, unfounded attack in recent weeks.

These attacks are driven by those who oppose the programs that this Congress has enacted into law and directed ATF to administer. Foiled by their inability to repeal or block those programs, these forces have directed their blind rage against the thousands of men and women at ATF who risk their lives to do their duty loyally, faithfully, and lawfully every day.

I would ask that the following statement of the Director of ATF, John Magaw, be entered into the RECORD to help add some semblance of balance and fairness to this tragic, ongoing slander:

STATEMENT FROM DIRECTOR MAGAW

In the last few months, the Bureau of Alcohol, Tobacco and Firearms has endured more than its usual share of controversy and criticism. One radio talk show host, who calls himself his listener's "favorite convicted felon", talks up shooting our agents in the head. The debate prior to a recent vote by the House of Representatives on the exclusionary rule was set up to make the vote look like a vote of fealty to the National Rifle Association.

Today (March 1) the NRA ran a full-page ad in the Washington Post accusing ATF of "abuses that range from intimidation and harassment to confiscation or destruction of property, entrapment, fabrication of criminal charges, even deadly assault."

The NRA may speak as it wishes and how it spends their money is between its leadership and its members. However, absolute respect for their right to do something does not include respect for what is said. Nor should the use of the "Big Lie" technique go unanswered.

ATF has a long and proud history of working effectively in some of the most controversial areas of public policy and law enforcement. A by-product of that experience is an openness to all parties, and a willingness to listen to fair criticism while letting defamation pass us by.

The America public gets a 35 to 1 return on every dollar it spends on ATF—just in revenue collections. For that dollar, they get an entirely integrated enforcement effort that collects taxes, regulates major industries and enforces criminal statutes. Each function provides skills, knowledge and abilities that directly promotes the efficiency of the others. In just one firearms program, focusing on armed career criminals, ATF has prevented nearly 4 million crimes and the loss to potential victims of $11 billion.

Our enforcement efforts take place in a system of checks and balances that are designed and function to protect the rights of all citizens.

There is a balance of agencies to protect against too great an accumulation of power. Prosecutors and judges form levels of independent review and approval. Juries of citizens try the facts. Media and interest groups watch. Within ATF there is a separate Office of Inspection and at Treasury, an Inspector General. Congress and the Administration oversee and question our performance. ATF is not outside that spectrum, but honored to be a part of it.

In fiscal year 1994, ATF recommended nearly 10,000 criminal defendants for prosecution. Who were they?

47% were convicted felons; 49% were involved in drug-trafficking; 25% had prior violent histories.

They were gang members and gun-runners, bombers and arsonists. They were the enemies of law abiding Americans—gun owners or not. Over 80 percent of them will be convicted and those convicted will serve their time. The armed career criminals I spoke of earlier are serving 27,000 years of mandatory imprisonment.

While dangerous criminals may well dread having ATF investigate them, the legal industries ATF regulates recognize that the bureau understands and recognizes their position as a legal and legitimate industry. The firearms industry in particular is a partner of American law enforcement in enabling ATF to trace the guns used in crime.

Most of all, our peers in law enforcement know us as open, efficient, cooperative, and supportive partners.

In the past decade, AFT agents have served over 10,000 search warrants. Not one of them has led to any finding of constitutional violations by an employee acting outside the scope of his or her authority.

When I came to ATF, I had nearly three decades of law enforcement service in the Ohio State Patrol and the United States Secret Service behind me. What I found in ATF were hard-working, committed, talented women and men with a particular focus on the most dangerous offenders in the Nation. No amount of advertizing will change the truth about how well and honorably they serve their fellow citizens—no matter how much you spend on it or how big you make it.

TRIBUTE TO THE SHOREFRONT JEWISH COMMUNITY COUNCIL

HON. JERROLD NADLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. NADLER. Mr. Speaker, I rise today to pay tribute to a truly remarkable organization, the Shorefront Jewish Community Council, as they celebrate their 20th anniversary.

The council aids and assists over 13,000 people a year. The resettlement activities of the council have integrated scores of emigres from the former Soviet Union into American society and work force. The actions of the Shorefront Jewish Community Council have also contributed to a revitalization of many area neighborhoods.

I would also like to congratulate the excellent work of the staff and volunteers of the council led by their president, Harry Schwartz, and executive director, Judah H. Klein.

At a time of fiscal restraint, neighborhood organizations will play an ever-increasing role in aiding those in need. I am fortunate to have the Shorefront Jewish Community Council to work with residents of the Brooklyn shorefront, an area which I represent.

Mr. Speaker, I would ask my colleagues to join me in honoring the Shorefront Jewish Community Council on this momentous occasion. I would also ask my colleagues to join with me in paying tribute to the honorees of the council's 20th anniversary brunch, Aileen R. Golden, who will be receiving the Advancement of Education Award, and Hyman Cohen as Man of the Decade.

TRIBUTE TO HUGH A. WESTBROOK

HON. CARRIE P. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mrs. MEEK of Florida. Mr. Speaker, I rise today to honor a dear friend of many years, a man of great compassion and vision and one of south Florida's truly outstanding citizens: Hugh A. Westbrook.

Hugh started his career as a pastor for 10 years in North Carolina and Florida. He is an ordained United Methodist minister with a master's of divinity degree from Duke University and a bachelor of arts degree from Emory University. He served as a hospital chaplain specializing in the care of terminally ill patients and their families.

He was also an instructor and associate dean at Miami-Dade Community College, where he collaborated in the development of an innovative curriculum in death education that emphasized studies leading to a better understanding of the psycho-social issues surrounding death.

Hugh Westbrook went on to found Hospice, Inc., and was instrumental in the passage by the Florida State Legislature of the statue that provided for the licensing of hospices in Florida and the establishment of the first standards of quality for the care of terminally ill people—standards that are still used today. He was also cochair of the National Hospice Education Project, which played a key role in the approval by Congress, in 1982, of Medicare reimbursement for hospice services.

Mr. Speaker, Hugh Westbrook will be celebrating his 50th birthday on March 17, and I want to extend to him warm greetings and best wishes on this important occasion. Hugh has had a major impact on south Florida and the Nation during his first 50 years. I am frankly looking forward to seeing what he will accomplish in the next 50.

HONORING MARJORIE JAYSON

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. GILMAN. Mr. Speaker, I am pleased to focus the attention of our colleagues the upcoming annual dinner of the Hastings-on-Hudson Chamber of Commerce in my congressional district.

This year, the special guest of honor will be an outstanding woman who has given of herself for many years. Marjorie Jayson is an individual who has especially devoted herself to make Hastings-on-Hudson a community which is the envy of the Nation.

Marjorie, who is 90 years young, was a special education teacher who taught hearing-impaired children how to lip read and helped those with speech impairments. She was also a fourth and fifth grade teacher.

Marjorie, who is affectionately known as "Marge" to her many friends and admirers, has also served as a Girl Scout troop leader, a leader in the Soroptimist Club, the First Reformed Church, in the Women's Club, and as a library volunteer.

One of her former students, Hastings resident Rose Egiziaco, said:

> Mrs. Jayson is a real sweetheart, a very caring, compassionate person. Her students were her children; each one of us was very special to her. She gave us the self-esteem we needed. In her book, we all could achieve and we did. She is truly an elegant lady. Many of her former students still have contact with her; that alone tells you how much she means to us.

The Hastings-on-Hudson Chamber of Commerce was well advised to choose Marjorie Jayson as their Citizen of the Year, not only because of her outstanding contributions, but also because this annual dinner dance raises a great deal of funding for high school scholarships. The Hasting-on-Hudson Chamber presents these scholarships once a year in honor of the Citizen of the Year, and $35,000 in scholarships have been given since the program was initiated in 1982.

Mr. Speaker, I invite my colleagues to join with us in saluting Marjorie Jayson, a superb person, teacher, and citizen, and in congratulating the Hastings-on-Hudson Chamber of Commerce for having the wisdom to honor this most sterling daughter of their community.

TRIBUTE TO THE CENTENNIAL COMMUNITY OF FRASER, MI

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. BONIOR. Mr. Speaker, this coming Sunday, March 5, 1995, the people of the city of Fraser, MI, are celebrating the centennial of the city's incorporation. The Village of Fraser was incorporated on that day in 1895.

One hundred and thirty-seven years ago, in 1858, Alexander James Fraser saw an opportunity to establish a village when he learned that the Chicago, Detroit, and Grand Trunk Railroad Co., was planning to build a railroad line between Detroit and Port Huron. Since it was common practice to build a station approximately every 10 miles, Fraser purchased 80 acres and was successful in persuading the railroad to build a depot on his land. The Fraser Depot and the surrounding land became known as the Village of Fraser. Although the depot became a center for transportation and communication, Fraser's hopes of building a thriving subdivision were not successful in his lifetime.

The community surrounding Fraser's Depot had became a booming business district by 1895. It has continued to grow and Fraser's 80-acre village is now 4 square miles. This thriving suburban community is home to nearly 14,000 people and although it is considered a residential suburb of Detroit, Fraser continues to be home to many successful businesses.

The members of the Fraser Historical Commission are proud of their community and are planning at least one event each month during this centennial year to celebrate the anniversary. I am proud to have the privilege of representing the people of Fraser and wish them success with each event.

As I said, the city is marking its year long centennial celebration with a birthday party this Sunday. I am looking forward to attending and ask that my colleagues join me in wishing a happy 100th birthday to the city of Fraser. May the next 100 years continue to be prosperous.

INTRODUCTION OF THE LOCAL GOVERNMENTS FLOW CONTROL ACT OF 1995

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. SMITH of New Jersey. Mr. Speaker, on Tuesday, February 28, MIKE OXLEY and I introduced the Local Governments Flow Control Act of 1995 (H.R. 1085) with the bipartisan support of several of our colleagues. This is the latest step toward providing relief for hundreds of communities nationwide who face enormous financial and long-term waste management burdens as a consequence of the Supreme Court's Carbone versus Clarkstown, New York decision.

As you know, that court decision interpreted the dormant Commerce Clause of the U.S.

Constitution in such a way that it invalidated flow control laws which local governments have used over the past decades as an effective waste management tool. In fact, flow control has enabled communities in more than 40 States to meet the Federal mandates of the Resource Conservation and Recovery Act [RCRA] in a cost-effective, safe, and efficient manner.

Since the Court decision, these communities have found themselves seriously overburdened. Because they needed to secure revenue bonds to finance costly, but highly advanced waste technologies, these communities now face a total outstanding debt of more than $10 billion. Several communities have already seen their credit ratings downgraded as a result of this debt—including five counties in my home State of New Jersey. And they are likely to be joined by others as investment services weigh the consequences of Congress' inability to swiftly grandfather their flow control authority.

You may recall that I introduced legislation on the first day of the session as a legislative remedy. That bill—the Community Solvency Act (H.R. 24)—is the identical text of legislation approved by the House by unanimous consent on October 7, 1994. The substance of H.R. 24 and that which Mr. OXLEY and I have now introduced (H.R. 1085) is largely the same; but the 11th-hour drafting style of H.R. 24 has been enormously improved in the Local Governments Flow Control Act of 1995.

This new bill represents the same strong commitment to local governments as its predecessor. Those communities which had practiced flow control or had made significant commitments of time, resources, and money—as specifically defined in both bills—toward implementing flow control are still grandfathered. They will be able to maintain the integrated waste systems which they have labored to establish in an effort to meet the waste treatment and disposal needs of their residents in a cost-effective, safe, efficient, and environmentally sound manner.

This new bill also represents our dedication to the principles of competition and a free and open market. All communities will be required to meet strict needs test analyses—to prove that flow control can meet the needs of the community better than an entirely unfettered market—and detailed competitive designation processes—to ensure that there is no unfair discrimination against any private or public sector market participant.

Finally, where the Local Governments Flow Control Act represents a vast improvement over its predecessor is in its simplicity. The numerous cross references and redundant phrases have been eliminated and replaced with definitions and well-ordered sections making this bill far easier to read and comprehend. Furthermore, those sections of the bill which had been ambiguous and a possible invitation to future litigation have been clarified.

This fine-tuning has brought the substance of the bill even closer to the position which several private sector waste companies are now supporting. Both Mr. OXLEY and I believe that this bill is truly a compromise which can benefit all parties at the negotiating table—local governments, Wall Street, private sector waste companies, and recycling interests.

Yesterday, I presented this bill to the Senate Subcommittee on Superfund, Waste Control and Risk Assessment during a hearing held on this matter and interstate waste control. I pointed out in my testimony that, particularly for my home State of New Jersey, the two issues are linked. Within the span of two decades, New Jersey went from the top importer of other States' waste to the No. 2 exporter. Twenty-five years ago, the State instituted a carefully designed waste management statute based on the premise of flow control. This statute places a strong emphasis on recycling efforts and integrated waste systems which are managed by the counties of the States, either individually or through interdistrict agreements.

One of the key objectives of New Jersey's waste management laws is self-sufficient waste management by the year 2000. The State is well on the way to its goal. Recycling is close to 60 percent in parts of the State and averaging 50 percent overall. Upon completion of two projects already in the works when the Carbone decision was handed down, the State expects to be capable of treating and disposing approximately 88 percent of its waste within its own boundaries. When the plan has been fully implemented, the State expects to export only 5 percent of its solid waste; thereby addressing through its own initiative the concerns of Midwestern States which are seeking to close their borders to other States' waste.

However, as I previously noted, flow control is the linchpin to the success of the New Jersey system. Without that authority, we can no longer be confident of meeting our worthy goals.

I urge you to join Chairman OXLEY, Mr. PALLONE, Mr. MINGE, Mrs. ROUKEMA, Mr. SAXTON, and me in cosponsoring the Local Governments Flow Control Act of 1995 and in the effort to provide prompt passage through the Congress of this important and necessary relief for local governments.

WESTMINSTER CELEBRATES SIXTH NATIONAL CHAMPIONSHIP

HON. RON KLINK

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. KLINK. Mr. Speaker, I rise today to congratulate Westminster College, in New Wilmington, PA, the 1994 NAIA Division II Football National Champions.

The Westminster Titans finished the 1994 season with a trip to the NAIA national championship game in Portland, OR, on Saturday, December 17, 1994. They won the national championship by defeating the defending national champions, Pacific Lutheran University, by a score of 27 to 7.

Winning has long been a tradition at Westminster, and this year marks the 100th year of football at the college. Over the past 100 years, Westminster has set numerous NAIA Division II records. They have 6 Division II titles; 9 championship game appearances, including 5 in the last 7 years and 2 straight; 15 playoff appearances, including 8 straight; and 30 playoff victories. All of these are NAIA bests.

In addition to the success of the team, several individuals were honored by being named to the NAIA Football All-American Team. They include Andy Blatt—running back—and Brian Germanoski—defensive tackle—named as first team selections; Craig Mills—inside line backer—as a second team choice; and Tim NcNeil—defensive back-wide receiver, Nate Armstrong—offensive tackle, Sean O'Shea—quarterback, and B.J. Hoening—defensive tackle—all earning honorable mention. Head coach, Gene Nicholson, was also named 1994 NAIA Division II Football National Coach of the Year.

I commend the Titans on their successful season, in this, their 100th year of football, and look forward to another century of continued success.

TRIBUTE TO THE 90TH ANNIVERSARY OF GAINES COUNTY

HON. LARRY COMBEST

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. COMBEST. Mr. Speaker, I rise to salute Gaines County, TX, as they celebrate their 90th anniversary. In October 1905, Gaines County was officially organized. This new county was named for James Gaines, an original signer of the Texas Declaration of Independence, whose fierce spirit of independence, strength, and steadfastness was exemplified by the early settlers of Gaines County.

West Texas and the Permian Basin area have a rich and varied heritage, beginning with the native Americans and Mexicans who roamed the Llano Estacado and continuing through current day with the ranchers and farmers who thrive in modern-day Gaines County. When ranchers first arrived, cattle and sheep roamed the fertile grasslands of the area, and even today these animals provide a livelihood for many who live there. After the ranchers, the farmers arrived, and experienced the difficulties of west Texas agriculture. The farmers, too, survived hard times when they discovered rich soil beneath the sandy surface. This fertile soil is the very reason that today Gaines County is the leading cotton and peanut producing county in the State of Texas.

The farming and ranching industries of Gaines County should in no way overshadow the rich oil supply which makes Gaines County one of Texas' major oil suppliers. In light of the severe challenges that the oil industry has faced in recent times, the nature of this profession has changed dramatically, and the people of Gaines County are working to meet these ever-changing needs.

For 90 years, Gaines County has persevered through hardship and adversity to become a strong and thriving community. In the next 90 years, I am confident the county will continue its growth and expansion and remain a wonderful place to live, work, and raise families.

H.R. 1022

HON. DAVID MINGE

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. MINGE. Mr. Speaker, on February 28, 1995, Mr. JOHNSON of South Dakota submitted comments regarding H.R. 1022, the Risk Assessment and Cost-Benefit Act. I share Mr. JOHNSON's views and wish to restate them for the record. I voted for H.R. 1022 yesterday as a means of allowing the debate to continue. Like Mr. JOHNSON, I find the bill flawed and in need of much improvement by the Senate or conference committee. If the bill is not improved, I will not be able to vote for its final passage. Overall, I support the general thrust of requiring risk assessment and cost-benefit tests for Federal regulations. However, like the gentleman from South Dakota, I believe that the current version of this legislation will lead to costly increases in Federal bureaucracy and litigation, and possibly pose a risk to public health and safety. The House leadership seems more concerned about making political statements with this bill than in crafting legal language that would actually serve the public interest. I am optimistic, however, that this issue will receive more deliberate and responsible consideration in the Senate, and I believe it should now be moved to the Senate for that consideration. Again, I want to make it clear that like Mr. JOHNSON, I will not vote for final passage of this legislation unless significant improvements have been made.

TRIBUTE TO ROBERT D. CLARK

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. FAZIO of California. Mr. Speaker, I rise today to honor a selfless community leader and constituent, Mr. Robert Clark. For 25 years, Mr. Clark served as general manager of the Glenn-Colusa Irrigation District [GCID]. He was also secretary to the district's board of directors.

His job was a difficult one, and he carried it out with incredible success and professionalism. Water is an extremely important resource, especially to the farmers and ranchers in agricultural-rich California. Back home, my constituents depend on this all-important resource for their livelihood and for the lives of a country that depends on the nourishment from their agricultural product.

Mr. Clark was responsible for ensuring water delivery to approximately 175,000 acres of land. He was in charge of mitigating all of the problems associated with water delivery, and let me tell you from firsthand experience the headaches are, indeed, many. I have worked with Mr. Clark and the GCID board of directors on difficult and ongoing issues such as salmon protection, riffle restoration, and dredging.

In this time of intense struggle for balance among environmental protection and water and land use, Mr. Clark was a rational and calm voice. His constant demeanor was remarkable considering that he supervised water deliveries to over 20,000 acres in three national wildlife refuges. On his watch, GCID irrigated up to 140,000 acres in fertile agricultural land.

Among his most notable accomplishments, was a $20 million rehabilitation program for the district's main canal system, including the construction early last decade of a new pump station. That effort added capacity and increased the security of the water distribution system.

Mr. Clark also accomplished the refinement of hydraulic measurement within the district, which led to the implementation of more equitable water distribution to water users.

In addition to his work at GCID, Mr. Clark has participated in professional water resource activities, worked as an international consultant in the irrigation field and served as a director of the Water Education Foundation.

Mr. Speaker, I ask my colleagues to join me today in honoring Mr. Clark for his many years of service to the Glenn-Colusa Irrigation District. Personally, I will miss him very much. I wish him much happiness and continued success in all his future endeavors.

KCPT PRESIDENT SPEAKS OUT ON PUBLIC BROADCASTING

HON. KAREN McCARTHY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Ms. MCCARTHY. Mr. Speaker, with the House of Representatives on the verge of considering rescissions legislation that would cut Federal funding for the Corporation for Public Broadcasting by 15 percent in 1996 and 30 percent in 1997, I commend to my colleagues a statement recently prepared by William R. Reed, the president of KCPT—channel 19, which is Kansas City's public television station.

Bill's statement, which is a response to common reasons given for the elimination of Federal funding for public broadcasting, follows:

REASONS GIVEN FOR THE ELIMINATION OF FEDERAL FUNDING FOR PUBLIC BROADCASTING

(By Bill Reed)

1. Public broadcasting funds liberal and controversial programs with federal dollars. Taxpayers' money should not be used for these purposes.

While KCPT does not receive large numbers of complaints about our political coverage, those received come equally from both left and right. For example, KCPT received many calls from liberals who were upset that McNeil/Lehrer devoted a large amount of time interviewing Senator Dole and Congressman Gingrich. And on the other side, we hear complaints about Bill Moyers' alleged liberal bias. But on balance, I believe KCPT is perceived by most viewers to be apolitical or non-political, as we should be. I think that McNeil/Lehrer is the most balanced program covering political issues on television anywhere.

PBS is aware of this criticism, and I have heard that staff are taking steps to ensure more internal balance in individual programs, rather than relying on balance over a series of programs. PBS President Ervin Duggan's proposed Democracy Project, which is coverage of the 1996 national elections, will have an emphasis on fairness and balance.

The statement that public television occasionally airs controversial programming is true, and the program of controversy last year was Armistead Maupin's Tales of the City, a six-hour series about San Francisco in the mid 1970s.

Before KCPT aired Tales, Dave Welsh, Vice President for Broadcasting, Katherine Soden, Director of Programming, and I viewed the series at least twice. The decision to air the series was not an easy one because we knew that it would be controversial—it contained strong language, drug use, homosexual relationship and some brief nudity (and no sex or violence). But it was also brilliant television with a legitimate look at a specific time and place in our history. The series was a moral tale with the central character, Mary Ann, a young women from the Midwest who did not give in to the lifestyles of that time—the drug use and the promiscuity—because of her values. Tales of the City was more a story about the emptiness of lives lived without commitment, without a moral core, than anything else.

KCPT received about 200 telephone calls and letters about the series—about 100 for and 100 against. Congress, however, reportedly received over 100,000 postcards as a result of a national campaign by the American Family Association and its president, the Reverend Donald E. Wildmon, against the series.

Even if one did not like the series, should funding be eliminated because of six hours of programming? What about the other 5,994 hours KCPT airs each year? Obviously, Tales and other potentially controversial programs raise some profound questions. Should KCPT censor programs if we think they might be controversial, even if they are good television dealing with legitimate issues? What about individual choice? And what about the "off" button? But these questions, as they relate to this series, anyway, may be moot. PBS has decided not to fund a sequel to Tales of the City.

2. We should privatize public television.

One of public television's strengths is that it serves many specialized audiences: Sewing programs, the old Lawrence Welk shows, cooking programs, GED programming, gardening programs, carpentry programs, how-to-fix-up-your-house programs, and painting programs. All these target audience programs would disappear because there simply are not large enough audiences to support them with commercial advertising.

Programming currently airing on Discovery, Arts and Entertainment and Nickelodeon cable channels attract smaller audiences than on public television, but they continue to exist financially because those channels are owned by large corporations with a financial interest in the success of cable television as a larger business. For example, Nickelodeon is owned by Viacom, Inc., which also owns the MTV and VH-1 cable channels. While there are commercials on those channels, they are also supported by the cable companies' carriage fees and their owners' subsidies. None of those three cable channels is making a profit—they are loss leaders for the cable companies. But, to the public and to members of Congress, the impression is that those channels are making it in the marketplace because they see commercials on them, and everyone knows that commercial television is a successful business. That is not true for all cable channels, but that news is seldom reported because the cable channels not making profits continue to operate.

To privatize public television means that we would have to at least break even to continue to exist, which would be impossible if we continue to broadcast the special audience programs that we are currently carrying. Privatization would mean, as we know, common-denominator programming to serve large enough audiences to attract enough commercials to bring in the revenues to break even or to make a profit. Privatization would be the end of what we call public television today. And, privatization would mean another commercial television station (and probably another commercial radio station) in Kansas City. Do we need another one? Would it even be financially feasible?

Finally, the original FCC intent in reserving television channels was to create educational television services across the country that would be delivered by television stations that did not have to make a profit to exist. Privatizing public television would take away from the public the one television channel that has been established to provide programming and services that otherwise would not be available on commercial television.

3. Federal funding for public broadcasting is an involuntary tax.

Since we do not vote directly on what programs and projects are funded with tax money, it follows that all federal programs are funded with involuntary tax funds.

The federal government, through the Federal Communications Commission (FCC), licenses commercial television and radio stations, allowing them to use the public airways to distribute programs, to sell advertising to pay for those programs and to return dividends to the owners of those stations. Each of us pays for the advertising costs on commercial radio and television every time we buy one of the products advertised—and we pay far more than the one dollar per year per citizen (the amount paid each year in tax support of public broadcasting) in increased costs for those products. How about that involuntary tax?

4. When there were only three commercial television networks, there were reasons to provide support for an alternate public television service, but cable television has eliminated that need with services such as the Discovery Channel and Arts and Entertainment available for adults and Nickelodeon for children.

Nationally, over 36 percent of all television households do not subscribe to cable television because either they cannot afford to or they have chosen not to (cable television is available to over 95 percent of all television households). Public television, of course, is free to anyone with a television set, while cable users pay a monthly fee.

While Discovery and Arts and Entertainment are excellent cable networks, they do not provide the breadth of service that viewers receive from KCPT—public affairs programs, children's fare or educational services, all part of KCPT's daily schedule of services.

Discovery, Arts and Entertainment and Nickelodeon provide no local programs or services. Compare these services to KCPT's City Watch; Marquee, Viva, Kansas City!; Kansas City Week in Review; specials such as our coverage of the Mid-West Health Summit; Women's Health issues; political coverage and debates; A great Current Running, a 90-minute documentary on Charles Gusewelle's epic trip down the Lena River in Siberia; KC Crossroads, a 60-minute pilot now being considered for funding by CPB as a national series featuring jazz and blues from the Kansas City area; and Ain't Seen Nothin' Like It Since, a 90-minute documentary on the world champion Kansas City Monarchs of the former Negro Baseball League; and our outreach efforts such as Sesame Street Pre-School Education Project (PEP); GED on TV; The Ready to Learn Project; Outstanding Community Kids; Break the Mold Teacher Awards; and Act Against Violence, an anti-violence outreach project now in the planning stages.

In a speech last March, Nickelodeon's president, Geraldine Laybourne, announced a $30 million three-year initiative, demonstrating, according to her, the breadth of Nick's commitment to children's programming. The fact is that public television invests over $16 million each year on children's programming, or an average of $48 million over three years (not including local expenditures on children's programming). She went on to say that Nickelodeon could concentrate on creating entertaining children's programming, while PBS had to incorporate education into its children's shows—thereby making them dull programs. Preschoolers are drawn to PBS programs far more than commercial children's shows precisely because they so effectively combine fun with learning. Our mission is not to offer fun for fun's sake—cable and broadcast commercial television offer that—but fun programs that also help children love to learn. Experts agree on the importance of developing basic learning skills at an early age, the skills that ultimately enable children to succeed in school and interact socially.

Discovery, Arts and Entertainment and Nickelodeon have no responsibilities to the local communities receiving their programming nor is any revenue generated for their services returned to those communities. KCPT's $5.3 million budget is spent primarily in the greater Kansas City area. KCPT pays local companies for janitorial services, electricity, maintenance and other services. KCPT employs 65 people who receive $2 million in salaries. In fact, KCPT is the only locally owned telecommunications organization serving the greater Kansas City area. KCPT's Board of Directors come from the communities served by the station and are responsible to those local communities for KCPT's operations.

5. Public television's educational services are no longer needed because cable and satellites are available to deliver those services.

Once again localism and commercial-free programming are keys in addressing this statement. KCPT serves 350,000 K–12 students in Kansas and Missouri each year. The instructional television programs for that service are selected by the teachers who will use them. KCPT also has a staff of resource specialists for hands-on training for the teachers, and more than 300 hours of training each year is provided by these staff.

In designing our on-line computer support system for our teachers and students, Link 19, local components of the service were created in response to the needs of the schools in the area KCPT serves.

KCPT is now constructing an electronic training facility that will enable us to help teachers master the use of telecommunications in the classroom and improve the quality of education in our community.

KCPT initiates numerous local outreach activities including Sesame Street PEP; GED on TV; Outstanding Community Kids; Breaking the Mold awards for outstanding teachers; women's health-care outreach programming; and reducing violence in our youth campaign.

Local components of the Ready to Learn project, to begin January 16, 1995, are being developed with the advice of over twenty community organizations that are part of KCPT's Ready to Learn Advisory Council.

The National Teacher Training Institute provides a two-day training workshop with college credit for in-service development for more than 100 K–12 faculty on an annual basis in math and science education.

SUMMARY

Federal funds for KCPT are matched by nine community dollars for every one federal dollar—a good return on investment by any measurement. All federal support for public broadcasting amounts to about one dollar per year per person. Are there any other federal programs you know about that return on that small investment all that public broadcasting does? Support for public broadcasting is an example of a federal program that works, a private/public partnership that returns quality national and local educational and informational programs and services not available anywhere else.

COMMEMORATING TEXAS INDEPENDENCE DAY

HON. HENRY BONILLA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. BONILLA. Mr. Speaker, today, commemorates Texas' independence from a despotic government. During the Texas revolution, 1835–36, Texians, as they called themselves, struggled, fought, and ultimately achieved a victory over a much larger foe. These freedom loving men, women, and children sacrificed their all in the pursuit of liberty. One of the greatest symbols of the ultimate sacrifice for Texas freedom—the Alamo—is in my hometown of San Antonio, TX.

The Alamo, originally a mission inhabited by European priests and their native American flock, still stands in tribute to the 189 fallen defenders.

Many of the defenders of the Alamo were natives of other American States. Represented and well honored are men from Alabama, Georgia, Kentucky, Vermont, Massachusetts, Mississippi, Ohio, Pennsylvania, Illinois, Louisiana, New Jersey, North Carolina, South Carolina, Virginia, Missouri, Maryland, Arkansas, and New York and the Volunteer State of Tennessee. To my fellow members from these States—Texas and Texans are grateful for their sacrifice.

Let us also not forget that amongst those who died defending the cradle of Texas freedom and who fought along side of such famous names as Travis, Bowie, and Crocket were Spanish surnamed, native born "Tejanos." These Tejanos were proud to fight for a just cause. I am proud of their legacy and I am proud of my Texas heritage.

Remember the Alamo! Viva Los Tejanos! Long Live the Lone Star State, and God Bless America!

A WELL EARNED DAY OF RETIREMENT

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. VISCLOSKY. Mr. Speaker, I would like to take this opportunity to mark March 3, 1995, as the retirement day for four employees of the United Steelworkers of America. This is a well-earned day of retirement and celebration for Leonard Hickey, Gayle Cody, R.L. Pace, and Catherine Hatch, whose distinguished careers in the labor movement have made their communities and Nation a better place to work and live.

Leonard "Len" Hickey, United Steelworkers of America, district 31, assistant director, was born in Muddy, IL, and began working at the Taylor Pipe Works in 1952. A heater at Bethlehem Steel's Burns Harbor plant, Len was elected as the first president of Union Local 6787. He later served in negotiations with Bethlehem and National Can. Len's career is distinguished by his leadership on issues of fair pay, incentives, and winning union members the respect of their employers.

Gayle A. Cody, United Steelworkers of America, district 31, executive secretary to Director Parton, was born in East Chicago, IN, and began working at the Hammond Times. Gayle started her career with the USWA, district 31 in 1966. She served as a USWA secretary under four previous directors prior to becoming the executive secretary under current director, Jack Parton. During her 29 years of service Gayle has been involved in all major areas of USWA activities.

R.L. Pace, United Steelworkers of America, district 31, subdistrict director, was born in Hub, MS, and was drafted into the Army in 1953. In 1956, he moved to Chicago, joined the National Guard's First Battalion 178th Infantry, and began working at Burton Auto Springs. He was promoted to staff representative in 1969, and has held a number of offices—including president, in Local 6183. In 1984, he was appointed to the position of subdirector of sub 4 and graduated from Northeastern Illinois University in 1985.

Catherine Hatch, United Steelworkers of America, district 31, secretary to Director Parton, was born in Gary, IN. She began working at the Post Tribune and started with the Steelworkers in 1954. She worked for both Local 2697 and Local 6787. She started at the district 31 office in 1986 working as secretary in organizing, PAC, and education departments. Catherine has handled the finances and records for district 31 since 1993.

On this special day I offer my heartfelt congratulations. Their families and communities can be proud of the contributions that each individual has made. Their work in the labor movement has made America work. I wish each of them a long, happy, and productive retirement.

DRUG DECRIMINALIZATION IN HOLLAND HAS INCREASED CRIME AND ADDICTION

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. SOLOMON. Mr. Speaker, let me commend to you the following article written by a distinguished doctor and chairman of the International Drug Strategy Institute, Eric A. Voth, M.D. Dr. Voth advocates retaining tough drug laws to guard against rising crime and experimentation. Citing Holland as an example, the legalization of drugs has resulted in greatly increased crime and addiction. The only way to combat the increase of drug use in this country is to stand firm against recent attempt by prodrug groups to mute public awareness. These groups attempt to disguise the dangers of drug abuse and consequently jeopardize future generations.

REPEATING HISTORY'S MISTAKES

The international drug policy debate rages regarding decisions whether to fundamentally change drug policy toward legalization or decriminalization of drug use, or to remain with restrictive policies. If we examine two examples of softening of drug policy, we will find ample reason to continue with restrictive policy.

In the mid to late 1970's during the Carter administration, drug policy visibly softened. Several states decriminalized marijuana, and in fact Alaska legalized marijuana. Drug policy "specialists" in their infinite wisdom supported the flawed concept called "responsible use" of drugs as a way that users could maintain personal use of drugs and avoid the ravages of addiction and physical problems.

Permissive drug policy originated with organizations like the National Organization for the Reform of Marijuana Laws. President Carter's drug policy advisor Peter Bourne, as well as others like Arnold Trebach, Mathea Falco, Peter Reuter, Mark Kleiman helped to press for the lenient policy.

Interestingly, during that time the use of marijuana and other drugs drastically increased. Use also increased in adolescents despite the fact that drugs never become legal or decriminalized for that age group. The use of marijuana among high school students in Oregon during decriminalization was double that of the national average. National averages of marijuana use among high school seniors increased to 50% of seniors having used in the previous year, and 10.7% used daily.

Ultimately, parents began to object to the rampant use of drugs, especially marijuana, among their children. In the early 1980's the "parents'" anti-drug movement began. Because of the drastic failure of lenient drug policies, steady pressure was exerted at national and local levels for restrictive drug policies. A huge national wave of high quality research, grassroots prevention organizations, and tightening of drug laws began.

Predictably, the use of drugs among "recreational" users dropped. High school seniors use of marijuana dropped to 23% of seniors using within the last year and 2% using on a daily basis. The use among hard addicts did not drop.

Strangely the cry has been sounded by some that the drug war did not work. That outcry, however, was almost exclusively being sounded by individuals who favored legalization or decriminalization back in the 1970's. The same individuals who called for soft policy in the earlier era are calling for the new harm reduction policy today. Hidden within such policy is the intent to gain decriminalization of drugs.

Holland has decriminalized drugs and tried harm reduction. Since the softening of drug policy there, shootings have increased 40%, robberies 62%, and car thefts 62%. This experiment which was meant to decrease organized crime has resulted in an increase in organized crime families from 3 in 1988 to 93 today. The number of registered marijuana addicts has risen 30% and the number of other addicts has risen 22%.

The major difference between today and the 1970's is that the prolegalization effort is more organized and better funded. The millionaire Richard Dennis from Chicago has given millions to the drug legalization effort. Billionaire George Soros has given $6 million to the Drug Policy Foundation to help seek legalization of drugs. He created the Open Society Fund which in turn funds Mathea Falco's Drug Strategies organization. Steadily, these groups put a happy and acceptable face on the idea of drug legalization or decriminalization. Their public relation campaign has softened public attitudes. Moves such as full page ads in national newspapers suggesting alternatives to drug policy are examples. Organized efforts at such ideas as hemp as a fiber alternative, medical marijuana, needle exchanges, therapeutic LSD, and others pervade the media. The Internet is bristling with pro-drug talk groups discussing recent drug experiences and how and where to obtain drugs.

In the face of these facts, the holdovers from the 70's drug policy makers are still asking for lenient drug laws. A substantial number of today's addicts started their use under the lenient policies of the 1970's. We have had our experience with decriminalization, and it is time that we recognize it and put that concept to bed.

The only hope for drug policy is a concerted effort of drug prevention which upholds the notion of no drug use, drug interdiction, and drug treatment. If we soften our hold on an already vexing problem, we will lose the war.

IN RECOGNITION OF JAMES T. MOLLOY

HON. JACK QUINN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. QUINN. Mr. Speaker, it is with a profound sense of honor and with great pleasure that I rise today in recognition of James T. Molloy, the former Doorkeeper of the House of Representatives.

Mr. Molloy was born in Buffalo, NY, on June 3, 1936. He graduated from Canisius College with a bachelor of science in 1958. From there, Mr. Molloy began a career filled with worthwhile and successful endeavors. Of these, the most important is his family, consisting of his wife, Roseanne, and daughter, Amy.

Over his long and distinguished career, James Molloy has exhibited a tireless dedication to public service. He has served as a marine fireman with the Buffalo Fire Department, a school teacher in Buffalo and Lackawanna schools, and as the Chief Finance Officer for the House of Representatives. In 1974, Mr. Molloy was elected by the 94th Congress to serve as Doorkeeper of the House. He was unanimously reelected as Doorkeeper by each succeeding Congress through the 103d Congress.

Over the past 30 years, James Molloy has been involved in countless activities. He is a member of the International Association of Firefighters, International Brotherhood of Longshoremen, National Association of Legislative Assistants, and chairman of the Board for the Wright Patman Congressional Federal Credit Union.

Among his many distinctions, Mr. Molloy has received the Outstanding Citizen Award from the New York State AFL–CIO in 1986, the President's Award from the New York State Federation of Police in 1986, and Roll Call's Man of the Year Award in 1990.

The many awards given to James Molloy fail to capture the essence of what he has done. Whether it be helping kids get jobs in Washington, finance their education, or just taking the extra time to show them the Capitol, James Molloy has consistently been there for the young people of Buffalo.

As Doorkeeper of the House, James Molloy introduced numerous Ambassadors, Prime Ministers, and Presidents. However, this did not cause him to lose touch with the many friends and family members both here in Washington and at home in Buffalo. For more than 20 years, the people of Buffalo had a friend in Washington in James Molloy.

H.R. 450

HON. DAVID MINGE

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. MINGE. Mr. Speaker, on February 24, 1995, Mr. JOHNSON of South Dakota submitted comments regarding the Regulatory Moratorium bill, H.R. 450. I share Mr. JOHNSON's views and wish to restate them for the record. Like Mr. JOHNSON, I believe that H.R. 450 is deeply flawed. I voted for this bill last Friday with the understanding that I will not support the conference report unless the legislation is significantly improved by the Senate or conference committee. I share Mr. JOHNSON's concern that as it now stands, H.R. 450 could result in massive confusion and an enormous amount of unnecessary litigation. It is also possible that if the current language is contained in the final version of this bill, it would interfere with a wide range of needed agricultural rulemaking involving turkeys, hogs, corn, and soybeans. I also share my colleague's concern that depending on the outcome of litigation, the existing language could interfere with rulemaking needed on behalf of the ethanol fuels industry.

The process by which Federal laws are crafted is often perceived as overly heavy-handed, rigid, and inefficient. I am optimistic that this legislation can be modified as it progresses through the legislative process so that its shortcomings are corrected. Unless significant modifications are made, I will not vote for this bill when it returns to the House for final consideration.

FURADAN REGULATION NOT AFFECTED BY REGULATORY MORATORIUM

HON. EARL POMEROY

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. POMEROY. Mr. Speaker, it is my understanding that the intent of the Government Reform and Oversight Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs is to exclude the Environmental Protection Agency Final Rule at 40 CFR part 180 titled, "Pesticide Tolerances for 2,3-Dihydro-2,2-Dimethyl-7-Benzofuranty-N-Methylcarbamate," from H.R. 450, a bill that imposes a moratorium on the implementation of regulations issued between November 20, 1994, and the enactment of risk assessment/cost benefit analysis legislation, or December 31, 1995, whichever comes first.

North Dakota has been granted a time-limited tolerance on Furadan CR–10 for use on canola. Furadan CR–10 is considered the most effective insecticide used to control the flee beetle, one of the major threats to canola in North Dakota.

North Dakota produces more canola than any other State and supports canola crushing facilities. Canola is a region-specific crop that when crushed produces one of the healthiest and highest demanded industrial use and edible use oils on the market today.

The initiative by the Environmental Protection Agency [EPA] enables canola producers in North Dakota and a handful of northern tier States to sell Furadan-treated canola seed to "Canola Crushing Processors" within the United States. Prior to the tolerance, canola producers were required to export treated canola seed to foreign processors, mostly in Canada.

It is my understanding that the regulation meets at least one of the general exclusions established in H.R. 450.

> Specifically, the definition of a "rule" excludes the "granting or recognizing an exemption, granting a variance or petition for relief from regulatory requirement, or other action relieving a restriction * * * or taking any action necessary to permit * * * [the] use of a substance or product."

In addition, H.R. 450 specifies that the term "regulatory rulemaking action" excludes:

> Rulemaking actions that are "limited to repealing, narrowing, or streamlining a rule, regulation, or administrative process or otherwise reducing regulatory burdens."

Additionally, based on H.R. 450, it would appear that should the Office of Management and Budget be asked to determine whether to exclude or exempt this regulation from the moratorium, that it should do so.

FURADAN REGULATION NOT AFFECTED BY REGULATORY MORATORIUM

HON. DAVID M. McINTOSH

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. McINTOSH. Mr. Speaker, it has been brought to my attention that a handful of northern tier States are concerned about whether an Environmental Protection Agency [EPA] time limited tolerance on furadan CR–10 for use on canola would be affected by H.R. 450, the Regulatory Transition Act of 1995.

It is the intent of the drafters of H.R. 450 to exclude from the regulatory moratorium agency exemptions and other actions that relieve a restriction on the use of a product or process. The EPA Final Rule at 40 CFR Part 180 titled, "Pesticide Tolerances for 2,3-Dihydro-2,2-Dimethyl-7-Benzofuranty-N-Methylcarbamate," fits that exception.

Additionally, the furadan regulation might also satisfy the streamlining exception to the moratorium to the extent it streamlines the burden on producers and growers of canola seeds.

Thus, it is intent of the drafters of H.R. 450, that should the Office of Information and Regulatory Affairs be asked to determine whether to exclude or exempt this regulation from the moratorium, that the regulation should be excluded.

FAIRNESS FOR FILIPINO WORLD WAR II VETERANS

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. FILNER. Mr. Speaker, I join today in a bipartisan effort with the gentleman from New York, Congressman BENJAMIN GILMAN, chairman of the House Committee on International Relations, to introduce the Filipino Veterans Equity Act of 1995.

Today, we recall the brave members of the Filipino Army who obeyed the order of the President of the United States during World War II. They fought side by side with U.S. forces against a common enemy. They served and died defending the American flag in the epic battles of Bataan and Corregidor and through 4 long years of enemy occupation. They were as much as part of our fighting forces as were soldiers drafted from the States.

But, soon after World War II ended, the 79th Congress enacted the Rescission Act of 1946, denying Filipino Veterans not only the benefits, but also the recognition they so richly deserved. For far too many years, Filipino Veterans have been waiting for the benefits they earned, the benefits that go automatically to other veterans who were exposed to similar hardships. A grave injustice has been done—and now is the time for us to correct this injustice.

Even President Harry S. Truman, who signed the Rescission Act, said it did not release the United States from its obligation to provide for the heroic Filipino Veterans who sacrificed so much during the war. He believed it was a moral obligation of the United States to look after the welfare of the Filipino Veterans—and so do I, and so do my colleagues who join me today in cosponsoring this legislation.

The bullets in World War II did not ask if their target was an American or a Filipino soldier. In 15 years, there will no longer be any of these veterans left alive. Many, until their dying day, were asking, "Do we deserve the 1946 Rescission Act? Didn't we suffer the same suffering as the American soldier fighting the same war?"

We must act and we must act now.

I am especially pleased that two of my colleagues from San Diego County are joining with me today in recognizing the contribution of the World War II Filipino Veterans, Congressmen BRIAN BILBRAY and RANDY "DUKE" CUNNINGHAM.

I urge all my other colleagues to join me in recognizing these brave soldiers and in granting them the benefits they earned and deserve.

CONGRATULATIONS TO FERMILAB

HON. J. DENNIS HASTERT

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. HASTERT. Mr. Speaker, I rise today to inform my colleagues of a scientific milestone, announced this afternoon at Fermi National Accelerator Laboratory in Batavia, IL.

Today, physicists at the laboratory, which is located within my district, announced the discovery of the subatomic particle called the top quark, the last of the six basic building blocks predicted to exist by current scientific theory.

Mr. Speaker, this discovery demonstrates the prominent role the United States and Fermilab play in the field of high energy physics. In addition, it is clear that Fermilab's Tevatron accelerator has established itself as the world's preeminent site for high energy physics research.

The men and women who have contributed to the success of the work of the CDF and DZERO experiment collaborations are to be congratulated. I would also note the positive role played by the Department of Energy in funding this continuing research, and the efforts of Universities Research Associations, Inc. in the operation of Fermilab. We can also not overlook the contributions of the National Science Foundation as well as scientists and additional funding to the project from some 12 other nations worldwide.

Fermilab's success can be shared by all of us in this House who have supported high-energy physics research by our votes. We additionally can be proud that we have assured Fermilab's continued leadership in this field through our support for construction of the main injector.

Mr. Speaker, I am proud today to congratulate Dr. John Peoples and the excellent staff at Fermilab for another great contribution to the advancement of science. They are a valuable research and education resource for the world, this Nation, and my home State of Illinois.

TRIBUTE TO JESSE J. LEWIS, JR.

HON. EARL F. HILLIARD

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. HILLIARD. Mr. Speaker, Jesse J. Lewis, Jr., was a graduate of Miles College, where he obtained a B.S. degree in business administration. He continued his concern for education throughout his life, attending numerous executive continuing education programs at colleges and universities around the country.

Mr. Lewis began his illustrious advertising and communications career in 1979 with Jesse J. Lewis & Associates, where he held several important positions. Under his direction, clients won numerous prestigious awards for advertising, including a telly which is awarded for regional and local television advertising. His unrelenting dedication and leadership enabled his clients to grow and succeed.

In addition to marketing and communications expertise, Jesse worked extensively in the production field. He was chief engineer at the New London Record Studios, where he supervised the production of radio spots, jingles, and custom music for local and national clients.

As a member of the board of directors for the Police athletic Team, the Alabama Ballet Theater, and the Magic City Art Connection, Jesse was actively involved in civic and social work throughout Alabama. He was a member of the National Association of Marketing Developers, the Urban League, the Birmingham Area Musicians Association, and the Metropolitan Business Association. He was also chairman of Special Projects for Toys for Tots, and chairman of the Birmingham Crime Commission.

Jesse passed away suddenly due to a tragic car accident on February 26, 1995. He is survived by his loving mother, Helen; his devoted father, Jesse Lewis, Sr., former president of Lawson State Community College and publisher of the Birmingham Times newspaper; and his brother, James Lewis.

Jesse Lewis, Jr., contributed immeasurably to the communications and business area of the African-American community of Birmingham, as well as to the constructive relationships with diverse business entities for the State of Alabama. Jesse will be greatly missed by family and friends. However, the legacy he leaves behind shall preserve an indelible impression for all of us who came to know and love him.

1994 NARCOTICS CERTIFICATIONS

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. HAMILTON. Mr. Speaker, I would like to call to my colleagues attention the President's certifications on cooperation by major narcotics producing and transit countries for 1994, Presidential Determination 95-15.

The Foreign Assistance Act of 1961 requires that the President withhold 50 percent of the assistance allocated to those countries that are major producers of narcotics or major transit countries until he has certified that those countries are either fully cooperating with the United States on narcotics issues or that the national interests of the United States require continued assistance. Countries that are not certified become ineligible to receive virtually all forms of U.S. foreign assistance.

I would like to commend the Clinton administration for its honest attention to the certification requirement. The spirit and the letter of the law had been ignored by successive administrations for many years, largely because of unrelated political concerns. In contrast, the Clinton administration has consistently made objective assessments of the performance of the 29 countries subject to certification on the very important issue of controlling the production and trafficking of narcotics.

I would particularly note the President's decision this year to use the waiver authority of the Foreign Assistance Act to continue to provide assistance to Colombia, despite problems in our narcotics cooperation in 1994. While this decision may have some political consequences in our bilateral relationship with Colombia, it was the right decision. In my opinion, our cooperation with Colombia last year fell short of that which would have justified full certification. However, as the source of over 80 percent of the world's cocaine, and given the enormous threat to Colombia posed by narcotics trafficking, United States national interests are best served by continuing to work with the Colombian Government to address this problem.

Some may argue that addressing the drug problem overseas is a waste of time and money. However, I believe that any effective, comprehensive national drug control program must have an international component. All of the cocaine and heroin in America comes from overseas. We cannot deal with this problem only by trying to stop the drugs at the borders. If we ignore the source and transit countries, the volume of drugs coming to America will increase exponentially.

I believe that we need to do more domestically to reduce the demand for these drugs, and give our law enforcement agencies adequate tools to address the violence that is so often associated with narcotics trafficking. But we also need to attack the production and transit of drugs overseas.

Once again, I commend the administration for its effort in this area and urge my colleagues to review this year's certifications.

INTRODUCTION OF THE EMPLOYMENT ENHANCEMENT REFORM ACT

HON. WILLIAM H. ZELIFF, JR.

OF NEW HAMPSHIRE

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 2, 1995

Mr. ZELIFF. Mr. Speaker, I rise today with my colleague JOHN KASICH and 25 of our colleagues to introduce legislation to improve Federal job training.

The present job training situation is a boondoggle of Federal bureaucracy. Hundreds of programs with different rules and administrative structures confuse the people they are intended to help and waste taxpayer money. Currently, States bear the brunt of the conflicting rules, regulations, and definitions from this senseless bureaucracy, and it is there that we must address the reform.

The Employment Enhancement Reform Act will simplify and streamline the flow of Federal job-training dollars to the States to better serve unemployed Americans and hasten their reentry into the work force. The act consolidates over 90 Federal job training programs into one flexible block grant program.

This discretionary block grant will be distributed to the States by formula at the direction of the Secretary of Labor using the formula from the Joint Training Partnership Act. States will have one set of job training definitions and regulations to implement, and one funding stream to monitor. The result: more resources devoted to job training services and fewer dollars being wasted on administrative costs.

My bill will make the broken Federal job training program cheaper, more effective, more efficient, and more flexible. Today each of these 90 programs have different rules, regulations, and definitions. A youth can be any age from 14 to 30. On-the-job training participants have different eligibility rules and reimbursement rates depending on individual programs. This causes chaos for participants, administrators, and auditors.

Instead of hundreds of program regulations, States will have one set of job training definitions and regulations to implement, and one funding stream to monitor. They will have one State-established set of standards and definitions for program success rather than the multitude we have today. The responsibility for financial and programmatic audits will lie with State Governors. Federal philosophies and biases will no longer be mandated over State management of these programs. States will be responsible for demonstrating that funds are being spent effectively and efficiently to implement the goals.

Consolidating the programs will create a pool of funds totaling approximately $11 billion. From this pool: $7.6 billion—70 percent—would go to the States through formula grants; $539 million—5 percent—would be distributed by the Secretary to States containing populations of a national, rather than a State concern; $2.7 billion—25 percent—would go to deficit reduction.

Our legislation assures that States have the flexibility to target job-training funds where they are most needed. States will work in partnership with private industry to provide training that supports the labor markets that exist in that State—rather than be subject to nationwide labor markets and fund distributions that have nothing to do with their State.

This act also repeals the 0.2 percent FUTA [Federal Unemployment Tax] surtax, adopted in 1976 and intended to be temporary. This repeal demonstrates to businesses that some Members of Congress are conscious of the mandates imposed by the Federal Government. This provision also takes another small step toward reducing the cost of regulation to business and encourages job growth.

The benefit to the Federal Government of a single, more efficient job training effort is a reduction in the deficit by approximately $7 billion over 5 years.

The end result, Mr. Speaker, will be a program driven by results. More resources can be devoted directly to effective job-training services that put people back to work, and fewer dollars will be wasted on administrative costs

These reforms are necessary to give Americans the skills our economy needs to grow and to get our welfare recipients back to work and back into the economy. State Governors are eager to develop partnerships with private industry and build successful programs. This legislation will make our job-training dollars work better and put people back to work. I urge my colleagues to join us in this effort.

I enclose a summary of my legislation.

EMPLOYMENT ENHANCEMENT REFORM ACT

The States shall use the money appropriated to the State's discretion with the following requirements:

POPULATIONS

The states will continue to serve the populations that were previously served by the consolidated programs and those that will benefit from the services. Those populations are: Disadvantaged Adults, Dislocated Workers, Veterans, Displaced Homemakers, Disadvantaged Youths, Persons with Disabilities and those requiring vocational education.

STATE COUNCIL

The Federal Government recognizes the benefits of coordination between government and business in the areas of job creation and worker retraining. States are encouraged to establish one coordinating council to facilitate worker transition from job to job or from unemployment to employment.

The council should advise the Governor and state legislatures as to emerging economic and employment trends, job creation opportunities, and other employment and job training needs.

APPLICANT PROCESS

States shall centralize the intake of service applicants (those in need of job training/placement assistance) to facilitate the coordination of social services, of which job placement and employment skills are a part.

States are encouraged to utilize the concept of "one-stop-shop" as a means of facilitating centralization.

PROFILING

The state shall be required to profile/evaluate all participants in programs funded under this law, to determine participation eligibility. The profiling should include an evaluation of the candidate's employment readiness. Since profiling is already done for unemployment benefits, this should not be an added burden on states.

States, as part of the profiling process, shall determine, broadly, the readiness of each candidate to enter the job market. These candidates shall be defined as:

(a) Job-ready and in need of placement services; (b) job-ready but in need of minor skills enhancement; (c) non-job-ready and in need of remedial education and/or major skill enhancement. Job skills should be addressed after the candidate has demonstrated an education equivalent to a high school degree.

PROGRAM SUCCESS

Success for those participants needing job placement services shall be determined by continuous employment for a period of time of no less than six months, of at least 35 hours per week, with wages of no less than 65% of the immediate previous wage level.

Success for those participants needing minor skill enhancement shall be:

(a) Demonstration of proficiency of skill areas assessed as deficient followed by full time employment; or (b) full time employment for a period of time of no less than 6 months, of at least 35 hours per week, with wages of no less than 65% of the immediate previous wage level.

Success for those participants in need of remedial education shall be:

(a) Demonstration of proficiency in education and skills commensurate with a high school degree followed by full time employment; or (b) full time employment for a period of time of no less than 6 months, of at least 25 hours per week, with wages of no less than 65% of the immediate previous wage level.

STATE RESPONSIBILITIES/REPORTING REQUIREMENTS

The States shall report to the Secretary of Labor at the end of the first full fiscal year after date of enactment and annually, by fiscal year, thereafter:

(a) Total number of applicants for employment services, total number of applicants provided some form of service, and the post evaluation determination of each served applicant (i.e. was applicant job-ready, in need of minor skill enhancement, or in need of remedial education/major skill enhancement).

(b) Total number of successes for each post evaluation determined group.

(c) Length of time, from time of profiling to time of job placement, for all applicants during fiscal year.

(d) An accounting of disbursement of appropriated funds.

(e) Report findings of audits performed during reporting period.

Given sufficient notice of request, States shall provide any and all additional information requested by the Federal Government.

SECRETARY OF LABOR'S RESPONSIBILITIES

If after consecutive reporting cycles, a state has failed to demonstrate continued aggregate progress to the success of the program, the Secretary of Labor shall abrogate funding in part or in whole to that state. States will have an opportunity to appeal this decision and such factors as natural disaster or severe economic downturn could be considered as justification for renewed funding.

The Secretary of Labor shall annually report to Congress the results of the Secretary's program oversight.

FURTHER RESTRICTIONS/REQUIREMENTS

None of the funds from this program shall be used for stipends or direct payments to participants for participation in the program except for needs-based transportation costs. However, participants are not excluded from collecting funds from other programs.

The Secretaries of Labor will jointly administer 5% of the funds of this Act for Indian tribes and migrant worker populations. The funds should be distributed according to the specific populations.

States are encouraged to disregard gender in aiding the applicant, and allow applicants to participate in education and job search for non-traditional occupations.

DEFICIT REDUCTION

This proposal generates approximately $7 billion in deficit reduction over five years.

TAX CUT

The "temporary" 0.2 percent FUTA surtax is repealed, demonstrating to businesses that some members of Congress are conscious of the mandates the Federal Government imposes and are willing to reduce the cost of labor to business to encourage job growth.

EARNED INCOME TAX CREDIT AWARENESS

During the profiling and evaluation process of each participant, the participant will be informed if they are eligible for the Earned Income Tax Credit and will be encouraged to receive the Earned Income Tax Credit on a monthly, rather than yearly, basis. This is to help increase the monthly income of eligible participants.

HOUSE OF REPRESENTATIVES—*Friday, March 3, 1995*

The House met at 10 a.m.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

May the glory of Your word, O God, be heard in every heart and every land; may that word bring gladness to people who seek hope and confidence and health in their daily lives; may that word remind of truth and integrity and honesty; may that word direct to the ways of peace and knowledge, and may that word of faith lift every person who yearns for justice and freedom. Bless us this day and every day, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Indiana [Mr. ROEMER] come forward and lead the House in the Pledge of Allegiance.

Mr. ROEMER led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

REPUBLICAN CONTRACT WITH AMERICA

(Mr. TIAHRT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIAHRT. Mr. Speaker, our Contract With America states the following:

On the first day of Congress, a Republican House will require Congress to live under the same laws as everyone else; cut committee staffs by one-third; and cut the congressional budget.

We kept our promise.

It continues that in the first 100 days, we will vote on the following items: A balanced budget amendment—we kept our promise; unfunded mandates legislation—we kept our promise; line-item veto—we kept our promise; a new crime package to stop violent criminals—we kept our promise; national security restoration to protect our freedoms—we kept our promise; Government regulatory reform—we are doing this now; welfare reform to encourage work, not dependence; family reinforcement to crack down on deadbeat dads and protect our children; tax cuts for middle-income families; Senior Citizens' Equity Act to allow our seniors to work without Government penalty; commonsense legal reform to end frivolous lawsuits; and congressional term limits to make Congress a citizen legislature.

This is our Contract With America, Mr. Speaker, and I just cannot say it enough; it is good policy, it is good government, and it is about time.

The SPEAKER pro tempore. The Chair will entertain 15 1-minutes on each side at this time.

A RESPONSIBLE WAY TO BALANCE THE BUDGET

(Mr. SAWYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SAWYER. Mr. Speaker, it does not make sense for a family to take out a bank loan just to pay for its weekly grocery bill. But if they are buying a house, it does make sense for a family to get a long-term mortgage. The groceries will be gone within a week. But the house will last for a long time.

It is the same way with the Federal budget. It does not make sense for our Government to take on debt for current consumption—to pay for the fuel and sailors that keep our Navy's ships at sea every day. But it does make sense to take on debt for long-range investments—to build the aircraft carrier that will last for a long time.

Yet under today's illogical budget rules, we treat consumption and investment the same way.

Today I am sponsoring a measure to create an operating budget and a capital budget. It would require the operating budget to be balanced by 2002. But it would permit borrowing for capital investments that will strengthen our future.

Our budget is in trouble because we fail to differentiate between consumption and investment. That outlook must change. My balanced-budget plan will help put our Nation's finances back onto a responsible footing.

CONSIDER WELFARE A LOAN

(Mr. FRANKS of Connecticut asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FRANKS of Connecticut. Mr. Speaker, I look forward to the day when as Members of Congress we are not debating the virtues of block grants versus entitlements for food, shelter, or child care programs. I look forward to the day, Mr. Speaker, when all able-bodied mothers and fathers and their extended families are carrying their own weight, a society where no one receives something that they have not earned.

Now, we all hit bumps in the road, and there should be ways to assist people at such times. But if one is given something without working or paying for it, it should be deemed as a loan that would be paid back or worked off, not as a bottomless pit of money distributed with no strings attached.

Everyone should be merely entitled to an opportunity to succeed. Yes, Mr. Speaker, I look forward to the day when the word "welfare" is used as frequently as the word "dinosaur."

SCHOOL NUTRITION

(Mr. HOYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HOYER. Mr. Speaker, I am appalled by the devastating cuts in children's programs which the Republicans are pushing through the House.

There are many cuts to choose from—but none is more galling than the attack on child nutrition.

Over the next 5 years, the proposed Republican block grants will cut more than $2.3 billion from school breakfast and lunch.

And, as if that were not enough, the block grant increases the proportion of Federal school food funding that can be used from State administrative costs.

How can a hungry child hear a teacher over the growling of an empty stomach?

How can a malnourished child keep healthy enough to stay in school?

Republicans have been telling us that these cuts are necessary to reduce our deficit. Yesterday evening the Committee on Appropriations voted on cutting taxes and reducing the deficit. Democrats voted yes in every instance. Republicans voted no in every instance.

STATES MUST BE GIVEN A CHANCE TO SOLVE SOCIAL WELFARE PROBLEMS

(Mr. BALLENGER asked and was given permission to address the House

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

for 1 minute and to revise and extend his remarks.)

Mr. BALLENGER. Mr. Speaker, freedom and responsibility. These are two of the most important goals of our welfare programs, and right now, these are the two goals we have not achieved.

For over 3 years the Federal Government has thrown more and more money into entitlements that just continue the cycle of poverty and dependence. Throwing more money at our problems just does not work. Our social safety net has become a black hole from which there is often no return.

Let us give the States a chance to solve their own social welfare problems on their own. Giving the States back the right to take care of their own people makes good sense. The welfare needs of Idaho or Wyoming are certainly different from those of New York.

Congress should learn to appreciate the diversity between States and let each one tackle poverty and hunger in its own unique way.

We have had our chance. Now let us have the States show us what they can do.

GUAM HARDEST HIT BY BASE CLOSINGS

(Mr. UNDERWOOD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. UNDERWOOD. Mr. Speaker, I rise today to point out the schizophrenia being experienced at the Pentagon these days.

Under the Secretary of Defense's recently released list of base closures to be considered by BRAC, Guam is the hardest hit American community on the list. It targets Guam for more personnel cuts than large States such as California, Virginia, and New York. The reductions represent between 5 and 10 percent of the entire work force on Guam, and as much as a quarter of Guam's economy could be adversely affected. Let me repeat: Up to 10 percent of the entire work force will be thrown out of work. If this magnitude of cut were undertaken in California, almost 1.5 million jobs would be affected.

To compound this problem, the Navy is trying to have it both ways. They are closing down facilities, saying they do not need them, and at the same time holding on to all the ports, drydocks, floating cranes, and other equipment in case they need the harbor in the future. This schizophrenia will leave our community in a straitjacket without the tools for our own economic survival. The military has the schizophrenia and we suffer the consequences. We need our facilities back.

NUTRITION BLOCK GRANT PROPOSAL

(Mr. GANSKE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GANSKE. Mr. Speaker, I rise today to ask a simple question of my colleagues across the aisle—Since when did the Government have the right to use the taxes of low-income people to subsidize families who live in $400,000 houses and earn $300,000 a year? I always thought they supported giving money to the needy and making the wealthy pay their fair share. Well, that is just what the Republican nutrition block grant proposal does. Eighty percent of the funds will be used to provide meals for low-income children.

Democrats have been ranting and raving for years that we should not subsidize the rich. Here is the perfect opportunity for them to offer bipartisan support to a proposal which does just that. An Omaha World Herald editorial drove the point home well. School lunch bureaucrats would have you believe that children from upper-income families are paying the total cost of the lunch. Wrong. Full price for these children means the Government is subsidizing their lunches 30 cents for each lunch.

I think upper-income children can afford this extra 30 cents. We do not need to subsidize middle- and upper-income school lunchers. We need to subsidize the poor.

The proposed changes in the nutrition programs are a way to make sure that those who can pay their way will, and those who cannot get help.

THE DIFFERENCE A SINGLE VOTE CAN MAKE

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, what a difference a single vote makes. Due to the two-thirds requirement in the Constitution, the Senate failed to pass a balanced budget amendment. One vote. One vote per precinct elected John Kennedy. One vote in March 1995 may have saved Social Security.

The truth is, Congress, the Constitution cannot be mended with microwave legislation. Good legislation requires a two-thirds burn in that crock pot. There is an old saying, if you want to cook it right, cook it long. Social Security does not deserve a microwave treatment.

COMMONSENSE LEGISLATION TO PROTECT OUR CHILDREN

(Mr. JONES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JONES. Mr. Speaker, the Democrats portray us as a cold, callous, and insensitive group. How can someone truthfully claim that? In the past 58 days, we have done more to ensure a brighter future for the citizens of this country and especially the children.

We have worked night and day to pass a comprehensive crime package, a slew of regulatory reform bills, a balanced budget amendment, and unfunded mandate reform with the intention of getting the Government back on track by transferring authority to State governments. We have increased funding and have allowed greater growth for the School Lunch Program than in past years.

We are conscious of the need to protect our children from an ever increasing crime rate and a debt-ridden Government, while in turn creating a comfortable and productive environment for them to learn.

We will continue to work hard by passing commonsense legislation for the benefit of our prized and most important resource—our children.

SCHOOL NUTRITION

(Mr. DINGELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, I rise to praise our Speaker, one of the foremost figures in the field of American literature, and one of our most famous authors. He has been making generous contributions to organizations which pay children $2 for every book they read. At the same time his colleagues on the Republican side of the aisle are taking money away from needy children who need subsidies for their lunch.

The teacher is teaching school children a lesson at this time. He is showing there is money to be made in book deals, perhaps enough to buy their own lunch. I would like to share some information that I find important in this callous regard to our children.

The leadership nutritional block grant would terminate all nutrition standards. Seven hundred thousand Michigan children eat school lunch every day. More than half qualify for free or reduced price lunches. Michigan will lose $107 million a year.

With one hand, the Speaker has offered school kids a book deal do encourage learning. With the other hand, he is taking away their lunch money which provides them with an absolute necessity for proper learning, and that is decent nutrition.

At the rate Republicans are taking money from kids, the kids are going to have to read an awful lot of books to stay fed.

PARLIAMENTARY INQUIRY

Mr. VOLKMER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. DOOLITTLE). The gentleman will state it.

Mr. VOLKMER. Do the rules of the House permit Members to walk in the well, be present in the well while a Member is speaking in the well?

The SPEAKER pro tempore. Members should not cross in front of Members while they are speaking in the well.

Mr. VOLKMER. Is it permissible to walk on the other side of the well while a Member is speaking in the well?

The SPEAKER pro tempore. Members should not walk between the Member speaking and the Chair.

Mr. VOLKMER. What I am trying to point out to Members on the other side, we have never done it on this side, is not to get your papers up and get ready to make your 1-minute while a Member is speaking in the well.

□ 1015

PRIVATE PROPERTY RIGHTS

(Mr. COOLEY asked and was given permission to address the House for 1 minute.)

Mr. COOLEY. Mr. Speaker, today we will again address private property rights. And there is only one issue: whether or not we will obey the fifth amendment.

For those who haven't read their constitution lately, I would like to quote these 12 profound words.

The final clause of the fifth amendment states the following: "* * * nor shall private property be taken for public use without just compensation."

This is a simple statement that requires little explanation. Just as a thief need not destroy the property he steals to be guilty, neither must the Government necessarily require a landowner to vacate his property for it to be taken for public use.

Mr. Speaker, without these 12 words, we would be little better than a socialistic society.

I, personally, subscribe to the axiom that if a man has done nothing wrong he has nothing to fear. Unfortunately, many law abiding citizens have a great deal to fear from the Federal Government.

Why? Because our environmental agencies create laws and regulations that destroy the value of their property.

In my district, millions of acres of timber lie unharvested because the government exercised its authority to save the spotted owl.

The Government has the authority to take my land. It also has the authority to save owls, but it does not have the right to do so without justly compensating you or me for it.

Mr. Speaker, let's reaffirm the fifth amendment, protect private property rights, and pass H.R. 925.

CAMPAIGN FINANCE REFORM

(Mr. JOHNSON of South Dakota asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JOHNSON of South Dakota. Mr. Speaker, there has been a great deal of talk of reform and of change in this body over the past month. Some of it real; much of it for show; much of it cynical; and even some of it counterproductive, such as the current talk about cutting child nutrition programs not to reduce the deficit but to provide tax cuts for the very wealthy. But there has been one issue of change that there has been too much silence about, and that is the most fundamental need of all, and that is to reform our campaign spending laws in this country so that we have meaningful, real democratic elections rather than auctions, which is the direction this country is going now.

I am proud to join several of my colleagues in introducing legislation this week which would break the gridlock that currently exists over campaign spending reform by following the military base closure commission model in creating a bipartisan commission to recommend campaign reform legislation. In 1 year Congress would have to vote on its recommendations up or down, no excuses.

Let us clean up the political process and return it to the people of the United States.

THE REAL VICTIMS

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Mr. Speaker, I want to read something to my liberal colleagues on the other side of the aisle who profess so much compassion for America's children while defending the current welfare system.

This is from Bill Bennett's article in the current Commentary magazine, which I would recommend that all my colleagues read, Bennett writes:

> Between 1962 and 1992, welfare spending in the United States increased by over 900 percent in 1992 dollars. At the same time the poverty rate dropped by less than 5 percent—and illegitimacy rates increased over 400 percent. Children are the real victims of this national tragedy. They are being conditioned into the same habits of dependency they are surrounded by, resulting in an almost unbreakable cycle of welfare.

And yet, Mr. Speaker, we get one liberal Democrat after another parading to the well to tell us how wonderful the current system is and how much the children need it.

The liberal Democrats may need it, but the children do not.

REFORM AT THE EXPENSE OF SCHOOL LUNCH PROGRAM

(Mr. ROEMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROEMER. Mr. Speaker, the Republican meat ax has fallen once again and this time not just on chicken and meat but on tomatoes, on beans, on carrots, on milk, and on orange juice. The latest target is the school lunch and breakfast program.

Now some of them are going to argue, we have not cut it. Ask them then why is there a 20-percent transfer out provision in the block grant? Ask them why is there no inclusion of price increases for food? Ask them why, why is there no inclusion of a recession or unemployment rates? Those are basic questions and, furthermore, ask them why is there not the provision for entitlement for a child in poverty to be eligible?

I am all for cutting billions, but let us cut billions from star wars and space stations and not nickel and dime our lunch programs to death.

WELFARE REFORM

(Mrs. VUCANOVICH asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include extraneous material.)

Mrs. VUCANOVICH. Mr. Speaker, why do we call it welfare? Under the current welfare system, people do not fare well—not at all.

Our current system has created a number of welfare addicts, some who will do anything to stay on the public dole. Congress must intervene with some tough love which will stop the addiction and create a more useful, caring society. The welfare plan which is being put forth by the Republicans is the only proposal which has offered people on welfare a chance to improve their lives.

While opponents have termed this proposal mean-spirited, it is nothing of the kind. Under the legislation, spending for school meals will increase by 4 percent next year, work training will be offered in exchange for benefits, and abuses of the system will be eliminated. What is mean-spirited is an administration which keeps feeding the addiction of individuals who cannot help themselves because they are trapped. The Republican proposal offers people an opportunity to break the addiction.

Mr. Speaker, it is time for Congress and the American public to say farewell to our current welfare system so that people in our Nation may actually fare well.

HUNGRY CHILDREN AT RISK IN MOVE TO BLOCK GRANT THE SCHOOL LUNCH PROGRAM

(Mr. BALDACCI asked and was given permission to address the House for 1 minute.)

Mr. BALDACCI. Mr. Speaker, block granting the School Lunch Program, as called for in Contract With America, places our Nation's most precious natural resource—its children—at risk.

We can and should look for ways to improve the School Lunch Program. But we cannot create a block grant, cut the funding, and expect the States to do more with less.

This is not, as some would have us believe, a deficit reduction issue. We need to balance the Federal budget. But we cannot do it on the backs of children. Helen Rankin, a school food service director in Maine, expressed this sentiment very eloquently to me. She said:

> As an adult, I am willing to make sacrifices to reduce the deficit, but let us not begin by slashing funds for defenseless children who cannot speak for themselves and do not have the right to vote. As we look after the hungry children of the world, let us continue to protect our own.

This is an ill-considered and mean spirited proposal, and it should be soundly rejected by this Congress.

RESPONSIBILITY, FREEDOM, AND COMPASSION

(Mrs. MYRICK asked and was given permission to address the House for 1 minute.)

Mrs. MYRICK. Mr. Speaker, mean spirited and callous and heartless. These are the terms the Democrats use to describe the welfare proposals moving through the House currently. As a former mayor of Charlotte who has seen firsthand the damage done by the welfare system over the years, I prefer the words responsibility, freedom, and compassion. Responsibility to be allowed to work and freedom to get off of welfare, compassion, caring, helping.

We had programs in our city that were innovative and they allowed people to take pride in themselves once again. We can do that through the proposals being offered by the Republican system that is currently underway now. Self-sufficiency is the key, not dependency.

IS CONGRESS LOSING ITS SENSE OF PRIORITIES?

(Mr. LUTHER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUTHER. Mr. Speaker, a great American and fellow Minnesotan, Hubert Humphrey, once said that the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life—the sick, the needy, and the handicapped.

For decades there has been bipartisan agreement in Congress on the importance of providing school lunches, and millions of children have been well-fed and well-educated.

But I am concerned today that Congress may be losing its sense of priorities. Clearly, we need to balance the budget. But as we allocate our country's scarce resources, let us be sure to keep things in proper perspective.

Last week this Congress voted to increase defense spending and next week we will consider a proposal to cut funding for school lunches.

That is not what the American people sent us here to do. If we really care about those Americans in the dawn of life, our children, and we should, then we better get our priorities straightened out soon.

SCHOOL LUNCH

(Mrs. CUBIN asked and was given permission to address the House for 1 minute.)

Mrs. CUBIN. Mr. Speaker, it is a personal disappointment and affront to me that Members of the minority party persist in their attack on our plan to provide nutritious meals to the Nation's schoolchildren.

They claim that by block granting the nutrition programs thousands of children will starve. In plain English, that claim is a lie and they know it. Funding for the School Lunch Program will increase by 4½ percent per year, that rate is above inflation but below what liberal Democrats think it should be so they label it a cut. Using accounting methods like this has us headed for a debtor's prison without a get-out-of-jail-free card.

The only thing we will cut is a layer of Federal bureaucracy in the nutrition programs which will save money and allow the States to do what they do so well, take care of their citizens.

The basic difference in philosophies is all too clear on this issue, after 40 years, Democrats cannot bear the thought of independent States, I myself have all the faith in the world in the ability of our State and local officials.

LOBBYIST REFORM

(Mr. MEEHAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MEEHAN. Mr. Speaker, the truth is that when that money was cut in committee, it did not take into account future enrollment figures. It did not take into account increases in food prices. They is why it is a cut. And how we can sit here and cut school lunches at a time when the same individuals who had an opportunity to cut lobbyists from paying meals for Members of Congress voted against it? The same Members who would vote to take away the school nutrition programs can be seen on a Tuesday or a Wednesday or a Thursday at the Capital Grill or at Morton's or La Colline or other restaurants around this Capitol having a free lunch paid for by lobbyists. It is a big thick steak.

Let us put that money back into the nutrition program and stop cutting around the issues. We are neglecting children in this country. Let us make investments where we ought to be making them.

WELFARE REFORM

(Mrs. FOWLER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. FOWLER. Mr. Speaker, the Republican welfare reform plan has been under attack from those who believe that bureaucrats in Washington know what is best for those in need. But after 30 years and $5 trillion, we know for sure that their way does not work.

No longer can we reward illegitimacy and nonwork. And no longer can we rely on the failed notion that we can just throw more money at the problem. The Personal Responsibility Act will help us end negative incentives and create a system that is leaner, more responsive and more truly compassionate.

The Republican welfare reform plan is based on the notion that giving States the flexibility to develop their own solutions means that we will be able serve those in need better with fewer Federal dollars. Experiments in States like Florida show that this is the approach we should be taking.

I urge my colleagues to take a stand for positive, commonsense welfare reform and support this legislation.

□ 1030

DEMOCRATS WANT WELFARE REFORM, BUT NOT EXTREMISM

(Ms. EDDIE BERNICE JOHNSON of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I have not heard anyone here on either side of the aisle defend the present welfare system. All of us want change. The difference is, on my side of the aisle, we do not want extremism. We do not want a system that is going to just punish and not find a way out for independence.

I am from Texas, and I can tell the Members that the child nutrition program has been helpful. Every report tells us that once the program started, children are attending school better, their attention span is longer, and they are achieving grades. We cannot, as a nation who cares, send our children through life without some kind of caring.

Mr. Speaker, if we want to create 50 new bureaucracies by sending it to the States, then we will have more government than we ever bargained for. State's rights for poor children in Texas has never worked. One out of every nine children in Texas is now hungry. Almost half of the low-income families are now hungry.

Mr. Speaker, I can tell the Members that most of these families have at least one working person. Are we going to throw our children to the wolves to give a tax break for the rich? I hope not.

WELFARE REFORM: REAL CHANGE VERSUS FALSE HOPE

(Mrs. KELLY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. KELLY. Mr. Speaker, I do not know what is more disheartening, the vicious cycle of dependency perpetuated by the current system of welfare, or the mindset on the part of some Members of this institution that a national welfare bureaucracy is the only way to help those in need.

The American taxpayer has not lacked in generosity. We have invested well over $5 trillion on welfare in this country since the mid-1960's, and welfare spending continues to rise.

And yet, despite this commitment, illegitimacy rates have risen, welfare dependence remains constant, and fewer recipients of assistance are working. Five million families received AFDC benefits in May 1993, up from 3.7 million in 1988, and over half of those families will remain dependent on welfare for over 10 years.

As working women and mothers, who among us does not remember earning their fist paycheck, meeting that first payroll, or the pride of seeing our own child bring home their first paycheck. It is this sort of restoration of self-esteem that we must achieve.

The Personal Responsibility Act of 1995 fundamentally restructures the way in which we think about welfare. It maintains a system of support for those in need, while restoring the notion that welfare recipients have an obligation to use this assistance to better themselves. We have an opportunity to accomplish real reform, and instill real hope in the lives of those caught in the welfare trap.

SAVINGS FROM REPUBLICANS' PLAN TO CUT CHILDREN'S SCHOOL LUNCHES WILL GO FOR TAX CUTS FOR THE WEALTHY

(Mr. EVANS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EVANS. Mr. Speaker, the Republican plan to decimate the school lunch program will penalize millions of America's kids, working families, and women, and the Republicans will use the savings to serve up a free lunch of tax cuts and tax concessions to millionaires and large multinational corporations.

Conservatives often say that the deficit will be passed on to our kids, but their approach to deficit reduction will mean that our kids will pay now and that they will pay with their potential. Their block grant proposal will block the future of 140,000 kids in Illinois alone.

The school lunch program is one of the most successful, one of the most cost-effective, and one of the most important programs that the Federal Government has ever administered.

I urge my colleagues to stop the Republicans from keeping this program and America's kids hostage to the Republican contract on America.

REPUBLICANS' WELFARE REFORM PLAN OFFERS A HELPING HAND-UP, NOT A HANDOUT

(Mrs. SMITH of Washington asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SMITH of Washington. Mr. Speaker, according to the Congressional Research Service, welfare spending in 1992 reached an all-time high of $210 billion. This is nearly three times as much as we need to abolish all poverty in the United States.

What does the American taxpayer get for this? What do we have to show for it? I will tell the Members: a bureaucracy that is wasting our money. Even worse, we have higher crime, higher illegitimacy, family disintegration, low educational achievement, neglect, and moral confusion.

Mr. Speaker, I do not think the devil himself could have come up with a better scheme to destroy America and her children. Yet, the Democrats come here day after day to defend a system that has produced nothing but misery for America's poor, and the poor children. They have done this after controlling Congress for over 40 years, building this system of misery.

We have pledged to change the failed liberal welfare system, not by giving a handout, but by giving a helping hand up.

SCHOOL LUNCHES ARE IMPORTANT FOR OUR CHILDREN

(Mr. BENTSEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BENTSEN. Mr. Speaker, the proposal to change the Child Nutrition Program into block grants will hurt the children of the 25th District in Texas. This week the Texas School Food Service Association visited me and explained the consequences of this proposal.

With the new block grant scheme, which in essence will give fixed sums to the States, Texas will lose big—close to a 30-percent reduction in moneys to the children of Texas. It is estimated for instance that the Houston Independent School District [HISD], one of many school districts in the 25th District, would lose $1.677 million next year to provide nutritious breakfasts and lunches for children.

I do not believe that HISD will fail to serve these children. Instead other educational programs will have to be cut. If we want our kids to learn and grow up to be productive citizens, we cannot expect them to starve in the process. In many cases, school meals are the only nutritious meals that children will receive each day.

This Republican proposal will actually create 50 new bureaucracies in 50 States. In addition, the new program will not have one national nutritional standard. Without a good meal, many children will have trouble learning. We need to invest in our children to ensure our future. The School Lunch Program today successfully feeds an average of 13 million children each day with a well balanced meal.

Mr. Speaker, as we say at home, don't mess with Texas. Mr. Speaker, don't mess with the kids' school lunch.

TRUE COMPASSION AND THE WELFARE SYSTEM

(Mr. CHABOT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHABOT. Mr. Speaker, the so-called political experts say do not respond to your opponents attacks, just ignore them. But in this case I just cannot sit idly by while I hear the whining and griping from the bitter defenders of the status quo who defend a welfare system that's bloated, scandal-ridden, and a huge waste of our hard-earned tax dollars.

Forty years of Democrat control of the House brought us this failed welfare system and now they are defending it with all of their might. The truth is they have turned their backs on those who are less fortunate and then they blame Republicans for trying to undo the damage that they took 30 years to create.

After spending billions of dollars on programs that have failed to work and after years of waging a phony war on poverty it is time for the defenders of the status quo to admit defeat and join us in creating a system that understands that true compassion is not measured in the number of our tax dollars spent on welfare, but in the number of Americans who are liberated from the grips of poverty.

CUTTING LIHEAP PROVES THE REPUBLICAN MAJORITY CONTINUES TO STREAMROLL SENIORS AND STRUGGLING FAMILIES

(Mr. OLVER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OLVER. Mr. Speaker, for 58 days now the Republican majority has had kids and seniors in their sights. Yesterday they hit both with one shot. LIHEAP, the Low-income Home Energy Assistance Program, is gone. LIHEAP helps almost 6 million families pay their heating bills in the winter.

The Republican majority is willing to trade the health of children and seniors for tax giveaways for the wealthiest 2 percent of Americans. The Republican majority will take away heat assistance from seniors on fixed incomes and families living on minimum wage or less to give another tax break to people making over $200,000 a year. Without LIHEAP, 144,000 families in my State of Massachusetts will have to skip meals to keep heat in their homes.

Mr. Speaker, we do not have a balanced budget amendment because Republicans would not protect seniors on Social Security. That is a shame. What is worse is the Republican majority continues to streamroll seniors and struggling families. Cutting LIHEAP proves it.

URGING MEMBERS TO SUPPORT THE PRIVATE PROPERTY PROTECTION ACT

(Mr. SHADEGG asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHADEGG. Mr. Speaker, today on this floor we will vote on the Private Property Protection Act. This is critically important legislation, and I urge each and every one of my colleagues to support it. The principle in America that private property cannot be taken from our citizens without paying them just compensation for that private property is at the heart of our form of government. It is, indeed, one of those values that we as American hold sacred.

Yet, yesterday Interior Secretary Bruce Babbitt called this legislation an attack on America's great natural resources. Absolutely nothing could be further from the truth. It is a sad day in America when officials of our national government openly advocate taking property from our citizens without compensating those who own that property.

We are all agreed that we must protect our natural resources, but we must not do that by stealing property from them or by nationalizing their resources. I urge my colleagues to support the Private Property Protection Act.

URGING MEMBERS TO JOIN IN CALLING FOR SPECIAL COUNSEL TO INVESTIGATE ALLEGATIONS AGAINST SPEAKER GINGRICH

(Mr. VOLKMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VOLKMER. Mr. Speaker, last year Members of the present majority complained about the investigation by Special Counsel Robert Fiske. They claimed that Fiske was a friend of the White House and that his investigation of Whitewater was not going far enough.

I ask the Members of the House to consider these facts. The current chairman of the House Ethics Committee cast the deciding vote for the Speaker in the 1989 whip's race. The chairman of the Ethics Committee seconded the nomination for Speaker this year. The chairman of our Ethics Committee last year tried to help our current Speaker by closing the pending Ethics Committee complaint against him.

Two other majority members of the House Ethics Committee have had personal dealings with the personal PAC of the Speaker, GOPAC, one of them as a contributor, and another as a recipient for his reelection.

Given these facts, I am sure those who call for a replacement of Special Counsel Fiske will now join me in calling for a special counsel to investigate the allegations against Speaker GINGRICH, and it should not take 100 days.

PARLIAMENTARY INQUIRIES

Mr. WALKER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. DOOLITTLE). The gentleman will state his parliamentary inquiry.

Mr. WALKER. Mr. Speaker, was not the entire speech of the gentleman from Missouri [Mr. VOLKMER], just a moment ago, out of order, because it was a direct reference to Members of this body?

The gentleman keeps reminding us of our obligations under the rules. The gentleman has a responsibility to the rules. My parliamentary inquiry is, was not his entire speech out of order?

The SPEAKER pro tempore. Members should not refer to pending Standards Committee investigations.

Mr. WALKER. I have a further parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state it.

Mr. WALKER. Beyond the pending ethics investigation, he also may have had personal references to the chairman of the Ethics Committee. Is that also not out of order?

The SPEAKER pro tempore. Members should not so refer to the Standards Committee or any Members thereof.

Mr. WALKER. A further parliamentary inquiry, Mr. Speaker: My understanding is that what the gentleman has just done in the House was a speech which was entirely out of order before the body: is that correct?

The SPEAKER. The Chair is responding in a general way to the proper debate in the House with respect to ethics investigations.

Mr. WALKER. I thank the Chair.

Mr. VOLKMER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. VOLKMER. Is the Chair ruling that it is improper for any Member to request a special counsel in an investigation being conducted by the Ethics Committee, which action has not been taken by the Ethics Committee?

The SPEAKER pro tempore. Members should not refer to pending Standards Committee investigations, or suggest courses of action within that committee.

Mr. VOLKMER. I thank the Chair.

PRIVATE PROPERTY PROTECTION ACT OF 1995

The SPEAKER pro tempore (Mr. DOOLITTLE). Pursuant to House Resolution 101 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 925.

☐ 1043

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, with Mr. SHUSTER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Thursday, March 2, 1995, pending was the amendment offered by the gentleman from California [Mr. MINETA]. Two hours remain for consideration of amendments under the 5-minute rule.

Is there further debate on the amendment?

☐ 1045

Mr. MINETA. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman from California is recognized for 5 minutes.

There was no objection.

Mr. MINETA. Mr. Chairman, the Mineta-Davis amendment is the bipartisan alternative to the Goss amendment which we considered and nearly approved last night.

When the Goss amendment was defeated by one vote, many members approached me—very concerned that a 10-

percent threshold was just not workable. That is why Mr. DAVIS and I developed the bipartisan alternative.

A 10-percent threshold is too inexact. It leaves the basic issue of whether you have rights under this bill with the fluctuations in appraisals which normally accompany any real estate evaluation. As my colleague has stated so well, such a margin of error is not reasonable.

The 10-percent threshold is so ill-advised that not only could the taxpayer be ripped off through variances in the appraisal process, claims which would be allowed under this bill—claims of the very developers and individuals which the proponents of this bill are claiming to protect—could be denied because the margin for error is just too slim.

Last night, 210 Members of this House agreed that a 10-percent threshold was too low, too inexact, and that 30 percent was preferable. When that was defeated, in the spirit of compromise, Mr. DAVIS and I developed the bipartisan alternative at 20 percent.

This amendment is the Goss amendment reduced from 30 percent to 20 percent. If you believed last night that 20 percent was better than 10 percent, if you are on record as voting to support 30 percent, there can be no explanation for not now supporting a 20-percent compromise.

Let me repeat, if you were one of the 210 who shared my concern and supported the Goss amendment at 30 percent, there can now be no good reason to not support the Mineta-Davis bipartisan alternative at 20 percent.

I urge an "aye" vote.

Mr. BONILLA. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, 10 percent can be a lot of money. Last night my friend, the gentleman from Texas [Mr. FIELDS], raised a question about an effort in San Antonio to control the water supply for several counties by declaring a snail that no one has ever seen endangered and put it on the list and threatening the entire economy of south Texas. Others have attempted to shut down five or six military bases in south Texas by using some bug or spider to declare the endangered species list. Think of what 10 percent of buying a metropolitan area with a million people in it would mean to the U.S. Government. There are many other examples around the country.

At this time I would like to yield to my friend, the gentleman from California [Mr. POMBO], to relate how 10 percent might affect the development of construction of a hospital, perhaps, because my understanding is that there are even flies on the endangered species list in California that are a big problem.

Mr. POMBO. I thank the gentleman for yielding. We in the past couple of years have had instances in California where in one specific example, eight flies stopped the construction of a $600 million hospital in southern California. Without any regard to what the use of that property was for, what the effect was on the citizens of that community, and with absolutely no regard at all for the well-being of the community, Fish and Wildlife came in and stopped the construction of a $600 million hospital.

They ended up having to mitigate their way out of it and give up, I believe it was 40 percent of their site to be permanent fly habitat on the grounds.

There are many instances where a little responsibility interjected into the actions of the agency would make a large difference.

Mr. BONILLA. The gentleman would agree that 10 percent of the cost of the hospital because of a fly or in the case of Texas, because of a snail or beetle could add up to millions of dollars and perhaps billions?

Mr. POMBO. Yes. We are talking about literally billions of dollars that are involved here. Recently in California we had the fairy shrimp listed. The fairy shrimp, I believe, will have a larger impact on California than anything that has been on the endangered species list or any proposal to the endangered species list that we have had yet. We literally have all the way from Bakersfield to Redding and now we are getting reports out of the Riverside and San Diego areas of fairy shrimp in those areas as well where any mud puddle that holds water for 14 days in the springtime is habitat for the fairy shrimp.

This definitely affects all farming and ranching activities. We have farmers who have fairy shrimp in their cow troughs, in their watering troughs, in their watering holes. We are looking at on the listing of the fairy shrimp alone billions of dollars that are affected in the State of California.

The fairy shrimp is a third of an inch long, an eighth of an inch across, an invertebrate that has been around for hundreds and hundreds of years, and there is absolutely no cost to the agency to go out and list this and declare all mud puddles habitat for the fairy shrimp.

What we are trying to do is instill a little common sense into the way the agency responds.

Mr. BONILLA. I appreciate the gentleman's remarks. Again to emphasize that we are trying to stop these shrimp, flies, snails, and spiders from costing people more money.

Mr. VOLKMER. Mr. Chairman, I move to strike the requisite number of words.

I will not take the full 5 minutes, but I just want to point out that this amendment is basically the same as the 30 percent, except instead of 30 percent, it is now 20 percent, but it is 20 percent of the total diminished value.

I would like to point out to the Members that what this amendment does in deference to what others do when they do a taking, as I have tried to point out to the gentleman from California where I consider the inconsistency between what he thinks is fair and what I think is fair.

If I have a 600-acre farm, Mr. Chairman, and the highway department, Missouri State highway department or commission comes along and takes 20 acres along the bottom of that for highway purposes and takes another 10 acres for right of way to abut the highway for an easement so there would not have to be any traffic in that area but they move it away from the farm, I get paid for every bit of that. No matter how much it diminishes in value that land, I get paid for the whole thing.

Under this amendment that we have pending before us, if I have that same 600-acre farm and if EPA or the Corps of Engineers or Fish and Wildlife find that there is a drainage ditch that runs through that farm with the same 20-acre amount and they say that that is swampland or that is wetlands, I cannot use it for farming anymore. It is no longer any use to me. I cannot do it. But under the present law, I get paid nothing for it. If I put my plow across it, I get fined. If I do anything to it, I get fined.

Under the bill, if that acreage, that 20 acres is diminished in value by 10 percent, then I am entitled to compensation.

Under the gentleman's amendment, my whole 600-acre farm has to be diminished in value by 20 percent. The likelihood of that happening is zero. What the gentleman's amendment is doing to most of my farmers out there who have small pockets in their fields that are now considered wetlands because they have an indentation and water has settled in there for a little while, no ducks have ever been on it, no geese have ever been on it, nothing has ever been on it, but they cannot touch it, they cannot use it, they are deprived of the use of it.

Under the present law, they get nothing. Under the gentleman's amendment, they will get nothing. At least under the bill, there is an opportunity or a chance that they will be at least compensated for that taking of their property.

Someone will say it is not a total taking, it is still theirs. What difference does it make, Mr. Chairman, if it is still yours and you cannot use it? If that is not a taking, I would like to know what a taking is when you are deprived of the use of it, for what if has always been used for. I speak in opposition to the amendment.

Mr. DOOLITTLE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, if we go right to the wording of the U.S. Constitution and the fifth amendment, it says, "Nor shall private property be taken for public use without just compensation." That amendment was put in there in order to protect people from having the government steal their property for the general benefit of all.

Sad to say, up until today, from the time the Constitution was drafted, this has been a right without an effective remedy, because in order to get the remedy, you had to be wealthy enough to go through years and years of litigation, 5 to 10 years on the average, and be able to expend $50,000 to $500,000 or more in attorney's fees. We all know that problems, with attorneys and their fees that we have in this society today, and I know sometimes we need to get attorneys. Like to pursue a takings claim. You need darned good attorneys. You need lots of money to pay them.

When I hear Members act like this is some great remedy that we have right now, I am here to say, it is not. That is why we need this piece of legislation.

This effect of this amendment is to allow the government to take 19.9 percent of the entire value of your property without any compensation. I know they are going to say in response, "Oh, yes. But we still allow you your fifth amendment right."

Some right.

This bill is designed to give efficacy to that right, to make it applicable to the average American. It is so important that we understand that. We are not talking about standing up for big corporations, for large landowners. They have the resources to hire the attorneys to fight this. We are talking about the little guy, everyone in this country who owns a piece of property, has worked hard to get that, and would like not to see it wiped out.

Why are Members so worried about protecting the Federal Government, Mr. Chairman? I am just amazed when I hear these expressions of concern. You would think the Federal Government was the weakest thing around. It has got enormous resources. These agencies behave with impunity in many cases and there are dozens, indeed hundreds of abusive examples of Federal agencies. That is why we have gotten to this point where there is now a ground swell of support to rise up and make a change.

Mr. Chairman, I would just observe in closing, George Washington, understood what government was and he knew it was not our friend. He said, "Government is not reasoned, it is not eloquence, it is force, and like fire it is a dangerous servant and a fearful master."

This bill represents an attempt to give meaning to the fifth amendment and protect our citizens.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the amendment before us is as flawed as the amendment that was previously offered that would have changed the 10 percent of any affected portion criteria to 30 percent of the whole of the property.

It is flawed primarily because it refers to the whole of the property. The whole of the property is a variable sum. I can change the whole of my property tomorrow by simply selling off a portion. I can divide it. I can do a number of things to game this system when the percentage is applied to the whole of my property.

We heard an eloquent statement from the gentleman from Missouri [Mr. VOLKMER] about how farmers would be treated under this kind of an arrangement when the percent diminution was applied to the whole of their property. What farmers would have to do in order to qualify for compensation, under this plan, under this amendment, they would be forced to sell off parts of their farm to divide it up in ways to qualify under this amendment. No one should be forced to game a system in order to receive fair compensation, but that is what this amendment has done as it is constructed.

I am informed by managers of this bill and this is a very important announcement that I hope Members are paying close attention to in their offices, that if we defeat this amendment providing for 20 percent of the entirety of one's property as a criteria, we will immediately offer an amendment that will provide the criteria 20 percent of the affected portion. This will get for those Members who think 10 percent is too small a criteria change in the bill, that modifies it to 20 percent. But it will also make the bill workable. It will apply that 20 percent to the regulated portion of a person's property, not to the entirety of his property causing him and others to try to game the system.

In effect, let me say it again. If we are successful in defeating this amendment, which is inartfully drawn, as inartfully drawn as the 30 percent amendment was previously drawn, and apply instead the following amendment, we will reach the 20 percent criteria that some of the authors of this amendment want to achieve but we will do it correctly. We will apply it to the affected portion of the property regulated under the act.

I want to make a quick point.

☐ 1100

In an editorial written by Sue Waldren, we find these words, and by the way this was January 2, 1994:

> The third amendment to the Bill of Rights states that no soldiers can be quartered in any home without the consent of the owner. Somehow, though, it apparently never occurred to the Founding Fathers that we might someday need an amendment against the arbitrary quartering of endangered species on private land. Good thing the Founders did not see this day when property owners all over America were to be told to idle their land and effectively turn it into a wildlife refuge without compensation from the government,

But that is what the endangered species law does now to farmers all over America.

In California most of my colleagues remember, let me remind them of the story that appeared April 19, 1994, where a southern farmer was arrested and charged with the possibility of a year in prison and $200,000 fine for doing what, for plowing his field because five dead rats were found on his field after he finished plowing it. About the same time, another farmer in Fresno, CA was brought to court for doing nothing more than plowing his field and in order to avoid going to jail, reached agreement with the Fish and Wildlife Service to pay a $5,000 fine, to give them 60 acres of his 160-acre farm, to give it to them, ordered by the court, and to sell the remaining 100 acres. Why? Because he had plowed his field and there on his property was apparently some sort of a bluenosed lizard that the Fish and Wildlife Service deemed threatened or endangered.

That kind of story needs to end. This amendment needs to be defeated. Then we can adopt an amendment for 20 percent of the affected portion and we will so offer that amendment.

Mrs. CHENOWETH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I come from a Western State where water is our lifeblood, where without water there is no production of agriculture at all, and without the systems of canals that were built beginning at the turn of the century, we would not be able to apply water to our land, and thus Idaho, whose largest industry is agriculture, would not be able to survive.

The prior appropriation doctrine, the legal water law in the 12 Western States, requires a proving up of beneficial use, which means that even if you had 100 acres to irrigate and you applied for a certain volume of water to irrigate that 100 acres, if you even paid for that water and there was more water that was left over, you would lose the volume of water that you paid for. In other words, if we do not use it we lose it. That is proving up of the beneficial use, which all of the 12 Western States must do.

If we were cut down to 20 percent of the whole, that would mean that 20 percent of our entire agricultural production in Idaho would be cut down, and I am so pleased to hear my colleague from Louisiana announce that there will be an amendment coming up which would require 20 percent of the value of the taking. That is much more acceptable but still not good enough for me.

I will support that amendment, however, but I do rise in opposition to this amendment.

Starting in the Warren court with Lynch versus Household Finance, the Supreme Court has historically backed up the fifth amendment. In Lynch versus Household Finance, the Warren court said that people have rights to use their property in its whole. It is not the property that has rights.

We have had a series of Supreme Court cases that have backed up the fact that we must reimburse people for their loss, the last one being the Dolan case out of Oregon in June 1994, which said there has to be a reciprocity in the exchange, which means equal value for equal loss.

Ladies and gentlemen, if this amendment succeeds, it is bound to be challenged in the U.S. Supreme Court because it is simply not just compensation.

Mr. CRAPO. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman from Idaho [Mr. CRAPO] is recognized for 5 minutes.

There was no objection.

Mr. CRAPO. Mr. Chairman, I ask the gentleman from Louisiana if he would be willing to engage in a colloquy.

Mr. TAUZIN. If the gentleman will yield, I will be more than happy.

Mr. CRAPO. I thank the gentleman from Louisiana. Yesterday we were pressed for time and we had a short colloquy on a matter I think we need to clarify further. I am referring specifically to section 5 of the legislation that we are discussing, which is entitled exceptions, and it basically states there that compensation will not be made under this act with respect to an agency action, the primary purpose of which is to prevent and identify damage to specific property other than the property whose use is limited.

The concern I want to clarify as much as we can here on the record is that this language is not intended to create an exception for compensation when wetlands are being considered by final agency action. My concern is that wetlands could be argued to be referring to specific property other than the property whose use is being limited and I would just, following up on our private conversations, like to make it a matter of record as to what this language is and is not intended to reach.

Mr. TAUZIN. If the gentleman will yield, I suggest it would truly be an oxymoron for anyone to argue that the bill provides compensation for private property takings when the reason for that private property taking is wetland protection under 404 and under sodbusters, and then to argue that you do not get compensated because the wetlands regulation on your property is designed to protect somebody else's wetlands regulation, it would certainly be an oxymoron.

The purpose of that exception is not indeed to allow such an oxymoron to occur. The purpose of that exemption is to provide a specific exemption for those regulations which are not designed for wetland protection but designed for other purposes, specifically purposes to prevent one from creating a harm or a nuisance on your neighbor. That is further amplified when as you know under the Tauzin amendment, we specifically said that nuisance laws and zoning laws which similarly regulate the property for valid reasons other than wetland protection create an exemption from the act.

Mr. CRAPO. I appreciate that; and so to emphasize again this is talking about when a person is seeking to use their own private property in a way that could cause damage to someone else's property, and somehow final agency action becomes involved. And in those specific limited circumstances, the act is not intended to apply.

Mr. TAUZIN. Mr. Chairman, if the gentleman will further yield, if I can make it crystal clear, it is not the intention in that exception to say that you cannot be compensated for wetland protection regulations on your own property. It is not the intent of that exception to say that you will not be able to be compensated because the regulation is designed to protect wetlands on somebody else's property. The idea is to prevent harm or damage to the property itself of the neighbor, not to carry out further wetlands protection. Therefore, that exemption would not exonerate the government from liability for the wetlands protection regulations as 404 or swamp-busters that diminish the value of someone's property.

Mr. CRAPO. I thank the gentleman.

I would also like to address the committee with the remainder of my time with regard to the amendment that is before us. There has been a lot said about whether 10 or 20 percent is the right level of demarcation in evaluating when compensation should occur. But it is important, and again as the gentleman from Louisiana stated earlier he hopes those listening to this in their offices or elsewhere will pay close attention, because there is a very big difference in this bill in addition to the 10 to 20 percent change that must be understood. This bill also changes the property to which the standard applies from the affected property to all of the property owned by the property owner, and that change is why it dramatically changes the standard, increases the potential for harm to private property owners and increases the potential for private property owners who want to go around the act, to game the act by subdividing their parcels, and so forth.

We are going to be following this amendment with another one which does the specific change which seems to be the one which is relied upon so much by the supporters of this amendment, and that is simply changing the figure from 10 to 20 percent in the act, but not changing the entire focus of the act on the affected property, rather than on more broadly other property that is contiguous.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. CRAPO. I am glad to yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I think we need to again make it crystal clear to the Members who are in their offices listening to this debate, when we defeat this amendment, which changes two provisions of the bill, it changes it from 10 to 20, but also from the affected portion to all of the property, we will offer an amendment that simply changes it from 10 to 20.

Mr. CRAPO. That is correct. With that clarification, I thank the gentleman.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman from Massachusetts [Mr. FRANK] is recognized for 5 minutes.

There was no objection.

Mr. FRANK of Massachusetts. Mr. Chairman, I was at a meeting and I did not get the welcome news bulletin we just got that apparently the Republican whip operation was not able to get 20 percent. I do not know if Members fully understood what we just heard but apparently the effort to persuade people who voted to go from 10 to 30, they would then vote to go from 10 to 20 was not successful, so apparently we have some concession.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I should remind the gentleman that offer was made to the gentleman yesterday when this amendment was made. We immediately offered to do that. It was turned down.

Mr. FRANK of Massachusetts. I understand that. But that also does not contradict what I just said, which is if the whip organization had been able to turn it all around it would not have happened.

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from California, the author of the amendment.

Mr. MINETA. Mr. Chairman, I thank the gentleman for yielding. Mr. Chairman, it seems to me this is a significant list. These are people who voted yesterday on the Goss amendment and it seems to me Members ought to take a look at this list and see how they voted, if they voted "aye" on the Goss amendment for 30 percent, and again there are 210 Members who voted "yes" on the Goss amendment, then it seems to me that these are the same people who ought to be voting "yes" on the Mineta-Davis amendment.

So, I am anxious to get this to a vote. And Members who would not yield to the arm twisting that is going on right now, they ought to vote their conscience, they ought to vote their constituency and vote "yes" on the Mineta-Davis amendment.

Mr. FRANK of Massachusetts. I thank the gentleman. Fortunate are those who can vote their conscience and their constituency at the same time. That is a great position to be in.

Let me say with regard to this whole 10 and 20 percent, one thing is very important to note. All of the horror stories we have heard, and many of them appear to be clear cases of abuse and misapplication of the statute, would be covered by the 20 percent, and the effort to restrict the number, the effort to defeat 30 percent and the effort to water down the 20 percent makes it very clear. This legislation is not aimed at alleviating those who have been the victims of horror stories, it is aimed at restricting the very operation of these laws as Congress intended them to operate, because if you were worried about the people who were cited in the very poignant examples we have heard, all of them would have been covered by the amendment that the gentleman from California has offered, because they were 100 percent disabilities of their property. Those were people who were told they could not live in their homes; those were people told they could not do anything at all. So the fight over the marginal number makes it very clear that this bill is aimed not at the occasional excess, but at the very heart of it today to correct the operations of these activities, and therefore, it is a very important amendment.

We get, by the way, as to 10 and 20, into the question of what is a de minimis level. Ten percent would mean that virtually every action taken by these entities would be litigated and administered.

I preferred 30 percent, but I think since that lost, the gentleman from California's amendment is a significant improvement. So take the two together, the insistence on a 10-percent threshold or 20 percent with the land so narrowly defined that it becomes far less than 10 percent to the whole property and what you see is this is not an effort, as I said, to prevent abuse of the statute. That is being done elsewhere when we rewrite the statute and deal with regulatory reform. This is an effort to severely hinder the operation of these statutes as written to say that there will be much less wetland regulation, that there will be much less environmental endangered species regulations because virtually every action that would be taken by these agencies would trigger such a thing.

Mr. CRAPO. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Idaho.

Mr. CRAPO. I thank the gentleman for yielding. I just want to make it clear there has been some discussion here as to whether people are being pressured into voting for a different amendment. When we talked to the Members about what their concern was, it was exactly what has been debated on this floor; that is, the 10 to 20 percent. What the gentlemen just debated, many of them did not get an opportunity to vote for a pure 10- to 20-percent change and wanted that rather than the amendment which was put forth which changed it dramatically.

Mr. FRANK of Massachusetts. I thank the gentleman's interest in giving people that opportunity. I am touched by it. He is a soul of generosity. But I do know that last night when we were ready to go to vote at 9:35 on this and leave time for other amendments so we would chew up the whole 12 hours, the Republican leadership said no because they did not have the votes lined up yet.

□ 1115

So I have not said there was pressure. It does seem to me, though, there was some very intense persuasion going on.

Mr. COOLEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as I listened to this debate all day yesterday and this morning as well, I think we are missing the point here. Let us go back to why we are really here. We are here to discuss the fifth amendment of the Constitution. Let us go back to the last phrase, "Nor shall private property be taken for the public use without just compensation."

We are starting now to dilute the Constitution by 10 percent, 20 percent, 30 percent. I do not think we should be doing it at all. But if we are going to do something, let us make it the lowest common denominator we possibly can. We should not be taking private property without just compensation at any level.

For some reason this body has violated the Constitution indirectly by passing environmental laws which have prohibited people from using their property, which have been a taking without any compensation. We in the West have suffered greatly from this action. We need to have relief from this action. This bill will do that.

I say to my colleagues on both sides of the aisle who voted for the change of 10, 20, 30 percent or whatever they want to talk about, if they really believe the Government should take their property without just compensation, next Monday when they go home let them donate 10, 20, 30 percent of their property to the Federal Government and let us help balance this budget.

I mean let us get right down to what the people really believe in. We do not want Government taking away our constitutional rights, and they have done this indirectly through legislation over the last 20 and 30 and 40 years and, some said, since the beginning of the Constitution.

We need to go back to that. We need to restore private property rights. This country was founded on private property rights. We were taught in high school and in grade school that the pilgrims came here for religious freedom. But they came here for another reason. They came in here to own property. What our Founding Fathers did when they put the Constitution together, the fifth thing on their mind was private property rights because they did not have that in the countries from which they came.

Since that time we have diluted this constitutional right. This is the first time in 207 years we went back to address that, to give back private property to the citizens and take away this horrible situation that government, both local and State, have infringed upon constitutional rights of the public.

So I urge my colleagues on both sides of the aisle, if they really believe that the Government should have the right to take their property, let them donate their property to the Government and help us balance this budget.

But I think we need to turn back to the Constitution and, therefore, return full property rights to the citizenry.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. COOLEY. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I want to thank the gentleman from Oregon [Mr. COOLEY] for an excellent statement. That is exactly what we are talking about. Nobody in this room, I hope, believes that the Government has the right to come and take 10, 20, percent, any amount of your property. If you really believe that—the gentleman makes the point—how many people are willing to donate 20 percent of their homes to the Federal Government? But when the Government comes and takes it, clearly that requires the Government to pay compensation. That is what this fight is all about.

I want to make another point. The debate we are on right now, whether to accept the amendment offered by the gentleman from California [Mr. MINETA], will not only change it from 10 to 20 but will now involve all of the property of the owner, not just the affected regulated portion.

The court, in Florida Rock, said that is wrong. It said the fifth amendment prohibits uncompensated taking of private property without reference to the owner's remaining property. We defeated this amendment, and then we offered an amendment to change it from 10 to 20.

Mr. COOLEY. I concur with the gentleman.

Mr. HAYWORTH. Mr. Chairman, I move to strike the requisite number of words

Mr. Chairman, I rise in strong support of the remarks of the gentleman from Oregon [Mr. COOLEY] and in strong opposition to the amendment as offered.

I think we have seen here today, those who happen to be viewing across the Nation, we have seen good, strong bipartisan support for a reasonable action to be taken.

I could not help but note with interest today's headlines. In fact, I just came from the other side of this building where a Member of the new minority party has decided to join the new majority party on the very issue that has been characterized, at least in my portion of the country, as a war on the West. And as my friend from Louisiana points out, although we may call it the war on the West, the gentlewoman from Idaho would certainly concur, in essence, what we have here is a fundamental conflict on the notion of private property and what the government can demand from us.

As the gentleman from Oregon said so clearly, without just compensation, remembering that clause, that provision of the fifth amendment, we are tearing asunder the original intent of the Founding Fathers. It is indeed unfortunate we have to bring this to the floor in the first place. What should be a fundamental tenet of American rights and liberties somehow are being stripped away. But as emblematic, as systematic of the new approach by the new majority, we are engaged in a new partnership with America and we move to address those rights.

So I oppose the amendment as offered by my friend from California on the grounds mentioned so eloquently by the gentleman from Louisiana and the gentleman from Oregon.

I would urge a "no" vote on this and let us restore the nature of property rights.

My. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. HAYWORTH. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding.

Mr. Chairman, we need to make one more point before we end this debate. The gentleman from Massachusetts [Mr. FRANK] said or intimated that the real intent is to gut the Endangered Species Act, the Wetlands Act. Let me read from the article by Sue Waldron in the Wall Street Journal:

> The dispute over endangered species isn't over whether or not society should protect them. It's between a policy that refuses to set priorities and insists on preservation no matter what the costs to the human species or, alternatively, a more balanced approach.
>
> We are hard put to see how the species act can itself survive politically operating as an environmentalist land grab of other peoples property. The seriousness of the claims for these various species might be better tested if the government had to compensate landowners for their losses.

That is all we are asking: balance, respect. We want a good Endangered Species Act, a good Wetlands Act, but we also want balance in landowner rights.

Mr. HAYWORTH. Reclaiming my time, the gentleman stands and points out with eloquence the entire mission here. I cannot help but note the irony that the current administration, which campaigned on the notion of putting people first, would instead relegate people to the back benches, if you would, or at least take away from people their essential constitutional rights.

It is the mission of this body, as we stand in check with both the executive and judicial branches to right the wrong, to legislate for the people of this country, and to legislate effectively. It is in that spirit that I oppose the amendment but endorse wholeheartedly the concept of real property rights for the citizens of the United States.

Mr. GILCHREST. Mr. Chairman, I cannot help but comment on the remarks of gentleman from Arizona when he says we should put people first. I think all of us agree with that. It is just how we do that which is important. Ignoring certain aspects, like clean water or biodiversity, and then say we are putting all the people first, I think we are losing some important aspects of their multidimensional discussion of property rights, endangered species, clean water, and so on.

In my area, clean water is absolutely essential for the quality of people's lives, not only for their health but for our economy, protecting the wetlands in not a sterile, regimented regulatory form. The way we do it in Maryland, we all sit down at the table and we discuss this issue. Fish and Wildlife is there, the corps is there, the Department of Natural Resources is there, the affected property owners are there. We discuss how we can manage the resources and protect people's lives.

Mr. Chairman, I want to make two points. One is that the gentleman from Louisiana [Mr. TAUZIN] is continuing to refer to the Florida Rock case. Now, he refers to it in an accurate manner. He has not distorted the facts.

But I want to bring in some more of the facts that were not included there. It happens to deal with a person that wanted a limestone, in particular a 98-acre parcel piece of property. He bought the property for $1,900 per acre. The Corps of Engineers would not allow him to fill part of that acreage because there were wetlands there.

Now, he was going to sell the property because he was not going to engage in limestone mining, so he wanted to sell it for $10,500 per acre. Now, that is a pretty good profit.

As a result of the corps' regulation, the appraisers valued the property then at $4,000 per acre. Now, he was a little regulated there. The corps diminished some of the value there. But a profit of $1,900 per acre to $4,000 per acre is pretty significant.

But we have to look at some other values here when we are talking about that. That is, what is the value to the quality of the water that is purified by the wetlands to the neighboring property owners? Then what is the value of their property, the neighboring property owners, if the wetlands were filled in, water is degraded? Who is going to buy their homes, their property? Is that then diminished?

So the question in my mind, at least, is should we compensate people to refrain, or stop them, refrain them from degrading the value of somebody else's properties by filling in those wetlands?

Now, there is one other thing I want to bring out. One of these famous, wonderful Dear Colleagues that are circulated around the House for a number of reasons, there was a "Dear Colleague" circulated that a Maryland couple was denied the right to shore up their property because of an endangered beetle. And as a consequence of that, 15 feet of the bank fell off while they were trying to wait for a permit.

Well, here are the facts: It was a piece of property in Lusby, MD, which had a high bank. The guy that lived there wanted to move because he knew the erosion problem was so bad. So he did not even pay the mortgage, the bank took over the property.

This couple purchased the property at a very low price. While they were living there, they realized there is a problem because 15 feet of their bank falls off. It was at that point, after the 15 feet fell off, that they applied for a permit to put some riprap around it so no more would be falling off.

The Federal Endangered Species Act, in its infinite flexibility, at least in the State of Maryland, was going to permit that shoring up. But the State of Maryland, which has an Endangered Species Act more strict than the Federal act, was a little bit more inquisitive.

Now, they have built the riprap, they are protected at this point, and the State of Maryland Endangered Species Act is going to become more flexible, modeled after the Federal program. There still needs to be some flexibility with the Federal program, I grant you that.

But one last point: A beetle, a fairy shrimp, a butterfly, let us not forget the fact that biodiversity offers us a tremendous amount of good things for medicine, for agriculture, for a whole lot of good reasons.

I just wanted to get those points out.

Mr. MCINTOSH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the Mineta amendment would massively reduce the number of Americans who would benefit from this the Private Property Protection Act of 1995. It would change the current bill ignoring existing case law and provide Government bureaucrats with the power to impose onerous regulations without accountability.

☐ 1130

The amendment is most destructive because it departs from providing compensation on affected parcels of property. Instead, it would provide compensation only if the entire whole of an individual's holdings were reduced in value.

In other words, if a property owner had 100 acres, 10 of which were wetlands, the Government could prevent that landowner from developing his property because of that wetlands on only 10 acres. Any other property owned by the individual could be used to offset the fair compensation due from the Government.

This is part of a conscious effort to support a national land-use policy. The supporters of the wetlands provisions in the Endangered Species Act have used those two acts to create a national intrusion into the property rights of Americans across the country, and the purpose of this amendment is to dilute the protections for property rights that landowners would have in standing up against that policy.

Let me just close by saying that the Florida Rock case has been mentioned earlier. It strikes me that in fact the value of protecting wetlands is something that society should take into account. The difference is that we should not ask innocent landowners to be the ones who foot the bill for that; instead, we should ask all of society to compensate that individual in order to preserve those truly valuable natural resources.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield just briefly?

Mr. MCINTOSH. I am delighted to yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding.

I am so glad my friend, the gentleman from Maryland, brought up Florida Rock again. The reason I quote it so often is that it is now Florida Rock III. These plaintiffs have made their third trip to the court of appeals. The case started in 1978. They finally got a judgment in March 1994 that says they are entitled to compensation. The case has been remanded again to the Court of Claims. They are on their fourth trip around. That is why this bill is so desperately needed.

Mr. MCINTOSH. That is right. My point is that if those are valuable wetlands, why should society not go ahead and pay compensation under the fifth amendment and under the provisions of this act so that someone who is an innocent landowner is not deprived of 60 percent of the value of his property.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. MINETA] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended.

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MINETA. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 173, noes 252, not voting 9, as follows:

[Roll No. 194]

AYES—173

Abercrombie
Ackerman
Andrews
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
Davis
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Ehlers
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Frost
Gejdenson
Gephardt
Gibbons
Gilchrest
Greenwood
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Mineta
Minge
Mink
Mollohan
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Rahall
Reed
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schiff
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Thompson
Thornton
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates
Zimmer

NOES—252

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Furse
Gallegly
Ganske
Gekas
Geren
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Green
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson, Sam
Kasich
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thurman
Tiahrt
Torkildsen
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff

NOT VOTING—9

Bryant (TX)
Gonzalez
Graham
Hoyer
Jones
Moakley
Rangel
Reynolds
Roberts

☐ 1150

The Clerk announced the following pair:

On this vote:

Mr. Rangel for, with Mr. Graham against.

Messrs. PORTER, LEACH, and SKEEN changed their vote from "aye" to "no."

Mr. LIPINSKI and Mrs. KELLY changed their vote from "no" to "aye."

So the amendment to the amendment in the nature of a substitute, as amended, was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. JONES. Mr. Speaker, I was unavoidably detained for rollcall No. 194. Had I been here, I would have voted "no." I ask that the RECORD reflect that.

LIMITATION OF DEBATE ON PROSPECTIVE AMENDMENTS

Mr. CANADY of Florida. Mr. Chairman, I ask unanimous consent that the gentleman from Florida [Mr. GOSS] be next recognized to offer an amendment and the debate on the amendment be limited to 20 minutes, equally divided and controlled by a proponent and an opponent thereto. I further ask unanimous consent that the gentleman from Mississippi [Mr. TAYLOR] and the gentleman from Ohio [Mr. TRAFFICANT] be next recognized to offer their amendments, and that debate on each of these two amendments be limited to 5 minutes, equally divided and controlled by a proponent and an opponent thereto.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

Mr. FRANK of Massachusetts. Mr. Chairman, reserving the right to object, that timetable with a rollcall on the Goss amendment would, of course, preempt any other amendments. I would not be able to accept something that would preempt any other chance for any other amendments.

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, I understand the gentleman's concern, and I would be certainly willing to change the unanimous-consent request to further limit the debate on the Goss amendment to 10 minutes, 5 minutes debate on each side.

Mr. FRANK of Massachusetts. Mr. Chairman, that will not be agreeable, but it is the best we can get. We will still be at risk. I hope, if Members will cooperate, we can get to the amendment of the gentleman from North Carolina [Mr. WATT].

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida [Mr. CANADY], as amended?

Mr. WATT of North Carolina. Mr. Chairman, reserving the right to object, what I still have not heard is the final part of the uanimous-consent request. I never heard what I understood to be the final part of the unanimous-consent request.

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, the first part of the unanimous-consent request, as now modified, is 10 minutes of debate on the Goss amendment. After that there will be 5 minutes debate on the Taylor amendment and 5 minutes debate on the Traficant amendment.

Mr. WATT of North Carolina. Mr. Chairman, I thought the final part was that the Watt amendment would come up last and be the final issue.

Mr. CANADY of Florida. Mr. Chairman, there was no mention of the Watt amendment in the unanimous-consent request.

Mr. WATT of North Carolina. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

AMENDMENT OFFERED BY MR. GOSS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE, AS AMENDED

Mr. GOSS. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The Clerk read as follows:

Amendment offered by Mr. GOSS to the amendment in the nature of a substitute offered by Mr. CANADY of Florida, as amended: In section 3(a), strike "10" and insert "20".

The CHAIRMAN. The gentleman from Florida [Mr. GOSS] is recognized for 5 minutes.

Mr. GOSS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, what we are involved in here is obviously a moving negotiation, and a number of things have happened in the last couple of votes on this in this very difficult area of trying to come to a compromise that will hold together a working block of votes to get on with the benefits of this legislation and to make it as good as possible and still attract a majority. A couple of things need to be pointed out here.

Mr. Chairman, the three particular areas of trouble that we wanted to discuss at this time were to get a further explanation on when we are talking about affected areas that are going to be subject to regulation, who sets those boundaries and how that happens. In a moment I am going to yield to my friend, the gentleman from Louisiana [Mr. TAUZIN], for that.

The second was an area where after the vote last night I had several Members, particularly from the Midwest, come to me and suggest they had a difficult time with my amendment that went to the total parcel, and they had not supported us because of concerns they had in explaining to me about prairie potholes and other types of situations that are very important, but somewhat unique to that part of the country, and they felt they did not understand it properly.

The third area was the question of the small lot owners. I am satisfied by moving this percentage to 20 percent, we still protect the small lot owners either way from unreasonable takings.

So I am, in the spirit of compromise, trying to get something that will work, and that is the purpose of this amendment. We now have a 20-percent threshold to trigger an automatic taking on the affected part of the property.

Mr. Chairman, I yield such time as he may consume to the gentleman from Louisiana [Mr. TAUZIN] to explain about how these affected areas actually work.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, what happens under the bill is that the property owner who believes he is affected by one of these statutes, endangered species, 404 wetlands or swampbusters, literally goes to the agency and makes a request, Am I affected by those statutes? If so, what part of my property is affected?

A good example is the one I gave the other day from my farmer in Plaquemines Parish. Included in his letter to me was a map. The corps actually drew a map, showed him the affected area of his property affected by the wetlands determination.

So the agency determines what part of your property is affected by wetlands or endangered species. That area is defined, is certain, and that is why this new revision to the amendment makes sense.

Mr. GOSS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I wanted to make sure to all those who supported my original amendment, that that explanation was going to be forthcoming, it is forthcoming, and it is satisfactory to me, because it gives the precision we were looking for, it allows the agency to make that determination. That protects the public, and on the other hand the private property owner is protected with this 20 percent threshold.

Mr. Chairman, I reserve the balance of my time.

□ 1200

The CHAIRMAN. Does any Member wish to speak in opposition to the amendment?

Mr. FRANK of Massachusetts. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Massachusetts [Mr. FRANK] is recognized for 5 minutes.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

This is an amendment that is about a subspecies of land. This is the planting of shade trees to give cover to Members who switched their vote.

Since everything has already been arranged and since under this restrictive 12-hour rule, if I debate this at any length my friend from North Carolina will be preempted from offering his amendment, I would simply say that I think this is just to cover Members who voted the other way on the last one since all the votes have already been accounted for.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield back the balance of my time, in the hopes that we will be able to protect the right of the gentleman from North Carolina [Mr. WATT] to offer his amendment.

Mr. GOSS. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. GOSS] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY] as amended.

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. DOOLITTLE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 338, noes 83, not voting 13, as follow:

[Roll No. 195]

AYES—338

Abercrombie
Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Bass
Bateman
Bentsen
Bereuter
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bono
Boucher
Brewster
Browder
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Christensen
Chrysler
Clayton
Clement
Clinger
Coble
Coburn
Coleman
Collins (GA)
Condit
Costello
Cox
Cramer
Crane
Cremeans
Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehrlich
Engel
English
Ensign
Eshoo
Evans
Everett
Ewing
Farr
Fawell
Fazio
Fields (LA)
Flanagan
Foley
Forbes
Ford
Fowler
Fox
Franks (CT)
Franks (NJ)
Frisa
Frost
Funderburk
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Geren
Gibbons
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutierrez
Gutknecht
Hall (OH)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Hilleary
Hilliard
Hobson
Hoekstra
Hoke
Holden
Horn
Houghton
Hoyer
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E.B.
Johnson, Sam
Johnston
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Lantos
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Martinez
Martini
Mascara
Matsui
McCarthy
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Menendez
Metcalf
Meyers
Mica
Miller (CA)
Miller (FL)
Minge
Mink
Molinari
Mollohan
Montgomery
Moorhead
Moran
Murtha
Myers
Myrick
Nethercutt
Ney
Norwood
Nussle
Obey
Olver
Ortiz
Orton
Oxley
Packard
Pallone
Paxon
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Portman
Poshard
Pryce
Quillen
Quinn
Rahall
Ramstad
Reed
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Salmon
Sanders
Sanford
Sawyer
Saxton
Scarborough
Schiff
Schroeder
Schumer
Scott
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (WA)
Solomon
Spence
Spratt
Stearns
Stenholm
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornton
Thurman
Tiahrt
Torkildsen
Torres
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—83

Baker (CA)
Barton
Becerra
Beilenson
Bevill
Bonilla
Bonior
Borski
Cardin
Chenoweth
Clyburn
Collins (IL)
Collins (MI)
Combest
Conyers
Cooley
Coyne
Crapo
Cubin
Dellums
Dingell
Dixon
Ehlers
Fattah
Fields (TX)
Filner
Flake
Foglietta
Frank (MA)
Frelinghuysen
Furse
Gilchrest
Hall (TX)
Hastings (FL)
Herger
Hinchey
Hostettler
Hunter
Lewis (GA)
LoBiondo
Lofgren
Markey
McDermott
McKinney
Meehan
Meek
Mineta
Morella
Nadler
Neal
Neumann
Oberstar
Owens
Parker
Pastor
Payne (NJ)
Porter
Reynolds
Richardson
Rivers
Roybal-Allard
Rush
Sabo
Schaefer
Serrano
Smith (TX)
Souder
Stark
Stockman
Studds
Thompson
Thornberry
Torricelli
Towns
Tucker
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Williams
Yates

NOT VOTING—13

Berman
Brown (CA)
Bryant (TX)
Clay
Dornan
Emerson
Gonzalez
Largent
Mfume
Moakley
Radanovich
Rangel
Stokes

☐ 1219

The Clerk announced the following pair:

On this vote:

Mr. Radanovich for, with Mr. Rangel against.

Ms. WATERS and Messrs. COMBEST, STOCKMAN, and CRAPO, Mrs. CHENOWETH, Mrs. CUBIN, and Messrs. HUNTER, RUSH, MEEHAN, FIELDS of Texas, and SCHAEFER changed their vote from "aye" to "no."

Mr. GUTIERREZ, Mrs. SMITH of Washington, Ms. ESHOO, and Messrs. GREENWOOD, MATSUI, JACOBS, and HILLIARD changed their vote from "no" to "aye."

So the amendment to the amendment in the nature of a substitute, as amended, was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. RADANOVICH. Mr. Chairman, I was unavoidably detained during rollcall No. 195, the vote on the Goss amendment to the Canady substitute. Had I been here, I would have voted "yes" on it.

PERSONAL EXPLANATION

Mr. LARGENT. Mr. Chairman, I was unavoidably detained on rollcall No. 195. Had I been present I would have voted "aye" on the Goss amendment to the Canady substitute to H.R. 925.

AMENDMENT OFFERED BY MR. TAYLOR OF MISSISSIPPI TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mr. TAYLOR of Mississippi. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The Clerk read as follows:

Amendment offered by Mr. TAYLOR of Mississippi to the amendment in the nature of a substitute offered by Mr. CANADY of Florida, as amended: After paragraph (4) of section 9, insert the following:

(5) the term "fair market value" means the most probable price at which property would change hands, in a competitive and open market under all conditions requisite to a fair sale, between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts, at the time the agency action occurs;

Redesignate succeeding paragraphs accordingly.

The CHAIRMAN. The gentleman from Mississippi [Mr. TAYLOR] will be recognized for 2½ minutes, and a Member opposed will be recognized for 2½ minutes.

The Chair recognizes the gentleman from Mississippi [Mr. TAYLOR].

Mr. TAYLOR of Mississippi. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, throughout the measure before us the term "fair market value" is referred to but never defined. What we have done is take two common uses of "fair market value," one coming from the Treasury regulations, another coming from a court case, Banks versus the United States. We have combined those two definitions. We feel it is self-explanatory. That is why we asked the Clerk to read it. I hope the majority will accept this amendment.

Mr. CANADY of Florida. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Florida.

Mr. CANADY of Florida. Mr. Chairman, I think the gentleman has a good amendment. We will be happy to accept and support the gentleman's amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Us, too, Mr. Chairman.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. TAYLOR of Mississippi. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, is it the understanding of the gentleman, as we have discussed privately, that this amendment defines "fair market value" without consideration of the agency action. The agency action then occurs, and the next question is fair market value, after the agency action diminishes, if it does, the value of the property?

Mr. TAYLOR of Mississippi. Mr. Chairman, to clarify, the key words "at the time the agency action occurs" are included. It was in both of those. It is included in this.

The CHAIRMAN. If no Member is seeking time in opposition, all time has expired.

The question is on the amendment offered by the gentleman from Mississippi [Mr. TAYLOR] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended.

So the amendment to the amendment in the nature of a substitute, as amended, was agreed to.

AMENDMENT OFFERED BY MR. TRAFICANT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA, AS AMENDED

Mr. TRAFICANT. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The Clerk read as follows:

Amendment offered by Mr. TRAFICANT to the amendment in the nature of a substitute offered by the gentleman from Florida, Mr. CANADY, as amended: After Sec. 7, insert the following:

SEC. . DUTY OF NOTICE TO OWNERS.

Whenever an agency takes an agency action limiting the use of private property, the agency shall give appropriate notice to the owners of that property directly affected explaining their rights under this Act and the procedures for obtaining any compensation that may be due to them under this Act.

Redesignate succeeding sections accordingly.

Mr. TRAFICANT (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The CHAIRMAN. The gentleman from Ohio [Mr. TRAFICANT] will be recognized for 2½ minutes and a Member in opposition will be recognized for 2½ minutes.

The Chair recognizes the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Chairman, this amendment ensures that property owners will in fact be notified and given notice, and their rights will be explained, and the procedures for obtaining any compensation available under this act will be made known to them.

The big corporations and the big guys have attorneys that handle this. The little guys many times that are hurt, and the families that are hurt due to these limitations, may not necessarily know their rights under this bill.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, let me first commend the gentleman on an excellent addition to the bill.

Secondly, I want to also commend him for the fact that he was the original author for the original 10- to 20-percent change we just adopted. I thank him for contributing this change to the bill.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, the minority accepts the amendment.

The CHAIRMAN. If no Member rises in opposition, all time has expired.

The question is on the amendment offered by the gentleman from Ohio [Mr. TRAFICANT] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended.

The amendment to the amendment in the nature of a substitute, as amended, was agreed to.

Mr. CANADY of Florida. Mr. Chairman, I move that the Committee do now rise.

The CHAIRMAN. The question is on the motion offered by the gentleman from Florida [Mr. CANADY].

The motion was agreed to.

Accordingly the Committee rose, and the Speaker pro tempore (Mr. DOOLITTLE) having assumed the chair, Mr. SHUSTER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, had come to no resolution thereon.

AUTHORIZING EXTENSION OF TIME FOR DEBATE ON AMENDMENTS TO H.R. 925, PRIVATE PROPERTY PROTECTION ACT OF 1995

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that consideration of the bill, H.R. 925, in the Committee of the Whole be extended by 10 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

PRIVATE PROPERTY PROTECTION ACT OF 1995

The SPEAKER pro tempore (Mr. DOOLITTLE). Pursuant to House Resolution 101 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 925.

□ 1226

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, with Mr. SHUSTER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose earlier today, the amendment offered by the gentleman from Ohio [Mr. TRAFICANT] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended, had been disposed of.

Pursuant to the order of the House, further consideration of the bill for amendment will end at 12:54.

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CANADY OF FLORIDA AS AMENDED

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute, as amended.

The Clerk read as follows:

Amendment offered by Mr. WATT of North Carolina to the amendment in the nature of a substitute offered by the gentleman from Florida, Mr. CANADY, as amended: Strike section 6(f).

The CHAIRMAN. The gentleman from North Carolina [Mr. WATT] is recognized for 5 minutes.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the effect of this amendment will become apparent very quickly. If we read the provisions of the fifth amendment, my colleagues here have spent a lot of time and rhetoric talking about the fifth amendment. The provision we are talking about in this particular bill says "nor shall private property be taken for public use without just compensation." They have told us throughout this debate that the purpose of this bill is to assure that people who are deprived of their property receive just compensation. They have told us that a reduction in value of people's property is a taking, and therefore, they should be compensated for it under the fifth amendment.

Mr. Chairman, I want to talk about this for a little bit, and find out from my colleagues whether we believe this right is a right that is a first-class right, or whether it is a right which is a second-class right that we have under the Constitution.

Mr. Chairman, we started out with a bill that said "If you have a diminution in the value of your property, a reduction in the value of your property as a result of any agency action, you would be compensated." We then spent hours debating whether to limit that bill to compensation for just two kinds of agency action, that agency action being for the Endangered Species Act and for the Clean Water Act, disregarding all of the other agency actions that might have the impact of reducing the value of an individual's property.

□ 1230

We then spent hours more debating the issue of whether the reduction in value that would be required to trigger this amendment, or this bill, would be 10 percent reduction or whether it would be 30 percent reduction, or where we finally got to under the last amendment, the 20 percent reduction.

I am not interested in talking about a constitutional right that triggers only if it is 70 percent. We do not have any constitutional rights in our country that trigger at 70 percent, or 80 percent, or even 90 percent. We cannot put a value on our constitutional rights.

Now we come to the amendment that I have offered, and I want to direct my colleagues' attention to the bill because in the first section of the bill, it says the Federal Government shall compensate a owner of property whose value has been diminished.

Then we read on over to the fine print of the bill and we got to the source of payment and it says, "Any payment made under this section to an owner and any judgment obtained by an owner in a civil action shall come out of the agency's budget" and the agency, if it gets a judgment against it, must come back and seek appropriations.

My question to my colleagues is, is this a constitutional right, or is it a second-class right?

The gentleman from Louisiana [Mr. TAUZIN] has been very articulate about the rights that we are talking about here. They are all constitutional rights. Do they apply only when the Clean Air Act steps on them or only when the Clean Water Act steps on them, or only when the Endangered Species Act?

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

(By unanimous consent, Mr. WATT of North Carolina was allowed to proceed for 2 additional minutes.)

Mr. WATT of North Carolina. Or is this a real constitutional right that we are willing to pay for as we pay for all other constitutional rights in this country?

So when our constituents come and say, "We can get recovery if our values are diminished," will we scratch our heads and say, "Oh, well, if we appropriate the money, you will get a recovery"?

If someone gets a judgment against the United States of America and the agency does not have the money, will we say to them, "Oh, no, the agency is bankrupt now. You must wait until next year's appropriation"? That is what the bill says. "It shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year."

I have never known anybody who got a judgment against the United States who we can put off until the next fiscal year and tell we are not going to pay that judgment until a year from now, or 2 years from now, or we may not pay it at all if they do not appropriate the funds.

The question I ask my colleagues in this amendment is to abolish this provision that says you can get your money only from an agency. There is no agency. This is the U.S. Government.

I call on my colleagues to make this a first-class constitutional right, not a second-class constitutional right.

Mrs. CHENOWETH. Mr. Chairman, I move to strike the last word.

Mr. Chairman, some things change in time and some things just do not change in time. I want to bring that into focus in my comments. Some things that do not change in time is the nature of government, the nature of a government that when it grows too large, then it begins to encroach on our constitutional rights and our ability to make a living off the land.

I want to share with Members a little bit of history, and, that is, that about 125 years ago, the U.S. Army sent General Custer into the West to conquer the Sioux Nation. In doing so, what they did not realize is that the Sioux were very keen people in regard to the promises that the American Government had made them, promises that were broken, promises that were broken when the American Army went in and they wounded and sometimes killed women and children. It was a broken promise between the American Government and the Sioux Nation. And so the American Government sent General Custer out to the West to conquer the Sioux Nation, not realizing that the Sioux were people who did not take very kindly to broken promises.

Of course, we know the history of what happened at Wounded Knee, and, that is, that when General Custer went in, a terrible battle ensured and there was a great slaughter and a great setback of the American Army at that time. But the Army retaliated and in conquering the West, went ahead and sent other troops out and they chased the Sioux Nation into Canada and finally captured and conquered them.

Sitting Bull, a great medicine man from the Sioux Nation, was asked to stand in this gallery, in this place, nearly 125 years ago, and I am standing in the same place that Sitting Bull stood when he addressed a joint session of the House and the Senate.

Yes, ladies and gentlemen, some things change but some things never do, because this is what Sitting Bull said when he stood exactly in this place. He said, "The government has made us many promises, more than I can remember, and they never kept but one. They promised to take our land and they took it."

As a lady from Idaho, I can tell you I live with that every day, because more and more of our land is being taken. I appreciate the bill, H.R. 925. I think it is historic. It is part of living up to the Contract With America and beginning to reclaim our land.

Mr. SCOTT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I accept the idea that society ought to pay for societal policies. When the public wants a highway, it wants to enjoy the benefits of the highway, those who have to suffer by losing their land are compensated so that everyone else can enjoy the benefits of the public policy.

If this bill is going to work, we have to acknowledge that no agency has in it the money for these reimbursements. When we again fund money for a highway, we not only have money for the road itself but also in the appropriation enough money to fulfill expenses and condemnation as part of that budget.

If this is going to be implemented, we have to have a budget from which these payments can be made. The Watt amendment, Mr. Chairman, provides that resource.

Mr. Chairman, I would hope that this amendment would pass. Otherwise, the bill just cannot operate.

I would ask, Mr. Chairman, the gentleman from North Carolina to respond, if he would, to the question of how the judgments would be enforced if his amendment is not passed.

Mr. WATT of North Carolina. If the gentleman would yield, as I understand it, in every other situation where a judgment is obtained against Government agencies, it is the Federal Government that stands behind that judgment and the full faith and credit of the United States is at risk any time a judgment is entered.

If this amendment is to have any meaningful effect, if this bill is to have any meaningful effect, and people who we have not guaranteed if this bill passes that they will be compensated will be subjected to the whims of the appropriation process or nonappropriation. It is like we have got these naughty Federal Government agencies over there that are somehow separate and part from the Federal Government, itself, and the laws that the Congress passes who are out there acting as renegades and we are looking for somebody to blame, and trying to tell our constituents that somehow we are compensating them and protecting them against these naughty Federal Government agencies and hiding our head when really the agencies and the rules that they are applying and promulgating that result in these reductions in value are pursuant to the laws we passed here in this body and this is all a charade designed to make it appear that it is not us that is causing the problem by passing the Endangered Species Act or the Clean Water Act, but it is some Federal Government agency over there that is separate from us over here in Congress and they ought to go over there and get their judgment satisfied.

What I want to make sure the public understands is that there is no Federal Government agency, and Congress, that this is one Federal Government. If the Federal Government agency does something wrong, it is being done pursuant to a law that we have passed and we cannot just pass the buck over there and leave the public out there saying they have a valuable constitutional right, yet they have no assured means of collecting the judgment that is at play.

Mr. SCOTT. Mr. Chairman, I finally say that as we pass future laws, we could include in those appropriations the money for reimbursement under this law as well as for the promulgation of the policy just as we do with highways. I would hope that his amendment would pass so that we could implement the law as soon as possible and not have to get into the situations as the gentleman from North Carolina has indicated.

I yield to the gentleman from North Carolina [Mr. ROSE].

Mr. ROSE. I thank the gentleman for yielding.

I would like to say about my colleague from North Carolina's amendment, that without this amendment, this is an unworkable piece of legislation, assuming that you feel that it needs to be enacted. I intend to vote for the bill, but it will be a much better bill with your amendment in it. Without it, it is rather mean-spirited as you pointed out. With it in it, it is extremely focusing of the public's mind and the Government's mind that the whole Government, not just some particular agency, has got to pay for it. I encourage my colleagues to support the Watt amendment. It perfects this bill.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have a different interpretation than my friend from North Carolina because what this amendment does is gut this legislation. It guts the private property rights of property owners which we are trying to protect because it takes out what is the real stick in this legislation. The real stick is if the Government comes in and takes your property because of an endangered species designation or a wetland declaration and you lose the beneficial use of your property as guaranteed by the Constitution, you are not going to be compensated by the Government.

It is my hope that you do not see this used as an entitlement. This is intended to be used when property is lost, when the Government comes in and says there really is a need for this particular piece of property as a wetland, or there really is a particular need for this property because of an endangered species.

When we passed the Endangered Species Act and when we passed Clean Water, it was never envisioned by this Congress that the basic water rights in the State of Texas would be abrogated because of a fountain darter.

□ 1245

It was never intended by this body when those two acts were passed that farmers and ranchers in the Texas hill country would lose the ability to control cedar on their property because of two birds. It was never intended when those acts were passed that a Golden Eagle's nest, and by the way, there never has been proof that there really was an eagle's nest in the example I cited, it was never intended that would stop the construction of a badly needed road in my congressional district.

Another particular story, Marge and Roger Krueger spent $53,000 of their savings on a lot for their dream house in the Texas hill country. They and other owners have been barred from building their dream houses because the Golden Cheek Warbler was found in adjacent canyons. Surely that was not the intent when the Endangered Species Act was passed and I think our forefathers had great foresight in understanding that through the actions of Government, property could be taken, and that is why they made provision in the Constitution for payment when in fact those takings have taken place.

So again I say to my friend from North Carolina I appreciate the sincerity with which he comes to the floor, but I have to say in all candor to my friend, this is a gutting amendment if you support the basic and fundamental private property rights guaranteed under the Constitution.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I am glad to yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. I am concerned about Marge and Roger Krueger. The question I would ask the gentleman is if whatever agency that caused that adverse impact to Marge's land runs out of money, and they have gotten a judgment against the United States or against that agency, and the agency then comes back a year later and asks for an appropriation, what kind of protection has the gentleman provided in this bill for Marge Krueger?

Mr. FIELDS of Texas. First you have the civil court, but then second let me say what this is designed to do.

Mr. WATT of North Carolina. They have the judgment already.

Mr. FIELDS of Texas. Reclaiming my time, what this stick of compensation is designed to do is to force the Federal Government in the first instance to make the right decision, to protect in this particular instance the warbler and the vireo. Other things could be done. You have State properties in this particular area where there was a concerted effort to save those birds. The fountain darter, there are things that could be done to propagate and actually increase the population and actually introduce this to the ecosystem of Texas. In regard to the eagle's nest I talked about just a minute ago, through cooperative effort people would bend over backwards in my area to protect if in fact that was an eagle's nest. But what has happened is we have lost the cooperation and the consultation with and of that local private landowner and that is what this legislation is designed to protect. This amendment guts it.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I am glad to yield to my friend from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding to make the point that it is the very language the gentleman's amendment would delete from the bill that provides the answer. It says that notwithstanding any other provision of law, payment must come from that agency. Therefore, the citizen can compel mandamus against that agency for payment.

Mr. CANADY of Florida. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just wanted to point out with respect to this amendment that it would eliminate the essential feature of this bill which provides an incentive for agencies to behave responsibly, for agencies to consider the real cost of their action, to take into account when they are imposing burdens on landowners, and I think for that reason this amendment would be counterproductive.

I believe that in many of the instances where we are currently seeing landowners burdened, we are seeing agencies that are overreaching, they are going beyond the real intent of the law, and agencies who are doing that can exercise their discretion not to do that. And I believe that would be the consequence, the major consequence of passing this law.

I want to also take this opportunity to thank all of those who have assisted and helped in the movement of this legislation. I want to particularly thank the gentleman from Texas [Mr. SMITH], the gentleman from California [Mr. POMBO], and the gentleman from Alaska [Mr. YOUNG], for their hard work in putting together the compromise, the substitute amendment which I have offered. Without their hard work on this issue we would not have been able to move this bill to the floor and I am very grateful to them for this.

I also want to thank particularly the gentleman from Idaho [Mr. CRAPO] for his hard work on this issue and his active participation in the floor debate. His very able participation here has been very important to the success of this bill.

Finally, it is very important also to thank the gentleman from Louisiana [Mr. TAUZIN] and the Members on the Democratic side who are participating in this effort. It is true that the gentleman from Louisiana [Mr. TAUZIN] has worked on this issue for years. I am very pleased that we are now seeing this issue brought to the floor, and I believe we are going to see this issue move forward to the Senate, and I am hopeful that we are going to see this issue passed into law later this year. So I am very grateful to them.

Mr. POMBO. Mr. Chairman, will the gentleman yield?

Mr. CANADY of Florida. Mr. Chairman, I yield to the gentleman from California.

Mr. POMBO. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I think we all would like to thank the gentleman for the wonderful job he has done in managing this bill on the floor, and I appreciate all of the hard work you have put in in battling over the last 12 long hours.

Mr. Chairman, I would like to rise in opposition to this amendment and to bring it into perspective in that if you take the incentive away, the hammer away from the agencies, you run into the situation that is the result of this bill coming to the floor, where an agency like the Fish and Wildlife Service can list the fairy shrimp and declare most of California habitat and control most of California without any cost to the agency, without any fear that anything is going to happen to them. They have run amok. It is the bureaucracy out of control, it is the bureaucracy and the regulators with a free hand running all over the Western United States and the Southern United States, without anyone having the ability to come down on them, unless of course you happen to have 10 years and a half million dollars to spend on attorneys' fees.

That is what we are trying to correct in this bill. And I know what the gentleman's intentions are, but I feel that if this amendment were passed, it would completely damage the bill, so that we would not be able to accomplish what is truly needed, and that is to restore some responsibility to the agencies, and to put that hammer in the hands and I guess to restore the power to the people who are out there having to live under this.

I think this is an extremely damaging amendment, and I would urge all of my colleagues to vote "no" on it.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. CANADY of Florida. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I will just take a minute and thank the gentleman for yielding. Let me concur in the last remarks. I do not want to use words like gutting and all of that, but this is extremely damaging. It takes from the bill the method of payment.

Let me say to my friend who offered the amendment, this is a first class right under the Constitution. Any citizen under this bill that wants to exercise that right can do so at 1 percent, 2 percent, 10 percent, 20 percent. This bill simply creates a new remedy for citizens at home under the criteria set by this bill to get justice at home. For it to work the agency has to want to cooperate, and if you do not make the agency responsible for damage it does, and do not make the agency responsible for payment, you will never get cooperation. Just day before yesterday Mr. Babbitt just announced the first of its kind safe harbor provision for the red cockaded woodpecker offering to cooperate with a landowner instead of taking their land.

This is what we need.

The CHAIRMAN. All time has expired.

Under the previous order of the House of today, the question is on the amendment offered by the gentleman from North Carolina [Mr. WATT] to the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. CANADY], as amended.

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WATT of North Carolina. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. Pursuant to clause 2 of rule XXIII, the Chair may reduce to not less than 5 minutes the time for any recorded vote that may be on another of the pending amendments without intervening business or debate.

The vote was taken by electronic device, and there were—ayes 127, noes 299, not voting 8, as follows:

[Roll No. 196]

AYES—127

Abercrombie
Ackerman
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Boucher
Brown (FL)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (MI)
Conyers
Coyne
DeFazio
DeLauro
Dellums
Deutsch
Dingell
Dixon
Doggett
Engel
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Green
Gutierrez
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoyer
Jackson-Lee
Jefferson
Johnson, E. B.
Johnston
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
LaFalce
Lantos
Lewis (GA)
Lofgren
Lowey
Maloney
Manton
Markey
Martinez
Matsui
McCarthy
McDermott
McKinney
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Mink
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Rahall
Reed
Reynolds
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Stark
Stokes
Studds
Thompson
Torres
Torricelli
Towns
Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—299

Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brown (OH)
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Dicks
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas

Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Jacobs
Johnson (CT)
Johnson (SD)
Johnson, Sam
Jones
Kanjorski
Kasich
Kelly
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Longley
Lucas
Luther
Manzullo
Martini
Mascara
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—8

Brown (CA)
Bryant (TX)
Chapman
Collins (IL)
Dornan
Gonzalez
Moakley
Rangel

□ 1312

The Clerk announced the following pair:

On this vote:

Mr. Rangel for, with Mr. Dornan against.

Mrs. THURMAN, Mr. LEVIN, and Mr. MCHALE changed their vote from "aye" to "no."

Mr. FAZIO, Mr. OBEY, and Mrs. LOWEY changed their vote from "no" to "aye."

So the amendment to the amendment in the nature of a substitute, as amended, was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as amended, offered by the gentleman from Florida [Mr. CANADY].

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

Mr. STUMP. Mr. Chairman, I rise in support of H.R. 925, the Private Property Protection Act of 1995 and I encourage my colleagues to support the bill as well.

The bill is not an assault on the Constitution and it is not a scheme to benefit a select few as some propaganda has suggested. The bill simply affords Americans the protection that they have been guaranteed under the Constitution's fifth amendment. The bill is easily the most important measure to protect private property rights since the Bill of Rights was ratified in 1791.

Tomorrow, March 4, 1995, marks the 206th year that the U.S. Congress has met. When the First Congress met, there was great concern that the Constitution did not include a basic Bill of Rights to limit the powers of the Federal Government. In their wisdom, the First Congress proposed a Bill of Rights and determined that the Bill of Rights should guarantee compensation for the taking of private property for public use.

When the Bill of Rights was ratified in 1789, guarantee of compensation for the taking of private property became the fifth amendment to the Constitution.

Since the Bill of Rights was ratified, the fifth amendment has been relied upon to limit Federal intrusion into private lives without due process of law. When we look back over the past 200 years, it is easy to see a clear pattern of increased takings of private property. The number of takings have rapidly escalated over the past two decades in direct relation to the increase in Federal regulatory actions. Unfortunately, private property owners who are victims of regulatory takings are not receiving due process guaranteed to them under the fifth amendment.

The Federal regulatory morass has unfairly punished private property owners by restricting the use of their lands. While such Federal regulations clearly "take" from private property owners, tragically, the private property owner must sue to get compensation due to them by the Federal Government.

We must not allow the Federal Government to continue to grow and regulate without regard for the public, of which private property owners are a part. We must not allow the Federal Government to take private lands for public purposes and then require the property owners to pay for costly, time consuming litigation in order to receive compensation.

We must pass H.R. 925 and protect the constitutional guarantee of compensation for the taking of private lands.

Mr. MINGE. Mr. Chairman, farmers and other landowners in the Second Congressional District are frustrated by a complex, burdensome, inefficient, and expensive set of procedures and restrictions dealing with wetlands and drainage. This has led to demands for compensation and reform of the process.

I am drafting and will introduce legislation to dramatically simplify the procedures and reduce the harsh effects of these drainage and wetlands restrictions. The problem must be solved, and it must be solved now.

The alternative approach set up in H.R. 925 of establishing a right to compensation for a loss of land value due to Federal restrictions is inviting but ill-advised. It will be a full employment act for attorneys and appraisers, potentially explosive liability, and an increase in the Federal debt. It is unworkable, unfair, and poorly thought out. For example, owners of areas with cattails that could be drained would be entitled to farmland value. Another example of the problem is how to handle parcels that are subject to, and then relieved of, restrictions. Should the land owner be obligated to refund the payment? Should the Federal Government have a lien on the land to receive the refund? Query, what is to be done about the situation where property both receives very substantial benefits from Federal activity that increases land value and then a more modest loss of value due to regulations?

The real goal is to eliminate the unreasonable burdens. The promise of compensation, contained in H.R. 925 that was hastily considered by the House of Representatives, is an inadequate, elusive, and unacceptable solution. For these reasons, I voted against the bill. Hopefully, the idea of reasonable compensation for unreasonable restrictions in H.R. 935 will be improved in the U.S. Senate to deal with the problems I have identified. If it is, I look forward to voting for the measure.

For the present, I look forward to working to lift the harsh burdens that are the real problem. Farmers in my area do not want a new and endless controversy. They want to farm. They are responsible stewards of the land.

Mr. LIGHTFOOT. Mr. Chairman, on March 2, 1995, I voted "aye" on the Tauzin amendment to H.R. 925. However, the computer did not record my vote. I would like to declare my support for this amendment which would protect the rights of property owners from overzealous government takings. I reaffirmed my support for this legislation by voting in favor of final passage of H.R. 925.

Mr. MFUME. Mr. Chairman, I rise in opposition to the H.R. 925, the Private Property Protection Act. The Private Property Protection Act comes under the guise of protecting private property rights, while in reality it pits the property rights of some against the rights of others and the rights of the community as a whole. Private property rights are sufficiently protected under the fifth amendment to the Constitution; codifying a specific interpretation of these rights is not only unnecessary, but dangerous as well. I urge a "no" vote on this legislation.

The courts have outlined the factors to be considered on a case-by-case basis in determining if a "taking" has occurred, including the economic impact on the property owner, the public purpose for which the regulation was adopted, and the character of the governmental action. H.R. 925 calls for an extended, legislated, interpretation of the fifth amendment of the Constitution. This bill would require the Federal Government to pay a private property owner for any decrease in value to his/her land due to Federal regulations. The effect of this legislation would be to have the Government—i.e. the taxpayers—pay land owners not to destroy the environment.

Along with property rights come property responsibilities. Nobody has the right to use his or her property in a manner that may harm the public health or damage the property of another landowner or the community as a whole. American citizens are able to use environmental laws in order to protect their property from damage at the lands of irresponsible industries and landowners. Environmental laws, in turn, have been established to preserve our natural resources for the benefit of future generations and so that Mother Earth can survive.

The intent of H.R. 925 is to make it fiscally impossible to enforce such important legislation as the Clean Water Act, the Endangered Species Act, and other environmental initiatives. A broader interpretation of this bill could limit the ability of the Federal Government to enforce such laws as the Americans with Disabilities Act, the Civil Rights Act, and other laws which protect American citizens but may place a financial burden on business. The possibilities of abuse under this legislation are enormous. We must not fall for the "what's mine, is mine" pitch used by "takings" legislation advocates if it comes at the expense of the American taxpayer, or the community at large. I urge my colleagues to vote against H.R. 925.

Mr. RADANOVICH. Mr. Chairman, bureaucracies have little respect for private property.

In my district, for example, a constituent has been fighting an uphill battle with USDA's Forest Service over an easement right.

Here is a letter from Jeffrey Green, county counsel of Mariposa County—my home community and on whose board of supervisors I formerly served. He explains the problem in a straightforward way that I believe my colleagues will find illuminating, and I ask that it be included with my remarks in the RECORD.

I also want to point out that the problem discussed by Mr. Green has a further dimension that illustrates the indifference Federal bureaucrats can display. More than a year ago—January 10, 1994—the district ranger of Stanislaus National Forest wrote Mr. Green that the requested road use permit for my constituents would be ready within the next 30 days.

When that didn't happen, Mr. Green made further inquiry. On May 17, 1994, the district ranger wrote that he could ensure that the permit would be received shortly. Knowing I planned to use this awful apathy by the Forest Service in remarks on the House floor, my counsel called the district ranger to ask whether the promised permit yet had issued. Sad to say, Mr. Chairman, the answer was "no."

These are intolerable circumstances that, I am learning go on every day across our country. Citizens are at the mercy of a corps of overpaid, underworked dolts who make a mockery of the term, "public service."

THE COUNTY COUNSEL,
Mariposa County, CA, March 2, 1995.

Re National Forest Service Use Permit for Billy J. Lovelace.

OFFICE OF CONGRESSMAN RADANOVICH,
Cannon Building, Washington, DC:

I have previously forwarded to your office my correspondence relative to the above matter and the failure of the Forest Service, after numerous promises, to issue a Use Permit to Mr. Lovelace to access his property wherein he resides. You have requested that I provide you additional information as to why in my opinion this type of activity illustrates the federal government's failure to respect property rights of its citizens. Mr. Lovelace purchased his property with the access road to his dwelling already constructed. That access road did in fact cross a small portion of the Forest Service property and an easement existed for the use of that Forest Service strip of land. When the easement expired, the Forest Service basically took the position that Mr. Lovelace was going to have to find other access to his property, although as a practical matter no other access existed. Mr. Lovelace felt totally ineffectual in dealing with the National Forest Service personnel, as they made him feel that access to his property would be granted upon their whim only and not as any property right he may have acquired over a period of time. We all know that you cannot acquire a prescriptive easement against a governmental entity, however, there is a concept of fair play and due process when the federal government has allowed access over a period of years and then arbitrarily determined that it may not continue that access to the property owner. That is what happened in the Lovelace case and the possible denial of the Use Permit has caused great emotional distress to Mr. Lovelace. He feels totally helpless in dealing with the federal government and therefore contacted his County Supervisor, Doug Balmain, to intervene on his behalf. Supervisor Balmain and myself did in fact intervene on Mr. Lovelace's behalf and had a number of conversations with the Forest Service personnel. Essentially the first meetings indicated that the Forest Service was adopting a blanket policy without any regard to the private property rights of the individuals in that it was inappropriate to access private property over a Forest Service land if there was any other conceivable way to access the property. Of course, to the Forest Service, any conceivable way to access the property did not take into consideration the extreme expenses involved in most cases, and the topography of the land which may make it impossible to access. However, after a number of conversations and written correspondence, the Forest Service did in fact agree that Mr. Lovelace was entitled to a Use Permit to access his property. As you know, that permit has still not been issued even though it was promised well over a year ago. Certainly when Mr. Lovelace purchased his property, he felt he had a property right to access his dwelling over the road that had been constructed prior to his purchase. It was only after his purchase that he discovered that the Forest Service may restrict access to his property. In my opinion, as well as Supervisor Balmain's opinion, the federal government has a moral right and obligation to deal honestly and fairly with citizens who are affected by its rules and regulations. Access to an individual's dwelling is certainly viewed by that individual as a property right and the threat of removing that access generates a great deal of distress for the property owner.

Based upon other experiences with the Forest Service, this is not an unusual way in which the Forest Service personnel deals with citizens' property rights and values. In one of the letters which my office received from the District Ranger regarding this matter, the following language was contained in the letter which, in effect, chastised Supervisor Balmain and myself for becoming involved in this issue: "Since the issues revolve around the administration and management of National Forest lands, all future correspondence will be carried out through the concerned individuals." I read that sentence to essentially tell Supervisor Balmain and myself to butt out of Supervisor Balmain's constituent's business with the federal government.

Should you desire any additional information regarding this matter, please feel free to contact me.

Very truly yours,
JEFFREY G. GREEN,
County Counsel.

Mr. COSTELLO. Mr. Chairman, I rise today to express my concern over legislation under consideration in the House today to place into statute guidance for takings allowance under the fifth amendment of the Constitution. While I support efforts to offer this guidance, I am concerned the original bill proposed by the majority goes too far.

This bill would require Federal agencies to reimburse private property owners if 10 percent of their land is affected by any Federal regulation. While the intent of this bill is good, the potential cost to the Federal Government for a 10-percent diminishment of property value is enormous.

In addition, the bill's basic provisions are unworkable. For instance, if the Federal Government raises the speed limit on a rural highway, property owners adjacent to the highway could claim their property has been devalued by at least 10 percent due to increased noise from greater automobile traffic or higher speed limits. They could then demand reimbursement from the Department of Transportation for that diminished land value.

I have made efforts to work with my colleagues to try and raise this threshold to a more reasonable level. I have voted for amendments to raise this threshold beyond the 10-percent level, to one which builds on current legal precedent but which is not too narrow. In addition, I am working with my Democratic colleagues who also favor protecting private property rights to narrow the bill to instances of likely takings—for wetlands protections, for example—instead of every Federal regulation. Making Federal regulations more reasonable is my goal, which is also why I have cosponsored wetlands reform in the past.

An effort was made to try and narrow this bill, but it did not go far enough. The amendment offered by Representative TAUZIN would have gone beyond just a wetlands provision to include rights of western water use, mining and other use western lands. It also raised the threshold to only 50 percent, one which I feel is still too unworkable. That is why I opposed the Tauzin amendment.

One amendment I did support would have required a private property impact assessment by an agency prior to any taking. This would have written into law an Executive order signed by President Ronald Reagan, that would allow property owners to seek compensation based on this assessment. Unfortunately, this amendment was rejected by a majority of my colleagues. However, this bill has improved as it has moved through the House, and it is my hope that in supporting this bill on final passage we may move it to the Senate and reach common ground to protect private property rights, and our Nation's critical environment areas, in a final package.

Mr. McDERMOTT. Mr. Chairman, I rise in strong opposition to H.R. 925. This is yet another proposal offered by the new majority to undermine our Nation's health, safety, and environmental standards in order to benefit their favorite special interest: the pollution industry.

This bill is a cruel joke which endangers helpless private property owners throughout the country and allows land abusers the opportunity to raid the Federal treasury.

Make no mistake, this bill is incapable of protecting the public from health or safety hazards.

In my State of Washington, clear cut logging on steep slopes caused extreme run-off and excessive flooding along the Tolt River. Slides sent trees and debris choking the river and deflecting flows.

Meanwhile, the flooding caused a family's mobile home to be washed down river and significantly eroded several other properties. The effect: property devaluation and serious expense to the downstream landowners, serious harm to the environment, and huge profits for the loggers.

This bill does nothing to either prevent such environmental damages or protect the landowners who undoubtedly will be harmed by the ensuing reckless developments.

In fact, even as amended, H.R. 925 makes the government liable for the negligent actions of industry polluters, reckless developers, and the property owners whose land is harmed by such development.

For example, when a developer seeks a permit to clear cut a steep slope as occurred in my State, or to fill in a wetland which endangers the property of downstream landowners, the government is damned if it grants the permit and damned if it doesn't.

If the government issues the permit, it then becomes liable for the damages incurred by the developers on the downstream property owner's lands. Yet, if the government denies the permit, this bill forces it to compensate the developer who requested it—no matter how negligent the developer's proposal may be.

By voting in favor of H.R. 925, the majority will commit our government to a financial conundrum which will drain the Federal treasury.

There are not enough health, education, nutrition, or family programs for the new majority to eliminate in order to pay for a bill which mandates such financial recklessness.

Mr. Chairman, I hope that you take a look beyond your political focus groups and examine the actual, real world implications of this dangerous bill.

I hope my colleagues find the wisdom and courage to vote against this horrifying piece of legislation which, as usual in this new majority, benefits a select few and harms the rest of us.

Mr. UNDERWOOD. Mr. Chairman, the fifth amendment to the U.S. Constitution clearly speaks to the issue of Federal land acquisition when it states: "[N]or shall private property be taken for public use, without just compensation." The Constitution is clear on the issue of Federal land takings and compels us to deal justly with the impact of Federal action on private land.

H.R. 925 is currently being touted as the cure for private land owners whose land has been devalued by Federal regulations. However, it does not answer Guam's outrage over Federal land policies.

The people of Guam have for many years been the victims of unjust land grabs and the heavy hand of Federal land policy. Within the borders of the war in the Pacific Park, land owners cannot develop their private property due to Federal regulations. Land owners at Ritidian Point, landlocked by the Andersen Air Force Base, are also denied free use of their land because access is restricted. Unfortunately, this legislation would not compensate these land owners or any others whose land is currently controlled by the Federal Government.

Guam needs more than just promises for the future; we need Congress to recognize and commit itself to resolving Guam's unique Federal land problems.

Mr. PETERSON of Minnesota. Mr. Chairman, today we are considering property rights legislation, one of the most important pieces of legislation we will vote on this year. The right to own property is one of the basic doctrines of our Constitution. The fifth amendment requires the Government to provide just compensation for property taken for public purposes. Property rights has come to the forefront of debate in rural America. This debate is vital to every landowner in this country, specially to the American farmer.

Over the past three decades, there has been an enormous expansion in Government regulation of private property. The intent of these regulations is for the most part positive. However, the rigidity of the regulations is completely unnecessary and over burdensome and often defeats the purpose of the objective of the regulation. The Federal Government makes it a practice to spell out step by step the method each person should use to accomplish the goal of a regulation. This rigidity is costly and actually creates more obstacles.

These regulation restrictions are out of control, specifically in regard to wetlands. For example, a farmer in my district bought 160 acres of land with the intent to farm the 160 acres. After talking to his local soil and conservation service [SCS], and looking at the records from the sight, including soil samples and all inclusive maps, the SCS office confirmed that no wetlands were contained on the land. My constituent then proceeded to purchase the land and begin to make the necessary changes to farm. His local SCS came out again to approve the site, and on the way out noticed some cattails in the field. The SCS then proceeded to discover, new wetlands which affected about 26 acres of land. This farmer would have reconsidered buying the property if he knew he could not farm on a large portion of his land.

As a result of this type of common practice by Federal agencies, private property owners repeatedly lose economic use of their property. In situations where the Government regulates to the point that the property owner may not use his property, or the property is substantially devalued, it is only fair and just for the property owner to be compensated.

No one argues that we need to regulate certain activities and restrict certain practices on land for the common good and well being of the country. We need clean water, we need clean air. And we need to protect the environment. However, the burden of providing public good should not be on an individual landowner. If the American public benefits from restrictions on land uses, then the public should pay for the costs.

Furthermore, as recourse to Federal taking, wealthy people and big corporations have the resources to protect their property rights through the legal process. The average person on the other hand doesn't have the money and should not have to defend his or her property rights in the current lengthy, complicated and expensive legal process. More often than not, the small property owner has no way to combat the expansive authority and resources of Federal agencies. We must set up a process where people don't have to hire a lawyer, spend a lot of their own money, and waste millions of taxpayer dollars to defend their basic property rights.

For these reasons, I strongly support H.R. 925, private property rights legislation. H.R. 925 ensures that private property owners are compensated when the use or value of their property is limited. This bill lays out clear and specific guidelines for government officials and property owners in determining when Federal regulations go too far, and result in violate individual property rights. Federal agencies will have to weigh their actions cautiously before issuing regulations and will be required to pay for the imposed regulations.

People in this country who purchase and pay taxes on property should not have to endure their rights being stripped away. The Federal Government must be responsible for its actions. Congress must act now to minimize the taking of our constitutionally protected property rights. I urge my colleagues to support H.R. 925.

Ms. PELOSI. Mr. Chairman, I rise today to oppose H.R. 925, the Private Property Protection Act of 1995. This legislation will create an entitlement program for polluters, a billion dollar sweepstakes for land speculators, and will leave the American taxpayer holding the bag.

In the words of a Justice Department official who testified before the House Judiciary Committee, "hard-working American taxpayers * * * will be forced to watch as their hard-earned wages are collected by the Government as taxes and paid out to corporations and large landowners as takings compensation."

At a time when so-called entitlement programs are under attack by the Republican Party, H.R. 925 would create an immense new entitlement program and bureaucracy with so much legal uncertainty that the only sure winners will be our Nation's lawyers.

Mr. Chairman, contrary to what the authors of this legislation would have us believe, American law is based on a deep respect for private property rights. The fifth amendment itself symbolizes this respect for property rights by ensuring that private property shall not be taken for public use without just compensation.

H.R. 925 represents a radical departure from long-settled Supreme Court doctrine. It abandons the modern definition of the fifth amendment's "takings" clause by requiring that private property owners be compensated if regulations limit land use and diminish property values by just 10 percent.

This means that almost any loss in market value would require compensation. This replaces an entire body of constitutional law with a clumsy measure that ignores the collective wisdom of two centuries of Supreme Court decisions.

Mr. Chairman, for over 200 years, private claims to compensation under the fifth amendment's "takings" clause have been successfully balanced against the public interest on a case-by-case basis.

H.R. 925 does not add to this delicate judicial balance in a constructive manner. Rather, it shatters legal precedent by imposing a heavy-handed new doctrine that will only result in unjust windfalls to wealthy corporations at a tremendous cost to the health, safety and pocketbooks of all Americans.

Who will pay for the costs of environmental clean-up when polluters degrade our environment? The American taxpayer. This bill protects the interests of polluters at the expense of the American taxpayer.

Mr. Chairman, we should heed the voice of our constituents as we consider this bill. In a recent CNN/Time poll, people were asked whether a landowner that is barred from installing a toxic waste dump should be compensated. Fully two-thirds of those interviewed, 66 percent, said no.

Let's not allow the American taxpayer to get "taken" by this legislation. I urge my colleagues to vote against H.R. 925.

Mr. JOHNSON of South Dakota. Mr. Chairman, once again the House Republican leadership has brought us a bill in H.R. 925, the Private Property Protection Act, which addresses a legitimately important issue, but which is overly broad, ill-considered and poorly drafted. I believe the debate on this important issue should continue, and so I will for now support this legislation in order for the Senate and the conference committees to have an opportunity to revise and improve the legislation. If no such significant improvement is forthcoming from those bodies, however, I am very doubtful that I will be able to vote for this bill on final passage.

Mrs. COLLINS of Illinois. Mr. Chairman, I rise today in opposition to H.R. 925, the Private Property Protection Act. This bill establishes a dangerous and disturbing precedent that would allow individuals to do whatever they want with their property, regardless of whether it destroys their neighbors' property or not. Moreover, H.R. 925 would establish a new entitlement system to pay off these individuals to prevent them from using their property in a damaging way.

Imagine if this radical and extreme interpretation of the U.S. Constitution's fifth amendment had been adopted by an earlier Congress. We would have no civil rights, no child labor laws, no environmental standards, no car safety standards, no clean water requirements, no Americans with Disabilities Act, etc. We would live in a dirty, unsafe, and callous environment in which each individual and corporation would be out for his or her own best interest, regardless of the consequences on their neighbors and surroundings. The Government's efforts to protect public health and safety would be completely compromised because agencies would have to choose between promulgating the laws we pass and going bankrupt or ignoring important federal laws.

Environmental justice efforts, and bills such as my Environmental Equal Rights Act would be completely undermined by H.R. 925 because environmentally disadvantaged communities would either have to allow a new waste facility site to be established or pay the polluter to not develop the site. This is dangerous, extreme and fundamentally unfair to the vast majority of Americans who own private property that is protected by our critical environmental, health, and public safety laws.

In fact, I prepared an amendment to this legislation that would ensure that private property owners could not seek compensation if an agency prevented them from using their land in a way that would decrease the property value of their neighbor's land. Currently, the bill prevents someone from seeking compensation if the agency's action seeks to prevent damage to other properties. Damage implies specific, visible harm to neighboring property. For example, if water or waste was backing up in someone's backyard. What about the loss of property value when an enormous, ugly waste treatment site is constructed at the end of your block? This has occurred throughout my district and it seems unfair that property owners should have to choose between watching their property value decrease or paying their neighbor not to construct a waste facility. My concerns with this legislation are so great, however, that I intend to oppose H.R. 925 completely.

What we have, Mr. Chairman, is a bad bill based on a bad idea. Members seem to be frustrated that Federal agencies are doing what they are required to do, which is to promulgate the laws that we pass. If this is the case, we should deal directly with this issue. But to pass a bill that makes taxpayers pay for our inaction is truly passing the buck. It is not only passing the buck but also endangering the future health and safety of the majority of our constituents. I urge my colleagues to join me in opposing this dangerous legislation.

Mr. SMITH of Texas. Mr. Chairman, some opponents of the Private Property Protection Act of 1995 are engaged in world class doublespeak.

Many of the same crowd that's run up a $4.5 trillion debt of our children's money criticize the Private Property Protection Act of 1995 as a raid on the Treasury. Those who supported the largest tax hike in history worry that the bill will harm the middle class.

Many of the same gang that supported a Governmental takeover of private health care in America condemn this bill as a new bureaucracy. Those who created cradle to grave entitlements attack this bill as a new entitlement. And the people who will oppose tort reform next week worried that this bill will be a boon for lawyers.

It's amazing the creative excuses that defenders of big Government will resort to in order to protect their power to tell the American people what to do. But, Mr. Chairman, the American people, many of whom are watching this debate on C–SPAN today, know better.

They know who is responsible for the deficit-raising, tax-elevating, mandate-creating, heavy-regulating, entitlement-formulating, lawsuit-generating policies of the regulatory state. And the American people understand who will, and won't, end those policies.

And if the opponents of the Private Property Protection Act of 1995 would read our bill, they'd know that this bill does not create a new entitlement, does not create new bureaucracy, is not a boon for lawyers, is not a threat to the middle class, and does not eliminate our Nation's environmental laws.

Read our bill. It simply makes the general public share the costs of regulations designed to benefit the general public. It prevents the Government from hiding those costs by foisting them on a single, innocent landowner.

Read our bill. It doesn't prevent Government from protecting endangered species or preserving wetlands. We the people can protect as many endangered species and as many wetlands as we the people are willing to pay for.

Read our bill. It doesn't create a new entitlement. Right now certain Americans who own the wrong land in the wrong place at the wrong time are forced to bear the entire cost of Government regulation. This bill simply relieves their burden brought on by the Government.

Read our bill. This has nothing to do with a raid on the Treasury. This bill prevents the Government from stealing private property. It provides relief to the victims of regulatory theft. This relief would be made available from annual agency appropriations, not the U.S. Treasury.

Read our bill. The Private Property Protection Act of 1995 would benefit the middle class. It would provide the people who do the work, pay the taxes, and pull the wagon with the same rights as the blind cave spider, golden cheeked warbler, and fairy shrimp. And it would make Government regulators public servants once again. No longer would these officials be the masters of middle class Americans.

Mr. Chairman, objections to this bill have nothing to do with entitlements, bureaucracy, middle-class rights, or lawyers. They don't object to any of these things; they've spent their careers working hard to expand each of them.

They have everything to do with their love of big Government control of the lives of middle class Americans. They'll say anything to defend it; they'll even talk in double-speak.

Mr. Chairman, this Congress was elected to end big Government and prevent it from trampling the rights of the American middle class. That's why we rise today, Republican and Democrat, from all over this Nation, to support the Private Property Protection Act of 1995. I urge my colleagues to read this bill and when they do they'll support it.

Mr. PACKARD. Mr. Chairman, Government imposed regulations chip away at the very cornerstone of our society—private property. It is time to stop Government's encroachment on our fifth amendment rights. Overzealous Federal regulations intrude on property owner rights and restrict individual freedom. Government exists to protect and serve the needs of private property owners, not to trespass on them.

H.R. 925, the Private Property Protection Act works to restore the sanctity of private property by ensuring fair compensation for unfair Federal takings. Our Republican property rights proposal represents a simple but constitutionally protected concept. Whether the Government wants your property to build a road or to preserve an endangered rat's habitat, the intent of our Founding Fathers is clear. If you take it, pay for it. H.R. 925 provides landowners with their first line of defense against overreaching Government regulations.

Our Nation's greatness arises in large part from the opportunities afforded by the use and ownership of private property. The restrictions imposed by overzealous regulatory agencies and legislatures limits the ability of property owners to manage and use their land. Bureaucrats abrogating our property rights and abusing the fifth amendment, assault the very fabric of our society.

Mr. Chairman, Government should be encouraging, not discouraging ownership of private property. Fair compensation for unfair Federal land taking will restore Government accountability and legitimacy. The people want Government to stop meddling in their private affairs. H.R. 925, the Private Property Protection Act, gets Government off of the people's back.

Mr. COLEMAN. Mr. Chairman, I rise today in opposition to the bill H.R. 925. I am disappointed because there were a series of important measures that would have modified the legislation in such a way that I could have supported it. Unfortunately, those measures failed, and the bill that we are left with has extremely alarming implications. Were this legislation enacted, the Federal Government would be saddled with a huge new entitlement program, with unknown costs. Not only will this legislation be tremendously expensive in terms of Federal dollars, but the limitations that it will impose upon the regulatory power of Federal agencies could exact a huge toll upon human health and the environment.

Many of the proponents of this bill have tried to argue that the decision before us is essentially a constitutional question. They have frequently read from the fifth amendment provision which bars the Federal Government from taking private property without just compensation. But H.R. 925 raises a constitutional question only insofar as the bill requires us to expand upon how this body chooses to define "takings." In the past, this interpretation has been left to the jurisdiction of the courts. As the takings question is fundamentally one of constitutional interpretation, the court system is probably the most appropriate forum for determining the proper answer to this question.

Yet, the precedent adhered to by the Supreme Court dictates that Government action must reduce the value of private property by almost 90 percent before the owner can be compensated. Many of my colleagues felt that such a threshold was unreasonably high, and wished to take steps to compensate property owners suffering large financial losses as the result of regulatory action. I strongly supported such initiatives. I feel that it is the proper role of the Congress to craft legislation to meet the changing needs of our society in a manner consistent with the intent of the Framers of the Constitution. I firmly believe that property owners should not be subject to undue financial burdens as a result of Government actions. However, this bill is not crafted simply to set new limitations on Government regulations. Indeed, this bill fundamentally redefines the "takings" question, giving it a meaning so broad that it has in effect been rendered meaningless.

Under the provisions of this bill, any property owner who can demonstrate a loss of value to their property of 10 percent or more will be entitled to Federal compensation. Unfortunately, this threshold is absurdly low. Landowners will be tempted under the terms of this provision to subdivide their property to meet the threshold, thereby resulting in a plethora of cases brought against Federal regulatory agencies. The bill makes no provision to prevent this from happening. The bill also fails to make any provisions to prevent speculation. If an individual buys land with the full knowledge of pending regulations that will impact upon the value of their property, they are nonetheless able to seek compensation under the terms of this bill should those regulations go into effect. Although I am certain that this is not an intended result of the bill, it is important to note that efforts to remedy this oversight failed in committee.

Aside from the technical problems of the bill, we must also face the fact that the language of this legislation threatens to vastly increase the size of the Federal Government. In establishing procedural channels for direct negotiations between Federal agencies while simultaneously promising to compensate all property owners who lose even 10 percent of their property value through regulations, we will open up a floodgate of litigations aimed at our various regulatory agencies. This bill will certainly increase the size of these Federal agencies. The agencies will be forced to hire a huge legal staff to help them determine the validity of claims brought against them. In effect, this bill ensures an increased bloating of our Federal bureaucracy. It seems strange to me the very people who are attacking big Government are actively engaged in the process of creating one.

The takings problem is large enough that it deserved a substantial portion of our time and effort toward the creation of an effective solution. Instead, the Republicans in this body acted hastily to present us with a bill that is clumsy and will doubtlessly prove ineffective. Surely there were better ways to address the problem. Instead, we have just established a brand new entitlement program, with uncertain costs and a vast scope. Just as Republicans are attacking Democrats for failing to endorse the balanced budget, they establish a program that may render such a balance impossible. Without calculating the costs of this bill, they have proposed a new program that will certainly cost the American taxpayer billions of dollars. Of course, many of those dollars will go not to small property owners. Under the terms of this bill, we will be taking money out of necessary programs, and using it to line the pockets of many wealthy landowners and industrialists, a new breed of speculators, lawyers for the Government, lawyers for those who file claims, and the Federal bureaucrats who will be central to sorting out this new law long after we are gone. Language to prevent this outcome was presented in the Porter, Farr, Ehlers, and Bryant amendment. Unfortunately, this effort failed.

While I would like to see the role of the Federal Government limited in relation to the rights of the owners of private property, I do not feel that H.R. 925 achieves that goal.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. HANSEN) having assumed the chair, Mr. SHUSTER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 925) to compensate owners of private property for the effect of certain regulatory restrictions, pursuant to House Resolution 101, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole?

If not, the question is on the amendment.

The amendment was agreed to.

□ 1315

The SPEAKER pro tempore (Mr. HANSEN). The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CANADY of Florida. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 277, nays 148, not voting 9, as follows:

[Roll No. 197]

YEAS—277

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Boehner
Bonilla
Bono
Brewster
Browder
Brown (OH)
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Costello
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Frisa
Frost

Funderburk
Gallegly
Ganske
Gekas
Geren
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Graham
Green
Gunderson
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Jacobs
Johnson (SD)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Knollenberg
Kolbe
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martinez
Mascara
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Molinari
Mollohan
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Obey
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Portman
Poshard
Pryce
Quillen
Radanovich
Regula
Reynolds
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Scott
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff

NAYS—148

Abercrombie
Ackerman
Andrews
Barrett (WI)
Becerra
Beilenson
Berman
Blute
Boehlert
Bonior
Borski
Boucher
Brown (FL)
Cardin
Castle
Clay
Clayton
Clement
Clyburn
Coleman
Collins (MI)
Conyers
Coyne
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Ehlers
Engel
Eshoo
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Franks (NJ)
Frelinghuysen
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Goss
Greenwood
Gutierrez
Hastings (FL)
Hinchey
Hoyer
Jackson-Lee
Jefferson
Johnson (CT)
Johnson, E.B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
Klug
LaFalce
Lazio
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martini
Matsui
McCarthy
McDermott
Meehan
Meek
Menendez
Mfume
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Porter
Quinn
Rahall
Ramstad
Reed
Richardson
Rivers
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schiff
Schroeder
Schumer
Serrano
Shays
Skaggs
Slaughter
Stark
Stokes
Studds
Thompson
Torkildsen
Torres
Torricelli
Towns
Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates
Zimmer

NOT VOTING—9

Brown (CA)
Bryant (TX)
Collins (IL)
Dornan
Gonzalez
Johnston
McKinney
Moakley
Rangel

□ 1331

The Clerk announced the following pair:

On this vote:

Mr. Dornan for, with Mrs. Collins of Illinois against.

Mr. ACKERMAN changed his vote from "yea" to "nay."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE TECHNICAL AND CONFORMING CHANGES IN H.R. 925, PRIVATE PROPERTY PROTECTION ACT OF 1995

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill H.R. 925, as amended, the Clerk be authorized to correct section numbers, cross-references, and punctuation, and to make such stylistic, clerical, technical, conforming, and other changes as may be necessary to reflect the action of the House in amending the bill.

The SPEAKER pro tempore (Mr. HANSEN). Is there objection to the request of the gentleman from Florida?

There was no objection.

GENERAL LEAVE

Mr. CANADY of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 925, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

JOB CREATION AND WAGE ENHANCEMENT ACT OF 1995

Mr. DELAY. Pursuant to section 2 of House Resolution 101, I call up the bill (H.R. 9) to create jobs, enhance wages, strengthen property rights, maintain certain economic liberties, decentralize and reduce the power of the Federal Government with respect to the States, localities, and citizens of the United States, and to increase the accountability of Federal officials, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The text of H.R. 9 is as follows:

H.R. 9

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Job Creation and Wage Enhancement Act of 1995".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—CAPITAL GAINS REFORM

Sec. 1001. 50 percent capital gains deduction.
Sec. 1002. Indexing of certain assets for purposes of determining gain or loss.
Sec. 1003. Capital loss deduction allowed with respect to sale or exchange of principal residence.

TITLE II—NEUTRAL COST RECOVERY

Sec. 2001. Depreciation adjustment for certain property placed in service after December 31, 1994.

TITLE III—RISK ASSESSMENT AND COST/BENEFIT ANALYSIS FOR NEW REGULATIONS

Sec. 3001. Findings

Subtitle A—Risk Assessment and Communication

Sec. 3101. Short title.
Sec. 3102. Purposes.
Sec. 3103. Effective date; applicability; savings provisions.
Sec. 3104. Principles for risk assessment.
Sec. 3105. Principles for risk characterization and communication.
Sec. 3106. Guidelines, plan for assessing new information, and report.
Sec. 3107. Definitions.

Subtitle B—Analysis of Risk Reduction Benefits and Costs

Sec. 3201. Analysis of risk reduction benefits and costs.

Subtitle C—Peer Review

Sec. 3301. Peer review program.

TITLE IV—ESTABLISHMENT OF FEDERAL REGULATORY BUDGET COST CONTROL

Sec. 4001. Amendments to the Congressional Budget Act of 1974.
Sec. 4002. President's annual budget submissions.
Sec. 4003. Estimation and disclosure of costs of Federal regulation.

TITLE V—STRENGTHENING OF PAPERWORK REDUCTION ACT

Sec. 5001. Short title.

Subtitle A—Authorization of Appropriations

Sec. 5101. Authorization of appropriations.

Subtitle B—Reducing the Burden of Federal Paperwork on the Public

Sec. 5201. Coverage of all federally sponsored paperwork burdens.
Sec. 5202. Paperwork reduction goals.

Subtitle C—Enhancing Government Responsibility and Accountability for Reducing the Burden of Federal Paperwork

Sec. 5301. Reemphasizing the responsibility of the Director to control the burden of Federal paperwork.
Sec. 5302. Enhancing agency responsibility to obtain public review of proposed paperwork burdens.
Sec. 5303. Expediting review at the Office of Management and Budget.

Sec. 5304. Improving public and agency scrutiny of paperwork burdens proposed for renewal.
Sec. 5305. Protection for whistleblowers of unauthorized paperwork burden.
Sec. 5306. Enhancing public participation.
Sec. 5307. Expediting review of an agency information collection request with a reduced burden.

Subtitle D—Enhancing Agency Responsibility for Sharing and Disseminating Public Information

Sec. 5401. Prescribing governmentwide standards for sharing and disseminating public information.
Sec. 5402. Agency responsibilities for sharing and disseminating public information.
Sec. 5403. Agency information inventory/locator system.

Subtitle E—Additional Government Information Management Responsibility

Sec. 5501. Strengthening the statistical policy and coordination functions of the Director.
Sec. 5502. Use of electronic information collection and dissemination techniques to reduce burden.
Sec. 5503. Agency implementation.
Sec. 5504. Automatic data processing equipment plan.
Sec. 5505. Technical and conforming amendments.

Subtitle F—Effective Dates

Sec. 5601. Effective dates.

TITLE VI—STRENGTHENING REGULATORY FLEXIBILITY

Sec. 6001. Judicial review.
Sec. 6002. Consideration of direct and indirect effects of rules.
Sec. 6003. Rules opposed by SBA Chief Counsel for Advocacy.
Sec. 6004. Sense of Congress regarding SBA Chief Counsel for Advocacy.

TITLE VII—REGULATORY IMPACT ANALYSES

Sec. 7001. Short title.
Sec. 7002. Rule making notices for major rules.
Sec. 7003. Hearing requirement for proposed rules; extension of comment period.
Sec. 7004. Regulatory impact analysis.
Sec. 7005. Additional responsibilities of Director of the Office of Management and Budget.
Sec. 7006. Standard of clarity.
Sec. 7007. Report by OIRA.
Sec. 7008. Definitions.

TITLE VIII—PROTECTION AGAINST FEDERAL REGULATORY ABUSE

Subtitle A—Citizens' Regulatory Bill of Rights

Sec. 8101. Citizens' regulatory bill of rights.

Subtitle B—Private Sector Whistleblowers' Protection

Sec. 8201. Short title.
Sec. 8202. Purpose.
Sec. 8203. Coverage.
Sec. 8204. Prohibited regulatory practices.
Sec. 8205. Prohibited regulatory practice as a defense to agency action.
Sec. 8206. Enforcement.
Sec. 8207. Citizen suits.
Sec. 8208. Office of the Special Counsel.
Sec. 8209. Relation to criminal investigations.

TITLE IX—PRIVATE PROPERTY RIGHTS PROTECTIONS AND COMPENSATION

Sec. 9001. Statement of purpose.
Sec. 9002. Compensation for Federal agency infringement or deprivation of rights to private property.
Sec. 9003. Severability.
Sec. 9004. Definitions.

TITLE X—ESTABLISHMENT OF FEDERAL MANDATE BUDGET COST CONTROL

Sec. 10001. Amendments to the Congressional Budget Act of 1974.
Sec. 10002. President's annual budget submissions.
Sec. 10003. Estimation and disclosure of costs of Federal mandates.

TITLE XI—TAXPAYER DEBT BUY-DOWN

Sec. 11001. Designation of amounts for reduction of public debt.
Sec. 11002. Public Debt Reduction Trust Fund.
Sec. 11003. Taxpayer-generated sequestration of Federal spending to reduce the public debt.

TITLE XII—SMALL BUSINESS INCENTIVES

Sec. 12001. Increase in unified estate and gift tax credits.
Sec. 12002. Increase in expense treatment for small businesses.
Sec. 12003. Clarification of definition of principal place of business.
Sec. 12004. Treatment of storage of product samples.

TITLE I—CAPITAL GAINS REFORM

SEC. 1001. 50 PERCENT CAPITAL GAINS DEDUCTION.

(a) GENERAL RULE.—Part I of subchapter P of chapter 1 of the Internal Revenue Code of 1986 (relating to treatment of capital gains) is amended to read as follows:

"PART I—TREATMENT OF CAPITAL GAINS

"Sec. 1201. Capital gains deduction.

"SEC. 1201. CAPITAL GAINS DEDUCTION.

"(a) GENERAL RULE.—If for any taxable year a taxpayer has a net capital gain, 50 percent of such gain shall be a deduction from gross income.

"(b) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.

"(c) COORDINATION WITH TREATMENT OF CAPITAL GAIN UNDER LIMITATION ON INVESTMENT INTEREST.—For purposes of this section, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

"(d) TRANSITIONAL RULE.—

"(1) IN GENERAL.—In the case of a taxable year which includes January 1, 1995—

"(A) the amount taken into account as the net capital gain under subsection (a) shall not exceed the net capital gain determined by only taking into account gains and losses properly taken into account for the portion of the taxable year on or after January 1, 1995, and

"(B) if the net capital gain for such year exceeds the amount taken into account under subsection (a), the rate of tax imposed by section 1 on such excess shall not exceed 28 percent.

"(2) SPECIAL RULES FOR PASS-THRU ENTITIES.—

"(A) IN GENERAL.—In applying paragraph (1) with respect to any pass-thru entity, the determination of when gains and losses are properly taken into account shall be made at the entity level.

"(B) PASS-THRU ENTITY DEFINED.—For purposes of subparagraph (A), the term 'pass-thru entity' means—

"(i) a regulated investment company,

"(ii) a real estate investment trust,

"(iii) an S corporation,

"(iv) a partnership,

"(v) an estate or trust, and

"(vi) a common trust fund."

(b) DEDUCTION ALLOWABLE IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 of such Code is amended by inserting after paragraph (15) the following new paragraph:

"(16) LONG-TERM CAPITAL GAINS.—The deduction allowed by section 1201."

(c) TECHNICAL AND CONFORMING CHANGES.—

(1) Section 13113 of the Revenue Reconciliation Act of 1993 (relating to 50-percent exclusion for gain from certain small business stock), and the amendments made by such section, are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such section (and amendments) had never been enacted.

(2) Section 1 of such Code is amended by striking subsection (h).

(3) Paragraph (1) of section 170(e) of such Code is amended by striking "the amount of gain" in the material following subparagraph (B)(ii) and inserting "50 percent of the amount of gain".

(4)(A) Paragraph (2) of section 172(d) of such Code is amended to read as follows:

"(2) CAPITAL GAINS AND LOSSES.—

"(A) LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation, the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets.

"(B) DEDUCTION UNDER SECTION 1201.—The deduction under section 1201 shall not be allowed."

(B) Subparagraph (B) of section 172(d)(4) of such Code is amended by striking "paragraphs (1) and (3)" and inserting "paragraphs (1), (2)(B), and (3)".

(5) Paragraph (4) of section 642(c) of such Code is amended to read as follows:

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 1 year, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1201 (relating to deduction for excess of capital gains over capital losses). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income)."

(6) Paragraph (3) of section 643(a) of such Code is amended by adding at the end thereof the following new sentence: "The deduction under section 1201 (relating to deduction of excess of capital gains over capital losses) shall not be taken into account."

(7) Paragraph (4) of section 691(c) of such Code is amended by striking "sections 1(h), 1201, and 1211" and inserting "sections 1201 and 1211".

(8) The second sentence of section 871(a)(2) of such Code is amended by inserting "such gains and losses shall be determined without regard to section 1201 (relating to deduction for capital gains) and" after "except that".

(9) Subsection (d) of section 1044 of such Code is amended by striking the last sentence.

(10)(A) Paragraph (2) of section 1211(b) of such Code is amended to read as follows:

"(2) the sum of—

"(A) the excess of the net short-term capital loss over the net long-term capital gain, and

"(B) one-half of the excess of the net long-term capital loss over the net short-term capital gain."

(B) So much of paragraph (2) of section 1212(b) of such Code as precedes subparagraph (B) thereof is amended to read as follows:

"(2) Special rules.—

"(A) Adjustments.—

"(i) For purposes of determining the excess referred to in paragraph (1)(A), there shall be treated as short-term capital gain in the taxable year an amount equal to the lesser of—

"(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), or

"(II) the adjusted taxable income for such taxable year.

"(ii) For purposes of determining the excess referred to in paragraph (1)(B), there shall be treated as short-term capital gain in the taxable year an amount equal to the sum of—

"(I) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) or the adjusted taxable income for such taxable year, whichever is the least, plus

"(II) the excess of the amount described in subclause (I) over the net short-term capital loss (determined without regard to this subsection) for such year."

(11) Paragraph (1) of section 1402(i) of such Code is amended by inserting ", and the deduction provided by section 1201 shall not apply" before the period at the end thereof.

(12) Section 12 of such Code is amended by striking paragraph (4) and redesignating the following paragraphs accordingly.

(13) Paragraph (2) of section 527(b) of such Code is hereby repealed.

(14) Subparagraph (D) of section 593(b)(2) of such Code is amended by adding "and" at the end of clause (iii), by striking ", and" at the end of clause (iv) and inserting a period, and by striking clause (v).

(15) Paragraph (2) of section 801(a) of such Code is hereby repealed.

(16) Subsection (c) of section 831 of such Code is amended by striking paragraph (1) and redesignating the following paragraphs accordingly.

(17)(A) Subparagraph (A) of section 852(b)(3) of such Code is amended by striking ", determined as provided in section 1201(a), on" and inserting "of 17.5 percent of".

(B) Clause (iii) of section 852(b)(3)(D) of such Code is amended—

(i) by striking "65 percent" and inserting "82.5 percent", and

(ii) by striking "section 1201(a)" and inserting "subparagraph (A)".

(18) Clause (ii) of section 857(b)(3)(A) of such Code is amended by striking "determined at the rate provided in section 1201(a) on" and inserting "of 17.5 percent of".

(19) Paragraph (1) of section 882(a) of such Code is amended by striking "section 11, 55, 59A, or 1201(a)" and inserting "section 11, 55, or 59A".

(20) Subsection (b) of section 904 of such Code is amended by striking paragraphs (2)(B), (3)(B), (3)(D), and (3)(E).

(21) Subsection (b) of section 1374 of such Code is amended by striking paragraph (4).

(22) Subsection (b) of section 1381 is amended by striking "or 1201".

(23) Subsection (e) of section 1445 of such Code is amended—

(A) in paragraph (1) by striking "35 percent (or, to the extent provided in regulations, 28 percent)" and inserting "17.5 percent (or, to the extent provided in regulations, 19.8 percent)", and

(B) in paragraph (2) by striking "35 percent" and inserting "17.5 percent".

(24) Clause (i) of section 6425(c)(1)(A) of such Code is amended by striking "or 1201(a)".

(25) Clause (i) of section 6655(g)(1)(A) of such Code is amended by striking "or 1201(a)".

(26)(A) The second sentence of section 7518(g)(6)(A) of such Code is amended—

(i) by striking "during a taxable year to which section 1(h) or 1201(a) applies", and

(ii) by striking "28 percent (34 percent" and inserting "19.8 percent (17.5 percent".

(B) The second sentence of section 607(h)(6)(A) of the Merchant Marine Act, 1936 is amended—

(i) by striking "during a taxable year to which section 1(h) or 1201(a) of such Code applies", and

(ii) by striking "28 percent (34 percent" and inserting "19.8 percent (17.5 percent".

(d) Effective Date.—

(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after December 31, 1994.

(2) Contributions.—The amendment made by subsection (c)(3) shall apply only to contributions on or after January 1, 1995.

(3) Withholding.—The amendment made by subsection (c)(23) shall apply only to amounts paid after the date of the enactment of this Act.

SEC. 1002. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.

(a) In General.—Part II of subchapter O of chapter 1 of the Internal Revenue Code of 1986 (relating to basis rules of general application) is amended by inserting after section 1021 the following new section:

"SEC. 1022. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.

"(a) General Rule.—

"(1) Indexed basis substituted for adjusted basis.—Except as otherwise provided in this subsection, if an indexed asset which has been held for more than 1 year is sold or otherwise disposed of, for purposes of this title the indexed basis of the asset shall be substituted for its adjusted basis.

"(2) Exception for depreciation, etc.—The deduction for depreciation, depletion, and amortization shall be determined without regard to the application of paragraph (1) to the taxpayer or any other person.

"(b) Indexed Asset.—

"(1) In general.—For purposes of this section, the term 'indexed asset' means—

"(A) stock in a corporation, and

"(B) tangible property (or any interest therein),

which is a capital asset or property used in the trade or business (as defined in section 1231(b)).

"(2) Certain property excluded.—For purposes of this section, the term 'indexed asset' does not include—

"(A) Creditor's interest.—Any interest in property which is in the nature of a creditor's interest.

"(B) Options.—Any option or other right to acquire an interest in property.

"(C) Net lease property.—In the case of a lessor, net lease property (within the meaning of subsection (i)(3)).

"(D) Certain preferred stock.—Stock which is fixed and preferred as to dividends and does not participate in corporate growth to any significant extent.

"(E) Stock in foreign corporations.—Stock in a foreign corporation.

"(F) Stock in S corporations.—Stock in an S corporation.

"(3) Exception for stock in foreign corporation which is regularly traded on national or regional exchange.—Paragraph (2)(E) shall not apply to stock in a foreign corporation the stock of which is listed on the New York Stock Exchange, the American Stock Exchange, the national market system operated by the National Association of Securities Dealers, or any domestic regional exchange for which quotations are published on a regular basis other than—

"(A) stock of a foreign investment company (within the meaning of section 1246(b)),

"(B) stock in a passive foreign investment company (as defined in section 1296), and

"(C) stock in a foreign corporation held by a United States person who meets the requirements of section 1248(a)(2).

"(4) Treatment of American depository receipts.—For purposes of this section, an American depository receipt for stock in a foreign corporation shall be treated as stock in such corporation.

"(c) Indexed Basis.—For purposes of this section—

"(1) General rule.—The indexed basis for any asset is—

"(A) the adjusted basis of the asset, multiplied by

"(B) the applicable inflation ratio.

"(2) Applicable inflation ratio.—The applicable inflation ratio for any asset is the percentage arrived at by dividing—

"(A) the gross domestic product deflator for the calendar quarter in which the disposition takes place, by

"(B) the gross domestic product deflator for the calendar quarter in which the asset was acquired by the taxpayer (or, if later, the calendar quarter ending on December 31, 1994).

The applicable inflation ratio shall never be less than 1. The applicable inflation ratio for any asset shall be rounded to the nearest 1/1000.

"(3) Gross domestic product deflator.—The gross domestic product deflator for any calendar quarter is the implicit price deflator for the gross domestic product for such quarter (as shown in the first revision thereof).

"(d) Short Sales.—

"(1) In general.—In the case of a short sale of an indexed asset with a short sale period in excess of 1 year, for purposes of this title, the amount realized shall be an amount equal to the amount realized (determined without regard to this paragraph) multiplied by the applicable inflation ratio. In applying subsection (c)(2) for purposes of the preceding sentence, the date on which the property is sold short shall be treated as the date of acquisition and the closing date for the sale shall be treated as the date of disposition.

"(2) Short sale of substantially identical property.—If the taxpayer or the taxpayer's spouse sells short property substantially identical to an asset held by the taxpayer, the asset held by the taxpayer and the substantially identical property shall not be treated as indexed assets for the short sale period.

"(3) Short sale period.—For purposes of this subsection, the short sale period begins on the day after property is sold and ends on the closing date for the sale.

"(e) TREATMENT OF REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—

"(1) ADJUSTMENTS AT ENTITY LEVEL.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the adjustment under subsection (a) shall be allowed to any qualified investment entity (including for purposes of determining the earnings and profits of such entity).

"(B) EXCEPTION FOR QUALIFICATION PURPOSES.—This section shall not apply for purposes of sections 851(b) and 856(c).

"(2) ADJUSTMENTS TO INTERESTS HELD IN ENTITY.—

"(A) IN GENERAL.—Stock in a qualified investment entity shall be an indexed asset for any calendar month in the same ratio as the fair market value of the assets held by such entity at the close of such month which are indexed assets bears to the fair market value of all assets of such entity at the close of such month.

"(B) RATIO OF 90 PERCENT OR MORE.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 90 percent or more, such ratio for such month shall be 100 percent.

"(C) RATIO OF 10 PERCENT OR LESS.—If the ratio for any calendar month determined under subparagraph (A) would (but for this subparagraph) be 10 percent or less, such ratio for such month shall be zero.

"(D) VALUATION OF ASSETS IN CASE OF REAL ESTATE INVESTMENT TRUSTS.—Nothing in this paragraph shall require a real estate investment trust to value its assets more frequently than once each 36 months (except where such trust ceases to exist). The ratio under subparagraph (A) for any calendar month for which there is no valuation shall be the trustee's good faith judgment as to such valuation.

"(3) QUALIFIED INVESTMENT ENTITY.—For purposes of this subsection, the term 'qualified investment entity' means—

"(A) a regulated investment company (within the meaning of section 851), and

"(B) a real estate investment trust (within the meaning of section 856).

"(f) OTHER PASS-THRU ENTITIES.—

"(1) PARTNERSHIPS.—In the case of a partnership, the adjustment made under subsection (a) at the partnership level shall be passed through to the partners.

"(2) S CORPORATIONS.—In the case of an S corporation, the adjustment made under subsection (a) at the corporate level shall be passed through to the shareholders.

"(3) COMMON TRUST FUNDS.—In the case of a common trust fund, the adjustment made under subsection (a) at the trust level shall be passed through to the participants.

"(g) DISPOSITIONS BETWEEN RELATED PERSONS.—

"(1) IN GENERAL.—This section shall not apply to any sale or other disposition of property between related persons except to the extent that the basis of such property in the hands of the transferee is a substituted basis.

"(2) RELATED PERSONS DEFINED.—For purposes of this section, the term 'related persons' means—

"(A) persons bearing a relationship set forth in section 267(b), and

"(B) persons treated as single employer under subsection (b) or (c) of section 414.

"(h) TRANSFERS TO INCREASE INDEXING ADJUSTMENT.—If any person transfers cash, debt, or any other property to another person and the principal purpose of such transfer is to secure or increase an adjustment under subsection (a), the Secretary may disallow part or all of such adjustment or increase.

"(i) SPECIAL RULES.—For purposes of this section:

"(1) TREATMENT AS SEPARATE ASSET.—In the case of any asset, the following shall be treated as a separate asset:

"(A) A substantial improvement to property.

"(B) In the case of stock of a corporation, a substantial contribution to capital.

"(C) Any other portion of an asset to the extent that separate treatment of such portion is appropriate to carry out the purposes of this section.

"(2) ASSETS WHICH ARE NOT INDEXED ASSETS THROUGHOUT HOLDING PERIOD.—The applicable inflation ratio shall be appropriately reduced for periods during which the asset was not an indexed asset.

"(3) NET LEASE PROPERTY DEFINED.—The term 'net lease property' means leased property where—

"(A) the term of the lease (taking into account options to renew) was 50 percent or more of the useful life of the property, and

"(B) for the period of the lease, the sum of the deductions with respect to such property which are allowable to the lessor solely by reason of section 162 (other than rents and reimbursed amounts with respect to such property) is 15 percent or less of the rental income produced by such property.

"(4) TREATMENT OF CERTAIN DISTRIBUTIONS.—A distribution with respect to stock in a corporation which is not a dividend shall be treated as a disposition.

"(5) SECTION CANNOT INCREASE ORDINARY LOSS.—To the extent that (but for this paragraph) this section would create or increase a net ordinary loss to which section 1231(a)(2) applies or an ordinary loss to which any other provision of this title applies, such provision shall not apply. The taxpayer shall be treated as having a long-term capital loss in an amount equal to the amount of the ordinary loss to which the preceding sentence applies.

"(6) ACQUISITION DATE WHERE THERE HAS BEEN PRIOR APPLICATION OF SUBSECTION (a)(1) WITH RESPECT TO THE TAXPAYER.—If there has been a prior application of subsection (a)(1) to an asset while such asset was held by the taxpayer, the date of acquisition of such asset by the taxpayer shall be treated as not earlier than the date of the most recent such prior application.

"(7) COLLAPSIBLE CORPORATIONS.—The application of section 341(a) (relating to collapsible corporations) shall be determined without regard to this section.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter O of chapter 1 of such Code is amended by inserting after the item relating to section 1021 the following new item:

"Sec. 1022. Indexing of certain assets for purposes of determining gain or loss."

(c) ADJUSTMENT TO APPLY FOR PURPOSES OF DETERMINING EARNINGS AND PROFITS.—Subsection (f) of section 312 of such Code (relating to effect on earnings and profits of gain or loss and of receipt of tax-free distributions) is amended by adding at the end thereof the following new paragraph:

"(3) EFFECT ON EARNINGS AND PROFITS OF INDEXED BASIS.—

For substitution of indexed basis for adjusted basis in the case of the disposition of certain assets, see section 1022(a)(1)."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to dispositions after December 31, 1994, in taxable years ending after such date.

SEC. 1003. CAPITAL LOSS DEDUCTION ALLOWED WITH RESPECT TO SALE OR EXCHANGE OF PRINCIPAL RESIDENCE.

(a) IN GENERAL.—Subsection (c) of section 165 of the Internal Revenue Code of 1986 (relating to limitation on losses of individuals) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting "; and", and by adding at the end the following new paragraph:

"(4) losses arising from the sale or exchange of the principal residence (within the meaning of section 1034) of the taxpayer."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to sales and exchanges after December 31, 1994, in taxable years ending after such date.

TITLE II—NEUTRAL COST RECOVERY

SEC. 2001. DEPRECIATION ADJUSTMENT FOR CERTAIN PROPERTY PLACED IN SERVICE AFTER DECEMBER 31, 1994.

(a) IN GENERAL.—Section 168 of the Internal Revenue Code of 1986 (relating to accelerated cost recovery system) is amended by adding at the end thereof the following new subsection:

"(k) DEDUCTION ADJUSTMENT TO ALLOW EQUIVALENT OF EXPENSING FOR CERTAIN PROPERTY PLACED IN SERVICE AFTER DECEMBER 31, 1994.—

"(1) IN GENERAL.—In the case of tangible property placed in service after December 31, 1994, the deduction under this section with respect to such property—

"(A) shall be determined by substituting '150 percent' for '200 percent' in subsection (b)(1) in the case of property to which the 200 percent declining balance method would otherwise apply, and

"(B) for any taxable year after the taxable year during which the property is placed in service shall be—

"(i) the amount determined under this section for such taxable year without regard to this subparagraph, multiplied by

"(ii) the applicable neutral cost recovery ratio for such taxable year.

"(2) APPLICABLE NEUTRAL COST RECOVERY RATIO.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The applicable neutral cost recovery ratio for the property for any taxable year is the number determined by—

"(i) dividing—

"(I) the gross domestic product deflator for the calendar quarter ending in such taxable year which corresponds to the calendar quarter during which the property was placed in service by the taxpayer, by

"(II) the gross domestic product deflator for the calendar quarter during which the property was placed in service by the taxpayer, and

"(ii) then multiplying the number determined under clause (i) by the number equal to 1.035 to the nth power where 'n' is the number of full years in the period beginning on the 1st day of the calendar quarter during which the property was placed in service by the taxpayer and ending on the day before the beginning of the corresponding calendar quarter ending during such taxable year.

The applicable neutral cost recovery ratio shall never be less than 1. The applicable neutral cost recovery ratio shall be rounded to the nearest 1/1000.

"(B) SPECIAL RULE FOR CERTAIN PROPERTY.—In the case of property described in paragraph (2) or (3) of subsection (b) or in subsection (g), the applicable neutral cost recovery ratio shall be determined without regard to subparagraph (A)(ii).

"(3) GROSS DOMESTIC PRODUCT DEFLATOR.—For purposes of paragraph (2), the gross domestic product deflator for any calendar quarter is the implicit price deflator for the gross domestic product for such quarter (as shown in the first revision thereof).

"(4) COORDINATION WITH INDEXING OF BASIS FOR PURPOSES OF DETERMINING GAIN OR LOSS.—Section 1022 shall not apply to any property to which this subsection applies.

"(5) ELECTION NOT TO HAVE SUBSECTION APPLY.—This subsection shall not apply to any property if the taxpayer elects not to have this subsection apply to such property. Such an election, once made, shall be irrevocable.

"(6) CHURNING TRANSACTIONS.—This subsection shall not apply to any property if this section would not apply to such property were subsection (f)(5)(A)(ii) applied by substituting '1995' for '1981' and '1994' for '1980'.

"(7) ADDITIONAL DEDUCTION NOT TO AFFECT BASIS OR RECAPTURE.—The additional amount determined under this section by reason of this subsection shall not be taken into account in determining the adjusted basis of any property or of any interest in a pass-thru entity (as defined in section 1201(d)(2)) which holds such property and shall not be treated as a deduction for depreciation for purposes of sections 1245 and 1250."

(b) MINIMUM TAX TREATMENT.—

(1) Paragraph (1) of section 56(a) of such Code is amended by adding at the end thereof the following new subparagraph:

"(E) USE OF NEUTRAL COST RECOVERY RATIO.—In the case of property to which section 168(k) applies and which is placed in service after December 31, 1994, the deduction allowable under this paragraph with respect to such property for any taxable year (after the taxable year during which the property is placed in service) shall be—

"(i) the amount so allowable for such taxable year without regard to this subparagraph, multiplied by

"(ii) the applicable neutral cost recovery ratio for such taxable year (as determined under section 168(k)).

This subparagraph shall not apply to any property with respect to which there is an election in effect not to have section 168(k)) apply."

(2) Subparagraph (C) of section 56(g)(4) of such Code is amended by adding at the end the following new clause:

"(v) NEUTRAL COST RECOVERY DEDUCTION.—Clause (i) shall not apply to the additional deduction allowable by reason of section 168(k)."

(c) COORDINATION WITH DEPRECIATION LIMITATION ON CERTAIN AUTOMOBILES.—Clause (i) of section 280F(a)(1)(B) of such Code is amended by adding at the end the following new sentence: "For purposes of this clause, the unrecovered basis of any passenger automobile shall be treated as including the additional amount determined under section 168 by reason of subsection (k) thereof to the extent not allowed as a deduction by reason of this paragraph for any taxable year in the recovery period."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1994.

TITLE III—RISK ASSESSMENT AND COST/BENEFIT ANALYSIS FOR NEW REGULATIONS

SEC. 3001. FINDINGS.

The Congress finds that:

(1) Environmental, health, and safety regulations have led to dramatic improvements in the environment and have significantly reduced human health risk; however, the Federal regulations that have led to these improvements have been more costly and less effective than they could have been; too often, regulatory priorities have not been based upon a realistic consideration of risk, risk reduction opportunities, and costs.

(2) The public and private resources available to address health, safety, and environmental concerns are not unlimited; those resources need to be allocated to address the greatest needs in the most cost-effective manner and so that the incremental costs of regulatory options are reasonably related to the incremental benefits.

(3) To provide more cost-effective and costreasonable protection to human health and the environment, regulatory priorities should be based upon realistic consideration of risk; the priority setting process must include scientifically sound, objective, and unbiased risk assessments, comparative risk analysis, and risk management choices that are grounded in cost-benefit principles.

(4) Risk assessment has proven to be a useful decision making tool; however, improvements are needed in both the quality of assessments and the characterization and communication of findings; scientific and other data must be better collected, organized, and evaluated; most importantly, the critical information resulting from a risk assessment must be effectively communicated in an objective and unbiased manner to decision makers, and from decision makers to the public.

(5) The public stake holders must be fully involved in the risk-decision making process. They have the right-to-know about the risks addressed by regulation, the amount of risk to be reduced, the quality of the science used to support decisions, and the cost of implementing and complying with regulations. This knowledge will allow for public scrutiny and promote quality, integrity, and responsiveness of agency decisions.

Subtitle A—Risk Assessment and Communication

SEC. 3101. SHORT TITLE.

This subtitle may be cited as the "Risk Assessment and Communication Act of 1995".

SEC. 3102. PURPOSES.

The purposes of this subtitle are—

(1) to present the public and executive branch with the most scientifically objective and unbiased information concerning the nature and magnitude of health, safety, and environmental risks in order to provide for sound regulatory decisions and public education;

(2) to provide for full consideration and discussion of relevant data and potential methodologies;

(3) to require explanation of significant choices in the risk assessment process which will allow for better peer review and public understanding; and

(4) to improve consistency within the executive branch in preparing risk assessments and risk characterizations.

SEC. 3103. EFFECTIVE DATE; APPLICABILITY; SAVINGS PROVISIONS.

(a) EFFECTIVE DATE.—Except as otherwise specifically provided in this subtitle, the provisions of this subtitle shall take effect 18 months after the date of enactment of this subtitle.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), this title applies to all risk assessments and risk characterizations prepared by, or on behalf of, any Federal agency in connection with Federal regulatory programs designed to protect human health, safety, or the environment.

(2) EXCEPTIONS.—(A) This title does not apply to risk assessments or risk characterizations performed with respect to either of the following:

(i) A situation that the head of the agency considers to be an emergency.

(ii) A screening analysis, including a screening analysis for purposes of product regulation, product reregistration, or premanufacturing notices.

(B) No analysis shall be treated as a screening analysis for purposes of subparagraph (A) if the results of such analyses are used either—

(i) as the basis for imposing restrictions on substances or activities, or

(ii) to characterize a positive finding of risks from substances or activities in any final agency document made available to the general public.

(3) LABELS.—This title shall not apply to any food, drug, or other product label or to any risk characterization appearing on any such label.

(c) SAVINGS PROVISIONS.—Nothing in this subtitle shall be construed to modify any statutory standard or requirement designed to protect health, safety, or the environment. Nothing in this subtitle shall be interpreted to preclude the consideration of any data or the calculation of any estimate to more fully describe risk or provide examples of scientific uncertainty or variability. Nothing in this title shall be construed to require the disclosure of any trade secret or other confidential information.

SEC. 3104. PRINCIPLES FOR RISK ASSESSMENT.

(a) IN GENERAL.—The head of each Federal agency shall apply the principles set forth in subsection (b) when preparing risk assessments in order to assure that such risk assessments and all of their components distinguish scientific findings from other considerations and are, to the maximum extent feasible, scientifically objective, unbiased, and inclusive of all relevant data. Discussions or explanations required under this section need not be repeated in each risk assessment document as long as there is a reference to the relevant discussion or explanation in another agency document.

(b) PRINCIPLES.—The principles to be applied when preparing risk assessments are as follows:

(1) When assessing human health risks, a risk assessment shall consider and discuss both laboratory and epidemiological data of sufficient quality which finds, or fails to find, a correlation between health risks and a potential toxin or activity. Where conflicts among such data appear to exist, or where animal data is used as a basis to assess human health, the assessment shall include discussion of possible reconciliation of conflicting information, and as appropriate, differences in study designs, comparative physiology, routes of exposure, bioavailability, pharmacokinetics, and any other relevant factor.

(2) Where a risk assessment involves selection of any significant assumption, inference, or model, the Federal agency preparing the assessment shall—

(A) present a representative list and explanation of plausible and alternative assumptions, inferences, or models;

(B) explain the basis for any choices;

(C) identify any policy or value judgments;

(D) fully describe any model used in the risk assessment and make explicit the assumptions incorporated in the model; and

(E) indicate the extent to which any significant model has been validated by, or conflicts with, empirical data.

SEC. 3105. PRINCIPLES FOR RISK CHARACTERIZATION AND COMMUNICATION.

In characterizing risk in any risk assessment document, regulatory proposal or decision, report to Congress, or other document which is made available to the public, each Federal agency characterizing the risk shall comply with each of the following:

(1) ESTIMATES OF RISK.—The head of such agency shall describe the populations or natural resources which are the subject of the risk characterization. If a numerical estimate of risk is provided, the agency shall, to the extent feasible and scientifically appropriate, provide—

(A) the best estimate or estimates for the specific populations or natural resources which are the subject of the characterization (based on the information available to the department, agency, or instrumentality); and

(B) a statement of the reasonable range of scientific uncertainties.

In addition to such best estimate or estimates, the Federal agency may present plausible upper-bound or conservative estimates in conjunction with plausible lower bounds estimates. Where appropriate, the Federal agency may present, in lieu of a single best estimate, multiple estimates based on assumptions, inferences, or models which are equally plausible, given current scientific understanding. To the extent practical and appropriate, the Federal agency shall provide descriptions of the distribution and probability of risk estimates to reflect differences in exposure variability in populations and uncertainties.

(2) EXPOSURE SCENARIOS.—The Federal agency shall explain the exposure scenarios used in any risk assessment, and, to the extent feasible, provide a statement of the size of the corresponding population at risk and the likelihood of such exposure scenarios.

(3) COMPARISONS.—To the extent feasible, the Federal agency shall provide a statement that places the nature and magnitude of risks to human health in context. Such statement shall include appropriate comparisons with estimates of risks that are familiar to and routinely encountered by the general public as well as other risks. The statement shall identify relevant distinctions among categories of risk and limitations to comparisons.

(4) SUBSTITUTION RISKS.—When a Federal agency provides a risk assessment or risk characterization for a proposed or final regulatory action, such assessment or characterization shall include a statement of any significant substitution risks to human health, where information on such risks has been provided to the agency.

(5) SUMMARIES OF OTHER RISK ESTIMATES.—If—

(A) a Federal agency provides a public comment period with respect to a risk assessment or regulation,

(B) a commenter provides a risk assessment, and a summary of results of such risk assessment, and

(C) such risk assessment is consistent with the principles and the guidance provided under this subtitle,

the agency shall present such summary in connection with the presentation of the agency's risk assessment or the regulation.

SEC. 3106. GUIDELINES, PLAN FOR ASSESSING NEW INFORMATION, AND REPORT.

(a) GUIDELINES.—Within 15 months after the date of enactment of this subtitle, the President shall issue guidelines for Federal agencies consistent with the risk assessment and characterization principles set forth in sections 3104 and 3105 and shall provide a format for summarizing risk assessment results. In addition, such guidelines shall include guidance on at least the following subjects: criteria for scaling animal studies to assess risks to human health; use of different types of dose-response models; thresholds; definitions, use, and interpretations of the maximum tolerated dose; weighting of evidence with respect to extrapolating human health risks from sensitive species; evaluation of benign tumors, and evaluation of different human health endpoints.

(b) PLAN.—Within 18 months after the date of enactment of this subtitle, each Federal agency shall publish a plan to review and revise any risk assessment published prior to the expiration of such 18-month period if the agency determines that significant new information or methodologies are available that could significantly alter the results of the prior risk assessment. The plan shall provide procedures for receiving and considering new information and risk assessments from the public. The plan may set priorities for review and revision of risk assessments based on factors such Federal agency considers appropriate.

(c) REPORT.—Within 3 years after the enactment of this subtitle, each Federal agency shall provide a report to the Congress evaluating the categories of policy and value judgments identified under subparagraph (C) of section 3104(b)(2).

(d) PUBLIC COMMENT AND CONSULTATION.—The guidelines, plan and report under this section, shall be developed after notice and opportunity for public comment, and after consultation with representatives of appropriate State agencies and local governments, and such other departments and agencies, offices, organizations, or persons as may be advisable.

(e) REVIEW.—The President shall review the guidelines published under this section at least every 4 years.

SEC. 3107. DEFINITIONS.

For purposes of this subtitle:

(1) RISK ASSESSMENT.—The term "risk assessment" means the process of identifying hazards and quantifying or describing the degree of toxicity, exposure, or other risk they pose for exposed individuals, populations, or resources. Such term also refers to the document containing the explanation of how the assessment process has been applied to an individual substance, activity, or condition.

(2) RISK CHARACTERIZATION.—The term "risk characterization" means that element of a risk assessment that involves presentation of the degree of risk in any regulatory proposal or decision, report to Congress, or other document which is made available to the public. The term includes discussions of uncertainties, conflicting data, estimates, extrapolations, inferences, and opinions.

(3) BEST ESTIMATE.—The term "best estimate" means an estimate which, to the extent feasible and scientifically appropriate, is based on one of the following:

(A) Central estimates of risk using the most plausible assumptions.

(B) An approach which combines multiple estimates based on different scenarios and weighs the probability of each scenario.

(C) Any other methodology designed to provide the most unbiased representation of the most plausible level of risk, given the current scientific information available to the Federal agency concerned.

(4) SUBSTITUTION RISK.—The term "substitution risk" means a potential increased risk to human health, safety, or the environment from a regulatory option designed to decrease other risks.

(5) FEDERAL AGENCY.—The term "Federal agency" means an executive department, military department, or independent establishment as defined in part I of title 5 of the United States Code, except that such term also includes the Office of Technology Assessment.

Subtitle B—Analysis of Risk Reduction Benefits and Costs

SEC. 3201. ANALYSIS OF RISK REDUCTION BENEFITS AND COSTS.

(a) IN GENERAL.—Except as provided in subsection (b), the President shall require each executive branch agency to prepare the following for each major rule designed to protect human health, safety, or the environment that is proposed or promulgated by the agency after the date of enactment of this Act:

(1) For each such proposed or promulgated rule, an assessment of incremental costs and incremental risk reduction or other benefits associated with each significant regulatory alternative considered by the agency in connection with the rule or proposed rule.

(2) For each such proposed or promulgated rule, to the extent feasible, a comparison of any human health, safety, or environmental risks addressed by the regulatory alternatives to other risks chosen by the head of the agency, including at least 3 other risks regulated by the agency and to at least 3 other risks with which the public is familiar.

(3) For each such proposed or promulgated rule, a statement of other human health risks potentially posed by implementing or complying with the regulatory alternatives, including substitution risks.

(4) For each final rule, an assessment of the costs and risk reduction or other benefits associated with implementation of, and compliance with, the rule.

(5) For each final rule, a certification by the head of the agency of each of the following:

(A) A certification that the assessment under paragraph (4) is based on an objective and unbiased scientific and economic evaluation of all significant and relevant information provided to the agency by interested parties relating to the costs, risks, and risk reduction or other benefits addressed by the rule. Such information shall have been subjected to peer review to the extent required by section 3301.

(B) A certification that the rule will substantially advance the purpose of protecting human health or the environment, as applicable, against the risk addressed by the rule.

(C) A certification that the rule will produce benefits to human health or the environment that will justify the costs incurred by local and State governments, the Federal Government, and other public and private entities as a result of implementation of and compliance with the rule, as determined under paragraph (1).

(D) A certification that there is no regulatory alternative that is allowed by the statute under which the regulation is promulgated that would achieve an equivalent reduction in risk in a more cost-effective manner, along with a brief explanation of why other regulatory alternatives that were considered by the head of the agency were found to be less cost-effective.

(b) Publication.—For each major rule referred to in subsection (a) the head of each agency shall publish in a clear and concise manner in the Federal Register along with the proposed or final regulation, or otherwise make publicly available, the information required to be prepared under subsection (a) of this section.

(c) Definitions.—For purposes of this section:

(1) Costs.—The term "costs" includes the direct and indirect costs to the United States government, costs to State and local governments, and costs to the private sector, of implementing and complying with a regulatory action.

(2) Major rule.— The term "major rule" means any regulation that is likely to result in one or more of the following:

(A) An annual effect on the economy of $25,000,000 or more.

(B) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(C) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Subtitle C—Peer Review

SEC. 3301. PEER REVIEW PROGRAM.

(a) Establishment.—For regulatory programs addressing human health, safety, or the environment, the head of each Federal agency shall develop a systematic program for peer review of risk assessments and economic assessments used by the agency. Such program shall be applicable across the agency and—

(1) shall provide for the creation of peer review panels consisting of independent and external experts who are broadly representative and balanced to the extent feasible;

(2) may provide for differing levels of peer review depending on the significance or the complexity of the problems or the need for expeditiousness;

(3) shall not exclude peer reviewers merely because they represent entities that may have a potential interest in the outcome, provided that interest is fully disclosed to the agency; and

(4) shall provide open opportunity to become part of a peer review panel at a minimum by soliciting nominations through a Federal Register announcement.

(b) Requirement for Peer Review.—Each Federal agency shall provide for peer review of scientific and economic information used for purposes of any evaluation under section 3201(a)(5)(A) or for purposes of any significant risk or cost assessment prepared in connection with a major rule. In addition, the Director of the Office of Management and Budget shall order that peer review be provided for any major risk assessment or cost assessment that may have a significant impact on public policy decisions.

(c) Contents.—

(1) In general.—Each peer review under this section shall include a report to the Federal agency concerned with respect to each of the following:

(A) An evaluation of the technical, scientific, and economic merit of the data and methods used for the assessment and analysis.

(B) A list of any considerations that were not taken into account in the assessment and analysis, but were considered appropriated by a majority of the members of the peer review panel.

(C) A discussion of the methodology used for the assessment and analysis.

(2) Comments and appendix.—Each peer review report under this subsection shall include—

(A) all comments supported by a majority of the members of the peer review panel submitting the report; and

(B) an appendix which sets forth the dissenting opinions that any peer review panel member wants to express.

(3) Separation of assessments.—Peer review of human health, safety, environmental, and economic assessments may be separated for purpose of this subtitle.

(d) Response to Peer Review.—The head of the Federal agency shall provide a written response to all significant peer review comments.

(e) Availability to Public.—All peer review comments or conclusions and the agency's responses shall be made available to the public and shall be made part of the administrative record for purposes of judicial review of any final agency action.

(f) Previously Reviewed Data and Analysis.—No peer review shall be required under this section for any data or analysis which has been previously subjected to peer review or for any component of any evaluation or assessment previously subjected to peer review.

(g) National Panels.—The President shall appoint National Peer Review Panels to annually review the risk assessment and cost assessment practices of each Federal agency for programs designed to protect human health, safety, or the environment. The Panel shall submit a report to the Congress no less frequently than annually containing the results of such review.

(h) Major Rule Defined.—For purposes of this section, the term "major rule" has the same meaning as provided by section 3201(c) except that "$100,000,000" shall be substituted for "$25,000,000".

TITLE IV—ESTABLISHMENT OF FEDERAL REGULATORY BUDGET COST CONTROL

SEC. 4001. AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 1974.

(a) Federal Regulatory Budget Cost Control System.—Title III of the Congressional Budget Act of 1974 is amended by inserting before section 300 the following new center heading **"PART A—GENERAL PROVISIONS"** and by adding at the end the following new part:

"PART B—FEDERAL REGULATORY BUDGET COST CONTROL

"SEC. 321. OMB-CBO REPORTS.

"(a) OMB-CBO Initial Report.—Within 1 year after the date of enactment of this section, OMB and CBO shall jointly issue a report to the President and each House of Congress that contains the following:

"(1) For the first budget year beginning after the issuance of this report, a projection of the aggregate direct cost to the private sector of complying with all Federal regulations and rules in effect immediately before issuance of the report containing the projection for that budget year of the effect of current-year Federal regulations and rules into the budget year and the outyears based on those regulations and rules.

"(2) A calculation of the estimated aggregate direct cost to the private sector of compliance with all Federal regulations and rules as a percentage of the gross domestic product (GDP).

"(3) The estimated marginal cost (measured as a reduction in estimated gross domestic product) to the private sector of compliance with all Federal regulations and rules in excess of 5 percent of the gross domestic product.

"(4) The effect on the domestic economy of different types of Federal regulations and rules.

"(5) The appropriate level of personnel, administrative overhead, and programmatic savings that should be achieved on a fiscal year by fiscal year basis by Federal agencies that issue regulations or rules with direct costs to the private sector through the reduction of such aggregate costs to the private sector by equal percentage increments in the 6 years following the budget year until the aggregate level of such costs does not exceed 5 percent of the estimated gross domestic product for the same fiscal year as the estimated costs that will be incurred.

"(6) Recommendations for budgeting, technical, and estimating changes to improve the Federal regulatory budgeting process.

"(b) Update Reports.—OMB and CBO shall issue update reports on September 15th of the fifth year beginning after issuance of the initial report and at 5-year intervals thereafter containing all the information required in the initial report, but based upon all Federal regulations and rules in effect immediately before issuance of the most recent update report.

"(c) Initial Baseline Report.—Within 30 days after the date of enactment of this section, OMB and CBO shall jointly issue a report to the President and each House of Congress that contains an initial aggregate regulatory baseline for the first budget year that begins at least 120 days after that date of enactment. That baseline will be a projection of the aggregate direct cost to the private sector of complying with all Federal regulations and rules in effect immediately before issuance of the report containing the projection for that budget year of the effect of current-year Federal regulations and rules into the budget year and the outyears based on those regulations and rules.

"SEC. 322. AGGREGATE REGULATORY BASELINE.

"(a) In General.—For the first budget year beginning after the date of enactment of this section and for every other fiscal year thereafter, the aggregate regulatory baseline refers to a projection of the aggregate direct cost to the private sector of complying with all Federal regulations and rules in effect immediately before issuance of the report containing the projection for that budget year of the effect of current-year Federal regulations and rules into the budget year and the outyears based on those regulations and rules. However, in the case of each of the succeeding fiscal years, the baseline shall be adjusted for the estimated growth during that year in the gross domestic product (GDP).

"(b) OMB-CBO Aggregate Regulatory Baseline Reports.—(1) The first budget year for which there shall be an aggregate regulatory baseline shall be the budget year to which the initial OMB-CBO baseline report issued under section 321(c) pertains.

"(2) In the case of each budget year after the budget year referred to in paragraph (1), not later than September 15 of the current year, OMB and CBO shall jointly issue a report containing the baseline referred to in subsection (a) for that budget year.

"SEC. 323. RECONCILIATION AND ALLOCATIONS.

"(a) Reconciliation Directives.—In addition to the requirements of section 310, a concurrent resolution on the budget for any fiscal year shall specify—

"(1) changes in laws and regulations and rules necessary to reduce the aggregate direct cost to the private sector of complying with all Federal regulations by 6.5 percent for the budget year (as measured against the aggregate regulatory baseline for the first budget year to which this part applies) and by equal percentage increments for each of the outyears (until the aggregate level of such costs does not exceed 5 percent of the estimated gross domestic product for the same fiscal year as the estimated costs that will be incurred) for Federal agencies that issue regulations or rules producing direct costs to the private sector; and

"(2) changes in laws necessary to achieve reductions in the level of personnel and administrative overhead and to achieve programmatic savings for the budget year and the outyears for those agencies of the following:

"(A) In the first outyear, one-fourth of the percent of reduction in regulatory authority from the aggregate regulatory base.

"(B) In the second outyear, one-third of the percent of reduction in regulatory authority from the aggregate regulatory base.

"(C) In the third, fourth, fifth, and sixth years following the budget year, one-half of the percent of reduction in regulatory authority from the aggregate regulatory base.

Section 310(c) shall not apply with respect to directions made under this section.

"(b) ALLOCATION OF TOTALS.—(1) The Committees on the Budget of the House of Representatives and the Senate shall each allocate aggregate 2-year regulatory authority among each committee of its House and by major functional category for the first budget year beginning after the date of enactment of this section and for the second, fourth, and sixth years following the budget year and then every other year thereafter.

"(2) As soon as practicable after receiving an allocation under paragraph (1), each committee shall subdivide its allocation among its subcommittees or among programs over which it has jurisdiction.

"(c) POINT OF ORDER.—(1) It shall not be in order in the House of Representatives or the Senate to consider any bill or resolution, or amendment thereto, which would cause the appropriate allocation made under subsection (b) for a fiscal year of regulatory authority to be exceeded.

"(2) WAIVER.—The point of order set forth in paragraph (1) may only be waived by the affirmative vote of at least three-fifths of the Members voting, a quorum being present.

"(d) DETERMINATIONS BY BUDGET COMMITTEES.—For purposes of this section, the level of regulatory authority for a fiscal year shall be determined by the Committee on the Budget of the House of Representatives or the Senate, as the case may be.

"(e) EXCEEDING ALLOCATION TOTALS.—Whenever any Committee of the House of Representatives exceeds its allocation of aggregate 2-year regulatory authority under subsection (b)(1), any Member of the House of Representatives may offer a bill in the House (which shall be highly privileged, unamendable, and debateable for 30 minutes) which shall only prohibit the issuance of regulations and rules by any agency under the jurisdiction of that committee for the fiscal years covered by that allocation until that committee eliminates its breach.

"SEC. 324. ANALYSIS OF REGULATORY COSTS BY CONGRESSIONAL BUDGET OFFICE.

"CBO shall prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee—

"(1) an estimate of the costs which would be incurred by the private sector in carrying out or complying with such bill or resolution in the fiscal year in which it is to become effective and in each of the 4 fiscal years following such fiscal year, together with the basis of each such estimate; and

"(2) a comparison of the estimate of costs described in paragraph (1) with any available estimates of costs made by such committee or by any Federal agency.

"SEC. 325. DEFINITIONS.

"As used in this part:

"(1) The term 'CBO' refers to the Director of the Congressional Budget Office.

"(2) The term 'OMB' refers to the Director of the Office of Management and Budget.

"(3) The term 'regulatory authority' or 'regulatory cost' means the direct cost to the private sector of complying with Federal regulations and rules.

"(4) The term 'direct costs' means (recognizing that direct costs are not the only costs associated with Federal regulation) all expenditures occurring as a direct result of complying with Federal regulation, rule, statement, or legislation, except those applying to the military or agency organization, management, and personnel.

"(5) The term 'regulation' or the term 'rule' means any agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of any agency, but does not include—

"(A) administrative actions governed by the provisions of sections 556 and 557 of title 5, United States Code; or

"(B) rules or regulations issued with respect to a military or foreign affairs function of the United States.

"(6) The term 'agency' means any authority of the United States that is an agency under title section 3502(1) of title 44, United States Code, including independent agencies.".

SEC. 4002. PRESIDENT'S ANNUAL BUDGET SUBMISSIONS.

Section 1105(a) of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(32) a regulatory authority budget analysis of the aggregate direct cost to the private sector of complying with all current and proposed Federal regulations and rules and proposals for complying with section 323 of the Congressional Budget Act of 1974 for the budget year and the outyears."

SEC. 4003. ESTIMATION AND DISCLOSURE OF COSTS OF FEDERAL REGULATION.

Chapter 6 of title 5, United States Code, popularly known as the "Regulatory Flexibility Act", is amended—

(1) in section 603(a) in the second sentence by inserting before the period the following: "and the monetary costs to small entities, other businesses, and individuals of complying with the proposed rule";

(2) by adding at the end of section 603 the following:

"(d) Each initial regulatory flexibility analysis shall also contain a description of the nature and amount of monetary costs that will be incurred by small entities, other businesses, and individuals in complying with the proposed rule.";

(3) in section 604(a)—

(A) in paragraph (2) by striking "and" after the semicolon;

(B) in paragraph (3) by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(4) a statement of the nature and amount of monetary costs that will be incurred by small entities, other businesses, and individuals in complying with the rule."; and

(4) in section 607 by inserting before the period the following: ", except that estimates of monetary costs under sections 603(d) and 604(a)(4) shall only be in the form of a numerical description".

TITLE V—STRENGTHENING OF PAPERWORK REDUCTION ACT

SEC. 5001. SHORT TITLE.

This title may be cited as the "Paperwork Reduction Act of 1995".

Subtitle A—Authorization of Appropriations

SEC. 5101. AUTHORIZATION OF APPROPRIATIONS.

Section 3520(a) of title 44, United States Code, is amended by striking out "$5,500,000 for each of the fiscal years 1987, 1988, and 1989." and inserting in lieu thereof "$7,000,000 for fiscal year 1994, $7,500,000 for fiscal year 1995, $8,000,000 for fiscal year 1996, $8,500,000 for fiscal year 1997, and $9,000,000 for fiscal year 1998.".

Subtitle B—Reducing the Burden of Federal Paperwork on the Public

SEC. 5201. COVERAGE OF ALL FEDERALLY SPONSORED PAPERWORK BURDENS.

Section 3502 of title 44, United States Code, is amended—

(1) by amending paragraph (3) to read as follows:

"(3) the term 'burden' means the time, effort, financial resources, and opportunity costs imposed on persons to generate, capture, assemble, process, maintain, and report information to or for a Federal agency, including—

"(A) the resources expended for obtaining, reviewing and understanding applicable instructions and requirements;

"(B) developing a way to comply with the applicable instructions and requirements;

"(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;

"(D) searching existing data sources;

"(E) obtaining, compiling and maintaining the necessary data;

"(F) implementing recordkeeping requirements;

"(G) completing and reviewing the collection of information;

"(H) retaining, sharing, notifying, reporting, transmitting, labeling, or otherwise disclosing to third parties or the public the information involved; and

"(I) carrying out any other information transaction which occurs as a result of the collection of information;";

(2) in paragraph (4) by striking out "of facts or opinions by" and inserting in lieu thereof "(through maintenance, retention, notifying, reporting, labeling or disclosure to third parties or the public) of facts or opinions by or for"; and

(3) in paragraph (17) by inserting ", including the retention, reporting, notifying, or disclosure to third parties or the public of such records" before the period.

SEC. 5202. PAPERWORK REDUCTION GOALS.

Section 3505 of title 44, United States Code, is amended to read as follows:

"§ 3505. Assignment of tasks and deadlines

"In carrying out the functions under this chapter, the Director shall—

"(1) set a governmentwide goal, consistent with improving agency management of the process for the review of each collection of information established under section 3506(e), to reduce by September 30, 1995, the burden of Federal collections of information existing on September 30, 1994, by at least 5 percent;

"(2) for the fiscal year beginning on October 1, 1995, and the following 3 fiscal years, set a governmentwide goal, consistent with improving agency management of the process for the review of each collection of information established under section 3506(e), to reduce the burden of Federal collections of information existing at the end of the immediately preceding fiscal year by at least 5 percent;

"(3) in establishing the governmentwide goal pursuant to paragraph (2), establish a goal for each agency that—

"(A) represents the maximum practicable opportunity to reduce the paperwork burden imposed upon the public by such agency's collections of information, after considering the recommendations of the senior agency official designated under section 3506(b)(1); and

"(B) permits the attainment of the governmentwide goal when such agency's goal is aggregated with the individual goals of all other agencies included in the governmentwide goal; and

"(4) in each report issued under section 3514, beginning with the report relating to fiscal year 1995, identify any agency initiatives to reduce the burden of the Federal collections of information associated with—

"(A) businesses, especially small businesses and those engaged in international competition;

"(B) State and local governments; and

"(C) educational institutions.".

Subtitle C—Enhancing Government Responsibility and Accountability for Reducing the Burden of Federal Paperwork

SEC. 5301. REEMPHASIZING THE RESPONSIBILITY OF THE DIRECTOR TO CONTROL THE BURDEN OF FEDERAL PAPERWORK.

Section 3504(c) of title 44, United States Code, is amended—

(1) in paragraph (3) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and inserting after subparagraph (A) the following new subparagraph:

"(B) display, to the extent practicable, an estimate of the burden for each response;";

(2) by amending paragraphs (5) and (6) to read as follows:

"(5) establishing procedures under which an agency is to estimate the burden under this chapter to comply with the proposed collection of information;

"(6) coordinating with the Office of Federal Procurement Policy to eliminate paperwork burdens associated with procurement and acquisition;";

(3) by striking out the period at the end of paragraph (7) and inserting in lieu thereof a semicolon; and

(4) by adding at the end thereof the following new paragraphs:

"(8) minimizing the Federal paperwork burden imposed through Federal collection of information, with particular emphasis on those individuals or entities most adversely affected, including—

"(A) businesses, especially small businesses and those engaged in international competition;

"(B) State and local governments; and

"(C) educational institutions; and

"(9) initiating and conducting, with selected agencies and non-Federal entities on a voluntary basis, pilot projects to test or demonstrate the feasibility and benefit of changes or innovations in Federal policies, rules, regulations, and agency procedures to improve information management practices and related management activities (including authority for the Director to waive the application of designated agency regulations or administrative directives after giving timely notice to the public and Congress regarding the need for such waiver).".

SEC. 5302. ENHANCING AGENCY RESPONSIBILITY TO OBTAIN PUBLIC REVIEW OF PROPOSED PAPERWORK BURDENS.

Section 3507(a) of title 44, United States Code, is amended—

(1) in paragraph (2)(B) by inserting "a summary of the request," after "title for the information collection request,";

(2) by striking out "and" at the end of paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

"(3) the agency provides at least 30 days for public comment to the agency and the Office of Management and Budget after publication of the notice in the Federal Register, except as provided under section 3507 (g) and (k), and the agency head and the Director consider comments received regarding the proposed collection of information; and".

SEC. 5303. EXPEDITING REVIEW AT THE OFFICE OF MANAGEMENT AND BUDGET.

Section 3507(b) of title 44, United States Code, is amended—

(1) by striking out the first sentence and inserting in lieu thereof "The Director shall within 30 days after publication of the notice under subsection (a)(3) that is applicable to a proposed information collection request not contained in a proposed rule, notify the agency involved of the decision to approve or disapprove the proposed information collection request and shall make such decisions publicly available. Any decision to disapprove an information collection request shall include an explanation of the reasons for such decision.";

(2) by striking out "sixty" each place it appears and inserting "30" in each such place;

(3) by striking out "thirty" and inserting in lieu thereof "30"; and

(4) by striking out "one" and inserting in lieu thereof "1".

SEC. 5304. IMPROVING PUBLIC AND AGENCY SCRUTINY OF PAPERWORK BURDENS PROPOSED FOR RENEWAL.

(a) APPROVAL OF INFORMATION COLLECTION REQUEST.—Section 3507(d) of title 44, United States Code, is amended—

(1) by inserting "(1)" after "(d)"; and

(2) by adding at the end thereof the following:

"(2)(A) If the head of the agency, or the senior official designated under section 3506(b)(1), decides to seek extension of the Director's approval granted for a currently approved information collection request, the agency shall, through the notice prescribed in subsection (a)(2)(B) and such other practicable steps as may be reasonable, seek comment from the agencies, and the public on the continued need for, and burden imposed by, the collection of information.

"(B) The agency, after having made a reasonable effort to seek comment under subparagraph (A), but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved information collection request, shall—

"(i) evaluate the public comments received;

"(ii) conduct the review established under section 3506(e); and

"(iii) provide to the Director the certification required by section 3506(f), including the text of the certification and any additional relevant information regarding how the information collection request comports with the principles and requirements of this chapter.

"(C) Upon receipt of such certification, and prior to the expiration of the control number for that information collection request, the Director shall—

"(i) ensure that the agency has taken the actions specified under section 3506(f)(2);

"(ii) evaluate the public comments received by the agency or by the Director;

"(iii) determine whether the agency certification complies with the standards under section 3506(f)(1); and

"(iv) approve or disapprove the information collection request under this chapter.

"(3) If a certification is not provided to the Director prior to the beginning of the 60-day period before the expiration of the control number as provided under paragraph (2)(B), the agency shall submit the information collection request for review and approval or disapproval under this chapter.

"(4) An agency may not make a substantive or material modification to an information collection request after it has been approved by the Director, unless the modification has been submitted to the Director for review and approval or disapproval under this chapter.".

(b) APPROVAL OF INFORMATION COLLECTION REQUIREMENTS.—Section 3507 of title 44, United States Code, is further amended by adding at the end thereof the following new subsections:

"(i)(1) As soon as practicable, but no later than publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information requirement and upon request, information necessary to make the determination required under this chapter.

"(2) Within 60 days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments under the standards set forth in section 3508 on the collection of information requirement contained in the proposed rule.

"(3) When a final rule is published in the Federal Register, the agency shall explain how any collection of information requirement contained in the final rule responds to the comments, if any, filed by the Director or the public, or explain the reasons such comments were rejected.

"(4) The Director has no authority to disapprove any collection of information requirement specifically contained in an agency rule, if the Director has received notice and failed to comment on the rule within 60 days after the notice of proposed rulemaking.

"(5) No provision in this section shall be construed to prevent the Director, at the discretion of such officer, from—

"(A) disapproving any information collection request which was not specifically required by an agency rule;

"(B) disapproving any collection of information requirement contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;

"(C) disapproving any collection of information requirement contained in a final agency rule, if the Director finds within 60 days after the publication of the final rule that such a collection of information requirement cannot be approved under the standards set forth in section 3508, after reviewing the agency's response to the comments of the Director filed under paragraph (2) of this subsection; or

"(D) disapproving any collection of information requirement, if the Director determines that the agency has substantially modified, in the final rule, the collection of information requirement contained in the proposed rule and the agency has not given the Director the information required under paragraph (1) with respect to the modified collection of information requirement, at least 60 days before the issuance of the final rule.

"(6) The Director shall make publicly available any decision to disapprove a collection of information requirement contained in an agency rule, together with the reasons for such decision.

"(7) The authority of the Director under this subsection is subject to subsection (c).

"(8) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

"(9) The decision of the Director to approve or not to act upon a collection of information requirement contained in an agency rule shall not be subject to judicial review.

"(j)(1) If the head of the agency, or the senior official designated under section 3506(b)(1), decides to seek extension of the Director's approval granted for a currently approved collection of information requirement, the agency shall, through the notice prescribed in subsection (a)(2)(B) and such other practicable steps as may be reasonable, seek comment from the agencies, and the public on the continued need for, and burden imposed by, the collection of information requirement.

"(2) The agency, after having made a reasonable effort to seek comment under paragraph (1), but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved collection of information requirement, shall—

"(A) evaluate the public comments received;

"(B) conduct the review established under section 3506(e); and

"(C) provide to the Director the certification required by section 3506(f), including the text of the certification and any additional relevant information regarding how the collection of information requirement comports with the principles and requirements of this chapter.

"(3) Upon receipt of such certification, and prior to the expiration date of the control number for that collection of information requirement, the Director shall—

"(A) ensure that the agency has taken the actions specified in section 3506(f)(2);

"(B) evaluate the public comments received by the agency or by the Director;

"(C) determine whether the agency certification complies with the standards under section 3506(f)(1); and

"(D) approve or disapprove the collection of information requirement under this chapter.

"(4) If under the provisions of paragraph (3), the Director disapproves a collection of information requirement, or recommends or instructs the agency to make a substantive or material change to a collection of information requirement, the Director shall—

"(A) publish an explanation thereof in the Federal Register; and

"(B) instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information requirement and thereafter to submit the collection of information requirement for approval or disapproval under this chapter.

"(5) Nothing in this subsection affects the review process for a collection of information requirement contained in a proposed rule, including a proposed change to an existing collection of information requirement, under subsection (i) with respect to such collection of information requirement.

"(6) The Director may not approve a collection of information requirement for a period in excess of 3 years.".

SEC. 5305. PROTECTION FOR WHISTLEBLOWERS OF UNAUTHORIZED PAPERWORK BURDEN.

Section 3507(h) of title 44, United States Code, is amended in the second sentence by inserting before the period ", and any communication relating to a collection of information, the disclosure of which could lead to retaliation or discrimination against the communicator".

SEC. 5306. ENHANCING PUBLIC PARTICIPATION.

Section 3517 of title 44, United States Code, is amended—

(1) by inserting "(a)" before "In development"; and

(2) by adding at the end thereof:

"(b)(1) Under procedures established by the Director, a person may request the Director to review any collection of information conducted by or for an agency to determine, if—

"(A) the collection of information is subject to the requirements of this chapter;

"(B) the collection of information has been approved in conformity with this chapter; and

"(C) the person that is to respond to the collection of information is entitled to the public protections afforded by this chapter.

"(2) Any review requested under paragraph (1), unless the request is determined frivolous or does not on its face state a valid basis for such review, shall—

"(A) be completed by the Director within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension;

"(B)(i) be coordinated with the agency responsible for the collection of information to which the request relates; and

"(ii) be coordinated with the Administrator for Federal Procurement Policy, if the request relates to a collection of information applicable to an actual or prospective Federal contractor or subcontractor at any tier; and

"(C) result in a written determination by the Director, that shall be—

"(i) furnished to the person making the request; and

"(ii) made available to the public upon request (and listed and summarized in the annual report required under section 3514), unless confidentiality is requested by the person making the request.".

SEC. 5307. EXPEDITING REVIEW OF AN AGENCY INFORMATION COLLECTION REQUEST WITH A REDUCED BURDEN.

Section 3507 of title 44, United States Code (as amended by section 5304(b) of this title) is further amended by adding at the end thereof the following new subsection:

"(k) Upon request by the head of an agency, the Director shall approve a proposed change to an existing information collection request (unless such proposed change is subject to subsection (i)) within 30 days after the Director receives the proposed change. The information collection request shall thereafter remain in effect at least for the remainder of the period for which it was previously approved by the Director, if—

"(1) the information collection request has a current control number; and

"(2) the Director determines that the revision—

"(A) reduces the burden resulting from the information collection request; and

"(B) does not substantially change the information collection request.".

Subtitle D—Enhancing Agency Responsibility for Sharing and Disseminating Public Information

SEC. 5401. PRESCRIBING GOVERNMENTWIDE STANDARDS FOR SHARING AND DISSEMINATING PUBLIC INFORMATION.

Section 3504(h) of title 44, United States Code, is amended to read as follows:

"(h) The functions of the Director related to agency dissemination and sharing of public information shall include—

"(1) developing policies and practices for agency dissemination and sharing of public information consistent with the agency responsibilities under section 3506(g); and

"(2) developing policy guidelines that instruct Federal agencies on ways to fulfill agency responsibilities to disseminate and share information that, to the extent appropriate and practicable—

"(A) make information dissemination products available on timely, equitable and cost effective terms;

"(B) encourage a diversity of public and private information dissemination products;

"(C) avoid establishing, or permitting others to establish, exclusive, restricted, or other distribution arrangements that interfere with the availability of information dissemination products on a timely and equitable basis; and

"(D) avoid establishing restrictions or regulations, including the charging of fees or royalties, on the reuse, resale, or redissemination of Federal information dissemination products by the public; and

"(E) set user charges for information dissemination products at a level sufficient to recover the cost of dissemination, except—

"(i) where otherwise required by statute;

"(ii) where the information is collected, processed, and disseminated for the benefit of a specific identifiable group beyond the benefit to the general public; or

"(iii) where user charges are established at less than cost of dissemination because of a determination that higher charges would interfere with the proper performance of the agency's functions.".

SEC. 5402. AGENCY RESPONSIBILITIES FOR SHARING AND DISSEMINATING PUBLIC INFORMATION.

Section 3506 of title 44, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) The head of each agency shall, to the extent appropriate and practicable, and in conformance with the policy guidelines established under section 3504(h), establish and maintain a management system for the dissemination and sharing of information that—

"(1) ensures that the public has timely, equitable and cost-effective access to the agency's information dissemination products;

"(2) disseminates and shares information in a manner that achieves the best balance between maximizing the usefulness of the information and minimizing the cost to the Government and the public;

"(3) takes advantage of all appropriate channels, Federal and non-Federal, including State and local governments, libraries and private sector entities, in discharging agency responsibilities for the dissemination and sharing of information;

"(4) considers whether an information dissemination product available from other Federal or non-Federal sources is equivalent to an agency information dissemination product and reasonably achieves the objectives of the agency;

"(5) establishes and maintains inventories of all agency information dissemination products in conformance with the requirements of section 3511;

"(6) establishes and maintains communications with members of the public and with State and local governments so that the agency shares information and otherwise creates information dissemination products that meet their respective needs; and

"(7) provides adequate notice when initiating, substantially modifying, or terminating significant information dissemination products.".

SEC. 5403. AGENCY INFORMATION INVENTORY/LOCATOR SYSTEM.

(a) IN GENERAL.—Section 3511 of title 44, United States Code, is amended to read as follows:

"§ 3511. Inventory systems of information dissemination products

"(a) Each agency having significant information dissemination products shall establish and maintain a comprehensive inventory of such products, which shall include, at a minimum, the title of each such product, an abstract of the contents of each product, the media in which each product is available, and the cost, if any, of each product, subject to any requirements promulgated pursuant to subsection (c).

"(b) The inventory created pursuant to subsection (a) shall be made available for public access by electronic means, and in such other media as are appropriate and practicable, at no charge to the public.

"(c) The Director, in consultation with the Secretary of Commerce, the Archivist of the United States, the Public Printer, and the Librarian of Congress, may establish a mechanism for developing technical standards and other minimum requirements for the agency inventory systems created under subsection (a).".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 35 of title 44, United States Code, is amended by amending the item relating to section 3511 to read as follows:

"3511. Inventory systems of information dissemination products.".

Subtitle E—Additional Government Information Management Responsibility

SEC. 5501. STRENGTHENING THE STATISTICAL POLICY AND COORDINATION FUNCTIONS OF THE DIRECTOR.

Section 3504(d) of title 44, United States Code, is amended to read as follows:

"(d)(1) The statistical policy and coordination functions of the Director shall include—

"(A) coordinating and providing leadership for development of the Federal statistical system;

"(B) developing and periodically reviewing and, as necessary, revising long-range plans for the improved coordination and performance of the statistical activities and programs of the Federal Government;

"(C) ensuring the integrity, objectivity, impartiality and confidentiality of the Federal statistical system;

"(D) reviewing budget proposals of agencies to ensure that the proposals are consistent with such long-range plans and developing a summary and analysis of the budget submitted by the President to the Congress for each fiscal year of the allocation for all statistical activities;

"(E) coordinating, through the review of budget proposals and as otherwise provided under this chapter, the functions of the Federal Government with respect to gathering, interpreting and sharing statistics and statistical information;

"(F) developing and implementing governmentwide policies, principles, standards and guidelines concerning statistical collection procedures and methods, statistical data classification, statistical information presentation and sharing, and such statistical data sources as may be required for the administration of Federal programs;

"(G) evaluating statistical program performance and agency compliance with governmentwide policies, principles, standards and guidelines;

"(H) promoting the timely release by agencies of statistical data to the public;

"(I) coordinating the participation of the United States in international statistical activities;

"(J) preparing an annual report to submit to the Congress on the statistical policy and coordination function;

"(K) integrating the functions described under this paragraph with the other information resources management functions specified under this chapter; and

"(L) appointing a chief statistician who is a trained and experienced professional to carry out the functions described under this paragraph.

"(2) The Director shall establish an interagency working group on statistical policy, consisting of the heads of the agencies with major statistical programs, headed by the chief statistician to coordinate agency activities in carrying out the functions under paragraph (1).

"(3) The Director shall provide opportunities for long-term training in the statistical policy functions of the chief statistician to employees of the Federal Government. Each trainee shall be selected at the discretion of the Director based on agency requests and shall serve for at least 6 months and no more than 1 year. All costs of the training are to be paid by the agency requesting training.".

SEC. 5502. USE OF ELECTRONIC INFORMATION COLLECTION AND DISSEMINATION TECHNIQUES TO REDUCE BURDEN.

Section 3504(g)(1) of title 44, United States Code, is amended—

(1) by inserting "development and" after "overseeing the"; and

(2) by inserting "(including standards that improve the ability of agencies to use technology to reduce burden)" after "establishment of standards".

SEC. 5503. AGENCY IMPLEMENTATION.

Section 3514(a) of title 44, United States Code, is amended—

(1) in paragraph (9)(C) by striking out "and" at the end thereof;

(2) in paragraph (10)(C) by striking out the period and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

"(11) a listing of any increase in the burden imposed on the public during the year covered by the report resulting from a collection of information conducted or sponsored by or for an agency, which was imposed by such agency—

"(A) as specifically mandated by the provision of a statute; or

"(B) as necessary to implement a statutory requirement, which requirement shall be identified with particularity;

"(12) a description of each such agency's efforts in implementing, and plans to implement, the applicable policies, standards and guidelines with respect to the functions under this chapter; and

"(13) a strategic information resources management plan for the Federal Government, developed in consultation with the Administrator of General Services, the Secretary of Commerce, and the Archivist of the United States, that includes an analysis of cross-cutting issues of governmentwide importance.".

SEC. 5504. AUTOMATIC DATA PROCESSING EQUIPMENT PLAN.

Section 3504(g) of title 44, United States Code, is amended—

(1) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) developing and annually revising, in consultation with the Administrator of General Services, a 5-year plan for meeting the automatic data processing equipment (including telecommunications) and other information technology needs of the Federal Government in accordance with the requirements of sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759) and the purposes of this chapter;".

SEC. 5505. TECHNICAL AND CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 3502(10) of title 44, United States Code, is amended by striking out "the Federal Housing Finance Board" and inserting in lieu thereof "Federal Housing Finance Board".

(b) REVIEW PERIODS.—Section 3507(g)(1) of title 44, United States Code, is amended to read as follows: "(1) is needed prior to the expiration of the time periods for public notice and review by the Director pursuant to the requirements of this chapter,".

(c) DIRECTOR REVIEW.—Section 3513(a) of title 44, United States Code, is amended in the first sentence by inserting "resources" after "information".

(d) RESPONSIVENESS.—Section 3514(a) of title 44, United States Code, is amended—

(1) in paragraph (9)(A) by inserting "and" at the end thereof;

(2) in paragraph (9)(B) by striking out the semicolon and inserting a period; and

(3) by striking out paragraph (9)(C).

Subtitle F—Effective Dates

SEC. 5601. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the provisions of this title shall become effective 120 days after the date of the enactment of this Act.

(b) IN PARTICULAR.—section 5101 and this section shall become effective upon the date of the enactment of this Act.

TITLE VI—STRENGTHENING REGULATORY FLEXIBILITY

SEC. 6001. JUDICIAL REVIEW.

(a) IN GENERAL.—Section 611 of title 5, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 6 of title 5, United States Code, is amended by striking the item relating to section 611.

SEC. 6002. CONSIDERATION OF DIRECT AND INDIRECT EFFECTS OF RULES.

(a) IN GENERAL.—Title 5, United States Code, is amended by inserting after section 610 the following new section:

"§611. Consideration of direct and indirect effects of rules

"In determining under this chapter whether or not a rule is likely to have a significant impact on a substantial number of small entities, an agency shall consider both the direct and indirect effects of the rule.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 6 of title 5, United States Code, is amended by inserting after the item relating to section 610 the following:

"611. Consideration of direct and indirect effects of rules.".

SEC. 6003. RULES OPPOSED BY SBA CHIEF COUNSEL FOR ADVOCACY.

(a) IN GENERAL.—Section 612 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(d) STATEMENT OF OPPOSITION.—

"(1) TRANSMITTAL OF PROPOSED RULES AND INITIAL REGULATORY FLEXIBILITY ANALYSIS TO SBA CHIEF COUNSEL FOR ADVOCACY.—On or before the 30th day preceding the date of publication by an agency of general notice of proposed rulemaking for a rule, the agency shall transmit to the Chief Counsel for Advocacy of the Small Business Administration—

"(A) a copy of the proposed rule; and

"(B)(i) a copy of the initial regulatory flexibility analysis for the rule if required under section 603; or

"(ii) a determination by the agency that an initial regulatory flexibility analysis is not required for the proposed rule under section 603 and an explanation for the determination.

"(2) STATEMENT OF OPPOSITION.—On or before the 15th day following receipt of a proposed rule and initial regulatory flexibility analysis from an agency under paragraph (1), the Chief Counsel for Advocacy may transmit to the agency a written statement of opposition of the proposed rule.

"(3) RESPONSE.—If the Chief Counsel for Advocacy transmits to an agency a statement of opposition to a proposed rule in accordance with paragraph (2), the agency shall publish the statement, together with the response of the agency to the statement, in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule.".

(b) CONFORMING AMENDMENT.—Section 603(a) of title 5, United States Code, is amended by inserting "in accordance with section 612(d)" before the period at the end of the last sentence.

SEC. 6004. SENSE OF CONGRESS REGARDING SBA CHIEF COUNSEL FOR ADVOCACY.

It is the sense of Congress that the Chief Counsel for Advocacy of the Small Business Administration should be permitted to appear as amicus curiae in any action or case brought in a court of the United States for the purpose of reviewing a rule.

TITLE VII—REGULATORY IMPACT ANALYSES

SEC. 7001. SHORT TITLE.

This title may be cited as the "Administrative Procedure Reform Act of 1995".

SEC. 7002. RULE MAKING NOTICES FOR MAJOR RULES.

Section 553 of title 5, United States Code, is amended by adding at the end the following:

"(f)(1)(A) The head of an agency shall publish in the Federal Register, at least 90 days before the date of publication of general notice under subsection (b) for a proposed major rule, a notice of intent to engage in rule making.

"(B) A notice under subparagraph (A) for a proposed major rule shall include, to the extent possible, the information required to be included in a Regulatory Impact Analysis for the rule under section 7004(c) (1), (2), and (8) of the Administrative Procedure Reform Act of 1995.

"(2) The head of an agency shall include in a general notice under subsection (b) for a major rule proposed by the agency—

"(A) a final Regulatory Impact Analysis for the rule prepared in accordance with section 7004 of the Administrative Procedure Reform Act of 1995; and

"(B) clear delineation of all changes in the information included in the final Regulatory Impact Analysis under section 7004(c)(1) and (2) of the Administrative Procedure Reform Act of 1995 from any such information that was included in the notice for the rule under paragraph (1)(B) of this subsection.

"(3) In this subsection, the term 'major rule' has the meaning given that term in section 7004(b) of the Administrative Procedure Reform Act of 1995.".

SEC. 7003. HEARING REQUIREMENT FOR PROPOSED RULES; EXTENSION OF COMMENT PERIOD.

(a) HEARING REQUIREMENT.—Section 553 of title 5, United States Code, is further amended—

(1) in subsection (b), in the matter following paragraph (3), by inserting "(except subsection (g))" after "this subsection"; and

(2) by adding after subsection (f) (as added by section 7002 of this title) the following:

"(g) If more than 100 interested persons acting individually submit comments to an agency regarding any rule proposed by the agency, the agency shall hold a public hearing on the proposed rule.".

(b) EXTENSION OF COMMENT PERIOD.—Section 553 of title 5, United States Code, is further amended by adding after subsection (g) (as added by subsection (a)(2) of this section) the following:

"(h) If during the 30-day period beginning on the date of publication of notice under subsection (f)(1)(A) for a proposed major rule, or if during the 30-day period beginning on the date of publication or service of notice required by subsection (b) for a proposed rule, more than 100 persons individually contact the agency to request an extension of the period for making submissions under subsection (c) pursuant to the notice, the agency—

"(1) shall provide an additional 30-day period for making those submissions; and

"(2) may not adopt the rule until after that additional period.".

(c) RESPONSE TO COMMENTS.—Section 553(c) of title 5, United States Code, is amended—

(1) by inserting "(1)" after "(c)"; and

(2) by adding at the end the following:

"(2) The head of an agency shall publish in the Federal Register with each rule published under section 552(a)(1)(D) of this title, responses to the substance of the comments received by the agency regarding the rule.".

SEC. 7004. REGULATORY IMPACT ANALYSIS.

(a) APPLICATION OF EXECUTIVE ORDER AS STATUTORY REQUIREMENT.—Except as otherwise provided in this section, Executive Order 12291 (relating to Federal regulation requirements and regulatory impact analysis), as in effect on September 29, 1993, shall apply to each agency in accordance with the provisions of the Order.

(b) DEFINITION OF MAJOR RULE IN ORDER.—Notwithstanding section 1(b) of the Order, for purposes of subsection (a) of this section, the term "major rule" means any proposed rulemaking—

(1) which affects more than 100 persons; or

(2) compliance with which will require the expenditure of more than $1,000,000 by any single person which is not a Federal agency.

(c) CONTENTS OF REGULATORY IMPACT ANALYSES.—In lieu of the information specified in section 3(d) of the Order, each preliminary and final Regulatory Impact Analysis required under section 3 of the Order for a rule shall contain the following:

(1) An explanation of the necessity, appropriateness and reasonableness of the rule.

(2) A description of the current condition that the rule will address and how that condition will be affected by the rule.

(3) A statement that the rule does not conflict with nor duplicate any other rule, or an explanation of why the conflict or duplication exists.

(4) A statement of whether the rule is in accord with or in conflict with any legal precedent.

(5) A statement of the factual, scientific, or technical basis for the agency's determination that the rule will accomplish its intended purpose.

(6) A statement that describes and, to the extent practicable, quantifies the risks to human health or the environment to be addressed by the rule.

(7) A demonstration that the rule provides the least costly or least intrusive approach for meeting its intended purpose.

(8) A description of any alternative approaches considered by the agency or suggested by interested persons and the reasons for their rejection.

(9) An estimate of the nature and number of persons to be regulated or affected by the rule.

(10) An estimate of the economic costs of the rule, including those incurred by persons in complying with the rule.

(11) An evaluation of the costs versus the benefits derived from the rule, including evaluation of how those benefits outweigh the cost.

(12) Whether the rule will require onsite inspections.

(13) An estimate of the paperwork burden on persons regulated or affected by the rule, such as the number of forms, impact statements, surveys, and other documents required to be completed by the person under the rule.

(14) Whether persons will be required by the rule to maintain any records which will be subject to inspection.

(15) Whether persons will be required by the rule to obtain licenses, permits, or other certifications, and the fees and fines associated therewith.

(16) Whether persons will be required by the rule to appear before the agency.

(17) Whether persons will be required by the rule to disclose information on materials or processes, including trade secrets.

(18) Whether persons will be required by the rule to report any particular type of incidents.

(19) Whether persons will be required by the rule to adhere to design or performance standards.

(20) Whether persons may need to retain or utilize any lawyer, accountant, engineer, or other professional consultant in order to comply with the regulations.

(21) An estimate of the costs to the agency for implementation and enforcement of the regulations.

(22) Whether the agency can be reasonably expected to implement the rule with the current level of appropriations.

(23) A statement that any person may submit comments on the Regulatory Impact Analysis to the Administrator of the Office of Information and Regulatory Affairs.

The requirements of this section shall be consistent with, and not duplicative of, the requirements of section 3201.

(d) DEFINITIONS.—In this section—

(1) the term "Order" means Executive Order 12291, as in effect on September 29, 1993; and

(2) each of the terms "agency", "regulation", and "rule" has the meaning given that term in section 1 of the Order, except that the term "agency" includes an independent agency.

SEC. 7005. ADDITIONAL RESPONSIBILITIES OF DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET.

An agency may not adopt a major rule unless the final Regulatory Impact Analysis for the rule is approved in writing by the Director of the Office of Management and Budget or by an individual designated by the Director for that purpose.

SEC. 7006. STANDARD OF CLARITY.

To the extent practicable, the head of an agency may not publish in the Federal Register any proposed major rule, summary of a proposed major rule, or Regulatory Impact Analysis unless the Director of the Office of Management and Budget certifies that the proposed major rule, summary, or Analysis—

(1) is written in a reasonably simple and understandable manner and is easily readable;

(2) is written to provide adequate notice of the content of the rule, summary, or Analysis to affected persons and interested persons that have some subject matter expertise;

(3) conforms to commonly accepted principles of grammar;

(4) contains only sentences that are as short as practical and organized in a sensible manner; and

(5) to the extent practicable, does not contain any double negatives, confusing cross references, convoluted phrasing, unreasonably complex language, or term of art or word with multiple meanings that may be misinterpreted and is not defined in the rule, summary, or analysis, respectively.

SEC. 7007. REPORT BY OIRA.

The Director of the Office of Management and Budget shall submit a report to the Congress no later than 24 months after the date of the enactment of this Act containing an analysis of rule making procedures of Federal agencies and an analysis of the impact of those rule making procedures on the regulated public and regulatory process.

SEC. 7008. DEFINITIONS.

For purposes of this title—

(1) except as provided in section 7004(d)(2), each of the terms "agency", "rule", and "rule making" has the meaning given that term in section 551 of title 5, United States Code; and

(2) the term "major rule" has the meaning given that term in section 7004(b).

TITLE VIII—PROTECTION AGAINST FEDERAL REGULATORY ABUSE

Subtitle A—Citizens' Regulatory Bill of Rights

SEC. 8101. CITIZENS' REGULATORY BILL OF RIGHTS.

(a) IN GENERAL.—Except as provided in subsection (c), each person that is the target of a Federal investigative or enforcement action shall, upon the initiation of an inspection, investigation, or other official proceeding directed against that person, have the right—

(1) to remain silent;

(2) to be advised as to whether the person has a right to a warrant;

(3) to be warned that statements can be used against them;

(4) to have an attorney or accountant present;

(5) to be informed as the the scope and purpose of the agency action;

(6) to be present at the inspection, investigation, or proceeding;

(7) to be reimbursed for unreasonable damages;

(8) to be free of unreasonable seizures of property or assets; and

(9) to receive attorneys fees and other expenses from the Government when the Government commences a frivolous civil action against such person, except that nothing in this paragraph shall be construed to affect the Equal Access to Justice Act.

(b) AGENCY RULES.—Each agency or other authority of the Federal Government with respect to which this section applies shall make appropriate rules within 90 days after the date of the enactment of this Act to implement this section in the context of that agency's functions.

(c) LIMITATION ON APPLICATION OF REQUIREMENTS.—A requirement of this section shall not apply if compliance with the requirement would—

(1) substantially delay responding to an imminent danger to person or property; or

(2) substantially or unreasonably impede a criminal investigation.

Subtitle B—Private Sector Whistleblowers' Protection

SEC. 8201. SHORT TITLE.

This subtitle may be cited as the "Private Sector Whistleblowers' Protection Act of 1995".

SEC. 8202. PURPOSE.

The Federal regulatory system should be implemented consistent with the principle that any person subject to Government regulation should be protected against reprisal for disclosing information that the person believes is indicative of—

(1) violation or inconsistent application of any law, rule, regulation, policy, or internal standard;

(2) arbitrary action or other abuse of authority;

(3) mismanagement;

(4) waste or misallocation of resources;

(5) inconsistent, discriminatory or disproportionate enforcement proceedings;

(6) endangerment of public health or safety;

(7) personal favoritism; and

(8) coercion for partisan political purposes;

by any agency or its employees.

SEC. 8203. COVERAGE.

This subtitle shall apply to:

(1) Any agency of the Federal Government as defined in section 551 of title 5, United States Code.

(2) Any agency of a State government that exercises authority under Federal law, or that exercises authority under State law establishing a program approved by a Federal agency as a substitute for or supplement to a program established by Federal law.

SEC. 8204. PROHIBITED REGULATORY PRACTICES.

(a) DEFINED.—For purposes of this subtitle, "prohibited regulatory practice" means any action described in subsection (b)(i), (ii), or (iii) of this section.

(b) PROHIBITION.—(1) No employee of an Agency who has authority—

(A) to take or direct other employees to take,

(B) to recommend, or

(C) to approve,

any regulatory action shall—

(i) take or fail to take, or threaten to take or fail to take,

(ii) recommend or direct that others take or fail to take, or threaten to so recommend or direct, or

(iii) approve the taking or failing to take, or threaten to so approve,

such regulatory action because of any disclosure by a person subject to the action, or by any other person, of information that the person believed indicative of—

(I) violation or inconsistent application of any law, rule, regulation, policy, or internal standard;

(II) arbitrary action or other abuse of authority;

(III) mismanagement;

(IV) waste or misallocation of resources;

(V) inconsistent, discriminatory or disproportionate enforcement;

(VI) endangerment of public health or safety;

(VII personal favoritism; or

(VIII) coercion for partisan political purposes;

by any agency or its employees.

(2) An action shall be deemed to have been taken, not taken, approved, or recommended because of the disclosure of information within the meaning of paragraph (1) if the disclosure of information was a contributing factor to the decision to take, not to take, to approve, or to recommend.

SEC. 8205. PROHIBITED REGULATORY PRACTICE AS A DEFENSE TO AGENCY ACTION.

(a) IN GENERAL.—In any administrative or judicial action or proceeding, formal or informal, by an agency to create, apply or enforce any obligation, duty or liability under any law, rule or regulation against any person, the person may assert as a defense that the agency or one or more employees of the agency have engaged in a prohibited regulatory practice with respect to the person or to a related entity in connection with the action or proceeding.

(b) COMPLIANCE.—If the existence of a prohibited regulatory practice is established, the person may be required to comply with the obligation, duty or liability to the extent compliance is required of and enforced against other persons similarly situated, but no penalty, fine, damages, costs or other obligation except compliance shall be imposed on the person.

SEC. 8206. ENFORCEMENT.

(a) CIVIL PENALTY.—Any agency, and any employee of an agency, engaging in a prohibited regulatory practice may be assessed a civil penalty of not more than $25,000 for each such practice. In the case of a continuing prohibited regulatory practice, each day that the practice continues shall be deemed a separate practice.

(b) PROCEDURES.—The President shall, by regulation, establish procedures providing for the administrative enforcement of the requirements of subsection (a) of this section.

SEC. 8207. CITIZEN SUITS.

(a) COMMENCEMENT.—Any person injured or threatened by a prohibited regulatory practice may commence a civil action on his own behalf against any person or agency alleged to have engaged in or threatened to engage in such practice.

(b) JURISDICTION AND VENUE.—Any action under subsection (a) of this section shall be brought in the district court for any district in which the alleged prohibited regulatory practice occurred or in which the alleged injury occurred. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to—

(1) restrain any agency or person who has engaged or is engaging in any prohibited regulatory practice;

(2) order the cancellation or remission of any penalty, fine, damages, or other monetary assessment that resulted from a prohibited regulatory practice;

(3) order the rescission of any settlement that resulted from a prohibited regulatory practice;

(4) order the issuance of any permit or license that has been denied or delayed as a result of a prohibited regulatory practice;

(5) order the agency and/or the employee engaging in a prohibited regulatory practice to pay to the injured person such damages as may be necessary to compensate the person for any harm resulting from the practice, including damages for—

(A) injury to, deterioration of, or destruction of real or personal property;

(B) loss of profits from idle or underutilized resources, and from business forgone;

(C) costs incurred, including costs of compliance where appropriate;

(D) loss in value of a business;

(E) reasonable legal, consulting and expert witness fees; or

(F) payments to third parties;

(6) order the payment of punitive damages, in an amount not to exceed $25,000 for each such prohibited regulatory practice, provided that, in the case of a continuing prohibited regulatory practice, each day that the practice continues shall be deemed a separate practice.

SEC. 8208. OFFICE OF THE SPECIAL COUNSEL.

(a) REQUEST FOR INVESTIGATION.—Any person who has reason to believe that any employee of any agency has engaged in a prohibited regulatory practice may request the Special Counsel established by section 1211 of title 5, United States Code, to investigate.

(b) POWERS.—The Special Counsel shall have the same power to investigate prohibited regulatory practices that it has to investigate prohibited personnel practices pursuant to section 1212 of title 5, United States Code.

SEC. 8209. RELATION TO CRIMINAL INVESTIGATIONS.

Nothing in this subtitle shall be construed so as substantially or unreasonably to impede a criminal investigation.

TITLE IX—PRIVATE PROPERTY RIGHTS PROTECTIONS AND COMPENSATION

SEC. 9001. STATEMENT OF PURPOSE.

It is the purpose of this title to compensate private property owners with respect to certain actions that are taken by the Federal Government for public purposes and that limit the use of private property by property owners.

SEC. 9002. COMPENSATION FOR FEDERAL AGENCY INFRINGEMENT OR DEPRIVATION OF RIGHTS TO PRIVATE PROPERTY.

(a) ELIGIBILITY.—

(1) IN GENERAL.—A private property owner is entitled to receive compensation from the United States in accordance with this section for any agency infringement or deprivation of rights to property that is owned by the private property owner.

(2) AGENCY INFRINGEMENT OR DEPRIVATION OF RIGHTS TO PROPERTY DEFINED.—For purposes of paragraph (1), the term "agency infringement or deprivation of rights to property" means a limitation or condition that—

(A) is imposed by a final agency action on a use of property that would be lawful but for the agency action, and

(B) results in a reduction in the value of the property equal to ten percent or more.

(3) CIRCUMSTANCES IN WHICH COMPENSATION NOT REQUIRED.—A private property owner shall not be entitled to receive compensation under this subsection for any of the following:

(A) A limitation on any action that would constitute a violation of applicable State or local law (including an action that would violate a local zoning ordinance or would constitute a nuisance under any applicable State or local law).

(B) A limitation on any use of private property, imposed pursuant to a determination by the President that the use poses or would pose a serious and imminent threat to public health and safety or to the health and safety of workers, or other individuals, lawfully on the property.

(C) A limitation imposed pursuant to the Federal navigational servitude.

(4) LIMITATION ON CUMULATIVE AMOUNT OF COMPENSATION.—No payment may be made pursuant to this subsection with respect to property if the sum of such payment and all other payments made pursuant to this subsection with respect to the property would exceed the fair market value of the property (as determined at the time of the payment).

(5) STATE OR LOCAL LIMITATIONS IMPOSED PURSUANT TO FEDERAL MANDATES.—A limitation or condition shall be considered to be a Federal agency infringement or deprivation of rights to property for purposes of paragraph (1) if it is a consequence of a limitation or condition on the use of the property by the private property owner that is imposed by a State or local government pursuant to an agency action that is intended to, or does, bind the State or local government.

(b) REQUEST FOR COMPENSATION.—Within 90 days after receipt of notice of an agency action with respect to which compensation is required under subsection (a), a private property owner may submit to the head of the agency a request in writing for compensation under this section.

(c) AGENCY DETERMINATION AND OFFER.—

(1) IN GENERAL.—Upon receipt of a request for compensation, submitted in accordance with subsection (b), with respect to an agency action affecting private property as described in subsection (a), the head of the agency that took the action shall determine whether the private property owner submitting the request has demonstrated entitlement to compensation under subsection (a). If the head of the agency finds that the private property owner has so demonstrated, the head of the agency shall offer to compensate the private property owner for the reduction in the value of the property, as demonstrated by the private property owner.

(2) TIMING OF DETERMINATION AND OFFER.—The head of an agency shall make the determination and offer, if any, required by paragraph (1) with respect to a request for compensation not later than 180 days after receiving the request.

(d) PRIVATE PROPERTY OWNERS' RESPONSE.—A private property owner shall have 60 days after the date of receipt of an offer under subsection (c) to accept or to reject the offer.

(e) ARBITRATION.—If the head of an agency determines, under subsection (c), that a private property owner is not entitled to compensation under subsection (a), or a private property owner rejects an offer made under subsection (c), the private property owner may submit the matter for arbitration to an arbitrator appointed by the head of the agency from a list of arbitrators submitted by the American Arbitration Association. The arbitrator shall determine whether the request meets the requirements of subsection (a) (if such determination is called for by the submission of the property owner) and shall determine the amount of compensation to which the property owner is entitled under this section, in accordance with subsection (c). The arbitration shall be conducted in accordance with the real estate valuation arbitration rules of that association. For purposes of this section, an arbitration is binding on the head of an agency and the private property owner as to whether the property owner is entitled to compensation under subsection (a) and as to the amount, if any, of compensation owed to the private property owner under this section.

(f) PAYMENT.—The head of an agency shall pay a private property owner any compensation required under the terms of an offer of the agency head that is accepted by the private property owner in accordance with subsection (d), or under a decision of an arbiter under subsection (e), by not later than 60 days after the date of the acceptance or the date of the issuance of the decision, respectively.

(g) NATURE OF REMEDY.—

(1) PROHIBITION OF LIMITATION ON OTHER CLAIMS.—No provision of this title shall be construed to limit the rights of any person to pursue any claim or cause of action under the Constitution or any other law (including a claim or cause of action concerning personal property).

(2) PROHIBITION OF USE AS CONDITION PRECEDENT.—Submission of a request for compensation, or receipt of compensation, under this title shall not be a condition precedent for any claim or cause of action under any law.

(h) LIMITATION ON DOUBLE RECOVERY.—

(1) COURT AWARDS OF DAMAGES.—Notwithstanding subsection (g), a court may credit a payment made pursuant to subsection (a) for any reduction in the value of property against the amount of damages awarded pursuant to any claim or cause of action, under the Constitution or any other law, that arises from the same reduction in the value of the same property.

(2) PAYMENTS UNDER THIS TITLE.—The amount awarded pursuant to any claim or cause of action, under the Constitution or any other law, for any reduction in the value of a property shall be credited against the amount of any payment made pursuant to subsection (a) with respect to the same reduction in the value of the same property.

(i) SOURCE OF PAYMENT FUNDS.—

(1) USE OF AGENCY FUNDS.—Except as provided in paragraphs (2) and (3), and notwithstanding any other provision of law, any payment made pursuant to subsection (a) shall be paid from the annual appropriation of the agency or agencies taking the action for which the payment is required. For the purpose of making such a payment, the head of the agency may transfer or reprogram any funds available to the agency.

(2) ALTERNATIVE SOURCE OF FUNDS.—If the agency taking the action referred to in paragraph (2) or (5) of subsection (a) does not have sufficient funds available to complete the payment required by this section with respect to the action, the Comptroller General of the United States shall identify the most appropriate Federal scurce of funds to complete the payment and the President shall complete the payment using funds from such source, notwithstanding any other provision of law.

(3) LAND EXCHANGE.—In lieu of payment under paragraph (1) or (2), the President may enter into an agreement with the private property owner who is entitled to the compensation for which the payment is required to provide all or part of the compensation by

exchanging all or part of the affected private property for property owned by the United States and identified by the President as suitable for such an exchange. The properties transferred as part of such an exchange shall be of equal value, as determined under section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)).

SEC. 9003. SEVERABILITY.

If any provision of this title, or the application thereof to any person or circumstance, is held invalid, the remainder of this title and the application of such provision to other persons and circumstances shall not be affected.

SEC. 9004. DEFINITIONS.

For purposes of this title:

(1) AGENCY.—The term "agency" has the meaning given that term in section 551(1) of title 5, United States Code.

(2) AGENCY ACTION.—The term "agency action" has the meaning given that term in section 551(13) of title 5, United States Code.

(3) FAIR MARKET VALUE.—Unless stated otherwise, the term "fair market value of the property" means the fair market value of property determined as of the date on which the private property owner makes a claim under this title with respect to the property.

(4) FINAL AGENCY ACTION.—The term "final agency action" means an agency action that is intended to or does bind a private property owner with respect to the use of the property. Such term includes but is not limited to the following:

(A) Denial of a permit.

(B) Issuance of a cease and desist order.

(C) Issuance of a statement under section 7(b)(3) of the Endangered Species Act of 1973 (16 U.S.C. 1536(b)(3)).

(D) Issuance of a permit with conditions.

(E) Commencement of a civil or criminal proceeding arising out of failure to secure a permit.

(5) PRIVATE PROPERTY OWNER.—The term "private property owner" means a person (other than the United States, a department, agency, or instrumentality thereof, or an officer, employee, or agent thereof when acting on behalf of his or her employing authority) that—

(A) owns property referred to in paragraph (6)(A); or

(B) holds property referred to in paragraph (6)(B).

(6) PROPERTY.—The term "property" means—

(A) land; and

(B) the right to use or receive water.

(7) REDUCTION IN THE VALUE OF PROPERTY.—The term "reduction in the value of property" means the difference, if greater than zero, between—

(A) the fair market value of property, as determined based on the value of the property if an agency action referred to in paragraph (2) or (5) of section 9002(a), as the case may be, were not implemented; minus

(B) the fair market value of property, as determined based on the value of the property if an agency action referred to in paragraph (2) or (5) of section 9002(a), as the case may be, were implemented.

(8) USE—The term "use" means a prior, existing, or potential utilization of property, by the private property owner, which is—

(A) predictable; and

(B) consistent with the utilization of property of the same general type or with property usage in the geographic area in which the property is located.

TITLE X—ESTABLISHMENT OF FEDERAL MANDATE BUDGET COST CONTROL

SEC. 10001. AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 1974.

(a) FEDERAL REGULATORY BUDGET COST CONTROL SYSTEM.—Title III of the Congressional Budget Act of 1974, as amended by section 4001(a) of this Act, is further amended by adding after part B the following new part:

"PART C—FEDERAL MANDATE BUDGET COST CONTROL

"SEC. 331. OMB-CBO REPORTS.

"(a) OMB-CBO INITIAL REPORT.—Within 1 year after the date of enactment of this section, OMB and CBO shall jointly issue a report to the President and each House of Congress that contains the following:

"(1) For the first budget year beginning after the issuance of this report, a projection of the aggregate direct cost to States and local governments of complying with all Federal mandates in effect immediately before issuance of the report containing the projection for that budget year of the effect of current-year Federal mandates into the budget year and the outyears based on those mandates.

"(2) A calculation of the estimated aggregate direct cost to States and local governments of compliance with all Federal mandates as a percentage of the gross domestic product (GDP).

"(3) The estimated marginal cost (measured as a reduction in estimated gross domestic product) to States and local governments of compliance with all Federal mandates in excess of the cap (to be determined under paragraph (5)) allowable for the sixth year following the budget year and subsequent fiscal years.

"(4) The effect on the domestic economy of different types of Federal mandates.

"(5) The appropriate level of personnel, administrative overhead, and programmatic savings that should be achieved on a fiscal year by fiscal year basis by Federal agencies that issue mandates with direct costs to States and local governments through the reduction of such aggregate costs to States and local governments by 6.5 percent for the budget year (as measured against the aggregate mandate baseline for the first budget year to which this part applies) and by 6.5 percent increments for each of the outyears (until the aggregate level of such costs does not exceed 3 percent of the estimated gross domestic product for the same fiscal year as the estimated costs that will be incurred).

"(6) Recommendations for budgeting, technical, and estimating changes to improve the Federal mandate budgeting process.

"(b) UPDATE REPORTS.—OMB and CBO shall issue update reports on September 15th of the fifth year beginning after issuance of the initial report and at 5-year intervals thereafter containing all the information required in the initial report, but based upon all Federal mandates in effect immediately before issuance of the most recent update report.

"(c) INITIAL BASELINE REPORT.—Within 30 days after the date of enactment of this section, OMB and CBO shall jointly issue a report to the President and each House of Congress that contains an initial aggregate mandate baseline for the first budget year that begins at least 120 days after that date of enactment. That baseline will be a projection of the aggregate direct cost to States and local governments of complying with all Federal mandates in effect immediately before issuance of the report containing the projection for that budget year of the effect of current-year Federal mandates into the budget year and the outyears based on those mandates.

"SEC. 332. AGGREGATE MANDATE BASELINE.

"(a) IN GENERAL.—For the first budget year beginning after the date of enactment of this section and for every other fiscal year thereafter, the aggregate mandate baseline refers to a projection of the aggregate direct cost to States and local governments of complying with all Federal mandates in effect immediately before issuance of the report containing the projection for that budget year of the effect of current-year Federal mandates into the budget year and the outyears based on those mandates. However, in the case of each of the succeeding fiscal years, the baseline shall be adjusted for the estimated growth during that year in the gross domestic product (GDP).

"(b) OMB-CBO AGGREGATE MANDATE BASELINE REPORTS.—(1) The first budget year for which there shall be an aggregate mandate baseline shall be the budget year to which the initial OMB-CBO baseline report issued under section 331(c) pertains.

"(2) In the case of each budget year after the budget year referred to in paragraph (1), not later than September 15 of the current year, OMB and CBO shall jointly issue a report containing the baseline referred to in subsection (a) for that budget year.

"SEC. 333. RECONCILIATION AND ALLOCATIONS.

"(a) RECONCILIATION DIRECTIVES.—In addition to the requirements of section 310, a concurrent resolution on the budget for any fiscal year shall specify—

"(1) changes in laws, regulations, and rules necessary to reduce the aggregate direct cost to States and local governments of complying with all Federal mandates by 6.5 percent for the budget year (as measured against the aggregate mandate baseline for the first budget year to which this part applies) and by 6.5 percent increments for each of the outyears (until the aggregate level of such costs does not exceed 3 percent of the estimated gross domestic product for the same fiscal year as the estimated costs that will be incurred) for Federal agencies that issue mandates producing direct costs to States and local governments; and

"(2) changes in laws necessary to achieve reductions in the level of personnel and administrative overhead and to achieve programmatic savings for the budget year and the outyears for those agencies of the following:

"(A) In the first outyear, one-fourth of the percent of reduction in mandate authority from the aggregate mandate base.

"(B) In the second outyear, one-third of the percent of reduction in mandate authority from the aggregate mandate base.

"(C) In the third, fourth, fifth, and sixth years following the budget year, one-half of the percent of reduction in mandate authority from the aggregate mandate base.

Section 310(c) shall not apply with respect to directions made under this section.

"(b) ALLOCATION OF TOTALS.—(1) The Committees on the Budget of the House of Representatives and the Senate shall each allocate aggregate 2-year mandate authority among each committee of its House and by major functional category for the first budget year beginning after the date of enactment of this section and for the second, fourth, and sixth years following the budget year and then every other year thereafter.

"(2) As soon as practicable after receiving an allocation under paragraph (1), each committee shall subdivide its allocation among its subcommittees or among programs over which it has jurisdiction.

"(c) POINT OF ORDER.—(1) It shall not be in order in the House of Representatives or the Senate to consider any bill or resolution, or amendment thereto, which would cause the appropriate allocation made under subsection (b) for a fiscal year of mandate authority to be exceeded.

"(2) WAIVER.—The point of order set forth in paragraph (1) may only be waived by the affirmative vote of at least three-fifths of the Members voting, a quorum being present.

"(d) DETERMINATIONS BY BUDGET COMMITTEES.—For purposes of this section, the level of mandate authority for a fiscal year shall be determined by the Committee on the Budget of the House of Representatives or the Senate, as the case may be.

"(e) EXCEEDING ALLOCATION TOTALS.—Whenever any Committee of the House of Representatives exceeds its allocation of aggregate 2-year mandate authority under subsection (b)(1), any Member of the House of Representatives may offer a bill in the House (which shall be highly privileged, unamendable, and debateable for 30 minutes) which shall only prohibit the issuance of mandates by any agency under the jurisdiction of that committee for the fiscal years covered by that allocation until that committee eliminates its breach.

"SEC. 334. ANALYSIS OF MANDATES COSTS BY CONGRESSIONAL BUDGET OFFICE.

"CBO shall prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee—

"(1) an estimate of the costs which would be incurred by States and local governments in carrying out or complying with such bill or resolution in the fiscal year in which it is to become effective and in each of the 4 fiscal years following such fiscal year, together with the basis of each such estimate; and

"(2) a comparison of the estimate of costs described in paragraph (1) with any available estimates of costs made by such committee or by any Federal agency.

"SEC. 335. DEFINITIONS.

"As used in this part:

"(1) The term 'CBO' refers to the Director of the Congressional Budget Office.

"(2) The term 'OMB' refers to the Director of the Office of Management and Budget.

"(3) The term 'costs' when referring to 'mandates' means the direct cost to States and local governments of complying with Federal mandates.

"(4) The term 'direct costs' means (recognizing that direct costs are not the only costs associated with Federal mandates) all expenditures occurring as a direct result of complying with Federal mandates, except those applying to the military or agency organization, management, and personnel.".

SEC. 10002. PRESIDENT'S ANNUAL BUDGET SUBMISSIONS.

Section 1105(a) of title 31, United States Code, as amended by section 4002 of this Act, is further amended by adding after paragraph (32) the following new paragraph:

"(33) a mandate authority budget analysis of the aggregate direct cost to States and local governments of complying with all current and proposed Federal mandates and proposals for complying with section 333 of the Congressional Budget Act of 1974 for the budget year and the outyears."

SEC. 10003. ESTIMATION AND DISCLOSURE OF COSTS OF FEDERAL MANDATES.

(a) COSTS TO STATE AND LOCAL GOVERNMENTS.—Chapter 6 of title 5, United States Code, popularly known as the "Regulatory Flexibility Act", is amended—

(1) in section 603, as amended by section 4003(2) of this Act, by adding after subsection (d) the following:

"(e) Each initial regulatory flexibility analysis for a proposed rule that establishes or implements a new Federal mandate shall also contain a description of the nature and amount of monetary costs that will be incurred by State and local governments in complying with the Federal mandate."; and

(2) in section 604(a), as amended by section 4003(3) of this Act—

(A) in paragraph (3) by striking "and" after the semicolon;

(B) in paragraph (4) by striking the period and inserting "; and"; and

(C) by adding after paragraph (4) the following:

"(5) in the case of an analysis for a rule that establishes or implements a new Federal mandate, a statement of the nature and amount of monetary costs that will be incurred by State and local governments in complying with the Federal mandate.".

(b) AGENCY REPORTS.—Each agency that under chapter 6 of title 5, United States Code, prepares an initial regulatory flexibility analysis for a proposed rule that establishes or implements a new Federal mandate shall at the same time submit to each House of Congress and to CBO and OMB a cost estimate and cost/benefit analysis of any new Federal mandate that would have an aggregate direct cost to State and local governments of at least $10,000,000 for any fiscal year.

TITLE XI—TAXPAYER DEBT BUY-DOWN

SEC. 11001. DESIGNATION OF AMOUNTS FOR REDUCTION OF PUBLIC DEBT.

(a) IN GENERAL.—Subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to returns and records) is amended by adding at the end the following new part:

"PART IX—DESIGNATION FOR REDUCTION OF PUBLIC DEBT

"Sec. 6097. Designation.

"SEC. 6097. DESIGNATION.

"(a) IN GENERAL.—Every individual with adjusted income tax liability for any taxable year may designate that a portion of such liability (not to exceed 10 percent thereof) shall be used to reduce the public debt.

"(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made with respect to any taxable year only at the time of filing the return of tax imposed by chapter 1 for the taxable year. The designation shall be made on the first page of the return or on the page bearing the taxpayer's signature.

"(c) ADJUSTED INCOME TAX LIABILITY.—For purposes of this section, the term 'adjusted income tax liability' means income tax liability (as defined in section 6096(b)) reduced by any amount designated under section 6096 (relating to designation of income tax payments to Presidential Election Campaign Fund)."

(b) CLERICAL AMENDMENT.—The table of parts for such subchapter A is amended by adding at the end the following new item:

"Part IX. Designation for reduction of public debt."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 11002. PUBLIC DEBT REDUCTION TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end the following section:

"SEC. 9512. PUBLIC DEBT REDUCTION TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Public Debt Reduction Trust Fund', consisting of any amount appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Public Debt Reduction Trust Fund amounts equivalent to the amounts designated under section 6097 (relating to designation for public debt reduction).

"(c) EXPENDITURES.—Amounts in the Public Debt Reduction Trust Fund shall be used by the Secretary of the Treasury for purposes of paying at maturity, or to redeem or buy before maturity, any obligation of the Federal Government included in the public debt (other than an obligation held by the Federal Old-Age and Survivors Insurance Trust Fund, the Civil Service Retirement and Disability Fund, or the Department of Defense Military Retirement Fund). Any obligation which is paid, redeemed, or bought with amounts from the Public Debt Reduction Trust Fund shall be canceled and retired and may not be reissued."

(b) CLERICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end the following new item:

"Sec. 9512. Public Debt Reduction Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received after the date of the enactment of this Act.

SEC. 11003. TAXPAYER-GENERATED SEQUESTRATION OF FEDERAL SPENDING TO REDUCE THE PUBLIC DEBT.

(a) SEQUESTRATION TO REDUCE THE PUBLIC DEBT.—Part C of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding after section 253 the following new section:

"SEC. 253A. SEQUESTRATION TO REDUCE THE PUBLIC DEBT.

"(a) SEQUESTRATION.—Notwithstanding sections 255 and 256, within 15 days after Congress adjourns to end a session, and on the same day as sequestration (if any) under sections 251, 252, and 253, but after any sequestration required by those sections, there shall be a sequestration equivalent to the estimated aggregate amount designated under section 6097 of the Internal Revenue Code of 1986 for the last taxable year ending one year before the beginning of that session of Congress, as estimated by the Department of the Treasury on October 1 and as modified by the total of (1) any amounts by which net discretionary spending is reduced by legislation below the discretionary spending limits enacted after the enactment of this section related to the fiscal year subject to the sequestration (or, in the absence of such limits, any net deficit change from the baseline amount calculated under section 257 (except that such baseline for fiscal year 1996 and thereafter shall be based upon fiscal year 1995 enacted appropriations less any 1995 sequesters)) and (2) the net deficit change that has resulted from all direct spending legislation enacted after the enactment of this section related to the fiscal year subject to the sequestration, as estimated by OMB. If the reduction in spending under paragraphs (1) and (2) for a fiscal year is greater than the estimated aggregate amount designated under section 6097 of the Internal Revenue Code of 1986 respecting that fiscal year, then there shall be no sequestration under this section.

"(b) APPLICABILITY.—

"(1) IN GENERAL.—Except as provided by paragraph (2), each account of the United States shall be reduced by a dollar amount calculated by multiplying the level of budgetary resources in that account at that time by the uniform percentage necessary to carry out subsection (a). All obligational authority reduced under this section shall be done in a manner that makes such reductions permanent.

"(2) EXEMPT ACCOUNTS.—No order issued under this part may—

"(A) reduce benefits payable the old-age and survivors insurance program established under title II of the Social Security Act;

"(B) reduce payments for net interest (all of major functional category 900); or

"(C) make any reduction in the following accounts:

"Federal Deposit Insurance Corporation, Bank Insurance Fund;

"Federal Deposit Insurance Corporation, FSLIC Resolution Fund;

"Federal Deposit Insurance Corporation, Savings Association Insurance Fund;

"National Credit Union Administration, credit union share insurance fund; or

"Resolution Trust Corporation."

(b) REPORTS.—Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in subsection (a), by inserting after the item relating to the GAO compliance report the following:

"October 1 . . . Department of Treasury report to Congress estimating amount of income tax designated pursuant to section 6097 of the Internal Revenue Code of 1986.";

(2) in subsection (d)(1), by inserting ", and sequestration to reduce the public debt,";

(3) in subsection (d), by redesignating paragraph (5) as paragraph (6) and by inserting after paragraph (4) the following new paragraph:

"(5) SEQUESTRATION TO REDUCE THE PUBLIC DEBT REPORTS.—The preview reports shall set forth for the budget year estimates for each of the following:

"(A) The aggregate amount designated under section 6097 of the Internal Revenue Code of 1986 for the last taxable year ending before the budget year.

"(B) The amount of reductions required under section 253A and the deficit remaining after those reductions have been made.

"(C) The sequestration percentage necessary to achieve the required reduction in accounts under section 253A(b)."; and

(4) in subsection (g), by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) SEQUESTRATION TO REDUCE THE PUBLIC DEBT REPORTS.—The final reports shall contain all of the information contained in the public debt taxation designation report required on October 1.".

(c) EFFECTIVE DATE.—Notwithstanding section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, the expiration date set forth in that section shall not apply to the amendments made by this section. The amendments made by this section shall cease to have any effect after the first fiscal year during which there is no public debt.

TITLE XII—SMALL BUSINESS INCENTIVES

SEC. 12001. INCREASE IN UNIFIED ESTATE AND GIFT TAX CREDITS.

(a) ESTATE TAX CREDIT.—

(1) Subsection (a) of section 2010 of the Internal Revenue Code of 1986 (relating to unified credit against estate tax) is amended by striking "$192,800" and inserting "the applicable credit amount".

(2) Section 2010 of such Code is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) APPLICABLE CREDIT AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The applicable credit amount is the amount of the tentative tax which would be determined under the rate schedule set forth in section 2001(c) if the amount with respect to which such tentative tax is to be computed were the applicable exclusion amount determined in accordance with the following table:

"In the case of estates of decedents dying, and gifts made, during:	**The applicable exclusion amount is:**
1996	$700,000
1997	$725,000
1998 or thereafter	$750,000.

"(2) COST-OF-LIVING ADJUSTMENTS.—In the case of any decedent dying, and gift made, in a calendar year after 1998, the $750,000 amount set forth in paragraph (1) shall be increased by an amount equal to—

"(A) $750,000, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $1,000."

(3) Paragraph (1) of section 6018(a) of such Code is amended by striking "$600,000" and inserting "the applicable exclusion amount in effect under section 2010(c) (as adjusted under paragraph (2) thereof) for the calendar year which includes the date of death".

(4) Paragraph (2) of section 2001(c) of such Code is amended by striking "$21,040,000" and inserting "the amount at which the effective tax rate under this section is 55 percent".

(5) Subparagraph (A) of section 2102(c)(3) of such Code is amended by striking "$192,800" and inserting "the applicable credit amount in effect under section 2010(c) for the calendar year which includes the date of death".

(b) UNIFIED GIFT TAX CREDIT.—Paragraph (1) of section 2505(a) of such Code is amended by striking "$192,800" and inserting "the applicable credit amount in effect under section 2010(c) for such calendar year".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 1995.

SEC. 12002. INCREASE IN EXPENSE TREATMENT FOR SMALL BUSINESSES.

(a) GENERAL RULE.—Paragraph (1) of section 179(b) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended by striking "$17,500" and inserting "$25,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

SEC. 12003. CLARIFICATION OF DEFINITION OF PRINCIPAL PLACE OF BUSINESS.

(a) IN GENERAL.—Subsection (f) of section 280A of the Internal Revenue Code of 1986 is amended by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) PRINCIPAL PLACE OF BUSINESS.—For purposes of subsection (c), a home office shall in any case qualify as the principal place of business if—

"(A) the office is the location where the taxpayer's essential administrative or management activities are conducted on a regular and systematic (and not incidental) basis by the taxpayer, and

"(B) the office is necessary because the taxpayer has no other location for the performance of the administrative or management activities of the business.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

SEC. 12004. TREATMENT OF STORAGE OF PRODUCT SAMPLES.

(a) IN GENERAL.—Paragraph (2) of section 280A(c) of the Internal Revenue Code of 1986 is amended by striking "inventory" and inserting "inventory or product samples".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1995.

MOTION OFFERED BY MR. DELAY

Mr. DELAY. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Motion offered by Mr. DELAY: Mr. DELAY of Texas moves to strike all after section 1 of the bill and insert a text composed of four divisions as follows: (1) division A, consisting of the text of H.R. 830, as passed by the House; (2) division B, consisting of the text of H.R. 925, as passed by the House; (3) division C, consisting of the text of H.R. 926, as passed by the House, and (4) division D, consisting of the text of H.R. 1022, as passed by the House.

The text of the bills referred to in the foregoing motion; H.R. 830, H.R. 925, H.R. 926, and H.R. 1022, is as follows:

H.R. 830

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Paperwork Reduction Act of 1995".

SEC. 2. COORDINATION OF FEDERAL INFORMATION POLICY.

Chapter 35 of title 44, United States Code, is amended to read as follows:

"CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

"Sec.
"3501. Purposes.
"3502. Definitions.
"3503. Office of Information and Regulatory Affairs.
"3504. Authority and functions of Director.
"3505. Assignment of tasks and deadlines.
"3506. Federal agency responsibilities.
"3507. Public information collection activities; submission to Director; approval and delegation.
"3508. Determination of necessity for information; hearing.
"3509. Designation of central collection agency.
"3510. Cooperation of agencies in making information available.
"3511. Establishment and operation of Government Information Locator Service.
"3512. Public protection.
"3513. Director review of agency activities; reporting; agency response.
"3514. Responsiveness to Congress.
"3515. Administrative powers.
"3516. Rules and regulations.
"3517. Consultation with other agencies and the public.
"3518. Effect on existing laws and regulations.

"3519. Access to information.
"3520. Authorization of appropriations.

"§ 3501. Purposes

"The purposes of this chapter are to—

"(1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;

"(2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;

"(3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;

"(4) improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society;

"(5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;

"(6) strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government;

"(7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;

"(8) ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to—

"(A) privacy and confidentiality, including section 552a of title 5;

"(B) security of information, including the Computer Security Act of 1987 (Public Law 100-235); and

"(C) access to information, including section 552 of title 5;

"(9) ensure the integrity, quality, and utility of the Federal statistical system;

"(10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

"(11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this chapter.

"§ 3502. Definitions

"As used in this chapter—

"(1) the term 'agency' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—

"(A) the General Accounting Office;

"(B) Federal Election Commission;

"(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

"(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities;

"(2) the term 'burden' means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

"(A) reviewing instructions;

"(B) acquiring, installing, and utilizing technology and systems;

"(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;

"(D) searching data sources;

"(E) completing and reviewing the collection of information; and

"(F) transmitting, or otherwise disclosing the information;

"(3) the term 'collection of information' means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

"(A) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

"(B) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes;

"(4) the term 'Director' means the Director of the Office of Management and Budget;

"(5) the term 'independent regulatory agency' means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

"(6) the term 'information resources' means information and related resources, such as personnel, equipment, funds, and information technology;

"(7) the term 'information resources management' means the process of managing information resources to accomplish agency missions and to improve agency performance, including through the reduction of information collection burdens on the public;

"(8) the term 'information system' means a discrete set of information resources and processes, automated or manual, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;

"(9) the term 'information technology' has the same meaning as the term 'automatic data processing equipment' as defined by section 111(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2));

"(10) the term 'person' means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, or local government or branch thereof, or a political subdivision of a State, territory, or local government or a branch of a political subdivision;

"(11) the term 'practical utility' means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;

"(12) the term 'public information' means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public; and

"(13) the term 'recordkeeping requirement' means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to—

"(A) retain such records;

"(B) notify third parties or the public of the existence of such records;

"(C) disclose such records to third parties or the public; or

"(D) report to third parties or the public regarding such records.

"§ 3503. Office of Information and Regulatory Affairs

"(a) There is established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs.

"(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall delegate to the Administrator the authority to administer all functions under this chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information resources management policy.

"§ 3504. Authority and functions of Director

"(a)(1) The Director shall—

"(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines; and

"(B) provide direction and oversee—

"(i) the review and approval of the collection of information and the reduction of the information collection burden;

"(ii) agency dissemination of and public access to information;

"(iii) statistical activities;

"(iv) records management activities;

"(v) privacy, confidentiality, security, disclosure, and sharing of information; and

"(vi) the acquisition and use of information technology.

"(2) The authority of the Director under this chapter shall be exercised consistent with applicable law.

"(b) With respect to general information resources management policy, the Director shall—

"(1) develop and oversee the implementation of uniform information resources management policies, principles, standards, and guidelines;

"(2) foster greater sharing, dissemination, and access to public information, including through—

"(A) the use of the Government Information Locator Service; and

"(B) the development and utilization of common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability;

"(3) initiate and review proposals for changes in legislation, regulations, and agency procedures to improve information resources management practices;

"(4) oversee the development and implementation of best practices in information resources management, including training; and

"(5) oversee agency integration of program and management functions with information resources management functions.

"(c) With respect to the collection of information and the control of paperwork, the Director shall—

"(1) review and approve proposed agency collections of information;

"(2) coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement, acquisition, and payment and to reduce information collection burdens on the public;

"(3) minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected;

"(4) maximize the practical utility of and public benefit from information collected by or for the Federal Government;

"(5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information; and

"(6) place an emphasis on minimizing the burden on small businesses with 50 or fewer employees.

"(d) With respect to information dissemination, the Director shall develop and oversee the implementation of policies, principles, standards, and guidelines to—

"(1) apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and

"(2) promote public access to public information and fulfill the purposes of this chapter, including through the effective use of information technology.

"(e) With respect to statistical policy and coordination, the Director shall—

"(1) coordinate the activities of the Federal statistical system to ensure—

"(A) the efficiency and effectiveness of the system; and

"(B) the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes;

"(2) ensure that budget proposals of agencies are consistent with system-wide priorities for maintaining and improving the quality of Federal statistics and prepare an annual report on statistical program funding;

"(3) develop and oversee the implementation of Governmentwide policies, principles, standards, and guidelines concerning—

"(A) statistical collection procedures and methods;

"(B) statistical data classification;

"(C) statistical information presentation and dissemination;

"(D) timely release of statistical data; and

"(E) such statistical data sources as may be required for the administration of Federal programs;

"(4) evaluate statistical program performance and agency compliance with Governmentwide policies, principles, standards and guidelines;

"(5) promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges;

"(6) coordinate the participation of the United States in international statistical activities, including the development of comparable statistics;

"(7) appoint a chief statistician who is a trained and experienced professional statistician to carry out the functions described under this subsection;

"(8) establish an Interagency Council on Statistical Policy to advise and assist the Director in carrying out the functions under this subsection that shall—

"(A) be headed by the chief statistician; and

"(B) consist of—

"(i) the heads of the major statistical programs; and

"(ii) representatives of other statistical agencies under rotating membership; and

"(9) provide opportunities for training in statistical policy functions to employees of the Federal Government under which—

"(A) each trainee shall be selected at the discretion of the Director based on agency requests and shall serve under the chief statistician for at least 6 months and not more than 1 year; and

"(B) all costs of the training shall be paid by the agency requesting training.

"(f) With respect to records management, the Director shall—

"(1) provide advice and assistance to the Archivist of the United States and the Administrator of General Services to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information resources management policies, principles, standards, and guidelines established under this chapter;

"(2) review compliance by agencies with—

"(A) the requirements of chapters 29, 31, and 33 of this title; and

"(B) regulations promulgated by the Archivist of the United States and the Administrator of General Services; and

"(3) oversee the application of records management policies, principles, standards, and guidelines, including requirements for archiving information maintained in electronic format, in the planning and design of information systems.

"(g) With respect to privacy and security, the Director shall—

"(1) develop and oversee the implementation of policies, principles, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies;

"(2) oversee and coordinate compliance with sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

"(3) require Federal agencies, consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), to identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

"(h) With respect to Federal information technology, the Director shall—

"(1) in consultation with the Director of the National Institute of Standards and Technology and the Administrator of General Services—

"(A) develop and oversee the implementation of policies, principles, standards, and guidelines for information technology functions and activities of the Federal Government, including periodic evaluations of major information systems; and

"(B) oversee the development and implementation of standards under section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d));

"(2) monitor the effectiveness of, and compliance with, directives issued under sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759);

"(3) coordinate the development and review by the Office of Information and Regulatory Affairs of policy associated with Federal procurement and acquisition of information technology with the Office of Federal Procurement Policy;

"(4) ensure, through the review of agency budget proposals, information resources management plans and other means—

"(A) agency integration of information resources management plans, program plans and budgets for acquisition and use of information technology; and

"(B) the efficiency and effectiveness of inter-agency information technology initiatives to improve agency performance and the accomplishment of agency missions; and

"(5) promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

"§ 3505. Assignment of tasks and deadlines

"(a) In carrying out the functions under this chapter, the Director shall—

"(1) in consultation with agency heads, set an annual Governmentwide goal for the reduction of information collection burdens by at least 10 percent, and set annual agency goals to—

"(A) reduce information collection burdens imposed on the public that—

"(i) represent the maximum practicable opportunity in each agency; and

"(ii) are consistent with improving agency management of the process for the review of collections of information established under section 3506(c); and

"(B) improve information resources management in ways that increase the productivity, efficiency and effectiveness of Federal programs, including service delivery to the public;

"(2) with selected agencies and non-Federal entities on a voluntary basis, initiate and conduct pilot projects to test alternative policies, practices, regulations, and procedures to fulfill the purposes of this chapter, particularly with regard to minimizing the Federal information collection burden; and

"(3) in consultation with the Administrator of General Services, the Director of the National Institute of Standards and Technology, the Archivist of the United States, and the Director of the Office of Personnel Management, develop and maintain a Governmentwide strategic plan for information resources management, that shall include—

"(A) a description of the objectives and the means by which the Federal Government shall apply information resources to improve agency and program performance;

"(B) plans for—

"(i) reducing information burdens on the public, including reducing such burdens through the elimination of duplication and meeting shared data needs with shared resources;

"(ii) enhancing public access to and dissemination of, information, using electronic and other formats; and

"(iii) meeting the information technology needs of the Federal Government in accordance with the purposes of this chapter; and

"(C) a description of progress in applying information resources management to improve agency performance and the accomplishment of missions.

"(b) For purposes of any pilot project conducted under subsection (a)(2), the Director may waive the application of any regulation or administrative directive issued by an agency with which the project is conducted, including any regulation or directive requiring a collection of information, after giving timely notice to the public and the Congress regarding the need for such waiver.

"§ 3506. Federal agency responsibilities

"(a)(1) The head of each agency shall be responsible for—

"(A) carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness; and

"(B) complying with the requirements of this chapter and related policies established by the Director.

"(2)(A) Except as provided under subparagraph (B), the head of each agency shall designate a senior official who shall report directly to such agency head to carry out the responsibilities of the agency under this chapter.

"(B) The Secretary of the Department of Defense and the Secretary of each military department may each designate a senior official who shall report directly to such Secretary to carry out the responsibilities of the department under this chapter. If more than one official is designated for the military departments, the respective duties of the officials shall be clearly delineated.

"(3) The senior official designated under paragraph (2) shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this chapter, including the reduction of information collection burdens on the public. The senior official and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under this chapter.

"(4) Each agency program official shall be responsible and accountable for information resources assigned to and supporting the programs under such official. In consultation with the senior official designated under paragraph (2) and the agency Chief Financial Officer (or comparable official), each agency program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs.

"(b) With respect to general information resources management, each agency shall—

"(1) manage information resources to—

"(A) reduce information collection burdens on the public;

"(B) increase program efficiency and effectiveness; and

"(C) improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security;

"(2) in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that shall describe how information resources management activities help accomplish agency missions;

"(3) develop and maintain an ongoing process to—

"(A) ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions;

"(B) in cooperation with the agency Chief Financial Officer (or comparable official), develop a full and accurate accounting of information technology expenditures, related expenses, and results; and

"(C) establish goals for improving information resources management's contribution to program productivity, efficiency, and effectiveness, methods for measuring progress towards those goals, and clear roles and responsibilities for achieving those goals;

"(4) in consultation with the Director, the Administrator of General Services, and the Archivist of the United States, maintain a current and complete inventory of the agency's information resources, including directories necessary to fulfill the requirements of section 3511 of this chapter; and

"(5) in consultation with the Director and the Director of the Office of Personnel Management, conduct formal training programs to educate agency program and management officials about information resources management.

"(c) With respect to the collection of information and the control of paperwork, each agency shall—

"(1) establish a process within the office headed by the official designated under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this chapter, to—

"(A) review each collection of information before submission to the Director for review under this chapter, including—

"(i) an evaluation of the need for the collection of information;

"(ii) a functional description of the information to be collected;

"(iii) a plan for the collection of the information;

"(iv) a specific, objectively supported estimate of burden;

"(v) a test of the collection of information through a pilot program, if appropriate; and

"(vi) a plan for the efficient and effective management and use of the information to be collected, including necessary resources;

"(B) ensure that each information collection—

"(i) is inventoried, displays a control number and, if appropriate, an expiration date;

"(ii) indicates the collection is in accordance with the clearance requirements of section 3507; and

"(iii) contains a statement to inform the person receiving the collection of information—

"(I) the reasons the information is being collected;

"(II) the way such information is to be used;

"(III) an estimate, to the extent practicable, of the burden of the collection; and

"(IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and

"(C) assess the information collection burden of proposed legislation affecting the agency;

"(2)(A) except for good cause or as provided under subparagraph (B), provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to—

"(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

"(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

"(iii) enhance the quality, utility, and clarity of the information to be collected; and

"(iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

"(B) for any proposed collection of information contained in a proposed rule (to be reviewed by the Director under section 3507(d)), provide notice and comment through the notice of proposed rulemaking for the proposed rule and such notice shall have the same purposes specified under subparagraph (A) (i) through (iv);

"(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507—

"(A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;

"(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

"(C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined under section 601(6) of title 5, the use of such techniques as—

"(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

"(ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or

"(iii) an exemption from coverage of the collection of information, or any part thereof;

"(D) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

"(E) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

"(F) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

"(G) contains the statement required under paragraph (1)(B)(iii);

"(H) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

"(I) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

"(J) to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public; and

"(4) place an emphasis on minimizing the burden on small businesses with 50 or fewer employees.

"(d) With respect to information dissemination, each agency shall—

"(1) ensure that the public has timely, equal, and equitable access to the agency's public information, including ensuring such access through—

"(A) encouraging a diversity of public and private sources for information based on government public information;

"(B) in cases in which the agency provides public information maintained in electronic format, providing timely, equal, and equitable access to the underlying data (in whole or in part); and

"(C) agency dissemination of public information in an efficient, effective, and economical manner;

"(2) regularly solicit and consider public input on the agency's information dissemination activities;

"(3) provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products; and

"(4) not, except where specifically authorized by statute—

"(A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;

"(B) restrict or regulate the use, resale, or redissemination of public information by the public;

"(C) charge fees or royalties for resale or redissemination of public information; or

"(D) establish user fees for public information that exceed the cost of dissemination, except that the Director may waive the application of this subparagraph to an agency, if—

"(i) the head of the agency submits a written request to the Director, publishes a notice of the request in the Federal Register, and provides a copy of the request to the public upon request;

"(ii) the Director sets forth in writing a statement of the scope, conditions, and duration of the waiver and the reasons for granting it, and makes such statement available to the public upon request; and

"(iii) the granting of the waiver would not materially impair the timely and equitable availability of public information to the public.

"(e) With respect to statistical policy and coordination, each agency shall—

"(1) ensure the relevance, accuracy, timeliness, integrity, and objectivity of information collected or created for statistical purposes;

"(2) inform respondents fully and accurately about the sponsors, purposes, and uses of statistical surveys and studies;

"(3) protect respondents' privacy and ensure that disclosure policies fully honor pledges of confidentiality;

"(4) observe Federal standards and practices for data collection, analysis, documentation, sharing, and dissemination of information;

"(5) ensure the timely publication of the results of statistical surveys and studies, including information about the quality and limitations of the surveys and studies; and

"(6) make data available to statistical agencies and readily accessible to the public.

"(f) With respect to records management, each agency shall implement and enforce applicable policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

"(g) With respect to privacy and security, each agency shall—

"(1) implement and enforce applicable policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency;

"(2) assume responsibility and accountability for compliance with and coordinated management of sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

"(3) consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

"(h) With respect to Federal information technology, each agency shall—

"(1) implement and enforce applicable Governmentwide and agency information technology management policies, principles, standards, and guidelines;

"(2) assume responsibility and accountability for information technology investments;

"(3) promote the use of information technology by the agency to improve the productivity, efficiency, and effectiveness of agency programs, including the reduction of information collection burdens on the public and improved dissemination of public information;

"(4) propose changes in legislation, regulations, and agency procedures to improve information technology practices, including changes that improve the ability of the agency to use technology to reduce burden; and

"(5) assume responsibility for maximizing the value and assessing and managing the risks of major information systems initiatives through a process that is—

"(A) integrated with budget, financial, and program management decisions; and

"(B) used to select, control, and evaluate the results of major information systems initiatives.

"§3507. Public information collection activities; submission to Director; approval and delegation

"(a) An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information—

"(1) the agency has—

"(A) conducted the review established under section 3506(c)(1);

"(B) evaluated the public comments received under section 3506(c)(2);

"(C) submitted to the Director the certification required under section 3506(c)(3), the proposed collection of information, copies of pertinent statutory authority, regulations, and other related materials as the Director may specify; and

"(D) published a notice in the Federal Register—

"(i) stating that the agency has made such submission; and

"(ii) setting forth—

"(I) a title for the collection of information;

"(II) a summary of the collection of information;

"(III) a brief description of the need for the information and the proposed use of the information;

"(IV) a description of the likely respondents and proposed frequency of response to the collection of information;

"(V) an estimate of the burden that shall result from the collection of information; and

"(VI) notice that comments may be submitted to the agency and Director;

"(2) the Director has approved the proposed collection of information or approval has been inferred, under the provisions of this section; and

"(3) the agency has obtained from the Director a control number to be displayed upon the collection of information.

"(b) The Director shall provide at least 30 days for public comment prior to making a decision under subsection (c), (d), or (h), except for good cause or as provided under subsection (j).

"(c)(1) For any proposed collection of information not contained in a proposed rule, the Director shall notify the agency involved of the decision to approve or disapprove the proposed collection of information.

"(2) The Director shall provide the notification under paragraph (1), within 60 days after receipt or publication of the notice under subsection (a)(1)(D), whichever is later.

"(3) If the Director does not notify the agency of a denial or approval within the 60-day period described under paragraph (2)—

"(A) the approval may be inferred;

"(B) a control number shall be assigned without further delay; and

"(C) the agency may collect the information for not more than 1 year.

"(d)(1) For any proposed collection of information contained in a proposed rule—

"(A) as soon as practicable, but no later than the date of publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information and any information requested by the Director necessary to make the determination required under this subsection; and

"(B) within 60 days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information contained in the proposed rule;

"(2) When a final rule is published in the Federal Register, the agency shall explain—

"(A) how any collection of information contained in the final rule responds to the comments, if any, filed by the Director or the public; or

"(B) the reasons such comments were rejected.

"(3) If the Director has received notice and failed to comment on an agency rule within 60 days after the notice of proposed rulemaking, the Director may not disapprove any collection of information specifically contained in an agency rule.

"(4) No provision in this section shall be construed to prevent the Director, in the Director's discretion—

"(A) from disapproving any collection of information which was not specifically required by an agency rule;

"(B) from disapproving any collection of information contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;

"(C) from disapproving any collection of information contained in a final agency rule, if the Director finds within 60 days after the publication of the final rule, and after considering the agency's response to the Director's comments filed under paragraph (2), that the collection of information cannot be approved under the standards set forth in section 3508; or

"(D) from disapproving any collection of information contained in a final rule, if—

"(i) the Director determines that the agency has substantially modified in the final rule the collection of information contained in the proposed rule; and

"(ii) the agency has not given the Director the information required under paragraph (1) with respect to the modified collection of information, at least 60 days before the issuance of the final rule.

"(5) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

"(6) The decision by the Director to approve or not act upon a collection of information contained in an agency rule shall not be subject to judicial review.

"(e)(1) Any decision by the Director under subsection (c), (d), (h), or (j) to disapprove a collection of information, or to instruct the agency to make substantive or material change to a collection of information, shall be publicly available and include an explanation of the reasons for such decision.

"(2) Any written communication between the Administrator of the Office of Information and Regulatory Affairs, or any employee of the Office of Information and Regulatory Affairs, and an agency or person not employed by the Federal Government concerning a proposed collection of information shall be made available to the public.

"(3) This subsection shall not require the disclosure of—

"(A) any information which is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; or

"(B) any communication relating to a collection of information, the disclosure of which could lead to retaliation or discrimination against the communicator.

"(f)(1) An independent regulatory agency which is administered by 2 or more members of a commission, board, or similar body, may by majority vote void—

"(A) any disapproval by the Director, in whole or in part, of a proposed collection of information that agency; or

"(B) an exercise of authority under subsection (d) of section 3507 concerning that agency.

"(2) The agency shall certify each vote to void such disapproval or exercise to the Director, and explain the reasons for such vote. The Director shall without further delay assign a control number to such collection of information, and such vote to void the disapproval or exercise shall be valid for a period of 3 years.

"(g) The Director may not approve a collection of information for a period in excess of 3 years.

"(h)(1) If an agency decides to seek extension of the Director's approval granted for a currently approved collection of information, the agency shall—

"(A) conduct the review established under section 3506(c), including the seeking of comment from the public on the continued need for, and burden imposed by the collection of information; and

"(B) after having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved collection of information, submit the collection of information for review and approval under this section, which shall include an explanation of how the agency has used the information that it has collected.

"(2) If under the provisions of this section, the Director disapproves a collection of information contained in an existing rule, or recommends or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, the Director shall—

"(A) publish an explanation thereof in the Federal Register; and

"(B) instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under this chapter.

"(3) An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director, unless the modification has been submitted to the Director for review and approval under this chapter.

"(i)(1) If the Director finds that a senior official of an agency designated under section 3506(a) is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of chapter 5 of title 5, United States Code, delegate to such official the authority to approve proposed collections of information in specific program areas, for specific purposes, or for all agency purposes.

"(2) A delegation by the Director under this section shall not preclude the Director from reviewing individual collections of information if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

"(j)(1) The agency head may request the Director to authorize collection of information prior to expiration of time periods established under this chapter, if an agency head determines that—

"(A) a collection of information—

"(i) is needed prior to the expiration of such time periods; and

"(ii) is essential to the mission of the agency; and

"(B) the agency cannot reasonably comply with the provisions of this chapter within such time periods because—

"(i) public harm is reasonably likely to result if normal clearance procedures are followed; or

"(ii) an unanticipated event has occurred and the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information related to the event or is reasonably likely to cause a statutory or court-ordered deadline to be missed.

"(2) The Director shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the collection of information a control number. Any collection of information conducted under this subsection may be conducted without compliance with the provisions of this chapter for a maximum of 90 days after the date on which the Director received the request to authorize such collection.

"§ 3508. Determination of necessity for information; hearing

"Before approving a proposed collection of information, the Director shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information.

"§ 3509. Designation of central collection agency

"The Director may designate a central collection agency to obtain information for two or more agencies if the Director determines that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with applicable law. In such cases the Director shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by the designation may not obtain for itself information for the agency which is the duty of the collection agency to obtain. The Director may modify the designation from time to time as circumstances require. The authority to designate under this section is subject to the provisions of section 3507(f) of this chapter.

"§ 3510. Cooperation of agencies in making information available

"(a) The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law.

"(b)(1) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penalties which relate to the unlawful disclosure of information) apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information.

"(2) The officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.

"§ 3511. Establishment and operation of Government Information Locator Service

"In order to assist agencies and the public in locating information and to promote information sharing and equitable access by the public, the Director shall—

"(1) cause to be established and maintained a distributed agency-based electronic Government Information Locator Service (hereafter in this section referred to as the 'Service'), which shall identify the major information systems, holdings, and dissemination products of each agency;

"(2) require each agency to establish and maintain an agency information locator service as a component of, and to support the establishment and operation of the Service;

"(3) in cooperation with the Archivist of the United States, the Administrator of General Services, the Public Printer, and the Librarian of Congress, establish an interagency committee to advise the Secretary of Commerce on the development of technical standards for the Service to ensure compatibility, promote information sharing, and uniform access by the public;

"(4) consider public access and other user needs in the establishment and operation of the Service;

"(5) ensure the security and integrity of the Service, including measures to ensure that only information which is intended to be disclosed to the public is disclosed through the Service; and

"(6) periodically review the development and effectiveness of the Service and make recommendations for improvement, including other mechanisms for improving public access to Federal agency public information.

"§3512. Public protection

"(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the collection of information involved was made after December 31, 1981, and at the time of the failure did not display a current control number assigned by the Director, or fails to state that such request is not subject to this chapter.

"(b) Actions taken by agencies which are not in compliance with subsection (a) of this section shall give rise to a complete defense or bar to such action by an agency, which may be raised at any time during the agency decision making process or judicial review of the agency decision under any available process for judicial review.

"§3513. Director review of agency activities; reporting; agency response

"(a) In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National Institute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.

"(b) Each agency having an activity reviewed under subsection (a) shall, within 60 days after receipt of a report on the review, provide a written plan to the Director describing steps (including milestones) to—

"(1) be taken to address information resources management problems identified in the report; and

"(2) improve agency performance and the accomplishment of agency missions.

"§3514. Responsiveness to Congress

"(a)(1) The Director shall—

"(A) keep the Congress and congressional committees fully and currently informed of the major activities under this chapter; and

"(B) submit a report on such activities to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the Director determines necessary.

"(2) The Director shall include in any such report a description of the extent to which agencies have—

"(A) reduced information collection burdens on the public, including—

"(i) a summary of accomplishments and planned initiatives to reduce collection of information burdens;

"(ii) a list of all violations of this chapter and of any rules, guidelines, policies, and procedures issued pursuant to this chapter;

"(iii) a list of any increase in the collection of information burden, including the authority for each such collection; and

"(iv) a list of agencies that in the preceding year did not reduce information collection burdens by at least 10 percent pursuant to section 3505, a list of the programs and statutory responsibilities of those agencies that precluded that reduction, and recommendations to assist those agencies to reduce information collection burdens in accordance with that section;

"(B) improved the quality and utility of statistical information;

"(C) improved public access to Government information; and

"(D) improved program performance and the accomplishment of agency missions through information resources management.

"(b) The preparation of any report required by this section shall be based on performance results reported by the agencies and shall not increase the collection of information burden on persons outside the Federal Government.

"§3515. Administrative powers

"Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this chapter.

"§3516. Rules and regulations

"The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter.

"§3517. Consultation with other agencies and the public

"(a) In developing information resources management policies, plans, rules, regulations, procedures, and guidelines and in reviewing collections of information, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.

"(b) Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this chapter, the person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information—

"(1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and

"(2) take appropriate remedial action, if necessary.

"§3518. Effect on existing laws and regulations

"(a) Except as otherwise provided in this chapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information resources management activities is subject to the authority of the Director under this chapter.

"(b) Nothing in this chapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

"(c)(1) Except as provided in paragraph (2), this chapter shall not apply to obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions—

"(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

"(B) during the conduct of—

"(i) a civil action to which the United States or any official or agency thereof is a party; or

"(ii) an administrative action or investigation involving an agency against specific individuals or entities;

"(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

"(D) during the conduct of intelligence activities as defined in section 4-206 of Executive Order No. 12036, issued January 24, 1978, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

"(2) This chapter applies to obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

"(d) Nothing in this chapter shall be interpreted as increasing or decreasing the authority conferred by Public Law 89-306 on the Administrator of the General Services Administration, the Secretary of Commerce, or the Director of the Office of Management and Budget.

"(e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

"§3519. Access to information

"Under the conditions and procedures prescribed in section 716 of title 31, the Director and personnel in the Office of Information and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of the responsibilities of the Comptroller General. For the purpose of obtaining such information, the Comptroller General or representatives thereof shall have access to all books, documents, papers and records, regardless of form or format, of the Office.

"§3520. Authorization of appropriations

"There are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this chapter such sums as may be necessary.".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect October 1, 1995.

H.R. 925

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Private Property Protection Act of 1995".

SEC. 2. FEDERAL POLICY AND DIRECTION.

(a) GENERAL POLICY.—It is the policy of the Federal Government that no law or agency action should limit the use of privately owned property so as to diminish its value.

(b) APPLICATION TO FEDERAL AGENCY ACTION.—Each Federal agency, officer, and employee should exercise Federal authority to ensure that agency action will not limit the use of privately owned property so as to diminish its value.

SEC. 3. RIGHT TO COMPENSATION.

(a) IN GENERAL.—The Federal Government shall compensate an owner of property whose use of any portion of that property has been limited by an agency action, under a specified regulatory law, that diminishes the fair market value of that portion by 20 percent or more. The amount of the compensation shall equal the diminution in value that resulted from the agency action. If the diminution in value of a portion of that property is greater than 50 percent, at the option of the owner, the Federal Government shall buy that portion of the property for its fair market value.

(b) DURATION OF LIMITATION ON USE.—Property with respect to which compensation has been paid under this Act shall not thereafter be used contrary to the limitation imposed by the agency action, even if that action is later rescinded or otherwise vitiated. However, if that action is later rescinded or otherwise vitiated, and the owner elects to refund the amount of the compensation, adjusted for inflation, to the Treasury of the United States, the property may be so used.

SEC. 4. EFFECT OF STATE LAW.

If a use is a nuisance as defined by the law of a State or is already prohibited under a local zoning ordinance, no compensation shall be made under this Act with respect to a limitation on that use.

SEC. 5. EXCEPTIONS.

(a) PREVENTION OF HAZARD TO HEALTH OR SAFETY OR DAMAGE TO SPECIFIC PROPERTY.—No compensation shall be made under this Act with respect to an agency action the primary purpose of which is to prevent an identifiable—

(1) hazard to public health or safety; or

(2) damage to specific property other than the property whose use is limited.

(b) NAVIGATION SERVITUDE.—No compensation shall be made under this Act with respect to an agency action pursuant to the Federal navigation servitude, as defined by the courts of the United States, except to the extent such servitude is interpreted to apply to wetlands.

SEC. 6. PROCEDURE.

(a) REQUEST OF OWNER.—An owner seeking compensation under this Act shall make a written request for compensation to the agency whose agency action resulted in the limitation. No such request may be made later than 180 days after the owner receives actual notice of that agency action.

(b) NEGOTIATIONS.—The agency may bargain with that owner to establish the amount of the compensation. If the agency and the owner agree to such an amount, the agency shall promptly pay the owner the amount agreed upon.

(c) CHOICE OF REMEDIES.—If, not later than 180 days after the written request is made, the parties do not come to an agreement as to the right to and amount of compensation, the owner may choose to take the matter to binding arbitration or seek compensation in a civil action.

(d) ARBITRATION.—The procedures that govern the arbitration shall, as nearly as practicable, be those established under title 9, United States Code, for arbitration proceedings to which that title applies. An award made in such arbitration shall include a reasonable attorney's fee and other arbitration costs (including appraisal fees). The agency shall promptly pay any award made to the owner.

(e) CIVIL ACTION.—An owner who does not choose arbitration, or who does not receive prompt payment when required by this section, may obtain appropriate relief in a civil action against the agency. An owner who prevails in a civil action under this section shall be entitled to, and the agency shall be liable for, a reasonable attorney's fee and other litigation costs (including appraisal fees). The court shall award interest on the amount of any compensation from the time of the limitation.

(f) SOURCE OF PAYMENTS.—Any payment made under this section to an owner, and any judgment obtained by an owner in a civil action under this section shall, notwithstanding any other provision of law, be made from the annual appropriation of the agency whose action occasioned the payment or judgment. If the agency action resulted from a requirement imposed by another agency, then the agency making the payment or satisfying the judgment may seek partial or complete reimbursement from the appropriated funds of the other agency. For this purpose the head of the agency concerned may transfer or reprogram any appropriated funds available to the agency. If insufficient funds exist for the payment or to satisfy the judgment, it shall be the duty of the head of the agency to seek the appropriation of such funds for the next fiscal year.

SEC. 7. LIMITATION.

Notwithstanding any other provision of law, any obligation of the United States to make any payment under this Act shall be subject to the availability of appropriations.

SEC. 8. DUTY OF NOTICE TO OWNERS.

Whenever an agency takes an agency action limiting the use of private property, the agency shall give appropriate notice to the owners of that property explaining their rights under this Act and the procedures directly affected for obtaining any compensation that may be due to them under this Act.

SEC. 9. RULES OF CONSTRUCTION.

(a) EFFECT ON CONSTITUTIONAL RIGHT TO COMPENSATION.—Nothing in this Act shall be construed to limit any right to compensation that exists under the Constitution or under other laws of the United States.

(b) EFFECT OF PAYMENT.—Payment of compensation under this Act (other than when the property is bought by the Federal Government at the option of the owner) shall not confer any rights on the Federal Government other than the limitation on use resulting from the agency action.

SEC. 9. DEFINITIONS.

For the purposes of this Act—

(1) the term "property" means land and includes the right to use or receive water;

(2) a use of property is limited by an agency action if a particular legal right to use that property no longer exists because of the action;

(3) the term "agency action" has the meaning given that term in section 551 of title 5, United States Code, but also includes the making of a grant to a public authority conditioned upon an action by the recipient that would constitute a limitation if done directly by the agency;

(4) the term "agency" has the meaning given that term in section 551 of title 5, United States Code;

(5) the term "specified regulatory law" means—

(A) section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(B) the Endangered Species Act of 1979 (16 U.S.C. 1531 et seq.);

(C) title XII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.); or

(D) with respect to an owner's right to use or receive water only—

(i) the Act of June 17, 1902, and all Acts amendatory thereof or supplementary thereto, popularly called the "Reclamation Acts" (43 U.S.C. 371 et seq.);

(ii) the Federal Land Policy Management Act (43 U.S.C. 1701 et seq.); or

(iii) section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604);

(6) the term "fair market value" means the most probable price at which property would change hands, in a competitive and open market under all conditions requisite to a fair sale, between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts, at the time the agency action occurs;

(7) the term "State" includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States; and

(8) the term "law of the State" includes the law of a political subdivision of a State.

H.R. 926

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Regulatory Reform and Relief Act".

TITLE I—STRENGTHENING REGULATORY FLEXIBILITY

SEC. 101. JUDICIAL REVIEW.

(a) AMENDMENT.—Section 611 of title 5, United States Code, is amended to read as follows:

"§ 611. Judicial review

"(a)(1) Except as provided in paragraph (2), not later than one year notwithstanding any other provision of law after the effective date of a final rule with respect to which an agency—

"(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities; or

"(B) prepared a final regulatory flexibility analysis pursuant to section 604,

an affected small entity may petition for the judicial review of such certification or analysis in accordance with the terms of this subsection. A court having jurisdiction to review such rule for compliance with the provisions of section 553 or under any other provision of law shall have jurisdiction to review such certification or analysis. In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection shall be filed not later than one year notwithstanding any other provision of law after the date the analysis is made available to the public.

"(2) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be adversely affected by the final rule.

"(3) Nothing in this subsection shall be construed to affect the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

"(4)(A) In the case where the agency certified that such rule would not have a significant economic impact on a substantial number of small entities, the court may order the agency to prepare a final regulatory flexibility analysis pursuant to section 604 if the court determines, on the basis of the rulemaking record, that the certification was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(B) In the case where the agency prepared a final regulatory flexibility analysis, the court may order the agency to take corrective action consistent with the requirements of section 604 if the court determines, on the basis of the rulemaking record, that the final regulatory flexibility analysis was prepared by the agency without observance of procedure required by section 604.

"(5) If, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (4) (or such longer period as the court may provide), the agency fails, as appropriate—

"(A) to prepare the analysis required by section 604; or

"(B) to take corrective action consistent with the requirements of section 604,

the court may stay the rule or grant such other relief as it deems appropriate.

"(6) In making any determination or granting any relief authorized by this subsection, the court shall take due account of the rule of prejudicial error.

"(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(4)) shall constitute part of the whole record of agency action in connection with such review.

"(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply only to final agency rules issued after the date of enactment of this Act.

SEC. 102. RULES COMMENTED ON BY SBA CHIEF COUNSEL FOR ADVOCACY.

(a) IN GENERAL.—Section 612 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(d) ACTION BY THE SBA CHIEF COUNSEL FOR ADVOCACY.—

"(1) TRANSMITTAL OF PROPOSED RULES AND INITIAL REGULATORY FLEXIBILITY ANALYSIS TO SBA CHIEF COUNSEL FOR ADVOCACY.—On or before the 30th day preceding the date of publication by an agency of general notice of proposed rulemaking for a rule, the agency shall transmit to the Chief Counsel for Advocacy of the Small Business Administration—

"(A) a copy of the proposed rule; and

"(B)(i) a copy of the initial regulatory flexibility analysis for the rule if required under section 603; or

"(ii) a determination by the agency that an initial regulatory flexibility analysis is not required for the proposed rule under section 603 and an explanation for the determination.

"(2) STATEMENT OF EFFECT.—On or before the 15th day following receipt of a proposed rule and initial regulatory flexibility analysis from an agency under paragraph (1), the Chief Counsel for Advocacy may transmit to the agency a written statement of the effect of the proposed rule on small entities.

"(3) RESPONSE.—If the Chief Counsel for Advocacy transmits to an agency a statement of effect on a proposed rule in accordance with paragraph (2), the agency shall publish the statement, together with the response of the agency to the statement, in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule.

"(4) SPECIAL RULE.—Any proposed rules issued by an appropriate Federal banking agency (as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or the Office of Federal Housing Enterprise Oversight, in connection with the implementation of monetary policy or to ensure the safety and soundness of federally insured depository institutions, any affiliate of such an institution, credit unions, or government sponsored housing enterprises or to protect the Federal deposit insurance funds shall not be subject to the requirements of this subsection.".

(b) CONFORMING AMENDMENT.—Section 603(a) of title 5, United States Code, is amended by inserting "in accordance with section 612(d)" before the period at the end of the last sentence.

SEC. 103. SENSE OF CONGRESS REGARDING SBA CHIEF COUNSEL FOR ADVOCACY.

It is the sense of Congress that the Chief Counsel for Advocacy of the Small Business Administration should be permitted to appear as amicus curiae in any action or case brought in a court of the United States for the purpose of reviewing a rule.

TITLE II—REGULATORY IMPACT ANALYSES

SEC. 201. DEFINITIONS.

Section 551 of title 5, United States Code, is amended by striking "and" at the end of paragraph (13), by striking the period at the end of paragraph (14) and inserting a semicolon, and by adding at the end the following:

"(15) 'major rule' means any rule subject to section 553(c) that is likely to result in—

"(A) an annual effect on the economy of $50,000,000 or more;

"(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or

"(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; and

"(16) 'Director' means the Director of the Office of Management and Budget.".

SEC. 202. RULEMAKING NOTICES FOR MAJOR RULES.

Section 553 of title 5, United States Code, is amended by adding at the end the following:

"(f)(1) Each agency shall for a proposed major rule publish in the Federal Register, at least 90 days before the date of publication of the general notice required under subsection (b), a notice of intent to engage in rulemaking.

"(2) A notice under paragraph (1) for a proposed major rule shall include, to the extent possible, the information required to be included in a regulatory impact analysis for the rule under subsection (i)(4)(B) and (D).

"(3) For a major rule proposed by an agency, the head of the agency shall include in a general notice under subsection (b), a preliminary regulatory impact analysis for the rule prepared in accordance with subsection (i).

"(4) For a final major rule, the agency shall include with the statement of basis and purpose—

"(A) a summary of a final regulatory impact analysis of the rule in accordance with subsection (i); and

"(B) a clear delineation of all changes in the information included in the final regulatory impact analysis under subsection (i) from any such information that was included in the notice for the rule under subsection (b).

The agency shall provide the complete text of a final regulatory impact analysis upon request.

"(5) The issuance of a notice of intent to engage in rulemaking under paragraph (1) and the issuance of a preliminary regulatory impact analysis under paragraph (3) shall not be considered final agency action for purposes of section 704.

"(6) In a rulemaking involving a major rule, the agency conducting the rulemaking shall make a written record describing the subject of all contacts the agency made with persons outside the agency relating to such rulemaking. If the contact was made with a non-governmental person, the written record of such contact shall be made available, upon request to the public.".

SEC. 203. HEARING REQUIREMENT FOR PROPOSED RULES; AND EXTENSION OF COMMENT PERIOD.

(a) HEARING REQUIREMENT.—Section 553 of title 5, United States Code, as amended by section 202, is further amended by adding after subsection (f) the following:

"(g) If more than 100 interested persons acting individually submit requests for a hearing to an agency regarding any major rule proposed by the agency, the agency shall hold such a hearing on the proposed rule.".

(b) EXTENSION OF COMMENT PERIOD.—Section 553 of title 5, United States Code, as amended by subsection (a), is further amended by adding after subsection (g) the following:

"(h) If during the 90-day period beginning on the date of publication of a notice under subsection (f) for a proposed major rule, or if during the period beginning on the date of publication or service of notice required by subsection (b) for a proposed major rule, more than 100 persons individually contact the agency to request an extension of the period for making submissions under subsection (c) pursuant to the notice, the agency—

"(1) shall provide an additional 30-day period for making those submissions; and

"(2) may not adopt the rule until after the additional period.".

(c) RESPONSE TO COMMENTS.—Section 553(c) of title 5, United States Code, is amended—

(1) by inserting "(1)" after "(c)"; and

(2) by adding at the end the following:

"(2) Each agency shall publish in the Federal Register, with each rule published under section 552(a)(1)(D), responses to the substance of the comments received by the agency regarding the rule.".

SEC. 204. REGULATORY IMPACT ANALYSIS.

Section 553 of title 5, United States Code, as amended by section 203, is amended by adding after subsection (h) the following:

"(i)(1) Each agency shall, in connection with every major rule, prepare, and, to the extent permitted by law, consider, a regulatory impact analysis. Such analysis may be combined with any regulatory flexibility analysis performed under sections 603 and 604.

"(2) Each agency shall initially determine whether a rule it intends to propose or issue is a major rule. The Director shall have authority to order a rule to be treated as a major rule and to require any set of related rules to be considered together as a major rule.

"(3) Except as provided in subsection (j), agencies shall prepare—

"(A) a preliminary regulatory impact analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director at least 60 days prior to the publication of notice of proposed rulemaking, and

"(B) a final regulatory impact analysis, which shall be transmitted along with the final rule at least 30 days prior to the publication of a major rule.

"(4) Each preliminary and final regulatory impact analysis shall contain the following information:

"(A) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms and the identification of those likely to receive the benefits.

"(B) An explanation of the necessity, legal authority, and reasonableness of the rule and a description of the condition that the rule is to address.

"(C) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs.

"(D) An analysis of alternative approaches, including market based mechanisms, that could substantially achieve the same regulatory goal at a lower cost and an explanation of the reasons why such alternative approaches were not adopted, together with a demonstration that the rule provides for the least costly approach.

"(E) A statement that the rule does not conflict with, or duplicate, any other rule or a statement of the reasons why such a conflict or duplication exists.

"(F) A statement of whether the rule will require on-site inspections or whether persons will be required by the rule to maintain any records which will be subject to inspection, and a statement of whether the rule will require persons to obtain licenses, permits, or other certifications including specification of any associated fees or fines.

"(G) An estimate of the costs to the agency for implementation and enforcement of the rule and of whether the agency can be reasonably expected to implement the rule with the current level of appropriations.

"(5)(A) the Director is authorized to review and prepare comments on any preliminary or final regulatory impact analysis, notice of proposed rulemaking, or final rule based on the requirements of this subsection.

"(B) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary impact analysis or notice of proposed rulemaking and shall refrain from publishing its preliminary regulatory impact analysis or notice of proposed rulemaking until such review is concluded. The Director's review may not take longer than 90 days after the date of the request of the Director.

"(6)(A) An agency may not adopt a major rule unless the final regulatory impact analysis for the rule is approved or commented upon in writing by the Director or by an individual designated by the Director for that purpose.

"(B) Upon receiving notice that the Director intends to comment in writing with respect to any final regulatory impact analysis or final rule, the agency shall refrain from publishing its final regulatory impact analysis or final rule until the agency has responded to the Director's comments and incorporated those comments in the agency's response in the rulemaking file. If the Director fails to make such comments in writing with respect to any final regulatory impact analysis or final rule within 90 days of the date the Director gives such notice, the agency may adopt such final regulatory impact analysis or final rule.

"(7) Notwithstanding section 551(16), for purposes of this subsection with regard to any rule proposed or issued by an appropriate Federal banking agency (as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or the Office of Federal Housing Enterprise Oversight, the term 'Director' means the head of such agency, Administration, or Office."

SEC. 205. STANDARD OF CLARITY.

Section 553 of title 5, United States Code, as amended in section 204, is amended by adding after subsection (i) the following:

"(j) To the extent practicable, the head of an agency shall seek to ensure that any proposed major rule or regulatory impact analysis of such a rule is written in a reasonably simple and understandable manner and provides adequate notice of the content of the rule to affected persons.".

SEC. 206. EXEMPTIONS.

Section 553 of title 5, United States Code, as amended by section 205, is further amended by adding after subsection (j) the following:

"(k)(1) The provisions of this section regarding major rules shall not apply to—

"(A) any regulation that responds to an emergency situation if such regulation is reported to the Director as soon as is practicable;

"(B) any regulation for which consideration under the procedures of this section would conflict with deadlines imposed by statute or by judicial order;

"(C) any regulation proposed or issued in connection with the implementation of monetary policy or to ensure the safety and soundness of federally insured depository institutions, any affiliate of such institution, credit unions, or government sponsored housing enterprises regulated by the Office of Federal Housing Enterprise Oversight;

"(D) any agency action that the head of the agency certifies is limited to interpreting, implementing, or administering the internal revenue laws of the United States, including any regulation proposed or issued in connection with ensuring the collection of taxes from a subsidiary of a foreign company doing business in the United States; and

"(E) any regulation proposed or issued pursuant to section 553 of title 5, United States Code, in connection with imposing trade sanctions against any country that engages in illegal trade activities against the United States that are injurious to American technology, jobs, pensions, or general economic well-being.

A regulation described in subparagraph (B) shall be reported to the Director with a brief explanation of the conflict and the agency, in consultation with the Director, shall, to the extent permitted by statutory or judicial deadlines, adhere to the process of this section.

"(2) The Director may in accordance with the purposes of this section exempt any class or category of regulations from any or all requirements of this section.

"(3) For purposes of paragraph (1), the term 'emergency situation' means a situation that is—

"(A) immediately impending and extraordinary in nature, or

"(B) demanding attention due to a condition, circumstance, or practice reasonably expected to cause death, serious illness, or severe injury to humans or substantial endangerment to private property or the environment if no action is taken.".

SEC. 207. REPORT.

The Director of the Office of Management and Budget shall submit a report to the Congress no later than 24 months after the date of the enactment of this Act containing an analysis of rulemaking procedures of Federal agencies and an analysis of the impact of those rulemaking procedures on the regulated public and regulatory process.

SEC. 208. EFFECTIVE DATE.

The amendment made by this title shall apply only to final agency rules issued after rulemaking begun after the date of enactment of this Act.

TITLE III—PROTECTIONS

SEC. 301. PRESIDENTIAL ACTION.

Pursuant to the authority of section 7301 of title 5, United States Code, the President shall, within 180 days of the date of the enactment of this title, prescribe regulations for employees of the executive branch to ensure that Federal laws and regulations shall be administered consistent with the principle that any person shall, in connection with the enforcement of such laws and regulations—

(1) be protected from abuse, reprisal, or retaliation, and

(2) be treated fairly, equitably, and with due regard for such person's rights under the Constitution.

H.R. 1022

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Risk Assessment and Cost-Benefit Act of 1995".

SEC. 2. FINDINGS.

The Congress finds that:

(1) Environmental, health, and safety regulations have led to dramatic improvements in the environment and have significantly reduced human health risk; however, the Federal regulations that have led to these improvements have been more costly and less effective than they could have been; too often, regulatory priorities have not been based upon a realistic consideration of risk, risk reduction opportunities, and costs.

(2) The public and private resources available to address health, safety, and environmental concerns are not unlimited; those resources need to be allocated to address the greatest needs in the most cost-effective manner and so that the incremental costs of regulatory alternatives are reasonably related to the incremental benefits.

(3) To provide more cost-effective and cost-reasonable protection to human health and the environment, regulatory priorities should be based upon realistic consideration of risk; the priority setting process must include scientifically sound, objective, and unbiased risk assessments, comparative risk analysis, and risk management choices that are grounded in cost-benefit principles.

(4) Risk assessment has proven to be a useful decision making tool; however, improvements are needed in both the quality of assessments and the characterization and communication of findings; scientific and other data must be better collected, organized, and evaluated; most importantly, the critical information resulting from a risk assessment

must be effectively communicated in an objective and unbiased manner to decision makers, and from decision makers to the public.

(5) The public stake holders must be fully involved in the risk-decision making process. They have the right-to-know about the risks addressed by regulation, the amount of risk to be reduced, the quality of the science used to support decisions, and the cost of implementing and complying with regulations. This knowledge will allow for public scrutiny and promote quality, integrity, and responsiveness of agency decisions.

(6) Although risk assessment is one important method to improve regulatory decisionmaking, other approaches to secure prompt relief from the burden of unnecessary and overly complex regulations will also be necessary.

SEC. 3. COVERAGE OF ACT.

This Act does not apply to any of the following:

(1) A situation that the head of an affected Federal agency determines to be an emergency. In such circumstance, the head of the agency shall comply with the provisions of this Act within as reasonable a time as is practical.

(2) Activities necessary to maintain military readiness.

(3) Any individual food, drug, or other product label, or to any risk characterization appearing on any such label, if the individual product label is required by law to be approved by a Federal department or agency prior to use.

(4) Approval of State programs or plans by Federal agencies.

SEC. 4. UNFUNDED MANDATES.

Nothing in this Act itself shall, without Federal funding and further Federal agency action, create any new obligation or burden on any State or local government or otherwise impose any financial burden on any State or local government in the absence of Federal funding, except with respect to routine information requests.

SEC. 5. DEFINITIONS.

For purposes of this Act:

(1) Costs.—The term "costs" includes the direct and indirect costs to the United States Government, to State, local, and tribal governments, and to the private sector, wage earners, consumers, and the economy, of implementing and complying with a rule or alternative strategy.

(2) Benefit.—The term "benefit" means the reasonably identifiable significant health, safety, environmental, social and economic benefits that are expected to result directly or indirectly from implementation of a rule or alternative strategy.

(3) Major rule.—The term "major rule" means any regulation that is likely to result in an annual increase in costs of $25,000,000 or more. Such term does not include any regulation or other action taken by an agency to authorize or approve any individual substance or product.

(4) Program designed to protect human health.—The term "program designed to protect human health" does not include regulatory programs concerning health insurance, health provider services, or health care diagnostic services.

(5) Emergency.—As used in this Act, the term "emergency" means a situation that is immediately impending and extraordinary in nature, demanding attention due to a condition, circumstance, or practice reasonably expected to cause death, serious illness, or severe injury to humans, or substantial endangerment to private property or the environment if no action is taken.

SEC. 6. AVAILABILITY OF INFORMATION AMONG FEDERAL AGENCIES.

Covered Federal agencies shall make existing databases and information developed under this Act available to other Federal agencies, subject to applicable confidentiality requirements, for the purpose of meeting the requirements of this Act. Within 15 months after the date of enactment of this Act, the President shall issue guidelines for Federal agencies to comply with this section.

TITLE I—RISK ASSESSMENT AND COMMUNICATION

SEC. 101. SHORT TITLE.

This title may be cited as the "Risk Assessment and Communication Act of 1995".

SEC. 102. PURPOSES.

The purposes of this title are—

(1) to present the public and executive branch with the most scientifically objective and unbiased information concerning the nature and magnitude of health, safety, and environmental risks in order to provide for sound regulatory decisions and public education;

(2) to provide for full consideration and discussion of relevant data and potential methodologies;

(3) to require explanation of significant choices in the risk assessment process which will allow for better peer review and public understanding; and

(4) to improve consistency within the executive branch in preparing risk assessments and risk characterizations.

SEC. 103. EFFECTIVE DATE; APPLICABILITY; SAVINGS PROVISIONS.

(a) Effective Date.—Except as otherwise specifically provided in this title, the provisions of this title shall take effect 18 months after the date of enactment of this title.

(b) Applicability.—

(1) In general.—Except as provided in paragraph (3), this title applies to all significant risk assessment documents and significant risk characterization documents, as defined in paragraph (2).

(2) Significant risk assessment document or significant risk characterization document.—(A) As used in this title, the terms "significant risk assessment document" and "significant risk characterization document" include, at a minimum, risk assessment documents or risk characterization documents prepared by or on behalf of a covered Federal agency in the implementation of a regulatory program designed to protect human health, safety, or the environment, used as a basis for one of the items referred to in subparagraph (B), and—

(i) included by the agency in that item; or

(ii) inserted by the agency in the administrative record for that item.

(B) The items referred to in subparagraph (A) are the following:

(i) Any proposed or final major rule, including any analysis or certification under title II, promulgated as part of any Federal regulatory program designed to protect human health, safety, or the environment.

(ii) Any proposed or final environmental clean-up plan for a facility or Federal guidelines for the issuance of any such plan. As used in this clause, the term "environmental clean-up" means a corrective action under the Solid Waste Disposal Act, a removal or remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and any other environmental restoration and waste management carried out by or on behalf of a covered Federal agency with respect to any substance other than municipal waste.

(iii) Any proposed or final permit condition placing a restriction on facility siting or operation under Federal laws administered by the Environmental Protection Agency or the Department of the Interior. Nothing in this section (iii) shall apply to the requirements of section 404 of the Clean Water Act.

(iv) Any report to Congress.

(v) Any regulatory action to place a substance on any official list of carcinogens or toxic or hazardous substances or to place a new health effects value on such list, including the Integrated Risk Information System Database maintained by the Environmental Protection Agency.

(vi) Any guidance, including protocols of general applicability, establishing policy regarding risk assessment or risk characterization.

(C) The terms "significant risk assessment document" and "significant risk characterization document" shall also include the following:

(i) Any such risk assessment and risk characterization documents provided by a covered Federal agency to the public and which are likely to result in an annual increase in costs of $25,000,000 or more.

(ii) Environmental restoration and waste management carried out by or on behalf of the Department of Defense with respect to any substance other than municipal waste.

(D) Within 15 months after the date of the enactment of this Act, each covered Federal agency administering a regulatory program designed to protect human health, safety, or the environment shall promulgate a rule establishing those additional categories, if any, of risk assessment and risk characterization documents prepared by or on behalf of the covered Federal agency that the agency will consider significant risk assessment documents or significant risk characterization documents for purposes of this title. In establishing such categories, the head of the agency shall consider each of the following:

(i) The benefits of consistent compliance by documents of the covered Federal agency in the categories.

(ii) The administrative burdens of including documents in the categories.

(iii) The need to make expeditious administrative decisions regarding documents in the categories.

(iv) The possible use of a risk assessment or risk characterization in any compilation of risk hazards or health or environmental effects prepared by an agency and commonly made available to, or used by, any Federal, State, or local government agency.

(v) Such other factors as may be appropriate.

(E)(i) Not later than 18 months after the date of the enactment of this Act, the President, acting through the Director of the Office of Management and Budget, shall determine whether any other Federal agencies should be considered covered Federal agencies for purposes of this title. Such determination, with respect to a particular Federal agency, shall be based on the impact of risk assessment documents and risk characterization documents on—

(I) regulatory programs administered by that agency; and

(II) the communication of risk information by that agency to the public.

The effective date of such a determination shall be no later than 6 months after the date of the determination.

(ii) Not later than 15 months after the President, acting through the Director of the

Office of Management and Budget, determines pursuant to clause (i) that a Federal agency should be considered a covered Federal agency for purposes of this title, the head of that agency shall promulgate a rule pursuant to subparagraph (D) to establish additional categories of risk assessment and risk characterization documents described in that subparagraph.

(3) EXCEPTIONS.—(A) This title does not apply to risk assessment or risk characterization documents containing risk assessments or risk characterizations performed with respect to the following:

(i) A screening analysis, where appropriately labeled as such, including a screening analysis for purposes of product regulation or premanufacturing notices.

(ii) Any health, safety, or environmental inspections.

(iii) The sale or lease of Federal resources or regulatory activities that directly result in the collection of Federal receipts.

(B) No analysis shall be treated as a screening analysis for purposes of subparagraph (A) if the results of such analysis are used as the basis for imposing restrictions on substances or activities.

(C) The risk assessment principle set forth in section 104(b)(1) need not apply to any risk assessment or risk characterization document described in clause (iii) of paragraph (2)(B). The risk characterization and communication principle set forth in section 105(4) need not apply to any risk assessment or risk characterization document described in clause (v) or (vi) of paragraph (2)(B).

(c) SAVINGS PROVISIONS.—The provisions of this title shall be supplemental to any other provisions of law relating to risk assessments and risk characterizations, except that nothing in this title shall be construed to modify any statutory standard or statutory requirement designed to protect health, safety, or the environment. Nothing in this title shall be interpreted to preclude the consideration of any data or the calculation of any estimate to more fully describe risk or provide examples of scientific uncertainty or variability. Nothing in this title shall be construed to require the disclosure of any trade secret or other confidential information.

SEC. 104. PRINCIPLES FOR RISK ASSESSMENT.

(a) IN GENERAL.—The head of each covered Federal agency shall apply the principles set forth in subsection (b) in order to assure that significant risk assessment documents and all of their components distinguish scientific findings from other considerations and are, to the extent feasible, scientifically objective, unbiased, and inclusive of all relevant data and rely, to the extent available and practicable, on scientific findings. Discussions or explanations required under this section need not be repeated in each risk assessment document as long as there is a reference to the relevant discussion or explanation in another agency document which is available to the public.

(b) PRINCIPLES.—The principles to be applied are as follows:

(1) When discussing human health risks, a significant risk assessment document shall contain a discussion of both relevant laboratory and relevant epidemiological data of sufficient quality which finds, or fails to find, a correlation between health risks and a potential toxin or activity. Where conflicts among such data appear to exist, or where animal data is used as a basis to assess human health, the significant risk assessment document shall, to the extent feasible and appropriate, include discussion of possible reconciliation of conflicting information, and as relevant, differences in study designs, comparative physiology, routes of exposure, bioavailability, pharmacokinetics, and any other relevant factor, including the sufficiency of basic data for review. The discussion of possible reconciliation should indicate whether there is a biological basis to assume a resulting harm in humans. Animal data shall be reviewed with regard to its relevancy to humans.

(2) Where a significant risk assessment document involves selection of any significant assumption, inference, or model, the document shall, to the extent feasible—

(A) present a representative list and explanation of plausible and alternative assumptions, inferences, or models;

(B) explain the basis for any choices;

(C) identify any policy or value judgments;

(D) fully describe any model used in the risk assessment and make explicit the assumptions incorporated in the model; and

(E) indicate the extent to which any significant model has been validated by, or conflicts with, empirical data.

SEC. 105. PRINCIPLES FOR RISK CHARACTERIZATION AND COMMUNICATION.

Each significant risk characterization document shall meet each of the following requirements:

(1) ESTIMATES OF RISK.—The risk characterization shall describe the populations or natural resources which are the subject of the risk characterization. If a numerical estimate of risk is provided, the agency shall, to the extent feasible, provide—

(A) the best estimate or estimates for the specific populations or natural resources which are the subject of the characterization (based on the information available to the Federal agency); and

(B) a statement of the reasonable range of scientific uncertainties.

In addition to such best estimate or estimates, the risk characterization document may present plausible upper-bound or conservative estimates in conjunction with plausible lower bounds estimates. Where appropriate, the risk characterization document may present, in lieu of a single best estimate, multiple best estimates based on assumptions, inferences, or models which are equally plausible, given current scientific understanding. To the extent practical and appropriate, the document shall provide descriptions of the distribution and probability of risk estimates to reflect differences in exposure variability or sensitivity in populations and attendant uncertainties. Sensitive subpopulations or highly exposed subpopulations include, where relevant and appropriate, children, the elderly, pregnant women, and disabled persons.

(2) EXPOSURE SCENARIOS.—The risk characterization document shall explain the exposure scenarios used in any risk assessment, and, to the extent feasible, provide a statement of the size of the corresponding population at risk and the likelihood of such exposure scenarios.

(3) COMPARISONS.—The document shall contain a statement that places the nature and magnitude of risks to human health, safety, or the environment in context. Such statement shall, to the extent feasible, provide comparisons with estimates of greater, lesser, and substantially equivalent risks that are familiar to and routinely encountered by the general public as well as other risks, and, where appropriate and meaningful, comparisons of those risks with other similar risks regulated by the Federal agency resulting from comparable activities and exposure pathways. Such comparisons should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks and the preventability or nonpreventability of risks.

(4) SUBSTITUTION RISKS.—Each significant risk assessment or risk characterization document shall include a statement of any significant substitution risks to human health, where information on such risks has been provided to the agency.

(5) SUMMARIES OF OTHER RISK ESTIMATES.—If—

(A) a commenter provides a covered Federal agency with a relevant risk assessment document or a risk characterization document, and a summary thereof, during a public comment provided by the agency for a significant risk assessment document or a significant risk characterization document, or, where no comment period is provided but a commenter provides the covered Federal agency with the relevant risk assessment document or risk characterization document, and a summary thereof, in a timely fashion, and

(B) the risk assessment document or risk characterization document is consistent with the principles and the guidance provided under this title,

the agency shall, to the extent feasible, present such summary in connection with the presentation of the agency's significant risk assessment document or significant risk characterization document. Nothing in this paragraph shall be construed to limit the inclusion of any comments or material supplied by any person to the administrative record of any proceeding.

A document may satisfy the requirements of paragraph (3), (4) or (5) by reference to information or material otherwise available to the public if the document provides a brief summary of such information or material.

SEC. 106. RECOMMENDATIONS OR CLASSIFICATIONS BY A NON-UNITED STATES-BASED ENTITY.

No covered Federal agency shall automatically incorporate or adopt any recommendation or classification made by a non-United States-based entity concerning the health effects value of a substance without an opportunity for notice and comment, and any risk assessment document or risk characterization document adopted by a covered Federal agency on the basis of such a recommendation or classification shall comply with the provisions of this title. For the purposes of this section, the term "non-United States-based entity" means—

(1) any foreign government and its agencies;

(2) the United Nations or any of its subsidiary organizations;

(3) any other international governmental body or international standards-making organization; or

(4) any other organization or private entity without a place of business located in the United States or its territories.

SEC. 107. GUIDELINES AND REPORT.

(a) GUIDELINES.—Within 15 months after the date of enactment of this title, the President shall issue guidelines for Federal agencies consistent with the risk assessment and characterization principles set forth in sections 104 and 105 and shall provide a format for summarizing risk assessment results. In addition, such guidelines shall include guidance on at least the following subjects: criteria for scaling animal studies to assess risks to human health; use of different types of dose-response models; thresholds; definitions, use, and interpretations of the maximum tolerated dose; weighting of evidence with respect to extrapolating human health risks from sensitive species; evaluation of benign tumors, and evaluation of different human health endpoints.

(b) REPORT.—Within 3 years after the enactment of this title, each covered Federal agency shall provide a report to the Congress evaluating the categories of policy and value judgments identified under subparagraph (C) of section 104(b)(2).

(c) PUBLIC COMMENT AND CONSULTATION.—The guidelines and report under this section, shall be developed after notice and opportunity for public comment, and after consultation with representatives of appropriate State, local, and tribal governments, and such other departments and agencies, offices, organizations, or persons as may be advisable.

(d) REVIEW.—The President shall review and, where appropriate, revise the guidelines published under this section at least every 4 years.

SEC. 108. RESEARCH AND TRAINING IN RISK ASSESSMENT.

(a) EVALUATION.—The head of each covered agency shall regularly and systematically evaluate risk assessment research and training needs of the agency, including, where relevant and appropriate, the following:

(1) Research to reduce generic data gaps, to address modelling needs (including improved model sensitivity), and to validate default options, particularly those common to multiple risk assessments.

(2) Research leading to improvement of methods to quantify and communicate uncertainty and variability among individuals, species, populations, and, in the case of ecological risk assessment, ecological communities.

(3) Emerging and future areas of research, including research on comparative risk analysis, exposure to multiple chemicals and other stressors, noncancer endpoints, biological markers of exposure and effect, mechanisms of action in both mammalian and nonmammalian species, dynamics and probabilities of physiological and ecosystem exposures, and prediction of ecosystem-level responses.

(4) Long-term needs to adequately train individuals in risk assessment and risk assessment application. Evaluations under this paragraph shall include an estimate of the resources needed to provide necessary training.

(b) STRATEGY AND ACTIONS TO MEET IDENTIFIED NEEDS.—The head of each covered agency shall develop a strategy and schedule for carrying out research and training to meet the needs identified in subsection (a).

(c) REPORT.—Not later than 6 months after the date of the enactment of this Act, the head of each covered agency shall submit to the Congress a report on the evaluations conducted under subsection (a) and the strategy and schedule developed under subsection (b). The head of each covered agency shall report to the Congress periodically on the evaluations, strategy, and schedule.

SEC. 109. STUDY OF COMPARATIVE RISK ANALYSIS.

(a) IN GENERAL.—(1) The Director of the Office of Management and Budget, in consultation with the Office of Science and Technology Policy, shall conduct, or provide for the conduct of, a study using comparative risk analysis to rank health, safety, and environmental risks and to provide a common basis for evaluating strategies for reducing or preventing those risks. The goal of the study shall be to improve methods of comparative risk analysis.

(2) Not later than 90 days after the date of the enactment of this Act, the Director, in collaboration with the heads of appropriate Federal agencies, shall enter into a contract with the National Research Council to provide technical guidance on approaches to using comparative risk analysis and other considerations in setting health, safety, and environmental risk reduction priorities.

(b) SCOPE OF STUDY.—The study shall have sufficient scope and breadth to evaluate comparative risk analysis and to test approaches for improving comparative risk analysis and its use in setting priorities for health, safety, and environmental risk reduction. The study shall compare and evaluate a range of diverse health, safety, and environmental risks.

(c) STUDY PARTICIPANTS.—In conducting the study, the Director shall provide for the participation of a range of individuals with varying backgrounds and expertise, both technical and nontechnical, comprising broad representation of the public and private sectors.

(d) DURATION.—The study shall begin within 180 days after the date of the enactment of this Act and terminate within 2 years after the date on which it began.

(e) RECOMMENDATIONS FOR IMPROVING COMPARATIVE RISK ANALYSIS AND ITS USE.—Not later than 90 days after the termination of the study, the Director shall submit to the Congress the report of the National Research Council with recommendations regarding the use of comparative risk analysis and ways to improve the use of comparative risk analysis for decision-making in appropriate Federal agencies.

SEC. 110. DEFINITIONS.

For purposes of this title:

(1) RISK ASSESSMENT DOCUMENT.—The term "risk assessment document" means a document containing the explanation of how hazards associated with a substance, activity, or condition have been identified, quantified, and assessed. The term also includes a written statement accepting the findings of any such document.

(2) RISK CHARACTERIZATION DOCUMENT.—The term "risk characterization document" means a document quantifying or describing the degree of toxicity, exposure, or other risk posed by hazards associated with a substance, activity, or condition to which individuals, populations, or resources are exposed. The term also includes a written statement accepting the findings of any such document.

(3) BEST ESTIMATE.—The term "best estimate" means a scientifically appropriate estimate which is based, to the extent feasible, on one of the following:

(A) Central estimates of risk using the most plausible assumptions.

(B) An approach which combines multiple estimates based on different scenarios and weighs the probability of each scenario.

(C) Any other methodology designed to provide the most unbiased representation of the most plausible level of risk, given the current scientific information available to the Federal agency concerned.

(4) SUBSTITUTION RISK.—The term "substitution risk" means a potential risk to human health, safety, or the environment from a regulatory alternative designed to decrease other risks.

(5) COVERED FEDERAL AGENCY.—The term "covered Federal agency" means each of the following:

(A) The Environmental Protection Agency.

(B) The Occupational Safety and Health Administration.

(C) The Department of Transportation (including the National Highway Transportation Safety Administration).

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration

(J) The United States Army Corps of Engineers.

(K) The Mine Safety and Health Administration.

(L) The Nuclear Regulatory Commission.

(M) Any other Federal agency considered a covered Federal agency pursuant to section 103(b)(2)(E).

(6) FEDERAL AGENCY.—The term "Federal agency" means an executive department, military department, or independent establishment as defined in part I of title 5 of the United States Code, except that such term also includes the Office of Technology Assessment.

(7) DOCUMENT.—The term "document" includes material stored in electronic or digital form.

TITLE II—ANALYSIS OF RISK REDUCTION BENEFITS AND COSTS

SEC. 201. ANALYSIS OF RISK REDUCTION BENEFITS AND COSTS.

(a) IN GENERAL.—The President shall require each Federal agency to prepare the following for each major rule within a program designed to protect human health, safety, or the environment that is proposed or promulgated by the agency after the date of enactment of this Act:

(1) An identification of reasonable alternative strategies, including strategies that—

(A) require no government action;

(B) will accommodate differences among geographic regions and among persons with different levels of resources with which to comply; and

(C) employ performance or other market-based mechanisms that permit the greatest flexibility in achieving the identified benefits of the rule.

The agency shall consider reasonable alternative strategies proposed during the comment period.

(2) An analysis of the incremental costs and incremental risk reduction or other benefits associated with each alternative strategy identified or considered by the agency. Costs and benefits shall be quantified to the extent feasible and appropriate and may otherwise be qualitatively described.

(3) A statement that places in context the nature and magnitude of the risks to be addressed and the residual risks likely to remain for each alternative strategy identified or considered by the agency. Such statement shall, to the extent feasible, provide comparisons with estimates of greater, lesser, and substantially equivalent risks that are familiar to and routinely encountered by the general public as well as other risks, and, where appropriate and meaningful, comparisons of those risks with other similar risks regulated by the Federal agency resulting from comparable activities and exposure pathways. Such comparisons should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks and the preventability or nonpreventability of risks.

(4) For each final rule, an analysis of whether the identified benefits of the rule are likely to exceed the identified costs of the rule.

(5) An analysis of the effect of the rule—

(A) on small businesses with fewer than 100 employees;

(B) on net employment; and

(C) to the extent practicable, on the cumulative financial burden of compliance with the rule and other existing regulations on persons producing products.

(b) PUBLICATION.—For each major rule referred to in subsection (a) each Federal agency shall publish in a clear and concise manner in the Federal Register along with the proposed and final regulation, or otherwise make publicly available, the information required to be prepared under subsection (a).

SEC. 202. DECISION CRITERIA.

(a) IN GENERAL.—No final rule subject to the provisions of this title shall be promulgated unless the agency certifies the following:

(1) That the analyses under section 201 are based on objective and unbiased scientific and economic evaluations of all significant and relevant information and risk assessments provided to the agency by interested parties relating to the costs, risks, and risk reduction and other benefits addressed by the rule.

(2) That the incremental risk reduction or other benefits of any strategy chosen will be likely to justify, and be reasonably related to, the incremental costs incurred by State, local, and tribal governments, the Federal Government, and other public and private entities.

(3) That other alternative strategies identified or considered by the agency were found either (A) to be less cost-effective at achieving a substantially equivalent reduction in risk, or (B) to provide less flexibility to State, local, or tribal governments or regulated entities in achieving the otherwise applicable objectives of the regulation, along with a brief explanation of why alternative strategies that were identified or considered by the agency were found to be less cost-effective or less flexible.

(b) EFFECT OF DECISION CRITERIA.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law, the decision criteria of subsection (a) shall supplement and, to the extent there is a conflict, supersede the decision criteria for rulemaking otherwise applicable under the statute pursuant to which the rule is promulgated.

(2) SUBSTANTIAL EVIDENCE.—Notwithstanding any other provision of Federal law, no major rule shall be promulgated by any Federal agency pertaining to the protection of health, safety, or the environment unless the requirements of section 201 and subsection (a) are met and the certifications required therein are supported by substantial evidence of the rulemaking record.

(c) PUBLICATION.—The agency shall publish in the Federal Register, along with the final regulation, the certifications required by subsection (a).

(d) NOTICE.—Where the agency finds a conflict between the decision criteria of this section and the decision criteria of an otherwise applicable statute, the agency shall so notify the Congress in writing.

SEC. 203. OFFICE OF MANAGEMENT AND THE BUDGET GUIDANCE.

The Office of Management and Budget shall issue guidance consistent with this title—

(1) to assist the agencies, the public, and the regulated community in the implementation of this title, including any new requirements or procedures needed to supplement prior agency practice; and

(2) governing the development and preparation of analyses of risk reduction benefits and costs.

SEC. 204. ENVIRONMENTAL CLEAN-UP.

For purposes of this title, any determination by a Federal agency to approve or reject any proposed or final environmental clean-up plan for a facility the costs of which are likely to exceed $5,000,000 shall be treated as major rule subject to the provisions of this title (other than the provisions of section 201(a)(5)). As used in this section, the term "environmental clean-up" means a corrective action under the Solid Waste Disposal Act, a remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and any other environmental restoration and waste management carried out by or on behalf of a Federal agency with respect to any substance other than municipal waste.

TITLE III—PEER REVIEW

SEC. 301. PEER REVIEW PROGRAM.

(a) ESTABLISHMENT.—For regulatory programs designed to protect human health, safety, or the environment, the head of each Federal agency shall develop a systematic program for independent and external peer review required by subsection (b). Such program shall be applicable across the agency and—

(1) shall provide for the creation of peer review panels consisting of experts and shall be broadly representative and balanced and to the extent relevant and appropriate, may include representatives of State, local, and tribal governments, small businesses, other representatives of industry, universities, agriculture, labor, consumers, conservation organizations, or other public interest groups and organizations;

(2) may provide for differing levels of peer review and differing numbers of experts on peer review panels, depending on the significance or the complexity of the problems or the need for expeditiousness;

(3) shall not exclude peer reviewers with substantial and relevant expertise merely because they represent entities that may have a potential interest in the outcome, provided that interest is fully disclosed to the agency and in the case of a regulatory decision affecting a single entity, no peer reviewer representing such entity may be included on the panel;

(4) may provide specific and reasonable deadlines for peer review panels to submit reports under subsection (c); and

(5) shall provide adequate protections for confidential business information and trade secrets, including requiring peer reviewers to enter into confidentiality agreements.

(b) REQUIREMENT FOR PEER REVIEW.—In connection with any rule that is likely to result in an annual increase in costs of $100,000,000 or more (other than any rule or other action taken by an agency to authorize or approve any individual substance or product), each Federal agency shall provide for peer review in accordance with this section of any risk assessment or cost analysis which forms the basis for such rule or of any analysis under section 201(a). In addition, the Director of the Office of Management and Budget may order that peer review be provided for any major risk assessment or cost assessment that is likely to have a significant impact on public policy decisions.

(c) CONTENTS.—Each peer review under this section shall include a report to the Federal agency concerned with respect to the scientific and economic merit of data and methods used for the assessments and analyses.

(d) RESPONSE TO PEER REVIEW.—The head of the Federal agency shall provide a written response to all significant peer review comments.

(e) AVAILABILITY TO PUBLIC.—All peer review comments or conclusions and the agency's responses shall be made available to the public and shall be made part of the administrative record.

(f) PREVIOUSLY REVIEWED DATA AND ANALYSIS.—No peer review shall be required under this section for any data or method which has been previously subjected to peer review or for any component of any analysis or assessment previously subjected to peer review.

(g) NATIONAL PANELS.—The President shall appoint National Peer Review Panels to annually review the risk assessment and cost assessment practices of each Federal agency for programs designed to protect human health, safety, or the environment. The Panel shall submit a report to the Congress no less frequently than annually containing the results of such review.

TITLE IV—JUDICIAL REVIEW

SEC. 401. JUDICIAL REVIEW.

Compliance or noncompliance by a Federal agency with the requirements of this Act shall be reviewable pursuant to the statute granting the agency authority to act or, as applicable, that statute and the Administrative Procedure Act. The court with jurisdiction to review final agency action under the statute granting the agency authority to act shall have jurisdiction to review, at the same time, the agency's compliance with the requirements of this Act. When a significant risk assessment document or risk characterization document subject to title I is part of the administrative record in a final agency action, in addition to any other matters that the court may consider in deciding whether the agency's action was lawful, the court shall consider the agency action unlawful if such significant risk assessment document or significant risk characterization document does not substantially comply with the requirements of sections 104 and 105.

TITLE V—PLAN

SEC. 501. PLAN FOR ASSESSING NEW INFORMATION.

(a) PLAN.—Within 18 months after the date of enactment of this Act, each covered Federal agency (as defined in title I) shall publish a plan to review and, where appropriate revise any significant risk assessment document or significant risk characterization document published prior to the expiration of such 18-month period if, based on information available at the time of such review, the agency head determines that the application of the principles set forth in sections 104 and 105 would be likely to significantly alter the results of the prior risk assessment or risk characterization. The plan shall provide procedures for receiving and considering new information and risk assessments from the public. The plan may set priorities and procedures for review and, where appropriate, revision of such risk assessment documents and risk characterization documents and of health or environmental effects values. The plan may also set priorities and procedures for review, and, where appropriate, revision or repeal of major rules promulgated prior to the expiration of such period. Such priorities and procedures shall be based on the potential to more efficiently focus national economic resources within Federal regulatory programs designed to protect human health, safety, or the environment on the most important priorities and on such other factors as such Federal agency considers appropriate.

(b) PUBLIC COMMENT AND CONSULTATION.—The plan under this section, shall be developed after notice and opportunity for public comment, and after consultation with representatives of appropriate State, local, and tribal governments, and such other departments and agencies, offices, organizations, or persons as may be advisable.

TITLE VI—PRIORITIES

SEC. 601. PRIORITIES.

(a) IDENTIFICATION OF OPPORTUNITIES.—In order to assist in the public policy and regulation of risks to public health, the President shall identify opportunities to reflect priorities within existing Federal regulatory programs designed to protect human health in a cost-effective and cost-reasonable manner. The President shall identify each of the following:

(1) The likelihood and severity of public health risks addressed by current Federal programs.

(2) The number of individuals affected.

(3) The incremental costs and risk reduction benefits associated with regulatory or other strategies.

(4) The cost-effectiveness of regulatory or other strategies to reduce risks to public health.

(5) Intergovernmental relationships among Federal, State, and local governments among programs designed to protect public health.

(6) Statutory, regulatory, or administrative obstacles to allocating national economic resources based on the most cost-effective, cost-reasonable priorities considering Federal, State, and local programs.

(b) STATE, LOCAL, AND TRIBAL PRIORITIES.—In identifying national priorities, the President shall consider priorities developed and submitted by State, local, and tribal governments.

(c) BIENNIAL REPORTS.—The President shall issue biennial reports to Congress, after notice and opportunity for public comment, to recommend priorities for modifications to, elimination of, or strategies for existing Federal regulatory programs designed to protect public health. Within 6 months after the issuance of the report, the President shall notify the Congress in writing of the recommendations which can be implemented without further legislative changes and the agency shall consider the priorities set forth in the report and priorities developed and submitted by State, local, and tribal governments when preparing a budget or strategic plan for any such regulatory program.

The SPEAKER pro tempore. Pursuant to section 2 of House Resolution 101, the previous question is ordered on the motion to amend and on the bill.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. DELAY].

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. SPRATT

Mr. SPRATT. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. SPRATT. In its present form I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. SPRATT moves to recommit the bill H.R. 9 to the Committee on Science with instructions to report the same back to the House forthwith with the following amendment:

In Division D of H.R. 9, consisting of the text of H.R. 1022, as passed by the House, strike the following text:

"Section 204. Environmental Clean-up.

"For the purposes of this title, any determination by a Federal agency to approve or reject any proposed or final environmental clean-up plan for a facility the costs of which are likely to exceed $5,000,000 shall be treated as a major rule subject to the provisions of this title (other than the provisions of section 205(a)(5)). As used in this section, "environmental clean-up" means a corrective action under the Solid Waste Disposal Act, a remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and any other environmental restoration and waste management carried out by or on behalf of a Federal agency with respect to any substance other than municipal waste."

Mr. DELAY (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. The gentleman from South Carolina [Mr. SPRATT] is recognized for 5 minutes.

Mr. SPRATT. Mr. Speaker, in the waning minutes of debate on H.R. 1022, the Risk Assessment and Cost-Benefit Analysis Act, Mr. WALKER offered a final amendment which was barely considered at all because we had run out of time. The Walker amendment then passed on a voice vote. This amendment expands the scope of H.R. 1022 far beyond what I think most Members appreciated, because there was no time to explain it when it came before us.

Basically, this Walker amendment provides that when any Federal agency approves or rejects any environmental cleanup plan, and the costs of the clean up plan will exceed $5 million, then the Risk Assessment Cost-Benefit Act is triggered. What in turn that means is that a full-blown risk assessment and cost-benefit analysis is required before the agency can move forward with the plan. If the benefits do not exceed the costs under the act, then the plan cannot be carried forward.

What is the environmental cleanup plan, a $5 million cleanup plan? First of all, the amendment says an environmental cleanup plan is any corrective action taken under CERCLA, the Superfund Act, or under the Solid Waste Disposal Act. That is the first application of it.

Mr. Speaker, I think we all agree that CERCLA or Superfund has taken too much time and involved too many lawyers. If we allow this amendment to stand in this bill, then we have just found another way to take more time and involve more lawyers, and I do not think that is the direction we want to move in. That is enough of a problem with the amendment.

But it goes beyond that, because it also says an environmental clean up decision is "any other environmental restoration and waste management carried out on behalf of a Federal agency with respect to any substance other than municipal waste." So this amendment applies to any environmental restoration decision taken with respect to a Federal facility and any waste management decision. That is Clean Water Act disposal, even Clean Air Act disposal problems. What does this mean?

All DOE facilities, Department of Energy facilities scattered across 17 States, from Savannah River to Oak Ridge, TN to Rocky Flats, to Hanford, WA, there is an enormous array of cleanup problems that could cost billions upon billions of approximate dollars, approximate, that have been accumulated over 50 years, toxic waste, hazardous waste, and very, very dangerous radioactive waste.

This amendment means that the Department of Energy does not have to deal with these nuclear and toxic waste problems if the cost-benefit analysis does not show the benefits will exceed costs.

This means that these problems, which have been overlooked and delayed for 50 years, will have to go through further delay because before DOE can do anything with respect to them, they have to put them through risk assessment and cost-benefit analysis. And this means that the risk assessment/cost-benefit analysis track becomes preempted.

Each one of these 17 sites now in the DOE complex now has a complicated, difficult negotiation ongoing with the State regulatory authorities, and most of them have compliance agreements. The States are no longer involved. what rules is risk assessment and cost-benefit analysis. At Hanford, at Rocky Flats, at Savannah River, all across the country.

The Department of Defense also has major cleanup decisions to make with respect to all the bases it closes. In fact, when we adopted the Base Closing Act, we said you cannot close a base and leave it and turn it over to local communities or new developers until you have resolved all the environmental cleanup problems.

Now the Department of Defense must add on to the time delays it is already experiencing the additional burden of doing cost-benefit analysis. If the cost-benefit analysis does not show the benefits will exceed the costs, then DOD will simply leave those problems unattended. They have been immunized by this bill if the benefits do not exceed the costs, leave them unattended, turn them over to a local community, and then guess what? The next landowner inherits the property with the sites there, but without immunity.

If that is not enough, this also applies to waste management. The term "waste management" is used. Waste management does not mean environmental problems that have accumulated through neglect or ignorance of the law over the past years. It means management of ongoing waste streams, waste water emissions into streams. This means DOD, DOE, and others that discharge in a waste management scheme, do not have to comply with waste management decisions unless the benefits can be proven to exceed the costs.

Now, we do not know all the ramifications of this provision, but think a few things are clear. This is not good law; it was made too hastily, it is ill-considered, ill-conceived, and should be stricken from the bill. Let us start over.

Mr. BROWN of California. Mr. Speaker, on February 28, in the waning minutes of the debate on the Risk Assessment and Cost-Benefit Act, H.R. 1022, the House added 17 short lines that potentially do a lot of damage. In adopting the Walker amendment, we have classified virtually every proposed or final environmental cleanup plan for a facility as a major rule subject to all the exacting provisions of the act.

This is yet another instance where, in our rush to pass legislation that improves the regulatory process, we have unnecessarily created a bigger mess than we started with.

Earlier in the debate we dramatically shrunk agency emergency exemption powers to get out from under this burden. Under the Walker amendment, we have dramatically reduced the dollar limit. The combination of these two provisions will end environmental enforcement as we know it to the detriment of anyone who lives near a site which could benefit from a federally aided cleanup. It also will be the last straw for many who would consider rehabbing industrial and Government sites to provide badly needed jobs.

Not all of the ramifications of this provision are known, but this we do know: First, it is going to cost a great deal more time and money to clean up a brownfield site and make it economically useful.

Second, any unemployed regulatory lawyers or environmental lawyers should be shouting hallelujah because they can prolong in court most facility cleanups under the Clean Air Act, the Clean Water Act, the Superfund law, the Department of Defense cleanup programs, and the Department of Energy cleanups.

Third, anyone in the business of doing environmental studies is set for life.

Fourth, since cleanups are now to be based strictly on cost-benefit analyses, States rights to participate in the process and the needs and preferences of local communities no longer matter.

Since this provision applies to every agency of the Federal Government, we do not know what else has been swept up. What is the effect on the Coast Guard, on FEMA, on the Nuclear Regulatory Commission, on our international commitments? No one knows.

Once again we have rushed through an amendment without thinking, without hearings, and without understanding the consequences of our actions. Let's recommit this bill with instructions so that we can avoid the economic and environmental harm that we will otherwise inadvertently spread throughout the country.

I urge my colleagues to vote for the motion to recommit.

Mr. MINETA. Mr. Speaker, I rise in strong support of the motion to recommit.

Mr. Speaker, the motion would direct the deletion of the Walker amendment on environmental cleanup. Rarely has such an ill-considered provision been added to legislation with so little discussion of its broad consequences.

Let me talk about the broad consequences of the amendment. This amendment will greatly delay environmental cleanups, undercut community participation in determining the level of cleanup, preempt States, and slow down the base closure and transfer process. I don't believe we should support any of those results.

What is the major complaint we have heard about Superfund? It takes too long to achieve cleanup and it is a field day for lawyers.

Let me be clear, adding the entire cost-benefit and risk analysis provisions of this bill on top of the current requirements of Superfund will surely delay cleanups. The law today precludes parties from delaying cleanup through court action. Don't forget that this bill also allows for judicial review of agency decisions. Lawyers will have the time of their lives and delay cleanups for years.

Delaying cleanups will have nothing but disastrous effects on the cost of cleanups. Although the proponents of the bill think they are reducing costs, this bill could result in greatly increased costs with less protection to show for it. The human cost through additional time of exposure is immeasurable, but we can measure the additional cost of cleanup which will occur if contaminants are allowed to migrate while the cleanup decision is tied up in court. I cannot support additional work for lawyers while human health is endangered and costs are increasing.

In addition, because this bill also applies to Department of Defense cleanups, the entire base closure process will be brought to its knees. What is the most important issue to local governments in the base closure process? Getting the property out of Federal ownership and into productive use. The Walker amendment will delay that process for years.

The Walker amendment preempts State and local governments from any effective role in determining cleanups. Currently, Federal cleanups are required to consider State laws and local preferences. The amendment overlays a Federal cost-benefit test over any local preference.

This could lead to less protective standards in direct contravention to local desires. Local input on long-term protectiveness, redevelopment considerations, and preservation of local amenities will fall silent in the face of cost considerations, even if the State or local government is willing to pay for them.

If you favor further delays in environmental cleanup; if you favor creating another new issue for lawyers to fight about in court; if you favor delaying the transfer of closed military installations to the local government; if you favor increasing the cost of cleanup; if you favor preempting the States in protecting their citizens; if you favor ignoring the desires of local government in addressing cleanups, then you can vote "no."

But if you want to look out for the interests of your constituents and the interests of State and local governments, you should support the motion to recommit.

The SPEAKER pro tempore. The gentleman from Texas [Mr. DELAY] is recognized for 5 minutes in opposition to the motion to recommit.

Mr. DELAY. Mr. Speaker, I rise in opposition to this motion to recommit, and in support of H.R. 9.

Over the last week, in a bipartisan fashion, the House has taken a dramatic step in favor of the American people. We have finally started the process of freeing small business, of protecting private property owners, of inserting some sanity into our rulemaking process.

Today, with H.R. 9, we put the Federal Government on notice: Don't tread unfairly on the American taxpayer.

As we all know, over the last several decades, the Federal Government has run roughshod over the American people. We have taxed them. We have taken their land. We have taken their businesses.

In this last election, the people said enough. They voted out incumbents in huge numbers, and threw out the leadership in both Houses of Congress for the first time in 40 years.

This 104th Congress has been called a second American revolution.

H.R. 9 is an important battle in the second American revolution.

If you are for real change and real reform, you will support H.R. 9. If you want to defend the status quo, if you believe that the American people are wrong in their disregard for the heavy hand of the Federal Government, you will vote for the motion to recommit.

I urge my colleagues to vote down the motion to recommit, and vote for H.R. 9.

□ 1345

The SPEAKER pro tempore (Mr. HANSEN). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. SPRATT. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 180, noes 239, not voting 15, as follows:

[Roll No. 198]

AYES—180

Abercrombie
Ackerman
Andrews
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Boehlert
Bonior
Borski
Boucher
Browder
Brown (FL)
Brown (OH)
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (MI)
Conyers
Costello
Coyne
Cramer
Deal
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Geren
Gibbons
Gordon
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E.B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Mineta
Minge
Mink
Mollohan
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Peterson (FL)
Peterson (MN)
Pomeroy
Poshard
Rahall
Reed
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Skelton
Slaughter
Spratt
Stark
Stenholm
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—239

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
DeLay
Diaz-Balart
Dickey
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stockman
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—15

Brown (CA)
Bryant (TX)
Burr
Collins (IL)
Dornan
Gonzalez
Green
Hayes
Johnston
Laughlin
Miller (CA)
Moakley
Montgomery
Pelosi
Rangel

□ 1401

The Clerk announced the following pairs:

On this vote:

Mr. Rangel for, with Mr. Dornan against.

Mrs. Collins of Illinois for, with Mr. Burr against.

Mr. SKELTON changed his vote from "no" to "aye."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. POMBO. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 277, nays 141, not voting 17, as follows:

[Roll No. 199]

YEAS—277

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Gallegly
Ganske
Gekas
Geren
Gillmor
Gilman
Gingrich
Goodlatte
Goodling
Gordon
Goss
Graham
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Jacobs
Johnson (SD)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Mollohan
Moorhead
Moran
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff

NAYS—141

Abercrombie
Ackerman
Andrews
Baldacci
Barrett (WI)
Becerra
Beilenson
Berman
Boehlert

Bonior
Borski
Boucher
Brown (FL)
Brown (OH)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Conyers
Costello
Coyne
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Greenwood
Gutierrez
Hall (OH)
Hastings (FL)
Hinchey
Hoyer
Jackson-Lee
Jefferson
Johnson, E.B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Mfume
Mineta
Mink
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Porter
Rahall
Reed
Reynolds
Richardson
Rivers
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Shays
Skaggs
Slaughter
Stark
Stokes
Studds
Thompson
Torres
Torricelli
Towns
Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates
Zimmer

NOT VOTING—17

Brown (CA)
Bryant (TX)
Collins (IL)
Collins (MI)
Dornan
Gonzalez
Green
Hayes
Johnson (CT)
Johnston
Laughlin
Miller (CA)
Moakley
Montgomery
Myers
Pelosi
Rangel

☐ 1421

The Clerk announced the following pair:

On this vote:

Mr. Dornan for, with Mr. Moakley against.

Mr. VOLKMER changed his vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

LEGISLATIVE PROGRAM

(Mr. GEPHARDT asked and was given permission to address the House for 1 minute.)

Mr. GEPHARDT. Mr. Speaker, I ask for 1 minute in order to inquire of the distinguished majority leader about the schedule.

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. GEPHARDT. I yield to the gentleman from Texas.

Mr. ARMEY. I thank the gentleman for yielding.

Mr. Speaker, on Monday, March 6, the House will meet at 12:30 p.m. for morning hour and 2 p.m. for legislative business. We will take up the rule and the debate of H.R. 988, the Attorney Accountability Act. We do not expect a vote to be called on the rule for H.R. 988, and we expect no votes before 5 p.m. on Monday. We hope to complete legislative business on Monday night as close to 9 p.m. as possible.

On Tuesday, the House will meet at 9:30 a.m. for morning hour and 11 a.m. for legislative business. We expect to complete H.R. 988 and being consideration of H.R. 1058, the Securities Litigation Reform Act, which is subject to a rule. It is our understanding that there are several events scheduled on Tuesday night that Members on both sides of the aisle will wish to attend. For that reason, we plan to finish legislative business on Tuesday between 6:30 and 7 p.m.

On Wednesday, as we announced last week, it is our desire to begin legislative business at 10 a.m. At that time, we expect to finish H.R. 1058, and move to consideration of H.R. 1075, the Common Sense Product Liability and Legal Reform Act, which is subject to a rule.

On Thursday and Friday, the House will meet at 10 a.m. for legislative business to complete consideration of H.R. 1075. It is our hope to have Members on their way home to their families and their districts by 3 p.m. on Friday.

Mr. GEPHARDT. Would the gentleman be able to tell us what he expects the rule to be providing for consideration of the product liability caps bill?

Mr. ARMEY. If the gentleman will yield, the Committee on Rules has not met on that. I cannot advise you at this time on what that rule will be. We will be consulting with the minority in that process.

Mr. GEPHARDT. Amendments are due to the Committee on Rules this afternoon by 3 p.m. I was just wondering if it was expected that all amendments submitted will be made in order. But it is my understanding they have to be presented by 3.

Mr. ARMEY. If the gentleman will yield, the gentleman is absolutely correct. Again, I cannot tell the gentleman anything further than that about the rule at this time.

Mr. GEPHARDT. Further inquiring, could the gentleman confirm on the longer term schedule, does the gentleman expect the term limits and rescissions bill to come to the floor the following week, March 13?

Mr. ARMEY. If the gentleman will yield, we anticipate the term limits will be brought to the floor on the 13th and 14th of March, and we expect rescissions to be on the floor the 15th or the 16th of March.

Mr. GEPHARDT. I take it, then, that welfare reform and spending cuts and the tax bill would come in the weeks after that?

Mr. ARMEY. If the gentleman would yield, the gentleman is absolutely correct.

Mr. GEPHARDT. I yield to the gentleman from Indiana [Mr. ROEMER].

Mr. ROEMER. I thank the distinguished minority leader for yielding.

I would appreciate engaging the distinguished majority leader in a couple of questions if I could.

First of all, I would like to thank him, he was not on the floor when I rose 2 weeks ago to thank him for his cooperation on getting not just Members with their families, but staffs with their families, on Valentine's Day. Certainly the majority leader does not want to hear more of my terrible, horrible poetry to try to get us back on the family-friendly schedule. I don't want to have to resort to torture to do that. But certainly a lot of Members and their families want to see increased efficiency in terms of the congressional schedule. They want to see if we work 70-hour, 80-hour weeks, that maybe there are procedures that we can use at the end of the day so that we do not see repeats of Monday and Thursday night of this past week, of staying in an hour over when we could have informed Members that we had the last vote.

I would just ask the majority leader a couple of questions. First of all, can you give us any more ideas, with predictability in mind, on the schedule for Wednesday and Thursday of next week, specific times?

Mr. ARMEY. If the gentleman would yield, let me just say, I cannot give you a more definitive answer at this time. It is always a matter of how well the day goes. We try to watch it, we try to schedule and stay in long enough to be sure that on the ensuing day we are able to complete that work which we hope to complete.

If the gentleman would continue to yield, Mr. Speaker, I understand the concern of the gentleman from Indiana [Mr. ROEMER]. His expression of concern the other day about wanting to be home and tuck in his children touched me, and if I could just make a recommendation, please do not read them your poems when you do that. We want them to have a good night's sleep. But we will try to do the best we can.

I too have had the pleasure at another time of tucking in my little ones and I know how special that can be and I do want to be attentive to it.

Mr. ROEMER. If the gentleman would answer a few more questions, do we intend to be in on Saturdays in March or April at this point?

Mr. ARMEY. If the gentleman would yield, it is possible, though I dare speak with some, what should I say, qualified confidence that I think I can dare say it seems fairly, perhaps even very unlikely. I have no expectation that I can see that that would happen. But I do have to make a reservation of a possibility that that could happen.

☐ 1430

It is my sincere hope and expectation that that will not be the case.

Mr. ROEMER. Finally, a question to the majority leader.

Many of us know that there are very, very difficult sessions ahead. We know that the Republicans are on a 100-day schedule for the contract. But after the first 100 days very difficult decisions are going to face this body on appropriations matters, on budget matters, and on rescission matters and on a farm bill that is critical to many of our States.

Can the gentleman give us some sense of the predictability and how efficacious we are going to be in terms of the schedule between April and August, and are we going to see a repeat of this first 100 days?

Mr. ARMEY. If the gentleman will yield, we are working on a schedule that we expect will be, in fact, much more family friendly that we hope to be able to give to the gentleman to take with him before his April recess so he and his family could have a better planning of the remainder of the year.

If the gentleman will just bear with us, we would try to complete that and make it available as soon as possible.

Mr. ROEMER. I thank the majority leader.

Mr. GEPHARDT. If the gentleman would just answer one more question of mine, the distinguished majority leader and I have had a conversation before about Members being able to depend upon getting out of here for the Easter recess on or about April 7 or no later than April 8, which is the Saturday before Palm Sunday. I take it we are still on a schedule that would give Members some certainty that they could make plans for after that date?

Mr. ARMEY. If the gentleman will yield, the distinguished minority leader knows I am by nature a rather cautious person in my optimism regarding these things, but what I have been telling my colleagues is I would feel very confident that I can guarantee you that you will wake up in your bed in your home district on Palm Sunday. I am not confident that you will not also retire to your bed in your home district on Palm Sunday. But I think it is a realistic optimism and I believe in fact that definitely by the Saturday prior to Palm Sunday the gentleman should have been on his way home and have his 3 weeks' time.

Mr. GEPHARDT. I thank the gentleman.

Mr. WISE. Mr. Speaker, will the gentleman yield?

Mr. GEPHARDT. I yield to the gentleman from West Virginia.

Mr. WISE. If I could address the majority leader for just a second, would he be able to inform us that he has a nonrefundable ticket that gets him home on that day, and then we would all take great security in that.

If I could just ask in a serious moment, Mr. Majority Leader, you do not see me rise on this subject too often, but I would just like to follow on a second on the gentleman from Indiana's theme. And I think I speak for both parties and I speak for members of the staff as well, that this schedule is working a great toll. And we understand, while perhaps not agree that there is the commitment to 100 days, if I could just share a couple of examples with the gentleman, I have not seen my two children awake, my young children, 7 and 5, in a waking state after 8 a.m. in the last 2 work weeks. My son drew a picture, my 7-year-old on Dads' Day and on Valentines Day, and on Dads' Day at school he drew a picture, they all drew pictures of their fathers, and the picture he drew of his father was a pretty good cartoon, actually, with a moustache, with a suitcase in one hand and a hand on the door and a balloon coming out of the mouth that said, "Goodbye." Those things get to you after a while.

Now, in fairness, our constituents do the same thing. The gentleman and I have constituents who are truck drivers, coal miners, sales people working two or three jobs trying to make it. They agonize that they do not see their children in every bit the same way. But there might be sometimes a little bit of a difference though. Sometimes they see a point at the end where they are going to get to. If nothing else, they understand that they are working for hours and they are paid on that basis.

I walked out of here last night knowing I was not going to see my children for dinner again, walked out of here and walked down the hall. I wanted to see what the other body was doing. It had been a historic day. The Chamber was shut, and so as I drifted around the Senate it suddenly occurred to me that we are missing a lot of meals over here to push the contract out. I do not know that they have missed one in anticipation of it.

So I guess I would just close, Mr. Leader, with more of a statement than a question. It is not meant to be acrimonious, but just a statement that both parties, everyone in here I believe professes to be for family values. We argue about that goal. We argue about how to get there. But we both believe we are standing up strongly for American families. I guess I do not think we really represent America's families if we are not with them, and I guess I believe that we do not move America's families very far ahead if we are leaving our own behind.

So, on the theme of the gentleman from Indiana, I would just ask that as the majority leader plans a schedule for the 100 days and what comes after, I would greatly appreciate the considerations raised here. As I say, I know the other side is feeling the same and wants to accommodate, but we have to remember our families as we seek to represent all of America's families.

Mr. ARMEY. If the gentleman will yield, I cannot help but observe to the gentleman from West Virginia that I have found in my own life that the time that I have seen him spend with his family has been much more enjoyable than the time I have spent with him, and we would like to keep the gentleman with his family as much as possible, and we will be working toward that objective.

Mr. WISE. We can reach a consensus on that.

ADJOURNMENT TO MONDAY, MARCH 6, 1995

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 12:30 p.m. on Monday next for morning hour debate.

The SPEAKER pro tempore (Mr. OXLEY). Is there objection to the request of the gentleman from Texas?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. ARMEY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE JOINT RESOLUTION 2

Mrs. SEASTRAND. Mr. Speaker, I ask unanimous consent to remove my name as a cosponsor of House Joint Resolution 2.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

REFORM THE SYSTEM

(Mrs. SEASTRAND asked and was given permission to address the House for one minute.)

Mrs. SEASTRAND. Mr. Speaker, we are entering one of the most difficult debates about fundamental reform in our Nation's history. Through perverse incentives, our Government has created a morally corrupt welfare state that discourages work and subsidizes illegitimacy. The welfare system is a tragic failure.

This debate is not about saving money, it is about saving family and the next generation. It is not about more spending, it is about more sincerity. It is not about stopping payments, it is about stopping poverty. It is not about an election cycle, it is about the dependency cycle. This is the greatest country the world has ever known. After 30 years and $5 trillion of failure, we can—we must—do better.

We have a plan we will be debating soon on the floor of the House that sets out to end incentives that promote self-destructive behavior. This plan has a vision for ending the welfare state, the Clinton plan offer only a mirage. We must work with compassion and common sense to end a system that has hurt the very people the very families we have set out to help.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 1058, SECURITIES LITIGATION REFORM ACT

Mr. DREIER, from the Committee on Rules, submitted a privileged report (Rept. No. 104–65) on the resolution (H. Res. 103) providing for consideration of the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 988, ATTORNEY ACCOUNTABILITY ACT OF 1995

Mr. GOSS, from the Committee on Rules, submitted a privileged report (Rept. 104–66) on the resolution (H. Res. 104) providing for consideration of the bill (H.R. 988) to reform the Federal civil justice system, which was referred to the House Calendar and ordered to be printed.

ANNOUNCEMENT BY CHAIRMAN OF COMMITTEE ON RULES REGARDING CONSIDERATION OF AMENDMENTS TO HOUSE JOINT RESOLUTION 2, THE TERM LIMITS CONSTITUTIONAL AMENDMENT

(Mr. SOLOMON asked and was given permission to address the House for 1 minute.)

Mr. SOLOMON. Mr. Speaker, the Rules Committee anticipates meeting on Thursday, March 9, to report a rule for the consideration of House Joint Resolution 2, the term limits constitutional amendment.

The rule may include a provision permitting only the offering of amendments in the nature of a substitute, by Members who have caused their amendments to be printed in the amendment section of the CONGRESSIONAL RECORD not later than Wednesday, March 8.

If Members are interested in having their amendment considered as a substitute for House Joint Resolution 2, they are encouraged to submit a summary and copy of the amendment to the Rules Committee before 5 p.m. on Wednesday, March 8 and testify before the Rules Committee, in addition to preprinting the amendment in the CONGRESSIONAL RECORD.

Members should use the Office of Legislative Counsel to ensure that their amendments are properly drafted and should be titled, "Submitted for printing under clause 6 of rule XXIII," and submitted at the Speaker's table.

GENERAL LEAVE

Mr. SCARBOROUGH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 9.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members are recognized for 5 minutes each.

THE TAX TECHNICAL CORRECTIONS ACT OF 1995

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. ARCHER] is recognized for 5 minutes.

Mr. ARCHER. Mr. Speaker, today I am introducing the Tax Technical Corrections Act of 1995. I am joined on this legislation by SAM GIBBONS, the distinguished ranking minority member of the Ways and Means Committee.

This legislation makes necessary technical corrections to implement the intent of prior tax legislation. Virtually all of the items in this bill were included in H.R. 3419, which passed in the House during the 103d Congress. However, the bill does include some new technical corrections.

I am introducing this legislation in order to give the public an opportunity to comment on it. Because I intend to mark up the technical corrections legislation during the Ways and Means Committee's consideration of the Contract With America tax provisions within the next 2 weeks, I would ask that any comments be submitted to the Ways and Means Committee as soon as possible.

The following are the new technical corrections which were not included in the prior legislation:

First, the bill clarifies that a U.S. shareholder's inclusion of a controlled foreign corporation's earnings invested in excess passive assets is treated like a dividend for purposes of the foreign tax credit limitation. Thus, like other amounts included in income with respect to a controlled foreign corporation, the inclusion would be characterized by reference to the underlying nature of the earnings and profits of the foreign corporation.

Second, the bill provides an inflation adjustment of the dollar amounts where a parent elects to include child's unearned income on the parent's return.

Third, the bill provides that the exclusion from income for a taxpayer's investment in an annuity contract applies to his entire investment in the contract, in the case of an annuity contract with a refund feature.

The bill also includes a number of new clerical changes, deletions of obsolete provisions, and date changes necessitated by the passage of time.

BALANCED BUDGET AMENDMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. WELDON] is recognized for 5 minutes.

Mr. WELDON of Florida. Mr. Speaker, I rise to speak regarding the issue of our balanced budget amendment. The balanced budget amendment yesterday in the other body failed to receive the necessary votes required to pass this amendment on to the State legislatures. I believe that if it had it would have been one of the most rapidly approved constitutional amendments in U.S. history, that it would have very quickly been approved by the required three-fourths of the State legislatures necessary according to our Constitution. I feel that this would have occurred because the people really do want this, and it really, truly is a bipartisan effort.

I was very, very disappointed to see our President using the issue of the scare tactic of Social Security cuts as a way of fighting this bill or fighting this amendment. Indeed, former Senator and Democratic Presidential candidate Paul Tsongas recently said it is embarrassing to be a Democrat and watch a Democrat President raise the scare tactic of Social Security to defeat the balanced budget amendment.

The greatest threat to Social Security is not the balanced budget amendment, but our continued deficit spending. We have a national debt of $4.8 trillion and growing. Last year we spent $296 billion just to pay the interest on the public debt. This year we will spend $333 billion; next year it is anticipated that it will be $364 billion.

The interest on the debt is one of the fastest growing accounts in the Federal budget. This is the greatest threat to Social Security and the greatest threat to every other element of the Federal budget.

□ 1445

Passage of the balanced budget amendment would have been the best guarantee of the integrity and protection of the Social Security trust fund. Let us remember that in 1993, when faced with a $300 billion deficit and a desire to find funding for his new programs, President Clinton's tax-and-spend plan cut seniors' Social Security benefits by $25 billion.

Also let us not forget, last October Alice Rivlin's memo where President Clinton's economic top advisors proposed tens of billions of dollars in additional cuts in Social Security benefits.

Mr. Speaker, the American people are not fooled by the rhetoric out of the White House about Social Security. The American people know that the White House is not concerned about the effects the balanced budget amendment would have on Social Security. The American people know that the real fear by the White House is that the balanced budget amendment would curb the growth of new liberal spending programs.

Mr. Speaker, a recent survey by CBS News/New York Times found that 79 percent, 79 percent of Americans favor the balanced budget amendment. Last week's poll by the Seniors Coalition found that 80 percent of those 55 to 65 favor the balanced budget amendment. Of those over 65, 71 percent favor the balanced budget amendment.

Mr. Speaker, seniors know the truth. The balanced budget amendment will stop the wasteful spending and reduce the threat that the deficit and growing interest payments cause to the Social Security trust fund.

Several weeks ago one of the President's chief economic advisors was asked if she had a family budget that her family lived by, and she responded "no." I think that this is part of the problem.

My family lives by a budget, and we plan for our future. Indeed when I was elected to this office, we had to budget for the cost of maintaining two households and we had to reduce our spending accordingly to compensate for those increased expenses that we were going to encounter.

We need to instill some of those basic fundamental rules that families govern their finances by. We need to instill into this body, the Government of the United States.

I believe this balanced budget amendment will become an issue in the next election of 1996, and I believe that we will see more Members elected both to this body and the one on the other side, more Members elected who will support the balanced budget amendment, and the will of the people of the United States will not be thwarted and that we will have a balanced budget amendment to the Constitution.

RECOMMENDATIONS OF THE BASE REALIGNMENT CLOSURE COMMISSION

The SPEAKER pro tempore (Mr. OXLEY). Under a previous order of the House, the gentleman from Alabama [Mr. BROWDER] is recognized for 5 minutes.

Mr. BROWDER. Mr. Speaker, I am convinced that Secretary of Defense William Perry's recommendation to the Base Realignment and Closure [BRAC] Commission to close Fort McClellan, AL, is a mistake with significant and dangerous ramifications.

With this recommendation, the Pentagon Jeopardizes the American soldier's ability to survive chemical warfare, breaks faith with hundreds of thousands of Alabamians at risk from their neighboring stockpile of aging chemical weapons, and seriously undermines the Chemical Weapons Convention and Bilateral Destruction Agreement.

Let me be specific about what's wrong with the proposed closure of Fort McClellan:

First, it contradicts two earlier directives of the Base Realignment and Closure Commission refusing closure efforts of 1991 and 1993. The BRAC Commission has ruled twice—and the President and Congress concurred—that the chemical defense mission performed at Fort McClellan is vital to our national defense and that the Army's recommendation violates the criteria of military value established by law. The 1993 Commission reprimanded the Pentagon for attempting a second closure—following the unsuccessful initiative of 1991—and warned:

> . . . if the Secretary of Defense wants to move the Chemical Defense School and Chemical Decontamination Training Facility in the future, the Army should pursue all of the required permits and certification for the new site prior to the 1995 Base Closure process.

The Pentagon has not acquired any of the required permits and certification; its only justification for the proposal is its assumption that the requisite permits can be granted to allow operation of the Chemical Defense Training Facility elsewhere.

Second, it would shut down the only facility in the free world where live agent chemical weapons defense training can be conducted for America and its allies. All United States services, 27 allied foreign nations, and the international CWC Preparatory Commission train at this facility. National and international experts have testified that relocation of the Chemical School and live agent facility would seriously disrupt our chemical defense program for a decade; even more importantly, they maintain, it is highly unlikely that such a move can be accomplished under today's environmental restrictions.

Third, it would destroy a chemical defense capability which is considered vital to the success of the Chemical Weapons Convention, whose article 10 guarantees chemical defense assistance to threatened signatory countries.

Fourth, it would dismantle a working chemical weapons program considered critical to the training of international inspectors for carrying out the requirements of the Chemical Weapons Convention.

Fifth, it would abrogate a written commitment of extensive Fort McClellan resources—medical, technical, and security personnel and facilities—to help protect the hundred thousand at-risk civilians in case of a chemical accident/incident during the storage and planned demilitarization of the across-town Anniston Army Depot chemical weapons stockpile—as required by the Bilateral Destruction Agreement and Chemical Weapons Convention. This commitment was made in the 1990 demilitarization permit request filed by the U.S. Army with the Alabama Department of Environmental Management [ADEM], which has authority over the demilitarization process. This commitment has been incorporated into numerous emergency response plans and agreements among Fort McClellan, Anniston Army Depot, and the surrounding community. It has been operationalized in chemical stockpile emergency preparedness drills throughout the local area under the direction of the Army and Federal Emergency Management Agency. Finally, it was reconfirmed to me in a meeting with and letter from Deputy Secretary of Defense John Deutch 6 months ago. ADEM has assured me that the loss of these resources—through closure of Fort McClellan—will virtually prohibit issuance of the permit.

I am shocked and disappointed that the Secretary of Defense who has broad responsibilities for the national and international security of our country, has yielded to the bean-counters and numbers-crunchers in the bowels of the Pentagon.

ADMIT TURKEY TO THE EUROPEAN UNION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kentucky [Mr. WHITFIELD] is recognized for 5 minutes.

Mr. WHITFIELD. Mr. Speaker, 2 years ago, prior to being elected to the U.S. Congress, my wife and I visited in the home of Tansu Ciller, now the prime minister of Turkey. Turkey has been a strategic ally of the United States for many years, particularly in our efforts to contain Soviet communism, and of course Turkey was an indispensable ally to the United States during the Persian Gulf war.

Today the country of Turkey is at a crossroads. A Kurdish insurrection is raging in the southeast. An Islamic fundamentalist movement is spreading throughout Istanbul and Ankara.

In the Islamic world there are two models of government; one is the Khomeni model in Iran, and the other is Turkey, the only country among 52 Moslem countries that is secular and democratic.

Turkey's most immediate problem is economic. In 1993, the Turkish lira began to engage in a sharp fall. Since then, investment has slowed down and inflation has reached an annual rate of 150 percent.

To help solve these economic problems, it is essential for Turkey's long-term stability that it be admitted to the European Union. The Clinton administration has acknowledged that they have not paid enough attention to this issue, and they are stepping up their activities.

Today, southern Europe is one of the most volatile areas in the world, and it is time for the U.S. Government to step up diplomatic activities to assure admittance of our longtime ally, Turkey, into the European Union.

If Turkey is not admitted, it will add fuel to the popular conviction that the West is rejecting Turkey out of religious bias.

Turkey and its people should be granted membership in the European Union. I think it is important for that area of the world that they be admitted. It will help them economically, and they have been a longtime valuable ally of America. I hope that the President will follow through on his efforts to step up his diplomatic activities in that regard.

BALANCED BUDGET AMENDMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. SCARBOROUGH] is recognized for 5 minutes.

Mr. SCARBOROUGH. Mr. Speaker, yesterday the Senate failed to do what American middle-class citizens and State legislators have had to do for some time, and that is, step up to the plate and finally have to balance their checkbooks, to take in only as much, and spend only as much, as they take in.

Unfortunately, they failed to grasp this very simple concept. It has been a quarter of a century since we balanced our Federal budgets, and yet the liberal Democrats again were afraid to restrict themselves, to live by this very simple, very American concept.

Now, earlier today we heard Democrats talking about wanting a family-friendly Congress and worrying about their children, and that is great. I have got children. I worry about my children, too.

But where were they when we were voting on the most important amendment that would have as big an impact on our children's future as anything? Well, I will tell you where some of them were a year ago. They were supporting this amendment when they knew that it did not have a chance of passing.

We had Senator TOM DASCHLE, who is now beating his chest in self-righteous indignation that anyone would dare pass a balanced budget amendment because locusts would descend from the heavens and senior citizens would die in their homes. This was the worst thing TOM DASCHLE said, and he was proud to stand up for it.

The SPEAKER pro tempore (Mr. OXLEY). The gentleman is admonished to not mention specific Members of the other body.

Mr. SCARBOROUGH. And this Representative was quoted a year ago saying this about this balanced budget amendment, there was going to be such a scourge on humanity. February 28, 1994: "In this debate for a balanced budget amendment, we are being forced to face the consequences of our inaction. Quite simply, we are building a legacy of debt for our children and grandchildren and hamstringing their ability to address pressing national priorities."

And what happened? Does he not care about children a year later? It does not make a lot of sense to me.

Another Senator stated a year ago, this constitutional amendment, no matter what one thinks of it, will add to the pressure that we reconcile that we spend what we raise and that we begin to assure a better economic future with economic growth and hope and opportunity for our children once again.

□ 1500

It seems he changed his mind, too. Now he is saying the same thing, bringing up this Social Security card. Frankly, I am getting a little tired of hearing Democrats come out and say how they are the protectors of Social Security, while Republicans want to steal money from our senior citizens.

Why do we not try to think back a few years ago in 1993, when their President sent a budget to the floor that increased taxes on Social Security recipients? How many Republicans voted to take more money out of senior citizens' checkbooks? Zero. Zilch. Zip. Nada. None. How do they sleep at night? I mean, how hypocritical can you be to say, "I want to protect Social Security, so I am going to make sure that we don't balance our checkbooks. I am going to save senior citizens. These bad Republicans are against senior citizens.

But he does not tell the rest of the story. He does not tell the story that it was the Republicans that stood up for senior citizens. Every single Republican in both houses stood up for senior citizens when the Democratic President, the Democratic House, and the Democratic Senate was ready to sell them down the river.

It is a disgrace. It is hypocritical. I do not know how they sleep at night. I do not know how the Senator from California, who stole her election from the California people by promising to support the balanced budget amendment and then voted against it and killed it a few months later, I do not know how she sleeps at night. And she will not allow the California people to have a chance to vote on the balanced budget amendment, only to make Congress abide by the same laws that middle-class citizens have had to abide by for too long.

I am going to be able to sleep at night. I do not know how they will.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. OXLEY). The gallery is admonished there will be no demonstration.

PARTIES SHOULD AGREE ON COURSE OF ACTION TO AVOID ECONOMIC DOWNTURN

The SPEAKER pro tempore. Under the previous order of the House, the gentleman from New Jersey [Mr. SAXTON] is recognized for 5 minutes.

Mr. SAXTON. Mr. Speaker, some months ago, after having been through the election and after having campaigned to support the provisions of the Contract With America, I came to the realization that subsequent to the policies that have been prevalent during this administration that had to do with tax policy, and then with the Fed increasing interest rates along with that tax policy at the same time we had high taxes, that history would ultimately repeat itself, and that our economy could not sustain itself with relatively high taxes and with increasing interest rates. There would come a time when our economy would turn down and that things would not be as this administration and all of us would like them to be. Perhaps that is not far away.

I take this special order this afternoon to just bring light to the fact that there are clouds on the horizon, and that we as Republicans and Democrats need to agree on a course of action to avoid what could be an economic downturn, serious economic downturn.

I picked up the Wall Street Journal this morning, and as I turned through the pages and got to page 2, I found three articles that disturbed me. The headline on one was "Consumers Held Down Spending During January." In reading that article, it simply said that consumers were hesitant to spend, as perhaps they had been at some previous times recently.

I looked at another article that disturbed me along the same vein that said "Retailers See Mildly Disappointing Sales for February Amid Slowing Economy." Of course, that headline speaks for itself. Everyone can understand why we would be disappointed to see that the economy, as this headline says, is slowing.

But then I saw a headline that really disturbed me, because a very important part of the Contract With America, things that Republicans and some Democrats agree on that are part of the contract, is that we can do some things here in the House of Representatives that will help to avoid a slowdown in the economy. And this third article, which really disturbed me, has a headline which says, "Rubin Questions the Economic Impact of Capital Gains Tax Cuts, Tax Reform."

This is Secretary Rubin, President Clinton's Secretary of the Treasury, and, of course, he is a very important person when it comes to directing economic policy. And that part of this that disturbed me the most said that he is being reported to have said "No significant tax reform is likely to emerge from Congress without substantial leadership from the Treasury, and Mr. Rubin said he is not inclined to deploy the Treasury's limited resources to design a tax reform scheme of its own."

Now, we have laid out before the America people as Republicans in the Contract With America our ideas of how to do this, and I would just say to Secretary Rubin, please, if you do not agree with us, at least recognize that the economy is showing signs of slowing, and please recognize that we have had seven interest rate increases in the last year, and please recognize that we had the largest tax increase to date in 1990, surpassed only by another more immense tax increase in 1993, and that taxes are at relative high rates and interest rates are relatively high, and yet Secretary Rubin does not worry about out Tax Code inhibiting savings investment and economic growth. He apparently does not want us to make changes to put in place tax policy proven to promote economic growth and savings.

Today our Tax Code and other Government policies promote dependence in my view on government and retard economic growth. Let me just point to a couple of examples.

Last week the Joint Economic Committee held a hearing here on the minimum wage and whether or not it should be increased as President Clinton has suggested. One of the things that we pointed out in that, and I will conclude with this, as to how government policy can promote dependence, is that $1 out of every $4.25, which is the minimum wage, comes to the Federal Government in terms of taxes. If that is in fact the case, it simply makes more sense for people of remain unemployed or go on welfare. These are the kinds of policies that we need to address as Republicans and Democrats with Secretary Rubin's help.

BALANCED BUDGET AMENDMENT SHOULD LIMIT SPENDING

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan [Mr. SMITH] is recognized for 5 minutes.

Mr. SMITH of Michigan. Mr. Speaker, yesterday, the Senate failed to muster the courage to join us in passing the balanced budget amendment. Thomas Jefferson once called public debt "the greatest of dangers to be feared." Borrowing and spending is addictive for politicians, Thomas Jefferson, in a letter to Elbridge Gerry in 1799, wrote:

> I am for a government rigorously frugal and simple, applying all the possible savings of the public revenue to the discharge of the national debt; and not for a multiplication of officers and salaries merely to make partisans, and not for increasing by every device, the public debt, on the principle of it's being a public blessing.

I agree with Mr. Jefferson wholeheartedly, and I suspect that most other Americans do as well.

Today, I am introducing a constitutional amendment that would attack the root cause of our budget deficit, that is Government spending. My amendment would limit the growth of Federal spending to the rate of economic growth as measured by gross domestic product. This would freeze the growth of Government as a percentage of the U.S. economy. The language of the amendment is an adaptation of a spending control proposal in Milton Friedman's book, "Free to Choose." Professor Walter Williams, Chairman of the Economics Department at George Mason University, and the National Taxpayers' Union have endorsed this concept. The CATO Institute has given their enthusiastic support and suggested that this might be an acceptable compromise position to the balanced budget amendment.

Today, the Federal debt is in excess of $4.7 trillion and growing at a rate of $200 to $300 billion per year. This is both an economic and a moral problem. The economic problem is that deficit financing is the ultimate form of hidden taxation. Federal borrowing injects a huge pro-spending bias into the budget process by allowing politicians to hand out a dollar of Government spending to voters, while only imposing 80 cents of taxes.

Unbridled Federal spending will eventually lead to what economists call monetizing of the debt, which in plain English means that the government pays for its debt by increasing the money supply, thereby causing inflation. This hidden tax, which Adam Smith called the worst form of taxation, strikes most heavily on those who save. As every senior citizen knows, their security can be wiped out in short order by even moderate inflation. At 8 percent inflation, the Government can effectively take away half of the money one has saved over a lifetime of work in about 9 years.

The moral argument for a balanced budget is that Federal borrowing is taxation without representation. Recall the words of the Declaration of Independence which refers to the repeated injuries and usurpations of King George because he imposed taxes on us without our consent. Can't our children make this same claim against a Congress that saddles them with debt interest payments that are already at $339 billion annually? None of our children and grandchildren currently have a say in the political process. Federal deficits may almost be thought of as a form of fiscal child abuse.

I call on my colleagues to stop deficit spending, and I call on all citizens to commit themselves to do their part, to sacrifice some of the many things they get from Government, so we can cut spending, look our kids in the eye, and tell them that we will no longer force them to pay future taxes to enhance our current standard of living.

As a nation of people who look to the future, and care about our children as much as we care about ourselves, we can make the commitment to limit spending, and keep that commitment.

BALANCED BUDGET AMENDMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio [Mr. HOKE] is recognized for 5 minutes.

Mr. HOKE. Mr. Speaker, the events yesterday and in the past several days in the other body have compelled me to come to the well to, if nothing else, at least vent a little bit to you and to the American people regarding the disgrace and hypocrisy that we have seen come out of the other side of this building unfortunately.

It is just stunning that we stood on the brink, right on the brink of actually enacting at least from our Congress a balanced budget amendment that would then go to the States and the State legislatures could make their own decisions on these things, that we stood on the very brink of that, and now we have been completely—we are not able to find out even what the States want to do in this area. The truth is that there was hypocrisy, there was deceit, there was deception, and there was lying on the other side of this building, in the other body, with respect to promises that were made and promises that certainly were not kept.

Let's go back to what this amendment is all about. Really to find out what it is all about you have to go back to the year 1789, when Thomas Jefferson wrote:

> I fear there is only one thing that we have kept out of the Constitution of the United States. It has one flaw, and that is that we have not restricted the Federal Government's ability to borrow money. We have not restricted the Federal Government's ability to borrow money.

What extraordinary clairvoyance Thomas Jefferson could have, that he would see in 1789 what has truly come home to roost in 1995.

□ 1515

And with a $5 trillion or nearly $5 trillion debt, the ability of this Federal Government to borrow, borrow, borrow and mortgage the future of our country, of our children, of our grandchildren, and that he was able to see in

1789 that there ought to be some restriction on borrowing money by the Federal Government, because if we do not restrict it, as we did not, then the Government finally figures it out. It figures out that you can buy constituencies. You can purchase influence. You can buy votes. And that is exactly—I mean the votes of people that elect Members of Congress, elect people to the Senate—and that is exactly what has happened. That is how it is possible that this Government could be so far in the red that it could exist so far beyond its means.

In 1789 he recognized that. And what is it exactly that this balanced budget amendment would do? It is pretty straightforward what it would do. It restricts the ability of the Government to borrow money. It requires in its one single absolutely dispositive section, it says, you must have a three-fifths majority in order to raise the amount of money, the debt ceiling on what, in order to raise the amount of money that the United States can borrow. The limit on that amount of money, in order to raise the limit on the amount of money we can borrow, you have to have a three-fifths majority. That is precisely the kind of restriction that Thomas Jefferson was talking about in 1789.

And what did the Senate do? Well, one Senator from the State of Florida who had personally campaigned on a promise to vote in favor of a balanced budget amendment voted against it, campaigned not more than 5 months ago on that promise, not more than 4 months ago on that promise, said in a solemn promise to the people that she was wanting to represent, I am going to vote for a balanced budget amendment. And then come yesterday, she voted against it. And what was the excuse given by her and by other Members of the other body? The excuse given was that somehow this would possibly, this could somehow have an impact on Social Security.

Well, A, that is not true. And B, where were those people in August of 1993, when they voted to cut Social Security by $25 billion and every single Republican in the Senate and every single Republican in the House of Representatives voted against that? But they voted to increase or to tax Social Security and cut Social Security payments to senior citizens $25 billion. Where were they then?

And then to say, well, this is just, this is just a hidden ploy to make it possible to cut Social Security. It is a lie. They know it is a lie. It is a smoke screen.

What is the smoke screen for? I will tell you what the smoke screen is for. It is for those people who truly believe that the Federal Government can solve all our problems. If you believe that the Federal Government can solve all of our problems through more spending, through bigger spending programs, through throwing more money at these problems, through hiring more Federal bureaucrats to do it, then you ought to be opposed to a balanced budget amendment. And if you are going to be truthful about it and if you are going to be honest about it, then that is what you will tell people, that is the way that you will explain it.

The smoke screen is Social Security recipients, when every single one of them voted to cut Social Security.

THE FEDERAL DEFICIT

The SPEAKER pro tempore (Mr. OXLEY). Under a previous order of the House, the gentleman from New York [Mr. SOLOMON] is recognized for 5 minutes.

Mr. SOLOMON. Mr. Speaker, I was going to stand up here today and talk about the fact that over the last 16 years I have been trying to enact legislation dealing with regulatory reform that would give back property rights to the people of this country, but I was so angered this morning when I woke up about 6 a.m. in the morning and I was watching CNN. I saw the President and his press secretary talking about how they had killed the balanced budget amendment. And how they now could get down to the serious business of balancing the budget over the next 7 years.

I have never been so mad in my life. I have a chart here, which says, "deficit projections and debt accumulation." This was President Clinton's budget as he offered it last year. And as you can see, he projected a deficit in 1995 of $165 billion, and it grew all the way over so that at the end of 5 years, there is an accumulation of $894 billion in new accumulated debt to go to the $4.5 trillion we already have.

This year, in January, he just gave us his new 5-year projection. This is just a year later. And what does this show? It shows in 1995, $193 billion in accumulated debt in just this first year. That is 30 billion higher than last year. And if you look at 1996, it goes from $170 billion deficit to $197 billion and so on over to the end of the 5-year period.

So what has he done? He has increased the national debt by almost a trillion dollars over the next 5 years. And they talk about wanting to balance the budget.

The one thing that is said is true, and that is that Congress just does not have the guts to balance the budget themselves. That is too bad. And, therefore, they do need that prodding. That is what those five Senators that promised to vote for a balanced budget amendment last year during their election said that needed to happen. Yet today they turned around and voted "no."

You know, Mr. Speaker, I introduced a budget last year. It was an alternative to both the Democrat and Republican budgets. And if you look at this bottom figure, we accumulated, instead of a trillion dollars over 5 years, we accumulated only $252 billion. But the interesting thing is that every single year the deficit dramatically dropped from $132 billion the first year down to $69 billion the second year, $47 billion the third year, $12 billion the fourth year, and a surplus of $8 billion in the fifth year.

You say, how did you do that? Because all of the pundits say, you cannot do that without raising taxes. You cannot do that without cutting Social Security. You cannot do that without cutting into contractual obligations to veterans.

Well, my colleagues, we did that. How did we do it. We did it by eliminating 150 programs like the Interstate Commerce Commission, that is totally wasteful. We privatized 125 government agencies, like the Federal Aviation Administration. We consolidated 35 government functions like the Bureau of Indian Affairs that has been there for 70 years and does nothing today. And downsized the Department of Education from 5,000 employees down to an office of only 500. We abolished the Department of Energy, which has not produced a gallon of gasoline or a quart of oil, we cut out 16,000 employees there and let the free market system work.

We converted the Department of Commerce from an overblown department of 36,000 employees down to only 3,000 and made them a consultative body to business and industry instead of this huge bureaucratic department. And then we means tested every single Federal program, including school lunch programs.

People say, Republicans want to do away with school lunch programs. We do not want to do away with school lunch programs. What we want to do is make Members of Congress ineligible because of their total wages. We make $129,000 or $130,000 a year. Why should the Government be subsidizing my children's school lunches? They should not, because we cannot afford it. And we means test that with people with incomes over $50,000.

Medicare, people with incomes of over $100,000 or $200,000 are being subsidized by the Federal Government for their health care. That is all well and good, I suppose, if you can afford it. But we do not have the money. And we means test everything else across the board.

Do you know what that did? That gave us an $800 billion savings over 5 years, and we balanced the budget without hurting people, by truly taking care of the needy.

It can be done, but we cannot do it the way this president is trying to do it.

HARVEST OF TREES ON FEDERAL LANDS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington [Mr. DICKS] is recognized for 5 minutes.

Mr. DICKS. Mr. Speaker, yesterday the House Committee on Appropriations took very dramatic action to deal with a very serious environmental problem in our country. Yesterday the House Committee on Appropriations directed the Forest Service to double their salvage program from approximately 1.5 billion board feet up to 3 billion board feet over the next 2 years. What that will do in essence will be to expand this program that is used to go out and take down dead, dying, diseased, bug-infested, and burnt trees that are going to rot and will be of no use to us over the next 2½ years.

What we said is, this is an emergency. We need to go out and do a good job for the American people, allow our foresters to go out and gather in those burnt, bug-infested trees. And that we could, if we did this, probably bring in about a billion dollars over the next 2 years in additional revenues to the treasury.

Also we would be protecting the forest health. It is clear in my mind and all the experts say this, if we do not get rid of these dead and dying trees, then we are going to be faced with the problem of increased forest fires.

Last year we spent in fighting forest fires in the west $1 billion. So we passed this emergency program yesterday and in it we created expedited procedures. We said that for the next 2 years, every sale will have to have an environmental assessment. There will have to be a biological opinion done, in which you look at the effect on endangered species, and if an agency, the Forest Service or the BLM are arbitrary and capricious, you can go into Federal court and stop that sale, that there will also be a period of time for administrative review. So we have created expedited judicial procedures and expedited environmental review, because if we do not act, if we do not get those trees while we can, we are going to lose this potential revenue to the Federal taxpayers.

Now, how much salvage is out there in the entire country? The Forest Service estimates that there is somewhere between 18- and 21-billion-board feet of this salvage that is out there. And today our lumber mills need saw logs. Our pulp and paper mills need chips. We have seen a dramatic reduction in harvesting of our Federal forest lands. And because of that, our mills are going out of business, particularly in the Pacific Northwest.

So I hope that the American taxpayers and the American people will support the Committee on Appropriations, will support the Taylor-Dicks amendment, which will allow this to happen.

I am glad that we had a bipartisan approach to this. The gentleman from North Carolina, Congressman TAYLOR, is a forester. He knows a lot about these matters. I have been working on these issues and trying to urge additional salvage for many, many years.

I think this is a win-win. We can protect the forest health by getting rid of these dead and dying trees, because if we do not do it, if we leave it out there, then we will have increased forest fires next year and we will have to spend billions more fighting the fires out in the west.

We also, by the way, the home builders of our country support this, because the cost of lumber in an ordinary $135,000 has gone up by $5,000 a house, because of the shortage of lumber.

This will give additional lumber supply and hopefully will reduce those prices. So it has a positive effect on housing as well.

I regret that we have to take this emergency step. I regret that we had to do this in the Committee on Appropriations. But I want you to know that the chairman of the Committee on Resources and the chairman of the Committee on Agriculture, the two committees with authorizing jurisdiction, approved this measure, because they recognize the emergency.

In my own State of Washington, we have seen a dramatic reduction in timber harvesting of our Federal lands over the last several years. Many of the people who I grew up with, went to school with, have lost their jobs, have gone into bankruptcy because they used to depend on logs off our Federal lands and they cannot get them any longer.

And they come to me and say, "Norm, can't we please have those dead and dying trees, the ones that are burnt, that are going to rot and we can't use them after two or three years? Can't we go out there and get them?"

So this amendment will allow that to happen, and I hope when it comes to the floor that we will have unanimous support, as we did in the Committee on Appropriations of the House of Representatives.

□ 1530

AFFIRMATIVE ACTION

The SPEAKER pro tempore (Mr. OXLEY). Under the Speaker's announced policy of January 4, 1995, the gentleman from California [Mr. TUCKER] is recognized for 60 minutes as the designee of the minority leader.

Mr. TUCKER. Mr. Speaker, I would like to take this time today in this special order to talk about an issue that is admittedly controversial but an issue that is going to be important to the well-being and the future of this country. That is, the issue of affirmation action.

This issue is about the fundamental right of minorities and women to participate in this society on every level without arbitrary and capricious barriers.

Mr. Speaker, affirmative action is a sledge hammer, created by this society, to smash the concrete barriers to opportunity. It was designed and implemented to erode the dual barriers of racism and sexism in this country, be it individual or institutional—intended or unintended. Mr. Speaker, throughout the history of this country, African-Americans have experienced the most humiliating and dehumanizing treatment every perpetrated on any group of people save the Native American.

The freedom of women and minorities to participate has been both a recent phenomenon and more importantly, a direct result of the Suffrage Movement, the Civil Rights Movement, the Voting Rights Act and just as importantly—affirmative action. While I know support for affirmative action has dwindled, its necessity is as apparent as ever before.

I am here today to tell those Americans who would dismantle affirmative action and undermine the gains of minorities and women that their efforts will not succeed.

Before the discussion can begin on the dismantlement of a policy, before attempts can be made to reverse the gains made by people in the areas of diversity, access and inclusion, before America can even think about having race and gender neutral laws, America must answer the question—have we really removed race and gender bias? Every statistic seems to suggest that we have not.

Let me begin by defining what affirmative action is and how it came to be.

Affirmative action is a term that first appeared in the text of the 1935 Wagner Act.

Under the Wagner Act, employers who were found to have intentionally engaged in unfair labor practices against union organizers and members had to take "affirmative action, including reinstatement of employees."

In 1941, prior to U.S. entry into World War II, President Franklin D. Roosevelt issued Executive Order 8802 affirming that it was U.S. policy "To encourage full participation in the national defense program by all citizens of the United States, regardless of race, creed, color or national origin."

Further, the order required that all future Defense contracts negotiated by the U.S. Government contain a nondiscrimination clause.

Executive orders for the next 20 years built upon the nondiscrimination mandate of Executive Order 8802. These orders reaffirmed the Federal Government's commitment to equal opportunity and reorganized the administrative structures to implement nondiscrimination policies in Federal employment under Government contract.

In 1961 President Kennedy issued Executive Order 10925 which endorsed a more proactive approach to equal opportunity and created the President's Committee on Equal Employment Opportunity.

The committee was directed "to consider and recommend additional affirmative steps which should be taken by executive departments and agencies to realize more fully the national policy of nondiscrimination within the executive branch of the Federal Government. The order required that Government contractors agree not to engage in employment discrimination based on race, creed, color, or national origin, and agree to "Take affirmative action to ensure that applicants are employed, and that employers are treated during employment" without regard to these characteristics.

Not until the Civil Rights Act of 1964 did the U.S. House of Representatives see fit to apply affirmative action to private employers.

The Civil Rights Act of 1964 made it unlawful for employers to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

The act went on to provide a remedy in the event a court found that an employer had "intentionally engaged in * * * an unlawful employment practice."

For the first time in American history, women and people of color had a guarantee of an opportunity to do what white males had always been able to do; the right to dream of a future and a real opportunity to realize that dream.

Since the 1960's both the executive and legislative branch have crafted a wide range of Federal laws and regulations authorizing, either directly or by judicial or administrative interpretation, affirmative race and gender conscious strategies to promote minority and women opportunities in jobs, housing, education, voting rights, and Government contracting.

Every President since President Kennedy has supported affirmative action as a tool to overcome past as well as present discrimination. Current standards for affirmative action were recommended in the late 1960's to the Nixon administration by a group of several hundred large corporations. These recommendations, accepted by President Nixon and implemented by Secretary of Labor George Schultz, included the management by objectives concepts of employment goals and time tables.

During the Reagan administration, the majority of the Cabinet, led by Secretary Bill Brock, successfully fought efforts by Ed Meese and Clarence Thomas to undermine the executive order on affirmative action. They were joined by bipartisan majorities in both the House and Senate. By 2-to-2 votes, bipartisan majorities in the Senate have defeated Senator HELMS' last two attempts to ban affirmative action. The language in Senator HELMS' legislation was much like that of the referendum now being presented to voters in the State of California.

Polls consistently show that Americans, by a 3-to-2 margin, support Federal affirmative action programs as long as they do not involve quotas. In addition, a January 1995 Los Angeles Times poll showed that when people were asked whether "affirmative action programs designed to help minorities get better jobs and education go to far these days, or don't go far enough, or are just about adequate," fifty-five percent said the programs are adequate or do not go far enough, while only 39 percent said the programs go too far.

I would submit that all Americans want a color or gender blind society, and that should be the goal of every American citizen. But serious discrimination still persists throughout this country. Study after study concludes that in employment, education, housing, and voting, minorities and women do not have equal opportunity. All too often, individual or institutional discrimination, whether it is intended or unintended, precludes minorities and women from participating in many levels of our society. As long as there is discrimination based on race and gender we must fashion remedies that take race and gender into account. Race and gender conscious remedies have proven to be essential and remain essential.

For nearly 20 years there have been those who have attempted to reverse the gains made in affirmative action. Each and every time they have been defeated. Moreover, the U.S. Supreme Court has repeatedly upheld the constitutionality of race and gender-based remedies. The Court has held that if discrimination is based upon the hue of a persons skin or the anatomy to which that person is born—then the same shall be taken into account when fashioning a remedy.

For years, many opponents of affirmative action have been misrepresenting the law and the facts regarding affirmative action.

Too many politicians have attempted to divide this Nation by playing racial politics with the quota issue. Those tactics have led many to believe that affirmative action and quotas are one in the same.

In tough economic times, when people fear losing—and are in fact losing—their jobs, their promotions, and their quality of life, they feel the need to blame and to scapegoat others. In such an environment, divisive quota politics will always find a receptive audience. For years the courts have struggled contentiously to balance competing interests in order to meet the test of practical fainess to all parties. Our Nation's Highest Court has ruled that minority workers may be denied positions. If awarding the position would require the displacement of a white worker already holding the position. The test as articulated in United Steel Workers versus Weber is whether race-conscious remedies unnecessarily impede the progress or interests of the white employees. In employing Weber, courts have drawn lines between actions that "disappoint the expectations of whites and those that take away from them" a status that they have already attained. Various means have been utilized to provide redress to workers, black or white, whose legitimate expectations have been defeated through no fault of their own. Political bodies have a wider array of options than the courts to assure that no one bears disproportionate burden in adjusting civil rights and seniority claims during tough economic times. If predictions of future labor shortages are accurate, the dilemma should arise less frequently.

With respect to claims of the disintegration of merit standards by affirmative actions policies, it has been clear from the outset that Federal affirmative action policy recognizes and incorporates the principle of merit. The courts have repeatedly stated that the purpose of affirmative action is to create an environment where merit can prevail and that if a party is not qualified for a position in the first place, then affirmative action considerations do not come into play.

Though critics argue that the merit requirement is widely flouted, they have yet to produce any evidence of its widespread abuse. Most often, those critics argue not for the correction of the abuse, but the total dismantlement of affirmative action.

Mr. Speaker, after 250 years of slavery, 100 years of apartheid, and 40 years of intentional discrimination made legal by the States, minorities and women find themselves under attack.

The vitriolic attacks on affirmative action being spewed from the youths of persons across this Nation, in States and localities throughout this country, is alarming. To those who would suggest that America has reached a point where a nation blind to pigment and gender is now at hand and affirmative action is no longer needed, just take a look around.

White males are 33 percent of the U.S. population, yet 80 percent of tenured professors are white male, 80 percent of this body is white male, 90 percent of the other body is white male, 92 percent of the Forbes 400 is white male, 97 percent of all school superintendents and 99.9 percent of all professional sports owners are white males.

Since the beginning of this country, white males have been and continue to receive preferential treatment in hiring, in services, in contracting, in educational opportunities, and in housing.

Since Members of this body like to use anecdotes, let me relate a story of what happened to the speaker of the California State Assembly, one of the most—if not the most powerful man in the State, Willie Brown, Jr. Some years ago the honorable assembly speaker attempted to lease an apartment in the city of San Francisco. Upon inquiring about the availability of an apartment, the speaker was told that no apartments were available. Mr. Speaker, Speaker Brown asked a white friend to make the same inquiry at the same location—upon requesting to see that apartment that friend was promptly shown an available unit. Now some would argue that the incident has nothing to do with race, but for some of us we can find no other explanation.

The signals are clear that there are those in this country and in this body who intend to roll back efforts on affirmative action and to call America's war on discrimination over.

I stand firm in my belief "that all men are created equal" and that given the recent history of this country, measures like the 1964 Civil Rights Act and subsequent court rulings were and continue to be necessary. If this were a homogeneous society without its history of hatred of oppression by the majority on the minority and women, there would be no need for affirmative action. This is not a homogeneous society. This is America, black, white, red, yellow, and brown: A nation of great diversity, representing every part of the world. Those who profess to support equality of opportunity while denigrating the remedies available to overcome this sad history, while offering no solutions, do nothing more than pay lip service to what women and minorities see as the most fundamental of human rights: The right to participate fairly and freely without arbitrary and capricious barriers.

I would submit to you, Mr. Speaker, and to this great Nation, that we cannot accept as truth, the notion that remedies designed to redress past, present, and future discrimination, are now somehow special rights conferred upon women and minorities. No matter how loud and how often these words are spoken, the truth is that these remedies are designed to lead to a more inclusive society. And on this issue there will be no retreat and there will be no surrender. All Americans should be guaranteed equality of opportunity. This proposed movement away from the inclusive policies of the past, presumes that we are now an inclusive society. The facts however reveal that we as a nation are not yet there.

If America wants to eliminate affirmative action while never frankly discussing her invidious racial past, and never accepting as a principle the equality of all persons; America will see the return of an era gone by. An era of mass demonstrations, boycotts, sit-ins, and whatever else is necessary, by any means necessary, to show this Nation and the world that American women and people of all colors; red, yellow, black, white, and brown, will not go back—and again I state on this issue there shall be no retreat and there shall be no surrender.

□ 1545

ACCOMPLISHMENT OF REPUBLICAN CONGRESS

The SPEAKER pro tempore (Mr. OXLEY). Under the Speaker's announced policy of January 4, 1995, the gentleman from Georgia [Mr. NORWOOD] is recognized for 60 minutes as the designee of the majority leader.

Mr. NORWOOD. Mr. Speaker, we have now completed 59 days of very hard work in this House, and as I sit back and ponder what we have accomplished in these 59 days I am really struck by the differences in what we on this side of the aisle are doing and what the Democrats are saying in opposition.

We want to take this country forward. We want to protect our Nation's future by reducing our national debt. But from the other side we hear very meek defenses and sometimes very loud defenses of the status quo.

We hear their cries to save the failed policies of the welfare state that they created over the last 40 years. And we hear their pleas to save the precious bureaucracy, for only the Federal bureaucrats know how to govern this Nation, they say.

Mr. Speaker, we owe very near $5 trillion. We are adding another trillion every 4 years. We are paying almost $300 billion annually in interest on our debt. There is no greater thing we must fear than our debt.

A trillion is a large number. I never can keep the zeros correct behind a trillion. But we owe almost $5 trillion, and maybe to put that in perspective just a little bit, I would say that if we tried to pay off $1 trillion of our debt and we chose to do that by paying $1 every second, we would pay off that trillion dollars in 144,000 years. And I remind my colleagues perhaps that organized agriculture only started on this planet 10,000 years ago.

I hope that says to Members as it does to me that though 5 is small, trillion is a lot, and the young people in this room today surely must realize that if we continue on the path that we have been going we are spending their inheritance, and we are spending their future, and those of us who sit over here every day and listen to the mistruths on this side every day are simply trying to bring that in balance.

The Federal bureaucrats who seem to run this Nation are people that are hired by us with our tax dollars. These people are nonelected officials, and it is not my opinion that they know what is best. In this great country, it is true that we are responsible for ourselves, we have individual responsibilities, and the great thing about this Nation is that we are free, and we should all be able to reach for the heavens and be all we can be according to our abilities and our willingness to work without interference from a Federal bureaucracy, and that is what we have been saying for 59 days.

These people must get off our backs and quit taking our freedoms away.

Mr. Speaker, I would like for you to consider all of the things that we have accomplished. On the first day of this Congress we passed reforms to make this body more responsible, to limit the power of the committee chairmen who for years, along with the Speaker have run this government, who had dictatorial control during their Democratic regime.

We have cut the number of staffers, just like we said we would, and we have eliminated funding for the caucuses, just like we said we would. We have made this body more open and more responsible, all the while every day the Democrats gripe and complain.

Mr. Speaker on January 26 we took a step in this body that the vast majority of Americans asked us to do. We passed the BBA, the balanced budget amendment, after trying for years, and I cannot tell you how excited I was that night when over 300 Members of this body cast their veto giving us finally a balanced budget amendment.

It was exciting because the number was 300, in fact because it was a bipartisan effort, Members from both sides of the aisle finally realized that in order to get this Congress to have the guts to do what they are supposed to do there was no option left but to change the Constitution. Three hundred Members of this body voted for it. And this will basically restore fiscal sanity and bring us back from the brink of disaster that we peer over, and we do.

It was a vote to save the children of this great Nation from a daunting future ahead of them, it was a vote to save my granddaughter from a very uncomfortable future. We did the right thing. I know we did. And even though the amendment did not pass the Senate yesterday, I know we in this body did what we said we would do. We did what 80 percent of the Americans in this country asked us to do: We passed a balanced budget amendment.

And I know that you are watching, I know that the American people are watching, they are watching C–SPAN in greater numbers than any time in the history of C–SPAN. They will remember who stopped this amendment.

They will recognize that those in the Senate who voted against this amendment, though, said just a year ago they would gladly vote for a balanced budget amendment were some of the very same people that cut Social Security benefits to our senior citizens just last year by a tax increase; yet this year they say, no, we cannot have a balanced budget amendment because it might affect Social Security.

The American people will remember the names of those who voted for the amendment last year and against it this year. The American people will remember. And there will be, ladies and gentlemen, there will be accountability for defeating the will of the majority.

All the while a small group of Democrats in this body cried about the precious programs that they would lose because of a balanced budget amendment. It is almost as if these programs are more important to them than the fiscal security of this Nation.

We heard much the same arguments when we passed the line-item veto and the Unfunded Mandates Reform Act. With the line-item veto we gave the President the same power possessed by most of the Nation's Governors. We gave the President an important tool in our fight against the deficit. We released the States from a choking grasp of unfunded Federal mandates and all the while the Democrats fretted that we would take the power away from the Federal Government.

Ladies and gentlemen, the power in this country is the power within the people's lands, not a Federal Government. In these 59 days we have made great strides in improving the quality of life in this Nation. Our crime bill, for example, will give local law enforcement the power to attack crime only as they know how. The National Security Restoration Act will ensure that no American soldier in the service of this Nation will die at the whim of an Egyptian bureaucrat.

We have passed legislation to bring the massive regulatory bureaucracy under control, and thank God. We have released the American people from the mindless bureaucrats that inflict billions and billions of dollars of unnecessary burden on the American economy, large business, small business and all.

In passing these acts we have kept our promise to the American people. We have put in more hours, held more hearings, cast more votes than any previous Congress had to this point in recent history. We have shown this Nation, with the work that we have done, that the U.S. House of Representatives can be an effective legislature.

We have shown the American people that Government can get the important business of this Nation accomplished. And we are going to accomplish still more in the next 41 days.

In the next 41 days we will reform the legal system to make our system more responsible and reduce the dragging effect that frivolous lawsuits have on this Nation. We are going to pass term limits to make legislators value public service over professional politics. We will take steps to treat seniors equitably with the Senior Citizens Equity Act, and yes, we will make reforms of our morally bankrupt welfare system.

And we will continue to hear the guardians of the old order whine and cry as we dismantle the system that they created over 40 years. We will continue to hear Democrats tell the American people how the Federal Government always knows best, as they did in the unfunded mandates debate.

We will continue to hear the Democrats say that local officials cannot be trusted to do the right thing, as they did in the crime bill debate. We will continue to hear the Democrats fight to save the power of the Federal bureaucrats, as they did in the regulatory reform debate.

It is offensive to me to sit here and listen day in and day out as they trumpet the capabilities of the bureaucracy to make our life better, as they clamor for the necessity of a bureaucracy that lives in our daily lives from the minute we get up to the minute we go to bed.

□ 1600

The hardworking folks back at home know better. The Federal Government has never been the cure-all the Democrats would like for you to think. The Federal Government is more often than not a nightmare waiting to happen to the hardworking people of this Nation.

The American people know better, and that is why the Democrats are in the minority today.

Ah, but now, Mr. Speaker, they have finally found a way to disguise this bankrupt argument that the Federal Government knows best. They have found a way to disguise their love of the Federal bureaucracy. We are now beginning to hear arguments that Republicans are out to starve the American children. Mr. Speaker, this is utter and complete nonsense.

I was on this floor last night for 1 hour listening to one lie right after the other about our nutrition programs, lies told by people who know better. If the American people knew how much the Democrats are willing to distort the truth to save the bureaucracy, they would be absolutely outraged. Yes, we are combining many nutritional programs into block grants; yes, we are sending the moneys back to the States where the teachers and the dietitians and the superintendents know best.

But, no, we are not sending less, we are sending more. We are increasing the funding because it involves children. But if you listen to the other side, you do not get the truth. Mr. Speaker, it is exasperating to have to put up with the rhetoric the other side hurls at us. I voted in committee to increase the funding for child nutrition programs, to increase the funding child nutrition programs are getting. Yet people are calling my office worried that we are gutting these programs. Why? We are not. Where do they read such things? Where do they hear such things? It is not happening.

We are increasing funding and eliminating the wasteful Federal bureaucracy to help get more money to the States, more money for food, not for bureaucrats. The charge that we are cutting funding is patently false. Perhaps, Mr. Speaker, Americans should consider why Democrats have sought to distort reality to protect Federal bureaucrats. Could it be, Mr. Speaker, for financial reasons? Could it be because Democrats receive millions and millions of dollars in campaign funding from bureaucrats? Could it be because these contributions to Democrats outnumber contributions to Republicans by a margin of 9 to 1?

Could it be that Democrats have a vested interest in protecting Federal bureaucrats?

Mr. Speaker, I would simply ask that the American people look at the facts. It is a fact that we are putting more money into child nutrition, it is a fact that our bill dismantles part of the Federal bureaucracy and it is a fact that Democrats receive significant campaign contributions from Federal bureaucrats.

All I ask is that the American people consider the facts.

Mr. Speaker, this Congress will continue to do what is best for America, this 104th Congress will. We will continue to keep the promises we made to make this Nation a better place, even in the face of distorted arguments made by the other side.

Mr. Speaker, if the Democrats really cared about children, they would stop fighting to save the bureaucracy and engage in an honest discussion about how to improve our welfare system.

For the good of this Nation, I surely hope they will join us in doing what is right for America.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. BROWDER) to revise and extend their remarks and include extraneous material:)

Mr. HOYER, for 5 minutes, today.

Mr. BROWDER, for 5 minutes, today.

Mrs. CLAYTON, for 5 minutes, today.

Mr. OWENS, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

(The following Members (at the request of Mr. SCARBOROUGH) to revise and extend their remarks and include extraneous material:)

Mr. SCARBOROUGH, for 5 minutes, today.

Mr. SAXTON, for 5 minutes, today.

Mr. ARCHER, for 5 minutes, today.

Mrs. MORELLA, for 5 minutes on March 8.

Mr. SMITH of Michigan, for 5 minutes, today and on March 7.

Mr. SOLOMON, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. DICKS, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. BROWDER) and to include extraneous matter:)

Ms. MCKINNEY.

Mr. FARR.

Mr. FOGLIETTA.

Mr. VENTO.

Mr. WARD.

Mr. TRAFICANT.

Ms. ESHOO in 11 instances.

Mr. COLEMAN.

Mr. UNDERWOOD.

Mr. MCDERMOTT.

Mr. OBERSTAR.

Mr. JOHNSON of South Dakota.

Mr. ACKERMAN.

Ms. MCCARTHY.

Mr. RAHALL.

(The following Members (at the request of Mr. SCARBOROUGH) and to include extraneous matter:)

Mr. COLLINS of Georgia.

Mr. SMITH of New Jersey.

Mr. PORTMAN.

(The following Members (at the request of Mr. NORWOOD) and to include extraneous matter:)

Mr. HALL of Texas in two instances.

Mr. MENENDEZ in six instances.

Mr. KIM.

Mr. FILNER.

Mr. LARGENT.

Mr. DAVIS.

Mr. YOUNG of Florida.

ADJOURNMENT

Mr. NORWOOD. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 5 minutes p.m.), under its previous order, the House adjourned until Monday, March 6, 1995, at 12:30 p.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

458. A letter from the Deputy Secretary of Defense, transmitting a report pursuant to section 1075 of the National Defense Authorization Act for fiscal year 1995; to the Committee on National Security.

459. A letter from the Department of Defense, Director of Defense Research and Engineering, transmitting a report on creation and operation of new federally funded research center, pursuant to 10 U.S.C. 2367(d)(1); to the Committee on National Security.

460. A letter from the Director, Defense Security Assistance Agency, transmitting the quarterly reports in accordance with sections 36(a) and 26(b) of the Arms Export Control Act, the March 24, 1979 report by the Committee on Foreign Affairs, and the seventh report by the Committee on Government Operations for the first quarter of fiscal year 1995, October 1, 1994 through December 31, 1994, pursuant to 22 U.S.C. 2776(a); to the Committee on International Relations.

461. A letter from the Chairman, Board for International Broadcasting, transmitting the Board's annual report on its activities, as well as its review and evaluation of the operation of Radio Free Europe/Radio Liberty for the period October 1, 1993, through September 30, 1994, pursuant to 22 U.S.C. 2873(a)(9); to the Committee on International Relations.

462. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the nonproliferation and disarmament fund report, fiscal year 1994, pursuant to section 504 of the Freedom Support Act of 1992; to the Committee on International Relations.

463. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11-16, "Salvation Army Equitable Real Property Tax Relief Act of 1995," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

464. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11-17, "Methodist Cemetery Association Equitable Real Property Tax Relief Act of 1995," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

465. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11-18, "Christ United Methodist Church Equitable Real Property Tax Relief Act of 1995," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

466. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11-19, "Real Property Deed Recordation Amendment Act of 1995," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

467. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11-21, "Metropolitan Baptist Church Equitable Real Property Tax Relief Act of 1995," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

468. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11-22, "Riverside Baptist Church Equitable Real Property Tax Relief Act of 1995," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

469. A letter from the Assistant Secretary (Management), Department of Treasury, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(e); to the Committee on Government Reform and Oversight.

470. A letter from the General Counsel, Federal Emergency Management Agency, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

471. A letter from the Chairman, Federal Maritime Commission, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

472. A letter from the Secretary of Health and Human Services, transmitting the annual report with respect to actions taken to recruit and train Indians to qualify them for positions subject to Indian preference; the annual report on actions taken to place non-Indians employed by the Indian Health Service in other Federal agencies, pursuant to 25 U.S.C. 472a(d); to the Committee on Resources.

473. A letter from the Chairman, Administrative Conference of the United States, the Conference's report entitled, "Toward Improved Agency Dispute Resolution: Implementing the ADR Act"; to the Committee on the Judiciary.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DREIER: Committee on Rules. House Resolution 103. Resolution providing for consideration of the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes (Rept. 104-65). Referred to the House Calendar.

Mr. GOSS: Committee on Rules. House Resolution 104. Resolution providing for consideration of the bill (H.R. 988) to reform the Federal civil justice system (Rept. 104-66). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ARCHER (for himself and Mr. GIBBONS):

H.R. 1121. A bill to make technical corrections relating to the Revenue Reconciliation Act of 1990 and the Revenue Reconciliation Act of 1993, and for other purposes; to the Committee on Ways and Means.

By Mr. YOUNG of Alaska:

H.R. 1122. A bill to authorize and direct the Secretary of Energy to sell the Alaska Power Administration, and for other purposes; to the Committee on Resources, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BROWDER;

H.R. 1123. A bill to repeal statutory limitations on the transportation of chemical munitions; to the Committee on National Security.

By Mr. COLEMAN:

H.R. 1124. A bill to amend chapters 83 and 84 of title 5, United States Code, to provide that, for civil service retirement purposes, inspectors of the Immigration and Naturalization Service, inspectors and canine enforcement officers of the U.S. Customs Service, and revenue officers of the Internal Revenue Service shall be treated in the same way as law enforcement officers; to the Committee on Government Reform and Oversight.

By Mr. TRAFICANT:

H.R. 1125. A bill to prohibit economic assistance and military assistance or arms transfer to the Government of Trinidad and Tobago until appropriate action is taken to eliminate illicit drug trafficking in Trinidad and Tobago; to the Committee on International Relations.

By Mr. FRANKS of New Jersey (for himself, Mr. PALLONE, Mr. LIPINSKI, Mr. SAXTON, Mr. FLAKE, Mr. ZIMMER, Mr. PAYNE of New Jersey, Mr. LoBIONDO, Mr. TORRICELLI, Mrs. ROUKEMA, and Mr. MARTINI):

H.R. 1126. A bill to strengthen and improve the pipeline safety provisions of chapter 601 of title 49, United States Code, and for other purposes; to the Committee on transportation and Infrastructure, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GANSKE (for himself and Mr. WYDEN):

H.R. 1127. A bill to limit the issuance of patents on medical procedures; to the Committee on the Judiciary.

By Mr. GILMAN:

H.R. 1128. A bill to amend title 28, United States Code, to provide an additional place for holding court in the southern district of New York; to the Committee on the Judiciary.

By Mr. LEWIS of Georgia (for himself, Mr. HILLIARD, Mr. ACKERMAN, Mr. BALDACCI, Mr. BARRETT of Wisconsin, Mr. BISHOP, Ms. BROWN of Florida, Mr. BRYANT of Texas, Mr. CLAY, Mrs. CLAYTON, Mr. CLYBURN, Mrs. COLLINS of Illinois, Mr. CONYERS, Mr. CRAMER, Mr. DELLUMS, Mr. DeFAZIO, Ms. DeLAURO, Mr. ENGEL, Mr. FARR, Mr. FATTAH, Mr. FILNER, Mr. FLAKE, Mr. FRANK of Massachusetts, Mr. FRAZER, Mr. FROST, Mr. GENE GREEN of Texas, Mr. HINCHEY, Mr. JACOBS, Ms. JACKSON-LEE, Mr. JEFFERSON, Ms. EDDIE BERNICE JOHNSON of Texas. Mr. KILDEE, Ms. LOFGREN, Mrs. LOWEY, Mrs. MALONEY, Mr. McDERMOTT, Mrs. MEEK of Florida, Mr. MILLER of California, Mr. OWENS, Mr. PAYNE of New Jersey, Ms. PELOSI, Mr. RANGEL, Mr. RICHARDSON, Mr. RUSH, Mr. SANDERS, Mrs. SCHROEDER, Mr. SCOTT, Mr. STUPAK, Mr. THOMPSON, Mr. TOWNS, Mr. TUCKER, Mr. UNDERWOOD, Ms. VELÁZQUEZ, Mr. WILLIAMS, Mr. WARD, Mr. WATT of North Carolina, Mr. WYNN, Mr. REYNOLDS, Miss COLLINS of Michigan, Ms. McKINNEY, Mr. MFUME, Mr. WATERS, Mr. HASTINGS of Florida, Mr. STOKES, and Mr. DIXON):

H.R. 1129. A bill to amend the National Trails Systems Act to designate the route from Selma to Montgomery as a National Historic Trail; to the Committee on Resources.

By Mr. DORNAN:

H.R. 1130. A bill to prohibit award, grant, and contract recipients from lobbying for the continuation of their awards, grants, and contracts and to repeal authority for the payment of expenses of intervening and the payment of attorney's fees, and for other purposes; to the Committee on the Judiciary, and in addition to the Committee on Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. McCRERY (for himself, Mr. HANCOCK, Mr. SHADEGG, and Mr. SMITH of Michigan):

H.R. 1131. A bill to balance the Federal budget by fiscal year 2002 through the establishment of Federal spending limits; to the Committee on the Budget, and in addition to the Committee on Rules, and Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. OBERSTAR:

H.R. 1132. A bill to amend the Federal Water Pollution Control Act to establish requirements and provide assistance to prevent nonpoint sources of water pollution, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. STEARNS:

H.R. 1133. A bill to provide that pay for Members of Congress may not be increased by any adjustment scheduled to take effect in a year immediately following a fiscal year in which a deficit in the budget of the U.S. Government exists; to the Committee on Government Reform and Oversight, and in addition to the Committee on House Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SMITH of Michigan (for himself, Mr. SHADEGG, Mr. HANCOCK, Mr. BARTON of Texas, Mr. HERGER, Mr. TAYLOR of Mississippi, Mr. LARGENT, Mr. BURR, Mr. SCARBOROUGH, and Mr. ZIMMER):

H.J. Res. 74. Joint resolution proposing a balanced budget amendment to the Constitution of the United States; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 6: Mr. LEACH, Mr. NETHERCUTT, Mr. SKEEN, and Mr. SOUDER.

H.R. 26: Mr. HANCOCK and Mr. MEEHAN.

H.R. 28: Mr. SHAYS.

H.R. 52: Mr. HERGER and Mr. PARKER.

H.R. 104: Mr. PARKER and Mr. FOLEY.

H.R. 209: Mr. HERGER, Mr. DUNCAN, and Mr. CALVERT.

H.R. 312: Mr. SHAYS.

H.R. 441: Mr. COOLEY, Mr. LEACH, Mr. ENGLISH of Pennsylvania, Mrs. CLAYTON, Mr. WELLER, Mr. EHLERS, Mr. EVANS, and Mr. WICKER.

H.R. 462: Mr. BEILENSON and Mr. UNDERWOOD.

H.R. 483: Mr. MEEHAN, Mr. BORSKI, Ms. ROYBAL-ALLARD, Mr. KIM, and Mr. BILBRAY.

H.R. 488: Mr. DELLUMS.

H.R. 548: Mr. LIPINSKI and Mr. PARKER.

H.R. 549: Mr. WICKER, Mr. CANADY, Mr. RIGGS, Mr. DIAZ-BALART, and Mr. McCOLLUM.

H.R. 559: Mr. MEEHAN and Mr. BORSKI.

H.R. 575: Mr. DAVIS, Mr. CANADY, Mr. ENGLISH of Pennsylvania, Mr. FRANKS of New Jersey, Mr. BARTLETT of Maryland, Mr. TORKILDSEN, Mr. SOUDER, Mr. McKEON, Mr. LARGENT, Mr. GRAHAM, Mr. LaTOURETTE, Mr. SHAYS, Mr. NEY, and Mr. GUTKNECHT.

H.R. 592: Mr. SKEEN, Mr. PARKER, and Mr. FOLEY.

H.R. 645: Mr. PAYNE of New Jersey and Mr. SERRANO.

H.R. 658: Mr. OLVER and Mr. WATT of North Carolina.

H.R. 708: Mr. SMITH of Texas and Mr. FORBES.

H.R. 777: Mr. ANDREWS, Mr. BENTSEN, Mr. BILBRAY, Mr. BORSKI, Mr. BUNNING of Kentucky, Mr. FOX, Mr. KING, Mr. LIPINSKI, Ms. MOLINARI, Mrs. MORELLA, Mr. OLVER, Ms. PRYCE, Mr. RANGEL, Mr. ROMERO-BARCELÓ, Mrs. SEASTRAND, and Mr. PARKER.

H.R. 778: Mr. ANDREWS, Mr. BENTSEN, Mr. BILBRAY, Mr. BORSKI, Mr. BUNNING of Kentucky, Mr. FOX, Mr. KING, Mr. LIPINSKI, Ms. MOLINARI, Mrs. MORELLA, Mr. OLVER, Ms. PRYCE, Mr. RANGEL, Mr. ROMERO-BARCELÓ, Mrs. SEASTRAND, and Mr. PARKER.

H.R. 779: Mr. FALEOMAVAEGA, Mr. FOX, Mr. MARTINEZ, Mrs. MORELLA, Mr. OLVER, Mr. RANGEL, Mr. ROMERO-BARCELÓ, Mr. SCOTT, Mr. VENTO, Mr. WYNN, and Mr. PARKER.

H.R. 780: Mr. FALEOMAVAEGA, Mr. FOX, Mr. MARTINEZ, Mrs. MORELLA, Mr. OLVER, Mr. RANGEL, Mr. SCOTT, Mr. VENTO, Mr. WYNN, and Mr. PARKER.

H.R. 789: Mr. ROTH, Mr. FOX, Mr. BARR, and Mr. BOEHNER.

H.R. 800: Mr. ENGLISH of Pennsylvania and Mr. LATHAM.

H.R. 803: Mr. LEWIS of California and Mr. BILBRAY.

H.R. 820: Mr. TOWNS, Mr. CRAMER, and Mr. WAMP.

H.R. 860: Mr. KINGSTON.

H.R. 899: Mrs. SMITH of Washington, Mrs. CHENOWETH, Mr. NETHERCUTT, Mr. GORDON, Mr. HOSTETTLER, Mr. QUILLEN, Mr. TATE, Mr. LATHAM, Mr. BRYANT of Tennessee, Mr. COBURN, Mr. WHITE, Mr. HEFLEY, and Mr. HINCHEY.

H.R. 922: Mr. MARTINEZ and Mr. LIPINSKI.

H.R. 942: Ms. ROYBAL-ALLARD, Ms. McKINNEY, Mr. SCHIFF, Mr. BLUTE, Mrs. ROUKEMA, Mr. ENGLISH of Pennsylvania, Mr. ZIMMER, Mr. MEEHAN, Mr. EVANS, Mr. LIPINSKI, Mr. YATES, and Mr. LoBIONDO.

H.R. 945: Mr. FROST, Mr. STUPAK, Mrs. ROUKEMA, Mr. WILSON, Mr. BOEHLERT, Mr. TORRICELLI, Mr. RAMSTAD, Mr. VENTO, Mr. BARCIA, Mr. RAHALL, Mr. FRANKS of Connecticut, Mr. SOLOMON, Mr. DIAZ-BALART, Mr. GEJDENSON, and Mr. FOGLIETTA.

H.R. 957: Mr. ABERCROMBIE, Mr. BURTON of Indiana, Mr. SHAYS, Mr. TRAFICANT, Mr. TALENT, Mr. CANADY, and Mr. TORRICELLI.

H.R. 971: Mr. HINCHEY.

H.R. 1003: Mr. HAYES, Mr. LIGHTFOOT, Mr. CARDIN, and Ms. LOFGREN.

H.R. 1020: Mr. WELLER, Mrs. COLLINS of Illinois, Mr. EWING, Mr. PETERSON of Minnesota, Mr. BARCIA, and Mr. CONYERS.

H.R. 1039: Mr. FORBES and Mr. SAXTON.

H.R. 1041: Mr. FORBES and Mr. SAXTON.

H.R. 1042: Mr. FORBES and Mr. SAXTON.

H.R. 1052: Mr. ROTH.

H.R. 1058: Mr. MOORHEAD, Mr. OXLEY, Mr. BILIRAKIS, Mr. SCHAEFER, Mr. BARTON of

Texas, Mr. HASTERT, Mr. STEARNS, Mr. PAXON, Mr. GILLMOR, Mr. CRAPO, Mr. BILBRAY, Mr. GANSKE, Mr. NORWOOD, Mr. WHITE, Mr. EDWARDS, Mr. BARCIA of Michigan, and Mr. COBURN.

H.R. 1061: Mr. CHRISTENSEN.

H.R. 1118: Mr. FORBES and Mr. SOLOMON.

H.J. Res. 61: Mr. FOX, Mr. BURR, and Mr. SALMON.

H. Con. Res. 5: Mr. LAHOOD, Mr. YOUNG of Alaska, Mr. DOOLITTLE, Mr. NETHERCUTT, Mr. SPENCE, Mr. HOSTETTLER, Mr. SCHAEFER, and Mr. BARCIA of Michigan.

H. Con. Res. 12: Mr. WISE.

H. Con. Res. 19: Mrs. WALDHOLTZ.

H. Con. Res. 23: Mr. EMERSON, Ms. LOFGREN, Mr. TOWNS, Ms. ESHOO, Mr. FOX, Mr. SENSENBRENNER, Ms. MOLINARI, Mr. GILCHREST, Ms. PRYCE, Mr. MARTINEZ, Mrs. SMITH of Washington, Mr. PACKARD, Mr. EHRLICH, Mr. COYNE, Mr. PAYNE of New Jersey, Mr. BORSKI, Mr. LANTOS, Mr. WALSH, Ms. ROYBAL-ALLARD, Mr. MENENDEZ, Mr. WISE, Mr. HASTINGS of Florida, Mr. HANSEN, Mr. SKEEN, Mr. BARRETT of Wisconsin, Mrs. CHENOWETH, Mr. STEARNS, and Mr. HINCHEY.

H. Con. Res. 25: Mr. WOLF, Mr. GILMAN, and Mr. SOLOMON.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.J. Res. 2: Mrs. SEASTRAND.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 988

OFFERED BY: MR. BRYANT OF TEXAS

AMENDMENT NO. 1: Page 4, insert the following after line 21 and redesignate the succeeding paragraph accordingly:

"(8) This subsection applies only to a claim brought against a small business concern as defined under section 3 of the Small Business Act.".

H.R. 988

OFFERED BY: MR. CARDIN

AMENDMENT NO. 2: At the end of section 4, insert the following:

(c) subsection (a) and (b) shall apply to the United States or any agency or any official of the United States acting in his or her official capacity.

H.R. 988

OFFERED BY: MS. HARMAN

AMENDMENT NO. 3: Page 2, line 9, strike "offer" and insert "reasonable offer made in good faith".

H.R. 988

OFFERED BY: MR. HOKE

AMENDMENT NO. 4: Page 6, after line 24 (after section 4) insert the following:

SEC. 5. CONTINGENT FEES OF ATTORNEYS.

(a) IN GENERAL.—Part III of title 28, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 80—CONTINGENT FEES OF ATTORNEYS

"1051. Limitations on contingent fees.

"1052. Definition of qualifying settlement offer.

"§ 1051. Limitations on contingent fees

"(a) EFFECT OF QUALIFYING SETTLEMENT OFFER.—In any Federal civil action (except an action for the protection of civil rights, including the right to vote) in which a monetary recovery is sought, the compensation to the attorney representing a plaintiff—

"(1) shall, if a qualifying settlement offer is made to and accepted by that plaintiff not exceed the lesser of—

"(A) the sum of—

"(i) a reasonable hourly rate, previously agreed upon by the attorney and the plaintiff, for legal work actually performed; and

"(ii) actual expenses of the attorney in the action; or

"(B) 10 percent of the amount of the accepted qualifying settlement offer; and

"(2) shall, if no qualifying settlement offer is accepted by that plaintiff, not exceed the sum of—

"(A) that portion not greater than 33 percent, agreed upon by the attorney and the plaintiff before trial, of the amount by which the final recovery in the action exceeds the amount of the final qualifying settlement offer;

"(B) a reasonable hourly rate, previously agreed upon by the attorney and the plaintiff, for legal work actually performed before the final qualifying settlement offer is made; and

"(C) actual expenses of the attorney in the action.

"§ 1052. Definition of qualifying settlement offer

"For the purposes of this chapter a qualifying settlement offer is an offer by all defendants—

"(1) to settle all claims against the defendants in the pending action; and

"(2) made not later than 60 days after the date of initial contact in writing between the attorneys for the parties notifying the defendant of the claim against the defendant.".

(b) CLERICAL AMENDMENT.—The table of chapters for part III of title 28, United States Code, is amended by adding at the end the following new item:

"80. Contingent Fees of Attorneys..........1051".

Redesignate succeeding sections accordingly.

H.R. 988

OFFERED BY: MR. LATOURETTE

AMENDMENT NO. 5: Page 6, line 24 (after section 4) insert the following:

SEC. 5. PROHIBITION OF CONTINGENCY FEES IN CASES OF UNDISPUTED LIABILITY.

(a) IN GENERAL.—If, not later than 180 days after the date of initial contact, the defendant informs the plaintiff in writing that the defendant no longer contest liability, the compensation to the plaintiff's attorney shall not exceed a reasonable hourly rate, previously agreed upon by the attorney and the plaintiff, for legal work actually performed in the action, and actual expenses of the attorney in the action.

(b) ENFORCEMENT.—Whoever is aggrieved by any violation of this section may in a civil action recover appropriate relief.

(c) DEFINITIONS.—For the purposes of this section the term "initial contact" means the receipt by the defendant of notice of the claim sent by the plaintiff through registered mail, return receipt requested, or commencement of the civil action, whichever occurs first.

Redesignate succeeding sections accordingly.

H.R. 988

OFFERED BY: MR. PARKER

AMENDMENT NO. 6: Beginning on page — redesignate Sections as Sections —, respectively, and insert at line — on page — the following:

SEC. . TRUTH IN ATTORNEYS' FEES.

It is the sense of the Congress that each State should require, under penalty of law, each attorney admitted to practice law in such State to disclose in writing, to any client with whom such attorney has entered into a contingency fee agreement—

(1) the actual services performed for such client in connection with such agreement, and

(2) the precise number of hours actually expended by such attorney in the performance of such services.

H.R. 988

OFFERED BY: MR. SMITH OF MICHIGAN

AMENDMENT NO. 7: Page 4, at the end of line 5, add the following:

To the extent that the offeree does not pay the offeror's costs and expenses, including attorneys' fees, as ordered by the court, the attorney of the offeree shall be liable for such costs, such expenses, and such fees.

H.R. 1058

OFFERED BY: MR. KENNEDY OF MASSACHUSETTS

AMENDMENT NO. 1: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 6. LIMITATIONS PERIOD FOR IMPLIED PRIVATE RIGHTS OF ACTION.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"SEC. 37. LIMITATIONS PERIOD FOR IMPLIED PRIVATE RIGHTS OF ACTION.

"(a) IN GENERAL.—Except as otherwise provided in this title, an implied private right of action arising under this title shall be brought not later than the earlier of—

"(1) 5 years after the date on which the alleged violation occurred; or

"(2) 3 years after the date on which the alleged violation was discovered.

"(b) EFFECTIVE DATE.—The limitations period provided by this section shall apply to all proceedings pending on or commenced after the date of enactment of this section.".

H.R. 1075

OFFERED BY: MR. FRANK OF MASSACHUSETTS

AMENDMENT NO. 1: Page 11, strike lines 17 through 24 and insert the following:

SEC. 107. SEVERAL LIABILITY FOR ECONOMIC AND NON-ECONOMIC LOSS.

In any product liability action, the liability of each defendant found to be less than 20 percent responsible for the claimant's economic and noneconomic loss shall be several only and shall not be joint. Each defendant found to be less than 20 percent responsible shall be liable only for the amount of economic and noneconomic loss attributable to such defendant in direct proportion to such defendant's proportional share of fault or responsibility for the claimant's harm, as determined by the trier of fact.

H.R. 1075

OFFERED BY: MR. ROTH

AMENDMENT NO. 2: Page 13, redesignate section 110 as section 111 and insert after line 2 on that page the following (and conform the table of contents accordingly):

SEC. 110. EXPEDITED PRODUCT LIABILITY SETTLEMENTS.

(a) IN GENERAL.—Any claimant may bring a civil action for damages against a person for harm caused by a product pursuant to applicable State law, except to the extent such law is superseded by this title.

(b) SETTLEMENT.—

(1) CLAIMANT.—Any claimant may, in addition to any claim for relief made in accordance with State law, include in such claimant's complaint an offer of settlement for a specific dollar amount.

(2) DEFENDANT.—The defendant may make an offer of settlement for a specific dollar amount within 60 days after service of the claimant's complaint or within the time permitted pursuant to State law for a responsive pleading, whichever is longer, except that if such pleading includes a motion to dismiss in accordance with applicable law, the defendant may tender such relief to the claimant within 10 days after the court's determination regarding such motion.

(3) COURT ACTION.—

(A) EXTENSION ORDER.—In any case in which an offer of settlement is made pursuant to paragraph (1) or (2), the court may, upon motion made prior to the expiration of the applicable period for response, enter an order extending such period. Any such order shall contain a schedule for discovery of evidence material to the issue of the appropriate amount of relief, and shall not extend such period for more than 60 days. Any such motion shall be accomplished by a supporting affidavit of the moving party setting forth the reasons why such extension is necessary to promote the interests of justice and stating that the information likely to be discovered is material, and is not, after reasonable inquiry, otherwise available to the moving party.

(B) DEFENDANT NOT ACCEPTING.—If the defendant, as offeree, does not accept the offer of settlement made by a claimant within the time permitted pursuant to State law for a responsive pleading or, if such pleading includes a motion to dismiss in accordance with applicable law, within 30 days after the court's determination regarding such motion, and a verdict is entered in such action equal to or greater than the specific dollar amount of such offer of settlement, the court shall enter judgment against the defendant and shall include in such judgment an amount for the claimant's reasonable attorney's fees and costs. Such fees shall be offset against any fees owned by the claimant to the claimant's attorney by reason of the verdict.

(C) CLAIMANT NOT ACCEPTING.—If the claimant, as offeree, does not accept the offer of settlement made by a defendant within 30 days after the date on which such offer is made and a verdict is entered in such action equal to or less than the specific dollar amount of such offer of settlement, the court shall reduce the amount of the verdict in such action by an amount equal to the reasonable attorney's fees and costs owed by the defendant to the defendant's attorney by reason of the verdict, except that the amount of such reductions shall not exceed that portion of the verdict which is allocable to noneconomic loss and economic loss for which the claimant has received or will receive collateral benefits.

(D) ATTORNEY'S FEES.—For purposes of this subparagraph, attorney's fees shall be calculated on the basis of an hourly rate which should not exceed that which is considered acceptable in the community in which the attorney practices, considering the attorney's qualifications and experience and the complexity of the case.

(c) ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.—In lieu of or in addition to making an offer of settlement under subsection (b), a claimant or defendant may, within the time permitted for the making of such an offer under such section, offer to proceed pursuant to any voluntary alternative dispute resolution procedure established or recognized under the law of the State in which the civil action for damages for harm caused by a product is brought or under the rules of the court in which such action is maintained.

(d) OFFEREE REFUSAL.—If the offeree refuses to proceed pursuant to such alternative dispute resolution procedure and the court determines that such refusal was unreasonable or not in good faith, the court shall assess reasonable attorney's fees and costs against the offeree.

(e) REBUTTABLE PRESUMPTION.—For the purposes of this section, there shall be created a rebuttable presumption that a refusal by an offeree to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith, if a verdict is rendered in favor of the offeror.

SENATE—*Friday, March 3, 1995*

(Legislative day of Wednesday, February 22, 1995)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Today we have a guest Chaplain, Father Paul Lavin, pastor of St. Joseph's Catholic Church, Capitol Hill, Washington, DC.

PRAYER

The guest Chaplain, the Reverend Paul Lavin, pastor of St. Joseph's Catholic Church, Capitol Hill, Washington, DC, offered the following prayer:

Let us pray:

Almighty Father, we acknowledge Your goodness and the great gifts You have given to our Nation. Give the Members of the U.S. Senate the grace of Your wisdom and understanding to call our Nation to respond wisely to Your gifts.

With Your help may our Nation be an image of justice, a mirror of sanctity, a protector of the truth, a refuge for the oppressed, a treasure to the poor, a hope to the wretched.

Direct all our actions by Your holy inspiration and carry them on by Your gracious assistance that every work of this Senate may begin from You and with Your grace, be part of Your work to make our world a more just and decent place.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

RESERVATION OF LEADER TIME

Mr. LOTT. Mr. President, this morning the time for the two leaders has been reserved.

SCHEDULE

Mr. LOTT. Mr. President, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 1 p.m., with Senators permitted to speak for up to 5 minutes each with the following exceptions: Senator CRAIG, 1 hour; Senator DASCHLE, 30 minutes; Senator LIEBERMAN, 20 minutes; Senator GRAHAM of Florida, 15 minutes; and Senator GRAMS of Minnesota, 5 minutes.

For the information of my colleagues, the majority leader has announced there will be no rollcall votes during today's session. Also, I urge all my Republican colleagues to attend an important press conference this morning at 10:30 in room S–207 of the Capitol for the announcement of our newest Republican Member, Senator BEN NIGHTHORSE CAMPBELL of Colorado.

Mr. President, if I may proceed for 2 minutes at this time?

The PRESIDENT pro tempore. Without objection, it is so ordered.

NEW REPUBLICAN SENATOR BEN NIGHTHORSE CAMPBELL

Mr. LOTT. Mr. President, I am sure our distinguished majority leader will be here later this morning to officially welcome our newest Member on the Republican side of the aisle. But I want to express my appreciation for the courage of this fine Senator, my friend from Colorado, Senator BEN NIGHTHORSE CAMPBELL. This is a Senator with a long history of courage, of humble beginnings, and of having fought for the things he believed in and has risen to election by the people of the State of Colorado to serve as one of their two U.S. Senators.

Again today he shows the principle and the courage that he has exhibited throughout his life. Because of his philosophy, because of his concern for his country, and because of his inability to continue to live under the umbrella of a party that is dominated by a small sliver of liberals in their party, taxers and spenders who won the day against the American people just yesterday, this morning he announced that he will join the Republican Party, the party that welcomes him, the party that reflects the views that he believes in of a reduced size of the Federal Government, responsibility for people at the local level, strong national defense, independence and freedom for people, and private property rights.

He will speak for himself but this announcement this morning is the loudest speech he has ever given in his life. I commend him and welcome him to our party.

I yield the floor.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

Under the previous order, the Senator from Idaho [Mr. CRAIG] is recognized to speak for up to 1 hour.

NEW REPUBLICAN SENATOR BEN NIGHTHORSE CAMPBELL

Mr. CRAIG. Mr. President, the whip of our party has just made an exciting announcement, that my friend and a friend of most of ours, Senator BEN NIGHTHORSE CAMPBELL of Colorado, is today announcing that he will become a Republican.

For a good number of years I have had the privilege to work with this Senator, both in the U.S. House of Representatives and now here in the Senate, and I must tell you that he is a man of great integrity. We have worked on a variety of western issues that are common to both our States and a broad base of our constituency, and it is exciting for me to know that BEN is going to become one of us. I feel very privileged that he has made that choice.

I have asked for a special order this morning to do an analysis following the vote yesterday of the balanced budget amendment and where we stand as a Senate now on the threshold of making a decision as it relates to how we will deal with this issue.

At this time I will yield to the Senator from Oklahoma—whom I know needs to preside in the chair and will in just a few moments—for his comments on this issue. Clearly, while in the House and now here in the Senate, he has been a leader on the issue of the balanced budget amendment, and I yield to the Senator for what time he may use.

Mr. INHOFE. I thank the Senator for yielding. This will be very brief, Mr. President.

The PRESIDENT pro tempore. The distinguished Senator from Oklahoma is recognized.

A PROFILE OF BALANCED BUDGET AMENDMENT SUPPORTERS

Mr. INHOFE. Mr. President, before we hear the analysis from the distinguished Senator from Idaho, I want to give you my own analysis. Yesterday on the floor, yesterday afternoon, I reminded the President, I reminded our fellow Members, and hopefully many in America who might be watching that those individuals who were fighting the balanced budget amendment have a very interesting profile, some things in common. I pointed out and documented that all of those 41 individuals who were the cosponsors of the right-to-know amendment to the budget balancing amendment had a very liberal

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

background. Each one of the 41 had either a D or an F rating by the National Taxpayers Union. Each one of the individuals had voted for the very large spending program called President Clinton's tax stimulus program. And each one had voted for the 1993 tax increase which has been characterized as the largest single tax increase in the history of public finance in America or anywhere in the world.

I announced that I suspected that the 33 Democrats who managed to keep from allowing us to have that one more vote to pass a balanced budget amendment yesterday would fit this same profile. I have analyzed this. I did this personally last night and I will give you the results of that.

Of the 33 Democrats—and it only took one to come over to our side and to free the future generations from the shackles they are going to be bound with—all 33 voted on the cloture vote in favor of the tax stimulus program, which was the big spending program. All 33 have a D or an F rating by the National Taxpayers Union. And 31 of the 33—all but 2 of them—voted for the largest single tax increase in the history of public finance in America or any place in the world.

The bottom line is this. All this talk about Social Security, all this talk about the right to know is bogus. The fact is those individuals did not want to balance the budget. They are big spenders.

Thank you, Mr. President. I yield to the distinguished Senator from Idaho.

The PRESIDENT pro tempore. The distinguished Senator from Idaho is recognized.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

Mr. CRAIG. Mr. President, I thank my colleague from Oklahoma for that analysis. Of course, that was the issue yesterday as we debated and finally voted on House Joint Resolution 1. For over 5 weeks we had debated the issue of a balanced budget and why this Government and why the Congress of the United States ought to be held to the constraints of a constitutional amendment requiring us to balance the Federal budget. While there were many arguments from a variety of perspectives, there was one overriding influence that could not be ignored nor could it be denied, and that was, had this issue passed the Senate yesterday, it would have been sent to our 50 States to begin a ratification process that I believe would have moved very rapidly to gain the necessary 38 States to bring about ratification.

In doing that, of course, the Congress knew that would begin a long and very difficult process to move us to a balanced budget by the year 2002, but one the American people now demand and expect from us, and one we know we can accomplish, if we can bring about the discipline but, more importantly, the pressure and the kind of control that a balanced budget amendment to our Constitution would result in.

There are so many who wrung their hands in the argument that this could never be done. But I argue that those who argue that are the many of the past. They are the ones who still are stuck in the idea or the concept that the Federal Government and its programs must manage and control people and direct an economy of a country outside the marketplace. That, of course, is exactly what the Congress of the United States has done for over 30 years, and we have seen results. We have seen the results of a $34.8 trillion debt that remains totally out of control. We have seen the results of how interest on that debt eroded any ability to spend both in discretionary and entitlement programs and locks us into a straitjacket of program and time and spending.

But something else that is also, I think, reflective of that debate is that those who argue it argue the status quo. They argue government as if it were something static, that it will never change, or that the Senators and the Members of the House who are involved in governing this country will always vote to have exactly the same programs, that we will not eliminate an agency, that we will not reduce or change a priority, and that we will not shift the intent of the governing of this country from one area to another.

That is a very false and phony argument. Certainly it is to the American people because, if there is anything sure about our country, it is change, and it occurs on a constant and daily basis. It is the Government that finds itself incapable of changing. So simply to say we cannot balance the budget because we cannot get there is to clearly argue that it is going to be the same Government and the same kind of budget, and we are going to ramp it up to 3, 4, 5, to 6 percent a year on the average and heading as far as the eye can see in that direction.

Why do I say that? Because that is exactly what President Clinton's budget demonstrated when he presented it here but a few weeks ago. Here is a President who came to town arguing that he must have the largest tax increase in history, and, if we gave it to him, that he would then begin a very progressive approach toward a budget that would bring us to a balanced budget that would bring down the deficit and continue to bring it down. That is what he campaigned on. That is what he promised the American people. That is what he, the President of the United States, promised this Senate and this Congress less than 2 years ago as he argued for and his party gave him the largest tax increase in history. Then in a most cavalier way, as he presented the budget just this year, he not only showed that he would not control the deficit, he said let the Republicans make the cuts. Let us see what they want to do. Let them make the cuts.

Mr. President, that is why we need a balanced budget amendment so that the Executive of this country can be as responsible as the legislative branch of this country, that budgeting becomes a partnership of cooperation where the President, the executive branch, brings about a balanced budget just as much and just as responsibly as the legislative branch of Government must do.

That is, of course, exactly what the constitutional amendment required as we looked at it the other day. That is why five of our colleagues from the other side who had once voted with us turned tail and ran away from their commitment and their pledge to their constituents. I am frustrated by that because they are honorable people. All of us in our pledge to our constituency attempt to honor it, and yet that did not happen yesterday on five very distinct votes. That is too bad.

We hope as we work this issue and continue to work this issue that we can regain the support of those Senators who left us yesterday and left their constituency.

We have several others who want to speak this morning. Before I yield, let me make one other point that I think is so fundamentally important as we debate a balanced budget amendment and as we continue to work on this issue and as we continue to assure the American people that we will do all within our power to bring down the deficits and to control our debt structure for now and for future generations.

Article V of our Constitution—that is the article that speaks to how we amend the organic document—speaks very clearly about how it gets done. It says that the Congress shall propose an amendment. That is in the first part of article V.

The second part of article V allows the States to petition for the formation of a constitutional convention. Many of us are concerned that a convention is not the right way to go and that the most responsible way is for the Congress of the United States to craft and propose an amendment.

Yesterday, the vote that we cast here was not to pass a balanced budget amendment; it was to propose a balanced budget amendment to our Constitution. And in so doing that, it then would allow the citizens of our country, the State legislatures, or, if they chose, the forming of a convention to debate and ratify the amendment. That action to propose was denied yesterday—not to pass but to propose—to send out to the States, to conform with article V of the Constitution.

In essence, what Senators who opposed that process yesterday did was to say to their citizens, "We will not give you the right to choose, we will not give you the right to look at this issue, to debate it, to understand the process, and to decide whether you want your Government to live under a constitutional requirement for a federally balanced budget." I find that an amazing testimony.

I really would like those Senators to go home and hold a press conference and tell their electorate, "We did not think you were responsible, we did not think you ought to have the right under the Constitution to decide," because that is exactly what they did. That in itself is a tragedy. But more importantly, what this is is a reaffirmation of something with which the American people have known for a long while, and they spoke so clearly about it last November. That was the arrogance of power that resides here on Capitol Hill, this all-knowing knowledge that somehow, if the wisdom does not emanate from Capitol Hill, it is unwise; that somehow the States and those who reside in the States cannot think for themselves, cannot make those judgments. That is absolutely the reverse philosophy from those who founded our country and who wrote the Constitution and who got it ratified. In fact, House Joint Resolution 1 that we voted on yesterday was very much a part of the style and the type of constitutional amendment that a Tom Jefferson would have put in the Constitution because it reflected that attitude of the power and the right of the individual citizen and the power to the States and the ability of the States to control their central government.

Yesterday, the Senators who opposed this said very clearly under all of the smokescreen and all of the excuses that they gave for not voting for it—there were two fundamental things. They did not believe in the rights of the States to control their central government, and they would not give the citizens of those States the right to choose that option. I think that is profound, and it is sad. But that is the reality of what happened yesterday.

It is very important that the American people understand that message in the coming days and weeks as we work to revisit this issue to gain the necessary 67 votes or the two-thirds votes of this body to propose it and to send it to the States for ratification.

At this time, let me yield to my colleague from Georgia, Senator COVERDELL, who has worked so closely with us on this issue, has worked on a team of Senators who met daily over the course of the last 5 weeks to develop the issue and work with Senator ORRIN HATCH here on the floor, to build the debate. I think it was a remarkable task. I say that because for well over 100 hours and for 5 long weeks we debated this issue, and there was very little dead time, as we call it, or quorum calls because there truly was a message that came through loud and clear from this side of the aisle as to the purpose of a balanced budget amendment, and part of that message was crafted by the Senator from Georgia. I am pleased to yield to him at this time for such time as he might consume.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from Georgia is recognized.

THE PRESIDENT IS NOT LISTENING TO THE PEOPLE

Mr. COVERDELL. Thank you, Mr. President. I commend my colleague from Idaho and the Senator from Utah, Senator HATCH, and also Senator SIMON, who is not present this morning, for the effort over the past 5 weeks they have lent to the effort to create a historical change in the governance and the financial discipline of our country. I was talking with my wife last evening, and I wish Senator SIMON from Illinois was here because she had a chance to watch his address to the Nation immediately following the vote. She said it was most eloquent and even recommended that I get a video of it so that I might see it. I missed it as I was in a press conference.

I was so saddened yesterday about the outcome, the narrow defeat of the opportunity to move forward with the debate in the Nation about constructing an amendment to the Constitution requiring a balanced budget. It reminded me a little of when I was a youngster and the battle in Korea had just begun. Each day I would pick up the paper and the perimeter would shrink for U.S. forces trying to hold on against the surge of the enemy. Every day was a little more sad, because that perimeter shrunk and shrunk and shrunk until finally it was a very small piece of that Korean Peninsula surrounding the city of Pusan. Lo and behold, the will of the country, the will of the alliance to put back an evil force that would do great damage to the future of the free world ultimately prevailed. I think the analogy will be so here.

I think over these past 30 to 40 years, the Nation has awakened each morning a little more worried about the state of the Union, a union that has pushed away every evil aggressor across and away from our shores but is perilously close to losing the standing of this great democracy because of a lack of domestic will, a lack of a will to take care of our own affairs and pay attention to our own financial health.

Maybe the beginning is in the press conference that will occur in about 8 minutes. Senator BEN NIGHTHORSE CAMPBELL came to this Senate on the same day I did but 2 years ago. Both of us saw the revolution coming. The Presiding Officer is a product of that revolution. I think his decision—I have not spoken to him, but it has to be some way affected by the realization of what the American people are asking of policymakers in their Capital City and the entrenched view to stand in the way of the change that America is asking for.

I go back to the President's State of the Union Address. In the President's State of the Union, after the election—and no one has received a greater thrashing than the President in that election—it caused great reflection, supposedly, in the White House, an analysis of what happened here. The President went back and read his speeches from 1992, the new Democrat theory. He wanted to revisit. What went wrong? In that speech, he said, "The American people are not just singing to us, they are shouting at us." How right he was. But he has not heard the shouts. Senator CAMPBELL has heard the shouting, and he is doing something about it. The President has not heard the shouting, and he is standing in the way of what America is seeking.

Yesterday was one of the most important votes ever to be cast in the history of the Senate. We were dealing with the core governance of America, the core document by which we live. We were saying that to secure the future of the Nation, we must have sound financial policy. We must live within our means. We must stop spending money we do not have because we impose a debt on future generations. Every child born today will get either a pink or blue wristband and attached to it will be a $22,000 mortgage. Unbelievable. Unbelievable that we would consume everything we have—$5 trillion we do not have, 30 percent of the tax base of the property taxes of the United States through unfunded mandates, and now we have even taken the practice of spending the livelihood of our children and grandchildren.

The Nation knows this must stop, which is why 80 percent of them said pass a balanced budget amendment, which is why they overturned the Congress last November and sent new majorities here. What did they send them here to do? They sent them here to change the way we do business in Washington. They did their level best to achieve it. Who was in their way? President William Clinton.

The defeat yesterday comes from the White House. There can be no doubt that the amendment would have passed, and it would have passed with 70-plus votes if it had not been for the President's decision to stand in its way. So what we have here is a classic division of the people that sent messengers to Washington to ratify, to honor, to carry out the will of a nation and a President who, in the final analysis, chose to nullify.

Mr. President, as you know, in about 3 minutes a very historic event will occur when Senator BEN NIGHTHORSE

CAMPBELL—I will put it in this light—affirms and acknowledges and does honor to what he is hearing the American people say. He will have chosen to leave the ranks of those who would nullify, reject, and subject the view of the American people.

It is hard for me to understand how anybody—particularly if you are in the White House as President of this great democracy—could miss what those people are saying out there. Every piece of data you pick up, it is either 7 out of 10 or 8 out of 10, it is overwhelming. This is almost like the last 2 years replayed. Last year, we were in a historic debate again and we were talking about health care. The President puts on the table a program that you could not even read and you could not even put it on a chart, a Government takeover of medicine.

The American people were telling him, in the loudest voice, they did not want him to do that. They were worried about health care reform, but they did not want the Government to take it over. They did not want to be taxed even more. Heavens, they were already working from January to July for the Government before they kept their first dime for their family's dream, so they could not understand what he was doing. By the end of this debate, 85 percent of the American people were saying, "Stop this nonsense. Don't do that." But the President pressed on as if he knew better, he knew more than this Nation of ours.

I am convinced that it was that battle over that great issue that made it so clear to America what they wanted to do in the midterm elections. And that is why there is a new majority in the Senate and that is why there is a new majority in the House, because the President kept trying to press on the country something that they were telling him in every way they knew how they did not want.

So they picked the elections to tell him. They said, "All right, if you won't listen to us, we're going to change who the players are in that city," and they sent a whole new class of Senators and a whole new class of House Members.

And at the center, at the very epicenter of the message was: Manage the financial affairs of the country. Make our country financially healthy. Pass a balanced budget amendment. The same numbers, another 80 percent of the American public saying, "Do this. Do this."

This makes me step back for a minute and talk about a word that was used frequently over the last 2 years by the President called "gridlock." He kept saying, "Gridlock. We can't get anything done."

Well, I would say to the President that it is one thing to stand here and try to stop something that the people do not want—which is what the Republican conference was doing on health care—it is another thing to stand in front of something that the whole Nation wants to do. That is the dilemma the President finds himself in on this balanced budget amendment.

America lost yesterday. It was not a win-lose situation here in the Senate. We talked about the 33 that voted against it and all those 66 who voted for it. This is not where the winning and losing took place. The losing took place in Keokuk, IA; in Norman, OK; Atlanta, GA; Miami; and Anchorage. The Nation knows, without any equivocation, that we must change the way we manage our financial affairs.

Mr. President, throughout the whole debate, the other side has brought up one red herring after another, one amendment after the other. It was advertised that the effect of these amendments would be to protect somebody—a veteran, a Social Security recipient, a child. It was almost shameful in the manipulation of the language, because, in effect, any set-aside would have made the whole effort moot.

In other words, if you had a balanced budget amendment, except for—it does not matter what name you put on it—then what would have happened from that date forward is every spending proposal that is more than we have would amend the exception. It would have made a nightmare out of whatever area of the law they tried to protect. They were not protecting it. They were putting it in harm's way. Whether it was veterans' or children's programs or Social Security, to set anything aside would have put it right in front of the pressure to spend and spend and spend with abandon. Every spending bill would have amended the exception. And so the whole exercise would have been absolutely moot. There would have been no reason to even go through the debate in the Nation if it was nothing more than a charade.

To those innocent bystanders who looked at that, it may have appeared as if they were trying to be protected. But I am here to say—and there are many with me—that they were actually being put in harm's way, because it would have been the route by which all spending occurred. It would have made a nightmare of any area of the law that was the set-aside.

Furthermore, I would say this, Mr. President. This Nation—well, let me put it another way, Mr. President, in the form of a rhetorical question. Have any of us ever known an individual or a family or a local community, probably more specifically a business, that was ever able to take care of its employees, its needs, its health, if it was financially crippled? Is Orange County better off today? No. Is a company that is pushed into bankruptcy able to take care of its employees, or are its employees facing a pink slip? Is a family that has spent too much on the credit card, bought a house that was too big, are they going to be able to send their children to college?

Well, obviously the answer is no—no for the individual, no for the family, no for a local community, and no for a business.

It is also true for a nation. No nation—no nation—that is financially destabilized can care for its security, either internationally or domestically. And every citizen of our country who is concerned because they are involved with a Government program, they, more than any other, should ask for and demand a financially healthy country because, without that, we will never be able to take care of the veterans or the children's programs, or an individual on Social Security. First, and foremost, we must be a healthy nation at home.

Mr. President, I yield the floor to the distinguished Senator from Idaho.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, let me thank my colleague from Georgia for those extremely valuable words and astute observations to the problems we face as a country today as it relates to the issue of our Federal budget, our debt, and how that gets handled and what we intend to do here as a new Congress, as a new Senate, to try to resolve that issue for the American people.

One of the sets of figures that I think comes to mind to me most often as we try to deal with a balanced budget and a resolution of this phenomenal debt structure that we have created over the last 30 years are figures that go like this: $829,444,000 a day additional debt—additional debt. That is almost the size of my State's entire operating budget for 1 year. We are now just a little over $1 billion in the State of Idaho. And this is one day's debt for the Federal Government.

That is $34,560,000 an hour.

I mean, you and I, Mr. President, cannot envision that.

We really cannot comprehend it. In fact, that is part of the problem we suffer from, that we cannot understand the magnitude of the problem that we are creating here on an hourly, daily, monthly basis.

Now I have asked for this special order for 1 hour, so I know that costs $34 million. But 1 minute is $576,000, and 1 second is $9,600. It truly is beyond the ability of this country and our people to understand.

Mr. President, oftentimes we reduce things that we understand to what we can see or envision. We know that a car costs somewhere in the $20,000 to $30,000 range today for a certain type, and that houses cost so much. You can drive down the street and say, "Look at that house. That house is about a $200,000 home, or a $300,000 home." The average human can comprehend that.

They can say, "Boy, I cannot afford that," or "I can," or "That is within our budget."

But can the average human comprehend $4.8 trillion, and what it takes to generate that or to pay for it? Or to begin to deal with it in a rational way? We cannot, as a country. Yet, every year here, first showing up on the budget sheets that we call the Federal Government, of $3.2. That is not $3.20, but that is $3.2 billion—but it is just $3.2, just a list of figures. It does not make a lot of sense.

And yesterday, and for the last 5 weeks, we have tried to begin to turn that corner, to bring it under control, to begin to define it, to work with the American people to understand it, and to say to them that this debt structure of over $18,000 per American citizen is going to get under control because it does mean something and it does have impact.

There has been a variety of approaches to control it. But my colleague, who has just joined me on the floor from Arizona, while he has been an outspoken supporter of the balanced budget amendment and has brought about a lot of the energy behind that in the House and now, of course, here in the Senate as one of our leaders with the team that worked to deal with this issue over the last several weeks, has also focused on spending reductions and spending controls, because that is really what it is all about.

If we balance the Federal budget in 7 years, we have to set a course of spending controls. Stay within our limit, stay within the ability to control, and to meet the target 7 years out in 2002.

At this moment, let me turn to the junior Senator from Colorado, or excuse me, from Arizona, for his comments on this issue and others that he might wish to address.

Mr. KYL. I thank you. Mr. President, I thank the Senator from Idaho.

He and I served in the House of Representatives together when he was a leader in the fight for the balanced budget amendment there. He carried that fight right over here to the Senate, and was one of our leaders in attempting to obtain passage of the balanced budget amendment this year. I predict that he will be one of the key figures in securing its passage sooner or later.

It has been a pleasure for me to be of assistance to him and to bring with me from the House of Representatives an idea actually which I brought from my own home State of Arizona to achieve a balanced budget by spending limits rather than by raising taxes. That is what I wish to talk about today.

Mr. President, if I could call time out for a second, the Senator from Idaho mistakenly referred to me as the junior Senator from Colorado for a moment, and I know exactly why. In the background, there was a deafening noise just a moment ago of loud applause for the junior Senator from Colorado, BEN NIGHTHORSE CAMPBELL, for his declaration that as of today, he is a proud member of the Republican Party, and will be a Member of the Republican Senate cadre. We are looking for a place to put his new desk on this side of this Chamber.

Mr. CRAIG. Will the Senator yield with that? We will find a place to put that desk.

Mr. KYL. And I suspect any others who may wish to join RICHARD SHELBY and BEN NIGHTHORSE CAMPBELL in joining us on the Republican side.

Mr. President, we welcome these friends—former Democrats who are now Republicans—not only because they are friends and we need their help, but because their decision to join the Republican Party in both cases, as they said, was, as in Ronald Reagan's old phrase, a decision not to leave the Democratic Party, but because the Democratic Party had really left them.

We have many friends here who proudly serve in the Democratic Party and uphold its traditions. From our point of view, one of those traditions is being willing to spend too much of the taxpayers' money. People like BEN NIGHTHORSE CAMPBELL and RICHARD SHELBY and PAUL SIMON from Illinois and others who remain in the Democratic Party have finally said, "We do not want to do that anymore. We have to balance the Federal budget."

It has not been comfortable for a Democrat to support us in that effort. The President of the United States was very much in opposition to the balanced budget amendment, and as the Senator from Georgia said a short while ago, we can probably attribute the defeat of the balanced budget amendment yesterday to the lobbying of the President of the United States. Five or six Democrats who had previously cosponsored and voted for the balanced budget amendment—Democrats—decided this time not to support it.

I think that handful of Democrats in support of the President, obviously, are the ones who will have to answer to the American people when the questions are asked, who defeated the balanced budget amendment.

But today is another day. We have to move on. We are going to move forward as if the balanced budget amendment had passed and as if we are going to balance the budget by the year 2002. We will do it with or without the balanced budget amendment. It will be harder without that constitutional limitation.

Yesterday's defeat of the balanced budget amendment, I suggest, is a call to arms. The ballot was lost, but the war rages on. The balanced budget amendment will ultimately pass—maybe later this year, maybe next year, or perhaps the year after. But it will pass because the American people demand that it pass.

Last fall, a political revolution swept Capitol Hill, a revolution fueled by the American people's anger with the Federal Government out of control, a Federal Government overregulating, overtaxing, and overspending. Although the American people swept new leadership into the Senate and the House of Representatives, yesterday's vote demonstrated that the vestiges of business as usual remain and that another round of housecleaning is yet to come.

I will predict that those who stood in the way of a balanced budget amendment yesterday will not be around when it is brought to a vote in future Congresses. The American people will, as I said, hold them accountable.

Our mission today, with or without the balanced budget amendment, is to immediately begin making the tough choices about what spending to cut and what programs to terminate in order to get the budget to balance by the year 2002. Our responsibility is to put an effective enforcement mechanism into place to force the Congress to begin to prioritize, to separate wants from needs, just like families all across America must do every day.

Mr. President, I thank the Chair.

(The remarks of Mr. KYL pertaining to the introduction of S. 494 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. KYL. Mr. President, I thank the Senator from Idaho for yielding this time and, again, for taking a strong leadership role in the effort to get the balanced budget amendment passed and predict that through his leadership eventually we will pass it.

(Mr. GORTON assumed the chair.)

Mr. CRAIG. Mr. President, I will not make that mistake again of referring to my colleague as the junior Senator from Colorado. I have had the privilege of serving with the Senator from Arizona for a good number of years, both in the House and now in the Senate, and I have always appreciated his leadership and his energy that he puts to the issues that he is dedicated to and certainly the spending limitation program that he has just proposed, of which I am proud to be a cosponsor.

We will work to prove to our colleagues on the other side that there is a way to balance the Federal budget and do so in a reasonable fashion without the draconian style arguments or comments that oftentimes come from the other side of the aisle when they find that they are threatened with the concept of a balanced budget. We know that can be done, and we know that there will be tough choices to be made, but it must be done.

I would like, Mr. President, to mention another issue that I guess the word disappointment comes to mind when I think of how it was used over the course of the last several weeks by several of my colleagues. And that was the issue of Social Security.

I am disappointed that every time Social Security is brought up on the floor of the U.S. Senate, it is used as a scare tactic, it is used to frighten dedicated American citizens who believe that their Federal Government has an obligation to them to assist them after they have paid into a system of income assistance known as Social Security, and that somehow there is a devious scheme on the part of some politicians in Washington to otherwise change that commitment that is clearly written into the Social Security law.

Mr. President, you and I and the American people know there is no devious scheme, not at all; that you and I and others who serve in the U.S. Senate really serve as the board of directors of Social Security, Inc., if you will. We are the ones charged under the law with the responsibility of managing the Social Security system.

Whether you can argue that it has been managed well or not, the bottom line is it has never failed to meet the obligation that it has to the citizens of this country who have paid into it and find themselves then eligible under the law to receive the benefits of it. Yet, somehow over the last several weeks, those who needed to create a smokescreen or a shield to back away from their previous support of a balanced budget amendment because of their President's pressure, or for whatever reason, begin to raise the ugly head and the old argument that somehow the other side was manipulating a way to change or destroy the Social Security system.

For the last 3 years, as we have debated the issue of the balanced budget amendment, Senator PAUL SIMON, of Illinois, who has been one of the leaders and certainly the prime sponsor and then the prime cosponsor this year of the balanced budget amendment, we have worked with a fellow by the name of Robert Myers. Robert Myers for years was the chief actuary of the Social Security system of the Social Security Administration from 1947 to 1970 and then a deputy commissioner from 1981 to 1982 and 1982 to 1983. He served as executive director of the National Commission on Social Security Reform—I mean, this man is Mr. Social Security.

I am quoting from a letter of February of this year that he sent to PAUL SIMON, when in essence he says the Federal debt is the threat to the Social Security system, not the balanced budget amendment. If you do not control the debt, you ruin the Social Security system and what is he saying in essence? He is recognizing the fact that if we bankrupt this country, Social Security checks are not going to go out. There will not be any money, whether it is in a trust fund or whether it is inside the general budget of our country.

The bottom line is if you have a busted government and a busted country, nothing goes out; everybody is equally bankrupt or poor at that moment. The responsibility then of this Congress is to keep a budget under control to move it toward balance, to bring the debt down so we can always honor the commitment of the Social Security system.

Well, it became the trust fund argument: Is it on, is it off? Is it in, is it out? We know from past experience that you manage the system. In 1983, Social Security needed reform and the Congress came together, Democrat and Republican alike, not in the kind of demagoguery that I felt I heard on this floor in the last several weeks, but we came together united as a government to manage and stabilize the system, and we did. Yet day after day, hour after hour, amendment after amendment, it was the ghost of the Social Security system or the mismanagement of it or some devious scheme under a balanced budget amendment to do so, and, Mr. President, that is just false. It is not true and, most importantly, the American people know it is not true.

The Senior Coalition, one of the largest organizations of senior citizens in this country, in a recent national survey—and I ask unanimous consent that this be printed in the RECORD.

There being no objection, the survey was ordered to be printed in the RECORD, as follows:

THE SENIORS COALITION,
Fairfax, VA, March 2, 1995.

Re The American Association of Retired Persons and the Balanced Budget Amendment.

To: All Interested Parties.

From: Kimberly Schuld, Legislative Analyst.

The AARP Commissioned The Wirthlin Group to conduct a survey for them January 25–28, 1995 on a variety of questions pertaining to the BBA. Since then, the AARP and the National Council of Senior Citizens have been twisting the poll's results and methodology to claim that public support for a BBA is low—once Americans are told what the BBA will mean to them.

The key word here is TOLD. The poll utilizes a series of questions designed to lead people to a mis-informed and generally incorrect impression of what the BBA will do. Namely, the line of questioning implies that Social Security and Medicare will face drastic cuts, and state and local taxes will skyrocket as the federal faucet is turned off.

An AARP Press Release announcing the poll results states, "* * * most Americans do not understand the potential impact of the Balanced Budget Amendment and are adamantly opposed to using Social Security and Medicare to reduce the federal deficit."

Quite bluntly, the AARP has effectively provided a political scare campaign for those members of Congress wishing to avoid facing their constituents with the news that they want to vote against the BBA. We all know the arguments against excluding Social Security from the constitutional amendment, but the AARP has electrified the "third rail" to the political benefit (is it really?) of the White House.

ANALYSIS OF THE AARP/WIRTHLIN POLL

The poll consisted of sixteen questions to 1,000 adults, with a 200 oversample to adults 50 and older. The margin of error is ±2.8% at a 95% confidence level. A copy of the questions is attached.

The poll starts off with a question about the direction of the country and then asks:

"Do you favor or oppose a balanced budget amendment to the U.S. Constitution that would require the federal government to balance its budget by the year 2002?"

Favor: 79%
Oppose: 16%

The next question tests how people perceive the budget can be balanced: spending cuts, taxes or both. This is followed by a question on equal percentage across-the-board cuts in every federal program.

The next two questions ask specifically if Social Security and Medicare should be included in across-the-board cuts. As could be expected, the respondents would favor exemptions for both programs. A key element to these two questions (#5 and #6) is the use of the word "exempt". The word "exempt" is not used anywhere in the poll except in relation to Social Security and/or Medicare. This sets up a connection in people's minds that these programs may be in graver danger than other government programs.

Question #7 sets up the respondent for the "truth in budgeting" excuse the Administration has been spinning. When offering people the choice between passing the BBA first, or identifying cuts first, the poll throws in "consequences" associated with cuts. The connotation is that there are going to be dire "consequences" to balancing the budget. This sets up the respondent to answer question #15 (open-ended) with a negative response on how they think the BBA will affect them personally.

Questions #8, #9 and #10 ask about whether respondents think it is necessary to cut Defense, Social Security and Medicare to balance the budget, or whether the budget could be balanced without these programs. As could be expected, the response for cutting Defense is overwhelming compared to SS and Medicare. The group of questions sets up a "good cop/bad cop" scenario in the mind of the respondent whereby they identify Defense as the "bad guy as well as being reminded which parry tends to support Defense. It is also important to remember that at the time this poll was taken, the newspapers and network news broadcasts were full of stories about the Republicans wanting to increase Defense spending in the Contract With America.

Questions #11 and #12 address taxes; their role in the budget balancing process and reform ideas. This also serves to set up negative responses to question #15. In #11, 48% of the people believe there will have to be tax increases to balance the budget. Then in the next question, they are asked to declare a preference for one of a variety of tax cuts. This conflict sets up a negative impression that tax cuts are good and the BBA is bad because there must be tax increases to accomplish its goal.

Question #13 throws together "programs for the poor, foreign aid, and congressional salaries and pensions". Respondents are asked how far these programs COMBINED would go toward balancing the budget if they were cut. By throwing these widely divergent programs together, the pollsters are setting up the respondent to believe that balancing the budget will mean higher taxes and cuts in taxpayer-financed programs.

Question #14 is the keeper. Respondents are asked if they still support a BBA with the following choices:

Social Security should be kept separate from the rest of the budget and exempted from a BBA because it is self-financed by a payroll tax.

or

Social Security is part of the overall government spending and taxing scenario, thus should be subject to cuts along with the rest of the budget.

The results of this questions dramatically flip the BBA support from question #2:

BBA with SS Exempt: 85%

BBA that cuts SS: 13%

Question #16 now asks:

"Do you favor or oppose the balanced budget amendment, even if it means that your state income taxes and local property taxes would have to be raised to make up for monies the federal government no longer transfers to your state?"

Favor: 38%

Oppose: 60%

This question ends the phone call on a gross mis-interpretation that dire consequences of doom and gloom are on the horizon, all at the voter's expense. This is exactly the type of question that re-reinforces the "angry voter" complex of the middle class family.

These anti-BBA results are achieved by planting the seed of doubt slowly but surely that:

1. It is the intention of BBA supporters to cut Social Security and Medicare.
2. It is the intention of BBA supporters to beef up Defense spending at the expense of everything else.
3. Taxes will inevitably go up with a BBA.
4. A BBA will have a negative direct impact on families "beyond the beltway."

Any time a Senator, Congressman, reporter or lobbyist starts to talk about poll results showing 85% of Americans oppose a BBA unless it exempts Social Security, bear in mind that the spin-meisters achieved this number by forcing the assumption that draconian Social Security cuts are a foregone conclusion.

Leaders from the Republican party, the Democratic party, the Administration and the President himself have all gone to great lengths to state that social security benefits are off the table.

Any member of congress who contends NOW that the new Republican leadership cannot be trusted to keep their hands off Social Security is also implicating their own party leaders and the President of the same un-trustworthiness.

Mr. CRAIG. Mr. President, in a letter to me and others who fought this issue, they polled their constituents and of them a thousand registered voters. That survey showed a confidence level of 95 percent that the Senate was doing the right thing to pass the balanced budget amendment.

When people were asked if they supported the Senate's passage, 79 percent overwhelmingly said yes, but the confidence level—and this was a Wirthlin poll, this was not just a few phone calls, this was a professionally nationally respected polling company—found out that the seniors of America do support a balanced budget amendment. They know of their future and the future of their grandchildren, and they want it to be bright. While they want their Social Security check, they do not want to bust the future of the country and the future of their children.

Mr. KYL. Will the Senator yield on that?

Mr. CRAIG. I will be happy to yield to my colleague from Arizona.

Mr. KYL. Mr. President, just before the Senator mentioned our children and grandchildren, I was going to make that precise point. I just got through with a statewide campaign. We conducted what we call back yard and living room meetings. In every one of these meetings, the question of the balanced budget amendment came up. Many of them were attended by seniors. I would ask these seniors—frankly, it was a way, Mr. President, of bragging about my two grandchildren.

I would say, "How many of you have children or grandchildren," and most of the hands would go up.

"Well, so do I, I have two beautiful grandchildren," and promised not to talk about them.

But the point I am making is that these seniors love their children and grandchildren more than anything else in the world. And when they talked about the balanced budget amendment and they talked about their needs for Medicare and other expenses that they would have to bear in their remaining years, they always came back to the point that they wanted to leave a better future for their children and grandchildren, and the last thing that they wanted to do was to leave a mountain of debt for these young kids to have to pay, because they instinctively knew that the future for these children and grandchildren will be a lower standard of living than we have enjoyed unless we get the Federal fiscal house in order. And so these senior citizens, consistent with the statistics that the Senator from Idaho has just quoted, to a person, were very much in favor of the Federal Government getting its fiscal house in order. They understood it was not only good for them but it was essential for the people they love most, their children and grandchildren.

Mr. CRAIG. I thank the Senator from Arizona for making those observations because those are the facts. That is the truth that is shown in survey after survey. The seniors of this country among any socioeconomic group understand the value of balancing budgets. They came through the Great Depression. They know how tough things can be out there when a country and a government is in trouble and an economy has collapsed, and they know that the future of their children and their grandchildren is at stake here. They do not want to see their offspring go through what many of them had to go through, on literally nothing through the course of a good many years because of a country that was in deep financial trouble as a result of a Great Depression.

Now, I am not suggesting that a Great Depression is at hand, but I am telling you that a $4.8 trillion debt uncontrolled and continuing to mount moves us toward the edge of a day when there will be a phenomenal financial reckoning in our country that could spell difficulties like the kinds that we had in the thirties if we do not resolve the issue now.

Let me yield to my colleague from Georgia.

Mr. COVERDELL. Will the Senator yield for just an observation?

Mr. CRAIG. Yes.

Mr. COVERDELL. I just came from the press conference where Senator BEN CAMPBELL announced officially that he had joined the ranks of the Republican Party. In his address, he spoke of the financial dismay. One of the key centers of it was the peril that he feared unless something is done, and soon. But as he was leaving—and I wanted to leave this with the Senator—one in the mass of reporters leaned over and said, "Was there any particular event that crystallized your decision?" And he turned to the reporter and he said, "Yes, the balanced budget amendment" result. And so, again, I think we see an American responding to the dilemma that the Senator has characterized this morning. I wanted to pass on that observation.

Mr. CRAIG. I thank the Senator from Georgia for those observations. I have had the privilege of knowing Senator CAMPBELL all of his public life here in Washington. He is a man of tremendous principle, and that kind of comment just does not surprise me at all. He is tremendously dedicated to the issue of a balanced budget amendment, and I know he was terribly frustrated when he saw a good many of his former Democrat colleagues back away from their strong support over the past few years for this issue, and we had discussed this over the last good number of days as he continued in his strong support for a balanced budget amendment.

Mr. President, this is an issue that now rests at the desk of the Senate, I am sure to be revisited again over the course of the next several months as we struggle to try to find a way, absent a balanced budget amendment, to resolve our spending difficulties and establish a course for the Congress in working with the executive branch of Government to bring down our deficits and move us toward a balanced budget.

My guess is that if we do not do that and we do not demonstrate to the American people that we are capable of doing that, we are but a year away or months away from revisiting the balanced budget amendment and passing it and causing the States and the citizens of this country the opportunity to force us to do what we should have done yesterday, and that is to have the will and the resolve to allow the American people to choose whether they wanted a balanced budget amendment to become a part of the organic law of the land, to become a part of the Constitution.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time assigned to the Senator from Idaho has expired.

Under the previous order, the Senator from Connecticut [Mr. LIEBERMAN] is recognized for up to 20 minutes.

Mr. LIEBERMAN. I thank the Chair.

PRIVILEGE OF THE FLOOR

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that Dr. Laura Philips, who is an American Institute of Physics Fellow, be allowed floor privileges during morning business on this day.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. I thank the Chair.

THE DEFENSE TECHNOLOGY GAP

Mr. LIEBERMAN. Mr. President, I rise today to sound an alarm for my colleagues and my country about a clear and present danger to America's ability to defend itself against foreign enemies in the future.

But first, a look back: throughout history, the time between major changes in the weaponry of war was measured in centuries. Then came the industrial revolution, and ever since the weapons of war have evolved with exponential speed. Now we are in the technology revolution and the pace is so furious that we would fight the gulf war today differently than we did just 4 years ago, simply because weapons—and related tactics—have changed so much.

Nations that first perfect new weapons of war are best-equipped to win wars. Those left behind the curve of change must scramble mightily to catch up—to close the gap—or else their vulnerability will be exploited.

At the beginning of this century there was the dreadnought gap. In 1906, Britain's First Sea Lord, John Fisher, commissioned the H.M.S. *Dreadnought*. It was a technological marvel in its time; bigger, faster, more powerful than any other warship of its kind on the planet.

The Germans, recognizing their vulnerability, built their own dreadnoughts. The English, fearing a dreadnought gap because of Germany's industrial prowess, sped up production and built a total of 15 over the next 6 years. Winston Churchill objected at first, believing there was no dreadnought gap. Indeed, such a gap never materialized. However, Britain's bigger navy provided a key margin for victory in World War I and Churchill, writing in 1928, acknowledged that he "was absolutely wrong in relation to the deep tides of destiny." He learned a lesson that served him and his nation well when the time came to fight the Germans again.

In the middle of this century was the atomic bomb gap. At the end of World War II we were the only nation to have the atomic bomb. Russia scrambled to catch up, and that led to the so-called missile gap of the late 1950's and early 1960's. Just as Germany and England rushed to build dreadnoughts after 1906, the United States and Russia rushed to build intercontinental ballistic missiles after 1957.

As we approach the end of the century, there is a new gap—a defense technology gap—and it is the gap between the technological capabilities of our military forces and those of any other nation on Earth. The clear and present danger I foresee is the narrowing of that gap in the next 10 to 20 years by virtue of decisions being made under the dome of this great Capitol building today.

The technology gap allowed us to defeat Saddam Hussein handily and deters other despots from acting rashly against us today. Given the threats we are likely to face tomorrow, I believe we must maintain and increase that gap, not let it shrink.

But the closing of the gap began last week when the House of Representatives voted to cut the heart out of crucial new programs designed to advance American technology. Five hundred million dollars were taken out of the Defense Department's technology reinvestment project [TRP] and $100 million were removed from the related civilian Advanced Technology Program [ATP]. The money is being shifted to pay for military operations in Somalia, Haiti, Iraq, and Bosnia. Additional cuts in the Advanced Research Projects Agency [ARPA], which runs the TRP and other technology programs, are being considered for the 1996 budget.

And just yesterday, a committee of the U.S. Senate cut more than $300 million from TRP and ATP and millions more from other technology programs in the current 1995 budget.

Some in Congress are cutting military technology to pay for military readiness. What they are really doing is shrinking a real technology margin of victory to close an illusory readiness gap—a gap readiness experts say does not exist.

Closing the defense technology gap is a tragic error we must avert. Disinvestment in military technology is the historical equivalent of Great Britain scuttling its dreadnoughts before World War I or America choosing not to build missiles after Sputnik. Cutting military technology programs is, quite frankly, one of the most thoughtless and harmful courses I have seen Congress contemplate in my 6 years in the Senate.

THE NATURE OF THE FUTURE THREAT

Defense spending must meet not only current needs; it must take into account the national security threats of our future. That future is less predictable than it was during the cold war, when we knew who, where, and how capable our enemy was at all times.

The end of the cold war has given us all hope that democracy and free markets will spread around the globe. And there have been tremendous success stories to celebrate. But the absence of a single superpower rivalry has also unleashed a stream of aggression and hostility and countless thousands have died in this post-cold-war world at the altar of nationalism, ethnicity, race, religion, and plain, old anarchic terrorism.

Over the short term—5 to 10 years—the United States faces potential threats in the Persian Gulf and the Korean Peninsula. Known and unknowable challengers loom more ominously on a 10-, 15-, and 20-year time horizon. The danger of a revived, nationalistic Russia is clearly a possibility.

Russia is still armed to the teeth, and the latest intelligence tells us it is moving ahead with major modernization programs in its most advanced weapons systems—submarines and aircraft. It is resource rich with a highly educated population. In the hands of a dictatorial government, it could resume a threatening world role once again. That is America's worst nightmare and, as unlikely as it seems to us today, consider how many unlikely changes have occurred in world history in just the last 5 years.

China is taking Russia seriously with a major modernization program for its military forces—a program that could make China a superpower in the next century. In response to the buildup in China, India is quickly developing its military. And Japan, in the next century, may well be forced to do the same. Other nations in the Asian rim have growing economies, are technologically advanced, and thus are capable of emerging as a threat to the stability of that region and to our interests there.

Add terrorist groups, the proliferation of ballistic missile technology, radical fundamentalist movements, despotic regimes, and the potential proliferation of nuclear, chemical, and biological weapons to the list, and it is easy to see that the future is fraught with perils for our Nation.

THE TECHNOLOGY DETERRENT

Given those dangers, and given the fact that the United States is the biggest target in sight, how can we best protect ourselves?

Thanks to the lessons of the gulf war, we know a big part of the answer lies in our advanced military technology, which can deter or, if necessary, defeat any challenger, whether it be a superpower, a rogue nation, or a terrorist group.

But we cannot rest on our gulf war laurels, content that today's weapons are enough to protect us for decades to come. Our next adversary, for example, may have access to detailed satellite photographs, making a tactic like General Schwarzkopf's "Hail Mary" movement of troops around Iraqi forces much more difficult. Or the enemy may possess missiles more capable than the Scud. The next gulf war will be far different than the last.

Those Members of Congress bent on cutting technology programs are repeating the error of so many former great powers: with their emphasis on readiness to the detriment of technological research and development, they are preparing to fight the last war all over again, not preparing for the enemies and wars of the future.

Our best defense is to stay as far ahead of any possible challenger as possible. The vice chairman of the Joint Chiefs of Staff, Adm. William Owens, says we need a high technology umbrella to protect us from the enemies of our future just as the nuclear umbrella protected us in the recent past. The nuclear umbrella deters other nuclear powers, like Russia, from attacking us. But because we are unlikely to use nuclear weapons against a nonnuclear nation, it is the high technology weapons in our arsenal that can keep them at bay, or defeat them if they strike.

THE BATTLEFIELD OF THE FUTURE

And if they strike, we can defeat them with our technologically advanced forces because we are changing the fundamental concept of the battlefield. The struggle for information is supplanting the fight for geographical position as the key goal on the battlefield, and that is where we can enjoy a huge advantage. Army Chief of Staff Sullivan says that the new battlefield will be a digitalized battlefield, one that can lift the fog of war for commanders and infantry alike.

Joint Chiefs of Staff Chairman Shalikashvili and Admiral Owens are contemplating the development of an electronic integrated system-of-systems to give us dominant battlefield awareness where real-time intelligence will lead to virtually instantaneous response. No more lengthy Scud hunts. No more service computers that cannot talk to each other.

The digitalized battlefield will also allow for decentralization of command, giving officers on the scene much greater ability to make the right decisions in response to the rapidly changing events of battle.

And that is just one of a hundred different technology avenues we must pursue. We are on the verge of a revolution in defense technology that will dwarf the impact of the dreadnought, the airplane, the tank, and the missile—a revolution that will not occur to our advantage if we fail to invest in military technology today. For innovation cannot occur on demand. It is a long-term process—yet a rapidly changing process as well. That means even a 1- or 2-year interruption in research and development funding will have terrible consequences down the road. A year is a lifetime in the field of high technology.

ARPA AND DUAL USE

Our current technological superiority has not evolved accidentally or overnight. The Department of Defense's secretive Advanced Research Projects Agency [ARPA], one of the least known, yet most important offices in the Pentagon, has been successfully promoting new technology for the military for the 37 years since President Eisenhower set it up.

In retrospect, it was a truly visionary Presidential accomplishment, and it is probably no accident that Eisenhower, like Churchill, approached this issue of military technology as a man who knew what it was like to order other men into battle. He knew this investment in technology would one day save lives—and it has.

What has ARPA done? Most of its efforts are classified, and it has purposely never recorded its history. But, by carefully investing in the private sector like a high-technology Johnny Appleseed, ARPA has helped bring about supercomputing, desktop computers, the internet—formerly ARPAnet—stealth technology, composites, a global positioning system, laser technology, high resolution imaging, advanced acoustics, smart weapons, and even the ubiquitous computer mouse, which has burrowed its way into millions of American homes and offices.

What is most obvious about this list is the multitude of ways in which military technology has been adapted for civilian use. In fact, technology developed for the military has revolutionized the lives of all Americans—the way we work, the vehicles we drive, the homes we live in. Technology that was designed to protect our way of life has evolved to transform our way of life. That is what the term "dual use" is all about—the use of technology for military and civilian purposes.

But times are changing—tables are about to be turned. President Eisenhower founded ARPA, but also warned that a military industrial base could swallow our economy. The opposite is now occurring. The defense technology base that was spawned by defense investment is now being swallowed by our civilian technology base.

For example, the computer was invented to help the military design a better way to mount an artillery attack, and it was improved when we needed to target our missiles. The military funded the development of computers and became the biggest market for computers. But today the Department of Defense has but a fraction of the computer market.

For the first time in human history advances in technology are occurring far more rapidly in the civilian sector than in the military. In a sense, we have gone from beating swords into plowshares to creating the plowshares first. Part of the reason is the widespread dissemination of technology among the population. The demand for new and better appliances, cars, and entertainment systems is enormous compared to the demand for better jets, tanks, and ships. The existence of that demand opens the door for cooperation between government and industry when a technology is of interest to the military and civilian markets.

Government dollars can be leveraged by private investment to produce more than could otherwise be accomplished under the auspices of the defense spending alone. In other words, potential civilian applications for military technology creates a multiplier effect on every Federal dollar we invest. Economies of scale then drive down the cost of the product and the contributing technology. The bottom line is this: Dual use literally gives us more bang for our buck. It is a genuine win-win situation—a win for our economy and for the defense of our country.

Perhaps most important: if our Government fails to use some of its defense spending to promote private sector technological development, the momentum of change in the design of the tools of war stalls and shifts elsewhere, and we risk losing new advances to the defense establishments of other nations, nations whose interests might be inimical to our own.

For the question is never, "Will we be able to invent new weapons of war?" The question is, "Who will invent the new weapons of war?" If we cut back on technological investment, such as is happening in Congress today, we will not always be able to answer that question with the words, "Made in the U.S.A."

This state of affairs can be summarized in three points:

First, the Defense Department must be involved in the exploding civilian technology world to meet its military technology needs.

Second, the United States, for military and economic reasons, must have the goal of maintaining the American advantage in civilian technology markets.

Third, collaboration between the civilian and military technology sectors can work because the applications for civilian and military use are easily transferable.

THE TECHNOLOGY PROGRAMS AT ISSUE: TRP

The technology reinvestment project [TRP] has been the first victim of the technology disarmament now underway in the House and the Senate. Developed by ARPA during the Bush administration, TRP investments are cost shared at least 50-50 with industry, competitively selected, industry-led and aimed at meeting civilian and military needs.

A brief review of current TRP investments gives us a clear idea of how important they are to our national security:

Head mounted displays: Infantrymen cannot walk around with desktop computers. With lightweight, head-mounted displays they can retain full mobility but have a full computer display of the battlefield and realtime intelligence and targeting data before their eyes. If you saw the movie "Aliens," you know what I am talking about. But this is an alien concept only if we cut off funding and allow another nation to pick up the ball we drop.

Uncooled infrared sensors: Desert Storm was launched as a night attack using infrared sensors as the basis for high-speed-attack operations. Our military needs to own the night and a new generation of cheaper, much more portable uncooled infrared sensors are an enabling technology being developed by a TRP team that will give us even greater control of the nighttime battlefield than ever before.

Item: Advanced information flow: Military command and control must process an exploding amount of intelligence data immediately to the battlefield for response. But limited communications capacity now clogs our ability to transmit, process, and act on that data. A TRP team is developing digital communications command and control equipment to burst massive new amounts of data through the interpretation and response pipeline at 10 gigabits per second, a 400-percent improvement over today's best equipment. That could mean the difference between life and death, victory and defeat on the battlefield.

Item: Single chip motion detectors: By reducing motion detection to a single chip accelerometer which can withstand accelerations up to 30,000 times the force of gravity, weapons guidance and navigation systems can be made significantly lighter and more sensitive. This will lead us, for example, to newer, more advanced versions of the cruise missiles and smart weapons that were so important to us in the gulf war.

Item: Autonomous all-weather aircraft landing: The efficiency of military aircraft is still limited by night and weather conditions. Operations at secondary fields are curtailed in these conditions if a full ground control system is absent, or if these facilities are disrupted or damaged. Basing aircraft at a small number of primary bases is not a good alternative because our command of the air becomes more vulnerable. A TRP team is working on placing all-weather air traffic and landing control systems into every cockpit, making aircraft independent of ground control availability and weather conditions.

Item: Turboalternator: Army gas-guzzling battle vehicles require a vast and vulnerable logistics chain and limit battlefield operations. The next war may not be fought next to Saudi oil refineries. A TRP team is developing a turboalternator so main engines can be switched off but all equipment and sensors can continue to operate during silent watch modes. This multiplies fuel efficiency and also makes detection through infrared emissions and engine noise much more difficult.

Item: Composite bridging: Military operations continue to be controlled by terrain: every stream or ravine that must be crossed creates a potential strong point for enemy defenders and disrupts the mobility that gives U.S. forces much of their edge. Every time our engineer forces have to bring up cumbersome, heavy bridging equipment for a crossing, enemy defenders can rally and our mobility is disrupted. A TRP team is developing superlight, superstrong composites for portable bridges to multiply the mobility of our battlefield forces.

Item: Precision laser manufacturing: Precision laser machining technology, by making aircraft parts microscopically precise, can make aircraft engines much more efficient. A TRP team, working with higher power density, more focused laser beams, and variable pulse formats, aims to double the life of military aircraft engines and sharply improve fuel efficiency and therefore range. Other beneficiaries include shipbuilders, airframe makers, engine makers, and a wide range of manufacturing technologies.

These are some of the new technologies we need for future battlefield dominance. And with a little imagination, we can envision even more revolutionary developments. Imagine a tiny helicopterlike device equipped with video cameras, flown by the dozens behind enemy lines, stealthily hovering throughout enemy territory, identifying the specific location of artillery, sniper nests, tanks, and serve as a guide for smart bombs launched from far away.

Imagine a sublaunched, fast-moving robot that can find and neutralize enemy mines at sea, safeguarding and speeding up the movement of our Navy.

Imagine lightweight, full body armor to make soldiers virtually invulnerable to small arms fire, dramatically improving our ability to control urban environments.

Such is the stuff of science fiction today, but like Leonardo Da Vinci and H.G. Wells, we need to realize that what is today's fiction can be tomorrow's fact. In fact, some Defense Department programs are looking into aspects of the exotic technologies I just described.

We must admit to ourselves we are no longer in the age of the backyard tinkerer when it comes to high technology weapons of war. No more Wright Brothers working out of a garage. The new weapons will come only after substantial investment by the Government and private industry, working together to safeguard the economy and security of our Nation's future.

That is why the drastic cuts in or cancellation of TRP, ATP, and other technology programs is akin to marching onto a field of battle and stripping our soldiers of their weapons. The survival of the soldiers of our future—soldiers to be drawn from the ranks of our children and grandchildren—depends on the development of technologies to help them control the battlefields of our future.

Failure to develop those technologies can only provide comfort to future enemies.

CONCLUSION

The movement to slash defense technology is being led by the "technonothings." When it comes to the complex interaction between Government and the private sector in technological research and development, the technonothings do not understand the lessons of history and they do not see the perils and opportunities in our future.

They cannot see or touch a weapon of the future and so they cannot justify spending money to develop it. They say they do not like Government picking winners and losers, but they do not understand that we need to have Government and business work together, sharing costs and talent, to bring about the defense and civilian technologies our citizens will want and need in the future.

It is a good thing that our predecessors in this Capitol building did not have to see a jet fighter before investing in its development, and did not decide to wait until the private sector invented it on its own.

They did not have to see or even understand the atomic bomb before spending millions on its creation, and did not decide to wait until scientists built one on their own.

They did not have to see and touch cruise missiles, Patriot missiles, stealth fighters, radar, lasers, and the whole panoply of weapons we now possess before allocating resources to their research and development.

We owe our survival to their foresight. Will we lose our liberty to myopia?

There is, I admit, not much of a constituency fighting for these programs, because we are dealing with the future, not the present. That makes investment in military technology a hard sell; not to the private sector, which wants the partnership, but to those political forces that cannot see much beyond the next election.

We need to go about the business of creating technological change the way some of our ancestors created the great pyramids, cathedrals, and other monumental architectural triumphs of the past: They started those works knowing they would not survive to see them finished, but pressed on with the knowledge that generations yet to come would appreciate what they did.

We must press on with such knowledge ourselves, lest we be, as Churchill said, "absolutely wrong in relation to the deep tides of destiny." Those tides are now tides of technological change and it is our destiny—our duty—to recognize there can be no turning back.

I thank the Chair. I yield the floor.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The distinguished Democratic leader is recognized under the previous order.

Mr. DASCHLE. I thank the President.

THE BALANCED BUDGET AMENDMENT

Mr. DASCHLE. Mr. President, let me begin this morning by going back to the debate yesterday and making a couple of remarks with regard to those who spent the better part of an entire month on the floor debating this issue.

The manager on the Republican side, the distinguished Senator from Utah, was a gentleman. He did an outstanding job and gave everyone the opportunity to be heard, and to discuss the issue, in a way that I think fits the Senate. It was, as the distinguished Senator from West Virginia said yesterday, a very good debate, a rigorous debate, a bruising debate in many cases but, certainly, one that afforded everyone the opportunity to be heard, to present their case, to make their positions well known. That was due in no small measure to the manner in which the distinguished Senator from Utah managed the legislation the entire time that it was pending on the floor.

Let me also commend the distinguished senior Senator from Illinois for his tenacious approach to the debate, and also for conducting himself in a very admirable way. I know that often, as we take our positions, we sometimes allow our own personal views to mask what in other ways would be a very legitimate discussion of issues. Certainly, the Senator from Illinois, as he conducted himself throughout this debate, did not allow whatever personal views he may hold with regard to the positions taken by other Senators to distract him from conducting himself in a way that I thought was extraordinary.

Certainly, the Senator from Idaho [Mr. CRAIG], and his leadership on this issue was also extraordinarily commendable.

I hope that as we take on these issues, as difficult and as fractious as they become sometimes, we can maintain civility, and that we can find ways with which to disagree without being disagreeable. I know there are a lot of strongly held views and a lot of temptation sometimes to get personal, to be negative. But I think that the course of this debate was one of our better moments. It was an opportunity for us to debate the issues in a meaningful way, without getting personal, being negative, and without distracting from what is our real purpose in being here.

Mr. President, the vote we took yesterday may not be the last on the constitutional amendment. The majority leader has indicated, as is his right, he is going to raise the issue again at some later date. Regardless of when that time may come, I think the real question now is: Can we as Democrats and Republicans work together? Can we find a way with which to put aside our differences on an amendment itself and commit ourselves to doing what we say we must do? We need to recognize that the clock is ticking, and to recognize that without some determination to take responsibility, to set forth a glidepath, we will be right back where we were a month ago, with no real progress, with no real substantive demonstration of our determination to resolve this matter 1 year from now, 2 years from now, or 3 years from now.

So, Mr. President, I think it is very important that we recognize that the clock is ticking. We have 43 days, by law—43 days by law—to produce a budget resolution. We did that last year. We hope very much that we can do it again this year. It is tough. And for those who say we do not need a constitutional amendment to do the job, I think it is all the more important that we demonstrate that we can; that we are up to the task; that we can meet our responsibilities to make it happen correctly, to make it happen in the way that was foreseen when we passed the laws setting up this budget process.

So within the next 43 days, we hope that a majority will come forth, and that we can work together to produce what we have called for on many occasions, a glidepath to a date certain, a time within which we will reduce the deficit to zero, a time within which we can be assured that indeed we are going to take the reins of responsibility and produce a balanced budget.

When that happens, we can look back with some pride at the way in which this whole effort was undertaken. I hope also that we will abide by the law passed some time ago that stipulates that we do so without the Social Security trust funds. That is the law. We are required already to keep Social Security off-budget. So that ought to be our task. That ought to be the responsibility that we all grasp now as Republicans and Democrats. Pro-balanced-budget amendment supporters and those who oppose it must recognize that we have a timeframe within which we must produce, a timeframe that is a little more than a month long, which requires us, by law, to set out a budget resolution that provides the glidepath that we all say we want.

Let us make it a time certain. I am not wedded to a specific date today. But I would agree to a time certain, a time within which we can, with some confidence, look to a decline of the deficit to the point where we can say with authority that we have taken Social Security out of the calculation, as the law requires; we have reduced the deficit annually, building on the 3-year record we have set out now, and we have done it within the timeframe that the law requires.

I think the American people would look at this Congress in a very different way. I think they would look at us with a great deal of admiration if we said we are going to do what we all say we want to do. Certainly, this is the time to prove it. This is an opportunity for us to demonstrate real responsibility. It is an opportunity for us to demonstrate real bipartisanship. It is an opportunity for us to set politics aside and say this is our task, and there can be no more important responsibility. We are going to do it and do it in a way that we all can feel proud.

So I sincerely hope, Mr. President, that everyone will accept that task, and that everyone will take this responsibility seriously. I think the majority is going to live up to their commitment. I am sure they will produce a resolution. I hope they will produce that resolution in the time the law requires.

So our purpose in coming to the floor this morning is to say that the balanced budget amendment debate, for now, is behind us. It is over. Let us get on with the real work of doing the job, doing what we say we are going to do. Let us get on with making sure that we do not miss this opportunity. Let us get on with trying to do what we all have professed is the most important thing we can do, and that is set out the glidepath to a balanced Federal budget at a time certain. That time certain is in the next 43 days.

Mr. President, I know of several of my colleagues that have come to the floor also to express themselves on this issue. I will yield whatever time he may require to the Senator from Nevada.

BALANCED BUDGET AMENDMENT

Mr. REID. Mr. President, last year, I offered a balanced budget amendment which excluded Social Security from the budget. When this body again considered a balanced budget amendment 4 or 5 weeks ago I offered an amendment that excluded Social Security. After it was defeated, I worked with others to ensure the Social Security trust funds would not be looted to reduce the deficit. Of course, we know the result of the vote yesterday. But, Mr. President, I feel no jubilation. I do not feel a sense of victory as a result of having my amendment being one of the principal—if not the principal—reason the balanced budget amendment failed.

But, in fact, the day after the vote, I feel a sense of hope, perhaps even anticipation, that the debate that has taken place in this body over the past several weeks has established at least two things in my mind. No. 1 is that the accumulating debt this country has is serious. No. 2, the American people recognize the seriousness of that debt, but they do not want to balance the budget using Social Security trust fund moneys.

We have heard several times on this floor that 80 percent of the American people support a balanced budget amendment. That is true. If you ask that same group of people, "Do you support a balanced budget amendment using Social Security to achieve a balanced budget?" only about 32 percent of those people say yes. In fact, most of the polls show a number slightly lower than that.

Mr. President, what was the debate on this floor about as relating to Social Security? Well, we established quite clearly that Social Security has not contributed one penny to the huge deficits that this country is accumulating—not a penny. We further established, without any refutation, that Social Security is not a welfare program. Social Security, quite to the contrary, is a self-financing program where a person's employer pays 6.2 percent of their wages into a fund—we call it a trust fund—and the individual, the employee, pays 6.2 percent of their wages into a fund. That is to be accumulated during their working life, so that when they retire, they will have a retirement income. The average around the country is $640 a month. That is not a lot, but certainly, for an individual, it is a difference between despair and the ability to live a decent life.

Mr. President, the issue now before us is to continue on a path of deficit reduction until we get to balance. I want to show this body the fact that while we have not done a wonderful job, we have done a pretty good job, and we have to do a lot better, recognizing that this will be the third year in a row that we have had a decline in the deficit, the first time in 50 years.

We also recognize, Mr. President, that we have also had the lowest unemployment and the lowest inflation in 50 years, the highest economic growth since LBJ. And we have 120,000 fewer Federal employees than we had 2 years and 2 months ago. We can do a lot better. But what if we had not adopted the Democratic deficit-reduction plan? What would we have had we not done that?

Well, Mr. President, this chart shows clearly what would have happened. As a result of the deficit-reduction plan that worked, we have had a declining deficit. It has not declined nearly enough, but a declining deficit. It levels off and this is, as seen on these lines at the bottom of this chart, what happened as a result of the hard choices we made.

Mr. President, I do not think it is wrong to mention to the American public that we did not receive a single Republican vote to bring this deficit down.

In fact, had we not adopted the tough program that we did, the deficit would have been huge. This is what would have happened had the Republicans prevailed, had the Republicans' deficit-reduction plan been adopted. It would not have been a deficit-reduction plan, it would have been a deficit increase. This red line shows what would have happened. And beginning next year, the budget we are adopting now, you can see where it would have skyrocketed.

So, Mr. President, we have not completely dropped the ball. We have done some good things and the economy now is in good shape. The question is: Can we learn from our experiences? Can we learn from the debate that has taken place on the Senate floor these past few weeks? I hope so.

I know, speaking from my perspective, I think the debate has been constructive. I join in what the minority leader, the Democratic leader, has said. I think the majority has allowed us to have a full debate on this issue. I commend and I applaud the senior Senator from Kansas, the majority leader of the Senate. I think he has really done a good job of moving this legislation through this body. I believe it has been a good debate. It is one that I hope we can learn from as we look to the future.

I look forward to seeing what budget is going to come from the leadership of Senator DOMENICI and Senator EXON. These are two experienced legislators. I have not had the opportunity—I know that the senior Senator from New Mexico has had a death in his family and I know he has a lot on his mind. But I know that his experience, together with Senator EXON, to whom I have spoken, is going to bring out a budget, that will take into consideration what has been debated on this floor; namely, that we need to bring the deficit down and we cannot and we should not use Social Security to bring the deficit down.

Mr. President, I am willing to work with my colleagues on the other side of the aisle. I agree with my colleagues, we should have a balanced budget. But, Mr. President, we can do that. Even though the balanced budget amendment did not pass, we can still do that.

Section 13301 of the Budget Enforcement Act says that you are not supposed to use Social Security. We should follow this law. Our numbers may not look as good as we would like them in the newspapers, but we could and we should have a balanced budget amendment. So, Mr. President, I repeat, our deficit is too big, but we also should not raid Social Security and try to justify using those moneys. I see my friend from North Dakota. My understanding is that the leader wanted to yield time to the Senator from North Dakota under the leader's time.

The PRESIDING OFFICER. Does the Senator yield time to the Senator from North Dakota?

Mr. DASCHLE. Mr. President, I yield such time as he may consume to the distinguished Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, how much time is available?

The PRESIDING OFFICER. There are 13 minutes 36 seconds.

Mr. DORGAN. Mr. President I thank the minority leader.

CONSTITUTIONAL AMENDMENT TO BALANCE THE BUDGET

Mr. DORGAN. Mr. President, yesterday, of course, we voted on a major proposed constitutional amendment to balance the budget. That was a vote that was difficult for a number of Members of the Senate. Most understood it was a very significant, serious issue, and a great deal of emotion existed on both sides. It was not an easy vote, I expect, for virtually anyone. And I suppose there are some ruptured feelings and relationships, at least momentarily, about some of these issues.

But I was thinking about it last evening. In the middle of the debate that we had for some weeks over the question of whether we should amend the Constitution, a news item appeared one morning about America's trade deficit. That news item disclosed that in the last year, when figures for December were released and we had a full year's picture of America's trade deficit, that we had the largest merchandise trade deficit in the history of the world. The United States was running the largest trade deficit in the history of humankind. We had gone, in a few years—15 years—from being the largest creditor or the biggest banker as a country to now the largest debtor in the world.

I thought about that in the context of the fractious debate on the issue of balancing the budget by a constitutional amendment. Because, with respect to international trade and the question of how we as a country do, we are a team, all of us. The entire country's future is at stake. Our jobs are at stake, opportunities for our children are at stake. And it is an international competition that we must win. There ought not be anyone in the congressional branch of Government that does not understand that we are on this team together and that we need policies that allow this team to win.

Well, then we come to domestic policies, including provisions that would require a change in the Constitution. And what is a team, or what should be a team, because we are all on the same side, in international competition in who will have the jobs, who will have the expansion, where will be the opportunity and that then breaks down into a debate in our Chamber. And, of course, what happens in the process of trying to make decisions about this, emotions run high and sometimes we have very fractious debates. There are, it seems to me, no winners and no losers in these kinds of debates. Certainly, when you are dealing with a question of whether or how to change the U.S. Constitution one would expect people to feel very strongly about their points of view.

I want to add to the comments by the Senator from South Dakota and Senator REID and others that I have the greatest respect for Senator HATCH and Senator SIMON. I think both of them did an extraordinary job. I have great respect for their point of view.

My own view is that there is a right way and a wrong way to change the Constitution. I feel very strongly that the question of how you count receipts in the Constitution is very important to the future of the Social Security system. Because the future of the Social Security system will not be a future that guarantees benefits to Americans who deserve them and who are entitled to them unless we preserve the funds in the trust funds. And that would not have been the case under this amendment.

If that had been changed, it would have passed yesterday with 75 votes. So there is no joy in that vote. And the message in that vote is not that the U.S. Senate does not want a balanced budget amendment. If that amendment had been changed, the message would have been 75—probably more, maybe 80 votes—in favor of a constitutional amendment to balance the budget provided there was a guarantee that trust funds of Social Security be protected.

I noted that in the Washington Post this morning they editorialized about this Social Security issue and said it is not an issue, because the fact is Social Security is now one-fourth of all spending for other than interest on the debt and that the deficit cannot be reduced without it.

I do not agree with that. If someone believes we should reduce the Federal deficit by cutting Social Security benefits, they would have a responsibility to cut Social Security taxes because the only purpose for which that tax is collected is to put it in a trust fund to be used for only one program, and that is Social Security.

I think the Washington Post is all wet. I am surprised to see the editorial. Everybody has a right to think as they think. I just disagree with them.

Now, the question of Social Security that we have discussed at some length I hope could still be resolved. If we could resolve that, that constitutional amendment can be brought back and will pass by a very significant margin.

I was probably 14 years old when I got a driver's license to drive my father's pickup truck, and my way of making some money during high school was to haul garbage. I would pick up the 50-gallon drums that had been opened at the top, used oil drums that the widows in my hometown of 300 people used to put their trash in and burn their trash.

At the end of a week or two, their 50-gallon drums would be full of burnt trash, and somebody would have to haul it to the dump ground in my small town. I borrowed my dad's pickup truck. When I was 14, I had a garbage route. I picked up the drums and hauled the trash to the dump ground for half a dozen widows in my hometown. That is the way I earned a few dollars and got along in high school.

All of those widows in my hometown whom I was doing a little work for—virtually all of them—lived on Social Security. That is about all they had. The difference between them, then, and those who preceded them 30 or 40 years prior to that, was that they reached that stage in life where they were in their seventies or eighties, some in their early nineties, and they had Social Security checks.

It was the difference between being impoverished at age 80 with nothing to live on, or having a little something to give you a decent life and give you an opportunity. That is what Social Security meant to them.

I saw it when I was a kid. That is why the Social Security system is still important to me. I think it is the crown jewel of achievement in the last 60 or 70 years in this country for us to have constructed something that works the way this works, to give an opportunity during one's retirement years to draw on a stream of income that one contributed to during one's working years.

We face challenges with Social Security, but the wrong way to approach those challenges is to say to somebody, "You can take what is built up in the trust fund or what we intend to build up in the trust fund to save for the future, and use it to balance the Federal deficit." It is the wrong thing to do. I know the amendment might be popular, but there is a difference between right and wrong.

It seems to me here, notwithstanding the strong winds, you need to be prepared to stand and fight for what is right. I respect everyone's views. Those who oppose me on this or dozens of other issues will not hear me denigrating the way they do business or the way they think. There is great room for disagreement. I have enormous respect for those who do disagree, but I also hope they will accord similar respect to the kind of debate that we have had.

I think that we have a country in which people look at the congressional branch of Government these days and they say, "You know, I kind of wish they could just make progress and get things done." And they probably know that there are many Members inside the institution who feel the same way. We understand what the problems are.

Let Members find a way to coalesce to solve the problems. There is no reason that on the issue of a balanced budget, we cannot follow on from what we did in 1993. Yes, I voted for the Deficit Reduction Act of 1993. That was enormously controversial. But I am glad I voted for it. It was the right thing, and it is still the right thing to have done, because It reduced the Federal budget deficit. I am glad I did that. I am prepared to do more.

I hope there are many people on both sides of the aisle during the budget and appropriations process who will join hands together in a bipartisan way. We are prepared to march up the hill. We do not need a constitutional amendment to do that. No one needs a constitutional amendment to build the steps to a balanced budget. Those are decisions of taxing and spending that are made individually, day after day, on appropriations bills and on the budget bill.

I guess my point today is to say there were conditions under which I was fully prepared to vote for this, and I described what those conditions were. They were not able to be met, I guess. I was not able to vote for it. That does not mean that we should not march together toward a balanced budget. Of course, we should. And we ought to start immediately. Some of us started in 1993. And we are pleased we did. Some who decided to vote for that paid a very heavy price for it. But it was a vote well worth taking as far as I was concerned.

Now, the next question for all Members is, what are the subsequent votes by which we can, together, begin to climb those stairs and make progress toward balancing this country's budget, and not just balancing the budget, but starting at some point to pay off the debt.

We need to create investment in this country. We need to create investment and growth opportunity. I started by talking about the trade deficit, because ultimately we are involved in world competition for the future. There will be winners and losers. I do not want this country to be a loser in the international competition. I want this country to win, because winners will be assigned new jobs, expansion opportunities, and hope, and losers will have the British disease of long, slow economic decay because they believe what is important is consumption, not production. That is another discussion for another time.

I fervently hope that all Members can understand we wear the same jersey. We are on the same team. In international competition, we are fighting the same fight for the future of this country. The answer—should we balance this budget and should we start paying off the debt—is clearly yes, notwithstanding what constitutional amendment might or might not be debated or discussed now or at any time in the future. The answer is yes, that is our job. The sooner that we get that job done, the better it is for the American people and for our children.

The PRESIDING OFFICER. The Senator from Florida is entitled, under the previous order, to 15 minutes.

Mr. DORGAN. Mr. President, how much time is remaining on Senator DASCHLE's time?

The PRESIDING OFFICER. One minute and thirty-two seconds.

A HAPPY DAY FOR FLORIDA

Mr. GRAHAM. Mr. President, this is a happy day for my State of Florida. One hundred and fifty years ago today, March 3, 1845, President John Tyler signed legislation which this Senate had passed 2 days earlier making Florida the 27th State to join the Union.

I am pleased to stand on the Senate floor today and express my appreciation to America for having accepted our State as a member of the United States and for the benefits that Florida has gained by that membership.

Florida has a long history that predates its period of statehood. In fact, Florida was the first point in North America to be discovered by Europeans when Ponce de Leon came upon the coast of Florida near what is now St. Augustine at Easter time in 1513. He spent a brief period of time in the State, enough to declare it the fountain of youth. In Florida, he looked for a place where one could bathe himself and receive eternal youth.

Not much longer, 1565, another Spaniard, Pedro Menendez de Aviles, established the first European city in North America in the location that is currently St. Augustine.

Florida had a tumultuous history during its prestatehood/preterritorial days. In the 18th century, Florida was peripherally involved in what was called the French and Indian War in North America. Florida was also involved in the Seven Years' War in Europe, at the conclusion of which, in 1763, the British Navy occupied Havana Harbor.

At the Treaty of Paris in 1763, the Spanish were given a choice. They could either have the British remove their navy from Havana or they could retain ownership of east Florida and west Florida—west Florida being the extension of the State from the Apalachicola River to the Mississippi River.

The majority whip, who joins me on the floor today, should take pride in this discussion of Florida. For almost 300 years, the southern part of Mississippi was part of the territory of Florida.

The Spanish decided that they would prefer to keep Havana. So the Floridas were transferred to Great Britain.

Florida stayed a British territory throughout the period of the American Revolution. At the end of the American Revolution in 1784, the Spanish had occupied Nassau, and the British received the same type of offer that they had made 21 years earlier: Would they prefer to have Nassau or the Floridas?

The British decided they would prefer to have Nassau, and the Floridas reverted back to Spanish control. Floridians had to have a fairly high threshold to deal with rejection in the 18th century.

But by 1819, the citizens of Florida had decided that their future was not with a European colonial power but was with the United States. That decision was sealed in 1819. In 1821 Florida became a territory of the United States of America and the two parts of Florida were combined into a single territory. Tallahassee was selected by its first territorial Governor, Gen. Andrew Jackson, to be the capital of the territory of Florida.

In 1845, Florida's territory had matured, and the United States was prepared to extend full statehood to Florida. Today, we celebrate the 150th anniversary of that statehood.

Mr. President, I would like to briefly comment on some of the changes that have occurred in the 150 years since Florida joined the Union. It is said that the one constant in Florida is change. If you do not like something about the State today, just wait a while because it will certainly be different tomorrow. That has certainly characterized our State during the last 150 years.

Maybe the most dramatic statement of that change is the sheer demographic size of Florida. When Florida entered the Union 150 years ago today, it was the smallest State in the Union with a population of approximately 55,000. Today, it is the fourth largest State with a population that now exceeds 14 million. Florida is projected to have a population of over 19 million by the year 2020 and by the middle of the next century to have a population approaching 40 million.

Florida in 1845 was a State very much on the periphery of the United States of America. It was a long way from almost anyplace in the country to Florida. And it was a long way from any one point in Florida to another. Legislators who represented the Florida Keys, in order to get to Tallahassee, had to take a boat to Philadelphia and then a train back to Thomasville, GA, from which they would take a carriage drive to get to Tallahassee.

Florida was remote. It was largely cut off from the mainstream of American life in 1845. Today, Florida has become, in many ways, the linchpin of our emerging relationships within the hemisphere. Florida has become a central point for trade and commerce and cultural exchange, not only within the United States but particularly between North America, the Caribbean, and Latin America.

Florida has become a State which is living in the future that will be all America's in the 21st century. The population of our citizens now, particularly the almost 19 percent over the age of 65, reflects what the rest of America's population will be by the end of the first quarter of the 21st century.

Florida is leading in technology and arts and culture. It has become a predictor of national trends. In 1845, Florida was a very homogeneous State. Most of our citizens had very similar backgrounds. Today Florida is one of the most diverse States in the Nation.

The list of countries from which schoolchildren and the largest public systems in Florida is virtually a list of the nations of the world. Florida is a State which has become, as some describe it, the "big paella" of America. It is the place in which people from all around the world now live in large numbers. They are becoming contributing members to our State and our Nation, but also with a fierce pride in their native culture.

Florida is becoming a model of the kind of cultural diversity that benefits America. It was with great pride in December of last year that Florida had the privilege of hosting the Summit of the Americas, the first gathering in a quarter of a century of the heads of government of the Western Hemisphere. The summit was the first time in which all of those present were democratically elected heads of government. The summit is illustrative of the centrality of Florida in the new relationship within our hemisphere.

Mr. President, Florida is helping the United States in establishing this relationship with the other Americas, but maybe Florida's greatest role for the 21st century will be as a model of how persons from different cultural backgrounds, different ethnic, racial, and religious backgrounds can live together in peace.

It has been suggested that the challenge of the 21st century will be the challenge of whether Bosnia is our collective future. Will we live in a world in which people who are different than their neighbors will find it impossible to live a life of dignity, respect, and peace?

While our State has not been immune from some of the abrasions of cultural diversity, we are proud of the degree to which we are building a society from a diverse community.

So, Mr. President, this is a happy and celebratory day for our State of Florida. It comes, I hope, as an event which might serve to assuage some of the contention that was felt here yesterday and maybe reverberates today. One hundred fifty years is a short time in the history of the planet but a long time in the political history of this Nation. It illustrates the good decisions that were made in this Chamber on March 1, 1845, when the Senate of the 54th Congress had the wisdom to enact the legislation that would create the 27th State of the Nation. Our challenge today is to create a record that Americans will look back on 150 years from now with pride.

So we thank America for allowing us to join the United States of America. We are proud of what we have contributed. We are pleased to be a full member of this greatest Nation in the history of the world. Thank you.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER (Mr. COVERDELL). The Chair recognizes the Senator from Mississippi.

Mr. LOTT. Mr. President, I ask unanimous consent that in addition to the previously agreed to 5 minutes, that I have an additional 2 minutes without interruption, for a total of 7 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

WELCOME, SENATOR BEN NIGHTHORSE CAMPBELL

Mr. LOTT. Mr. President, I had the honor earlier this morning of announcing that Senator BEN NIGHTHORSE CAMPBELL, of Colorado, would be joining the Republican ranks in the Senate. And, again, I want to extend a welcome to him and say how proud I am of him for his conviction and his courage.

I am satisfied that his voting pattern will remain the same. He has things he feels very strongly about. He does worry about where we are headed with deficit spending in this country. He is concerned about the Federal Government's abuse of public lands. He is concerned about private property rights. He has an outstanding record, one that I have observed for, I guess, 10 years now, having served in the House of Representatives with him back in the midsixties and now having watched him in the Senate for the past 2 years. He is going to be an outstanding addition to the party. It is an honor to the Republican Party to have him join us.

I ask unanimous consent that his résumé be printed in the RECORD.

There being no objection, the résumé was ordered to be printed in the RECORD, as follows:

Ben Nighthorse Campbell, Democrat, of Ignacio, CO; born in Auburn, CA, on April 13, 1933; attended New England Mills Grammar School, Weimar, CA; attended Placer High School, Auburn, CA, 1951; quit high school to join Air Force (where he got his GED); in 1991 attended Placer High School's graduation exercises and received a diploma; B.A., San Jose State, 1957; attended Meiji University in Toyko, Japan, as special research student, 1960–64; served in U.S. Air Force in Korea, airman second class, 1951–53; jewelry designer who has won more than 200 first-place and best-of-show awards; rancher who raised, trained, and showed horses; All-American in judo, captained the U.S. Olympic Judo Team, 1965; won the gold medal in the Pan-American Games of 1963; elected to Colorado State Legislature in 1982, serving 1983–86 on the agriculture and Natural Affairs and Business and Labor Committees; appointed adviser to the Colorado Commission on International Trade and Colorado Commission on the Arts and Humanities; voted by colleagues one of "Ten Best Legislators" in the Denver Post-News Center 4 survey, 1984; "1984 Outstanding Legislator" award from Colorado Bankers Association; inducted into the Council of 44 Chiefs, Northern Cheyenne Indian Tribe; member of Durango Chamber of Commerce, American Quarter Horse Association, American Paint Horse Association, American Brangus Association, American Indian Education Association, Colorado Pilots Association, Aircraft Owners and Pilot Association, senior technical adviser, U.S. Judo Association; married July 23, 1966, to Linda Price; two children: Colin, and Shanan; elected to the 100th Congress, November 4, 1986; reelected to each succeeding Congress; appointed to Committees on Agriculture, Interior and Insular Affairs, and Small Business; elected to the Senate on November 3, 1992 for the 6-year term beginning January 3, 1993.

Mr. LOTT. Mr. President, just to make a couple observations about BEN NIGHTHORSE CAMPBELL as an individual, he was born in California, but moved to Colorado at an early age. He served in the Air Force during the Korean war. He is a rancher who raises and trains show horses. He was All-American in judo. He captained the U.S. Olympic team in 1964 and won the gold medal in the Pan-American games in 1963. He was elected to the Colorado State Legislature in 1982, where he received numerous awards, including being voted one of the 10 best legislators in the Denver Post-News Center 4 survey. In 1984, he was selected as the Outstanding Legislator by the Colorado Bankers Association. He has been inducted into the Council of 44 Chiefs, of the Northern Cheyenne Indian Tribe. He is a member of the American Indian Education Association and the Colorado Pilots Association. He is married to the former Linda Price, and they have two children.

He is a typical example of the American success story, starting with very humble beginnings, overcoming lots of difficulty and adversity. But by hard work and energy and education and training, he has become an outstanding U.S. Senator, and we are truly pleased to have him in our ranks here today.

BALANCED BUDGET AMENDMENT

Mr. LOTT. Mr. President, if I could move on to another subject, I listened with a great deal of interest this morning to the distinguished minority leader, Senator DASCHLE, of South Dakota, and I think maybe his remarks will help to begin to get things back on the right track. The past few days have been very difficult here in the Senate. Some things, perhaps harsh things, have been said here on the floor of the Senate and in the public arena, and I think we have to stop and take stock of how much damage was done by the debate and all that went on during the discussion on the balanced budget amendment to the Constitution.

I agree that we need a bipartisan effort to achieve a balanced budget, and in fact if we had the will, we could achieve a balanced budget without a constitutional amendment. But I have been in this city for 26 years, as a staff member, as a House Member, and as a Senator, and it has not been happening. I do not believe it will happen without a constitutional amendment requiring a balanced budget. I think we need the additional leverage.

However, we took the vote. We were one vote shy. Any one of 34 Senators could have passed that constitutional amendment to balance the budget and send it to the American people for their legislatures to vote on that amendment. It did not happen. But we should go forward. We should set a process in motion that would lead to deficit reduction this year and next year. We cannot have a situation where for every year as far as the eye can see President Clinton's budget would call for $200 billion deficits.

So we need to make the tough decisions for the process to get there, and then we need to have the budget itself. So we will see what happens when we get to the tough votes on amendments and on the balanced budget resolution later on this year. We will have disagreements on both sides of the aisle. Every one of us will find that there is something we feel very strongly about, and we will fight for it. That is the way it works. But I have also watched over the years Members of Congress in both bodies stand up and say, why, we want a balanced budget but not here, not there, not in my State—in your State, somewhere else, some other day, some other time.

When we had the Gramm-Rudman process, when we got up to the lick log, so to speak, we moved the dates or we exempted this group and that group. When it started off, it was 3 or 4, and it was 21 the next thing you know. So we will see if we can have a bipartisan effort to achieve a balanced budget. And once again, I heard the minority leader say we should exempt Social Security.

Republicans will have a budget resolution, a 5-year plan, that will move us toward a balanced budget by the year 2002 without touching Social Security. The leader said that. I have said it. Republicans have said it. Democrats have said it.

That is where we started getting in trouble this past week. We started showing evidence we did not trust each other. Our word is not good enough anymore. When the leader stands here and says we are not going to touch Social Security benefits or raise taxes, that is not good enough anymore. We had people making speeches about, oh, we have to do this to protect Social Security. Where were they last year when we voted on the same, identical balanced budget amendment? Why were they not worried then? Why is it now, all of a sudden, after all these years with Social Security being in the unified budget, we had to take it off at that particular moment? Where were they last year when we had relevant votes—actually, it was in 1993—when we had relevant votes on Social Security?

I ask unanimous consent to have printed in the RECORD at this point the votes that I refer to, a vote to table the McCain-Brown amendment. And I think there are six or seven of those.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

> The relevant votes are:
>
> A vote to table the McCain/Brown amendment to the Omnibus Budget and Reconciliation Act of 1993 (OBRA 93), which would have required that revenues from the increased tax on Social Security benefits be credited to the OASDI trust funds (Vote No. 184, June 25, 1993).

Mr. LOTT. I really do believe that was just a cover to use as a reason not to vote for the balanced budget amendment. But again, if we can work together in a bipartisan way to get a glidepath toward a balanced budget, certainly we should try to do that.

PROGRESS IN THE SENATE

Mr. LOTT. Mr. President, I also want to take this occasion to say that I do not think the Senate has looked very good this year. I do not think the length of the debate necessarily improves the quality of the legislation. I think you need to have reasonable debate, adequate debate, understand what is in legislation, but I think debate just for debate's sake is not good legislating.

When I look at what we have done this year, we have been in session now for the most part for 2 months, and what do we have to show for it for the American people? We got off, I thought, to a pretty fast start, although it took longer than it should have. On the congressional coverage, we did say, oh, we are going to make the laws apply to us, and the vote was 98 to 1—98 to 1. We got that one passed, and it went to the President.

That is the only bill—I believe this is correct—the only major bill, and maybe the only bill, that we have sent to the President for his signature this year, in 2 months.

Now, we went then to unfunded mandates, a process to try to stop the cavalcade of unfunded Federal mandates we are putting on States—overwhelming support for it, but here in the Senate we spent 58 hours and 34 minutes discussing this legislation.

The PRESIDING OFFICER. The Chair advises the Senator from Mississippi he has exhausted his 7 minutes.

Mr. LOTT. Mr. President, I ask unanimous consent I may proceed for 2 more minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. For 58 hours and 34 minutes we talked about unfunded mandates. You would have thought this was really a controversial issue. Now, we needed time to look at the bill and, yes, to look at the report to make sure we fully understood it, but 58 hours and 34 minutes? And then we got to a vote on final passage and it passed 86 to 10—86 to 10. That is good. You would think, great, now we are on the move.

The bill has not gone to the President yet. It is still languishing in conference.

And then, of course, there was the balanced budget amendment —116 hours of debate. We covered a lot of territory in that debate. It ranged far and wide, quite often far from the subject at hand—116 hours. And then we voted, and the vote was, in the final analysis, really 66 to 34, although the majority leader changed his vote in order to offer the motion to reconsider—65 to 35.

I do not think the American people want the Senate to just react or act on what the House has done. But I think they have a right to expect that the Senate would get the message of the election in 1994 as well as the House. I think the American people want us to act in an affirmative way. And sometimes they want us to act to stop and reverse some of the policies of the past 20 to 40 years that have gotten us into the difficulty we are in with our Federal debt. We do not seem to be doing a very good job of moving forward that agenda, or any agenda. And when I say it that way I am assuming some of the blame on this side of the aisle, too.

So I guess my conclusion here today, as we run out of time, is yes, I hope we can run in a bipartisan way. There have been ruptures. I had looked forward to working with the new leadership on the other side of the aisle. I have known Senator DASCHLE, Senator DORGAN, Senator BREAUX and Senator KERREY for years and have a lot of respect for them. I thought we could cut out some of the acrimony and some of the partisanship, that we could talk and communicate and understand each other and have a schedule that the Members could rely on that would make sense. I hope we can still do that. But we lost a little bit of that opportunity in the past few days in my opinion.

I think the Senate needs to take stock of itself. Maybe this is the way it has always been done. I do not believe that. I have gone back and looked at history and I do not think necessarily what we have done in the last 2 months is the way it has always been done. But I have an answer to that. If it has, so what? If it needs to be changed, if we can do a better job, let us do it. Yes, I am a former House Member. No, I do not want to make the Senate a replica of the House. But can we make the Senate a better legislative body, if we make some changes or we work together in a way that provides—yes, more efficiency? I think it is worthy of effort. And I hope we will begin it next week.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Florida.

Mr. MACK. Mr. President, I ask unanimous consent to address the Senate as in morning business.

The PRESIDING OFFICER. That is the regular order, Senator.

THE DEFEAT OF THE BALANCED BUDGET AMENDMENT, HYPOCRISY ON THE RECORD

Mr. MACK. Mr. President, during the past several weeks there has been significant debate on one of the most fundamental issues facing America today. One which, frankly, divides the two parties in this country. At times the debate was heated. At times the debate appeared to indicate the balanced budget amendment would pass. But, in the last days, it became clear that would not be the case and the balanced budget amendment was defeated.

This morning, while Republicans were trying to recover from that defeat, we were buoyed by the announcement that Senator BEN NIGHTHORSE CAMPBELL was switching parties, changing from Democrat to Republican.

During the press conference this morning making that announcement, a question was raised by one of the reporters regarding a comment attributed to the minority leader of the Senate, suggesting of Senator CAMPBELL, "perhaps he should resign and run for reelection. * * *"

I assume the minority leader made that statement because Senator CAMPBELL had changed parties. I would like to suggest that perhaps the minority leader, Senator DASCHLE, should resign and run for reelection himself, because clearly he changed his position on an incredibly fundamental issue which he not only voted for in the past, but made as a central theme of his campaign in 1986.

Let me quote from one of his commercials:

> The national debt. America is awash in red ink. But in 1979, Tom Daschle saw the damage these deficits could do to our country. His first official act was to sponsor a constitutional amendment to balance the budget. For seven years, Tom Daschle battled party leaders and special interests to cut waste and close loopholes.

Mr. President, using the same line of reasoning and logic that was employed this morning by the Senate minority leader, Senator DASCHLE, perhaps he should follow his own advice. Perhaps he should resign and run for reelection.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Minnesota.

THE BALANCED BUDGET AMENDMENT

Mr. GRAMS. Mr. President, I rise today to remind my colleagues of the words of Benjamin Franklin, when he urged, "Never leave that till tomorrow which you can do today."

Good advice. But when is this Congress going to listen?

For too long, Congress has used the word "tomorrow" to repeatedly avoid the responsibilities and obligations of today.

We will stop spending more than we take in—tomorrow.

We will safeguard our children's future by paying our own bills—tomorrow.

We will make the tough choices to get our fiscal house in order—tomorrow.

We will balance the budget—tomorrow.

The problem with tomorrow, of course, is that it never, ever gets here—there is always another one waiting in the wings. Responsibilities are never met. Obligations are never fulfilled.

And yesterday's vote on the balanced budget amendment demonstrates once again that—despite all the talk on Capitol Hill about change—Congress still operates under the notion that you should never do today what you can put off until tomorrow.

Mr. President, I am deeply disappointed that this body put politics ahead of promises in rejecting the balanced budget amendment.

Passage hinged on the votes of six Democrats who, just 1 year ago—March 1, 1994—voted for the balanced budget amendment. Yesterday, those same six Senators voted "no" on a bill that was virtually identical to the one they supported last year.

The balanced budget amendment is a beautifully simple piece of legislation that makes so much sense to the voters that 8 out of 10 of them asked us to make it law. What do we go back home and tell them this weekend—sorry? Try again tomorrow?

No. Beginning today, with or without a balanced budget amendment, we need to start laying out the glidepath that will lead us to a balanced budget by the year 2002.

To my colleagues who said we can straigthen out the fiscal mess in Washington without meddling with the Constitution, it is time to stop making promises and start delivering on them.

The only way we will ever clean up the Federal books is to start today, not tomorrow, not next month, not next year, but today.

We have said again and again that balancing the budget will not be easy. But those who elected us do not care if we have a tough job. They expect us to do that job.

Unlike the ancient plunderers who would pillage a town, then set it afire as they headed off toward their next conquest, we are not going to slash and burn the budget and leave it in shambles behind us.

The needs of this country will continue to be met. But if we are serious about bringing the budget into balance, the wants of this country will have to be closely scrutinized. Some will have to be put on hold.

We need a balanced budget for another reason as well, Mr. President—so that we can begin to pay back our massive national debt.

We didn't accumulate this $4.8 trillion burden overnight, and we will not pay it off overnight, either. But whether it takes 20 years or 40 years, we have to start now.

The debt we are piling up and passing along to the next generation of Americans is not just fiscally wrong—it is morally wrong.

George Washington could not have known the problems we would face in 1995, but he cautioned us—198 years ago—about amassing a national debt.

It was expected, he wrote in his Farewell Address, that in times of crisis, the Federal Government would occasionally be required to spend beyond its means. But in times of peace and prosperity the Government must repay its debt, and not push its burdens onto the next generation.

We have been at peace and enjoying prosperity for 40 years. With the recklessness of the past behind us, the burden that Congress bears today is ensuring the strength of this Nation tomorrow.

In conclusion, a balanced budget can be achieved by the year 2002 if we begin laying out the path today. We will have to do it without a balanced budget amendment, but make no mistake—this Congress must do it.

Mr. LOTT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, is leader time reserved?

The PRESIDING OFFICER. It has been reserved.

THE BALANCED BUDGET AMENDMENT

Mr. DOLE. Mr. President, let me indicate that round one of the balanced budget effort has been disposed of. But there will be other rounds. Our new Republican colleague, Senator CAMPBELL, when he was talking to some of the reporters, was saying the thing that really made the decision for him was the balanced budget amendment and the games that are being played with the balanced budget amendment and those who one year vote one way and the next year vote another way on the balanced budget amendment.

As I said in my remarks yesterday, it seems to me that this issue should not and will not go away. We will proceed on the basis that the balanced budget amendment will be passed. We will see how many are willing to make the tough votes—we hope a majority on both sides of the aisle—and we will see about Social Security and some of the other smokescreens that were talked about during the debate.

But I would just assure my colleagues that this issue—and it is an issue and will continue to be an issue because 80 percent of the American people have told us that they want a balanced budget amendment. We have told them we do not care what you want, we know what is best. A minority of 34 knows what is best, even though a majority of 80 percent have a different view.

So I am excited about the prospects of taking this case to the American people for the next 3 months, 4 months, 6 months, 8 months, 10 months, a year, 16 months, whatever it takes because it is that important. Again, it is not a matter of partisanship, because I congratulate the 14 Democrats who withstood the pressure from the White House and the leadership on the other side to vote consistently and to vote their convictions. This was a bipartisan effort, as it should have been. And I read the obituaries in the morning's paper about what it means for A or X or Y or Z. It is what it means to the American people that makes the difference. And what it means to the American people is that the U.S. Senate by one vote, one vote, has said wait. You have to wait. We will make these judgments for you. You do not understand. We understand all these complex issues.

But I must say traveling around the country when you make speeches and you talk about unfunded mandates, people say "Well, I do not think I have had that." They do not really focus on unfunded mandates. You talk about covering Congress like we cover everybody else. Most people say that is a good idea. But I find the thing that the American people understand without any further explanation is when you say "balanced budget." They are doing it in their business. They are doing it in their homes. They are doing it in their offices, and they understand the balanced budget. They also understand regulatory reform, which is another issue that will be on this floor very soon.

So I do not know when this reconsideration will take place, but hopefully very soon. But if not, there is time to take the case to the American people. I do not suggest that many of my colleagues were not properly motivated. But I think in some cases it was a lot of politics, and that is not without precedent on either side of the aisle either, I would say, because this is a political institution in a sense. But this issue is larger than any one Senator or larger than this institution. As I have said, we do not amend the Constitution lightly around here. We certainly had adequate debate.

I conclude by saying to all of my colleagues that we are going to have to change our operating rules in the Senate because we are now starting to report out some of the legislation.

So I just alert my colleagues to be prepared to be here almost every night until 10 or 11 o'clock. There will not be any recesses in the Senate this year that I can see after the Easter recess. We have tried to accommodate our colleagues who want to spend 10 days on this, 3 weeks on this, 3 or 4 weeks on this. And I do not know of any other way to finish our work. But I think every Senator will accept that because, if we want to have these extended debates and we want to have this full discussion, then certainly we understand that it is going to take more time. I do not have any objection to that except to say that we are going to try to complete our work this year. I do not see any other way unless there is some way that the Democratic leader and I could come together and figure out some way to do it. But if you look at what has happened so far this year, we have had about 2 months now on three pieces of legislation. And we have been in session almost every day. Maybe that is the way it is. On that basis, you would pass about 15 pieces of legislation.

I alert my colleagues that we are going to meet with the Democratic leader next week to try to outline a program for the next couple of months. I know that after legislation comes from the House it properly goes to committees here and we have hearings and markups. The line-item veto will be on this floor by the end of next week, and we will stay on the line-item veto and we will be here nights. We are not going to spend 30 days on the line-item veto. We will find out where the votes are when the President says he supports a line-item veto. We will see if he really believes in it. If you are really going to work for the line-item veto. We hope he does.

So I alert my colleagues that though many of us would like to have a little more time off these next few months, I do not believe it is possible. If it is, I will try to accommodate all my colleagues.

I yield the floor.

THE BALANCED BUDGET AMENDMENT

Mr. CONRAD. Mr. President, we have heard speeches this morning that suggest because the balanced budget amendment has been defeated, we somehow have to wait to balance the budget. I simply say that there is no need to wait. There is nothing that prevents us from moving to write budgets that balance the budget. We can do that in the normal process of the Congress—and we should.

Mr. President, no one should use as an excuse that the balanced budget amendment failed. Mr. President, we have an obligation—all of us, Democrats and Republicans—to now go to work to move this country toward balance. And there is no time to spare, because we face a demographic time bomb in this country; that is, when the baby boomers start to retire and the number of people who are eligible for Medicare and Social Security doubles. That requires that we go to work and write balanced budgets.

Mr. President, I want to just put in some perspective why some of us felt so keenly that the balanced budget amendment that was before us was flawed. I come from a financial background. I was a tax commissioner of my State before I came to this body. In that position, I fought the looting of trust funds at the State level. We were faced with it consistently because we had large energy trust funds and, repeatedly, there were attempts by people in the legislature to raid those funds. I thought it was wrong then. I thought it was wrong when I came to this Chamber that we were doing the same thing with respect to trust funds.

Mr. President, I think when people talk about a balanced budget amendment, we ought to ask: What budget was being balanced? What budget was being balanced with that amendment that we considered yesterday?

I remind my colleagues of the language of section 7, which defined what budget was being balanced. It said:

> Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for those for repayment of debt principal.

Mr. President, this definition includes all Social Security revenue and all Social Security outlays. And the problem is, Social Security is not contributing to the deficit; it is in surplus. So, by definition, the amendment we were considering yesterday would have taken Social Security surpluses and applied them to other operating expenses of the Federal Government. That is what was wrong with the amendment we considered yesterday. In principle, that is what was wrong.

Mr. President, I understand fully that when you do not use Social Security surpluses, when you do not use trust fund moneys, that makes the task more difficult. That makes the challenge greater. But I do not think we should say to the American people we are balancing the budget when we are really looting and raiding trust funds in order to balance the budget. That is a fraud. That should not be enshrined in the Constitution of the United States, because that would make it virtually impossible to fix. And if we fail to fix it, the economic implications for the future are far more severe. We will never be able to keep the promise to those who have paid the taxes on the promise that they will receive retirement benefits, if we do not treat the Social Security surpluses that are supposed to be treated as a trust fund in that way.

During the discussions, a number of the leaders who were proponents of the amendment came to me in an attempt to secure my vote and said they would agree to stop using the Social Security trust fund surpluses by the year 2012.

Mr. President, this chart shows what they were suggesting. This chart shows the flow of funds in the Social Security trust fund. The year 2012 is about here on the chart. So when they are saying they would use the Social Security trust fund surpluses until the year 2012, they were saying they would use most of the trust fund moneys, because you can see that is about the high-water mark of the buildup of the trust fund. Then it starts to decline as the baby boom generation starts to retire. I said, no, I would not accept a proposal that would use trust fund moneys until the year 2012. That is about $2 trillion that would have been used. They came back to me several moments later and said, "How about if we stopped using the Social Security trust fund money by the year 2008?"

Mr. President, I said no to 2008 because after consulting on the flow of funds that moved through the trust funds or the projections of the flow of funds, my staff reported to me that it would be $1.3 trillion. Mr. President, I think those exchanges confirm that those who were proponents of the amendment fully intended to use Social Security trust fund moneys to offset other Government operating expenses. I think that is wrong as a principle, just wrong. I do not think we should do that. I think it would be a mistake to do that. I understand that it makes the job tougher.

Mr. President, if we are going to tell the American people we are balancing the budget, then I think we ought to do it honestly. We ought to be really balancing the budget, not taking trust fund moneys to help balance the budget. If that means we have to stretch out the time period so that we set an honest goal, then we should do that. And the reason I feel this so acutely is when we look at what the flow of funds will be, or are projected to be, if we do not save that money, when we reach out here in 2025 and when we reach 2029, all of the money is gone. It is all gone by 2029. And that assumes that we allow the trust funds to be built up. So I think it is imperative that we treat the trust funds separately from the other operating accounts of the Government.

Mr. President, let me just go back to this final chart because it speaks to the need for all of us to come together.

We have had high levels of partisanship in the last days, and perhaps that was inevitable. I think some of the things that have been said that question each other's motives are unfortunate. I think when Members of Congress start name calling, that is uncalled for. None of us should engage in that. That demeans this institution.

Mr. President, we now do have an obligation to try to address what is a serious crisis facing this country.

This chart shows why current trends are not sustainable. The green line here shows the revenues anticipated for the United States. It shows the history from 1970 to today and a projection out to the year 2030. Revenue is pretty constant. The colored bars here show the expenses. And we can all see what is going to happen because of this demographic time bomb, the tremendous number of baby boomers who are going to retire and what that does to Medicare and Medicaid and Social Security. It explodes the costs. That has to be addressed. And nothing precludes us from doing that.

Mr. President, it is time for us to work together, to put aside partisanship to get the job done.

I thank the Chair and yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Pennsylvania.

Mr. SANTORUM. Thank you, Mr. President.

SOCIAL SECURITY AND BALANCING THE BUDGET

Mr. SANTORUM. Mr. President, I just want to make a couple of comments about the arguments that are being made with respect to Social Security, not just by the Senator from North Dakota but many others, not just today but for the last several days.

First, we should not use the Social Security trust fund for balancing the budget. What does that mean? We should not use the Social Security trust fund to balance the budget. Are we taking money out of the Social Security trust fund and spending it directly on other programs? No. No, we do not take money out of the Social Security trust fund to spend it on other programs.

Money in the Social Security trust fund is borrowed, for which we pay interest on the money back to the Social Security Administration, as we would with any fund that runs a surplus in the Federal Government.

We have surpluses in the highway trust fund. What do we do with the highway trust fund money? Do we spend it on other programs? No, that money is in there. It is earning interest. We are investing it in Government bonds, just like we do the Social Security trust fund, just like we do the aviation trust fund, just like we do with any other trust fund that we have in the Federal Government that happens for a period of time to be running a surplus.

So to use the argument that we are using the Social Security trust fund to balance the budget is as fallacious an argument as it is to say we are using the highway trust fund to balance the budget. The highway trust fund has a couple billion dollars surplus in it. I did not see anybody run to the floor to protect our roads and bridges. They did not come to the floor and say, "We can't use the highway trust fund. That is not fair. It hid the deficit."

It is not true. Let us be honest. Let us not hide it from the people.

Where were the highway trust fund advocates? Where were the aviation trust fund advocates?

We were saying let us be truthful and honest in not hiding this from the American people.

What is going on is in the fine spirit of hiding behind the apron of Social Security when you cannot define your program in other ways. That is what is going on here. I had it happen to me in my election. Many of us have had it happen to us in our elections. When you are losing, when you know you cannot defend your record, when you know you cannot defend your vote, you bring up the old red herring: Let us run behind Social Security. Let us scare the public that we are going to get Social Security and we will be OK. They will believe it.

We will never change this place, we will never change this place, until the American public has enough realization to know that there is not any program that could ever compete in popularity and support—not one program that can compete in popularity and support—with the Social Security program. If the Federal Government continues on its way and we continue to have to eliminate programs as the debt gets to be a bigger and bigger and bigger part of our Federal Government, the only program, if we have one program left, I will assure you, will be the Social Security program. Everything else will be gone. That will win. That will always be maintained.

The American public has to stop being afraid that someone is going to come in and raid their Social Security plan. It is not going to happen. We promised it was not going to happen. Unfortunately, I guess the promise of the majority leader of the U.S. Senate is not enough; the promise of the Speaker of the House that we are not going to touch Social Security is not enough. A vote of something like 90 to 10 in this body that we will not cut Social Security or touch Social Security over the next 7 years is not enough. Because people are always afraid.

Is it not sad? Is it not sad what we have done to the people of this country? We have gotten them so addicted to Government that every time we talk about changing it, they run. They get scared. They get scared. We have made them dependent. We have succeeded here in Washington in the first step to really control what goes on in America by having people dependent upon us.

No one in this Chamber is going to take $1 of benefits away from any Social Security recipients in this country to balance the budget. And everyone in this Chamber knows it. Everyone in this Chamber knows it.

This was partisanship. This was political. It is a lot of things. The reason six Members who voted for this exact amendment voted the other way and hid behind Social Security was one reason, and it was not Social Security—partisan advantage. Stop the Contract With America, let us not move things too fast now, let us not change the status quo in Washington.

We have a great opportunity before us in Washington today. We have a House of Representatives that continues to crank out and pass legislation that was called for in their Contract With America that has the support of the American public. And it is sitting over here in the Senate and it will continue to pile up and pile up until the people of America send a message to their Senators that they want something done.

If you want something done in Washington, if you want a leaner, more efficient, smaller Government, if you want that power and freedom back to you, the American public, not centered here in Washington where we can threaten you by pulling the rug out from under a program that you like, but in fact to enable you and empower you to take those challenges and responsibilities yourselves, when you believe that can happen, you have to communicate that to the people here in the Senate. Because if you communicate that, this place will change. And if it is not in the next 2½ years, the 1996 election will make that change.

The opportunity is here. It is up to the American public as to whether that is going to happen or not. It is up to you as to whether we are going to succeed as a body in the Senate.

The rules are structured here—boy, I never knew—but the rules are structured here so we pretty much cannot get anything done. That is the way they sort of crafted this place, so things slow down, so we do not do a lot here.

Now, as Senator LOTT said earlier, I do not want, as a former House Member, I do not want the Senate to be like the House. We need more deliberation. We need to put the brakes on things and cool things off a little bit. I understand that. But, at the same time, we should not be obstructionists for the sake of being obstructionists.

I have here a table, which I ask unanimous consent to have printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FIRST SESSIONS—STATISTICAL COMPARISONS

Year/Congress	Days in session through February	Time in session	Record/votes
1995/104th	36	316'03"	97
1993/103d	19	91'51"	20
1991/102d	29	145'56"	20
1989/101st	16	43'10"	15
1987/100th	22	89'58"	29
1985/99th	22	105'36"	17
1983/98th	17	53'55"	2
1981/97th	24	71'18"	25

Prepared by the Senate Daily Digest/Office of the Secretary.

The PRESIDING OFFICER. The Chair advises the Senator that his time has expired.

Mr. SANTORUM. I ask unanimous consent for 2 additional minutes.

Mr. EXON. Reserving the right to object, as long as it would not be extended longer than the 2-minute period. We have a problem. The Senator from Michigan has to assume the chair, people have to catch airplanes.

In deference to the Senator, I will not object.

Mr. SANTORUM. I will take 1 additional minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SANTORUM. I just wanted to include this in the RECORD and comment that in the 104th Congress, the Congress we are in right now, we have been in 36 days, 316 hours and 3 minutes of debate, 97 votes.

It is unprecedented the amount of time we have spent here in this body to try to move things forward. We have cooled it off, we have debated it, and we got two bills passed. Only one has been signed into law.

If you look at other Congresses through February, in the last Congress they were in 19 days, compared to 36, and only had 91 hours of debate. In 1991, 29 days in session, 145 hours of debate; 1989, 16 days in session, 43 hours of debate.

The fact of the matter is we are working hard, we are debating long, and we are not accomplishing a whole heck of a lot. Cooling off is one thing; stonewalling is another.

What we need to do, I implore my colleagues and the American public, is to rally to the defense of what the voters in November asked for, and move some things forward.

I yield the floor.

Mr. EXON. Mr. President, I ask if I may yield to my colleague from Michigan for a statement, and I ask unanimous consent that I might yield for whatever short period he might need to my friend from Michigan.

The PRESIDING OFFICER. Without objection, it is so ordered.

IN MEMORY OF ED PRINCE

Mr. ABRAHAM. Mr. President, it is with great sadness and a deep sense of personal loss that I note the passing yesterday of a close friend, Mr. Ed Prince of Holland, MI, a successful businessman, family man, and philanthropist.

I had the privilege of knowing Ed Prince and his family for a number of years. Ed was a self-made businessman who took seriously his Christian duty to help his neighbors and others less fortunate than himself.

After quitting his job as chief engineer at the local machine works in Holland, MI, Ed started his own automotive components company. Now that company employs 4,500 people and is the Nation's largest producer of die cast machinery.

But Ed did not let concern with the bottom line take him away from his Calvinist roots and family values. He devoted time and money to family causes on a local, State, and national scale. He was a major contributor to his church, local charitable organizations, and such national organizations as the Family Research Council and Focus on the Family.

Perhaps Ed's greatest accomplishment, other than serving as an exemplary husband and father, is his commitment to his hometown of Holland. When downtown Holland began struggling financially, Ed and his wife Elsa came to the rescue. They bought a number of downtown buildings, refurbished them, and sold or leased them back to small businesses. They even put heaters under the sidewalks so folks could come downtown during Holland's severe winters without fear of slipping and falling or being disinclined because of the winter.

I also know the residents at the Evergreen Commons Senior Center, a facility which I have visited, will miss Edgar and his support. He gave $1 million to that organization so that Holland's senior citizens could maintain their dignity while being helped in their old age. He also has been a major contributor to colleges in his area—both Calvin and Hope colleges owe him a great debt of gratitude. As his pastor, David Guerrin, remarked, "He used all of his resources—both personal and financial—not as an end in themselves, but always as a means of glorifying God."

Those words constitute a fine tribute to a great man, a man to whom I also owe a great debt of gratitude for the example he provided through his generosity, strength of character, and spirit of fellowship toward his community.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nebraska.

Mr. EXON. Will the Chair explain to the Senator, are we in morning business, and are there time restraints on the amount of time that we are allowed to speak under the order?

The PRESIDING OFFICER. That is the order of business, and the time limit is 5 minutes.

Mr. EXON. Mr. President, I will try to stay within that timeframe. I might request an additional minute or 2 if I run out of time.

I want to start out, Mr. President, and briefly compliment my great friend and colleague from West Virginia. There is no Member that I have served more proudly with in the U.S. Senate than ROBERT BYRD. He is a very learned individual, and I listened and I have listened before to his great and persuasive arguments as to why the constitutional amendment should not be placed in the Constitution. And he has made some excellent points.

He did not change my mind, but he made me quiver a few times. I simply say that I thought the statements, the way Senator BYRD, as usual, handled himself in a very professional, gentlemanly manner, made his points very, very well, and I am proud to serve with him. I am proud to serve with all of the Members of this body, even those who of course did not agree with my vote yesterday in support of the constitutional amendment.

Nevertheless, I think it has been a very healthy debate. Basically, the reason this debate has been kept on track is because it has been the herding, keeping the locomotive of straight talk on track, by the Senator from West Virginia.

Let me address some of the concerns I have. The main concern that I have—and I would like to say despite the fact that the balanced budget amendment did not pass yesterday, the world has not come to an end—I hope the comity and the understanding of Members on both sides of the aisle and on both sides of this important and contentious issue is such that we can move ahead in some kind of a proposition to bring our spiraling deficit and skyrocketing national debt under control.

We can lament the fact that the balanced budget amendment failed by one vote yesterday. I think it is safe to assume that those Members who supported the balanced budget amendment think little is served by whipping or arguing at great length about maybe calling it up again tomorrow and turning it around. That is not going to happen. I will simply say that I hope we can leave politics as much as possible out of this debate.

Having said that, I simply say, as a person who has always voted for a balanced budget amendment, I think that even with the great talents and arguments—many of them sound—that Senator BYRD and others advanced, we probably would have carried the day on the balanced budget amendment had it not been that politics got involved in this matter very early.

Not long ago, the Republican National Committee, with their vast resources, decided they were going to put some pressure on Democratic Senators in certain States of the Union, and they went into those States and in some cases enlisted the Republican Governor of those States to attack publicly, at the expense of the Republican hierarchy, to bring pressure to bear.

The facts of the matter are that that backfired. The facts of the matter are—and I am a pretty good vote counter in this body—I think that that activity, as much as anything else, was a prelude to the defeat of the balanced budget amendment yesterday.

There were some talks today, unfortunately, on the floor of the Senate about people resigning because they changed parties and all of these kind of things, which brought a retort, of course, that possibly others who had voted for this previously and did not vote for it this time should resign.

I do not think that kind of debate contributes much to the basic understanding, to advise the people on what the situation is. Let me say in the first place that I believe that there were mistakes made on both sides. I have cited what I think was a critical mistake when obviously the hierarchy of the Republican Party decided to politicize this debate, and if we look at the States where they advertised, we will see what I think is proof positive that their actions were ill advised, bad politics, and certainly bad strategy from the standpoint of passing the constitutional amendment.

Everywhere they tried, they failed. In fact, I happen to feel, in conversations I have had with several of my colleagues that were caught in that attack, that it probably caused them to swing against the amendment, among other reasons. So it was counterproductive.

I will also say that one of the problems I had with the constitutional amendment that I voted for was the fact that the hope was held out—in fact, it was almost a promise—that if we passed the constitutional amendment to balance the budget, we would do so by the year 2002. Well, the facts of the matter are that had we passed that constitutional amendment yesterday, and had we not had a war between now and the year 2002, or a serious downturn in the economy, if everything went according to schedule, we still would not have balanced the budget the way most people think the balanced budget would have worked.

I simply say it would have been far better, it seems to me, had my friends on the other side of the aisle, with whom I worked closely on this, been more upfront and said, "Yes, we would not have actually balanced the budget by the year 2002 because we intend to use the amount of money that we protect and are going to continue to protect that is called the Social Security trust fund."

So, therefore, it should have been said up front that if this constitutional amendment passes, we will balance the budget of the Federal Government by the year 2002, except for counting the surplus in the Social Security trust fund. I think that is evident, and it is evident by the fact that it came up in discussion but has not been, I think, fully understood.

Having said that, I do not agree. I did not agree and I disagree with those on this side of the aisle who, I think, made some very good political points by talking about the looting and the raiding of Social Security. Certainly, I think that was not the intent of all but one of the Members on that side of the aisle who voted for the amendment. It certainly was not the intent of this Senator. But I recognize that it was a good political argument to make.

I do not believe that any of us who were supporting a constitutional amendment—I can only speak for myself, but I have some knowledge of the thinking that went on of others who were supporting this—that we were simply saying we were not raiding anything. We were simply recognizing the fact that some people do not understand; and that is that the Social Security trust fund is presently invested in T bills, securities of the United States of America fully backed with the faith and credit of the United States of America, and there is no way that we could or should raid those funds to balance a budget.

Another way of saying that is a bookkeeping procedure, because clearly the law says that we cannot invest trust funds, especially Social Security trust funds, but all trust funds, we cannot invest them in the stock market or other speculative propositions, only in Government securities, basically T bills. So there was no raid on Social Security in the actual sense of the word.

Let me simply ask, where do we go from here? It seems to me, although the balanced budget amendment would have given us the discipline that I think is necessary—it is not there for many and varied reasons—therefore, that we should press on very aggressively to begin to balance a budget now without the constitutional amendment, as most of us said we hope we could do.

I probably think the best way out of this is simply pass a resolution that the Budget Committee should report out, according to present law, by April 1, a budget that will balance the budget by the year 2002, or whenever. I will simply point out that the present law clearly states that you cannot use the Social Security trust fund to balance a budget. So I hope that possibly we could pass a resolution directing the Budget Committee to come out with a balanced budget amendment, notwithstanding the fact at least of now we are not going to put it in the Constitution, there is no reason why we should not press forward.

I simply say I think people of good will should put politics aside now and try to work toward balancing the budget the only way we have available to us at the present time, and that is the will, the good fellowship and support of the men and women who serve on the Budget Committee; direct them to come forth with a balanced budget amendment by some period of year, hopefully 2002, that could balance a budget the way we have to balance a budget in the absence of a constitutional amendment to do so.

I thank the Chair, and I yield the floor.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Alaska.

EXTENSION OF MORNING BUSINESS

Mr. MURKOWSKI. Mr. President, I believe morning business was to expire at 1. I ask unanimous consent that morning business be extended until 2 p.m., under the same arrangement that was initiated for the previous morning business schedule.

The PRESIDING OFFICER. Without objection, it is so ordered.

MANDATE OF SELF-DISCIPLINE

Mr. MURKOWSKI. Mr. President, I would like to reflect on what I consider a reality. It seems to me that we have managed to do it again. We have put off taking the medicine necessary to correct the accumulated deficits that we have been running because we have again refused to impose a balanced budget mandate in our Constitution. Let me just reflect a little bit on how this body seems to work with unsolvable problems.

We all remember the extended debate on base closures, the fact that we could never agree whose base would be closed. So we finally consented to bring about the creation of a commission staffed by knowledgeable people who would independently evaluate priorities of base closures. The Commission would examine all relevant evidence presented by the individual military services and then make specific recommendations on a package. Congress would then be given the opportunity to vote up or down on that package.

We saw what happened to that Commission yesterday. We voted unanimously to extend the Commission because it has worked. It worked simply because the other alternatives did not work.

I am kind of a bottom-line person, Mr. President. It seems to me that we have attempted to address our deficits by statute in the past. You remember back in 1985, we had Gramm-Rudman I. And it was our conviction that this would bring about control of runaway spending and it would bring about an end to the continued deficits.

Under Gramm-Rudman I, we were going to have a zero deficit by 1991, at least we were supposed to. Then we had Gramm-Rudman II in 1987. That was supposed to bring about a zero deficit by 1993. It did not work. Then we had the 1990 budget agreement and that was supposed to bring about the decline of the deficits. Under that agreement, the deficit was supposed to be $83 billion. In reality, the deficit for 1995 is more than 100 percent higher—$205 billion.

If we look at our short history relative to trying to correct this matter since 1985, one has to come to the conclusion that statutes do not worked.

I was somewhat amused by the editorial in the Washington Post this morning which suggested that amending the Constitution was the wrong way to do it; we have the capability to do it and, therefore, we should do it. But the fact remains, Mr. President, we did not do it then and we have not done it now. It simply is not going to be addressed. I think the attitude of the American people is that we simply do not have the self-discipline to reduce spending, we do not have the self-discipline to reduce the rate of growth of entitlements, we have simply left the entitlements on automatic pilot.

I reached the conclusion some time ago—and this is the basis for my support of the balanced budget amendment—that since nothing else has worked, this obviously would bring about a mandate to the Congress, and that mandate would be self-discipline.

There is one other factor that I think is important, and that is how the American people are going to view this. Social Security has been mentioned, but it would seem to me that the people of retirement age that are dependent on Social Security, and those who are about to be, have a conscious awareness of the realities associated with the monetary system of this country. We can look at Mexico and see what happened—too much debt.

I do not know, Mr. President, if you have observed what is happening in Canada, but 29.6 percent—29.6 percent—of the Canadian budget is interest on their debt. That is nearly one-third.

We are running deficits each year, Mr. President, but the difficulty with it is that the interest on the accumulated debt now is more than the deficit. So the reality of this action, or lack of action taken by this body is really one that has to be addressed.

Mr. President, I think we have a situation where we have to recognize we do not have the self-discipline to eliminate the deficit. Our monetary system, as we know it, is very much at stake. We should have given the American people, through their State legislatures, the opportunity to decide whether the Constitution should be amended. It takes 38 States to amend the Constitution. There would have been a great debate.

I think by not giving the American people the opportunity to be heard on this matter, we have done a great disservice to them and to ourselves, and we have not corrected the problem that has been addressed in this body over the last several weeks. I think that is, indeed, unfortunate.

I thank the Chair.

(The remarks of Mr. WARNER pertaining to the introduction of S. 496 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

THE MEXICAN PESO

Mr. BENNETT. Mr. President, I rise to discuss a situation that has been before us in the Chamber previously.

We were all caught with some surprise earlier this year when the Secretary of the Treasury and the Chairman of the Federal Reserve Board came before a group of Members of Congress, House and Senate combined, to tell us of the crisis in Mexico and to ask for our support for a proposal to extend $40 billion in loan guarantees to the Mexicans.

My initial reaction to that proposal was one of support, as were the reactions of the leadership of both parties in both Houses. Mexico is enormously important to the United States, economically and culturally. In addition, if we want to become crass about it, there are some 750,000 American jobs that are in jeopardy if the Mexican economy should collapse. It made sense for the United States to do what it could to reach out to the Mexicans and try to support their economy, and I supported the administration's request.

As we got into the details of the deal, however, it became clear to me, as it did to a number of other Members of Congress, that the $40 billion loan guarantee was not a good deal, and we advised the Treasury of that. We urged them to come up with some alternative proposals, and they did. To their credit, they listened to the Congress and they proposed the second deal which I stood on this floor and endorsed in principle. It involved $15 billion from the Exchange Stabilization Fund and $5 billion under control of the Federal Reserve for a total of $20 billion in American money and the rest from international sources.

I praised that deal because it increased the participation to include other governments besides our own, and it injected the expertise of the Federal Reserve Board into this circumstance which was not directly the situation previously.

I was forced to come to the floor to express some reservations in a later speech about how this deal was being put together. When it was finally announced and the specifics were signed in the White House, I was shocked, and quoted as being shocked in the national press, by the statement by the Mexican Minister of Finance, Mr. Ortiz, who said we will use this money to shore up our banks, to put more capital into the Mexican banks. That was not what I had understood the deal was going to be. I said I hope it works, but I still think the thing we should do is to get the Federal Reserve Board involved in extinguishing pesos.

Well, Mr. President, Mexico is back in the headlines with the news of the arrest of President Salinas' brother, the accusation being that he profited improperly and enormously from the privatization program that went on under President Salinas, and then the occasion of his arrest on the accusation that he had a hand in the political assassinations that took place in Mexico that helped upset the stability of that nation.

I had dinner just the other evening of this week with people who are doing business in Mexico who say that the economic conditions there are worse than they were in 1981. For those who may not remember the 1981 devaluation, the peso prior to that devaluation was trading at 3 to the dollar. By the time they finally eliminated that peso and replaced it with the new pesos, it was 3,000 to the dollar. And again I say, people doing business in Mexico now are saying it is worse than it was in 1981.

The Mexican Government is still printing pesos as if they had not learned the lessons of 1981 and the lessons of the recent devaluation. I see no action on our part by the Federal Reserve Board to try to extinguish pesos. Perhaps that is logical. If the Mexicans are going to continue to print them, the Federal Reserve Board obviously should not be involved in trying to soak them up.

More in sorrow than anger, I come to the floor now to say it is my opinion that this attempt, well meaning and one which I supported, to aid the Mexicans in their hour of great distress is failing. I stand ready, if the Treasury is interested, to make continued recommendations as to what might be done. But I hear these stories about the assassinations, the breakdown of Mexican political institutions, and the information that the central bank and the Mexican Government are continuing to print pesos, and I find myself distressed and discouraged at the prospect. It is not a pleasant one. If our neighbors immediately to the south go back into the abyss of the economic disasters that they went through in 1981, it is not just they who will suffer; we in this country will suffer, and I am filled, as I say, with distress and anguish that the American attempt to help them for whatever reason has failed.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I ask that I be permitted 2 or 3 minutes to say to my distinguished colleague from Utah that I wish to associate myself with the remarks he has just completed. I have been counseling with him some several weeks now on this subject, and I would like the Senate to know how much time the distinguished Senator from Utah has devoted to independent analysis and research of this subject. I, too, from the very beginning was deeply concerned with the propriety and the manner in which the United States addressed this issue. To date, I have not been able to ascertain enough facts to enable this Senator to reach a final conclusion. However, I am concerned that the actions that our Government has taken will benefit many people who were involved in this transaction from the beginning for purpose of making unusual profits as a consequence of the high interest rates involved.

I also regret that Congress did not become more involved, that time was not permitted to allow hearings so that we could have had a better understanding of the facts. I firmly believe that Congress should have participated in making the decision on this important matter.

I will continue to work with my distinguished colleague from Utah and others to assess this situation in hopes that someday we can provide for the American people and others a complete set of facts as to how this crisis occurred, how it was addressed, and who was to profit and who was to lose.

We have all expressed our compassion and concern about the people of Mexico. Indeed, there is no one who does not feel a desire to help them. That was expressed by the recent action of the Congress, and indeed the President, in certain trade agreements. However, this particular situation still has a large element of mystery that must be resolved in a manner that the American people fully understand.

I thank my colleague.

I yield the floor, Mr. President.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that I may speak out of order and that I may speak for not to exceed 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE SENATE AND THE CONSTITUTION

Mr. BYRD. Mr. President, I have come to the floor and waited because other Senators wanted to speak, and they were conforming themselves to the order providing that Senators may be permitted to speak for not to exceed 5 minutes. I did not want to attempt to go ahead of anyone who had been waiting. I believe the time has come, now, when I will not be imposing on other Senators who have wished to speak.

I was also told that the distinguished majority leader wanted to come to the floor. I talked with the assistant majority leader and he indicated that he felt Senators would soon have completed speaking so that I would have more time.

Mr. President, Kipling was a great British poet. One of his great pieces of poetry is "The Heritage." If I may at this moment just recall a couple of verses of "The Heritage."

Our fathers in a wondrous age,
Ere yet the Earth was small,
Ensured to us an heritage,
And doubted not at all
That we, the children of their heart,
Which then did beat so high,
In later time should play like part
For our posterity.

* * * * *

Then fretful murmur not they gave
So great a charge to keep,
Nor dream that awestruck time shall save
Their labour while we sleep.
Dear-bought and clear, a thousand year
Our fathers' title runs.
Make we likewise their sacrifice,
Defrauding not our sons.

Mr. President, I feel very deeply that on yesterday the Senate rose to meet the test that was before it and, in doing that, it had in mind our posterity. I think it was a truly great moment in the history of the Senate. I have, from time to time, seen the Senate rise to meet such an occasion, when the occasion demanded courage and perhaps some sacrifice.

We had a thorough debate on the balanced budget amendment to the Constitution. It was not overly long. In terms of lengthy debates, my mind goes back to the 1964 Civil Rights Act. That measure was before the Senate 103 days—from March 9, when the motion to proceed was first offered—by Mr. Mansfield, I believe—until June 19, when the rollcall on the last vote was completed. The motion to proceed took 2 weeks, and then the bill itself was before the Senate for a total of 77 days, with actual debate thereon consuming 57 days, including 6 Saturdays.

I hear, from time to time, the tabulation of the number of hours that we have spent in this Senate on this bill or that bill—100 hours, or 115 hours and 43 minutes, or whatever it may be. I am somewhat—perhaps not amused, but perhaps I regret that we view the role of this Senate and our responsibility as Senators in the context of how many hours we may spend on a matter that is so vital to the Nation as is a constitutional amendment, and especially the constitutional amendment that we have been discussing over the past 33 days.

I have risen to express appreciation to the distinguished majority leader during these days, and to the distinguished manager of the bill on the majority side, Mr. HATCH. I thought we had a good debate, and I have no complaint concerning the time spent. I thought we had spent enough time, to inform ourselves and the American people, and it was, therefore, time to vote. We had reached a point where minds and intentions were pretty much solidified and it was time for a vote. That time was well spent, Mr. President. I do not think it is the role of the Senate to move legislation through this body expeditiously for the mere sake of expedition. We got started early in the year, as I have previously praised the majority leader for that. And we have not had any recesses. I have previously commended the majority leader for that. We have had too many recesses in recent years; too much accommodation of Members. We do have to accommodate one another here. But we have had too much accommodation, often at the expense of thoroughness of debate.

I have been a Member of the Senate for a long time. Only one other Member of the body has been here longer. I have been here when there were all-night sessions, long sessions, Saturday sessions. At times, these are necessary. If it is necessary that we have lengthy sessions, without recesses, to get our work done, then I do not quarrel about that. I feel it is my duty as a Senator to be at my post of duty, whether it is 10 o'clock on Monday morning or 10 o'clock on Saturday night. Duty calls, and I shall be at my post of duty.

Therefore, I am not overwhelmed by references to the number of hours or the number of minutes that we have spent on this or that bill. I think we sometimes are prone to overlook the purpose of the Senate and of its being. I, too, came from the House of Representatives. I came from both houses of the West Virginia Legislature. Forty-nine years ago, I first ran for office. So, my life—most of it—has been spent in various legislative bodies. The House of Representatives plays an important role. But the Senate was not meant to be a second House of Representatives. It was not meant to be a body in which speed in legislating was the overriding standard by which we measure our actions.

I praise the Senate. The debate was a thorough one. We have had thorough debates too infrequently in recent years. Everything seems to have been measured for the purpose of accommodating Senators' schedules. Unanimous-consent agreements have been entered into so much—I probably have arranged more unanimous-consent agreements than any other Senator in the history of the Senate, because for 22 years I was in the leadership in this Senate in one position or another. Even under my predecessor, Mr. Mansfield, who was a very fine Senator, and a fine leader, who served longer as majority leader than any other Senator has served, but he was perfectly happy to have me do the floor work. And I did it. I stayed on the floor. If anyone wanted to know where ROBERT BYRD could be found at a given time, they could go to the floor of the Senate. They would find him there.

Therefore, I for many years studied the rules and precedents of the Senate and its history. My reverence for the Senate grew as time went by. I do not claim that I walked into the Senate with it. The reverence that I have, came as the years have come and gone. I revere the Senate. My reverence was reinforced in this recent debate.

Let me read what Daniel Webster had to say about the Senate on March 7, 1850.

> Mr. President, I wish to speak today, not as a Massachusetts man, nor as a northern man, but as an American, and a Member of the Senate of the United States. It is fortunate that there is a Senate of the United States; a body not yet moved from its propriety, not lost to a just sense of its own dignity, and its own high responsibilities, and a body to which the country looks with confidence, for wise, moderate, patriotic, and healing counsels.

I think that the Senate rose to its full measure of duty in the course of the recent debate. I can understand the emotions of different Members in the Senate and their purposes for voting for or against the constitutional amendment to balance the budget. There are those who felt deeply that by the amendment, the Social Security trust fund would have been raided. I share that view to some extent. But, Mr. President, I hope that we do not lose sight of the fact that, at least in the opinion of some of us here, what was about to be raided, was the Constitution of the United States.

I have voted for constitutional amendments before, as I say. But on this occasion, we were about to adopt a constitutional amendment that would go to the very heart of our structure of republican government, with its mixed powers, its checks and balances. Additionally, we were about to write into that Constitution a fiscal theory or fiscal policy which, in the minds of many who are far more expert than I, with respect to the economy and with respect to fiscal matters, would have been very destructive of this Nation's economy and would have resulted in economic chaos.

To me—to me—the greatest disaster that we in this body could bring down upon our Nation and its republican form of government, would be to adopt a constitutional amendment such as was rejected on yesterday. And I hope now that we will get a little bit above and beyond talking about additional efforts to write such an amendment into the Constitution—a Constitution that has served our Nation so well for 206 years and that was created by men with great intellect, great wisdom, great experience, great vision. I trust that we will not let politics govern us in our judgments here with respect to tampering with the Constitution of the United States.

We are all politically partisan to some extent. I do not envy the job of the majority leader or the job of the minority leader. Theirs is a tough job. When I became majority leader, I probably lost 10 points in West Virginia. I had been accustomed to winning by 89 percent, or at least very high percentages. When I became majority leader, and majority whip before that, and even secretary of the Democratic conference before that, as I moved on and took over the main party leadership duties, I realized that I also had a constituency here in the Senate whose ideologies ran the entire spectrum, from one end to the other. Consequently, the duty of party leadership impacts on one's votes and his way of seeing various issues and what his duties are. A leader has to remember that he has duties to his constituents who send him here, duties to the Nation, duties to his State, and duties to his constituent colleagues here in the Senate who elect him to the party leadership position which he has sought. I know the pressures that build on both leaders.

I do not envy those who carry such pressures. I worked with Mr. DOLE for a good many years in different capacities—as minority leader and as majority leader. I always worked well with him, and he with me.

As I look at our new leader on this side of the aisle, I admire him. I think he demonstrated true statesmanship in his leadership on the amendment. It was difficult for him. But he rose to the needs of that critical hour of yesterday, and he helped all of us to come together and to reach a decision. There were other profiles in courage—Senator HATFIELD, as I have previously mentioned, and others whose names I laid into the RECORD on yesterday.

Mr. President, I hope we will put away the seductive attraction of a constitutional amendment to balance the budget as we try to deal with this very serious problem that confronts our country. A constitutional amendment to balance the budget, I suppose, would be, to some proponents, a political cover for serious actions that they very well know are going to have to be taken if we are ever going to effectively reduce the deficits. They seek such a political cover to which they can point when their votes are needed to raise taxes or to cut programs. They can then point to a constitutional amendment that has been welded into that organic law and say, well, that made me do it.

Mr. President, that is a terrible price to pay. We ought not seek that cover, because it is purely a political cover and it comes at the price of the Constitution. We ought not do that to our children and grandchildren. We do owe it to our children and grandchildren to come to grips with this problem—the debt, the deficits, the interest on the debt. And we have operated on a national credit card for the last dozen to 15 years.

There is going to have to be some pain involved in any deficit reduction plan, if it is to be truly effective. I deplore the current talk of tax cuts. Having been a legislator now for almost half a century, I know how easy it is to vote for tax cuts. I know how hard it is to vote for tax increases. I have voted for some of both. But, Mr. President, we cannot face this terrible debt—it is almost $5 trillion—this terrible deficit and the interest on the debt, and talk glibly about cutting taxes and balancing the budget, while keeping defense and other programs off the table. It is a joke. We ought to go to the mirror and look ourselves in the face, look ourselves in the eye and ask, "Do you really believe that we can get a handle on these terrible deficits and continue to cut domestic programs that are for the well-being, security and happiness of our people, and, at the same time, cut taxes when the economy is good and unemployment is down?" I just cannot believe we are living in a real world. If anything, we are going to have to increase taxes. If we really mean business about getting the deficits under control and balancing the budget by the year 2002 or 2010, whatever, we have to understand that we are going to have to pay a price, and it is going to be painful.

I have heard the gauntlet thrown down today. We will see how many Senators will vote for tough proposals, it is said. But I note always that nobody includes in those tough decisions the possibility or the probability that we may even have to vote to increase taxes. If we really mean to be serious about balancing the budget, we ought not leave possible tax increases off the table. It is certainly foolish to talk about going in the other direction and cutting taxes in the present climate.

I hope, Mr. President, that we will put yesterday behind us. I have always tried to be magnanimous in defeat as well as in victory. It is easy to be magnanimous in victory. The test is, can one be magnanimous in defeat? We ought not look back. Lot's wife looked back and she became a pillar of salt. We ought not look back to yesterday. We ought not rake over the old ashes of yesterday. I hope that the American people will not perceive us as being Senators who put politics ahead of the good of the Nation. Political party is important, but George Washington warned us against party and factions.

I am a Democrat. I grew up in a coal miner's home. They were Democrats who raised me. I have never read a political party platform, State or national. I do not have any intention of ever reading a party platform. Party is not first, last, and always with this Senator.

It is not the alpha and the omega, the beginning and the end. There is life beyond political party. Party ranks with this Senator somewhere down about here (pointing)—not up here. We will, of course, have political parties as long as the Republic stands, I am sure.

But I fear that the people must be discouraged, perplexed, and saddened when they listen to some of the things that are being said here about what happened yesterday. It is sad. The people must surely believe that party is everything to us politicians. Party is important, but the people must not get the impression that some of us see the Senate as merely a crucible in which to mold the party's fortunes over the next 50 to 100 years. Mr. President, that is a sad impression to convey.

We hear a great deal about the so-called Contract With America. Mr. President, I, too, ran in the last election. The primary criticism that my opponent used on me was that I had defeated a balanced budget amendment to the Constitution. "Vote ROBERT C. BYRD out of office and we will get a balanced budget amendment to the Constitution," he urged. So that vote was used against me.

But I carried all 55 counties in my State. I am grateful for the faith of Democrats and Republicans and Independents in West Virginia. They gave me every county for the first time in the State's history. I have carried every county in primaries before, but no candidate for office in a statewide, contested general election in West Virginia has ever carried all 55 counties. I carried them all. I am not bragging. I am simply saying that this issue was used on me in the last election.

I voted for a constitutional amendment to balance the budget back in 1982. I voted against a constitutional amendment to balance the budget in 1986. I voted against a constitutional amendment to balance the budget in 1994.

So why did I change? I began to look at this issue and to study it. I came to the conclusion that I had voted the wrong way in 1982. I have changed my viewpoint and I will never—never, never—again vote for a constitutional amendment to balance the budget.

I do not think such an amendment has any business being in the Constitution. Our Framers did not believe that fiscal policy or fiscal theory should be written into the Constitution of the United States. They believed, and rightly, that fiscal policy should be left to the elected representatives of the people, because, when one considers the vicissitudes of time and the vast vacillations in the economy, the changing circumstances from month to month or year to year, then one should surely perceive that fiscal policy is something that should remain flexible and outside the verbiage of the Constitution. It should not be welded into the Constitution, where it would be inflexible and rigid and would result in chaos.

One cannot but conclude that this business about a constitutional amendment to balance the budget has become the Holy Grail in the minds of many politicians. But we do the people of this country a great disservice, in my judgment, when we lead them to believe that a constitutional amendment to balance the budget will correct the fiscal ills that confront us. Sooner or later, we will rue the day that we did it. It will be regretted.

Moving toward the goal of a balanced budget is a job that has to be done. And sometimes, one may have to be willing to sacrifice his political career to achieve that goal.

One may say, "Well, look at him. He's 77 years old. Perhaps he doesn't have much of a political career left."

But let us not be too quick to judge. I have taken difficult positions before in this body that have cost me votes.

Yet, when one stands on a principle in which he believes, and, concerning which he has given the most serious study and reflection over a period of many years, then, he may say,

> come one, come all! this rock shall fly
> From its firm base as soon as I!

as did Fitz-James to Sir Roderick in Scott's "The Lady of the Lake."

One may so stand if he stands solidly on principle. Even those who disagree with him will say, "Well, I don't agree with him, but he says what he believes and that is what we want. He takes his stand."

I do not hold myself to be a paragon of principle. But having been in politics 49 years and having lived 77 years, I have learned a few things along the way. One cannot compromise principle and expect to be able to defend his position with passion and with conviction.

Winning the White House is important. Winning control of the Senate is important. Winning control of the House is important. Winning reelection is important. But all this shall pass. In the final conclusion, when one walks out of this Chamber forever, he has to look in the mirror and he will say, "Old boy, you stood the test." Or he has to look at himself and in his own conscience know that, on the great national issues of the day, he failed to stand the test.

Conclusions on great national issues should always be reached by much study. And people sometimes reach different conclusions after much reflection. I say that this amendment is not worth the price—it is not worth the price—of shooting an arrow into the heart of the charter of the people's liberties.

This amendment, in my judgment, would have brought about the destruction of the constitutional system of mixed powers and checks and balances. And that is the central pillar of the charter of our liberties.

That was the genius of the Framers of the Constitution. They were men of great experience. They knew about the history of Englishmen, who had shed blood for the liberties of Englishmen and for the right of the people to elect their representatives to Parliament. The people of England, sometimes with the sword, found their way to what became the great British Constitution. It is not written, except in the form of certain documents, certain statutes, the Petition of Right, confirmation of the charters, the Magna Carta, court decisions, custom, and so on.

Our forebears knew about that great British Constitution. They knew the history of the struggle of our forebears in the motherland. James Wilson was born in Scotland. Robert Morris, who was the financier of the revolution, was born in England. Their roots to the motherland were very close to them. They also knew about classical Rome.

I have read that a certain Senator spoke derisively about my yen for Roman history and for taking up the time of the Senate to talk about my little dog Billy. Well, I only have this to say. If one does not study history, he is not likely to be remembered by history. As far as my little dog Billy is concerned, during my long life I have at times thought that the more I learn about dogs the less I think of some people. There is no deceit in Billy. No deceit in a dog. No devious ways in a dog. But I accept those criticisms and laugh about them.

Mr. President, the Senate did the right thing yesterday, and I make no apology for my part. We all at times get carried away and perhaps say things, perhaps a little untactfully, but one cannot expect always to be absolutely perfect in his approach to things. I look at yesterday's passing as something that is gone. I hope other Senators will look at things of the past in the same way.

We all have a job to do here. We ought to recognize that the American people have reposed their confidence in us. This is an honor, Mr. President, that should weigh heavily upon every Senator. The American people did not have to send me here. The people of

West Virginia did not have to send me here. They did not have to return me when I sought to be returned. They demonstrated the same faith in each of us, and they expect us to carry out our responsibilities.

What the American people would like to hear from their representatives is the truth. We do the people of this country a great disservice when we play upon their emotions and when we play pure politics with the vital concerns of a nation that confront us here.

Surely we must know that in our hearts. I hope we will turn our backs on yesterday and that we will seek to come together, because achieving a balanced budget will require bipartisanship. We can keep on pointing the fingers and bickering and trying to jockey around and get the upper hand in a political squabble, looking to the next election. We can point the fingers at those who voted this way or that way or some other way, but each time I point my finger at you, Mr. President, I point three fingers at myself. I point three fingers at myself.

For God's sake, can we not forget politics once in a while? Does politics mean everything? Does politics mean that we have to scramble and scratch and crawl over the bodies of other people to achieve victory for a political party? The Framers did not know anything about the Democratic Party or the Republican Party when they wrote that Constitution. It saddens me.

We are all politically partisan sometimes, but, Mr. President, we should not pay just any price for political victory. Not just any price. Every day that goes by, I feel a greater appreciation for this Constitution. I have read all of the 85 Federalist Papers. Five by John Jay: the second, third, fourth, fifth, and 64th Federalist Papers; two-thirds of the papers, approximately, were written by Hamilton; and the remainder by Madison.

If one really wants to get a true understanding of this political system, and if one really wants to marvel at the genius of the men who wrote this Constitution, let him or her read the Federalist Papers. The Framers were well-acquainted with Plutarch, and Polybius, Tacitus, Livius, Suetonius, and other great ancient historians. They also knew the history of England. They were familiar with Montesquieu, Locke, Plato, Aristotle, Cicero—they were men who counseled with history.

Yet, here we are, tinkering with their handiwork as though it were a platform in some so-called Contract With America. I have not read the Contract With America. I do not owe it any allegiance. None! I try to remind those who may feel a little perturbed by that, that I also do not read any Democratic or Republican platforms. But I do read the Constitution. And it is too magnificent a piece of handiwork—by the most illustrious gathering of men that ever met anywhere at a given time in history—to risk destruction by an amendment to balance the budget. Here we are, with our little feeble perceptions, attempting to tinker with that great document. Not only to tinker with it but to tinker in a way that would destroy the fundamental pillars of its structural design.

There was never anything like it—never—in the history of the world, and we Pygmies, 206 years later, would assault, by way of a political amendment—a political amendment to give ourselves cover—assault that Constitution. This was not a proposed statute yesterday we were talking about. A statute can be changed, as we all know, by the same Congress that enacted it, but not so with a constitutional amendment. Not a constitutional amendment.

Men have died and shed their blood to keep in place this fundamental charter of liberties, unblemished, untarnished, and unstained. And here, we go about glibly talking about a constitutional amendment to that great document—a document so great that we refer to it from time to time as being immortal.

We should not look back on yesterday as a defeat. It was a victory for the American people. They may not realize it, but it was a victory for the American people. There were courageous men and women here who stood firmly against the amendment.

I do not denigrate those who voted the other way. A lot of those men and women have courage, too, and they have good intentions. But study that Constitution! Study the Federalist Papers! Study the history of the United States of America, study the history of England, study the history of Rome, study the history of the ancients, and then match the wisdom you have acquired with that of those who know little about history, who care even less, who know little about the Constitution, apparently, and who put party—political party—ahead of everything.

There are many things above party—one's family, his duty to his Maker. That is first, and his duty to his oath to support and defend the Constitution of the United States.

Mr. President, I think we ought to try to bind up our wounds. We all ought to look ahead and work together with the goal in mind and in heart that we are going to reduce the budget deficits, even though it hurts. I do not like to vote to increase taxes, and it is not because I am 77. Who knows, Abraham lived to be 175. I may be around awhile yet. No man knows how long he will be around, whether he will be around for the next election or not.

> Boast not thyself of tomorrow; for thou knowest not what a day may bring forth.

While we are here, let us be true to our oath, and let us be able to look in that mirror when the last day comes and say, "Old boy, you didn't bend."

So I hope we will move away from this talk that, well, I want to vote for a constitutional amendment to balance the budget, but this is just not the right amendment. Mr. President, in my view, there is not any amendment that is the "right amendment" to the Constitution when it goes to the heart of the constitutional system of mixed powers and checks and balances and when it comes to writing fiscal policy into that great document. It has no place in the Constitution. Forget about it.

Let us move away from that plateau. That is a low plateau. Now that the amendment has been rejected, let us get down to business and work on the problem. Let us all be willing to take a little skin off the finger or off the back of the head, or wherever. If it means cutting some of my programs that I am interested in, well, we will just have to cut them. I took a cut yesterday in the Appropriations Committee, several million dollars in respect to something that is very vital to my State, coal research. I said somebody has to give.

Now, let us take that attitude. I do not want to give on everything, but we all have to give up something. Let us not challenge other Senators' courage by saying, "We'll see if you vote for the tough decisions" unless we are also willing to lay on that table another tough option—the option of tax increases. Then the American people will understand we mean business.

Mr. President, as I conclude, I have been in the minority and I have been in the majority. I have won at times, and I have lost at times. But I have to face tomorrow, and the Senator who may be my opponent today may be my champion tomorrow. These things pass. But we cannot avoid the real problem that faces us, and we all ought to do our level best to play down party just a little bit. Not only those people out there beyond the beltway will have to sacrifice; we are going to have to sacrifice, too. We may have to take a little political skin off our backs.

Come what may, let us remember—I have heard much about children and grandchildren around here in this debate. We all love our children, we all love our grandchildren, and we all want them to honor us as we have honored our fathers. The greatest thing we can do in this difficult situation is to preserve the Constitution for them, not put political careers or political parties ahead of the Constitution, and work hard to achieve a bipartisan plan to reduce the deficits and balance the budget.

If I might be so immodest, I would like to repeat my own words which are written in "The Senate 1789–1989," volume 2.

> After 200 years, the Senate is still the anchor of the Republic, the morning and evening star in the American constitutional constellation * * *. It has weathered the

> storms of adversity, withstood the barbs of cynics and the attacks of critics, and provided stability and strength to the nation during periods of civil strife and uncertainty, panics and depressions. In war and in peace, it has been the sure refuge and protector of the rights of the states and of a political minority. And, today, the Senate still stands—the great forum of constitutional American liberty!

Thank God for the Senate! Thank God for the Constitution! Thank God for men and women who will rise above the sorry spoils of politics and stand for that Constitution! We can then say, with Longfellow:

> Thou, too, sail on, O Ship of State!
> Sail on, O Union, strong and great!
> Humanity with all its fears,
> With all the hopes of future years,
> Is hanging breathless on thy fate!
>
> We know what Master laid thy keel,
> What Workmen wrought thy ribs of steel,
> Who made each mast, and sail, and rope,
> What anvils rang, what hammers beat,
> In what a forge and what a heat
> Were shaped the anchors of thy hope!
>
> Fear not each sudden sound and shock,
> 'T is but the wave and not the rock;
> 'T is but the flapping of the sail,
> And not a rent made by the gale!
> In spite of rock and tempest's roar,
> In spite of false lights from the shore,
> Sail on, nor fear to breast the sea!
> Our hearts, our hopes, are all with thee,
> Our hearts, our hopes, our prayers, our tears,
> Our faith triumphant o'er our fears,
> Are all with thee, are all with thee!

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. COCHRAN). Without objection, it is so ordered.

Mr. HELMS. Mr. President, has time for morning business expired?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. I ask unanimous consent that I be permitted to proceed as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Carolina is recognized.

Mr. HELMS. I thank the Chair.

(The remarks of Mr. HELMS pertaining to the introduction of S. 497 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

THE WORDS WILL FLY

Mr. LAUTENBERG. Mr. President, we are obviously getting close to closing up business for the day. Over the weekend, I am sure we are going to hear a lot about what took place in these Chambers these last few days, about who was right, who was wrong, who was accused of deception, who was taking the unique responsibility for being the one or the ones who wanted to tell the truth, who wanted to be honest with the American people. The words will fly, Mr. President, at a fairly rapid pace.

I think one thing ought to be said, because I have been here now a dozen years. I came out of the business community, and I do not remember the people in the boardrooms where I spent some time, or people in business conferences where I spent a lot of time, or people who shared in the responsibilities in these companies—I very seldom heard a business leader, a CEO, a chairman of the board saying, "I have been fleecing my customers and I have been doing it for a long time, but we do not have to do anything else."

Around here, in these last days, I heard people suggest that we ought to tell the American people the truth, that we ought to stop the deception, that we ought to come straight. I do not know who they were talking about. I can tell you I resent it if the accusation includes me and some of the finest people I have ever known who worked hard here trying to do their best, trying to always level with the public. Yes, we could have a difference on either side of the aisle. We could have a difference in the way the information is presented. We could have a difference in the way the slant is tilted.

But I do not remember, in my angriest moment with someone with whom I disagreed, saying that they are lying, or saying that they are telling untruths because they disagreed with a position that I took.

I have heard rhetoric from the House that says we have been picking the pockets of the American citizens way too long. I do not know who does that, Mr. President. Occasionally, there is someone in this Congress of ours who does commit a dishonest act or who breaks the rules. That is true. But it is wrong to suggest we collectively are doing this purposefully to take advantage of the public.

Many are here at wages far less than they might earn in the outside world, and take abuse far more than they might take in the outside world. It is far more disruptive to family life than it would be in the outside world, when you know you can get home for dinner and review your kids' lessons or say hello to your spouse and enjoy some moments of relaxation. It is not possible here. We all talk about the quality of life and how we would like to make it better and how tough it is, when your home is in Minnesota or New Jersey or New York or Idaho, to be sitting here in Washington, which is our workplace for the most part, not our home State and not our house where family exists. So there is always that kind of thing to consider.

Therefore, Mr. President, those who serve here are not looking for some particular advantage.

I believe that, even, again, with those with whom I most disagree, they are here because they believe that we have a purpose; that this country of ours is such a valuable asset and we are so lucky to live in this Nation that they want to serve and serve honestly.

Sometimes the rhetoric escapes and we start talking about things that are nonsense, about how we have been tricking the American people. It is not true.

We just had a vote on the balanced budget amendment that lost temporarily, a balanced budget amendment to change our Constitution. There are many who voted against the balanced budget amendment—almost every one—who would like to see life made easier on our citizens and on ourselves by balancing the budget, by getting our House in order.

Mr. President, we heard references so many times to the way individuals, businesses, and States conduct their affairs. They say they balance their budgets. Those who suggest that willy-nilly do not know what they are talking about, because the average family is far more in debt because they try to own a house or a piece of property that they feel will be an asset to pass on to future generations, and they leave far more debt when they pass on in a situation like that than is being suggested as laid out in front because of the way we conduct business here.

Businesses borrow money constantly. I do not know of any company of size—and I am a student of business, as well as a former business leader. I am considered a pioneer in the computing industry, one whose name is listed in the Data Processing Hall of Fame. It does not compare to my colleague, Bill BRADLEY's, identification with the Hall of Fame of Basketball, but it is a hall of fame, as small as it may be.

The fact of the matter is, Mr. President, that there were many times when I discussed business problems with leaders and they talked about their borrowing and they talked about their indebtedness and they talked about what they had to do now to plan for the future.

State after State, including my own that has a balanced budget requirement, nevertheless, has the opportunity to borrow for capital investments and either put it up as collateral or go to the marketplace for bonds to be paid off over a period of years. We do not have that sensible structure in Federal Government. And that is a point, I think, though discussed many times, that is still not clear.

If we in the U.S. Government make the decision to build a building that has a 50-year life and we can build it in 1 year and it costs $1 billion, we charge off $1 billion in that fiscal year. If it were in the business world, it would be written off at the rate of about $20,000 a year. Excuse me, I have not been doing arithmetic enough since I have been out of the business world. But the fact of the matter is, it would be written off over a period of time. We do not do that here.

In many ways, our financial house is in far better condition than many here would admit.

Mr. President, we were looking for responses from those who supported the balanced budget amendment in relation to Social Security and Medicare. What would happen if we did not use the Social Security trust fund to force a better balance on our books than we have? We asked for those proponents to lay out a budget that would balance; let them do the arithmetic.

It never happened, Mr. President, because we pretended that by force feeding the process, that we could achieve something that we would not do on our own even though our constituents sent us here specifically for the purpose of watching out for their interests.

I can tell you, Mr. President, that the balanced budget amendment, had it gone into place or if it goes into place, would severely impair life and the economy in the State of New Jersey. We could be looking at tax increases of 17.5 percent to make up for the funds that we would not be getting from the Federal Government. We would lose $2.1 billion a year in funding for Medicaid. We would lose almost $200 million a year in highway trust fund grants. We would lose almost $1 billion a year in lost funding for education, job training, the environment, housing, and other areas. To restate, New Jersey would have to increase State taxes by 17.5 percent across the board to make up for losses in grants.

On the jobs side of things, the most critical index, according to the Treasury, by forcing Congress to raise taxes and/or cut spending in a recession, the balanced budget amendment would substantially worsen the effects of economic downturn.

During the recession of 1990 to 1992, the unemployment rate in my State of New Jersey rose from 4.9 percent to a peak of 9 percent. Had the balanced budget been in effect, unemployment in New Jersey would have peaked at a much higher level, somewhere, it is estimated, between 9.9 percent and 11.8 percent. Had the balanced budget been in effect, the unemployment rate in New Jersey would have been punitive. Thus, Mr. President, the balanced budget amendment would not have done my State any good.

What will do my State good is if all of us get together and work to balance the budget, whether it is in the year 2002 or 2010. The fact is if we put this on an ever-decreasing glidepath from where we are, we will be substantially better off, better off than having a law that would force feed our economy into an unnatural structure that could be the most painful decision that this country has seen, perhaps, in its history.

Mr. President, I close by asking the question, where's the beef? Where is the interest by those who propose the balanced budget amendment, into presenting a budget that will, in fact, balance itself, reduce the deficit, ultimately wind up in a zero annual deficit.

Let them produce it. I am on the Budget Committee, Mr. President. I am more than willing to work with the distinguished leader of the Budget Committee and the ranking member to try and devise a budget that answers that need. Right now, I do not see a willingness to tackle the problem. I see an intent, rather, to do the politically satisfying or advantageous thing.

It is regrettable, Mr. President, that we had the kind of bitter rhetoric that permeated this place in these last couple of weeks. I do not think it does the Congress any good. I do not think it does the institution any good. I do not think it does the country any good.

Right now there is chaos in the currency markets across the world. The dollar is dropping rapidly. I think much of it is due to the fact that there was such dire forecasts made here that unless we balance the budget, unless we took this artificial means of dealing with our fiscal responsibilities that catastrophe would fall.

I hope that that is not true, Mr. President. As I said earlier, I often disagree with colleagues on the other side, sometimes with colleagues on this side. I really believe that in this body, in this institution, there are people whose will is good, who want to do the right thing.

I would not accuse any of those who take a different position of lying to the public, of trying to deceive the citizens of the country. No, Mr. President, I think we ought to cool the rhetoric and get on with our responsibilities. I hope that in the next weeks we will do just that. I yield the floor.

MORNING BUSINESS

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Mr. President, as of the close of business on Thursday, March 2, the Federal debt stood at $4,851,006,718,917.40 meaning that on a per capita basis, every man, woman, and child in America owes $18,414.50 as his or her share of that debt.

ANNUAL REPORT OF THE DEPARTMENT OF TRANSPORTATION—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 25

Under the authority of the order of January 4, 1995, the Secretary of the Senate, on Wednesday, March 1, 1995, during the recess of the Senate, received the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

In accordance with section 308 of Public Law 97-449 (49 U.S.C. 308(a)), I transmit herewith the Twenty-seventh Annual Report of the Department of Transportation, which covers fiscal year 1993.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 1, 1995.*

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Zaroff, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which was referred to the Committee on Energy and Natural Resources.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:25 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 926. An act to promote regulatory flexibility and enhance public participation in Federal agency rulemaking and for other purposes.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 926. An act to promote regulatory flexibility and enhance public participation in Federal agency rulemaking and for other purposes; to the Committee on Governmental Affairs.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. KYL (for himself, Mr. GRAMS, Mr. ABRAHAM, and Mr. CRAIG):

S. 494. A bill to balance the Federal budget by fiscal year 2002 through the establishment of Federal spending limits; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mrs. KASSEBAUM:

S. 495. A bill to amend the Higher Education Act of 1965 to stabilize the student loan programs, improve congressional oversight, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. WARNER (for himself and Mr. ROBB):

S. 496. A bill to abolish the Board of Review of the Metropolitan Washington Airports Authority, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. HELMS (for himself and Mr. FAIRCLOTH):

S. 497. A bill to amend title 28, United States Code, to provide for the protection of civil liberties, and for other purposes; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KYL (for himself, Mr. GRAMS, Mr. ABRAHAM, and Mr. CRAIG):

S. 494. A bill to balance the Federal budget by fiscal year 2002 through the establishment of Federal spending limits; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

THE BALANCED BUDGET/SPENDING LIMITATION ACT OF 1995

Mr. KYL. Mr. President, I rise today with my colleagues, ROD GRAMS, SPENCER ABRAHAM, and LARRY CRAIG to introduce the Balanced Budget/Spending Limitation Act of 1995, a bill designed to balance the budget by fiscal year 2002, through the establishment of Federal spending limits and sequestration. An identical bill is being introduced in the House of Representatives by Representatives JIM MCCRERY and MEL HANCOCK.

The Balanced Budget/Spending Limitation Act establishes a mechanism to limit spending and enforce limits. It establishes a Federal spending limit as 21.5 percent of the gross domestic product in fiscal year 1996, declining one-half percent of GDP per year to 19 percent in fiscal year 2001.

In subsequent years, Federal spending would have to balance with revenue but could not exceed 19 percent of the gross domestic product. Any excess of spending over receipts or the Federal spending limits would be eliminated by sequesters, including a new fiscal year start sequester designed to hold a fiscal year's spending accountable for any actual deficit in the prior year.

The Federal spending limits in the Balanced Budget/Spending Limit Act are established in recognition of the fact, as the Senator from Idaho said a moment ago, that revenues have fluctuated only within the narrow bands of 18 to 20 percent of the gross domestic product for the last 40 years, despite tax increases, tax cuts, economic contractions, and expansions and fiscal policies pursued by Presidents of both parties.

In effect, the economy has already imposed an effective limit on how much revenue the Federal Government can raise—19 percent of the gross domestic product, exactly the level of today. While tax rate increases and tax cuts may produce temporary surges and declines in revenue, revenues always adjust at about 19 percent of GDP, and that is because changes in the Tax Code affect people's behavior. Higher taxes discourage work, production, savings, and investment, slowing economic growth. And with less economic activity to tax, of course, revenues to the Treasury are never as great as the tax writers expect.

On the other hand, lower tax rates stimulate work, production, savings, and investment so revenues to the Treasury increase even at lower tax rates.

With that in mind, the only way that Congress really can ever balance the budget is to ratchet spending as a share of GDP down to the level of revenues the economy has historically been willing to bear—19 percent of GDP.

Limit spending, and there is no need for Congress to consider tax rate increases. It would not be allowed to spend any additional revenue that it raised. Besides, as reflected in historical trends, tax rate increases are more likely to slow economic growth than produce additional revenue relative to the gross domestic product.

Link spending to economic growth, as measured in terms of GDP, and a positive incentive is created for Congress to support pro-growth economic policies. The more the economy grows, the more Congress is allowed to spend, although always proportionate to the size of the Nation's economy. In other words, 19 percent of a larger GDP represents more revenue to the Treasury and, thus, more than Congress is allowed to spend, than 19 percent of a smaller GDP.

The advantages of the Federal spending limits are thus threefold.

First, it will get us to a balanced budget by limiting spending, not increasing tax rates; second, it will shrink Government relative to the size of the economy; and third, it gives Congress a strong incentive to support policies that will keep the economy healthy and strong, policies of less taxation, less regulation and less spending that the American people are demanding anyway.

For those Members of the Senate who voted against the balanced budget amendment saying Congress could do the job if it only had the courage and the will, well, here is your chance. For those who express concern about Social Security, this bill provides for protection of the trust funds that we promised during the debate on the balanced budget amendment. The balanced budget amendment will never be a threat to Social Security.

Mr. President, with or without a balanced budget amendment, deficit spending must stop. We know that. The economic security of the Nation is at stake. The future of our children and our grandchildren is at stake as a result of the mountain of debt Congress is leaving behind.

This bill we are introducing today defines the glidepath and includes the enforcement mechanism to get the budget to balance, and I am going to urge its prompt consideration by this body so that we can immediately demonstrate to the State legislatures, to the people of this country and, frankly, to many of our colleagues who did not support the balanced budget amendment yesterday that we mean business, that we mean to balance this budget by the year 2002 and that we are prepared to begin the steps to achieve that goal. One of the first steps should be the adoption of legislation such as this to establish the framework for achieving our goal.

By Mrs. KASSEBAUM:

S. 495. A bill to amend the Higher Education Act of 1965 to stabilize the student loan programs, improve congressional oversight, and for other purposes; to the Committee on Labor and Human Resources.

THE STUDENT LOAN EVALUATION AND STABILIZATION ACT

• Mrs. KASSEBAUM. Mr. President, I introduce the Student Loan Evaluation and Stabilization Act. Similar legislation has been introduced in the House by Congressman GOODLING and others.

The provisions of this bill are designed to accomplish four main goals:

First, to cap the direct loan program at 40 percent of student loan volume;

Second, to correct problems in the budget scoring process which result in an inaccurate accounting of the full costs of the direct loan program;

Third, to clarify congressional intent on a number of provisions of the legislation which established the direct loan program; and

Fourth, to level the playing field with respect to direct loans and guaranteed loans so that they can be evaluated based on real differences in the administration, efficiency, and effectiveness between the two programs.

It is no secret that I have serious reservations and concerns about the direct loan program enacted into law last Congress in the Omnibus Budget Reconciliation Act, otherwise known as OBRA 1993.

I am troubled that the President is proposing a further expansion of this program in his fiscal year 1996 budget request. This proposal, which would institute 100 percent direct lending by academic year 1997–98, amounts to a total Federal takeover of a successful public/private sector partnership—the Student Loan Program. This approach stands in stark contrast to the "reinventing" Government message promoted by Vice President GORE, where the focus is on privatizing more Federal functions and reducing the size of the Federal Government.

I can support a demonstration of a direct loan program, but I believe that the small 5-percent demonstration included in the Higher Education Act Amendments of 1992 was adequate. I believe that OBRA 1993 went far beyond a demonstration in allowing for the eventual replacement of 60 percent of the Federal guaranteed student loan program with a direct loan program.

Thus, my legislation would cap the direct lending program at the level specified in current law for the second year of the program—permitting up to 40 percent of the total student loan volume to be made through direct Government loans. All schools which signed participation agreements with the Department of Education in 1994 to enter the program in July of this year will be able to enter the program, but the program will not expand beyond this level until Congress authorizes such an expansion.

Restoring the direct loan program to a more appropriate demonstration level will allow for a more thoughtful evaluation and comparison of the guaranteed Federal Family Education Loan [FFEL] Program and the Federal Direct Student Loan [FDSL] Programs. It will allow both programs to operate with continued stability until Congress has enough information to determine which program is more effective and cost-efficient for students, institutions of higher education, and taxpayers.

Through the reconciliation process, the 103d Congress made a substantial change in the student loan program without the benefit of comprehensive hearings or debate or of any evaluation results of the direct loan demonstration included in the 1992 higher education amendments.

This change was made in order to take advantage of the current budget treatment of direct loans—which produces an inaccurate picture of its true budgetary consequences because certain direct loan costs are excluded in the scoring. These distortions have been well-documented by the Congressional Budget Office. It is unfortunate that serious policy decisions were driven by a budget process which hid the true costs of this program.

As evidence of this shell game, the Department of Education has criticized the companion bill introduced by Representative GOODLING stating that it would increase costs or budget outlays by $4.9 billion because the bill would change the budget scoring process. The Department's analysis notes that this change in the scoring process "does not change the long-term cost of the Direct Loan program, it only changes when those costs are scored for budgetary purposes."

This analysis illustrates the frustrating situation we face in getting a handle on the real costs of direct lending. What the materials developed by the Department say, in effect, is that current scoring practices undercount $4.9 billion in costs for the current direct loan program! Moving to 100 percent direct lending to claim more savings, as proposed by the President, will only compound the problem. We cannot and should not continue to operate in this type of budgetary Fantasyland.

The Department's criticism is also disingenuous because a change in scoring would not increase costs or force the Congress to pay for the scoring change. It would simply allow the direct and guaranteed student loan programs to be scored in the same manner so we can truly compare the costs of the two programs.

Therefore, I have included in this legislation an amendment to the Congressional Budget Act that would provide a more accurate comparison of direct and guaranteed student loans.

The bill also clarifies congressional intent with respect to several provisions of the direct loan authorization legislation. Specifically:

First, my legislation specifies that direct consolidation loans are intended to be offered only to students with guaranteed loans who cannot obtain consolidation loans or income-contingent repayment from participating guaranteed loan lenders. This clarification is important, as the administration is in the process of developing a plan that could result in transferring millions of dollars worth of guaranteed loans into the direct loan program through the direct consolidation loan program. The magnitude of this program, as well as the circumstances under which the administration envisions it would apply, goes far beyond congressional intent in providing authority for consolidation loans.

Second, the bill makes clear that Department officials must calculate default rates for direct lending schools just as they do for guaranteed loan schools. To date, Department officials have not indicated how they will calculate default rates for direct loan schools or for students that select income-contingent loan repayment. Many schools with high or rising default rates entered the direct loan program because they saw this as a way to escape penalties for high default rates or to reduce their default rates.

Third, in order to determine the effect of income-contingent repayment on institutional cohort default rates, the bill also requires the Department to report various data on loans being repaid through such repayment.

Finally, the bill clarifies certain provisions of the law which the Department has interpreted and implemented in a way that gives direct lending an edge over the guaranteed loan program. True comparisons between the two programs are not possible with such differences. Thus, my bill levels the playing field between the two programs.

Having described what my bill does, I would also like to clarify what the bill does not do.

First, the changes that I am proposing will have no effect on student access to Federal loans, on the costs of those loans to students, or on the amount that students may borrow. There is a widespread misconception that the direct loan program offers lower fees and interest rates than those available to guaranteed loan borrowers. This is simply not the case.

The issue in this debate is who should be making the loans and providing the capital—the Federal Government or the private sector. The issue is not the availability or cost of loans to students.

Second, my legislation will not reduce the number of repayment options available to students. The repayment options available to students in the guaranteed loan program are virtually identical to those in the direct loan program. Students have multiple repayment options available to them in both programs—including options to repay over longer periods of time or to make smaller initial payments which gradually increase over time as earnings increase.

In fact, my bill will increase the number of repayment options available by permitting students in the guaranteed loan program to repay their loans based on their incomes—an option now available only to students participating in the direct loan program. I would hope that students would exercise caution in selecting this option, given that it could greatly increase the amount they end up repaying. However, I feel the option should be made available to both guaranteed and direct loan student borrowers—many of whom may otherwise default on their loans.

As the legislative process continues, I will be keeping an open mind to other program changes designed to maximize the benefits of private sector participation in the Federal student lending program while holding down the costs to taxpayers. These changes could include steps such as increased risk-sharing by lenders and guaranty agencies—coupled with relief from burdensome and unnecessary regulations.

It is my hope that Congress can act promptly to correct the problems I have identified, so that decisions regarding Federal student loans can be made on the basis of sound policy rather than on flawed budget scoring procedures.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 495

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Student Loan Evaluation and Stabilization Act of 1995".

(b) REFERENCES.—References in this Act to "the Act" are references to the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

SEC. 2. FINDINGS.

The Congress finds that:

(1) The current public/private student loan partnership is fulfilling the mission set for it by Congress, delivering loans to students reliably and in a timely fashion, and should be preserved.

(2) The Administration's dismantling of the Federal Family Education Loan (FFEL) Program which has begun in order to replace it with an unproven direct Government lending program, which increases the Federal debt, further enlarges the Federal bureaucracy, adds major new financial oversight activities to the already overburdened Department of Education, and forces Congress to depend on estimated budget savings which may prove illusory, needs to be stopped so that a true and valid comparison of the student loan programs can occur.

(3) The Federal Direct Student Loan (FDSL) Program pilot is only now getting started and has proceeded fairly smoothly when dealing with 5 percent of new loan volume. This slow and cautious approach should be continued as the volume increases to 40 percent. This pilot program should continue to proceed slowly and cautiously and demonstrate successful results before expanding it to additional loan volume.

(4) While the FDSL Program pilot continues its test phase, reform of the FFEL Program which will benefit students and institutions of higher education, should be a continuing priority for the Department of Education.

SEC. 3. PARTICIPATION OF INSTITUTIONS AND ADMINISTRATION OF DIRECT LOAN PROGRAMS.

(a) LIMITATION ON PROPORTION OF LOANS MADE UNDER THE DIRECT LOAN PROGRAM.—Section 453(a) of the Act (20 U.S.C. 1087c(a)) is amended—

(1) by amending paragraph (2) to read as follows:

"(2) DETERMINATION OF NUMBER OF AGREEMENTS.—In the exercise of the Secretary's discretion, the Secretary shall enter into agreements under subsections (a) and (b) of section 454 with institutions for participation in the programs under this part, subject to the following:

"(A) for academic year 1994–1995, loans made under this part shall represent 5 percent of new student loan volume for such year; and

"(B) for academic year 1995–1996 and for any succeeding fiscal year, loans made under this part shall represent 40 percent of new student loan volume for such year, except that the Secretary may not enter into agreements under subsections (a) and (b) of section 454 with any additional eligible institutions that have not applied and been accepted for participation in the program under this part on or before December 31, 1994.".

(2) by striking paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3).

(b) ELIMINATION OF CONSCRIPTION.—Section 453(b)(2) of the Act is amended—

(1) by striking subparagraph (B);

(2) by redesignating subparagraphs (A)(i) and (A)(ii) as subparagraphs (A) and (B) respectively; and

(3) in such subparagraph (B) (as so redesignated) by striking "clause (i); and" and inserting "subparagraph (A).".

(c) CONTROL OF ADMINISTRATIVE EXPENSES.—

(1) ADMINISTRATIVE EXPENSES.—Section 458(a) of the Act is amended to read as follows:

"(a) IN GENERAL.—For each fiscal year, there shall be available to the Secretary from funds not otherwise appropriated, funds for all direct and indirect expenses associated with the Direct Student Loan program under this part."

(2) IMPROVED CONGRESSIONAL OVERSIGHT OF ADMINISTRATION.—(A) Section 458(b) of the Act is amended to read as follows:

"(b) FUNDING TRIGGERS.—For each fiscal year, funds available under this section may be obligated only in such amounts and according to such schedule as specified in the appropriations Act for the Department of Education of a detailed proposal of expenditures under this section.".

(B) Section 458(d) of the Act is amended to read as follows:

"(d) QUARTERLY REPORT.—The Secretary shall provide a detailed quarterly report of all monies expended under this section to the Chairman of the Committee on Labor and Human Resources of the Senate and the Chairman of the Committee on Economic and Educational Opportunities of the House of Representatives. Such report shall specifically identify all contracts entered into by the Department for services supporting the loan programs under parts B and D of this title and the current and projected costs of such contracts."

(3) ADMINISTRATIVE COST ALLOWANCE.—Section 428(f) of the Act is amended—

(A) in subsection (A) by striking out "For a fiscal year prior to fiscal year 1994, the" and inserting in lieu thereof "The"; and

(B) by inserting after the first sentence of subsection (B) the following new sentence:

"For fiscal year 1996 and each succeeding fiscal year, each guaranty agency shall elect to receive an administrative cost allowance, payable quarterly, for such fiscal year calculated on the basis of either of the following:

"(i) 0.85 percent of the total principal amount of the loans upon which insurance was issued under part B during such fiscal year by such guaranty agency; or

"(ii) 0.08 percent of the original principal amount of loans guaranteed by the guaranty agency that was outstanding at the end of the previous fiscal year."

(d) ELIMINATION OF TRANSITION TO DIRECT LOANS.—The Act is further amended—

(1) in section 422(c)(7)—

(A) by striking "during the transition" and all that follows through "part D of this title" in subparagraph (A); and

(B) by striking "section 428(c)(10)(F)(v)" in subparagraph (B) and inserting "section 428(c)(9)(F)(v)";

(2) in section 428(c)(8)—

(A) by striking "(A)" after the paragraph designation; and

(B) by striking subparagraph (B);

(3) in section 428(c)(9)(E)—

(A) by inserting "or" after the semicolon at the end of clause (iv);

(B) by striking"; or" at the end of clause (v) and inserting a period; and

(C) by striking clause (vi);

(4) in clause (vii) of section 428(c)(9)(F)—

(A) by inserting "and" before "to avoid disruption"; and

(B) by striking ", and to ensure an orderly transition" and all that follows through the end of such clause and inserting a period;

(5) in section 428(c)(9)(K), by striking "the progress of the transition from the loan programs under this part to" and inserting "the integrity and administration of";

(6) in section 428(e)(1)(B)(ii), by inserting "during the transition" and all that follows through "part D of this title";

(7) in section 428(e)(3), by striking "of transition";

(8) in section 428(j)(3)—

(A) by striking "DURING TRANSITION TO DIRECT LENDING" in the heading of paragraph (3); and

(B) by striking "during the transition" and all that follows through "part D of this title," and inserting a comma;

(9) in section 453(c)(2), by striking "TRANSITION" and inserting "INSTITUTIONAL" in the heading of paragraph (2);

(10) in section 453(c)(3), by striking "AFTER TRANSITION" in the heading of paragraph (3); and

(11) in section 456(b)—

(A) by inserting "and" after the semicolon at the end of paragraph (3);

(B) by striking paragraph (4);

(C) by redesignating paragraph (5) as paragraph (4); and

(D) in such paragraph (4) (as redesignated), by striking "successful operation" and inserting "integrity and efficiency."

SEC. 4 DIRECT LOANS HAVE THE SAME TERMS AND CONDITIONS AS FEDERAL FAMILY EDUCATION LOANS.

(a) IN GENERAL.—Section 455(a)(1) of the Act (20 U.S.C. 1087e(a)(1)) is amended to read as follows:

"(1) PARALLEL TERMS, CONDITIONS, BENEFITS AND AMOUNTS.—Unless otherwise specified in this part, loans made to borrowers under this part shall have the same terms, conditions, eligibility requirements and benefits, and be available in the same amounts, as the corresponding types of loans made to borrowers under section 428, 428B, 428C and 428H of this title.".

(b) DIRECT CONSOLIDATION LOANS.—Section 455(a)(2) of the Act is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) section 428C shall be known as 'Federal Direct Consolidation Loans'; and".

SEC. 5. ABILITY OF BORROWERS TO CONSOLIDATE UNDER DIRECT AND GUARANTEED LOANS PROGRAMS.

(a) ABILITY OF PART D BORROWERS TO OBTAIN FEDERAL STAFFORD CONSOLIDATION LOANS.—Section 428C(a)(4) of the Act (20 U.S.C. 1078–3(a)(4)) is amended—

(1) by striking "or" at the end of subparagraph (B);

(2) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E); and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) made under part D of this title;".

(b) ABILITY OF PART B BORROWERS TO OBTAIN FEDERAL DIRECT CONSOLIDATION LOANS.—Section 428C(b)(5) of the Act is amended to read as follows:

"(5) DIRECT CONSOLIDATION LOANS FOR BORROWERS IN SPECIFIED CIRCUMSTANCES.—(A) The Secretary may offer a borrower a direct consolidation loan if a borrower otherwise eligible for a consolidation loan pursuant to this section is—

"(i) unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1); or

"(ii) unable to obtain a consolidation loan with an income contingent repayment schedule from a lender with an agreement under subsection (a)(1).

"(B) The Secretary shall establish appropriate certification procedures to verify the eligibility of borrowers for loans pursuant to this paragraph.

"(C) The Secretary shall not offer such consolidation loans if, in the Secretary's judgment, the Department of Education does not have the necessary origination and servicing arrangement in place for such loans, or the projected volume in the program would be destabilizing to the availability of loans otherwise available under this part.".

SEC. 6. INCOME CONTINGENT REPAYMENT IN THE FEDERAL FAMILY EDUCATION LOAN PROGRAM.

(a) INSURANCE PROGRAM AGREEMENT.—Section 428(B)(1)(E)(i) of the Act (20 U.S.C. 1078(b)(1)(E)(i)) is amended by striking "or income-sensitive repayment schedule" and inserting in lieu thereof "repayment schedule or either an income-sensitive or income contingent repayment schedule".

(b) REPAYMENT SCHEDULES.—Section 428(c)(A) of the Act is amended by striking "or income-sensitive repayment schedules" and inserting in lieu thereof "repayment schedules or either income sensitive or income contingent repayment schedules".

(c) DEFINITIONS.—Section 435 of the Act is amended by adding a new subsection (n):

"(n) INCOME CONTINGENT REPAYMENT SCHEDULES.—For the purpose of this part, income contingent repayment schedules established pursuant to section 428(b)(1)(E)(i) and 428(c)(2)(A) may have terms and conditions comparable to terms and conditions established by the Secretary pursuant to section 45(e)(4).".

SEC. 7. RESERVE FUND REFORMS.

(a) GUARANTY AGENCY RESERVE LEVELS.—Section 428(c)(9) of such Act (20 U.S.C. 1078(c)(9)) is amended—

(1) in subparagraph (E)—

(A) by striking "The Secretary" and inserting "After notice and opportunity for hearing on the record, the Secretary"; and

(2) in subparagraph (F)—

(A) by inserting "dedicated to the functions of the agency under the loan insurance program under this part" after "assets of the guaranty agency" in clause (vi); and

(B) in clause (vi), by inserting before "; or" the phrase ", except that the Secretary may not take any action to require the guaranty agency to provide to the Secretary the unencumbered non-Federal portion of a reserve fund (as defined in section 422(a)(2))".

(b) ADDITIONAL AMENDMENTS.—Section 422 of the Act is further amended—

(1) in the last sentence of subsection (a)(2), by striking "Except as provided in section 428(c)(10) (E) or (F), such" and inserting "Such";

(2) in subsection (g), by striking paragraph (4) and inserting the following:

"(4) DISPOSITION OF FUNDS RETURNED TO OR RECOVERED BY THE SECRETARY.—Any funds that are returned to or otherwise recovered by the Secretary pursuant to this subsection shall be retuned to the Treasury of the United States for purposes of reducing the Federal debt and shall be deposited into the special account under section 3113(d) of title 31, United States Code.".

SEC. 8. DEFAULT RATE LIMITATIONS ON DIRECT LENDING.

(a) INELIGIBILITY BASED ON DEFAULT RATES.—Section 435(a)(2) of the Act (20 U.S.C. 1085(a)(2)) is amended by inserting "or part D" after "under this part".

(b) COHORT DEFAULT RATE.—Section 435(m)(1) of the Act is amended by:

(1) striking "428, 428A, or 428H" in paragraph (A) and inserting "428, 428A, 428H, or part D of the Act (except for Federal Direct PLUS Loans)";

(2) striking "428C" in paragraph (A) and inserting "428C or 455(g)";

(3) striking "428C" in paragraph (C) and inserting "428C or 455(g)"; and

(4)(A) in paragraph (B), by striking "only"; and

(B) in paragraph (B) by inserting "and loans made under part D determined to be in default," after "for instance.".

(c) INCOME CONTINGENT REPAYMENT.—Section 435(m) of the Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) The Secretary shall produce an annual report on loans subject to repayment schedules under sections 428(b)(1)(E)(i), 428C(c)(2)(A), and 455(e)(4) at the end of each fiscal year detailing, by institution and for the title IV, part B and D programs separately and together—

"(i) the number and amount of loans scheduled for payments that did not equal the interest accruing on the loan,

"(ii) the number and amount of loans where no payment was scheduled to be received from the borrower due to their low-income status,

"(iii) the number and amount of loans where a scheduled payment was more than 90 days delinquent, and

"(iv) the projected amount of interest and principal to be forgiven at the end of the 25 year repayment period, based on the projected payment schedule for the borrower over that period.

"(B) Such report shall be made available at the same time as the reports required under section 435(m)(4) of this Act.".

(d) TERMINATION OF INSTITUTIONAL PARTICIPATION.—Section 455 of the Act is amended by adding at the end the following new subsection:

"(k) TERMINATION OF INSTITUTIONS FOR HIGH DEFAULT RATES.—

"(1) METHODOLOGY AND CRITERIA.—After consultation with institutions of higher education and other members of the higher education community, the Secretary shall develop—

"(A) a methodology for the calculation of institutional default rates under the loan programs operated pursuant to this part;

"(B) criteria for the initiation of termination proceedings on the basis of such default rates; and

"(C) procedures for the conduct of such termination proceedings.

"(2) COMPARABILITY TO PART B.—In developing the methodology, criteria, and procedures required by paragraph (1), the Secretary shall, to the maximum extent possible, establish standards for the termination of institutions from participation in loan programs under this part that are comparable to the standards established for the termination of institutions from participation in the loan programs under part B. Such procedures shall also include provisions for the appeal of default rate calculations based on deficiencies in the servicing of loans under this part that are comparable to the provisions for such appeals based on deficiencies in the servicing of loans under part B.".

"(3) LIMITATION ON AUTHORIZATION TO ISSUE NEW LOANS UNDER THIS PART.—Such standards and procedures required by paragraphs (1) and (2) shall be promulgated in final form no later than 120 days after date of enactment of this paragraph. Notwithstanding any other provision of this part, no new loan under this part shall be issued after 120 days after the date of enactment of this paragraph if the standards and procedures required under this section have not been promulgated prior to that date. The authority to issue new loans under this part shall resume upon the Secretary's issuance of such standards and procedures."

SEC. 9. USE OF ELECTRONIC FORMS.

Section 484(a) of the Act (20 U.S.C. 1091b(a)) is amended by adding the following new paragraph after paragraph (a)(4):

"(5) ELECTRONIC FORMS.—(A) Nothing in this Act shall preclude the development, production, distribution or use of the form described in subsection (a)(1) in an electronic format through software produced or distributed by guaranty agencies or eligible lenders, or consortia thereof. Such electronic form need not require the signature of the applicant to be collected at the time the form is submitted, if the applicant certifies the output of the application in a subsequent document. No fee may be charged in connection with use of the electronic form described in subsection (a)(1).

"(B) The Secretary shall approve the use of an electronic form submitted for approval that is not inconsistent with the provisions of this part or part B within 30 days of such submission. In the case of any electronic form not approved, the Secretary shall specifically identify the changes to the form necessary to secure approval.".

SEC. 10. APPLICATION FOR PART B LOANS USING FREE FEDERAL APPLICATION.

Secton 483(a) of the Act (20 U.S.C. 1090(a)) is amended—

(1) in paragraph (1)—

(A) by inserting "B," after "assistance under parts A,";

(B) by striking "part A) and to determine the need of a student for the purpose of part B of this title" and inserting "part A)."; and

(C) by striking the last sentence and inserting the following: "Such form may be in an electronic or any other format (subject to section 485B) in order to facilitate use by borrowers and institutions."; and

(2) in paragraph (3), by striking "and States shall receive," and inserting", any guaranty agency authorized by any such institution, and States shall receive, at their request and".

SEC. 11. CREDIT REFORM.

(a) AMENDMENT.—Section 502(5)(B) of the Congressional Budget Act (31 U.S.C. 661a(5)(B)) is amended to read as follows:

"(B) The cost of a direct loan shall be the net present value, at the time when the direct loan is disbursed, of the following cash flows for the estimated life of the loan:

"(i) Loan disbursements.

"(ii) Repayments of principal.

"(iii) Payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries.

"(iv) In the case of a direct student loan made pursuant to the program authorized under part D of title IV of the Higher Education Act of 1965, direct and indirect expenses, including but not limited to the following: expenses arising from credit policy and oversight, activities related to credit extension, loan origination, loan servicing, training, program promotion and payments to contractors, other Government entities, and program participants, collection of delinquent loans, and write-off and close-out of loans.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) of this section shall apply to all fiscal years beginning on or after October 1, 1995, and to statutory changes made on or after the date of enactment of this Act.

SUMMARY OF S. 495

The bill will do four basic things:

(1) Cap the direct loan program at 40 percent of student loan volume.

(a) This allow for the continued implementation of the Federal Direct Student Loan Program (FDSL) at the loan volume currently authorized for the second year of the program (beginning July 1995).

(b) It provides for the continued stability of the Federal Family Education Loan Program (FFELP—previously known as the Guaranteed Student Loan or the Stafford and PLUS loan programs).

(c) It improves congressional oversight of administrative expenditures.

(2) Improve the accuracy of the budget scoring process.

The bill revises the Congressional Budget Act so that budget scoring will be fair and accurate when determining and comparing costs associated with the FFELP loan program and the direct lending program.

(3) Clarify congressional intent with respect to provisions of the law establishing the direct loan program.

(a) Clarifies that direct consolidation loans are intended to be offered only to those students who cannot obtain consolidation loans or income-contingent repayment from participating lenders.

(b) Clarifies that default rates should be calculated for direct lending schools as they are for FFELP loan schools.

(c) Also requires the reporting of data on direct loans being repaid through income-contingent repayment in order to determine the effect of such repayment on cohort default rates.

(4) Make the FDSL and FFELP programs more comparable so that they can be evaluated based on "real" differences between the administration, efficiency, and effectiveness of the two programs.

(a) Clarify that the guaranteed loan program and the direct loan program have essentially the same terms and conditions for loans and their repayment.

(b) Allow income-contingent repayment for FFELP borrowers.

(c) Make the application processes similar for FFELP and direct loan students.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. The bill is to be cited as the "Student Loan Evaluation and Stabilization Act of 1995."

Section 2. Findings. The bill makes four findings upon which the legislation is based. The findings highlight the fact that the Federal Direct Student Loan Program (direct loan program) is in its pilot phase and that a slow and cautious approach toward implementing the program should be continued. The findings further emphasize that the federal debt, further enlarges the federal bureaucracy, adds major new financial oversight activities to the Department of Education, and forces Congress to depend on an estimated budget savings that may prove illusory. In addition, the findings note that reform of the Federal Family Education Loan Program (guaranteed loan program) should be a continuing priority of the Department of Education.

Section 3. Participation of Institutions and Administration of Direct Loan Programs.

Subsection (a). Participation in direct loans is limited as follows:

(1) five percent of new student loan volume for academic year 1994–1995;

(2) for academic year 1995–1996 loans to those students and parents of students attending institutions who have applied and been accepted for participation in the direct loan program on or before December 31, 1994.

Subsection (b). The authority of the Secretary to force schools into the direct loan program is eliminated.

Subsection (c). Section 458 of the HEA is amended so that administrative expenses for the direct loan program under are made available on an entitlement basis to cover the full administrative costs of direct loans made under Part D. These costs are recognized on a net present value basis under the Credit Reform Act amendment in section 11 of this legislation.

This section also establishes "funding triggers" for the release of funds under section 458. Funds may be obligated only in such amounts and according to the schedules specified under the Appropriations Act for the Department of Education after submission of a detailed proposal for expenditures under this section.

In addition, this section also directs the Secretary to produce a detailed quarterly report of the expenditures of monies under section 458.

Finally, this section mandates payment of an administrative cost allowance to guaranty agencies based on the following formula: .85 percent of the total principal amount of the loans for which insurance was issued during the fiscal year, or .08 percent of the original principal amount of the loans guaranteed by the program that are outstanding at the end of the previous fiscal year. Agencies elect which formula under which to receive payment.

Subsection (d). References to the transition to the direct loan program are eliminated from the HEA.

Section 4. Direct Loans Have the Same Terms and Conditions as Federal Family Education Loans. The legislation clarifies and strengthens Congressional intent that direct and guaranteed loans have essentially the same terms, conditions, eligibility requirements, and loan limits.

Section 5. Ability of Borrowers to Consolidate Under Direct and Guaranteed Loan Programs.

Subsection (a). Borrowers of direct loans under Part D are made eligible to consolidate such loans into a Federal Stafford Consolidation Loan.

Subsection (b). The HEA is clarified to reflect Congressional intent that a guaranteed loan borrower is only eligible to obtain a direct consolidation loan when they are unable to obtain a consolidation loan from a lender. The law is also modified to limit eligibility of a guaranteed loan borrower to those students who are unable to obtain a consolidation loan with an income-contingent loan repayment schedule from a lender.

This section also requires the Secretary to establish appropriate certification procedures to verify eligibility of borrowers and it prohibits the Secretary from offering consolidation loans if the Department lacks the capacity or if the projected loan volume would destabilize the availability of guaranteed loans.

Section 6. Income Contingent Repayment in the Federal Family Education Loan Program. The legislation authorizes guaranteed student loan borrowers to repay their loans through income-contingent repayment to lenders like in the direct loan program.

Section 7. Reserve Fund Reforms. The legislation requires due process procedures, including a hearing on the record, for the return of guaranty agencies reserve funds. The legislation further restricts the expenditure of such funds, and those funds otherwise recovered by the Secretary, by requiring the funds to be returned to the U.S. Treasury.

Section 8. Default Rate Limitations on Direct Lending. This section clarifies the HEA to reflect Congressional intent that the Secretary is required to calculate default rates for direct lending schools and to terminate such schools if they exceed the default rates established in the law as is done currently for the guaranteed loan schools.

This section also requires the reporting of data on direct loans being repaid through income-contingent repayment in order to determine the effect of such repayment on cohort default rates.

In addition, section 455 of the HEA is modified by directing the Secretary to develop criteria for the calculation of default rates for institutions participating in the direct loan program. The methodology, criteria, and procedures to be used in determining such default rates must be comparable to those applied to schools participating in the guaranteed loan program under Part B of the HEA. Such standards must be promulgated no later than 120 days after the date of enactment of this legislation or the Secretary may no longer make any new direct loans.

Section 9. Use of Electronic Forms. This section permits the development, production, distribution and use of an electronic version of the common application form by guaranty agencies, lenders, and consortium thereof to expedite the processing of student loans. Requires that the Secretary approve the form to ensure it is consistent with the requirements of the HEA. Allows the applicant to certify that the output of the application is accurate in a subsequent document. The legislation prohibits a fee from being charged to students in connection with the use of this form.

Section 10. Application for Part B Loans Using the Free Federal Application. Section 483(A) of the HEA is amended to clarify that the application may be the Free Application for Federal Student Assistance (FAFSA). The legislation also clarifies that the application may be in an electronic or other format in order to facilitate use by borrowers and institutions. Finally, this section clarifies that data shall be available to any guaranty agency authorized by an institution.

Section 11. Credit Reform. The bill modifies section 502(5)(B) of the Congressional Budget Act to require consideration of direct and indirect expenses associated with Federal Direct Student Loans, including, but not limited to, expenses arising from credit policy and oversight, credit extension, loan origination, loan servicing, training, program promotion, and payments to contractors. The amendment would apply to all fiscal years beginning on or after October 1, 1995, and to statutory changes made on or after the date of enactment of this bill.●

By Mr. WARNER (for himself and Mr. ROBB):

S. 496. A bill to abolish the Board of Review of the Metropolitan Washington Airports Authority, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE BOARD OF REVIEW OF THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY ABOLITION ACT OF 1995

Mr. WARNER. Mr. President, on January 26, 1995, I joined with my colleagues Senators MCCAIN and ROBB in introducing legislation in the Senate to abolish the Board of Review of the Metropolitan Washington Airports Authority.

Mr. President, I have been involved for many years in seeking to devise a legislative solution to the constitutional issues that exist due to the decisions of the Congressional Board of Review.

Unfortunately, Mr. President, I have learned that the legislation which my colleagues and I introduced does include a provision which I do not support. The provision is contained in section 3 of the legislation which is the elimination of the perimeter rule with respect to certain nonstop flights.

After further review and analysis of this provision, and after consultation with the Governor of Virginia and the Metropolitan Washington Airports Authority, I have learned that adoption of such a provision would be detrimental to the current and projected operations of Washington National Airport and Washington Dulles International Airport. Eliminating the perimeter rule could in the short term disrupt existing air service patterns, with nonstop flights to cities within the perimeter being canceled as flights are added to more distant and economically beneficial destinations. In the longer term, both the airlines and the cities that could suffer a loss in nonstop service to National could call for increases in the number of flights allowed at National.

Mr. President, today I am introducing legislation along with my colleague Senator ROBB, which will seek to abolish the Board of Review of the Metropolitan Washington Airports Authority.

Mr. President, our legislation would: First, remove the unconstitutional sections of the Metropolitan Washington Airports Act; second, provide a savings clause to protect all actions of the Authority taken under the old legislation; and third direct the Secretary of Transportation to amend the Authority's 50-year lease.

This legislation provides a necessary cure to a constitutional deficiency as defined by the Federal courts, in the structure of the Airports Authority, which is operating and improving the two airports that serve the Nation's Capital and the Washington region, Washington National and Washington Dulles International.

In April 1994, the Court of Appeals for the District of Columbia Circuit found that the Board of Review, made up of current and former Senators and Members of Congress, violated constitutional separation of powers principles. This was the second time the courts have struck down the Board of Review, which was designed to represent users of the airports and to preserve some Federal control over them.

The court of appeals stayed its decision until the Supreme Court had time to consider the issue. The Supreme Court decided not to hear the case in January, and the stay expires March 31, 1995.

Therefore, I repeat, all Congress is required to do to keep the airports in operation is to pass this legislation. Such continued uninterrupted operations are essential to the travel requirements of Members of Congress and their staffs.

If the Congress does not amend the Metropolitan Washington Airports Act by that date, the Airports Authority Board of Directors will lose all its power to take basic, critical actions, including the ability to award contracts, issue more bonds, amend its regulations, change its master plans, or adopt an annual budget.

This shutdown could not come at a worse time. The Airports Authority is in the middle of a $2 billion construction program between two airports.

In 1986, the Congress transferred the airports to an interstate agency created by the District of Columbia and the Commonwealth of Virginia. We did this because we recognized that an independent state-level authority could do what the Federal Government apparently could not—issue revenue bonds and undertake the major construction that was so long overdue at both airports.

The Airports Authority has done a credible job carrying out congressional intent. It has sold over $1.3 billion in tax-exempt bonds, and has multimillion dollar projects underway to double the size of the Dulles terminal and replace many of the National Airport facilities with a modern new terminal building.

As of today, the Authority has already completed $331 million in construction projects, and has an additional $416 million under construction. The steel superstructure at National is visible to all; just this week, construction crews topped off the new 220-foot high air traffic control tower there.

Thus, we cannot afford to interrupt this construction progress by Congress not acting by March 31, 1995. The Congress must pass this legislation now.

Mr. President, recently the House Transportation subcommittee on Aviation adopted H.R. 1036, the Metropolitan Washington Airports Amendments Act of 1995. This legislation contains provisions which we cannot support at this time.

Specifically, the legislation imposes a reauthorization provision in which the Congress would reauthorize the Airports Authority every 2 years. Also, the statutory freeze on the 37 slots under the high density rule would be repealed. This would mean that the Federal Aviation Administration would be able to increase slots through a rulemaking process.

Mr. President, all the Congress must consider now—before March 31—legislation to abolish the Congressional Board of Review. Any further delays will result in slowing the schedule and increasing the costs of the major construction projects at both airports.

By Mr. HELMS (for himself and Mr. FAIRCLOTH):

S. 497. A bill to amend title 28, United States Code, to provide for the protection of civil liberties, and for other purposes; to the Committee on Governmental Affairs.

ACT TO END UNFAIR PREFERENTIAL TREATMENT

Mr. HELMS. Mr. President, momentarily I am going to send a bill to the desk for introduction but I want to make a few remarks before I do that.

First of all, this bill will simply get us started along a road that the Senate ought to have taken a long time ago. Senator DOLE may have a similar bill, in which case I will gladly serve as a cosponsor of his bill, and I feel sure that he will want to be a cosponsor of mine. There may be others. But somebody has to start the ball rolling and that is what I am doing here at about 18 minutes until 3 p.m. on Friday.

Mr. President, unless I am badly mistaken, when the bill I shall offer today hits the hopper there is likely to be the usual outburst of usual phony demagoguery among our liberal brethren in the political arena and in the news media. It always happens when a proposal is made to do away with any Federal program that was established in the first place to attract votes for liberal candidates and liberal issues.

The liberal brethren can begin their holier than thou lamentations, because here comes the bill that proposes to eliminate so-called affirmative action programs that have done more harm than good in terms of race relations, which have been exceedingly costly to the American taxpayers, and worst of all, have been so burdensome for people trying to operate small businesses or, in fact, businesses of any size.

This legislation, which I shall send to the desk presently, is almost identical to the California Civil Rights Initiative which proposes to erase several decades of State-sponsored preferential programs in California based on race, color, gender, or ethnic background. If you want to call it the Helms bill that is fine, but I want to call it, "An Act to

End Unfair Federal Preferential Treatment." And I hope that hereinafter it will be known as that.

This bill's principal difference with the California legislation is that I am proposing to eliminate the same kinds of discriminatory, expensive, and counterproductive programs on the Federal level as California is attempting on the State level.

As I said at the outset, Mr. President, we are likely to hear and see the customary antics by the liberal news media who always start tossing epithets around any time efforts are proposed to put an end to Federal programs that do not work and that have done more harm than good—in this case, the heavy-handed effort of Government to force so-called affirmative action down the throats of the American people of all races.

But I say, here and now, that this legislation—indeed this issue—is not about race—although an intellectually dishonest liberal media may try to portray it as such. It is about fairness. It is about putting an end to reverse discrimination at the hands of ruthless bureaucrats.

Reasonable men and women may disagree about the wisdom of the Government's having gotten into the business of racial and other quotas, and affirmative action in the first place. But, now is not the time to revisit that argument, or to attempt to unscramble that egg. And that is not what this legislation is all about.

Rather, Mr. President, this legislation is based on questions being raised by a vast percentage of the American people. For example:

First, with a Federal debt of $4.8 trillion, can Congress justify forcing the American taxpayers to continue paying for programs that are today no longer needed?

Second, should Congress—which so recklessly ran up this $4.8 trillion debt—now act to do away with the social engineering foolishness that is so harming the country?

Third, after 30 years of federally funded affirmative action programs, it is now time to say enough is enough.

Fourth, should America return to the fundamental principles laid out prayerfully, and with specificity, by our Founding Fathers?

Is not the answer "yes" to each of these questions?

Of course it is.

You see, Mr. President, the American dream has been within the reach of citizens of all races, religions, and ethnic backgrounds because our Nation has adhered for so many years to the principles of free enterprise, self reliance, personal responsibility, and, of course, the concept that every citizen should be free to pursue his or her personal dream—based not on birthright, but rather on hard work, initiative, talent, and character.

The now-entrenched, but nonetheless discriminatory system of affirmative action preferences established by Congress, the courts, and virtually every Federal agency flies in the face of the merit-based society that the Founding Fathers envision, which is why my legislation, aimed at removing these preferences, is called the "Act to End Unfair Federal Preferential Treatment."

Mr. President, I am convinced this legislation reflects the thoughts of countless citizens across America of every color and creed who struggle each day to make the American dream become a reality—to own their own homes, raise their families, and provide educations for their children. But the all-powerful Federal Government somehow manages to get in the way at nearly every turn. This is the thing that we must put an end to.

Those familiar with the debate surrounding affirmative action and quota programs likely have heard of the California Civil Rights Initiative, which residents of that State will vote upon as early as next March. For those unfamiliar with this initiative, it reads:

> Neither the State of California nor any of its political subdivisions or agents shall use race, sex, color, ethnicity or national origin as a criterion for either discriminating against, or granting preferential treatment to, any individual or group in the operation of the State's system of public employment, public education or public contracting.

As I stated previously, the Act To End Unfair Federal Preferential Treatment—which I will shortly send to the desk—differs in that it puts an end to taxpayer funding of such programs on the Federal level.

Mr. President, polls show that 73 percent of Californians support this initiative to roll back racial and other quotas and preferences. But California is not alone in this sentiment. According to a recent Wall Street Journal/NBC News survey, 2 out of every 3 Americans—including half of those who voted for President Clinton—oppose so-called affirmative action.

This demonstrates, I believe, that the American people are once again far ahead of their leaders in Washington. Americans recognize that such programs are divisive, discriminatory, and in fact, harm the very citizens they claim they want to help. In short, these programs pervert the concept of equality. As Senator Malcolm Wallop, the great statesman from Wyoming, put it, "Any government that is not strictly blind in matters of race is quite simply un-American."

Mr. President, we simply cannot afford to continue to pour money into ineffective and ultimately destructive affirmative action programs when the total Federal debt, as of March 1, stood at exactly $4,848,389,403,816.26. That is $18,404.57 for every man, woman, and child in America.

Of course, those who pay taxes—because so many do not—will pay even far more than that in the theoretical sense of how much it will cost to pay off the debt. We must stop wasting the taxpayers' money on programs that demonstrably cannot and will not work.

If the California initiative passes, one legislative analysis predicts that high schools and community colleges would save $120 million a year in administrative costs. Universities would save another $50 million a year. Think of the savings we could realize if Federal programs are terminated nationwide. It boggles the mind.

Let me offer a few examples of Government-sponsored affirmative action programs that are so counterproductive and divisive they make me wonder how much more of this we can swallow. These few programs are only the tip of the iceberg.

First, the State Department has been instructed that certain new positions must be filled with women and minorities rather than white workers. The administration complained when a State Department list of candidates for ambassadorial posts did not contain enough minorities and women. The White House returned the list to Secretary Christopher.

Second, the Federal Communications Commission has for years implemented a program where women and minorities are given special tax breaks and special incentives to enable them to acquire mass media facilities, such as radio and television stations.

The most well-known example is the special tax break that Viacom, the world's second largest entertainment conglomerate, is trying to use. Under current FCC law, Viacom can defer $1.1 to $1.6 billion in taxes on the sale of its cable operations simply by selling them to an African-American buyer. And this buyer just happens to be the same man who conceived the minority tax-break program while working on FCC issues in the Carter White House. This minority buyer now plans to invest $1 million of his own money in the acquisition. I ask you, Mr. President, is this someone in need of a Federal preference? I say no way, José.

Third, the Forest Service has a firefighter program where certain positions can be filled only with women or minorities. And a North Carolina constituent and Forest Service employee recently sent me articles regarding an internal Forest Service document that actually states, "Only unqualified applicants will be considered." This policy was supposed to be a set-aside for women. So much for qualifications being important.

Fourth, and what about the Defense Department's special hiring directive that said, "special permission will be required for promotion of all white men without disabilities."

Mr. President, I have it on good authority that there are more than 160 such preference programs in place today in the Federal bureaucracy. That is what this bill is aimed at. And who pays for them? That is right. The American taxpayers pay for them.

Citizens visiting my office frequently note on my office wall a picture of a man who was a friend of all of us who served with him, Hubert Humphrey of Minnesota. Hubert was the author of the original Civil Rights Act of 1964. True enough, Senator Humphrey and I disagreed on just about every policy issue but we disagreed agreeably. We were friends, nevertheless. And I respected him for having the courage of his convictions, wrong as I thought those convictions were sometimes. He stated many times to me that my feeling about him was mutual, and I appreciated that.

In any event, Hubert Humphrey was exactly right when he stated during a debate in this room over the Civil Rights Act of 1964:

> * * * if there is any language [in the Civil Rights Act of 1964] which provides that any employer will have to hire on the basis of percentages or quotas related to color, race, religion or national origin, I will start eating the pages one after another because it is not there.

Well, the distinguished majority leader, Mr. DOLE, recently remarked,

> Now we all have indigestion from living in an America where the government too often says that the most important thing about you is the color of your skin or the country of your forefathers * * * that's wrong, and we should fix it.

I agree with Senator DOLE. BOB DOLE was on target, and hopefully the legislation that I am introducing today will serve as a first step toward fixing this problem.

As I said at the outset, I anticipate that Senator DOLE may offer legislation on this subject. I hope others will too so that we can all think together and act together on a problem that should not be allowed further to beset the greatest country on Earth.

But, Mr. President, back to Hubert Humphrey. Hubert Humphrey hated the idea of quotas and preferential treatment based on race. He knew instinctively that such programs, if instituted, would turn America inside out—which is exactly what has occurred: there is much evidence that so-called affirmative action programs have exacerbated racial problems—not healed them. Former Secretary of Education William Bennett put it this way.

> Affirmative Action has not brought us what we want—a colorblind society. It has brought us an extremely color-conscious society. In our universities we have separate dorms, separate social centers. What's next—water fountains? That's not good, and everybody knows it.

George Weigel of the Ethics and Public Policy Center had this observation regarding how divided a country America has become:

> People have not grasped the extent to which the notion of governmentally appointed preference groups is pernicious to American democracy * * * They have not grasped what it means to balkanize the United States. My guess is that there will be a tremendous revolt against this.

Paul Sniderman of Stanford University and Thomas Piazza of the University of California recently completed a book, "The Scar of Race." These authors demonstrate that whites are more likely to view African-Americans in a negative light if they are first asked questions about affirmative action. Here's what Sniderman and Piazza found:

> A number of whites dislike the idea of affirmative action so much and perceive it to be so unfair that they have come to dislike blacks as a consequence.

Parenthetically, Mr. President, that is an awful state of affairs, but I believe it to be true. It should not be true, but it is. The authors continued:

> Hence the special irony of the contemporary politics of race. In the very effort to make things better, we have made some things worse.

Sharon Brooks Hodge, an African-American writer and broadcaster, perhaps summed it up best when she observed:

> * * * white skepticism leads to African-American defensiveness * * * Combined, they make toxic race relations in the workplace.

And, as is the case with so many forays into social engineering by the Federal Government, affirmative action and quota programs, have, at the end of the day, harmed the very people their proponents designed them to assist. Peter Schrag of the San Diego Union-Tribune hit the nail on the head when he asked:

> To what extent will the real achievements of minorities be diminished by the suspicion that they got some sort of break?

Although Federal agencies designed affirmative action programs to benefit victims of discrimination at the lowest rungs of the economic ladder, today they benefit chiefly educated, middle-class minorities. As Linda Chavez, the Hispanic leader and President of the Center for Equal Opportunity and former staff director of the U.S. Commission on Civil Rights under President Reagan, observed today's government affirmative action programs benefit those who can make it on their own.

Mr. President, after 30 years of affirmative action, America now finds itself a more racially ethnically divided society than ever before. The cohesiveness which once brought all of us together as Americans first is slipping away.

After 30 years, it is obvious that this social experiment called affirmative action has outlived its usefulness. It is time for the Federal Government to scrap these programs, and restore the principles upon which our country was built—personal responsibility, self-reliance, and hard work.

Mr. President, that formula for achievement was the answer 200 years ago and it is still the same today. And I might add, it is the only road to reaching the American dream for all our citizens, whether they be black, white, Hispanic or Asian, men or women. The Act To End Unfair Federal Preferential Treatment is the first step toward this dream.

Mr. President, I ask unanimous consent that the following items be printed in the RECORD at the conclusion of my remarks following the text of the bill, an August 21, 1994, article by Peter Schrag of the San Diego Union Tribune; a February 15, 1995, article by Linda Chavez in USA Today; and a February 13, 1995, article by Steven Roberts in U.S. News & World Report.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 497

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Act to End Unfair Preferential Treatment".

SEC. 2. PUBLIC EMPLOYMENT, PUBLIC CONTRACTING, AND FEDERAL BENEFITS.

Part VI of title 28, United States Code, is amended by inserting after chapter 176 the following new chapter:

"CHAPTER 177—CIVIL LIBERTIES

"§ 3601. Public employment, public contracting, and Federal benefits

"Notwithstanding title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 15 of the Small Business Act (15 U.S.C. 644), or any other provision of law, no agent or agency of the Federal Government may use race, color, gender, ethnicity, or national origin—

"(1) as a criterion for either discriminating against, or granting preferential treatment to, any individual or group; or

"(2) in a manner that has the effect of requiring that employment positions be allocated among individuals or groups;

with respect to providing public employment, conducting public contracting, or providing a Federal benefit for education or other activities.

"§ 3602. Necessary classifications based on gender

"Nothing in this chapter shall be interpreted as prohibiting classifications based on gender that are reasonably necessary to the normal provision of public employment, conduct of public contracting, or provision of a Federal benefit.

"§ 3603. Court order or consent decree

"Nothing in this chapter shall be interpreted as—

"(1) affecting any court order or consent decree that is in effect as of the date of enactment of this chapter; or

"(2) forbidding a court to order appropriate relief to redress past discrimination.

"§ 3604. Definitions.

"As used in this chapter:

"(1) The term 'agent' means an officer or employee of the Federal Government.

"(2) The term 'Federal benefit' means—

"(A) funds made available through a Federal contract; or

"(B) cash or in-kind assistance in the form of a payment, grant, loan, or loan guarantee, provided through any program administered or funded by the Federal Government.".

MINORITIES CAN'T MEASURE UP? THAT'S WHAT AFFIRMATIVE ACTION POLICIES IMPLY, THOUGH YOU WON'T HEAR ITS LIBERAL BACKERS SAY SO

(By Linda Chavez)

BETHESDA, MD.—For years I've suspected that many liberals favor affirmative action because they believe blacks and Hispanics can't measure up to the same standards as whites, but it's been difficult to get any of them to say so publicly.

Now Rutgers University President Francis L. Lawrence, a staunch proponent of affirmative action throughout his career, has let the cat out of the bag.

In comments to a faculty group discussing the school's admission criteria, Lawrence referred to blacks as a "disadvantaged population that doesn't have the genetic, hereditary background" to score equally with whites on the Scholastic Aptitude Test.

Lawrence has since apologized for his comments—which he now says he doesn't actually believe—and students have led angry protests demanding his resignation.

But the fact is that affirmative-action programs at universities around the country operate as if Lawrence were right.

They routinely apply lower admission standards to black and Hispanic applicants, all the while pretending that such double standards won't reinforce negative stereotypes and stigmatize students admitted under them.

The University of California at Berkeley, for example, admits black and Hispanic students with test scores and grade-point averages significantly below those it requires of both white and Asian students.

Berkeley is one of the few universities that has made available such information, even on a limited basis.

In 1989, Berkeley turned away approximately 2,800 white students with perfect 4.0 GPAs—straight As. But half of the minority students it admitted that year had below a 3.53 GPA.

And contrary to the assumptions of many affirmative-action supporters, students admitted on the basis of lower test scores and grades aren't necessarily economically disadvantaged graduates of poor inner-city schools.

At Berkeley, for example, the Hispanic student admitted through the affirmative action program comes from a middle-class family, and many if not most attended integrated schools, often in the suburbs.

In fact, 17% of Hispanic entering freshmen admitted to Berkeley in 1989 came from families that earned more than $75,000 a year, as did 14% of black students.

Statistics like these make it increasingly difficult for advocates to argue that affirmative action is intended to benefit disadvantage minorities.

One Mexican-American student told researchers studying the Berkeley program she was "unaware of the things that have been going on with our people, all the injustice we've suffered, how the world really is. I thought racism didn't exist, and here, you know, it just comes to light."

No doubt she was referring to the political indoctrination many minority students receive in such programs so they'll know how "oppressed" they really are, despite attending one of the world's elite institutions of higher learning.

But the comments that racism at Berkeley "just comes to light" might just as well apply to the university's own admission standards, which clearly do treat applicants differently according to their race.

Affirmative action advocates can't have it both ways. A system that depends on holding minorities to different—and lower—standards than whites invites prejudice and bolsters bigotry.

But it also sends a clear message to the intended beneficiaries that those who claim to want to help minorities don't really believe blacks and Hispanics can ever measure up to whites.

Most supporters of affirmative action no doubt would be horrified that anyone might interpret their intentions so malignly. But their actions speak as loudly as words.

WHAT OTHERS ARE SAYING

"We are happily at a time when a number of the compensations that were earlier advanced to make up for earlier discrimination are no longer needed."—Calif. Gov. Pete Wilson.

"If the president respects the goal of affirmative action as fully as he should, he might gain political support from voters who believe in pursuing an integrated society. * * * But if he ignores the subject and lets critics set the terms of the debate * * * he's likely to be stuck with affirmative action as a thin cover for nasty, race-minded politics—the Willie Horton issue of 1996. And it's likely to contribute to his loss."—Lincoln Caplan, Newsweek magazine contributing editor.

"The people in America now are paying a price for things that were done before they were born. We did discriminate. * * * But should future generations have to pay for that?"—Senate Majority Leader Bob Dole.

"We know that affirmative action has created problems, abuses we didn't contemplate. But if you eliminate or severely curb * * * then what?"—Calif. Lt. Gov. Gray Davis.

"(It's) going to be hell. * * * You better make sure you prepare for it."—Franklyn Jenifer, president of the University of Texas at Dallas, warning college administrators of a backlash from minority students if affirmative action policies are removed.

[From the U.S. News & World Report, Feb. 13, 1995]

AFFIRMATIVE ACTION ON THE EDGE—A DIVISIVE DEBATE BEGINS OVER WHETHER WOMEN AND MINORITIES STILL DESERVE FAVORED TREATMENT

Affirmative action is a time bomb primed to detonate in the middle of the American political marketplace. Federal courts are pondering cases that challenge racial preferences in laying off teachers, awarding contracts and admitting students. On Capitol Hill, the new Republican majority is taking aim at the Clinton administration's civil rights record. On the campaign trail, several Republican presidential hopefuls are already running against affirmative action. And in California, organizers are trying to put an initiative on next year's ballot banning state-sanctioned "preferential treatment" based on race or gender.

This increasingly angry and divisive debate about the role of race and gender in modern America could help the Republicans unseat Bill Clinton in 1996 and change the way many institutions allot jobs, business and benefits. A recent Wall Street Journal NBC News survey found that 2 out of 3 Americans, including half of those who voted for President Clinton in 1992, oppose affirmative action. The Los Angeles Times found 73 percent of Californians back the ballot initiative. "The political implications are enormous," says Will Marshall of the Democratic leadership Council, a moderate group. "Obviously, a lot of Republicans look at affirmative action as the ultimate wedge issue."

The assault on affirmative action is gathering strength from a slow-growth economy, stagnant middle-class incomes and corporate downsizing, all of which make the question of who gets hired—or fired—more volatile. Facing attacks on such a broad front, women's groups, civil rights organizations and other defenders of affirmative action are circling their wagons. Women and minorities still need preferential treatment, they argue, because discrimination still exists, causing blacks and other minorities to lag far behind whites in terms of economic status. "If African-Americans are taking all these jobs," asks Barbara Arnwine of the Lawyers Committee for Civil Rights Under Law, "why is there double-digit unemployment in the African-American community?" Adds Patricia Williams, a professor at Columbia Law School: "There is this misplaced sound and fury about nothing. Access is still very limited, and the numbers are still very low."

But the sound and fury are real. Affirmative action poses a conflict between two cherished American principles: the belief that all Americans deserve equal opportunities and the idea that hard work and merit, not race or religion or gender or birthright, should determine who prospers and who does not. In 1965, Lyndon Johnson defended affirmative action by arguing that people hobbled by generations of bias could not be expected to compete equally. That made sense to most Americans 30 years ago, but today many argue that the government is not simply ensuring that the race starts fairly but trying to decide who wins it.

Moreover, many women and racial minorities are no longer disadvantaged simply because of their race or gender. Indeed, most of the young people applying for jobs and to colleges today were not even born when legal segregation ended. "I'll be goddamned why the son of a wealthy black businessman should have a slot reserved for that race when the son of a white auto-assembly worker is excluded," says a liberal Democratic lawmaker. "That's just not right."

DISHEARTENING

The critics of affirmative action include some conservative minority and women's leaders who believe it has a destructive effect on their own communities. Thomas Sowell, the black economist, argues that affirmative action has created a process of "mismatching," in which competition for talented minorities is so fierce that many are pushed into colleges for which they are not ready. "You can't fool kids," says Linda Chavez, a Hispanic activist. "They come into a university, they haven't had the preparation and it's a very disheartening experience for some of them.

Others say affirmative action causes coworkers to view them with suspicion. "White skepticism leads to African-American defensiveness," says Sharon Brooks Hodge, a black writer and broadcaster. "Combined, they make toxic race relations in the workplace." Glenn Loury, an economics profession at Boston University, says proponents of affirmative action have an inferiority complex: "When blacks say we have to have affirmative action, please don't take it away from us, it's almost like saying, 'You're right, we can't compete on merit.' But I know that we can compete."

William Bennett, former education secretary and a leading GOP strategist, says that "toxic" race relations, aggravated by affirmative action, have led to a damaging form of re-segregation: "Affirmative action has not brought us what we want—a colorblind society. It has brought us an extremely color-conscious society. In our universities we have separate dorms, separate social centers. What's next—water fountains? That's not good, and everybody knows it."

But supporters of affirmative action maintain that arguments like Bennett's are unrealistic—even naive. "We tried colorblind 30 years ago, and that system is naturally and artificially rigged for white males," says Connie Rice of the NAACP Legal Defense and Education Fund. "If we abandon affirmative action, we return to the old-boy network."

Voices on both sides of the debate are starting to discuss a possible compromise that would focus eligibility on class, instead of on race or gender. For example, the son of a poor white coal miner from West Virginia would be eligible for special help, but the daughter of a black doctor from Beverly Hills would not. "Some of the conventional remedies don't work as one might have hoped," says University of Pennsylvania law professor Lani Guinier, whose ill-fated nomination as Clinton's chief civil rights enforcer sparked a storm of protest from conservatives. "Perhaps there is an approach that does not suggest that only people who have been treated unfairly because of race or gender or ethnicity have a legitimate case."

No one questions the sensitivity of the subject. For years, the civil rights lobby, backed by Democrats in Congress, was so strong that critics often felt intimidated. Even today, Democrats who disagree with affirmative action are reluctant to voice their doubts. "The problem is political correctness—you can't talk openly," says a member of Congress.

Democrats are talking privately, however, urging the White House to formulate a response to the antiaffirmative-action wave before it swamps the president and the party. At the Justice Department, chief civil rights enforcer Duval Patrick is ready: "We have to engage; we can't sit to one side."

But despite the fact that the California initiative could cost Clinton a must-win state in 1996, the administration seems sluggish, even paralyzed. Laments a senior adviser, "We're going to wait until it's a crisis before reacting." White House political strategists admit one reason for the inaction: The issue is a sure loser.

REFEREE?

Caught between angry white males and the party's traditional liberal base, White House advisers think the best they can do is position the president as an arbiter between two extremes. In a recent interview with U.S. News, the president voiced his aim this way: "What I hope we don't have here, and what I hope they don't have in California, is a vote that's structured in such a way as to be highly divisive, where there have to be winners and losers and no alternatives can be easily considered." Asked his views on affirmative action, the president tried—as he often does—to please both sides: "There's no question that a lot of people have been helped by it. Have others been hurt by it? What is the degree of that harm? What are the alternatives? That's a discussion we ought to have."

But a senior administration official admits that the middle ground will be an uncomfortable place: "The civil rights groups are going to say we're caving in if we make any compromises. And the Republicans are going to shout, 'Quotas.'" That same tension is already developing within the White House. U.S. News has learned that Chief of Staff Leon Panetta is quietly asking friends on Capitol Hill whether the president should simply endorse the California initiative—a position sure to trigger outrage among the president's more-liberal advisers.

Unsure how resolute the White House will be, civil rights groups are looking for their own strategy to defend affirmative action. One of their main jobs, they say, is to debunk the "myth" that unqualified women and minorities are being hired in large numbers. And some of the best salesmen for affirmative action are big corporations that adjusted long ago to the demands for a more-diverse work force, dread bad publicity and fear the uncertainty change would produce. James Wall, national director of human resources for Deloitte & Touche LLP, a management consulting firm, says diversity is good business: "If you don't use the best of all talent, you don't make money."

Even so, the combination of old resentments, new economic hardships and shifting political winds threatens to explode. "There's a great deal of pent-up anger beneath the surface of American politics that's looking for an outlet," says conservative strategist Clint Bolick of the Institute for Justice. It's the same anxiety that helped pass Proposition 187 in California, which sharply restricts public assistance to the children of illegal immigrants, and thwarted Clinton's plan to push a Mexican aid plan through Congress. "If there is a squeeze on the middle class," says GOP pollster Linda Divall, "people get very vociferous if they think their ability to advance is being limited."

Some African-American leaders insist that this white-male anger is being stirred up by demogogues who make blacks and women into scapegoats. Says Derrick Bell, professor of law at New York University: "There is a fixation among so many in this country that their anxieties will go away if we can just get these black folks in their place."

But the anxieties are strong and are coupled with a growing belief that affirmative action is another aspect of intrusive and inefficient big government. "The real back-to-basics movement is not in education but in politics," says William Bennett. "We're rethinking basic assumptions about government."

Accordingly, the fight over affirmative action is playing out in four arenas:

CALIFORNIA

The real question is whether the civil rights initiative will appear on the primary ballot in March of 1996 or on the general-election ballot. If it appears in November, the measure could seriously damage President Clinton's chances to carry the nation's most populous state. That is precisely why national Republicans are promising to raise money for the effort—as long as organizers aim for November.

The initiative is the brainchild of two academics, Tom Wood and Glynn Custred, who say they were alarmed by the prevalence of "widespread reverse discrimination" in the state's college system. The initiative has already attracted some unlikely support: Ward Connerly, a black member of the University of California Board of Regents, said last month that he favors an end to racial and gender preferences. "What we're doing is inequitable to certain people. I want something in its place that is fair." and Hispanic columnist Roger Hernandez wrote: "I've never understood why Hispanic liberals, so sensitive to slights from the racist right, don't also take offense at the patronizing racists of the left who say that being Hispanic makes you an idiot."

California Assembly Speaker Willie Brown, who is black, opposes the initiatives as an attempt "to maintain white America in total control." But other Democrats are scurrying for cover. "The wedge potential is absolutely scary," says Ron Wakabayashi, director of the Los Angeles County Human Rights Commission. "The confrontation of interests looks like blacks and Latinos on one side and Asians and Jews on the other."

THE COURTS

The Supreme Court has generally supported race and gender preferences to remedy past discrimination, but an increasingly conservative bench has moved to limit the doctrine. In 1989, the court struck down a program in Richmond, Va., that set aside 30 percent of municipal contracts for racial minorities, and that decision set off a flurry of litigation. In the current term, the court already has heard arguments in a key case: A white-owned construction company is claiming that it failed to get a federal contract in Colorado because of bonuses given to contractors that hire minority firms.

In another case making its way toward the high court, a black teacher in Piscataway, N.J., was retained while an equally qualified white teacher was fired, in the name of diversity. The Bush administration sided with the white teacher after she sued the school board. The Clinton administration backs the board. Two other cases relating to education are also moving forward. In one, white students at the University of Maryland are challenging a scholarship program reserved for minorities. In the other, the University of Texas law school is being sued for an admissions policy that lowers standards for blacks and Hispanics.

While most court watchers do not expect sweeping changes in current doctrine, the high court is closely divided on racial-preference questions, and the deciding votes could be cast by Justice Sandra Day O'Connor. Legal analysts cite her opinion in a 1993 case challenging voting districts that were drawn to guarantee a black winner: "racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions." The court's most likely move: require programs to be more narrowly tailored to remedy past discrimination.

CONGRESS

Republican victories last year mean that critics of affirmative action now control the key committees and the congressional calendar. A strategy session was held last Friday at the Heritage Foundation, a conservative think tank, bringing together about two dozen Hill staffers, lawyers and conservative activists. Already, Rep. Charles Canady, the Florida Republican who heads the key House subcommittee, has written to the Justice Department requesting every document relating to affirmative action cases. His goal oversight hearings that try to demonstrate that the administration's civil rights policies far exceed the original intent of Congress.

Conservatives are considering amendments to appropriations bills that would restrict the administration's flexibility. There also is talk of a measure banning racial and gender preferences altogether. Civil rights proponents remain confident that Clinton would veto any measure that eviscerates affirmative action and that his veto would survive.

CAMPAIGN '96

The affirmative action issue will be test-marketed this year by Buddy Roemer, a Republican candidate for governor of Louisiana. But it is already intruding into the politics of 1996: California Gov. Pete Wilson has all but endorsed the initiative and Sen. Phil Gramm of Texas, who will soon announce his presidential candidacy, has taken over the appropriations subcommittee that handles the Justice Department. He will use it, predicts an administration official, "as a platform to rail against quotas."

The danger for Republicans lies in going too far in attacking affirmative action and courting resentful white males. If the antiaffirmative-action campaign "turns into mean-spirited racial crap, to hell with it," William Bennett warned fellow Republicans.

But the questions at the core of the affirmative action debate remain unanswered. How much discrimination still exists in America? And what remedies are still necessary to aid its victims?

[From the San Diego Union-Tribune, Aug. 21, 1994]

THE PREFERENTIAL TREATMENT BACKLASH

(By Peter Schrag)

A Republican attempt to prohibit California government agencies from discriminating for or against individuals on the basis of race, ethnicity or gender got a three-hour hearing in the Assembly Judiciary Committee this month, followed by the predictable brushoff from the committee's majority Democrats. "It is one of the most dangerous pieces of legislation I have witnessed in my four years here," said Assemblywoman Barbara Lee, D-Oakland.

We should only be so lucky.

The California Civil Rights Initiative (CCRI), a constitutional amendment that would have required a two-thirds vote in each house of the Legislature in order to go on the ballot, had as much chance as a snowball in a furnace. It was sponsored by Assemblyman Bernie Richter of Chico and had some 42 legislative co-sponsors, one of whom was a Democrat and one an Independent.

It's a simply worded proposition. Its key passage says, "Neither the state * * * nor any of its political subdivisions or agents shall use race, sex, color, ethnicity or national origin as a criterion for either discriminating against, or granting preferential treatment to, any individual or group in the operation of the state's system of public employment, public education or public contracting."

Put that proposition to the voters unadorned and you're likely to get a sweep. It's as American as Abraham Lincoln and Martin Luther King Jr.: Judge people as individuals on what they can do, on the content of their character, not on what group they belong to or the color of their skin.

It's not the way things work, either in the universities, where much of the push and inspiration for CCRI comes from, or many other places in the public arena. Everywhere there are preferences based at least partly on something else—in hiring, in college admissions and in a thousand subtle other ways.

The reasons for some official preferences are obvious enough: 1) to make up for the lingering effects of past discrimination and 2) to try to get in the professions, in the civil service and on the campuses people who, at the very least, are not strikingly different in pigmentation from the rest of the populace.

But as the backers of the CCRI point out, the thing has gone to the point where new offenses are committed in the effort to remedy the old: Should there be scholarships reserved for blacks or Hispanics? Should college departments be offered bounties for bagging minorities in their faculty recruiting? Should there be legislative requirements of racial proportionality, not only in university admissions, but in graduation rates?

Should people of the right color or sex be given preference in contracting with public agencies, even if it costs the public more? And to what extent should success of a particular ethnic group—Asians in academic achievement for example—itself become a reason for race-based restrictions against them?

In some instances, these things have reached such totemic proportions that just questioning them is regarded as evidence of racism.

But it's not the whole story. Even CCRI's sponsors, who now hope to get the measure on the ballot by the initiative route, acknowledge that there are colleges that give preference in admission to children of alumni or, as at the University of California, to the offspring of legislators. And there are almost without doubt fire and police departments, and probably other public agencies as well, where it still doesn't hurt to be related to somebody, or at least to know them, whatever the civil service regulations say.

More important, there are legitimate sensibilities and experiences that come with certain backgrounds that may well be important in the selection of police officers or in enriching the composition of a campus. Where two candidates are otherwise similarly qualified, what's wrong with giving preference to the one whose parents are immigrants and grew up in the barrio?

CCRI's backers point out, correctly, that economic disadvantage could be used more legitimately to accomplish almost the same thing. But the very precision in CCRI's language is likely to run colleges and other state agencies afoul, on the one hand, of federal laws that encourage affirmative action and, on the other, to invite still more suits from disappointed applicants every time there's a suggestion that race or gender might have been used, however marginally, as a criterion.

All that being said, however, CCRI nonetheless reflects a set of increasingly serious problems and grievances that, as the state becomes ever more diverse, will become all the more vexing.

At what point do objective criteria and real performance become secondary to the politically correct imperatives of diversity, as in some cases they already are, thereby making it harder and harder to maintain standards of quality? To what extent do preferences for marginal candidates lead to frustration when its beneficiaries are overwhelmed?

The questions run on: To what extent will the real achievements of minorities be diminished by the suspicion that they, too, got some kind of break? To what extent does the whole process generate mutually self-validating backlash that further institutionalizes race in our society? And at what point, given our growing diversity, do the definitional problems about who is what—definitions, ironically, that squint right back to the slaveholders' racial distinctions—become both absurd and totally unmanageable?

The problem may lie as much in the idea of subjecting these processes to a rigid legal formula as in the formula chosen. And it lies in the unchecked spread of the idea that everything—college admissions, college graduation, a job—is an entitlement not to be abridged without due process.

But the complaint of the CCRI people is real enough, and it has legs.

ADDITIONAL COSPONSORS

S. 17

At the request of Mr. SPECTER, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 17, a bill to promote a new urban agenda, and for other purposes.

S. 47

At the request of Mr. SARBANES, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 47, a bill to amend certain provisions of title 5, United States Code, in order to ensure equality between Federal firefighters and other employees in the civil service and other public sector firefighters, and for other purposes.

S. 111

At the request of Mr. DASCHLE, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 111, a bill to amend the Internal Revenue Code of 1986 to make permanent, and to increase to 100 percent, the deduction of self-employed individuals for health insurance costs.

S. 242

At the request of Mr. DASCHLE, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 242, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for the payment of tuition for higher education and interest on student loans.

S. 252

At the request of Mr. LOTT, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 252, a bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age.

S. 254

At the request of Mr. LOTT, the name of the Senator from New Jersey [Mr. LAUTENBERG] was added as a cosponsor of S. 254, a bill to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the U.S. merchant marine during World War II.

S. 262

At the request of Mr. GRASSLEY, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 262, a bill to amend the Internal Revenue Code of 1986 to increase and make permanent the deduction for health insurance costs of self-employed individuals.

S. 303

At the request of Mr. LIEBERMAN, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 303, a bill to establish rules governing product liability actions against raw materials and bulk component suppliers to medical device manufacturers, and for other purposes.

S. 304

At the request of Mr. SANTORUM, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

S. 442

At the request of Ms. SNOWE, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 442, a bill to improve and strengthen the child support collection system, and for other purposes.

S. 448

At the request of Mr. GRASSLEY, the name of the Senator from Montana [Mr. BAUCUS] was added as a cosponsor of S. 448, a bill to amend section 118 of the Internal Revenue Code of 1986 to provide for certain exceptions from rules for determining contributions in aid of construction, and for other purposes.

SENATE CONCURRENT RESOLUTION 3

At the request of Mr. SIMON, the names of the Senator from Wyoming [Mr. SIMPSON], the Senator from Utah [Mr. HATCH], and the Senator from New York [Mr. D'AMATO] were added as cosponsors of Senate Concurrent Resolution 3, a concurrent resolution relative to Taiwan and the United Nations.

ADDITIONAL STATEMENTS

THE SENATE WITHOUT SENATOR METZENBAUM

• Mr. SIMON. Mr. President, it has been only 2 months since the retirement of our former colleague, Senator Howard Metzenbaum of Ohio, but already it is clearly apparent that his unique role remains unfilled in this body.

None of the phrases coined to describe Howard Metzenbaum—"The People's Watchdog," The Tiger From Ohio—quite does justice to the real service he performed for the public and for the Republic in his duties here.

Someone of his stature, courage, and sheer persistence comes to the fore all too infrequently in public life today.

I commend to my colleagues, and to all others who care about this institution, an article written in the closing days of Howard Metzenbaum's Senate service that adds some historic perspective to his distinguished career. I ask that the article be printed in the RECORD.

The article follows:

[From the Cleveland Plain Dealer, Dec. 4, 1994]

HOWARD'S END

(By Thom Diemer)

Metzenbaum was true to form through his last days in the Senate. His leaving was like a fingernail scratching a chalkboard.

He always had a chip on his shoulder.

His pursed-lipped scowl could intimidate a trash-talking bureaucrat or unnerve an imperious Republican. He knew he had the edge, he confided to aides, once his adversary got angry.

Howard Metzenbaum was true to form through his last days in the United States Senate. He went out with neither a bang nor a whimper. His leaving was more like a fingernail scratching a chalkboard.

Some of his colleagues squirmed as Metzenbaum battled for one last lost cause. But most shrugged or grinned, saying in so many words, "That's Howard."

In a special lame-duck Senate session on Thursday, Metzenbaum railed against the General Agreement on Tariffs and Trade, saying it was weighted down with "deals for big business" and would "shortchange American workers." He was one of only 13 Democrats voting against the trade pact.

His determination, fearlessness and unrelenting partisanship brought him acclaim and notoriety during 19 remarkable years as Ohio's junior senator.

"I think people know I vote in accordance with the dictates of my conscience, not with the political winds," he said in an interview last month. "There are people who hate me with a passion, but when I do meet them, I laugh and kid them, and I tell them I absolutely defend their right to be wrong."

His character was shaped by a work ethic cultivated during the Depression, a commitment to government activism personified by the New Deal, close ties with the American labor movement and an ethical grounding in Reform Judaism.

"I always worked," he said.

A lean upbringing in Cleveland's Glenville neighborhood fueled his resentment for a system that he saw as stacked against the little guy. Brushes with anti-Semitism opened his heart to the plights of other minorities and persecuted groups.

POPULARITY DEFIED LOGIC

Metzenbaum's national stature grew as he gained power and influence in the Senate, yet there was no mellowing. He could be vitriolic, blustery and reckless even with retirement looming at the age of 77.

He never shed his partisan image.

Political analysts puzzled for decades over the secret to his electoral success: How did an acerbic, left-wing ideologue, out of step philosophically with many of his constituents in a Republican-leaning state, become one of the most dominant public figures in Ohio history?

"There is no question that in my political career I have taken strong stands. No question some people were very unhappy with those stands," he said at his last Senate news conference. "But fortunately, enough people decided they were positions of conscience or conviction and they respected me for it. Therefore, a number of them voted for me and I was able to remain in office."

He was a curmudgeon, the last angry liberal.

In 1988, his final campaign, he vanquished Cleveland Mayor George V. Voinovich by 588,000 votes. Results strongly suggested more than 1 million Ohioans split their tickets, voting for both Metzenbaum and Republican President George Bush.

"He has been able to convert his liberalism into a populism that not only benefits people on the bottom rungs of the ladder, but also the middle class," Ohio State University political scientist Herb Asher once said. "That's why he has been so successful in Ohio: Howard Metzenbaum is a fighter, and a fighter for us—the middle class."

Ohio Senate President Stanley J. Aronoff, who helped the late Robert Taft Jr. of Cincinnati defeat Metzenbaum in Metzenbaum's first Senate bid 24 years ago, said "voters have a propensity to like him or dislike him—very little in-between."

"The interesting thing with Metzenbaum is that, as time went on, he was able to become comfortable even in conservative Cincinnati," Aronoff added. "In some respects, even though his philosophy would be leftish, he came to be regarded as conservative."

CONSISTENCY APPLAUDED

John C. Green, director of the University of Akron's Raymond C. Bliss Institute for Applied Politics, explained it this way: Metzenbaum, he said, had a "tremendous knack for being right about issues people care about"—job security, pensions, workplace safety, cable television rates and a raft of consumer issues.

Conversely, his battles on Capitol Hill against the Central Intelligence Agency, multi-national corporations—or in favor of gays in the military—were of little consequence to average, working Ohioans.

"Talking to people we hear over and over again, 'I don't like Metzenbaum, I don't agree with him, but I always know where he stands and I admire him for that,' Green said. "Although he was perhaps more liberal on many issues than Ohioans were, Sen. Metzenbaum has been remarkably consistent."

A Republican critic, media consultant Roger J. Stone, was less generous.

"Two words," he said when asked to explain Metzenbaum's electoral success, "luck and money."

Metzenbaum's fund-raising prowess was unmatched by any other Ohio politician. He raised a record $8 million to battle Voinovich, taking from union members, Hollywood stars, the arts community and liberal-oriented interest groups. He was never shy about asking.

MENTOR AND TORMENTOR

For years, Metzenbaum was said to be hated by Republicans, unloved by his staff and disrespected by reporters, many of whom saw him as a shameless publicity-monger. There was some truth to all those observations, but Washington loves success. Metzenbaum converted many of his critics because he was effective at what he did.

Joel Johnson, his administrative assistant for most of his last term, said he had been both a "mentor and a tormentor" to his staff.

He was fiendish about punctuality, demanded that work be nearly perfect, and read the riot act in unsparing, colorful language when an aide let him down.

"We were all pretty tough," said Barry Direnfeld, a Cleveland native who started as a mailroom clerk for Metzenbaum in 1974 and later became his legislative director. "It was a hyper place."

At a Capitol Hill retirement party for the old tiger during the final week of the Senate session, dozens of former staffers nodded as Johnson's voice cracked as he said how proud he was to work for Metzenbaum, a tough boss who inspired loyalty.

There were no tears from the Republicans or the reporters. But they came to his party—from crusty Strom Thurmond, the one-time Dixiecrat and only senator older than Metzenbaum, to Doug Lowenstein, the journalist Metzenbaum credits for hanging the nickname "Headline Howie" on him. Lowenstein eventually worked as a legislative assistant for Metzenbaum.

His decision not to seek a fourth term opened the door for a Republican, Mike DeWine, who defeated Metzenbaum's son-in-law, Joel Hyatt, in the campaign for the open Senate seat in November. But Metzenbaum battled to the wire, a whirl of activity as the clock ran out on the 103rd Congress.

BASEBALL OBSESSION

He made a pest of himself trying to convince the Senate it should jump into the baseball strike, stripping the owners of their antitrust immunity so the players union could take them to court.

His contempt for the millionaire owners, passion for anti-monopoly laws and instinct for media attention drove him, even while friends like Sen. Tom Harkin of Iowa implored him to drop the issue. He seemed oblivious to the fact that the ballplayers he supported were a far cry from the blue collar trade unionists he stood up for as a labor lawyer in the 1950s and 1960s.

On Sept. 30, Metzenbaum ignored his pals' pleas and struggled in vain to get his antitrust amendment attached to another bill. But that wasn't the only item on the agenda. The same day, he fired off a letter to President Clinton, urging him to fire CIA Director James Woolsey for his handling of the Aldrich Ames spy case.

On Oct. 8, the Senate's last day of regular business, he had "holds" on a half-dozen bills and was threatening to block a dozen more. Sen. Carl Levin, the Michigan Democrat, said his office had forms to keep track of bills that were stalled: "a box for Republican holds, one for Democrats, and one for Sen. Metzenbaum."

HE DID IT HIS WAY

Howard Morton Metzenbaum was born on Chesterfield Ave. on Cleveland's East Side on June 4, 1917.

His father, Charles Metzenbaum, was a wholesale jobber who sold bankrupt stocks during the Great Depression. "They were struggling to eke out an existence," he says of his father and mother, Anna. "They were wonderful parents. I found no fault with them at all."

No fault. That's about it. He is devoted to Shirley Metzenbaum, his wife of 48 years, but he doesn't talk much about the family he grew up with. When he does, it is with a certain detachment.

An older brother, Irwin, once ran unsuccessfully for the Ohio Senate and lives in obscurity in Cleveland. A cousin, Jimmy, served in the Ohio legislature, immediately preceding Metzenbaum, who was elected to the Ohio House in 1942. Years later an uncle, Myron Metzenbaum, developed the "Metzenbaum scissors," a surgical tool common in operating rooms.

"I cannot explain why I am the way I am," said a man not given to introspection. "I cannot think of any individual who molded me."

No teacher, no mentor, no guru. He did it on his own.

Metzenbaum hurried through Glenville High School, running track for the Tarblooders and once racing against the great Jesse Owens, then at East Tech, who left him in the dust.

And he worked.

In high school, he sold magazines and hauled groceries in a wagon to housewives at 10 cents a delivery.

He owned a car before he was old enough to drive. An older boy operated an unlicensed delivery service for him, ferrying patrons to a race track. The business was short-lived. He woke up one morning, and the car, a 1926 Essex, was gone. His dad had sold it to make a mortgage payment on their home.

Worse still, he and Alva "Ted" Bonda, a lifelong friend and business partner, tried to sell class rings at Glenville, but their entire inventory was stolen from a school locker. "The person we bought them from bothered us for years," Bonda said, laughing at the debacle. "I think that's why Howard became a lawyer."

At Ohio State University, he ran a bike rental business and played trombone for 50 cents an hour in a youth orchestra. During law school, he began drafting legislation for state lawmakers.

He scalped tickets and sold mums outside Buckeye football games and hit the road from time to time with a carload of consumer items. Driving through towns like Findley and Fremont, Metzenbaum and partners sold shopkeepers razor blades, toiletries, pencils, and—yes, the old rumor is true—condoms.

"The police would hassle you, because condoms at that point were sort of something dirty or smutty," he recalled.

LEFTWARD TILT BEGINS

War broke out in Europe. Metzenbaum, despite his allegiance to Franklin D. Roosevelt, initially questioned U.S. involvement. He was embarking on a dangerous flirtation with the far left—associations that would haunt him throughout his career.

Metzenbaum said he conducted himself in a way that no one ever thought or suggested he was a communist—"Well, I won't say nobody."

Some did regard him as a fellow traveler. He had been a member of the National Lawyers Guild and a co-founder of the Ohio School of Social Sciences—organizations regarded as communist fronts by red-hunters of the 1940s and 1950s.

Metzenbaum was red-baited in the 1970 campaign against Taft, and again in 1987 when an old rival sprang to his defense. A briefing paper urged GOP candidates to use his past connections to brand Metzenbaum a "communist sympathizer." Sen. John Glenn, Ohio Democrat, a bitter foe of Metzenbaum in the Democratic primaries of 1970 and 1974, was among the first to denounce the paper, material prepared by the National Republican Senate Campaign Committee.

The material was scrapped, but the irony couldn't be missed: Metzenbaum, for all his left-wing leanings, is a capitalist of the first order.

He started out as a tax consultant when he found the prestigious law firms were not hiring "nice young Jewish lawyers," as he put it in a 1988 Plain Dealer Sunday Magazine article.

He jumped into politics in 1942, right after law school, serving first in the Ohio House, then in the Ohio Senate where he sponsored a groundbreaking fair-employment act.

He remained in Columbus until 1950, leaving after he lost a bid to become majority leader. He suspects anti-Semitism was to blame; he can still tick off the names of the five state senators who turned against him.

BUSINESS BLOSSOMS

After the war, he and Bonda and a third partner, Sidney Moss, got interested in the rental car business, but soon realized there was more money to be made in airport parking lots. At the time, airports were still on the order of tourist attractions. Most travelers used trains or buses.

"There was no organized parking at airports," Bonda said, "it was just free parking."

Not for long. APCOA—Airport Parking Co. of America—made them millions of dollars, branching out with well-lighted, guarded lots at dozens of airports. The partners sold APCOA to ITT in 1966 for an estimated $6 million.

It was the first of many profitable ventures for Metzenbaum and Bonda, including the suburban Sun Newspapers, and part-ownership in the Cleveland Indians. Some enterprises used union labor; others kept unions out.

Metzenbaum married, reared four daughters and kept his finger in politics and the labor movement. He served as counsel to the Ohio AFL–CIO.

He marched in Selma with Martin Luther King Jr. and Viola Liuzzo.

In 1958, he managed the campaign of the cantankerous Stephen M. Young to a stunning upset victory over Sen. John Bricker, a diehard Republican conservative. Six years later, he helped Young win again, this time over Robert Taft Jr.

GOING FOR THE BIG TIME

By 1970, Metzenbaum, his fortune made, his family secure, decided to re-enter politics. All he had to do was defeat a national hero—astronaunt John Glenn, who was also seeking the Democratic Senate nomination.

That race was recalled at his farewell bash in October as a number of old friends wore buttons from that campaign, proclaiming, "I'm a Metz fan."

Little known outside the Cleveland area, he ran a brilliant campaign against the overconfident Glenn. He used television advertising extensively—a pioneering effort by Ohio standards—and emphasized bread-and-butter issues.

Organized labor closed ranks behind him. The young consumer movement embraced him. He even capitalized on the success of the miracle New York Mets, using the "Metz fan" slogan.

He upset Glenn but lost to Taft in the general election. Four years later when William Saxbe gave up Ohio's other Senate seat to become attorney general, Gov. John J. Gilligan, at the urging of union leaders, named Metzenbaum to the open seat.

Glenn was furious and immediately challenged Metzenbaum in the bar-knuckled 1974 Senate Democratic primary—the Civil War of Ohio politics.

It was a low point for Metzenbaum, one of many in his mercurial career.

When Metzenbaum suggested that "Col. Glenn," a Marine career officer, had never held a real job, Glenn unloaded on him:

"Go with me and tell a Gold Star mother her son didn't hold a job. Go with me to Arlington National Cemetery. . . ." He lectured his opponent, who, because of substandard eyesight, had never served in the military.

Glenn won. Metzenbaum had to wait until 1976, when he finally unseated Taft in what was almost certainly his last chance to win a big one.

But the feud with Glenn lasted for years. The two men hardly spoke during Metzenbaum's first term. Glenn refused to expressly endorse him for re-election in 1982.

They reconciled at mid-decade, and worked well together when Democrats recaptured the Senate majority in 1986.

"I've been waiting 20 years to say this," Glenn said at Metzenbaum's goodbye party, "come January of 1995, I'll be the only one of us who has a job."

THE METZENBAUM STYLE

Metzenbaum's big mouth and perpetual wheeling and dealing got him in trouble.

In 1974, 22 Republican senators voted not to seat the freshman Metzenbaum because of his dispute with the Internal Revenue Service over a five-year-old tax liability. The millionaire entrepreneur hadn't paid any federal income taxes in 1969.

"That didn't bother me," he said. "I stood there in back and I said, 'Incredible. Howard Metzenbaum's the subject of a Senate debate. Isn't that great?'

Metzenbaum was embarrassed by the revelation in 1983 that he accepted a $250,000 "finders fee" for putting together a seller and buyer for the elegant Hay-Adams Hotel, a block from the White House. Insisting all the while he had done nothing wrong, he eventually gave back the fee, with interest.

He called his clumsy performance in the Anita Hill-Clarence Thomas hearings in 1991 a "low point" in his political career. Charges that one of his staffers had leaked Hill's sexual harassment allegations to the media knocked him off balance.

Foreign affairs were not his forte. He once called for the assassination of Libyan dictator Moammar Gadhafy—and he praised Iraq's Saddam Hussein as a potential peacemaker, before the Persian Gulf war.

A lifelong opponent of capital punishment, he disappointed many of his closest supporters in 1987 when, with re-election coming up the next year, he backed the death penalty for drug kingpins in federal cases.

"In retrospect," he said recently, "I am not positive whether there was some rationalization about that decision or not."

He rarely had doubts about which course to take. He didn't hesitate in opposing a popular constitutional amendment banning desecration of the American flag, for instance.

But he almost voted for the Gramm-Rudman deficit reduction plan—wrestling free from a panicked aide trying to stop him—and the advocacy of his close friend Sen. Paul Simon sorely tempted him to back a balanced budget law.

Pernnial roadblock

Despite a productive third term, Metzenbaum will be most remembered for what he stopped, rather than what he pushed through the legislative maze. He was a master of the filibuster and an upsetter of the pork barrel. He had a Holmesian knack for finding the mischievous language hidden in legislation.

"The first major decision that Howard made was a break with a new president and filibuster on decontrol of natural gas prices," Direnfeld said, recalling the senator's battle with President Carter in 1977. He said Metzenbaum's attitude was, "I will do whatever it takes."

Metzenbaum lost and later had to admit deregulation didn't cause the price explosion he feared.

As he said in announcing his retirement last summer, "I've won my share of battles and fought my share of lost causes."

He was so proficient at weeding out waste, extravagance and special interest projects that the Washington Post headlined a 1982 news story: "Thank God for Metzenbaum!"

He stopped the free transfer of a federal railroad to Alaska, exposed a timber industry giveaway in the same state and shut down a multi-billion tax break for the oil industry—to name a few battles won.

It was often said he saved taxpayers billions, yet he frequently appeared on "big spender" lists put out by conservative groups targeting lawmakers enamored of social spending and redistribution-of-wealth tax policies.

He frequently got knocked down. He failed to bar companies from replacing strikers with permanent new hires; had little success in his war against the insurance industry, often fell short in bids to deny antitrust exemptions to various concerns, including baseball.

"Howard Metzenbaum seemed to go out of his way to antagonize business," said Jack Reimers, immediate past president of the Ohio Chamber of Commerce, recalling Metzenbaum's Ohio Senate days. "He was the opitome of the anti-business politician—he thrived, savored and sought to be viewed that way."

He infuriated colleagues too, making lasting enemies who waited for chances to torpedo his bills. "One man's pork is another man's building project," noted one former House member.

Rep. David L. Hobson, a Springfield Republican respected on both sides of the aisle, said the senator from his home state never opened a line of communication with him.

"We don't have any contract with Metzenbaum—none," said Hobson. "You know what people say to me? 'That's Howard.'

CHAMPION OF CAUSES

When he joined the Senate majority in 1987, Metzenbaum was determined to show he could legislate constructively. He compiled a solid if unspectacular record of accomplishment.

The Ohioan passed legislation forcing companies to give workers 60 days notice of a plant shutdown, ordering the food industry to put nutrition labels on its products, and making bankrupt companies honor their pension commitments.

He was a burr under the saddle of the National Rifle Association. He sponsored the Brady handgun waiting-period law and cosponsored the assault weapons ban. He led the successful fights to ban armor-piercing bullets and guns that cannot be identified by airport metal detectors.

He wrote the key age discrimination law and was co-sponsor of the Civil Rights Act of 1991. He was one of Israel's best friends on Capitol Hill and a consistent voice for organized labor.

Sen. Ernest Hollings, a South Carolina Democrat, angered by Metzenbaum's interruptions during a debate, once referred to him as "the senator from B'nai B'rith."

He championed laws for the smallest of constituencies. He provided incentives for drug manufacturers to develop "orphan drugs" for treatment of rare diseases. Typical of Metzenbaum, when he discovered some of the drug firms were reaping big profits, he tried to trim back the incentives.

He won breakthrough federal funding for Alzheimer's research, watched out for migrant workers, and was always protective of America's children. One of the last bills he got enacted—and one of his proudest achievements—will make it easier for couples to adopt a child from a different race.

His dedication to the wellbeing of children, his adoration of Shirley, his delight in his grandchildren—that was his softer side.

"He is not the same man who came here 19 years ago. He had a chip on his shoulder. He was demanding and impatient and wanted to accomplish a lot," said Johnson. "He changed. He grew and matured."

BACK TO THE FUTURE

To this day, he thinks he could have defied the Republican landslide and won re-election this year, had he chosen to run again. But even in semi-retirement, as president of the Consumer Federation of America, he will be in the face of the business interests he fought for years.

Take one last look at his Senate office in the Russell Building on Capitol Hill. It is a revelation, nothing less than a small gallery of contemporary art.

Instead of the tiresome grip-and-grin photos with presidents and other luminaries, the works of Red Grooms, Robert Rauschenberg and Frank Stella—all Metzenbaum intimates—are on display.

He and Shirley nurtured the artistic communities in Washington and Cleveland.

His instincts for good art, a good deal, and good politics seldom failed him.

He was prescient in his maiden Senate speech. On April 10, 1974, he scolded his new colleagues for their leisurely pace—for running an "elephantine government that moves clumsily to set policy by reacting to crisis."

"The people pay a terrible price," he said. "No wonder the people are angry—they have a right to be."•

CORRECTION

• Mrs. HUTCHISON. Mr. President, yesterday while introducing the letter from Col. William Barrett Travis, I read from the wrong notes and misstated the date of the Texans' victory at San Jacinto. March 2 is the birthday of Sam Houston, the anniversary of the signing of the Texas Declaration of Independence, and the day we honor as the birthday of our State. Of course, the victory at San Jacinto occurred the following month on April 21, 1836.•

TEMPLE EMANU-EL

• Mr. MOYNIHAN. Mr. President, this spring Temple Emanu-El in New York City celebrates its sesquicentennial. This vibrant house of worship is both the largest Jewish congregation in the world and the fountainhead of America Reform Judaism.

Dr. Ronald Sobel, Temple Emanu-El's distinguished senior rabbi, has prepared a brief history of this dynamic temple which I believe will be of great interest to Members of the Senate. I ask that this history of Temple Emanu-El be printed in the RECORD.

The history follows:

THE CONGREGATION: A HISTORICAL PERSPECTIVE

(By Dr. Ronald B. Sobel, Senior Rabbi)

The Jewish historical experience is inextricably interwoven with the history of Western civilization. It is the story of a minority interacting reciprocally with large complex societies and cultures. Therefore, unlike the history of any other people or civilization, the historical experience of the Jewish people cannot be viewed or analyzed in isolation. In this respect there are no historical analogs.

From the dawn of civilization in the ancient Near East to the post-industrial era of our own time, Jews have been a part of and remained apart from each circumstance encountered in history. They have created responsive forms appropriate to the cultures and societies in which they have lived throughout the globe for almost four thousand years. The Jewish people became experts in creative adaptation.

However, there was and remains a single constant amid the bewildering responses to changing historical circumstances. The constant is a concept of unity, the affirmation that God is One and omnipotent. Commitment to this idea of oneness in nature and human nature did not breed repetitive conformity century after century, but rather produced creative diversity generation after generation. The concept of God's unity allowed the Jewish people to live, survive, and create amid changing historical realities; the concept of unity allowed for the diversity necessary for survival. It was and remains the mortar with which the Jewish people have built their many houses among many peoples.

The process of Jewish adaptation to the society and culture of the United States has been defined within the broader phenomenon known as "Americanization." It was a complex process and the many methodologies employed reflect the diversities of Jewish life. The Jews who came to the United States as immigrants defined their destiny as inseparably bound to the well-being of all Americans. They became passionate advocates of the American experiment in democracy.

Though the first Jews to arrive on these shores came as early as 1654, it was not until the mid-nineteenth century that sufficient numbers of Jewish immigrants were present to allow the forms and shapes of Americanization to emerge. It was during that time that Temple Emanu-El was founded. The Jews who established Emanu-El, and those who joined their ranks during the first decades of the Congregation's existence, were immigrants from Germany who sought to reorient themselves by adapting their individual lives and collective institutions to the new environment of American civilization. The congregation they created and the lifestyles they fashioned were only the most recent chapter in a long history of creative adaptation; what they accomplished was nothing new in the Jewish historical experience.

From the very beginning the United States provided a polity in which the freest Jewish community the world has ever known was able to develop and grow. It was, and remains, within this unique experiment in democracy that Temple Emanu-El originated and subsequently flowered to world prominence.

It is useful to understand the nature of Western European immigration to the United States in the nineteenth century in general, and German Jewish immigration in particular, to grasp fully the origins of Temple Emanu-El. The conservative reactions that dominated Europe following the final defeat of Napoleon created a climate wherein many of the dreams set in motion by the Emancipation and the French Revolution were considerably constrained. The climate of rigid conservatism inhibited liberal growth in religion, in politics, and in the social sphere. After unsuccessful attempts to change that conservative trend, many liberals, finding no future in Europe, turned to America. They came to these shores with the hope and dream that in this land the preciousness of personality would be cherished and the dignity of individuality honored. Among those who came from Western Europe in the late 1830s were the men and women who would soon found Temple Emanu-El.

In September 1884, a "cultus verein" (cultural society) was established on New York's Lower East Side, and it was out of that cultural society that Emanu-El had its origins. In April 1845, thirty-three members of the society decided to establish a Reform congregation.

They were not particularly conversant with Reform Judaism and were only vaguely aware of its origins in their native Germany. Seeking advice, they wrote first to Congregation Beth Elohim in Charleston, South Carolina, which in 1824 was the first Reform congregation established in the United States; they also wrote to the leaders of the Har Sinai Congregation in Baltimore, Reform Judaism's second congregation in America, which was founded in 1843. They received some responses and proceeded to establish their own congregation, which they called Temple Emanu-El.

When they banded together as a religious community it was simultaneously the first in New York to be established as a Reform congregation and the third such Liberal congregation in America. It is of some interest to note that the use of the word "Emanu-El" as the name of a congregation is the first time in history that we know of that a Jewish congregation adopted this word as a designation. By choosing "Emanu-El," which means "God is with us," the founders were not doubt reflecting their hopes that God would be with them as they came to this new land, and as they put down their roots here.

Their spiritual hopes knew no bounds, but their material resources were limited. Thus the first place of worship was a rented room on the second floor of a private dwelling at the corner of Grand and Clinton streets. The records indicate that at the organizing meeting in 1845, the men present contributed a total of less than thirty dollars, and with that modest sum began the Congregation. The founders quickly outgrew that rented room, and in 1848 they moved to Chrystie Street, a few blocks west of their original location. The Congregation was still limited by its financial resources and did not possess the means to erect its own synagogue. By necessity, therefore, they purchased an existant building, which had previously been used as a methodist church, and with some changes transformed it for Jewish worship and communal meetings.

In the first few years, Temple Emanu-El's growth, through not dramatic, was steady, and the members remained modest of means. Yet there was sufficient development that by 1854 the Congregation felt the need to move again, this time northwest to Twelfth Street near Fourth Avenue. As the general population in Manhattan was moving uptown so too was the Jewish population, and thus inevitably the members of Emanu-El as well. Again unable to build on their own, they bought a structure that had been a Baptist church and refurbished it as a synagogue. However, their dreams of building a great temple were neither to be denied nor postponed to some distant future. In 1868, three years after the conclusion of the Civil War and twenty-three years after the final meeting of the "cultus verein," the members of Congregation Emanu-El were in a position to erect an imposing sanctuary at the northeast corner of Fifth Avenue and Forty-third Street, which a critic of the time described as "the finest example of Moorish architecture in the Western world." That religious home was to remain the Congregation's place of worship until the latter part of 1927, when construction of the present edifice began.

It is remarkable that within a span shorter than twenty-five years the Congregation that had begun with so few in number and so little in material means was able to erect a building that was judged an architectural wonder not only by the Jewish world but also by the people of the city of New York. The first quarter century of the Congregation's history may be viewed as a microcosm of the success of the Western European immigrant in general, and of the German Jewish immigrant in particular.

The first rabbi to serve Temple Emanu-El was Dr. Leo Merzbacher. Little is known about him, but it seems probable that he was the first ordained rabbi to serve a congregation in New York. Dr. Merzbacher led the Congregation in its earliest encounters with Reform Jewish philosophy and practice and authored one of the first Reform prayer books in America. Following his death in 1856, he was succeeded by Dr. Samuel Adler, who by that time had already achieved a reputation as one of the great philosophical and theological leaders of the Reform movement in Germany. The first three decades of the Congregation's history were thus marked by significant radical reforms in liturgy, theology, and practice. But after 1875, having achieved great eminence, the Congregation tended to become somewhat more conservative. Innovations, ritual changes, and prayer book adaptations thereafter came slowly. Dr. Adler preached in German, as had Dr. Merzbacher before him, and that language adequately served the needs of the first generation of Temple Emanu-El's members. However, it did not serve the needs of the founders' children, whose principal language was English, and thus it was inevitable that this second generation expressed a desire for an English-speaking preacher. That need was satisfied with the election of Emanu-El's third rabbi, Dr. Gustav Gottheil. Although born in Germany, Dr. Gottheil was fluent in English, having served a Liberal congregation in Manchester, England.

It is not without significance that Emanu-El's first three rabbis were trained in Europe, a circumstance necessitated by the fact that the American Jewish community had not yet been able to establish a successful rabbinic seminary. (However, it was not long thereafter that the need for such an institution was satisfied, two years following Gottheil's arrival in New York, Isaac Mayer Wise created the Hebrew Union College in Cincinnati.) Dr. Gottheil served the congregation until 1900 and advanced the cause of Reform Jewish life in several important ways: he was an innovator in liturgy, particularly by his authorship of a hymnbook, and he was one of the earliest rabbis in the United States to consciously reach out to the Christian community, and his rabbinate witnessed the beginnings of the interfaith movement. Better understanding between Christians and Jews has been an important element in the experience of the American Jewish community, and it significantly began at Temple Emanu-El. Dr. Joseph Silverman, who joined the rabbinic staff in 1888 as Dr. Gottheil's assistant, was the first American-born rabbi to serve in New York and was a member of the second graduating class of Hebrew Union College.

In 1895, amid great joy and elaborate ceremony, the Congregation celebrated the fiftieth anniversary of its founding. On that occasion the city's most prominent rabbis, Christian clergyman, educators, and political figures were present. Their participation and the wide press coverage reporting the Golden Jubilee celebration reflected the enormous growth of Temple Emanu-El. A congregation that had begun so humbly on the Lower East Side was now, a half century later, being recognized as among the most important religious institutions in the city.

Gottheil's successor was Dr. Judah Leon Magnes, who was also American born and a graduate of Hebrew Union College. Magnes was an active member of the nascent Zionist movement and also played an important role in bridging the cultural diversities that separated the Jewish community of German origin from those who had emigrated from Eastern Europe. Magnes remained at Emanu-El only a few years and later became the first president of Hebrew University in Jerusalem. In 1912, the Congregation called the scholarly Dr. Hyman G. Enelow to the pulpit. His contributions to higher Jewish learning were profound, and his writings are still studied by scholars all over the world.

When Temple Emanu-El was founded in 1845 there were approximately fifteen thousand Jews in the United States. Thirty-five years later that number had grown to a quarter of a million. In 1881, following the assassination of Czar Alexander II, dread pogroms were unleashed throughout most of Eastern Europe, and with them a great wave of immigration to America began as Jews fled from physical persecution, political oppression, and economic hardship. During the next forty years the Jewish population in the United States increased by an additional two-and-a-half-million men, women, and children.

Recognizing their responsibilities by remaining receptive to a centuries-old Jewish tradition that held that one must "aid the poor, care for the sick, teach the ignorant, and extend a helping hand to those who have lost their way in the world," the members and leaders of Temple Emanu-El responded generously and creatively to the profound poverty of their Jewish brethren who had emigrated to New York from Eastern Europe during this forty-year period. The wealth and talent of the uptown German Jews who worshiped at Emanu-El were generously bestowed upon the newly arrived Russian Jews. (However, even prior to this period of massive immigration, the Congregation had established its own tradition of philanthropic largesse.)

Although the members of Temple Emanu-El may have felt a sense of noblesse oblige in the performance of their charitable activities, and perhaps their efforts were largely directed toward Americanizing their "poor cousins" in order to reinforce their own standing in society, nevertheless what they and other German Jews in America did was nothing short of creating private institutions of philanthropy and education such as no community, Jewish or non-Jewish, had ever done before in history. The Temple and its leaders set an example to a world willing to learn about caring, and that caring including concern for non-Jews as well as Jews.

In 1920, the Congregation celebrated its seventy-fifth anniversary, again with great joy, but this time combined with a thanksgiving celebrating the recent American victory at the end of World War I. The fact that the United States had been at war with Germany caused somewhat of an identity crisis for many Americans of German origin, including some members of Temple Emanu-El. (There were also ambivalent feelings compounded by the fact that Russia, which had been our ally in the war, was the country that, during the previous four decades, was responsible for inflicting such horrible brutality upon the Jewish people.) However, the war was over, the Allies were victorious, and Emanu-El celebrated its anniversary in an exaltation of freedom.

By the beginning of the third decade of the twentieth century those Jews who had more recently arrived from Eastern Europe were beginning to settle into American life, to define themselves, and to make their own place in their new land of freedom. Less and less were they in need of the kind of assistance they had received for so long from the German Jews. And thus Emanu-El and its membership were now able to begin to address their own inner needs. In the 1920s a call for spiritual renewal went forth from the pulpit, and what followed was the establishment of many of the auxiliary organizations and activities that continue to this day to give so much vitality and meaning to the Congregation's programs and activities. It is also of interest to note that by the early 1920s some Eastern Europeans were beginning to join the Temple. A generation later, by the conclusion of World War II, the majority of the Congregation's members were men and women who traced their ancestry to either parents or grandparents of Eastern European rather than Western European origin.

In 1868, when the Congregation dedicated its Temple, Forty-third Street and Fifth Avenue was at the center of the most elegant residential section of the city. However, by the mid-1920s that part of Fifth Avenue and its surrounding streets had undergone a radical transformation. What had been for so long quietly residential had now become noisily commercial, so much so that on Saturday mornings worshipers found it difficult to pray over the cacophony coming from the adjacent streets. Furthermore, until the early 1900s the majority of the Congregation's members lived in the immediate vicinity of the Temple, but by the 1920s the overwhelming majority were residing much farther north, on the Upper West Side as well as the Upper East Side. While the old building at Forty-third Street remained architecturally beautiful, it had serious functional problems. The student body in the Religious School was growing in size, and the classrooms were inadequate. There were insufficient meeting rooms to house the expanding programs of the Temple. Following several years of debate and consideration, the Congregation, upon the recommendation of its respected president, Louis Marshall, purchased property on the northeast corner of Fifth Avenue and Sixty-fifth Street. A better location could not have been chosen. The assumption was then, and the reality today remains, that so long as there is a Central Park, this part of Fifth Avenue would be exclusively residential in character.

It was also in the late twenties that the second most influential Reform congregation in New York, Temple Beth-El (House of God) consolidated with Emanu-El. Possessor of its own distinguished history, Temple Beth-El had been established in 1874 through the amalgamation of two earlier congregations, Anshe Chesed (Men of Mercy) and Adas Jeshurun (Congregation of Israel). Its first rabbi was Dr. David Einhorn, one of the most important architects of nineteenth-century Reform Jewish thought. He was succeeded by the equally brilliant theologian Dr. Kaufmann Kohler, who left the pulpit of Beth-El in 1903 to become president of Hebrew Union College in Cincinnati.

The newly merged congregations combined rabbinic resources as well as lay brilliance into one new great Congregation. The people of Emanu-El left Forty-third Street in 1927, and during the years that it took to erect the new building, they worshiped at the handsome Temple Beth-El, which stood at Fifth Avenue and Seventy-sixth Street.

The first religious service at the new Temple at Fifth Avenue and Sixty-fifth Street was conducted in September 1929; sadly, that gathering was occasioned by the death of Louis Marshall, the man who perhaps more than any other was responsible for the building of the great new Temple. A few weeks later, services for Rosh Hashanah and Yom Kippur were conducted. How fortuitous it was that the members of the Congregation decided to build and create this magnificent Temple when they did, for had they delayed, for whatever reason, in all probability this gloriously magnificent edifice that now stands as Temple Emanu-El would probably never have been built. In the latter part of October 1929 the stock market crashed, and the Great Depression began.

The Temple was formally dedicated in January 1930 in a ceremony presided over by the rabbis of the Congregation: the great orator Dr. Hathan Krass, who had come to Temple Emanu-El in 1923; Dr. Hyman G. Enelow, the gentle scholar who had been with the Congregation since 1912; and the equally brilliant scholar Dr. Samuel Schulman, who had been Senior Rabbi of Temple Beth-El. The newly elected President of the Congregation was the Honorable Irving Lehman, Judge of the New York State Court of Appeals (and Chief Judge from 1940 onward), whose family had been affiliated with the Congregation since the 1870s.

Sharply contrasting moods characterized the decade and a half that rounded out Temple Emanu-El's first hundred years. On April 4, 1945, the Congregation entered the majestic Sanctuary for a Service of Rededication, climaxing seven months of Centenary Celebration. It was a decade and a half that began with hope and ended with promise, while the interval was filled with crisis and horror, sorrow and tragedy, such as the human family had never before endured. The Jewish people, schooled in centuries of persecution, were made the victims of an ancient hatred welded to modern technology, and by the time Nazism was finally destroyed by the Allied victory, the virtual annihilation of European Jewry had come to pass. The fortunate few who escaped to America were welcomed to Temple Emanu-El with the same attention and devotion shown by an earlier generation to those who had fled the tyranny of Czarist Russia.

As a result of the economic catastrophe precipitated by the Depression, the membership of the Congregation was significantly diminished. However, to the credit of the Broad and the congregants of Emanu-El, in the face of burdensome debt they wholeheartedly assumed social responsibility for those beyond the precincts of the Temple. Both to the needs of the refugees from Hitlerism and the call for patriotic service during the war, Temple Emanu-El's men and women responded generously and willingly. In both areas they established and maintained programs of excellence.

During 1934 Rabbis Enelow, Krass, and Schulman retired, and Dr. Samuel H. Goldenson was selected as their successor. A gentle man, and a champion of Classical Reform, Dr. Goldenson brought to the rabbinate of Emanu-El a spirit of saintliness. Two years previously, in 1932, the ministry of Dr. Nathan A. Perilman had begun; he came to the Congregation with the expectation of staying only six months, but remained for forty-one-and-a-half years, making his rabbinate the longest active service in the Congregation's history. Upon the retirement of Dr. Goldenson in 1948, Dr. Julius Mark was elected the Temple's Senior Rabbi. Dr. Mark had won wide recognition for the important role that he played as a Navy Chaplain during World War II. At the time of Dr. Mark's election, Dr. Perilman was made Rabbi of the Congregation.

The years following World War II saw an enormous growth in the Temple's membership. The 1950s were characterized by an age of significant revival in religious institutions, and the Congregation grew wondrously as America was able again to settle down to a peacetime environment. New programs were introduced, old programs were revitalized, and adult-education offerings were significantly expanded. After twenty distinguished years, Dr. Mark retired in 1968 and was succeeded as Senior Rabbi by Dr. Perilman, who remained with the Congregation for an additional five-and-a-half years, retiring at the end of 1973.

Dr. Perilman was then succeeded by Dr. Ronald B. Sobel, who had come to Temple Emanu-El as Assistant Rabbi immediately following his ordination at Hebrew Union College in 1962. When elected Senior Rabbi at the end of 1973, Dr. Sobel was the youngest spiritual leader ever elected by the Congregation. Today he is assisted by two long-time associates, Rabbi David M. Posner and Rabbi Richard S. Chapin.

The 1970s and the 1980s have continued to witness further growth in the Congregation, so much so that today Temple Emanu-El is world Jewry's most prominent house of worship. Physically it is the largest Jewish synagogue in the world, and the size of its membership also makes it the largest Reform congregation in the world. Innovative programs continue to be introduced and older programs are expanded as the members of the Congregation reach out more and more to the Jewish world in New York and beyond and to the other communities of which we are a part.

The past is always prelude to the present, the present forever a preparation for the future. In 1995 the Congregation will celebrate its one hundred fiftieth anniversary. We have every expectation and hope that Emanu-El will continue to be a beacon and a pride to world Jewry.

Although much has changed in the near century and a half since the Congregation was founded at Grand and Clinton streets, the members of Temple Emanu-El continue to be fundamentally committed to a faith that proclaims:

First, instead of one fixed and changeless revelation from God to Moses at Sinai, the Jewish people have been heir to a progressive revelation, which continues throughout history in the discoveries of science and in the insights of wise, sensitive human souls. The Bible and Talmud are valuable permanent records of earlier and decisive stages in this process. But, since revelation comes from God through human beings, all the documents of revelation are a mixture of the divine and the human, the eternally valid as well as the temporary and transient. Judasiam is a living, growing way of life, evolving gradually from earlier and more primitive forms to the full flowering of its universal spiritual message.

Second, central and changeless is the belief in the one and holy God, who is to be served through righteousness and mercy. God's law is basically ethical. Ritual and ceremony, as the prophets declared long ago, are not the essence of religion. Moreover, historical study reveals that ceremonial practice has been constantly subject to change. Indeed, ritual is not without value; it is a means of making religious truth more vivid and inspiring to the worshiper. But the forms are not sacrosanct. If they fail to instruct and uplift those who practice them, they may be modified or discarded.

Third, the universal ethical aspect of Judaism must forever remain primary in the consciousness of the Jewish people. Therefore, the members of Temple Emanu-El do not hope for the coming of a personal Messiah to usher in a period of national restoration, but rather look forward with anticipation to a universal messianic era for all humanity. Neither the establishment of a nation-state in the ancient homeland, nor the restoration of the Jerusalem Temple, nor the reinstitution of the sacrificial cult are necessary prerequisites for the realization of the messianic dream. Thus, we believe that Jews are, and should remain, citizens of the various nations in which they live.

Fourth, the survival of the Jewish people as a religious group is a sacred and urgent obligation. The Jewish people have a mission to humankind, a mission ordained of God and proclaimed by the prophets of ancient Israel. This mission requires that the people born in, or adopted into, the Covenant of Abraham must persuade humankind through teaching and example that the One and Only God can be worshiped in holiness only as His children serve each other in love. To acknowledge God's unity requires obedience to, and reverence for, His ethical mandates and moral imperatives. The mission of Israel will not have been fulfilled until righteousness and peace prevail everywhere for everyone. Until that great messianic fulfillment, the Jewish people must survive as a "kingdom of priests" dedicated to the service of God and humanity.

These were the principles of faith proclaimed by the founders of Congregation Emanu-El in 1845; they remain the principles to which this generation of Temple Emanu-El constantly rededicates itself.

The story of Temple Emanu-El is the history of successful Americanization. From 1845 to the present the members of the Congregation have authorized a new chapter in the chronicle of Jewish creative adaptation. Their lives have served as an enviable model of what the Jew could strive to become, and continue to be, in the United States.•

BOB SAMPSON TURNS 70

• Mr. SIMON. Mr. President, I want to take this opportunity to congratulate my friend Robert Sampson, of Arlington Heights, IL, on the occasion of his 70th birthday, Saturday, March 4. He is a truly remarkable person, whom I admire and respect.

Bob Sampson has been an inspiration to many Americans. He has muscular dystrophy, which has caused him to be in a wheelchair since he was 9 years old. He lost his college scholarship when the school he was to attend found out he was disabled. Undaunted, he went on to college and law school and became a successful attorney for the city of Chicago. He then joined United Airlines, where he rose to be a senior vice president.

As a successful member of the business community, Bob could have chosen to stay out of the struggles surrounding disability issues. Instead, he has been unselfish in his drive to help other people with disabilities gain access to buildings and equal employment opportunities. He was one of President Carter's first appointments to the U.S. Architectural Transportation Barriers Compliance Board, after having served as the Vice Chairman of the President's Committee on Employment of the Handicapped. A long-term member of the board of directors of the Muscular Dystrophy Association, Jerry Lewis' "big kid," he has told his personal story to millions of people to raise money to find a cure for muscular dystrophy. He has never forgotten his roots.

Bob Sampson has been a role model for all of us, teaching that disability is not inability. I join his wife Jean, his children—Patty, Rob, and Kathy—his grandchildren, and his many friends in wishing him a very happy birthday, and many more.•

TRIBUTE TO VENICE HIGH SCHOOL BAND

• Mr. GRAHAM. Mr. President, I rise today to commend a group of young people from Venice High School for honoring our veterans. On November 11, 1994, the Venice Area Veterans Council presented a special salute to Korea veterans during a Veterans Day ceremony. The Venice High School Band, under the direction of John Lapato, performed the "Korea Veterans March" composed by Charles Gabriele. Marilyn Sexton was the vocalist. The band included Renee Arata, Mary Baker, Katy Banks, Leeann Bennett, Heather Bibbee, Jennifer Britton, Colleen Buckley, Joshua Burgett, Buddy Corbin, Amanda Coronado, Neejay Cowan, Kevin Crissman, J.B. Dewitt, Erika Fauser, Kelly Feldhouse, Natalie Fleming, Robert Fuller, Kevin Gifford, Brook Greene, John Greenwald, Chris Haines, Eric Hill, Shane Hobbs, Loyom Khan, Aimee Kervin, Stephanie Klinge, Christina Magero, Renee McGoogan, Tim Milligan, Scott Moudy, Emile Paradiso, Ryan Persky, Jeanne Piehl, Michelle Poirier, Chris Ryon, Eric Ryon, Kelly Shetterly, C. Siller, Laura Suffoletto, Grady Smith, James Taylor, Cortnie Thornberger, Melissa Thorley, and Debby Whisler.

I applaud these young Americans for honoring our Korea veterans with their time and talents. It was a memorable event for all those involved.•

THE TOP QUARK

• Mr. SIMON. Mr. President, last May scientists at Fermi Laboratory in Batavia, IL found the first direct evidence of the top quark, the sixth and last component of a standard model of matter that explains the relationships between subatomic particles. This week, teams at Fermi Laboratory announced that they have confirmed evidence of the particle, leaving no doubt about its existence.

I want to congratulate them on their accomplishment. And, I want to add that basic science research in this country, like that which goes on at Fermi Laboratory in Illinois, Brookhaven in New York, and Stanford in California, contributes greatly to our understanding of basic science and provides vision and hope to thousands of curious students and researchers who are pursuing a future in the sciences.

The President in his fiscal year 1996 budget proposed adding $100 million above the 1995 level to enhance the work going on at our major DOE-operated basic research facilities. I support this initiative. The United States currently leads the world in particle physics research. Without a continued investment in our DOE laboratories, our scientists will find themselves uninvolved and disadvantaged in what's becoming a worldwide community of basic science research.

For nearly a decade, the superconductor super collider was the centerpiece of the Nation's basic science program. While I fully supported the project and opposed its termination, the project's expense sacrificed valuable resources going to other worthy laboratories, like Fermi lab in Illinois. With the cancellation of the SSC, we gutted our high-energy physics research budget and threatened to send a message to the world that we no longer were willing to invest in high energy physics research.

We now have the opportunity to make effective use of our current facilities and to remain important contributors to a world-wide effort. With the leadership of Senator BENNETT JOHNSTON and President Clinton, we are once again investing in the research capabilities at Fermi lab and other leading laboratories, and as evidenced by the resent discovery of the top quark, we continue to be world leaders in this area.

The United States has tremendous potential to lead the way in scientific research in the next decade, but only with sufficient funding. I applaud the President for his leadership in this important area.•

EXECUTIVE CALENDAR

Mr. HELMS. Mr. President, I am proceeding with the Executive Calendar. It goes without saying that what I am about to refer to has been cleared with the other side.

As in executive session, I ask unanimous consent that the Senate proceed to the immediate consideration of the following nominations on the Executive Calendar en bloc: Calendar Nos. 23, 24, 25, 26, 27, 28, 29 and 30. I believe they are all Department of State nominations.

Further, Mr. President, I ask that the nominations be confirmed en bloc; that the motions to reconsider be laid upon the table en bloc; that any statements relating to the nominations appear at the appropriate place in the RECORD; and that the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF STATE

Johnnie Carson, Of Illinois, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Zimbabwe.

Herman E. Gallegos, of California, to be an Alternate Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Lee C. Howley, of Ohio, to be a Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Jeanette W. Hyde, of North Carolina, to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to Antigua and Barbuda, and as Ambassador Extraordinary and Plenipotentiary of the United States of America to St. Kitts and Nevis, and as Ambassador Extraordinary and Plenipotentiary of the United States of America to Grenada.

Martin S. Indyk, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Israel.

Isabelle Leeds, of New York, to be an Alternate Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Bismarck Myrick of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Lesotho.

Frank G. Wisner, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Career Minister, for the personal rank of Career Ambassador in recognition of especially distinguished service over a sustained period:

ORDERS FOR MONDAY, MARCH 6, 1995

Mr. HELMS. Mr. President, I ask unanimous consent that when the Senate completes its business today that it stand in adjournment until the hour of 1 p.m. on Monday, March 6, 1995, and that following the prayer, the Journal of proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day.

I further ask that there then be a period for the transaction of routine morning business not to extend beyond the hour of 2 p.m, with Senators permitted to speak therein for up to ten minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I further ask, Mr. President, that at 2 p.m. the Senate proceed to the consideration of calendar item No. 21, S. 244, the Paperwork Reduction Act. At least one amendment, I might add, is expected to be offered. Therefore, votes could occur during Monday's session of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL MONDAY, MARCH 6, 1995, AT 1 P.M.

Mr. HELMS. Mr. President, if there be no further business to come before the Senate, I ask now that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 3:25 p.m., adjourned until Monday, March 6, 1995, at 1 p.m.

NOMINATIONS

Executive nominations received by the Senate March 3, 1995:

UNITED STATES ENRICHMENT CORPORATION

CHARLES WILLIAM BURTON, OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES ENRICHMENT CORPORATION FOR THE REMAINDER OF THE TERM EXPIRING FEBRUARY 24, 1996, VICE FRANK G. ZARB, RESIGNED.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 3, 1995:

DEPARTMENT OF STATE

JOHNNIE CARSON, OF ILLINOIS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ZIMBABWE.

HERMAN E. GALLEGOS, OF CALIFORNIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FORTY-NINTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

LEE C. HOWLEY, OF OHIO, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FORTY-NINTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

JEANETTE W. HYDE, OF NORTH CAROLINA, TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO ANTIGUA AND BARBUDA, AND AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO ST. KITTS AND NEVIS, AND AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO GRENADA.

MARTIN S. INDYK, OF THE DISTRICT OF COLUMBIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO ISRAEL.

ISABELLE LEEDS, OF NEW YORK, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FORTY-NINTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

BISMARCK MYRICK, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF LESOTHO.

FRANK G. WISNER, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, FOR THE PERSONAL RANK OF CAREER AMBASSADOR IN RECOGNITION OF ESPECIALLY DISTINGUISHED SERVICE OVER A SUSTAINED PERIOD.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

EXTENSIONS OF REMARKS

TRIBUTE TO CAROLYN NOOR

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Ms. ESHOO. Mr. Speaker, I rise today to honor Carolyn Noor and her upcoming induction into the San Mateo County Women's Hall of Fame as a Young Woman of Excellence.

As a senior at Aragon High School in San Mateo, CA, Carolyn Noor serves as a role model not only for her peers but also for our entire community. She tutors grade school students, volunteers as a counselor for an outdoor education program, coordinates the creation of a multicultural mural at her school, and works for the Youth for Understanding and YMCA world camp programs. In addition, she serves on the city of San Mateo Citizens Review Committee and has cochaired a local community center's Thanksgiving food drive. Ms. Noor has received numerous academic awards including recognition as an outstanding student in both English and social studies.

Mr. Speaker, Carolyn Noor is an outstanding citizen, and I commend her for her remarkable commitment and contributions to our community. I ask my colleagues to join me in saluting her as she is being inducted into the San Mateo County Women's Hall of Fame as a Young Woman of Excellence.

IN HONOR OF REV. VICTOR KENNEDY, CHAPLAIN OF THE 1995 ST. PATRICK'S DAY DINNER AND PARADE

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. MENENDEZ. Mr. Speaker, I rise today to pay tribute to Rev. Victor Kennedy, chaplain of the 1995 St. Patrick's Day Dinner and Parade. Reverend Kennedy is among the many Irish-American men and women who have helped make this country great.

The Irish have been immigrating to the United States since the early part of the nineteenth century. In that time, they have made many contributions to this country. They have distinguished themselves at every level of American society. As Irish-Americans have built their businesses, so have they contributed to the economic prosperity of this Nation. As they have grown politically, they have contributed to government on the local, State, and national levels. Their devotion to family and friends demonstrates that much can be accomplished when people work together in harmony.

At home, Irish-Americans have worked hard to protect all of us from crime and fire. They have put their lives on the line to help ensure the safety of their fellow citizens. The long, proud tradition of Irish police officers and firemen scarcely needs to be mentioned. However, the Irish have not only been good neighbors at home, they have also put their lives on the line when they have fought to defend this Nation against our foes in every major conflict over the last 200 years.

Reverend Kennedy is part of this great Irish-American tradition. He has dedicated his life to helping others. He is the former youth director of the Archdiocesan CYP/Youth Ministries, and is currently the pastor of the Church of Good St. Anne. He is an exemplary community leader and an advocate for our youth. Through his involvement in the community, Reverend Kennedy has reached out to countless people and has made a difference in their lives.

His parishioners greatly admire Reverend Kennedy for his leadership. He has played a vital role in the physical rehabilitation of his church. In addition, his efforts have brought new life to the parish. I am truly proud to have him as a resident of Hudson County.

As we celebrate St. Patrick's Day, let us remember all of those Irish-American men and women who have made a difference in the United States. This is a day for us to acknowledge their achievements and feel proud to have them in the United States. This holiday is an excellent opportunity to pay tribute to Irish-Americans; past and present.

OCEAN SHIPPING INDUSTRY CHANGES NEEDED

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. TRAFICANT. Mr. Speaker, the Subcommittee on Coast Guard and Maritime Transportation, upon which I serve as the ranking Democrat, will soon begin consideration of changes to the Shipping Act of 1984 and the future role of the Federal Maritime Commission in the ocean shipping industry. As the subcommittee and, eventually, the full Committee on Transportation and Infrastructure, move forward on these issues, I would like you and our colleagues to know what I believe needs to come out of the legislative process.

First, I believe the functions of the Federal Maritime Commission need to be maintained, particularly with regard to protecting our ocean carrier industry and shippers against unfair and anticompetitive trade practices of foreign governments and carriers. In fact, this should become more of a focus and a higher priority for the commission. And given the public's general call for smaller and more efficient government, the commission should take steps to downsize and rightsize its operations, just as we expect all Government agencies and departments to do.

Second, I believe the hearings held in February by the subcommittee indicated that important modifications can be made to the Shipping Act of 1984 that would provide a much greater degree of flexibility in the business relationships between shippers and ocean carriers. Right now, conferences of ocean carriers with broad antitrust immunity restrict a number of types of transactions and relationships in the ocean shipping business. For instance, service contracts, which are long-term large volume arrangements between carriers and shippers, should not be restricted or prohibited by the carrier conferences or their members. Also, carriers that want to offer a rate to a shipper that is different than that of the carrier conference should be able to do so on a much quicker basis.

These kinds of reforms at the Federal Maritime Commission and in the Shipping Act will bring significant improvements to our trading relationships around the globe. The relationships between the shipping public and the ocean carrier industry would also be beneficially changed so that U.S. industry generally would be in a more competitive posture in the world marketplace.

I look forward to working with the leadership and members of the Transportation and Infrastructure Committee to develop legislation to accomplish these ends.

TEXAS COUPLE NAMED FOSTER PARENTS OF THE YEAR

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. HALL of Texas. Mr. Speaker, it is a privilege for me to pay tribute to two outstanding citizens who visited the Capitol this week from the Fourth District of Texas. They are Joe and Pattie Laroche of Denison, who were recently named by the Child Welfare League as Foster Parents of the Year for the Southern States.

The Laroches have been licensed foster parents for more than 5 years. During that time they have cared for more than 30 children, ranging from newborns to those up to 12 years of age. They have three children of their own—Sarah, Bethany, and Christina, two of which—Christina and Bethany—they adopted. Children who have been under the care of the Laroches have stayed with them anywhere from 1 night to 5 months. The longest stay for a child has been 2 years.

The Laroches were previously honored as Grayson County Foster Parents of the Year, by the Texas Department of Human Services and as the State Foster Parents of the Year

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

by the Texas Council of Child Welfare Boards. They were recommended for the awards by Gwen Henderson, Foster Home Developer for the Texas Department of Human Services for Grayson County.

The Laroches described the recognition as humbling and said that being foster parents is a learning experience that has great rewards. They recognize the need for more foster parents but realize that many people are fearful of trying.

Being a foster parent to a child is a special calling that deserves our respect and our gratitude. It requires a generous and selfless spirit, and often much patience and understanding. Good foster parents like the Laroches have a lasting impact on the lives of foster children, who like all children, need affection and attention and need to feel a sense of well-being.

Mr. Speaker, I am proud to pay tribute today to Joe and Patti Laroche and to all those who serve as foster parents across America. These foster parents devote their lives to help make life better for our children in need. I am particularly proud to have the Laroches as my constituents and wish them much success as they continue to serve foster children in Grayson County. I admire their dedication and commitment to this cause and salute their good work.

TRIBUTE TO ELLSWORTH AIR FORCE BASE ON SUCCESS OF DAKOTA CHALLENGE

HON. TIM JOHNSON

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. JOHNSON of South Dakota. Mr. Speaker. I rise today to give high praise to the men and women of Ellsworth Air Force Base who participated in the congressionally mandated B–1B bomber readiness test appropriately named "Dakota Challenge '94." The test was conducted from June 1-November 30 of last year, and during most of the test the 28th Bomb Wing at Ellsworth flew training missions at an accelerated peacetime rate. During the final month of the assessment, the 28th Bomb Wing deployed a squadron to Roswell Industrial Air Center, NM to simulate flying from an austere location at wartime sortie rates. Earlier this week, the Air Force Operational Test and Evaluation Center issued its final report on Dakota Challenge and the report reveals that the B–1B bombers exceeded all test expectations. As a long-time supporter of the B–1B, I am pleased with this outcome and incredibly proud that the men and women of Ellsworth can take some credit for the impressive results.

Throughout the 6 months of the test, the men and women of the 28th Bomb Wing faced the challenges and demands of the assessment with ardent determination. The commitment and top notch performance of the men and women at Ellsworth Air Force ensured that the B–1B bomber exceeded all of its performance goals during Dakota Challenge. I am hopeful that this impressive performance will resolve long-standing disagreements over the B–1B's capabilities and help secure the future of the B–1B bomber which Secretary of the Air Force Widnall has called the backbone of the bomber fleet.

The outcome of the test is a rock-solid testimonial to the B–1B's capabilities and I am proud of the men and women of the 28th Bomb Wing who ensured the unquestionable success of the test. I commend all of the men and women at Ellsworth who made Dakota Challenge a success through their commitment and discipline.

TRIBUTE TO JOSEPH E. BERGERON

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Ms. ESHOO. Mr. Speaker, I rise today to pay tribute to Joseph E. Bergeron, an outstanding citizen and devoted public servant, on the occasion of his retirement from the San Mateo County Planning Commission.

Mr. Bergeron has given invaluable service to the people of San Mateo County for 13 years as a planning commissioner, including three terms as commission chair. His unparalleled leadership and consensus-building skills were critical to seeing the county through some of its most difficult land use decisions. While Mr. Bergeron has devoted untold hours to the work of the commission, he has also made time to serve our community as a member of the board of directors of the Center for Civic Education, the San Mateo County Suicide Prevention Association, and the San Mateo County Heart Association. He has actively participated in the Italian American Federation, serving as its President from 1980–1982 and being named its 1992 Man of the Year, the PTA, and the Girl Scouts and Boy Scouts, where he was a counselor and merit badge advisor.

Mr. Bergeron is also recognized throughout the State of California for his outstanding service to the State bar. He has been a champion of the legal profession since his graduation from the prestigious Boalt Hall School of Law at the University of California, Berkeley in 1968.

He was a member of the California State Bar board of governors from 1991–1994, serving as its vice president in 1994 and working to strengthen the legal profession as a member of the Commission on Judicial Nominees Evaluation, as well as the Committees on the Environment and Administration of Justice. He has given exemplary service to the legal community as a judge pro-tem and arbitrator for the Superior and Municipal Courts of San Mateo County, as an instructor of business law at San Mateo County Community College, and as a lecturer for the Continuing Education of the Bar and at numerous trial lawyer seminars. Mr. Bergeron has used his tireless energy to make great contributions to local legal organizations, including the Legal Aid Society, the County Bar Association, the Barristers Club, and the Trial Lawyers Association. In 1982, the California Trial Lawyers Association, on whose board he also served, recognized Joe Bergeron as its Outstanding Trial Lawyer Chapter President.

Mr. Speaker, Joe Bergeron has been a shining light in San Mateo County throughout his long history of service to the public and the legal community. I've been privileged to work closely with him and I'm proud to call him my friend. I ask my colleagues to join me in saluting Joe Bergeron as he retires from the San Mateo County Planning Commission.

IN HONOR OF MAEVE McDERMOTT, GRAND MARSHALL OF THE 1995 ST. PATRICK'S DAY PARADE

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. MENENDEZ. Mr. Speaker, I rise today to pay tribute to Sister Maeve McDermott, grand marshall of this year's St. Patrick's Day Parade in Jersey City. Sister McDermott is among the many Irish-American men and women who have helped make this country great.

The Irish have been immigrating to the United States since the early part of the 19th century. In that time, they have made many contributions to this country. They have distinguished themselves at every level of American society. As Irish-Americans have built their businesses, so have they contributed to the economic prosperity of this Nation. As they have grown politically, they have contributed to government on the local, State, and national levels. Their devotion to family and friends demonstrates that much can be accomplished when people work together in harmony.

At home, Irish-Americans have worked hard to protect all of us from crime and fire. They have put their lives on the line to help ensure the safety of their fellow citizens. The long, proud tradition of Irish police officers and firemen scarcely needs to be mentioned. However, the Irish have not only been good neighbors at home, they have also put their lives on the line when they have fought to defend this Nation against our foes in every major conflict over the last 200 years.

Sister Maeve McDermott is part of this great Irish-American tradition. Upon graduating high school, she joined the convent and went on to teach in the St. Patrick and St. Michael Elementary Schools. Since 1978, she has been co-principal of St. Patrick School and Assumption/All Saints School. She was also very instrumental in helping a number of Irish immigrants relocate to this country.

Sister McDermott has dedicated her life to helping the young people of Jersey City. She realizes that our youth need love and guidance. She has given both freely over the years. She is an exemplary human being.

As we celebrate St. Patrick's Day, let us remember all of those Irish-American men and women who have made a difference in the United States. This is a day for us to acknowledge their achievements and feel proud to have them in the United States. This holiday is an excellent opportunity to pay tribute to Irish-Americans; past and present.

HONORING BUD O'BRIEN

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. FARR. Mr. Speaker, Bud O'Brien was the kind of newspaperman—not journalist, mind you, newspaperman—who has become all but extinct. He got into the business not long after the end of World War II, when a way with words, combined with a feeling for people and real life, was considered as good as, if not better than, a college degree.

After attending Adams State University in Alamosa, CO, Bud learned the newspaper business, both the good and the bad, first-hand from such smalltown editors as Harley Holden of the Loveland, CO, Daily Herald, Chap Wentworth of the Dunsmuir News, and Paul Bodenhamer of the Redding-Record Searchlight.

By the time he arrived at the Register-Pajaronian in 1962, to be its wire editor and educational reporter, he was an accomplished and highly regarded professional. For three decades, as an editor and reporter, his substantial contributions helped the people of Watsonville enjoy the benefits of a first-class smalltown newspaper.

His best work, which may be less directly visible to the public, came in the last 10 years, when he served as city editor and managing editor. His eye for talent brought a succession of fine people to the Pajaronian newsroom; his knowledge of the business and generous counsel helped scores of young reporters blossom to their full potential; and his rigorously reasoned and elegantly written editorials made a bracing and formidable contribution to the public debate.

He was a man who loved his craft; who brought out the best in those he worked for; and who stood unflinchingly for what he believed to be right. His retirement is well-earned, but both the people of Watsonville and the newspaper business are worse off for it.

TORLONE'S COMMUNITY BAKERY: THE END OF AN ERA FOR HUNTINGTON

HON. NICK J. RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. RAHALL. Mr. Speaker, this Saturday, March 4, 1995, marks a sad day for the community of Huntington, WV. On Saturday, the Torlone brothers, Louie, Dominic, and Alfred, will close the doors of the Torlone's Community Bakery for the last time, after almost 50 years of service to Huntington. The Torlone brothers are selling the bakery to retire, a retirement well deserved after their lifelong service to their country and community.

It is a great honor to commemorate the Torlone's families' commitment to Huntington. Beginning in 1946, the small bakery, opened by Peter and Maria Torlone, and continuing until Saturday by their three sons Louie, Dominic, and Alfred, has been a staple to the community. It will be sorely missed by all.

Louie Torlone commented last week that he hopes that the community will remember that the bakery treated everybody decently. Anyone who has visited the bakery in the last 50 years can attest to how well the Torlone's treated their neighbors. Each week, the Torlone family donates baked goods to local churches, to missions, and to veterans homes. And after the tragic Marshall University plane crash, the Torlones emptied every last shelf so that rescue workers could be fed. The Torlones are always ready to help others.

Dominic Torlone will miss the people the most. For years, the residents of Huntington have been the Torlone's customers, but they are also the family's friends, likely to just stop by to share the warmth and conversation in the bakery. Dominic, who works the day shift, is always ready to provide a warm cup of coffee, advice, or a hug to any of his neighbors or customers.

Alfred Torlone, the youngest brother, believes the family has flour in their blood; their father began baking bread in West Virginia shortly after he immigrated from Italy in 1912. Alfred and his brothers have maintained the store as—in his words—a "perfect example of a mom and pop store like we used to have in the old days."

Throughout all these years, the Torlones have been a tremendous asset to the Huntington community. Their commitment to charity and their store has made Huntington a better place since 1946. Their family, friends, and neighbors all wish Louie, Dominic, and Alfred the best of luck as they enter their much deserved retirement. I salute their service to Huntington.

TRIBUTE TO CAROL STROY BOES

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Ms. ESHOO. Mr. Speaker, I rise today to honor Carol Stroy Boes and her upcoming induction into the San Mateo County Women's Hall of Fame.

Carol Stroy Boes is an exceptional public servant who has been an active member of her local community. While working as a flight attendant and mother, she pursued her higher education and obtained an advanced degree in law. In addition to running her own law practice, Ms. Boes has volunteered with a variety of local organizations, including those involved with city and county government, business, women's health, and community service. Her many leadership activities include: chairing of the San Mateo County Bar Association Real Estate Section; serving as a board member of the Human Investment Project, Leadership San Mateo, the San Mateo Rotary Club, the San Mateo Chamber of Commerce, and the Housing Advisory and Appeals Board; and working as a member of the Community Advisory Committee for Breast Cancer, and the County Charter Review Committee. In 1985, Ms. Boes received the Golden Gears Award from the Peninsula Industrial and Business Association.

Mr. Speaker, Carol Stroy Boes is an outstanding citizen, and I commend her for her remarkable commitment and contributions to our community. I ask my colleagues to join me in saluting her as she is being inducted into the San Mateo County Women's Hall of Fame.

IN HONOR OF MAUREEN MURPHY, IRISH POLICE OFFICER OF THE YEAR, 1995

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. MENENDEZ. Mr. Speaker, I rise today to pay tribute to Maureen Murphy, Irish Police Officer of the Year, 1995, who will be honored at this year's St. Patrick's Day Parade in Jersey City. Ms. Murphy is among the many Irish-American men and women who have helped make this country great.

The Irish have been immigrating to the United States since the early part of the nineteenth century. In that time, they have made many contributions to this country. They have distinguished themselves at every level of American society. As Irish-Americans have built their businesses, so have they contributed to the economic prosperity of this Nation. As they have grown politically, they have contributed to government on the local, State and national levels. Their devotion to family and friends demonstrates that much can be accomplished when people work together in harmony.

At home, Irish-Americans have worked hard to protect all of us from crime and fire. They have put their lives on the line to help ensure the safety of their fellow citizens. The long, proud tradition of Irish police officers and firemen scarcely needs to be mentioned. However, the Irish have not only been good neighbors at home, they have also put their lives on the line when they have fought to defend this Nation against our foes in every major conflict over the last 200 years.

Maureen Murphy is part of this great Irish-American tradition. In 1984, Ms. Murphy graduated from the Jersey City Police Academy. Since then, she has helped to make Hudson County a safer place to live. She is currently a detective in Hudson County. She has dedicated her life to law enforcement and through the years, has bravely protected the people of Hudson County. She was named Woman of the Year in 1991 by the Emerald Society of which she is a member.

Ms. Murphy is truly deserving of the honor of being named Irish Police Officer of the Year. Her hard work and dedication are exemplary and should be recognized. She plays a vital role in the community and I am proud to have her working in Hudson County.

As we celebrate St. Patrick's Day, let us remember all of those Irish-American men and women who have made a difference in the United States. This is a day for us to acknowledge their achievements and feel proud to have them in the United States. This holiday is an excellent opportunity to pay tribute to Irish-Americans; past and present.

PROHIBIT ECONOMIC AND MILITARY ASSISTANCE TO THE GOVERNMENT OF TRINIDAD AND TOBAGO

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. TRAFICANT. Mr. Speaker, Trinidad and Tobago are the southern-most islands of the Lesser Antilles chain in the Caribbean. They were merged in 1888 to form a single colony, and in 1962 obtained full independence from the United Kingdom, and joined the Commonwealth of Nations.

The economic recession coupled with the geographic location of Trinidad and Tobago make it a prime target for sophisticated narcotics cartels wielding vast financial resources. Presently illicit drugs are smuggled from South America through Trinidad and Tobago and end up in other Caribbean islands as well as the United States, Canada, and Europe. The Coast Guard and the Police Service, the two most important agencies in the Government of Trinidad and Tobago's counter-narcotics efforts, have arrested several low-level drug offenders, but have been virtually ineffective against major traffickers.

Cooperation with the Government of Trinidad and Tobago's law enforcement and counter narcotics agencies have improved, but allegations of corruption persist. Lengthy delays and backlogs continue to hamper the judicial system, particularly in narcotics-related cases. In early 1993, a team of Scotland Yard detectives investigated allegations of a drug cartel operating within the Police Service. Although the team found no evidence of a single cartel, it did uncover evidence of widespread corruption among police officers, including the involvement of several officers with local and international drug rings. Although the team recommended the dismissal of over 100 officers, to date the Government of Trinidad and Tobago has taken no action.

Mr. Speaker, the problem of drugs in our society is getting out of control. Drug trafficking is causing crime to rise. It is causing violence to rise. It is causing health care costs to rise. It must stop. I want to make it clear to governments around the world that America is fed up with drug trafficking and we are not going to stand for it anymore.

Today I introduced a bill that will prohibit economic and military assistance to the Government of Trinidad and Tobago until appropriate action is taken to ensure that drug trading and trafficking will not be tolerated. The bill states, "The President may not provide economic assistance or military assistance or arms transfers to the Government of Trinidad and Tobago unless the President certifies to the Congress that such Government has taken appropriate action to eliminate illicit drug trafficking in Trinidad and Tobago."

In the last 10 years, Congress has taken money away from the American people in housing, education, revenue sharing, urban development action grants, Medicare, school lunches, Head Start, and research and development programs. Our roads and bridges are falling apart, water lines need repair, and our sewers are ruptured. While the American people are being neglected by our Government, I want to make sure that our Government will not send a dime to countries that are soft on the drug trade.

CHERRY BLOSSOM FESTIVAL

HON. MAC COLLINS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. COLLINS of Georgia. Mr. Speaker, in 1912 Mrs. William Howard Taft accepted 3,000 cherry trees as a gift from Japan for the Nation's capital.

Since 1948 the National Conference of State Societies has sponsored the Annual Cherry Blossom Festival. Congress chartered the National Conference of State Societies in 1952 with Public Law 82–293. NCSS includes all of Washington's State and territorial societies. NCSS submits a financial report each year to the House Judiciary Committee. GAO has approved every audit for 42 years. President Abraham Lincoln was a member of the Illinois State Society, founded in 1854. Dozens of Members of Congress have served as presidents of State societies, including former Representative Bob Michel and Vice President AL GORE. Members and congressional wives currently chair the Michigan, Texas, Illinois, and Puerto Rico societies.

As a member of Georgia State Society, I am pleased to announce the NCSS will once again sponsor this year's festival events from April 2 through 9 in cooperation with National Park Service, the Downtown Jaycees, WRC–TV, and the Embassy of Japan. The festival celebrates our Nation's youth, represented by State and territorial cherry blossoms princesses, and celebrates our friendship with Japan.

On behalf of many colleagues, I would like to recognize the generous support NCSS receives from corporate sponsors such as American Family Life Assurance Company, headquartered in Columbus, GA. AFLAC and NCSS will be partners in a special cherry blossom donation for relief of earthquake victims in Kobe, Japan. Forty-three years after Congress chartered NCSS we can be proud this group still serves its original purpose with energy and distinction.

TRIBUTE TO PEGI MORTON YOUNG

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mrs. ESHOO. Mr. Speaker, I rise today to honor Pegi Morton Young and her upcoming induction into the San Mateo County Women's Hall of Fame.

After giving birth to a son with severe cerebral palsy in 1986, Pegi Morton Young cofounded the Bridge School, which is an innovative educational program for children with severe speech and physical impairments. She served as the unpaid director of the school for 6 years and remains active as president of the board of directors. Under Ms. Young's exceptional leadership, the Bridge School has been certified by the California State Department of Education as a non-public school and received community-wide praise for its outstanding program. Her commitment to the community is never-ending, and she is always the first to volunteer for a project.

Mr. Speaker, Pegi Morton Young is an outstanding citizen, and I commend her for her remarkable commitment and contributions to our community. I ask my colleagues to join me in saluting her as she is being inducted into the San Mateo County Women's Hall of Fame.

IN HONOR OF MICHAEL J. O'REILLY, IRISH FIREFIGHTER OF THE YEAR, 1995

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. MENENDEZ. Mr. Speaker, I rise today to pay tribute to Michael O'Reilly, Irish Firefighter of the Year, 1995, who will be honored at this year's St. Patrick's Day parade in Jersey City. Mr. O'Reilly is among the many Irish-American men and women who have helped make this country great.

The Irish have been immigrating to the United States since the early part of the 19th century. In that time, they have made many contributions to this country. They have distinguished themselves at every level of American society. As Irish-Americans have built their businesses, so have they contributed to the economic prosperity of this Nation. As they have grown politically, they have contributed to government on the local, State and national levels. Their devotion to family and friends demonstrates that much can be accomplished when people work together in harmony.

At home, Irish-Americans have worked hard to protect all of us from crime and fire. They have put their lives on the line to help ensure the safety of their fellow citizens. The long, proud tradition of Irish police officers and firemen scarcely needs to be mentioned. However, the Irish have not only been good neighbors at home, they have also put their lives on the line when they have fought to defend this Nation against our foes in every major conflict over the last 200 years.

Michael O'Reilly is part of this great Irish-American tradition. He has served the citizens of Jersey City as a firefighter since 1981. Through the years, he has bravely put his life on the line to save the lives of others. In addition, he has dedicated his time as a baseball coach and organizes sporting and recreational events for members of his community.

Mr. O'Reilly is a lifelong resident of Jersey City. He attended school there and he and his wife have raised their children there. He is a fine constituent of whom I am very proud.

As we celebrate St. Patrick's Day, let us remember all of those Irish-American men and women who have made a difference in the United States. This is a day for us to acknowledge their achievements and feel proud to have them in the United States. This holiday is an excellent opportunity to pay tribute to Irish-Americans; past and present.

NATIONAL ENGINEERS WEEK

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. FILNER. Mr.Speaker and colleagues, I rise today to commemorate the profession of engineering.

February 19–25 was National Engineers Week. As the Nation's second largest profession, engineering provides a challenging and rewarding career choice to roughly 1.8 million people in the United States.

Mr. Speaker, engineers often complain that many people do not know what it is that engineers do. Well, virtually everything that you and I do every day of the year has been invented, improved, or made safer because of engineers.

National Engineers Week is always celebrated at the time of George Washington's birthday. Washington had the educational background of an engineer and land surveyor and is considered the Nation's first engineer. As President, Washington led a growing society toward technical advancements, invention and education. He promoted the construction of roads, canals, the U.S. Capitol, docks and ports and development of manufacturing resources.

Engineers Week falls during Black History Month. African-Americans have engineered some of our most important and best-known inventions.

There are numerous examples of leaders in the engineering profession, Mr. Speaker, but one has especially touched my heart. It is the story of Archie Alexander, who although advised against a career in engineering because of racial prejudice, persisted and gained recognition. If it were not for Mr. Alexander's perseverance, the Tidal Basin Bridge and Seawall and the Whitehurst Freeway in Washington, DC would not have been built.

It is African-American role models like Alexander who have helped pave the way for others wishing to pursue careers in engineering, including women and members of other minority groups.

As we approach the 21st century, the profession of engineering will help us cope with our changing world, while creating numerous new jobs and career paths. Long live engineering.

TRIBUTE TO INVENTOR AUSTIN STANTON

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. HALL of Texas. Mr. Speaker, I rise today to pay tribute to an outstanding American, Austin N. Stanton, who died November 27, 1994, at the age of 91 following a brief illness. Austin Stanton was the inventor of microcircuitry—the precursor to the computer age. He was a long-time resident of Garland, TX, and lived in Bonham, TX, in my Fourth Congressional District, during the past 8 years.

Austin Stanton dared to dream, and through hard work and determination made those dreams come true. Born on May 31, 1903, in Cromwell, IA, to Harriet L. Stanton, teacher, and the Rev. Jay B. Stanton, pastor and teacher, he left home at the age of 12 and worked at various odd jobs until he decided as a teenager that he should develop his own potential. He hopped a freight train to State University of Iowa and paid his way through school by working as a night serviceman for a power company. He received a B.E. degree in Electrical Engineering from the university in 1925, followed by an M.S. degree in physics in 1927. His thesis, "Phenomena in Resonance Radiation of Cesium," was the foundation for later scientific and technological achievements.

He was married in 1926 to Margaret L. Saveraid, and following college, they drove to Texas, where Mr. Stanton began working with a seismograph crew in oil exploration. From 1927 to 1945 he gained experience in geophysics and electronics, serving as president of Geophysical Exploration Co. and Texas Geophysical Co., both of Dallas, and as associate professor and acting head of the electrical engineering department and head of the preradar school, U.S. Army, at Southern Methodist University in Dallas.

In 1945, he founded Varo Corp. in an old building on his farm in Garland, TX, with about $800 in capital. The building was converted into a laboratory, and his young, small staff began work on the design for a revolutionary power conversion unit for military aircraft. They also developed tiny power supplies, microcircuitry, and precision timing devices for space vehicles. Varo conceived and developed the first light-amplifying, night-vision telescope, first electronic inverters, and the first microcircuits. Microcircuitry led to the development of integrated circuits, which brought about the computer age. Varo was the only producer and supplier of microcircuitry for more than 5 years. Their microcircuit transmitter was donated to the Smithsonian Institution, where it was placed on display. When Mr. Stanton retired as chairman of the board of Varo in 1967, he had parlayed his $800 investment into a successful $60 million per year international business. He also provided advice and assistance to Texas Instruments Co. in the microelectronics field.

Since 1967 Mr. Stanton has been actively involved in developing advanced technology. He was chairman of the board of the Keller Corp. and Methacoal Corp., both research and development companies and leaders in various phases of the alternative fuels, power and energy, electric generation, and waste utilization fields. With Leonard J. Keller, an expert in engineering, he developed Ambient Energy Corp, and built the first Ambient Energy Home, a model of affordable, all-electric energy homes. In 1990 he coinvented the cleanest, most efficient, and least costly coal-based electric generating plant in the world. He earned approximately 40 patents during his lifetime and was actively involved in technology development until his recent illness.

Mr. Stanton was for many years a personal friend and associate of Wernher von Braun, the principal scientist of space-age technology. He provided valuable assistance to Von Braun and was the first to propose the commercialization of space. He made presentations on the subject at the first international conference on space utilization.

Austin Stanton also was a philanthropist. Before he moved to Bonham from Garland, he donated 25 acres of land near downtown Garland and pledged $350,000 in Varo stock—which later sold for $1 million—for construction of a hospital, which became the nucleus of Baylor Medical Center in Garland. He also contributed more than 100 acres of ranch land to the city's parks and recreation system.

Austin Stanton received many awards during his lifetime, including "Pioneer of the Space Age" award from the U.S. Army and the "Lloyd Berkner Space Utilization" award and the "Pioneer and Leader in Space and Microelectronics" award from the American Astronautical Society. He was a fellow of the American Astronautical Society and the British Interplanetary Society and a member of Tau Beta Pi and Sigma Xi.

He is survived by his wife of 67 years, Margaret L. Stanton, 2 daughters, a sister, 17 grandchildren, 22 great-grandchildren, and 3 great-great-grandchildren. He was a good friend of mine, and he will be missed and remembered by all those who knew him.

It is a rare privilege, Mr. Speaker, to have the opportunity to pay tribute to this singular individual, who shared his talents and the fruits of his labors with his country, his community, his peers, and his family. Austin Stanton's life touched our lives in many ways—through scientific and technological advances, in our defense and space programs, and in our environmental efforts. As we adjourn today, Mr. Speaker, I ask my Colleagues to join me in paying our last respects to a truly great American—Austin Stanton.

IN SUPPORT OF FEDERAL FUNDING FOR EDUCATION

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. VENTO. Mr. Speaker, much of the current budget debate centers on America's children—we all want to ensure our young people can achieve the American dream. Experience has shown that investing in education is one of the surest ways to achieve this important national goal. Increased levels of education translate into higher wages for individuals and a more productive workforce. In 1993, the median weekly wages of a high school graduate exceeded those of someone without a diploma by almost 30 percent, and the payoff for a college degree was even higher. Despite these findings demonstrating the value of education, the House Subcommittee on Labor, Health and Human Services, and Education under the Republican leadership has recently approved a bill to rescind over $1.7 billion in education funding for fiscal year 1995. Many of these cuts will affect our Nation's most vulnerable youth: the poor, the homeless, and those with disabilities. If we truly value our young people and our future, we must support Federal funding for education. I would like to bring to the attention of my colleagues the following letter of Jay Noren, chancellor of Minnesota State colleges and universities, to the Minneapolis Star Tribune which discusses the benefits to individuals and society of investing in education.

[From the Minneapolis Star Tribune, Feb. 28, 1995]

FUNDING EDUCATION REWARDS THE ENTIRE STATE IN THE LONG RUN

(By Jay Noren)

When Gov. Arne Carlson submits the supplemental budget to the Legislature today, he has an opportunity to look beyond the immediate political horizon and demonstrate not only state but national leadership by investing in education.

Preliminary reports anticipate additional state revenue available in the next biennium, more than expected when the governor made his preliminary budget recommendations on Jan. 24.

This will be the time for the governor and legislators to focus on how state dollars can best be invested for the long-range good of Minnesota and its people. Education is precisely that investment. The investment funds should come from two sources:

The additional revenue should be earmarked for education.

The governor and legislators should reconsider the proposed 25 percent increase in spending for prisons and the 16.9 percent increase in health and human services, and invest a portion of that increase in education.

Clearly prisons and human services are worthy recipients of public funding. But these sectors have received 138 percent and 175 percent increases respectively since 1987, while higher education has received only a 36 percent increase, not enough to cover inflation and enrollment growth.

People are Minnesota's best natural resource. People who are trained and educated are a value-added form of that natural resource.

The governor's preliminary budget continued a 10-year trend, putting an ever-larger proportion of the state budget into criminal justice and health and human services, while putting an ever-smaller proportion into education.

Higher education—the state's technical colleges, community colleges, state universities, the University of Minnesota and student financial aid—would get 11.8 percent of the state budget under the governor's plan. In the mid-'90s, higher education got 15.5 percent.

Minnesota State Colleges and Universities (MnSCU) is the "home-town" higher education system that provides technical and academic education in every corner of Minnesota. The preliminary budget fell $94 million short of maintaining current programs.

That shortfall will result in layoffs and huge tuition increases requiring students to pay more and get less—the equivalent of denying college to 14,000 students.

The University of Minnesota needs an increase in its base funding rather than the one-time money recommended in the earlier budget—funding that will disappear in two years, creating an even larger crisis in 1997.

K-12 education needs funding to face large current increases in pupils which will continue for the next 10 to 15 years (enrollment that is also now beginning to affect higher education).

The governor said it right in his Jan. 24 message when he said the state's budget for the next two years should: make government accountable and affordable; support children and families; prepare young people for work; create jobs and sustain economic vitality, and build stable communities.

An investment in education directly addresses all five points:

Colleges and universities will be accountable. The July 1, 1995, merger of Minnesota higher education institutions is the most far-reaching restructuring of higher education in Minnesota history—and it has the potential for immense rewards for students, for employers and for the state. We have defined measurable goals and we are committed to reviewing every program, every building and every expenditure in our new system.

In the next two years we will reduce 20 colleges to 10 consolidated colleges. Each of these consolidated colleges will operate more efficiently with fewer administrators and better services to students.

We will reduce the central administration staff by 20 percent from the size of the three merging system offices.

We will undertake intensive evaluation of all educational programs not only to identify duplicate and ineffective programs but also to highlight centers of excellence that serve students best. Centers of excellence will receive additional resources largely from the reinvestment of savings gained from reducing and eliminating ineffective programs.

An investment in education supports children and families. An investment in education helps 5-year-olds in kindergarten and it helps 45-year-olds who need training or retraining for jobs. Unassailable statistics show that education correlates directly with income. People with an associate degree earn more than those with a high school diploma. People with a bachelor's degree or a master's earn still more. The ability to earn a decent income is the best stabilizing force for any family.

Prepare young people for work. We couldn't agree more with the governor's priority. That's what education does—it prepares people for work and responsible citizenship.

Create jobs and sustain economic vitality. Minnesota's towns and cities are full of businesses and factories started by graduates of our colleges and universities. Those businesses and factories employ our graduates. Clearly the thriving communities in Minnesota are those which either have—or are within easy reach of—a college or university. The 62 college and university campuses produce most of Minnesota's educated and hard-working employees, as well as most of our entrepreneurs, who create the businesses employing our citizens. The University of Minnesota campuses similarly fuel the economy and make unique contributions through research and graduate education which translate into new products, new businesses and solutions to human problems throughout the world.

As we move into an era with more older people, more children and fewer workers, state revenues and public programs for our citizens (including human services and crime prevention) will continually erode unless our workers succeed in earning more money. Do we want those workers to be struggling in minimum-wage jobs? Or do we want them trained and educated for high-income jobs in industries that are able to compete globally? Investment in education will increase personal income and return state tax revenues needed to pay for Minnesota's other public programs essential to quality living.

Build stable communities. Efficient, energetic colleges and universities are a stabilizing force in their communities. Weakened colleges and universities, fighting to stay alive in the face of severe budget cuts, will cause serious community instability.

Minnesota became a great state by passionate preservation of its values and traditions. One of its most central traditions has been a strong public K-12 and higher-education system, open and accessible to all.

Gov. Carlson rightly asks education to accept change and to adapt itself to the immediate needs of the late '90s and the 21st century. We are eager to accept that challenge. But we cannot meet that challenge if primary and secondary schools, colleges and universities must use their energy for intensive care of critically ill schools and campuses rather than vital, healthy efforts to enhance students' fitness through accessible and innovative education.

Minnesota young people of today and tomorrow have fewer self-improvement opportunities through education than the opportunities provided to the current generation of business leaders, legislators, teachers and public servants. We must give them the educational choices we all enjoyed in our earlier years. It is a tradition that our parents and grandparents nourished, and we must continue the educational sustenance for Minnesota's future quality of life. The crisis in education funding has arrived. Only visionary leadership—from educators, the Legislature and the governor—can prevent crisis in society at large. In this legislative session we must fund adequate educational investment and demand accountability for the principal outcome—preservation of Minnesota's economic and social strength.

TRIBUTE TO CELESTE MAIA CRON

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Ms. ESHOO. Mr. Speaker, I rise today to honor Celeste Maia Cron and her upcoming induction into the San Mateo County Women's Hall of Fame.

After 25 years as the head of local printing and graphics firm, Celeste Maia Cron became the first woman to head the printing office for the State of California. At the printing office, Ms. Cron has started an in-house women's support group to deal with job discrimination, spousal and partner abuse, and other family related problems. Previously, she founded the Friends of the Advisory Council on Women and served as the president of the Private Industry Council and Soroptomists International of Burlingame/San Mateo. Ms. Cron is a prominent leader in our community and has been honored with a number of awards including the 1991 Volunteer Recognition Award by the Volunteer Center, a Palo Alto Junior League award for her work in education, the Key Award from the March of Dimes, and the National Association of Printers and Lithographers Award for Exceptional Employee Relationships.

Mr. Speaker, Celeste Maia Cron is an outstanding citizen, and I commend her for remarkable commitment and contributions to our community. I ask my colleagues to join me in saluting her as she is being inducted into the San Mateo County Women's Hall of Fame.

IN HONOR OF CLARE FLANNERY, IRISH WOMAN OF THE YEAR, 1995

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. MENENDEZ. Mr. Speaker, I rise today to pay tribute to Clare Flannery, Irish Woman of the Year, 1995, who will be honored at this year's St. Patrick's Day parade in Jersey City. Ms. Flannery is among the many Irish-American men and women who have helped make this country great.

The Irish have been immigrating to the United States since the early part of the 19th century. In that time, they have made many contributions to this country. They have distinguished themselves at every level of American society. As Irish-Americans have built their businesses, so have they contributed to the economic prosperity of this Nation. As they have grown politically, they have contributed to government on the local, State and national levels. Their devotion to family and friends demonstrates that much can be accomplished when people work together in harmony.

At home, Irish-Americans have worked hard to protect all of us from crime and fire. They have put their lives on the line to help ensure the safety of their fellow citizens. The long, proud tradition of Irish police officers and firemen scarcely needs to be mentioned. However, the Irish have not only been good neighbors at home, they have also put their lives on the line when they have fought to defend this Nation against our foes in every major conflict over the last 200 years.

Clare Flannery is part of this great Irish-American tradition. She is an active member of Project Children, which is an Irish community-based organization that pays to fly almost 1,000 children from Northern Ireland to the United States each year. The goal of Project Children is to offer the youngsters a respite from the violence which has plagued their homeland for over 25 years. This organization would not run as successfully as it does, if it were not for the dedication of people like Clare Flannery.

Ms. Flannery has done this while raising a family of her own. She is the proud mother of four children and a grandmother of four. She has been successful in raising a family, while at the same time helping the community. In doing so, she has set a positive example for all of us.

As we celebrate St. Patrick's Day, let us remember all of those Irish-American men and women who have made a difference in the United States. This is a day for us to acknowledge their achievements and feel proud to have them in the United States. This holiday is an excellent opportunity to pay tribute to Irish-Americans; past and present.

SELMA

HON. CYNTHIA A. McKINNEY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Ms. McKINNEY. Mr. Speaker, as bigots and supremacists across the Nation bask in their new Republican majorities, this weekend's reenactment of the Selma to Montgomery march couldn't have come at a better time.

Thirty years ago, my friend and colleague JOHN LEWIS had his head bashed in on the Edmund Pettus Bridge because he dared to march for voting rights in the South. That historic march to Montgomery gave us the Voting Rights Act which is now under attack from every sector: Majority and minority districts are being challenged in the courts, Governors are trying to kill motor-voter, and now affirmative action has become the new Republican wedge issue to divide people.

Mr. Speaker, while the bigots and supremacists feel emboldened by a Republican Congress, I invite them to come to Selma this weekend and witness our resolve to fight.

DESIGNATE THE TRAIL FROM SELMA TO MONTGOMERY AS A NATIONAL HISTORIC TRAIL

HON. JOHN LEWIS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. LEWIS of Georgia. Mr. Speaker, today I am introducing a bill to designate the road from Selma to Montgomery as a National Historic Trail. The road from Selma to Montgomery was the last symbolic leg in the journey to the Voting Rights Act of 1965.

Thirty years ago this month we tried to march from Selma to Montgomery to demonstrate for voting rights for all. As the nonviolent marchers crossed the Edmund Pettus Bridge in Selma, we were attacked by State troopers. I myself was beaten bloody. The country was outraged. Two days later, the marchers made a second attempt and turned back to avoid more bloodshed.

One week later, President Lyndon Johnson addressed the Nation and called for passage of the Voting Rights Act. He said:

> I speak tonight for the dignity of man and the destiny of democracy * * * at times, history and fate meet at a single time in a single place to shape a turning point in man's unending search for freedom. So it was at Lexington and Concord. So it was a century ago in Appomattox. And so it was last week in Selma, Alabama.

This weekend we go back to Selma for the 30th anniversary of the marches. We go back to remember what happened and to rededicate ourselves to the importance of voting rights.

We have come a long way. In 1965, there were 500 African-American elected officials in the country. There were fewer than 100 in the South. In 1995, more than 7,000 African-Americans hold elective office—nearly 5,000 of them in the South.

However, we still have a long way to travel on our journey. In the 1992 Presidential election, only 56 percent of the voting age population voted. In the 1994 midterm elections only 38 percent voted. This is a tragedy.

The designation of the route from Selma to Montgomery will educate and remind us of the right and responsibility to vote. It will also give important recognition to the men and women who dedicated their lives for voting rights for all Americans.

In 1990, Congress enacted the Selma to Montgomery National Trail Study Act and directed the National Park Service to study the trail. Their report is complete. It is time to make this important part of American history a national historic trail.

I urge all my colleagues to join me as cosponsors of this important bill. Thank you, Mr. Speaker.

NONPOINT SOURCE WATER POLLUTION PREVENTION ACT OF 1995

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. OBERSTAR. Mr. Speaker, today I have introduced the Nonpoint Source Water Pollution Prevention Act of 1995, the sequel to what is now section 319 of the Clean Water Act, nonpoint source management programs.

The Federal Water Pollution Control Act Amendments of 1972 set the Nation on its current cleanup course. The first line of that landmark legislation, in section 101(a), declares it the objective of the act "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

Until now, municipalities and industries have borne the brunt of this commitment. Since 1972 American citizens as Federal and State taxpayers have spent more than $75 billion to clean up municipal point sources. Industry, and citizens as consumers, have spent over $130 billion on cleaning up industrial point sources, including $67 billion in capital expenditures and $63 billion in operating costs.

Despite that costly sacrifice, fully one-third of the Nation's rivers, half of our estuaries, and more than half of our lakes are not meeting designated uses. Only about half of our river miles, two-thirds of lake acres, and three-quarters of our estuaries have even been assessed, meaning that a much more significant though unknown number of waterbodies are impaired, and more are threatened.

Dredging, to remove sediment from our harbors and navigation channels, costs American taxpayers hundreds of millions of dollars each year. Polluted water from upstream forces communities to add expensive treatment technologies to both their drinking water and wastewater facilities. The outbreak of cryptosporidium in Milwaukee, caused by animal pathogens washed into the drinking water from farms upriver, are an illustration of the costs of nonpoint sources in terms of human health.

The major cause of this failure to meet the standards is nonpoint sources of pollution [NPS]—or poison runoff—the unfinished agenda of the 1972 act.

The program in my bill builds on established Federal, State, and local programs: the Nonpoint Management Program in the Clean Water Act, the nonpoint source provisions of the Coastal Zone Act Reauthorization Amendments of 1990 [CZARA], and USDA's conservation and water quality incentive programs.

It focuses on sensitive watersheds, and encourages land users to prevent runoff, such as sediment, pesticides, herbicides, fertilizers, and toxics from city streets, from polluting our lakes, rivers, and streams.

It uses watershed implementation plans, designed by the State with input from local landowners and other groups. Landowners would develop site-level plans using site-specific management measures that they themselves have chosen. Assistance would be available from a wide variety of sources, including USDA, the States, and EPA.

As CZARA already does for coastal areas, the bill requires States or local governments to be able to take enforcement action against so-called bad actors, those who refuse to comply while their neighbors are being good actors.

The bill sets timetables for achieving clean water: 8 years from the beginning of the watershed implementation plans. At that point, the watershed would be assessed and, if clean water had not been achieved, additional measures would be implemented in two 2-year phases. At the end of 12 years, the waters would have to meet water quality standards.

The bill also creates a nonpoint program for Federal lands directly under the President. It expands water quality criteria and standards to cover nonpoint pollutants, contains provisions for new sources of nonpoint pollution, and creates a Citizen Monitoring Program to assist States in their monitoring under this and other programs.

This bill is fair to those who have already spent hundreds of millions of dollars on Clean Water Act mandates; fair to municipalities and drinking water suppliers who are faced with added costs; fair to landowners in coastal areas who already are complying with CZARA; and fair to future generations of Americans who will also need clean water.

TRIBUTE TO NAN HAWKINS BOSTICK

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Ms. ESHOO. Mr. Speaker, I rise today to honor Nan Hawkins Bostick and her upcoming induction into the San Mateo County Women's Hall of Fame.

Nan Hawkins Bostick is a leading advocate for women and children in our community, as well as a prominent member of California's pro-choice movement. She has chaired Children by Choice, the Bay Area Pro-Choice Coalition, and the San Mateo County National Women's Political Caucus. In addition, she has served as public affairs director for Planned Parenthood of San Mateo and State coordinator of California Republicans for Choice. During the 1970's, Ms. Bostick was a member of a rock-and-roll band which performed at feminist rallies and children's programs. Her interest in education has extended to her own business, NGB & Associates, through which she has created instructive materials in various media for special education and inner-city students.

Mr. Speaker, Nan Hawkins Bostick is an outstanding citizen, and I commend her for her remarkable commitment and contributions to our community. I ask my colleagues to join me in saluting her as she is being inducted into the San Mateo County Women's Hall of Fame.

HONORING OWEN KIRBY AND GARY DELA RABA

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. ACKERMAN. Mr. Speaker, I rise today to join with my constituents in the Fifth Congressional District and the members of the police officers of Nassau County, NY, as they gather to observe Nassau Police Conference Appreciation Night, and to honor Owen Kirby and Gary Dela Raba.

Owen Kirby, past Nassau Police Conference president, has truly brought honor to the citizens of Nassau County through his unfailing support of effective police work. Growing up in East Meadow, Long Island, Owen completed his schooling and went on to serve in the U.S. Army. Several years after his discharge, Owen took the police examination and was soon assigned to the Sands Point Police Department. His awareness of police concerns and a desire to provide more effective service to the public soon led to his involvement in the Police Benevolent Association and the Nassau Police Conference. He held several positions which include coeditor of the Blotter, the organization's publication, delegate, corresponding secretary, and second vice president. In 1987, in recognition of his outstanding service and enormous potential, his colleagues elected him president of the Nassau Police Conference.

Gary Dela Raba, president of the Nassau County Police Benevolent Association, is yet another unique individual who has devoted himself to the betterment of his fellow police officers and the more effective delivery of police services to Nassau County. Beginning as a police cadet in 1971, Gary was first assigned to the eighth precinct. It was here that he began to familiarize himself with the Police Benevolent Association's [PBA] collective bargaining system. In 1975, Gary was elected as a PBA trustee and began a process that would enable him to use his human relations expertise to enhance the professional standing of Nassau County's police.

As a trustee, Gary served on many committees and was eventually appointed to the PBA board of governors. In 1981, he was elected second vice president of the Nassau PBA. By 1988, this thorough understanding of the multiplicity of issues impacting on police officers led to his election as PBA president. As president, he has continuously worked at making the Nassau Police Department recognized throughout the country as one of professionalism and effectiveness.

Mr. Speaker, as we search for modern day heroes to lead our society, we could find no better role models than Owen Kirby and Gary Dela Raba.

I ask all my colleagues in the House to join with me in paying tribute to these two outstanding police officers.

THE OSCE AND MACEDONIA

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. SMITH of New Jersey. Mr. Speaker, last week the states belonging to the Organization for Security and Cooperation in Europe—the OSCE—adopted a statement in Vienna regarding the escalation of ethnic tensions in Macedonia and the events that are causing this escalation. Some members of the ethnic Albania community of that country have sought to open their own Albanian-language university, and the resulting confrontation with the authorities became violent on February 17, leading to the death of one Albanian and the injury of dozens of individuals, including several police officers. Of course, there are now mutual recriminations regarding how the violence started.

As Chairman of the Helsinki Commission, I want to note and lead my support to the path outlined in the OSCE statement, which calls on all parties to exercise restraint, to strengthen the dialogue and to maintain an open-minded attitude in order to overcome the problems between them. It also indicates the willingness of the OSCE High Commissioner for National Minorities and the OSCE Monitoring Mission in Macedonia to contribute as they can to the alleviation of tensions.

I support this, because the differences which exist in Macedonia today can, in fact, be worked out peacefully. To allow the tensions to worsen unnecessarily not only would be destabilizing to Macedonia, but potentially to an entire Balkan region where there is already too much tension and violence.

In regard to the effort to establish a university in the city of Tetovo, provisions of the OSCE—and specifically the Copenhagen document of 1990—state that national minorities do have the right to establish and maintain their own educational and cultural institutions, as well as unimpeded contacts among themselves and with citizens of other states with common ethnic origin. The Macedonian Government is not obliged to fund, accredit or even recognize this university, but to consider the institution illegal—and to physically destroy last December the building in which it was originally opened—violates the spirit, if not the letter, of these provisions.

Mr. Speaker, if some segments of the Albanian community in Macedonia genuinely have as their objective a solid educational institution for the benefit of the people of their community, they should make sure that education is not used instead to provoke tension or incite violence. While there are ample grounds for criticism of the Macedonian Government, as I have just expressed, there is also reason to believe that minority-related issues, including education, can be satisfactorily addressed in a far less confrontational manner.

I would urge all sides to address education and other minority-related questions through dialogue, and the authorities to move more quickly on needed educational reforms. In the meantime, those ethnic Albanian leaders arrested for incitement during the February 17th incident are entitled to the protection of their rights, and any judicial proceedings should ensure due process in their regard.

Mr. Speaker, I would hope that assurances of full protection for human rights could be made and timely reforms could be forthcoming. While I recognize that Macedonia is not a member of the OSCE, Macedonia is not excused from complying with international human rights standards.

IN HONOR OF JOSEPH A. RICCARDI, HONORARY IRISHMAN OF THE YEAR, 1995

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. MENENDEZ. Mr. Speaker, I rise today to pay tribute to Joseph A. Riccardi, Honorary Irishman of the Year, 1995, who will be honored at this year's St. Patrick Day Parade in Jersey City.

The Irish have been immigrating to the United States since the early part of the 19th century. In that time, they have made many contributions to this country. They have distinguished themselves at every level of American society. As Irish-Americans have built their businesses, so have they contributed to the economic prosperity of this Nation. As they have grown politically, they have contributed to government on the local, State and national levels. Their devotion to family and friends demonstrates that much can be accomplished when people work together in harmony.

At home, Irish-Americans have worked hard to protect all of us from crime and fire. They have put their lives on the line to help ensure the safety of their fellow citizens. The long, proud tradition of Irish police officers and firemen scarcely needs to be mentioned. However, the Irish have not only been good neighbors at home, they have also put their lives on the line when they have fought to defend this Nation against our foes in every major conflict over the last 200 years.

Joseph Riccardi is being honored this year for his many contributions to the community. Mr. Riccardi founded Knights Auto Body, Inc. in 1960. He served as commissioner on the Jersey City Parking Authority, Hudson County Recreation Authority and as a board member of the Jersey City Medical Center Foundation. Mr. Riccardi is a former chairman of the Jersey City chapter of the March of Dimes, and he has served on the Saint Patrick's Day Parade Committee since 1962. In addition, he is a sponsor of Project Children, and is the Honorary Irishman of the Jersey City Emerald Society.

Through the years, Mr. Riccardi has served the people of Jersey City Well. His involvement in the many above-mentioned organizations shows that he is committed to helping make life a little easier for his fellow Americans. He is truly an exemplary individual.

As we celebrate St. Patrick's Day, let us remember all of those Irish-Americans men and women who have made a difference in the United States. This is a day for us to acknowledge their achievements and feel proud to have them in the United States. This holiday is an excellent opportunity to pay tribute to Irish-Americans; past and present.

TRIBUTE TO HELEN M. HAUSMAN

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Ms. ESHOO. Mr. Speaker, I rise today to honor Helen M. Hausman and her upcoming induction into the San Mateo County Women's Hall of Fame.

Helen M. Hausman is an exceptional public servant with a remarkable history of leadership in our community. She has served on the PTA for 25 years, been elected to the Sequoia Union High School District Board four times, and chaired a bay area symposium on the Geneva Conventions and Humanitarian Law. In addition, she is currently serving her second term on the San Mateo County Community College District Board and chairing the San Mateo County American Red Cross board of directors. As an advocate for youth and women, Ms. Hausman has volunteered for a number of youth organizations, and the Junior League has appointed her as community advisor to serve as a role model for young women volunteers Ms. Hausman has also spoken on gender equity issues for the American Association of University Women.

Mr. Speaker, Helen M. Hausman is an outstanding citizen, and I commend her for her remarkable commitment and contributions to our community. I ask my colleagues to join me in saluting her as she is being inducted into the San Mateo County Women's Hall of Fame.

CELEBRATING FLORIDA'S SESQUICENTENNIAL

HON. C.W. BILL YOUNG

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. YOUNG of Florida. Mr. Speaker, I rise today in proud observance of the sesquicentennial anniversary of the State of Florida.

One hundred and fifty years ago today, President John Tyler signed into law the Florida Statehood bill, enacted 2 days earlier by the 28th Congress, admitting Florida as the 27th State. Today, the Sunshine State has risen in stature to become the fourth largest State of the Union, with an economy larger than all but 14 countries. In the last 15 years alone, its population has risen by more than a third, further enriching one of the most economically successful, culturally vibrant regions of America.

The Sunshine State plays a vital role in American prosperity. In 1513, Ponce de Leon's initial landfalls along Florida's pristine beaches marked the first steps by European settlers on the shores of North America. Today, the more than 20 million visitors to our State each year walk these same beaches seeking their own Fountain of Youth. Florida welcomes tourists from across the world who come to enjoy our cultural offerings and environmental beauty.

Our State's rich natural resources provide our Nation with a healthy diet of fruits, vegetables, and fish, and its manufacturing industries supply America with key electrical, transportation and high technology equipment.

Since the Spanish-American War, critical military facilities across Florida have defended our Nation's Southeast flank, and have given us the ability to protect our national interests throughout the hemisphere. On the threshold of the 21st century, the United States relies ever more on Florida's strengths in education and technology, assets that have already launched us into a new frontier.

As Commander Steve Oswald told our Florida congressional delegation this morning while orbiting the Earth in Space Shuttle *Endeavor,* "Every time Americans have left the planet to explore space, they have done so from Florida."

The greatest testament to Florida's excellence comes from the tens of thousands of people each year who choose to make our State their homes. Whether by birth or by choice, Floridians are a proud people who have contributed greatly to the history of our Nation. Twenty-two sons of Florida have won the Nation's highest award for bravery, the Congressional Medal of Honor, for protecting our country's freedoms. Here in the Nation's Capital, 96 Floridians have served our State and our Nation in the House of Representatives, and 30 have distinguished themselves through their service in the Senate. We salute our predecessors and the numerous other Floridians who have served in the executive, judicial, and legislative branches of the Federal Government.

From the white, sandy beaches and intercostal waterways of Pinellas County, the area which I have the privilege to represent, to the tropical Keys to the south, the rich pine forests to the north, and the excitement of the Kennedy Space Center on the east coast, after 150 years, the Sunshine State has become synonymous with great historic moments and diverse natural beauty. Florida's many diverse successes have transformed it into a gateway between North and South America, a bridge from the Earth to space, and a link connecting us to our future. With great pride, I salute the State of Florida on this historic day. May the sun always shine on its future.

SALUTE TO THE RHO CHAPTER OF ALPHA PHI ALPHA FRATERNITY

HON. THOMAS M. FOGLIETTA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. FOGLIETTA. Mr. Speaker, I rise today to pay tribute to the Rho chapter of Alpha Phi

Alpha Fraternity at Temple University in Philadelphia. The men of Rho chapter are celebrating their 80th year of fraternal service on March 31, 1995.

Alpha Phi Alpha, founded in 1906, is the Nation's first and oldest African-American Greek-letter organization. Alpha Phi Alpha was established for young men of African descent who were not allowed to join other Greek-letter organizations. Since its establishment, seven other African-American Greek organizations have been created, using Alpha Phi Alpha as a model.

Alpha Phi Alpha has over 100,000 initiated members in over 600 undergraduate and alumni chapters throughout the country 89 years later. Alpha Phi Alpha is the sponsor of many national programs which provide support to the United Negro College Fund, Big Brothers/Big Sisters of America, and March of Dimes and many scholarship endeavors. Through their programs, the members of Alpha Phi Alpha have helped many less fortunate people in cities across the Nation. Some of the distinguished men who were part of this brotherhood include: the Honorable Thurgood Marshall, Dr. Martin Luther King, Jr., the Honorable David Dinkins, and Mr. Jesse Owens.

Rho chapter of Alpha Phi Alpha was founded on November 3, 1914, at Temple University. Rho chapter follows the format of the national chapter in format and purpose and has contributed a great deal to communities throughout the city of Philadelphia.

On this 80th anniversary of its establishment, I would like to recognize the Rho chapter of Alpha Phi Alpha for its accomplishments and contributions both to its members and to communities in Philadelphia and across the Nation. I hope my colleagues will join me in congratulating President James G. Slaughter and the upstanding men of the Rho chapter of Alpha Phi Alpha on this great anniversary.

LEGISLATION REGARDING RETIREMENT PACKAGE FOR REVENUE OFFICERS

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. COLEMAN. Mr. Speaker, I rise today to introduce a bill which grants an early retirement package for revenue officers of the Internal Revenue Service, Customs Inspectors of the U.S. Customs Service, and immigration inspectors of the Immigration and Naturalization Service.

The legislation will amend the current law that grants retirement after 20 years to Federal law enforcement officers and firefighters, but does not include the groups mentioned above. Similar to currently covered law enforcement officers and firefighters, the employees to be covered under this bill have very hazardous, physically taxing occupations, and it is in the public's interest to ensure a vigorous work force in these positions.

Because my district is located on the United States-Mexico border, I know first hand the hardship and hazards that these employees endure on a daily basis. Most recently, drug smugglers have attempted to actually run over inspectors by speeding through our border crossings. Some Customs employees have lost their lives in the line of duty. These employees are confronted everyday with the criminal element. We must ensure that they receive adequate and competitive benefits so that we can continue to recruit the highest caliber people for these positions.

The need for a 20-year retirement benefit for inspectors of the Customs Service is easily apparent. These employees are the country's first line of defense against terrorism and the smuggling of illegal drugs at our borders. They have the authority to apprehend those engaged in such activities. They are responsible for the majority of arrests performed by Customs Service employees. These employees face multiple challenges. They confront leading criminals in the drug war, organized crime figures, and increasingly sophisticated white-collar criminals.

The physical demands of the Revenue officer job are evidenced by heavy workloads, and a high rate of job stress, resulting in a variety of physical and mental symptoms. The employees frequently use pseudonyms to hide their identity because of the large threat to their personal safety.

This legislation is cost effective. Any cost is more than offset by savings in training costs and increased revenue collection. A 20-year retirement bill for these employees will reduce turnover, increase yield, decrease employee recruitment and development costs, and enhance the retention of a well-trained and experienced work force.

It is imperative that we establish an effective Inspector and Revenue officer work force to ensure the integrity of our borders and proper collection of the taxes and duties due the Federal Government.

This bill, once enacted, will correct an oversight for these Federal employees. I ask the committee of jurisdiction to take up the legislation as rapidly as possible, and urge my colleagues to support it.

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CIVIL SERVICE RETIREMENT SYSTEM.

(a) TREATMENT AS LAW ENFORCEMENT OFFICERS.—Section 8331(20) of title 5, United States Code, is amended by striking "administrative position." and inserting "administrative position, and any revenue officer, customs inspector, customs canine enforcement officer, and Immigration and Naturalization inspector.".

(b) DEFINITIONS.—Section 8331 of title 5, United States Code, is amended—

(1) by striking "and" at the end of paragraph (25);

(2) by striking the period at the end of paragraph (26) and inserting a semicolon; and

(3) by adding at the end the following:

"(27) 'revenue officer' means an employee of the Internal Revenue Service, the duties of whose position are primarily the collection of delinquent taxes and the securing of delinquent returns, including an employee engaged in this activity who is transferred to a supervisory or administrative position;

"(28) 'customs inspector' means an employee of the United States Customs Service, the duties of whose position are primarily to—

"(A) enforce laws and regulations governing the importing and exporting of merchandise;

"(B) process and control passengers and baggage;

"(C) interdict smuggled merchandise and contraband; and

"(D) apprehend (if warranted) persons involved in violations of customs laws,

including an employee engaged in this activity who is transferred to a supervisory or administrative position;

"(29) 'customs canine enforcement officer' means an employee of the United States Customs Service, the duties of whose position are primarily to work directly with a dog in an effort to—

"(A) enforce laws and regulations governing the importing and exporting of merchandise;

"(B) process and control passengers and baggage;

"(C) interdict smuggled merchandise and contraband; and

"(D) apprehend (if warranted) persons involved in violations of customs laws,

including an employee engaged in this activity who is transferred to a supervisory or administrative position; and

"(30) 'Immigration and Naturalization inspector' means an employee of the Immigration and Naturalization Service, the duties of whose position are primarily the controlling and guarding of the boundaries and borders of the United States against the illegal entry of aliens, including an employee engaged in this activity who is transferred to a supervisory or administrative position.".

SEC. 2. FEDERAL EMPLOYEES' RETIREMENT SYSTEM.

(a) TREATMENT AS LAW ENFORCEMENT OFFICERS.—Section 8401(17) of title 5, United States Code, is amended by adding at the end the following: "such term includes any revenue officer, customs inspector, customs canine enforcement officer, and Immigration and Naturalization inspector;".

(b) DEFINITIONS.—Section 8401 of title 5, United States Code, is amended—

(1) by striking "and" at the end of paragraph (31);

(2) by striking the period at the end of paragraph (32) and inserting a semicolon; and

(3) by adding at the end the following:

"(33) 'revenue officer' means an employee of the Internal Revenue Service, the duties of whose position are primarily the collection of delinquent taxes and the securing of delinquent returns, including an employee engaged in this activity who is transferred to a supervisory or administrative position;

"(34) 'customs inspector' means an employee of the United States Customs Service, the duties of whose position are primarily to—

"(A) enforce laws and regulations governing the importing and exporting of merchandise;

"(B) process and control passengers and baggage;

"(C) interdict smuggled merchandise and contraband; and

"(D) apprehend (if warranted) persons involved in violations of customs laws,

including an employee engaged in this activity who is transferred to a supervisory or administrative position;

"(35) 'customs canine enforcement officer' means an employee of the United States Customs Service, the duties of whose position are primarily to work directly with a dog in an effort to—

"(A) enforce laws and regulations governing the importing and exporting of merchandise;

"(B) process and control passengers and baggage;

"(C) interdict smuggled merchandise and contraband; and

"(D) apprehend (if warranted) persons involved in violations of customs laws,

incuding an employee engaged in this activity who is transferred to a supervisory or administrative position; and

"(36) 'Immigration and Naturalization inspector' means an employee of the Immigration and Naturalization Service, the duties of whose position are primarily the controlling and guarding of the boundaries and borders of the United States against the illegal entry of aliens, including an employee engaged in this activity who is transferred to a supervisory or administrative position.".

SEC. 3. EFFECTIVE DATE; PRIOR SERVICE.

(a) EFFECTIVE DATE.—Except as otherwise provided in this section, this Act and the amendments made by this Act—

(1) shall take effect on the 90th day after the date of the enactment of this Act; and

(2) shall apply with respect to an individual only if such individual serves as a revenue officer, customs inspector, customs canine enforcement officer, or Immigration and Naturalization inspector on or after the effective date of this Act.

(b) PRIOR SERVICE.—

(1) EMPLOYEE CONTRIBUTIONS.—In administering chapter 83 or 84 of title 5, United States Code, with respect to an individual who satisfies subsection (a)(2), the amendments made by this Act shall be disregarded for purposes of any service performed before the effective date of this Act as a revenue officer, customs inspector, customs canine enforcement officer, or Immigration and Naturalization inspector, unless such individual deposits into the Fund, within such time and in such manner as the Office of Personnel Management by regulation requires, an amount equal to the amount by which—

(A) the deductions from pay which would have been required for such service had such amendments then been in effect; exceeds

(B) the amounts actually deducted from such pay (less any amounts refunded and not repaid),

with interest.

(2) AGENCY CONTRIBUTIONS.—Not later than 90 days after the full amount required under paragraph (1) has been paid by an individual, the agency that employed such individual during the period of service to which such amount relates shall pay into the Fund, with interest, an amount equal to the amount by which—

(A) the Government contributions which would have been required for such service, had such amendments then been in effect; exceeds

(B) the Government contributions actually made for such service.

(c) REGULATONS.—The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this Act, including regulations for determining the amount of any interest to be paid under this section.

(d) DEFINITIONS.—For the purpose of this section—

(1) each of the terms "revenue officer", "customs inspector", "customs canine enforcement officer", and "Immigration and Naturalization inspector" has the meaning given it by section 8331 or 8401 (as the case may be) of title 5, United States Code, as amended by this Act; and

(2) the term "Fund" means the Civil Service Retirement and Disability Fund under section 8348 of title 5, United States Code.

STOP THE ASSAULT ON PUBLIC BROADCASTING

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. OWENS. Mr. Speaker, the Republican assault on public broadcasting represents outrageous overkill by the elite oppressive group that presently holds power in Congress. The benefits of public broadcasting far outweigh the costs. Probably nowhere else in the budget do we achieve a better cost-benefits ratio. American taxpayers definitely get their money's worth from its investment in quality programs on a vast array of topics, subjects, and issues. Like any complex institution public broadcasting can certainly be improved. It must end the trend toward more advertising. There is a need to stop catering to established commentators who have already become well known through commercial media. Instead of repeating the same voices and faces, public broadcasting should give us new ones. Certain producers should be told "5 years and you're off" in order to make way for younger talent. The exception to this rule, however, must prevail in the area of children's programming. Some excellent programs for this group will never be picked up by commercial media. We must protect the rights of future children to enjoy Big Bird and Barney. Let us save money somewhere else in the budget, starting with bank bailouts, Mexican bailouts, and welfare for rich farmers. Taxpaying parents are ready to revolt if the Washington budget axe fails on Big Bird and Barney.

PROTECT BIG BIRD AND BARNEY

Big Bird and Barney
Must Go
To help hungry bankers
In Mexico
Leadership plays its role
Guiding big bankers
To the dole
Twenty billion plus
Won't make jobs for us
Please children don't cry
Democracy didn't yet die
Brave knights are riding
Budget axe monsters
Can't keep hiding
Big Bird and Barney
Must go
To help hungry bankers
In Mexico
But babies don't cry
Our voting parents
Will counterattack
To win
Big Bird and Barney back.

TRIBUTE TO ORTENSIA LOPEZ

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Ms. ESHOO. Mr. Speaker, I rise today to honor Ortensia Lopez and her upcoming induction into the San Mateo County Women's Hall of Fame.

Ortensia Lopez is an exceptional public servant who has demonstrated remarkable leadership in our community. She is the second of 11 children born to parents from Mexico and the first in her family to graduate from college. Since 1977, she has worked as the executive officer of the North Peninsula Neighborhood Services Center, and she is currently serving as executive director of the Bay Area Latino Non-Profit Association. In addition, Ms. Lopez is the cofounder of the Hispanic Concilio of San Mateo County, the Latino Issues Forum, and Sur San Francisco. She has also served on countless boards and commissions such as the State and local Hispanic Chamber of Commerce, the Chicana/Latina Foundation, the AIDS Advisory Task Force, and Seton Hospital. Her dedicated service has been recognized with the Bank of America Hispanic Heroes and Heroines Award, the United Way of the Bay Area Volunteer of the Year Award, and the Hispanic Yellow Pages Community Recognition Award, among many others.

Mr. Speaker, Ortensia Lopez is an outstanding citizen, and I commend her for her remarkable commitment and contributions to our community. I ask my colleagues to join me in saluting her as she is being inducted into the San Mateo County Women's Hall of Fame.

SUPPORT FOR FEDERAL NUTRITION PROGRAMS

HON. TIM JOHNSON

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. JOHNSON of South Dakota. Mr. Speaker, today I wish to express my strong support for our Federal nutrition programs—especially the school breakfast and lunch programs and the WIC program. I am very concerned about the Republican proposals to dismantle these programs, decrease their funding, and change their very nature.

It is inexcusable that so many children in this Nation live in poverty and that we have one of the highest infant mortality rates of any industrialized country in the world. We must make an aggressive effort to direct our limited resources towards our most precious resource—our children.

The WIC program is one of the very few Government programs that has been recognized as a success by people from all parts of the political spectrum. Studies have shown that WIC reduces low birthweight babies, premature births, and infant mortality. Every dollar spent on WIC produces a savings of between $1.77 and $3.13 in Medicaid expenses. Similarly, the school breakfast and lunch programs have been proven to be very effective. It has long been recognized that hungry children are unprepared to learn, and for this reason school nutrition programs have enjoyed bipartisan support for years.

Mr. Speaker, while I am well aware of the fact that we need to examine all Government programs to ensure that Federal funds are being spent effectively and to work towards our goal of a balanced budget, I am quite concerned about the Republican proposals affecting nutrition programs.

I am very concerned about the effect of replacing Federal programs such as these that are recognized as effective with 50 different State programs. If our goal is to reduce bureaucracy, how does creating 50 new programs help meet that goal?

In addition, if we are seeking to reduce costs, why does the Republican proposal repeal the competitive-bidding requirement for the selling of infant formula to WIC? This provision has contained costs in the program by cutting the cost of providing formula by nearly $1 billion in 1993—nearly a two-thirds reduction in the program's expenses. Repealing this provision will take a billion dollars of the taxpayers' money and turn it over to four pharmaceutical companies. Is this really the best use of our limited resources?

I am also concerned about the elimination of Federal nutrition standards. These standards have improved the nutrition and health of low-income families and help ensure that our children have access to healthy meals at school. We have no assurance that these standards will continue to be met at the State level—what will keep us from returning to the days of "ketchup as a vegetable?"

Finally, I am concerned that the block grant approach to school breakfast and lunch programs will shut needy children out of the program and reduce the ability of the program to respond to increases in the school-age population, inflation of food prices, and/or changes in the economy. USDA estimates that my State of South Dakota stands to lose over $28 million from child nutrition programs from fiscal year 1996–2000.

I ask my colleagues to think long and hard about making such drastic changes to programs that work—is it really good policy to experiment with the health and well-being of our children to pay for tax cuts for the wealthy?

IN HONOR OF CHARLES KERR, IRISHMAN OF THE YEAR, 1995

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. MENENDEZ. Mr. Speaker, I rise today to pay tribute to Charles Kerr, Irishman of the Year, 1995, who will be honored at this year's St. Patrick's Day parade in Jersey City. Mr. Kerr is among the many Irish-American men and women who have helped make this country great.

The Irish have been immigrating to the United States since the early part of the 19th century. In that time, they have made many contributions to this country. They have distinguished themselves at every level of American society. As Irish-Americans have built their businesses, so have they contributed to the economic prosperity of this Nation. As they have grown politically, they have contributed to government on the local, State, and national levels. Their devotion to family and friends demonstrates that much can be accomplished when people work together in harmony.

At home, Irish-Americans have worked hard to protect all of us from crime and fire. They have put their lives on the line to help ensure the safety of their fellow citizens. The long, proud tradition of Irish police officers and firemen scarcely needs to be mentioned. However, the Irish have not only been good neighbors at home, they have also put their lives on the line when they have fought to defend this Nation against our foes in every major conflict over the last 200 years.

Charles Kerr is part of this great Irish-American tradition. He was born and raised in Jersey City. His parents lived there for 90 years. Throughout his life, he has made many contributions to the community and has been actively involved in the religious community.

Mr. Kerr fought bravely in the Korean war. In 1969, he started his own business. He was president of Kerr Electric for 25 years, yet, he still found the time to participate in the community. Mr. Kerr was the first president and organizer of the New Tammannee Club in downtown Jersey City. He was also the last president of the Original Monkey Club, the oldest social club in Jersey City.

As we celebrate St. Patrick's Day, let us remember all of those Irish-American men and women who have made a difference in the United States. This is a day for us to acknowledge their achievements and feel proud to have them in the United States. This holiday is an excellent opportunity to pay tribute to Irish-Americans; past and present.

TRIBUTE TO PRIYA KARIM HAJI

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Ms. ESHOO. Mr. Speaker, I rise today to honor Priya Karim Haji and her upcoming induction into the San Mateo County Women's Hall of Fame.

Priya Karim Haji is only 24 years old and has already made remarkable contributions to our community. Currently she is the executive director and cofounder of Free at Last Community and Rehabilitation Services, which is an organization providing drug and alcohol recovery programs. While in college, Ms. Haji developed a comprehensive after-school activities program for high school youth, helped to found a free medical clinic, and organized a Midnight Basketball League. In addition, she served as a facilitator for a weekly substance abuse group at San Quentin Prison, volunteered with the County AIDS Program, and worked as a substance abuse counselor for Links to Positive People.

Mr. Speaker, Priya Karim Haji is an outstanding citizen, and I commend her for her remarkable commitment and contributions to our community. I ask my colleagues to join me in saluting her as she is being inducted into the San Mateo County Women's Hall of Fame.

IN MEMORY OF SISTER ANN GILLEN

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. SMITH of New Jersey. Mr. Speaker, as chairman of the Commission on Security and Cooperation in Europe, I would like to call the attention of my colleagues to the recent passing of Sister Ann Gillen, one of the leading human rights activists on behalf of persecuted Jewish dissidents and refuseniks in the former Soviet Union. A member of the Society of the Holy Child Jesus, Sister Ann served for 15 years as executive director of the Interreligious Task Force for Soviet Jewry. On numerous occasions, she traveled to the former Soviet Union to visit and support Jewish refuseniks and the families of political prisoners. In addition, Sister Ann was a frequent attendee at international human rights fora. An unwavering supporter of the Conference on Security and Cooperation in Europe, Sister Ann served as a leader for several human rights delegations to the Belgrade, Madrid and Vienna CSCE Review Conferences where she urged political figures and diplomats to press the Soviets to live up to their own obligations under the Helsinski Accords and other international agreements.

Sister Ann was a woman of action when responding to the plight of Soviet Jews. In 1979, Sister Ann offered her own freedom to the Soviet Government in exchange for the release of long-time refusenik Ida Nudel. Needless to say, the Soviets refused, but her gesture helped dramatize Ida Nudel's plight to the world and bring additional pressure on Kremlin leaders to allow Nudel to emigrate. In 1982, Sister Ann was one of three human rights leaders to serve an historic Writ of Habeas Corpus on the Soviet Consul in Washington, DC for Andrei Sakharov. In 1989, while attending the Sakharov International Human Rights Conference in Moscow, Sister Ann publicly urged Soviet leaders to end state regulation of religion.

Long before others were encouraged to speak out on behalf of religious liberty and long before religious organizations collaborated on issues such as these, Sister Ann crossed ecumenical lines and reached out to persecuted, imprisoned human beings of all faiths—and in particular the Soviet Jews—to bring them hope and to fight tirelessly for their rights. Even in the last days of her life, Sister Ann did not think of her own pain, but of the suffering of religious believers around the world as she continued to plan conferences and projects that would go on after her own work had ended.

Sister Ann's fellow campaigner in the struggle for Soviet Jewry, Union of Councils President Pamela Braun Cohen, was certainly correct when she said, "No doubt thousands of Soviet Jews owe their freedom to Sister Ann's tireless efforts."

Dr. Kent Hill, President of Eastern Nazarene College and an expert on religion in the former Soviet Union, described Sister Ann as "a tireless, selfless, and effective advocate of those who suffered because of their religious convictions."

In an award presented to her by a coalition of human rights organizations just prior to her death, Sister Ann was honored with these words: "All of us who are novices in this work are very grateful for the paths that you have paved for us. This small token of our admiration pales in contrast to the contributions that you have given to make the world more humane. Perhaps, someday, we, following your example, may demonstrate the same depth of devotion and be a role model to other human rights activists."

Mr. Speaker, Sister Ann exemplified the finest qualities of her faith and her religious order as she reached across ethnic and religious boundaries to rescue strangers in distress. Her many friends and associates, and those who benefitted from her tireless efforts, will cherish her memory.

TRIBUTE TO LISA MARJORIE COAR

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Ms. ESHOO. Mr. Speaker, I rise today to honor Lisa Marjorie Coar and her upcoming induction into the San Mateo County Women's Hall of Fame as a Young Woman of Excellence.

Lisa Marjorie Coar is a remarkable person who serves as a role model for everyone in our community. She is a 4.0 student at Burlingame High School, a member of its tennis team, the student body liaison to the Burlingame Human Relations Commission, and the student representative to the San Mateo Union High School Board of Trustees. Ms. Coar also plays an active role in the Black Student Union, volunteers with an afterschool day-care program, and serves food to the homeless. In addition, her achievements include being selected as a Girl's State Delegate, a National Achievement semifinalist, and the recipient of both the Edward Teller Award for Academic Excellence and the Xerox Humanities and Social Science Award.

Mr. Speaker, Lisa Marjorie Coar is an outstanding citizen, and I commend her for her remarkable commitment and contributions to our community. I ask my colleagues to join me in saluting her as she is being inducted into the San Mateo County Women's Hall of Fame as a Young Woman of Excellence.

PAYING TRIBUTE TO THE WINNERS OF THE 1995 GOVERNOR'S AWARD FOR BUSINESS AND EDUCATION PARTNERSHIPS

HON. THOMAS M. DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Mr. DAVIS. Mr. Speaker, it gives me great pleasure to rise today to pay tribute to some outstanding citizens from the 11th District of Virginia. These are the people who have achieved the Governor's Award for Business and Education partnerships with Northern Virginia Community College [NVCC].

Richard A. Patterson, president of the Rosenthal automotive organization is a 22 year veteran of the automobile business. He has been with the Rosenthal organization for 14 years, where as CEO, he has strongly influenced development of the company's training and education.

The Rosenthal automotive organization, the Capital area's largest group of automobile dealerships, has made a significant contribution to the Arlington/Alexandria Cultural Center at Northern Virginia Community College [NVCC].

Dr. Semmler has been a professor of mathematics. He has authored or coauthored seven books in mathematics and has received numerous awards, including the Governor's Award from NVCC in 1991; the Once in a Century Award from Plattsburgh State University in 1990; and the Diploma of Honor Award from Pacific Western University in 1992.

Dr. Semmler has been a major contributor to Northern Virginia Community College for more than a decade. His gifts established the "Semmler and Friends" and the "Semmler and Alumni" seminar rooms in the Richard J. Ernst Community Cultural Center.

James B. White is vice president and general manager of the Virginia Division of Washington Gas. He joined the Company in 1977 and also serves as a member of the board of directors of Shenandoah Gas in Winchester, VA. He has been active with NVCC.

Washington Gas and its distribution subsidiaries provide natural gas service to 726,000 customer meters in the Washington metropolitan area and surrounding region. The company's service area covers 6,648 square miles in Virginia, Maryland, the District of Columbia, and West Virginia.

Gerald T. Halpin is founder and president of West Group and has taken an active role in the community for many years. West Group is a primary corporate contributor to the NVCC Educational Foundation's Annual Fund and is also a donor to the NVCC Alumni Federation. Headquartered in McLean, VA, West Group is one of the area's leading real estate developers and build-to-suit specialists. The firm provides expertise in land acquisition, development, design, construction, leasing and property management services, and is renowned for its award-winning office parks including West Park and West Gate in Tysons Corner. More than 10 million square feet of commercial office, residential, resort, industrial, and retail space has been developed by West Group's principals since 1958.

Michael D. Lynch is president of The Mark Winkler Company and has been with the firm since 1988. He has served on the board of the Northern Virginia Community College Educational Foundation since 1993.

The Mark Winkler Company has strongly supported NVCC's new Arlington/Alexandria Cultural Center on its Alexandria campus as well as other college programs.

Ellen Z. McCloy is president of Mobil Foundation, Inc. and a member of the board of directors of the Wolf Trap Foundation, Marymount University, and WETA.

Mobil Foundation, Inc., the philanthropic arm of Mobil Corp., has supported Northern Virginia Community College since 1982. The foundation is a major donor to the Arlington/Alexandria Cultural Center and the Richard J. Ernst Community Cultural Center. It is also a sponsor of the college-wide Honors Program, which provides student scholarships and program enrichment funds.

Mario Morino is founder and chairman of both the Morino Institute and Foundation. He was the founder and past Chairman of Legent Corp., one of the world's largest software companies based in Herndon, VA. He currently serves as a director on its board.

The Morino Foundation, on behalf of the Morino Institute, supports a scholarship program at Northern Virginia Community College. The Morino Institute is a nonprofit educational organization dedicated to helping people take greater control of their future and the future of their communities in the Information Age.

Elijah "Zeke" Jackson is chief executive officer of NavCom Systems, and currently serves on the board of the NVCC Educational Foundation.

NavCom Systems, Inc. is a minority-owned and operated communications and navigation systems engineering and manufacturing firm and has made several generous contributions to NVCC over the past 2 years, including a gift to cover the construction costs of the Mary Louise Jackson Amphitheater on the Mannassas Campus, scholarship funds for minority students, and a donation to the purchase of computer equipment.

John Van Horn, II, is president of Central Fidelity National Bank's northern Virginia region and is director of the NVCC Educational Foundation.

Central Fidelity National Bank has made a significant contribution toward the construction of the Arlington/Alexandria Cultural Center. The center's forum for exhibits and receptions will be named for Central Fidelity. Central Fidelity National Bank also has a program in place that provides scholarships and mentors for NVCC students.

Edward H. Bersoff is a member of the NVCC Educational Foundation board of directors and currently serves as the board's president.

BTG supports NVCC with funding for scholarships and educational programs. Service to NVCC is part of BTG's commitment of time and resources to community service, focusing on education in the public schools and institutions of higher learning. Headquartered in Vienna, VA, BTG is an information technology company offering total solutions to its clients through systems engineering and integration, value-added reselling of hardware and software, and the manufacturing of its own line of high-performance computers.

Harry N. Doyle, Jr., a 23-year resident of Fairfax County and a 38-year Bell Atlantic veteran, is the company's area manager. He serves as a vice president of the NVCC Educational Foundation board of directors.

Bell Atlantic of Virginia is a major contributor to the NVCC Educational Foundation's annual fund as well as to the Richard J. Ernst Community Cultural Center, which houses the Bell Atlantic Art Gallery. Bell Atlantic of Virginia's 7,600 employees provide local exchange and exchange access services plus state-of-the art voice and data communications services via 2.9 million customer access lines in the Commonwealth of Virginia.

Wayne G. Larochelle, senior vice president for Crestar Bank in the Trust and Investment Management Group is one Crestar's Washington office, currently serves on the Board of the NVCC Educational Foundation.

Crestar Bank is a significant contributor to both the Richard J. Ernst Community Cultural Center on NVCC's Annandale campus and the Arlington/Alexandria Cultural Center which will be constructed on the Alexandria campus. With over $14 billion in assets, Crestar is one of the most respected and profitable banks in the region.

Edward and Carol Hickey endowed a scholarship in 1988 through the NVCC Educational Foundation as a memorial to their daughter, Paula Anne Hickey, who graduated from NVCC's nursing program in 1987. Paula felt that her education and training at NVCC prepared her thoroughly for a career in nursing, which she began as a medical-surgical care nurse at the National Hospital for Orthopedics and Rehabilitation in Arlington. Paula was working as a staff nurse in the Progressive Care Unit and studying for a B.S. at George Mason University at the time of her death. The Hickey's have four other children, one of whom also attended Northern Virginia Community College.

Senator Edward M. Holland and his family are significant contributors to the Arlington/Alexandria Cultural Center Campaign at Northern Virginia Community College. Senator Holland is co-chairing the Capital Campaign for the Cultural Center. He and his family have been active in Arlington County civic and business activities for several decades. Senator Holland has served with distinction since 1972. He is an attorney at law in Arlington and serves as a member of the board of directors of First Virginia Banks, Inc. and of First Virginia Bank, Falls Church.

Margaret W. Fisher's love of the arts and of higher education inspired her recent contribution to support the Arlington/Alexandria Cultural Center. She will name an art exhibit area where local artists will have the opportunity to display their works. Mrs. Fisher is a professional artist and has held exhibits of her work this past year at George Mason University, Virginia Commonwealth University, the Arlington Chamber of Commerce, the Arlington Central Library, and the Unitarian Universalist Church of Arlington, as well as a benefit show at Hospice of Northern Virginia. She has taught painting at NVCC's Annandale and Loudoun campuses and at the University of Virginia. In addition, Mrs. Fisher is a poet and published author.

Irving L. Denton, NVCC professor emeritus, recently endowed the "Helen and Irv Denton Accounting Scholarship." Denton served on NVCC's part-time and full-time faculty for 14 years after his retirement from the U.S. Air Force in 1973. Professor Denton initiated the accounting program at NVCC's Manassas campus in 1974 and moved to the Annandale campus in 1976, where he developed and presented one of the college's first televised courses before his retirement in 1986.

In retirement, he participates in various civic activities and is a long-time director of the Annandale Chamber of Commerce. His late wife, Helen N. Denton, a renowned northern Virginia CPA, taught Governmental Accounting at NVCC's Manassas and Annandale campuses, and his daughter, D'Ann Denton Henderson, is an NVCC alumna.

Michael G. Anzilotti is executive vice president and chief administrative officer of First Virginia Bank. Effective April 1, 1995, he will become president and CEO. A past chairman of the Fairfax County Chamber of Commerce, he currently serves on the boards of the Fairfax Unit of the American Cancer Society, the Arts Council of Fairfax County, the Superintendent's Business/Industry Advisory Council, and the NVCC Educational Foundation.

First Virginia Bank is the largest of the 23 member banks owned by First Virginia Banks, Inc. and is headquartered in Falls Church, VA.

J. David Robinson is Freddie Mac's vice president for Community Relations. He has been with the firm since 1985.

The Freddie Mac Foundation is dedicated to brightening the future of children, youth, and families at risk. It fulfills this mission by providing funds to organizations working to strengthen health, education, and welfare of children and youth and to provide family support services.

Angela M. Brown a business unit executive in higher education for IBM, serves on the board of the NVCC Educational Foundation.

IBM Corp. is a major contributor to the Northern Virginia Community College's annual fund. The corporation has also provided technical equipment and software as well as a significant donation for the Mary Louise Jackson Amphitheater on the Manassas campus.

Bonnie Lewis Pfoutz has made a generous gift in support of the Arlington/Alexandria Cultural Center and will name the courtyard at the center in memory of her mother, Katherine Robinson Lewis. Gardening was a favorite pasttime of Mrs. Lewis. The Katherine Robinson Lewis Memorial Courtyard will serve as a loving tribute.

The Washington Forrest Foundation has established an endowed scholarship fund in the Northern Virginia Community College Educational Foundation for south Arlington students who are pursuing vocational careers. The Washington Forrest Foundation also gave a major grant for development of the Arlington/Alexandria Cultural Center.

Established in 1968, the Washington Forrest Foundation provides financial support to nonprofit organizations for the purpose of improving and enhancing the quality of life in Arlington, and especially south Arlington.

Mr. Speaker, I know my colleagues join me in paying tribute to these fine upstanding award winners for 1995. Their contributions to the Northern Virginia Community College have helped thousands of northern Virginians to get ahead in life by providing educational opportunities and training. Their steadfast commitment is another example of their strong volunteer spirit which so enriches our country.

TRIBUTE TO DR. ELIZABETH JACKSON MACAULAY

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 3, 1995

Ms. ESHOO. Mr. Speaker, I rise today to honor Dr. Elizabeth Jackson Macaulay and her upcoming induction into the San Mateo County Women's Hall of Fame.

Dr. Elizabeth Jackson Macaulay has cared for the families of our community as a practicing pediatrician for 50 years. She studied medicine at a time when few women sought a career in the field and graduated with awards as one of only three women in her class from Long Island College of Medicine in 1936. Dr. Macaulay has always provided humanitarian, sensitive health care to a vast number of children. With her generous policies, Dr. Macaulay has made house calls and given special consideration to families who could not afford her services. In addition to her professional career, Dr. Macaulay has successfully raised seven children who fondly remember their mother's dedication to their upbringing.

Mr. Speaker, Dr. Elizabeth Jackson Macaulay is an outstanding citizen, and I commend her for her remarkable commitment and contributions to our community. I ask my colleagues to join me in saluting her as she is being inducted into the San Mateo County Women's Hall of Fame.

SENATE—*Monday, March 6, 1995*

The Senate met at 1 p.m. and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. We have a guest Chaplain today, Dr. Neal T. Jones, pastor of Columbia Baptist Church, Falls Church, VA. I had the pleasure of attending that church a number of years when my family was up here years ago. He is a wonderful pastor. We are honored to have him.

PRAYER

The guest Chaplain, the Reverend Dr. Neal T. Jones, pastor, Columbia Baptist Church, Falls Church, VA, offered the following prayer:

Let us pray:

Heavenly Father, we pray for our families. The higher we climb the rungs of national prominence, the more we lower our resistance to the diseases of family. The more our name appears in the paper, the more pressure and embarrassment follows for our children and spouse. The more time we spend helping our Nation, the less time we have to enjoy pimento cheese sandwiches or a picnic with our children. We are weary because the more who think we are important, the more we become too important to spend time with family.

Help us, then, in our homes. Let our mates be our best friends. Let our children be our closest companions. Help us talk to them about trials, pray with them each day, and play with them regularly. Let us construct our nest with great care lest we build our castles in vain.

We commit ourselves to You, Heavenly Father, because You know how to make us family.

In Jesus' name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. CRAIG. Mr. President, today the time for the two leaders has been reserved, and there will be a period for the transaction of morning business until the hour of 2 p.m., with Senators permitted to speak for up to 10 minutes each. At 2 p.m. today, the Senate will begin consideration of S. 244, the Paperwork Reduction Act.

For the information of all of my colleagues, there will be no rollcall votes during today's session.

MEASURE PLACED ON CALENDAR—SENATE JOINT RESOLUTION 28

The PRESIDING OFFICER (Mr. BENNETT). The clerk will read Senate Joint Resolution 28 for the second time.

The assistant legislative clerk read as follows:

> A joint resolution (S.J. Res. 28) to grant consent of Congress to the Northeast Interstate Dairy Compact.

Mr. CRAIG. Mr. President, I object to further proceedings at this time.

The PRESIDING OFFICER. Under rule XIV, the measure will be placed on the calendar.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 2 p.m., with Senators permitted to speak therein for up to 10 minutes each.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

BALANCED BUDGET AMENDMENT

Mr. CRAIG. Mr. President, over the last several days, the Senate has been engaged in a debate over the balanced budget amendment. It was during that period of time that those opposed to it chose to use the argument of Social Security, as somehow the amendment would throw in jeopardy that system of funding supplemental retirement for the elderly and the old age of our country, and the other benefits that go along with the system. They argued loudly that changes should be made, but most assuredly that the amendment ought to take Social Security out of the current budget process.

There were several of us who at that time argued that the Social Security receipts were now a part of the unified Federal budget. They had been since 1969. They were part of what we budget today, and every Senator on this floor, at least more than once, had voted to include those by action of voting for the passage of a budget of our Federal Government.

While it was argued loudly—and loudly ignored by the opposition—that that was part of what we do today and it was clear that that is what we do, it was part of that effort to try to bring Members of the other side aboard in support of that amendment that an offer of good faith was made as a phasing out of the use of those funds as we moved toward a balanced budget beyond the year 2002. That offer was rejected.

What I thought was interesting over the weekend and why I bring this issue once again before the Senate is that as many of our leaders are on talk shows during the weekends, I thought one that is worth mentioning appeared in an article in the Washington Times this morning which came from the White House itself. Let me read from that article. It said:

> Meanwhile, the White House conceded yesterday that Social Security trust fund surpluses currently mask the size of the deficit, undermining the argument Senate Democrats had used to defend their opposition to the balanced budget amendment. White House Chief of Staff Leon Panetta said the 1996 deficit is actually $50 billion higher than reported because the administration uses Social Security trust fund surpluses to reduce the deficit. Previous administrations used the same accounting technique.

And, of course, that is exactly what we referred to on the floor on the Senate time after time over the debate of the last several weeks when we talked about the unified budget and the need to correct that and the ability to correct that through the authorizing legislation and the implementing legislation that would occur following the passage of a balanced budget amendment.

The article went on to say:

> Six Senate Democrats who voted for the amendment in 1994 reversed themselves last week saying they feared Republicans would use the trust fund to balance the budget.

Many of us argued at that time that that argument was false and that, of course, those Democrats knew that they were now using the trust funds, like every other person serving in the U.S. Congress, to deal with the current budget because it was part of the unified budget.

> Mr. Panetta said on the ABC-TV show "This Week" that funds for the Social Security trust fund are indistinguishable from other revenues because funds flow into the same general Government account.
>
> "When you look at the Federal budget, and even when you look at Social security, the reality is that those are funds that flow into a central trust for Social Security," Mr. Panetta said. "Government basically operates that program, even though it flows into that trust. So it really ought to be considered part and parcel of the overall as we consider the budget."

That is what Mr. Panetta said. That is what many of us have attempted to argue, and yet last week, for some reason, those who chose to be in opposition to the balanced budget amendment grabbed onto this very thin thread and, in my opinion, the thread

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

broke when the White House agreed with us that current unified budgets use Social Security trust funds, and it was Republicans who had offered in good faith an alternative that would move us away from that process as we moved toward a balanced budget, and it was that offer that was rejected.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

TWO WRONGS DO NOT MAKE A RIGHT

Mr. REID. Mr. President, when I came to the floor this morning, the last thing I wanted to talk about was balanced budgets and Social Security. But my friend from Idaho, in effect, made the argument that I made 4 weeks ago when I offered the amendment on Social Security, and that argument is—I guess it could be summed up best as my mother told me on numerous occasions: Two wrongs do not make a right.

It is not right that we have, contrary to law, since 1990 raided the Social Security trust fund. It is against the law to do that. We have gone ahead and done it anyway and, as my friend from Idaho stated, we are still doing it. We should stop doing it, and that is the whole point of the debate on Social Security.

Social Security has not contributed 1 cent to the deficit, not a penny. What right do we then have to take 6.2 percent out of the check of any of the personnel around here, any of the people in the audience, 6.2 percent of their paycheck, of their money and then the employer matches it 6.2 percent. So 12.4 percent of every person's paycheck is put into a trust fund. For what? For retirement so that when they retire, they will have Social Security benefits. That is a program we have had for 60 years.

That money, contrary to what my friend from Idaho said, is not to be used for foreign aid. It is not a tax to pay for the peacekeeping mission in Haiti. It is not money to pay for farm subsidies. It is not taxes paying for B-2 bombers. It is money that is set aside not for a welfare program but a retirement program.

I hope this budget that will be reported out by the Budget Committee, by my friend from New Mexico and my friend from Nebraska, both renowned deficit hawks, people who believe in having a frugal, fiscally responsible budget, deletes Social Security, that no longer masks the deficit.

I think we should be honest about it. I hope they will do that. Otherwise, Mr. President, we are going to get into another debate on the budget resolution, because the time has come to start following the law. We do not need to phase it out. This is the first admission we had they wanted to use Social Security moneys. Remember, all the statements in the past from the House and Senate were that we are going to protect Social Security.

Some way to protect it, just take the money and spend it. We should not do that.

So, Mr. President, the debate on the balanced budget amendment was a good debate. It proved to me that we have a problem with the deficit; it proved to me that we must do something about that deficit; and, third, it proved to me we should do it without Social Security.

I am willing to stand up on this floor and walk down in the well, or from my chair, whatever we are directed to do, and cast votes to do just that.

Now, Mr. President, I came here today not to speak about this. I came to speak about another issue.

Mr. DORGAN. Mr. President, I wonder if the Senator from Nevada will yield for a question.

Mr. REID. I will be happy to yield.

MISUSE OF SOCIAL SECURITY TRUST FUNDS

Mr. DORGAN. Mr. President, I was listening to the discussion in the Chamber and heard once again an attempt to create a misimpression about the debate last week on the constitutional amendment to balance the budget. The argument has been made, "Gee, the trust funds in the Social Security system are being misused now, so I do not know what anybody was concerned about, and the notion of the trust funds being in jeopardy was all a lot of nonsense."

We heard a lot of that last week, but I also want to correct the record here, and the record is this. No matter how often someone stands and makes this argument, it is not true. If they say the balanced budget amendment has nothing to do with the Social Security trust funds, in my judgment, they are simply overlooking the facts.

The fact is that as the constitutional amendment to balance the budget was written, the Social Security trust funds would have been used to reduce the Federal budget deficit. The fact is while people were saying in public "We have no intention of using the Social Security trust funds," in private they were in effect saying, "Look, fellows, let us be honest. We cannot balance the budget without using the Social Security trust funds." They were saying one thing in public, another thing in private.

Now, I helped write the 1983 bill called the Social Security Reform Act. When we wrote it, we decided to impose payroll taxes in a way to raise more money than was necessary on a yearly basis to be put into the Social Security system to save for the future.

In 1983, in the markup, I raised the question about whether, in fact, the money would be saved and, of course, since that time it has been historically used by Republicans to offset the budget deficit balance in this country.

The proposal last week would have made that misuse of the trust funds constitutional. It would have redefined receipts and expenditures in the constitutional amendment in a manner that guarantees you will use all of those so-called forced savings in the Social Security system to offset the Federal budget deficit, the operating budget deficit of the United States.

Frankly, that is not an honest thing to do. Either we are not going to balance the Federal budget or we are going to save Social Security trust funds and balance the Federal budget. But last week, the proposal was to let us use the Social Security trust funds to balance the Federal budget.

That is bad public policy no matter how you slice it or how you describe it. It does not matter what is said in the coming days; it does not alter the facts. The facts are we are talking about $1.3 trillion in the next 12 years of dedicated taxes to be paid into a trust fund that will not be there under the circumstances of that constitutional amendment to balance the budget. Some things are worth standing and fighting for—$1.3 trillion and the future of the Social Security system, it seems to me, is worth standing and fighting for.

Mr. REID. If I could direct—the Senator from North Dakota now has the floor—a question to the Senator from North Dakota.

Mr. DORGAN. The Senator from Nevada has the floor.

Mr. REID. I would say, one of the misunderstandings also has been that we, those of us who supported the exemption of Social Security from the balanced budget amendment, there is a misapprehension that we did not want Social Security ever touched again. I ask my friend from North Dakota, was it not our intention clearly—we made statements in the Chamber and to the press—that Social Security should rise or fall on its own merits; if we had to tinker with it on the edges to make sure that it was actuarially sound, we could do this, did we not?

Mr. DORGAN. Absolutely. And the fact is there will be adjustments made in the Social Security system. To the extent they are made, they ought to be made to make that system actuarially sound.

Mr. REID. As it has been in the past.

Mr. DORGAN. I do not support misusing the trust funds to balance the Federal operating budget. That is a dishonest way of budgeting, in my judgment.

Mr. REID. We should not be using those moneys, I say to my friend, those tax moneys, 12.4 percent of a person's check, for foreign aid, is that not true?

Mr. DORGAN. Absolutely.

Mr. REID. For the military or highway construction? It should be used for retirement, is that not right?

Mr. DORGAN. Exactly. They are dedicated taxes to be put only in a trust fund to be used only for that purpose.

Mr. CONRAD. Will the Senator yield?

Mr. REID. I will be happy to yield.

Mr. CONRAD. I thank the Senator from Nevada.

RAIDING OF THE SOCIAL SECURITY TRUST FUNDS

Mr. CONRAD. I heard, as I was having lunch downstairs, the distinguished Senator from Idaho attempt to, what I can only say is rewrite history with respect to the debate last week.

Let me say, as one who was involved in those negotiations, I think the record is abundantly clear. Those who were proponents of the amendment clearly intended to raid Social Security trust funds in order to pay for other Government expenses to reduce the budget deficit. That is precisely what was going on last week. Any attempt to say that is not the case is to rewrite history.

Now, as one who was involved in that negotiation, let us review what occurred. Some have said we are raiding the trust funds now. Well, that is absolutely correct. We are raiding the trust funds now. It does not make it right. And to suggest we ought to enshrine that principle and that policy in the Constitution of the United States is dead wrong. To constitutionalize a raiding of trust funds to pay for other Government expenses I believe is a wrong principle.

Let me just say that when I was tax commissioner of the State of North Dakota, I opposed raiding trust funds to pay for Government expenses. I think it is a wrong principle. We should not be doing it at this level either.

Mr. President, the hard reality is the trust fund surpluses that we are running now are about to explode. They are about to become much bigger surpluses, and the reason for that is to get ready for the day the baby boom generation retires, when the number of people eligible is going to double in this country. But what they are going to find is the cupboard is bare. There is no money in the trust funds. There is not a nickel in the trust funds. All the money has been spent.

Mr. President, I want to go back to what occurred last week. I laid out on the 28th, on the morning of the 28th the criteria that were necessary to secure my vote. I was thought then to be a key swing vote. I laid out very clearly in the CONGRESSIONAL RECORD what the criteria were that I would apply in order to get my vote.

During those negotiations, Republican leaders came to me, and they said we understand your concern about taking Social Security trust fund money and using it for Government expenses. We will agree to stop using Social Security trust fund surpluses by the year 2012.

Let me repeat that. After saying for weeks that they had no intention of taking Social Security trust fund money, last week on Tuesday, the 28th, Republican leaders told me they would agree to stop using the trust fund surpluses by the year 2012. That is about $2 trillion of Social Security trust fund surpluses that they were saying they were going to use.

When I said, no, that certainly was not something I could agree to, they came back to me and said we will stop using Social Security trust fund surpluses by the year 2008. Again, this is after saying for weeks they had no intention of using any of those moneys. But they came to me and said we will stop using the Social Security trust fund surpluses by the year 2008.

What could be more clear as to what their intention was? What could be more clear? They said to me they intended to be using the money, first until 2012 and then until 2008. It was only then, after I had objected to that, that they talked about a phasing out and we discussed a formula for phasing out of the Social Security trust fund money. But even that proposal, even that suggestion was flawed because when they put in writing what they had in mind, it was a statute. I told them on that night: I am not a lawyer. I am not a constitutional expert. But if you tell me that this will protect the funds over time, I will go to legal experts and ask them for their opinions.

The next day, they sent to me a draft of a formula that we had discussed the night before. But again it was in statute form, which had never been my idea. That was their idea.

Mr. REID. Will my friend from North Dakota yield?

Mr. CONRAD. If I can just complete the thought?

Then I got the document the next morning. I got the document the next morning. It was their draft of how they said they could protect Social Security funds. I met with legal experts from the Budget Committee, from the Congressional Research Service, and they said this is not going to protect anything because a constitutional amendment supersedes any statute.

So when we hear the other side here today say they had a plan to phase out using Social Security trust funds, it was not an effective plan. It was not a plan that had legal force and effect —at least according to the constitutional experts that I talked to. They told me very clearly that what they were offering was eyewash. It made it look like they were going to do something or were willing to do something, but it would not have legal force and effect.

That is, I believe, the review of what happened last week. For the other side to now say they had no intention of using Social Security funds—please, that is just not the case. It is clearly not the case. They had every intention of using $1.3 trillion of Social Security trust fund surpluses by the year 2008. It would have been about $2 trillion if we had taken their first offer to stop using the funds by 2012. And to say their final offer was to phase out the use of the funds overlooks the point that they were suggesting that a statute would provide that protection when the legal experts I consulted said in fact that would have no legal force and effect.

I want to thank my colleague. I just felt the need to set the record straight here, at least with respect to my belief of what happened last week.

THE BALANCED BUDGET AMENDMENT

Mr. REID. Mr. President, I wanted to say to my friend, he was present, is it not true, one day last week prior to the vote when we were in an office in the Dirksen Building and we called in a constitutional law expert to go over once again the fact that section 7 of the underlying constitutional amendment said that all revenues must be included? The report language and everything else pointed to the fact that that includes Social Security revenues. Then we asked him, going over the argument again, would a speech, a letter, or a statute in effect do away with section 7 of the constitutional amendment?

It is true, is it not, that the scholar said it would not? Once a constitutional amendment passed, Social Security would be there, it would be used for balancing the budget, unless you again amended the Constitution? Is that not true?

Mr. CONRAD. The Senator is exactly right. We met with a legal expert, a constitutional law expert from the Congressional Research Service, who told us that the statute that had been proposed by the other side to protect Social Security over time, phasing out the using of Social Security surplus funds by the year 2012, would not work.

I had been advised earlier in the day by a budget expert from the Budget Committee itself, a constitutional law expert from the Budget Committee itself, that it would not work. We were advised later on that day that, in fact, that was the case.

THE BALANCED BUDGET AMENDMENT

Mr. HOLLINGS. Mr. President, if the Senator will yield for a couple of minutes, I thank the Senator from Nevada for his leadership and particularly both Senators from North Dakota for their leadership on this issue.

We are talking about truth in budgeting. I know the distinguished Presiding Officer believes in the truth. And the truth is, that when Republicans point fingers and talk in terms of a flip-flop, they should examine their own records and realize that many on there side who previously voted to protect Social Security have now flip-flopped to voting against it.

The Record will show that the Senator from South Carolina voted for practically the same language in voting for the constitutional amendment in 1993. As I stated long before the vote, at that particular time I had not carefully focused on the details of the

Simon amendment. I was told: FRITZ, this is the same balanced budget amendment to the Constitution. It is not going anywhere. They talked about protecting Social Security, and I thought, frankly, it did.

When I saw the House of Representatives pass this legislation for the first time this year, I began to study in detail whether or not the language complied with the 1990 Hollings-Heinz law, section 13301 of the Budget Enforcement Act, that we struggled to put on the books.

Why the struggle? Because I have been down this road before. I remember Arthur Burns, who was then Director of the Federal Reserve back in the 1970's, talked the need for a unified budget. I went along with the unified budget in 1983 because there were not any surpluses. That was the problem, the dilemma that the distinguished Senator from North Dakota is pointing out. We were trying to make up, with a tax on payrolls, not only the short-term deficit in Social Security, but also to protect the fiscal soundness of Social Security into the middle of the next century.

But then, during the late 1980's, a funny thing happened on the way to the forum—the Federal deficit exploded. The Social Security surpluses were growing as a result of the increased payroll tax. But to hide our fiscal profligacy Congress, Republican and Democrat, used those funds to mask the true size of the problem. Rather than changing course and taking steps to reduce our spending habits, we were content to move the deficit from the Federal Government over to the Social Security trust.

That bothered Senator Heinz, the late Senator from Pennsylvania, and this Senator. Senator Heinz was not on the Budget Committee, but I was. So I brought it up and on July 10, 1990, we had, by a vote of 20 to 1—where the distinguished Senator from Texas [Mr. GRAMM] was the lone vote against. Thereafter, by a vote of 98 to 2 on the floor of this body, we passed my amendment and saw it signed into law by President Bush on November 5, 1990.

So comes this particular amendment. I checked closely, and I read and reread it. As I said, we went to better constitutional experts than myself, but everybody knows that you cannot amend the Constitution by statute. As President Washington said in his Farewell Address:

> If, in the opinion of the people, the distribution or modification under the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way in which the constitution designates—But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.

So I knew it. I had been into this court before. I said, "Wait a minute. When it says that all receipts and all outlays will be included in this deficit, that means that all Social Security receipts and all Social Security outlays will be included in calculating the deficit, thereby repealing section 13301."

Now that got my attention. If I am flipping and flopping, at least, as Adlai Stevenson said years ago, it is not a question of whether I am conservative or I am liberal. The question is whether I am headed in the right direction. I am headed in the direction of complying with the law. I will yield, because I did not intend to speak until I had my lunch, but I was disturbed by this nonsense that I heard a little while ago.

I will ask our distinguished friends, at least in The Washington Post, to report that five Democratic Senators are ready, willing, and able to vote for a constitutional amendment to balance the budget if they protect Social Security. The majority leader said they are going to protect it. I heard him yesterday on "Face the Nation". He said, "We are going to protect Social Security." All I am saying is that they need to put it in black and white. They need to put it in writing for the American people.

We wrote a formal letter so there would be no misunderstanding. We said that you can pass a constitutional amendment with 70 votes if you only protect Social Security.

I honor the representations made by the distinguished Senator from Nevada and the distinguished Senator from North Dakota today on the floor about the need for truth in budgeting. The five votes were there that could have easily passed the amendment. They acted like the offer was never made. It was formally made.

I am still prepared, and make the same offer, as one of the particular five. You could get one vote and pass it right now. It is 1:30 now. You could do it at 1:35 p.m., in the next 5 minutes; anytime. But that is not the position they take. The Record is clear. If they wanted to pass it, they could have passed it in a flash.

I thank the distinguished Senator.

The PRESIDING OFFICER. Who seeks recognition?

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. REID. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. DORGAN. Yes.

PRIVILEGE OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that during the morning business of the Senate, Larry Ferderber, a congressional fellow, be allowed privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. If I may further ask unanimous consent, Mr. President. I can see the time is running. I know Senator BRYAN is here to give a statement and Senator BINGAMAN is here to give a statement. I wanted to give a statement on something other than Social Security and the balanced budget.

I am wondering if we could have the permission of the Chair, and I ask unanimous consent to extend morning business also for Senator BRYAN, Senator BINGAMAN, myself, and Senator DORGAN until 2:15.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. Regular order will be enforced with Senators allowed to speak for up to 10 minutes of morning business. Under the order, morning business is allowed for up to 10 minutes.

Mr. DORGAN. Mr. President, let me add a final comment about this, and to say that in the coming days, if and when Senators come to the floor to try to revise history or describe what happened in a manner that does not comport with what I think happened last week, others of us will come to the floor to correct it. We will not let stand assertions by some who say "Gee, the only reason we lost this vote on the constitutional amendment to balance the budget was because some people did not understand what we were trying to do. We had no intention of using the Social Security trust funds."

Well, in private conversations, we were told, "Look, fellows; in this language, we all understand you cannot balance the budget without using the Social Security trust funds."

I wish we had heard that in public, as well, and maybe the American people would understand more clearly what was behind the political circumstances last week.

In fact, a lot of this was just politics, as all of us know. Twenty-four hours after the vote, the Republican National Committee already had their advertisements on the air, paid for and running. They knew what they were doing. The slash and burn attack of politics is fine. They can do that. They have the money. But it is all about politics. The fact is, we have a serious budget deficit problem in this country. We ought to fix it. We ought not raid the Social Security trust fund to do it.

When Abraham Lincoln was debating Stephen Douglas, he was apparently exasperated. He could not get Douglas to understand a point he was trying to make. Finally, he stopped and looked at him. "Tell me, sir. How many legs does a cow have?" Douglas said, "Four." "Well, sir. Now, if you called the tail a leg, how many legs would the cow have?" Douglas said, "Five." Lincoln said, "That is where you are wrong. Just because you call a tail a leg does not at all make it a leg."

The folks come here and say they want a balanced budget at the end of 7 years, and at the end of the 7 years, they have taken the trust fund to balance the budget. They do not have a balanced budget. They might call it that. But they have raided the Social Security trust funds to do it. I do not know what arithmetic books they studied to give them this sort of advice on how to achieve these things.

The people who spoke the loudest about changing the American Constitution on the deficit are the same ones who, through polling, have devised this Contract With America that would also have us enact a very big tax cut right now. They would cut three-quarters of a trillion dollars from revenue with a big tax cut because that is popular. So they say, "Let us have a big tax cut. Let us have a defense increase, one of the biggest areas of public spending. Let us increase defense spending. Let us cut taxes. And let us change the Constitution to require a balanced budget." And while they change the Constitution, they would define revenues and expenditures in a way that would raid the Social Security trust funds to balance the budget.

Some of us say, "No. It does not make any sense." They say: "It does not make sense to you? Then we attack you back home with paid ads." That is fine. They have a right to do that in this country. But the American people deserve to know the truth, as well.

There is an old virtue in this country about saving. One of the sobering things we did in the 1980's was to decide in 1983 that we would save for the future in the Social Security trust funds. I was part of that. I helped write it. Unfortunately, in these circumstances, in recent years, and also, if we passed a constitutional amendment enshrining in that language forever in the future, we would have misspent the Social Security trust funds. At least, I am not willing to be a part of that. Others can describe it the way they see it, or the way they want to. But I would simply leave it at this: We were told in private, by the same people who said in public, "We have no intention of using the Social Security trust funds," we were told in private, "Look, fellows. The only way we can balance the budget is by using the Social Security trust funds."

If I told the folks in my hometown that the only way you can balance the budget is by raiding the Social Security trust funds, they would then say you need to take a new course in budget balancing. Of course, you need to balance the Federal budget. You can, and you should. But at the same time, you can, should, and must save the money you promised the workers in this country and the retired people in this country that you would have in the Social Security trust funds.

You promised them you would do that. You owe it to them to do that. It is not a case where you do one or the other. You do both—balance the Federal budget and be honest with the trust funds. And, if someone tries to do it differently, tries to shortcut by saying let us use the trust funds to balance the budget, I think a lot of people would appreciate somebody who says, "No, it does not make any sense."

This is not about politics. It is about principle. If you are not willing to stand for principle from time to time, then you should not be here. I am not complaining about the political pressure. They can attack forever. But when they come to the floor to revise the story of what happened last week, then I intend to be on the floor, and I hope the Senator from Nevada and others will be prepared to correct the RECORD every single day they do it. The American people need to understand what happened. And we have an obligation to tell them the truth about what went on in the Senate last week.

We did not start this. I heard this discussion and felt the need to come over and respond to it. I prefer that we not have these discussions. I prefer instead that we decide that what happened last week happened last week. Let us try to work this week on what benefits this country.

But to forever, today, every day, and every way, bring this up is just politics. It is just: "How do we win and how do we force the others to lose?" I know I am representing myself in an assertive way because of what I just heard. I say that the Presiding Officer at this point is someone who I know believes the less politics the better. We are all elected through the political system, and I am proud of the system. I support the system.

John F. Kennedy used to say, "Every mother hopes their child can grow up to be President as long as they do not get involved in politics." But we must make public decisions and it is a necessary system. Party politics, it seems to me, ought to play a lesser role than public principle on important public issues.

I hope we can put all that aside and decide to march in unison toward the goals of the people. They want a better economy and more opportunity in the future. Both political parties have an obligation to join hands and see if we can find ways to try to bring that about and give to the American people an economy that is growing and provides more opportunity.

Mr. President, I yield the floor.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada [Mr. BRYAN] is recognized.

NUCLEAR WASTE DEBATE AT LOS ALAMOS

Mr. BRYAN. Mr. President, I want to focus my colleagues' attention on a subject that has consumed a good bit of my energy now for more than a decade. It is the subject of a high-level nuclear waste repository and an ill-conceived proposal by the nuclear power industry that Yucca Mountain in Nevada is the ideal place to do that.

I want to further call to my colleagues' attention the front page article in the New York Times yesterday which, in my judgment, says it all. I have had it blown up here. "Scientists Fear Atomic Explosion of Buried Waste, Debate by Researchers, Argument Strikes New Blow Against a Proposal for a Repository in Nevada."

That does pretty well sum it up, because for the past 13 years, there has been an unremitting, relentless effort to locate a high-level nuclear waste dump at Yucca Mountain, assuring us in Nevada that it is perfectly safe, nothing to worry about. This article reveals that, since last summer, Department of Energy scientists at Los Alamos National Laboratory, one of the most distinguished laboratories in America, have been studying a premise advanced by one of their colleagues that nuclear waste stored in a geologic repository in volcanic tuff risks "going critical." That is nuclear jargon—"going critical." To those of us who are laymen, it means an explosion, a detonation, in which radioactive material would be scattered for miles and miles.

Needless to say, the consequences of a spontaneous nuclear explosion 90 miles from the city of Las Vegas would have a devastating impact. I must say, Mr. President, I continue to be shocked and outraged that the Department of Energy and the nuclear power industry continue to force the acceptance of a dump on Nevada when it appears that their own scientists cannot reach consensus on the most fundamental safety questions related to nuclear waste.

As the New York Times article points out, "even if scientists can debunk the new argument that buried waste at Yucca Mountain might eventually explode, the existence of so serious a dispute so late in the planning process might cripple the plan or even kill it."

Nevadans are no strangers to the uncertainties of science when it comes to nuclear matters. I must say, the distinguished occupant of the chair and the great State that he represents are no strangers to this issue either. It has been 41 years since the first atmospheric detonation occurred at the Nevada test site outside of Las Vegas. Nevadans, Utahans, and Americans alike were assured there was absolutely no risk, no safety hazard, nothing to be concerned about. Let us in the scientific community reassure you that you have nothing to be concerned about.

Mr. President, I have used this opportunity on the floor to share my own reaction. I was initially in the eighth grade at that time. Our science teachers had us go out and, using a scientific calculation after seeing that flash that was embellished in the early morning dawn and feeling the seismic impact, you could actually ascertain the distance from ground zero to where that flash was being received. We were pretty excited about it. I was 13 at the time. By the time we were in high school, it had become such a part of the southern Nevada culture that businesses, wishing to demonstrate their own patriotism, were renaming business establishments atomic this and atomic that. Some may recall there was a fashion in America, an atomic hair-do. We who were students of Las Vegas High School were so enthralled by the experience that the cover of our annual, the Wildcat Echo, had the nuclear mushroom cloud on it. We thought we were part of something that was very exciting and important to the country and that it contained no risk for us.

The constituents of the distinguished occupant of the chair were told this as well. We know, decades later, that the people who were downwind—most of them, fortunately for us in Nevada, were not in Nevada; unfortunately for our sister State to the east, they were in Utah. They suffered the genetic effects, the cancer and the other serious illnesses because we were all told, and as good Americans we believed, there is absolutely no risk to health or safety.

Well, fast forward, Mr. President. We are now told that burying high-level nuclear waste is absolutely safe. As I have indicated, there is a relentless drumbeat of pressure and publicity, coordinated, if you will, between the Department of Energy, which on this issue simply serves as a surrogate of a nuclear power industry.

But why are the public officials in Nevada opposed to this, because is it really safe? Is it just a matter of science and nothing to be concerned about?

Mr. President, if I am appearing a bit cynical, it is because that has, sadly, been my experience. My senior colleague and I, Senator REID, have lived in southern Nevada. This has been part of our experience from the time of our youth until the time we entered public life, and now as we have service together in the U.S. Senate.

Last Thursday, before this story broke, the Senate Energy Committee held a hearing. May I say to the new chairman, the distinguished chairman from Alaska, it was a very fair hearing. We in Nevada had a chance to express our view, and the Secretary of Energy and the civilian radioactive waste manager, Mr. Dreyfus, was there, and those in the nuclear power industry were there. This was last Thursday.

Let me put this in context. In this debate in the scientific community in which there are three teams comprised of 10 scientists—that is 30 scientists—they have been unable to rebut the assertion that there is genuine fear that an explosion can occur in a geologic repository. This discussion has been going on for months and months and months.

I knew nothing about this discussion. Like Senator REID, I have meetings at least monthly, probably more frequently, asking, "What is the latest?" "What is happening?" "What are you going to do?" My point is that as recently as this past Thursday, the nuclear power industry and its advocates repeatedly assert that there is no scientific or engineering basis holding back progress at Yucca Mountain, that all of the opposition to Yucca Mountain is purely political.

Bunk. These people that have formulated this premise, which has been unable to be rebutted, are not people that have been hired by Senator REID, myself, the Governor of Nevada, or antinuclear activists. These are people within the Department of Energy's own distinguished laboratory at Los Alamos. Not a word of this was shared with us. We learned it, as did millions of Americans, by becoming aware of the story yesterday in the New York Times and in subsequent news accounts that have followed.

For 13 years, blindly they have proceeded on the premise that it has to be a deep geological burial and Yucca Mountain is the only place it has to be. I must say that some public officials from my own State came to the hearing last Thursday to say, look, maybe we ought to cop out, sell out for a few bucks and see what we can get—the so-called benefits argument.

That is to their disgrace, Mr. President. There can be no compromise with the health and safety of the citizens of our State. And I must say that the nuclear power industry, in its cynicism, continues to advocate "just negotiate for benefits; just negotiate for benefits."

Well, the newest proposal now is that we have to have an interim storage facility; not a permanent, but an interim is what we need. And, you guessed it, the interim storage proposal, well, that should go to Nevada, too. And the premise for that is because Yucca Mountain is going to be a permanent repository, let us just have them all next door. That will require a statutory legislative change to the Nuclear Waste Policy Act. And, I must say, in light of this concern here, I do not know how any fair-minded Member of the U.S. Senate cannot take a look and say, "Maybe we ought to take a little time out and take a pulse on this."

Even before this revelation, the testimony before the committee on Thursday was that there is about a 50-50 chance of the permanent repository at Yucca Mountain ever being licensed. As I say, this most recent revelation should put that into further context.

Senator REID and I for some time, joined by our government and district political officeholders, Democrat and Republican alike, in our State, have called for an independent review, an independent review. We have been joined by the GAO, the Nuclear Waste Technical Review Board and many, many others in the community.

Secretary O'Leary has simply refused our request. We waste billions on the program—proponents of the dump and opponents of the dump agree on that—more than $4 billion. And now, Mr. President, it is time to insist upon this independent review.

I do not expect Secretary O'Leary will change her position, but it will be my purpose to introduce an independent review process by legislation later this week.

I thank my distinguished colleague, the senior Senator from Nevada.

Mr. President, I ask unanimous consent that the text of the Sunday New York Times article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Mar. 5, 1995]

SCIENTISTS FEAR ATOMIC EXPLOSION OF BURIED WASTE; DEBATE BY RESEARCHERS

(By William J. Broad)

Debate has broken out among Federal scientists over whether the planned underground dump for the nation's high-level atomic wastes in Nevada might erupt in a nuclear explosion, scattering radioactivity to the winds or into ground water or both.

The debate, set off by scientists at the Los Alamos National Laboratory in New Mexico, is the latest blow to the planned repository deep below Yucca Mountain in the desert about 100 miles northwest of Las Vegas. Opponents of nuclear power and Nevada officials have long assailed the project as ill-conceived and ill-managed, and it has encountered numerous delays.

Even if scientists can debunk the new argument that buried waste at Yucca Mountain might eventually explode, the existence of so serious a dispute so late in the planning process might cripple the plan or even kill it. Planning for the repository began eight years ago and studies of its feasibility have so far cost more than $1.7 billion. The Federal Government wants to open the repository in 2010 as a permanent solution to the problem of disposing of wastes from nuclear power plants and from the production of nuclear warheads.

The possibility that buried wastes might detonate in a nuclear explosion was raised privately last year by Dr. Charles D. Bowman and Dr. Francesco Venneri, both physicists at Los Alamos, the birthplace of the atomic bomb. In response, lab managers formed three teams with a total of 30 scientsts to investigate the idea and, if possible, disprove it.

While uncovering many problems with the thesis, the teams were unable to lay it to rest, laboratory officials say. So the lab is now making the dispute public in scientific papers and is considering having it aired at large scientific meetings as well.

"If we knew how to put the stake through it's heart, we'd do it," Dr. John C. Browne, head of energy research at the lab, said in an interview. Going further, some panel members said they felt that the new thesis had been refuted.

Dr. Bowman, the idea's chief advocate, said the internal debate had changed some elements of the thesis but over all had left it honed and strenghened.

"We think there's a generic problem with putting fissile materials underground," he said in an interview, referring to substances that fission, or split part, in a nuclear chain reaction.

The few scientists outside the laboratory who have become aware of the debate say the explosion thesis is provocative and probably wrong. Nonetheless, they say, the stakes are too high to sweep the idea under the rug.

"It is important to see whether it has anything to do with the situation that might arise in an actual repository," said Dr. Richard L. Garwin, a prominent physicist at the International Business Machines Corporation who has long advised the Federal Government on nuclear arms and their dismantlement.

Highly radioactive wastes are the main orphan of the nuclear era, having found no permanent home over the decades. In theory, if the Yucca plan wins approval after a careful study of the area's geology, a labyrinth of bunkers carved beneath the mountain would hold thousands of steel canisters for 10,000 years, until radioactive decay rendered the wastes less hazardous.

The spent fuel from nuclear reactors is permeated with plutonium, which is a main ingredient used in making nuclear bombs.

Since plutonium 239 has a half-life of 24,360 years, significant amounts of it would remain active for more than 50,000 years, long after the steel canisters that once held the radioactive material had dissolved. (A radioactive substance's half-life is the period required for the disintegration of half of its atoms.)

With the end of the cold war, the Nevada site has increasingly been studied for a possible added role as a repository for the plutonium from scrapped nuclear arms. In January 1994, the National Academy of Sciences, which advises the Federal Government, suggested that the plutonium be mixed with highly radioactive wastes and buried, or burned in reactors and then buried. In either case, some plutonium would end up going underground.

On Wednesday, President Clinton, trying to win a permanent global ban on the spread of nuclear arms, ordered substantial cuts in American stockpiles of weapons plutonium but did not say what would become of the deadly substance. Officials said it would remain in temporary storage above ground until a decision was made on its ultimate disposition.

The scientist leading the charge against the burial of fissile materials, Dr. Bowman, has an alternative plan in which particle accelerators would, by a kind of nuclear alchemy, transmute radioactive wastes, as well as plutonium, into more benign elements before they were buried. Dr. Bowman is the head of the planning effort for the proposed project.

Although that gives him a personal stake in the explosion argument, experts say that such situations are common in science and that ideas must be judged on their merits.

Last summer and fall, Dr. Bowman began talking of the dangers of underground storage and was urged to set them down in an internal Los Alamos report, which he did by November. The crux of his argument was that serious dangers would arise thousands of years from now after the steel canisters dissolved and plutonium slowly began to disperse into surrounding rock.

The rocky material, he said, could aid the start of a chain reaction by slowing down speeding subatomic particles known as neutrons that fly out of plutonium atoms undergoing spontaneous decay. Neutrons of a certain speed can act like bullets to split atoms in two in a burst of nuclear energy.

Under some circumstances, Dr. Bowman theorized, the slowing of the neutrons could make an individual pile of plutonium explode in a nuclear blast equal in force to about a thousand tons of high explosive, setting off other blasts throughout the vast repository.

The team assembled to review the thesis concluded that it held serious flaws, said Dr. Browne of Los Alamos. First, dispersal of plutonium, if it happened at all, would take much longer than envisioned—so long that the plutonium would have mostly decayed.

Second, the review team felt that if a plutonium pile did begin to heat up, the reaction would automatically slow down and stop as the heat made the pile expand.

Third, the team felt that any reaction would be too slow to cause an explosion and that, at worst, a pile would simply heat up like a reactor.

"The burden of proof rests on Charlie," said Dr. Browne, referring to Dr. Bowman. "He's hypothesized some scenarios that, if correct, are clearly very important. In spite of the fact that there is a sizable amount of opposition to Charlie's paper, our feeling is that the subject is so important that it deserves additional peer review outside the laboratory, since we could not resolve the disagreement internally."

Dr. Bowman says the explosion thesis is alive and well. On Friday he finished an 11-page draft paper thick with graphs and equations that lays it out in new detail.

The team criticisms, he said in an interview, repeatedly fall flat. For instance, dispersal could happen relatively quickly, especially if water percolated through the dump. Even if slow, plutonium 239 decays into uranium 235, which harbors the same explosive risks but requires millions of years to decay into less dangerous elements.

So too with the other criticisms, he says. Water could aid the slowing of neutrons and make sure the reaction went forward rather than automatically slowing down. And a pile could explode, he insists, while conceding that the blast from a single one might have a force of a few hundred tons of high explosive rather than the thousand or more originally envisioned.

On the other hand, his new paper says plutonium in amounts as small as one kilogram, or 2.2 pounds, could be dangerous.

"We got some helpful criticism and that, combined with additional work, has made our thesis even stronger," he said.

The most basic solution, Dr. Bowman said, would be removing all fissionable material from nuclear waste in a process known as reprocessing or by transmuting it in his proposed accelerator. Other possible steps would include making steel canisters smaller and spreading them out over larger areas in underground galleries—expensive steps in a project already expected to cost $15 billion or more.

A different precaution, Dr. Bowman said, would be to abandon the Yucca site, where the volcanic ground is relatively soluble. Instead, the deep repository might be dug in granite, where migration of materials would be slower and more difficult.

Cathy Roche, vice president for communications of the Nuclear Energy Institute, a nuclear industry trade group based in Washington, said the debate suggested the need for more study of the Yucca site, not less.

"We're concerned that this not be used as an excuse by the opponents of waste solutions to stop the scientific analysis of the mountain," she said.

Dr. Daniel A. Dreyfus, the head of civilian radioactive waste management at the Energy Department in Washington, which runs Los Alamos and the Yucca Mountain studies, said he was keeping an open mind on whether Dr. Bowman's thesis might trigger an overhaul of the project.

"The characterization work has any number of uncertainties," he said in an interview. "Criticality is clearly a major consideration when you put a whole bunch of high-level waste anywhere. Whether Yucca Mountain is the right site, I don't know.

"Maybe there's no good solution," he added. "But walking away from the problem is no solution either. We better keep trying, because we already made the decision to have the wastes in the first place."

Mr. BRYAN. Mr. President, I yield back any time I may have remaining.

(Mr. GORTON assumed the chair.)

Mr. REID. Mr. President, I extend my appreciation publicly, as I have done privately on a number of occasions, for the leadership of RICHARD BRYAN on this issue. And I say RICHARD BRYAN, because his leadership on this issue started long before he became a Member of the U.S. Senate. During his tenure as Governor of the State of Nevada, he was a leader in recognizing the fallacy of attempting to geologically bury nuclear waste next to the No. 1 destination resort of the world—Las Vegas.

Mr. President, I, like my friend, the junior Senator from Nevada, as a little boy used to watch the flashes in the morning sky. I lived about 60 miles from Las Vegas, 60 miles farther away from the explosion than did Senator BRYAN. We would get up—it would be dark—a bunch of little kids, and we would see that flash in the sky. Sometimes in Searchlight, where I was born and raised, we would hear the explosion, because by the time it got to Searchlight, a lot of times the sound would bounce clear over Searchlight.

But, as I told many people, we were the lucky ones, because the winds did not blow toward Searchlight. The winds blew toward St. George, they blew toward Enterprise in Utah, and those young men and women who watched the night sky explode got diseases and some died. I have talked to parents, I have talked to children, sons and daughters. And, of course, there are the stories that have been written about sheep, people herding sheep. Herders would get up in the morning and the wool would just come off their animals, even though they were still alive.

So, Mr. President, this is a serious matter, and I know everyone recognizes it is a serious matter.

But for those of us who have lived with this since 1982, to see this headline in the New York Times yesterday says it all. "Scientists Fear Atomic

Explosion of Buried Waste"; just like on Senator BRYAN's chart, his visual aid, on the front page of the New York Times.

And what troubles me so much is this has been going on for months and months. It is easy for the people in charge of the program, when somebody says, "Oh, don't worry about it." They come and testify. They write papers. But when there is evidence by a scientific community that says an explosion could occur, we do not hear about it.

How many congressional hearings have we had since this took place? Several. How many public gatherings have we had where Department of Energy officials have come forward? Numerous.

The Secretary of Energy, I say to my friend from Nevada, has recently said that this is a priority with her to get nuclear waste in Nevada. I wonder if there would be a sting of conscience that would say, "I wonder if we should be worried about this atomic explosion."

And, Mr. President, it is not as if it has not happened before. In the former Soviet Union, they had an explosion from nuclear waste.

The article is frightening, to say the least. "Debate has broken out"—I am reading directly from this article—"among Federal scientists whether the planned underground dump for the Nation's high-level atomic wastes in Nevada might erupt in a nuclear explosion, scattering radioactivity to the winds or ground water or both."

This is not sensationalism that the Senators from Nevada has created. This is a newspaper article and it comes from the scientific community.

We have been called everything—"unpatriotic" was one of the better terms we have been called—because we have stood in the road to try to stop this thing from happening.

"The debate, set off by scientists at the Los Alamos National Laboratory in New Mexico"— one of the finest scientific institutions in the world—"is the latest blow to the planned repository."

I wish I believed that.

It says, "Even if scientists can debunk the new argument that buried waste at Yucca Mountain might eventually explode, the existence of so serious a dispute so late in the planning process might cripple the plan or even kill it."

I hope so, because, as I say, Mr. President, rather than do as they do with all the so-called good news that comes in relation to the repository, they hid this. This has been hidden. And they did it by saying, "We do not believe it is possible." And here we are going to have 30 scientists prove this wrong. They have tried to prove that it is wrong for almost 10 months. They cannot. They admit this. The scientists, the three teams, were not told to go prove how it could happen, I say to my friend from Nevada, they were asked to prove how it could not happen, and they could not do it.

> The possibility that buried wastes might detonate in a nuclear explosion was raised privately last year by Dr. Charles D. Bowman and Dr. Francesco Venneri, both physicists at Los Alamos * * * the teams were unable to lay it to rest * * *.

Dr. Bowman, among other things, said, "We think there's a generic problem with putting fissile materials underground." That is an understatement, reading the rest of this stuff.

> Highly radioactive wastes are the main orphan of the nuclear era, having found no permanent home over the decades.
>
> The spent fuel from nuclear reactors is permeated with plutonium, which is a main ingredient used in making nuclear bombs.

"Since plutonium 239," listen to this, "has a half-life of 24,360 years, significant amounts of it would remain active," to say the least.

Should we not stop and just relax a little bit and not be driven by the nuclear power industry? Sure, they have invested a lot of money in nuclear waste disposal in Nevada. That is the only place they have cast their lot.

Should we not stop and let common sense dictate proper policy? We are not talking here about storing wheat. We are not talking about storing tires that may burn for a little while. We are talking about storing nuclear waste that will explode like an atomic bomb that occurred at Nagasaki and Hiroshima. And hundreds of times they have been exploded in the deserts of Nevada.

I have heard many times people say, "Well, what is the alternative?" There are a lot of alternatives. The No. 1 alternative has been created, again, by scientists. During this period of 13 years they have been trying to figure out a way we can transport nuclear waste, and scientists came up with an idea that might work pretty well. That is a dry cast storage container.

But why transport it? If it is safe to haul in a truck, why do we not leave it where it is, and then it is really safe. Now, this is not something that HARRY REID, who has a very inadequate scientific background, came up with. Scientists came up with this. And they have said leave it where it is.

It is really time to step back, think, and study this issue. It is time to do some scientific investigation, to look at other technologies, to look at other sites. It is time to drop the efforts to amend the Nuclear Waste Policy Act, to drop efforts to speed the process up. It is premature to change our strategy, to accelerate our strategy, to think about moving nuclear waste anywhere else.

In this newspaper article one of the scientists said, I think you better give up on Nevada and start looking someplace else. Mr. President, I do not want to create this problem for somebody else. We have to know what we are going to do before we start talking about burying geological waste. One scientist here said we better look to granite formation because the water will not come through and water could help accelerate the process that could lead to an explosion.

There are some who say that there is another crisis that exists. Our cooling ponds are filled. I say, leave them filled. Move the spent fuel rods out and put them into dry cast storage containers at the reactor sites. We have time. It is perfectly safe to store the waste where it is.

Why the rush? The rush is because the nuclear waste power industry is fixated on this. It is like an obsession. They do not want to be proven that they may have been wrong and spent billions of dollars of the ratepayers money wrongly. That is what it amounts to.

Mr. President, I am happy this came out, even if it was through the newspaper. I think it would have been more appropriate had people from the Department of Energy at the hearing that was held the other day testified that we have another problem that has come up: Scientists fear atomic explosion of buried waste.

I do not know how the newspaper got this information. There is nothing in the article to indicate how or where they got it. I do not know if they got it from the Department of Energy. However they got it, this is not an appropriate way to do business when we are dealing with the most poisonous substance known to man, namely, plutonium.

It gives me pause about the Department of Energy. I have called publicly for doing away with the Department of Energy. This certainly does not distract from my initial goal. I think it adds to it. I think the functions of the Department of Energy should be spread out among other agencies, some to the Department of Defense, some to Interior, some to the EPA.

I am very disappointed in my Government, especially the Department of Energy. I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Texas.

Mrs. HUTCHISON. I thank the Chair.

(The remarks of Mrs. HUTCHISON pertaining to the introduction of S. 498 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

DR. MIKE CAUDLE FINDS FOREIGN SOIL, COMMON GROUND

Mr. HELMS. Mr. President, all of us think and talk a lot about priorities these days, and that it is good. And ever so often we read or hear about a special person with special priorities and principles. When we do, a sense of admiration wells up within us—and, in my own case, a sense of regret that I haven't done more than I have in terms of what my father used to call the Lord's work.

I have reached the age, Mr. President, when far younger men and women than I are doing wonderful and remarkable things. Many of them I have met; some are like members of the family. One in particular came to mind the other night when I was reading the 1994 annual report of the Knoxville Medical Center, of the University of Tennessee.

But I am moving ahead of my story. Many years ago I met a young man named Bob Caudle whom I found impressive. I was then one of the senior officers of Capitol Broadcasting Co. in Raleigh which owned and operated a television station, a radio station, two statewide radio networks and an assortment of other related enterprises.

I persuaded Bob Caudle to join Capitol Broadcasting's team. He served well until he retired and then agreed to become a part of the Helms Senate family. We don't have a staff, Mr. President—not in Washington nor in Raleigh nor in Hickory. We're a family that is praised by even my strongest critics for the splendid constituent service they render—not only to North Carolinians but to citizens all over the country who contact us seeking assistance.

Bob and Jackie Caudle had two little boys when Bob began work at the television station. Later a precious little baby girl, Lisa, rounded out the Caudle family.

Lisa Caudle is today a beautiful young woman with one of the most beautiful voices I've ever heard. Both of the Caudle boys long ago became men, both became highly respected physicians. Dr. Bob Caudle, Jr., is in practice in Raleigh. Dr. Michael Caudle, hereinafter referred to as Mike, is now chairman of the University of Tennessee's Medical Center's department of obstetrics and gynecology.

I mentioned the 1994 annual report of the University of Tennessee's Medical Center of Knoxville. The entire issue is devoted to the subject of compassion. The foreword discloses to all of us the definition of compassion. Note these eloquent words, Mr. President:

> Deep inside ourselves, there is a place where compassion knows no limits; where love and concern for our fellow human beings become omnipotent. But for many, limited courage and determination leave this wellspring untapped. For others, this wellspring is where they find their life's purpose.
>
> Such is the case for the physicians, staff and volunteers features in these pages. The Medical Center was their starting point, but their compassion has led them beyond the institution's walls. They have gone where others are weak, vulnerable, lonely and broken. Their journeys have changed them forever.

Mr. President, there follows immediately in that annual report a full-page color picture of Dr. Mike Caudle, striding along a walkway at the medical center, stethoscope in the right pocket of his white physician's jacket. And then, on the next page, begins an in-depth tribute to that distinguished physician who, it seems, was a polite little boy visiting his dad at the Raleigh television station—surely it could be no longer than a few weeks ago.

No, Mr. President, it was awhile ago, and I want Senators, and others who peruse the CONGRESSIONAL RECORD, to have this tribute, headed "Foreign Soil, Common Ground" available for reading.

Therefore, Mr. President, I ask unanimous consent that the aforementioned article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

In August of 1961, 10-year-old Michael Caudle sat mesmerized by the family television set on which he saw the raising of the Berlin Wall. He wondered what life would be like for those people who were literally being sealed off from the rest of the world. He later learned that "the wall" was only part of something called the Iron Curtain, a symbol of Soviet domination throughout Eastern Europe. Thirty-two years later in 1993, Caudle's childhood wonderings were realized when he visited Romania on a medical mission trip. Now a physician serving as chairman of University Medical Center's Department of Obstetrics and Gynecology, Dr. Caudle was persuaded to make the journey after listening to a speech given at his church by a Romanian Parliament member. Touched by this description of the many needs in Romania, he decided to serve as a link to the country, spending a week teaching at the medical school in Timisoara and performing obstetrical and gynecological procedures at rural clinics.

Although Dr. Caudle had always wanted to visit Eastern Europe, he found his first few minutes there a bit unsettling. "When I got off the airplane, they bodily searched me. They have these military people with AK-47s and they X-ray your luggage," he explained. "They asked what I was doing there, and I told them I was working for the Romanian doctors who were waiting for me outside. They looked outside and slammed my luggage down and left. When I asked my Romanian colleagues why the guards suddenly left me alone, they said, 'Every gun in that airport needs an OB/GYN doctor for his wife. They aren't going to mess with you,'".

As Dr. Caudle began his work, he soon discovered that many women were desperate for sterilization, a procedure that was previously illegal in Romania. "I told the doctors 'I don't think it's a good idea for women to be pregnant all the time. What you should be doing is a sterilization procedure called tubal ligation,'" Dr. Caudle recalled. "I explained it to some patients with the help of one of their doctors, and several volunteered to have it done. The word spread quickly once the women realized what this could mean for them. This was a big step toward getting at least a few people out of a cycle that has kept women constantly pregnant, anemic and sick."

This cycle was only part of a "reign of terror" begun under Romania's ruthless dictator, Nicolae Ceausescu, who ruled Romania from 1965 until 1989. Wanting to limit individuality and thoughts of freedom, Ceausescu banned education of the humanities and sciences. His rules grew even more despotic when he banned contraceptives and demanded that women bear at least five children.

Ceausescu's restrictions and demands bankrupted the country and alienated its people. Romania's discontent led to a revolution in December 1989 when a revolt occurred in the city of Timisoara over the deportation of an ethnic Hungarian pastor. The uprising resulted in the deaths of hundreds when Ceausescu ordered his army to fire on the crowd. Protests began in many cities the day after the massacre, and on December 22, the dictator was forced to leave the country. He was soon captured, however, and executed after a brief trial.

In the aftermath of the revolution, Romania is still in a state of social and economic despair. Every aspect of life is reduced to a minimal level, particularly health care. In this setting, Dr. Caudle found himself playing the multiple roles of physician, technician, engineer and teacher.

"You can see the value of people like me spending time there and providing technical instruction. They are finally getting some equipment, but it has just been collecting dust because they don't know how to use it. The key is education. I could go over there and see patients for the rest of my life, but teaching through the university multiplies the effort," Dr. Caudle said.

With the aid of a translator, Dr. Caudle gave several lectures to the medical students. "They are very bright. It is quite difficult to get into medical school there," he explained. "They came to class with lists of questions they had spent hours preparing. 'How do you do this in America?' or 'How do you do that?' They were very well read, but they have old textbooks."

This teaching experience, however, was a two-way street, particularly in the rural settings. Dr. Caudle had to learn to function without the technology he has grown used to in the States. He also learned that maturity and a proven track record are advantageous for medical missions like this one.

"They challenge your authority on everything because they are so well read. They have their own reasons for doing things, and they argue with you," Dr. Caudle remembered. "What I have learned is that there are some things we do in the States that I'm not sure are right anymore. We do them as a habit and they do it differently. Now I can't decide which way is right."

The questions went beyond obstetrical and gynecological issues as Dr. Caudle's first visit came to a close. He realized that the time spent in Romania had influenced him in a profound way. "Dr. Dragulescu, the rector of the medical school in Timisoara, was thanking me for making sacrifices to come to his country and I said, 'Your people died in the streets, your children died. What is it for me to come here for a week compared to what you've been through?' I went over there to help, but what happened was that I found out what was really important to me. It reorients your priorities and how you spend your time," he explained.

Although he could justifiably feel overwhelmed at the enormity of the problems which exist there, Dr. Caudle feels that he and others can make a difference. "Romania is like much of the rest of the world. Life there is filled with chronic misery. It's the slow drip of the economy that drags Romanians down, and that's why Americans need to go over there to help," he urged. "Beyond what Americans can accomplish, it's such a privilege to meet so many of these people who are to Romanians what our revolutionary patriots are to us."

This emotional experience was translated into action as Dr. Caudle returned home and began a search to legitimize these types of visits. That search led him to discover an organization on The University of Tennessee's Knoxville campus called the Alliance of Universities for Democracy. Founded in 1990, the group is an alliance of American universities and more than 100 Eastern European members. The Alliance promotes democracy and encourages Eastern European Universities to develop closer relationships with their communities.

Beyond legitimizing medical missions, the Alliance also serves as a way for equipment to be shared. "There are companies in the States that dispose of medical equipment in landfills. Some of that equipment is 20 years ahead of what they have in Romania. These companies are willing to send it over there, and the Alliance gives these kinds of efforts a name—a way to do this sort of thing," Dr. Caudle explained.

Dr. Caudle completed his second mission trip in June 1994. He also arranged this past October for Rector Dragulescu's first visit to the United States. Dragulescu, a cardiologist, spent time comparing medical technologies with University Medical Center's faculty, as well as formulating an overall picture of health care in this country.

Although the rector's visit lasted only two weeks, one of the graduates of a Romanian medical school will be doing a five-year OB/GYN residency at University Medical Center. Totally unrelated to Dr. Caudle's visit, medical student Cristian Andronic applied for the residency program here. Because Dr. Caudle was impressed by and familiar with the medical schools in Romania, he granted Andronic an interview.

"I told him that if he wanted to find a way to get here, we would take a look at him. I'll be darned if he didn't scrape up the money to come, which was close to a year's salary for someone over there. He flew to Chicago and caught a bus to Knoxville," Dr. Caudle said. "He'll be here for several years. My hope is that he will then return to Romania to practice and teach."

These types of exchanges, both short and long term, provide a more realistic view of the United States than the idealistic ones held by many Romanians. "They love Americans, particularly in western Romania. You see little American flags in the backs of their cars. It's an ideal we can't possibly live up to, but it's also a great opportunity for us," Dr. Caudle commented.

"It's a huge obligation to be an American in Romania," he added. "They have read all about George Washington and the founding of our country on principles of freedom and 'one nation under God' and they take it all very seriously."

It seems to have all come full circle. He was a post-war boy interested in and bothered by events more than half a world away. He grew up and pursued a career seemingly unrelated to these interests. But his career is precisely what led him to discover this other world. The ideals upon which his country was founded are now held sacred by these faraway people who are no longer strangers.

"My relationship with my friends in Romania has brought all these things about the Iron Curtain, my faith and the reality of these people into one form. You know, they are more like us than they are different. They have the same basic hopes, needs and desires," Dr. Caudle concluded.

"Their courage is tremendous and they have taught me a lot. I feel like I'm helping to fight for their freedom because they still don't have it yet—not in the sense of a workable economy, which is necessary to stay free. It would be easy to slowly drift right back into some kind of communistic or totalitarian regime. They have to continue to fight for freedom—it's an elusive thing."

WAS CONGRESS IRRESPONSIBILE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Mr. President, up to now the incredibly enormous Federal debt has been like the weather—everybody has talked about it but hardly anybody has undertaken the responsibility of doing anything about it. The balanced budget amendment failed to pass the Senate—by one vote! There'll be another vote later this or next year.

A lot of politicians talk a good game—when they are back home—about bringing Federal deficits and the Federal debt under control. But many of them regularly vote in support of bloated spending bills that roll through the Senate, and the American people took note of that on November 8.

As of Friday, March 3, at the close of business, the Federal debt stood — down to the penny — at exactly $4,840,472,285,419.16. This debt, remember, was run up by the Congress of the United States.

The Founding Fathers decreed that the big-spending bureaucrats in the executive branch of the U.S. Government must never be able to spend even a dime unless and until authorized and appropriated by the U.S. Congress.

The U.S. Constitution is quite specific about that, as every schoolboy is supposed to know.

Do not be misled by politicians who declare that the Federal debt was run up by some previous President or another, depending on party affiliation. Sometimes you hear false claims that Ronald Reagan ran it up; sometimes they play hit-and-run with George Bush.

These buck-passing declarations are false, as I said earlier, because the Congress of the United States is the culprit. The Senate and the House of Representatives are the big spenders.

Mr. President, most citizens cannot conceive of a billion of anything, let alone a trillion. It may provide a bit of perspective to bear in mind that a billion seconds ago, Mr. President, the Cuban missile crisis was in progress. A billion minutes ago, the crucifixion of Jesus Christ had occurred not long before.

Which sort of puts it in perspective, does it not, that Congress has run up this incredible Federal debt totaling 4,808 of this billions—of dollars. In other words, the Federal debt, as I said earlier, stood this morning at 4 trillion, 840 billion, 472 million, 285 thousand, 419 dollars, and 16 cents. It will be even greater at closing time today.

DEATH OF HOWARD W. HUNTER, PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

Mr. CRAIG. Mr. President, I join with the family, friends and over 9 million members of the Church of Jesus Christ of Latter-Day Saints in grieving the death of Howard W. Hunter, president of the Church of Jesus Christ of Latter-Day Saints.

President Hunter was born November 14, 1907, in Boise, ID, the son of John William and Nellie Marie Rasmussen Hunter. He had been President of the Latter-Day Saints church since June 5, 1994, when he succeeded another Idahoan, the late Ezra Taft Benson. He was known as a gentle, kind, and humble man. He will be remembered for his compassionate nature, which blended well with his thoughtful, orderly leadership style. Howard W. Hunter was a soft-spoken man who stressed love, forgiveness, and attendance at the temples of the church.

During his long life, Howard W. Hunter was noted for his hard work and strength of character.

President Hunter began working early in life in Boise, selling newspapers on street corners, delivering telegrams, and later working in a newspaper office. He excelled scholastically and was active in the Scouting Program, becoming the second Boy Scout in Idaho to attain the rank of Eagle Scout. He became interested in music as a young boy, won a marimba in a high school contest and became proficient with the saxophone, clarinet, violin, and drums. As a young man he organized a dance band and in 1927 the band, called Hunter's Croonaders, went on a 5-month Asian cruise abroad the S.S. *President Jackson*. He gave up a promising musical profession in favor of marriage, family life, church service, and his law career.

Howard W. Hunter enjoyed a successful career as a corporate attorney and served as a director of a number corporations, including Beneficial Life Insurance Co., First Security Corp., and New World Archaeological Foundation.

President Howard H. Hunter spent a life of service to others and will be missed by all those who came to know him and were the recipient of his many years of dedicated service.

I would ask all Senators to join with me in a heartfelt thank you to Howard W. Hunter and an expression of comfort to his surviving wife, Inis Bernice

Egan, his sons John J. Hunter and Richard A. Hunter, and his 18 grandchildren, and 23 great-grandchildren.

MATT URBAN

Mr. LEVIN. Mr. President, a friend of mine named Matt Urban passed away over the weekend, leaving a legacy of superlative achievement in a military career that will enlighten generations to come about what it means to be a soldier, a patriot and a hero.

I would like to share my memory of Matt Urban and a few of the things that impressed us in Michigan about this citizen and civic leader, this family man who was, I believe, the most decorated soldier in the history of the U.S. military.

He will be remembered in our hearts and in our history books for his staggering courage and fearless valor in the face of the grave danger that comes with war. Duty to country and loyalty to the men with whom he fought side-by-side drove him on the battlefields of victorious campaigns across North Africa, Sicily, Normandy, and Belgium in World War II.

Matt's military career was legendary. Indeed, his exploits on the battlefield are larger than life. He earned 29 combat medals, including seven Purple Hearts, the Medal of Honor, the American Campaign Medal, and French Croix de Guerre with a Silver gilt Star. Each and every medal tells a story of a man who seemed to show no fear, a man determined to carry on the fight for freedom for his countrymen.

His final Medal of Honor, awarded in a White House ceremony in 1980, marked an act of heroism that had come to characterize his feats in combat. He rescued his men, who were caught in a hail of German gunfire, by climbing aboard an empty tank and training its cannon on the enemy.

We all pray the battles Matt Urban survived are the likes of which no soldier will ever see again.

These battles were waged at a great cost, but they also gained great and lasting rewards for our Nation and our allies. Matt Urban was a disciple for democracy, fighting hard battles in the trenches of Europe so that we and our grandchildren may live free from tyranny and prosper.

Matt Urban's greatness was not just on the battlefield. In Monroe and later in Holland, MI he served as a valued employee in their recreation departments working to make the lives of children from those towns brighter and happier. He capped his career as a city employee in Holland managing the civic center, an ideal vocation for one of our State's leading citizens.

While Matt Urban's body is laid to rest, his memory and impact on our lives lingers on. As a member of a screening committee I assembled to nominate Michigan's finest young men and women for appointments at our military academies, he served as the vibrant link connecting yesterday's soldier to tomorrow's generation of new leadership. The tradition of duty, honor, and country and the motivation to do right that he inspired in the lives he touched continues today in the spirits of the young men and women he helped usher into new military careers.

THE BALANCED BUDGET AMENDMENT—A HISTORICAL PERSPECTIVE

Mr. BYRD. Mr. President, on Tuesday last, February 28, 1995, the Senate was supposed to vote on the final disposition of the constitutional amendment to balance the budget. It may be of interest to my colleagues to know that exactly 200 hundred years ago, on February 28, 1795, the Senate was meeting at Congress Hall in Philadelphia, then the nation's capital. Our information is incomplete about the details of that day's session because, as was its practice at that time, the Senate met behind closed doors and kept only the briefest of minutes as required by the Constitution. What we do know, based on news accounts derived from members who were willing to talk to local journalists, is that Senators were most concerned that day about paying the government's debts and raising further income to meet growing expenses.

The Senate debated and approved, by a vote of 21–1, "An act making further provision for the support of Public Credit, and for the Redemption of the Public Debt." The Senate rejected four proposed amendments, including an amendment offered by Senator Aaron Burr to require repayment, during a 12–20-year period, of the principal on a subscription loan to fund the foreign debt. As ultimately enacted, the bill required that "the principal of the said loan may be reimbursed at any time, at the pleasure of the United States." This suggested the Senate's majority recognized that the government might not be in a position to repay its loans within Burr's 12–20-year period. Lenders to the government would have to be satisfied with repayment at some indefinite time in the future.

Related to this concern about managing for government expenditures, the Senate also approved committee amendments to a bill to require the Comptroller of the Treasury to order the submission of accounts and vouchers by all individuals who had received public funds, and to file suit against individuals who had failed to comply, and ordered that the bill pass to a third reading.

Concerned with revenue sources, the Senate also received from the House and referred to a committee a bill that would impose duties on snuff and refined sugar.

Mr. President, I ask unanimous consent that the proceedings of February 28, 1795, as shown in the "Annals of Congress," along with the "Act for the Support of Public Credit and for the Redemption of the Public Debt," which was passed on March 3, 1795, be printed in the RECORD.

There being no objection, the historical material was ordered to be printed in the RECORD, as follows:

[From the "Annals of Congress"—Senate Proceedings, February 28, 1795]

SATURDAY, FEBRUARY 28.

* * * * *

On motion, to insert the following section after the 5th, to wit:

"*Be it further enacted*, That a Loan be opened at the Treasury to the full amount of the outstanding and unbarred new emission bills of credit, the sums which shall be subscribed to be payable in the principal and interest of such bills, computing the interest thereon to the first day of January next, and that the subscriber or subscribers shall be entitled to receive therefor a certificate for the amount of the principal sum so subscribed and paid, bearing an interest of five per centum per annum from the first day of January next, payable quarter yearly at the Treasury, and redeemable at the pleasure of the United States, by the payment of the sum specified therein, and containing a stipulation that the United States will redeem the same before the expiration of thirty years from the passing of this act, and also to another certificate for the amount of the interest on the sum so subscribed, computing the same to the first of January next, bearing an interest of three per centum per annum from the first day of January next, payable quarter yearly at the Treasury, and redeemable at the pleasure of the United States, by the payment of the sum specified therein:"

It passed in the negative.

On motion, by Mr. Burr, to add the following proviso to the 11th section, to wit:

"*Provided, nevertheless*, That, whenever the six per cent stock shall be under par, it shall be the duty of the Commissioners of the Sinking Fund to lay out, in the purchase of the said stock, the money applicable to the payment of the said two per cent. of principal, or so much thereof as can be laid out in the purchase thereof, at a rate under par:"

It passed in the negative.

On motion, by Mr. Burr, to expunge the last section of the bill, to wit:

"SEC. 20. *And be it further enacted*, That so much of the act laying duties upon carriages for the conveyance of persons, and of the act laying duties on licenses for selling wines and foreign distilled spirituous liquors by retail, and of the act laying certain duties upon snuff and refined sugar, and of the act laying duties on property sold at auction, as limits the duration of the said several acts, be, and the same are hereby, repealed; and that all the said several acts be, and the same are hereby, continued in force until the first day of March, one thousand eight hundred and one:"

It passed in the negative.

On the question, Shall this bill pass as amended? it was determined in the affirmative—Yeas 21, nays 1, as follows:

YEAS.—Messrs. Bradford, Bradley, Brown, Burr, Cabot, Ellsworth, Foster, Frelinghuysen, Gunn, Hawkins, Izard, King, Langdon, Livermore, Martin, Mitchell, Robinson, Ross, Rutherfurd, Strong, and Vining.

Mr. Jackson voted in the negative.

Resolved, That this bill pass with the amendment.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to alter and amend the act entitled 'An act laying certain duties upon snuff and refined sugar;'" in which they desire the concurrence of the Senate.

The Senate resumed the second reading of the bill, send from the House of Representatives for concurrence, entitled, "An act for the more effectual recovery of debts due from individuals to the United States;" and having agreed to sundry amendments reported by the committee,

Ordered, That this bill pass to the third reading, as amended.

Mr. FRELINGHUYSEN, from the committee to whom was recommitted the bill, sent from the House of Representatives for concurrence, entitled "An act for continuing and regulating the Military Establishment of the United States, and for repealing sundry acts heretofore passed on that subject," reported further amendments, which were considered and agreed to, and the bill amended accordingly.

Ordered, That this bill pass to the third reading.

The bill, sent from the House of Representatives for concurrence, entitled "An act to alter and amend the act entitled 'An act laying certain duties upon snuff and refined sugar,'" was read the first time, and, by unanimous consent, the rule was dispensed with, and the bill was read the second time, and referred to Messrs. CABOT, ELLSWORTH, and IZARD, to consider and report thereon to the Senate.

AN ACT FOR THE SUPPORT OF PUBLIC CREDIT, AND FOR THE REDEMPTION OF THE PUBLIC DEBT, MARCH 3, 1795

Be it enacted, &c., That it shall be lawful for the Commissioners of the Sinking Fund, and they are hereby empowered, with the approbation of the President of the United States, to borrow, or cause to be borrowed, from time to time, such sums, in anticipation of the revenue appropriated, not exceeding, in one year, one million of dollars, to be reimbursed within a year from the time of each loan, as may be necessary for the payment of the interest which shall annually accrue on the public debt; and for the payment of the interest on any such temporary loan, which shall not exceed six per centum per annum, so much of the proceeds of the duties on goods, wares, and merchandise imported, on the tonnage of ships or vessels, and upon spirits distilled within the United States, and stills, as may be necessary, shall be, and are hereby, appropriated.

SEC. 2. *And be it further enacted*, That a loan be opened at the Treasury to the full amount of the present foreign debt, to continue open until the last day of December, in the year one thousand seven hundred and ninety-six, and that the sums which may be subscribed to the said loan shall be payable and receivable, by way of exchange, in equal sums of the principal of the said foreign debt; and that any sum so subscribed and paid shall bear an interest equal to the rate of interest, which is now payable on the principal of such part of the foreign debt as shall be paid or exchanged therefor, together with an addition of one-half per centum per annum; the said interest to commence on the first day of January next succeeding the time of each subscription, and to be paid quarterly, at the same periods at which interest is now payable and paid upon the domestic funded debt: *Provided*, That the principal of the said loan may be reimbursed at any time, at the pleasure of the United States.

SEC. 3. *And be it further enacted*, That credits to the respective subscribers for the sums by them respectively subscribed to the said loan, shall be entered and given on the books of the Treasury in like manner as for the present domestic funded debt; and that certificates therefor, of a tenor conformable with the provisions of this act, signed by the Register of the Treasury, shall issue to the several subscribers, and that the said credits, or stock standing in the names of the said subscribers, respectively, shall be transferable, in like manner, and by the like ways and means, as are provided by the seventh section of the act aforesaid, entitled "An act making provision for the debt of the United States," touching the credits or stock therein mentioned; and that the interest to be paid upon the stock which shall be constituted by virtue of the said loan shall be paid at the offices or places where the credits for the same shall from time to time stand or be, subject to the like conditions and restrictions as are prescribed in and by the eighth section of the act last aforesaid.

SEC. 4. *And be it further enacted*, That the interest and principal of all loans authorized by this act shall be made payable at the Treasury of the United States only, so far as relates to the payment of the principal and interest of the domestic debt.

SEC. 5. *And be it further enacted*, That so much of the duties on goods, wares, and merchandise imported, on the tonnage of ships or vessels, and upon spirits distilled within the United States, and stills, heretofore appropriated for the interest of the foreign debt, as may be liberated or set free, by subscriptions to the said loan, together with such further sums of the proceeds of the said duties as may be necessary, shall be, and they are hereby, pledged and appropriated, for the payment of the interest which shall be payable upon the sums subscribed to the said loan, and shall continue so pledged and appropriated until the principal of the said loan shall be fully reimbursed and redeemed: *Provided, always*, That nothing herein contained shall be construed to alter, change, or in any manner affect the provisions heretofore made concerning the said foreign debt, according to contract, either during the pendency of the said loan or after the closing thereof; but every thing shall proceed, touching the said debt, and every part thereof, in the same manner as if this act had never been passed, except as to such holders thereof as may subscribe to the said loan, and from the time of the commencement thereof in each case, that is, when interest on any sum subscribed shall begin to accrue.

SEC. 6. *And be it further enacted*, That the several and respective duties laid and contained in and by the act, entitled "An act laying additional duties on goods, wares, and merchandise imported into the United States," passed the seventh day of June, one thousand seven hundred and ninety-four, shall, together with the other duties heretofore charged with the payment of interest on the public debt, continue to be levied, collected, and paid, until the whole of the capital or principal of the present debt of the United States, and future loans which may be made pursuant to law, for the exchange, reimbursement, or redemption thereof, or of any part thereof, shall be reimbursed or redeemed, and shall be, and hereby are, pledged and appropriated for the payment of interest upon the said debt and loans, until the same shall be so reimbursed or redeemed.

SEC. 7. *And be it further enacted*, That the reservation made by the fourth section of the aforesaid act, entitled "An act making provision for the reduction of the public debt," be annulled, and, in lieu thereof, that so much of the duties on goods, wares, and merchandise imported, on the tonnage of ships or vessels, and upon spirits distilled within the United States, and stills, as may be necessary, be, and the same hereby are, substituted, pledged, and appropriated for satisfying the purpose of the said reservation.

SEC. 8. *And be it further enacted*, That the following appropriations, in addition to those heretofore made be made, to the fund constituted by the seventh section of the act, entitled "An act supplementary to the act making provision for the debt of the United States," passed the eighth day of May, one thousand seven hundred and ninety-two, to be hereafter denominated "The Sinking Fund," to wit: First. So much of the proceeds of the duties on goods, wares, and merchandise imported, on the tonnage of ships or vessels, and on spirits distilled within the United States, and stills, as, together with the moneys which now constitute the said fund, and shall accrue to it, by virtue of the provisions hereinbefore made, and by the interest upon each installment, or part of principal which shall be reimbursed, will be sufficient, yearly and every year, commencing the first day of January next, to reimburse and pay so much as may rightfully be reimbursed and paid, of the principal of that part of the debt or stock which, on the said first day of January next, shall bear an interest of six per centum per annum, redeemable by payments on account both of principal and interest, not exceeding, in one year, eight per centum, excluding that which shall stand to the credit of the Commissioners of the Sinking Fund, and that which shall stand to the credit of certain States, in consequence of the balances reported in their favor by the Commissioners for settling accounts between the United States and individual States: Secondly. The dividends which shall be from time to time declared on so much of the stock of the Bank of the United States as belongs to the United States, (deducting thereout such sums as will be requisite to pay interest on any part remaining unpaid of the loan of two million of dollars had of the Bank of the United States, pursuant to the eleventh section of the act by which the said Bank is incorporated:) Thirdly. So much of the duties on goods, wares, and merchandise imported, on the tonnage of ships or vessels, and on spirits distilled within the United States, and stills, as, with the said dividends, after such deduction, will be sufficient, yearly and every year, to pay the remaining installments of the principal of the said loan as they shall become due, and as, together with any moneys which, by virtue of provisions in former acts, and hereinbefore made, shall, on the first day of January, in the year one thousand eight hundred and two, belong to the said Sinking Fund, not otherwise specially appropriated; and with the interest on each installment, or part of principal, which shall from time to time be reimbursed or paid of that part of the debt or stock, which, on the first day of January, in the year one thousand eight hundred and one, shall begin to bear an interest of six per centum per annum, will be sufficient, yearly and every year, commencing on the first day of January, in the year one thousand eight hundred and two, to reimburse and pay so much as may rightfully be reimbursed and paid of the said principal of the said debt or stock which shall so begin to bear an interest of six per centum per annum, on the said first day of January, in the year one thousand eight hundred and one, excluding that which shall stand to the credit of the Commissioners of the Sinking Fund and that which shall stand to the credit of certain States, as aforesaid: Fourthly. The net proceeds of the sales of lands belonging, or which shall hereafter belong to the United States, in the Western Territory thereof: Fifthly. All moneys which shall be received into the Treasury on account of debts due to the United States by reason of any matter prior to their present Constitution: And, lastly, All surplusses of the revenues of the United States which shall remain, at the end of any calendar year, beyond the amount of the appropriations charged upon the said revenues, and which, during the session of Congress next thereafter, shall not be otherwise specially appropriated or reserved by law.

SEC. 9. *And be it further enacted,* That as well the moneys which shall accrue to the said Sinking Fund, by virtue of the provisions of this act, as those which shall have accrued to the same by virtue of the provisions of any former act or acts, shall be under the direction and management of the Commissioners of the Sinking Fund, or the officers designated in and by the second section of the act, entitled "An act making provision for the reduction of the Public Debt," passed the twelfth day of August, one thousand seven hundred and ninety, and their successors in office; and shall be and continue appropriated to the said fund until the whole of the present debt of the United States, foreign and domestic, funded and unfunded, including future loans, which may be made for reimbursing or redeeming any instalments or parts of principal of the said debt, shall be reimbursed and redeemed; and shall be, and are hereby declared to be, vested in the said Commissioners, in trust, to be applied according to the provisions of the aforesaid act of the eighth day of May, in the year one thousand seven hundred and ninety-two, and of this act, to the reimbursement and redemption of the said debt, including the loans aforesaid, until the same shall be fully reimbursed and redeemed. And the faith of the United States is hereby pledged that the moneys or funds aforesaid shall inviolably remain and be appropriated and vested, as aforesaid, to be applied to the said reimbursement and redemption, in manner aforesaid, until the same shall be fully and completely effected.

SEC. 10. *And be it further enacted,* That all reimbursements of the capital or principal of the Public Debt, foreign and domestic, shall be made under the superintendence of the Commissioners of the Sinking Fund, who are hereby empowered and required, if necessary, with the approbation of the President of the United States, as any instalments or parts of the said capital or principal become due, to borrow, on the credit of the United States, the sums requisite for the payment of the said instalments or parts of principle: *Provided,* That any loan which may be made to the said Commissioners shall be liable to reimbursement at the pleasure of the United States; and that the rate of interest thereupon shall not exceed six per centum per annum; and, for greater caution, it is hereby declared that it shall be deemed a good execution of the said power to borrow, for the said Commissioners, with the approbation of the President, to cause to be constituted certificates of stock, signed by the Register of the Treasury, for the sums to be respectively borrowed, bearing an interest of six per centum per annum, and redeemable at the pleasure of the United States; and to cause the said certificates of stock to be sold in the market of the United States, or elsewhere: *Provided,* That no such stock be sold under par. And for the payment of interest on any sum or sums which may be so borrowed, either by direct loans or by the sale of certificates of stock, the interest on the sum or sums which shall be reimbursed by the proceeds thereof, (except that upon the funded stock, bearing and to bear an interest of six per centum, redeemable by payments, not exceeding in one year eight per centum on account both of principal and interest,) and so much of the duties on goods, wares, and merchandise imported, on the tonnage of ships or vessels, and upon spirits distilled within the United States, and upon stills, as may be necessary, shall be, and hereby are, pledged and appropriated.

SEC. 11. *And be it further enacted,* That it shall be the duty of the Commissioners of the Sinking Fund to cause to be applied and paid, out of the said fund, yearly and every year, at the Treasury of the United States, the several and respective sums following, to wit: First—Such sum and sums as, according to the right for that purpose reserved, may rightfully be paid for, and towards the reimbursement or redemption of such Debt or stock of the United States, as, on the first day of January next, shall bear an interest of six per centum per annum, redeemable by payments, not exceeding in one year eight per centum, on account both of principal and interest, excluding that standing to the credit of the Commissioners of the Sinking Fund, and that standing to the credit of certain States, as aforesaid, commencing the said reimbursement or redemption on the said first day of January next. Secondly—Such sum and sums as, according to the conditions of the aforesaid Loan, had of the Bank of the United States, shall be henceforth payable towards the reimbursement thereof, as the same shall respectively accrue. Thirdly—Such sum and sums, as according to the right for that purpose reserved, may rightfully be paid for and towards the reimbursement or redemption of such Debt or stock of the United States as, on the first day of January, in the year one thousand eight hundred and one, shall begin to bear an interest of six per centum per annum, redeemable by payments, not exceeding in one year eight per centum, on account both of principal and interest, excluding that standing to the credit of the Commissioners of the Sinking Fund, and that standing to the credit of certain States, as aforesaid, commencing the said reimbursement or redemption, on the first day of January, in the year one thousand eight hundred and two; and also to cause to be applied all such surplus of the said fund as may at any time exist, after satisfying the purposes aforesaid, towards the further and final redemption of the present Debt of the United States, foreign and domestic, funded and unfunded, including loans for the reimbursement thereof, by payment or purchase, until the said Debt shall be completely reimbursed or redeemed.

SEC. 12. *Provided always, and be it further enacted,* That nothing in this act shall be construed to vest in the Commissioners of the Sinking Fund a right to pay, in the purchase or discharge of the unfunded Domestic Debt of the United States, a higher rate than the market price or value of the Funded Debt of the United States: *And, provided also,* That if, after all the debts and loans aforesaid, now due, and that shall arise under this act, excepting the said Debt or stock bearing an interest of three per cent., shall be fully paid and discharged, any part of the principal of the said Debt or stock bearing an interest of three per cent., as aforesaid, shall be unredeemed, the Government shall have liberty, if they think proper, to make other and different appropriations of the said funds.

SEC. 13. *And be it further enacted,* That all priorities heretofore established in the appropriations by law, for the interest on the Debt of the United States, as between the different parts of the said Debt, shall, after the year one thousand seven hundred and ninety-six, cease, with regard to all creditors of the United States who do not, before the expiration of the said period, signify, in writing, to the Comptroller of the Treasury, their dissent therefrom; and that thenceforth, with the exception only of the debts of such creditors who shall so signify their dissent, the funds or revenues charged with the said appropriations shall, together, constitute a common or consolidated fund, chargeable indiscriminately, and without priority, with the payment of the said interest.

SEC. 14. *And be it further enacted,* That all certificates, commonly called Loan Office certificates, final settlements, and indents of interest, which, at the time of passing this act, shall be outstanding, shall on or before the first day of January, in the year one thousand seven hundred and ninety-seven, be presented at the office of the Auditor of the Treasury of the United States, for the purpose of being exchanged for other certificates of equivalent value and tenor, or, at the option of the holders thereof, respectively, to be registered at the said office, and returned; in which case it shall be the duty of the said Auditor to cause some durable mark or marks to be set on each certificate, which shall ascertain and fix its identity, and whether genuine, or counterfeit, or forged; and every of the said certificates which shall not be presented at the said office within the said time, shall be forever after barred or precluded from settlement of allowance.

SEC. 15. *And be it further enacted,* That if any transfer of stock standing to the credit of a State shall be made pursuant to the act, entitled "An act authorizing the transfer of the stock standing to the credit of certain States," passed the second day of January, in this present year, after the last day of December next, the same shall be upon condition, that it shall be lawful to reimburse, at a subsequent period of reimbursement, so much of the principal of the stock so transferred as will make the reimbursement thereof equal in proportion and degree to that of the same stock transferred previous to the said day.

SEC. 16. *And be it further enacted,* That, in regard to any sum which shall have remained unexpended upon any appropriation other than for the payment of interest on the Funded Debt; for the payment of interest upon, and reimbursement, according to contract, of any loan or loans made on account of the United States, for the purposes of the Sinking Fund, or for a purpose in respect to which a longer duration is specially assigned by law, for more than two years after the expiration of the calendar year in which the act of appropriation shall have been passed, such appropriation shall be deemed to have ceased and been determined; and the sum so unexpended shall be carried to an account on the books of the Treasury, to be denominated "The Surplus Fund." But no appropriation shall be deemed to have so ceased and been determined until after the year one thousand seven hundred and ninety-five, unless it shall appear to the Secretary of the Treasury, that the object thereof hath been fully satisfied; in which case it shall be lawful for him to cause to be carried the unexpended residue thereof to the said account of "the Surplus Fund."

SEC. 17. *And be it further enacted*, That the Department of the Treasury, according to the respective duties of the several officers thereof, shall establish such forms and rules of proceeding for and touching the execution of this act as shall be conformable with the provisions thereof.

SEC. 18. *And be it further enacted*, That all the restrictions and regulations heretofore established by law for regulating the execution of the duties enjoined upon the Commissioners of the Sinking Fund shall apply to and be in as full force for the execution of the analogous duties enjoined by this act as if they were herein particularly repeated and re-enacted: and a particular account of all sales of stock, or of loans by them made, shall be laid before Congress within fourteen days after their meeting next after the making of any such loan or sale of stock.

SEC. 19. *And be it further enacted*, That in every case in which power is given by this act to make a loan, it shall be lawful for such loan to be made of the Bank of the United States, although the same may exceed the sum of fifty thousand dollars.

SEC. 20. *And be it further enacted*, That so much of the act laying duties upon carriages for the conveyance of persons, and of the act laying duties on licenses for selling wines and foreign distilled spirituous liquors by retail, and of the act laying certain duties upon snuff and refined sugar, and of the act laying duties on property sold at auction, as limits the duration of the said several acts, be, and the same is hereby repealed; and that all the said several acts be, and the same are hereby, continued in force until the first day of March, one thousand eight hundred and one.

Approved, March 3, 1795.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is now closed.

PAPERWORK REDUCTION ACT OF 1995

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 244, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 244) to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 244

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Paperwork Reduction Act of 1995".

SEC. 2. COORDINATION OF FEDERAL INFORMATION POLICY.

Chapter 35 of title 44, United States Code, is amended to read as follows:

"CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

"Sec.
"3501. Purposes.
"3502. Definitions.
"3503. Office of Information and Regulatory Affairs.
"3504. Authority and functions of Director.
"3505. Assignment of tasks and deadlines.
"3506. Federal agency responsibilities.
"3507. Public information collection activities; submission to Director; approval and delegation.
"3508. Determination of necessity for information; hearing.
"3509. Designation of central collection agency.
"3510. Cooperation of agencies in making information available.
"3511. Establishment and operation of Government Information Locator Service.
"3512. Public protection.
"3513. Director review of agency activities; reporting; agency response.
"3514. Responsiveness to Congress.
"3515. Administrative powers.
"3516. Rules and regulations.
"3517. Consultation with other agencies and the public.
"3518. Effect on existing laws and regulations.
"3519. Access to information.
"3520. Authorization of appropriations.

"§ 3501. Purposes

"The purposes of this chapter are to—

"(1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;

"(2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;

"(3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;

"(4) improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society;

"(5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;

"(6) strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government;

"(7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;

"(8) ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to—

"(A) privacy and confidentiality, including section 552a of title 5;

"(B) security of information, including the Computer Security Act of 1987 (Public Law 100–235); and

"(C) access to information, including section 552 of title 5;

"(9) ensure the integrity, quality, and utility of the Federal statistical system;

"(10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

"(11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this chapter.

"§ 3502. Definitions

"As used in this chapter—

"(1) the term 'agency' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—

"(A) the General Accounting Office;

"(B) Federal Election Commission;

"(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

"(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities;

"(2) the term 'burden' means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

"(A) reviewing instructions;

"(B) acquiring, installing, and utilizing technology and systems;

"(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;

"(D) searching data sources;

"(E) completing and reviewing the collection of information; and

"(F) transmitting, or otherwise disclosing the information;

"(3) the term 'collection of information'—

"(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

"(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

"(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

"(B) shall not include a collection of information described under section 3518(c)(1);

"(4) the term 'Director' means the Director of the Office of Management and Budget;

“(5) the term ‘independent regulatory agency’ means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

“(6) the term ‘information resources’ means information and related resources, such as personnel, equipment, funds, and information technology;

“(7) the term ‘information resources management’ means the process of managing information resources to accomplish agency missions and to improve agency performance, including through the reduction of information collection burdens on the public;

“(8) the term ‘information system’ means a discrete set of information resources and processes, automated or manual, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;

“(9) the term ‘information technology’ has the same meaning as the term ‘automatic data processing equipment’ as defined by section 111(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2));

“(10) the term ‘person’ means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, or local government or branch thereof, or a political subdivision of a State, territory, or local government or a branch of a political subdivision;

“(11) the term ‘practical utility’ means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;

“(12) the term ‘public information’ means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public; and

“(13) the term ‘recordkeeping requirement’ means a requirement imposed by or for an agency on persons to maintain specified records.

“§ 3503. Office of Information and Regulatory Affairs

“(a) There is established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs.

“(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall delegate to the Administrator the authority to administer all functions under this chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information resources management policy.

“(c) The Administrator and employees of the Office of Information and Regulatory Affairs shall be appointed with special attention to professional qualifications required to administer the functions of the Office described under this chapter. Such qualifications shall include relevant education, work experience, or related professional activities.

“§ 3504. Authority and functions of Director

“(a)(1) The Director shall oversee the use of information resources to improve the efficiency and effectiveness of governmental operations to serve agency missions, including service delivery to the public. In performing such oversight, the Director shall—

“(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines; and

“(B) provide direction and oversee—

“(i) the review of the collection of information and the reduction of the information collection burden;

“(ii) agency dissemination of and public access to information;

“(iii) statistical activities;

“(iv) records management activities;

“(v) privacy, confidentiality, security, disclosure, and sharing of information; and

“(vi) the acquisition and use of information technology.

“(2) The authority of the Director under this chapter shall be exercised consistent with applicable law.

“(b) With respect to general information resources management policy, the Director shall—

“(1) develop and oversee the implementation of uniform information resources management policies, principles, standards, and guidelines;

“(2) foster greater sharing, dissemination, and access to public information, including through—

“(A) the use of the Government Information Locator Service; and

“(B) the development and utilization of common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability;

“(3) initiate and review proposals for changes in legislation, regulations, and agency procedures to improve information resources management practices;

“(4) oversee the development and implementation of best practices in information resources management, including training; and

“(5) oversee agency integration of program and management functions with information resources management functions.

“(c) With respect to the collection of information and the control of paperwork, the Director shall—

“(1) review proposed agency collections of information, and in accordance with section 3508, determine whether the collection of information by or for an agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

“(2) coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement and acquisition and to reduce information collection burdens on the public;

“(3) minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected;

“(4) maximize the practical utility of and public benefit from information collected by or for the Federal Government; and

“(5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information.

“(d) With respect to information dissemination, the Director shall develop and oversee the implementation of policies, principles, standards, and guidelines to—

“(1) apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and

“(2) promote public access to public information and fulfill the purposes of this chapter, including through the effective use of information technology.

“(e) With respect to statistical policy and coordination, the Director shall—

“(1) coordinate the activities of the Federal statistical system to ensure—

“(A) the efficiency and effectiveness of the system; and

“(B) the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes;

“(2) ensure that budget proposals of agencies are consistent with system-wide priorities for maintaining and improving the quality of Federal statistics and prepare an annual report on statistical program funding;

“(3) develop and oversee the implementation of Governmentwide policies, principles, standards, and guidelines concerning—

“(A) statistical collection procedures and methods;

“(B) statistical data classification;

“(C) statistical information presentation and dissemination;

“(D) timely release of statistical data; and

“(E) such statistical data sources as may be required for the administration of Federal programs;

“(4) evaluate statistical program performance and agency compliance with Governmentwide policies, principles, standards and guidelines;

“(5) promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges;

“(6) coordinate the participation of the United States in international statistical activities, including the development of comparable statistics;

“(7) appoint a chief statistician who is a trained and experienced professional statistician to carry out the functions described under this subsection;

“(8) establish an Interagency Council on Statistical Policy to advise and assist the Director in carrying out the functions under this subsection that shall—

“(A) be headed by the chief statistician; and

“(B) consist of—

“(i) the heads of the major statistical programs; and

“(ii) representatives of other statistical agencies under rotating membership; and

“(9) provide opportunities for training in statistical policy functions to employees of the Federal Government under which—

“(A) each trainee shall be selected at the discretion of the Director based on agency requests and shall serve under the chief statistician for at least 6 months and not more than 1 year; and

“(B) all costs of the training shall be paid by the agency requesting training.

“(f) With respect to records management, the Director shall—

"(1) provide advice and assistance to the Archivist of the United States and the Administrator of General Services to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information resources management policies, principles, standards, and guidelines established under this chapter;

"(2) review compliance by agencies with—

"(A) the requirements of chapters 29, 31, and 33 of this title; and

"(B) regulations promulgated by the Archivist of the United States and the Administrator of General Services; and

"(3) oversee the application of records management policies, principles, standards, and guidelines, including requirements for archiving information maintained in electronic format, in the planning and design of information systems.

"(g) With respect to privacy and security, the Director shall—

"(1) develop and oversee the implementation of policies, principles, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies;

"(2) oversee and coordinate compliance with sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

"(3) require Federal agencies, consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), to identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

"(h) With respect to Federal information technology, the Director shall—

"(1) in consultation with the Director of the National Institute of Standards and Technology and the Administrator of General Services—

"(A) develop and oversee the implementation of policies, principles, standards, and guidelines for information technology functions and activities of the Federal Government, including periodic evaluations of major information systems; and

"(B) oversee the development and implementation of standards under section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d));

"(2) monitor the effectiveness of, and compliance with, directives issued under sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759) [and review proposed determinations under section 111(e) of such Act];

"(3) coordinate the development and review by the Office of Information and Regulatory Affairs of policy associated with Federal procurement and acquisition of information technology with the Office of Federal Procurement Policy;

"(4) ensure, through the review of agency budget proposals, information resources management plans and other means—

"(A) agency integration of information resources management plans, program plans and budgets for acquisition and use of information technology; and

"(B) the efficiency and effectiveness of inter-agency information technology initiatives to improve agency performance and the accomplishment of agency missions; and

"(5) promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

"§ 3505. Assignment of tasks and deadlines

"In carrying out the functions under this chapter, the Director shall—

"(1) in consultation with agency heads, set an annual Governmentwide goal for the reduction of information collection burdens by at least five percent, and set annual agency goals to—

"(A) reduce information collection burdens imposed on the public that—

"(i) represent the maximum practicable opportunity in each agency; and

"(ii) are consistent with improving agency management of the process for the review of collections of information established under section 3506(c); and

"(B) improve information resources management in ways that increase the productivity, efficiency and effectiveness of Federal programs, including service delivery to the public;

"(2) with selected agencies and non-Federal entities on a voluntary basis, conduct pilot projects to test alternative policies, practices, regulations, and procedures to fulfill the purposes of this chapter, particularly with regard to minimizing the Federal information collection burden; *and*

"(3) in consultation with the Administrator of General Services, the Director of the National Institute of Standards and Technology, the Archivist of the United States, and the Director of the Office of Personnel Management, develop and maintain a Governmentwide strategic plan for information resources management, that shall include—

"(A) a description of the objectives and the means by which the Federal Government shall apply information resources to improve agency and program performance;

"(B) plans for—

"(i) reducing information burdens on the public, including reducing such burdens through the elimination of duplication and meeting shared data needs with shared resources;

"(ii) enhancing public access to and dissemination of, information, using electronic and other formats; and

"(iii) meeting the information technology needs of the Federal Government in accordance with [the requirements of sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759), and] the purposes of this chapter; and

"(C) a description of progress in applying information resources management to improve agency performance and the accomplishment of missions.[; and

["(4) in cooperation with the Administrator of General Services, issue guidelines for the establishment and operation in each agency of a process, as required under section 3506(h)(5) of this chapter, to review major information systems initiatives, including acquisition and use of information technology.]

"§ 3506. Federal agency responsibilities

"(a)(1) The head of each agency shall be responsible for—

"(A) carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness; and

"(B) complying with the requirements of this chapter and related policies established by the Director.

"(2)(A) Except as provided under subparagraph (B), the head of each agency shall designate a senior official who shall report directly to such agency head to carry out the responsibilities of the agency under this chapter.

"(B) The Secretary of the Department of Defense and the Secretary of each military department may each designate a senior official who shall report directly to such Secretary to carry out the responsibilities of the department under this chapter. If more than one official is designated for the military departments, the respective duties of the officials shall be clearly delineated.

"(3) The senior official designated under paragraph (2) shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this chapter, including the reduction of information collection burdens on the public. The senior official and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under this chapter.

"(4) Each agency program official shall be responsible and accountable for information resources assigned to and supporting the programs under such official. In consultation with the senior official designated under paragraph (2) and the agency Chief Financial Officer (or comparable official), each agency program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs.

["(5) The head of each agency shall establish a permanent information resources management steering committee, which shall be chaired by the senior official designated under paragraph (2) and shall include senior program officials and the Chief Financial Officer (or comparable official). Each steering committee shall—

["(A) assist and advise the head of the agency in carrying out information resources management responsibilities of the agency;

["(B) assist and advise the senior official designated under paragraph (2) in the establishment of performance measures for information resources management that relate to program missions;

["(C) select, control, and evaluate all major information system initiatives (including acquisitions of information technology) in accordance with the requirements of subsection (h)(5); and

["(D) identify opportunities to redesign business practices and supporting information systems to improve agency performance.]

"(b) With respect to general information resources management, each agency shall—

"(1) [develop information systems, processes, and procedures to] *manage information resources to—*

"(A) reduce information collection burdens on the public;

"(B) increase program efficiency and effectiveness; and

"(C) improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security;

"(2) in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that shall describe how information resources management activities help accomplish agency missions;

"(3) develop and maintain an ongoing process to—

‘‘(A) ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions;

[‘‘(B) develop and maintain an integrated, comprehensive and controlled process of information systems selection, development, and evaluation;

‘‘[(C)] *(B)* in cooperation with the agency Chief Financial Officer (or comparable official), develop a full and accurate accounting of information technology expenditures, related expenses, and results; and

‘‘[(D)] *(C)* establish goals for improving information resources management's contribution to program productivity, efficiency, and effectiveness, methods for measuring progress towards those goals, and clear roles and responsibilities for achieving those goals;

‘‘(4) in consultation with the Director, the Administrator of General Services, and the Archivist of the United States, maintain a current and complete inventory of the agency's information resources, including directories necessary to fulfill the requirements of section 3511 of this chapter; and

‘‘(5) in consultation with the Director and the Director of the Office of Personnel Management, conduct formal training programs to educate agency program and management officials about information resources management.

‘‘(c) With respect to the collection of information and the control of paperwork, each agency shall—

‘‘(1) establish a process within the office headed by the official designated under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this chapter, to—

‘‘(A) review each collection of information before submission to the Director for review under this chapter, including—

‘‘(i) an evaluation of the need for the collection of information;

‘‘(ii) a functional description of the information to be collected;

‘‘(iii) a plan for the collection of the information;

‘‘(iv) a specific, objectively supported estimate of burden;

‘‘(v) a test of the collection of information through a pilot program, if appropriate; and

‘‘(vi) a plan for the efficient and effective management and use of the information to be collected, including necessary resources;

‘‘(B) ensure that each information collection—

‘‘(i) is inventoried, displays a control number and, if appropriate, an expiration date;

‘‘(ii) indicates the collection is in accordance with the clearance requirements of section 3507; and

‘‘(iii) contains a statement to inform the person receiving the collection of information—

‘‘(I) the reasons the information is being collected;

‘‘(II) the way such information is to be used;

‘‘(III) an estimate, to the extent practicable, of the burden of the collection; and

‘‘(IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and

‘‘(C) assess the information collection burden of proposed legislation affecting the agency;

‘‘(2)(A) except as provided under subparagraph (B), provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to—

‘‘(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

‘‘(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

‘‘(iii) enhance the quality, utility, and clarity of the information to be collected; and

‘‘(iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

‘‘(B) for any proposed collection of information contained in a proposed rule (to be reviewed by the Director under section 3507(d)), provide notice and comment through the notice of proposed rulemaking for the proposed rule and such notice shall have the same purposes specified under subparagraph (A) (i) through (iv); and

‘‘(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507—

‘‘(A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;

‘‘(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

‘‘(C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined under section 601(6) of title 5, the use of such techniques as—

‘‘(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

‘‘(ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or

‘‘(iii) an exemption from coverage of the collection of information, or any part thereof;

‘‘(D) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

‘‘(E) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

‘‘(F) contains the statement required under paragraph (1)(B)(iii);

‘‘(G) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

‘‘(H) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

‘‘(I) to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

‘‘(d) With respect to information dissemination, each agency shall—

‘‘(1) ensure that the public has timely and equitable access to the agency's public information, including ensuring such access through—

‘‘(A) encouraging a diversity of public and private sources for information based on government public information, and

‘‘(B) agency dissemination of public information in an efficient, effective, and economical manner;

‘‘(2) regularly solicit and consider public input on the agency's information dissemination activities; and

‘‘(3) not, except where specifically authorized by statute—

‘‘(A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;

‘‘(B) restrict or regulate the use, resale, or redissemination of public information by the public;

‘‘(C) charge fees or royalties for resale or redissemination of public information; or

‘‘(D) establish user fees for public information that exceed the cost of dissemination.

‘‘(e) With respect to statistical policy and coordination, each agency shall—

‘‘(1) ensure the relevance, accuracy, timeliness, integrity, and objectivity of information collected or created for statistical purposes;

‘‘(2) inform respondents fully and accurately about the sponsors, purposes, and uses of statistical surveys and studies;

‘‘(3) protect respondents' privacy and ensure that disclosure policies fully honor pledges of confidentiality;

‘‘(4) observe Federal standards and practices for data collection, analysis, documentation, sharing, and dissemination of information;

‘‘(5) ensure the timely publication of the results of statistical surveys and studies, including information about the quality and limitations of the surveys and studies; and

‘‘(6) make data available to statistical agencies and readily accessible to the public.

‘‘(f) With respect to records management, each agency shall implement and enforce applicable policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

‘‘(g) With respect to privacy and security, each agency shall—

‘‘(1) implement and enforce applicable policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency;

‘‘(2) assume responsibility and accountability for compliance with and coordinated management of sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

‘‘(3) consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

‘‘(h) With respect to Federal information technology, each agency shall—

‘‘(1) implement and enforce applicable Governmentwide and agency information technology management policies, principles, standards, and guidelines;

‘‘(2) assume responsibility and accountability [for any acquisitions made pursuant to a delegation of authority under section 111 of the Federal Property and Administrative

Services Act of 1949 (40 U.S.C. 759);**]** *for information technology investments;*

"(3) promote the use of information technology by the agency to improve the productivity, efficiency, and effectiveness of agency programs, including the reduction of information collection burdens on the public and improved dissemination of public information;

"(4) propose changes in legislation, regulations, and agency procedures to improve information technology practices, including changes that improve the ability of the agency to use technology to reduce burden; and

["(5) establish, and be responsible for, a major information system initiative review process, which shall be developed and implemented by the information resources management steering committee established under subsection (a)(5), consistent with guidelines issued under section 3505(4), and include—

["(A) the review of major information system initiative proposals and projects (including acquisitions of information technology), approval or disapproval of each such initiative, and periodic reviews of the development and implementation of such initiatives, including whether the projected benefits have been achieved;

["(B) the use by the committee of specified evaluative techniques and criteria to—

["(i) assess the economy, efficiency, effectiveness, risks, and priority of system initiatives in relation to mission needs and strategies;

["(ii) estimate and verify life-cycle system initiative costs; and

["(iii) assess system initiative privacy, security, records management, and dissemination and access capabilities;

["(C) the use, as appropriate, of independent cost evaluations of data developed under subparagraph (B); and

["(D) the inclusion of relevant information about approved initiatives in the agency's annual budget request.**]**

"(5) ensure responsibility for maximizing the value and assessing and managing the risks of major information systems initiatives through a process that is—

"(A) integrated with budget, financial, and program management decisions; and

"(B) used to select, control, and evaluate the results of major information systems initiatives.

"§ 3507. Public information collection activities; submission to Director; approval and delegation

"(a) An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information—

"(1) the agency has—

"(A) conducted the review established under section 3506(c)(1);

"(B) evaluated the public comments received under section 3506(c)(2);

"(C) submitted to the Director the certification required under section 3506(c)(3), the proposed collection of information, copies of pertinent statutory authority, regulations, and other related materials as the Director may specify; and

"(D) published a notice in the Federal Register—

"(i) stating that the agency has made such submission; and

"(ii) setting forth—

"(I) a title for the collection of information;

"(II) a summary of the collection of information;

"(III) a brief description of the need for the information and the proposed use of the information;

"(IV) a description of the likely respondents and proposed frequency of response to the collection of information;

"(V) an estimate of the burden that shall result from the collection of information; and

"(VI) notice that comments may be submitted to the agency and Director;

"(2) the Director has approved the proposed collection of information or approval has been inferred, under the provisions of this section; and

"(3) the agency has obtained from the Director a control number to be displayed upon the collection of information.

"(b) The Director shall provide at least 30 days for public comment prior to making a decision under subsection (c), (d), or (h), except as provided under subsection (j).

"(c)(1) For any proposed collection of information not contained in a proposed rule, the Director shall notify the agency involved of the decision to approve or disapprove the proposed collection of information.

"(2) The Director shall provide the notification under paragraph (1), within 60 days after receipt or publication of the notice under subsection (a)(1)(D), whichever is later.

"(3) If the Director does not notify the agency of a denial or approval within the 60-day period described under paragraph (2)—

"(A) the approval may be inferred;

"(B) a control number shall be assigned without further delay; and

"(C) the agency may collect the information for not more than 2 years.

"(d)(1) For any proposed collection of information contained in a proposed rule—

"(A) as soon as practicable, but no later than the date of publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information and any information requested by the Director necessary to make the determination required under this subsection; and

"(B) within 60 days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information contained in the proposed rule;

"(2) When a final rule is published in the Federal Register, the agency shall explain—

"(A) how any collection of information contained in the final rule responds to the comments, if any, filed by the Director or the public; or

"(B) the reasons such comments were rejected.

"(3) If the Director has received notice and failed to comment on an agency rule within 60 days after the notice of proposed rulemaking, the Director may not disapprove any collection of information specifically contained in an agency rule.

"(4) No provision in this section shall be construed to prevent the Director, in the Director's discretion—

"(A) from disapproving any collection of information which was not specifically required by an agency rule;

"(B) from disapproving any collection of information contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;

"(C) from disapproving any collection of information contained in a final agency rule, if the Director finds within 60 days after the publication of the final rule that the agency's response to the Director's comments filed under paragraph (2) of this subsection was unreasonable; or

"(D) from disapproving any collection of information contained in a final rule, if—

"(i) the Director determines that the agency has substantially modified in the final rule the collection of information contained in the proposed rule; and

"(ii) the agency has not given the Director the information required under paragraph (1) with respect to the modified collection of information, at least 60 days before the issuance of the final rule.

"(5) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

"(6) The decision by the Director to approve or not act upon a collection of information contained in an agency rule shall not be subject to judicial review.

"(e)(1) Any decision by the Director under subsection (c), (d), (h), or (j) to disapprove a collection of information, or to instruct the agency to make substantive or material change to a collection of information, shall be publicly available and include an explanation of the reasons for such decision.

"(2) Any written communication between the Office of the Director, the Administrator of the Office of Information and Regulatory Affairs, or any employee of the Office of Information and Regulatory Affairs and an agency or person not employed by the Federal Government concerning a proposed collection of information shall be made available to the public.

"(3) This subsection shall not require the disclosure of—

"(A) any information which is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; or

"(B) any communication relating to a collection of information which has not been approved under this chapter, the disclosure of which could lead to retaliation or discrimination against the communicator.

"(f)(1) An independent regulatory agency which is administered by 2 or more members of a commission, board, or similar body, may by majority vote void—

"(A) any disapproval by the Director, in whole or in part, of a proposed collection of information of that agency; or

"(B) an exercise of authority under subsection (d) of section 3507 concerning that agency.

"(2) The agency shall certify each vote to void such disapproval or exercise to the Director, and explain the reasons for such vote. The Director shall without further delay assign a control number to such collection of information, and such vote to void the disapproval or exercise shall be valid for a period of 3 years.

"(g) The Director may not approve a collection of information for a period in excess of 3 years.

"(h)(1) If an agency decides to seek extension of the Director's approval granted for a currently approved collection of information, the agency shall—

"(A) conduct the review established under section 3506(c), including the seeking of comment from the public on the continued need for, and burden imposed by the collection of information; and

"(B) after having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved collection of information, submit the collection of information for review and approval under this section, which shall include an explanation of how the agency has used the information that it has collected.

"(2) If under the provisions of this section, the Director disapproves a collection of information contained in an existing rule, or recommends or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, the Director shall—

"(A) publish an explanation thereof in the Federal Register; and

"(B) instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under this chapter.

"(3) An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director, unless the modification has been submitted to the Director for review and approval under this chapter.

"(i)(1) If the Director finds that a senior official of an agency designated under section 3506(a) is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of chapter 5 of title 5, United States Code, delegate to such official the authority to approve proposed collections of information in specific program areas, for specific purposes, or for all agency purposes.

"(2) A delegation by the Director under this section shall not preclude the Director from reviewing individual collections of information if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

"(j)(1) The agency head may request the Director to authorize collection of information prior to expiration of time periods established under this chapter, if an agency head determines that—

"(A) a collection of information—

"(i) is needed prior to the expiration of such time periods; and

"(ii) is essential to the mission of the agency; and

"(B) the agency cannot reasonably comply with the provisions of this chapter within such time periods because—

"(i) public harm is reasonably likely to result if normal clearance procedures are followed; or

"(ii) an unanticipated event has occurred and the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information related to the event or is reasonably likely to cause a statutory or court-ordered deadline to be missed.

"(2) The Director shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the collection of information a control number. Any collection of information conducted under this subsection may be conducted without compliance with the provisions of this chapter for a maximum of 90 days after the date on which the Director received the request to authorize such collection.

"§ 3508. Determination of necessity for information; hearing

"Before approving a proposed collection of information, the Director shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent that the Director determines that the collection of information by an agency is unnecessary for the proper performance of the functions of the agency, for any reason, the agency may not engage in the collection of information.

"§ 3509. Designation of central collection agency

"The Director may designate a central collection agency to obtain information for two or more agencies if the Director determines that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with applicable law. In such cases the Director shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by the designation may not obtain for itself information for the agency which is the duty of the collection agency to obtain. The Director may modify the designation from time to time as circumstances require. The authority to designate under this section is subject to the provisions of section 3507(f) of this chapter.

"§ 3510. Cooperation of agencies in making information available

"(a) The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law.

"(b)(1) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penalties which relate to the unlawful disclosure of information) apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information.

"(2) The officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.

"§ 3511. Establishment and operation of Government Information Locator Service

"In order to assist agencies and the public in locating information and to promote information sharing and equitable access by the public, the Director shall—

"(1) cause to be established and maintained a distributed agency-based electronic Government Information Locator Service (hereafter in this section referred to as the 'Service'), which shall identify the major information systems, holdings, and dissemination products of each agency;

"(2) require each agency to establish and maintain an agency information locator service as a component of, and to support the establishment and operation of the Service;

"(3) in cooperation with the Archivist of the United States, the Administrator of General Services, the Public Printer, and the Librarian of Congress, establish an interagency committee to advise the Secretary of Commerce on the development of technical standards for the Service to ensure compatibility, promote information sharing, and uniform access by the public;

"(4) consider public access and other user needs in the establishment and operation of the Service;

"(5) ensure the security and integrity of the Service, including measures to ensure that only information which is intended to be disclosed to the public is disclosed through the Service; and

"(6) periodically review the development and effectiveness of the Service and make recommendations for improvement, including other mechanisms for improving public access to Federal agency public information.

"§ 3512. Public protection

"Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain, provide, or disclose information to or for any agency or person if the collection of information subject to this chapter—

"(1) does not display a valid control number assigned by the Director; or

"(2) fails to state that the person who is to respond to the collection of information is not required to comply unless such collection displays a valid control number.

"§ 3513. Director review of agency activities; reporting; agency response

"(a) In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National Institute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.

"(b) Each agency having an activity reviewed under subsection (a) shall, within 60 days after receipt of a report on the review, provide a written plan to the Director describing steps (including milestones) to—

"(1) be taken to address information resources management problems identified in the report; and

"(2) improve agency performance and the accomplishment of agency missions.

"§ 3514. Responsiveness to Congress

"(a)(1) The Director shall—

"(A) keep the Congress and congressional committees fully and currently informed of the major activities under this chapter; and

"(B) submit a report on such activities to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the Director determines necessary.

"(2) The Director shall include in any such report a description of the extent to which agencies have—

"(A) reduced information collection burdens on the public, including—

"(i) a summary of accomplishments and planned initiatives to reduce collection of information burdens;

"(ii) a list of all violations of this chapter and of any rules, guidelines, policies, and procedures issued pursuant to this chapter; and "(iii) a list of any increase in the collection of information burden, including the authority for each such collection;

"(B) improved the quality and utility of statistical information;

"(C) improved public access to Government information; and

"(D) improved program performance and the accomplishment of agency missions through information resources management.

"(b) The preparation of any report required by this section shall be based on performance results reported by the agencies and shall not increase the collection of information burden on persons outside the Federal Government.

"§3515. Administrative powers

"Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this chapter.

"§3516. Rules and regulations

"The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter.

"§3517. Consultation with other agencies and the public

"(a) In developing information resources management policies, plans, rules, regulations, procedures, and guidelines and in reviewing collections of information, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.

"(b) Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this chapter, a person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information—

"(1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and

"(2) take appropriate remedial action, if necessary.

"§3518. Effect on existing laws and regulations

"(a) Except as otherwise provided in this chapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information resources management activities is subject to the authority of the Director under this chapter.

"(b) Nothing in this chapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

"(c)(1) Except as provided in paragraph (2), this chapter shall not apply to the collection of information—

"(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

"(B) during the conduct of—

"(i) a civil action to which the United States or any official or agency thereof is a party; or

"(ii) an administrative action or investigation involving an agency against specific individuals or entities;

"(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

"(D) during the conduct of intelligence activities as defined in section 4-206 of Executive Order No. 12036, issued January 24, 1978, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

"(2) This chapter applies to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

"(d) Nothing in this chapter shall be interpreted as increasing or decreasing the authority conferred by Public Law 89-306 on the Administrator of the General Services Administration, the Secretary of Commerce, or the Director of the Office of Management and Budget.

"(e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

"§3519. Access to information

"Under the conditions and procedures prescribed in section 716 of title 31, the Director and personnel in the Office of Information and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of the responsibilities of the Comptroller General. For the purpose of obtaining such information, the Comptroller General or representatives thereof shall have access to all books, documents, papers and records, regardless of form or format, of the Office.

"§3520. Authorization of appropriations

"(a) Subject to subsection (b), there are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this chapter, and for no other purpose, $8,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.

"(b)(1) No funds may be appropriated pursuant to subsection (a) unless such funds are appropriated in an appropriation Act (or continuing resolution) which separately and expressly states the amount appropriated pursuant to subsection (a) of this section.

"(2) No funds are authorized to be appropriated to the Office of Information and Regulatory Affairs, or to any other officer or administrative unit of the Office of Management and Budget, to carry out the provisions of this chapter, or to carry out any function under this chapter, for any fiscal year pursuant to any provision of law other than subsection (a) of this section.".

SEC. 3. EFFECTIVE DATE.

The provisions of this Act and the amendments made by this Act shall take effect on June 30, 1995.

The PRESIDING OFFICER. The Presiding Officer, in his capacity as a Senator from the State of Washington, suggests the absence of a quorum.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

Mr. DOLE. Mr. President, let me just take a moment to indicate that we have not yet given up on this side of the Capitol on the balanced budget amendment to the Constitution.

I view the one-vote loss as a temporary setback. I am very optimistic about passing the balanced budget amendment with the necessary two-thirds vote in this Congress. It means either this year or next year. We will be making every effort, not only on this side of the aisle, but along with Senator SIMON on the other side of the aisle, to secure one additional vote. That is all it takes, one additional vote. We can call it up, reconsider it, no debate, and then vote on the balanced budget amendment; no debate, 67 votes, and it will then go to the States for ratification.

I hope that any of my colleagues who may have voted the other way have had time to think about this seriously. It is an item supported by 80 percent of the American people. It is a discipline we need in the Congress of the United States. My view is its time has come and, in my view, it will happen this Congress. And I hope that we will have even more than the 67 votes required.

All those who have been frightening and trying to scare senior citizens, I suggest that has not been effective. We have indicated from the start that we are not touching Social Security, and we will proceed on that basis in the budget discussions. I guess we will determine before many weeks who really is serious about reducing the deficit and about getting to a balanced budget. For all those who indicated in their statements that we do not need a balanced budget amendment to do that, we will have an opportunity to determine which one of those Senators meant what they said, or which others were just saying it because it might be something people like to hear in their States.

But, again, I ask those who voted with us last year on the balanced budget amendment to search their conscience, dig out their old speeches and their old press releases and their old campaign spots, and take another look at the amendment that lost by one vote. It was identical, with the exception of a change of date from 2001 to 2002 and with the so-called Nunn language, which we think improved the amendment.

This is something that should not be given up easily. We intend to pursue it.

Again, I thank my colleagues on both sides of the aisle for their bipartisan efforts to reach the magic number of 67.

I yield the floor.

PAPERWORK REDUCTION ACT OF 1995

The Senate continued with the consideration of the bill.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I rise in support of S. 244, the Paperwork Reduction Act of 1995. This legislation was, this year as last year, reported out unanimously from the Committee on Governmental Affairs, reflecting the bipartisan efforts of Senators NUNN, GLENN, and myself.

The legislation reaffirms the fundamental purpose of the Paperwork Reduction Act of 1980—to reduce the paperwork burden imposed on the public by the Federal Government. But it does much more. It increases the scope of the act by 50 percent in overturning the Supreme Court's decision in Dole v. United Steelworkers of America. In that case the Supreme Court surprised many of us who had worked on fashioning this legislation by limiting OMB's authority to review Government collections of information only to those instances where the paperwork flowed from a private party to the Government and thus excluded instances where the Government requires information to be provided to another party.

By overturning the Dole case, all paperwork falls under the act and is thereby subject to review by the Office of Information and Regulatory Affairs.

Under the act, each agency—and the act covers all agencies, even independent agencies—must analyze each information collection for its need and its practical utility. All such information collections, even those of independent agencies, must be approved by OIRA before they become effective.

The legislation also authorizes appropriations for OIRA for 5 more years at $8 million each year. OIRA is not only the hub of the wheel in enforcing this act but has come to play a significant role in executing executive orders on the subject of regulatory review. As we work in committee to draft comprehensive regulatory reform legislation, it is clear that OIRA will have even a greater role. This authorization of greater appropriations is a very important provision.

The paperwork burden produced by Government's enormous appetite for information is an ever increasing problem. The fact that the problem is growing does not mean that the efforts under the Paperwork Reduction Act of 1980 have not been worthwhile. The problem would have been even worse without such efforts. The mechanism for reducing burdens cannot be faulted because Congress passes more laws that generate more paperwork.

Now, the legislation before us recognizes that an information collection may be problematic not only because the collection has no public utility but also because the collector may already have access to the information and need not bother our citizenry with a request for the same information. I applaud the efforts of GAO to underscore this simple truth by highlighting the benefits of information resources management. This legislation effectuates the principle that information resources management and reduction of paperwork burden are two sides of the same coin. While some may view the two aspects as competing for scarce OIRA resources, that view is mistaken. The two aspects are inextricably linked.

This legislation enjoys widespread support among the business community, both big and small, as well as among State and local governments and the people, all who bear the burden of Federal Government paperwork collections. They all will be pleased to see that this legislation strengthens the paperwork reduction aspects of the act and that, in particular, it retains the direction of OIRA that it manage the paperwork burden on the public to achieve a 5-percent annual reduction.

Paperwork burdens, like other regulatory burdens, are a hidden tax on the American people—a tax without measure, a tax unrestricted by budgetary or constitutional limitations, but a tax no less real.

Government paperwork collections are a burden on the public. The legislation indicates an increased sensitivity to that fact by requiring each agency to develop a paperwork clearance process to review and solicit public comment on proposed information collections before submitting them to OMB for review. Public accountability is also strengthened through requirements for public disclosure of communications with OMB regarding information collections—with protections for whistleblowers complaining of unauthorized collections—and for OMB to review the status of any information collection upon public request. In combination with more general requirements, such as encouraging data sharing between the Federal Government and State and local and tribal governments, this legislation strives to further the goals of the act of minimizing government information collection burdens while maximizing the utility of government information.

With regard to the act's over-arching information resources management—IRM—policies, the legislation charges agency heads with the responsibility to carry out agency IRM activities to improve agency productivity, efficiency, and effectiveness. It makes program officials responsible and accountable for those information resources supporting their programs. The IRM mandate is strengthened by focusing on managing information resources in order to improve program performance, including the delivery of services to the public and the reduction of information collection burdens on the public.

With the Federal Government spending approximately $25 billion a year on information technology, the stakes are too high not to press for the most efficient and effective management of information resources. With such improvements in information resources management, the reduction of information collection burdens on the public and maximizing the utility of government information will not otherwise occur.

This legislation is not the final word on the very important subject of information technology. The committee will be fashioning legislation later this session to restructure and redesign the Federal Government for the 21st century. One essential aspect of a modern Federal Government is the effective use of information technology to better accomplish public missions at lower costs. We will be back.

Finally, I want to underscore a point to which Senators GLENN, NUNN, and I gave considerable attention. This legislation is a rewrite of the 1980 act. Its form is necessitated by the number of technical and other changes made. This form is in no way intended to start a new legislative history with the 1995 act. Rather, this legislation is only a pro tanto modification intended to carry on the legislative history of the 1980 act. The report, at page 3, makes this very same point. This is an important point. It should be noted by anyone interested in the legislative history that guides the interpretation of the Paperwork Reduction Act.

In closing, I wish to commend my colleagues, Senator GLENN and Senator NUNN, for their cooperation and patience in fashioning legislation on a very, very complex subject. This legislation, in my opinion, merits the full support of every Member.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, today, the Senate turns to consideration of S. 244, the Paperwork Reduction Act of 1995. As the Senator from Delaware, my good friend, Senator ROTH, has already explained, this bill reauthorizes appropriations for the Office of Information and Regulatory Affairs [OIRA] and it strengthens the Paperwork Reduction Act of 1980. This represents years of hard work which began in the 100th Congress.

S. 244 is substantially identical to S. 560, the Paperwork Reduction Act of 1994, which was approved by the Senate, not once but twice in the closing days of the last Congress. It passed the Senate by unanimous voice vote on October 6, 1994. the following day, the text of S. 560 was attached to a House-passed measure, H.R. 2561, and returned to the House. Unfortunately, it was not cleared for action before the adjournment of the 103d Congress. The House of Representatives did not act on it.

Like S. 560 in the last Congress, S. 244 enjoys strong bipartisan support. Chairman ROTH and Senator GLENN are both original cosponsors. Both have worked long and hard on this needed legislation to strengthen the Paperwork Reduction Act of 1980 and to reauthorize appropriations for OIRA. The crafting of a consensus bill in the last Congress was made possible by the skill and leadership of my friend from Ohio, Mr. GLENN, and my friend from Delaware, Mr. ROTH.

Leading cosponsors of S. 244 also include the new chairman of the Committee on Small Business, Senator KIT BOND, and the committee's ranking Democratic member, Senator BUMPERS. Former Chairman BUMPERS and successive ranking Republican members of the Committee on Small Business, including Senators Boschwitz, Kasten, and Pressler, have been original cosponsors of the predecessor legislation in the 101st and 102d Congress. The Committee on Small Business, of which I am a member as well as the Governmental Affairs Committee, has played a crucial supporting role in sustaining the effort to enact legislation to strengthen the 1980 act. Such support is not surprising since relief from paperwork and regulatory burdens is vital to the small business community. It has become a focus of activity for the Committee on Small Business, the Committee on Governmental Affairs, and several other committees in the Senate as well as their counterparts in the House of Representatives.

This year we are being joined by colleagues from both sides of the aisle, many of whom are present or former members of the Committee on Small Business as well as the Committee on Governmental Affairs. When introduced, S. 244 had 21 bipartisan cosponsors. My friend from Mississippi, Mr. LOTT, as inadvertently omitted from the list. He should have been on the list when it was originally introduced.

Mr. President, I ask unanimous consent that Senator LOTT be added to list of original cosponsors to the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. Further, Mr. President, I ask unanimous consent that the following Senators be added as additional cosponsors—Senator STEVENS, Senator AKAKA, Senator GRASSLEY, Senator THOMAS, Senator COHEN, Senator THOMPSON, Senator ROCKEFELLER, and Senator D'AMATO.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. In this Congress, the House of Representatives is decidedly more receptive to this legislation. A modified version of S. 560 was included in H.R. 9, the Job Creation and Wage Enhancement Act of 1995, which includes many of the regulatory and paperwork relief provisions of the Republican Contract With America. Representatives BILL CLINGER, the new chairman of the House Committee on Government Reform and Oversight, the new name for the Committee on Government Operations, was the principal Republican cosponsor to H.R. 2995, the House companion to S. 560 in the last Congress. So he has been working on this a long time. In this Congress, he introduced H.R. 830, the Paperwork Reduction Act of 1995, with Representatives NORM SISISKY as the principal Democratic cosponsor.

I might add Representative SISISKY has worked on this legislation for several years with me, including trying last year to get this legislation through the House in the last couple of weeks of the session. On February 22, the House passed H.R. 830 by a rollcall vote of 418–0.

Like the reported version of S. 560 in the last Congress, S. 244 has the support of the Clinton administration. During testimony before the House Small Business Committee on Friday, January 27, Sally Katzen, Administrator of the Office of Information and Regulatory Affairs, stated the administration's support for S. 244.

The Paperwork Reduction Act of 1995 enjoys strong support from the business community, especially the small business committee. It has the support of a broad Paperwork Reduction Act coalition, representing virtually every segment of the business community. Participating in the coalition are the major national small business associations—the National Federation of Independent Business [NFIB], the Small Business Legislative Council [SBLC], and National Small Business United [NSBU], as well as the many specialized national small business association, like the American Subcontractors Association, that comprise the membership of SBLC or NSBU. Other participants represent manufacturers, aerospace and electronics firms, construction firms, providers of professional and technical services, retailers of various products and services, and the wholesalers and distributors who support them.

Leadership for the coalition is being provided by the Council on Regulatory and Information Management, known as C–RIM and by the U.S Chamber of Commerce. C–RIM is the new name for the Business Council on the Reduction of Paperwork, which has dedicated itself to paperwork reduction and regulatory reform issues for more than a half century. While he was C–RIM's executive director, Bob Coakley worked tirelessly on advancing this legislation. Bob came to C–RIM after many years of service to the Committee on Governmental Affairs, especially for our former colleague, Lawton Chiles, the father of the Paperwork Reduction Act of 1980, when he was in the Senate. Of course he is now Governor of Florida.

The coalition also includes a number of professional associations and public interest groups that support strengthening the Paperwork Reduction Act of 1980. These include the Association of Records Managers and Administrators [ARMA] and Citizens for a Sound Economy [CSE], to name but two very active coalition members.

Given the regulatory and paperwork burdens faced by State and local governments, legislation to strengthen the Paperwork Reduction Act is high on the agenda of the associations representing elected officials. As Governor of Florida, Lawton Chiles, has worked hard on this issue within the National Governors Association. During its 1994 annual meeting, the National Governors Association adopted a resolution in support of legislation to strengthen the Paperwork Reduction Act of 1980.

The principal purpose of the Paperwork Reduction Act of 1995 is to reaffirm and provide additional tools by which to attain the fundamental objective of the Paperwork Reduction Act of 1980—to minimize the Federal paperwork burdens imposed on individuals, businesses, especially small businesses, educational and nonprofit institutions, and State and local governments.

The Paperwork Reduction Act of 1995 provides a 5-year reauthorization of appropriations for the Office of Information and Regulatory Affairs [OIRA]. Created by the 1980 act, OIRA serves as the focal point at OMB for the Act' implementation. OIRA is also the focal point for the regulatory review process, which is exercised under an Executive order. As the Congress undertakes its fundamental changes to the Government processes for the formulation of regulations, OIRA's role and its broad authorities under the Paperwork Reduction Act will be become even more obvious.

I would like to highlight just a few of the provisions of the bill. It reemphasizes the fundamental responsibilities of each Federal agency to minimize new paperwork burdens by thoroughly reviewing each proposed collection of information for need and practical utility, the act's fundamental standards—need and practical utility. The bill makes explicit the responsibility of each Federal agency to conduct this review itself, before submitting the proposed collection of information for public comment and clearance by OIRA in the Office of Management and Budget.

The bill before us reflects the provisions of S. 560 that further enhance public participation in the review of paperwork burdens, when they are first being proposed or when an agency is seeking to obtain approval to continue to use an existing paperwork requirement. Strengthening public participation is at the core of the 1980 act and is strengthened even further in this act.

The Paperwork Reduction Act of 1995 maintains the 1980 act's Governmentwide 5-percent goal for the reduction of paperwork burdens on the public. Given past experience, some question the effectiveness of such goals in producing net reductions in Governmentwide paperwork burdens. The Coalition believe that the bill should reflect individual agency goals as well. If seriously implemented, the proponents argue that such agency goals can become an effective restraint on the cumulative growth of Government-sponsored paperwork burdens. Although this provision is not in the bill before the committee today, I am hopeful that it will be strengthened in this manner before becoming law.

The bill includes amendments to the 1980 act which further empower members of the public to help police Federal agency compliance with the act. I would like to describe two of these provisions.

One provision would enable a member of the public to obtain a written determination from the OIRA Administrator regarding whether a federally sponsored paperwork requirement is in compliance with the act. If the agency paperwork requirement is found to be noncompliant, the Administrator is charged with taking appropriate remedial action. This provision is based upon a similar process added to the Office of Federal Procurement Policy Act in 1988.

The second provision encourages members of the public to identify paperwork requirements that have not been submitted for review and approval pursuant to the act's requirements. Although the act's public protection provisions explicitly shield the public from the imposition of any formal agency penalty for failing to comply with such an unapproved, or bootleg, paperwork requirement, individuals often feel compelled to comply. This is especially true when the individual has an ongoing relationship with the agency and that relationship accords the agency substantial discretion that could be used to redefine their future dealings. In other words, leverage. Under S. 244, a member of the public can blow the whistle on such a bootleg paperwork requirement and be accorded the protection of anonymity.

Next, I would like to emphasize that the Paperwork Reduction Act of 1995 clarifies the 1980 act to make explicit that it applies to Government-sponsored third-party paperwork burdens. These are recordkeeping, disclosure, or other paperwork burdens that one private party imposes on another private party at the direction of a Federal agency. In 1990, the U.S. Supreme Court decided that such Government-sponsored third-party paperwork burdens were not subject to the Paperwork Reduction Act.

That was contrary to the authors' original intent as has been often stated by the Governor of Florida, then-Senator Lawton Chiles.

The Court's decision in Dole versus United Steelworkers of America created a potentially vast loophole. The public could be denied the act's protections on the basis of the manner in which a Federal agency chose to impose a paperwork burden, indirectly rather than directly. It is worthy of note that Lawton Chiles went to the trouble and expense of filing an amicus brief to the Supreme Court arguing that no such exemption for third-party paperwork burdens was intended. Given the plain works of the statute, the Court decided otherwise. The bill makes explicit the act's coverage of all Government-sponsored paperwork burdens. Once this bill is enacted, we can feel confident that this major loophole will be closed. But given more than a decade of experience under the act, it is prudent to remain vigilant to additional efforts to restrict the act's reach and public protections.

The smart use of information by the Government, and its potential to minimize the burdens placed on the public, is a core concept of the 1980 act. The information resources management [IRM] provisions of the Paperwork Reduction Act of 1995 build upon the foundation laid more than a decade ago by our former colleague from Florida. These provisions of S. 244 are the major contribution of my friend from Ohio, who has emphasized the potential of improved IRM policies to make Government more effective in serving the Public.

Mr. President, I would like to recognize the contributions of several staff members. First, David Plocher, counsel for Senator GLENN, who along with Tony Coe, an associate counsel in the Office of Senate Legislative Counsel, did much of the drafting. Next, I would like to recognize Frank Polk, the committee's Republican staff director, who assisted Senator ROTH over the many years of effort that have gotten us to this point, and also on my staff Rocky Rief and Matthew Sikes, who have been diligent in working on this legislation; and, finally, certainly not least and probably more than any other individual person, Bill Montalto, who has provided assistance to me as well as Chairman BUMPERS and the ranking Republican members of the Small Business Committee. In this and many other efforts Bill has served well many Members of the Senate, the Committee on Small Business, and indeed the entire small business community. For 13 years, Bill Montalto has served the Small Business Committee. Six years prior to that he was in the service of the U.S. Army. He was there a lawyer and counsel and a logistics specialist.

I have had an opportunity to work with this remarkable public servant for all of those 13 years as he served the Small Business Committee. We have worked on a number of legislative initiatives, such as the mentor-protege program which is now functioning. On the Federal Acquisition Streamlining Act, Bill brought his expertise in the small business arena to bear in that legislation which was passed by the Armed Services Committee and the Governmental Affairs Committee, and helped initiate and further small business development centers that are operating all over the country. Bill was invaluable in his creation of the concept of developing that legislation. The SBA 504 program, no one knows more about that program than Bill, and the SBA Preferred Surety BOND Program and numerous others which have helped our small business community.

Bill will be leaving the Small Business Committee on the Senate side, and my understanding is that he will be going to a key position on the Small Business Committee on the House side. So we will continue, hopefully, to benefit from his advice and his expertise and his dedication in all of these areas.

So to Bill Montalto I owe a special debt of gratitude today, and I am sure Senator BUMPERS, who was chairman of the Small Business Committee, now ranking Democrat, and others who have worked with him would echo my sentiments expressed here today. I am sure Senator BOND and others who have worked on this legislation, also, would certainly know that Bill has done a wonderful job here.

Mr. President, with those comments, I urge my colleagues to pass this legislation. I hope we can pass it today or certainly tomorrow. And I hope that we will be able to have a meeting of the minds with the House and send this bill to the President. It is long overdue. I think it will help begin to alleviate some of the crushing burden of paperwork for so much of our business community.

I yield the floor.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, it is with great pleasure that I rise in support of the Paperwork Reduction Act of 1995, S. 244. As an original cosponsor, I see this legislation playing a critical role in the broader initiative to minimize Government regulatory and paperwork burdens imposed at the Federal level.

I want to say a very special thanks to Chairman ROTH for moving this bill through his committee. We have given his committee the great blessing of about two-thirds of the urgent legislation to be brought before the Senate. We thank him for moving this bill forward.

In addition, a very special thanks to the Senator from Georgia [Mr. NUNN] who has long been a champion of paperwork reduction who has worked long and hard. With his leadership we passed this several times in the Senate. As he indicated in his opening remarks, it now looks like we have a receptive majority in the House. I am hopeful that the good work that those two friends, as well as the distinguished Senator from Ohio, Senator GLENN, have put in, along with Senator BUMPERS, my predecessor, will bear fruit.

Small businesses are especially hard hit by excessive regulatory and paperwork burdens imposed by the Federal bureaucracy. Each time I return home to my State of Missouri, small business owners come up to me and say how the unnecessary burdens of Federal regulations are really crushing them. The Federal requirements too often force these hard-working men and women and small business owners to divert time, energy, and their resources away from productive activities, reducing the competitiveness of the business and impeding their growth.

As chairman of the Small Business Committee, I have had the opportunity to hear a lot from people around the country in the last few months. They are the ones who seem to be crying "enough" during last November's election. They have told us they are fed up with Government that is inefficient and wasteful. They want that to change. They are unhappy with the Government's failure to meet their expectations in carrying out its responsibility.

People want Government to work well. Basic governmental functions to insure we have clean water to drink, safe medicines to take, and safe food to eat are sought by all Americans. But they look at our Government today and see an institution that must be brought under control.

And it is not hard to understand their frustration. The paperwork burden imposed on Americans in 1993 totaled 6.6 billion hours. Small businesses alone spend 1 billion hours simply filling out Government paperwork at an annual cost of $100 billion. Furthermore, Government regulation costs individuals and businesses more than $500 billion annually or about $5,000 per family. Just imagine the potential benefit to our economy if some of this valuable time could have been spent on product development or sales.

First, let me assure my colleagues that the Paperwork Reduction Act of 1995 will not impose new regulatory burdens on individuals and businesses. Under the Paperwork Reduction Act, we expect more from the agencies, not from the public. Whenever an agency imposes a paperwork requirement, it must estimate the total amount of time needed to fulfill the requirement. The burden is not merely how long it takes to complete the Government form, report or survey. A greater burden is likely to be the time necessary to understand the requirement, identify the information needed to respond, compile the data, and then submit it in the required format. It is likely the Government format is vastly different from how the small business owner maintains the data.

The Council on Regulation and Information Management [C-RIM], a group which has sought since 1942 to rationalize and minimize the Federal regulatory and paperwork reduction processes, believes that Federal agencies underestimate the total time burden imposed by their paperwork by nearly one-third. C-RIM believes the actual burden is closer to 10 billion hours, not the 6.6 billion claimed by Federal agencies. If you estimate compliance cost at $50 per hour, the annual cost of federally imposed paperwork burdens totals $500 billion.

As a nation, we cannot afford to continue to heap new paperwork and regulatory burdens on individuals and businesses. While recognizing that the total Federal paperwork burden has continued to grow, the Paperwork Reduction Act of 1980 has brought some successes. First, the 1980 act assures that the public will have an opportunity to comment upon proposed Federal paperwork burdens and to suggest ways to collect necessary information in a less burdensome way. The Paperwork Reduction Act of 1995 strengthens participation by the public. Small businesses will have an opportunity earlier in the process to shed light on the practical business reality on a proposed paperwork requirement. In this bill, we are giving them opportunities to point out when nearly identical information is being collected by another Federal agency. In addition, small businesses will be able to comment on the timing of the submission of the data as well as the format.

Recently, the House of Representatives passed its version of the Paperwork Reduction Act of 1995. It is very appropriate that we in the Senate act on this important legislation today. This act is part of a broad down payment on the regulatory relief program we must pass if we expect Americans to maintain trust and respect in their Government.

Another bill I hope we will consider soon is S. 350, the Regulatory Flexibility Amendments Act of 1995. Earlier this year, I introduced this bill to remove the prohibition against judicial review of agency compliance with the Regulatory Flexibility Act. The purpose of the Reg Flex Act is very simple. It rejects the notion that one size fits all under Government regulations. Under this act, Federal regulators must take into account the needs of small business in drafting new regulations.

The SBA Chief Counsel for Advocacy is charged with monitoring Federal agency compliance with the Reg Flex Act. Unfortunately, too often regulators in some Federal agencies give mere lipservice to the Reg Flex Act requirements, because the Reg Flex Act specifically prohibits judicial enforcement of the law's requirements. As a result, too many Federal regulators have ignored their responsibilities under the act, even when the Chief Counsel for Advocacy notifies the agencies of their failure to comply.

My bill is intended to encourage Federal agencies to comply with their reg flex obligations by permitting small businesses to go into Federal court to enforce compliance by an agency. The judge also will have the freedom to stay implementation of a regulation until the agency comes into compliance. On March 8, I will chair a hearing before the Senate Committee on Small Business to receive testimony from public and private witnesses on how to implement better the Reg Flex Act. It is my intention to review other administrative remedies to enforce the Reg Flex Act so new regulations are written correctly in the first place, so the need to challenge agencies in Federal court might be minimized.

Mr. President, when I first elected to the U.S. Senate, I did not realize so much of my time would be devoted to getting the Government off the backs of individuals and small businesses. As the co-chair of the Senate Regulatory Relief Task Force, we have targeted for reform the 10 worst regulatory burdens. This move will help small businesses, who are the hardest hit by many of these burdensome regulations. We need to reinforce the notion that our Government should be a friend of small business. Government should not be an enemy of growth and new jobs. Unfortunately, today we find a regulatory environment that creates too many roadblocks that impede the growth of small business.

The Paperwork Reduction Act of 1995 is an important step toward bringing our Government under control. For our Government to demand paperwork requiring 10 billion hours per year to fill out is a sign that much work needs to be done to reach this goal. This bill will help move us in the right direction, and I urge to support its passage.

Mr. DOLE. Mr. President, today we begin consideration of S. 244, the Paperwork Reduction Act of 1995. This is a badly needed piece of legislation, and enjoys broad bipartisan support. Americans are drowning in paperwork and need relief now.

This legislation is an important part of our package of reforms to downsize Government; to get the Government off the backs of the American people. Together with regulatory reform and unfunded mandates legislation, paperwork reduction is an important step forward toward improving the lives of ordinary Americans by injecting some common sense into the requirements of the Federal Government on our citizens.

The Paperwork Reduction Act of 1995 strengthens the Paperwork Reduction Act of 1980 by setting a goal of reducing the paperwork burdens imposed by the Federal Government by 5 percent; clarifying that the act will apply to all Government-sponsored collections of information; and strengthening and improving both information technology management and information dissemination. These are reforms and improvements that are long overdue.

Mr. President, I have had many people, particularly those with small businesses, tell me that they would be willing to forgo some aspects of a Federal program that might benefit them if only they could be protected from unnecessary paperwork as well. As it is, the burdens involved are nothing more than a tax: a tax on our productivity. This costs America jobs. It deters those who would otherwise open businesses from doing so; and it is often the difference between a successful and a failing business.

The American people spoke clearly in last November's elections: "rein in big government." They want and deserve a smaller and more responsive Government. They also want and deserve a system of Government that respects the intentions of the Founding Fathers as reflected in the 10th amendment to the Constitution: Those powers not delegated to the Federal Government are reserved to the people and to the States.

The 10th amendment is not merely an abstract point of political philosophy—it reflects the voice of experience by those who understood that Government works best when it governs least and when decisions are made at the level closest to the people. Decisions about what to require in the way of forms, justifications, documentation and recordkeeping made in Washington, DC, often lack this sense of the practical limits on Government. Thus, what may seem perfectly reasonable to a bureaucrat in Washington, DC—who only deals with his or her specific program—is experienced by many Americans as an exercise in frustration, and often of harassment. When you multiply that one bureaucrat by the literally thousands of programs that seem reasonable in a vacuum, it does not take long to see that we have the recipe for disaster.

Mr. President, when everyone is in charge, no one is in charge. Thus, we cannot absolve ourselves of the burdens caused by the executive branch that is, after all, attempting to carry our what it believes to the dictates of Congress. Congress has an important role—indeed, an obligation—to exercise the kind of oversight that reins in the excesses of Government. S. 244 is an important step forward, and I urge my colleagues to support its passage.

Mr. GLENN. Mr. President, I am very happy that we are today one important step closer to reauthorization of the Paperwork Reduction Act. This law is essential to reducing the burdens of Government paperwork on the American people. The law is also key to improving the management of Federal Government information systems—this is essential because the Federal Government is now spending $25 billion a year on information technology.

The bill we bring to the floor today is the product of several years of bipartisan effort. In fact, this bill is virtually identical to the bill passed by unanimous consent in October 1994. This year, I hope we can quickly go all the way and get the bill signed into law.

Our bill makes important improvements to the 1980 Paperwork Reduction Act. It strengthens the paperwork clearance process and information resources management—both in OMB and the agencies:

We reauthorize the act for 5 years;

We overturn the Dole versus United Steelworkers Supreme Court decision, so that information disclosure requirements are covered by the OMB paperwork clearance process;

We require agencies to evaluate paperwork proposals and solicit public comment on them before the proposals go to OMB for review;

We create additional opportunities for the public to participate in paperwork clearance and other information management decisions;

We strengthen agency and OMB information resources management [IRM] requirements;

We establish information dissemination standards and require the development of a Government Information Locator Service [GILS] to ensure improved public access to Government information, especially that maintained in electronic format; and

We make other improvements in the areas of Government statistics, records management, computer security, and the management of information technology.

These are important reforms and improvements to the act. We should act on this legislation quickly.

Mr. NUNN. Mr. President, I ask unanimous consent that letters of support from the Paperwork Reduction Act Coalition and individual member organizations may be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

THE PAPERWORK REDUCTION
ACT COALITION,
March 2, 1995.

Hon. SAM NUNN,
U.S. Senate, Senate Office Building, Washington, DC.

DEAR SENATOR NUNN: The organizations comprising the steering committee of the Paperwork Reduction Act Coalition wish to express our strong and enthusiastic support for S. 244, the "Paperwork Reduction Act of 1995."

As you know, we have been steadfastly working for enactment of this legislation since 1989. This commitment stems from our belief that S. 244 will significantly strengthen the ability of the federal government to reduce the regulatory paperwork burden upon the private sector and the American public. Time and again it has been demonstrated that unnecessary regulatory costs hinder economic growth and retard job creation and retention. With as much as nine percent of the gross domestic product involved in meeting the federal government's information needs, it is imperative that a strengthened Paperwork Reduction Act be aggressively used to improve productivity, eliminate waste, and reduce the burdens upon businesses and taxpayers.

To illustrate the breadth of support for this legislation, we have attached a partial list of the members of the Paperwork Reduction Act Coalition. Their commitment to this issue is every bit as sincere as ours.

We came so close last Congress with passage of S. 560. Now that the House has passed its companion legislation, we have the opportunity to successfully bring this debate to a close. We look forward to helping you achieve that goal.

Sincerely,

Chamber of Commerce of the United States; Citizens for a Sound Economy, Council on Regulatory and Information Management; National Association of Manufacturers; National Federation of Independent Business; National Small Business United; Small Business Legislative Council; Aerospace Industries Association of America; Air Transport Association of America; Alliance of American Insurers; American Consulting Engineers Council; American Institute of Merchant Shipping; American Iron and Steel Institute; American Petroleum Institute.

American Subcontractors Association; American Telephone and Telegraph; Associated Builders and Contractors; Associated Credit Bureaus; Associated General Contractors of America; Association of Manufacturing Technology; Association of Records Managers and Administrators; Automotive Parts and Accessories Association; Biscuit and Cracker Manufacturers' Association; Bristol Myers; Chamber of Commerce of the United States; Chemical Manufacturers Association; Chemical Specialties Manufacturers Association; Citizens Against Government Waste.

Citizens for a Sound Economy; Computer and Business Equipment Manufacturers Association; Contract Services Association of America; Copper and Brass Fabricators Council; Council on Regulatory and Information Management; Dairy and Food Industries Supply Association; Direct Selling Association; Eastman Kodak Company; Electronic Industries Association; Financial Executive Institute; Food Marketing Institute; Gadsby & Hannan; Gas Appliance Manufacturers Association; General Electric; Glaxo, Inc.; Greater Washington Board of Trade; Hardwood Plywood and Veneer Association.

Independent Bankers Association of America; International Business Machines; International Communication Industries Association; International Mass Retail Association; Kitchen Cabinet Manufacturers Association; Mail Advertising Service Association International; McDermott, Will & Emery; Motorola Government Electronics Group; National Association of Home Builders of the United

States; National Association of Manufacturers; National Association of Plumbing-Heating-Cooling Contractors; National Association of the Remodeling Industry; National Association of Wholesalers-Distributors.

National Federation of Independent Business; National Food Brokers Association; National Food Processors Association; National Foundation for Consumer Credit; National Glass Association; National Restaurant Association; National Roofing Contractors Association; National Security Industrial Association; National Small Business United; National Society of Professional Engineers; National Society of Public Accountants; National Tooling and Machining Association; Northrop Corporation; Packaging Machinery Manufacturers Institute; Painting and Decorating Contractors of America.

Printing Industries of America; Professional Services Council; Shipbuilders Council of America; Small Business Legislative Council; Society for Marketing Professional Services; Sun Company, Inc.; Sunstrand Corporation; Texaco; United Technologies; Wholesale Florists and Florists Supplies of America.

MEMBERS OF THE SMALL BUSINESS LEGISLATIVE COUNCIL.

Air Conditioning Contractors of America.
Alliance for Affordable Health Care.
Alliance of Independent Store Owners and Professionals.
American Animal Hospital Association.
American Association of Nurserymen.
American Bus Association.
American Consulting Engineers Council.
American Council of Independent Laboratories.
American Floorcovering Association.
American Gear Manufacturers Association.
American Machine Tool Distributors Association.
American Road & Transportation Builders Association.
American Society of Travel Agents, Inc.
American Sod Producers Association.
American Subcontractors Association.
American Textile Machinery Association.
American Trucking Associations, Inc.
American Warehouse Association.
American Wholesale Marketers Association.
AMT—The Association of Manufacturing Technology.
Apparel Retailers of America.
Architectural Precast Association.
Associated Builders & Contractors.
Associated Equipment Distributors.
Associated Landscape Contractors of America.
Association of Small Business Development Centers.
Automotive Service Association.
Automotive Recyclers Association.
Bowling Proprietors Association of America.
Building Service Contractors Association International.
Business Advertising Council.
Christian Booksellers Association.
Council of Fleet Specialists.
Council of Growing Companies.
Direct Selling Association.
Electronics Representatives Association.
Florists' Transworld Delivery Association.
Health Industry Representatives Association.
Helicopter Association International.
Independent Bakers Association.
Independent Bankers Association of America.
Independent Medical Distributors Association.
International Association of Refrigerated Warehouses.
International Communications Industries Association.
International Formalwear Association.
International Television Association.
Machinery Dealers National Association.
Manufacturers Agents National Association.
Manufacturers Representatives of America, Inc.
Mechanical Contractors Association of America, Inc.
National Association for the Self-Employed.
National Association of Catalog Showroom Merchandisers.
National Association of Home Builders.
National Association of Investment Companies.
National Association of Plumbing-Heating-Cooling Contractors.
National Association of Private Enterprise.
National Association of Realtors.
National Association of Retail Druggists.
National Association of RV Parks and Campgrounds.
National Association of Small Business Investment Companies.
National Association of the Remodeling Industry.
National Association of Truck Stop Operators.
National Association of Women Business Owners.
National Chimney Sweep Guild.
National Association of Catalog Showroom Merchandisers.
National Coffee Service Association.
National Electrical Contractors Association.
National Electrical Manufacturers Representatives Association.
National Food Brokers Association.
National Independent Flag Dealers Association.
National Knitwear Sportswear Association.
National Lumber & Building Material Dealers Association.
National Moving and Storage Association.
National Ornamental & Miscellaneous Metals Association.
National Paperbox Association.
National Shoe Retailers Association.
National Society of Public Accountants.
National Tire Dealers & Retreaders Association.
National Tooling and Machining Association.
National Tour Association.
National Venture Capital Association.
Opticians Association of America.
Organization for the Protection and Advancement of Small Telephone Companies.
Passenger Vessel Association.
Petroleum Marketers Association of America.
Power Transmission Representatives Association.
Printing Industries of America, Inc.
Promotional Products Association International.
Retail Bakers of America.
Small Business Council of America, Inc.
Small Business Exporters Association.
SMC/Pennsylvania Small Business.
Society of American Florists.

NATIONAL FEDERATION OF
INDEPENDENT BUSINESS,
Washington, DC, March 1, 1995.

CUT GOVERNMENT REDTAPE AND EXCESSIVE PAPERWORK—SUPPORT S. 244

Hon. SAM NUNN,
U.S. Senate, Washington, DC.

DEAR SENATOR: On behalf of the more than 600,000 small business owners of NFIB, I am writing to express our strong support for S. 244, legislation to strengthen the Paperwork Reduction Act (PRA).

Small business is struggling to swim against the rising tide of regulatory paperwork required by the federal government. This flood of paperwork is overwhelming to small business owners and threatens their ability to survive and prosper. In fact, a recent NFIB Education Foundation survey found that the burden of federal regulation and paperwork was the fastest rising problem facing small business owners. Strengthening the PRA is essential to the livelihood of small business in America.

If you want entrepreneurs in your state to spend less time filling out forms and more time creating jobs then vote YES on S. 244. Final passage of S. 244 will be a Key Small Business Vote for the 104th Congress.

Sincerely,

JOHN J. MOTLEY III,
Vice President,
Federal Governmental Relations.

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,
Washington, DC, March 2, 1995.

To Members of the United States Senate:

The U.S. Chamber of Commerce Federation of 215,000 businesses, 3,000 state and local chambers of commerce, 1,200 trade and professional associations, and 72 American Chambers of Commerce abroad identified the need for federal paperwork reduction as its number three issue of greatest significance for the 104th Congress. Accordingly, I urge your strong support for S. 244, the "Paperwork Reduction Act of 1995."

Consider this:

Paperwork burdens carry a $510 billion price tag annually for the American economy;

The American public spends 6.8 billion hours annually complying with federal paperwork mandates;

Businesses pay at least twice as much in paperwork costs than for corporate taxes;

Businesses (both small and large) carry more than 60 percent of the paperwork burden; and

The financial impact from paperwork burdens equals about nine percent of the Gross Domestic Product annually.

Clearly, this problem has reached gargantuan proportions and must be reversed. The "Paperwork Reduction Act of 1995" is essential to this goal. If enacted, S. 244 would provide for a stronger Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget to conduct centralized reviews of proposed and existing paperwork burdens. It also would provide for increased opportunities for the public to comment on proposed paperwork mandates and for realistic assessments of estimated reporting and recordkeeping. Significantly, S. 244 would reverse the 1990 Supreme Court decision in *Dole* vs. *United Steelworkers*, which had the effect of limiting OIRA's ability to oversee a substantial amount of the federally imposed paperwork burden, despite the intentions of the authors of the original Paperwork Reduction Act of 1980. Any information required to be disclosed to third parties (i.e., where the data is not provided directly to the government) would be subject to the paperwork review process. Finally, this legislation would prescribe specific goals for substantive reductions in the amount of federally required information.

Because information is the key to meeting many of the needs of society, we acknowledge the validity of appropriate reporting requirements. The business community—and particularly small businesses—do require, however, an information-collection process that is rational and reasonable, and that reflects the centrality of our role as job creators.

Again, please vote "YES" on S. 244, the "Paperwork Reduction Act of 1995."

Sincerely,

R. BRUCE JOSTEN,
Senior Vice President,
Membership Policy Group.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. NUNN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NUNN. Mr. President, while we are waiting and working out, hopefully, the managers' amendment, I would like to speak briefly on another subject, with the stipulation that if someone comes in, I will be glad to be interrupted.

THE 1996 PARALYMPIC GAMES

Mr. NUNN. Mr. President, last month I spoke on the floor detailing for my colleagues the exciting history of the Paralympic games. Many Americans are aware of, and excited about, the 16 days of Centennial Olympic games competition to be held in Atlanta during July and August, 1996. However, a number of people remain unaware of the 12 days of Paralympic competition that will be held less than 2 weeks after the conclusion of the Olympic Games. Atlanta is proud to host the Paralympics games along with the 4,000 athletes, 1,000 coaches, and team staff that it will bring to Georgia from more than 100 nations.

The Paralympic movement, dating back to 1946, has involved scores of outstanding men and women with a wide variety of disabilities. Last month, I spoke of the accomplishments of Al Mead, an above-the-knee amputee. Al lost his leg due to a fall he took as a nine year old that led to complications requiring amputation. He is a former world record-holder in the long jump and the 100 meters, and a long jump silver-medalist in the Barcelona Paralympics. His accomplishments are awe-inspiring, and I look forward to watching Al perform, along with thousands or other people, in Atlanta in 1996.

Today, I would like to call attention to another outstanding Paralympian, a young woman named Trischa Zorn. Trischa has been legally blind since birth with a condition called anaridia—the absence of an iris. Despite her condition, she has been a top performer in both the Paralympics and the Olympic swimming competitions. At age 7, she began swimming along with her sister's swim team in Tustin, CA. By the age of 10, her family moved to Mission Viejo where she began training in earnest.

Due to her 20/1000 vision, Trischa had difficulty knowing when it was time to make her turns at the end of each length of the pool. Over the years she trained herself to count each stroke across the length of the pool so that she would know when she was approaching turns. With incredible dedication and determination, Trischa, in 1980 at the age of 16, was named first alternate on the U.S. Olympic swimming team. As we all know, to be selected as first alternate for the U.S. Olympic team is a tremendous achievement for the most able-bodied among us. It means competing at levels most of us will never approach. However, to be named first alternate to the U.S. Olympic team and to be legally blind is truly an incredible achievement.

After a highly successful high school swimming career, Trischa was recruited by the University of Nebraska's women's swimming program. By her sophomore year at Nebraska, Trischa was named to the Big Eight all-academic team along with receiving All-American honors her junior and senior years.

After graduating from Nebraska in 1987, Trischa got her master's degree in school administration from Indiana University/Purdue University at Indianapolis. She obtained her certification to teach both in the pool and in the classroom, all the while maintaining her vigorous training schedule.

At the 1992 Paralympic games in Barcelona, Trischa was the top overall medalist. She won 12 medals—10 gold, 2 silver—and broke 6 world records. At the 1990 World Championships for the Disabled, she scored a "Perfect 11," winning a gold medal in every swimming event. In the 1988 Seoul Paralympics, she won 12 gold medals, earning the nickname "The Golden Girl." Trischa has been awarded such titles as the first-ever Physically Challenged Athlete of the Year, Indianapolis Woman of the Year, and she was nominated for the 1988 Sports Illustrated Sportsman of the Year Award.

Obviously, Mr. President and my colleagues, this is a woman who has focused on her abilities and almost dismissed her disabilities. She is now focusing on the 1996 Paralympics. All of us in Atlanta, and all who will be coming from all over the world to those events, look forward to watching "The Golden Girl" add more medals and records to her already impressive list of accomplishments.

Mr. President, I yield the floor.

PAPERWORK REDUCTION ACT OF 1995

The Senate continued with the consideration of the bill.

Mr. ROTH. Mr. President, I ask unanimous consent that the committee amendments be agreed to en bloc, that they be considered original text for purposes of further amendment, and that no points of order be waived.

The PRESIDING OFFICER (Mr. ABRAHAM). Without objection, it is so ordered.

Mr. ROTH. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. Mr. President, I would like to ask the manager of the bill a few questions.

Mr. ROTH. I am available to answer the questions of the Senator from Colorado.

Mr. BROWN. I thank the chairman. Under section 3505 the Director of the Office of Management and Budget has a duty to, in consultation with agency heads, set annual agency goals to reduce information collection burdens. Would the chairman agree that the Secretary of Commerce may take this opportunity to reduce the paperwork burden on persons relating to the compilation and publication of censuses of agriculture and irrigation, of manufactures, of mineral industries, and other businesses, including the distributive trades, service establishments, and transportation?

Mr. ROTH. I believe it would be appropriate for the Secretary of Commerce to review the paperwork burden associated with this census collection.

Mr. BROWN. I thank the Senator for that clarification. Under section 3506, each agency shall reduce the information collection burdens on the public. These industry and economic censuses cause business owners and farmers to maintain a great deal of paperwork in order to complete the census. The 1992 Agriculture Census alone required farmers and ranchers to answer more than 200 questions. It is my understanding that if a hospital, for example, has a garden where they grow lettuce or fruits only for their patients, they may still be considered a farmer and be required to fill out the 200 questions in the agriculture census even though their crops never go to market. Would the chairman agree that this section would require the Secretary of

Commerce to reduce burdens created by the compilation and publication of censuses of agriculture and irrigation, of manufactures, of mineral industries, and other businesses, including the distributive trades, service establishments, and transportation?

Mr. ROTH. Clearly this section requires agencies to review the information collection actions it carries out. To the extent that the Secretary is able to reduce the information collection burden on the affected public in this area, this section requires the Secretary to do so.

Mr. BROWN. I am particularly concerned about the unnecessary duplication in the collection of information in these censuses. Would the Senator agree that sections 3509 and 3510 are intended to encourage agencies to share information and avoid repetitive collections of the same information?

Mr. ROTH. This act not only encourages information sharing, section 3509 in particular authorizes the OMB Director to designate a central collection agency to obtain information for two or more agencies where it is not inconsistent with applicable law.

Mr. BROWN. I thank the chairman for his assistance and I yield the floor.

AMENDMENT NO. 317

(Purpose: To clarify certain definitions and intelligence related provisions, and for other purposes)

Mr. ROTH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. ROTH], for himself and Mr. NUNN, proposes an amendment numbered 317.

Mr. ROTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 8, lines 19 and 20, strike out "and processes, automated or manual,".

On page 8, line 25, beginning with "section" strike out all through line 2 on page 9 and insert in lieu thereof "section 111(a)(2) and (3)(C) (i) through (v) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2) and (3)(C) (i) through (v));".

On page 22, line 24, strike out "a senior official" and insert in lieu thereof "senior officials".

On page 23, line 2, strike out "for the military departments".

On page 46, lines 8 and 9, strike out "collection of information prior to expiration of time periods established under this chapter" and insert in lieu thereof "a collection of information".

On page 46, line 13, strike out "such time periods" and insert in lieu thereof "time periods established under this chapter".

On page 46, lines 17 and 18, strike out "within such time periods because" and insert in lieu thereof "because".

On page 46, line 21, strike out "or".

On page 46, beginning with line 22, strike out all through line 2 on page 47 and insert in lieu thereof the following:

"(ii) an unanticipated event has occurred; or

"(iii) the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed."

On page 49, line 14, insert "(a)" before "In order".

On page 50, insert between lines 22 and 23 the following new subsection:

"(b) This section shall not apply to operational files as defined by the Central Intelligence Agency Information Act (50 U.S.C. 431 et seq.)."

On page 56, lines 4 and 5, strike out "section 4-206 of Executive Order No. 12036, issued January 24, 1978," and insert in lieu thereof "section 3.4(e) of Executive Order No. 12333, issued December 4, 1981,".

On page 58, insert between lines 2 and 3 the following new section:

SEC. 3. PAPERWORK BURDEN REDUCTION INITIATIVE REGARDING THE QUARTERLY FINANCIAL REPORT PROGRAM AT THE BUREAU OF THE CENSUS.

(a) PAPERWORK BURDEN REDUCTION INITIATIVE REQUIRED.—As described in subsection (b), the Bureau of the Census within the Department of Commerce shall undertake a demonstration program to reduce the burden imposed on firms, especially small businesses, required to participate in the survey used to prepare the publication entitled "Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations".

(b) BURDEN REDUCTION INITIATIVES TO BE INCLUDED IN THE DEMONSTRATION PROGRAM.—The demonstration program required by subsection (a) shall include the following paperwork burden reduction initiatives:

(1) FURNISHING ASSISTANCE TO SMALL BUSINESS CONCERNS.—

(A) The Bureau of the Census shall furnish advice and similar assistance to ease the burden of a small business concern which is attempting to compile and furnish the business information required of firms participating in the survey.

(B) To facilitate the provision of the assistance described in subparagraph (A), a toll-free telephone number shall be established by the Bureau of the Census.

(2) VOLUNTARY PARTICIPATION BY CERTAIN BUSINESS CONCERNS.—

(A) A business concern may decline to participate in the survey, if the firm has—

(i) participated in the survey during the period of the demonstration program described under subsection (c) or has participated in the survey during any of the 24 calendar quarters previous to such period; and

(ii) assets of $50,000,000 or less at the time of being selected to participate in the survey for a subsequent time.

(B) A business concern may decline to participate in the survey, if the firm—

(i) has assets of greater than $50,000,000 but less than $100,000,000 at the time of selection; and

(ii) participated in the survey during the 8 calendar quarters immediately preceding the firm's selection to participate in the survey for an additional 8 calendar quarters.

(3) EXPANDED USE OF SAMPLING TECHNIQUES.—The Bureau of the Census shall use statistical sampling techniques to select firms having assets of $100,000,000 or less to participate in the survey.

(4) ADDITIONAL BURDEN REDUCTION TECHNIQUES.—The Director of the Bureau of the Budget may undertake such additional paperwork burden reduction initiatives with respect to the conduct of the survey as may be deemed appropriate by such officer.

(c) DURATION OF THE DEMONSTRATION PROGRAM.—The demonstration program required by subsection (a) shall commence on October 1, 1995, and terminate on the later of—

(1) September 30, 1998; or

(2) the date in the Act of Congress providing for authorization of appropriations for section 91 of title 13, United States Code, first enacted following the date of the enactment of this Act, that is September 30, of the last fiscal year providing such an authorization under such Act of Congress.

(d) DEFINITIONS.—For purposes of this section:

(1) The term "burden" shall have the meaning given that term by section 3502(2) of title 44, United States Code.

(2) The term "collection of information" shall have the meaning given that term by section 3502(3) of title 44, United States Code.

(3) The term "small business concern" means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant thereto.

(4) The term "survey" means the collection of information by the Bureau of the Census at the Department of Commerce pursuant to section 91 of title 13, United States Code, for the purpose of preparing the publication entitled "Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations".

On page 58, insert between lines 2 and 3 the following new section:

SEC. 4. OREGON OPTION PROPOSAL.

(a) FINDINGS.—The Senate finds that—

(1) Federal, State and local governments are dealing with increasingly complex problems which require the delivery of many kinds of social services at all levels of government;

(2) historically, Federal programs have addressed the Nation's problems by providing categorical assistance with detailed requirements relating to the use of funds which are often delivered by State and local governments;

(3) although the current approach is one method of service delivery, a number of problems exist in the current intergovernmental structure that impede effective delivery of vital services by State and local governments;

(4) it is more important than ever to provide programs that respond flexibly to the needs of the Nation's States and communities, reduce the barriers between programs that impede Federal, State and local governments' ability to effectively deliver services, encourage the Nation's Federal, State and local governments to be innovative in creating programs that meet the unique needs of the people in their communities while continuing to address national goals, and improve the accountability of all levels of government by better measuring government performance and better meeting the needs of service recipients;

(5) the State and local governments of Oregon have begun a pilot project, called the Oregon Option, that will utilize strategic planning and performance-based management that may provide new models for intergovernmental social service delivery;

(6) the Oregon Option is a prototype of a new intergovernmental relations system, and it has the potential to completely transform the relationships among Federal, State and local governments by creating a system

of intergovernmental service delivery and funding that is based on measurable performance, customer satisfaction, prevention, flexibility, and service integration; and

(7) the Oregon Option has the potential to dramatically improve the quality of Federal, State and local services to Oregonians.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Oregon Option project has the potential to improve intergovernmental service delivery by shifting accountability from compliance to performance results and that the Federal Government should continue in its partnership with the State and local governments of Oregon to fully implement the Oregon Option.

On page 58, line 3, strike out "**SEC. 3.**" and insert in lieu thereof "**SEC. 5.**".

Mr. ROTH. Mr. President, the managers' amendment I have sent to the desk contains four parts. The first part is a series of committee amendments. The second consists of a few technical amendments requested by the intelligence community. The third is an amendment authored by Senator COVERDELL which eases compliance with the Census Bureau's Quarterly Financial Reports requirements. The fourth is a provision authored by Senator HATFIELD relating to the Oregon option.

The first part, amendments reported by the committee, was developed by Senators COHEN, GLENN, NUNN, and myself. It modifies several provisions of the bill regarding procurement of information technology. In the time since the language of this legislation was drafted last year, the Congress passed the Federal Acquisition Streamlining Act and the President signed it into law. That act and other events have created the opportunity to revise portions of the Paperwork Reduction Act. In summary, the amendment will better focus the information technology provisions on achieving results.

This amendment was the result of a collaborative effort by Senators COHEN, GLENN, NUNN, and myself. Senators NUNN, GLENN, and I developed the bill now before the Senate. With Senator COHEN, we also had primary responsibility for the drafting and passage of last year's acquisition reform bill. So, there is broad agreement by the key sponsors of both efforts on the value of the Cohen-Roth-Glenn-Nunn amendment for the Paperwork Reduction Act.

More work is needed to fix the Government's problems in using information technology. We have had hearings at the Governmental Affairs Committee, and the General Accounting Office is doing a major audit of the situation. Beyond that, Senator COHEN and I are working on legislation to follow up on the committee's acquisition reform efforts. The language in the committee's version of the Paperwork Reduction Act also will remove potential areas of conflict between this bill and the acquisition reform efforts the committee is currently pursuing.

The second part consists of technical amendments intended to assure that the responsibilities given to OMB in the bill concerning the oversight of information technology activities within the Department of Defense and the intelligence community are the same as the authorities in the current Paperwork Reduction Act.

I understand that, during the development of these amendments, concern was expressed about computer security within the executive branch. In the previous Congress Senator GLENN and I asked the Office of Technology Assessment to study security and privacy in the electronic age. In its report, entitled "Information Security and Privacy in Network Environments," OTA outlined important legal and policy issues involved in the security of such environments and recommended substantial congressional involvement in addressing those issues. The report also describes the organizational relationships concerning these matters and the delicacy with which they were crafted in enacting the Computer Security Act of 1987. These are complex issues which the committee intends to address in depth later this session. In the meantime, however, the bill we are considering today leaves existing authorities unchanged.

The third portion of the amendment is the Coverdell provision to establish a demonstration program within the Census Bureau to reduce the paperwork burden on small business resulting from the Quarterly Financial Report Program. The demonstration program expires on September 30, 1998, the date on which the Quarterly Financial Report Program itself expires, or if such program is itself further extended, then the demonstration expires in such later year.

During such time the Census Bureau is required to assist first-time respondents in fulfilling the information collection under the Quarterly Report Program, or if the program is reauthorized for a subsequent period, the demonstration would expire on that later date. Particularly, the Bureau is mandated to establish a toll-free telephone number for those seeking such assistance.

Perhaps more important than the assistance for first-time respondents is the Coverdell provision's protection against a firm's repeated requirement of participation. No firm with assets of $50 million or less may be required to participate twice if it has participated since October 1, 1989. And no firm of $100 million or less may be required to participate if it has participated within the last eight quarters.

I support the provision authored by Senator COVERDELL and commend him for his initiative.

The fourth provision is a sense of the Senate resolution expressing support for an innovative statewide effort to improve intergovernmental assistance and service delivery. Authored by Senator HATFIELD, the resolution recognizes that the State and local governments of Oregon have begun a comprehensive project to coordinate their use of Federal funds to address social needs. Joined by the Federal Government in this effort, they are attempting to trade more flexibility in the use of those funds for more accountability for measurable performance. This provision expresses a recognition that this approach has the potential to improve intergovernmental service delivery and ought to be encouraged.

I support all four parts of the amendment and urge its adoption.

I yield the floor.

The PRESIDING OFFICER. Is there further debate?

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, the Senator from Delaware has explained the managers' amendment. I think there is nothing to add. I urge adoption.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 317) was agreed to.

Mr. ROTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NUNN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROTH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Arkansas is recognized.

(The remarks of Mr. BUMPERS and Mr. BENNETT pertaining to the introduction of S. 504 are located in today's RECORD under "Statements on Introduced bills and Joint Resolutions.")

THE DOLLAR-YEN RELATIONSHIP

Mr. BENNETT. Mr. President, I have enjoyed this exchange. While I have the floor, I would like to talk briefly about the issue that I came to the floor to talk about before I became fascinated with the arguments by my friend from Arkansas.

Mr. President, I happen to be chairman of the Senate prayer breakfast group. In that role, I attended the National Prayer Breakfast addressed by President Clinton and the Reverend Andrew Young. While we were there, we had Scripture readings, one from the New Testament and one from the Old Testament. Ruth Bader Ginsburg from the Supreme Court read the Scripture from the Old Testament. And I would like to repeat that which she read here on the floor of the Senate today because it covers beautifully the issue I want to address briefly.

It is from Deuteronomy, chapter 25, and starts with verse 13.

> Do not have two differing weights in your bag, one heavy, one light. Do not have two differing measures in your house, one large, one small. You must have accurate and honest weights and measures so that you may live long in the land the Lord, your God, is giving you.

Honest weights and measures—do not have one large and one small.

The newspapers this morning are full of the story of the relationship between the dollar and the yen or the dollar and the deutsche mark. We recognize that the dollar for us is the unit of account that we use to measure the value of our work, measure the value of our products, and measure the value of our lands. All of these things are measured by the number of dollars that they can bring. In Japan the measure is the yen. Now, says the Bible, do not have two measures in your bag, one big and one small, one heavy and one light. Do not switch the measures.

Yet, when it comes to the unit of account between national economies, we seem to have gotten into the idea that we can switch the measures. We have gone through that with the Mexicans. When we debated NAFTA on this floor, the unit of account was 3.5 pesos equals $1. Oh, it varied a little. It was in a band between 3.1 and 3.5. But we adopted NAFTA. We supported NAFTA on the firm assumption that the relationship between the dollar and the peso would be as stable as the weights and measures described in the Bible, that there would not be a breaking of the trust between those two countries.

Then, in December there was, as our friends to the South said, "Well, we are no longer going to hold the rigidity of that weight and measure between those two currencies. We are going to say the dollar buys you 4.5 pesos. We are going to have a lighter weight in our bag than we had before."

I have spoken about the peso. I have perhaps spent too much time in the Senate talking about the peso. I tried to get the administration to work toward trying to get the weights and measures back to where they were. The administration does not seem to be interested in that. I will continue to bring it up from time to time. But today, I want to talk about the dollar and the yen because that is on the front pages. Mexico for some reason seems to have disappeared from the front pages even though the economic disaster in Mexico probably has more impact on our country long term than the relationship between the dollar and the yen.

We are being told in this morning's papers that the dollar is falling against the yen, that the problem is in the free flight of the dollar, that we must do something to defend the dollar. There is an explicit assumption in that statement that I would like to challenge. What if—just think about it—what if the dollar is the stable measure and it is the yen that is fluctuating in the wrong direction? What if, as you reach into your bag, you pull out the weight that the Bible talks about and it is the dollar that you find there? How are we going to know, if we have two fluctuating against each other, which one is the stable one? Or maybe neither is the stable one? But the unspoken assumption in this morning's paper that the yen is stable and it is the dollar that is falling is the assumption I want to challenge. How can you challenge it?

Well, there is a third unit of measure that I would like to introduce into the equation. That is the measure that has been used for a unit of account of value since biblical times and probably before. There were no dollars, there were no yens when Moses wrote what I have read in Deuteronomy. But there was a measure for money, and it was called gold.

How is the dollar valued currently with respect to that ancient metal? We have been talking about it—the Senator from Arkansas and I—in terms of mining. Let us talk about it in terms of money for just a minute.

The dollar is currently somewhere in the neighborhood where $380 buys you an ounce of gold; a little below that right now, down in the $370's. But the dollar has been fairly stable for months, maybe even going back to a year, around the $380 to $385 mark.

You look at it today. The dollar is still stable in that area with respect to gold. The yen, on the other hand, has been falling with respect to gold. The price of gold in yen is $320 to the ounce. When we add this third element to the equation, it begins to change our perception just a little. Maybe it is the dollar that is stable and the yen that is fluctuating improperly instead of the other way around as this morning's papers indicate.

What would happen if Alan Greenspan, who follows these things more carefully perhaps than any of us, got on the telephone and called his office number in Japan and said, Why don't you start printing extra yen? Do you know what would happen if they started printing extra yen? The value of the yen with respect to gold would begin to change. Of course, if we stayed stable with the price of gold, the value of the yen with respect to dollars would begin to change. And you would see the dollar-yen relationship begin to come together around the common point.

For the sake of illustrating the point, let us say it was at $380 an ounce of gold and the yen would come to the point where you could buy gold at $380 an ounce with yen as well. So the yen and the dollar relationship would be solidified around their common relationship to gold.

I think a number of very interesting things would happen in the world if that were to happen. I leave you with this intriguing thought which Mr. Greenspan left with us when he testified before the Banking Committee. He said, "If the United States were on a gold standard, the Mexican peso crisis would not have occurred," because, you see, what he is really saying is, if we pegged our unit of account to a weight and a measure that did not change, to a weight and a measure that did not have a light version and a small version, to use the language of the Bible, but had only one, our currency would be the strongest in the world and the other nations would peg their currency to our currency, instead of having a situation where both currencies are constantly moving and producing the kind of uncertainty that this morning's headlines give us.

Mr. President, I have no legislation to offer on this. I expect I probably will have as the Congress unfolds. But I take the occasion of this morning's headlines to once again raise the issue. I raised it last year in the last Congress when Mr. Greenspan first suggested in his testimony before the Banking Committee that pegging the dollar to gold might be a good idea. I have been watching it closely ever since Mr. Greenspan said that. I have been trying to become a student of this issue ever since Mr. Greenspan said that. I have talked about it on the floor of the Senate ever since Mr. Greenspan said that. So far, nobody has noticed. Perhaps nobody will notice it today.

I find it very interesting that in this morning's paper, everybody is interested in the relationship between the dollar and the yen and the dollar and the deutsche marks, just as they were all interested in the relationship between the dollar and the peso. Nobody is addressing the fundamental question raised in the scriptural reference that Ruth Bader Ginsburg gave us at the National Prayer Breakfast when she told us, as the Bible has told us, that we must have stability and honesty in our weights and measures.

I can think of no place where it is more vital to have that stability and honesty than in the weight and measure that we use to measure value throughout the world, which is our currency.

I thank the Chair and yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER (Mr. BURNS). The Senator from California [Mrs. BOXER], is recognized.

Mrs. BOXER. I ask unanimous consent to speak as in morning business at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator is recognized.

THE VOTE ON THE BALANCED BUDGET AMENDMENT

Mrs. BOXER. Mr. President, I have just returned from California, where there was obviously great interest in the vote on the balanced budget amendment. I have to say that the response to my vote, in general, was one that greatly encourages me. I have to say, however, that what is of greater interest to my constituency, the people of California, the largest State in the Nation—31 million people—is that we get down to working on the actual budget.

It is one thing to debate a balanced budget amendment that would not take effect until 2002 or later. Depending on if and when the States ratify it, it could be the year 3000, for all we know. It is another thing to actually sit down at the table and work together, Republicans and Democrats alike, and bring back a budget that we can all be proud of. Since I am on the Senate Budget Committee, I truly look forward to that exercise. I hope we can come back here with a bipartisan product that cuts into that deficit and gets us on that glidepath toward a balanced budget that we have been talking about.

Mr. President, there is no question that the vote last week on the balanced budget amendment was clearly one of the most important votes in this Congress. There is talk among some of my colleagues on the other side of the aisle that there could be retribution against those who voted no, including punishing the senior Senator from Oregon who, in my view, simply did what we are supposed to do around here—listen to our conscience, adhere to our principles, and vote those principles and vote that conscience. We only have that chance here once in awhile, that these issues of principle and conscience come before us.

To hear some of my colleagues tell it, the voters will be raging against any one of us who voted against this part of the Contract With America. Well, I have to say to you that threats and political maneuvering have no place in this debate, particularly when we are talking about amending the Constitution of the United States of America. When we do that, every Member of Congress should have the right to vote in the best interest of his or her constituency, as that Senator sees it, without fear of political retribution from his or her party. The stakes are too great and they are too long lasting.

This is not some bill that can be overturned easily. We are talking about the Constitution of the United States of America, the most long-lasting symbol of our freedom.

In the case of the balanced budget amendment, to me, the stakes were enormous. First, the very viability of the Social Security system and, second, the real fear that the amendment, as drafted, would have rendered the Federal Government helpless to respond in cases of economic recession or natural disaster. I have talked about that on the Senate floor.

I showed the pictures of disaster emergencies that have been visited upon States over the recent years, and how terrible it would be if we had to go and look at the faces of our constituency at the very moment of their need and say: We cannot do anything about it because this amendment says you cannot really do it unless you get a supermajority vote, and we simply cannot get those 60 votes.

I think back to my father telling me about the dark days of the Depression. I was born after that, and my dad said, "You cannot believe what it was like." He said, "Until FDR came in there, you had Herbert Hoover saying, 'Let the States take care of it.'" I went back and I checked some of the quotes. It is unbelievable. It is the same thing you hear today: "The States can take care of all of these problems. You do not need the Federal Government."

Meanwhile, people were jumping out of windows and selling apples on the street. I am not going to be here and vote for an amendment that would cause us to make that same mistake again. If I do, in my view, I am not being true to my conscience nor to the people that I represent. When I came here, I said I was going to fight for them—not against them, but for them.

I want it clear that in 1992, as a Member of the House of Representatives, I voted for a constitutional amendment to balance the budget. But there was a very big difference in that amendment in 1992 and this amendment that I opposed just last week. That amendment would have protected Social Security, and it was flexible enough so that a simple majority vote could have allowed us to act in an emergency. It gave the President the ability to declare an urgency—it was called a declaration of urgency—if in a particular budget year the country needed special spending to solve a crisis.

That is an amendment I would vote for again today. But I want to make something perfectly clear. During this debate, Democrats offered many constructive changes to the Republican balanced budget amendment, which I felt was so inflexible. But of the many amendments offered, the Republicans accepted only one, which was the amendment offered by the senior Senator from Georgia, SAM NUNN. That clarified, somewhat, the role of the power of the Federal courts in balancing the budget. All of the other amendments—and there were many—were tabled, basically on a party-line vote.

Republicans appeared to be under strict instructions to vote down any change to the amendment—even changes they supported in the past. They did vote for the Nunn amendment, but the basic message to the Democrats was: Offer all of the suggestions you like, but we are not really going to accept them. And then when Democrats, who had clearly laid out their problems with the amendment, voted against the amendment, they were berated for voting no, as if they were doing something that was so unusual, when we had spent all of that time trying to offer constructive amendments.

The majority leader even delayed the vote for one day. That is very unusual. He wanted to make sure the heat was put on us. He wanted to make sure he could get that final vote so that the Contract With America—that Republican Contract With America—could move forward.

I happen to believe that move backfired, because in that 24-hour period, the focus was on the amendment. And, as our colleague, Senator ROBERT BYRD, who was such a leader in this debate, has said, the amendment could be compared to a used car—and I agree with him—a used car that looks great on the outside, but when the public looked under the hood, it did not look so good.

Our Democratic leader, Senator DASCHLE, told the Social Security story, and that changed the public support for this amendment. Although 70 percent support a balanced budget amendment to the Constitution, support drops to 30 percent when those questioned understand that the Social Security trust fund would not be protected and could be looted. Let me repeat that: seventy percent of the people support a balanced budget amendment in the abstract, but when you tell them that Social Security trust funds can be looted to balance the budget, it flip-flops completely and 70 percent then oppose it.

By the way, that same poll was taken in my home State of California with exactly the same result.

I thought Senator KENT CONRAD said it best when he described the raid on Social Security like this. He said, if your boss came into your office one day and said, "Look, I think you are doing a great job, but I can't meet my operating expenses this year, so I am going to take the money you put into your pension fund and I am going to use it to pay the bills. After all," the boss could say, "you are a young person. You are not going to retire for a long time. So if I take that money, you don't have to worry. Someday I will put it back."

Well, I say if your boss does that, you ought to call the police, and you have a right to do it, because that is pure theft.

But that was exactly what was going to happen to Social Security. It is not a matter of never touching the benefits. We have touched benefits before. We have changed the system before. We will probably have to do it again. But it is a matter of the Social Security trust fund itself.

The Republican leadership refused to protect Social Security in that balanced budget amendment. During the debate, they said they would never touch it. They would never touch Social Security. They said they had no intention of ever using the surplus or raiding Social Security. They even had an amendment that said they would not do it.

Well, that is why several of my Democratic colleagues thought, "Well, gee. They say they are never going to touch Social Security. Maybe we have a chance here to make this amendment work, to change it, to build the protections of Social Security into the amendment itself."

Well, in private negotiations, it went something like this, according to what I have been told. The Republicans said to my colleagues, "Look, we need your vote. We promise, we will put it in writing, we will stop using the surplus in Social Security by the year 2012."

Well, my colleagues were not happy with that.

They said, "What about 2008? We will stop using the surplus in the year 2008."

Well, I ask you: If someone says they will not ever touch Social Security in one breathe and in the next breathe they say they will stop touching it in 2012, what does that mean to you? It is like getting beaten up by a bully and all the while you are getting hit, he says, "I'm not hitting you." And then he says, "OK, I'll stop hitting you in 5 minutes, but, remember, I'm not hitting you now." That is doublespeak.

So I think it is important to remember every time you hear the Republicans say that they would never hurt Social Security, ask them why they refused to change their constitutional amendment to make it impossible for anyone to raid it. Keep asking them that question, because all the talk is simply that. They would not protect Social Security, period. We gave them every chance.

I want every single person who paid a FICA tax—that is the Social Security payroll tax—to realize the benefits. We know now—there was a very recent survey—that four out of five families are not prepared enough for their retirement. They are going to need Social Security in order to survive. Let us not ruin a system that has worked so well.

If the Republicans want an amendment to the Constitution—and I know they want it; they are going to bring it back up here—they can have it if they protect Social Security.

I, myself, felt, as I said before, that there are other crucial issues to address—the issue of recession, the issue of disaster—but clearly there are enough votes on the Democratic side of the aisle to get that amendment through if the Republicans agree to protect Social Security.

My colleagues put it in writing and they sent the letter over to the other side.

So, where are we now? The balanced budget amendment for now is off the table, but what is on the table is the budget itself, which takes me back to my opening remarks.

I am on the Budget Committee and I am waiting to see the Republican budget for next year. I look forward to making progress on the deficit.

We saw President Clinton's budget. He has deficit reduction in it. There are some who say it is not enough. Maybe we can do more. I look forward to doing more, as long as we ensure that our Nation takes care of its basic needs and its future. You do not want to destroy this country. We want to get this country on a glidepath toward a balanced budget; frankly, towards a surplus budget. That is what we really should be going for.

I think it is important to note that, had the balanced budget amendment passed and were we back here today, there would have been a lot of hoopla, but the deficit would not have declined by one penny. Deficit reduction will begin in the Budget Committee with real cuts.

Two years ago, we made real progress on the deficit by carrying out President Clinton's plan to cut the deficit by $500 billion. That was a tough deficit reduction vote. We did not get one Republican vote. So it was hard, but it passed.

Again, the President has submitted a follow-up budget. He says it reflects his priorities, what he thinks we need to invest in—education, technology, et cetera—and that it achieves deficit reduction. And he includes a middle-class tax plan in there.

I am ready, willing, and able to look at the President's budget, look at my Republican friends' budget, and to work on a budget with my Democratic colleagues so that we can really put our best ideas together and start doing our work. But I want to make one thing clear tonight. I will not work in any way to injure the children of this country. No way. But if we look at the product that is coming over from the House of Representatives, that is exactly what is going on.

I will never forget the new chairman of the House Appropriations Committee telling the press that he is having the time of his life as he ends the Federal school lunch program and the nutrition program for women, infants and children. He actually held up a knife at the opening session and waived it around. Even the children in the country saw it.

In my mind, that knife is a symbol—a symbol—of what is happening here in Washington. It is going too far. It is slashing. It is injuring. It is hurting.

What are we, as a people, if we take effective feeding programs and gut them? Do we want to become a Nation where old people become bag ladies because Social Security has been looted, and little children have their hands out and their tummies swollen like they do in some faraway land? I do not think that is what the American people want.

I do not care if it is in somebody's contract. It is not in my contract. Anything I can do to protect the children under the rules of this Senate, I will do. I am here to announce that I will do anything I have to do to protect the children.

Do the people want change? Yes. Do the people want deficit reduction? Yes. But do they want us to hurt the innocents in our country? No. And I will not and others will not.

Often I read the Constitution. I carry it around, a little pocket-sized version, and I say God bless this Constitution for giving us a bicameral legislature so that the impact of a radical revolution—and it has been called such—the impact of a radical revolution can be studied or modified or turned back.

I have been in politics for a while. This is a time of rough rhetoric and threats and the worst type of politics I have ever seen. When I got elected to the Senate I really made a very basic promise to the people of California: That is, I would fight for them, for their environment, for their families, for their grandmas and grandpas, and for their jobs. I also promised to fight for what I believe in. I said I would never be intimidated by threats. I repeat that today.

There are some awfully good men and women in this U.S. Senate, across party lines. I think it is time that we change the atmosphere of the Congress—we can do it here in the U.S. Senate—and that we work together for the people. I think if we do that we will make great progress on the deficit, on this economy, and on restoring the American dream. We can do it.

However, we need to look at some of these proposals that truly will hurt our Nation, because when we wage an assault on the most vulnerable people in our country, we wage an assault on all of America. Thank you, Mr. President. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAMS). Without objection, it is so ordered.

PAPERWORK REDUCTION ACT

The Senate continued with consideration of the bill.

AMENDMENT NO. 318

(Purpose: To provide for the termination of reporting requirements of certain executive reports submitted to the Congress, and for other purposes)

Mr. McCAIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. McCAIN] proposes an amendment numbered 318.

Mr. McCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the pending measure, add the following new section:

SEC. . TERMINATION OF REPORTING REQUIREMENTS.

(a) TERMINATION.—

(1) IN GENERAL.—Subject to the provisions of paragraph (2), each provision of law requiring the submittal to Congress (or any committee of the Congress) of any report specified in the list described under subsection (c) shall cease to be effective, with respect to that requirement, 5 years after the date of the enactment of this Act.

(2) EXCEPTION.—The provisions of paragraph (1) shall not apply to any report required under—

(A) The Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95–452); or

(B) the Chief Financial Officers Act of 1990 (Public Law 101–576).

(b) IDENTIFICATION OF WASTEFUL REPORTS.—The President shall include in the first annual budget submitted pursuant to section 1105 of title 31, United States Code, after the date of enactment of this Act a list of reports that the President has determined are unnecessary or wasteful and the reasons for such determination.

(c) LIST OF REPORTS.—The list referred to under subsection (a) is the list prepared by the Clerk of the House of Representatives of the first session of the 103d Congress under clause 2 of rule III of the Rules of the House of Representatives.

Mr. McCAIN. Mr. President, this amendment is based on S. 233, the Reporting Requirements Sunset Act of 1995. The amendment would sunset all congressionally mandated reports after 5 years except those required by the Inspector General Act and the Chief Financial Officers Act.

The objective of the amendment, Mr. President, is very clear. It is to alleviate the massive costs to taxpayers and the huge burdens Congress has placed upon Federal agencies with statutory reporting requirements.

Let me repeat, Mr. President, this amendment calls for sunset of all congressionally required, mandated reports in 5 years. It does not require that those congressionally mandated reports be ended immediately. These reports, many of which are very important to keep the Congress informed as to the activities of the executive branch of Government, can be reauthorized and probably should be reauthorized. But what I am seeking here is simply a sunset of all these reports over a 5-year period.

Now, Mr. President, I use as my source no less an important person than the Vice President of the United States. When sending his report to the Congress, called "Creating a Government That Works Better and Costs Less, Report of the National Performance Review," by Vice President AL GORE, on September 7, 1993, he said:

> Action: *Reduce the burden of congressionally mandated reports.*
>
> Woodrow Wilson was right. Our country's 28th president once wrote that "there is no distincter tendency in congressional history than the tendency to subject even the details of administration" to constant congressional supervision.
>
> One place to start in liberating agencies from congressional micromanagement is the issue of reporting requirements. Over the past decades, we have thrown layer upon layer of reporting requirements on federal agencies, creating an almost endless series of required audits, reports, and exhibits.
>
> Today the annual calendar is jammed with report deadlines. On August 31 of each year, the Chief Financial Officers (CFO) Act requires that agencies file a 5-year financial plan and a CFO annual report. On September 1, budget exhibits for financial management activities and high risk areas are due.

He goes on to say:

> In fiscal year 1993, Congress required executive branch agencies to prepare 5,348 reports. Much of this work is duplicative. And because there are so many different sources of information, not one gets an integrated view of an agency's condition—least of all the agency manager who needs accurate and up to date numbers. Meanwhile, trapped in this blizzard of paperwork, no one is looking at results.
>
> We propose to consolidate and simplify reporting requirements, and to redesign them so that the manager will have a clear picture of the agency's financial condition, the condition of individual programs, and the extent to which the agency is meeting its objectives. We will ask Congress to pass legislation granting OMB the flexibility to consolidate and simplify statutory reports and establishing a sunset provision in any reporting requirement adopted by Congress in the future.

That is the recommendation of the Vice President.

Mr. President, some Americans might be interested to know some of the requirements, some of the reports that are required, which have been mandated by the Congress to be submitted to Congress every year:

"Transportation, Sale, and Handling of animals for research and pets." That is a report which is required annually.

"Effects of Changes in the Stratosphere Upon Animals." That is only required every 2 years.

"U.S.-Japan Cooperative Medical Science Program." That is an annual report.

"Operation of Mobile Trade Fairs." That is an annual report required, mandated by the Congress.

"Studies of the Striped Bass." That is an annual report.

"Number of Customs Service Undercover Operations Commenced, Pending, and Closed"; an annual report.

"Monitoring of the Stratosphere"; that is biennially.

"Effectiveness of Ice Control Programs on the Kankakee River in Wilmington, Illinois." That is a mandated annual report.

"Activities Involving Electric and Hybrid Vehicle Research"; annually.

"International Coffee Agreement." That is an annual report.

And, as appropriate: "Recommendations for Correcting High Coffee Prices."

"Summary and Analysis of Agency Statements With Respect to Motor Vehicle Use." That is an annual report.

"World Food Day." This is an annual report that is mandated by the Congress; a report on World Food Day.

Here is another one which is probably a compelling report that everyone in the Congress reads, I am sure, every year when it comes in:

"The Air Force Participation in State Department Housing Pools."

"The Telephone Bank Board."

"The Financial Report of the Agricultural Hall of Fame."

Mr. President, I have always been interested in the Agricultural Hall of Fame. I am just not sure that I need a report every year on its condition.

"Developing an Agricultural Information Exchange Program With Ireland."

"Investigations Into Increased Use of Protein By-Products From Alcohol Fuel Production"; annually.

"Continuation Pay for Armed Forces Dentists."

Mr. President, I have to make a confession right now. I have been on the Armed Services Committee, now in my 9th year, and I have never read the annual report that is required concerning the continuation pay for Armed Forces dentists. I am probably doubly guilty because for 8 of those years, I was a member of the Personnel Subcommittee, and I still never read that congressionally mandated report requiring the Congress to be updated annually on the Continuation Pay for Armed Forces Dentists. So I am one of those guilty parties who has failed to pay attention to these vital reports that are sent to the Congress on an annual basis.

"Average Cost per-Mile of Privately Owned Motorcycles, Automobiles, and Airplanes"; annually.

"Proposed Reductions in Pricing Policy for Space Transportation System For Commercial and Foreign Users."

And finally, last but not least, the Congress is requiring a report annually concerning the condition of the "Ladies of the Grand Army of the Republic," on an annual basis.

I do not know if that report requires an update on the individual health of the members or perhaps the status of the Grand Army of the Republic's finances. But again, although I must confess my deep and abiding interest in the activities of the Ladies of the Grand Army of the Republic, I have not read that annual report, either. But I intend to do so at least once because for the life of me I cannot imagine—I cannot imagine—why the Congress of the United States would require an annual report concerning the Ladies of the Grand Army of the Republic. I am sure that Senator NUNN would want, perhaps, to have included in that a report on the Daughters of the Confederacy, given his regional interests.

However, I do not think that either of these, frankly, are required. And the reality is that each of these reports costs money. Someone has to take time from his or her duties and go to work and compile these reports and send them over to the Congress of the United States. And the fact is, I am sorry to be a bit jocular about this issue, but no one reads most of these reports.

What we do to the bureaucrats and the people who are hard-working men and women is two things. One, waste their time; and then, two, we do not get the emphasis that we really need on the reports that are vital to Congress, the reports that are necessary to help us do our work. Instead, we clutter it up with 5,300 reports.

In case you think we have been doing this forever, let me remind you, for the RECORD, in 1970 the GAO stated that Congress mandated only 750 reports. Now we have spiraled past 5,300. I believe the number, to be exact, is 5,348 reports last year. Further, the GAO study states that Congress imposes about 300 new requirements on Federal agencies each year.

Mr. President, we should sunset these and we should also have a requirement that any report that is mandated by Congress have a sunset provision in it. If the report is necessary, if it is vital, if it is something that the Congress needs in order to do its work, then we can easily reauthorize these every 5 years.

As Senators LEVIN and COHEN, who have worked very hard on this issue have noted, the Department of Agriculture alone has estimated the cost of preparing the 280 reports it had to submit to Congress last year at $40 million.

The sum of $40 million was spent last year just by the Department of Agriculture alone in preparing the 280 reports that they had to submit to Congress.

Mr. President, I support the bills that have been proposed by Senator LEVIN and Senator COHEN to eliminate several hundred specific reports. I think many of them should be done away with now. I hope that we can consider Senator LEVIN's and Senator COHEN's legislation as soon as possible. In the meantime, why do we not get about the business of sunsetting these?

Mr. President, I am joined by my friends at the National Taxpayers Union and the Citizens for a Sound Economy. Let me just quote briefly from the National Taxpayers Union letter and the letter from Citizens for a Sound Economy.

> National Taxpayers Union, America's largest taxpayer organization, is pleased to endorse * * * the bill to terminate all congressionally mandated reports after five years. This legislation would save millions of taxpayer dollars that are now wasted on unnecessary reports.
>
> National Taxpayers Union is pleased to support this important "sunset" bill and encourages you to offer it as an amendment to pending legislation on the Senate floor. The sooner wasteful government reports can be eliminated, the better it will be for America's taxpayers.

The Citizens Against Government Waste are also in support of this amendment.

Mr. President, Citizens for a Sound Economy says:

> While it is important for Congress to keep a watchful eye on the activities of Federal agencies, requiring more than 5,300 reports from the executive branch each year is a costly case of extreme micromanagement. These reports—most of which are probably never read and many of which are redundant—constitute a monumental waste of time, money and manpower. Ultimately, American taxpayers pay for these unnecessary reports. The price tag on these reports was $757 million in 1993.

Mr. President, I think that is an important point that the Citizens for a Sound Economy have made. The price tag on this 5,300 reports last year, in 1993, 2 years ago, was $757 million.

So I urge my colleagues. I would like to see, frankly, this amendment accepted by both sides. I would be more than happy to discuss this issue with my friends on the other side, the managers of the bill. I want to thank them for their hard work on this issue.

Let me also point out the final report of the Senate members of the Joint Committee on the Organization of Congress which was issued in December 1993. On page 22, it said—this is the report of a bipartisan group of Senate members chaired by Senator BOREN and Senator DOMENICI. The other members were Senators SASSER, FORD, REID, SARBANES, PRYOR, KASSEBAUM, LOTT, STEVENS, COHEN, and LUGAR.

Item 33 of this report, Organization of Congress recommendation, the requirement for an executive agency to report to Congress should be effective for no more than 5 years. They go on to say the proliferation of mandatory agency reporting is a matter of wide concern. Several times in recent years the House Government Operations Committee and the Senate Governmental Affairs Committee have acted to eliminate the reports which have outlived their usefulness. However, the recent reports should not continue in perpetuity without some clear evidence that the report serves a useful policy and purpose. The proliferation of mandatory agency reports has been a matter of wide concern in the Congress and in the executive branch. This provision would automatically terminate such reports and will encourage committees and Members who find a particular report valuable to act to extend the statutory requirement for a specific report.

Mr. President, I want to thank both Senator ROTH, the distinguished chairman of the committee, and Senator NUNN for their hard work on this bill. I believe that this amendment is an appropriate addition to it. I would like to see us understand that, if this amendment were passed, we may not save $757 million because I think we all are aware that there are a number of reports that need to be made to Congress and there are many areas which the Congress needs to be aware of. But there is also literally thousands that have long outlived their usefulness, if they ever had any, and it is time that we sunseted them all.

Mr. President, I yield the floor.

Mr. President, I ask unanimous consent that the letters from the Citizens for a Sound Economy and the National Taxpayers Union be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CITIZENS FOR A SOUND ECONOMY,
Washington, DC, July 29, 1994.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN: This is to express the support of Citizens for a Sound Economy (CSE) for S. 1971, which would eliminate all congressionally mandated reports after five years. CSE is a 250,000 member grassroots advocacy group that promotes free market economic policies.

While it is important for Congress to keep a watchful eye on the activities of federal agencies, requiring more than 5300 reports from the executive branch each year is a costly case of extreme micromanagement. These reports—most of which are probably never read and many of which are redundant—constitute a monumental waste of time, money and manpower. Ultimately, American taxpayers pay for these unnecessary reports. The price tag on these reports was $757 million in 1993. S. 1971 would reduce that burden substantially.

Citizens for a Sound Economy therefore applauds your sponsorship of S. 1971, and we urge you and your colleagues to pass this bill.

Sincerely,

PAUL BECKNER,
President.

NATIONAL TAXPAYERS UNION,
Washington, DC, June 13, 1994.

Hon. JOHN MCCAIN,
U.S. Senate, Russell Office Building, Washington, DC.

DEAR SENATOR MCCAIN: National Taxpayers Union, America's largest taxpayer organization, is pleased to endorse S. 1971, your bill to terminate all congressionally mandated reports after five years. This legislation would save millions of taxpayer dollars that are now wasted on unnecessary reports.

S. 1971 would "sunset" the more than 5,300 Executive Branch department and agency reports that Congress now requires. It would provide a five-year window of opportunity for important and necessary reports to be reauthorized. This would alleviate the present avalanche of reports mandated by laws enacted over the years.

In the words of Vice President Gore's National Performance Review Report, "over the past decades, we have thrown layer upon layer of reporting requirements on federal agencies, creating an almost endless series of required audits, reports, and exhibits."

NTU agrees with that analysis as well as the recommendation of the Senate members of the Joint Committee on the Organization of Congress, to limit all agency reporting requirements enacted by Congress to an effective period of no more than five years. Again, as in S. 1971, those reports that are particularly valuable could be reauthorized for a specific period.

National Taxpayers Union is pleased to support this important "sunset" bill and encourages you to offer it as an amendment to pending legislation on the Senate floor. The sooner wasteful government reports can be eliminated, the better it will be for America's taxpayers.

We urge your Senate colleagues to join with you to enact the provisions of S. 1971.

Sincerely,

AL CORS, JR.,
Director, Government Relations.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, it is my hope that we can accept this amendment. I am checking right now to make sure there is no one who has a strong feeling otherwise.

But I think the Senator from Arizona makes a good case. These reports oftentimes are needed when first requested and then they get into law and they become permanent fixtures. So where we can eliminate a lot of these reports, I would certainly welcome that.

We have done some similar things in the authorization bill in the defense report. Once, I recall, DOD complained very much about all the reports. We gave them the authority to come up and tell us all they did not want. Lo and behold, they ended up wanting most of them.

So you never know who has decided they like reports until you test the waters. But I think that is what the Senator from Arizona is doing here. He is testing the water. It would be up to those, I understand, who want to keep a report to have it specifically reviewed as well as have it go on in perpetuity. I hope we accept this, and I think we will get an affirmative OK of that in just a minute.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I wonder if the managers of the bill would object if I went off this while they are looking for that approval and spoke as if in morning business for a short period of time.

Mr. ROTH. Mr. President, I say to the distinguished Senator that there will be no objection so long as we are able to come back for a unanimous-consent request and that we be free to do so.

Mr. GORTON. There will be no problem.

Mr. President, I ask unanimous consent that I be allowed to proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE BALANCED BUDGET AMENDMENT

Mr. GORTON. Mr. President, last Thursday at the end of the dramatic vote on the balanced budget amendment and its rejection by a single vote, there were many who felt that this was a tragedy with respect to dealing with the problems facing the United States and its huge budget deficits now and during the course of this year.

While I was a strong supporter of that amendment, and while I hope that the majority leader is able to bring it back up for another and more successful vote sometime in future, I believe that its rejection not only did not reduce the pressure on Members of the U.S. Senate, House of Representatives or the President of the United States to work toward a balanced budget, but I believe that in fact it increased that pressure.

On several occasions during the 5-week long debate on that proposition, I observed, as did others, that this body was divided essentially into three groups of Members with respect to the balanced budget and the balanced budget amendment:

First, the rather large majority, those who believe that the present system was broken and needed to be fixed by radical and dramatic action, the imposition of an outside discipline on all of us to see to it that we did what we know needs to be done, but against which political pressures have for some 30 years been invariably successful;

A smaller group of Members, who not only thought that a balanced budget amendment was undesirable but thought that a balanced budget itself was undesirable, who favor the status quo, not only with respect to the Constitution, but with respect to our own fiscal actions;

And a third group who were very prominent in the debate who agreed with the proposition that we need a more responsible fiscal policy, that we need to work toward a balanced budget, but that we did not need the discipline of a constitutional amendment to cause that to take place.

It is in one sense to that group, but also those who supported the constitutional amendment, that I speak here this evening. I believe that all of us are under the gun at this point.

I think it behooves the party on this side of the aisle, the conservatives in this body, to seriously attempt to pass a budget resolution which, if followed for a 7-year period, would lead to a balanced budget in the year 2002, and to do that without touching Social Security and to do it with at least a modest tax cut on the level proposed by the President of the United States.

I think that Members on this side will undertake that very, very difficult task. I believe that, if anything, the great majority of those who voted for the constitutional amendment find themselves even more determined today than they were a week ago to follow in fact the discipline they wanted to set for the indefinite future, even without that constitutional discipline. But I believe that goal encompasses not just those on this side of the aisle, not just the chairman of the Senate Budget Committee, but his distinguished ranking Democratic member, who also voted for the constitutional amendment, and the majority of the members of the Senate Budget Committee.

More important, however, Mr. President, I hope that that goal, in reality, will be shown to be the goal of all of those Members who said that they believe in a balanced budget but not in the amendment. If they will join with us, if they will express their support for a course of action bringing us to a balanced budget within 7 years, without any reductions in Social Security benefits, and with some reduction in taxes, they will have done in fact what they claim to support in theory. And if they will join with the 66 Members who voted for the constitutional amendment, we should have upward of 80 votes in this body for a responsible budget resolution, for the actions in reconciliation and outside of reconciliation necessary, to meet that goal this year, right now.

I am optimistic, Mr. President. I think that determination is there, and I hope that the leadership of this body will be able to see to it that we start working toward it in fact, not just in theory, very soon, in the course of the next few weeks.

We have all had our say. Those of us for the constitutional amendment should remain committed. Those against it, who claim to believe in a balanced budget, should be even more dedicated to the proposition that we do the job. If that is the result of last week's debate, our loss will not have been in vain.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PAPERWORK REDUCTION ACT

The Senate continued with consideration of the bill.

Mr. McCAIN. Mr. President, I will be asking unanimous consent to modify my amendment, in language to be worked out amongst staff, that this amendment not be in application to reports that are triggered by specific legislation that is on the books.

For example, the War Powers Act requires a report from the executive branch to the Congress, and there are certain pieces of legislation that are on the books and in law that require specific reports to be made in the event of certain actions or events taking place. In arms sales, there is a report that needs to be made to Congress in the event of an arms sale to certain countries under certain circumstances. So the staff understands and Senator LEVIN and Senator ROTH understand.

I ask unanimous consent that I may modify my amendment in a technical way to ensure that the language exempts those reports that are triggered by acts of Congress.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, let me thank, first of all, my friend from Arizona for this modification. His amendment is right on target. We should be sunsetting reports which are automatically and routinely filed. Many of them are not needed. We should sunset those reports after a period of time as his amendment does.

On the other hand, we should not put into jeopardy those reports, such as the War Powers Act reports and arms sales reports, which are not those routine, regular reports that are automatic, but rather are triggered by events that are important to Congress, as indicated by the legislation that is already on the books.

I wish to thank the Senator from Arizona for that modification.

In addition, I believe that the Senator from Delaware will be seeking unanimous consent that I be allowed to offer an amendment—which I believe will be accepted—in the morning, which will eliminate a number of reports, I believe 200 reports, which have been cleared by various committees that are no longer needed.

Senator McCAIN's amendment is a sunset amendment, a very important amendment. What my amendment does is take a smaller number of reports that are currently required which should no longer be filed, which take a lot of time and take a lot of money. We have methodically gone through, report by report by report, and have determined, I believe, from memory, that there are in the area of 200 to 300 reports that we can eliminate—not just sunset, but absolutely eliminate.

I think the Senator from Delaware will be making a unanimous-consent request, if a unanimous-consent request is required—I am not sure what the status is—but will be offering a unanimous-consent request that would allow me to offer an amendment tomorrow morning, with 10 minutes of debate.

Mr. ROTH. Mr. President, I say to my distinguished friend from Michigan that that is my intent.

I, first of all, wish to congratulate the distinguished Senator from Arizona for his amendment, because I do think it is a valuable one. We look forward to seeing it adopted.

I believe the proposal of the distinguished Senator from Michigan adds a positive factor. We are trying to work out a unanimous-consent that would allow him to bring it up the first thing tomorrow morning at 10:30.

I very much appreciate that.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TOMORROW

Mr. ROTH. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10:30 a.m. on Tuesday, March 7, and that immediately following the prayer, the Senate resume consideration of S. 244, and Senator LEVIN be recognized to offer an amendment dealing with reports on which there be 10 minutes for debate, to be equally divided in the usual form. I further ask that Senator WELLSTONE be recognized to offer an amendment dealing with children immediately following the debate or conclusion of the Levin amendment, on which there be 90 minutes to be equally divided in the usual form.

I further ask that following the conclusion of debate on the Wellstone amendment, the Senator be recognized to offer a second amendment dealing with gifts on which there be 90 minutes, to be equally divided in the usual form.

I further ask that following the disposition of debate on the second Wellstone amendment, Senator GREGG be recognized to offer an amendment dealing with education, and that no second-degree amendments be in order prior to a motion to table and if offered, the second degree amendments be relevant.

I further ask that the above-listed amendments be the only amendments remaining in order to S. 244.

I further ask unanimous consent that any votes ordered on or in relation to the above-mentioned amendments, be stacked to occur beginning at 2:15 p.m. on Tuesday, if all time is used or yielded back.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN addressed the Chair.

Mr. ROTH. Mr. President, I renew my unanimous-consent request.

Mr. LEVIN. The minority has no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, I thank the distinguished Senator from Michigan. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BROWN). Without objection, it is so ordered.

AMENDMENT NO. 318, AS MODIFIED

Mr. ROTH. Mr. President, on behalf of the distinguished senior Senator from Arizona, I send an amendment modification to the desk.

The PRESIDING OFFICER. The amendment will be so modified.

The amendment, as modified, is as follows:

At the end of the pending measure, add the following new section:

SEC. . TERMINATION OF REPORTING REQUIREMENTS.

(a) TERMINATION.—

(1) IN GENERAL.—Subject to the provisions of paragraph (2), each provision of law requiring the submittal to Congress (or any committee of the Congress) of any annual, semiannual or other regular periodic reports specified on the list described under subsection (c) shall cease to be effective, with respect to that requirement, 5 years after the date of the enactment of this Act.

(2) EXCEPTION.—The provisions of paragraph (1) shall not apply to any report required under—

(A) the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95–452);

(B) the Chief Financial Officers Act of 1990 (Public Law 101–576).

(b) IDENTIFICATION OF WASTEFUL REPORTS.—The President shall include in the first annual budget submitted pursuant to section 1105 of title 31, United States Code, after the date of enactment of this Act a list of reports that the President has determined are unnecessary or wasteful and the reasons for such determination.

(c) LIST OF REPORTS.—The list referred to under subsection (a) includes only the annual semiannual, or other regular periodic reports on the list prepared by the Clerk of the House of Representatives for the first session of the 103d Congress under clause 2 of rule III of the Rules of the House of Representatives.

Mr. ROTH. Mr. President, I think that amendment is self-explanatory. It has already been explained. I think it is acceptable to the minority as well as the majority.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I wish to thank the Senators from Delaware and Arizona for the modification. It now makes it apply only to those reports which are filed annually, semiannually, or at other regular intervals, regular periodic intervals. It will not include reports which are triggered by events, or possible events, such as a War Powers Act report or weapons sales report where the requirement is based on an external event which is not a regular periodic event like a date on a calendar.

That was acceptable to the Senator from Arizona, and I think it now will make this accomplish its goal, which is to try to get rid of a whole bunch of reports which we get every year or 6 months which nobody really relies on but not wipe out reports, or sunset reports which we do heavily rely on which are those reports such as the War Powers Act or weapons sales reports which are triggered by specific events covered by statute which the Congress indicated its intent to obtain reports on for those other external reasons.

So we do very much appreciate the modification.

Mr. ROTH. Mr. President, if there is no further debate, I urge acceptance of the amendment.

The PRESIDING OFFICER. Without objection, the amendment as modified, is agreed to.

So the amendment (No. 318), as modified, was agreed to.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ANNUAL REPORT OF THE NATIONAL ENDOWMENT FOR DEMOCRACY—MESSAGE FROM THE PRESIDENT—PM 26

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

Pursuant to the provisions of section 504(h) of Public Law 98–164, as amended (22 U.S.C. 4413(i)), I transmit herewith the 11th Annual Report of the National Endowment for Democracy, which covers fiscal year 1994.

Promoting democracy abroad is one of the central pillars of the United States security strategy. The National Endowment for Democracy has proved to be a unique and remarkable instrument for spreading and strengthening the rule of democracy. By continuing our support, we will advance America's interests in the world.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 6, 1995.*

NATIONAL PROGRAM FOR FLOODPLAIN MANAGEMENT—MESSAGE FROM THE PRESIDENT—PM 27

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Environment and Public Works:

To the Congress of the United States:

It is with great pleasure that I transmit *A Unified National Program for Floodplain Management* to the Congress. The Unified National Program responds to section 1302(c) of the National Flood Insurance Act of 1968 (Public Law 90–448), which calls upon the President to report to the Congress on a Unified National Program. The report sets forth a conceptual framework for managing the Nation's floodplains to achieve the dual goals of reducing the loss of life and property caused by floods and protecting and restoring the natural resources of floodplains. This document was prepared by the Federal Interagency Floodplain Management Task Force, which is chaired by FEMA.

This report differs from the 1986 and 1979 versions in that it recommends four national goals with supporting objectives for improving the implementation of floodplain management at all levels of government. It also urges the formulation of a more comprehensive, coordinated approach to protecting and managing human and natural systems to ensure sustainable development relative to long-term economic and ecological health. This report was prepared independent of *Sharing the Challenge: Floodplain Management Into the 21st Century* developed by the Floodplain Management Review Committee, which was established following the Great Midwest Flood of 1993. However, these two reports complement and reinforce each other by the commonality of their findings and recommendations. For example, both reports recognize the importance of continuing to improve our efforts to reduce the loss of life and property caused by floods and to preserve and restore the natural resources and functions of floodplains in an economically and environmentally sound manner. This is significant in that the natural resources and functions of our riverine and coastal floodplains help to maintain the viability of natural systems and provide multiple benefits for people.

Effective implementation of the Unified National Program for Floodplain Management will mitigate the tragic loss of life and property, and disruption of families and communities, that are caused by floods every year in the United States. It will also mitigate the unacceptable losses of natural resources and result in a reduction in the financial burdens placed upon governments to compensate for flood damages caused by unwise land use decisions made by individuals, as well as governments.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 6, 1995.*

MEASURES PLACED ON THE CALENDAR

The following joint resolution was read the second time and placed on the calendar:

S.J. Res. 28. Joint resolution to grant consent of Congress to the Northeast Interstate Dairy Compact.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mrs. HUTCHISON:

S. 498. A bill to amend title XVI of the Social Security Act to deny SSI benefits for individuals whose disability is based on alcoholism or drug addiction, and for other purposes; to the Committee on Finance.

By Mr. JOHNSTON:

S. 499. A bill to provide an exception to the coverage of State and local employees under Social Security; to the Committee on Finance.

S. 500. A bill to amend the Internal Revenue Code of 1986 to provide certain deductions of school bus drivers shall be allowable in computing adjusted gross income; to the Committee on Finance.

By Mr. BREAUX (for himself and Mr. JOHNSTON):

S. 501. A bill to amend the Internal Revenue Code of 1986 to permit the tax-free rollover of certain payments made by employers to separated employees; to the Committee on Finance.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 502. A bill to clarify the tax treatment of certain disability benefits received by former police officers or firefighters; to the Committee on Finance.

By Mrs. HUTCHISON:

S. 503. A bill to amend the Endangered Species Act of 1973 to impose a moratorium on the listing of species as endangered or threatened and the designation of critical habitat in order to ensure that constitutionally protected private property rights are not infringed, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BUMPERS (for himself, Mr. LAUTENBERG, Mr. LEAHY, Mr. AKAKA, Mr. LEVIN, Mr. PRYOR, Mr. KOHL, Mr. FEINGOLD, and Mr. PELL):

S. 504. A bill to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. HARKIN:

S. 505. A bill to direct the Administrator of the Environmental Protection Agency not to act under section 6 of the Toxic Substances Control Act to prohibit the manufacturing, processing, or distribution of certain fishing sinkers or lures; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MURKOWSKI (for himself, Mr. LIEBERMAN, Mr. BROWN, Mr. ROBB, Mr. D'AMATO, Mr. SIMON, Mr. THOMAS, Mr. HELMS, Mr. COATS, Mr. PELL, Mr. WARNER, Mr. AKAKA, Mr. GRAMS, Mr. DOLE, Mr. KEMPTHORNE, Mr. DORGAN, Mr. SPECTER, Mr. HATFIELD, Mr. LUGAR, Mr. FEINGOLD, Mr. ROTH, Mr. THURMOND, Mr. HATCH, Mr. GORTON, Mr. CAMPBELL, Mr. MACK, Mr. INOUYE, Mr. ASHCROFT, Mr. CHAFEE, Mr. ROCKEFELLER, Mr. SIMPSON, Mr. COCHRAN, Mr. CONRAD, Mr. DEWINE, Mr. GREGG, and Mr. CRAIG):

S. Con. Res. 9. A concurrent resolution expressing the sense of the Congress regarding a private visit by President Lee Teng-hui of the Republic of China on Taiwan to the United States; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. HUTCHISON:

S. 498. A bill to amend title XVI of the Social Security Act to deny SSI benefits for individuals whose disability is based on alcoholism or drug addiction, and for other purposes; to the Committee on Finance.

LEGISLATION TO DENY SSI BENEFITS TO INDIVIDUALS WHOSE DISABILITY IS BASED ON DRUG OR ALCOHOL ADDICTION

Mrs. HUTCHISON. Mr. President, I would like to introduce a bill this morning because there is something fundamentally wrong with a Government program that pays drug addicts to remain addicted and pays alcoholics to continue being addicted to alcohol. Yet, that is precisely what the Supplemental Security Income Program currently does: It grants substance abusers an entitlement based upon their addiction.

Most Americans are surprised to learn that drug abuse is now classified as a disability and that addicts and alcoholics are given SSI payments which they use to supply their addictions rather than to obtain food, shelter, and treatment which, of course, was the purpose of the program.

This simply defies the commonsense test. It wastes resources and does actual harm to those it claims to help. SSI payments may, under these circumstances, provide a perverse incentive to beneficiaries. We pay them to stay on drugs, we pay them not to work, and we pay them to avoid recovery.

In the words of one doctor who has spent her entire professional career dealing with the problems of addiction, SSI payments "* * * undermine the very thing they are supposed to be doing for my patients—promoting their rehabilitation."

In 1994, 100,000 drug addicts and alcoholics were on the SSI rolls and received an estimated $382 million in Federal benefits, benefits that came out of the pockets of responsible, hardworking, taxpaying Americans.

The SSI caseload of drug addicts and alcoholics has expanded more than 700 percent since 1988 when there were only 13,000 such individuals in the programs. At their current rate of increase, their numbers are expected to rise to 200,000 within 5 years.

Sadly, only 10 percent ever recover and escape the SSI rolls. Such a recovery rate is devastating. We have botched our attempt to provide a safety net and have instead provided these individuals the means to continue their free-fall into addiction. Congress cannot in good conscience continue this policy.

So today, I am introducing a bill to stop payments to individual addicts and instead rededicate those resources to put addiction research and treatment programs on the books. These funds will be put to much more constructive alternative uses. Society as a whole will benefit because treatment programs reduce criminal justice costs and lost productivity.

Drug addicts and alcoholics do not need an allowance from the Government which they can then use to feed their addictions. What they need is treatment. The drug addicts and alcoholics program within SSI was intended to support these individuals while they were under treatment. But that is not how things worked out. The program has been difficult to monitor and they have, in fact, not found that people who are taking the benefits are going into rehabilitation programs. In fact, rehabilitation is actually discouraged because rehabilitation results in loss of benefits of the program.

Substance abuse is taking a horrible toll on our society. The current SSI Program is doing nothing to remedy that unfortunate fact. My bill would alter our fundamental approach to substance abuse and abusers. Instead of general monthly payments, the abusers would be given treatment programs that require participation by them and commitment by them to stop their habit and rehabilitate themselves to be responsible citizens. It will save money, and it will put our taxpayer dollars to better use.

By Mr. JOHNSTON:

S. 499. A bill to provide an exception to the coverage of State and local employees under Social Security; to the Committee on Finance.

S. 500. A bill to amend the Internal Revenue Code of 1986 to provide that certain deductions of schoolbus drivers shall be allowable in computing adjusted gross income; to the Committee on Finance.

LEGISLATION TO HELP SCHOOLBUS DRIVERS

• Mr. JOHNSTON. Mr. President, today I am introducing legislation to help assist our Nation's schoolbus drivers who provide a very important role in the education of our children. Recently, several broad-based tax provisions have been enacted into law which adversely affect schoolbus drivers. The bills I am introducing today will provide some of our most dedicated school employees with relief which they need and deserve.

The first measure would permit busdrivers to deduct actual operating expenses, regardless of whether or not they itemize on their Federal tax returns. This was the law prior to enactment of the Tax Reform Act of 1986. Under current law, however, schoolbus drivers' actual expenses are treated as miscellaneous expenses, thus limiting the deduction to those who itemize and subjecting it to the 2-percent floor. The floor has prevented many schoolbus drivers from qualifying for any deduction for their actual operational expenses because they cannot meet the 2-percent floor applicable to miscellaneous itemized deductions. The result has been a substantial increase in schoolbus drivers' annual income tax liability. Moreover, even those busdrivers who itemize and qualify for deductions under the 2-percent floor have been penalized, especially those who file joint returns.

The second measure would exempt schoolbus drivers—and other State and local employees who work on a part-time, seasonal, or temporary basis—from paying Social Security taxes. Many of these individuals are already covered under State and local retirement systems; however, the law currently requires that they pay into Social Security as well. The result is increased costs to the employer and smaller take-home paychecks for the employees. Perversely, some States may even decide to remove these workers from their retirement systems, which could result in a reduction in, or loss of, retirement benefits for which the employees have worked for many years.

Our schoolbus drivers do a yeoman's job in transporting future generations to and from school. We all agree that education of our youth should be one of our highest priorities. Let's pass this legislation and provide some relief to those individuals who make it possible for our children to arrive at school in a safe and timely manner.•

By Mr. BREAUX (for himself and Mr. JOHNSTON):

S. 501. A bill to amend the Internal Revenue Code of 1986 to permit the tax-free rollover of certain payments made by employers to separated employees.

TAX FREE ROLLOVER OF CERTAIN PAYMENTS TO SEPARATED EMPLOYEES

• Mr. BREAUX. Mr. President, I rise today to reintroduce legislation to help those employees who are living under a new reality of the 1990's—corporate downsizing. This bill will allow taxpayers who lose their jobs due to corporate downsizing to roll over, tax-free, any lump sum payment received as part of the termination into an individual retirement account [IRA] or similar qualified plan. Taxes would be paid when the funds are withdrawn at retirement. This will allow the upfront payment to serve the purpose of providing the necessary income for retirement. This legislation will relieve an enormous tax burden on thousands of Americans and further encourage retirement savings. Last year the bill was estimated to cost $405 million over 5 years.

Without this legislation, many workers, generally 5 to 10 years from retirement age, will see between 40 to 50 percent of these payments immediately eaten up by Federal, State, and local income taxes. Of course, if these payments are made out of excess funds in a qualified retirement plan funded by the employer, this problem does not arise. This however, is not always the case. Given the generally dismal rate of underfunded private retirement plans, payments will often come out of the general revenues of the company rather than from a qualified plan, and thus will not qualify for the tax exempt rollover provisions that currently exist under the code.

Mr. President, I hope that my colleagues will join me by cosponsoring this important legislation.•

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 502. A bill to clarify the tax treatment of certain disability benefits received by former police officers or firefighters; to the Committee on Finance.

POLICE AND FIREFIGHTERS TAX CLARIFICATION ACT

• Mr. DODD. Mr. President, today I am reintroducing an important piece of legislation that will provide a measure of tax fairness for more than 1,000 police officers, firefighters and their families in my home State of Connecticut. I am pleased to be joined in this effort by Senator LIEBERMAN.

This bill clarifies the tax treatment of heart and hypertension benefits awarded to Connecticut's police officers and firefighters prior to 1992. The clarification is necessary because of an error made in the original version of Connecticut's heart and hypertension law. Under the law, Connecticut intended to treat heart and hypertension benefits as workmen's compensation for tax purposes. Unfortunately, because of the language used in the State statute, the heart and hypertension benefits became taxable under a ruling by the Internal Revenue Service [IRS] in 1991.

Since the IRS ruling, Connecticut has amended its law. But that change does not help those police officers, firefighters, and their families, who received benefits prior to the amendment. These law-abiding citizens accepted the benefits with the understanding that they were not taxable. Now, as a result of the problem with the State law, and through no fault of their own, they are being charged with back taxes, interest, and penalties by the IRS.

Mr. President, we must address this unfortunate situation. Our firefighters and police officers are dedicated public servants. Every day, they face enormous difficulties and dangers protecting our homes and neighborhoods. The hazards they face make their jobs particularly stressful. They need the security provided by heart and hypertension benefits. They should not have to contend with back taxes and penalties that are being assessed due to an error in State law.

Under this legislation, which would exempt heart and hypertension benefits from taxable income for the years prior to the IRS ruling—1989, 1990, and 1991—we can treat these public servants and their families more fairly. This bill is narrowly drafted to accomplish that limited purpose and would not affect the tax treatment of heart and hypertension benefits awarded after January 1, 1992.

Mr. President, my efforts to pass this legislation date back to the 102d Congress. During that Congress, Senator LIEBERMAN and I worked with Representatives BARBARA KENNELLY and ROSA DELAURO and this bill became a part of the Revenue Act of 1992. Although the Revenue Act was passed by Congress, it was vetoed by President Bush 1 day after he lost the election. We tried again during the 103d Congress, but we were unable to move the bill through the relevant committees.

I am hopeful that we can pass this legislation quickly this year so that we can remove the threat of back taxes and penalties that hangs over Connecticut's police officers, firefighters, and their families.•

By Mr. BUMPERS (for himself, Mr. LAUTENBERG, Mr. LEAHY, Mr. AKAKA, Mr. LEVIN, Mr. PRYOR, Mr. KOHL, Mr. FEINGOLD, and Mr. PELL):

S. 504. A bill to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes; to the Committee on Energy and Natural Resources.

MINERAL EXPLORATION AND DEVELOPMENT ACT

Mr. BUMPERS. Mr. President, I rise today to introduce the Mineral Exploration and Development Act of 1995.

This is the fourth Congress that I have proposed comprehensive legislation to reform the 1872 mining law. Obviously, if I had been successful in the past, I would not be here again today. There are few issues around here that I have such strong feelings about as I have on this subject.

Mr. President, as it provided for in 1872, and what it still permits today, the 1872 mining law allows for any citizen of this country to go on any of the 550 million acres of Federal lands open to mining, drive down four stakes encompassing 20 acres of land and notify the Bureau of Land Management that the land is subject to a mining claim. If, at some time in the future, the claimant decides that that 20-acre claim has gold, silver, copper, platinum, or any other hardrock mineral under it, the claimant can demand—literally demand—a deed from the U.S. Government for that 20 acres. If the BLM decides that yes, it does indeed have commercially mineable minerals under the claim, the Government will give you a deed to the land. Mr. President, they will give you a deed for either $2.50 an acre or $5 an acre, depending on the type of mining claim you have.

Mr. President, it is very difficult to make this case because the people across the country say that this simply cannot be true. No government in its right mind, especially a government that is in debt $4.6 trillion, would give away the public domain and billions of dollars worth of minerals for $2.50 an acre, with billions of dollars worth of gold under it. Well, unhappily, we are crazy enough to do just that, and we have been doing it since 1872.

Mr. President, there are estimates that between $1 and $4 billion worth of gold and other minerals are removed from our public lands every year. The taxpayers, the very owners of the public lands, don't even receive one red cent in return.

Mr. President, the Goldstrike Mine in Nevada is owned by a subsidiary of American Barrick Resources, which is a Canadian corporation. Incidentally, many of the top gold-mining companies in this country are foreign owned.

On September 10, 1992, Barrick filed an application for patents on 1,800 acres of its Golstrike Mine with the Bureau of Land Management. The BLM checked it out and found that there were commercial quantities of gold underneath that 1,800 acres.

(Mr. CRAIG assumed the chair.)

Mr. BUMPERS. As a result, the Bureau of Land Management had no choice but to give Barrick a deed to the 1,800 acres of land for $9,000; $5 an acre. According to Barrick—not DALE BUMPERS—the land contains $10 billion dollars' worth of gold.

And so Barrick is going to mine 10 billion dollars' worth of gold—and what do you think Uncle Sam's return will be? Absolutely nothing.

Let me ask my colleagues: If you had 1,800 acres of land and Barrick Mining Co. was getting ready to mine 10 billion dollars' worth of gold off your land, what would you expect in return? Five percent? Ten percent? As a matter of fact, the Newmont Mining Co. in Nevada pays an 18-percent royalty to a private landowner in the Carlin Trend of Nevada.

However, the U.S. taxpayers will not receive one red cent in royalties. And it is our land. It is our gold. It belongs to the people of this country.

People who watch speeches like this on the floor of the Senate say this couldn't possibly be true.

It not only can happen, but it has been happening for years and years and years. And I can tell you, with the makeup of the Senate in the 104th Congress, it will likely continue to happen. While I may not win this battle this year, I am certainly not going to quit speaking out about it.

While the hardrock mining companies argue that the imposition of a reasonable royalty would put them out of business, they continue to ignore the fact that gross royalties are paid for all other minerals that are extracted from the taxpayer-owned land. We charge people who mine coal 12.5 percent. If you extract natural gas from Federal lands, you pay the U.S. Government a 12.5-percent royalty. If you mine geothermal resources, as we do out West, it is 10 to 15 percent of gross revenues. If you drill oil on Federal lands, you pay a 12.5-percent royalty.

However, if you mine for gold, silver, or copper, you do not pay one red cent to the U.S. Government.

Why? Because the mining companies have the political clout in this body to prevent the enactment of comprehensive mining law reform. Last year the House of Representatives passed a comprehensive and reasonable mining law reform bill. However, when it came over to the Senate it fell into the same old sump hole.

Occasionally, "60 Minutes" or "20-20" or "Prime Time Live" will do a 10- to 20-minute segment on this issue. Sam Donaldson will say, "Can you believe this?" And the next morning, my phone rings off the wall.

Several years ago, after ABC did a story on the mining law, a Senator called and said, "For God's sake, get me on your bill as a cosponsor. My phone hasn't stopped ringing." We put him on as a cosponsor. However, when it came time to vote on my amendment to impose a moratorium on the issuance of patents, he voted against it. He just had not yet heard from the mining industry when he cosponsored my bill.

The 1872 mining law does not reflect modern environmental protection policies. Past mining activities have left a legacy of unreclaimed lands, acid mine drainage, and hazardous waste. Approximately 60 abandoned hardrock mining sites are currently on the Superfund National Priority List. Some estimate that it could cost taxpayers upward of $50 billion to clean up these sites.

The 1872 mining law does not contain any bonding or reclamation requirements or any requirements for protecting the environment. While BLM and Forest Service regulations address these issues, their regulations, particularly BLM's, are full of loopholes and weak.

The Mineral Exploration and Development Act of 1995 would provide BLM and the Forest Service with sufficient authority to regulate mining to minimize adverse impacts to the environment. It would mandate reclamation and bonding and would direct the agencies to promulgate specific reclamation standards.

Some of the Senators who come on this floor and make these long speeches about what a wonderful thing the 1872 mining law is and how wonderful it has been to their States, should take a look at what the State governments do. For example, Arizona charges a 2-percent royalty on the gross value of the minerals extracted from State-owned land. If you mine on private or Federal lands, Arizona charges a 2.5-percent severance tax.

What do we charge? Nothing.

Montana gets a 5-percent royalty for raw metallic minerals mined on State lands and they charge a severance tax of 1.6 percent of the gross value in excess of $250,000 for gold, silver, and platinum mined on all lands in the State.

The State of Utah charges a 4-percent gross value royalty on nonfissionable metalliferous metals.

Utah also charges a 2.6-percent severance tax on all metalliferous minerals, including those that are on Federal lands. Whether there is a patent on it or not, whether it is private lands or Federal lands, you pay a severance tax in the State of Utah.

What does the U.S. Government charge? absolutely nothing.

Wyoming charges a 5-percent royalty on the gross sales value of gold, silver, and trona mined on State-owned land, and a 2-percent net of the minemouth value severance tax on everything that is mined anywhere in that State.

However, the mining industry will continue to insist that if my bill or anything even close to it passes, it will be the end of the world as we know it.

Now, Mr. President, I started out talking about the fact that this is the sixth year I have fought this battle. When I first started back about 1990, I could not even fathom that this was actually going on in this country. Sadly, it continues unabated.

The argument of the mining industry then was, "It will put us out of business if you charge us a royalty." "How about 3 percent?" "No, we cannot afford 3 percent." "Two percent?" "No, we cannot afford 2 percent. Cannot afford anything." Now they say: "We will pay a small royalty, but you must allow us to deduct every imaginable and unimaginable cost of mining first".

Mr. President, at the beginning of the 103d Congress gold was selling in this country for $333 an ounce. The mining industry said, "we cannot afford to pay an 8-percent royalty or even a 5-percent royalty when we are selling gold for $333 an ounce. It would bankrupt us." Gold is now selling for approximately $375 an ounce. However, the mining industry is still claiming poverty.

Mr. President, when I first started fighting on this issue in 1990 we had 1.2 million mining claims in this country. Today, because a person now has to pay $100 a year in order to hold his claim, that number has been reduced to 330,000 claims. Do you know why there has been such a precipitous drop in the number of claims? All those claims out there were filed to build summer homes on the land or they were filed hoping some big mining company would come along and say, "How about letting us explore your claim?" because they did not have to pay a red cent to keep that claim viable.

Mr. President, almost every one of these mining companies do, in fact, pay royalties. However, they don't pay royalties to the landowner—the American taxpayer. Rather, they pay royalties to somebody they bought the claim from. So who is really getting the royalty? It is the guy who had the claim.

If I had claims amounting to 1,000 acres, never touched it, a mining company could come by and say, "We would like to have that claim to mine on." If I said, "OK," they will look it over. If they find out it has gold on it, they will say, "We will pay you a 5-percent royalty on all the gold we take off of your land." That goes on time and time again. Virtually every major mining company in the United States that mines on Federal lands is paying a pretty good-sized royalty to the guy who went out there and drove the stakes into the ground with no intention of ever doing anything.

Mr. President, I have tried every year to convince the Senate to enact comprehensive mining law reform. In addition, I have tried to impose a moratorium to prohibit the Interior Department from granting patents. The House of Representatives passed such a moratorium every year since I started this fight, and every year the Senate has killed it. Last year the Senate finally agreed to the moratorium during a House-Senate Appropriations conference.

In 1991 I came within a single vote of passing the patent moratorium. Just 4 days later, the Stillwater Mining Co. filed applications for patents on a little more than 2,000 acres of land in Montana. It took them just 4 days to figure out that they might have to pay a royalty one of these days if they did not get a patent. Assuming they get these patents, Stillwater will pay just $10,000 for the 2,000 acres of land. According to Stillwater's own figures, the land contains roughly 35 to 38 billion dollars' worth of platinum and palladium.

And, Mr. and Mrs. Taxpayer, what do you think you are going to get for the 38 billion dollars' worth of platinum and palladium that you own? You guessed it. Not one penny.

Mr. President, I will just make this little summation. The patent moratorium that we passed last year grandfathered-in about 350 patent applications. If we do not keep the moratorium pending until Congress is ready to enact comprehensive reform, the U.S. Government will continue to give away our public lands.

In addition, we will continue to permit mining companies to walk away from unmitigated environmental disasters leaving the taxpayers to pick up the tab. They did not get a red cent out of it, but the taxpayers get the luxury of cleaning up the mess.

Mr. President, my bill constitutes what I believe to be the minimum required for comprehensive mining law reform. It provides for the Secretary to have considerable input into the siting of mining operations to ensure that areas such as Yellowstone National Park are not ruined.

My bill provides for an 8-percent gross royalty. It provides for bonding to make sure that the land is put back in half decent shape when mining operations are completed. It stops this business of giving deeds to people for $2.50 an acre.

Opponents of comprehensive reform will soon introduce a bill that would continue to permit patenting. Rather than $2.50 or $5 an acre, the claimant would have to pay the fair market value for the surface of the land. That is only marginally better than the $5 an acre they pay now.

Senators trying to pass this as reform will say: "Well, they are paying fair market value." You give me the Gulf of Mexico; I will pay for the fair market of the surface of the Gulf of Mexico if you give me all the oil underneath it.

Mr. President, I intend to pursue this matter as long as I am in the U.S. Senate. I want to say to my colleagues and to the American people, there is no greater travesty—no greater travesty—than the continuation of this mining law and allowing the mining interests of this country to take the valuable resources that belong to every taxpayer in the country.

We have a $4.6 trillion debt and Speaker GINGRICH and the proponents of the Contract With America want to put children in orphanages, take away school lunches, and dramatically cut food stamps. But the mining companies can't compensate the taxpayers because there are enough western Senators here to stop it. Where are our priorities?

So I will probably not succeed this year. If I could not succeed last year, given the makeup of the Senate this year, I will not prevail and I am tired of fighting the battle, but I am not tired enough to quit.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at the conclusion of my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 504

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be referred to as the "Mineral Exploration and Development Act of 1995".

(b) TABLE OF CONTENTS.—

TITLE I—MINERAL EXPLORATION AND DEVELOPMENT
Sec. 101. Definitions, references, and coverage.
Sec. 102. Lands open to location; rights under this Act.
Sec. 103. Location of mining claims.
Sec. 104. Claim maintenance requirements.
Sec. 105. Penalties.
Sec. 106. Preemption.
Sec. 107. Limitation on patent issuance.
Sec. 108. Multiple mineral development and surface resources.
Sec. 109. Mineral materials.
TITLE II—ENVIRONMENTAL CONSIDERATIONS OF MINERAL EXPLORATION AND DEVELOPMENT
Sec. 201. Surface management.
Sec. 202. Inspection and enforcement.
Sec. 203. State law and regulation.
Sec. 204. Unsuitability review.
Sec. 205. Lands not open to location.
TITLE III—ABANDONED MINERALS MINE RECLAMATION FUND
Sec. 301. Abandoned Minerals Mine Reclamation Fund.
Sec. 302. Use and objectives of the fund.
Sec. 303. Eligible areas.
Sec. 304. Fund allocation and expenditures.
Sec. 305. State reclamation programs.
Sec. 306. Authorization of appropriations.
TITLE IV—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS
Sec. 401. Policy functions.
Sec. 402. User fees.
Sec. 403. Regulations; effective dates.
Sec. 404. Transitional rules; mining claims and mill sites.
Sec. 405. Transitional rules; surface management requirements.
Sec. 406. Basis for contest.
Sec. 407. Savings clause claims.
Sec. 408. Severability.
Sec. 409. Purchasing power adjustment.
Sec. 410. Royalty.
Sec. 411. Savings clause.
Sec. 412. Public records.

TITLE I—MINERAL EXPLORATION AND DEVELOPMENT

SEC. 101. DEFINITIONS, REFERENCES, AND COVERAGE.

(a) DEFINITIONS.—As used in this Act:

(1) The term "applicant" means any person applying for a plan of operations under this Act or a modification to or a renewal of a plan of operations under this Act.

(2) The term "claim holder" means the holder of a mining claim located or converted under this Act. Such term may include an agent of a claim holder.

(3) The term "land use plans" means those plans required under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) or the land management plans for National Forest System units required under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604), whichever is applicable.

(4) The term "legal subdivisions" means an aliquot quarter section of land as established by the official records of the public land survey system, or a single lot as established by the official records of the public land survey system if the pertinent section is irregular and contains fractional lots, as the case may be.

(5) The term "locatable mineral" means any mineral not subject to disposition under any of the following:

(A) the Mineral Leasing Act (30 U.S.C. 181 and following);

(B) the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following);

(C) the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following); or

(D) the Mineral Leasing for Acquired Lands Act (30 U.S.C. 351 and following).

(6) The term "mineral activities" means any activity for, related to or incidental to mineral exploration, mining, beneficiation and processing activities for any locatable mineral, including access. When used with respect to this term—

(A) the term "exploration" means those techniques employed to locate the presence of a locatable mineral deposit and to establish its nature, position, size, shape, grade, and value;

(B) the term "mining" means the processes employed for the extraction of a locatable mineral from the earth;

(C) the term "beneficiation" means the crushing and grinding of locatable mineral ore and such processes which are employed to free the mineral from other constituents, including but not necessarily limited to, physical and chemical separation techniques; and

(D) the term "processing" means processes downstream of beneficiation employed to prepare locatable mineral ore into the final marketable product, including but not limited to, smelting and electrolytic refining.

(7) The term "mining claim" means a claim for the purposes of mineral activities.

(8) The term "National Conservation System unit" means any unit of the National

Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, or a national conservation area, national recreation area, or a national forest monument.

(9) The term "operator" means any person, partnership, or corporation with a plan of operations approved under this Act.

(10) The term "Secretary" means, unless otherwise provided in this Act—

(A) the Secretary of the Interior for the purposes of title I and title III;

(B) the Secretary of the Interior with respect to land under the jurisdiction of such Secretary and all other lands subject to this Act (except for lands under the jurisdiction of such Secretary and all other lands subject to this Act (except for lands under the jurisdiction of the Secretary of Agriculture) for the purposes of title II; and

(C) the Secretary of Agriculture with respect to lands under the jurisdiction of the Secretary of Agriculture for the purposes of title II.

(11) The term "substantial legal and financial commitments" means significant investments that have been made to develop mining claims under the general mining laws such as: long-term contracts for minerals produced; processing, beneficiation, or extraction facilities and transportation infrastructure; or other capital-intensive activities. Costs of acquiring the mining claim or claims, or the right to mine alone without other significant investments as detailed above, are not sufficient to constitute substantial legal and financial commitments.

(12) The term "surface management requirements" means the requirements and standards of section 201, section 203, and section 204 of this Act, and such other standards as are established by the Secretary governing mineral activities and reclamation.

(b) REFERENCES.—(1) Any reference in this Act to the term "general mining laws" is a reference to those Acts which generally comprise chapters 2, 12A, and 16, and sections 161 and 162 of title 30, United States Code.

(2) Any reference in this Act to the "Act of July 23, 1955", is a reference to the Act of July 23, 1955, entitled "An Act to amend the Act of July 31, 1947 (61 Stat. 681), and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes." (30 U.S.C. 601 and following).

(c) COVERAGE.—This Act shall apply only to mineral activities and reclamation on lands and interests in land which are open to location as provided in this Act.

SEC. 102. LANDS OPEN TO LOCATION; RIGHTS UNDER THIS ACT.

(a) OPEN LANDS.—Mining claims may be located under this Act on lands and interests in lands owned by the United States to the extent that—

(1) such lands and interests were open to the location of mining claims under the general mining laws on the date of enactment of this Act;

(2) such lands and interests are opened to the location of mining claims by reason of section 204(f) or section 205 of this Act; and

(3) such lands and interests are opened to the location of mining claims state the date of enactment of this Act by reason of any administrative action or statute.

(b) RIGHTS.—The holder of a mining claim located or converted under this Act and maintained in compliance with this Act shall have the exclusive right of possession and use of the claimed land for mineral activities, including the right of ingress and egress to such claimed lands for such activities, subject to the rights of the United States under section 108 and title II.

SEC. 103. LOCATION OF MINING CLAIMS.

(a) GENERAL RULE.—A person may locate a mining claim covering lands open to the location of mining claims by posting a notice of location, containing the person's name and address, the time of location (which shall be the date and hour of location and posting), and a legal description of the claim. The notice of location shall be posted on a conspicuous, durable monument erected as near as practicable to the northeast corner of the mining claim. No person who is not a citizen, or a corporation organized under the laws of the United States or of any State or the District of Columbia, may locate or hold a claim under this Act.

(b) USE OF PUBLIC LAND SURVEY.—Except as provided in subsection (c), each mining claim located under this Act shall—

(1) be located in accordance with the public land survey system, and

(2) conform to the legal subdivisions thereof. Except as provided in subsection (c), the legal description of the mining claim shall be based on the public land survey system and its legal subdivision.

(c) EXCEPTIONS.—(1) If only a protracted survey exists for the public lands concerned, each of the following shall apply in lieu of subsection (b):

(A) The legal description of the mining claim shall be based on the protracted survey and the mining claim shall be located as near as practicable in conformance with a protracted legal subdivision.

(B) The mining claim shall be monumented on the ground by the erection of a conspicuous durable monument at each corner of the claim.

(C) The legal description of the mining claim shall include a reference to any existing survey monument, or where no such monument can be found within a reasonable distance, to a permanent natural object.

(2) If no survey exists for the public lands concerned, each of the following shall apply in lieu of subsection (b):

(A) The mining claim shall be a regular square, with each side laid out in cardinal directions, 40 acres in size.

(B) The claim shall be monumented on the ground by the erection of a conspicuous durable monument at each corner of the claim.

(C) The legal description of the mining claim shall be expressed in metes and bounds and shall include a reference to any existing survey monument, or where no such monument can be found within a reasonable distance, to a permanent natural object. Such description shall be of sufficient accuracy and completeness to permit recording of the claim upon the public land records and to permit the Secretary and other parties to find the claim upon the ground.

(3) In the case of a conflict between the boundaries of a mining claim as monumented on the ground and the description of such claim in the notice of location referred to in subsection (a), the notice of location shall be determinative.

(d) FILING WITH SECRETARY.—(1) Within 30 days after the location of a mining claim pursuant to this section, a copy of the notice of location referred to in subsection (a) shall be filed with the Secretary in an office designated by the Secretary.

(2) Whenever the Secretary receives a copy of a notice of location of a mining claim under this Act, the Secretary shall assign a serial number to the mining claim, and immediately return a copy of the notice of location to the locator of the claim, together with a certificate setting forth the serial number, a description of the claim, and the claim maintenance requirements of section 104. The Secretary shall enter the claim on the public land records.

(e) LANDS COVERED BY CLAIM.—A mining claim located under this Act shall include all lands and interests in lands open to location within the boundaries of the claim, subject to any prior mining claim referenced under subsections (c) and (d) of section 404.

(f) DATE OF LOCATION.—A mining claim located under this Act shall be effective based upon the time of location.

(g) CONFLICTING LOCATIONS.—Any conflicts between the holders of mining claims located or converted under this Act relating to relative superiority under the provisions of this Act may be resolved in adjudication proceedings before the Secretary. Such adjudication shall be determined on the record after opportunity for hearing. It shall be incumbent upon the holder of a mining claim asserting superior rights in such proceedings to demonstrate to the Secretary that such person was the senior locator, or if such person is the junior locator, that prior to the location of the claim by such locator—

(1) the senior locator failed to file a copy of the notice of location within the time provided under subsection (d); or

(2) the amount of rental paid by the senior locator was less than the amount required to be paid by such locator pursuant to section 104.

(h) EXTENT OF MINERAL DEPOSIT.—The boundaries of a mining claim located under this Act shall extend vertically downward.

SEC. 104. CLAIM MAINTENANCE REQUIREMENTS.

(a) IN GENERAL.—(1) In order to maintain a mining claim under this Act a claim holder shall pay to the Secretary an annual rental fee. The rental fee shall be paid on the basis of all land within the boundaries of a mining claim at a rate established by the Secretary of not less than—

(A) $5 per acre in each of the first through fifth years following location of the claim;

(B) $10 per acre in each of the sixth through tenth years following location of the claim;

(C) $15 per acre in each of the eleventh through fifteenth years following location of the claim;

(D) $20 per acre in each of the sixteenth through twentieth years following location of the claim; and

(E) $25 per acre in the twenty-first diligence year following location of the claim, and each year thereafter. (2) The rental fee shall be due and payable at a time and in a manner as prescribed by the Secretary.

(b) FAILURE TO COMPLY.—(1) If a claim holder fails to pay the rental fee as required by this section, the Secretary shall immediately provide notice thereof to the claim holder and after 30 days from the date of such notice the claim shall be deemed forfeited and such claim shall be null and void by operation of the law, except as provided under paragraphs (2) and (3). Such notice shall be sent to the claim holder by registered or certified mail to the address provided by such claim holder in the notice of location referred to in section 103(a) or in the most recent instrument filed by the claim holder pursuant to this section. In the even such notice is returned as undelivered, the Secretary shall be deemed to have fulfilled the notice requirements of this paragraph.

(2) No claim may be deemed forfeited and null and void due to a failure to comply with the requirements of this section if the claim holder corrects such failure to the satisfaction of the Secretary within 10 days after the

date such claim holder was required to pay the rental fee.

(3) No claim may be deemed forfeited and null and void due to a failure to comply with the requirements of this section if, within 10 days after date of the notice referred to in paragraph (1), the claim holder corrects such failure to the satisfaction of the Secretary, and if the Secretary determines that such failure was justifiable.

(c) Prohibition.—The claim holder shall be prohibited from locating a new claim on the lands included in a forfeited claim for one year from the date such claim is deemed forfeited and null and void, except as provided in subsection (d).

(d) Relinquishment.—A claim holder deciding not to pursue mineral activity on a claim may relinquish such claim by notifying the Secretary. A claim holder relinquishing a claim is responsible for reclamation as required by section 201 of this Act and all other applicable requirements. A claim holder who relinquishes a claim shall not be subject to the prohibition of subsection (c) of this section; however, if the Secretary determines that a claim is being relinquished and relocated for the purpose of avoiding compliance with any provision of this Act, including payment of the applicable annual rental fee, the claim holder shall be subject to the prohibition in subsection (c) of this section.

(e) Suspension.—Payment of the annual rental fee required by this section shall be suspended upon the payment of the royalty required by section 410 of this Act in an amount equal to or greater than the applicable annual rental fee. During any subsequent period of non-production, or period when the royalty required by section 410 of this Act is an amount less than the applicable annual rental fee, the claimant shall pay to the Secretary a total amount equal to the applicable annual rental fee.

(f) Fee Disposition.—The Secretary shall deposit all moneys received from rental fees collected under this subsection into the Fund referred to in title III.

SEC. 105. PENALTIES.

(a) Violation.—Any claim holder who knowingly or willfully posts on a mining claim or files a notice of location with the Secretary under section 103 that contains false, inaccurate or misleading statements shall be liable for a penalty of not more than $5,000 per violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments.

(b) Review.—No civil penalty under this section shall be assessed until the claim holder charged with the violation has been given the opportunity for a hearing on the record under section 202(f).

SEC. 106. PREEMPTION.

The requirements of this title shall preempt any conflicting requirements of any State, or political subdivision thereof relating to the location and maintenance of mining claims as provided for by this Act. The filing requirements of section 314 of the Federal Land Policy and Management Act (43 U.S.C. 1744) shall not apply with respect to any mining claim located or converted under this Act.

SEC. 107. LIMITATION ON PATENT ISSUANCE.

(a) Mining Claims.—After January 4, 1995, no patent shall be issued by the United States for any mining claim located under the general mining laws unless the Secretary of the Interior determines that, for the claim concerned—

(1) a patent application was filed with the Secretary on or before October 1, 1994; and

(2) all requirements established under sections 2325 and 2326 of the Revised Statutes (30 U.S.C. 29 and 30) for vein or lode claims and sections 2329, 2330, 2331, and 2333 of the Revised Statutes (30 U.S.C. 35, 36, and 37) for placer claims were fully complied with by that date. If the Secretary makes the determinations referred to in paragraphs (1) and (2) for any mining claim, the holder of the claim shall be entitled to the issuance of a patent in the same manner and degree to which such claim holder would have been entitled to prior to the enactment of this Act, unless and until such determinations are withdrawn or invalidated by the Secretary or by a court of the United States.

(b) Mill Sites.—After October 1, 1994, no patent shall be issued by the United States for any mill site claim located under the general mining laws unless the Secretary of the Interior determines that for the mill site concerned—

(1) a patent application for such land was filed with Secretary on or before October 1, 1994; and

(2) all requirements applicable to such patent application were fully complied with by that date. If the Secretary makes the determinations referred to in paragraphs (1) and (2) for any mill site claim, the holder of the claim shall be entitled to the issuance of a patent in the same manner and degree to which such claim holder would have been entitled to prior to the enactment of this Act, unless and until such determinations are withdrawn or invalidated by the Secretary or by a court of the United States.

SEC. 108. MULTIPLE MINERAL DEVELOPMENT AND SURFACE RESOURCES.

(A) In General.—The provisions of sections 4 and 6 of the Act of August 13, 1954 (30 U.S.C. 524 and 526), commonly known as the Multiple Minerals Development Act, and the provisions of section 4 of the Act of July 23, 1955 (30 U.S.C. 612), shall apply to all mining claims located or converted under this Act.

(b) Enforcement.—The Secretary of the Interior, or the Secretary of Agriculture, as the case may be, shall take such actions as may be necessary to ensure the compliance by claim holders with section 4 of the Act of July 23, 1955 (30 U.S.C. 612).

SEC. 109. MINERAL MATERIALS.

(a) Determinations.—Section 3 of the Act of July 23, 1955 (30 U.S.C. 611), is amended as follows:

(1) Insert "(a)" before the first sentence.

(2) Strike "or cinders" and insert in lieu thereof "cinders, or clay".

(3) Add the following new subsection at the end thereof:

"(b)(1) Subject to valid existing rights, after the date of enactment of the Mineral Exploration and Development Act of 1995, all deposits of mineral materials referred to in subsection (a), including the block pumice referred to in such subsection, shall only be subject to disposal under the terms and conditions of the Materials Act of 1947.

"(2) For purposes of paragraph (1), the term 'valid existing rights' means that a mining claim located for any such mineral material had some property giving it the distinct and special value referred to in subsection (a), or as the case may be, met the definition of block pumice referred to in such subsection, was properly located and maintained under the general mining laws prior to the date of enactment of the Mineral Exploration and Development Act of 1995, and was supported by a discovery of a valuable mineral deposit within the meaning of the general mining laws on the date of enactment of the Mineral Exploration and Development Act of 1995 and that such claim continues to be valid."

(b) Mineral Materials Disposal Clarification.—Section 4 of the Act of July 23, 1955 (30 U.S.C. 612), is amended as follows:

(1) In subsection (b) insert "and mineral material" after "vegetative".

(2) In subsection (c) insert "and mineral material" after "vegetative".

(c) Conforming Amendment.—Section 1 of the Act of July 31, 1947, entitled "An Act to provide for the disposal of materials on the public lands of the United States" (30 U.S.C. 601 and following) is amended by striking "common varieties of" in the first sentence.

(d) Short Titles.—(1) Surface Resources.—The Act of July 23, 1955, is amended by inserting after section 7 the following new section.

"Sec. 8. This Act may be cited as the 'Surface Resources Act of 1955'.".

(2) Mineral Materials.—The Act of July 31, 1947, entitled "An Act to provide for the disposal of materials on the public lands of the United States" (30 U.S.C. 601 and following) is amended by inserting after section 4 the following new section:

"Sec. 5. This Act may be cited as the 'Materials Act of 1947'.".

(e) Repeal.—(1) The Act of August 4, 1892 (27 Stat. 348) commonly known as the Building Stone Act is hereby repealed.

(2) The Act of January 31, 1901 (30 U.S.C. 162) commonly known as the Saline Placer Act is hereby repealed.

TITLE II—ENVIRONMENTAL CONSIDERATIONS OF MINERAL EXPLORATION AND DEVELOPMENT

SEC. 201. SURFACE MANAGEMENT.

(a) In General.—Notwithstanding the last sentence of section 302(b) of the Federal Land Policy and Management Act of 1976, and in accordance with this title and other applicable law, the Secretary shall require that mineral activities and reclamation be conducted so as to minimize adverse impacts to the environment.

(b) Plans of Operation.—Except as provided under paragraph (2), no person may engage in mineral activities that may cause a disturbance of surface resources unless such person has filed a plan of operations with, and received approval of such plan of operations, from the Secretary.

(2)(A) A plan of operations may not be required for mineral activities related to exploration that cause a negligible disturbance of surface resources not involving the use of mechanized earth moving equipment, suction dredging, explosives, the use of motor vehicles in areas closed to off-road vehicles, the construction of roads, drill pads, or the use of toxic or hazardous materials.

(B) A plan of operations may not be required for mineral activities related to exploration that, after notice to the Secretary, involve only a minimal and readily reclaimable disturbance of surface resources related to and including initial test drilling not involving the construction of access roads, except activities under notice shall not commence until an adequate financial guarantee is established for such activities pursuant to subsection (1).

(c) Contents of Plans.—Each proposed plan of operations shall include a mining permit application and a reclamation plan together with such documentation as necessary to ensure compliance with applicable Federal and State environmental laws and regulations.

(d) Mining Permit Application Requirements.—The mining permit referred to in subsection (c) shall include such terms and conditions as prescribed by the Secretary, and each of the following:

(1) The name and mailing address of—

(A) the applicant for the mining permit;

(B) the operator if different than the applicant;

(C) each claim holder of the lands subject to the plan of operations if different than the applicant;

(D) any subsidiary, affiliate or person controlled by or under common control with the applicant, or the operator or each claim holder, if different than the applicant; and

(E) the owner or owners of any land, or interests in any such land, not subject to this Act, within or adjacent to the proposed mineral activities.

(2) A statement of any plans of operation held by the applicant, operator or each claim holder if different than the applicant, or any subsidiary, affiliate, or person controlled by or under common control with the applicant, operator or each claim holder if different than the applicant.

(3) A statement of whether the applicant, operator or each claim holder if different than the applicant, and any subsidiary, affiliate, or person controlled by or under common control with the applicant, operator or each claim holder if different than the applicant has an outstanding violation of this Act, any surface management requirements, or applicable air and water quality laws and regulations and if so, a brief explanation of the facts involved, including identification of the site and the nature of the violation.

(4) A description of the type and method of mineral activities proposed, the engineering techniques proposed to be used and the equipment proposed to be used.

(5) The anticipated starting and termination dates of each phase of the mineral activities proposed.

(6) A map, to an appropriate scale, clearly showing the land to be affected by the proposed mineral activities.

(7) A description of the quantity and quality of surface and ground water resources within and along the boundaries of, and adjacent to, the area subject to mineral activities based on 12 months of pre-disturbance monitoring.

(8) A description of the biological resources found in or adjacent to the area subject to mineral activities, including vegetation, fish and wildlife, riparian and wetland habitats.

(9) A description of the monitoring systems to be used to detect and determine whether compliance has and is occurring consistent with the surface management requirements and to regulate the effects of mineral activities and reclamation on the site and surrounding environment, including but not limited to, groundwater, surface water, air and soils.

(10) Accident contingency plans that include, but are not limited to, immediate response strategies, corrective measures to mitigate impacts to fish and wildlife, ground and surface waters, notification procedures and waste handling and toxic material neutralization.

(11) Any measures to comply with any conditions on minerals activities and reclamation that may be required in the applicable land use plan, including any condition stipulated pursuant to section 204(d)(1)(B).

(12) A description of measures planned to exclude fish and wildlife resources from the area subject to mineral activities by covering, containment, or fencing of open waters, beneficiation, and processing materials; or maintenance of all facilities in a condition that is not harmful to fish and wildlife.

(13) Such environmental baseline data as the Secretary, by rule, shall require sufficient to validate the determinations required for plan approval under this Act.

(e) RECLAMATION PLAN APPLICATION REQUIREMENTS.—The reclamation plan referred to in subsection (c) shall include such terms and conditions as prescribed by the Secretary, and each of the following:

(1) A description of the condition of the land subject to the mining plant permit prior to the commencement of any mineral activities.

(2) A description of reclamation measures proposed pursuant to the requirements of subsections (m) and (n).

(3) The engineering techniques to be used in reclamation and the equipment proposed to be used.

(4) The anticipated starting and termination dates of each phase of the reclamation proposed.

(5) A description of the proposed condition of the land following the completion of reclamation.

(6) A description of the maintenance measures that will be necessary to meet the surface management requirements of this Act, such as, but not limited to, drainage water treatment facilities, or liner maintenance and control.

(7) The consideration which has been given to making the condition of the land after the completion of mineral activities and final reclamation consistent with the applicable land use plan.

(f) PUBLIC PARTICIPATION.—(1) Concurrent with submittal of a plan of operations, or a renewal application for a plan of operations, the applicant shall publish a notice in a newspaper of local circulation for 4 consecutive weeks that shall include: the name of the applicant, the location of the proposed mineral activities, the type and expected duration of the proposed mineral activities, and the intended use of the land after the completion of mineral activities and reclamation. The Secretary shall also notify in writing other Federal, State and local government agencies that regulate mineral activities or land planning decisions in the area subject to mineral activities.

(2) Copies of the complete proposed plan of operations shall be made available for public review for 30 days at the office of the responsible Federal surface management agency located nearest to the location of the proposed mineral activities, and at the country courthouse of the county in which the mineral activities are proposed to be located, prior to final decision by the Secretary. During this period, any person and the authorized representative of a Federal, State or local governmental agency shall have the right to file written comments relating to the approval or disapproval of the plan of operations. The Secretary shall immediately make such comments available to the applicant.

(3) Any person that is or may be adversely affected by the proposed mineral activities may request, after filing written comments pursuant to paragraph (2), a public hearing to be held in the county in which the mineral activities are proposed. If a hearing is requested, the Secretary shall conduct a hearing. When a hearing is to be held, notice of such hearing shall be published in a newspaper of local circulation for 2 weeks prior to the hearing date.

(g) PLAN APPROVAL.—(1) After providing notice and opportunity for public comment and hearing, the Secretary may approve, require modifications to, or deny a proposed plan of operations, except as provided in section 405. To approve a plan of operations, the Secretary shall make each of the following determinations:

(A) The mining permit application and reclamation plan are complete and accurate.

(B) The applicant has demonstrated that reclamation as required by this Act can be accomplished under the reclamation plan and would have a high probability of success based on an analysis of such reclamation measures in areas of similar geochemistry, topography and hydrology.

(C) The proposed mineral activities, reclamation and condition of the land after the completion of mineral activities and final reclamation would be consistent with the land use plan applicable to the area subject to mineral activities.

(D) The area subject to the proposed plan of operations is not included within an area designated unsuitable under section 204 for the types of mineral activities proposed.

(E) The applicant has demonstrated that the plan of operations will be in compliance with the requirements of all other applicable Federal requirements, and any State requirements agreed to by the Secretary pursuant to subsection 203(c).

(2) Final approval of a plan of operations under this subsection shall be conditioned upon compliance with subsection (1) and, based on information supplied by the applicant, a determination of the probable hydrologic consequences of the proposed mineral activities and reclamation.

(3)(A) A plan of operations under this section shall not be approved if the applicant, operator, or any claim holder if different than the applicant, or any subsidiary, affiliate, or person controlled by or under common control with the applicant, operator or each claim holder if different than the applicant, is currently in violation of this Act, any surface management requirement or of any applicable air and water quality laws and regulations at any site where mineral activities have occurred or are occurring.

(B) The Secretary shall suspend an approved plan of operations if the Secretary determines that any of the entities described in section 201(d)(1) were in violation of the surface management requirements at the time the plan of operations was approved.

(C) A plan of operations referred to in this subsection shall not be approved or reinstated, as the case may be, until the applicant submits proofs that the violation has been corrected or is in the process of being corrected to the satisfaction of the Secretary; except that no proposed plan of operations, after opportunity for a hearing, shall be approved for any applicant, operator or each claim holder if different than the applicant with a demonstrated pattern of willful violations of the surface management requirements of such nature and duration and with such resulting irreparable damage to the environment as to clearly indicate an intent not to comply with the surface management requirements.

(h) TERM OF PERMIT; RENEWAL.—(1) The approval of a plan of operations shall be for a stated term. The term shall be no greater than that necessary to accomplish the proposed operations, and in no case for more than 10 years, unless the applicant demonstrates that a specified longer term is reasonably needed to obtain financing for equipment and the opening of the operation.

(2) Failure by the operator to commence mineral activities within one year of the date scheduled in an approved plan of operations shall be deemed to require a modification of the plan.

(3) A plan of operations shall carry with it the right of successive renewal upon expiration only with respect to operations on areas

within the boundaries of the existing plan of operations, as approved. An application for renewal of such plan of operations shall be approved unless the Secretary determines, in writing, any of the following:

(A) The terms and conditions of the existing plan of operations are not being met.

(B) Mineral activities and reclamation activities as approved under the plan of operations are not in compliance with the surface management requirements of this Act.

(C) The operator has not demonstrated that the financial guarantee would continue to apply in full force and effect for the renewal term.

(D) Any additional revised or updated information required by the Secretary has not been provided.

(E) The applicant has not demonstrated that the plan of operations will be in compliance with the requirements of all other applicable Federal requirements, and any State requirements agreed to by the Secretary pursuant to subsection 203(c).

(4) A renewal of a plan of operations shall be for a term not to exceed the period of the original plan as provided in paragraph (1). Application for plan renewal shall be made at least 120 days prior to the expiration of an approved plan.

(5) Any person that is, or may be, adversely affected by the proposed mineral activities may request a public hearing to be held in the county in which the mineral activities are proposed. If a hearing is requested, the Secretary shall conduct a hearing. When a hearing is held, notice of such hearing shall be published in a newspaper of local circulation for 2 weeks prior to the hearing date.

(i) PLAN MODIFICATION.—(1) Except as provided under section 405, during the term of a plan of operations the operator may submit an application to modify the plan. To approve a proposed modification to a plan of operations the Secretary shall make the determinations set forth under subsection (g)(1). The Secretary shall establish guidelines regarding the extent to which requirements for plans of operations under this section shall apply to applications to modify a plan of operations based on whether such modifications are deemed significant or minor; except that:

(A) any significant modifications shall at a minimum be subject to subsection (f), and

(B) any modification proposing to extend the area covered by the plan of operations (except for incidental boundary revisions) must be made by application for a new plan of operations.

(2) The Secretary may, upon a review of a plan of operations or a renewal application, require reasonable modification to such plan upon a determination that the requirements of this Act cannot be met if the plan is followed as approved. Such determination shall be based on a written finding and subject to notice and hearing requirements established by the Secretary.

(j) TEMPORARY CESSATION OF OPERATIONS.—(1) Before temporarily ceasing mineral activities or reclamation for a period of 180 days or more under an approved plan of operations or portions thereof, an operator shall first submit a complete application for temporary cessation of operations to the Secretary for approval.

(2) The application for approval of temporary cessation of operations shall include such terms and conditions as prescribed by the Secretary, including but not limited to the steps that shall be taken during the cessation of operations period to minimize impacts on the environment. After receipt of a complete application for temporary cessation of operations the Secretary shall conduct an inspection of the area for which temporary cessation of operations has been requested.

(3) To approve an application for temporary cessation of operations, the Secretary shall make each of the following determinations:

(A) The methods for securing surface facilities and restricting access to the permit area, or relevant portions thereof, shall effectively ensure against hazards to the health and safety of the public and fish and wildlife.

(B) Reclamation is contemporaneous with mineral activities as required under the approved reclamation plan, except in those areas specifically designated in the application for temporary cessation of operations for which a delay in meeting such standards is necessary to facilitate the resumption of operations.

(C) The amount of financial assurance filed with the plan of operations is sufficient to assure completion of the reclamation plan in the event of forfeiture.

(D) Any outstanding notices of violation and cessation orders incurred in connection with the plan of operations for which temporary cessation is being requested are either stayed pursuant to an administrative or judicial appeal proceeding or are in the process of being abated to the satisfaction of the Secretary.

(k) REVIEW.—Any decision made by the Secretary under subsections (g), (h), (i), (j) or (l) shall be subject to review under section 202(f).

(l) BONDS.—(1) Before any plan of operations is approved pursuant to this Act, or any mineral activities are conducted pursuant to subsection (b)(2), the operator shall file with the Secretary financial assurance payable to the United States and conditional upon faithful performance of all requirements of this Act. The financial assurance shall be provided in the form of a surety bond, trust fund, cash or equivalent. The amount of the financial assurance shall be sufficient to assure the completion of reclamation satisfying the requirements of this Act if the work had to be performed by the Secretary in the event of forfeiture, and the calculation shall take into account the maximum level of financial exposure which shall arise during the mineral activity including, but not limited to, provision for accident contingencies.

(2) The financial assurance shall be held for the duration of the mineral activities and for an additional period to cover the operator's responsibility for revegetation under subsection (n)(6)(B).

(3) The amount of the financial assurance and the terms of the acceptance of the assurance shall be adjusted by the Secretary from time to time as the area requiring coverage is increased or decreased, or where the costs of reclamation or treatment change, but the financial assurance must otherwise be in compliance with this section. The Secretary shall specify periodic times, or set a schedule, for reevaluating or adjusting the amount of financial assurance.

(4) Upon request, and after notice and opportunity for public comment, the Secretary may release in whole or in part the financial assurance if the Secretary determines each of the following:

(A) Reclamation covered by the financial assurance has been accomplished as required by this Act.

(B) The operator has declared that the terms and conditions of any other applicable Federal requirements, and State requirements pursuant to subsection 203(b), have been fulfilled.

(5) The release referred to in paragraph (4) shall be according to the following schedule:

(A) After the operator has completed the backfilling, regrading and drainage control of an area subject to mineral activities and covered by the financial assurance, and has commenced revegetation on the regraded areas subject to mineral activities in accordance with the approved plan of operations, 50 percent of the total financial assurance secured for the area subject to mineral activities may be released.

(B) After the operator has completed successfully all mineral activities and reclamation activities and all requirements of the plan of operations and the reclamation plan and all the requirements of this Act have in fact been fully met, the remaining portion of the financial assurance may be released.

(6) During the period following release of the financial assurance as specified in paragraph (5)(A), until the remaining portion of the financial assurance is released as provided in paragraph (5)(B), the operator shall be required to meet all applicable standards of this Act and the plan of operations and the reclamation plan.

(7) Where any discharge from the area subject to mineral activities requires treatment in order to meet the applicable effluent limitations, the treatment shall be monitored during the conduct of mineral activities and reclamation and shall be fully covered by financial assurance and no financial assurance or portion thereof for the plan of operations shall be released until the operator has met all applicable effluent limitations and water quality standards for one full year without treatment.

(8) Jurisdiction under this Act shall terminate upon release of the final bond. If the Secretary determines, after final bond release, that an environmental hazard resulting from the mineral activities exists, or the terms and conditions of the plan of operations or the surface management requirements of this Act were not fulfilled in fact at the time of release, the Secretary shall reassert jurisdiction and all applicable surface management and enforcement provisions shall apply for correction of the condition.

(m) RECLAMATION.—(1) Except as provided under paragraphs (5) and (7) of subsection (n), lands subject to mineral activities shall be restored to a condition capable of supporting the uses to which such lands were capable of supporting prior to surface disturbance, or other beneficial uses, provided such other uses are not inconsistent with applicable land use plans.

(2) All required reclamation shall proceed as contemporaneously as practicable with the conduct of mineral activities and shall use the best technology currently available.

(n) RECLAMATION STANDARDS.—The Secretary shall establish reclamation standards which shall include, but not necessarily be limited to, provisions to require each of the following:

(1) SOILS.—(A) Topsoil removed from lands subject to mineral activities shall be segregated from other spoil material and protected for later use in reclamation. If such topsoil is not replaced on a backfill area within a time-frame short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be used so that the topsoil is preserved from wind and water erosion, remains free of any contamination by acid or other toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation.

(B) In the event the topsoil from lands subject to mineral activities is of insufficient quantity or of inferior quality for sustaining vegetation, and other suitable growth media removed from the lands subject to the mineral activities are available that shall support vegetation, the best available growth medium shall be removed, segregated and preserved in alike manner as under subparagraph (A) for sustaining vegetation when restored during reclamation.

(C) Mineral activities shall be conducted to prevent any contamination or toxification of soils. If any contamination or toxification occurs in violation of this subparagraph, the operator shall neutralize the toxic material, decontaminate the soil, and dispose of any toxic or acid materials in a manner which complies with this section and any other applicable Federal or State law.

(2) STABILIZATION.—All surface areas subject to mineral activities, including spoil material piles, waste material piles, ore piles, subgrade ore piles, and open or partially backfilled mine pits which meet the requirements of paragraph (5) shall be stabilized and protected during mineral activities and reclamation so as to effectively control erosion and minimize attendant air and water pollution.

(3) EROSION.—Facilities such as but not limited to basins, ditches, streambank stabilization, diversions or other measures, shall be designed, constructed and maintained where necessary to control erosion and drainage of the area subject to mineral activities, including spoil material piles and waste material piles prior to the use of such material to comply with the requirements of paragraph (5) and for the purposes of paragraph (7), and including ore piles and subgrade ore piles.

(4) HYDROLOGIC BALANCE.—(A) Mineral activities shall be conducted to minimize disturbances to the prevailing hydrologic balance of the area subject to mineral activities and adjacent areas and to the quality and quantity of water in surface and ground water systems, including stream flow, in the area subject to mineral activities and adjacent areas, and in all cases the operator shall comply with applicable Federal or State effluent limitations and water quality standards.

(B) Mineral activities shall prevent the generation of acid or toxic drainage during the mineral activities and reclamation, to the extent possible using the best available demonstrated control technology; and the operator shall prevent any contamination of surface and ground water with acid or other toxic mine drainage and shall prevent or remove water from contact with acid or toxic producing deposits.

(C) Reclamation shall, to the extent possible, also include restoration of the recharge capacity of the area subject to mineral activities to approximate premining condition.

(D) Where surface or underground water sources used for domestic or agricultural use have been diminished, contaminated or interrupted as a proximate result of mineral activities, such water resource shall be restored or replaced.

(5) GRADING.—(A) Except as provided under this paragraph (7), the surface area disturbed by mineral activities shall be backfilled, graded and contoured to its natural topography.

(B) The requirement of subparagraph (A) shall not apply with respect to an open mine pit if the Secretary finds that such open pit or partially backfilled pit would not pose a threat to the public health or safety or have an adverse effect on the environment in terms of surface or groundwater pollution.

(C) In instances where complete backfilling of an open pit is not required, the pit shall be graded to blend with the surrounding topography as much as practicable and revegetated in accordance with paragraph (6).

(6) REVEGETATION.—(A) Except in such instances where the complete backfill of an open mine pit is not required under paragraph (5), the area subject to mineral activities, including any excess spoil material pile and excess waste pile, shall be revegetated in order to establish a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area subject to mineral activities, capable of self-regeneration and plant succession and at least equal in extent of cover to the natural revegetation of the surrounding area.

(B) In order to insure compliance with subparagraph (A), the period for determining successful revegetation shall be for a period of 5 full years after the last year of augmented seeding, fertilizing, irrigation or other work, except that such period shall be 10 full years where the annual average precipitation is 26 inches or less.

(7) EXCESS SPOIL AND WASTE.—(A) Spoil material and waste material in excess of that required to comply with paragraph (5) shall be transported and placed in approved areas, in a controlled manner in such a way so as to assure long-term mass stability and to prevent mass movement. In addition to the measures described under paragraph (3), internal drainage systems shall be employed, as may be required, to control erosion and drainage. The design of such excess spoil material piles and excess waste material piles shall be certified by a qualified professional engineer.

(B) Excess spoil material piles and excess waste material piles shall be graded and contoured to blend with the surrounding topography as much as practicable and revegetated in accordance with paragraph (6).

(8) SEALING.—All drill holes, and openings on the surface associated with underground mineral activities, shall be sealed when no longer needed for the conduct of mineral activities to ensure protection of the public, fish and wildlife, and the environment.

(9) STRUCTURES.—All buildings, structures or equipment constructed, used or improved during mineral activities shall be removed, unless the Secretary determines that the buildings, structures or equipment shall be of beneficial use in accomplishing the postmining uses or for environmental monitoring.

(10) FISH AND WILDLIFE.—All fish and wildlife habitat in areas subject to mineral activities shall be restored in a manner commensurate with or superior to habitat conditions which existed prior to the mineral activities, including such conditions as may be prescribed by the Director, Fish and Wildlife Service.

(o) ADDITIONAL STANDARDS.—The Secretary may, by regulation, establish additional standards to address the specific environmental impacts of selected methods of mineral activities, such as, but not limited to, cyanide leach mining.

(p) DEFINITIONS.—As used in subsections (m) and (n):

(1) The term "best technology currently available" means equipment, devices, systems, methods, or techniques which are currently available anywhere even if not in routine use in mineral activities. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, scheduling of activities and design of sedimentation ponds. Within the constraints of the surface management requirements of this Act, the Secretary shall have the discretion to determine the best technology currently available on a case-by-case basis.

(2) The term "best available demonstrated control technology" means equipment, devices, systems, methods, or techniques which have demonstrated engineering and economic feasibility and practicality in preventing disturbances to hydrologic balance during mineral activities and reclamation. Such techniques will have shown to be effective and practical methods of acid and other mine water pollution elimination or control, and other pollution affecting water quality. The "best available demonstrated control technology" will not generally be in routine use in mineral activities. Within the constraints of the surface management requirements of this Act, the Secretary shall have the discretion to determine the best available demonstrated control technology on a case-by-case basis.

(3) The term "spoil material" means the overburden, or nonmineralized material of any nature, consolidated or unconsolidated, that overlies a deposit of any locatable mineral that is removed in gaining access to, and extracting, any locatable mineral, or any such material disturbed during the conduct of mineral activities.

(4) The term "waste material" means the material resulting from mineral activities involving beneficiation, including but not limited to tailings, and such material resulting from mineral activities involving processing, to the extent such material is not subject to subtitle C of the Resource Conservation and Recovery Act of 1976 or the Uranium Mill Tailings Radiation Control Act.

(5) The term "ore piles" means ore stockpiled for beneficiation prior to the completion of mineral activities and reclamation.

(6) The term "subgrade ore" means ore that is too low in grade to be of economic value at the time of extraction but which could reasonably be economical in the foreseeable future.

(7) The term "excess spoil" means spoil material that may be excess of the amount necessary to comply with the requirements of subsection (m)(3).

(8) The term "excess waste" means waste material that may be excess of the amount necessary to comply with the requirements of subsection (m)(3).

SEC. 202. INSPECTION AND ENFORCEMENT.

(a) INSPECTIONS AND MONITORING.—(1) The Secretary shall make such inspections of mineral activities so as to ensure compliance with the surface management requirements. The Secretary shall establish a frequency of inspections for mineral activities conducted under an approved plan of operations, but in no event shall such inspection frequency be less than one complete inspection per calendar quarter or two complete inspections annually for a plan of operations for which the Secretary approves an application under section 201(j).

(2)(A) Any person who has reason to believe they are or may be adversely affected by mineral activities due to any violation of the surface management requirements may request an inspection. The Secretary shall determine within 10 days of receipt of the request whether the request states a reason to believe that a violation exists, except in the event the person alleges and provides reason to believe that an imminent danger as provided by subsection (b)(2) exists, the 10-day period shall be waived and the inspection conducted immediately. When an inspection is conducted under this paragraph, the Secretary shall notify the person filing the complaint and such person shall be allowed to accompany the inspector during the inspection. The identity of the person supplying information to the Secretary relating to a possible violation or imminent danger or harm shall remain confidential with the Secretary if so requested by that person, unless that person elects to accompany an inspector on the inspection.

(B) The Secretary shall, by regulation, establish procedures for the review of any decision by his authorized representative not to inspect or by a refusal by such representative to ensure remedial actions are taken the respect to any alleged violation. The Secretary shall furnish such persons requesting the review a written statement of the reasons for the Secretary's final disposition of the case.

(3)(A) The Secretary shall require all operators to develop and maintain a monitoring and evaluation system which shall be capable of identifying compliance with all surface management requirements.

(B) Monitoring shall be conducted as close as technically feasible to the mineral activity or reclamation involved, and in all cases the monitoring shall be conducted within the area affected by mineral activities and reclamation.

(C) The point of compliance shall be as close to the mineral activity involved as is technically feasible, but in any event shall be located to comply with applicable State and Federal standards. In no event shall the point of compliance be outside the area affected by mineral activities and reclamation.

(D) The operator shall file reports with the Secretary on a quarterly basis on the results of the monitoring and evaluation process except that if the monitoring and evaluation show a violation of the surface management requirements, it shall be reported immediately to the Secretary.

(E) The Secretary shall determine what information must be reported by the operator pursuant to subparagraph (B). A failure to report as required by the Secretary shall constitute a violation of this Act and subject the operator to enforcement action pursuant to this section.

(F) The Secretary shall evaluate the reports submitted pursuant to this paragraph, and based on those reports and any necessary inspection shall take enforcement action pursuant to this section.

(b) ENFORCEMENT.—(1) If the Secretary or authorized representative determines, on the basis of an inspection that an operator, or any person conducting mineral activities under section 201(b)(2), is in violation of any surface management requirement, the Secretary or authorized representative shall issue a notice of violation to the operator or person describing the violation and the corrective measures to be taken. The Secretary or authorized representative shall provide such operator or person with a reasonable period of time to abate the violation. If, upon the expiration of time provided for such abatement, the Secretary or authorized representative finds that the violation has not been abated he shall immediately order a cessation of all mineral activities or the portion thereof relevant to the violation.

(2) If the Secretary or authorized representative determines, on the basis of an inspection, that any condition or practice exists, or that an operator, or any person conducting mineral activities under section 201(b)(2), is in violation of the surface management requirements, and such condition, practice or violation is causing, or can reasonably be expected to cause—

(A) an imminent danger to the health or safety of the public; or

(B) significant, imminent environmental harm to land, air or water resources;

the Secretary or authorized representative shall immediately order a cessation of mineral activities or the portion thereof relevant to the condition, practice or violation.

(3)(A) a cession order by the Secretary or authorized representative pursuant to paragraphs (1) or (2) shall remain in effect until the Secretary or authorized representative determines that the condition, practice or violation has been abated, or until modified, vacated or terminated by the Secretary or authorized representative. In any such order, the Secretary or authorized representative shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order. The Secretary shall require appropriate financial assurances to insure that the abatement obligations are met.

(B) Any notice or order issued pursuant to paragraphs (1) or (2) may be modified, vacated or terminated by the Secretary or authorized representative. An operator, or person conducting mineral activities under section 201(b)(2), issued any such notice or order shall be entitled to a hearing on the record pursuant to subsection (f).

(4) If, after 30 days of the date of the order referred to in paragraph (3)(A), the required abatement has not occurred the Secretary shall take such alternative enforcement action against the responsible parties as will most likely bring about abatement in the most expeditious manner possible. Such alternative enforcement action shall include, but is not necessarily limited to, seeking appropriate injunctive relief to bring about abatement.

(5) In the event an operator, or person conducting mineral activities under section 201(b)(2), is unable to abate a violation or defaults on the terms of the plan of operation the Secretary shall forfeit the financial assurance for the plan of operations if necessary to ensure abatement and reclamation under this Act.

(6) The Secretary shall not forfeit the financial assurance while a review is pending pursuant to subsections (f) and (g).

(c) COMPLIANCE.—(1) The Secretary may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction or restraining order, in the district court of the United States for the district in which the mineral activities are located whenever an operator, or person conducting mineral activities under section 201(b)(2):

(A) violates, fails or refuses to comply with any order issued by the Secretary under subsection (b); or

(B) interferes with, hinders or delays the Secretary in carrying out an inspection under subsection (a). Such court shall have jurisdiction to provide such relief as may be appropriate. Any relief granted by the court to enforce an order under clause (A) shall continue in effect until the completion or final termination of all proceedings for review of such order under subsections (f) and (g), unless the district court granting such relief sets it aside or modifies it.

(2) Notwithstanding any other provision of law, the Secretary shall utilize enforcement personnel from the Office of Surface Mining Reclamation and Enforcement to augment personnel of the Bureau of Land Management and the Forest Service to ensure compliance with the surface management requirements, and inspection requirements of subsection (a). The Bureau of Land Management and the Forest Service shall each enter into a memorandum of understanding with the Office of Surface Mining Reclamation and Enforcement for this purpose.

(d) PENALTIES.—(1) Any operator, or person conducting mineral activities under section 201(b)(2), who fails to comply with the surface management requirements shall be liable for a penalty of not more than $5,000 per violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. No civil penalty under this subsection shall be assessed until the operator charged with the violation has been given the opportunity for a hearing under subsection (f).

(2) An operator, or person conducting mineral activities under section 201(b)(2), who fails to correct a violation for which a cessation order has been issued under subsection (b) within the period permitted for its correction shall be assessed a civil penalty of not less than $1,000 per violation for each day during which such failure continues, but in no event shall such assessment exceed a 30-day period.

(3) Whenever a corporation is in violation of the surface management requirements or fails or refuses to comply with an order issued under subsection (b), any director, officer or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same penalties that may be imposed upon an operator under paragraph (1).

(e) CITIZEN SUITS.—(1) Except as provided under paragraph (2), any person having an interest which is or may be adversely affected may commence a civil action on his or her own behalf to compel compliance—

(A) against the Secretary where there is alleged a violation of any of the provisions of this Act or any regulation promulgated pursuant to this Act or terms and conditions of any plan of operations approved pursuant to this Act;

(B) against any other person alleged to be in violation of any of the provisions of this Act or any regulation promulgated pursuant to this Act or terms and conditions of any plan of operations approved pursuant to this Act;

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act or any regulation promulgated pursuant to this Act which is not within the discretion of the Secretary; or

(D) against the Secretary where it is alleged that the Secretary acts arbitrarily or capriciously or in a manner inconsistent with this Act or any regulation promulgated pursuant to this Act. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties. (2) No action may be commenced except as follows:

(A) Under paragraph (1)(A) prior to 60 days after the plaintiff has given notice in writing of such alleged violation to the Secretary, or to the person alleged to be in violation; except no action may be commenced against any person alleged to be in violation if the Secretary has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the provisions of this title (but in any such action in a court of the United States the person making the allegation may intervene as a matter of right.)

(B) Under paragraph (1)(B) prior to 60 days after the plaintiff has given notice in writing of such action to the Secretary, in such manner as the Secretary shall by regulation prescribe, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the environment or to the health or safety of the public or would immediately affect a legal interest of the plaintiff.

(3) Venue of all actions brought under this subsection shall be determined in accordance with title 28 U.S.C. 1391(a).

(4) The court, in issuing any final order in any action brought pursuant to paragraph (1) may award costs of litigation (including attorney and expert witness fees) to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(5) Nothing in this subsection shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any of the provisions of this Act and the regulations thereunder, or to seek any other relief, including relief against the Secretary.

(f) REVIEW BY SECRETARY.—(1)(A) Any, operator, or person conducting mineral activities under section 201(b)(2), issued a notice of violation or cessation order under subsection (b), or any person having an interest which is or may be adversely affected by such decisions, notice or order, may apply to the Secretary for review of the notice or order within 30 days of receipt thereof, or as the case may be, within 30 days of such notice or order being modified, vacated or terminated.

(B) Any operator, or person conducting mineral activities under section 201(b)(2), who is subject to a penalty under subsection (d) or section 105 may apply to the Secretary for review of the assessment within 30 days of notification of such penalty.

(C) Any person having an interest which is or may be adversely affected by a decision made by the Secretary under subsections (g), (h), (i), (j), and (l) of section 201, or subsection 202(a)(2), or subsection 204(g), may apply to the Secretary for review of the decision within 30 days after it is made.

(2) The Secretary shall provide an opportunity for a public hearing at the request of any party. Any hearing conducted pursuant to this subsection shall be on record and shall be subject to section 554 of title 5 of the United States Code. The filing of an application for review under this subsection shall not operate as a stay on any order or notice issued under subsection (b).

(3) Following the hearing referred to in paragraph (2), if requested, but in any event the Secretary shall make findings of fact and shall issue a written decision incorporating therein an order vacating, affirming, modifying or terminating the notice, order or decision, or with respect to an assessment, the amount of penalty that is warranted. Where the application for review concerns a cessation order issued under subsection (b), the Secretary shall issue the written decision within 30 days of the receipt of the application for review, unless temporary relief has been granted by the Secretary under paragraph (4).

(4) Pending completion of any proceedings under this subsection, the applicant may file with the Secretary a written request that the Secretary grant temporary relief from any order issued under subsection (b) together with a detailed statement giving reasons for such relief. The Secretary shall expeditiously issue an order or decision granting or denying such relief. The Secretary may grant such relief under such conditions as he may prescribe only if such relief shall not adversely affected the health or safety of the public or cause significant, imminent environmental harm to lad, air or water resources.

(5) The availability of review under this subsection shall not be construed to limit the operation of rights established under subsection (e).

(g) JUDICIAL REVIEW.—(1) Any action by the Secretary in promulgating regulations to implement this Act, or any other actions constituting rulemaking by the Secretary to implement this Act, shall be subject to judicial review in the United States District of Columbia. Any action subject to judicial review under this subsection shall be affirmed unless the court concludes that such action is arbitrary, capricious, or otherwise inconsistent with law. A petition for review of any action subject to judicial review under this subsection shall be filed in the United States District Court for the District of Columbia within 60 days from the date of such action, or after such date if the petition is based solely on grounds arising after the sixtieth day. Any such petition may be made by any person who commented or otherwise participated in the rulemaking or who may be adversely affected by the action of the Secretary.

(2) Final agency action under this Act, including such final action on those matters described under subsection (f), shall be subject to judicial review in accordance with paragraph (4) and pursuant to 28 U.S.C. 1391(a) of the United States Code on or before 60 days from the date of such final action.

(3) The availability of judicial review established in this subsection shall not be construed to limit the operations of rights established under subsection (e).

(4) The court shall hear any petition or complaint filed under this subsection solely on the record made before the Secretary. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

(5) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order or decision of the Secretary.

(h) PROCEEDINGS.—Whenever a proceeding occurs under subsection (a), (f), or (g), or under section 201, or under section 204(g), at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees) as determined by the Secretary or the court to have been reasonably incurred by such person for or in connection with participation in such proceedings, including any judicial review of the proceeding, may be assessed against either party as the court, resulting from judicial review or the Secretary, resulting from administrative proceedings, deems proper.

SEC. 203. STATE LAW AND REGULATION.

(a) STATE LAW.—(1) Any reclamation standard or requirement in State law or regulation that meets or exceeds the requirements of subsections (m) and (n) of section 201 shall not be construed to be inconsistent with any such standard.

(2) Any bonding standard or requirement in State law or regulation that meets or exceeds the requirements of section 201(l) shall not be construed to be inconsistent with such requirements.

(3) Any inspection standard or requirement in State law or regulation that meets or exceeds the requirements of section 202 shall not be construed to be inconsistent with such requirements.

(b) APPLICABILITY OF OTHER STATE REQUIREMENTS.—(1) Nothing in this Act shall be construed as affecting any air or water quality standard or requirement of any State law or regulation which may be applicable to mineral activities on lands subject to this Act.

(2) Nothing in this Act shall be construed as affecting in any way the right of any person or enforce or protect, under applicable law, such person's interest in water resources affected by mineral activities on lands subject to this Act.

(c) COOPERATIVE AGREEMENTS.—(1) Any State may enter into a cooperative agreement with the Secretary for the purposes of the Secretary applying such standards and requirements referred to in subsection (a) and subsection (b) to mineral activities or reclamation on lands subject to this Act.

(2) In such instances where the proposed mineral activities would affect lands not subject to this Act in addition to lands subject to this Act, in order to approve a plan of operations the Secretary shall enter into a cooperative agreement with the State that sets forth a common regulatory framework consistent with the surface management requirements of this Act for the purposes of such plan of operations.

(3) The Secretary shall not enter into a cooperative agreement with any State under this section until after notice in the Federal Register and opportunity for public comment.

(d) PRIOR AGREEMENTS.—Any cooperative agreement or such other understanding between the Secretary and any State, or political subdivision thereof, relating to the surface management of mineral activities on lands subject to this Act that was in existence on the date of enactment of this Act may only continue in force until the effective date of this Act, after which time the terms and conditions of any such agreement or understanding shall only be applicable to plans of operations approved by the Secretary prior to the effective date of this Act except as provided under section 405.

(e) DELEGATION.—The Secretary shall not delegate to any State, or political subdivision thereof, the Secretary's authorities, duties and obligations under this Act, including with respect to any cooperative agreements entered into under this section.

SEC. 204. UNSUITABILITY REVIEW.

(a) IN GENERAL.—The Secretary of the Interior in preparing land use plans under the Federal Land Policy and Management Act of 1976, and the Secretary of Agriculture in preparing land use plans under the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, shall each conduct a review of lands that are subject to this Act in order to determine whether there are any areas which are unsuitable for all or certain types of mineral activities pursuant to the standards set forth under subsection (e). In the event such a determination is made, the review shall be included in the applicable land use plan.

(b) SPECIFIC AREAS.—Not later than 90 days after the date of enactment of this Act, the Secretary of the Interior and the Secretary of Agriculture, on the basis of any information available, shall each publish a notice in the FEDERAL REGISTER identifying and listing the lands subject to this Act which are or may be determined to be unsuitable for all or certain types of mineral activities according to the standards set forth in subsection (e). After opportunity for public comment and proposals for modifications to such listing, but not later than the effective date of this Act, each Secretary shall begin to review the lands identified pursuant to this subsection to determine whether such lands are unsuitable for all or certain types of mineral activities according to the standards set forth in subsection (e).

(c) LAND USE PLANS.—(1) At such time as the Secretary revises or amends a land use plan pursuant to the provisions of law other than this Act, the Secretary shall identify lands determined to be unsuitable for all or certain types of mineral activities according to the standards set forth in subsection (e). The Secretary shall incorporate such determinations in the applicable land use plans.

(c) If lands covered by a proposed plan of operations have not been reviewed pursuant to this section at the time of submission of a plan of operations, the Secretary shall, prior to the consideration of the proposed plan of operations, review the areas that would be affected by the proposed mineral activities to determine whether the area is unsuitable for all or certain types of mineral activities according to the standards set forth in subsection (e). The Secretary shall use such review in the next revision or amendment to the applicable land use plan to the extent necessary to reflect the unsuitability of such lands for all or certain types of mineral activities according to the standards set forth in subsection (e).

(3) This section does not require land use plans to be amended until such plans are adopted, revised, or amended pursuant to provisions of law other than this Act.

(d) EFFECT OF DETERMINATION.—(1) If the Secretary determines an area to be unsuitable under this section for all or certain types of mineral activities, he shall do one of the following:

(A) In any instance where a determination is made that an area is unsuitable for all types of mineral activities, the Secretary of the Interior, with the consent of the Secretary of Agriculture for lands under the jurisdiction of the Secretary of Agriculture, shall withdraw such area pursuant to section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

(B) In any instance where a determination is made that an area is unsuitable for certain types of mineral activities, the Secretary shall take appropriate steps to limit or prohibit such types of mineral activities. (2) Nothing in this section may be construed as affecting lands where mineral activities under approved plans of operations or under notice (as provided for in the regulations of the Secretary of the Interior in effect prior to the effective date of this Act relating to operations that cause a cumulative disturbance of five acres or less) were being conducted on the effective date of this Act, except as provided under subsection (g).

(3) Nothing in this section may be construed as prohibiting mineral activities not subject to paragraph (2) where substantial legal and financial commitments in such mineral activities were in existence on the effective date of this Act, but nothing in this section may be construed as limiting any existing authority of the Secretary to regulate such activities.

(4) Any unsuitability determination under this section shall not prevent the types of mineral activities referred to in section 201(b)(2)(A), but nothing in this section shall be construed as authorizing such activities in areas withdrawn pursuant to section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

(e) REVIEW STANDARDS.—(1) An area containing lands that are subject to this Act shall be determined to be unsuitable for all or certain types of mineral activities if the Secretary determines, after notice and opportunity for public comment, that reclamation pursuant to the standards set forth in subsections (m) and (n) of section 201 would not be technologically and economically feasible for any such mineral activities in such area and where—

(A) such mineral activities would substantially impair water quality or supplies within the area subject to the mining plan or adjacent lands, such as impacts on aquifers and aquifer recharge areas;

(B) such mineral activities would occur on areas of unstable geology that could if undertaken substantially endanger life and property;

(C) such mineral activities would adversely affect publicly-owned places which are listed on or are eligible for listing on the National Register of Historic Places, unless the Secretary and the State approve all or certain mineral activities, in which case the area shall not be determined to be unsuitable for such approved mineral activities;

(D) such mineral activities would cause loss of or damage to riparian areas;

(E) such mineral activities would impair the productivity of the land subject to such mineral activities;

(F) such mineral activities would adversely affect candidate species for threatened and endangered species status; or

(G) such mineral activities would adversely affect lands designated as National Wildlife Refuges.

(2) An area may be determined to be unsuitable for all or certain mineral activities if the Secretary, after notice and opportunity for public comment, determines that reclamation pursuant to the standards set forth in subsections (m) and (n) of section 201 would not be technologically and economically feasible for any such mineral activities in such area and where—

(A) such mineral activities could result in significant damage to important historic, cultural, scientific, and aesthetic values or to natural systems;

(B) such mineral activities could adversely affect lands of outstanding aesthetic qualities and scenic Federal lands designated as Class I under section 162 of the Clean Air Act (42 U.S.C. 7401 and following);

(C) such mineral activities could adversely affect lands which are high priority habitat for migratory bird species or other important fish and wildlife species as determined by the Secretary in consultation with the Director of the Fish and Wildlife Service and the appropriate agency head for the State in which the lands are located;

(D) such mineral activities could adversely affect lands which include wetlands if mineral activities would result in loss of wetland values;

(E) such mineral activities could adversely affect National Conservation System units; or

(F) such mineral activities could adversely affect lands containing other resource values as the Secretary may consider.

(f) WITHDRAWAL REVIEW.—In conjunction with conducting an unsuitability review under this section, the Secretary shall review all administrative withdrawals of land from the location of mining claims to determine whether the revocation or modification of such withdrawal for the purpose of allowing such lands to be opened to the location of mining claims under this Act would be appropriate as a result of any of the following:

(1) The imposition of any conditions referred to in subsection (d)(1)(B).

(2) The surface management requirements of section 201.(3) the limitation of section 107.

(g) CITIZEN PETITION.—(1) In any instance where a land use plan has not been amended or completed to reflect the review referred to in subsection (a), any person having an interest that may be adversely affected by potential mineral activities on lands subject to this Act covered by such plan shall have the right to petition the Secretary to determine such lands to be unsuitable for all or certain types of mineral activities. Such petition shall contain allegations of fact with respect to potential mineral activities and with respect to the unsuitability of such lands for all or certain mineral activities according to the standards set forth in subsection (e) with supporting evidence that would tend to establish the allegations.

(2) Petitions received prior to the date of the submission of a proposed plan of operation under this Act, shall stay consideration of the proposed plan of operations pending review of the petition.

(3) Within 4 months after receipt of a petition to determine lands to be unsuitable for all or certain types of mining in areas where a land use plan has not been amended or completed to reflect the review referred to in subsection (a), the Secretary shall hold a public hearing on the petition in the locality of the area in question. After a petition has been filed and prior to the public hearing, any person may support or oppose the determination sought by the petition by filing written allegations of facts and supporting evidence.

(4) Within 60 days after a public hearing held pursuant to paragraph (3), the Secretary shall issue a written decision regarding the petition which shall state the reasons for granting or denying the requested determination.

(5) Reviews conducted pursuant to this subsection shall be consistent with paragraphs (3) and (4) of subsection (d) and with subsection (a).

SEC. 205. LANDS NOT OPEN TO LOCATION.

(a) LANDS.—Subject to valid existing rights, each of the following shall not be open to the location of mining claims under this Act on the date of enactment of this Act:

(1) Lands recommended for wilderness designation by the agency managing the surface, pending a final determination by the Congress of the status of such lands.

(2) Lands being managed by the Bureau of Land Management as wilderness study areas on the date of enactment of this Act except where the location of mining claims is specifically allowed to continue by the statute designating the study area, pending a final determination by the Congress of the status of such lands.

(3) Lands within Wild and Scenic River System and lands under study for inclusion in such system, pending a final determination by the Congress of the status of such lands.

(4) Lands identified by the Bureau of Land Management as Areas of Critical Environmental Concern.

(5) Lands identified by the Secretary of Agriculture as Research Natural Areas.

(6) Lands designated by the Fish and Wildlife Service as critical habitat for threatened or endangered species.

(7) Lands administered by the Fish and Wildlife Service.

(8) Lands which the Secretary shall designate for withdrawal under authority of other law, including lands which the Secretary of Agriculture may propose for withdrawal by the Secretary of the Interior under authority of other law.

(b) DEFINITION.—As used in this section, the term "valid existing rights" means that a mining claim located on lands referred to in subsection (a) was property located and maintained under the general mining laws prior to the date of enactment of this Act, and was supported by a discovery of a valuable mineral deposit within the meaning of the general mining laws on the date of enactment of this Act, and that such claim continues to be valid.

TITLE III—ABANDONED MINERALS MINE RECLAMATION FUND

SEC. 301. ABANDONED MINERALS MINE RECLAMATION FUND.

(a) ESTABLISHMENT.—(1) There is established on the books of the Treasury of the United States a trust fund to be known as the Abandoned Minerals Mine Reclamation Fund (hereinafter in this title referred to as the "Fund"). The Fund shall be administered by the Secretary of the Interior acting through the Director, Bureau of Land Management.

(2) The Secretary of the Interior shall notify the Secretary of the Treasury as to what portion of the Fund is not, in his judgment, required to meet current withdrawals. The Secretary of the Treasury shall invest such portion of the Fund in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketplace obligations of the United States of comparable maturities. The income on such investments shall be credited to, and form a part of, the Fund.

(b) AMOUNTS.—The following amounts shall be credited to the Fund for the purposes of this Act:

(1) All moneys received from the collection of rental fees under section 104 of this Act.

(2) Amounts collected pursuant to sections 105 and 202(d) of this Act.

(3) All moneys received from the disposal of mineral materials pursuant to section 3 of the Materials Act of 1947 (30 U.S.C. 603) to the extent such moneys are not specifically dedicated to other purposes under other authority of law.

(4) Donations by persons, corporations, associations, and foundations for the purposes of this title.

(5) Amounts referred to in section 410(e)(1) of this Act.

SEC. 302. USE AND OBJECTIVES OF THE FUND.

(a) IN GENERAL.—The Secretary is authorized to use moneys in the Fund for the reclamation and restoration of land and water resources adversely affected by past mineral (other than coal and fluid minerals) and mineral material mining, including but not limited to, any of the following:

(1) Reclamation and restoration of abandoned surface mined areas.

(2) Reclamation and restoration of abandoned milling and processing areas.

(3) Sealing, filling, and grading abandoned deep mine entries.

(4) Planting of land adversely affected by past mining to prevent erosion and sedimentation.

(5) Prevention, abatement, treatment and control of water pollution created by abandoned mine drainage.

(6) Control of surface subsidence due to abandoned deep mines.

(7) Such expenses as may be necessary to accomplish the purposes of this title.

(b) PRIORITIES.—Expenditure of moneys from the Fund shall reflect the following priorities in the order stated:

(1) The protection of public health, safety, general welfare and property from extreme danger from the adverse effects of past minerals and mineral materials mining practices.

(2) The protection of public health, safety, and general welfare from the adverse effects of past minerals and mineral materials mining practices.

(3) The restoration of land and water resources previously degraded by the adverse effects of past minerals and mineral materials mining practices.

SEC. 303. ELIGIBLE AREAS.

(a) ELIGIBILITY.—Lands and waters eligible for reclamation expenditures under this Act shall be those within the boundaries of States that have lands subject to this Act and the Materials Act of 1947—

(1) which were mined or processed for minerals and mineral materials or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to the date of enactment of this title; and

(2) for which the Secretary makes a determination that there is no continuing reclamation responsibility under State or Federal laws; and

(3) for which it can be established that such lands do not contain minerals which could economically be extracted through the reprocessing or remining of such lands, unless such consideration are in conflict with the priorities set forth under paragraphs (1) and (2) of section 302(b).

In determining the eligibility under this subsection of Federal lands and waters under the jurisdiction of the Forest Service or Bureau of Land Management in lieu of the date referred to in paragraph (1), the applicable date shall be August 28, 1974, and November 26, 1980, respectively.

(b) SPECIFIC SITES AND AREAS NOT ELIGIBLE.—Sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 and following) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 and following) shall not be eligible for expenditures from the Fund under this title.

SEC. 304. FUND ALLOCATION AND EXPENDITURES.

(a) ALLOCATIONS.—(1) Moneys available for expenditure from the Fund shall be allocated on an annual basis by the Secretary in the form of grants to eligible States, or in the form of expenditures under subsection (b), to accomplish the purposes of this title.

(2) The Secretary shall distribute moneys from the Fund based on the greatest need for such moneys pursuant to the priorities stated in section 302(b).

(b) DIRECT FEDERAL EXPENDITURES.—Where a State is not eligible, or in instances where the Secretary determines that the purposes of this title may best be accomplished otherwise, moneys available from the Fund may be expended directly by the Director, Bureau of Land Management. The Director may also make such money available through grants made to the Chief of the United States Forest Service, the Director of the National Park Service, and any public entity that volunteers to develop and implement, and that has the ability to carry out, all or a significant portion of a reclamation program, or through cooperative agreements between eligible States and the entities referred to in this subsection.

SEC. 305. STATE RECLAMATION PROGRAMS.

(a) ELIGIBLE STATES.—For the purposes of section 304(a), "eligible States" are those States for which the Secretary determines meets each of the following requirements:

(1) Within the State there are mined lands, waters, and facilities eligible for reclamation pursuant to section 303.

(2) The State has developed an inventory of such areas following the priorities established under section 302(b).

(3) The State has established, and the Secretary has approved, a State abandoned minerals and mineral materials mine reclamation program for the purpose of receiving and administering grants under this subtitle.

(b) MONITORING.—The Secretary shall monitor the expenditure of State grants to ensure they are being utilized to accomplish the purposes of this title.

(c) STATE PROGRAMS.—(1) The Secretary shall approve any State abandoned minerals mine reclamation program submitted to the Secretary by a State under this title if the Secretary finds that the State has the ability and necessary State legislation to implement such program and that the program complies with the provisions of this title and the regulations of the Secretary under this title.

(2) No State, or a contractor for such State engaged in approved reclamation work under this title, or a public entity referred to in section 304(b), shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State abandoned minerals mine reclamation program under this section. This paragraph shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

SEC. 306. AUTHORIZATION OF APPROPRIATIONS.

Amounts credited to the Fund are authorized to be appropriated for the purpose of this title without fiscal year limitation.

TITLE IV—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SEC. 401. POLICY FUNCTIONS.

(a) MINERALS POLICY.—The Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) is amended by adding at the end thereof the following: "It shall also be the responsibility of the Secretary of Agriculture to carry out the policy provisions of paragraphs (1) and (2) of this Act.".

(b) MINERAL DATA.—Section 5(e)(3) of the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1604) is amended by inserting before the period the following: ", except that for National Forest System lands the Secretary of Agriculture shall promptly initiate actions to improve the availability and analysis of mineral data in Federal land use decisionmaking".

SEC. 402. USER FEES.

The Secretaries of Interior and Agriculture are authorized to establish and collect from persons subject to the requirements of this Act such user fees as may be necessary to reimburse the United States for a portion of the expenses incurred in administering such requirements. Fees may be assessed and collected under this section only in such manner as may reasonably be expected to result in an aggregate amount of the fees collected during any fiscal year which does not exceed the aggregate amount of administrative expenses referred to in this section.

SEC. 403. REGULATIONS; EFFECTIVE DATES.

(a) EFFECTIVE DATE.—This Act shall take effect 1 year after the date of enactment of this Act, except as otherwise provided in this Act.

(b) REGULATIONS.—(1) The Secretary of the Interior shall issue final regulations to implement title I, such requirements of section 402 and 409 as may be applicable to such title, title III and sections 404, 406, and 407 not later than the effective date of this Act specified in subsection (a).

(2) The Secretary of the Interior and the Secretary of Agriculture shall each issue final regulations to implement their respective responsibilities under title II, such requirements of section 402 as may be applicable to such title, and sections 405 and 409 not later than the effective date of this Act referred to in subsection (a). The Secretary of the Interior and the Secretary of Agriculture shall coordinate the promulgation of such regulations.

(3) Failure to promulgate the regulations specified in this subsection by the effective date of this Act by reason of any appeal or judicial review shall not delay the effective date of this Act as specified in subsection (a).

(c) NOTICE.—Within 60 days after the publication of regulations referred to in subsection (b)(1), the Secretary of the Interior shall give notice to holders of mining claims and mill sites maintained under the general mining laws as to the requirements of section 404. Procedures for providing such notice shall be established as part of the regulations.

(d) NEW MINING CLAIMS.—Notwithstanding any other provision of law, after the effective date of this Act, a mining claim for a locatable mineral on lands subject to this Act—

(1) may be located only in accordance with this Act,

(2) may be maintained only as provided in this Act, and

(3) shall be subject to the requirements of this Act.

SEC. 404. TRANSITIONAL RULES; MINING CLAIMS AND MILL SITES.

(a) CLAIMS UNDER THE GENERAL MINING LAWS.—(1) CONVERTED MINING CLAIMS.—Notwithstanding any other provision of law, within the 3-year period after the effective date of this Act, the holder of any unpatented mining claim which was located under the general mining laws before the effective date of this Act may elect to convert the claim under this paragraph by filing an election to do so with the Secretary of the Interior that references the Bureau of Land Management serial number of that claim in the office designated by such Secretary. The provisions of title I (other than subsections (a), (b), (c), (d)(1), (f), and (h) of section 103) shall apply to any such claim, effective upon the making of such election, and the filing of such election shall constitute notice to the Secretary for purposes of section 103(d)(2). Once a mining claim has been converted, there shall be no distinction made as to whether such claim was originally located as a lode or placer claim.

(2) UNCONVERTED MINING CLAIMS.—Notwithstanding any other provision of law, any claim referred to in paragraph (1) that has not converted within the 3-year period referred to in such paragraph shall be deemed forfeited and declared null and void.

(3) CONVERTED MILL SITE CLAIMS.—Notwithstanding any other provision of law, within the 3-year period after the effective date of this Act, the holder of any unpatented mill site which was located under the general mining laws before the effective date of this Act may elect to convert the site under this paragraph by filing an election to do so with the Secretary of the Interior that references the Bureau of Land Management serial number of that mill site in the office designated by such Secretary. The provisions of title I (other than subsections (a), (b), (c), (d)(1), and (f) of the section 103) shall apply to any such claim, effective upon the making of such election, and the filing of such election shall constitute notice to the Secretary for purposes of section 103(d)(2). A mill site converted under this paragraph shall be deemed a mining claim under this Act.

(4) UNCONVERTED MILL SITE CLAIMS.—Notwithstanding any other provision of law, any mill site referred to in paragraph (3) that has not converted within the 3-year period referred to in such paragraph shall be deemed forfeited and declared null and void.

(5) TUNNEL SITES.—Any tunnel site located under the general mining laws on or before the effective date of this Act shall not be recognized as valid unless converted pursuant to paragraph (1). No tunnel sites may be located under the general mining laws after the effective date of this Act.

(b) SPECIAL APPLICATION OF REQUIREMENTS.—For mining claims and mill sites converted under this section each of the following shall apply:

(1) For the purposes of complying with the requirements of section 103(d)(2), whenever the Secretary receives an election under paragraphs (1) or (3) of subsection (a), as the case maybe, he shall provide the certificate referenced in section 103(d)(2) to the holder of the mining claim or mill site.

(2) The first diligence year applicable to mining claims and mill sites converted under this section shall commence on the first day of the first month following the date the holder of such claim or mill site files an election to convert with the Secretary under paragraphs (1) or (3) of subsection (a), as the case may be, and subsequent diligence years shall commence on the first day of that month each year thereafter.

(3) For the purposes of determining the boundaries of a mining claim to which the rental requirements of section 104 apply for a mining claim or mill site converted under this section, the rental fee shall be paid on the basis of land within the boundaries of the converted mining claim or mill site as described in the notice of location or certificate of location filed under section 314 of the Federal Land Policy and Management Act of 1976.

(c) PRECONVERSION.—Any unpatented mining claim or mill site located under the general mining laws shall be deemed to be a prior claim for the purposes of section 103(e) during the 3-year period referred to in subsections (a)(1) or (a)(3).

(d) POSTCONVERSION.—Any unpatented mining claim or mill site located under the general mining laws shall be deemed to be a prior claim for the purposes of section 103(e) if converted pursuant to subsections (a)(1) or (a)(3).

(e) DISPOSITION OF LAND.—In the event a mining claim is located under this Act for lands encumbered by a prior mining claim or mill site located under the general mining laws, such lands shall become part of the claim located under this Act if the claim or mill site located under the general mining laws is declared null and void under this section or otherwise becomes null and void thereafter.

(f) PREACT CONFLICTS.—(1) Any conflicts in existence on or before the date of enactment of this Act between holders of mining claims located under the general mining laws may be resolved in accordance with applicable laws governing such conflicts in effect on the date of enactment of this Act in a court with proper jurisdiction.

(2) Any conflicts not relating to matters provided for under section 103(g) between the holders of a mining claim located under this Act and a mining claim or mill located under the general mining laws arising either before or after the conversion of any such claim or site under this section shall be resolved in a court with proper jurisdiction.

SEC. 405. TRANSITIONAL RULES; SURFACE MANAGEMENT REQUIREMENTS.

(a) NEW CLAIMS.—Notwithstanding any other provision of law, any mining claim for a locatable mineral on lands subject to this Act located after the date of enactment of this Act, but prior to the effective date of this Act, shall be subject to such surface management requirements as may be applicable to the mining claim in effect prior to the date of enactment of this Act until the effective date of this Act, at which time such claim shall be subject to the requirements of title II.

(b) PREEXISTING CLAIMS.—Notwithstanding any other provision of law, any unpatented mining claim or mill site located under the general mining laws shall be subject to the requirements of title II as follows:

(1) In the event a plan of operations had not been approved for mineral activities on any such claim or site prior to the effective date of this Act, the claim or site shall be subject to the requirements of title II upon the effective date of this Act.

(2) In the event a plan of operations had been approved for mineral activities on any such claim or site prior to the effective date of this Act, such plan of operations shall continue in force for a period of 5 years after the effective date of this Act, after which time the requirements of title II shall apply, except as provided under subsection (c), subject to the limitations of section 204(d)(2). In order to meet the requirements of section 201, the person conducting mineral activities under such plan of operations shall apply for a modification under section 201(i). During such 5-year period the provisions of section 202 shall apply on the basis of the surface management requirements applicable to such plans of operations prior to the effective date of this Act.

(3) In the event a notice had been filed with the authorized officer in the applicable district office of the Bureau of Land Management (as provided for in the regulations of the Secretary of the Interior in effect prior to the date of enactment of this Act relating to operations that cause a cumulative disturbance of five acres or less) prior to the date of enactment of this Act, mineral activities may continue under such notice for a period of 2 years after the effective date of this Act, after which time the requirements of title II shall apply, except as provided under subsection (c), subject to the limitations of section 204(d)(2). In order to meet the requirements of section 201, the person conducting mineral activities under such notice must apply for a modification under section 201(i) unless such mineral activities are

conducted pursuant to section 201(b)(2). During such 2-year period the provisions of section 202 shall apply on the basis of the surface management requirements applicable to such notices prior to the effective date of this Act.

(4) In the event a notice (as described in paragraph (3)) had not been filed with the authorized officer in the applicable district office of the Bureau of Land Management prior to the date of enactment of this Act, the claim or site shall be subject to the surface management requirements in effect prior to the effective date of this Act at which time such claims shall be subject to the requirements of title II.

SEC. 406. BASIS FOR CONTEST.

(a) Discovery.—After the effective date of this Act, a mining claim may not be contested or challenged on the basis of discovery under the general mining laws, except as follows:

(1) Any claim located on or before the effective date of this Act may be contested by the United States on the basis of discovery under the general mining laws as in effect prior to the effective date of this Act if such claim is located within units of the National Park System, National Wildlife Refuge System, National Wilderness Preservation System, Wild and Scenic Rivers System, National Trails System, or National Recreation Areas designated by an Act of Congress, or within an area referred to in section 205 pending a final determination referenced in such section.

(2) Any mining claim located on or before the effective date of this Act may be contested by the United States on the basis of discovery under the general mining laws as in effect prior to the effective date of this Act if such claim was located for a mineral material that purportedly has a property giving it distinct and special value within the meaning of section 3(a) of the Act of July 23, 1955, or if such claim was located for a mineral that was not locatable under the general mining laws on or before the effective date of this Act.

(b) The Secretary of the Interior or the Secretary of Agriculture, as the case may be, may initiate contest proceedings against those mining claims referred to in subsection (a) at any time, except that nothing in this section may be construed as requiring the Secretary to inquire into or contest the validity of a mining claim for the purpose of the conversion referred to in section 404.

(c) Nothing in this section may be construed as limiting any contest proceedings initiated by the United States under this section on issues other than discovery.

SEC. 407. SAVINGS CLAUSE CLAIMS.

(a) Notwithstanding any other provision of law, except as provided under subsection (b), an unpatented mining claim referred to in section 37 of the Mineral Leasing Act (30 U.S.C. 193) may not be converted under section 404 until the Secretary of the Interior determines the claim was valid on the date of enactment of the Mineral Leasing Act and has been maintained in compliance with the general mining laws.

(b) Immediately after the date of enactment of this Act, the Secretary of the Interior shall initiate contest proceedings challenging the validity of all unpatented claims referred to in subsection (a), including those claims for which a patent application has not been filed. If a claim is determined to be invalid, the Secretary shall promptly declare the claim to be null and void.

(c) No claim referred to in subsection (a) shall be declared null and void under section 404 during the period such claim is subject to a proceeding under subsection (b). If, as a result of such proceeding, a claim is determined valid, the holder of such claim may comply with the requirements of section 404(a)(1), except that the 3-year period referred to in such section shall commence with the date of the completion of the contest proceeding.

SEC. 408. SEVERABILITY.

If any provision of this Act or the applicability thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 409. PURCHASING POWER ADJUSTMENT.

The Secretary shall adjust all rental rates, penalty amounts, and other dollar amounts established in this Act for changes in the purchasing power of the dollar every 10 years following the date of enactment of this Act, employing the Consumer Price Index for all urban consumers published by the Department of Labor as the basis for adjustment, and rounding according to the adjustment process of conditions of the Federal Civil Penalties Inflation Adjustment Act of 1990 (104 Stat. 890).

SEC. 410. ROYALTY.

(a) Reservation of Royalty.—Production of locatable minerals (including associated minerals) from any mining claim located or converted under this Act, or mineral concentrates derived from locatable minerals produced from any mining claim located or converted under this Act, as the case may be, shall be subject to a royalty of not less than 8 percent of the gross income from the production of such locatable minerals or concentrates, as the case may be.

(b) Royalty Payments.—Royalty payments shall be made to the United States not later than 30 days after the end of the month in which the product is produced and placed in its first marketable condition, consistent with prevailing practices in the industry.

(c) Reporting Requirements.—All persons holding claims under this Act shall be required to provide such information as determined necessary by the Secretary to ensure compliance with this section, including, but not limited to, quarterly reports, records, documents, and other data. Such reports may also include, but not be limited to, pertinent technical and financial data relating the quantity, quality, and amount of all minerals extracted from the mining claim.

(d) Audits.—The Secretary is authorized to conduct such audits of all persons holding claims under this Act as he deems necessary for the purposes of ensuring compliance with the requirements of this section.

(e) Disposition of Receipts.—All receipts from royalties collected pursuant to this section shall be distributed as follows—

(1) 50 percent shall be deposited into the Fund referred to in title III;

(2) 25 percent collected in any State shall be paid to the State in the same manner as are payments to States under section 35 of the Mineral Leasing Act; and (3) 25 percent shall be deposited into the Treasury of the United States.

(f) Compliance.—Any person holding claims under this Act who knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading information required by this section, or fails or refuses to submit such information, shall be subject to the enforcement provisions of section 202 of this Act and forfeiture of the claim.

(g) Regulations.—The Secretary shall promulgate regulations to establish gross income for royalty purposes under subsection (a) and to ensure compliance with this section.

(h) Report.—The Secretary shall submit to the Congress an annual report on the implementation of this section. The information to be included in the report shall include, but not be limited to, aggregate and State-by-State production data, and projections of mid-term and long-term hard rock mineral production and trends on public lands.

SEC. 411. SAVINGS CLAUSE.

(a) Special Application of Mining Laws.—Nothing in this Act shall be construed as repealing or modifying any Federal law, regulation, order or land use plan, in effect prior to the effective date of this Act that prohibits or restricts the application of the general mining laws, including such laws that provide for special management criteria for operations under the general mining laws as in effect prior to the effective date of this Act, to the extent such laws provide environmental protection greater than required under this title.

(b) Other Federal Laws.—Nothing in this Act shall be construed as superseding, modifying, amending or repealing any provision of Federal law not expressly superseded, modified, amended or repealed by this Act, including but not necessarily limited to, all of the following laws—

(1) the Clean Water Act (33 U.S.C. 1251 and following);

(2) the Clean Air Act (42 U.S.C. 7401 and following);

(3) title IX of the Public Health Service Act (the Safe Drinking Water Act (42 U.S.C. 300f and following));

(4) the Endangered Species Act of 1973 (16 U.S.C. 1531 and following);

(5) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 and following);

(6) the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following);

(7) The Uranium Mill Tailing Radiation Control Act (42 U.S.C. 7901 to 7942);

(8) the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 and following);

(9) the Solid Waste Disposal Act (42 U.S.C. 6901 and following);

(10) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 and following);

(11) the Act commonly known as the False Claims Act (31 U.S.C. 3729 to 3731);

(12) the National Historic Preservation Act (16 U.S.C. 470 and following);

(13) the Migratory Bird Treaty Act (16 U.S.C. 706 and following); and

(14) the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976.

(c) Protection of Conservation Areas.—In order to protect the resources and values of Denali National Park and Preserve, and all other National Conservation System units, the Secretary of the Interior or other appropriate Secretary shall utilize authority under this Act and other applicable law to the fullest extent necessary to prevent mineral activities within the boundaries of such units that could have an adverse impact on the resources of values of such units.

SEC. 412. AVAILABILITY OF PUBLIC RECORDS.

Copies of records, reports, inspection materials or information obtained by the Secretary under this Act shall be made immediately available to the public, consistent with section 552 of title 5 of the United States Code, in central and sufficient locations in the county, multicounty, and State area of mineral activity or reclamation so that such items are conveniently available to residents in the area proposed or approved for mineral activities or reclamation.

Mr. BUMPERS. I yield the floor, Mr. President.

Mr. BENNETT. Mr. President, I come to the floor to talk about another matter, but I must respond to my friend from Arkansas—and he is, indeed, my friend—and say to him that I would be happy to cosponsor with him a bill that will call for royalty on mining claims. However, we have one slight disagreement about the definition of royalty. My friend from Arkansas wants a royalty on gross revenues, where I am willing to give him a royalty on net revenues.

I know the arguments about that and the answers about that. People say, "Oh, the bookkeepers will juggle the books in such a way as to guarantee there are no net revenues; therefore, royalty on net will not produce anything of value."

Royalty on gross, however, has the same impact as a decrease in price. Coming from the State of Utah, where we have had direct experience with what happens when there is a decrease in price in hardrock mining minerals, I know how devastating that can be to the economy.

One of the largest employers in my State is Kennecott, with the largest open-pit copper mine in the world. When the price of copper fell below a certain level—and I will be happy to supply that for the RECORD later on if Senators are interested—Kennecott continued to produce even though they were producing at a loss. They did this because they wanted to maintain their position in the world and maintain their market share.

After awhile, however, they could not continue to do that, and ultimately they shut down. The impact on the economy of the State of Utah, and particularly of the Salt Lake area, was devastating. Kennecott was employing about 5,000 people. Kennecott was buying equipment from suppliers all over the valley that were employing thousands more. Kennecott no longer paid any State income taxes. Certainly, they were not paying any Federal income taxes. And their employees who were out of work were not paying State or Federal income taxes, but many of them were drawing unemployment compensation.

Kennecott was idle for several years until the price of copper went back up. And when the price of copper went back up, Kennecott said we are going to reopen the Kennecott mine. It was a great day for the State of Utah and for the city of Salt Lake when Kennecott reopened. They started rehiring again. They did not hire all 5,000 back; they had modern mining techniques, and they only hired 2,500. Even so, 2,500 good-paying jobs in Utah were most welcome. As long as the price of copper stays up, those jobs will be there and Kennecott will continue to supply that which we need in the economy there.

A gross royalty, as I said, Mr. President, is exactly the same thing as a price cut. If you put a gross royalty of 6 percent on the price of copper, that is exactly the same thing as cutting the price of copper 6 percent. If you say, no, we will do a 3-percent royalty, that is exactly the same thing as cutting the price of copper 3 percent. Can the company afford to pay it? If the price of copper is sufficiently high on the world market, absolutely, no problem. But what happens if the price of copper starts to fall and that margin is the difference, that gross royalty is the difference between a price the company can survive at and a price the company has to close down at? The end result you know, Mr. President; the company shuts down.

So I am willing to endorse the idea of changing the 1872 mining law. I am willing to join with my friend from Arkansas in writing a change to that law and putting in a royalty for the Federal Government on these minerals. But I want it to be a net royalty rather than a gross royalty so that it does not produce the result of lowering the world price of the commodity for that particular producer.

Let us take two mines, both of them mythical, but they will illustrate the point. In mine A, they are mining gold with a bulldozer. That is how we mine copper, by the way, at the Kennecott copper mine. We mine it with a bulldozer. It is an open pit copper mine, and they just bulldoze the material into the crushers and ultimately into the separators, and ultimately they get the copper.

In mine B, they have to build shafts. They are mining with all kinds of challenges and difficulties finding the vein of gold. In mine A, the cost of mining the gold —again, picking a number out of the air, but these are theoretical mines—in mine A, the gold is selling for $380 an ounce. Their cost of producing it is about $100 an ounce. They have a gross margin of $280 an ounce on that gold. Mine B gold is selling for $380 an ounce. Their cost of producing it is $350 an ounce. They have a margin of $30.

If you come along and put a gross royalty on gold, mine A is not going to pay any attention to that cost at all. Good Heavens, they are earning $230 an ounce. An extra $30 off of that, they are still going to earn $200 an ounce. No problem. They can pay the royalty, not be concerned about it, go on their way, produce gold. But in mine B, $30 an ounce gross royalty means they have to shut down. And when you go into a mining situation, you have to look at not only the price that is being earned on the world market, but you have to look at your cost of production. So if you had a net royalty, the kind that I am willing to support, you would say, in mine A, if the royalty, to pick a number to keep it easy for those of us who cannot calculate too fast, is 10 percent, mine A is going to pay you on that $230 gross margin $23 an ounce. Mine B is going to pay you $3 an ounce. But both mine A and mine B are going to be in business, and both of them are going to be hiring people, and both of them are going to be maintaining payrolls, and both of them are going to be generating income to the Federal Government.

This brings me to the second point where I have a disagreement with my friend from Arkansas when he says these fabulous finds that he describes produce not one penny to the Federal taxpayer. That is simply not so. If the mine is as productive as the Senator indicates that it will be, it produces income taxes from the profits of the company that gets the gold. It produces income taxes from the employees who are working there. It produces income taxes from the profits of the suppliers who produce the machinery and the power, the utilities, the rest of the things that go into making the mine work, and it produces income taxes from the wages of the employees of the suppliers. Indeed, the Federal Government gets an enormous amount of money out of a profitable business operation like a profitable gold mine, a profitable copper mine, a profitable palladium mine, whatever it is.

He wants to add to the amount of money the Federal Government is getting from that operation some more money in the form of a royalty. And as I say, I am willing to support that. The place where I part company with him is on whether the royalty should be on the gross or on the net.

As I have said, if it is on the gross, it represents a unilateral price cut for American operators that foreign operators do not have to absorb. If it is on the net, it represents an additional income tax, if you will, but I am perfectly willing to grant that additional income tax on the grounds that the land they are using is Federal land and there perhaps should be that additional tax.

As I talk to the miners in my State, they are willing to do that, too. There is no opposition now in the mining industry that I am aware of to a Federal royalty on Federal lands as long as it is a net royalty rather than a gross royalty.

As I said, Mr. President, I had not intended to speak about that when I came to the floor, but I always enjoy my friend from Arkansas. It comes as no surprise to him to know that I have heard this speech before, so I have thought some of these things through from previous recitations, and I am sure we will have the debate again as the Congress goes on. I commend him for his diligence. I commend him for his determination to see this thing through, and I hope that in the course of things maybe we can come to an agreement and ultimately resolve this because I am not one who insists we cannot ever, ever change the 1872 mining act.

I see the Senator is on his feet.

Mr. President, I ask unanimous consent that he be allowed to comment without my losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. First of all, I wish to say that it is not just me saying it, and perhaps the Senator from Utah would not wish to have commendations from this side of the aisle, but I do want to say that my opinion of him is shared by my colleagues. It developed almost immediately when he came here. He is really one of the fine additions to the Senate. He came here in 1992, was elected in the same year I was reelected. I found him to be an extremely thoughtful, compassionate, truly dedicated public servant. We have worked together on two or three issues, most notably concessions contracts in the national parks. We have gotten along beautifully. He does not vote the way I tell him to all the time, that is my only objection. But I can tell you, he is a man of integrity and a man of intellect, and it pains me that we are on opposite sides of this issue.

I do want to make two or three points in partial rebuttal to what my good friend from Utah has just said.

First, upon the completion of exploration, mining companies generally have a good idea about the amount and type of minerals located at a particular site.

They make big investments to mine, nobody denies that. And they provide a lot of jobs. But let me tell you, looking for oil can be a lot riskier than looking for minerals. Oftentimes, oil companies will spend, in deep sea water, almost $1 billion to drill a well and sometimes hit a duster. Yet, we charge them, if they do happen to hit oil, 12.5 percent of the gross value of the oil they produce. And we charge nothing to the mining industry.

Second, the Senator said that he objected to gross royalties, which I am strongly supportive of. But the Senator's own home State of Utah charges a 4-percent gross royalty on any nonfissionable minerals taken from lands that belong to the State of Utah. And virtually every mining contractor in this country on private lands provides for either a gross royalty or a net smelter return, which is close to a gross royalty. So there is nothing new or unique about that. I would rather take a percentage point or two less in royalties then to go through all those convoluted methods that I have heard discussed in the Energy Committee.

Finally, while I am reluctant to use a personal analogy, my son and a partner went into the baking business approximately 12 years ago. They worked, I would say, 2 or 3 nights a week trying to perfect different recipes, different cooking times, different temperatures, everything—to make what they thought was a perfect product. Then they rented a restaurant that closed at 9 o'clock, and they baked until 1 o'clock in the morning and would go out the next day and sell the product on the streets.

Then they leased a little spot, and then they leased a bigger spot, and they leased a bigger spot, and 2 years ago they bought a big building. It has been growing by leaps and bounds. I guess they would normally have about 20 employees—during the Christmas season, maybe 30 to 35.

I guess that is just about the most graphic case I can think of, because it happens to be in the family, of somebody who went out and started a business, just as the Senator from Utah has done. Nobody gave him a nickel to do anything. He took a big risk. And it looks as though it is going to be a very successful business.

My point is, nobody gets up on the floor of the Senate to defend the thousands and thousands of people like my son who never asked for anything and built a business. Do you know something else? He pays taxes. Do you know something else? His employees pay taxes. And nobody gets up on the floor of the Senate and says, "Ain't this wonderful?" It is only the mining industry, only the mining industry that you hear that argument made for.

Mr. President, I yield the floor.

Mr. BENNETT. I thank my friend. I remind him—remind is the wrong term—I tell him that I did stand on the floor and defend exactly the kind of businesses he just described during the debate last year over the President's economic package, and told stories similar to the one he has told, and demonstrated, I thought, how the devastation of the "S" corporation procedure that was contained in the President's plan would damage businesses like that.

I did not prevail on that occasion but I assure my colleague those kinds of presentations in defense of those businesses have been made. I have great admiration for his son. I also happen to like his son's cookies, which the Senator is kind enough to share with me from time to time. They are, indeed, a good product.

We can have this debate, and we will. My point is that there is more to this than simply the question of whether or not the taxpayers are being ripped off by giving away land. It is not that there are bars of gold sitting on the ground, waiting to be picked up and taken to Fort Knox and turned into cash. There are all kinds of processes that must be performed before the gold can be refined, before it can be sold. I say to the Senator, as he talks about the oil industry that faces exactly the same thing, I think his analogy is well taken. The oil industry faces the risk of exploration, the costs of refining, and all of the rest of that.

We have in the State of Utah enough oil, according to the geologists, to dwarf and eclipse the oil in Saudi Arabia. We have trillions and trillions and trillions of barrels of oil in the State of Utah. Why, therefore, are we not producing oil? For the simple reason that in Utah the oil is trapped in what is called oil shale. It is not down beneath the sand, to be pumped out simply by, in the language of the oil industry, sticking a straw in and sipping it up. And the oil shale does not become commercially viable until the world price of oil goes somewhere in the neighborhood of $50 to $60 a barrel.

If we were going to get $60 a barrel for oil, you would see Utah take over for Saudi Arabia, and Utah be the oil center of the universe. But the world price is not at $60 a barrel; the world price is nowhere near $60 a barrel.

Let us say that the world price was close to making shale oil commercially viable but the 12.5-percent increase in the world price represented by the U.S. royalty was the knife edge between its being profitable and not profitable. If that were to be the case and we were facing a serious energy crisis, I would come to the floor and say let us repeal the 12.5-percent royalty. Let us go to a net royalty on oil companies. Indeed, I am willing to talk about that as a possibility here.

You know the gold is there. Yes. When you buy the land, when you patent the land, you know the gold is there. The thing you do not know and cannot predict, cannot be sure of, is the world price of the gold. That is where you are taking a gamble. If the world price of the metal falls below a certain level, you have just lost your money, which is what happened, as I said, in the State of Utah where we lost 5,000 jobs, not because people did not know the copper was there. The copper was still there. The difference is that the world price fell, and when the world price fell below that level, we shut down and we lost all the jobs. And we lost all the employment. When the world price came back up, the jobs came back up.

My concern is not to bail out the rich mining companies. My concern is to hang onto those jobs if I can and say let us put the royalties in such a fashion that we do not cut the price for U.S. producers by an amount that their foreign competitors do not have.

By Mr. HARKIN:

S. 505. A bill to direct the Administrator of the Environmental Protection

Agency not to act under section 6 of the Toxic Substances Control Act to prohibit the manufacturing, processing, or distribution of certain fishing sinkers or lures; to the Committee on Environment and Public Works.

COMMON SENSE IN FISHING REGULATIONS ACT

• Mr. HARKIN. Mr. President, today I am introducing the Common Sense In Fishing Regulations Act. This bill limits government regulation run amok, its approval would put a little common sense into an area of extreme overregulation.

In March of last year the Environmental Protection Agency [EPA] proposed a rule that would ban the manufacture and sale of lead fishing sinkers—the weights most anglers use to get their baits and lures down to where the fish are. As an angler myself, I see this as a clear example of overzealous regulators acting far outside the realm of the reasonable and into the ridiculous.

In 1992 the Environmental Defense Fund, a fine organization with highly laudable goals, and several other organizations petitioned EPA under the Toxic Substances Control Act to issue a regulation that would require labels on lead fishing sinkers stating that lead is toxic to wildlife. In a few rare cases it has been shown that waterfowl will ingest sinkers improperly discarded at the water's edge, using them in their digestive tract to help grind their food. Because the sinkers can stay in the birds for an extended time, lead poisoning can develop. The petitioners felt that if anglers were made more aware of the possible dangers of improperly discarding used sinkers they would be even more conscientious with their use. However, EPA went far beyond the scope of the petition and I believe in fact the law and proposed a total ban on the sale and manufacture of lead sinkers.

In their research EPA could document fewer than 50 cases, nationwide, over a period of 16 years in which waterfowl had died of lead poisoning likely due to the ingestion of lead sinkers. Across this entire Nation over a period of 16 years, they could only document a few possible cases and yet they want to stop millions of American anglers from using devices that have been in use on this continent for centuries! If this is not a case of extreme overregulation and micromanagement by a Federal bureaucracy, I don't know what is. EPA has based their actions on speculation and anecdotal information, not on hard scientific research. It is incomprehensible that EPA would base such a far reaching regulation on such a statistically insignificant number of incidents out of a bird population that numbers in the hundreds of millions. No one would dispute that lead in the bloodstream is toxic and that waterfowl could die from using lead in their digestive system. But EPA has clearly not established that lead sinkers "present or will present an unreasonable risk of injury to human health or the environment" as is clearly required for such action under the Toxic Substances Control Act. In fact, they clearly state that they cannot establish any threat to human health through the home manufacture of lead sinkers.

And that is where a great many lead sinkers are made. In the basements and garages across this country, many anglers have a side hobby, making sinkers, jigs, and other lead based fishing tackle. They make different types, test their effectiveness, and make modifications on their designs as needed. This adds greatly to the fishing experience and angling challenge through more complete involvement in all aspects of the sport. Yet EPA wants to prohibit this type of activity without any scientific basis whatsoever. The proposed rule even states that the possible risk to human health through home manufacture is impossible to evaluate.

When lead shot for waterfowl hunting was banned several years ago, hundreds of thousands of waterfowl gizzards were examined. There was clear evidence that lead shotgun shell pellets did pose a very real threat to ducks and geese. That is just not the case in this instance. As I stated, there is not enough evidence to warrant such a sweeping regulation.

This ban would also force many small manufacturers out of business. While it can be feasible for a large company to retool and develop alternatives to lead, the costs to a small business in terms of the research and equipment needed to convert their operation is prohibitive and would force many small businesses to close their doors, leaving many individuals without livelihoods. While the larger companies reap the benefits of deeper pockets, the small business is squeezed out.

One of the true ironies in EPA's proposed rule is that it does not ban the use of lead sinkers, or ban the sale of current stocks. It seems strange to me that if these sinkers are so bad for the environment that they must be banned that EPA would allow their continued use in any instance. Anglers can continue to use the sinkers they have on hand after the ban becomes effective, and stores are given time in the proposed rule to sell out whatever stock they have on hand. This proposal thus would create an enforcement nightmare. It might take years, sinkers are pretty durable and often a small number will last an angler for quite some time, to use all the lead sinkers in existence should the ban become effective. In the meantime, will EPA enforcement officers be checking people's garages and basements to ensure that new sinkers are not being made? Will a black market in lead sinkers develop? And what would this regulation require of State fish and game enforcement officers?

Mr. President, a regulation such as this could greatly add to the burden on a State's game wardens. These individuals are some of the hardest working and most efficient law enforcement officials in the country and in an increasingly hostile environment we want to require them to determine the age of every sinker used. This regulation could force law abiding anglers—and most are extremely careful when it comes to game laws—to prove where and when they got any sinkers they are using or face criminal charges. Will anglers be required to keep the receipts for all of their tackle in their tackle boxes to prove purchase dates? All this because EPA has gone wild with regulations.

No group is more widely supportive of environmentally sound regulation than America's anglers. They see the very direct correlation between sound, sane environmental regulations and the benefits gained from them. Without environmental protections, the hobby and industry that is fishing in America would not be viable. Anglers understand all too well that without appropriate protections and regulations one of America's most widely enjoyed outdoor sports would cease to exist. Without sound policies America's water would soon be devoid of fish and most anglers are extremely cognizant of that and act accordingly when in the pursuit of their hobby. But this regulation is far beyond any reasonable and sound environmental policy. It is based on guesswork and supposition, not sound science. It oversteps the bounds of common sense.

Mr. President, before EPA proposes such a rule that will create untold headaches for State enforcement officials, anglers and many small business, it should be ready to provide much more complete proof that it is necessary and would be effective.

Finally, this amendment does not preclude future EPA action on this issue. EPA should take appropriate steps to protect waterfowl, no one is arguing that point. The bill I am introducing today specifies that should more substantial evidence or risk to either human health or wildlife become available then the Administrator is directed to report that information to Congress and make suggestions regarding possible legislative action.

Mr. President, I want to be clear that there are many critically important rules and regulations in place and being drafted on things from protecting worker rights and worker safety to making sure our air is clean. Some are proposing to freeze all regulations and gut many others. That is clearly not the right approach. We need reforms, but we need common sense reforms. We need to be very selective to assure that critical protections are not discarded as we act to block the ridiculous.

Having said that, it is important that this bill be passed as soon as possible as EPA is actively pursuing its course of action on this proposed rule. They have held hearings and the comment period has closed. EPA will soon be coming out with the final rule on this subject and millions of anglers will be seriously affected by the finalization of this ridiculous rule.

I ask my colleagues to support this measure and to help bring a little more common sense to our Government. I ask unanimous consent that a copy of the bill be included in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 505

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Common Sense in Fishing Regulations Act".

SEC. 2. FINDINGS.

Congress finds that—

(1) millions of Americans of all ages enjoy recreational fishing; fishing is one of the most popular sports;

(2) lead and other types of metal sinkers and fishing lures have been used by Americans fishing for hundreds of years;

(3) the Administrator of the Environmental Protection Agency has proposed to issue a rule under section 6 of the Toxic Substances Control Act, to prohibit the manufacturing, processing, and distribution in commerce in the United States, of certain smaller size fishing sinkers containing lead and zinc, and mixed with other substances, including those made of brass;

(4) the Environmental Protection Agency has based its conclusions that lead fishing sinkers of a certain size present an unreasonable risk of injury to human health or the environment on less than definitive scientific data, conjecture and anecdotal information;

(5) alternative forms of sinkers and fishing lures are considerably more expensive than those made of lead; consequently, a ban on lead sinkers would impose additional costs on millions of Americans who fish;

(6) in the absence of more definitive evidence of harm to the environment, the Federal Government should not take steps to restrict the use of lead sinkers; and

(7) alternative measures to protect waterfowl from lead exposure should be carefully reviewed.

SEC. 3. FISHING SINKERS AND LURES.

(a) DIRECTIVE.—The Administrator of the Environmental Protection Agency shall not, under purported authority of section 6 of the Toxic Substances Control Act (15 U.S.C. 2605), take action to prohibit or otherwise restrict the manufacturing, processing, distributing, or use of any fishing sinkers or lures containing lead, zinc, or brass.

(b) FURTHER ACTION.—If the Administrator obtains a substantially greater amount of evidence of risk of injury to health or the environment than that which was adduced in the rulemaking proceedings described in the proposed rule dated February 28, 1994 (59 Fed. Reg. 11122 (March 9, 1994)), the Administrator shall report those findings to Congress, with any recommendation that the Administrator may have for legislative action.

ADDITIONAL COSPONSORS

S. 34

At the request of Mr. BREAUX, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 34, a bill to amend the Internal Revenue Code of 1986 to treat geological, geophysical, and surface casing costs like intangible drilling and development costs, and for other purposes.

S. 200

At the request of Mr. BRADLEY, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 200, a bill to amend title 18, United States Code, to regulate the manufacture, importation, and sale of any projectile that may be used in a handgun and is capable of penetrating police body armor.

S. 240

At the request of Mr. DOMENICI, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 240, a bill to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the act.

S. 244

At the request of Mr. HARKIN, his name was added as a cosponsor of S. 244, a bill to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

At the request of Mr. NUNN, the names of the Senator from Mississippi [Mr. LOTT], the Senator from Alaska [Mr. STEVENS], the Senator from Hawaii [Mr. AKAKA], the Senator from Iowa [Mr. GRASSLEY], the Senator from Wyoming [Mr. THOMAS], the Senator from Maine [Mr. COHEN], the Senator from Tennessee [Mr. THOMPSON], the Senator from West Virginia [Mr. ROCKEFELLER], and the Senator from New York [Mr. D'AMATO] were added as cosponsors of S. 244, supra.

S. 476

At the request of Mr. NICKLES, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 476, a bill to amend title 23, United States Code, to eliminate the national maximum speed limit, and for other purposes.

SENATE CONCURRENT RESOLUTION 3

At the request of Mr. SIMON, the names of the Senator from Montana [Mr. BURNS], the Senator from Georgia [Mr. COVERDELL], the Senator from Idaho [Mr. CRAIG], the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from New Hampshire [Mr. GREGG], the Senator from North Carolina [Mr. HELMS], the Senator from Oklahoma [Mr. INHOFE], the Senator from Arizona [Mr. KYL], the Senator from Arizona [Mr. MCCAIN], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Concurrent Resolution 3, a concurrent resolution relative to Taiwan and the United Nations.

SENATE CONCURRENT RESOLUTION 9—RELATING TO A VISIT BY PRESIDENT LEE TENG-HUI OF THE REPUBLIC OF CHINA ON TAIWAN TO THE UNITED STATES

By Mr. MURKOWSKI (for himself, Mr. LIEBERMAN, Mr. BROWN, Mr. ROBB, Mr. D'AMATO, Mr. SIMON, Mr. THOMAS, Mr. HELMS, Mr. COATS, Mr. PELL, Mr. WARNER, Mr. AKAKA, Mr. GRAMS, Mr. DOLE, Mr. KEMPTHORNE, Mr. DORGAN, Mr. SPECTER, Mr. HATFIELD, Mr. LUGAR, Mr. FEINGOLD, Mr. ROTH, Mr. THURMOND, Mr. HATCH, Mr. GORTON, Mr. CAMPBELL, Mr. MACK, Mr. INOUYE, Mr. ASHCROFT, Mr. CHAFEE, Mr. ROCKEFELLER, Mr. SIMPSON, Mr. COCHRAN, Mr. CONRAD, Mr. DEWINE, Mr. GREGG, and Mr. CRAIG) submitted the following concurrent resolution which was referred to the Committee on Foreign Relations:

S. CON. RES. 9

Whereas United States diplomatic and economic security interests in East Asia have caused the United States to maintain a policy of recognizing the People's Republic of China while maintaining solidarity with the democratic aspirations of the people of Taiwan;

Whereas the Republic of China on Taiwan (known as Taiwan) is the United States' sixth largest trading partner and an economic powerhouse buying more than twice as much annually from the United States as do the 1,200,000,000 Chinese of the People's Republic of China;

Whereas the American people are eager for expanded trade opportunities with Taiwan, the sixth largest trading partner of the United States and the possessor of the world's second largest foreign exchange reserves;

Whereas the United States interests are served by supporting democracy and human rights abroad;

Whereas Taiwan is a model emerging democracy, with a free press, free elections, stable democratic institutions, and human rights protections;

Whereas vigorously contested elections conducted on Taiwan in December 1994 were extraordinarily free and fair;

Whereas United States interests are best served by policies that treat Taiwan's leaders with respect and dignity;

Whereas President Lee, a Ph.D. graduate of Cornell University, has been invited to pay a private visit to his alma mater and to attend the annual USA-ROC Economic Council Conference in Anchorage, Alaska;

Whereas there is no legitimate policy grounds for excluding the democratic leader of Asia's oldest republic from paying private visits;

Whereas the Senate of the United States voted several times in 1994 to welcome President Lee to visit the United States; and

Whereas Public Law 103-416 provides that the President of Taiwan shall be welcome in the United States at any time to discuss a host of important bilateral issues: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the President should promptly indicate that the United States will welcome a private visit by President Lee Teng-hui to his alma mater, Cornell University, and will welcome a transit stop by President Lee in Anchorage, Alaska, to attend the USA-ROC Economic Council Conference.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President.

Mr. MURKOWSKI. Mr. President, I am introducing today, on behalf of myself and 35 colleagues, a resolution calling on President Clinton to allow his excellency Lee Teng-hui, President of the Republic of China on Taiwan, to come to the United States for a private visit. A nearly identical resolution is also being introduced today by my colleagues in the House of Representatives, Congressmen LANTOS, SOLOMON, and TORRICELLI.

This is not the first time this issue has come before this body. The last Congress spoke very clearly on the question of a visit by President Lee. The Senate approved unanimously a resolution offered by myself and Senator ROBB calling on the administration to make several changes to United States-Taiwan policy, including allowing President Lee to visit the United States. Then, under Senator BROWN's leadership, the Senate agreed by a vote of 94–0 to amend United States immigration laws to add a provision specifically welcoming the leader of the Taiwanese people to enter the United States at any time to discuss issues of mutual concern. This amendment was eventually adopted by the Congress and signed into law.

Unfortunately, up to now, the Clinton Administration has chosen to ignore Congress and yield to the People's Republic of China on this issue. In the last several months, various State Department officials have indicated in public forums that they do not intend to allow President Lee to make a private visit. Mr. President, this State Department policy allows the People's Republic of China to dictate who can and cannot enter the United States—and that offends this Senator and many others.

For many years, Congress and the executive branch have prodded the people of Taiwan to make greater strides toward democracy. Taiwan has responded: Over the last decade, Taiwan has ended martial law, allowed the development of a free and vigorous press, and legalized opposition political parties. Last December, people throughout Taiwan went to the polls in a free and fair election, which was vigorously contested by all parties.

I remind my colleagues that Taiwan is the world's 13th largest trading partner and the United States' 5th largest trading partner. With $17 billion in United States exports to Taiwan in 1994, it purchased twice as many United States products as the People's Republic of China. It holds the world's largest foreign reserves. Taiwan is also friendly, democratic, stable, and prosperous. Its human rights record has steadily improved.

Yet, rather than rewarding Taiwan for these great strides, it remains the policy of the Clinton administration to deny entry into the United States to the democratic leader of Asia's oldest republic; in effect, treating Taiwan like an international pariah. Many of us were outraged last May when the administration refused to allow President Lee to overnight in Hawaii en route to a presidential inauguration in Central America. While we are aware of the need to maintain a productive relationship with the People's Republic of China, there is no defensible argument for allowing Communist bureaucrats in Beijing to block a private visit to the United States by the elected leader of the Taiwanese people.

President Lee, a Ph.D. graduate of Cornell University in New York, has expressed a desire to visit his alma mater. In addition, President Lee has been invited to attend the annual USA–ROC Economic Council Conference in Anchorage, AK. Other Senators and Representatives have invited him to visit their respective States. It would be entirely appropriate to allow one or more of these private visits.

The attached resolution demonstrates the support of the new Congress for democracy movements around the world and our commitment to increased economic ties and people-to-people contacts between the American people and the people of Taiwan. If the administration continues to ignore the voice of Congress, it may be necessary to move further legislation amending United States immigration laws or reopening the 1979 Taiwan Relations Act in order to facilitate these changes.

I urge the administration to reconsider its current position on a visit by President Lee. Certainly, there is ample precedent for allowing a private visit. After all, the administration has seen the benefit of having Yasser Arafat, leader of the PLO, attend a White House ceremony. Gerry Adams, head of Sinn Fein, the political wing of the Irish Republican Army, has been granted travel visas. Tibet's exile leader, the Dalai Lama, called on Vice President GORE over the strong objections of the People's Republic of China. Each of these men represent unofficial entities with which the United States does not have official ties. Similarly, in each case, other countries with whom we maintain diplomatic relations objected. Yet, the administration rightly chose to allow visits to advance other policy goals. A similar rationale should be applied to President Lee.

AMENDMENTS SUBMITTED

PAPERWORK REDUCTION ACT

ROTH (AND NUNN) AMENDMENT NO. 317

Mr. ROTH (for himself and Mr. NUNN) proposed an amendment to the bill (S. 244) to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes; as follows:

On page 8, lines 19 and 20, strike out "and processes, automated or manual,".

On page 8, line 25, beginning with "section" strike out all through line 2 on page 9 and insert in lieu thereof "section 111(a)(2) and (3)(C) (i) through (v) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2) and (3)(C) (i) through (v));".

On page 22, line 24, strike out "a senior official" and insert in lieu thereof "senior officials".

On page 23, line 2, strike out "for the military departments".

On page 46, lines 8 and 9, strike out "collection of information prior to expiration of time periods established under this chapter" and insert in lieu thereof "a collection of information".

On page 46, line 13, strike out "such time periods" and insert in lieu thereof "time periods established under this chapter".

On page 46, lines 17 and 18, strike out "within such time periods because" and insert in lieu thereof "because".

On page 46, line 21, strike out "or".

On page 46, beginning with line 22, strike out all through line 2 on page 47 and insert in lieu thereof the following:

"(ii) an unanticipated event has occurred; or

"(iii) the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed."

On page 49, line 14, insert "(a)" before "In order".

On page 50, insert between lines 22 and 23 the following new subsection:

"(b) This section shall not apply to operational files as defined by the Central Intelligence Agency Information Act (50 U.S.C. 431 et seq.)."

On page 56, lines 4 and 5, strike out "section 4–206 of Executive Order No. 12036, issued January 24, 1978," and insert in lieu thereof "section 3.4(e) of Executive Order No. 12333, issued December 4, 1981,".

On page 58, insert between lines 2 and 3 the following new section:

SEC. 3. PAPERWORK BURDEN REDUCTION INITIATIVE REGARDING THE QUARTERLY FINANCIAL REPORT PROGRAM AT THE BUREAU OF THE CENSUS.

(a) PAPERWORK BURDEN REDUCTION INITIATIVE REQUIRED.—As described in subsection (b), the Bureau of the Census within the Department of Commerce shall undertake a demonstration program to reduce the burden imposed on firms, especially small businesses, required to participate in the survey used to prepare the publication entitled "Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations".

(b) BURDEN REDUCTION INITIATIVES TO BE INCLUDED IN THE DEMONSTRATION PROGRAM.—The demonstration program required by subsection (a) shall include the following paperwork burden reduction initiatives:

(1) FURNISHING ASSISTANCE TO SMALL BUSINESS CONCERNS.—

(A) The Bureau of the Census shall furnish advice and similar assistance to ease the burden of a small business concern which is attempting to compile and furnish the business information required of firms participating in the survey.

(B) To facilitate the provision of the assistance described in subparagraph (A), a toll-free telephone number shall be established by the Bureau of the Census.

(2) VOLUNTARY PARTICIPATION BY CERTAIN BUSINESS CONCERNS.—

(A) A business concern may decline to participate in the survey, if the firm has—

(i) participated in the survey during the period of the demonstration program described under subsection (c) or has participated in the survey during any of the 24 calendar quarters previous to such period; and

(ii) assets of $50,000,000 or less at the time of being selected to participate in the survey for a subsequent time.

(B) A business concern may decline to participate in the survey, if the firm—

(i) has assets of greater than $50,000,000 but less than $100,000,000 at the time of selection; and

(ii) participated in the survey during the 8 calendar quarters immediately preceding the firm's selection to participate in the survey for an additional 8 calendar quarters.

(3) EXPANDED USE OF SAMPLING TECHNIQUES.—The Bureau of the Census shall use statistical sampling techniques to select firms having assets of $100,000,000 or less to participate in the survey.

(4) ADDITIONAL BURDEN REDUCTION TECHNIQUES.—The Director of the Bureau of the Budget may undertake such additional paperwork burden reduction initiatives with respect to the conduct of the survey as may be deemed appropriate by such officer.

(c) DURATION OF THE DEMONSTRATION PROGRAM.—The demonstration program required by subsection (a) shall commence on October 1, 1995, and terminate on the later of—

(1) September 30, 1998; or

(2) the date in the Act of Congress providing for authorization of appropriations for section 91 of title 13, United States Code, first enacted following the date of the enactment of this Act, that is September 30, of the last fiscal year providing such an authorization under such Act of Congress.

(d) DEFINITIONS.—For purposes of this section:

(1) The term "burden" shall have the meaning given that term by section 3502(2) of title 44, United States Code.

(2) The term "collection of information" shall have the meaning given that term by section 3502(3) of title 44, United States Code.

(3) The term "small business concern" means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant thereto.

(4) The term "survey" means the collection of information by the Bureau of the Census at the Department of Commerce pursuant to section 91 of title 13, United States Code, for the purpose of preparing the publication entitled "Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations".

On page 58, insert between lines 2 and 3 the following new section:

SEC. 4. OREGON OPTION PROPOSAL.

(a) FINDINGS.—The Senate finds that—

(1) Federal, State and local governments are dealing with increasingly complex problems which require the delivery of many kinds of social services at all levels of government;

(2) historically, Federal programs have addressed the Nation's problems by providing categorical assistance with detailed requirements relating to the use of funds which are often delivered by State and local governments;

(3) although the current approach is one method of service delivery, a number of problems exist in the current intergovernmental structure that impede effective delivery of vital services by State and local governments;

(4) it is more important than ever to provide programs that respond flexibly to the needs of the Nation's States and communities, reduce the barriers between programs that impede Federal, State and local governments' ability to effectively deliver services, encourage the Nation's Federal, State and local governments to be innovative in creating programs that meet the unique needs of the people in their communities while continuing to address national goals, and improve the accountability of all levels of government by better measuring government performance and better meeting the needs of service recipients;

(5) the State and local governments of Oregon have begun a pilot project, called the Oregon Option, that will utilize strategic planning and performance-based management that may provide new models for intergovernmental social service delivery;

(6) the Oregon Option is a prototype of a new intergovernmental relations system, and it has the potential to completely transform the relationships among Federal, State and local governments by creating a system of intergovernmental service delivery and funding that is based on measurable performance, customer satisfaction, prevention, flexibility, and service integration; and

(7) the Oregon Option has the potential to dramatically improve the quality of Federal, State and local services to Oregonians.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Oregon Option project has the potential to improve intergovernmental service delivery by shifting accountability from compliance to performance results and that the Federal Government should continue in its partnership with the State and local governments of Oregon to fully implement the Oregon Option.

On page 58, line 3, strike out **"SEC. 3."** and insert in lieu thereof **"SEC. 5."**.

McCAIN AMENDMENT NO. 318

Mr. McCAIN proposed an amendment to the bill, S. 244, supra; as follows:

At the end of the pending measure, add the following new section:

SEC. . TERMINATION OF REPORTING REQUIREMENTS.

(a) TERMINATION.—

(1) IN GENERAL.—Subject to the provisions of paragraph (2), each provision of law requiring the submittal to Congress (or any committee of the Congress) of any report specified on the list described under subsection (c) shall cease to be effective, with respect to that requirement, 5 years after the date of the enactment of this Act.

(2) EXCEPTION.—The provisions of paragraph (1) shall not apply to any report required under—

(A) the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95-452); or

(B) the Chief Financial Officers Act of 1990 (Public Law 101-576).

(b) IDENTIFICATION OF WASTEFUL REPORTS.—The President shall include in the first annual budget submitted pursuant to section 1105 of title 31, United States Code, after the date of enactment of this Act a list of reports that the President has determined are unnecessary or wasteful and the reasons for such determination.

(c) LIST OF REPORTS.—The list referred to under subsection (a) is the list prepared by the Clerk of the House of Representatives for the first session of the 103d Congress under clause 2 of rule III of the Rules of the House of Representatives.

NOTICES OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. McCAIN. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will be holding an oversight hearing on Tuesday, March 7, 1995, beginning at 10 a.m., in room 485 of the Russell Senate Office Building on Federal programs authorized to address the challenges facing Indian youth.

Those wishing additional information should contact the Committee on Indian Affairs at 224-2251.

COMMITTEE ON INDIAN AFFAIRS

Mr. McCAIN. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will be holding an oversight hearing on Wednesday, March 8, 1995, beginning at 2:30 p.m., in room 485 of the Russell Senate Office Building on reforming and downsizing of the Bureau of Indian Affairs.

Those wishing additional information should contact the Committee on Indian Affairs at 224-2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Monday, March 6, 1995, for purposes of conducting a full committee hearing which is scheduled to begin at 2 p.m. The purpose of the hearing is to consider S. 333, the Department of Energy Risk Management Act of 1995.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

GIRL SCOUTS AND BOY SCOUTS OF RHODE ISLAND

• Mr. CHAFEE. Mr. President, I am pleased to recognize two outstanding groups of young leaders in the State of Rhode Island. These individuals of the

Girl Scouts and Boy Scouts have exhibited great qualities such as leadership and hard work.

Since the beginning of the century, Girl Scouts and Boy Scouts have developed leadership skills in their members through determination, self-reliance, and teamwork.

The Silver and Gold Awards are the two highest honors that can be received by any Girl Scout. Those who have received these awards have demonstrated excellence, hard work, and the desire to help in their community. Likewise, the Eagle Scout is the highest award given to a Boy Scout. Candidates must display leadership in outdoor skills and service projects helpful to their communities and religious and school institutions.

I am proud to congratulate these recipients of these distinguished awards. The young leaders pose as role models to their fellow peers. Their skills learned through Girl and Boy Scouts will serve them well.

I would also like to acknowledge the recipient's parents, their Scout leaders, and Scouting organizations. These selfless people have contributed their time and energy to the Girl and Boy Scouts.

Therefore, with great honor I submit the list of young women and men who have earned these awards.

The list follows:

CLASS OF 1994 EAGLE SCOUTS, NARRAGANSETT COUNCIL, BOY SCOUTS OF AMERICA

ASHAWAY, RI

Robert J. Brown.

BARRINGTON, RI

Daniel G. Decelles, Christopher A. Story, Timothy S. Tehan, Stephen Powers, Robert Andrew Mueller, Scott R. Goff, and Brendan S. Mara.

BRISTOL, RI

Frank J. Parenti, John B. Brogan, Jean-Paul Arsenault, Peter Karl Sanders, and Nicholas P. Boisvert.

CHARLESTOWN, RI

John MacCoy, Jr.

CHEPACHET, RI

John J. Dumas, Jr., Gregory F. Coupe, Ian Arthur Hopkins, Matthew Raymond Siedzik, Robert D. Silva, and Thomas A. Guilbault.

COVENTRY, RI

Jason Clark, Benjamin Mark Estock, Mark E. Randolph, Michael T. Saccoccia, Mark A. Tondreau, Jason R. Cyr, John Henry Potvin, Kyle Gerard Bear, Frank A. Denette, IV, and Daniel M. Wolf.

CRANSTON, RI

Matthew P. Brown, Stephen J. Puerini, Michael Peter Joubert, Andy Guglielmo, Michael A. Aiello, Christopher Petteruti, Louis W. Turchetta, David Pedroso, John Gaccione, Gregory E. Baker, Brian J. Neri, and Jonathan A. Watterson.

CUMBERLAND, RI

David J. Gnatek, Todd Andrew Eckhardt, Jonathan M. Dziok, Matthew J. Turner, and Mark K. O'Neill.

EAST GREENWICH, RI

Jonathan Hecker, Kevin Kazlauskas, and Chris Lundsten.

EAST PROVIDENCE, RI

Caleb Cabral, Francisco Ripley and Michael Frederick Eastwood.

FOSTER, RI

Nicholas T. DiVozzi, Daniel J. Hopkins, Archibald L. Jackson, IV, Craig Jackson, William Rhodes, IV, and Benjamin J. Sinwell.

GLOCESTER, RI

Michael N. Cost.

HOPE VALLEY, RI

Jason M. McClure.

JOHNSTON, RI

Michael Dennehy, Timothy Forsberg, John Arcand Billy S. Rotondo, and Nicholas L. Marsella.

LINCOLN, RI

Ritesh Radadia.

MANVILLE, RI

James P. Cournoyer.

MIDDLETOWN, RI

Timothy J. Davis, Thomas A. Paull, Brian W. Gabriel, and James Adrian Butler.

NEWPORT, RI

Taylor K. Ackman, Peter Michael Fucito, Eric L. Hauquitz, and Stephen C. Grimes.

NORTH KINGSTOWN, RI

John Mainor, Matthew Vanasse, Stephen D. Mosca, Robert A. Russell, III, James R. Fogarty, and Keith E. Piehler.

NORTH PROVIDENCE, RI

Jason A. Parker, Donald E. Almonte, Jr., and Filipe Botelho Correia.

NORTH SCITUATE, RI

Charles B. Cost and Eric Scott Anderson.

NORTH SMITHFIELD, RI

Michael M. Borek, Patrick M. Neville, Eric Andrew George, and Michael G. Hemond.

PASCOAG, RI

Gregg Kwider.

PAWTUCKET, RI

Robert F. Brown, III, David Machowski, Jeff R. LeClair, and Jorge Manuel Correia.

PORTSMOUTH, RI

Jonathan L. Perry, Christopher Hitchcock, and David Eric Johnson.

PROVIDENCE, RI

Dennis L. Arnold, Manny Mederiors, Raymond A. Pagliarini, Christopher P. Spadazzi, and Andrew B. Qualls.

RIVERSIDE, RI

John Midgley, Russell S. Horsman, and Marc Carlson.

SMITHFIELD, RI

Marc P. Cardin, Todd S. Manni, Michael R. Guilmain, Timothy Guilmain, Douglas T. McElroy, William B. Ross, III, Steve A. Marcaccio, Jr., Andrews J. Bailey, Adam Aquilante, and Matthew Cole.

WAKEFIELD, RI

Michael J. Mulhearn.

WARREN, RI

Geoffrey Avila.

WARWICK, RI

Justin J. Hart, Morgan A.L. Goulet, Edward F. Doonan, III, Thomas R. Bushell, Brian C. Stowe, Michael Luszcz, Jeremy M. Kubics, J. Nicholas Betley, and Joseph A. Chappelle.

Jared Fogel, Jacob Thompson, Andrew Gil, Christopher J. Dimase, and David W. Lowell.

WEST KINGSTON, RI

Daniel Jospeh Dorson.

WEST WARWICK, RI

Christopher R. Phillips, David M. Durand, Roger Alan Bonin, Eric David Fields, and Christopher J. Cardillo.

WYOMING, RI

Romeo P. Gervais, III and Christopher Ayotte.

PAWCATUCK, CT

Douglas Gladue, and Michael A. Slater.

BELLINGHAM, MA

Eric Twardzicki.

BLACKSTONE, MA

Bryan Lee White, Jason V. Cardone, Craig R. Cousineau, Jeremy Pontes, and Bryan Lee White.

NORTON, MA

Valerien Joseph Pina, Jr.

REHOBOTH, MA

Michael S. Baker, James D. Paschecco, and Michael Darowski.

SEEKONK, MA

Michael J. Lund, Michael J. Euell, Christopher N. Abell, Aaron C. Shumate, Greg M. Rebello, and Jeffrey A. Benoit.

HACKETTSTOWN, NJ

Brian E. Fox.

MONTAGUE, NJ

Craig E. Scorpio.

GIRL SCOUT SILVER AWARD RECIPIENTS

BARRINGTON, RI

Amanda Macomber and Heidi Scheumann.

BRISTOL, RI

Tanya Karsch, Bethany Manchester, and Patricia Vedro.

CAROLINA, RI

Melissa Reynolds.

COVENTRY, RI

Lisa Brennan, Lisa Charland, Margaret Dunning, and Kristina Triggs.

CRANSTON, RI

Pamela Rhynard.

CUMBERLAND, RI

Gina Antoni, Kerri Ayo, Sarah Billington, Jennifer Bonner, Amanda Condon, Emily Conway, Kyla Gomes, Shannon Goodwillie, Jennifer Gray, Catherine Jones, Allison Manley, Kelly McElroy, Sharon Nahas, Kristen O'Neill, Nikki Parness, Vanessa Sealey, Rebecca Silverman, Nicole Tetreault, Marcy Trocina, and Gina Zollo.

EAST GREENWHICH, RI

Amy Krasner and Catherine Truslow.

EAST PROVIDENCE, RI

Katie Armstrong and Brandi Blakely.

HOPE VALLEY, RI

Megan Olean.

JOHNSTON, RI

Kelli Eramian, Heather Fagan, and Shannon Quigley.

MIDDLETOWN, RI

Mary Chase, Jennifer McCleary, and Mandi Klotz.

PAWTUCKET, RI

Christal Desmarais.

PEACE DALE, RI

Beth Lardaro.

PORTSMOUTH, RI

Maureen Blau, Shana Brady, Adrianne Henderson, Janessa LeComte, and Tiffany Major.

PROVIDENCE, RI

Jennifer Pettis.

RIVERSIDE, RI

Rebecca Fisher, Stephanie Santos, Catherine Sorrentino, and Shannon Tompkins.

RUMFORD, RI

Erin Kelly.

SEEKONK, MASS.

Laurel Durkey, and Kerri Skurka.

WAKEFIELD, RI

Leah Collins, Aimee Lamothe, Pam Lord, Sasha Marge, and Melissa Richmond.

WARREN, RI

Jessica Rogers.

WARWICK, RI

Andrea Agajanian, Kerri Boisvert, Carrie Diaz, Katie Merithew, Andrea Parenteau, Kathleen Rassler, Jessica Shea, and Jessica Tanner.

WEST KINGSTON, RI

Jennifer Perkins.

WICKFORD, RI

Tivia Berman.

COVENTRY, RI

Jaclyn Sheppard and Jessica Stone.

CRANSTON, RI

Chrystal Toppa and Melissa Maynard.

EAST GREENWICH, RI

Kristen Gaffney.

PORTSMOUTH, RI

Kathleen Magrath, Deborah E. Gabriel, and Elizabeth S. Holman.

WARWICK, RI

Tracey Ursillo, Helen Sullivan, and Stephanie Ogarek.

WEST WARWICK, RI

Jennifer Goldberg.●

COMMENDING THE ANTI-DEFAMATION LEAGUE FOR THEIR EFFORTS TO COMBAT HATE CRIMES

● Mr. SIMON. Mr. President, I rise today to applaud the Anti-Defamation League [ADL] for their continuing work to expose and combat hate crimes, and to bring your attention to their most recent "Audit of Anti-Semitic Incidents." For the past 16 years, the ADL has compiled data about anti-Jewish attacks. Their efforts in the collection of data and the development of programs regarding anti-Semitic acts increase public awareness of this problem, and help generate constructive solutions. I commend ADL for continuing this important endeavor, and would like to share with you some of their recent findings.

Unfortunately, the ADL's 1994 survey indicates that the number and severity of anti-Semitic hate crimes has worsened nationwide. There were 2,066 incidents reported to ADL from 46 States, the District of Columbia, and Puerto Rico in 1994 alone. This represents an overall increase of more than 10 percent from 1993, and constitutes the first time the audit total has gone over 2,000. I was particularly troubled by the dramatic rise in the number of violent, destructive, and, in one case, deadly assaults against Jews. For the fourth year, the number of anti-Semitic acts against individuals outnumber the incidents of vandalism against institutions and other property. The number of reported incidents of assault, threat, and harassment totaled 1,197. This represents almost an 11-percent increase from 1993. In fact, acts of harassment and personal assault have risen 291 percent in a 10-year span. Shootings, arsons, and firebombings were also far more prevalent than in previous years. In 1994, there were 25 arsons and 10 arson attempts, compared with the total of 41 arsons in the 5 previous years combined.

While these numbers make a dramatic statement about the magnitude of anti-Semitic hate crime, some specific examples more graphically illustrate the sad story of hatred present in our society today. The most violent incident occurred in New York City, where, on March 1, a lone gunman opened fire on a van filled with Hasidic students crossing the Brooklyn Bridge. One student died in the attack and three other students were seriously wounded. The ADL reports that in Memphis, two older teenagers attacked two 13-year-old Jewish boys with a sword while yelling anti-Semitic epithets.

In February, in Eureka, CA, a bedroom of a Jewish family's home was set afire and a message was left: "I got a Jew." In Michigan, in November, a Jewish couple received a package in the mail containing a severed dog's head wrapped in a plastic bag, on which was written "Dirty Jew" and swastikas.

Tragically, anti-Semitic incidents on college campuses continued to rise and increased by 17 percent from 1993. At South Alabama University, a Jewish faculty member found a note in his campus mailbox reading, "Death to Jews—That means you* * *" At Northwestern University, "Kill all the Jews" was written on a residence hall adviser's memo board in response to the question, "What do you think of race relations at NU?" At Temple Law School, a student was harassed by a member of the Western Heritage Society who said, "I heard you discussing cross burnings and I'd like to arrange one for you." From February through April, nearly 300 books in the library of Cleveland State University in Ohio were defaced with hate stickers incorporating Nazi themes.

The ADL's report did contain some positive information, however. The number of arrests made in connection with anti-Semitic crimes more than doubled from the 1993 total. This may be attributable in part to the growing impact of State and Federal hate crime legislation and improved hate crime training programs for law enforcement officials. For example, Colorado law enforcement agencies recently brought charges, resulting from an 8-month investigation into Denver-area hate groups, against 21 young adults, ages ranging from 19 to 26, who were members of white supremist and skinhead organizations.

In closing, I again want to commend the ADL for its outstanding and important work.●

ABOLISH METROPOLITAN WASHINGTON AIRPORTS AUTHORITY—S. 496

● Mr. ROBB. Mr. President, I am pleased to join Senator WARNER in introducing legislation removing congressional oversight from the operations at Washington National and Dulles Airports.

Quick passage of legislation removing congressional oversight is imperative. The Supreme Court recently upheld a lower court's ruling that the congressional review board violates the constitutional separation of executive and legislative powers. Under the lower court's order, Congress must reach a solution to the separation of powers issue by March 31 or the Washington Metropolitan Airports Authority will be unable to complete actions which require the approval of the review board.

Although there are proposals under consideration in the House and Senate relating to the congressional review board, most of the other proposed legislation also addresses matters such as the perimeter rule which limits flights to and from Washington National Airport to 1,250 miles, reconstituting the review board under another name, and the slot rule which limits the number of flights and hours of operation at National Airport. These contentious issues are unrelated to the problem at hand and will delay passage of legislation needed to keep the airports operating.

With a court-imposed deadline fast approaching, it is imperative that we enact this clean bill in an expeditious matter, and I urge quick consideration and passage of this measure.●

CARDINAL JOSEPH BERNARDIN ON HEALTH CARE

● Mr. SIMON. Mr. President, when I think of individuals who speak for our societal conscience from a spiritual perspective, I know of no other more qualified or appropriate than my good friend Cardinal Joseph Bernardin, the Archbishop of Chicago. He recently addressed the Harvard Business School Club of Chicago regarding his concerns with the rapid commercialization of our health care delivery system. I ask that his speech be printed in the RECORD at the end of my remarks.

Whether we agree with it or not, there is a wave of fundamental change underway in our health delivery system. It is the transformation or assimilation of nonprofit hospitals and health providers into for-profit health delivery systems. Almost every day, you will read in the business section about how many hospitals are being purchased by large investor-owned companies.

Let me be clear, I am not opposed to the idea of encouraging private enterprise and industry innovation in our health care system. Indeed, our health care system, which is the best in the world for those who have access to it, was largely built on the foundation of cutting-edge medical technology and research conducted by for-profit pharmaceutical and medial equipment companies.

What I would like for us to reflect upon, however, is whether the rapid unrestrained commercialization of the health care delivery system is in the best long-term interests of our country. Cardinal Bernardin wisely states in his speech that, "* * * there is a fundamental difference between the provision of medical care and the production and distribution of commodities * * *" and that "* * * the primary * * * purpose of medical care delivery should be a cured patient * * * and a healthier community, not to earn a profit * * *."

As we work together toward reforming portions of our health care system this year, I hope all of us will take some time out to reflect upon the fundamental changes that are taking place in the health care system today and ask whether they are in the best interests of our society tomorrow. As you do so, I hope that you will have Cardinal Bernardin's advice in mind.

The speech follows:

MAKING THE CASE FOR NOT-FOR-PROFIT HEALTHCARE

Good afternoon. It is a privilege to address the Harvard Business School Club of Chicago on the critical, but often conflicted issue of healthcare. Because of its central importance to human dignity, to the quality of our community life, and to the Church's mission in the world, I have felt a special responsibility to devote a considerable amount of attention to healthcare at both the local and national levels.

In the last year, I have spoken at the National Press Club on the need to ensure access to adequate healthcare for all; I have issued a Protocol to help ensure the future presence of a strong, institutional healthcare ministry in the Archdiocese of Chicago; and in order to be more in touch with ongoing developments in the field, I have joined the Board of Trustees of the Catholic Health Association of the United States—the national organization that represents more than 900 Catholic acute and long-term care facilities.

In the interest of full disclosure, I must warn you that this considerable activity does not qualify me as a healthcare expert. Healthcare policy is challenging and extraordinarily complicated, and in this area I am every bit the layman. But because of its central importance in our lives—socially, economically, ethically, and personally—we "non-experts" avoid the healthcare challenge at our peril.

I come before you today in several capacities. First, as the Catholic Archbishop of Chicago who has pastoral responsibility for numerous Catholic healthcare institutions in the archdiocese—though each is legally and financially independent. Second, as a community leader who cares deeply about the quality and availability of healthcare services throughout metropolitan Chicago and the United States. And third, as an individual who, like you, will undoubtedly one day become sick and vulnerable and require the services of competent and caring medical professionals and hospitals.

THE GROWING THREAT TO NOT-FOR-PROFIT HEALTHCARE

In each role I am becoming increasingly concerned that our healthcare delivery system is rapidly commercializing itself, and in the process is abandoning core values that should always be at the heart of healthcare. These developments have potentially deleterious consequences for patients and society as a whole. This afternoon, I will focus on one important aspect of this problem: the future vitality and integrity of not-for-profit hospitals.

Not-for-profit hospitals constitute the overwhelming majority of Chicagoland hospitals. They represent more than three quarters of the nonpublic acute-care general hospitals in the country. Not-for-profit hospitals are the core of this nation's private, voluntary healthcare delivery system, but are in jeopardy of becoming for-profit enterprises.

Not-for-profit hospitals began as philanthropic social institutions, with the primary purpose of serving the healthcare needs of their communities. In recent decades, they have become important non-governmental "safety net" institutions, taking care of the growing numbers of uninsured and underinsured persons. Indeed, most not-for-profit hospitals regard the provisions of community benefit as their principal mission. Unfortunately, this historic and still necessary role is being compromised by changing economic circumstances in healthcare, and by an ideological challenge to the very notion of not-for-profit healthcare.

Both an excess supply of hospital beds and cost-conscious choices by employers, insurers, and government have forced not-for-profits into new levels of competition for paying patients. They are competing with one another, with investor-owned hospitals, and with for-profit ambulatory facilities. In their struggle for economic survival, a growing number of not-for-profits are sacrificing altruistic concerns for the bottom line.

The not-for-profit presence in healthcare delivery is also threatened by a body of opinion that contends there is no fundamental distinction between medical care and a commodity exchanged for profit. It is argued that healthcare delivery is like other necessary economic goods such as food, clothing, and shelter and should be subject to unbridled market competition.

According to this view, economic competition in healthcare delivery is proposed as a welcome development with claims that it is the surest way to eliminate excess hospital and physician capacity, reduce healthcare prices, and assure the "industry's" long-term efficiency. Many proponents of this view question the need for not-for-profit hospitals since they believe investor-owned institutions operate more efficiently than their not-for-profit counterparts and can better attract needed capital. Thus, they attack the not-for-profit hospital tax exemption as an archaic and unwarranted subsidy that distorts the healthcare market by providing exempt institutions an unfair competitive advantage.

This afternoon, I will make three arguments: First, that there is a fundamental difference between the provision of medical care and the production and distribution of commodities; second, that the not-for-profit structure is better aligned with the essential mission of healthcare delivery than is the investor-owned model; and third, that leaders in both the private and public sector have a responsibility to find ways to preserve and strengthen the not-for-profit hospital and healthcare delivery system in the United States. Before making these arguments I need to clarify an important point.

THE ADVANTAGES OF CAPITALISM AND FREE ENTERPRISE

In drawing the distinction between medical care and other commodities on the one hand, and not-for-profit and investor-owned institutions on the other, I am not expressing any general bias against capitalism or the American free enterprise system. We are all beneficiaries of the genius of that system. To paraphrase Pope John Paul II: If by capitalism is meant an economic system that recognizes the fundamental and positive role of business, the market, private property, and the resulting responsibility for the means for production—as well as free human creativity in the economic sector—then its contribution to American society has been most beneficial.

As a key element of the free enterprise system, the American business corporation has proved itself to be an efficient mechanism for encouraging and minimizing commercial risk. It has enabled individuals to engage in commercial activities that none of them could manage alone. In this regard, the purpose of the business corporation is specific: to earn a growing profit and a reasonable rate of return for the individuals who have created it. The essential element here is a reasonable rate of return, for without it the commercial corporation cannot exist.

SOCIETY'S NON-ECONOMIC GOODS

That being said, it is important to recognize that not all of society's institutions have as their essential purpose earning a reasonable rate of return on capital. For example, the purpose of the family is to provide a protective and nurturing environment in which to raise children. The purpose of education at all levels is to produce knowledgeable and productive citizens. And the primary purpose of social services is to produce shelter, counseling, food, and other programs for people and communities in need. Generally speaking, each of these organizations has as its essential purpose a non-economic goal: the advancement of human dignity.

And this is as it should be. While economics is indeed important, most of us would agree that the value of human life and the quality of the human condition are seriously diminished when reduced to purely economic considerations. Again, to quote Pope John Paul II, the idea that the entirety of social life is to be determined by market exchanges is to run "the risk of an 'idolatry' of the market, an idolatry which ignores the existence of *goods which by their nature are not and cannot be mere commodities.*" (Emphasis added.)

This understanding is consistent with the American experience. In the belief that the non-economic ends of the family, social services, and education are essential to the advancement of human dignity and to the quality of our social and economic life, we have treated them quite differently from most other goods and services. Specifically, we have not made their allocation dependent solely on a person's ability to afford them. For example, we recognize that individual human dignity is enhanced through a good education, and that we all benefit by having an educated society; so we make an elementary and secondary education available to everyone, and heavily subsidize it thereafter. By contrast, we think it quite appropriate that hair spray, compact disks, and automobiles be allocated entirely by their affordability.

HEALTHCARE: NOT SIMPLY A COMMODITY

Now it is my contention that healthcare delivery is one of those "goods which by their nature are not and cannot be mere commodities." I say this because healthcare involves one of the most intimate aspects of our lives—our bodies and, in many ways, our minds and spirits as well. The quality of our life, our capacity to participate in social and economic activities, and very often life itself are at stake in each serious encounter with the medical care system. This is why we expect healthcare delivery to be a competent and a caring response to the broken human condition—to human vulnerability.

To be sure, we expect our physician to earn a good living and our hospital to be economically viable, but when it comes to our case we do not expect them to be motivated mainly by economic self-interest. When it comes to our coronary bypass or our hip replacement or our child's cancer treatment, we expect them to be professional in the original sense of that term—motivated primarily by patient need, not economic self-interest. We have no comparable expectation—nor should we—of General Motors of Wal-Mart. When we are sick, vulnerable, and preoccupied with worry we depend on our physician to be our confidant, our advocate, our guide and agent in an environment that is bewildering for most of us, and where matters of great importance are at stake.

The availability of good healthcare is also vital to the character of community life. We would not think well of ourselves if we permitted healthcare institutions to let the uninsured sick and injured go untreated. We endeavor to take care of the poor and the sick as much for our benefit as for theirs. Accordingly, most Americans believe society should provide everyone access to adequate healthcare services just as it ensures everyone an education through grade twelve. There is a practical aspect to this aspiration as well because, like education, healthcare entails community-wide needs which it impacts in various ways: We all benefit from a healthy community; and we all suffer from a lack of health, especially with respect to communicable disease.

Finally, healthcare is particularly subject to what economists call market failure. Most healthcare "purchases" are not predictable, nor do medical services come in standardized packages and different grades, suitable to comparison shopping and selection—most are specific to individual need. Moreover, it would be wrong to suggest that seriously ill patients defer their healthcare purchases while they shop around for the best price. Nor do we expect people to pay the full cost of catastrophic, financially devastating illnesses. This is why most developed nations spread the risk of these high-cost episodes through public and/or private health insurance. And due to the prevalence of health insurance, or third-party payment, most of us do not pay for our healthcare at the time it is delivered. Thus, we are inclined to demand an infinite amount of the very best care available. In short, healthcare does not lend itself to market discipline in the same way as most other goods and services.

So healthcare—like the family, education, and social services—is special. It is fundamentally different from most other goods because it is essential to human dignity and the character of our communities. It is, to repeat, one of those "goods which by their nature are not and cannot be mere commodities." Given this special status, the primary end or essential purpose of medical care delivery should be a cured patient, a comforted patient, and a healthier community, not to earn a profit or a return on capital for shareholders. This understanding has long been a central ethical tenet of medicine. The International Code of the World Health Organization, for example, states that doctors must practice their profession "uninfluenced by motives of profit."

THE ADVANTAGES OF NOT-FOR-PROFIT INSTITUTIONS

This leads me to my second point, that the primary non-economic ends of healthcare delivery are best advanced in a predominantly not-for-profit delivery system.

Before making this argument, however, I need to be very clear about what I am not saying: I am not saying that not-for-profit healthcare organizations and systems should be shielded from all competition. I believe properly structured competition is good for most not-for-profits. For example, I have long contended that the quality of elementary and secondary education would benefit greatly from the use of vouchers and expanded parental choice in the selection of schools; similarly, the Catholic Health Association's proposal for healthcare reform envisions organized, economically disciplined healthcare systems competing with one another for enrollees.

Second, I am not saying that all not-for-profit hospitals and healthcare systems act appropriately, some do not. But the answer to this problem is greater accountability in their governance and operation, not the extreme measure of abandoning the not-for-profit structure in healthcare.

What I am saying is that the not-for-profit structure is the preferred model for delivering healthcare services. This is so because the not-for-profit institution is uniquely designed to provide essential human services. Management expert Peter Drucker reminds us that the distinguishing feature of not-for-profit organizations is not that they are non-profit, but that they do something very different from either business or government. He notes that a business has "discharged its task when the customer buys the product, pays for it, and is satisfied with it," and that government has done so when its "policies are effective." On the other hand, he writes:

"The 'non-profit' institution neither supplies goods or services nor controls (through regulation). Its 'product' is neither a pair of shoes nor an effective regulation. Its product is a changed human being. The non-profit institutions are human change agents. Their 'product' is a cured patient, a child that learns, a young man or woman grown into a self-respecting adult; a changed human life altogether."

In other words, the purpose of not-for-profit organizations is to improve the human condition, that is, to advance important non-economic, non-regulatory functions that cannot be as well served by either the business corporation or government. Business corporations describe success as consistently providing shareholders with a reasonable return on equity. Not-for-profit organizations never properly define their success in terms of profit; those that do have lost their sense of purpose.

This difference between not-for-profits and businesses is most clearly seen in the organizations' different approaches to decision making. The primary question in an investor-owned organization is: "How do we ensure a reasonable return to our shareholders?" Other questions may be asked about quality and the impact on the community, but always in the context of their effect on profit. A properly focused not-for-profit always begins with a different set of questions:

What is best for the person who is served?

What is best for the community?

How can the organization ensure a prudent use of resources for the whole community, as well as for its immediate customers?

HEALTHCARE'S ESSENTIAL CHARACTERISTICS

I believe there are four essential characteristics of healthcare delivery that are especially compatible with the non-for-profit structure, but much less likely to occur when healthcare decision making is driven predominantly by the need to provide a return on equity. These four essential characteristics are:

Access.
Medicine's patient-first ethic.
Attention to community-wide needs.
Volunteerism.

Let me discuss each.

First, there is the need for access. Given healthcare's essential relationship to human dignity, society should ensure everyone access to an adequate level of healthcare services. This is why the United States Catholic Conference and I argued strongly last year for universal insurance coverage. This element of healthcare reform remains a moral imperative.

But even if this nation had universal insurance, I would maintain that a strong not-for-profit sector is still critical to access. With primary accountability to shareholders, investor-owned organizations have a powerful incentive to avoid not only the uninsured and underinsured, but also vulnerable and hard-to-serve populations, high-cost populations, undesirable geographic areas, and many low-density rural areas. To be sure, not-for-profits also face pressure to avoid these groups, but not with the added requirement of generating a return of equity.

Second, not-for-profit healthcare organizations are better suited than their investor-owned counterparts to support the patient-first ethic in medicine. This is all the more important as society moves away from fee-for-service medicine and cost-based reimbursement toward capitation. (By "capitation" I mean paying providers in advance a fixed amount per person regardless of the services required by any specific individual.)

Whatever their economic disadvantages, fee-for-service medicine and cost-based reimbursement shielded the physician and the hospital from the economic consequences of patient-first ethic in American medicine. Few insured patients were ever undertreated, though some were inevitably overtreated. Now we face a movement to a fully capitated healthcare system that shifts the financial risk in healthcare from the payers of care to the providers.

This development raises a critically important question: "When the providers is at financial risk for treatment decisions who is the patient's advocate?" How can we continue to put the patient first in this new arrangement? This challenge will become especially daunting as we move into an intensely price competitive market where provider economic survival is on the line every day. In such an environment the temptation to undertreat could be significant. Again, not-for-profits will face similar economic pressure but not with the added requirement of producing a reasonable return on shareholder equity. Part of the answer here, I believe, is to ensure that the nation not convert to a predominantly investor-owned delivery system.

Third, in healthcare there are a host of community-wide needs that are generally unprofitable, and therefore unlikely to be addressed by investor-owned organizations. In some cases, this entails particular services needed by the community but unlikely to earn a return on investment, such as expensive burn units, neonatal intensive care, or immunization programs for economically deprived populations. Also important are the teaching and research functions needed to renew and advance healthcare.

The community also has a need for continuity and stability of health services. Because the primary purpose of not-for-profits is to serve patients and communities, they tend to be deeply rooted in the fabric of the community and are more likely to remain—if they are needed—during periods of economic stagnation and loss. Investor-owned organizations must, on the other hand, either leave the community or change their product line when return-on-equity becomes inadequate.

Fourth, volunteerism and philanthropy are important components of healthcare that thrives best in a non-for-profit setting. As Peter Drucker has noted, volunteerism in not-for-profit organizations is capable of generating a powerful countercurrent to the contemporary dissolution of families and loss of community values. At a time in our history when it is absolutely necessary to strengthen our sense of civic responsibility, volunteerism in healthcare is more important than ever. From the boards of trustees of our premier healthcare organizations to the hands-on delivery of services, volunteers in healthcare can make a difference in peoples' lives and "forge new bonds to community, a new commitment to active citizenship, to social responsibility, to values."

ROLE OF MEDIATING INSTITUTIONS

In addition to my belief that the not-for-profit structure is especially well aligned with the central purpose of healthcare, let me suggest one more reason why each of us should be concerned that not-for-profits remain a vibrant part of the nation's healthcare delivery system: They are important mediating institutions.

The notion of mediating structures is deeply rooted in the American experience: On the one hand, these institutions stand between the individual and the state; on the other, they mediate against the rougher edges of capitalism's inclination toward excessive individualism. Mediating structures such as family, church, education, and healthcare are the institutions closest to the control and aspirations of most Americans.

The need for mediating institutions in healthcare is great. Private sector failure to provide adequately for essential human services such as healthcare invites government intervention. While government has an obligation to ensure the availability of and access to essential services, it generally does a poor job of delivering them. Wherever possible we prefer that government work through and with institutions that are closer and more responsive to the people and communities being served. This role is best played by not-for-profit hospitals. Neither public nor private, they are the heart of the voluntary sector in healthcare.

Earlier, I identified several reasons why I believe investor-owned organizations are not well suited to meeting all of society's needs and expectations regarding healthcare. Should the investor-owned entity ever become the predominant form of healthcare delivery, I believe that our country will inevitably experience a sizeable and substantial growth in government intervention and control.

Until now, I have made two arguments: first, that healthcare is more than a commodity—it is a service essential to human dignity and to the quality of community life; and second, that the not-for-profit structure is best aligned with this understanding of healthcare's primary mission. My concluding argument is that private and public sector leaders have an urgent civic responsibility to preserve and strengthen our nation's predominantly not-for-profit healthcare delivery system.

This is a pressing obligation because the not-for-profit sector in healthcare may already be eroding as a result of today's extremely turbulent competitive environment in healthcare. The problem, let me be clear, is not competition per se, but the kind of competition that undermines healthcare's essential mission and violates the very character of the not-for-profit organization by encouraging it—even requiring it—to behave like a commercial enterprise.

Contemporary healthcare markets are characterized by hospital overcapacity and competition for scare primary care physicians, but also, and more ominously, by shrinking health insurance coverage and growing risk selection in private health insurance markets. These latter two features encourage healthcare providers to compete by becoming very efficient at avoiding the uninsured and high risk populations, and by reducing necessary but unprofitable community services—behavior that strikes at the heart of the not-for-profit mission in healthcare. Moreover, the environment leads some healthcare leaders to conclude that the best way to survive is to become for-profit or to create for-profit subsidiaries. The existence of not-for-profits is further threatened by the aggressive efforts of some investor-owned chains to expand their market share by purchasing not-for-profit hospitals and by publicly challenging the continuing need for not-for-profit organizations in healthcare.

ADVANCING THE NOT-FOR-PROFIT HEALTHCARE MISSION

Each of us and our communities have much to lose if we allow unstructured market forces to continue to erode the necessary and valuable presence of not-for-profit healthcare organizations. It is imperative, therefore, that we immediately begin to find ways to protect and strengthen them.

How can we do this? Without going into specifics, I believe it will require a combination of private sector and governmental initiatives. Voluntary hospital board members and executives must renew their institutions' commitment to the essential mission of not-for-profit healthcare. Simultaneously, government must reform health insurance markets to prevent "redlining" and assure everyone reasonable access to adequate healthcare services. Finally, government should review its tax policies to ensure that existing laws and regulations are not putting not-for-profits at an inappropriate competitive disadvantage, but are holding them strictly accountable for their tax exempt status.

Let me conclude by simply reiterating the thesis I made at the beginning of this talk. Healthcare is fundamentally different from most other goods and services. It is about the most human and intimate needs of people, their families, and communities. It is because of this critical difference that each of us should work to preserve the predominantly not-for-profit character of our healthcare delivery in Chicago and throughout the country.●

ORDERS FOR TUESDAY, MARCH 7, 1995

Mr. ROTH. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 10:30 a.m., on Tuesday, March 7, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, the Senate then immediately begin consideration of S. 244, the Paperwork Reduction Act, and, further, that no rollcall votes occur prior to 2:15 p.m. on Tuesday.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROTH. Mr. President, I now ask unanimous consent that following the disposition of S. 244, the Paperwork Reduction Act, the Senate proceed to the consideration of H.R. 889, the supplemental appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, I further ask that the Senate stand in recess between the hours of 12:30 p.m. and 2:15 p.m., in order for the weekly party caucuses to meet.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROTH. Mr. President, for the information of all of my colleagues, under the previous order there are four remaining amendments in order to the Paperwork Reduction Act. Therefore, rollcall votes are expected throughout the day on Tuesday, although no votes will occur prior to 2:15 p.m.

Senators should also be aware that following the paperwork reduction bill, the Senate will begin consideration of the supplemental appropriations bill.

RECESS UNTIL TOMORROW AT 10:30 A.M.

Mr. ROTH. Mr. President, if there be no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 7:12 p.m., recessed until Tuesday, March 7, 1995, at 10:30 a.m.

NOMINATIONS

Executive nominations received by the Senate March 6, 1995:

NATIONAL TRANSPORTATION SAFETY BOARD

JOHN GOGLIA, OF MASSACHUSETTS, TO BE A MEMBER OF THE NATIONAL TRANSPORTATION SAFETY BOARD

FOR THE TERM EXPIRING DECEMBER 31, 1998, VICE SUSAN M. COUGHLIN, RESIGNED.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

CLIFFORD GREGORY STEWART, OF NEW JERSEY, TO BE GENERAL COUNSEL OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR A TERM OF 4 YEARS, VICE DONALD R. LIVINGSTON, RESIGNED.

IN THE NAVY

THE FOLLOWING-NAMED REAR ADMIRALS (LOWER HALF) IN THE RESTRICTED LINE OF THE U.S. NAVY FOR PROMOTION TO THE PERMANENT GRADE OF REAR ADMIRAL, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 624, SUBJECT TO QUALIFICATIONS THEREFORE AS PROVIDED BY LAW:

AEROSPACE ENGINEERING DUTY OFFICER

To be rear admiral

BARTON D. STRONG [redacted]

SPECIAL DUTY OFFICER (CRYPTROLOGY)

To be rear admiral

THOMAS F. STEVENS [redacted]

IN THE ARMY

THE FOLLOWING-NAMED OFFICER, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTIONS 624 AND 628, TITLE 10, UNITED STATES CODE.

To be lieutenant colonel

DAVID C. CHUBER [redacted]

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICERS FOR PROMOTION IN THE U.S. AIR FORCE, UNDER THE APPROPRIATE PROVISIONS OF SECTION 624, TITLE 10, UNITED STATES CODE, AS AMENDED, WITH DATES OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE.

MEDICAL SERVICE CORPS

To be lieutenant colonel

CARL M. ALLEY [redacted]
ROBERT W. BLUM [redacted]
BRUCE R. BROWN [redacted]
DONALD L. BULLARD [redacted]
JAMES L. BYERS [redacted]
STEVEN L. CARDENAS [redacted]
CHI CHIANG [redacted]
LARRY L. COBLER [redacted]
ADANTO R. DAMORE [redacted]
ROBERT L. DITCH [redacted]
FREDA L. FACEY [redacted]
MICHAEL T. FEESER [redacted]
CHESTER A. GOODING, JR. [redacted]
SCOTT R. GRAHAM [redacted]
FRED M. HANNAN, JR. [redacted]
BRUCE A. HARMA [redacted]
WILFRID J. HILL [redacted]
SUSAN L. HUFSMITH [redacted]
KAREN E. JONES [redacted]
MICHAEL S. JONES [redacted]
PARTICK G. KANE [redacted]
COREY A. KIRSCHNER [redacted]
JOHN R. LAKE [redacted]
SCOTT E. LAWRENCE, [redacted]
JODY B. LEJA [redacted]
DORON N. MANIECE, [redacted]
GARY D. MCMANN, [redacted]
BENNY C. MERKEL [redacted]
WILLIAM J. MITCHELL [redacted]
MARYANN MORREALE [redacted]
MILTON T. OBENOSKEY [redacted]
KEVIN P.N. OSHEA [redacted]
LEOARD A. OSTERMANN [redacted]
GARY N. OVERALL [redacted]
KEVIN A. POLLARD [redacted]
MARK A. PRESSON [redacted]
ROBERT G. QUINN, [redacted]
REYES P. RAMIREZ [redacted]
ROBERT J. RENNIE [redacted]
RONALD C. RETZER [redacted]
RICHARD D. ROGNEHAUGH [redacted]
SUZANNE M. SILVER [redacted]
DONALD E. TAYLOR [redacted]
MICHAEL D. THORNTON [redacted]
DONALD B. TREMBLEY [redacted]
NANCY A. WAITE, [redacted]
CHARLES D. WALLER, [redacted]
DAVID M. WILMOT [redacted]
DAVID E. WOMACK, [redacted]
FREDERICK L. WOODS [redacted]
JOHN H. YANCEY [redacted]
ROBERTA L. YOUNG [redacted]

HOUSE OF REPRESENTATIVES—*Monday, March 6, 1995*

The House met at 12:30 p.m. and was called to order by the Speaker pro tempore [Mr. GOSS].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
March 6, 1995.

I hereby designate the Honorable PORTER J. GOSS to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

MORNING BUSINESS

The SPEAKER pro tempore. Pursuant to the order of the House of January 4, 1995, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 30 minutes, and each Member except the majority and minority leader limited to not to exceed 5 minutes.

The Chair recognizes the gentleman from Georgia [Mr. NORWOOD] for 5 minutes.

REPUBLICAN LEGAL REFORM PACKAGE

Mr. NORWOOD. Mr. Speaker, I rise today in support of the common sense legal reforms we will consider this week. We have the opportunity this week to restore sanity to our legal system. The irresponsible costs added to our Nations' economy by fear of lawsuits must be curtailed. Our reforms add simple principles of common sense to the legal system and will cut down the tremendous expenses Americans face every year in legal fees and increase costs in goods and services.

Our reform package is based on four simple principles. First, we set up a responsible loser pays provision that makes settlement an attractive alternative. The loser pays provision will reduce the urge for lawyers to take suits to trial in an effort to win extravagant damage amounts. Loser pays will lessen the load on our judicial system, and will in no way harm those seeking legitimate claims.

The next reform is to place tighter restrictions on the use of expert witnesses. Our bill will make sure that expert witnesses are in fact experts. It will require the use of scientific theories to be scientific and we will cut down the use of rent-a-scientists. Mr. Speaker, we are not hurting consumers by making expert witness rules stricter, we are helping consumers by limiting the costs that are passed on to them by business, that have to defend themselves against questionable experts.

Our bill will limit the liability of a defendant to a proportional share of their fault in noneconomic damages. One of the most destructive problems with our legal system is join and several liability. Our current rules allow litigants to shake down wealthy defendants for far more damages than they should ever be responsible. It is just plain wrong for the Gates Rubber Co. to have to defend themselves against millions of dollars in damages when a chicken processing plant burns down—especially when that plant had no fire alarms, no sprinkler system, and padlocks on the fire doors. Mr. Speaker, clearly any responsibility owned by Gates is minimal. Our bill will see to it, that responsibility is proportionate.

The fourth principle our reform package is based on is limiting punitive damages. There is clearly a place for punitive damages in our legal system in cases where defendants intended to cause harm to others or acted with a flagrant indifference to the safety of others. But there must be a limit put on punitive damages, particularly when they are imposed on defendants in a reckless manner by vindictive juries—when this happens, we all pay. At some point, punitive damages move from reasonable to ridiculous. In our bill, that point is $250,000 or three times the amount of economic damages whichever is greater. After all, no one in this country should have to check on their liability insurance before serving coffee.

I would encourage my colleagues to consider one further reform as we act on this legislation. Mr. Speaker, if we are to ever contain health care costs in this Nation, we must limit the punitive liability faced by manufacturers and sellers of drugs or medical devices—if those drugs or devices are approved by the FDA. Once FDA approval is legally met, a manufacturer or seller should not face punitive damages. If we do not take this important step forward, health care costs will continue to skyrocket, and the quality of care our Nation receives will be lacking.

Mr. Speaker, our legal reform package is not about hating lawyers. It is about reforming the system to allow lawyers to act more responsibly as a profession. This legislation is not about hurting consumers—in reality, our reforms will remove some of the costly burden consumers have to pay in the marketplace everyday as a result of frivolous lawsuits, without limiting their ability to seek legal remedies when they feel they have been wronged. Mr. Speaker, our legal system is out of control, and it goes far deeper than million dollar cups of coffee, it is the billions of dollars in liability our economy is forced to absorb every year. I urge my colleagues to make these reasonable reforms and resist the pressure to back down, our economy and our Nation needs these reforms—please don't back down now.

REPUBLICAN LEGAL REFORM IS A SHAM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Oregon [Mr. DEFAZIO] is recognized during morning business for 5 minutes.

Mr. DEFAZIO. Mr. Speaker, let me start by saying I am not an attorney. I am one of probably a minority in this Congress who is not an attorney.

But I have taken recourse to the courts. I live in the Pacific Northwest. When a scam was run on the Northwest called WPPSS, Washington Public Power Supply System, that promised us five nuclear powerplants to produce power without cost for only $4 billion, and it ultimately cost $10 billion, and all but one was never completed.

I launched a ratepayer lawsuit in court. On the other side of the courtroom were a couple of hundred lawyers.

Now, under this bill, ratepayers will not be suing anymore because they will have to pay for those 200 high-priced corporate lawyers on the other side of the room. I have 1 lawyer, a local guy, pro bono, me, and 26 other citizens. That will not happen anymore under the Republican view of what is wrong with the legal system in America.

There are problems, and the American people are frustrated, but they have perverted that frustration into a bill that is an abomination. The Republican spinmeisters have worked overtime for this week's production, and it is a production. They pretend this is a relief for Main Street America, for people who are overburdened by litigation. But with breathtaking bait-and-switch, they produced a bill beyond the dreams of the most corrupt corporate swindlers in this country.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface **indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.**

It is payback and payoff time, America.

First we have the Corporate Intimidation Act. I have already explained that. It is called loser pays. If the ratepayer wants to go to court and sue a multi-billion-dollar corporation: "Hey, check your checkbook. If you can afford to pay for all the lawyers they trot into the court, go right ahead." I do not think there will be too many lawsuits filed by ratepayers anymore, but maybe that is the objective of this proposed bill.

It is also a blank check for bunco artists. We know that Wall Street is suffering. They are suffering because of litigation, those poor people on Wall Street, those poor thousand-dollar-an-hour poor lawyers. You know, it is tough.

Well, they have a new defense now, and it is called, "I forget." And under this bill, the one coming up on Wednesday, they can say, "Well, gee, we would have disclosed those defects in our prospectus for you, but I forget." So, hire a thousand-dollar lawyer; he forgot. That is now a defense.

But this is for Main Street America, remember that, this is for Main Street America. Sure, it is for Main Street America. Who buys those securities, who gets defrauded? There will not be another Charles Keating under this bill, thank God there will not be another Charles Keating defrauding the taxpayers of millions of dollars. It will not prevent the fraud, but it will prevent the litigation against Charles Keating. That is great. That resolves the problem with the legal system in America.

This is just what main street needs at a time of the bankruptcy of Orange County, the Barings Bank, speculation going on wildly. When your IRA disappears or your little pension plan, because of a bunco artist, don't worry, you will not be able to go to court anymore. That is what this bill is all about.

Finally, we have the tort reform. We have heard a lot of States rights from that side of the aisle. This will take States rights and rip it into shreds; 200 years of State precedents in tort reform will be overruled by the Federal Government only when it protects corporate interests.

You know, there will be a 15-year ban on litigation to get any product, any product, unless a business is harmed, so they will be able to go in and sue for commercial losses. Your wife, husband, mother, son, is killed by a defective product? After 15 years, tough luck. Your company loses some money with the defective product, after 15 years? Welcome to court.

This is for Main Street America? No, it is not for Main Street America. This has one very simple thing underlying it. It used to be that all men and women were equal before the law. Under the new Republican proposal, all dollars are equal before the law, and the corporations have a lot more of them than we do. That is what this is all about, in, many, many ways that are yet to be told. Watch the debate this week, listen, pick up the covers, look underneath. This is not for main street. It is for Wall Street.

DANVILLE HOUSING AUTHORITY: DEMOLITION OF CARVER PARK

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Illinois [Mr. EWING] is recognized during morning business for 5 minutes.

Mr. EWING. Mr. Speaker, I come here today to discuss an example of the stranglehold on our society by the Government in hopes that by discussing it we can find a better way outside of extremely big government and bureaucracy to address some of our problems.

What is the problem I want to talk about? It is a problem dealing with the Carver Park Housing Authority project in Danville, IL. This poses a very immediate and serious risk to both human health and safety.

The project itself was poorly built in an area, in a flood plane, and the subsoil is unstable and has caused considerable damage to these public housing buildings.

Some years back the project was abandoned and has been for some years totally deserted. But the local housing authority cannot get permission to tear it down.

The city of Danville has even come in and condemned the property, and yet the project stays there, standing there as a beacon, really, of poor government and poor management, costing the city, costing the Federal Government, costing the taxpayers for years and years to keep this crime-ridden area as safe as possible for the citizens of Danville.

We know now what the problem is. but why? Why has this Government not come through and allowed the local housing authority to tear this down? Well, the Department of Housing and Urban Development has failed to authorize the demolition of these structures because of bureaucratic redtape.

To remove the 130 units in this complex, Federal law requires that the Federal Government must replace these 130 units. But Danville does not need these units. They have no demand for these public housing units. But they do need another type of housing unit, section 8 housing. But they cannot get that because they have these other units on the books.

In addition, the Danville Housing Authority has requested section 8 housing several times, but to no avail.

Now, there is a solution to this problem, and we are probably going to take care of it in the next week when we take up the title III of section 302 of the appropriations. There, we are going to allow for specific language which will allow the Department to give waivers so that under 200 units can be destroyed without replacing them.

But this is only a stopgap measure, only a partial solution. But with this, HUD will be allowed to bypass their regulations and rules and tear down these abandoned, crime-ridden structures in this housing development.

But I believe the American taxpayers are really tired of Government that is so bureaucratic, so tied up with its own rules and regulations that we have to pass additional legislation to do something that common sense dictates we should have done.

Now, the long-term solution is that we should be able to devise here in this body a type of government that is not so bureaucratic, big government that is not so big, government that is responsive to the taxpayers and to local government needs.

The bureaucratic arm of this Government, in this case the housing and human services department, should have been able to use enough common sense to come forth with legislation, enactments which would give them the discretion to take care of the matters such as this.

I hope that we will pass the language on the appropriations bill next week and be able to move this particular incident out of the way. But we ought to learn from it.

FUTURE OF AMERICA'S WELFARE SYSTEM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Illinois [Mr. DURBIN] is recognized during morning business for 5 minutes.

Mr. DURBIN. Mr. Speaker, the Congress of the United States is involved in a very important debate on the future of America's welfare system. Both parties have come to the understanding and agreement that the current welfare system is, by and large, a failure. It is a system which is loathed not only by the people who are in the system, but certainly by taxpayers, who see a great deal of waste and misguided policy.

Unfortunately, this debate took a bad turn on Capitol Hill several weeks ago when my Republican colleagues announced one of the first casualties in this debate would be the Federal nutrition programs, programs which have been tried and tested over decades and which have been proven to be dramatic successes.

I went back to my district this last weekend and on Saturday had a town gathering in Quincy, IL, inviting people from the general area to come and tell me their experiences with three specific programs. I would like to share them with you this afternoon.

I think these personal human stories tell a lot more about this welfare reform debate than all the books and statistics and all the high-flying political speeches that you are going to hear in the next several weeks.

The first little fellow I met was named Reed. Reed was the cutest little 7-month-old you could imagine, 20 pounds, bouncing up and down, happiest kid I could ever remember seeing.

His mom told the story about how Reed was not always this way, how he got off to a slow start in life. They could not find an infant formula that worked for him. Finally, they did. A pretty rare commercial infant formula which Reed could tolerate and, in fact, grow very well on.

That formula was provided to that working mother, who is struggling to get by on a low-wage job, by the WIC Program, a Federal program that steps in with low-income families and gives them a helping hand. If you could have seen the smile on Reed's face and his mother's face as they told the story, you can understand that the concept of block-granting these programs and cutting funds for them will cut off children just like that, forcing the mothers of Reed and others across the country into a welfare system that we are trying to pare down.

And then, of course, we had another young lady there, a mother of a little girl named Shay. She had three children. They were in day care homes. Now that is different from the day-care centers that you might drive by. In my part of the world, people have day-care services in their basements, in family rooms, and they are licensed by the State. They provide low-cost day care for mothers who otherwise could not work without it.

Well, she had three children in day care. The Federal Government helps provide for those in day care about $4 a day to feed the kids, a little snack and a little lunch during the course of the day.

One of the proposals before Congress is to eliminate that altogether. What this mother told me was that while she was off working 40 hours a week in a fast food restaurant, working several days a week just to pay for day care, she said $4 a day does not sound like much, but it is $15 per week times 3 kids is 180 bucks per month. She said, "Congressman, think about what I am earning for a living, $4 or $5 an hour is not much, and the impact it is going to have on me. I need to have affordable day care to stay out of welfare."

Finally, one of our school superintendents came in and told a story about school lunch. It is nothing short of amazing to me that our Republican friends now want to go after the school lunch program. I have been around here for a few years, and I cannot recall scandals, massive scandals, and waste in the bureaucracy. This is a program administered at the local level that works.

A school superintendent came in to tell the story of a little boy about 10 years old. Several years ago his mother went out for groceries and never came back. That left him with his two brothers and his father alone. Because his father works long hours, it became his burden to basically raise his little brothers.

They come to school each day, those three kids, and the superintendent told me, he said,

> Congressman, make no mistake about it, it is the best meal of the day for them. It may look like just a plateful of spaghetti and pizza to somebody walking through the cafeteria, but these kids wolf it down. Sometimes we have to bring them down to the cafeteria for crackers and milk to keep them going.

So let us not get caught up in all the statistical debate and forget the real people involved. We have got to keep good nutrition programs that are working in place doing their job. We cannot have a strong America without strong children and strong families.

THE EXHAUSTIVE CONCORDANCE TO THE UNITED STATES CONSTITUTION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Tennessee [Mr. WAMP] is recognized during morning business for 2 minutes.

Mr. WAMP. Mr. Speaker, I have happily discovered that many of my colleagues, like I did campaigned with a copy of the U.S. Constitution in our pockets. As one who strongly believes in government strictly according to constitutional principles, I make our Government's defining document the object of constant study. In fact, before almost every speech I give on the House floor, I consult the Constitution to remind myself of, and clarify, the underlying constitutional principle involved.

That is why I am so happy one of my constituents has written and published "The Exhaustive Concordance to the United States Constitution." The book is a valuable treasure for avid constitutionalists like myself.

Through the generosity of this book's editor, Dr. Dennis Bizzoco, of Chattanooga, TN and its publishers, an individual copy for each Member of Congress—Senators, Representatives, Delegates, and the Resident Commissioner—is being made available free of charge. I am happy to report to my colleagues their copy was delivered to them this morning through inside mail.

On the special copy Dr. Bizzoco presented to Speaker GINGRICH last Friday, these words of Thomas Jefferson were inscribed, which remind us all of the power of the U.S. Constitution: "In questions of power let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

I hope that the Members of Congress will use their copy of "The Exhaustive Concordance to the United States Constitution," and if you find it of value, please let Dr. Bizzoco know you appreciate his donation to our public debate by dropping him a short note.

Mr. Speaker, I close by reminding the Nation that this Constitution demands a limited Federal role. This Constitution is the roadmap of good government, and through the 10th amendment it says that issues not clearly defined as being the responsibility of the Federal Government should be returned to the States.

We trust the State officials, the local State officials, with these decisions. We want to give them the money and let them make the decisions on how to spend that money so these big Federal bureaucracies that are inefficient and unfair do not continue.

THE PROPOSAL TO INCREASE THE MINIMUM WAGE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentlewoman from North Carolina [Mrs. CLAYTON] is recognized during morning business for 1 minute.

Mrs. CLAYTON. Mr. Speaker, I rise to urge early hearings on the proposal to increase the minimum wage.

The Speaker has promised to have hearings scheduled. Those hearings should be scheduled soon.

We are slashing the school lunch and breakfast program.

We are removing thousands of women, infants, and children from the WIC Program.

We are cutting education programs, and programs that move teenagers from school to work, including complete elimination of the Summer Jobs Program.

We are slicing away at public housing support programs.

And, while telling the poor they must work to eat, we have yet to give any consideration to a modest increase in the minimum wage.

Mr. Speaker, somewhere in these first 100 days, we should find time to give the millions of minimum wage workers a hearing on the subject to their wages.

If we want to force citizens to work to eat, let us provide a livable wage so that they can earn enough to feed themselves.

PROGRAM CUTS FOR THE POOR TO FUND TAX CUTS FOR THE WELL-TO-DO?

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Colorado [Mr. SKAGGS] is recognized during morning business for 5 minutes.

Mr. SKAGGS. Mr. Speaker, last Thursday the House Appropriations Committee met for 6 or 7 hours to prepare for floor action a bill that will cut some $17 billion from this year's appropriations. It is a lot of money. It can easily pass as merely a statistic in the debate going on in this country these days.

But in those $17 billion of cuts there is a story to be told. That amount represents $1 out of every $7 that this country was going to expend this year on programs to help the poor, those living below the poverty line. And that $17 billion represents $1 out of $100 that this Government was going to be spending on everybody else. One-seventh of our budget to help the least advantaged in this country, one one-hundredth of the budget to help the most advantaged in this country.

And you might ask, why? Why would we be doing that to programs like Women's, Infants and Children, early childhood nutrition programs, which clearly more than pay for the expenditures in better health, better learning, better productivity over a lifetime, and pay for themselves at a ratio of 4 or 5 to 1? Why would we be cutting prenatal care, absolutely essential to prevent low-birthweight babies and early childhood disease? What is the economy to be accomplished there?

Why go after safe schools programs that are critical in our urban neighborhoods, and why cut substantially into the low-income energy assistance program so critical to poor and largely older Americans in the colder parts of this country?

Well, the only answer we can find for taking from the disadvantaged disproportionately than from the advantaged is the tax cut that the majority wishes this Congress to pass, the benefits of which will also accrue largely to the best-off in this society, the top one-fifth, which was the only group in this country that enjoyed real increases in their standard of living during the eighties and early nineties.

This is just the beginning. Soon we will have proposals coming to the floor that will also cut other critical support programs, whether it is child care or food stamps.

I wanted to get some sense of what this was going to mean to the people in my district. I had a meeting this last Saturday morning at the Boulder Day Nursery, in Boulder, CO, where mothers, fathers, and kids came together to try to explain what this complicated, but ultimately critical, interconnected set of programs, from early childhood nutrition to day care to prenatal care to AFDC, had meant in their lives. People who do not want to be dependent on anybody else, who want to get on their feet, who want to be productive citizens, but who, for various reasons—husband and father who took a walk, a tragedy—had to rely on some of these programs.

I will be speaking further about what a central role this kind of support means, not because these people want to stay on the dole, but because they want to make something of themselves, become taxpayers, become productive citizens, and need a sense of community from all of us to get through some difficult times in their lives.

RECESS

The SPEAKER pro tempore. There being no further Members listed for morning hour, pursuant to clause 12, rule I, the Chair declares the House in recess until 2 p.m. today.

Accordingly (at 1 o'clock p.m.) the House stood in recess until 2 p.m.

□ 1400

AFTER RECESS

The recess having expired, the House was called to order by the Speaker.

PRAYER

The Reverend Michael B. Easterling, senior pastor, Madison Avenue Baptist Church, New York, NY, offered the following prayer:

Let us pray:

Lord of all nations, we give You thanks this day for life itself and for the promise of Your faithful guidance and care. You have blessed us in innumerable ways and You have placed in our hands the responsibilities of caring for our world and caring for one another.

May we assume these great responsibilities with conscientiousness and always with great humility.

As we undertake these tasks, will You give to us, Your servants, that wisdom and understanding and compassion we must have if we are to be successful.

Lord of life, lead us in all of our endeavors, that Your truth might be found, that justice and peace might be realities, and that Your eternal will might be done.

In Your holy name we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentlewoman from Washington [Ms. DUNN] come forward and lead the House in the Pledge of Allegiance.

Ms. DUNN of Washington led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Edwin Thomas, one of his secretaries.

A WELCOME TO REVEREND EASTERLING

(Mr. MCDERMOTT asked and was given permission to address the House for 1 minute.)

Mr. MCDERMOTT. Mr. Speaker, on behalf of my colleagues in the House of Representatives I am delighted to welcome as our guest Chaplain, the Reverend Michael Easterling, senior minister of the Madison Avenue Baptist Church in New York City.

The Reverend Mr. Easterling has served the Madison Avenue Church with great distinction for 10 years, a church that has provided a variety of services to his community located just a few blocks from the Empire State Building. His leadership has meant much to the neediest of people and together with the members of the church, the message of religion has been translated into deeds of justice and mercy to his community.

Mike Easterling and I were classmates together at Wheaton College in Illinois and I have been an admirer of his dedication and his commitment in his ministry. Also, it should be mentioned that Mr. Easterling and our own Chaplain, Jim Ford, served together as cadet chaplains at the U.S. Military Academy at West Point, NY.

Thank you, Mike, for your prayer today and best wishes in the good work that you do together with the people of Madison Avenue Baptist Church.

REPUBLICAN CONTRACT WITH AMERICA

(Mr. CHABOT asked and was given permission to address the House for 1 minute.)

Mr. CHABOT. Mr. Speaker, our Contract With America states the following:

On the first day of Congress, a Republican House will require Congress to live under the same laws as everyone else; cut committee staffs by one-third; and cut the congressional budget. We kept our promise.

The contract goes on to say that in the first 100 days, we will vote on the following items: A balanced budget amendment—we kept our promise: unfunded mandates legislation—we kept our promise; line-item veto—we kept our promise; a new crime package to stop violent criminals—we kept our promise; national security restoration to protect our freedoms—we kept our promise; Government regulatory reform—we kept our promise; commonsense legal reform to end frivolous lawsuits—we are starting this today;

And still to go: Welfare reform to encourage work, not dependence; family reinforcement to crack down on deadbeat dads and protect our children; tax cuts for middle-income families; Senior Citizens' Equity Act to allow our seniors to work without government penalty; congressional term limits to make Congress a citizen legislature.

This is our Contract With America.

SCHOOL SAFETY AND SCHOOL LUNCH

(Mr. DINGELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, I was delighted to hear the last person in the well to addres the subject of children. I would like to again address that today.

Last week, my colleagues, we discussed the question of cuts in the School Lunch Program. Today we find that my Republican colleagues propose to zero out the Drug-Free Schools Program and also the Safe Schools Program. This tends to show me that my Republican colleagues know the cost of everything and the value of nothing, because the greatest trust and the greatest treasure that this Nation has is our young people.

To have them in schools which are free of drugs, which are safe, and to see to it that those who have no recourse to adequate nutrition and food supplies at home, to see that they have an adequate school lunch is indeed one of the ways that we not only nurture our greatest treasure, but we look to the future of this country.

REAL REFORM THE ONLY TRULY COMPASSIONATE THING TO DO

(Ms. DUNN of Washington asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include extraneous material.)

Ms. DUNN of Washington. Mr. Speaker, let us talk about compassion, because some of our Members seem to have a distorted sense of what that term means when it comes to our Nation's failed welfare policies.

Is it compassionate to continue with a status quo system that for three generations has stripped women of their dignity? Republicans say no. The current system limits the ability of poor women to seek gainful work and condemns those women and their children to a life of hopelessness caught up in the welfare cycle.

That is not compassion, Mr. Speaker. It is destructive to women, to children, and to families.

In fact, because of the disincentives that exist in the current system, many welfare mothers will never be married.

Mr. Speaker, let us not defend the status quo. Instead, let us end a system that traps children in lives of higher rates of domestic abuse and violent crime and inadequate educational opportunities. Let us transform welfare and redefine compassion to mean stronger families, domestic tranquility, and good jobs.

SCHOOL LUNCH PROGRAM

(Mr. UNDERWOOD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. UNDERWOOD. Mr. Speaker, the majority decided again last week not to protect the School Lunch Program, but to include it in a block grant and let the children compete for dwindling Federal dollars against other needy groups.

The majority's vision of America would have schoolchildren fight for their lunch money with programs for the elderly, disabled veterans, and indigent mothers. There is a new bully in the schoolyard. This is a fight where everyone loses. And all this while funding tax breaks for the wealthy. Mr. Speaker, I believe that the majority has extended class warfare into the classroom, but instead of the haves and have-nots, it is the well-fed versus the hungry.

Just as important as military readiness is classroom readiness—the readiness of schoolchildren to learn because their stomachs are not empty. Just as important as a balanced budget amendment is a balanced lunch law, ensuring a nutritious hot lunch to poor school kids.

Let us support classroom readiness and a balanced lunch law.

THIS IS NOT JUDGE WAPNER'S COURT

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Mr. Speaker, the United States legal system should not imitate Judge Wapner's "People's Court." Our entrepreneurs should not be threatened by organizations like 1-800-LAWYER that encourage American citizens to sue everyone and anyone with little or no reason.

Right now, our legal system is well intentioned, but is not structured with any common sense. We have the chance to provide this common sense with lawsuit abuse and product liability reform.

We cannot continue to allow trial lawyers to enrich themselves at the expense of well-intentioned citizens.

We have citizens in this country afraid to practice their business or produce certain products for fear of being sued. We have Americans who are not getting replacement heart valves because the company that manufactured them was afraid of being bankrupted by an enormous lawsuit.

Let us put an end to out of control litigation and get the legal system in this country back on the right track, as we continue to enact our Contract With America.

CONTRATULATIONS TO THE PENGUINS FOR A TITLE

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, Youngstown State University, the Penguins, division I, double A, national champion football team, 3 of the last 4 years in a playoff, ladies and gentlemen, were received today at the White House by President Clinton. What a beautiful day for our valley and what a beautiful day for the top football coach in all of America, Jim Tressel, coach of the Penguins.

The greatest record in the last 5 years of any program in the country, led by All-Americans Lester Weaver and Leon Jones, Chris Samarone of Cheney, in Youngstown, OH, Randy Smith, and great quarterback, Mark Grungard, of nearby Springfield Local.

The Penguins defeated Marshall University 2 of those 3 years and defeated Boise State last year.

Ladies and gentlemen, this is the finest program in America. They are typical of the fighting spirit of the people of the Mahoning Valley in Ohio who lost the steel mills but their tenacity is never quit.

Hail to Jim Tressel and the Penguins. And at 3:30, Members, there will be a little reception in 2253. Come on by. The best in America.

NO DEFENSE FOR FAILED WELFARE SYSTEM

(Mr. JONES asked and was given permission to address the House for 1 minute.)

Mr. JONES. Mr. Speaker, it is time to tell the truth about our welfare system. It is not the system that it was designed to be. It is not temporary help for those who are down on their luck. It is a bureaucratic nightmare that has trapped generations of Americans into a cycle of dependency. It is no secret that the welfare system has failed miserably. It does not provide a hand up.

It is nothing more than a handout. Americans across the country, including those who receive welfare, are sick of the failed system. We should face the problem and fix the system. Republicans have offered serious proposals to reform welfare, but those on the other side of the aisle are offering nothing more than distortion in a desperate attempt to defend a failed system.

That is not what the American people elected us to do. They elected us to fix a broken system. It is time to reform the welfare system.

REFORM OF THE LEGAL SYSTEM

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute.)

Mr. DEFAZIO. Mr. Speaker, the Republican image meisters and spin artists worked overtime for this week's production in Congress. They tapped a concern of average Americans over the growing litigiousness of our society, but with a breathtaking bait and switch. They have produced a bill beyond the dreams of the most corrupt financial swindler or the most irresponsible corporation. They call it the Common Sense Legal Reform Act.

In reality, it is the corporate dollar liability and litigation shield act.

No. 1, the loser pays. What does that mean? It means if you are an average citizen and you have been aggrieved by an exploding Pinto, if you wanted to sue Ford, you have to be ready to pay for all of Ford Motor Co.'s legal costs. Better think twice before you go to court to sue about an injury with products.

A blank check for bunko artists and new defenses for Wall Street. They forgot to inform you when you invest your pension in a bad deal. The new defense is, I forgot. It is actually written in the bill. It is almost a joke. I forgot. Thousand-dollar-an-hour lawyers and Wall Street forgot.

This is not for main street. It is for Wall Street.

WELFARE: A BETTER WAY

(Mr. NORWOOD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NORWOOD. Mr. Speaker, someone once defined the Federal welfare system as the result of Americans wanting—in the worst way—to help those who have fallen behind.

There must be a way to help people without trapping them in dependency, robbing their self-respect, suffocating their initiative, and paving their way to lives of despair, illiteracy, and illegitimate behavior.

That better way is now working its way through the deliberative legislative process here in the House of Representatives and will be before this body in the next few days.

Foremost, this new approach incorporates the realization that the Federal Government is incapable of undertaking the experiments to produce a new welfare system.

To fulfill that role, we would designate the States as laboratories of innovation, reform, and effective transformation of the welfare system.

We also would eliminate an expensive, unnecessary layer of Federal bureaucracy whose role has been to look over the shoulders of the States and impose a one-size-fits-all straitjacket to restrain administrators for searching for better ways to deliver help to those in need.

URGING MEMBERS TO STAND TOGETHER AND PREVENT REDUCTION OF ENERGY ASSISTANCE TO THE POOR

(Mr. POMEROY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. POMEROY. Mr. Speaker, the temperature reached 15 below zero in North Dakota last night. Unfortunately, the discomfort of the cold was made much worse by the anxiety caused by the news that all of the funds for home heating assistance to the poor had been eliminated by the House Committee on Appropriations late last week.

Thousands of households in my State need help from time to time with high bills brought on by severe winter weather. Most receiving assistance have incomes below $8,000 a year, are elderly with disabilities, or families with young children under the age of 5 in the household.

How in the world could Members of this body eliminate this critical program in order to fund tax cuts for the rich? That is a trade-off that does not make any sense. Maybe they just do not understand. After all, the temperature in Atlanta, GA, today is going to be 75 degrees warmer than in North Dakota.

I call on every Member of this body, Republican and Democrats, who represent citizens coping with tough winters and high heat costs, to stand together and not leave the poorest of the poor out in the cold.

ANOTHER HOLE PUNCHED IN THE CONTRACT WITH AMERICA REPRESENTS A GAP PUNCHED IN AMERICA'S CONSTITUTION

(Mr. WATT of North Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WATT of North Carolina. Mr. Speaker, this is a copy of the Constitution of the United States. I want Members to know that in this body it is under siege. Every time our Speaker shows up here and punches a hole in his laminated Contract With America, we can be almost guaranteed that they are punching another hole in the Constitution of the United States.

Last week, it was the fifth amendment of the U.S. Constitution that they punched a hole in systematically; before that, the fourth amendment, habeas corpus, and division of responsibility between the executive and legislative branch.

I will be back here to tell Members every time they do it again. Do not be fooled when they punch that hole in the Contract With America. It is another notch, but it is another gap in the Constitution of the United States.

THE CHICKENS ARE COMING HOME TO ROOST

(Mr. VOLKMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VOLKMER. Mr. Speaker, "the chickens are coming home to roost." that is an old saying that applies to what is currently going on in Congress. Republicans are clearly showing who they represent.

Mr. Speaker, the Republicans who won control of the House by a majority of 15 votes are using this slim margin to dismantle all Government programs, even compassionate programs to help needy Americans.

Mr. Speaker, little of this was spelled out in the Contract on America and none of it was discussed with the American people. Few Americans, if any, knew what the Republicans had up their sleeve when Republicans were sworn in on January 4.

Mr. Speaker, all this changed last week however, and the American people now know what the Republicans were hiding up their sleeve when Republicans had to make cuts in programs like school lunches, heating assistance for low-income senior citizens, reductions in hospital and health care for veterans, caps on student loans, as well as other cuts in order to finance a $722 billion tax break for special interests.

Mr. Speaker, last week the chickens came home to their roost. Already, the American people are upset and by large margins disagree and reject the fine print in the shortsighted and meanspirited Republican Contract on America.

IN OPPOSITION TO THE NUTRITION BLOCK GRANT PROGRAM

(Mr. WARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WARD. Mr. Speaker, I rise today in opposition to the nutrition block grant program, which, if enacted into law as the Republican contract seeks to do, will devastate our Nation's children. Despite the rhetoric we hear about creating less government, the fact is this new block grant program will create 50 new programs administered by 50 new State bureaucracies.

Under the Republican family nutrition block grant proposal, child care, nutrition, WIC programs, and others like them will be cut by 5.3; let me rephrase that, $5,300 million. We should not talk about billions, we should talk about millions, because it is a number we can relate to better; $5,300 million cut over 5 years from our women, infant, and children's programs. This is a successful program and should not be changed.

Mr. Speaker, I rise in opposition to these programs. These are mean-spirited Republican ideas.

PROTESTING THE DISMANTLING OF THE SCHOOL LUNCH AND CHILD NUTRITION PROGRAMS

(Mr. MINETA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MINETA. Mr. Speaker, I rise today in strong opposition to the Republican dismantling of the school lunch and child nutrition programs.

It has been proven, Mr. Speaker, that children who are not well fed are not well learned. Without proper nourishment, students simply do not achieve to the levels that they are capable. If their bellies are empty, their minds will be, too.

Turning the school lunch and child nutrition programs into block grants to the States will literally mean taking food from the mouths of children. It will result in a significant decrease in the number of lunches that are served daily at our schools.

In my congressional district alone, the California Department of Education estimates that more than 20,000 children will be impacted by this new block grant program.

Mr. Speaker, we need to ensure the future of our children. If we do not raise smart and healthy kids today, we will all suffer tomorrow.

CHILD NUTRITION PROGRAMS AXED

(Mr. JEFFERSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JEFFERSON. Mr. Speaker, it has been said that the moral test of government is how that government treats those who are in the dawn of life, the children. Sadly, today Congress is falling extremely short of this test. It is sacrificing the health and well-being of our Nation's most vulnerable in favor of petty political rhetoric, and to safeguard the privileged status of the wealthiest of Americans on the backs of women and children.

With the near elimination of the school lunch and breakfast programs and the Food Stamp Program, among others, our colleagues on the other side of the aisle have hit nearly 5 million of America's children, our most previous resource, where it could very well hurt them the most—in their stomachs. Mr. Speaker, that is a shame.

The proposed rescissions this House will be asked to vote on soon are mean-spirited and close to a declaration of war on women and children. Child nutrition programs, undeniably, have been marked by many signs of success. There is a positive connection between child nutrition programs and educational attainment.

Low-income children who participate in these programs achieve higher standardized test scores than low-income students who do not. Decreased tardiness and absenteeism have also resulted from these programs.

In conclusion, Mr. Speaker, these nutrition programs have made it easier for children to do what we want them to do when they go to school—to learn.

Let us not take this chance away from our children.

PROVIDING FOR CONSIDERATION OF H.R. 988, ATTORNEY ACCOUNTABILITY ACT OF 1995

Mr. GOSS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 104 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 104

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 988) to reform the Federal civil justice system. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed two hours equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule for a period not to exceed seven hours. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The CHAIRMAN. The gentleman from Florida [Mr. GOSS] is recognized for 1 hour.

Mr. GOSS. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio [Mr. HALL], pending which I yield myself such time as I may consume.

During consideration of this resolution, all time yielded is for purposes of debate only.

Mr. Speaker, as part of our ongoing commitment to fulfilling the Contract With America, today we consider the first of a series of commonsense legal reform measures. Americans are all too familiar with abuses and indefensible judgments spawned by our legal system. Almost every American can recall reading in a paper or seeing on TV some episode that boils their blood or elevates their blood-pressure about a system run amok—enough is enough.

People across our Nation have called upon us to restore some basic fairness and reason to the judicial process now. I would guess that most Americans probably agree that the $3 million judgment recently awarded to a woman who spilled hot coffee in her lap was unreasonable. While the plaintiff in that case, and likely her lawyer too, now may rest comfortably on that judgment, the rest of America can expect to pay more for lukewarm coffee in the future. "Beware of hot coffee" signs are springing up at drive-in windows. Clearly, the system is out of balance and needs reform. And that is what we are doing here today. House Resolution 104 is an open, fair, and hopefully noncontroversial rule that allows us to consider H.R. 988. I am pleased that this resolution was reported out of the Rules Committee on a unanimous voice vote—with the full support of the minority.

Specifically, House Resolution 104 provides 2 hours of general debate and a total of 7 hours for any germane amendments Members may wish to offer under an open amendment process. Majority and minority members of the Judiciary Committee who testified on this measure at our hearing on Friday suggested that 7 hours of amendments plus 2 hours of general debate should provide Members ample opportunity to discuss the bill.

In fact, the timing in this rule was agreed upon in friendly negotiations with minority members of the Rules Committee. While the gentlelady from Colorado [Mrs. SCHROEDER] indicated that some technical aspects of H.R. 988

may take time for nonattorneys to fully appreciate, she suggested that only 5 hours of amendment time would have been sufficient—we have offered 7. In fact, the minority members of the Rules Committee and the minority members of the Judiciary Committee indicated that they anticipate very few amendments from their side of the aisle.

Mr. Speaker, in 1989, Americans filed more than 18 million civil lawsuits against each other. That is about 1 suit for every 10 adults in America. Meanwhile, the number of lawyers and the profits of the legal service industry have been exploding. In 1970, there were only 355,000 attorneys in America. Today, that number has more than doubled, to nearly 1 million. I doubt anyone would claim our quality of life has doubled because of all those attorneys. Revenues to the legal industry have grown at a pace that exceeds that even of health care costs. I am delighted that the House is now beginning to address these disturbing trends by reconsidering some of our system's current incentives. The Attorney Accountability Act of 1995 seeks to discourage frivolous lawsuits while encouraging good faith settlement negotiations by plaintiffs and defendants alike. The bill provides for a modified loser pays rule for certain civil suits brought in Federal court. By requiring that litigants who reject reasonable pretrial offers of settlement pay a portion of their opponents' legal costs, the Attorney Accountability Act should to more fruitful good faith negotiations. While making changes to our legal system that should make that system work better for all Americans, this bill also preserves America's unique contingency fee tradition—which is often crucial to ensuring access to the courts and our justice system by the poor.

Mr. Speaker, I support this bill and this fair and open rule.

□ 1430

Mr. Speaker, I reserve the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker. I would like to commend my colleague from Florida, Mr. GOSS, for ably describing this rule which will allow consideration of H.R. 988, the Attorney Accountability Act. This is a rule which caps the overall time allowed for the amendment process at 7 hours. Normally, I am opposed to time caps on complex legislation such as this; however, the Rules Committee did reach a bipartisan agreement on an amendment offered by my colleague, Mr. FROST, during the committee's deliberations. Under the Frost amendment, as amended by Mr. SOLOMON, 2 hours of general debate is provided, and the time cap on amendments is increased from the original 6-hour limit to 7 hours. The rule also makes in order the Judiciary Committee amendment in the nature of a substitute as an original bill for the purposes of amendment.

Mr. Speaker, even though this rule was reported out of the Committee on Rules by a voice vote, I want to point out that the bill itself, H.R. 988, did elicit substantial discussion among members of the Rules Committee. This bill makes major changes to the current Federal civil justice system and should be thoroughly debated. While many of us would have preferred a totally open rule, I am glad members of the committee increased the general debate time, as well as time for amendments, on a bill of this significance.

Mr. Speaker, I am troubled by some of the provisions of the Attorney Accountability Act. I do believe we have a problem in our country with frivolous lawsuits. We all have heard or read about cases which seem absurd, and result in increased costs to consumers and small businesses. However, before supporting this bill, I want to make sure we are actually getting at the reform intended.

The bill includes provisions which result in a loser pay system. Under these provisions, the nonprevailing party must pay the prevailing party's attorney's fees in Federal civil diversity litigation where a settlement offer has been made. While this could be a step toward reducing frivolous cases, I would like to see some assurances that this is not a tactic to scare away legitimate cases from middle-income people.

There was concern expressed in the Rules Committee that, under these provisions, defendants could make intentionally low settlement offers and inflate costs as a strategy. In trying to reform the judicial system, we should be sensitive to the fact that not all Americans, and small businesses, can afford high-priced attorneys—and many of them do have legitimate claims which have a right to be heard.

This rule does provide adequate time to explore this complicated and important subject, and therefore I will support the rule. I ask my colleagues to join me in supporting it.

Mr. Speaker, I include the following for the RECORD:

FLOOR PROCEDURE IN THE 104TH CONGRESS

Bill No.	Title	Resolution	Process used for floor consideration	Amendments in order
H.R. 1	Compliance	H. Res. 6	Closed	None.
H. Res. 6	Opening Day Rules Package	H. Res. 5	Closed; contained a closed rule on H.R. 1 within the closed rule	None.
H.R. 5	Unfunded Mandates	H. Res. 38	Restrictive; Motion adopted over Democratic objection in the Committee of the Whole to limit debate on section 4; Pre-printing gets preference.	N/A.
H.J. Res. 2	Balanced Budget	H. Res. 44	Restrictive; only certain substitutes	2R; 4D.
H. Res. 43	Committee Hearings Scheduling	H. Res. 43 (OJ)	Restrictive; considered in House no amendments	N/A.
H.R. 2	Line Item Veto	H. Res. 55	Open; Pre-printing gets preference	N/A.
H.R. 665	Victim Restitution Act of 1995	H. Res. 61	Open; Pre-printing gets preference	N/A.
H.R. 666	Exclusionary Rule Reform Act of 1995	H. Res. 60	Open; Pre-printing gets preference	N/A.
H.R. 667	Violent Criminal Incarceration Act of 1995	H. Res. 63	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 668	The Criminal Alien Deportation Improvement Act	H. Res. 69	Open; Pre-printing gets preference; Contains self-executing provision	N/A.
H.R. 728	Local Government Law Enforcement Block Grants	H. Res. 79	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 7	National Security Revitalization Act	H. Res. 83	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 729	Death Penalty/Habeas	N/A	Restrictive; brought up under UC with a 6 hr. time cap on amendments	N/A.
S. 2	Senate Compliance	N/A	Closed; Put on suspension calendar over Democratic objection	None.
H.R. 831	To Permanently Extend the Health Insurance Deduction for the Self-Employed.	H. Res. 88	Restrictive; makes in order only the Gibbons amendment; waives all points of order; Contains self-executing provision.	1D.
H.R. 830	The Paperwork Reduction Act	H. Res. 91	Open	N/A.
H.R. 889	Emergency Supplemental/Rescinding Certain Budget Authority	H. Res. 92	Restrictive; makes in order only the Obey substitute	1D.
H.R. 450	Regulatory Moratorium	H. Res. 93	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 1022	Risk Assessment	H. Res. 96	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 926	Regulatory Flexibility	H. Res. 100	Open	N/A.
H.R. 925	Private Property Protection Act	H. Res. 101	Restrictive; 12 hr. Time Cap on amendments; Requires Members to pre-print their amendments in the Record prior to the bill's consideration for amendment; Waives germaneness and budget act points of order as well as points of order concerning appropriating on a legislative bill against the committee substitute used as base text.	1D.
H.R. 1058	Securities Litigation Reform Act	H. Res. 103	Restrictive; 8 hr. Time Cap on amendments; Pre-printing gets preference; Makes in order the Wyden amendment and waives germaneness against it.	1D.
H.R. 988	The Attorney Accountability Act of 1995	H. Res. 104	Restrictive; 7 hr. Time Cap on amendments; Pre-printing gets preference	N/A.

Note: 74% restrictive; 26% open. These figures use Republican scoring methods from the 103rd Congress. Not included in this chart are three bills which should have been placed on the Suspension Calendar. H.R. 101, H.R. 400, H.R. 440.

Mr. HALL of Ohio. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GOSS. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

REPORT ON UNIFIED NATIONAL PROGRAM FOR FLOODPLAIN MANAGEMENT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore [Mr. KNOLLENBERG] laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Banking and Financial Services and ordered to be printed:

To the Congress of the United States:

It is with great pleasure that I transmit *A Unified National Program for Floodplain Management* to the Congress. The Unified National Program responds to section 1302(c) of the National Flood Insurance Act of 1968 (Public Law 90–448), which calls upon the President to report to the Congress on a Unified National Program. The report sets forth a conceptual framework for managing the Nation's floodplains to achieve the dual goals of reducing the loss of life and property caused by floods and protecting and restoring the natural resources of floodplains. This document was prepared by the Federal Interagency Floodplain Management Task Force, which is chaired by FEMA.

This report differs from the 1986 and 1979 versions in that it recommends four national goals with supporting objectives for improving the implementation of floodplain management at all levels of government. It also urges the formulation of a more comprehensive, coordinated approach to protecting and managing human and natural systems to ensure sustainable development relative to long-term economic and ecological health. This report was prepared independent of *Sharing the Challenge: Floodplain Management Into the 21st Century* developed by the Floodplain Management Review Committee, which was established following the Great Midwest Flood of 1993. However, these two reports complement and reinforce each other by the commonality of their findings and recommendations. For example, both reports recognize the importance of continuing to improve our efforts to reduce the loss of life and property caused by floods and to preserve and restore the natural resources and functions of floodplains in an economically and environmentally sound manner. This is significant in that the natural resources and functions of our riverine and coastal floodplains help to maintain the viability of natural systems and provide multiple benefits for people.

Effective implementation of the Unified National Program for Floodplain Management will mitigate the tragic loss of life and property, and disruption of families and communities, that are caused by floods every year in the United States. It will also mitigate the unacceptable losses of natural resources and result in a reduction in the financial burdens placed upon governments to compensate for flood damages caused by unwise land use decisions made by individuals, as well as governments.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 6, 1995.*

ANNUAL REPORT OF NATIONAL ENDOWMENT FOR DEMOCRACY FOR FISCAL YEAR 1994—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

Pursuant to the provisions of section 504(h) of Public Law 98–164, as amended (22 U.S.C. 4413(i)), I transmit herewith the 11th Annual Report of the National Endowment for Democracy, which covers fiscal year 1994.

Promoting democracy abroad is one of the central pillars of the United States' security strategy. The National Endowment for Democracy has proved to be a unique and remarkable instrument for spreading and strengthening the rule of democracy. By continuing our support, we will advance America's interests in the world.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 6, 1995.*

ATTORNEY ACCOUNTABILITY ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 104 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 988.

The Chair designates the gentleman from Ohio [Mr. HOBSON] Chairman of the Committee of the Whole, and requests the gentleman from Florida [Mr. GOSS] to assume the chair temporarily.

□ 1438

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 988, to reform the Federal civil justice system, with Mr. GOSS, Chairman pro tempore, in the chair.

The Clerk read the title of this bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from California [Mr. MOORHEAD] will be recognized for 1 hour, and the gentleman from Michigan [Mr. CONYERS] will be recognized for 1 hour.

The Chair recognizes the gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 988, the Attorney Accountability Act of 1995.

It is widely believed that the American legal system no longer serves to expedite justice and ensure fair results. It has become burdened with excessive costs and long delays. For many people, especially middle and lower income litigants, justice is often delayed and as a result is often denied. For instance, in 1985, the percent of civil cases over 3 years old in Federal district courts was 6.6 percent. Five years later that figure grew to 10.4 percent.

In addition to excessive costs and long delays, the American legal system has been hurt by an overreliance on litigation. According to Judge Stanley Marcus, chairman of the Judicial Conference Committee on Federal-State Jurisdiction,

> If present trends continue, the federal courts' civil caseload will double every fourteen years, and in the twenty-eight years between 1992 and 2020 the compounded effect of that doubling and redoubling will raise the annual number of civil cases commenced from roughly 226,000 per year to nearly 840,000 per year.

Judge Marcus went on to observe that.

> Under current workload standards this volume of litigation would require an enormous increase in the number of district judges and circuit judges, transforming the existing nature of the federal judicial system virtually beyond recognition.

The overuse of litigation imposes tremendous costs upon American taxpayers, businesses, and consumers. H.R. 988 will begin the process of restoring accountability, efficiency, and fairness to our Federal justice system.

H.R. 988 addresses these concerns in three ways. First, it sets up a settlement-oriented loser-pays-attorney's-fee mechanism that rewards reasonable parties who negotiate to settle claims prior to trial. If either side rejects a settlement offer and goes on to win something less at trial, that side would be liable for attorney's fees and court costs. However, it is important to note that the awarding of attorney's fees under this section is not automatic. If the judgment is anywhere in between the last offer and counteroffer of settlement existing 10 days or more before trial, the traditional American rule applies and each side bears its own costs and fees. There are also two exceptions to the mandatory requirement that a court award costs and attorney's fees under this section. The first exception would allow the court to exempt certain cases based upon express findings that the case presents novel and important questions of law or fact and that it substantially affects nonparties. The second instance where a court would not be required to award costs and attorney's fees, would be when it finds that it would be manifestly unjust to do so. This provision was drafted by my colleague from Virginia, a member of the Courts and Intellectual Property Subcommittee, Mr. GOODLATTE. I would like to commend him for his hard work and leadership on this important issue.

Second, the bill would limit the admissibility of scientific testimony of expert witness. It would make a scientific opinion inadmissible unless it: First, Is scientifically valid and reliable; second, has a valid scientific connection to the fact it is offered to prove; and third, is sufficiently reliable so that the probative value of such evidence outweighs the dangers specified in rule 403.

The dangers specified in rule 403 are "unfair prejudice, confusion of the issues, or misleading the jury." What we intend to do here is to codify a relatively recent Supreme Court case of Daubert versus Merrell Dow Pharmaceuticals (1993). That case overruled the 70-year-old common law test enunciated in Frye versus United States (1923) that expert scientific opinion was admissible only if it were based on techniques that were "generally accepted" by the scientific community. The Daubert court held that the common law rule of "generally accepted" by a scientific community had been superseded by the new rule 702 and "generally accepted" was just one of several standards that should be used when a judge considers the admissibility of scientific testimony.

The value of the Daubert decision is that the court spoke extensively about how rule 702 should be applied. What we are trying to do here is to cut back on the possibility of distorted scientific evidence from being introduced into a Federal trial of civil litigation. We do this by shifting the burden of proof, whereas under present law the presumption is in favor of admitting expert scientific testimony, however, under H.R. 988 such testimony is presumed to be inadmissible unless certain standards are met.

Third, H.R. 988 would amend rule 11(c) of the Federal Rules of Civil Procedure relating to the sanctions a Federal judge may impose against lawyers who file frivolous lawsuits or engage in abusive litigation tactics.

Although Federal courts have always had the authority to sanction frivolous pleadings and papers, the early judicial, statutory, and procedural guidelines were very vague, and sanctions were extremely rare. Speaking before the 1976 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, then-Chief Justice Burger noted with alarm the

> Widespread feeling that the legal profession and judges are overly tolerant to lawyers who exploit the inherently contentious aspects of the adversary system to their own private advantage at public expense.

In 1990, the Judicial Conference's Advisory Committee on Civil Rules undertook a review of the Rule and asked the Federal Judicial Center [FJC] to conduct an empirical study of its operation and impact. The study found that a strong majority of federal judges believe that: First, The old rule 11 did not impede development of the law—95 percent; second, the benefits of the rule outweighed any additional requirement of judicial time—71.9 percent; third, the old rule 11 had a positive effect on litigation in the Federal courts—80.9 percent; and fourth, the rule should be retained in its then-current form—(80.4 percent).

Despite this clear judicial support for a strong rule 11, in 1991, the Civil Rules Advisory Committee included provisions to weaken the 1993 rule in a broader package of proposed amendments to the Federal rules. The proposed changes were then sent to the Supreme Court for approval or modification.

Exercising what it viewed to be a limited oversight role, the Supreme Court approved the proposed changes without substantive comment in April 1993. In a strongly worded dissent on rule 11, Justice Scalia correctly anticipated that the proposed revision would eliminate a "significant and necessary deterrent" to frivolous litigation:

> [T]he overwhelming approval of the Rule by the federal district judges who daily grapple with the problem of litigation is enough to persuade me that it should not be gutted.

H.R. 988 makes several important changes to rule 11. First, it reestablishes a system of mandatory, as opposed to discretionary, sanctions. That is if a judge finds that a lawyer has filed a frivolous lawsuit or otherwise abused the system and if it's warranted the judge shall award attorney's fees to the abused party. Second, it mandates the use of attorney's fees as part of the sanction. Third, it puts a bigger emphasis on the rule's compensatory function by clarifying that sanctions should be sufficient to deter repetition and to compensate the parties that were injured.

All of these changes make good, common sense. Mandatory sanctions send a clear message that abusive litigation practices will not be tolerated by our judicial system or the judges who form its core. Appropriate monetary sanctions, including the award of attorney's fees, also help in deterring abuse and provide some recompense for parties that are harmed by sanctionable misconduct.

Fourth, H.R. 988 would eliminate the so-called safe harbor provision of the current rule, which permits a lawyer or litigant to withdraw a challenged pleading, without penalty, prior to the actual award of sanctions. As Justice Scalia noted in his dissent to the Court's transmission of the new rule 11 to the Congress,

> Those who file frivolous suits and pleadings should have no "safe harbor." The Rules should be solicitous of the abused and not of the abuser. Under the revised rule, parties will be able to file thoughtless, reckless, and harassing pleadings, secure in the knowledge that they have nothing to lose * * *

Fifth, it would return to the pre-December 1993 practice of applying rule 11 to discovery abuses. An empirical study conducted by the American Judicature Society suggested that discovery made up over 19 percent of the motions that were filed under the old rule 11. It is important to sanction discovery abuses just as it is important to sanction abuses at any stage of the litigation process.

By so doing the public has a sense of fairness in the knowledge that abusive practices will not be tolerated by our justice system. Mandatory sanctions also prevent judges from going easy on lawyers who break the rules. Most judges do not like imposing punishment when their duty does not require it, especially on their own acquaintances and on members of their own profession. This is human nature.

Mr. Chairman, in conclusion, I believe it is important to point out that we have over 850,000 lawyers in this country. Of these very, very few ever step foot into a courtroom. And of those who do, the vast majority do not file frivolous lawsuits or otherwise abuse the system. In fairness to my profession and in fairness to the vast majority of lawyers in this country, this legislation and my comments are not directed at them. They work hard and they participate fairly and they make an important contribution to this country and to our system of justice. This legislation is intended to make an impact on those few lawyers who do take advantage and abuse and misuse the system for their own private benefit. Rule 11 sanctions are to be implemented and like other types of clear penalties in our civil and criminal justice system, are intended to send an unambiguous message that abusive conduct from lawyers will not be tolerated.

I urge a favorable vote on H.R. 988.

□ 1445

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, when the loser-pays provision was unveiled, it was part of the controversial Contract With America. Now we know that H.R. 988 is really part of the Republican majority's contract with corporate America. And reading the fine print of this provision makes clear that the average American citizen is not a party to the contract.

This bill, and all of the other bills we debate this week on civil justice reform are drafted from a single point of view: the corporate defendant's. All these bills seek to cut out the plaintiffs' right to bring cases in the first place by either eliminating who you can sue, where you can sue, or how much you can receive in compensation for harm suffered.

If this bill really strived in a neutral fashion to penalize frivolous lawsuits or to discourage the filing of clearly unmeritorious cases, no one in this Chamber would have any trouble supporting this proposition. But when the bill is clearly drafted to deter middle-income persons from pursuing reasonable claims in court and placing them at a severe disadvantage with risk-free parties, such as large corporations whose legal fees are normally deducted as a business expense, then I have great objection to this legislation.

We are told that the motivation behind the loser-pays provision is the tremendous number of frivolous lawsuits filed every day in America. But the proponents offer no empirical data to support their claims. They did not in the committee, perhaps there will be some arriving here today.

The so-called explosion in litigations throughout the 1980's and 1990's upon examination we find was brought by corporations suing other corporations or domestic relations suits, it was not an explosion of product liability actions or medical malpractice actions, or of tort actions in general.

It is notable that the new majority of Republicans are eager to embrace the so-called English rule just as prominent voices in England are calling increasingly for the abandonment of the rule in that country itself.

In a January 14 editorial, the conservative British magazine, The Economist, called for the abandonment of the rule because "only the very wealthy can afford the costs and risks of most litigation" under the English rule.

I continue to quote, "This offends one of the most basic principles of a free society: equality before the law."

This comes from England, not from the United States. It is clear that the loser-pays provision in H.R. 988 fails to distinguish between frivolous cases and reasonable cases in which liability is closely contested, and thus will deter many, particularly middle-income citizens and small businesses, from pursuing reasonable claims for defenses.

As one scholar has noted, for a middle-income litigant facing some possibility of an adverse fee shift, defeat may wipe him out financially. The threat of having to pay the other side's fee can loom so large to be intimidating in the mind of a person without considerable disposable assets that it deters the pursuit of even a fairly promising and substantial claim for defense.

It is intimidating to have such a proposal now brought before the Congress to become part of our law.

Middle-income parties and small businesses may have to place their very solvency on the line in order to pursue a meritorious claim. And frequently in tort cases we do not know what a meritorious claim is because the evidence might determine a case becoming a big winner or a total loser. The burden of proof in a civil case is preponderance of the evidence often described as the amount of evidence that shifts the scale, if even only slightly, from the point of balance. A middle-income plaintiff confronted with a written offer to settle under section 2 of this bill must settle at that point, unless he or she is willing to assume the risk of payment of the other side's attorney's fees, and for a middle-income plaintiff who would be financially ruined by such an award, the calculus becomes in effect whether it is reasonable beyond doubt that they will prevail.

That is a pretty high standard, and it is notable that the States often referred to as the laboratories of democracy have not in any significant numbers perceived the English rule to be an appropriate measure for their court systems, nor do I.

The Florida experience, in which doctors first demanded the English rule and then demanded that it be abolished, should be a reminder to us that unintended consequences often overtake the intended ones, particularly when we act hastily and without thoughtful deliberation.

Mr. Chairman, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Chairman, I yield 8 minutes to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, the gentleman from California quite adequately described the provisions that are to appear for general debate and then during the 5-minute rule for amendment. The gentleman from Michigan is worried about the English rule. I think we ought to set the stage for the debate that is yet to come by at least an attempt by this Member to give a kind of a historical development of how we reached this point. I will not start with William and Mary or 1066 or the Battle of Hastings or 1215 or any of those historical dates, but I will start in this House of Representatives when long ago, I say to the gentleman from Michigan, we abandoned the English rule, even in the drafting of our loser pays provisions as they appear in this bill. So that should be noted.

But for the public, let us talk about this for a minute and for the record.

□ 1500

Loser pays is a concept that pleases the American people who are watching our court system disintegrate before their very eyes. Loser pays simply says to our people that if a claimant goes into court, has his lawyer file a suit that is totally frivolous, but does so for the purpose of trying to get a settlement from a company that is not willing to go to court but knowing that the case is not worth anything but just to get them off their backs, offers something and the plaintiff walks off with a windfall, something that they could not have earned in court but because of the system they are able to get a settlement, well, people look askance at that, and it is causing a great tremor in our justice system.

So we thought about that. Many people favor the concept of loser pays. It says that if a claimant comes into court with a frivolous claim, let us assume, just for the moment, one of these claims that has very little basis in law or fact, but is known to generate an offer from the insurance company representing the other side, just for the sake of getting that person off their back, the loser pay context says that if that case should go into court and the defendant insurance company and the others say:

> We are not going to pay you a penny of blackmail or extortion type or pressure type of damages; you take us to court. We do not care, but if you lose under the loser pays, you are going to have to pay the attorney fees and costs that it cost us to come to court and defend this lawsuit.

And vice versa, if the plaintiff makes a bona fide claim of $100,000 and the defendant insurance company says it is not worth a darn when it really is and they know that they are stiffing the plaintiff by not agreeing to negotiate for settlement and they dare to go into court, and the plaintiff does win the $100,000 or something akin to it, then the defendant should pay the attorney's fees and costs.

So that is what loser pays is all about. Should we have something like this in the current situation? Should we try to modify that? Should we try to bring loser pays into the American judicial system?

Because right now we have what is called the American system. The American system is you go to court and each pays his own attorney's fees and costs and there are some rare cases where, by reason of a statute, attorney's fees have to be paid by the losing party, et cetera. But generally that American rule allows each party to pay or forces each party to pay his or her own attorney's fees and costs, et cetera.

So now, where are we? The English rule says loser pays no matter what happens in court. The loser has to pay the attorney's fees and costs of the other party. We found some objection even among the lawyers in the Committee on the Judiciary on that.

I point this out to the gentleman from Michigan, and it is astounding that it is the gentleman from Michigan, because what I have to say touches upon his own State. When we decided that we had to have some kind of loser pays but something that makes sense, we adopted, the gentleman from Virginia [Mr. GOODLATTE], the gentleman from South Carolina [Mr. INGLIS], and I and others, reformulated, as did the gentleman from California [Mr. MOORHEAD] and his staff, reformulated rule 68. So those of you who would condemn loser pays are also condemning, if you condemn loser pays in its generic form, in its broad form, you are also condemning rule 68 as it now applies to the rules in the rules of Federal procedure.

So those who condemn loser pays are not even satisfied with what has already been a Federal rule for a long time, rule 68, which is a modified form of loser pays.

Now, further, our modification modifies further the modification that appears in rule 68 of the Federal rules of civil procedure. So do not give us this rhetoric about you are opposing loser pays unless you also oppose rule 68 and are not satisfied with the judicial conference and its promulgation of its rules as it applies to loser pays.

We already have loser pays. We are trying to perfect it.

And you know what rule I want to see applied, I say to the gentleman from Michigan? Is the gentleman from listening to me?

I want to apply the Michigan rule which, for a long time, has had loser pays in the State and it works, and it is loser pays. Do you, in your condemnation of loser pays and the English rule, are you ready to concede that the rule 68 in Federal rules of civil procedure, and the Michigan rule which is a modification of that, are acceptable modes projecting loser pays? That is what the debate is going to be about.

We feel we have come up with a thoughtful analysis of loser pays, and to try to get these parties to negotiate to reduce the number of frivolous debates, of frivolous suits that are filed, and try to get people to come to the middle of offer of settlement so that these cases would not have to clog up the docket and the negotiations would be fostered.

Here is the idea, when the plaintiff demands $100,000 and the defendant says, "I can only pay $50,000," then if the verdict comes in somewhere between the two, each one has to pay his own costs. If it comes in over $100,000 where the defendant could have settled for 100, then the defendant has to pay the costs. If it comes in under $50,000 where the defendant has to pay now more than they have conjured up that it had to pay, it should also have to pay the attorneys fees and the costs.

The plaintiff would have to do that if it is under $50,000. That is a reasonable way to do it.

And the Michigan rule, which I would like to see occur and which I will debate under the 5-minute rule, is this, I say to the gentleman from Michigan, the claimant offers to settle for $100,000. The defendant says no, $50,000 is enough. Well, that strikes immediately under my amendment the number 75,000, and if the verdict comes in at 90,000, then the defendant has to pay the costs. If it comes in under 75, the plaintiff has to pay the costs.

What we are trying to do is drive these people into a negotiating mode in which the reasonable middle area would be found for possible settlement of the case so that the loser would pay and keep the case out of court.

We have a thoughtful approach to this, and I will reject the rhetoric of you are against loser pays because you are against the present law if you are against loser pays.

Mr. CONYERS. Mr. Chairman, I yield 6 minutes to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I thank the gentleman for yielding this time to me.

I just have a couple of comments to make. First is on the sanctions. Many plaintiffs bring the cases on a contingent fee. If you lose the case, if the lawyer brings such a case and does not win, whether it is frivolous or not, if he does not win he does not get paid a fee at all. That is certainly a sanction.

If the case is, in fact, frivolous, the present law already provides significant sanctions.

There have been recent improvements in that law, and we need to let them play out to make sure they work.

There have been no complaints, or very few complaints, about the present law as it has been improved, and in terms of the loser pays, Mr. Chairman, that is a good sound bite but it is just not good sound policy. It will have the effect of denying the average citizen access to the courts.

The corporations who are suing each other, obviously their attorneys fees can be a cost of business, if they are defending or bringing cases against individuals, it can be a cost of doing business.

Our courts ought to be a place where citizens can have their rights vindicated and resolve those differences. If we have the loser pays, we are going to have a significant situation where the average citizen will not have access to the courts.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. SCOTT. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, on that point, I tried as strenuously as I could, and I ask the gentleman, does he reject rule 68 of the Federal rules of civil procedure which is a current law which is a type of loser pays?

Mr. SCOTT. It is my understanding if you bring a frivolous lawsuit, then you can have attorneys fees assessed against you. I agree with that if it is frivolous. I am not supporting frivolous cases. A lot of cases that are not frivolous, it is a close call. You do not know the people are going to lie about the color of the red light, and you lose your case because of that. That is not a frivolous case.

Mr. GEKAS. It still remains, under your definition, to determine whether or not it is frivolous, but you would favor loser pays in that situation?

Mr. SCOTT. I would favor loser pays as a sanction against a frivolous lawsuit, but not against a meritorious law suit.

Mr. GEKAS. Nobody does.

Mr. SCOTT. If someone in good faith, if someone brings a good-faith lawsuit, they ought not be threatened in the way this loser pays threatens them if it is a close call, and you lost a close case, you not only lose your case, lose all you are putting into the case, you lose your house, lose your kids' education for having dared to come forward with a case that was meritorious, you just did not win. I do not agree with loser pays to put people into bankruptcy for having dared to come into court to vindicate their rights in good faith.

Mr. GEKAS. Mr. Chairman, if the gentleman will yield further, if we are to demonstrate to the gentleman from Virginia that none of the thoughtful, reasonable loser pays provisions that we are projecting does anything except militate against frivolous suits——

Mr. SCOTT. Reclaiming my time, that is not what it is.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. SCOTT. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding. First, let me say is it not that the situation a defendant is placed in right now, they have absolutely no choice about being brought into court? They are made a defendant, and even whether the case is frivolous or has a close call, they have to bear risk, they have to bear attorneys' fees, no matter what their background is. They may be poor, they may be middle class, they may be a small business, they may be a large business. They still have to bear that risk.

In a contingent fee case, you see the ads in the paper all the time now, no fee if no recovery. No risk is the message, and do you not think there should be something on that situation that the plaintiff has to look at?

Mr. SCOTT. I would say the present law provides if people have a bona fide claim they want to bring to court, they have their rights they want vindicated, if they have been ripped off by a business, if they are trying to get money they loaned to somebody and they want to get it back, there are technicalities in the law they may not be able to get it back. Whatever the reason they are in court vindicating their rights, they ought to be able to come forward without having to bet their house and kids' education on the outcome.

Mr. Chairman, I only have a short period of time, and all that I am asking, Mr. Chairman, is we not change this law, we not force people into a situation where they have to bet their house in order to get what they deserve. That is not right.

This bill ought to be defeated. The courts are not only for those that can bet tens of thousands of dollars on the outcome, it is for average citizens that can come into court to vindicate their rights.

Mr. MOORHEAD. Mr. Chairman, I yield 10 minutes to the gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. I thank the chairman for yielding and for his hard work on this bill, which I think is a very good bill.

I rise in strong support of it. This bill has three provisions, all of which are geared toward bringing more common sense to our legal system.

The first deals with the losing party in a lawsuit under certain circumstances paying the winning party's attorneys' fees, limited to just 10 days before trial, through the trial, limited to not exceeding the amount they paid their own attorney and limited by other discretion given to the judge; I think this is eminently reasonable and allows the award of attorneys' fees only in cases where they party who is the losing party, whether it is the defendant or the plaintiff, is unreasonable, or has a frivolous action or a nonmeritorious action.

I would say to the gentleman from Virginia that he recognizes that this, even taking his point of view, is a substantial improvement over the loser pays provision that was in the bill from his point of view. He voted for this amendment in the committee.

Mr. SCOTT. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Virginia.

Mr. SCOTT. I will acknowledge that your amendment in committee made the bill less worse than it is.

Mr. GOODLATTE. Thank you.

Mr. SCOTT. I will also acknowledge that you have to try the meritorious good suits and the frivolous suits under the same procedure, and people coming into a lawsuit do not know whether they are going to lose in many occasions, and ought not be, when discussing whether they are going to bring the suit or not——

Mr. GOODLATTE. The gentleman's point is correct. The same thing is true of a defendant, whether that be an individual, regardless of their economic background, whether that be a small business person whose business could be lost, the bringing of the lawsuit imposes risk upon that party; it does not impose risk upon the plaintiff.

Now this changes that in this respect, it says that if the party, if a suit is filed, and the parties negotiated in good faith, then the losing party in those negotiations will be responsible for the prevailing party's attorneys' fees limited, as I described earlier, when it occurs that the losing party's recovery in the case either being a verdict against them or a verdict lower than the amount that was offered by the defendant occurs, and it just seems to me in every single case this would apply the defendant or the plaintiff if they do not prevail is shown to have had: First, a nonmeritorious case, and second, not to have prevailed in the case, to not having been reasonable in the case. For example, if the plaintiff sues the defendant for $100,000, the defendant offers the plaintiff $50,000, the plaintiff turns that down and goes into court, if they get an award greater than $50,000 but less than the $100,000 they sued for, there is going to be no award of attorneys fees; if they get something less than $50,000 and they were up at $100,000, they were unreasonable in their negotiations and they should be required to compensate the reasonable party that in good faith offered to settle the case or a defendant who feels there is no merit to the case and offers to dismiss the case because it has no merit and they insist on going into court, they ought to suffer some exposure for liability and not simply have the system we have right now where it is estimated, here is an article by George McGovern of all people just published in the news very recently.

□ 1515

This was just published in the newspapers just recently, "America Must Curb Its Lawsuit Industry." He says:

> First, we must put a stop to the frivolous and fraudulent lawsuit. It has been estimated at a meeting of the American Board of Trial Advocates that a fourth of all the lawsuits filed in the United States are either frivolous or fraudulent. Another study by Harvard University on medical injury and malpractice litigation found that 80 percent of the participants in those suits suffered no real injury as a result of medical negligence. Attorney sanctions should be strengthened to keep frivolous or fraudulent cases out of court.

Mr. McGovern speaks from his own personal experience. He started a business in Connecticut. He had a small hotel there, and, after successfully defending against two slip-and-fall cases at the hotel, discovered that, while he was successful in defeating each one of these cases that did not have merit, he in each case spent large sums of money defending the case which never should have been brought in the first place.

So, Mr. Chairman, it seems to me that we are being entirely reasonable and we are doing this for the benefit of all parties involved, plaintiffs and defendants, and, more importantly, we are doing this for the benefit of consumers because, if we use this to encourage settlement of cases, to cut down on the amount of litigation, to cut down on the amount of court time, and, if we can use this to encourage or discourage the bringing of frivolous suits and fraudulent suits, the price of goods and services are going to be reduced in this country because anybody who offers a product for sale has to factor into the price that they sell that product for the insurance they pay and the other legal costs they have attendant to that, and in addition, Mr. Chairman, the cost of insurance would be reduced if these cases could be screened out.

This is an effective mechanism for screening them out, and I urge the passage of this bill.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I am glad that the gentleman is taking some time in general debate because I want to debate early between ourselves the negotiations that the gentleman and I have been carrying on and what the final formulation might be if the loser pays.

I say to the gentleman, "You and I had discussed, even before markup, the possibility of utilizing the Michigan rule, to which I referred to before. In that case let me give the hypothetical and see if you agree. I offer—as a claimant I claim $100,000, and you, the defendant, offer $50,000, just like in your example that you gave the gentleman from Virginia. But in applying the Michigan rule, which I looked upon with favor, if we stopped there and were hard set that those two figures, and it moves into trial, the figure, for the purpose of loser pays, becomes the median between the two at $75,000. So then, if the verdict comes in at $76,000 or above $75,000, then the defendant has to pay all the costs."

Correct; under the Michigan law?

Mr. GOODLATTE. That is correct.

Mr. GEKAS. And if it comes under $75,000, at $62,000, or $73,000, or whatever, then the plaintiff would have to pay the—because the median figure was not met.

Now I know the gentleman agrees with me when I say to him and I say to the Members, "This stimulates and urges negotiation because, when we're sitting on the other side of the table, you and I, and I'm at $100,000, and you're at $50,000, and we know that $75,000 is going to be the point at which the attorneys' fees costs are going to be relegated, then maybe I will—well, look, I'll settle for $87,500, or you move it up to $62,500, that type of thing."

Mr. Chairman, does the gentleman agree with me that that does stimulate a negotiation?

Mr. GOODLATTE. I would agree it stimulates negotiation.

Let me say that the concern I have is that the difference between the Michigan rule that the gentleman is articulating very accurately here and the bill, as it is currently drafted, is that under the current circumstances only when the Plaintiff meets or exceeds the amount of their demand will they get attorney fees. Only when the defendant keeps the plaintiff below the amount of their settlement offer will the defendant get attorney fees, and in the area in between that $50,000 to $100,000 no one, no party, pays the other party's attorney fees as the bill is written.

I say to the gentleman, "You would make it razor sharp by saying, if it's 75 thousand and one dollar, the plaintiff prevails, and the defendant pays his attorney fees. if it's $75,999, the defendant prevails, and the plaintiff pays his attorney fees," and I really don't think the merit of whether or not a case was reasonable ought to fall on one dollar. That can never happen.

Mr. GEKAS. Will the gentleman yield further?

Mr. GOODLATTE. Let me finish this. That can never happen under the circumstances we currently have in this bill because, if it got that close together, $1, or even $1,000, or $5,000, the way the bill is written they will close that up. They will not go to court over a difference of a few dollars. But in the gentleman's case they are between $50,000 and $100,000, and they will often decide that it is not fair to go to court. It will put more pressure on them to settle because of that razor sharp limitation, but in the end the decision will be made based on the difference of $1, and that is the hesitation I have with that——

Mr. GEKAS. Mr. Chairman, will the gentleman yield further?

Mr. GOODLATTE. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. That razor would be brought down on the neck of the $50,000 to $100,000 proposal that the gentleman and I are using as an example, and even under the main language of the bill, because if the verdict is $49,999, are we not making an arbitrary cut there as to who is——

Mr. GOODLATTE. Reclaiming my time, Mr. Chairman, the gentleman is correct, but the difference is that in my case the plaintiff is at $100,000 in the case, and the defendant is at $50,000 in their settlement offer, so if the plaintiff recovers $49,999, if the gentleman will, the plaintiff was off by $50,000 in terms of their offer, and there is that $50,000 gap between when one side has to pay attorney fees and when the other side has to pay attorney fees. In the gentleman's case there was a $1——

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has expired.

Mr. MOORHEAD. Mr. Chairman, I yield 2 additional minutes to the gentleman from Virginia.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, what we are really saying—I do want to predict how the argument is going to go later when the amendment process begins.

The gentleman is saying that the present language, not the Michigan rule, but the present language, is more likely to deter frivolous suits because the gap between the $49,999 and the $100,000 is so great that that proves that the plaintiff should not recover because it is more or less frivolous or——

Mr. GOODLATTE. I do not know that it is more likely to deter frivolous suits, but I do think it is more fair in the sense that one dollar should not decide the difference between who gets attorney fees and who does not, and that is the effect of that adding that additional point in there in the Michigan——

Mr. GEKAS. If the gentleman would yield further, I would be willing to talk to the gentleman from Virginia on the other side, and the gentleman from North Carolina on the other side, and the gentleman from Michigan at a sidebar following the general debate to see which of the two approaches, assuming that they are going to have to accept, or at least recognize, the possibility that loser pays is going to find its way into this law, to see which of these two approaches they would find acceptable. If they say, "Go back to your closet," I will do that. But if they want to discuss it with me, that discussion that I will have with those three gentlemen will make me determine whether or not I will advance my amendment when the time comes for general—for the amendments.

But in either case, Mr. Chairman, I would offer an amendment to tighten up the second offer that is made in this bill's language after the first negotiations are ended.

Mr. GOODLATTE. Yes, that amendment would be helpful, and I think it is a good amendment.

Mr. GEKAS. All right.

Mr. CONYERS. Mr. Chairman, I yield 15 minutes to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I thank the minority ranking member for yielding this time to me.

Mr. Chairman, I want to spend a few minutes putting this bill in a little bit different context than the discussion that has been taking place here because I think my colleagues and the American people really need to understand that this bill is part of a larger package of bills, and they need to have a better understanding of what that package of bills, when considered together, will yield in the legal context.

This bill is called the Attorney Accountability Act of 1995. There is a Securities Litigation Reform Act which will follow this bill in sequence. And then finally there is a bill which we around this body call the Tort Reform Act, which proposes to reform product liability cases and punitive damages in a general way, and I do not think we can talk about this particular bill without putting it in the context of this whole reform package in having a better understanding of what my colleagues in this body are trying to do.

I have some serious reservations about this whole major reform effort because my experience is somewhat different than many of my colleagues in this body, and I represent to some extent a constituency that is a little different than many of my colleagues in this body. The experience that I bring to this body is one of having practiced law for a total of 2 years before being elected to Congress, and, while I am aware of general assumptions, jokes, negative comments that people make about lawyers and the representation that lawyers tend to have in this country, my experience has been one of being on the side of lawyers and clients who were fighting to secure their constitutional rights and fighting to be free of the invasion of the State into their homes and lives, and fighting to have equal rights in a system which sometimes does not assume that they ought to have those rights, and in my experience lawyers have played an important and valuable role in protecting the rights of people, and I think, if we look at the totality of these three bills that we are debating this week, there are some troubling assumptions that underlie these bills.

One of those assumptions is that most lawyers are bad or dishonest. Well, I am not going to come into this body and try to tell my colleagues or tell the American people that there are not dishonest or bad lawyers, but I would come into this body and say to my colleagues that for every one bad and dishonest lawyer, I will submit to my colleagues, that there are thousands of good and honest lawyers who take their responsibilities to represent their clients seriously and view that as a serious responsibility.

The second assumption that I think we need to be aware of, as we debate these three bills that are on the floor this week and we need to be very careful about how we approach our assumptions on this issue, is that when our courts get clogged and there are backlogs in the court system, that poor people should not have access to the courts anymore, that the court system should be the place and province only of people who are dealing with big litigation, dealing with lots of money and major business rights that may be at play.

□ 1530

That is one of the assumptions that I think is implicit in this whole loser pays system, that everybody who comes in to the court, either, well, both, really, has a case which is frivolous or that they can afford to pay the cost of the other side in the litigation. They have big bucks, so to speak.

Well, think about what we are saying when we talk about the loser pays. It says that even if you have a valid lawsuit, a good lawsuit, it is going to cost a lot of money to bring that lawsuit. And if you happen to lose that litigation, not only are you going to have to pay your own litigation expenses and legal fees, you are going to be called upon to pay the litigation expenses and legal fees of the opposing party.

Now, this bill that we are debating today started off, as my colleague, the gentleman from Virginia [Mr. SCOTT], has indicated, to be a lot worse in this regard than the bill that has come to the floor. I am the first to commend the gentleman from Virginia [Mr. GOODLATTE] for taking what was an absolutely terrible piece of legislation and revising it somewhat in committee to make it a better piece of legislation. But I would submit to my colleagues that this bill still assumes that poor people really do not have a place in the legal process and they are going to be discouraged from bringing lawsuits to court.

I would submit to my colleagues that if this plays out, we need to be careful that we do not send the wrong message to poor people who are finding a legal process that is available to them. Because if the legal process is not available to poor people to resolve their disputes, then what process is available to poor people to resolve their disputes? Would we have more people go back to the days that they are dueling and challenging each other in the alleys and streets of America? Or would we make available to them on a fair and equitable basis the right to have their grievances addressed in a court of law?

There is a third assumption that I think is implicit in these three pieces of legislation that we need to be leery of. That assumption is that we should somehow in this body be protecting the rich and subjecting ordinary people to the whims of the rich business community to even their experimentation and their bad motivation, because I think by the time we get to the third bill and we start to see that we are putting limitations on punitive damages and we are redefining the standards that apply in products liability cases and in other tort cases, to increase the standard to a higher standard of care or a lesser standard of care for the manufacturer and a higher standard of proof for people who seek to come into court and file a claim against the manufacturer, that we are beginning to take sides in this issue.

I want to get through this not in the context of this particular bill but in the total context of these bills, all of which started out as one big legal reform package and, I would submit to my colleagues and the American public, will end up back together in one big reform package, if we follow the policy that was followed last week to split these reform measures into little pieces, pass the little pieces one at a time and then at the end of the week come back and make a motion to consolidate all of them into one package so that they can check off or, as I said earlier, punch another little hole in their Contract With America and check off another one of those little contract items, which is what, I submit to my colleagues, this is all about.

So the effort in these bills is not only to limit access to the courts. That is what loser pays, in my estimation, is all about, because any time somebody is poor and wants to go and file a lawsuit, they are going to have to think not only once, twice, or thrice, but many, many times before they will have the nerve to file a lawsuit, even if they think their claim is meritorious.

It also has the effect, these bills, of limiting the possibility of plaintiffs' recoveries, by making it more difficult to win the cases by raising the legal standards, by raising the legal fees that must be paid to the other side if you lose the case, and even by limiting the amount of attorney fees that plaintiffs can win and be awarded if they win the case to correspond with the amount that was paid by the defendant in the case to his or her counsel.

Now, is that not a pretty radical idea? The plaintiff, which comes into court and has the burden of proof in every case that is filed, all of a sudden, even if they have a meritorious case and they win the case, the maximum that they can recover in attorney's fees from the other side is the amount that was paid by the other side to the defendant in the case.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, the reason that is in there is to limit the exposure of parties that may be lower-income parties because the converse is true as well. If the defendant prevails, the plaintiff cannot pay any more than he pays himself.

Mr. WATT of North Carolina. Mr. Chairman, reclaiming my time, I did not think the gentleman was going to get defensive as quickly as he did, to be honest with my colleagues. But that should show everybody exactly the point that I am making here. This is a radical concept, and if we are going to have equity, that situation ought to be flowing both ways. It should not just be flowing one way.

Let me make one final point, and then I will be through. We will have the opportunity to debate this back and forth during the course of this whole week, I expect, that we will be on this legal reform package.

The final point I want to make to my colleagues and to the American people is that somebody in this process ought to be worried about protecting ordinary people in our society. I submit to my colleagues that neither one of these bills, neither this bill that is coming to the floor today, the securities litigation bill that will be right behind it, nor the products liability limitation and punitive damages limitation bill that will come later in the week is designed to be in the interest of ordinary American people. We have gotten to the point in this body that we are so consumed with lifting the burden off of business that the pendulum has swung completely to the other end of the spectrum.

I would submit that the American people ought to be concerned about that and my colleagues ought to be concerned about it. We ought to be opposing this bill.

Mr. MOORHEAD. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois [Mr. FLANAGAN] for a colloquy.

Mr. FLANAGAN. Mr. Chairman, I thank the gentleman for yielding time to me. I appreciate the gentleman's leadership on H.R. 988 and would like to address a question to the gentleman regarding section 3, the honesty in evidence provision.

As the gentleman is aware, this section establishes some guidelines for determining the admissibility of scientific expert testimony. It is my understanding that in consideration of this bill, the committee intended that H.R. 988 serve to codify the holding in the Supreme Court case Daubert but felt that the specific criteria in Daubert were not meant to be exhaustive and, therefore, did not limit the statute facially to such criteria.

Instead, the committee anticipates further expansion of the criteria through continuing appellate review. This criteria, namely testing, peer review, and publication, are certainly criteria that should be utilized in determining scientific validity and reliability.

Mr. Chairman, is this a correct interpretation of the intention of this bill?

Mr. MOORHEAD. Mr. Chairman, will the gentleman yield?

Mr. FLANAGAN. I yield to the gentleman from California.

Mr. MOORHEAD. Yes, it is a correct interpretation of the committee's intent. The value of Daubert is that the Court spoke extensively about how rule

702 should be applied. In our report we make it very clear that we intend to codify Daubert and that we expect it to be further developed through case law. As the Department of Justice pointed out in its submission to the subcommittee, the Daubert decision is complex and cannot be easily distilled into a word or two of black letter law. That is why we did not just adopt the four standards set forth in Daubert. We intended to both codify and complement the standards established in Daubert.

With the judge acting as the gatekeeper, section 3 is intended to prevent lawyers from taking advantage of the court system.

Mr. FLANAGAN. Mr. Chairman, I thank the gentleman. I was glad we could clear that up.

Mr. MOORHEAD. Mr. Chairman, I yield myself 2 minutes.

Comments have been made about this legislation helping the rich at the expense of the poor. My clients throughout the 25 years that I practiced law were basically poor people. I ran the legal aid service in Glendale for 16 years. I want to help people that cannot help themselves. But I can tell my colleagues, poor people are more apt to be the defendants than they are the plaintiffs. Rich people are more apt to be the plaintiffs than are the poor.

I think this legislation helps the poor defendant who otherwise would be bankrupt by frivolous cases that are filed against him. And by poor we do not necessarily mean people who have no money whatsoever, but people who are middle class or below, as far as their financial ability is concerned. They can be bankrupted very easily by a frivolous lawsuit that is filed against them and the little that they have taken away from them.

The portion of the bill toward the end that deals with rule XI, I tried to defeat several years ago when the law was changed after 10 years of successful existence.

That part of the bill is a reenactment of legislation that we had that was effective for 10 years and that the courts liked overwhelmingly because it helped them when lawyers were doing things that should not be done and filing frivolous cases or frivolous pleadings at the expense of people at the other side.

I think we have a good bill. I think we have a bill that is aimed to help all litigants, includes the people who do not have means, who need to be helped, but who are very badly hurt by the present system.

I think we need this change. For that reason, I am for it. I think those Members that have said that it is aimed to hurt the poor just do not understand the legislation, because that is not what it does.

□ 1545

Mr. CONYERS. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, I rise to point out the problems that we are confronted with, which are multiplying rapidly. First, the gentleman from Pennsylvania has suggested that rule 68 somehow has application here. I think he challenged me or someone on this side as to whether we support rule 68 or not.

I would hope he would revisit this important Federal rule, because it has nothing to do with this bill in terms of assessing attorney fees. It has a lot to do with assessing costs of the parties, but it does not apply to the consideration of attorney's fees that are taking up our time at the moment.

Second, Mr. Chairman, there is another additional reason why loser pays is not a highly desirable proposal that we codify into law at this time. It is true, we do have a Federal rule that permits the court to assess pay to any of the parties that he considers to be frivolous, upon a motion properly brought. But this bill changes the option that the court has to mandatory consideration, that the court will assess attorney fees in these kinds of situations.

It is there that I think we need to examine this vary carefully for the prejudicial impact that it has on plaintiffs who may be working-class people, and heaven help them if they are poor. They do not have anything to put up.

That gets to another point that has been made about cases that are being accepted without cost. They are seen on television advertised all the time.

First of all, an attorney is unlikely, after hearing a person come into his office, that he would accept a case that he does not see some merit in, because it would be a cost he would be bearing, so many of those cases are washed out. In a way, those attorneys are doing the bar a great service.

On the other hand, those that advertise that they will take tort cases without pay for a plaintiff are doing the plaintiff a great service, because if a poor person does not have the means to pay for a lawsuit, he or she is then put upon to go through the entire list of dozens, sometimes hundreds, sometimes more than hundreds of lawyers to find out what office, what lawyer in which office, might entertain their case, assuming that they have merit.

Therefore, Mr. Chairman, it is very important that we understand that these kinds of cases exist; that poor people do have important tort claims; that they have no way of financing the attorney as they go along.

Mr. Chairman, let me turn to the goal of deterring frivolous lawsuits, which everyone would like to do, even without statistical information. Notice that this general debate, like the debate in the Committee on the Judiciary, has gone on without one statistic ever being cited to determine that this is the problem, none. Now the loser pays provision goes well beyond it.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. CONYERS] has expired.

(By unanimous consent, Mr. CONYERS was allowed to proceed for 2 additional minutes.)

Mr. CONYERS. Mr. Chairman, the loser pays provision now gives a wealthy party or a corporate party the power to slam the courthouse door shut in the face of a working class individual, or heaven help him if it is a poor individual, or an individual who was injured by the very claim that they are suing and seeking to get recompensed.

The proponents of the bill say that this measure will encourage the parties to settle, but our goal, however, should not be to encourage the parties to settle at any cost. The goal should be to encourage reasonable settlements with all parties on a level playing field.

This bill encourages unreasonable settlements in cases where the liability is a close question and there is great economic disparity between the parties. We are now turning the negotiating into rolls of the dice that neither party can accurately predict what will happen if the case is a close one.

Remember, we are not talking about cases with no merit, or cases that have a clear potential, we are talking about close cases, and close cases are the ones that are being forced to be settled at any cost.

Mr. Chairman, I think that is a very difficult proposition. I would like Members to know that former Senator George McGovern on television this week is now beginning to virtually recant the ads we have all been seeing. He said "I'm not sure Federal legislation is the way to go," and he disavows his remarks in the ad. I would say sorry about this, fellows, I know they wanted to rely on George McGovern to build their case here; that "frivolous lawsuits helped drive my small inn in and out of business."

Like most of those who claim that suits, not competition or other factors, are the cause, he now says that that comment is an exaggeration, and that his biggest problem leading to bankruptcy was the economic national downturn that he and his competition with other hotels sustained.

Mr. MOORHEAD. Mr. Chairman, I yield 5 minutes to the gentleman from Tennessee [Mr. BRYANT].

Mr. BRYANT of Tennessee. Mr. Chairman, I rise today in support of H.R. 988.

I believe access to the courts is an intricate part of our freedom.

And so I would not want to discourage anyone with a legitimate case to seek a judgment for it.

But I do want to discourage the thousands of frivolous and senseless cases which cost taxpayers and consumers billions of dollars and bog down our courts.

And that is exactly what H.R. 988 will do.

H.R. 988 will encourage a complainant and a defendant to work out reasonable agreements and settlements before they seek court action.

From a logistical and economical perspective of the courts, it makes sense for both parties to work toward—and arrive at—a mutual agreement.

The issue here is whether or not it is our responsibility to encourage complainants and defendants to do that.

I think it is our responsibility.

If I am a complainant seeking $100,000 in a case, and the defendant in my case offers me $70,000 and I refuse it, and a jury awards me $60,000, it makes sense that I should be required to cover at least some of their legal costs.

After all, had I taken the offer, I would have eliminated much of our legal fees and given the court more time to address other cases.

This legislation will send a clear message to greedy litigants and their lawyers who milk the system.

And that message is very simply this: Our judicial system and America's consumers and taxpayers will no longer pay for the selfish and greedy behavior at their expense.

Mr. Chairman, as an attorney, I can tell you we must reform our litigation procedures.

If we do not, we have only higher product costs and insurance rates to look forward to as well as a bogged down court system.

I urge my colleagues to support H.R. 988.

Mr. CONYERS. Mr. Chairman, I am delighted to yield 3 minutes to our distinguished colleague, the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I just wanted to comment on some of the things we have heard. We have heard about this poker game people are going to have to play in order to figure out whether to settle or not to settle.

Mr. Chairman, some of these cases are very difficult to evaluate. They are impossible to judge by $1 or $2 or $50. Sometimes you do not know exactly what to settle for. Some people just want their day in court. Whatever happened to that?

Mr. Chairman, we have heard a lot about what happens to people who are poor when they come to court. Let us talk about a middle-class person who happens to be just a regular homeowner, has a little money set aside for college education for the children, who has been ripped off in a real estate deal or been maimed in an automobile accident when they say they had the green light and the other side said they had the green light; your client knows that the light was green, but you do not know whether you can win that case or not when you discuss the case, whether to bring it with your lawyer, and he says, "You have a 70 percent or 80 percent chance of winning, but there is a chance we might lose the case and you will have to pay tens of thousands of dollars for the other side for their attorney's fees for having brought the case that you thought that you were in the right;" you are going to lose your house, you are going to lose the money you have set aside for the college education for your children.

You are there in a position where you do not know whether or not you can even afford to take the chance, the outside chance, that you might lose the case. That is what this loser pays does. It discourages the bona fide cases for people to have their day in court, middle class, poor, or otherwise.

It does not affect the corporations that can just put this as the cost of doing business. It affects the right of an average man or woman to have the courts mean what they say they mean, a place to vindicate your rights and to resolve disputes.

Mr. MOORHEAD. Mr. Chairman, I understand the minority has no further speakers.

Mr. CONYERS. Mr. Chairman, I would ask now much time we have remaining on both sides.

The CHAIRMAN. The gentleman from California [Mr. MOORHEAD] has 19 minutes remaining, and the gentleman from Michigan [Mr. CONYERS] has 24 minutes remaining.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am in possession now of a letter that has been sent to the Speaker of the House from the Attorney General of the United States, Janet Reno, as well as Abner Mikva, counsel to the President, which I will include in the RECORD. I would like to quote one part of it.

> First, we believe that fee-shifting provisions such as that in H.R. 988 are unfair, unnecessary, and unwise. That provision would, with limited exceptions, require the court to order one party to pay attorney's fees of another if the former did not secure final judgment more favorable than offered by the latter.
>
> While such fee-shifting may be appropriate in some contexts, a blanket fee-shifting rule would work a significant injustice, particularly against parties that have fewer resources. Such a loser pays rule is alien to the American legal system, and we know of no empirical evidence that such a rule would address the primary problems facing our civil justice system, the slow pace and high costs of justice.

I hope our colleagues will consider this as we move forward.

The letter referred to is as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, March 6, 1995.

Hon. NEWT GINGRICH,
Speaker of the House, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: This week, the House of Representatives is expected to consider legislation that would significantly reform the American legal system. While we believe that our legal system can and should be improved, several provisions that the House is likely to consider are deeply problematic; therefore, we write to express our concerns and reservations about several of those provisions.

Our comments divide into three sections, but are by no means exhaustive on this subject. Instead, we focus on provisions that, based on our extensive legal experience, are simply too extreme—provisions that are unfair and tilt the legal playing field dramatically to the disadvantage of consumers and middle-class citizens.

First, we believe that fee-shifting provisions such as that in H.R. 988, are unfair, unnecessary, and unwise. That provision would, with limited exceptions, requires a court to order one party to pay the attorney's fees of another if the former did not secure a final judgment more favorable than offered by the latter. While such fee-shifting may be appropriate in some contexts, a blanket fee-shifting rule would work a significant injustice, particularly against parties that have fewer resources. Such a "loser pays" rule is alien to the American legal system and we know of no empirical evidence that such a rule would address the primary problems facing our civil justice system—the slow pace and high cost of justice.

Second, several of the provisions concerning product liability in H.R. 1075 are also unfair and unjustified. As a general matter, we believe that product liability reform should be enacted by the States, rather than by Congress. This area of law has traditionally been the purview of State courts and legislators; if changes are needed, those changes should generally be left to the States. In fact, product liability is one area in which States truly have served as "laboratories of democracy"—over the last twenty years virtually every State has significantly reformed its legal system as it relates to product liability.

We find certain of the preemptive provisions under consideration particularly puzzling in light of the contemporary and ongoing debate about the extent to which the Federal Government has usurped responsibilities that appropriately belong to the States. On issue after issue, broad bipartisan groups have emphasized the advantages of devolving authority to State and local governments. As in other spheres of government, proponents of Federal restrictions on traditional State and local prerogatives bear a heavy burden of persuasion in justifying new Federal intervention. For several provisions in particular, we believe that that burden has not been met.

For example, we believe that the preemption of State law to establish differential treatment of "economic" and "noneconomic" losses is both unjustified and unsound. This provision (section 107 of H.R. 1075) would severely and unfairly prejudice, among others, elderly citizens, plaintiffs whose losses include pain and suffering, and women who suffer loss of their reproductive ability.

We are equally critical of section 201 of H.R. 1075 which establishes an arbitrary formulaic limit on punitive damages. Virtually all parties agree that, in certain rare circumstances, punitive damages are appropriate: occasionally, an award of punitive damages is the only way to bring an offender to justice, or to keep a dangerous product off the market. While every State maintains judicial controls to revise or reverse punitive-damage awards, there is not any *a priori* basis for fixing a ceiling on the award of punitive damages, measured either by a dollar amount or as a multiple of compensatory damages; instead punitive damages are and should be imposed based on the facts and circumstances of the particular claim.

Perhaps most disturbing of all is the fact that section 201 would mandate certain procedural rules in every civil action filed in Federal and State court. This provision—even more than those limited to product liability actions—represents a disturbing and unprecedented federal encroachment on two hundred years of well-established State authority and responsibility.

Third, with regard to reforms of the Federal securities laws, we share the concerns articulated by SEC Chairman Levitt. In this Federal regime, congressional activity is more appropriate, and we agree with the Chairman that the securities-litigation system can be improved. Our securities laws must encourage innovation and investment, while at the same time deter white-collar crime and ensure the integrity of the financial markets. The experience of the past decade has shown that taxpayers and honest business people can suffer greatly from fraud and improper behavior. We support reasonable reforms to this system but believe that certain provisions in H.R. 1058 are problematic, while others are manifestly unfair and could lead to inadequate deterrence against financial fraud. We hope to work closely with Congress and the SEC to address these concerns so that sound legislation can be enacted to correct the problem of frivolous suits and enhance the integrity of the securities markets.

In closing, we would emphasize that we believe that our civil justice system can and should be reformed—but reform must be fair to all parties and respectful of the important role of the States in our Federal system. We have some ideas that would be constructive. While we oppose the particular provisions mentioned above, we look forward to working with the Congress to develop thoughtful and balanced reform of the American legal system.

Sincerely,

JANET RENO,
Attorney General.
ABNER J. MIKVA,
Counsel to the President.

□ 1600

What we are suggesting in this bill before us now in terms of whether someone should be punished for bringing a suit that may turn out to be meritorious is that we are saying here that we are going to pass a law in the Congress that says that people with no money must sit on their rights for fear that they will be totally bankrupted in the event they lose the suit. That is precisely what this bill is about that is before us today. And that if they hesitate for a lengthy enough period, the statute of limitations will kick in and their claim will have expired because it was not timely brought.

What is a working person to do? Forget a person that has no money and cannot even put up anything or lose anything or lose their bank accounts or their home. But what about a working person gambling on pursuing a lawsuit, if he could be exposed to paying both his attorney's fees and the defendant's fees? The answer is obvious, that he is going to hesitate.

Why is it that we are going after working people, someone earning $30,000 should now be caught up in the claim that the wave of litigation must now be somehow subsided by making them pay both attorney's fees of all parties in the event that they do not succeed?

Let us look at a typical case that might be brought to an attorney's firm. What if a person sought to become a plaintiff and thought that there was a 70–30 percent chance that he would prevail. Under the current law, a person could be very justified in determining to go forward. But under H.R. 988, he would be very prudent to hesitate and perhaps decide not to go, because he is not going to win. He may not win. And why should he risk this huge loss under these circumstances?

Mr. MOORHEAD. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from California, the distinguished subcommittee chairman, and the floor manager of the bill.

Mr. MOORHEAD. First if he is as broke and poor as you say, of course, I would not want a judgment against him because it would not be worth very much. But there is a provision in the law that we are promoting that says if it would be manifestly unjust, the court does not have to order those attorney's fees.

Mr. CONYERS. You have another provision where we are changing the law from "may" to "shall."

Mr. MOORHEAD. But it still says that those class of expenses if they would be manifestly unjust, there is an exception.

Mr. CONYERS. Then I take it that the gentleman from California agrees with me that a working person bringing a suit where he thought he had a 70-percent chance of recovery would be under the gun if he had to go into court with the assumption that if he did not win, and he thinks he only has a partial chance of winning, that he would be stuck with attorney fees. Are you telling me that this bill would exonerate him from having to pay the defendant's fees?

Mr. MOORHEAD. If the judge determines that it would be manifestly unjust for him to order those fees, he can avoid them.

Mr. CONYERS. Why are you tightening the rope around the neck of a plaintiff, a working class plaintiff in the first place?

Mr. MOORHEAD. The rope is going to be around anyone that has money far more than it is going to be around the neck of the working class person. I would rather have one judgment for fees against one man that had a little money than I would 10 or 50 or 100 that had none.

Mr. CONYERS. So would I, but that is not what is in the bill unfortunately. I quite agree. But why would we make this a more difficult lawsuit for a working person who thinks he might have a 70-percent chance than he already has? I mean, if it is a frivolous lawsuit, he is going to be subject to attorney fees under the present law.

Mr. MOORHEAD. All he has to do is to make a reasonable offer.

Mr. CONYERS. You are tightening the tourniquet. You are making it tougher on people to bring lawsuits. You are making it impossible for an injured person without means or resources who may have an excellent lawsuit to bring them at all because we keep talking about, what about a person that walks into a lawyer's office having read a television advertisement saying that he will take the case without any up front payment of attorney fees on a contingency basis? What is wrong with that?

The attorney that would take a case knows that if he does not have a reasonable case, he is not going to get anywhere, and he is not even going to get paid by his own admission.

So I would urge the gentleman to consider the harm that we are bringing to working people and people bringing tort suits who may be injured with meritorious claim but may not have the $500 or $1,000 or $3,000 that an attorney might reasonably claim to start a suit.

Mr. MOORHEAD. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from California.

Mr. MOORHEAD. We do not discourage people who have a just claim from filing a lawsuit, and we even give them the opportunity up to 10 days before the case would come to trial to make a reasonable offer of settlement, so that if they have a claim, they believe in their claim, they make a reasonable offer of settlement, and if it is not far above what is eventually ordered by the court, there will be no attorney's fees whatsoever.

Mr. CONYERS. I would like the rest of my colleagues that are a party to this bill to take into consideration the American Bar Association's evaluation of this measure.

They say that the "loser pays" bill as amended, although extensive revisions have been made to this legislation, to the legislation as introduced, and were made by the Committee on the Judiciary, "serious problems remain with the current loser pays provisions of H.R. 988."

"The case has not been made for jettisoning the tradition in this country of requiring each party to bear its own attorneys' fees. While some fee-shifting occurs under some State or Federal statutes and procedures, the heavy burden of persuasion must rest on proposers of such variance from the American rule. The American Bar Association is particularly troubled because of the accelerated timetable under which H.R.

988 has been considered in the House. There has been no opportunity to have this debate.

"The ABA is concerned that H.R. 988 may undermine diversity jurisdiction and will surely encourage undesirable forum shopping. In addition, it imposes a requirement that is inconsistent with the American system of justice. Among the fundamental problems inherent in the current proposal is that it places an extra burden on the poor, the middle class, and small businesses who are entitled by law to choose a Federal forum. This extra burden is unrelated to the merits of their claims. Worse yet, its weight is involuntary when it falls on the poor, the middle class, and small businesses when they are brought to the Federal forum by a litigant much better able to bear the burden of possible fee-shifting. Any such procedure could only be justified if it provided safeguards to allow reasonable access to the Federal courts for all litigants and provided safeguards against an abusive misuse of the fee-shifting procedures. Unfortunately, the exemption and the relief provided for manifest injustice do not begin to level the playing field."

For shame, that out of the Committee on the Judiciary of the House would come a bill of such draconian magnitude that we are now asking working people, middle-class people, poor people now to bear the corporate defendant's fees if they do not win. There are too many good cases that are so close that not even the most skillful plaintiff's counsel or defense counsel can predict the outcome. There are too many variables. We see that in the history of civil litigation.

I am stunned by the punitive nature, the severity and the unfairness that is all rolled together in this one bill to say now that the historic tradition of the American system of justice should be jettisoned this week because we are tired of so many frivolous claims being brought.

I urge that the Members reject this bill and any of the feeble attempts to improve it that may ensue on the floor.

Mr. Chairman, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I think that this bill has been totally misdescribed throughout the debate here. There are going to be far more people that have money, and have the ability to pay, that have to pay the other side's attorney's fees than will ever be able to be paid by these poor defendants that we keep talking about. I would surely much rather have an order for attorney's fees from some of the main corporations than I ever would someone that is as described in this bill.

We do not have a copy of the letter that supposedly came from the Attorney General's office, but I suspect they do not, also, understand what is in this bill, because it just is not as described in the letter that was written and I hope that we can get a copy of that letter.

Mr. Chairman, I yield such time as he may consume to the gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. I thank the gentleman for yielding me the time.

The gentleman is correct. This bill has been very grossly mischaracterized by the other side. The whole purpose of this provision is to promote reasonableness in bringing lawsuits, reasonableness in settling lawsuits, and will have the ultimate effect of seeing more suits settled and fewer frivolous and nonmeritorious suits brought.

This will not have the effect of depriving anything from any plaintiff who brings a meritorious suit in court and it in fact will have, I think, a very positive effect on the cost of goods and services for people who are low income as well as the cost of insurance for people who are low income, auto insurance, homeowners' insurance, et cetera.

This bill is designed to say that you cannot come into court under the pretense that there is no risk to bringing a lawsuit. That is exactly what this does, and it counters the ads that we see time and time again in the Yellow Pages and elsewhere that say no recovery, no fee. That is, there is no risk to you to bringing a lawsuit. So come on in.

Well, there is a risk to society, there is a risk to defendants who are unfairly sued, and that is what this is designed to correct and it will correct it in a way that is fair by limiting the attorney's fees to just those 10 days before trial, through trial, and it will limit it to not more than the losing party pays their own attorney's fees so you do not have the possibility of a deep-pocket corporate party to a suit that wins the case overloading the other party with enormous attorney's fees that they cannot match. It cannot be more than they are paying their own attorney's fees, and for that reason I think this is an entirely reasonable provision that discourages suits from being brought that are nonmeritorious.

Mr. CONYERS. Mr. Chairman, I yield myself 1 minute.

I cannot help but respond to the gentleman from Virginia, a very well-known lawyer on the committee, that this is the kind of law that people, working-class people and poor people, have been looking to get a chance to help them bring their cases into court. I simply find that preposterous.

I think it goes against all of the testimony that we have heard before the committee. For him to suggest that this is just what working-class people need to get into court means that he has now thrown the bill out to the winds and this is just a free-wheeling rhetorical debate.

□ 1615

The American Bar Association, whose letter I just recited, said that the bill would work a harm to just people that the gentleman thinks it would be a benefit to, and I remind the gentleman that the American Bar Association is made up of more defendants' lawyers than even plaintiffs' lawyers.

Mr. MOORHEAD. Does the gentleman from Michigan have further requests for time?

Mr. CONYERS. Mr. Chairman, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Chairman, we have the right to close the debate. I have one more Member who desires time. We will reserve our time.

Mr. CONYERS. Mr. Chairman, if the gentleman is reserving his time to close debate, I yield 3 minutes to the gentleman from Illinois [Mr. DURBIN], a distinguished former member of the bar.

Mr. DURBIN. Mr. Chairman, still a member of the bar but not practicing for about 12 years. But I want to tell my colleagues this a very dangerous concept that we are pushing in this bill. In the course of this week we are going to have two or three pieces of legislation.

I think the most important question any Member of Congress can ask when these bills come before the floor is a very simple one: Who wants this bill? I can tell Members who wants a loser-pay bill: a defendant who, frankly, does not want to be in court in the first instance, and wants to make sure that he can discourage as many people as possible from going to court.

Are there frivolous lawsuits? Yes. Should they be weeded out? Of course. But there are an awful lot of people who do not have the means in their own personal savings or the wherewithal to go to court and to go there with an attorney in an attempt to try to get redress of their grievances. What we are talking about here is as fundamental as our Constitution, the basic rights of individuals, the rights of victims if you will, to come to court. I think all of us understand who practice law that over 90 percent of cases are settled now. This is not needed as an incentive to settle. Cases settle today, both sides try to reach an agreement and in the overwhelming majority of cases they do reach an agreement.

But what this is an attempt to do is to hang a blade over the head of the plaintiff in the closing days before trial and say, incidentally, if you guess wrong, if the jury does not go along with you, not only are you going to have your own expenses, you have to pay the corporation's legal expenses too from the date when they made their offer to settle. I think that is a sad thing.

I also think we ought to put in context what the Republican contract is talking for. At the same time as the

Republican contract is taking away the regulatory authority of the Government to protect consumers and individuals, the contract comes through the back door and takes away the rights of those same consumers and individuals to go to court. This is the first installment.

So we are leaving America's consuming public unprotected in both instances; first, from a regulatory agency which is trying to protect them and second, from their day in court which is their ultimate recourse.

I can tell my colleagues in the practice of law I had in Springfield, IL, most of my clients were working folks who came in and they had never filed a lawsuit before. Something had occurred in their lives, usually some personal tragedy, and they came to me asking for representation. If I told them up front that they had to pay all of their attorneys' fees going in, frankly, they could not have been there. If I told them also there was a chance if we could get a trial they would have had to pay the railroad's attorneys' fees that happened to have the railroad car that ran over and killed one of their loved ones, they might have thought twice about it.

That is what this is all about, this is who wants this bill. Corporate America wants this bill; they want to discourage individuals from bringing actions against big corporations, from beginning to even bring actions against those who have deep pockets, and let me tell my colleagues quite honestly if we go along with this and go back to the British system of loser pay, which they are having second thoughts about at the same time, is a very big mistake, a very serious mistake for the future of this country.

Mr. CONYERS. Mr. Chairman, how much time remains on my side?

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] has 8 minutes remaining.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, one of the complaints that has been lodged against this bill is the unreasonable haste with which it has been brought out of the Committee on the Judiciary, which has five or six of the items of the contract of America which are now being given precedence in the House. And unfortunately the original bill provided that the losers to any claim pay the attorney's fee of the winner. It applied to all of the fees in the case, at least as to that claim and was not tied to any offer whatsoever.

Then we had the modest improvement by the gentleman from Virginia, the famous Goodlatte amendment, which made the bill less worse. It adopted a rule 68 type settlement offer. The loser pays the winners' fees after the date of an offer, and the losing means not doing better than the offer. The award is limited as in the original bill to the plaintiff's own attorney fees, and we are in a real roll of the dice in terms of whether a person can make an offer based upon their outcome. All of which presumes that plaintiffs' lawyers and defendants' lawyers know how these cases are going to come out, which in many instances, particularly if the case is not an open and shut one, is the last thing that any of the parties knows. It is an improvement over the original bill.

Now I am told by the gentleman from Pennsylvania [Mr. GEKAS] to look to my own State for the Michigan-type awards where they split it down the middle and do not get into the crap shooting deal of who made the right offer at the right time so that they would have less attorney's fees to pay.

What we have is an unlevel playing field where the party with more wealth can engage in pursuing a contest against the party with less wealth, no matter how meritorious their claim might be to bring this matter forward and it puts plaintiffs at peril, it puts plaintiffs at peril. It jeopardizes the civil adversarial process that we have honored for so long.

This is yet another provision within the contract with corporate America that we are so anxious to have raised at this time.

I will tell Members one other thing. This is going to jeopardize civil rights lawsuits, and there has been very little said about that at this point, but it is very, very, important that we understand that rule XI is going to impact upon the 1983 Federal rule.

I just want my colleagues to know that the critics are claiming that the infamous 1983 amendment to the Federal Rules of Civil Procedure has turned into a tool for judges and defendants to punish those who pursue unpopular causes of action. Two recent cases show how this can happen, and a lawyer may be litigating at his or her own peril when they are suing the government inside the Federal court, according to some of the lawyers that have been bringing civil rights cases for a lot of time. It is inhibiting civil rights cases which ought to be a new cause for concern to many of us in this Chamber who remember with what difficulty and what great sacrifice we were able to bring civil rights suits to litigation in the first place.

Actions under civil rights based on gender, race or religious freedom could be made infinitely more complex to bring and could further inhibit attorneys representing plaintiffs in this very, very important area of Federal law.

I urge my colleague to please examine this fairly. This is not a matter of being a Republican or Democrat, this is a matter of how the judicial system will work for ordinary people in America. I say the time has finally come in this contract for us to do something for the working people, for the people who will be put in peril in having to bring these suits under the strictures that would now require them to mortgage their home, spend their children's college fees or to make outrageous loans in pursuit of what they consider to be a fair claim.

Please let us examine and turn back the bill and the premises underlying H.R. 988.

Mr. Chairman, I yield back the balance of my time.

Mr. MOORHEAD. Mr. Chairman, I yield the balance of my time to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. Mr. Chairman, I thank the distinguished subcommittee chairman for yielding me this time.

Mr. Chairman, I rise today in strong support of this Attorney Accountability Act. This is truly a historic day in the life of this body; for the first time in 40 years we have a comprehensive tort reform bill before the House. I commend the chairman of the subcommittee, the chairman of the full committee, the gentleman from Illinois [Mr. HYDE], the gentleman from Virginia [Mr. GOODLATTE], and others who worked to produce this bill.

With all due respect to the distinguished ranking member who brings the letter from the American Bar Association, the defenders of the status quo here, and says that we are operating with unreasonable haste by bringing this bill to the floor, Mr. Chairman, this debate has been raging in America for 40 years. Real people in the real word are finally getting heard in the People's House. They are saying enough is enough with an out-of-control legal system. Last year alone 20 million new lawsuits were filed in America. That is one lawsuit for every 10 Americans, 20 million suits in 1 year.

We have been conducting this debate for 40 years. The difference is with the new Republican majority we are finally getting a bill heard and getting it to the floor, and hopefully with bipartisan support as with the other bills in the Contract With America, this bill will pass this body.

The loser pays rule, more appropriately called the fairness rule, is central to the bill before us today, the Attorney Accountability Act. We are trying to restore accountability and fairness to our civil system. We must, must, discourage the filing of frivolous lawsuits and promote the settlement of a strong case.

The distinguished ranking member talks about those people who are indigent, without resources, not having their day in court, and brings the letter from the American Bar Association singing the same tune.

Well, Mr. Chairman, it is right in the bill, right in the bill; if the court finds that requiring the payments of such costs and expenses would be manifestly unjust, then they are waived. Then there is no requirement that the loser pays, if there is a manifestly unjust result. So that, Mr. Chairman, is a red herring.

Let us get down to the nitty-gritty of this debate. Why should prevailing plaintiffs have to give up a substantial proportion of their damage awards to pay their own attorneys? Such deserving parties, people who are truly deserving of awards, are never, never fully or adequately compensated for their injuries under the present system and thus just basically wrong.

Seventy years ago, Mr. Chairman, the Massachusetts Judicial Council criticized this inequity and they asked on what principal of justice can a plaintiff, wrongfully run down on a public highway, recover his doctors' bills but not his lawyers' bills, and why should defendants who are dragged into court for unwarranted claims also have to pay substantial legal fees? These defendants, Mr. Chairman, lose, even when they win, and that is wrong. For many defendants, we all know the game that is being played out there under the rule. It makes more economic sense to settle these frivolous cases than to defend themselves in a prolonged lawsuit despite full confidence in their legal position. This practice hurts all of us because it motivates the filing of more frivolous claims and we pay.

That is why, Mr. Chairman, I was so pleased that the Committee on the Judiciary modified and improved the fairness rule that was contained in the original H.R. 10.

I also want to thank all of those who participated in drafting this common sense legal reforms act.

□ 1630

Mr. Chairman, I chaired the task force which drafted this bill, and so many people on our side of the aisle contributed to this effort, and I want to thank all of them for crafting this important legislation, particularly the gentleman from Virginia [Mr. GOODLATTE], who crafted the modification of the loser pays or the fairness rule.

I think the most important change in the modification is the definition of who is the winner and who is the loser of a case that goes to trial. That has been clearly articulated here today.

I think it is also important to emphasize, Mr. Chairman, that under this bill before us today, H.R. 988, only a party that acts irresponsibly by rejecting reasonable settlement offers will have to pay the attorney's fees of the other party and, of course, H.R. 988 does more than just adopt the fairness rule.

Most of the discussion here today and, in fact, in the ensuing months since H.R. 10 was drafted has centered on the loser-pays rule, but there is much more to the bill before us today.

The second major provision, the honesty-in-evidence provision, will ensure that we keep junk science out of the courtroom, too many so-called experts peddling their biased testimony for contingency fees.

Mr. Chairman, all we are doing with this provision, this honesty-in-evidence provision, is codifying the Daubert case, which requires that expert testimony rest on a reliable foundation and that it be relevant to the task at hand.

This bill, Mr. Chairman, prevents experts from being paid a contingency fee so as to remove incentives for their biased testimony. If we want losing parties to accept verdicts that go against them, we must make sure that trials are fair. The honesty-in-evidence provisions will ensure just that, fairness.

The bill before us, H.R. 988, the Attorney Accountability Act, restores the pre-1993 version of rule 11 as has been mentioned here today of the civil procedure rules.

Mr. Chairman, this rule can be one of the most effective means of curbing lawyer misconduct if we give it back its teeth.

Now, I am still amazed as a lawyer formerly in practice myself that the rule was weakened in 1993 when the rule had the support of a strong majority of Federal judges who were surveyed by the Federal Judicial Center. In fact, Mr. Chairman, at that time, with respect to rule 11, 95 percent of the judges said the old rule did not impede development of law. Seventy-two percent of the judges said the benefits of rule 11 far outweighed the expenditure of their time. Eighty-one percent of the Federal judges said that the overall effect of rule 11 had a very positive impact on litigation in the Federal courts. And most telling, over 80 percent of the judges said we should retain the original rule 11. That is what we are trying to do here today is to restore that form of rule 11.

H.R. 988, the bill before us today, will reestablish the system of mandatory as opposed to discretionary sanctions which is very, very important in restoring accountability on the part of lawyers in our system.

Also, Mr. Chairman, the bill mandates the use of attorney's fees as part of this sanction.

Third, it puts a larger emphasis on the rule's compensatory function by clarifying the sanctions should be sufficient to deter repetition and to compensate the parties that were injured.

Finally, it eliminates a safe-harbor provision of the current rule 11(c) which permits a lawyer to withdraw a challenged pleading without penalty prior to an award of sanctions. Clearly, clearly the rule should be solicitous of the abused, not of the abuser.

Mr. Chairman, I am also pleased that this bill would return to the pre-1993 practice of having rule 11 apply to discovery.

Mr. Chairman, in conclusion, when you look at the various elements of the Attorney Accountability Act, I predict we are going to again have a large bipartisan vote in favor of this important reform legislation. Why? Because this legislation finally, finally gives us real tort reform, finally brings us concrete steps to restore accountability, efficiency, and fairness to our Federal civil justice system.

Mr. Chairman, in closing, I urge strong support of the Attorney Accountability Act of 1995. Let us have this real tort reform which is so long overdue.

Ms. HARMAN. Mr. Chairman, I rise today in support of the Goodlatte amendment. While I had intended to offer an amendment to H.R. 988, Mr. GOODLATTE's amendment has alleviated many of my concerns about the timing of settlement offers and the process of calculating attorneys' fee awards under the bill. I therefore do not plan to offer my amendment.

As reported, H.R. 988 carries with it the potential for abuse. Under the bill, defendants may respond to lawsuits by immediately making low-ball offers, even as low as $1.00, simply to set in motion the time clock on which attorney fees are calculated. My amendment would have addressed this problem by requiring only reasonable, good faith offers to trigger the bill's fee-shifting provisions.

The Goodlatte amendment also addresses this problem by tolling the calculation of attorneys' fees until after the date of the last offer by a party. Since parties would not be able to use low-ball offers to set the attorneys' fees' clock in motion, I am confident that the Goodlatte amendment will spur good-faith bargaining rather than procedural gamesmanship.

More good-faith settlements will cause more lawsuits to be voluntarily dismissed and will help restore some efficiency to our Federal legal system.

Mr. HYDE. Mr. Chairman, I rise in support of H.R. 988, the Attorney Accountability Act of 1995. I would like to congratulate the gentleman from California [Mr. MOORHEAD], chairman of the Subcommittee on Courts and Intellectual Property, for his outstanding efforts in connection with this legislation. H.R. 988 effectively tackles one of the fundamental problems in our legal system today: frivolous litigation.

Mr. Chairman, the American legal system does not resolve claims as expeditiously as it should. Why? Because some who participate in the litigation process do not act responsibly. Parties are too quick to bring suit because they have nothing to lose for bringing even meritless claims. Attorneys, hoping for settlement amounts based on nuisance value, assist in encouraging possible litigants. One need only turn on the television late at night or turn to the lawyer section of the yellow pages to see incentives employed by such attorneys which, without measures to ensure accountability, serve to feed the lawsuit frenzy which plagues our Nation.

Our system of justice has also lost some of its integrity by allowing the consideration of invalid and unreliable scientific evidence from so-called experts which may unfairly influence juries and other triers of fact in their crucial roles of deciding the outcome of a case.

The legislation before us today will accomplish three goals. First, it will lessen the incentive to litigate claims which have little or no merit through the implementation of a loser-pays rule. Second, it will assure the reliability and validity of scientific evidence in cases involving such evidence. Third, it will prevent attorneys from filing frivolous lawsuits by appropriately imposing mandatory sanctions on those attorneys.

This legislation will infuse greater fairness into the civil justice system—because parties and attorneys will be held accountable for their actions and are encouraged to be reasonable within the litigation process. It will also provide for prompt, easier, quicker access to our court system by decreasing docket congestion and encouraging the speedy resolution of valid claims. The result will be greater affordability and justice for all Americans with real and viable grievances.

The loser-pays rule in section 2 reflects an amendment adopted by the Judiciary Committee, sponsored by the gentleman from Virginia [Mr. GOODLATTE], who should be commended for his hard work. It fully achieves the goals we promised in the Contract With America—greater accountability, practical penalties for unreasonableness, and a settlement-based mechanism which will serve to eliminate many suits before they reach trial. Under H.R. 988, parties are allowed to discover the merits of their claims, but will be required to pay the opposing party's attorney's fees if they fail to act reasonably in settling a lawsuit or if they continue to pursue a frivolous claim. A litigant with a strong defense can rely on the protection of the loser-pays rule by placing a fair offer on the table. The more reasonable the offer, the more likely the adverse party to a claim will have to pay the attorney's fees. A plaintiff who unreasonably maintains a meritless claim or refuses to settle a claim who fares worse at trial or after judgment than the offer of settlement, will incur the defendant's fees. Likewise, an unreasonable defendant who refuses to settle or meet the claim of a plaintiff will have to pay the plaintiff's fees if after trial or judgment he fares worse than an offer made by the plaintiff. This mechanism has, built within it, incentives which encourage reasonable negotiation toward resolution along with a safety net for cases in which it would be grossly inequitable to apply the rule. Further, if both parties are unreasonable, the status quo is maintained and neither side receives the benefit of the rule. It is a fair, just, and workable loser-pays rule that is drafted to accomplish accountability while taking into account the unique history of negotiation which has long been a staple of American jurisprudence.

The honesty in evidence contained in section 3 of H.R. 988 will mark a significant change in product liability and other civil cases where scientific evidence is frequently used. As we all know, it can be very difficult for juries to fully gauge and evaluate the quality and validity of the scientific evidence presented. And while we all agree that America's jury system is by far the best method of evaluating tort claims, it is imperative that where difficult technical and scientific proof is to be considered, juries know such proof will be reliable, valid and relevant. Otherwise, the risk of prejudice is too great.

Plaintiffs' attorneys have had it too easy, Mr. Chairman. The same attorney who may implore the consensus of the scientific community for one case will employ a so-called expert in another who, on the basis of new or fringe scientific methods, ups the ante in a case to the detriment of a defendant. The market for so-called expert witnesses in this country is vast and growing, a market created by parties and attorneys who may employ any method to reap large financial awards at a huge cost to the American consumer. While no one wishes to deny a plaintiff with a valid claim from proving his case, accountability demands that cases by proven properly.

Section 3 of H.R. 988 will disallow the admission of scientific evidence by a judge unless such evidence is shown to be valid, reliable, and scientifically connected to the fact it is offered to prove in a case. This standard was established by the Supreme Court in Daubert versus Merrill Dow Pharmaceuticals in 1993, and should serve to weed out prejudicial evidence which could otherwise be used unfairly to persuade triers of fact. Further, under the bill, expert witnesses will be barred from testifying if they have any stake in the outcome of a case. Providing for integrity in expert witnesses is another important part of restoring accountability to litigation in American courts.

Section 4 of H.R. 988 will impose mandatory sanctions on attorneys who knowingly bring frivolous cases, reestablishing a significant and necessary deterrent on attorneys who encourage the filing of such cases in hopes of achieving financial gain on settlement value alone. The bill will amend rule 11 of the Federal Rules of Civil Procedure to bring back vital protections against the filing of thoughtless, reckless and harassing pleadings which have contributed to the demise of our civil justice system and which cause unfairness to those who are dragged into courtrooms without proper cause. Under the new rule, abusers who file lawsuits must be appropriately sanctioned by judges if found to be in violation and are provided no safe harbor to withdraw such filings. In effect, lawyers will be held accountable to do some research in advance, to evaluate cases before adding to limitless congestion of the courts and will face sure penalties for their misconduct.

Mr. Chairman, it is high time that Congress make clear to a nation fed up with inflated legal costs, long delays for viable claims and abusive tactics by lawyers, witnesses and opportunistic litigants, that we are ready and willing to take action to ensure that our legal system will operate fairly and expeditiously. Judges likewise need to be required to impose sanctions against abuse. We should no longer tolerate frivolous filings. H.R. 988 contains fair, responsible measure which will encourage accountability and, when necessary, sanction misconduct. I am proud to be an original cosponsor of this measure which will restore confidence in our civil justice system and serve as a model to the states. It will provide to the American people what we promised when we signed the Contract With America, real and significant legal reform. I urge support of H.R. 988.

Mrs. COLLINS of Illinois. Mr. Chairman, this week in my GOP colleagues' mad, frenzied dash to the 100-day finish line of the so-called Contract With America, this body is being presented with a series of bills that will effectively strip away the rights of average, hard-working citizens to obtain access to our Nation's courts for the resolution of their legitimate disputes. Today we start with H.R. 988, the misnamed Attorney Accountability Act, which would be better titled the "No Money, No Status, No Justice Act of 1995."

H.R. 988 is an absolute perversion of the ideals upon which our civil justice system in the United States was established, Mr.Chairman. Filled with gimmicky, feel-good phrases such as "loser pays" and "honesty in evidence," this legislation is just another public relations ploy thought up by the Republican leadership's spinmeisters—as with the rest of the contract—that has little substantive, factual evidence to support its propositions.

My friends on the opposite side of the aisle would like to have the American people believe that H.R. 988 is absolutely necessary to stem the tide of frivolous litigation that they purport is incapacitating our civil justice system. They advocate this overreaching legislation despite the fact that there are already tried and true penalties and sanctions in place which work quite well in weeding out the relatively few nonmeritorious lawsuits that do have occasion to find their way into our courts.

Unfortunately the only thing the bill before us today is meant to do and will do is further stifle the voices of America's middle and lower income aggrieved citizens in favor of the GOP's large corporate contributors and back-room-buddies. This is one more in a continuing pattern of shameful assaults on the underserved and underrepresented in our society by the majority party in the U.S. Congress, Mr. Chairman, and the American people have a right to know the facts.

Under H.R. 988, average citizens and small business owners seeking to bring suit against corporate wrongdoers would have to think twice about filing a claim, no matter how much they have been harmed because of provisions in this bill which would require, as I stated before, losing parties to pay the legal fees of the winners in many instances. As a result, as scholar Thomas Rowe has noted, "the threat of having to pay the other side's fee can loom so large in the mind of a person without considerable disposable assets that it deters the pursuit of even a fairly promising and substantial claim or defense."

This is hardly what our system of justice is all about Mr. Chairman.

It is interesting that earlier this year the prominent conservative magazine, the Economist, called for abandonment of Britain's loser-pays rules, because in that country only the very wealthy can afford the costs and risks of most litigation which offends one of the most basic principles of a free society: equality before the law. Apparently the majority sees nothing wrong with this. Well I, along with my constituents, sure as heck do.

But wait, Mr. Chairman, that is not all. Other provisions of H.R. 988 would subvert the Supreme Court's recent carefully construed framework for the judicial evaluation of scientific evidence, designed to curb abuses in the use of expert testimony. Again, these changes would be instituted for change's sake rather than because of any body of evidence indicating the need for such revisions. This House should not legislate just because we can Mr. Chairman, but because there is a need to do so. The GOP has yet to show any credible need for this legislation.

The American people do want accountability in all branches of our Federal Government—executive, legislative, and judicial. They do want commonsense, targeted reforms to many of our major societal institutions such as the civil and criminal justice systems. What they do not want and do not accept, however, is for so-called accountability and reform to come at the expense of their basic rights as citizens. H.R. 988, unfortunately, would do just that. Therefore, I appeal to my colleagues on both sides of the aisle to vote "no" on this legislation.

Mr. STOKES. Mr. Chairman, I rise in strong opposition to H.R. 988, the Attorney Accountability Act of 1995. While I am aware of the current excitement in the Congress to do anything perceived as promoting the interests of the rich, and big corporations, I am also mindful of my duty as a Member of Congress to act in the best interest of the all the people I represent and in the best interest of the U.S. Constitution I have sworn to uphold.

We cannot and should not, in an attempt to decrease the amount of frivolous lawsuits, shirk our responsibility to act in the best interest of poor and hard working Americans by disrespecting the Founding principles of the American justice system—over 200 years of common law. This shortsighted and rushed legislation will not only fail to reform or enhance the legal system in the United States, but will endanger the delicate balance of power between rich and poor, powerful and weak, so skillfully and wisely crafted over 200 years of development in the courts of this Nation.

The bill before us today, the Attorney Accountability Act of 1995, will not only attempt to curtail unwanted lawsuits, but will also make it impossible for regular Americans to have access to the Federal courts. Such an assault on American citizens' rights to access to the courts is an outrage. This restrictive bill will certainly undermine many of our most important efforts to provide a forum that promotes equality for all Americans.

Mr. Chairman, the stated purpose of the Attorney Accountability Act is to require one party to pay the other's attorney fees and other legal costs if that party rejects a settlement offer, and then receives less in the judgment at trial. Republican proponents have stated that this provision is intended to discourage frivolous lawsuits, and encourage parties to settle disputes prior to trial. This bill also establishes new restrictions on the use of scientific evidence, by establishing a presumption of inadmissability. Finally, the bill requires judges to impose sanctions on attorneys for making frivolous arguments.

This legislation, which would result in limiting citizens' access to our Federal courts, warps the American justice system to such an extent that the motives of the drafters of this legislation should be seriously questioned. While I agree that Congress should continue to make significant strides to improve the quality of litigation in this country, this proposed measure goes well beyond the legitimate objective of balancing the interests of regular working people and corporate America. In fact, this bill will inhibit the will of the people by transferring all of the power of rendering justice in the courts to the wealthy, well-connected, and privileged.

The clear result of the imposition of a lower pays rule would be to destroy Americans' constitutionally guaranteed right to have access to the Federal courts through diversity jurisdiction. Article III of the U.S. Constitution guarantees diversity jurisdiction and unequivocally states: "The judicial power shall extend to all cases * * * between citizens of different States * * *." The 14th and 15th amendments declare that no State "shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of laws." The 14th and 15th amendments were clearly intended to ensure all Americans access to the courts of this country for the protection of their persons and property, to redress wrongs and to enforce contracts. Without free access to the courts, Americans' constitutional rights will be abrogated. By imposing on working Americans what could be substantial costs for bringing an unsuccessful claim, H.R. 988 locks the Federal courthouse doors, and gives the rich the key.

Mr. Chairman, not only would transferring the power in litigation to the wealthier party be clearly contrary to the course of 200 years of American common law, the reasoning behind this unfair and unjust bill is not supported by the facts. So-called frivolous lawsuits actually make up a minute portion of all lawsuits litigated in this Nation. Under current law, the Federal rules of civil procedure give judges the opportunity to hold attorneys accountable for bringing frivolous lawsuits. Rule 11 of the Federal rules of civil procedure presently authorize Federal courts to impose sanctions upon attorneys, law firms, or parties for engaging in inappropriate conduct or for bringing frivolous or harassment lawsuits. The facts clearly show that despite the fact that there were thousands of cases filed last year, in less than 1 percent of those cases did Federal judges determine that rule 11 sanctions were justified.

H.R. 988 would remove from the wise discretion of a Federal judge the determination of how to impose rule 11 sanctions. My colleagues on the other side of the aisle have often claimed that they favor retracting the tentacles of the Federal Government from local people, who best know and understand the issues they face. Yet, this bill flies in the face of this often touted Republican ethic. H.R. 988 removes from a Federal judge who has heard the evidence, knows the parties, and lives in the community, the discretion to make a determination of when to impose rule 11 sanctions. This modification of the Federal rules is unjustified, ill-advised and will lead to injustice for working and middle-class Americans.

For over 200 years, the American legal system has developed a system that keeps frivolous suits to a minimum. The free market has established contingent fee arrangements that create an enormous disincentive for plaintiffs who seek to initiate frivolous lawsuits. Contingent fee cases permit working- and middle-class Americans to have access to attorneys whose fees they could not normally afford. This does not mean that these plaintiffs currently incur no costs or risks. Plaintiffs are often faced with substantial court costs and attorney expenses that must be paid up front and are often nonrefundable, win, or lose.

The reality of the economics of contingent fee arrangements make it economically ill-advisable to bring, support or litigate frivolous claims. H.R. 988's so-called attack on frivolous lawsuit is, in fact, an attack on the access of regular Americans to the courts, and subverts the economic realities of contingent fee litigation that already discourages frivolous lawsuits.

Mr. Chairman, this legislation is unsurpassed in its compromise of the balance of powers between litigants in our Nation. With very little opportunity for open hearing, and with limited debate, this measure has been placed before us. A measure of this kind requires detailed analysis of the impact it may have on the American people, and one of the greatest pillars of the American Republic: The people's access to the courts—but no such review has, or will, take place. In the current rush to force this bill through the House, the interests of the American people and the American justice system will certainly be compromised on the altar of corporate greed. I urge my colleagues to join with me, and vote against this bill.

Mr. PACKARD. Mr. Chairman, our society is consumed by lawsuit fever—sue the producer, sue the manufacturer, sue the seller. Frivolous lawsuits clog our courts and impose tremendous costs on American workers and consumers. Americans want a legal system that promotes civil justice, not greed.

The only winners in the game of lawsuit abuse are the lawyers. Consumers lose and workers lose. Lawsuit abuse scares away jobs and stifles innovative new products. Consumers pay the tab for excessive litigation costs and jury awards through higher prices and outrageous insurance premiums. These litigation taxes cost Americans $130 billion a year. Fairness no longer exists in our current civil justice system. Hardworking consumers should not pay the tab for legal tactics and judicial abuse.

Our Republican commonsense product liability and legal reform bill, H.R. 988, works to restore national fairness and common sense to a judicial system spinning out of control. H.R. 988 puts an end to frivolous, excessive lawsuits by capping damages at $250,000 or three times the amount of economic damage. Furthermore, it requires plaintiffs to prove that harm was flagrantly intended by the defendant.

The commonsense product liability and legal reform bill restores accountability and responsibility. H.R. 988 provides a remedy for America's litigation fever, while ensuring that justifiable claims will be fairly tried and rewarded. Americans are tired of supporting a civil justice system that abuses their rights and freedoms as workers and consumers.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute now printed in the bill is considered as an original bill for the purpose of amendment and is considered as having been read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 988

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Attorney Accountability Act of 1995".

SEC. 2. AWARD OF COSTS AND ATTORNEY'S FEES IN FEDERAL CIVIL DIVERSITY LITIGATION AFTER AN OFFER OF SETTLEMENT.

Section 1332 of title 28, United States Code, is amended by adding at the end the following:

"(e)(1) In any action over which the court has jurisdiction under this section, any party may, at any time not less than 10 days before trial, serve upon any adverse party a written offer to settle a claim or claims for money or property or to the effect specified in the offer, including a motion to dismiss all claims, and to enter into a stipulation dismissing the claim or claims or allowing judgment to be entered according to the terms of the offer. Any such offer, together with proof of service thereof, shall be filed with the clerk of the court.

"(2) If the party receiving an offer under paragraph (1) serves written notice on the offeror that the offer is accepted, either party may then file with the clerk of the court the notice of acceptance, together with proof of service thereof.

"(3) The fact that an offer under paragraph (1) is made but not accepted does not preclude a subsequent offer under paragraph (1). Evidence of an offer is not admissible for any purpose except in proceedings to enforce a settlement, or to determine costs and expenses under this subsection.

"(4) At any time before judgment is entered, the court, upon its own motion or upon the motion of any party, may exempt from this subsection any claim that the court finds presents a question of law or fact that is novel and important and that substantially affects nonparties. If a claim is exempted from this subsection, all offers made by any party under paragraph (1) with respect to that claim shall be void and have no effect.

"(5) If all offers made by a party under paragraph (1) with respect to a claim or claims, including any motion to dismiss all claims, are not accepted and the judgment, verdict, or order finally issued (exclusive of costs, expenses, and attorney's fees incurred after judgment or trial) in the action under this section is not more favorable to the offeree with respect to the claim or claims than the last such offer, the offeror may file with the court, within 10 days after the final judgment, verdict, or order is issued, a petition for payment of costs and expenses, including attorney's fees, incurred with respect to the claim or claims from the date the last such offer was made.

"(6) If the court finds, pursuant to a petition filed under paragraph (5) with respect to a claim or claims, that the judgment, verdict, or order finally obtained is not more favorable to the offeree with respect to the claim or claims than the last offer, the court shall order the offeree to pay the offeror's costs and expenses, including attorneys' fees, incurred with respect to the claim or claims from the date the last offer was made, unless the court finds that requiring the payment of such costs and expenses would be manifestly unjust.

"(7) Attorney's fees under paragraph (6) shall be a reasonable attorney's fee attributable to the claim or claims involved, calculated on the basis of an hourly rate which may not exceed that which the court considers acceptable in the community in which the attorney practices law, taking into account the attorney's qualifications and experience and the complexity of the case, except that the attorney's fees under paragraph (6) may not exceed—

"(A) the actual cost incurred by the offeree for an attorney's fee payable to an attorney for services in connection with the claim or claims; or

"(B) if no such cost was incurred by the offeree due to a contingency fee agreement, a reasonable cost that would have been incurred by the offeree for an attorney's noncontingent fee payable to an attorney for services in connection with the claim or claims.

"(8) This subsection does not apply to any claim seeking an equitable remedy.".

SEC. 3. HONESTY IN EVIDENCE.

Rule 702 of the Federal Rules of Evidence (28 U.S.C. App.) is amended—

(1) by inserting "(a) In general.—" before "If", and

(2) by adding at the end the following:

"(b) Adequate basis for opinion.—Testimony in the form of an opinion by a witness that is based on scientific knowledge shall be inadmissible in evidence unless the court determines that such opinion—

"(1) is scientifically valid and reliable;

"(2) has a valid scientific connection to the fact it is offered to prove; and

"(3) is sufficiently reliable so that the probative value of such evidence outweighs the dangers specified in rule 403.

"(c) Disqualification.—Testimony by a witness who is qualified as described in subdivision (a) is inadmissible in evidence if the witness is entitled to receive any compensation contingent on the legal disposition of any claim with respect to which the testimony is offered.

"(d) Scope.—Subdivision (b) does not apply to criminal proceedings.".

SEC. 4. ATTORNEY ACCOUNTABILITY.

(a) SANCTIONS.—Rule 11(c) of the Federal Rules of Civil Procedure (28 U.S.C. App.) is amended—

(1) in the matter preceding paragraph (1) by striking "may" and inserting "shall";

(2) in paragraph (1)(A)—

(A) in the second sentence by striking ", but shall" and all that follows through "corrected"; and

(B) in the third sentence by striking "may" and inserting "shall"; and

(3) in paragraph (2) by striking "A sanction imposed" and all that follows through "violation." and inserting the following: "A sanction imposed for a violation of this rule shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the parties that were injured by such conduct. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of an order to pay to the other party or parties the amount of the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorney's fee.".

(b) APPLICABILITY TO DISCOVERY.—Rule 11 of the Federal Rules of Civil Procedure is amended by striking subdivision (d).

SEC. 5. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Subject to subsection (b), this Act and the amendments made by this Act shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) The amendment made by section 2 shall apply only with respect to civil actions commenced after the effective date of this Act.

(2) The amendments made by section 3 shall apply only with respect to cases in which a trial begins after the effective date of this Act.

The CHAIRMAN. The bill will be considered for amendment under the 5-minute rule for a period not to exceed 7 hours.

During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition to a Member offering an amendment that has been printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered as having been read.

Are there any amendments to the bill?

AMENDMENT OFFERED BY MR. GOODLATTE

Mr. GOODLATTE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GOODLATTE: Page 3, line 20, insert before the period the following: "or, if the offeree made an offer under this subsection, from the date the last such offer by the offeree was made".

Page 4, line 3, insert after "offer was made" the following: "or, if the offeree made an offer under this subsection, from the date the last such offer by the offeree was made".

Mr. GOODLATTE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. GOODLATTE. Mr. Chairman, the purpose of this amendment is to enhance provisions of the bill that deal with making offers of settlement.

The way the bill currently reads, the parties can limit their exposure to attorneys' fees by making offers of settlement. However, it is the party that makes their own offer that can cut off the exposure of attorneys' fees for the other side, and we want to reverse that so that each party will have an incentive to make offers of settlement, because the more they offer to settle, the more likely it is they will be able to recover attorneys' fees.

So by making this contingent upon the last offer by the nonprevailing party in a case rather than the last offer by the prevailing party, we will have the effect of allowing each party to make offers of settlement in order to cut off their exposure for attorneys' fees.

Now, this exposure for attorneys' fees can be limited to less than 10 days before trial through the trial itself, and, therefore there is a limitation on how long you can make these offers which cut off at 10 days before trial for the purpose of making sure that there are some risks attached to bringing a lawsuit which turns out to not have merit.

So I would encourage all of us who want to promote settlement of lawsuits and want to promote reasonableness to adopt this amendment. The effect of not changing this will be essentially to have parties having a disincentive to make additional offers of settlement, because if they can control when their opposing parties' attorneys' fee is cut off, they will have to add that additional calculation as to the worth of those attorneys' fees in determining whether or not to offer a settlement, an increased settlement offer.

So, for example, if there is the likelihood of recovering $10,000 of attorneys' fees in a case and a party feels they have a 75 percent chance of winning, they may feel that they are not only making an additional offer of settlement but they are also giving up the value, whatever they may place on it, of those attorneys' fees. We want to turn that around. We want the parties to have an incentive to make settlement offers so if we allow them to cut off their own exposure for attorneys' fees through the date of that settlement, by making a settlement offer, we will accomplish our goal of encouraging more settlement in these cases.

Mr. CONYERS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we began the debate and the amendment process by first of all amending the least worst part of this bill that loser pays all. Remember, we had an original bill. The original bill in committee provided for the loser as to any claim to pay the attorney fees of the winner. It applied to all fees in the case that applied to that particular claim, was not tied to any offer.

Wonderfully, providentially, the consciences of the new majority overcame them, and they accepted the Goodlatte amendment. The Goodlatte amendment, as it was debated in the committee, said that the loser pays the winner's fees after the date of the offer if they come up the short side, and here is where the poker playing began. The person with the greatest resources usually can win in a poker game, especially when you are down to the last couple of chips.

Here we have the loser pays the winner's fees after the date of the offer, and the losing means not doing better than the offer; the award is limited to the plaintiff's own attorney fees or reasonable fee based on the hours spent by the plaintiff's attorney.

This did make a mean spirited bill less mean-spirited. The problem was that the unlevel playing field, if one party has more wealth than the other, still obtains. I makes it highly risky to pursue a case where liability is in question, and that is what we continue here.

Now, fortunately, and I say that seriously, the gentleman from Virginia has found another error in this hastily tacked together provision, because now he is suggesting that if the offeree made an offer under this subsection from the date the last such offer by the offeree was made, if the offeree made an offer under this subsection from the date that last such by the offeree was made, then he would be moving, advancing his cause, which changes considerably the plight of the offeree before this language was inserted. I am sorry that we did not find this out before now, but the problem is that these poker-game-like provisions in terms of negotiating offers being made by both parties are contingent upon the fact that one or both of the parties have some idea as to what the actual outcome is going to be.

I suggest to you that in personal injury and tort cases the outcome might vary widely from forum to forum. The outcome could vary very widely depending on whether there is a jury, or whether the judge is trying the facts and the law in the case, and now we are finding that there were other errors made.

To me, this improvement which is necessary to the logic that was intended by the gentleman from Virginia originally, does not cure the basic problem to the bill. We still have a bill that is going to be subjected to even more amendments to try to humanize it, to try to live down the reputation that it has so wholesomely earned as being an antiplaintiff's bill, an antiworking people's bill, an antipoor person's attempt to get into court, that it is a way of shutting the door down.

The whole provision is confusing. It is a trap for the unwary. I suggest to you attorneys are going to tear their hair out trying to figure out how they can game the system with this new Las Vegas type offer that can and now must be made if you are to protect yourself against being assessed the fees of the opposing party.

Ms. PRYCE. Mr. Chairman, I move to strike the requisite number of words.

I rise in support of the Goodlatte amendment and in support of the provisions on attorney's fees and costs which have been included in H.R. 988 and to commend my colleague, the gentleman from Virginia [Mr. GOODLATTE], for his hard work on this very fair legislation.

During consideration of H.R. 988 by the Committee on the Judiciary an amendment was adopted by a vote of 27 to 7. The amendment substantially modified the language governing awards of costs and attorneys' fees in Federal civil diversity litigation from a strict and onerous loser pays formula to a fairer, yet much needed, version. The Goodlatte amendment is designed to encourage settlement of legal disputes, to reduce the burden of frivolous claims on the Federal courts, and to provide full recovery to the prevailing party. It will not impose a barrier to filing of meritorious lawsuits, but will simply require plaintiffs to engage in thoughtful and deliberate consideration of the substance of their claims before proceeding with costly, time-consuming litigation.

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As a former judge, I saw my fair share of frivolous lawsuits, and I also saw my fair share of the collection of a good number of nuisance claims, and I know from years of impartial observation in courtrooms that this provision is evenhanded, fair, and will do the job.

I am pleased that the language has been included to provide the courts with latitude in determining awards of attorneys' fees and cost. Specifically, the bill stipulates that the court may decline to grant an award where the payment of such costs and expenses would be "manifestly unjust." In addition, the court is not required to make an award in cases involving a claim for equitable relief or in cases where the court finds that the claim presents a novel and important question of law or fact that substantially effects nonparties.

Mr. Chairman, H.R. 988 will encourage settlement of disputed claims, allows cases with merit to proceed more rapidly through the judicial process, and assures that plaintiffs' concerns are addressed appropriately.

Therefore, I urge my colleagues to support passage of this important legislation. In it are properties that will go far in addressing abuses we all know exist and that I have seen firsthand, yet it stops short of denying access to fair-minded litigants.

I urge adoption.

Mr. MOORHEAD. Mr. Chairman, I move to strike the requisite number of words.

You know, in the course of a debate on any bill, we strive to make the legislation as good as we possibly can. Every bill is amended along the way. This bill has changed somewhat in its form as members of the subcommittee and the full committee and now the people on the floor find ways that they may want to improve the legislation.

That does not mean that mistakes have been made; far from it, it means that a very good idea has been presented to the Congress that can be changed by many of the people that are present here.

Mr. GOODLATTE has a fine amendment here. His amendment improves the quality of the overall bill, and I certainly support it.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

Mr. Chairman, this is indeed a part of the process of refining these bills and making them of such a nature that they try to be as fair as possible to all parties. But the real purpose here is to encourage settlement of lawsuits and discourage the bringing of lawsuits that do not have merit.

The CHAIRMAN. The gentleman from California [Mr. MOORHEAD] has the time, and he must remain upon his feet.

(On request of Mr. GOODLATTE and by unanimous consent, Mr. MOORHEAD was allowed to proceed for 5 additional minutes.)

Mr. GOODLATTE. Mr. Chairman, will the gentleman continue to yield?

Mr. MOORHEAD. I yield to the gentleman.

Mr. GOODLATTE. I thank the gentleman for yielding.

Mr. Chairman, this is, I believe, a very good model for handling the problem we have in this country with frivolous lawsuits, fraudulent lawsuits, and the fact that so many people are forced in the courts to defend cases that do not have merit and have to expend a great deal of money to do so.

The effect here will be to set a model that the State legislatures can look at to apply in the State courts. This only applies in diversity cases in the U.S. district courts. Earlier there was mention by one of the parties on the other side regarding the effect on civil right cases. This does not apply in Federal question cases, only on diversity cases in Federal court. Diversity cases make up about 20 percent of the Federal docket, and the Federal docket amounts to about 5 percent of all the lawsuits brought in the country.

So this will be a good test of whether the Congress has come up with a way to provide incentives for parties to be reasonable when they bring lawsuits. We do not want anybody in this country who has a meritorious claim not to bring that claim in a State or Federal court as they deem appropriate. But we want them to do so after they have fully evaluated the merits of a case. We do not want them to do so if their purpose is fraud; we do not want them to do so if the purpose is to be frivolous.

This will have the effect of making them think about that before they bring the action, and it encourages reality in these cases by requiring that the parties understand that they have an obligation to negotiate settlement resolution of these cases in good faith; that they not tie up our Federal court system with a case that really should be settled.

By having this mechanism whereby if a party makes an offer to settle the case, as this amendment provides, they can have the ability to reduce their exposure for attorneys fees by doing that up until 10 days before trial. We will promote that settlement opportunity.

So, again, I urge my colleagues to support this amendment and to support the underlying bill.

Mr. MOORHEAD. Mr. Chairman, as we come to the end of the debate on this very important amendment, I cannot help but look at the clock and see that we still have 10 minutes more to use before the 5 o'clock period when we can have votes on the floor. So, it would be helpful if I can yield some additional time to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding further.

In terms of looking at this provision in this bill from the standpoint of the effect that it will have on the plaintiff in a case, I think that it has a great deal of merit for the plaintiff as well, because the effect will be to say that if you indeed do have merit to your case, if you know that the defendant in this case is liable for a harm that has been caused to you, you know there is going to be increased pressure on that defendant to settle the case because that defendant will then be put in the position of knowing that they will have to pay the plantiffs' attorney's fee if the plaintiff prevails.

So, this is not something that is in favor of defendants as opposed to plaintiffs or in favor of corporate defendants as opposed to individual plaintiffs or individual defendants.

This will have the effect of making everybody who looks at a case, looks at it carefully, makes a study of the case and understands that when the defendant takes a case into court they will have to always bear the cost of their attorneys' fees. No longer will we have a situation where we will read in the telephone books of the country, no recovery. If there is no fee, there is no recovery. In other words, there is no risk for bringing a lawsuit.

There should be a risk for every party in the case. There also should be a reward for everybody in the case if they are reasonable in their approach. When a plaintiff has a good case and a deep-pocket defendant is refusing to settle the case because they are a deep pocket, this plaintiff who knows that he has the case will be able to force that defendant to act because the defendant will know that they will ultimately face attorneys' fees for their failure to act.

Mr. DURBIN. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Illinois.

Mr. DURBIN. I thank the gentleman for yielding.

Mr. Chairman, I would like to ask the gentleman from Virginia his experience. Mine, in Illinois, was that 90 to 95 percent of all the civil cases filed settled before they went to trial. That suggests to me that if the goal is to find settlements, the system is currently doing that in most cases.

Is the gentleman's experience different?

Mr. GOODLATTE. Well, I would say to the gentleman, the comments of a member of his own party, George McGovern, who in 1972 was a Presidential candidate, he says in an article out this weekend calling for a reform of our judicial system, that one out of four suits brought in court are either frivolous or fraudulent. If that is indeed the case, then we have a serious problem with cases that are being brought that are not meritorious.

Mr. DURBIN. If the gentleman will further yield, I do not question that some percentage of lawsuits are frivolous; 25 percent, if that is accurate, is a very high percentage. I think he may overstate it, but perhaps he has reason to believe that is the case. But that is part of the system that we have, an open system. We really do not screen candidates for public office. There are frivolous candidates for public office who run too. They are put on the ballot, they are given their day in court of the electorate, and they may be rejected. The same is true for many of these lawsuits.

The question is whether you want to close down the democratic nature of this process and keep the people out who really should be part of it. This is a voice for many——

Mr. GOODLATTE. I do not think it has that effect at all because, as I said earlier, if the plaintiff's case has merit, that is going to put greater pressure on the defendant to settle case because they know that if they lose the case, they are going to pay attorney's fees.

Furthermore, because of the settlement mechanism that has been added into this bill, the effect is going to be to encourage a greater number of settlements.

I would hope we would settle—if it is 90 percent now, I hope we get to 99 percent. There is always a reasonable position somewhere in the middle of these cases, and we want to have these parties to have every pressure possible to find that reasonable ground and keep them from tying up our courts with cases that do not need to be there if the parties would act rationally and settle them.

Mr. DURBIN. The gentleman responded relating to frivolous lawsuits. But back to my original question: What is the gentleman's experience on the percentage of cases presently filed, civil cases that are settled before they go to trial? What has been the gentleman's experience?

Mr. GOODLATTE. I do not have a figure. I would say it is a high percentage.

Mr. DURBIN. Between 90 and 95 percent?

Mr. GOODLATTE. It is a high percentage. The question is what percentage of cases we have in Federal courts now that can be removed from the court system if there is a penalty for bringing a frivolous or fraudulent case? If that indeed is 25 percent, that is a substantial reduction. I think it would be greater than that.

Not only will frivolous and fraudulent cases be settled, but in some cases where there is merit in the case that the parties have not been able to get together, they will get together because of the increased risk involved in the case and nonmeritorious cases will be settled or dismissed before somebody takes the risk of bringing an action all the way through the cost of the judge, the jury, and everybody else that has to be involved, and all the time involved in the case. We can reduce those by encouraging settlement. I think this is a very good vehicle to do it.

Mr. WISE. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from West Virginia.

Mr. WISE. I thank the gentleman for yielding.

Mr. Chairman, the gentleman quoted Senator George McGovern. Does the gentleman agree with George McGovern on just about anything else?

Mr. GOODLATTE. Yes. As a matter of fact, I do. This case comes from an article that George McGovern wrote about his experiences with a business that he started in Connecticut, a hotel. George McGovern, a couple of years ago, was quoted as saying, "You know, I never realized until I was a small business owner, but regulations in this country are beating small businesses to death and we got to do something about it."

Now he comes along and says not only do we have to reform the regulatory process in this country but we also need to reform the judicial process to discourage the lawsuit industry, as he calls it.

Mr. SOLOMON. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from New York.

Mr. SOLOMON. I appreciate the gentleman yielding.

Mr. Chairman, I could also answer my friend's question because I never thought I would ever agree with George McGovern, who was the father of the philosophy that said big brother government knows best. I had the opportunity to sit next to him at a dinner the other night in which he went on to lament his former attitude about big government and how they could solve all the problems.

The gentleman mentioned that when he became a small businessman, all of a sudden he realized what all of these burdens do. And by tying up all of these entrepreneurial midsize businesses in court, it means that much less money that they can use for capital to expand businesses.

Remember, midsize and small businesses create 75 percent of every new job in America every single year for high school kids coming out of high school, for college grads. The gentleman is right on line, and we certainly hope his position prevails tonight.

Mr. GOODLATTE. I thank the gentleman for his comments.

Mr. WISE. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. I thank the gentleman for yielding.

Mr. Chairman, I think we are finally getting to the bottom of this matter. We have had the gentleman from Virginia [Mr. GOODLATTE] really make it clear what he is after. First of all, he does not want any plaintiff to ever bring a lawsuit that he does not get charged for it, no matter what his economic circumstances. He said that.

That is, the responsibility of going into court; namely, you got to afford to be able to go into court and if you cannot, you have no business bringing the lawsuit. How meritorious it might be? It does not matter. How important is it that the injury complained of in the lawsuit is the reason that the person is impecunious and not working? Irrelevant. How important is a case that has obvious redeeming merit to it? Beside the point.

If the plaintiff cannot afford to pay his attorneys' fees, quote from the gentleman from Virginia, "He should not be in court because he is not a responsible party." That is why I am against this whole bill.

The argument of the gentleman from Virginia, his most recent remarks in attempting to repair the repair that he did to the original bill in committee, the Committee on the Judiciary, make it clear that this bill is an attack on the contingency fee, which you have a right to dislike or hate as you may feel.

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I happen to think that it happens to be an important way for people to get a case brought that may have merit. The contingency fee is a primary avenue for ordinary people, for poor people, to seek a remedy in court when they have been harmed and do not have any money, do not have a bank account, do not have stocks or bonds, do not have a house that they can put up as collateral to secure an attorney to prosecute their cause of action. This bill effectively destroys the contingency fee system because it says that the poor person or the middle class person will have to put their savings, their home, at risk to get to court, and if they do not get to court, they have got to involve themselves in this great new poker game in which their attorneys will now have to bid, negotiate, bid appropriately, as if they all know what the outcome of a case is going to be, which in my experience has been just the opposite has been true.

So I think that even the attempts of the gentleman from Virginia at this late date to perfect the amendment lead me to oppose it, as I oppose the entire bill, and I hope that the Members of this House will reject this amendment.

Mr. WISE. Mr. Chairman, I thank the gentleman. I would like to continue.

As I do, Mr. Chairman, I would like to preface my remarks by saying that, yes, I did practice law before coming to the Congress. I think it should be noted that personal injury suits of any kind were not a part of my practice. In fact, I spent years trying to figure out what was my practice, and I know this was not part of it, and so I do not necessarily have a stake in this in any way except to say that it is my observation that the only way some people are going to get to court is on the present basis.

As the New York Times noted in an editorial several days ago, what this bill seeks to do is to overturn 200 years of United States common law, common law that, yes, is different from the mother country, Great Britain, where the loser does pay, but we made a decision in this country years ago, centuries ago, to divert from that because we felt that there ought to be access to the courts for all.

I say to my colleagues, "There is a very plain reality that, if you're a middle income person, you're going to have to think twice before you bring even a meritorious suit because your attorney, if he or she is doing their job, is going to have to caution you and say, "I think you have a good case; it's a case I feel comfortable bringing," remembering that that attorney is not paid for the most part, that attorney is not paid, unless there is a victory. But if you should lose, if the jury by narrow margin should decide you lose, even though the merits were almost equally balanced, you can end up paying, and, yes, you can end up paying, you can end up paying the large insurance company, the large corporation, whomever, whose lawyers are running up a tab happily at hundreds of dollars an hour. That is an incredible risk.

I ask, "Do you risk your children's education? Do you risk your home? Do you risk your car? Do you risk your job?"

Mr. Chairman, I think people misunderstand if they think that——

The CHAIRMAN. The time of the gentleman from West Virginia [Mr. WISE] has expired.

(By unanimous consent, Mr. WISE was allowed to proceed for 3 additional minutes.)

Mr. WISE. So that is a considerable risk.

The other myth, I think, is that people enter into these suits lightly, thinking, well, I do not have to pay anything, and, therefore, I can just go down, retain a lawyer, and sort of like the lottery will buy a ticket, and see if we hit. That is not the way it works. There is a considerable amount of time, investment in effort, made, all from the person who is having to put forward their own expenses for medical examinations, that type of thing.

I would just urge there are some useful provisions to this legislation. I appreciate, for instance, in later pieces what they are trying to do to separate out in some cases of joint and several liability, or, in some cases, dealing with whether or not accountants should be made as liable in securities actions, but what I really just disapprove of here is making it so much more difficult for people to get to court in the first place.

The reality is that middle income people, poor people, are not going to be able to go to court as they once did, and I would urge, as much as the gentleman is trying to perfect this amendment, I urge rejection of the amendment, and certainly the bill.

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. WISE. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, the gentleman prefaced his remarks by noting that he had practiced law before coming to Congress. I want to preface my remarks by saying I did not do that. I am not a lawyer——

Mr. WISE. The gentleman is the best of all to speak.

Mr. WILLIAMS. I preface it because I want to say that my profession was that of an educator, and, as a teacher, I have watched with growing alarm at the drum beat of attacks, some of it very personal, that has gone on, particularly this past decade and a half, against lawyers.

Attorney are, in the American system, the arbiters of our justice. It is attorneys that develop the information which proves the guilty guilty and proves the innocent innocent, and I want to just take a minute of the gentleman's time to say that I believe the attack on attorneys, particularly trial lawyers of the past decade and some, is what drives the legislation here today, and I want to say further that my examination of this bill shows that it is toll road justice, it is deep pocket justice, it is means testing justice in America. It says, "If you're not rich, don't play."

Mr. Chairman, that is a terrible, terrible thing for this country to bend to, and I thank the gentleman for having yielded to me.

Mr. WISE. If I could add to that, "If you're not rich, don't play," that, "If you're very poor, you'll have to pay."

Mrs. COLLINS of Illinois. Mr. Chairman, I rise in opposition to the Goodlatte amendment and urge a strong "no" vote from my colleagues.

This ill-conceived amendment effectively denies average, hard-working citizens the right to access our Nation's courts for the resolution of their disputes. Oppressive as this is, it does fall nicely in line with the rest of the punitive Contract With America.

Under this amendment, average citizens and small business owners seeking to bring suit against corporate wrongdoers would have to think twice about filing a claim, no matter how much they've been harmed because of its provisions which would require losing parties to pay the legal fees of the winners in many instances. Ironically, under the language of this amendment, the category "loser" would include even those parties who won their cases, but were compensated for their losses by the court at a level that is less than what they were offered for a settlement.

As scholar Thomas Rowe has noted, "the threat of having to pay the other side's fee can loom so large in the mind of a person without considerable disposable assets that it deters the pursuit of even a fairly promising and substantial claim or defense."

This is hardly what our system of justice is all about, Mr. Chairman.

It is interesting that earlier this year the prominent conservative magazine, the Economist, called for abandonment of Britain's "loser pays" rules, because in that country "only the very wealthy can afford the costs and risks of most litigation" which "offends one of the most basic principles of a free society: equality before the law." Apparently the majority sees nothing wrong with this. Well, I along with my constituents, sure as heck do.

Our Nation's system of justice is based on the proposition that all Americans, regardless of income, should have access to this system. The Goodlatte amendment turns this proposition on its head and makes a mockery of our civil courts.

For these reasons, I urge rejection of the amendment.

The CHAIRMAN. The time of the gentleman from West Virginia [Mr. WISE] has expired.

The question is on the amendment offered by the gentleman from Virginia [Mr. GOODLATTE].

The question was taken; and the chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 317, noes 89, not voting 28, as follows:

[Roll No. 200]

AYES—317

Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Bass
Bateman
Beilenson
Bentsen
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Boucher
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clayton
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLay
Diaz-Balart
Dickey
Dicks
Dixon
Doggett
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Furse
Gallegly
Ganske
Gejdenson
Gekas
Geren
Gibbons
Gilchrest
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee
Johnson (CT)
Johnson, Sam
Jones
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Lofgren
Longley
Lucas
Luther
Manzullo
Martinez
Martini
Mascara
McCarthy
McCollum
McCrery
McHale
McHugh
McInnis
McKeon
McNulty
Meehan
Menendez
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Obey
Olver
Ortiz
Orton
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Pombo
Pomeroy
Porter
Pryce
Quillen
Quinn
Rahall
Ramstad
Reed
Regula
Riggs
Roberts
Roemer
Rohrabacher
Ros-Lehtinen
Royce
Salmon
Sanford
Sawyer
Saxton
Scarborough
Schroeder
Schumer
Seastrand
Sensenbrenner
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Thurman
Tiahrt
Torkildsen
Torres
Torricelli
Traficant
Upton
Vento
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf

Woolsey
Wyden
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—89

Abercrombie
Ackerman
Allard
Andrews
Baesler
Bonior
Borski
Clay
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
DeLauro
Dellums
Deutsch
Dingell
Durbin
Evans
Farr
Fattah
Fazio
Filner
Flake
Foglietta
Frost
Gephardt
Gonzalez
Gutierrez
Hastings (FL)
Hefley
Hilliard
Hinchey
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Kanjorski
Kildee
Lewis (GA)
Lipinski
Lowey
Manton
Markey
Matsui
McDermott
McKinney
Mineta
Mink
Moakley
Murtha
Oberstar
Owens
Pastor
Payne (NJ)
Petri
Pickett
Poshard
Reynolds
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Schaefer
Scott
Serrano
Shadegg
Skelton
Slaughter
Stark
Stokes
Studds
Thompson
Thornton
Towns
Tucker
Velazquez
Visclosky
Waters
Watt (NC)
Williams
Wise
Wynn
Yates

NOT VOTING—28

Barton
Becerra
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Bunning
Condit
Dooley
Fields (LA)
Ford
Gillmor
Hefner
Johnston
Maloney
McDade
McIntosh
Meek
Mfume
Miller (CA)
Pelosi
Portman
Radanovich
Rangel
Rogers
Roth
Roukema
Schiff

□ 1731

The Clerk announced the following pairs:

On this vote:

Mr. Radanovich for, with Ms. Brown of Florida against.

Mr. Schiff for, Mr. Rangel against.

Messrs. BAESLER, MATSUI, and SHADEGG changed their vote from "aye" to "no."

Ms. ESHOO, Messrs. GILCHREST, VENTO, LEVIN, GEJDENSON, MARTINEZ, MOLLOHAN, ROEMER, FRANK of Massachusetts, MASCARA, RAHALL, BERMAN, WAXMAN, DIXON, BEILENSON, OLVER, TANNER, MEEHAN, and TORRES changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. PORTMAN. Mr. Chairman, because of a scheduling conflict, I was unable to arrive in time for the vote on the Goodlatte amendment. Had I been in attendance, I would have voted "yea" on rollcall vote No. 200.

PERSONAL EXPLANATION

Mr. MFUME. Mr. Chairman, I was, unfortunately, detained in my congressional district in Baltimore earlier today and thus forced to miss a record vote. Specifically, I was not present to record my vote on rollcall vote No. 200, the amendment offered by Mr. GOODLATTE of Virginia.

Had I been here I would have voted "nay."

PERSONAL EXPLANATION

Mr. FIELDS of Louisiana. Mr. Chairman, I was delayed in my district today and was not able to make rollcall vote 200 because I was doing a briefing on school nutrition with schoolchildren and cafeteria workers.

Had I been present, I would have voted "no."

□ 1730

The CHAIRMAN. Are there further amendments to the bill, H.R. 988?

Mr. BERMAN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to use my time, if I could, to ask a few questions of either the gentleman from California, the gentleman from Virginia, if I might.

As I understand the principle of this bill, initially, was to follow the English rule. It has been modified somewhat. As I understand it now, that if offers and counteroffers keep going on between the plaintiff and defendant, the time for legal fees to be assessed against the losing party starts conceivably as little as 10 days before the trial and covers the duration of that trial; is that correct?

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Virginia.

Mr. GOODLATTE. The gentleman is correct.

Mr. BERMAN. But as I understand the English rule, the English rule does not apply to those civil cases brought by an indigent plaintiff, a plaintiff represented by the legal aid society in Great Britain. Is there any provision in this bill that keeps an indigent plaintiff or a plaintiff who could in no way have the assets to pay the fee of the defendent in a contingency case, let us say, for example, from being assessed the fees that might ultimately be assessed if the final settlement comes in, the final judgment comes in higher than or less than the defendant had offered?

Mr. GOODLATTE. Mr. Chairman, if the gentleman will continue to yield, in section 6, the Court cannot award attorney's fees or other costs and expenses if they find that doing so would be manifestly unjust.

Mr. BERMAN. Section 6. My bill only has five sections.

Mr. GOODLATTE. In section 2, I guess it would be subsection (e)(6).

Mr. BERMAN. Section 2, (e)(6).

Let me just read that, "if the court finds, pursuant to a petition filed under paragraph (5)," that is a petition to shift costs, as I understand it.

Mr. GOODLATTE. That is correct.

Mr. BERMAN. "With respect to a claim or claims, that the judgment, verdict or order finally obtained is not more favorable to the offeree with respect to the claim or claims than the last offer, the court shall order the offeree," that is, in most cases but not all cases, the plaintiff, "to pay the offeror's," that is the defendant in most cases, "costs and expenses, including attorney's fees, incurred with respect to the claim or claims from the date the last offer was made, unless the court finds that requiring that payment of such costs and expenses would be manifestly unjust."

Is that a fair reading of the words?

Mr. GOODLATTE. I think the gentleman read it correctly.

Mr. BERMAN. Is it the gentleman's contention that ability to pay is one of the criteria that the court should look to in determining whether shifting costs would make it manifestly unjust?

Mr. GOODLATTE. I would leave that entirely to the discretion of the court. I think that in some circumstances, it might be appropriate to award attorney's fees regardless of those circumstances. In others, I feel that it might not. It is not my intention to define that in that fashion.

Mr. BERMAN. Mr. Chairman, reclaiming my time, I yield to the gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Chairman, to begin with, if the defendant was indigent, it would be totally uncollectable anyway. So it would be of no value to anybody to get it. I would imagine the plaintiffs would be willing to go along with, unless, unless it happened to be an insurance company that was behind it.

Mr. BERMAN. Reclaiming my time, let us say the defendant had a car. Let us say the defendant made—the plaintiff, talking about here—the plaintiff made $20,000.

Mr. GOODLATTE. Mr. Chairman, if the gentleman will continue to yield, it could be the defendant.

Mr. BERMAN. Let us talk about it in the context of a plaintiff who has a legitimate case. It is not frivolous. He decides not to accept the offer. He could have his, by virtue of this fee shifting provision, he could have his wages garnished, his automobile attached, other assets foreclosed on because he was not in the, he was not able to pay the court-ordered shifted fee costs of the defendant who could be a multimillion dollar corporation. Is that not a fair statement of possibilities?

Mr. MOORHEAD. I do not think it is, because he would already have obviously at that point, have a huge judgment against him to begin with.

The CHAIRMAN. The time of the gentleman from California [Mr. BERMAN] has expired.

(By unanimous consent, Mr. BERMAN was allowed to proceed for 5 additional minutes.)

Mr. MOORHEAD. Mr. Chairman, if the gentleman will continue to yield, if he were indigent, as the gentleman said, and the plaintiff got a huge judgment against him, or if it was the other way around, the plaintiff were indigent, as the gentleman says, the judge, I am sure, would consider the terms here that it would be totally unfair to tie those fees to it.

Mr. BERMAN. Let us create a hypothetical here. Let us understand what we are talking about.

A suit is brought in Federal court under the diversity statute by a plaintiff who is making $20,000 a year, based on the negligence of an out-of-state corporation and offers go back and forth. He decides the last offer is not acceptable. They go to a month-long trial. And the jury awards an amount to the plaintiff that is less than the defendant's last offer.

In that situation, it is possible, under this statute, for the court to decide that the cost of that entire month-long trial and all the other costs of the 10 days prior to that trial would be shifted to the plaintiff and that that would be an enforceable judgment, that the defendant could than go and seek to execute through garnishment of wages, through attaching the car and executing on it, through doing all of the traditional devices that can be utilized to collect a sum owed. Is that not a fair statement?

Mr. GOODLATTE. Mr. Chairman, if the gentleman will continue to yield, that is possible just as it is possible for a poor defendant in a case to suffer those same consequences under the American rule, the current law that exists right now. We are equalizing the risk.

Mr. BERMAN. Well, if I may reclaim my time, that is not correct. There are only a few specified statutes, for instance, civil rights cases, where you automatically provide prevailing costs for the plaintiff.

Mr. GOODLATTE. What I am saying is, if a defendant is brought into court in a nonmeritorious, frivolous or fraudulent lawsuit and has to defend that case, unless there are provisions that provide attorney's fees and that defendant, win or lose, that defendant has to bear the cost. So what I am saying is that the plaintiff right now, if they are on a contingent fee basis, has no risk. You look in the phone book. You will see all the people that will tell them there is no risk in the case. The defendant always has risk.

Mr. BERMAN. I would like to reclaim my time to make a few points.

The proponents of this bill, if you keep talking about it as a way to deal with the frivolous, nonmeritorious case or in a way that would protect, because of this subsection 6, the indigent or almost indigent plaintiff, then all I would ask you to do is amend your bill to put those tests in. Do not say, this will only apply to deter the frivolous case and provide fee shifting in the nonmeritious case when your bill makes no effort to limit it to that.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Texas.

Mr. DOGGETT. If I understood that last answer, about frivolous or fraudulent suits, you would get the impression that this only applies to frivolous or fraudulent suits. Is it not correct that there is no requirement to prove frivolity or to prove fraud in order to impose these burdens and lead to the garnishment of somebody's wages.

Mr. BERMAN. The gentleman from Texas is absolutely right. Ironically, in the one hearing we had in front of the subcommittee that is chaired by my friend from California, the witness, the law professor testifying in favor of the concept of loser pays, said there should be guidelines to limit this to the frivolous and nonmeritorious cases. This is what the proponent said, not the opposition.

Mr. DOGGETT. So they could have limited this bill to frivolous and fraudulent cases but instead, as a way of discouraging even legitimate suits that sometimes, of course, in a court in front of a judge and a jury could go either way, if someone takes a chance thinking they have got a good suit but they lose, it is not a frivolous suit, it is not a fraudulent suit, but when the jury weighs the evidence, they conclude that it does not have merit, that they are going to have imposed upon them the cost of some large concern in defending that suit and they could actually have the wages garnished, perhaps a car taken away, all kinds of things.

Mr. BERMAN. It gets even more complicated and in a sense unfair than that. The gentleman could have a meritorious case where he wins a jury award.

The CHAIRMAN. The time of the gentleman from California [Mr. BERMAN] has again expired.

(By unanimous consent, Mr. BERMAN was allowed to proceed for 5 additional minutes.)

Mr. BERMAN. Let me respond to the gentleman. Just in response to the gentleman from Texas, he could win, he could have a meritorious case but perhaps against that particular defendant the award was somewhat less than the very final offer.

□ 1745

This would bring into play the fee shifting without regard to how meritorious it was, or without regard to the ability of the plaintiff to pay. The thing that galls me is it keeps being argued, the proponents keep talking about the frivolous case, the nonmeritorious case, but they will not put into the bill limitations that would restrict this to the frivolous or nonmeritorious case.

This would be a very simple issue to deal with. You can set up a standard, you can set up a guideline in here that would give the judge the guidelines and the congressional intent to only have this apply in the case of frivolous actions, nonmeritorious actions, refusals to accept reasonable offers, but there is no effort to amend the bill to do that. That gives me the problem.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I want to commend the gentleman from California for bringing this point into even sharper focus than it has been brought before. However, just in case we think that there may be a bit of generosity in allowing the waiver of the requirement to pay fees and costs, in the report of the majority the Republicans say "It is the intent of the committee that this standard," which is to pay costs, "be interpreted to be an exceptionally high one, extending well beyond the relative wealth of the parties."

In other words, do not give them an inch, boys. We are going to turn this rule on its head, and it does not matter if one is wealthy and one is poor; we were looking for a lot of other things to help you keep this standard exceptionally high. I think it is an indication of intent.

Mr. BERMAN. The gentleman's point is so well taken. Remember, this was all patterned after an English rule, an English rule which, by the way, the bastion of British conservatism, the Economist Magazine, has said led to many unfair results, but that English rule exempts anyone who is represented by the Legal Aid Society, anyone who needs assistance with legal services.

Mr. DOGGETT. This is more a draconian rule.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, when the gentleman from Texas questioned the gentleman about the situation where the jury finds no merit in the claim, is it not the case that the jury there found no merit in the case, which begs the question? That is what we are saying. The only test of whether it is a nonmeritorious claim, that is, frivolous, is when the jury brings in a verdict of zero for the plaintiff. Then, at that point, is triggered the loser pays situation.

Mr. BERMAN. If I may reclaim my time, the gentleman from Pennsylvania does not understand the new basic structure.

Mr. GEKAS. The gentleman does not have to tell me what I understand. I understand.

Mr. BERMAN. The gentleman from Pennsylvania does not understand the basic framework of this bill. This is not limited to whether you lose the case. This bill, as it is now written, deals with you sue perhaps a number of defendants under diversity jurisdiction. As to one defendant who makes an offer, you come in let us say $50,000 less than that offer, but with hundreds of thousands of dollars of jury award as to you, because we have eliminated joint and several liability now under this bill.

Mr. GEKAS. Mr. Chairman, if the gentleman will continue to yield, the question the gentleman from Texas posed is different. That is what I am saying.

Mr. BERMAN. If the gentleman will allow me to use my time, it has nothing to do with winning or losing. If the jury award comes in $1,000 under what that particular defendant offered, then fees are shifted, unless the court somehow, under guidelines which are incredibly onerous and draconian, finds that it was manifestly unjust to shift the fees.

Mr. DOGGETT. If the gentleman will continue to yield, does the gentleman mean that instead of being a loser pay rule, this is really a winner pay rule? Somebody could go in, they could win, the jury could decide they were perfectly justified with reference to their claim, and they would still end up having this draconian rule applied to them?

Mr. BERMAN. Actually what I think, to reclaim my time, what I think is this bill is a warning to plaintiffs throughout the United States: Do not bring your case under the diversity statute, because the risks of any award against you are so great for the shifting of attorney's fees, whether you win or whether you lose, that you have lost.

The CHAIRMAN. The time of the gentleman from California [Mr. BERMAN] has expired.

(By unanimous consent, Mr. BERMAN was allowed to proceed for 2 additional minutes.)

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Texas.

Mr. DOGGETT. A further question, Mr. Chairman. The gentleman mentioned diversity jurisdiction. Does this also apply with reference to removal? In other words, if someone filed their action under State law in a State court that did not have a draconian, regressive, reactionary rule like that that is being urged tonight for adoption, could they be removed, if they were against an out-of-State party, to Federal court and suddenly find themselves as a winner pay, facing all of the hardships that you have suggested will emanate from this piece of legislation?

Mr. BERMAN. To reclaim my time, the gentleman shows that, even as a State justice, he is quite familiar with Federal law. I actually was too generous in my comment. We not only have limited the diversity jurisdiction for plaintiffs by this provision, and wiped it out, but what we have done is said "Defendants, you have the choice. You can stay in State court or you can take advantage of this draconian rule and remove to Federal court." This is such an unjust consequence.

Mr. GOODLATTE. Will the gentleman yield on that point, Mr. Chairman?

Mr. BERMAN. I am happy to yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

If the gentleman from Texas would also call attention to this, what the gentleman from Texas just described as the so-called winner pays rule is exactly what is included under Federal law right now, because rule 68 of the Federal Rules of Civil Procedure allows a defendant in a case to make an offer of judgment which, if the plaintiff does not accept it and goes into court and receives a judgment, a verdict in his favor for an amount that is less than that offer in judgment, the plaintiff can be required by the court to pay the attorney's fees of the defendant, just like this in this case.

Mr. BERMAN. Reclaiming my time, that is not correct. The only thing you can recover are court costs. That is a small, small percentage of the potential liability that comes when you add attorney's fees.

Mr. GOODLATTE. The cost can be very substantial in some cases.

Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, in response to the colloquy that just took place on the other side, let me point out that this is a case of any kind of nonmeritorious claim being exposed to a risk for attorney's fees for the plaintiff or the defendant, so a plaintiff who is viewing their case as having merit is not going to give up their Federal diversity jurisdiction. They are going to take that diversity jurisdiction, with the intent to force the other side to pay attorney's fees, unless they reasonably offer settlement offers. That is what this mechanism does.

With regard to the contention that this changes the English rule, and the gentleman from California [Mr. BERMAN] is somehow abhorrent of that, I would point our that the gentleman from California voted for this change in the Committee on the Judiciary. Therefore if he really does not like that, I think he has contradicted himself.

The fact of the matter is that this is simply modeled after rule 68, but it expands it. It makes it better, not worse, because under rule 68, only a defendant who is liable can avail themselves of the mechanism of the so-called winner pays described by the gentleman from Texas.

Under this plan, a defendant who is not liable, who says "I didn't do anything wrong, I should not have been dragged into court," they also can avail themselves of those privileges, and the plaintiff can avail themselves of that by making reasonable settlement offers.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, does the gentleman not agree there is a great difference between costs and court costs plus attorney's fees? It could be hundreds of thousands of dollars. To call one winner pays when it does not include attorney's fees is not quite the same.

Mr. GOODLATTE. Reclaiming my time, Mr. Chairman, the principle is the same, and the amount of those court costs can vary dramatically from case to case, as can the amount of the attorney's fees, but the same principle applies either way, and the fact of the matter is that the rule 68 is in the Federal Rules of Civil Procedure to encourage settlement of cases, and this will take that one step further, make that process not only available to defendants, but also available to plaintiffs and also available to defendants who are not liable.

This is only available to the defendant who is at fault. Why not also make it available to the defendant who is not at fault, and says "I have been dragged into court, I had no choice in this matter, I won the lawsuit, and now I have to pay substantial attorney's fees," whereas the plaintiff in a particular case may have taken no economic risk in proceeding to court, and their case is very different than that of the defendant, who always has to pay, win or lose.

Mrs. SCHROEDER. If the gentleman will yield again, I think we just have to keep reminding people, there is a tremendous difference between court costs and attorney's costs. When you are adding the two together, the magnitude is great.

Mr. GOODLATTE. We have limited those attorney's fees so they can not exceed the amount the plaintiff is paying, or the defendant, if the defendant is the loser, cannot exceed the amount you are paying your own lawyer, so you cannot have a deep pocket come in and overload the costs by bringing in four lawyers to try the case.

Also, we have limited it to just 10 days before trial through the trial, so a party cannot overload the other party with discovery, whether it is necessary or unnecessary, and then collect attorney's fees for all that discovery that was done.

This is a very reasonable way to impose some risk on the parties in cases, to encourage settlement and reduce the number of frivolous, fraudulent, and I would say to the gentleman from California [Mr. BERMAN], nonmeritorious cases.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield again?

Mr. GOODLATTE. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Earlier the gentleman from Pennsylvania [Mr. GEKAS] said, I think the way I heard him, and I hope we get a clarification, but he defined as frivolous a case that the plaintiff lost; that if the plaintiff lost, by definition, it would be frivolous.

Mr. GOODLATTE. I do not believe that is the gentleman's definition.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Pennsylvania for a clarification.

Mr. GEKAS. Mr. Chairman, what we are saying is that the final verdict of the jury is, in effect, if it finds against the plaintiff, if it finds zero, that is prima facie evidence for the late determination as to whether or not attorney's fees and so forth should be paid, that it was nonmeritorious. It had no merit or else it would not have resulted in a zero judgment.

Mrs. SCHROEDER. Mr. Chairman, if the gentleman will continue to yield, does the gentleman mean nonmeritorious meaning frivolous? Because he is saying anyone who loses therefore was frivolous.

My concern is what do you do about the very close calls. That is why I was so disturbed by the gentleman's comment.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding. I just wanted to join in the correction of my friend, the gentleman from Pennsylvania, because a zero recovery from the plaintiff raises no question whatsoever about frivolity, because the test is of the evidence, which you could lose by a very small amount. It has nothing to do with frivolity.

Mr. GEKAS. So what?

AMENDMENT OFFERED BY MR. MCHALE

Mr. MCHALE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MCHALE: After section 4, insert the following:

SEC. 5. FRIVOLOUS ACTIONS.

(a) GENERAL RULE.—

(1) SIGNING OF COMPLAINT.—The signing or verification of a complaint in all civil actions in Federal court constitutes a certificate that to the signatory's or verifier's best knowledge, information, and belief, formed after reasonable inquiry, the action is not frivolous as determined under paragraph (2).

(2) DEFINITIONS.—

(A) For purposes of this section, an action is frivolous if the complaint is—

(i) groundless and brought in bad faith;

(ii) groundless and brought for the purpose of harassment; or

(iii) groundless and brought for any improper purpose.

(B) For purposes of subparagraph (A), the term "groundless" means—

(i) no basis in fact; or

(ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(b) DETERMINATION THAT AN ACTION IS FRIVOLOUS.—

(1) MOTION FOR DETERMINATION.—Not later than 90 days after the date the complaint in any action in a Federal court is filed, the defendant to the action may make a motion that the court determine if the action is frivolous.

(2) COURT ACTION.—The court in any action in Federal court shall on the motion of a defendant or on its own motion determine if the action is frivolous.

(c) CONSIDERATIONS.—In making its determination of whether an action is frivolous, the court shall take into account—

(1) the multiplicity of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the party to investigate and conduct discovery; and

(4) affidavits, depositions, and any other relevant matter.

(d) SANCTION.—If the court determines that the action is frivolous, the court shall impose an appropriate sanction on the signatory or verifier of the complaint and the attorney of record. The sanction shall include the following—

(1) the striking of the complaint;

(2) the dismissal of the party; and

(3) an order to pay to the defendant the amounts of the reasonable expenses incurred because of the filing of the action, including costs, witness fees, fees of experts, discovery expenses, and reasonable attorney's fees calculated on the basis of an hourly rate which may not exceed that which the court considers acceptable in the community in which the attorney practices law, taking into account the attorney's qualifications and experience and the complexity of the case, except that the amount of expenses which may be ordered under this paragraph may not exceed—

(A) the actual expenses incurred by the plaintiff because of the filing of the action; and

(B) to the extent that such expenses were not incurred because of a contingency agreement, the reasonable expenses that would have been incurred in the absence of the contingency agreement.

(e) CONSTRUCTION.—For purposes of this section the amount requested for damages in a complaint does not constitute a frivolous action.

Page 7, line 1, strike "SEC. 5." and insert "SEC. 6.".

Page 7, line 7, strike "The" and insert "Section 5 and the".

Mr. MCHALE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. MCHALE. Mr. Chairman, I first of all want to thank the leadership on both sides of the aisle for their cooperation in allowing me to bring this amendment to the floor. I particularly want to thank my colleague, the gentleman from California [Mr. BERMAN] who spoke a few minutes ago, and who inadvertently described exactly the contents of my amendment.

The gentleman from California, when he was at the microphone, said we should have an amendment that is strictly limited to frivolous lawsuits, we should have an amendment that is based on clear standards, we should have an amendment where the determination is made by the judge in the case as to whether or not there is a frivolous suit, whether or not those standards have been met, and whether or not appropriate sanctions should be imposed.

Mr. Chairman, that is precisely what is contained in my amendment. Let me summarize briefly the contents of what I propose. First of all, the amendment now at the desk supplements but does not replace the language contained in the Goodlatte settlement amendment.

The language of my colleague, the gentleman from Virginia [Mr. GOODLATTE], inserted in the bill remains intact.

Second, my amendment covers statutory as well as diversity cases. Third, it directly addresses the issue of frivolous suites, as requested by my colleague, the gentleman from California [Mr. BERMAN]. It allows for the early dismissal potentially within the first 90 days of a case of those privileges claims which have been brought before the court. This allows for dismissal before extensive discovery costs and legal fees have been incurred.

My amendment is fully compatible with the analogous language in H.R. 956, the products liability bill that we will take up later this week. In summary, Mr. Chairman, what my amendment requires is this: After a judicial finding that the suit is indeed frivolous, this amendment requires that the court enter an order compelling the losing plaintiff or his attorney to pay those expenses unnecessarily incurred by the winning defendant, including court costs, attorney's fees, and discovery expenses.

Mr. Chairman, as someone who opposes the English rule, and ironically, this proposal was originally drafted in opposition to the English rule, a matter no longer before us, and who is concerned that the settlement procedures in the bill itself may be somewhat complicated, I offer this amendment as a clear and straightforward solution to the real, if rare, problems of frivolous suits.

Mr. Chairman, it was ironic, as I sat here a few moments ago I listened to the gentleman from California [Mr. BERMAN] raise very legitimate concerns. What he said into this very microphone was that we need to limit the applicability of sanctions to truly frivolous suits, those motions need to be based on clear standards, and we should allow the judge under those circumstances to make a determination.

I turned to Mr. BERMAN a moment ago and said "I have the amendment and I now offer it to the House."

□ 1800

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. McHALE. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. I thank the gentleman from Pennsylvania for yielding.

Let me ask a few questions about your amendment, because I really think this amendment goes much further than the bill, if I am reading it correctly. The way I read the sanctions section on page 2 is that you oppose the sanction on the verifier of the complaint and the attorney of record, and it says "shall." So my understanding is you are putting them both in the loop for a frivolous lawsuit; is that correct?

Mr. McHALE. The gentlewoman is correct, and I think that is entirely fair and appropriate. Remember, the sanction is not to be imposed unless the judge has previously determined that this is truly a frivolous suit. This then empowers the judge to enter an appropriate sanction order where, if necessary, costs can be imposed, where appropriate, on both the litigant and the litigant's attorney.

When a frivolous case has been filed and has been knowingly filed by an attorney, I believe that is a relatively rare circumstance, but when that happens, I do trust to the trial judge to enter an appropriate order of sanctions potentially on the party and the party's attorney.

Mrs. SCHROEDER. If the gentleman will yield further, I must say I am a little concerned about this amendment because it does that, because it is bringing in a whole other level. When we look at the core bill that this amendment is being offered to, we are not saying if the loser cannot pay, the loser's attorney must pay, or the loser and the loser's attorney must both pay. So you are adding another whole standard. Furthermore, what about frivolous defenses?

Mr. McHALE. Reclaiming my time, that is current law. Under current law when an attorney acts improperly under Federal rule 11 or when a truly frivolous claim has been filed, a judge, usually at a much later stage in the proceedings, may enter an appropriate sanction order.

All we are saying here is that when a truly frivolous suit has been filed, and we define that very carefully in the amendment, under circumstances where I think we would have consensus——

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. McHALE] has expired.

(By unanimous consent, Mr. McHALE was allowed to proceed for 2 additional minutes.)

Mr. McHALE. Mr. Chairman, where we have the matter brought before a judge and the judge who is hearing the case concludes that the matter is truly frivolous, it seems to me that under that circumstance, it is entirely correct and appropriate that the judge in the case be allowed to sanction both the party and the party's attorney, the purpose being to deter frivolous actions.

Mrs. SCHROEDER. If the gentleman would yield further, your amendment is not in lieu of the Goodlatte language.

Mr. McHALE. It is not.

Mrs. SCHROEDER. So the issue that was going around that the gentleman from California [Mr. BERMAN] was talking about, about frivolous lawsuits, this is on top of the Goodlatte amendment, is that correct?

Mr. McHALE. This is in addition to it. Frankly, and I mean to be absolutely candid here, I do have some concerns about the unpredictability of the settlement procedures now in the bill, but I do not touch those procedures. My amendment offers a much earlier, much more expedited and efficient means by which we can screen from the judicial system those truly egregious cases where within the first 90 days the judge can conclude that the case is totally without merit, that it has been brought frivolously and that a sanction order is appropriate both for the party and the party's attorney who should never have dragged the defendant into court.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. McHALE. I yield to the gentleman from California.

Mr. BERMAN. I think the gentlewoman from Colorado makes a good point. My initial excitement and positive interest in your amendment——

Mr. McHALE. Do not lose it now.

Mr. BERMAN. Is waning because it does not replace section 2, it is in addition to section 2. So all of the problems of meritorious cases brought by relative poor plaintiffs in situations where maybe they even win——

Mr. McHALE. Reclaiming my time if I may, that determination of what is frivolous is based on the standard in the amendment where the judge has to conclude before sanctioning anyone that the case was brought in bad faith, for purposes of harassment or for other improper purposes. And when that is the prior judicial determination, sanctions would seem to be appropriate.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have been listening carefully to the gentleman from Pennsylvania's proposed amendment. What he is doing is creating an entire new rule out of whole cloth without ever going to the Rules Enabling Act, the procedure through which we devise new rules.

He is saying that after complaint is filed, the defendant has 30 days to answer, there is discovery proceedings, and before a summary judgment, there would be this frivolous motion that would be permitted to be entertained.

This moves right out of nowhere and has the Congress intrude upon a 50-year procedure that has been working relatively well.

I would urge great caution in the Congress now moving directly to the rules-making capacity as opposed to going through a system that has been carefully provided over the years in terms of how these rules come into being.

This is a motion that would come to pass before there has been an examination of the facts. The summary judgment would occur after a frivolous motion which would make no sense at all in a procedural way to move a Federal case along. It would be a travesty to have this motion weigh in before there have been the facts brought before the court to even issue a summary judgment.

I would hope that the gentleman would carefully consider what he has in mind in that regard.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I am very concerned about this, because I think we are creating a whole new motion here, and I think when you create new motions in the court, you are causing all sorts of problems.

I must also say to Members, the DSG reports this amendment as being in lieu of, and so what I understand from the gentleman from Pennsylvania is not in lieu of, it is alongside of. Therefore, the Democratic study group is wrong.

Mr. McHALE. Mr. Chairman, will the gentlewoman yield on that point?

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. McHALE. The gentlewoman does accurately quote from the DSG report and for whatever reason, and it may emanate from my office, the DSG report is inaccurate. The language of my amendment is an alternative but not in replacement of the language offered by the gentleman from Virginia [Mr. GOODLATTE]. Mr. GOODLATTE's language would normally apply up to within 10 days of trial. My language which does not touch his would come into play at a much earlier stage in the process where the purpose really is to screen the most egregious cases before extensive legal fees and discovery costs are incurred.

Mrs. SCHROEDER. Reclaiming my time, I must say I am very concerned about the amendment, then, because it leaves the core of the loser pay things which I am concerned about, then it adds this other whole motion to this process, and I think there are a lot of questions that bubble around in my head.

I realize you cannot make this motion until 90 days after it has been filed, but what if discovery is not done? Can you keep filing this motion?

Then also I think it is also one way. The defendants do not have a way to fight back if the plaintiffs start throwing out frivolous countercomplaints, or whatever, that they could possibly be doing or frivolous defenses that are raised.

So I think you are giving the hammer to only one side, you are throwing attorneys into it. I do not know how many times you could be making this motion after the 90 days, and I can also see attorneys saying if you have made the motion in the first 90 days and the judge did not rule it was frivolous, then they might say you could not apply loser pays later on. I just think there are a whole lot of real confusing things here that I do not understand.

Mr. BRYANT of Texas. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I would first like to thank you for pointing out that the DSG report inaccurately reported this. Second, I would like to raise a question. Why would the effect which the gentleman from Pennsylvania [Mr. McHALE] is after not be obtained today with simply filing a motion to dismiss and asking for rule 11 sanctions?

Mr. McHALE. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. McHALE. It is entirely possible by cobbling together the existing rules of civil procedure, you could end up with a kind of process that we spell out explicitly in the contents of my amendment.

This amendment simply says that if a truly frivolous case comes through the courthouse door and if it is recognized as such by the judge, then upon the dismissal of the case at that early stage within the first 90 days, sanctions may be imposed.

The gentleman from Texas [Mr. BRYANT] is correct. If a judge wanted to reach into the rules of civil procedure and cobble together several different rules, the same result could be achieved. This is a much more straightforward process.

Mr. BRYANT of Texas. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I would just like to make a point. I would strongly oppose the gentleman's amendment now that I learn that it is in addition to rather than in place of, for the simple reason that as you have constructed it now, first the plaintiff who has no resources and is obviously frightened by the situation in the beginning files a lawsuit, then they first have got to get past the potential of having a judge force them to pay attorneys' fees based upon your provision, and if they get past that, then they are faced with, at the end of the case, having to pay attorneys' fees based upon what the Republicans have come up with.

It is doubly bad, rather than an improvement, and I would strongly urge Members to vote against this amendment.

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Michigan.

Mr. CONYERS. I would just like to refer our friend from Pennsylvania to the Federal Rules of Civil Procedure, rule 11–1, by motion, a motion for sanctions under this rule can be made separately from other motions.

The remedy that the gentleman seeks is already well ensconced in the rules.

Mrs. SCHROEDER. I think that the gentleman from Michigan is making an excellent point. We have rule 11, we are not sure what we are devising here with a whole new motion and what is going on around it, and I understand what the gentleman is trying to do. I think there are very good intentions, but they are missing the core of what everybody was complaining about.

Mr. McHALE. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. McHALE. I thank the gentlewoman for yielding. If what we are talking about here is a redundant situation, and I do not think it is, why is there such vehement opposition?

What we are talking about here is a situation where there are no clear procedures for the removal, the dismissal and the imposition of sanctions where a case is truly frivolous.

Please, let's start with the premise of this argument. The judge must conclude that there is bad faith, that this is brought for purposes of harassment, and only thereafter may sanctions be considered.

The CHAIRMAN. The time of the gentleman from Colorado [Mrs. SCHROEDER] has expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 1 additional minute.)

Mrs. SCHROEDER. Let me just answer what the gentleman said. Reclaiming my time, I think it is very important to point out that it sounds so simple, but we are creating a whole new motion. There is rule 11, there is a process that is already there. We are adding something all new and that is also holding the attorney accountable, and there is a lot of discretion in there as to what a judge might hold frivolous, and we do not know how many times this motion can be made after 90 days. It could become a harassment motion. Plus you do not have anything on the plaintiff's side that is equal. So you just keep giving more and more hammers to one side and I do not think it levels the playing field at all.

Mr. Chairman, I would urge Members to please vote against this amendment, because I really think the way it is written now, it is going to just cause more problems.

(At the request of Mr. CONYERS and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 2 additional minutes.)

Mrs. SCHROEDER. I yield to the gentleman from Michigan.

Mr. CONYERS. It just occurred to me as the gentleman asked what is the sweat if it is just redundant. We cannot make the rules for Federal court procedure in the United States redundant when we are now going outside of the Rules Enabling Act which has a process set up for making rules.

The gentleman rushes to the floor with an idea that the DSG report got wrong, we are trying to help straighten it out, we point out to him that there is adequate coverage of this, but think of the problem with frivolous lawsuits. Frequently they are not discovered in the first weeks or months of the suit. It sometimes is determined in the course of the case as witnesses and evidence are produced that this is not a well-founded lawsuit. So having this motion intervene before summary judgment within 90 days is yet another reason for us to, as unexcitedly as we can, point out we do not need this amendment.

(At the request of Mr. McHALE and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 2 additional minutes.)

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. McHALE. I thank the gentlewoman for yielding, and I apologize, I would not have requested the time had I known that.

I thank my colleagues for their contributions to the debate, but let us not allow a smokescreen to be raised here. This matter is very straightforward. The fact is when the suit cannot be shown to be frivolous in the first 90 days, the motion will not be granted. Where this motion will be granted and should be granted is when it can be established within the first 90 days that the case has been brought for purposes of harassment or bad faith.

□ 1815

When it can be shown in the first 90 days that it is truly frivolous because of bad faith or harassment, why do we want to incur the expenses of discovery? Why not allow the trial court to dismiss the case and impose appropriate sanctions?

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Michigan.

Mr. CONYERS. For us to suggest we do not have a remedy for frivolity that is discovered within the first 90 days is to misread seriously the Federal Rules of Civil Procedure. We have such a rule. What I am saying to the gentleman is we do not need to worry about the first 90 days because most frivolously brought suits are discovered later than that. It is very hard to determine whether it would emerge.

Mr. MCHALE. Mr. Chairman, will the gentlewoman yield on that very point?

Mr. CONYERS. What the gentleman is doing is ignoring that we have a way for modifications to be worked out between the court and the Congress. It is called the Rules Enabling Act, and this is a very extraordinary provision that the gentleman is making. Very few Members get on the floor and move to directly amend the Federal Rules of Civil Procedure without so much as a hearing, discussion, witnesses or anything, explain to us DSG did not get it right, and we keep trying to point out to the gentleman that this problem that he is addressing is already covered.

Mr. MCHALE. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has expired.

(At the request of Mr. MCHALE and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 1 additional minute.)

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. MCHALE. Mr. Chairman, this debate has taken a turn I did not anticipate and without in any way challenging the sincerity of the arguments, we have heard every smokescreen in the world within the last few minutes.

This amendment simply says in conformity with the existing bill where you have a bad suit, one that is clearly frivolous and brought in bad faith, we are empowering with this procedure a Federal judge to recognize that the suit is frivolous and impose appropriate sanctions. That is a power that could conceivably be cobbled together under existing law but it is nowhere spelled out nearly as clearly or appropriately as it is in this amendment.

Why are we so frightened that frivolous suits will be dismissed from court in an expeditious manner and appropriate court costs flowing from bad faith be imposed on litigants and lawyers who in that rare case file such frivolous suits?

Mr. BRYANT of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is extremely important that we focus on the fact that the McHale amendment is not an amendment to this bill that would make the bill deal with frivolous suits. It is an amendment to the bill which adds another step in this process.

Were it an amendment which converted this bill into one that would screen out frivolous suits I would wholeheartedly support it and I think nearly all of us would. What it does is add to this draconian and unprecedented in 200 years notion of loser pays, a provision that says that little person who does not have very many resources and is not going to be able to get a lawyer to work for them to bring a case against a big person or institution, whether that be the government or a major company of some kind faces an additional hurdle, and that is that a local judge perhaps friendly and philosophically inclined in the way of a defendant might slap him with a dismissal under the McHale amendment and make him pay attorney's fees, but if he can get past that and then he has the outcome that is foreseen in the Republican bill, he then faces once again the possibility of having to pay attorney's fees, costs, and be flatly bankrupt for simply trying to pursue what might have been a meritorious case.

I would urge Members to look carefully at this. If we can take the McHale language and convert it into the main purpose of bill, that is to say we made the McHale language as it is the DSG report made us think he was going to do, I would vote for that. I understand there is going to be an amendment offered in just a moment to do that, and I urge Members to move strongly in the direction of converting the McHale amendment into that and do not support the McHale amendment as a simple addition of another dangerous step for a middle-class person who has a meritorious case and cannot get a lawyer to handle it for the fear he may be hit not once but perhaps even twice.

AMENDMENT OFFERED BY MR. BERMAN TO THE AMENDMENT OFFERED BY MR. MCHALE

Mr. BERMAN. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. BERMAN to the amendment offered by Mr. MCHALE: Strike section 2 and insert the following:

SEC. 2. FRIVOLOUS ACTIONS.

(a) GENERAL RULE.—

(1) SIGNING OF COMPLAINT.—The signing or verification of a complaint in all civil actions in Federal court constitutes a certificate that to the signatory's or verifier's best knowledge, information, and belief, formed after reasonable inquiry, the action is not frivolous as determined under paragraph (2).

(2) DEFINITIONS.—

(A) For purposes of this section, an action is frivolous if the complaint is—

(i) groundless and brought in bad faith;

(ii) groundless and brought for the purpose of harassment; or

(iii) groundless and brought for any improper purpose.

(B) For purposes of subparagraph (A), the term "groundless" means—

(i) no basis in fact; or

(ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(b) DETERMINATION THAT AN ACTION IS FRIVOLOUS.—

(1) MOTION FOR DETERMINATION.—Not later than 90 days after the date the complaint in any action in a Federal court is filed, the defendant to the action may make a motion that the court determine if the action is frivolous.

(2) COURT ACTION.—The court in any action in Federal court shall on the motion of a defendant or on its own motion determine if the action is frivolous.

(c) CONSIDERATIONS.—In making its determination of whether an action is frivolous, the court shall take into account—

(1) the multiplicity of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the party to investigate and conduct discovery; and

(4) affidavits, depositions, and any other relevant matter.

(d) SANCTION.—If the court determines that the action is frivolous, the court shall impose an appropriate sanction on the signatory or verifier of the complaint and the attorney of record. The sanction shall include the following—

(1) the striking of the complaint;

(2) the dismissal of the party; and

(3) an order to pay to the defendant the amounts of the reasonable expenses incurred because of the filing of the action, including costs, witness fees, fees of experts, discovery expenses, and reasonable attorney's fees calculated on the basis of an hourly rate which may not exceed that which the court considers acceptable in the community in which the attorney practices law, taking into account the attorney's qualifications and experience and the complexity of the case, except that the amount of expenses which may be ordered under this paragraph may not exceed—

(A) the actual expenses incurred by the plaintiff because of the filing of the action; and

(B) to the extent that such expenses were not incurred because of a contingency agreement, the reasonable expenses that would have been incurred in the absence of the contingency agreement.

(e) CONSTRUCTION.—For purposes of this section the amount requested for damages in a complaint does not constitute a frivolous action.

Page 7, line 7, strike "The amendment made by section" and insert "Section".

Mr. BERMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment to the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. MOORHEAD. Mr. Chairman, reserving the right to object, we do not have a copy of the amendment yet.

Mr. BERMAN. Mr. Chairman, will the gentleman yield on his reservation?

Mr. MOORHEAD. I yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, all this amendment does is take the amendment offered by the gentleman from Pennsylvania and replace section 2 with his amendment. In other words, makes his amendment into the base, the core of the bill. In other words, going from the offer, the counteroffer, loser pays notion to the frivolous action notion.

Mr. MOORHEAD. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BERMAN. Mr. Chairman, the debate which preceded the introduction of the amendment by the gentleman from Pennsylvania [Mr. MCHALE] discussed the unwillingness of the proponents to have their language meet their rhetoric, to deal with the nonmeritorious frivolous claims.

The gentleman from Pennsylvania [Mr. MCHALE] has come up with an amendment which seeks to do that. White I have some concerns about the entire structure of the amendment and to what extent it moves in place of the Federal Rules of Civil Procedure or might have other provisions which are inconsistent with rule XI, the fact is the amendment of the gentleman from Pennsylvania [Mr. MCHALE] does deal with the rhetorical arguments in favor of the sponsors, that the sponsors of this bill have been using.

Therefore, I thought the appropriate thing to do in this case was offer an amendment which simply makes the McHale amendment to deal with actions in the case of frivolous lawsuits the core of this bill. Let us, if we want to address the issue of frivolous cases, an explosion of frivolous cases, the cases which have no merit and the ability of the court to deal with that effectively, let us not punish the poor plaintiff, let us not punish the plaintiff who has a decent case and believes in good faith that he or she can win that case. Let us not punish the plaintiff who receives a judgment that is $1,000 less than the last offer happens to be against that particular defendant by making massive shifts of legal fees from the defendant to the plaintiff without regard to the plaintiff's ability to pay.

That is, let us take the McHale amendment and let us move that ahead as the core part of this bill.

Mr. MOORHEAD. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I am happy to yield to the gentleman from California.

Mr. MOORHEAD. Mr. Chairman, does this strike Goodlatte? Does it strike section 2?

Mr. BERMAN. I will say to the gentleman, yes, it does.

Mr. MOORHEAD. So it strikes Goodlatte.

Mr. BERMAN. It substitutes the McHale language for the Goodlatte language; yes.

Mr. MOORHEAD. And does it attempt to restrict it only to the diversity cases.

Mr. BERMAN. This amendment, as I understand it, is not restricted to diversity cases; and what is the logic of restricting it to diversity cases if a case is frivolous?

Mr. MOORHEAD. I am trying to find out what it does.

Mr. BERMAN. It does not restrict to diversity cases. It is the exact terms, word for word, of the McHale amendment, only in section 2 instead of as an addition to the what I view as very unfortunate loser pays concept that is in the base bill.

I urge an aye vote on this amendment.

Mr. MCHALE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I appreciate where the gentleman is coming from in his argument. As a matter of fact, the position he is now taking is one I had originally considered taking myself in the drafting of my amendment. I had originally considered it as a substitute for the Goodlatte language and then both logically and practically I decided against it. Let me tell Members why I changed my position with regard to the logic of the Berman substitute amendment.

The proposal of the gentleman from Virginia [Mr. GOODLATTE] has to do with settlement language, settlement negotiations that may occur at the end of the pipeline, up to within 10 days of the time of trial. He makes a good faith effort in his language to encourage settlement at that point in order to preclude unnecessary jury determinations, the costs, the expense and the delay of the actual trial.

My amendment logically moves to the opposite end of the pipeline, and frankly I would respectfully suggest it is the end of the pipeline where the American people are demanding reform. It says early on in the process, before discovery costs have been incurred, before legal fees have been run through the ceiling early on in the process when it is clear to the trial judge that there has been bad faith, that the suit is being brought for the purposes of harassment or some other improper purpose, within those first 90 days before judicial resources have been unnecessarily consumed, the case may be dismissed. It may be determined to have been brought frivolously, and sanctions can be imposed.

Now, whether or not Members support the Goodlatte language regarding settlement negotiations, perhaps 3 years into the litigation, my amendment clearly improves the bill by allowing a release of those cases from the judicial process when at the front end of litigations it is clear to the trial judge the suit is being frivolously brought for improper purposes.

Second, in the event that the Berman amendment were to carry, even if it were to be substituted for the Goodlatte language, that would in fact kill the bill. And I think that is perhaps the purpose of some who might argue for that position.

My amendment is a logical, reasonable alternative that cuts to the heart of this issue, the prompt, efficient dismissal of frivolous claims when that fact is clear during the first the 90 days of litigations. At a later point in time it may be determined, in this body or the other body, that the Goodlatte language should be amended or perhaps deleted. But at this point there is absolutely no inconsistency in arguing for reform both at the beginning of the pipeline and at the end.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. MCHALE. I certainly will yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, the gentleman's amendment is focused on the frivolous, nonmeritorious case and trying to deal early on in the process to avoid massive expenses that come when a frivolous case is brought.

Mr. MCHALE. The gentleman is correct.

Mr. BERMAN. Mr. Chairman, it is the rhetoric and the arguments of the proponents of the basic bill, all fit into the context of frivolous actions, desire to deter frivolous actions. The gentleman's amendment strikes at that; their amendment does not. Let me give an example.

Mr. MCHALE. If the gentleman will yield, the gentleman's analysis is absolutely correct. I would therefore suggest to him that he vote for my amendment and if that does not sufficiently improve the bill, vote against the bill.

Mr. BERMAN. Mr. Chairman, I appreciate the gentleman's suggestion. If he will continue to yield, I think I can improve the bill by taking the gentleman's effort to address the issue of frivolous litigations, which I keep hearing from the sponsors of the bill and the proponents of the contract was the purpose of their amendment, and in the belief that the gentleman's amendment comes closer to achieving that goal than their amendment, without the negative impacts on the meritorious case brought by the plaintiff who might not have the resources to cover attorneys' fees, and who has every good intention in bringing that action, I think the gentleman's amendment meets the objectives much more clearly than the bill does with the present system, and so I want to see the gentleman's amendment become the basic heart of the bill.

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And that is the purpose, if I may just use your time to illustrate the problem, under the Goodlatte amendment, it you accept that the next bill coming down the pike, the product liability bill, eliminates joint and several liability, you get into a situation where a plaintiff brings a case against, say, three defendant corporations, and one of the defendant corporations he is suing, let us say, for $1 million, and one of the defendant corporations says, "I will give you $200,000."

Mr. MCHALE. Reclaiming my time, the gentleman and I may be in total agreement as to some of the potential deficiencies in the current language in the bill. My amendment is before the House subjected to your amendment as a substitute which deals totally with the other end of the pipeline. Whatever reservations the gentleman might have regarding the Goodlatte language, surely we can come together with a consensus opinion that a frivolous case ought to be dismissed within the first 90 days.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong opposition to the Berman amendment to the McHale amendment.

This would have the effect of eliminating all of the effort that has been made in putting into this case incentives for parties to settle the case, incentives the gentleman from California himself voted for in the committee on this bill.

And if we were to adopt this in the manner that the gentleman from California [Mr. BERMAN] suggests, that is all we will accomplish. We will go back to having a situation where we have rule 11 and only rule 11 with a mechanism added by the gentleman from Pennsylvania who is acting, I think, in very good faith to provide an additional mechanism to act within 90 days of a suit being brought, but you will still have the situation where it will always be in the hands of the judge to decide what a frivolous case is, what a nonmeritorious case is, what a fraudulent case is, and only in those cases will there be any recompense to the prevailing party.

The result of that will be the same that we have right now with rule 11 of the Federal rules of civil procedure. It is seldom imposed on any of the parties in the cases.

We are attempting here to say that when somebody brings an action in Federal court under the diversity law that they will understand that it is not a risk-free proposition. They should make sure that they have confidence in their case and understand that if they do not offer to settle the case in good faith that the case will result in their being forced to pay attorneys' fees to the party that was forced to defend the case, or in the case of a defendant who is defending the case in bad faith, they will be forced to pay attorneys' fees to the plaintiff who brought a good case that should have been settled before it ever got to trial.

If the gentleman from California is successful in his motion, we will not have any provisions in the bill which say that the loser of the lawsuit based upon the merits of the case and the loser not having any merits, because the jury found his claim to be nonmeritorious, or he did not negotiate reasonably in the case and, therefore, an award was granted below what the defendant last offered in the case and, therefore, the plaintiff should have taken that award, under those circumstances, we will not have any of those incentives for settling the case if this amendment were adopted.

Now, the gentleman from Pennsylvania has, I think, a good proposal to expedite bringing to the attention of the court frivolous cases, but he does not have any way of defining what a frivolous case is or defining what a nonmeritorious case is or defining what a fraudulent case is, and the mechanism that we have in the bill now does define what a nonmeritorious or lesser, if you want to accept the gentleman's contention that there are cases that are not frivolous but are close calls, the jury finds them nonmeritorious, as the other gentleman from Texas described them earlier. Under those circumstances, there is a risk of paying attorneys' fees.

That will be gone if the amendment offered by the gentleman from California to the amendment offered by the gentleman from Pennsylvania [Mr. MCHALE] is adopted.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I thank the gentleman for yielding.

I want to point out that you have acknowledged that we have a mechanism in place now to get rid of frivolous lawsuits.

Mr. GOODLATTE. Absolutely. I acknowledge it is there. I would hope the gentleman from Texas would acknowledge that it is used very, very seldom.

Mr. BRYANT of Texas. I would like to ask the gentleman to express his opinion about why it is used very, very seldom, if that is the case.

Mr. GOODLATTE. In my opinion it is used very, very seldom because judges are former attorneys and they say, "There but for the grace of God go I." They do not want to put an attorney under rule 11 sanctions in an embarrassing situation with their client.

The fact of the matter is there are far more frivolous and fraudulent cases. George McGovern says there are one out of four cases that are frivolous and fraudulent. Surely rule 11 does not apply in one out of four cases.

Mr. BRYANT of Texas. I am interested to hear the gentleman express his faith in George McGovern's judgment.

Mr. GOODLATTE. I was hoping you would place some faith in George McGovern's judgment.

Mr. BRYANT of Texas. Neither he or Kemp are high on my list, but I would say to the gentleman that the people in court are former lawyers, the judges are former lawyers. Yes, the judge is most likely a former defense lawyer. They are the ones that come here and say, "Oh, all of these frivolous lawsuits are being filed." Why do not these defense lawyer judges dismiss them under rule 11? Now, the point I am making is this, we have a mechanism for getting rid of frivolous cases.

The gentleman from Pennsylvania [Mr. MCHALE] proposed an amendment to make it more explicit. We thought that was going to be a substitute for your bill. If it was, it would be a good idea.

Vote for the Berman amendment and it will be.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it is with some trepidation that I join the gentleman from California [Mr. BERMAN], and the reason that I join him now, even though I was not originally for McHale, is that it is what he is doing to the whole bill is what makes this important. We are finally debating what is, I think, at the center of the issue, what to do about frivolous, malicious, or fraudulent lawsuits, and this is the core of the issue, not whether the loser should pay through a wonderful gaming device that stacks it up against the leveraged defense.

This is a much more salutary way for us to proceed, and if there is any problem, it is not the good faith of the plaintiffs bringing suit which, under the current bill, will be intimated through the gambling creed behind the current H.R. 988.

What I want to see is a little person able to bring a suit in good faith that may not have the ability to pay, who may not have the ability to even pay his lawyer's fees at the end of the case, win or lose.

Mr. MCHALE. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Pennsylvania.

Mr. MCHALE. In the interests of full disclosure, let me say to the gentleman and to the House, I used to be a plaintiff's lawyer. I represented many of those persons of modest financial resources.

The language in my amendment would not harm those persons in any way, and I have to smile and say to the gentleman that it is heartening to see that the wisdom of my amendment has now become apparent in light of the fact that it is being offered as a substitute for the earlier Republican language.

Mr. CONYERS. Exactly. That is the redeeming part of the whole thing, as far as I am concerned, but, you know, we are in a situation of relative improvement.

What we are trying to do now is a lot different from cutting out some of your clients in earlier years who would not have been able to bring a suit unless you were going to have contingent fees or you took the case, or someone took the case, on the basis that it had merit. You could not look in the crystal ball and predict you would win or lose the suit. You could not tell what the jury was going to do.

You did not know what the judge is going to do. You did not know if you were going to get shot into a different forum, all of which has a tremendous impact on the outcome of a case. And what we are doing now, what we are doing now is saying let us look at whether it is malicious, frivolous, or fraudulent, and with that, I can agree.

Mr. MCHALE. If the gentleman will yield further, the gentleman and I agree, which is why I oppose the English rule. Ironically, my proposal was drafted originally not as a substitute for Goodlatte but as a substitute for the English rule on which he gentleman from Michigan and I are in full agreement.

Mr. CONYERS. The base underlying the bill is worse than that English rule, because at least the English rule let people who had lawyers appointed be free of being assessed costs. This rule does not take that into consideration.

I urge the Berman amendment be agreed to.

Mr. BRYANT of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would just like to say very briefly if you vote for the Berman amendment what you will get is what the DSG reported the McHale amendment was to amend. We now learned it was inaccurate. The report was inaccurate. If the Berman amendment is adopted, we will be voting for a system that gets rid of frivolous lawsuits early in the case but not one that makes it so frightening for a middle-class or lower middle-class person to bring a lawsuit that they just flat cannot afford to come forward and bring one.

The point is we are told the problem that exists is frivolous lawsuits that cost defendants money unfairly, even though we cannot find any data to support this, we cannot get any studies brought forward that this is going on, we cannot get any kind of an economic study. We do not have any evidence of it at all. We are told the problem is frivolous cases.

We respond to that by saying there is rule 11 right now that gets rid of frivolous cases early in the case. The other side comes back and says, "Yes, but the judges do not use it enough."

Well, the fact of the matter is what they are most really deeply concerned about is they do not want middle-class and lower middle-class people to be able to file a lawsuit against defendants with whom they sympathize. That is simply what it boils down to.

Now, the Berman amendment, if adopted, will mean we will have the first 90 days of the case in the system for getting rid of what they say they are concerned about, frivolous lawsuits, but we would not have a system that said that an average person who brought a case and happened to lose. and everybody knows you can lose a case serendipitously from time to time, would not lose all of their life's savings, lose all of their personal assets and, therefore, be afraid to bring the case in the first place.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from California.

Mr. BERMAN. It is not simply the losing of the case. You can lose by winning under the Goodlatte scenario. That is why I prefer the McHale approach instead of the Goodlatte scenario, and let me explain why.

A situation, a diversity case, four or five corporate defendants, a plaintiff brings an action, he seeks, based on medical injuries and loss of wages and pain and suffering, to collect a million dollars. Defendant three of the five defendants offers $80,000. He has no other offers. He thinks $80,000 will not even cover reimbursement for one-third of his medical bills. He refuses that offer. The case goes to trial. He gets a judgment; he gets a judgment for $1 million, exactly what he sought in his initial pleadings.

However, under the elimination of joint liability, that is coming in the very next bill, the judge apportions, and the jury apportions, liability where the one defendant who made an $80,000 offer is found only to be 7.5 percent liable and, therefore, only obligated to pay $75,000. Now, a huge amount of that particular defendant's attorneys' fees are shifted to the plaintiff even though he got exactly what he wanted, because it was not until the time of trial that he had a sense of how the different negligent defendants would be apportioned. You lose when you win under the Goodlatte scenario. It is not even about frivolous cases, not about nonmeritorious cases. It is about meritorious cases where the apportionment of damages is slightly different as it almost always will be than the plaintiff originally thought.

Mr. BRYANT of Texas. That is an example.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

This does not just deal with frivolous cases. This is intended to encourage settlement in all cases by imposing risk on all parties. We talk all the time here about somebody risking loss, but nobody talks about the fact that if you are the defendant in a lawsuit and you are an individual or you are a small businessperson and you have to spend a fortune in attorneys' fees, that happens to you whether you win the case or lose the case under our current law.

All we are doing is saying we are making the risk equal between the plaintiffs and defendants.

Mr. BRYANT of Texas. The same thing happens to the plaintiff.

Mr. GOODLATTE. Not if it is a contingent case.

Mr. BRYANT of Texas. Somebody is paying those costs.

Mr. GOODLATTE. Not the plaintiff.

Mr. BRYANT of Texas. You have got the same drag on the plaintiff as there is on the defendants, because the lawyer has to carry the burden. He is not going to do it unless he thinks he has a good chance of winning. That is the whole point of this.

I would simply conclude by pointing out the argument, at bottom, on your side of the aisle is we do not have any faith in the judges, most of whom were appointed by Republican Presidents, and we do not have any faith in the American people when you take them 12 at a time and put them in the jury box and show them facts, so we are going to try to write the rules in a way to make sure nobody ever files a case unless it is an absolute slam dunk winner. I do not think that is fair to the middle class.

I think you should vote for the Berman amendment.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BRYANT] has expired.

(At the request of Mr. BERMAN and by unanimous consent, Mr. BRYANT of Texas was allowed to proceed for 2 additional minutes.)

Mr. BRYANT of Texas. Mr. Chairman, I would like to say in conclusion if you vote for the Berman amendment, what you get is a system which the gentleman from Pennsylvania [Mr. MCHALE] had planned to add on to the Goodlatte amendment that would instead be the bill that would say we are going to get rid of these frivolous cases in the first 90 days, but you would not leave us in the situation if you voted for the Berman amendment, you would not have the situation of going through the 90-day process and then facing losing your life's savings because you brought a meritorious case but for some reason or other you happened to lose that.

Mr. MCHALE. If the gentleman will yield, Mr. Chairman, I appreciate the kind, if belated, comments my amendment is now receiving, and in the event that in the vote on the Berman amendment, the Berman amendment is unsuccessful, I hope those kind words of praise are remembered when the McHale amendment on its merits is brought to a vote.

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Mr. BRYANT of Texas. Let me make the point that the kind words for the gentleman from Pennsylvania [Mr. MCHALE], as reported to us, in the DSG report, indicated it was an amendment to replace the Goodlatte language. But if it is an add-on, it makes the bill twice as bad rather than good.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BRYANT] has expired.

(On request of Mr. BERMAN and by unanimous consent, Mr. BRYANT was allowed to proceed for 2 additional minutes.)

Mr. BRYANT of Texas I yield to the gentleman from California.

Mr. BERMAN. I thank the gentleman from Texas for yielding to me.

First of all, the gentleman from Virginia [Mr. GOODLATTE] says what we are trying to do is encourage settlements, avoid going to jury trials and the expense of that. So we are trying to put some risk on both parties. But nowhere in this bill is there any effort on to equate the risks. The middle-class plaintiff or middle-class defendant or small business man is treated exactly the same as the multibillion-dollar corporation.

Shifting fees, shifting fees from General Motors to a plaintiff is not a massive deterrent to General Motors aggressively litigating and seeking to throw whatever smoke it can up to defeat a legitimate claim. Shifting fees from the average plaintiff to General Motors means that case will never be brought, that is what this is about.

This means no case will be brought under the Federal diversity jurisdiction, and so the problem with the McHale amendment, in addition to the Goodlatte amendment, is, as long as the Goodlatte language stays in this bill, plaintiffs are not going to utilize their rights under the Federal diversity statute.

It would have been better to repeal it because this way you are saying plaintiffs cannot utilize it but if a defendant thinks he can gain from it, he can remove it. You do not even have the fairness in your language to eliminate the ability to remove if it is not in the Federal court. It is all defendant-oriented. It does not deal with the frivolous case. The McHale amendment at least focuses on that. That is why I think that should be in place instead of the Goodlatte amendment.

Mr. MOORHEAD. Mr. Chairman, I rise to oppose the Berman amendment to the McHale amendment and to oppose the McHale amendment.

Mr. Chairman, the Berman amendment really destroys all the loser-pays provisions, and particularly the Goodlatte amendment, which we have been working on for several days, in fact for a couple of weeks. The original amendment, Mr. McHale's amendment, is much broader than the bill itself, and we have not had an opportunity in committee or in hearings or anything else to go over this broad an amendment.

I think that it destroys the possibility of the bill passing. I think it weakens the bill. In that respect I would, as chairman of the subcommittee, be willing to have hearings on the subject later on.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman for yielding to me.

Does not the gentleman concede that this moves the measure out of the draconian nature of punishing people for bringing lawsuits to dealing with lawsuits that may in fact be frivolous, malicious, or fraudulent? Is that not a good thing?

Mr. MOORHEAD. One thing in this argument today, we have come up with the idea that plaintiffs are always poor and defendants are always rich. That is far from the truth. A plaintiff can pick a forum, he can file in the Federal court if there is diversity, he can bring the defendant where the defendant never wants to go.

There are lots of defendants who are worth modest sums of money who could be totally destroyed by the action itself being filed against him. Then to say that he does not have a right in frivolous cases or under circumstances where there is no good cause to get his attorneys' fees back, he is left penniless anyway.

Mr. CONYERS. Let me ask the gentleman one thing. When was the last time the gentleman heard a corporation look on television and see an ad for a plaintiff's law firm saying, "No payment if we don't win"? Has the gentleman ever heard of a corporation going to a lawyer like that? I don't think so. Has the gentleman ever heard, before the time that we could use television—and he may have been a plaintiff's lawyer once—did you not normally get people who could not afford a lawsuit?

Mr. MOORHEAD. A lot of lawsuits.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

Mr. Chairman, what is being overlooked here is we are talking about a mechanism that encourages reasonable settlements of lawsuits by imposing risks on all the parties in the case. And we limit that risk for those who talk about the deep pockets. Nobody has to pay the other side's attorneys' fees whether the other side is the very poor person or the other side is General Motors or whoever. No one has to pay them any more than they pay their own attorney.

What we are doing here is creating incentives for parties to settle cases that should be settled by letting them know that there is a risk to not settling it and creating reasonable behavior on the part of parties.

If we accept the Berman amendment, we will have lost all that effort to discourage lawsuits from going to trial in cases and adding to the cost of litigation in this country.

I urge opposition to this amendment.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I am happy to yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman once again.

Mr. Chairman, I always like to hear the gentleman from Virginia [Mr. GOODLATTE] tell us what he is trying to do because it is totally unvarnished and it is straight on the table. He is trying to end lawsuits for people who may not be able to afford them regardless of whether they have merit or not. Thankfully, he said it repeatedly during the course of this debate, and that is precisely my objection to this whole bill.

A person can be injured and not have any money and have a totally meritorious lawsuit, and he should not be held accountable to pay for the attorneys' fees whether he wins or loses. The test is the preponderance of the evidence. That is 51 percent to 49 percent.

The plaintiff is not a lawyer or a judge, he does not know what is happening.

So I am saying that is the unfairness that the gentleman from Virginia [Mr. GOODLATTE] keeps putting on the table that underscores more and more peoples' objections to this bill.

The CHAIRMAN. The time of the gentleman from California [Mr. MOORHEAD] has expired.

(By unanimous consent, Mr. MOORHEAD was allowed to proceed for 2 additional minutes.)

Mr. MOORHEAD. I yield further to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

Mr. Chairman, yes, I will freely confess that I want to encourage settlement of lawsuits. The fewer of them brought into court the better. Every lawsuit has a solution to it. We want the parties to find that solution before they get into court. And the best way to do that is to give the parties incentives to find those solutions on their own before they get into court.

The defendant always faces that incentive because a defendant always has to pay their attorneys on a hourly basis. That does not happen in contingent fee cases for plaintiffs, where, as I have said before, you look in the phone book and you will find ad after ad or watch television, "No fee if no recovery." That is what is driving litigation.

I am in favor of contingent fees because it helps a lower-income person get into court. But the problem is that we should never ever say there is no risk attached to bringing the case in court. That is what this does.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I thank the gentleman for yielding to me.

Mr. Chairman, I point out to the gentleman: that there is no risk attached? That is absolutely preposterous. Anyone who has ever been close to the courthouse knows that. A lawyer who starts the case and has to finance it, he is not going to prosecute a case he cannot win.

Mr. GOODLATTE. We are not talking about the plaintiff——

Mr. BRYANT of Texas. He is not going to go through months and years of work; that is preposterous to assume that that is going on. It is not going on. That is why you have the rule of sanctions that the gentleman and I discussed. It has not been used very much. There are not very many cases in which it ought to be used.

I think it is very interesting how the gentleman shifted the discussion from stopping frivolous cases to some kind of an incentive to settle. What you have here is a prohibition on an average person getting into a courthouse.

Mr. MOORHEAD. Reclaiming my time, the gentleman is probably right, there are cases that are filed that they intend to get something out of. But in many, many of these personal injury cases or others, they file a suit, hopeful to make a settlement.

Mr. ABERCROMBIE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I hope we can bring some sanity to all this. I am opposed to this, I am opposed to this bill. If you think about it, I cannot imagine why some of my friends on this side are for this.

We have been looking at working on this for several days, and in fact the past several weeks. We are getting rid of several centuries of people fighting against the king to be able to sue.

You cannot say that something is groundless or frivolous. If a man or woman says this is in their interest and they can find a lawyer to take it, they should be able to do it. Let us get to the bottom line here. I have done that. I have been on that side. I was libeled once, and I went to a lawyer and, thank God, I was able to find an attorney who took my case when I did not have any money. I was a student in college. He took that case and it helped set law in the State of Hawaii because we drove the State of Hawaii back. They had all their attorneys working against me. Anybody who is tuning in across this country, this bill is against you.

There are three things that define a free people: the right to have a jury trial; the right to vote; and the right to sue. The commoner can sue the king. The king in this country, the executive in this country, the big people, corporations, whoever it is, they have to stand in court against a small person. That is what this is all about.

I saw the Speaker today. He says he is somewhat of a historian. Well, he is a little loose with the facts. He got on television today and said, "Look through your rolodex and see who you have not sued today." What a sorry spectacle that is and what a sorry spectacle this is today.

I went down to take the law boards, and I walked out before I left—I took a look at the people in the room and decided I did not want to be with them. Walked out before it was over.

This is not a conservative position. I do not understand this position that is being taken by our Republican friends and, sad to say, some of my Democratic friends.

We should be defending the individual's right to sue the king. That is what this is all about. You can have all of the discussion back and forth when most of the country could not even understand what you were talking about. There is a bottom line to be drawn on all of this: Can the average American take someone else into court and see who is right? You have no business telling me that my views and my desires are groundless, that they are brought in bad faith, that they are brought for the purpose of harassment.

I was the one who was harassed in the case. I had a State senator who libeled me, who knew that he libeled me. It was during the Vietnam war situation, and if you do not think that can reoccur here, you are making a sad mistake. He libeled me, and he knew it.

What they ended up doing it in order not to have to pay my lawyer, thank God I was able to find somebody who was willing to take my case, and he absorbed all the costs. I did not have any money. He took it on. I was glad to have him. That is what this is all about. Think about it.

This bill, H.R. 988, I do not care what you do—I day to the gentleman from Pennsylvania [Mr. MCHALE]—it is nothing against him individually, I say to the gentleman from California [Mr. BERMAN] it is not against him.

I realize they are trying to go against the tide. Do you know what this is? This is trying to dull the guillotine as it comes down to chop off your neck. We are trying to see if we cannot make the car break down on the way to your execution so you have to arrive on 4 rims instead of 4 wheels.

Think about this. There is not a lot of people on the floor, but if I get the chance on another amendment, I am going to come up further. The whole history of freedom is what is at stake with this. You do not have a contract to uproot the Constitution and the history of the Constitution and what brought us to this stage in America. The average person, the every-day man and woman, has a right to do down and say to somebody who is an attorney, willing to take their case, "Will you help me? I have nothing. I don't know if I have got a case that you can win, but I feel I have been injured, I feel I have been done harm. Will you take my case, will you step up to the plate for me?"

That attorney has to think long and hard, Mr. Chairman, because that attorney does not know whether he or she can afford to do that, does not know that they can take them on.

And as for settling cases, let me tell you I have been a member of a city council, and I have been a member who had to decide when we were the deep pocket with only 1 percent, and I voted every time that we were at fault to do that because that is what protected the system so the individual man and woman in this country knows that they are going to get a recourse of action that will result in justice for them.

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Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take 5 minutes. I just want to say "Amen" to my friend, the gentleman from Hawaii [Mr. ABERCROMBIE], and rise immediately after him so that everybody will quit thinking that I am the least mild-mannered fellow in this body. It is always nice to speak after the gentleman from Hawaii because then I do not sound like I am the ranting, raving guy in the body. But what he says is absolutely correct, and it goes back to what we discussed in the general debate, and that is that we have a problem in our judicial system that ought to be attacked as if it were a gnat, and we are using a sledgehammer to attack it, and we have come in with a solution that swings the pendulum all the way to the other extreme and, in the process, does an injustice to a system of justice and a system of addressing grievances in this country that has been in place for centuries and centuries.

Mr. Chairman, we started by saying that our objective is to deal with lawsuits that have no merit, that are frivolous lawsuits. I say to my colleagues, "The problem is you can't deal with those lawsuits with this bill without throwing out the baby with the bath water, and so you come in with a piece of legislation that is designed to revamp and reshape the entire system of justice in civil cases just so we can deal with one, or two, or even a handful of, or a thousand frivolous lawsuits or abuses of the process, and that is not the way we ought to be proceeding."

The amendment that has been offered by the gentleman from California [Mr. BERMAN] would limit this bill to frivolous lawsuits, which we were told was the primary motivating factor for coming forward with this bill in the first place, and, as we get further and further into it, now we find that we are not dealing just with frivolous lawsuits, but we are putting in place a whole new system that encourages, demands, forces people to resolve litigation whether they want to do it or not, and in the process disadvantaging people who need access to the justice system and makes it impossible for them to come into the court without substantial fear of risking all of their assets.

I think we ought to step back from this, as the gentleman from California [Mr. BERMAN] has encouraged us to do, and put this system into place, limit it to frivolous lawsuits, which is the primary motivating factor and the factor that it should be applicable to and bring some sanity back to this process.

I say to my colleagues, "Don't throw out our whole system of judicial works just to get a few bad apples out of the system."

Mr. SCOTT. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, I say to the gentleman, "We ought to point out, if we don't adopt the Berman-McHale amendment, it not only will apply to frivolous lawsuits, it will also apply to meritorious lawsuits, those that are not—but not as meritorious as you thought they were. You can win your suit. You can win, essentially prevail, but if you come in essentially just under the offer, then you will be beset with these draconian provisions. That is not right."

Mr. WATT of North Carolina. That is correct, and I think the best analysis we heard of it is, "You win and lose cases in the real world. The burden of proof is on one side or the other, but you win a case with a 51 percent versus a 49 percent."

Every case that gets filed, most cases that get filed, 90 percent, 95 percent of the cases that get filed, are close questions. They are not slam dunks, as we say in basketball lingo, and that is what this bill is designed to discourage——

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

Mr. INGLIS of South Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise for two reasons: First, to correct something that I said in the Committee on the Judiciary and, second, to engage the gentleman from Virginia [Mr. GOODLATTE] in a colloquy, but first as to the correction:

In committee I was very concerned about the amendment of the gentleman from Virginia [Mr. GOODLATTE]. Now I am much more convinced of the rectitude of the amendment in that it does improve the bill, and so I apologize to the gentleman for misunderstanding it at the Committee on the Judiciary and feel that he did make a significant improvement to the bill. That is my first observation.

The second:

My reason for engaging the gentleman in a colloquy just briefly, Mr. Chairman, is to ask whether at some point—I am, along with the gentleman from Pennsylvania [Mr. GEKAS], a little bit interested in the Michigan rule that would possibly sharpen up loser pays. We are not going to offer that at this juncture, but I guess I am asking the gentleman from Virginia if possibly somewhere down the road we might look at that if this does not work as well as we think it is going to work. I am concerned about that middle ground and hoping that we can push the parties even closer towards settlement and sharpen it up a little bit, but maybe the gentleman would have some thoughts about——

Mr. GOODLATTE. Mr. Chairman will the gentleman yield?

Mr. INGLIS of South Carolina. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I am also interested in finding ways to encourage more reasonableness in litigation and to encourage more settlement of cases. I think that is the intent of the amendment of the gentleman from Pennsylvania [Mr. GEKAS], but quite frankly—and also let me say that we will find out, if this passes and becomes law, and despite all the apocalyptic statements of many on the other side, this applies to about 1 or 2 percent of all the civil litigation in this country, so we are going to find out, without endangering all those rights, whether or not this does work. But if it does, then I think we answer one of the objections they have by not taking the Gekas procedure and splitting the difference between the two parties, wherever they end up, and saying that, for example, the plaintiff last offered $100,000, and the defendant last offered $50,000, putting it at $75,000, so that if the plaintiff gets $75,001, the plaintiff wins and pays—the defendant pays attorney fees. If the plaintiff gets $74,999, the plaintiff wins but pays the defendant's attorney fees. Their objection to that is that that is not fair that the winner pays.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. Let me finish that point.

They are correct that there are circumstances where a plaintiff in a case could get a judgment under these circumstances and wind up paying attorney fees for the defendant, but under the current bill, as it is formulated, that only occurs if they are way off in their settlement negotiations.

So, for example, if that plaintiff is at $100,000 in the case, and the defendant is offering $50,000, and they do not get any further, under the current rule in this bill only if the plaintiff recovers more than $100,000 will the defendant pay the plaintiff's attorney fees; only if the plaintiff gets less than $50,000, or $50,000 less than the plaintiff's last offer, would the plaintiff pay the defendant's attorney fees because the plaintiff was not reasonable in negotiations. The proof of the reasonableness is in the jury's final award, and that is the basis of this mechanism. It will push parties together to settle cases.

I think that the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS] is well intentioned, but I think it may be too razor sharp for the comfort of some on the other side.

Mr. INGLIS of South Carolina. Reclaiming my time, I point out to the gentleman from Virginia I think that he has well stated that he is in a middle position here, between the position I might take and the position the gentleman from Michigan might take and, therefore, shows the reasonableness of the gentleman from Virginia's point of view.

I think that in the future I hope that we can come back and revisit to figure out whether we need to tighten it up a little bit and move it toward this direction.

Mr. GOODLATTE. Mr. Chairman, would the gentleman yield further?

Mr. INGLIS of South Carolina. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, what I am neglecting to say here is that the American rule that is championed by some on the other side applies in that example that I just gave where the jury comes back with an award between $100,000 and $50,000. Neither party pays the other party's attorney fees because neither of them has a claim that they made an offer better than what the other party finally achieved in the case.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. INGLIS of South Carolina. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I would hope we all support the American rule rather than one side, but let me point out to my colleagues that the whole notion that there is some superior method enforcing settlement of cases as opposed to having them tried is one that I find undermines the whole basis of loser pays.

The fact of the matter is that of course everybody would love to settle. But where the weight and the power is more on one side than on the other, settlement becomes a very unfair tool, and that is why we go to trial.

The judges are trying to get the parties to settle, the parties themselves frequently want to settle, and now here comes the Congress, "You will settle these cases or you will be penalized," and that is the underlying part of it that I cannot agree with.

Mr. INGLIS of South Carolina. Reclaiming my time, Mr. Chairman, I say to the gentleman from Michigan the problem is that I think he is overlooking the fact that in many of these cases the plaintiff would not have much risk. Talking about contingency fee arrangement. The defendant is the one at risk, who is hanging out to dry as a small business person. They are hanging out to dry while the plaintiff has very little risk.

The CHAIRMAN. The time of the gentleman from South Carolina [Mr. INGLIS] has expired.

Mr. BURTON of Indiana. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to have a hypothetical story, and then I would like to ask a question of the gentleman from Virginia [Mr. GOODLATTE].

Fellow is driving across the Ohio State-Indiana border, and interstate trucking company has a trucker who loses control of the vehicle through his own negligence, and he hits this car, and he puts this fellow in the hospital, and the fellow has a major shoulder injury, and he goes through several surgeries, and after several surgeries it is evident that he is going to be physically impaired probably for the rest of his life. So he goes to the trucker, trucking company, or to his insurer, and he says, "Look, I'm going to be impaired the rest of my life. I'd like to have a $500,000 damage settlement," his attorney does.

And they say, "Well, I tell you what. We've looked at your case, and we think we'll give you $50,000."

And so they come back, and they go through the preliminaries, and the plaintiff says, "OK, I'll go to $400,000," and the defendant says, "We'll go up to $100,000," and there they hit the loggerhead, and they go to a trial, and the trial goes on for—this process drags out for about 2 or 3 months, and during the trial the jury does not like the way the defendant—or the plaintiff looks, or they do not like some of the things that his attorney says, and they decide to give him $75,000 instead of the $100,000, which is lower than the last best offer, and, because they settle on $75,000, he is liable for all of the defense's legal fees, as I understand it.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. BURTON of Indiana. I yield to the gentleman from Virginia.

Mr. GOODLATTE. He is only liable with the defense's legal fees to the extent that they do not exceed his own legal fees. He cannot pay any more than he pays his own lawyer.

Mr. BURTON of Indiana. So his lawyer, if he was on a 40-percent contingency basis, and he got a——

Mr. GOODLATTE. The bill provides a mechanism for calculating a reasonable value for those attorney fees if the case was brought on——

Mr. BURTON of Indiana. OK; well, let us say it is a 40-percent contingency basis; OK? So 40 percent of $75,000 is what, $30,000?

Mr. GOODLATTE. The bill does not work based on percentage. It bases on a reasonable value and the hourly rate of——

Mr. BURTON of Indiana. Let us say that it is a reasonable value and that it comes out to $25,000.

Mr. GOODLATTE. Right.

Mr. BURTON of Indiana. OK; so he has to pay $25,000 of the defense's legal fees?

Mr. GOODLATTE. That is correct.

Mr. BURTON of Indiana. So that would be a total of $50,000 that he would be out as far as legal obligations.

□ 1915

For his shoulder injury, that is a permanent impairment, he now is going to get a $25,000 settlement in reality.

Mr. GOODLATTE. The fact of the matter is he turned down a $100,000 settlement offer. His $300,000 last offer was four times what the jury finally gave him.

Mr. BURTON of Indiana. Reclaiming my time, the man has a permanent disability. Because of the jury's decision, he is going to end up with $25,000, and he has a lifetime of pain and suffering. It just seems to me there ought to be some balance in this. For the plaintiff to pay 100 percent of the legal fees of the defendant is exorbitant. I think there ought to be some compromise. There ought to be a penalty, but I do not think the penalty should be 100 percent. It seems to me that something like 25 percent would be a more realistic figure. There is a penalty involved, he knows he is going to have to pay, but 100 percent loser-pays makes absolutely no sense to me.

Mr. GOODLATTE. If the gentleman will yield further, the gentleman makes a good point that the further away from the settlement and the further away from the defendant's last offer the plaintiff is perhaps the less reasonable he is and that the percentage might vary.

If the gentleman has some kind of a sliding scale for that type of case, I would be happy to work with the gentleman to do that. I am not sure that a flat percentage would be applicable in every case, because what about the case where he asks for $100,000, the defendant offers $50,000, and the jury awards him $2,000 because there is some minor aspect of the case he is right about. But he should not have brought the whole case into court, and left $50,000 on the table to get $2,000.

Mr. BURTON of Indiana. Reclaiming my time, I do not know how you would work out a sliding scale. It would be very difficult. I do believe there ought to be a penalty for a lawsuit where they are way out of kilter, but 100 percent just does not seem fair to me. So I will be proposing an amendment, and, in the interim, if we could talk and maybe figure out some kind of a compromise that would be fine. I will propose an amendment that says loser pays 25 percent of the defendant's legal fees, and not 100 percent.

Mr. GOODLATTE. If the gentleman will yield further, I would like to point out to the gentleman that attorneys fees are limited not only in respect to not paying more than you pay your own attorney's fee or the value of what you would have paid based on an hourly rate, it is also limited to not more than 10 days before trial through the trial. So all the earlier discovery in the case and that sort of thing, you are not exposed to paying for that either, so long as you are making a good faith settlement offer, which essentially can be any settlement offer up to 10 days before the trial.

Mr. BURTON of Indiana. Everything before 10 days before the trial is not included?

Mr. GOODLATTE. That is correct. You can limit your exposure substantially the way we designed this bill now, compared to the original loser-pays provision in the original bill.

The CHAIRMAN. The time of the gentleman from Indiana [Mr. BURTON] has expired.

(By unanimous consent, Mr. BURTON of Indiana was allowed to proceed for 1 additional minute.)

Mr. BURTON of Indiana. Mr. Chairman, 10 days before the trial, this is a very contentious case, the defense has two attorneys working on it at 10 hours a day, 20 hours a day at $100 an hour, that is $2,000 a day, but I think that is a low fee for some of these attorneys. Say it is $2,000 a day plus clerical and everything else. In 10 days you are looking at $25,000 or $30,000 in legal fees.

Mr. GOODLATTE. That could arise.

Mr. BURTON of Indiana. Or more, if you have a really involved case.

Mr. GOODLATTE. If the gentleman will yield, that is limited by the amount that the plaintiff is paying their own attorney's fees in this case. Do not forget this is also applying to a defendant and also applies not just to tort cases. In fact, the vast majority of the cases, diversity cases, are going to be contract actions between people suing each other for debt, and there will be plenty of times when the plaintiff will want to recover attorney fees from the defendant.

Mr. BURTON of Indiana. I really believe we should take a hard look at having a lower percentage than 100 percent. I think 25 percent sounds reasonable.

Mr. HASTINGS of Florida. Mr. Chairman, I move to strike the requisite number of words.

I would like to engage in a colloquy with the gentleman from Virginia [Mr. GOODLATTE].

Am I to understand that the objective is to encourage settlement of cases in Federal court?

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. HASTINGS of Florida. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, there are two objectives of this provision in the bill. One is to discourage the bringing of frivolous, fraudulent, and nonmeritorious claims. The other is to encourage settlement of cases. That is correct.

Mr. HASTINGS of Florida. Is the gentleman aware that for the last decade, 92 percent of all cases that were filed as civil cases were ultimately settled in Federal Court?

Mr. GOODLATTE. I am aware of that fact.

Mr. HASTINGS of Florida. It is the 8 percent you are worried about?

Mr. GOODLATTE. It is the overload in the courts and the fact that a lot of those cases that were settled were settled for nominal sums of money where one party or the other feels the other party was not acting reasonably. This gives a defendant in a case the opportunity to say I am not liable, I am not going to offer settlement, and if I go to court, I am entitled to bring something from somebody who brought a suit against me, made me go to great expense, and they are not having to pay anything because they may or may not have the case on a contingent fee basis.

Mr. HASTINGS of Florida. How do you arrive at that objectively? I heard you say a moment ago it was based on what the jury ultimately decides as to whether or not there was ultimate merit. Do you not contemplate excellent litigants being on the defense side or plaintiff's side being more persuasive or jurors that are quirky or judges who are stupid, or do you not contemplate any of those things?

Mr. GOODLATTE. All of those things play a role in the case, and all of those things need to be taken into account, as they are taken into account right now when you look at determining whether or not you make a settlement offer in a case. The same thing is true right now. If you know that the judge generally tends to favor the plaintiff or the judge generally tends to favor the defendant, you are going to structure your settlement offer differently as a result of that. If you think you have a good jury in a case, you are going to make a good settlement offer than otherwise.

All of those factors are true right now. What we are saying is right now there should not be the atmosphere that says there are some litigants in court who are approaching it from the standpoint that it is risk free, either because they are claiming fraud or have a frivolous suit.

Mr. HASTINGS of Florida. Mr. Chairman, reclaiming my time, do you not think that rule XI with the sanctions enforcement has been utilized such that lawyers are mindful of the existence of that rule and have avoided bringing frivolous litigation to court, and are you not also mindful that judges pick up real quickly on frivolous litigation and that normally it is dismissed? You are talking, I believe, about the exception to the rule.

Mr. GOODLATTE. Rule XI is on average applied in each district court system in this country, the Western District of Virginia, for example, where I practiced, very, very rarely, maybe once or twice or three times on average in a year out of all the cases that are filed.

Mr. HASTINGS of Florida. Mr. Chairman, reclaiming my time, that is not true for every district. I presided in the Southern District and used it more than four times in a year as a presiding judge, as did countless other judges. Maybe we had the kinds of litigants that would come forward and we had to sanction them.

Mr. GOODLATTE. If the gentleman would yield further on that interesting point, the testimony we heard during the hearing was that before rule XI was amended and weakened a couple of years ago, during the 10-year time frame before that, there were a total of 3,000 cases. That is 300 each year for 10 years, divided into 100 different district court systems in the Federal District Court system in the country. So on average, it is not being used very often.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. HASTINGS of Florida. I yield to the gentleman from California.

Mr. BERMAN. Just noting in the hope that the debate on this amendment and the amendment to the amendment are winding down, I would just like to use the gentleman's time if I might to restate the purpose of the Berman amendment.

The base bill and the Goodlatte amendment do not take into account the merits of the case or the ability of either party. It does not seek to spread the risks equally. It essentially punishes the person who has less resources vis-a-vis the person or corporation who has greater resources.

The McHale substitute has the benefit of actually getting at what the proponents of this bill have been talking about, which is weeding out the frivolous case.

So because the McHale substitute seeks to get at the frivolous lawsuit, even though it is cast in a fashion that is different than I would have drafted it, I think it makes a better proposal than the Goodlatte proposal. So the Berman amendment simply says McHale in place of Goodlatte, not McHale in addition to Goodlatte.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. BERMAN] to the amendment offered by the gentleman from Pennsylvania [Mr. MCHALE].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. GOODLATTE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. Pursuant to clause 2(c) of rule XXIII, the Chair may reduce to 5 minutes the minimum time for electronic voting on the underlying McHale amendment, if ordered, without intervening business or debate.

The vote was taken by electronic device, and there were—ayes 186, noes 235, not voting 13, as follows:

[Roll No. 201]

AYES—186

Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Bateman
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Clay
Clayton
Clement
Clyburn
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Duncan
Durbin
Edwards
Ehrlich
Engel
English
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gilman
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Longley
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McKinney
Meehan
Meek
Menendez
Mfume
Minge
Mink
Moakley
Mollohan
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Orton
Owens
Pallone
Pastor
Payne (NJ)
Peterson (FL)
Peterson (MN)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Sisisky
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOES—235

Abercrombie
Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Collins (GA)
Combest
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham

Danner
Davis
de la Garza
Deal
DeLay
Dickey
Doolittle
Dornan
Dreier
Dunn
Ehlers
Emerson
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam

Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Lucas
Manzullo
Martini
McCollum
McCrery
McHale
McHugh
McInnis
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Mineta
Molinari
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Oxley
Packard
Parker
Paxon
Payne (VA)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad

Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Torkildsen
Traficant
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—13

Becerra
Bunning
Coburn
Coleman
Condit

Gibbons
Hefner
McDade
McIntosh
Miller (CA)

Pelosi
Rangel
Roth

☐ 1943

Mrs. KENNELLY and Mr. TORRICELLI changed their vote from "no" to "aye."

Mrs. JOHNSON of Connecticut and Mr. MINETA changed their vote from "aye" to "no."

So the amendment to the amendment was rejected.

The result of vote was announced as above recorded.

☐ 1945

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. MCHALE].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MCHALE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 115, noes 306, not voting 13, as follows:

[Roll No. 202]

AYES—115

Andrews
Baker (CA)
Barrett (WI)
Bateman
Beilenson
Bentsen
Bevill
Bilbray
Bishop
Blute
Boucher
Brown (OH)
Chenoweth
Combest
Coyne
Cramer
Crapo
Davis
DeLay
Deutsch
Diaz-Balart
Dingell
Dooley
Doolittle
Doyle
Duncan
Engel
English
Ensign
Fazio
Foglietta
Forbes
Fowler
Fox
Frank (MA)
Franks (NJ)
Gejdenson
Gephardt
Gilchrest

Gilman
Gonzalez
Goodlatte
Gordon
Goss
Green
Greenwood
Gutknecht
Hall (OH)
Harman
Herger
Hoke
Holden
Horn
Inglis
Jefferson
Johnston
Kanjorski
Kaptur
Kelly
Klink
Kolbe
Latham
Lazio
Levin
Lincoln
Luther
Manton
Mascara
McCollum
McHale
McKinney
Meek
Meyers
Mineta
Mollohan
Montgomery
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Obey
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Porter
Rahall
Ros-Lehtinen
Rush
Sanford
Sawyer
Scarborough
Schumer
Shadegg
Sisisky
Smith (MI)
Souder
Spence
Stark
Stenholm
Studds
Taylor (MS)
Torkildsen
Torricelli
Traficant
Tucker
Upton
Visclosky
Vucanovich
Waldholtz
Weldon (FL)
Weldon (PA)
Wicker
Wise
Zimmer

NOES—306

Abercrombie
Ackerman
Allard
Archer
Armey
Bachus
Baesler
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
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Brown (CA)
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Collins (GA)
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Fawell
Fields (LA)
Fields (TX)
Filner
Flake
Flanagan
Foley
Ford
Franks (CT)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Gallegly
Ganske
Gekas
Geren
Gillmor
Goodling
Graham
Gunderson
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Hall (TX)
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Hancock
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Hastert
Hastings (FL)
Hastings (WA)
Hayes

Hayworth
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Heineman
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Hobson
Hoekstra
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Istook
Jackson-Lee
Jacobs
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Jones
Kasich
Kennedy (MA)
Kennedy (RI)
Kennelly
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Kim
King
Kingston
Kleczka
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Knollenberg
LaFalce
LaHood
Lantos
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Laughlin
Leach
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Maloney
Manzullo
Markey
Martinez
Martini
Matsui
McCarthy
McCrery
McDermott
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McInnis
McKeon
McNulty
Meehan
Menendez
Metcalf
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Mica
Miller (FL)
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Molinari
Moorhead
Morella
Myers
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Olver
Ortiz
Owens
Oxley
Packard
Pastor
Paxon
Payne (NJ)
Payne (VA)
Peterson (MN)
Pickett
Pombo
Portman
Poshard
Pryce
Quillen
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Radanovich
Ramstad
Reed
Regula
Reynolds
Richardson
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Roemer
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Rohrabacher
Rose
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Roybal-Allard
Royce
Sabo
Salmon
Sanders
Saxton

Schaefer
Schiff
Schroeder
Scott
Seastrand
Sensenbrenner
Serrano
Shaw
Shays
Shuster
Skaggs
Skeen
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Spratt
Stearns
Stockman
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Taylor (NC)
Tejeda
Thomas
Thompson
Thornberry
Thornton
Thurman
Tiahrt
Torres
Towns
Velazquez
Vento
Volkmer
Walker
Walsh
Wamp
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Waters
Watt (NC)
Watts (OK)
Waxman
Weller
White
Whitfield
Williams
Wilson
Wolf
Woolsey
Wyden
Wynn
Yates
Young (AK)
Young (FL)
Zeliff

NOT VOTING—13

Becerra
Bunning
Coburn
Coleman
Condit

Gibbons
Hefner
McDade
McIntosh
Miller (CA)

Pelosi
Rangel
Roth

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Mr. CHAPMAN and Ms. EDDIE BERNICE JOHNSON of Texas changed their vote from "aye" to "no."

Messrs. FAZIO, SHADEGG, GUTKNECHT, FOX of Pennsylvania, and HERGER changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. CARDIN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I wonder whether the subcommittee chairman would respond to a colloquy.

Mr. MOORHEAD. Mr. Chairman, will the gentleman yield?

Mr. CARDIN. I yield to the gentleman from California.

Mr. MOORHEAD. I will be glad to engage in a colloquy with the gentleman, Mr. Chairman.

Mr. CARDIN. Mr. Chairman, I am concerned that attorneys representing the Federal Government or any of its entities or instrumentalities in Federal courts not be held to a different standard under rule XI(c) than other attorneys.

Is it the intention of the subcommittee chairman that the sanctions in rule XI(c) for filing frivolous claims be applied with equal force?

Mr. MOORHEAD. Mr. Chairman, if the gentleman will continue to yield, I share the concern of the gentleman from Maryland. It is our intention that rule XI(c) be applied equally to all litigants, and that the Federal judges exercise no special restraint when dealing with the Federal Government.

Mr. CARDIN. I thank the subcommittee chairman, Mr. Chairman.

AMENDMENT OFFERED BY MR. HOKE

Mr. HOKE. Mr. Chairman, I offer an amendment.

The Chairman. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HOKE: Page 6, after line 24 (after section 4) insert the following:

SEC. 5. CONTINGENT FEES OF ATTORNEYS.

(a) IN GENERAL.—Part III of title 28, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 80—CONTINGENT FEES OF ATTORNEYS

"1051. Limitations on contingent fees.

"1052. Definition of qualifying settlement offer.

"§ 1051. Limitations on contingent fees

"(a) EFFECT OF QUALIFYING SETTLEMENT OFFER.—In any Federal civil action (except an action for the protection of civil rights, including the right to vote) in which a monetary recovery is sought, the compensation to the attorney representing a plaintiff—

"(1) shall, if a qualifying settlement offer is made to and accepted by that plaintiff not exceed the lesser of—

"(A) the sum of—

"(i) a reasonable hourly rate, previously agreed upon by the attorney and the plaintiff, for legal work actually performed; and

"(ii) actual expenses of the attorney in the action; or

"(B) 10 percent of the amount of the accepted qualifying settlement offer; and

"(2) shall, if no qualifying settlement offer is accepted by that plaintiff, not exceed the sum of—

"(A) that portion not greater than 33 percent, agreed upon by the attorney and the plaintiff before trial, of the amount by which the final recovery in the action exceeds the amount of the final qualifying settlement offer;

"(B) a reasonable hourly rate, previously agreed upon by the attorney and the plaintiff, for legal work actually performed before the final qualifying settlement offer is made; and

"(C) actual expenses of the attorney in the action.

"§ 1052. Definition of qualifying settlement offer

"For the purposes of this chapter a qualifying settlement offer is an offer by all defendants—

"(1) to settle all claims against the defendants in the pending action; and

"(2) made not later than 60 days after the date of initial contact in writing between the attorneys for the parties notifying the defendant of the claim against the defendant.".

(b) CLERICAL AMENDMENT.—The table of chapters for part III of title 28, United States Code, is amended by adding at the end the following new item:

"80. Contingent Fees of Attorneys ...... 1051".

Redesignate succeeding sections accordingly.

Mr. CONYERS. Mr. Chairman, I reserve a point of order on the amendment.

Mr. HOKE. Mr. Chairman, what this piece of legislation does with this amendment to H.R. 988 is essentially to codify in Federal law what is already the legal code of just about every State bar association in all of the United States.

Here is the problem. What it does essentially is it says there will not be a contingent fee allowed when there is no contingency. Over the last several decades it has become increasingly easier to successfully prosecute a tort claim; that is, to seek and receive compensation for injury or damages to one's property.

During that same period the risks of an attorney representing a client under a contingent fee agreement have likewise decreased, and the attorney's compensation has increased dramatically. The purpose of this legislation is to ensure that contingent fees are earned only when there is a real contingency; that there be the potential of a large reward only when there is a proportionate risk.

A number of other good results will flow from this legislation. First, where there is no question of liability, which, as I have said, is in most of the cases where you have personal injury lawsuits, the injured consumer will end up with substantially more of the compensation, not the attorney. It is very pro-consumer.

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Second, because this amendment strongly encourages realistic early offers from defendants, injured parties would be compensated much quicker.

Third, defendants also will save, again because this proposal cuts down substantial and protracted lengthy disputes.

Finally, the proposal reduces frivolous lawsuits because it modifies some of the hit-the-lottery type temptations that exist for plaintiff's lawyers today, and it does all of this without in any way restricting access to the courts for anyone.

Here is how it works. A plaintiff seeking damages in a tort case would notify each defendant of the claim. The defendant would then have up to 60 days to make a settlement offer. If this early offer is accepted, the plaintiff's lawyer, having done whatever work was involved, would be limited to his or her hourly fees. If on the other hand the early offer was rejected, the plaintiff's lawyer could collect a percentage contingent fee but only to the extent that any eventual recovery exceeds the rejected offer.

The basic idea is to induce defendants to make realistic early settlement offers with the assurance that the plaintiff knows he will get most of the money in all of those cases where the defendant eventually expects to be held responsible and go give plaintiffs and their lawyers incentives to accept these early offers unless they are convinced they can win substantially higher amounts through litigation.

The net result is to increase plaintiffs' net recoveries while slashing both sides' legal fees.

The contingent fee agreement has a long and somewhat tortured place in American legal history. Many lawyers and legal scholars have been troubled by it. Their discomfort mainly centers around the tension that exists between the clear benefit of contingent fees which allows greater access to the courts for low- and middle-income individuals on the one hand and the obvious potential for exploitation and abuse of unsophisticated clients in cases where there is no question of liability.

Bar associations and the courts have struggled to ensure fairness in contingent fee systems by either setting caps or sliding scales as has been done in States such as Florida, Illinois, New Jersey, California, and New York, or by purporting to flatly bar the use of contingent fees in certain classes of cases where the risks of client nonrecovery are negligible.

For example, the Virginia State Bar Association in a 1992 ethics opinion barred contingent fees in claims against Virginia's form of nonfault or no-fault automobile insurance contracts, saying one purpose of a contingent fee arrangement is to encourage a lawyer to accept a case which carries inherent risks of nonpayment of legal fees. Conversely, matters which carry no such risk to the lawyer are not usually matters in which a contingent fee arrangement is appropriate.

Or as was stated in a typical State court decision, where the risk of uncertainty of recovery is low, it would be the rare case where the attorney could properly resort to a contingent fee.

Unfortunately, these ethical pronouncements notwithstanding, the fact is that contingent fee arrangements are practically the exclusive method of compensating lawyers in personal injury cases, which is why this amendment is such an attractive solution. It is based on a proposal coauthored by Michael Horowitz of the Hudson Institute; Lester Brickman, a law professor at Cardozo School of Law; and Jeffrey O'Connell, professor of law at the University of Virginia. It has the enthusiastic support of an extraordinary and exceptional group of lawyers and legal scholars, including Derek Bok, former dean of Harvard Law School; Norman Dorsen, the former president of the American Civil Liberties Union; former Federal judge Robert Bork; Bob Pitofsky, soon-to-be Chairman of the Federal Trade Commission; and former Attorney General under President Bush, William Barr.

The fact is that there is a massive gap between legal ethical rules and legal ethical reality. What this amendment does is find a way to begin to close that gap.

AMENDMENT OFFERED BY MR. CONYERS TO THE AMENDMENT OFFERED BY MR. HOKE

Mr. CONYERS. Mr. Chairman, I offer a perfecting amendment to the amendment.

The CHAIRMAN. Does the gentleman insist upon his point of order?

Mr. CONYERS. No, I do not. I withdraw the point of order; Mr. Chairman.

The CHAIRMAN. The gentleman withdraws his point of order. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. CONYERS to the amendment offered by Mr. HOKE:

Page 1, line 8, strike "plaintiff" and insert "party".

Page 1, line 10, strike "that" and insert "a".

Page 2, lines 3, 13, and 17, strike "plaintiff" and insert "party".

Mr. CONYERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment to the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Chairman, the gentleman from Ohio's amendment presents a number of important and potentially troubling issues. Most significant, it avoids even the semblance of evenhandedness by only limiting the fees plaintiff's attorneys could receive. What about the defendant counsel's fees? What about making this apply to plaintiff's attorneys as well as defense attorneys?

The amendment creates a new set of controls on lawyers. It discards our Nation's long-cherished notion of freedom of contract, and instead imposes a set of Government-controlled fee schedules. I think this is 100 percent at odds with the free market beliefs of many of my friends on the other side of the aisle.

The gentleman from Ohio's amendment would also create a potentially significant conflict of interest before the attorney and his client. It would also discourage settlements, because attorneys could not receive the fee that he or she had bargained for if the case settles.

Perhaps the most serious problem is that the Hoke amendment would limit a plaintiff's right to pay his attorney while imposing no similar limitation on the defendant's right to pay his attorney. As a result, this perfecting amendment would specify that defense counsel are subject to the same limitations as are imposed on plaintiff's counsel. My perfecting amendment would specify that defense counsel are subject to the same limitations as are the plaintiff's counsel.

Would the gentleman consider accepting the amendment?

Mr. HOKE. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Ohio.

Mr. HOKE. Basically what you are saying is that it would apply when a defense counsel is contracting with his or her client pursuant to a contingent fee arrangement; is that correct?

Mr. CONYERS. Well, there are contingent fees, but there are other ways that a defense counsel can be reimbursed as the gentleman knows. For example, when a case settles, there can be a bonus or some kind of contractual stipulation for increased remuneration.

Mr. HOKE. My amendment specifically deals with cases of early offers of settlement in contingent fee cases. To the extent that defense counsels have entered into contingent fee arrangements with their clients, I cannot see that it would be a problem. But I think that the number of cases where that would apply would be extraordinarily rare. Perhaps you are contemplating something else.

Mr. CONYERS. May I respond to my colleague on the Committee on the Judiciary by saying that there are relatively rare instances where a defense counsel is paid on a contingency basis except that the way that they are paid is contingent upon an outcome as well. So in the larger sense, I want to just make sure that we have everybody wearing the same restriction, to the extent that that is possible.

By the way, I want to commend the gentleman, I understand that civil rights litigation is excluded from this provision. I think that is a very thoughtful provision. I would hope that the gentleman would accept this perfecting amendment.

Mr. ZIMMER. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from New Jersey.

Mr. ZIMMER. This amendment assumes that the plaintiff gets the recovery and the plaintiff's attorney gets a piece of the action. Your amendment to the amendment would anticipate a situation where the defendant in fact would have a recovery? Or are you going to measure the defendant's lawyer's fee in terms of the recovery received by the plaintiff?

Mr. CONYERS. No, I did not mean to complicate the relationship of the defendant with his client. His recovery would be in a sense, even if it is hourly, which is frequently the case for defense counsel, it would be contingent on the number of hours that he worked. It would be contingent on what part of the trial the case was settled in.

All I was doing was just letting what fits the goose fit the gander as well.

Mr. HOKE. If the gentleman would yield, I am assuming that this also will perfect the amendment in such a way that you will be wanting to give it your unqualified support and in that spirit, I certainly accept the gentleman's perfecting amendment.

Mr. CONYERS. Yes, I would be delighted to support this amendment. I thank the gentleman for accepting it.

The CHAIRMAN. Is there further discussion on the amendment offered by the gentleman from Michigan [Mr. CONYERS]?

PARLIAMENTARY INQUIRY

Mr. BRYANT of Texas. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. BRYANT of Texas. Mr. Chairman, is it the case that the Conyers amendment to the Hoke amendment has already been accepted, or is that not the case?

The CHAIRMAN. No, it still has to be voted upon.

Is there further discussion on the Conyers amendment?

Mr. MOORHEAD. Mr. Chairman, I rise in opposition to the Conyers amendment.

I believe that the amendment that is being offered is making a bad amendment worse. I do not see how you can possibly limit the amount of money that can be paid to a defendant's attorney in a case. We are getting into price controls for counsel. H.R. 988 does not deal with the capping of lawyer's fees, it deals with who pays attorney's fees, it deals with the quality of scientific testimony that can be introduced during a trial, and it deals with a lawyer's misconduct in the filing of frivolous claims.

Section 3 of H.R. 988 would make expert testimony inadmissible if the witness is entitled to receive any compensation contingent on the outcome of the case. The reason for this is that an expert witness who received a contingency fee is thus less likely to furnish reliable testimony than one who receives a flat or hourly fee since he or she has a vested interest in the outcome of the litigation.

All of this was in the Contract With America. A cap on lawyer fees was not a part of that contract. The Contract as we have heard from the debate so far is having a difficult time at least on the other side of the aisle traveling through Congress as it is, and to add this very controversial baggage would make it almost impossible to get to final passage.

Much more work needs to be done on the original amendment before this committee recommends it to the House. Certainly I do not recommend the perfecting amendment that has been offered by the gentleman from Michigan [Mr. CONYERS].

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. CONYERS] to the amendment offered by the gentleman from Ohio [Mr. HOKE].

The amendment to the amendment was rejected.

Mr. BRYANT of Texas. Mr. Chairman, I rise in opposition to the Hoke amendment.

Mr. Chairman, the Hoke amendment to some extent places really in, I think, very stark relief what we are doing with this bill and with the bills that are to follow.

First, we are in the process of rewriting the rules in such a way that no plaintiff can afford to bring a case because under the bill pending before the House at the present time, the result would be that they would lose their life savings, they would lose everything they had ever had, ever saved, ever earned for them or their children if somebody on the jury did not like the color of their skin or the way they parted their hair.

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So they are making it impossible for anyone to bring the case.

The subsequent bills that are going to come up behind this one are going to rewrite the rules so even if you bring it, you have no hope of winning the case because these bills are going to rewrite all of the rules in such a way that the middle-class person who comes forward with it cannot have any chance whatsoever of winning the case, because all of the standards are going to be rewritten.

But the Hoke amendment now goes one step further. It says you no longer can even really hire a lawyer because now you are going to be saddled with a new, untested, untried, and unstudied system of compensating a lawyer. Now when a middle-class person has to hire a lawyer for a case and he has no money, he cannot contract to pay a huge hourly fee, he has to sign a contingency fee contract, and the harder the case is to win, the more likely the victory, obviously the higher the contingency fee will be. That is all that he has to bargain with.

The gentleman from Ohio [Mr. HOKE] removes the ability of the plaintiff to be flexible in negotiating with his lawyer to try to induce the lawyer to take his case. I submit that the last thing we need to do is either under the Contract With America or under our tried and true principles of capitalism and free marketing rights in this country or under our hoped-for priority of letting average people get into the courthouse represented by a fine lawyer, that we should not be voting for the Hoke amendment today. I urge Members to vote no and to turn away an effort to interfere with the right of people to contract a person they would like to have come to work for them to pursue a case.

Mr. ARMEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Hoke contingency fee reform amendment to H.R. 988, the Attorney Accountability Act.

This amendment goes a long way toward getting to the root of our litigation crisis. Thirty-one percent of all Americans regard lawyers as less honest than the average citizen. Among those who have actually used a lawyer, less than half believe they were charged a reasonable fee.

Much of this sentiment is attributable to the contingency fee arrangement. Plaintiffs' lawyers working on contingent fees often receive a large amount of money for very little work when the defendant offers to settle immediately for an ample sum.

While contingency fee arrangements were originally designed for cases where there was not a clear indication of fault, they are now practically the exclusive method of compensating attorneys in personal injury cases: As witness the attorneys' ads on your late night television shows.

Let me give one example of this. In 1989, a delivery truck smashed into a school bus in my own State of Texas with 21 children. There was never any question of liability. The only question was how much the families of the victims would receive. After a few months of negotiations, the families settled for about $122 million. For a few hours' work, a handful of lawyers carved up a $40 million-plus fee, about a $25,000 hourly rate.

Mr. Chairman, that is why the Hoke amendment is so important. It means that in those cases in which a defendant expects to be held liable and to pay, the plaintiff, not the plaintiff's lawyer, will receive much more of the award.

This amendment merely puts into Federal law that which is already into the ethical rules, but universally ignored by all of the States.

I strongly urge my colleagues to support this amendment.

Mr. ZIMMER. Mr. Chairman, will the gentleman yield?

Mr. ARMEY. I yield to the gentleman from New Jersey.

Mr. ZIMMER. Mr. Chairman, I thank the gentleman for yielding and for creating this A to Z statement.

Mr. Chairman, I rise in support of the Hoke contingency fee reform amendment to H.R. 988. I believe that whether or not Members agree with the concept of loser pays, or whether or not they agree with a monetary cap on damages, this is an elegant way to deal with an important problem in the law. It encourages both plaintiffs and defendants to settle disputes quickly, and it eliminates the awarding of outrageously inflated fees where they are not earned, that is, when there is no dispute about liability.

But it does so in a way that places no restrictions on access to the courts. Indigent, low-income and middle-income individuals will still have unlimited access to the courts through a contingency fee arrangement, and they will only pay their lawyer's hourly rate when the case settles quickly. Thus there is plenty of incentive to settle early for both plaintiffs and defendants.

Under this amendment, everyone wins, except maybe the lawyers, and frankly the lawyers win too because this amendment goes a long way to restoring fairness to the way the contingencies are handled, and that will go a long way to restoring the public's confidence in lawyers and the courts, the lack of which my colleague from Texas has referred to.

That is probably why so many highly regarded lawyers and judges and law professors and legal scholars have lined up behind this reform. From Derek Bok, former president of Harvard University and dean of Harvard Law School to Judge Robert Bork one of our country's most distinguished legal scholars; from William Barr, Attorney General in the Bush administration, to Robert Pitofsky, soon to be Chairman of the Federal Trade Commission under the Clinton administration. They all know that confidence in our legal system, and ultimately that means confidence in lawyers, is essential to our form of government. And they have all written in support of the idea that lawyers have an ethical obligation to solicit early offers and not charge contingent fees against such offers.

In fact, what the Hoke amendment really does is put into Federal law that which is already in the ethical rules of all of the States but is universally ignored.

I strongly urge support of this amendment.

Mr. ARMEY. I thank the gentleman.

Mr. Chairman, I would like to make a final observation before I surrender my time.

Mr. Chairman, I am not a lawyer, but I profoundly believe that the practice of law is an honorable profession and that the vast majority of the people who practice law in America are honorable people.

However, it is the excesses so publicly displayed, so crassly displayed of the contingency fee plaintiff lawyers that has given the law profession such a terrible reputation. And I support this amendment on behalf of the plaintiffs and the legal profession.

The CHAIRMAN. The time of the gentleman from Texas [Mr. ARMEY] has expired.

Mr. BRYANT of Texas. Mr. Chairman, I ask unanimous consent that the gentleman from Texas [Mr. ARMEY] have 2 more minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

Mr. ARMEY. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, this is the final insult upon those who may depend on attorneys with contingency fees, who may not be able to afford an attorney, and we are now saying that somehow we have got to regulate the relationship between a plaintiff and his or her attorney. We are now into wage and price controls. What we are trying to do now is unilaterally tell plaintiffs that we are now going to have not through the rules of procedure that control the conference, the judicial conference, the Supreme Court where these kind of rules normally travel and then come to the Congress for disposition, we are now ruling on the floor how we are going to deal with these kinds of questions. And I think that this is a very, very discouraging circumstance for plaintiffs' attorneys to now be prescribed what they will get regardless of what the contract between the plaintiff and his attorney may be.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. Mr. Chairman, I thank the gentleman for yielding. I regret very much that the majority leader came down here and read a statement and then walked off. I got him more time so that he could yield to me so that I could examine the anecdote but he said he would not take the time, and he walked off the floor. What he did was a tried and true method that has been used by the proponents of this amendment. They stand up here, and they talk about an anecdote, and before you can ask them any questions about the anecdote they disappear.

The fact of the matter is the gentleman was talking about a very well known, highly publicized lawsuit in Texas in which many children lost their lives, and fortunately, because they were poor children, had very poor parents, using the contingency system they were able to hire the best lawyers in the State of Texas, and they got a big settlement, which is what was supposed to happen.

The gentleman talked about how they only worked for a few hours, and he has no idea how many hours, the attorneys did work or how much work they did for the fee, although he could find it out if he would go to the records, and if he really wanted to he could go to the case file, or have one of his assistants go to the case file, or have the tort reform group or somebody go to the case file and find out how many hours were really worked in this case and find out what was really done. We will never know what the truth of that is in that anecdote, nor do we ever seem to ever get to the bottom of any of the other anecdotes.

The fact of the matter is that the contingency fee has been studied and studied and studied, and the advocates of this had an adequate opportunity to ask for hearings on this question. We had no hearings on the question of contingency fees. And they had an adequate opportunity to bring forth studies that will tell us something about the effect of contingency fees, but they come up here at the last minute and say not only are we not going to let you file a case, not only are we not going to let you win a case, we are not even going to let you hire a lawyer. That is the bottom line of the Hoke amendment, and I strongly urge Members to vote against the Hoke amendment.

Mr. SCOTT. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I just would point out, listening to the debate one would think that there was a requirement of plaintiffs to hire lawyers only with a contingency fee. You can hire lawyers on an hourly fee if you want to pay it. The plaintiff makes that choice.

The plaintiffs are not complaining about their right to use a contingency fee or an hourly rate. Innocent defendants are not complaining because a contingency fee means those lawyers are not going to get paid at all. The only ones who are complaining are the defendants who are guilty of what they are charged.

Ms. JACKSON-LEE. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Texas.

Ms. JACKSON-LEE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, let me provide just another spin or another look-see at this particular amendment, because I think certainly the gentleman from Ohio [Mr. HOKE], has good intentions. But allow me to raise an issue, if you would.

My city of Houston, and I come with deep experience serving as a council member dealing with litigation against the city, we retained an attorney on a contingency fee basis, saving firsthand taxes to the citizens of Houston, and that contingency fee relationship resulted in a multimillion-dollar settlement or result for the city of Houston and the citizens of Houston.

I think when we label contingency fees as negative across the board, we fail to realize the value of such resources for a myriad of litigants, including a local government.

Mr. WYNN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to ask the sponsor a question if he would be willing to respond.

Mr. Chairman, if there is no settlement in the first 2 months, what occurs?

Mr. HOKE. Mr. Chairman, will the gentleman yield?

Mr. WYNN. I yield to the gentleman from Ohio.

Mr. HOKE. Mr. Chairman, the contingency fee then occurs. I wanted to say something in regard to that.

Mr. WYNN. That is fine, Mr. Chairman. Reclaiming my time, that is the point I wanted to make, that in one instance, according to the answer provided by the sponsor, nothing would occur because if the offer is rejected the attorney would simply proceed on a contingency fee basis as is current practice.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. WYNN. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding. It is actually worse than he described, because what happens is the contingent fee is limited to only the additional amount that is added to the case when a final verdict comes in.

Mr. WYNN. Reclaiming my time, that is bad. But what he just said may be even worse if he is in fact correct, because the attorney would just reject a settleman offer, therefore putting into effect a contingency fee.

I want to make a couple of other quick points. Mr. Chairman, the point is this, the contingency fees are being portrayed as the villain of the legal system. That is emphatically not true. The contingency fees are a mechanism by which the average American, the person that the Republicans love to cite, gets access to the judicial system. Without contingency fees the fact is a lot of cases would not be brought.

I want to tell my colleagues something else. Without contingency fees, we do not have a control on frivolous lawsuits, because contingency fees are in fact the initial screening mechanism, and as an attorney I can tell you that if a case comes in that is frivolous, I am not going to take it on a contingency basis because in all probability I will lose. So a lot of cases that would otherwise be brought are in fact not brought because the initial attorney says this case is a bad case.

Let me point out in the second instance this bill does not stop contingency fees. As the gentleman from Virginia [Mr. GOODLATTE], I believe, indicated, after the 10 percent you are still able to collect a contingency fee. So let us suggest that you are offered in a $100,000 case a $10,000 settlement. You reject the settlement offer. You then win $100,000. You collect a contingency of $30,000.

□ 2030

I think contingency fees are good. If my colleagues think it is bad, certainly this amendment will not prohibit it.

I suggest that we reject the amendment offered by the gentleman from Ohio [Mr. HOKE].

Mr. HYDE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Ohio [Mr. HOKE].

Mr. Chairman, this is the week to bash lawyers, and next week it is the week to bash politicians, and frankly, as one of each, I feel beleaguered.

I want to say a kind word for contingency fees.

I say to my colleagues, They are the way poor people get access to darn good lawyers, and you don't just walk into a lawyer's office, and he says, "Sign the contract." There may be investigations. In fact, if the lawyer is worth his salt, he'll have to hire and send out investigators to get statements from witnesses, pictures of intersections, hospital records, the police report. There is a lot of work, there is a lot of expense, involved, and the lawyer does that on the if come. Maybe he'll collect it, and maybe he won't, but he has every incentive to work hard to maximize the settlement because his contingency fee depends on that. But people who cannot afford an hourly rate, people who have cases where the injury is bad but the liability is thin, all sorts of situations arise, but you get access to good lawyers in the contingency arrangement.

Now we get excited about how many hours were spent on this case. They tell a great story about the bank that opened up one morning, and they could not get the vault door open, and they called the locksmith. It took him about 6 minutes, and he sent them a bill for about $2,000, and the bank president said, You only spent 6 minutes.

He said, Yeah, but I went to school for 6 years to learn what to do.

Many times a lawyer spends very little time, but because this lawyer has a great reputation in this field, the insurance company gets sensitized to the fact that it is cheaper to settle at a fair figure than to horse around and get clobbered later on.

So I just suggest I know the gentleman from Ohio [Mr. HOKE], who is one of the most useful members of our committee, he has an idea here that has some merit to it because contingency fees can be abused, clients can be abused, judges can be abusive, all kinds of wrong things can happen, but in the grand scheme of things a poor person can retain a very good lawyer on a contingency fee basis, and the client will make a good settlement; the lawyer, it is worth his while, and justice is served.

So, Mr. Chairman, with deep regret I must oppose the amendment offered by the gentleman from Ohio [Mr. HOKE] and say a kind word for those good lawyers that I have encountered in my lifetime.

Mr. COX of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think we can all agree that there are meritorious arguments on both sides of this debate. But it is interesting to note, having weighed the arguments on both sides, who agrees that the gentleman from Ohio [Mr. HOKE] is offering a sound amendment, that Mr. HOKE has a good idea.

I confess that I am myself a recovering lawyer. I practiced for about 10 years before I came to the Congress, and I was trained in Harvard Law School. The president of Harvard, Derrick Bok, is in favor of this amendment. Harvard is not a conservative place as far as I know. I had a teacher there whose name is Petovsky. He is about to be nominated and confirmed by the Senate to be Bill Clinton's head of the FTC, and Professor Petovsky thinks this is a good idea.

The head of the ACLU, last time I checked a left wing organization, thinks this is a good idea. ACLU president Norman Dorsen has endorsed the idea behind the amendment offered by the gentleman from Ohio [Mr. HOKE].

Now, whenever the head of ACLU and Judge Bork agree, Mr. Chairman, I think we ought to take a look and find out why it is that they think this is a good idea, and it turns out that this is not at all an attack on contingency fees, which just about everybody that I just named thinks ought to remain as part of our legal system. Rather it is an attack, and I will be delighted to yield in just a moment, as soon as I make my few points—rather this is an attack on the use of the contingency fee arrangement when there is not any real contingency. It is thought to be in, I believe, all 50 States under the bar rules a matter of ethics that you should not try and seek to obtain a contingency fee when they, the lawyer, know that there is really no authentic risk, and the Hoke amendment gets to that very point in a very useful way. He says, if somebody, 60 days after the start of the dispute, offers to settle the case for a particular amount of money, that that amount of money is no longer a contingency because they get that if they settle.

Now it was said, If you reject that settlement and go on and only get a contingency fee on the amount in excess of the settlement, that that is somehow unfair, and I agree that is unfair, but the amendment, as offered by the gentleman from Ohio [Mr. HOKE] does not limit the lawyer to a contingency on what is really at risk. It also gives him, on top of that, 100 percent of his reasonable hourly rate, which is agreed upon objectively. In that circumstance I think we should all agree that it is consumers who are being protected.

I say to my colleagues, "When you go to the garage, and you ask the mechanic if there is something wrong with your transmission, you depend rather heavily on that garage mechanic to tell you the truth." That is why, in fact, we regulate that industry for the benefit of the consumers, so that consumers do not get ripped off because they, frankly, do not know what is going on in the drive train under the hood nine times out of ten. They are experts at some other part of life.

Likewise, Mr. Chairman, the lawyer is in a unique position to assess the contingency, and the client is taking the lawyer's word for it. If it turns out there is nothing at risk, which is clearly the case if the other side in 60 days offered to pay that full amount of money, is it not unfair to collect a contingency fee against it? The contingency fee runs 30 to 40 percent, sometimes higher, if it is not limited, of the settlement amount or of the eventual verdict. That is taking away from the consumer the amount that the court or the jury has just awarded to him. It is grossly unfair.

Ultimately two things are at stake here, ethics and consumer protection. it is consumers that we are supposed to be protecting here, and it is the ethics of the profession, in my view, in need of some ethical regulation that this amendment would get after.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Michigan.

Mr. CONYERS. I say to the gentleman, "Mr. COX, this issue didn't come up before our Committee on the Judiciary, and if there are as many good arguments as you suggest there are, couldn't we take this back? Chairman HYDE would be, I'm sure, willing to hold hearings on it. But here we are regulating an incredibly important matter, normally one that's left to the Judicial Conference, and the Supreme Court, and then to the Congress, and here tonight late, rather late in hour, we're going to just decide to alter this subject matter."

Mr. Chairman, I would hope that we can send it, if we reject the amendment, we can send it back to——

The CHAIRMAN. The time of the gentleman from California [Mr. COX] has expired.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to this amendment. I do so with some reluctance because I appreciate the gentleman's efforts, but I think that this is pure and simple price controls, and the problem with price controls is this:

"Whenever you have them, there are all kinds of unintended consequences that emanate from those price controls. For example, what happens to the defendant in a case where because the insurance company representing the defendant, let's say it's a doctor accused of medical malpractice wants to go ahead and settle the case in the 60-day time period to take advantage of this early offer mechanism, and the doctor said, 'I don't want any offer made at all because I didn't commit malpractice. I wanted to have my day in court.'"

Mr. Chairman, I would ask the gentleman from Ohio what does that doctor do when that insurance company sends him a letter advising him that he is not negotiating in good faith and that, if he does not accept the offer, he will be responsible for any additional amounts that are recovered?

The same thing happens on the plaintiff's side. What happens when the plaintiff turns down the settlement offer, and he wants to go on to court, but his attorney said, "Well, the original contingency fee will justify the cost, but now the case is only worth an additional $25,000 above the $50,000 offered. I don't think he should go ahead."

He says, "I don't care. I want to go ahead with the case."

The attorney does not want to go ahead.

What happens in the case of fraud where you have an incentive now for people to go out and create an accident by running in front of a vehicle, getting it in, making that early—making the demand upon the defendant, and the insurance company has 60 days to rush in and make a settlement.

This is going to encourage all kinds of behavior that does not make sense. It will encourage fraud. It will encourage poor representation of clients. It will drive a wedge between plaintiffs and their attorneys. It will drive a wedge between defendants and their insurance companies.

I believe that there is also a problem here in that the matter does not require that the defendant admit liability when they make this offer so that when the defendant makes the offer and the plaintiff turns it down because he low-balls it, the result of the thing is that then the plaintiff's attorney will have a limited contingent fees only on the amount they improve the case, but the plaintiff's attorney still has to not just improve the value of the case and the damages and get a contingency fee on that, but also has to prove liability, and that is where the contingency is founded. It is founded on the principle that you take a risk. Some cases you prove liability. Some cases you won't. Just because the defendant makes a settlement offer and does not concede liability does not mean there is not a risk of proving liability in the case.

Finally, the provisions of this amendment are flawed in this respect. It says 60 days after the date of the initial contact by the plaintiff. Well, at that point most cases have not been filed in court. The initial demand is made before suit is filed, and we do not know whether this was in State court or Federal court as to whether or not this provision would even apply.

Mr. BARRETT of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Wisconsin.

Mr. BARRETT of Wisconsin. I would like to follow up very quickly on what the gentleman is saying. By the language of this amendment, Mr. Chairman, the 60 days begins to run on the first contact between the plaintiff's attorney and the insurance company, but the bill itself, the amendment itself, does not kick in until there is a Federal diversity suit. There is not going to be a Federal diversity suit until an action is filed, so we are going to have the unusual effect of the plaintiff's attorney making the demand, waiting 60 days. There is no lawsuit. It does not kick in.

By its own terms, Mr. Chairman, this amendment does not work, it does not fit together, because it will not kick in until after the plaintiff's attorney waits the 60 days.

Mr. GOODLATTE. The gentleman is correct.

While the idea underlying this has a good purpose of attempting to encourage settlement, it is an unfair situation to impose upon the parties to lawsuits because of the fact that it has many unintended consequences and, finally, because of the fact that, when an attorney has somebody walk in the door, they do not know whether it is a good case or not. They have to conduct a lot of investigation in these cases, and, when they do that, they never get compensated for the cases that do not have any merit. They are taking a risk in practicing that type of law, and I think that we want the people to take risks. This is counter to the purpose of the loser pays amendment in that respect, but it is separate and apart.

I would not say it does anything to loser pays. It creates a separate mechanism, but one that, I think, is fraught with a lot of unintended consequences, and I would urge my colleagues to vote against it.

☐ 2045

Mr. BONO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I stand here in support of the amendment.

Mr. Chairman, I yield to the gentleman from Ohio [Mr. HOKE].

Mr. HOKE. Mr. Chairman, I appreciate the words of my friend from Virginia, but I have to say three things and then ask for a vote.

No. 1, this does not eliminate contingent fees. It does not restrict access to the courts. In fact, it maintains or increases it. And it does not in any way restrict attorneys compensation for the time that they put in. What it does do is it merely says that lawyers will be paid their hourly rate where there is no question of liability, where there is an early offer on settlement between the two parties.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. HOKE].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HOKE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 71, noes 347, not voting 16, as follows:

[Roll No. 203]

AYES—71

Allard
Armey
Baker (CA)
Ballenger
Barton
Bereuter
Bilbray
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Burr
Christensen
Chrysler
Coburn
Collins (GA)
Combest
Cox
Cremeans
Cubin
DeLay
Dornan
Dunn
Flanagan
Gunderson
Gutknecht
Hancock
Hayworth
Hefley
Herger
Hoke
Horn
Inglis
Jacobs
Kelly
Kolbe
Lewis (KY)
Lightfoot
Martinez
McHugh
McInnis
McIntosh
Metcalf
Mica
Myrick
Norwood
Parker
Paxon
Petri
Pombo
Riggs
Rohrabacher
Royce
Salmon
Saxton
Scarborough
Schaefer
Shadegg
Shays
Smith (WA)
Solomon
Stenholm
Stockman
Stump
Tate
Taylor (NC)
Thornberry
Walker
Zeliff
Zimmer

NOES—347

Abercrombie
Ackerman
Andrews
Archer
Bachus
Baesler
Baker (LA)
Baldacci
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Bass
Bateman
Beilenson
Bentsen
Berman
Bevill
Bilirakis
Bishop
Bliley
Blute
Boehlert
Bonior
Borski
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Bunn
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chenoweth
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Collins (IL)
Collins (MI)
Conyers
Cooley
Costello
Coyne
Cramer
Crane
Crapo

Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dickey
Dingell
Dixon
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Durbin
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fazio
Fields (LA)
Fields (TX)
Filner
Flake
Foglietta
Foley
Forbes
Ford
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Geren
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gutierrez
Hall (OH)
Hall (TX)
Hamilton
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Heineman
Hilleary
Hilliard
Hinchey
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Istook
Jackson-Lee
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnson, Sam
Johnston
Jones
Kanjorski
Kaptur
Kasich
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
LaFalce
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Markey
Martini
Mascara
Matsui
McCarthy
McCollum
McCrery
McDermott
McHale
McKeon
McKinney
McNulty
Meehan
Meek
Menendez
Meyers
Mfume
Miller (FL)
Mineta
Minge
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Nadler
Neal
Nethercutt
Neumann
Ney
Nussle
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Oxley
Packard
Pallone
Pastor
Payne (NJ)
Payne (VA)
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Reed
Regula
Reynolds
Richardson
Rivers
Roberts
Roemer
Rogers
Ros-Lehtinen
Rose
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sanford
Sawyer
Schiff
Schroeder
Schumer
Scott
Seastrand
Sensenbrenner
Serrano
Shaw
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Spence
Spratt
Stearns
Stokes
Studds
Stupak
Talent
Tanner
Tauzin
Taylor (MS)
Tejeda
Thomas
Thompson
Thornton
Thurman
Tiahrt
Torkildsen
Torres
Torricelli
Towns
Traficant
Tucker
Upton
Velazquez
Vento
Visclosky
Volkmer
Vucanovich
Waldholtz
Walsh
Wamp
Ward
Waters
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Williams
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Yates
Young (AK)
Young (FL)

NOT VOTING—16

Becerra
Bunning
Chapman
Coleman
Condit
Dicks
Gibbons
Hansen
Hefner
McDade
Miller (CA)
Pelosi
Rangel
Roth
Stark
Watt (NC)

□ 2104

Messrs. MFUME, KASICH, and BACHUS changed their vote from "aye" to "no."

Messrs. HERGER, HORN, ROHRABACHER, and PAXON changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. MOORHEAD. Mr. Chairman, I move that the Committee do now rise.

The CHAIRMAN. The question is on the motion offered by the gentleman from California [Mr. MOORHEAD].

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. KINGSTON) having assumed the chair, Mr. HOBSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, (H.R. 988) to reform the Federal civil justice system had come to no resolution thereon.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 1058, SECURITIES LITIGATION REFORM ACT

Mr. SOLOMON, from the Committee on Rules, submitted a privileged report (Rept. No. 104–68) on the resolution (H. Res. 105) providing for the consideration of the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PERMISSION FOR CERTAIN COMMITTEES AND SUBCOMMITTEES TO SIT TOMORROW, TUESDAY, MARCH 7, 1995, DURING FIVE-MINUTE RULE

Mr. SOLOMON. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the five-minute rule: The Committee on Agriculture, the Committee on Banking and Financial Services, the Committee on Economic and Educational Opportunity, the Committee on Government Reform and Oversight, the Committee on National Security, the Committee on Resources, the Committee on Transportation and Infrastructure, the Committee on Veterans' Affairs, and the Select Committee on Intelligence.

Mr. Speaker, it is my understanding that the minority has been consulted and there is no objection to these requests.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. WISE. Mr. Speaker, reserving the right to object, the distinguished gentleman from New York [Mr. SOLOMON], chairman of the Committee on Rules, is correct, the Democratic leadership has been consulted on each of these and there is no objection.

Mr. Speaker, I withdraw my reservation of objection.

Mr. SOLOMON. Mr. Speaker, we thank the gentleman for his being so reasonable.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE JOINT RESOLUTION 2

Mrs. MYRICK. Mr. Speaker, I ask unanimous consent that my name be deleted as a cosponsor of that joint resolution, House Joint Resolution 2.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from North Carolina?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE JOINT RESOLUTION 2

Mr. BROWNBACK. Mr. Speaker, I ask unanimous consent that my name be deleted as a cosponsor of the joint resolution, House Joint Resolution 2.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

NOTIFYING MEMBERS OF HISTORIC MEETING ON THURSDAY, MARCH 9, 1995, REGARDING AMERICA'S RENEWED WAR ON DRUGS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from New Hampshire [Mr. ZELIFF] is recognized for 30 minutes as the designee of the majority leader.

Mr. ZELIFF. Mr. Speaker, it is my pleasure to offer this special order tonight on a subject which is of major importance to all of us.

Remember the drug war? Remember when casual use was condemned, not discussed in the same breath as legalization? When the Nation's commitment to interdicting drugs wasn't shrinking? When Presidents and First Ladies spoke out, especially to children, about the dangers of drug use?

Well, I do, and so do many of my friends and colleagues in this Chamber.

That is why, as chairman of the House Oversight Subcommittee on National Security, International Affairs and Criminal Justice, I will be joined by Democrats and Republicans in holding historic hearings on March 9. Our singular and united purpose: To reawaken the Nation. To refocus our great Nation on the renewed need for engaged, outspoken national leadership. From the very, very top.

Sadly, there is a growing consensus that our current approach is failing. In 1993 and 1994, respected annual surveys of 51,000 high school students and 8th graders told a depressing story: Gains made are slipping away.

We are in the midst of a major reversal—both in youth use and attitudes.

After a steep drop in monthly cocaine use between 1988 and 1991, from 2.9 to 1.3 million users, and a similar drop in overall drug use between 1991 and 1992 from 14.5 million users to 11.4 million users.

The latest numbers reveal drug use up for all surveyed grades for crack, cocaine, heroin, stimulants, LSD, non-LSD hallucinogens, inhalants, and marijuana.

For example, in 1994, according to the respected Michigan University study, twice the number of 8th graders were experimenting with marijuana as did in 1991, and daily use of marijuana by seniors was up by half just from 1993.

If that were not enough to show our current failure, the nationally-recognized Drug Abuse Warning Network has just reported that drug-related emergency room visits in 1994 were up 8 percent over 1993, now standing at their highest point ever.

Does this matter? You better believe it does. The Columbia University Center on Addiction and Substance Abuse [CASA], headed by a former Carter Cabinet Secretary, expressed it this way.

> If historical trends continue, the jump in marijuana use among America's children from 1992 to 1994 signals that 820,000 more of these children will try cocaine in their lifetime. Of that number, about 58,000 will become regular cocaine addicts and users.

These numbers only scratch the surface. Drugs kills kids. They steal opportunity, crush dreams and ruin lives.

This has not changed, even as their acceptability has crept back. What we need in 1995 is leadership—real leadership—something that has been sadly absent.

Let me be clear. Leadership is needed from both sides of the aisle, and from both ends of Pennsylvania Avenue.

The Nation must again talk about this scourge, educate kids, go after the drug traffickers who have enjoyed freer reign with reduced interdiction. Less money was spent on interdiction in 1994 than in 1993, and less in 1993 than in 1992. We must collectively revive the Nation, restore the momentum, and recognize that this is a war won every day—one child at a time.

That's what Thursday's hearing is for. And we are calling in the leaders in this fight. Our first speaker will be someone who has been working privately on this issue for a decade.

She is flying from her husband's side to deliver what we understand will be her most significant address on this issue since she addressed the United Nations in 1988.

We will listen intently, because she is a uniquely dedicated leader to drug prevention and the creator of a national foundation to halt drug abuse. We will also listen because she is a former First Lady, Nancy Reagan.

She will be followed by a former Head of the Drug Enforcement Administration under both Presidents Clinton and Bush, Judge Robert Bonner.

□ 2115

At Bonner's side will sit a former Drug Czar, Dr. William Bennett, who promises new thinking and a crisp critique. Both men drive one point home: Presidential leadership is essential, especially in re-finding a commitment to international interdiction. With Bonner and Bennett, John Walters, and other veterans of the drug war, I would also point out the solidarity of purpose represented by the recent article from Joseph Califano, "It's Drugs, Stupid."

We need bi-partisan effort and a bipartisan call to national leadership. Califano's ideas are not the only ones on point.

We will be joined by a former Coast Guard Commandant, Paul Yost, predecessor to President Clinton's national coordinator for drug interdiction.

We will also hear from President Clinton's Drug Czar, Dr. Lee Brown. Just how has the Nation gotten so far off track? Why has there been so little presidential leadership on drugs?

And from both sides of the aisle: How will President Clinton's 1995 Annual Drug Control Strategy address the 1993 and 1994 slippage? Prevention must not be left out. Teaching and interdicting are both important; they lean upon each other, two sides of a dam restraining the inflow of illegal drugs.

Major national leaders on prevention will also speak, including the widely-heralded Partnership for a Drug Free America, BEST Foundation, Community Anti-Drug Coalitions of America, and Texans' War on Drugs.

There is only one point: Drugs destroy lives, and our Nation must now remember what President and Nancy Reagan so plainly taught.

You cannot stop drugs without effective drug interdiction. You cannot prevent drug use if you don't talk about it. From the President on down, it's time to seriously look at drugs again. The Nation needs it, and our kids deserve it: We now need renewed national leadership.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. ZELIFF. I yield to the gentleman from New York.

Mr. GILMAN. I want to commend the gentleman for his efforts in the drug war, something we have been fighting for many years. Too often our Nation forgets crucial aspects of how drugs have affected our society, killing our young people, placing many of our people in a nonproductive situation. We cannot say enough about this problem, we cannot do enough about the problem. I want to commend the gentleman for his efforts.

Mr. ZELIFF. I thank the gentleman from New York and the highly respected chairman of the Committee on International Relations. I know from your vantage point, maybe you can just tell us from your vantage point, from a worldwide global effort what this is doing to our national defense and security.

Mr. GILMAN. It has affected every aspect of our society, not only security which has been hurt by the many drug abusers who are out there, but also industry itself, loss of productivity, absenteeism, the amount of accidents that occur. But most important, how it has impacted upon our young people, the overdose, the deaths, causing many of our young people to leave school and to go out on the street and become drug traffickers rather than to be productive members of our society.

It has been estimated that drug abuse in our country costs over $500 billion in lost productivity, absenteeism, and all sorts of problems that it causes. We cannot say enough to convince our Nation to get behind our drug war to make certain that our communities are going to be drug-free and that our schools will be drug-free. I hope my colleagues will take a look at the proposal to cut funding for the drug-free school proposal. I think that is an extremely important measure. Prevention is so important.

Those of us who have been fighting the battle recognize there are five major battlefields in the drug war to reduce supply and demand simultaneously, to go to the source countries and eradicate, to interdict when the product comes out of those countries and heads toward our shores, and then to beef up our enforcement when it reaches our shoreline.

Then on the demand side, to provide the kind of education that will discourage abuse by our own youngsters, to teach them that drug abuse is not recreational but is deadly, and then in the final analysis to treat and to rehabilitate the victims of drug abuse. Again I thank the gentleman for focusing his attention on this very important aspect of the drug war.

Mr. ZELIFF. I thank the gentleman from New York.

Mr. EHRLICH. If the gentleman would further yield, I first want to thank the gentleman in a very public way for making me a Vice Chair of the committee. I am very excited. I also congratulate the gentleman with respect to your enthusiasm to tackle this issue head-on, because it occurred to me in the course of the crime debate, and I would like the gentleman to comment on this if he would. We discussed on this floor truth-in-sentencing and the importance of building prisons and mandatory minimum sentences and gun violence and all the very important crime-related bills that have passed through this floor, but we were criticized because we did not address at that time in my view what is really the threshold issue here, which is the proliferation of drug abuse in this country over the last 20 years, because I know the gentleman agrees with me, name the issue, AIDS, child abuse, truth-in-sentencing, building of prisons, whatever it is, whether it is a fiscal issue or a social issue, most of the issues we deal with on this floor are in some way related to the proliferation of drug abuse in this country today.

I would direct a question to the Chair of the subcommittee and ask you to comment on this observation.

When Mrs. Reagan came out with the "Just Say No" program, she was criticized, as the gentleman will recall. It just was not cool to just say no. There had to be something more sophisticated, a more complex message that we needed to give to the children of this country.

But the fact is, and I think this goes back to the whole idea really behind the Contract With America and why many of us ran for public office, getting back to this idea of personal responsibility in our individual lives and stressing the fact that our kids make millions of decisions during the course of a day, and the message they need to hear coming from their parents, from their elders, from the floor of this House is, "It's OK to say no, it's cool to say no," because they will pay the price potentially if they make the wrong decision.

I would like the gentleman to comment on the leadership the Reagans, the former First Lady showed in coming out in such a way that she knew she would be in for it. She knew that the Hollywood types and the commentators from Washington would deem her comments almost irrelevant and she would become the focus of actually being made fun of, which she was, but she stuck to her guns and she is going to revisit our subcommittee, I know you are very honored to have her come to our subcommittee and restress, reiterate how important this message is today for our kids in 1995.

Mr. ZELIFF. First I am very proud to have the gentleman as my Vice Chair. I think Thursday's meetings are going to be right on point, and I am hoping that with the people we have assembled there, we can draw enough attention to get back on track.

I agree, Nancy Reagan did step out at a time when it was not easy to do that, to take a leadership role, but that is what leadership is all about. She certainly was supported by the President at that point, and people from around the country stepping out. This is what we have to do now. We need to now step back out.

We hope that we can encourage the President to start with his office, the bully pulpit, and start showing the kind of leadership that needs to be shown here, that maybe that will then start both sides of the aisle here, both sides of Pennsylvania Avenue, we start then speaking out as well.

I think that is what it is going to take. It is going to have to be a national, a top priority, and the priority starts right at the very, very top, with the President. If he shows the kind of leadership that he is capable of showing, then we will all be able to do the same in our individual areas.

But we cannot let this go on. If we accept casual use of drugs, then we are going to accept things, the former Surgeon General was starting to talk about legalization, and we are going downhill from there. I think we have just go to reverse where we have been and start back up where we were back in the days of Nancy Reagan.

Mr. EHRLICH. I really appreciate the gentleman's comments. This is certainly not a partisan issue in any respect, but you were focused on the casual use of drugs, which I think is an element in this whole debate that has been missing in recent times. I would like the gentleman to comment on this number.

Columbia University Center on Addiction and Substance Abuse recently warned, if historical trends continue, the jump in marijuana use among America's children, defined as ages 12 through 18, from 1992 to 1994, signals that 820,000 more of these children will try cocaine in their lifetime. Of that number, about 58,000 kids will become regular cocaine addicts and users.

It seems to me that the White House misses the fact that no one goes from being a nondrug user to a gross abuser. There is a middle ground there. The casual user really needs to be the focal point of our efforts here on the floor of this House. Here again, that is where the former First Lady really deserves credit, because she focused her energies on those casual users, and God knows, if we ignore the casual users, we have major problems down the road.

Mr. ZELIFF. Absolutely. We have got to get to kids early on and stay with them all the way through.

Mr. MICA. Will the gentleman yield?

Mr. ZELIFF. Yes, sir, I yield to the gentleman from Florida, a very valued member of our committee as well.

Mr. MICA. First I want to take just a moment and thank you as chairman of our subcommittee, I have the honor of serving with you.

I know the hour is late, I know that my colleagues are late, the staff is tired, and we have been working very diligently the past weeks to bring issues before the Congress and the American people of utmost importance, but I really cannot think of any subject that is more important to this Congress or to American society than the question of drug and substance abuse.

I want to compliment you, too, taking over as chairman of this subcommittee and immediately dealing with the issue and bringing this issue to the forefront not only of our subcommittee but of the Congress and this administration and the American people.

If I might just comment a few minutes. As a Member, a new Member of Congress during the 103d session, I had over 130 Members of both sides of the aisle, Republican and Democrat, sign a letter asking the former chairman of the House Committee on Government Operations to hold a hearing, a full hearing on the administration's drug policy. Do you know that we never held a true full hearing on the administration's drug policy? The worse the situation got, the more that this was ignored. In fact, it was totally ignored. Again over 130 Members, both sides, Republicans and Democrats, asked for a hearing and never got a hearing. On the very last day, a hearing was held in one of the subcommittees and it was a sham of a hearing.

So I salute you on taking charge of this subcommittee, on bringing this subject forward. Let me say that this is a real, real problem that this country has, and that is drug and substance abuse and that our subcommittee and this Congress must address some of these fundamental issues.

For too long, the other side sent mixed messages. They sent messages as far as the Congress was concerned in the way that drug abuse would be tolerated in this country. We had a Surgeon General of this Nation who did not give the proper emphasis to the problems with casual abuse and drug use that we have heard mentioned here today. It has not been a priority of this administration. I again commend you on making it a priority.

When this Congress can send thousands of American troops into Haiti and we can help solve the problems in Somalia and around the world and when just a few miles from here, Washington, DC, we have in the alleys, in the backyards, in the streets almost every weekend and every night people, their lives being destroyed, young people being destroyed. You know, I have been coming to our Nation's capital for almost 15 years now and every Monday I pick up the paper and it practically brings tears to my eyes and sadness to my heart to read about the young black American, Afro-American males that are being wiped out in our Nation's capital, again just a few blocks from here.

Each year since I have been coming here, it has been between 350 and 450 people whose lives are snuffed out in this fashion.

□ 2130

And somewhere this has to be a priority. Somewhere there has to be a time for this Congress and this Nation to wake up and see that the real problem facing this country, that the biggest social and crime problem is drugs and drug abuse and drug use.

If you come to Florida in my district and you talk to the sheriffs and talk to the enforcement people and you ask them how many people in your prison or in your jail are here and have been involved in drug abuse or substance abuse, they will tell you 60 percent, 70 percent of the people in prison have been victimized or involved in drug use and abuse.

We have ignored this problem, and we must bring this problem and this administration and this Congress' approach, a new approach, a sound approach.

This administration ignored helping our Andean nations with information, with exchange radar information. I will say that two of the chairs and former ranking member of the Committee on Foreign Relations sat in hearings and saw the mess that was created with our Andean nations, and now we accuse Colombia of not paying attention to drug abuse and interdiction and assistance and enforcement. Yet this Nation has not made it a priority. So we have got to get our house and our policy and our agenda and our priorities in order, and we have got to make drugs and substance abuse enforcement, interdiction, telling our young people this is not an acceptable behavior, telling our young people how it will destroy their lives and make enforcement a real tool rather than an imaginary or illusory tool as has been done under this administration.

So I do want to commend again the gentleman in the well, the chairman for holding these hearings and for coming out late tonight and for giving us an opportunity to tell the Congress and the American people that this is high on our priority agenda. We do not have a Contract With America for the next 100 days, but this is part of the Contract With America now and for this new majority in Congress, and it will be for the days remaining in our tenure in this Congress and now the 104th Congress.

Mr. EHRLICH. If the gentleman will yield, I really appreciate listening to his remarks. As the subcommittee chairman knows, I was not here in the 103d Congress. But in reading through the administration's antidrug strategy, I read a provision that really disturbed me. The Clinton drug strategy now seems to deemphasize prevention, saying "Antidrug drug messages have lost their potency."

My question to the gentleman from Florida and to the chairman of the subcommittee is was that a central theme of the hearings that did occur in the 103d Congress? Have we given up?

Mr. MICA. If I may respond to the gentleman, there never was a central theme. There were hit and miss embarrassments, and the only one that I recall that there was any change or attempted change in policy was relating to the Andean policy and the exchange of information.

I remember when the President came to the Summit of the Americas in Miami and we spent about an hour together, almost every Member of Congress who joined our delegation stood up and said, "Mr. President, what is your policy relating to narcotics control? Mr. President, what is the situation relating to enforcement?" Each time we got different answers from the President and from his advisers, and finally they have begun to respond, only because there is a new majority in the Congress.

Mr. ZELIFF. If the gentleman will yield for just a second, the interesting thing is there has been very little mention about a drug policy at all for the last 2 years. I think this is the crime of the whole thing, we are just now talking about it. We are tolerating it, and that is what we hope these hearings will start to bring out.

Mr. MICA. Under the previous administration, the drug czar, Mr. Martinez from Florida, and Mr. William Bennett, there were no less than two dozen subcommittee hearings and at least two full committee hearings on the policies, and these drug leaders from the administration were hauled before the Congress and asked to comment on specifics of the policy. We have not had that opportunity, but we will have that opportunity. We will find out what the policy is, what the direction of this administration is going to be, and if necessary I will work with the gentleman and with both sides of the aisle to craft a policy that makes some sense so that we bring enforcement, so that we bring real education forward, and that we list this as a national priority, that our children and young people are dying on our streets, that it is the No. 1 cause behind crime in this country, and it has been swept under the table and now something needs to be done about it.

So this is your priority and it is my priority, and it will be the priority of other Members in this 104th Congress.

Mr. ZELIFF. I thank the gentleman for those very wise comments.

I yield to the gentleman from Indiana [Mr. SOUDER], another valued member of our subcommittee, and I look forward to his testimony on Thursday.

Mr. SOUDER. I thank the gentleman for yielding. I imagine that there are a lot of people in a state of shock on hearing about this hearing, because I want to commend the gentleman because of the way this body works and the other body, and I was a legislative director for Senator COATS in 1982 through 1992, and in 1985 to 1993, the top three issues were drugs, drugs and drugs, and anything that looked like a drug bill we shoveled money toward that drug bill, and we tried to address the issue. But much of the way Congress works is once we pass a bill, then we assume that supposedly that the problem has disappeared. We end welfare as we know it, and we fix this, and because Congress focused on it 4 or 5 years ago, the problem was supposed to go away. It does not matter that statistics show that it has grown up. But now the political focus is off, people want to ignore it and put it under the table and focus on something a little more topical and get more attention, even though the problem is still existing and is increasing.

In the first year in office President Clinton slashed the czar's office from 146 to 25. He put enforcement efforts on the back burner and shifted the emphasis from our borders he says to neighborhoods and streets, yet they have cut back on a lot of those types of efforts. This administration has spent, as we heard earlier, much too much time focusing on the problems in Somalia, or in Haiti, or on micromanaging the rest of the world and they have not paid adequate attention to our crisis here at home.

In Fort Wayne, IN, in my hometown, instead of having 30 or 40 buildings that are used for crack, we now have 150 to 250 that are occasionally used for crack. Our gang problem has increased further. For murders, we see in Fort Wayne that most murders are drug-related, they are kids battling on the streets over control of the drug trade, often coming out of Detroit or out of Chicago. It has not gone down at all.

I think as we look at that we need a clear message from our national leadership that we are going to do whatever we can. We need to use the moral authority of the bully pulpit, of the President. We need clear direction coming out of there. We already heard Joycelyn Elders and her position which was actually, "Don't smoke, but if you have to smoke, don't smoke tobacco." It was a really very mixed message, and we have seen an increase in the T-shirts and in the rock music, and in every store with rock music that you go into you have that marijuana sign, the marijuana drug, an acceptance in the culture, and we need to focus on changing the moral authority and the direction of this country. We are clearly seeing a rise in the use of marijuana, the major drug of preference in usage, as well as other types of drugs in this country. The plain truth is that leadership matters. We can put money into education and D.A.R.E., into the school problems which reaches a few people. We can try to put the balloons up in the air. We can try the INS, we can try the faster cigarette boats to try to track people down in the water. We can look through the banana shipment to see if drugs are coming in. We can use different aircraft and try all the different methods for interdiction and we need to, but that alone will not eliminate it. We need to have local task forces to do it. We need to have a focus there. We need to have treatment programs, many of which fail, but we still need to have treatment efforts and make the effort on all of those fronts.

But a lot of this ultimately is going to come down to we just have to say no. That is why it is so important to have Mrs. Reagan coming to give that moral message again, that we have to have the moral authority to change the commitment in the individual lives and in society to say that that is wrong. We cannot tolerate this. We need to pass that message to our children and to our families to supplement that. Our responsibility as Government leaders is to try to use the force of Government, but much of this is in the hearts of people, and we have to use our bully pulpit, the President, the Congress, committee hearings like the gentleman is having to put the toughness back in it.

I think the record of this administration is clear, and if they think that they have improved it, they need to exhale.

Mr. ZELIFF. I thank all of my colleagues for joining us tonight. We are having this hearing on Thursday, and it is going to be the most important single issue that I think our country faces. It is one we need to focus great attention on from both sides of the aisle and both ends of Pennsylvania Avenue, and we look forward to these hearings.

WHO REALLY CARES ABOUT THE KIDS?

The SPEAKER pro tempore (Mr. KINGSTON). Under the Speaker's announced policy of January 4, 1995, the gentleman from Pennsylvania [Mr. FOX] is recognized for 30 minutes as the majority leader's designee.

Mr. FOX of Pennsylvania. Mr. Speaker, I rise on the issue of nutrition for children.

Mr. Speaker, when Republicans stood on the steps of the Capitol on September 27 last year, we made a contract with the American people. We said that if the people made us the majority party in the House of Representatives we would bring to the floor of the House, within 100 days, 10 major bills to get America back on track. Our contract will be honored; our word will be kept.

Soon we will consider a bill that will make an end to a welfare state that has failed. The welfare state failed because for too many years Congress equated solutions with one-size-fits-all bureaucratic remedies. And it failed because Congress was afraid to make the tough decisions that must be made if be made if we are going to truly help the beneficiaries of the current welfare system as well as the taxpayers without whom no system of help could be made possible.

However, in our attempts to provide needy children with nutrition programs through block grants we have been suscepted to the disingenuous attacks by the White House and its congressional allies. Listening to the other side, one would have thought the worst: the school lunch program.

The American people deserve better than these scare tactics. We are seeking compassionate solutions to help needy children. We are committed to creating a system that ensures the safety and health of our Nation's children.

The facts are clear and, as usual, the facts tell quite a different story than some congressional Democrats have presented. Spending for school meal programs will actually increase by at least 4.5 percent next year under the Republican proposal and each year thereafter.

Our bill creates a separate school-based nutrition block grant that focuses on school-based nutrition programs such as school lunch and school breakfast. In addition, it creates a separate family nutrition block grant to meet the needs of low-income children and pregnant mothers, provides meals and supplements to children in child care, and allows for the operation of a summer food program to meet the needs of children when they are not in school.

Block grants eliminate the Federal middleman and allow the Governors to design a program that serves their State's families in the most efficient manner, and even saves money on administration. By eliminating the Federal bureaucracy and the 15-percent administrative costs that go with it, they can use these funds to provide more meals for more students.

As we turn power over to the States, much has been said about the strings attached issue. Some Governors have asked for block grants from the Federal Government that come with no strings. However, we want to make sure that the programs will be, in fact, implemented correctly and in the way that we know will serve our children best.

Let me emphasize that nutrition block grants will go directly to fund nutrition programs and nutrition programs only. In turn, States will be responsible for reporting to the Federal Government mathematical statistics every year to ensure their commitment to serving those needs. It is imperative that the nutritional goals are met.

Changing a system as large and as important as welfare will inevitably lead to some disagreements. Nevertheless, when our bill is passed, we believe life in America will be changed for the better. We also believe children will be served better by eliminating the Federal middleman and the bureaucracy and getting more funds, in fact, to help our children.

Mr. Speaker, I yield to the gentleman from Oklahoma [Mr. WATTS].

Mr. WATTS of Oklahoma. Mr. Speaker, I want to spend a few minutes and go down memory lane. I was one of those kids in school who loved school lunches. Back at Jefferson Davis Elementary School in Eufala, OK, they made some of the best school lunches. I used to love the hot dogs, sauerkraut, and mashed potatoes, and those cinnamon rolls were pretty doggone good too. In fact, all of us kids were made to eat lunches and were thankful to have them.

Let me fast forward to 1994. As far as my public service, before I was elected from the Fourth District of Oklahoma, I served as youth minister at the Baptist Church in Dale City, and on occasion I would go to different junior highs and high schools in the community and eat with the kids in my youth group. Now, for round numbers, let us say 100 kids were supposed to eat in the school lunch room. Only about 50 to 60 of those kids would eat lunch, and most were eating from the fast food outlets in the cafeteria that actually made money for the schools. Now that is a different story. The rest of that food went to waste. A lot of food went to waste.

I do not like waste. I do not know about your house, but in my house growing up, J.C. Buddy Watts, Sr., and my mother Helen Watts would never approve of wasting food.

□ 2145

Now I do not know about your house, but in my house growing up, J.C. Buddy Watts, Sr., and Helen Watts would never approve of wasting food. Wasting money was even worse.

That is what this school nutrition program is all about, not wasting food and not wasting money.

As my colleagues know, the opening day reforms of this House suggested that Government would have to live under the same rules as everyone else. We need to stop the misinformation campaign and scare tactics of those opposed to us and get out the real truth about the school nutrition program. The school nutrition program is saving money and is passing along these savings to the school lunch program.

And here is a real twist. With the Republican nutrition block grants we are actually serving kids the best kinds of lunches, lunches that have budgets cooked up in their own State, lunch budgets that will actually increase 4.5 percent each year for the next 5 years. Let me repeat that, budget increases of 4.5 percent each year for the next 5 years, and lunches that will be healthy and nutritious, maybe even taste as good as what Mrs. Guider and Mrs. Woods would make at my elementary school.

The point is Mrs. Guider and Mrs. Woods, our cafeteria manager, and Mrs. O'Reilly, the principal, and now Governor Keating and his staff in Oklahoma know more about serving their children than bureaucrats in Washington.

This plan sends the school lunch program back to the States where they can administer it best. It creates block grants that eliminate the Federal middleman and reduces paperwork, meaning more lunches can be served with the savings.

As Michigan Governor Engler says, the States can do it better. To quote him:

> To suggest that any Governor in any State is ready to abandon children, let them be hungry, throw them out on the street, is absurd.

Anyone who thinks that Uncle Sam knows best how to feed the kids in Duncan, Lawton, Altus, Frederick, or Norman, OK, is literally out to lunch.

Mr. Speaker, this whole debate is not true. The savings alone will allow us to continue to serve those in need and increase the number of children and families receiving services.

We have all heard that there is no such things as a free lunch. The current program serves up about $200 million just for administration to provide the 1.77 dollars' worth of free lunch and at least 30 cents in subsidies for all students who pay. If we cut out the middleman, we all gain from the savings.

We need to put the Federal bureaucracy on a diet. The only starvation in this bill is to the fat-laden layers of Federal bureaucracy.

Now let me repeat something. This bill only cuts out the fat of the middleman, the Federal bureaucrat, not school lunches. This bill saves money by sending the money back home to prepare home cooked meals in our own home schools.

The best news yet is we pass along the savings to our kids.

Here are a few more morsels:

There are actually more funds in fiscal year 1996 under the block grant proposals than under the current system. Eighty percent of the funds must be used for meals for low-income children, and no more than 2 percent may be used for administrative purposes.

Add up all these tidbits, and I think you find the opposition's dissent is distasteful. We have a full plate when it comes to budgeting in this Congress. The school nutrition block grant programs make sure that our students also have a full plate when it comes to lunchtime.

Mr. FOX of Pennsylvania. Mr. Speaker, I appreciate the comments of my colleague, the gentleman from Oklahoma [Mr. WATTS]. I think he well points out the fact that under our GOP proposed spending on the school lunch program you will notice in the red column the increase every year goes all the way up to 1995, the year 2000. So obviously there is a dedication here to take a program, and improve it, and to make sure that we work hard with it.

At this time, with permission, Mr. Speaker, I yield to the gentlewoman from North Carolina [Mrs. MYRICK].

Mrs. MYRICK. Mr. Speaker, funding for the nutrition programs under the GOP plan is greater in each of the next 5 years than under the current system, a 4.5-percent increase each year or $19 billion 795 million, which is $588 million more than would be provided under the current system.

Mr. Speaker, our needy children will not be left behind. All program dollars in family nutrition block grants are required to go to individuals below 185 percent of the poverty level. With increased funding, less bureaucracy and less paperwork, Mr. Speaker, States can provide more services to more people.

Eighty percent of the family block grant must be used to provide food assistance to pregnant, postpartum and breast-feeding women, and infants and children who are found to be a nutritional risk. This program helps children because it meets the needs of low-income children, pregnant mothers, provides meals and supplements to children, and child care, and allows for the operation of a summer food program to meet the needs of children when they are not in school, but in day care centers, Head Start, summer camp, and homeless shelters.

Mr. Speaker, these changes will benefit our children positively over the next few years.

Mr. FOX of Pennsylvania. Mr. Speaker, I yield to the gentleman from Ohio [Mr. NEY] to speak on his perspective not only with regard to nutrition and the importance of our program, but his experience in the State of Ohio in programs dealing with human needs.

Mr. NEY. Mr. Speaker, I thank my distinguished colleague from Pennsylvania [Mr. FOX] for yielding his time.

As my colleagues know, I think the sad part to this whole scenario is the amount of demagoguery that has been cast forth in the media, and I note, as I went around my district this weekend, as I talked to people involved with the school nutrition program, and you start to tell them what the reality is versus the myth, as you well know, they start to see the real intent that is before us with this proposal in Congress.

As my colleagues know, I would like to point out that, of course, the issue is, as I spoke with my constituents involved with the school food programs, the issue is that we are increasing it, and the issue is that we are sending this to the States by cutting out the middle bureaucracy with more money through the process, and the issue, also the fact of the situation, is that not only are we going to be increasing, but we are going to be guaranteeing that the school lunches are going to be there.

And there is another guarantee. For those of you out there that have worried that this would be somehow sabotaged, somehow set somewhere else when it comes into the States, I think it is clear, if you look at the track record, whether it is money for the seniors that have come down to the States, Mr. Speaker, or whether it is moneys that have come down for other essential programs, I think you will find that the States carry out the mission, and if they do not, there is plenty, as we know, out in the system of Federal ability to step in and make it clear of what our intent was.

But beyond that, Mr. Speaker, I want to just address the issue of what we are doing and why we are doing it, and it is because we do care about children, and I guess what disturbs me the most is the fact of picking up the newspapers and seeing a direct attack upon those of us who want to give more money, who want to take care of children, and it is being put forth, and I know you have seen this. It is being put forth all over the media and told by people that, you know, we are mean-spirited with children, and that is not the reality of it.

Not only are we trying to pass laws to toughen the laws that go after those who try to harm children, but by this proposal we are really cutting out the Federal bureaucracy that is taking more money away, and the 5-percent administrative cap, I think, is a very good thing, but you know we are caring Members who have children. We are Members that come from districts that have needs.

I serve an Appalachian district, very poor school district, and there is no way that we would promote anything that is not going to help our schools.

So, Mr. Speaker and my colleagues, the gentleman from Pennsylvania [Mr. FOX], you know I just feel that it is very unfair, and history is going to prove us right as we proceed down a path to give an increase, to give more money, and to guarantee our children good hot lunches. History is going to show that we are correct in what we did, and history is going to show we were not mean-spirited. We simply want to give more money.

How this has been televised and turned around, Mr. Speaker, I think is causing such unfair confusion throughout this country with the people, so I am very proud of what we are going to do. None of us want to hurt children. We all want to help our poor school districts and the children that cannot get lunches, and so I feel confident. I know the past history of our States, and the pressure is going to be there, and this is going to be watched, and the people are going to make sure, and this Congress is going to make sure, that our wishes are carried out.

Mr. FOX of Pennsylvania. Mr. Speaker, I appreciate the comments of the gentleman from Ohio [Mr. NEY]. I think he has seen in the State of Ohio just how well the programs work in a State that have come back from the Federal Government with the safeguards you put on as finance chairman.

Mr. NEY. And, Mr. Speaker, my colleague, Mr. FOX from Pennsylvania, I can tell you in the 1980's, when the block grants were coming back and the cry was, as this comes from Washington, DC, we are going to lose our money; what do we do? We put in administrative caps. What did we say they are to be used for? Community development purposes, these block grants. What has the track record been from 1981 forward? It has been a track record of success. The bureaucracy was cut loose from here and fed right back into those economic development programs, and the gentleman knows from his State, I am sure, we have a track record of success.

So this is not embarking on nothing new in the sense of doing this in past situations from Congress back to the States. But I believe that it is an issue where people knew they could demagogue, knew they could twist it, knew they could turn it and try to paint a paint brush of people that just really do not want to help the children. That is so far from the truth.

I know our State has got a track record.

Mr. FOX of Pennsylvania. We do in Pennsylvania as well, so we look forward to working with you on this issue and make sure we bring light to it. The fact is we want to protect the programs for children, and we will work together for that purpose.

Mr. NEY. I applaud you and thank you.

Mr. FOX of Pennsylvania. Mr. Speaker, at this time I yield to the gentleman from Washington [Mr. NETHERCUTT] for comments in support of this proposal to make sure we increase the school lunch programs and protect our children.

Congressman NETHERCUTT.

Mr. NETHERCUTT. Mr. Speaker, I thank the gentleman from Pennsylvania [Mr. FOX] for yielding to me, for this opportunity to speak about the family nutrition block grant.

Mr. Speaker, the reason my colleagues and I are here on the floor tonight is to make the case for the hard choices that we are compelled to make in order to bring the Federal budget in balance, and this is why we continue to supply essential services to our constituents in need. As my friend just said here on the floor, it is a little disconcerting when those who oppose any reform in the existing programs label those programs, the plan for reform by the Republican Congress, as hurting children, or hurting women who are pregnant, or hurting older Americans. It is simply not true, and it is unfair to them, and it is unfair to this body.

Why are we delving into such a sensitive area? The reason is simple. We have a national debt of over $4.7 trillion. The interest on the debt alone exceeds the defense budget for this year, which is by September we will have to raise possibly the debt ceiling again most likely in excess of the $5 trillion mark. In a place where we use the term "crisis" quite freely, our gargantuan debt represents the greatest crisis that we face as a Nation, not only us as adults, but our children in future generations. My colleagues across the aisle have been enormously critical of our efforts to combine programs into block grants and to get rid of the cost of the Federal bureaucracy that administers them. They raise the specter of increased malnutrition among the Nation's poor. Nothing could be further from the truth.

What we are doing by creating a family nutrition block grant is to simply combine funding for the WIC program, the child and adult care food program, the summer food program and the homeless children nutrition program. We are cutting out the middlemen, in this case Federal bureaucrats, and getting more money to those families and children in need. Let us call this the stop feeding the bureaucrats measure. In other words, we will save money by being more efficient in the distribution of Federal funds by moving it closer to those people whom the programs serve. In fact, based on the CBO projections, Congressional Budget Office projections for funding for the current programs, the programs grouped in the family nutrition block grant will increase, and listen to this, by an average of 3 percent a year for the next 5 years. Where is the money going? We have mandated that all of the funding available in the block grant go to low income families, and 80 percent of that money must go to women and children currently served by the WIC program. Women, infants and children will be fine under this program by the Republican majority.

Furthermore, no more than 5 percent can be spent by the States on administrative costs, so I say, Mr. Speaker, let us not be fooled by the rhetoric that comes forth on a daily basis. It is a public relations effort to resist sensible reform.

□ 2200

This will work. It is going to be good for women. It is going to be good for children. We will all be better off in the years ahead. I thank the gentleman.

Mr. FOX of Pennsylvania. I want to thank the speakers that have joined me tonight for this special order on the Republican proposed program to increase WIC and the school lunch programs.

With me today has been the gentleman from Oklahoma, Congressman J.C. WATTS, the gentlewoman from North Carolina, Congresswoman SUE MYRICK, the gentleman from Ohio, Congressman ROBERT NEY, and the gentleman from Washington, Congressman GEORGE NETHERCUTT. I think the case can be made and I hope the American people realize that we Republicans are dedicated to increasing the school lunch programs, approximately 4.5 percent per year from here to the year 2000 and beyond.

We will be working with colleagues on both sides of the aisle to make sure we protect our children in every way possible and to make sure we move forward in good sensible legislation that will help our children and help our families.

I thank the Speaker for this time tonight to be able to express our views on this and, hopefully, illuminate this issue for every one.

AFFIRMATIVE ACTION

The SPEAKER pro tempore (Mr. KINGSTON). Under the Speaker's announced policy of January 4, 1995, the gentleman from South Carolina [Mr. CLYBURN] is recognized for 60 minutes as the designee of the minority leader.

Mr. CLYBURN. Mr. Speaker, tonight we are going to continue our discourse here on the subject of affirmative action. As you know, Mr. Speaker, that has become a subject that a lot of Americans are concerned about these days. So tonight, once again, I am pleased to join with three colleagues who will take a few moments to try and get the public and our fellow Members in this body to understand a little better what this whole issue of affirmative action is all about.

Tonight, Mr. Speaker, I am pleased to be joined by the gentleman from Mississippi [Mr. BENNIE THOMPSON], my friend, the gentlewoman from Texas, Congresswoman EDDIE BERNICE JOHNSON, and my friend, the gentleman from Alabama, Congressman EARL HILLIARD.

To begin with, Mr. Speaker, as I have noted before, for 18 years prior to my coming to the Congress, I served my State of South Carolina as State human affairs commissioner.

In that job, it was my responsibility to look after the employment practices, the fair housing practices, all of these issues we had under one umbrella, and one of those things had to do with affirmative action.

So every year, while I was there, we issued a report on the subject of affirmative action. I want to use a little from that report to hopefully shed some more light on this subject.

Now, in South Carolina, I am very proud of the fact that affirmative action was the order of the day under four different Governors. I served four Governors, two Democrats, two Republicans. All four of those Governors supported this concept. I want to show you exactly why.

Today on my way back to Washington I was reading through some news clippings, and one of the clippings I read was written by, I think, a Mr. William Rushing from one of the think tanks in the country. He asked the question, just what is affirmative action?

I want to take a few moments and answer that question for him, because he attempted to answer it and got it wrong, like so many of our friends do.

A lot of people get it wrong because they really do not understand it. Other people get it wrong because they intentionally try to misrepresent it and try to inflame people with such notions as quotas and preferences, those kinds of words that they know will inflame people.

So let us look at this chart here. You will see, Mr. Speaker, exactly what affirmative action is.

If this can be seen, affirmative action is a written document, outlining the steps an agency would undertake to reach fair representation of all race and sex groupings in its jurisdiction.

In order to do a good affirmative action plan, you go through a lot of things, a policy statement. You look at the responsibilities for implementation. You look at disseminating the policy. But the most important thing about affirmative action is to utilize what we call availability, utilization and availability and analysis, looking at the work force, looking at the job groups and looking at the availability of various people in that work force.

Now, let us look at exactly what we try to do when we analyze a work force. First of all, the work force analysis that we do happened to deal with things like just who all worked in this particular environment, looking at exactly what the groupings are. Then when you look at the groupings of people who are working there, then you look at the job group analysis; that is, to look at all of the groupings of jobs by their categories, whether you are talking about professionals, executives and all of that sort of thing. And then we look at the availability.

Now, that is something that is very important, because this is where people get it wrong. This has absolutely nothing to do with population. For instance, it may be that in a particular jurisdiction the population may be 30 percent black, but when you look at the kind of jobs involved in this work force and look for the number of people with the requisite skills for doing that job, what you may find is that the black people with the requisite skills may only constitute 20 percent. So then you will not be asking anybody to use 30 percent as a goal because of the population. You will then look at the goal being 20 percent, because that is what the availability is, that is what the number of people with the requisite skills may be.

Once you find that, that is when you then get to the issue of goals and timetables.

Now, I want to spend just a couple of minutes before yielding to Ms. EDDIE BERNICE JOHNSON of Texas on this whole notion of goals, because that is where this term "quota" seems to creep in time and time again. I have heard people say, goals mean quotas and that is that. Nothing could be further from the truth, and I want, and hopefully you can see what we call a goals form, because this is very, very interesting, for those people who really want to know what this issue is.

A goals form has to do with looking at the current work force, looking at what the current work force is in a particular agency or a particular State. And look at this goals form. Let us look first at this line that says that "executives." When we look at the current work force and we see that here you have got 21 white male executives, one black male executive, over here the goal, that means you have a total of 23 with one white female.

Now, what you have got here is a work force that shows that 91 percent of all the people who make up that work force happen to be white males. But the interesting thing is, when you go over and you look at the availability of people, you see that 8 percent of the people who are available in the work force happen to be black males. Almost 30 percent, 29.8 percent happen to be white females, and 9 percent happen to be black females.

When you look at that, what you will see, if you have got 8 percent that is available and you only got one, which is 4 percent, that means that you are under utilizing those people by, of black males, by 3.7 percent. You are under utilizing white females by 25.5 percent, and black females by 9 percent.

Now, what you do then is look at establishing annual goals based upon people's availability in the work force. And so you then look and say, well, if the availability is 8 percent, then that is how you set your goals, which is the floor. We are saying that at least 8 percent of the people in that work force ought to be black males.

The interesting thing is, if the total is 23, 8 percent of 23 happens to be two. And so that is all you are talking about. If you have 23 people at that level and only 8 percent of the people at that level qualified to do the job happen to be black, then the goal would only be 8 percent of the total number of hirees.

Now, that is what goals setting is all about.

Finally, if you look at the second category here, you will find in "professionals" the numbers run a little bit different. But there is something here about the professional I want to show you, because it talks about how you really find out whether or not you need to set a goal.

If you look at the professionals, you will see under professionals, there are 26 white males, only 3 black males, 7 white females, 3 black females for a total of 39. But now when you look at availability, you find that black males constitute 5 percent of availability. And you look here, you find out that that means simply that there is no under utilization, because they have 5 percent of availability, yet they end up in the work force at that job category 7 percent, so in actuality, they are 2.7 percent over represented. So do you need to do affirmative action there? The answer is no. That is why we see a big "no" sitting in this category of under utilization.

So, Mr. Speaker, I thought I would point this out tonight before we get started in this discussion so that those people looking in tonight can actually see what a goal is and, hopefully, it will in some way put them in a better frame of mind to listen to exactly what we have to say here tonight, because I think that if we can get a good, solid discussion going on this subject, then we all can join with our President, as he reviews this issue. I think it needs to be reviewed, because people misunderstand it.

There are a lot of people in this Congress, there are a lot of people in the White House who really need to understand what they are talking about when they talk about affirmative action, because most of them have talked about an issue based upon their own personal beliefs rather than studying this issue as many of us have as professionals for more than 18 years.

So I am pleased now, to go further in this discussion, to yield to my good friend, the gentlewoman from Texas [Ms. EDDIE BERNICE JOHNSON].

Ms. EDDIE BERNICE JOHNSON of Texas. Thank you, Mr. CLYBURN. I appreciate your efforts and leadership.

Affirmative action is a phrase that has caused a great deal of noise and potential separation in this country. And yet, it was brought about for a remedy. The only reason why the phrase was ever devised is to address inequities in this country.

Frequently we have said that this nation has come as far as it has with less than half of its brain power. One of the reasons why we say that is because women and minorities have been virtually ignored.

Affirmative action actually started under President Richard Nixon, who recognized the inequities that existed and recognized the loss to this country.

First of all, if there are no opportunities for minorities to have decent jobs and have an opportunity to move up, then they are not going to pay the taxes that they ought to be paying because every one ought to share that.

□ 2215

However, you cannot pay if you do not make it. I think that some think that the only persons that have been helped have been black Americans. That is so far from the truth.

First, I think it is well-known that persons who have gained most by affirmative action have been white females. However, beyond that, especially in my State of Texas, short men, short white men, have gained an opportunity to be members of the Texas Rangers, who had a ceiling, a base on how tall one must be to be a Texas Ranger.

I do not know if that meant that they had to be tall enough for someone to look in their faces upward when they stopped their cars on the Texas highways, or what, but it was discriminatory. It had eliminated virtually all Mexican-Americans in Texas from becoming Texas Rangers. Blacks were, perhaps, eliminated for other reasons. Also, white males that were short had been eliminated from being hired.

To remove this kind of discriminatory measure that really had no force, had no reason to be there, offered first opportunities to white males quicker than anyone else, because that is always the case. One hundred percent of the persons who have been President of this country have been white males; 90 percent of the ones who make up this body where we serve are white males. I do not know that any affirmative action program has served to hurt white males.

It helped white males to get jobs on Southwest Airlines, when men brought a suit because they were eliminated from being hired as airline attendants, when they were called stewardesses. Then other airlines, too, have now started to hire. Most of the diversity went to white males when the change came.

I started out as a young professional, before I was old enough to vote, at the Veterans' Administration Hospital in Dallas as a registered professional nurse. The majority of the patients were male. That is because the majority of the veterans were male. The majority of the nurses were female, because traditionally, nursing had been thought of as a female profession in this country. Therefore, most of the nursing assistants had to be male, because of lifting, privacy.

However, that has changed, now. Why did it change? Because of sensitivity. Affirmative action has brought about more sensitivity than any other measure, and recognizing that perhaps whole groups of people have been left out of professions that have something to offer if they felt there were opportunities within those professions.

Mr. Speaker, this affirmative action is not just for black Americans, though most battles to do with civil rights have been fought by black Americans, but we are the last ones that receive most of the benefit from many of the battles that we fight. However, that is OK, because what is good for us is good for America. Fairness and opportunity are good for all Americans.

Now we talk about being a global society, and a leader in the global world. We cannot be global leaders, eliminating and ignoring and not including diversity.

Mr. Speaker, we say we are a nation of nations, and if we are, and we are, we have to be diverse. Every American must feel that there is an opportunity. The Constitution guarantees that, and it is recognized that we did not get covered by the Constitution until later in its history, because, you know, just 50 years ago, in 1944, were blacks able to vote in the primary in Texas, just 50 years ago. Laws had to be passed, lawsuits, lots of time in court, just to get the right to cast a vote.

We have done a lot for this country. We have fought very, very vigorously in every war. We have brought about the opportunities for diversity in this country. We have brought the attention to the need for diversity in this country. I think if we do nothing else, we need to continue to educate the people of this Nation that affirmative action is for all people.

There have been opportunities for non-blacks to work for Members of this Congress that are black. I think that is important. I think it is important to have those kinds of relationships and those opportunities, but without that sensitivity, without the idea of affirmative action, I am not a quota supporter, because it implies just putting someone in the place, whether they are qualified or not. I do not support that. It is not necessary. There are numerous people that, given the opportunity, could do a good job, and perhaps even a better job.

Mr. Speaker, a large number of the athletes professionally in this country are black Americans. How many black Americans own clubs and organizations? I think they are 100 percent owned by white males, or at least 95 percent. There might be one or two white females that open them.

So who needs affirmative action? The sensitivity needs to go to the minds of white Americans, that is who needs it, to remind them to be fair, to remind them that this is supposed to be a color-blind society. However, when it goes blind, it does not see color at all.

That is all we are attempting to do, is sensitize. I hope to live to see the day that we will have a color-blind society. We seem to fade into obscurity without some rules, without some reminders that this country has offered fairness as one of its core foundation rules. It just so happens that unless reminded, a large group of people get left out.

Our intent, Mr. Speaker, is to sensitize, to educate, and we are not going away. We are here for the long haul. We want to see affirmative action live. We want to see it live in behavior. We want to work, we want to earn, we want to be responsible, but we cannot do it without an effort to give us an opportunity.

Mr. Speaker, I believe it is a battle worth fighting, and I really hate to see the exploitation that is being promised now to the American people to use race as dividing and bringing about lots of expression of hate in this country by running for President to get rid of affirmative action. I think that is a very, very slimy way to attempt to fool the American people and exploit the emotions of people who feel that they have been mistreated.

I think we need to study the issue, I think we need to see if it is working, where it is working, and who it is working for, and we need some more sensitivity training, perhaps, but it is not going away. We will not allow it to go away. This is America, a nation of nations .

Mr. CLYBURN. Mr. Speaker, I thank the gentlewoman very much for her comments.

I wanted to point out just one thing that she talked about. It is kind of interesting, but she mentioned that affirmative action, especially the goals and timetables part of it, got started under a Republican administration, under Richard Nixon.

At the time, the very first group that he brought under the goals and timetables happened to be the construction group. The interesting thing is, Mr. Speaker, that at the time of affirmative action, the goals and timetables, the time was established, and 85 percent of all the supervisors in the construction trades had to be white males.

If we look at this little chart here now, that figure still holds true today. After 20 years, 84.9 percent, 85 percent, are still white males. I thank the gentlewoman so much.

I yield to the gentleman from Mississippi, BENNIE THOMPSON, who I think wants to talk a little bit about what affirmative action means to the business community.

Mr. THOMPSON. First of all, Mr. Speaker, I would say to the gentleman from South Carolina, I thank him for convening this special order, but also I would like to associate myself with the comments made by my colleague, the gentlewoman from Texas. Clearly, affirmative action is on the minds of everyone in this country. We cannot let it fall victim to a certain radical element in this country that would like to turn back the progress that has been made.

Clearly, Mr. Speaker, as we talk about affirmative action, let us be very clear that it was created because a void was in this country as it related to employment, as it related to business, and as it related to minority participation in the broadest spectrum of life.

As the gentleman indicated, all of the Presidents since the early sixties have affirmed through Executive order that affirmative action should be the law of the land. This is the greatest country in the world. We cannot fall victim to that radical element that would like to move us back, away from affirmative action.

The lack of minorities in the workplace is well documented. If we talk to anyone, as they discuss affirmative action, we all agree that affirmative action has not made the dent that we would like for it to make, but we cannot argue that black people are better off without affirmative action, because they are not.

However, more importantly than the statistics, affirmative action for the first time has allowed minorities in the board rooms, employment in Fortune 500 companies, and basically, to become involved in the entire fabric of America, so we really cannot allow ourselves to deny minorities, women, or whomever, an opportunity to participate in the entire melting pot of America.

Also, Mr. Speaker, what we have to do is understand that the notion of affirmative action at no point signifies less than acceptable standards for participation. None of us here would ever, ever argue that if a job is available, that we should give it to a less qualified individual. If a contract is available, we should not give that contract to anybody other than some who can perform it, not to a less qualified contractor.

Basically, business is better off. As business participates in affirmative action, business increases. You and I know businesses, Coca-Cola, IBM, a lot of major corporations who have recognized the need for diversity in the workplace. They have diversified their work force, but they also have increased their business by diversifying, because affirmative action is a very positive step.

Mr. Speaker, business, believe it or not, in this country is better off with affirmative action. However, the notion of quotas is really a misnomer in this definition, because we are not talking about quotas, but the opposition to affirmative action tries to bring the cue word into the debate.

However, if we look at quotas in business, all businesses operate on quotas. They talk about you have to perform certain businesses functions, you have to have certain targets. A number of issues relating to quotas for businesses are very positive.

□ 2230

Sometimes people try to say businesses are against quotas. But in order for businesses to be successful, they have to have certain quotas that their employees have to meet in terms of productivity.

It is a positive. So as we look at the term "quota," we look at it as goal-setting, as targeting, and not something negative. Businesses understand that quotas are important.

A part of that, Mr. Chairman, bringing affirmative action to the business place has also diversified employment. It is important that corporate America reflect this country. If corporate America is insensitive to all of us here, then we are not doing what is in the best interests of this country.

Last, let me put forth the notion that this country supposedly by trying to shoot down affirmative action is responding to last November's election. Supposedly the angry white males in this country feel that they have been given a raw deal, or made to be somehow second class. That is not the notion of affirmative action. We ascribe and do so in concert as a group here tonight that affirmative action is a very positive step for this country.

So those individuals who might see it as a negative, we hope that you will not continue to do that, that affirmative action is positive, it is healthy, and there are no statistics that I have been able to see nor have we been able to garner even from the opposition that affirmative action is not a good tool for alleviating discrimination and bringing about diversity in the workplace.

I yield back to the gentleman from South Carolina [Mr. CLYBURN] so that we can begin the dialog that is so desperately needed to bring some reason to the debate rather than the hysteria that we hear so often from the people on the radical right.

Mr. CLYBURN. I thank the gentleman from Mississippi [Mr. THOMPSON].

Let me look at this chart here to reinforce a point that you have just made. I think all of us will agree that there is in fact a phenomenon out here that can be called the angry white male. The question is, why are they angry? I say it is because of the same reason that black males are angry. We are angry because of what has happened to family income in recent years.

If you look at this chart here, you will see that between 1950 and 1978, all the people in our society were growing together. I think it was President Kennedy who said that a rising tide lifts all boats. All the boats were going up together.

In the first quintile here, you will see, in the bottom 20 percent, the growth in that timeframe, in that 28-year period, the growth of 138 percent. And in the top 20 percent, there was a 99 percent. Everybody went up, 98, 106 percent, 111 percent, 99 percent. But what has happened to the growth in family income since?

What we see here between 1979 and 1993, that growth has been negative for the people. It has dropped by 58 percent for people in the low 20 percent, 7 percent in the next 20 percent and 3 percent in the middle here. Yet in the upper 20 percent, their growth has gone up by 18 percent.

So, yes, people are angry because they are frustrated. They are working harder and they are making less money. So that is where the anger is. And those merchants of ill will are using this anger and this frustration trying to turn it into hate and, therefore, they are targeting the weakest elements of our society for these people to vent their anger on.

So you are absolutely correct. I thought I would just use this chart to reinforce that, so nobody is denying that there is anger out there but that anger is not just among white people, it is among black people as well, because they, too, fall in these percentiles here.

Let us now go to our good friend, the gentleman from Alabama [Mr. HILLIARD], the lawyer in this group, who is going to talk a little bit about the public policy.

Mr. HILLIARD. I thank the gentleman from South Carolina [Mr. CLYBURN].

This country has an obligation, this Government has an obligation to set the tone for the direction in which this country should go. And oftentimes we do that through laws. In many instances we leave it up to the States and in those situations where the States in this country set policies or make laws that are congruent, that keep the people happy, keep people satisfied, and obtain their objectives, the Federal Government as a rule does not invade their turf or does not invade their territory.

But sometimes, because of the fact that we have 50 different States, the Federal Government has to step in in order to standardize, or set a public policy, that will be uniform, especially when it affects how the Federal Government itself does business or how an agency of the Federal Government operates.

I say that to say that sometimes in America the Congress has looked and has not been satisfied with what it has see, and in order to correct even a

President, to correct certain things, they set certain rules.

Let me give an idea of what I am talking about. After World War II, our country became very much aware of the world, and America started trading, and not only trading with other countries on a very large scale but many of our larger corporations started moving their plants into other countries, started producing whatever they produced in other countries.

In the 1960's and the 1970's, the Congress decided that it wanted to make sure that a large number of jobs remained in America. So it came up with the Buy American Act.

Now, the Buy American Act was not a mandate but it was simply a situation where Congress gave tax breaks and gave points and they gave set-asides to achieve its public policy objective, making the business environment so conducive that companies would want to remain in this country, would want to produce in this country.

Oftentimes in America, we see where certain things happen to achieve a certain result, such as with veterans. After World War II, we found that a large number of veterans had served several years in the service, some on the battlefield, others in other areas, but contributing to the war efforts.

Congress wanted to reward those who had supported this country because, some of them, some males did not go, some females did not go, they stayed home, they went to college, and they were able to get all the good jobs because they were well educated.

So when the veterans came back, they did not have the experience, did not have the education that the others had, so Congress wanted to try to rectify to a limited degree or to a certain extent some of the problems that the veterans had incurred by going out defending this country.

So they set up a point system where it gave so many points on any examination for a Federal job to a veteran, and if he had been injured, it gave him additional points.

If someone took a test to work in the post office and he just happened to be a veteran, because of his service to the country, we gave him an extra 5 percent or an extra 10 percent. This is because we wanted to set a public policy. We wanted to encourage the Federal agencies to hire veterans. And we also wanted to help the veterans who had served their country.

So we see in these two different situations, the Buy American Act and the veterans act, where Congress has decided to invade the turf of agencies and the Federal Government itself by making things more compatible for veterans.

The States have done the same thing. They gave points to veterans. Many of them passed the Buy Americans Act so that they wanted to encourage people to do certain things.

Affirmative action is also a public policy that has been established. It has been established by the national government, in this case, in many instances by executive orders of various Presidents, and also be certain laws that have been included in their agencies' rules and regulations. These laws do not mandate but just call for certain situations to take place. In other words, it creates incentives.

It does not mandate, it does not demand, it does not make, but it just creates a favorable situation. It may be a tax break to those persons selling to a minority, in the case of a radio or TV station, because Congress wants the airwaves to be diversified. It does not just want all conservatives occupying and owning all the radio and TV stations that almost happens to be the case now. So incentives are given.

But if you look at who benefits from those incentives, you will find that all Americans benefit. In the case of a radio station being purchased by a minority and certain tax preferences are given to the majority person who sold it, you find that that person benefits who is a majority. The minority benefits because he has the station.

So, you see, it works for America. Just like the Buy American Act, just as the preference that has been given to veterans in terms of their examinations, their additional points, it served the veterans, it serves our country. Affirmative action also serves our country.

But let me go beyond just public policy as it relates to the Federal Government. Corporate America has been swinging in the wind. Every time a law is made, every time an Executive order is made, every time an agency of the government makes a rule and a regulation, it has to change, because it has to obey the laws, the rules, and the regulations.

We have a situation, for about the last 25 years, we have been, not demanding but we have been encouraging corporate America to perform certain acts. Many of them have very good affirmative action policies that they have built up over the past 20 something years. They do not want to dismantle them. They are very satisfied. It creates a situation where corporate America has been able to diversify its work force, diversify its boards of directors in many instances, and it has opened up America so that all those different groups that make up America happen to be included in the decision-making process, in the work force, and not just as consumers.

It makes a very healthy situation. The healthy situation is what Congress has sought to create, not just with the government, not just with its agencies, but with corporate America. And corporate America is moving right along.

Any interruption would cause additional problems, additional changes, and it would actually be a setback.

We do not want that. Corporate America does not want that. And this government does not want that.

Now, who wants it?

□ 2245

Those who seek to divide America, and those who seek to divide America only for their own selfish reasons or purposes. And who would seek to divide America? If things are moving along, if we have a situation where everyone has been included in our work force, everyone is being included in a diversified manner on all of our boards making decisions, who would object?

Who would be angry because there is a policy that Latinos, women and blacks should be included in the work force or should be included in the decision-making process or decision-making boards, on decision-making boards, who would be angry? I cannot think of any real American that would be angry, regardless of his gender, regardless of her situation. It would be un-American to be angry.

Mr. CLYBURN. I thank the gentleman so much. Let me point out it is kind of interesting you talked about the interruption, it is kind of interesting in the 1960's when we first started discussing what needed to be done in order to improve the status of black Americans, there was an interesting figure that I think we ought to all look at. When you compared black mayors' salaries to white mayors you would find in the 1960's, black mayors made 67 cents to every dollar that was made by white males.

We put in the program of affirmative action in the 1960's and it is kind of interesting that by 1979 that figure had gone to 81 cents to every dollar. But along came the 1980's and we had an interruption in affirmative action where there was no longer any force, the Reagan administration attempted to undo it, calling in studies, studies which did not prove that affirmative action did what they said it was going to do, but during that period, by the time we got to 1990, that figure had dropped again back to 76 cents to every dollar.

So, my point is in the 1960's when we started this, it was 67 cents, it got up to 81 cent in the 1970's and now we are retrogressing and so that is what has happened.

Another little thing here is kind of interesting, the unemployment rate has started to do the same thing. The average unemployment in the 1950's was 4.5 percent, that creeped up. In the 1980's the average unemployment went up to 7.3 percent. In the 1990's we started down again. When this administration came into office it was 7.7 percent, it went as low as 5.6 percent, is now up around 5.7 percent, so we average so far 6.4 percent.

So I say we are going in the right direction with our economy, and there is no reason for any white males or white females to be angry with black people because affirmative action did not do this.

So, let me look. I think we have about 10 minutes remaining. Let me give each one of us 3 minutes here to kind of summarize, and I will go now to Congresswoman JOHNSON.

Mrs. EDDIE BERNICE JOHNSON of Texas. I thank the gentleman. Let me just share very quickly that my father told me that the reason why he did not want to go to college is because he did not want to teach or preach, he wanted to be a businessman. The opportunities did not exist. So, therefore, there was no encouragement to go on for education. He made a very good living and was a very good father to all of us.

Times have changed, and we do not want to go back. We want our young people to understand that if they choose a non-traditional profession, if they choose to be a scientist, if they choose to be a physician, the opportunities will be there and those opportunities have not always been there.

I remember when Texas paid black students to leave the State to go to medical school. We do not have to do that anymore, but we do not want to go back. We do not want to go back where we were. When young people see that their parents have an opportunity because they stayed in school, they do not have to continue to struggle because they cannot get a contract because they prepared themselves well, then young people will be encouraged to do the right thing and to be well qualified for jobs and professions that they would like to contribute.

But if we go back, we will say to the world, as a global leader that in this country we do not treat all people the same, all people do not have an opportunity, and so take to the streets, break the law. Those are the opportunities you have. We do not want to go back. We would plead with the people, let us go forward. This is America where all people are supposed to have a right to the dream, and the only way that we have had a real little glimpse at that dream is through opportunity.

I thank the gentleman very much for having this session tonight.

Mr. CLYBURN. I go now to my good friend the gentleman from Mississippi [Mr. THOMPSON].

Mr. THOMPSON. I thank the gentleman. Being one of the five Members from the State of Mississippi here in Congress, I was very happy to see the Mississippi State legislature finally get around to taking the slavery law off the books.

My point here is there are so many things in America we have to correct so that even by taking slavery off the books, that is the first step. But if you look at my State again we have more black elected officials than any other State, and you would assume, rightfully so, that that is something to be proud of and we are. But the fact is that had to go to court to give African-Americans in Mississippi the opportunity to elect the candidates of their choice. Our State government did not want that and I am tying this into affirmative action and civil rights.

We have to have laws that encourage people to do the right thing. Affirmative action encourages individuals to do the right thing.

But the broader issue is leadership. The cop-out is to say we do not need affirmative action, we are in a colorblind society, there should be no preferences given. But that is not leadership. Leadership recognizes the fact that there is a history in this country that a lot of us are not proud of, but we are men and women composing a Congress who are willing to bite the bullet and correct the past evils.

Leadership dictates making the difficult decisions, not running from them.

Mr. CLYBURN. I thank the gentleman so much.

I yield to my good friend from Alabama [Mr. HILLIARD].

Mr. HILLIARD. I thank the gentleman very much.

In our society, especially in America, there are certain words that we do not like to use such as discrimination, segregation, set-aside, preferences, goals, and I do not know why people want to always avoid using those words.

To me if the chair over there is brown, it is brown. And you say that, and you do not have to try to go around corners giving a description of it. In America, anything that might be negative in any sense, that might be bad, I find that there are so many Americans afraid to approach the subject, afraid to discuss the subject, and they whisper about it and they try to get around it by making everything seem to be what it happens not to be. And that is just America.

But we have to change that. We still have discrimination in America, and if you do not know I want to tell you, we still have discrimination in America.

Now once you understand that, you will understand that, sure, we have gotten rid of discrimination de jure which is by law, but we still have discrimination de facto. In fact you can look at any corporation in America, you can look at any agency of any State government and you will find that it does not fairly represent the number of minorities, whatever minority it is in that area. If it is in Arizona, I can tell you now that it does not fairly represent our Mexican-Americans; if it is in North Dakota or South Dakota it does not fairly represent Indians; in Birmingham, AL, it will not fairly represent African-Americans. In Miami it will not fairly represent Cubans.

What I am saying is we do not have complete diversity. We need goals, we need incentives, we need affirmative action to create diversity in our country.

Mr. CLYBURN. I thank the gentleman very much.

Mr. Speaker, let me close this hour by first of all thanking my friends for joining me this evening. Hopefully to our fellow Members in the House and to the public-at-large looking in tonight, we have shed some light on this subject.

We hear a lot of talk today about the time for affirmative action has passed. Let me say in closing just a little something to you about time.

My friends in this body who talk about the need to do away with affirmative action are always quoting Martin Luther King, Jr., in his "I have a dream" speech where he talked about judging people by the content of their character rather than the color of their skin. But you know, Martin Luther King said something about time when he wrote that letter from the Birmingham City Jail in 1963, just a few months before he made the "I have a dream" speech. He said time is neutral; time is never right and it is never wrong, time is only what we make it. And he went on to tell us in that letter that we are going to be made to repent in this generation not just for the vitriolic words and deeds of bad people, but for the appalling silence of good people.

And then King said this, and I close. King said, "I am beginning to believe that the people of ill will in our society make a much better use of time than the people of good will." And so I call for the people of good will in our society to start making a much better use of time and to remember that we, the people of good will, ought to make more use of our time, at least better use of our time than the people of ill will.

With that I thank my colleagues and good night.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. ROGERS (at the request of Mr. ARMEY) for today until 7:15 p.m., on account of personal reasons.

Mr. BUNNING of Kentucky (at the request of Mr. ARMEY) for today, on account of illness.

Mr. RANGEL (at the request of Mr. GEPHARDT) for today and the balance of the week, on account of a death in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. WISE) to revise and extend their remarks and include extraneous material:)

Ms. KAPTUR, for 5 minutes, today.

Mr. OWENS, for 5 minutes, today.

Mr. WYNN, for 5 minutes, today.

(The following Members (at the request of Mr. EHRLICH) to revise and extend their remarks and include extraneous material:)

Mr. DORNAN, for 5 minutes, on March 7.

Mr. RIGGS, for 5 minutes, each day, on March 7, 8, 9, and 10.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. WISE) and to include extraneous matter:)

Ms. HARMAN.

Mr. RANGEL.

Mr. MCDERMOTT.

Mr. PALLONE.

Mr. ANDREWS.

Mr. STOKES.

Mr. DURBIN.

Mr. STARK in two instances.

Mr. TOWNS in six instances.

Mr. HAYES.

Ms. WOOLSEY.

(The following Members (at the request of Mr. EHRLICH) and to include extraneous matter:)

Mr. BEREUTER.

Mr. CRANE.

Mr. GILMAN in two instances.

Mr. PORTMAN.

(The following Members (at the request of Mr. CLYBURN) and to include extraneous matter:)

Mr. LUTHER.

Mr. PACKARD.

ADJOURNMENT

Mr. CLYBURN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 59 minutes p.m.), under its previous order, the House adjourned until tomorrow, Tuesday, March 7, 1995, at 9:30 a.m.

EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports concerning the foreign currencies and U.S. dollars utilized by various individuals and groups of the House of Representatives during the fourth quarter of 1994 in connection with Speaker-authorized official foreign travel, pursuant to Public Law 95–384, are as follows:

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO INDIA AND ENGLAND, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 10 AND NOV. 20, 1994

Name of Member or employee	Date		Country	Per diem[1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]
Hon. Barbara-Rose Collins	11/10	11/19	India	31.23	1,418.00						1,418.00
	11/19	11/20	England		233.00				[3]		233.00
Meredith Cooper	11/10	11/19	India	31.23	1,418.00						1,418.00
	11/19	11/20	England		233.00				[3]		233.00
Total					3,302.00						3,302.00

[1] Per diem constitutes lodging and meals.

[2] If foreign currency is used, enter U.S. dollars equivalent; if U.S. currency is used, enter amount expended.

[3] On Nov. 19, 1994, no flight available to United States; overnight stay in London.

BARBARA-ROSE COLLINS.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO THAILAND, INDONESIA, AND INDIA, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 11 AND NOV. 22, 1994

Name of Member or employee	Date		Country	Per diem[1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]
Jim McDermott	11/10	11/11	Thailand		216.07		5,946.95				6,163.02
	11/11	11/13	Indonesia		464.00						464.00
	11/13	11/22	India		1,647.00						1,647.00
Charles Williams	11/10	11/11	Thailand		216.06		5,358.95				5,575.01
	11/11	11/13	Indonesia		464.00						464.00
	11/13	11/22			1,647.00						1,647.00
Total					4,654.13		11,305.90				15,960.03

[1] Per diem constitutes lodging and meals.

[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

JIM McDERMOTT,
Dec. 31, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, MS. HANNELORE HEYEN, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 14 AND NOV. 19, 1994

Name of Member or employee	Date		Country	Per diem[1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]	Foreign currency	U.S. dollar equivalent or U.S. currency[2]
Hannelore G. Heyen	11/14	11/15	Taiwan		$234.00						234.00
	11/15	11/17	Vietnam		652.00						652.00
	11/17	11/19	Philippines		380.00						380.00
Commercial airfare							$3,769.95				3,769.95
Total					1,266.00		3,769.95				5,035.95

[1] Per diem constitutes lodging and meals.

[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

HANNELORE G. HEYEN,
Dec. 30, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, HONORABLE JAMES D. FORD, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 11 AND NOV. 21, 1994

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
James D. Ford	11/11	11/12	Germany								
	11/12	11/14	Ivory Coast								
	11/14	11/15	Ghana								
	11/15	11/16	Benin								
	11/16	11/17	Niger								
	11/17	11/20	Nigeria								
	11/20	11/21	France								
	11/21		United States								
Total					2,100.00		624.00				2,724.00

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

JAMES D. FORD,
Dec. 5, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, MR. MIGUEL MARQUEZ, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 30 AND DEC. 4, 1994

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Miguel Marquez	11/30	12/2	Mexico								
	12/2	12/4	Guatemala		150.00						150.00
Commercial airfare							772.45				772.45
Total					150.00		772.45				922.45

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

MIGUEL MARQUEZ,
Feb. 20, 1995.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

474. A letter from the Deputy Secretary of Defense, transmitting a report on C–17 milestones and exit criteria; to the Committee on National Security.

475. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed license for the export of major defense equipment and services sold commercially to Greece (Transmittal No. DTC–3–95), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

476. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed license for the export of major defense equipment and services sold commercially to Sweden (Transmittal No. DTC–1–95), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

477. A letter from the Chairman, Board of Governors of the Federal Reserve System, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

478. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

479. A letter from the Administrator, General Services Administration, transmitting an informational copy of the fiscal year 1996 GSA's Public Buildings Service Capital Investment and Leasing Program, pursuant to 40 U.S.C. 606(a); to the Committee on Transportation and Infrastructure.

480. A letter from the Secretary of Energy, transmitting the Department's 15th annual report on the Automotive Technology Development Program, fiscal year 1993, pursuant to 42 U.S.C. 5914; to the Committee on Science.

481. A letter from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to increase, effective as of December 1, 1995, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans, and for other purposes; to the Committee on Veterans' Affairs.

482. A letter from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to provide for cost savings in the housing loan program for veterans, to limit cost-of-living increases for Montgomery GI Bill benefits, and for other purposes; jointly, to the Committees on Veterans' Affairs and National Security.

483. A letter from the Director, Office of Management and Budget, transmitting a draft of proposed legislation to revise and streamline the acquisition laws of the Federal Government, and for other purposes; jointly, to the Committees on Government Reform and Oversight, National Security, the Judiciary, International Relations, Small Business, Science, and Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. CANADY: Committee on the Judiciary. House Joint Resolution 2. Resolution proposing an amendment to the Constitution of the United States with respect to the number of terms of office of Members of the Senate and the House of Representatives; with an amendment (Rept. 104–67). Referred to the House Calendar.

Mr. DREIER: Committee on Rules. House Resolution 105. Resolution providing for consideration of the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes (Rept. 104–68). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. THOMAS:

H.R. 1134. A bill to amend title XVIII of the Social Security Act to extend certain savings provisions under the Medicare Program, as incorporated in the budget submitted by the President for fiscal year 1996; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ROBERTS:

H.R. 1135. A bill to improve the Commodity Distribution Programs of the Department of Agriculture, to reform and simplify the Food Stamp Program, and for other purposes; to the Committee on Agriculture.

By Mr. GILMAN (for himself, Mr. FILNER, Mr. EVANS, Mr. TORRICELLI, Mr. UNDERWOOD, Mr. CUNNINGHAM, Mrs. MINK of Hawaii, Mr. LANTOS, Ms. PELOSI, Mr. YATES, Mr. FROST, Mr. MINETA, Mr. FALEOMAVAEGA, Mr. ABERCROMBIE, Mr. STARK, Ms. LOFGREN, Mr. BILBRAY, and Mr. SERRANO):

H.R. 1136. A bill to amend title 38, United States Code, to deem certain service in the organized military forces of the Government of the Commonwealth of the Philippines and the Philippine Scouts to have been active service for purposes of benefits under programs administered by the Secretary of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. LAHOOD (for himself and Mr. INGLIS of South Carolina):

H.R. 1137. A bill to amend title 39, United States Code, to prevent certain types of mail matter from being sent by a Member of the House of Representatives as part of a mass mailing; to the Committee on House Oversight, and in addition to the Committee on Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. McDERMOTT:

H.R. 1138. A bill to amend the Internal Revenue Code of 1986 to reduce the harbor maintenance tax if the Harbor Maintenance Trust Fund is overfunded; to the Committee on Ways and Means.

By Mr. SAXTON (for himself and Mr. STUDDS):

H.R. 1139. A bill to amend the Atlantic Striped Bass Conservation Act, and for other purposes; to the Committee on Resources.

By Mr. SCHUMER:

H.R. 1140. A bill to amend the Public Health Service Act to provide for the prevention, control, and elimination of tuberculosis; to the Committee on Commerce.

By Mr. YOUNG of Alaska (for himself, Mr. SAXTON, and Mr. STUDDS):

H.R. 1141. A bill to amend the act popularly known as the "Sikes Act" to enhance fish and wildlife conservation and natural resources management programs; to the Committee on Resources.

By Ms. ESHOO:

H.J. Res. 75. Joint resolution proposing an amendment to the Constitution of the United States to provide for 4-year terms for Members of the House of Representatives and to provide that Members may not serve more than three terms; to the Committee on the Judiciary.

By Mr. LANTOS (for himself, Mr. SOLOMON, and Mr. TORRICELLI):

H. Con. Res. 33. Concurrent resolution expressing the sense of the Congress regarding a private visit by President Lee Teng-hui of the Republic of China on Taiwan to the United States; to the Committee on International Relations.

By Mr. POMBO (for himself, Mr. YOUNG of Alaska, Mr. LUCAS, Mr. TALENT, Mr. CRANE, Mr. SHADEGG, Mr. CUNNINGHAM, Mr. BILBRAY, Mr. DOOLITTLE, Mr. SCHAEFER, Mr. TAUZIN, Mr. STUMP, Mrs. CHENOWETH, Mrs. CUBIN, Mr. BAKER of California, Mr. RIGGS, Mr. HUNTER, Mr. COOLEY, Mr. GRAHAM, and Mr. WAMP):

H. Res. 106. Resolution requiring that certain introduced measures be accompanied by statements of the constitutional authority for enacting them; to the Committee on Rules.

By Mr. THOMAS:

H. Res. 107. Resolution providing amounts for the expenses of certain committees of the House of Representatives in the 104th Congress; to the Committee on House Oversight.

MEMORIALS

Under clause 4 of rule XXII,

23. The SPEAKER presented a memorial of the General Assembly of the Commonwealth of Virginia, relative to a balanced budget requirement and Presidential line-item veto; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 24: Mr. SMITH of Michigan.

H.R. 42: Mr. ACKERMAN, Mr. SERRANO, Mr. BECERRA, and Ms. VELAZQUEZ.

H.R. 70: Mr. STENHOLM.

H.R. 104: Ms. FURSE.

H.R. 151: Mr. MCHUGH.

H.R. 157: Mr. BURR.

H.R. 218: Mr. HASTINGS of Washington.

H.R. 246: Mr. ZIMMER.

H.R. 253: Mr. FILNER, Mr. GALLEGLY, Mr. MARTINEZ, and Ms. PELOSI.

H.R. 312: Mr. INGLIS of South Carolina and Mr. WELLER.

H.R. 345: Mr. BREWSTER and Mr. STOCKMAN.

H.R. 354: Mr. SKEEN.

H.R. 371: Mr. SOLOMON and Mr. WILLIAMS.

H.R. 372: Mr. ROHRABACHER.

H.R. 373: Mr. EWING and Mr. PARKER.

H.R. 408: Mr. FRANKS of Connecticut.

H.R. 426: Mrs. CHENOWETH, Mr. LIPINSKI, and Mr. CALVERT.

H.R. 427: Mrs. SEASTRAND, Mr. ROYCE, Mr. BREWSTER, Mr. HOSTETTLER, and Mr. CRAPO.

H.R. 438: Mr. BILBRAY, Mr. FOLEY, and Mr. NORWOOD.

H.R. 485: Mr. PARKER.

H.R. 556: Mr. TEJEDA, Mr. ORTIZ, and Mr. BENTSEN.

H.R. 557: Mr. TEJEDA, Mr. ORTIZ, and Mr. BENTSEN.

H.R. 569: Mr. BERMAN.

H.R. 570: Mr. LIPINSKI, Mr. FAZIO of California, Mr. PETRI, Mr. FROST, and Mr. SAXTON.

H.R. 580: Mr. TATE.

H.R. 733: Mr. UPTON, Ms. RIVERS, and Mr. HINCHEY.

H.R. 734: Mr. UPTON, Ms. RIVERS, and Mr. HINCHEY.

H.R. 752: Mr. WHITE and Mr. CHRISTENSEN.

H.R. 759: Mr. GUTKNECHT.

H.R. 783: Mr. STUPAK and Mr. POMEROY.

H.R. 789: Mr. EWING, Mr. THORNBERRY, Mr. SOUDER, and Mr. TORRICELLI.

H.R. 849: Mr. BROWN of Ohio and Mr. DURBIN.

H.R. 873: Mr. GILLMOR, Mr. ZELIFF, Mr. POSHARD, and Mr. SANFORD.

H.R. 910: Mr. THOMPSON, Mr. UNDERWOOD, Mr. MINGE, Mr. HINCHEY, and Mr. FATTAH.

H.R. 928: Mr. LIPINSKI, Mr. GORDON, and Mr. MCHUGH.

H.R. 959: Mr. BEILENSON.

H.R. 963: Mr. MILLER of Florida, Mr. PETERSON of Florida, Mr. STEARNS, Mr. BENTSEN, Mr. BARRETT of Wisconsin, and Mr. MCHUGH.

H.R. 1005: Mr. WELDON of Florida, Mr. JONES, Mr. WELLER, Mr. BLUTE, Mrs. CHENOWETH, and Mr. CALVERT.

H.R. 1021: Mr. LIPINSKI.

H.R. 1023: Mr. OLVER.

H.R. 1024: Mr. MCKEON.

H.R. 1058: Mr. KLUG and Mr. FRISA.

H.R. 1093: Mr. MINGE and Mr. BAESLER.

H.R. 1114: Mr. WYDEN.

H.R. 1118: Mr. EMERSON, Mr. DORNAN, Mr. CHRISTENSEN, and Mrs. CHENOWETH.

H.J. Res. 56: Mr. LIPINSKI.

H.J. Res. 61: Mr. EMERSON, Mr. MCINTOSH, and Mr. TIAHRT.

H. Con. Res. 12: Mr. LAUGHLIN, Ms. BROWN of Florida, and Mr. DIAZ-BALART.

H. Con. Res. 31: Mr. FRANKS of Connecticut, Mr. MANTON, Mr. DIAZ-BALART, Mr. DELLUMS, Ms. LOFGREN, and Ms. FURSE.

H. Res. 24: Mr. FORBES, Mr. LAHOOD, Mr. CUNNINGHAM, Mr. WICKER, Mr. SAXTON, Mr. ROHRABACHER, Mr. ENGLISH of Pennsylvania, and Mr. BAKER of Louisiana.

H. Res. 30: Mr. TATE, Mr. CLYBURN, Mr. STUDDS, Mr. HINCHEY, and Mr. PARKER.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.J. Res. 2: Mr. BROWNBACK and Mrs. MYRICK.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1058

OFFERED BY: MR. BRYANT

AMENDMENT NO. 2: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 6. INAPPLICABILITY TO DERIVATIVES.

This Act and the amendments made by this Act shall not apply to any action based on an allegation of fraud in connection with the purchase or sale of a derivative instrument. For purposes of this section, the term "derivative instrument" means any financial contract or other instrument that derives its value from the value or performance of any security, currency exchange rate, or interest rate (or group or index thereof), but does not include—

(1) any security that is traded on a national securities exchange or on an automated interdealer quotation system sponsored by a securities association registered under section 15A of this title;

(2) any forward contract which has a maturity at the time of issuance not exceeding 270 days;

(3) any contract of sale of a commodity for future delivery, or any option on such a contract, traded or executed on a designated contract market and subject to regulation under the Commodity Exchange Act; or

(4) any deposit held by a financial institution.

H.R. 1058

OFFERED BY: MR. BRYANT

AMENDMENT NO. 3: Page 18, beginning on line 6, strike subsections (b) and (c) and insert the following (and redesignate the succeeding subsections accordingly):

"(b) PLEADING REQUIREMENT.—In any action arising under this title in which the plaintiff may recover money damages only if it proves that the defendant acted with scienter, the plaintiff must allege in its complaint facts suggesting that the defendant acted with that state of mind.

H.R. 1058

OFFERED BY: MR. COX

AMENDMENT NO. 4: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 6. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964(c) of title 18, United States Code, is amended by inserting ", except that no person may bring an action under this provision if the racketeering activity, as defined in section 1961(1)(D), involves conduct actionable as fraud in the purchase or sale of securities" before the period.

H.R. 1058

OFFERED BY: MR. DINGELL

AMENDMENT NO. 5: Page 18, beginning on line 2, strike "For example, a defendant who genuinely forgot to disclose, or to whom disclosure did not come to mind, is not reckless.".

H.R. 1058

OFFERED BY: MS. ESHOO

AMENDMENT NO. 6: Page 17, beginning on line 18, strike paragraph (4) and insert the following:

"(4) RECKLESSNESS.—For purposes of paragraph (1), a defendant makes a fraudulent statement recklessly if, in making such statement, the defendant engaged in conduct (i) that was highly unreasonable, involving not merely simple or even inexcusable negligence, but an extreme departure from standards of ordinary care, and (ii) that presented a danger of misleading investors that was either known to the defendant or so obvious that the defendant must have been aware of it.

H.R. 1058

OFFERED BY: MR. KENNEDY OF MASSACHUSETTS

AMENDMENT NO. 7: Page 24, line 13, strike "No defendant" and all that follows through line 16, and after line 21, insert the following new paragraph (and redesignate the succeeding paragraph accordingly):

"(4) UNCOLLECTIBLE SHARES.—If, upon motion made not later than 6 months after a final judgment is entered, the court determines that all or part of a defendant's share of the damages is uncollectible, the remaining defendants shall be jointly and severally liable for the uncollectible share. A share of damages is uncollectible if the court finds that—

"(A) the defendant is, or is in imminent danger of becoming, bankrupt or insolvent;

"(B) the defendant is, or is likely to be, subject to either State or Federal criminal proceedings that raise a reasonable doubt about the defendant's ability to proceed as a going concern; or

"(C) the defendant is, or the principals thereof, pose a risk of fleeing the country to avoid prosecution, or are attempting to transfer the defendant's assets outside the United States to avoid satisfying a judgment reached under this title.

H.R. 1058

OFFERED BY: MR. MANTON

AMENDMENT NO. 8. Page 7, beginning on line 19, strike subsection (c) through page 11, line 8, and insert the following:

"(c) AWARDS OF FEES AND EXPENSES.—

"(1) AUTHORITY TO AWARD FEES AND EXPENSES.—If the court in any private action arising under this title enters a final judgment against a party litigant on the basis of a default, a motion to dismiss, motion for summary judgment, or a trial on the merits, the court shall, upon motion by the prevailing party, determine whether—

"(A) The complaint or motion is being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

"(B) the claims, defenses, and other legal contentions in the complaint or motion, taken as a whole, are unwarranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

"(C) the allegations and other factual contentions in the complaint or motion, taken as a whole, lack any evidentiary support or would be likely to lack any evidentiary support after a reasonable opportunity for further investigation or discovery; or

"(D) the denials of factual contentions are unwarranted on the evidence or are not reasonably based on a lack of information or belief.

"(2) AWARD TO PREVAILING PARTY.—If the court determines that the losing party has violated any subparagraph of paragraph (1), the court shall award the prevailing party reasonable fees and other expenses incurred by that party. The determination of whether the losing party violated any such subparagraph shall be made on the basis of the record in the civil action for which fees and other expenses are sought.

"(3) APPLICATION FOR FEES.—A party seeking an award of fees and other expenses shall, within 30 days of a final, nonappealable judgment in the action, submit to the court an application for fees and other expenses that verifies that the party is entitled to such an award under paragraph (1) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.

"(4) SANCTIONS AGAINST ATTORNEY.—The court—

"(A) shall award the fees and expenses against the attorney for the losing party unless the court determines that the losing party was principally responsible for the actions described in subparagraph (A), (B), (C), or (D) of paragraph (1); and

"(B) may, in its discretion, reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy.

"(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit or impair the discretion of the court to award costs pursuant to other provisions of law.

"(6) DEFINITIONS.—For purposes of this subsection, the term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees and expenses. The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of services furnished.

H.R. 1058

OFFERED BY: MR. MARKEY

AMENDMENT NO. 9: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 6. AUTHORITY OF SEC TO PROSECUTE AIDING AND ABETTING.

Section 20 of the Securities Exchange Act of 1934 (15 U.S.C. 78t) is amended—

(1) by striking the heading of such section and inserting the following:

"LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID OR ABET VIOLATIONS"; and

(2) by adding at the end the following new subsection:

"(e) PROSECUTION OF PERSONS WHO AID OR ABET VIOLATIONS.—For purposes of actions by the Commission pursuant to subsections (d)(1) and (d)(3) of section 21, any person who knowingly or recklessly provides substantial assistance to another person in the violation of a provision of this title, or of any rule or regulation thereunder, shall be deemed to violate such provision and shall be liable to the same as the person to whom such assistance is provided.".

H.R. 1058

OFFERED BY: MR. MINETA

AMENDMENT NO. 10: Page 26, beginning on line 1, strike section 37 through page 28, line 2, and insert the following:

"SEC. 37. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

"(A) SAFE HARBOR IN GENERAL.—In any private action arising under this title based on a fraudulent statement (as defined in section 10A), a person shall not be liable with respect to any forward-looking statement if and to the extent that the statement—

"(1) contains a projection, estimate, or description of future events; and

"(2) refers clearly (or is understood by the recipient to refer) to—

"(A) such projections, estimates, or descriptions as forward-looking statements; and

"(B) the risk that such projections, estimates, or descriptions may not be realized.

The safe harbor for forward-looking statements established under this subsection shall be in addition to any safe harbor the Commission may establish by rule or regulation.

"(b) DEFINITION OF FORWARD-LOOKING STATEMENT.—For the purpose of this section, the term 'forward-looking statement' shall include (but not be limited to) projections, estimates, and descriptions of future events, whether made orally or in writing, voluntarily or otherwise.

"(c) NO DUTY TO MAKE CONTINUING PROJECTIONS.—In any private action arising under this title, no person shall be deemed to have any obligation to update a forward-looking statement made by such person unless such person has expressly and substantially contemporaneously undertaken to update such statement.

"(d) AUTOMATIC PROCEDURE FOR STAYING DISCOVERY; EXPEDITED PROCEDURE FOR CONSIDERATION OF MOTION ON APPLICABILITY OF SAFE HARBOR.—

"(1) STAY PENDING DECISION ON MOTION.—Upon motion by a defendant to dismiss on the ground that the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section and that the safe harbor provisions of this section preclude a claim for relief, the court shall stay discovery until such motion is decided.

"(2) PROTECTIVE ORDERS.—If the court denies a motion to dismiss to which paragraph (1) is applicable, or if no such motion is made and a party makes a motion for a protective order, at any time beginning after the filing of the complaint and ending 10 days after the filing of such party's answer to the complaint, asserting that the safe harbor provisions of this section apply to the action, a protective order shall issue forthwith to stay all discovery as to any party to whom the safe harbor provisions of this section may apply, except that which is directed to the specific issue of the applicability of the safe harbor. A hearing on the applicability of the safe harbor shall be conducted within 45 days of the issuance of the protective order. At the conclusion of the hearing, the court shall either dismiss the portion of the action based upon the use of the forward-looking information or determine that the safe harbor is unavailable in the circumstances.

"(e) REGULATORY AUTHORITY.—The Commission shall exercise its authority to describe conduct with respect to the making of forward-looking statements that will be deemed not to provide a basis for liability in private actions under this title. Such rules and regulations shall—

"(1) include clear and objective guidance that the Commission finds sufficient for the protection of investors;

"(2) prescribe such guidance with sufficient particularity that compliance shall be readily ascertainable by issuers prior to issuance of securities; and

"(3) provide that forward-looking statements that are in compliance with such guidance and that concern the future economic performance of an issuer of securities registered under section 12 of this title will be deemed not to be in violation of this title.

Nothing in this section shall be deemed to limit, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under other statutes under which the Commission exercises rule-making authority.".

H.R. 1058

OFFERED BY: MR. WATT OF NORTH CAROLINA

AMENDMENT NO. 11. Page 8, line 20, strike the word "shall" and substitute "may".

H.R. 1058

OFFERED BY: MR. WATT OF NORTH CAROLINA

AMENDMENT NO. 12: Page 16, line 23, after the semicolon, add "and".

Page 16, strike lines 24 and 25 in the entirety and redesignate the subsequent subsection accordingly.

H.R. 1058

OFFERED BY: MR. WYDEN

AMENDMENT NO. 13: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 6. FINANCIAL FRAUD DETECTION AND DISCLOSURE.

(a) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 is amended by inserting after section 13 (15 U.S.C. 78m) the following new section:

"SEC. 13A. FRAUD DETECTION AND DISCLOSURE.

"(a) AUDIT REQUIREMENTS.—Each audit required pursuant to this title of an issuer's financial statements by an independent public accountant shall include, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission, the following:

"(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

"(2) procedures designed to identify related party transactions which are material to the financial statements or otherwise require disclosure therein; and

"(3) an evaluation of whether there is substantial doubt about the issuer's ability to continue as a going concern over the ensuing fiscal year.

"(b) REQUIRED RESPONSE TO AUDIT DISCOVERIES.—

"(1) INVESTIGATION AND REPORT TO MANAGEMENT.—If, in the course of conducting any audit pursuant to this title to which subsection (a) applies, the independent public accountant detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the issuer's financial statements) has or may have occurred, the accountant shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

"(A)(i) determine whether it is likely that an illegal act has occurred, and (ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

"(B) as soon as practicable inform the appropriate level of the issuer's management and assure that the issuer's audit committee, or the issuer's board of directors in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or otherwise come to the attention of such accountant in the course of the audit, unless the illegal act is clearly inconsequential.

"(2) RESPONSE TO FAILURE TO TAKE REMEDIAL ACTION.—If, having first assured itself that the audit committee of the board of directors of the issuer or the board (in the absence of an audit committee) is adequately informed with respect to illegal acts that have been detected or otherwise come to the accountant's attention in the course of such accountant's audit, the independent public accountant concludes that—

"(A) any such illegal act has a material effect on the financial statements of the issuer,

"(B) senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to such illegal act, and

"(C) the failure to take remedial action is reasonably expected to warrant departure from a standard auditor's report, when made, or warrant resignation from the audit engagement,

the independent public accountant shall, as soon as practicable, directly report its conclusions to the board of directors.

"(3) NOTICE TO COMMISSION; RESPONSE TO FAILURE TO NOTIFY.—An issuer whose board of directors has received a report pursuant to paragraph (2) shall inform the Commission by notice within one business day of receipt of such report and shall furnish the independent public accountant making such report with a copy of the notice furnished the Commission. If the independent public accountant making such report shall fail to receive a copy of such notice within the required one-business-day period, the independent public accountant shall—

"(A) resign from the engagement; or

"(B) furnish to the Commission a copy of its report (or the documentation of any oral report given) within the next business day following such failure to receive notice.

"(4) REPORT AFTER RESIGNATION.—An independent public accountant electing resignation shall, within the one business day following a failure by an issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the accountant's report (or the documentation of any oral report given).

"(c) AUDITOR LIABILITY LIMITATION.—No independent public accountant shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rules promulgated pursuant thereto.

"(d) CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.—If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 21C of this title, that an independent public accountant has willfully violated paragraph (3) or (4) of subsection (b) of this section, then the Commission may, in addition to entering an order under section 21C, impose a civil penalty against the independent public accountant and any other person that the Commission finds was a cause of such violation. The determination whether to impose a civil penalty, and the amount of any such penalty, shall be governed by the standards set forth in section 21B of this title.

"(e) PRESERVATION OF EXISTING AUTHORITY.—Except for subsection (d), nothing in this section limits or otherwise affects the authority of the Commission under this title.

"(f) DEFINITIONS.—As used in this section, the term 'illegal act' means any action or omission to act that violates any law, or any rule or regulation having the force of law.".

"(b) EFFECTIVE DATES.—As to any registrant that is required to file selected quarterly financial data pursuant to item 302(a) of Regulation S-K (17 CFR 229.302(a)) of the Securities and Exchange Commission, the amendments made by subsection (a) of this section shall apply to any annual report for any period beginning on or after January 1, 1996. As to any other registrant, such amendment shall apply for any period beginning on or after January 1, 1997.

H.R. 988

OFFERED BY: MR. BURTON OF INDIANA

AMENDMENT NO. 8: In section 2, page 4, line 1, insert at the beginning of the line: "25 percent of".

And on line 5, strike the period, insert a comma and add the following new language ", or the Court may increase the percentage above the 25% if in the opinion of the Court the offeror was not reasonable in accepting the last offer."

H.R. 988

OFFERED BY: MS. HARMAN

AMENDMENT NO. 9: Strike section 2 of the bill, and insert the following:

SEC. 2. AWARD OF COSTS AND ATTORNEY'S FEES IN FEDERAL CIVIL DIVERSITY LITIGATION.

Section 1332 of title 28, United States Code, is amended by adding at the end the following:

"(e) AWARDS OF FEES AND EXPENSES.—

"(1) AUTHORITY TO AWARD FEES AND EXPENSES.—In any action over which the court has jurisdiction under this section, if the court enters a final judgment against a party litigant on the basis of a motion to dismiss, motion for summary judgment, or a trial on the merits, the court shall, upon motion by the prevailing party, determine whether (A) the position of the losing party was not substantially justified, (B) imposing fees and expenses on the losing party or the losing party's attorney would be just, and (C) the cost of such fees and expenses to the prevailing party is substantially burdensome or unjust. If the court makes the determinations described in clauses (A), (B), and (C), the court shall award the prevailing party reasonable fees and other expenses incurred by that party. The determination of whether the position of the losing party was substantially justified shall be made on the basis of the record in the action for which fees and other expenses are sought, but the burden of persuasion shall be on the prevailing party.

"(2) SECURITY FOR PAYMENT OF COSTS IN CLASS ACTIONS.—In any private action arising under this section that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the court shall require an undertaking from the attorneys for the plaintiff class, the plaintiff class, or both, in such proportions and at such times as the court determines are just and equitable, for the payment of the fees and expenses that may be awarded under paragraph (1).

"(3) APPLICATION FOR FEES.—A party seeking an award of fees and other expenses shall, within 30 days of a final, nonappealable judgment in the action, submit to the court an application for fees and other expenses that verifies that the party is entitled to such an award under paragraph (1) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.

"(4) ALLOCATION AND SIZE OF AWARD.—The court, in its discretion, may—

"(A) determine whether the amount to be awarded pursuant to this subsection shall be awarded against the losing party, its attorney, or both; and

"(B) reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the action.

"(5) AWARDS IN DISCOVERY PROCEEDINGS.—In adjudicating any motion for an order compelling discovery or any motion for a protective order made in any action over which the court has jurisdiction under this section, the court shall award the prevailing party reasonable fees and other expenses incurred by the party in bringing or defending against the motion, including reasonable attorneys' fees, unless the court finds that special circumstances make an award unjust.

"(6) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit or impair the discretion of the court to award costs pursuant to other provisions of law.

"(7) PROTECTION AGAINST ABUSE OF PROCESS.—In any action to which this subsection applies, a court shall not permit a plaintiff to withdraw from or voluntarily dismiss such action if the court determines that such withdrawal or dismissal is taken for purposes of evasion of the requirements of this subsection.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) The term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorneys' fees and expenses. The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of services furnished.

"(B) The term 'substantially justified' shall have the same meaning as in section 2412(d)(1) of title 28, United States Code.".

H.R. 988

OFFERED BY: MR. MCHALE

AMENDMENT NO. 10: After section 4, insert the following:

SEC. 5. FRIVOLOUS ACTIONS.

(a) GENERAL RULE.—

(1) SIGNING OF COMPLAINT.—The signing or verification of a complaint in all civil actions in Federal court constitutes a certificate that to the signatory's or verifier's best knowledge, information, and belief, formed after reasonable inquiry, the action is not frivolous as determined under paragraph (2).

(2) DEFINITIONS.—

(A) For purposes of this section, an action is frivolous if the complaint is—

(i) groundless and brought in bad faith;

(ii) groundless and brought for the purpose of harassment; or

(iii) groundless and brought for any improper purpose.

(B) For purposes of subparagraph (A), the term "groundless" means—

(i) no basis in fact; or

(ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(b) DETERMINATION THAT AN ACTION IS FRIVOLOUS.—

(1) MOTION FOR DETERMINATION.—Not later than 90 days after the date the complaint in any action in a Federal court is filed, the defendant to the action may make a motion that the court determine if the action is frivolous.

(2) COURT ACTION.—The court in any action in Federal court shall on the motion of a defendant or on its own motion determine if the action is frivolous.

(c) CONSIDERATIONS.—In making its determination of whether an action is frivolous, the court shall take into account—

(1) the multiplicity of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the party to investigate and conduct discovery; and

(4) affidavits, depositions, and any other relevant matter.

(d) SANCTION.—If the court determines that the action is frivolous, the court shall impose an appropriate sanction on the signatory or verifier of the complaint and the attorney of record. The sanction shall include the following—

(1) the striking of the complaint;

(2) the dismissal of the party; and

(3) an order to pay to the defendant the amounts of the reasonable expenses incurred because of the filing of the action, including costs, witness fees, fees of experts, discovery expenses, and reasonable attorney's fees calculated on the basis of an hourly rate which may not exceed that which the court considers acceptable in the community in which the attorney practices law, taking into account the attorney's qualifications and experience and the complexity of the case, except that the amount of expenses which may be ordered under this paragraph may not exceed—

(A) the actual expenses incurred by the plaintiff because of the filing of the action; and

(B) to the extent that such expenses were not incurred because of a contingency agreement, the reasonable expenses that would have been incurred in the absence of the contingency agreement.

(e) CONSTRUCTION.—For purposes of this section the amount requested for damages in a complaint does not constitute a frivolous action.

Page 7, line 1, strike "SEC. 5." and insert "SEC. 6.".

Page 7, line 7, strike "The" and insert "Section 5 and the".

H.J. RES. 2

OFFERED BY: MRS. FOWLER

AMENDMENT NO. 1: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE —

"No person may serve more than four consecutive terms as Representative or two consecutive terms as Senator, not counting any term that began before the adoption of this article of amendment.".

EXTENSIONS OF REMARKS

INTRODUCTION OF A BILL TO ROLL BACK THE HARBOR MAINTENANCE TAX

HON. JIM McDERMOTT

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. MCDERMOTT. Mr. Speaker, today I am introducing a bill to roll back the Harbor Maintenance Tax [HMT] and provide truth in budgeting. The HMT raises much more money than is needed for harbor maintenance and the Harbor Maintenance Trust Fund contains a huge surplus which is hurting our ports and being used to reduce the size of the Federal deficit. The current high tax rate raises the cost of U.S. exports and encourages shippers to divert cargo to Canadian ports where no such tax is collected. The HMT rate should be rolled back or reduced so that it raises only 100 percent of the costs of harbor maintenance.

The Water Resources Development Act of 1986 established a HMT of 0.04 percent of cargo value to pay for 40 percent of the harbor maintenance activities of the Army Corps of Engineers. In 1990, the Bush administration proposed raising the tax rate to 0.125 percent of cargo value to pay for 100 percent of harbor maintenance work, 0.115 percent, and certain extraneous activities, 0.01 percent, of the National Oceanic and Atmospheric Administration [NOAA]. The 1990 budget agreement approved the full tax rate increase but rejected the diversion of the trust funds to NOAA.

Harbor Maintenance Trust Fund revenues have increased much faster than expenditures as a result of increased trade, stricter enforcement of the tax, fairly constant Corps harbor maintenance appropriations and the artificially high HMT rate. The surplus in the trust fund grew from $120.6 million at the end of fiscal year 1992 to $302.3 million at the end of fiscal year 1993 to $451.4 million at the end of fiscal year 1994. The administration projects that the trust fund surplus will grow to $644.3 million by the end of fiscal year 1995 and $802.9 million by the end of fiscal year 1996.

In fiscal year 1994, the Harbor Maintenance Trust Fund distributed $497.1 million for harbor maintenance activities by the Army Corps of Engineers, but collected $646.2 million, or 130 percent of expenditures. With the additional funds for enforcement of the HMT included in the implementing legislation for GATT, the trust fund surplus may grow even faster in the coming years.

This growing surplus is especially disturbing because of the way the HMT harms the competitiveness of U.S. exports in the international marketplace and diverts cargo to Canadian, and potentially Mexican, ports where no such tax is collected. For example, on all import containers coming into the Port of Seattle, the HMT adds an average cost of $180 per box. This is money that the importer could save by simply diverting the cargo to Vancouver, Canada.

The HMT is especially burdensome to U.S. ports in the Pacific Northwest, Great Lakes region and the Northeast which compete directly with nearby Canadian ports. The burden is even greater for northern ports like Seattle, Tacoma, and Boston that need very little harbor maintenance. The Ports of Seattle and Tacoma estimate that their shippers annually pay over $50 million in harbor maintenance taxes while the ports receive less than $1 million annually in harbor maintenance—this amounts to less than 2 cents back on the dollar.

The growing trust fund surplus may also violate article II of the GATT which only permits "fees or other charges," on trade which are "commensurate with the cost of services rendered." Several European nations have expressed concern to the U.S. Government about this possible GATT violation.

My legislation would rollback the HMT as follows:

First, reduce the harbor maintenance tax rate by 0.02 percentage points in three successive years to 0.65 percent of cargo value; and

Second, provide that in any year thereafter that begins with a Harbor Maintenance Trust Fund balance of under $100 million, the HMT rate will be increased by 0.01 percentage point, and that, in any year that begins with a trust Fund balance of over $100 million, the tax rate will be decreased by 0.01 percentage point.

This method will ensure that the Harbor Maintenance Trust Fund will always have a positive, but medium-sized, balance. The trigger provision would probably not come into play for 6–8 years. The Hazardous Substance Superfund and the Oil Spill Liability Trust Funds operate with similar triggers.

A rollback of the Harbor Maintenance Tax is supported by many shippers, carriers, and ports involved in international trade. This legislation would be a modest step to control the growing surplus in the Harbor Maintenance Trust Fund and check the deleterious effects of the Harbor Maintenance Tax.

RECOGNIZING THE GOLDEN STATE WARRIORS AND FANNIE MAE'S EFFORTS IN THE EAST BAY

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. STARK. Mr. Speaker, I stand before you today to recognize a partnership which is making a significant difference in northern California. Fannie Mae, the Golden State Warriors and their owner, Christopher Cohan, have joined in an effort to alleviate some of our community's housing needs.

About a year ago, Fannie Mae and the Golden State Warriors basketball team created the Home Team Fund—a program which assists low-income families and first-time home buyers. In this short period, they have conducted an extensive consumer outreach effort, raised funds for actual construction, and have even pounded nails themselves during the construction of two new homes.

According to Fannie Mae, a lack of knowledge and a fear of the home-buying process prevent many qualified people from taking that first step to buying a home. To tackle this problem or should I say slam-dunk, Fannie Mae and the Warriors sponsored a free Home-Buying Fair at the Oakland Coliseum in April 1994. Local lenders, real estate professionals, counseling agencies, and housing nonprofits were there to encourage and educate those who thought owning a home was out of their reach. More than 5,000 people attended this one day fair to learn about how to buy a home.

The partnership has also raised funds which provide grants for actual construction. In fact, a portion of the gate receipts from this evening's game, and proceeds from a sports memorabilia auction prior to the game, will be contributed to this fund.

Their voluntarism has also included hands-on efforts. In a project managed by East Bay Habitat for Humanity, Warrior players, coaches and staff participated in the actual construction of two new homes in East Oakland. This year, two additional homes will be built and will be sold to families who contribute "sweat" equity to the project.

Mr. Speaker, I hope you and my colleagues will join me in congratulating this unconventional, but successful housing partnership. Mr. Cohan and the Warriors' altruistic concern for its community is deserving of special recognition, and we should encourage more organizations to enter into these sort of joint ventures.

TRIBUTE TO STANLEY O. IKENBERRY, PRESIDENT OF THE UNIVERSITY OF ILLINOIS

HON. RICHARD J. DURBIN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. DURBIN. Mr. Speaker, last week the University of Illinois announced that James J. Stukel had been selected to become the 15th president of the University of Illinois. I would like to congratulate Mr. Stukel and wish him the best.

It will not be an easy job, though. You see, Mr. Stukel has a hard act to follow—my friend, Stanley O. Ikenberry. Stan announced his retirement last year and we have not been able to convince him to stay.

Stan Ikenberry has served as president of the University of Illinois for 16 years. He

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

spearheaded the transformation of the University of Illinois at Chicago and helped it become the largest research university campus in the Chicago area. He has helped to lead Illinois into the 21st century with his dedication to the Beckman Institute and the National Center for Supercomputing Applications. Most importantly, he has dedicated his time to ensuring that the University of Illinois is a top notch educational institution.

Mr. Speaker, Stan Ikenberry celebrated his 60th birthday on March 3, 1995. The University could not have given him a present better than the selection of Jim Stukel to succeed him. With the selection of such a high caliber candidate, Stan now knows that his work will be carried on into the next millennium.

Mr. Speaker, I want to thank Stanley O. Ikenberry for everything he has done for Illinois. Stan, I hope you have a happy and productive retirement. You will be missed.

SCHOOL LUNCHES

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. BEREUTER. Mr. Speaker, this Member highly commends to his colleagues this editorial which appeared in the Omaha World-Hearld on March 2, 1995.

GOP WOULD KEEP SCHOOL LUNCHES AND LET STATES RUN THE PROGRAM

The notion was spread that Republicans in Congress are about to snatch school lunches from the mouths of hungry kids.

It's not going to happen. It hasn't even been proposed. Such talk is part of a gross misunderstanding, orchestrated by critics of a GOP plan that would transfer the school nutrition program from the federal government to the states.

Nobody is proposing that the school lunch program be eliminated. Nobody is recommending that low-income kids be denied free lunches. Certainly nobody is urging that less be spent to keep poor children properly fed—and therefore attentive—during the school day.

Neither does the issue have anything to do with shutting down the cafeteria lines. Some Republicans merely believe that the states can feed the kids more efficiently and bring the program's runaway costs under control. Those Republicans may well be right.

Critics say that states have a poor record in providing social services. Some states have indeed done poorly, although the critics sometimes have to reach back to Mississippi or Alabama in the 1950s or 60's to illustrate their contention. Times have changed. No good reason exists that Governors Nelson, Branstad and Romer and their colleagues shouldn't have the opportunity to show whether they can run the lunch program more efficiently and compassionately than the federal government has run it.

If the states revert to the behavior of a Mississippi in the 1950s, of course, Congress should take another look. But nothing suggests that they would do that.

Unfortunately, the GOP plan has been widely misrepresented. President Clinton said it threatens the interests of children. Ellen Goodman, a Boston Globe columnist, made it sound monstrous when she wrote that the country "is simply not too broke to feed poor schoolchildren." Sen. Patrick Leahy, D-Vt., called it despicable and declared that children would go hungry if it passed. An Agriculture Department official said decades of progress in good nutrition were about to be reversed.

Such overheated rhetoric.

Sponsors of the proposal deny that spending would be cut at all. In 1994, the federal appropriation was $4.3 billion, with the states adding funds of their own. The GOP plan would allocate block grants of $6.78 billion next year, rising to $7.8 billion in 2000. That's not a cut. But critics have another way of measuring things. They note that earlier projections were $5 billion to $7 billion higher over the five-year period. That much will be needed, they contend, to meet population growth and inflation.

Whether the projects reflect genuine need, however, is debatable. Most beneficiaries in the school lunch program are kids from middle-income and upper-income families. They receive subsidized meals even though they are deceptively told that they pay "full price." In the language of the school-lunch bureaucracy, "full-price" means that the government is paying only 32 cents of the total instead of the $1.90 it pays for low-income kids.

Under the Republican plan, there would be no subsidies for the rich and middle-income lunchers. But that hardly constitutes forcing children to go hungry. Since when did the government have the right to use the tax of low-income and middle-income people to subsidize families who live in $400,000 houses and earn $300,000 a year?

Other critics of the GOP plan stress the welfare aspect. They talk about the lunches as a way of fighting hunger among kids who may have no alternative to the subsidized meals they receive at school. Some of the critics say the number of needy kids is certain to grow in the next few years.

Suppose they are right. It would provide further vindication for the Republican approach, under which middle-income families and rich families would pay their own way to free more funds for the needy. That isn't a bad thing. Certainly it would constitute the dreadful assault on defenseless children that critics have so deceptively accused the Republicans of proposing.

TRIBUTE TO JOSEPH M. FERRAINA

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. PALLONE. Mr. Speaker, on Friday, March 3, 1995, Mr. Joseph M. Ferraina of Long Branch, NJ, was honored by the Amerigo Vespucci Society in a testimonial dinner at the Squire's Pub in West Long Branch, NJ, in honor of a great career as an educator and community leader.

Mr. Speaker, it would take up an entire page of the CONGRESSIONAL RECORD to simply set forth, in list form, the many associations, memberships and achievement of Mr. Ferraina. I would like to offer just a brief overview of some of his public accomplishments.

Mr. Ferraina emigrated from Argentina in 1963 and began his career in Long Branch as a Spanish teacher in 1973. In 1978 he was appointed Vice-Principal of the Long Branch Middle School, and in 1982 he was named principal, a position he held for a decade. Two years ago he was promoted to assistant superintendent of the Long Branch Public Schools, and last year was named superintendent.

Joe Ferraina has many distinctions, associations, memberships, awards, citations and honors to his credit—testimony to the many friends he has made, the many lives he has touched and the real difference he has made.

He was named Principal of the Year by the Monmouth County Elementary and Middle School Administrators Association in 1991. Since 1980, he has served as a Governors Teaching Scholars Mentor. In 1988 he was named Man of the Year by the Amerigo Vespucci Society. Other awards include the Certificate of Merit from the Bilingual Society of Long Branch, the Distinguished Service Citation from the Rotary Club of Long Branch, the Community Service Award from B'nai B'rith, the Certificate of Appreciation from Rotary International, a commendation-resolution from the New Jersey State Senate, a resolution of appreciation from the city of Long Branch, the Community Involvement Award from the Knights of Pythias, the Community Service Commendation from the Superior Court of New Jersey, the Distinguished Service Commendation from the Superior Court of New Jersey, the Paul Harris Award from the Rotary Club of Long Branch and the Humanitarian Award from the NAACP of Long Branch.

Mr. Ferraina remains active in the Rotary Club of Long Branch, having served as president. He is on the Monmouth Medical Center Board of Trustees and the Ronald McDonald House Board of Directors. He continues to chair the highly successful Long Branch Columbus Day Parade Committee. His other community affiliations include: Figli Di Colombo (Sons of Columbus) Club of Long Branch, the Drug and Alcohol Abuse Council, the first aid squad, the Monmouth Medical Human Resources Committee and the Amerigo Vespucci Society of Long Branch. He is also on the Advisory Board of the Core State/New Jersey National Bank Monmouth/Ocean County, the board of directors of Greater Long Branch Chamber of Commerce, the Long Branch Free Public Library board of trustees, and the advisory board of Long Branch Tomorrow, Inc. Last October, he was the main speaker at the Latino American Committee of Monmouth County.

Mr. Speaker, it is great honor for me to pay tribute to Joe Ferraina, someone who represents an excellent role model for today's youth. With his strong communications skills, his fluency in three languages—English, Spanish, and Italian—his effective managerial skills, his dedication to the community and, most important, his commitment to the students for whom he has taken on such a serious responsibility, Mr. Ferraina exemplifies the best qualities we celebrate in an educator, a community leader and a citizen.

LITIGATION MAYHEM

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. PACKARD. Mr. Speaker, our Republican Contract With America continues to move on track. Last week we passed the Job Creation and Wage Enhancement Act to stop out-of-control Federal spending and regulation. This week we will work to stop out-of-control litigation which is clogging our civil justice system.

Our current legal system is being abused and overused. Frivolous lawsuits and outlandish damage rewards make a mockery of our civil justice system. In the last 30 years the number of Federal lawsuits filed annually tripled. This tidal wave of trivial lawsuits threatens fast-growing firms and burdens consumers by adding big legal bills to the cost of doing business. Our Republican Common Sense Legal Reform Act, H.R. 10, works to correct this injustice.

Common sense legal reforms like product liability, limiting punitive damages, and making attorneys accountable for their litigation tactics will work to stem the current tide of endless litigation. The Republican tort reform proposals work to restore accountability to the legal system and reduce costs to the American people.

Mr. Speaker, the tort reform provisions proposed within our Contract With America will end baseless litigation and exaggerated jury awards. Our Common Sense Legal Reform Act will protect American manufacturers, consumers and workers. We must end this litigation mayhem.

REPUBLICAN MODEST PROPOSAL

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. STARK. Mr. Speaker, I always thought that the 1729 "Modest Proposal" essay by Jonathan Swift about how to solve the terrible homeless and hunger problems in Ireland was one of the most devastating satires ever written.

The new Republican welfare bill, however, may cause Republican Governors to seriously consider Swift's proposal. By ending cash assistance as an entitlement and drastically cutting the funds available, the Republican bill guarantees that in the next recession, there will be millions of homeless and hungry children in America. To avoid the embarrassment of the failure of their social theories, the Republican Governors may adopt Swift's Modest Proposal and resort to eating the evidence. The following update of Swift's essay was found in the Ways and Means hearing room during the committee's mark-up of the welfare deform legislation. It appears to be 99 percent Swift and 1 percent update.

A Modest Proposal for Preventing the Children of Poor People in America From Being a Burden to Their Parents or Country, and for Making Them Beneficial to the Public

(An up-date of a 1729 proposal by an early Cato Institute thinker, Jonathan Swift, to be added to the Republican Welfare Reform bill)

It is a melancholy object to those who walk through this great Capital, or travel in the country, when they see at red lights, in the streets, and on the steam grates herds of beggars, followed by three, four, or six children, all in rags, and importuning every passenger for Metro fare. These families, instead of being able to work for their honest livelihood, are forced to employ all their time in washing car windows and begging sustenance for their helpless infants, who, as they grow up, turn thieves for want of work.

I think it is agreed by all parties that this prodigious number of children is a very great additional grievance; and therefore whoever could find a fair, cheap, and easy method of making these children sound an useful members of the Republic would deserve so well of the public as to have his statue set up (perhaps in a beggar-free Lafayette Park) as a preserver of the nation.

But my intention is very far from being confined to provide only for the children of professed beggars; it is of a much greater extent, and shall take in the whole number of infants at a certain age who are born of parents who live under duress, to wit: of minimum wage workers, temps, contract workers, legal aliens, illegal aliens, and farm workers.

As best can be computed by the Bureau of Labor Statistics, a child just dropped from its dam may be supported by her milk for a solar year with little other nourishment, at most not above the value of $20, which the mother may certainly get, or the value in scraps, by her lawful occupation of begging, and it is exactly at one year old that I propose to provide for them, in such a manner as, instead of being a charge upon their parents, or the local charities, or wanting food and Levi's and sneakers the rest of their lives, they shall, on the contrary, contribute to the feeding and partly to the clothing of many thousands.

There is likewise another great advantage in my scheme, that it will prevent those voluntary abortions, and that horrid practice of women murdering their bastard children, alas, too frequent among us, sacrificing the poor innocent babes, I doubt, more to avoid the expense than the shame, which would move tears and pity in the most savage and inhuman beast.

The number of souls in America being about 270 million and the number of babies born out of wedlock and without identity of father about 277,000 a year, the question therefore is, how this number shall be reared, and provided for, which in the current national mood seems utterly impossible by all the old socialist methods, for we can neither employ them in handicraft or agriculture; they can very seldom pick up a livelihood by stealing until they arrive at six years old, except where they are of towardly parts, although I confess they learn the rudiments much earlier, during which time they can however be properly looked upon only as probationers.

I am assured by our apparel sweatshop owners that a boy or a girl before twelve years old, is no salable commodity, and even when they come to this age, they will not yield above $300, which cannot turn to a profit either their parents or the Nation, the charge of burgers, French fries, and bluejeans having been at least four times that value.

I shall now therefore humbly propose my own thoughts, which I hope will not be liable to the least objection.

I have been assured by a very knowing Heritage Foundation scholar of my acquaintance, that a young healthy child well nursed is at a year old a most delicious, nourishing and wholesome food, whether stewed, roasted, baked, or boiled, and I make no doubt that it will equally serve in a fricassee, or a ragout.

I do therefore humbly offer it to the Ways and Means Committee's consideration, that of every 277,000 children already computed, twenty thousand may be reserved for breed, whereof only one fifth part to be males, which is more than we allow to sheep, cattle, or swine, and my reason is that these children are seldom the fruits of marriage, a circumstance not much regarded by our savages, therefore one male will be sufficient to serve four females. That the remaining quarter million or so may at a year old be offered in sale to the persons of quality, and fortune, always advising the mother to let them suck plentifully in the last month, so as to render them plump, and fat for a good table. A child will make two dishes at an entertainment for friends, and when the family dines alone, the fore or hind quarter will make a reasonable dish, and seasoned with a little pepper or salsa will be very good boiled on the fourth day, especially in February.

I have reckoned upon a medium, that a child just born will weigh ten pounds, and in a solar year if tolerably nursed increaseth to twenty-eight pounds.

I grant this food will be somewhat dear, and therefore very proper for the owners of plants which have moved to Mexico, who, as they have already devoured most of the parents, seem to have the best title to the children.

I have already computed the charge of nursing a beggar's child (in which list I reckon, as said, various aliens, minimum wager laborers, tenant farmers, etc.) to be about $20 per annum, rags included, and I believe no gentleman would repine to give $6 per pound for the carcass of a good fat child, which, as I have said, will make four dishes of excellent nutritive meat, when he hath only some particular friend or his own family to dine with him. Thus will the Merger and Acquisition dealers of the nation learn to grow popular among the working population for their purchase of these repasts, and the mother will have about $150 net profit, and be fit for work until she produces another child.

Among the merits of this proposal I offer the following:

Whereas the maintenance of 250,000 children from year one upwards cannot be computed at less than $1,000 a piece per annum, the nation's stock will be thereby increased a quarter billion dollars per year, compounded year by year, besides the profit of a new dish, introduced to the tables of all gentleman of fortune ,who have any refinement of taste, and the money will circulate among ourselves, the goods being entirely of our own growth and manufacture and not from some pesky import.

Whereas the constant breeders, besides the gain of $150 per annum by the sale of their children, will be rid of the charge of maintaining them after the first year.

Finally, this Modest Proposal would be a great inducement to marriage, which all wise nations have either encouraged by rewards, or enforced by laws and penalties. It would increase the care and tenderness of mothers towards their children, when they were sure of a settlement for life, to the poor babes, provided in some sort by the public to their annual profit instead of expense. We should soon see an honest emulation among the married women, which of them could bring the fattest child to the market. Men would become as fond of their wives, during the time of their pregnancy, as they are now of their mares in foal, their cows in calf, or sows when they are ready to farrow, nor offer to beat or kick them (as it is too frequent a practice) for fear of a miscarriage.

TAXED TO THE LIMIT

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. CRANE. Mr. Speaker, in 1982, I first introduced a bill to replace our entire complicated tax code with one, simple flat income tax. Unfortunately, we were not given the opportunity to debate my bill or fundamental tax reform in general thanks to the Democrat-controlled Ways and Means Committee.

With the advent of Republican control of Congress, we finally have an opportunity to debate fundamental reform of the tax code. I believe that such reform should include the flat income tax.

Echoing that statement is our Senate colleague CONNIE MACK from Florida. In the March 2, 1995, edition of the Washington Times, Senator MACK wrote an article stating the case for the flat tax. I commend his article to the attention of my colleagues, and urge them to support the concept and implementation of the flat tax when Congress later considers tax reform.

[From the Washington Times, Mar. 2, 1995]

TAXED TO THE LIMIT

(By Connie Mack)

Eighty-two years ago this week Americans' hard-earned money became subject to federal income taxation. After eight decades of misuse by lawmakers, lobbyists, special interests and income redistributors, the income tax system is in dire need of a complete overhaul.

Under the current income tax system, marginal tax rates that were 15 and 28 percent just a few years back are now as high as 45 percent—and in some cases high tax rates are combined with double and even triple taxation of income.

Our current tax system punishes success, stifles work effort, discourages saving and investing and fosters unproductive investments in tax shelters. Simply stated, our tax system hinders the full productive potential of our economy and reduces every American's potential for a higher standard of living.

Like our forefathers, we find ourselves at a crossroads of governmental evolution. The American Revolution was as much a referendum on tax policies as it was on government. Jefferson, Hamilton and Paine looked at the political realities of that time and concluded that the status quo could not meet the needs of the "New World." Today, as we enter the new millennium, the American people are demanding the same kind of imagination and leadership that our forefathers provided. The Republican Economic Plan is a major part of the new revolution that began on Nov. 8.

The Flat Tax is a critical part of this revolution. A flat rate income tax would radically reduce the tax compliance burden currently imposed on every individual and business. People would be able to calculate their income tax liability with ease. The Internal Revenue Service would no longer need to publish 480 different tax forms. Taxpayers would no longer have to wade through 1,378 pages of tax code and 6,439 additional pages of federal tax regulation.

Not only is the tax burden (particularly on the middle-class) at a record high, but Americans waste some $190 billion and 6 billion man-hours just to comply with our onerous tax code. To add some perspective, 6 billion man hours is equal to the amount of man hours it takes to produce all of the cars, trucks and airplanes in this country each year!

If adopted, a flat rate tax system would end the economic damage due to the perverse effects on work incentives caused by high marginal tax rates. The amount of after-tax money an individual keeps for each additional dollar earned can determine whether that individual works overtime, seeks out tax shelters, or goes fishing. Currently, people automatically forfeit more of their money to taxes when they increase their real income and are moved to a higher tax rate—cutting the government in on a larger share of people's hard work and success. It's no wonder Americans feel they have been working longer and harder with so little to show for it—they have.

These deterrents would not exist under a flat tax system. The prevailing "rich" vs. "poor" tax warfare, which has fostered higher taxes across the board to the disadvantage of everyone, would end. To the greatest possible extent, people would be treated equally under the law. There would be no tax loopholes or giveaways for special interests. A flat tax would provide fundamental fairness in the way we treat all taxpayers.

A generous individual allowance and dependent deduction would insure that low-income families would be completely removed from the tax rolls. Right now, our government takes a huge chunk of peoples' income and then bribes them with their own money by giving it back with a deduction here and tax credit there. A low-rate flat tax would allow tax payers to keep more hard earned money as they earn it; no other tax reform plan treats each individual with as much fairness, simplicity and clarity. The flat tax would eliminate government's current role of micro-managing people's behavior through the tax code, and would encourage individual initiative, ingenuity and opportunity to flourish.

Tax reform is critical to enhancing long-term economic growth. By eliminating destructively high marginal tax rates, the flat tax would boost investment, productivity, wage growth and overall standard of living. We know that reducing high marginal tax rates worked when Presidents Kennedy and Reagan cut them, resulting in two periods of our nation's most robust economic growth.

While Americans continue to work longer and harder to improve their lives, their efforts are being thwarted by an outdated and punitive tax code. Replacing the current income tax system with a flat tax will reduce both the time and amount Americans dedicate to taxes. A revolution began on Nov. 8—and flat-tax reform should be an integral part of this revolution.

A SPECIAL SALUTE TO MARTHA E. BOLDEN: CELEBRATING A LIFE OF ACTIVISM

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. STOKES. Mr. Speaker, I take pride in rising today to salute a resident of my congressional district, Mrs. Martha E. Bolden, who was recently profiled in the Plain Dealer newspaper. In the article which is entitled, "Four Score and Ten: A Life of Activism," the reporter explores the life of this outstanding individual and her contributions to our city. Mrs. Bolden is well known for her commitment to improving the lives of others. I want to share with my colleagues and the Nation some information regarding this outstanding individual.

Mrs. Bolden was the operator of a beauty shop in Mobile, AL, during the 1930's when she was encouraged to vote because she was a businessowner. Her $200 poll tax fee was paid by one of the city's black physicians. In order to register to vote, Mrs. Bolden was also required to memorize the seventh amendment to the Constitution. With determination, she overcame this obstacle and became a registered voter, achieving celebrity status in the black community. This action and determination on the part of Martha Bolden represented the beginning of a lifetime of activism.

Mr. Speaker, Mrs. Bolden moved to Cleveland, OH, in 1953. Over the years, the Cleveland community has benefited greatly from her strong leadership. Upon arriving in Cleveland, Mrs. Bolden immediately became active in the Hough community, encouraging her neighbors to vote and work in political campaigns. When riots destroyed city neighborhoods in the mid-1960's, Mrs. Bolden was instrumental in helping to rebuild the city. She was a founding member of the Hough Area Development Corp., which was one of the first community-based development corporations in the country. The organization played a key role in revitalizing the neighborhood, including the development of shopping facilities and housing estates for residents.

Mr. Speaker, I am proud to salute Martha Bolden on the House Floor today. I can recall that she was one of my first clients when I began practicing law in Cleveland. As an attorney, I represented her when she purchased her home in the city. I also recall that Mrs. Bolden was an active worker in my political campaigns. At the age of 90, she is still politically involved as one of the "101 Women for Stokes."

Mr. Speaker, Martha E. Bolden is a hero to many, and an inspiration to all of us. Throughout her life, she has given unselfishly of her time and talent in an effort to make our city better and empower the community. Her political activism has made the difference in the lives of many. We salute her for her dedication and commitment. I want to share with my colleagues the article regarding Mrs. Bolden which appeared in the Plain Dealer. I ask them to join me in paying tribute to this exceptional individual.

[From the Plain Dealer, Feb. 6, 1995]

FOUR SCORE AND TEN: A LIFE OF ACTIVISM

(By Olivera Perkins)

CLEVELAND.—Martha E. Bolden says she was never afraid.

Not when she was voting in the 1930s in Mobile, Ala., at a time when racial intimidation ensured most blacks didn't vote. Nor during the Hough riots of 1966, when many buildings burned throughout her neighborhood.

"I never was afraid of anyone," she said. "I knew what I was doing was right and would help blacks trying to get somewhere."

And, she will tell you, she has no regrets.

At 90, the woman nicknamed Mother of Hough sits in an armchair in the den of her home, spinning historical tales from her life. Time has weakened her body, but not the passion and precision with which she recounts her experiences.

Bolden remembers being in her Mobile beauty shop in the early 1930s when Dr. John Taylor, one of the city's black physicians, stopped by. Taylor told her she should vote because she was a business owner.

Taylor paid Bolden's more than $200 poll tax, designed to keep blacks from voting. And she memorized the U.S. Constitution's Seventh Amendment, a requirement for her to register.

Disturbed that she could pay the tax, the white registrar was confident Bolden would be unable to recite the amendment from memory, she said.

"I was always good at remembering things," she recalled.

As a registered voter, Bolden achieved a celebrity status among the city's blacks.

Bolden became one of the few black women in Mobile invited to join the YWCA. But she wasn't treated as an equal to whites. "I had no voice," she said. "The only thing you could do is sit there like a log."

When a white member of the YWCA offered the black women a building so they would start their own organization, they accepted. Bolden said she knew the woman was racist, but she and the other blacks wanted the autonomy.

Years later, Bolden continued to talk about her voting experiences. In 1953, she moved to a city where blacks still didn't vote often. That city was Cleveland.

Many of her new neighbors and friends were surprised she had voted in the deep South.

"They would say: 'You mean you voted down South?'" she said. "But I was just as surprised at the number of black people in Cleveland who didn't vote. They had never voted in the South, so they assumed they couldn't vote here."

Bolden encouraged her Hough neighbors to vote. She said she worked in several political campaigns, including those of Rep. Louis Stokes and her son-in-law, the late Earl Hooper, a former Cleveland councilman.

By the time the riots came in the mid-1960s, Bolden was widely known in her community.

She recalled that the riots—with four people killed between July 18 and July 24, 1966—frightened many of her neighbors. Many wanted to leave; the flames had killed their civic optimism.

But she had no such thoughts. "Instead of focusing on the buildings that were burning around me, I tried to keep in mind on how things would be rebuilt," she said.

Bolden helped rebuild her neighborhood as a founding member of the Hough Area Development Corp., one of the first community-based development corporations in the country. One of the group's first projects was the Martin Luther King Plaza shopping center at Wade Park and Crawford Avenues. And in 1979, the group put together Crawford Estates, one of the first residential subdivisions built in a Cleveland inner-city neighborhood since World War II.

Claude Banks, who was president of the now-defunct corporation, said Bolden kept the group focused with her direct, but gentle manner.

"Often we would get carried away with our own importance or power base," he said. "She would tell us that we were not there for our own agendas, but the bigger purpose of empowering the community."

Ken McGovern, a former vice president at University Circle Inc., which worked closely with the Hough group, said Bolden never swayed from her mission.

"She was among a group of indigenous leaders who had the insight to seize control of the political climate of the late 1960s and early 1970s in a positive way," he said.

Hunter Morrison, former director of Homes for Hough, a subsidiary of the corporation, said. "There was always the ideal of being like her, or wanting what was best for the community."

Even with all of the community activism, Bolden found time to raise a family of 12 children. She credits her husband Gresson, an automobile mechanic who died in 1984, with helping her.

"People would say to me: 'We didn't know you had a husband,'" she said. "I said you wouldn't know because he's not involved in any of this. He stays at home and takes care of the babies."

Until she had gallbladder surgery four years ago, Bolden was still active in the community. She even volunteered at the Cleveland Veterans Affairs Medical Center several times a week.

"You would have thought she was going to a job," said Ceola King, her daughter. "She would be very upset if she couldn't get there on time."

Today, she still does a few things—such as helping her daughter with an array of block club activities.

"Sometimes I say to myself: 'Martha, you have got to rest,'" she said recently. "But something inside of me says they need you. You can help."

BLOCK GRANTS WOULD JEOPARDIZE THE SCHOOL LUNCH PROGRAM IN THE 36TH CONGRESSIONAL DISTRICT

HON. JANE HARMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Ms. HARMAN. Mr. Speaker, the pending legislative proposal to turn Child Nutrition Programs into a block grant will mean the end of school lunches in my congressional district—the end of 413,017 meals a day that keep the children in my district healthy and ready to learn.

Recently I met with the director of food service for the Manhattan Beach Unified School District. She explained that because most of the children who benefit from school lunches in my district do not receive fully-subsidized lunches, their schools would drop out of the school lunch program if it were changed to a block grant. Districts such as the Palos Verdes Peninsula Unified School District and the Manhattan Beach Unified School District would be forced to eliminate their successful school lunch programs because the schools simply couldn't afford to continue the program on their own.

Mr. Speaker, I am a deficit hawk and I am prepared to make tough spending choices. But let's not cut programs that work. Let's not cut critical investments in our children. Let's not cut the school lunch program by turning it into a wasteful and misdirected block grant program.

A WINNING GAMBIT IN HARLEM

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. RANGEL. Mr. Speaker, I rise to recognize the achievements of a group of young people from my congressional district in Harlem, members of the Mott Hall Middle School chess team, the Dark Knights. Through their dedication and enjoyment of chess, the Dark Knights have become city-wide and national champions in a demanding game. The team's members, who are black, Latino, and Asian, have, through their belief in themselves challenged us to believe in them, and students like them. I congratulate them and the coaches, parents, and private citizens who have assisted them. They challenge us all to raise the expectations and possibilities our Nation holds for all young people of color. I encourage you to read the attached article from the February 17 Wall Street Journal:

[From the Wall Street Journal, Feb. 17, 1995]

A WINNING GAMBIT IN HARLEM

(By Hugh Pearson)

NEW YORK.—Twenty-eight-year-old Maurice Ashley is standing before a classroom of students in Harlem's Mott Hall Middle School. Behind him, unsurprisingly, is a blackboard. But on it is displayed something unexpected: the diagram of a chessboard. Mr. Ashley is preparing his team of chess-playing hotshots for the following weekend's competition. "I'm going to show you a game that's so dramatic in exposing weak squares, it's ridiculous," he tells them.

The team calls itself the Dark Knights. Its members know they can trust Mr. Ashley's judgment: He is an international chess master—indeed, the highest-ranking black chess player in the world. Last year he coached the Dark Knights to the National Junior High School Chess Team Championship.

Mr. Ashley details the opening moves of the game, then dramatizes an unusual maneuver. "It's called a Dutch. And it's characterized mainly by the fact that this pawn goes to [position] F5 in order to get real serious control of this E4 square. As you can see, D5 and F5 pawns are controlling E4." He pauses. "What could go wrong with a move like this?"

"It blocks his C8 bishop," answers a student.

"That's right. The C8 bishop could have a very hard time getting into the game."

PROBLEM SOLVING

With such teaching Mr. Ashley guides the team through various moves and countermoves that may come up in competition. Periodically he gives them a break from blackboard instruction and divides the class up into pairs. Over real chessboards, they puzzle out problems of increasing difficulty, sometimes competing with one another. The pairs choose names for themselves, which Mr. Ashley writes on the blackboard so he can keep score.

With the imagination and humor typical of 12-, 13-, and 14-year-olds, one pair decides to call itself "Storm Soldiers and One Fool"; another is "Men in Tights." Yet another chooses the name "Confused." When this pair gives a wrong answer, Mr. Ashley says: "I see why you call yourselves confused." Everyone laughs.

Mr. Ashley doesn't worry that his students will take his kidding the wrong way. They are good at chess, and they know it. He obviously feels no need to patronize them, reassure them or redeem them from feelings of disadvantage.

When Mr. Ashley coached another team—the Raging Rooks of Harlem—to a national junior-high-school chess championship in 1991, one team member, Sharu Robinson, wondered out loud at the national media attention: "Why is it that they're acting as though we we're some Cinderella team that came out of nowhere and won? We went, we knew what we were doing, we kicked butt, and that's it. What's the problem?"

Of course the problem—or rather, the surprise—was the color of their skin. "One, it's about being black," says Mr. Ashley, reflecting on the odd reaction he gets when he tells people that he teaches chess to Harlem youths. "Two, it's the fact that it's chess, which has this mystique surrounding it. It's not the urban game; it's the urbane game, the game of the elite."

People are often skeptical of the value of chess instruction. "Chess players are considered to be in their own intellectual stratosphere," Mr. Ashley explains. "The strategy of teaching it to kids already seems wrong. And then to teach it to young black kids on top of that brings in all the stereotypes; that they're too disadvantaged to learn the game; that they aren't really smart; that they're more physical than intellectual. The stereotypes are just so dramatic on all levels that it's too far for most people to stretch."

Mott Hall defies such stereotypes regularly. More than a quarter of the school's students—who are black, Latino and Asian—receive chess instruction twice weekly, as part of an educational initiative that sees chess as a competitive, engaging way of learning analytical reasoning. The program is financed by a prominent New York real-estate developer, Daniel Rose, as part of his Harlem Educational Activities Fund. The fund itself is an unusual success story.

Besides its chess component, HEAF finances a program designed to improve the reading skills at the New York City elementary school with the lowest average reading scores. (Mott Hall, it should be noted, is the public school for gifted Harlem children; for the past four years its reading scores have been the highest in the city for public middle schools.) The fund also provides tutoring to Harlem youths, to help them prepare for the entrance exams to New York's three most exclusive public high schools (Stuyvesant, Bronx High School of Science and Brooklyn Tech). A mentoring program assists those who are admitted and eventually advises them about picking the right colleges.

HEAF's track record is impressive. One way or another, it has served more than 1,000 youths since its inception in 1988. Besides facilitating Mott Hall's chess victories, the fund has raised the reading scores at the city's lowest-scoring public elementary school substantially. In 1992, only 9% of its students scored at or above the city's average grade level; this past year 30% did. So far the fund's tutorial instruction has helped nearly 200 Harlem youths score high enough to enter the city's top public high schools.

Mr. Rose's efforts are just one of many privately funded programs by wealthy businessmen concerned about the lack of educational opportunities for children who live in poor urban areas. Many such programs, like the "Student/Sponsor Partnership" founded in 1986 by Dillion Read investment banker Peter Flanigan, are designed to funnel students from such communities into private and religious schools.

Mr. Rose, by contrast, believes in the importance of public schools. He feels that the private sector has a crucial role to play in making up for dwindling tax dollars. But he also feels that the private sector should lead the way in ensuring that school funds are spent more efficiently. "The gross expenditures in the New York City public school system are very high," he explains. "But it doesn't show up in the classroom. Given the horrendous number of students graduating as functional illiterates, obviously something isn't working. The resources we have must be redirected."

To Mr. Rose, chess instruction is one way of redirecting such resources profitably. Mr. Ashley agrees. "Kids have a natural excitement and curiosity for the game," he explains. "As they get deeper and deeper into it, they become more and more confident, more and more sure of themselves. Their self-esteem rises. I look at the kids I've instructed here in Harlem who have gone on to high school and they have this peaceful aura about them."

Both men are convinced that the mastery of chess complements—and encourages—academic success. Sharu Robinson, for one, will graduate this year from The Dalton School, one of New York's most prestigious private schools. There is every reason to believe that there are many students like Sharu—especially nonwhite students who may have absorbed a false message about the supposed limits of their intellectual abilities—who can benefit enormously from learning a game that requires of its practitioners analytic reasoning, mental discipline and strategic skill.

Mr. Rose dismisses the recent attention given to hereditary factors in intelligence sparked by controversy over "The Bell Curve." He strongly believes that environment plays the decisive role in intellectual achievement.

A FIRM GROUNDING

Mr. Ashley's personal experience lends support to this view. His family arrived in the U.S. from Kingston, Jamaica, when he was 12. In Kingston he was immersed in an environment where, as he put it, "I didn't have the word 'disadvantaged' pummeled into my brain." So when his mother brought him and his two brothers to live in the Brownsville section of Brooklyn, he had a firm enough grounding to keep himself focused on his studies, even though drug dealers plied their trade nearby. "I just dealt with it," he says. He later graduated from City College and soon after became the chessmaster he is now, capable of leading classrooms of Harlem junior-high-school students to major chess championships.

The following weekend, it happened again. The Dark Knights of Mott Hall captured first place in the New York City Junior High School Chess Team Championship. Team members received the top five individual awards as well.

Whatever Maurice Ashley is doing to register these victories, his efforts obviously help to demonstrate that private philanthropy and talented individuals have a crucial role to play in improving the quality of education in our public schools.

TRIBUTE TO VENOLA WILLIAMS

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. TOWNS. Mr. Speaker, I would like to recognize a very special person, Mrs. Venola Williams, a native of Camden, NC. She moved to New York in 1955 and joined the Berean Missionary Church where she is still an active member. She participates in the gospel ensemble and the pastor's aide club.

For a number of years Mrs. Williams was employed at Memorial Sloan Kettering Hospital. In 1986, she became a pre-K family assistant for the board of education in district 19. Venola supports many community activities, including voter registration, the NAACP, and the Berean Vacation Bible School.

Venola is the proud mother of three daughters, and the grandmother of seven. Her mother Lona Mae Bright, and her grandmother Elnora Ferebee, who is 99 years old, are her daily sources of inspiration. I am proud to recognize her contributions to the community.

IRISH EYES ARE SMILING THIS GLORIOUS ST. PATRICK'S DAY 1995

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. GILMAN. Mr. Speaker, I rise with a great deal of joy and pride to join with the many millions of Americans of Irish descent to help honor St. Patrick's Day that will soon be celebrated here, and around the globe.

The Irish and all those who are Irish at heart will soon celebrate this great and joyous holiday.

On March 17, in the city of New York, thousands will proudly march down the magnificent Fifth Avenue. Millions more will watch on television the oldest continuous parade in these United States.

I have been privileged annually to march in the St. Patrick's Day parade in New York City. It has always been a special honor to march with our friends along the beautiful and majestic Fifth Avenue, past the magnificent St. Patrick's Cathedral, weather accommodating or not.

Truly, one can see Irish eyes smiling on each and every face along the parade route, and among the marchers on each of those glorious March 17s, which sometimes are cold, windy, and sometimes rainy days, but always glorious.

Neither weather, which is often not very accommodating, nor controversy, has ever deterred that great parade and the true celebration of Irish-America on St. Patrick's Day in the great city of New York.

That magnificent city, especially with its deep and long historical and cultural ties to Erin, is a fitting place for such a great and historic parade of so many very proud traditions and Irish personalities.

This year the grand marshall is His Eminence, the Cardinal Archbishop of the city of New York John O'Connor, who has always watched the parade from the steps of St. Patrick's Cathedral. Now he will proudly and fittingly lead it down Fifth Avenue this year as he approaches possible retirement.

Many of the Irish who emigrated to America, first either landed in New York City, or made it their home, or in the nearby suburbs.

I was recently surprised to learn that the current Irish Deputy Prime Minister and Minister for Foreign Affairs, Dick Spring, once tended bar in the great city of New York before his return to Ireland and rise to high authority.

I am particularly proud to have, and more importantly proudly represent, a great many constituents and close personal friends in my district of proud Irish heritage.

Numerous other cities, towns, and villages around New York State, and throughout our great Nation as well will also have parades and other joyous celebrations of St. Patrick's Day across America in the coming weeks.

We in this great Nation have more than 40 million Americans who can trace their roots to Ireland. They are proud to celebrate that heritage with many others, and will do so proudly in the days ahead.

These many Americans of Irish descent and their forebears have contributed much to America's success and prosperity from the time of the American Revolution, through the Civil War, and all our wars abroad, to today.

In the arts and in literature, culture, law, politics, commerce and industry, sports, the judiciary, law enforcement, our armed services, and many other fields and endeavors, the Irish in America have excelled.

The Irish have been highly successful in helping to build and expand America and to make it a stronger and more vibrant Nation with their many significant contributions in these and other fields.

This Nation has a very special relationship with Ireland, based upon this heritage of those millions of our citizens of Irish descent, who themselves, or their forefathers, emigrated here and contributed so much to our heritage and to our Nation's history.

The events and struggle for peace in Northern Ireland today because of that heritage, are of particular interest to them, and to all of us. We now have the best prospects for peace in that troubled region in the last 25 years or more.

The joyous St. Patrick's Day celebrations around the globe by the Irish people, which is a national holiday in the Irish Republic, are again this year particularly filled with a special hope and joy that lasting peace in the north of Ireland may finally be within reach.

Many today hope that finally the diverse traditions and all the concerned parties and both Governments in the region, can finally bring about peace and lasting justice in that long troubled region of Northern Ireland.

The courageous and forward-looking December, 1993 Downing Street Joint Declaration, and the recently released framework document developed under the leadership and efforts of the Prime Ministers of both Great Britain and Ireland give us great hope.

Along with the efforts for peace and reconciliation of John Hume of the SDLP, Gerry Adams of Sinn Fein, and many others, today because of all these developments, the best opportunity for peace in the region in many years, now exists.

The cessation of violence in recent months and the eventual all-party-inclusive talks in the current peace efforts based upon that declaration, and the framework document give us and the whole world a sense that a lasting end may finally be in sight to the violence of the past.

What we want, and what we all hope for, is a true, fair, and just settlement and lasting peace for the north of Ireland. We all wish that this will become a lasting reality as we approach another St. Patrick's Day celebration.

The United States because of our special relationship with both Ireland and Great Britain, must be prepared to play a major role in facilitating and fostering that long desired lasting and just peace in the north.

We here in the United States must be prepared to help move the peace process along, when and where needed—especially if it stalls—as President Clinton pledged during the 1992 Presidential campaign when he talked of appointment of a special envoy for peace.

We will soon be holding historic full committee hearings on Northern Ireland before the International Relations' Committee which I am now proud to chair.

In addition, along with some of my colleagues, I will soon be visiting Ireland in mid-April to continue this commitment to play a constructive and important role in helping promote peace, justice, and a shared and equally distributed economic future in the north of Ireland.

Ireland is rightfully today on America's foreign policy agenda and should be for the foreseeable future. We must all work together until lasting peace and justice become a reality in the Ireland we know and for which we have such a high regard.

Let us all hope and pray once again that this will be the beginning of many St. Patrick's Days when lasting peace and justice will prevail over all of Ireland.

COLA FOR CIVIL SERVICE EMPLOYEES

HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. STUPAK. Mr. Speaker, I rise today to call attention to an issue brought forth by a constituent of mine, Mr. Charles Stewart, of Gladstone, MI, and to have his letter inserted into the Congressional Record. While it is not my usual practice to insert such letters into the Record, as I receive and reply to thousands of letters every year, Mr. Stewart has written in very clear terms about an issue of great concern to thousands of Americans in Michigan, and across this country.

Mr. Stewart is one of the many civil service retirees whose Cost of Living Adjustment (COLA) has been delayed. Mr. Speaker, every year this delay causes a budgetary crisis for thousands of our retirees. Mr. Stewart, and others, joined the civil service and signed up for a plan that was to carry them through their retirement. Now, at a crucial point, the rules of the game have been changed and Mr. Stewart, and others, are being forced to wait three months every year for the adjustment they have been promised, and have worked hard for. This is simply wrong.

As Mr. Stewart's letter suggests, there is no reason why retirees should pay such a great price for the budget crunches of today. There are more equitable ways for this Congress to generate revenue without picking on a certain class of citizen. I suggest we continue looking more toward equitable and fair cuts and less toward balancing the budget on the backs of our retires.

Mr. Speaker, I ask Mr. Stewart's letter appear directly following my remarks.

REPRESENTATIVE BART STUPAK,
House Office Building,
Washington, DC.

DEAR BART: For the second year in a row I have received my new year's present from Congress. No increase in my civil service annuity until April 1, 1995.

Year after year as a postal employee I was penalized by Congress, and postal service management. We either received no raise, or raises that were much lower than independent studies indicated we should have been granted. As a result I worked a second job (Bay DeNoc Lure), plus some tax and bookkeeping to support my family.

Now, in retirement we are still "whipping boys", and are expected to pay for budgetary mistakes which we did not create, and who should not be held responsible, but are being penalized. It would be easier to accept this discrimination if it was reasonable, and fair which it is not.

May you and your family enjoy a very happy and prosperous New Year.

Sincerely,
CHARLES L. STEWART.

REGARDING DEPARTMENT OF INTERIOR'S ASSERTIONS THAT MIGRATORY BIRD SEASON REGULATIONS WILL BE IMPACTED BY H.R. 1022

HON. JAMES A. HAYES

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. HAYES. Mr. Speaker, last week during the debate on H.R. 450, the Regulatory Transition Act, I thought that I, along with my colleagues, Mr. Baker of Louisiana, and Mr. Young of Alaska, expediently and prudently clarified language of that bill to address the concerns of the Department of Interior with respect to potential delays in the opening of migratory bird hunting seasons. Such a postponement could have been disastrous to Louisiana's and our Nation's economy.

Now, much to my chagrin, the Department of Interior is at it again. They, through the U.S. Fish and Wildlife Service [USFWS], claim that H.R. 1022, the Risk Assessment and Cost-Benefit Act, would also adversely effect the promulgation of the annual regulations designating migratory bird hunting seasons. As you may know, the taking of migratory birds is specifically prohibited by the Migratory Bird Treaty Act of 1918, unless rulemaking actions by the Department of Interior authorize such hunting seasons.

USFWS has provided as the primary basis for their contention that hunting licensure requirements, although actually instituted and collected by state authorities, cost the hunting public in excess of $100 million per year, thus meeting the threshold requirement contained with the bill's definition of a major rule. Under H.R. 1022, any regulation that is likely to result in annual increase in cost of $25 million or more is classified a major rule. USFWS also asserts that the inclusion of the term indirect in the definition of costs could provide an additional argument that the $100 million makes hunting regulations applicable to the risk analysis requirements.

The intent of H.R. 1022 is clearly not to limit the ability of Federal agencies to move ahead with legitimate and routine annual regulatory processes, especially those rules that have positive benefit-to-cost ratios. USFWS is trying to create a dubious and incorrect connection between the definitions of indirect costs as germane to the threshold requirement of a major rule and the fees hunters pay to States every year.

H.R. 1022 clearly seeks to differentiate between those regulations which have a significant cost on our Nation's economy and those regulations which have a positive economic impact. By their own information, USFWS states that the economic multiplier associated with migratory bird hunting accounts for somewhere between $700 million and $1 billion per year. In my State of Louisiana, duck hunting pumps some $57 million into our economy. This amount represents the benefits, not the regulatory burdens, that our economy reaps when hunters travel to hunting camps, eat at restaurants, buy equipment, etc., and all of these benefits are made possible by USFWS' regulatory process. Therefore, USFWS' interpretation of the threshold requirement contained within the definition of a major rule is in direct contrast to the objective and meaning of the language of H.R. 1022, and seems motivated more by politics than substance. In fact, the House Committee on Commerce has indicated that H.R. 1022 does not cover regulations for opening and closing of migratory bird hunting seasons.

Injecting risk assessment into the Federal regulatory process will be critical if the Federal Government is to appropriately allocate its limited resources toward our most pressing problems. The yearly analysis that is an integral part of USFWS' migratory bird hunting regulations provides the best available data on bird population to enable the appropriate designation of season lengths and bag limits. This information is crucial to ensure the future sustainability and conservation of the species. Accordingly, I believe that, should the USFWS continue to misinterpret the intent of the legislative history of H.R. 1022, they will be abdicating their responsibilities as the stewards of our wildlife and fisheries resources, and they will have no one to blame but themselves.

TRIBUTE TO MRS. AVELLAR HANSLEY

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. TOWNS. Mr. Speaker, I would like to acknowledge the contributions of Avellar Hansley. She was born in Peachland, NC, and attended high school in Polkton, NC. She and her husband are the parents of three daughters. Mrs. Hansley considers her husband as her primary source of support and encouragement.

When Mrs. Hansley arrived in New York City in 1953, she sought to increase her training and to obtain work in the securities and stocks and bonds industry. She secured work with Chemical Bank and retired from Chemical Bank in 1991.

She is the founder and president of the Linden-Bushwick Block Association, and is directly responsible for transforming city-owned vacant lots into a beautiful Greenthumb Program flower and vegetable garden. Mrs. Hansley is also dedicated to community service. Avellar Hansley is a 9-year member of Community Board Nine in Brooklyn, in addition to the Eastern Star organization, the Local Area Policy Board, and the Greater Free Gift Baptist Church of Brooklyn. I commend her service to the community of Brooklyn.

LEGISLATION TO PROVIDE VETERANS BENEFITS TO MEMBERS OF THE PHILIPPINE COMMONWEALTH ARMY AND THE MEMBERS OF THE SPECIAL PHILIPPINE SCOUTS, H.R. 1136

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. GILMAN. Mr. Speaker, I am proud to introduce legislation, H.R. 1136, to amend title 38, of the United States Code, to provide that persons considered to be members of the Philippine Commonwealth Army Veterans and members of the Special Philippine Scouts—by reason of service with the Armed Forces during World War II—should be eligible for full veterans benefits from the Department of Veterans Affairs.

We must correct the grave injustice that has befallen this brave group of veterans, since their valiant service, on behalf of the United States, during World War II.

On July 26, 1941, President Roosevelt issued a military order, pursuant to the Philippines Independence Act of 1934, calling members of the Philippine Commonwealth Army into the service of the United States Forces of the Far East, under the command of Lt. Gen. Douglas MacArthur.

For almost 4 years, over 100,000 Filipinos, of the Philippine Commonwealth Army fought alongside the Allies to reclaim the Phlippine Islands from Japan. Regrettably, in return, Congress enacted the Rescission Act of 1946. This measure limited veterans eligibility for service-connected disabilities and death compensation and also denied the members of the Philippine Commonwealth Army the honor of being recognized as veterans of the United States Armed Forces.

A second group, the Special Philippine Scouts called New Scouts who enlisted in the United States Armed Forces After October 6, 1945, primarily to perform occupation duty in the Pacific, were similarly excluded from benefits.

I believe it is time to correct this injustice and to provide the members of the Philippine Commonwealth Army and the Special Philippine Scouts with the benefits and the services that they valiantly earned during their service in World War II.

Accordingly, I have introduced legislation, H.R. 1136, that will provide veterans of the Philippine Commonwealth Army and the Special Philippine Scouts with the benefits, the compensation, and most importantly, with the recognition they courageously earned.

I urge my colleagues to carefully review this legislation that corrects this grave injustice and provides veterans benefits to members of the Philippine Commonwealth Army and the members of the Special Philippine Scouts.

Mr. Speaker, I insert the full text of the bill at this point in the RECORD.

H.R. 1136

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Filipino Veterans Equity Act of 1995".

SEC. 2. CERTAIN SERVICE IN THE ORGANIZED MILITARY FORCES OF THE PHILIPPINES AND THE PHILIPPINE SCOUTS DEEMED TO BE ACTIVE SERVICE.

(a) IN GENERAL.—Section 107 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out "not" after "Army of the United States, shall"; and

(B) by striking out ", except benefits under—" and all that follows and inserting in lieu thereof a period; and

(2) in subsection (b)—

(A) by striking out "not" after "Armed Forces Voluntary Recruitment Act of 1945 shall"; and

(B) by striking out "except—" and all that follows and inserting in lieu thereof a period.

(b) CONFORMING AMENDMENTS.—(1) The heading of such section is amended to read as follows:

"§ 107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts"

(2) The item relating to such section in the table of sections at the beginning of chapter 1 of such title is amended to read as follows:

"107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts.".

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall take effect on ________.

(b) APPLICABILITY.—No benefits shall accrue to any person for any period before the effective date of this Act by reason of the amendments made by this Act.

TRIBUTE TO MARQUETTE POLICE CHIEF GEORGE G. JOHNSON ON HIS RETIREMENT

HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. STUPAK. Mr. Speaker, I rise today to pay tribute to a friend and distinguished public servant, George G. Johnson, who is retiring this month as Police Chief of Marquette, MI. George Johnson's career spans over four decades of distinguished service as a patrol officer, motorcycle officer, detective and Marquette Chief of Police.

Simply put, George Johnson is one of the most respected and admired law enforcement professionals in the entire state of Michigan. His years of outstanding work are a credit to him, and an example for law enforcement professionals and public servants nationwide.

After serving 6 years in the U.S. Navy, George Johnson joined the Marquette Police Department as a patrol officer in 1955. He served as a motorcycle officer until being promoted to detective in 1961. A short 3 years later, George was promoted to Chief of the Department.

In his capacity as Chief of Police, George Johnson has been a leader both in law enforcement and in the community at large. As Chief of Police, George has taken a leading role in many State and regional law enforcement associations. He has been a charter member of the Michigan Law Enforcement Officers Training Council, the Michigan Association of Chiefs of Police, the State Traffic Committee, The Upper Peninsula Chiefs Association, and Northern Michigan University Police Advisory Council Chairman. He has served as a charter member of the Marquette County Law Enforcement Officers Association. He was also selected Upper Peninsula Officer of the Year in 1967, and recognized in 1987 by the International Association of Chiefs of Police as one of the top 25 law enforcement professionals in the Nation. In 1993, Chief Johnson was chosen by his peers as employee of the Year for the City of Marquette.

George's work in Marquette, with community programs and projects, has helped to improve and enrich the lives of all of his neighbors. Through his work on the Shiras Institute board of directors and other agencies and organizations, George has given his time and talent unselfishly to his community.

Mr. Speaker, George Johnson epitomizes all that is great about public service. His commitment, and drive have served to make Marquette a better place.

While we in Northern Michigan will miss George, we want to take this opportunity to express our deep gratitude for a job well done and wish him and his family well in all of his future endeavors.

TRIBUTE TO MARIA E. GONZALEZ

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. TOWNS. Mr. Speaker, it is my pleasure to relate the odyssey of success of Maria E. Gonzalez. Born in Tegucigalpa, Honduras, in 1938, she dreamed of being either a teacher or politician. In some measure, she was able to realize her ambitions.

After arriving in the United States at the age of 16, Ms. Gonzalez graduated from Commerce High School. She met Domingo Gonzalez and their union resulted in four children, and subsequently five grandchildren. When her children became adults, Maria returned to school and received her B.A. from Touro College. She later received a master's degree from Bank Street College of Education. Ms. Gonzalez put her training to good use and became a social studies teacher at Junior High School 296, where she taught sixth-, seventh-, eighth-, and ninth-grade students until 1993. Currently she works as a housing coordinator for Phipps Community, providing social services for the tenants of CPW houses.

Maria has been very active in local politics. She is the female district leader for the 54th assembly district, and a former member of the United Parents Association and the Puerto Rican Teachers Association. Ms. Gonzalez is also the former treasurer for the election campaign of Councilman Martin M. Dilan, and a former assistant to Assemblyman Darryl Towns.

Indeed, she has been able to realize her dreams of teaching and being involved in politics. Her success is truly worthy of mention, and it is my pleasure to highlight her accomplishments and contributions.

APPLE VALLEY GIRLS HOCKEY TEAM WINS HISTORIC VICTORY

HON. WILLIAM P. LUTHER

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. LUTHER. Mr. Speaker, a historic event took place last month in my Congressional district. The girls hockey team of Apple Valley High School, a local secondary school in my congressional district, made history by winning the first Statewide girls hockey tournament. The Apple Valley Eagles, finishing the season with a record of 24–0–1, defeated the South St. Paul Packers by a score of 2 to 0.

Having followed the Eagles' season this year, I cannot overstate the significance of this achievement for the future of women's sports, especially girls hockey high school programs. Minnesota is the home to nearly 25 percent of the Nation's women's hockey teams, and we obviously take great pride in our collective hockey skills. The success of this initial tournament is a sign of much progress and a very hopeful future for the sport. According to Lynn Olson, head of the girls' and women's division of USA Hockey, at least 10 high schools in Minnesota will add teams next season, adding to the current 130 nonschool amateur girls' and women's teams.

These young athletes have become role models for their fellow students. According to Jaime DeGrisseles, an Apple Valley Eagle headed for the University of New Hampshire in the fall: "I think a lot of younger girls look up to us as role models. I think we'll all look back at this and know we won the first girls' State championship and it will just be amazing."

The Apple Valley student athletes, their parents, and teachers, and their loyal fans appreciate the hard work and dedication this State championship represents. Their success is well-deserved, and Minnesotans can take great pride in another historic first.

TRIBUTE TO BETTY J. WILLIAMS

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. TOWNS. Mr. Speaker, I would like to pay tribute to Ms. Betty J. Williams. Ms. Williams was born August 6, 1944, in Hodges, SC. She is the oldest of six children born to Lawrence and Agnes Williams.

Ms. Williams is a graduate of North Carolina A&T State University where she received her B.S. She later received her M.S. in social work from Columbia University, and her J.D. from New York Law School.

A committed community activist and worker, Ms. Williams is involved in numerous projects. She is the founding member of the World Community of Social Workers, and was instrumental in promoting a pilot program that utilized retired educators to serve as advocates for special education parents. Her numerous organizational affiliations include the Metropolitan Black Bar Association, Delta Sigma Theta Sorority, New York Law School Alumni Association, and the Association of the Bar of the City of New York.

Ms. Williams is a woman of abundant talents and accomplishments, and I am pleased to introduce her to my colleagues.

POINT REYES BIRD OBSERVATORY

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Ms. WOOLSEY. Mr. Speaker, I rise today to recognize one of my district's most valuable resources, the Point Reyes Bird Observatory [PRBO], which is dedicated to protecting our marine environment by increasing our knowledge of birds and their habitats.

PRBO was established in 1965 in order to provide research and education programs concerning songbirds and has expanded their mission to include international biological research on the loss of wetlands and the destruction of rain forests.

As the oldest bird observatory in North America, PRBO has become the authority of the Farallon Islands and provided important long-term studies. They have done extensive research on the Pacific flyway, Antarctica, and other areas, contributing greatly to the scientific pool of information. PRBO sponsors a census of migratory birds and runs a model volunteer program with members of the public and students as field biologists. PRBO is public treasure worthy of national significance.

As we celebrate PRBO's 30th anniversary, I wish to recognize the staff and the many individual volunteers that contribute the time and energy at the observatory, and to thank them for their commitment to improving our understanding of our natural environment.

TRIBUTE TO ANDREA KOSTIE-LIEBERMAN

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, March 6, 1995

Mr. TOWNS. Mr. Speaker, in my district I am fortunate to have educators that perform beyond the levels expected of them. Andrea Kostie-Lieberman is illustrative of that type of educator. Andrea is a product of New York public schools. She graduated from Berriman Junior High School and Thomas Jefferson High School. She earned a B.A. and master of science from Brooklyn College. An additional master of science degree was obtained from Pace University.

Andrea is certified by the State of New York as a school district administrator, and as a school administrator-supervisor. She is also certified as an assistant principal and principal. Her educational career began in district 19, where she is currently in charge of district 19's Early Childhood Center P.S. 149 Annex.

Dedicated to service, Andrea shares her educational expertise by serving on many educational committees, including the 10th Congressional Commission on Education. She has served as vice president for membership, and as an executive board member of Phi Delta Kappa. I am proud to recognize Andrea Kostie-Lieberman for her professionalism and dedication.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the Congressional Record on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, March 7, 1995, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

MARCH 8

9:30 a.m.

Appropriations

Interior Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Geological Survey, Department of the Interior.

SD-116

Energy and Natural Resources

To hold oversight hearings on domestic petroleum production and international supply.

SD-366

Governmental Affairs

To resume hearings on proposed legislation to reform the Federal regulatory process, to make government more efficient and effective

SD-342

Labor and Human Resources

To hold hearings on proposed legislation to authorize funds for and to consolidate health professions programs.

SD-430

Small Business

To hold hearings on the proposed "Regulatory Flexibility Amendments Act".

SR-428A

10:00 a.m.

Appropriations

Agriculture, Rural Development, and Related Agencies Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for rural economic and community development services of the Department of Agriculture.

SD-138

Appropriations

Foreign Operations Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for foreign assistance programs, focusing on international organizations and programs.

SD-192

Banking, Housing, and Urban Affairs

To resume oversight hearings on the condition of credit unions.

SD-538

Finance

To hold hearings to examine welfare reform proposals, focusing on the views of the States.

SD-215

1:30 p.m.

Foreign Relations

East Asian and Pacific Affairs Subcommittee

To hold hearings to examine intellectual property rights with regard to the People's Republic of China.

SD-419

2:00 p.m.

Energy and Natural Resources

Forests and Public Land Management Subcommittee

To hold oversight hearings on Forest Service appeals.

SD-366

Select on Intelligence

To hold closed hearings on intelligence matters.

SH-219

2:30 p.m.

Indian Affairs

To hold oversight hearings to examine the structure and funding of the Bureau of Indian Affairs.

SR-485

MARCH 9

9:30 A.M.

Agriculture, Nutrition, and Forestry

To hold hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on cost issues of certain farm programs.

SR-332

Armed Services

To resume hearings on proposed legislation authorizing funds for fiscal year 1996 for the Department of Defense and the future year's defense program, focusing on the Army.

SR-222

Energy and Natural Resources

Business meeting, to consider the nomination of Wilma A. Lewis, of the District of Columbia, to be Inspector General, Department of the Interior; to be followed by a closed briefing on international aspects of petroleum supply.

S-407, Capitol

Finance

To continue hearings to examine welfare reform proposals, focusing on policy goals.

SD-215

10:00 a.m.

Appropriations

Transportation Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the National Transportation Safety Board.

SD-192

Banking, Housing, and Urban Affairs

Housing Opportunity and Community Development Subcommittee

HUD Oversight and Structure Subcommittee

To hold joint hearings to examine proposals to reorganize the Department of Housing and Urban Development.

SD-538

Foreign Relations

Western Hemisphere and Peace Corps Affairs Subcommittee

To hold hearings to examine the implementation and costs of U.S. policy in Haiti.

SD-419

Governmental Affairs

To hold hearings to examine nuclear non-proliferation issues.

SD-342

Judiciary

To hold hearings on S. 227, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions.

SD-226

Veterans Affairs

To hold hearings on the nomination of Dennis M. Duffy, of Pennsylvania, to be Assistant Secretary of Veterans Affairs for Policy and Planning, and to review the President's budget request for fiscal year 1996 for veterans programs.

SR-418

2:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Health and Human Services.
SD–138

Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Secret Service, Federal Law Enforcement Training Center, and the Financial Crimes Enforcement Network, Department of the Treasury.
SD–192

Foreign Relations
Near Eastern and South Asian Affairs Subcommittee
To hold hearings to review South Asian proliferation issues.
SD–419

2:30 p.m.
Commerce, Science, and Transportation
Aviation Subcommittee
To hold hearings to examine the Metropolitan Washington National Airport authority.
SR–253

MARCH 10

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Science Foundation, and the Office of Science and Technology Policy.
SD–138

Environment and Public Works
Superfund, Waste Control, and Risk Assessment Subcommittee
To hold oversight hearings on the implementation of the Comprehensive Environmental Response, Compensation, and Liability Act.
SD–406

Joint Economic
To hold hearings to examine the employment-unemployment situation for February.
SD–562

10:00 a.m.
Finance
To continue hearings to examine welfare reform proposals, focusing on the Administration's views.
SD–215

MARCH 13

9:30 a.m.
Finance
To hold hearings to examine the status of the consumer price index.
SD–215

MARCH 14

9:00 a.m.
Judiciary
To hold hearings to examine proposals to reduce illegal immigration and to control financial costs to taxpayers.
SD–226

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on wetlands and farm policy.
SR–332

Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense.
SD–138

Appropriations
Energy and Water Development Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Energy Office of Energy Research.
SD–192

Finance
To resume hearings to examine welfare reform proposals, focusing on teen parents receiving welfare.
SD–215

10:00 a.m.
Labor and Human Resources
To hold hearings to examine health care reform issues in a changing marketplace.
SD–430

MARCH 15

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Smithsonian Institution.
SD–116

Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD–366

Labor and Human Resources
To continue hearings to examine health care reform issues in a changing marketplace.
SD–430

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for farm and foreign agriculture services of the Department of Agriculture.
SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Justice.
Room to be announced

2:00 p.m.
Appropriations
Energy and Water Development Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bonneville Power Administration.
SD–192

2:30 p.m.
Indian Affairs
To hold hearings on S. 349, to authorize funds for the Navajo-Hopi Relocation Housing Program.
SR–485

MARCH 16

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on taxpayers' stake in Federal farm policy.
SR–332

Rules and Administration
To hold hearings to examine Architect of the Capitol funding authority for new projects.
SR–301

10:00 a.m.
Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Bureau of Investigation and Drug Enforcement Agency, both of the Department of Justice.
S–146, Capitol

Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Highway Administration, Department of Transportation.
SD–192

2:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Education.
SD–192

MARCH 22

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Fish and Wildlife Service, Department of the Interior.
SD–192

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Natural Resources Conservation Service, Department of Agriculture.
SD–138

2:30 p.m.
Indian Affairs
To hold hearings on S. 441, to authorize funds for certain programs under the Indian Child Protection and Family Violence Prevention Act.
SR–485

MARCH 23

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Railroad Administration, Department of Transportation, and the National Passenger Railroad Corporation (Amtrak).
SD–192

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Alcohol, Tobacco and Firearms and the United States Customs Service, Department of the Treasury.
SD–192

3:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Institutes of Health, Department of Health and Human Services.
SD–138

MARCH 24

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Housing and Urban Development.
SD–138

MARCH 27

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Executive Office of the President, and the General Services Administration.
SD–138

MARCH 28

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Land Management, Department of the Interior.
SD–116

MARCH 29

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Food Safety and Inspection Service, Animal and Plant Health Inspection Service, Agricultural Marketing Service, and the Grain Inspection, Packers and Stockyards Administration, all of the Department of Agriculture.
SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Judiciary, Administrative Office of the Courts, and the Judicial Conference.
S–146, Capitol

10:30 a.m.
Indian Affairs
Business meeting, to consider pending calendar business.
SR–485

MARCH 30

9:30 a.m.
Rules and Administration
To hold hearings to examine the future of the Smithsonian Institution.
SR–301

Veterans' Affairs
To hold joint hearings with the House Committee on Veterans Affairs to review the legislative recommendations of AMVETS, American Ex-Prisoners of War, Vietnam Veterans of America, Blinded Veterans Association, and the Military Order of the Purple Heart.
345 Cannon Building

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Aviation Administration, Department of Transportation.
SD–192

MARCH 31

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on agricultural credit.
SR–332

Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Veterans Affairs, the Court of Veteran's Appeals, and Veterans Affairs Service Organizations.
SD–138

APRIL 3

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Internal Revenue Service, Department of the Treasury, and the Office of Personnel Management.
SD–138

APRIL 4

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on market effects of Federal farm policy.
SR–332

Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Park Service, Department of the Interior.
SD–138

APRIL 5

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Aeronautics and Space Administration.
SD–192

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Agricultural Research Service, Cooperative State Research, Education, and Extension Service, Economic Research Service, and the National Agricultural Statistics Service, all of the Department of Agriculture.
SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Immigration and Naturalization Service, and the Bureau of Prisons, both of the Department of Justice.
S–146, Capitol

APRIL 6

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Emergency Management Agency.
SD–138

Rules and Administration
To resume hearings to examine the future of the Smithsonian Institution.
SR–301

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of the Treasury and the Office of Management and Budget.
SD–161

APRIL 26

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for energy conservation.
SD–116

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Food and Consumer Service, Department of Agriculture.
SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Legal Services Corporation.
S–146, Capitol

11:00 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for fossil energy, clean coal technology, Strategic Petroleum Reserve, and the Naval Petroleum Reserve.
SD–116

APRIL 27

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Transit Administration, Department of Transportation.
SD–192

MAY 2

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Forest Service of the Department of Agriculture.
SD-138

MAY 3

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Environmental Protection Agency, the Council on Environmental Quality, and the Agency for Toxic Substances and Disease Registry.
SD-192

10: a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Agriculture.
SD-138

MAY 4

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Coast Guard, Department of Transportation.
SD-192

MAY 5

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for Environmental Protection Agency science programs.
SD-138

MAY 11

10:00 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Indian Affairs, Department of the Interior.
SD-116

1:00 p.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Indian Health Service, Department of Health and Human Services.
SD-116

MAY 17

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of the Interior.
SD-192

SENATE—*Tuesday, March 7, 1995*

(Legislative day of Monday, March 6, 1995)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The guest Chaplain, the Reverend Dr. Neal T. Jones, Columbia Baptist Church, Falls Church, VA, offered the following prayer:

Let us pray:

Heavenly Father, help us to discover an everlasting joy to replace our perennial search for happiness. We are weary of hunting for momentary happiness. We are tired of recreation that does not recreate. We are tired of smiling with a lump in our throat. We are exhausted by moments of leisure when we cannot shed our pain.

We praise You that we have located the Master, our joyful Person. For the joy that was set before Him, He endured the cross. We ask for the power to pursue the joy of purpose. Thank You that joy can come in our pain because our purpose is great. Restore unto us the joy of living with Your help.

In Jesus' name. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. DOLE. Mr. President, the Senate will resume consideration of S. 244, the Paperwork Reduction Act. Under the agreement four amendments remain in order to the bill.

We hope to finish the bill and handle all amendments prior to the policy luncheon. Any votes will be stacked to begin at 2:15 or later, depending on how much debate time remains. For the luncheons we will be in recess from 12:30 until 2:15.

After disposition of the Paperwork Reduction Act, we will begin consideration of H.R. 889, the supplemental appropriations bill.

So I advise my colleagues there could be votes throughout the afternoon and into the evening.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DEWINE). Without objection, it is so ordered.

PAPERWORK REDUCTION ACT OF 1995

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 244, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 244) to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the Senator from Michigan will offer an amendment on which there will be 10 minutes equally divided.

Mr. LEVIN. I thank the Chair.

AMENDMENT NO. 319

(Purpose: To provide for the elimination and modification of reports by Federal departments and agencies to the Congress, and for other purposes)

Mr. LEVIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself and Mr. COHEN, proposes an amendment numbered 319.

Mr. LEVIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment appears in today's RECORD under "Amendments Submitted.")

Mr. LEVIN. Mr. President, I am pleased to offer today in behalf of Senator COHEN and myself the Federal Reports Elimination and Modification Act of 1995 as an amendment to the pending bill.

Our amendment will eliminate over 200 outdated and unnecessary reporting requirements. These are reporting requirements which have been placed into the law over many, many years that are now useless. These are over 200 reports that are not needed or used by congressional committees. They require up to $10 million of cost in their preparation. We have gone through each of the reports mandated by law. We have talked to each of the agencies. We have consulted with each of the congressional committees. This is the list of those reports which are totally dispensable which for the most part no one even uses anymore. But they just stay in the law, filed every year or every 6 months by agencies at great cost.

My subcommittee, the oversight subcommittee of governmental affairs, which Senator COHEN now chairs and which I am now the ranking member of, has gone through all of the reporting requirements. We have again made this assessment as to those reports. Each committee having proposed what their needs are, these reports are the ones that are no longer needed.

This legislation is designed to improve the efficiency of agency operations by eliminating unnecessary paperwork and staff time by consolidating the amount of information that flows from the agencies to Congress.

So this amendment is the product of a coordinated and a thorough and aggressive effort to identify the congressionally mandated agency reporting requirements that have outlived their usefulness and now serve only as an unnecessary drain on agency resources, resources that could be devoted to more important program use. In fact, the Congressional Budget Office estimates that enactment of this legislation could result in savings of up to $5 to $10 million.

This is the second wave of reports elimination from the Subcommittee on Oversight of Government Management which Senator COHEN chairs and on which I now serve as the ranking Democrat. We passed a similar bill that eliminated or modified other reporting requirements in 1985.

Since it had been over 8 years since that effort, I decided it was time once again to take a look at agency reporting requirements that we, in Congress, have enacted and take those reports that have outlived their usefulness off our books. That is much easier said than done. There are literally thousands of different congressionally mandated reporting requirements. Each of those reporting requirements was enacted for a reason. To make a responsible choice about whether or not a particular reporting requirement should be eliminated, that reason must be identified and evaluated as to whether it remains valid. That is time-consuming, painstaking work; however, it is necessary work.

For example, by the time the 1985 legislation was enacted into law, the number of report eliminations contained in the bill had dropped from over 100 on introduction to just 23. The General Accounting Office [GAO] did a review of the 1985 reports elimination effort to see why the number of reports in the bill dropped so drastically. GAO uncovered certain weaknesses in that effort; primarily that the agencies did not consult with Congress when making their recommendations for eliminations or modifications and that the agency recommendations were not accompanied by adequate justifications.

We took heed of GAO's findings in developing this legislation. The 1985 legislation was based on a list of agency recommendations generated by the Office of Management and Budget. This time around, there was no such list available, so we had to generate our own. In 1993, Senator COHEN and I wrote to all 89 executive and independent agencies and asked that they identify reports required by law that they believe are no longer necessary or useful and, therefore, that could be eliminated or modified. In our request letter, we stressed the importance of a clear and substantiated justification for each recommendation made.

We received responses from about 80 percent of the agencies. For the most part, the agencies made a serious effort to review and recommend a respectable number of reporting requirements for elimination, but given the opportunity our effort presented, some were surprisingly less aggressive. Certain agencies already had report elimination projects underway. For example, the Department of Defense, at the request of Senator MCCAIN, conducted an internal review of the congressionally mandated reporting requirements for all of its services. Numerous reporting requirements were then eliminated and modified in the fiscal year 1995 defense authorization bill and were not included, therefore, in this legislation.

After receiving the agency responses, a member of the subcommittee staff generated a master list of all the agency recommendations. At the same time we sent to the chairman and ranking member of each of the relevant Senate committees, for their review and comment, the recommendations made by the agencies under their respective jurisdictions. Feedback from the committees of jurisdiction is necessary to ensure that this effort eliminates as many reporting requirements as possible without losing needed information. We also asked that the committees provide us with any additional recommendations for eliminations or modifications they might have.

Many of the committees responded to the request for comments. Those responses were generally supportive of the subcommittee's efforts and most contained only a few changes to the agency recommendations. Those changes were primarily requests by committees to retain reports under their jurisdiction because the information contained in the report is of use to the committee or, in some cases, of use to outside organizations. We adjusted the master list of eliminations and modifications based on those committee comments. Subcommittee staff then worked with the Senate legislative counsel's office to check statutory references to make sure we are addressing the correct provisions in law.

Senator COHEN and I introduced S. 2156 on May 25, 1994. As introduced, the bill contained nearly 300 recommendations for eliminations or modifications. Senators GLENN, ROTH, STEVENS, and MCCAIN cosponsored that bill.

Shortly after the introduction of S. 2156, Senator COHEN and I again wrote to all the committees and asked for comments on the bill as introduced. This was a continuation of our effort to avoid the problems of the 1985 effort by including the committees of jurisdiction in each step of the development of S. 2156. Certain committees have responded to that second request and generally they have asked for few changes to the bill.

While most of the recommendations we received from the agencies and included in the bill concern targeted, agency-specific reporting requirements, we did receive several recommendations regarding governmentwide reporting requirements. Again, we turned to the committees of jurisdiction for guidance on how or whether to enact these governmentwide agency recommendations. A number of these recommendations concerned reporting requirements that fall under various financial management statutes such as the Chief Financial Officers Act. Our bill does not address these particular recommendations due to the proposal contained in H.R. 3400 and other legislation to allow the administration to set up a pilot program aimed at streamlining the reporting and other requirements contained in these laws.

We are in the process of reviewing other governmentwide reporting requirements to see if some changes can be made. For instance, there were several recommendations to change inspector general [IG] reports from semiannual to annual. From our initial discussions with the IG community and the relevant committee staff it seems that it might be possible to make this shift without jeopardizing the oversight responsibilities of the IG's. We will continue to discuss this recommendation to see if we can't achieve some change. Another issue that we will be looking at is creating thresholds for governmentwide reporting requirements. We received several recommendations from smaller agencies that talked of the burden of complying with certain governmentwide reporting requirements that have no relevance to their small agency.

Every reporting requirement takes away resources that could be used elsewhere in the agency. Sometimes the burden is slight—as low as a few hundred dollars. Sometimes the burden is great—as high as a few million dollars. Enactment of this legislation will save time and money.

This legislation gets at those reports that no one uses. These are the reports that come into our offices and sit in staff in-boxes for weeks, maybe months, until they are either rerouted to someone else or filed in that popular circular file drawer. On several occasions in the process of drafting this legislation, agencies told us that, for whatever reason, they hadn't been doing or had never done the reporting requirement they were now seeking to eliminate. Apparently no one had noticed the agency's failure to report or, if they did, no one complained. We have taken care to be aggressive in identifying reports, but deferential to the committees with substantive responsibility that may use these reports.

This amendment, which is the same as S. 2156 with a few changes, is a bipartisan effort. It was unanimously reported out of the Governmental Affairs Committee by voice vote on August 2, 1994. We tried to get it to the floor last year, but were unable to do so. I am pleased that the Senate will act on this legislation today to move the Federal Report Elminiation and Modification Act of 1995 one step closer to becoming law. In today's day and age, we need all the resources we can get. The longer the reporting requirements contained in this bill stay on the books, the more resources are unnecessarily spent to comply. I thank Senator COHEN and his staff for their assistance in developing and moving this bill through the legislative process. I also want to take this opportunity to thank Tony Coe of the Senate legislative counsel's office for his fine work in drafting this legislation. I also want to thank Kay Dekuiper who was a member of the Oversight Subcommittee staff when this legislation was being developed and who did the bulk of the hard, tedious work putting this legislation together. She has since left the Senate to pursue her career elsewhere, but our appreciation for her efforts while she was here remain undiminished.

Mr. President, I believe this amendment has been cleared on the other side. I spoke to Senator ROTH about this last night. He, again, was a supporter of this in the last Congress.

This matter came up quite quickly last night, so we did not even have an opportunity to list him as a cosponsor. I am quite confident, however, from his quick comments to me last night on the floor, that he does support this amendment.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, on behalf of the manager of this legislation, my understanding is that this is not a controversial amendment. I am basing that, at least partially, on the assurances of the distinguished Senator from Michigan. I also understand from the staff that this amendment is acceptable.

So, at this juncture, there will be no objection to this amendment.

Mr. LEVIN. Again I thank the manager of the bill for his support.

Mr. NUNN. Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 319) was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

AMENDMENT NO. 320

Mr. WELLSTONE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 320.

The amendment is as follows:

At the appropriate place, add the following new section:

SEC. . SENSE OF CONGRESS.

It is the sense of Congress that Congress should not enact or adopt any legislation that will increase the number of children who are hungry or homeless.

Mr. WELLSTONE. Mr. President, let me start out with a definition for my colleagues. The definition of hunger. This amendment talks about hunger among children.

The mental and physical condition that comes from not eating enough food due to insufficient economic, family or community resources.

Mr. President, the way in which this is measured would be if there was a "yes" on at least five of the following eight questions.

Does your household ever run out of money to buy food to make a meal?

Do you or other adult members of your household ever eat less than you feel you should because there is not enough money to buy food?

Do you or other adult members of your household ever cut the size of meals or skip meals because there is not enough money for food?

Do your children ever eat less than you feel they should because there is not enough money for food?

Do you ever cut the size of your children's meals or do they ever skip meals because there is not enough money for food?

Do your children ever say they are hungry because there is not enough food in the house?

Do you ever rely on a limited number of foods to feed your children because you are running out of money to buy food for a meal?

Do any of your children ever go to bed hungry because there is not enough money to buy food?

Mr. President, the Food Research Action Council Community Childhood Hunger Identification Project, estimated in 1991 that there are 5.5 million children under 12 years of age who are hungry in the United States. Let me repeat that. There are 5.5 million children today, with existing programs of support, who are hungry in the United States of America.

Mr. President, the U.S. Council of Mayors Status Report on Hunger and Homelessness in American Cities in 1994 found that 64 percent of the persons receiving food assistance were from families with children.

I could go on with other definitions and would be pleased to do so as we move forward with this amendment.

Homelessness. The U.S. Council of Mayors Status Report on Hunger and Homelessness in American Cities estimated that 26 percent of the requests at the emergency shelters were for children, homeless children.

In 1988, the National Academy of Sciences, Institute of Medicine, estimated that there were 100,000 children who are homeless each day—100,000 children, Mr. President, homeless in the United States of America.

Mr. President, on the very first day or the second day of this session, going back to the Congressional Accountability Act, I brought this amendment to the floor. I said that I feared that what was going to happen in the 104th Congress would go way beyond the goodness of people and that part of the safety net would be eviscerated, in particular, support for children in America. That was voted down. I could not get the Senate to go on record.

Then, Mr. President, with the unfunded mandates bill, I came out and said, "Why don't we at least do a child impact statement so we know what we are doing with these cuts, be they rescissions or proposed cuts in the budget and reconciliation bill?" That was voted down.

Then I brought a motion to refer which was a direction back to the Budget Committee as a part of the balanced budget amendment. At that time, I held up some headlines, and I said, "I have been told by colleagues, 'Senator WELLSTONE, there is no reason for you to come out here with scare tactics because we are not going to cut nutrition programs for children. We are not going to do anything that could lead to more hunger or homelessness among children.'"

I came out here just last week with several headlines, one from February 23, "House Panel Votes Social Funding Cuts, Republicans Trim Nutrition and Housing." Another one, "House Panel Moves to Cut Federal Child Care, School Lunch Fund."

Mr. President, today, just by way of background, what is the headline in the Washington Post, Tuesday, March 7? It is a front-page story about a school in Fayette, MS. The headline is "School Fearful That Johnny Can't Eat"—not "School Fearful That 'Johnny Can't Read'"—"School Fearful That 'Johnny Can't Eat.'"

The Congress' school lunch debate worries some in rural Mississippi.

I got a little boy come in here every morning and eats everybody's food. Just licks the plate. And you know he's not the only one," said Jeanette Reeves, eagle-eyed and dressed in starched white, a cafeteria manager who doesn't have to tell the children twice to eat all their lima beans. "Many of these children get their only meals right here at school. Lord, it'll be cruel to change that.

That, Mr. President, is a front-page story from the Washington Post. Now we are moving to the point where we are not worried about whether "Johnny can't read." We are worried about whether or not "Johnny can't eat"—cuts in School Lunch Programs and School Breakfast Programs and Child Nutrition Programs.

Mr. President, the same Washington Post piece, page A-4, headline: "House Panel Votes to Curtail Program for Disabled Children."

Mr. President, I think we have just plain run out of excuses here on the Senate side.

Let me just give a little bit more context. Last week we had charts out on the importance of the debt and the annual budget deficits. I have brought some charts out about the importance of children in America.

Mr. President, I ask unanimous consent to have printed in the RECORD an article by Bob Herbert, "Inflicting Pain on Children," in a New York Times op-ed piece, Saturday, February 25.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Feb. 25, 1995]

INFLICTING PAIN ON CHILDREN

(By Bob Herbert)

THE HELPLESS ARE TAKING THE BRUNT OF THE REPUBLICANS' ATTACK ON OUR SOCIAL SYSTEM

The Republican jihad against the poor, the young and the helpless rolls on. So far no legislative assault has been too cruel, no budget cut too loathsome for the party that took control of Congress at the beginning of the year and has spent all its time since then stomping on the last dying embers of idealism and compassion in government.

This week Republicans in the House began approving measures that would take food off the trays of hungry school children and out of the mouths of needy infants. With reckless disregard for the human toll that is sure to follow, they have also aimed their newly powerful budget-reducing weapons at programs that provide aid to handicapped youngsters, that support foster care and adoption,that fight drug abuse in schools and that provide summer jobs for needy youths.

They have also targeted programs that provide fuel oil to the poor and assistance to homeless veterans. And they have given the back of their hand to President Clinton's national service corps.

The United States has entered a nightmare period in which the overwhelming might of the Federal Government is being used to deliberately inflict harm on the least powerful people in the nation. The attacks on children have been the worst. If the anti-child legislation that is moving with such dispatch through the House actually becomes law, "the results will be cataclysmic," according to James Weill, general counsel to the Children's Defense Fund.

Mr. Weill said: "The Republican leadership has targeted children for almost all of the pain. They've cut, I think, $7 billion out of the child nutrition programs, and that's not even counting food stamps, which they haven't done yet.

"Foster care and adoption have been cut by $4 billion over five years. They've cut Aid to Families with Dependent Children, and they're eliminating most of the entitlements as they go along. They're just smashing their way through all of the children's programs. To me, this so-called revolution is more like a massacre of the innocents."

President Clinton denounced the cuts and accused the G.O.P. majority in Congress of "making war on children." At a press conference yesterday in Ottawa, Canada, Mr. Clinton said: "What they want to do is make war on the kids of this country to pay for the capital gains tax cut. That's what's going on."

There is a breathless, frenzied quality to the Republican assault, as if the party leaders recognize that they must get their work done fast—while the Democrats are still in a post-election stupor, and before the public at large becomes aware of the extremes of suffering and social devastation that are in the works.

"This agenda is too harsh," said Senator Paul Wellstone, a Democrat from Minnesota. "I realize that the Republicans won the election, but these measures are too extreme, too mean-spirited. They go beyond what the goodness of the people in this country would permit. Most Americans do not want to see vulnerable people hurt, especially children."

Mr. Wellstone has irritated some of his Republican colleagues by frequently offering a legislative amendment that says the Senate "will not enact any legislation that will increase the number of children who are hungry or homeless." Each time it is offered, the amendment is defeated.

The Senate majority leader, Bob Dole, dismissed the Wellstone amendment as an "extraneous" measure designed solely to make Republicans "look heartless and cold." No doubt. But Senator Wellstone is right on target when he says that the Republican legislative strategy was carefully designed to hurt the people "who aren't the big players, who aren't the heavy hitters, who don't make big contributions, who don't have lobbyists, who don't have clout."

If anything is funny in this dismal period, it's that the Republicans are touchy about being called heartless and cold. That's a riot. Has anyone listened to Newt Gingrich lately? To Dick Armey? To Phil Gramm? This is the coldest crew to come down the pike since the Ice Age.

An indication of just how cold and heartless the Republicans have become is the startling fact that Mr. Dole, of all people, is starting to look a little warm and fuzzy.

Mr. WELLSTONE. I quote from that article:

The Republican jihad against the poor, the young and the helpless rolls on. So far no legislative assault has been too cruel, no budget cut too loathsome for the party that took control of Congress at the beginning of the year and has spent all its time since then stomping on the last dying embers of idealism and compassion in government.

This week Republicans in the House began approving measures that would take food off the trays of hungry schoolchildren and out of the mouths of needy infants. With reckless disregard for the human toll that is sure to follow, they have also aimed their newly powerful budget-reducing weapons at programs that provide aid to handicapped youngsters, that support foster care and adoption, that fight drug abuse in schools and that provide summer jobs for needy youths.

Mr. President, 1 day in the life of American children: 636 babies are born to women who had late or no prenatal care. One day in the life of American children: 801 babies are born at low birthweight; by the way, to many women who never had any proper nutrition, and we now have proposed cuts in the Women, Infants, and Children Program. One day in the life of American children: 1,234 children run away from their homes. One day in the life of American children: 2,255 teenagers drop out of school each school day. One day in the life of American children: 2,868 babies are born into poverty. One day in the life of American children: 7,945 children are reported abused or neglected. One day in the life of American children: 100,000 children are homeless. One day in the life of American children: Three children die from child abuse. One day in the life of American children: 9 children are murdered; 13 children die from guns; 27 children—a classroomful—die from poverty; 63 babies die before they are 1 month old—63 babies die before they are 1 month old; and 101 babies die before their 1st birthday.

Mr. President, it is just time for the U.S. Senate to go on record. Let me just make it clear again what this amendment does. This amendment on the paperwork reduction bill is just a sense-of-the-Senate amendment. We are not going to do anything that creates more hunger or homelessness among children. There is no excuse not to go on record. The U.S. Senate needs to take this position.

Mr. President, a little bit more in context, I have a report: "Unshared Sacrifice; The House of Representatives' Shameful Assault on America's Children," March 1995, the Children's Defense Fund, that I ask be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

[From the Children's Defense Fund, March 1995]

UNSHARED SACRIFICE—THE HOUSE OF REPRESENTATIVES' SHAMEFUL ASSAULT ON AMERICA'S CHILDREN

INTRODUCTION

In a "revolution" that so far has spared just about everyone else, the House leadership and key committee majorities have targeted America's children for the earliest, broadest, and by far the deepest pain in budget cuts, program restructuring, and rescissions. In less than two weeks key committees and subcommittees have voted to cut $40 billion from crucial child survival programs, and to end the federal safety net for children and their families. This is a wholly unshared sacrifice: the House seems to be postponing for a later day, if ever, any contemplation of major cuts for other constituencies. Savings from savage cuts in programs for needy and helpless children would be used to fund a new and unnecessary defense build-up; to pay for a capital gains tax cut of which 71 percent goes to the richest 1 percent of Americans; and to reduce a tax on the richest 13 percent of the elderly by $56 billion (over 10 years) when that tax goes to pay part of Medicare's cost.

While the House majority's welfare plan has gotten most media attention, that plan's unprecedented savaging of children is merely symptomatic of a broad-gauged assault on hungry children's nutrition programs, disabled children's disability assistance, preschool children's child care and child development centers, unemployed youths' summer jobs, sick children's medical care, and abused children's foster care and hope for adoptive families. Block grants, rescissions, and consolidations are being used in a multifront attack on children's services. Not even proven money-saving programs like Head Start have been spared. And in the midst of this series of brutal reductions, the most severe have been reserved for the most vulnerable children—those who are disabled or in foster care.

Based on data from the Congressional Budget Office, the Department of Health and Human Services and the Department of Agriculture, and analysis of congressional numbers by the Children's Defense Fund, $40 billion in core safety net program cuts were adopted in the past two weeks that would force out of these programs millions of the children eligible under current rules (see chart, next page).

These numbers assume that states would reduce spending by the amount of federal reductions, and do so by eliminating eligible children from the program rather than reducing benefits across-the-board. In some programs like AFDC and SSI, the strategy of dropping children is virtually dictated by the proposed legislation. In others, it is possible for states to spread out the cuts and reduce benefits for more children, but completely deny benefits to fewer. In that case, many more children would be hurt, but the damage to each would be a bit less. In either instance, the pain will be massive.

The numbers in this report actually understate the real depth of the cuts, since they assume there is no recession driving up the number of children needing help; assume there are no transfers from the new block grants to other programs (as is allowed with some of the funds); assume that there are not larger cuts in state funds by states that would be freed from any matching requirements; and do not account for how cuts in one area (such as AFDC) will drive up the need in other areas (such as foster care).

Moreover, the AFDC losses in 2000 disguise the full impact of the House welfare plan: 3 million to 5 million children could lose AFDC when that plan is fully phased in.

THE UNSHARED SACRIFICE

	Dollars cut over 5 years	Dollars cut in the fifth year (2000)	Children losing benefits in the year 2000	Percentage of all eligible children who would lose benefits in the year 2000
AFDC	$12.8 billion	$3.7 billion	1.7 million (3–5 million in later years).	18.1
SSI for children	$12.1 billion	$5.5 billion	516,000	67.0
Foster Care and Adoption Assistance	$5.5 billion	$1.7 billion	111,000	26.0
School Lunches	$2 billion	$510 million	2.22 million	8.8
Child Care	$2.5 billion	$612 million	378,000	24.0
Child and Adult Care Food Program	$4.6 billion	$1.1 billion	1,048,000	50.0

This assault on America's children is also an assault on America's future. The millions of infants and toddlers who would be denied food necessary for their physical and intellectual development in the years ahead are the ones America will want to be computer programmers in 2017. The millions of five-year-olds who would be denied any cash aid for housing, food, or clothing are the ones we will want to be learning in college or apprenticing in industry in 2010. The thousands of battered 10-year-olds denied counseling and foster care and adoptive homes are the ones we will want not to be violent 16-year-olds in 2001. By ravaging the childhoods of millions of American children, the House simultaneously will be pillaging America's economic and democratic future.

The assault on children is unique in its size and severity. No other group, except for legal aliens, has been touched by more than a small fraction of the cuts aimed at children. No massively subsidized corporation has yet to see a dime threatened. (In fact, a handful of big businesses got a $1 billion gift from higher prices on infant formula—and less formula purchased—when the House Committee on Economic and Educational Opportunities voted down competitive bidding in the WIC program, a step USDA says will cause "increased malnutrition, growth stunting, and iron deficiency anemia.") No farmer has had his crop subsidies cut. No military or civil service retiree—or member of Congress—has seen his pay or health insurance or retirement benefits cut. Defense contractors have been given a gift of new and higher spending. Programs for poor families have faced extra cuts in order to spare traditional "pork" like visitors' centers or NRA-sponsored efforts to teach school children to shoot guns.

The House majority has put almost all its cost-cutting effort into slashing and burning its way through programs for children and the parents, grandparents, foster parents, and others who are struggling to care for them.

This is not what America voted for last November. This is not what Americans want. This is not what America needs. Nevertheless, in just 10 days in February, House committees voted to slash these basic supports:

Food for children. The House Economic and Educational Opportunities Committee voted to take away the guarantee that low-income children can get free or reduced-price school lunches and breakfasts. The plan indiscriminately lumps these school-based programs together and cuts them by $2 billion over five years. In a separate block grant, the committee ended the guarantee of food for children in Head Start and child care centers through the Child and Adult Care Food Program and lumped this with the WIC program of food for poor pregnant women and infants, the summer food program, and food for the homeless, and cut the package by $5 billion over five years. Cutting fat? Hardly. Experts estimate that hundreds of millions fewer meals would be served to needy children in the year 2000, thanks to the cut. And 60,000 Head Start placements are likely to end because programs will have to spend the Head Start money on food to replace the child care food program cut for hundreds of thousands of children. Sharing the pain? Hardly. No other food program has yet been cut, whether the cafeteria for members of the House of Representatives or the programs that feed the elderly. House Speaker Gingrich has promised, as well as he should, not to cut food programs for the elderly. But it is perverse to treat food for seniors as deserving of protection but food for children as a waste of national resources. We can afford to feed both.

Income support for children. The House Ways and Means Committee's Human Resources subcommittee voted to take away the guarantee that poor children can get AFDC; voted to order states to deny throughout childhood any aid to children born out of wedlock to young mothers (even though the mother may eventually requalify for aid); and voted to limit to five years the receipt of welfare for children who might still qualify despite the other rule changes. In the year 2000, $3.7 billion will be taken away from poor children. Is this aimed at parents and personal responsibility? Not really. The plan cuts off children even when parents can get benefits, cuts off families even when they have been working and complying with all rules, and tells a child who has been living with his low-income, elderly grandparents since birth that she'll get no help after the age of five. Cutting fat? No! In the year 2000, 1.7 million children who by definition do not have enough for food or shelter are projected to lose AFDC. Even more will lose help if states cut back further or divert state and federal AFDC funds to other purposes. Sharing the pain? Hardly.

Mr. WELLSTONE. I will just read a couple of operative paragraphs.

In a "revolution" that so far has spared just about everyone else, the House leadership and key committee majorities have targeted America's children for the earliest, broadest, and by far the deepest pain in budget cuts, program restructuring, and rescissions. In less than two weeks key committees and subcommittees have voted to cut $40 billion from crucial child survival programs, and to end the federal safety net for children and their families. This is a wholly unshared sacrifice: the House seems to be postponing for a later day, if ever, any contemplation of major cuts for other constituencies. Savings from savage cuts in program for needy and helpless children would be used to fund a new and unnecessary defense build-up; to pay for a capital gains tax cut of which 71 percent goes to the richest 1 percent of Americans; and to reduce a tax on the richest 13 percent of the elderly by $56 billion (over 10 years) when that tax goes to pay part of Medicare's cost.

Mr. President, when I go to gatherings of senior citizens, they list children and their grandchildren right at the top of their concerns. We talk about their concerns about block granting congregate dining and Meals on Wheels, which older Americans made sure did not happen in the House. The first thing they say to me is, "Senator, we also want to make sure that the school lunch program is not eliminated or cut back. We want to make sure that there are not cuts in childhood nutrition programs."

Mr. President, I say to my colleagues that we do not have, in this Contract With America, we have not seen in any of these rescissions, we have not seen in any of the action on the House side, one word about oil company subsidies being cut, one word about coal company subsidies being cut, one word about pharmaceutical company subsidies being cut, one word about the privileged, about the powerful, about Pentagon contractors having to sacrifice at all.

Instead, those citizens who are being asked to sacrifice and tighten their belts are the very citizens who cannot—the children in this country. I suggest today that there is a reason for that. They are the citizens who are not the heavy hitters. They are the citizens who are not the well connected. They are the citizens who do not have all the lobbyists. They are the citizens with the least amount of political power. I do not think we should be making decisions on that basis.

How interesting it is, Mr. President, that we are willing to cut free lunches for children, but we are not willing to ban gifts and cut free lunches for Senators and Representatives. Let me repeat that once again: How interesting it is that in the U.S. Congress, on the House side, there is a willingness to cut free lunches for hungry children, but no commitment to have a gift ban and end free lunches for Representatives and Senators. That small example tells a large story about what is going on here right now in the U.S. Congress.

Mr. President, people voted for change. But it always begged the question, What kind of change? With these cuts in nutrition programs, now we have to have fear, in the schools of Ohio, Minnesota, Mississippi, and all across the land, not that Johnny cannot read, but that Johnny cannot eat. These cuts go beyond the goodness of people in this country.

This is not what people voted for. And when we see the rescissions coming over, and some of these block grants and mean-spirited cutbacks in child nutrition programs, and mean-spirited cuts in other children's programs that will lead to more homeless, all I ask my colleagues in the U.S. Senate to do today is to go on record with a mild sense-of-the-Senate resolution that we will not do anything that will increase more hunger or homelessness among children.

Now, Mr. President, I say to my colleagues—because I have had this amendment on the floor over and over again—that I do not think they can hide any longer. First, at the beginning of the session, it was all about prerogative, not on the Congressional Accountability Act.

I also heard about this type of rationale and even read in the New York Times Magazine about this the other day in relation to gift ban. No, we do not want to do that because we want to show that we are in control. Or we do not want to give a Senator ink. I did not think we made decisions on that basis, but the gift ban amendment was voted down. This amendment was voted down also. Then I brought it up again on unfunded mandates—it was voted down. Then I brought it up as just a motion to refer to the Budget Committee, not as an amendment to the constitutional amendment to balance the budget. Senator HATCH was on the floor, a Senator whom I deeply respect, and he said, "Look, Senator WELLSTONE, I really think that this is based upon your opposition to the balanced budget amendment, and these amendments are not going to be amendments we will accept." Fine.

But now we have a bill that is sailing through the Senate. There is tremendous support for it. I support it. And all I am doing, since this bill is out here, is asking for a sense of the Senate. We see the front page stories; we hear it on the radio; we see it on television. Sometimes, I think, Mr. President, if I had time, I would retrace the hunger tour that Senator Robert Kennedy took. I really would. I almost feel as though Senators need to see it themselves.

All I am saying is, the writing is on the wall. We see where the deep cuts are. We see what its effects on children are going to be. Everybody agrees that these programs are harsh, that these programs will have a very serious impact on children, the most vulnerable of our citizens, the poor children of America.

I am saying, because all eyes are on the Senate to put a stop to this, today is the day. Let Members go on record. We can do this on a nonpartisan basis. We should have Democrats and Republicans in a resounding vote go on record that we will not do anything to create more hunger or homelessness among children. Let Members agree on that. Let Members agree when it comes to deficit reduction, there will be a standard of fairness. Let Members agree we will represent children in America and we will represent them well. Let Members agree this is a part of the priorities of what we stand for. Let Members put to rest the fears that so many people have in this country that what is happening right now in the Congress is a juggernaut that is mean spirited, that will hurt so many children in the country.

We, today, can go on record saying we are not going to do that. That is what I ask my colleagues to do.

Mr. President, I do not really understand. One of the things that has been interesting to me is the silence on the other side of the aisle. We know rescissions are coming over here. We know the kind of cuts that have already taken place in committee and on the floor in the House of Representatives. So there is not one Senator who can look me in the eye and say any longer, "Senator WELLSTONE, you're crying Chicken Little." That is what some of my colleagues had to say to me at the beginning of the session.

But now the evidence is irrefutable and irreducible. We know the proposed cuts. We know what is coming over here. I do not think there is one Senator who can come out on the floor and say to me today "You are wrong, we don't need to go on record with this statement, because no one will do this to children in America." The evidence is clear it is being done. Nor are there any excuses any longer about it being the beginning of the session or about it being the constitutional amendment to balance the budget. It is all very clear.

One more time, Mr. President:

> It is the sense of the Congress that Congress should not enact or adopt any legislation that will increase the number of children who are hungry or homeless.

Is that too much to ask of my colleagues?

Moments in America for children, a Children's Defense Fund study last year:

Every 5 seconds of the school day a student drops out of public school;

Every 30 seconds a baby is born into poverty;

Every 2 minutes a baby is born at low birthweight;

Every 2 minutes a baby is born to a mother who had late or no prenatal care;

Every 4 minutes a child is arrested for an alcohol-related crime;

Every 7 minutes a child is arrested for a drug crime;

Every 2 hours a child is murdered;

Every 4 hours a child commits suicide.

Mr. President, we cannot savage children in America today. It is unconscionable, as I look at what the House of Representatives is doing right now, that we in the U.S. Congress seem to be willing to cut free lunches for poor children in America, but we have not yet passed a gift ban that would end free lunches for Representatives and Senators. Today I ask the U.S. Senate, Democrats and Republicans alike, to go on record, "It is the sense of Congress that Congress should not enact or adopt any legislation that would increase the number of children who are hungry or homeless."

How much time do I have left?

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Minnesota has 23 minutes 15 seconds.

Mr. WELLSTONE. Mr. President, I reserve the remainder of my time

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, we have no request for time on this side. We are prepared to yield our time back if the Senator from Minnesota is ready to conclude the debate.

Mr. WELLSTONE. Mr. President, before I do, and while my colleague is on the floor, I would like to get his attention just for a moment. I will be pleased to do so, and I understand the votes will all take place after our caucus meetings this afternoon.

I have a lot of respect for the whip. I think we have a good friendship, agree or disagree, on all issues. But I want my colleague to know why I continue to bring this amendment to the floor. It certainly is not for ink because there has not been a lot of coverage for this amendment.

I said at the beginning I was going to do it, and every day as I read the papers and hear what is happening on the House side, I realize that it is really going to be up to the Senate, Republicans and Democrats alike, in a careful nonpartisan way to take certain action that I think 90 percent of the people in the country want us to take.

Part of that action is to certainly not, for example, cut nutrition programs for children. I refer the Senator from Mississippi to this article today regarding Fayette, MS, and there were two parts to this. There are wonderful interviews with some of the parents and some of the women who work at the cafeteria and teachers who work with children about the tremendous fear.

The headline is "School Fearful That 'Johnny Can't Eat'," not "Johnny Can't Read."

Congress' school lunch debate worries some in rural Mississippi. The Senator may have been off the floor. It starts out with this quote. I find this quote to be, at a personal level—it moves me and really worries me.

"I got a little boy come in here every morning and eats everybody's food. Just licks the plate. And you know he's not the only one," said Jeanette Reeves, eagle-eyed and dressed in starched white, a cafeteria manager who doesn't have to tell the children twice to eat all their lima beans. "Many of these children get their only meals right here at school. Lord, it'll be cruel to change that."

And then there are some teachers, I say to my colleague from Mississippi. This is in Fayette, MS, and they say, "Listen, these children just cannot learn, if they are not going to have at least one good meal a day, they can't learn, they can't do well in school."

Mr. President, we all say we are for the children in America. As I have said on the floor before, I think that includes all God's children, not just our children, and that includes the children that are poor and, unfortunately, a sizable percentage of children in America are poor.

I say to my colleague from Mississippi, if there is no further debate, I would be pleased to yield back the remainder of my time, but I am hoping that in the absence of debate today that finally the Senate is willing to go on record:

> It is the sense of Congress that Congress should not enact or adopt any legislation that will increase the number of children who are hungry or homeless.

I do not think there should be one Senator who should have a problem voting for this. I think it is time we go on record as an institution. If there is no debate, I take that silence as consent, and I yield back the remainder of my time.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I will be happy to yield back the remainder of time, but first, since my State has been referred to several times—that is normal, if you want to make a case, it has been the practice around here for 20 years to attack Mississippi.

Frankly, we do not appreciate that. But also I just want to emphasize, there is a lot of misinformation out here. What we would like to do is to take nutrition programs, a lot of other programs, reform them, get the fraud out of them where it exists—and it may not be the case in the nutrition program—cut back on administration costs because there is a lot of waste and money going to the administration of these programs instead of getting to children, food for children, nutrition for children.

One of the points that people in Washington seem to miss is——

Mr. WELLSTONE. Will the Senator yield? Can I ask the Senator before he moves to table if I could have a couple minutes to respond?

Mr. LOTT. I am sure we can work that out.

Mr. WELLSTONE. I thank the Senator.

Mr. LOTT. I just ask the Senators here, is there anybody among us who would not like to see us find some savings in programs, maybe actually get more money to the children? What I understand is being proposed in the House of Representatives actually with the block grants is that you would get more money actually going for food to the children by cutting out the bureaucracy and the redtape.

It seems to me like that is a good idea: More flexibility for the States, a better way, perhaps, being found to administer these programs. The Governors believe that can happen—the Governor of my State, the Governor of Michigan.

So what we are talking about is a better program, a better deal that will help more children. What we have been doing is we are feeding bureaucrats. How about if we feed the children instead?

What everybody is saying is we cannot change anything. "Oh, no, don't touch this one, don't touch that one." For 40 years this stuff has been building up. It is a bureaucratic nightmare, with all kinds of waste. It is time that we find a way to improve some of these programs. We believe we can do that. That is all we are seeking with these nutrition programs. There is a tremendous amount of misinformation out there on this and other programs.

Last week we had debate on the balanced budget amendment. They said, "Oh, we don't need this. Let's just go and find a way to reduce the deficit." And then the list begins: "Oh, but, you can't touch this program, you can't even improve it, you can't limit the rate of increase in spending on programs."

That is all we are talking about. Most of these programs we are not talking about cutting a nickel; we are talking about controlling the rate of growth. So here they come, the same crowd we heard in the eighties: "Oh, don't cut this one, don't cut that one, don't cut the Low Income Energy Assistance Program," that gives $19 million for air conditioning in the State of Florida, and I am sure a lot of money for air conditioning in my State.

We all have our little program and say, "Don't touch this one." You cannot have it both ways. You cannot find ways to begin to control spending and reduce the deficit without looking at every program, every agency, every department and seeing if we cannot do a better job. If we say do not touch any program, we will never get anything done.

I did not want to start a full debate here, but I had to at least get that on the record. I think what we are talking about is better programs, less bureaucracy, and more funds for people who really need the help.

Does the Senator wish to use additional time?

Mr. WELLSTONE. Mr. President, if I might just ask for 5 minutes.

Mr. LOTT. Since the Senator yielded back his time, I will yield back 5 minutes from our time.

Mr. WELLSTONE. Mr. President, I thank the Senator from Mississippi.

Let me just be really clear about, first of all, what this vote is on. I do take exception to some of what my colleague had to say. But I am not even debating today whether or not some of what has been proposed in block grants will work better or not. I take what the Senator has said to be said in good faith.

What this amendment says is the Senate goes on record that we will not enact or adopt any legislation which will increase the number of children hungry or homeless.

So the Senator from Mississippi would agree with me on that. He has not proposed that we do make cuts that would increase hunger and homelessness.

This does not cast judgment on any particular proposal. Given what is moving through and given some of the discussion, let us go on record that we are not going to do anything that would do that. I should think the Senator would agree. That is my first point. To vote for this means that Senators are willing to go on record saying certainly one thing that is important to us is not to increase any hunger or homelessness among children. That is all this says. That is point one.

Point two—and I say this with some sense of sadness to my colleague—actually there is a considerable amount of empirical data about the cuts. I have before me a Department of Agriculture study, and actually there are many other studies that are now coming out about the cuts that are being proposed, cuts I say to my colleague, in child nutrition programs State by State. Alabama, school-age children, fiscal year 1996, $1,972,000; preschool children, $15,098,000; Mississippi—but I will get to Minnesota so you do not think it is just Mississippi—$2,421,000 for school-age children and $14 million cuts for preschool children in nutrition programs. In my State of Minnesota, cuts of $1,627,000 for school-age children and $15,189,000 for preschool children.

That is why I am worried about this, I say to my colleague from Mississippi. So, first, there is no one any longer who is really arguing we are not facing deep cuts that will have a harmful effect on children. But, even if I was to agree with what my colleague just said, that is not what this amendment is about. We should together vote for this because then we make it clear that regardless of our disagreement about specific policies, one thing we are in agreement on is that the Senate as an institution certainly is not going to take any action that would increase hunger or homelessness among children. I do not know how my colleagues can continue to vote against this.

Finally, I would like to say this by way of an apology because I agree with my colleague from Mississippi about this. I think this is a powerful story, but in no way, shape or form did I intend to pick on Mississippi. I believe that one of the things we do over and over again is that we look everywhere but home. It is so easy for those of us in Pennsylvania or Minnesota to focus on Mississippi, and I fully understand the sentiment of my colleague from Mississippi. Unfortunately, Mr. President, I say to my colleague, I can point to children that are struggling in Minnesota. I am sure that the Presiding Officer can in Pennsylvania. The kind of issues that concern me are all across the United States of America, not just in the State of Mississippi, which, indeed, is a wonderful State. But this is a wonderful story because it puts faces, it puts real people, it puts real children behind all the statistics, and that is why I use this as an example.

Mr. President, I thank the Senator from Mississippi. I really hope I will have support from colleagues on this.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. I yield back the remainder of our time, and I move to table the amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. LOTT. Mr. President, does the Chair have business pending?

The PRESIDING OFFICER. Under the previous order, the Senator from Minnesota [Mr. WELLSTONE] is recognized to offer an amendment on which there shall be 90 minutes equally divided.

Mr. WELLSTONE. Mr. President, yesterday, I had reserved time for another slot and had considered an amendment, which is the gift ban amendment, and again the connection I make over and over again today, it just strikes me as being more than ironic; I think it is unconscionable that, apparently, as I look at what the House of Representatives is doing right now, we are willing to cut free lunches for children but we are not willing to pass a gift ban that ends free lunches for Senators and Representatives.

However, Mr. President, while I think there has to be action on this, I look forward to working with my colleagues, Senator LEVIN from Michigan, Senator FEINGOLD, Senator LAUTENBERG, and certainly the majority leader, who has gone on record in favor of this. So this amendment will be in the Chamber, though not today, and we will have a vote on it. I will not propose this amendment today.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. I would like to say to the Senator from Minnesota and remind all of our colleagues that the majority leader, Senator DOLE, has indicated this issue will be addressed. He is working on legislation in the gift ban area, and I do expect that we will have a vote in this area in the not too distant future. So rest assured, we are going to take up this issue.

Mr. WELLSTONE. Mr. President, I thank my colleague from Mississippi, and I would just say I appreciate that. Rest assured, I will be out in the Chamber with other colleagues with this amendment and keep pushing this, and hopefully we will all do this together.

Mr. LOTT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GREGG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ASHCROFT). Without objection, it is so ordered.

Mr. GREGG. Mr. President, at this time I had the right to offer an amendment. I do not intend to offer the amendment at this time and withdraw that right.

THE OREGON OPTION

Mr. HATFIELD. Mr. President, recently, the State of Oregon and several Federal agencies signed a memorandum of understanding to create a new partnership which will test unique methods of delivering Government services in a better and more efficient manner. When this revolutionary partnership, called the Oregon option, is fully implemented, Federal grants or transfers to State and local governments in Oregon will be based on results rather than compliance with procedures.

I believe that this project has the potential to vastly improve intergovernmental service delivery in my State and may well prove to be a national model for future governmental partnerships. For this reason, I am pleased the managers of the pending legislation, the Paperwork Reduction Act of 1995, have included in their bill my sense-of-the-Senate resolution urging the Federal Government to continue to be an active partner in this effort.

Mr. President, I would specifically like to thank Senators ROTH and GLENN for their assistance and would also like to thank Senator NUNN for his help in including my amendment.

Mr. COHEN. Mr. President, as a cosponsor of this important legislation, I am pleased that the Senate will soon pass the Paperwork Reduction Act of 1995. I am a longtime supporter of the Paperwork Reduction Act which seeks to reduce the Federal paperwork burdens imposed on the public.

I have been particularly concerned about the effects of the Federal regulatory burden on small businesses throughout my years in Congress. Americans spend billions of hours a year filling out forms, surveys, questionnaires, and other information requests for the Federal Government at a cost of several hundred billions dollars. Increasing paperwork burdens force small businesses to redirect scarce resources away from activities that might otherwise allow them to provide better services to their customers or provide additional jobs. America's small businesses are the backbone of our economy and, as such we need to ensure that they are not crippled by regulatory burdens that hinder their ability to compete in the increasingly competitive global marketplace.

I am also pleased to cosponsor an amendment offered by Senator LEVIN to eliminate or modify over 200 statutory reporting requirements that have outlived their usefulness. This is an issue that Senator LEVIN and I have worked on for a number of years in our capacity as chairman and ranking minority member of the Governmental Affairs Subcommittee on Oversight of Government Management. The Levin amendment is consistent with efforts by the administration and the Congress to reinvent Government and make it more efficient. It is based on a bill Senator LEVIN and I introduced last Congress which CBO estimated would reduce agencies' reporting costs by $5 to $10 million annually. The legislation was the product of more than a year's worth of discussions with Government agencies and congressional committees.

Examples of the types of reports that the amendment will eliminate or modify include a provision to eliminate an annual Department of Energy reporting requirement on naval petroleum and oil shale reserves production. The same data included in this report is included in the naval petroleum reserves annual report. Another provision would modify the Department of Labor's annual report to include the Department's audited financial statements and, thereby, eliminate the need for a separate annual report for all money received and disbursed by the Department.

The Levin amendment is consistent with the goals of the Paperwork Reduction Act. It is intended to reduce the paperwork burdens placed on Federal agencies and streamline the information that flows from these agencies to the Congress.

Mr. President, I would now like to make a few statements about the overall legislation. The bill before us contains provisions to maximize the use of information collected by the Federal Government and keep in place the 1980 act's goal of reducing the paperwork burdens imposed on the public through an annual governmentwide paperwork reduction goal of 5 percent.

It reauthorizes the Office of Information and Regulatory Affairs [OIRA], within the Office of Management and Budget [OMB], which implements the act and requires each Federal agency to thoroughly review proposed paperwork requirements to make sure they are truly needed and have a practical utility. It also enhances public participation in reviewing paperwork requirements.

The bill clarifies that the act applies to all Government-sponsored paperwork, eliminating any confusion over the coverage of so-called third party burdens—those imposed by one private party on another due to a Federal regulation—caused by the U.S. Supreme Court's 1989 decision in Dole versus United Steelworkers of America. This decision created a loophole for agencies to avoid public comment and OMB review. Florida Gov. Lawton Chiles, who authorized the Paperwork Reduction Act when he was in the Senate, filed on amicus brief with the Supreme Court arguing that no such exemption for third party paperwork burdens where intended when the act was created. Unfortunately, the Court held that the plain meaning of the statute could not support such a finding.

Finally, I am pleased that the Governmental Affairs Committee accepted an amendment I offered in committee to make changes to the information technology provisions of the bill and allow the opportunity for information technology reform later this Congress. This is an important issue that warrants separate legislative consideration. In closing, I want to commend Senators ROTH, GLENN, and NUNN for their work in this area. The bill enjoys broad bipartisan support and I hope my colleagues will move expeditiously to vote on final passage.

RECESS UNTIL 2:15 P.M.

Mr. GREGG. Mr. President, I ask unanimous consent that the Senate now stand in recess until 2:15.

There being no objection, the Senate, at 12:23 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. ABRAHAM).

PAPERWORK REDUCTION ACT OF 1995

The Senate continued with the consideration of the bill.

VOTE ON MOTION TO TABLE AMENDMENT NO. 320

The PRESIDING OFFICER. The question now occurs on the motion to table amendment No. 320, offered by the Senator from Minnesota [Mr. WELLSTONE].

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Oklahoma [Mr. INHOFE] is necessarily absent.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 51, nays 47, as follows:

[Rollcall Vote No. 99 Leg.]

YEAS—51

Abraham
Ashcroft
Bennett
Bond
Brown
Burns
Chafee
Coats
Cochran
Coverdell
Craig
D'Amato
DeWine
Dole
Domenici
Faircloth
Frist
Gorton
Gramm
Grams
Grassley
Hatch
Hatfield
Helms
Hutchison
Kassebaum
Kempthorne
Kerrey
Kyl
Lieberman
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Packwood
Pressler
Roth
Santorum
Shelby
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner

NAYS—47

Akaka
Baucus
Biden
Bingaman
Boxer
Bradley
Breaux
Bryan
Bumpers
Byrd
Campbell
Cohen
Conrad
Daschle
Dodd
Dorgan
Exon
Feingold
Feinstein
Ford
Glenn
Graham
Gregg
Harkin
Heflin
Hollings
Inouye
Jeffords
Johnston
Kennedy
Kerry
Kohl
Lautenberg
Leahy
Levin
Mikulski
Moseley-Braun
Moynihan
Murray
Nunn
Pell
Reid
Robb
Rockefeller
Sarbanes
Simon
Wellstone

NOT VOTING—2

Inhofe
Pryor

So the motion to lay on the table the amendment (No. 320) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. DOLE. Mr. President, I ask for the yeas and nays

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill, having been read the third time, the question is, Shall it pass?

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 100 Leg.]

YEAS—99

Abraham
Akaka
Ashcroft
Baucus
Bennett
Biden
Bingaman
Bond
Boxer
Bradley
Breaux
Brown
Bryan
Bumpers
Burns
Byrd
Campbell
Chafee
Coats
Cochran
Cohen
Conrad
Coverdell
Craig
D'Amato
Daschle
DeWine
Dodd
Dole
Domenici
Dorgan
Exon
Faircloth
Feingold
Feinstein
Ford
Frist
Glenn
Gorton
Graham
Gramm
Grams
Grassley
Gregg
Harkin
Hatch
Hatfield
Heflin
Helms
Hollings
Hutchison
Inhofe
Inouye
Jeffords
Johnston
Kassebaum
Kempthorne
Kennedy
Kerrey
Kerry
Kohl
Kyl
Lautenberg
Leahy
Levin
Lieberman
Lott
Lugar
Mack
McCain
McConnell
Mikulski
Moseley-Braun
Moynihan
Murkowski
Murray
Nickles
Nunn
Packwood
Pell
Pressler
Reid
Robb
Rockefeller
Roth
Santorum
Sarbanes
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner
Wellstone

NOT VOTING—1

Pryor

So the bill (S. 244) as amended was passed as follows:

S. 244

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—PAPERWORK REDUCTION

SEC. 101. SHORT TITLE.

This title may be cited as the "Paperwork Reduction Act of 1995".

SEC. 102. COORDINATION OF FEDERAL INFORMATION POLICY.

Chapter 35 of title 44, United States Code, is amended to read as follows:

"CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

"Sec.
"3501. Purposes.
"3502. Definitions.
"3503. Office of Information and Regulatory Affairs.
"3504. Authority and functions of Director.
"3505. Assignment of tasks and deadlines.
"3506. Federal agency responsibilities.
"3507. Public information collection activities; submission to Director; approval and delegation.
"3508. Determination of necessity for information; hearing.
"3509. Designation of central collection agency.
"3510. Cooperation of agencies in making information available.
"3511. Establishment and operation of Government Information Locator Service.
"3512. Public protection.
"3513. Director review of agency activities; reporting; agency response.
"3514. Responsiveness to Congress.
"3515. Administrative powers.
"3516. Rules and regulations.
"3517. Consultation with other agencies and the public.
"3518. Effect on existing laws and regulations.
"3519. Access to information.
"3520. Authorization of appropriations.

"§ 3501. Purposes

"The purposes of this chapter are to—

"(1) minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;

"(2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government;

"(3) coordinate, integrate, and to the extent practicable and appropriate, make uniform Federal information resources management policies and practices as a means to improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public and the improvement of service delivery to the public;

"(4) improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society;

"(5) minimize the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of information;

"(6) strengthen the partnership between the Federal Government and State, local, and tribal governments by minimizing the burden and maximizing the utility of information created, collected, maintained, used, disseminated, and retained by or for the Federal Government;

"(7) provide for the dissemination of public information on a timely basis, on equitable terms, and in a manner that promotes the utility of the information to the public and makes effective use of information technology;

"(8) ensure that the creation, collection, maintenance, use, dissemination, and disposition of information by or for the Federal Government is consistent with applicable laws, including laws relating to—

"(A) privacy and confidentiality, including section 552a of title 5;

"(B) security of information, including the Computer Security Act of 1987 (Public Law 100-235); and

"(C) access to information, including section 552 of title 5;

"(9) ensure the integrity, quality, and utility of the Federal statistical system;

"(10) ensure that information technology is acquired, used, and managed to improve performance of agency missions, including the reduction of information collection burdens on the public; and

"(11) improve the responsibility and accountability of the Office of Management and Budget and all other Federal agencies to Congress and to the public for implementing the information collection review process, information resources management, and related policies and guidelines established under this chapter.

"§ 3502. Definitions

"As used in this chapter—

"(1) the term 'agency' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include—

"(A) the General Accounting Office;

"(B) Federal Election Commission;

"(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

"(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities;

"(2) the term 'burden' means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency, including the resources expended for—

"(A) reviewing instructions;

"(B) acquiring, installing, and utilizing technology and systems;

"(C) adjusting the existing ways to comply with any previously applicable instructions and requirements;

"(D) searching data sources;

"(E) completing and reviewing the collection of information; and

"(F) transmitting, or otherwise disclosing the information;

"(3) the term 'collection of information'—

"(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either—

"(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

"(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

"(B) shall not include a collection of information described under section 3518(c)(1);

"(4) the term 'Director' means the Director of the Office of Management and Budget;

"(5) the term 'independent regulatory agency' means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Housing Finance Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

"(6) the term 'information resources' means information and related resources, such as personnel, equipment, funds, and information technology;

"(7) the term 'information resources management' means the process of managing information resources to accomplish agency missions and to improve agency performance, including through the reduction of information collection burdens on the public;

"(8) the term 'information system' means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;

"(9) the term 'information technology' has the same meaning as the term 'automatic data processing equipment' as defined by section 111(a) (2) and (3)(C) (i) through (v) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a) (2) and (3)(C) (i) through (v));

"(10) the term 'person' means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, or local government or branch thereof, or a political subdivision of a State, territory, or local government or a branch of a political subdivision;

"(11) the term 'practical utility' means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;

"(12) the term 'public information' means any information, regardless of form or format, that an agency discloses, disseminates, or makes available to the public; and

"(13) the term 'recordkeeping requirement' means a requirement imposed by or for an agency on persons to maintain specified records.

"§ 3503. Office of Information and Regulatory Affairs

"(a) There is established in the Office of Management and Budget an office to be known as the Office of Information and Regulatory Affairs.

"(b) There shall be at the head of the Office an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall delegate to the Administrator the authority to administer all functions under this chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information resources management policy.

"(c) The Administrator and employees of the Office of Information and Regulatory Affairs shall be appointed with special attention to professional qualifications required to administer the functions of the Office described under this chapter. Such qualifications shall include relevant education, work experience, or related professional activities.

"§ 3504. Authority and functions of Director

"(a)(1) The Director shall oversee the use of information resources to improve the efficiency and effectiveness of governmental operations to serve agency missions, including service delivery to the public. In performing such oversight, the Director shall—

"(A) develop, coordinate and oversee the implementation of Federal information resources management policies, principles, standards, and guidelines; and

"(B) provide direction and oversee—

"(i) the review of the collection of information and the reduction of the information collection burden;

"(ii) agency dissemination of and public access to information;

"(iii) statistical activities;

"(iv) records management activities;

"(v) privacy, confidentiality, security, disclosure, and sharing of information; and

"(vi) the acquisition and use of information technology.

"(2) The authority of the Director under this chapter shall be exercised consistent with applicable law.

"(b) With respect to general information resources management policy, the Director shall—

"(1) develop and oversee the implementation of uniform information resources management policies, principles, standards, and guidelines;

"(2) foster greater sharing, dissemination, and access to public information, including through—

"(A) the use of the Government Information Locator Service; and

"(B) the development and utilization of common standards for information collection, storage, processing and communication, including standards for security, interconnectivity and interoperability;

"(3) initiate and review proposals for changes in legislation, regulations, and agency procedures to improve information resources management practices;

"(4) oversee the development and implementation of best practices in information resources management, including training; and

"(5) oversee agency integration of program and management functions with information resources management functions.

"(c) With respect to the collection of information and the control of paperwork, the Director shall—

"(1) review proposed agency collections of information, and in accordance with section 3508, determine whether the collection of information by or for an agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

"(2) coordinate the review of the collection of information associated with Federal procurement and acquisition by the Office of Information and Regulatory Affairs with the Office of Federal Procurement Policy, with particular emphasis on applying information technology to improve the efficiency and effectiveness of Federal procurement and acquisition and to reduce information collection burdens on the public;

"(3) minimize the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected;

"(4) maximize the practical utility of and public benefit from information collected by or for the Federal Government; and

"(5) establish and oversee standards and guidelines by which agencies are to estimate the burden to comply with a proposed collection of information.

"(d) With respect to information dissemination, the Director shall develop and oversee the implementation of policies, principles, standards, and guidelines to—

"(1) apply to Federal agency dissemination of public information, regardless of the form or format in which such information is disseminated; and

"(2) promote public access to public information and fulfill the purposes of this chapter, including through the effective use of information technology.

"(e) With respect to statistical policy and coordination, the Director shall—

"(1) coordinate the activities of the Federal statistical system to ensure—

"(A) the efficiency and effectiveness of the system; and

"(B) the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes;

"(2) ensure that budget proposals of agencies are consistent with system-wide priorities for maintaining and improving the quality of Federal statistics and prepare an annual report on statistical program funding;

"(3) develop and oversee the implementation of Governmentwide policies, principles, standards, and guidelines concerning—

"(A) statistical collection procedures and methods;

"(B) statistical data classification;

"(C) statistical information presentation and dissemination;

"(D) timely release of statistical data; and

"(E) such statistical data sources as may be required for the administration of Federal programs;

"(4) evaluate statistical program performance and agency compliance with Governmentwide policies, principles, standards and guidelines;

"(5) promote the sharing of information collected for statistical purposes consistent with privacy rights and confidentiality pledges;

"(6) coordinate the participation of the United States in international statistical activities, including the development of comparable statistics;

"(7) appoint a chief statistician who is a trained and experienced professional statistician to carry out the functions described under this subsection;

"(8) establish an Interagency Council on Statistical Policy to advise and assist the Director in carrying out the functions under this subsection that shall—

"(A) be headed by the chief statistician; and

"(B) consist of—

"(i) the heads of the major statistical programs; and

"(ii) representatives of other statistical agencies under rotating membership; and

"(9) provide opportunities for training in statistical policy functions to employees of the Federal Government under which—

"(A) each trainee shall be selected at the discretion of the Director based on agency requests and shall serve under the chief statistician for at least 6 months and not more than 1 year; and

"(B) all costs of the training shall be paid by the agency requesting training.

"(f) With respect to records management, the Director shall—

"(1) provide advice and assistance to the Archivist of the United States and the Administrator of General Services to promote coordination in the administration of chapters 29, 31, and 33 of this title with the information resources management policies, principles, standards, and guidelines established under this chapter;

"(2) review compliance by agencies with—

"(A) the requirements of chapters 29, 31, and 33 of this title; and

"(B) regulations promulgated by the Archivist of the United States and the Administrator of General Services; and

"(3) oversee the application of records management policies, principles, standards, and guidelines, including requirements for archiving information maintained in electronic format, in the planning and design of information systems.

"(g) With respect to privacy and security, the Director shall—

"(1) develop and oversee the implementation of policies, principles, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for agencies;

"(2) oversee and coordinate compliance with sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

"(3) require Federal agencies, consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), to identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

"(h) With respect to Federal information technology, the Director shall—

"(1) in consultation with the Director of the National Institute of Standards and Technology and the Administrator of General Services—

"(A) develop and oversee the implementation of policies, principles, standards, and guidelines for information technology functions and activities of the Federal Government, including periodic evaluations of major information systems; and

"(B) oversee the development and implementation of standards under section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d));

"(2) monitor the effectiveness of, and compliance with, directives issued under sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759);

"(3) coordinate the development and review by the Office of Information and Regulatory Affairs of policy associated with Federal procurement and acquisition of information technology with the Office of Federal Procurement Policy;

"(4) ensure, through the review of agency budget proposals, information resources management plans and other means—

"(A) agency integration of information resources management plans, program plans and budgets for acquisition and use of information technology; and

"(B) the efficiency and effectiveness of inter-agency information technology initiatives to improve agency performance and the accomplishment of agency missions; and

"(5) promote the use of information technology by the Federal Government to improve the productivity, efficiency, and effectiveness of Federal programs, including through dissemination of public information and the reduction of information collection burdens on the public.

"§ 3505. Assignment of tasks and deadlines

"In carrying out the functions under this chapter, the Director shall—

"(1) in consultation with agency heads, set an annual Governmentwide goal for the reduction of information collection burdens by at least five percent, and set annual agency goals to—

"(A) reduce information collection burdens imposed on the public that—

"(i) represent the maximum practicable opportunity in each agency; and

"(ii) are consistent with improving agency management of the process for the review of collections of information established under section 3506(c); and

"(B) improve information resources management in ways that increase the productivity, efficiency and effectiveness of Federal programs, including service delivery to the public;

"(2) with selected agencies and non-Federal entities on a voluntary basis, conduct pilot projects to test alternative policies, practices, regulations, and procedures to fulfill the purposes of this chapter, particularly with regard to minimizing the Federal information collection burden; and

"(3) in consultation with the Administrator of General Services, the Director of the National Institute of Standards and Technology, the Archivist of the United States, and the Director of the Office of Personnel Management, develop and maintain a Governmentwide strategic plan for information resources management, that shall include—

"(A) a description of the objectives and the means by which the Federal Government shall apply information resources to improve agency and program performance;

"(B) plans for—

"(i) reducing information burdens on the public, including reducing such burdens through the elimination of duplication and meeting shared data needs with shared resources;

"(ii) enhancing public access to and dissemination of, information, using electronic and other formats; and

"(iii) meeting the information technology needs of the Federal Government in accordance with the purposes of this chapter; and

"(C) a description of progress in applying information resources management to improve agency performance and the accomplishment of missions.

"§ 3506. Federal agency responsibilities

"(a)(1) The head of each agency shall be responsible for—

"(A) carrying out the agency's information resources management activities to improve agency productivity, efficiency, and effectiveness; and

"(B) complying with the requirements of this chapter and related policies established by the Director.

"(2)(A) Except as provided under subparagraph (B), the head of each agency shall designate a senior official who shall report directly to such agency head to carry out the responsibilities of the agency under this chapter.

"(B) The Secretary of the Department of Defense and the Secretary of each military department may each designate senior officials who shall report directly to such Secretary to carry out the responsibilities of the department under this chapter. If more than one official is designated, the respective duties of the officials shall be clearly delineated.

"(3) The senior official designated under paragraph (2) shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under this chapter, including the reduction of information collection burdens on the public. The senior official and employees of such office shall be selected with special attention to the professional qualifications required to administer the functions described under this chapter.

"(4) Each agency program official shall be responsible and accountable for information resources assigned to and supporting the programs under such official. In consultation with the senior official designated under paragraph (2) and the agency Chief Financial Officer (or comparable official), each agency program official shall define program information needs and develop strategies, systems, and capabilities to meet those needs.

"(b) With respect to general information resources management, each agency shall—

"(1) manage information resources to—

"(A) reduce information collection burdens on the public;

"(B) increase program efficiency and effectiveness; and

"(C) improve the integrity, quality, and utility of information to all users within and outside the agency, including capabilities for ensuring dissemination of public information, public access to government information, and protections for privacy and security;

"(2) in accordance with guidance by the Director, develop and maintain a strategic information resources management plan that shall describe how information resources management activities help accomplish agency missions;

"(3) develop and maintain an ongoing process to—

"(A) ensure that information resources management operations and decisions are integrated with organizational planning, budget, financial management, human resources management, and program decisions;

"(B) in cooperation with the agency Chief Financial Officer (or comparable official), develop a full and accurate accounting of information technology expenditures, related expenses, and results; and

"(C) establish goals for improving information resources management's contribution to program productivity, efficiency, and effectiveness, methods for measuring progress towards those goals, and clear roles and responsibilities for achieving those goals;

"(4) in consultation with the Director, the Administrator of General Services, and the Archivist of the United States, maintain a current and complete inventory of the agency's information resources, including directories necessary to fulfill the requirements of section 3511 of this chapter; and

"(5) in consultation with the Director and the Director of the Office of Personnel Management, conduct formal training programs to educate agency program and management officials about information resources management.

"(c) With respect to the collection of information and the control of paperwork, each agency shall—

"(1) establish a process within the office headed by the official designated under subsection (a), that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this chapter, to—

"(A) review each collection of information before submission to the Director for review under this chapter, including—

"(i) an evaluation of the need for the collection of information;

"(ii) a functional description of the information to be collected;

"(iii) a plan for the collection of the information;

"(iv) a specific, objectively supported estimate of burden;

"(v) a test of the collection of information through a pilot program, if appropriate; and

"(vi) a plan for the efficient and effective management and use of the information to be collected, including necessary resources;

"(B) ensure that each information collection—

"(i) is inventoried, displays a control number and, if appropriate, an expiration date;

"(ii) indicates the collection is in accordance with the clearance requirements of section 3507; and

"(iii) contains a statement to inform the person receiving the collection of information—

"(I) the reasons the information is being collected;

"(II) the way such information is to be used;

"(III) an estimate, to the extent practicable, of the burden of the collection; and

"(IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and

"(C) assess the information collection burden of proposed legislation affecting the agency;

"(2)(A) except as provided under subparagraph (B), provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comment to—

"(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

"(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

"(iii) enhance the quality, utility, and clarity of the information to be collected; and

"(iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

"(B) for any proposed collection of information contained in a proposed rule (to be reviewed by the Director under section 3507(d)), provide notice and comment through the notice of proposed rulemaking for the proposed rule and such notice shall have the same purposes specified under subparagraph (A) (i) through (iv); and

"(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507—

"(A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;

"(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

"(C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined under section 601(6) of title 5, the use of such techniques as—

"(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

"(ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or

"(iii) an exemption from coverage of the collection of information, or any part thereof;

"(D) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

"(E) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

"(F) contains the statement required under paragraph (1)(B)(iii);

"(G) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

"(H) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

"(I) to the maximum extent practicable, uses information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

"(d) With respect to information dissemination, each agency shall—

"(1) ensure that the public has timely and equitable access to the agency's public information, including ensuring such access through—

"(A) encouraging a diversity of public and private sources for information based on government public information, and

"(B) agency dissemination of public information in an efficient, effective, and economical manner;

"(2) regularly solicit and consider public input on the agency's information dissemination activities; and

"(3) not, except where specifically authorized by statute—

"(A) establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public;

"(B) restrict or regulate the use, resale, or redissemination of public information by the public;

"(C) charge fees or royalties for resale or redissemination of public information; or

"(D) establish user fees for public information that exceed the cost of dissemination.

"(e) With respect to statistical policy and coordination, each agency shall—

"(1) ensure the relevance, accuracy, timeliness, integrity, and objectivity of information collected or created for statistical purposes;

"(2) inform respondents fully and accurately about the sponsors, purposes, and uses of statistical surveys and studies;

"(3) protect respondents' privacy and ensure that disclosure policies fully honor pledges of confidentiality;

"(4) observe Federal standards and practices for data collection, analysis, documentation, sharing, and dissemination of information;

"(5) ensure the timely publication of the results of statistical surveys and studies, including information about the quality and limitations of the surveys and studies; and

"(6) make data available to statistical agencies and readily accessible to the public.

"(f) With respect to records management, each agency shall implement and enforce applicable policies and procedures, including requirements for archiving information maintained in electronic format, particularly in the planning, design and operation of information systems.

"(g) With respect to privacy and security, each agency shall—

"(1) implement and enforce applicable policies, procedures, standards, and guidelines on privacy, confidentiality, security, disclosure and sharing of information collected or maintained by or for the agency;

"(2) assume responsibility and accountability for compliance with and coordinated management of sections 552 and 552a of title 5, the Computer Security Act of 1987 (40 U.S.C. 759 note), and related information management laws; and

"(3) consistent with the Computer Security Act of 1987 (40 U.S.C. 759 note), identify and afford security protections commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of information collected or maintained by or on behalf of an agency.

"(h) With respect to Federal information technology, each agency shall—

"(1) implement and enforce applicable Governmentwide and agency information technology management policies, principles, standards, and guidelines;

"(2) assume responsibility and accountability for information technology investments;

"(3) promote the use of information technology by the agency to improve the productivity, efficiency, and effectiveness of agency programs, including the reduction of information collection burdens on the public and improved dissemination of public information;

"(4) propose changes in legislation, regulations, and agency procedures to improve information technology practices, including changes that improve the ability of the agency to use technology to reduce burden; and

"(5) ensure responsibility for maximizing the value and assessing and managing the risks of major information systems initiatives through a process that is—

"(A) integrated with budget, financial, and program management decisions; and

"(B) used to select, control, and evaluate the results of major information systems initiatives.

"§3507. Public information collection activities; submission to Director; approval and delegation

"(a) An agency shall not conduct or sponsor the collection of information unless in advance of the adoption or revision of the collection of information—

"(1) the agency has—

"(A) conducted the review established under section 3506(c)(1);

"(B) evaluated the public comments received under section 3506(c)(2);

"(C) submitted to the Director the certification required under section 3506(c)(3), the proposed collection of information, copies of pertinent statutory authority, regulations, and other related materials as the Director may specify; and

"(D) published a notice in the Federal Register—

"(i) stating that the agency has made such submission; and

"(ii) setting forth—

"(I) a title for the collection of information;

"(II) a summary of the collection of information;

"(III) a brief description of the need for the information and the proposed use of the information;

"(IV) a description of the likely respondents and proposed frequency of response to the collection of information;

"(V) an estimate of the burden that shall result from the collection of information; and

"(VI) notice that comments may be submitted to the agency and Director;

"(2) the Director has approved the proposed collection of information or approval has been inferred, under the provisions of this section; and

"(3) the agency has obtained from the Director a control number to be displayed upon the collection of information.

"(b) The Director shall provide at least 30 days for public comment prior to making a decision under subsection (c), (d), or (h), except as provided under subsection (j).

"(c)(1) For any proposed collection of information not contained in a proposed rule, the Director shall notify the agency involved of the decision to approve or disapprove the proposed collection of information.

"(2) The Director shall provide the notification under paragraph (1), within 60 days after receipt or publication of the notice under subsection (a)(1)(D), whichever is later.

"(3) If the Director does not notify the agency of a denial or approval within the 60-day period described under paragraph (2)—

"(A) the approval may be inferred;

"(B) a control number shall be assigned without further delay; and

"(C) the agency may collect the information for not more than 2 years.

"(d)(1) For any proposed collection of information contained in a proposed rule—

"(A) as soon as practicable, but no later than the date of publication of a notice of proposed rulemaking in the Federal Register, each agency shall forward to the Director a copy of any proposed rule which contains a collection of information and any information requested by the Director necessary to make the determination required under this subsection; and

"(B) within 60 days after the notice of proposed rulemaking is published in the Federal Register, the Director may file public comments pursuant to the standards set forth in section 3508 on the collection of information contained in the proposed rule;

"(2) When a final rule is published in the Federal Register, the agency shall explain—

"(A) how any collection of information contained in the final rule responds to the comments, if any, filed by the Director or the public; or

"(B) the reasons such comments were rejected.

"(3) If the Director has received notice and failed to comment on an agency rule within 60 days after the notice of proposed rulemaking, the Director may not disapprove any collection of information specifically contained in an agency rule.

"(4) No provision in this section shall be construed to prevent the Director, in the Director's discretion—

"(A) from disapproving any collection of information which was not specifically required by an agency rule;

"(B) from disapproving any collection of information contained in an agency rule, if the agency failed to comply with the requirements of paragraph (1) of this subsection;

"(C) from disapproving any collection of information contained in a final agency rule, if the Director finds within 60 days after the publication of the final rule that the agency's response to the Director's comments filed under paragraph (2) of this subsection was unreasonable; or

"(D) from disapproving any collection of information contained in a final rule, if—

"(i) the Director determines that the agency has substantially modified in the final rule the collection of information contained in the proposed rule; and

"(ii) the agency has not given the Director the information required under paragraph (1) with respect to the modified collection of information, at least 60 days before the issuance of the final rule.

"(5) This subsection shall apply only when an agency publishes a notice of proposed rulemaking and requests public comments.

"(6) The decision by the Director to approve or not act upon a collection of information contained in an agency rule shall not be subject to judicial review.

"(e)(1) Any decision by the Director under subsection (c), (d), (h), or (j) to disapprove a collection of information, or to instruct the agency to make substantive or material change to a collection of information, shall be publicly available and include an explanation of the reasons for such decision.

"(2) Any written communication between the Office of the Director, the Administrator of the Office of Information and Regulatory Affairs, or any employee of the Office of Information and Regulatory Affairs and an agency or person not employed by the Federal Government concerning a proposed collection of information shall be made available to the public.

"(3) This subsection shall not require the disclosure of—

"(A) any information which is protected at all times by procedures established for information which has been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; or

"(B) any communication relating to a collection of information which has not been approved under this chapter, the disclosure of which could lead to retaliation or discrimination against the communicator.

"(f)(1) An independent regulatory agency which is administered by 2 or more members of a commission, board, or similar body, may by majority vote void—

"(A) any disapproval by the Director, in whole or in part, of a proposed collection of information of that agency; or

"(B) an exercise of authority under subsection (d) of section 3507 concerning that agency.

"(2) The agency shall certify each vote to void such disapproval or exercise to the Director, and explain the reasons for such vote. The Director shall without further delay assign a control number to such collection of information, and such vote to void the disapproval or exercise shall be valid for a period of 3 years.

"(g) The Director may not approve a collection of information for a period in excess of 3 years.

"(h)(1) If an agency decides to seek extension of the Director's approval granted for a currently approved collection of information, the agency shall—

"(A) conduct the review established under section 3506(c), including the seeking of comment from the public on the continued need for, and burden imposed by the collection of information; and

"(B) after having made a reasonable effort to seek public comment, but no later than 60 days before the expiration date of the control number assigned by the Director for the currently approved collection of information, submit the collection of information for review and approval under this section, which shall include an explanation of how the agency has used the information that it has collected.

"(2) If under the provisions of this section, the Director disapproves a collection of information contained in an existing rule, or recommends or instructs the agency to make a substantive or material change to a collection of information contained in an existing rule, the Director shall—

"(A) publish an explanation thereof in the Federal Register; and

"(B) instruct the agency to undertake a rulemaking within a reasonable time limited to consideration of changes to the collection of information contained in the rule and thereafter to submit the collection of information for approval or disapproval under this chapter.

"(3) An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director, unless the modification has been submitted to the Director for review and approval under this chapter.

"(i)(1) If the Director finds that a senior official of an agency designated under section 3506(a) is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved and has sufficient resources to carry out this responsibility effectively, the Director may, by rule in accordance with the notice and comment provisions of chapter 5 of title 5, United States Code, delegate to such official the authority to approve proposed collections of information in specific program areas, for specific purposes, or for all agency purposes.

"(2) A delegation by the Director under this section shall not preclude the Director from reviewing individual collections of information if the Director determines that circumstances warrant such a review. The Director shall retain authority to revoke such delegations, both in general and with regard to any specific matter. In acting for the Director, any official to whom approval authority has been delegated under this section shall comply fully with the rules and regulations promulgated by the Director.

"(j)(1) The agency head may request the Director to authorize a collection of information, if an agency head determines that—

"(A) a collection of information—

"(i) is needed prior to the expiration of time periods established under this chapter; and

"(ii) is essential to the mission of the agency; and

"(B) the agency cannot reasonably comply with the provisions of this chapter because—

"(i) public harm is reasonably likely to result if normal clearance procedures are followed;

"(ii) an unanticipated event has occurred; or

"(iii) the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

"(2) The Director shall approve or disapprove any such authorization request within the time requested by the agency head and, if approved, shall assign the collection of information a control number. Any collection of information conducted under this subsection may be conducted without compliance with the provisions of this chapter for a maximum of 90 days after the date on which the Director received the request to authorize such collection.

"§ 3508. Determination of necessity for information; hearing

"Before approving a proposed collection of information, the Director shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent that the Director determines that the collection of information by an agency is unnecessary for the proper performance of the functions of the agency, for any reason, the agency may not engage in the collection of information.

"§ 3509. Designation of central collection agency

"The Director may designate a central collection agency to obtain information for two or more agencies if the Director determines that the needs of such agencies for information will be adequately served by a single collection agency, and such sharing of data is not inconsistent with applicable law. In such cases the Director shall prescribe (with reference to the collection of information) the duties and functions of the collection agency so designated and of the agencies for which it is to act as agent (including reimbursement for costs). While the designation is in effect, an agency covered by the designation may not obtain for itself information for the agency which is the duty of the collection agency to obtain. The Director may modify the designation from time to time as circumstances require. The authority to designate under this section is subject to the provisions of section 3507(f) of this chapter.

"§ 3510. Cooperation of agencies in making information available

"(a) The Director may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law.

"(b)(1) If information obtained by an agency is released by that agency to another agency, all the provisions of law (including penalties which relate to the unlawful disclosure of information) apply to the officers and employees of the agency to which information is released to the same extent and in the same manner as the provisions apply to the officers and employees of the agency which originally obtained the information.

"(2) The officers and employees of the agency to which the information is released, in addition, shall be subject to the same provisions of law, including penalties, relating to the unlawful disclosure of information as if the information had been collected directly by that agency.

"§ 3511. Establishment and operation of Government Information Locator Service

"(a) In order to assist agencies and the public in locating information and to promote information sharing and equitable access by the public, the Director shall—

"(1) cause to be established and maintained a distributed agency-based electronic Government Information Locator Service (hereafter in this section referred to as the 'Service'), which shall identify the major information systems, holdings, and dissemination products of each agency;

"(2) require each agency to establish and maintain an agency information locator service as a component of, and to support the establishment and operation of the Service;

"(3) in cooperation with the Archivist of the United States, the Administrator of General Services, the Public Printer, and the Librarian of Congress, establish an interagency committee to advise the Secretary of Commerce on the development of technical standards for the Service to ensure compatibility, promote information sharing, and uniform access by the public;

"(4) consider public access and other user needs in the establishment and operation of the Service;

"(5) ensure the security and integrity of the Service, including measures to ensure that only information which is intended to be disclosed to the public is disclosed through the Service; and

"(6) periodically review the development and effectiveness of the Service and make recommendations for improvement, including other mechanisms for improving public access to Federal agency public information.

"(b) This section shall not apply to operational files as defined by the Central Intelligence Agency Information Act (50 U.S.C. 431 et seq.).

"§ 3512. Public protection

"Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to maintain, provide, or disclose information to or for any agency or person if the collection of information subject to this chapter—

"(1) does not display a valid control number assigned by the Director; or

"(2) fails to state that the person who is to respond to the collection of information is not required to comply unless such collection displays a valid control number.

"§ 3513. Director review of agency activities; reporting; agency response

"(a) In consultation with the Administrator of General Services, the Archivist of the United States, the Director of the National Institute of Standards and Technology, and the Director of the Office of Personnel Management, the Director shall periodically review selected agency information resources management activities to ascertain the efficiency and effectiveness of such activities to improve agency performance and the accomplishment of agency missions.

"(b) Each agency having an activity reviewed under subsection (a) shall, within 60 days after receipt of a report on the review, provide a written plan to the Director describing steps (including milestones) to—

"(1) be taken to address information resources management problems identified in the report; and

"(2) improve agency performance and the accomplishment of agency missions.

"§ 3514. Responsiveness to Congress

"(a)(1) The Director shall—

"(A) keep the Congress and congressional committees fully and currently informed of the major activities under this chapter; and

"(B) submit a report on such activities to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as the Director determines necessary.

"(2) The Director shall include in any such report a description of the extent to which agencies have—

"(A) reduced information collection burdens on the public, including—

"(i) a summary of accomplishments and planned initiatives to reduce collection of information burdens;

"(ii) a list of all violations of this chapter and of any rules, guidelines, policies, and procedures issued pursuant to this chapter; and

"(iii) a list of any increase in the collection of information burden, including the authority for each such collection;

"(B) improved the quality and utility of statistical information;

"(C) improved public access to Government information; and

"(D) improved program performance and the accomplishment of agency missions through information resources management.

"(b) The preparation of any report required by this section shall be based on performance results reported by the agencies and shall not increase the collection of information burden on persons outside the Federal Government.

"§ 3515. Administrative powers

"Upon the request of the Director, each agency (other than an independent regulatory agency) shall, to the extent practicable, make its services, personnel, and facilities available to the Director for the performance of functions under this chapter.

"§ 3516. Rules and regulations

"The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this chapter.

"§ 3517. Consultation with other agencies and the public

"(a) In developing information resources management policies, plans, rules, regulations, procedures, and guidelines and in reviewing collections of information, the Director shall provide interested agencies and persons early and meaningful opportunity to comment.

"(b) Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this chapter, a person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information—

"(1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and

"(2) take appropriate remedial action, if necessary.

"§ 3518. Effect on existing laws and regulations

"(a) Except as otherwise provided in this chapter, the authority of an agency under any other law to prescribe policies, rules, regulations, and procedures for Federal information resources management activities is subject to the authority of the Director under this chapter.

"(b) Nothing in this chapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

"(c)(1) Except as provided in paragraph (2), this chapter shall not apply to the collection of information—

"(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

"(B) during the conduct of—

"(i) a civil action to which the United States or any official or agency thereof is a party; or

"(ii) an administrative action or investigation involving an agency against specific individuals or entities;

"(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

"(D) during the conduct of intelligence activities as defined in section 3.4(e) of Executive Order No. 12333, issued December 4, 1981, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

"(2) This chapter applies to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

"(d) Nothing in this chapter shall be interpreted as increasing or decreasing the authority conferred by Public Law 89-306 on the Administrator of the General Services Administration, the Secretary of Commerce, or the Director of the Office of Management and Budget.

"(e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

"§ 3519. Access to information

"Under the conditions and procedures prescribed in section 716 of title 31, the Director and personnel in the Office of Information and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of the responsibilities of the Comptroller General. For the purpose of obtaining such information, the Comptroller General or representatives thereof shall have access to all books, documents, papers and records, regardless of form or format, of the Office.

"§ 3520. Authorization of appropriations

"(a) Subject to subsection (b), there are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this chapter, and for no other purpose, $8,000,000 for each of the fiscal years 1996, 1997, 1998, 1999, and 2000.

"(b)(1) No funds may be appropriated pursuant to subsection (a) unless such funds are appropriated in an appropriation Act (or continuing resolution) which separately and expressly states the amount appropriated pursuant to subsection (a) of this section.

"(2) No funds are authorized to be appropriated to the Office of Information and Regulatory Affairs, or to any other officer or administrative unit of the Office of Management and Budget, to carry out the provisions of this chapter, or to carry out any function under this chapter, for any fiscal year pursuant to any provision of law other than subsection (a) of this section.".

SEC. 103. PAPERWORK BURDEN REDUCTION INITIATIVE REGARDING THE QUARTERLY FINANCIAL REPORT PROGRAM AT THE BUREAU OF THE CENSUS.

(a) PAPERWORK BURDEN REDUCTION INITIATIVE REQUIRED.—As described in subsection (b), the Bureau of the Census within the Department of Commerce shall undertake a demonstration program to reduce the burden imposed on firms, especially small businesses, required to participate in the survey used to prepare the publication entitled "Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations".

(b) BURDEN REDUCTION INITIATIVES TO BE INCLUDED IN THE DEMONSTRATION PROGRAM.—The demonstration program required by subsection (a) shall include the following paperwork burden reduction initiatives:

(1) FURNISHING ASSISTANCE TO SMALL BUSINESS CONCERNS.—

(A) The Bureau of the Census shall furnish advice and similar assistance to ease the burden of a small business concern which is attempting to compile and furnish the business information required of firms participating in the survey.

(B) To facilitate the provision of the assistance described in subparagraph (A), a toll-free telephone number shall be established by the Bureau of the Census.

(2) VOLUNTARY PARTICIPATION BY CERTAIN BUSINESS CONCERNS.—

(A) A business concern may decline to participate in the survey, if the firm has—

(i) participated in the survey during the period of the demonstration program described under subsection (c) or has participated in the survey during any of the 24 calendar quarters previous to such period; and

(ii) assets of $50,000,000 or less at the time of being selected to participate in the survey for a subsequent time.

(B) A business concern may decline to participate in the survey, if the firm—

(i) has assets of greater than $50,000,000 but less than $100,000,000 at the time of selection; and

(ii) participated in the survey during the 8 calendar quarters immediately preceding the firm's selection to participate in the survey for an additional 8 calendar quarters.

(3) EXPANDED USE OF SAMPLING TECHNIQUES.—The Bureau of the Census shall use statistical sampling techniques to select firms having assets of $100,000,000 or less to participate in the survey.

(4) ADDITIONAL BURDEN REDUCTION TECHNIQUES.—The Director of the Bureau of the Budget may undertake such additional paperwork burden reduction initiatives with respect to the conduct of the survey as may be deemed appropriate by such officer.

(c) DURATION OF THE DEMONSTRATION PROGRAM.—The demonstration program required by subsection (a) shall commence on October 1, 1995, and terminate on the later of—

(1) September 30, 1998; or

(2) the date in the Act of Congress providing for authorization of appropriations for section 91 of title 13, United States Code, first enacted following the date of the enactment of this Act, that is September 30, of the last fiscal year providing such an authorization under such Act of Congress.

(d) DEFINITIONS.—For purposes of this section:

(1) The term "burden" shall have the meaning given that term by section 3502(2) of title 44, United States Code.

(2) The term "collection of information" shall have the meaning given that term by section 3502(3) of title 44, United States Code.

(3) The term "small business concern" means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant thereto.

(4) The term "survey" means the collection of information by the Bureau of the Census at the Department of Commerce pursuant to section 91 of title 13, United States Code, for the purpose of preparing the publication entitled "Quarterly Financial Report for Manufacturing, Mining, and Trade Corporations".

SEC. 104. OREGON OPTION PROPOSAL.

(a) FINDINGS.—The Senate finds that—

(1) Federal, State and local governments are dealing with increasingly complex problems which require the delivery of many kinds of social services at all levels of government;

(2) historically, Federal programs have addressed the Nation's problems by providing categorical assistance with detailed requirements relating to the use of funds which are often delivered by State and local governments;

(3) although the current approach is one method of service delivery, a number of problems exist in the current intergovernmental structure that impede effective delivery of vital services by State and local governments;

(4) it is more important than ever to provide programs that respond flexibly to the needs of the Nation's States and communities, reduce the barriers between programs that impede Federal, State and local governments' ability to effectively deliver services, encourage the Nation's Federal, State and local governments to be innovative in creating programs that meet the unique needs of the people in their communities while continuing to address national goals, and improve the accountability of all levels of government by better measuring government performance and better meeting the needs of service recipients;

(5) the State and local governments of Oregon have begun a pilot project, called the Oregon Option, that will utilize strategic planning and performance-based management that may provide new models for intergovernmental social service delivery;

(6) the Oregon Option is a prototype of a new intergovernmental relations system, and it has the potential to completely transform the relationships among Federal, State and local governments by creating a system of intergovernmental service delivery and funding that is based on measurable performance, customer satisfaction, prevention, flexibility, and service integration; and

(7) the Oregon Option has the potential to dramatically improve the quality of Federal, State and local services to Oregonians.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Oregon Option project has the potential to improve intergovernmental service delivery by shifting accountability from compliance to performance results and that the Federal Government should continue in its partnership with the State and local governments of Oregon to fully implement the Oregon Option.

SEC. 105. TERMINATION OF REPORTING REQUIREMENTS.

(a) TERMINATION.—

(1) IN GENERAL.—Subject to the provisions of paragraph (2), each provision of law requiring the submittal to Congress (or any committee of the Congress) of any annual, semiannual or other regular periodic reports specified on the list described under subsection (c) shall cease to be effective, with respect to that requirement, 5 years after the date of the enactment of this Act.

(2) EXCEPTION.—The provisions of paragraph (1) shall not apply to any report required under—

(A) the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95–452); or

(B) the Chief Financial Officers Act of 1990 (Public Law 101–576).

(b) IDENTIFICATION OF WASTEFUL REPORTS.—The President shall include in the first annual budget submitted pursuant to section 1105 of title 31, United States Code, after the date of enactment of this Act a list of reports that the President has determined are unnecessary or wasteful and the reasons for such determination.

(c) LIST OF REPORTS.—The list referred to under subsection (a) includes only the annual, semiannual, or other regular periodic reports on the list prepared by the Clerk of the House of Representatives for the first session of the One Hundred Third Congress under Clause 2 of Rule III of the Rules of the House of Representatives.

SEC. 106. EFFECTIVE DATE.

The provisions of this title and the amendments made by this title shall take effect on June 30, 1995.

TITLE II—FEDERAL REPORT ELIMINATION AND MODIFICATION

SEC. 201. SHORT TITLE.

This title may be cited as the "Federal Report Elimination and Modification Act of 1995".

SEC. 202. TABLE OF CONTENTS.

The table of contents for this title is as follows:

Sec. 201. Short title.
Sec. 202. Table of contents.

SUBTITLE I—DEPARTMENTS

CHAPTER 1—DEPARTMENT OF AGRICULTURE

Sec. 1011. Reports eliminated.
Sec. 1012. Reports modified.

CHAPTER 2—DEPARTMENT OF COMMERCE

Sec. 1021. Reports eliminated.
Sec. 1022. Reports modified.

CHAPTER 3—DEPARTMENT OF DEFENSE

Sec. 1031. Reports eliminated.

CHAPTER 4—DEPARTMENT OF EDUCATION

Sec. 1041. Reports eliminated.
Sec. 1042. Reports modified.

CHAPTER 5—DEPARTMENT OF ENERGY

Sec. 1051. Reports eliminated.
Sec. 1052. Reports modified.

CHAPTER 6—DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sec. 1061. Reports eliminated.
Sec. 1062. Reports modified.

CHAPTER 7—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec. 1071. Reports eliminated.
Sec. 1072. Reports modified.

CHAPTER 8—DEPARTMENT OF THE INTERIOR

Sec. 1081. Reports eliminated.
Sec. 1082. Reports modified.

CHAPTER 9—DEPARTMENT OF JUSTICE

Sec. 1091. Reports eliminated.

CHAPTER 10—DEPARTMENT OF LABOR

Sec. 1101. Reports eliminated.
Sec. 1102. Reports modified.

CHAPTER 11—DEPARTMENT OF STATE

Sec. 1111. Reports eliminated.

CHAPTER 12—DEPARTMENT OF TRANSPORTATION

Sec. 1121. Reports eliminated.
Sec. 1122. Reports modified.

CHAPTER 13—DEPARTMENT OF THE TREASURY

Sec. 1131. Reports eliminated.
Sec. 1132. Reports modified.

CHAPTER 14—DEPARTMENT OF VETERANS AFFAIRS

Sec. 1141. Reports eliminated.

SUBTITLE II—INDEPENDENT AGENCIES

CHAPTER 1—ACTION

Sec. 2011. Reports eliminated.

CHAPTER 2—ENVIRONMENTAL PROTECTION AGENCY

Sec. 2021. Reports eliminated.

CHAPTER 3—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sec. 2031. Reports modified.

CHAPTER 4—FEDERAL AVIATION ADMINISTRATION

Sec. 2041. Reports eliminated.

CHAPTER 5—FEDERAL COMMUNICATIONS COMMISSION

Sec. 2051. Reports eliminated.

CHAPTER 6—FEDERAL DEPOSIT INSURANCE CORPORATION

Sec. 2061. Reports eliminated.

CHAPTER 7—FEDERAL EMERGENCY MANAGEMENT AGENCY

Sec. 2071. Reports eliminated.

CHAPTER 8—FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sec. 2081. Reports eliminated.

CHAPTER 9—GENERAL SERVICES ADMINISTRATION

Sec. 2091. Reports eliminated.

CHAPTER 10—INTERSTATE COMMERCE COMMISSION

Sec. 2101. Reports eliminated.

CHAPTER 11—LEGAL SERVICES CORPORATION

Sec. 2111. Reports modified.

CHAPTER 12—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Sec. 2121. Reports eliminated.

CHAPTER 13—NATIONAL COUNCIL ON DISABILITY
Sec. 2131. Reports eliminated.
CHAPTER 14—NATIONAL SCIENCE FOUNDATION
Sec. 2141. Reports eliminated.
CHAPTER 15—NATIONAL TRANSPORTATION SAFETY BOARD
Sec. 2151. Reports modified.
CHAPTER 16—NEIGHBORHOOD REINVESTMENT CORPORATION
Sec. 2161. Reports eliminated.
CHAPTER 17—NUCLEAR REGULATORY COMMISSION
Sec. 2171. Reports modified.
CHAPTER 18—OFFICE OF PERSONNEL MANAGEMENT
Sec. 2181. Reports eliminated.
Sec. 2182. Reports modified.
CHAPTER 19—OFFICE OF THRIFT SUPERVISION
Sec. 2191. Reports modified.
CHAPTER 20—PANAMA CANAL COMMISSION
Sec. 2201. Reports eliminated.
CHAPTER 21—POSTAL SERVICE
Sec. 2211. Reports modified.
CHAPTER 22—RAILROAD RETIREMENT BOARD
Sec. 2221. Reports modified.
CHAPTER 23—THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD
Sec. 2231. Reports modified.
CHAPTER 24—UNITED STATES INFORMATION AGENCY
Sec. 2241. Reports eliminated.
SUBTITLE III—REPORTS BY ALL DEPARTMENTS AND AGENCIES
Sec. 3001. Reports eliminated.
Sec. 3002. Reports modified.
SUBTITLE IV—EFFECTIVE DATE
Sec. 4001. Effective date.

Subtitle I—Departments

CHAPTER 1—DEPARTMENT OF AGRICULTURE

SEC. 1011. REPORTS ELIMINATED.

(a) REPORT ON MONITORING AND EVALUATION.—Section 1246 of the Food Security Act of 1985 (16 U.S.C. 3846) is repealed.

(b) REPORT ON RETURN ON ASSETS.—Section 2512 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421b) is amended—

(1) in subsection (a), by striking "(a) IMPROVING" and all that follows through "FORECASTS.—"; and

(2) by striking subsection (b).

(c) REPORT ON FARM VALUE OF AGRICULTURAL PRODUCTS.—Section 2513 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421c) is repealed.

(d) REPORT ON ORIGIN OF EXPORTS OF PEANUTS.—Section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 958) is repealed.

(e) REPORT ON REPORTING OF IMPORTING FEES.—Section 407 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736a) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c) through (h) as subsections (b) through (g), respectively.

(f) REPORT ON AGRICULTURAL INFORMATION EXCHANGE WITH IRELAND.—Section 1420 of the Food Security Act of 1985 (Public Law 99–198; 99 Stat. 1551) is amended—

(1) in subsection (a), by striking "(a)"; and

(2) by striking subsection (b).

(g) REPORT ON POTATO INSPECTION.—Section 1704 of the Food Security Act of 1985 (Public Law 99–198; 7 U.S.C. 499n note) is amended by striking the second sentence.

(h) REPORT ON TRANSPORTATION OF FERTILIZER AND AGRICULTURAL CHEMICALS.—Section 2517 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 4077) is repealed.

(i) REPORT ON UNIFORM END-USE VALUE TESTS.—Section 307 of the Futures Trading Act of 1986 (Public Law 99–641; 7 U.S.C. 76 note) is amended by striking subsection (c).

(j) REPORT ON PROJECT AREAS WITH HIGH FOOD STAMP PAYMENT ERROR RATES.—Section 16(i) of the Food Stamp Act of 1977 (7 U.S.C. 2025(i)) is amended by striking paragraph (3).

(k) REPORT ON EFFECT OF EFAP DISPLACEMENT ON COMMERCIAL SALES.—Section 203C(a) of the Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by striking the last sentence.

(l) REPORT ON WIC EXPENDITURES AND PARTICIPATION LEVELS.—Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)) is amended—

(1) by striking paragraphs (8) and (9); and

(2) by redesignating paragraphs (10) and (11) as paragraphs (8) and (9), respectively.

(m) REPORT ON WIC MIGRANT SERVICES.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended by striking subsection (j).

(n) REPORT ON DEMONSTRATIONS INVOLVING INNOVATIVE HOUSING UNITS.—Section 506(b) of the Housing Act of 1949 (42 U.S.C. 1476(b)) is amended by striking the last sentence.

(o) REPORT ON ANNUAL UPWARD MOBILITY PROGRAM ACTIVITY.—Section 2(a)(6)(A) of the Act of June 20, 1936 (20 U.S.C. 107a(a)(6)(A)), is amended by striking "including upward mobility" and inserting "excluding upward mobility".

(p) REPORT ON LAND EXCHANGES IN COLUMBIA RIVER GORGE NATIONAL SCENIC AREA.—Section 9(d)(3) of the Columbia River Gorge National Scenic Area Act (16 U.S.C. 544g(d)(3)) is amended by striking the second sentence.

(q) REPORT ON INCOME AND EXPENDITURES OF CERTAIN LAND ACQUISITIONS.—Section 2(e) of Public Law 96–586 (94 Stat. 3382) is amended by striking the second sentence.

(r) REPORT ON SPECIAL AREA DESIGNATIONS.—Section 1506 of the Agriculture and Food Act of 1981 (16 U.S.C. 3415) is repealed.

(s) REPORT ON EVALUATION OF SPECIAL AREA DESIGNATIONS.—Section 1510 of the Agriculture and Food Act of 1981 (16 U.S.C. 3419) is repealed.

(t) REPORT ON AGRICULTURAL PRACTICES AND WATER RESOURCES DATA BASE DEVELOPMENT.—Section 1485 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5505) is amended—

(1) in subsection (a), by striking "(a) REPOSITORY.—"; and

(2) by striking subsection (b).

(u) REPORT ON PLANT GENOME MAPPING.—Section 1671 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5924) is amended—

(1) by striking subsection (g); and

(2) by redesignating subsection (h) as subsection (g).

(v) REPORT ON APPRAISAL OF PROPOSED BUDGET FOR FOOD AND AGRICULTURAL SCIENCES.—Section 1408(g) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123(g)) is amended—

(1) by striking paragraph (2); and

(2) by redesignating paragraph (3) as paragraph (2).

(w) REPORT ON ECONOMIC IMPACT OF ANIMAL DAMAGE ON AQUACULTURE INDUSTRY.—Section 1475(e) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3322(e)) is amended—

(1) in paragraph (1), by striking "(1)"; and

(2) by striking paragraph (2).

(x) REPORT ON AWARDS MADE BY THE NATIONAL RESEARCH INITIATIVE AND SPECIAL GRANTS.—Section 2 of the Act of August 4, 1965 (7 U.S.C. 450i), is amended—

(1) by striking subsection (l); and

(2) by redesignating subsection (m) as subsection (l).

(y) REPORT ON PAYMENTS MADE UNDER RESEARCH FACILITIES ACT.—Section 8 of the Research Facilities Act (7 U.S.C. 390i) is repealed.

(z) REPORT ON FINANCIAL AUDIT REVIEWS OF STATES WITH HIGH FOOD STAMP PARTICIPATION.—The first sentence of section 11(l) of the Food Stamp Act of 1977 (7 U.S.C. 2020(l)) is amended by striking ", and shall, upon completion of the audit, provide a report to Congress of its findings and recommendations within one hundred and eighty days".

(aa) REPORT ON RURAL TELEPHONE BANK.—Section 408(b)(3) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)(3)) is amended by striking out subparagraph (I) and redesignating subparagraph (J) as subparagraph (I).

SEC. 1012. REPORTS MODIFIED.

(a) REPORT ON ANIMAL WELFARE ENFORCEMENT.—The first sentence of section 25 of the Animal Welfare Act (7 U.S.C. 2155) is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(5) the information and recommendations described in section 11 of the Horse Protection Act of 1970 (15 U.S.C. 1830).".

(b) REPORT ON HORSE PROTECTION ENFORCEMENT.—Section 11 of the Horse Protection Act of 1970 (15 U.S.C. 1830) is amended by striking "On or before the expiration of thirty calendar months following the date of enactment of this Act, and every twelve calendar months thereafter, the Secretary shall submit to the Congress a report upon" and inserting the following: "As part of the report submitted by the Secretary under section 25 of the Animal Welfare Act (7 U.S.C. 2155), the Secretary shall include information on".

(c) REPORT ON AGRICULTURAL QUARANTINE INSPECTION FUND.—The Secretary of Agriculture shall not be required to submit a report to the appropriate committees of Congress on the status of the Agricultural Quarantine Inspection fund more frequently than annually.

(d) REPORT ON ESTIMATED EXPENDITURES UNDER FOOD STAMP PROGRAM.—The third sentence of section 18(a)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2027(a)(1)) is amended—

(1) by striking "by the fifteenth day of each month" and inserting "for each quarter or other appropriate period"; and

(2) by striking "the second preceding month's expenditure" and inserting "the expenditure for the quarter or other period".

(e) REPORT ON COMMODITY DISTRIBUTION.—Section 3(a)(3)(D) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100–237; 7 U.S.C. 612c note) is amended by striking "annually" and inserting "biennially".

(f) REPORT ON PRIORITIES FOR RESEARCH, EXTENSION, AND TEACHING.—Section 1407(f)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3122(f)(1)) is amended—

(1) in the paragraph heading, by striking "ANNUAL REPORT" and inserting "REPORT"; and

(2) by striking "Not later than June 30 of each year" and inserting "At such times as the Joint Council determines appropriate".

(g) 5-YEAR PLAN FOR FOOD AND AGRICULTURAL SCIENCES.—Section 1407(f)(2) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3122(f)(2)) is amended by striking the second sentence.

(h) REPORT ON EXAMINATION OF FEDERALLY SUPPORTED AGRICULTURAL RESEARCH AND EXTENSION PROGRAMS.—Section 1408(g)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123(g)(1)) is amended by inserting "may provide" before "a written report".

(i) REPORT ON EFFECTS OF FOREIGN OWNERSHIP OF AGRICULTURAL LAND.—Section 5(b) of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504(b)) is amended to read as follows:

"(b) An analysis and determination shall be made, and a report on the Secretary's findings and conclusions regarding such analysis and determination under subsection (a) shall be transmitted within 90 days after the end of—

"(1) the calendar year in which the Federal Report Elimination and Modification Act of 1995 is enacted; and

"(2) the calendar year which occurs every ten years thereafter.".

CHAPTER 2—DEPARTMENT OF COMMERCE

SEC. 1021. REPORTS ELIMINATED.

(a) REPORT ON VOTING REGISTRATION.—Section 207 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-5) is repealed.

(b) REPORT ON ESTIMATE OF SPECIAL AGRICULTURAL WORKERS.—Section 210A(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1161(b)(3)) is repealed.

(c) REPORT ON LONG RANGE PLAN FOR PUBLIC BROADCASTING.—Section 393A(b) of the Communications Act of 1934 (47 U.S.C. 393a(b)) is repealed.

(d) REPORT ON STATUS, ACTIVITIES, AND EFFECTIVENESS OF UNITED STATES COMMERCIAL CENTERS IN ASIA, LATIN AMERICA, AND AFRICA AND PROGRAM RECOMMENDATIONS.—Section 401(j) of the Jobs Through Exports Act of 1992 (15 U.S.C. 4723a(j)) is repealed.

(e) REPORT ON KUWAIT RECONSTRUCTION CONTRACTS.—Section 606(f) of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 is repealed.

(f) REPORT ON UNITED STATES-CANADA FREE TRADE AGREEMENT.—Section 409(a)(3)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) is amended to read as follows:

"(3) The United States members of the working group established under article 1907 of the Agreement shall consult regularly with the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and advisory committees established under section 135 of the Trade Act of 1974 regarding—

"(A) the issues being considered by the working group; and

"(B) as appropriate, the objectives and strategy of the United States in the negotiations.".

(g) REPORT ON ESTABLISHMENT OF AMERICAN BUSINESS CENTERS AND ON ACTIVITIES OF THE INDEPENDENT STATES BUSINESS AND AGRICULTURE ADVISORY COUNCIL.—Section 305 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5825) is repealed.

(h) REPORT ON FISHERMAN'S CONTINGENCY FUND REPORT.—Section 406 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1846) is repealed.

(i) REPORT ON USER FEES ON SHIPPERS.—Section 208 of the Water Resources Development Act of 1986 (33 U.S.C. 2236) is amended by—

(1) striking subsection (b); and

(2) redesignating subsections (c), (d), (e), and (f) as subsections (b), (c), (d), and (e), respectively.

SEC. 1022. REPORTS MODIFIED.

(a) REPORT ON FEDERAL TRADE PROMOTION STRATEGIC PLAN.—Section 2312(f) of the Export Enhancement Act of 1988 (15 U.S.C. 4727(f) is amended to read as follows:

"(f) REPORT TO THE CONGRESS.—The chairperson of the TPCC shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Foreign Affairs of the House of Representatives, not later than September 30, 1995, and annually thereafter, a report describing—

"(1) the strategic plan developed by the TPCC pursuant to subsection (c), the implementation of such plan, and any revisions thereto; and

"(2) the implementation of sections 303 and 304 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5823 and 5824) concerning funding for export promotion activities and the interagency working groups on energy of the TPCC.".

(b) REPORT ON EXPORT POLICY.—Section 2314(b)(1) of the Export Enhancement Act of 1988 (15 U.S.C. 4729(b)(1)) is amended—

(1) in subparagraph (E) by striking out "and" after the semicolon;

(2) in subparagraph (F) by striking out the period and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new subparagraphs:

"(G) the status, activities, and effectiveness of the United States commercial centers established under section 401 of the Jobs Through Exports Act of 1992 (15 U.S.C. 4723a);

"(H) the implementation of sections 301 and 302 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5821 and 5822) concerning American Business Centers and the Independent States Business and Agriculture Advisory Council;

"(I) the programs of other industrialized nations to assist their companies with their efforts to transact business in the independent states of the former Soviet Union; and

"(J) the trading practices of other Organization for Economic Cooperation and Development nations, as well as the pricing practices of transitional economies in the independent states, that may disadvantage United States companies.".

CHAPTER 3—DEPARTMENT OF DEFENSE

SEC. 1031. REPORTS ELIMINATED.

(a) REPORT ON SEMATECH.—Section 274 of The National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100–180; 101 Stat. 1071) is amended—

(1) in section 6 by striking out the item relating to section 274; and

(2) by striking out section 274.

(b) REPORT ON REVIEW OF DOCUMENTATION IN SUPPORT OF WAIVERS FOR PEOPLE ENGAGED IN ACQUISITION ACTIVITIES.—

(1) IN GENERAL.—Section 1208 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 1701 note) is repealed.

(2) CLERICAL AMENDMENT TO TABLE OF CONTENTS.—Section 2(b) of such Act is amended by striking out the item relating to section 1208.

CHAPTER 4—DEPARTMENT OF EDUCATION

SEC. 1041. REPORTS ELIMINATED.

(a) REPORT ON PERSONNEL REDUCTION AND ANNUAL LIMITATIONS.—Subsection (a) of section 403 of the Department of Education Organization Act (20 U.S.C. 3463(a)) is amended—

(1) in paragraph (2), by striking all beginning with "and shall," through the end thereof and inserting a period; and

(2) by redesignating paragraph (3) as paragraph (2).

(b) REPORT ON PROJECTS FUNDED BY THE FUND FOR THE IMPROVEMENT AND REFORM OF SCHOOLS AND TEACHING.—Section 3232 of the Fund for the Improvement and Reform of Schools and Teaching Act (20 U.S.C. 4832) is amended—

(1) in the section heading, by striking "**AND REPORTING**";

(2) in subsection (a), by striking "(a) EXEMPLARY PROJECTS.—"; and

(3) by striking subsections (b) and (c).

(c) REPORT ON THE SUCCESS OF FIRST ASSISTED PROGRAMS IN IMPROVING EDUCATION.—Section 6215 of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 4832 note) is amended—

(1) by amending the section heading to read as follows:

"**SEC. 6215. EXEMPLARY PROJECTS.**";

(2) in subsection (a), by striking "(a) EXEMPLARY PROJECTS.—"; and

(3) by striking subsections (b) and (c).

(d) REPORT ON SUPPORTED EMPLOYMENT ACTIVITIES.—Subsection (c) of section 311 of the Rehabilitation Act of 1973 (20 U.S.C. 777a(c) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(e) REPORT ON THE CLIENT ASSISTANCE PROGRAM.—Subsection (g) of section 112 of the Rehabilitation Act of 1973 (20 U.S.C. 732(g)) is amended—

(1) by striking paragraphs (4) and (5); and

(2) in paragraph (6), by striking "such report or for any other" and inserting "any".

(f) REPORT ON THE SUMMARY OF LOCAL EVALUATIONS OF COMMUNITY EDUCATION EMPLOYMENT CENTERS.—Section 370 of the Carl D. Perkins Vocational and Applied Technology Act (20 U.S.C. 2396h) is amended—

(1) in the section heading, by striking "**AND REPORT**";

(2) in subsection (a), by striking "(a) LOCAL EVALUATION.—"; and

(3) by striking subsection (b).

(g) REPORT ON THE ADMINISTRATION OF THE VOCATIONAL EDUCATION ACT OF 1917.—Section 18 of the Vocational Education Act of 1917 (20 U.S.C. 28) is repealed.

(h) REPORT BY THE INTERDEPARTMENTAL TASK FORCE ON COORDINATING VOCATIONAL EDUCATION AND RELATED PROGRAMS.—Subsection (d) of section 4 of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (20 U.S.C. 2303(d)) is repealed.

(i) REPORT ON THE EVALUATION OF THE GATEWAY GRANTS PROGRAM.—Subparagraph (B) of section 322(a)(3) of the Adult Education Act (20 U.S.C. 1203a(a)(3)(B)) is amended by striking "and report the results of such evaluation to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate".

(j) REPORT ON THE BILINGUAL VOCATIONAL TRAINING PROGRAM.—Paragraph (3) of section

441(e) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2441(e)(3)) is amended by striking the last sentence thereof.

(k) REPORT ON ADVISORY COUNCILS.—Section 448 of the General Education Provisions Act (20 U.S.C. 1233g) is repealed.

SEC. 1042. REPORTS MODIFIED.

(a) REPORT ON THE CONDITION OF BILINGUAL EDUCATION IN THE NATION.—Section 6213 of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 3303 note) is amended—

(1) in the section heading, by striking "**REPORT ON**" and inserting "**INFORMATION REGARDING**"; and

(2) by striking the matter preceding paragraph (1) and inserting "The Secretary shall collect data for program management and accountability purposes regarding—".

(b) REPORT TO CONGRESS ON THE STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT.—Subsection (b) of section 724 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11434(b)) is amended by striking paragraph (4) and the first paragraph (5) and inserting the following:

"(4) The Secretary shall prepare and submit a report to the appropriate committees of the Congress at the end of every other fiscal year. Such report shall—

"(A) evaluate the programs and activities assisted under this part; and

"(B) contain the information received from the States pursuant to section 722(d)(3).".

(c) REPORT TO GIVE NOTICE TO CONGRESS.—Subsection (d) of section 482 of the Higher Education Act of 1965 (20 U.S.C. 1089(d)) is amended—

(1) in the first sentence by striking "the items specified in the calendar have been completed and provide all relevant forms, rules, and instructions with such notice" and inserting "a deadline included in the calendar described in subsection (a) is not met"; and

(2) by striking the second sentence.

(d) ANNUAL REPORT ON ACTIVITIES UNDER THE REHABILITATION ACT OF 1973.—Section 13 of the Rehabilitation Act of 1973 (20 U.S.C. 712) is amended by striking "twenty" and inserting "eighty".

(e) REPORT TO THE CONGRESS REGARDING REHABILITATION TRAINING PROGRAMS.—The second sentence of section 302(c) of the Rehabilitation Act of 1973 (20 U.S.C. 774(c)) is amended by striking "simultaneously with the budget submission for the succeeding fiscal year for the Rehabilitation Services Administration" and inserting "by September 30 of each fiscal year".

(f) REPORT PREPARED BY THE DEPARTMENT OF THE INTERIOR ON INDIAN CHILDREN AND THE BILINGUAL EDUCATION ACT.—

(1) REPEAL.—Subsection (c) of section 7022 of the Bilingual Education Act (20 U.S.C. 3292) is repealed.

(2) ANNUAL REPORT.—Paragraph (3) of section 7051(b)(3) of the Bilingual Education Act (20 U.S.C. 3331(b)(3)) is amended—

(A) in subparagraph (D), by striking "and" after the semicolon;

(B) in subparagraph (E), by striking the period and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

"(F) the needs of the Indian children with respect to the purposes of this title in schools operated or funded by the Department of the Interior, including those tribes and local educational agencies receiving assistance under the Johnson-O'Malley Act (25 U.S.C. 452 et seq.); and

"(G) the extent to which the needs described in subparagraph (F) are being met by funds provided to such schools for educational purposes through the Secretary of the Interior.".

(g) ANNUAL EVALUATION REPORTS.—Section 417 of the General Education Provisions Act (20 U.S.C. 1226c) is amended—

(1) in the section heading, by striking "ANNUAL" and inserting "BIENNIAL"; and

(2) in subsection (a)—

(A) by striking "December" and inserting "March";

(B) by striking "each year," and inserting "every other year"; and

(C) by striking "an annual" and inserting "a biennial";

(3) in subparagraph (B), by striking "previous fiscal year" and inserting "2 preceding fiscal years"; and

(4) in subparagraph (C), by striking "previous fiscal year" and inserting "2 preceding fiscal years".

(h) ANNUAL AUDIT OF STUDENT LOAN INSURANCE FUND.—Section 432(b) of the Higher Education Act of 1965 (20 U.S.C. 1082(b)) is amended to read as follows:

"(b) FINANCIAL OPERATIONS RESPONSIBILITIES.—The Secretary shall, with respect to the financial operations arising by reason of this part prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31, United States Code. The transactions of the Secretary, including the settlement of insurance claims and of claims for payments pursuant to section 1078 of this title, and transactions related thereto and vouchers approved by the Secretary in connection with such transactions, shall be final and conclusive upon all accounting and other officers of the Government.".

CHAPTER 5—DEPARTMENT OF ENERGY

SEC. 1051. REPORTS ELIMINATED.

(a) REPORTS ON PERFORMANCE AND DISPOSAL OF ALTERNATIVE FUELED HEAVY DUTY VEHICLES.—Paragraphs (3) and (4) of section 400AA(b) of the Energy Policy and Conservation Act (42 U.S.C. 6374(b)(3), 6374(b)(4)) are repealed.

(b) REPORT ON WIND ENERGY SYSTEMS.—Section 9(a)(3) of the Wind Energy Systems Act of 1980 (42 U.S.C. 9208(a)(3)) is repealed.

(c) REPORT ON COMPREHENSIVE PROGRAM MANAGEMENT PLAN FOR OCEAN THERMAL ENERGY CONVERSION.—Section 3(d) of the Ocean Thermal Energy Conversion Research, Development, and Demonstration Act (42 U.S.C. 9002(d)) is repealed.

(d) REPORTS ON SUBSEABED DISPOSAL OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE.—Subsections (a) and (b)(5) of section 224 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10204(a), 10204(b)(5)) are repealed.

(e) REPORT ON FUEL USE ACT.—Sections 711(c)(2) and 806 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8421(c)(2), 8482) are repealed.

(f) REPORT ON TEST PROGRAM OF STORAGE OF REFINED PETROLEUM PRODUCTS WITHIN THE STRATEGIC PETROLEUM RESERVE.—Section 160(g)(7) of the Energy Policy and Conservation Act (42 U.S.C. 6240(g)(7)) is repealed.

(g) REPORT ON NAVAL PETROLEUM AND OIL SHALE RESERVES PRODUCTION.—Section 7434 of title 10, United States Code, is repealed.

(h) REPORT ON EFFECTS OF PRESIDENTIAL MESSAGE ESTABLISHING A NUCLEAR NONPROLIFERATION POLICY ON NUCLEAR RESEARCH AND DEVELOPMENT COOPERATIVE AGREEMENTS.—Section 203 of the Department of Energy Act of 1978—Civilian Applications (22 U.S.C. 2429 note) is repealed.

(i) REPORT ON WRITTEN AGREEMENTS REGARDING NUCLEAR WASTE REPOSITORY SITES.—Section 117(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10137(c)) is amended by striking the following: "If such written agreement is not completed prior to the expiration of such period, the Secretary shall report to the Congress in writing not later than 30 days after the expiration of such period on the status of negotiations to develop such agreement and the reasons why such agreement has not been completed. Prior to submission of such report to the Congress, the Secretary shall transmit such report to the Governor of such State or the governing body of such affected Indian tribe, as the case may be, for their review and comments. Such comments shall be included in such report prior to submission to the Congress.".

(j) QUARTERLY REPORT ON STRATEGIC PETROLEUM RESERVES.—Section 165(b) of the Energy Policy and Conservation Act (42 U.S.C. 6245(b)) is repealed.

(k) REPORT ON THE DEPARTMENT OF ENERGY.—The Federal Energy Administration Act of 1974 (15 U.S.C. 790d), is amended by striking out section 55.

SEC. 1052. REPORTS MODIFIED.

(a) REPORTS ON PROCESS-ORIENTED INDUSTRIAL ENERGY EFFICIENCY AND INDUSTRIAL INSULATION AUDIT GUIDELINES.—

(1) Section 132(d) of the Energy Policy Act of 1992 (42 U.S.C. 6349(d)) is amended—

(A) in the language preceding paragraph (1), by striking "Not later than 2 years after October 24, 1992, and annually thereafter" and inserting "Not later than October 24, 1995, and biennially thereafter";

(B) in paragraph (4), by striking "and" at the end;

(C) in paragraph (5), by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following new paragraph:

"(6) the information required under section 133(c).".

(2) Section 133(c) of the Energy Policy Act of 1992 (42 U.S.C. 6350(c)) is amended—

(A) by striking, "October 24, 1992" and inserting "October 24, 1995"; and

(B) by inserting "as part of the report required under section 132(d)," after "and biennially thereafter,".

(b) REPORT ON AGENCY REQUESTS FOR WAIVER FROM FEDERAL ENERGY MANAGEMENT REQUIREMENTS.—Section 543(b)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8253(b)(2)) is amended—

(1) by inserting ", as part of the report required under section 548(b)," after "the Secretary shall"; and

(2) by striking "promptly".

(c) REPORT ON THE PROGRESS, STATUS, ACTIVITIES, AND RESULTS OF PROGRAMS REGARDING THE PROCUREMENT AND IDENTIFICATION OF ENERGY EFFICIENT PRODUCTS.—Section 161(d) of the Energy Policy Act of 1992 (42 U.S.C. 8262g(d)) is amended by striking "of each year thereafter,"; and inserting "thereafter as part of the report required under section 548(b) of the National Energy Conservation Policy Act,".

(d) REPORT ON THE FEDERAL GOVERNMENT ENERGY MANAGEMENT PROGRAM.—Section 548(b) of the National Energy Conservation Policy Act (42 U.S.C. 8258(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking "and" after the semicolon;

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following new subparagraph:

"(B) the information required under section 543(b)(2); and";

(2) in paragraph (2), by striking "and" after the semicolon;

(3) in paragraph (3), by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following new paragraph:

"(4) the information required under section 161(d) of the Energy Policy Act of 1992.".

(e) Report on Alternative Fuel Use by Selected Federal Vehicles.—Section 400AA(b)(1)(B) of the Energy Policy and Conservation Act (42 U.S.C. 6374(b)(1)(B)) is amended by striking "and annually thereafter".

(f) Report on the Operation of State Energy Conservation Plans.—Section 365(c) of the Energy Policy and Conservation Act (42 U.S.C. 6325(c)) is amended by striking "report annually" and inserting ", as part of the report required under section 657 of the Department of Energy Organization Act, report".

(g) Report on the Department of Energy.—Section 657 of the Department of Energy Organization Act (42 U.S.C. 7267) is amended by inserting after "section 15 of the Federal Energy Administration Act of 1974," the following: "section 365(c) of the Energy Policy and Conservation Act, section 304(c) of the Nuclear Waste Policy Act of 1982,".

(h) Report on Cost-Effective Ways To Increase Hydropower Production at Federal Water Facilities.—Section 2404 of the Energy Policy Act of 1992 (16 U.S.C. 797 note) is amended—

(1) in subsection (a), by striking "The Secretary, in consultation with the Secretary of the Interior and the Secretary of the Army," and inserting "The Secretary of the Interior and the Secretary of the Army, in consultation with the Secretary,"; and

(2) in subsection (b), by striking "the Secretary" and inserting "the Secretary of the Interior, or the Secretary of the Army,".

(i) Report on Progress Meeting Fusion Energy Program Objectives.—Section 2114(c)(5) of the Energy Policy Act of 1992 (42 U.S.C. 13474(c)(5)) is amended by striking out the first sentence and inserting in lieu thereof "The President shall include in the budget submitted to the Congress each year under section 1105 of title 31, United States Code, a report prepared by the Secretary describing the progress made in meeting the program objectives, milestones, and schedules established in the management plan.".

(j) Report on High-Performance Computing Activities.—Section 203(d) of the High-Performance Computing Act of 1991 (15 U.S.C. 5523(d)) is amended to read as follows:

"(d) Reports.—Not later than 1 year after the date of enactment of this subsection, and thereafter as part of the report required under section 101(a)(3)(A), the Secretary of Energy shall report on activities taken to carry out this Act.".

(k) Report on National High-Performance Computing Program.—Section 101(a)(4) of the High-Performance Computing Act of 1991 (15 U.S.C. 5511(a)(4)) is amended—

(1) in subparagraph (D), by striking "and" at the end;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following new subparagraph:

"(E) include the report of the Secretary of Energy required by section 203(d); and".

(l) Report on Nuclear Waste Disposal Program.—Section 304(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10224(d)) is amended to read as follows:

"(d) Audit by GAO.—If requested by either House of the Congress (or any committee thereof) or if considered necessary by the Comptroller General, the General Accounting Office shall conduct an audit of the Office, in accord with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit a report on the results of each audit conducted under this section.".

CHAPTER 6—DEPARTMENT OF HEALTH AND HUMAN SERVICES

SEC. 1061. REPORTS ELIMINATED.

(a) Report on the Effects of Toxic Substances.—Subsection (c) of section 27 of the Toxic Substance Control Act (15 U.S.C. 2626(c)) is repealed.

(b) Report on Compliance With the Consumer-Patient Radiation Health and Safety Act.—Subsection (d) of section 981 of the Consumer-Patient Radiation Health and Safety Act of 1981 (42 U.S.C. 10006(d)) is repealed.

(c) Report on Evaluation of Title VIII Programs.—Section 859 of the Public Health Service Act (42 U.S.C. 298b–6) is repealed.

(d) Report on Model System for Payment for Outpatient Hospital Services.—Paragraph (6) of section 1135(d) of the Social Security Act (42 U.S.C. 1320b–5(d)(6)) is repealed.

(e) Report on Medicare Treatment of Uncompensated Care.—Paragraph (2) of section 603(a) of the Social Security Amendments of 1983 (42 U.S.C. 1395ww note) is repealed.

(f) Report on Program To Assist Homeless Individuals.—Subsection (d) of section 9117 of the Omnibus Budget Reconciliation Act of 1987 (42 U.S.C. 1383 note) is repealed.

SEC. 1062. REPORTS MODIFIED.

(a) Report of the Surgeon General.—Section 239 of the Public Health Service Act (42 U.S.C. 238h) is amended to read as follows:

"BIANNUAL REPORT

"Sec. 239. The Surgeon General shall transmit to the Secretary, for submission to the Congress, on January 1, 1995, and on January 1, every 2 years thereafter, a full report of the administration of the functions of the Service under this Act, including a detailed statement of receipts and disbursements.".

(b) Report on Health Service Research Activities.—Subsection (b) of section 494A of the Public Health Service Act (42 U.S.C. 289c–1(b)) is amended by striking "September 30, 1993, and annually thereafter" and inserting "December 30, 1993, and each December 30 thereafter".

(c) Report on Family Planning.—Section 1009(a) of the Public Health Service Act (42 U.S.C. 300a–7(a)) is amended by striking "each fiscal year" and inserting "fiscal year 1995, and each second fiscal year thereafter,".

(d) Report on the Status of Health Information and Health Promotion.—Section 1705(a) of the Public Health Service Act (42 U.S.C. 300u–4) is amended in the first sentence by striking out "annually" and inserting in lieu thereof "biannually".

CHAPTER 7—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 1071. REPORTS ELIMINATED.

(a) Reports on Public Housing Homeownership and Management Opportunities.—Section 21(f) of the United States Housing Act of 1937 (42 U.S.C. 1437s(f)) is repealed.

(b) Interim Report on Public Housing Mixed Income New Communities Strategy Demonstration.—Section 522(k)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437f note) is repealed.

(c) Biennial Report on Interstate Land Sales Registration Program.—Section 1421 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1719a) is repealed.

(d) Quarterly Report on Activities Under the Fair Housing Initiatives Program.—Section 561(e)(2) of the Housing and Community Development Act of 1987 (42 U.S.C. 3616a(e)(2)) is repealed.

(e) Collection of and Annual Report on Racial and Ethnic Data.—Section 562(b) of the Housing and Community Development Act of 1987 (42 U.S.C. 3608a(b)) is repealed.

SEC. 1072. REPORTS MODIFIED.

(a) Report on Homeownership of Multifamily Units Program.—Section 431 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12880) is amended—

(1) in the section heading, by striking "**ANNUAL**"; and

(2) by striking "The Secretary shall annually" and inserting "The Secretary shall no later than December 31, 1995,".

(b) Triennial Audit of Transactions of National Homeownership Foundation.—Section 107(g)(1) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701y(g)(1)) is amended by striking the last sentence.

(c) Report on Low-Income Home Energy Assistance Program.—Section 2605(h) of the Low-Income Home Energy Assistance Act of 1981 (Public Law 97–35; 42 U.S.C. 8624(h)), is amended by striking out "(but not less frequently than every three years),".

CHAPTER 8—DEPARTMENT OF THE INTERIOR

SEC. 1081. REPORTS ELIMINATED.

(a) Report on Audits in Federal Royalty Management System.—Section 17(j) of the Mineral Leasing Act (30 U.S.C. 226(j)) is amended by striking the last sentence.

(b) Report on Domestic Mining, Minerals, and Mineral Reclamation Industries.—Section 2 of the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) is amended by striking the last sentence.

(c) Report on Phase I of the High Plains States Groundwater Demonstration Project.—Section 3(d) of the High Plains States Groundwater Demonstration Program Act of 1983 (43 U.S.C. 390g–1(d)) is repealed.

(d) Report on Reclamation Reform Act Compliance.—Section 224(g) of the Reclamation Reform Act of 1982 (43 U.S.C. 390ww(g)) is amended by striking the last 2 sentences.

(e) Report on Geological Surveys Conducted Outside the Domain of the United States.—Section 2 of Public Law 87-626 (43 U.S.C. 31(c)) is repealed.

(f) Report on Recreation Use Fees.—Section 4(h) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(h)) is repealed.

(g) Report on Federal Surplus Real Property Public Benefit Discount Program for Parks and Recreation.—Section 203(o)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(o)(1)) is amended by striking "subsection (k) of this section and".

SEC. 1082. REPORTS MODIFIED.

(a) Report on Levels of the Ogallala Aquifer.—Title III of the Water Resources Research Act of 1984 (42 U.S.C. 10301 note) is amended—

(1) in section 306, by striking "annually" and inserting "biennially"; and

(2) in section 308, by striking "intervals of one year" and inserting "intervals of 2 years".

(b) Report on Effects of Outer Continental Shelf Leasing Activities on Human, Marine, and Coastal Environments.—Section 20(e) of the Outer Continental Shelf Lands Act (43 U.S.C. 1346(e)) is amended by striking "each fiscal year" and inserting "every 3 fiscal years".

CHAPTER 9—DEPARTMENT OF JUSTICE

SEC. 1091. REPORTS ELIMINATED.

(a) Report on Crime and Crime Prevention.—(1) Section 3126 of title 18, United States Code, is repealed.

(2) The table of sections for chapter 206 of title 18, United States Code, is amended by striking out the item relating to section 3126.

(b) Report on Drug Interdiction Task Force.—Section 3301(a)(1)(C) of the National Drug Interdiction Act of 1986 (21 U.S.C. 801 note; Public Law 99-570; 100 Stat. 3207-98) is repealed.

(c) Report on Equal Access to Justice.—Section 2412(d)(5) of title 28, United States Code, is repealed.

(d) Report on Federal Offender Characteristics.—Section 3624(f)(6) of title 18, United States Code, is repealed.

(e) Report on Costs of Death Penalty.—The Anti-Drug Abuse Act of 1988 (Public Law 100-690; 102 Stat. 4395; 21 U.S.C. 848 note) is amended by striking out section 7002.

(f) Mineral Lands Leasing Act.—Section 8B of the Mineral Lands Leasing Act (30 U.S.C. 208-2) is repealed.

(g) Small Business Act.—Subsection (c) of section 10 of the Small Business Act (15 U.S.C. 639(c)) is repealed.

(h) Energy Policy and Conservation Act.—Section 252(i) of the Energy Policy Conservation Act (42 U.S.C. 6272(i)) is amended by striking ", at least once every 6 months, a report" and inserting ", at such intervals as are appropriate based on significant developments and issues, reports".

(i) Report on Forfeiture Fund.—Section 524(c) of title 28, United States Code, is amended—

(1) by striking out paragraph (7); and

(2) by redesignating paragraphs (8) through (12) as paragraphs (7) through (11), respectively.

CHAPTER 10—DEPARTMENT OF LABOR

SEC. 1101. REPORTS ELIMINATED.

Section 408(d) of the Veterans Education and Employment Amendments of 1989 (38 U.S.C. 4100 note) is repealed.

SEC. 1102. REPORTS MODIFIED.

(a) Report on the Activities Conducted Under the Fair Labor Standards Act of 1938.—Section 4(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 204(d)(1)) is amended—

(1) by striking "annually" and inserting "biannually"; and

(2) by striking "preceding year" and inserting "preceding two years".

(b) Annual Report of the Office of Workers' Compensation.—

(1) Report on the administration of the longshore and harbor workers' compensation act.—Section 42 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 942) is amended—

(A) by striking "beginning of each" and all that follows through "Amendments of 1984" and inserting "end of each fiscal year"; and

(B) by adding the following new sentence at the end: "Such report shall include the annual reports required under section 426(b) of the Black Lung Benefits Act (30 U.S.C. 936(b)) and section 8194 of title 5, United States Code, and shall be identified as the Annual Report of the Office of Workers' Compensation Programs.".

(2) Report on the administration of the black lung benefits program.—Section 426(b) of the "Black Lung Benefits Act (30 U.S.C. 936(b)) is amended—

(A) by striking "Within" and all that follows through "Congress the" and inserting "At the end of each fiscal year, the"; and

(B) by adding the following new sentence at the end: "Each such report shall be prepared and submitted to Congress in accordance with the requirement with respect to submission under section 42 of the Longshore Harbor Workers' Compensation Act (33 U.S.C. 942).".

(3) Report on the administration of the federal employees' compensation act.—(A) Subchapter I of chapter 81 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 8152. Annual report

"The Secretary of Labor shall, at the end of each fiscal year, prepare a report with respect to the administration of this chapter. Such report shall be submitted to Congress in accordance with the requirement with respect to submission under section 42 of the Longshore Harbor Workers' Compensation Act (33 U.S.C. 942).".

(B) The table of sections for chapter 81 of title 5, United States Code, is amended by inserting after the item relating to section 8151 the following:

"8152. Annual report.".

(c) Annual Report on the Department of Labor.—Section 9 of an Act entitled "An Act to create a Department of Labor", approved March 4, 1913 (29 U.S.C. 560) is amended by striking "make a report" and all that follows through "the department" and inserting "prepare and submit to Congress the financial statements of the Department that have been audited".

CHAPTER 11—DEPARTMENT OF STATE

SEC. 1111. REPORTS ELIMINATED.

Section 8 of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2606) is amended by striking subsection (b), and redesignating subsection (c) as subsection (b).

CHAPTER 12—DEPARTMENT OF TRANSPORTATION

SEC. 1121. REPORTS ELIMINATED.

(a) Report on Deepwater Port Act of 1974.—Section 20 of the Deepwater Port Act of 1974 (33 U.S.C. 1519) is repealed.

(b) Report on Coast Guard Logistics Capabilities Critical to Mission Performance.—Sections 5(a)(2) and 5(b) of the Coast Guard Authorization Act of 1988 (10 U.S.C. 2304 note) are repealed.

(c) Report on Marine Plastic Pollution Research and Control Act of 1987.—Section 2201(a) of the Marine Plastic Pollution Research and Control Act of 1987 (33 U.S.C. 1902 note) is amended by striking "biennially" and inserting "triennially".

(d) Report on Applied Research and Technology Program.—Section 307(e)(11) of title 23, United States Code, is repealed.

(e) Reports on Highway Safety Improvement Programs.—

(1) Report on railway-highway crossings program.—Section 130(g) of title 23, United States Code, is amended by striking the last 3 sentences.

(2) Report on hazard elimination program.—Section 152(g) of title 23, United States Code, is amended by striking the last 3 sentences.

(f) Report on Highway Safety Performance—Fatal and Injury Accident Rates on Public Roads in the United States.—Section 207 of the Highway Safety Act of 1982 (23 U.S.C. 401 note) is repealed.

(g) Report on Highway Safety Program Standards.—Section 402(a) of title 23, United States Code, is amended by striking the fifth sentence.

(h) Report on Railroad-Highway Demonstration Projects.—Section 163(o) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 130 note) is repealed.

(i) Report on Uniform Relocation Act Amendments of 1987.—Section 103(b)(2) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4604(b)(2)) is repealed.

(j) Report on Federal Railroad Safety Act of 1970.—Section 211 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 440) is repealed.

(k) Report on Railroad Financial Assistance.—Section 308(d) of title 49, United States Code, is repealed.

(l) Report on Use of Advanced Technology by the Automobile Industry.—Section 305 of the Automotive Propulsion Research and Development Act of 1978 (15 U.S.C. 2704) is amended by striking the last sentence.

(m) Report on Obligations.—Section 4(b) of the Federal Transit Act (49 U.S.C. App. 1603(b)) is repealed.

(n) Report on Suspended Light Rail System Technology Pilot Project.—Section 26(c)(11) of the Federal Transit Act (49 U.S.C. App. 1622(c)(11)) is repealed.

(o) Report on Saint Lawrence Seaway Development Corporation.—Section 10(a) of the Act of May 13, 1954 (68 Stat. 96, chapter 201; 33 U.S.C. 989(a)) is repealed.

(p) Reports on Pipelines on Federal Lands.—Section 28(w)(4) of the Mineral Leasing Act (30 U.S.C. 185(w)(4)) is repealed.

(q) Reports on Pipeline Safety.—

(1) Report on natural gas pipeline safety act of 1968.—Section 16(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1683(a)) is amended in the first sentence by striking "of each year" and inserting "of each odd-numbered year".

(2) Report on hazardous liquid pipeline safety act of 1979.—Section 213 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2012) is amended in the first sentence by striking "of each year" and inserting "of each odd-numbered year".

SEC. 1122. REPORTS MODIFIED.

(a) Report on Major Acquisition Projects.—Section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (Public Law 102-338; 106 Stat. 1551) is amended—

(1) by striking "quarter of any fiscal year beginning after December 31, 1992, unless the Commandant of the Coast Guard first submits a quarterly report" and inserting "half of any fiscal year beginning after December 31, 1995, unless the Commandant of the Coast Guard first submits a semiannual report"; and

(2) by striking "quarter." and inserting "half-fiscal year.".

(b) Report on Oil Spill Liability Trust Fund.—The quarterly report regarding the Oil Spill Liability Trust Fund required to be submitted to the House and Senate Committees on Appropriations under House Report 101-892, accompanying the appropriations for the Coast Guard in the Department of Transportation and Related Agencies Appropriations Act, 1991, shall be submitted not later than 30 days after the end of the fiscal year in which this Act is enacted and annually thereafter.

(c) REPORT ON JOINT FEDERAL AND STATE MOTOR FUEL TAX COMPLIANCE PROJECT.—Section 1040(d)(1) of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 101 note) is amended by striking "September 30 and".

(d) REPORT ON PUBLIC TRANSPORTATION.—Section 308(e)(1) of title 49, United States Code, is amended by striking "January of each even-numbered year" and inserting "March 1995, March 1996, and March of each odd-numbered year thereafter".

(e) REPORT ON NATION'S HIGHWAYS AND BRIDGES.—Section 307(h) of title 23, United States Code, is amended by striking "January 1983, and in January of every second year thereafter" and inserting "March 1995, March 1996, and March of each odd-numbered year thereafter".

CHAPTER 13—DEPARTMENT OF THE TREASURY

SEC. 1131. REPORTS ELIMINATED.

(a) REPORT ON THE OPERATION AND STATUS OF STATE AND LOCAL GOVERNMENT FISCAL ASSISTANCE TRUST FUND.—Paragraph (8) of section 14001(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (31 U.S.C. 6701 note) is repealed.

(b) REPORT ON THE ANTIRECESSION PROVISIONS OF THE PUBLIC WORKS EMPLOYMENT ACT OF 1976.—Section 213 of the Public Works Employment Act of 1976 (42 U.S.C. 6733) is repealed.

(c) REPORT ON THE ASBESTOS TRUST FUND.—Paragraph (2) of section 5(c) of the Asbestos Hazard Emergency Response Act of 1986 (20 U.S.C. 4022(c)) is repealed.

SEC. 1132. REPORTS MODIFIED.

(a) REPORT ON THE WORLD CUP USA 1994 COMMEMORATIVE COIN ACT.—Subsection (g) of section 205 of the World Cup USA 1994 Commemorative Coin Act (31 U.S.C. 5112 note) is amended by striking "month" and inserting "calendar quarter".

(b) REPORTS ON VARIOUS FUNDS.—Subsection (b) of section 321 of title 31, United States Code, is amended—

(1) by striking "and" at the end of paragraph (5),

(2) by striking the period at the end of paragraph (6) and inserting "; and", and

(3) by adding after paragraph (6) the following new paragraph:

"(7) notwithstanding any other provision of law, fulfill any requirement to issue a report on the financial condition of any fund on the books of the Treasury by including the required information in a consolidated report, except that information with respect to a specific fund shall be separately reported if the Secretary determines that the consolidation of such information would result in an unwarranted delay in the availability of such information.".

(c) REPORT ON THE JAMES MADISON-BILL OF RIGHTS COMMEMORATIVE COIN ACT.—Subsection (c) of section 506 of the James Madison-Bill of Rights Commemorative Coin Act (31 U.S.C. 5112 note) is amended by striking out "month" and inserting in lieu thereof "calendar quarter".

CHAPTER 14—DEPARTMENT OF VETERANS AFFAIRS

SEC. 1141. REPORTS ELIMINATED.

(a) REPORT ON FURNISHING CONTRACT CARE SERVICES.—Section 1703(c) of title 38, United States Code, is repealed.

(b) REPORT ON ADEQUACY OF RATES FOR STATE HOME CARE.—Section 1741 of such title is amended—

(1) by striking out subsection (c); and

(2) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(c) REPORT ON LOANS TO PURCHASE MANUFACTURED HOMES.—Section 3712 of such title is amended—

(1) by striking out subsection (l); and

(2) by redesignating subsection (m) as subsection (l).

(d) REPORT ON LEVEL OF TREATMENT CAPACITY.—Section 8110(a)(3) of such title is amended—

(1) in subparagraph (A)—

(A) by striking out "(A)"; and

(B) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively; and

(2) by striking out subparagraph (B).

(e) REPORT ON COMPLIANCE WITH FUNDED PERSONNEL CODING.—

(1) REPEAL OF REPORT REQUIREMENT.—Section 8110(a)(4) of title 38, United States Code, is amended by striking out subparagraph (C).

(2) CONFORMING AMENDMENTS.—Section 8110(a)(4) of title 38, United States Code, is amended by—

(A) redesignating subparagraph (C) as subparagraph (D);

(B) in subparagraph (A), by striking out "subparagraph (D)" and inserting in lieu thereof "subparagraph (C)"; and

(C) in subparagraph (B), by striking out "subparagraph (D)" and inserting in lieu thereof "subparagraph (C)".

Subtitle II—Independent Agencies

CHAPTER 1—ACTION

SEC. 2011. REPORTS ELIMINATED.

Section 226 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5026) is amended—

(1) by striking subsection (b); and

(2) in subsection (a)—

(A) in paragraph (2), by striking "(2)" and inserting "(b)"; and

(B) in paragraph (1)—

(i) by striking "(1)(A)" and inserting "(1)"; and

(ii) in subparagraph (B)—

(I) by striking "(B)" and inserting "(2)"; and

(II) by striking "subparagraph (A)" and inserting "paragraph (1)".

CHAPTER 2—ENVIRONMENTAL PROTECTION AGENCY

SEC. 2021. REPORTS ELIMINATED.

(a) REPORT ON ALLOCATION OF WATER.—Section 102 of the Federal Water Pollution Control Act (33 U.S.C. 1252) is amended by striking subsection (d).

(b) REPORT ON VARIANCE REQUESTS.—Section 301(n) of the Federal Water Pollution Control Act (33 U.S.C. 1311(n)) is amended by striking paragraph (8).

(c) REPORT ON IMPLEMENTATION OF CLEAN LAKES PROJECTS.—Section 314(d) of the Federal Water Pollution Control Act (33 U.S.C. 1324(d)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(d) REPORT ON USE OF MUNICIPAL SECONDARY EFFLUENT AND SLUDGE.—Section 516 of the Federal Water Pollution Control Act (33 U.S.C. 1375) (as amended by subsection (g)) is further amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(e) REPORT ON CERTAIN WATER QUALITY STANDARDS AND PERMITS.—Section 404 of the Water Quality Act of 1987 (Public Law 100-4; 33 U.S.C. 1375 note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(f) REPORT ON CLASS V WELLS.—Section 1426 of title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act") (42 U.S.C. 300h-5) is amended—

(1) in subsection (a), by striking "(a) MONITORING METHODS.—"; and

(2) by striking subsection (b).

(g) REPORT ON SOLE SOURCE AQUIFER DEMONSTRATION PROGRAM.—Section 1427 of title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act") (42 U.S.C. 300h-6) is amended—

(1) by striking subsection (l); and

(2) by redesignating subsections (m) and (n) as subsections (l) and (m), respectively.

(h) REPORT ON SUPPLY OF SAFE DRINKING WATER.—Section 1442 of title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act") (42 U.S.C. 300h-6) is amended—

(1) by striking subsection (c);

(2) by redesignating subsection (d) as subsection (c); and

(3) by redesignating subsections (f) and (g) as subsections (d) and (e), respectively.

(i) REPORT ON NONNUCLEAR ENERGY AND TECHNOLOGIES.—Section 11 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5910) is repealed.

(j) REPORT ON EMISSIONS AT COAL-BURNING POWERPLANTS.—

(1) Section 745 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8455) is repealed.

(2) The table of contents in section 101(b) of such Act (42 U.S.C. prec. 8301) is amended by striking the item relating to section 745.

(k) 5-YEAR PLAN FOR ENVIRONMENTAL RESEARCH, DEVELOPMENT, AND DEMONSTRATION.—

(1) Section 5 of the Environmental Research, Development, and Demonstration Authorization Act of 1976 (42 U.S.C. 4361) is repealed.

(2) Section 4 of the Environmental Research, Development, and Demonstration Authorization Act of 1978 (42 U.S.C. 4361a) is repealed.

(3) Section 8 of such Act (42 U.S.C. 4365) is amended—

(A) by striking subsection (c); and

(B) by redesignating subsections (d) through (i) as subsections (c) through (h), respectively.

(l) PLAN ON ASSISTANCE TO STATES FOR RADON PROGRAMS.—Section 305 of the Toxic Substances Control Act (15 U.S.C. 2665) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

CHAPTER 3—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 2031. REPORTS MODIFIED.

Section 705(k)(2)(C) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4(k)(2)(C)) is amended—

(1) in the matter preceding clause (i), by striking "including" and inserting "including information, presented in the aggregate, relating to";

(2) in clause (i), by striking "the identity of each person or entity" and inserting "the number of persons and entities";

(3) in clause (ii), by striking "such person or entity" and inserting "such persons and entities"; and

(4) in clause (iii)—

(A) by striking "fee" and inserting "fees"; and

(B) by striking "such person or entity" and inserting "such persons and entities".

CHAPTER 4—FEDERAL AVIATION ADMINISTRATION

SEC. 2041. REPORTS ELIMINATED.

Section 7207(c)(4) of the Anti-Drug Abuse Act of 1988 (Public Law 100-690; 102 Stat. 4428; 49 U.S.C. App. 1354 note) is amended—

(1) by striking out "GAO"; and

(2) by striking out "the Comptroller General" and inserting in lieu thereof "the Department of Transportation Inspector General".

CHAPTER 5—FEDERAL COMMUNICATIONS COMMISSION

SEC. 2051. REPORTS ELIMINATED.

(a) REPORT TO THE CONGRESS UNDER THE COMMUNICATIONS SATELLITE ACT OF 1962.—Section 404(c) of the Communications Satellite Act of 1962 (47 U.S.C. 744(c)) is repealed.

(b) REIMBURSEMENT FOR AMATEUR EXAMINATION EXPENSES.—Section 4(f)(4)(J) of the Communications Act of 1934 (47 U.S.C. 154(f)(4)(J)) is amended by striking out the last sentence.

CHAPTER 6—FEDERAL DEPOSIT INSURANCE CORPORATION

SEC. 2061. REPORTS ELIMINATED.

Section 102(b)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Public Law 102-242; 105 Stat. 2237; 12 U.S.C. 1825 note) is amended to read as follows:

"(1) QUARTERLY REPORTING.—Not later than 90 days after the end of any calendar quarter in which the Federal Deposit Insurance Corporation (hereafter in this section referred to as the 'Corporation') has any obligations pursuant to section 14 of the Federal Deposit Insurance Act outstanding, the Comptroller General of the United States shall submit a report on the Corporation's compliance at the end of that quarter with section 15(c) of the Federal Deposit Insurance Act to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives. Such a report shall be included in the Comptroller General's audit report for that year, as required by section 17 of the Federal Deposit Insurance Act.".

CHAPTER 7—FEDERAL EMERGENCY MANAGEMENT AGENCY

SEC. 2071. REPORTS ELIMINATED.

Section 201(h) of the Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281(h)) is amended by striking the second proviso.

CHAPTER 8—FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

SEC. 2081. REPORTS ELIMINATED.

Section 9503 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The requirements of this section are satisfied with respect to the Thrift Savings Plan described under subchapter III of chapter 84 of title 5, by preparation and transmission of the report described under section 8439(b) of such title.".

CHAPTER 9—GENERAL SERVICES ADMINISTRATION

SEC. 2091. REPORTS ELIMINATED.

(a) REPORT ON PROPERTIES CONVEYED FOR HISTORIC MONUMENTS AND CORRECTIONAL FACILITIES.—Section 203(o) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(o)) is amended—

(1) by striking out paragraph (1);

(2) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

(3) in paragraph (2) (as so redesignated) by striking out "paragraph (2)" and inserting in lieu thereof "paragraph (3)".

(b) REPORT ON PROPOSED SALE OF SURPLUS REAL PROPERTY AND REPORT ON NEGOTIATED SALES.—Section 203(e)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(e)(6)) is repealed.

(c) REPORT ON PROPERTIES CONVEYED FOR WILDLIFE CONSERVATION.—Section 3 of the Act entitled "An Act authorizing the transfer of certain real property for wildlife, or other purposes.", approved May 19, 1948 (16 U.S.C. 667d; 62 Stat. 241) is amended by striking out "and shall be included in the annual budget transmitted to the Congress".

CHAPTER 10—INTERSTATE COMMERCE COMMISSION

SEC. 2101. REPORTS ELIMINATED.

Section 10327(k) of title 49, United States Code, is amended to read as follows:

"(k) If an extension granted under subsection (j) is not sufficient to allow for completion of necessary proceedings, the Commission may grant a further extension in an extraordinary situation if a majority of the Commissioners agree to the further extension by public vote.".

CHAPTER 11—LEGAL SERVICES CORPORATION

SEC. 2111. REPORTS MODIFIED.

Section 1009(c)(2) of the Legal Services Corporation Act (42 U.S.C. 2996h(c)(2)) is amended by striking out "The" and inserting in lieu thereof "Upon request, the".

CHAPTER 12—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SEC. 2121. REPORTS ELIMINATED.

Section 21(g) of the Small Business Act (15 U.S.C. 648(g)) is amended to read as follows:

"(g) NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AND INDUSTRIAL APPLICATION CENTERS.—The National Aeronautics and Space Administration and industrial application centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in the program.".

CHAPTER 13—NATIONAL COUNCIL ON DISABILITY

SEC. 2131. REPORTS ELIMINATED.

Section 401(a) of the Rehabilitation Act of 1973 (29 U.S.C. 781(a)) is amended—

(1) by striking paragraph (9); and

(2) by redesignating paragraphs (10) and (11) as paragraphs (9) and (10), respectively.

CHAPTER 14—NATIONAL SCIENCE FOUNDATION

SEC. 2141. REPORTS ELIMINATED.

(a) STRATEGIC PLAN FOR SCIENCE AND ENGINEERING EDUCATION.—Section 107 of the Education for Economic Security Act (20 U.S.C. 3917) is repealed.

(b) BUDGET ESTIMATE.—Section 14 of the National Science Foundation Act of 1950 (42 U.S.C. 1873) is amended by striking subsection (j).

CHAPTER 15—NATIONAL TRANSPORTATION SAFETY BOARD

SEC. 2151. REPORTS MODIFIED.

Section 305 of the Independent Safety Board Act of 1974 (49 U.S.C. 1904) is amended—

(1) in paragraph (2) by adding "and" after the semicolon;

(2) in paragraph (3) by striking out "; and" and inserting in lieu thereof a period; and

(3) by striking out paragraph (4).

CHAPTER 16—NEIGHBORHOOD REINVESTMENT CORPORATION

SEC. 2161. REPORTS ELIMINATED.

Section 607(c) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8106(c)) is amended by striking the second sentence.

CHAPTER 17—NUCLEAR REGULATORY COMMISSION

SEC. 2171. REPORTS MODIFIED.

Section 208 of the Energy Reorganization Act of 1974 (42 U.S.C. 5848) is amended by striking "each quarter a report listing for that period" and inserting "an annual report listing for the previous fiscal year".

CHAPTER 18—OFFICE OF PERSONNEL MANAGEMENT

SEC. 2181. REPORTS ELIMINATED.

(a) REPORT ON CAREER RESERVED POSITIONS.—(1) Section 3135 of title 5, United States Code, is repealed.

(2) The table of sections for chapter 31 of title 5, United States Code, is amended by striking out the item relating to section 3135.

(b) REPORT ON PERFORMANCE AWARDS.—Section 4314(d)(3) of title 5, United States Code, is repealed.

(c) REPORT ON TRAINING PROGRAMS.—(1) Section 4113 of title 5, United States Code, is repealed.

(2) The table of sections for chapter 41 of title 5, United States Code, is amended by striking out the item relating to section 4113.

(d) REPORT ON PREVAILING RATE SYSTEM.—Section 5347 of title 5, United States Code, is amended by striking out the fourth and fifth sentences.

(e) REPORT ON ACTIVITIES OF THE MERIT SYSTEMS PROTECTION BOARD AND THE OFFICE OF PERSONNEL MANAGEMENT.—Section 2304 of title 5, United States Code, is amended—

(1) in subsection (a) by striking out "(a)"; and

(2) by striking subsection (b).

SEC. 2182. REPORTS MODIFIED.

(a) REPORT ON SENIOR EXECUTIVE SERVICE POSITIONS.—Section 3135(a) of title 5, United States Code, is amended—

(1) in paragraph (1) by striking out ", and the projected number of Senior Executive Service positions to be authorized for the next 2 fiscal years, in the aggregate and by agency";

(2) by striking out paragraphs (3) and (8); and

(3) by redesignating paragraphs (4), (5), (6), (7), (9), and (10) as paragraphs (3), (4), (5), (6), (7), and (8), respectively.

(b) REPORT ON DISTRICT OF COLUMBIA RETIREMENT FUND.—Section 145 of the District of Columbia Retirement Reform Act (Public Law 96-122; 93 Stat. 882) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by striking out "(1)";

(ii) by striking out "and the Comptroller General shall each" and inserting in lieu thereof "shall"; and

(iii) by striking out "each"; and

(B) by striking out paragraph (2); and

(2) in subsection (d), by striking out "the Comptroller General and" each place it appears.

(c) REPORT ON REVOLVING FUND.—Section 1304(e)(6) of title 5, United States Code, is amended by striking out "at least once every three years".

CHAPTER 19—OFFICE OF THRIFT SUPERVISION

SEC. 2191. REPORTS MODIFIED.

Section 18(c)(6)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)(6)(B)) is amended—

(1) by striking out "annually";

(2) by striking out "audit, settlement," and inserting in lieu thereof "settlement"; and

(3) by striking out ", and the first audit" and all that follows through "enacted".

CHAPTER 20—PANAMA CANAL COMMISSION

SEC. 2201. REPORTS ELIMINATED.

(a) REPORTS ON PANAMA CANAL.—Section 1312 of the Panama Canal Act of 1979 (Public Law 96-70; 22 U.S.C. 3722) is repealed.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by striking out the item relating to section 1312.

CHAPTER 21—POSTAL SERVICE

SEC. 2211. REPORTS MODIFIED.

(a) REPORT ON CONSUMER EDUCATION PROGRAMS.—Section 4(b) of the mail Order Consumer Protection Amendments of 1983 (39 U.S.C. 3001 note; Public Law 98-186; 97 Stat. 1318) is amended to read as follows:

"(b) A summary of the activities carried out under subsection (a) shall be included in the first semiannual report submitted each year as required under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.).".

(b) REPORT ON INVESTIGATIVE ACTIVITIES.—Section 3013 of title 39, United States Code, is amended in the last sentence by striking out "the Board shall transmit such report to the Congress" and inserting in lieu thereof "the information in such report shall be included in the next semiannual report required under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.)".

CHAPTER 22—RAILROAD RETIREMENT BOARD

SEC. 2221. REPORTS MODIFIED.

Section 502 of the Railroad Retirement Solvency Act of 1983 (45 U.S.C. 231f-1) is amended by striking "On or before July 1, 1985, and each calendar year thereafter" and inserting "As part of the annual report required under section 22(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231u(a))".

CHAPTER 23—THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

SEC. 2231. REPORTS MODIFIED.

Section 21A(k)(9) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(k)(9)) is amended by striking out "the end of each calendar quarter" and inserting in lieu thereof "June 30 and December 31 of each calendar year".

CHAPTER 24—UNITED STATES INFORMATION AGENCY

SEC. 2241. REPORTS ELIMINATED.

Notwithstanding section 601(c)(4) of the Foreign Service Act of 1980 (22 U.S.C. 4001(c)(4)), the reports otherwise required under such section shall not cover the activities of the United States Information Agency.

Subtitle III—Reports by All Departments and Agencies

SEC. 3001. REPORTS ELIMINATED.

(a) REPORT ON PART-TIME EMPLOYMENT.—(1) Section 3407 of title 5, United States Code, is repealed.

(2) The table of sections for chapter 34 of title 5, United States Code, is amended by striking out the item relating to section 3407.

(b) BUDGET INFORMATION ON CONSULTING SERVICES.—(1) Section 1114 of title 31, United States Code, is repealed.

(2) The table of sections for chapter 11 of title 31, United States Code, is amended by striking out the item relating to section 1114.

(c) SEMIANNUAL REPORT ON LOBBYING.—Section 1352 of title 31, United States Code, is amended by—

(1) striking out subsection (d); and

(2) redesignating subsections (e), (f), (g), and (h) as subsections (d), (e), (f), and (g), respectively.

(d) REPORTS ON PROGRAM FRAUD AND CIVIL REMEDIES.—(1) Section 3810 of title 31, United States Code, is repealed.

(2) The table of sections for chapter 38 of title 31, United States Code, is amended by striking out the item relating to section 3810.

(e) REPORT ON RIGHT TO FINANCIAL PRIVACY ACT.—Section 1121 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3421) is repealed.

(f) REPORT ON FOREIGN LOAN RISKS.—Section 913(d) of the International Lending Supervision Act of 1983 (12 U.S.C. 3912(d)) is repealed.

(g) REPORT ON PLANS TO CONVERT TO THE METRIC SYSTEM.—Section 12 of the Metric Conversion Act of 1975 (15 U.S.C. 205j-1) is repealed.

(h) REPORT ON TECHNOLOGY UTILIZATION AND INTELLECTUAL PROPERTY RIGHTS.—Section 11(f) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(f)) is repealed.

(i) REPORT ON EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE.—Section 4(a) of the Act entitled "An Act to authorize the making, amendment, and modification of contracts to facilitate the national defense", approved August 28, 1958 (50 U.S.C. 1434(a)), is amended by striking out "all such actions taken" and inserting in lieu thereof "if any such action has been taken".

(j) REPORTS ON DETAILING EMPLOYEES.—Section 619 of the Treasury, Postal Service, and General Government Appropriations Act, 1993 (Public Law 102-393; 106 Stat. 1769), is repealed.

SEC. 3002. REPORTS MODIFIED.

Section 552b(j) of title 5, United States Code, is amended to read as follows:

"(j) Each agency subject to the requirements of this section shall annually report to the Congress regarding the following:

"(1) The changes in the policies and procedures of the agency under this section that have occurred during the preceding 1-year period.

"(2) A tabulation of the number of meetings held, the exemptions applied to close meetings, and the days of public notice provided to close meetings.

"(3) A brief description of litigation or formal complaints concerning the implementation of this section by the agency.

"(4) A brief explanation of any changes in law that have affected the responsibilities of the agency under this section.".

Subtitle IV—Effective Date

SEC. 4001. EFFECTIVE DATE.

Except as otherwise provided in this title, the provisions of this title and amendments made by this title shall take effect on the date of the enactment of this Act.

Mr. NUNN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business.

The PRESIDING OFFICER (Mr. THOMPSON). Without objection, it is so ordered.

BALANCED BUDGET AMENDMENT

Mr. FORD. Mr. President, in the 21 years I have served in this body, I have never seen the level of partisanship that we are seeing on the balanced budget amendment. So maybe I should not have been shocked last Friday to see my colleague from Mississippi, Senator LOTT, blatantly misrepresent my words of 1994. Clearly, his only purpose was to further divide the American public and to tarnish the reputation of Senators who have only sought to pass the best amendment possible.

Senator LOTT quoted me as saying, Mr. President, and I will quote it verbatim from the RECORD; this is what Senator LOTT said I said:

> I hear so much about "if 40-some-odd Governors can operate a balanced budget, why can't the Federal Government."
>
> * * * I operated under it.

When I said "I," Mr. President, as Governor:

> It worked.
>
> * * * I think implementation of this amendment will work. I think we can make it work.
>
> * * * I do not understand why it takes a brain surgeon to understand how you operate a budget the way the States do.
>
> * * * this is an opportunity to pass a balanced budget amendment that will work and will give us a financially sound future, not only for ourselves but for our children and our grandchildren.

End of the quote that Senator LOTT put in the RECORD.

To that I say, Mr. President, read the full statement, and the fallacy will become clear.

I ask unanimous consent that both of my floor statements from last year be printed in the RECORD.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

[From the Congressional Record, Feb. 25, 1994]

Mr. FORD. Mr. President, I thank the Senator from Nevada for allowing me this time.

I support a balanced budget amendment and always have. The borrow and spend policies of the past must not continue. We all know that. The ability to expand our economy and provide job opportunities for this and future generations, much less provide for a nation that can function beyond simply servicing its debt, absolutely depends upon bringing the deficit under control. I think that my friend from Illinois would agree with this sentiment and I agree in principle with his amendment. I think that the Senator has done the Nation a great service by his tireless work on behalf of this serious matter. However, there is room for improvement in most things including, the original language of Senate Joint Resolution 41.

It is the job and the responsibility of the Congress to control the spending of our Nation. Unfortunately, we have abandoned this role, to a large degree, by running large budget deficits during normal times. By normal times I mean not during war, or recessions. This practice is not only fiscally irresponsible, but with the huge debt we are now passing along to our children, it has become morally irresponsible as well. We as a congress and, being the representatives of the people, as a nation must begin to regain control of our spending policies. We need something that forces us to do this. An amendment to the Constitution would do just that.

While one law can be changed by passing another law, this legislation would make fiscal discipline mandatory.

However, the Congress must not pass the buck once again by relinquishing control of the budget all together. Congressional control must be maintained and our amendment does just that. Deficit spending by itself is not the problem. The problem is chronic deficit spending in good times not just bad ones. Furthermore, we are not borrowing at the present time to rebuild infrastructure by building roads, airports, or an information super highway. Nor have we been borrowing for the last 30 years to bring a faltering economy out of recession or prepare for war. We have had the need from time to time during that period and during these periods, borrowing represents sound fiscal policy. During times of war or economic downturn, these policies help the economy and help our Nation as a whole. But this is not what we have been doing at all. What we have been doing is borrowing to pay the interest on previous debt.

Let me put this in terms that every American can understand. When a company decides to expand or buy more efficient equipment, it generally borrows the money, knowing that this investment will more than pay for itself in the future. The profit earned is used first to pay off the loan and the extra is kept as income. The key word in all of this is invest. Investment as our President has been saying for some time is good, it provides benefits in years to come. We invest a great deal of money on the Federal level, upwards of $200 billion. This money is well spent and will pay dividends to our children and their children. When we build a highway, it increases economic efficiency and activity, real dividends that pay off in real jobs and increased incomes. Congress should not cut off its nose to spite its face. Our amendment protects this vital investment portion of spending. It keeps responsibility with the Congress and gives us the flexibility that we need during hard times and the discipline we need during the good ones to manage the budget in a responsible manner.

Let me get back to my example of a business borrowing to expand or upgrade its facilities. Bad fiscal policy is when all of the profits earned from the improvements are frittered away on other expenses, and the loan is never repaid. When this happens, the situation goes downhill fast. If the belt is not tightened and the loan is not paid off, the company, no matter what, will go bankrupt. It can borrow more money for a time but eventually it must pay off its loans or the banks will eventually turn that company down. We are a nation that is getting perilously close to that last loan. We are borrowing not to invest for growth, but instead simply and irresponsibly to pay off interest on past loans. All the while our debt continues to mount and we have nothing to show for it. This is the type of behavior that must be stopped and our amendment is the prescription for this sickness. It stops the bad borrowing but keeps the Congress in control of investing in our Nation's future.

Our Founding Fathers placed the country's purse strings under the explicit control of the Congress. Our amendment keeps the control here. The judicial branch of Government has no business deciding on what program should be cut or what revenue should be raised. That is our responsibility. Our amendment keeps that responsibility right where it belongs. I won't talk on this point too long because, I think there is complete agreement among us on this point. However, I cannot stress enough that we in the Congress must make the hard choices, and if we do not our amendment calls for an internal solution. Should this happen, this legislation calls for uniform cuts; with everyone and every program paying equally. That is fair and just and it would be a congressional action.

Let me speak on another matter of grave concern to many of our citizens. That is the sanctity of the Social Security system. Many years ago, our Nation made a pact with its people to help them in retirement, whether that be in old age or by disability. Our amendment respects that agreement, in fact it reinforces it, makes it stronger, safer and more secure. This amendment has a lot to do with responsible action and nowhere is that needed more than on dealing with Social Security. It is exempt from our amendment, thus securing and fortifying its position as a separate trust fund. Neither receipts nor outlays will be counted as part of the budget under this provision. As my friend, and colleague from North Dakota [Mr. Dorgan] has pointed out, "the Social Security system is not causing the deficit." Its revenues and surpluses should not be used to mask the deficit nor should its outlays be counted as part of expenditures. Our proposal protects the sanctity of this most vital program.

In closing, I would like to stress just how strongly I favor a balanced budget amendment, but it must be the right amendment and our amendment is it. I have supported and continue to support my colleague from Illinois in his efforts to control Federal spending, however, our proposed changes make this a more honest and more workable amendment. Surpluses in trust funds whether it be for airports, Social Security or highways, will not be used to mask the true size of the deficit. And, equally important, it will allow Congress to maintain the flexibility needed during wars or recessions while protecting our capital investments and curtailing our practice of borrowing to pay interest on past loans.

Mr. President, I do not think anyone in this body with certainty can tell us what will happen in the future if we have a balanced budget amendment to our Constitution. I do not think we can say with certainty. And so with uncertainty, we get all the horror stories. And all the horror stories if this does not pass; something is going to happen. If it does pass, some other things are going to happen.

The implementing legislation that is required, if and when a balanced budget amendment passes, will give us some idea and eliminate some of the uncertainties, but that will be the legislative branch prerogative to pass the implementing legislation. So I wish to kind of put a little oil on the water if I can as to all the uncertainties we have been hearing about in the last few days.

We also hear the horror stories that if the Simon amendment passes, the courts will become the legislative body. Well, we scurried around and I guess now you have the Danforth amendment included in the Simon amendment, because the horror story was that the courts would then become the legislative body of this land. They would tell us what new taxes to impose and what programs to cut or what all new taxes and no programs cut or programs cut and no new taxes. So under the Simon original amendment the courts would have had jurisdiction over the legislative body. So we scurry around and find an amendment that will basically eliminate it. Not good enough. Not good enough because the Reid amendment says only the legislative body.

Well, then we hear we have no way to say to those of us who will make a vote, have discipline because the courts will not. So whichever way you go, you can find somebody on the other side.

It reminds me when I was president of a civic organization, and we had a question that was bothersome to me. I turned to the legal counsel for the civic organization, and I said, "Which way should we go on this?" He said, "Mr. President, go either way and we will make a heck of a case out of it." And so that is what I think we find here. Go either way and we will make a case on it.

We eliminate the worry of the courts telling the legislative body that is elected by the people what to do and what not to do, and that was our idea which was finally accepted by the so-called Simon amendment.

In 1983, the Social Security Program was in horrible shape. Everyone in this body understands that we were in real trouble with Social Security. But we all came together in a bipartisan way and corrected the problem with Social Security in outyears. Now they say the only way that you can save Social Security is a balanced budget.

Well, we are still collecting out of my check every month, and I suggest my distinguished colleague from Illinois is having his taken out every month. I do not know what that has to do with a balanced budget except if it is out there you can use it to help balance the budget.

So what the Reid amendment says is that after we have gone through the 1983 labor to fix the Social Security question, we have included in this amendment that we would not touch Social Security. On this floor you hear it. "Don't touch Social Security." Now we are trying to say a balanced budget saves it. That is the only way because they do not have this exclusion in this amendment. In the cloakrooms you hear talk, "We have to save Social Security." And over the lunch table we hear it, "We should not destroy Social Security." So the Reid amendment or resolution has taken care of that problem.

Do you know something, Mr. President? You can sympathize with me over this a little bit. I have heard for days now, and really for years: If 40-some-odd Governors can operate under a balanced budget, why cannot Federal Government? Well, Mr. President, I had the privilege, as you did, given me by the people of my State to serve as Governor. I even had the line-item veto. And the Kentucky Constitution states that the Governor—nobody else—the Governor must reduce expenditures if it is determined that the State would have a shortfall. But if you want to raise taxes, you have to call a special session for the purpose of raising taxes.

Now we hear that we do not want to operate like Governors. We just want to use them as operating under a balanced budget. We are going to give you an opportunity to say that you do not want to operate like Governors. You just want to use them as an image out there that operates under a balanced budget because Governors must operate under a balanced budget. Then we think that is good. But we do not want the Federal Government to do that.

Let us follow the State procedure, if it works. And it is simple. I operated, as I said earlier, under this procedure. We had an operating account and a capital account. I never vetoed a budget. I never exercised the line-item veto in 4 years. And I left $300 million in surplus. Pretty good, I thought, a lot better than we are doing here. We had the operating account and we had the bond issue. We have T bills here. Whatever the legislative process is, after the amendment is approved or disapproved, if it is, right now they are a little bit light. They call our amendment light. But they are light in votes, and they are struggling now to try to figure out a way to get some more. They are condemning our proposal because it has, in my opinion, more common sense in it than theirs.

So we had our operating account. We had our bond issue. We had the payments to be made out of the operating account. We paid it. We had a balanced budget. We had a surplus. Our estimates were pretty good.

If we had not gotten the agreement, as we now have, to vote next Tuesday at 3 o'clock, and then 4 hours later on the second amendment, we would have had the opportunity to vote on each one of those amendments to the Simon amendment, because many in this Chamber felt the Simon amendment did not include the exclusion of the courts. That is one. Social Security is another. You would have the operating and capital construction accounts to vote on up or down. And we would have had to vote on each one of those separately. We would delay moving towards a balanced budget, and the delays would have been, I think, helpful to those that oppose a balanced budget.

Mr. President, I interrupted the distinguished Senator from Illinois [Mr. Simon], awhile ago when he was reading from the newspaper that this amendment is just a stalking horse to give cover to those who want to vote for a constitutional amendment that probably will not pass, and then that gives them a reason to vote against Senator Simon.

Let me clear everybody's mind. I am for a balanced budget amendment. And I intend to vote for a balanced budget amendment, and maybe two before next week is over. But some ideas around here might just be worth looking at for a moment. There might be a moment. If you look into the future and how we are going to operate, this may be a pretty decent idea to try.

I hear that, "Oh, well, if we are going to vote for this, we will not have to do anything for 7 years." I thought we were under a budget constraint now. I thought we had caps on our budget now. I thought this was the third straight year of deficit decline, unprecedented in the last 31 years since Harry Truman. I thought we would have to continue to do that even though we required 2001 to have the budget balanced or begin that process.

I think this is a way we can do this to accommodate most people, rather than take the position that it is this way or nothing. I come from the State of Henry Clay. Henry Clay was a great compromiser. Henry Clay described compromise as "negotiating hurt"—negotiating hurt. You had to give up something most of the time that you really did not want to, and it hurt to give it up. But for the sake of progress, for the sake of bringing a consensus together, compromise is a pretty good thing.

So, we offer to the colleagues in the Senate the ability to say, we are not going to disturb Social Security. I do not care what you say about a balanced budget as long as you take it out of your paycheck and put it into a Social Security account. That is where it belongs.

We talk about capital construction of the highways. We are taxing now and not spending it. We are not spending it. We have billions; a $15-, $17-, $18-billion surplus in the highway account. We are not spending it.

Talk about airports capital construction; 10 percent of every ticket that is purchased goes into the airport improvement trust fund. There is $7, $8 billion in there not building airports. What is a balanced budget going to do for that? We are already charging the tax.

We can have our operating account. We can have our capital account. Some say that we ought to balance the Federal budget like we do our house account or our budget at home. We have an operating account at home. That operating account is the amount of income we have. We buy a car.

We can buy a car, maybe not a luxury car, but one within our means and what we can pay for. We decide we want to buy a house, and it may not be a mansion, but it is what we can pay for. What we should have in an operating account is our income. We make those payments on those capital investments that we have, and we keep our operating account balanced. I do not see anything wrong with it. If Governors operate that way—and some are beating their chests saying if Governors can do it, we can do it—here is how Governors do it. I operated under it. I understand it. I had a veto of the budget; I had the line-item veto; all of those, when I was Governor. We operated out of an operating account and out of a capital account. It was in the budget. We made our payments and we had a surplus.

I do not understand why that is not at least tickling the interest of some folks. But we are rigid right now. "It is ours or nothing." Well, you may just get nothing, with a capital "N." And you are light right now on votes. If you are light on votes, why not look at something that will be workable, because you will get some votes for this one. With the others, you might just pass this amendment. But the way you are going now, you are light by several votes.

My colleague keeps talking about taxes. I do not know that this brings new taxes. That one does. That is all I have heard is "the courts imposing taxes." Yes; we will have to pay taxes. For the Simon resolution, the report was $570 in new taxes per individual in my State. If you want it, I will get it and give it to you. Everybody quotes the paper around here. I will give you an article out of the paper. They do not necessarily have to be true, but we sure do quote them. So all of this propaganda is being put out.

So I hope that those who are so rigidly stuck to one amendment could at least give this one a little read; look at it a little bit. We take care of depression; we take care of war; we take care of those things. I think it is important that we have the opportunity to put something in place. If you are going to tinker with the Constitution now, give the Constitution something that will work. Give it something that you think would have a chance of working. And then the implementing legislation will set up the procedure whereby we use the operating account, and what is the capital construction, and how do we pay for it? Do we use T-bills for capital and pay the bills off?

We heard the Senator from Illinois say that it was Albert Gore, Sr. that said pay as you go and put on new taxes, and President Eisenhower was saying let us bond it and pay the bonds off. That was a difference of opinion then. So we taxed the payoff; rather than having an operating fund to pay off capital construction, pay off the bond issue.

So I hope that we will give this very serious consideration. I will have other things to say before the vote comes next Tuesday, and I welcome any cosponsors. We have had many come to us this morning to talk about it. We have picked up a good many votes today. We are further away from passing this amendment than Senator Simon is, but if we combined our efforts, we would pass it.

You say I am a stalking-horse? No; I am not a stalking-horse. You say I am trying to give people cover. No; they are not getting cover from this one. We have a legitimate proposal to be given to the colleagues in the U.S. Senate, that they can go back home and say: I voted for a Constitutional amendment to balance the budget that is doable.

The other one is, you either eliminate or increase taxes, or both. I do not think this one puts you in the posture of raising taxes. That is a great, great difference, in my opinion. I have been listening very carefully as to raising taxes and how much new tax it is going to cost to pay for the Simon resolution, and I think it is time we take a step back and look at an opportunity now to have a balanced budget amendment. I do not have the words to get you out on the edge of the seat or the ability to say, boy, that is it. I just do not have that ability.

I do believe sincerely that we have an amendment that is important, an amendment that should be considered, and maybe, just maybe, we can put our two groups together and say that we have a resolution here that could be doable; it is workable, and we could vote for a balanced budget, and the future of Senator Simon's unborn grandchildren will be saved.

I yield the floor.

[From the Congressional Record, Mar. 1, 1994]

The PRESIDING OFFICER. The Senator from Kentucky [Mr. FORD] is recognized for 10 minutes.

Mr. FORD. Mr. President, I have but a few minutes to speak this morning on behalf of the Reid-Ford-Feinstein balanced budget amendment. So I will concentrate my remarks this morning on trust.

The public trusts the Congress to keep the Nation's finances in order. Nowhere is that agreement and that trust more evident or more important than in governing the Social Security trust fund.

In the debate over our amendment and the Simon amendment, honesty and protection of the trust fund have played a very big role. Right now, surpluses in the trust funds are being used to hide the true amount of the deficit. The biggest example of this is in Social Security, but it is by no means alone in this distinction.

During the 1980's, we allowed the Federal trust funds to run up huge surpluses. We would collect a gasoline tax to fund highway construction but then not spend it all on highways, thus creating an accounting surplus. The problem is, we did spend money elsewhere creating masked deficit and budgetary illusions.

The Simon amendment will allow us to continue to do this. I have a speech in my folder that I made back in October of 1987 that addressed this very issue. This particular speech dealt with the Aviation trust fund. At the time, it represented a $6 billion surplus.

Mr. President, I say to my colleagues that that is only peanuts when compared to Social Security. According to OMB, from 1985, when the Social Security System started to run a surplus, to 1993, it singlehandedly covered up $366 billion in Government red ink. Social Security covered up $366 billion in Government red ink.

If you think that is bad, wait until we look to the future. From 1994 through the year 2001, the date that Senator Simon's amendment would likely take effect, CBO projects another $703 billion in budgetary chicanery, for a grand total of $1.69 trillion worth of deception.

When compared with that, the deficit hidden by the other trust funds are small potatoes—only another $35 to $40 billion. Pretty soon though, as we have heard in the past, it adds up to real money. We pat ourselves on the back and claim to cut spending and do what is right for our electorate, all the while our Social Security trust fund is full of IOU's.

Well, I, and those who support our amendment, mean to do something about that. Our amendment respects the pact our Nation made with its people many years ago. It reinforces it, makes it stronger, safer, and more secure. Social Security is exempt from our amendment, thus securing and fortifying its position as a separate trust fund. If you do not believe me, just listen to the Gray Panthers, and they will tell you themselves. I have here three letters to that effect. AARP, the National Alliance for Senior Citizens, and the National Committee to Preserve Social Security and Medicare, all endorse Social Security's treatment under this amendment.

Other trust funds will be treated honestly as well. They will be considered as a part of the capital budget that invests in infrastructure and development. Building highways and airports pays dividends in the future through higher productivity and job opportunity and growth. Social Security and these other trust funds did not cause the deficit, and under our amendment they will not be used to hide the deficit either. This is honest budgeting and a workable balanced budget amendment.

Mr. President, time is short and a vote on the Reid-Ford-Feinstein balanced budget amendment is near. Unfortunately, I fear that it is not near passage but defeat. Standing beside that defeat will be a good faith effort of those who are truly concerned about the world that we leave for future generations. Standing beside that defeat will be the last attempt of this Congress to face reality and tackle an ever-crippling debt and deficit problem. Standing beside that defeat will be faith in Government. I support the efforts of my friend and colleague from Illinois to take on this persistent fiscal dishonesty, but his version of the amendment will go down to defeat as well.

The Reid-Ford-Feinstein amendment is the only amendment that could stand the chance of final passage. We all know that. Yet standing by the defeat of yet another balanced budget will be my colleagues from the other side of the aisle. Instead of getting what they could, they will go home proud of taking the supposed moral high ground. If that is what they want, they can have it. What I want and what 70 percent of our Nation's people want is a sound financial future. What they will get is more of the same under the Simon amendment, for standing tall at the end of the day will be disenchantment, dishonesty, and fiscal irresponsibility.

I hear so much about "if 40-some-odd Governors can operate a balanced budget, why can't the Federal Government."

Well, I give them an opportunity. I operated under it. It worked. We had a huge surplus when I left the Governor's office. We had an operating account. We had a capital account.

They say operate like you do at home. At home you have income, your salary. That is your operating account. You buy a car within your means. You pay that out of your operating account. You buy a home. You pay that out of your operating account. But your operating account is always balanced. And we have a time period in which to pay it off.

They say, "Oh, we will never implement that legislation." How do you know we will not? I have seen some amazing things come out of this Chamber. I have seen people work and do the right thing.

I think implementation of this amendment will work. I think we can make it work. But on the other hand, if we want an issue, fine. Stay with Senator Simon and Senator Hatch. Stay with them and then have an issue when you go home.

But do you want a balanced budget amendment? There are enough votes with those who are supporting that amendment that we can get one.

Oh, I hear all this, "The House is going to make us do it." I have never seen us make the House do anything. I have never seen the House make us do anything. So when they pass their balanced budget amendment, what is it going to do? It is going to die between here and there. That is what is going to happen to it. It is going to die between here and there.

"Oh, we will be forced into it." Nope. The House will not do that to us. We will not do it to the House. So if you want a balanced budget amendment operated like Nebraska was operated, like Kentucky was operated, I will guarantee you that we can do the right thing.

That is what it is all about here today, to do the right thing. We have an operating budget. We are going to pay this in 10 years. The slice is in here. We have IOU's in the Social Security. We are going to buy it. It is in operating. We buy it, pay it off. So Social Security is sound. I do not understand why it takes a brain surgeon to understand how you operate a budget the way the States do.

And so, Mr. President, I would hope that we would reconsider between now and 3 o'clock this afternoon that this is an opportunity to pass a balanced budget amendment that will work and will give us a financially sound future, not only for ourselves but for our children and our grandchildren.

I hear my distinguished friend say he is going to do it for his unborn grandchildren. I have five. The Senator is no "Lone Ranger." I am just as worried about my grandchildren as he is. And I think I have a pretty good idea. I have had to work under it. I had to operate it. I understand how it works. There are few in this Chamber who do. You will find that most of those will vote for this amendment because it works.

Do it like the Governors do; pass the Reid amendment. Do it like you do at home and operate your own budget; pass the Reid amendment. It is just that simple, Mr. President.

I do not know how much time I have remaining, but I will reserve it.

Mr. FORD. Mr. President, because of the way that the quotes were lifted from my speeches, this action can only be viewed as intentional. Senator LOTT falsely states that I was talking about the balanced budget amendment that had been introduced by his side of the aisle when, in fact, I was speaking about my own substitute amendment, with other Senators here, one that, among other things, excluded Social Security. This action can only be viewed as irresponsible.

Further reading of my original quote clearly indicates I was advocating the same position a year ago that I advocated on the Senate floor last week and that I remain committed to today: Ensuring that Social Security is not used to balance the budget.

The truth of the matter is that this error has backfired. This attempt to discredit me and my intentions has instead shown from day 1 that I have had serious reservations about what could happen to Social Security. While I was voicing my concern about Social Security, my colleagues on the other side of the aisle were putting together proposals to carve up the Social Security trust fund.

Mr. President, I have papers right here, drafted in the form of a bill, which show the amount of Social Security moneys that would be used from the trust fund. That was offered to me as an alternate proposal. They were going to use the Social Security trust fund. This one is for 10 years.

Generally, something like this might be passed off as an isolated incident. But, unfortunately, this appears to be one segment of a large Republican National Committee strategy, and I submit further proof of the scurrilous activities RNC releases that commit the same wrongs.

Mr. President, I submit those for the record and ask unanimous consent they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[RNC News Release, Washington, DC, Mar. 2, 1995]

STATEMENT BY RNC CHAIRMAN HALEY BARBOUR FOLLOWING THE SENATE BALANCED BUDGET AMENDMENT VOTE

By blocking passage of the balanced budget amendment, Bill Clinton and the Democrats who voted against it in the Senate today made the difference between Republican leadership and Democrat retrenchment more crystal clear than ever. While Republicans are keeping our promise to end business-as-usual in Washington, Clinton and his Clinton Corps in the Senate banded together in a blatant exercise of politics-as-usual.

Tom Daschle, Jeff Bingaman, Dianne Feinstein, Wendell Ford, Byron Dorgan, and Fritz Hollings have become apprentices in The Clinton School, where the fine art of saying one thing, but doing another is taught. They told the people of their states they were for a balanced budget amendment. They voted for a balanced budget amendment in the past, some of them more than once. But when Clinton and the Democrats needed them, they switched their votes and defeated the balanced budget amendment. They put party above the interests of the children of their state.

Their hypocrisy extends even to the excuses they're scrambling for. The six Democrats who today defeated the balanced budget amendment are trying to use Social Security as a cover for their flip-flop, but in 1993 the same six voted to cut Social Security income by raising taxes on beneficiaries. They voted for a virtually identical balanced budget amendment last year without any mention of Social Security. The fig leaf they're trying to hide behind wouldn't hide a gnat.

Clinton, the liberal Democrats in the Senate and the big-spending special interests might have succeeded in stopping passage of the balanced budget amendment today, but the voters will have the last word.

HALEY'S COMMENT BY REPUBLICAN NATIONAL COMMITTEE CHAIRMAN HALEY BARBOUR

A lot of Americans are very mad tonight . . . very mad at Bill Clinton and the Democrats in Congress who defeated the balanced budget amendment by a single vote this afternoon.

According to a CBS/New York Times poll, 79% of Americans support passage of the balanced budget amendment, and no wonder. The budget has been balanced only one year since 1960. Under Bill Clinton's new budget the deficit goes up, and it stays at the $200 billion level for the rest of the century. In 2002, the year this amendment would have required a balanced budget, Clinton's budget deficit will be $320 billion.

The voters know the only way to stop the spending spree is through the constitutional discipline of this amendment. The big-spending liberals know that too, so they joined Bill Clinton in pulling out all stops to kill the amendment.

In the end, the left focused on six Democrat senators, who had voted for the virtually identical amendment just last year. Clinton and company needed all six. If any one voted for the amendment, it would pass.

Last year Fritz Hollings of South Carolina said on the Senate floor, in support of the balanced budget amendment, "No more weaseling, no more excuses, just make the hard choices and balance the budget." Today Hollings weaseled; he voted no.

Wendell Ford of Kentucky voted for the amendment in 1986 and 1994, when he said we needed a constitutional amendment to regain control of spending. In his speech in support of the constitutional amendment, he referred to Congress as representatives of the people. Today Ford decided he'd be a representative of the Democrat Party instead. So he turned his back on the people of Kentucky, and voted no.

Tonight you've seen the Daschle, Dorgan and Feinstein campaign ads, extolling their support of the balanced budget amendment.

No wonder people are cynical. Voters have grown accustomed to Bill Clinton promising one thing but doing just the opposite; saying what you want to hear during the election, but never intending to do it. Now we've learned this tactic is contagious in the Democrat Party. All six of these senators—Dorgan, Daschle, Hollings, Feinstein, Ford and Bingaman voted no today, despite what they had said in the past. They formed the hypocritical Clinton Corps, who told their constituents they're for the balanced budget amendment but voted against it today.

It is not lost on the voters that at the same time Republicans are keeping our word by fulfilling the mandate given us by the American people last November, it was Democrats, breaking their promises, that caused the balanced budget amendment to lose today.

But today won't be the last day. Senator Bob Dole has said he will bring it up to vote on again. Between now and then I hope you and every other outraged American let these senators hear from you.

THE DEFEAT OF THE BALANCED BUDGET AMENDMENT: HYPOCRISY ON THE RECORD

In 1992, Byron Dorgan (D-N.D.) ran a campaign ad touting his support for a balanced budget amendment. In the ad, he looks at the camera (as the state's voters) squarely in the eye and says: "This country's in deep trouble. Everybody knows that. The question is, what can we do about it. Well, we can fight to change things. I'm convinced we can put this country back on track, but to do it, we've got to put an end to these crippling budget deficits. So here's what I'm fighting to do." He then unveils the "Dorgan Plan" and describes its final, critical component: "I'm working for a constitutional amendment that forces a balanced budget." He even voted for the balanced budget amendment—with no strings attached—in the 1994 campaign year, saying "I am convinced that it is the right thing to do and the necessary thing to do." (Congressional Record, March 1, 1994)

Tom Daschle (D-S.D.), who voted for the balanced budget amendment—no strings attached—last year, had made his support of the balanced budget amendment a central issue in his campaign in 1986, airing an ad showing red ink pouring over the Constitution as the announcer reads: "The national debt. America is awash in red ink. But in 1979, Tom Daschle saw the damage these deficits could do to our country. His first official act was to sponsor a constitutional amendment to balance the budget. For seven years, Tom Daschle has battled party leaders and special interests to cut waste and close loopholes." Apparently, he just wasn't up to the battle anymore this year, when he caved to President Clinton.

Dianne Feinstein (D-Calif.) saw fit last year—when she was up for reelection—to support the balanced budget amendment, no strings attached. She, too, put her support for the amendment on public display in a campaign ad, which touts her "courageous votes for the balanced budget amendment" as central to her fight to "create jobs and get California's economy going again." The tag line of the ad says, "She's our Senator, Dianne Feinstein." From her flip-flop today, it appears she's now Bill Clinton's Senator.

Wendell Ford (D-Ky.) voted for the balanced budget amendment both in 1986 and 1994. Last year he said, "We as a Congress and, being the representatives of the people, as a nation must begin to regain control of our spending policies. We need something that forces us to do this. An amendment to the Constitution would do just that." (March 1, 1994) Today, as the third-ranking Democrat in the Senate, he sided with his party, taking the opposite position from a majority of the people of his state.

Ernest Hollings (D-S.C.) voted for the balanced budget amendment both in 1986 and 1994. When he voted for it last year, he said: "By writing a balanced budget amendment into the basic law of the land, we will compel Washington to do its job. No more weaseling. No more excuses. Just make the hard choices and balance the budget. And do not be surprised when a balanced U.S. budget turns out to be the best economic growth program this country has ever seen." (Congressional Record, March 1, 1994)

Mr. FORD. I for one am fed up with this type of political mudslinging. It does a disservice to serious discussion of the issue, and I hope that the American people are tired of it, too. I hope that this incident forces my colleague and his associates at the RNC to actually read the full text of my speeches and stop the blatant misrepresentation.

And Mr. President, from the National Journal's Congressional Daily, they have a quote on page 8 of March 2.

On Wednesday, Ford's Washington office received 407 phone calls supporting the balanced budget amendment and 765 opposing it, according to the office spokesman. The ratio has remained about the same throughout the week in the Washington and State offices, he said. In addition, Republican National Chairman Haley Barbour shrugged off a claim by FORD that RNC ads running in FORD's home State of Kentucky backfired and helped solidify FORD's position on the amendment.

And I quote Mr. Barbour. Mr. Barbour says, and I quote:

"I was born at night but not last night," Barbour said, adding that he does not believe "any member of the United States Senate could vote against the wishes of his constituents merely because he got his feelings hurt by a TV ad."

Now, Mr. President, I was born at night, but I was not born last night. What I said was when they started running the ads against me in Kentucky, it stirred up a hornet's nest. It caused other groups that were opposed to the amendment to gear up. They put on radio ads; they put on TV ads, and they stirred it up. If he had left it alone—that is what I am saying. He stirred up the activity himself, and it did not hurt my feelings. I am a grown man. I have been around a long time. Dad told me, in politics, when they tear the hide off of you, just remember it grows back and you are tougher.

You are looking at one tough son of a gun today, Mr. President. I just want people to understand, lest we forget, they put that out and misquoted us again. They misquoted us again. I think that the record ought to be made straight, and I have all the documentation necessary to prove that this statement of mine was lifted from the RECORD, not actually the statement I made. It was a statement I made as it related to a substitute amendment that we thought would be a better amendment that would work better for the American people and, yes, would help our children and our grandchildren.

And so, Mr. President, I make this statement just to defend myself because I do not want this statement to hang out there longer because it would, I think, be detrimental to what I hope my constituents understand and what I believe to be the facts.

Mr. DORGAN. Mr. President, I wonder if the Senator will yield 1 minute.

Mr. FORD. Mr. President, I yield to the Senator from North Dakota.

Mr. DORGAN. Mr. President, I wanted to follow on those comments by saying that my experience with respect to information put in the CONGRESSIONAL RECORD about statements I made last year was similar to that of the Senator from Kentucky [Mr. FORD].

Other Senators have spoken on the floor of the Senate about our sincerity in working to protect Social Security. They were asking—about the Senator from Kentucky, my colleague from

North Dakota, the Senator from California, myself and others—these other Senators were wondering where were we last year when we voted on the same identical balanced budget amendment? Senators were asking why we were not worried then. Why did we not, et cetera, et cetera.

And then they put parts of our statements in the RECORD. The problem is that what they put in was not all of the statements, but simply a couple of paragraphs.

Let me read, if I might, from last year's statement that I made on the floor of the Senate. Let us see whether the Senator who mentioned this statement might want to modify his remarks, because I think, if he had known all of what I had to say last year, he might have spoken differently last week. These are my words last year on the Senate floor. I said to Senator SIMON:

> I would like to ask the Senator a question about the Social Security issue.
>
> We are now, by design, running surpluses in the Social Security system in order to prepare for the time when we will need them, when the baby boomers retire. I do not want to be in a situation where we use those surpluses to balance the Federal budget. That would be dishonest.
>
> If we did that, we would, in effect, steal money from a trust fund. We collect this money from the payroll taxes, out of workers' paychecks and businesses, and we assure them that this money will go into a trust fund. We promise people that it will be used only for trust fund purposes.
>
> If we use that money to offset the operating budget deficits, we are misusing that money. We cannot allow that to happen.

That is me speaking last year, not this year.

Again, quoting myself, speaking last year.

> The fact is we must not count the surplus between now and the year 2035. Between now and then we will have an enormous bubble of surplus * * *.
>
> The reason we increased taxes on payrolls in this country is we decided we must force national savings to meet a need after the turn of the century. To fail to do so is irresponsible.
>
> That is why I say to the Senator from Illinois (speaking to Senator Simon that day) that—whether it is under the current budget scheme in Congress without respect to this constitutional amendment, or whether it is with respect to a constitutional amendment—we must do the right thing with respect to the Social Security trust funds. The right thing is not to count them in the balanced budget computation.
>
> That is the only way to achieve national forced savings that we promised the workers and businesses in this country we were going to achieve.

Now, I read that to say that is what I said in the Chamber last year, and yet Senators have come to the floor and wondered where I was last year. Senators said that we did not bring this up, that we did not talk about this. And they put in the RECORD part of the statement and left all of this out.

Now, I hope it is an accident because accidents happen. But maybe we can be accurate with each other about what we did or did not do and what we said or did not say. Maybe we can decide that we respect each other's views. We differ. We feel strongly about things on this floor, and we represent the people the best we can. But I think that we ought to understand that what we should give each other in this Chamber is not just the truth but the whole truth, the whole truth. We do not need to in any way—and I would never, and I will not impugn motives here—but I do not think we should ever intend, nor do I expect anyone would ever intend, to misrepresent.

So believing that to be the case, I hope others who will take the floor in the future will not ever again say this: Where were they last year? Why were they not making these kinds of representations last year?

I will not read this a second or third time, but anybody who heard what I just read could not fail to understand. If you heard, you cannot fail to understand I raised exactly the same points last year as I raised this year.

I hope I do not hear someone again make the mistake, and I assume it is a mistake, not to include those statements I made in the Chamber last year in representations that they bring to the floor this year.

All of us understand what a lot of this is. It is a lot of politics. That is fine. We operate in a political system. I am not defensive about it. I just believe that when we discuss things with each other, let us do it with all the facts, let us do it with the truth and the whole truth.

That is what I hope to do with all of my colleagues in this Chamber. That is what I hope they would do with me as well.

I appreciate the Senator from Kentucky yielding.

Mrs. FEINSTEIN. May I ask the Senator from Kentucky to yield for an additional statement?

Mr. FORD. Mr. President, the Senator can get the floor in her own right.

The PRESIDING OFFICER. The Senator from Kentucky does not have the floor.

Mr. FORD. The Senator can get it in her own right.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. May I speak as in morning business?

The PRESIDING OFFICER. Without objection, it is so ordered.

CORRECTING THE BALANCED BUDGET AMENDMENT DEBATE

Mrs. FEINSTEIN. Mr. President, I also would like to correct the record, and so I rise today to set it straight. I am reacting to the fact again that the Senator from Mississippi submitted a portion of my floor statement from balanced budget debate last year and incorrectly described the context of my remarks, and I would like to put those remarks in context.

The Senator claims in the CONGRESSIONAL RECORD that the statement was made in response to the balanced budget amendment as submitted by Senators SIMON and HATCH. In fact, there were two proposals last year on the balanced budget amendment. The statement that is attributed to me was made in reaction and in support of the balanced budget amendment proposed by Senator REID, which would have protected the Social Security trust fund. I would like to put the statement submitted by the Senator from Mississippi in context by briefly reading a couple of paragraphs from my floor speech made on February 24, 1994.

> I am here to speak on behalf of the Reid amendment. I believe it is improved over the Simon amendment. This amendment would protect Social Security. I do not believe that the trust fund should be used to balance the budget. It would allow the creation of a capital budget (that is this amendment), just as many cities and States do now. It would allow flexibility in times of recession. And it would keep the courts from mandating actions that are legislative prerogatives.
>
> These changes make this amendment a much more workable balanced budget amendment.
>
> There are many in this body who believe that amending the Constitution is very strong medicine, perhaps too strong. I have listened very carefully to those arguments. But I have come to the conclusion that without the strong medicine the patient is not going to heal.
>
> People have said to me: You come from California and you supported an amendment for earthquake disaster relief that was off budget.
>
> Yes, I did. Disaster relief for floods was off budget. Disaster relief for Hurricane Iniki was off budget. Disaster relief for Hurricane Andrew was off budget. So why should California be treated any differently? That is why we need an amendment to make everyone play by the same rules.
>
> I think this is the heart of the matter. If people believe that under our present way of doing business we can balance this budget, then they should vote against a balanced budget amendment.

This is the part that I was quoted in.

> If in their heart of hearts they believe we are not going to be able to balance the budget under the current process, then I believe they should support the balanced budget amendment. At least that is the conclusion to which I have come. Without a constitutional amendment, a balanced budget just is not going to be achieved.

That is the context of my remarks, out of which one paragraph was taken and attributed to my not being concerned about Social Security last year. I submit this as proof that I was concerned about Social Security last year. This year I presented a substitute amendment which was the balanced budget amendment with Social Security excluded, and it lost before this body.

If I might just quickly restate my views, because I believe it is important. Let me speak as someone who does believe in a balanced budget amendment. It may not be the same identical one you believe in, Mr. President, but then that is why we are legislators, to legislate, hear the ebb and flow of debate, make up our minds, and improve legislation. I quite genuinely believe, and I think the figures will corroborate, that we can take Social Security off budget, create a capital budget—as the city of which I was mayor does, as the State of California does, as more than 40 other States do—and actually, by so doing, have less trouble balancing the budget by the year 2002 than we would if the present balanced budget amendment passed.

Now, perhaps the Federal Government is so far removed from States or cities that they cannot countenance financing large items of capital like aircraft carriers, at $1 billion per, through a capital budget, but I think we can. I think there is room for people to have different views about a balanced budget amendment. And I hope that, as others state our views, that they would do so correctly.

I have heard many Members supporting a balanced budget amendment say—and heard one on tape just a half-hour ago—"We have no intentions of using Social Security to balance the budget." That is wrong. Social Security's revenues would be used in the balanced budget amendment recently voted on to balance the budget.

Why do I believe that Social Security is as important a contract with America as the revisionist Contract With America? The reason I believe it is because for years people have been paying FICA taxes with the assurance that those taxes are not used for budget purposes, they are used for their retirement. That is a contract with America. You pay 6.2 percent of your salary, your employer matches it, the Federal Government holds that and invests it in Treasury bills, and you get it back as you retire.

I believe that obligation ought to be kept intact. If we find we cannot keep the obligation intact because more people are retiring and not enough are earning, then the system needs adjustment. And I am the first one to say that. Or the money is not going to be there, do not make young working people with young families pay the FICA tax today. Do the honest thing and cancel the FICA tax.

So I think there are very major and legitimate public policy questions at play in this balanced budget amendment and I hope that the mentality that I have been surprised to see in the last week—which is almost the mentality that anyone who dares disagree with the great pundits and proponents of the balanced budget amendment is not quite as good an American and does not have the right to disagree—would cease. I think that makes a mockery out of the public policy debates of the No. 1 one public policy forum of the United States, the U.S. Senate.

I believe we have a right to listen to debate. I believe we have a right to try to forge a better amendment. And I think taking Social Security out of the balanced budget amendment does in fact make it a better amendment and there is a way to compensate for the loss and that is by doing something that most States and every big city in this Nation does, which is fund their major capital improvements through a capital budget.

Mr. President, I thank you for the opportunity and I yield the floor.

Mr. LOTT. Mr. President, last week, I inserted in the RECORD a list of quotations concerning the balanced budget amendment, from several of our colleagues who voted against the balanced budget amendment on March 2 of this year. Those quotes demonstrated their support for the balanced budget amendment in earlier years, especially in 1994, when there was little chance that it would actually pass.

Earlier this afternoon, our distinguished colleague from Kentucky, Senator FORD, suggested an error in the words attributed to him. As I understood him, he has not claimed that he never said the words I quoted him as saying. But rather, he said them in support of a substitute amendment to the balanced budget amendment, not in support of the original legislative language.

That substitute—a Reid-Ford-Feinstein amendment—had the effect of exempting Social Security from the constitutional strictures of the balanced budget amendment.

The Senator is correct in pointing that out. The words I quoted were spoken on March 1, 1994, in support of that substitute amendment, which, because of its Social Security exclusion, did differ from the balanced budget amendment the Senator voted against on March 2 of this year.

If I had been aware of that, I would have duly noted it in the material inserted in the RECORD, but not read. So I apologize to the Senator for that misimpression. But in the interest of fairness, I think we should lay out the whole story. As another of our colleagues said here this afternoon, we want, not just the truth but the whole truth.

And the whole truth is that, after our distinguished colleague from Kentucky spoke those quoted words in support of the Reid-Ford-Feinstein amendment, that amendment was rejected by the Senate by a vote of 22 to 78.

The next vote came 5 hours later. It was a vote on final passage of Senate Joint Resolution 41, the balanced budget amendment virtually identical to the one narrowly defeated by the Senate only last week. And on that vote, Senator FORD voted "yea."

Let me make that clear. Although the Senator's words I quoted were directed toward the Reid-Ford-Feinstein substitute amendment, the Senator from Kentucky did indeed vote for the original balanced budget amendment last year which was basically identical to the one we voted on this year which he voted against.

Methinks, maybe, he protest too much.

I was raised to believe that actions speak louder than words. And the point of my remarks in the RECORD last week was that the actions of several of our colleagues with regard to the balanced budget amendment last year just do not compute, as Dr. Spock would say, with thier actions this year.

I do regret any inconvenience to the Senator caused by the publication of his quote from 1994. And I want to assure him that all future quotes will be triple-checked for their precise parliamentary context.

But at the same time, those of us who truly support a balanced budget amendment owe it to the public—to the taxpayers—to make clear why that amendment was defeated, at least temporarily, in this body last week.

It was defeated because several Senators who voted for its exact language 1 year ago found some reason, some excuse, to change their position 180 degrees this year.

Whatever their reasons for doing so, that abrupt change is what is at issue here. It is what the public is asking question about. And, in some cases, it may be difficult to explain.

One thing is for sure: No one can explain away that radical change in position regarding the balanced budget amendment by pointing to the Reid-Ford-Feinstein substitute of 1994. That substitute was indeed the subject of Senator FORD's remarks as I quoted them, but it ws the original, untouched, unamended, unaltered, authentic balanced budget amendment for which he voted on March 1, 1994.

And it was the same amendment, with only the beneficial addition of Senator NUNN's language concerning the federal judiciary, which he voted against on March 2, 1995.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that I may speak for not to exceed 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE BALANCED BUDGET AMENDMENT FIGHT

Mr. BYRD. Mr. President, the balanced budget amendment fight has ended for the moment, but some rather unattractive reverberations seem still to be echoing in this Chamber and around this city. Honorable men and women wrestled with their consciences and did the best that they could to reach the right decision on the balanced budget amendment to the Constitution. Thirty days of good solid debate in the best Senate tradition persuaded some that the amendment was the right thing and some that it was the wrong thing. That is exactly what the constitutional Framers intended when they set up the difficult amending process laid out in the Constitution. But the Framers probably did not foresee the aftermath of political guerilla-warfare tactics that is now in progress, nor would they have understood or appreciated this particular unfortunate turn of events.

Attack ads are already running in the States of certain Members who could not support the amendment this year because of its glaring deficiencies. Because of the thorough examination of the amendment on this floor and elsewhere, the constitutional amendment has been somewhat discredited. The idea has lost some support with the people and in its present form, it has lost the support of some Senators who had supported it in the past. There is nothing unusual about that. Proposals often fall out of favor when careful examination reveals their flaws. That is healthy. That is good for the Republic. That is representative democracy.

But, the ugliness which continues to pervade the air on the days after the amendment's defeat is unwarranted, unwise, and to be regretted.

Senators who have used their best judgment are under attack and in the most extreme of cases one Senator, it is rumored, has been threatened with his position on a Senate committee.

When Senators are asked to check their integrity at the door to continue in good standing their membership in any political party, something is very, very wrong. When a Senator has to subordinate his conscience and his dedication to the Constitution of the United States to any political party, then we have come to a very poor pass in this Senate and in this country. When Members of the Senate are subjected to hit-list tactics because of their position of conscience on an important constitutional amendment, somewhere, somebody's perception of the word "Honorable" is seriously off track. And when losing a fair fight prompts the loud public "chewing of rags" which we have seen since last Thursday evening, everybody loses, including the Nation.

I hope that the coming days will see a restoration of sanity and comity in this body. What we need to do now is to get on with the business of reducing the deficit, which is what the American people have really asked us to do. This Senate which so distinguished itself only last week with a wise and courageous decision on the balanced budget amendment, must cease the self-destructive and embarrassing threats and recriminations and once again distinguish itself by a serious attempt to do the people's business. That is what we are all elected and expected to do.

Mr. President, for the information of Senators, I ask unanimous consent to include in the RECORD at this point rule XXIV of the Standing Rules of the Senate entitled "Appointment of Committees."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RULE XXIV

APPOINTMENT OF COMMITTEES

1. In the appointment of the standing committees, or to fill vacancies thereon, the Senate, unless otherwise ordered, shall by resolution appoint the chairman of each such committee and the other members thereof. On demand of any Senator, a separate vote shall be had on the appointment of the chairman of any such committee and on the appointment of the other members thereof. Each such resolution shall be subject to amendment and to division of the question.

2. On demand of one-fifth of the Senators present, a quorum being present, any vote taken pursuant to paragraph 1 shall be by ballot.

3. Except as otherwise provided or unless otherwise ordered, all other committees, and the chairmen thereof, shall be appointed in the same manner as standing committees.

4. When a chairman of a committee shall resign or cease to serve on a committee, action by the Senate to fill the vacancy in such committee, unless specially otherwise ordered, shall be only to fill up the number of members of the committee, and the election of a new chairman.

Mr. BYRD. Mr. President, I yield the floor.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT OF 1995

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to consideration of H.R. 889 which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 889) making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness for the Department of Defense for the fiscal year ending September 30, 1995 and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Appropriations, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

H.R. 889

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to provide emergency supplemental appropriations for the Department of Defense to preserve and enhance military readiness for the fiscal year ending September 30, 1995, and for other purposes, namely:

[TITLE I

[EMERGENCY SUPPLEMENTAL APPROPRIATIONS

[DEPARTMENT OF DEFENSE—MILITARY

[MILITARY PERSONNEL

[MILITARY PERSONNEL, ARMY

[For an additional amount for "Military Personnel, Army," $69,300,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[MILITARY PERSONNEL, NAVY

[For an additional amount for "Military Personnel, Navy," $49,500,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[MILITARY PERSONNEL, MARINE CORPS

[For an additional amount for "Military Personnel, Marine Corps," $10,400,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[MILITARY PERSONNEL, AIR FORCE

[For an additional amount for "Military Personnel, Air Force," $71,700,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[RESERVE PERSONNEL, NAVY

[For an additional amount for "Reserve Personnel, Navy," $4,600,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE

[OPERATION AND MAINTENANCE, ARMY

[For an additional amount for "Operation and Maintenance, Army," $958,600,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE, NAVY

[For an additional amount for "Operation and Maintenance, Navy," $347,600,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE, MARINE CORPS

[For an additional amount for "Operation and Maintenance, Marine Corps," $38,000,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE, AIR FORCE

[For an additional amount for "Operation and Maintenance, Air Force," $888,700,000: *Provided*, That such amount is designated by

Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE, DEFENSE-WIDE

[For an additional amount for "Operation and Maintenance, Defense-Wide," $43,200,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE, NAVY RESERVE

[For an additional amount for "Operation and Maintenance, Navy Reserve," $6,400,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[PROCUREMENT

[OTHER PROCUREMENT, ARMY

[For an additional amount for "Other Procurement, Army," $28,600,000, to remain available until September 30, 1997: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OTHER PROCUREMENT, AIR FORCE

[For an additional amount for "Other Procurement, Air Force," $8,100,000, to remain available until September 30, 1997: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OTHER DEPARTMENT OF DEFENSE PROGRAMS

[DEFENSE HEALTH PROGRAM

[For an additional amount for "Defense Health Program," $14,000,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[TITLE II

[RESCINDING CERTAIN BUDGET AUTHORITY

[DEPARTMENT OF DEFENSE—MILITARY

[OPERATION AND MAINTENANCE

[OPERATION AND MAINTENANCE, AIR FORCE

[(RESCISSION)

[Of the funds made available under this heading in Public Law 103–335, $15,000,000 are rescinded.

[OPERATION AND MAINTENANCE, DEFENSE-WIDE

[(RESCISSION)

[Of the funds made available under this heading in Public Law 103–335, $18,800,000 are rescinded.

[ENVIRONMENTAL RESTORATION, DEFENSE

[(RESCISSION)

[Of the funds made available under this heading in Public Law 103–335, $150,000,000 are rescinded.

[FORMER SOVIET UNION THREAT REDUCTION

[(RESCISSION)

[Of the funds made available under this heading in Public Law 103–335, $80,000,000 are rescinded.

[PROCUREMENT

[AIRCRAFT PROCUREMENT, AIR FORCE

[(RESCISSIONS)

[Of the funds made available under this heading in Public Law 103–139, $15,000,000 are rescinded.

[Of the funds made available under this heading in Public Law 103–335, $71,400,000 are rescinded.

[MISSILE PROCUREMENT, AIR FORCE

[(RESCISSIONS)

[Of the funds made available under this heading in Public Law 102–396, $33,000,000 are rescinded.

[Of the funds made available under this heading in Public Law 103–139, $86,200,000 are rescinded.

[NATIONAL GUARD AND RESERVE EQUIPMENT

[(RESCISSION)

[Of the funds made available under this heading in Public Law 103–335, $30,000,000 are rescinded.

[DEFENSE PRODUCTION ACT PURCHASES

[(RESCISSION)

[Of the funds made available under this heading in Public Law 103–139, $100,000,000 are rescinded.

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION, ARMY

[(RESCISSIONS)

[Of the funds made available under this heading in Public Law 103–139, $28,300,000 are rescinded.

[Of the funds made available under this heading in Public Law 103–335, $19,700,000 are rescinded.

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY

[(RESCISSIONS)

[Of the funds made available under this heading in Public Law 103–139, $1,200,000 are rescinded.

[Of the funds made available under this heading in Public Law 103–335, $58,900,000 are rescinded.

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION, AIR FORCE

[(RESCISSIONS)

[Of the funds made available under this heading in Public Law 103–139, $93,800,000 are rescinded.

[Of the funds made available under this heading in Public Law 103–335, $75,800,000 are rescinded.

[RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE

[(RESCISSIONS)

[Of the funds made available under this heading in Public Law 103–139, $77,000,000 are rescinded.

[Of the funds made available under this heading in Public Law 103–335, $491,600,000 are rescinded.

[RELATED AGENCIES

[NATIONAL SECURITY EDUCATION TRUST FUND

[(RESCISSION)

[Of the funds made available under this heading in Public Law 102–172, Public Law 103–50, Public Law 103–139, and Public Law 103–335, $161,287,000 are rescinded: *Provided*, That the balance of funds in the National Security Education Trust Fund (established pursuant to section 804 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1904)), other than such amount as is necessary for obligations made before the date of the enactment of this Act, is hereby reduced to zero: *Provided further*, That no outlay may be made from the Fund after the date of the enactment of this Act other than to liquidate an obligation made before such date and upon liquidation of all such obligations made before such date, the Fund shall be closed: *Provided further*, That no obligation may be made from the Fund after the date of the enactment of this Act.

[TITLE III

[ADDITIONAL EMERGENCY SUPPLEMENTAL APPROPRIATIONS TO FURTHER ENHANCE READINESS

[DEPARTMENT OF DEFENSE—MILITARY

[MILITARY PERSONNEL

[MILITARY PERSONNEL, ARMY

[For an additional amount for "Military Personnel, Army," $75,500,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[MILITARY PERSONNEL, NAVY

[For an additional amount for "Military Personnel, Navy," $68,200,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[MILITARY PERSONNEL, MARINE CORPS

[For an additional amount for "Military Personnel, Marine Corps," $3,000,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[MILITARY PERSONNEL, AIR FORCE

[For an additional amount for "Military Personnel, Air Force," $70,400,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[RESERVE PERSONNEL, ARMY

[For an additional amount for "Reserve Personnel, Army," $6,500,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[RESERVE PERSONNEL, NAVY

[For an additional amount for "Reserve Personnel, Navy," $5,000,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[RESERVE PERSONNEL, MARINE CORPS

[For an additional amount for "Reserve Personnel, Marine Corps," $1,300,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[RESERVE PERSONNEL, AIR FORCE

[For an additional amount for "Reserve Personnel, Air Force," $2,800,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[NATIONAL GUARD PERSONNEL, ARMY

[For an additional amount for "National Guard Personnel, Army," $11,000,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[NATIONAL GUARD PERSONNEL, AIR FORCE

[For an additional amount for "National Guard Personnel, Air Force," $5,000,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE

[OPERATION AND MAINTENANCE, ARMY

[For an additional amount for "Operation and Maintenance, Army," $133,000,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE, NAVY

[For an additional amount for "Operation and Maintenance, Navy," $107,000,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE, MARINE CORPS

[For an additional amount for "Operation and Maintenance, Marine Corps," $46,000,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE, AIR FORCE

[For an additional amount for "Operation and Maintenance, Air Force," $80,400,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE, ARMY RESERVE

[For an additional amount for "Operation and Maintenance, Army Reserve," $13,000,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE, NAVY RESERVE

[For an additional amount for "Operation and Maintenance, Navy Reserve," $18,000,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

[For an additional amount for "Operation and Maintenance, Marine Corps Reserve," $1,000,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE, AIR FORCE RESERVE

[For an additional amount for "Operation and Maintenance, Air Force Reserve," $2,600,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

[For an additional amount for "Operation and Maintenance, Army National Guard," $10,000,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

[For an additional amount for "Operation and Maintenance, Air National Guard," $10,000,000: *Provided*, That such amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

[TITLE IV

[GENERAL PROVISIONS

[SEC. 401. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

[SEC. 402. Notwithstanding sections 607 and 630 of the Foreign Assistance Act of 1961 (22 U.S.C. 2357, 2390) and sections 2608 and 2350j of title 10, United States Code, all funds received by the United States as reimbursement for expenses for which funds are provided in this Act shall be deposited in the Treasury as miscellaneous receipts.]

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to provide supplemental appropriations for the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes, namely:

TITLE I

SUPPLEMENTAL APPROPRIATIONS

DEPARTMENT OF DEFENSE—MILITARY

MILITARY PERSONNEL

MILITARY PERSONNEL, ARMY

For an additional amount for "Military Personnel, Army", $35,400,000.

MILITARY PERSONNEL, NAVY

For an additional amount for "Military Personnel, Navy", $49,500,000.

MILITARY PERSONNEL, MARINE CORPS

For an additional amount for "Military Personnel, Marine Corps", $10,400,000.

MILITARY PERSONNEL, AIR FORCE

For an additional amount for "Military Personnel, Air Force", $37,400,000.

RESERVE PERSONNEL, NAVY

For an additional amount for "Reserve Personnel, Navy", $4,600,000.

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For an additional amount for "Operation and Maintenance, Army", $636,900,000.

OPERATION AND MAINTENANCE, NAVY

For an additional amount for "Operation and Maintenance, Navy", $284,100,000.

OPERATION AND MAINTENANCE, MARINE CORPS

For an additional amount for "Operation and Maintenance, Marine Corps", $27,700,000.

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for "Operation and Maintenance, Air Force", $785,800,000.

OPERATION AND MAINTENANCE, DEFENSE-WIDE

For an additional amount for "Operation and Maintenance, Defense-Wide", $43,200,000.

OPERATION AND MAINTENANCE, NAVY RESERVE

For an additional amount for "Operation and Maintenance, Navy Reserve", $6,400,000.

OTHER DEPARTMENT OF DEFENSE PROGRAMS

DEFENSE HEALTH PROGRAM

For an additional amount for "Defense Health Program", $14,000,000.

GENERAL PROVISIONS

SEC. 101. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 102. During the current fiscal year, appropriations available to the Department of Defense for the pay of civilian personnel may be used, without regard to the time limitations specified in section 5523(a) of title 5, United States Code, for payments under the provisions of section 5523 of title 5, United States Code, in the case of employees, or an employee's dependents or immediate family, evacuated from Guantanamo Bay, Cuba, pursuant to the August 26, 1994 order of the Secretary of Defense.

(INCLUDING TRANSFER OF FUNDS)

SEC. 103. In addition to amounts appropriated or otherwise made available by this Act, $28,297,000 is hereby appropriated to the Department of Defense and shall be available only for transfer to the United States Coast Guard to cover the incremental operating costs associated with Operations Able Manner, Able Vigil, Restore Democracy, and Support Democracy: Provided, That such amount shall remain available for obligation until September 30, 1996.

SEC. 104. (a) Section 8106A of the Department of Defense Appropriations Act, 1995 (Public Law 103–335), is amended by striking out the last proviso and inserting in lieu thereof the following: ": Provided further, That if, after September 30, 1994, a member of the Armed Forces (other than the Coast Guard) is approved for release from active duty or full-time National Guard duty and that person subsequently becomes employed in a position of civilian employment in the Department of Defense within 180 days after the release from active duty or full-time National Guard duty, then that person is not eligible for payments under a Special Separation Benefits program (under section 1174a of title 10, United States Code) or a Voluntary Separation Incentive program (under section 1175 of title 10, United States Code) by reason of the release from active duty or full-time National Guard duty, and the person shall reimburse the United States the total amount, if any, paid such person under the program before the employment begins".

(b) Appropriations available to the Department of Defense for fiscal year 1995 may be obligated for making payments under sections 1174a and 1175 of title 10, United States Code.

(c) The amendment made by subsection (a) shall be effective as of September 30, 1994.

SEC. 105. Subsection 8054(g) of the Department of Defense Appropriations Act, 1995 (Public Law 103–335), is amended to read as follows: "Notwithstanding any other provision of law, of the amounts available to the Department of Defense during fiscal year 1995, not more than $1,252,650,000 may be obligated for financing activities of defense FFRDCs: Provided, That, in addition to any other reductions required by this section, the total amount appropriated in title IV of this Act is hereby reduced by $200,000,000 to reflect the funding ceiling contained in this subsection and to reflect further reductions in amounts available to the Department of Defense to finance activities carried out *by defense FFRDCs and other entities providing consulting services, studies and analyses, systems engineering and technical assistance, and technical, engineering and management support.''.*

(RESCISSIONS)

SEC. 106. Of the funds provided in Department of Defense Appropriations Acts, the following funds are hereby rescinded from the following accounts in the specified amounts:

Operation and Maintenance, Navy, $16,300,000;

Operation and Maintenance, Air Force, $2,000,000;

Operation and Maintenance, Defense-Wide, $90,000,000;

Environmental Restoration, Defense, $300,000,000;

Aircraft Procurement, Army, 1995/1997, $77,611,000;

Procurement of Ammunition, Army, 1993/1995, $85,000,000;

Procurement of Ammunition, Army, 1995/1997, $89,320,000;

Other Procurement, Army, 1995/1997, $46,900,000;

Shipbuilding and Conversion, Navy, 1995/1999, $26,600,000;

Missile Procurement, Air Force, 1993/1995, $33,000,000;

Missile Procurement, Air Force, 1994/1996, $86,184,000;

Other Procurement, Air Force, 1995/1997, $6,100,000;

Procurement, Defense-Wide, 1995/1997, $65,000,000;

Defense Production Act, $100,000,000;

Research, Development, Test and Evaluation, Army, 1995/1996, $38,300,000;

Research, Development, Test and Evaluation, Navy, 1995/1996, $59,600,000;

Research, Development, Test and Evaluation, Air Force, 1994/1995, $81,100,000;

Research, Development, Test and Evaluation, Air Force, 1995/1996, $226,900,000;

Research, Development, Test and Evaluation, Defense-Wide, 1994/1995, $77,000,000;

Research, Development, Test and Evaluation, Defense-Wide, 1995/1996, $351,000,000.

(RESCISSION)

SEC. 107. Of the funds made available for the National Security Education Trust Fund in Public Law 102–172, $150,000,000 are rescinded: Provided, That the balance of funds in the National Security Education Trust Fund (established pursuant to section 804 of Public Law 102–183 (50 U.S.C. 1904)), other than such amounts as are necessary for liquidation of obligations made before the date of the enactment of this Act, is hereby reduced to $8,500,000: Provided further, That upon liquidation of all such obligations and the $8,500,000 in the preceding proviso, the Fund shall be closed.

(TRANSFER OF FUNDS)

SEC. 108. Section 8005 of the Department of Defense Appropriations Act, 1995 (Public Law 103–335; 108 Stat. 2617), is amended by striking out ''$2,000,000,000'' and inserting in lieu thereof ''$1,750,000,000''.

SEC. 109. REPORT ON COST AND SOURCE OF FUNDS FOR MILITARY ACTIVITIES IN HAITI.

(a) REQUIREMENT.—None of the funds appropriated by this Act or otherwise made available to the Department of Defense may be expended for operations or activities of the Armed Forces in and around Haiti sixty days after enactment of this Act, unless the President submits to Congress the report described in subsection (b).

(b) REPORT ELEMENTS.—The report referred to in subsection (a) shall include the following:

(1) A detailed description of the estimated cumulative incremental cost of all United States activities subsequent to September 30, 1993, in and around Haiti, including but not limited to—

(A) the cost of all deployments of United States Armed Forces and Coast Guard personnel, training, exercises, mobilization, and preparation activities, including the preparation of police and military units of the other nations of the multinational force involved in enforcement of sanctions, limits on migration, establishment and maintenance of migrant facilities at Guantanamo Bay and elsewhere, and all other activities relating to operations in and around Haiti; and

(B) the costs of all other activities relating to United States policy toward Haiti, including humanitarian and development assistance, reconstruction, balance of payments and economic support, assistance provided to reduce or eliminate all arrearages owed to International Financial Institutions, all rescheduling or forgiveness of United States bilateral and multilateral debt, aid and other financial assistance, all in-kind contributions, and all other costs to the United States Government.

(2) A detailed accounting of the source of funds obligated or expended to meet the costs described in paragraph (1), including—

(A) in the case of funds expended from the Department of Defense budget, a breakdown by military service or defense agency, line item, and program; and

(B) in the case of funds expended from the budgets of departments and agencies other than the Department of Defense, by department or agency and program.

[TITLE V]

TITLE II

RESCISSIONS

The following rescissions of budget authority are made, namely:

CHAPTER I

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES

DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

IMMIGRATION EMERGENCY FUND

(RESCISSION)

Of the amounts made available under this heading in Public Law 103–317, **[**$70,000,000**]** *$50,000,000* are rescinded.

DEPARTMENT OF COMMERCE

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

INDUSTRIAL TECHNOLOGY SERVICES

(RESCISSION)

Of the amounts made available under this heading in Public Law 103–317 for the Advanced Technology Program, $107,000,000 are rescinded.

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

(RESCISSION)

Of the amounts made available under this heading in Public Law 103–317, $20,000,000 are rescinded.

CHAPTER II

ENERGY AND WATER DEVELOPMENT

DEPARTMENT OF ENERGY

ATOMIC ENERGY DEFENSE ACTIVITIES

DEFENSE ENVIRONMENTAL RESTORATION AND WASTE MANAGEMENT

(RESCISSION)

Of the amounts made available under this heading in Public Law 103–316 and prior years' Energy and Water Development Appropriations Acts, $100,000,000 are rescinded.

CHAPTER III

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED AGENCIES

MULTILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

INTERNATIONAL FINANCIAL INSTITUTIONS

CONTRIBUTION TO THE AFRICAN DEVELOPMENT FUND

(RESCISSION)

Of the funds made available under this heading in Public Law 103–306, $62,014,000 are rescinded.

BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

AGENCY FOR INTERNATIONAL DEVELOPMENT

[ASSISTANCE FOR THE NEW INDEPENDENT STATES OF THE FORMER SOVIET UNION

[(RESCISSION)

[Of the funds made available under this heading in Public Law 103–87 for support of an officer resettlement program in Russia as described in section 560(a)(5), $110,000,000 are rescinded.**]**

DEVELOPMENT FUND FOR AFRICA

(RESCISSION)

Of the funds made available under this heading in Public Law 103–87 and Public Law 103–306, $110,000,000 are rescinded.

CHAPTER IV

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES

DEPARTMENT OF ENERGY

CLEAN COAL TECHNOLOGY

(RESCISSION)

Of the funds made available under this heading for obligation in fiscal year 1996, $50,000,000 are rescinded and of the funds made available under this heading for obligation in fiscal year 1997, $150,000,000 are rescinded: *Provided*, That funds made available in previous appropriations Acts shall be available for any ongoing project regardless of the separate request for proposal under which the project was selected.

CHAPTER V

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION, AND RELATED AGENCIES

DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

TRAINING AND EMPLOYMENT SERVICES

(RESCISSION)

Of the funds made available under this heading in Public Law 103–333 for carrying out title II, part C of the Job Training Partnership Act, $200,000,000 are rescinded.

DEPARTMENT OF EDUCATION

[SCHOOL IMPROVEMENT PROGRAMS

[(RESCISSION)

[Of the funds made available under this heading in Public Law 103–333 for new education infrastructure improvement grants, $100,000,000 are rescinded.**]**

STUDENT FINANCIAL ASSISTANCE

(RESCISSION)

Of the funds made available under this heading in Public Law 103–112, $100,000,000 made available for title IV, part A, subpart 1 of the Higher Education Act are rescinded.

CHAPTER VI

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES

DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

FACILITIES AND EQUIPMENT

(AIRPORT AND AIRWAY TRUST FUND)

(RESCISSION)

Of the available balances under this heading that remain unobligated for the "advanced automation system", $35,000,000 are rescinded.

FEDERAL HIGHWAY ADMINISTRATION

FEDERAL-AID HIGHWAYS

(HIGHWAY TRUST FUND)

(RESCISSION)

Of the available contract authority balances under this heading in Public Law 97–424, $13,340,000 are rescinded; and of the available balances under this heading in Public Law 100–17, $120,000,000 are rescinded.

MISCELLANEOUS HIGHWAY DEMONSTRATION PROJECTS

(RESCISSION)

Of the available appropriated balances provided in Public Law 93–87; Public Law 98–8; Public Law 98–473; and Public Law 100–71, $12,004,450 are rescinded.

FEDERAL RAILROAD ADMINISTRATION

LOCAL RAIL FREIGHT ASSISTANCE

(RESCISSION)

Of the available balances under this heading, [$13,126,000] *$6,608,000* are rescinded.

[PENNSYLVANIA STATION REDEVELOPMENT PROJECT

[(RESCISSION)

[Of the funds made available under this heading in Public Law 103–331, $40,000,000 are rescinded.]

CHAPTER VII

DEPARTMENTS OF VETERANS AFFAIRS AND HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES

[INDEPENDENT AGENCIES

[NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NATIONAL AERONAUTICAL FACILITIES

[(RESCISSION)

[Of the funds made available under this heading in Public Law 103–327, for construction of wind tunnels, $400,000,000 are rescinded.]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING PROGRAMS

ANNUAL CONTRIBUTIONS FOR ASSISTED HOUSING

(RESCISSION)

Of the funds made available under this heading in Public Law 103–327 and any unobligated balances from funds appropriated under this heading in prior years, $400,000,000 are rescinded from amounts available for the development or acquisition costs of public housing.

[This Act may be cited as the "Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance Military Readiness Act of 1995".]

This Act may be cited as the "Supplemental Appropriations and Rescissions Act, 1995".

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, the Senate now turns to consideration of H.R. 889, making fiscal year 1995 supplemental appropriations for the Department of Defense, and rescinding appropriations for defense and nondefense programs. The Committee on Appropriations met last Thursday on this measure, and reported it with amendments by a unanimous vote of 28–0.

The bill recommended by the committee contains two titles. The first title provides a total of $1,935,400,000 in supplemental appropriations for the Department of Defense. These appropriations are recommended in response to a request from the President for $2,538,700,000 to replenish accounts depleted by unbudgeted operations in and around Haiti, Cuba, Bosnia, Rwanda, Somalia, Iraq, and Korea. Guided by the recommendations of our defense subcommittee, the committee proposes a reduction from the President's request for defense. We believe that we have addressed the immediate concerns of the Department of Defense regarding operational readiness, and are prepared to consider the other readiness issues raised by the Department in connection with the fiscal year 1996 defense appropriations bill.

The committee has also recommended rescissions in prior appropriations for defense in order to offset the additional spending recommended. The President requested appropriations with an emergency designation under the terms of the Budget Enforcement Act. With this designation, funds provided would have been in addition to those set by the domestic discretionary caps. The committee believes it is preferable to offset spending wherever and whenever possible, so that the deficit is not increased.

Senator STEVENS, the chairman of our Defense Appropriations Subcommittee, and the ranking Member of that committee, former chairman DANIEL INOUYE, will discuss the specifics of the supplemental appropriations and rescissions in title I as we proceed with the debate on this measure.

The second title of the bill as recommended would rescind a total of $1,535,966,450 in appropriations for nondefense programs. The other body recommended rescissions of slightly more than $1.4 billion in nondefense programs in order to partially offset the costs of their recommended supplementals for defense. Our committee fully offset defense supplementals with rescissions in lower priority defense programs. Our nondefense rescissions are solely intended to achieve reductions in Federal spending this fiscal year.

Mr. President, I believe, as we have researched this, that this is the first time in the history of the Appropriations Committee where a rescission package was identified as an offset and as a deduction from the current deficit. I think that is worthy to take note.

Mr. President, that summarizes the recommendations of the committee. They are discussed in greater detail in our report which is Senate report 104–12 which was received last Friday and available to all Members.

I am now prepared to yield the floor for any opening remarks that the ranking member, the former chairman of the Appropriations Committee, Senator BYRD, wishes to make. Then we will seek to adopt the committee amendments, and proceed with consideration of the bill and entertaining any amendments that Members may wish to offer at this time.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the chairman, Senator HATFIELD, for his statement which is complete and thorough enough in itself without any additional words on my part. But I do support the committee's recommendations on H.R. 889, as reported by Senator HATFIELD.

H.R. 889, as reported, contains recommendations totaling just over $1.9 billion to restore readiness funds to the Department of Defense. These funds were used for unforeseen international operations such as in Haiti, in the Middle East, Rwanda, Somalia, and Bosnia.

It is my understanding that the Department of Defense needs these funds by the end of March. The committee's recommended appropriations are approximately $600 million less than requested by the President and $1.2 billion below the House bill. Furthermore, and most importantly, the committee's recommendations include sufficient Department of Defense rescissions to fully offset both the budget authority and the outlays of these defense appropriations.

I compliment the distinguished chairman of the Defense Appropriations Subcommittee, Mr. STEVENS, and the distinguished ranking member of the Defense Appropriations Subcommittee, Mr. INOUYE, for their able efforts in finding these offsets.

In addition, title II of the bill contains rescissions from a number of nondefense appropriations totaling over $1.5 billion in additional spending cuts.

I compliment the chairman of the committee, Mr. HATFIELD, who is a former chairman of the committee, former ranking member, and again chairman of the Appropriations Committee for his expeditious handling of this important measure, and I urge Senators on both sides to support the committee's recommendations.

I yield the floor.

Mr. HATFIELD. Mr. President, as we now proceed, I would seek unanimous consent that the committee amendments be considered, and agreed to, en bloc; that the bill, as amended, be considered as original text for the purpose of further amendment; and, that no points of order be waived thereon by reason of this agreement.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I believe a unanimous-consent request is pending. Is that the order of business?

The PRESIDING OFFICER. The Senator is correct.

Mr. BINGAMAN. Mr. President, I object.

Mr. HATFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, the first title to this supplemental appropriations bill addresses two components of our defense financing. First, it provides $1.96 billion to ensure military readiness through the remainder of this year. Second, it proposes $1.96 billion in rescissions to fully offset the new budget authority and outlays for 1995.

We received the administration's request and we scrubbed it a little bit, and we recommended that $600 million be deleted from the amounts proposed by the House in accordance with the request of the administration.

These come in three categories. The request proposed advance funding of reimbursements from Kuwait and the United Nations. In two instances, we spent defense money already appropriated for other purposes for the purpose of sending troops to Kuwait or to assist in support of the United Nations in peacekeeping activities. I believe we should rely on our allies and on the United Nations to fulfill their commitments, and that we need not put up taxpayers' money in advance of the receipt of the payment that they are already committed to pay to us.

The request proposed $70 million in military construction and facility upgrades at Guantanamo Bay naval station to support Cuban refugees now interned at that installation. Now, here again, Mr. President, together with some of our staff, I journeyed to Guantanamo Bay to look at the situation and I am convinced that the amounts that have been requested should await a total congressional assessment on the policy of the refugee internment camp at Guantanamo Bay. I believe that can be addressed in the 1996 defense and military construction bills. Those may not be decisions to be made in the appropriations process. They may be made by the Armed Services Committee in its deliberations and recommendations to the Senate and to the Congress as a whole.

Finally, several amounts were proposed that were not justified as emergencies or were unrelated to the contingency operations in Cuba, Haiti, Bosnia, and Kuwait. Many of those also can and should be addressed through the normal reprogramming process of the Department. We, as a Nation, face a crisis in military readiness because the administration spent money on contingency operations in excess of amounts provided by Congress.

The 1995 defense appropriations bill included many increases in the budget for readiness, training, recruiting, and maintenance of facilities in military housing. These are the very priorities that were put at risk by the President's decision to engage in operations in Bosnia, Haiti, Kuwait, and Rwanda without approval and support of funding for those activities by the Congress. The President did not come to the Congress in advance of these deployments to seek funding or to propose offsets in existing authorizations.

Instead, money provided by the Congress for training, logistic support, and personnel, were diverted to these accounts. This practice is in stark contrast to how the Congress and the White House approached the Persian Gulf war. As we proceed through our review of the Department's 1996 budget, I believe we must address the fiscal controls that permitted the administration to delete vital readiness accounts early in the year without the explicit consent of the Congress.

As I said before, it is my understanding that that may come from the Armed Services Committee. I know that some of my colleagues, including my fellow Senator from Alaska and the distinguished chairman of the Foreign Relations Committee will offer amendments to tighten controls on DOD consultation with the Congress. Members of the committee discussed at length the issue of offsetting the new spending in this bill and the precedent set for emergencies.

While the military requirements are urgent, they can be met by reductions to programs that Congress might have reduced if we had known the cost of the contingency operations to begin with.

The current deficit crisis makes it necessary that the amounts in this bill be fully offset. That is the judgment of our committee. That presents the committee with only hard choices, especially when the choices have to be made this late in the year. That simply means that we would have a lot more flexibility in the beginning of the fiscal year to eliminate some accounts than we do now because many of the accounts have already been spent out to the point where it is not possible to include them in the readjustments made in this bill.

In general, the recommendations before the committee reflect cuts in programs where spending can be controlled. Many of the programs we seek to reduce have merit, Mr. President, great merit. We have provided funding for these programs in the past and even in this current fiscal year.

I want to tell the Senate that I am confident that Congress will revisit some of these in the 1996 bill. But at the present time we have no alternative to find some source to obtain the funds to put back into the training accounts so training can be continued. There is a timeframe involved. It must be done so the moneys are available no later than the end of April. We hope that they will be available by April 1.

We have made reductions to the TRP account, environmental and defense conversion accounts. These reflect the availability of funds, and they reflect to a certain extent a change of direction for the programs, but basically it is because that is where the money is that has not been expended in this fiscal year. To the extent that any funds remain available for the TRP in the future, I believe they must be specifically directed and identified military priorities.

The committee proposal strikes a fair balance to proceed to conference with the House, and I would urge Members of the Senate on both sides of the aisle and particularly on both sides of the TRP debate, to endorse the level that is in this bill because it is different from that in the House.

I believe I was the originator of the Defense Environmental Restoration Program but I viewed with increasing alarm the steady increase in spending in that program with little to show for it. Despite the progress in that fund, the Department of Defense still spends only about 50 percent of the amounts in the environmental restoration account for cleanup activities. Almost 50 percent now goes for studies, plans, and legal fees. In comparison, when we build new facilities, the cost for those is about 6 to 7 percent. Only 6 to 7 percent of the funding goes for design, planning and litigation in the planning and building of new facilities.

Now, our cut does not impact any funds provided to meet environmental hazards at bases identified for closure in the 1988, 1991, and 1993 BRAC rounds. Those funds are appropriated separately in the military construction bill and were not addressed by this bill.

We do face another base closing round this year. I know that, recognizing that two Alaska bases are on the list to be closed: Adak naval station, and Fort Greely at Big Delta, AK. I am sensitive to the defense conversion and transition issues.

Amounts provided in recent bills have gone well beyond the original goals, however, of those programs as they were established when the defense drawdown defense following the gulf wars.

In particular, the cuts proposed by the committees address areas where the Congress has significantly earmarked funds for specific projects. While not canceling or terminating any one project, the Secretary will have to substantially scale back spending in this area. Again, that will have to be done because that is where the money is. If we have to find almost $2 billion in these accounts at this time, we have to find accounts where the remaining balance will justify taking some of the money out and still leaving the program operable for the remainder of the year. Spending to ease the impact of these defense cutbacks cannot come at the significant loss of immediate military readiness. However, I assure all interested Members that we want to work to ensure the highest priority programs continue to be adequately funded.

Most of the program reductions proposed in the rescission package that we present to the Senate reflect fact-of-life program changes. For instance, the Department terminated the TSSAM missile leaving funds that were appropriated for that project available for rescission. We intend to continue to work with the Air Force to determine what may be the best estimate of amounts available to cut in this area in the conference.

I also want to commend the efforts of Lt. Gen. Dick Hawley and Ms. Darlene Druyun for their efforts to expedite the termination process on the TSSAM missile system, and they are minimizing the cost of that termination to the taxpayers.

Congress also funded six new AH-64 Apache helicopters for 1995 to assure no break in production as we move to the Longbow version of that aircraft. However, new foreign sales have developed, and the Army has indicated that those funds we appropriated for 1995 are not required for new aircraft procurement this year. In conference, we intend to look at Army proposals to shift some of the funding in that account to accelerate the Longbow Program.

This committee also initiated the Arms Program to preserve the industrial base for ammunition production. The cut we have made reflects the amount to expire at the end of this year. The Army has not accounted in the 1996 budget for funds necessary to meet the ammunition stockpile and training requirements, and we will want to move some accounts around to assure we have the necessary amounts for the 1996 bill.

Finally, the committee has strongly supported the Department of Defense's efforts to procure unmanned aerial vehicles for battlefield surveillance and intelligence. The cut to this item reflects technical delays only in the program. I am personally, and I believe our committee is totally, committed to providing adequate funding for the program based on its readiness for production. When it is ready, we will provide a recommendation to the Senate that it be appropriately funded.

In closing, I know some of the Senate will disagree with some of these rescissions. The options for offsets at this stage are very limited. I urged the Department of Defense to submit this supplemental as early as last December, but because of other considerations, the White House chose to withhold it until February. That delayed our ability to respond to the needs, as I have said, because the spending of other accounts continued and we now have limited flexibility as to where to get moneys from commencing about the first of May. We are dealing with a period between May and September 30 now. We could have been dealing with the period January 1 to September 30 if we had the request early in the year.

Mr. President, the bottom line is we must get these funds to the military services as quickly as possible, as I said, by the end of this month if at all possible. That commitment must guide our work to complete this bill, I hope, today or early tomorrow at the latest.

There are a series of impacts. I asked the Chief of Naval Operations, Admiral Boorda, to tell us what might happen to the Navy, for instance, if we do not get this money to the Navy in time. He has told me if he does not have the money in time, he faces the option of deferring all maintenance on small naval craft and tugs for the Atlantic fleet.

He will have to reduce the maintenance on two aircraft carriers and will have to delay one submarine overhaul.

He may have to delay maintenance on naval facilities worldwide.

He has to stop flight training for two carrier air wings that are currently preparing for deployment. That is very dangerous, Mr. President. These people stay at home, fly a very low number of hours, and just before deployment they always get back and get their readiness up to very top performance. We have two aircraft carriers ready to go to sea. I talked about them this morning with some people in the Department. It makes no sense for us to delay aircraft carriers and not have our crews at the peak of their performance, as would be possible if these funds had not been diverted. They must be replaced as soon as possible.

In addition, there are some other things that are going to happen if these funds are delayed even longer than we currently anticipate they could be:

There are seven additional Atlantic fleet ship overhauls.

There is a proposal to stop Naval Reserve flying for C-9 and P-3 aircraft;

To stop flight training for carrier squadrons returning from deployment. There, again, after they come back, the long steam coming back, before they are allowed to take some time off they again go through and try to bring their readiness up to peak so, if they are called back, they can continue to be ready. They do not get the type of training on deployment that they can get here at home when we have the electronic ranges that can be used and the kind of training that can be obtained as they prepare for deployment or return from deployment.

Last but not least, we are down to the point where there will be no spare parts for the last 40 days of this year if these moneys are not put into the accounts and the spare parts made available.

I remember the days, Mr. President, when we had vessels in Norfolk and other ports that could not leave port because they did not have spare parts. That just cannot happen at a time like this when we have reduced our forces and we are trying to maintain the readiness of the smaller force that we have.

I certainly hope the Senate will listen to us and the Congress as a whole will act as rapidly as possible on this request for supplemental funds, to request those funds which were diverted from training accounts for the peacekeeping operations.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, may I begin by first commending my distinguished colleague from Oregon, the chairman of the full committee, Mr. HATFIELD, and my dear friend from Alaska, the chairman of the subcommittee, Senator STEVENS, for coming forth with this bill. Difficult decisions had to be made, and they made them. Difficult recommendations have to be made to the Senate, and these recommendations are now being presented.

Together they have crafted a bill which balances the needs of the Department of Defense and our committee's desire not to increase the deficit. As the Senator from Alaska indicated, this bill provides $1.9 billion in new appropriations requested by the Department of Defense to cover emergency expenses. However, it is some $600 million less than DOD wanted, but it provides a reasonable amount, considering the committee's goal of offsetting new appropriations with rescissions.

But, Mr. President, I think I must inform my colleagues that I am concerned with the guidelines that govern the committee's efforts with this DOD supplemental, and I hope it will not be viewed as a precedent for future emergency supplementals.

The Budget Enforcement Act requires that, in general, discretionary spending must be constrained to stay within ceilings established in the budget resolution. However, Mr. President, this agreement allows these ceilings to be breached if the President and the Congress agree that these funds are needed to meet emergency requirements. The President submitted his request for DOD funds as an emergency and the House agreed.

The House recommended rescissions of $3.2 billion to offset the budget authority it added for DOD so as not to add to the long-term deficit.

The Senate Appropriations Committee-reported bill has gone one step further. This bill that we are discussing this moment has dispensed with the emergency designation for the DOD supplemental and, therefore, under Senate rules, the committee must offset both budget authority and outlays recommended in this bill.

With this action, I hope that the Senate is not charting a new and hazardous course.

The Defense Department does not budget for emergency expenses. On several occasions, the Congress has denied past administrations' requests to establish contingency accounts which could have been used for emergencies and crisis response. The Congress has recommended instead that DOD request supplementals to cover such emergency costs.

It has always been anticipated that for expenses necessary to cover emergencies, funds would be added to the current budget, not reallocated from existing resources. In this bill, we are requiring DOD to use its existing resources to cover costs of emergencies. This is contrary to the intent of the budget agreement, and I hope that we are not making a mistake.

I am told that the Secretary of Defense and the Chairman of the Joint Chiefs of Staff regard this recommendation with grave concern. I do not disagree with the specific rescission recommendations by the committee, though they were difficult to make, because I believe that under the circumstances, they are reasonable and they represent the best options for offsetting the budget authority and outlays contained in the supplemental.

However, by rescinding these funds today, there will be few resources available to cover the so-called must-pay bills which we know the Pentagon will face later this year. The Defense Department has already identified nearly $800 million in must-pay bills. It expects this total unfunded requirement to reach about $1 billion.

These must-pay bills are not considered emergencies under the terms of the budget agreement. Therefore, they will have to be paid from within available funding. And where is DOD to find these funds if Congress has already rescinded $1.9 billion?

Mr. President, I am of the impression that all of us in this body, Democrats and Republicans, are supportive of the need to maintain the readiness of our military forces. By requiring that these unforeseen emergency expenses must be offset, the committee is virtually guaranteeing that when shortfalls occur in other areas of DOD funding, they will have to be made up by cutting readiness spending.

Mr. President, I hope I am wrong, but this is a very serious matter. I am greatly concerned that in the future, the Chairman of the Joint Chiefs will object to the requests of our civilian leaders to use military forces overseas for crisis response and for emergencies because they believe it will be damaging to the overall readiness of the force. They may realize that if they must pay for these costs out of their own hide, they will have to cut readiness to do so.

So I hope that all of us will think hard and long about the decision we are about to make today. I will be supporting this measure, and I do so with a clear conscience, and I will be very proud and happy to say publicly that I rely upon the judgment, the good judgment of my two dear friends from Oregon and Alaska.

Mr. President, the chairman of this committee has drafted a good bill under the circumstances, and I look forward to working with him in conference on these issues.

Mr. President, the chairman of the subcommittee brought up a matter which is dear to the hearts of some of my colleagues on this side of the aisle, the so-called TRP. It should be noted that the House by its action took out $500 million, and though there are many in this body who support the House action, the chairman of the committee and the chairman of the subcommittee took a courageous stand to say we will cut only $200 million.

I know this is not the full amount, but I think under the circumstances it is an amount that we can live with, and so I hope that those who are considering proposing an amendment to restore the funds will think about this because I think the committee made the proper recommendation under the circumstances.

I thank the Chair. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. SNOWE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from South Carolina.

Mr. THURMOND. Madam President, as we debate the Defense supplemental appropriations bill, I want to ensure that my colleagues and the managers of the bill are aware of some of the underlying problems with the way this supplemental was crafted.

First let me say the supplemental is necessary, and I intend to support the bill. The bill is designed to replace critical readiness and training funds which the services had to spend in the first half of this fiscal year for humanitarian and other so-called peace operations. If we do not replace those funds, military readiness will continue to decline. Combat readiness has declined too far already. The Nation cannot afford to let it erode further. It angers me that the administration has allowed readiness to suffer at all. Under these circumstances, it would be irresponsible to require the military departments to further curtail training and maintenance, and cause more degradation in combat readiness.

While this supplemental is necessary, I was surprised to see that the Appropriations Committee chose to fully offset the costs of these peace operations, which were ill-conceived and not approved by the Congress, from within the fiscal year 1995 Defense budget. In others words, under this bill the Department of Defense must fund those operations totally within its existing budget.

I have said over and over that the defense budget has been cut too much, too fast. I have strongly supported an increase to the President's budget request to bring fiscal year 1996 defense funding level with fiscal year 1995, adjusted for inflation. This supplemental, in effect, reduces funds available for defense in fiscal year 1995 by requiring these externally imposed operations to be absorbed within the current defense budget.

This is a very complex and difficult issue. Fortunately the Appropriations Committee has offset these extra costs with programs which, for the most part, can be called nondefense items; or programs which the Defense Department could not execute in this fiscal year. By fully offsetting the supplemental appropriations, the deficit is not increased. In fact, title II actually reduces the deficit from domestic accounts.

I am a strong supporter of removing nondefense items from the defense budget, and have long been a supporter of a balanced budget and reducing the deficit. However, I am concerned at the precedent we may be setting by finding all the offsets in the current defense budget.

I do not support using our military forces as a global police force or social service agency, deploying them all over the world without the expressed approval of the Congress. We have reduced our Armed Forces and defense resources to dangerously low levels. Now it is questionable whether we can defend our vital interests in a conflict with one or more major regional powers. Consequently, I do not want the administration to regard approval of this supplemental appropriations bill as endorsement of their expanded peacekeeping activities abroad, nor of their plan to pay for these excursions with current defense funds.

In closing, I reiterate my support for this Defense supplemental, but urge my friends on the Appropriations Committee to consider the method used in preparing this bill as a one time event, and not as a model for future supplemental appropriations for the Department of Defense.

I thank the Chair; I yield the floor.

AMENDMENT NO. 321

(Purpose: To express the sense of the Senate affirming the importance of, and the need for, cost-shared partnerships between the Department of Defense and the private sector to develop dual-use technologies)

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, to the first amendment of the committee, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN], for himself, Mr. NUNN, and Mr. LIEBERMAN, proposes an amendment numbered 321:

At the end of the amendment add the following:

SEC. 110. It is the sense of the Senate that (1) cost-shared partnerships between the Department of Defense and the private sector to develop dual-use technologies (technologies that have applications both for defense and for commercial markets, such as computers, electronics, advanced materials, communications, and sensors) are increasingly important to ensure efficient use of defense procurement resources, and (2) such partnerships, including Sematech and the Technology Reinvestment Project, need to become the norm for conducting such applied research by the Department of Defense.

Mr. BINGAMAN. Madam President, let me very briefly describe the amendment and yield to my colleague, Senator NUNN, who wants to make a brief statement also. Then I will describe it in a little more depth for my colleagues.

This amendment expresses the sense of the Senate—and that is all it is, a sense-of-the-Senate amendment—that cost-shared partnerships to develop dual-use technologies are important and increasingly important to ensure the efficient use of our defense resources. It specifies that these partnerships, including the technology reinvestment project, need to become the norm for conducting much of our applied research in the Pentagon.

This language came out of the work of two different task forces, the Democratic task force back in 1992, which Senator PRYOR chaired, and the Republican task force which Senator Rudman chaired. Members of this body who were part of that Rudman task force include, of course, Senator STEVENS, Senator LUGAR, Senator COHEN, Senator HATCH, Senator DOMENICI, Senator McCAIN, Senator LOTT, Senator WARNER, and there were others as well. Out of the work of the two task force groups we developed a bipartisan consensus which began during the Bush Presidency and has continued through the Clinton Presidency that this way of funding for defense purposes was an important effort to pursue.

I believe this amendment helps to reaffirm that principle, and for that reason I offer the amendment. As I pointed out, it is a sense of the Senate. It does not try to change the dollar figures as they come out of the supplemental agreement.

I want to compliment the Senator from Alaska and the Senator from Hawaii in the work they have done in the subcommittee to try to do what they could to ensure that this important program, the technology reinvestment project, continue, and also to find the funds necessary to meet the needs of our Department of Defense at this crucial time.

I will explain the amendment in some more detail in a moment. I would like at this point to yield the floor and allow the Senator from Georgia to go ahead and speak.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Madam President, I rise in support of the amendment offered by my colleague from New Mexico. I appreciate the pressures on the Appropriations Committee. The Senator from Hawaii and the Senator from Alaska have done a commendable job in trying to handle this supplemental under very difficult circumstances.

I share the sentiments expressed by the Senator from South Carolina about the overall supplemental. I hope it is viewed as a one-shot proposition, because if we are sending a signal to the Department of Defense that any time there is an emergency that comes up and they come over and request supplemental funds that they are going to have to have 100 percent offset, then we are going to change the nature of the responsiveness of the Department of Defense itself to the missions that may, indeed, be crucial to our Nation's security.

One mission comes to mind on a hopefully hypothetical basis, but it could become a reality. We may get into a situation, even in the next 30 or 45 days in Croatia, where the United Nations is ordered to get out of Croatia. There is no doubt that this evacuation could precipitate more fighting in Bosnia, and could even require rescue missions to get U.N. personnel who are in harm's way in Bosnia out of that war-stricken area.

And if the Department of Defense is told that anything they do in that kind of rescue mission with NATO and with the United Nations is going to have to be a 100 percent offset, and they are going to have to basically kill or substantially alter crucial defense programs in order to absorb that, then that is going to be a very strong signal that the United States is not going to be as involved as we have been in world affairs, including commitments to our allies and commitments that we have voted for at the U.N. Security Council.

So this complete offset sounds good in speeches but it has very serious implications for the Department of Defense. Make no mistake about it, this complete offset policy means the long-term readiness of the Department of Defense is going to go down. It does not mean that the immediate readiness is going down because that can be protected. But future readiness requires modernization, it requires research and development, and those are the programs being cut by this complete offset policy. So 5, 6, 7 years from now, people will have a very serious problem with readiness if we continue to declare there is no emergency even when our forces are responding to the unanticipated events that we all know will take place in the world from time to time.

I hope this is not viewed as precedent. As my friend, the chairman of the committee, the Senator from South Carolina, said: If this is a precedent, we are going to have some serious problems.

I know the Department of Defense worked with the Senator from Alaska and the Senator from Hawaii in identifying offsets. I know they are still concerned about certain programs, such as the program Senator BINGAMAN is discussing, the technology reinvestment program, which is one of the programs that is being severely impacted by this supplemental.

Also, environmental cleanup is being impacted severely under this bill. And that environmental cleanup is not only something that has to be done in base closures, but we have solemn commitments to Governors in a number of States that we are going to carry that out. And as we cut back on these environmental impact funds in the Department of Defense, make no mistake about it, there are going to be lawsuits involved, litigation involved, contractual obligations that are going to have to be breached. I do not say that all of that is going to flow from this bill. But it is going to flow if we continue to have to take these kinds of actions.

So I understand the Senator from Alaska has worked very hard on this, as has the Senator from Hawaii, who has put up a warning light about the direction that this bill takes us in. I hope that not only the Appropriations Committee—because they are carrying out, I have no doubt, the will of the majority here—but I hope the majority itself will think about the implications for defense. Because one of the things in the Contract With America, and in other commitments made by those on both sides in running for office, was a strong national defense and protecting readiness. The problem is, Madam President, readiness is being defined as just the next year or two, when readiness has to be defined over the next 5 to 10 years. And readiness, by that definition, includes research and development and includes procurement. And without the kind of long-term commitment to research and development and to procurement, we simply will not have modern and ready forces 5 years from now or 10 years from now.

So I rise in support of the amendment offered by my colleague from New Mexico. I support the TRP Program as one of those crucial programs for future military readiness for several reasons. First, it is our bridge to the future for the technology needs of the Department of Defense. We all know how difficult it has become to fund the technology programs we know we will need for the forces that will be in the field 10 years from now and 15 years from now. We are having to depend more and more on research conducted by the civil sector of our economy.

For a long time the research and development flowed from defense to the civil sector. That is still true in some cases, but increasingly a larger and larger percent of our crucial defense technology is flowing from the civilian commercial sector to the Department of Defense. The Defense Department can no longer afford to be the leading edge of every technology. TRP gives us access to those dual-use research projects that will benefit both the defense and the commercial sectors.

Second, because the research is dual-use, it is cost shared. Industry is paying the bulk of the cost in most of the TRP projects. This means that for every dollar we put in the TRP program we get from $2 to $10 of research that helps our defense efforts from the private sector. So this is leveraged money. We get a lot more back from the private sector than the Federal dollars we put in.

Third, the TRP program is competitive. It is not in any way pork. It is based on merit and on competitive selection. The research goes to those institutions that propose the most important research projects and who propose the best cost-sharing arrangements. This is how we assure ourselves that the work is important. Industry would not put their money or time on the line if they did not think the research would pay off for them and for the Nation.

So I urge my colleagues to support the Bingaman amendment, which does not, as I understand it, shift funds but which expresses the strong sentiment of the Senate on these programs.

I urge my colleagues on the Appropriations Committee, Senator STEVENS and Senator INOUYE, to do the best they can in conference to hold the Senate mark and not to cut below the Senate mark, which is already going to take this program to a point of some jeopardy.

So I thank the Senator for his leadership. This has been a subject that he has led in the Senate Armed Services Committee and in the Senate and in the Congress. In my view, the Senator from New Mexico has done a great deal of meritorious work for our long-range national security by taking the lead on this program. So I thank him for his leadership, and I thank him for yielding.

Mr. BINGAMAN. Mr. President, I want to thank Senator NUNN of Georgia, the ranking Democrat on the Armed Services Committee, who was the chairman of the committee at the time that we began these programs several years ago while President Bush was in the White House.

Let me just go through a few statements to indicate the broad range of support for the general principle that I am talking about here.

First, let me cite from the report of the task force that former Senator Rudman chaired, a Senate Republican Task Force on Adjusting the Defense Base. The report was published in June 1992. It was a report which was well received. Senator PRYOR championed and chaired a similar group on the Democratic side. Let me just cite a few sentences from the report of the Rudman committee.

> The task force believes that increased funds should be devoted to the development of so-called dual-use technologies—that is, technologies that have application both for defense and commercial markets—by entering into partnerships with the private sector. Dual-use technologies will be increasingly important to ensure efficient use of defense procurement resources, and advances in this area will have the added benefit of strengthening the U.S. commercial sector. In order for these projects to be effective, there should be a requirement that half of the funding be provided by non-federal participants.

I also want to cite a statement issued by the White House in September 1992. This was, of course, while President Bush was in the White House. This was, I believe, a statement that that administration and that President felt strongly that these were worthwhile activities. On the 15th of September the statement was issued by the President's Press Office.

> The President today transmitted to the Congress budget amendments for the Department of Defense that would reallocate $250 million of the Department's fiscal year 1993 request to defense advanced technology programs. The reallocated funds would be used in the areas of communications, high performance computers, small satellites, sensors to identify environmental contamination and manufacturing technology. These areas are essential to national security, and also have dual-use civilian applications. The funds for these advanced technology programs would be reallocated from lower priority defense programs.

Madam President, the views that were expressed in 1992, both by the group of Senators who participated in the Rudman task force and by the White House under President Bush, were echoed very recently in a hearing we had before the Armed Services Committee where I asked, first, General Shalikashvili, Chairman of the Joint Chiefs of Staff, what his view was on the value of these types of programs and where they fit in the priorities of the administration today.

He said, and let me quote his response to my question.

> Senator BINGAMAN, I am first of all extraordinarily enthused about the possibilities that exist out there for us to take a major step forward and a major step forward in comparison to all of our potential adversaries in this area that you described, dominant battlefield awareness. Through our advances in microelectronics, satellite technology and what not, we have the ability to see and be aware of what is going on on the battlefield to a degree that will literally, I believe, revolutionize warfare. So this is not just making sure that we have the next best tank or the next best destroyer. This is an effort to really take a major step forward.
>
> Now, much of the technology for that, we believe, probably already exists out there in the commercial world, and certainly those companies like AT&T, and others that are working on projects, where these same pieces are necessary commercially, that we need to be aware of it, capture it, integrate it into the work that we do so that we not only capture the very best that is out there, but do not spend taxpayers' money trying to reinvent the wheel in our own laboratories.

Let me cite one other authority in this field, Madam President. This comes from sometime further back in our history. The year is 1946. We have a memo from the Chief of Staff of the Department of the War. He says in that memo. This is, of course, following the Second World War.

> The Armed Forces could not have won the war alone. Scientists and businessmen contributed techniques and weapons which enabled us to outwit and overwhelm the enemy. Their understanding of the army's needs made possible the highest degree of cooperation. This pattern of integration must be translated into a peacetime counterpart which will not merely familiarize the Army with the progress made in science and industry but draw into our planning for national security all the civilian resources which can contribute to the defense of the country.

That is a statement, of course, from General Eisenhower shortly after the Second World War. So the concept that we are arguing for here—integration of our military and commercial technology bases—the importance of this principle, I think has been recognized for a long time.

The superpower, in a defense sense, the superpower in the 21st century will be that nation that best leverages its national technology and industrial base to achieve critical defense goals. Dominant battlefield awareness is one of those recognized goals of our Defense Department today, and clearly emphasis on these dual-use technologies is important for us to achieve that dominant battlefield awareness. That is the view of General Shalikashvili.

DOD-industry partnerships have been successful. Our $700 million investment in SEMATECH over the past 8 years, which has been matched by industry, has been an enormously more productive investment than some of our earlier investments in defense-specific semiconductor research.

Secretary Perry also has come out very strongly in support of this. Let me just cite a quotation from him before I conclude, Madam President, because he spoke well the other day about the importance of these programs. I asked him where these stood in his list of priorities, and he said, and I quote:

> I consider it [the Technology Reinvestment Project] one of our highest priority programs. I hope I have the opportunity with the Congress to defend—to vigorously defend—the importance of this program. I think some of the moves to rescind it and criticize it are made from some confusion as to what the program is. It is being confused with some of the technology earmark programs which have been added by Congress in past years. I would remind all of this committee—

That was the Armed Services Committee.

> that all TRP programs are competitive. Indeed, they are highly competitive. There are many—indeed, sometimes dozens of—companies submitting proposals on them. So we get the best out of many different proposals. And secondly, all of them are funded 50 percent by industry; at least 50 percent by industry. So they are very highly leveraged. We get quite a good benefit from this. We depend in the future on being able to integrate our defense technology base into the national technology base and this TRP program is an absolute key to doing that, and any individual TRP program is a good deal in and of itself.

Madam President, that sums up the case. I think the procedural situation we find ourselves in has been alluded to before. Let me just reiterate it. We have a proposal from the House of Representatives which would rescind the $502 million in the TRP; the entire amount.

The appropriators here on the Senate side have concluded that they have to, because of the other pressing needs of the Defense Department, rescind $200 million. Quite frankly, that is a very, very major cut in this program which I think will undoubtedly do damage to the program. But I am willing to defer to their judgment. I am willing to do as all of us will have to do in the coming months; that is, tighten our belts to deal with our budgetary problems. I am willing to take their commitment that they will go to conference and fight as best they can to maintain the Senate position and keep this program alive and healthy.

This is a very high priority for our Department of Defense. I believe it is a high bipartisan priority for many here in the Congress.

Madam President, before I conclude and sit down, let me just indicate, as cosponsors on the amendment that I have sent to the desk, I want to list Senators NUNN, LIEBERMAN, ROCKEFELLER, and BOB KERREY from Nebraska.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Madam President, I yield the floor.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Madam President, I wish to commend my distinguished colleague from New Mexico for his extraordinary leadership in guiding the TRP policy and program throughout all of these years.

I wish to, at this time, provide to my friend from New Mexico my personal assurance that everything possible will be done to maintain the Senate position on this matter. Thank you very much.

Mr. McCAIN. Madam President, I do not intend to oppose what the managers seek. This is a voice vote on this amendment, primarily because it is a sense-of-the-Senate amendment.

I will have a lot of remarks to make about the TRP program and about where it should be in the priority list of the needs of the American defense establishment. My amendment that will be forthcoming will address the TRP. I will save my remarks for that eventuality, which I hope will take place as soon as this amendment is disposed of.

Let me just say that there are a lot of nice-to-have things that we should use our defense funds for. There are a lot of very necessary and vital things and missions and purposes that are not being fulfilled now. I do not rank TRP as one of those that is vital. I view it as one that is nice to have.

I have very serious question about the criteria that are used and, indeed, many of the funding of specific projects, which I will name when I get into my amendment.

With that, I yield the floor.

The PRESIDING OFFICER. Is there any further debate on the amendment?

Mr. STEVENS. Madam President, I want to set the stage for consideration of this amendment. The House proposed rescission of $502 million in what is known as this Technology Reinvestment Program [TRP]. TRP will be in conference, in other words.

Our committee responded to the Department of Defense's appeals to the Senate to support the TRP program. To date, the Department has received 3,000 proposals for TRP, and selected only 251 for funding. It is an extremely competitive process which has produced about an 8.5-percent success rate. That is unfortunate.

The Senate recommendation allows the Advanced Research Projects Agency [ARPA], the agency of the Defense Department that has jurisdiction over this program, to continue the ongoing TRP projects. We have provided enough funds to begin new projects and to continue, as I said, the ongoing projects. The new projects will focus on areas selected by the military services themselves.

This is a mandate promoted by our committee and approved by Congress. The Senate's proposed rescission will reinforce Congress' requirement that we mean to assure that defense needs are the dominant element in each TRP project and will eliminate funds for projects that do not have defense relevance.

Indeed, the Congress took specific legislative steps to ensure this greater service role in the TRP effort.

First, Congress mandated that the Assistant Secretaries for Research, Development, and Acquisition for each of the military services be made full members of the council which approves all TRP projects.

Second, the Congress directed that $75 million in fiscal year 1995 TRP funds were to be available only for projects selected in areas of interest designated exclusively by the military service acquisition executives.

Every TRP project includes at least 50 percent cost share from the teams performing the work. Thus, the Pentagon is able to get twice as much or more for each Federal dollar invested in these programs.

While a lower level of investment in TRP is in order as we search for funds necessary to restore the readiness, as I mentioned before, we do not believe we should terminate this program.

I also think it is noteworthy, Madam President, that the sense-of-the-Senate resolution here mentioned Sematech. Sematech is a consortium of major U.S. chip manufacturing firms. Sematech has achieved a number of things. However, the consortium has received substantial Federal funding for 3 years more than was originally planned.

Sematech demonstrates that we must set firm, clear objectives for these projects and limit the efforts to a definite, finite duration. These efforts cannot become entitlements which annually drain the DOD's limited budget dollars.

I do not want to leave the impression that these projects have not been successful. I have a list here of the projects which we feel do contribute to Department of Defense needs.

Mr. President, I ask unanimous consent that that list be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

A LIST OF TRP PROJECTS WHICH CONTRIBUTE TO DOD NEEDS

Affordable Composites for Propulsion (Value—$25.0 million, Prime—Pratt & Whitney, West Palm Beach, Florida).

Precision Laser Machine (Value—$33.8 million, Prime—TRW, Redondo Beach, California).

Uncooled Low Cost Infrared (IR) Sensors Technology Reinvestment Alliance (ULTRA) (Value—$9.2 million, Prime—Inframetrics Inc., North Billerica, Massachusetts).

Trauma Care Information Management System (Value—$15.1 million, Prime—Rockwell International Corporation, Richardson, Texas).

Digital X-Ray system for Trauma and Battlefield Applications (Value—$6.1 million; Prime—General Electric Corporate Research & Development, Schenectady, New York).

Next Generation High Resolution & Color Thin Film Electroluminescence (TFEL) Displays (Value—$29.2 million, Prime—Planar Systems, Inc., Beaverton, Oregon).

Developing Speech Recognition for Future DSP's in Hand Held Computers (Value—$3.0 million; Prime—Dragon Systems, Inc., Newton, Massachusetts).

Development of Monolithic Motion-Detecting Components Made with MEMS Technology (Value—$7.6 million; Prime—Analog Devices, Inc., Wilmington, Massachusetts).

Wearable Computer Systems with Transparent, Headmounted Displays for Manufacturing, Maintenance, and Training Applications (Value—$5.1 million; Prime—Boeing Computer Services, Bellevue, Washington).

Object Technology for Rapid Software Development and Delivery (Value—$24.5 million; Prime—Anderson Consulting, Chicago, Illinois).

Portable Shipbuilding Robotics (Value—$12.5 million; Prime—CYBO Robots, Inc., Indianapolis, Indiana).

Mr. LAUTENBERG. Madam President, I rise today in support of the amendment offered by my colleague from New Mexico. I would also like to commend my colleague for his strong leadership on this issue.

At a time when we must be very prudent in allocating our resources, dual use defense programs, like TRP and Sematech can prove to be a good investment. These programs enable the Department of Defense to competitively leverage Federal dollars with private sector matching funds to better meet our defense—and domestic—needs.

If we are serious about balancing the budget and getting our fiscal house in order, then we are going to need to find additional savings in all areas of the Federal budget, including the defense budget. As the defense budget declines, it will become cost prohibitive for the Department of Defense to sustain a separate defense industrial base, which in many cases might very well be duplicative. Programs like TRP and Sematech capitalize on presently available new commercial technologies to meet military needs. In an era of limited resources, these programs enable us to make better use of the funds that are available.

The TRP has come under some scrutiny for ineffective management of late. And I would agree that, like most every other program in the Federal Government, TRP could be managed more efficiently. But that is not a reason to cut funding for what is on the whole a good program.

Dual-use programs, like TRP and Sematech, allow the Department of Defense to maximize its research and development dollars. For its part, the Department of Defense gets technologies which are critical to our Nation's military needs. While the companies, on the other hand, get technology which will enable them to compete more effectively in the global marketplace.

Mr. STEVENS. Madam President, if there is no further comment, I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

So the amendment (No. 321) was agreed to.

Mr. BINGAMAN. Madam President, I ask unanimous consent that Senator KENNEDY be added as a cosponsor of the previous amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I move to reconsider the vote.

Mr. MCCAIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PRIVILEGES OF THE FLOOR

Mr. STEVENS. Madam President, I ask unanimous consent that Mr. Joseph Fengler and Mr. Sujata Millick be permitted privileges of the floor during consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 322

Mr. MCCAIN. Madam President, I have an amendment at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], proposes an amendment numbered 322.

Mr. MCCAIN. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 21, line 9, strike out "$300,000,000" and insert in lieu thereof "$150,000,000".

On page 22, line 15, strike out "$351,000,000" and insert in lieu thereof "$653,000,000".

Mr. MCCAIN. Madam President, this amendment would restore half, $150 million, of the committee-recommended cut in defense environmental restoration account, and the amendment would offset this spending with recision of an additional $302 million in the Technology Reinvestment Program known as TRP.

The net effect of the amendment is to reduce defense budget authority by $152 million and outlays by $110 million in fiscal year 1995, which could be credited to deficit reduction.

Madam President, first of all, in the past several years, as we all know, the Department of Defense has experienced significant increases in the cost of environmental cleanup, as have most public and private industries. All we have to do is look at the Superfund and know of the enormous challenges that face this country in the area of environmental cleanup.

Because of these costs, I think the reduction of $300 million in defense environmental restoration is too severe a reduction. In addition, my colleagues should be aware that the account which is being cut will be the source of funding to clean up at bases recommended for closure in the 1995 round, at least until the 1996 appropriation of BRAC cleanup is approved. Cutting this account could therefore have an effect on the cleanup of bases that are being closed.

Finally, Madam President, State and local governments have the ability under the law to enforce stricter standards for cleanup than Federal law requires. State and local governments also have the ability to levy fines and penalties against the Department of Defense if it fails to comply with these standards. If too much is cut from this account, then the Department of Defense may find itself using environmental restoration funds to pay fines and litigate court cases arising from noncompliance with State and local laws. That does not seem to be an efficient use of these limited dollars.

Madam President, the fact is that when we close a base or even if we have an open base and there is an environmental problem on those bases, I think our obligation is clear. Our obligation is clear that we clean up that base. Clearly, it is a very expensive proposition. And there is no doubt that if we cut these funds, somewhere there will be military installations that are environmentally unsafe.

I do not see how we get around that obligation. I do not see how we can just cut money for environmental cleanup and ignore the very severe situations that exist today. There is a base in my own home State. It will be many years before the environmental cleanup is completed. The estimate of the cost of that cleanup, by the way, has increased by a factor of 10 since the base was recommended to be closed just 3 years ago.

So, I do not really understand how we rationalize a reduction in environmental cleanup funds. I do not think my record indicates that I am some kind of a wild-eyed environmentalist, to say the least. But I do not see how we cannot fulfill the obligation that we have to the taxpayers of America, and that is to clean up defense installations which reside in their States and their communities that are in need of environmental cleanup.

Let me talk a little bit about the TRP, which is obviously a very attractive program to many. It is the Technology Reinvestment Program. First of all, the selection criteria which I quote from the ARPA program information package for the Technology Reinvestment Program for the 1995 competition states that the criteria should be for technology development competition only incorporating all statutory selection criteria for the three statutory programs under which the competition is being conducted. They should be defense relevant. Results of future commercialization of product or of the process are as follows: critical defense technology is preserved; a defense capability is more affordable; or—and I emphasize "or"—a significant improvement in house safety or environment, especially in manufacturing, is accomplished.

Madam President, that "or" seems to be the operative clause here. Otherwise, I do not see how in the world we would approve of the San Francisco Bay Area Rapid Transit Authority receiving $39 million for a 2-year effort to demonstrate a precision location system for trains in tunnels. I do not see how that is a critical defense technology being preserved or a defense capability being more affordable.

And, $6.9 million was awarded to a consortium of businesses and government entities based in the Southeastern United States to assist small businesses and in developing pollution prevention and environmentally safe industrial processes; $15.8 million was awarded to demonstrate the feasibility of establishing online linkage of medical data bases among medical centers in hospitals across the United States; $7.6 million was shelled out for a project designed to develop highly efficient power electronic building blocks to convert, control, and condition electricity to meet U.S. commercial electrical requirements.

Madam President, in my view, it would take a great leap of the imagination to view those as a critical defense technology being preserved or defense capability being more affordable. It probably meets a significant improvement in health safety or environment, or it could be construed as such.

The fact is that the TRP is probably a very nice thing to have. Last year, in the fiscal year 1995 National Defense Act, I sponsored legislation to require the GAO to independently assess the TRP awards in the context of the objectives specified in law.

Although the review is not yet complete, GAO's tentative findings show that TRP awards were generally not driven by the military criteria. In fact, GAO found that the panel members who reviewed proposals submitted to DOD for TRP awards were not even briefed on the legislative objectives of the program. Thus, a national security criteria was generally accorded lesser rank weight in the decisionmaking process. The final report of the GAO will be available in May.

We have already spent $1.4 billion for the TRP program in the past 3 years, in my view, with little to show for it in the way of militarily useful technologies. As a result, I think the action of the House Appropriations subcommittee recommended rescission of most of the 1995 funds for this program, in my view, should be the same.

Let me talk about priorities a second. This is $302 million that would be earmarked for this particular program, appropriated for this particular program.

Today on the front page of the Washington Post:

> Fort Bragg, NC—After decades of neglect, U.S. military housing has so deteriorated that Pentagon leaders say it is discouraging soldiers from reenlisting and thereby handicapping the military's readiness.
>
> Many barracks and family apartments, built soon after World War II, are cramped and suffer from peeling lead-based paint, hazardous asbestos, cracked foundations, corroded pipes or faulty heating and cooling systems.
>
> More than half the family housing is rated inadequate, and Defense Secretary William J. Perry cites the poor condition of military housing as the number one complaint he hears from soldiers on visits to bases.
>
> But at a time of shrinking budgets, Pentagon officials have come up with only some token extra millions of dollars to throw at a problem requiring billions—

I repeat—

> requiring billions to fix.

Madam President, last year, the administration sent over a request that did not include the pay raise for the men and women in the military. There are hints we now have—the quaint phrase—"congressionally mandated pay raises." Congressionally mandated pay raises. That is interesting, because the fact is the pay raises for the men and women in the military to keep up with the cost-of-living should not be congressionally mandated. They should be requested by the administration, which I am happy to see that they are doing with this year's 1996 budget. But for 2 years, there was no request for pay raises for the military.

I do not know how we justify this kind of spending when we have inadequate housing, when we have men and women in the military who are spending incredible times away from home, when we are cutting back on flying hours, steaming hours and training hours, when any objective observer has agreed that we need to improve the readiness, and that readiness is beginning to suffer rather significantly, and yet we have already spent $1.4 billion, and are now spending an additional $150 million.

I also want to return for a minute to the issue of environmental cleanup. Unless a base is environmentally clean, or substantially so, a base cannot be turned over to the local authorities, or whoever is involved in the negotiations for the use of that base. We know what happens to the costs of environmental cleanup. And now for us to cut the funding for environmental cleanup, in my view, would be a very, very serious mistake.

I want to say that Sematech is a successful endeavor. Sematech, I believe, has been a wise investment of America's tax dollars, and I also think it is well to point out that 1996 will be the last year that Sematech requires Government appropriations, which is exactly the way it was designed and is exactly the way that these things should be accomplished.

But I suggest that in this era of very tough priorities—in testimony before the Senate Armed Services Committee this morning from the Secretary of the Navy and the Chief of Naval Operations also making clear that their priorities, if there was any additional money, would go to additional aircraft, additional ships, additional pay and benefits for the men and women in the military. Nowhere—nowhere—do I hear any member of the uniformed military even knows what TRP is much less believe that it is a national priority.

So, Madam President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Madam President, there is a great deal of what the Senator from Arizona said with which I agree, but I think that he has overlooked the task that we had. We had the task of finding almost $2 billion, and we are five-twelfths through the year in terms of the moneys with which we are dealing. As a practical matter, the largest account that is unspent is, in fact, that which is entitled "environmental funding."

It is a little bit more than $5.5 billion, and we are affecting by the recommendations we have made here less than 6 percent of the total funding for the environmental accounts. Other items that we are dealing with, particularly in terms of the TRP funds, represent a great deal more of the account.

Let me just say this: If I had a way now to put the money that is in either account into the military construction bill, I would do that. In the last year, at my request, we added—and that was one of those infamous congressional add-ons to the budget—$81 million for additional military housing. I wish we could get a greater interest in upgrading this housing, and I think that the story on the front page of the Post is very accurate.

But the problem really is that if we look at the environmental account, which we did in great detail, we are looking at a project where they still plan to spend $810 million in this fiscal year on studies of these environmental restoration sites. We have eliminated a substantial portion of those studies. That is what our cut does.

We have urged that the Department proceed now and not spend so much money studying these projects and instead do them. They are not that large and they mostly can be done without these enormous nationwide studies. They just seem to be enveloped in studies.

We will have reduced the budget request by $700 million through this rescission, and it is primarily aimed at that study account. If we look at this account, as I have said, DOD has spent almost 60 percent of all of the cleanup funds we have made available so far on studies. We think that at a time of emergencies such as this is, it is time to reallocate funds. Again, we are not increasing funds for either the TRP, that is the Technology Reinvestment Program, or the environmental restoration account. We are decreasing both. So we are talking about where to cut more.

If we look at the amount of money available, there is a great deal more money available in the environmental restoration account, mainly because it is reserved for studies which can be conducted next year, if necessary. If they are necessary, we can appropriate money for them in 1996. But right now, there are other projects which are ongoing in the Technology Reinvestment Program. I already put the list in the RECORD.

There is an affordable composites for propulsion project in Florida.

There is a precision laser machine project in California, Redondo Beach.

There is an uncooled low-cost infrared sensor technology reinvestment program in Massachusetts.

There is a trauma care information management system in Richardson, TX.

There is a digital x-ray system for trauma and battlefield applications in Schenectady, NY.

There is a next generation high resolution thin film electroluminescent, what we call a TFEL display, again, with a military impact, in Beaverton, OR.

There is a speech recognition by digital signal processors for hand-held computers, again, defense impact in Newton, MA.

There is a monolithic motion detecting components technology with microelectrical mechanical systems, again it is in Massachusetts.

There is one in Bellevue, WA, wearable computer systems with a transparent head mounted display for, basically, computer services in aircraft.

They are all very high-tech and, as far as we can see, they ought to be continued. We have provided enough money so that we do not have to reduce any of the ongoing projects.

Unfortunately, the amendment of the Senator from Arizona will do that. It will reduce the funds that are available for ongoing projects. It will increase the reduction in the program of the technology reinvestment area, that I just mentioned, by $302 million.

It restores a portion of the money to the environmental restoration account, money that is really not needed this year. It is there. It is available. It has been appropriated. As a matter of fact, in recent years, there has been a substantial carryover in that account. I urge the Senate to take the recommendation of the committee. It was reached after substantial consultation with both the military services and the civilian people in the Department of Defense. It is a level which no one likes to see reached. The moneys are being reduced for both accounts. But I tell the Senate, if we are going to find $2 billion and do the least harm to ongoing projects that have already been approved, we should take from the money that is in this enormous account of almost $6 billion and take it from the area of the planned studies. No ongoing cleanup project should be harmed.

Incidentally, as I indicated in the beginning of my statement, the moneys for base closure environmental studies are already there. We have not touched them at all. The real emergency areas where we are having to do specific environmental projects, in the process of carrying out the base closure process, have not been at all affected by the recommendations that we have made from the committee.

I urge the Senate to realize that we had before us a rescission from the Technology Reinvestment Program from the House. This will be a conference issue. Both the House and the Senate proposed to reduce that fund but not by the same amount.

When we look at the ongoing projects under the Technology Reinvestment Program in which we have already invested some taxpayers' money, if we are going to use the money efficiently, we should provide enough to carry out those projects, and that is what we have done. That basically is all we have done.

So I do hope that we can keep the TRP funding at the level we have indicated. I do believe the House may insist on changing it somewhat. As a matter of fact, the House is probably going to insist on changing several of the items where we have made changes in their recommendations. But we made an extensive study of this, and I personally had several meetings with the Deputy Secretary of Defense, Dr. Deutch, because of his personal interest in the subject matter and in the concept of technology. We have kept the cut but not at the level suggested by the Senator from Arizona.

I urge the Senate to keep the recommendations of the Senate Appropriations Committee. They were reached after, as I said, substantial consultation with those involved in the projects.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, I wish to speak briefly to support the statements the Senator from Alaska has made and the position the Appropriations Committee has come to the floor with in this area.

As I think the Senator from Arizona pointed out, his amendment would do two things, two very different things. It would, first of all, cut and eliminate the technology reinvestment project by rescinding all of the funds in that program, which I think would be a very misguided action by this Congress.

Second, it would restore some of those funds to the environmental cleanup activity. The Senator from Arizona pointed out that he himself has not been known as a wild-eyed environmentalist. I think that was the phrase he used. I certainly think there is some truth to that.

Earlier, after this last election, on December 5, 1994, he and Senator WARNER sent a letter to President Clinton urging that much of the funding be dropped in the defense budget and specific programs be eliminated, and in that list of programs he sent to the President he himself proposed that DOD and DOE defense environmental programs be reduced by $930 million in fiscal year 1995.

The proposal of the subcommittee is to reduce them by $400 million total, and I think that is a much more reasonable level of funding in those areas.

Let me also talk a moment about the TRP. I think the Senator from Alaska did a good job of pointing out that there are many useful defense-related programs going forward with TRP funding.

Let me just cite a couple of them. One of the programs is the multichip module program. The breakthrough in the 1960's was the microchip where many, many transistors could be put on one small piece of silicon to dramatically reduce the size, weight, and cost of electronics. The military was the first user of microelectronics and this was the technology that made the ICBM and all later advanced weapons possible. Of course, now the commercial demand for this technology dwarfs the military market. But that does not diminish its importance to the Defense Department.

The breakthrough of the 1990's is the multichip module technology where many, many chips are put on one common substrate to dramatically increase once again military system performance and lower their costs. TRP is meeting this challenge by cost sharing an effort with the consortium that brings together the emerging participants in this new industry in an effort to lower equipment manufacturing costs by making all needed technology advances simultaneously. Members include GM Hughes Electronics, IBM, Micromodule Systems, Motorola, nChip, Polycon, and Texas Instruments. Sandia National Laboratories will establish a test bed to support the effort.

Madam President, there are a couple of items that I received from the Department of Defense to make the point. This is a printed circuit board which shows the circuitry needed for an advanced weapons system and the multichip module which is being developed through TRP funding to replace it—this much smaller item. That is the kind of a breakthrough we are trying to finance and accomplish and bring about through use of this dual-use technology.

Let me cite one other example, and this is the TRP precision laser machining project.

Let me again show a very small, little item to my colleagues. This sample illustrates the initial results under this TRP project. Graphite composite material similar to that used in stealth aircraft has 1,600 laser-drilled holes which were accomplished in only 10 minutes.

The TRP will develop further this technology to be able to achieve a much faster hole drilling rate, up to 10,000 holes per second, without sacrificing the unprecedented hole quality already achieved and illustrated here. At that point it will be feasible to process entire airframes in about 1 day, enabling laminar flow control by these holes in critical airflow surfaces. This performance-enhancing flow control is impractical to manufacture with current technology, and the laser hole drilling provides not only the speed but the quality required to make the process practical and cost effective.

The Department of Defense points out that the result will be substantial from their perspective of enhanced military aircraft component performance and improved fuel efficiency by more than 3 percent, saving about $400 million per year. This technology will also reduce life cycle costs by about $100,000 per engine by using these precise laser beams to drill holes with the highly increased precision and reproducibility shown in this sample.

Madam President, let me just conclude by pointing out again the statement by Secretary Perry before the Armed Services Committee, which my colleague from Arizona serves on with me, where, when asked about the TRP, he said, "I hope I have the opportunity with the Congress to defend, to vigorously defend the importance of this program."

Madam President, if we adopt the amendment by the Senator from Arizona we are not giving the Secretary of Defense that opportunity. There has been no hearing that can be cited by the Senator from Arizona here. He is proposing or suggesting that the Senate, in our ultimate wisdom, should substitute our judgment for that of the Secretary of Defense, for that of the Under Secretary of Defense, for that of the Chairman of the Joint Chiefs of Staff. In my view this would not be wise. We need to keep funding in the TRP, keep this a program that continues to go forward in these very important areas.

As the Senator from Alaska pointed out, the additional funding that is being transferred to environmental activities is just not needed this year.

Madam President, I hope very much this amendment will not be agreed to and that we can support the position of the Appropriations Committee.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Madam President, let me thank the Senator from New Mexico for reading the letters I sent to the President. I appreciate it. I will try to make sure that he is made aware of the correspondence I have between myself and the President and the Secretary of Defense. I point out to my friend from New Mexico, he did not get several of my correspondences, nor the gist nor intent of the recommendations I made.

First of all, I made the recommendations and I stated in the letter, "reduce overemphasis on environmental cleanup and reduce funding to account for management savings, use of more effective technologies and less stringent standards." That is out of a $6 billion overall authorization, and is in keeping with the CBO recommendations.

For the edification of my friend and colleague from New Mexico, I wrote a letter on January 23 of this year where I stated:

> As you know, I wrote to the President on December 5, 1994, asking that he defer the obligation of funding for certain defense programs, including the environmental accounts of the Departments of Defense and Energy. I would like to clarify my intent in including $930 million in DOD and DOE environmental accounts in the listing of programs characterized as lower priority funding.
>
> First, let me assure you that I understand the importance of environmental cleanup and fully support the need to provide adequate funding to accomplish this daunting task. Therefore, I believe it is incumbent upon the Department of Defense to bear its fair share of the burden of remediating any problems resulting from the conduct of necessary military activities. However, I also feel strongly that costs such as research and education, as well as other costs not directly related to actual cleanup activities, should be borne equally by all entities, whether governmental or private, rather than one or two federal agencies.
>
> It is in this context that I suggested that a portion of the DOD and DOE budgets for environmental programs be reviewed and reconsidered in the context of more fairly and appropriately allocating the fiscal burden of federal environmental programming across all government agencies.

So I want to assure my friend from New Mexico, to clear up any misconception as my intent in the letter I sent to the President on December 5 and January 23. I would be glad to provide him with a copy of those.

Madam President, I ask unanimous consent this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
January 23, 1995.

Hon. WILLIAM PERRY,
Secretary of Defense,
The Pentagon, Washington, DC.

DEAR MR. SECRETARY: As you know, I wrote to the President on December 5, 1994, asking that he defer the obligation of funding for certain defense programs, including the environmental accounts of the Departments of Defense and Energy. I would like to clarify my intent in including $930 million in DOD and DOE environmental accounts in the listing of programs characterized as lower priority funding.

First, let me assure you that I understand the importance of environmental cleanup and fully support the need to provide adequate funding to accomplish this daunting task. Therefore, I believe it is incumbent upon the Department of Defense to bear its fair share of the burden of remediating any problems resulting from the conduct of necessary military activities. However, I also feel strongly that costs such as research and education, as well as other costs not directly related to actual cleanup activities, should be borne equally by all entities, whether governmental or private, rather than one or two federal agencies.

It is in this context that I suggested that a portion of the DOD and DOE budgets for environmental programs be reviewed and reconsidered in the context of more fairly and appropriately allocating the fiscal burden of federal environmental programming across all government agencies.

You and I are both aware of the growing scarcity of defense dollars to carry out our national security priorities. Therefore, we must work together now to ensure that we put the immediate needs of our common defense as our first priority.

As Chairman of the Readiness Subcommittee of the Armed Services Committee, which has jurisdiction over the environmental restoration program of the Department of Defense, I intend to look into these issues very closely during the FY 1996 budget review. I would like to request your assistance in identifying specific areas of the Department's environmental restoration accounts which you believe should be distributed outside of the Department. In this review, I would ask that you look closely at research and education funding, as well as the standards and remediation techniques to ensure that cleanup funding is being used efficiently and in the most cost-effective way to protect human health.

As always, I appreciate your assistance in this matter. I will be sending a copy of this letter to the Secretary of Energy.

Sincerely,

JOHN McCAIN,
U.S. Senator.

Mr. STEVENS. Madam President, in closing this debate, and I do not know whether it will or not, but let me just make my final remarks.

I want to emphasize to the Senate the difficult task we have had to find money to offset the funds necessary to restore the training, operation, and maintenance accounts for the Department of Defense. We have done that by taking funds from accounts, some of which we may replace in 1996. But we are taking them from accounts where we know they cannot be spent this year. There is no way the department is going to spend all of the remaining $800 million that is available for studies in this environmental restoration account.

The account does not need more money now. There is no showing at all that it needs more money. As a matter of fact, in the Technology Reinvestment Program, all we have funded is the money for the ongoing projects that have already been approved and additional efforts that have defense relevance. That means we are going to continue those ongoing projects which were determined to have defense relevance for this year.

We are talking still about this year. We still have to review the TRP program for 1996 and we have to review the environmental restoration account for 1996, but I plead with the Senate to look at the problem we had to find money to offset the emergency request. We have taken the emergency off. We have taken the emergency off because we found, dollar for dollar, outlay for outlay. Both outlays and budget authority are reduced sufficiently to offset the moneys that are necessary to be restored in the operating accounts of the military services, plus there is some money for the Coast Guard.

Our task was to reduce spending accounts for the balance of 1995 and take money where it would do the least harm to the department. I plead with the Senate to realize that, of the $5.5 billion appropriated for the Department of Defense environmental funding account, we have dealt with about $700 million in study money. There is still plenty of money there in the whole environmental account. It does not need the restoration moneys that are suggested by the Senator from Arizona.

The PRESIDING OFFICER. Is there any further debate?

Mr. LEVIN. Madam President, I will vote against the McCain amendment to cut funding from the technology reinvestment project. I find this an unpleasant task because I am strongly in favor of full funding for environmental cleanup and restoration at closed DOD bases. I am also a proponent of the technology reinvestment project.

The McCain amendment would cut twice the amount of funding from TRP than it would restore to DERA. That tells me that the purpose of this amendment is to kill the technology reinvestment project, which I believe is wrong. As the previous amendment offered by Senator BINGAMAN showed, it is the sense of the Senate that the TRP is important to our national security, and ought to be the norm for the way the Pentagon does business.

I believe that the TRP is a good example of a new way of doing business between the Federal Government and the private sector, one that is cooperative, cost-shared, competitive, and mutually beneficial.

Mr. ROBB. Madam President, I rise today in support of the amendment offered by Senator BINGAMAN and of U.S. dual-use technology efforts in general.

The U.S. military will be challenged repeatedly as a deterrent and fighting force in the decades to come. We face the potential of a resurgent Russia, a new economic power that decides to pursue military dominance in its region, or a rogue regime with a nuclear weapon at its disposal.

Although the United States will retain its preeminent position as the only military superpower for decades to come, our relative military advantage inevitably will wane. Identifying the next great military powers is obviously very difficult, but we can rest assured that not all will share U.S. values and interests. The question today is whether we will be able to respond rapidly and adequately to emerging threats.

Of particular concern are those nations that will attempt to couple rapid economic growth with tight political control. Fortunately for democracies, this marriage of tyranny and a free economy usually leads to divorce. But even a short-lived marriage of this sort is a reasonable prospect for several of today's nondemocratic nations. Widely available and rapidly advancing military technologies will allow these nations to arm relatively quickly and, conceivably, to leapfrog some U.S. military capabilities through innovative technologies.

It is this possibility for a rapid, technologically based emergence of a major threat that dictates we support our technology base as effectively as possible, and focus our energies on highly advanced, long-term technologies.

We cannot, of course, continue to pay for the enormous research and development base of the cold war. We must now turn to the commercial sector, which leads the Department of Defense in many key technologies, to help sustain U.S. technological leadership. Dual-use technology development efforts, like the Technology Reinvestment Program, represent one of the best conceivable approaches to meeting this long-term national security need. TRP is an especially effective program:

TRP is supporting a vast range of defense technology developments in areas such as low-cost night vision, high-density data storage, battlefield casualty treatment, and composite aircraft structures.

TRP awards are matched by the program participants, effectively leveraging taxpayer dollars.

TRP awards are competed and represent a much more efficient approach than saddling DOD research programs with earmarks that often duplicate or misdirect existing efforts.

Finally, TRP allows DOD to drive down costs by leveraging commercial large-scale production.

TRP is truly a cents-on-the-dollar program that will secure U.S. long-term security interests well into the next century. While I applaud and strongly support readiness today, let's not compromise our future—a future that will require much foresight and technological excellence to deter and, if necessary, defeat advanced military threats.

Madam President, I yield the floor.

Mr. LIEBERMAN. Madam President, I rise in opposition to the proposed amendment. First, let me say that I am concerned that among our early acts in this 104th Congress we are about to cut $1.9 billion dollars out of our defense budget. Among the cuts proposed, are cuts to our critical technology development programs. Since technological superiority will win the battles of tommorow, we are stealing funds that will determine the readiness of future generations, to pay for defense emergencies today. I believe these actions are a clear and present danger to our defense capability. In our zeal to increase defense readiness and fund operations while we control spending, control Government proliferation, control the deficit we may be laying the groundwork for inevitable future inferiority in critical defense technologies. This amendment only increases the damage that is being done to this critical technology development effort.

Military readiness is at the forefront of the defense agenda for both the administration and many of my colleagues here in Congress. I share their concern that our military must be fully prepared to insure national security. This is not an option, this is our responsibility. At the same time, some of my colleagues are proposing and voting for cuts in defense technology development programs that are critical to the defense readiness of tomorrow.

ARPA AND DUAL USE

Our current technological superiority has not evolved overnight. DOD's secretive Advanced Research Projects Agency (ARPA), the preeminent technology development entity in the world, has been successfully researching and evolving new technology for military applications, in close alliance with the services, for the 37 years since President Eisenhower set it up. In retrospect, it was a truly visionary Presidential accomplishment.

What has ARPA done? Most of its efforts are classified, and it has purposely never recorded its history. Let's just look at a list of technologies that we can talk about that ARPA helped evolve: Supercomputing; desktop computers; the internet (formerly ARPAnet); stealth; the entire field of materials science and composites; GPS—the global positioning system run by atomic clocks; laser technology including laser machining; high resolution digital imaging; advanced acoustics; smart weapons; and even the ubiquitous computer mouse.

This is only a partial list, but this list alone has revolutionized not only the U.S. warfare machine, but U.S. civilian society.

THE TECHNOLOGY PROGRAMS AT ISSUE: TRP

The Technology Reinvestment Project [TRP] has been the first victim of the technology attack. It is designed to be a dual use effort in a program concept first developed by President Bush's Director of ARPA. TRP projects are cost-shared at least 50/50 with industry, competitively selected, industry-led and aimed at civilian and military needs.

What are ARPA's TRP teams working on?

Item: Head mounted displays. Infantrymen can't walk around with desktop computers. With light-weight, head-mounted displays they can retain full mobility but have a full computer display of the battlefield and real-time intelligence and targeting data before their eyes.

Item: Advanced information flow. Military command and control must process an exploding amount of intelligence data immediately to the battlefield for response. But limited communications capacity now clogs our ability to transmit, process, and act on that data. A TRP team is developing digital communications command and control equipment to burst massive new amounts of data through the interpretation and response pipeline at 10 gigabits per second, a 400 percent improvement over today's best equipment. This will be the building block for a new integrated command and control network.

Item: Single chip motion detectors. By reducing motion detection to a single chip accelerometer which can withstand accelerations up to 30,000 times the force of gravity, weapons guidance and navigation systems can be made significantly lighter and more sensitive. This will be critical to the next generation of smart weapons.

Item: Uncooled infrared sensors. Desert Storm was launched as a night attack using infrared sensors as the basis for high speed attack operations. Our military needs to own the night and a new generation of cheaper, much more portable uncooled infrared sensors are a crucial enabling technology being developed by a TRP team.

Item: Autonomous all-weather aircraft landing. The efficiency of military aircraft is still limited by night and weather conditions. Operations at secondary fields are curtailed in these conditions if a full ground control system is absent, or if these facilities are disrupted or damaged at a primary site. Basing aircraft at a small number of primary bases, is not a good alternative, because our command of the air becomes more vulnerable. A TRP team is working on placing all-weather air traffic and landing control systems into every cockpit, making aircraft independent of ground control availability and weather conditions.

Item: Turboalternator. Army gas-guzzling battle vehicles require a vast and vulnerable logistics chain and limit battlefield operations. The next war may not be fought next to Saudi oil refineries. A TRP team is developing a turboalternator so main engines can be switched off, but all equipment and sensors can continue to operate, during silent watch modes. This multiplies fuel efficiency and also makes detection through infrared emissions and engine noise much more difficult.

Item: Composite bridging. Military operations continue to be controlled by terrain: every stream or ravine that must be crossed creates a potential strong point for enemy defenders and disrupts the mobility that gives U.S. forces much of their edge. Every time our engineer forces have to bring up cumbersome, heavy bridging equipment for a crossing, enemy defenders can rally and our mobility is disrupted. A TRP team is developing superlight, superstrong composites for superportable bridges to multiply the mobility of our battlefield forces.

Item: Precision laser manufacturing. Precision laser machining technology, by making aircraft parts microscopically precise, can make aircraft engines much more efficient. A TRP team, working with higher power density, more focused laser beams and variable pulse formats, aim to double the life of military aircraft engines and sharply improve fuel efficiency and therefore range. Other beneficiaries include shipbuilders, airframe makers, engine makers, and a wide range of other manufacturing technologies.

These examples are the kinds of new technologies we need for future battlefield dominance. ARPA's TRP selection criteria emphasizes nine areas of established military need, from battlefield sensors, to mobility, to prompt casualty treatment, to command and control capability to advanced materials. TRP technology projects also must have civilian application to help cut military costs and link into emerging civilian technologies. TRP is a brand-new effort and many of its investments are high risk. There are no doubt fixes that will need to be applied to the program, and some of its military priorities may require clarification, as with any new program. But to decimate it without even holding a hearing about the cornucopia of technology advances it is spawning is rash, and dangerous to our military technology future.

Given some of the other program cuts now on the table, the assault on TRP appears to be the beginning of a larger assault on technology R&D, in general. Given the dangers of the future battlefield, this assault can only provide comfort to future enemies.

CONCLUSION

At a time when we need to renew our commitment to defense technology, with an eye toward the necessary control of defense spending, we are cutting back on the very programs poised to solve the problem. We must take advantage of civilian-led technologies. We must control defense spending. We must remain sufficiently superior to our competitors to deter any threats to our national security. We have no choice. If we don't capture the power of technological innovations, we can be sure that our opponents will.

I urge my colleagues to vote against the amendment.

Mr. KERRY. Madam President, I wish to go on record in opposition to the McCain amendment and express my strong support for the Department of Defense Technology Reinvestment Program [TRP] which provides essential public-private funding for dual-use research and development.

The collapse of the Soviet Union and the end of the cold war have not brought an end to the need for a strong United States military. We find ourselves facing challenges that are different but no less complex: The spread of nuclear weapons and major regional, ethnic and religious conflicts, to name a few. These new threats increase the need for fast, flexible, mobile forces equipped with the most advanced weapon systems. The Technology Reinvestment Program will allow our troops to defend themselves with the most current, technologically advanced equipment and enhance our ability to respond effectively to any threat our troops may face.

The Defense Department's TRP is an innovative program that maximizes the use of taxpayer funds to exploit promising technologies by working cooperatively with the private sector to ensure both our military and commercial sectors seize and exploit these cutting edge technologies. This cooperative endeavor enhances our national security and economic well-being and moves us toward a single, cutting-edge national technology and industrial base. The TRP program enables the Pentagon to exploit the rapid rate of innovation and market-driven efficiencies evident in the commercial industry to meet defense needs. By drawing on commercial technology and capabilities wherever possible—along with the superior systems design and integration skills of U.S. businesses—

the military can do its job more effectively and at a far lower cost to the taxpayer.

While I agree with the objective of the McCain amendment to restore funding to the Defense Environmental Restoration Act accounts to provide for environmental cleanups on defense bases, I cannot support the transfer to DERA from the TRP program. The $150 million reduction in the DERA program, while regrettable, is a small portion of the overall DERA program. In addition, DERA is not the only program in the Defense budget that provides environment cleanup funding. On the other hand, the proposed cuts in the McCain amendment coupled with the TRP reductions already contained in the committee-reported Senate rescission bill, would virtually eliminate the TRP program.

As we all know, we won the cold war, in no small way because of our technological expertise. We won the cold war because there was a national commitment to win it. We dedicated the resources to the research and development and to the manufacturing that were required to win. We must continue in that tradition and I urge my colleagues to reject the McCain amendment.

Mr. KENNEDY. Madam President, I oppose this amendment. It seeks to achieve a laudable goal, mitigating the cuts imposed by the Supplemental Appropriations Act on the environmental cleanup of Department of Defense facilities. It would do so, however, by eliminating the Department's premier dual-use technology program, the technology reinvestment project. I support this vital program to maintain our military's technological edge into the next century. Therefore, I oppose the McCain amendment.

Through its environmental restoration effort, the Defense Department is fulfilling its obligation to the communities of America where military facilities have contaminated the land, water, or air. The President, the Secretary of Defense, and the leaders of the service branches have a solemn commitment to protecting our citizens from environmental threats caused by Department activities.

Some have criticized the Department's environmental restoration program as being a nondefense activity, since the funding for the cleanup does not go directly into the modernization or maintenance of our forces, and is therefore beyond the scope of the Department's responsibility. Nothing could be further from the truth. Keeping its lands free of contamination is a clear obligation of any private or public entity, including the Department of Defense.

An example of the urgency of addressing this problem can be found in my home State of Massachusetts. Over the decades of the cold war, activities at Otis Air Force Base and Camp Edwards on Cape Cod have resulted in drastic contamination. Roughly 65 million gallons of ground water have been contaminated, threatening public water supplies and recreational ponds. Last year, the Department of Defense settled on a plan for cleaning up the contamination. This cleanup will take years to implement. Reductions in the environmental fund will delay these vital cleanup programs.

Under the leadership of Secretary of Defense Perry and Sherri Goodman, the Deputy Under Secretary for Environmental Security, the Clinton administration has laid out a plan for addressing the huge cleanup problem facing the Department. The $1.78 billion we voted in last year's budget is a downpayment on a cleanup program that will be implemented well into the next century.

Although this amendment would add funds for the clean-up, a goal I support, it would do so by taking funds from the technology reinvestment project. The TRP combines the best of national technology, national security planning, and acquisition reform. It seeks to ensure that the Nation's high-technology industries, as they readjust to the shrinking defense budget, will still carry out research and development to meet national defense needs.

Deputy Secretary of Defense John Deutch has said that the Defense Department can no longer afford the luxury of having its own private industry. The Department must devise ways to use the commercial sector to meet its future industrial needs. The TRP spearheads the effort to achieve that goal.

It uses less than 2 percent of the Defense Department's research and development budget to get high-technology American businesses to begin meeting our defense needs in an economical fashion. The TRP leverages Government money by providing up to half the cost of financing dual-use research and development projects.

These projects, carried out by consortia of private corporations, universities, and scientific laboratories, meet real defense needs. The categories of military need in which project funding is awarded include military mobility and deployment; battlefield sensors; command, control, communications, computers, and intelligence—so-called C^4I; and electronics design and manufacturing. As Secretary Perry has testified, there can be no doubt that the program is funding projects that fulfill direct defense requirements.

In some areas, such as command and control software, commercial technology is more advanced than the corresponding military technologies now in use. In these instances, the TRP seeks to apply existing commercial technologies to military applications. In other cases, such as battlefield sensors, military technologies are more advanced, but the Department seeks to take advantage of the lower cost production processes that commercial manufacturing the marketing may provide.

The House bill rescinds $500 million in fiscal year 1994 and fiscal year 1995 funds for the TRP. This amount would effectively eliminate the program. The committee's bill rescinds $200 million in fiscal year 1994 and fiscal year 1995 funding for the TRP, far superior to the House bill, but still a major cut to the program. By further cutting the TRP by $302 million, the McCain amendment would repeat the House action of eliminating the program.

I was pleased to be a cosponsor of the amendment offered earlier by Senator BINGAMAN, expressing the sense of the Senate in support of the TRP. That amendment was passed by a voice vote. To pass the McCain amendment now would wipe out our approval of that earlier amendment.

I support greater funding for the Defense Department's environmental restoration program. I urge the conferees on this legislation to achieve the highest level of funding possible for it. But we should not undermine the future of the Nation's defense industry to achieve this goal. I urge my colleagues to defeat this amendment.

Mr. STEVENS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. STEVENS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Arizona to the committee amendment on page 1, line 3. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 22, nays 77, as follows:

[Rollcall Vote No. 101 Leg.]

YEAS—22

Abraham
Bradley
Brown
Campbell
Chafee
Craig
Faircloth
Feingold
Gorton
Gramm
Grassley
Helms
Hutchison
Inhofe
Kassebaum
Kempthorne
Kyl
McCain
Nickles
Roth
Snowe
Warner

NAYS—77

Akaka
Ashcroft
Baucus
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Bryan
Bumpers
Burns
Byrd
Coats
Cochran
Cohen
Conrad
Coverdell
D'Amato
Daschle
DeWine
Dodd
Dole
Domenici
Dorgan
Exon
Feinstein
Ford
Frist
Glenn
Graham
Grams
Gregg
Harkin
Hatch
Hatfield
Heflin
Hollings
Inouye
Jeffords
Johnston
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Lott
Lugar
Mack
McConnell
Mikulski
Moseley-Braun
Moynihan
Murkowski
Murray
Nunn
Packwood
Pell
Pressler
Reid
Robb
Rockefeller
Santorum
Sarbanes
Shelby
Simon
Simpson
Smith
Specter
Stevens
Thomas
Thompson
Thurmond
Wellstone

NOT VOTING—1

Pryor

So, the amendment (No. 322) was rejected.

Mr. STEVENS. Madam President, I move to reconsider the vote.

Mr. HATFIELD. Madam President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STEVENS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATFIELD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT

Mr. HATFIELD. Madam President, I ask unanimous consent that the committee amendments be considered and agreed to en bloc except for the committee amendments beginning on page 1, lines 3 through page 25, line 4; and page 31, lines 5 through 21. That the bill as amended be considered as original text for the purpose of further amendments and that no points of order be waived thereon by reason of this agreement.

Mr. BYRD. Madam President, this request has been cleared on this side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to en bloc, except for the following:

On page 1, line 3 through page 25, line 4; and page 31, lines 5 through 21.

Mr. HATFIELD. Now, Madam President, I ask unanimous consent that the pending committee amendments be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 323

Mr. HATFIELD. Madam President, I send an amendment to the desk on behalf of Senators McCONNELL and LEAHY and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD] for Mr. McCONNELL (for himself and Mr. LEAHY) proposes an amendment numbered 323.

Mr. HATFIELD. Madam President, I ask unanimous consent that further reading be dispensed.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 323) is as follows:

On page 27, between lines 6 and 7, insert the following:

CONTRIBUTION TO THE INTERNATIONAL DEVELOPMENT ASSOCIATION

(RESCISSION)

Of the funds made available under this heading in Public Law 103-306, $70 million are rescinded.

In lieu of the Committee amendment on page 27, lines 21 through 25, insert the following:

DEVELOPMENT ASSISTANCE FUND

(RESCISSION)

Of the funds made available under this heading in Public Law 103-87 and Public Law 103-306, $13,000,000 are rescinded.

ASSISTANCE FOR EASTERN EUROPE AND THE BALTIC STATES

(RESCISSION)

Of the funds made available under this heading in Public Law 103-87 and Public Law 103-306, $9,000,000 are rescinded.

ASSISTANCE FOR THE NEW INDEPENDENT STATES OF THE FORMER SOVIET UNION

(RESCISSION)

Of the funds made available under this heading in Public Law 103-87 and Public Law 103-306, $18,000,000 are rescinded, of which not less than $12,000,000 shall be derived from funds allocated for Russia.

Mr. LEAHY. Madam President, I want to speak briefly about the foreign operations part of this supplemental appropriations and rescissions bill.

First, let me say that I believe strongly that supplemental funds for the Department of Defense should be offset with defense rescissions. Domestic and foreign affairs funds should not be used to cover defense costs. I do understand, however, that these rescissions were made in anticipation of a difficult conference with the House.

The $172 million in foreign operations rescissions that were presented to the Appropriations Committee would have come entirely from sub-Saharan Africa. I was very concerned about the impact this would have on the world's neediest people, and discussed my concerns with Senator McCONNELL. I want to thank him for working with me to modify the rescissions in a way that protects our bilateral aid programs in Africa.

I do support the $62 million rescission from the African Development Fund. Those funds were appropriated last year with the explicit caveat that the fund make significant management reforms. It has not done so. Perhaps this rescission will get their attention.

That leaves $110 million. All of it would have been taken from the Agency for International Development's programs in Africa. Those funds are used to support basic health and nutrition, AIDS prevention, child survival, basic education, agriculture research, and programs to promote free markets and free elections. These are programs that Republicans and Democrats strongly support, as do the American people, because they often make the difference between life and death for people facing starvation, political violence, or deadly diseases we can cure.

The rescission, as initially proposed, would have meant that our aid to Africa, which already amounts to only about $1 per person, would bear the total burden of these cuts. That I could not accept.

Senator McCONNELL and I have worked together to modify the foreign operations rescissions to protect AID's programs in Africa. I appreciate his willingness to find a compromise.

Rather than take the money from the Development Fund for Africa, the amendment we have coauthored, which is also cosponsored by Senator LAUTENBERG, would rescind $70 million from the International Development Association; $13 million from the Development Assistance Fund; $18 million from the former Soviet Republics, of which at least $12 million must come from Russia; and $9 million from Eastern Europe.

Let me say that I wish we did not have to rescind any of this money. These are all programs I support, and I hope we can reduce some of these cuts in conference. I especially hope that we can find alternatives to cutting so much from IDA, since these are commitments made by the U.S. Government and this cut will only add to our arrears.

But faced with this difficult choice, I wanted to be sure that the cuts did not fall on the backs of the poorest people. That is the reason for this amendment.

Mr. McCONNELL. Madam President, I am joined today by Senators LEAHY, LAUTENBERG, and JEFFORDS, in amending the foreign operations rescissions package. When the committee decided to move forward with rescissions I requested a listing of the unobligated balances in our international affairs accounts. I learned that the three largest accounts which have been slow to spend their resources are those committed to the Middle East, the New Independent States, and the Development Fund for Africa.

It is my view that contributing to the economic and political stability in the NIS is a vital interest of the United States in the post-cold-war world. Although many of the specific programs for the NIS have been plagued by difficulties, I am reluctant to send the signal that Congress is abandoning its commitment to the region. The House rescission which reflected a 10 percent cut to the region's unobligated balances might send just such a message.

The troop housing project is obviously troubled. We have held a number of hearings to review whether it is, in any way, meeting the defined objectives. We had expected the program to offer incentive to remove troops from the Baltics, build housing where there was an acute shortage, generate jobs in the construction sector, and expand private home ownership—I think there is consensus that it has failed on virtually all accounts. Nevertheless, I would prefer to see the funds for the project reprogrammed rather than cut out altogether.

As an alternative to the House provisions, Senator LEAHY and I are offering a modest reduction in the NIS account with a requirement that two-thirds of the resources are drawn from the Russia projects.

This was a direct and determined response to the situation in Chechnya. A few weeks ago when the administration decided to offer $20 million in relief to Chechnya, we learned that they planned to draw some of the funding from Armenia, Georgia, and other regional emergency accounts. I see no purpose in punishing those countries to compensate for Russian outrages in Chechnya. The requirement that two-thirds of the rescissions from the NIS account be drawn from Russian programs is intended to reinforce that message.

The second large account with unobligated balances had a direct affect on the Middle East peace process. Again, I think our interests dictated that we not take any action that could disrupt our commitment to stability and the peace process. Consequently, I was unwilling to draw down this account to support rescissions.

I relied on the third account, the Africa Development Fund for two reasons—the slow spending rate and the fact that the fund is complemented by an array of other accounts that contribute to Africa development. In addition to the DFA, we contribute to the Africa Development Foundation, the Africa Development Fund, the Africa Development Bank, and the International Development Association.

After discussions with my colleagues, I have agreed to shift the burden of rescissions from the bilateral Africa program where we have more confidence and opportunity to assure United States interests are addressed to the International Development Association which I view as less responsive to United States goals.

The rescissions Senator LEAHY and I are offering, continue our support for vital American interests while addressing our common concerns about reducing our deficit. With this Congress we have new responsibilities to reduce the deficit. I plan to make sure that our foreign aid program contributes to the process of downsizing the Government and our debt.

This rescissions proposal is the first step in a series of difficult choices which lie ahead. Foreign aid can and should serve U.S. national economic and political interests. When and where it fails to meet that test, I guarantee my colleagues that the funds will be rescinded, reprogrammed, or reduced.

Mr. LAUTENBERG. Madam President, I am pleased to cosponsor this amendment because it would ensure that the foreign aid spending reductions in this bill do not come entirely out of programs for Africa.

Under the bill reported by Senate Appropriations Committee, $172 million in assistance for Africa was cut. No other region of the world was affected. Senator LEAHY and I expressed concern about the reductions in assistance to Africa during the Senate Appropriations Committee consideration of this bill because we thought it was unwise to target all the cuts at one region. During the full committee markup, the chairman of the Foreign Operations Appropriations Subcommittee agreed to address our concern during full Senate consideration.

The amendment before the Senate today would do just that. It would spread the burden of the rescissions in the foreign aid program across more regions of the world. It would still rescind $62 million for the African Development Fund. But instead of rescinding $110 million for the Development Fund for Africa—which funds child survival, basic education, health, and environmental programs—the amendment would rescind $110 million from a multitude of programs. It would reduce funding for the soft loan window of the World Bank by $70 million. It would reduce funding for the former Soviet Union—mostly from Russia—by $18 million. It would reduce $13 million in development assistance. And it would reduce $9 million in aid to the countries of Eastern Europe.

While all cuts are painful, the reductions proposed in this amendment are a sound alternative to rescinding $172 million from one of the poorest, most vulnerable regions of the world. Through our foreign aid program, the United States currently spends approximately $1 per person in Africa, far less than we spend on other regions of the world. That is a small investment in the future of democracy and regional stability. It is small amount of assistance to support fast growing export markets. It is small amount to spend to reduce disease, end poverty and human misery, and help create opportunities for the people of Africa.

Madam President, it would be unwise to reduce aid only to Africa, and I am glad we have reached an agreement with the chairman of the Foreign Operations Appropriations Subcommittee to ensure that the 172 million rescissions in foreign aid spending do not target Africa exclusively. I urge my colleagues to support this amendment.

Mr. HATFIELD. Madam President, this amendment embodies an agreement between the chairman and the ranking minority member of the Foreign Operations Subcommittee regarding the recisions recommended in chapter 3 of title II. It has been cleared on both sides. I ask for its adoption.

The PRESIDING OFFICER. Is there further debate on this amendment? If not, the question is on agreeing to the amendment.

So the amendment (No. 323) was agreed to.

Mr. HATFIELD. Madam President, I move to reconsider the vote.

Mr. BYRD. Madam President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 324

Mr. HATFIELD. Madam President, I send an amendment to the desk on behalf of Senators GRAMM and HOLLINGS, and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending committee amendments will be laid aside. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for Mr. GRAMM, (for himself and Mr. HOLLINGS) proposes an amendment numbered 324.

Mr. HATFIELD. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 25 of the Committee bill, strike line 14 through line 12 on page 26, and insert in lieu thereof the following:

DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

IMMIGRATION EMERGENCY FUND

(RESCISSION)

Of the amounts made available under this heading in Public Law 103–317, $10,000,000 are rescinded.

DEPARTMENT OF COMMERCE

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

INDUSTRIAL TECHNOLOGY SERVICES

(RESCISSION)

Of the amounts made available under this heading in Public Law 103–317 for the Advanced Technology Program, $32,000,000 are rescinded.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH AND FACILITIES

(RESCISSION)

Of the funds made available under this heading in Public Law 103–317, $2,500,000 are rescinded.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

INFORMATION INFRASTRUCTURE GRANTS

(RESCISSION)

Of the amounts made available under this heading in Public Law 103–317, $34,000,000 are rescinded.

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

(RESCISSION)

Of the amounts made available under this heading in Public Law 103–317, $40,000,000 are rescinded.

RELATED AGENCIES

SMALL BUSINESS ADMINISTRATION

SALARIES AND EXPENSES

(RESCISSION)

Of the funds made available under this heading in Public Law 103–317 for tree-planting grants pursuant to section 24 of the Small Business Act, as amended, $15,000,000 are rescinded.

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

(RESCISSION)

Of the funds made available under this heading in Public Law 103–317 for payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, $15,000,000 are rescinded.

DEPARTMENT OF STATE AND RELATED AGENCIES

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

ACQUISITION AND MAINTENANCE OF BUILDINGS ABROAD

(RESCISSION)

Of unobligated balances available under this heading, $28,500,000 are rescinded.

Mr. HOLLINGS. Madam President, at last week's markup of the defense supplemental appropriations bill, H.R. 889, Subcommittee Chairman Senator GRAMM and I found ourselves both opposed to specific domestic rescissions that were included in the House-passed bill. Since that committee meeting, we have been working on a substitute amendment to the Commerce, Justice, and State chapter that we can both support, with the ground rules that we must propose a rescission in place of any rescission currently in the bill that is deleted.

Our amendment restores all but $10 million of the Immigration Emergency Fund appropriation and most of the appropriation in the Commerce Department's Advanced Technology Program. The House had proposed cutting $70 million from the Justice Fund and $107 million from the Commerce Department's ATP Program. All of the alternative offsets that this amendment proposes are from accounts within our subcommittee's jurisdiction, and we have retained the $177 million in deficit reduction proposed in both the House bill and the committee recommended bill.

This amendment, which I will describe, represents a bipartisan response to the reductions in Justice and technology programs proposed by the House.

IMMIGRATION EMERGENCY FUND

The amendment restores all but $10 million of the Department of Justice, Immigration and Naturalization Service's Immigration Emergency Fund to the level provided in last year's CJS appropriation bill.

This fund was established for possible immigration emergencies, and we provided a $75 million appropriation last summer to deal with the Cuban and Haitian immigration crisis. Use of the fund, which has current balances of $111 million, requires a Presidential declaration of an emergency and congressional notification. Given the current state of affairs along our Southern border, it is prudent that the account balances be maintained at a level of at least $100 million.

ADVANCED TECHNOLOGY PROGRAM

The amendment restores $75 million to the National Institute of Standards and Technology's Advanced Technology Program [ATP]. The committee amendment would retain a rescission of $32 million from this account, instead of the $107 million proposed in the committee reported bill.

The ATP is an important investment in American economic competitiveness. It supports American industry's own efforts to develop new cutting-edge, next-generation technologies—technologies that will create the new industries and jobs of the 21st century. The ATP does not fund the development of commercial products. Instead, it provides matching funds to both individual companies and joint ventures for pre-product research on these high-risk, potentially high-payoff technologies. These technologies include promising new ideas in manufacturing, advanced electronics, and new materials.

Why do we need the ATP? The answer is simple: to keep America competitive and create jobs. Long-term technology has become the key to future U.S. prosperity at precisely the time that global competition, downsizing, and shareholder pressures now force American companies to focus scarce research dollars on short-term projects. The Commerce Department estimates that these market pressures now push companies to spend up to 90 percent of their research funding on projects that will pay off in 1 to 5 years. As a result, U.S. companies, small and large, now have serious trouble funding long-term, next-generation technologies that will build new industries but will not pay for 10 to 15 years. Moreover, historically the U.S. Government has supported long-term research in only a few key sectors—an approach very different from our foreign competitors.

The ATP's sole aim is to develop new basic technologies that would not be pursued or pursued soon because of technical risks and other obstacles that discourage private-sector investment. The ATP does not support product development, and is modeled on similar Federal research programs which have long helped a few sectors such as agriculture, the aircraft industry, and the energy technology. The program particularly helps small technology companies. To date, the ATP has made 177 awards, involving 480 companies and research partners in 38 States.

The ATP is new, but already has begun to make a real difference. Diamond Semiconductor Group's story is not atypical. It had a new idea for reliably producing larger, more-cost effective semiconductor wafer—about the size of an LP record as opposed to today's small wafers. But the company did not have the resources to fully test out its idea. "Winning the ATP award was absolutely critical to us," says President Manny Sieradzki. The ATP award helped the company provide the proof needed for varian associates, as major semiconductor equipment manufacturer, to provide development funding.

I want to mention three other points about the ATP. First, the ATP is part of a long American tradition of supporting industry efforts to develop new technologies. To date, most of those efforts have been in defense or a few key civilian areas. But those older U.S. investments have been substantial and effective. USDA helped create modern agriculture, the Government has supported aeronautical research since 1915, and the NIH helped create biotechnology. The ATP simply extends this proven model of long-term investments in technology to the rest of U.S. industry. And, while the ATP assists a wide range of American industries, it costs less than comparable programs which serve specific sectors. In fiscal year 1995, the ATP and NIST's manufacturing extension program cost a total of $522 million—compared with $1.675 billion at USDA for research and extension, $882 million at NASA for aeronautics, and $3.757 billion at the Department of Energy for civilian energy technology.

Second, this is not interfering with the marketplace or having the Government pick winners and losers. The ATP is without doubt the most market-driven technology program supported by the Government. Industry, not government, proposes both specific projects and key areas of technology to focus on. Industry, not Government, runs the projects and contributes the majority of the funds. As mentioned, the ATP supports only long-term pre-product research, never product development. And awards are made by peer-review panels of technical experts and retired business executives—not by the White House, not by the Secretary of Commerce, and not by Congress.

Third, the ATP has enjoyed strong bipartisan support. The Bush administration wrote the regulations for the ATP, and in his fiscal year 1993 budget President Bush requested substantial increases for the program. In addition, on June 25, 1992, Senate Republicans—through the Senate Republican Task Force on Adjusting the Defense Base Chaired by Senator Warren Rudman—endorsed both the ATP and the NIST Manufacturing Extension Program. This program has had strong bipartisan support in the past, and deserves strong bipartisan support now.

NOAA PROCUREMENT SAVINGS

The amendment proposes a rescission of $2.5 million of funds appropriated in fiscal year 1995 to the National Oceanic and Atmospheric Administration [NOAA] for modifications and procurement of aircraft radar. NOAA has procured and is installing the radar, but has informed the subcommittee that $2.5 million is excess to requirements. The agency recently proposed to reprogram these funds for administrative overhead. The subcommittee recommends applying these resources instead for deficit reduction and restoring the ATP program.

INFORMATION INFRASTRUCTURE GRANTS

The subcommittee recommends a rescission of $34 million for Department of Commerce, National Telecommunications and Information Administration, Information Infrastructure Grants. This program was created in fiscal year 1994, and the first grant awards recently were made. Funding for this program increased from $26 million in fiscal year 1994 to $64 million in fiscal year 1995. It has yet to be authorized, and we have continued to oppose rescissions from the Public Broadcasting Facilities Program in NTIA that the administration keeps proposing. Accounting for departmental transfers and reprogrammings, this rescission restores the program to its fiscal year 1994 level.

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

The amendment would rescind $40 million for the Economic Development Administration [EDA]. This is $20 million more than the committee reported bill. I reluctantly agreed to this rescission. Following our fiscal year 1995 appropriation bill, the EDA proposed a reprogramming of $40 million from Defense economic adjustment/conversion and regular title IX programs to initiate a new Competitive Communities Program. As I understand it, this new program would provide grants to intermediaries to provide loans to industries locating or expanding in impacted communities. THe subcommittee was unable to reach agreement in order to approve the reprogramming request—and under our guidelines both the majority and minority must agree for a reprogramming to go forward. In light of that, we have agreed to use these resources in lieu of House rescissions.

SMALL BUSINESS ADMINISTRATION TREE-PLANTING

The amendment proposes to rescind $15 million from the Small Business Administration's [SBA] salaries and expenses account. This rescission is proposed in the President's budget.

This action would terminate the SBA tree planting program. This is a nice program that provides grants to States and local governments to plant seedlings and small trees. But, it has little to do with the mission or purpose of the SBA, and we have never supported funding in a Senate appropriations bill. In fact, it has never been authorized by the Small Business Committees. It has been an annual House Appropriations Committee add-on-the budget.

LEGAL SERVICES CORPORATION

The amendment proposes to rescind $15 million of the $415 million appropriated in last year's CJS appropriations bill for the Legal Services Corporation [LSC]. This amendment would reduce the payment to the LSC to the level recommended by the Senate last year. We fought hard in conference last year to contain the growth of the Legal Services Corporation, which had grown each year due to pressure from the House. With the political see change in the House, I'm sure that they should be willing to return to the lower Senate-passed funding level.

STATE DEPARTMENT UNOBLIGATED BALANCES

The amendment proposes to rescind $28.5 million from unobligated balances in the Department of State's foreign buildings account. Again, it is with great reluctance that I recommend this rescission. This is an area in which the Senate-passed CJS appropriations bill exceeded the House last year, and we got them to come up to our level. Each year the Department of State's program changes due to delays, scope and priority changes, and contract savings. Normally, we would support retaining these balances to further the overseas construction program. But, in the current environment, these balances are being proposed for rescission to offset restoring House rescissions.

CONCLUSION

This is unpleasant business. I think everyone should realize that the House is driving this game. These rescissions are not going to offset Department of Defense readiness spending; instead, they will be used, at least for the time being, for deficit reduction. The ground rules, as laid out by Chairman HATFIELD and the leadership, are that we must meet or exceed the amount of rescissions that the House has proposed. And, I should note that our House counterparts recently approved a second, much larger rescission bill.

Both Chairman GRAMM and I agree that this amendment provides for a vastly improved package than what the House sent to the Senate. I urge adoption of the amendment.

Mr. HATFIELD. Madam President, this amendment embodies an agreement between the chairman and the ranking minority member of the Commerce, Justice Subcommittee regarding the rescissions recommended in chapter 1, title II.

It has been cleared by both sides. I recommend its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 324) was agreed to.

Mr. HATFIELD. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 325

(Purpose: To provide that the Endangered Species Act of 1973 shall not apply with respect to Fort Bragg, NC)

Mr. HELMS. Madam President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS], for himself and Mr. FAIRCLOTH, proposes an amendment numbered 325.

The amendment is as follows:

At the end of title I, insert the following:

SEC. 1. FORT BRAGG, NORTH CAROLINA.

Notwithstanding any other law, for fiscal year 1995 and each fiscal year thereafter, the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not apply with respect to land under the jurisdiction of the Department of the Army at Fort Bragg, North Carolina.

Mr. HELMS. Madam President, may I inquire if my distinguished colleague from North Carolina, Mr. FAIRCLOTH, has been added as a cosponsor of this amendment?

The PRESIDING OFFICER. The Senator is.

Mr. HELMS. I thank the Chair.

Madam President, as we always say around this place, this amendment is simple and straightforward. I have never heard of an amendment being offered that was not simple and straightforward.

This amendment proposes to stop the Federal Government and its bureaucrats from, first, preventing the Department of the Army from carrying out its national security mission and, second, wasting taxpayer dollars in the process.

The amendment addresses a problem the Army is having at Fort Bragg, NC. The U.S. Fish and Wildlife Service has listed a red-cockaded woodpecker as a threatened and endangered species and has designated Fort Bragg as a major recovery area for the red-cockaded woodpecker.

The bureaucrats at the Fish and Wildlife Service have forced the Department of the Army to go to great length and great expense to set aside land, create tank trails, create nesting areas, and restrict construction—all to meet an arbitrary plan to protect woodpecker nests.

The Department of the Army has been required, first, to set aside 12,000 acres of land just to protect the woodpecker; second, to prepare a 44-page report that limits training activities of the Army; third, since fiscal year 1989, the Army has spent more than $5 million as a result of the efforts to protect the woodpecker; fourth, to halt eight construction projects at the base.

Madam President, it is my understanding that four species are being protected at Fort Bragg and another one is going to be added soon—a butterfly—to make that five species. There are 70 more State and Federal species in line to be added. If four species require almost 13,000 acres of protection, what is going to happen 5 or 10 years down the road when there will be 70 species? Will there be any land at Fort Bragg left on which to train our troops?

The last time I checked the function of the Army is to defend the national security interests of the United States and not birds in trees. To carry out its national security function, the Army must have the ability to train its troops in battlefield situations. But as any military expert will tell you, training exercises are impeded when planners must work around protected woodpecker nests. This is in fact the case at Fort Bragg.

Madam President, there is another point: The Army is currently attempting to purchase an 11,000 acre parcel of land—known as the Overhills tract. This purchase has aroused some controversy inasmuch as it will take a significant amount of valuable land off the tax rolls in Harnett County, NC.

Part of the reason the Army must acquire this parcel, is to protect the red cockcaded woodpecker. Let me quote from a letter I recently received from the Department of Army:

> Purchasing this land would bring us much closer to attaining the number of active RCW (red cockaded woodpecker) colonies established by the U.S. Fish and Wildlife Service. Once the RCW population has been recovered, Fort Bragg will have much greater freedom in training and siting construction to support our mission.

The Army is being forced to buy more land, using taxpayers dollars, to protect woodpecker colonies.

Gen. Robert E. Lee wrote these words to his wife on December 25, 1862:

> What a cruel thing is war: to separate and destroy families and friends, and mar the purest joys and happiness God has granted to us in this world; to fill our hearts with hatred instead of love for our neighbors, and to devastate the fair face of this beautiful world!

There will always be threats to our national security. The cold war may be over, but there still remain threats to our national security. We owe our soldiers the best possible training.

It is outrageous to sacrifice the training of our troops on the altar of environmentalism.

I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there any further debate on this amendment?

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Madam President, first of all, this is legislation on an appropriations bill, and I think that is improper to start with. But more than that, it is absolutely clear that in the Environment and Public Works Committee we are going to deal with the Endangered Species Act this year. That act is coming up for reauthorization and, indeed, it has not been reauthorized in several years, but we are going to reauthorize it. We are going to review it in connection with all the problems that have been cited so frequently.

I just think it is a mistake for us to be going at this piecemeal with every State which has a particular problem with the Endangered Species Act, to bring it forward in this piecemeal fashion. We are going to go at it in a very thoughtful way with hearings, with the administration testifying, with those Senators who wish to testify to come forward and, indeed, just today, we considered a measure by the Senator from Texas that would apply a 6-month moratorium on further listings under the Endangered Species Act. It deals solely with section 4, which is the listing section, and it does not deal with section 7, which is the conciliation section. That is quite proper.

In our committee, we had the Secretary of the Interior, Secretary Bruce Babbitt, testify. We had representatives from industry, and we had representatives from the affected areas and that is a very thoughtful way to proceed on this.

But I do deplore the procedure that is occurring tonight, which is to take a particular section and a particular area and say you cannot apply the Endangered Species Act to that.

Now, maybe there should not be colonies of woodpeckers provided for, but who knows what else might be encompassed under this procedure?

So, Madam President, I think it is very unfortunate that we are proceeding in this fashion, and I hope that the amendment will not be accepted.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from California.

Mrs. BOXER. Mr. President, I really hope in this particular case the Senate will follow the leadership of John CHAFEE, the chairman of the Environment and Public Works Committee. I think it is not the right way to go about amending the Endangered Species Act, to attack it on every type of bill that comes before us. It is not the right way to govern.

I wish to read what the amendment says:

> Notwithstanding any other law, for fiscal year 1995 and each fiscal year thereafter, the Endangered Species Act shall not apply with respect to land under the jurisdiction of the Department of the Army at Fort Bragg, NC.

Well, if everybody carved out their territory, we would not be doing much to preserve the species that we really have an obligation to preserve.

Today, in the hearing of the Environment and Public Works Committee, we spent about 4 hours debating the Endangered Species Act. Many people do not realize that the drug taxol, which is the hope for those with ovarian cancer and breast cancer, came from a plant called the yew tree. Many people do not realize that the hope of finding cures for all kinds of dreaded diseases lies with these plants, these exotic plants, sometimes very simple weeds.

There is a company which grew up in the Silicon Valley of California called Shaman Pharmaceutical. It is a very interesting story. A shaman in the old culture is actually a doctor, and Shaman Pharmaceutical was founded here in the United States of America by a very bright young woman, business woman who realized the value that lies in these plants in the South American rain forests, and they have come forward with at least three drugs from these exotic plants which hold tremendous promise to treat lung disease and very, very difficult diseases to cure.

So I would say we do not know what endangered species lie in this particular area of Fort Bragg. We do not know what particular plants are there, what species are there, if they hold hope for the future. But simply to attach this amendment to a bill that deals with paying for military operations is certainly the wrong way to go about it.

So I certainly do hope that our colleagues on both sides of the aisle will follow the leadership of Senator CHAFEE, the chairman of the Environment and Public Works Committee. Let us show our faith in his leadership of this committee. It is going to be difficult to reauthorize the Endangered Species Act. We know we have to make it better. But we also know that if we pick it apart piece by piece, area by area, it seems to me we are robbing this country of some very important, potentially lifesaving endangered species. A lot of people say, when you point out that a specie is in danger, what does that have to do with me, this little bird over here? They make fun of some of the endangered species.

Well, the fact is we have an ecological chain, and everyone supports saving the bald eagle. The Endangered Species Act saved the bald eagle. Everyone supported saving the California condor. And I will tell you, we lost in California the grizzly bear because we were not on top of preserving it. We lost that opportunity forever. It is gone. Our grandchildren will never know what a California grizzly bear really was. So this is not the way to go about the debate on the Endangered Species Act.

We had Secretary of the Interior Babbitt in front of the committee today. He clearly stated he has gotten the message. He is going to work with communities. He is talking about exempting private properties, small parcels, from the Act so that we do not overburden small property owners. I think we are making terrific progress.

The Senator from Rhode Island is working with the Senator from Texas, and I think the bill she now has is moving in the right direction. I personally do not support a moratorium on this because you might lose a species in the process, which I think is the wrong way to go. But we are working together in the committee, Democrats and Republicans alike.

So, again, I am very surprised to see this amendment. I had no idea it was coming to the floor. I am pleased I was here so I could participate in the debate. I hope we will at the proper time vote against this amendment. It simply does not make any sense to have an amendment such as this on a bill which deals with paying for military operations.

I thank the Chair. I yield the floor.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, as one of the managers of this measure, I find this amendment to be most unfortunate. We have not had the opportunity of listening to all of the facts. I have listened very carefully to the distinguished chairman of the committee, the Senator from Rhode Island, and I believe all of us should take his sage advice. The committee is about to take up the whole measure of endangered species. This is an appropriations bill, and to have legislation of this sort placed upon it would place the whole measure in jeopardy. I hope we would do something to resolve this matter.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The other Senator from North Carolina is recognized.

Mr. FAIRCLOTH. Mr. President, I would like to speak on the amendment of my fellow Senator from North Carolina in regard to the red-cockaded woodpecker and the problem it has presented to Fort Bragg. The EPW has been completely out of reason in what we should be doing there, and they set a quota of 300 colonies of red-cockaded woodpeckers that had to be established on the Fort Bragg military reservation. Some 25,000 acres have already been contributed to raising woodpeckers, and now we are talking about buying roughly 12,000 more acres at $15 million of taxpayers' money to meet the quota of 300 colonies of red-cockaded woodpeckers.

I think the amendment that Senator HELMS has proposed is a good one. But I also agree with Senator CHAFEE that we need to bring it up before the EPW Committee, of which Senator CHAFEE is chairman, and of which I am a member. I would like the opportunity to work with Senator CHAFEE in the EPW Committee, and I will personally commit to the Senator from North Carolina that it will be done expeditiously and we will bring it up and act on it in the EPW Committee if he would see fit to withdraw his amendment.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I thank my colleagues from North Carolina and I want to say this to them. We have not had an opportunity to have a hearing on this. We will rapidly. I do not want to say tomorrow or the day after, but all I can say is we will get to it as rapidly as we can. We will listen to the testimony, we will have the folks from the Army up, we will have folks from the Fish and Wildlife—I presume they are the people who are dealing with this—and possibly the EPA people. We will do the best we can to resolve this.

Obviously, if we cannot resolve it I will so inform the Senators from North Carolina and they will have opportunities to bring this up again. But it will be our earnest attempt to get this thing settled in a fashion that recognizes the problems that have been set forth by both the distinguished Senators.

So that is my commitment to attend to it very soon. I hope they will give me a little time to get to this because we have to get witnesses and, again, I cannot say it is going to be tomorrow, I cannot say it is going to be next week. But I can just say we will get right to it.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, needless to say I thank the Senator from Rhode Island. His proposition is fair. Every piece of legislation ought to stand on its own merits. Even though I think this is a ridiculous situation extant at Fort Bragg, NC, it is the same kind of ridiculous situation that is confronting businessmen all over this country. I am glad the Senator is working on that proposition.

In view of what has been said here, Mr. President, I ask unanimous consent that the yeas and nays be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The Senator now has that right.

The amendment is withdrawn.

The amendment (No. 325) was withdrawn.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I thank the distinguished senior Senator from North Carolina and the junior Senator. The junior Senator is a very esteemed member of our committee. I know he will pay close attention to this whole matter.

Second, I thank the senior Senator from Hawaii for his support in this matter. When he spoke, it got everybody's attention. Likewise, the distinguished Senator from California, who so ably spoke on this previously. Now it is up to us. We will get to it in the Environment and Public Works Committee.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 326

(Purpose: To strengthen international sanctions against the Castro government in Cuba, to develop a plan to support a transition government leading to a democratically elected government in Cuba, and for other purposes)

Mr. HELMS. Mr. President, I send to the desk a printed amendment and I ask the sponsors be identified by the clerk in the preface to the bill. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] for himself, Mr. DOLE, Mr. MACK, Mr. COVERDELL, Mr. GRAHAM, Mr. D'AMATO, Mr. HATCH, Mr. GRAMM, Mr. THURMOND, Mr. FAIRCLOTH, Mr. GREGG, Mr. INHOFE, Mr. HOLLINGS, Ms. SNOWE, Mr. KYL, Mr. THOMAS, Mr. SMITH, Mr. LIEBERMAN, Mr. WARNER, Mr. NICKLES, and Mr. ROBB proposes an amendment numbered 326.

Mr. HELMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. The Chair notifies the Senator from North Carolina that there is a pending first-degree amendment at this time.

Mr. HELMS. I was not aware of that. I ask unanimous consent that it be temporarily laid aside so I can discuss my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I was astonished to learn this morning that President Clinton's advisers have recommended that he ease up on the embargo against Fidel Castro's Communist Dictatorship in Cuba. If these advisers are parading under the flag of expertise, it's a false flag, and they are doing great harm to the President with such advice.

This is no time to be reducing U.S. pressure on Castro. It is precisely the wrong way to go. Backing off on Castro will help the Castro Communist dictatorship and do great harm to the Cuban people—who already have suffered too much for 36 years.

I have made it clear that, as chairman of the Senate Foreign Relations Committee, doing everything possible to bring freedom and democracy to Cuba is at the top of my priority list.

That is why I introduced the Cuban Liberty and Democratic Solidarity [Libertad] Act as my first piece of legislation as chairman of the Foreign Relations Committee.

Fidel Castro's brutal and cruel Communist dictatorship has persecuted the Cuban people for 36 years. He is the world's longest reigning tyrant.

Let me be clear: Whether Castro leaves Cuba in a vertical or horizontal position is up to him and the Cuban people. But he must—and will—leave Cuba.

I categorically reject suggestions to lift or soften the embargo. For 36 years, both Republican and Democratic Presidents have maintained a consistent, bipartisan policy of isolating Castor's dictatorship.

There must be no retreat in that policy today. If anything, with the collapse of the U.S.S.R. and the end of Soviet subsidies to Cuba, the embargo is finally having the effect on Castro that has been intended all along. Why should the United States let up the pressure how? It is time to tighten the screws—not loosen them. We have an obligation—to our principles and to the Cuban people—to elevate the pressure on Castro until the Cuban people are free.

The bipartisan Cuba policy has led the American people to stand together in support of restoring freedom to Cuba. As for my legislation, it incorporates and builds upon the significant work of the two distinguished Senators from Florida, CONNIE MACK and BOB GRAHAM, and of a number of our colleagues in the House of Representatives.

The message we should be sending to both Castro and those who want to do business with him are contained in the Cuban Liberty and Democratic Solidarity Act now at the desk. The message is: Isolate Castro until the Cuban people are free.

We can achieve this by strengthening international sanctions against the Castro regime by prohibiting sugar imports from countries that purchase sugar from Cuba and then sell that sugar to us; and instructing our representatives to the International Financial Institutions to vote against loans to Cuba and to require the United States to withhold our contribution to those same institutions if they ignore our objections and aid the Castro regime.

We can accomplish this objective by urging the President to seek an international embargo against Cuba at the United Nations, and by prohibiting loans or other financing by a United States person to a foreign person or entity who purchases an American property confiscated by the Cuban regime.

My legislation reaffirms the 1992 Cuban Democracy Act, revitalizes our broadcasting programs to Cuba, and cuts off foreign aid to any independent state of the former Soviet Union that aids Castro, specifically if that aid goes for the operation of military and intelligence facilities in Cuba which threaten the United States.

This bill encourages free and fair elections in Cuba after Mr. Castro is gone and authorizes programs to promote free market and private enterprise in Cuba.

The bill also helps U.S. citizens and U.S. companies whose property was confiscated by the Castro regime by denying entry into the United States to anyone who confiscates or benefits from such property and by allowing a U.S. citizen with a confiscated property claim to go into a U.S. court to seek compensation from a person or entity which is being unjustly enriched by the use of that confiscated property.

Mr. President, the Cuban people are industrious and innovative. In countries where people are allowed to live and work in freedom, they have prospered. My hope and the hope of the cosponsors of this bill, is that this bill will hasten an end to the brutal Castro dictatorship and make Cuba free and prosperous once more.

Mr. President, I yield the floor.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I want to commend the distinguished Senator from North Carolina. I understand he has laid the amendment down and we will continue the debate tomorrow morning.

I think when the administration talks about easing sanctions on Cuba they have made a big, big mistake. They have misread the American people, not just in the State of Florida where many Cuban-Americans reside. They have misread the public opinion all across America.

I hope that we have a good discussion of this amendment tomorrow morning. I thank the Senator from North Carolina. I am a cosponsor of the amendment. I thank him for laying down the amendment this time.

I hope my colleagues will have an opportunity to study the amendment overnight and to also review the remarks of the Senator from North Carolina so that they might also participate in the debate.

We are back on the bill at 10:30 or 11 tomorrow. I am not certain. We have not made that determination yet.

I thank the Chair. I thank my colleague.

Mr. HELMS. I thank the distinguished majority leader.

Mr. President, parliamentary inquiry. This amendment is to an excepted committee amendment. Is that not correct?

The PRESIDING OFFICER. It is the understanding of the chair that the Senator from North Carolina has an amendment set aside to propose this to the bill itself. The Senator, however, has the right to change it.

Mr. HELMS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MODIFICATION OF AMENDMENT NO. 326

Mr. HELMS. Mr. President, I ask unanimous consent that I may modify, at the bottom of page 1 of the amendment, so as to read, "At the end of the first excepted committee amendment, add the following:".

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I send the modification to the desk.

The PRESIDING OFFICER. The amendment is so modified.

The modification reads as follows:

At the end of the first excepted committee amendment, add the following:

Mr. HELMS. I thank the Chair.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ASHCROFT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

GUEST CHAPLAIN, REV. PAUL E. LAVIN

Mr. HATFIELD. Mr. President, last week, we had the distinct honor of sharing the floor with a credentialed and principled brother, guest Chaplain, Rev. Paul E. Lavin. I have been fortunate to have shared a friendship with Father Lavin that has enriched me in many ways. This friendship has developed, as Father Lavin has graciously opened his parish to me in the morning, so I can begin my day with prayer and worship. These times have been invaluable as I wrestle with the difficult and complex issues that we regularly face in the Senate.

Father Lavin visited us with many accomplishments and distinctions. Father Lavin did his undergraduate work at King's College and then later attended seminary at Seminary of Our Lady of Angels. After receiving his master degree from seminary, he was ordained a year later by Patrick Cardinal O'Boyle at St. Matthew's Cathedral in Washington, DC. This marked the beginning of his official religious ministry. He accepted his first pastorate, at Mount Calvary Parish where he ministered for 5 years. During his tenure, he established the ECHO retreat program for high school seniors and young adults in the Archdiocese of Washington. This program remains the primary youth retreat in the Archdiocese.

Father Lavin continued his commitment to young people in his next position as the director of Youth Retreats for the Catholic Youth Organization of the Archdiocese of Washington. Under his direction the Catholic Youth Organization created a retreat center in Silver Spring, MD which he administered until 1979. For the next 10 years, he served as the chaplain of American University. In his capacity, he established the Hannan Series, which brought those involved in significant public service together with American students to discuss how their faith has influenced their public lives. He then returned to the pastorate becoming the pastor of Mother Seton Parish which is a parish of 1,800 Catholic families in suburban Montgomery county. His present position as the pastor of St. Joseph's on Capitol Hill, is what has caused our paths to meet.

Father Lavin also is distinguished by many appointments which include: national chaplain of the Junior Catholic Daughters of America, member of board of directors of the Bishop McNamara High School, and president of Germantown HELP which is an ecumenical crisis helping organization.

I have been blessed by my relationship with Father Lavin. While I have no plans to forsake my Baptist commitments, I have always felt welcome at St. Joseph's. So much so, that when my daughter was engaged to a Catholic, I suggested that she hold her wedding at St. Joseph's, a suggestion that she eagerly complied with. Later my granddaughter was baptized at St. Joseph's.

It is encouraging when people can come together in fellowship made possible by their common bond in Christ. I have experienced this fellowship with Father Lavin, and I look forward to continued interaction with him in the future.

GUEST CHAPLAIN, REV. ERNEST R. GIBSON

Mr. DOMENICI. Mr. President, it is my distinct honor to reflect on the accomplishments of our guest Chaplain, Rev. Ernest R. Gibson. Reverend Gibson is a product of Howard University where he studied sociology and religion. He has been putting his studies to work in his capacity as the pastor of the First Rising Mount Zion Baptist Church. He began pastoring this church in 1952, and he continues as head of this congregation today. Under his leadership, his church has grown from 65 members to its current attendance of 1,700 active members.

The history and development of Gibson's congregation serves as a tribute to his life accomplishments. Four years after Gibson started as pastor of First Rising Mount Zion Baptist Church, in 1956, they bought their first building in Northwest Washington, DC. Later in 1973, they oversaw the construction of the Gibson Plaza which was a 10-story, 217-unit apartment building for low and moderate income families. In 1985, they completed construction of their education building, and recently in 1990, they completed construction of a new church building.

Reverend Gibson's congregation serves as a positive force in its surrounding community working proactively to address the needs of those less fortunate. They offer many programs including, a college guarantee offering tuition assistance up to full tuition, an outpatient drug treatment facility, a weekly food distribution which reaches an average of 300 individuals, and a meal program for homeless families.

Reverend Gibson's commitment to his community extends greater than his responsibilities as the pastor of First Rising Mount Zion Baptist Church. He was also the chairman of glass recycling program in cooperation with the Glass Packaging Institute and Mid-Atlantic Glass Recycling Program. Under his leadership they saw a total of 10 different churches and agencies participate.

As well as being active in his surrounding community, Reverend Gibson was involved with other persons of faith, in his role as the executive director of the Council of Churches of Greater Washington. In this ecumenical work, the reverend urged churches to be more concerned about social issues, coordinated a voter registration drive which placed registrars in more than 30 churches, and directed the Interfaith Conference. He also was the co-chair of the Greater Washington Billy Graham Crusade in 1986, coordinating the efforts of local churches in their support of this endeavor.

I am proud to share the floor with Reverend Gibson because he is a man whose religious convictions make an impact on the treatment of others. He has clearly taken to heart Christ's recommendation to feed his sheep. Gibson's commitment to the service of others is undeniable and his faithful devotion to his congregation is obvious. We need more pastors like Gibson who are devoted not just to their congregation, but also to the surrounding community. His body of believers can act as an example to the church in America of what it means to serve the community.

TRIBUTE TO THE REVEREND NEAL JONES

Mr. COATS. Mr. President, I would like to use this opportunity to provide a statement of appreciation for Rev. Neal Jones, who has volunteered this week to open our Senate sessions with prayer.

Mr. President, Reverend Jones has faithfully served for the last 26 years as the pastor of Columbia Baptist Church in Falls Church, VA. During this time of esteemed service, Reverend Jones has displayed the personal, professional, and spiritual characteristics that distinguish him for the important role of opening the Senate's day with prayer.

Reverend Jones has a heart devoted to God, as evidenced by his love of people and concern for others. Of special note relating to his duties in the Senate, Reverend Jones has a broad doctrinal understanding of various religious traditions, and, while firm in his convictions, he has maintained an attitude of grace toward differences of opinion.

Pastor Jones has a warm and winsome manner allowing him to pastor to all types of persons without regard to their status. He has a truly special gift for pastoral ministry and encouragement.

Mr. President, these personal, professional and spiritual traits are revealed through Reverend Jones' dedicated work in the community. Under the leadership of Pastor Jones, Columbia Baptist has grown into a dynamic church ministering to a changing community in extraordinary ways. The church has a vibrant Korean and Hispanic ministry, a model child-care program of low-income families and single mothers, a major food, clothing, and medical program for a sister church in Moscow, and many other community outreach programs.

In addition to providing leadership and guidance for these ministry activities, Reverend Jones serves on the Executive Board of Prison Fellowship; he is a member of the Baylor University Board of Regents; and he has served on the Foreign Mission Board and is past president of the Baptist General Association of Virginia. Reverend Jones also has shared his ministry in Japan, Africa, and Russia.

Mr. President, as I am sure my colleagues have noticed this week, the Reverend Jones has an extraordinary gift of prayer. One prominent national Christian leader told me, "Neal's prayers would rank with those of Peter Marshall," who is, perhaps, the best known of all past Senate chaplains.

Mr. President, the U.S. Senate has been truly blessed by the efforts of Rev. Neal Jones, and I am honored to have this opportunity to recognize and commend him for his service to us this week.

I yield the floor.

HOWARD W. HUNTER

Mr. HATCH. Mr. President, I rise today to pay tribute to the life and contributions of a singular individual. Howard W. Hunter, president of the world's nearly 9 million members of the Church of Jesus Christ of Latter-Day Saints, better known as the Mormons, completed his earthly sojourn last Friday, March 3, 1995.

Although his tenure as head of the church was relatively brief, he has left an indelible impression for good, forged through many years of service to his church and to humankind in a variety of capacities.

Those of us who have heard him speak, both in large assembly and in personal setting, were inspired, moved, and edified by his counsel. His physical frailty, as he battled cancer, stood in direct contrast to the force of his spirit, conviction, and care for those he loved and served.

President Hunter brought his own special gifts to his last calling. He bore his witness to the redeeming power of the atonement and the gospel of Christ that he loved with an invitation that included all of God's children. Like his exemplar, Jesus Christ, he included the faithful and the fallen in his spiritual embrace.

Despite an impressive personal resume, President Hunter downplayed his own accomplishments and reached out to others to encourage and to aid. In many respects, his life can be described as a fulfillment of the Savior's observation:

> And whosoever of you will be the chiefest, shall be servant of all.
>
> For even the Son of Man came not to be ministered unto, but to minister, and to give His life a ransom for many.—Mark 10:44, 45.

Howard William Hunter was born November 14, 1907, in Boise, ID. As a young man, he excelled scholastically and developed a lifelong love for music and scouting. He enjoyed a successful career as a corporate lawyer in California. He was called to be a member of the council of the Twelve Apostles of the Church of Jesus Christ of Latter-Day Saints in October 1959. The following three decades saw him travel worldwide in his fulltime church service.

At the age of 86, President Hunter succeeded President Ezra Taft Benson, who died May 30, 1994. He became the 14th president of the church.

President Hunter was married to Clara May Jeffs. She died October 9, 1983. He later married Inis Bernice Egan on April 20, 1990.

He was the father of 3 sons, eighteen grandchildren, and 16 great-grandchildren.

His legacy lives on not only in his posterity, but in his example and strong witness of his beliefs to the world.

REGARDING THE PASSING OF LDS CHURCH PRESIDENT HOWARD W. HUNTER

Mr. KEMPTHORNE. Mr. President, I would like to take this opportunity to note the passing of one of this Nation's great citizens and religious leaders. On March 3, 1995, the Church of Jesus Christ of Latter-day Saints, on behalf of his family, announced the death of President Howard W. Hunter.

President Hunter, an Idaho native, was named the 14th president of the LDS Church in June of 1994. His message, throughout his service to the LDS Church, was a prayer for compassion and tolerance. In his first statement as president he said, "To the membership of the Church in every country of the world and to people everywhere I extend my love. . . . I pray we might treat each other with more kindness, more courtesy, more humility and patience and forgiveness."

President Hunter was born in Boise, ID, on November 14, 1907, to John William and Nellie Marie Rasmussen Hunter. At an early age, President Hunter showed a quick mind and dedication as he attained the rank of Eagle Scout in the Boy Scouts of America. In addition, he exhibited a gift for music and learned to play the saxophone, clarinet, violin, and drums. His love of music was so great that he even organized his own orchestra, Hunter's Croonaders. The Croonaders were a popular fixture in Boise for many years.

President Hunter briefly attended the University of Washington, and later, in 1939, graduated cum laude from Southwestern University Law School with a Juris Doctor degree. He did this studying nights while holding a full-time job.

During his professional career, President Hunter practiced corporate law in Los Angeles where he was eventually named to the boards of 24 corporations. He also served as assistant district commissioner for the Boy Scouts of America for the Metropolitan Los Angeles area, as well as serving his church in a variety of positions ranging from bishop to president of the Pasadena California Stake.

On October 10, 1959, President Hunter was called to serve as a member of his church's Council of the Twelve Apostles. He served as acting president of this quorum from 1985 to 1988, and was president from June 1988 to June 1994.

After 52 years of marriage, President Hunter's first wife, Clara May Jeffs, passed away in 1983. Later, in April 1990, he married his second wife, the former Inis Bernice Egan. President Hunter is survived by his second wife; 2 sons, John J. Hunter of Ojai, CA, and Richard A. Hunter of San Jose, CA; 18 grandchildren and 16 great-grandchildren.

Mr. President, we are saddened by the death of such a great and talented man. But he will be remembered for his message of compassion and love, and his example of hard work and success that he exhibited throughout his life.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Mr. President, before contemplating today's bad news about the Federal debt, lets's have our little pop quiz again: How many million dollars are in $1 trillion? When you arrive at an answer, bear in mind that it was Congress that ran up a debt now exceeding $4.8 trillion.

To be exact, as of the close of business yesterday, Monday, March 6, the total Federal debt—down to the penny—stood at $4,840,905,153,915.08—meaning that every man, woman, and child in America now owes $18,376.42 computed on a per capita basis.

Mr. President, again to answer the pop quiz question, How many million in a trillion? There are a million million in a trillion; and you can thank the U.S. Congress for the existing Federal debt exceeding $4.8 trillion.

EASING UNITED STATES SANCTIONS TOWARD CUBA

Mr. PELL. Mr. President, as you know, I have spoken at length in this Chamber about the need to review United States policy toward Cuba. Therefore, I was very pleased to see reported in the Washington Post this morning that President Clinton is considering taking some modest steps toward altering the existing sanctions policy, in favor of more communication and contact between the Cuban and American people.

As I understand it, what is under consideration is the rolling back of last August's sanctions that were imposed during the Cuban migrant crisis—sanctions that have prohibited Cuban-Americans from sending money to family members in Cuba or visiting them, except in cases of dire emergency.

I believe that the President will find that there is a great deal of support for taking these steps within the Cuban-American community—many of whom have been forced to sit back and do nothing to cushion the severe economic hardships they see their loved ones on the island enduring. I would urge the President to move forward with these measures, if for no other reason than on humanitarian grounds.

In addition to rolling back the August sanctions, the President appears to be considering whether to set forth a list of steps that the Cuban Government might take to elicit the calibrated easing of United States sanctions policy. This technique was contemplated a number of years ago when relations with Castro had temporarily thawed, but was overtaken by events before it was ever implemented. It is clearly worth exploring.

After more than 30 years of mistrust, confidence building measures on both sides will be needed in order to lay the groundwork for productive negotiations on issues of mutual concern to both countries. Someone must make the first gesture. I believe that if President Clinton acts affirmatively on the policy changes currently before him, he will be taking that very important first step. I would urge that he do so.

I would ask unanimous consent that an article entitled "Clinton May Ease Sanctions on Cuba" that appeared in the Washington Post on March 7, 1995 be printed in the RECORD at the conclusion of my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[The Washington Post, Tuesday, March 7, 1995]

CLINTON MAY EASE SANCTIONS ON CUBA

(By Daniel Williams and Ann Devroy)

President Clinton's foreign policy advisers are recommending he take steps toward easing relations with Cuba by revoking some economic sanctions adopted against the nation in August, administration officials said yesterday.

The proposal, which has not yet been accepted by Clinton, would lift the ban that blocks Cuban exiles from sending cash to relatives on the island and would ease severe limits on travel to Cuba by U.S. citizens.

In addition, the advisers recommend issuing a list of steps that Cuban President Fidel Castro could take to qualify for a "calibrated response" by the United States. That could lead to talks on issues that have separated the two countries for more than 30 years, the officials said.

Any easing of restrictions would put Clinton into a confrontation with Sen. Jesse Helms (R-N.C.), chairman of the Senate Foreign Relations Committee, who has drawn up legislation designed to tighten economic sanctions on Cuba.

Helms, other conservative Republicans, some anti-Castro Democratic legislators and the Cuban exile communities in Florida and New Jersey have long favored tougher treatment of Castro.

Senior foreign policy advisers have prepared a memo for Clinton to make the case that the August sanctions, which formed part of the U.S. effort to persuade Castro to stop the flow of Cuban boat people to America, succeeded and should now be removed.

During the summer, a relaxing of coastal surveillance by Castro ignited a massive exodus of raft people, 30,000 of whom took to the seas for Florida.

The outpouring caused Clinton to reverse longstanding U.S. policy and bar their landing on U.S. soil.

Since 1963, Cubans who arrived on U.S. shores had been all but guaranteed automatic political asylum.

But Clinton feared an immigration crisis at a time of a nationwide political backlash against newcomers.

So most of the Cubans were sent to the U.S. Naval Base at Guantanamo Bay on Cuba's southeastern tip.

The decision not to admit the Cubans angered many in the Cuban-American community.

So, to mollify them as well as punish Castro, Clinton agreed to tighten the three-decade-old ban on trade with Cuba. The new sanctions included a bar on the sending of cash to relatives by Cuban Americans.

In addition, travel to this island was sharply restricted, as visits by relatives were curtailed and a Treasury Department permit was required for trips by educational researchers and other groups.

At the time, the Clinton administration estimated that the ban on cash remittances and reduced travel would cost the Cuban economy an estimated $150 million per year. The new actions under consideration would not affect the rest of the trade ban.

Soon after imposing the tougher sanctions, the United States entered talks with Cuba aimed at easing the immigration crisis. The two sides reached a deal in which Cuba, in return for again blocking the outflow of raft people, received a guarantee of 20,000 visas a year for its citizens to go to the United States. The administration rejected a bid by Cuba to revoke the new sanctions as part of the immigration deal.

The time has come, some U.S. officials believe, to test whether Castro is willing to make deep economic and political reforms, a senior administration official said. The administration has engaged in a low-level debate over most of the past two years on whether to try to encourage political liberalization in Cuba by engaging Castro and loosening the overall trade embargo against the island nation.

Some mid-level State Department officials and others had proposed for months that Washington engage Castro either to help avert chaos surrounding a future succession or, in case of chaos, to establish a relationship that could avoid more refugee waves.

But the White House saw no political gain for easing relations. Last fall, Secretary of State Warren Christopher said Castro would have to make political reforms before the United States could engage on such issues as the embargo, eased travel relations and diplomatic relations.

The administration, before making a "calibrated response," will be looking for wider economic reforms to establish a free market on the island as well as political reforms, including the stationing of human rights monitors on the island, the senior official said.

MESSAGES FROM THE HOUSE

At 3 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill; in which it reuqests the concurrence of the Senate:

H.R. 925. An act to compensate owners of private property for the effect of certain regualtory restrictions.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 925. An act to compensate owners of private property for the effect of certain regulatory restrictions; to the Committee on Environment and Public Works.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-454. A communication from the Office of the Nuclear Waste Negotiator, transmitting, pursuant to law, the final report of the Office; to the Committee on Energy and Natural Resources.

EC-455. A communication from the Secretary of the Interior, transmitting, pursuant to law, the annual report of the Office of Surface Mining Reclamation and Enforcement for 1994; to the Committee on Energy and Natural Resources.

EC-456. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC-457. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC-458. A communication from the Deputy Associate Director for Compliance, Royalty

Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–459. A communication from the Deputy Associate Director for Compliance, Royalty Management Program, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–460. A communication from the General Sales Manager of the Department of Agriculture, transmitting, pursuant to law, a report relative to the availability of lentils and dry edible peas; to the Committee on Agriculture, Nutrition and Forestry.

EC–461. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 93–20; to the Committee on Appropriations.

EC–462. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 94–7; to the Committee on Appropriations.

EC–463. A communication from the Director of the Standards of Conduct Office, Department of Defense, transmitting, pursuant to law, a report relative to persons who filed DD Form 1787; to the Committee on Armed Services.

EC–464. A communication from the Director, Legislative Liaison, Department of the Air Force, transmitting, pursuant to law, a report relative to the Air Force's portion of the 1995 Base Realignment and Closure recommendations; to the Committee on Armed Services.

EC–465. A communication from the Deputy Under Secretary of Defense (Environmental Security), transmitting, pursuant to law, notification of a delay in the submission of a report relative to environmental compliance; to the Committee on Armed Services.

EC–466. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, a report relative to the Defense Commercial Telecommunications Network; to the Committee on Armed Services.

EC–467. A communication from the Administrator of the Panama Canal Commission, transmitting, a draft of proposed legislation to authorize expenditures for fiscal year 1996 for the operation and maintenance of the Panama Canal and for other purposes; to the Committee on Armed Services.

EC–468. A communication from the Assistant Secretary of Defense for Economic Security, transmitting, pursuant to law, the BRAC 95 Force Structure Plan for the Armed Forces; to the Committee on Armed Services.

EC–469. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation to authorize appropriations for fiscal years 1996 and 1997 for the United States Coast Guard, and for other purposes; to the Committee on Commerce, Science and Transportation.

EC–470. A communication from the Administrator of the Federal Aviation Administration, transmitting, pursuant to law, a report relative to the Traffic Alert and Collision Avoidance System; to the Committee on Commerce, Science and Transportation.

EC–471. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Department's annual report on the Automotive Fuel Economy Program; to the Committee on Commerce, Science and Transportation.

EC–472. A communication from the Acting Secretary of the Treasury, transmitting, pursuant to law, the annual report of the United States Government for fiscal year 1994; to the Committee on Finance.

EC–473. A communication from the Acting Secretary of the Treasury, transmitting, pursuant to law, the quarterly report on the expenditures and need for worker adjustment assistance training funds; to the Committee on Finance.

EC–474. A communication from the Chairman of the Prospective Payment Assessment Commission, transmitting, pursuant to law, the annual report of the Commission dated March 1, 1995; to the Committee on Finance.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROTH, from the Committee on Governmental Affairs, without recommendation without amendment:

S. 4. A bill to grant the power to the President to reduce budget authority (Rept. No. 104–13).

By Mr. ROTH, from the Committee on Governmental Affairs, without recommendation with an amendment:

S. 14. A bill to amend the Congressional Budget and Impoundment Control Act of 1974 to provide for the expedited consideration of certain proposed cancellations of budget items (Rept. No. 104–14).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. CRAIG (for himself, Mr. MURKOWSKI, Mr. REID, Mr. BRYAN, Mr. DOMENICI, Mr. BURNS, Mr. THOMAS, Mr. HATCH, Mr. BENNETT, Mr. STEVENS, Mr. KEMPTHORNE, Mr. KYL, and Mr. PRESSLER):

S. 506. A bill to amend the general mining laws to provide a reasonable royalty from mineral activities on Federal lands, to specify reclamation requirements for mineral activities on Federal lands, to create a State program for the reclamation of abandoned hard rock mining sites on Federal lands, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. PRESSLER:

S. 507. A bill to amend title 18 of the United States Code regarding false identification documents, and for other purposes; to the Committee on the Judiciary.

By Mr. MURKOWSKI (for himself, Mr. BREAUX, Mr. GORTON, Mr. STEVENS, Mr. COCHRAN, and Mr. CAMPBELL):

S. 508. A bill to amend the Internal Revenue Code of 1986 to modify certain provisions relating to the treatment of forestry activities; to the Committee on Finance.

By Mr. CAMPBELL (for himself and Mr. BROWN):

S. 509. A bill to authorize the Secretary of the Interior to enter into an appropriate form of agreement with, the town of Grand Lake, Colorado, authorizing the town to maintain permanently a cemetery in the Rocky Mountain National Park; to the Committee on Energy and Natural Resources.

By Mr. MCCAIN (for himself and Mr. INOUYE):

S. 510. A bill to extend the authorization for certain programs under the Native American Programs Act of 1974, and for other purposes; to the Committee on Indian Affairs.

By Mr. DOMENICI (for himself and Mr. ABRAHAM):

S. 511. A bill to require the periodic review and automatic termination of Federal regulations; to the Committee on Governmental Affairs.

By Mr. GRASSLEY:

S. 512. A bill to amend title XVIII of the Social Security Act to provide for a 5-year extension of the medicare-dependent, small, rural hospital payment provisions, and for other purposes; to the Committee on Finance.

By Mr. HEFLIN:

S. 513. A bill to amend chapter 23 of title 28, United States Code, to authorize voluntary alternative dispute resolution programs in Federal courts, and for other purposes; to the Committee on the Judiciary.

By Mr. AKAKA:

S. 514. A bill for the relief of the heirs, successors, or assigns of Sadae Tamabayashi; to the Committee on the Judiciary.

By Mr. BRADLEY:

S. 515. A bill to amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to provide for improved public health and food safety through the reduction of harmful substances in meat and poultry that present a threat to public health, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HEFLIN (for himself and Mr. SHELBY):

S. 516. A bill to transfer responsibility for the aquaculture research program under Public Law 85–342 from the Secretary of the Interior to the Secretary of Agriculture, and for other purposes; to the Committee on Environment and Public Works.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CRAIG (for himself, Mr. MURKOWSKI, Mr. REID, Mr. BRYAN, Mr. DOMENICI, Mr. BURNS, Mr. THOMAS, Mr. HATCH, Mr. BENNETT, Mr. STEVENS, Mr. KEMPTHORNE, Mr. KYL, and Mr. PRESSLER):

S. 506. A bill to amend the general mining laws to provide a reasonable royalty from mineral activities on Federal lands, to specify reclamation requirements for mineral activities on Federal lands, to create a State program for the reclamation of abandoned hard rock mining sites on Federal lands, and for other purposes; to the Committee on Energy and Natural Resources.

MINING LAW REFORM ACT

Mr. CRAIG. Mr. President, in the last Congress, Members in the Senate and our colleagues in the other Chamber worked hard to reform the laws under which the U.S. mining industry operate on the vast Federal lands of the west. Members on both sides of the aisle, from all regions of the country, acknowledged that the mining law of 1872 needed change. While I was disappointed we did not pass legislation in the last Congress to reform mining law, I would have been more disappointed if Congress had accepted some of the reform proposals that were put forward at that time. The reason for my concern was the proposals offered at that time did not meet my primary test of fair legislation. That test is this country's mining industry that annually contributes approximately $53 billion to our economy will not be driven to economic ruin nor to operate only in other countries.

Today, I am introducing, a bipartisan bill in conjunction with Chairman MURKOWSKI, Senator REID and 10 other of my colleagues. The Mining Law Reform Act of 1995, is a bill which will ensure continued mineral production in the United States. It provides for a fair economic return from minerals extracted on public lands, and will link mining practices on Federal lands to State and Federal environmental laws and land-use plans. This bill provides a balanced and equitable solution to concerns raised over the existing mining law.

Mining in the United States is an important part of our Nation's economy. It serves the national interest by maintaining a steady and reliable supply of the materials that drive our industries. Revenue from mining fuels local economies by providing family income and preserving community tax bases. Mining has become an American success story. Fifteen years ago, U.S. manufacturers were forced to rely on foreign producers for 75 percent of the gold they needed. Today, the United States is more than self-sufficient. The domestic mining industry not only meets the demand, but produces a gold surplus of 36 percent, worth $1.5 billion in export balance of payments.

Mining, however, is a business associated with enormous up-front costs and marginal profits. Excessive royalties discourage, and in other countries have discouraged, mineral exploration. Too large a royalty would undermine the competitiveness of the mining industry. The end result of excessive Government involvement would be the movement of mining operations overseas and the loss of American jobs. The legislation I am introducing today will keep U.S. mines competitive and prevent the movement of U.S. jobs to other countries.

The general mining law is the cornerstone of U.S. mining practices. It establishes a useful relationship between industry and Government to promote the extraction of minerals from mineral rich Federal lands. Although the cornerstone of this law was originally enacted in 1872, it remains to function effectively today. The law has been amended and revised many times since its original passage. The legislation I am introducing today preserves the solid foundation provided by this law and makes some important revisions that address the concerns that have been paramount in this debate that I have been involved in for nearly a decade.

Specifically, the Mining Law Reform Act of 1995 will insure revenue to the Federal Government by imposing fair and equitable net royalties. It requires payment of fair market value for lands to be mined. It assures lands will return to the public sector it they are not developed for mineral production, as is intended in this legislation. Furthermore, to prevent mining interests from using patented land for purposes other than mining, the bill limits residential occupancy to that which is only necessary to carry out mining activities.

To ensure mining activities do not unnecessarily degrade Federal lands, the Mining Law Reform Act mandates compliance with all Federal State and local environmental laws with regard to land use and reclamation. To enforce these provisions, the bill includes civil penalties and the authority for compliance orders.

Finally, this bill creates a program to address the environmental problems associated with abandoned mines. Working directly with the States, the Mining Law Reform Act directs one-third of the royalty receipts to abandoned mine cleanup programs; another one-third of those receipts could be used by States if they so decided.

The legislation I am proposing today is in the best interest of the American people because it provides revenue from public resources, assures mines will be developed in an environmentally sensitive manner and that abandoned mines from earlier eras will be reclaimed. It is fair to mining interests because it imposes reasonable fees and royalties. It is good for the environment because it assures land use and reclamation activities. I ask my colleagues to join me in support of this legislation and look forward to hearings and Senate legislative action.

Mr. PRESSLER. Mr. President, I am pleased to join my colleagues today in introducing legislation to reform the mining law of 1872. I congratulate my distinguished friend, Senator LARRY CRAIG, for all of his hard work on this very important issue.

As a Senator from a State with significant mining activity, reform of the obsolete mining law of 1872 is imperative. There are currently 95 mining companies operating in the State of South Dakota, bringing in more than $321 million in gross State revenues. Many of these are small businesses. The mining industry employs almost 2,500 South Dakotans.

I therefore represent many dedicated individuals who are an integral part of South Dakota's economy. I also represent a number of citizens who believe all mining activity should be stopped. In South Dakota, as in a number of States, citizens are deeply divided on issues related to mining.

However, my constituents are all in agreement on one basic point: the mining law of 1872 is outdated. It needs to be revised. I believe the legislation we are introducing today is a fair approach to reforming this antiquated law.

Mr. President, in my State of South Dakota, five major gold mining companies conduct large scale surface mining for gold on roughly 2,400 acres of land in the Black Hills. Current expansion proposals cover at least another 1,300 acres, including 800 acres of U.S. Forest Service land. Additionally, there are numerous exploratory drilling operations on Forest Service lands in the Black Hills.

Over the past few years, I have held many public meetings in South Dakota in which South Dakota mining operations were discussed. The problems inherent in the mining law of 1872 come up again and again at these meetings.

Many South Dakotans are particularly concerned about the existing land patent provisions and the extremely low fees required to purchase Federal land. Current law allows Federal land to be offered at a base price of $2.50 or $5.00 per acre. This is a virtual give-away. Anyone who has visited the beautiful Black Hills National Forest in western South Dakota would certainly agree that those lands are worth far more. It is important that responsible mining activity be permitted. However, in this time of huge Federal deficit spending, it is time these fees were reformed to reflect good fiscal common sense.

This legislation takes care of that. It brings much needed revenue back to the Federal Government. This legislation mandates that the fair market value be charged for ownership of Federal lands. In addition, it imposes claim holding fees of $100 per year, per claim.

This legislation also would ensure that the Government gets paid for some of the value of what is in the land. It would impose a net royalty of 3 percent on proceeds from mining activity. This provision is based on the State-imposed net proceeds tax, which is working quite successfully in Nevada. It makes good economic sense.

Another issue South Dakotans always raise is reclamation. It is certainly important that we encourage responsible caretaking of South Dakota's Federal lands—both to maintain the health of the Black Hills National Forest, and to preserve its natural beauty. Who knows best how to take care of South Dakota's Federal lands than South Dakotans? That's why I support the provision of this bill which places the responsibility for developing reclamation standards in the hands of the States. Those of us here in Washington, from Members of Congress to Government bureaucrats, don't always know what is best for the Federal lands in South Dakota—or even Wyoming or Colorado. Each State is in a better position to judge for itself what is best for its own environmental well-being.

Last year, we spent a great deal of time working to develop a compromise on mining law reform. Unfortunately, we were unsuccessful in passing a final bill. I believe that this year's legislation incorporates many elements of last year's compromise. This bill has widespread support from the mining industry. It is sound legislation, and we should not delay in moving it forward.

On behalf of many South Dakotans, I urge my colleagues in the Senate to give this matter serious consideration. Many provisions of the 1872 mining law need to be revised. The dedicated miners of South Dakota and the rest of the country should no longer be asked to shoulder the burdens imposed by this antiquated law. I look forward to working with members of the Senate Committee on Energy and Natural Resources as they strive to make this bill into a fair and equitable mining reform law.

By Mr. PRESSLER:

S. 507. A bill to amend title 18 of the United States Code regarding false identification documents, and for other purposes; to the Committee on the Judiciary.

FALSE IDENTIFICATION ACT

Mr. PRESSLER. Mr. President, today I am pleased to reintroduce legislation designed to attack a growing problem: the use of false identification documents [ID's] by young people under 21 years of age. I introduced a similar bill late last year.

Several years ago, Congress conditioned Federal highway funding on the requirement that States have a minimum drinking age of at least 21 years. Since then, all 50 States have come into compliance. One consequence has been a dramatic increase in the use of false ID's by young people to illegally purchase alcoholic beverages. An illegal, underground black market has emerged, supplying cheap documents to satisfy this demand. The prevalence of counterfeit ID's poses a growing menace to the licensed beverage industry, and promotes alcohol abuse among young Americans.

With modern computer graphic programs, counterfeiting a driver's license is child's play for sophisticated computer users. On October 3, 1994, the Washington Times published a front-page article entitled "Fake IDs surmount high-tech obstacles: Underage drinkers flock to buy them." The article describes how easily falsified identification documents can be created by computers and the steps various States are taking in response.

Several State driver's licenses, including Maryland and California, now include a hologram, two separate pictures, and a magnetic strip in an effort to make counterfeiting more difficult. However, even these measures are being duplicated with relative ease. It is time for Congress to take action.

The bill I am introducing today attacks this problem in two ways. First, it reduces, from five to three, the number of false identification documents that must be in an individual's possession before a prison sentence, a fine, or both, can be imposed under Federal law. Second, it requires a prison sentence, a fine, or both, for anyone convicted of using the mail to send a false ID to someone under 21 years of age.

Mr. President, let me explain both of these provisions in more detail. The first provision tightens current Federal law which provides penalties for knowingly possessing or transferring unlawfully five or more false identification documents. The number of false ID's necessary to trigger this law would be reduced from five to three. Someone convicted under this provision would face a fine of up to $15,000, imprisonment of up to 3 years, or both.

These days, it is far too easy and cheap to buy a fake ID. Therefore, buying alcohol is not difficult for someone under 21. A recent report by the U.S. Department of Health and Human Services stated that "minors can get state driver's license in Times Square in New York City for $10 to $15 each." Young people always have attempted to buy alcohol at an early age. Nothing Congress does will suppress the urge for alcohol in young people.

However, this bill is not directed at someone under 21 years of age who possesses one or two false ID's. We can do little to address the demand, but we can do something to reduce the supply. The Federal Government needs to crack down on those in the business of illegally producing and transferring false ID's. By stiffening Federal penalties for the production and distribution of false ID's, this bill will punish those who profit from teenage alcohol abuse and make obtaining false documents more difficult.

The second provision of this bill creates a new penalty for using the mails to distribute false ID's. Under this provision, anyone who knowingly sends an identification document showing an individuals to be 21 years old or older through the mails—without first verifying the individual's actual age—can be imprisoned for up to 1 year, be fined, or both. Verification can be satisfied by viewing a certification or other written communication confirming the age of the individual being identified.

This provision attempts to stem the interstate distribution of false ID's. Forty-six States currently have laws prohibiting youths from misrepresenting their age in order to purchase alcohol. But nothing prohibits minors from obtaining false ID's from other States through the mail. Tough Federal action is necessary. This provision will affect businesses specializing in mail-order false ID's.

To conclude, let me say this legislation has the support of the National Licensed Beverage Association and the South Dakota Retail Liquor Dealers Association. I urge my colleagues to join them in supporting this legislation.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD at this point. I also ask consent that several newspaper articles be included in the RECORD at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 507

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the "False Identification Act of 1995."

SEC. 2. MINIMUM NUMBER OF DOCUMENTS FOR CERTAIN OFFENSE.

Section 1028 of title 18, United States Code, is amended—

(1) in subsection (a)(3), by striking "five" and inserting "3"; and

(2) in subsection (b)(1)(B), by striking "five" and inserting "3".

SEC. 3. REQUIRED VERIFICATION OF MAILED IDENTIFICATION DOCUMENTS.

(a) IN GENERAL.—Chapter 83 of title 18, United States Code, is amended by adding at the end the following:

§ 1739. Verification of identification documents

"(a) Whoever knowingly sends through the mails any unverified identification document that bears a birth date—

"(1) purporting to be that of the individual named in the document; and

"(2) showing such individual to be 21 years of age or older;

when in fact that individual has not attained the age of 21 years, shall be fined under this title or imprisoned not more than 1 year, or both.

"(b) As used in this section—

"(1) the term 'unverified', with respect to an identification document, means that the sender has not personally viewed a certification or other written communication confirming the age of the individual to be identified in the document from—

"(A) a governmental entity within the United States or any of its territories or possessions; or

"(B) a duly licensed physician, hospital, or medical clinic within the United States; and

"(2) the term 'identification document' means a card, certificate, or paper intended to be used primarily to identify an individual.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 83 of title 18, United States Code, is amended by adding at the end the following new item:

"1739. Verification of identification documents.".

(c) CONFORMING AMENDMENT.—Section 3001(a) of title 39, United States Code, is amended by striking "or 1738" and inserting "1738, or 1739".

[From the Washington Times, Oct. 3, 1994]

Fake IDs Surmount High-tech Obstacles—Underage Drinkers Flock to Buy Them

(By Matt Neufeld)

The high-tech revolution has helped boost one local cottage industry with a potentially lethal product: fake identification cards for underaged drinkers.

Illegal, falsified ID cards are prevalent among underage drinkers, especially college students, and their production flourishes no matter how many steps authorities take to make them difficult to copy, police and government officials say.

"Fake IDs are rampant," said Trina Leonard, an aide to Montgomery County Council member Gail Ewing, who is also chairwoman of the Maryland Underage Drinking Prevention Coalition. "Fake IDs are an enormous problem among teenagers because they frequently are a passport to death and injury for kids."

The use and manufacture of fake IDs has been a concern of parents, police and state motor vehicle authorities for decades. The problem surfaced again after Friday's announcement that three of the four Walt Whitman High School girls involved in the Sept. 6 double-fatal car crash in Potomac were carrying fake IDs.

The girls did not use their IDs that night, Montgomery County police said, but relied instead on another way in which teens procure alcohol: They had an adult buy 2½ cases of beer for them from a liquor store in Georgetown the night of the crash.

One mother of a boy who knew the girls later found four different phony IDs in her own son's wallet, she told friends.

Even as states take dozens of precautions in preparing high-technology licenses designed to be difficult to copy, technology-savvy students and underground counterfeiters match the authorities' steps in meticulous and frustrating ways.

"It continues to be a problem, because, as police say, no matter how tough they get, kids are smart and they always find a way to get them," said Tim Kime, a spokesman for the Washington Regional Alcohol Program, a private advocacy group.

"We live in the age of computers, and you can do wonderful things with a computer. You get the right background [cloth], the picture, the laminator, and you've got a pretty good ID," said Sgt. David Dennison, who heads the Prince George's County police collision analysis and reconstruction unit. The unit's responsibilities include drunken driving and underage drinking.

"You bet there's some computer geniuses out there at these colleges who find it very easy to do," Sgt. Dennison said. "If they can print money with computers, driver's licenses aren't that hard."

In the Potomac crash, driver Elizabeth Clark, 16, and a front-seat passenger, Katherine Zirkle, 16, were killed when Elizabeth's 1987 BMW hit a tree along River Road at 12:55 a.m.

Two friends riding in the back seat, Elinor "Nori" Andrews, 15, and Gretchen Sparrow, 16, were hospitalized with serious injuries but were released last week.

Police said Elizabeth had a blood-alcohol level of .17 percent, nearly double the .10 percent level that state law defines as driving while intoxicated. Katherine's blood-alcohol level was .03 percent police said.

In Maryland, minors with a blood-alcohol level of .02 percent can have their licenses taken on the spot.

Detecting homegrown phony IDs isn't always easy, authorities say.

"In fact some police officers on the street couldn't tell the difference unless they thoroughly examine them. You can be fooled," said Sgt. John Daly of the Metropolitan Police check and fraud division.

Earlier this year, Maryland introduced driver's licenses with holograms, two separate pictures and a magnetic strip in an effort to counter the counterfeiters.

"But the kids are duplicating those," said Ms. Leonard, the Montgomery council aide. "A police officer told me that [soon] after those came out, a kid took electrical tape and put it on a fake ID."

Although many high school students have fake IDs, police find that most of them are manufactured, distributed and used by college students. The IDs are bought, sold and distributed through an underground black market spread by word of mouth.

Area students often make or procure fake IDs in the form of licenses from far-away states such as Iowa or Kansas, thinking local businesses won't know the difference. A widely known legal guidebook available to businesses shows up-to-date pictures of licenses from every state, but police say that many merchants are too lazy to consult it.

Three Charged in Fake-ID Scam

CHARLOTTESVILLE.—Three former University of Virginia students have been charged in what police said was a scheme to pass stolen student identification cards and fraudulent checks.

Police at the University of North Carolina at Chapel Hill said the ring operated in two states. Based in Charlottesville, it included several former members of Alpha Phi Alpha, a service fraternity at the University of Virginia that was suspended in 1992 after a hazing incident.

Investigators believe the students stole about 400 UNC-Chapel Hill ID cards in January to pass stolen or counterfeited checks and to get state ID cards in North Carolina and Virginia.

North Carolina authorities last week charged Canu C. DiBona, 21, of Durham, N.C. with one count of felony financial transaction card theft. Marcus A. Tucker, 23, of Charlottesville was arrested Sept. 15 on several charges, including felony financial transaction card theft and two counts of forgery.

Authorities said Phillipe Zamore, 21, also of Charlottesville also was implicated in the scheme. He was arrested in April and charged with felony larceny after attempting to use an illegally obtained credit card at a University of Virginia bookstore.

Authorities said more arrests are expected.

Investigators said the cards reportedly have turned up as far away as New York and Florida. Near the UNC-Chapel Hill campus alone, the ring has used up to $20,000 in bad checks, Lt. Clay Williams of the campus police said.

Police said members of the alleged ring used sophisticated equipment to read information on magnetic tape on the backs of the IDs, and even printed their own checks with a laser printer.

"All these kids are smart—that's what's striking about this." Lt. Williams said. "We have very intelligent young men—extremely computer literate, highly articulate—that could be upstanding professionals in the community, but instead they chose the lure of fast money."

[From the St. Joseph's University (PA) Hawk, Mar. 15, 1994]

Busted!—2 SJU Students Arrested in Fake I.D. Ring

(By Maureen O'Connell)

The population of the state of New Jersey recently fluctuated by an estimated 100 to 200 citizens as students under the age of 21 obtained fraudulent drivers' licenses for that state through an operation based on the ground floor of Sourin Residence Hall and the Adam's Mark Hotel last weekend.

St. Joseph's University Security and the Pennsylvania State Police stepped in to curb this rapid population boom and arrested six students and two juveniles directly connected with the scheme. Two of the six students, identified by The Philadelphia Inquirer as Salvatore Carollo and Carl Lynn, attend St. Joseph's and are residents of Sourin room 15. According to the Inquirer both were arraigned on Sunday evening on charges of forgery and manufacturing false identification.

The fake ID factory, which turned out near-authentic licenses with the help of advanced computer programming and other electronic devices at the cost of $100 a pop, was not a well kept secret and was quickly leaked to St. Joseph's University Security and the Pennsylvania State Police.

According to director of public safety and security Albert Hall, a "top security" officer discovered the operation during a shift on Friday evening.

"He notified me at home and had some very good information that this was happening," said Hall.

"By the sign-in logs it is pretty evident that it started on Thursday evening," said Hall.

"I decided we had a felony being committed and I knew we had to bring it to law enforcement's attention or we would be obstructing justice. I then called the Pennsylvania State Police and left a message. Later that evening, [an officer in the] Fraudulent Document Unit called and he was very interested in what was going on."

Hall said that shortly after he made his call, the State Police received a call from an informed parent.

According to Hall, University security met with State Police the next morning, Saturday, at 8 a.m. to determine a strategy.

"A plan was devised to introduce a state trooper as a student and to have the Pennsylvania state trooper be sent through the process," said Hall.

The trooper joined students in the assembly line—he entered Sourin, gave the necessary personal information which was logged into a computer, trekked to the Adams Mark Hotel, was photographed, and received his "bogus ID."

Almost immediately, Security and the State Police entered Sourin while the State Police alone entered the Adam's Mark.

"We went through the room (in Sourin) and found the outside person who we believe to be responsible for typing information into the computer," said Hall. He also mentioned that the Police also found "more electronic equipment."

According to Hall, four St. Joseph's students were present in the room in Sourin. One was completely unconnected with the operation and consequently released. Two others were given non-traffic citations for summary offenses and the fourth was arrested for misdemeanors of fraud and manufacturing false documents.

Hall mentioned that three visiting students were also in the room, one of whom was released. The remaining two visitors were charged with felonies for fraud and manufacturing false documents.

"I have very good information that they have worked other schools in the Maryland area and I have put them in touch with the State Police," said Hall.

He also claimed that State Police seized "what appeared to be back-up discs for information saved on computers."

"Another group of St. Joseph's students who went to the Adam's Mark Hotel with the trooper were issued non-traffic citations," added Hall.

"Several other participants were charged with felonies at the Adam's Mark Hotel," he said.

According to Pennsylvania State Trooper Gant who has been involved in subsequent investigations, an additional 5 to 7 students were given non-traffic citations in the hotel.

Gant explained that these citations involve "sliding fines" up to $500 dollars, depending upon judicial decision.

"The people arrested were held at Eighth and Race awaiting arraignment until Sunday," said Hall. "For the parties involved charged with felonies and misdemeanors there is a range of penalties from fines to jail sentences."

Regardless of Commonwealth penalties, the University will subject the two arrested students to the traditional disciplinary system.

"Two St. Joseph's undergraduates arrested over the weekend in a counterfeit I.D. scheme have been suspended by the University pending further investigation and review," said director of external relations Joseph Lundardi in a press release on Monday. "An internal disciplinary hearing will be conducted later this week, with findings and/or sanctions referred to the Vice President for Student Life and Provost."

According to the Student Handbook both students committed the following major violations: 1) Misrepresentation of identity or age; forging or altering records including University identification card: 2) Maliciously entering and/or using University premises, facilities or property without authorization. The two may also have violated the guest policy.

Possible sanctions for such violations include summary discipline dismissal, expulsion, suspension, removal from the residence community, disciplinary probation, restitution or fines.

The pair have been given the choice to appear before an administrator within the Student Life system or to have a hearing with the Peer Review Board. According to the Peer Review Board's handbook "present attitude; past record (both positive and negative); severity of damage, injury, harm or destruction or potential for such; honesty, cooperation and willingness to make amends" will all be taken into consideration when deliberating for sanctions.

Regardless of their fate, an undetermined number of students currently possess the false I.D.s and according to both Hall and Gant, the State Police have a record of names.

"The Police will be making a decision on how to handle the students who purchased these fraudulent New Jersey licenses," said Hall. "The state police have alerted all liquor stores in the area to be on the lookout for those New Jersey. I.D.s which are distinguishable by a code which is on all of them," he added.

[From the St. Joseph's University (PA) Hawk, Mar. 25, 1994]

STUDENT ACCOUNTS OF RAID AND AFTERMATH

(By Jessica Hausmann)

Students were stunned this Saturday as police busted a fake ID ring centered in a room in Sourin, as well as in the Adam's Mark Hotel on City Avenue. Several St. Joe's students purchased ID's and some of them were understandably worried.

One student, who did not purchase an ID, was present in the room when the police arrived.

"The door gets kicked in (and they shout) 'Hit the floor! F.B.I., State Police! Everybody down, down!' just like a scene out of 'Cops'," said the student. "They handcuffed me to one of the guys whose room it was, who I felt bad for because he didn't know the full impact of what was going on," he added.

Police spent some time in the room trying to sort out who was in charge. "They recognized one of the girls as the person who takes the people from Sourin to the Adam's Mark. Her and the kid at the computer, those two played it cool and calm. Everybody else was flipping out. One kid was crying, bawling and he didn't even do anything. He was in there looking for one of his friends," said the student.

"Eventually they took three of us out, me, the other one and this girl. They didn't take us out in handcuffs or anything, they just took us in the police car, and took us down," explained the student. "The cop was trying to get something out of the kids that would incriminate the other kids," he said.

"When they took us down to the station, at one point there was this St. Joe's official and he saw the one kid was crying and he went up to him and said, 'You better tell him everything you know if you want to stay in this school,'" the student reported.

The student said he was held for two and a half hours and then released. He claims that some of the agents looked very familiar to him.

"I recognized three undercover agents as people who I thought were St. Joe's students," he said.

He also claimed that this is not the only location this group has hit.

"I knew a guy whose sister came up for the weekend and she got the same exact ID from the same people at a different school," he said.

Some students who did purchase an ID at St. Joseph's, but were not present when the police arrived, are worried because of rumors of a computer disk containing all of the names of students who purchased the fake NJ licenses.

"I'm very nervous," said one student who purchased an ID on Friday. She reported that she paid $100 for the fake license.

"I went over to Sourin and went in the room. I filled out a sheet with all the information and someone entered it into a computer. They printed it out and I gave it to this guy. Then they took us to the Adam's Mark Hotel on the twelfth floor where all the camera stuff was set up. I signed a paper and then they took the picture. They ran it through these machines and five minutes later I had the ID," she explained.

The student had been signed into Sourin by a friend who lives in the building. She said it was obvious that not everyone could have been signed into the same room since it was fairly crowded.

"There were twelve people there when I was there," she noted.

One student reported that he had to sign a disclaimer stating that the license was not endorsed by the government or the New Jersey Department of Motor Vehicles. He claimed it also stated that all of the information given by the student was true to the best of his knowledge.

Another student reported purchasing a different kind of fake ID in the same room in Sourin prior to the scandal.

"I got a Virginia license in the same room almost a month ago for $60," reported the student. She intends to use the ID, but not around here.

Students who were not involved in the incident in any way were also affected. Some 21-year-old students with legitimate New Jersey licenses are concerned that it may become more difficult for them to get into area bars.

"I better be able to get into The Duck or I'm going to kill someone," said junior Chris Ferland, who recently turned 21. Some students who are under 21 are worried that it will now be more difficult to obtain alcohol from places that previously did not card or that accepted fake IDs.

Students working for the admissions office as tour guides are also affected. The office has prepared them for possible difficulties they may encounter on tours as parents and perspective students ask them about the scandal itself or about a quote appearing in a front page article in Monday's Philadelphia Inquirer regarding the incident, in which a student is quoted as saying that there are no activities or events for students on campus during the weekend.

"They told us to be honest about what happened and to stress that there are activities on campus but that they are not alcohol related events and some students choose not to attend them or they choose to drink before they go to them," said junior tour guide Angie Faust.

Faust believes that this student's statement can hurt all St. Joe's students.

"What one student said can hurt our reputation as a school," she said.

By Mr. MURKOWSKI (for himself, Mr. BREAUX, Mr. GORTON, Mr. STEVENS, Mr. COCHRAN, and Mr. CAMPBELL):

S. 508. A bill to amend the Internal Revenue Code of 1986 to modify certain provisions relating to the treatment of forestry activities; to the Committee on Finance.

REFORESTATION TAX ACT

Mr. MURKOWSKI. Mr. President, I am pleased to be joined by Senators BREAUX, GORTON, STEVENS, COCHRAN, and CAMPBELL in introducing the Reforestation Tax Act of 1995. This legislation will encourage investment in and sound management of privately owned forest land.

Mr. President, our forests serve as the foundation of a multibillion dollar forest products industry. From lumber and construction materials to pulp and paper, timber provides a wide range of products that are essential to modern living. At the same time, our forests provide wildlife habitat, maintain watershed, and are used for a broad range of recreational activities, including fishing, hunting, hiking, and camping.

One of the challenges facing this country is ensuring that we have enough forests to meet our wildlife habitat and watershed needs as well as sustaining a reliable supply of timber for forest products. As harvest levels on public lands decline, we need to encourage private foresters to invest in and properly maintain their stock of trees.

Yet there is strong evidence that private and public tree replanting is declining. According to the U.S. Forest Service tree replanting and direct seeding has been steadily declining. Between 1980 and 1988, annual private tree planting increased from 1.76 million acres per year to 2.96 million acres per year. However, in every year since 1988, private tree replantings have continuously declined, reaching barely 2.04 million acres in 1993—one-third lower than in 1988.

The decline in private reforestation reflects the reality that this is a very long-term, high-risk business. Trees can take anywhere from 25 to 75 years to grow to maturity, depending on the type of tree and regional weather and soil conditions. The key to success is good management which is costly. And fire and disease can wipe out acres of trees at any time during the long growing period.

The legislation we are introducing today will boost private investment in forests and aid in the cost of maintaining these forests. Our legislation has four components:

Partial elimination of the tax on inflationary gains. The gain from the sale of private timber would be reduced by 3 percent for each year the timber is owned, up to a maximum reduction of 50 percent of the gain. This should protect long-term investors in forest land from being taxed on inflationary gains.

Doubling the reforestation tax credit. The current reforestation tax credit has been significantly eroded by inflation because it has not been increased in 15 years. Our bill doubles the amount of reforestation expenditures eligible for the credit—from $10,000 to $20,000—and indexes this amount for future inflation.

Amortization of reforestation expenses. The current law special 7-year amortization for up to $10,000 of forestation expenses also has not kept up with inflation since it was enacted in 1980. Our legislation increases this amount to $20,000 and indexes it for future inflation. In addition, it reduces the amortization period to 5 years.

Passive loss rules. Treasury regulations seriously discourage private foresters from employing sound forest management practices. Our bill revises the regulations by providing that private foresters, like most other business entrepreneurs, can prove that they are materially participating in the forestry business.

Mr. President, there can be no doubt that passage of this legislation is a key to the preservation and expansion of investment in this vital natural resource. It has been endorsed by conservation, environmental, and forestry organizations including the American Forest and Paper Association, the National Association of State Foresters, the Wilderness Society, and the Natural Resources Defense Council.

I urge my colleagues to join us in this effort to encourage long-term investment in private forest land and cosponsor this important legislation.

I ask unanimous consent that the text of the bill and a list of the organizations supporting this legislation be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 508

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reforestation Tax Act of 1995".

SEC. 2. PARTIAL INFLATION ADJUSTMENT FOR TIMBER.

(a) IN GENERAL.—Part I of subchapter P of chapter 1 of the Internal Revenue Code of 1986 (relating to treatment of capital gains) is amended by adding at the end the following new section:

"SEC. 1203. PARTIAL INFLATION ADJUSTMENT FOR TIMBER.

"(a) IN GENERAL.—At the election of any taxpayer who has qualified timber gain for any taxable year, there shall be allowed as a deduction from gross income an amount equal to the qualified percentage of such gain.

"(b) QUALIFIED TIMBER GAIN.—For purposes of this section, the term 'qualified timber gain' means the lesser of—

"(1) the net capital gain for the taxable year, or

"(2) the net capital gain for the taxable year determined by taking into account only gains and losses from timber.

"(c) QUALIFIED PERCENTAGE.—For purposes of this section, the term 'qualified percentage' means the percentage (not exceeding 50 percent) determined by multiplying—

"(1) 3 percent, by

"(2) the number of years in the holding period of the taxpayer with respect to the timber.

"(d) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction under subsection (a) shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets."

(b) COORDINATION WITH EXISTING LIMITATIONS.—

(1) Subsection (h) of section 1 of such Code (relating to maximum capital gains rate) is amended by inserting after "net capital gain" each place it appears the following: "(other than qualified timber gain with respect to which an election is made under section 1203)".

(2) Subsection (a) of section 1201 of such Code (relating to alternative tax for corporations) is amended by inserting after "net capital gain" each place it appears the following: "(other than qualified timber gain with respect to which an election is made under section 1203)".

(c) ALLOWANCE OF DEDUCTION IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 of such Code (relating to definition of adjusted gross income) is amended by adding after paragraph (15) the following new paragraph:

"(16) PARTIAL INFLATION ADJUSTMENT FOR TIMBER.—The deduction allowed by section 1203."

(d) CONFORMING AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 of such Code is amended by adding at the end the following new item:

"Sec. 1203. Partial inflation adjustment for timber."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after December 31, 1994.

SEC. 3. APPLICATION OF PASSIVE LOSS LIMITATIONS TO TIMBER ACTIVITIES.

(a) IN GENERAL.—Treasury regulations sections 1.469–5T(b)(2) (ii) and (iii) shall not apply to any closely held timber activity if the nature of such activity is such that the aggregate hours devoted to management of the activity for any year is generally less than 100 hours.

(b) DEFINITIONS.—For purposes of subsection (a)—

(1) CLOSELY HELD ACTIVITY.—An activity shall be treated as closely held if at least 80 percent of the ownership interests in the activity is held—

(A) by 5 or fewer individuals, or

(B) by individuals who are members of the same family (within the meaning of section 2032A(e)(2) of the Internal Revenue Code of 1986).

An interest in a limited partnership shall in no event be treated as a closely held activity for purposes of this section.

(2) TIMBER ACTIVITY.—The term "timber activity" means the planting, cultivating, caring, cutting, or preparation (other than milling) for market, of trees.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1994.

SEC. 4. AMORTIZATION OF REFORESTATION EXPENDITURES AND REFORESTATION TAX CREDIT.

(a) INCREASE IN MAXIMUM AMORTIZABLE AMOUNT.—Paragraph (1) of section 194(b) of the Internal Revenue Code of 1986 (relating to maximum dollar amount) is amended—

(1) by striking "The aggregate" and inserting "(A) IN GENERAL.—The aggregate",

(2) by striking "$10,000 ($5,000" and inserting "$20,000 ($10,000", and

(3) by adding at the end the following new subparagraph:

"(B) INFLATION ADJUSTMENT.—

"(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1995, each dollar amount contained in subparagraph (A) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1994' for 'calendar year 1992' in subparagraph (B) of such section.

"(ii) ROUNDING.—If any increase determined under clause (i) is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50."

(b) DECREASE IN AMORTIZATION PERIOD.—

(1) IN GENERAL.—Section 194(a) of such Code is amended by striking "84 months" and inserting "60 months".

(2) CONFORMING AMENDMENT.—Section 194(a) of such Code is amended by striking

"84-month period" and inserting "60-month period".

(c) AVAILABILITY OF DEDUCTION AND CREDIT TO TRUSTS.—Subsection (b) of section 194 of such Code is amended—

(1) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3), and

(2) in paragraph (3) (as so redesignated)—

(A) by inserting "AND TRUSTS" after "ESTATES" in the heading, and

(B) by inserting "and trusts" after "estates" in the text.

(d) EFFECTIVE DATE.—

(1) AMORTIZATION PROVISIONS.—Except as provided in paragraph (2), the amendments made by this section shall apply to additions to capital account made after December 31, 1994.

(2) TAX CREDIT PROVISIONS.—In the case of the reforestation credit under section 48(b) of the Internal Revenue Code of 1986, the amendments made by this section shall apply to property acquired after December 31, 1994.

LIST OF COSPONSORING ORGANIZATIONS FOR RTA

American Forest and Paper Association.
Forest Industries Council on Taxation.
Forest Farmers Association.
Southern Forest Products Association.
Southeastern Lumber Manufacturers Association.
Maine Forest Products Council.
Small Woodland Owners Association of Maine.
Oklahoma Forestry Association.
Arkansas Forestry Association.
Southern State Foresters.
Georgia Forestry Association.
Louisiana Forestry Association.
North Carolina Forestry Association.
South Carolina Forestry Association.
Mississippi Forestry Association.
Texas Forestry Association.
Virginia Forestay Association.
American Pulpwood Association.
National Association of State Foresters.
Hardwood Manufacturing Association.
National Hardwood Lumber Association.
Hardwood Research Council.
Hardwood Forest Foundation.
Alabama Forestry Commission.
Stewards of Family Farms, Ranches and Forests.
The Wilderness Society.
The National Woodland Owners Association.
The Oregon Small Woodlands Association.
The Washington Farm Forestry Association.
1,000 Friends of Oregon.
The Idaho Forest Owners Association.
The Forest Landowners of California.
The National Resources Defense Council.

By Mr. CAMPBELL (for himself and Mr. BROWN):

S. 509. A bill to authorize the Secretary of the Interior to enter into an appropriate form of agreement with, the town of Grand Lake, CO., authorizing the town to maintain permanently a cemetery in the Rocky Mountain National Park; to the Committee on Energy and Natural Resources.

ROCKY MOUNTAIN NATIONAL PARK GRAND LAKE CEMETERY ACT

Mr. CAMPBELL. Mr. President, On January 26, 1915, Congress passed legislation creating a 265,726-acre Rocky Mountain National Park. In 1892, long before the park was created, the town of Grand Lake established a small, less than 5-acre community cemetery that lies barely 1,000 feet inside the western edge of the park. Apparently, in the early 1950's, the National Park Service took notice of the cemetery and issued the town a formal special use permit, which has been renewed over the years. In 1991, Rocky Mountain National Part apparently informed the town of grand lake that it would issue one final 5-year special use permit.

This 103-year-old cemetery has become part of the community's heritage. Grand Lake residents have very strong emotional and personal attachments to it and need to be assured of its continued use and designation as a cemetery. The current permit is due to expire in 1996. All parties have agreed that a more permanent solution was needed to meet the needs of the community and the resource preservation and protection intended by the establishment of the park.

Existing measures available to the National Park Service, including special use permit authority, do not provide for a permanent solution that satisfies both the park and the community. In addition, special uses apparently can only be permitted for a maximum period of 5 years. Given that the town and park agree that the small cemetery is a permanent use, continued renewal of a 5-year permit is not a realistic solution.

In an effort to avoid future difficulties, park and town representatives have agreed that this legislation would offer the best solution to this problem. Authorizing the continued existence of the cemetery with specific size and boundaries within the park also protects park resources. The community has expressed a strong willingness and desire to assume responsibility for permanent management of the cemetery. This legislation would authorize the development of an agreement to turn maintenance responsibilities for the cemetery and road over to the town, resulting in a financial savings to the park. It also recognizes the cultural significance of the cemetery and its strong ties with the history of the Grand Lake area, which includes the story of Rocky Mountain National Park.

This legislation would negate the need for repeated negotiations between the community and the National Park Service, and the chance for misunderstandings. The National Park Service and Grand Lake representatives have worked long and hard on developing this proposal. Enactment of this legislation would go a long way in maintaining and enhancing the spirit of cooperation and good will between park and community that has been achieved during the development of this resolution.

By Mr. MCCAIN (for himself and Mr. INOUYE):

S. 510. A bill to extend the authorization for certain programs under the Native American Programs Act of 1974, and for other purposes; to the Committee on Indian Affairs.

NATIVE AMERICAN PROGRAM REAUTHORIZATION

Mr. MCCAIN. Mr. President, I am pleased to have the vice chairman of the Committee on Indian Affairs, Senator INOUYE, join me today in introducing a bill to extend the authorization for certain programs under the Native American Programs Act of 1974. This program is administered by the Administration for Native Americans, or ANA, within the Department of Health and Human Services.

Each year ANA awards several hundred grants to Indian and Alaska Native tribes and other native communities and organizations for governance, social and economic development, and environmental mitigation projects. While modest in size, ANA grants have proven to be extremely valuable tools for tribes and other native community groups seeking to further their self-sufficiency. ANA and its grants are vital to many Indian and native communities. ANA has earned strong support from Indian and Alaska Native tribes.

The authority for most of the grants distributed by ANA expires at the end of fiscal year 1995. Although the administration has requested funding for fiscal year 1996 at fiscal year 1995 levels, it has yet to forward a bill to Congress to reauthorize the act.

This important but small program should not be placed in jeopardy by the administration's distraction-of-the-month. Therefore, I am introducing this reauthorization bill without the benefit of the administration's request. The bill would simply extend by 4 years the general authority for ANA appropriations and by 3 years the authority for ANA tribal environmental quality grant appropriations. In both cases, the reauthorization would extend to fiscal year 1999 and the amounts authorized would remain unchanged. The Committee on Indian Affairs has scheduled a hearing on the bill for March 22, 1995, at 2:30 p.m. We hope to complete consideration of the bill by the end of March.

Mr. President, I urge my colleagues to join with me in enacting this reauthorization so that these important funds are not interrupted. I ask unanimous consent that a section-by-section summary and the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 510

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION OF APPROPRIATIONS FOR NATIVE AMERICAN SOCIAL AND ECONOMIC DEVELOPMENT STRATEGIES GRANT PROGRAM.

Section 816 of the Native American Programs Act of 1974 (42 U.S.C. 2992d) is amended—

(1) in subsection (2), by striking "for fiscal years 1992, 1993, 1994, and 1995." and inserting "for each of fiscal years 1995, 1996, 1997, 1998, and 1999."; and

(2) in subsection (c), by striking "and 1996," and inserting "1996, 1997, 1998, and 1999,".

SECTION-BY-SECTION SUMMARY

Section 1. Authorization of Appropriations of Native American Social and Economic Development Strategies Grant Program.

(1) General Grant Reauthorization. This subsection provides for a four year extension to fiscal year 1999 of the present authority to appropriate such sums as may be necessary for the purpose of carrying out the provisions of the Native American Programs Act of 1974 which do not otherwise have an express authorization of appropriation.

(2) Tribal Environmental Quality Grant Reauthorization. This subsection provides for a three year extension to fiscal year 1999 of the present authority to appropriate $8,000,000 for the purpose of carrying out the provisions Title 42, Section 2991b(d) of the United States Code relating to grants to improve tribal regulation of environmental quality.

By Mr. DOMENICI (for himself and Mr. ABRAHAM):

S. 511. A bill to require the periodic review and automatic termination of Federal regulations; to the Committee on Governmental Affairs.

REGULATORY SUNSET AND REVIEW ACT

Mr. DOMENICI. Mr. President, I am pleased to introduce the Regulatory Sunset and Review Act of 1995, a bill that requires all existing Federal regulations to terminate in 7 years and new regulations to terminate in 5 years unless the appropriate agency, after soliciting public input and with the direction and guidance from Congress and the Office of Management and Budget, determines the regulations are still relevant and necessary.

The purpose of this bill is to address the staggering volume of regulations promulgated each year and the enormous costs associated with these regulations that place such a financial and management burden on all Americans.

This bill could be termed a "consumers" bill. As regulations are promulgated by various Government agencies, the cost of complying with these regulations is estimated to be between $250 and $500 billion annually. As noted in the March 4, 1995, Washington Post article, "The Myths That Rule us:"

> . . . economists are nearly unanimous in believing at least half the cost (of regulations) is passed on to consumers in the form of higher prices. Most of the rest is passed on to employees in the form of lower wages. . . . Put another way, regulation is a form of taxation that amounts to about $2,000 per year for the average U.S. household . . .

It is time we review these regulations to determine if they are necessary—if their benefits outweigh the costs, if they are duplicative, out-of-date, and if they are written in the most clear and unambiguous way possible.

Americans from all walks of life are affected by these regulations: small to large businesses, hospitals and schools, farmers and ranchers, and local, State, and tribal governments, to name but just a few. In the last two months of 1994 alone, 615 proposed and final regulations were published in the Federal Register. In all, the Federal Register totaled 68,107 pages in length in 1994. It is time to get a handle on these regulations to determine if they should be modified or eliminated, and this bill will respond to this need by establishing a mandatory review process by the agencies.

The importance of examining the thousands of existing regulations has been enunciated clearly by my constituents in New Mexico. In 1994, I created a Small Business Advocacy Council to advise me about the problems of small businesses and how Congress could address some of their concerns. The council held 7 meetings in 6 locations throughout the State of New Mexico, and more than 400 businesses participated in these meetings. The consistent theme at all of these meetings was the appearance of an adversarial relationship between the Federal Government and business, as well as the lack of accountability of regulatory agencies in their dealings with business.

A few weeks ago in Albuquerque, the Senate Small Business Committee kicked off a series of field hearings entitled "Entrepreneurship in America." Many members of the Small Business Advocacy Council testified at this hearing and explained to Chairman CHRISTOPHER BOND how difficult it is to not only understand the regulations, but to comply with them.

As an example, one witness said that the EEOC performs audits to ensure that an employer is in compliance with title VII of the Civil Rights Act of 1964. The EEOC asks for a roster of employees to identify minority group, sex, and disabilities. The witness said, however, that while the information may be useful, an employer is unable to ask these questions of applicants or employees.

This is only one example, but over the past year, I can assure you that I have heard countless similar examples that point out the inconsistencies, duplications, and burdensome nature of these Government regulations. And, an important emphasis must be made: all the witnesses understood and supported the positive aspects of regulations—that they were developed with the best intentions for good purposes. The witnesses simply believe that there must be a better way than the present system.

I would like to mention briefly a report by the General Accounting Office [GAO], completed in June 1994, entitled "Workplace Regulation—Information on Selected Employer and Union Experience." While I intend to devote more detail to this report at a later time, let me just mention that the GAO's finding were strikingly similar to the findings of the New Mexico Business Advocacy Council: Those interviewed called for the adoption of a more service-oriented approach to workplace regulation; an improvement to information access and educational assistance to employers, workers, and unions; and more input into agency standard setting and enforcement efforts. The report discussed the constantly changing and complex nature of regulations and that they are often ambiguous with an increased potential for lawsuits.

It is obvious the time has come to review these regulations in a concise and systematic way. The process needs an overhaul, and this bill is designed to help facilitate this restructuring.

I am pleased my distinguished colleague, Senator SPENCER ABRAHAM, is joining me in introduction of this timely measure, and I hope others will soon join us in this endeavor. This bill is almost identical to a measure introduced in the House last week by Representatives CHAPMAN, MICA, and DELAY, H.R. 994. As regulatory reform measures are considered in both Chambers, I believe the Regulatory Sunset and Review Act of 1995 will be an important component of these efforts.

I ask unanimous consent that a statement by Senator ABRAHAM be included as a part of the RECORD and that the text of the bill be printed following these remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 511

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Regulatory Sunset and Review Act of 1995".

SEC. 2. PURPOSES.

The purposes of this Act are the following:

(1) To require agencies to regularly review their regulations and make recommendations to terminate, continue in effect, modify, or consolidate those regulations.

(2) To require agencies to submit those recommendations to the Administrator of the Office of Information and Regulatory Affairs and to the Congress.

(3) To provide for the automatic termination of regulations that are not continued in effect after such review.

(4) To designate a Regulatory Review Officer within each agency, who is responsible for the implementation of this Act by the agency.

SEC. 3. REVIEW AND TERMINATION OF REGULATIONS.

(a) IN GENERAL.—Except as provided in subsection (c), the effectiveness of a regulation issued by an agency shall terminate on the applicable termination date under subsection (b), and the regulation shall have no force or effect after that termination date, unless the head of the agency—

(1) reviews the regulation in accordance with section 4;

(2) after the review, and at least 120 days before that termination date, submits in accordance with section 5(a) a preliminary report on the findings and proposed recommendations of that review in accordance with section 5(a)(2);

(3) reviews and considers comments regarding the preliminary report that are transmitted to the agency by the Administrator and appropriate committees of the Congress during the 60-day period beginning on the date of submission of the preliminary report; and

(4) after the 60-day period beginning on the date of submission of the preliminary report to the Congress, but not later than 60 days before that termination date, submits to the President, the Administrator, and the Congress, and publishes in the Federal Register—

(A) a final report on the review under section 4 in accordance with section 5(a)(3), and

(B) a notice extending the effectiveness of the regulation, with or without modifications, as of the end of the 60-day period beginning on the date of that publication.

(b) TERMINATION DATES.—For purposes of subsection (a), the termination date of a regulation is as follows:

(1) EXISTING REGULATIONS.—For a regulation in effect on the date of the enactment of the Act, the termination date is the last day of the 7-year period beginning on the date of the enactment of this Act.

(2) NEW REGULATIONS.—For a regulation that first takes effect after the date of the enactment of this Act, the termination date is the last day of the 5-year period beginning on the date the regulation takes effect.

(3) REGULATIONS CONTINUED IN EFFECT.—For a regulation the effectiveness of which is extended under subsection (a), the termination date is the last day of the 7-year period beginning on the date of publication of a notice under subsection (a)(4) for that extension.

(c) TEMPORARY EXTENSION.—The termination date under subsection (b) for a regulation may be delayed by not more than 6 months by the head of the agency that issued the regulation if the agency head submits to the Congress and publishes in the Federal Register a preliminary report that describes modifications that should be made to the regulation.

(d) RELATIONSHIP TO OTHER LAW.—Section 553 of title 5, United States Code, shall not apply to the extension or modification of a regulation in accordance with this Act.

SEC. 4. REVIEW OF REGULATIONS BY AGENCY.

(a) IN GENERAL.—The head of each agency shall, under the criteria set forth in subsection (b)—

(1) conduct thorough and systematic reviews of all regulations issued by the agency to determine if those regulations are obsolete, inconsistent, or duplicative or impede competition; and

(2) issue reports on the findings of those reviews, which contain recommendations for—

(A) terminating or extending the effectiveness of those regulations;

(B) any appropriate modifications to a regulation recommended to be extended; or

(C) any appropriate consolidations of regulations.

(b) CRITERIA FOR REVIEW.—The head of an agency shall review, make recommendations, and terminate or extend the effectiveness of a regulation under this section under the following criteria:

(1) The extent to which the regulation is outdated, obsolete, or unnecessary.

(2) The extent to which the regulation or information required to comply with the regulation duplicates, conflicts with, or overlaps requirements under regulations of other agencies.

(3) The extent to which the regulation impedes competition.

(4) Whether the benefits to society from the regulation exceed the costs to society from the regulation.

(5) Whether the regulation is based on adequate and correct information.

(6) Whether the regulation is worded as simply and clearly as possible.

(7) Whether the most cost-efficient alternative was chosen in the regulation to achieve the objective of the regulation.

(8) The extent to which information requirements under the regulation can be reduced, particularly for small businesses.

(9) Whether the regulation is fashioned to maximize net benefits to society.

(10) Whether the regulation is clear and certain regarding who is required to comply with the regulation.

(11) Whether the regulation maximizes the utility of market mechanisms to the extent feasible.

(12) Whether the condition of the economy and of regulated industries is considered.

(13) Whether the regulation imposes on the private sector the minimum economic burdens necessary to achieve the purposes of the regulation.

(14) Whether the total effect of the regulation across agencies has been examined.

(15) Whether the regulation is crafted to minimize needless litigation.

(16) Whether the regulation is necessary to protect the health and safety of the public.

(17) Whether the regulation has resulted in unintended consequences.

(18) Whether performance standards or other alternatives were utilized to provide adequate flexibility to the regulated industries.

(c) REQUIREMENT TO SOLICIT COMMENTS FROM THE PUBLIC AND PRIVATE SECTOR.—In reviewing regulations under this section, the head of an agency shall publish in the Federal Register a solicitation of comments from the public (including the private sector) regarding the application of the criteria set forth in subsection (b) to the regulation, and shall consider such comments, before making determinations under this section and sending a report under section 5(a) regarding a regulation.

SEC. 5. AGENCY REPORTS.

(a) PRELIMINARY AND FINAL REPORTS ON REVIEWS OF REGULATIONS.—

(1) IN GENERAL.—The head of an agency shall submit to the President, the Administrator, and the Congress and publish in the Federal Register a preliminary report and a final report for each review of a regulation under section 4.

(2) PRELIMINARY REPORT.—A preliminary report shall contain—

(A) specific findings of the agency regarding—

(i) application of the criteria set forth in section 4(b) to the regulation;

(ii) the need for the function of the regulation; and

(iii) whether the regulation duplicates functions of another regulation; and

(B) proposed recommendations on whether—

(i) the effectiveness of the regulation should terminate or be extended;

(ii) the regulation should be modified; and

(iii) the regulation should be consolidated with another regulation.

(3) FINAL REPORT.—A final report on the findings and recommendations of the agency head regarding extension of the effectiveness of the regulation and any appropriate modifications to the regulation shall include—

(A) a full justification of the decision to extend and, if applicable, modify the regulation; and

(B) the basis for all determinations made with respect to that extension or modification under the criteria set forth in section 4(b).

(b) REPORT ON SCHEDULE FOR REVIEWING EXISTING REGULATIONS.—Not later than 100 days after the date of the enactment of this Act, and on or before March 1, annually thereafter, the head of each agency shall submit to the Administrator and the Congress and publish in the Federal Register a report stating a schedule for the review of regulations in accordance with this Act. The schedule shall identify the review actions intended to be conducted during the calendar year in which such report is submitted.

SEC. 6. FUNCTIONS OF ADMINISTRATOR.

(a) IN GENERAL.—The Administrator shall—

(1) review and evaluate each report submitted by the head of an agency under section 5(a), regarding—

(A) the quality of the analysis in the reports;

(B) whether the agency has properly applied the criteria set forth in section 4(b); and

(C) the consistency of the agency action with actions of other agencies; and

(2) transmit to the head of the agency the recommendations of the Administrator regarding the report.

(b) GUIDANCE.—The Administrator shall provide guidance to agencies on the conduct of reviews and the preparation of reports under this Act.

SEC. 7. DESIGNATION OF AGENCY REGULATORY REVIEW OFFICERS.

(a) IN GENERAL.—The head of each agency shall designate an officer of the agency as the Regulatory Review Officer of the agency.

(b) FUNCTIONS.—The Regulatory Review Officer of an agency shall—

(1) be responsible for the implementation of this Act by the agency; and

(2) report directly to the head of the agency with respect to that responsibility.

SEC. 8. JUDICIAL REVIEW.

(a) LIMITATION OF ACTION.—Notwithstanding any other provision of law, an action seeking judicial review of an agency action under this Act extending, terminating, modifying, or consolidating a regulation shall not be brought after the 30-day period beginning on the date of the publication of a notice under section 3(a)(4) for that action.

(b) SCOPE OF REVIEW.—Agency compliance or noncompliance with the provisions of this Act shall be subject to judicial review only pursuant to section 706(1) of title 5, United States Code.

SEC. 9. DEFINITIONS.

For purposes of this Act:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Office.

(2) AGENCY.—The term "agency" has the meaning given that term in section 551(1) of title 5, United States Code.

(3) APPROPRIATE COMMITTEE OF THE CONGRESS.—The term "appropriate committee of the Congress" means with respect to a regulation each standing committee of the Congress having authority under the rules of the House of Representatives or the Senate to report a bill to enact or amend the provision of law under which the regulation is issued.

(4) OFFICE.—The term "Office" means the Office of Information and Regulatory Affairs in the Office of Management and Budget.

(5) REGULATION.—The term "regulation" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy, other than such a statement to carry out a routine administrative function of an agency.

Mr. ABRAHAM. Mr. President, I strongly support the legislation sponsored by my good friend from New Mexico, Senator PETE DOMENICI.

Not long ago we passed legislation that finally subjects Congress to most work place and other laws that affect the American people. I enthusiastically supported this legislation out of a sense of fundamental fairness: it seemed to me that the body that legislates rules for the rest of society at the very least ought to be obliged to follow those rules itself.

But I had another reason for supporting the accountability act. You see, it seemed to me that when Members of Congress actually had to confront and deal with some of the onerous regulations they have been imposing on the people of America they might decide that it was time to eliminate some of the overregulation that is strangling our economy.

For too long Congress has acted as if regulation is cost-free, even though at the U.S. Chamber of Commerce's estimate, they cost our economy $510 billion a year—9 percent of our gross domestic product. For too long Congress has acted as if the burden of paperwork these regulations impose is either light or nonexistent when, according to the chamber of commerce, Federal regulations alone require 6.8 billion hours of paperwork to our businesses and entrepreneurs.

But the accountability act alone will not be enough because the sheer inertia of Government regulation continues to push our businesses, and small businesses in particular, into bankruptcy. We must cull the code books of regulations that are redundant, obsolete, unnecessarily costly and just plain unnecessary.

This Regulatory Sunset and Review Act will go a long way toward fighting the inertia of Government regulation by putting in place a mandatory review procedure for all regulations our bureaucrats want to see continued. It would place in each agency a review officer who would review all regulations, new and old, with the aid of Congress and the Office of Management and Budget.

All existing regulations would terminate within 7 years unless they pass a rigorous review process. For new regulations the initial sunset period would be 5 years. The goal would not be to eliminate all regulations, after all some regulations are needed to enforce statutes we have passed to protect Americans' health and safety as well as their rights. But we do not need regulations, and should not have them, unless as required by this act they are shown to be: necessary; more beneficial than costly; reasonable in their cost and other impact on consumers; clear and unambiguous; unlikely to cause unnecessary litigation; and reasonable in their burden on local, State and National economies.

Only by subjecting our regulations to rigorous, repeated review can we finally bring the spread of over-regulation under control. Only by setting up a standardized review procedure can we ensure that bureaucratic inertia and discretion no longer stifle our economy and our liberties.

I ask unanimous consent that a letter of endorsement for the Domenici-Abraham regulatory sunset bill from the National Federation of Independent Business be entered into the RECORD:

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NFIB,
Washington, DC, March 6, 1995.

Hon. SPENCE ABRAHAM,
U.S. Senate, Washington, DC.

DEAR SENATOR ABRAHAM: On behalf of the more than 600,000 members of the National Federation of Independent Business, I am writing to support your legislation, the Regulatory Sunset and Review Act.

Government regulations constitute an enormous burden for small businesses. Even beneficial regulations are so complex that small business owners find it increasingly difficult to comply.

The Domenici-Abraham legislation will help curb the cost of federal regulations on small business by sunsetting them. Requiring a periodic justification for existing and future regulations is essential if small businesses are going to start-up, grow and expand while creating jobs all along the way.

With regulatory sunsetting regulations and the federal agencies responsible for them must justify their existence through a review process in order to keep them on the books. Necessary regulations would continue while others would be modified and the unnecessary would disappear.

The Domenici-Abraham regulatory sunset legislation is a concept NFIB members have been supporting for years. Seventy-seven percent of our members voted overwhelmingly to support reevaluating regulations on a frequent basis. We think the Domenici-Abraham approach is a balanced and fair approach to weeding out what works with what is unnecessary in the current regulatory system.

NFIB strongly supports your Regulatory Sunset and Review legislation. We look forward to working with you to pass this legislation.

Sincerely,

JOHN J. MORLEY III,
Vice President,
Federal Governmental Relations.

By Mr. GRASSLEY:

S. 512. A bill to amend title XVIII of the Social Security Act to provide for a 5-year extension of the Medicare-dependent, small, rural hospital payment provisions, and for other purposes; to the Committee on Finance.

MEDICARE DEPENDENT HOSPITALS PROGRAM EXTENSION ACT

Mr. GRASSLEY. Mr. President, I rise to introduce a bill which would extend the Medicare-dependent Hospital Program.

This program expired in October 1994. As its title implied, the hospitals it helped were those which were very dependent on Medicare reimbursement. These were small—100 beds or less—rural, hospitals with not less than 60 percent of total discharges or with 60 percent of total inpatient days attributable to Medicare beneficiaries. The program enabled the hospitals in question to choose the most favorable of three reimbursement methods.

This program was extended, and phased out down to October 1994, in the Omnibus Budget Reconciliation Act of 1993. That act retained the choice of the three original reimbursement methods. But it reduced the reimbursement available from those original computation methods by 50 percent.

My legislation would not extend the program as it was originally enacted by the Omnibus Budget Reconciliation Act of 1989. Rather, it would extend for 5 years the provisions contained in the Omnibus Budget Reconciliation Act of 1993. My bill would also extend those provisions retroactively. That is, as though the program had not expired in October 1994.

As I noted above, the hospitals which benefited from this program are small, rural, hospitals providing an essential point of access to hospital or hospital-based services in rural areas and small towns.

Obviously, as those of my colleagues who have followed, and participated in, our debates about the health care needs of rural areas know only too well, if we lose these hospitals, we will also have a hard time keeping physicians in those communities.

Mr. President, 44, or 36 percent, of Iowa's 122 community hospitals qualified to participate in this program, and 29, or 24 percent, chose to participate in 1994. I believe that this was the largest number of such hospitals of any State.

The percentage of all inpatient days attributable to Medicare patients is 77.4 percent for these hospitals, and Medicare discharges represent 65.5 percent of total discharges.

These Iowa hospitals will lose about $3 million as a consequence of the expiration of this program, according to estimates made by the Iowa Hospital Association. The annual losses will vary from a low of $3,635 to a high of $248,016. Fourteen of these hospitals will lose $100,000 or more. Fourteen of these hospitals had negative operating margins in 1994. Those negative operating margins varied from minus $30,970 to minus $1,065,105. It is highly likely that the financial situation of these hospitals will be even worse in the coming years. Two of the hospitals with positive operating margins will probably begin to have negative margins with the expiration of the program.

The bottom line is that many of these hospitals are going to have a very difficult time continuing to exist when this program expires.

Mr. President, I am also going to work toward extension of the each/rpch program—the Essential Access Community Hospital and Rural Primary Care Hospital Program. If this program is extended to all the States, and if the Medicare-Dependent Hospital Program is extended, the smaller hospitals in Iowa would be able to modify their missions in a deliberate and nondisruptive way and continue to provide essential health care services in their communities.

By Mr. HEFLIN:

S. 513. A bill to amend chapter 23 of title 28, United States Code, to authorize voluntary alternative dispute resolution programs in Federal courts, and for other purposes; to the Committee on the Judiciary.

VOLUNTARY ALTERNATIVE DISPUTE RESOLUTION ACT

Mr. HEFLIN. Mr. President, I am today introducing legislation that would authorize our Nation's Federal district courts to adopt and utilize voluntary alternative dispute resolution programs.

The time has come for Congress and the Federal courts to realize that there must be alternative ways of settling disputes other than the traditional methods utilizing a Federal judge and jury. With criminal cases crowding the dockets, many litigants in civil cases, especially small businesses, simply cannot get their cases heard in a timely manner.

Recent statistics from the Administrative Office of the United States Courts indicate that a majority of cases in the Federal courts are civil cases and that the number of filings since 1990 has increased 9 percent. With criminal cases being put on a fast track, the time has come for Congress to assist the Federal courts in processing civil cases for the benefit of the American people.

Our Federal court system is one of the best in the world, and our judges work long hours to hear cases which come before them. I believe the approach that my legislation takes will bring the Federal courts into the 21st century ahead of schedule by expressing Congress' intent that if parties want to voluntarily settle their civil disputes by such methods as court annexed arbitration, mediation, early neutral evaluation, minitrials, or summary trials, then they should be allowed to do so.

I am introducing this legislation as a result of a hearing which the Judiciary Subcommittee on Courts and Administrative Practice held several months ago. I was privileged to Chair this subcommittee hearing which heard testimony from a number of distinguished witnesses including Judge Anne Williams, on behalf of the U.S. Judicial Conference; Judge Bill Wilson, U.S. District Court (E.D. Arkansas); Judge William Schwarzer on behalf of the Federal Judicial Center; U.S. Magistrate Judge Wayne Brazil (N.D. California); Judge Raymond Broderick (E.D. Pennsylvania); Stuart Grossman, on behalf of the American Board of Trial Advocates; Jack Watson, on behalf of the American Bar Association; and Dianne Nast, a practicing attorney in Philadelphia.

The focus of the hearing was to consider H.R. 1102, introduced by Congressman Bill Hughes of New Jersey, which would have required, not merely authorized, each of the 94 Federal district courts to adopt either a mandatory or a voluntary court-annexed arbitration program which would operate under the existing authority of Chapter 44, Sections 651–658 of Title 28 of the United States Code. H.R. 1102 would have increased the maximum amount in controversy for cases referred under the mandatory programs from $100,000 to $150,000.

In 1988, Congress enacted legislation to authorize the continuation of 10 pilot programs of mandatory court-annexed arbitration that were in operation in the Federal courts, and this legislation also authorized 10 additional pilot programs that would be of a voluntary nature.

This authorization was to terminate toward the end of 1993, and H.R. 1102 would have made that authorization permanent and would have required each district court to adopt either a mandatory or a voluntary program of court-annexed arbitration. Because of strong concerns raised at the hearing regarding the mandatory nature of court-annexed arbitration, our subcommittee was unwilling to immediately go forward with H.R. 1102. Instead, S. 1732, which became Public Law 103–192, was introduced toward the end of 1993, which simply extended the existing authority for 1 year with regard to the 20 pilot districts utilizing court-annexed arbitration.

In early August last year, I, along with my colleagues Senators BIDEN, HATCH, GRASSLEY, and SPECTER, introduced S. 2407, the Judicial Amendments Act of 1994, to extend this authority for an additional 3 years until the end of 1997. S. 2407 was introduced and passed by the Senate on August 19, and sent to the House of Representatives which also passed it at the close of the session. It was signed by the President on October 25, 1994, and became Public Law 103–420.

Let me return now to the hearing which the subcommittee held in October 1993 and which focused primarily on arbitration which is one of the programs of ADR as alternative dispute resolution is popularly called. Judge Ann Claire Williams of the U.S. District Court for the Northern District of Illinois appeared on behalf of the U.S. Judicial Conference which is the policymaking body of the Federal judiciary. The Judicial Conference has recommended that Congress should authorize all Federal district courts to have the discretion to utilize voluntary nonbinding court-annexed arbitration. Thus, the judicial Conference did not recommend the expansion of mandatory court-annexed arbitration for the remainder of the Federal district courts.

The legislation which I am introducing today builds on the recommendation of the Judicial Conference by authorizing each of the 94 Federal district courts to adopt not only voluntary court-annexed arbitration but also other ADR programs, including but not limited to mediation, early neutral evaluation, minitrials, summary jury, or bench trials.

My legislation also contains a provision that clearly states that "[a]n alternative dispute resolution program shall not in any way infringe on a litigant's right to trial de novo and shall impose no penalty on participating litigants."

Over the last year, I have talked with many people from both the bar and the business community, and I believe that it is an undeniable fact that civil litigation in the Federal courts has become more complicated, time-consuming, and expensive. Further, the Speedy Trial Act, requiring criminal cases to proceed on a fast track, has resulted in delays in civil cases being considered by the Federal courts.

I want to make certain that the Congress clearly intends for our Federal courts to consider alternative means of dispute resolution, so that litigants can have a speedy and less expensive alternative to formal civil adjudication, consistent with the requirements of the seventh amendment to the U.S. Constitution. Where parties are willing to mutually participate in such alternatives, I believe there are merits that justify our support for such programs.

I hope that this legislation will be carefully considered by my colleagues, and I look forward to further discussion on its merits in the days ahead.

By Mr. AKAKA:

S. 514. A bill for the relief of the heirs, successors, or assigns of Sadae Tamabayashi; to the Committee on the Judiciary.

RELIEF FOR THE FAMILY OF SADAE TAMABAYASHI

Mr. AKAKA. Mr. President, I rise to introduce a bill for the relief of the family of Sadae Tamabayashi.

In 1941, Mrs. Tamabayashi was the owner of Paradise Clothes Cleaning

Shop in Honolulu, HI. On the fateful morning of December 7, she and her family lost everything that they owned. The attack on Pearl Harbor not only had national repercussions, it affected the lives of many individuals as well, especially those who lived in Hawaii at the time. For Sadae Tamabayashi and her family, the bombing was devastating to their livelihood.

On the morning of December 7, Paradise Clothes Cleaning Shop was destroyed by fire which started as a result of the attack on Pearl Harbor and the subsequent retaliatory shots by U.S. Armed Forces. The entire building and its contents, which included the Tamabayashi's family quarters, were destroyed.

The Tamabayashi family attempted to seek compensation through the War Damage Corporation Claims Service Office in 1942. Their efforts were to no avail. Their claim for reparations was denied by the corporation because Mrs. Tamabayashi was a Japanese national. However, Mrs. Tamabayashi was prohibited from becoming a citizen under the Immigration Act of 1924, which excluded persons of Japanese descent. It was not until 1952, 7 years after the end of World War II, that the 1924 Immigration Act was repealed, and Asians were finally given equal citizenship status in this country.

The family of Sadae Tamabayashi seeks fair treatment of their mother's losses. I hope that my colleagues will support this effort to bring to a close this sad chapter in the lives of the Tamabayashi family.

By Mr. BRADLEY:

S. 515. A bill to amend the Federal Meat Inspection Act and the Poultry Products Inspection Act to provide for improved public health and food safety through the reduction of harmful substances in meat and poultry that present a threat to public health, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

FAMILY FOOD PROTECTION ACT

Mr. BRADLEY. Mr. President, let me tell you about Katie O'Connell. Katie's picture ended up on postcards that thousands of Americans have sent and will be sending to Washington. Neither her parents nor I are glad that this is the case. You see, Katie was a beautiful, happy, 2-year-old girl from my home State of New Jersey. Yet, she died from eating a hamburger served at a fast food restaurant. Unknown to anyone, her meal was contaminated with a deadly pathogen called E coli. Sadly, the meat that Katie ate had been declared safe by inspectors from the U.S. Department of Agriculture.

Katie died from a disease that should have been detected through our Federal meat inspection system. Katie is no longer alive because that system failed her and her family, and has failed thousands of others across the country. The legislation I am introducing today, the Family Food Protection Act, is designed to ensure a Federal system that protects the public and not just meat processors and slaughterhouses.

Diseases cause by foodborne illness often strike those most vulnerable in our society: our children. Last summer, health officials in New Jersey battled another outbreak of the disease that killed Katie O'Connell. One family the McCormick's of Newton, NJ, had two of their children—ages 2 and 3—hospitalized. Their lives were in danger because they too ate meat that had been declared safe by Federal inspectors in the Department of Agriculture.

These cases in New Jersey are far from isolated: The Centers for Disease Control estimates that over 9,000 people die, and another 6.5 million become sick, from foodborne illness every year.

That the current system represents a false promise to the public is not news. Many studies, including work by the GAO and the National Academy of Science, make this point.

About 1 month ago, the USDA proposed a series of new regulations for food inspection. These rules would require a daily testing for salmonella at meat/poultry processing plants. Additionally, each of the Nation's 6,000 slaughterhouses and processing plants would have to develop operating plans designed to minimize the possible sources of contamination.

This proposal represents a significant improvement over the current system—which has remained remarkably unchanged for 90 years. However, the proposal leaves some significant holes. The Family Food Protection Act fills the holes:

First, the Family Food Protection Act is comprehensive—we need to recognize the scope of the problem. It's not just salmonella. We need USDA to consider the whole range of human pathogens—bacteria—and other harmful substances—for example animal drugs, pollutants—that can threaten health. My bill calls on the Secretary to enact standards and regulations designed to control and reduce any of these dangerous substances that is likely to cause foodborne illness.

Second, the Family Food Protection Act gives the Secretary the enforcement tools he needs—the bill allows the Secretary: to order a recall of contaminated food; to demand the identification of the whole chain of companies that may have handled a contaminated food—"traceback"; to withdraw Federal inspection, and the USDA seal of approval from plants that are repeated violators of regulations; to issue civil fines, which makes it more likely that the processors will follow through with their improved operating procedures.

Third, the Family Food Protection Act helps protect the conscientious worker—the new USDA regulations depend on changes in the daily operations of thousands of plants to protect the public. In order to provide the most protection to the public, we need the cooperation of workers as well as managers. This bill provides explicit whistleblower protection to food processing employees who step forward with public health concerns.

Fourth, the Family Food Protection Act keeps the public involved and informed—this bill would: provide for public access to food safety inspection records; create a public advisory board of food safety.

Last Congress, Congressman TORRICELLI and I introduced the Katie O'Connell Safe Food Act. Like most legislation, that bill didn't make it into law. But that fact does not mean that we haven't changed policy as a result. This bill exposed the inadequacies of the status quo and shook up the bureaucrats at USDA.

I'm pleased that the USDA is trying to respond to the challenge of food safety. But the USDA has much more to do before the public can really believe their program means a guarantee of healthy food. This new bill is the blueprint for the work yet to be done.

The Family Food Protection Act is supported by a wide range of consumer and food safety advocacy groups. I urge my colleagues in the Senate to consider this legislation carefully and support its enactment.

I ask unanimous consent that a copy of a bill summary and the legislation be printed following these remarks.

There being no objection, the materials was ordered to be printed in the RECORD, as follows:

S. 515

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Family Food Protection Act of 1995".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.

TITLE I—MEAT INSPECTION

Sec. 101. References to the Federal Meat Inspection Act.
Sec. 102. Definitions.
Sec. 103. Inspection of meat and meat food products.
Sec. 104. Post mortem examination of carcasses and marking or labeling.
Sec. 105. Storage and handling regulations.
Sec. 106. Federal and State cooperation.
Sec. 107. Auxiliary provisions.
Sec. 108. Reducing adulteration of meat and meat food products.

TITLE II—POULTRY INSPECTION

Sec. 201. References to the Poultry Products Inspection Act.
Sec. 202. Definitions.
Sec. 203. Federal and State cooperation.
Sec. 204. Ante mortem and post mortem inspection, reinspection, and quarantine.

Sec. 205. Exemptions.
Sec. 206. Reducing adulteration of poultry and poultry products.

SEC. 2. FINDINGS.

Congress finds that—

(1) bacterial foodborne illness exacts a terrible toll on United States citizens, taking approximately 9,000 lives each year and causing between 6,500,000 and 80,000,000 illnesses;

(2) meat and meat food products, and poultry and poultry products, contaminated with pathogenic bacteria are a leading cause of foodborne illness;

(3) foodborne illness related to meat and poultry cost Americans between $2,000,000,000 and $4,000,000,000 each year in medical expenses and lost wages;

(4) the number of illnesses and deaths associated with adulterated meat and poultry undermines public confidence in the food supply of the United States and tends to destroy both domestic and foreign markets for wholesome meat and poultry;

(5) the meat and poultry inspection system costs United States taxpayers approximately $600,000,000 per year but does not provide adequate protection against foodborne illness because the system does not test for and limit the presence of disease-causing bacteria;

(6) the Federal Government must—

(A) set levels of disease-causing bacteria above which meat and meat food products and poultry and poultry products are determined to be unsafe for human consumption and adulterated; and

(B) remove the products from commerce unless and until the products are made safe;

(7) beginning with the National Academy of Sciences report entitled "Meat and Poultry: The Scientific Basis for the Nation's Program", the United States Department of Agriculture has been urged to shift from organoleptic inspection to inspection based on the detection and limitation of disease-causing bacteria;

(8) to sustain the confidence of the people of the United States and justify the expenditure of tax dollars, the inspection system must—

(A) be based on sound application of modern science;

(B) effectively protect human health;

(C) be open to public scrutiny;

(D) create incentives for high standards;

(E) provide for fines for failure to meet standards; and

(F) assess severe penalties for intentional violation of the law;

(9) a modern system of meat and poultry inspection should extend from farm to table and require livestock and poultry producers, handlers, processors, distributors, transporters, and retailers to assume responsibility for handling livestock, meat, meat food products, poultry, and poultry products in such a way as to limit contamination to a level that will not endanger human health;

(10) to effectively protect human health, there must be an orderly transition from the system of inspection in effect on the date of enactment of this Act to a new system based on preventive controls that are designed to limit the presence of disease-causing bacteria on meat, meat food products, poultry, and poultry products, and the efficacy of the new system must be demonstrated by pilot projects;

(11)(A) consumer confidence is further undermined by the "USDA Inspected and Passed" seal that appears on every package of meat or a meat food product and the "USDA Inspected for Wholesomeness" seal that appears on every package of poultry and poultry products, a seal that misleads consumers into believing the products are safe when the products often are contaminated with disease-causing bacteria; and

(B) the Federal Government should not affix a seal that misleads consumers and may increase the incidence of foodborne illness and death; and

(12)(A) all articles and other animals that are subject to the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) and the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) are in interstate or foreign commerce or substantially affect commerce; and

(B) regulation by the Secretary of Agriculture and cooperation by the States, consistent with this Act and the amendments made by this Act, are necessary to prevent or eliminate burdens on commerce and to protect the health and welfare of consumers of the United States.

TITLE I—MEAT INSPECTION

SEC. 101. REFERENCES TO THE FEDERAL MEAT INSPECTION ACT.

Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), except to the extent otherwise specifically provided.

SEC. 102. DEFINITIONS.

(a) ADULTERATED.—Section 1(m)(1) (21 U.S.C. 601(m)(1)) is amended to read as follows:

"(1) if it bears or contains a poisonous or deleterious substance that may render it injurious to health, except that, in the case of a substance that is not an added substance, the article shall be considered adulterated under this subsection if there is a reasonable probability that the quantity of the substance in the article will cause adverse health consequences;".

(b) ADDED SUBSTANCE; OFFICIAL ESTABLISHMENT.—Section 1 is amended by adding at the end the following:

"(w) The term 'added substance'—

"(1) means a substance that is not an inherent constituent of a food and whose intended use results, or may reasonably be expected to result, directly or indirectly, in the substance becoming a component of, or otherwise affecting the characteristics of, the food; and

"(2) includes—

"(A) a substance that is intentionally added to any food; or

"(B) a substance that is the result of microbial, viral, environmental, agricultural, industrial, or other contamination.

"(x) The term 'official establishment' means an establishment at which inspection of the slaughter of cattle, sheep, swine, goats, mules, and other equines, or the processing of meat and meat food products of the animals, is maintained in accordance with this Act.".

SEC. 103. STORAGE AND HANDLING REGULATIONS.

The last sentence of section 24 (21 U.S.C. 624) is amended by inserting before the period at the end the following: ", except that regulations issued under section 503 shall apply to a retail store or other type of retail establishment".

SEC. 104. FEDERAL AND STATE COOPERATION.

Section 301(c) (21 U.S.C. 661(c)) is amended—

(1) in paragraph (1)—

(A) in the first sentence—

(i) by inserting after "the Wholesome Meat Act," the following: "or by 30 days prior to the expiration of the 2-year period beginning on the date of enactment of the Family Food Protection Act of 1995,"; and

(ii) by striking "title I and IV" and inserting "titles I, IV, and V";

(B) by striking "titles I and IV" each place it appears and inserting "titles I, IV, and V"; and

(C) by striking "title I and title IV" each place it appears and inserting "titles I, IV, and V"; and

(2) in paragraph (3), by striking "titles I and IV" each place it appears and inserting "titles I, IV, and V".

SEC. 105. AUXILIARY PROVISIONS.

Sections 402 and 403 (21 U.S.C. 672 and 673) are amended by striking "title I or II" each place it appears and inserting "title I, II, or V".

SEC. 106. REDUCING ADULTERATION OF MEAT AND MEAT FOOD PRODUCTS.

The Act (21 U.S.C. 601 et seq.) is amended by adding at the end the following:

"TITLE V—REDUCING ADULTERATION OF MEAT AND MEAT FOOD PRODUCTS

"SEC. 501. REDUCING ADULTERATION OF MEAT AND MEAT FOOD PRODUCTS.

"(a) IN GENERAL.—On the basis of the best available scientific and technological data, the Secretary shall issue regulations to—

"(1) limit the presence of human pathogens and other potentially harmful substances in cattle, sheep, swine, or goats, or horses, mules, or other equines at the time the animals are presented for slaughter;

"(2) ensure that appropriate measures are taken to control and reduce the presence and growth of human pathogens and other potentially harmful substances on carcasses and parts of carcasses and on meat or meat food products derived from the animals prepared in any official establishment;

"(3) ensure that all ready-to-eat meat or meat food products prepared in any official establishment preparing the meat or food product for distribution in commerce are processed in such a manner as to destroy any human pathogens and other potentially harmful substances that are likely to cause foodborne illness; and

"(4) ensure that meat and meat food products, other than meat and meat food products referred to in paragraph (3), prepared at any official establishment preparing meat or a meat food product for distribution in commerce are labeled with instructions for handling and preparation for consumption that, when adhered to, will destroy any human pathogens or other potentially harmful substances that are likely to cause foodborne illness.

"(b) NONCOMPLIANCE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a carcass or part of a carcass, or meat or a meat food product, prepared at any official establishment preparing the article for distribution in commerce, that is found not to be in compliance with the regulations issued under paragraph (2), (3), or (4) of subsection (a) shall be—

"(A) considered adulterated and determined to be condemned; and

"(B) if no appeal is made to the determination of condemnation, destroyed for human food purposes under the supervision of a duly authorized representative of the Secretary.

"(2) REPROCESSING OR LABELING.—A carcass or part of a carcass, or meat or a meat food product that is not in compliance with paragraph (2), (3), or (4) of subsection (a), but that may by reprocessing or labeling, or both, be made not adulterated, need not be condemned and destroyed if after reprocessing or labeling, or both, as applicable and as determined by the Secretary, under the supervision of a duly authorized representative of the Secretary, the carcass, part of a carcass, meat, or meat food product is subsequently inspected and found to be not adulterated.

"(3) APPEALS.—

"(A) ACTION PENDING APPEAL.—If an appeal is made to a determination of condemnation, the carcass, part of a carcass, meat, or meat food product shall be appropriately marked, segregated, and held by the official establishment pending completion of an appeal inspection.

"(B) CONDEMNATION SUSTAINED.—If the determination of condemnation is sustained, the carcass, part of a carcass, meat, or meat food product if not so reprocessed or labeled, or both, under paragraph (2) so as to be made not adulterated, shall be destroyed for human food purposes under the supervision of a duly authorized representative of the Secretary.

"(c) HUMAN PATHOGENS AND OTHER HARMFUL SUBSTANCES.—Not later than 1 year after the date of enactment of this title, the Secretary shall issue regulations that—

"(1) require meat and meat food products in an official establishment to be tested, in such manner and with such frequency as the Secretary considers necessary, to identify human pathogens, or markers for the pathogens, and other potentially harmful substances in the meat and meat food products;

"(2) require that the results of any test conducted in accordance with paragraph (1) be reported to the Secretary, in such manner and with such frequency as the Secretary considers necessary;

"(3)(A) establish interim limits for human pathogens and other potentially harmful substances that, when found on meat or meat food products, may present a threat to public health; and

"(B) in carrying out subparagraph (A)—

"(i) establish interim limits that are below the industry mean as determined by the Secretary for the pathogen or other potentially harmful substance established through national baseline studies; and

"(ii) reestablish the interim limits every two years after the initial interim limits until the regulatory limits referred to in subsection (d)(2), tolerances, or other standards are established under this Act or other applicable law; and

"(4) prohibit or restrict the sale, transportation, offer for sale or transportation, or receipt for transportation of any meat or meat food products that—

"(A) are capable of use as human food; and

"(B) exceed the regulatory limits, interim limits, tolerances, or other standards established under this Act or other applicable law for human pathogens or other potentially harmful substances.

"(d) RESEARCH AND REGULATORY LIMITS.—

"(1) RESEARCH ON FOOD SAFETY.—The Secretary, acting through the Under Secretary of Agriculture for Food Safety, shall conduct or support appropriate research on food safety, including—

"(A) developing and reevaluating appropriate limits for human pathogens or other potentially harmful substances that when found on meat and meat food products prepared in official establishments may present a threat to public health;

"(B) developing efficient, rapid, and sensitive methods for determining and detecting the presence of microbial contamination, chemical residues, and animal diseases that have an adverse impact on human health;

"(C) conducting baseline studies on the prevalence of human pathogens or other potentially harmful substances in processing facilities; and

"(D) conducting risk assessments to determine the human pathogens and other potentially harmful substances that pose the greatest risk to human health.

"(2) REGULATORY LIMITS FOR HUMAN PATHOGENS AND OTHER HARMFUL SUBSTANCES.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Secretary of Health and Human Services shall establish regulatory limits, to the maximum extent scientifically supportable, for human pathogens and other potentially harmful substances, including heavy metals, that, when found as a component of meat or meat food products prepared in official establishments, may present a threat to public health.

"(B) RISK TO HUMAN HEALTH.—In establishing the regulatory limits, the Secretary of Health and Human Services shall consider the risk to human health, including the risk to children, the elderly, individuals whose immune systems are compromised, and other population subgroups, posed by consumption of the meat or meat food products containing the human pathogen or other potentially harmful substance.

"(C) FUNDING.—The Secretary of Agriculture shall annually transfer to the Secretary of Health and Human Services an amount, to be determined by the Secretaries, to defray the cost of establishing the regulatory limits.

"(e) SURVEILLANCE AND SAMPLING SYSTEMS.—

"(1) SURVEILLANCE SYSTEM.—In conjunction with the Director of the Centers for Disease Control and Prevention and the Commissioner of Food and Drugs, the Secretary shall develop and administer an active surveillance system for foodborne illness, that is based on a representative sample of the population of the United States, to assess more accurately the frequency and sources of human disease in the United States associated with the consumption of food products.

"(2) SAMPLING SYSTEM.—

"(A) IN GENERAL.—Not later than 2 years after the date of enactment of this title, the Secretary shall establish a sampling system, using data collected under subsection (c)(2) and other sources, to analyze the nature, frequency of occurrence, and quantities of human pathogens and other potentially harmful substances in meat and meat food products.

"(B) INFORMATION.—The sampling system shall provide—

"(i) statistically valid monitoring, including market basket studies, on the nature, frequency of occurrence, and quantity of human pathogens and other potentially harmful substances in meat and meat food products available to consumers; and

"(ii) such other information as the Secretary determines may be useful in assessing the occurrence of human pathogens and other potentially harmful substances in meat and meat food products.

"(C) NONCOMPLIANCE.—If a sample is found to exceed regulatory limits, interim limits, tolerances, or standards established under this Act or other applicable law, the Secretary shall take action to prevent violative products from entering commerce or to remove the violative products from the market.

"(f) REVIEW AND CONSULTATION.—

"(1) REVIEW.—The Secretary shall review, at least 2 years, all regulations, processes, procedures, and methods designed to limit and control human pathogens and other potentially harmful substances present on or in carcasses and parts of carcasses and in meat and meat food products. The ongoing review shall include, as necessary, epidemiologic and other scientific studies to ascertain the efficiency and efficacy of the regulations, processes, procedures, and methods.

"(2) CONSULTATION.—In carrying out paragraphs (1) and (3) of subsection (c), subsection (d), subsection (e)(1), and paragraph (1), the Secretary shall consult with the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, and the heads of such other Federal and State public health agencies as the Secretary considers appropriate.

"SEC. 502. HAZARD CONTROLS.

"(a) REGULATIONS.—

"(1) ISSUANCE.—Not later than 1 year after the date of enactment of this title, the Secretary shall issue regulations that require an official establishment to—

"(A) adopt processing controls that are adequate to protect public health; and

"(B) limit the presence and growth of human pathogens and other potentially harmful substances in carcasses and parts of carcasses and on meat and meat food products derived from animals prepared in the establishment.

"(2) CONTENT.—The regulations shall—

"(A) set standards for sanitation;

"(B) set interim limits for biological, chemical, and physical hazards, as appropriate;

"(C) require processing controls to ensure that relevant regulatory standards are met;

"(D) require recordkeeping to monitor compliance;

"(E) require sampling to ensure that processing controls are effective and that regulatory standards are being met; and

"(F) provide for agency access to records kept by official establishments and submission of copies of the records to the Secretary as the Secretary considers appropriate.

"(3) PUBLIC ACCESS.—Public access to records that relate to the adequacy of measures taken by an official establishment to protect the public health, and to limit the presence and growth of human pathogens and other potentially harmful substances, shall be subject to section 552 of title 5, United States Code.

"(4) PROCESSING CONTROLS.—The Secretary may, as the Secretary considers necessary, require any person with responsibility for, or control over, any animals or meat or meat food products intended for human consumption to adopt processing controls, if the processing controls are needed to ensure the protection of public health.

"(b) ADVISORY BOARD.—

"(1) IN GENERAL.—On the issuance of regulations under subsection (a), the Secretary shall convene an advisory board on meat and poultry safety to—

"(A) recommend improvements to the meat and poultry inspection programs;

"(B) evaluate alternatives to the programs; and

"(C) provide other relevant advice to the Secretary.

"(2) COMPOSITION.—The advisory board shall include representatives of consumers, processors, producers, retail outlets, inspectors, plant workers, public health officials, and victims of foodborne illness.

"(3) DUTIES.—The advisory board shall—

"(A) evaluate—

"(i) the meat and poultry inspection programs; and "(ii) the significance of the programs in ensuring the proper operation of mandatory processing controls; and

"(B) make recommendations to the Secretary described in paragraph (4).

"(4) REPORT.—The Secretary shall report to Congress on the recommendations of the advisory board for improving the meat and poultry inspection programs, including—

"(A) the timing and criteria for any changes in the programs;

"(B) alternative approaches for addressing safety and quality issues; and

"(C) the minimum time needed to ensure that processing controls effectively reduce foodborne illness prior to any change in the programs.

"(5) PROCEDURE.—The advisory board shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

"(c) LABELING.—Notwithstanding any other provision of this Act, if the Secretary discontinues carcass-by-carcass inspection of meat, the 'USDA Inspected and Passed' seal, or a similar seal, shall not be affixed to any carcasses and parts of carcasses and to meat and meat food products derived from the animals prepared in any official establishment.

"SEC. 503. VOLUNTARY GUIDELINES FOR RETAIL ESTABLISHMENTS.

"(a) STANDARDS.—

"(1) IN GENERAL.—In consultation with representatives of States, the Conference for Food Protection, the Association of Food and Drug Officials, and Federal agencies, the Secretary shall establish minimum standards for the handling, processing, and storage of meat and meat food products at retail stores, restaurants, and similar types of retail establishments (collectively referred to in this section as 'retail establishments').

"(2) CONTENT.—The standards shall—

"(A) be designed to ensure that meat and meat food products sold by retail establishments are safe for human consumption;

"(B) be based on the principles of preventive controls; and

"(C) include—

"(i) safe food product processing and handling practices for retail establishments, including time and temperature controls on meat and meat food products sold by the establishments;

"(ii) equipment handling practices, including standards for the cleaning and sanitization of food equipment and utensils;

"(iii) minimum personnel hygiene requirements; and

"(iv) requirements for the use of temperature warning devices on raw meat and meat food products to alert consumers to inadequate temperature controls.

"(b) GUIDELINES.—

"(1) ISSUANCE.—Not later than 18 months after the date of enactment of this title, the Secretary, after notice and opportunity for comment, shall issue guidelines for retail establishments that offer meat and meat food products that include the standards established under subsection (a).

"(2) COMPLIANCE.—Not later than 18 months after the date of enactment of this title, the Secretary shall issue a final regulation defining the circumstances that constitute substantial compliance by retail establishments with the guidelines issued under paragraph (1). The regulation shall provide that there is not substantial compliance if a significant number of retail establishments have failed to comply with the guidelines.

"(3) REPORT.—

"(A) IN GENERAL.—Not later than 3 years after the date of enactment of this title, the Secretary shall issue a report to Congress on actions taken by retail establishments to comply with the guidelines. The report shall include a determination of whether there is substantial compliance with the guidelines.

"(B) SUBSTANTIAL COMPLIANCE.—If the Secretary determines that there is substantial compliance with the guidelines, the Secretary shall issue a report and make a determination in accordance with subparagraph (A) not less than every 2 years.

"(C) NO SUBSTANTIAL COMPLIANCE.—If the Secretary determines that there is not substantial compliance with the guidelines, the Secretary shall (at the time the determination is made) issue proposed regulations requiring that retail establishments comply with the guidelines. The Secretary shall issue final regulations imposing the requirement not later than 180 days after issuance of any proposed regulations. Any final regulations shall become effective 180 days after the date of the issuance of the final regulations.

"(c) ENFORCEMENT.—A State may bring, in the name of the State and within the jurisdiction of the State, a proceeding for the civil enforcement, or to restrain a violation, of final regulations issued pursuant to subsection (b)(3)(C) if the food that is the subject of the proceeding is located in the State.

"SEC. 504. LIVESTOCK TRACEBACK.

"(a) IN GENERAL.—

"(1) IDENTIFICATION.—For the purpose of understanding the nature of foodborne illness and minimizing the risks of foodborne illness from carcasses and parts of carcasses and meat and meat food products distributed in commerce, the Secretary shall, as the Secretary considers necessary, prescribe by regulation that cattle, sheep, swine, and goats, and horses, mules, and other equines presented for slaughter for human food purposes be identified in a manner prescribed by the Secretary to enable the Secretary to trace each animal to any premises at which the animal has been held for such period prior to slaughter as the Secretary considers necessary to carry out this Act.

"(2) PROHIBITION OR RESTRICTION ON ENTRY.—The Secretary may prohibit or restrict entry into any slaughtering establishment inspected under this Act of any cattle, sheep, swine, or goats, or horses, mules, or other equines not identified as prescribed by the Secretary.

"(b) RECORDS.—

"(1) IN GENERAL.—The Secretary may require that a person required to identify livestock pursuant to subsection (a) maintain accurate records, as prescribed by the Secretary, regarding the purchase, sale, and identification of the livestock.

"(2) ACCESS.—A person subject to paragraph (1) shall, at all reasonable times, on notice by a duly authorized representative of the Secretary, afford the representative access to the place of business of the person and an opportunity to examine the records of the person and copy the records.

"(3) DURATION.—Any record required to be maintained under this subsection shall be maintained for such period of time as the Secretary prescribes.

"(c) FALSE INFORMATION.—No person shall falsify or misrepresent to the Secretary or any other person any information concerning the premises at which any cattle, sheep, swine, or goats, or horses, mules, or other equines, or carcasses thereof, were held.

"(d) MAINTENANCE OF RECORDS.—No person shall, without authorization from the Secretary, alter, detach, or destroy any records or other means of identification prescribed by the Secretary for use in determining the premises at which were held any cattle, sheep, swine, or goats, or horses, mules, or other equines, or the carcasses thereof.

"(e) HUMAN PATHOGENS OR OTHER HARMFUL SUBSTANCES.—

"(1) IDENTIFICATION OF SOURCE.—If the Secretary finds any human pathogen or any other potentially harmful substance in any cattle, sheep, swine, or goats, or horses, mules, or other equines at the time they are presented for slaughter or in any carcasses, parts of carcasses, meat, or meat food products prepared in an official establishment and the Secretary finds that there is a reasonable probability that human consumption of any meat or meat food product containing the human pathogen or other potentially harmful substance presents a threat to public health, the Secretary may take such action as the Secretary considers necessary to determine the source of the human pathogen or other potentially harmful substance.

"(2) ACTION.—If the Secretary identifies the source of any human pathogen or other potentially harmful substance referred to in paragraph (1), the Secretary may prohibit or restrict the movement of any animals, carcasses, parts of carcasses, meat, meat food products, or any other article from any source of the human pathogen or other potentially harmful substance until the Secretary determines that the human pathogen or other potentially harmful substance at the source no longer presents a threat to public health.

"(f) PRODUCERS AND HANDLERS.—

"(1) USE OF METHODS.—The Secretary shall use any means of identification and recordkeeping methods utilized by producers or handlers of cattle, sheep, swine, or goats, or horses, mules, or other equines whenever the Secretary determines that the means of identification and recordkeeping methods will enable the Secretary to carry out this section.

"(2) COOPERATION.—The Secretary may cooperate with producers or handlers of cattle, sheep, swine, or goats, or horses, mules, or other equines, in which any human pathogen or other potentially harmful substance described in subsection (e)(1) is found, to develop and carry out methods to limit or eliminate the human pathogen or other potentially harmful substance at the source.

"SEC. 505. NOTIFICATION AND RECALL OF NONCONFORMING ARTICLES.

"(a) NOTIFICATION.—Any person preparing carcasses or parts of carcasses, meat, or meat food products for distribution in commerce who obtains knowledge that provides a reasonable basis for believing that any carcasses or parts of carcasses or any meat or meat food products—

"(1) are unsafe for human consumption, adulterated, or not produced in accordance with section 501(a); or

"(2) are misbranded;

shall immediately notify the Secretary, in such manner and by such means as the Secretary may by regulation prescribe, of the identity and location of the articles.

"(b) RECALL.—

"(1) IN GENERAL.—If the Secretary finds, on notification or otherwise, that any carcasses or parts of carcasses or any meat or meat food products—

"(A) are unsafe for human consumption, adulterated, or not produced in accordance with section 501(a); or

"(B) are misbranded;

the Secretary shall by order require any person engaged in the processing, handling, transportation, storage, importation, distribution, or sale of the articles to immediately cease any distribution of the articles, and to recall the articles from commercial distribution and use, if the Secretary determines that there is a reasonable probability that the product is unsafe for human consumption, adulterated, or misbranded, unless the person is engaged in a voluntary recall of the articles that the Secretary considers adequate.

"(2) ORDER.—The order shall—

"(A) include a timetable during which the recall shall occur;

"(B) require periodic reports by the person to the Secretary describing the progress of the recall; and

"(C) require notice to consumers to whom the articles were, or may have been, distributed as to how the consumers should treat the article.

"(c) INFORMAL HEARING.—

"(1) IN GENERAL.—The order shall provide any person subject to the order with an opportunity for an informal hearing, to be held not later than 5 days after the date of issuance of the order, on the actions required by the order.

"(2) VACATION OF ORDER.—If, after providing an opportunity for the hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

"(d) JUDICIAL RECALL.—A district court of the United States may order any person engaged in the processing, handling, transportation, storage, importation, distribution, or sale of any carcass, part of a carcass, meat, or meat food product to recall the carcass, part of a carcass, meat, or meat food product if the court finds that there is a reasonable probability that the carcass, part of a carcass, meat, or meat food product is unsafe for human consumption, adulterated, or misbranded.

"SEC. 506. REFUSAL OR WITHDRAWAL OF INSPECTION.

"(a) IN GENERAL.—The Secretary may, for such period or indefinitely as the Secretary considers necessary to carry out this Act, refuse to provide, or withdraw, inspections under title I with respect to any official establishment if the Secretary determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, the service that the applicant or recipient, or any person connected with the applicant or recipient, has repeatedly failed to comply with this Act.

"(b) INSPECTIONS PENDING REVIEW.—The Secretary may direct that, pending opportunity for an expedited hearing in the case of any refusal or withdrawal of inspections and the final determination and order under subsection (a) and any judicial review of the determination and order, inspections shall be denied or suspended if the Secretary considers the action necessary in the public interest in order to protect the health or welfare of consumers or to ensure the safe and effective performance of official duties under this Act.

"(c) JUDICIAL REVIEW.—

"(1) IN GENERAL.—The determination and order of the Secretary with respect to refusal or withdrawal of inspections under this section shall be final and conclusive unless the applicant for, or recipient of, inspections files an application for judicial review not later than 30 days after the effective date of the order.

"(2) INSPECTIONS PENDING REVIEW.—Inspections shall be refused or withdrawn as of the effective date of the order pending any judicial review of the order unless the Secretary or the Court of Appeals directs otherwise.

"(3) VENUE; RECORD.—Judicial review of the order shall be—

"(A) in the United States Court of Appeals for the circuit in which the applicant for, or the recipient of, inspections has the principal place of business of the applicant or recipient or in the United States Court of Appeals for the District of Columbia Circuit; and

"(B) based on the record on which the determination and order are based.

"(4) PROCESS.—Section 204 of the Packers and Stockyards Act, 1921 (7 U.S.C. 194), shall be applicable to appeals taken under this section.

"(d) ADDITIONAL AUTHORITY.—This section shall be in addition to, and not derogate from, any provision of this Act for refusal, withdrawal, or suspension of inspections under title I.

"SEC. 507. CIVIL PENALTIES.

"(a) IN GENERAL.—

"(1) ASSESSMENT.—A person who violates this title, a regulation issued under this title, or an order issued under subsection (b) or (d) of section 505 may be assessed a civil penalty by the Secretary of not more than $100,000 for each day of violation.

"(2) SEPARATE VIOLATION.—Each offense described in paragraph (1) shall be considered to be a separate violation.

"(3) NOTICE AND OPPORTUNITY FOR HEARING.—No penalty may be assessed against a person under this section unless the person is given notice and an opportunity for a hearing on the record before the Secretary in accordance with sections 554 and 556 of title 5, United States Code.

"(4) AMOUNT.—The amount of the civil penalty shall be assessed by the Secretary by written order, taking into account the gravity of the violation, the degree of culpability, and any history of prior offenses. The amount may be reviewed only as provided in subsection (b).

"(b) REVIEW.—

"(1) IN GENERAL.—A person against whom a violation is found and a civil penalty assessed by order of the Secretary under subsection (a) may obtain review of the order in the United States Court of Appeals for the circuit in which the party resides or has a place of business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in the court not later than 30 days after the date of the order and by simultaneously sending a copy of the notice by certified mail to the Secretary.

"(2) RECORD.—The Secretary shall promptly file in the court a certified copy of the record on which the violation was found and the penalty assessed.

"(3) FINDINGS.—The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence on the record as a whole.

"(c) CIVIL ACTION TO RECOVER ASSESSMENT.—

"(1) IN GENERAL.—If a person fails to pay an assessment of a civil penalty after the penalty has become a final and unappealable order, or after the appropriate Court of Appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall institute a civil action to recover the amount assessed in any appropriate district court of the United States.

"(2) SCOPE OF REVIEW.—In a recovery action under paragraph (1), the validity and appropriateness of the order of the Secretary imposing the civil penalty shall not be subject to review.

"(d) DISPOSITION OF AMOUNTS.—All amounts collected under this section shall be paid into the Treasury of the United States.

"(e) EQUITABLE RELIEF.—

"(1) RELATIONSHIP TO OTHER ACTIONS.—Nothing in this Act requires the Secretary to report for criminal prosecution, or for the institution of an injunction or other proceeding, a violation of this Act, if the Secretary believes that the public interest will be adequately served by assessment of civil penalties.

"(2) MODIFICATION OF PENALTY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty assessed under this section.

"SEC. 508. WHISTLEBLOWER PROTECTION.

"(a) IN GENERAL.—No person subject to this Act may harass, prosecute, hold liable, or discriminate against any employee or other person because the person—

"(1) is assisting or demonstrating an intent to assist in achieving compliance with any Federal or State law (including a rule or regulation);

"(2) is refusing to violate or assist in the violation of any Federal or State law (including a rule or regulation); or

"(3) has commenced, caused to be commenced, or is about to commence a proceeding, has testified or is about to testify at a proceeding, or has assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the functions or responsibilities of any agency, office, or unit of the Department of Agriculture.

"(b) PROCEDURES AND PENALTIES.—The procedures and penalties applicable to prohibited acts under subsection (a) shall be governed by the applicable provisions of section 31105 of title 49, United States Code.

"(c) BURDENS OF PROOF.—The legal burdens of proof with respect to prohibited acts under subsection (a) shall be governed by the applicable provisions of sections 1214 and 1221 of title 5, United States Code.".

TITLE II—POULTRY INSPECTION

SEC. 201. REFERENCES TO THE POULTRY PRODUCTS INSPECTION ACT.

Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), except to the extent otherwise specifically provided.

SEC. 202. DEFINITIONS.

(a) ADULTERATED.—Section 4(g)(1) (21 U.S.C. 453(g)(1)) is amended to read as follows:

"(1) if it bears or contains a poisonous or deleterious substance that may render it injurious to health, except that, in the case of a substance that is not an added substance, the article shall be considered adulterated under this subsection if there is a reasonable probability that the quantity of the substance in the article will cause adverse health consequences;".

(b) ADDED SUBSTANCE.—Section 4 is amended by adding at the end the following:

"(cc) The term 'added substance'—

"(1) means a substance that is not an inherent constituent of a food and whose intended use results, or may reasonably be expected to result, directly or indirectly, in the substance becoming a component of, or otherwise affecting the characteristics of, the food; and

"(2) includes—

"(A) a substance that is intentionally added to any food; or

"(B) a substance that is the result of microbial, viral, environmental, agricultural, industrial, or other contamination.".

SEC. 203. FEDERAL AND STATE COOPERATION.

The first sentence of section 5(c)(1) (21 U.S.C. 454(c)(1)) is amended—

(1) by inserting after "the Wholesome Poultry Products Act," the following: "or by 30 days prior to the expiration of the 2-year period beginning on the date of enactment of the Family Food Protection Act of 1995,"; and

(2) by striking "sections 1-4, 6-10, and 12-22 of this Act" and inserting "sections 1 through 4, 6 through 10, 12 through 22, and 30 through 37".

SEC. 204. EXEMPTIONS.

Section 15(a)(1) (21 U.S.C. 464(a)(1)) is amended by inserting before the semicolon at the end the following: ", except that regulations issued under section 32 shall apply to a retail store or other type of retail establishment".

SEC. 205. REDUCING ADULTERATION OF POULTRY AND POULTRY PRODUCTS.

The Act (21 U.S.C. 451 et seq.) is amended by adding at the end the following:

"SEC. 30. REDUCING ADULTERATION OF POULTRY AND POULTRY PRODUCTS.

"(a) IN GENERAL.—On the basis of the best available scientific and technological data, the Secretary shall issue regulations to—

"(1) limit the presence of human pathogens and other potentially harmful substances in poultry at the time the poultry are presented for slaughter;

"(2) ensure that appropriate measures are taken to control and reduce the presence and growth of human pathogens and other potentially harmful substances on poultry or poultry products prepared in any official establishment;

"(3) ensure that all ready-to-eat poultry or poultry products prepared in any official establishment preparing the poultry or poultry products for distribution in commerce are processed in such a manner as to destroy any human pathogens and other potentially harmful substances that are likely to cause foodborne illness; and

"(4) ensure that poultry and poultry products, other than the poultry and products referred to in paragraph (3), prepared at any official establishment preparing the poultry or poultry products for distribution in commerce are labeled with instructions for handling and preparation for consumption that, when adhered to, will destroy any human pathogens or other potentially harmful substances that are likely to cause foodborne illness.

"(b) NONCOMPLIANCE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), poultry or a poultry product prepared at any official establishment preparing the poultry or poultry product for distribution in commerce, that is found not to be in compliance with the regulations issued under paragraph (2), (3), or (4) of subsection (a) shall be—

"(A) considered adulterated and determined to be condemned; and

"(B) if no appeal is made to the determination of condemnation, destroyed for human food purposes under the supervision of an inspector.

"(2) REPROCESSING OR LABELING.—Poultry or a poultry product that is not in compliance with paragraph (2), (3), or (4) of subsection (a), but that may by reprocessing or labeling, or both, be made not adulterated, need not be condemned and destroyed if after reprocessing or labeling, or both, as applicable and as determined by the Secretary, under the supervision of an inspector, the poultry or poultry product is subsequently inspected and found to be not adulterated.

"(3) APPEALS.—

"(A) ACTION PENDING APPEAL.—If an appeal is made to a determination of condemnation, the poultry or poultry product shall be appropriately marked, segregated, and held by the official establishment pending completion of an appeal inspection.

"(B) CONDEMNATION SUSTAINED.—If the determination of condemnation is sustained, the poultry or poultry product if not reprocessed or labeled, or both, under paragraph (2) so as to be made not adulterated, shall be destroyed for human food purposes under the supervision of a duly authorized representative of the Secretary.

"(c) HUMAN PATHOGENS AND OTHER HARMFUL SUBSTANCES.—Not later than 1 year after the date of enactment of this section, the Secretary shall issue regulations that—

"(1) require poultry and poultry products in an official establishment to be tested, in such manner and with such frequency as the Secretary considers necessary, to identify human pathogens, or markers for the pathogens, and other potentially harmful substances in the poultry and poultry products;

"(2) require that the results of any test conducted in accordance with paragraph (1) be reported to the Secretary, in such manner and with such frequency as the Secretary considers necessary;

"(3)(A) establish interim limits for human pathogens and other potentially harmful substances that, when found on poultry or poultry products, may present a threat to public health; and

"(B) in carrying out subparagraph (A)—

"(i) establish interim limits that are below the industry mean as determined by the Secretary for the pathogen or other potentially harmful substance established through national baseline studies; and

"(ii) reestablish the interim limits every two years after the initial interim limits until the regulatory limits referred to in subsection (d)(2), tolerances, or other standards are established under this Act or other applicable law; and

"(4) prohibit or restrict the sale, transportation, offer for sale or transportation, or receipt for transportation of any poultry or poultry products that—

"(A) are capable of use as human food; and

"(B) exceed the regulatory limits, interim limits, tolerances, or other standards established under this Act or other applicable law for human pathogens or other potentially harmful substances.

"(d) RESEARCH AND REGULATORY LIMITS.—

"(1) RESEARCH ON FOOD SAFETY.—The Secretary, acting through the Under Secretary of Agriculture for Food Safety, shall conduct or support appropriate research on food safety, including—

"(A) developing and reevaluating appropriate limits for human pathogens or other potentially harmful substances that when found on poultry and poultry products prepared in official establishments may present a threat to public health;

"(B) developing efficient, rapid, and sensitive methods for determining and detecting the presence of microbial contamination, chemical residues, and animal diseases that have an adverse impact on human health;

"(C) conducting baseline studies on the prevalence of human pathogens or other potentially harmful substances in processing facilities; and

"(D) conducting risk assessments to determine the human pathogens and other potentially harmful substances that pose the greatest risk to human health.

"(2) REGULATORY LIMITS FOR HUMAN PATHOGENS AND OTHER HARMFUL SUBSTANCES.—

"(A) IN GENERAL.—Not later than 2 years after the date of enactment of this section, the Secretary of Health and Human Services shall establish regulatory limits, to the maximum extent scientifically supportable, for human pathogens and other potentially harmful substances, including heavy metals, that, when found as a component of poultry or poultry products prepared in official establishments, may present a threat to public health.

"(B) RISK TO HUMAN HEALTH.—In establishing the regulatory limits, the Secretary of Health and Human Services shall consider the risk to human health, including the risk to children, the elderly, individuals whose immune systems are compromised, and other population subgroups, posed by consumption of the poultry or poultry products containing the human pathogen or other potentially harmful substance.

"(C) FUNDING.—The Secretary of Agriculture shall annually transfer to the Secretary of Health and Human Services an amount, to be determined by the Secretaries, to defray the cost of establishing the regulatory limits.

"(e) SURVEILLANCE AND SAMPLING SYSTEMS.—

"(1) SURVEILLANCE SYSTEM.—In conjunction with the Director of the Centers for Disease Control and Prevention and the Commissioner of Food and Drugs, the Secretary shall develop and administer an active surveillance system for foodborne illness, that is based on a representative sample of the population of the United States, to assess more accurately the frequency and sources of human disease in the United States associated with the consumption of poultry and poultry products.

"(2) SAMPLING SYSTEM.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall establish a sampling system, using data collected under subsection (c)(2) and other sources, to analyze the nature, frequency of occurrence, and quantities of human pathogens and other potentially harmful substances in poultry and poultry products.

"(B) INFORMATION.—The sampling system shall provide—

"(i) statistically valid monitoring, including market basket studies, on the nature, frequency of occurrence, and quantity of human pathogens and other potentially harmful substances in poultry and poultry products available to consumers; and

"(ii) such other information as the Secretary determines may be useful in assessing the occurrence of human pathogens and other potentially harmful substances in poultry and poultry products.

"(C) NONCOMPLIANCE.—If a sample is found to exceed regulatory limits, interim limits, tolerances, or standards established under this Act or other applicable law, the Secretary shall take action to prevent violative products from entering commerce or to remove the violative products from the market.

"(f) REVIEW AND CONSULTATION.—

"(1) REVIEW.—The Secretary shall review, at least every 2 years, all regulations, processes, procedures, and methods designed to limit and control human pathogens and other potentially harmful substances present on or in poultry and poultry products. The ongoing review shall include, as necessary, epidemiologic and other scientific studies to ascertain the efficiency and efficacy of the regulations, processes, procedures, and methods.

"(2) CONSULTATION.—In carrying out paragraphs (1) and (3) of subsection (c), subsection (d), subsection (e)(1), and paragraph (1), the Secretary shall consult with the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, and the heads of such other Federal and State public health agencies as the Secretary considers appropriate.

"SEC. 31. HAZARD CONTROLS.

"(a) REGULATIONS.—

"(1) ISSUANCE.—Not later than 1 year after the date of enactment of this section, the Secretary shall issue regulations that require an official establishment to—

"(A) adopt processing controls that are adequate to protect public health; and

"(B) limit the presence and growth of human pathogens and other potentially harmful substances in poultry and poultry products prepared in the establishment.

"(2) CONTENT.—The regulations shall—

"(A) set standards for sanitation;

"(B) set interim limits for biological, chemical, and physical hazards, as appropriate;

"(C) require processing controls to ensure that relevant regulatory standards are met;

"(D) require recordkeeping to monitor compliance;

"(E) require sampling to ensure that processing controls are effective and that regulatory standards are being met; and

"(F) provide for agency access to records kept by official establishments and submission of copies of the records to the Secretary as the Secretary considers appropriate.

"(3) PUBLIC ACCESS.—Public access to records that relate to the adequacy of measures taken by an official establishment to protect the public health, and to limit the presence and growth of human pathogens and other potentially harmful substances, shall be subject to section 552 of title 5, United States Code.

"(4) PROCESSING CONTROLS.—The Secretary may, as the Secretary considers necessary, require any person with responsibility for, or control over, any poultry or poultry products intended for human consumption to adopt processing controls, if the processing controls are needed to ensure the protection of public health.

"(b) ADVISORY BOARD.—On the issuance of regulations under subsection (a), the Secretary shall convene an advisory board on meat and poultry safety in accordance with section 502(b) of the Federal Meat Inspection Act.

"(c) LABELING.—Notwithstanding any other provision of this Act, if the Secretary discontinues carcass-by-carcass inspection of poultry, the 'USDA Inspected for Wholesomeness' seal, or a similar seal, shall not be affixed to any poultry and poultry products derived from the poultry prepared in any official establishment.

"SEC. 32. VOLUNTARY GUIDELINES FOR RETAIL ESTABLISHMENTS.

"(a) STANDARDS.—

"(1) IN GENERAL.—In consultation with representatives of States, the Conference for Food Protection, the Association of Food and Drug Officials, and Federal agencies, the Secretary shall establish minimum standards for the handling, processing, and storage of poultry and poultry products at retail stores, restaurants, and similar types of retail establishments (collectively referred to in this section as 'retail establishments').

"(2) CONTENT.—The standards shall—

"(A) be designed to ensure that poultry and poultry products sold by the retail establishments are safe for human consumption;

"(B) be based on the principles of preventive controls; and

"(C) include—

"(i) safe food product processing and handling practices for retail establishments, including time and temperature controls on poultry and poultry products sold by the establishments;

"(ii) equipment handling practices, including standards for the cleaning and sanitization of food equipment and utensils;

"(iii) minimum personnel hygiene requirements; and

"(iv) requirements for the use of temperature warning devices on raw poultry or poultry products to alert consumers to inadequate temperature controls.

"(b) GUIDELINES.—

"(1) ISSUANCE.—Not later than 18 months after the date of enactment of this section, the Secretary, after notice and opportunity for comment, shall issue guidelines for retail establishments that offer poultry and poultry products that include the standards established under subsection (a).

"(2) COMPLIANCE.—Not later than 18 months after the date of enactment of this section, the Secretary shall issue a final regulation defining the circumstances that constitute substantial compliance by retail establishments with the guidelines issued under paragraph (1). The regulation shall provide that there is not substantial compliance if a significant number of retail establishments have failed to comply with the guidelines.

"(3) REPORT.—

"(A) IN GENERAL.—Not later than 3 years after the date of enactment of this section, the Secretary shall issue a report to Congress on actions taken by retail establishments to comply with the guidelines. The report shall include a determination of whether there is substantial compliance with the guidelines.

"(B) SUBSTANTIAL COMPLIANCE.—If the Secretary determines that there is substantial compliance with the guidelines, the Secretary shall issue a report and make a determination in accordance with subparagraph (A) not less than every 2 years.

"(C) NO SUBSTANTIAL COMPLIANCE.—If the Secretary determines that there is not substantial compliance with the guidelines, the Secretary shall (at the time the determination is made) issue proposed regulations requiring that retail establishments comply with the guidelines. The Secretary shall issue final regulations imposing the requirement not later than 180 days after issuance of any proposed regulations. Any final regulations shall become effective 180 days after the date of the issuance of the final regulations.

"(c) ENFORCEMENT.—A State may bring, in the name of the State and within the jurisdiction of the State, a proceeding for the civil enforcement, or to restrain a violation, of final regulations issued pursuant to subsection (b)(3)(C) if the food that is the subject of the proceeding is located in the State.

"SEC. 33. LIVESTOCK TRACEBACK.

"(a) IN GENERAL.—

"(1) IDENTIFICATION.—For the purpose of understanding the nature of foodborne illness and minimizing the risks of foodborne illness from poultry and poultry products distributed in commerce, the Secretary shall, as the Secretary considers necessary, prescribe by regulation that poultry presented for slaughter for human food purposes be identified in a manner prescribed by the Secretary to enable the Secretary to trace each poultry to any premises at which the poultry has been held for such period prior to slaughter as the Secretary considers necessary to carry out this Act.

"(2) PROHIBITION OR RESTRICTION ON ENTRY.—The Secretary may prohibit or restrict entry into any slaughtering establishment inspected under this Act of any poultry not identified as prescribed by the Secretary.

"(b) RECORDS.—

"(1) IN GENERAL.—The Secretary may require that a person required to identify poultry pursuant to subsection (a) maintain accurate records, as prescribed by the Secretary, regarding the purchase, sale, and identification of the poultry.

"(2) ACCESS.—A person subject to paragraph (1) shall, at all reasonable times, on notice by a duly authorized representative of the Secretary, afford the representative access to the place of business of the person and an opportunity to examine the records of the person and copy the records.

"(3) DURATION.—Any record required to be maintained under this subsection shall be maintained for such period of time as the Secretary prescribes.

"(c) FALSE INFORMATION.—No person shall falsify or misrepresent to the Secretary or any other person any information concerning the premises at which any poultry were held.

"(d) MAINTENANCE OF RECORDS.—No person shall, without authorization from the Secretary, alter, detach, or destroy any records or other means of identification prescribed by the Secretary for use in determining the premises at which were held any poultry.

"(e) HUMAN PATHOGENS OR OTHER HARMFUL SUBSTANCES.—

"(1) IDENTIFICATION OF SOURCE.—If the Secretary finds any human pathogen or any other potentially harmful substance in any poultry at the time the poultry is presented for slaughter or in any poultry or poultry products prepared in an official establishment and the Secretary finds that there is a reasonable probability that human consumption of any poultry or poultry product containing the human pathogen or other potentially harmful substance presents a threat to public health, the Secretary may take such action as the Secretary considers necessary to determine the source of the human pathogen or other potentially harmful substance.

"(2) ACTION.—If the Secretary identifies the source of any human pathogen or other potentially harmful substance referred to in paragraph (1), the Secretary may prohibit or restrict the movement of any poultry or poultry products, or any other article from any source of the human pathogen or other potentially harmful substance until the Secretary determines that the human pathogen or other potentially harmful substance at the source no longer presents a threat to public health.

"(f) PRODUCERS AND HANDLERS.—

"(1) USE OF METHODS.—The Secretary shall use any means of identification and recordkeeping methods utilized by producers or handlers of poultry whenever the Secretary determines that the means of identification and recordkeeping methods will enable the Secretary to carry out this section.

"(2) COOPERATION.—The Secretary may cooperate with producers or handlers of poultry in which any human pathogen or other potentially harmful substance described in subsection (e)(1) is found, to develop and carry out methods to limit or eliminate the human pathogen or other potentially harmful substance at the source.

"SEC. 34. NOTIFICATION AND RECALL OF NONCONFORMING ARTICLES.

"(a) NOTIFICATION.—Any person preparing poultry or poultry products for distribution in commerce who obtains knowledge that provides a reasonable basis for believing that any poultry or poultry products—

"(1) are unsafe for human consumption, adulterated, or not produced in accordance with section 30(a); or

"(2) are misbranded;

shall immediately notify the Secretary, in such manner and by such means as the Secretary may by regulation prescribe, of the identity and location of the articles.

"(b) RECALL.—

"(1) IN GENERAL.—If the Secretary finds, on notification or otherwise, that any poultry or poultry products—

"(A) are unsafe for human consumption, adulterated, or not produced in accordance with section 30(a); or

"(B) are misbranded;

the Secretary shall by order require any person engaged in the processing, handling, transportation, storage, importation, distribution, or sale of poultry or poultry products to immediately cease any distribution of the poultry or poultry products, and to recall the poultry or poultry products from commercial distribution and use, if the Secretary determines that there is a reasonable probability that the product is unsafe for human consumption, adulterated, or misbranded, unless the person is engaged in a voluntary recall of the poultry or poultry products that the Secretary considers adequate.

"(2) ORDER.—The order shall—

"(A) include a timetable during which the recall shall occur;

"(B) require periodic reports by the person to the Secretary describing the progress of the recall; and

"(C) require notice to consumers to whom the articles were, or may have been, distributed as to how the consumers should treat the article.

"(c) INFORMAL HEARING.—

"(1) IN GENERAL.—The order shall provide any person subject to the order with an opportunity for an informal hearing, to be held not later than 5 days after the date of issuance of the order, on the actions required by the order.

"(2) VACATION OF ORDER.—If, after providing an opportunity for the hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

"(d) JUDICIAL RECALL.—A district court of the United States may order any person engaged in the processing, handling, transportation, storage, importation, distribution, or sale of poultry or a poultry product to recall the poultry or product if the court finds that there is a reasonable probability that the poultry or poultry product is unsafe for human consumption, adulterated, or misbranded.

"SEC. 35. REFUSAL OR WITHDRAWAL OF INSPECTION.

"(a) IN GENERAL.—The Secretary may, for such period or indefinitely as the Secretary considers necessary to carry out this Act, refuse to provide, or withdraw, inspections under this Act with respect to any official establishment if the Secretary determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, the service that the applicant or recipient, or any person connected with the applicant or recipient, has repeatedly failed to comply with this Act.

"(b) INSPECTIONS PENDING REVIEW.—The Secretary may direct that, pending opportunity for an expedited hearing in the case of any refusal or withdrawal of inspections and the final determination and order under subsection (a) and any judicial review of the determination and order, inspections shall be denied or suspended if the Secretary considers the action necessary in the public interest in order to protect the health or welfare of consumers or to ensure the safe and effective performance of official duties under this Act.

"(c) JUDICIAL REVIEW.—

"(1) IN GENERAL.—The determination and order of the Secretary with respect to refusal or withdrawal of inspections under this section shall be final and conclusive unless the applicant for, or recipient of, inspections files an application for judicial review not later than 30 days after the effective date of the order.

"(2) INSPECTIONS PENDING REVIEW.—Inspections shall be refused or withdrawn as of the effective date of the order pending any judicial review of the order unless the Secretary or the Court of Appeals directs otherwise.

"(3) VENUE; RECORD.—Judicial review of the order shall be—

"(A) in the United States Court of Appeals for the circuit in which the applicant for, or the recipient of, inspections has the principal place of business of the applicant or recipient or in the United States Court of Appeals for the District of Columbia Circuit; and

"(B) based on the record on which the determination and order are based.

"(4) PROCESS.—Section 204 of the Packers and Stockyards Act, 1921 (7 U.S.C. 194), shall be applicable to appeals taken under this section.

"(d) ADDITIONAL AUTHORITY.—This section shall be in addition to, and not derogate from, any provision of this Act for refusal, withdrawal, or suspension of inspections under this Act.

"SEC. 36. CIVIL PENALTIES.

"(a) IN GENERAL.—

"(1) ASSESSMENT.—A person who violates any of sections 30 through 37, a regulation issued under any of the sections, or an order issued under subsection (b) or (d) of section 34 may be assessed a civil penalty by the Secretary of not more than $100,000 for each day of violation.

"(2) SEPARATE VIOLATION.—Each offense described in paragraph (1) shall considered to be a separate violation.

"(3) NOTICE AND OPPORTUNITY FOR HEARING.—No penalty may be assessed against a person under this section unless the person is given notice and an opportunity for a hearing on the record before the Secretary in accordance with sections 554 and 556 of title 5, United States Code.

"(4) AMOUNT.—The amount of the civil penalty shall be assessed by the Secretary by written order, taking into account the gravity of the violation, the degree of culpability, and any history of prior offenses. The amount may be reviewed only as provided in subsection (b).

"(b) REVIEW.—

"(1) IN GENERAL.—A person against whom a violation is found and a civil penalty assessed by order of the Secretary under subsection (a) may obtain review of the order in the United States Court of Appeals for the circuit in which the party resides or has a place of business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in the court not later than 30 days after the date of the order and by simultaneously sending a copy of the notice by certified mail to the Secretary.

"(2) RECORD.—The Secretary shall promptly file in the court a certified copy of the record on which the violation was found and the penalty assessed.

"(3) FINDINGS.—The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence on the record as a whole.

"(c) CIVIL ACTION TO RECOVER ASSESSMENT.—

"(1) IN GENERAL.—If a person fails to pay an assessment of a civil penalty after the penalty has become a final and unappealable order, or after the appropriate Court of Appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall institute a civil action to recover the amount assessed in any appropriate district court of the United States.

"(2) SCOPE OF REVIEW.—In a recovery action under paragraph (1), the validity and appropriateness of the order of the Secretary imposing the civil penalty shall not be subject to review.

"(d) DISPOSITION OF AMOUNTS.—All amounts collected under this section shall be paid into the Treasury of the United States.

"(e) EQUITABLE RELIEF.—

"(1) RELATIONSHIP TO OTHER ACTIONS.—Nothing in this Act requires the Secretary to report for criminal prosecution, or for the institution of a injunction or other proceeding, a violation of this Act, if the Secretary believes that the public interest will be adequately served by assessment of civil penalties.

"(2) MODIFICATION OF PENALTY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty assessed under this section.

"SEC. 37. WHISTLEBLOWER PROTECTION.

"(a) IN GENERAL.—No person subject to this Act may harass, prosecute, hold liable, or discriminate against any employee or other person because the person—

"(1) is assisting or demonstrating an intent to assist in achieving compliance with any Federal or State law (including a rule or regulation);

"(2) is refusing to violate or assist in the violation of any Federal or State law (including a rule or regulation); or

"(3) has commenced, caused to be commenced, or is about to commence a proceeding, has testified or is about to testify at a proceeding, or has assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the functions or responsibilities of any agency, office, or unit of the Department of Agriculture.

"(b) PROCEDURES AND PENALTIES.—The procedures and penalties applicable to prohibited acts under subsection (a) shall be governed by the applicable provisions of section 31105 of title 49, United States Code.

"(c) BURDENS OF PROOF.—The legal burdens of proof with respect to prohibited acts under subsection (a) shall be governed by the applicable provisions of sections 1214 and 1221 of title 5, United States Code.".

SUMMARY OF THE FAMILY FOOD PROTECTION ACT

The laws governing meat and poultry safety, first developed in the early 1900's, need to be brought up-to-date to assure that new systems to reduce foodborne illness from meat and poultry are as effective as possible. Current programs for inspecting meat and poultry must be supplemented with more modern methods that control and test for the substances that cause foodborne illness and death.

Harmfull bacteria on meat and poultry products are responsible for at least five million illnesses and 4000 deaths each year. Yet, under the current law, the government can't stop contaminated meat from reaching consumer's tables. The Family Food Protection Act will require the United States Department of Agriculture [USDA] to use scientific standards and testing to prevent contaminated food from reaching consumers and gives the agency modern enforcement tools like recall and traceback to get contaminated food off the market and to trade it to its source.

The Family Food Protection Act adds a new Title V to the Federal Meat Inspection Act and new sections 30 through 37 to the Poultry Products Inspection Act. These sections are parallel between the two Acts. Unless otherwise noted, "the Secretary" refers to the Secretary of Agriculture.

REDUCING ADULTERATION OF MEAT AND POULTRY PRODUCTS

Under this section, the Secretary would be required to control and reduce the presence and growth of human pathogens and other harmful substances in meat and poultry products. Modern microbial testing for such contaminants would be required within two years of enactment of the Act. Results of the tests would be reported to the USDA.

Interim limits would be established by the Secretary for human pathogens and other harmful substances until regulatory limits, tolerances or other standards are set by the Secretary of Health and Human Services. The Secretary would conduct or support appropriate research. Meat or poultry that exceeds the limits would be prohibited from sale or transportation. Regulatory limits set by the Secretary of Health and Human Services would protect all consumers including children, the elderly and the immune compromised.

The Secretary, in conjunction with the Centers of Disease Control and Prevention and the Food and Drug Administration, would administer an active surveillance system for foodborne illnesses and a sampling system to analyze the nature and frequency of human pathogens and other harmful substances in meat and poultry products. The Secretary shall review all regulations every two years and consult with relevant federal and state public health agencies as appropriate.

HAZARD CONTROLS

The Secretary shall require slaughter and processing plants to adopt processing controls adequate to protect public health and to limit the presence and growth of human pathogens and other harmful substances in meat and poultry. The regulations will include standards for sanitation; interim limits for biological, chemical and physical hazards; process controls to assure the limits are met; record keeping requirements; sampling requirements; and agency access to records. Public access to records is assured through the Freedom of Information Act. The Secretary may require other processing controls as deemed necessary to assure the protection of public health.

Once processing controls are required, an advisory board shall be appointed, consisting of consumer and victim representatives, processors, producers, retail outlets, inspectors, plant workers, and public health officials, to recommend other changes to the existing inspection programs, including improvements in and alternatives to the current programs.

The Secretary is directed to discontinue use of the existing inspection seals if, at any time, the Secretary discontinues the carcass-by-carcass inspection of meat. The seal for meat and meat food products says "Inspected and passed." The seal for poultry and poultry products says "Inspected for wholesomeness by U.S. Department of Agriculture."

VOLUNTARY GUIDELINES FOR RETAIL ESTABLISHMENTS

The Secretary is directed to develop minimum standards for the handling, processing and storage of meat and poultry products by retail stores, restaurants, and similar establishments to assure that food sold by such establishments is safe for human consumption. Following notice and comment, guidelines are established within 18 months after enactment of the Act. So long as there is substantial compliance by retailers, the guidelines remain voluntary. If substantial compliance is not achieved, the guidelines may become regulations. States may bring actions against retailers to restrain violation of any final regulations under the Act.

LIVESTOCK TRACEBACK

Traceback of animal and animal carcasses is allowed for the purpose of understanding the nature of foodborne illness and minimizing the risks of such illness. The Secretary shall prescribe methods that permit animal identification sufficient to accomplish traceback to the farm or other places where livestock or poultry are held.

If animals are presented for slaughter that contain human pathogens or other harmful substances sufficient to pose a threat to health, the Secretary may take action to determine the source of the human pathogen or other harmful substance. The Secretary may prohibit or restrict the movement of animals, carcasses, meat or meat food products containing the human pathogen or other harmful substance.

NOTIFICATION AND RECALL OF NONCONFORMING ARTICLES

Under this section, any person, firm or corporation preparing meat or poultry products for distribution with a reasonable basis for believing that the products are unsafe for human consumption, adulterated or misbranded shall immediately notify the Secretary of the identity and location of such products.

If the Secretary finds the products are unsafe for human consumption, adulterated or misbranded, the Secretary shall order the recall of such products and all further distribution shall be halted, unless the products are subject to a voluntary recall that the Secretary deems adequate. The person, firm or corporation subject to the order has the opportunity for a hearing within 5 days after the date of the order.

Any district court may order any person, firm or corporation to recall any meat or poultry product if the court finds that there is a reasonable probability that the product is unsafe for human consumption, adulterated or misbranded.

REFUSAL OR WITHDRAWAL OF INSPECTION

The Secretary may refuse to provide or withdraw inspection services if the Secretary determines, after providing the opportunity for a hearing, that the recipient of the service has repeatedly failed to comply with the requirements of the Federal Meat Inspection Act, the Poultry Products Inspection Act or corresponding regulations.

Inspection can be withdrawn prior to a hearing if such action is necessary in order to protect the health and welfare of consumers or to assure the safe and effective performance of official duties.

Judical review of these orders shall be in the United States Court of Appeals.

CIVIL PENALTIES

Civil penalties may be assessed against persons, firms or corporations that violate provisions of the Federal Meat Inspection Act, the Poultry Products Inspection Act or relevant orders. Civil penalties are limited to $100,000 per day of violation. The amount of the penalty shall be assessed by written order following consideration of the gravity of the violation, degree of culpability, and the history of prior offenses.

Judicial review of these orders shall be in the United States Court of Appeals. Penalties collected under this section shall be paid into the United States Treasury.

CORPORATE WHISTLEBLOWER PROTECTION

Employees are protected against harassment, discrimination, prosecution and liability by employers because the employee is assisting in achieving compliance with federal or state laws, rules or regulations; refusing to violate federal or state laws, rules or regulations; or otherwise attempting to carry out the functions of or responsibilities of the USDA. This section is governed by the Surface Transportation Act and the Whistleblower Protection Act.

By Mr. HEFLIN (for himself and Mr. SHELBY):

S. 516. A bill to transfer responsibility for the aquaculture research program under Public Law 85-342 from the Secretary of the Interior to the Secretary of Agriculture, and for other purposes; to the Committee on Environment and Public Works.

NATIONAL AQUACULTURE RESEARCH CENTER ACT

Mr. HEFLIN. Mr. President, I am pleased to introduce the National Aquaculture Research Center Act of 1995.

The first major provision within my legislation transfers responsibility for the aquaculture research program from the Secretary of the Interior to the Secretary of Agriculture. This transfer simply recognizes the reality that the vast majority of aquaculture research and funding comes through the U.S. Department of Agriculture. This is a long-overdue streamlining measure that will greatly improve the overall efficiency and timeliness of aquaculture research.

The second provision stipulates that the Southeastern Fish Culture Laboratory in Marion, AL be named and designated as the "Claude Harris National Aquaculture Research Center." Many of my colleagues remember former Congressman Claude Harris, who passed away last fall after a battle with lung cancer. He spent 6 years in the House of Representatives from the Seventh District of Alabama, and was an outstanding Member of Congress. At the time of his death, he was serving as the U.S. attorney for the northern district of Alabama. He was honest and amiable and never took his political accomplishments for granted.

During his time in Congress, Claude Harris was a strong supporter of aquaculture research, and was instrumental in promoting it through his hard work on the House Energy and Commerce Committee. The fish culture laboratory in Marion is located in Claude's former district.

This designation will serve as a proper and fitting tribute to the memory of Congressman Claude Harris, whose drive, determination, and energy did so much to advance the important science of aquaculture in this country.

ADDITIONAL COSPONSORS

S. 50

At the request of Mr. LOTT, the name of the Senator from Minnesota [Mr. GRAMS] was added as a cosponsor of S. 50, a bill to repeal the increase in tax on Social Security benefits.

S. 104

At the request of Mr. D'AMATO, the name of the Senator from Maine [Ms. SNOWE] was added as a cosponsor of S. 104, a bill to establish the position of Coordinator for Counter-Terrorism within the office of the Secretary of State.

S. 212

At the request of Mr. KERRY, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 212, a bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Shamrock V*.

S. 213

At the request of Mr. KERRY, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 213, a bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Endeavour*.

S. 244

At the request of Mr. LUGAR, his name was added as a cosponsor of S. 244, a bill to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

S. 275

At the request of Mr. GRASSLEY, the name of the Senator from Texas [Mrs. HUTCHISON] was added as a cosponsor of S. 275, a bill to establish a temporary moratorium on the Interagency Memorandum of Agreement Concerning Wetlands Determinations until enactment of a law that is the successor to the Food, Agriculture, Conservation, and Trade Act of 1990, and for other purposes.

S. 303

At the request of Mr. LIEBERMAN, the name of the Senator from Minnesota [Mr. GRAMS] was added as a cosponsor of S. 303, a bill to establish rules governing product liability actions against raw materials and bulk component suppliers to medical device manufacturers, and for other purposes.

S. 328

At the request of Mr. SANTORUM, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 328, a bill to amend the Clean Air Act to provide for an optional provision for the reduction of work-related vehicle trips and miles traveled in ozone nonattainment areas designated as severe, and for other purposes.

S. 351

At the request of Mr. HATCH, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 351, a bill to amend the Internal Revenue Code of 1986 to make permanent the credit for increasing research activities.

S. 469

At the request of Mr. GREGG, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 469, a bill to eliminate the National Education Standards and Improvement Council and opportunity-to-learn standards.

S. 476

At the request of Mr. NICKLES, the name of the Senator from Michigan [Mr. ABRAHAM] was added as a cosponsor of S. 476, a bill to amend title 23, United States Code, to eliminate the national maximum speed limit, and for other purposes.

S. 500

At the request of Mr. JOHNSTON, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 500, a bill to amend the Internal Revenue Code of 1986 to provide that certain deductions of school bus drivers shall be allowable in computing adjusted gross income.

AMENDMENTS SUBMITTED

PAPERWORK REDUCTION ACT

LEVIN (AND OTHERS) AMENDMENT NO. 319

Mr. LEVIN (for himself, Mr. COHEN, Mr. ROTH, and Mr. GLENN) proposed an amendment to the bill (S. 244) to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes; as follows:

On page 2, insert between lines 2 and 3 the following:

TITLE I—PAPERWORK REDUCTION

On page 2, line 3, strike out "**SECTION 1.**" and insert in lieu thereof "**SEC. 101.**".

On page 2, line 4, strike out "Act" and insert in lieu thereof "title".

On page 2, line 6, strike out "**SEC. 2.**" and insert in lieu thereof "**SEC. 102.**".

On page 58, strike out lines 3 through 5 and insert in lieu thereof the following:

SEC. 103. EFFECTIVE DATE.

The provisions of this title and the amendments made by this title shall take effect on June 30, 1995.

On page 58, add after line 5 the following new title:

TITLE II—FEDERAL REPORT ELIMINATION AND MODIFICATION

SEC. 201. SHORT TITLE.

This title may be cited as the "Federal Report Elimination and Modification Act of 1995".

SEC. 202. TABLE OF CONTENTS.

The table of contents for this title is as follows:

Sec. 201. Short title.
Sec. 202. Table of contents.

SUBTITLE I—DEPARTMENTS

CHAPTER 1—DEPARTMENT OF AGRICULTURE

Sec. 1011. Reports eliminated.
Sec. 1012. Reports modified.

CHAPTER 2—DEPARTMENT OF COMMERCE

Sec. 1021. Reports eliminated.
Sec. 1022. Reports modified.

CHAPTER 3—DEPARTMENT OF DEFENSE

Sec. 1031. Reports eliminated.

CHAPTER 4—DEPARTMENT OF EDUCATION

Sec. 1041. Reports eliminated.
Sec. 1042. Reports modified.

CHAPTER 5—DEPARTMENT OF ENERGY

Sec. 1051. Reports eliminated.
Sec. 1052. Reports modified.

CHAPTER 6—DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sec. 1061. Reports eliminated.
Sec. 1062. Reports modified.

CHAPTER 7—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec. 1071. Reports eliminated.
Sec. 1072. Reports modified.

CHAPTER 8—DEPARTMENT OF THE INTERIOR

Sec. 1081. Reports eliminated.
Sec. 1082. Reports modified.

CHAPTER 9—DEPARTMENT OF JUSTICE

Sec. 1091. Reports eliminated.

CHAPTER 10—DEPARTMENT OF LABOR

Sec. 1101. Reports eliminated.
Sec. 1102. Reports modified.

CHAPTER 11—DEPARTMENT OF STATE

Sec. 1111. Reports eliminated.

CHAPTER 12—DEPARTMENT OF TRANSPORTATION

Sec. 1121. Reports eliminated.
Sec. 1122. Reports modified.

CHAPTER 13—DEPARTMENT OF THE TREASURY

Sec. 1131. Reports eliminated.
Sec. 1132. Reports modified.

CHAPTER 14—DEPARTMENT OF VETERANS AFFAIRS

Sec. 1141. Reports eliminated.

SUBTITLE II—INDEPENDENT AGENCIES

CHAPTER 1—ACTION

Sec. 2011. Reports eliminated.

CHAPTER 2—ENVIRONMENTAL PROTECTION AGENCY

Sec. 2021. Reports eliminated.

Chapter 3—Equal Employment Opportunity Commission
Sec. 2031. Reports modified.
Chapter 4—Federal Aviation Administration
Sec. 2041. Reports eliminated.
Chapter 5—Federal Communications Commission
Sec. 2051. Reports eliminated.
Chapter 6—Federal Deposit Insurance Corporation
Sec. 2061. Reports eliminated.
Chapter 7—Federal Emergency Management Agency
Sec. 2071. Reports eliminated.
Chapter 8—Federal Retirement Thrift Investment Board
Sec. 2081. Reports eliminated.
Chapter 9—General Services Administration
Sec. 2091. Reports eliminated.
Chapter 10—Interstate Commerce Commission
Sec. 2101. Reports eliminated.
Chapter 11—Legal Services Corporation
Sec. 2111. Reports modified.
Chapter 12—National Aeronautics and Space Administration
Sec. 2121. Reports eliminated.
Chapter 13—National Council on Disability
Sec. 2131. Reports eliminated.
Chapter 14—National Science Foundation
Sec. 2141. Reports eliminated.
Chapter 15—National Transportation Safety Board
Sec. 2151. Reports modified.
Chapter 16—Neighborhood Reinvestment Corporation
Sec. 2161. Reports eliminated.
Chapter 17—Nuclear Regulatory Commission
Sec. 2171. Reports modified.
Chapter 18—Office of Personnel Management
Sec. 2181. Reports eliminated.
Sec. 2182. Reports modified.
Chapter 19—Office of Thrift Supervision
Sec. 2191. Reports modified.
Chapter 20—Panama Canal Commission
Sec. 2201. Reports eliminated.
Chapter 21—Postal Service
Sec. 2211. Reports modified.
Chapter 22—Railroad Retirement Board
Sec. 2221. Reports modified.
Chapter 23—Thrift Depositor Protection Oversight Board
Sec. 2231. Reports modified.
Chapter 24—United States Information Agency
Sec. 2241. Reports eliminated.
Subtitle III—Reports by All Departments and Agencies
Sec. 3001. Reports eliminated.
Sec. 3002. Reports modified.
Subtitle IV—Effective Date
Sec. 4001. Effective date.

Subtitle I—Departments

CHAPTER 1—DEPARTMENT OF AGRICULTURE

SEC. 1011. REPORTS ELIMINATED.

(a) Report on Monitoring and Evaluation.—Section 1246 of the Food Security Act of 1985 (16 U.S.C. 3846) is repealed.

(b) Report on Return on assets.—Section 2512 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421b) is amended—

(1) in subsection (a), by striking "(a) Improving" and all that follows through "Forecasts.—"; and

(2) by striking subsection (b).

(c) Report on Farm Value of Agricultural Products.—Section 2513 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421c) is repealed.

(d) Report on Origin of Exports of Peanuts.—Section 1558 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 958) is repealed.

(e) Report on Reporting of Importing Fees.—Section 407 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736a) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c) through (h) as subsections (b) through (g), respectively.

(f) Report on Agricultural Information Exchange With Ireland.—Section 1420 of the Food Security Act of 1985 (Public Law 99–198; 99 Stat. 1551) is amended—

(1) in subsection (a), by striking "(a)"; and

(2) by striking subsection (b).

(g) Report on Potato Inspection.—Section 1704 of the Food Security Act of 1985 (Public Law 99–198; 7 U.S.C. 499n note) is amended by striking the second sentence.

(h) Report on Transportation of Fertilizer and Agricultural Chemicals.—Section 2517 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624; 104 Stat. 4077) is repealed.

(i) Report on Uniform End-Use Value Tests.—Section 307 of the Futures Trading Act of 1936 (Public Law 99–641; 7 U.S.C. 76 note) is amended by striking subsection (c).

(j) Report on Project Areas With High Food Stamp Payment Error Rates.—Section 16(i) of the Food Stamp Act of 1977 (7 U.S.C. 2025(i)) is amended by striking paragraph (3).

(k) Report on Effect of EFAP Displacement on Commercial Sales.—Section 203C(a) of the Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note) is amended by striking the last sentence.

(l) Report on WIC Expenditures and Participation Levels.—Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)) is amended—

(1) by striking paragraphs (8) and (9); and

(2) by redesignating paragraphs (10) and (11) as paragraphs (8) and (9), respectively.

(m) Report on WIC Migrant Services.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended by striking subsection (j).

(n) Report on Demonstrations Involving Innovative Housing Units.—Section 506(b) of the Housing Act of 1949 (42 U.S.C. 1476(b)) is amended by striking the last sentence.

(o) Report on Annual Upward Mobility Program Activity.—Section 2(a)(6)(A) of the Act of June 20, 1936 (20 U.S.C. 107a(a)(6)(A)), is amended by striking "including upward mobility" and inserting "excluding upward mobility".

(p) Report on Land Exchanges in Columbia River Gorge National Scenic Area.—Section 9(d)(3) of the Columbia River Gorge National Scenic Area Act (16 U.S.C. 544g(d)(3)) is amended by striking the second sentence.

(q) Report on Income and Expenditures of Certain Land Acquisitions.—Section 2(e) of Public Law 96–586 (94 Stat. 3382) is amended by striking the second sentence.

(r) Report on Special Area Designations.—Section 1506 of the Agriculture and Food Act of 1981 (16 U.S.C. 3415) is repealed.

(s) Report on Evaluation of Special Area Designations.—Section 1510 of the Agriculture and Food Act of 1981 (16 U.S.C. 3419) is repealed.

(t) Report on Agricultural Practices and Water Resources Data Base Development.—Section 1485 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5505) is amended—

(1) in subsection (a), by striking "(a) Repository.—"; and

(2) by striking subsection (b).

(u) Report on Plant Genome Mapping.—Section 1671 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5924) is amended—

(1) by striking subsection (g); and

(2) by redesignating subsection (h) as subsection (g).

(v) Report on Appraisal of Proposed Budget for Food and Agricultural Sciences.—Section 1408(g) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123(g)) is amended—

(1) by striking paragraph (2); and

(2) by redesignating paragraph (3) as paragraph (2).

(w) Report on Economic Impact of Animal Damage on Aquaculture Industry.—Section 1475(e) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3322(e)) is amended—

(1) in paragraph (1), by striking "(1)"; and

(2) by striking paragraph (2).

(x) Report on Awards Made by the National Research Initiative and Special Grants.—Section 2 of the Act of August 4, 1965 (7 U.S.C. 450i), is amended—

(1) by striking subsection (l); and

(2) by redesignating subsection (m) as subsection (l).

(y) Report on Payments Made Under Research Facilities Act.—Section 8 of the Research Facilities Act (7 U.S.C. 390i) is repealed.

(z) Report on Financial Audit Reviews of States With High Food Stamp Participation.—The first sentence of section 11(l) of the Food Stamp Act of 1977 (7 U.S.C. 2020(*l*)) is amended by striking ", and shall, upon completion of the audit, provide a report to Congress of its findings and recommendations within one hundred and eighty days".

(aa) Report on Rural Telephone Bank.—Section 408(b)(3) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)(3)) is amended by striking out subparagraph (I) and redesignating subparagraph (J) as subparagraph (I).

SEC. 1012. REPORTS MODIFIED.

(a) Report on Animal Welfare Enforcement.—The first sentence of section 25 of the Animal Welfare Act (7 U.S.C. 2155) is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(5) the information and recommendations described in section 11 of the Horse Protection Act of 1970 (15 U.S.C. 1830).".

(b) Report on Horse Protection Enforcement.—Section 11 of the Horse Protection Act of 1970 (15 U.S.C. 1830) is amended by striking "On or before the expiration of thirty calendar months following the date of enactment of this Act, and every twelve calendar months thereafter, the Secretary shall submit to the Congress a report upon" and inserting the following: "As part of the report submitted by the Secretary under section 25 of the Animal Welfare Act (7 U.S.C. 2155), the Secretary shall include information on".

(c) Report on Agricultural Quarantine Inspection Fund.—The Secretary of Agriculture shall not be required to submit a report to the appropriate committees of Congress on the status of the Agricultural Quarantine Inspection fund more frequently than annually.

(d) Report on Estimated Expenditures Under Food Stamp Program.—The third sentence of section 18(a)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2027(a)(1)) is amended—

(1) by striking "by the fifteenth day of each month" and inserting "for each quarter or other appropriate period"; and

(2) by striking "the second preceding month's expenditure" and inserting "the expenditure for the quarter or other period".

(e) Report on Commodity Distribution.—Section 3(a)(3)(D) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100–237; 7 U.S.C. 612c note) is amended by striking "annually" and inserting "biennially".

(f) Report on Priorities for Research, Extension, and Teaching.—Section 1407(f)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3122(f)(1)) is amended—

(1) in the paragraph heading, by striking "ANNUAL REPORT" and inserting "REPORT"; and

(2) by striking "Not later than June 30 of each year" and inserting "At such times as the Joint Council determines appropriate".

(g) 5-Year Plan for Food and Agricultural Sciences.—Section 1407(f)(2) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3122(f)(2)) is amended by striking the second sentence.

(h) Report on Examination of Federally Supported Agricultural Research and Extension Programs.—Section 1408(g)(1) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123(g)(1)) is amended by inserting "may provide" before "a written report".

(i) Report on Effects of Foreign Ownership of Agricultural Land.—Section 5(b) of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504(b)) is amended to read as follows:

"(b) An analysis and determination shall be made, and a report on the Secretary's findings and conclusions regarding such analysis and determination under subsection (a) shall be transmitted within 90 days after the end of—

"(1) the calendar year in which the Federal Report Elimination and Modification Act of 1995 is enacted; and

"(2) the calendar year which occurs every ten years thereafter.".

CHAPTER 2—DEPARTMENT OF COMMERCE

SEC. 1021. REPORTS ELIMINATED.

(a) Report on Voting Registration.—Section 207 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa–5) is repealed.

(b) Report on Estimate of Special Agricultural Workers.—Section 210A(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1161(b)(3)) is repealed.

(c) Report on Long Range Plan for Public Broadcasting.—Section 393A(b) of the Communications Act of 1934 (47 U.S.C. 393a(b)) is repealed.

(d) Report on Status, Activities, and Effectiveness of United States Commercial Centers in Asia, Latin America, and Africa and Program Recommendations.—Section 401(j) of the Jobs Through Exports Act of 1992 (15 U.S.C. 4723a(j)) is repealed.

(e) Report on Kuwait Reconstruction Contracts.—Section 606(f) of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 is repealed.

(f) Report on United States-Canada Free Trade Agreement.—Section 409(a)(3)(B) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 note) is amended to read as follows:

"(3) The United States members of the working group established under article 1907 of the Agreement shall consult regularly with the Committee on Finance of the Senate, the Committee on Ways and Means of the House of Representatives, and advisory committees established under section 135 of the Trade Act of 1974 regarding—

"(A) the issues being considered by the working group; and

"(B) as appropriate, the objectives and strategy of the United States in the negotiations.".

(g) Report on Establishment of American Business Centers and on Activities of the Independent States Business and Agriculture Advisory Council.—Section 305 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5825) is repealed.

(h) Report on Fisherman's Contingency Fund Report.—Section 406 of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1846) is repealed.

(i) Report on User Fees on Shippers.—Section 208 of the Water Resources Development Act of 1986 (33 U.S.C. 2236) is amended by—

(1) striking subsection (b); and

(2) redesignating subsections (c), (d), (e), and (f) as subsections (b), (c), (d), and (e), respectively.

SEC. 1022. REPORTS MODIFIED.

(a) Report on Federal Trade Promotion Strategic Plan.—Section 2312(f) of the Export Enhancement Act of 1988 (15 U.S.C. 4727(f) is amended to read as follows:

"(f) Report to the Congress.—The chairperson of the TPCC shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Foreign Affairs of the House of Representatives, not later than September 30, 1995, and annually thereafter, a report describing—

"(1) the strategic plan developed by the TPCC pursuant to subsection (c), the implementation of such plan, and any revisions thereto; and

"(2) the implementation of sections 303 and 304 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5823 and 5824) concerning funding for export promotion activities and the interagency working groups on energy of the TPCC.".

(b) Report on Export Policy.—Section 2314(b)(1) of the Export Enhancement Act of 1988 (15 U.S.C. 4729(b)(1)) is amended—

(1) in subparagraph (E) by striking out "and" after the semicolon;

(2) in subparagraph (F) by striking out the period and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new subparagraphs:

"(G) the status, activities, and effectiveness of the United States commercial centers established under section 401 of the Jobs Through Exports Act of 1992 (15 U.S.C. 4723a);

"(H) the implementation of sections 301 and 302 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5821 and 5822) concerning American Business Centers and the Independent States Business and Agriculture Advisory Council;

"(I) the programs of other industrialized nations to assist their companies with their efforts to transact business in the independent states of the former Soviet Union; and

"(J) the trading practices of other Organization for Economic Cooperation and Development nations, as well as the pricing practices of transitional economies in the independent states, that may disadvantage United States companies.".

CHAPTER 3—DEPARTMENT OF DEFENSE

SEC. 1031. REPORTS ELIMINATED.

(a) Report on Sematech.—Section 274 of The National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100–180; 101 Stat. 1071) is amended—

(1) in section 6 by striking out the item relating to section 274; and

(2) by striking out section 274.

(b) Report on Review of Documentation in Support of Waivers for People Engaged in Acquisition Activities.—

(1) In general.—Section 1208 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 1701 note) is repealed.

(2) Clerical amendment to table of contents.—Section 2(b) of such Act is amended by striking out the item relating to section 1208.

CHAPTER 4—DEPARTMENT OF EDUCATION

SEC. 1041. REPORTS ELIMINATED.

(a) Report on Personnel Reduction and Annual Limitations.—Subsection (a) of section 403 of the Department of Education Organization Act (20 U.S.C. 3463(a)) is amended—

(1) in paragraph (2), by striking all beginning with "and shall," through the end thereof and inserting a period; and

(2) by redesignating paragraph (3) as paragraph (2).

(b) Report on Projects Funded by the Fund for the Improvement and Reform of Schools and Teaching.—Section 3232 of the Fund for the Improvement and Reform of Schools and Teaching Act (20 U.S.C. 4832) is amended—

(1) in the section heading, by striking "**AND REPORTING**";

(2) in subsection (a), by striking "(a) Exemplary Projects.—"; and

(3) by striking subsections (b) and (c).

(c) Report on the Success of FIRST Assisted Programs in Improving Education.—Section 6215 of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 4832 note) is amended—

(1) by amending the section heading to read as follows:

"**SEC. 6215. EXEMPLARY PROJECTS.**";

(2) in subsection (a), by striking "(a) Exemplary Projects.—"; and

(3) by striking subsections (b) and (c).

(d) Report on Supported Employment Activities.—Subsection (c) of section 311 of the Rehabilitation Act of 1973 (20 U.S.C. 777a(c) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(e) Report on the Client Assistance Program.—Subsection (g) of section 112 of the Rehabilitation Act of 1973 (20 U.S.C. 732(g)) is amended—

(1) by striking paragraphs (4) and (5); and

(2) in paragraph (6), by striking "such report or for any other" and inserting "any".

(f) Report on the Summary of Local Evaluations of Community Education Employment Centers.—Section 370 of the Carl D. Perkins Vocational and Applied Technology Act (20 U.S.C. 2396h) is amended—

(1) in the section heading, by striking "**AND REPORT**";

(2) in subsection (a), by striking "(a) Local Evaluation.—"; and

(3) by striking subsection (b).

(g) Report on the Administration of the Vocational Education Act of 1917.—Section 18 of the Vocational Education Act of 1917 (20 U.S.C. 28) is repealed.

(h) Report by the Interdepartmental Task Force on Coordinating Vocational Education and Related Programs.—Subsection (d) of section 4 of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (20 U.S.C. 2303(d)) is repealed.

(i) Report on the Evaluation of the Gateway Grants Program.—Subparagraph (B) of section 322(a)(3) of the Adult Education Act (20 U.S.C. 1203a(a)(3)(B)) is amended by striking "and report the results of such evaluation to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate".

(j) Report on the Bilingual Vocational Training Program.—Paragraph (3) of section 441(e) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2441(e)(3)) is amended by striking the last sentence thereof.

(k) Report on Advisory Councils.—Section 448 of the General Education Provisions Act (20 U.S.C. 1233g) is repealed.

SEC. 1042. REPORTS MODIFIED.

(a) Report on the Condition of Bilingual Education in the Nation.—Section 6213 of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 3303 note) is amended—

(1) in the section heading, by striking "**REPORT ON**" and inserting "**INFORMATION REGARDING**"; and

(2) by striking the matter preceding paragraph (1) and inserting "The Secretary shall collect data for program management and accountability purposes regarding—".

(b) Report to Congress on the Stewart B. McKinney Homeless Assistance Act.—Subsection (b) of section 724 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11434(b)) is amended by striking paragraph (4) and the first paragraph (5) and inserting the following:

"(4) The Secretary shall prepare and submit a report to the appropriate committees of the Congress at the end of every other fiscal year. Such report shall—

"(A) evaluate the programs and activities assisted under this part; and

"(B) contain the information received from the States pursuant to section 722(d)(3).".

(c) Report To Give Notice to Congress.—Subsection (d) of section 482 of the Higher Education Act of 1965 (20 U.S.C. 1089(d)) is amended—

(1) in the first sentence by striking "the items specified in the calendar have been completed and provide all relevant forms, rules, and instructions with such notice" and inserting "a deadline included in the calendar described in subsection (a) is not met"; and

(2) by striking the second sentence.

(d) Annual Report on Activities Under the Rehabilitation Act of 1973.—Section 13 of the Rehabilitation Act of 1973 (20 U.S.C. 712) is amended by striking "twenty" and inserting "eighty".

(e) Report to the Congress Regarding Rehabilitation Training Programs.—The second sentence of section 302(c) of the Rehabilitation Act of 1973 (20 U.S.C. 774(c)) is amended by striking "simultaneously with the budget submission for the succeeding fiscal year for the Rehabilitation Services Administration" and inserting "by September 30 of each fiscal year".

(f) Report Prepared by the Department of the Interior on Indian Children and the Bilingual Education Act.—

(1) Repeal.—Subsection (c) of section 7022 of the Bilingual Education Act (20 U.S.C. 3292) is repealed.

(2) Annual report.—Paragraph (3) of section 7051(b)(3) of the Bilingual Education Act (20 U.S.C. 3331(b)(3)) is amended—

(A) in subparagraph (D), by striking "and" after the semicolon;

(B) in subparagraph (E), by striking the period and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

"(F) the needs of the Indian children with respect to the purposes of this title in schools operated or funded by the Department of the Interior, including those tribes and local educational agencies receiving assistance under the Johnson-O'Malley Act (25 U.S.C. 452 et seq.); and

"(G) the extent to which the needs described in subparagraph (F) are being met by funds provided to such schools for educational purposes through the Secretary of the Interior.".

(g) Annual Evaluation Reports.—Section 417 of the General Education Provisions Act (20 U.S.C. 1226c) is amended—

(1) in the section heading, by striking "ANNUAL" and inserting "BIENNIAL"; and

(2) in subsection (a)—

(A) by striking "December" and inserting "March";

(B) by striking "each year," and inserting "every other year"; and

(C) by striking "an annual" and inserting "a biennial";

(3) in subparagraph (B), by striking "previous fiscal year" and inserting "2 preceding fiscal years"; and

(4) in subparagraph (C), by striking "previous fiscal year" and inserting "2 preceding fiscal years".

(h) Annual Audit of Student Loan Insurance Fund.—Section 432(b) of the Higher Education Act of 1965 (20 U.S.C. 1082(b)) is amended to read as follows:

"(b) Financial Operations Responsibilities.—The Secretary shall, with respect to the financial operations arising by reason of this part prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31, United States Code. The transactions of the Secretary, including the settlement of insurance claims and of claims for payments pursuant to section 1078 of this title, and transactions related thereto and vouchers approved by the Secretary in connection with such transactions, shall be final and conclusive upon all accounting and other officers of the Government.".

CHAPTER 5—DEPARTMENT OF ENERGY

SEC. 1051. REPORTS ELIMINATED.

(a) Reports on Performance and Disposal of Alternative Fueled Heavy Duty Vehicles.—Paragraphs (3) and (4) of section 400AA(b) of the Energy Policy and Conservation Act (42 U.S.C. 6374(b)(3), 6374(b)(4)) are repealed.

(b) Report on Wind Energy Systems.—Section 9(a)(3) of the Wind Energy Systems Act of 1980 (42 U.S.C. 9208(a)(3)) is repealed.

(c) Report on Comprehensive Program Management Plan for Ocean Thermal Energy Conversion.—Section 3(d) of the Ocean Thermal Energy Conversion Research, Development, and Demonstration Act (42 U.S.C. 9002(d)) is repealed.

(d) Reports on Subseabed Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste.—Subsections (a) and (b)(5) of section 224 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10204(a), 10204(b)(5)) are repealed.

(e) Report on Fuel Use Act.—Sections 711(c)(2) and 806 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8421(c)(2), 8482) are repealed.

(f) Report on Test Program of Storage of Refined Petroleum Products Within the Strategic Petroleum Reserve.—Section 160(g)(7) of the Energy Policy and Conservation Act (42 U.S.C. 6240(g)(7)) is repealed.

(g) Report on Naval Petroleum and Oil Shale Reserves Production.—Section 7434 of title 10, United States Code, is repealed.

(h) Report on Effects of Presidential Message Establishing a Nuclear Nonproliferation Policy on Nuclear Research and Development Cooperative Agreements.—Section 203 of the Department of Energy Act of 1978—Civilian Applications (22 U.S.C. 2429 note) is repealed.

(i) Report on Written Agreements Regarding Nuclear Waste Repository Sites.—Section 117(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10137(c)) is amended by striking the following: "If such written agreement is not completed prior to the expiration of such period, the Secretary shall report to the Congress in writing not later than 30 days after the expiration of such period on the status of negotiations to develop such agreement and the reasons why such agreement has not been completed. Prior to submission of such report to the Congress, the Secretary shall transmit such report to the Governor of such State or the governing body of such affected Indian tribe, as the case may be, for their review and comments. Such comments shall be included in such report prior to submission to the Congress.".

(j) Quarterly Report on Strategic Petroleum Reserves.—Section 165(b) of the Energy Policy and Conservation Act (42 U.S.C. 6245(b)) is repealed.

(k) Report on the Department of Energy.—The Federal Energy Administration Act of 1974 (15 U.S.C. 790d), is amended by striking out section 55.

SEC. 1052. REPORTS MODIFIED.

(a) Reports on Process-Oriented Industrial Energy Efficiency and Industrial Insulation Audit Guidelines.—

(1) Section 132(d) of the Energy Policy Act of 1992 (42 U.S.C. 6349(d)) is amended—

(A) in the language preceding paragraph (1), by striking "Not later than 2 years after October 24, 1992, and annually thereafter" and inserting "Not later than October 24, 1995, and biennially thereafter";

(B) in paragraph (4), by striking "and" at the end;

(C) in paragraph (5), by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following new paragraph:

"(6) the information required under section 133(c).".

(2) Section 133(c) of the Energy Policy Act of 1992 (42 U.S.C. 6350(c)) is amended—

(A) by striking, "October 24, 1992" and inserting "October 24, 1995"; and

(B) by inserting "as part of the report required under section 132(d)," after "and biennially thereafter,".

(b) Report on Agency Requests for Waiver From Federal Energy Management Requirements.—Section 543(b)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8253(b)(2)) is amended—

(1) by inserting ", as part of the report required under section 548(b)," after "the Secretary shall"; and

(2) by striking "promptly".

(c) Report on the Progress, Status, Activities, and Results of Programs Regarding the Procurement and Identification of Energy Efficient Products.—Section 161(d) of the Energy Policy Act of 1992 (42 U.S.C. 8262g(d)) is amended by striking "of each year thereafter,"; and inserting "thereafter as part of the report required under section 548(b) of the National Energy Conservation Policy Act,".

(d) Report on the Federal Government Energy Management Program.—Section 548(b) of the National Energy Conservation Policy Act (42 U.S.C. 8258(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking "and" after the semicolon;

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following new subparagraph:

"(B) the information required under section 543(b)(2); and";

(2) in paragraph (2), by striking "and" after the semicolon;

(3) in paragraph (3), by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following new paragraph:

"(4) the information required under section 161(d) of the Energy Policy Act of 1992.".

(e) Report on Alternative Fuel Use by Selected Federal Vehicles.—Section 400AA(b)(1)(B) of the Energy Policy and Conservation Act (42 U.S.C. 6374(b)(1)(B)) is amended by striking "and annually thereafter".

(f) Report on the Operation of State Energy Conservation Plans.—Section 365(c) of the Energy Policy and Conservation Act (42 U.S.C. 6325(c)) is amended by striking "report annually" and inserting ", as part of the report required under section 657 of the Department of Energy Organization Act, report".

(g) Report on the Department of Energy.—Section 657 of the Department of Energy Organization Act (42 U.S.C. 7267) is amended by inserting after "section 15 of the Federal Energy Administration Act of 1974," the following: "section 365(c) of the Energy Policy and Conservation Act, section 304(c) of the Nuclear Waste Policy Act of 1982,".

(h) Report on Cost-Effective Ways To Increase Hydropower Production at Federal Water Facilities.—Section 2404 of the Energy Policy Act of 1992 (16 U.S.C. 797 note) is amended—

(1) in subsection (a), by striking "The Secretary, in consultation with the Secretary of the Interior and the Secretary of the Army," and inserting "The Secretary of the Interior and the Secretary of the Army, in consultation with the Secretary,"; and

(2) in subsection (b), by striking "the Secretary" and inserting "the Secretary of the Interior, or the Secretary of the Army,".

(i) Report on Progress Meeting Fusion Energy Program Objectives.—Section 2114(c)(5) of the Energy Policy Act of 1992 (42 U.S.C. 13474(c)(5)) is amended by striking out the first sentence and inserting in lieu thereof "The President shall include in the budget submitted to the Congress each year under section 1105 of title 31, United States Code, a report prepared by the Secretary describing the progress made in meeting the program objectives, milestones, and schedules established in the management plan.".

(j) Report on High-Performance Computing Activities.—Section 203(d) of the High-Performance Computing Act of 1991 (15 U.S.C. 5523(d)) is amended to read as follows:

"(d) Reports.—Not later than 1 year after the date of enactment of this subsection, and thereafter as part of the report required under section 101(a)(3)(A), the Secretary of Energy shall report on activities taken to carry out this Act.".

(k) Report on National High-Performance Computing Program.—Section 101(a)(4) of the High-Performance Computing Act of 1991 (15 U.S.C. 5511(a)(4)) is amended—

(1) in subparagraph (D), by striking "and" at the end;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following new subparagraph:

"(E) include the report of the Secretary of Energy required by section 203(d); and".

(l) Report on Nuclear Waste Disposal Program.—Section 304(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10224(d)) is amended to read as follows:

"(d) Audit by GAO.—If requested by either House of the Congress (or any committee thereof) or if considered necessary by the Comptroller General, the General Accounting Office shall conduct an audit of the Office, in accord with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit a report on the results of each audit conducted under this section.".

CHAPTER 6—DEPARTMENT OF HEALTH AND HUMAN SERVICES

SEC. 1061. REPORTS ELIMINATED.

(a) Report on the Effects of Toxic Substances.—Subsection (c) of section 27 of the Toxic Substance Control Act (15 U.S.C. 2626(c)) is repealed.

(b) Report on Compliance With the Consumer-Patient Radiation Health and Safety Act.—Subsection (d) of section 981 of the Consumer-Patient Radiation Health and Safety Act of 1981 (42 U.S.C. 10006(d)) is repealed.

(c) Report on Evaluation of Title VIII Programs.—Section 859 of the Public Health Service Act (42 U.S.C. 298b–6) is repealed.

(d) Report on Model System for Payment for Outpatient Hospital Services.—Paragraph (6) of section 1135(d) of the Social Security Act (42 U.S.C. 1320b–5(d)(6)) is repealed.

(e) Report on Medicare Treatment of Uncompensated Care.—Paragraph (2) of section 603(a) of the Social Security Amendments of 1983 (42 U.S.C. 1395ww note) is repealed.

(f) Report on Program To Assist Homeless Individuals.—Subsection (d) of section 9117 of the Omnibus Budget Reconciliation Act of 1987 (42 U.S.C. 1383 note) is repealed.

SEC. 1062. REPORTS MODIFIED.

(a) Report of the Surgeon General.—Section 239 of the Public Health Service Act (42 U.S.C. 238h) is amended to read as follows:

"BIANNUAL REPORT

"Sec. 239. The Surgeon General shall transmit to the Secretary, for submission to the Congress, on January 1, 1995, and on January 1, every 2 years thereafter, a full report of the administration of the functions of the Service under this Act, including a detailed statement of receipts and disbursements.".

(b) Report on Health Service Research Activities.—Subsection (b) of section 494A of the Public Health Service Act (42 U.S.C. 289c–1(b)) is amended by striking "September 30, 1993, and annually thereafter" and inserting "December 30, 1993, and each December 30 thereafter".

(c) Report on Family Planning.—Section 1009(a) of the Public Health Service Act (42 U.S.C. 300a–7(a)) is amended by striking "each fiscal year" and inserting "fiscal year 1995, and each second fiscal year thereafter,".

(d) Report on the Status of Health Information and Health Promotion.—Section 1705(a) of the Public Health Service Act (42 U.S.C. 300u–4) is amended in the first sentence by striking out "annually" and inserting in lieu thereof "biannually".

CHAPTER 7—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 1071. REPORTS ELIMINATED.

(a) Reports on Public Housing Homeownership and Management Opportunities.—Section 21(f) of the United States Housing Act of 1937 (42 U.S.C. 1437s(f)) is repealed.

(b) Interim Report on Public Housing Mixed Income New Communities Strategy Demonstration.—Section 522(k)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437f note) is repealed.

(c) Biennial Report on Interstate Land Sales Registration Program.—Section 1421 of the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1719a) is repealed.

(d) Quarterly Report on Activities Under the Fair Housing Initiatives Program.—Section 561(e)(2) of the Housing and Community Development Act of 1987 (42 U.S.C. 3616a(e)(2)) is repealed.

(e) Collection of and Annual Report on Racial and Ethnic Data.—Section 562(b) of the Housing and Community Development Act of 1987 (42 U.S.C. 3608a(b)) is repealed.

SEC. 1072. REPORTS MODIFIED.

(a) Report on Homeownership of Multifamily Units Program.—Section 431 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12880) is amended—

(1) in the section heading, by striking "**ANNUAL**"; and

(2) by striking "The Secretary shall annually" and inserting "The Secretary shall no later than December 31, 1995,".

(b) Triennial Audit of Transactions of National Homeownership Foundation.—Section 107(g)(1) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701y(g)(1)) is amended by striking the last sentence.

(c) Report on Low-Income Home Energy Assistance Program.—Section 2605(h) of the Low-Income Home Energy Assistance Act of 1981 (Public Law 97–35; 42 U.S.C. 8624(h)), is amended by striking out "(but not less frequently than every three years),".

CHAPTER 8—DEPARTMENT OF THE INTERIOR

SEC. 1081. REPORTS ELIMINATED.

(a) Report on Audits in Federal Royalty Management System.—Section 17(j) of the Mineral Leasing Act (30 U.S.C. 226(j)) is amended by striking the last sentence.

(b) Report on Domestic Mining, Minerals, and Mineral Reclamation Industries.—

Section 2 of the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a) is amended by striking the last sentence.

(c) Report on Phase I of the High Plains States Groundwater Demonstration Project.—Section 3(d) of the High Plains States Groundwater Demonstration Program Act of 1983 (43 U.S.C. 390g–1(d)) is repealed.

(d) Report on Reclamation Reform Act Compliance.—Section 224(g) of the Reclamation Reform Act of 1982 (43 U.S.C. 390ww(g)) is amended by striking the last 2 sentences.

(e) Report on Geological Surveys Conducted Outside the Domain of the United States.—Section 2 of Public Law 87–626 (43 U.S.C. 31(c)) is repealed.

(f) Report on Recreation Use Fees.—Section 4(h) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460*l*–6a(h)) is repealed.

(g) Report on Federal Surplus Real Property Public Benefit Discount Program for Parks and Recreation.—Section 203(o)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(o)(1)) is amended by striking "subsection (k) of this section and".

SEC. 1082. REPORTS MODIFIED.

(a) Report on Levels of the Ogallala Aquifer.—Title III of the Water Resources Research Act of 1984 (42 U.S.C. 10301 note) is amended—

(1) in section 306, by striking "annually" and inserting "biennially"; and

(2) in section 308, by striking "intervals of one year" and inserting "intervals of 2 years".

(b) Report on Effects of Outer Continental Shelf Leasing Activities on Human, Marine, and Coastal Environments.—Section 20(e) of the Outer Continental Shelf Lands Act (43 U.S.C. 1346(e)) is amended by striking "each fiscal year" and inserting "every 3 fiscal years".

CHAPTER 9—DEPARTMENT OF JUSTICE

SEC. 1091. REPORTS ELIMINATED.

(a) Report on Crime and Crime Prevention.—(1) Section 3126 of title 18, United States Code, is repealed.

(2) The table of sections for chapter 206 of title 18, United States Code, is amended by striking out the item relating to section 3126.

(b) Report on Drug Interdiction Task Force.—Section 3301(a)(1)(C) of the National Drug Interdiction Act of 1986 (21 U.S.C. 801 note; Public Law 99–570; 100 Stat. 3207–98) is repealed.

(c) Report on Equal Access to Justice.—Section 2412(d)(5) of title 28, United States Code, is repealed.

(d) Report on Federal Offender Characteristics.—Section 3624(f)(6) of title 18, United States Code, is repealed.

(e) Report on Costs of Death Penalty.—The Anti-Drug Abuse Act of 1988 (Public Law 100–690; 102 Stat. 4395; 21 U.S.C. 848 note) is amended by striking out section 7002.

(f) Mineral Lands Leasing Act.—Section 8B of the Mineral Lands Leasing Act (30 U.S.C. 208–2) is repealed.

(g) Small Business Act.—Subsection (c) of section 10 of the Small Business Act (15 U.S.C. 639(c)) is repealed.

(h) Energy Policy and Conservation Act.—Section 252(i) of the Energy Policy Conservation Act (42 U.S.C. 6272(i)) is amended by striking ", at least once every 6 months, a report" and inserting ", at such intervals as are appropriate based on significant developments and issues, reports".

(i) Report on Forfeiture Fund.—Section 524(c) of title 28, United States Code, is amended—

(1) by striking out paragraph (7); and

(2) by redesignating paragraphs (8) through (12) as paragraphs (7) through (11), respectively.

CHAPTER 10—DEPARTMENT OF LABOR

SEC. 1101. REPORTS ELIMINATED.

Section 408(d) of the Veterans Education and Employment Amendments of 1989 (38 U.S.C. 4100 note) is repealed.

SEC. 1102. REPORTS MODIFIED.

(a) Report on the Activities Conducted Under the Fair Labor Standards Act of 1938.—Section 4(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 204(d)(1)) is amended—

(1) by striking "annually" and inserting "biannually"; and

(2) by striking "preceding year" and inserting "preceding two years".

(b) Annual Report of the Office of Workers' Compensation.—

(1) Report on the administration of the Longshore and Harbor Workers' Compensation Act.—Section 42 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 942) is amended—

(A) by striking "beginning of each" and all that follows through "Amendments of 1984" and inserting "end of each fiscal year"; and

(B) by adding the following new sentence at the end: "Such report shall include the annual reports required under section 426(b) of the Black Lung Benefits Act (30 U.S.C. 936(b)) and section 8194 of title 5, United States Code, and shall be identified as the Annual Report of the Office of Workers' Compensation Programs.".

(2) Report on the administration of the Black Lung Benefits Program.—Section 426(b) of the "Black Lung Benefits Act (30 U.S.C. 936(b)) is amended—

(A) by striking "Within" and all that follows through "Congress the" and inserting "At the end of each fiscal year, the"; and

(B) by adding the following new sentence at the end: "Each such report shall be prepared and submitted to Congress in accordance with the requirement with respect to submission under section 42 of the Longshore Harbor Workers' Compensation Act (33 U.S.C. 942).".

(3) Report on the administration of the Federal Employees' Compensation Act.—(A) Subchapter I of chapter 81 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 8152. Annual report

"The Secretary of Labor shall, at the end of each fiscal year, prepare a report with respect to the administration of this chapter. Such report shall be submitted to Congress in accordance with the requirement with respect to submission under section 42 of the Longshore Harbor Workers' Compensation Act (33 U.S.C. 942).".

(B) The table of sections for chapter 81 of title 5, United States Code, is amended by inserting after the item relating to section 8151 the following:

"8152. Annual report.".

(c) Annual Report on the Department of Labor.—Section 9 of an Act entitled "An Act to create a Department of Labor", approved March 4, 1913 (29 U.S.C. 560) is amended by striking "make a report" and all that follows through "the department" and inserting "prepare and submit to Congress the financial statements of the Department that have been audited".

CHAPTER 11—DEPARTMENT OF STATE

SEC. 1111. REPORTS ELIMINATED.

Section 8 of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2606) is amended by striking subsection (b), and redesignating subsection (c) as subsection (b).

CHAPTER 12—DEPARTMENT OF TRANSPORTATION

SEC. 1121. REPORTS ELIMINATED.

(a) Report on Deepwater Port Act of 1974.—Section 20 of the Deepwater Port Act of 1974 (33 U.S.C. 1519) is repealed.

(b) Report on Coast Guard Logistics Capabilities Critical to Mission Performance.—Sections 5(a)(2) and 5(b) of the Coast Guard Authorization Act of 1988 (10 U.S.C. 2304 note) are repealed.

(c) Report on Marine Plastic Pollution Research and Control Act of 1987.—Section 2201(a) of the Marine Plastic Pollution Research and Control Act of 1987 (33 U.S.C. 1902 note) is amended by striking "biennially" and inserting "triennially".

(d) Report on Applied Research and Technology Program.—Section 307(e)(11) of title 23, United States Code, is repealed.

(e) Reports on Highway Safety Improvement Programs.—

(1) Report on railway-highway crossings program.—Section 130(g) of title 23, United States Code, is amended by striking the last 3 sentences.

(2) Report on hazard elimination program.—Section 152(g) of title 23, United States Code, is amended by striking the last 3 sentences.

(f) Report on Highway Safety Performance—Fatal and Injury Accident Rates on Public Roads in the United States.—Section 207 of the Highway Safety Act of 1982 (23 U.S.C. 401 note) is repealed.

(g) Report on Highway Safety Program Standards.—Section 402(a) of title 23, United States Code, is amended by striking the fifth sentence.

(h) Report on Railroad-Highway Demonstration Projects.—Section 163(o) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 130 note) is repealed.

(i) Report on Uniform Relocation Act Amendments of 1987.—Section 103(b)(2) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4604(b)(2)) is repealed.

(j) Report on Federal Railroad Safety Act of 1970.—Section 211 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 440) is repealed.

(k) Report on Railroad Financial Assistance.—Section 308(d) of title 49, United States Code, is repealed.

(l) Report on Use of Advanced Technology by the Automobile Industry.—Section 305 of the Automotive Propulsion Research and Development Act of 1978 (15 U.S.C. 2704) is amended by striking the last sentence.

(m) Report on Obligations.—Section 4(b) of the Federal Transit Act (49 U.S.C. App. 1603(b)) is repealed.

(n) Report on Suspended Light Rail System Technology Pilot Project.—Section 26(c)(11) of the Federal Transit Act (49 U.S.C. App. 1622(c)(11)) is repealed.

(o) Report on Saint Lawrence Seaway Development Corporation.—Section 10(a) of the Act of May 13, 1954 (68 Stat. 96, chapter 201; 33 U.S.C. 989(a)) is repealed.

(p) Reports on Pipelines on Federal Lands.—Section 28(w)(4) of the Mineral Leasing Act (30 U.S.C. 185(w)(4)) is repealed.

(q) Reports on Pipeline Safety.—

(1) Report on natural gas pipeline safety act of 1968.—Section 16(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1683(a)) is amended in the first sentence by striking "of each year" and inserting "of each odd-numbered year".

(2) Report on hazardous liquid pipeline safety act of 1979.—Section 213 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2012) is amended in the first sentence by striking "of each year" and inserting "of each odd-numbered year".

SEC. 1122. REPORTS MODIFIED.

(a) Report on Major Acquisition Projects.—Section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (Public Law 102–338; 106 Stat. 1551) is amended—

(1) by striking "quarter of any fiscal year beginning after December 31, 1992, unless the Commandant of the Coast Guard first submits a quarterly report" and inserting "half of any fiscal year beginning after December 31, 1995, unless the Commandant of the Coast Guard first submits a semiannual report"; and

(2) by striking "quarter." and inserting "half-fiscal year.".

(b) Report on Oil Spill Liability Trust Fund.—The quarterly report regarding the Oil Spill Liability Trust Fund required to be submitted to the House and Senate Committees on Appropriations under House Report 101–892, accompanying the appropriations for the Coast Guard in the Department of Transportation and Related Agencies Appropriations Act, 1991, shall be submitted not later than 30 days after the end of the fiscal year in which this Act is enacted and annually thereafter.

(c) Report on Joint Federal and State Motor Fuel Tax Compliance Project.—Section 1040(d)(1) of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 101 note) is amended by striking "September 30 and".

(d) Report on Public Transportation.—Section 308(e)(1) of title 49, United States Code, is amended by striking "January of each even-numbered year" and inserting "March 1995, March 1996, and March of each odd-numbered year thereafter".

(e) Report on Nation's Highways and Bridges.—Section 307(h) of title 23, United States Code, is amended by striking "January 1983, and in January of every second year thereafter" and inserting "March 1995, March 1996, and March of each odd-numbered year thereafter".

CHAPTER 13—DEPARTMENT OF THE TREASURY

SEC. 1131. REPORTS ELIMINATED.

(a) Report on the Operation and Status of State and Local Government Fiscal Assistance Trust Fund.—Paragraph (8) of section 14001(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (31 U.S.C. 6701 note) is repealed.

(b) Report on the Antirecession Provisions of the Public Works Employment Act of 1976.—Section 213 of the Public Works Employment Act of 1976 (42 U.S.C. 6733) is repealed.

(c) Report on the Asbestos Trust Fund.—Paragraph (2) of section 5(c) of the Asbestos Hazard Emergency Response Act of 1986 (20 U.S.C. 4022(c)) is repealed.

SEC. 1132. REPORTS MODIFIED.

(a) Report on the World Cup USA 1994 Commemorative Coin Act.—Subsection (g) of section 205 of the World Cup USA 1994 Commemorative Coin Act (31 U.S.C. 5112 note) is amended by striking "month" and inserting "calendar quarter".

(b) Reports on Various Funds.—Subsection (b) of section 321 of title 31, United States Code, is amended—

(1) by striking "and" at the end of paragraph (5),

(2) by striking the period at the end of paragraph (6) and inserting "; and", and

(3) by adding after paragraph (6) the following new paragraph:

"(7) notwithstanding any other provision of law, fulfill any requirement to issue a report on the financial condition of any fund on the books of the Treasury by including the required information in a consolidated report, except that information with respect to a specific fund shall be separately reported if the Secretary determines that the consolidation of such information would result in an unwarranted delay in the availability of such information.".

(c) Report on the James Madison-Bill of Rights Commemorative Coin Act.—Subsection (c) of section 506 of the James Madison-Bill of Rights Commemorative Coin Act (31 U.S.C. 5112 note) is amended by striking out "month" and inserting in lieu thereof "calendar quarter".

CHAPTER 14—DEPARTMENT OF VETERANS AFFAIRS

SEC. 1141. REPORTS ELIMINATED.

(a) Report on Furnishing Contract Care Services.—Section 1703(c) of title 38, United States Code, is repealed.

(b) Report on Adequacy of Rates for State Home Care.—Section 1741 of such title is amended—

(1) by striking out subsection (c); and

(2) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(c) Report on Loans To Purchase Manufactured Homes.—Section 3712 of such title is amended—

(1) by striking out subsection (l); and

(2) by redesignating subsection (m) as subsection (l).

(d) Report on Level of Treatment Capacity.—Section 8110(a)(3) of such title is amended—

(1) in subparagraph (A)—

(A) by striking out "(A)"; and

(B) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively; and

(2) by striking out subparagraph (B).

(e) Report on Compliance With Funded Personnel Coding.—

(1) Repeal of report requirement.—Section 8110(a)(4) of title 38, United States Code, is amended by striking out subparagraph (C).

(2) Conforming amendments.—Section 8110(a)(4) of title 38, United States Code, is amended by—

(A) redesignating subparagraph (C) as subparagraph (D);

(B) in subparagraph (A), by striking out "subparagraph (D)" and inserting in lieu thereof "subparagraph (C)"; and

(C) in subparagraph (B), by striking out "subparagraph (D)" and inserting in lieu thereof "subparagraph (C)".

Subtitle II—Independent Agencies

CHAPTER 1—ACTION

SEC. 2011. REPORTS ELIMINATED.

Section 226 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5026) is amended—

(1) by striking subsection (b); and

(2) in subsection (a)—

(A) in paragraph (2), by striking "(2)" and inserting "(b)"; and

(B) in paragraph (1)—

(i) by striking "(1)(A)" and inserting "(1)"; and

(ii) in subparagraph (B)—

(I) by striking "(B)" and inserting "(2)"; and

(II) by striking "subparagraph (A)" and inserting "paragraph (1)".

CHAPTER 2—ENVIRONMENTAL PROTECTION AGENCY

SEC. 2021. REPORTS ELIMINATED.

(a) Report on Allocation of Water.—Section 102 of the Federal Water Pollution Control Act (33 U.S.C. 1252) is amended by striking subsection (d).

(b) Report on Variance Requests.—Section 301(n) of the Federal Water Pollution Control Act (33 U.S.C. 1311(n)) is amended by striking paragraph (8).

(c) Report on Implementation of Clean Lakes Projects.—Section 314(d) of the Federal Water Pollution Control Act (33 U.S.C. 1324(d)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(d) Report on Use of Municipal Secondary Effluent and Sludge.—Section 516 of the Federal Water Pollution Control Act (33 U.S.C. 1375) (as amended by subsection (g)) is further amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(e) Report on Certain Water Quality Standards and Permits.—Section 404 of the Water Quality Act of 1987 (Public Law 100–4; 33 U.S.C. 1375 note) is amended—

(1) by striking subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(f) Report on Class V Wells.—Section 1426 of title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act") (42 U.S.C. 300h–5) is amended—

(1) in subsection (a), by striking "(a) Monitoring Methods.—"; and

(2) by striking subsection (b).

(g) Report on Sole Source Aquifer Demonstration Program.—Section 1427 of title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act") (42 U.S.C. 300h–6) is amended—

(1) by striking subsection (l); and

(2) by redesignating subsections (m) and (n) as subsections (l) and (m), respectively.

(h) Report on Supply of Safe Drinking Water.—Section 1442 of title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act") (42 U.S.C. 300h–6) is amended—

(1) by striking subsection (c);

(2) by redesignating subsection (d) as subsection (c); and

(3) by redesignating subsections (f) and (g) as subsections (d) and (e), respectively.

(i) Report on Nonnuclear Energy and Technologies.—Section 11 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5910) is repealed.

(j) Report on Emissions at Coal-Burning Powerplants.—

(1) Section 745 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8455) is repealed.

(2) The table of contents in section 101(b) of such Act (42 U.S.C. prec. 8301) is amended by striking the item relating to section 745.

(k) 5-Year Plan for Environmental Research, Development, and Demonstration.—

(1) Section 5 of the Environmental Research, Development, and Demonstration Authorization Act of 1976 (42 U.S.C. 4361) is repealed.

(2) Section 4 of the Environmental Research, Development, and Demonstration Authorization Act of 1978 (42 U.S.C. 4361a) is repealed.

(3) Section 8 of such Act (42 U.S.C. 4365) is amended—

(A) by striking subsection (c); and

(B) by redesignating subsections (d) through (i) as subsections (c) through (h), respectively.

(l) Plan on Assistance to States for Radon Programs.—Section 305 of the Toxic Substances Control Act (15 U.S.C. 2665) is amended—

(1) by striking subsection (d); and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

CHAPTER 3—EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 2031. REPORTS MODIFIED.

Section 705(k)(2)(C) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4(k)(2)(C)) is amended—

(1) in the matter preceding clause (i), by striking "including" and inserting "including information, presented in the aggregate, relating to";

(2) in clause (i), by striking "the identity of each person or entity" and inserting "the number of persons and entities";

(3) in clause (ii), by striking "such person or entity" and inserting "such persons and entities"; and

(4) in clause (iii)—

(A) by striking "fee" and inserting "fees"; and

(B) by striking "such person or entity" and inserting "such persons and entities".

CHAPTER 4—FEDERAL AVIATION ADMINISTRATION

SEC. 2041. REPORTS ELIMINATED.

Section 7207(c)(4) of the Anti-Drug Abuse Act of 1988 (Public Law 100–690; 102 Stat. 4428; 49 U.S.C. App. 1354 note) is amended—

(1) by striking out "GAO"; and

(2) by striking out "the Comptroller General" and inserting in lieu thereof "the Department of Transportation Inspector General".

CHAPTER 5—FEDERAL COMMUNICATIONS COMMISSION

SEC. 2051. REPORTS ELIMINATED.

(a) Report to the Congress Under the Communications Satellite Act of 1962.—Section 404(c) of the Communications Satellite Act of 1962 (47 U.S.C. 744(c)) is repealed.

(b) Reimbursement for Amateur Examination Expenses.—Section 4(f)(4)(J) of the Communications Act of 1934 (47 U.S.C. 154(f)(4)(J)) is amended by striking out the last sentence.

CHAPTER 6—FEDERAL DEPOSIT INSURANCE CORPORATION

SEC. 2061. REPORTS ELIMINATED.

Section 102(b)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Public Law 102–242; 105 Stat. 2237; 12 U.S.C. 1825 note) is amended to read as follows:

"(1) Quarterly reporting.—Not later than 90 days after the end of any calendar quarter in which the Federal Deposit Insurance Corporation (hereafter in this section referred to as the 'Corporation') has any obligations pursuant to section 14 of the Federal Deposit Insurance Act outstanding, the Comptroller General of the United States shall submit a report on the Corporation's compliance at the end of that quarter with section 15(c) of the Federal Deposit Insurance Act to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives. Such a report shall be included in the Comptroller General's audit report for that year, as required by section 17 of the Federal Deposit Insurance Act.".

CHAPTER 7—FEDERAL EMERGENCY MANAGEMENT AGENCY

SEC. 2071. REPORTS ELIMINATED.

Section 201(h) of the Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281(h)) is amended by striking the second proviso.

CHAPTER 8—FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

SEC. 2081. REPORTS ELIMINATED.

Section 9503 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The requirements of this section are satisfied with respect to the Thrift Savings Plan described under subchapter III of chapter 84 of title 5, by preparation and transmission of the report described under section 8439(b) of such title.".

CHAPTER 9—GENERAL SERVICES ADMINISTRATION

SEC. 2091. REPORTS ELIMINATED.

(a) Report on Properties Conveyed for Historic Monuments and Correctional Facilities.—Section 203(o) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(o)) is amended—

(1) by striking out paragraph (1);

(2) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

(3) in paragraph (2) (as so redesignated) by striking out "paragraph (2)" and inserting in lieu thereof "paragraph (3)".

(b) Report on Proposed Sale of Surplus Real Property and Report on Negotiated Sales.—Section 203(e)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(e)(6)) is repealed.

(c) Report on Properties Conveyed for Wildlife Conservation.—Section 3 of the Act entitled "An Act authorizing the transfer of certain real property for wildlife, or other purposes.", approved May 19, 1948 (16 U.S.C. 667d; 62 Stat. 241) is amended by striking out "and shall be included in the annual budget transmitted to the Congress".

CHAPTER 10—INTERSTATE COMMERCE COMMISSION

SEC. 2101. REPORTS ELIMINATED.

Section 10327(k) of title 49, United States Code, is amended to read as follows:

"(k) If an extension granted under subsection (j) is not sufficient to allow for completion of necessary proceedings, the Commission may grant a further extension in an extraordinary situation if a majority of the Commissioners agree to the further extension by public vote.".

CHAPTER 11—LEGAL SERVICES CORPORATION

SEC. 2111. REPORTS MODIFIED.

Section 1009(c)(2) of the Legal Services Corporation Act (42 U.S.C. 2996h(c)(2)) is amended by striking out "The" and inserting in lieu thereof "Upon request, the".

CHAPTER 12—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SEC. 2121. REPORTS ELIMINATED.

Section 21(g) of the Small Business Act (15 U.S.C. 648(g)) is amended to read as follows:

"(g) National Aeronautics and Space Administration and Industrial Application Centers.—The National Aeronautics and Space Administration and industrial application centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in the program.".

CHAPTER 13—NATIONAL COUNCIL ON DISABILITY

SEC. 2131. REPORTS ELIMINATED.

Section 401(a) of the Rehabilitation Act of 1973 (29 U.S.C. 781(a)) is amended—

(1) by striking paragraph (9); and

(2) by redesignating paragraphs (10) and (11) as paragraphs (9) and (10), respectively.

CHAPTER 14—NATIONAL SCIENCE FOUNDATION

SEC. 2141. REPORTS ELIMINATED.

(a) Strategic Plan for Science and Engineering Education.—Section 107 of the Education for Economic Security Act (20 U.S.C. 3917) is repealed.

(b) Budget Estimate.—Section 14 of the National Science Foundation Act of 1950 (42 U.S.C. 1873) is amended by striking subsection (j).

CHAPTER 15—NATIONAL TRANSPORTATION SAFETY BOARD

SEC. 2151. REPORTS MODIFIED.

Section 305 of the Independent Safety Board Act of 1974 (49 U.S.C. 1904) is amended—

(1) in paragraph (2) by adding "and" after the semicolon;

(2) in paragraph (3) by striking out "; and" and inserting in lieu thereof a period; and

(3) by striking out paragraph (4).

CHAPTER 16—NEIGHBORHOOD REINVESTMENT CORPORATION

SEC. 2161. REPORTS ELIMINATED.

Section 607(c) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8106(c)) is amended by striking the second sentence.

CHAPTER 17—NUCLEAR REGULATORY COMMISSION

SEC. 2171. REPORTS MODIFIED.

Section 208 of the Energy Reorganization Act of 1974 (42 U.S.C. 5848) is amended by striking "each quarter a report listing for that period" and inserting "an annual report listing for the previous fiscal year".

CHAPTER 18—OFFICE OF PERSONNEL MANAGEMENT

SEC. 2181. REPORTS ELIMINATED.

(a) Report on Career Reserved Positions.—(1) Section 3135 of title 5, United States Code, is repealed.

(2) The table of sections for chapter 31 of title 5, United States Code, is amended by striking out the item relating to section 3135.

(b) Report on Performance Awards.—Section 4314(d)(3) of title 5, United States Code, is repealed.

(c) Report on Training Programs.—(1) Section 4113 of title 5, United States Code, is repealed.

(2) The table of sections for chapter 41 of title 5, United States Code, is amended by striking out the item relating to section 4113.

(d) Report on Prevailing Rate System.—Section 5347 of title 5, United States Code, is amended by striking out the fourth and fifth sentences.

(e) Report on Activities of the Merit Systems Protection Board and the Office of Personnel Management.—Section 2304 of title 5, United States Code, is amended—

(1) in subsection (a) by striking out "(a)"; and

(2) by striking subsection (b).

SEC. 2182. REPORTS MODIFIED.

(a) Report on Senior Executive Service Positions.—Section 3135(a) of title 5, United States Code, is amended—

(1) in paragraph (1) by striking out ", and the projected number of Senior Executive Service positions to be authorized for the next 2 fiscal years, in the aggregate and by agency";

(2) by striking out paragraphs (3) and (8); and

(3) by redesignating paragraphs (4), (5), (6), (7), (9), and (10) as paragraphs (3), (4), (5), (6), (7), and (8), respectively.

(b) Report on District of Columbia Retirement Fund.—Section 145 of the District of Columbia Retirement Reform Act (Public Law 96–122; 93 Stat. 882) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) by striking out "(1)";

(ii) by striking out "and the Comptroller General shall each" and inserting in lieu thereof "shall"; and

(iii) by striking out "each"; and

(B) by striking out paragraph (2); and

(2) in subsection (d), by striking out "the Comptroller General and" each place it appears.

(c) Report on Revolving Fund.—Section 1304(e)(6) of title 5, United States Code, is amended by striking out "at least once every three years".

CHAPTER 19—OFFICE OF THRIFT SUPERVISION

SEC. 2191. REPORTS MODIFIED.

Section 18(c)(6)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1438(c)(6)(B)) is amended—

(1) by striking out "annually";

(2) by striking out "audit, settlement," and inserting in lieu thereof "settlement"; and

(3) by striking out "; and the first audit" and all that follows through "enacted".

CHAPTER 20—PANAMA CANAL COMMISSION

SEC. 2201. REPORTS ELIMINATED.

(a) Reports on Panama Canal.—Section 1312 of the Panama Canal Act of 1979 (Public Law 96–70; 22 U.S.C. 3722) is repealed.

(b) Technical and Conforming Amendment.—The table of contents in section 1 of such Act is amended by striking out the item relating to section 1312.

CHAPTER 21—POSTAL SERVICE

SEC. 2211. REPORTS MODIFIED.

(a) Report on Consumer Education Programs.—Section 4(b) of the mail Order Consumer Protection Amendments of 1983 (39 U.S.C. 3001 note; Public Law 98–186; 97 Stat. 1318) is amended to read as follows:

"(b) A summary of the activities carried out under subsection (a) shall be included in the first semiannual report submitted each year as required under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.).".

(b) Report on Investigative Activities.—Section 3013 of title 39, United States Code, is amended in the last sentence by striking out "the Board shall transmit such report to the Congress" and inserting in lieu thereof "the information in such report shall be included in the next semiannual report required under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.)".

CHAPTER 22—RAILROAD RETIREMENT BOARD

SEC. 2221. REPORTS MODIFIED.

Section 502 of the Railroad Retirement Solvency Act of 1983 (45 U.S.C. 231f–1) is amended by striking "On or before July 1, 1985, and each calendar year thereafter" and inserting "As part of the annual report required under section 22(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231u(a))".

CHAPTER 23—THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

SEC. 2231. REPORTS MODIFIED.

Section 21A(k)(9) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(k)(9)) is amended by striking out "the end of each calendar quarter" and inserting in lieu thereof "June 30 and December 31 of each calendar year".

CHAPTER 24—UNITED STATES INFORMATION AGENCY

SEC. 2241. REPORTS ELIMINATED.

Notwithstanding section 601(c)(4) of the Foreign Service Act of 1980 (22 U.S.C. 4001(c)(4)), the reports otherwise required under such section shall not cover the activities of the United States Information Agency.

Subtitle III—Reports by All Departments and Agencies

SEC. 3001. REPORTS ELIMINATED.

(a) Report on Part-Time Employment.—(1) Section 3407 of title 5, United States Code, is repealed.

(2) The table of sections for chapter 34 of title 5, United States Code, is amended by striking out the item relating to section 3407.

(b) Budget Information on Consulting Services.—(1) Section 1114 of title 31, United States Code, is repealed.

(2) The table of sections for chapter 11 of title 31, United States Code, is amended by striking out the item relating to section 1114.

(c) Semiannual Report on Lobbying.—Section 1352 of title 31, United States Code, is amended by—

(1) striking out subsection (d); and

(2) redesignating subsections (e), (f), (g), and (h) as subsections (d), (e), (f), and (g), respectively.

(d) Reports on Program Fraud and Civil Remedies.—(1) Section 3810 of title 31, United States Code, is repealed.

(2) The table of sections for chapter 38 of title 31, United States Code, is amended by striking out the item relating to section 3810.

(e) Report on Right to Financial Privacy Act.—Section 1121 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3421) is repealed.

(f) Report on Foreign Loan Risks.—Section 913(d) of the International Lending Supervision Act of 1983 (12 U.S.C. 3912(d)) is repealed.

(g) Report on Plans To Convert to the Metric System.—Section 12 of the Metric Conversion Act of 1975 (15 U.S.C. 205j–1) is repealed.

(h) Report on Technology Utilization and Intellectual Property Rights.—Section 11(f) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(f)) is repealed.

(i) Report on Extraordinary Contractual Actions To Facilitate the National Defense.—Section 4(a) of the Act entitled "An Act to authorize the making, amendment, and modification of contracts to facilitate the national defense", approved August 28, 1958 (50 U.S.C. 1434(a)), is amended by striking out "all such actions taken" and inserting in lieu thereof "if any such action has been taken".

(j) Reports on Detailing Employees.—Section 619 of the Treasury, Postal Service, and General Government Appropriations Act, 1993 (Public Law 102–393; 106 Stat. 1769), is repealed.

SEC. 3002. REPORTS MODIFIED.

Section 552b(j) of title 5, United States Code, is amended to read as follows:

"(j) Each agency subject to the requirements of this section shall annually report to the Congress regarding the following:

"(1) The changes in the policies and procedures of the agency under this section that have occurred during the preceding 1-year period.

"(2) A tabulation of the number of meetings held, the exemptions applied to close meetings, and the days of public notice provided to close meetings.

"(3) A brief description of litigation or formal complaints concerning the implementation of this section by the agency.

"(4) A brief explanation of any changes in law that have affected the responsibilities of the agency under this section.".

Subtitle IV—Effective Date

SEC. 4001. EFFECTIVE DATE.

Except as otherwise provided in this title, the provisions of this title and amendments made by this title shall take effect on the date of the enactment of this Act.

WELLSTONE AMENDMENT NO. 320

Mr. WELLSTONE proposed an amendment to the bill, S. 244, supra; as follows:

At the appropriate place, add the following new section:

SEC. . SENSE OF CONGRESS.

It is the sense of Congress that Congress should not enact or adopt any legislation that will increase the number of children who are hungry or homeless.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

BINGAMAN (AND OTHERS) AMENDMENT NO. 321

Mr. BINGAMAN (for himself, Mr. Nunn, Mr. Lieberman, Mr. Rockefeller, Mr. Kerrey, Mr. Kennedy, and Mr. Dodd) proposed an amendment to the bill, (H.R. 889) making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes; as follows:

At the end of the amendment add the following:

Sec. 110. It is the sense of the Senate that (1) cost-shared partnerships between the Department of Defense and the private sector to develop dual-use technologies (technologies that have applications both for defense and for commercial markets, such as computers, electronics, advanced materials, communications, and sensors) are increasingly important to ensure efficient use of defense procurement resources, and (2) such partnerships, including Sematech and the Technology Reinvestment Project, need to become the norm for conducting such applied research by the Department of Defense.

McCAIN AMENDMENT NO. 322

Mr. McCAIN proposed an amendment to the bill H.R. 889, supra; as follows:

On page 21, line 9, strike out "$300,000,000" and insert in lieu thereof "$150,000,000".

On page 22, line 15, strike out "$351,000,000" and insert in lieu thereof "$653,000,000".

McCONNELL (AND OTHERS) AMENDMENT NO. 323

Mr. HATFIELD (for Mr. McConnell, for himself, Mr. Leahy, Mr. Jeffords, and Mr. LAUTENBERG) proposed an amendment to the bill H.R. 889, supra; as follows:

On page 27, between lines 6 and 7, insert the following:

CONTRIBUTION TO THE INTERNATIONAL DEVELOPMENT ASSOCIATION

(RESCISSION)

Of the funds made available under this heading in Public Law 103–306, $70 million are rescinded.

In lieu of the Committee amendment on page 27, lines 21 through 25, insert the following:

DEVELOPMENT ASSISTANCE FUND

(RESCISSION)

Of the funds made available under this heading in Public Law 103–87 and Public Law 103–306, $13,000,000 are rescinded.

ASSISTANCE FOR EASTERN EUROPE AND THE BALTIC STATES

(RESCISSION)

Of the funds made available under this heading in Public Law 103–87 and Public Law 103–306, $9,000,000 are rescinded.

ASSISTANCE FOR THE NEW INDEPENDENT STATES OF THE FORMER SOVIET UNION

(RESCISSION)

Of the funds made available under this heading in Public Law 103–87 and Public Law 103–306, $18,000,000 are rescinded, of which not less than $12,000,000 shall be derived from funds allocated for Russia.

GRAMM (AND HOLLINGS) AMENDMENT NO. 324

Mr. HATFIELD (for Mr. GRAMM for himself and Mr. HOLLINGS) proposed an amendment to the bill H.R. 889, supra; as follows:

On page 25 of the Committee bill, strike line 14 through line 12 on page 26, and insert in lieu thereof the following:

"DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

IMMIGRATION EMERGENCY FUND

(RESCISSION)

Of the amounts made available under this heading in Public Law 103–317, $10,000,000 are rescinded.

DEPARTMENT OF COMMERCE

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

INDUSTRIAL TECHNOLOGY SERVICES

(RESCISSION)

Of the amounts made available under this heading in Public Law 103–317 for the Advanced Technology Program, $32,000,000 are rescinded.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH AND FACILITIES

(RESCISSION)

Of the funds made available under this heading in Public Law 103–317, $2,500,000 are rescinded.

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

INFORMATION INFRASTRUCTURE GRANTS

(RESCISSION)

Of the amounts made available under this heading in Public Law 103–317, $34,000,000 are rescinded.

ECONOMIC DEVELOPMENT ADMINISTRATION

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

(RESCISSION)

Of the amounts made available under this heading in Public Law 103–317, $40,000,000 are rescinded.

RELATED AGENCIES

SMALL BUSINESS ADMINISTRATION

SALARIES AND EXPENSES

(RESCISSION)

Of the funds made available under this heading in Public Law 103–317 for tree-planting grants pursuant to section 24 of the Small Business Act, as amended, $15,000,000 are rescinded.

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

(RESCISSION)

Of the funds made available under this heading in Public Law 103–317 for payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, $15,000,000 are rescinded.

DEPARTMENT OF STATE AND RELATED AGENCIES

DEPARTMENT OF STATE

ADMINISTRATION OF FOREIGN AFFAIRS

ACQUISITION AND MAINTENANCE OF BUILDINGS ABROAD

(RESCISSION)

Of unobligated balances available under this heading, $28,500,000 are rescinded.

HELMS (AND FAIRCLOTH) AMENDMENT NO. 325

Mr. HELMS (for himself and Mr. FAIRCLOTH) proposed an amendment to the bill H.R. 889, supra; as follows:

At the end of title I, insert the following:

SEC. 1 . FORT BRAGG, NORTH CAROLINA.

Notwithstanding any other law, for fiscal year 1995 and each fiscal year thereafter, the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall not apply with respect to land under the jurisdiction of the Department of the Army at Fort Bragg, North Carolina.

HELMS (AND OTHERS) AMENDMENT NO. 326

Mr. HELMS (for himself, Mr. DOLE, Mr. MACK, Mr. COVERDELL, Mr. GRAHAM, Mr. D'AMATO, Mr. HATCH, Mr. GRAMM, Mr. THURMOND, Mr. FAIRCLOTH, Mr. GREGG, Mr. INHOFE, Mr. HOLLINGS, Ms. SNOWE, Mr. KYL, Mr. THOMAS, Mr. SMITH, Mr. LIEBERMAN, Mr. WARNER, Mr. NICKLES, and Mr. ROBB) proposed an amendment to the bill H.R. 889, supra; as follows:

At the end of the bill, add the following:

TITLE _—CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT OF 1995

SEC. _01. SHORT TITLE.

This title may be cited as the "Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995".

SEC. _02. FINDINGS.

The Congress makes the following findings:

(1) The economy of Cuba has experienced a decline of approximately 60 percent in the last 5 years as a result of—

(A) the reduction in its subsidization by the former Soviet Union;

(B) 36 years of Communist tyranny and economic mismanagement by the Castro government;

(C) the precipitous decline in trade between Cuba and the countries of the former Soviet bloc; and

(D) the policy of the Russian Government and the countries of the former Soviet bloc to conduct economic relations with Cuba predominantly on commercial terms.

(2) At the same time, the welfare and health of the Cuban people have substantially deteriorated as a result of Cuba's economic decline and the refusal of the Castro regime to permit free and fair democratic elections in Cuba or to adopt any economic or political reforms that would lead to democracy, a market economy, or an economic recovery.

(3) The repression of the Cuban people, including a ban on free and fair democratic elections and the continuing violation of fundamental human rights, has isolated the Cuban regime as the only nondemocratic government in the Western Hemisphere.

(4) As long as no such economic or political reforms are adopted by the Cuban government, the economic condition of the country and the welfare of the Cuban people will not improve in any significant way.

(5) Fidel Castro has defined democratic pluralism as "pluralistic garbage" and has made clear that he has no intention of permitting free and fair democratic elections in Cuba or otherwise tolerating the democratization of Cuban society.

(6) The Castro government, in an attempt to retain absolute political power, continues to utilize, as it has from its inception, torture in various forms (including psychiatric abuse), execution, exile, confiscation, political imprisonment, and other forms of terror and repression as most recently demonstrated by the massacre of more than 70 Cuban men, women, and children attempting to flee Cuba.

(7) The Castro government holds hostage in Cuba innocent Cubans whose relatives have escaped the country.

(8) The Castro government has threatened international peace and security by engaging in acts of armed subversion and terrorism, such as the training and arming of groups dedicated to international violence.

(9) The Government of Cuba engages in illegal international narcotics trade and harbors fugitives from justice in the United States.

(10) The totalitarian nature of the Castro regime has deprived the Cuban people of any peaceful means to improve their condition and has led thousands of Cuban citizens to risk or lose their lives in dangerous attempts to escape from Cuba to freedom.

(11) Attempts to escape from Cuba and courageous acts of defiance of the Castro regime by Cuban pro-democracy and human rights groups have ensured the international community's continued awareness of, and concern for, the plight of Cuba.

(12) The Cuban people deserve to be assisted in a decisive manner in order to end the tyranny that has oppressed them for 36 years.

(13) Radio Marti and Television Marti have both been effective vehicles for providing the people of Cuba with news and information and have helped to bolster the morale of the Cubans living under tyranny.

(14) The consistent policy of the United States towards Cuba since the beginning of the Castro regime, carried out by both

Democratic and Republican administrations, has sought to keep faith with the people of Cuba, and has been effective in isolating the totalitarian Castro regime.

SEC. _03. PURPOSES.

The purposes of this title are—

(1) to strengthen international sanctions against the Castro government;

(2) to encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers;

(3) to provide a policy framework for United States support to the Cuban people in response to the formation of a transition government or a democratically elected government in Cuba; and

(4) to protect the rights of United States persons who own claims to confiscated property abroad.

SEC. _04. DEFINITIONS.

As used in this title—

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

(2) CONFISCATED.—The term "confiscated" refers to the nationalization, expropriation, or other seizure of ownership or control of property by governmental authority—

(A) without adequate and effective compensation or in violation of the law of the place where the property was situated when the confiscation occurred; and

(B) without the claim to the property having been settled pursuant to an international claims settlement agreement.

(3) CUBAN GOVERNMENT.—The term "Cuban government" includes the government of any political subdivision, agency, or instrumentality of the Government of Cuba.

(4) DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA.—The term "democratically elected government in Cuba" means a government described in section _26.

(5) ECONOMIC EMBARGO OF CUBA.—The term "economic embargo of Cuba" refers to the economic embargo imposed against Cuba pursuant to section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)), the International Emergency Economic Powers Act, and the Export Administration Act of 1979.

(6) PROPERTY.—The term "property" means—

(A) any property, right, or interest, including any leasehold interest,

(B) debts owed by a foreign government or by any enterprise which has been confiscated by a foreign government; and

(C) debts which are a charge on property confiscated by a foreign government.

(7) TRAFFICS.—The term "traffics" means selling, transferring, distributing, dispensing, or otherwise disposing of property, or purchasing, receiving, possessing, obtaining control of, managing, or using property.

(8) TRANSITION GOVERNMENT IN CUBA.—The term "transition government in Cuba" means a government described in section _25.

(9) UNITED STATES PERSON.—The term "United States person" means—

(A) any United States citizen, including, in the context of claims to confiscated property, any person who becomes a United States citizen after the property was confiscated but before final resolution of the claim to that property; and

(B) any corporation, trust, partnership, or other juridical entity 50 percent or more beneficially owned by United States citizens.

PART A—STRENGTHENING INTERNATIONAL SANCTIONS AGAINST THE CASTRO GOVERNMENT

SEC. _11. STATEMENT OF POLICY.

It is the sense of the Congress that—

(1) the acts of the Castro government, including its massive, systematic, and extraordinary violations of human rights, are a threat to international peace;

(2) the President should advocate, and should instruct the United States Permanent Representative to the United Nations to propose and seek within the Security Council a mandatory international embargo against the totalitarian government of Cuba pursuant to chapter VII of the Charter of the United Nations, which is similar to consultations conducted by United States representatives with respect to Haiti; and

(3) any resumption of efforts by any independent state of the former Soviet Union to make operational the nuclear facility at Cienfuegos, Cuba, will have a detrimental impact on United States assistance to such state.

SEC. _12. ENFORCEMENT OF THE ECONOMIC EMBARGO OF CUBA.

(a) POLICY.—(1) The Congress hereby reaffirms section 1704(a) of the Cuban Democracy Act of 1992, which states the President should encourage foreign countries to restrict trade and credit relations with Cuba.

(2) The Congress further urges the President to take immediate steps to apply the sanctions described in section 1704(b)(1) of such Act against countries assisting Cuba.

(b) DIPLOMATIC EFFORTS.—The Secretary of State should ensure that United States diplomatic personnel abroad understand and, in their contacts with foreign officials are—

(1) communicating the reasons for the United States economic embargo of Cuba; and

(2) urging foreign governments to cooperate more effectively with the embargo.

(c) EXISTING REGULATIONS.—The President shall instruct the Secretary of the Treasury and the Attorney General to enforce fully the Cuban Assets Control Regulations in part 515 of title 31, Code of Federal Regulations.

(d) VIOLATIONS OF RESTRICTIONS ON TRAVEL TO CUBA.—The penalties provided for in section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16) shall apply to all violations of the Cuban Assets Control Regulations (part 515 of title 31, Code of Federal Regulations) involving transactions incident to travel to and within Cuba.

SEC. _13. PROHIBITION AGAINST INDIRECT FINANCING OF CUBA.

(a) PROHIBITION.—Effective upon the date of enactment of this title, it is unlawful for any United States person, including any officer, director, or agent thereof and including any officer or employee of a United States agency, knowingly to extend any loan, credit, or other financing to a foreign person that traffics in any property confiscated by the Cuban government the claim to which is owned by a United States person.

(b) TERMINATION OF PROHIBITION.—The prohibition of subsection (a) shall cease to apply on the date of termination of the economic embargo of Cuba.

(c) PENALTIES.—Violations of subsection (a) shall be punishable by the same penalties as are applicable to similar violations of the Cuban Assets Control Regulations in part 515 of title 31, Code of Federal Regulations.

(d) DEFINITIONS.—As used in this section—

(1) the term "foreign person" means (A) an alien, and (B) any corporation, trust, partnership, or other juridical entity that is not 50 percent or more beneficially owned by United States citizens; and

(2) the term "United States agency" has the same meaning given to the term "agency" in section 551(1) of title 5, United States Code.

SEC. _14. UNITED STATES OPPOSITION TO CUBAN MEMBERSHIP IN INTERNATIONAL FINANCIAL INSTITUTIONS.

(a) CONTINUED OPPOSITION TO CUBAN MEMBERSHIP IN INTERNATIONAL FINANCIAL INSTITUTIONS.—(1) Except as provided in paragraph (2), the Secretary of the Treasury shall instruct the United States executive director of each international financial institution to vote against the admission of Cuba as a member of such institution until Cuba holds free and fair, democratic elections, conducted under the supervision of internationally recognized observers.

(2) During the period that a transition government in Cuba is in power, the President shall take steps to support the processing of Cuba's application for membership in any international financial institution, subject to the membership taking effect after a democratically elected government in Cuba is in power.

(b) REDUCTION IN UNITED STATES PAYMENTS TO INTERNATIONAL FINANCIAL INSTITUTIONS.—If any international financial institution approves a loan or other assistance to Cuba over the opposition of the United States, then the Secretary of the Treasury shall withhold from payment to such institution an amount equal to the amount of the loan or other assistance, with respect to each of the following types of payment:

(1) The paid-in portion of the increase in capital stock of the institution.

(2) The callable portion of the increase in capital stock of the institution.

(c) DEFINITION.—For purposes of this section, the term "international financial institution" means the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the Inter-American Development Bank.

SEC. _15. UNITED STATES OPPOSITION TO READMISSION OF THE GOVERNMENT OF CUBA TO THE ORGANIZATION OF AMERICAN STATES.

The President should instruct the United States Permanent Representative to the Organization of American States to vote against the readmission of the Government of Cuba to membership in the Organization until the President determines under section _23(c) that a democratically elected government in Cuba is in power.

SEC. _16. ASSISTANCE BY THE INDEPENDENT STATES OF THE FORMER SOVIET UNION OF THE GOVERNMENT OF CUBA.

(a) REPORTING REQUIREMENT.—Not later than 90 days after the date of enactment of this title, the President shall submit to the appropriate congressional committees a report detailing progress towards the withdrawal of personnel of any independent state of the former Soviet Union (within the meaning of section 3 of the FREEDOM Support Act (22 U.S.C. 5801)), including advisers, technicians, and military personnel, from the Cienfuegos nuclear facility in Cuba.

(b) CRITERIA FOR ASSISTANCE.—Section 498A(a)(11) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a(a)(1)) is amended by striking "of military facilities" and inserting "military and intelligence facilities, including the military and intelligence facilities at Lourdes and Cienfuegos,".

(c) INELIGIBILITY FOR ASSISTANCE.—(1) Section 498A(b) of that Act (22 U.S.C. 2295a(b)) is amended—

(A) by striking "or" at the end of paragraph (4);

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

"(5) for the government of any independent state effective 30 days after the President has determined and certified to the appropriate congressional committees (and Congress has not enacted legislation disapproving the determination within the 30-day period) that such government is providing assistance for, or engaging in nonmarket based trade (as defined in section 498B(k)(3)) with, the Government of Cuba; or".

(2) Subsection (k) of section 498B of that Act (22 U.S.C. 2295b(k)), is amended by adding at the end the following:

"(3) NONMARKET BASED TRADE.—As used in section 498A(b)(5), the term 'nonmarket based trade' includes exports, imports, exchanges, or other arrangements that are provided for goods and services (including oil and other petroleum products) on terms more favorable than those generally available in applicable markets or for comparable commodities, including—

"(A) exports to the Government of Cuba on terms that involve a grant, concessional price, guarantee, insurance, or subsidy;

"(B) imports from the Government of Cuba at preferential tariff rates; and

"(C) exchange arrangements that include advance delivery of commodities, arrangements in which the Government of Cuba is not held accountable for unfulfilled exchange contracts, and arrangements under which Cuba does not pay appropriate transportation, insurance, or finance costs.".

(d) FACILITIES AT LOURDES, CUBA.—(1) The Congress expresses its strong disapproval of the extension by Russia of credits equivalent to $200,000,000 in support of the intelligence facility at Lourdes, Cuba, in November 1994.

(2) Section 498A of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a) is amended by adding at the end the following new subsection:

"(d) REDUCTION IN ASSISTANCE FOR SUPPORT OF MILITARY AND INTELLIGENCE FACILITIES IN CUBA.—(1) Notwithstanding any other provision of law, the President shall withhold from assistance allocated for an independent state of the former Soviet Union under this chapter an amount equal to the sum of assistance and credits, if any, provided by such state in support of military and intelligence facilities in Cuba, such as the intelligence facility at Lourdes, Cuba.

"(2) Nothing in this subsection may be construed to apply to—

"(A) assistance provided under the Soviet Nuclear Threat Reduction Act of 1991 (title II of Public Law 102–228) or the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103–160); or

"(B) assistance to meet urgent humanitarian needs under section 498(1), including disaster assistance described in subsection (c)(3) of this section.".

SEC. _17. TELEVISION BROADCASTING TO CUBA.

(a) CONVERSION TO UHF.—The Director of the United States Information Agency shall implement a conversion of television broadcasting to Cuba under the Television Marti Service to ultra high frequency (UHF) broadcasting.

(b) PERIODIC REPORTS.—Not later than 45 days after the date of enactment of this title, and every three months thereafter until the conversion described in subsection (a) is fully implemented, the Director shall submit a report to the appropriate congressional committees on the progress made in carrying out subsection (a).

SEC. _18. REPORTS ON COMMERCE WITH, AND ASSISTANCE TO, CUBA FROM OTHER FOREIGN COUNTRIES.

(a) REPORTS REQUIRED.—Not later than 90 days after the date of enactment of this title, and every year thereafter, the President shall submit a report to the appropriate congressional committees on commerce with, and assistance to, Cuba from other foreign countries during the preceding 12-month period.

(b) CONTENTS OF REPORTS.—Each report required by subsection (a) shall, for the period covered by the report, contain—

(1) a description of all bilateral assistance provided to Cuba by other foreign countries, including humanitarian assistance;

(2) a description of Cuba's commerce with foreign countries, including an identification of Cuba's trading partners and the extent of such trade;

(3) a description of the joint ventures completed, or under consideration, by foreign nationals and business firms involving facilities in Cuba, including an identification of the location of the facilities involved and a description of the terms of agreement of the joint ventures and the names of the parties that are involved;

(4) a determination as to whether or not any of the facilities described in paragraph (3) is the subject of a claim against Cuba by a United States person;

(5) a determination of the amount of Cuban debt owed to each foreign country, including the amount of debt exchanged, forgiven, or reduced under the terms of each investment or operation in Cuba involving foreign nationals or businesses; and

(6) a description of the steps taken to assure that raw materials and semifinished or finished goods produced by facilities in Cuba involving foreign nationals or businesses do not enter the United States market, either directly or through third countries or parties.

SEC. _19. IMPORTATION SANCTION AGAINST CERTAIN CUBAN TRADING PARTNERS.

(a) SANCTION.—Notwithstanding any other provision of law, sugars, syrups, and molasses, that are the product of a country that the President determines has imported sugar, syrup, or molasses that is the product of Cuba, shall not be entered, or withdrawn from warehouse for consumption, into the customs territory of the United States, unless the condition set forth in subsection (b) is met.

(b) CONDITION FOR REMOVAL OF SANCTION.—The sanction set forth in subsection (a) shall cease to apply to a country if the country certifies to the President that the country will not import sugar, syrup, or molasses that is the product of Cuba until free and fair elections, conducted under the supervision of internationally recognized observers, are held in Cuba. Such certification shall cease to be effective if the President makes a subsequent determination under subsection (a) with respect to that country.

(c) REPORTS TO CONGRESS.—The President shall report to the appropriate congressional committees all determinations made under subsection (a) and all certifications made under subsection (b).

(d) REALLOCATION OF SUGAR QUOTAS.—During any period in which a sanction under subsection (a) is in effect with respect to a country, the President may reallocate to other countries the quota of sugars, syrups, and molasses allocated to that country, before the prohibition went into effect, under chapter 17 of the Harmonized Tariff Schedule of the United States.

PART B—SUPPORT FOR A FREE AND INDEPENDENT CUBA

SEC. _21. POLICY TOWARD A TRANSITION GOVERNMENT AND A DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA.

It is the policy of the United States—

(1) to support the self-determination of the Cuban people;

(2) to facilitate a peaceful transition to representative democracy and a free market economy in Cuba;

(3) to be impartial toward any individual or entity in the selection by the Cuban people of their future government;

(4) to enter into negotiations with a democratically elected government in Cuba regarding the status of the United States Naval Base at Guantanamo Bay;

(5) to restore diplomatic relations with Cuba, and support the reintegration of Cuba into entities of the Inter-American System, when the President determines that there exists a democratically elected government in Cuba;

(6) to remove the economic embargo of Cuba when the President determines that there exists a democratically elected government in Cuba; and

(7) to pursue a mutually beneficial trading relationship with a democratic Cuba.

SEC. _22. AUTHORIZATION OF ASSISTANCE FOR THE CUBAN PEOPLE.

(a) AUTHORIZATION.—

(1) IN GENERAL.—The President may provide assistance under this section for the Cuban people after a transition government, or a democratically elected government, is in power in Cuba, as determined under section _23 (a) and (c).

(2) EFFECT ON OTHER LAWS.—

(A) SUPERSEDING OTHER LAWS.—Subject to subparagraph (B), assistance may be provided under this section notwithstanding any other provision of law.

(B) DETERMINATION REQUIRED REGARDING PROPERTY TAKEN FROM UNITED STATES PERSONS.—Subparagraph (A) shall not apply to section 620(a)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)(2)).

(b) RESPONSE PLAN.—

(1) DEVELOPMENT OF PLAN.—The President shall develop a plan detailing the manner in which the United States would provide and implement support for the Cuban people in response to the formation of—

(A) a transition government in Cuba; and

(B) a democratically elected government in Cuba.

(2) TYPES OF ASSISTANCE.—Support for the Cuban people under the plan described in paragraph (1) shall include the following types of assistance:

(A) TRANSITION GOVERNMENT.—Assistance under the plan to a transition government in Cuba shall be limited to such food, medicine, medical supplies and equipment, and other assistance as may be necessary to meet emergency humanitarian needs of the Cuban people.

(B) DEMOCRATICALLY ELECTED GOVERNMENT.—Assistance under the plan for a democratically elected government in Cuba shall consist of assistance to promote free market development, private enterprise, and a mutually beneficial trade relationship between the United States and Cuba. Such assistance should include—

(i) financing, guarantees, and other assistance provided by the Export-Import Bank of the United States;

(ii) insurance, guarantees, and other assistance provided by the Overseas Private Investment Corporation for investment projects in Cuba;

(iii) assistance provided by the Trade and Development Agency;

(iv) international narcotics control assistance provided under chapter 8 of part I of the Foreign Assistance Act of 1961; and

(v) Peace Corps activities.

(c) CARIBBEAN BASIN INITIATIVE.—(1) The President shall determine, as part of the plan developed under subsection (b), whether or not to designate Cuba as a beneficiary country under section 212 of the Caribbean Basin Economic Recovery Act.

(2) Any designation of Cuba as a beneficiary country under section 212 of such Act may only be made after a democratically elected government in Cuba is in power. Such designation may be made notwithstanding any other provision of law.

(3) The table contained in section 212(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)) is amended by inserting "Cuba" between "Costa Rica" and "Dominica".

(d) TRADE AGREEMENTS.—Notwithstanding any other provision of law, the President, upon transmittal to Congress of a determination under section _23(c) that a democratically elected government in Cuba is in power, should—

(1) take the steps necessary to extend nondiscriminatory trade treatment (most-favored-nation status) to the products of Cuba; and

(2) take such other steps as will encourage renewed investment in Cuba.

(e) COMMUNICATION WITH THE CUBAN PEOPLE.—The President should take the necessary steps to communicate to the Cuban people the plan developed under this section.

(f) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this title, the President shall transmit to the appropriate congressional committees a report describing in detail the plan developed under this section.

SEC. _23. IMPLEMENTATION; REPORTS TO CONGRESS.

(a) IMPLEMENTATION WITH RESPECT TO TRANSITION GOVERNMENT.—Upon making a determination that a transition government in Cuba is in power, the President shall transmit that determination to the appropriate congressional committees and should, subject to the availability of appropriations, commence the provision of assistance to such transition government under the plan developed under section _22(b).

(b) REPORTS TO CONGRESS.—(1) The President shall transmit to the appropriate congressional committees a report setting forth the strategy for providing assistance described in section _22(b)(2)(A) to the transition government in Cuba under the plan of assistance developed under section _22(b), the types of such assistance, and the extent to which such assistance has been distributed in accordance with the plan.

(2) The President shall transmit the report not later than 90 days after making the determination referred to in paragraph (1), except that the President shall transmit the report in preliminary form not later than 15 days after making that determination.

(c) IMPLEMENTATION WITH RESPECT TO DEMOCRATICALLY ELECTED GOVERNMENT.—The President shall, upon determining that a democratically elected government in Cuba is in power, transmit that determination to the appropriate congressional committees and should, subject to the availability of appropriations, commence the provision of assistance to such democratically elected government under the plan developed under section _22(b)(2)(B).

(d) ANNUAL REPORTS TO CONGRESS.—Not later than 60 days after the end of each fiscal year, the President shall transmit to the appropriate congressional committees a report on the assistance provided under the plan developed under section _22(b), including a description of each type of assistance, the amounts expended for such assistance, and a description of the assistance to be provided under the plan in the current fiscal year.

SEC. _24. TERMINATION OF THE ECONOMIC EMBARGO OF CUBA.

(a) TERMINATION.—Upon the effective date of this section—

(1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)) is repealed;

(2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) is amended by striking "Republic of Cuba";

(3) the prohibitions on transactions described in part 515 of title 31, Code of Federal Regulations, shall cease to apply; and

(4) the President shall take such other steps as may be necessary to rescind any other regulations in effect under the economic embargo of Cuba.

(b) EFFECTIVE DATE.—This section shall take effect upon transmittal to Congress of a determination under section _23(c) that a democratically elected government in Cuba is in power.

SEC. _25. REQUIREMENTS FOR A TRANSITION GOVERNMENT.

For purposes of this title, a transition government in Cuba is a government in Cuba that—

(1) is demonstrably in transition from communist totalitarian dictatorship to representative democracy;

(2) has released all political prisoners and allowed for investigations of Cuban prisons by appropriate international human rights organizations;

(3) has dissolved the present Department of State Security in the Cuban Ministry of the Interior, including the Committees for the Defense of the Revolution and the Rapid Response Brigades;

(4) has publicly committed itself to, and is making demonstrable progress in—

(A) establishing an independent judiciary;

(B) respecting internationally recognized human rights and basic freedoms as set forth in the Universal Declaration of Human Rights, to which Cuba is a signatory nation;

(C) effectively guaranteeing the rights of free speech and freedom of the press;

(D) permitting the reinstatement of citizenship to Cuban-born nationals returning to Cuba;

(E) organizing free and fair elections for a new government—

(i) to be held within 1 year after the transition government assumes power;

(ii) with the participation of multiple independent political parties that have full access to the media on an equal basis, including (in the case of radio, television, or other telecommunications media) in terms of allotments of time for such access and the times of day such allotments are given; and

(iii) to be conducted under the supervision of internationally recognized observers, such as the Organization of American States, the United Nations, and other elections monitors;

(F) assuring the right to private property;

(G) taking appropriate steps to return to United States citizens and entities property taken by the Government of Cuba from such citizens and entities on or after January 1, 1959, or to provide equitable compensation to such citizens and entities for such property;

(H) having a currency that is fully convertible domestically and internationally;

(I) granting permits to privately owned telecommunications and media companies to operate in Cuba; and

(J) allowing the establishment of an independent labor movement and of independent social, economic, and political associations;

(5) does not include Fidel Castro or Raul Castro;

(6) has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people; and

(7) permits the deployment throughout Cuba of independent and unfettered international human rights monitors.

SEC. _26. REQUIREMENTS FOR A DEMOCRATICALLY ELECTED GOVERNMENT.

For purposes of this title, a democratically elected government in Cuba, in addition to continuing to comply with the requirements of section _25, is a government in Cuba which—

(1) results from free and fair elections—

(A) conducted under the supervision of internationally recognized observers;

(B) in which opposition parties were permitted ample time to organize and campaign for such elections, and in which all candidates in the elections were permitted full access to the media;

(2) is showing respect for the basic civil liberties and human rights of the citizens of Cuba;

(3) has established an independent judiciary;

(4) is substantially moving toward a market-oriented economic system based on the right to own and enjoy property;

(5) is committed to making constitutional changes that would ensure regular free and fair elections that meet the requirements of paragraph (2); and

(6) has returned to United States citizens, and entities which are 50 percent or more beneficially owned by United States citizens, property taken by the Government of Cuba from such citizens and entities on or after January 1, 1959, or provided full compensation in accordance with international law standards and practice to such citizens and entities for such property.

PART C—PROTECTION OF AMERICAN PROPERTY RIGHTS ABROAD

SEC. _31. EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE CONFISCATED PROPERTY CLAIMED BY UNITED STATES PERSONS.

(a) ADDITIONAL GROUNDS FOR EXCLUSION.—Section 212(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) is amended by adding at the end the following:

"(D) ALIENS WHO HAVE CONFISCATED AMERICAN PROPERTY ABROAD AND RELATED PERSONS.—(i) Any alien who—

"(I) has confiscated, or has directed or overseen the confiscation of, property the claim to which is owned by a United States person, or converts or has converted for personal gain confiscated property, the claim to which is owned by a United States person;

"(II) traffics in confiscated property, the claim to which is owned by a United States person;

"(III) is a corporate officer, principal, or shareholder of an entity which the Secretary of State determines or is informed by competent authority has been involved in the confiscation, trafficking in, or subsequent unauthorized use or benefit from confiscated property, the claim to which is owned by a United States person, or

"(IV) is a spouse or dependent of a person described in subclause (I),

is excludable.

"(ii) The validity of claims under this subparagraph shall be established in accordance with section 303 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995.

"(iii) For purposes of this subparagraph, the terms 'confiscated', 'traffics', and 'United States person' have the same meanings given to such terms under section 4 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals seeking to enter the United States on or after the date of enactment of this title.

SEC. _32. LIABILITY FOR TRAFFICKING IN CONFISCATED PROPERTY CLAIMED BY UNITED STATES PERSONS.

(a) CIVIL REMEDY.—(1) Except as provided in paragraphs (2) and (3), any person or government that traffics in property confiscated by a foreign government shall be liable to the United States person who owns the claim to the confiscated property for money damages in an amount which is the greater of—

(A) the amount certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949, plus interest at the commercially recognized normal rate;

(B) the amount determined under section _33(a)(2); or

(C) the fair market value of that property, calculated as being the then current value of the property, or the value of the property when confiscated plus interest at the commercially recognized normal rate, whichever is greater.

(2) Except as provided in paragraph (3), any person or government that traffics in confiscated property after having received (A) notice of a claim to ownership of the property by the United States person who owns the claim to the confiscated property, and (B) a copy of this section, shall be liable to such United States person for money damages in an amount which is treble the amount specified in paragraph (1).

(3)(A) Actions may be brought under paragraph (1) with respect to property confiscated before, on, or after the date of enactment of this title.

(B) In the case of property confiscated before the date of enactment of this title, no United States person may bring an action under this section unless such person acquired ownership of the claim to the confiscated property before such date.

(C) In the case of property confiscated on or after the date of enactment of this title, in order to maintain the action, the United States person who is the plaintiff must demonstrate to the court that the plaintiff has taken reasonable steps to exhaust all available local remedies.

(b) JURISDICTION.—Chapter 85 of title 28, United States Code, is amended by inserting after section 1331 the following new section:

"§ 1331a. Civil actions involving confiscated property

"The district courts shall have exclusive jurisdiction, without regard to the amount in controversy, of any action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995.".

(c) WAIVER OF SOVEREIGN IMMUNITY.—Section 1605 of title 28, United States Code, is amended—

(1) by striking "or" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; or"; and

(3) by adding at the end the following:

"(7) in which the action is brought with respect to confiscated property under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995.".

SEC. _33. DETERMINATION OF CLAIMS TO CONFISCATED PROPERTY.

(a) EVIDENCE OF OWNERSHIP.—For purposes of this title, conclusive evidence of ownership by the United States person of a claim to confiscated property is established—

(1) when the Foreign Claims Settlement Commission certifies the claim under title V of the International Claims Settlement Act of 1949, as amended by subsection (b); or

(2) when the claim has been determined to be valid by a court or administrative agency of the country in which the property was confiscated.

(b) AMENDMENT OF THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949.—Title V of the International Claims Settlement Act of 1949 is amended by adding at the end the following new section:

"ADDITIONAL CLAIMS

"SEC. 514. Notwithstanding any other provision of this title, a United States national may bring a claim to the Commission for determination and certification under this title of the amount and validity of a claim resulting from actions taken by the Government of Cuba described in section 503(a), whether or not the United States national qualified as a United States national at the time of the Cuban government action, except that, in the case of property confiscated after the date of enactment of this section, the claimant must be a United States national at the time of the confiscation.".

(c) CONFORMING REPEAL.—Section 510 of the International Claims Settlement Act of 1949 (22 U.S.C. 1643i) is repealed.

NOTICE OF HEARING

COMMITTEE ON SMALL BUSINESS

Mr. BOND. Mr. President, I wish to announce that the Committee on Small Business will hold a hearing on Wednesday, March 8, 1995, at 9:30 a.m., in room 428A of the Russell Senate Office Building. The subject of the hearing is the Regulatory Flexibility Amendment Act.

For further information, please contact Louis Taylor at 224–5175.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 9:30 a.m. on Tuesday, March 7, 1995, in open session, to receive testimony on the defense authorization request for fiscal year 1996 and the future years defense program.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. GREGG. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet Tuesday, March 7, 1995, in room 215 of the Dirksen Senate Office Building, beginning at 9:00 a.m. and continuing through most of the day, to conduct a hearing on the Federal Communications Commission's tax certificate program.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 7, 1995, at 10:00 a.m. to hold a hearing on the consideration of ratification of the convention on conventional weapons (Treaty Doc. 103–25).

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 7, 1995, at 2:00 p.m. to hold a hearing on the overview of United States policy toward South Asia.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Tuesday, March 7, 1995, beginning at 10 a.m., in room 485 of the Russell Senate Office Building on Federal programs authorized to address the challenges facing Indian youth.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday March 7, 1995, at 10:00 a.m. to hold a hearing on the jury and the search for truth.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on health professions consolidation and reauthorization, during the session of the Senate on Tuesday, March 7, 1995 at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. GREGG. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a joint hearing with the House Committee on Veterans' Affairs to receive the legislative presentation of The Veterans of Foreign Wars. The hearing will be held on March 7, 1995, at 9:30 a.m., in room 345 of the Cannon House Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON DRINKING WATER, FISHERIES, AND WILDLIFE

Mr. GREGG. Mr. President, I ask unanimous consent that the Subcommittee on Drinking Water, Fisheries, and Wildlife be granted permission to meet Tuesday, March 7, at 9:30 a.m. to conduct a legislative hearing on S. 191 and other pending proposals to institute a moratorium on certain activities under authority of the Endangered Species Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON OCEANS AND FISHERIES

Mr. GREGG. Mr. President, I ask unanimous consent that the Oceans and Fisheries Subcommittee of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on March 7, 1995, at 2:30 p.m. on appropriations for the U.S. Coast Guard in fiscal year 1996.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PARKS, HISTORIC PRESERVATION, AND RECREATION

Mr. GREGG. Mr. President, I ask unanimous consent that the Subcommittee on Parks, Historic Preservation, and Recreation of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Tuesday, March 7, 1995, for purposes of conducting a joint hearing with the Subcommittee on National Parks, Forests and Lands, of the House Committee on Resources, which is scheduled to begin at 9:30 a.m. The purpose of the hearing is to receive testimony from officials of the General Accounting Office regarding their on-going study on the health of the National Park System.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

BUDGET AMENDMENT'S TIME HAS COME

• Mr. SIMON. Mr. President, there was a variety of comment before the vote on the balanced budget amendment, one of the more sensible appearing in the Buffalo News, written by Douglas Turner.

I ask that the column be printed in the RECORD.

The column follows:

[From the Buffalo News, Feb. 27, 1995]

BUDGET AMENDMENT'S TIME HAS COME; THE DEMOCRATS ARE MORTGAGING THEIR FUTURE BY OPPOSING IT

(By Douglas Turner)

WASHINGTON.—Sen. Daniel Patrick Moynihan predicted on Friday that the Senate will defeat a proposed amendment to the Constitution calling for a balanced federal budget.

If he's right, and the learned New York Democrat quite often is, that Senate action will squelch the bill that easily passed the House last month.

The crucial Senate vote will probably come Wednesday or Thursday.

Loss of the amendment will not be good for the country. Fighting this idea whose time has come will also be a calamitous loser for the Democrats. They won't get the Senate back in 1996 or 1998 if they win on this week's roll call.

It guarantees returning the Republicans to control of the House after next year's elections.

House GOP Campaign chairman Bill Paxon will say a bigger Republican majority is needed to offer up this amendment again.

If the amendment fails, the states will be denied their opportunity to vote on the measure. This will insult our embattled federal system. Belief in our national system is already under heavy attack from junkyard dog conservatives.

Defeat will be the same as Washington Democrats saying to the nation: "We know you have a legal right to consider this popular idea, but we don't trust you, not even your sophisticated state legislatures, enough for you to consider it." Dumb.

"Popular" doesn't describe the momentum behind the balanced budget idea. Eighty percent of the nation wants this amendment. Even in liberal New York State, support is overwhelming.

Moynihan is one of the Democrats who does believe voters are smart enough to understand. He has spent days, weeks, honing and delivering his arguments against the amendment. He's published a small booklet about it, and gave a lengthy floor address last week. He talked about it on "Meet the Press" again yesterday.

Central to their arguments, and Moynihan's, is their concern for loss of flexibility. The amendment, they say, will deprive Congress of the ability to infuse a sinking economy with enough federal money to restore its vigor.

We'd be inviting a sustained economic Depression, they say. Moynihan devised a chart that shows the big spikes in the national economy before 1940. These show crippling variations in gross national product, up and down by as much as 15 percent in the span of a couple of years.

Post-1940 variations are mild, and generally positive, on this chart. These came after the massive New Deal expansion of the government bureaucracy and the practice of "counter-cyclical" federal spending.

The chart is an icon to a generation of politicians and professors steeped in the Keynesian tradition of demand economics.

The chart looks good until you think about it. First, it credits special surges in federal spending for the relative stability of the post-war economy. But it ignores the role of such income support programs as Social Security, and the importance of the labor movement as post-war stabilizers.

It also ignores the fact that the most celebrated "counter-cyclical" spending (not counting defense) was during the New Deal. It did build many fine projects, and it helped hundreds of thousands of individuals. It had little if any lasting effect on the economy as a whole.

The last counter-cyclical experience occurred during the recession of 1982–83. To help the unemployed and help stimulate a flat economy Congress threw a few billion into public works and expanded unemployment benefits.

There is nothing in this proposed amendment that would bar Congress from taking such modest steps again. If a crisis like the Depression occurred again, a three-fifths majority in each house could bypass the amendment's spending restrictions.

If there were a crisis, the people would respond just as they did in the 1930s. They threw out a catatonic GOP and installed Democrats, giving them a three-to-one margin.

The Democrats are on the wrong side of this one. Balancing the budget is a liberal concept, in the classic sense of the word, liberating.

Interest on the debt nearly equals all the government spends on discretionary programs, such as disease control, transit, research, aid to cities, education and foster care.

Interest payments are crowding out aid to the underprivileged just as much as entitlements. Interest payments go to people rich enough to buy government securities in $10,000 and $100,000 lots—not exactly the guy in your neighborhood Legion hall.

It is a loser for the Democrats on demographic lines. It is the young voter—not the aging one—that is going to pay and pay and pay to get this debt off his back.

For every sophisticated argument against it, there is an even stronger common sense argument for balancing the budget—sooner than later.

The people aren't dumb.•

HOMICIDES BY GUNSHOT IN NEW YORK CITY

• Mr. MOYNIHAN. Mr. President, I rise to continue my weekly practice of reporting to the Senate on the death toll by gunshot in New York City. Last week, 12 people lost their lives to bullet wounds, bringing this year's total to 107.•

ALLEGATIONS REGARDING POTENTIAL NUCLEAR EXPLOSIONS IN A GEOLOGIC REPOSITORY FOR SPENT NUCLEAR FUEL

• Mr. JOHNSTON. Mr. President, last Sunday, the New York Times published a front-page story alleging that geologic disposal of spent nuclear fuel in Yucca Mountain could result in an "atomic explosion of buried waste." The story is based on a hypothesis proposed several months ago by two scientists at the Los Alamos National Laboratory, Dr. Charles D. Bowman and Dr. Francisco Venneri. Drs. Bowman and Venneri, neither of whom is a geologist, performed some crude calculations on what might happen to plutonium in a geologic repository. They assumed that 50 to 100 kilograms of pure plutonium-239 would slowly diffuse through nonabsorbing silicon dioxide—not any type of rock actually found under Yucca Mountain—and then gradually reach criticality as various neutron-absorbing elements in the nuclear waste diffused away over the millennia.

We have been told by the New York Times and by both Senators from Nevada yesterday that three teams of scientists at Los Alamos "have been unable to rebut the assertion" of Drs.

Bowman and Venneri. This is simply not true.

The Los Alamos National Laboratory, in fact, did respond to these allegations. It formed three review teams. A "Red Team" was set up to serve in the role of skeptic. A "Blue Team" was set up to take the role of defenders of the Bowman-Venneri hypothesis. A "White Team" was set up to serve as a neutral judge of the work of the other two teams, and to render an overall judgment as to which was more credible.

What was the conclusion of the White Team? I ask that a two-page "Summary Critique of Bowman-Venneri Paper by Internal Review Groups at Los Alamos," which was publicly released yesterday by the Los Alamos National Laboratory, as well as the complete text of the White Team report, entitled "Comments on 'Nuclear Excursions' and 'Criticality Issues'" be printed in the RECORD at the end of this statement.

The White Team report is a devastating critique of the hypothesis of Drs. Bowman and Venneri. It states that:

> The geological situations in the Bowman paper are too idealized to validate the proposed scenario.
>
> The assumption of significant plutonium dispersion into the surrounding medium is without justification.
>
> The amount of water is overestimated by a factor of 1000. . . . There is no steam explosion.
>
> The assumptions about the behavior of the fissile mixture near criticality are not credible.
>
> There is no credible mechanism for releasing energy on a time scale short enough for even a steam explosion.

Even when the White Team started assuming that the impossible would happen, it still could not find the Bowman-Venneri hypothesis credible. For example, the White Team concluded:

> Even if dispersion and criticality are assumed (which is strongly objected to), the conclusion that an explosion would occur is incorrect.
>
> Even if dispersion, criticality, and energy release are assumed, there would be no serious consequences elsewhere in the repository or on the surface.

The florid story in the New York Times and the comments made on the floor yesterday by my distinguished colleagues from Nevada illustrate vividly how to misuse science in public policy debates.

Step No. 1. Ignore peer review. The New York Times clearly knew that an internal laboratory review of the Bowman-Venneri hypothesis had taken place, but got the story of that review completely wrong. Is there any way to characterize the above statements as being "unable to lay [the Bowman-Venneri hypothesis] to rest," as the New York Times reported? I don't see how. And, of course, no external review by a scientific journal of this paper has taken place—it isn't even clear whether Drs. Bowman and Venneri have submitted their calculations to any journal, other than the New York Times, for consideration.

Step No. 2. Do not even bother to get your facts straight. The true story of the internal Los Alamos review of this paper was readily available yesterday to any Member of this body who would have taken the time to call anyone at the laboratory whose name was mentioned in the New York Times story.

Step No. 3. Just jump on any news story that seems to support your preconceived view. Blow up the headline into a big chart, and head directly to the Senate floor.

Unfortunately, this is not the first time that we have seen bad science injected into the debate over a permanent geologic repository for spent nuclear fuel. In 1989, another DOE scientist named Jerry Szymanski interpreted some mineral deposits adjacent to the Yucca Mountain site as evidence that ground water repeatedly had risen well above the level proposed for the repository in the geologically recent past. If such an event were to occur in the lifetime of the repository, it would flood the waste packages and could result in a release of radioactive material to the environment. But before this hypothesis could be properly reviewed by other scientists, Szymanski's report became a media sensation fueled by, among others, the New York Times. Eventually, a distinguished group of scientists from the National Academy of Sciences was asked to evaluate Szymanski's interpretations and the data upon which he had based those interpretations. This panel concluded what the vast majority of DOE and U.S. Geological Survey scientists had concluded already: that the mineral deposits were produced by rainwater at the surface and had nothing to do with fluctuations in the ground water table at all. That was in 1992. Notwithstanding the NAS conclusion, the State of Nevada continues to pay large sums of money to Szymanski, now an independent consultant, to continue beating a dead horse.

So let me respond in detail to the specific charges made yesterday by my distinguished colleagues from Nevada.

The distinguished junior Senator from Nevada charged that a "discussion has been going on for months and months and months" involving "three teams comprised of 10 scientists—that is 30 scientists [that] have been unable to rebut the assertion that there is a genuine fear that an explosion can occur in a geologic repository." In fact, the scientists at Los Alamos were able to rebut the assertion, and did.

The distinguished senior Senator from Nevada complained that the Bowman-Venneri hypothesis had not been mentioned in public hearings or debates. Well, that's how scientific review works. Scientific results ought to get careful peer review within the scientific community before they are served up in the Sunday New York times. If a scientific result can withstand neutral scrutiny—which is what Los Alamos was in the process of doing—then it should be published in the open scientific literature and we can start the debate as to what its relevance to policy might be. None of us is served by fragmentary and distorted accounts of scientific research in the public media.

The distinguished senior Senator from Nevada characterized the Bowman-Venneri calculations as "evidence by a scientific community that says an explosion could occur." Do my colleagues really believe that a crude, theoretical calculation, predicated on all sorts of inaccurate assumptions for example, that the rock under Yucca Mountain is pure silicon dioxide, constitutes evidence? Evidence usually means something real. You can make up any theoretical calculations you like, and if you are not going to be constrained by reality, you can come up with some pretty interesting answers. But you will not get any evidence that way.

The distinguished senior Senator from Nevada stated that "it is not as if it has not happened before. In the former Soviet Union, they had an explosion from nuclear waste." He would have us believe that the Soviet explosion is somehow relevant to geologic disposal of spent nuclear fuel. Not so. The Soviet explosion occurred in a nuclear waste tank at Tomsk, not in a geological repository. The explosion was caused by red oil—a byproduct of reprocessing spent nuclear fuel. The whole idea behind the current DOE waste program, and geologic storage in a location such as Yucca Mountain, is not to reprocess.

The distinguished senior Senator from Nevada says that his information is "not sensationalism" and that it "comes from the scientific community." Well, publication in the New York Times hardly constitutes peer review. It is sensationalism, pure and simple.

Finally the distinguished senior Senator from Nevada said that these results came "from one of the finest scientific labs in the world." Now that we can see what Los Alamos actually has to say about the Bowman-Venneri hypothesis, will the Senators from Nevada accept what the Los Alamos review team had to say?

In summary, it is not true that, as both Senators from Nevada tried to tell us yesterday: "Thirty scientists * * * have tried to prove it wrong for 10 months. They cannot." As it turns out, they can shoot this hypothesis full of holes, and they did.

Before we call a halt to all attempts to find a solution to our nuclear waste problems, or before we set up mini-repositories for spent nuclear fuel at every nuclear plant in the Nation, let's see the Bowman-Venneri hypothesis for what it is—a preliminary calculation with a highly questionable connection to the real world. If scientists at Los Alamos want to pursue such calculations, that is their right. But we should not let ourselves be swayed by sensational reports based on sketchy theories. Good policy can and should only be based on good, peer-reviewed science.

The material follows:

[The attached paper is a summary of the work of the three review teams that have examined the paper on possible criticality at the planned Yucca Mountain Repository. It was compiled by the senior manager at Los Alamos National Laboratory who supervises the author of the original paper.]

SUMMARY POINTS OF BOWMAN-VENNERI PAPER—"UNDERGROUND AUTOCATALYTIC CRITICALITY OF PLUTONIUM AND OTHER FISSILE MATERIAL"

(By Charles Bowman and Francesco Venneri)

1. Underground storage as presently recommended could lead to autocatalytic criticality and uncontrolled dispersal of thermally fissile material with significant nuclear energy release and possibly nuclear explosions in the 100-ton range.

2. Fissile material when emplaced underground is subcritical. However, once containment is breached, the fissile material is free to disperse in the underground matrix either through natural (diffusion, earthquakes, water flow) or unnatural means (human intervention).

3. The underground matrix contains good moderators such as water and rock (silicon dioxide) in various proportions. Under certain conditions of fissile material density, radius, water and rock composition, the fissile material can reach criticality due to neutrons moderated in the rock/water mixture. The criticality can have either positive or negative feedback. Negative feedback would mean that the nuclear reactions would decrease as the mixture heated up and expanded and hence go subcritical. Positive feedback means that the nuclear fission is self-enhancing (autocatalytic). Hence the nuclear reactions continue to grow to supercriticality and possibly explosive conditions.

4. Neutron poisons, such as boron, that are added to the spent fuel when emplaced underground to prevent criticality have different solubilities than fissile materials and thus would be leached out from the fissile material area.

5. Without water, 50–100 kg of fissile material is required to reach autocriticality. As small an amount as 1 kg of fissile material can reach autocriticality with water present.

SUMMARY CRITIQUE OF BOWMAN-VENNERI PAPER BY INTERNAL REVIEW GROUPS AT LOS ALAMOS

GEOLOGIC EMPLACEMENT

1. The geological situation in the Bowman paper are too idealized to validate the proposed scenario. Pure silicon dioxide, a weak neutron absorber, is not a common geological material and has not been proposed as a repository material. Other elements present in all proposed geological formations absorb neutrons much more strongly than pure silicon dioxide, which reduces the reactivity of the mixture.

2. For periods less than 10,000 years, the presence of Plutonium 240 (half-life of 6,500 years) would also reduce reactivity strongly.

MATERIAL DISPERSION UNDERGROUND

1. The assumption of significant dispersion of plutonium into the surrounding geologic medium is without justification. Geologic processes take millions of years by which time the plutonium-239 (half-life of 24,000 years) would have decayed to 235 U which is less reactive.

2. The Bowman paper argues that water flowing down through the repository would dissolve glass logs in about 1,000 years and leave a fragile powder of plutonium that could disperse through steam "explosions" caused by criticality heating of the water in the vicinity of the Pu log. However, the amount of water is overestimated by a factor of 1,000 so that the correct time scale is on the order of a million years. Also the temperature gradient is over estimated by a factor of ten so that there is no steam "explosion." Also the leaching process could leave a residue as strong as the original log.

3. Material is not likely to be dispersed into symmetric shapes but rather along fractures which would provide more difficult geometries for criticality.

CRITICALITY

1. The assumptions about the behavior of the fissile mixture near criticality are not credible.

2. As the fissile/rock/water mixture approached criticality, it would slowly heat and expand which would drop its reactivity below critical and mixture would cool. Thus the mixture would have a negative temperature coefficient.

EXPLOSIONS/ENERGY RELEASE

1. Even if dispersion and criticality are assumed (which is strongly objected to), the conclusion that an explosion would occur is incorrect.

2. There is no credible mechanism for releasing energy on a time scale short enough for even a steam explosion. A nuclear explosion must make the transition from critical to highly supercritical in a fraction of a second. A credible means to force this transition in a repository has not been found.

3. Even if dispersion, criticality and energy release are assumed, there would be no serious consequences elsewhere in the repository or on the surface.

[The attached paper is the preliminary work of a team of scientists at Los Alamos National Laboratory. The team was asked to review the papers that have been generated dealing with the issue of possible criticality at the planned Yucca Mountain Repository. Further analysis may be conducted, and possible further modifications of the estimates contained in this paper may occur, in the normal process of scientific investigation. The paper of the review team as it stands now does contain considerable work by the team.]

COMMENTS ON "NUCLEAR EXCURSIONS" AND "CRITICALITY ISSUES"

The Laboratory provided a technical review of a paper by Drs. Bowman and Venneri on the "Nuclear Excursions and Eruptions from Plutonium and Other Fissile Material Stored Underground," which argued that the dispersal of plutonium (Pu) stored underground could increase its reactivity to the point where critically, auto-catalytic reaction, and explosive energy release could occur.

The review concluded that the probability of each of these steps is vanishingly small and that the probability of the occurrence of all three is essentially zero. Moreover, even if these steps could occur, any energy release would be too small and slow to produce any significant consequences either in the repository or on the surface.

The authors of "Nuclear Excursions" provided responses to the issues raised in that review in the form of a paper entitled "Criticality Issues for Thermally Fissile Material in Geologic Storage." The white team and the leaders of the blue and red teams reviewed the responses in "Criticality Issues," met to discuss them, determined that they are flawed for essentially the same reasons as the original paper, and concluded that they do not significantly impact the conclusion of the review that the probability of the chain of events postulated in "Nuclear Excursions" and "Criticality Issues is essentially zero and that even if they could occur, any energy release would be too small and slow to produce significant consequences.

EMPLACEMENT

The geological situations discussed in "Nuclear Excursions" were too idealized to provide a useful framework for analysis or to validate the proposed scenario. That was pointed out in the review, but those situations were still used in "Criticality Issues." "Nuclear Excursions" postulates the emplacement of fissile materials in geologic formations of pure silicon dioxide. Pure silicon dioxide is a weak neutron absorber, is not a common geologic material, and has not been proposed as a repository material. Other elements present in all geologic formations that have been proposed absorb neutrons much more strongly than pure silicon dioxide, which reduces the reactivity of the mixture.

Furthermore, "Nuclear Excursions" performs most of its yield calculation for pure Pu-239; so does "Criticality Issues." The weapons plutonium of interest has a significant fraction of Pu-240, which is a strong absorber that further reduces reactivity. Even for the maximum loading postulated in "Nuclear Excursions," weapons plutonium could never disperse to a condition of criticality in real, dry repository materials. It is argued that the Pu-240 would decay, leaving the more reactive Pu-239, but that would happen over several times the 6,500 year half life of Pu-240. Even then the Pu-240 would be replaced by its daughter U-236, which is also a strong absorber. Moreover, as noted above, the calculations in both papers ignore minor soil constituents with very large absorption cross sections. When they are properly included, it may not be possible to achieve criticality for the assumed conditions even without the Pu-240.

The assumption of significant dispersion of plutonium into the surrounding geologic medium in "Nuclear Excursions" is without justification. Geological processes would take millions of years, by which time plutonium would have decayed to uranium-235, which is less reactive than Pu-239. We have not discovered a credible process that would produce more rapid dispersal. Anthropogenic measures are unlikely and are routinely accounted for in repository analyses. "Criticality Issues" argues that water flowing down through the repository would dissolve the glass log in 1,000 years and leave a fragile powder, but its calculation overestimates the amount of rainfall on and water in the repository by factors of 1,000, so the correct time scale for dispersal is again about a million years.

It has also been noted that the temperature gradient driving the process is overestimated by an order of magnitude and that the leaching process could leave a residue as strong as the original log.

CRITICALITY

The assumptions about the behavior of the fissile mixture near criticality are not credible. "Nuclear Excursions" assumed that the rock in which the fissile material is placed is rigid and would prevent the expansion of the material and permit the achievement of super criticality. That was based on an improper interpretation of the published equation of state. In reality, rock is compressible, and even at depths of several kilometers, lithostatic stresses are small and anisotropic, so that confining stresses are small. Even if it fractured the rock, it would not do so in a spherically symmetric manner. Even if the mixed material became critical, it would slowly heat and expand, which would drop its reactivity below critical, after which its neutron flux would drop, and the mixture would cool. That is, the mixture has the negative temperature coefficient of many fissile assemblies. This was pointed out in detail in the review.

Nevertheless, "Criticality Issues" again argued that fissile material could diffuse through criticality, although it shifted its argument to soils with very high amounts of water, which have higher reactivity. However, the essential physics is the same as for dry rock. The mixed material would slowly heat and expand, which would drop its reactivity, which would cause it to cool. Hydrated mixtures also generally have negative temperature coefficients. Moreover, the first time the mixture underwent this cycle, it would drive off the water, after which it would be left far below critical, dry, and with no mechanism for the reinsertion of water. Thus, there is nothing new in "Criticality Issues," it simply repeats the stability errors made in "Nuclear Excursions."

There are some interesting tradeoffs between the negative temperature coefficient of such mixtures from expansion and the potentially small positive coefficient from absorption and Pu-239 resonance broadening, but those effects are delicate and comparable even at high hydration. Unfortunately, they cannot be evaluated from the calculations in "Criticality Issues," which were apparently all performed for cold soil, pure SiO_2, and pure Pu-239. All three of those restrictions would have to be removed to provide an assessment beyond that in "The Myth of Nuclear Explosions at Waste Disposal Sites." Given the simplicity and ease of monitoring for the development of the conditions postulated, that is readily addressed.

ENERGY RELEASE

Even if dispersion and criticality are assumed, the conclusion that an explosion would occur is incorrect. "Nuclear Excursions" postulates "auto-catalytic" behavior in which the release of energy leads to greater criticality, but the discussion above shows that in dry repository material, the release of energy instead reduces criticality and shuts the reaction off. "Criticality Issues" postulates autocatalytic behavior in hydrated mixtures, but the discussion of the previous section shows that to the extent that the phenomena has been quantified by earlier work, the release of energy reduces criticality there, too.

The postulated mechanisms for explosion are not credible; the most that appears possible is heating and evaporation of some water before a smooth shut down. There is no credible mechanism for releasing energy on a time scale short enough for even a steam explosion. A nuclear explosion must make the transition from critical to highly supercritical in a fraction of a second. A credible means to force the transition in a repository has not been found. Thus, the assertion that an explosion would occur is incorrect.

Even if dispersion, criticality, and energy release are assumed, which appear virtually impossible on the basis of the arguments above, there would be no serious consequences elsewhere in the repository or on the surface. Calculations indicate containment volumes very small compared to the nominal spacing between storage elements; thus, there could not be any coupling between storage elements or any possibility of greater energy releases through synergisms.

RELATION WITH OTHER WORK

That the critical mass may be reduced by dilution by moderating material discussed in the paper is well understood by the nuclear community. Fermi used it to full advantage when he assembled the first pile under the grandstand at Stagg Stadium.

Fermi also used the advantages of heterogeneity in minimizing resonance losses in natural uranium, although that is irrelevant to the discussions of Pu reactivity here.

The National Academy of Science report does not suggest emplacement of weapons plutonium in the manner discussed by "Nuclear Excursions," although it did comment on the advantages of higher fissile loading. The Academy was alert to the potential for criticality and qualified its recommendations by stating that further analysis and discussion were needed before deciding on the best and safest geologic disposition of weapons and reactor spent fuel.

SUMMARY

We should always be alert to unintended consequences and open to discussions that illuminate potential dangers in nuclear waste storage. "Nuclear Excursions" argued that there were serious dangers in proposed repository concepts. We disagreed with the paper's major assumptions and found its major conclusions to be incorrect for fundamental, technical reasons, which were stated in detail and in writing. "Criticality Issues" did not respond to those reasons, but introduced a new scenario, in which it made the same technical errors in a new context. We have pointed those errors out above. At this point we find no technical merit in either paper. However, the papers treat technical matters and apparently contain no classified material; thus, in accord with the laboratory's policy of open and unrestricted research and discussion on unclassified matters, the authors should be free to submit their paper for publication in a peer reviewed journal.

That said, we do not find any value in these two papers that would justify publication in their current form, and we do not see how to produce such a paper from them. They contain fundamental errors in concept and execution. They show no grasp of such elementary concepts as the time scale for the approach to criticality and energy release and the crucial role of the negative temperature coefficient of the mixtures treated. Worse, they show no appreciation of these points even after they were pointed out forcefully in the review. That is compounded by the constantly shifting scenarios in the papers and the alarmist estimates of potential effects, which have become less credible and more shrill throughout this process.

The authors apparently show little interest in technical suggestions or inclination to respond to it. Thus, it would not appear to be useful to continue this one-sided discussion, which we take to be concluded. If this program is continued, and these individuals remain associated with it, the laboratory would be well served by establishing a permanent red team, funded by this program and composed of independent members from the cognizant technical divisions, and giving them the responsibility of checking each calculation done by them.●

Mr. ASHCROFT. Mr. President, the following unanimous consent requests have been agreed to by the minority leadership, as well as the majority.

EXECUTIVE CALENDAR

Mr. ASHCROFT. Mr. President, as if in executive session, I ask unanimous consent that the Senate immediately proceed to the consideration of Executive Calendar Nos. 32 and 33 en bloc; further, that the nominations be confirmed, en bloc; that the motions to reconsider be laid upon the table en bloc; that any statements relating to the nominations appear at the appropriate place in the RECORD; and the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF DEFENSE

Herschelle Challenor, of Georgia, to be a member of the National Security Education Board for a term of 4 years, vice Steven Muller.

Sheila Cheston, of the District of Columbia, to be general counsel of the Department of the Air Force, vice Gilbert F. Casellas.

ORDERS FOR WEDNESDAY, MARCH 8, 1995

Mr. ASHCROFT. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 10:30 a.m. on Wednesday, March 8, 1995; that following the prayer, the Journal of the proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then immediately resume consideration of H.R. 889, the supplemental appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ASHCROFT. Mr. President, for the information of my colleagues, we hope to complete action on the supplemental bill tomorrow. Therefore, Senators should be aware that rollcall votes are expected throughout tomorrow's session.

RECESS UNTIL 10:30 A.M. TOMORROW

Mr. ASHCROFT. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent the Senate stand in recess under the previous order.

There being no objection, the Senate, at 6:34 p.m., recessed until Wednesday, March 8, 1995, at 10:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 7, 1995:

DEPARTMENT OF DEFENSE

HERSCHELLE CHALLENOR, OF GEORGIA, TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF 4 YEARS.

SHEILA CHESTON, OF THE DISTRICT OF COLUMBIA, TO BE GENERAL COUNSEL OF THE DEPARTMENT OF THE AIR FORCE.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

HOUSE OF REPRESENTATIVES—*Tuesday, March 7, 1995*

The House met at 9:30 a.m. and was called to order by the Speaker pro tempore [Mrs. WALDHOLTZ].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
March 7, 1995.

I hereby designate the Honorable ENID G. WALDHOLTZ to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

MORNING BUSINESS

The SPEAKER pro tempore. Pursuant to the order of the House of January 4, 1995, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 30 minutes, and each Member except the majority and minority leaders limited to not to exceed 5 minutes.

The Chair recognizes the gentleman from Florida [Mr. JOHNSTON] for 5 minutes.

ETHICAL VIOLATIONS: PAST AND PRESENT

Mr. JOHNSTON of Florida. Madam Speaker, until 2 weeks ago, in almost 20 years of public service, I had never filed a complaint against a colleague, even though I twice served on committees charged with investigating colleagues for ethical violations in the Florida State Senate with their censure or dismissal often hanging in the balance.

In 30 years of the practice of law, I never filed an ethics complaint against a colleague, even though again, I served for many years on the grievance committee of the Florida Bar which recommended to the bar either disbarment, suspension, or reprimand for serious violations of ethical standards.

Accordingly, I do not take lightly such complaints against a colleague, and in particular, the Speaker of the House.

On Wednesday, February 22 of this year, I became a signatory, along with Congresswomen PAT SCHROEDER and CYNTHIA MCKINNEY, to a complaint filed with the House Committee on Standards of Official Conduct against Speaker NEWT GINGRICH.

The first response to our complaint by the Speaker was communicated through his staff assistant, who, according to the Washington Post, "* * * accused the lawmakers who filed the complaint of 'malicious imbecility.'" I consider this a rather intemperate remark, to say the least, and as much as the spokesman is an employee of the House of Representatives and a surrogate of the Speaker, I find his tone and language both offensive and inappropriate.

On Friday of the same week, Mr. GINGRICH made the following statement with respect to our complaint: "They are misusing the ethics system in a deliberate, vicious, vindictive way, and I think it is despicable and I have just about had it."

I do not plan to discuss the merits of the complaint against Mr. GINGRICH this morning. I believe that would be improper, because the matter is now within the jurisdiction of the Committee on Standards of Official Conduct. If and when there are charges filed against the Speaker by the committee, the full House will sit in judgment of these charges. I will comment, however, on the history of the Speaker's complaints against a former colleague.

It is common knowledge that Mr. GINGRICH filed numerous complaints against Speaker Jim Wright in 1988, and I quote at length from an article in the New York Times dated June 10, 1988:

> The New York Times has examined the case against Mr. Wright through interviews with the House Republican who has been his main accuser, as well as with the Speaker's attorney and legal experts and through a review of the House rules, transcripts of congressional debate of those rules and other documents.
>
> In the course of that examination, the Speaker's primary critic, Representative Newt Gingrich of Georgia and Mr. Gingrich's aides said that there were errors and gaps in the complaint that he had filed with the Ethics Committee and that led to the panel's proceedings, but they said that what was most important was a full inquiry into the Speaker's actions, as well as a review of the adequacy of the House rules.
>
> The case against Mr. Wright as laid out in the complaint is not particularly strong, according to Mr. Gingrich and his aides. Mr. Gingrich said in an interview earlier this week that the two counts involving oil investments had been included in his complaint solely "out of curiosity" and that "I don't expect them to be actionable items."

Let me repeat that 7 years ago, Mr. GINGRICH told the New York Times that he filed two counts against the Speaker of the U.S. House of Representatives solely out of curiosity and with no expectation of their being actionable.

My complaint against the Speaker of the House on February 22 certainly was not conceived out of curiosity and certainly does not rise or fall to the level of malicious imbecility, and certainly, as quoting the Speaker in reference to this complaint, is not offered in a deliberate, vicious, vindictive way. I would never charge a colleague with misconduct and the violation of a law and ethics, as I have done, without serious and conscientious deliberation and conviction.

Continuing in a historical vein, I have attached to these remarks a press release issued by Mr. GINGRICH through his congressional office, dated July 28, 1988. In this press release, Mr. GINGRICH demands that the special counsel appointed to investigate House Speaker Jim Wright be given carte blanche authority. Let me point out that this special counsel was appointed under a Democratic Congress with the consent of the then-Speaker, Jim Wright. I quote from this press release:

> The rules normally applied by the Ethics Committee to an investigation of a typical Member are insufficient in an investigation of the Speaker of the House, a position which is third in line of succession to the Presidency and the second most powerful position in America. Clearly this investigation has to meet a higher standard of public accountability and integrity.

So far, the Speaker of the House, Congressman NEWT GINGRICH, has failed to respond publicly to three charges lodged against him in the Committee of Standards of Official Conduct, except in terms of the vernacular that I quoted earlier, nor has he consented to the appointment of a special counsel. It is he who placed himself in the glasshouse 7 years ago. It is he who has raised the questions of integrity, character, and conflict with which we now contend, and it is he alone who can remove this cloud, not only from himself, but from the body over which he now presides.

NEWT GINGRICH is third in line of succession to the Presidency, occupying the second most powerful position in America. As such, and to quote his own words, "Clearly, this investigation has to meet a higher standard of public accountability and integrity."

GINGRICH INSISTS ON THOROUGH INVESTIGATION

WASHINGTON, DC.—Congressman Newt Gingrich (R-GA) today insisted that the House Ethics Committee give the special counsel appointed to investigate House Speaker Jim Wright the independence necessary to do a thorough and complete job.

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Discouraged by several news reports that special counsel Richard Phelan would be restricted in the scope of his investigation, Gingrich took a series of actions including writing to House Ethics Chairman Julian Dixon (D–CA), forwarding the letter to his colleagues in the House, and speaking on the House floor on the need for a truly independent counsel with full leeway in pursuing the investigation.

In his letter to Chairman Dixon, Gingrich wrote:

"I have a number of concerns regarding the Ethics Committee's contract with and instructions for the special counsel hired to conduct the investigation into Speaker Jim Wright's questionable financial dealings.

"First, I am concerned that the scope, authority, and independence of the special counsel will be limited by the guidelines the Ethics Committee has established."

Gingrich agreed with concerns raised by Common Cause Chairman Archibald Cox in a letter to Chairman Dixon earlier this week. The Common Cause letter urged the Ethics Committee to commit itself to the following measures:

1. The outside counsel shall have full authority to investigate and present evidence and arguments before the Ethics Committee concerning the questions arising out of the activities of House Speaker James C. Wright, Jr.;

2. The outside counsel shall have full authority to organize, select, and hire staff on a full- or part-time basis in such numbers as the counsel reasonably requires and will be provided with such funds and facilities as the counsel reasonably requires;

3. The outside counsel shall have full authority to review all documentary evidence available from any source and full cooperation of the Committee in obtaining such evidence;

4. The Committee shall give the outside counsel full cooperation in the issuance of subpoenas;

5. The outside counsel shall be free, after discussion with the Committee, to make such public statements and reports as the counsel deems appropriate;

6. The outside counsel shall have full authority to recommend that formal charges to brought before the Ethics Committee, shall be responsible for initiating and conducting proceedings if formal charges have been brought and shall handle any aspects of the proceedings believed to be necessary for a full inquiry;

7. The Committee shall not countermand or interfere with the outside counsel's ability to take steps necessary to conduct a full and fair investigation; and

8. The outside counsel will not be removed except for good cause.

Gingrich wrote to Chairman Dixon, "It is my impression from press reports that the Ethics Committee has specifically failed to meet the Common Cause standard. Furthermore, it is my understanding that the special counsel cannot go beyond the six areas outlined in your June 9, 1988, Resolution of Preliminary Inquiry. This leads me to believe that the special counsel will not be allowed to investigate the questionable bulk purchases of Mr. Wright's book, "Reflections of a Public Man," as a way to circumvent House limits on outside income.

"I am particularly concerned that the unusual purchases by the Teamsters Union, the New England Mutual Life Insurance Co., a Fort Worth developer, and a Washington lobbyist will not be investigated.

"I believe many will perceive this action as an attempt by the Ethics Committee to control the scope and direction of the investigation."

Gingrich requested a copy of the contract arranged between the Ethics Committee and Mr. Phelan. He also asked to know the extent of Mr. Phelan's subpoena power.

Gingrich said, "The House of Representatives, as well as the American public, deserve an investigation which will uncover the truth. At this moment, I am afraid that the apparent restrictions placed on this special counsel will not allow the truth to be uncovered.

"The rules normally applied by the Ethics Committee to an investigation of a typical Member are insufficient in an investigation of the Speaker of the House, a position which is third in the line of succession to the Presidency and the second most powerful elected position in America. Clearly, this investigation has to meet a higher standard of public accountability and integrity."

SPENDING CUTS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Florida [Mr. GOSS] is recognized during morning business for 5 minutes.

Mr. GOSS. Madam Speaker, I read in last Friday's Congress Daily that the chairman of the Budget Committee in the other body is looking for between $150 and $200 billion in discretionary cuts as part of his effort to bring about a balanced budget. Some might see that as a difficult or even an impossible task. But a careful and honest assessment of all discretionary accounts yields heartening news. It can be done, I say. It can be done. There is at least this much nonpriority spending we can eliminate. In fact, I would argue that there is much more than $150 to $200 billion. As we move toward the budget and appropriations process, it is imperative that we address the wasteful spending that bloats our Federal budget, as everybody knows. As I have done for the last 3 years, I have again submitted to the budgetary leaders of both Houses of Congress my annual list of discretionary spending cuts for their consideration. These 75 cuts would save the American taxpayer $275 billion over 5 years.

Madam Speaker, critics of the balanced budget amendment contend that it would mandate draconian cuts in entitlement programs because our discretionary budget simply just does not offer significant savings. The facts clearly show otherwise. In reality, we continue to fund outdated and duplicative programs that operate in the shadows serving our bureaucracy and special interests rather than the American people we work for. We desperately need to shed some light on these ancient programs. The Appalachian Regional Commission, a Great Society era created as a temporary response to poverty, continues to spend hundreds of millions of dollars annually with little discernible impact on the long-term economic health of the United States of America.

These are probably very worthy projects, but I do not think they really are getting at the core of poverty and they probably would not compete as well with other Federal dollars for more urgent needs. Only in Washington could this be construed as a legitimate response to poverty. The Rural Electrification Administration, which provides electricity for my home in Sanibel, formed in 1935 when only 10 percent of projects have included funding for the NASCAR Hall of Fame and most recently $750,000 toward a new football stadium in South Carolina. Rural America had electricity, continues to spend billions of dollars subsidizing rural electric and telephone companies—this despite the fact that today 99 percent of rural America has electricity and 98 percent has phones. I suggest those who do not have it do not want it. Taken alone, each of these programs may not amount to large costs—but when you start adding them up, going through a whole list of projects, you can see why we have a budget crisis.

Unfortunately, programs like these are the rule rather than the exception. Of course, Government must lead by example. That is why I have proposed also reducing the legislative and executive branch appropriation by 20 percent, which would save $3 billion over the next 5 years. The American people spoke clearly last November—they want to downsize the Government. We should understand that message. And that process needs to begin at the top with Congress and the President. To be credible, we must not only eliminate wasteful spending but we must also be willing to look at good programs and prioritize our limited financial resources so we get the most important served. I do not pretend to think that we can correct decades of neglect and abuse overnight. While these 75 proposals which I offered are not a cure-all, they will hopefully serve as the first shot in the coming budgetary battle between the defenders of the status quo and those of us who came here to make a difference.

The debate is between the habitual big spenders in the District of Columbia and those newcomers who have dared to suggest maybe the Federal Government should stop the waste, fraud, and abuse of the precious tax dollars. There is no one in America who has come forward to claim or even to imply that every Federal dollar spent is a dollar well spent. On the contrary, there are tens, if not hundreds, of millions of Americans who know we are not handling their tax dollars as wisely as possible and they are asking us to do better. There is no excuse for us not to do better. We can start now, we can start today. I urge my colleagues to look at my list of spending cuts, and if they do not like my list, make your own. There are plenty of places to cut spending.

CUTS IN VETERANS' BENEFITS CALLED CALLOUS AND UNCONSCIONABLE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Ohio [Mr. STOKES] is recognized during morning business for 3 minutes.

Mr. STOKES. Madam Speaker, last week the House Appropriations Committee voted to drastically cut $206 million in funding for programs that serve our Nation's veterans. I do not think this is the proper way to demonstrate our commitment to individuals who have made the ultimate sacrifice in serving this Nation and protecting our lives and property.

It is especially callous that these cuts come from funds earmarked for medical equipment and ambulatory care facilities. The Veterans' Administration currently has an unmet need of necessary medical equipment exceeding three-quarters of a billion dollars. The bill passed by the Appropriations Committee would increase that unmet need by at least $50 million.

How can we even consider such reductions when information we hear daily tells us of new and emerging medical conditions being experienced by our veterans. Just when our veterans' medical centers and medical teams are recognizing and attempting to address these problems, the Republican-controlled House wants to slash funds that would be used to purchase such types of equipment as cat scanners, x-rays, EKG machines, and other vital equipment. Already, due to budget constraints, the VA is not able to replace and improve medical equipment nearly as often as the private sector.

Even more shocking is the $156 million reduction in construction projects. These funds are targeted for ambulatory care facilities—a crucial aspect of the VA's medical care agenda at a time when our aging World War II veterans are requiring more medical assistance. Clearly, this is not the time to cut back on ambulatory care facilities.

If the rescissions have been recommended by the Republicans on the committee to offset the costs of the California earthquake and other natural disasters, it will create another disaster for thousands of our veterans. If these actions are intended to offset the cost of future tax cuts—including capital gains for middle-class families and affluent investors—it is unconscionable.

These cuts are ill-considered. The veterans of this Nation have dutifully served this country. We owe them the same full measure of devotion they gave in protecting this Nation with their lives.

THE ROLE OF THE ARMS CONTROL AND DISARMAMENT AGENCY IN INTERNATIONAL AFFAIRS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Georgia [Mr. LINDER] is recognized during morning business for 5 minutes.

Mr. LINDER. Madam Speaker, this past week in a press conference with the President's Presidential press secretary, we heard him say that, "Prime Minister Rabin is calling. I think it is fair for us to say because he is upset and alarmed by the action taken in the House of Representatives to cut back on funding in the fiscal year 1995 supplemental bill for debt forgiveness for Jordan."

While he said that, we do not know if that is why Prime Minister Rabin was calling. We have learned that very often what this White House says has no relation to the facts, but that is what he said.

He further said the President told the Prime Minister in candor that we face a very tough audience on Capitol Hill. "This is an example of the tilt toward isolation that you now see in the Republican-dominated Congress."

That is vintage Bill Clinton, blame the other guy, "I didn't do it, I am trying to help you, the devil made me do it, the dog ate my lunch, the dog ate my homework."

Madam Speaker, the President's entrance into the Middle East is to first make it partisan and to politicize foreign affairs. It is most shameful that it is done in one of the most troubled areas of the world. Why does he do this? Because for 2½ years this Nation has lacked a coherent global vision, a global view.

What are our U.S. national security interests? When I look across world, I see our friends in NATO, the former Soviet bloc, it is absolutely in the interests of the United States that the former Soviet-bloc nations discover that capitalism and freedom work.

I see our increasingly important trading partners on the Pacific rim and, of course, the tinderbox for the world, the Middle East. And where are our troops that are supposed to be the shield of the Republic and the shield of our foreign affairs? Our troops are in Rwanda, Somalia, Haiti, Cambodia, Macedonia, northern Iraq, hardly a reflection of a coherent world view.

The peace process today in the Middle East has been carried out without United States leadership. This is the first administration of the last four that has shown no interest in leadership in the Middle East peace process.

The PLO agreement was reached, not in the United States, but in Oslo. Of course, the great handshake took place on the south lawn, but we were not involved until after the agreement had been reached.

The Jordanian-Israeli agreements were bilateral. The agreements were signed on the south lawn, but we were not there in the leadership. But lacking any domestic agenda this year, the President has decided to weigh in on the Middle East and has done so by politicizing it and making it partisan. He can do something about this right in his own administration. Israel is a nation that is in a defensive posture, with armed aggressors all around her, and is building a defensive ARROW missile system for protection to shoot down incoming ballistic missiles. We now have an Arms Control and Disarmament Agency that has been in effect since 1972—and an ABM agreement—that is negotiating further agreements with former Soviet-bloc nations for reasons that absolutely escape me.

We are the only Nation that can add to the technology required for a bullet to intercept a bullet. We have done that with the ERINT missile, called the PAC-3, built by Rockwell. But this administration, under what I presume to be simply bureaucratic inertia, has chosen to limit further technological advances in this intercept missile technology to 3 kilometers per second, precisely what we have now. I do not know why we would want to limit any future technology, since there is not a nation in the world competing with us in this technology, why would we ask them to agree with us to limit what we can do?

Mr. President, if you want to do something about the Middle East and for the future safety of this very vulnerable friend in this troubled part of the world, abolish the Arms Control and Disarmament Agency, get out of ABM, and let her protect herself.

VETERANS' RESCISSIONS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Illinois [Mr. GUTIERREZ] is recognized during morning business for 3 minutes.

Mr. GUTIERREZ. Madam Speaker, you know, we keep calling these cuts rescissions. But let us face it. These are not rescissions, but rather a retreat, a retreat from recent promises to fund programs during this fiscal year, a retreat from long-standing promises to serve veterans. And, just as an army in retreat turns its back and runs, those who support this package are also turning their backs.

Obviously, the Appropriations Committee has done a disservice to all Americans affected by those cuts. But, let us consider how shameful it is to do a disservice to people who have already given their service to this country. That means America's veterans. These cuts are financing 14 years of failed, phony, fiscal policy from the GOP—two sets of Republican budget-busters that are squeezing working families like a vice.

In 1981, a Republican President began to cut taxes for the wealthy and build up our defense. And in 1995, a Republican Congress wants—sound familiar?—to cut taxes for the wealthy and build up our defense. To quote that same Republican President, "there they go again."

Let us see how flawed these rescissions are.

Just look at the decision to cancel improvements at the VA hospital in San Juan, Puerto Rico. Now I do not know whether any member of the Appropriations Committee has traveled to the facility in San Juan. But I have. I can speak firsthand of the overcrowding and long delays as patients try to access the services supposedly available to them. I can attest to the urgent need for the proposed renovation of the hospital. But rather than break ground on a new veterans' facility, the Republicans would prefer that we break a promise.

And, it is not just happening in San Juan, but at 5 other facilities in the VA system affected by these cuts—areas where more than 1 million veterans reside. Furthermore, these cuts show that these rescissions are not just an abandonment of compassion, but an abandonment of reason. That is because, rather than produce the great savings that the Republicans so grandly advertise, these rescissions would cancel exactly the kind of services—like outpatient care—that rein in the escalating costs of medical care.

In addition, I want to state two simple facts about outpatient care, or ambulatory care: first, it saves lives; second, it saves money. You would think that the Republicans would at least care about one of those facts.

You know, many of us have accused the Appropriations Committee of using a hatchet or a meat ax to make these cuts when a scalpel would have been better. Well, it turns out that VA surgeons will not even be using scalpels pretty soon, since the Republicans will not let them buy any new ones. As I said earlier, these Republican rescissions are really a retreat.

When they were young, these veterans were sent overseas, to lands far from their home. And if they wanted to, these service men had plenty of reasons to retreat. But rather than retreat from battle, they endured. Rather than shirk from duty, they stood up for principles. I want to encourage this House to show the same determination. I want this House to show the same willingness to carry through on principle.

Rather than retreat, I urge the House to muster up the courage to fight, to fight for what is right, to fight for, not against, the American family, to fight for those who fought for us, to reject this rescission package.

OSHA'S NIGHTMARES

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Georgia [Mr. NORWOOD] is recognized during morning business for 5 minutes.

Mr. NORWOOD. Madam Speaker, I have for you today a couple of OSHA nightmares which illustrate OSHA's overbearing enforcement policies. Although OSHA eventually dropped the charges in both cases, I think they still provide valuable insight into the mentality of an out-of-control agency.

In the first OSHA nightmare, a Maine dentist, Dr. Jeffrey Grosser, was fined $17,500 as the result of an OSHA office inspection. The fines included an $8,000 infection control citation and a $7,000 citation for improper hazardous materials information and training.

OSHA charged that Dr. Grosser's employees "were exposed to the hazard of being infected with hepatitis B and/or HIV through possible direct contact with blood or other body fluids." However, Dr. Grosser's only employee is a receptionist who does not work with patients. For that, Dr. Grosser incurred an $8,000 infection control fine.

So what, you may ask did Dr. Grosser do in the case of the $7,000 fine?

In this instance Dr. Grosser was charged $7,000 for not providing hazardous materials information and training.

What were the hazardous materials in question?

Chemical developer used in a self-contained x-ray machine and bleach used to mop the floor. That's right, ordinary household bleach.

Madam Speaker, in the second OSHA nightmare, Dr. Steven Smunt was fined $4,400 for citations that included removing his eyeglasses when administering anesthetic to a child, and inadequately labeling a first-aid kit that had a "first-aid" sticker on it.

The sum $4,400 is a lot of money no matter what line of work you're in. Regulatory actions like this can only end up hurting consumers. This is particularly the case when this Nation is trillions of dollars in debt, and we are spending the money hard-working Americans send to us on OSHA nonsense like this.

But, Madam Speaker, some people continue to believe that our regulatory reform efforts are wrong-headed. They think that all our regulations are fine and wonderful. Some people just do not get it. In this Sunday's Washington Post, Jessica Matthews wrote that our regulatory reform package was too drastic and based on false premises. Well Ms. Matthews, maybe it is OK with you that OSHA tried to declare bricks a poisonous substance. Maybe it is OK with you that OSHA wants you to get a environmental impact statement everyday you come to work, and maybe it is OK with you when OSHA writes new rules that cost an industry $2 billion but produce no measurable improvement in worker safety. Or maybe it is OK with you that regulations in this country cost us $500 billion annually—nearly $10 thousand for the average family of 4—maybe that is OK with you, but it is not OK with me, and it is not OK with the American people.

OSHA is one agency that has turned a reasonable and important mission into a bureaucratic nightmare for the American economy. Common sense was long ago shown the door at OSHA. OSHA is one agency that needs to be restructured, reinvented, or just plain removed.

SPENDING CUTS? NOT WITH MY VOTE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Massachusetts [Mr. OLVER] is recognized during the morning business for 3 minutes.

Mr. OLVER. Madam Speaker, in just a couple of weeks we are going to be beginning debate on the cornerstone of the Republican Contract on America, and that is a tax cut of $200 billion over 5 years. Never mind that those tax cuts are going to add to the deficit, never mind that these tax cuts make balancing the budget harder. But let us examine what these tax cuts actually do.

In this first chart that I have here, this chart shows who benefits from the tax cuts. If you look at this, 50 percent of the tax cuts go to 10 percent of the families, with over $100,000 of income per year—50 percent of the cuts to 10 percent of families.

At the lower end, the first two categories, which represent 71 million families or two-thirds of all families in the United States, they get less than 20 percent of the tax cuts.

Well, if that is a little bit difficult to understand, then let us look at this chart instead. On this chart, this shows how much each family gets. Families with more than $200,000 per year of income would get, on average, $5,000 of tax reduction. And 49 million families, about 45 percent of all Americans, that have under $30,000 of income per year, they would get on average $57 a year, or about $1 per week would be their share of this tax cut.

Now, they claim they are not going to make the deficit larger, so we are going to be debating this next week the so-called rescissions bill, a $17 billion rescissions bill.

Well, Madam Speaker, in NEWT GINGRICH's America, Republicans will cut infant mortality prevention and prenatal nutrition and children's foster care and safe and drug-free schools for children, education for disadvantaged children, and domestic violence prevention and shelters for homeless families. But they will not do it with my vote.

Next week, in NEWT GINGRICH's America's these radical-right Republicans will cut vocational and technical education and Americorps, the National Community Corps, school dropout prevention, college scholarships and summer jobs. But not with my vote.

And next week, in NEWT GINGRICH's America, these Republican extremists will cut rental assistance for low-income families and public housing maintenance and safety and home heating assistance for 6 million American families, every one of whom happens to lie in this lower category. But not with my vote.

In NEWT GINGRICH's America, to go back to this we are going to take $16 billion of cuts, over $300 for every single family in this category, and transfer it to families in this category.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ELIMINATION ACT OF 1995

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Colorado [Mr. HEFLEY] is recognized during morning business for 5 minutes.

Mr. HEFLEY. Madam Speaker, French economist Jean-Baptiste Say is famous as the author of Say's Law, sometimes summarized as "Supply creates its own demand." In economic circles, this law is still the subject of debate.

Here in Washington, however, the Department of Housing and Urban Development has been proving Say's Law for the past 30 years. We keep increasing spending on public housing, and the problem just gets worse.

Contrary to popular belief, housing assistance was not cut during the Reagan years. Discretionary Federal assisted housing outlays have grown from $165 million in 1962 to $5.5 billion in 1980 and $23.7 billion in 1994, resulting in 55 percent more families being assisted today than in 1980.

Has this dramatic growth solved the problem? No. Today, after HUD's budget has grown by over 400 percent in 15 years, only 30 percent of the families eligible to receive housing assistance are doing so.

And what kind of housing are they receiving? The 1992 report on severely distressed public housing found many public housing residents afraid to leave their own homes due to prevalent crime while others were living in decaying conditions that threatened their safety and health.

According to HUD's own statement of principles issued January of this year, "the rigidly bureaucratic, top-down, command-and-control public housing management system that has evolved over the years has left tens of thousands of people living in squalid conditions at a very high cost in wasted lives and Federal dollars."

Three decades of HUD and homeownership is down, homelessness is up, and millions of low-income Americans are condemned to live in substandard housing which would be unacceptable if it were owned by anyone else.

Say's Law indeed.

Quite simply, HUD has failed its mission of providing decent, low-income housing to America's poor. On the other hand, it has done an excellent job of providing jobs to over 4,000 Washington bureaucrats who oversee the hundreds of programs within the Department.

For these reasons, I have introduced legislation to abolish HUD by January 1, 1998, and consolidate its needed existing programs into block grants and vouchers.

If it is truly the job of government to subsidize low-income housing, then let's do it without the middle man. Rent vouchers allow low-income people to choose their own home, rather than have some bureaucrat choose it for them. Block grants give money directly to the States and local governments—that much closer to the taxpayers who pay the bills.

These reforms are in line with the recommendations recently outlined by HUD itself. The administration's own reform plan proposes eliminating all direct capital and operating subsidies to existing public housing authorities and converting these funds to rent certificates.

For years, conservatives and liberals alike have been championing similar reforms, and it's good to see the current administration jumping onboard.

On the other hand, the administration's effort falls short of the bottom line. Bill Clinton proposed to consolidate HUD's 60 public housing programs into three general funds. He then requested an increase in HUD's budget.

Madam Speaker, America's poor do not just suffer from a surplus of bureaucrats telling them where to live and what to do. They also suffer from excess government that destroys jobs and opportunity.

With $200 billion deficits projected into the next century, it isn't enough to just consolidate many little programs into a few big programs. We have to reduce the size of Government overall. We need to eliminate entire departments. We need to abolish HUD.

It is time to admit that Uncle Sam makes a lousy landlord and end this 30-year experiment in socialist domestic policy. As Bill Clinton said in his State of the Union Address, "The old way of governing around here actually seemed to reward failure."

Let us stop rewarding HUD's failure by abolishing HUD and eliminating the unnecessary bureaucracy. The alternative is to continue investing in instant ghettos and Federal bureaucrats.

That's a solution we have tried for 30 years, and it just has not worked.

VA RESCISSIONS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Virginia [Mr. SCOTT] is recognized during morning business for 3 minutes.

Mr. SCOTT. Madam Speaker, the strength of our national defense has always depended not only on the size of our armory, but in the people who serve. Stock piles of bullets, bombs, and ships are of no use without the brave men and women who are willing to put aside personal hopes and dreams for a time to serve the common good. We owe a tremendous debt of gratitude to these Americans; and one of the ways we have done this is to provide health care services to our veterans. Unfortunately, these services are now the subject of proposed budget cuts.

The rescissions that target Veterans' hospitals, and more specifically remove funding for ambulatory care facilities at Veterans' hospitals, will reduce access to general health care for our veterans, and will make it more difficult to deliver important preventive health care services at these facilities.

The construction of the ambulatory facility at the VA hospital in Hampton, VA is also considered a top priority by the 177,000 patients that currently receives its services. As the fourth oldest hospital in the system, the VA Medical Center in Hampton provides outpatient and inpatient care to veterans who have defended our country in its time of need. This veterans' facility and the others across the country are able to return the favor by meeting health care needs of these dedicated veterans.

The six projects under attack in the GOP rescissions, are not new projects. Several have been under consideration for congressional funding since 1989. The funding has been approved in the past. It is only now, as the new majority looks for ways to finance tax cuts, that the ambulatory care facilities are at risk.

Mr. Speaker, the veterans who use these facilities are not wealthy, or even middle class in some circumstances. The services they receive at the VA hospital constitute their sole access to health care. As we move from inpatient care to primary care in the general delivery of health care, it is important that we continue to offer similar services to our veterans. These preventive services reduce the need for costly inpatient services. In the long run, this will go further toward saving taxpayer dollars than the assorted tax cuts being proposed by the majority.

I call upon my colleagues to vote to restore the funding to the VA ambulatory care projects when the rescission package is brought to the floor next week. These projects make sense, and send a clear message that we are committed to our veterans and to their well-being. It is the least we can do to thank them for their service.

TERM LIMITS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Florida [Mr. MCCOLLUM] is recognized during morning business for 5 minutes.

Mr. MCCOLLUM. Madam Speaker, I want to call the attention of our colleagues to the fact that 1 week from today the U.S. House of Representatives will have a historic first. We will have an opportunity for the first time in the history of this country to vote on a term limits constitutional amendment, an amendment that would limit the length of time that Members of the U.S. House and the U.S. Senate may serve in these two august bodies.

This amendment proposal will have many variations to be voted on out here, and there are certain preferences that some of us have as to one version or another. I know for one, I have been working for years in an effort to get a 12-year limit on both the House and the Senate. Six 2-year terms in the House and two 6-year terms in the Senate. Actually, I prefer that we lengthen the terms in the House and have three 4-year terms.

Whatever the debate may be over the number of years, the important bottom line is that we move along with the process and get a final passage vote that gets us to 290 and makes a bold statement out here.

The reason why we need term limits seems apparent to most people. A record 77 percent of the American people favor term limits. Sometimes the poll has been as high as 80 and other times as low as 70. But that is strong support for term limits which has been there for years and years and years.

What the American people have seen, that many in Congress have not admitted to in recent years, is the fact that we really have become very career-oriented in this body, in the House particularly but, to a large extent in the Senate as well.

Members here are serving full time, a way that the Founding Fathers would not have envisioned. A year-round Congress is something, again, that the Founding Fathers had not envisioned.

Back years ago, we had a situation where Members came here for a very brief period of time at the beginning of the year, as in Senate legislatures, and serve for a couple of months, go home, and not come back again for another year. At the same time, Members served rarely more than two terms as Congressmen in the House and they went home and were citizen legislators in the true sense of the word.

Today's Government is too big for this. We are going to have, for the foreseeable future, a full-time U.S. House and Senate doing the will of the public, a job that is intended to be done. But at the same time what has happened that goes along with this, that I think is a real problem, is that Members are becoming increasingly concerned that it is a full-time job and a career as well. Not all feel that way, but a substantial number do. We need to take the career orientation out of Congress and put a finite limit on the length of time that you can serve here.

The reason why this seems to me to be important is because those who are constantly seeking reelection, viewing it as a career, are inevitably consciously or unconsciously going to try to please every interest group to get reelected. Believe you me, there is an interest group for every proposal that comes before Congress and certainly for every spending proposal. That is a good reason why we have not had a balanced budget.

In addition to needing to mitigate the career orientation of too many Members of Congress, we need to put a permanent rule in place, something in the Constitution that would limit the power of any individual Member to control a committee or to be involved as a chairman or been in a powerful position for too long a period of time. Only a term limit amendment can do that.

Then, term limits would provide also a certainty we are going to have new, fresh ideas here regularly, coming forward out of the public.

I would suggest to my colleagues who oppose term limits and say we need to have the experience and wisdom here of Members who are very good and talented, I would say, yes, there are a few, but there are thousands and thousands of other Americans who can replace those whom we turn out, who could come here, serve their country just as well and would serve just as well as those of us who might think a few of those Members are very talented who are here.

I happen to favor 12 years, as I have said. I think that makes more sense. Twelve years in the Senate and 12 years in the House rather than 6 years in the House or 8 years in the Senate or some other number that is appropriate.

My judgment is that if we go with a number different from the Senate and the House, that we are going to weaken this body as opposed to the Senate.

When we have conference committee meetings and we have other opportunities to debate the issues of the day with the Senate, they will have the more experienced Members in the room, they will have a tougher staff situation, and the House will be weakened. That is not good public policy.

I also happen to think that 6 years is too short. I think you need to be here a couple of terms before you are chairman of a full committee, you need to be in 6 years before you come into the leadership, because this is a full-time job right now whether we like it or not. It is a big Government. I think you open yourself, as term limits supporters, to the critics who oppose term limits altogether who will say the staff will run this place if you support the 6-year version. Twelve years in both bodies makes a lot of sense to me.

But the bottom line is we need, those of us who support term limits, to stick together. Our latest whip check shows we have about 230 Members openly pledged to support term limits in one form or another, coming out here for a vote next week. It is truly remarkable. Two Congresses ago we only had 33 Members of Congress willing to openly support term limits. In the last Congress we got up to 107. In this Congress now it appears that we are going to have at least 230 Members saying, "Yes, we want term limits in one form or another," and I hope all 230 and 60 more which we need to get to the two-thirds to pass the amendment, will be here for whatever version emerges on final passage, whether 6 or 8 or 12, whatever. I urge all Members to seriously consider term limits, remember it is a historic vote out here next Tuesday.

VETERANS' ADMINISTRATION 1995 RESCISSIONS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentlewoman from Connecticut [Ms. DELAURO] is recognized during morning business for 3 minutes.

Ms. DELAURO. Madam Speaker, cutting funding for veterans to pay for tax cuts to the wealthy is wrong. Clearly, my Republican colleagues from the House Appropriations Committee disagree. Last week, under the continued assault of the Contract With America, veterans learned that Republicans cut $206 million from the Department of Veterans Affairs budget to help pay for tax cuts for the wealthy.

These cuts represent more than just money—they represent the breaking of a solemn promise Congress made with sick and disabled veterans across the Nation last year. These cuts target some of the most vulnerable groups in our society—aging World World II and Korean conflict veterans and others who have sacrificed so much for our Nation.

This funding is sorely needed. The Department of Veterans Affairs has been counting on this assistance to pay for six critically needed ambulatory care projects and to replace worn out medical equipment.

This was not money unwisely appropriated. In the case of the ambulatory care projects, each of these projects have been carefully considered and authorized. Further, they are an essential part of the Department's plan to move away from costly inpatient care to delivering cost-effective outpatient care; part of the Department's plan to invest taxpayers dollars and make the VA medical delivery system more efficient.

One of these projects, the West Haven VA Medical Center, is located in my district in West Haven, CT. The West Haven VA Medical Center serves the entire Veterans Administration's medical system. It is the site of the National Post Traumatic Stress Disorder Research Center and the only VA AIDS diagnostic laboratory. Despite its notable reputation, the center's buildings are in extremely poor condition.

The proposed ambulatory care clinic at West Haven would connect the two main, deteriorating buildings and provide the space that is necessary to respond to the number of outpatient visits at the hospital which have doubled since 1984.

Madam Speaker, this, in the words of Lauren Brown, a nurse at West Haven, is not any way to treat "* * * vets [who] served their country regardless of party affiliation or which party was sitting in the White House."

In Connecticut, we are lucky. The West Haven Project is supported by the entire delegation—Republicans and Democrats alike. It is my hope that Members will follow the example Connecticut has set and stand in support our veterans by restoring funding for the Veterans' Administration.

Madam Speaker, our obligation to our veterans must be kept. These cuts are mean-spirited. They do not save money. They must be reversed. When these cuts are debated on the floor next week, I urge my colleagues to support an amendment that will restore this crucial funding to the Department of Veterans Affairs medical construction and equipment accounts.

VETERANS RESCISSIONS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Puerto Rico [Mr. ROMERO-BARCELÓ] is recognized during morning business for 3 minutes.

Mr. ROMERO-BARCELÓ. Madam Speaker, last Thursday, the House Appropriations Committee voted to cut six Veterans' Administration ambulatory clinic projects totalling $156 million and $50 million in medical equipment purchases which already face an $800 million backlog.

One of these projects happens to be the San Juan Veterans' Affairs Medical Center Outpatient Clinic addition, a project designed to address a 15-year problem of severe overcrowding at the facility. Considered as a VA priority for many years. The area currently used for ambulatory care at the San Juan VA Medical Center provides only 40 percent of the space required according to VA standards. Therefore, temporary measures such as converting storage space and corridors into clinical and examination rooms have been the mode of addressing these chronic space deficiencies for many years. Currently, some outpatient clinics and medical interviews are being performed in the hallways and nursing stations of the facility and exit corridors have been converted into additional waiting areas, potentially comprising the health and safety of both patients and visitors.

After a 15-year struggle by Puerto Rican veterans, Congress finally appropriated the necessary funding—34.8 million—to finalize the construction of the vitally needed outpatient clinic at the San Juan VA Medical Center last year. The project had already been authorized and $4 million had been appropriated for its design a year earlier. Puerto Rico's 145,000 veterans, particularly the sick and disabled, celebrated this long-awaited achievement, construction of which is scheduled to begin this year, only to see the House Appropriations Committee decide to take away all the funds a few months later.

However, the fact that strikes me the most is that these proposed cuts will be particularly devastating to the VA medical system because the targeted facilities are all ambulatory outpatient care facilities. The rescissions come at a time when the VA is involved in the effort of shifting from hospital inpatient care to outpatient and non institutional care settings, which is in keeping with the new general trend in providing medical care throughout the Nation. The purpose is not to put patients in the hospitals, but to keep them out of hospitals.

In the words of Veterans Affairs' Committee Chairman BOB STUMP—and I will quote from his February 28, 1995, letter to Appropriations Committee Chairman BOB LIVINGSTON—

> The particular projects selected for rescissions by the subcommittee—VA/HUD Appropriations—are unfortunately the type of projects the Veterans' Affairs Committee has been encouraging the VA to pursue. It is my strong belief, shared by veterans and their service organizations, that giving greater priority to ambulatory care projects is clearly the right approach to improve service to veterans.

Mr. STUMP went on to conclude—and I once again quote—that "in striking contrast to the needs the VA faces, these cuts move VA in the wrong direction."

The Department of Veterans Affairs has consistently ranked the six targeted ambulatory projects as the ones with their highest priorities. They are an integral part of the Department's effort to move away from costly inpatient care and provide more accessible, cost effective and efficient outpatient care. Ultimately, all these projects will save the VA medical system and, therefore, the American taxpayer, millions of dollars.

However, by proposing the rescission of these six projects, the Republicans are sending a very clear message: The health of our Nation's veterans is not a priority

Madam Speaker, we owe a great debt to our veterans. A reduction in hard earned medical services to deserving veterans is not the way to pay for a tax cut for the wealthy and the most wealthy, influential corporations.

I urge my colleagues from both sides of the aisle to support restoring this vital funding when this ill-conceived rescissions package is brought to the floor next week. While it is a small reward for the sacrifices our deserving veterans have made, it is the very least we can do.

PROPOSED BASE CLOSURES IN GUAM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Guam [Mr. UNDERWOOD] is recognized during morning business for 3 minutes.

Mr. UNDERWOOD. Madam Speaker, under the Secretary of Defense's recently released list of base closures to be considered by BRAC, Guam is the hardest hit American community on the list. Four of Guam's facilities, all from the Department of the Navy, were slated for closure or realignment by the Department of Defense, affecting some 2,700 civilian and 2,100 military positions. In terms of total personnel affected, Guam is targeted for more reductions than such large States as California, Virginia, and New York.

The proposed reductions could be devastating to Guam's economy. The reductions represent between 5 and 10 percent of the entire work force on Guam, and as much as a quarter of Guam's economy could be adversely affected. Let me repeat: up to 10 percent of the entire work force will be thrown out of work. And these are the DOD's own figures, not my estimates. To put it in perspective, if this magnitude of cut were undertaken in California, almost 1.5 million jobs would be affected.

But these types of reductions did not occur in California. In fact, according to testimony by the Secretary of the Navy Dalton yesterday, four bases in California were spared because of the potential economic impact. Does anyone doubt whether they even considered the economic let alone the human impact of their cuts on Guam.

To compound the job loss, the Navy is trying to have it both ways. They're closing down facilities, saying they don't need them, and at the same time holding on to all the assets in case they need them in the future. Under the proposal to close the ship repair facility, or SRF, the Navy would not transfer the piers, floating drydocks, its typhoon basin anchorage, floating cranes and other equipment to the local community. Similarly, they would retain all the pier space with the closure of a number of naval activities at the naval station.

Their decision would be like moving all the troops out of Fort Ord, but holding onto the base. They cannot and should not have it both ways. Either they retain the facilities or turn them over to the local community so that Guam can recover the job losses. This schizophrenia will leave our community in a straitjacket without the tools for our own economic survival. If the Navy closes down these facilities and retains the assets we will be left with no access to the waterfront and a few empty buildings. This does not bode well for forming a successful reuse plan when we cannot even be given the opportunity to use our own resources.

According to recent statements by the Secretary of Defense William Perry and other officials in the Pentagon, the decision to pull back from Guam was opposed by some high ranking uniformed officers, including the Commander in Chief, Pacific Command, Adm. Richard Macke. Apparently, Admiral Macke indicated that without Guam, the Navy will be forced to count on foreign facilities in Japan to meet their needs and would lose the most forward deployed U.S. military base on American soil in the Pacific. The CINC understands the big picture and the need for Guam as a strategic base. However, the computer model used by the Pentagon did not consider these implications.

Computer models, bean counters, and technocrats did not consider such factors as reliability, loyalty and the long-term effect of these closures on our position in the Pacific. Apparently suits in the Pentagon overruled some of our uniformed military personnel who understand the need to maintain an SRF in Guam.

A more logical approach than the one taken in the Secretary's recommendation would be a joint use agreement with the local government. Under such an arrangement, the Government of Guam could act as a corporate operator of the major facility, SRF. The Navy would then pay the government of Guam to operate the facility and retain access to it in times of crisis. In this way, the equipment and quality of work force is maintained and used for commercial use but the Navy does not have to pay for the entire cost anymore. It makes good economic sense by saving the Navy money and giving the local community the economic tools to survive.

If this approach is rejected and BRAC decides that Guam is not needed as a forward deployed base then the Navy must turn over the assets and land upon completion of the closure. Otherwise, there is no way that the people of Guam could possibly recover the 25 percent loss to their economy and 5 to 10 percent reduction in the work force. The least the Navy can do if they are going to close these facilities is to give the local community the tools to recover from the loss.

Since the Navy has taken the easy way out by making a wishywashy decision, it is now up to BRAC to decide.

Madam Speaker, I urge BRAC to make the right decision.

SAVE FLORIDA VETERANS PROJECTS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentlewoman from Florida [Ms. BROWN] is recognized during morning business for 2 minutes.

Ms. BROWN of Florida. Madam Speaker, last week the Republican members of the House Committee on Appropriations voted to rescind $206 million in the VA's budget for this year. These funds were intended for six VA facilities and medical equipment to provide better health care for our Nation's veterans.

Of these six projects that were cut, two were in the Florida, Gainesville ambulatory care unit that has been on the list for over 18 years, and one in Orlando that is a win-win situation, an example of how Government works well.

When the Base Closure Commission recommended closing the naval training facility, the Department of Defense, along with Veterans' Affairs, worked together to turn that facility over to the veterans who really needed the facility in the Orlando area. The amount of this funding was $14 million. There could be no backing down on this matter. A vote to keep our veterans projects is a vote to keep our promise to our veterans.

These cuts targeted at veterans are another example that the Republican "Contract With" is a "Contract on America," and a Contract on American veterans.

Madam Speaker, one project was for a $14 million project to allow the VA to relocate from its present location to the Orlando Naval Training Center hospital, identified for base closure, for use as a satellite outpatient clinic and a 120-bed nursing home facility.

The existing outpatient clinic in Orlando is a disgrace. It lacks sufficient examining rooms, waiting areas, and bathrooms. There is no privacy for examining women veterans and parking is severely limited. These veterans in east central Florida have already waited too long for access to a quality health care facility.

The other funds were $17.8 million for a VA ambulatory care addition in Gainesville. Funds have already been obligated for the Gainesville ambulatory care addition. In fact, last week the VA announced a contract award for the project. This project has been identified by the VA as critically necessary to relieve outpatient overcrowding problems. Lack of space prevents the medical center from offering care in a timely manner. This Gainesville project has been designed to include an ambulatory surgery facility in renovated space, along with facilities for primary care, specialty outpatient care, and women's health.

It is a national disgrace that Republicans cut these funds to provide better care for veterans. The list obviously was quickly and thoughtlessly compiled. Our Nation's veterans—men and women—who have been called upon to put their lives on the line in remote parts of the world and under the most difficult conditions. If they survive this ordeal, they should at least be able to have good care when they return to the United States.

These canceled projects prevent us from expanding our outpatient services, a national trend in health care delivery, and making our health care system more efficient and cost effective. These canceled projects are aimed at one of the most fragile groups in our society—aging World War II and Korean conflict veterans. These and all veterans should expect and receive good care. If we cannot protect them at their time of need, how can we ask them to stand in harm's way to protect us?

SUPPORT AN AMENDMENT TO THE RESCISSIONS BILL

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Mississippi [Mr. MONTGOMERY] is recognized during morning business for 2 minutes.

Mr. MONTGOMERY. Madam Speaker, I want to thank the gentlewoman from Florida [Ms. BROWN] and the gentleman from Guam [Mr. UNDERWOOD] for giving me part of their time.

Madam Speaker, I rise to support, and I hope all Members would support, an amendment to the rescissions bill. This amendment would restore the $206 million for veterans' programs which the Committee on Appropriations proposes to rescind.

Madam Speaker, I hope the Committee on Rules will permit us to offer a clean amendment to restore these funds.

The six VA projects which the committee has recommended be canceled are needed in order to improve access to necessary outpatient care in an area where over 1 million veterans reside.

Rather than producing real savings, the proposed rescissions would tend to have the opposite effect because they would cut projects aimed at making VA health care delivery more cost-effective.

As the President of the United States said yesterday, "These cuts would harm those veterans who most need the Nation's help." Enacting this measure would contradict the Speaker's assurance to me in January that Congress would not cut veterans' programs.

Madam Speaker, in some parts of the country the VA really does not have the proper health facilities to meet the veterans' needs. I am told that the clinics are too small. For example, in Puerto Rico eye doctors are forced to perform eye examinations in hallways. Many VA outpatient clinics were built so long ago that there is no privacy for women veterans. In most of these older facilities, there is only one examining room per doctor. We would like to provide two examining rooms for each doctor, which would facilitate and speed up the process. We hope we will have the support when we offer this amendment to restore the $206 million cut by the Committee on Appropriations.

RECESS

The SPEAKER pro tempore. There being no further requests for morning business, pursuant to clause 12, rule I, the House will stand in recess until 11 a.m.

Accordingly, at 10 o'clock and 28 minutes a.m., the House stood in recess until 11 a.m.

□ 1100

AFTER RECESS

The recess having expired, the House was called to order by the Speaker.

PRAYER

The Most Reverend Augustin Roman, Auxiliary Bishop of Miami, Miami Shores, FL, offered the following prayer:

Father in Heaven, Lord and Ruler of all the Earth and its nations; You have given all peoples one common origin and Your will is to gather them as one family in Yourself.

Look upon this assembly of our national leaders and fill them with the spirit of Your wisdom so that they may act in accordance with Your will. Through their deliberations, may they seek to overcome the selfishness that divides our human family and thus help secure justice for all their brothers and sisters. For it is justice guaranteed for all and denied to no one that rightly orders our liberty while accepting Your lordship over us and so assures the security of a true and lasting peace worthy of man created in Your image and likeness. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Texas [Mr. GENE GREEN] come forward and lead the House in the Pledge of Allegiance.

Mr. GENE GREEN of Texas led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER

The Chair announces that there will be 20 1-minutes on each side.

A WELCOME TO BISHOP ROMAN

(Ms. ROS-LEHTINEN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. ROS-LEHTINEN. Mr. Speaker, this morning we were blessed by hearing Auxiliary Bishop Augustin Roman of the Archdiocese of Miami deliver the opening invocation. My colleagues, LINCOLN DIAZ-BALART, BOB MENENDEZ, and I welcome him.

We have recently come to the floor to remind our colleagues of the great contribution that immigrants make to this country. Bishop Roman is another perfect example.

Bishop Roman arrived in the United States in 1966, after having been expelled from Cuba by the tyrannical regime of Fidel Castro.

In 1979, Bishop Roman became the first Cuban in 200 years to be named a bishop in the United States. The bishop holds advanced degrees in theology and human resources and serves as director of the "Ermita de la Caridad," a shrine to Our Lady of Charity, which he helped create. He has been a spiritual guide for the people of south Florida during troubled times.

Bishop Roman is also active in seeking freedom for the Cuban rafters detained at Guantanamo.

When called by the local press a hero, the bishop humbly responded that "a bishop, a priest is a servant, not a hero." This humility and compassion is what has made the bishop of one south Florida's heroes, or as he would put it, its servant.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE JOINT RESOLUTION 2

Ms. DUNN of Washington. Mr. Speaker, I ask unanimous consent that my name be withdrawn as a cosponsor of House Joint Resolution No. 2.

The SPEAKER pro tempore (Mr. HEFLEY). Is there objection to the request of the gentlewoman from Washington?

There was no objection.

REPUBLICANS IN THE SCHOOL LUNCH PROGRAM

(Mr. GENE GREEN of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GENE GREEN of Texas. Mr. Speaker, last night and this last weekend we heard the Republican majority defend their school lunch changes. It is the great Republican shell game for school lunch.

They promise a 4.5-percent increase under one shell, but they do not tell us what is under the Appropriations Committee shell. What is under the State shell, when they can cut 20 percent from the School Lunch Program and transfer it to other programs?

The Republicans are playing budgetary shell games with school lunches. They are taking a guaranteed school lunch for children and subjecting it to the authorization process, to the appropriations process, and then subjecting it to whatever a State may want to do up to 20 percent. On one hand they promise an increase in funding, on the other hand the Committee on Appropriations has been cutting the summer youth jobs and other programs for children.

Are we going to protect the lunch program, or are we going to subject it to the Committee on Appropriations and what they are doing now? Will school districts be forced to end programs when massive rescissions bills come down after they have already bought food? Maybe we should go to the kids during the year after they have already had that luncheon say, you need to give it back.

Why is Congress trying to fix a program that has been working since 1946?

REPUBLICAN CONTRACT WITH AMERICA

(Mr. HOBSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HOBSON. Mr. Speaker, our Contract With America states the following: On the first day of Congress, a Republican House will require Congress to live under the same laws as everyone else; cut committee staffs by one-third, and cut the congressional budget. We kept our promise.

It continues that in the first 100 days, we will vote on the following items: A balanced budget amendment—we kept our promise; unfunded mandates legislation—we kept our promise; line-item veto—we kept our promise; a new crime package to stop violent criminals—we kept our promise; national security restoration to protect our freedoms—we kept our promise; Government regulatory reform—we kept our promise; commonsense legal reform to end frivolous lawsuits—we plan to complete that today;

Welfare reform to encourage work, not dependence; family reinforcement to crack down on deadbeat dads and protect our children; tax cuts for middle-income families; senior citizens' equity act to allow our seniors to work without Government penalty, and congressional term limits to make congress a citizen legislature.

This is our Contract With America.

REPUBLICAN PROPOSAL TO END THE SCHOOL LUNCH PROGRAM

(Ms. VELÁZQUEZ asked and was given permission to address the House for 1 minute.)

Ms. VELÁZQUEZ. Mr. Speaker, 2 weeks ago the Republican Party released its most extreme proposal. Republicans voted to dissolve the most successful child nutrition programs in our schools today—the school lunch program. With a 5-year, $5 billion program cut, the GOP will raise the nutritional deficit of thousands of school age kids.

Republicans need to understand that in their callous and inhuman proposal, they will be hurting the most vulnerable of Americans—our Nation's children. Members of the GOP argue that their program will cut bureaucrats and will not endanger our children. Well I have news for them, cutting school lunches does endanger our children. How can we prepare our youth for the jobs of the 21st century when we deny them the basic requirements for a healthy body and sound mind.

Members on the other side of the aisle need to stop playing schoolyard bully. Their actions are an insult to millions of Americans and their children. I urge this body to defeat any action against the health and well-being of our Nation's kids.

REFORM FOR THE NEXT GENERATION

(Mrs. SEASTRAND asked and was given permission to address the House for 1 minute.)

Mrs. SEASTRAND. Mr. Speaker, in trying to help the least advantaged among us, our Federal Government has instead created a culture of poverty that is destroying the next generation. It created a safety net that works as a hammock instead of a trampoline. It created reliance when we wanted self-help. And it started a cycle of dependency when we wanted charity. The clients of the welfare system have instead become its victims.

Now Congress has the opportunity to change the system. We have the obligation to reform the system. And we have the moral imperative to transform this system of dependency. While others have come to defend the welfare state, they have instead declared war on our children of the next generation because they don't recognize this era has raised the white flag over the current culture of poverty. Mr. Speaker our welfare system is normally bankrupt and only through a mixture of compassion and tough love will we be able to keep our country from declaring moral chapter 11 and defaulting on the next generation—our children.

TOP 10 REASONS FOR SUPPORT OF 1-800-BUY-AMERICAN

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, the top 10 reasons to cosponsor my 1-800-Buy-American bill.

No. 10, the bill pays for itself. No. 9, it passed the House last year overwhelmingly. No. 8, no government bureaucrats. No. 7, no more Ross Perot specials and graphs. No. 6, the Chinese are coming. No. 5, it beats all those 1-900 phone sex calls for your family. No. 4, the American workers demand it. No. 3, Japan hates it. No. 2, it should be a part of the Contract With America. And No. 1, David Letterman is absolutely fed up with those Chinese toasters.

1-800-Buy-American, H.R. 447, passed the House, the Senate did not show the wisdom. Cosponsor H.R. 447.

LIABILITY LAWSUIT SYSTEM

(Mr. TIAHRT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIAHRT. Mr. Speaker, America's liability lawsuit system has imposed huge costs on the economy and our society. Even Little League baseball has not been exempt. Its liabilities insurance rates have climbed 1,000 percent in 5 years. So Americans are going to have to pay more for their children to play baseball.

I feel safe in saying that if our current liability system had existed 100 years ago, we would not be flying airplanes. And being from the air capital of the world, Wichita, KS, that is a startling thought. Americans are brave and adventurous people. We like to take risks. We have historically been willing to pay the price for progress. But all we are paying today is the cost of frivolous and predatory lawsuits brought by lawyers who in many cases are only out to protect their fees.

Mr. Speaker, $300 billion a year. That is what our system costs Americans each year in higher prices and lost wages and in lost jobs. While we need to ensure that people with legitimate grievances have access to the justice system, we also need to make commonsense reforms.

SCHOOL LUNCH

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, the war on kids just got extremer and meaner yesterday. We all know about the war on the lunch program and paper plates are coming in in the mail every day to my office saying please save it, please save it. But yesterday we saw one more step that I really could not believe.

We saw them take out of the Child Support Enforcement Act a provision saying a deadbeat parent could have their driver's license taken away. Now, I think that is amazing.

As they are taking away a child's lunch, they are not at all hesitant to leave a deadbeat parent with their driver's license. Heaven forbid.

What is a child supposed to do? The child, I guess, is supposed to pick better parents before birth. I do not think that is a good answer.

WELFARE REFORM

(Mr. JONES asked and was given permission to address the House for 1 minute.)

Mr. JONES. Mr. Speaker, the defenders of the old order have been telling us for weeks how much they want to help the children. But their idea of helping children is expanding a welfare system that has proven to be a failure—especially for children.

Consider this recent poll result. When asked, "do you think children are generally better off today or worse off than when you were a child," 60 percent of all Americans—and 77 percent of black Americans—said children today were worse off.

All you have to do is look around to see that the people are right. And the welfare system is a large part of the reason why.

So why do the Democrats fight so hard to save a failed system?

I think it has a lot to do with the poverty industry that has grown up around the Democratic Party.

The Democrat Party may need poverty, but America does not.

It is time to act, Mr. Speaker. It is time to change a failed system that has done irreparable harm to America's children.

□ 1115

CHILDREN AT RISK WITH CUTBACKS ON SCHOOL LUNCH PROGRAM

(Mr. SERRANO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SERRANO. Mr. Speaker, let me see if I can get this right. The Republican approach is to lower taxes for the rich by taking the school lunch away from the children. The contract with America is undoing the legend of Robin Hood.

Republicans who were elected last November never told the voters that they intended to bring pain to the children of our country. The mean-spirited Republicans continue to set their sights on attacking those members of our society who are least able to fight back.

This time they have gone too far and the American people are aware of the all-out assault on children in this country. The Republicans can try to mislead the people about the Social Security cuts but they are not going to be able to hide their attacks on the school lunch program and the children in our country.

Day after day, Republicans come up with a new way to hurt helpless little children. Are the children a special interest group Republicans want to do away with?

The voices of the American people are being heard. Do not hurt the children.

CHANGES IN THE LEGAL SYSTEM PROVIDED BY THE CONTRACT WITH AMERICA

(Mr. CHABOT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHABOT. Mr. Speaker, this is a true story. A man in New York tried to commit suicide by jumping in front of a subway train? He survived, and then he sued the city for damages, and he won $1.2 million.

This is just the type of case which tells why three-fourths of Americans say that the current liability lawsuit system is in need of major repair.

The American people are sick and tired of our culture of victimization. Murderers go free because they were supposedly abused as children. A woman spills coffee on herself, and then she collects millions of dollars in punitive damages.

Whatever happened to personal responsibility? This is no small matter. Frivolous lawsuits cost Americans $300 billion in higher prices and in lost wages, but we are going to reform this system, while ensuring that all those with legitimate grievances will have access to the justice system. This is our Contract With America.

SCHOOL LUNCHES NOT JUST A LUXURY, SAYS MISSISSIPPI EDUCATOR

(Mr. KLINK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KLINK. Mr. Speaker, William Billups, the Principal at the all black Jefferson Elementary School in Jefferson County, MS, rural, poor, and 85 percent black, says that school lunch programs are not just a luxury.

Principal Billups is a Republican, and he says he likes a lot of the changes that are taking place in Washington these days, but ending the Federal School Lunch Program and block granting the money to the States is not his idea of making things better.

Billups calls it a crapshoot. Adding that you just do not know what they will do with the money.

Having watched Mississippi State politics like I have watched politics in my State of Pennsylvania, Billups knows that "They'll take a little here and take a little there. It'll be political." And he adds, we shouldn't be political. about food. Maybe we should send our Republican friends back to Jefferson Elementary School in Jefferson County, MS, to learn that lesson.

PROTECT BIODIVERSITY AND ECOSYSTEMS

(Mr. GILCHREST asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GILCHREST. Mr. Speaker, Dr. Norse, chief scientist for the Center for Marine Conservation, reminds us that biodiversity and ecosystems do such things as maintaining climate, removing pollutants from the atmosphere, building soils to sustain the agricultural industry, and protect coastlines, and these are essential, all of the things I just described, to human existence.

Just as our astronauts are absolutely dependent on expensive, engineered life support systems to sustain them in the cold void of space, what sustains the entire Earth in the cold void of space is the life-supporting functions of the world's ecosystems and biodiversity. These things provide the habitat that all species need, including humans.

Unfortunately, our responsibility for being stewards of the land often conflicts with our apparent and obvious need to produce and consume resources.

Just as we would never sell the original Constitution of the United States or the Chesapeake Bay to foreign investors for any amount of money, we should not sell our biological diversity for a percentage. We must reexamine our knowledge on these issues.

SAVE THE SCHOOL LUNCH PROGRAM; REJECT CAPITAL GAINS TAX CUT

(Mr. BROWN of Ohio asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROWN of Ohio. Mr. Speaker, yesterday I visited three elementary schools in my district, Hamilton and Homewood in Lorain, OH, and Franklin Elementary in Elyria. I talked with students, parents, cafeteria workers, teachers, and administrators about school lunches. The school lunch program, they told me, begun in 1946 by Harry Truman, is a Government program that works. They simply said "Don't mess with it."

Almost one in three children in the Lorain and Elyria public school systems, middle American cities, certainly qualify for some type of assistance in school lunches. That is good, sound, fundamental policy. It helps the kids, for sure. For some of them it is the most nutrition they will get in a day. Just ask some of the physicians and nurses in Lorain County whether they think the school lunch program is a good investment.

I am a budget deficit hawk, but cutting school lunches for working-class and poor kids, Mr. Speaker, simply goes too far. Republican extremists last week, though, increased military spending by $3.2 billion, and Republican extremists announced that they will pass a capital gains tax break for the wealthiest 1 percent of our society. Mr. Speaker, this is extremism. It should be rejected.

GOOD NEWS FOR SENIOR COMMUNITIES

(Mr. GOSS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOSS. Mr. Speaker, this week we expect some long-overdue good news for seniors. The Department of Housing and Urban Development will release its new rule defining the "significant facilities and services" requirement for senior communities under the Fair Housing Act. We well remember HUD's first attempt to set such standards—a disaster that sparked vigorous and legitimate protest from seniors across the country. From what we have seen, it appears HUD learned its lesson the second time through. I thank all those who made themselves heard. It made a difference. The new rule recognizies the unique social and physical characteristics of senior communities. And it will enable existing senior-only communities to qualify for the exemption without great expense. It is about time the bureaucracy acts to alleviate the unnecessary fears and anxiety caused by the vagueness in current law. I hope the millions of Americans impacted by this proposed new rule will take a close look and let us know what they think.

UNDER "LOSER PAYS," WINNERS TREATED AS LOSERS

(Mr. GUTIERREZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GUTIERREZ. Mr. Speaker, the legal bill we are debating today can be summed up in two words.

Loser pays.

Loser pays. An appropriate phrase for this Congress.

Because all across America, people who are winners are being treated like losers.

Hard-working American families who are busy meeting their mortgage and making their car payment and saving for school supplies.

Middle income Americans who are too busy trying to stretch their dollars to attend the thousand dollar a plate dinners for Republican insiders.

Loser pays.

Well, to my Republican colleagues, I guess the people who hold the champagne glasses and wear the designer dresses at their fundraisers are the winners, and the people who serve the drinks and clean up afterward are the losers.

But today we have a chance to preserve the right of Americans to be winners in court by rejecting the lobbyist-sellout the majority calls "legal reform."

When we do, the losers who pay will not be American families, they will be the lobbyists left alone when the lights go out at their party.

THE COMMON SENSE LEGAL REFORM ACT WILL RESTORE THE BASIC PRINCIPLES OF LAW

(Mr. WHITE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WHITE. Mr. Speaker, I would like to spend just a couple minutes this morning talking about my second year in law school, not the first year; the first year we studied the traditional principles of law and I understood those. In the second year we started to get into the more recent developments that we have seen in our legal system, and those, frankly, I did not often understand.

These are principles, for example, that allow someone who is only responsible for 10 percent of the damages caused to someone to be liable for 100 percent of all the payments that have to be made. It allows someone who is drunk to recover full damages, even though it was his drunkenness or the fact that he was on drugs that caused his own damages.

Frankly, Mr. Speaker, that is something I did not understand, and 15 years of practicing law confirmed to me that our legal system is dramatically out of whack. That is why I am so happy to be here today as we debate the Common Sense Legal Reform Act.

This act will do many things, but most important, Mr. Speaker, it will restore the principles that our law used to be based on back to the law today, principles of personal responsibility, principles of right and wrong. I urge my colleagues to vote for it.

A PLEA FOR RESTORED FUNDING FOR LIHEAP

(Mrs. KENNELLY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. KENNELLY. Mr. Speaker, it is not easy to be poor in this country; it is not easy to be old; and it is not easy to get through a harsh New England or Midwestern winter if you are either.

For that reason, we enacted the low-income energy assistance program, or LIHEAP. In fiscal year 1993, more than 5 million households benefited from funding under LIHEAP. More than 70 percent of these recipients have annual incomes of less than $8,000.

In my own State of Connecticut, not only are our winters harsh and our economy in deep difficulty—our fuel costs are disproportionately high. The average price of natural gas in Connecticut is 291 percent higher than it is in Alaska. Without LIHEAP, many families may be faced with the starkest of choices: Heat versus gas for the car, or clothes for the children, or a roof over your head.

It is not easy to be poor, or old, or sick. And it's not easy to be overlooked. Let us not ignore these people least able to speak for themselves. Let us restore funding for LIHEAP.

GOP KEEPING ITS PROMISE TO CHILDREN

(Ms. DUNN of Washington asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DUNN of Washington. Mr. Speaker, Republicans are keeping their promises—and that includes the promise to help millions of children currently forced to live on welfare because one of their parents has abandoned them. This Nation's No. 1 natural resource is its children, and they deserve the protection that Republicans offer them in our welfare reform plan.

For decades our Nation has seen a huge welfare bureaucracy continue to grow while Congress stood idly by failing to hold parents accountable for the precious children they have brought into the world and then carelessly chose to abandon. We cannot allow this tragic status quo to continue.

Under the Republican welfare reform bill States will finally get the assistance they need to track down deadbeat parents—especially the 30 percent who move out of the State often to avoid paying child support. Our proposal will help to find these individuals and require them to pay the $34 billion they owe in child support to the children they have deserted—children who might have been kept off welfare if the parent had kept his commitment.

Mr. Speaker, it is a tough approach but a fair one. And, above all else, it is the approach that can save children from falling into the welfare trap of a lifetime of dependence on the Government.

We can end the status quo. Let us help States find those deadbeat parents, and let's keep our promise to the children.

COMMENDING BISHOP ROY LAWRENCE HAILEY WINBUSH

(Mr. FIELDS of Louisiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FIELDS of Louisiana. Mr. Speaker, when men look through the halls of time, it is leaders in our community who literally stand out, those who shake the very ground on which we walk.

It brings me great pleasure to take this moment to recognize a leader not only in my State, but a leader in this entire Nation, Bishop Roy Lawrence Hailey Winbush, who was recently elected the chairman of the Congress of the National Black Churches, an organization that has an active participation of over 65,000 churches nationwide.

Bishop Winbush took this esteemed position it will be 40 years ago. He served as a community leader, and made an incredible mark on this country as a leader who recognizes and represented the cities of Alexandria, Lake Charles, Lafayette, Monroe, and Shreveport.

Bishop Winbush also is a general board member of the Church of God in Christ, an organization that represents over 5 and a half million members nationwide. Bishop Winbush is also a public servant. When faced with the problem of crime, community, and family, President Clinton requested his presence, along with others, to address the problem within the African-American community.

I am happy to say this gentleman lives in my community, and I commend him today.

CHILD NUTRITION PROGRAMS INCREASED, NOT CUT

(Mr. NORWOOD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NORWOOD. Mr. Speaker, that the other side continues to accuse us of cutting funding for child nutrition programs is ludicrous. I voted in committee to increase the funding child nutrition programs are receiving, yet people are calling my office worried that we are gutting these programs. We are increasing the funding and eliminating the wasteful Federal bureaucracy to send more money to the States. The charge that we are cutting funding is patently false. Mr. Speaker, I would simply ask that Americans look at the facts. It is a fact that we are putting more money in to child nutrition. It is a fact that our bill dismantles part of the Federal bureaucracy. And it is a fact that many Democrats receive significant campaign contributions from

Federal bureaucrats every year. All I ask is that Americans consider the facts.

IN OPPOSITION TO CHILD NUTRITION AND SUMMER JOB CUTS

(Ms. JACKSON-LEE asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE. Mr. Speaker, I hold in my hands the Constitution of the United States of America, which has in some parts of it the opportunity for all of us to pursue happiness and to establish equality. I simply ask, who is working for the children?

It is interesting to hear expressions about how much these block grants and these votes will provide more dollars for school breakfasts and lunches. In fact, they really do not. What they actually do is cut the dollars, because they do not take into consideration the increased need of our children and our mothers, who are in fact fighting every day to survive.

Mr. Speaker, I rise today to speak against the runaway legislative freight train that threatens to crush the lives of millions of America's children. In particular, as a Representative for the 18th Congressional District in the State of Texas, I acknowledge that there are businesses, small businesses, there are working people, middle class, but I also say that my district has a wealth of children who are in fact in need of school breakfasts and school lunches.

My Republican colleagues indicate and are the conductors of the unconscionable train. Mr. Speaker, we must realize that we have to stand for the children. We cannot lose $670 million in my home State of Texas alone between now and the year 2000.

Mr. Speaker, let us not cut nutrition for our children, let us stand up and fight and uphold the Constitution.

Mr. Speaker, I must rise today to speak against the runaway legislative freight train that threatens to crush the lives of millions of America's children.

My colleagues from the other side of the aisle are the conductors of this unconscionable train, and they continue to drive that train at breakneck speed through this body without any consideration about what and who they will leave lying bloody on the tracks behind them.

Their agenda—already declared immoral by Cardinal John O'Connor—will slash child nutrition programs—more than $670 million in my home State of Texas alone between now and the year 2000.

And now, as if nutrition cuts were not horrific enough, the mad conductors of the runaway train have set their sights on summer job programs. Bear in mind, these are the same folks who complain about welfare dependency and cycles of poverty. Do they not see, Mr. Speaker, that denying some 600,000 needy young people a summer job will only make it that much more difficult for them to get the work experience they'll need to break our of poverty?

Mr. Speaker, I fear these Republican conductors do not see the damage their runaway train will wreak because they are blinded by their zeal to cut taxes, with no real focus on the deficit of working Americans.

For the sake of America's children, this train must be stopped.

□ 1130

TIME FOR COMMONSENSE LEGAL REFORM

(Mr. CHRISTENSEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHRISTENSEN. Mr. Speaker, yesterday this body began the monumental task of reforming America's legal system.

Mr. Speaker, for too many years ridiculous legal judgments have been handed down in frivolous lawsuits where the only real winners are the lawyers.

Mr. Speaker, some have suggested that we should leave this up to the individual States to decide. I am a true federalist at heart and I believe that in States where the State statute is stronger than the Federal law that State law should prevail. But there are States where the abuses of the judicial system have run amuck.

Case in point, Alabama. Steve Flowers is a 13-year veteran of the Alabama legislature and chairman of the Insurance Committee for the Alabama House.

In 1987 Mr. Flowers was the primary sponsor of Alabama's legal reform legislation, but he now strongly favors Federal legislation in this area.

Why? Because in 1993 the Alabama Supreme Court in Henderson versus Alabama Power Company ruled that the Alabama legislature did not have the authority to impose limits on punitive damages.

Mr. Speaker, in the first 11 months of 1994, juries in Alabama awarded more than $170 million in punitive damages, not including wrongful death actions.

The time is now for true commonsense legal reform. This body must act now to turn the tide of lawsuit abuse and pass this measure to protect hard working Americans from the long arm of the trial lawyers.

CONTRACT PUNCHES HOLES IN CONSTITUTION

(Mr. WATT of North Carolina asked and was given permission to address the House for 1 minute.)

Mr. WATT of North Carolina. Mr. Speaker, when I showed up yesterday with my hole puncher in one hand and the Constitution in the other hand and represented that the Contract With America was beginning to punch holes in the Constitution, I got calls yesterday saying, "Are you crying wolf?" So I went back and here is the record.

Line item veto, article I, section 1.

Effective death penalty action, habeas corpus, article I, section 9.

National Defense Revitalization Act, this review commission, article II, section 2.

Exclusionary Rule Reform Act, fourth amendment, punched a hole.

Takings legislation, fifth amendment, punched a hole, America.

The Contract With America is punching holes in our Constitution. As the Speaker comes in here to punch a hole in this contract, they are punching a hole in the Constitution of the United States.

WHAT IS REALLY GOING ON

(Mr. HOKE asked and was given permission to address the House for 1 minute.)

Mr. HOKE. I wonder if that applause coming from the other side of the aisle, if those Members who applauded, if perhaps they also voted back on the first day of Congress, of the 103d Congress, 1992, to seat delegates, to allow them to vote in the Committee of the Whole in contravention of article I, section 2 of the Constitution, punch-punch.

We continue to hear the same thing over and over and over, and it just begins to make you wonder if you repeat it long enough and loud enough, if the big lie might not take effect, might not actually stick.

The fact is that we are increasing the amount of money that goes to School Lunch Programs. Everybody knows that on both sides of the aisle, including when one takes into effect demographics and changes in population.

What is amazing, though, is that the same lie would be repeated. So what is it all about? Is it not really just about power and the loss of constituencies and the loss of bases? I think that is really what is going on here.

Clearly those friends of mine on the other side of the aisle have been supported for years and years by the Federal employees PAC's, and that is really what is going on here.

SUPPORT FEDERAL NUTRITION PROGRAMS

(Ms. NORTON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. NORTON. Mr. Speaker, we are pedaling backward fast, crushing kids as we go. Cut the heat at home, cut the lunches at school. There is no escaping the cuts, kids.

Have we forgotten the shameful revelations of hunger and poverty that produced the American majority for school lunches, WIC and low income energy assistance? What about that contract?

Contracts are supposed to be win-win propositions. Tax cuts for the wealthy paid for with lunch money from kids is a rotten tradeoff. As $5 billion wallop at WIC and child nutrition programs is child abuse.

If Washington cannot afford to feed hungry kids, cash-starved cities like the District will hardly be able to pick up the pieces—or the children. It is time we stopped eating our young and their lunches.

THE ALTERNATIVE MINIMUM TAX REPEAL ACT OF 1995

(Mr. ENGLISH of Pennsylvania asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ENGLISH of Pennsylvania. Mr. Speaker, today I am introducing the Alternative Minimum Tax Repeal Act of 1995. It is my sincere hope that this legislation will provide a starting point for this Congress to consider eliminating economic distortions caused by the Tax Code and encourage new investment in manufacturing.

This legislation would repeal the alternative minimum tax that was created as part of the Tax Reform Act of 1986. This tax is a major impediment to new investment for many capital intensive and rapidly growing manufacturing firms in the chemical, electronic equipment, energy, metal, paper, steel, and transportation industries. It is a parallel tax system that takes away a portion of a company's depreciation deductions if their income as computed under the alternative minimum formula is higher than their income calculated under the regular tax system.

While it was designed and intended to prevent otherwise profitable companies from escaping taxation altogether through the use of exclusions, deductions, and credits, it has instead resulted in large interest-free loans to the Government by companies that experienced real economic losses during the early 1990's. Congress never intended for companies to incur a permanent increase in tax liability due to this tax. Put simply, the alternative minimum tax is not working as it was intended.

While many members of the House Ways and Means Committee, on which I serve, are very concerned about this tax, by introducing this legislation I hope to ignite a broader interest in this exact type of much needed tax reform. I am pleased to offer this bill to the House.

LEAVE THE KIDS ALONE

(Mr. LEWIS of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEWIS of Georgia. Mr. Speaker, yesterday I ate breakfast and lunch with students at two schools in Atlanta, Payton Forest Elementary School and Thomasville Heights Elementary School. Many of these children were receiving these meals through the School Lunch and Breakfast Programs. For some of them it was the first decent meal they had had since Friday, the last time they were in school.

Mr. Speaker, it is cold and heartless, it is just plain mean, for the Republican majority to deprive these children of their school breakfast and lunches. This program is a success. It provides the food necessary for children to learn. Children cannot learn on an empty stomach, they cannot learn if they are hungry.

The cost of my breakfast and lunch yesterday was a combined $2.70. Surely, this is not too great a cost to pay to feed our children, to give them the nutrition they need to learn and to grow.

In their rush to provide tax breaks to the wealthy, the Republican majority would steal lunch money from our kids. I, for one, do not want any part of that contract and I don't think the American people do either.

THE SIMPLE FACTS

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Mr. Speaker, I certainly have a great deal of affection and admiration for the gentleman who preceded me here in the well. I was pleased to see that he was back at school as were many of my liberal Democrat colleagues yesterday. But the fact is that with all due respect, my friends should not spend time exclusively in the lunchroom, they should go back to math class, because here are the simple facts of this case.

We are actually increasing $200 million in excess of what the President is calling for in school nutrition programs. We are calling for a 4.5-percent increase in these school nutrition programs. Yes, we are asking to fine tune the responsibility to give the responsibility to people on the front lines fighting the battle, but friends, it is an increase.

Only in Washington can an increase be called a cut and be called heartless and mean spirited when in fact we are public spirited trying to get control of this problem, trying to feed the truly needy and trying not to make this a crass political issue.

SUPPORT FEDERAL NUTRITION PROGRAMS

(Mr. WARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WARD. Mr. Speaker, I have a prepared text for today to talk about child nutrition programs, but I have to react to what we have just been hearing. To say that they are not going to cut these child nutrition programs is the big lie, ladies and gentlemen, because if you make a block grant, you take last year's figure which may be higher than the year before's but say, "We are not going to raise it in the future, we are just going to let the States spend it," you are cutting it.

If you do not take into account economic downturns, if you do not take into account what happens in community after community across this country which may be different than what is happening here, and then have the audacity to blame the Democrat support on our connections with Federal bureaucrats, that is just too absurd for words.

Ladies and gentlemen, we need to continue to support our children.

FEAR TACTICS EMPLOYED IN SUPPORTING FEDERAL NUTRITION PROGRAMS

(Mr. DREIER asked and was given permission to address the House for 1 minute and to revise and extend his remarks).

Mr. DREIER. Mr. Speaker, pathetic is the only way to describe the message which has been emanating from the other side, trying to frighten the people of the United States of America about our goals for dealing with the issue of child nutrition.

We do not have a cut. We have a 4.5-percent increase. That is very clear. But as my friend from the other side of the aisle just said, we somehow in transferring this to the States will in fact allow a tremendous cut to take place. Baloney. There is a provision in this legislation which states that 80 percent of those funds that are provided must go toward the nutrition program and the requirement also states that no more than a 2-percent overhead can be provided.

We are increasing the level of funding, we are trying to make it more responsible so that in fact we do not see what exists today, 20 percent of those young people benefiting from the program coming from homes with incomes in excess of $50,000 a year.

We want the truly needy to benefit from this, we are increasing the level of funding for it, and they should quit the kind of fear tactics that they are imposing.

TORT REFORM

(Mr. SAM JOHNSON of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks).

Mr. SAM JOHNSON of Texas. I will not even address the lies coming from the other side.

Mr. Speaker, I want to talk about tort reforms we are considering this week. They are important to every citizen in this country, so important that each of the 50 States is currently considering some type of overhaul of their own legal system.

In my home State of Texas, Governor Bush has declared a state of emergency to address these reforms and with good cause. Texas ranked fourth in the Nation in million-dollar verdicts between 1990 and 1993. Lawsuit abuse is out of control, so out of control it is crippling businesses, destroying jobs, and costing every household in Texas $2,700 per year.

Last year alone in Texas prisons there were 1,000 suits filed by prisoners for crazy reasons. One for being licked. Yeah, I said licked by a horse while on a work detail.

The time has come for my colleagues to take a giant step for America and answer the plea seen on a billboard in a town in south Texas that reads, "Stop Lawsuit Abuse Now."

FIXING THE WELFARE MESS

(Mr. RIGGS asked and was given permission to address the House for 1 minute and to revise and extend his remarks).

Mr. RIGGS. Mr. Speaker, I first of all will join with my colleagues who have used adjectives such as pathetic and audacious to describe the fear tactics and the continuing politics of envy that we hear coming from the other side of the aisle. I will add another, though, adjective to describe what I have been seeing take place, and that is unconscionable. It is unconscionable for the House Democratic Party to treat welfare recipients as a political constituency for political gain.

Mr. Speaker, Americans have said that they are sick of a failed liberal welfare system that traps people in a cycle of dependency. Five million families, 9 million kids on AFDC, and at any given time over 50 percent of those families have been on AFDC welfare for over 10 years.

It is a system that ruins generation after generation, a system that has cost us as a country $5 trillion while making the situation worse. Two out of three black babies born out of wedlock, 20 percent of white children born out of wedlock.

Mr. Speaker, the American people want us to fix the welfare mess before it does any more damage and fix it, we will.

□ 1145

WELFARE REFORM

(Mr. SHAW asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHAW. Mr. Speaker, I have been sitting here listening to the speakers that came before me here this morning on the House floor criticizing the Republicans for what they are trying to do that is to reform welfare, criticizing the Republicans for bringing a child support bill to the floor and saying that it was not tough enough.

I will say to my friends in the Democrat Party you had 40 years to bring welfare reform to the floor and you never brought it; you had 40 years to bring a child support bill to the floor that was tough, and you never did it.

Now we are looking to you and we are reaching out to you as we are to the President, who gave a speech within the last hour on welfare reform, we are reaching out and saying come now and join with us because we are moving it forward. We are going to have welfare reform. It is going to pass this House. We are going to have a lot of Democrats that are going to be joining the Republicans who are pushing this agenda forward.

And you know what? We are going to be doing things for the poor that you never did. We are going to be doing things for the children that you neglected and we are going to reform welfare.

SUPPORT FOR TORT REFORM

(Mr. WELDON of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WELDON of Florida. Mr. Speaker, it is a pleasure for me to rise today and speak in support of the tort reform or lawsuit reform being brought before the House by the Republican leadership. As a physician who has practiced medicine in the community for the past 7 years, I can say that I have seen firsthand the terrible effect of this runaway problem with lawsuits on our Nation and in particular on our ability to practice good, high quality, cost effective medicine.

The people who have been paying for this runaway crisis in excessive lawsuits are the people of the United States. The patients have been paying the costs.

The time has arrived, it is long overdue. Reform is needed and reform is now, this week, before the House of Representatives. And I beseech all of my colleagues on both sides of the aisle to support the Republican programs for dealing with this problem in our Nation and restoring true balance to our criminal and civil justice system.

DEMOCRATS SCARING CHILDREN ABOUT SCHOOL LUNCHES

(Mr. BURTON of Indiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURTON of Indiana. Mr. Speaker, last week the Speaker of the House, NEWT GINGRICH, went out to a school here in Washington, DC, to try to support a program called the Earn and Learn Program. That is where they pay children $2 for reading a book and it is to encourage kids to learn. It is a great program; it is being adopted in many schools across this country.

But before he got there, two Members of the Democrat minority went out there and had lunch with the kids and told them that the Speaker was coming out and that he was going to take away their lunches, that the Speaker of the House was against them, he was going to take away the school lunch for all of the kids across the country and scared those little kids to death.

Now, that is wrong; that is wrong. The fact of the matter is we are going to increase school lunch funding by 4 percent, we are going to increase it. What we are going to cut is the bureaucracy. We are going to send it to the States in block grants, so that the Governors who understand their States and the mayors who understand their cities can distribute this money properly so that it goes to the intended purpose without a lot of bureaucratic expense.

And I really want to say to my colleagues on the Democrat side, if you criticize us for the school lunch program, criticize your colleagues for going out and scaring those little kids last week. That is wrong.

ATTORNEY ACCOUNTABILITY ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 104 and rule XXIII the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 988.

□ 1159

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 988) to reform the Federal civil justice system, with Mr. HOBSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Monday, March 6, 1995, the amendment offered by the gentleman from Ohio [Mr. HOKE] had been disposed of and the bill was open to amendment at any point.

Two and one-half hours remain for consideration of amendments under the 5-minute rule.

Are there further amendments to the bill?

AMENDMENT OFFERED BY MR. BURTON OF INDIANA

Mr. BURTON of Indiana. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. BURTON of Indiana: In section 2, page 4, line 1, insert at the beginning of the line "25 percent of".

And on line 5, strike the period, insert a comma and add the following new language "or the Court may increase the percentage above the 25 percent if in the opinion of the Court the offeree was not reasonable in rejecting the last offer."

Mr. BURTON of Indiana. Mr. Chairman, I believe that if there is a frivolous lawsuit filed there ought to be a penalty assessed on the plaintiff. I believe that should be the case. I do not believe, however, it should be a 100 percent losers paying totally, and the reason I say that is because I have known a number of people who have been involved in litigations of this type who have had a legitimate lawsuit, and because of the jury or because of the judge or for whatever reason the ruling was against them, and they were not in a position to be able to pay exorbitant legal fees on the part of the defendant.

Many times these defendants are lawyers for large corporations who can drag these suits on for long periods of time and spend an awful lot of money. Look at some of the trials like you see on TV right now like the O.J. Simpson trial, you see how much time and effort and money is being spent on legal defense.

Some of these people are very proficient at what they do. Can you imagine, we are not talking about a murder trial now, but can you imagine a person in a civil case that is suing somebody and they have the ability to hire the kind of legal counsel you see in the O.J. Simpson case where millions of dollars might be spent in defending someone?

So I believe that there ought to be some middle ground. And that middle ground is exhibited in my amendment, and my amendment says that if the plaintiff loses the case, there is a 25-percent penalty. But if it is a frivolous flagrant case, the judge has the ability to expand that up to 100 percent. So there is somewhat of a sliding scale.

I talked to the gentleman from Virginia [Mr. GOODLATTE] last night, the bill's sponsor, and he said he thought he could live with some kind of sliding scale. The problem is that neither the gentleman from Virginia [Mr. GOODLATTE], nor I, nor anyone in the body could come up with a sliding scale. So the next best thing is to come up with a hard percentage, like the 25 percent I am talking about, and then leave discretion to the judge in the event he feels like it is a case that was not meritorious and was frivolous and he can raise that fee. I think that will discourage an awful lot of lawsuits.

In addition, I think this will bring both sides closer together than the loser pays provision that is already in the bill because it is going to encourage the plaintiff, because he knows there is a penalty if they lose the case; and it is going to encourage the defense because they know they are not going to get 100 percent even if they hire high-powered lawyers to win the case. So I think this will force more people to settlement, even more so than the entire loser pays provision in the bill.

So, Mr. Chairman, I believe this is a sound, reasonable amendment. It strikes a middle ground. It comes as close to the sliding scale the gentleman from Virginia [Mr. GOODLATTE] said he would accept without going to an actual sliding scale, which I think is an impossible thing to achieve.

Ms. HARMAN. Mr. Chairman, I rise in support of the Burton amendment.

Mr. Chairman, I would like to commend the gentleman from Indiana [Mr. BURTON] for trying to do something that concerns many of us in this body who have listened intensely to the debate on this issue. I think that everyone here does not want to deter meritorious lawsuits, but it is also true that there are abuses, and we do want to deal with those abuses in a fair way.

I think that the Goodlatte language, especially as amended by him, goes a long way toward doing that, but there are possible excesses in that language, and the gentleman from Indiana [Mr. BURTON] has suggested a remedy that would amount to a sliding scale of fee awards that would deal with those excesses.

I know the gentleman from Indiana [Mr. BURTON] speaks here from personal experience, and I think it is very commendable that he would offer this. I also want to say that should his amendment fail, I intend to offer an amendment to provide a different approach to this very difficult subject, which I think also merits consideration.

My bottom line here is this is not a partisan issue, this is about fairness, it is about curbing abuse, but it is also about permitting meritorious action.

I urge support for the Burton amendment.

Mr. MOORHEAD. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Indiana. The amendment would limit loser pays to a 25-percent recovery. This would in effect defeat the concept of loser pays. What this does is substantially reduce the incentive for the parties to settle their cases out of court.

If we are going to go on with a loser-pays provision, let us not weaken it or water it down to such a point that it defeats the whole purpose.

The other part of the amendment giving the judge discretion to increase the 25 percent would only lead to further litigations on whether the offer is reasonable or unreasonable. The amendment I believe would seriously weaken loser pay.

We have a number of provisions in the legislation now that puts restrictions on loser pay. We have tried to reach the areas where it is between, where the judgment is between the offer of the defendant and the offer of the plaintiff; there would be no loser pay involved there. There are provisions that a judge can use his discretion as to whether to provide for loser pay in the legislation.

I think that if we are going to go in this direction there is not much left of the loser-pay provision. I do not think that the 25 percent still left in here will have much effect on encouraging people to settle. I do not think it will have much to do to cut down on overall litigations. And for that reason I would ask for a "no" vote on this amendment.

Mr. BURTON of Indiana. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I am happy to yield to the gentleman from Indiana.

Mr. BURTON of Indiana. Mr. Chairman, I do not quite understand the chairman's argument. He said that this would eliminate the forcing of a settlement before the trial takes place. It seems to me that this puts more of a balance into the legislation instead of having all of the burdens shifted over to the plaintiff.

Right now you are shifting 100 percent of the costs to the plaintiff if he does not settle and the judgment is below what was the last offer. And it seems to me that that is putting undue pressure on the plaintiff.

What I was trying to do was to try to reach a middle ground that was more fair than what the original legislation intended.

Mr. MOORHEAD. But actually it applies to both the defendant and the plaintiff. The plaintiff is not the only one that could be caught paying the other person's fees.

But I can tell the gentleman that you can limit the amount of money you may have to pay by prior to 10 days before trial making your final offer and you will not have to pay the fees that have accrued prior to that time. You many be able to strike under the present bill a large percent of what you might otherwise have had to pay.

But I do think that if you go down from there and have only 25 percent of what would accrue from that time forward, you do not have very much left out of your loser pays.

Mr. BURTON of Indiana. If the gentleman will yield on one further question. The further question is did the gentleman understand, he did not mention in his comments, that the judge does have latitude to increase that 25 percent to 100 percent if he chooses to do that?

Mr. MOORHEAD. I understand that, and I did comment on that in my comments, that you come to another argument when you go into that. You lead to further litigation and dispute as to whether the offer has been reasonable or unreasonable, many other things that could be involved there, and we are going to have an irregularity between one judge and another as to what you get out of the law as we intend it to be.

□ 1200

Mr. BURTON of Indiana. Mr. Chairman, if the gentleman would yield further, I ask, "Don't judges already have latitude?"

Mr. MOORHEAD. To a certain extent.

Mr. BURTON of Indiana. Then why would this exacerbate that situation?

Mr. MOORHEAD. I say to the gentleman, "Primarily because, when you cut from 100 percent to 25 percent, you're gutting the very issue we're talking about."

Mr. BURTON of Indiana. But the fact of the matter is judges have latitude right now. What we are setting is a floor of 25 percent, and we are allowing them to go to 100 percent.

So what the gentleman wants to do is he does not want the judges to have any latitude; is that correct?

Mr. MOORHEAD. They do have some latitude under the bill as it is written.

Mr. BURTON of Indiana. But the gentleman does not want them to have this latitude.

Mr. MOORHEAD. Latitude in every single case where they have not found that it will work an injustice.

We have in our legislation that we have, we have provisions in those extreme cases where the judge does have a latitude.

Mr. BURTON of Indiana. Well——

Mr. MOORHEAD. I just think, if the gentleman is not in favor of loser pays, of course he is not going to like this at all. But under the amendments that we have put into the bill, a lot of the sting of loser pays has been taken out already——

Mr. BURTON of Indiana. If the gentleman would yield——

Mr. MOORHEAD. In the Goodlatte amendment.

Mr. BURTON of Indiana. One more brief comment, and that is this, that I do agree that there should be a penalty, and I agree that the penalty should be pretty severe. Twenty-five percent is not peanuts in many of these cases, but what I disagree with——

The CHAIRMAN. The time of the gentleman from California [Mr. MOORHEAD] has expired.

(On request of Mr. BURTON of Indiana and by unanimous consent, Mr. MOORHEAD was allowed to proceed for 1 additional minute.)

Mr. BURTON of Indiana. What I disagree with is that this is putting such a huge burden on, in many cases, people who could not afford to pay the 100 percent, and—but at the same time the gentleman is still giving the judge latitude in the event it is a frivolous case. It seems to me this is as close to a sliding scale as the gentleman from Virginia [Mr. GOODLATTE] requested, as we can possibly come.

Mr. MOORHEAD. It is a sliding scale though.

Mr. BURTON of Indiana. Well, Mr. Chairman, I say to the gentleman, "Well, you're giving the judge latitude; I mean that's a sliding scale."

Mr. MOORHEAD. Possibility.

I say to the gentleman, "I think you're just defeating loser pays."

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, the gentleman from Indiana [Mr. BURTON] and I have been discussing since last night the gentleman's concerns, and what I would first say to the gentleman is that let us not forget that we are talking about diversity cases in Federal district court. We are not talking about, by any means, all tort cases. In fact, what we are really talking about are the vast majority of these cases not being the kind of tort cases the gentleman described. They are being mostly contract cases and issues——

The CHAIRMAN. The time of the gentleman from California [Mr. MOORHEAD] has expired.

(On request of Mr. GOODLATTE and by unanimous consent, Mr. MOORHEAD was allowed to proceed for 1 additional minute.)

Mr. GOODLATTE. Mr. Chairman, would the gentleman yield further?

Mr. MOORHEAD. I yield to the gentleman from Virginia.

Mr. GOODLATTE. It would be my hope that we could work something out along the lines of the amendment that I suggested there which would help out in the case where a plaintiff actually got a judgment against a defendant, but the defendant offered more under the proceeding that is provided for in the bill than what the plaintiff got from the jury, and under those circumstances, because a case is really two parts; it is part liability and part proving damages, and clearly the plaintiff would have proven liability in those circumstances. Then there is an argument to be made that it should be less than 100 percent. It would make it 50 percent.

If the gentleman would work with us along those lines and withdraw his amendment, it would be very helpful.

Mr. BURTON of Indiana. Mr. Chairman, would the chairman yield briefly?

Mr. MOORHEAD. I yield to the gentleman from Indiana.

Mr. BURTON of Indiana. Let me just make two comments.

First of all, many of the States are working on similar legislation of this right now as far as State litigation is concerned. We all know that. I believe that what we do here today will serve as a model for many of those States, so this reaches beyond just Federal litigation in my view in the long run.

In addition to that, I read the gentleman's amendment, and, while I think that is a step in the right direction, the problem I have with that is we still have some jurors and some judges that may rule against a legitimate case, and what the gentleman's amendment does is only deals where the plaintiff gets some kind of a settlement. If the plaintiff does not get any settlement, then he or she still pays 100 percent of the defense cost for the defendant, and in my view, as my colleagues know, that could work an undue hardship.

My amendment, my amendment right now, says that they do have a 25-percent penalty, and, if it is truly a frivolous case, the judge can assess more than that, but it does leave some discretion with the court, and to me that makes some sense.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield further?

Mr. MOORHEAD. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Let me say to the gentleman from Indiana, let us not forget that under the current system that exists right now that the circumstances the gentleman just described where a judge or a jury unfairly ruled against a party, if they rule against a defendant, they are stuck right now paying attorney fees, and substantial attorney fees. Under a contingency fee case the gentleman describes, that would not be true of a plaintiff; you see?

So there is a definite disparity in the law as it exists right now.

Mr. BURTON of Indiana. Mr. Chairman, if the gentleman would yield, let me just say that all cases are not on a contingency basis.

Mr. GOODLATTE. That is correct.

Mr. BURTON of Indiana. And the gentleman keeps talking about a contingency basis, but many of those are on hourly rate, and so the plaintiff does pay legal fees in many of these cases on an hourly rate, and it is pretty doggone high.

So this contingency thing is real, but that is not 100 percent.

Mr. GOODLATTE. If the gentleman would yield further, the gentleman is correct, but in tort cases I think he would find the overwhelming majority, if not all of them, are going to be on a contingency fee basis. I am sure there are a few that are not, but very, very few.

What we are really talking about are other types of contract actions and so on where that would be the case, but then again that would be true of both parties facing that liability under the circumstances that the gentleman describes. My amendment would cure the difficulty that we are talking about here.

Mr. BURTON of Indiana. If the gentleman would yield further, I say to the gentleman, if your amendment would deal, in addition to those cases where the plaintiff got a settlement, but below the last best offer; if it went further than that, even where the plaintiff lost, I could probably accept that amendment, but the gentleman completely eliminates that possibility.

I say to the gentleman, in your amendment here that you just presented to me, if the plaintiff gets a zero grant or zero decision from the court, he still picks up 100 percent of the defense's legal fees. So that part of the amendment I don't think is good, and I could not accept that.

Mr. MOORHEAD. Mr. Chairman, I yield back the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to commend my colleague, the gentleman from Indiana [Mr. BURTON], for bringing a real-life situation into this debate which demonstrates the severe adverse impact that this bill would have on ordinary working people in this country. I also want to commend him for this effort to improve the provisions of the underlying bill, which I think his amendment would do. However at the same time I want to point out the problem that the amendment demonstrates that the underlying bill presents to us.

I say to my colleagues, "When you try to apply this bill to other than frivolous cases, you are inevitably going to get into the very kind of situation that Mr. BURTON's amendment is trying to address, and, once you start to do this sliding scale approach, or once you try to do 25 percent, or 50 percent, or 75 percent, or 10 percent, what you have started to do is demonstrate the sheer irrationality of the entire approach that is being applied here because, once you get on that kind of slippery slope, as we used to call it in the law, you can't figure out where to draw the line in a way that it makes any kind of sense, and it doesn't show that a higher threshold necessarily makes any more sense. What it shows is that the underlying approach that you are using when you apply it to nonfrivolous lawsuits doesn't make any sense."

So, Mr. Chairman, while I commend the gentleman for coming forward with the amendment, which is an improvement, it gets us on that slippery slope and moves us on this sliding scale toward a better bill, we would really be better served if we went back to the approach of limiting the underlying bill only to frivolous cases.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to this amendment. The effect of this amendment would be to say in a case where somebody loses a lawsuit for whatever reason that not only are their attorney fees limited in the fashion they have already been limited in the bill, and we have limited them in several respects: First of all, we have limited them to 10 days before the trial through the trial, and we have done that for good reason.

It has been pointed out that a party to a lawsuit through the discovery process could drive up the amount of attorney fees by loading up the other party with discovery motions, and depositions and so on. So we limit it to 10 days before trial through the trial, which is the time when one is, generally speaking, preparing for trial and preparing the case. Second, we have limited it so that the losing party would not be required to pay the prevailing party more than the attorney fees that the prevailing party is—the losing party is paying their own attorney.

The fact of the matter is that that also has a good purpose in the bill because it prevents the deep pockets that so many on the other side have talked about from loading up the attorney fees by bringing four attorneys into trial and so on. They cannot, by adding costs on their side, make the nonprevailing party, the losing party, pay more costs because it is limited that they cannot pay the other side more than they pay their own attorney. So they have the ability to some extent to control and to limit that.

Finally, we have in this bill a provision which allows the court in its discretion to not apply the provisions of this bill under two circumstances. One circumstance is where it finds that it would be manifestly unjust to do so, and that certainly gives the court discretion. In addition, the court can find that the case presents a question of law or fact that is novel and important and that substantially affects nonparties, and if a—and can exempt it for that reason as well.

This amendment will take that 75 percent further. Three quarters of the attorney fees that are provided for that are left in this bill would be taken out of the bill with this amendment. It is not a good amendment from that standpoint. It is not reasonable to think that just the 25 percent will have the kind of effect that we need to have on frivolous lawsuits, fraudulent lawsuits, nonmeritorious lawsuits, and not the kind of effect we need to have that is provided in this bill to encourage greater settlement of these cases. The effect of this will be say, "Yes, you might have to pay a little bit of attorney fees, but it's going to be you don't have to pay a lot."

For those reasons I would strongly urge that my colleagues defeat this amendment. This is not a good amendment from the standpoint of trying to do something about the explosion of litigation in this country.

The fact is that the Girl Scouts; we have talked about all these big corporate defendants in this country. Well, one of the organizations that supports the legal reforms we have are the Girl Scouts, and the Girl Scouts' counsel here in Washington, DC, says that the first 87,000 boxes of Girl Scout cookies that they have to sell goes to raise the $120,000 to pay their liability insurance. The effect of that is that, before one penny can be spent to help Girl Scouts with all the wonderful programs that Girl Scouts have, not one penny can be spent until they sell 87,000 boxes and raise $127,000 to deal with the liability.

Little Leaguers are opposed, are in favor, of legal reforms because they know that it is becoming increasingly difficult to get people to participate in allowing them to use their fields for ball diamonds because of the fact that they face greater and greater exposure to lawsuits, and the loss of insurance, and the risk of being brought in as parties to these cases.

This is not a problem that deals with corporate America alone. It certainly does add to the cost of consumer goods when corporations raise those prices to consumers. It certainly does have an effect on insurance companies when they raise insurance premiums to all Americans for their automobiles, for homeowners insurance, for any kind of insurance that we want to name. The costs are going up, and they are going up rapidly.

Mr. Chairman, the cost of our litigation system in this country is rising at a faster rate than the cost of our medical system in this country, which we spent all of last year addressing——

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has expired.

(By unanimous consent, Mr. GOODLATTE was allowed to proceed for 2 additional minutes.)

Mr. GOODLATTE. Mr. Chairman, the fact of the matter is that legal costs in this country are rising at a rate of 12 percent a year, far in excess, far in excess of what is happening even in the cost of medical care, but certainly three or four times the rate of inflation in this country.

□ 1215

And this amendment will reduce drastically the ability to use this provision to say, when you file a lawsuit, you take a risk. You have made the risk way too small, I would say to the gentleman from Indiana.

Mr. BURTON of Indiana. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Indiana.

Mr. BURTON of Indiana. Let me just say that I think that a 25-percent penalty is an inducement for settlement. The gentleman keeps acting like it is nothing. Twenty-five percent of the legal fees of the defendant can be an awful lot of money, especially in a Federal case. We are not talking about peanuts. I think that this will dissuade people from going to trial, and it will force a settlement. The gentleman acts like if it is not 100 percent, it is not going to force a settlement.

The other thing you are discounting is that if it is a frivolous case, the judge can start at the 25 percent and go all the way to the 100 percent level. So you can have total loser pays.

This is a good middle ground. It will dissuade people from going to court. It will force settlements. So I think the gentleman is overstating the case. It will not be as onerous as far as forcing settlements as 100 percent. But it certainly is going to force a lot of these people to settle out of court without going to trial. Twenty-five percent is a step in the right direction, and it still gives the judge latitude to go all the way to 100 percent. I think this is a good amendment.

Mr. GOODLATTE. Reclaiming my time, I would say to the gentleman that the mechanism I offered to deal with the case where the plaintiff proves the case but has been unreasonable in their settlement negotiations and gives them some relief there would be something that would be tolerable. But 25 percent in all cases regardless of whether or not they are meritorious or not, we know that when discretion is given to judges in these cases——

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has again expired.

(By unanimous consent, Mr. GOODLATTE was allowed to proceed for 2 additional minutes.)

Mr. GOODLATTE. When you take that in all cases and then ask the judge to give more, the history with rule XI sanctions is that it is very, very, very rarely done. And the attorneys know it, and they do not worry about rule XI sanctions because they know that the odds of them being applied to them are very, very remote. If you put this provision in, they are going to know that it is 25 percent. Maybe there is a remote chance of getting more, but it is not going to be 100 percent in the cases that it should be 100 percent in.

Mr. BURTON of Indiana. Mr. Chairman, if the gentleman will continue to yield, I understand the gentleman does not think the judges will assess this additional 75 percent in a case where it is a flagrant example of a frivolous case. But I do not think I agree with that. At least there is 25 percent penalty, a flat 25 percent right off the top.

Let me just say something about the amendment you referred to. The problem with your amendment that you suggested as an alternative, and it is a step in the right direction, is that it is 50 percent if the plaintiff gets less than the last best offer. But in the event he or she gets zero, they still pay 100 percent of the defendant's legal expenses. And in many cases, I wish the gentleman would just pay attention here for a second, in many cases, you may have a jury or a judge who for one reason or another does not like the way the plaintiff looks and they rule that they should not get anything and then they have to pick up 100 percent of the cost.

If the gentleman made this 50 percent across the board, I would accept it.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I just wanted to say that I heard the gentleman citing the Girl Scouts, I just came from the Committee on Rules where they are citing the Girl Scouts. On Friday the Girl Scouts were on the front page of the Wall Street Journal saying please, please, this is not their legislation. Today in the Wall Street Journal, on the first section of section B, they are saying that once again. Let me quote, it says, "It is not at all true, we have been harangued with frivolous lawsuits. That is absolutely not the case."

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has expired.

(On request of Mrs. SCHROEDER, and by unanimous consent, Mr. GOODLATTE was allowed to proceed for 30 additional seconds.)

Mrs. SCHROEDER. Mr. Chairman, if the gentleman will continue to yield, that is what the head of the Girl Scouts says. Having been a Girl Scout, when I was younger, the one thing they believe in is in truth. It says, "Truth has been the first casualty." I really wish Members would stop citing the Girl Scouts, when they have been frantically trying over and over again to say they have not been inundated with frivolous lawsuits and you do not have to sell all of those cookies to pay this off. They really would like to get that out there. So I really think we ought to stop calling this the Girl Scout cookie bill because the Girl Scouts do not want that name.

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has again expired.

(By unanimous consent, Mr. GOODLATTE was allowed to proceed for 1 additional minute.)

Mr. GOODLATTE. Mr. Chairman, I thank the gentlewoman for her comments. The fact of the matter is, the representative of the Girl Scouts here in the Washington Area District Girl Scout Council told me this personally, 87,000 boxes of cookies sold to raise $120,000 to pay liability insurance before they ever can spend a penny on anything else.

Mrs. SCHROEDER. Mr. Chairman, if the gentleman will continue to yield, I assume that the national office keeps those records. I think what happens here, it is like the old game we used to play in Girl Scouts called telephone. I think probably some of the leaders have heard that passed along. The national Girl Scout office has said that is not true.

Mr. GOODLATTE. Reclaiming my time, the representative of the Girl Scouts for the Washington District Council told me and a number of other Members of Congress and others personally that that was the fact. I am not representing that as something I know personally. I am representing it as what was told to me by a representative of the Girl Scouts.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words.

I just want to quickly answer that I think in all honesty that we ought to be listening to the Wall Street Journal which has now made two passes at that. We also ought to be listening to the National Girl Scout office of New York which would be handling those complaints. I think that that is very key. They have said this over and over again. This whole debate is full of all sorts of stories that get blown out of proportion.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana [Mr. BURTON].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BURTON of Indiana. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 202, noes 214, not voting 18, as follows:

[Roll No. 204]

AYES—202

Ackerman
Andrews
Baesler
Baker (LA)
Baldacci
Barcia
Barrett (WI)
Bateman
Becerra
Beilenson
Bentsen
Berman
Bevill
Bilirakis
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Burton
Buyer
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Conyers
Costello
Coyne
Cramer
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Doyle
Duncan
Durbin
Edwards
Ehrlich
Engel
English
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Foglietta
Ford
Fox
Frank (MA)
Frost
Furse
Gephardt
Gilman
Gonzalez
Gordon
Graham
Green
Greenwood
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Hunter
Jackson-Lee
Jacobs
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lincoln
Lipinski
Livingston
Lofgren
Longley
Lowey

Luther
Maloney
Manton
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McCollum
McDermott
Meehan
Menendez
Mfume
Miller (CA)
Mineta
Minge
Moakley
Mollohan
Moran
Morella
Murtha
Myers
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Quillen
Rahall
Reed
Regula
Reynolds
Richardson
Rivers
Roemer
Ros-Lehtinen
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOES—214

Abercrombie
Allard
Archer
Armey
Bachus
Baker (CA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Bilbray
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Bunning
Burr
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
DeLay
Dickey
Dreier
Dunn
Ehlers
Emerson
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Goodlatte
Goodling
Goss
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
LoBiondo
Lucas
Manzullo
McCrery
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Mink
Molinari
Montgomery
Moorhead
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quinn
Radanovich
Ramstad
Riggs
Roberts
Rohrabacher
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—18

Collins (MI)
Condit
Dornan
Flake
Funderburk
Gejdenson
Gibbons
Jefferson
McDade
McKinney
Meek
Orton
Rangel
Rogers
Roth
Stockman
Waters
Weldon (PA)

□ 1241

The Clerk announced the following pair:

On this vote:

Mr. Flake for, with Mr. Jefferson against.

Messrs. BRYANT of Texas, CREMEANS, TAYLOR of Mississippi, SISISKY, and PORTER changed their vote from "aye" to "no."

Messrs. MYERS of Indiana, RICHARDSON, and TORRES changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I offer an amendment that has been redesignated the Conyers-Nadler amendment.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. CONYERS: Page 6, after line 24, insert the following:

(e) LIMITATION ON APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply with respect to civil actions to which any of the following applies:

(1) Section 772 of the Revised Statutes of the United States (42 U.S.C. 1988).

(2) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.).

(3) The Fair Housing Act (42 U.S.C. 3601 et seq.).

(4) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(5) The Equal Access Act (20 U.S.C. 4071 et seq.).

Rule 11 of the Federal Rules of Civil Procedure, as in effect immediately before the effective date of such amendments, shall apply with respect to such civil actions.

Mr. CONYERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Chairman, this is an amendment which has been referred to indirectly throughout the debate, and it might gather the support of the manager of the bill on the other side. I will present it and hope that it does.

□ 1245

I want to thank the gentleman from New York [Mr. NADLER], my colleague on the committee, for his work on a very important part of this bill.

This is an amendment that would preserve our citizens' hard-earned right to protect their civil and other constitutional rights including religious rights.

What we are doing essentially is exempting civil rights cases, religious cases, and gender cases from the bill in terms of attorney sanctions and payments. This leaves the decision on the merit in the hands of the courts.

The people of this country, the Members of this body, have fought too long and hard for religious and civil rights groups in this country to see these precious rights slip away in a little-noticed procedural provision in the Contract With America.

My amendment would safeguard these rights by providing that cases involving religious, racial, and gender discrimination can be brought without undue fear of chilling legal sanctions. Importantly, the amendment would allow rule 11 as it currently exists to provide for discretionary court-imposed sanctions to continue to apply in civil rights and religious cases. This contrasts with the mandatory court sanctions which are contained in the bill before us.

This is a very important distinction because we have a list of lawsuits and attorneys that have been sanctioned under this measure, in a disproportionately large amount of civil rights cases and religious cases. The attorneys have been brought to heel under rule 11, and we are very, very much afraid of what would happen if we would change this to mandating the court to impose these sanctions.

In cases where our citizens have to go to court to protect their constitutional rights, it is imperative that we have as open and fair a court procedure as possible. While rule 11 may have some limited role to play in these cases, it should not have a dominant or overreaching role as would be the case under this bill.

I remind the Members of the fire storm that erupted on Capitol Hill as a result of a 1992 Supreme Court decision, in Employment Division versus Smith, where the court discarded decades of free exercise jurisprudence by holding that the free exercise clause does not relieve individuals of obligations to comply with supposedly neutral laws that restrict their freedom of religion.

How would this occur? What we would do under H.R. 988 is make it more difficult for courageous citizens to bring legal actions to redeem their constitutional rights. It would mandate that litigants pay the other side's legal fees whenever a legal pleading was somehow shown to be unworthy. It would completely remove any equitable discretion by the courts. It also would create a great amount of contention among the parties.

I want to just tell Members a little bit about where rule 11 has come from over the years. We have got a number of studies, but one from the Georgetown Law Journal by Professor Nelken found that 22 percent of the rule 11 motions between 1983 and 1985 were filed in civil rights cases, even though these cases comprised only 7 percent of the civil docket.

At Fordham University, there was a study that in all reported cases from 1983 to 1987, rule 11 sanctions against civil rights plaintiffs were imposed at a rate of 17 percent greater than against all other plaintiffs.

In other cases, we found that the safe harbor provision in rule 11 now was very important and should be preserved.

Please support this civil rights amendment.

Mr. MOORHEAD. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Michigan [Mr. CONYERS].

If I thought for 1 minute that rule 11 sanctions had fallen disproportionately on civil rights attorneys I would have crafted an amendment exempting them, but that's not the case.

The 1991 Federal Judicial Center study on the operation and impact of rule 11 was designed to examine several of the questions about the effects of the rule. The study found:

While the incidence of rule 11 activity has been higher in civil rights cases than in some other types of cases, the imposition rate of sanctions in civil rights cases has been similar to that in other cases.

The study found that rule 11 had not been invoked or applied disproportionately against represented plaintiffs and their attorneys in civil rights cases.

The FJC concluded that rule 11 has not interfered with creative advocacy or impeded the development of the law.

Professor Maurice Rosenberg, Columbia University School of Law, reviewed a subset of sanctioned civil rights cases and commented in his 1990 testimony to the Committee on Rules and Practice and Procedure:

> Many complaints strain hard to pretend they involve civil rights claims so that, for example, attorneys' fees may accompany a successful or partially successful outcome.
>
> If a complaint alleges that the towing away of plaintiff's car by the police or the refusal of the San Francisco authorities to allow softball to be played on the hardball field violated the plaintiff's civil rights, is that claim correctly counted as a "civil rights action?" That designation covers a wide assortment of grievances, many of which are pressed in order to break new legal ground or, as suggested above, for ulterior purposes.

Finally, the issue of fair administration of rule 11, like many other procedural issues, depends upon the fairness and competence of the Federal judiciary. When properly applied, rule 11 should not unjustly deter litigation by civil rights plaintiffs or any other group.

I urge a "no" vote on the amendment.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman for yielding. Is he aware that the Judicial Conference studied the rule in 1989 after 16 experts and they made the two changes? First they made the change that would leave the sanctions to the court's discretion and they created this safe harbor passage for rule 11 motions for 21 days.

This has been working very, very effectively and has cured the problem that I was pointing out to you, that there is no question that before that, we had a serious problem of civil rights and religious rights organizations' lawyers being sanctioned.

Is the gentleman familiar with the procedure, the change that rule 11 underwent?

Mr. MOORHEAD. Senior U.S. District Judge Milton Shadur of the northern district of Illinois said he generally would welcome the restoration of the old rule.

"The most recent changes watered it down," he says, "by offering an out for lawyers who get caught when filing frivolous pleadings."

"At this point rule 11 is pretty much dead," he said.

That dealt with what was done with these amendments that you are talking about. We are putting it back in as rule 11 was for 10 solid years, and virtually all of the judges across the country believed it helped them and it brought a better quality of justice to the courts.

Mr. CONYERS. If the gentleman would yield a final time, the gentleman was aware that this was studied by the Judicial Conference, went to the Supreme Court, passed muster there, is working very well. We are talking about December 1993. This is a very premature decision for us without sending it back up the chain of command for rulemaking in the Federal judiciary to snatch the discretionary sanction of the judge away from him after such a short notice.

I would urge the gentleman to realize the seriousness of what he is proposing here in opposing this very modest rulemaking sanction that I am modifying.

We are not eliminating rule 11. We are just saying the judge would have the discretion that he had as a result of all the work the judges did in 1993.

Mr. NADLER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in support of this amendment to exempt civil rights lawsuits from the mandatory rule 11 provision of the bill and to leave it up to the discretion of the judges. I hope that some of the gentlemen on the other side will listen to what I am about to say because I do not think it has been said before.

Last year, we passed the Religious Freedom Restoration Act to undo the Supreme Court decision in the Smith case. There are a number of other court decisions narrowing religious freedom which have not been undone and which people seek to try to challenge for reconsideration in court.

For example, there are a number of decisions narrowing the Religious Accommodations Act which various religious groups want to litigate as well as to try to get this Congress to change.

A memo that I have here from the Christian Legal Society says, for example, an attorney arguing a religious discrimination case and urging the courts to reject the reasoning in any of the existing cases could well be subject to the rule 11 sanctions as contained in this bill. The litigation route presently presents the only opportunity religious individuals will have to seek relief in employment discrimination cases. On this basis, and on the basis of the inclusion in the amendment to the Equal Access Act, the Christian Legal Society and the National Association of Evangelicals will support the amendment.

I have here, Mr. Chairman, and I hope the gentleman from California will pay attention to this so we can comment on it, a letter from the Christian Legal Society and the National Association of Evangelicals in support of this amendment, and I am going to read excerpts from it.

> On behalf of the Christian Legal Society's Center for Law and Religious Freedom and the Public Affairs Office of the National Association of Evangelicals, we express our full support for any amendment that would exempt civil rights suits including those under the Equal Access Act and the Religious Freedom Restoration Act from this bill's purview.
>
> The history of religious liberty demonstrates that the powerless sometimes must look to the courts in cases that "push the envelope" of the law in order to vindicate our most precious freedoms in ways that existing law does not. We are concerned that mandatory sanctions will discourage the bringing of meritorious religious claims, not just frivolous ones. The first freedom of the first amendment is too precious to risk such a chilling effect. Any interest in judicial efficiency is far outweighed by our duty to keep open the doors of the Federal judiciary to such cases.
>
> Moreover, the preemptive effect of this bill is unnecessary in civil rights cases. Unlike commercial lawsuits, people rarely sue the government merely seeking a nuisance settlement. The few who do can still be dealt with under a discretionary rule 11. Federal judges have not shown that they need to have their judgment handcuffed in this way, at least not in civil rights litigation.
>
> For any and all of these reasons, we support your amendment to section 4 of H.R. 988.
>
> Thank you, * * *.
>
> Respectfully yours, Steven T. McFarland, Director, Center for Law and Religious Freedom of the Christian Legal Society, and Forest Montgomery, General Counsel, Office of Public Affairs for the National Association of Evangelicals.

Mr. Chairman, I think this graphically shows why it is necessary to adopt this amendment if we are going to take our usual protective attitude toward religious liberty. I do not agree with this bill in general and I do not agree that we need to have mandatory rule 11 sanctions. But even many of those who do agree with that I would hope could recognize the distinction on civil rights and religious liberty cases. If someone is suing on a products liability case or a contract case or whatever, if you have a defendant with deep pockets, there are nuisance lawsuits, there are occasions where people will file frivolous claims, but if you are filing a constitutional claim on religious liberty, on religious accommodation, you are not going to have frivolous claims. No one is going to deliberately bring a frivolous religious liberty claim, rarely. We have not seen that problem in the courts and where we do, if we ever do, the nonmandatory, the discretionary rule 11 sanction could do. But to make a mandatory rule 11 sanction here when the religious liberty attorneys are going to have to be trying to persuade a court to change the existing precedent, to push the envelope is going to have a real chilling effect on that, and I do not think we need a real chilling effect on religious liberty.

I would hope that there would be reconsideration on this amendment and that it would pass.

□ 1300

The CHAIRMAN. The time of the gentleman from New York [Mr. NADLER] has expired.

(At the request of Mr. MOORHEAD and by unanimous consent, Mr. NADLER was allowed to proceed for 3 additional minutes.)

Mr. NADLER. I yield to the gentleman from California

Mr. MOORHEAD. Mr. Chairman, I think a lot of argument here is based upon a misunderstanding of what the law is presently and what we are doing to it.

Under sanctions in the present law it says if on a notice and a reasonable opportunity to respond the court determines that a subdivision had been violated the court may, subject to conditions stated below, impose an appropriate sanction upon the attorneys, law firms or parties who have violated subdivision (b) or are responsible for action. We changed that "may" to "shall." But there is an awful lot of discretion there in the finding of whether there is a violation or not, and what any kind of a sanction, mild or otherwise, there should be. But that is present law.

We do take out of the bill the opportunity under motion to at the last minute, after it has been found they have violated the code by putting in amendments and other pleadings that should not be there, we give them 21 days to change their position, but that is after you are caught with the cookie jar in your hand, we say that they can change that. We have taken that 21-day grace period out and that is principally what the bill does to begin with.

I would like to say this as far as the National Association of Evangelicals and the Christian Legal Society. I have great respect for them. I have worked with them on many, many occasions. I think I have a 100-percent voting record with them, so I am not putting them down or anything else. But I do not think they understand what this is all about.

Mr. NADLER. Reclaiming my time, sir, I think they do understand. We do not have a problem with the present law. But of course this bill would change the present law and what the Christian Legal Society and the National Association of Evangelicals are saying and what other religious groups that I have been speaking to in the last few days have said to me, is that making mandatory rule 11 sanctions, making it mandatory would have a chilling effect in this area. It may have a chilling affect in other areas and we are not talking about them. We do not have a problem with frivolous suits in civil rights and other areas and they are looking at pushing the envelop and they are very concerned about that.

Mr. MOORHEAD. If the gentleman will yield, that is of course not what this amendment is all about. It exempts a number of different acts of Congress from any portion of this thing which is certainly not in the present law, nothing that we have talked about before.

I will say this, as far as the National Association of Evangelicals who I know very well, they have not come in and testified, they have not commented to me about this in any way if they have a problem.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will struggle on this issue to be nonemotional. I will struggle because I remember 25 years ago the very day I returned to North Carolina to practice law in what was regarded and is regarded as a civil rights law firm. In the middle of the night someone came and set a fire to the law firm office before I had practiced law in that office 1 day.

I will struggle because I have seen how much courgage it takes for a plaintiff or a group of plaintiffs to come forward in the face of racial oppression and assert their civil rights.

I will struggle because I have been before judges, 99 percent of whom I would remind my colleagues here are members of the majority race in this country, and I have heard them not understand the underlying basis of a civil rights claim because they have no history to relate that claim to, and to have them in the final analysis find that some portion of the claim is frivolous because they just simply cannot relate to people being abused and having their rights abused in that way.

My colleagues, this is not about some kind of theoretical fear that is being expressed here. There is a concern with frivolous lawsuits, but I remind my colleagues that in this amendment, and I want the gentleman from California to read the amendment, starting at line 9 of the amendment it specifically says "rule XI of the Federal Rules of Civil Procedure as in effect immediately before the effective date of such amendments shall apply with respect to such civil actions." This is not doing away with rule XI.

I have heard my colleague here, the gentleman from Michigan [Mr. CONYERS], read without anybody paying attention, apparently, the disparity in the percentages of frivolous and sanction cases that exist in civil rights cases, 7 percent of the cases yielding a substantially disproportionate share of the sanctions. But I will remind my colleagues that nobody comes forward in the South in the time in which I grew up and brought forward any kind of frivolous civil rights action. It took courage. It took running the risk that your House would be burned down; it took running the risk that your law office would be burned down; it took running the risk that your friends down the street who call you Mr. Charlie would not speak to you again if you brought to light the fact that the employer down the street was discriminating on the basis of race in hiring of people.

This is not some theoretical concern that is being expressed in this amendment. I beg of my colleagues to take this amendment seriously, and vote it up and agree to put this exception in, and provide the kind of protection that these hardworking people, these law-abiding people who simply want to have their civil rights vindicated are bringing to the courts.

Mr. SCOTT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to add just one other point to this very briefly and that is that you could go through all of that what the gentleman from North Carolina said, and in fact you could have a winning lawsuit and still be forced to pay opposing attornerys' fees if you come in under an offer made sometime during the middle of trial.

Mr. Chairman, the reason that we have attorneys' fees provided in these kinds of cases is that the damage, the financial damage is ususally so small that you have an empty promise in discrimination laws if this amendment is not passed. The empty promise without attorneys' fees is you go to court and you will pay more than you could possibly get.

I would hope that this amendment would pass, would keep the law as it is, and that people who are discriminated against be vindicated and have those rights vindicated in court.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. SCOTT. Mr. Chairman, I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

Just a point of winning a law suit and still being required to pay attorney's fees, this would not apply to any of these actions, would it not, because these are all Federal question issues and would not come up under the modified losers pay provisions in the bill which only apply to diversity cases?

Mr. SCOTT. If you are calling it a Federal question, then the passage of this amendment would have no effect in the gentleman's interpretation.

Mr. GOODLATTE. I agree with that; but they are two different types of actions. They are mutually exclusive of each other.

Mr. SCOTT. Mr. Chairman, I would say to the gentleman if that is his interpretation, then the passage would do no harm to the bill and it ought to be adopted just to make sure.

Mr. GOODLATTE. Mr. Chairman, if I can follow up because the comments of the gentleman from North Carolina are indeed impressive, is there something about, and this is what troubles me from my side, is there something about an attorney or an individual who misbehaves with one of those cases and incurs sanctions that would differ from somebody, regardless of their background, regardless of their race or age or sex or anything else in any of the other areas where we apply the "shall" provision, which is what the amendment does, instead of the "may" provision, which is what the gentleman wants to preserve for these particular issues?

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. SCOTT. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding.

I would just simply say to the gentleman, there is a predisposition, there is a disposition, and fortunately over time it is beginning to wane I would acknowledge, and I do not want to leave the impression that our whole Federal or State benches are still where they were 15 or 20 years ago, but I would submit to the gentleman that in these cases there is a substantially higher likelihood that goes beyond insignificant statistical probability, if you go back and look at the statistics that the gentleman from Michigan [Mr. CONYERS] was talking about, that a finding of frivolousness is going to be found in these cases.

Mr. GOODLATTE. Does the gentleman think that is changed based upon changing it from "may" to "shall"? I mean, if there is a discriminatory predisposition that the gentleman describes, would that not also be likely to occur in a circumstance where the judge has the discretion under the law as it exists now?

Mr. WATT of North Carolina. If the gentleman will yield further, I think what the gentleman is doing is sanctioning by this bill that kind of attitude, and giving latitude to it by saying you shall make, you shall do this; and the finding of frivolousness that there will be an inclination to do it anyway, and once you add on to it the word "shall" what we have done here is sanctioned that kind of attitude.

At least under the other standard we can at least try to get in the head of the judge and say look, Judge, you are applying a different standard in noncivil rights cases than you are in civil rights cases and try to embarrass him. But once you give him that extra little piece of ammunition, the "shall" in this bill, you have given that judge who may be inclined, the literary license he needs to abuse the system.

Mr. SCOTT. Mr. Chairman, in summary I think I do not want to get away from the point this is a decision a person has to make before they even have the nerve to come forward, and this is just one more barrier to scaring them and daring them to come forth and vindicate their rights in court.

Ms. NORTON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I come forward as a former chair of the Equal Employment Opportunity Commission, very disquieted that in this bill mandatory sanctions could apply to civil rights actions, and disquieted on the basis of the record.

First, I ask my colleagues to be consistent. We have already exempted civil rights matters from the unfunded mandates bill and from the Regulatory Transition Act. Let us repeat that consistency here.

Why did we do it there and why should we do it here?

□ 1315

Civil rights actions are very difficult to bring. They always have been. They are more difficult to bring today than they were 30 years ago when the acts were passed. At that time getting an attorney was more likely because the discrimination was so widespread, and on the surface there was a bar, a private bar, that developed. Ten years after the act, when I came to chair the EEOC, that bar had virtually disintegrated. The reason is that when lawyers take an action under a civil rights case, they are taking a very large chance. They are hoping to get their fees back. They have to borrow money in order to mount a substantial case.

So if there is any hurdle in the way, what we found, even 10 years after the act—and we find 30 years after the act now—they hesitate and the bar itself simply was not available.

First of all, for a person to come forward, that plaintiff has to make a very difficult decision. She is almost always going against power. Who are the plaintiff's lawyers in the first place? These are usually small practitioners going up against counsel from large corporations. These people have lawyers on staff that can file endless motions to tie up these small practitioners whom we have said we want to bring these cases in order to vindicate civil rights.

Do we want people to bring these cases, or do we not want people to bring these cases? We have said in these two previous bills we do not need to destroy or disassemble the civil rights superstructure that we have put in place. We have not been inconsistent here.

Civil rights actions are different in all kings of ways. For example, for most of those actions, punitive damages are not available. Compensatory damages are often unavailable. Under Title VII, all you can get is your back pay. Most of these cases are settled by the time the case gets to court. The case has gone through some kind of conciliation often, or at least there has been an attempt to settle the case.

If we want to chill the right to bring a civil rights action, then we go back to these mandatory sanctions. I do not know where we could find a lawyer, almost all of them small practitioners, willing to come forward under these circumstances.

Mr. Chairman, the courts are very experienced. They know how to handle cases that are frivolous in the civil rights area. There have been hundreds of thousands of civil rights cases. This is a unique area of the law. We have encouraged people to come forward. We have continued to do so in the 104th Congress with the two bills I have named, the unfunded mandates bill and the Regulatory Transition Act.

I ask my colleagues please to be consistent. Let us stay together yet again on a civil rights provision. Let us support the Conyers amendment.

Mr. ABERCROMBIE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, yesterday I spoke in my opposition to this bill in general, and I will speak in favor of this amendment at least.

Mr. Chairman, I am sad to report that one of the great intellects, one of the great playwrights of the 20th century, died less than 3 weeks ago, Robert Bolt. Robert Bolt wrote "A Man for All Seasons," and I commend that to my colleagues who are contemplating voting for this bill let alone voting against this amendment.

Let me quote very briefly from the body of the work, "A Man for All Seasons." As you may recall, this is about Sir Thomas More.

Sir Thomas More found himself in the position of having to defend the church, and there was an argument over religious freedom. And this was not the kind of argument that we may be having here today. He was having an argument with his prospective son-in-law, a man named William Roper. William Roper is described by Robert Bolt in a manner that I think might fit some of the people who are not thinking clearly about this today: "William Roper, a stiff body in an immobile face with little imagination and moderate brain but an all too consuming rectitude, which is his cross, his solace, and his hobby." And I feel we have many people here like that today, Mr. Chairman.

So when Sir Thomas More was confronting his prospective son-in-law, young Mr. Roper, when Roper wanted to have someone seized and arrested because of their views, Roper says, "There is! God's law."

And Sir Thomas More said, "Then God can arrest him."

Then Roper said this is "sophistication upon sophistication"—the kind of argument we are hearing on this floor today.

And More said, "No, sheer simplicity. The law, Roper, the law. I know what's legal not what's right. And I'll stick to what's legal."

"Then you set man's law above God's!

"No, far below; but let me draw your attention to a fact—I'm not God. The currents and eddies of right and wrong, which you find such plain sailing, I can't navigate. I'm no voyager. But in the thickets of the law, oh, there I'm a forester. I doubt if there's a man alive who could follow me there, thank God."

And if he should go, "if he was the Devil himself, until he broke the law!"

Then Roper says, "So now you'd give the Devil benefit of law!"

Then Sir Thomas More said, "Yes. What would you do? Cut a great road through the law to get after the Devil?"

Roper said, "I'd cut down every law in England to do that."

More said, "Oh? And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast—man's laws, not God's—and if you cut them down—and you're just the man to do it—d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake."

Mr. Chairman, we need to give the Devil the safety of law for our own benefit, for our own safety's sake. And on the question of religious freedom, how can we even be contemplating such a change as is being imagined in the underlying law which we are proposing to pass in this bill?

When the last law is down and the Devil turns on you, where will we hide?

Loser pays. Loser pays is a vestige of this history in England, and in which class warfare prevails. This is the aristocrats against the commoners. That is exactly what it is all about.

No one in good conscience, if they are going to think today, can find themselves resisting this amendment, and I hope and I pray that Members will think further upon what we are doing here.

I know the gentleman from California [Mr. MOORHEAD] as a colleague. I have had the opportunity to speak with him. I respect him. I think he is among the most decent persons that I have met in the Congress. I respect his civility. Some of the people I have talked to about this bill I respect as libertarians.

The CHAIRMAN. The time of the gentleman from Hawaii [Mr. ABERCROMBIE] has expired.

(By unanimous consent, Mr. ABERCROMBIE was allowed to proceed for 2 additional minutes.)

Mr. ABERCROMBIE. Mr. Chairman, I find myself discussing this not as a question of partisanship, not as a question of Democrats versus Republicans. I do not find myself in a position, Mr. Chairman—and I refer again to my good friend, the gentleman from California, and some of the others I have discussed this with—of looking at this even as a question of winners and losers. On the particular issue, I think we are ill-served by this contract.

This is not a question of loser pays in regard to clients and lawyers. This is a question of whether we are losing as freedom-loving individuals. Some of my libertarian friends that I have on the other side of the aisle find themselves stumbling for an explanation to me as to how they can be for this. This is the ultimate defense of the individual against the State.

Mr. DURBIN. Mr. Chairman, will the gentleman yield?

Mr. ABERCROMBIE. Yes, I yield to the gentleman from Illinois.

Mr. DURBIN. Mr. Chairman, the gentleman has given the most classic conservative argument I have ever heard. He is asking for us to protect our rights as individuals against forces that otherwise would prevail, whether they are the power of government or the power of wealth. The reference he has made to "a man for all seasons" is one of my favorites. I thank the gentleman for bringing it into this debate.

Mr. ABERCROMBIE. Mr. Chairman, I thank the gentleman.

As I bring this up, let me say that I make it a practice of reading this play at least once a year to remind myself of why I am in the Congress. This is one of the reasons why I am here, and I want to tell the Members that this debate has energized me. Sometimes I get up tired in the morning, and I am sure we all have done that. I read in the Post today how tired we all are because we have been moving at a fast pace. That is all right. I do not mind myself, but I realize I am here dealing with the fundamentals, not just me but all of us here, my dear friends and colleagues. We are dealing with the fundamentals. This is what this is all about.

More paid with his head. More paid with his head for standing up for freedom. We will not have to do that today. This is my political head or your political head. What difference does that make? Nobody is going to be shot coming out of this Chamber. Nobody is going to be arrested under these circumstances, not coming out of here. But it is not rhetoric for those whom it affects. And when it comes to religion, this is the first, Mr. Chairman. The first of all our amendments, Mr. Chairman, is freedom of religion. Minus this, we lose the entire basis of what the United States and democracy is all about.

I plead with the Members, please, to examine the basis of what we are doing here. It is not important to pass everything. It is not important to say yes, every "i" was dotted and every "t" was crossed in this contract, regardless of how we have come to feel about it. That is why we are having this debate.

I wish we had had more time in the committee hearing, but we did not. I appeal to the Members, at least on this amendment, please realize that the basis is not Democrat versus Republican. It is a matter of standing up for the fundamentals, standing up for the freedom of the people of the United States.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. CONYERS].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MOORHEAD. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 194, noes 229, not voting 11, as follows:

[Roll No. 205]

AYES—194

Abercrombie
Ackerman
Andrews
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)

Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
Danner
Davis
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks

Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Ehlers
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Foglietta
Ford
Fox
Frank (MA)

Frost
Furse
Gejdenson
Gephardt
Geren
Gilman
Gonzalez
Goodlatte
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Hobson
Holden
Hoyer
Jackson-Lee
Jacobs
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Luther
Maloney

Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McNulty
Meehan
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Montgomery
Murtha
Nadler
Neal
Oberstar
Obey
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo

Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Sisisky
Skaggs
Skelton
Slaughter
Spratt
Stark
Stenholm
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOES—229

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Cooley

Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Gilchrest
Gillmor
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)

Hayworth
Hefley
Heineman
Herger
Hilleary
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lowey
Lucas
Manzullo
Martini
McCollum
McCrery
McHale
McHugh
McInnis

McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Moorhead
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn

Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder

Spence
Stearns
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—11

Condit
Flake
Gibbons
Jefferson

McDade
McKinney
Meek
Olver

Rangel
Roth
Weldon (PA)

□ 1347

The Clerk announced the following pairs:

On this vote:

Mr. Jefferson for, with Mr. Roth against.

Mr. Flake for, with Mr. Weldon of Pennsylvania against.

Mr. DAVIS and Mr. SCHUMER changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words.

Mr. SMITH of Michigan. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Michigan.

Mr. SMITH of Michigan. Mr. Chairman, I offer an amendment. I would like to say I will not ask for a recorded vote on this amendment.

The CHAIRMAN. The gentleman is recognized for debate only on Mr. GOODLATTE's time. The Chair will have to reserve the ability to separately recognize for the purpose of offering an amendment.

PARLIAMENTARY INQUIRIES

Mr. GOODLATTE. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. GOODLATTE. Mr. Chairman, do I have the ability to yield to the gentleman from Michigan [Mr. SMITH] for the purpose of offering an amendment?

The CHAIRMAN. The gentleman has only the ability to yield for the purpose of debate. The amendment must be offered by the gentleman from Michigan in his own right.

Mr. GOODLATTE. I yield to the gentleman for the purpose of debate. I apologize to the gentleman that he will not be allowed to offer an amendment under these circumstances.

Mr. SMITH of Michigan. Mr. Chairman, then I would yield back to the gentleman, because I am still in hopes that I can have the 5 minutes to offer my amendment.

Mr. GOODLATTE. Mr. Chairman, that being the case, I yield back my time.

Mr. SMITH of Michigan. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. SMITH of Michigan. Inasmuch as my amendment was printed in the RECORD, do I understand I have a right to have a vote on that amendment?

The CHAIRMAN. If the gentleman is recognized before the expiration of 7 hours at 2:20, the time set for consideration of the bill under the rule, then the gentleman will be accorded the opportunity to offer and have a vote upon his amendment.

Mr. SMITH of Michigan. It is my understanding, Mr. Chairman, that I have the right to be recognized and to have that vote on the amendment, even if there is no debate, is that correct?

The CHAIRMAN. The gentleman is correct, if the gentleman offers his amendment before 2:20.

AMENDMENT OFFERED BY MR. BRYANT OF TEXAS

Mr. BRYANT of Texas. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. BRYANT of Texas: AMENDMENT NO. 1: Page 4, insert the following after line 21 and redesignate the succeeding paragraph accordingly:

"(8) This subsection applies only to a claim brought against a small business concern as defined under section 3 of the Small Business Act."

Mr. BRYANT of Texas. Mr. Chairman, the bill before the House today, as those who have carefully watched this debate now, is one that would for the first time in American history shift the burden from where it has always been to the loser in a lawsuit to pay the costs of the winner for bringing the lawsuit, so that if a person brings a case, even though it appears to be meritorious, even though it is a case that anyone would agree could go either way, when he accidentally, for some reason, unforeseeably loses, he then faces the enormous burden of paying all of the expenses of the person on the other side. The result of that, of course, is to make it very difficult for people of little means to ever have access to our system of justice in the United States.

Now, the rationale given for this bill is that we have to somehow, according to the advocates of it, make business life a little bit easier for the overburdened manufacturer, the small manufacturer out there, who cannot do business because he is constantly faced with the possibility of being sued and losing.

Yet the bill applies to any type of manufacturer of any size whatsoever. When we complain that the bill is simply making it easy for the biggest and the largest and the strongest companies in our country to produce products of an inferior type that might later injure someone, and yet never be sued, they say oh, no, we are not trying to protect the big boys. We are just trying to create an even playing field. We are really looking at a way to protect the little guys.

Well, the amendment which I have before the House at this moment does just that. What it says is that the loser-pay bill on the floor today only applies when the defendant is a small business as defined by the section 3 of the Small Business Act. What is that? That is a business with 500 or fewer employees.

I submit to you that we are embarking on a mission here for which we have no evidence, for which we have been given no direction based upon any empirical data. If we are going to do that, for goodness' sake, we ought to limit the effect to small businesses and not allow the biggest of the businesses, the ones that can well afford to pay their own costs, to be exempt from any type of a lawsuit that is brought against them, in effect because no one will ever dare to bring a lawsuit for fear they might lose because of the color or their skin or the side of the head on which they part their hair or some other frivolous reason.

All of those involved in litigation understand there is always a risk that a case can be lost, even a case that is firmly grounded as to the facts of the case and the law. When you add the loser-pay rule to our Federal jurisprudence, you put an average person in the extremely difficult position of deciding whether to risk the equity in their homes or the money that they put away for their children before pursuing even the most meritorious of claims.

Let me point out, this does not hurt rich folks because they can afford to absorb the costs. It does not hurt poor folks because a poor person is not going to be in any position to pay an opposing side's attorney fees. They can simply get their obligation in that regard discharged in a bankruptcy proceeding. But it goes to middle class Americans who do not have enough to be unconcerned about the costs, and have a great deal to lose if they are so unhappy so as not to win a case which otherwise appears to be meritorious.

If we are going to have a law like that, and I do not think we should, but if we are going to have a law like that on the books, by golly, the effect of it ought to be limited to cases in which the defendant is a small business, not a gigantic business that can well afford to handle its own litigation costs.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I want to commend the gentleman, because in the closing hours on this debate, the gentleman has done as much to improve it as any provision that has been brought. It would be a protection only for small businesses who would be exempt from the loser-pay feature of this bill.

Mr. BRYANT of Texas. That is correct.

Mr. CONYERS. I am pleased to support it and accept it on our side, and I hope that because of the limited debate opportunity that the gentleman has, that the other side would consider it carefully in terms of accepting it as well.

Mr. BRYANT of Texas. Mr. Chairman, reclaiming my time, I thank the gentleman for his comments.

To recapitulate, the amendment says that the loser-pay bill on the floor today will only apply when the defendant is a small business, that is, one with 500 employees or less. A small business is defined in the amendment as the term "small business" is defined by section 3 of the Small Business Administration Act.

Mr. Chairman, I urge Members' support for the amendment.

Mr. MOORHEAD. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Texas.

Mr. Chairman, his amendment would limit the settlement and attorneys fees provisions of H.R. 988 to cases against small business. We do not intend to limit the application of these provisions to a large or a small business. As now written under the bill, it applies to any litigant in Federal court under the diversity statute.

The purpose of this legislation is to try and encourage all parties to settle and not go to trial whenever possible. I do not know what percentage of cases filed under the diversity statute are filed by small businesses or how often they are the defendants, but loser-pays should be applied to everybody, and not be based on the size of a business to the exclusion of ordinary litigants. The focus of loser-pays is on the strength of a claim and to discourage weak and frivolous cases.

Mr. Chairman, I urge a "no" vote on this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. BRYANT].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BRYANT of Texas. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 177, noes 214, not voting 13, as follows:

[Roll No. 206]

AYES—177

Abercrombie
Baesler
Baldacci
Barcia
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
Danner
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Duncan
Durbin
Edwards
Engel
Ensign
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
Meehan
Menendez
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Peterson (MN)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Schroeder
Schumer
Scott
Serrano
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thornton
Thurman
Torres
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOES—244

Ackerman
Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Cooley
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson

Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Salmon
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—13

Andrews
Condit
Cox
Flake
Gibbons
Jefferson
McDade
McKinney
Meek
Rangel
Roth
Torricelli
Williams

☐ 1417

The Clerk announced the following pairs:

On this vote:

Mr. Flake for, with Mr. Cox against.

Mr. Jefferson for, with Mr. Roth against.

Mrs. FOWLER changed her vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. INGLIS of South Carolina. Mr. Chairman, I move to strike the last word.

The CHAIRMAN. The gentleman is recognized for 3 minutes.

Mr. SMITH of Michigan. Mr. Chairman, will the gentleman yield?

Mr. INGLIS of South Carolina. I yield to the gentleman from Michigan.

Mr. SMITH of Michigan. Mr. Chairman, I appreciate the gentleman yielding to me.

It is somewhat of a frustrating experience to have amendments, as Members from both sides of the aisle have had only to be preempted and ultimately denied the opportunity to offer those amendments.

The members of that committee are given priority. Mr. Chairman, the members of that committee are essentially all attorneys, so those of us who are members of other occupations get little opportunity to say "wait a minute."

Mr. Chairman, the title of this bill is "The Attorney Accountability Act." In fact, this bill as currently written does little to make attorneys accountable. The only part of this bill that does anything to make lawyers accountable for their actions is the change in rule XI.

That change, requiring a mandatory penalty for violation of the rule, applies only in the small number of cases in which an attorney is actually sanctioned by a judge under rule XI. As we have heard from most everybody, Mr. Chairman, there are very few sanctions that take place. If ever this sanction does take place, the judge even has the right to waive the penalty on the attorney and assess all of the sanction penalties on the client.

Mr. Chairman, my amendment would have required attorneys to accept some responsibility for their actions by making them liable for 50 percent of the unpaid costs of unnecessary litigation that the client does not pay fully. I think this is important.

Mr. Chairman, under H.R. 988 as currently drafted, attorneys seeking a big, contingency fee payday have an incentive to litigate weak cases aggressively. If the client wins, the lawyer cashes in. If the client loses, the client is stuck with the bill. It's even better if the client's poor—then no one has to pay.

My amendment makes an attorney liable for half of any attorney's fee award that a client can't pay. This sanction is not unduly harsh. There can be no award of fees unless:

First, a settlement is offered;

Second, the offer is rejected; and

Third, the jury returns a verdict less than the offer.

In the few cases in which these conditions are met, the award is limited:

First, it's capped at the amount of the offeree's expenses;

Second, it's limited to the actual cost incurred from the time of the offer through the end of the trial; and

Third, the judge has discretion to moderate or waive the penalty when it would be manifestly unjust.

These modest steps are necessary if we truly intend to make attorneys accountable. My amendment tells lawyers: This is a court, not a lottery office. You're an officer of this court. As an officer of this court, you have a responsibility to the court and the other litigants not to waste their time and money. And if you ignore these responsibilities, you can be held liable. I ask the House to vote "yes" on the Smith amendment to H.R. 988.

Mrs. SCHROEDER. Mr. Chairman, I regret that the time constraints imposed by the rule precluded consideration of the Harman amendment, which replaces H.R. 988's "loser pays" provision with the attorneys fees standard in the securities bill.

The goal of deterring frivolous lawsuits is a worthy one. However, H.R. 988's loser pays provision goes well beyond that; it gives a wealthy party the power to slam the courthouse door shut in the face of a middle-income or poor individual with a reasonably strong case. The Harman amendment strikes a better balance—it deters suits that are frivolous, but allows ordinary people to pursue close cases.

Assume a case in which the damages are high—for example, $500,000—and the amount of damages is essentially undisputed. However, the defendant's liability is not a certainty. The plaintiff's attorney advises him that the liability question is fairly strong, but it isn't a slam dunk. The attorney estimates that the odds are perhaps 70–30 in favor of winning the liability question. In this kind of case, under our current system, the plaintiff will either win a judgment of something very close to $500,000, or will win nothing. This is clearly not a frivolous case; it is a reasonable case for the plaintiff to pursue, even if, in the end, he loses. Under current law, even a poor or middle-income plaintiff will be able to pursue this case, because he can obtain representation on a contingency fee basis, and does not assume any risk of having to pay the other side's attorneys fees if he loses.

But let us assume that H.R. 988 is in effect. Assume that the defendant is a large corporation, whose decisionmaking with respect to the case is not particularly affected by the possiblity of recovering its attorneys fees, because they are considered to be a routine cost of doing business. The defendant makes a $1 offer to the plaintiff, which is filed and served very early in the case. The defendant's primary motivation is not to reach a reasonable settlement; it is to try to deter the lawsuit altogether by playing on the plaintiff's unwillingness to roll the dice on his life savings on a 70–30 gamble.

The plaintiff is a middle-income individual who has a contingency-fee agreement with his attorney, and has managed to salt away some savings, which he hopes to use for his children's college education, or perhaps to support either his own retirement, or his parents in the event they need his support later in their lives.

Under the terms of section 2 of H.R. 988—the Goodlatte loser pays provision—if the plaintiff loses the case, he will end up losing his life savings to pay the defendant's attorneys fees. These fees will be considerable; because the plaintiff has a contingency fee agreement with his own attorney, he will be required to pay the defendant a fee calculated on an hourly rate limited only to the number of hours his own attorney worked. Because liability was a close question, his own attorney worked many hours to prepare this case. There is no reasonable counteroffer the plaintiff can make that will protect him from having to pay attorneys fees if he loses, because the only offer that would protect him would be an offer to dismiss his case. Because H.R. 988 does not give him a way to avoid risking his life savings if the defendant offers him $1, the plaintiff has to be willing to gamble his life savings in order to pursue a case with high damages and a 70–30 probability of winning liability. The Harman amendment, by contrast, protects the individual who seeks access to the courts in a case where liability is reasonably likely, but not a slam dunk. Unless we adopt the Harman amendment, the results of this bill are:

First, the middle-income plaintiff, who is strongly risk-averse, can pursue even a relatively strong case only by putting his life savings on the line.

Second, the bargaining power between individuals and large corporations is very uneven, because the plaintiff is risking his life savings, while all of the risks on the defendant's side are absorbable as a cost of doing business.

Third, the court cannot step in to level this playing field, because even though H.R. 988 allows the court to decline to order the loser to pay if the court finds that requiring payment would be manifestly unjust, the report filed by the Judiciary Committee states very clearly that the standard governing this exception is "an exceptionally high one, extending well beyond the relative wealth of the parties." Thus, the fact that the winning defendant is a large corporation, and the losing plaintiff is a middle-income plaintiff who will have to use all of his life savings to pay the defendant's attorneys fees, is not something that the Republican majority believes is a manifest injustice.

The respected conservative British magazine, the Economist, has called for the repeal of the so-called English rule, that is, loser pays, in England, precisely because it shuts the courthouse door to middle-income parties. Let's not make the mistake of giving large corporations and wealthy individuals an unfair advantage in our civil justice system. The American way is equal justice under law. H.R. 988 replaces that with a system of all the justice you can afford. I urge adoption of the Harman amendment.

The CHAIRMAN. All the time has expired.

The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore, Mr. BARRETT of Nebraska, having assumed the chair, Mr. HOBSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 988), to reform the Federal civil justice system, pursuant to House Resolution 104, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

MOTION TO RECOMMIT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. CONYERS. I certainly am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. CONYERS moves to recommit H.R. 988 back to the Committee on the Judiciary with instruction to report back forthwith with the following amendment:

Strike section 2 of the bill, and insert the following:

SEC. 2. AWARD OF COSTS AND ATTORNEY'S FEES IN FEDERAL CIVIL DIVERSITY LITIGATION.

Section 1332 of title 28, United States Code, is amended by adding at the end the following:

"(e) AWARDS OF FEES AND EXPENSES.—

"(1) AUTHORITY TO AWARD FEES AND EXPENSES.—In any action over which the court has jurisdiction under this section, if the court enters a final judgment against a party litigant on the basis of a motion to dismiss, motion for summary judgment, or a trial on the merits, the court shall, upon motion by the prevailing party, determine whether (A) the position of the losing party was not substantially justified, (B) imposing fees and expenses on the losing party or the losing party's attorney would be just, and (C) the cost of such fees and expenses to the prevailing party is substantially burdensome or unjust. If the court makes the determinations described in clauses (A), (B), and (C), the court shall award the prevailing party reasonable fees and other expenses incurred by that party. The determination of whether the position of the losing party was substantially justified shall be made on the basis of the record in the action for which fees and other expenses are sought, but the burden of persuasion shall be on the prevailing party.

"(2) SECURITY FOR PAYMENT OF COSTS IN CLASS ACTIONS.—In any private action arising under this section that is certified as a class action under the Federal Rules of Civil Procedure, the court shall require an undertaking from the attorneys for the plaintiff class, the plaintiff class, or both, in such proportions and at such times as the court determines are just and equitable, for the payment of fees and expenses that may be awarded under paragraph (1).

"(3) APPLICATION FOR FEES.—A party seeking an award of fees and other expenses shall, within 30 days of a final, nonappealable judgment in the action, submit to the court an application for fees and other expenses that verifies that the party is entitled to such an award under paragraph (1) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.

"(4) ALLOCATION AND SIZE OF AWARD.—The court, in its discretion, may—

"(A) determine whether the amount to be awarded pursuant to this subsection shall be awarded against the losing party, its attorney, or both; and

"(B) reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the action.

"(5) AWARD IN DISCOVERY PROCEEDINGS.—In adjudicating any motion for an order compelling discovery or any motion for a protective order made in any action over which the court has jurisdiction under this section, the court shall award the prevailing party reasonable fees and other expenses incurred by the party in bringing or defending against the motion, including reasonable attorneys' fees, unless the court finds that special circumstances make an award unjust.

"(6) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit or impair the discretion of the court to award costs pursuant to other provisions of law.

"(7) PROTECTION AGAINST ABUSE OF PROCESS.—In any action to which this subsection applies, a court shall not permit a plaintiff to withdraw from or voluntarily dismiss such action if the court determines that such withdrawal or dismissal is taken for purposes of evasion of the requirements of this subsection.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) The term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorneys' fees and expenses. The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of services furnished.

"(B) The term 'substantially justified' shall have the same meaning as in section 2412(d)(1) of title 28, United States Code.".

Mr. CONYERS (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. CONYERS] is recognized for 5 minutes.

Mr. CONYERS. Mr. Speaker, this has been a long 2 days on a bill that has presented a lot of problems to people. I am, on the motion to recommit, introducing a concept that was presented by the gentlewoman from California [Ms. HARMAN] which would limit the so-called loser pays provisions to those cases where the settlement offer was reasonable and made in good faith.

This is the same standard being adopted in the context of the Republican bill on securities litigation, H.R. 1058. This is the precise language in the Republican bill on securities scheduled to be on the floor shortly.

I would hope that my Republican colleagues would be able to see the logic of extending the same standard to injured tort victims as they do to stockholders. If someone loses a limb in a product liability case, they should have the same access to justice as an investor who has received fraudulent information.

The English rule, which requires losers to pay the legal fees of winners, which I had not thought would ever be popular in America, since we have the American rule, would substantially eliminate justice for the middle class members of our society.

As in England, those without a significant financial cushion will simply be unable to afford the risks of losing litigation.

Ms. HARMAN. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentlewoman from California.

Ms. HARMAN. Mr. Speaker, I thank the gentleman for his heroic attempt to allow me to offer an amendment that is now part of the motion to recommit.

Essentially, the motion would borrow fee-shifting provisions from the 1980 Equal Access To Justice Act, which is now a Federal law, and from the precise language that will be offered later today in the securities litigation reform bill by the gentleman from California [Mr. COX], which sets up a three-part standard for fee shifting. We feel that this would be much more fair than the language of the gentleman from Virginia [Mr. GOODLATTE] in the present bill.

Mr. Chairman, I would commend the gentleman from Virginia [Mr. GOODLATTE] for his enormous effort to provide a standard that is fair, but I would point out that in making that standard mandatory, he could very well cause unfair results in close cases, and the Cox language, which we will debate fully later, would take care of those problems.

I would urge support for the motion to recommit, and I would urge consideration of this much better language.

Mr. CONYERS. Mr. Speaker, in closing, the loser pays is a phrase that appeals to everyone who has heard it. It removes itself to anecdotes about court cases that appeared or produced an absurd or abusive outcome, but government by anecdote can produce disastrous policy.

Although the Contract With America claims that the loser pays provision is intended to penalize frivolous lawsuits and discourage the filing of weak cases, it is almost certain to have adverse consequences which limit access to justice.

The Harman amendment to recommit essentially cushions some of the worst features that now exist in the bill, and, as I have said before, it duplicates the bill on securities litigation by adopting the very same standard.

Please support the motion to recommit this bill.

Mr. MOORHEAD. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from California [Mr. MOORHEAD] is recognized for 5 minutes.

Mr. MOORHEAD. Mr. Speaker, the motion to recommit, unlike the loser pays language in H.R. 988, would take control out of the hands of the party and give it to the courts.

Moreover, an award of attorneys' fees under this amendment is merely discretionary with the court and not mandatory, like the language of H.R. 988. This amendment would also make the losing party's lawyer vulnerable for attorneys' fees.

This approach completely overlooks the fact that a decision to settle the case or press the case to trial is a decision of the party and not their lawyer. The lawyer cannot settle a case without the consent of his client.

The ultimate decision must be the client's as to whether a settlement is made or not. If the approach in this amendment were adopted, the lawyer would have to evaluate every case with a view toward his own liability, which would easily conflict with the interests of the party he purports to represent.

Mr. Speaker, this amendment, while appropriate for securities cases, should not be applied across the board. It will gut the loser pays language in H.R. 988. I urge its defeat.

Mr. Speaker, I yield the balance of my time to the gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman for yielding to me, and I thank the chairman of the subcommittee for his fine work on this legislation, and the other side for the very civil way this debate has been conducted.

However, Mr. Speaker, I must rise in opposition to this motion to recommit, because it will return us to the situation we have right now.

□ 1430

It will eliminate the opportunity we have to truly say that when you go into Federal court, you have to be responsible, you have to be prepared to take responsibility for your own actions. By giving to the judge the discretion of whether or not to apply attorneys' fees, you will put us back to the situation we have right now with rules like rule 11, which has the effect of saying, "Yes, we have sanctions, but, gee, maybe we wont't apply them," and the evidence is that they have not been applied.

There are some other problems with this amendment. For one thing, this amendment incorporated in the motion to recommit could allow the court to require that the winning party's legal fees be paid by the losing party's attorney.

This is a very wrongheaded concept in American justice. You should not ever drive a wedge between anybody and their lawyer who has all kinds of ethical responsibilities in the representation of their client.

Ms. HARMAN. Mr. Chairman, will the gentleman yield just for one question?

Mr. MOORHEAD. I yield to the gentlewoman from California.

Ms. HARMAN. Is this not the precise language that will be offered in the next bill we take up, the securities litigation bill, that was drafted by the gentleman from California [Mr. COX], including the possibility that attorneys could pay the fee awards?

Mr. GOODLATTE. I have to say I am not on the committee who produced that bill, so I do not know. You may be correct. If so, I will attempt to change that language in that bill.

But the point is here that if we take away the mechanism that has been set up in this bill, we will have eliminated all of the incentives we created to settle cases, all of the incentives we have created to not bring frivolous, fraudulent, or nonmeritorious lawsuits in U.S. district court. The compromise that we have come up with as changed from the original bill is a very, very good effort to control the overload of lawsuits in our courts without having to go back to a system now where there is no pressure on some individuals not to be responsible when they decide to bring an action in court.

I strongly urge the defeat of this motion to recommit.

The SPEAKER pro tempore (Mr. BARRETT of Nebraska). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 232, noes 193, not voting 10, as follows:

[Roll No. 207]

AYES—232

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham

Davis
de la Garza
Deal
DeLay
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Gingrich
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson, Sam
Jones
Kasich
Kelly
Kim
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Lucas
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Morella
Myers
Myrick
Neumann
Ney
Norwood
Nussle
Ortiz
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—193

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barrett (WI)
Bateman
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Buyer
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
Danner
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Ehrlich
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
King
Kleczka
Klink
LaFalce
Lantos
LaTourette
Laughlin
Lazio
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Longley
Lowey
Luther
Maloney
Manton
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McDermott
McHale
Meehan
Menendez
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Moran
Murtha
Nadler
Neal
Nethercutt
Oberstar
Obey
Olver
Orton
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pickett
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Roemer
Ros-Lehtinen
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Sisisky
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOT VOTING—10

Condit
Flake
Gibbons
Jefferson
Johnson (CT)
McDade
McKinney
Meek
Rangel
Roth

☐ 1450

The Clerk announced the following pairs:

On this vote:

Mrs. Johnson of Connecticut for, with Mr. Flake against.

Mr. Roth for, with Mr. Jefferson against.

Mr. CHAPMAN changed his vote from "aye" to "no."

Mr. BACHUS and Mr. SHAYS changed their vote from "no" to "aye."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MOORHEAD. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks on H.R. 988, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 1058, SECURITIES LITIGATION REFORM ACT

Mr. DREIER. Mr. Speaker, by direction of the Committee on Rules I call up House Resolution 105 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 105

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Commerce. After general debate the bill shall be considered for amendment under the five-minute rule for a period not to exceed eight hours. The bill shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. Points of order under clause 7 of rule XVI against the amendments printed in the report of the Committee on Rules accompanying this resolution are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

SEC. 2. H. Res. 103 is laid on the table.

The SPEAKER pro tempore. The gentleman from California [Mr. DREIER] is recognized for 1 hour.

Mr. DREIER. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to my friend, the gentleman from Texas [Mr. FROST], pending which I yield myself such time as I might consume. All time yielded will be for debate purposes only.

Mr. Speaker, this is a modified open rule providing for consideration of H.R. 1058, the Securities Litigation Reform Act, with 1 hour of general debate. Following general debate, the bill will be open for amendment under the 5-minute rule for a period not to exceed 8 hours.

While there is no requirement that amendments be printed in the RECORD prior to their consideration, priority in recognition can be accorded by the Chair to Members who have had their amendments preprinted.

Mr. Speaker, the rule waives clause 7 of rule XVI relating to germaneness for two amendments. One is the amendment offered by my friend from the other side of the aisle, the gentleman from Oregon [Mr. WYDEN], which establishes audit procedures to detect financial fraud in securities matters. The second amendment is offered by a Member of the majority, the gentleman from California [Mr. COX], to exempt securities fraud from the RICO statute.

Upon completion of the consideration of all amendments to the bill the rule provides for one motion to recommit to the minority.

Mr. Speaker, this is a fair rule, providing for an open amendment process. While there is a cap on total time for amendments, the minority is able to give priority consideration to whatever germane amendments their leadership considers most important. Let me repeat: that they are able to give priority consideration to whatever germane amendments they consider most important.

The Committee on Rules majority is not shutting particular amendments out of the process. Securities litigations reform is a critical step in our effort to help create more high-quality private-sector jobs right here at home.

Private securities legislation is undertaken today in a system that encourages meritless cases, destroys thousands of jobs, undercuts economic growth, and raises the prices that American families pay for goods and services.

Mr. Speaker, the defenders of the status quo in the minority have said on issue after issue this year: "If it ain't broke, don't fix it." Well, this is one time there is no doubt that the current system is broke, and we are very fortunate that the bill being reported forward from the committee will fix it.

H.R. 1058 creates a system that swiftly finds and punishes real fraud and allows the victims of fraud to be fully compensated for their losses. At the same time it will free innocent parties from wasteful and baseless litigation designed to enrich litigators alone. While Chairman BLILEY of the Commerce Committee and Chairman FIELDS of the Subcommittee on Telecommunications and Finance have done tremendous work in bringing this bill to the floor, I would like to note the tireless efforts of my friend from Newport Beach, CA [Mr. COX].

Mr. COX is a former securities lawyer and has been involved in securities litigations reform since his days at Harvard Law School. He has pushed this important reform effort throughout his 6 years in the House, and was ready to move forward when the new majority in the Congress made real reform possible. His hard work and leadership has been critical to this effort.

Mr. Speaker, presenting this modified open rule to the House reminds me of a report that I heard last week on National Public Radio's Morning Edition. It was about a graduate school course offered by American University here in Washington, DC. The subject of the course was lobbying. As I listened to the trials and tribulations faced by those in the lobbying community with all of the changes occurring here in Congress, I was very proud to hear that the professional lobbyists under the new majority's policy of open rules find the issue of dealing with open rules extraordinarily difficult.

In the words of the lobbyist that has taught the course for years, and I quote:

> A position of more open rules is a detrimental thing to a lot of lobbying interests. One of the lobbyist's commandments is "keep it off the floor." If you can get something done in committee and have it sealed and come out with a closed rule, then you're safe. If everything is amendable on the floor, that makes the job of the lobbyist that much harder because then you're dealing with 218 folks instead of just 22 or 23.

Mr. Speaker, lobbyists know that the new Committee on Rules has brought a new openness to the House, and they do not like it. The new majority on the Committee on Rules and the many Members of Congress that are supporting the more open rules are doing right by the American people.

House Resolution 105, this rule, is no exception. It is another in a growing series of rules that do not pick and choose amendments to stifle debate. I urge my colleagues to support this very fair, balanced, modified open rule as we proceed with debate on the Securities Litigations Reform Act.

Mr. Speaker, I include for the RECORD material on the amendment process under special rules reported by the Rules Committee, 103d Congress versus the 104th Congress.

THE AMENDMENT PROCESS UNDER SPECIAL RULES REPORTED BY THE RULES COMMITTEE,[1] 103D CONGRESS V. 104TH CONGRESS

[As of March 7, 1995]

Rule type	103d Congress		104th Congress	
	Number of rules	Percent of total	Number of rules	Percent of total
Open/Modified-open[2]	46	44	18	86
Modified Closed[3]	49	47	3	14
Closed[4]	9	9	0	0
Totals:	104	100	21	100

[1] This table applies only to rules which provide for the original consideration of bills, joint resolutions or budget resolutions and which provide for an amendment process. It does not apply to special rules which only waive points of order against appropriations bills which are already privileged and are considered under an open amendment process under House rules.

[2] An open rule is one under which any Member may offer a germane amendment under the five-minute rule. A modified open rule is one under which any Member may offer a germane amendment under the five-minute rule subject only to an overall time limit on the amendment process and/or a requirement that the amendment be preprinted in the Congressional Record.

[3] A modified closed rule is one under which the Rules Committee limits the amendments that may be offered only to those amendments designated in the special rule or the Rules Committee report to accompany it, or which preclude amendments to a particular portion of a bill, even though the rest of the bill may be completely open to amendment.

[4] A closed rule is one under which no amendments may be offered (other than amendments recommended by the committee in reporting the bill).

SPECIAL RULES REPORTED BY THE RULES COMMITTEE, 104TH CONGRESS

[As of March 2, 1995]

H. Res. No. (Date rept.)	Rule type	Bill No.	Subject	Disposition of rule
H. Res. 38 (1/18/95)	O	H.R. 5	Unfunded Mandate Reform	A: 350–71 (1/19/95).
H. Res. 44 (1/24/95)	MC	H. Con. Res. 17	Social Security	A: 255–172 (1/25/95).
		H.J. Res. 1	Balanced Budget Amdt	
H. Res. 51 (1/31/95)	O	H.R. 101	Land Transfer, Taos Pueblo Indians	A: voice vote (2/1/95).
H. Res. 52 (1/31/95)	O	H.R. 400	Land Exchange, Arctic Nat'l. Park and Preserve	A: voice vote (2/1/95).
H. Res. 53 (1/31/95)	O	H.R. 440	Land Conveyance, Butte County, Calif	A: voice vote (2/1/95).
H. Res. 55 (2/1/95)	O	H.R. 2	Line Item Veto	A: voice vote (2/2/95).
H. Res. 60 (2/6/95)	O	H.R. 665	Victim Restitution	A: voice vote (2/7/95).
H. Res. 61 (2/6/95)	O	H.R. 666	Exclusionary Rule Reform	A: voice vote (2/7/95).
H. Res. 63 (2/8/95)	MO	H.R. 667	Violent Criminal Incarceration	A: voice vote (2/9/95).
H. Res. 69 (2/9/95)	O	H.R. 668	Criminal Alien Deportation	A: voice vote (2/10/95).
H. Res. 79 (2/10/95)	MO	H.R. 728	Law Enforcement Block Grants	A: voice vote (2/10/95).
H. Res. 83 (2/13/95)	MO	H.R. 7	National Security Revitalization	PQ: 229–100; A: 227–127 (2/15/95).
H. Res. 88 (2/16/95)	MC	H.R. 831	Health Insurance Deductibility	PQ: 230–191; A: 229–188 (2/21/95).
H. Res. 91 (2/21/95)	O	H.R. 830	Paperwork Reduction Act	A: v.v. (2/2?/95).
H. Res. 92 (2/21/95)	MC	H.R. 889	Defense Supplemental	A: 282–144 (2/22/95).
H. Res. 93 (2/22/95)	MO	H.R. 450	Regulatory Transition Act	A: 252–175 (2/23/95).
H. Res. 96 (2/24/95)	MO	H.R. 1022	Risk Assessment	A: 253–165 (2/27/95).
H. Res. 100 (2/27/95)	O	H.R. 926	Regulatory Reform and Relief Act	A: voice vote (2/28/95).
H. Res. 101 (2/28/95)	MO	H.R. 925	Private Property Protection Act	A: 271–151 (3/1/95).
H. Res. 104 (3/3/95)	MO	H.R. 988	Attorney Accountability Act	A: voice vote (3/6/95).
H. Res. 103 (3/3/95)	MO	H.R. 1058	Securities Litigation Reform	
H. Res. 105 (3/6/95)	MO			

Codes: O-open rule; MO-modified open rule; MC-modified closed rule; C-closed rule; A-adoption vote; PQ-previous question vote.

Source: Notices of Action Taken, Committee on Rules, 104th Congress.

Mr. Speaker, I reserve the balance of my time.

☐ 1500

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I must rise in opposition to this rule. Legislation of this complexity and which may ultimately have an enormous impact on securities markets and investor transactions in this country deserves informed and considered debate. H.R. 1058 was not thoroughly examined in the Commerce Committee, and now, this rule does not give the House an opportunity to thoroughly consider this legislation. In fact, Mr. Speaker, there is ample proof that in the haste to send this legislation, along with the other pieces of H.R. 10, to the full House, a significant issue was left out, or perhaps forgotten.

That issue, relating RICO to securities transactions only came to the attention of the Rules Committee yesterday afternoon—2 days after the original rule, H.R. 103, had been reported to the House. In order to provide for the consideration of the RICO issue, it was necessary for the Rules Committee to meet and report yet another rule on H.R. 1058. Yet, in spite of the fact that another issue was added to the debate on H.R. 1058, the Rules Committee did not see fit to allow the House any more time to debate these important issues through the amendment process.

Mr. Speaker, House resolution limits consideration of all amendments to H.R. 1058 to 8 hours. That 8 hours includes time for voting—which, in effect, places strict limits on the consideration of amendments. I opposed this limit during the debate on this rule in the Committee on Rules last Friday and last night and I bring my opposition to the floor today. Limiting the time to consider amendments ultimately limits the debate and the number of amendments which may be offered. This limitation is contrary to the stated objectives of the Republican majority to open the House to free and unfettered debate. Considering the complexity of this legislation and the potential impact it may have on our economy, I question whether 8 hours is really an adequate amount of time to debate this matter in a free and unfettered manner.

In fact, Mr. Speaker, the gentleman from Michigan [Mr. DINGELL] originally requested 12 hours for consideration of amendments on this bill. The majority has asked that the Democrats on the Rules Committee confer with our leadership to determine the number of hours that we feel would be adequate to cover the anticipated amendments to legislation scheduled for the floor. The Democratic members of the Rules Committee made a responsible request last Friday: that request was based on our best estimates of the time needed to thoroughly debate this legislation. Our request was based on our discussions with the ranking minority member of the Commerce Committee after his consultations with his members.

Last week, the majority of the Rules Committee saw fit to only grant 66 percent of the requested time. And, last night when an additional issue, some say a major issue, was added to the issues to be considered by the House, the majority refused to grant any additional time for consideration of amendments to H.R. 1058. Mr. Speaker, it is for this reason that I must oppose this rule. Last week we made a good faith offer under the terms articulated by Chairman SOLOMON and last night we reiterated our position.

Mr. Speaker, the Democratic members of the Rules Committee believe the 8-hour time limit is inadequate for the consideration of this legislation because of the enormity of the issue, as well as the addition of the RICO amendment. We support efforts to deter those who abuse the judicial system by filing meritless lawsuits. We support efforts to provide substantive sanctions on those who engage in these activities. The desire to make corrections in the process is indeed bipartisan—the only question is how to accomplish those corrections. Members need time to consider all the options.

Democratic members have made a good faith effort to participate in the deliberations on the rule for this bill, but again our efforts have been rebuffed. In spite of bipartisan desires to end frivolous lawsuits while protecting average investors and honesty in the securities market, this is not a bipartisan rule. For this reason, I urge defeat of the rule.

AMOUNT OF TIME SPENT ON VOTING UNDER THE RESTRICTIVE TIME CAP PROCEDURE IN THE 104TH CONGRESS

Bill No.	Bill title	Roll-calls	Time spent	Time on amends
H.R. 667	Violent Criminal Incarceration Act.	8	2 hrs. 40 min.	7 hrs. 20 min.
H.R. 728	Block Grants	7	2 hrs. 20 min.	7 hrs. 40 min.
H.R. 7	National Security Revitalization.	11	3 hrs. 40 min.	6 hrs. 20 min.
H.R. 450	Regulatory Moratorium	13	3 hrs. 30 min.	6 hrs. 30 min.
H.R. 1022	Risk Assessment	6	2 hrs	8 hrs.
H.R. 925	Takings	8	2 hrs. 40 min.	9 hrs. 20 min.
H.R. 988	Attorney.			

MEMBERS SHUT OUT BY A TIME CAP—104TH CONGRESS

This is a list of Members who were not allowed to offer amendments to major legislation because the 10 hour time cap on amendments had expired. These amendments were also pre-printed in the Congressional Record. This list is not an exhaustive one. It contains only Members who had pre-printed their amendments; others may have wished to offer amendments but would have been prevented from doing so because the time for amendment had expired.

H.R. 728—Law Enforcement Block Grants: 10 Members.

Mr. Bereuter, Mr. Kasich, Ms. Jackson-Lee, Mr. Stupak, Mr. Serrano, Mr. Watt, Ms. Waters, Mr. Wise, Ms. Furse, Mr. Fields.

H.R. 7—National Security Revitalization Act: 8 Members.

Ms. Lofgren, Mr. Bereuter, Mr. Bonior, Mr. Meehan, Mr. Sanders (2), Mr. Schiff, Mrs. Schroeder, Ms. Waters.

H.R. 450—Regulatory Moratorium: 15 Members.

Messrs. Towns, Bentsen, Volkmer, Markey, Moran, Fields, Abercrombie, Richardson, Traficant, Mfume, Collins, Cooley, Hansen, Radanovich, Schiff.

H.R. 1022—Risk Assessment: 3 Members (at least three other Members had amendments prepared but were not allowed to offer them: Mr. Doggett, Mr. Mica, Mr. Markey).

Mr. Cooley (2), Mr. Fields, Mr. Vento.

Mr. Speaker, I reserve the balance of my time.

Mr. DREIER. Mr. Speaker, I yield 4 minutes to my friend and classmate, the gentleman from Humboldt, TX [Mr. FIELDS], the distinguished chairman of the Telecommunications Subcommittee.

Mr. FIELDS of Texas. Mr. Speaker, I rise in support of the rule on H.R. 1058, the Securities Litigation Reform Act.

Today's votes will bring to an end the debate on one of the least understood and potentially most important legal reforms the Congress will address this year. The arcane subject of securities litigation reform concerns a great many more people than just the nine law firms that dominate this practice. It concerns more than the handful of law school professors who seem intent on examining the individual trees and missing the forest. It concerns more than the accountants and the brokers and the lawyers.

H.R. 1058 concerns desperately needed reforms that focus on the need to protect the employers of American workers from being abused by a handful of lawyers. It concerns protecting American shareholders who invest their savings and use them to provide for their own welfare, the education of their children, and to insure they have a secure retirement. American investors are entitled to see us protect them from watching their hopes and confidence disappear when the companies in which they invest their savings are victimized by those who file abusive and frivolous lawsuits.

Perhaps the greatest contribution to the debate on this subject has been to help people understand there are shareholders on both sides of these cases, and that in most cases they all lose. Even SEC Chairman, Arthur Levitt, has noted:

> there is a sense in which class action lawsuits simply transfer wealth from one group of shareholders, those who are not members of the plaintiff class, to another group of shareholders. Large transaction costs accompany this transfer, as the total amount paid to attorneys on both sides may equal or even

exceed the net amount paid to the plaintiff class.

Something is very wrong with a civil litigation system in which only the lawyers win.

H.R. 1058 is about Congress removing the incentives that exist in the current system for lawyers to sue a company because the price of its stock has dropped. It is about protecting the corporations that play so large a role in this country's economy from having to divert resources that are used to run and expand their businesses into defending frivolous lawsuits. This legislation is sorely needed, it is not an academic exercise. Witnesses have testified before the Commerce Committee for the last two Congresses that abusive litigation costs have led their companies to contract their business, to cancel research and development, and to be less forthcoming with financial information to their shareholders.

This is an open and fair rule, that allows consideration of all legitimate amendments. Let us cure this sickness, Mr. Speaker, and restore the health of America's employers. I urge my colleagues to support the rule.

Mr. FROST. Mr. Speaker, for the purposes of debate only, I yield 6 minutes to the gentleman from Massachusetts [Mr. MOAKLEY].

Mr. DREIER. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. MOAKLEY].

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 8 minutes.

Mr. MOAKLEY. Mr. Speaker, I thank the gentlemen for yielding.

Mr. Speaker, the rule we are considering today adds another Republican broken promise to that ever growing heap. The Republicans promised to let the American people have their say in Government by granting 70 percent open rules. They are breaking that promise.

Republicans promised to consider every single contract item under an open rule. Mr. Speaker, they are breaking that promise also.

I guess, Mr. Speaker, legislating is not as easy as it looks. In their hurry to finish the contract and begin the April recess, the Republicans forgot to put the civil RICO amendment offered by the gentleman from California [Mr. COX] in H.R. 10. They also made a series of mistakes in the committee report which would have opened all sorts of points of order.

But they decided to throw away the old bill and come up with a new one that has never seen the inside of a congressional committee room. That way they protect the bill from all types of points of order.

Once again, the Republicans sang the praises of a deliberative democracy. Where is that chorus now, Mr. Speaker? It certainly was not in committee. In fact, the amendment this rule adds was not even considered by a congressional committee. It had no hearing, and it was never reported out.

How is that for sunshine? Mr. Speaker, this restrictive rule will keep the people's representatives from improving this bill by capping the time allowed for amendments. Democrats asked for 12 hours for amendments, and the Republicans said they had time only for 8 hours, because they did not want anything to interfere with their April 8 recess.

Well, I cannot help it, Mr. Speaker, if the Republicans put themselves on schedules, but we at least, if we are not part of the schedule, we should not have to abide by all of the schedules.

Then they added the controversial rewrite of the civil RICO laws, and they still refused to increase that 8 hours to 10 or 12 hours.

I would add, Mr. Speaker, that Republican time caps are even worse than they look, and all the time caps that we had issued in the last couple of Congresses, not one person was ever frozen out of bringing their amendment forward.

Under the Republican time caps, they include actually the voting time. That means an 8-hour rule or an 8-hour debate time is only about 6 hours, and once again, they have broken their promises.

Mr. Speaker, just so I can show you what they mean by moderate open rules, H.R. 728, law enforcement block grants, shouted to the rafters, "This is an open rule, this is a moderate open rule," they froze out 10 Members with their amendments.

Let me tell you, the Members frozen out were the gentleman from Nebraska [Mr. BEREUTER], the gentleman from Ohio [Mr. KASICH], the gentlewoman from Texas [Ms. JACKSON-LEE], the gentleman from Michigan [Mr. STUPAK], the gentleman from New York [Mr. SERRANO]; at least this is an equal opportunity freezing out of all kinds of Members.

On H.R. 7, the National Security Revitalization Act, moderate open rule, "This is what we promised you," eight Members, and their amendments died on the altar down there.

The Regulatory Moratorium Act, H.R. 450, 15 Members were not able to bring their amendments forward; 1022, H.R. 1022, risk assessment, three Members, and at least three other Members had amendments prepared but were not allowed to offer them. And even the Attorney Accountability Act, four Members were frozen out, the gentlewoman from California [Ms. HARMAN], the gentleman from Michigan [Mr. SMITH], the gentleman from Mississippi [Mr. PARKER], and the gentleman from Ohio [Mr. LATOURETTE]. "These are open rules."

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. MOAKLEY. I am happy to yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I thank my friend from south Boston, the former chairman of the Committee on Rules, for yielding.

The reason I underscore the fact he is the former chairman of the Committee on Rules, Mr. Speaker, is that it is so apparent the disparity that one must look at between the 103d Congress and the 104th Congress.

The gentleman from Massachusetts [Mr. MOAKLEY], Mr. Speaker, has just said that these Members were knocked out, prevented from having the opportunity to offer these amendments. The Committee on Rules did not have a single thing to do with that, Mr. Speaker. The Committee on Rules said that we will provide a process that is open and accountable. We made it very clear this is a modified open rule. This is a modified open rule.

Mr. MOAKLEY. Reclaiming my time, the Committee on Rules had everything to do with this, because the Committee on Rules could have given more time in order that those Members who struggled to get those amendments in proper form could have brought them forward.

Mr. DREIER. If the gentleman would yield further, the point is very clear, and that is the Committee on Rules did not make the decision which amendments could and could not be offered, as has been the case in past Congresses. It is up to the leadership of each party to establish their priorities.

We are not trying to say that an idea cannot be considered here on the House floor. What we are saying is that with this outside time constraint of 8 or 10 or 12 hours, which we have had, what we have said is you all establish your priorities and then bring them to the House floor and have an up-or-down vote on them.

Mr. MOAKLEY. It is really up to the Committee on Rules to offer the amendments, to offer the time to bring these amendments to the floor, and I do not care how my friend cuts it and talks about leadership. Being on the Committee on Rules, you can make a bill, if it is a germane bill, or you waive points of order, and you bring it to the floor, if you give it time, it can be heard.

□ 1515

Last year we had time caps on half a dozen bills. Not one person was frozen out from the debates. Under their time caps, there is not a bill that goes by that people are not frozen out.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from California.

Mr. DREIER. I thank the gentleman for yielding.

Mr. Speaker, not one person was frozen out in debate. What happened in the 103d Congress was that Members were frozen out from the third floor, frozen out because they were told their amendments could not even be offered because we had so many closed rules.

Down here we are saying any amendment that is germane can be offered. We have an outside limit of sometimes 8 to 12 hours.

Mr. MOAKLEY. Mr. Speaker, reclaiming my time——

The SPEAKER pro tempore (Mr. DICKEY). The gentleman from Massachusetts has 5 seconds remaining.

Mr. MOAKLEY. Five seconds? Well, thank you.

Mr. DREIER. Mr. Speaker, I yield an additional 5 seconds to the gentleman from Massachusetts.

Mr. MOAKLEY. I am overwhelmed. I want to make the point that the Republican Party came down and said, "What happened in the 103d Congress will never happen again. We are going to give out open rules." Well, where are they?

Mr. DREIER. Mr. Speaker, I am happy to yield 2 minutes to my friend and classmate, the gentleman from Findlay, OH [Mr. OXLEY], Chairman of the Subcommittee on Commerce and Trade.

Mr. OXLEY. I thank the gentleman for yielding this time to me, and I rise in support of the rule as well as H.R. 1058.

Our committee has worked long and hard on providing for a reasonable set of rules that these kinds of debates can take place. I think we have achieved that.

I want to pay particular tribute to the gentleman from Texas, the chairman of the Subcommittee on Telecommunications and Securities, and also to the gentleman from California [Mr. COX], and my friend from Louisiana, who has really been the godfather of this provision for a number of years. We appreciate his ability to work with the majority in crafting what I think is a very effective bill that will start to get some common sense back into our legal process and at the same time permit people who are truly aggrieved to pursue their claims in court.

I thought the debate in the committee was lively, informative, and I suspect the same thing will occur on the floor during general debate and the amending process.

Securities litigation reform is a bill whose time has come. It is a provision that will allow for, I think, some dealing with securities litigation that is long overdue. Numerous groups throughout the country support this effort. We think that those companies that are just starting out, entrepreneurial companies particularly, are highly vulnerable to these kinds of strike lawsuits. That is exactly what this bill tries to mitigate and to change.

I think the gentleman is correct, the rule is proper, and the bill is a good step in the right direction and true commonsense legal reform.

Mr. Speaker, today I rise in strong support of H.R. 1058, The Securities Litigation Reform Act.

Is there a person in this Congress or in this country who honestly believes that our current system of securities fraud litigation does not require serious and immediate reform?

H.R. 1058 is the answer.

As we speak, a strike suit plague is devastating our Nation and crippling American competitiveness.

Unprincipled lawyers are spreading this plague at an alarming rate. One firm in particular files a strike suit every 4.2 business days, and 1 of every 8 companies listed on the New York Stock Exchange has been crippled by strike suits.

While these lawyers claim to sue in the name of the investor, a number of recent studies show otherwise. For example, the National Economic Research Association has concluded that investors recover just 7 cents on every dollar lost.

Their actual recovery is even lower. Plaintiffs' lawyers usually take one-third of all the settlement proceeds.

The strike suit plague is forcing our companies to squander resources rather than devoting them to productivity and job creation. It stifles innovation and adds tens of millions of dollars to the cost of doing business. It is time we rid our countryside of this disease and cure our Nation's economy.

Strike suits are devastating our Nation. A study by the Rand Institute of Civil Justice says excessive litigation—largely designed to coerce settlements from successful defendants—may cost our economy as much as $36 billion each year.

All Americans pay a hidden litigation tax to subsidize the massive cost of strike suits. Some pay with their jobs, as workers are laid off in the wake of extorted settlements. Scores of other able-bodied Americans are never hired in the first place. Research and development and other investments that spur economic growth are slashed. Consumers pay higher prices for their goods and services. All of us pay the price for strike suits as the lawyers quietly walk away with fortunes in extorted settlements.

It is time to rid our Nation of this strike suit epidemic. It is time for a litigation tax cut.

I urge you all to support H.R. 1058 in the name of the fiscal health of all Americans.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, make no mistake of it, H.R. 1058 will encourage securities fraud. It is a bad bill. Milken, Boesky, people like that would have been delighted to have functioned under the provisions of this legislation.

The rule is a bad rule; it is unfair, and it does not give sufficient time for the matters involved in this legislation to be properly addressed. Both should be rejected by the House.

Now, I am no water or spear carrier for trial lawyers. I began pushing product liability over 10 years ago. Two weeks ago I voted for legislation to reform product liability laws. I have long felt there was a real need for reforming medical malpractice and for dealing with securities litigation, which does happen to constitute a problem.

But this legislation goes well beyond meeting needs. It does what the old Chinese story tells about: It burns down the barn to cook the pig.

H.R. 1058, in its zeal to eliminate abuses, goes too far. It creates shelters, it creates loopholes, and it creates incentives for securities fraud. It will impair the transparency, the fairness of our marketplace, and it will make it more difficult for the SEC to deal with problems of securities fraud, and it will raise real questions about whether Americans can continue to trust and to believe that their securities markets are the best and fairest and most open in the world.

This legislation is opposed by a large number of people and agencies that should be listened to carefully.

It is opposed by the Securities and Exchange Commission, the State securities regulators, Attorney General of the United States, the U.S. Conference of Mayors, the Government Finance Officers Association, individual investors and all major consumers groups—all opposed.

The American Association of Retired Persons, the Gray Panthers, Consumers Union, Consumer Federation of America—all oppose it.

Citizen Action, Public Citizen, and the U.S. Public Interest Research Group all oppose this legislation.

Why? Because it is bad legislation, because it does not adequately protect the interests of the honest, innocent and small investors, and because it threatens the trust of the American people in the American securities market.

I need to remind my colleagues on the Republican side of the aisle that one of the reasons the United States is regarded as the wonders of the world in terms of our securities markets and capital-raising system is the fact that our system is known to be fair and people know they can trust it. This is a peculiarity not found elsewhere in the world.

The bill suffers from multitudes of defects, and these reveal the extreme goals of the supporters, goals like "losers pays," establishing a defense against recklessness that allows a miscreant to get off by the simple statement of, "Ooops, I forgot the law," and imposing harsh pleading requirements that are impossible to meet for real-life plaintiffs with good cases.

I would observe that under the requirements for Scienter in the pleadings in this legislation a person who has been wronged by securities fraud will need not only a lawyer but he will need a psychiatrist and a psychic to tell him what was going on inside the mind and head of the wrongdoer who skinned him and thousands of other

Americans of their hard-won and thousands of other Americans of their hard-won and hard-earned savings.

The process? The process was intolerable. Neither I nor the ranking member of the relevant subcommittee were included in the discussions on the bipartisan compromise.

Members and staff received markup documents the night before markup. That is insufficient time to review and prepare amendments and statements. We were then presented with totally different documents and totally different legislation the next day, without time to review or to understand the changes.

Debate was inexplicably and unfairly shut down at 2:30 p.m. on Thursday, February 16, in a markup which had already been shortened by prolonged recesses for negotiations and by a process which permitted neither adequate hearings nor opportunity to amend or to ask questions or witnesses.

This was dictated by the Republican leadership because of scheduling the bill on the floor. Originally, it was not even intended for the SEC to be heard. The SEC came forward and said that the bill, as originally drafted, would even foreclose their anti-fraud actions at the Securities and Exchange Commission.

This legislation still has significant defects. It ought to be recommitted, it ought to be defeated, it ought to be amended, but it should not be passed.

Mr. DREIER. Mr. Speaker, I am happy to yield 3 minutes to the distinguished gentleman from East Petersburg, PA [Mr. WALKER], chairman of the Committee on Science.

Mr. WALKER. I thank the gentleman for yielding.

Mr. Speaker, I have been fascinated by the series of speeches that have been made on this rule and several others that seem to basically complain about the fact that things are actually getting done in the U.S. Congress these days.

Now, they are not things that the Democrats want to have done, so they bleed and bray out here on the House floor about the nature of the process.

But the fact is that we are moving legislation they do not happen to agree with, and particularly a lot of the left-wing special-interest groups they are beholden to do not agree with, several of whom were named by the gentleman from Michigan.

It is true those groups probably do not agree with what we are doing, but then they always were for big-government solutions to virtually everything that comes down the pike.

But I am particularly fascinated by the discussions that we have had on the floor today about the process by which we are passing legislation and particularly the concept of open rules.

I have consistently come to this floor over a period of years and talked about need for open rules. I made those points within the leadership of the House of Representatives. I would prefer things come out here under an open rule. But I must say that I was somewhat disappointed in the earliest days of this process when apparently the Democrat leadership decided to sabotage open rules and were part of a process that called adjournment votes and a variety of other things in order to try to undermine that process, simply so they could come to the floor now and complain about the fact that the rules are not open as they would like.

I think that is a nice tactic, it makes for good legislation. It makes, though, for a very difficult process to defend.

I would also say that I think the complaints about the fact that it is done under a period of time is also a rather interesting argument. The period of time, of course, forces the Democrat leadership to actually pick amongst their Members who have amendments to bring forward, or to refuse to pick among them, which is what they are really doing now, in an act of total ineffectual leadership they are refusing to pick among their Members.

So, against what you give them a full day to debate, 8 hours, 10 hours, 12 hours, and so on, and they cannot manage their time well enough to figure out how to get various amendments to the floor, which leaves them then in the position of being able to go to the floor and say, "This Member, somehow during a 10-hour period, was unable to work his amendment in."

I would suggest that at the very least what we are doing is debating these issues under a 5-minute rule and having a free and open debate about the issues, a debate which is much better than the system the Democrat leadership would like to go to, which picks the members in the Rules Committee.

You see, what the Democrat leadership would really like to have done is they would like to go up to the Rules Committee and have the Republicans choose the Democrat who will be able to offer amendments. That gets them off the hook. Then they get a chance to complain about the fact that this Member was knocked out and it was the terrible Republicans who did not allow this Member to have his amendment.

Well, actually I think it is a better system to allow Members to come to the floor freely and offer their amendment and debate them under the 5-minute rule. And if the Democrats want to do the job of picking and choosing amongst their Members, they can certainly do that. But the system is far better than the closed system operated by the Democrats for all too many years.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Speaker, I rise in opposition to this rule for one very simple reason: It is not going to allow us enough time to debate a very complex and important issue that will potentially affect every single American.

At the subcommittee level we debated only from 1 until 7, with many rollcalls on the floor during that markup. At full committee we started in the morning, but it was the day we were breaking for Jefferson/Jackson weekend. As a result, with many rollcalls on the floor, we only had, again, a couple of hours to debate these very important issues.

We went before the Committee on Rules and we asked, quite reasonably, I think, for an open rule with unlimited time so we could bring these issues out on the floor.

The problem now, as we know, is that the majority is limited by their Contract With America in allocating any time to any of these very important issues. So, as a result, despite the fact we are given 8 hours here on the floor, 1 hour is on the rule, 1 hour is on general debate, 6 hours are left over. And to add insult to injury, the Republicans on the Rules Committee have now reported out a second rule allowing for a nongermane amendment to be made by the gentleman from California [Mr. COX], and that will also come out of the time of the consideration of this legislation.

Let me say quite simply that there are four good reasons to oppose the legislation substantively as well. One, an English rule which the very conservative——

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. MARKEY. I would be happy to yield on the gentleman's time.

☐ 1530

Mr. DREIER. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. MARKEY].

The SPEAKER pro tempore (Mr. DICKEY). The gentleman from Massachusetts has an additional minute.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I simply wanted to inquire of my friend, the gentleman from Massachusetts; did he say that the 1 hour that the rule is being considered is out of the 8 hours that is considered for the amendment process?

Mr. MARKEY. Mr. Speaker, I have been informed that that is, in fact, accurate, and I thank the gentleman from California for his clarification.

Mr. DREIER. And the 1 hour of general debate is also——

Mr. MARKEY. Mr. Speaker——

Mr. DREIER. Eight hours is an amendment process——

Mr. MARKEY. The staff of the Committee on Rules has just informed me of that.

Mr. DREIER. I want my friend to enjoy his entire additional 30 seconds.

Mr. MARKEY. I thank the gentleman very much, but at the same time we have to note that all the rollcall time does come out of that 8 hours, and the time for the additional amendment that the Committee on Rules has put in order to allow a nongermane amendment is also coming out of the time of our ability to consider this legislation.

An English rule is built into this law which puts the burden on the loser in any lawsuit. It makes it almost onerously impossible for anyone to bring a lawsuit against a large financial institution in this country. It, second, imposes an I-forgot defense. That is, if any of the people who are engaging in any of this fraud say, "Well, I forgot," then they are protected.

Remember the old Saturday Night Live skit where Steve Martin would stand up at the end and say, "Well, I've got a sure-fire, guaranteed defense."

I say to my colleagues, "Anytime you're stymied for an answer to any charge which is being made against you, just say, 'I forgot,'" and that is our defense here today.

Mr. Speaker, we are going to allow that as a defense in these important cases, and, third, we have the depleting requirements which require a specific pleading at the get-go of any of this legislation requiring any plaintiff to be Carnac in terms of their ability to know what was going on in the intent of the defendant's mind at that time, although they know with some certainty that some fraud has been perpetrated, and finally the fraud on the market——

The SPEAKER pro tempore. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

Mr. DREIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think it is important to clarify that we have 8 hours of time on amendments, an hour of general debate, and an hour on this rule, a total of 10 hours.

Mr. Speaker, I yield 2 minutes to my friend and another classmate from Richmond, VA, the gentleman from Virginia [Mr. BLILEY], the chairman of the Committee on Commerce.

Mr. BLILEY. Mr. Speaker, I rise in support of this rule to provide for consideration of H.R. 1058, the Securities Litigation Reform Act. This bill is title II of H.R. 10, the Common Sense Legal Reforms Act, as reported by the Commerce Committee. It is ground breaking legislation, part of the original Contract With America.

As we said in the contract, America has become too litigious a society. We sue each other too often, too easily, and regrettably, too well. The burden on the Federal courts is enormous. The number of lawsuits filed each year has almost tripled in the last 30 years. President Bush's Council on Competitiveness concluded the American litigation explosion carries high costs for the American economy. We see it everyday as manufacturers withdraw products from the market, or discontinue product research, reduce their work forces, and raise their prices.

There is a problem even more insidious than an increase in the number of lawsuits filed. It is the realization that an increasing number should never have been filed in the first place. The Congress has been petitioned repeatedly over the last few years by executives of some of America's fastest growing high tech companies, as well as the accounting and securities professions, who believe the civil liability system is broken. In case after real case, they can show from their experiences that the system no longer recovers damages for investors who are actually wronged and it unfairly focuses the enormous costs of litigation on reputable public companies and not upon those who engage in fraud.

The subject of litigation reform has been before our committee under both Democrat and Republican control. Late in the 103d Congress the committee held two hearings on the subject, and early in the 104th we held two more. Empirical studies show that virtually all claims in 10b–5 class actions, meritorious and frivolous, are settled. Unfortunately, the settlement amounts bear no relationship to the underlying damages, but instead are related principally to the amount claimed, or the defendants' insurance coverage.

Much of H.R. 1058 is no longer controversial, despite the continuing cries of the plaintiffs' bar and their supporters in the State securities commissions. Most Members of Congress now understand and agree with us that lawyers should not pay referral fees to brokers who send them clients, or that named plaintiffs should be barred from receiving bounty payments. Most Members are appalled that the current system is a race to the courthouse which rewards the first to file, regardless of how little merit the case has. Only the most strident supporters of plaintiff lawyers disagree with the provisions of H.R. 1058 that require disclosure to class members of settlement terms or that private plaintiffs legal fees should not be paid out of SEC disgorgment pools.

H.R. 1058 will not cure all the ills of a litigious society that looks to the courts to solve its problems. But it will help to restore some balance between plaintiffs and defendants and to constrain that small group of plaintiff securities lawyers who have gamed the procedure and turned our judicial system into a weapon against American businesses, workers, and shareholders.

This rule is drafted to provide for an open and constructive debate of the problems and the solutions proposed in H.R. 1058. I urge my colleagues to support the rule.

Mr. FROST. Mr. Speaker, for the purpose of debate only, I yield 2 minutes to the gentlewoman from California [Ms. HARMAN].

Ms. HARMAN. Mr. Speaker, this is a bad rule for a good bill, a bill I will probably support.

We have just concluded a frustrating debate on the Legal Reform Act under a bad rule, and many ideas that could have perfected that bill could not be considered. I, for one, had hoped to change the fee shifting mechanism in that bill to make it identical to the fee shifting provisions in this bill. A bipartisan group wanted to make the change, but the inadequate time for debate elapsed before we could offer our substitute. Had the substitute been considered, I believe it would have passed, and this Member and many others would have supported that bill.

H.R. 1058, to which this rule pertains, includes important and meritorious steps to reform securities litigations to reduce the costs and distractions of unwanted litigation. Several amendments to be offered by the gentlewoman from California [Ms. ESHOO] and the gentleman from California [Mr. MINETA] will further ensure that high technology companies, which are essential to U.S. competitiveness, are reasonably and properly protected by its provisions.

In true bipartisan style, Mr. Speaker, I would like to commend the gentleman from California [Mr. COX], my friend and colleague, for his leadership on this issue. He described himself yesterday as a recovering corporate attorney. Not only did he and I attend the same law school, but I suffer from the same affliction. I, too, am a recovering corporate attorney.

Securities litigation needs reform. This is a good bill. It is a shame debate will be so truncated.

Mr. Speaker, the future of our Nation's future competitive advantage lies in our ability to develop products and services that are on the leading edge of technology and research. The business ventures which undertake such activities are among the fastest growing sectors of our economy. Indeed, they are the pride of our economy.

Regrettably, many of these business ventures are saddled by the costs and distractions of unwarranted and meritless lawsuits, filed when stock prices fluctuate for reasons often beyond the control of business management. The consequences of these abusive suits are settlements and costly legal proceedings unconnected to the merits of the underlying case. Despite the absence of wrongdoing by managers, corporations are essentially forced to pay large sums to avoid even larger expenses associated with legal defense. Advocates of litigation reform cite empirical studies that show virtually all claims in 10b–5 class actions, meritorious or not, are settled.

Let me share an example from the world's leading manufacturer of computer workstations, Sun Microsystems.

Founded in 1982, the company now has annual revenues in excess of $4 billion with over

13,000 employees world-wide, including many in my district.

Since it's initial public offering in March 1986, the company has been profitable every quarter except June 1989. In that quarter, as the result of the introduction of new technology and the switch-over to a new internal management system, the company reported a loss.

When it issued a special public advisory it was hit with three securities class actions within days.

And, when the company actually announced its earnings results, two more class actions quickly followed. The five suits were consolidated into a single suit seeking over $100 million.

In September 1990, despite the fact that Sun Microsystems had a profitable quarter, two more suits followed the company's announcement that earnings were about 10 cents per share less than what analysts expected. These two suits were consolidated into a suit seeking over $200 million.

Mr. Speaker, these suits have drained a staggering amount of money from Sun Microsystems—money that could have been devoted to product development, research, even a return on earnings. In the period from June 1989 to January 1993, Sun Microsystems spent over $2.5 million on attorney's fees and expenses. And this does not include the value of the time lost by management.

Because of the possible exposure of $300 million, and with only $35 million covered by insurance, the company agreed to settle the first suit for $25 million and the second suit for $5 million.

Amazingly, after these settlements were announced, Sun was hit with an unprecedented derivative action in State court alleging that the settlements were too generous. These actions were also settled, with Sun paying plaintiff's attorney $1.45 million and its own attorneys $500,000.

Mr. Speaker, what did shareholders get because of these suits? Nothing more than minor changes to Sun's internal policies.

Mr. Speaker, the record is replete with such examples. Examples like Silicon Graphics, Inc. of Mountain View, CA and Rykoff-Sexton, Inc. of Los Angeles. Examples that do not even begin to measure the huge waste in resources spent defending as well as prosecuting such suits.

These are resources which companies, like small high-technology and emerging growth companies, can better devote to research, and product development and promotion.

The bill, and the improvements that will be offered through the amendments, will reform securities litigation, end abusive lawsuits, and lift the unwarranted burden placed on companies that provide the competitive edge of America's economy.

Mr. DREIER. Mr. Speaker, I yield 3 minutes to my friend, the gentleman from Newport Beach, CA [Mr. COX], the foremost congressional authority on securities litigation.

Mr. COX of California. Mr. Speaker, I will reserve for general debate most comments on the substance of the legislation, but I would like to speak a little bit about the process by which this bill came through subcommitte, came through committee, after two hearings and is coming to the floor.

I found, when I first was elected to Congress, that the House and the Senate were in the business, rather routinely, of producing thousand-page epics that nobody read. The S&L bailout bill comes to mind. Nineteen hundred and eighty-nine it came up here, drafted by the administration. Nobody in the House or Senate read it. We know that because it was not printed in the RECORD until after the vote took place. It happened that when we did the 6-year transportation reauthorization bill, even though I was on the Subcommittee for Surface Transportation, we did not get a markup for the 6-year transportation reauthorization, not in subcommittee, and in committee we got the whole bill the first time, and for the record my hands are probably a foot or so apart. The whole bill got plunked down on our desks the very day of the markup, and that was the first time we saw that bill, and then, when it went to conference, it was changed so dramatically that nobody knew what was going on. It was produced, I think, about three in the morning, or something, and we voted on this huge bill without anybody having read it or understood it. This has become rather routine.

Contrast with the way the Congress used to run what we have been doing with securities litigation reform. We had two hearings, this Congress. We have had hearings in prior Congresses as well. The bill was bottled up in committee, and, after those hearings, we went to subcommittee markup, and we had a very long subcommittee markup that was so long that we were arguing about adjectival modifiers of words in particular lines. The bill itself is not very long, and of course everyone has read it. Then we went to full committee, and we made still more amendments. There was some criticism in full committee because amendments were allowed, that we were changing the bill in committee, although that is what markups are supposed to be all about, and here we are on the floor with a rule that is so open that just about everybody who wants to offer amendments is able to do so.

Nonetheless, I understand how the ranking member might be upset because the bill came out of committee with only 10 Democrat votes. It was produced 33 to 10, a huge bipartisan majority for a very, very sound bill. If it did anything like what we have been hearing here on the floor today, of course those Democrats and all of the Republicans would not have voted for it, but it protects investors. It protects investors by providing a guardian ad litem or a steering committee that their class-action lawyer will now deal with to make sure that the clients get represented. It prevents bonus payments to favored plaintiffs in a class action so all the class is treated equally. It says that in the future the lawyers are going to have to pay attention to their clients when they file these kinds of lawsuits, and they are going to have to know that they have a case first so that the investors in a company that might be extorted from will also be protected.

Finally I should point out that some of this I-forgot business relates to the fact that this is a fraud statute, it is not a negligence statute, and we do not have negligence in the securities laws now, nor will we have it after this bill.

Mr. FROST. Mr. Speaker, for the purposes of debate only, I yield 2 minutes to the gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. Mr. Speaker, I thank the gentleman from Texas [Mr. FROST] of the Committee on Rules for according me this time, and I rise on this rule to point out with strong vehemence my opposition to this last minimum effort to completely undercut the jurisdiction of the Committee on the Judiciary and allow the majority to offer an amendment to H.R. 1058 that would end civil RICO lawsuits for securities fraud.

The Racketeer Influence and Corrupt Organizations legislation would now be brought to an end with one sentence that has never been examined in either the former Committee on Commerce, the present Committee on the Judiciary, in any subcommittees or full committees. As a matter of fact, it was not even on this rule. It was through a remeeting that this rule even allowed it to be joined, and this is one of the great protections against fraud that exists in our law today.

It is absolutely incredible that the RICO amendment that is included in here is broader than any RICO amendment that Congress has ever considered before. The previous attempts at this legislation have failed, and those attempts do not ever go as far as this sweeping amendment that we are considering with such a short amount of time.

We need more time. We could use the whole time for this bill on RICO alone, and it is with great regret that I have to make these points about a very important part of this rule.

Mr. DREIER. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Westbury, NY [Mr. FRISA], a new member of the Committee on Commerce.

Mr. FRISA. Mr. Speaker, I thank the gentleman from California [Mr. DREIER], my friend, for yielding this time to me.

Mr. Speaker I am happy to rise in support of the rule which will provide more than ample time for careful, thoughtful, deliberate consideration of this much needed measure which will finally bring about reforms to our legal system.

☐ 1545

Mr. Speaker, the American people want our system to work, and we know that right now it has not been working. I find it rather amazing that my good friends on the Democrat side, who have not been able to do anything about these reforms for 40 years, are now complaining that we are moving toward reform too quickly.

Well, I think the American people spoke last November 8, Mr. Speaker, and they have sided with the Republican majority in saying it is long past time to act, to use some common sense, to enact some changes to our system.

Let us roll up our sleeves and get down to work. Mr. Speaker, constituents in my district, hard-working, taxpayers, put in an 8-hour day, and they can get the job done. I do not know why the Democrats in Congress cannot get the job done in 8 hours to amend this legislation.

Mr. Speaker, I urge all of my colleagues to rise in support of this rule so we can get to debate on the bill itself, and then for a full 8 hours, a full day's work, to amend the legislation, pass it, move it to the Senate, so finally we will have those legal reforms.

Mr. FROST. Mr. Speaker, for the purpose of debate only, I yield 1 minute to the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Speaker, I will shortly offer an amendment that stipulates that if there is a major fraud that corporate managers refuse to remedy, the corporate auditor would have to report the fraud to Government regulators.

I want to thank Chairman SOLOMON and Mr. HALL from the Committee on Rules for their effort to support it, and would like to note that the gentleman from Louisiana [Mr. TAUZIN] joins me as a cosponsor in offering this amendment.

This amendment has passed the House twice, it has the support of the Securities and Exchange Commission and the accounting profession. I would like to note that if this amendment had been the law of the land in the Keating case, the auditor, instead of slinking away when the auditor saw the wrongdoing, the auditor would have been required to bring that to the attention of Government regulators and taxpayers would have been spared considerable liability.

Mr. Speaker, I urge my colleagues to support this amendment. The last time it came before the Committee on Commerce it passed unanimously with the support of every member of the committee.

Mr. FROST. Mr. Speaker, for the purpose of debate only, I yield 2 minutes to the gentleman from Louisiana [Mr. TAUZIN].

Mr. DREIER. Mr. Speaker, I yield 1 minute to the gentleman from Louisiana.

The SPEAKER pro tempore (Mr. DICKEY). The gentleman from Louisiana [Mr. TAUZIN] is recognized for 3 minutes.

Mr. TAUZIN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I have great sympathy for those who believe this bill is moving too fast this session, but I remind my colleagues that I offered this bill two Congresses ago. I crafted this bill two Congresses ago with the hopes we could have hearings two Congresses ago. We got no hearings.

I refiled it last year, 182 Members of the Congress last year cosponsored it; 67 Democrats. And we could get no hearings until the very last week or two of the session when it was too late for us to take any action on the bill.

There were 4 years for this Congress to move on this bill if we had wanted to take that time. But for 4 years, we could never even get this bill moving, except finally a series of hearings right at the end of the session.

We have had hearings again this year. We have had markups, subcommittee and the full committee. We will have a full and active debate the next day and a half, with 8 hours for folks to offer amendments under this modified open rule. And I am excited that we will finally get a chance to fix something that desperately needs fixing.

The old rule that "If it ain't broke, do not fix it" not only applies here, it applies in buckets. When 93 percent of these cases settle, most of them at 10 cents on a dollar, we have a system that is ultimately broke. We have a system made for the attorneys. When 8 cents on the dollar is all that is recouped for the stockholders, when most of the suits are brought to shake down companies, to shake them down any time their stock prices drop a couple points, when these suits are produced on Xerox machines, when the same plaintiff repeatedly appears in the suit time after time, one of them 35 times, you begin to see a picture of professional plaintiffs.

I ask the attorney who brought that suit for the same plaintiff 35 times if perhaps he did not have a professional plaintiff, or if maybe this was the most unlucky person in America.

It is time for us to put an end to that kind of a legal system. When a legal system preys upon our economy instead of trying to render justice, something is wrong. The bill we will present to you today had the support of eight Democrats on the Committee on Commerce, almost half of our membership. It will have the support of many Democrats and Republicans on the floor today and tomorrow. It will truly be a bipartisan effort to put an end to a terrible legal system and to replace it with one that works, one that corrects fraud, one that urges plaintiffs to bring good cases and take them to a conclusion, to prove fraud exists, and to make the guilty parties pay, and to end this business of frivolous shakedown lawsuits that is threatening to cripple many small businesses just trying to get going and discourage them to disclose more information to us, not keep it all secret because they are afraid of another lawsuit right around the corner.

Mr. Speaker, this is a day we have long waited for. This day and the next day ought to produce a good legal system instead of the rotten one we have. I look forward to it under this rule.

Mr. FROST. Mr. Speaker, for the propose of debate only, I yield the remaining time to the gentleman from West Virginia [Mr. WISE].

The SPEAKER pro tempore. The gentleman from West Virginia [Mr. WISE] is recognized for 4 minutes.

Mr. WISE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I think somewhere there has to be a middle ground between the previous Republican speaker who was ecstatic that we were going to be allowed 8 full hours of debate. Of course, that includes voting time, which, if you look at the chart of the last bills under this so-called open rule procedure, means about 25 percent of that debate time is taken up. Somewhere between 8 hours that the Republican gentleman was excited about and the 200 years of common law in jurisprudence and getting into court, that threatens to be upset. So somewhere between 8 hours of debate time and 200 years, perhaps we could have a little more debate time.

I am delighted that the gentleman from Louisiana is happy. I am happy it is coming to the floor. But I think on something of this magnitude, dealing with the securities industry, one of the pillars of the economy in our country, that you need better than 8 hours of debate time, including the voting time.

Remember, the voting time takes a minimum of 17 minutes. Now, let us look at the chart in the past on voting time. To those who say that the problem is that the Democratic minority does not allocate its time wisely enough or manage it, I might point out on the H.R. 728, the Law Enforcement Block Grants, there were at least two Republicans, Mr. BEREUTER and Mr. KASICH, who joined a number of Democrats in being shut out from offering amendments. H.R. 7, the National Security Revitalization Act, Mr. BEREUTER and Mr. SCHIFF joined a number of Democrats in being shut out from being able to offer amendments. The regulatory moratorium, there were at least three Republicans shut out. Mr. MICA was shut out on the risk assessment bill. Just most recently, Ms. HARMAN, who has appeared here already, was shut out, and Mr. SMITH of Michigan, a Republican, was shut out as well.

Once again, we cannot even get in the Republicans to offer their amendments. Some might say if Republicans and Democrats are being shut out, what is the difference? The difference is on the Republican side, being in the majority, they get to craft the bill. Democrats do not. So the best bite we get at the apple is here on the floor.

Also, I might point out the only bite many of us get at the apple is on the floor, right here, and that is why this kind of rule is restrictive and not open, and I think violates the promise that the Republicans gave us of open rules on the contract items.

So picking right back up again, because this is the only time I get under this with the time limitations, I would just urge people to understand that on these very important contract items, when they say there is an open rule, there is no open rule; that indeed 25 percent of the time is being taken up alone on votes. Meritorious votes, some called by Republicans, some called by Democrats, some called by Members of both sides, interestingly enough, when it is clear that is an overwhelming majority. So you get a situation on the risk assessment bill, 10 hours of debate, with 2 hours taken up by rollcall votes alone.

Mr. Speaker, we can do business better than this. If you were in a courtroom, even under the legal reform being put forward this week, you would get a chance to make your arguments. You would get a chance to have a full and open hearing. You would get a chance for every point of view to be offered for all evidence, if you would, if you consider an amendment to be offered. You would get a chance to have that done. Not here. Not here.

Talk about a contract, there is a breach of contract, and that is that open rules will precede each of these items. There is no open rule in this. No matter how you dress it up or put it, it is a race to the clock. A race is what is involved in here. How quickly can you talk and can you get a vote and will there be time for the next person, Republican or Democrat, to be able to offer their amendment.

Mr. DREIER. Mr. Speaker, I yield myself the balance of my time.

The SPEAKER pro tempore. The gentleman from California [Mr. DREIER] is recognized for six minutes.

Mr. DREIER. Mr. Speaker, this is not a so-called open rule. This is not a wide open rule. This is a modified open rule. What it means very simply is the Committee on Rules did not say what amendments are going to be made in order. The Committee on Rules said that any Member who has a germane amendment can stand up here on the floor and say "Mr. Speaker, I have an amendment at the desk," and that amendment has to be considered.

The only constraint is the outside 8-hour limitation on debate, and that limitation simply means that we have to responsibly determine exactly what priorities there are and what they should be.

Now, there have been some arguments that have come forward from my friends on the other side of the aisle that somehow this is a rule which is closed and we are shutting out people. Well, we have heard from the gentleman from Louisiana, making this clearly a bipartisan modified open rule. The gentleman believes, as I am sure other Democrats do, along with Republicans, that this rule will allow for consideration of legislation that for years and years and years Democrats and Republicans have tried to bring up to deal with the question of securities litigation reform. Tragically, because of the recalcitrant leadership of the past, they were unable to do that.

This rule allows every single idea that is out there to be considered.

Mr. WISE. Mr. Speaker, will the gentleman yield?

Mr. DREIER. I yield to the gentleman from West Virginia.

Mr. WISE. I understand what the gentleman is saying in terms of anyone can bring any idea up. But do you not think it is a closed rule if any idea will not be able to be offered because of the clock, including Republicans' ideas, as precedence goes to members of the committee first.

Mr. DREIER. Reclaiming my time, the answer is a resounding no. This is a modified open rule, because what it says to my friend is if he has an amendment that he wants to offer, and one of his colleagues also has an amendment that he decides is equally as important, they should say let us take 10 minutes each so we can get the full membership of this House on record to vote up or down on this amendment.

So my point, Mr. Speaker, is that every idea, every single idea, can be considered if we can structure it in such a way that all of those proposals move forward.

Mr. WISE. If the gentleman will continue to yield, if that is the case, why did Mr. BEREUTER and Mr. KASICH, for instance, when they were protesting, particularly Mr. BEREUTER the other day on the law enforcement block grants, why did not Members of your party get together? The fact is this closes people out.

Mr. DREIER. Unfortunately, they did not get together. That was something that was not able to be worked out under that process. What we are saying to both leaderships is establish priorities, but under an open amendment process. Let us proceed with making this institution accountable.

In years past the Committee on Rules would kill ideas from the left or the right, not allowing them to even be considered here. Now every one of those ideas can come up under an 8-hour time limit.

Now, as I listen to the people whom I represent, they know that the Gettysburg Address was delivered in 3 minutes. They believe that we should, within an 8- or 10- or 12-hour period, we will be spending as Mr. MARKEY said, a total of 10 hours on this, with 1 hour for general debate, 1 hour of debate on the rule, and 8 hours for amendments, they believe within 10 hours we might be able to under an open amendment process consider these ideas.

Mr. WISE. If the gentleman will yield further, do they know how many days it took to prepare that 2-minute Gettysburg Address?

Mr. DREIER. I do not know, the 3-minute address.

Mr. WISE. The shorter it is, the longer is spent to prepare it.

Mr. DREIER. Reclaiming my time, I would say Mr. TAUZIN, who said that three Congresses ago he introduced this legislation, that totals 6 years that it took to prepare this, and I believe that Mr. TAUZIN and others who have been involved in this should have an opportunity to consider this, and it is going to be done under a fair and open process. I suspect the gentleman from south Boston would like me to yield.

Mr. MOAKLEY. Mr. Speaker, will the gentleman yield?

Mr. DREIER. I yield to the gentleman from Massachusetts.

□ 1600

Mr. MOAKLEY. Is it not true though that the gentleman's party promised open rules, more open rules than they had the year before?

Mr. DREIER. The gentleman is absolutely right. That is exactly what we have provided, many more open rules than we had in the 103d Congress or the 102d Congress. What we have got is a structure where modified open and open rules are 82 percent, about 82 percent of the legislation that we have considered. I think that, as we listen to people like Cokie Roberts, who, when I was quoting National Public Radio earlier——

Mr. MOAKLEY. She erred, she was in error.

Mr. DREIER. Cokie Roberts erred by saying that we are doing this under an open process. Well, Cokie happens to have spent a great deal of time observing this institution. She also has, there have also been a lot of other people who have looked from the outside. And they have watched this on television and they have said, "You all are doing it under an open process." Why? Because they see that a modified open rule, while it does have an outside time cap, does in fact give every Member the right to offer their amendment, have it considered, have it voted on.

Mr. MOAKLEY. The gentleman promised that the contract on America would be based on all open rules.

Mr. DREIER. I do not know about a contract on America. I know about a Contract With America.

Mr. MOAKLEY. Was it not true that the gentleman's people said that these would be all open rules?

Mr. DREIER. Well, my people said that we would consider——

Mr. MOAKLEY. Did not the Speaker say that?

Mr. DREIER. It was said that we would consider these proposals under an open amendment process. That is exactly what we are doing. We are doing it under a modified open rule.

Mr. MOAKLEY. The gentleman is changing it. He is going to consider them under an open process. It does not mean an open rule.

Mr. DREIER. Mr. Speaker, I suspect that it would be best for me to say that I urge an "aye" vote on this fair and responsible modified open rule.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution. The previous question was ordered.

The SPEAKER pro tempore (Mr. DICKEY). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FROST. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 257, nays 155, answered "present" 1, not voting 21, as follows:

[Roll No. 208]

YEAS—257

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Graham
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McHugh
McInnis
McIntosh
McKeon
Meyers
Mica
Miller (FL)
Mineta
Molinari
Montgomery
Moorhead
Morella
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Schumer
Seastrand
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thornton
Tiahrt
Torkildsen
Torres
Torricelli
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Williams
Wilson
Wolf
Wyden
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—155

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
DeFazio
DeLauro
Dellums
Deutsch
Dingell
Dixon
Doggett
Dooley
Doyle
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Foglietta
Ford
Frost
Furse
Gejdenson
Gephardt
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Holden
Jackson-Lee
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lofgren
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McNulty
Meehan
Menendez
Mfume
Miller (CA)
Minge
Mink
Moakley
Mollohan
Moran
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Scott
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Tejeda
Thompson
Thurman
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Wise
Woolsey
Wynn
Yates

ANSWERED "PRESENT"—1

Lowey

NOT VOTING—21

Bono
Chapman
Condit
Dicks
Durbin
Flake
Frank (MA)
Gibbons
Greenwood
Hinchey
Jefferson
Largent
Livingston
McCrery
McDade
McKinney
Meek
Metcalf
Rangel
Roth
Weldon (PA)

□ 1620

Mr. MOLLOHAN changed his vote from "yea" to "nay."

Mr. RAHALL changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. BONO. Mr. Speaker, I was unavoidably detained, and was not able to vote on rollcall vote 208.

Had I been here, I would have voted "aye" on rollcall 208, the rule on H.R. 1058, Securities Litigation Reform Act.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 481

Mr. CALLAHAN. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H.R. 481.

The SPEAKER pro tempore (Mr. DICKEY). Is there objection to the request of the gentleman from Alabama?

There was no objection.

SECURITIES LITIGATION REFORM ACT

The SPEAKER pro tempore. Pursuant to House Resolution 105 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1058.

□ 1621

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes, with Mr. COMBEST in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Virginia [Mr. BLILEY] will be recognized for 30 minutes, and the gentleman from Massachusetts [Mr. MARKEY] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Virginia [Mr. BLILEY].

Mr. BLILEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 1058, the Securities Litigation Reform Act. A recent survey by the National Venture Capital Association found that 62 percent of responding entrepreneurial companies that went public in 1986 had been sued by 1993. The survey concluded that, if historical rates continue, "unprecedented numbers of newly public companies are likely to be sued in the coming years." This is a national tragedy and a situation the Congress cannot allow to continue. H.R. 1058 is an important first step in our continuing review of litigation reform.

H.R. 1058 is the product of months of intensive negotiations. I would like to highlight for the Members of this body major changes that were made to this legislation during the committee drafting process.

The entire bill has been modified where necessary to make clear that restrictions on bringing legal actions based on the antifraud provisions of section 10 of the Securities Exchange Act and rule 10b-5 apply only to private suits, not to SEC enforcement actions. The legislation was intended to curb strike suits, not SEC enforcement actions, and that is now what it does.

Similarly, the bill has been modified to apply only to implied actions under section 10b, and does not override other sections of the securities laws that provide their own express causes of action. Strike suits are almost always brought under section 10, and actions based on other sections of the securities laws have not been a problem.

The intentional fraud-only standard of H.R. 10 has been modified. H.R. 1058 provides for actions based on misrepresentations or omissions done recklessly, but a defendant found reckless can only be held for the proportionate share of his liability. The definition of recklessness is based, in part, on language taken from the leading case in this area. Intentional fraud will still bring joint and several liability, as well it should. Anyone who intentionally breaks the law should know that he will be responsible for all damages that flow from his actions.

The bill preserves the principle of "fraud on the market" by removing the obligation in H.R. 10 to prove reliance in each instance of misrepresentation. Existing case law allowing plaintiffs to meet their obligation of showing reliance by relying on the market price will be codified for the first time. Members who seek to apply fraud on the market to all securities and not just those with liquid markets do not understand the legal principle and economic theories that underly the legislation.

The provision governing fee shifting, "Loser Pays," has been modified significantly under the terms of H.R. 1058. The prevailing party can recover his costs only if he can prove that the losing party's case was without substantial merit, and that imposing those costs on the loser will not be unjust to either side. This entire provision applies to judgments; if a case is settled, it does not apply.

One thing has not changed. H.R. 1058 addresses the same issue as H.R. 10 did, that is, the crying need to reform the process by which securities class actions are litigated. H.R. 1058 is a refinement of H.R. 10, brought about by debate and consultation between many Members on both sides of the aisle. I urge its support by all Members of the House.

Mr. Chairman, I reserve the balance of my time.

Mr. MARKEY. Mr. Chairman, I yield myself 6 minutes.

Mr. Chairman, what I would like to do to help all those who are trying to decide how they are going to vote here today is to perhaps assist them by applying a multiple choice test, so that people can choose themselves, as we go through the test, which they think would be the correct answer.

Let me begin by asking which one of these four categories would be hurt by H.R. 1058: A, insider traders; B, fraudulent derivative brokers; C, wrongdoer accountants; or D, fraud victims.

The correct answer there is D, fraud victims would in fact be harmed, because it is going to essentially cripple the ability of private fraud actions to be brought by individual investors who have in fact had their life savings ripped off by investors, by companies that have misled them in their investment strategy.

Next question: out of the 235,000 suits filed in 1994, how many were securities fraud cases in this country: A, 31,800 out of the 235,000; B, 9,500; C, 18,670; D, 290, 290 out of the 235,000 cases. The correct answer is 290 cases in the securities fraud area.

The next question, by what percentage have securities fraud class actions increased over the last 20 years in our country: A, a 150-percent increase; B, a 100-percent increase; C, a 50-percent increase; D, minus 4.3-percent. The correct answer is D, a 4.3-percent decrease in securities fraud actions brought over the last 20 years.

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Next question, just trying to be helpful:

Out of the 14,000 public companies, how many were sued each year on average in securities fraud class actions over the last several years?

A. 7,000 public companies sued each year.

B. 3,500 public companies sued each year.

C. 1,400 companies in America sued each year.

D. 125 companies sued for fraud each year in the United States.

The correct answer, D, only 125 companies are sued each year in the United States for securities fraud.

Next question:

Which is H.R. 1058's solution to the derivatives crisis facing dozens of municipalities and other counties in the United States?

A. Improve the supervision and regulation of derivatives dealers.

B. Strengthen fraud liability.

C. Increase customer protections.

D. Make it virtually impossible for victims to recover their losses from fraudulent brokers.

The answer, D, make it impossible for all intents and purposes for there to be a recovery when individuals have been injured.

Next question:

Which one do the English not like?

A. Tea.

B. Soccer.

C. Fish and chips.

D. The English rule.

The correct answer is the English rule. They do not like the English rule in England.

Economist, the leading conservative periodical in that country, last month editorialized against the English rule arguing that the American rule is a better rule if ordinary individuals are to be compensated for harm which has befallen them because of fraudulent activity in the financial marketplace.

Next question:

Which is not a defense to securities fraud under H.R. 1058?

A. The plaintiff did not plead specific facts of my state of mind.

B. The plaintiff did not read on line 12 of page 68 of the prospectus where I made my fraudulent misrepresentation.

C. Sorry, I forgot the truth.

D. None of the above.

The answer, D.

H.R. 1058 requires plaintiff's complaints to make specific allegations which, if true, would be sufficient to establish scienter as to each defendant at the time the alleged violation occurred. In addition, it is expressly made insufficient for this purpose to plead the mere presence of facts inconsistent with a statement or omission alleged to have been misleading.

Next question:

How much will H.R. 1058 reduce the Federal budget?

A. By $100 million.

B. By $50 million.

C. By zero.

D. It will increase it by up to $250 million over the next 5 years.

The answer, D, it will increase the Federal deficit by $250 million according to the Congressional Budget Office because of the needed additional enforcement by the Securities and Exchange Commission out in the financial marketplace.

Finally, under H.R. 1058, who will pay fraud victims the share of the damages caused by the primary wrongdoer who is in jail or bankrupt?

A. The reckless wrongdoers who participated in the fraud.

B. Aiders and abetters in the fraud who helped to make it possible.

C. The accountants who claim they forgot to disclose the fraud.

D. Nobody.

The answer is, D, nobody else would have to pay if somebody lost their life's fortune after being misled into a terrible investment with information which was completely and totally erroneous.

That is the problem we have with this bill. We hope that as we move into the specific amendments that those who are concerned about integrity and honesty in the financial marketplace will support some of the amendments we have to improve the bill.

Mr. BLILEY. Mr. Chairman, for purposes of debate only, I yield 5 minutes to the gentleman from Texas [Mr. FIELDS], chairman of the Subcommittee on Telecommunications and Finance.

Mr. FIELDS of Texas. Mr. Chairman, I begin with a quiz of my own.

Were the remarks of my friend:

A. Inaccurate.

B. Misleading.

C. Entertaining.

D. Good-natured.

I think the answer is "all of the above," and we are going to have plenty of time to debate this.

I rise in support of H.R. 1058, the Securities Litigation Reform Act. This legislation revolutionizes the standard by which all disputes under securities laws will be litigated.

For example, the Securities Litigation Reform Act will introduce the concept of proportional liability into the Federal securities laws for the first time. A defendant may be liable for joint and several damages only if found to have acted knowingly. Defendants found liable for recklessness will be held proportionately liable. A person will be liable for all the damages he causes but only the damages that person causes. The concept is common sense and so simple one must wonder why it was not adopted long ago.

Arguably, the adoption of proportional liability alone is the most significant development in private securities litigation in the 61 years since the Federal securities laws were passed. This provision alone will go a long way toward eliminating strike suits, in that deep-pocket defendants will no longer be subject to the same coercive pressure to settle. By the adoption of this provision, we will eliminate the abuses of the current system that amount to a socialization of the risk. More importantly, Congress should do everything it can to ensure that the constitutional right of wrongly accused defendants, yes, even corporate defendants, to have an opportunity to defend themselves in court is protected. The costs of defending frivolous lawsuits today prevents that from happening. Proportional liability is a reform that will help accomplish this objective.

It is impossible to review the impact of spurious litigation and the abuses possible within the current securities class action system and not realize how important this bill is for the economic welfare of our country.

Critics of this legislation will tell us that private securities litigation is a critical addition to an effective enforcement program at the Securities and Exchange Commission. We agree, but surely frivolous lawsuits are not a necessary part of the Securities and Exchange Commission enforcement mechanism. Lawsuits brought solely for the purpose of coercing settlements out of deep-pocket defendants have no place in our law enforcement mechanism.

The frightening implication of the arguments of opponents of litigation reform is that everything is just fine the way it is. They see strike suit lawyers bringing lawsuits as a regulatory device that should be encouraged to promote market efficiency. We on this side of the aisle could not disagree more. We believe the only justifiable purpose for a lawsuit is to recover damages for people who have been injured. Academic studies of class action strike suits, however, show that even successful plaintiff shareholders recover just pennies on the dollar. The lawyers without clients who bring these suits take home millions of dollars in fees. Strike suits do not contribute to market efficiency. They contribute to affluent lifestyles of strike suit lawyers.

H.R. 1058 is dramatic, it is revolutionary legislation because that is what is necessary. The old ways of doing things are just not working. The bill provides that the losing party, his attorney or both will pay the prevailing party's legal fees if a court enters a final judgment against them. The court has discretion not to award fees if the losing party establishes that its position was substantially justified. The court will require the attorney, the class, or both to post security for costs to ensure that funds are available to pay the legal fees if they are awarded. This section represents a compromise from the original "loser pays." It will be a powerful deterrent to the filing of frivolous suits. It will also ensure that successful plaintiffs receive a full recovery of their damages and that successful defendants do not suffer injury from having been wrongly accused.

Some provisions in this legislation are not revolutionary but just good public policy. For the first time in the securities laws, a standard for reckless conduct is defined. Similarly for the first time the Federal securities laws have been modified to specifically allow proving reliance by demonstrating a fraud on the market, that that has occurred. Finally, the bill creates a safe harbor for forward looking statements issued by companies so that they need not fear litigation if projections they make in good faith do not turn out as expected.

H.R. 1058 is a breakthrough piece of legislation. I urge the support of all my colleagues.

Mr. MARKEY. Mr. Chairman, I yield 5 minutes to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, a good legal system is not one that is measured by the number of lawsuits that are filed. It is not one measured by the length of those lawsuits, about how many judgments are rendered. Quite the contrary. A good legal system is one that deters bad behavior and, therefore, leads to fewer lawsuits. It is one in fact that encourages settlements of merited cases rather than the massive settlement of all cases regardless of merits.

On that test, this legal system we are trying to reform today is a rotten one. The gentleman from Massachusetts has told you that there were only a few cases filed. Let me give Members the facts.

In 1993, there were 723 of these cases pending, more than any other year except 1974. In fact, in the last 4 years, from 1990 to 1993, there have been 1,180 of these cases filed and that is almost equal to the number filed in the 10 previous years. Many more lawsuits. While Federal lawsuits are generally declining by 30 percent, these lawsuits are up by 10 percent.

Second, these lawsuits are not sailboats sailing on the ocean of litigation. These are massive carriers, massive lawsuits. The 723 cases pending today estimated request $28.9 billion in damages. These are huge lawsuits that clog up the system and that send a message out to everybody across America that the lawsuits are waiting for you the first time your stock prices drop.

The ripple effect of these lawsuits is massive. To businesses sued and those not sued, the message is simple: "Don't tell investors anything about your company because anything you say will be held against you in a lawsuit filed by lawyers who xerox the claims, appoint their own clients and get a lawsuit going worth billions of dollars in which most of the parties end up settling at 10 cents on the dollar."

Let me ask Members something: When 93 percent of these cases never reach a jury, when most of them are settled for 10 cents on the dollar, do you not get the impression I get, that this is a system where merit does not matter, everybody settles all the time?

Why? Because these are massive lawsuits and merit does not count. The liability is so huge, the shotgun effect of the lawsuit against all parties is so dramatic, the damages claimed is so huge that the temptation is to get out of it as fast as you can, 10 cents on the dollar, take care of the lawyer, do not worry about the stockholders, is the way this system works.

This is a bad legal system. And when we are told, as we are told, that only 6 cents on the dollar ends up being recovered for stockholders under this system, you and I ought to be deeply concerned about it. It means that real fraud is not being prosecuted. It means that meritless cases are filed and stockholders get nothing, but a few big law firms in America are doing quite well.

When you have that kind of a system where merit does not matter, where lawsuits are filed on a Xerox machine, where one lawyer in California says, "I have the best law practice in America, I have no clients," he just names whoever he wants to represent the class and files a lawsuit.

When you have professional plaintiffs appearing time after time on these lawsuits and bounties, legal bounties paid in order to get these lawsuits going, when you have got that kind of a system, is not time to reform it?

For 4 years now, I have been asking this Congress to do that and I am delighted today we will have that chance. As we debate amendments over the next 8 hours, let me tell Members that we have tried to accommodate concerns. We have tried to bring this bill this year as close as we can to the Dodd-Domenici bill of last year and to the Tauzin bill of last year that got 182 cosponsors, 67 Democrats to cosponsor it.

We will see when this debate is over an awful lot of Members on both sides of this aisle voting for this measure. We will improve it in the process in the next 8 hours. It will be a better bill, closer to the bill that we offered last year and the year before. I am proud to tell Members the coalition that I have been working with has endorsed this bill and the effort to improve it is still on this floor. We will join with many other Democrats in a bipartisan effort to improve this section of the law.

When we are through, we are going to have a statute that discourages fraud because it counts on real merited cases to be filed, and it counts on them to be brought to fruition and the guilty parties punished. It will be a system that discourages frivolous, shakedown strike lawsuits that benefit no one in this country except the few law firms who make a havoc of our legal system and a ton of money over it.

Mr. FIELDS of Texas. Mr. Chairman, I yield 7 minutes to the gentleman from California [Mr. COX], one of the principal authors of the legislation.

Mr. COX of California. Mr. Chairman, it is frequently said that lawyers are turning America into a nation of victims. Thanks to the trial bar which makes its living fanning these flames, not only real injuries but every imaginable harm is now compensable in court, except one; the one category of injury for which there is seemingly no recompense is injury inflicted by lawyers themselves.

What is the remedy for the ruinous economic losses, the delays, and the sheer misery caused by the fraudulent abuse of our laws, in particular of our securities laws? The answer is none. None. Fraudulent securities litigation may be the most egregious instance of this cure today. It is a legal torture chamber for plaintiffs and defendants alike, more suitable to the pages of Charles Dickens' "Bleak House" than a nation dedicated to equal justice under law.

The current system of private securities litigations is an outrage and a disgrace. It cheats both the victims of fraud and innocent parties by lavishly encouraging meritless cases, it has destroyed thousands of jobs, undercut economic growth and American competitiveness and raised the prices every American pays for goods and services.

It mocks the many victims of real fraud who receive pennies on the dollar while the lawyers take millions. The only beneficiaries are the lawyers. Their clients typically get a pittance for their claims.

Who are the victims of these strike suits which are brought to generate settlement value, which are brought in order to generate a nuisance value so that the lawyers can be paid simply to stop their harassment? First and foremost, victims of this kind of system are the victims of real fraud. The current system herds them into powerless classes of plaintiffs who are completely under the thumb of strike suit lawyers. The class members do not even have the chance to participate personally; oftentimes they are not even identified until very late in the proceedings.

Earlier today we heard from a company in Arlington, VA, just across the river from the Capitol, who spent hundreds of thousands of dollars responding to one of these strike suits generated for the purpose of making the company pay the lawyers to go away. The class representative that was selected by these lawyers as the most representative of all of the plaintiffs finally sent a postcard to the company and ended it this way by saying, "I did not know the lawyer was going to do this; he talked to my wife. He acted against my wishes. I was in the hospital at the time. I like your company."

That is the degree to which class action lawyers are able to control this kind of litigation. The lead plaintiffs who supposedly represent the victims' interests are not average investors. As often as not the so-called lead plaintiffs are virtually employees of the counsel. As one of the leading attorneys in this area once put it, and as the gentleman from Louisiana [Mr. TAUZIN] so eloquently reminded us, he said, "I have the greatest practice of law in the world. I have no clients." That is the way class action securities strike suit lawyers view their opportunity to harass ordinary investors.

The same stable of tame lead plaintiffs appears in case after case. That is why our bill puts a limit on the number of suits that professional plaintiffs can bring to five in every 3 years.

How bad is this problem? Harry Lewis has appeared as lead plaintiff in an estimated 300 to 400 lawsuits. Rodney Shields has been in over 80 cases. William Weinberger has appeared in 90 cases just since 1990. One court recently called one of these professional plaintiffs the unluckiest investor in the world. Obviously, a wry sense of humor, that judge.

With the lawyers in charge of the litigation, it is little wonder they manage to benefit their own interests at the expense of their clients. Many recent studies have shown that the current system encourages strike suits lawyers to ignore even overwhelming cases of fraud. Flagrant cases that should lead to 100 percent recovery are instead settled for cents on the dollar while the lawyers get millions in settlement fees.

Even when the fraud victims get a full recovery the current winner-loses system unique to America still ensures they will never get fully compensated. Their attorneys' fees and costs come right off the top. And because the plaintiffs' lawyers, not the victims, control the litigations, they make sure those attorneys' fees are top dollar no matter how meager their clients' recovery.

The current system ensures that investors will suffer ever more avoidable losses in the future. Even good faith reasonable predictions about the future events of a company's prospects are penalized under the current securities laws. The threat of lawsuits over so-called forward looking information, how is this company going to do in the future, is so serious that many if not most CEO's these days refuse to talk to the press at all about their company's performance and yet that is exactly the kind of information the market needs to operate. How a company has performed in the past is interesting, but everybody wants to know what is going to happen from here forward. That is the information the market seeks out. Because the market is after that information they are now getting it through the black market and under the table. We would like to make sure that it is quality information, that a reasonable statement made in good faith should be available and should come from the source.

Strike suits claim virtually every American as a victim. Most particularly by this I mean ordinary workers and consumers all are victims of the heavy litigations tax levied by strike suit lawyers. The tens of millions of dollars siphoned off each year by strike suits represents thousands of workers not hired, new products delayed or canceled outright and vital research that will never be done, and price increases imposed on consumers. This tax will fall most heavily on high-tech biotechnology and other growth companies, the very industry most critical to American competitiveness.

One out of every four strike suits targets high-tech companies. High-tech and biotech companies have paid 40 percent of the costs of strike suit settlements handing out some $440 million, however, over the last 2 years alone.

Strike suits claim a last category of victims: tens of millions of Americans who have invested in securities through their labor union pension funds, ESOP's or their individual mutual fund. They suffer twice. They suffer whenever price fluctuation triggers the suit, and they suffer again through the costs of litigating and settling the strike suits that follow.

The current system is not protecting them; our legislation will.

Mr. MARKEY. Mr. Chairman, I yield 2 minutes to the gentlewoman from California [Ms. ESHOO].

Ms. ESHOO. Mr. Chairman, at the first Committee on Commerce hearing on this issue I stated that our final objective must be the Congress must pass and the President should sign into law legislation which provides relief from meritless lawsuits and do it this year. Let me state the plain facts. Meritless lawsuits are crippling our high-technology industry. They cost money, they cut investment and stifle initiative. They must be stopped.

Twenty-six of the 40 largest high-tech companies in Silicon Valley have been sued. In fact I think if you place them all in the room, all of the players in Silicon Valley, the only difference between them is those that have sued and those that will be.

H.R. 1058 attempts to stop these suits and I commend my colleagues for bringing this issue to the floor. We share the same goal of ending frivolous lawsuits.

In my view, in the effort to right the wrongs, many of the reforms proposed by H.R. 1058 go too far. By eliminating such protections as the recklessness standard for fraud, this legislation would strip the ability of shareholders with legitimate claims; let me underscore that again, with legitimate claims to go to court.

Just yesterday the White House called H.R. 1058 "manifestly unfair," and the chairman of the SEC, Arthur Levitt, has said the Commission cannot support the bill. That is why it is being debated, that is why it has been brought to the floor, and that is why there are many key amendments that will be offered to improve the bill.

So Mr. Chairman, high technology businesses should not have to wait another year. They need relief now.

Recently I introduced legislation, H.R. 675, along with my colleague, the gentleman from California, Mr. NORM MINETA, who is my next-door neighbor and represents part of the Silicon Valley, which mirrors the broad bipartisan legislation introduced again this year by Senators DODD and DOMENICI. I believe H.R. 675 will put an end to frivolous suits while protecting investors' rights. This bill, I believe, protects investors' rights and is a bill which ultimately I think will break a legislative stalemate which would only delay protection for our high technology community.

We must craft a piece of legislation that stops the frivolousness and yet still protects shareholders and investors, and the bill before us today I think is a step in the right direction.

In my view, the balance of the work still remains to be done. As H.R. 1058 advances through the legislative process, our objective again must be to end meritless lawsuits quickly and efficiently and with fairness, and I think that is an operative word.

Mr. Chairman, my constituents need and deserve relief, and I look forward to working on producing that for them.

Mr. FIELDS of Texas. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Ohio [Mr. GILLMOR].

Mr. GILLMOR. Mr. Chairman, I thank the gentleman for yielding time to me, and I rise in support of H.R. 1058, the Securities Litigations Reform Act.

This week we are going to be debating a number of important legal and economic issues, and one of the most critical will be finally addressing the explosion of abusive and speculative litigation known as "strike suits." For too many years American high technology and manufacturing companies have faced the unreasonable risk and threat of litigation at the cost of higher product prices, diminished earnings shareholder returns, reduced capital investment, and a less vibrant American economy.

As a result many people are not willing to serve on the boards of directors of these companies. Many companies, even where there is no fraud and no negligence committed, are faced with the tremendous cost of litigations. It also makes companies far less willing to disclose useful and valuable information to the public. Such abuses simply cannot be allowed to continue unchecked.

Robert Samuelson, a noted economist, pointed out the huge increase in legal costs in our society. Over a 22-year period legal fees as a percent of the gross national product increased nine-tenths of 1 percent to 1.7 percent, nearly double.

When you consider that 3 or 4 percent is considered good growth in the economy, and you drain off 1.7 percent in nonproductive fees of this sort, it is clear the tremendous harm that it does to our economy, the harm it does to jobs and to the standard of living of the average working American.

Let me close by quoting from Jim Kimsey, who represents the American Electronic Association, before the Telecommunications Committee.

Of the explosion in securities litigation he said: "We believe the current securities litigation system promotes meritless litigation, shortchanges investors, and costs jobs. It is a showcase example of the legal system run awry. It is bad law, bad policy, and bad economics."

Mr. Chairman, the time has come to act and pass securities reform litigation.

Mr. MARKEY. Mr. Chairman, I yield 5 minutes to the gentleman from Michigan [Mr. DINGELL] the ranking minority member of the full committee.

Mr. DINGELL. Mr. Chairman, I ask unanimous consent to use a modest display.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. DINGELL. Mr. Chairman, there are ways of cleaning up the abuses that exist with regard to citizens' suits regarding securities. But this legislation is not the way that it should be done.

My colleagues on the Republican side would have us believe that the securities industry and the marketplaces of this country are some kind of kindergarten or perhaps a cloistered nunnery where nothing that is good for us is brought out. No, sir, nothing could be further from the truth. The hard fact of the matter is this is the place where rascals and rogues go to plunder the American people, honest investors who invest their life savings and that is all. And this legislation, while it might correct abuses of which the other side complains, will also strip law-abiding citizens of their rights to litigate where wrongdoing has been done to them and where their assets have been stolen by wrongdoing.

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This is not a handout from the trial lawyers. This is a prestigious business publication. It says, "Can you trust your broker?" The answer is you may be able to, but you may not. It is inside the publication, and I would commend it to the reading of my colleagues.

Look at some of the things that have had happened recently in the securities industry, and you will understand why it is that this is bad legislation: a billion-dollar collapse of Barings investment banking firm in England. The lawsuits against the perpetrators of that wrongdoing would have probably been sheltered by this legislation. Similarly, the $2 billion collapse of Orange County investments that led that county to declare bankruptcy probably would be sheltered by this legislation. Limited partnership fraud so far has cost Prudential Securities better than $1 billion. Twelve billion dollars in litigation in a fraud case against Drexel Burnham Lambert; the case was settled for $3 billion, no shakedown by trial lawyers, but action by the Federal Government.

How about the securities fraud and insider trading scandals perpetrated by Ivan Boesky, Dennis Levine, Martin Siegel and others on Wall Street?

What about some other splendid securities frauds which probably would have been sheltered under this legislation? Lincoln Savings and Loan, Charlie Keating and his cohorts; they sold worthless bonds to the elderly in bank lobbies; Washington Public Power Supply System, a massive default of $10 billion and more in bonds, led to a class-action lawsuit which resulted in more than an $800 million settlement, probably would have been proscribed under the legislation that we are addressing. In Salomon Brothers, a group of elite institutions worked together to raid government bonds auctions; probably lawsuits would have been banned under the legislation we are talking about. At Miniscribe, the company shipped bricks in boxes instead of hard disk drives, or at Phar-Mor, where executives maintained two sets of books so that as much as $1 billion could be diverted for personal interests. Those are some of the better.

But you know that in some 35 other communities other than Orange County, some publicly supported institutions also reported massive losses in 9 months, these because of exotic derivatives, and it goes on and on, Kemper Financial Services, which was recently charged by the SEC with illegally diverting stock trades for the benefit of its own profit-sharing plan. Kemper settled a similar charge earlier with the SEC for $10 million. We do not know how much they are going to come up with on this one.

The Wall Street Journal reported the SEC charged more than a dozen individuals and companies with wireless cable fraud bulking 3,000 investors out of $40 million. On February 27, the Journal and the Times reported Hanover, Sterling & Co., a brokerage company, was ordered to cease all operations. Why? Because thousands of investors in the 16 stocks to which the firm was a market-maker suffered massive losses ranging from 57 percent to 80 percent when the shutdown was reported.

Business Week on February 20 said, "Can you trust your broker?" The answer, as I have said, was not reassuring. It says a rising wave of cynicism, both inside and outside the industry on widely accepted ways of doing business at the largest and most prestigious firms.

What we are talking about here is legislation that has been offered by my Republican colleagues that shelters wrongdoing. It does not only protect innocent people against strike suits, but it requires, for example, that in pleading, a pleader has to prove what was going on inside the head and the mind of the wrongdoer, and the question then is, what is the representative of the hurt litigant? Is it a lawyer? Is it a psychic or is it a psychiatrist?

This is outrageous legislation and should be rejected.

Mr. FIELDS of Texas. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Colorado [Mr. SCHAEFER].

Mr. SCHAEFER. Mr. Chairman, I rise today in support of H.R. 1058, the Securities Litigation Reform Act.

As a member of the Telecom and Finance Subcommittee, I have long supported similar legislation to fix our broken securities litigation system. The system is broken for defrauded investors who recall and recover only a small amount of their losses when part of valid cases. The system is broken for businesses, especially the startup high-tech firms who rely on capital markets for financing. And it is broken for the general public who ultimately must pay the price of frivolous litigation in the form of slower economic growth, fewer jobs, and higher prices.

It is very clear we have a serious problem. I say to my colleagues, strike a blow for our small businesses and startup enterprises. Support H.R. 1058.

Mr. FIELDS of Texas. Mr. Chairman, I yield 2 minutes to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Chairman, I rise today in strong support of H.R. 1058.

We must end abuse that is eroding our legal system. As stated by SEC Chairman Arthur Levitt, private actions are intended to compensate defrauded investors and deter securities violations.

If the current system fails to distinguish between strong and weak cases, it serves neither purpose effectively. I could not agree more.

Unfortunately, this is precisely with what we are left today, an ineffective system.

The changes mandated by this legislation would help restore responsibility and respectability to our corporate system. First, the provision that imposes loser-pays rules when the court determines the position of the losing party was not substantially justified are warranted. This would prevent the consummate race to the courthouse. Plaintiffs will have to weigh the merits of the case before filing suit. Opponents claim this will have a chilling effect on plaintiffs' right to sue. This is simply not the case.

The modified loser-pays provision will only result in fee shifting in cases that should not have been brought in the first place. The only thing chilled by this provision would be meritless suits which I believe deserve to be put in the deep freeze.

Second, as for the definition of recklessness, the current law is vague and uncertain. Parties may engage in nearly identical conduct, yet courts reach completely different results. The vagueness and uncertainty of the current standard has led to a great deal of inconsistency, confusion, and unfairness in our judicial system.

I think all of us would agree that by creating consistency we can increase fairness and decrease the probability of injustice in our legal system.

In general, most strike suits under current law do more harm than good. Reform is needed for two main reasons. No. 1, proper plaintiffs must have a place to redress valid grievances.

Mr. MARKEY. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, I would just like to point out to my colleagues that there are 435 votes in this House to improve class action security fraud lawsuits.

We want to stop the race to the courthouse. We want to sanction lawyers who bring frivolous cases or bring them in bad faith.

But what we really hear from the other side about the virtues that our antifraud laws bring to our investors and to our market, we rarely hear about the need for a balanced approach to reform. We rarely hear the mention of the terrible frauds that have occurred over the last 10 years, and we never hear assurances from the other side that their legislation will not adversely impact these disastrous situations like Drexel and Milken and Boesky and Lincoln Savings and Keating and Miniscribe and many others.

If the legislation brought here today was meant to shut down these legal firms that take professional plaintiffs and terrorize private corporations across this country, I think we can find a consensus. The truth of the matter is though the legislation we are considering here today shuts down the good suits, the legitimate suits, the suits that have to be brought by individuals in this country against Boesky and against Milken and against Keating and against all of those S&L scam artists that were out there in the 1980's, the scam artists that resulted in the U.S. Congress being forced to vote for 100 to 150 billion dollars' worth of taxpayer dollars in order to insure that those who had put their life savings in the S&L's and banks across this country did not in fact face bankruptcy.

Mr. Chairman, I reserve the balance of my time.

Mr. FIELDS of Texas. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. BLUTE].

Mr. BLUTE. Mr. Chairman, I thank the gentleman, the distinguished chairman of the subcommittee, who wrote this legislation.

Mr. Chairman, the engine of economic growth in this country is under assault from some lawyers who give the term "gone fishing" an entirely new meaning.

These strike-suit lawyers are trolling for easy money won from vulnerable companies whose only crime is being subject to a volatile market.

Entrepreneurial high-tech companies in my State such as EMC Corp. based in my district are being hit with strike suits which seek damages for loss in stock value. This is a company that has created thousands of jobs in the State of Massachusetts. Since going public in 1986, it has been the subject of two such suits. One was filed less than 24 hours after the company disclosed quarterly earnings lower than the previous quarter.

This kind of situation is not unusual. Hundreds of suits are filed by lawyers and professional plaintiffs who prey on small high-tech firms because their stocks tend to be more volatile and they are more inclined to settle.

In fact, between 1989 and 1993, 61 percent of all strike suits were brought against companies with less than $500 million in annual sales, and 33 percent against companies with less than $100 million in sales.

Mr. Speaker, the problem is critical, because these high-tech companies are the job-creating innovators, where many of our cutting-edge products originate. These are companies that are leading our export efforts in our economy. Biotechnology companies in my district are developing treatments for cancer and AIDS. These kinds of strike suits are jeopardizing the development of those life-saving products by holding these companies hostage.

These companies are forced to divert resources, energy, talent, and money to fighting these unwarranted strike suits.

Mr. Chairman, I urge my colleagues to support this bill, and let us have a strong growth export economy.

Mr. MARKEY. Mr. Chairman, I yield 4 minutes to the gentleman from Michigan [Mr. CONYERS], the ranking minority member of the Committee on the Judiciary.

Mr. CONYERS. Mr. Chairman, I thank the gentleman from Massachusetts for yielding to me and commend him on the excellent job that he has done today and through the years on this very important subject.

Ladies and gentlemen, the committee report explaining why this legislation is needed talks about the typical case of high-growth, high-technology stock which experiences a sudden change in price, thereby giving rise to securities lawsuits and a claim for damages by shareholders.

But that is not the type of lawsuit that would be affected by the one killer amendment by the gentleman from California who will offer it very soon in this debate. By blocking all possibility of civil RICO lawsuits for securities fraud, the Cox amendment would incredibly harm plantiffs such as the elderly bondholders who were cheated out of their life's savings by Charles Keating in the Lincoln Savings and Loan debacle. It would deny any effective remedy for the thousands of depositors of the Bank of Credit and Commerce International, the notorious BCCI, which regulators from 62 countries united to shut down because of the bank's fraudulent practices.

Why an amendment of such a broad sweep that it would prevent lawsuits against some of the biggest white-collar criminals in the Nation's history, even though the sponsors of the amendment may not have intended such a result? The answer is this amendment was hastily put together without the benefit of any hearings or debate in any committee or the possibility of a markup where there could have been important improvements, and now within an 8-hour ambit, we are asked to consider the revocation of the greatest single crime-fighting bill provision, RICO, on the law books today.

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It is a shame for what is going on now.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from California [Mr. COX], who is a member of the Committee on the Judiciary, by the way.

Mr. COX of California. Mr. Chairman, I point out that the RICO amendment, which the gentleman is accurate in stating that I will soon offer, was in fact inadvertently left out of the bill when we combined the Commerce and Judiciary portions. It was in the original bill introduced on January 4, also in the original bill of last year and introduced and made public as part of the Contract With America in October. It has always been in the bill.

Mr. CONYERS. Well, may I just respond to the gentleman? Could we inadvertently leave it out when there were no hearings on it? It was mentioned in the bill, but there were a lot of things mentioned in the bill. On this pretext, anything that was not put in the bill could have been accidentally left out.

The problem that we have is that the gentleman's amendment is asking the Congress in broad daylight to believe that the biggest amendment for fighting civil fraud that has ever been put on the books was accidentally left out. I guess we accidentally did not have any hearings. I guess there accidentally were not any witnesses. I guess this was all an accident that needs to be corrected right now.

If it was an accident, let us go back and do it correctly. The provision of this amendment is broader than any attempt at a modification of RICO, and the gentleman knows it.

Mr. FIELDS of Texas. Mr. Chairman, I yield 3 minutes to the gentleman from Oklahoma [Mr. COBURN].

Mr. COBURN. I thank the gentleman for yielding to me.

Mr. Chairman, something I learned a long time ago from my father that I think would do us all well and that is his definition of a good lawyer. And a good lawyer is somebody who solves problems rather than creates them.

The legislation that we are considering has in fact addressed an issue before us that is causing and wreaking havoc with a large number of America's most consistent job-providing industries.

I believe the American people are sick and tired of those who feed off of our system and weaken American competitiveness. They are sick of the unscrupulous few who make a mockery of our concept of justice by exploiting the legal system for their own personal gain.

Mr. Chairman, a glitch in the Securities and Exchange Act of 1934, called rule 10 B–5, created a new group of parasites known as professional plaintiffs. These professional plaintiffs are recruited by those who figured out how to exploit our judicial system by filing frivolous lawsuits.

Currently, exploitation of rule 10 B–5 allows these clever few to sue companies through the use of professional plaintiffs for fraud whenever the price of a stock drops. These professional plaintiffs, or parasites, if you will, who hold only a tiny share of stock, launch fishing expeditions and rack up formidable discovery fees to force the defendants to settle out of court rather than to pay the costs of defending themselves. The result has been a threefold explosion of securities fraud suits over the last 5 years. One out of every eight companies on the New York Stock Exchange has been hit with this type of suit. I believe America's economic growth is stifled by such a perversion of our legal system by a small handful of lawyers that file the lion's share of suits, hitting one in every four high-technology firms in our country today. Just nine law firms in this country have accounted for two-thirds of the 1,400 class suits filed between 1988 and 1993.

The threat that exploitation of rule 10 B–5 poses to our time, our peace of mind, and our pocketbooks, the pocketbooks of the average American, is immoral and should be illegal.

I am supporting the Securities Reform Act because it will free American

Businesses from the ever-present threat of baseless and expensive lawsuits. This bill will deter the practice of frivolous lawsuits that serve only to line the pockets of those who rob our corporations of investment capital and rob them of the resource for competitive research and development and ultimately rob us of an increased standard of living and high-wage jobs.

I therefore urge passage of H.R. 1058.

Mr. MARKEY. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania [Mr. KLINK].

Mr. KLINK. I thank the gentleman for yielding this time to me.

You know, proponents of this so-called securities litigation reform are arguing that private securities and class action suits are making it virtually impossible for public companies to raise capital and are preventing these companies from going public.

But they will tell you only anecdotes about their friends in big business who would prefer not to be sued because they really cannot rely on the facts. The facts will show that our markets have been tremendously successful in raising capital for public companies. Every important statistical measure of the success of our securities markets, the number and proceeds of initial public offerings, the volume and value of common stock offerings, the volume of trading, have been at all-time highs. The number of initial public security offerings has risen 9,000 percent in the last 20 years while the proceeds raised have skyrocketed 38,000 percent.

The staff report of the Senate Subcommittee on Securities has found that, "Despite the claims by critics that securities litigation is hampering capital formation, initial public offerings have proceeded at a record pace in recent years."

We all know that recently the Dow-Jones Industrial Averages surpassed the 4,000 mark, which is an all-time high. That has to make us all wonder how can it be that there is such a serious problem from the roughly 300 fraud class action cases filed each year.

In light of the facts, claims by companies that they are afraid to go public to raise capital because of fear of litigation are nothing but really self-serving nonsense. If they are really are so concerned about litigation, they would not be restricting the minuscule number of private securities fraud class actions, they would be restricting the huge and increasing numbers of business-versus-business suits.

As the Rand Corp.'s recent study of the litigation patterns of Fortune 1,000 companies demonstrates, by far, is that you are seeing many more firms that are suing other firms. As the Wall Street Journal, in an article of December 3, 1993, entitled "Suits by Firms Exceed Those by Individuals," noted, "Businesses may be their own worst enemies when it comes to the so-called litigation explosion."

So why is it that proponents are seeking to limit only private actions and not business suits?

Mr. FIELDS of Texas. Mr. Chairman, I yield 2 minutes to our good friend on the other side of the aisle, the gentleman from Virginia [Mr. MORAN].

Mr. MORAN. I thank the gentleman for yielding this time to me.

Mr. Chairman, I do not know if there are others of my colleagues who have been stockbrokers at some time in their life, but I was for 10 years. I have watched what has happened in the securities marketplace. The gentleman from Michigan [Mr. DINGELL] is absolutely right: There are corporate abuses.

Mr. KLINK, the gentleman from Pennsylvania, is also correct that the securities market itself is doing quite well.

But the fact remains that there is an abuse within this industry that does need to be corrected. And it is focused primarily on those firms that provide the highest rate of growth to our economy, those firms that take the greatest risks, in the area of high-technology.

Legent Corp., in Herndon, VA, now in Vienna, actually, they had a slight change in their earnings expectation, the stock dropped. Immediately they were hit with one of those strike lawsuits. They required 200,000 pages of documentation, many, many days of very valuable employee time was spent, and they wound up settling for $2 million in legal fees even though it was acknowledged it was a frivolous lawsuit.

Metrix Corp., same thing happened; A small reduction in their earnings expectation, the stocks began to drop, and they got hit with a strike lawsuit. They had to produce 50,000 documents, 200,000 electronic messages to the plaintiffs' lawyers, 20 employees had to spend full time on this. They wound up settling for $975,000.

Mr. Chairman, I want you to recognize this: The investors, the shareholders got $400 or less. The lawyer got $330,000. That is what this is all about. They are fishing expeditions for lawyers who have found a way to abuse the system. It should not be tolerated in the courts and it should not be tolerated in the Congress.

Mr. MARKEY. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. I thank the gentleman for yielding this time to me.

Mr. Chairman, I was inspired after hearing my friend, the gentleman from Virginia [Mr. MORAN], for whom I have great respect, enormous respect. After I heard him speak, I want to say that he voices the sentiments by many of us on this side that we ought to make some modifications that deal with the real problems.

But the bill we have before us today is one of a long line of measures that are so extreme, that go so far and that are so, in many respects, absurd as to, I think, astonish anyone who is an observer or a participant in the system of jurisprudence in America today.

If the problem was as it has been described by the majority, surely the Securities and Exchange Commission would have been here saying so. But they came before the committee and did not say that this bill was the solution.

The gentleman from Virginia, [Mr. MORAN] quoted anecdotes. There are many anecdotes; some of them are right on point. But when you get to anecdotes and you look at them carefully, you begin to find that the point one wishes to make by using anecdotes begins to fall apart.

Mr. FIELDS of Texas. Mr. Chairman, I yield 1 minute to the gentleman from New York State [Mr. PAXON].

Mr. PAXON. I thank the gentleman for yielding this time to me.

Mr. Chairman, I rise in strong support of H.R. 1058. This needed legislation strikes at the very heart of the serious problem, the strike suits and abusive litigation.

As we have heard from previous speakers, our capital markets are the envy of the world, but that position is being seriously threatened. It is threatened by a privileged few, a group of people who are not injured in any way, but have found a system for legal extortion, a system where all you need is to read stock quotes for a falling stock and pair it up with a data base, and there is a comprehensive list of ready plaintiffs.

Mr. Chairman, for far too long this has been going on. It is time to stop it and for Congress to approve this important legislation.

I believe it is a balanced approach that will benefit all Americans.

It will not eliminate the ability of injured Americans to bring claims, but it will stop get-rich attorneys from filing spurious claims against companies.

I am proud of our Committee on Commerce, the work product they have put forth, and particularly the work of the gentleman from California, Mr. COX, the gentleman from Texas, Mr. FIELDS, and the gentleman from Virginia, Chairman BLILEY.

Mr. MARKEY. Mr. Chairman, I yield myself the 2 minutes to conclude.

Mr. Chairman, the cover of News-Week just out tells the story: "The boy who lost a billion dollars, Nick Leeson, the 28-year-old trader who bankrupted England's oldest investment firm."

Now, Nick Leeson is an interesting case. It is not directly on point here, except to the extent to which there are Nick Leesons out there and they do prey upon innocent investors, they do engage in practices that risk the life savings of individuals who believe that the holding out, the representation made by the S&L, is in fact accurate.

Now, with the Dow-Jones Industrial Average rising to 4,000 this week, there is unprecedented confidence in the American marketplace, that it is honest and efficient, but honest above all.

That is what our American laws have given assurances to the rest of the world over the last 60 years. If you go to Singapore, if you go to England, if you go to any other place in the world, you go to a country that has lower standards than our country. It is this system of laws which we have put in place which has given the reason for individual investors to look at the thousands of companies which we have, take their savings and put them into these companies that have allowed our Dow-Jones Industrial Average to rise to 4,000. That is what we should be extremely cautious about as we deal with this issue here today.

Our system works. If we want to deal with rogue lawyers, if we want to deal with frivolous law cases let us deal with them, but let us not also kid ourselves, there are many here who are interested in ensuring that the legitimate cases that have to be brought to protect the public are also excluded as well.

Mr. FIELDS of Texas. Mr. Chairman, I yield myself the remaining minute.

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Mr. Chairman, some of the examples we have heard from the other side of the aisle, Milken, Keating, Leeson, they all share something important. Each of these acted with intent. Each of these acted with the intent to defraud.

The legislation that we are considering today would not affect shareholder actions against those people or people like them in the future. Those people would be jointly and severally liable. That has not changed in our legislation, and, Mr. Chairman, I think that is a compelling point in ending this debate.

Mr. HASTINGS of Florida. Mr. Chairman, while H.R. 10 is called the Common Sense Legal Reform Act, the more accurate title would be the Citizens' Rights Reduction Act. For more than 200 years, the citizens of the United States have possessed the right by their own States to hold wrongdoers accountable. Under H.R. 10, such rights would be taken away from the citizens of the States. With an apparent Congress-knows-best attitude, the proponents of this bill want to take away the rights of ordinary Americans to hold wrongdoers accountable and to seek fair and just compensation when they are wronged. This bill is wrong.

Mr. HASTERT. Mr. Chairman, I rise in support of H.R. 1058, the Securities Litigation Reform Act, a bill that will discourage meritless suits.

There is a securities litigation explosion in this country. In 1993 we saw the highest number of pending cases in any year for which data are available except 1974. Since 1990, filings have increased dramatically. The number of cases filed in the 4 years from 1990 to 1993 nearly equals the number filed in the previous 10 years combined.

Some argue that H.R. 1058 will hurt investors, but just the opposite is true. The current litigation explosion punishes investors because companies increasingly fear so called strike suits which are filed each time their stock fluctuates. Thus, companies reveal less and less information to investors that could be used against them in the future. Clearly, investors lose when they do not have access to information when making decisions about where to place their life savings.

Investors are also hurt under current law because they, in reality, are the ones who pay the costs when a company has to go to court to defend itself against a meritless lawsuit. They also pay the high cost of maintaining insurance against these strike suits.

Finally, investors, who have legitimate claims, receive less money than they deserve because it is common practice to simply settle out of court. Companies settle out of court, whether or not the suit has merit, because it costs an average of $692,000 in legal fees and 1,055 hours of management time to successfully defend a strike suit. When meritless suits can be dismissed, the cases of real fraud will be brought to court. Then, investors will get paid the real value of their loss.

That is just not the case today. Today, investors receive between 6 and 14 cents on the dollar lost.

Securities litigation reform will reward investors by removing these punishments. However, in addition, specific provisions are included in the bill to give investors the same authority over their attorney as other clients, in other types of litigation, have. The bill provides for a court-appointed steering committee to make sure that lawsuits are maintained in the client's best interest. It also requires settlement offers to disclose the amount paid to lawyers and class members per share of stock. These significant changes favor those investors who have legitimate and important suits.

But investors are not the only ones punished by meritless strike suits. High-technology and high-growth companies are also punished. One in every eight companies listed on the New York Stock Exchange is hit with a strike suit. Even more startling is that one of every four strike suits targets these high-growth companies. The average settlement, which is over $8.6 million, has, in essence, become a litigation tax on these companies.

Those who have a tangential relationship to these suits, primarily the accountants who certify the books, are also punished. The long arm of the law has sought to include them, even when there is no fraud on their part, just because they have deep pockets.

It's time that we reform our judicial system so that those who commit crimes are the ones who are punished, not those who abide by the law. H.R. 1058 will restore integrity to our system and I urge my colleagues to join me in voting to pass this important bill.

Mr. STOKES. Mr. Chairman, I rise in strong opposition to H.R. 1058, the Securities Litigation Reform Act of 1995. We should not, in an attempt to decrease the amount of frivolous class action lawsuits, forsake our duty to act in the best interest of individual small investors and consumers by limiting their ability to seek redress in the courts. This ill-conceived and hurried legislation will not only fail to reform the securities litigation system in the United States, but will in fact compromise Americans' faith in our securities industry.

The bill before us today, the Securities Litigation Reform Act of 1995, will not only attempt to curtail unwanted lawsuits, but will also make it impossible for regular Americans to have access to the Federal courts. Such an assault on American citizens' rights to access to the courts is unacceptable and I will oppose this legislation for many of the same reasons I opposed H.R. 988, the Attorney Accountability Act of 1995. H.R. 1058 is a restrictive bill that will certainly undermine many of our most important efforts to provide a forum that provides legal redress for individual Americans and our ability to insure the integrity of the securities markets.

Mr. Speaker, one of the stated purposes of the Securities Litigation Reform Act is to shift fee burdens to a losing party including defrauded individual small investors. Proponents of H.R. 1058 have stated that this provision is intended to discourage frivolous class action lawsuits, and encourage parties to settle disputes prior to trial.

This bill also establishes new loopholes and limited liability provisions for brokers and firms who defraud investors. Finally, the bill contains other technical modifications that make it easier for wrongdoers to commit fraud and more difficult for investors to seek redress in the courts.

This bill is hostile to the American justice system's over 200-year-old policy that favors access to the Federal courts for citizens with a claim. Adoption of the "loser pays" standards in H.R. 1058 would inhibit the will of the people by transferring all of the burden of the costs of rendering justice in the courts from the wealthy, well-connected and privileged to the individual small investor. The clear result of imposing a "loser pays" rule would be to destroy regular Americans' rights under the Federal security laws to have access to the Federal courts.

Mr. Speaker, by disproportionately transferring to plaintiffs the burden of the cost of pursuing securities litigation this bill is clearly in opposition to over 200 years of American common law. Furthermore, the reasoning behind this unfair and unjust bill is not supported by the facts. So-called frivolous lawsuits actually make up a minute portion of all lawsuits litigated in this Nation. Noted securities law experts like Professor Arthur R. Miller of the Harvard Law School have pointed out that: "There is absolutely no evidence that the 1 percent of cases on the Federal court docket under the Securities Acts is any different, in terms of the problem of frivolousness, as the other 99 percent of the Federal judicial docket."

Under current law, the Federal rules of civil procedure give judges the opportunity to hold attorneys accountable for bringing frivolous lawsuits. Rule 11 of the Federal rules of civil procedure presently authorize Federal courts to impose sanctions upon attorneys, law firms, or parties for engaging in inappropriate conduct or for bringing frivolous or harassment lawsuits. The facts clearly show that despite the fact that there were thousands of cases filed last year, in less than 1 percent of those cases did Federal judges determine that rule 11 sanctions were justified.

Mr. Speaker, we have also been told that frivolous securities lawsuits are at the crest of a wave of securities litigation that is overwhelming the courts and sapping the strength of corporate America. Neither statement could be further from the truth. This is confirmed by the testimony by the Securities and Exchange Commission's William R. McLucas, who testified that: "According to statistics obtained from the Administrative Office of the U.S. Courts, the approximate aggregate number of securities cases—including SEC cases—filed in Federal District Court does not appear to have increased over the past two decades." In fact, the figures from the Administrative Office of the U.S. Courts also reveal that in 1993 there were 298 class-action lawsuits, slightly less than the 305 filed over 20 years ago in 1974.

Mr. Speaker, while I am sympathetic to the goal of eliminating frivolous securities litigation, H.R. 1058 in its present form fails to provide adequate protection or incentives to preserve the rights of victims of abuses of the securities laws, and in particular, those investors and consumers in my home State of Ohio.

As you all know, several municipalities and counties throughout the United States have been plagued by massive losses as a result of involvement in risky securities investments. My home district has not been immune to the abuses that exist in the securities brokerage industry. Due to the high risk leveraging and derivatives investments peddled by many Wall Street brokerage firms, Cuyahoga County's $1.8 billion investment pool, the Secured Asset Fund Earnings [SAFE], has been dissolved, and these investments have cost Cuyahoga County taxpayers approximately $122 million. More than 70 government agencies, including Ohio cities, counties, and school districts participated in the SAFE fund, which held more than one-fourth of its investments in these highly speculative securities. As a result of SAFE's losses and dissolution, Cuyahoga County has had to cut next year's budget by 11 percent—$35 million—and will freeze spending for 3 years after that.

This bill would clearly protect wrongdoers from lawsuits brought against them by defrauded investors. The "loser pays" requirements, loopholes and limited liability would make it virtually impossible for my constituents who have been victims of SAFE's collapse to seek judicial redress, should faud turn out to have contributed to its demise.

American securities markets are the envy of the world. They provide magnificent benefits to investors and businesses alike. Despite the claims of supporters of this bill that securities litigation is hampering capital markets. The facts reveal that initial public offerings have proceeded at a record pace in recent years, and a long list of notorious cases have recovered billions of dollars for thousands of defrauded investors.

Our markets attract investments because investors have confidence in securities industry honesty and efficiency. All investors are aware of the fact that there are risks attached to any investment, and these investors are willing to take such risks in exchange for the potential gain. Yet, investors are not prepared to be defrauded and swindled out of their hard-earned money. So when any investor is defrauded, the entire securities industry is placed at risk. Private securities actions actually represent an efficient and effective privatization of National Policy to counteract financial fraud. H.R. 1058 would seriously compromise such a counteraction.

Mr. Speaker, it is my belief that H.R. 1058, and the circumstances under which it is presented in this House, attempt to mislead the American people to believe that cookie cutter, simplistic solutions will cure what ails this Nation. Nothing could be further from the truth. As our Nation faces an epidemic of financial difficulties, bankruptcy and the abuse of consumer and citizens funds, the solution to these problems will not be found in quick fixes like the Securities Litigation Reform Act. The American people elected us to act in their best interest, not compromise their welfare because Government refuses to have the courage to meet its obligations. I urge my colleagues to join with me and vote against this bill.

The CHAIRMAN. All time for general debate has expired. Pursuant to the rule, the bill is considered as having been read for amendment under the 5-minute rule.

The text of H.R. 1058 is as follows:

H.R. 1058

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Securities Litigation Reform Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Prevention of lawyer-driven litigation.
(a) Plaintiff steering committees to ensure client control of lawsuits.
"Sec. 36. Class action steering committees.
"(a) Class action steering committee.
"(b) Membership of plaintiff steering committee.
"(c) Functions of plaintiff steering committee.
"(d) Immunity from civil liability; removal.
"(e) Effect on other law."
(b) Prohibition on attorneys' fees paid from Commission disgorgement funds.
Sec. 3. Prevention of abusive practices that foment litigation.
(a) Additional provisions applicable to private actions.
"Sec. 20B. Procedures applicable to private actions.
"(a) Elimination of bonus payments to named plaintiffs in class actions.
"(b) Restrictions on professional plaintiffs.
"(c) Awards of fees and expenses.
"(d) Prevention of abusive conflicts of interest.
"(e) Disclosure of settlement terms to class members.
"(f) Encouragement of finality in settlement discharges.
"(g) Contribution from non-parties in interests of fairness.
"(h) Defendant's right to written interrogatories establishing scienter."
(b) Prohibition of referral fees that foment litigation.
Sec. 4. Prevention of "fishing expedition" lawsuits.
"Sec. 10A. Requirements for securities fraud actions.
"(a) Scienter.
"(b) Requirement for explicit pleading of scienter.
"(c) Dismissal for failure to meet pleading requirements; stay of discovery; summary judgment.
"(d) Reliance and causation.
"(e) Allocation of liability.
"(f) Damages."
Sec. 5. Establishment of "safe harbor" for predictive Statements.
"Sec. 37. Application of safe harbor for forward-looking Statements.
"(a) Safe harbor defined.
"(b) Automatic protective order staying discovery; expedited procedure.
"(c) Regulatory authority."
Sec. 6. Rule of construction.
Sec. 7. Effective date.

SEC. 2. PREVENTION OF LAWYER-DRIVEN LITIGATION.

(a) PLAINTIFF STEERING COMMITTEES TO ENSURE CLIENT CONTROL OF LAWSUITS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"SEC. 36. CLASS ACTION STEERING COMMITTEES.

"(a) CLASS ACTION STEERING COMMITTEE.—In any private action arising under this title seeking to recover damages on behalf of a class, the court shall, at the earliest practicable time, appoint a committee of class members to direct counsel for the class (hereafter in this section referred to as the 'plaintiff steering committee') and to perform such other functions as the court may specify. Court appointment of a plaintiff steering committee shall not be subject to interlocutory review.

"(b) MEMBERSHIP OF PLAINTIFF STEERING COMMITTEE.—

"(1) QUALIFICATIONS.—

"(A) NUMBER.—A plaintiff steering committee shall consist of not fewer than 5 class members, willing to serve, who the court believes will fairly represent the class.

"(B) OWNERSHIP INTERESTS.—Members of the plaintiff steering committee shall have cumulatively held during the class period not less than—

"(i) the lesser of 5 percent of the securities which are the subject matter of the litigation or $10,000,000 in market value of the securities which are the subject matter of the litigation; or

"(ii) such smaller percentage or dollar amount as the court finds appropriate under the circumstances.

"(2) NAMED PLAINTIFFS.—Class plaintiffs serving as the representative parties in the litigation may serve on the plaintiff steering committee, but shall not comprise a majority of the committee.

"(3) NONCOMPENSATION OF MEMBERS.—Members of the plaintiff steering committee shall serve without compensation, except that any member may apply to the court for reimbursement of reasonable out-of-pocket expenses from any common fund established for the class.

"(4) MEETINGS.—The plaintiff steering committee shall conduct its business at one or more previously scheduled meetings of the committee, of which prior notice shall have been given and at which a majority of its members are present in person or by electronic communication. The plaintiff steering committee shall decide all matters within its authority by a majority vote of all members, except that the committee may determine that decisions other than to accept or reject a settlement offer or to employ or dismiss counsel for the class may be delegated to one or more members of the committee, or may be voted upon by committee members seriatim, without a meeting.

"(5) Right of Nonmembers To Be Heard.—A class member who is not a member of the plaintiff steering committee may appear and be heard by the court on any issue relating to the organization or actions of the plaintiff steering committee.

"(c) Functions of Plaintiff Steering Committee.—The authority of the plaintiff steering committee to direct counsel for the class shall include all powers normally permitted to an attorney's client in litigation, including the authority to retain or dismiss counsel and to reject offers of settlement, and the authority to accept an offer of settlement subject to final approval by the court. Dismissal of counsel other than for cause shall not limit the ability of counsel to enforce any contractual fee agreement or to apply to the court for a fee award from any common fund established for the class.

"(d) Immunity From Civil Liability; Removal.—Any person serving as a member of a plaintiff steering committee shall be immune from any civil liability for any negligence in performing such service, but shall not be immune from liability for intentional misconduct or from the assessment of costs pursuant to section 20B(c). The court may remove a member of a plaintiff steering committee for good cause shown.

"(e) Effect on Other Law.—This section does not affect any other provision of law concerning class actions or the authority of the court to give final approval to any offer of settlement.".

(b) Prohibition on Attorneys' Fees Paid From Commission Disgorgement Funds.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following new paragraph:

"(4) Prohibition on Attorneys' Fees Paid From Commission Disgorgement Funds.—Except as otherwise ordered by the court, funds disgorged as the result of an action brought by the Commission, or of any Commission proceeding, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.".

SEC. 3. PREVENTION OF ABUSIVE PRACTICES THAT FOMENT LITIGATION.

(a) Additional Provisions Applicable to Private Actions.—The Securities Exchange Act of 1934 is amended by inserting after section 20A (15 U.S.C. 78t–1) the following new section:

"PROCEDURES APPLICABLE TO PRIVATE ACTIONS

"Sec. 20B. (a) Elimination of Bonus Payments to Named Plaintiffs in Class Actions.—In any private action under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the portion of any final judgment or of any settlement that is awarded to class plaintiffs serving as the representative parties shall be equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class. Nothing in this subsection shall be construed to limit the award to any representative parties of actual expenses (including lost wages) relating to the representation of the class.

"(b) Restrictions on Professional Plaintiffs.—Except as the court may otherwise permit for good cause, a person may be a named plaintiff, or an officer, director, or fiduciary of a named plaintiff, in no more than 5 class actions filed during any 3-year period.

"(c) Awards of Fees and Expenses.—

"(1) Authority to award fees and expenses.—If the court in any private action arising under this title enters a final judgment against a party litigant on the basis of a motion to dismiss, motion for summary judgment, or a trial on the merits, the court shall, upon motion by the prevailing party, determine whether (A) the position of the losing party was not substantially justified, (B) imposing fees and expenses on the losing party or the losing party's attorney would be just, and (C) the cost of such fees and expenses to the prevailing party is substantially burdensome or unjust. If the court makes the determinations described in clauses (A), (B), and (C), the court shall award the prevailing party reasonable fees and other expenses incurred by that party. The determination of whether the position of the losing party was substantially justified shall be made on the basis of the record in the action for which fees and other expenses are sought, but the burden of persuasion shall be on the prevailing party.

"(2) Security for payment of costs in class actions.—In any private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the court shall require an undertaking from the attorneys for the plaintiff class, the plaintiff class, or both, in such proportions and at such times as the court determines are just and equitable, for the payment of the fees and expenses that may be awarded under paragraph (1).

"(3) Application for fees.—A party seeking an award of fees and other expenses shall, within 30 days of a final, nonappealable judgment in the action, submit to the court an application for fees and other expenses that verifies that the party is entitled to such an award under paragraph (1) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.

"(4) Allocation and size of award.—The court, in its discretion, may—

"(A) determine whether the amount to be awarded pursuant to this section shall be awarded against the losing party, its attorney, or both; and

"(B) reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the action.

"(5) Awards in discovery proceedings.—In adjudicating any motion for an order compelling discovery or any motion for a protective order made in any private action arising under this title, the court shall award the prevailing party reasonable fees and other expenses incurred by the party in bringing or defending against the motion, including reasonable attorneys' fees, unless the court finds that special circumstances make an award unjust.

"(6) Rule of construction.—Nothing in this subsection shall be construed to limit or impair the discretion of the court to award costs pursuant to other provisions of law.

"(7) Protection against abuse of process.—In any action to which this subsection applies, a court shall not permit a plaintiff to withdraw from or voluntarily dismiss such action if the court determines that such withdrawal or dismissal is taken for purposes of evasion of the requirements of this subsection.

"(8) Definitions.—For purposes of this subsection—

"(A) The term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorneys' fees and expenses. The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of services furnished.

"(B) The term 'substantially justified' shall have the same meaning as in section 2412(d)(1) of title 28, United States Code.

"(d) Prevention of Abusive Conflicts of Interest.—In any private action under this title pursuant to a complaint seeking damages on behalf of a class, if the class is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall, on motion by any party, make a determination of whether such interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the class.

"(e) Disclosure of Settlement Terms to Class Members.—In any private action under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, any settlement agreement that is published or otherwise disseminated to the class shall include the following statements:

"(1) Statement of potential outcome of case.—

"(A) Agreement on amount of damages and likelihood of prevailing.—If the settling parties agree on the amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title and the likelihood that the plaintiff would prevail—

"(i) a statement concerning the amount of such potential damages; and

"(ii) a statement concerning the likelihood that the plaintiff would prevail on the claims alleged under this title and a brief explanation of the reasons for that conclusion.

"(B) Disagreement on amount of damages or likelihood of prevailing.—If the parties do not agree on the amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this title or on the likelihood that the plaintiff would prevail on those claims, or both, a statement from each settling party concerning the issue or issues on which the parties disagree.

"(C) Inadmissibility for certain purposes.—Statements made in accordance with subparagraphs (A) and (B) concerning the amount of damages and the likelihood of prevailing shall not be admissible for purposes of any Federal or State judicial action or administrative proceeding.

"(2) Statement of attorneys' fees or costs sought.—If any of the settling parties or their counsel intend to apply to the court for an award of attorneys' fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on a per-share basis, together with the amount of the settlement proposed to be distributed to the parties to suit, determined on a per-share basis), and a brief explanation of the basis for the application. Such information shall be clearly summarized on the cover page of any notice to a party of any settlement agreement.

"(3) Identification of Lawyers' Representatives.—The name and address of one or more representatives of counsel for the class who will be reasonably available to answer written questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

"(4) Other Information.—Such other information as may be required by the court, or by any plaintiff steering committee appointed by the court pursuant to section 36.

"(f) Encouragement of Finality in Settlement Discharges.—

"(1) Discharge.—A defendant who settles any private action arising under this title at any time before verdict or judgment shall be discharged from all claims for contribution brought by other persons with respect to the matters that are the subject of such action. Upon entry of the settlement by the court, the court shall enter a bar order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution or indemnity arising out of the action—

"(A) by nonsettling persons against the settling defendant; and

"(B) by the settling defendant against any nonsettling defendants.

"(2) Reduction.—If a person enters into a settlement with the plaintiff prior to verdict or judgment, the verdict or judgment shall be reduced by the greater of—

"(A) an amount that corresponds to the percentage of responsibility of that person; or

"(B) the amount paid to the plaintiff by that person.

"(g) Contribution From Non-Parties in Interests of Fairness.—

"(1) Right of contribution.—A person who becomes liable for damages in any private action under this title (other than an action under section 9(e) or 18(a)) may recover contribution from any other person who, if joined in the original suit, would have been liable for the same damages.

"(2) Statute of limitations for contribution.—Once judgment has been entered in any such private action determining liability, an action for contribution must be brought not later than 6 months after the entry of a final, nonappealable judgment in the action.

"(h) Defendant's Right to Written Interrogatories Establishing Scienter.—In any private action under this title in which the plaintiff may recover money damages, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.".

(b) Prohibition of Referral Fees That Foment Litigation.—Section 15(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(c)) is amended by adding at the end the following new paragraph:

"(8) Receipt of Referral Fees.—No broker or dealer, or person associated with a broker or dealer, may solicit or accept remuneration for assisting an attorney in obtaining the representation of any customer in any private action under this title.".

SEC. 4. PREVENTION OF "FISHING EXPEDITION" LAWSUITS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 10 the following new section:

"SEC. 10A. REQUIREMENTS FOR SECURITIES FRAUD ACTIONS.

"(a) Scienter.—

"(1) In general.—In any private action arising under this title based on a fraudulent statement, liability may be established only on proof that—

"(A) the defendant directly or indirectly made a fraudulent statement;

"(B) the defendant possessed the intention to deceive, manipulate, or defraud; and

"(C) the defendant made such fraudulent statement knowingly or recklessly.

"(2) Fraudulent statement.—For purposes of this section, a fraudulent statement is a statement that contains an untrue statement of a material fact, or omits a material fact necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading.

"(3) Knowingly.—For purposes of paragraph (1), a defendant makes a fraudulent statement knowingly if the defendant knew that the statement of a material fact was untrue at the time it was made, or knew that an omitted fact was necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading.

"(4) Recklessness.—For purposes of paragraph (1), a defendant makes a fraudulent statement recklessly if the defendant, in making such statement, is guilty of highly unreasonable conduct that (A) involves not merely simple or even gross negligence, but an extreme departure from standards of ordinary care, and (B) presents a danger of misleading buyers or sellers that was either known to the defendant or so obvious that the defendant must have been consciously aware of it. For example, a defendant who genuinely forgot to disclose, or to whom disclosure did not come to mind, is not reckless.

"(b) Requirement for Explicit Pleading of Scienter.—In any private action to which subsection (a) applies, the complaint shall specify each statement or omission alleged to have been misleading, and the reasons the statement or omission was misleading. The complaint shall also make specific allegations which, if true, would be sufficient to establish scienter as to each defendant at the time the alleged violation occurred. It shall not be sufficient for this purpose to plead the mere presence of facts inconsistent with a statement or omission alleged to have been misleading. If an allegation is made on information and belief, the complaint shall set forth with specificity all information on which that belief is formed.

"(c) Dismissal for Failure To Meet Pleading Requirements; Stay of Discovery; Summary Judgment.—In any private action to which subsection (a) applies, the court shall, on the motion of any defendant, dismiss the complaint if the requirements of subsection (b) are not met, except that the court may, in its discretion, permit a single amended complaint to be filed. During the pendency of any such motion to dismiss, all discovery and other proceedings shall be stayed unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party. If a complaint satisfies the requirements of subsection (b), the plaintiff shall be entitled to conduct discovery limited to the facts concerning the allegedly misleading statement or omission. Upon completion of such discovery, the parties may move for summary judgment.

"(d) Reliance and Causation.—

"(1) In general.—In any private action to which subsection (a) applies, the plaintiff shall prove that—

"(A) he or she had knowledge of, and relied (in connection with the purchase or sale of a security) on, the statement that contained the misstatement or omission described in subsection (a)(1); and

"(B) that the statement containing such misstatement or omission proximately caused (through both transaction causation and loss causation) any loss incurred by the plaintiff.

"(2) Fraud on the market.—For purposes of paragraph (1), reliance may be proven by establishing that the market as a whole considered the fraudulent statement, that the price at which the security was purchased or sold reflected the market's estimation of the fraudulent statement, and that the plaintiff relied on that market price. Proof that the market as a whole considered the fraudulent statement may consist of evidence that the statement—

"(A) was published in publicly available research reports by analysts of such security;

"(B) was the subject of news articles;

"(C) was delivered orally at public meetings by officers of the issuer, or its agents;

"(D) was specifically considered by rating agencies in their published reports; or

"(E) was otherwise made publicly available to the market in a manner that was likely to bring it to the attention of, and to be considered as credible by, other active participants in the market for such security.

Nonpublic information may not be used as proof that the market as a whole considered the fraudulent statement.

"(3) Presumption of reliance.—Upon proof that the market as a whole considered the fraudulent statement pursuant to paragraph (2), the plaintiff is entitled to a rebuttable presumption that the price at which the security was purchased or sold reflected the market's estimation of the fraudulent statement and that the plaintiff relied on such market price. This presumption may be rebutted by evidence that—

"(A) the market as a whole considered other information that corrected the allegedly fraudulent statement; or

"(B) the plaintiff possessed such corrective information prior to the purchase or sale of the security.

"(4) Reasonable expectation of integrity of market price.—A plaintiff who buys or sells a security for which it is unreasonable to rely on market price to reflect all current information may not establish reliance pursuant to paragraph (2). For purposes of paragraph (2), the following factors shall be considered in determining whether it was reasonable for a party to expect the market price of the security to reflect substantially all publicly available information regarding the issuer of the security:

"(A) The weekly trading volume of any class of securities of the issuer of the security.

"(B) The existence of public reports by securities analysts concerning any class of securities of the issuer of the security.

"(C) The eligibility of the issuer of the security, under the rules and regulations of the Commission, to incorporate by reference its reports made pursuant to section 13 of this title in a registration statement filed under the Securities Act of 1933 in connection with the sale of equity securities.

"(D) A history of immediate movement of the price of any class of securities of the issuer of the security caused by the public dissemination of information regarding unexpected corporate events or financial releases.

In no event shall it be considered reasonable for a party to expect the market price of the security to reflect substantially all publicly available information regarding the issuer of the security unless the issuer of the security has a class of securities listed and registered on a national securities exchange or quoted on the automated quotation system of a national securities association.

"(e) ALLOCATION OF LIABILITY.—

"(1) JOINT AND SEVERAL LIABILITY FOR KNOWING FRAUD.—A defendant who is found liable for damages in a private action to which subsection (a) applies may be liable jointly and severally only if the trier of fact specifically determines that the defendant acted knowingly (as defined in subsection (a)(3)).

"(2) PROPORTIONATE LIABILITY FOR RECKLESSNESS.—If the trier of fact does not make the findings required by paragraph (1) for joint and several liability, a defendant's liability in a private action to which subsection (a) applies shall be determined under paragraph (3) of this subsection only if the trier of fact specifically determines that the defendant acted recklessly (as defined in subsection (a)(4)).

"(3) DETERMINATION OF PROPORTIONATE LIABILITY.—If the trier of fact makes the findings required by paragraph (2), the defendant's liability shall be determined as follows:

"(A) The trier of fact shall determine the percentage of responsibility of the plaintiff, of each of the defendants, and of each of the other persons or entities alleged by the parties to have caused or contributed to the harm alleged by the plaintiff. In determining the percentages of responsibility, the trier of fact shall consider both the nature of the conduct of each person and the nature and extent of the causal relationship between that conduct and the damage claimed by the plaintiff.

"(B) For each defendant, the trier of fact shall then multiply the defendant's percentage of responsibility by the total amount of damage suffered by the plaintiff that was caused in whole or in part by that defendant and the court shall enter a verdict or judgment against the defendant in that amount. No defendant whose liability is determined under this subsection shall be jointly liable on any judgment entered against any other party to the action.

"(C) Except where contractual relationship permits, no defendant whose liability is determined under this paragraph shall have a right to recover any portion of the judgment entered against such defendant from another defendant.

"(4) EFFECT OF PROVISION.—This subsection relates only to the allocation of damages among defendants. Nothing in this subsection shall affect the standards for liability under any private action arising under this title.

"(f) DAMAGES.—In any private action to which subsection (a) applies, and in which the plaintiff claims to have bought or sold the security based on a reasonable belief that the market value of the security reflected all publicly available information, the plaintiff's damages shall not exceed the lesser of—

"(1) the difference between the price paid by the plaintiff for the security and the market value of the security immediately after dissemination to the market of information which corrects the fraudulent statement; and

"(2) the difference between the price paid by the plaintiff for the security and the price at which the plaintiff sold the security after dissemination of information correcting the fraudulent statement.".

SEC. 5. ESTABLISHMENT OF "SAFE HARBOR" FOR PREDICTIVE STATEMENTS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"SEC. 37. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

"(a) SAFE HARBOR DEFINED.—In any action arising under this title based on a fraudulent statement (within the meaning of section 10A), a person shall not be liable for the publication of any projection if—

"(1) the basis for such projection is briefly described therein, with citations (which may be general) to representative sources or authority, and a disclaimer is made to alert persons for whom such information is intended that the projections should not be given any more weight than the described basis therefor would reasonably justify; and

"(2) the basis for such projection is not inaccurate as of the date of publication, determined without benefit of subsequently available information or information not known to such person at such date.

"(b) AUTOMATIC PROTECTIVE ORDER STAYING DISCOVERY; EXPEDITED PROCEDURE.—In any action arising under this title based on a fraudulent statement (within the meaning of section 10A) by any person, such person may, at any time beginning after the filing of the complaint and ending 10 days after the filing of such person's answer to the complaint, move to obtain an automatic protective order under the safe harbor procedures of this section. Upon such motion, the protective order shall issue forthwith to stay all discovery as to the moving party, except that which is directed to the specific issue of the applicability of the safe harbor. A hearing on the applicability of the safe harbor shall be conducted within 45 days of the issuance of such protective order. At the conclusion of the hearing, the court shall either (1) dismiss the portion of the action based upon the use of a projection to which the safe harbor applies, or (2) determine that the safe harbor is unavailable in the circumstances.

"(c) REGULATORY AUTHORITY.—In consultation with investors and issuers of securities, the Commission shall adopt rules and regulations to facilitate the safe harbor provisions of this section. Such rules and regulations shall—

"(1) include clear and objective guidance that the Commission finds sufficient for the protection of investors,

"(2) prescribe such guidance with sufficient particularity that compliance shall be readily ascertainable by issuers prior to issuance of securities, and

"(3) provide that projections that are in compliance with such guidance and that concern the future economic performance of an issuer of securities registered under section 12 of this title will be deemed not to be in violation of section 10(b) of this title.".

SEC. 6. RULE OF CONSTRUCTION.

Nothing in the amendments made by this Act shall be deemed to create or ratify any implied private right of action, or to prevent the Commission by rule from restricting or otherwise regulating private actions under the Securities Exchange Act of 1934.

SEC. 7. EFFECTIVE DATE.

This Act and the amendments made by this Act are effective on the date of enactment of this Act and shall apply to cases commenced after such date of enactment.

The CHAIRMAN. The bill will be considered for amendment under the 5-minute rule for a period not to exceed 8 hours.

During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition to a Member who has caused an amendment to be printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

Are there any amendments to the bill?

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

Mr. COX of California. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. COX of California: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 6. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.

Section 1964(c) of title 18, United States Code, is amended by inserting ", except that no person may bring an action under this provision if the racketeering activity, as defined in section 1961(1)(D), involves conduct actionable as fraud in the purchase or sale of securities" before the period.

Mr. COX of California. Mr. Chairman, I offer an amendment that would prevent plaintiffs' attorneys from bringing actions alleging securities law violations under the Racketeer Influence and Corrupt Organizations Act which we know as RICO.

Today we are fulfilling our Contract With America by curbing frivolous securities litigation. For many years now shrewd plaintiffs' attorneys have been using RICO to evade the requirements that Congress has established in the Federal securities laws. Supreme Court Justice Thurgood Marshall called our attention to this problem as far back as 1985 when he explained that the civil RICO statute, quote, "virtually eliminates decades of legislative and judicial development of private civil remedies under the Federal securities laws." Today's amendment seeks only to reform RICO in the area of securities legislation, but I should point out that this House under its previous control by today's minority, the Democrats, have previously passed wholesale RICO reform by an overwhelming margin. This reform measure, authored by the gentleman from Virginia [Mr. BOUCHER] and the gentleman from Florida [Mr. MCCOLLUM], now the chairman of the Judiciary Subcommittee on Crime, enjoyed overwhelming bipartisan support. My amendment is fully consistent with this effort, if more limited.

The provision originally in the Contract With America that addressed the problem of civil RICO actions in the securities area, as I explained in my colloquy a moment ago with the gentleman from Michigan, was omitted from the bill as reported out of committee inadvertently. It was not opposed in committee. If we do not reinsert this provision by adopting my amendment, we will fail to address a significant number of frivolous actions based on alleged securities law violations, but brought under the RICO statute. When Congress enacted RICO back in 1970, we intended that it be used as a weapon against organized criminals, not as a weapon against ordinary investors and the business community.

The problem posed by the widespread use of civil RICO is one recognized by legal experts across the spectrum. In the Supreme Court case from which I just quoted, in 1985 Justice Marshall, along with Justice Powell, was in the dissent but the majority who said that the law needs to be changed still agreed that the abuse of RICO is very real.

Let me quote from the majority opinion:

> In its private civil version RICO is evolving into something quite different from the original conception of its enactors; in other words, Congress. The extraordinary uses to which civil RICO has been put appear to be primarily the result of the failure of Congress.

That from the majority of the Supreme Court, so the majority and the minority of the Supreme Court agreed that RICO is being abused by its application in the securities area.

Plaintiffs' attorneys' inappropriate and abusive use of RICO has also been recognized by the current White House counsel, Abner Mikva. While still a judge for the U.S. Circuit Court of Appeals for the District of Columbia, Mr. Mikva detailed his observations of RICO abuse when testifying before the House Committee on Criminal Justice in 1985. Mr. Mikva, of course, has been a Member of Congress in 1970, and he had warned back then that RICO might be stretched and abused in a way. Here is his testimony in 1985 before the House Subcommittee on Criminal Justice:

> I stand amazed to realize that my hyperbolic horrible examples of how far the law would reach pale into insignificance when compared to what actually has happened. What started out as a small cottage industry for Federal prosecutors has become a commonplace weapon in the civil litigation arsenal.

Most significantly, those that have the responsibility of regulating our securities markets support my amendment. For the past 10 years the chairman of the Securities and Exchange Commission, the SEC, have all supported civil RICO reform. Beginning in 1985, former SEC Chairman John Shad testified before Congress in support of legislation to amend RICO in this way. In 1986, Mr. Chairman, the SEC even submitted draft legislation for civil RICO reform. In 1989, the SEC General Counsel, Dan Goelzer, testified before Congress in favor of this civil RICO reform, and today the SEC continues to support civil RICO reform.

In testimony before our committee, Mr. Chairman, the chairman of the SEC, Arthur Levitt, stated that H.R. 10, as originally drafted, contained the kind of civil RICO reform that is necessary. He recently wrote a letter to our Committee on Commerce chairman, the gentleman from Virginia [Mr. BLILEY], stating that the SEC fully supports this provision that I am offering today.

The reason this area is one of such wide-ranging consensus is because almost everyone who studied the issue recognizes that the civil RICO statute has been abused in securities fraud legislation to distort the incentives and remedies that the Federal securities laws are supposed to provide. They have done this by taking advantage of a loophole in RICO that has permitted inclusion of securities laws violations as a predicate act for which the defendant may be tagged as a racketeer and held liable for treble damages and attorney fees.

Additionally, because many claims that could be asserted as securities laws claims can also be characterized as mail or wire fraud——

The CHAIRMAN. The time of the gentleman from California [Mr. COX] has expired.

(By unanimous consent, Mr. COX of California was allowed to proceed for 5 additional minutes.)

Mr. COX of California. Because many claims that could be asserted as securities laws claims can also be characterized as mail or wire fraud, and because mail and wire fraud are also predicates for civil RICO liability, Plaintiffs' attorneys have a devastating, potent, and readily available alternative for bringing actions under RICO instead of under our securities laws. As the SEC general counsel stated in his 1989 testimony before the House Committee on the Judiciary, and I quote now,

> The commission is concerned that the civil liability provisions of RICO can, in many cases, convert private securities law fraud claims into RICO claims. Successful plaintiffs in such cases are entitled to treble damages, despite the express limitations on recovery under the securities laws to actual damages. Private plaintiffs may be able to bypass the carefully crafted liability provisions of the securities laws and thereby recover damages in cases in which Congress or the courts have determined that no recovery should be available.

Congress initially passed securities laws in order to impose a uniform system of duties and liabilities upon the securities industry and to protect investors. Each time we have acted to amend the securities laws we have balanced the need to provide the maximum amount of consumer protection against the need to maintain fluid, stable and reliable markets. Today we are seeking to enact litigation reforms because we have identified significant problems and abuses in the current system that are hurting investors, consumers, and the Nation as a whole.

Mr. Chairman, the failure to adopt this amendment would undermine the reforms we are hoping to achieve because attorneys could then do an end run around all of the reform by simply using the RICO statute. In evading the reforms that we are seeking to achieve today enterprising lawyers will have the continuing ability to extort settlements from innocent defendants based on claims that will allow them no chance of recovery under the reforms that we have today. Lest we have any doubt about the ability of plaintiffs' attorneys to leverage settlements from defendants under civil RICO, we need only listen again to Justice Thurgood Marshall who explained that, quote,

> Many a prudent defendant, facing ruinous exposure, will decide to settle a case even with no merit. It is, thus, not surprising that civil RICO has been used for extortive purposes, giving rise to the very evils it was designed to combat.

Mr. Chairman, unless we adopt my amendment, a plaintiff's attorney alleging a single violation of the securities laws will be able to bring an action under civil RICO and leverage a hefty settlement from an innocent victim. Because an element of RICO is a pattern, plaintiffs would have the latitude to conduct discovery of records dating as far back as 10 years. Discovery costs like that run up a tab of millions of dollars. Often, faced with the cost of these multimillion-dollar discovery fees, the prospect of being labeled a racketeer and the prospect of being held liable for treble damages and attorney fees, defendants, as Thurgood Marshall has said, are forced to settle meritless cases brought under RICO.

Mr. Chairman, our economy's health depends on the efficient operation of America's capital markets. We must continue to balance the provisions of adequate remedies for injured investors and the imposition of excessive penalties on all participants in our capital markets. The treble damage blunderbuss of RICO undermines this balance and imposes exorbitant litigation costs, impedes the raising of capital, and

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. Mr. Chairman, I just took note of the fact that the gentleman said a moment ago that for some kind of a loophole in the RICO statute that allows people to sue securities dealers who they believe are guilty of a pattern of fraudulent activity, but I am looking here at the language from the statute: 18 U.S.C. says that actually racketeering; that is, predicate action with the RICO statue, include, quote, any fees involving fraud and the sales of securities. I ask, "In view of that, how can you describe this as a loophole?"

Mr. COX of California. As I mentioned, the Supreme Court, all of the Justices, both in the majority and minority of this RICO case, viewed this as an area where congressional action is richly needed because RICO, although technically being exploited within the letter of the law, was never intended to apply to securities cases.

Mr. BRYANT of Texas. Well, I just read the statute to the gentleman which specifically related to——

Mr. COX of California. Well, reclaiming my time——

Mr. BRYANT of Texas. Fraud and the sale of securities——

Mr. COX of California. So I can fully and adequately respond to the gentleman——

The CHAIRMAN. The time of the gentleman from California [Mr. COX] has expired.

(By unanimous consent, Mr. COX of California was allowed to proceed for 1 additional minute.)

Mr. COX of California. The SEC chairman came and testified before our Committee on Commerce, and here is what he said. It is very brief, and I will just share it with the gentleman:

> For many years the Commission has supported legislation to eliminate the overlap between the private remedies under RICO and under the Federal securities laws. The securities laws generally provide adequate remedies for those injured by security fraud. It is both unnecessary and unfair to expose defendants in securities cases to the threat of treble damages and other extraordinary remedies provided by RICO.

Mr. BRYANT of Texas. Mr. Chairman, would the gentleman yield further?

Mr. COX of California. This is according to the Clinton appointment to head up the Securities and Exchange Commission.

Mr. BRYANT of Texas. If the gentleman would yield further just to point out the gentleman said it was a loophole, and I read to the gentleman the law indicating it is not a loophole. Now the gentleman is reading to me testimony, or something, from the SEC, but we never had hearings on the issue of RICO in the committee that the gentleman and I are members of. We never had any hearings——

Mr. COX of California. Reclaiming my time, we did, of course, have hearings on this testimony that was given at that hearing——

Mr. BRYANT of Texas. There were no hearings on RICO——

Mr. COX of California. The SEC.

Mr. BRYANT of Texas. The gentleman will have to acknowledge we had no hearings on RICO.

Mr. COX of California. Mr. Chairman, I think my 60 seconds have expired.

Mr. Chairman, I offer an amendment that would prevent plaintiffs' attorneys from bringing actions alleging securities law violations under the Racketeer Influenced and Corrupt Organizations Act [RICO]. Today we are fulfilling our Contract With America by curbing frivolous securities litigation. For many years now, shrewd plaintiffs' attorneys have been using RICO to evade the requirements we have established in the Federal securities laws. Supreme Court Justice Thurgood Marshall called our attention to this problem as far back as 1985 when he explained that the civil RICO statute "virtually eliminates decades of legislative and judicial development of private civil remedies under the Federal securities laws." *Sedima, S.P.R.I.* v. *Imrex Company, Inc.*, 105 S.Ct. 3292, 3294 (1985) (dissenting). Indeed, while today's amendment seeks only to reform RICO in the area of securities litigation, the House—Democrats in control—has previously passed wholesale RICO reform by an overwhelming margin. This reform measure, authored by the gentlemen from Virginia [Mr. BOUCHER] and Mr. MCCOLLUM, the chairman of the Judiciary Subcommittee on Crime, enjoyed overwhelming bipartisan support. My amendment, I believe is fully consistent with this effort.

This provision originally in the Contract With America that addressed the problem of civil RICO actions in the securities area (H.R. 10, Title I § 107) was omitted from the bills reported out of committee. If we do not reinsert this provision by adopting my amendment, we will fail to address a significant number of frivolous actions based on alleged securities law violations, but brought under the RICO statute. When we enacted RICO back in 1970, we intended that it be used as a weapon against organized criminals, not as a weapon against ordinary investors and the business community.

The problem posed by the widespread use of civil RICO is one recognized by legal experts across the spectrum. In addition to Justice Marshall, Chief Justice Rehnquist has observed:

> Virtually everyone who has addressed the question agrees that civil RICO is now being used in ways that Congress never intended when it enacted the statute in 1970. Most of the civil suits filed under the statute have nothing to do with organized crime.

(Rehnquist, Reforming Diversity Jurisdiction and Civil RICO, St. Mary's L.J. 5, 9 (1989) (originally presented at the Brookings Institution's Eleventh Seminar on the Administration of Justice, April 7, 1989). Plaintiffs' attorneys' inappropriate and abusive use of RICO has also been recognized by current White House Counsel Abner Mikva. While still a judge for the U.S. Circuit Court of Appeals for the District of Columbia, Mr. Mikva detailed his observations of RICO abuse when testifying before the House Subcommittee on Criminal Justice in 1985. While a Member of Congress in 1970, Mr. Mikva had warned his colleagues about RICO's overbreadth. In 1985, in testifying before the House Subcommittee on Criminal Justice, he noted the following about his comparison of his initial thoughts on RICO back in 1970 with the subsequent reality:

> I stand amazed * * * to realize that my hyperbolic horrible examples of how far the law would reach pale into insignificance when compared to what has actually happened * * * What started out as a small cottage industry for federal prosecutors has become a commonplace weapon in the civil litigation arsenal.

As we learned yesterday, Mr. Mikva and the Administration have a number of problems with the legislation before us today. However, as observed above, my amendment is one provision upon which we all agree.

Also, most significantly, those that have the responsibility of regulating our securities markets similarly support my amendment. For the past 10 years, the Chairmen of the Securities and Exchange Commission [SEC] have all supported civil RICO reform. Beginning in 1985, former SEC Chairman John Shad testified before Congress in support of legislation to amend RICO. In 1986, the SEC even submitted draft legislation to Congress that would have significantly limited civil RICO claims based on alleged securities law violations. In 1989, SEC General Counsel Dan Goelzer testified before Congress in favor of civil RICO reform. And today, the SEC continues to support civil RICO reform. In a recent letter to Commerce Committee Chairman BLILEY, SEC Chairman Arthur Levitt stated that the SEC fully supports this provision I am offering today.

The reason why this is one area where there is such wide-ranging consensus is because almost everyone who has studied this issue recognizes that plaintiffs' attorneys have used the civil RICO statute to distort the incentives and remedies that the federal securities laws provide. They have done this by taking advantage of a loophole in RICO that has permitted inclusion of securities law violations as a predicate act for which a defendant may be tagged as a racketeer and held liable for treble damages and attorneys' fees. Additionally, because many claims that could be asserted as securities law claims can also be characterized as mail or wire fraud, and because mail and wire fraud are also predicates for civil RICO liability, plaintiffs' attorneys have a devastating potent and readily available alternative for bringing actions under RICO rather than under our securities laws. As SEC General Counsel Goelzer stated in 1989 testimony before the House Judiciary Committee:

> The Commission is concerned, however, that the civil liability provisions of RICO can in many cases convert private securities law fraud claims into RICO claims. Successful plaintiffs in such cases are entitled to treble damages, despite the express limitations on recovery under the securities laws to actual damages. Private plaintiffs may be able to bypass the carefully crafted liability provisions of the securities laws, and thereby recover damages in cases in which Congress or the courts have determined that no recovery should be available under those laws. As a result, civil RICO places increased and unwarranted financial burdens on commercial defendants, including securities industry defendants.

Congress initially passed securities laws in order to impose a uniform system of duties and liabilities upon the securities industry, and to protect investors. Each time that we have amended the securities laws, we have balanced the need to provide the maximum amount of consumer protection possible against the need to maintain fluid, stable, and reliable markets. Today, we are seeking to enact litigation reforms because we have identified significant problems and abuses in the current system that are hurting investors, consumers, and the nation as a whole. We are seeking to enact changes to our federal securities laws in those areas where we have identified reforms are needed. We are seeking a losers pay provision to punish plaintiffs for bringing frivolous actions. In addition, we are seeking a limitation on joint and several liability to restore fairness to the federal securities laws. The failure to adopt my amendment would undermine the reforms we are hoping to achieve today without any award, unscrupulous attorneys could do an end run around the reforms by using the RICO statute. Through the use of civil RICO, plaintiffs will be able to initiate law suits based on alleged securities law violations, and will be entitled to seek treble damages and attorneys' fees.

In evading the reforms we are seeking to achieve today, enterprising plaintiffs' attorneys will have the continuing ability to extort settlements from innocent defendants based on claims that would allow them no chance of recovery under the reforms before us today. Lest we have any doubt about the ability of plaintiffs' attorneys to leverage settlements from defendants under civil RICO, we need only listen again to Justice Marshall, who explained that "[m]any a prudent defendant, facing ruinous exposure, will decide to settle even a case with no merit. It is thus not surprising that civil RICO has been used for extortive purposes, giving rise to the very evils it was designed to combat." *Sedima*, 105 S.Ct. at 3295. Unless we adopt my amendment, a plaintiff's attorney, alleging a single violation of the securities laws, will be able to bring an action under civil RICO and leverage a hefty settlement from an innocent victim. Because an element of a RICO action is a pattern, plaintiffs have the latitude to conduct discovery of records dating back 10 years or more. Such discovery costs defendants millions of dollars. Often, faced with the cost of these multimillion dollar discovery fees, and the prospect of being labeled a racketeer, and being held liable for treble damages and attorneys' fees, defendants are forced to settle meritless cases.

Our economy's health depends on the efficient operation of its country's capital markets. We must continue to balance the provision of adequate remedies for injured investors and the imposition of excessive penalties on all participants in our capital markets. The treble damage blunderbuss of RICO undermines this balance and imposes exorbitant litigation costs, impedes the raising of capital and ultimately puts these costs on the shoulders of consumers and emerging innovative companies.

Mr. Chairman, at this point I would like to read several comments from judges across the country who have commented on the abuses prevalent in civil RICO litigation. If there is one message we should extract from these opinions, it is that we must reform RICO to prevent plaintiffs' attorneys from bringing actions more appropriately brought under our securities laws.

"It is true that private civil actions under the statute are being brought almost solely against such defendants [respected and legitimate businesses], rather than against the archetypal, intimidating mobster. Yet this defect—if defect it is—is inherent in the statute as written, and its correction must lie with Congress."—The Supreme Court, *Sedima*, 105 S. Ct. at 3286–87.

"I have a feeling about RICO in the civil world * * * as being the most conspicuous case I know of legislation requiring Congressional attention to revision."—Former U.S. District Court Judge Simon Rifkind of the Southern District of New York.

"An imaginative plaintiff could take virtually any illegal occurrence and point to acts preparatory to the occurrence, usually the use of the telephone or mails, as meeting the requirement of pattern."—U.S. Circuit Court of Appeals for the 5th Circuit Judges Higginbotham, Politz, and Jolly (*Montesano* v. *Seafirst Commercial Corp.*, 818 F.2d 423, 424 (5th Cir. 1987)).

"Congress * * * may well have created a runaway treble damage bonanza for the already excessively litigious."—Federal Circuit Court of Appeals for the 7th Circuit Judges Wood, Cummings, and Hoffman (*Schacht* v. *Brown*, 711 F2d, 1343, 1361 (7th Cir. 1983)).

"[O]ne of the proliferating developments in civil litigation has been the use of RICO * * * in civil claims, in routine commercial disputes, including those arising under the federal securities laws. I think that the proliferation of these claims and the use of a law that was designed to eliminate organized crime is a very bad influence on the commercial community."—U.S. District Court Judge Milton Pollack of the Southern District of New York.

"McCarthy, though armed with substantial damage claims, with a requested ad damnum of $312,220 in compensatory and $1 million in punitive damages, obviously cannot resist the treble damages and attorneys' fees lure of RICO."—Judge Shadur, U.S. District Court for the Northern District of Illinois (*McCarthy Cattle Co.* v. *Paine Webber, Inc.*, 1985 WL 631 (N.D. Ill., April 11, 1985).

"[The plaintiff's complaint] demonstrates at least two facts of life in an urban district court in a litigation-prone society: * * * RICO's lure of treble damages and attorneys' fees draws litigants and lawyers * * * like lemmings to the sea."—Judge Shadur (*Wolin* v. *Hanley Dawson Cadillac, Inc.*, 636 F. Supp. 890, 891 (N.D. Ill. 1986).

Mr. CONYERS. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from California [Mr. COX].

Mr. Chairman and members of the committee, this amendment, we must never forget, has arrived here by extraordinary means. It was accidentally, like when you sweep up trash at night in the Committee on the Judiciary. This little slip of paper called RICO fell to the ground in a corner. Nobody noticed it, and, therefore, we have a whole securities bill that went to the Committee on Rules, was dealt with, and then the Committee on Rules came back again and said, "Oh, we overlooked civil RICO, and we have an amendment, not to modify it as applies to securities, which has been the main use of civil RICO in securities ever since RICO was started. We said we will not pare it down, we will not deal with the other amendments that have always applied to RICO before in the Committee on the Judiciary without so much as mentioning this name RICO. We now have a measure in one sentence that will remove it from all securities legislation from this point on.

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Are you aware of the magnitude of what it is we are proposing to do here as the first amendment to this legislation on the floor? We are now saying that the fact that RICO was used in all of the major fraud cases, that we have now reached the point on the basis of a Supreme Court case that goes back 10 years to say that now RICO is so abused we must now get rid of it.

Remember, the last time I saw an idea about RICO was when the former gentleman from New Jersey, Mr. Hughes, developed a gatekeeper concept, in which we would filter through under a very strict set of principles, which cases might make it to a RICO suit.

But now—and I disagreed with that. But the gatekeeper concept was a very modest one. It kept RICO alive in terms of civil litigation. It was much more carefully crafted than a blanket exemption from RICO in all securities cases.

What we are saying is that all of the major fraud cases in which RICO busted people who were bilking millions of dollars, sometimes billions of dollars, is now going to be thrown in the trash heap, and we will not need it anymore.

That is why those who want to preserve RICO includes the Association of Attorneys General, the National Association of Insurance Commissioners, the U.S. Conference of Mayors, the North American Securities Administration associations. It is very clear that public prosecutors and regulators are aghast at the Cox amendment and the implications of what it has in store in us trying to police this very tricky, complex area of money crimes that is now still as much a problem has it has always been.

Civil RICO, with their treble damages, which frequently are used for great leverage purposes, can recover money which pay attorney fees and are a vital remedy that should not be diminished in any way. RICO is critical in the fight against savings and loan fraud, bank and insurance and financial crimes. Using civil RICO, the victims of white collar crime can sue these malfeasors for triple their losses, and it is frequently the only effective means for victims.

Do not throw the baby out with the bathwater. There has never been a minute's hearing in any of the committees of jurisdiction, certainly not judiciary, and I really must say that this is the most outrageous proposal in terms of securities regulation that I have ever heard. Vote down the Cox amendment.

Mr. McCOLLUM. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman. I rise in support of the amendment offered by the gentleman from California. In the last several Congresses the subject of RICO reform and, in particular, the use of the RICO statute in civil business disputes, has received significant attention. Hearings have been held; bills have been introduced; but in the end, nothing has happened. A law that was originally intended to strike a major blow to organized crime and racketeering, has continued to be used as a hammer in routine civil cases.

Today, we take a step toward meaningful civil RICO reform. This amendment will end inappropriate use of the civil RICO statute in an area of the law where it has been most abused—the securities law area. Congress never intended for the RICO statute to be used as the principal means of litigating disputes over securities transactions. The securities laws themselves provide aggrieved buyers and sellers with private causes of action so that they may seek compensation for their losses. The increases in the use of the racketeering statue for this purpose, however, has produced consequences that Congress never intended. The threat of RICO sanctions has had a chilling effect on entrepreneurship and ultimately economic growth.

Mr. Chairman, the civil RICO statute is tough, and it should be. The statute's provision for treble damaged and attorneys fees awards were designed to help private citizens strike back against criminal enterprises and other corrupt organizations. But they were never intended to be used as a means to litigate disputes between parties to bona fide securities transactions.

The amendment offered by the gentleman from California will begin the process of restoring the civil RICO statute to the uses that Congress intended. This amendment will put an immediate stop to one of the greatest abuses of the civil RICO statute.

It must be noted, however, Mr. Chairman, that adopting this amendment will not remedy all of the problems with the way the civil RICO statute is being misused. As chairman of the Subcommittee on Crime, where jurisdiction over this issue resides, I intend to introduce RICO reform. It is my hope that the subcommittee will bring forward legislation to help ensure that the RICO statutes are used in the manner that Congress originally intended.

In the interim, however, this amendment will stop some of the most egregious abuses of the civil RICO statute. This amendment is an important first step in the RICO reform process. I urge my colleagues to support it.

Mr. Chairman, I also want to commend the gentleman from Virginia [Mr. BOUCHER] for his work on the other side of the aisle in trying to get civil RICO reform over the past sessions of Congress. Many hearings were held in this past decade. Where there might not have been one this session of Congress, we have certainly had plenty on the subject in the past.

The truth of the matter is the House once even passed a reform of RICO that did not go through the Senate, which would have required a prior criminal conviction before you could get civil RICO. I dare say, to allay the gentleman from Michigan's concerns, there are plenty of remedies for those bad apples that commit serious fraud out there without going and using the civil RICO statute for the kind of abusive purposes that have been happening in the securities area and in many others.

So I commend the gentleman from California for offering the amendment, I urge my colleagues to support it, and I appreciate the time.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this is a most extraordinary day. When we considered the bill in the committee, this is the headline we got in the Wall Street Journal, a well-known bastion of left wing liberalism and excessive regulation said this: "Fraud Shields for Companies Gain in House."

I do not know whether we ought to amend RICO or not. There is not one scintilla of evidence in the record of the Committee on Commerce whether we should or we should not. And there is nothing there which says that we ought to take away the right of a person to sue civilly under RICO where there is interstate trafficking in stolen securities. RICO had securities violations as the subject of civil suits from the very first day that it was enacted into law.

Now, we have a market which is the most trusted in the world. It is for two reasons: One, because we have good enforcement at the SEC. The other is because we have an extraordinarily good system of private enforcement, enforcement by private citizens suing wrongdoers to collect for wrongdoing. And millions and millions of dollars are collected for this reason.

My colleagues never saw this language in the committee. We never knew it was coming until late last night, when the Committee on Rules decided that something should be done about this matter. No discussion was offered in the committee. The author of the legislation had nothing to say on this subject. No one on the Republican side had anything to say about the need to address the wrongdoing under RICO.

It is interesting to note that in Russia they are now saying, and this is what the chairman of the Russian Securities Fund had to say, "Each scandal chips away at investors' trust, and trust is the only thing we can rely on to get more business."

I have told the securities industry time after time, people think that the securities industry and the markets in this country run on money. They do not. They run on public confidence. And if there is public confidence, then everyone will make lots of money. What we are doing here is sneaking out of the Committee on Rules a proposal to repeal RICO, and it is not going to contribute to the trust of the American people in the securities market or in the marketplace.

The only confidence that is going to be boosted by this amendment is going to be the confidence of rascals and scoundrels, who will then be secure in the knowledge that if they engage in theft of resources belonging to others, that they are not going to get sued. That is all.

This legislation comes to the floor with abbreviated hearings and not adequate opportunity for amendments to be offered. The legislation is controlled by the Committee on Rules, which has said we will add RICO, which is not germane to the bill, and which is not even in the Committee on Energy and Commerce.

We are amending a statute which is not even under the jurisdiction of the Committee on Energy and Commerce, and we are amending it without ever having a word of hearings or a bit of evidence or testimony taken on the subject. Why is RICO taken up now when it could be addressed in another committee in proper fashion after appropriate hearings? I have no explanation. Perhaps the gentleman from California who offers the amendment has, but I seriously doubt if he does or will.

Many Americans had hoped that the Contract on America would be an engine for progress by making needed and targeted reforms. This amendment is just another demonstration that the contract instead has become a gravy train for any special interest with enough money and resources that they can get aboard and go where they want to go at the expense of the ordinary American.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from California.

Mr. COX of California. Mr. Chairman, I would just point out, we just saw an exhibit on the floor and, as is so often the case when one reads the headlines, you miss the story. In the fine print the gentleman from Michigan forgot to tell us the last sentence of that happens to be a concise statement of the purpose of the bill. It says, "The purpose of the bill," and this was actually on what he presented to us, but you could not read it, only the headline, "The purpose of this bill remains to reduce litigation to cut down on fraud committed by unscrupulous lawyers and professional plaintiffs."

Mr. FIELDS of Texas. Mr. Chairman, reclaiming my time, today we are seeking to enact fundamental reforms of the manner in which securities actions are litigated. In order to ensure that our reforms are comprehensive, we must make every effort to identify oversights or omissions in our legislation that could potentially hamper the effectiveness of H.R. 1058.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Michigan.

Mr. DINGELL. I was much impressed by the comments of the gentleman from California. The quote that he gave is an excellent one: "The purpose of the bill is to cut down on litigation and to cut down on fraud committed by unscrupulous lawyers and professional plaintiffs." And the authority that is quoted in the article is, guess who? The gentleman from California [Mr. COX].

Mr. COX of California. Mr. Chairman, if the gentleman will yield further, I think that the gentleman from Michigan earlier pointed out that the Wall Street Journal usually understands where to get their information, and there is not much question but that that is what the bill does, and in particular this amendment will help us to achieve that objective.

Mr. FIELDS of Texas. Mr. Chairman, reclaiming my time, as I was pointing out, there have been oversights, and this amendment seeks to address an oversight of the drafting. In the current bill we have failed to prescribe civil RICO actions based on conduct that is actionable in fraud and the purchase or sale of securities. Left uncorrected, this omission would seriously undermine our efforts today.

The original drafters of H.R. 10 recognized this fact and included this identical provision in title I, section 107. As a result of sheer error, section 107 was not included in any of the versions reported out of committee. By offering this amendment, the gentleman from California [Mr. COX] is seeking to do no more than reinsert this provision back into the Contract With America.

Mr. Chairman, it is particularly important to note that this amendment has the support of the U.S. Securities and Exchange Commission. In providing the views of the Commission to the Committee on Commerce on title II of H.R. 10 on February 23, 1995, this year, Chairman Levitt stated the Commission supports the elimination of civil RICO liability predicated on security law violations.

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The enactment of this legislation will provide much needed reform by helping curb frivolous securities actions. This amendment will go a long way toward guaranteeing meaningful reform because civil RICO actions are well-recognized vehicles for bringing frivolous lawsuits. If we do not adopt this amendment, plaintiffs' attorneys will be free to evade our reforms by merely bringing securities actions under RICO, thereby frustrating the efforts of this legislation.

We should have no doubt that if we fail to adopt this amendment, plaintiffs' attorneys will take full advantage of our omission. Almost every claim that a plaintiff alleges as a violation of securities laws may also be pled as a RICO violation. Plaintiffs' attorneys can easily allege both the enterprise and the pattern elements necessary to turn a securities action into a RICO claim, because most security law violations are committed in the course of conducting the affairs of a business or an enterprise.

Moreover, virtually all securities transactions involve the use of the mail or telephone.

Further demonstrating the need to enact this amendment is the significant number of securities fraud cases brought as RICO claims. As early as 1985, the American Bar Association found that 40 percent of all civil RICO cases filed in Federal courts were based on securities fraud. If we fail to pass this amendment, we will continue to leave this avenue wide open for the plaintiffs' bar. The failure to amend RICO to exclude issues for conduct that is actionable as a securities law violation would enable plaintiffs' attorneys to continue to seek treble damages and to evade the most important elements of the types of reform we hope to accomplish.

We need only compare the provisions of this legislation with those of the RICO——

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

(By unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 3 additional minutes.)

Mr. FIELDS of Texas. Mr. Chairman, we need only compare the provisions of this legislation with those of the RICO statute in order to identify those reforms that plaintiffs' attorneys will be able to avoid. H.R. 1058, this legislation, has a losers pay provision. RICO does not. H.R. 1058 preserves a one year statute of limitation. The RICO statute of limitations is longer. H.R. 1058 limits joint and several liability to knowing securities fraud; RICO does not. The list continues.

But the point is clear, unless we eliminate the RICO alternative, our reforms under this legislation will be undermined.

The U.S. Supreme Court Justice, Chief Justice Rehnquist, Justice Marshall, and the Judicial Conference have all recognized the ability of plaintiffs' attorneys to bring meritless actions under RICO and leverage substantial payments for defendants through such actions. As Justice Marshall explained about civil RICO actions in 1985, and I quote:

> Many a prudent defendant, facing a ruinous exposure, will decide to settle even a case with no merit. It is thus not surprising that civil RICO has been used for extortive purposes, giving rise to the very evils that it was designed to combat.

Mr. Chairman, we enacted civil RICO many years ago to provide private citizens with a weapon against organized crime and racketeering. We did not intend RICO to be a supplement to the Federal securities laws. We never intended to give trial lawyers treble damages in these types of civil lawsuits.

Nonetheless, unless we adopt this amendment, plaintiffs' attorneys will use RICO to evade our efforts of reform.

I urge all of my colleagues to support the Cox amendment and follow through with our promise to the American people to provide common sense and comprehensive legal reform.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the whole purpose of this debate, the whole purpose of this multi-year effort to bring this issue to the floor and eventually hopefully to pass this bill, is to change the incentives in this system, in this legal system, to change them in a very positive way, to create an incentive system that says, if you find knowing fraud, prosecute it. You will have, under knowing fraud, under the examples illustrated by several of my colleagues on this side, you will have the full recourse of 10(b)(5) litigation remedies at your disposal. You will have full joint and several liability available to you. You sue all the parties. They are all 100 percent responsible. It is up to them to figure out who is going to contribute to each other in a knowing fraud case.

It says where there is not knowing fraud—and by the way, the original statute we are amending never talked about anything but knowing fraud. Courts have invented another standard of violations of the statutes. Courts have invented something that they said was called recklessness, something close to knowing. It was so close to knowing they said that you almost had to be believed to have known that you were committing a fraud or you were so reckless, you were so in fact in violation of common standards of what we perceive to be good behavior that you literally will be presumed to have known.

In those cases where it is a reckless behavior, not a knowing behavior, this statute creates a new liability structure. It says, in those cases that you identify the persons who were reckless. You identify their percentage liability or the court does eventually in the judgment, and each is proportionately liable for their share of the recklessness, as opposed to the joint and several liability that attaches to knowing fraud, the guys that intend to harm you and, in fact, do harm you.

It is the purpose of this statute to create these two liabilities for one simple reason: Without a change in the law, as this bill suggests, plaintiffs will, plaintiffs' lawyers will continue to file these shakedown lawsuits, scattershot everybody connected with the company, everybody associated with it, officers, board members, accountants, lawyers, everybody connected with a company, and then sit back and do discovery and continue the litigation until somebody says, wait a minute, we have had enough, here is 10 cents on the dollar. We are out of here. That has been the practice.

If you want to discourage that, you need to make this important change in the way these kinds of lawsuits are brought. Remember we are talking about civil lawsuits. This bill does nothing, nothing to change the authority nor the responsibility of the SEC to prosecute claims of fraud under its enforcement authority already guaranteed in law and preserved in this statute.

What this amendment does, and it is supported by the SEC, is to say that plaintiff lawyers who do not like these reforms, who want to continue bringing these massive lawsuits to shake people down, will not be able to use the civil processes of RICO to do that. They are going to use this reform statute. Without this amendment, this reform is meaningless. Lawyers can simply continue to do, as some have suggested they will do, and that is use the treble damage approach of the RICO statute to avoid the reforms of this legislation and, therefore, continue to wreak havoc upon a legal system that is creating some awful problems for us in the marketplace.

We have heard through witnesses before our committee in the last Congress and this Congress what some of those awful problems are, problems in which small companies, particularly growth companies, who are doing their best with a new invention to get it going and to produce it and sell it to the marketplace find that their stock may jump up one day, jump down the next. And all of a sudden they are in a massive lawsuit, they and everybody connected with them.

Problems that we have found in companies across the board where they have said, we would like to tell you more about our company, if you want to invest in it, but we are afraid to tell you anything because whatever we say somebody is going to say we misled you in a lawsuit next week. And we are going to find ourselves involved in another massive litigation with a lot of court costs and legal fees.

If we do not cure those problems soon, this legal mess created under 10(b)(5) will continue to erode the productivity of small growth companies who are desperately trying to employ Americans and to produce more products not only for our marketplace but for the marketplaces of the world. It is that simple.

Lawyers who actually use this system today and who want to fight these reforms would love to have somewhere else to go, some other system, and using the civil RICO is the way they might go. This amendment needs to be passed.

Mr. WHITE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take 5 minutes because this is really a very simple argument. If Members do not want to reform the securities laws, then they do not want to vote for this amendment. But if they do want to reform the securities laws, this amendment is absolutely essential. Why? Because the RICO statute which this amendment would take away from applying to securities laws has become the stealth bomber of civil litigation in our society.

This is a statute that is so poorly drafted by this body that plaintiffs' lawyers can apply it to everything but the kitchen sink. And anybody who has practiced law knows that the way around an established regime in the statutory framework is to file a civil RICO suit because then none of the laws apply.

That is why a statute designed to apply to racketeering and organized crime in 40 percent of the cases now applies to securities lawsuits. This is a statute that is out of control. If we do not exempt this litigation from this statute, we will never get this job done.

Mr. Chairman, we are trying to reform the securities laws. Reform is desperately needed. I think almost all of us acknowledge that. But if we do not eliminate RICO, we are not going to get this reform done.

RICO is a loophole large enough for any plaintiff's lawyer to drive the largest Mercedes Benz through. We have to exempt it from this statute. I urge every single one of my colleagues who believe in securities law reform to vote for this amendment.

Mr. BRYANT of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to start by saying, I really think that the offering of this amendment today is a low point in the operation of this House this year. This is an amendment that has a sweeping impact, yet we never had any hearings on this matter. Why? Because the committee with jurisdiction over this bill, which the gentleman from Texas, [Mr. FIELDS] presides over, at least the subcommittee, does not even have jurisdiction over RICO.

The result of that is that we are going to hear in this debate today, we have already heard, we are going to continue to hear a whole series of misstatements and a lot of remarks that are going to be read that somebody else wrote. Why? Because nobody in the debate on either side knows very much about RICO.

I used to be the cosponsor in previous Congresses of a bill, along with a number of my colleagues on this side of aisle and that side of the aisle, to reform the RICO statute. There are problems with it. But I dare say, nobody who has spoken so far on that side of aisle or on this side of the aisle knows what they are. The fact of the matter is, we never saw this amendment until late last night. We never had any hearings on it. I just have to say that bringing a sweeping proposal like that to the House that has such an enormous impact without anybody really knowing what it is is, in my view, not the way to legislate. I urge Members to look at it in that light.

We have heard a number of interesting statements. The last speaker a moment ago, the gentleman from California [Mr. COX], has gotten up and said, we have got to get rid of RICO. It is a loophole in the law. You probably believe that it is loophole in the law. Somebody our staff told you that. Maybe a lobbyist told you that.

But I read to the gentleman from California [Mr. COX] just a moment ago and I will read for the benefit of this gentleman as well, 18 United States Code which says, "Any offense involving fraud in the sale of securities is one of the predicate acts of racketeering." It has been there in there from the very beginning. It is not a loophole. It has always been in there. Surely the gentleman would not wish to mislead the House. I am not sure he did not intend to. We have all made mistakes.

The fact is, when you do not have any hearings on a proposal, when it has not been seen by anybody until the night before the bill comes up, there are going to be mistakes made. And that is one of them.

We heard the gentleman from California [Mr. COX] and others stand up and praise the SEC and say the SEC wants this. We do not know if the SEC wants it or not. There was language that was sort of a side bar language in their testimony with regard to the underlying bill that made some statements with regard to the need to reform RICO. I agree that there is a need to reform RICO. But the fact is, the SEC did not testify on RICO. Why? There have not been any hearings on RICO before the House of Representatives or any of its committees this year. So we do not know what their clear view is of RICO.

Also they invoked the SEC. They say we should look at these casual remarks that they have made and apply them to our own judgment of RICO. What about the SEC's opinion of the loser-pays bill that you brought up here? They think it is a bad idea. What about their opinion of your standard of recklessness? They think it is a bad idea. What about the SEC's opinion of your definition of fraud on the market? They think it is a bad idea. And what about the SEC's opinion of the pleading requirements which you have put in the bill? They think those are a bad idea as well.

☐ 1815

I note that the gentleman repeatedly gets up and says, "It is a shame that plaintiff just does not recover enough in these cases." This is a RICO statute that provides treble damages. That is the one you want to repeal with this amendment. You might not have even realized that, inasmuch as there were no hearings, and very few people in this debate today are going to know very much about what the RICO statute even says.

Finally, I think it is perhaps maybe a symbol of this whole debate, but after the gentleman from Michigan, Mr. DINGELL, made a stirring speech condemning this whole effort, the gentleman from California, Mr. COX, gets up and referred to Mr. DINGELL's clipping, and reads to him from the last line of the clipping, making it appear that somehow the Wall Street Journal has said the opposite of what Mr. DINGELL says.

Then Mr. DINGELL gets up and realizes who Mr. COX is quoting; he is quoting himself. Why? Because he did not have any hearings, and he does not have anybody else to quote. This amendment is not based upon any hearings, it is not based upon any jurisprudential, it is not based upon any data, any economic study, it is based upon an idea those guys had late last night.

I urge Members to vote this amendment down and restore some dignity to the proceedings of this House.

Mr. BILBRAY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I happen to have heard my colleague, the gentleman from Michigan, mention in not too glowing terms the concept of rascals and rogues who had capitalized off of certain situations in our society. My question is as to who are the rascals and who are the rogues.

Frankly, when we have 40 percent of the cases under the RICO being identified as being not as the original intention to the depth of what the original intention was supposed to come out, Mr. Chairman, there are rascals and rogues who would manipulate the law for their own personal gains. This amendment would try to rectify that problem.

I do not think anybody who voted for the original intention expected it to be a free ride for those in the legal profession, to be able to dig deep into other people's pockets, or to be able to have procedures that they could not use in any other civil cases.

However, to take advantage of a law that was meant to stop racketeering, to take advantage of legislation that was meant to protect the people of this country from organized crime, truly is immoral. Frankly, I think that this abuse that has been recognized by the Supreme Court is probably a good example of why the bar associations of this country probably are not doing their job, and because of that, we need to do our job here to straighten out abuses that have become obvious, obvious to the point to where we have to correct the well-intentioned RICO regulations.

Mr. Chairman, I think that we do have rascals and rogues out there, a segment of our society that refuses to live by the rulings and the good intentions that the rest of us take for granted. There are those that take a look at legislation and say what a great opportunity not to have to play by the rules.

I think this amendment, Mr. Chairman, will help to straighten it out and say we will live by the rules, and I think that the amendment will say that the rules will be set the same for these cases.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. BILBRAY. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, about the gentleman's concern, does he know that alleged Mafia links in securities cases would not be prosecutable under RICO? Is that part of his intention in repealing RICO, as applies to securities?

Mr. BILBRAY. Of course not, Mr. Chairman. There are 40 percent of the cases being used under this. Is the gentleman saying that 40 percent of the cases under RICO are all racketeering?

Mr. CONYERS. No, I have no idea.

Mr. BILBRAY. Here is the point: RICO is meant to go after racketeering. It is being misused by attorneys, because it means they do not have to play by the other rules.

Mr. CONYERS. If I could remind the gentleman, we have already read the statute on the floor. It includes as a predicate offense securities violations. It is in plain English, and it was there from the first day that RICO was enacted into law, having passed this Congress.

However, my point is, would the gentleman preclude Mafia activities with securities from being a prosecutable offense under RICO? Because when we take RICO away, we are taking away the opportunity to prosecute Mafia involvement with securities.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. BILBRAY. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. Mr. Chairman, I apologize to the gentleman on the other side of the aisle that I do not have the statute book with me, but as the gentleman knows, the civil part of RICO is just one or two sentences, and that is that one or two sentences that has made a number of civil actions to be brought under RICO. That is not what our intent is.

Mr. BILBRAY. It does not constitute 40 percent of the legislation.

Mr. FIELDS of Texas. If someone is breaking the law, as the gentleman alleges, as a Mafia mobster, that person would still be penalized under the criminal sections of RICO.

Mr. BILBRAY. Mr. Chairman, what we are talking about, those one or two sentences, are being manipulated for 40 percent of the actions. I do not think the legislation, and the gentleman was here, probably, I was not, I cannot believe the gentleman meant for 40 percent of this law to be used in this manner. I cannot believe that was his intention.

Mr. CONYERS. If the gentleman will yield, we did not mean any percentages, Mr. Chairman. Nobody had any percentages in mind. The fact of the matter is if the law can apply in a case being prosecuted civilly, it ought to apply.

Treble damages under RICO is an incredibly important tool, without which we are going to be at a loss for a lot of violations, including Mafia violations that are being reported in the Wall Street Journal.

Mr. BILBRAY. I think that what the gentleman is saying, see, the gentleman is trying to use that. This law was meant to go after the Mafia. The fact is it is being abused.

Mr. MARKEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to this amendment. This is Congress operating at its worst. The amendment that we have here on the floor was never considered before our committee. There were no hearings that were called on this issue. In fact, the statute that we are amending right now is a separate statute altogether, the RICO statute. It has nothing to do with the jurisdiction of this committee.

In fact, Mr. Chairman, this subject was never referred to our committee for consideration. Moreover, the Committee on the Judiciary, which does have jurisdiction over this issue, did not consider it, and had no witnesses on this subject as part of the process of bringing this bill out onto the floor.

Mr. Chairman, we can all have a debate about whether or not racketeering should be considered to cover this, that, or another category, or potential defendants in suits, but let us not kid ourselves. When our subcommittee held hearings on penny stock fraud in 1989 and 1990, we had to have our witnesses testify with bags over their heads because of the fear of retaliation by organized crime in the penny stock market of this country.

Mr. Chairman, for any of the Members who think that as we talk about racketeering, that somehow or other it is exclusive of the securities marketplace, believe me, the penny stock market was rife with organized crime, so much so that there were life-threatening circumstances that many of our witnesses felt they were going to encounter.

Mr. Chairman, that is even apart from the central question, though, that we have to answer tonight: Is it proper for this Congress to take up an issue of such a magnitude with no hearings, in fact, with markups before our committee, that is, a process by which we could make amendments to the legislation, that resulted in both subcommittee and full committee markups being truncated down to a point where there was no more than 2 or 3 hours on each occasion, even to consider amendments to the subject which was before us, much less this, which was not before us?

To then come out here with a historic amendment to a separate piece of legislation with the Committee on Rules having a special hearing last night to put in order a nongermane amendment to a piece of legislation that has nothing to do with the business, and then asking our Members to rush out here at 6:30 and cast a vote on that, it is unfair. It is wrong. Congress should not operate this way. It is completely unnecessary.

The Committee on the Judiciary, chaired by the gentleman from Illinois, is fully capable of having a hearing on RICO that considers all aspects of it, that has witnesses coming in from the Justice Department, from the States, from the private bar, and from all others to give testimony.

Congress tonight is being asked to cast a historic vote on a subject with no information before us except the opinions of a few Members who have been able to get a nongermane amendment put in order. It is Congress at its worst.

I recommend to all Members to vote "no" on such an important subject, and send that signal that this subject should be sent back to the Committee on the Judiciary so that they have hearings on the issue, and send us out a bill that deals with that relevant subject in a way that dignifies this most important of all legislative bodies in the country.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I am glad to yield to the gentleman from Michigan.

Mr. DINGELL. I would like to address, if the gentleman would permit, the substance of the amendment, Mr. Chairman. The amendment says "Except no person may bring an action under this provision if the racketeering activity as defined in section 1961," and so forth, "involves conduct actionable as fraud in the purchase or sale of securities" before the period.

What this means is if fraud involving securities is involved in the question that is involved in the lawsuit—

Mr. DINGELL. Mr. Chairman, I ask unanimous consent that the gentleman may proceed for 4 additional minutes.

Mr. COX of California. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. DINGELL. What this says, Mr. Chairman, because the language of the amendment reads as it does, is that if you are charged in a civil suit with violation of wire laws, of narcotics, or any of the other things which are prohibited under RICO, you had better make darned sure that you have been involved in some way with securities, because then you get a wash.

This amendment guts RICO. It guts civil suits under RICO. It should be rejected.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

(At the request of Mr. FIELDS of Texas and by unanimous consent, Mr. MARKEY was allowed to proceed for 3 additional minutes.)

Mr. MARKEY. Mr. Chairman, I yield to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Chairman, just so that we understand, because of the redundant way in which the amendment is drawn, it says that if the suit by a citizen involves securities, you cannot sue under RICO, so you would not be able to sue under RICO for any of the other things which are prohibited under RICO: for example, murder; for example, violation of narcotics laws; for example, participating in a criminal enterprise of any kind, or for any kind of interstate fraud, gambling, narcotics, or whatever it might happen to be.

Mr. Chairman, if we are going to deal with the question of RICO reform, then good sense says that we should deal with it well. We ought not offer, simply because the individual can rush into court and say "But you cannot sue me under RICO for gambling or narcotics because I was involved in securities, and the language of the Cox amendment says that I can't be sued if securities were involved."

I do not blame the gentleman from California for objecting, because I would not want anybody to say these things about me on the floor, but the hard fact is the legislation is poorly drawn, it is hurried to the floor without proper hearings, without any intelligent consideration, and it has results far different, far broader, far worse from the standpoint of RICO, law enforcement, and getting at criminals generally. That is what is involved here.

The amendment ought to be rejected, if for no other reason than it is sloppy work. It is an embarrassment to the House. It may not embarrass the author of the amendment, but it assuredly embarrasses me, because I believe that this body should legislate well and efficiently. It should legislate wisely, so we do not surprise ourselves with the stupid consequences of irresponsible, unwise, and careless work. I urge that the amendment be rejected.

□ 1830

Mr. LEWIS of California. Mr. Chairman, I move to strike the requisite number of words, and I yield to my colleague, the gentleman from California [Mr. COX].

Mr. COX of California. I thank the gentleman for yielding.

I am disappointed with the intemperate remarks of the gentleman from Michigan who certainly knows that we have had ample testimony on the subject of RICO in many, many committees in this Congress over years and years and years which I recounted when the gentleman apparently was not on the floor commencing in 1985, dating all the way up to this year when just a few weeks ago, the current Commissioner of the Securities and Exchange Commission came before our Committee on Commerce and supported this amendment. He also has sent a letter to the current chairman of the Committee on Commerce supporting this amendment.

I mentioned that Abner Mikva has testified before Congress in support of this amendment, in support of RICO reform. I mentioned that the Supreme Court of the United States when it examined this issue 10 years ago found that it is up to Congress to fix this problem and both the majority and the minority in that Supreme Court decision said that RICO is being stretched beyond what Congress originally intended in the securities area.

I even quoted from Justice Thurgood Marshall. Thurgood Marshall was in the dissent, in the minority in that case, and it was Thurgood Marshall and Justice Powell who would have voted to limit RICO in the Supreme Court, but we are doing it here in Congress because majority said it is really Congress' mistake, Congress should fix it. The SEC's general counsel has testified in favor of this and we quoted from his testimony. I have submitted for the RECORD comments from judges across America who have said that this is an abuse. Almost all of the examples that we just recently heard were examples where criminal RICO, which is the whole bulk of the statute, civil RICO is only a few sentences, where criminal RICO should be used.

It is certainly important that criminals be prosecuted and that is exactly what will happen before and after this amendment. But what we do not want to see is for our carefully crafted Federal securities laws to be shunted aside and instead for people to be able to use a statute never intended to apply in these civil cases in this way so that they can get treble damages, something not provided for in our securities laws, so that they can get discovery going all the way back 10 years to show a pattern which is part of RICO, not part of the securities laws, and in short so they can gin up settlements where a settlement is not in order.

This is exactly the kind of securities litigation fraud that we are here to punish and we certainly should not do anything that would permit it to continue.

I urge my colleagues very strongly to support this amendment. If there are no further comments, I would ask for a vote.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. COX].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. FIELDS of Texas. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 292, noes 124, answered "present" 1, not voting 17, as follows:

[Roll No. 209]

AYES—292

Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Bonilla
Bono
Boucher
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Clinger
Clyburn
Coble
Coburn
Collins (GA)
Combest
Cooley
Costello
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLauro
DeLay
Deutsch
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Evans
Everett
Ewing
Farr
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kennelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lucas
Maloney
Manzullo
Martini
Mascara
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Minge
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Nussle
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Salmon
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Vento
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—124

Abercrombie
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bonior
Borski
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Clay
Clayton
Coleman
Collins (IL)
Collins (MI)
Conyers
Coyne
Cramer
DeFazio
Dellums
Dicks
Dingell
Dixon
Doggett
Engel
Fattah
Fields (LA)
Filner
Foglietta
Ford
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hefner
Hilliard
Hinchey
Jackson-Lee
Jacobs
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Luther
Manton
Markey
Martinez
Matsui
McCarthy
McDermott
McHale
McNulty
Meehan
Menendez
Mfume
Miller (CA)
Mineta
Mink
Nadler
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Pomeroy
Rahall
Reed
Reynolds
Richardson
Rivers
Roemer
Roybal-Allard
Rush
Sabo
Sanders
Schroeder
Scott
Serrano
Skaggs
Slaughter
Stark
Stokes
Studds
Stupak
Taylor (MS)
Thompson
Torres
Towns
Tucker
Velazquez
Visclosky
Volkmer
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn

ANSWERED "PRESENT"—1

Lowey

NOT VOTING—17

Boehner
Condit
Flake
Gibbons
Greenwood
Hansen
Jefferson
Largent
McDade
McKinney
Meek
Murtha
Norwood
Rangel
Rose
Roth
Yates

□ 1851

The Clerk announced the following pairs:

On this vote:

Mr. Largent for, with Mr. Flake against.
Mr. Roth for, with Mr. Jefferson against.

Messrs. JOHNSON of South Dakota, GENE GREEN of Texas, and LEVIN changed their vote from "aye" to "no."

Ms. LOFGREN and Messrs. PETERSON of Florida, THORNTON, and MOAKLEY changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. LARGENT. Mr. Speaker, had I been present for the following votes on Tuesday, March 7, 1995, I would have voted as follows:

On House Resolution 105, agreeing to the resolution—"yea."

On the Cox amendment to H.R. 1058, to prohibit claimants from bringing securities lawsuits under Racketeer Influenced and Corrupt Organizations [RICO] Act—"yea."

AMENDMENT OFFERED BY MR. FIELDS OF TEXAS

Mr. FIELDS of Texas. Mr. Chairman, I offer a technical amendment.

The Clerk read as follows:

Amendment offered by Mr. FIELDS of Texas: Page 9, line 5, strike "verifies" and insert "certifies".

Page 11, line 21, and page 13, line 20, strike "any settlement" and insert "any proposed or final settlement".

Page 12, line 9, insert "per share" after "potential damages".

Page 14, beginning on line 18, strike "The order shall bar" and all that follows through line 23, and insert the following:

The order shall bar all future claims for contribution arising out of the action—

"(A) by any person against the settling defendant; and

"(B) by the settling defendant against any person older than a person whose liability has been extinguished by the settling defendant's settlement.

Page 16, line 20, insert "section 10(b) of" after "under".

Page 17, line 6, insert "to state" after "or omits".

Page 17, line 25, strike "or sellers" and insert ", sellers, or security holders".

Page 18, line 2, strike "consciously".

Page 19, line 25, insert "knowledge and" after "paragraph (1),".

Mr. FIELDS of Texas (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. FIELDS of Texas. Mr. Chairman, this amendment contains only technical and conforming changes that have been agreed to by the majority and minority.

The amendments clarify that disclosure is required for both proposed and final settlements, and that such disclosures includes a statement of potential damages per share. They also prevent settlement discharge bar orders from prohibiting a defendant from using an indemnification agreement or suing a subordinate. The amendments clarify that the new section 10A applies only to actions under old section 10(b) and make certain other technical and conforming changes.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to my friend, the gentleman from Massachusetts.

Mr. MARKEY. Mr. Chairman, I thank the gentleman for yielding.

Indeed this amendment does include several technical changes which have been agreed upon between the majority and the minority, and we would recommend them to the full committee.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. FIELDS].

The amendment was agreed to.

Mr. BLILEY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I am about to make a motion that the committee do rise, but before doing so I would like to announce that when the Committee returns to this measure tomorrow, the first order of business will be the amendment of the gentlewoman from California [Ms. ESHOO].

Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mrs. VUCANOVICH) having assumed the chair, Mr. COMBEST, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes, had come to no resolution thereon.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 956, COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

Mr. LINDER, from the Committee on Rules, submitted a privileged report (Rept. No. 104–69) on the resolution (H. Res. 108) providing for consideration of the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PERMISSION FOR SUNDRY COMMITTEES AND THEIR SUBCOMMITTEES TO SIT TOMORROW DURING THE 5-MINUTE RULE

Mr. HASTERT. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the 5-minute rule. The Committee on Banking and Financial Services; the Committee on Economic and Educational Opportunities; the Committee on Government Reform and Oversight; the Committee on House Oversight; the Committee on International Relations; the Committee on National Security; and the Committee on Transportation and Infrastructure.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. DOGGETT. Mr. Speaker, reserving the right to object, we have consulted with the ranking minority member of each of those committees and have no objection to their meeting while the House is in session.

Madam Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

□ 1900

SPECIAL ORDERS

The SPEAKER pro tempore (Mrs. VUCANOVICH). Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

WE NEED A NEW ECONOMIC NATIONALISM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. GEPHARDT] is recognized for 5 minutes.

Mr. GEPHARDT. Madam Speaker, I rise today to call my colleagues' attention to an important finding in last week's issue of Business Week.

I am speaking of an economic reality which may be new to the business press in the United States—but has been plaguing millions of hard-working middle-class families for more than 16 years.

The simple fact is corporate profits are surging, but the working people who stand behind those profits are seeing their incomes fall.

That is why Business Week concluded in an editorial, and I quote,

> The middle class has shouldered much of the pain * * * that has made Corporate America so productive and competitive in global markets. Now is the time for the middle class to share in the fruits of higher productivity.

When you look at the facts, it is clear that we are in the midst of a powerful business boom. Business Week reports that, despite the Federal Reserve's efforts to halt our economy, corporate profits among 900 leading companies grew by an astonishing 71 percent in the fourth quarter of 1994.

Profits grew by a whopping 41 percent for all of 1994, the biggest increase since Business Week began keeping these statistics back in 1973.

But while business has never been better, for middle-income families, the economic crunch continues.

Business Week reports that American household wealth has actually fallen by about half of 1 percent—only the eighth time it has dropped in 30 years.

This is something to which attention must be paid, especially by those who talk about family values.

Look at what is happening to the families that have given up every minute of family time while parents work two, three, even four jobs. How can you build a strong family when you are working day and night just to pay the bills?

When I was growing up in the 1950's, America brought a higher standard of living to a growing number of our people.

As profits flourished, the people behind those profits saw their real wages rise.

But today, working people cannot even expect to share in the fruits of their own labor.

The statistics are as plain as day. From 1947 to 1973, American workers gave their companies an almost 90 percent increase in productivity, and in return, their real wages increased by nearly 99 percent. They got as much as they gave.

But from 1973 to 1982, workers got only half as much of an increase in real wages as they gave in new productivity. And from 1982 through last year, they got only a third as much as they gave in real productivity.

For Democrats, the single, simple, fundamental task of our party—in this Congress, in this decade, in this generation—is to fight for the standard of living of working families and the middle class. We must heed the words of Business Week, and help the middle class to share in the profits and fruits of higher productivity.

That means that we must question a boom in which Wall Street is strong, but Main Street is still weak.

It means we must challenge an economy in which the Dow Jones keeps rising through the roof, but family fortunes keep falling through the floor.

And it means that the American people have to decide which political party is willing to stand up and fight for them—and which political party is standing in their way.

Democrats believe in a substantial minimum wage increase—because you cannot support a strong economy, let alone your own family, on $8,500 a year. People ought to be paid more if they are working than if they are on welfare, and too often, we know that is not the case today.

Republicans not only oppose a minimum wage increase, House Republican Leader DICK ARMEY wants to abolish the minimum wage altogether. I ask Mr. ARMEY or those who agree with him, could you raise a family on $8,500 a year?

Democrats believe that a capital gains tax cut is not the first priority, that we need a middle-class tax cut, to build up the community of consumers who buy America's products.

Republicans not only oppose a middle-class tax cut, they want to give that tax break to the wealthiest investors, forcing deep cuts in the programs working Americans need most; school lunches for children, food stamps, Social Security, Medicare.

Democrats believes that globalization of our economy should not mean the pauperization of our middle class. It should not mean throwing our workers into roller-coaster competition with third-world workers who earn as little as a dollar a day.

And it does not have to mean that, if we change the way we do business, both home and abroad.

We need a new economic internationalism, to bring the third world into the global economy, without submerging developed nations into the third world, to lift them up, without dragging ourselves down.

We need a new economic nationalism. Not an effort to isolate ourselves, but a commitment by business, labor, and government to hard-working, middle class families here at home.

We need a commitment to the notion of "Pay for Performance"—ensuring that productivity, quality, and creativity profit the people who are actually providing it. A powerful study by Laura Tyson and David Levine shows that if you reward workers' good results, you get even more progress. In the coming months, I will offer legislation to encourage companies to embrace such financial fairness.

Republicans, on the other hand, actually like the rampant globalization of our economy. They do not see lower wages, lower environmental standards, and lower labor standards as a problem; they see them as the solution. We have seen the results in these past 16 years: people suffer, even as profits soar.

Business Week's findings are powerful proof of the challenge we face: raising the standard of living for working families and the middle class.

And I think it is clear that this goal could not be farther from the Republican agenda. Just read the Contract. There is not so much as a nod or wink about real jobs or opportunities.

So it is up to the Members of my party—the Democratic Party—to devise real solutions to this very real national crisis.

IMPORTANCE OF INCREASING CAPITAL FORMATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan [Mr. SMITH] is recognized for 5 minutes.

Mr. SMITH of Michigan. Madam Speaker, during my 5 minutes I would like to comment on two different areas. One is to report on the testimony before the Committee on the Budget today. Witnesses appearing before the Committee on the Budget stressed the importance of increasing capital formation in this country if we expect to increase our standard of living.

I, and we all, should be particularly concerned, because as we compare what is happening in the United States with other nations around the world, we see that the United States ranks either last or very close to the bottom in terms of the amount of savings. For every take-home dollar, our savings are very low. You compare our 5 percent savings with countries like Japan at almost 19 percent, South Korea at approximately 32 percent, we see that we have encouraged spending and consumption rather than savings that are so important to having capital available for investment.

In comparing the United States with the rest of the world, we also see that the investment in those new tools and machinery per worker is lagging in this country compared to the rest of the world, and not surprisingly, the rate of increase in our productivity is also at nearly the bottom of the list.

I bring this to my colleagues because I think we are tremendously challenged today with a problem of other countries, now that we are past the cold war, doing everything that they can do to attract capital investment. If we want to increase our standard of living in this country, we cannot just look at pretend things like increasing the minimum wage. What we have got to do is look at true improvements in our economy and the true availability of more and better jobs by encouraging businesses to buy that machinery and that equipment and those facilities that are going to increase the efficiency of those workers, increase the productivity, and ultimately increase their wages and standard of living.

THE ATTORNEY ACCOUNTABILITY ACT

I would like to briefly comment on a second area, and that relates to the passage this afternoon of H.R. 988. I was disappointed that we ended up with only attorneys being able to offer amendments in the limited time period simply because of the rules and precedents that allow the recognition of members of the committee; in this case, essentially all the committee members of the Committee on the Judiciary are attorneys.

The title of the bill that we passed this afternoon was the "Attorney Accountability Act." In fact, this bill as currently written does little to make attorneys accountable. The only part of the bill that does anything to make lawyers accountable for their actions is the change in rule 11, and that change requiring a mandatory penalty for violation of the rule applies only in a small number of cases in which an attorney is actually sanctioned by a judge under rule 11 and, of course, as we heard in much of the testimony, there are very few sanctions, and even when there is a sanction, that attorney-judge has the latitude of not imposing any sanction on the attorney, but simply a sanction, a financial sanction on the client.

Madam Speaker, in conclusion, my amendment would have made an attorney liable for half of any attorney's fee award a client cannot pay. This sanction is not unduly harsh. There can be no award of fees unless: First, a settlement is offered; second, the offer is rejected; and third, the jury returns a verdict less than the offer.

In the few cases in which these conditions are met, the award is limited. First, it is capped at the amount of the offeree's expenses; second, it is limited to the actual costs incurred from the time of the offer through the end of the trial; and third, the judge has discretion to moderate or waive the penalty when it would be manifestly unjust.

These modest steps, it seems to me, should have been necessary if we truly intend to make attorneys accountable.

My amendment would have told lawyers, "This is a court, not a lottery office. You are an officer of this court, and as an officer of this court, you have a responsibility to the court and the other litigants not to waste their time and money, and if you ignore these responsibilities, you can be held liable."

Madam Speaker, I appreciate the opportunity to express these thoughts.

A TRIBUTE TO L.J. "LUD" ANDOLSEK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota [Mr. OBERSTAR] is recognized for 5 minutes.

Mr. OBERSTAR. Madam Speaker, earlier today it was my sad, but high personal privilege to offer a tribute to my dear friend, a great Minnesotan, and great American, the Honorable L.J. "Lud" Andolsek, during the Mass of Christian Burial at St. Jane de Chantal Church, Bethesda, MD. Lud served this House of Representatives for over 14 years as administrative assistant to my predecessor, the Honorable John A. Blatnik, and as chief clerk of the House Public Works Committee. It is only fitting and proper, therefore, that his contributions should be acknowledged and appreciated on the floor of this Chamber, which he loved and respected so greatly. Lud passed away last Friday, March 3.

L.J. "LUD" ANDOLSEK—A TRIBUTE

Regina, Kathy, Brendan, Nicholas, Kendall, Don and friends, all. We are gathered in the stark reality that death is not something that happens only in some other family, in some other place. It comes to our families, even to those whom we think indestructible . . . like Lud Andolsek.

It is natural—even necessary—to grieve that never in this life will we again see that beloved face, hear that special voice, feel that unique touch. But, we must also remember that Christ, too, wept at the tomb of Lazarus.

At the moment of death, what matters is not how long the years, but how great they were, how rich the moments, how generous the contribution to the lives of others.

Lud's were great years, as grand, as vital, as vibrant, as expansive as life itself—years lived fully, intensively, joyfully, without looking back over the shoulder, without regrets. Some second thoughts, to be sure, but regrets, never.

Meeting Lud was an unshakable, unforgettable experience. He took hold of you like a force . . . and he also took your measure.

He enjoyed putting on a gruff exterior, hanging signs behind his desk like: "If you think work is fun, stick around and have a helluva good time"; or: "I don't get ulcers, I give them," complete with ferocious art work.

Those who knew him best, though, knew there was a big marshmallow inside. I remember going home to Chisholm, visiting Grandma Oberstar. My grandmother, who, like Lud's parents, had emmigrated from Slovenia, talking about Lud, remembering him as a boyhood friend of my father and saying, "He always had such rosy cheeks." I thought about telling Grandma of the thick cigar, the clouds of smoke and, at times, the ashen complexion from incredibly long hours of work and decided that I shouldn't undermine her beautiful, almost cherubic image of "the Commish."

Lud's life was the stuff that makes up the "American Dream." Born to a family like so many others in Minnesota's Iron Range country—poor, but who didn't consider themselves poor—certainly no poverty of spirit, and rising to high public office.

He worked the hard youth of an iron ore miner's family. He was a journalist; goalie and player-coach of his college hockey team—a rarity in those days; National Youth Administration Director for Minnesota; distinguished military service; a brief career with the Veterans Administration; a long stint, through economically tough years with the late Congressman John A. Blatnik and the House Public Works Committee; and then, after decades of serving others, recognition in his own right, for his gifts and talents: Appointment by President John F. Kennedy to the U.S. Civil Service Commission as Vice Chairman—and reappointments and service under five presidents: Kennedy, Johnson, Nixon, Ford and Carter. Then, retirement.

Not content with—and too restless for retirement, Lud went out and organized the retirees, as President of the National Association of Retired Federal Employees, adding 100,000 to their numbers and forging NARFE into a political force to be reckoned with. Then, retirement again—but always restless, probing, inquisitive, determined, setting his iron will to overcoming obstacles.

He was proud of his Slovenian heritage—loved the music, the food, the language, the people.

He loved, revered and reveled in public service—for him, the highest attainment of the human community.

In the end—as in the beginning—with Lud, what mattered most was loyalty: to friends, especially his lifelong friend, John Blatnik; to principle: to veterans preference, to the idea that government should serve the least among us, that it should do good for people.

For Lud, the highest, most enduring loyalty was to family, to Regina, whom he loved steadfastly and with devotion; to his daughter, Kathy; her husband, Don; to his grandchildren Brendan, Nicholas and Kendall; his sister, Frances, and her family. He loved . . . fiercely, protectively, and—at the last—tenderly.

Lud touched our lives indelibly. Caught up with him in life, we are bound to him in death. He has met his test and left us a rich legacy. Our test is to live our lives so that what he meant to us can never pass away.

□ 1915

REMEMBERING WORLD WAR II

The SPEAKER pro tempore (Mrs. VUCANOVICH). Under a previous order of the House, the gentleman from California [Mr. DORNAN] is recognized for 5 minutes.

Mr. DORNAN. Madam Speaker, I wish I had an hour because my subject certainly is worthy of it.

Madam Speaker, 50 years ago today the House of Representatives came to a screeching halt, and so did the U.S. Senate. They stood in the aisles here and cheered because the United States had crossed the Rhine on the Ludendorf railroad bridge at Remagen. And in just these few minutes—I will expand my remarks later—but in just these few minutes I think again of Ronald Reagan's goodbye to his country 9 days before George Bush was sworn in as President.

In the close of President Reagan's goodbye after 8 wonderful years, he said, "We must teach our young people about the history of our country, what those 30 seconds over Tokyo meant." He mentioned D-day. He mentioned Vietnamese boat people, Vietnamese rescue at sea, with a refugee yelling up to an American sailor, "Hello, freedom man." He mentioned all the sacrifices that had gone before us. He told the children of America, "If your parents are not teaching you at the kitchen table the history of your country, hit them on it." I think that would be a very American thing to do.

Listen to this moment in history that President Eisenhower said was absolutely stunning.

Time magazine said it was a moment for all history.

After the war, General Eisenhower was quoted:

> Broad success in war is usually foreseen by days or weeks, with the result that when it actually arrives, higher commanders and staffs have discounted it and are immersed in plans for the future. This, however, was completely unforeseen.
>
> We were across the Rhine, 600 people, by midnight. We were across the Rhine on a permanent bridge, the traditional defensive barrier to the heart of Germany, the Rhine was pierced.
>
> Finally, defeat of the enemy, which we had long calculated would be accomplished in late spring, the summer campaign of '45 was now on our minds just around the corner.

General Eisenhower's chief of staff, his alter ego, General Walter Bedell Smith, termed the Remagen Bridge worth its weight in gold. And a few days later it collapsed, killing 14 brave engineers.

Let me give the names of our great heroes. The first ones across should certainly have gotten the Medal of Honor. When the young Brigadier General Hoge said, "Get across that bridge," a young sergeant and a young lieutenant did not pause or say, "But, sir, every sniper on the east side of that river is going to have my heart or my forehead in his gunsights." They just obeyed.

The first man across was a sergeant, the backbone of the military, Sergeant Alex Drabik of Holland, a suburb of Toledo, Ohio. He was a squad leader in the 3d platoon.

Madam Speaker, I yield to the gentlewoman from Ohio [Ms. KAPTUR].

Ms. KAPTUR. I say to the gentleman that Drabik was a very distinguished resident of my district for many years until his death about a year ago. We were very proud of his service. He was the first U.S. soldier across the Rhine.

Mr. DORNAN. I wish he was here. If I were running this place, I would have him address a joint session of Congress. That is what this man did to save tens of thousands of Germans who did not vote for Hitler who were being wiped out. All the people in the concentration camps that lived because the war ended 3 months earlier and had stopped them from starving to death and all of the untold GI's and the Navy and Army Air Corps and Marines and everybody that died.

By the way, today we were only day 17 of 36 days on Iowa Jima. The Navy shelling stopped today. The Marines were still pressing on to lose almost 6,000 people and 800 others killed in action.

Here is Drabik. He was with the 27th Armored Infantry.

The second man across was an officer, 2d lieutenant, and get this German-American name, Karl Timmermann, of West Point, not New York with the academy, but Nebraska, company commander as a 2d lieutenant, company CO, 27th Infantry Battalion, first officer over the bridge.

Sergeant Joe DeLisio, of Bronx, NY, platoon leader of the 3d platoon, Company A. He cleaned out a machine gun nest that was set on the bridge.

First Lieutenant Hugh Mott, Nashville, TN, platoon leader in Company B. I do not have time to go through them all: Doorland, Reynolds, Soumas, Windsor, Goodson, Grimball; Michael Chinchar, of Saddle River Township, NJ; Joe Petrencsik, of Cleveland; Anthony Samele, of Bronx, NY. I will put the story of this day the bridge over Remagan and what the final German commander said who was trying to blow up the bridge when he came back to see it months later. Every one of those men were the bravest and should have gotten the Medal of Honor. They all did get the Distinguished Service Cross.

(The document referred to is as follows:)

A DICTIONARY OF BATTLES

(By David Eggenberger)

Rhineland (World War II), 1945. Before the last of the German attackers had been driven out of the Ardennes bulge, the Allies had resumed their offensive against the Siegfried Line. Progress was so slow, however, that the large-scale effort became necessary to effect a breakthrough to the Rhine Valley.

On February 8 the Canadian First Army (Henry Crerar) launched Operation Veritable, a major attack southeast from Nijmegen, Holland, between the Meuse and the Rhine. The latter was reached on February 14. A converging thrust by the U.S. Ninth Army (William Simpson), called Operation Grenade, crossed the Roer River on February 23. The two advances linked up at Geldern, Germany, on March 3. Two days later the Allies had pressed to the Rhine from opposite Düsseldorf northward, leaving only a small German bridgehead at Xanten-Wesel. The Canadians eliminated this pocket on March 10. Meanwhile, to the south, the left wing of the U.S. First Army (Courtney Hodges) attacked toward Cologne on February 23 to cover the Ninth Army's right flank. This offensive swept across the Rhine plain, while the U.S. Third Army of Gen. George Patton punched its way through the Siegfried Line north of the Mosselle River.

On the central front the rest of the First Army and the Third Army, both under the group command of Gen. Omar Bradley, launched a broad attack on March 5 toward the middle Rhine (Operation Lumberjack). By March 10 the Americans had closed to the river from Coblenz northward through Bonn and Cologne (which fell March 7), to link up with the Canadians at Wesel.

The rapid advance to the Rhine yielded a surprising and rich dividend. On March 7 the U.S. 9th Armored Division discovered the railroad bridge and Remagen still standing. (It was the only Rhine bridge not demolished by the Germans.) In a daring gamble, leading elements dashed across the Rhine and seized a bridgehead on the east bank. Gen. Dwight Eisenhower, supreme Allied commander in Europe, ordered the new breakthrough hurriedly reinforced. Despite German counterattacks and determined efforts to wreck the bridge, Hodges rushed three corps (three, five, seven) across the river by bridge, pontoon, and ferry. By March 21 the bridgehead had grown to 20 miles long and 8 miles deep. (The Remagen success caused the Allies to shift the main axis of their attack from Field Marshal Sir Bernard Montgomery's northern group of armies to Bradley's central force.)

During the Remagen bridgehead build-up, the U.S. general Jacob Devers' Sixth Army Group launched its own advance to the Rhine (Operation Undertone). It took the form of a huge pincers movement against SS Gen. Paul Hausser's Seventh and First German armies. On March 15 the right wing of Patton's Third Army attacked south across the Moselle River into the Saar. Two days later Gen. Alexander Patch's U.S. Seventh Army began hammering through the Siegfried Line, headed northeast. By March 21 the joint U.S. offensive had crushed all German opposition west of the Rhine except for a shrinking foothold around Landau. Then on March 22 Patton's 5th Infantry Division wheeled from south to east and plunged across the Rhine at Oppenheim. Encouraged by light opposition in this area, the eighth Corps bridged the river at Boppard, 40 miles to the north, on March 24. Germany's last natural defensive barrier had now been breached in three places on Bradley's front.

The Rhineland battle inflicted a major defeat on three Nazi army groups—Johannes Blaskowitz in the north, Walther Model in the center, Paul Hausser in the south. Some 60,000 Germans were killed or wounded and almost 250,000 captured. This heavy toll, plus the loss of much heavy equipment, ruined the Nazi chances of holding the Allied armies at the Rhine. Americans killed in action totaled 6,570; British and Canadian deaths were markedly fewer.

THE BRIDGE AT REMAGEN—THE AMAZING STORY OF MARCH 7, 1945—THE DAY THE RHINE RIVER WAS CROSSED

(By Ken Hechler)

THE SIGNIFICANCE OF REMAGEN BRIDGE

For almost three weeks after the capture of the Remagen Bridge, American troops fought bitterly in the woods and gullies of the Westerwald. They inched forward, expanding the bridgehead hour by hour, pushing laboriously to the east, to the north and to the south. Not until March 16, when American forces reached the Bonn-Limburg autobahn, seven miles east of the Rhine, did they have the maneuver space in which to fan out. For the infantry and tankmen who slugged it out in the bridgehead, for the military police and anti-aircraft men who were strafed at the Rhine crossings by attacking planes, and for the engineers who struggled in the face of air and artillery fire to build pontoon and treadway bridges over the river, capture of the Remagen Bridge seemed to stiffen rather than weaken enemy resistance. To many of these men, it did not seem that crossing the bridge had accomplished much.

The capture of the Ludendorff Bridge materially hastened the ending of the war. It was an electrifying development at the moment, but it was followed a few weeks later by General Patton's sneak crossing of the Rhine south of Remagen at Oppenheim, and then by Field Marshal Montgomery's grand assault across the river south of Arnhem after extensive preparations and blasts on the trumpet.

One of Karl Timmermann's fellow townsmen from West Point, Nebraska, rumbled across a Rhine pontoon bridge with gasoline and supplies, several weeks after Timmermann's exploit. He commented that the Rhine seemed little wider than the Elkhorn back home and certainly not as wide as the Missouri River. He confidently told his friends that to cross a bridge like that was small potatoes. For years afterward, he spoke up in West Point American Legion meetings, in all the local bars, and at the corner drugstore, disparaging what Timmermann had done at Remagen.

The Germans had a far different reaction. In his conference with Field Marshal Kesselring two days after the capture of the Ludendorff Bridge, Hitler told him bluntly that the really vulnerable spot on the western front was Remagen, and that it was urgent to "restore" the situation there. Hitler took a personal hand in hurrying all available troops to reduce the Remagen bridgehead. The 11th Panzer Division wheeled southward from the Ruhr. The Panzer Lear and 9th Panzer divisions followed, swallowing many gallons of precious, high-priority gasoline. Many other divisions and scraps of divisions joined in the frantic German fight to contain the bridgehead.

Field Marshal Model's Chief of Staff, Major General Carl Wagener, summed up the German view as follows: "The Remagen affair caused a great stir in the German Supreme Command. Remagen should have been considered a basis for termination of the war. Remagen created a dangerous and unpleasant abscess within the last German defenses, and it provided an ideal springboard for the coming offensive east of the Rhine. The Remagen bridgehead made the other crossing of the Rhine a much easier task for the enemy. Furthermore, it tired German forces which should have been resting to withstand the next major assault."

The Remagen bridgehead was vital in helping to form the southern and eastern pincers for the Allied troops that surrounded and trapped 300,000 German soldiers in the Ruhr.

As sorely needed German troops were thrown against the Remagen bridgehead, the resulting disorganization and weakening of defenses made it much easier for other American Rhine crossings to be made to the north and south of Remagen. Just as the loss of the bridge was a blow to German morale, so did it provide a strong boost to American and Allied morale. Not only did it make the end of the war seem close at hand, but it also emboldened the combat troops when they were confronted with chances to exploit opportunities. It underlined the fact that the German army's soft spots could be found through aggressive attacks, thereby spurring American forces to apply greater pressure.

After the war, General Eisenhower had this to say about the significance of the seizure of Remagen Bridge: "Broad success in war is usually foreseen by days or weeks, with the result that when it actually arrives higher commanders and staffs have discounted it and are immersed in plans for the future. This was completely unforeseen. We were across the Rhine, on a permanent bridge; the traditional defensive barrier to the heart of Germany was pierced. The final defeat of the enemy, which we had long calculated would be accomplished in the spring and summer campaigning of 1945, was suddenly now, in our minds, just around the corner." General Eisenhower's Chief of Staff, Lieutenant General Walter Bedell Smith, termed the Remagen Bridge "worth its weight in gold."

President Franklin D. Roosevelt, with only six weeks to live, shared the elation of the field commanders over the significance of Remagen. The victorious Army Chief of Staff, General George C. Marshall, had this appraisal to make: "The prompt seizure and exploitation of the crossing demonstrated American initiative and adaptability at its best, from the daring action of platoon leader to the Army commander who quickly directed all his moving columns. * * * The bridgehead provided a serious threat to the heart of Germany, a diversion of incalculable value. It became a springboard for the final offensive to come."

War correspondents on the scene added their eyewitness accounts on the significance of seeing American troops on the east bank of the Rhine. The Associated Press cabled on March 8: "The swift, sensational crossing was the biggest military triumph since the Normandy landings, and was a battle feat without parallel since Napoleon's conquering legions crossed the Rhine early in the last century." Hal Boyle wrote from the front that "with the exception of the great tank battle at El Alamein, probably no tank engagement in World War II will be remembered longer than the dashing coup which first put the American army across the Rhine at Remagen." He added that the crossing of the Rhine by the men "who knew there was strong likelihood the dynamite-laden bridge would blow up under them at any moment has saved the American nation 5,000 dead and 10,000 wounded.

"It was a moment for history," stated Time magazine.

The nation expressed its gratitude to the heroes of Remagen in numerous ways. Both the United States Senate and the House of Representatives interrupted their deliberation to cheer the news. In the House, a spirited debate took place as to which state could claim the first man to cross. Congress Brooks Hays of Arkansas declared philosophically: "I am sure there will be glory enough for all."

All around the country, local civic and patriotic organizations honored the men who had wrought the miracle of Remagen. The feeling toward the Remagen heroes was perhaps best expressed in an editorial in the March 10, 1945, New York Sun, which concluded with these words: "Great shifts in history often do hang upon the developments of minutes. Americans know, and the enemy has learned, that given the least opportunity, American soldiers are quick to seize any break and exploit it to the fullest. The men who in the face of scattered fire and the great threat of the bridge blowing up under them, raced across and cut the wires have materially shortened a struggle in which every minute means lost lives. To all who utilized that ten minutes so advantageously goes the deepest gratitude this country can bestow."

Captain Karl Friesenhahn, the little German engineer who was in charge of the engineer company at Remagen in 1945, returned to Remagen in 1954. I saw him gaze over the ruins of the bridge and he quietly asked what awards the American Army had given to Lieutenant Karl Timmermann, Sergeant Drabik, Lieutenant Mott and the other first Americans who crossed. When I told him that they had received Distinguished Service Crosses, Captain Friesenhahn replied with some feeling:

"They deserved them—and then some. They saw us trying to blow that bridge and by all odds it should have blown up while they were crossing it. In my mind they were the greatest heroes in the whole war."

INDIVIDUAL AWARDS

DISTINGUISHED SERVICE CROSS

The Distinguished Service Cross is the highest award which is conferred only on members of the U.S. Army. It is second only to the Medal of Honor, which is also awarded to members of other branches of the service. The following officers and men of the 9th Armored Division were awarded Distinguished Service Crosses for their heroism at Remagen:

Sergeant Alex A. Drabik of Holland (Toledo), Ohio, squad leader of 3d platoon, Company A, 27th Armored Infantry Battalion. First man over the bridge.

Second Lieutenant Karl H. Timmermann of West Point, Nebraska, company commander of Company A, 27th Armored Infantry Battalion. First officer over the bridge.

Sergeant Joseph DeLisio of Bronx, New York, platoon leader of 3d platoon, Company A, 27th Armored Infantry Battalion. Cleaned out machine gun nest on bridge.

First Lieutenant Hugh B. Mott of Nashville, Tennessee, platoon leader in Company B, 9th Armored Engineer Battalion. Led engineers who ripped out demolition wires and cleared the bridge of explosives.

Sergeant Eugene Dorland of Manhattan, Kansas, Company B, 9th Armored Engineer Battalion. One of engineers who helped clear the bridge of explosives.

Sergeant John A. Reynolds of Lincolnton, North Carolina, Company B, 9th Armored Engineer Battalion. One of engineers who helped clear the bridge of explosives.

Captain George P. Soumas of Perry, Iowa, company commander of Company A, 14th Tank Battalion, the first tank company to cross the bridge.

First Lieutenant C. Windsor Miller of Silver Spring, Md., platoon leader in Company A, 14th Tank Battalion, the first tank platoon to cross the bridge.

Sergeant William J. Goodson of Pendleton, Indiana, Company A, 14th Tank Battalion. Tank commander of the first tank which crossed Remagen Bridge.

1st Lieutenant John Grimball of Columbia, South Carolina, platoon leader in Company A, 14th Tank Battalion. Head of first tank platoon to reach the bridge.

Sergeant Michael Chinchar of Saddle River Township, New Jersey, platoon leader of 1st platoon, Company A, 27th Armored Infantry Battalion. One of first group of infantrymen across the bridge.

Sergeant Joseph S. Petrencsik of Cleveland, Ohio, assistant squad leader in 3d platoon, Company A, 27th Armored Infantry Battalion. One of first group of infantrymen across the bridge.

Sergeant Anthony Samele of Bronx, New York, squad leader in 1st platoon, Company A, 27th Armored Infantry Battalion. Third man across the bridge.

NOT WITH MY VOTE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts [Mr. OLVER] is recognized for 5 minutes.

Mr. OLVER. Madam Speaker, in just a couple of weeks we are going to start debate on one of the cornerstones of the Republican Contract on America. That cornerstone, the tax cut of $200 billion over 5 years.

Never mind that the deficit is already $200 billion per year, put aside that the tax cuts add to the deficit, never mind that these tax cuts make balancing the budget harder, and never mind that not a responsible economist agrees that cutting taxes is the right way to start on reducing the deficit and balancing the budget.

But putting those things aside, let us examine the proposal. First of all, on this chart we can see who gets the tax benefits from the tax reductions being proposed. If you would look at the first 2 columns down on the left-hand side, less than 20 percent of the tax reduction is given to some 71 million American families that are almost two-thirds of all the American families.

In the upper side there you find 50 percent of the tax reductions to less than 10 percent of the families, whose income is now over $100,000 per year.

Well, if that graph is a little difficult to grasp quickly, look at the second one. Under this graph, in the same categories of income, what this shows is that the Republican tax cut will provide $5,000 to the average family, who presently make more than $200,000 per year. That would be $12 billion of tax cuts each year.

Down at the other end of the scale there are 49 million families that, together, get $57 on average per family per year. That is about $1 per week per family.

Now, the Republicans claim that they are not going to make the deficit larger. So, we will be debating the $17 billion rescission bill next week. Under NEWT GINGRICH'S Contract on America, spending cuts which hurt children and elders and make it harder for youth and teenagers to get the education and skills and training so that they can get jobs, those spending cuts will be used to give tax breaks to the wealthiest of Americans.

In NEWT GINGRICH'S America, Republicans are going to cut infant mortality prevention, prenatal, children's foster care, safe and drug-free schools for children, and education for disadvantaged children and domestic violence prevention and shelters for homeless families. But they will do it without my vote.

In NEWT GINGRICH'S America, these Republicans will cut vocational and technological education and AmeriCorps, the National community service corps, school drop-out prevention, and college scholarships, summer jobs for teenagers who are at risk of dropping out of school, and school-to-work job training. But, again, they will do that without my vote.

In NEWT GINGRICH'S America, the Republican extremists will cut rental assistance to low-income families and public housing maintenance and safety and home heating assistance for 6 million families, every one of whom, every one of whom falls in that category of people with incomes under $30,000 a year. But, again, they will do it without my vote.

In NEWT GINGRICH's America, at least $12 billion in tax cuts are going to be transferred, $12 billion of wealth, will be transferred from people down in this area who now have under $30,000 of income per year, and it will be transferred into tax cuts for the wealthiest 2 percent of Americans, giving them $5,000 a year, on average, in tax cuts.

At least $12 billion in services, in the services that I have mentioned, will be cut from these 48 million families down there at the lower end of the scale, who have under $30,000 of income per year. That is over $250, on average, per family that is going to be cut.

Madam Speaker, if people who are watching have not already guessed it, and probably many of them have, every Member of Congress, every Senator, every Member of the House falls in the upper categories on this graph, and not one Member of Congress will lose a penny of the $12 billion taken away from those 48 million families whose income is below $30,000 per year.

□ 1930

FORT McCLELLAN AND ANNISTON ARMY DEPOT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Alabama [Mr. BROWDER] is recognized for 5 minutes.

Mr. BROWDER. Madam Speaker, a few nights ago I spoke on this floor, and I said that the Secretary of Defense's recommendation to close Fort McClellan, AL, was a mistake with significant and dangerous consequences. To be specific tonight, Madam Speaker, I would like to talk about the mistake of this recommendation that breaks faith with hundreds of thousands of civilians in Alabama who live around a dangerous chemical stockpile which is slated to be destroyed by the United States as part of an agreement with Russia.

Let me tell my colleagues something about this stockpile. This chemical stockpile stored in this same community with Fort McClellan, has poisons such as sarin and VX. A small drop of sarin on a man's skin can be fatal. VX is several times more lethal than sarin, and a small drop of the liquid evenly distributed can kill many people. Among the weapons stored at the Anniston Army Depot, each M–23 land mine contains 10½ pounds of VX. Each 155 millimeter artillery projectile can hold either 6 pounds of VX or 6½ pounds of sarin. Each of the 78,000 M55 115-millimeter rockets; that is 78,000 of those, contains either 10 pounds of VX or 10.7 pounds of sarin. That is a pretty dangerous mixture.

That is why one newspaper had this headline, Madam Speaker, that said, "Army, An Army Study Leaking Nerve Rockets, Could Explode on Their Own." That is why another newspaper headline said, "Living with Chemical Weapons. Best Hope If There's an Accident: Run for Your Life."

The Army knew this in 1990 when it filed a permit request with the Alabama Department of Environmental Management called Resource Conservation and Recovery Act hazardous waste permit application for the Department of the Army, Anniston Army Depot chemical stockpile disposal system. This is in 1990. This is all of the contingency plans they have if there is an accident in this place.

Fort McClellan chemical response plan says,

> This plan establishes a required organization, responsibilities and procedures in the event of an accident or incident at Anniston Army Depot. The purpose of this plan is to establish procedures and actions to be employed by Fort McClellan reaction teams in support of a chemical accident or incident occurring on the Anniston Army Depot and which is or will become a potential hazard to the depot and surrounding community.

Madam Speaker, several hundred thousand people are in that surrounding community of Anniston Army Depot, and Fort McClellan's resources have been committed by that permit request in case we have a problem there.

I had a meeting last year, almost a year ago, with Deputy Secretary of Defense John Deutsch. I would like to read a letter he wrote to me in August. He said:

> DEAR MR. BROWDER: In our meeting on June 16, 1994, you and I discussed Department of Defense policy and intentions on several matters related to the Chemical Demilitarization Project scheduled for Anniston Army Depot. You requested that I provide assurances on these matters, and I am pleased to respond to this request. As you know, the Department is eager to conduct its business in a manner that is open and meets community concerns to the maximum extent possible. The "safeguard" assurances you request serve this purpose and therefore deserve the positive responses provided below.
>
> Please rest assured that we share your concern for safe and environmentally sound destruction of chemical weapons at Anniston. Specifically . . .

Madam Speaker, under the heading of Fort McClellan Support Resources:

> By separate correspondence I'm asking the Secretary of the Army to work closely with Alabama Department of Environmental Management to respond to the State requirement and to be fully responsible to their concerns.

He closed:

> I assure you that the Department of Defense will continue to insure that the destruction of our chemical weapons stockpile is accomplished in full cognizance of the ongoing need to protect our people and our environment.

Then the Undersecretary of Defense that same month issued its memorandum for the Secretary of the Army. Subject: Chemical Weapons Demilitarization Facility at Anniston Army Depot:

> Efforts are ongoing to ensure the successful start of chemical weapons demilitarization operations at Anniston Army Depot. In order to gain the requisite support for these operations, we must ensure the application of certain safeguards which will satisfy local concerns and enhance the safety of the demilitarization process.

Madam Speaker, this lists all the requirements, the decontamination team, the medical assistance team, says we need to be fully responsive to the Alabama Department of Environmental Management, and we must commit appropriate military resources such as the following which have been identified at the current location to support the demilitarization effort.

Madam Speaker, for 40 years the Army has dumped these dangerous chemicals on Alabama. They pledged Fort McClellan as our rescue squad. Now they want to close down the rescue squad and strike a match to that pile of dangerous chemicals. I will not allow that to happen. I will do everything I can to stop that from happening unless this dangerous mistake is reversed.

BY SLOWING GROWTH IN SPENDING FROM 7.6 TO 3 PERCENT WE CAN BALANCE THE BUDGET BY 2002

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey [Mr. SAXTON] is recognized for 5 minutes.

Mr. SAXTON. Madam Speaker, I would like to talk for just a few minutes about the rate of increase that we have seen in Federal spending and what some of us would like to do to stop that from happening.

Last summer House Republicans held a series of meetings and decided that someone had to step up to the plate and do something about this very serious fiscal problem. Without question, Madam Speaker, one of the most important issues we face today is our soaring national debt. I think both parties agree with that. Today it has reached epidemic proportions in that we have a national debt of almost $5 trillion, $4.8 trillion to be more exact.

Think about the magnitude of it. We are not talking about millions or billions that we throw around here daily. We are talking about trillions, almost $5 trillion.

I realize that it is difficult for most people to think in terms of trillions. it is for me. But look at it this way. Five trillion is a 5 with 12 zeroes behind it.

Or look at it in terms of what $5 trillion means if we divide it equally among the American citizens. In those terms $5 trillion means $18,000 for every man, woman and child in the United States, and, unless we deal with this problem now, by the turn of the century the United States will spend more on interest on the national debt than we spend on the defense of our country.

That is why Republicans, and I might say some Members of both parties, are offering a fresh approach.

If we simply slow the growth in spending from what it has averaged over the last 10 years, 7.6 percent; that is right, 7.6 percent every year increase over the last 10 years, if we slow it to about 3 percent, we can balance the budget by the year 2002. Programs that have been growing by leaps and bounds must be reined in.

Now if we are being honest with ourselves and with the American people, we and our critics must make it clear that the Republicans are simply limiting the rate of growth in a broad variety of programs.

I say to my colleagues, Yes, if you were told otherwise, you're not being told the truth. For example, Republicans want to reduce the rate of increase in the School Lunch Program. This year we're spending about $4.5 billion on this program, and we're proposing a spending level of $4.7 billion for fiscal year 1996. Now if that sounds to you like an increase, you have got it right.

My colleagues, only in Washington can an increase of $200 million be considered a cut, and that is what our opponents are claiming.

Let us look next at the Child Nutrition Program. We are currently spending at a level of $3.47 billion.

The American people need to know that Republicans want to slow the rate of growth in this program by proposing a 1996 spending level of $3.68 billion, another $200 million increase. It is an increase over present levels, but it is not the astronomical rate of increase that some of our colleagues on the other side of the aisle want.

What I am saying is that we are not decimating or gutting these programs. We are slowing the rate of growth for them from an average of 7.6 percent to about 3 percent.

Let us look at one more program. Let us go to veterans benefits as a final example where in 1995 we spent about $17.73 billion. The spending level for veterans benefits under our Republican program for 1996 is $17.78 billion, another increase this time of $50 million, but a reduction in the rate of growth. By doing this we are doing something different to bring spending under control. We are doing something different because we recognize that there are limits to taxes Americans should be expected to pay, and there are limits to the debt we should create.

We need to get real. We need to be straight with the American people, particularly with those who are the beneficiaries of the worthy programs that we are talking about.

Join with us in bringing about a realistic, long-range spending plan that will provide the level of benefits needed but will not bankrupt our children and our grandchildren.

REPUBLICAN PARTY, A PARTY OF CONTRADICTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland [Mr. WYNN] is recognized for 5 minutes.

Mr. WYNN. Madam Speaker, now that the first 50 days are past, I think we are beginning to see the true colors of the Republican Party. Once again they are playing Robin Hood in reverse, taking from the poor to give to the rich. When I thought about some of the things that have occurred over the last couple of weeks, it appeared to me that what we have is a party of contradictions. This is a group that said, What we are is pro-life. We believe in the sanctity of life. And I am not trying to reopen that debate, but I did find it interesting that, when they started cutting, they went after the Healthy Start Program and cut $10 million from programs that provided prenatal care.

Madam Speaker, I wonder how, on the one hand, people can say they are pro-life, but take away funds that help expectant mothers take care of newborns. They took $25 million from the Women, Infants, and Children's Program, another program designed to help expectant mothers and toddlers obtain the kind of nutrition that they need to survive. It seems to me to be a strange contradiction.

Next they said, Well, you know, we're the party that believes in work. Well, that is what the Republicans say. But the first thing they did was go after programs that move children, young people, from school to work. They cut a total of $3 billion, including 600,000 positions in summer jobs.

□ 1945

Now we can talk all we want about how we can fight crime and we can talk all we want about people need to pull themselves up by the bootstraps and get out of the wagon and help everybody else pull, but when you take money out of the Summer Jobs Program, it seems to me you are party in contradiction. Then they said, Oh, yes, sir, we support the elderly. We asked them about protecting Social Security; they said, Oh, yes, we will do it. We won't touch Social Security. We said, If you won't touch Social Security, put it in the bill. They would not do it.

I think the contradiction is clear, but we go on and find that in the area of fuel assistance for the elderly the Republicans decided they would cut out the entire program. Two million elderly are engaged in the Fuel Assistance Program. That program is eliminated.

Then, you know, they are also the party that is big on patriotism and they always want to talk about a drop of American blood, but that is also the crowd that cut 50 million from medical equipment and facilities from the veterans program, even at a time when we are expecting an increase in the veterans population.

Now I just heard one of my distinguished colleagues say, Well, you don't understand. What we are doing is, we are not cutting these programs, we are slowing the growth. I am going to tell you in a minute what they are going to do with the funds that they claim that they are saving. But before I get to that, I want to talk about the School Lunch Program. Because once again they are robbing the poor to give to the rich.

Tomorrow morning I am going to have breakfast with young students at Bladensburg Elementary and next week I am going to have lunch with some more students at Green Valley Elementary School, and the reason I am going is to see what is going on. At Green Valley, for example, 61 percent of the students are in the free or reduced lunch program. And the teachers will tell you that this may be the only meal that these young people get.

So it seems to me that if the Republicans were really serious about giving people a chance in life, they would not be taking money out of the School Lunch Program.

Now, let's get back to economics. They say, Well, we are just slowing the growth of these programs; we are actually putting in more. What you find, ladies and gentlemen, is that when the Republicans are talking about defense spending, they alway talk about funds adjusted for inflation. But when they talk about social spending, they talk about raw numbers, which means that the numbers essentially stay the same while inflation eats away at the purchasing power. So consequently, those programs that they claim they are increasing are scheduled to fail and cannot in fact keep pace with the cost of providing these services, cannot keep pace with the cost of food and other products to make these programs viable.

Now, I suppose some would say, You don't understand, Congressman, we have to make these cuts to reduce the deficit. If it were going for the deficit, that would be one thing, but they are giving it to the rich. The cuts that I described are not going for the deficit. In fact, they are going to provide tax cuts for the wealthy. Thirty percent of the tax cuts that come out of the programs that I just described will go to the richest 2 percent of Americans in this country. Thirty percent of the tax benefit to the richest 2 percent of Americans. And a full 50 percent of the tax breaks won't go to the average American citizen that the Speaker likes to talk about. The 50 percent goes to the people who make over $100,000.

So, ladies and gentlemen, it seems to me that we are in a grave state of contradiction in that instead of assisting the poor and instead of helping them move out of poverty, we are taking resources from them.

And they say, Well, we are just giving it to the States so the States can do it better at less cost and we are just cutting bureaucratic costs.

Ladies and gentlemen, you have to have bureaucracy at the State level, so they are substituting State bureaucrats for Federal bureaucrats. The cost savings are not going to be there.

The other issue is this: If the States were inclined to do these programs, if the States were inclined to have fuel assistance and breakfast programs and lunch programs, why didn't the States do it? It was not done until the Federal Government stepped in and said giving people a healthy start in life is a national priority and it doesn't matter if they live in Oklahoma or Alaska, we want to make sure that you get these benefits.

So you see, Madam Speaker, in the final analysis we have a contradiction. We are not helping the poor, we are only helping the rich at the expense of the poor.

WE WILL BALANCE THE BUDGET

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota [Mr. RAMSTAD] is recognized for 5 minutes.

Mr. RAMSTAD. Madam Speaker, over the last 30 years the Federal Government has only balanced its budget one time: in 1969. One balanced budget in 30 years.

Madam Speaker, time and time again Congress has proved unwilling and unable to balance the budget. Time and time again, statutory scheme after statutory scheme has failed. That is why, Madam Speaker, we need the legal forces and the moral authority of a constitutional amendment. Unless we act now, the deficit is projected to be more than $200 billion each and every year through the end of the century. This year alone more than 15 cents of every dollar in the Federal budget goes to pay interest on the Federal debt of $4.8 trillion.

Madam Speaker, we are spending over $235 billion this year alone to pay the interest on the debt. This insane deficit spending must stop now. It doesn't take a rocket scientist to figure out we are headed for financial disaster unless we balance the budget now.

Now, some politicians in this body are trying to scare people by playing fast and loose with the facts. They are claiming a budget amendment would require $1 trillion in budget cuts by the year 2002. What these politicians don't tell you is that the Federal Government is currently projected to increase spending each year until then on the average of 5.4 percent per year. That is a $3 trillion increase in Federal spending over the next 7 years.

Only in Washington, Madam Speaker, can a smaller increase in spending be called a cut. The budget can be balanced by simply holding the spending increase to 3 percent, to an average of 3 percent per year. In other words, if we increase spending 3 percent per year until 2002, we will have a balanced budget. Or put another way, if we halted the increase to 2 trillion instead of 3 trillion over the next 7 years, we will balance the budget.

It is high time the Federal Government lived within its means the way every family in my district in Minnesota must, the way every family in America must. We simply can't keep mortgaging our children's and grandchildren's futures. We can't keep promising more than we know we can deliver.

What is really mean-spirited, Madam Speaker, is to continue to promise people more than we can deliver, to promise, promise, promise to spend more than we bring in. That is why, Madam Speaker, we need the balanced budget amendment and the discipline that that provides. It is the only way to truly achieve a smaller government, lower taxes and put more money in the taxpayers' pockets. It is also the only way to avoid an economic earthquake in America.

With the unfortunate defeat of the balanced budget amendment in the other body, it is more imperative than ever that this body now exercise fiscal discipline. That is exactly what the new House majority will deliver.

And, Madam Speaker, I admit it won't be easy. The President unfortunately has abdicated its responsibility, hasn't given us anything near a balanced budget.

We know the American people are behind us. They understand what is at stake. They are smarter than many politicians give them credit. And working together, we will get the job done. Working together with the American people, we will balance the budget.

TIME TO GET SERIOUS ABOUT TRADE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon [Mr. DEFAZIO] is recognized for 5 minutes.

Mr. DEFAZIO. Madam Speaker, the gentleman who proceeded me talked about a looming crisis, and I am in agreement with him regarding the implications of our continuing deficit and mounting debt, but there is a more immediate economic crisis confronting this country and we are hearing little of it, little discussion of it here on the floor of the House of Representatives or in the other body or downtown at the White House.

Why might that be? Because too many people are implicated in the policies that led up to that crisis and they don't want to talk about it.

The dollar today for the third day in a row hit a postwar low. Here is what the dollar's decline looks like over the last 10 years. The dollar has fallen to just about a third of its value compared to the Japanese yen in a mere 10 years.

A few days ago, we announced that we had the largest trade deficit in the history of the United States: $160 billion. We borrowed $160 billion from foreign nations so that we could buy their goods when they were not buying ours. And when Mickey Kantor, or the Special Trade Representative, was discussing this he said, You might ask if your trade policy is working, and he said, Yes, it is right on track. A $160 billion trade deficit, 3.2 million lost jobs in manufacturing to overseas competition, and it is working just fine?

That underlies to a tremendous extent this crash in the dollar. And the other part is our linkage to Mexico. The peso has reached a new low today, and despite our promise of a $50 billion bailout, Mexico is in a tailspin like you would not believe.

About a month ago an analyst, a financial analyst named Christopher Whalen sat in my office and he said, If the United States is going to put up $40 billion to bail out Mexico, they better be willing to put up $150 to bail out Mexico because it will trigger a run on the United States dollar. And that has come to pass.

The people downtown and the apologists on that side of the aisle for these trade policies and for the Mexico bailout, and the Speaker who would not lift a hand and would not allow us to bring a bill to the floor to stop the Mexico bailout, those people have nothing to say. They would say there is no linkage.

Read today's New York Times. The administration's biggest problem may be that the world is believing the rhetoric it employed to win support for its $20 billion aid package for Mexico's troubled economy. Especially Mr. Clinton's insistence that the Mexican and American economies are intertwined. Today with the Mexican Government racing to take over failing banks, stabilize a tumultuous political situation, the peso dropped to a new low. And despite the bailout, the peso is now weaker than it was when we announced the $50 billion package.

The speculation in the markets is now that the package may not be enough to do the job. $50 billion to export jobs to Mexico to run a $12 billion trade deficit with Mexico next year and it is not enough? How much is enough for these apologists, for a failed trade policy? Some people are going to have to admit that they were wrong.

NAFTA is not working the way they told us it would. It has put the United States into an international tailspin. We have linked ourselves to a collapsing Third World economy and there is no end in sight.

And what are we doing on the floor of the House of Representatives? Are we considering legislation that would address this? Are there emergency hearings going on here in the Congress to deal with the crashing dollar and our alliance with Mexico and the $50 billion trade bailout? No, in fact, ironically today and tomorrow on the floor of the House we are considering special legislation to give special privileges to poor beleaguered Wall Street stockholders who have lost their money or people who have lost their pension funds.

We are giving Wall Street a special little gift. They have done such a great job in leading us into these trade policies and forcing us into these trade policies. Not me—I didn't vote for it—but forcing others who felt they must follow the lead of Wall Street. Those people are now being given special privileges by the House of Representatives so they will be immune from stockholder lawsuits and they will be immune from forgetting to tell you something. That is their reward.

It is time to get serious about trade and turn these issues and say no to Wall Street and get America back on track.

A MAJOR ECONOMIC CRISIS IS BREWING

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio [Ms. KAPTUR] is recognized for 5 minutes.

Ms. KAPTUR. Madam Speaker, I wish to associate myself with the remarks of the prior speaker. There is no question that the value of our Nation's currency on international markets is a measure of our Nation's economic strength and economic health. And over the past few days and weeks, our dollar has hit historic lows against currencies of all the nations that we trade with. In fact, it is at the lowest level, our dollar's value, since World War II. That is a longer time than many people in this Chamber have been alive. so it has not been at this point for decades.

The dollar's exchange value stands at a scant 92.8 yen to the dollar. I can remember when it was 240 yen to the dollar and 1.4 German marks against the dollar. In other words, the dollar is not looking so good to the rest of the world. It is losing its value. It is looking cheap.

Little that our Treasury Department or Federal Reserve have been able to do over the last few days to give the dollar a boost has worked. In fact, they put over $2 billion into buying currencies around the world over the weekend and it did not do any good. Did not do any good, had no impact on stopping the dollar's further decline.

□ 2000

Now, what does this really mean to families in our Nation? It means that our money, our people's money, cannot buy as much, not just here at home, but abroad. It means that interest rates in our country rose seven times over the last 12 months, even though most people were going, well, why are interest rates going up? There is really no inflation. What is happening here? Banks are raking in good money off of our people, and though there is no inflation on the horizon, we see that our Nation is raising interest rates to attract money from other places because our money is not worth as much.

In fact, we are now, the United States of America, the largest debtor nation in the world, and through NAFTA, we linked ourselves to Mexico and Canada, and North America is now the largest debtor continent on the face of the planet.

And the markets know it. For 15 years our country has been importing vast amounts of merchandise, more than we exported. In fact, last year, 1994, we had the largest merchandise trade deficit in the history of our country; as Congressman DEFAZIO referenced, over $166 billion more of goods coming in here than we sent out.

In effect, what we have, we have a decapitalization of the United States of America; production that used to be done here is being done somewhere else. We are importing all this stuff and then we have to pay for it with borrowed money. Doesn't sound like a very smart policy to me.

Last year, our deficit with Japan went up even more, to over $65 billion. Our deficit with China went up to nearly $30 billion, and the former surplus that we had had before NAFTA with Mexico dried up and went into the negative numbers in October and November of last year, and with the incredible devaluation of the peso, it is estimated that this year of 1995, the United States will yield nearly $15 billion more of trade deficit in the red with Mexico.

In other words, Mexico will be sending more goods to this country than we will be sending down there. That is not how NAFTA was supposed to work. It is clear that since the middle of February, and like Mr. DEFAZIO, I have a chart that shows the value of the U.S. dollar going down. Since the mid-1980's until the most recent period here after the Mexican peso was devalued, to which we have not linked ourselves inseparably, the value of our dollar has dropped at the fastest rate in the history of our country, and like Mr. DEFAZIO, I am shocked there are no emergency hearings in the Congress. There is no word from the White House. At least the newspapers are reporting, and it has been in top headlines in USA Today, in the New York Times, in the Wall Street Journal. You think Washington fell comatose on this one.

There is a major economic crisis brewing, and money is flowing out of our Treasury to try to prop up the Mexican peso, a few billion dollars. Actually there is more money that has flowed out of the Treasury to prop up the Mexican peso than money has flowed out of the Treasury to prop up the United States' dollar in international markets, we learned this morning. What happened today? Peso went down again in terms of its own value.

Madam Speaker, I ask unanimous consent for an additional minute.

The SPEAKER pro tempore (Mrs. VUCANOVICH). The Chair is constrained not to entertain such a request during the 5-minute period. The Chair is advised that the 1-minute extension that was allowed the gentleman from Alabama earlier this evening was a parliamentary error.

Ms. KAPTUR. Oh, was an error. All right.

Madam Speaker, let me just say in closing, is not it time someone in this House rang the alarm bell to say enough is enough, and I call on Speaker GINGRICH to allow our bills to move to the floor to stop the further outflow of taxpayer dollars to Mexico.

AMERICAN POLICY ON CUBA

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Florida [Ms. ROS-LEHTINEN] is recognized for 5 minutes.

Ms. ROS-LEHTINEN. Madam Speaker, earlier today, we were privileged to have had the Auxiliary Bishop of the Archdiocese of Miami, Agustin Roman, deliver the opening invocation. In addition to being a model human being and a great role model for our south Florida community, Bishop Roman is one of the many victims of the Castro regime.

You see, the bishop, who is a native of Cuba, was expelled from his own country in 1961 after armed militia men entered his church and at gunpoint led Bishop Roman and 132 other priests out of the country. Since then, the bishop has made it his personal mission to diffuse God's word around the world and to bring liberty and democracy to Cuba.

Of course, Bishop Roman was not the first nor the last victim of the tyrant who has ruled Cuba for 36 years. As we saw in this summer's rafter exodus, millions of Cubans still linger in the misery and oppression which Fidel Castro and his band of goons have imposed on the island.

Most of these Cubans have fled the island this summer and risked their lives in hopes of reaching the shores of freedom, and they remain today detained like common criminals behind the barbed wire of their Guantanamo Base refugee camps.

This policy by the Clinton administration has been a very unfortunate shift in U.S. policy toward Cuba, which previously gave the oppressed Cuban people the opportunity to begin a new and productive life in the United States, and at the onset of this policy the President promised tougher sanctions against Castro. But as today's front page story in the Washington Post reports, advisers to the President are considering proposing a plan to the President which calls for the easing of sanctions against Cuba and which promises Castro to consider further relaxation of the embargo if Castro makes what they consider to be a positive move toward democracy.

Madam Speaker, this is the height of naivete and an utter denial of the reality of the way that Castro operates. For 36 years, the United States has been waiting for concessions from Castro and we have gotten none. In the 1960's, all we got were screams of "paredon, paredon," announcing the execution of yet another Cuban. In the 1970's, we got the exportation of revolution, not only to Latin America, but also to Africa, where thousands of young Cubans were sent to their deaths in the name of the revolution.

And in the 1980's, we got rectification and a special period of peace, which squeezed the Cuban people to mere subsistence.

Today, we get word of reforms, cosmetic reforms, which are just a mask of the sad reality, the utter failure of Castro and of his Communist revolution.

However, through all these decades, one element of the Cuban regime has remained intact, the absolute control of Castro over the island of Cuba and the denial of political and civil rights to the Cuban people.

Unbelievably and apparently, some within the Clinton administration still believe that Castro can reform and that it is somehow the fault of the United States that Castro has remained unwilling to change.

Just today, at an International Relations hearing, I was once again surprised by a member of the administration on the policy toward Cuba. On a hearing on the Mexico bailout plan, a state official made the incredible statement that Mexico does not "provide assistance to the government of Cuba."

This is a disingenuous statement, considering that Mexico is one of the leading investment countries in Cuba and that the Mexican Government actively encourages Mexican investors to invest in the island. Thus Mexico, through its policy of investment promotion in Cuba, directly encourages the subsidizing of the repression of the Cuban people. Leave it to the Clinton administration officials to once again ignore the obvious.

Furthermore, we have still not heard a word from the President on the recently introduced Cuban Liberty and Democratic Solidarity Act introduced by Senator JESSE HELMS and Congressman DAN BURTON, and this bipartisan legislation is a joint effort by Democrats and Republicans to tighten the Cuban embargo against Castro. However, as of today, the President has remained silent.

Madam Speaker, on a recent trip to Guantanamo, led by a very knowledgeable chairman of the Western Hemisphere Subcommittee, Congressman DAN BURTON, as well as with Congressmen LINCOLN DIAZ-BALART, BOB MENENDEZ, MARK SANFORD, VIC FRAZER, and JOHN MICA, we were able to once again visit with the victims of the Castro revolution, the sons and daughters of the revolution as Castro has called them, and they are now his main adversaries.

Madam Speaker, I call on the President to understand that dialogue and concessions are not the answer. Tougher sanctions are, and that is where U.S. policy should be directed.

The stronger religion grows, the harder it may be for Castro to keep his monopoly on power.

AMERICAN POLICY ON CUBA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. DIAZ-BALART] is recognized for 5 minutes.

Mr. DIAZ-BALART. Mr. Speaker, back in December, my office began to get reports from within the Clinton administration that advisers, foreign policy advisers to the President, were advising him to send a gesture of friendship to Castro. After I got the third report from within the administration that foreign policy advisers to the President were pressuring the President to do that, to send a gesture of friendship to Castro, Congresswoman ROS-LEHTINEN and I sent a letter to the President, where we expressed our deep concern about those reports, and I have got that letter here and I would like to read it if I can.

"Mr. President"—this was back in December—

> We have received deeply disturbing reports from within your administration concerning efforts by Mr. Morton Halperin to achieve the implementation of a policy initiative by the White House that would benefit the Cuban communist dictatorship.
>
> These reports are made even more alarming by the fact that Mr. Halperin is the member of your National Security Council staff, whose nomination to a sensitive Department of Defense position had to be withdrawn when the Democratic-controlled Senate would not confirm him. Throughout his career, Mr. Halperin has shown faulty judgment in relation to threats emanating from Castro's Cuba. After Castro's incursions into Angola and Ethiopia, for example, Mr. Halperin inaccurately wrote that "every action which the Soviet Union and Cuba have taken in Africa has been consistent with the principles of international law. The Cubans have come in only when invited by a government and have remained only at their request."

"As you know, Mr. President"—we continue in the letter, in December—

> On August 5th of this year, approximately 30,000 Cubans spontaneously took to the streets in Havana demanding freedom. Despite a terrible crackdown by the regime, Cubans throughout the island are demanding democracy in ever-bolder forms of action. Sugar production and Castro's ability to purchase oil are at an all time low, the sanctions you implemented last August 20th are having a strong effect, and numerous signs point to the inevitable collapse of the communist tyranny.
>
> Any gesture along the lines being sought by Mr. Halperin at this time, such as authorizing U.S. business to engage in the unrestricted sale and financing of medicine, medical supplies, medical equipment or food to Castro; lifting your August 20th sanctions, banning charter flights and remittances; allowing financial transactions or travel for so-called academic, cultural and scientific exchange, public exhibitions or performances or activities of alleged religious organizations; loosening travel restrictions to allow unrestricted travel by U.S. citizens or allowing business or tourist travel; allowing the establishment of U.S. news bureaus in Cuba or Cuban news bureaus in the United States; or ceasing to regulate financial transactions related to the establishment of news bureaus in communist Cuba; entering into so-called negotiations with the government to settle U.S. property claims or any other friendly gesture toward Castro at this time of almost unprecedented repression would constitute a form of the complicity with the ferocious oppression of the Cuban communist dictatorship against its people.
>
> We hope that you will remain firm in the enforcement of our sanctions against the Cuban dictatorship by resisting the pressures of those who would throw in the moribund Cuban totalitarian regime.

He very courteously answers in January, stating, "I assure you that our Cuban policy will remain focused on bringing about a peaceful transition to a democratic regime and will be guided by the Cuban Democracy Act." Basically, he goes on saying that we won't be pressured. Then he says, please be—"Please be assured as well that I have confidence in the advice that I am being given on Cuba. That advice has and will continue to reflect the administration policy and the principles of the Cuban Democracy Act. I look forward to working with Congress in pursuit of our common objective of a free and Democratic Cuba."

Now, today the Washington Post on the front page has an article, Clinton may ease sanctions on Cuba. Talk about a direct leak. President Clinton's foreign policy advisers are recommending, this is not—we hear it is possible, there are reports, no, beginning of the article, front page of the Washington Post, President Clinton's foreign policy advisers are recommending he take steps towards easing relations from Cuba by revoking some economic sanctions adopted against the Nation in August, administration's officials said yesterday.

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This is the Washington Post today. So how does one reconcile the letter from the President, where he says, I am not yielding to pressure, we are going to maintain our sanctions, please be assured that I have confidence in the advice I am getting, and this article.

We need to continue talking about this. This is very serious, very serious. This is not the time to throw a lifeline to Castro. It is the time to go the other direction and to help Cuban people to gain their freedom.

THE DAVIS-BACON ACT

The SPEAKER pro tempore (Mr. DUNCAN). Under a previous order of the House, the gentlewoman from Connecticut [Ms. DELAURO] is recognized for 5 minutes.

Ms. DELAURO. Mr. Speaker, Republicans in Congress have begun their assault on one of the most important workers' rights acts of the 20th century, the Davis-Bacon Act. This important law protects the American standard of living by ensuring that workers on federally-funded construction projects are paid at the wage rates that prevail in their communities. To repeal the Davis-Bacon Act would be a slap in the face to the American worker.

The Davis-Bacon Act was passed in 1931 and signed by a Republican President. It was the first Federal wage law to provide prevailing wage protection to nongovernment workers.

Now, Republicans in Congress are threatening to repeal this historic legislation. At a time when the number one concern of middle-class working families is a declining standard of living, repealing the Davis-Bacon Act would be devastating. The very heart of this law is protecting the American standard of living.

But you do not have to take my word for it. Just look at what has happened in States that have present repealed prevailing wage laws. Economists at the University of Utah have written a comprehensive study of the effects of repealing prevailing wage laws in nine States during the 1980's.

The University of Utah study found that the repeal of prevailing wage laws had a destructive economic impact. From their analysis of these repeal States, authors of the report project that the Federal Davis-Bacon Act would hurt the national economy in the following ways:

Federal income tax collections would fall by $1 billion per year because of the decline in construction earnings. As a result, the Federal deficit would dramatically increase.

Each construction worker would see his or her annual earnings fall by $1,477. The total national loss due to this reduction in construction earnings would be $4.6 billion each year.

A massive increase in cost overruns and use of expensive change orders. In the case of Utah, which repealed its State prevailing wage law in 1981, cost overruns on State financed roads tripled over the next decade due to the low-ball bidding practices. The lack of a prevailing wage will encourage similar overruns at the national level.

Prevailing wage laws were designed to achieve a simple goal: to prevent government from using its purchasing power to undermine the wages of workers. It is a law that works. It works for our workers, for their families, our communities, and our economy.

American workers are already on an economic treadmill, working longer hours and earning less, struggling to buy homes, struggling to send their kids to college. The Davis-Bacon Act helps many American workers to keep pace. To repeal it now would turn up the speed on the economic treadmill and put the American dream out of reach for too many working families.

Mr. Speaker, I am pleased to be here tonight with several of my colleagues who are going to address this very, very important issue.

DAVIS-BACON: PROTECTING THE AMERICAN STANDARD OF LIVING

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. FILNER] is recognized for 5 minutes.

Mr. FILNER. Mr. Speaker, I join with several of my colleagues tonight to discuss the Davis-Bacon Act, an act which for more than six decades has protected the standard of living of all Americans. We are going to hear in the debate that comes up as there are efforts to repeal this act that somehow the Davis-Bacon Act merely helps a few union workers, that it is a special interest law for only a few.

Mr. Speaker, Davis-Bacon benefits all Americans. It does help union workers who have negotiated good wage rates across America. But it helps nonunion construction workers also because prevailing wages in almost 75 percent of communities across the country are based on nonunion pay scales and because Davis-Bacon extends the same protections to nonunion workers as it does to union members.

Davis-Bacon benefits communities like my own in San Diego, because wages in our city are protected from cutthroat out-of-State lower wage labor and our economy is enriched because our working people maintain the purchasing power to keep our own small businesses thriving and our own retail operations going.

Contractors in our community are helped because they have a level playing field on which to compete and our taxpayers are benefited because they can rely on quality and the productivity, the timeliness, the reliability that more than compensates for the additional wage cost.

All our citizens, Mr. Speaker, are benefited because all the construction projects we rely on, whether they be bridges or schools or dams, nuclear waste removal sites, military installations, superhighways, all are built to the highest specifications by the most qualified, well-trained workers. That is why Davis-Bacon protects the standard of living of all Americans.

Now, we are going to hear in the debate that follows in a few days, in the months ahead, that eliminating Davis-Bacon will save the government billions of dollars, that Davis-Bacon adds to the cost of government at a time when we can ill afford that.

Mr. Speaker, the facts say otherwise. In fact, eliminating Davis-Bacon will not save the government money. Lower wages, it turns out, does not mean lower cost. And why is that? As has been shown in comparison after comparison, high-wage states complete the work of the Davis-Bacon contracts with 56 percent fewer hours worked. High-wage states, as contrasted to low-wage states, build 74.5 more miles of roadbed and 33 more miles of bridges for $557 million less, and at the same time workers received a wage package more than double that in those low-wage states.

In addition, if Davis-Bacon were repealed, construction employees would be misclassified as independent contractors and the government would be cheated out of billions of tax dollars.

As my colleague, the gentlewoman from Connecticut, [Ms. DELAURO], pointed out, nine States have already repealed their little Davis-Bacon acts because they have found out that tax collections actually fell because of lower rates. The Federal Government, it has been estimated, will lose nearly a billion dollars a year because of the decline in construction earnings. That is simply not a very smart way to address our deficit problem.

In addition, construction injuries increase by 15 percent in non-Davis-Bacon States, and that results in enormous loss-of-work days and productivity.

So, Mr. Speaker, not only does Davis-Bacon benefit all Americans; repealing it will not reduce any cost. It may, in fact, raise the cost of doing business.

My own district in San Diego has a majority of residents who are either African-American or Hispanic. They always ask, is anything I propose or anything that I favor harmful or of benefit to ethnic minorities?

Mr. Speaker, Davis-Bacon protects all working people, regardless of race of ethnicity. The intent of the act is to mandate that a fair and liveable wage be paid to every worker to stabilize local wage rates.

Mr. Speaker, we must not repeal Davis-Bacon.

REPEAL OF DAVIS-BACON

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas, Mr. GENE GREEN, is recognized for 5 minutes.

Mr. GENE GREEN of Texas. Mr. Speaker, a number of us are taking the floor tonight in an attempt to respond to some of the misinformation used to justify the repeal of the Davis-Bacon, a law that requires fairness for our workers. The Davis-Bacon Act provides a process in which the Federal Government and many local governments must pay workers in a specific area the same wage on federal contracts as any other contract. There are several arguments put forth by the Republican majority or at least some of the Republican majority, because I would like to insert into the RECORD a letter from President Reagan in 1981 showing his support for Davis-Bacon Act.

WE AGREE WITH PRESIDENT REAGAN JUST SAY "NO" TO REPEAL

THE WHITE HOUSE,
Washington, September 29, 1981.

Mr. ROBERT A. GEORGINE,
President, AFL-CIO,
Washington, DC.

DEAR BOB: I want to acknowledge the Building and Construction Trades Department letter of September 11 concerning efforts to repeal the Davis-Bacon Act. I have asked the Secretary of Labor to respond directly, but I want to assure you and your General Presidents that I will continue to support my campaign pledge do not seek repeal of the Act.

With best wishes.

Very sincerely,

RONALD REAGAN.

The arguments revolve around the act being racist, as barring minorities from earning prevailing wages and adding costs to Federal contracts for multiple reasons.

Let us take the issue of Davis-Bacon being racist Federal law. This argument is based on language that was passed, was discussed when this original bill was passed in 1931. I would submit to the House that many things said in 1931 and the early 1930's on this House floor could not be used today, but that still means that Davis-Bacon is not a racist law.

A Congressman Upshaw from Georgia in 1927 asked Congressman Bacon if this bill was based on preventing a large aggregation of Negro labor, and Congressman Bacon vehemently stated that any influx of labor, union or nonunion, regardless of race, being paid below prevailing wage would be detrimental to a local job market. Stating that Davis-Bacon is racially biased also assumes that minorities are not earning a prevailing wage. That argument that repealing Davis-Bacon helps minority workers goes against documented proof to the contrary.

I would also like to insert into the RECORD a resolution from the NAACP in its July 1993 convention supporting Davis-Bacon and the continuation of Davis-Bacon.

RESOLUTION PASSED BY THE NAACP AT ITS ANNUAL CONVENTION, JULY 1993

V. LABOR AND INDUSTRY

1. Davis-Bacon Act—Concurred.

Whereas, people of color have entered the construction industry in increasing numbers in the past. Today, they are threatened with the loss of many of the economic and social gains made over the last several years; and,

Whereas, the Davis-Bacon Act of 1931 protects the wages of all construction workers, including minorities and women, who are particularly vulnerable to exploitation; and,

Whereas, shocking examples of the exploitation of minorities and female workers on the construction site, even in the face of the Davis-Bacon Act, the law designed to prohibit such exploitation, are legion,

Therefore, be it resolved, that the NAACP supports the Davis-Bacon Act, takes steps to strengthen its enforcement, and supports the creation of opportunities through training and apprenticeship programs.

A 1991 wage survey by the Department of Labor, reveals that the percentage of minorities employed by Federal contractors was 20.12 percent as opposed to nonfederal projects of 20.56 percent. A difference of 0.4 percent in three categories, craftsman, operators, and laborers. Federal contractors have a higher percentage of minorities participation than nonfederal contractors. This also goes against the Senate report language which states that Davis-Bacon protects small businesses, especially minority small businesses, from being undercut in labor costs by large contracts.

Davis-Bacon makes no distinction between race, gender or other characteristic. It simply requires an employer pay a prevailing wage, a fair wage. That is it.

The next argument is that Davis-Bacon is a union wage. In the State of Texas we are a right to work State which prevents anyone from being forced to join a union. Contractors, the perfect example of small business, the engine of job creation, are the only respondents to job surveys that are sent out by the Department of Labor. Wage surveys are sent out and in a geographic area to obtain the wage and benefits paid by contractors and subcontractors. They are not sent to union halls or to union officials.

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Mr. Speaker, I want to stress the fact that at no time does a union official send in a wage survey. It is actually the employer who sends them in. A contractor who decides on his own to be a union contractor obviously sends in that survey, but he does not represent the union.

On the form contractors use to report wage information, form WD 10, it calls for a contractor to respond. There is no area for a labor leader or any other labor representative to respond.

The process allows contractors of all sizes in a geographic area to decide what level they will pay their workers, while protecting the job market from large multistate contractors. In recent surveys on building trades, the Department of Labor showed that 38 percent of the respondents were union, 38 percent.

To say that this wage is union wages is just not correct. If that is to say that 38 percent make up the distinction on this survey by the Davis-Bacon source book, then we Democrats in the House are now in the majority, Mr. Speaker, because we could control it with 38 percent.

We should not run headlong into repealing a law that for 60 years has stood in its stead. It is based on falsehoods and wishful thinking, particularly that Davis-Bacon was based on racist assumptions, and also that it is a union wage that they are saying, with 38 percent only provided.

Studies of 10 States where 50 percent of the highway and bridge construction occurs reveals that workers paid double that of low wages built 74 miles more roadbed and 32 miles more bridges for $557 billion less. My colleague, the gentleman from California, pointed this out, and I am proud to be here tonight with my colleagues, not only from Connecticut and California, but myself being from Texas, to talk about the benefits that we have by having a prevailing wage in Davis-Bacon being on our books since 1931.

REPUBLICAN PROGRAMS REFLECT THE TRUE PARTY OF THE MIDDLE CLASS

The SPEAKER pro tempore (Mr. DUNCAN). Under a previous order of the House, the chair recognizes the gentleman from California [Mr. CUNNINGHAM] for 5 minutes.

Mr. CUNNINGHAM. Mr. Speaker, I have heard some of my Democratic colleagues talk about the Contract With America. They say it is detrimental, but if you look at those Members that are saying that, those are the same Members that voted against the balanced budget amendment.

If you look at the Contract With America, on the items that we have covered so far, take a look at the history of this House. Have you seen votes as fast and as many Republicans and Democrats supporting those Contract items?

Congress falls under the same laws, the balanced budget amendment, the line-item veto, unfunded mandates, 290 votes to 340 votes, Mr. Speaker; bipartisanship. Who voted against that bipartisanship? The liberal and socialist Members of the Democratic party. Even members of their own party have separated themselves from the liberal leadership.

If you take a look at those who voted against it, the gentleman from Missouri [Mr. GEPHARDT], the gentleman from Michigan [Mr. BONIOR], the gentleman from California [Mr. FAZIO], why? Because they support big Government, government doing everything for everybody. The only way they can do that is to have a big bureaucracy, and to support that big bureaucracy, they have to increase taxes and increase spending.

Mr. Speaker, the rhetoric; the gentleman from Missouri [Mr. GEPHARDT], years and years and years, I have the documentation, every single tax vote that the minority leader now claims that, It is only for the rich, and we are trying to help the poor, I have the records. That is the same rhetoric since 1970.

Each time, the Democratic package, including the Bush package, would resolve that. However, here again, he is saying the same thing.

I look at our two California Senators that hid behind the balanced budget amendment and say they were trying to protect Social Security, but yet in the Clinton tax package those same two Senators in the liberal leadership, those same Members of this body that I just mentioned, voted for the Clinton tax package, which increased the tax on Social Security. Yet, our two Senators on the other side are hiding behind that, for the balanced budget amendment.

Mr. Speaker, I look at what we have done in the past, and the rhetoric. I look at a Clinton tax package in which there was a promise of a middle-class tax break, a promise not only in the campaign, but before the actual budget came forward, and what happened?

Remember the great Btu tax and the Clinton tax package? There was not going to be any middle-class tax in that. I heard liberal Democrat after liberal Democrat come up and say, There is no tax increase in the Btu tax, there is no tax increase for the middle-class in this tax package. America did not buy it, and you passed a bill that was so bad that after 45 minutes of closing the clock and twisting arms, you passed it by 1 vote, when then Speaker Foley shut down the clock, twisted arms until you could pass that bill.

The rhetoric? $600 billion in new taxes and fees, a defense cut of $177 billion, and sure, you can apply some of that to the deficit, but in that you increase the tax on Social Security, you cut the veterans' COLA, so who is really playing the rhetoric?

The bottom line, Mr. Speaker, is that the middle-class marginal tax rate went up under the Clinton budget. Every Member that is speaking here against the Contract not only voted against the balanced budget amendment, but voted for that Clinton tax, which increased the marginal tax rate of the middle-class from $17,000 and above, yet they say they are the party of the middle-class?

A balanced budget, Greenspan has said, will bring interest rates down by 2 percent. That will provide capital. Take a look at the items that we wanted to do: capital gains reduction, that is only for the rich? Malarkey. America sees through that, and they support a capital gains reduction.

Where we want to limit the amount of growth, growth is projected by over 50 percent in spending by the year 2002. We want to limit growth to 30 percent. Yet, the tax and spend liberals said, We are cutting these programs, we are limiting the growth.

We are not cutting any programs, Mr. Speaker. I take a look at the minority leader, I take a look at the socialist leadership in the Democratic Party, and I am glad they are in the leadership, because even in their own party, from the Black Caucus, from the liberal leadership, those Members have separated themselves from that kind of rhetoric that we can no longer afford, give me more society that will not accept responsibility for their own actions.

URGING MEMBERS TO SUPPORT MAINTAINING THE DAVIS-BACON ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. BECERRA] is recognized for 5 minutes.

Mr. BECERRA. Mr. Speaker, I would like to first begin by thanking several of my Democratic colleagues who came here tonight to speak in support of the Davis-Bacon Act, which now is in jeopardy of being repealed by the new Republican majority.

Mr. Speaker, I want to thank them, because this is an issue which goes directly to my family situation and to my heart. My father is someone who had the chance to benefit from the Davis-Bacon Act. My father is a retired construction worker, a road construction worker. Many of the roads that people use in California, from Highway 5 and other highways that were constructed in the big days of the sixties and seventies, those roads were constructed in part by men like my father.

My father never earned a lucrative wage, but he did earn a decent wage. This is, in my opinion, an Act, the Davis-Bacon Act, which made it possible for my family to have some security and some decency in its living standards. I know when I speak on behalf of those who support the Davis-Bacon Act that I speak not just for them, but also for my father.

Mr. Speaker, to repeat what some of the Members have said before, the Davis-Bacon Act is an act that passed in 1931. It was an act that passed through the sponsorship of Republican legislators and was signed by a Republican President.

The law merely mandates that taxpayer dollars go to contractors who offer the greatest quality craftsmanship, the highest productivity, the quickest turnaround, and the best management. The primary purpose of the law is to assure that by requiring the payment of locally prevailing wages, that Federal spending practices do not undercut the wages of hard-working people, and that they do not put local contractors and their employees in an unfair competitive situation.

Individual and industry contractors benefit, because in discouraging competition that would be based on the payment of substandard wages, the act promotes a greater availability of skilled construction workers. The act, by enduring more stable and predictable wages, facilitates the recruitment, the training, and the retention of skilled construction workers.

Mr. Speaker, let us talk about who loses if the Davis-Bacon Act is repealed. More than a half a million construction workers would suffer reduced earnings and a lower standard of living if the act were to be repealed. Individual construction firms and the construction industry as a whole may also lose if conscientious contractors are forced to compete with the fly-by-night and low-balling contractors who pay depressed wages and offer workers no benefits.

Taxpayers would lose if the act is repealed. Given the way labor markets operate, savings to be achieved through lower wages would be offset by the lower productivity of less skilled and less experienced workers. Their work product, roads, bridges, building, then become the public's responsibility. If the work product is of low quality, then that is a consequence that taxpayers will be forced to live with.

Mr. Speaker, repeal of the Davis-Bacon Act is not a money saver. Contrary to what the Republican majority is saying these days, repeal of Davis-Bacon would not automatically save the Government money, because well educated, well-trained, and fairly paid workers are more productive than their poorly-trained low paid counterparts. They often bring in projects at less cost than those using low-wage workers.

Repeal of Davis-Bacon also threatens worker safety. When productive, skilled, properly-trained labor is hired at a Davis-Bacon wage, safety and health are also hired. The use of untrained, poorly-skilled workers results in a higher occurrence of injuries and fatalities on the Nation's job sites.

Repeal may also threaten public safety, as poorly trained workers are more likely to make dangerous mistakes.

Mr. Speaker, what would happen if Davis-Bacon were repealed? Each construction worker would see his or her annual income fall by about $1,477. That may not seem like a lot to some people, Mr. Speaker, but think of it this way. $1,477 pays for about half a year's worth of groceries for an average American family.

For my family when I was growing up, and my father and my mother were working hard, that was a tremendous amount of money. It would have affected the way we lived and the standard of living that we were able to have, which was very meager. It would have affected it greatly.

Members of Congress have supported the Davis-Bacon Act in the past on a bipartisan basis. I hope, Mr. Speaker, that we have that same bipartisan support for this particular act, because quite honestly, it helps American because it helps America's workers and American's contractors.

I would hope at this time, Mr. Speaker, that we would see the value in maintaining the act and move forward from there.

Ms. ESHOO. Mr. Speaker, it puzzles me why the Republicans are determined to repeal the Davis-Bacon Act. After all, this law has its origins in State initiatives, was written by two Republicans, and has been declared successful by a leading Republican economist. If this isn't a winning combination as the majority defines it, then what is?

Despite current GOP claims to the contrary, the Davis-Bacon Act is based on years of State experience with prevailing-wage standards prior to its passage by Congress. Back in 1891, Kansas adopted the country's first prevailing-wage statute, and at least six other States had passed similar legislation before the first prevailing-wage law was introduced in Washington.

By the late 1920's, Republicans in Congress were extremely concerned about increasing incidents of cutthroat Federal bidding by fly-by-night contractors using low-wage labor. With shoddy construction threatening massive Federal building programs, Representative Robert Bacon—a New York Republican—introduced the forerunner of the Davis-Bacon law.

With the help of Senator James Davis—a Republican from Pennsylvania and former Labor Secretary under three Republican Presidents—the Davis-Bacon Act was eventually passed and signed into law by President Hoover in 1931.

Since that time, the Davis-Bacon Act has proven to be a remarkable success for local communities, minorities, and American taxpayers.

Local communities have benefited because their wages have been protected against lowballing, out-of-State contractors, while their economies have been enriched by residents maintaining enough purchasing power to keep locally owned businesses thriving.

Minorities have benefited from the Davis-Bacon Act's protection of wage gains made over the years, and become heavily employed in the construction industry because of the decent wages it pays.

In addition, the percentage of minorities employed by Federal contractors is higher than the percentage of minorities employed by non-Federal contractors, which reflects the positive impact Davis-Bacon has had for minority workers.

Finally, Davis-Bacon has benefited American taxpayers. Dr. John Dunlop—Secretary of Labor under President Ford—has concluded that any additional costs incurred by paying prevailing wages have been offset by better quality, productivity, timeliness, and reliability on Federal projects. It's vital for our bridges, schools, dams, nuclear waste removal projects, military installations, and superhighways to continue to be built to the highest specifications by the most qualified, well-trained workers available—and the Davis-Bacon Act ensures that will happen.

Mr. Speaker, for over 60 years, Davis-Bacon has been an unqualified success. It must be preserved.

Mr. ENGEL. Mr. Speaker, the opponents of the Davis-Bacon Act have mounted an attack to repeal a law that helps American workers. This is nothing more than an effort to pull the rug out from under working people. As the son of a dedicated ironworker, I resent this shameful union bashing and the implication that the workers of this country are not entitled to a decent wage for their labor.

Davis-Bacon is a law that actually strengthens our economy and helps America. Contractors and American workers both benefit from its provisions. I ask you to consider these facts:

Repealing Davis-Bacon will result in lower wages for half a million Americans. Construction workers is the United States who currently receive prevailing wages could lose $1,400 annually if Davis-Bacon is repealed. The average annual earnings of a construction worker is $28,000. Isn't this the type of middle-class American that we should protect rather than punish?

The prevailing wage law actually generates benefits to local communities 2.4 times the amount spent on a construction project because workers spend their money locally and pay local taxes. Repealing Davis-Bacon could result in the widespread importation of non-local, low-wage workers, causing an adverse affect on local economies.

According to a study conducted by the University of Utah, repeal of the Davis-Bacon Act will reduce Federal tax collections by $1 billion per year because of the decline in construction earnings, while simultaneously causing a massive increase in cost overruns. In States that have repealed their little Davis-Bacon laws, construction costs have risen because of substandard work that must be redone when less skilled workers are used on the projects.

Davis-Bacon does not require contractors to pay union wages. 70 percent of the prevailing wage schedules are not union wage rates, yet still allow a fair wage to be paid in the local area to middle class workers.

The Workers Protection Subcommittee of the House Economic and Educational opportunities Committee hurried the markup of the repeal of the Act without adequately considering its ramifications. The Subcommittee did not even allow the Secretary of Labor to testify.

It's time to bring some reason to this issue. At a time when the middle class is feeling the crunch in our economy, the repeal of Davis-Bacon would adversely affect the workers that are a productive and important segment of our society. I strongly urge you to fight any attempts to repeal this Act. By doing so, you will be working to keep our construction industry competitive and viable.

Mr. RAHALL. Mr. Speaker, I rise in support of the continuation of the prevailing wage laws embodied in the Davis-Bacon Act, and against repeal of this vital act.

As you know, Mr. Speaker, on March 2, 1995, the Subcommittee on Worker Protections, so-called, voted to repeal the Davis-Bacon Act. They did so without a single member of the minority membership being present, an action that is, in and of itself, unprecedented in recent memory. The Democrats, refusing to be a party to the demise of the Davis-Bacon Act at the hands of their colleague in the other party, walked out in protest.

The Davis Bacon Act has been in effect since 1931, and 32 States have their own Davis-Bacon Acts, with 9 States having repealed previous State statutes. Perhaps before taking any further action to repeal Davis-Bacon, all Members should take a look at what has happened in the nine repeal States.

A recent, February 1995, study conducted by the University of Utah, one of the nine States having repealed their State Davis-Bacon Act, showed that:

First, it resulted in driving down construction earnings and the loss to the State's coffers of substantial income tax and sales tax revenues.

Second, as a result of the repeal of the State statute in Utah, the size of total cost overruns on State road construction tripled, and there has been a major shift to a less-skilled labor force, lowering labor productivity along with wages, and increasing injuries and fatalities in the workplace.

Third, looking at all States, the study found that repeal cost construction workers in the nine States at least $1,477 per year in earnings.

Fourth, the nine State repeals have reduced construction training in those States by 40 percent.

Fifth, minority representation in construction training has fallen even faster than have the training programs in repeal States.

Sixth, occupational injuries in construction rose by 15 percent where State prevailing wage laws were repealed.

Based on the above six findings, the study concluded that Federal income tax collections would fall by at least $1 billion per year in real terms for every year for the foreseeable future—if the Federal Davis-Bacon Act were repealed.

The University of Utah's study concluded further that: At the Federal level, construction cost savings would have to be very high indeed to generate any budget benefit from a repeal of the Davis-Bacon Act because of the Federal income tax structure. For example, using a conservative estimate of 3 percent construction cost savings with a 20 percent marginal tax rate (based on the 1991 level of Federal construction spending), the Federal Government would lose $838 million per year by repealing the Davis-Bacon Act.

For those who falsely claim that a repeal of the Davis-Bacon Act would reduce the deficit, they are wrong—the above-cited study showed that a repeal will raise the Federal budget deficit, because the purpose and effect of a repeal is to lower the cost of wages on federally funded construction projects—which in turn lower wages and earnings. Proponents of the claim that repeal would lower the deficit are wrong also because the study found that the lower cost of wages cannot be isolated to federally financed public works—because in fact such wages would decline across the entire construction labor market causing the Government to lose more in income tax revenues than it would gain in construction cost savings.

Mr. Speaker, the repeal of the Davis-Bacon Act is not about reducing the deficit, or saving construction costs in federally assisted projects. It isn't about lowering wages so that more people can be employed.

It is about union busting.

The Act does not—I repeat does not—require that collectively bargained (union) wages be paid unless such wages also happen to be the prevailing wage in the locality where the work takes place. Davis-Bacon isn't about unions—although unions have made Davis-Bacon work by stabilizing the construction industry, keeping fly-by-night operations from operating; keeping health and safety standards in effect, and assuring that all workers, including apprentices, are well-trained and able to contribute to cost-effective productivity at the work site.

Davis-Bacon assures that federally assisted construction projects are completed by well-trained, decently-paid workers, not store-front operations who use poor workmanship and shoddy materials—meaning higher maintenance costs and costly rehabilitation and repairs down the line. It means fewer cost overruns that drive up the total cost of construction.

For many years Congress has made efforts to protect the working men and women in construction and other industries by assuring that they are paid the local prevailing wage, and particularly for projects that are paid for out of Federal funds. Now that there has been a shift in the majority parties in Washington, the repeal effort is in full force and is being pursued with vigor by opponents of the Act.

I believe that a repeal of the Davis-Bacon Act, would be a betrayal to all who are affected by the construction industry, and that is every American. Most importantly, it would be a betrayal to the workers who rely on good wages for a decent livelihood.

I am diametrically opposed to the repeal of the Davis-Bacon Act, and I call upon the House of Representatives to continue the broad, bipartisan support that the Act has enjoyed to date by rejecting legislation to repeal Davis-Bacon.

GENERAL LEAVE

Mr. BECERRA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the topic of this special order, the Davis-Bacon Act.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

REPUBLICAN PROPOSAL ON THE SCHOOL LUNCH PROGRAM WILL SPEND LESS MONEY ON BUREAUCRATS AND MORE MONEY ON CHILDREN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee [Mr. DUNCAN] is recognized for 5 minutes.

Mr. DUNCAN. Mr. Speaker, I do not serve on the Economic and Educational Opportunities Committee, but the Republicans on that committee voted a few days ago to increase spending on the School Lunch Program from $6.7 to $7.8 billion over the next 5 years.

I repeat: the Republicans voted to increase spending on school lunches.

Yet headlines all over this country said, "Republicans vote to end School Lunch Program."

Now, millions of Americans have a totally false impression that Republicans have killed the School Lunch Program.

Actually what was done was to try to end it as a Federal program and turn it into a State program.

This was done so that more money could be spent on food for kids and less on bureaucrats in Washington.

Most Governors have said they could take 80 percent of the money and probably operate almost any Federal program more efficiently and effectively.

However, in this instance, the Committee did not say take the School Lunch Program over with just 80 percent of the money—it said take 100 percent of the money with a built-in raise of 4.5 percent each year.

This is almost 50 percent more than what inflation has been since the Reagan years.

Yet some liberals saw a chance to use a political sledgehammer here, and beat us over the head with it, and with help from a supportive national media, they are creating a totally false impression.

I have always supported the School Lunch Program, and I can assure you there is not one member here, Democrat or Republican, who wants to take food away from any hungry children.

I do not serve on the Committee that is trying to change this program, but I do know that what the Committee is trying to do is make things better for children, not worse.

The School Lunch Program has gotten tremendous bi-partisan support in the past because it has worked relatively well. But anything can be made better.

And if there is a way to spend more on children and less on bureaucrats, then we should try it.

Too many federal programs today benefit primarily the bureaucrats who work for the program and really do very little for the intended beneficiaries.

This is true even in programs designed to help children. Every program up here has some beautiful motherhood and apple pie title, but you have to look below the surface, and below the headlines, to find the true story.

If we want to help bureaucrats, we will continue, and even increase, all our current federal programs, and even create new ones.

If we really want to help children, though, we will downsize government and decrease its cost, and give parents the freedom to spend more of their own money on their own children.

Apparently, though, with many liberals, if the choice is between giving money to bureaucrats or leaving more with parents and children, they will side with the bureaucrats every time.

There were two other main objections to the changes the Committee made in the School Lunch Program.

One was to the lack of national standards on nutrition, and one was to the fact that the Governors were given leeway as to 20 percent of the money as long as it was spent on other child welfare programs.

These were included because almost everyone today realizes that one-size-fits-all dictation from Washington is not working and has been harmful to even our best programs.

I am convinced that the wonderful people that we have running our school lunch program in East Tennessee do not need bureaucrats in Washington telling them what they can and cannot serve.

As to the 20 percent flexibility for Governors, this was done because some States need to spend more percentagewise on school lunches than others. But if this is a great concern, I certainly would support changes making sure all this money is spent for its intended purpose, which is school lunches.

I suppose the big point to be made here is that Republicans love children just as much as Democrats do.

Despite what some pious, holier-than-thou liberals would have people believe, no one has a monopoly on virtue—no one has cornered the market on compassion.

All of us are trying to do as much as possible for children. No one has voted to kill the School Lunch Program.

Many people around the country no longer think of the Federal Government as God. They know that some programs can be better run from the State level, or even by local governments.

And above all, they want less of their money being spent on bureaucrats and paperwork, and more being spent on children.

□ 2045

SAVE PUBLIC BROADCASTING

The SPEAKER pro tempore (Mr. CUNNINGHAM). Under a previous order of the House, the gentlewoman from Maryland [Mrs. MORELLA] is recognized for 5 minutes.

Mrs. MORELLA. Mr. Speaker, I rise today to express my support for continued Federal funding for public broadcasting.

PBS and NPR provide commercial-free entertainment and information that is always good for you, whatever your age.

PBS and NPR provide commercial-free entertainment and information that always brings the best of all our American cultures, the brilliance of our science and technology, the clash of our political opinions, and the natural beauty of our world, wherever we live.

PBS and NPR provide so much for so little: they cost only $1.09 per person. Americans overwhelmingly approve a Federal funding for public television and radio, with 87 percent in favor of continued support. Although the Federal allocation is small—currently $285.6 million—in the overall CPB budget, it is vital seed money that makes everything else possible.

To deny funding to PBS and NPR would be to truly damage the quality of our lives and our children's lives. Free market forces would not sustain the effort required to create and keep a show like "Sesame Street," which is watched by over 6 million preschoolers on an average of three times per week. Commercial stations refused to air "Sesame Street" when it was first developed. Can you imagine any network today airing the program for 2 hours straight without commercial interruption?

An article in last week's Washington Post, reminded me just how important PBS is to quality programming for our children; for shows like "Sesame Street," "Mr. Roger's Neighborhood," and "Ghostwriter" that make their lives richer not poorer. The Post story told this sad tale: ABC will cancel "Cro," a Children's Television Network production on its Saturday morning schedule in favor of something entitled—I am not making this up—"Dumb and Dumber."

This choice bit of children's entertainment is a television version of a full-length cartoon movie of the same name, which consists of "toilet jokes and exposed bottoms," said the Post but offers vast opportunities for those big profit, toy spinoffs. "Cro," a show that treats science and technology through the eyes of an 11-year-old stone age child, it was decided, had no future at Toys 'R Us so it had to go.

Do we really for a minute believe that commercial and cable stations will do the right thing by our children and young people? My friends, our children's choices will go from dumb to dumber, from violent to more violent, if PBS goes!

Much has been said and written about public broadcasting and elitism. What nonsense! What condescension! Eighty percent of all Americans—your neighbors and mine—watch public television at least once a month and have access to literally the world of entertainment and the arts without leaving their family room couch.

Comparisons have been made—and rightly so—between saving public television and radio and the campaign for public libraries, which was led by Andew Carnegie early in this century. His mission, to make sure every American had access to free books regardless of income level or place of residence, mirrors the contemporary mission of public television and radio to bring exposure to the world's greatest art, music, literature, and wonders to everyone. With your television and radio tuned to your PBS or NPR station you can sit in the front row at the Metropolitan Opera, watch the Bolshoi Ballet, or sit in your arm chair and travel the globe. It opens the world to all.

We are blessed in the Washington area with access to several public broadcasting stations: WETA, MPT, WHMM, and WAMU. The market in which these stations operate is large and its supporters and fans generous at fundraising time. But this is not the case across the country. The loss of Federal funding to radio outlets in rural areas, for example, would be devastating—in many cases radio stations would have to drop NPR programming and that means losing "Morning Edition," "All Things Considered," and "Talk of the Nation."

In many areas of the country, whole school systems rely on public broadcasting to supplement their curriculums. The president of Maryland Public Television has pointed out that "as we enter the information age, every community in America needs its public television station as an on-ramp to the information superhighway and to fight for the public interest so that educational usage doesn't get pushed onto the shoulder by commercial interests."

Mr. Speaker, to cut off federal support for public broadcasting is to do irreparable damage to a system that provides all Americans, regardless of age, race, ethnicity, party affiliation, or geographic location with riches that once belonged only to a very small elite. Public broadcasting is for all of us.

COMMEMORATING THE 30TH ANNIVERSARY OF THE VOTING RIGHTS CAMPAIGN OF 1965

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Georgia [Mr. LEWIS] is recognized for 60 minutes as the designee of the minority leader.

Mr. LEWIS of Georgia. Mr. Speaker, I rise tonight at this hour during this special order to commemorate the 30th anniversary of the voting rights campaign of 1965. Thirty years ago this day, March 7, 1965, was a turning point in the struggle for the right to vote in the American South.

In commemorating the voting rights campaign of 1965, we honor the great sacrifices many people made to secure voting rights for all Americans.

Now, Mr. Speaker, you must keep in mind that during another period in our history, during the 1960's, there were certain political subdivisions in the 11 Southern States of the old South, from Virginia to Texas, where 50 to 80 percent of the population was black, and there was not a single black registered voter. The practice used by whites to keep blacks out of their political process ranged from economic retaliation to outright murder. In many instances brutal acts of violence were directed against those who tried to register to vote. Those few who were allowed to register were harassed, intimidated, and even beaten when they tried to exercise their precious right to vote.

One State, the State of Mississippi, had a black voting-age population of more than 450,000, and only 16,000 blacks were registered to vote. In one county in Alabama, Lowndes County, between Selma and Montgomery, AL, the county was more than 80 percent black, and there was not a single registered black voter.

In the little town of Selma, the county seat of Dallas County, AL, majority of black population, only 2.1 percent of blacks of voting age were registered to vote.

The drive for the right to vote came to a head in Selma in the heart of the Black Belt after a series of nonviolent protests and after people had been shot, beaten, and killed. A small band of citizens on March 7, in an effort to dramatize to the Nation and to the world the need for voting rights legislation, decided to march from Selma to Montgomery.

Young black children, some elderly black men and women, left the Brown Chapel A.M.E. Church on Sunday afternoon, March 7, 1965, walking to twos, It was a silent, nonviolent, and peaceful protest, walking through the streets of Selma.

Crossing the Alabama River, crossing the Edmund Pettus Bridge, when they reached the apex of the bridge, they saw a sea of blue, Alabama State troopers.

The Governor of the State, at that time Gov. George Wallace, had issued a statement the day before saying the march would not be allowed. The sheriff of Dallas County, a man by the name of Jim Clark, on the Saturday night before the march on Sunday had requested that all white men over the age of 21 to come down to the Dallas County Courthouse to be deputized to become part of his posse to stop the march.

Sheriff Clark was a very big man who wore a gun on one side, a nightstick on the other side, and he carried an electric cattle prodder in his hand. He did not use it on cows. He used it on peaceful, nonviolent protesters.

As we continued to walk on that Sunday afternoon, we came within the hearing distance of the State troopers and a man identified himself and said:

> I am Maj. John Cloud of the Alabama State Troopers. I give you 3 minutes to disperse and go back to your church. This is an unlawful march, and it will not be allowed to continue.

In less than 1½ minutes, Maj. John Cloud said, "Troopers advance," and you saw these men putting on their gas masks. They came toward us, beating us with nightsticks, bullwhips, tramping us with horses, and using tear gas.

That Sunday, March 7, 1965, became known as Bloody Sunday. There was a sense of righteous indignation all across the country. People could not understand what they saw on television. They could not understand the picture they saw in the paper the next day coming from Selma.

Lyndon Johnson, 8 days later, came before this hall and spoke to a joint session of the Congress on March 15, 1965, to urge Congress to pass a strong voting rights law.

□ 2100

In that speech President Johnson started off the night by saying:

> I speak tonight for the dignity of man and the destiny of democracy.

He went on to say:

> I urge every member of both parties, Americans of all religions and of all colors, from every section of this country, to join me in that cause.

President Johnson continued by saying:

> At times, at times history and fate meet at a single time in a single place to shape a turning point in man's unending search for freedom.

He went on to say:

> So it was at Lexington and Concord. So it was a century ago at Appomattox. So it was last week in Selma, Alabama.

And the President went on to say:

> There long-suffering men and women peacefully protested the denial of their rights as Americans. Many were brutally assaulted. One good man, a man of God, was killed.

A few days between March 7, 1965, and March 15, 1965, a young white minister by the name of James Reed, who came down from Boston to participate, was beaten by the Klan and later died.

In that speech here in this hall Lyndon Johnson said that night over and over again, "We shall overcome."

In a matter of a few months, Mr. Speaker, the Congress passed the Voting Rights Act, and it was signed into law on August 6, 1965. Because of the March from Selma to Montgomery, because of the leadership of Lyndon Johnson and the action of the Congress on August 6, 1965, we have witnessed what I like to call a nonviolent revolution in American politics, especially in the South. Today in Selma more than 75 percent of blacks of voting age are not registered to vote, and you have a biracial city council. In a State like Mississippi today there are more than 300,000 registered black voters, and the State of Mississippi has the highest number of elected black officials. In 1965, on March 7, 1965, there were less than 50 black elected officials in 11 Southern States. Today there are more than 7,000.

So, Mr. Speaker, we have come a distance. We made a lot of progress. But I think what happened 30 years ago as we meet here tonight tends to dramatize the distance we must still travel before we create a truly interracial democracy in America.

So, Mr. Speaker, at this time I am going to yield to some of my colleagues that are willing to participate in this special order in memory, not just in memory, but in commemoration, I guess, in celebration, of what happened in that little town of Selma, what happened in other parts of Alabama, but also in Mississippi, and Tennessee, and Louisiana, North and South Carolina, and Texas, all across our country really, to make democracy real.

Now, Mr. Speaker, I yield to the gentleman from California [Mr. BECERRA].

Mr. BECERRA. Mr. Speaker, I thank the gentleman from Georgia [Mr. LEWIS].

I say to the gentleman first that it is with great honor that I stand next to him today with the opportunity to participate in this special order that he has organized because he is one whose footsteps I hope I have a chance to follow in the future, as well as someone who has distinguished himself in the past as one of those who marched way back when, in the 1960's, and made it possible for some of us to be here today. I consider myself someone who is the fruits of much of the work of people like the gentleman from Georgia [Mr. LEWIS], and I think it is only a tribute to the folks like him that we have a chance to come before here, and speak and say how things really are. So to the gentleman from Georgia and those like him who have fought and continue to fight, Mr. Speaker, I say, "Thank you for giving me the opportunity to stand here today and speak on behalf of voting rights for all Americans."

Clearly the Voting Rights Act was a landmark piece of legislation for our country and for our history. The Voting Rights Act made it possible for people for the first time to truly participate in America's democracy, and of course now that we see the 30th year of the Voting Rights Act, it is only fitting that we have a chance to discuss its many successes, especially in light of the fact that there are so many obstacles and so many deterrents to its successful implementation that are being placed before us these days.

I think it is clear that there have been benefits to the African-American community throughout this Nation. It is unquestionable that it opened doors for many people who for years have been closed out of the process. But let me focus a little bit of my time on two emerging communities that, too, have benefited from the Voting Rights Act and who have struggled as well to try to make sure that America truly is a place for all.

Let me focus a few minutes, if I may, on the Asian-Pacific Americans in this country and the Latinos of this country who, as the gentleman from Georgia [Mr. LEWIS] mentioned, are part of America and make up that fabric which makes America so great.

The Asian-Pacific American community is really coming of age. It is a community in California which represents about 10 percent of the State's population. That is a dramatic increase over the last decade or two decades, yet the Asian-Pacific population is woefully underrepresented in office and in other signficant places of importance. The participation rates are very low right now for Asian-Pacific Americans when it comes to voting, and the biggest barrier, of course, is language. Right now what we find is that without some assistance and an opportunity to learn the language, it becomes very difficult for people to fully participate and understand the process, but fortunately the Voting Rights Act has made it possible for a number of Asian-Pacific Americans to become fully participant members of democracy. Just in California alone in the last few elections 25,000 additional voters, citizens, Asian-Pacific Americans, have gone to the polls, voted and become participants because the Voting Rights Act made it possible for them to participate through bilingual ballots. Now that is an example of how the Voting Rights Act has helped the Asian-Pacific American community.

In the Latino community, Mr. Speaker, it is much the same. I should note that the Latino community has a long history, especially in the Southwest, where there were settlements in this country long before the Pilgrims made it to the shores of the east coast. But Latinos have also suffered from poll taxes, white primaries and intimidation. Throughout the history of the Southwest it was very difficult for Latinos to participate in the process because literacy tests or language barriers were imposed, but the Voting Rights Act has made it possible for real progress to be achieved. I think it is clear to say that the doubling of Latino elected officials over the last 10 to 15 years, the increase in voter participation by Latinos, oh, say from 1975 from about 1.5 million to over 3 million are marked increases that deserve recognition especially for the Voting Rights Act.

I can go on and on and talk about how things are improving not just in the southwest, but in New York City where there has been a 17-percent increase in the number of Latinos who are registered to vote. But what we find from this is once they begin to participate in the process, they become full Americans, and I think that is what we hope to achieve through the Voting Rights Act, is full Americans, and I want to say to people like the gentleman from Georgia [Mr. LEWIS] to those who will participate in this special order, that it gives me great pride to say that back in the 1960's, when the march and the struggle came to a head and we had a chance to really televise it, that there was a chance to tell the American people that people have struggled, struggled not just for decades, but for centuries, to provide true, true rights, true representation to all people, not just a particular minority, not just to those that have been disenfranchised, but to all people, and I think, when you look at all the different communities that we have in this country that make up the fabric of America, you can truly say that the Voting Rights Act has worked. We should make it work more. We should preserve it. In fact we should strengthen it.

I would just like to say that it is time for us to stand together and do what was done 30 years ago, say that the Voting Rights Act must not only continue, but we must strengthen it. So I thank the gentleman from Georgia [Mr. LEWIS] for the opportunity to be here today.

Mr. LEWIS of Georgia. I thank the gentleman from California, my friend and colleague, for participating in this special order.

Mr. Speaker, I now yield to the gentlewoman from Texas [Ms. JACKSON-LEE], and I want to thank her for being here and participating.

Ms. JACKSON-LEE. Mr. Speaker, it is with both celebration and trepidation that I rise this evening in recognition of the 30th anniversary of the March From Selma to Montgomery and passage of the Voting Rights Act.

I celebrate with my colleagues the inspiring courage that fortified the unarmed band of non-violent probably people like our neighbors, who were tear-gassed, charged and brutally beaten by State police on horseback as they tried to peacefully cross the Edmund Pettus Bridge in Selma, Alabama, 30 years ago today I also salute them—for these courageous souls changed the course of history of this nation—and when the 35,000 strong reached Montgomery after the March 7 march, they were black and white together.

I celebrate the courage of the distinguished gentleman from Georgia, [Mr. LEWIS], who was on that bridge on March 7, and suffered great injury in the name of freedom along with the gentlelady from Georgia, [Ms. MCKINNEY], has been instrumental in providing my colleagues and I the opportunity to address the chamber this evening.

And I celebrate the Voting Rights Act of 1965 that has ensured the freedom for all Americans to cast their ballots in peace and safety.

A freedom some may take for granted these days, but a freedom for which so many—black and white—were forced to fight and too often die.

My trepidation, Mr. Speaker, comes in the knowledge that there are those around this Nation today who seem to have forgotten America's long and tortured history of racial injustice. There are those, Mr. Speaker, who would turn back the clock to a time of fear and polarization. Those who are again willing to stroke the fires of racial division in their pursuit of short term gain.

As history's demagogues have always chosen their scapegoats, American demagogues today seek to make different classes and races of people their scapegoats.

Encouraged by November's election analysis, today's demagogues want to promote anger and divisiveness amongst America's many races—particularly those most associated with the civil rights movement—African-Americans.

If they can convince white Americans that they should fear these diverse Americans instead of spending more constructive time solving the problems of binding work instead of welfare, of insuring the maintenance of school lunches and breakfasts instead of ketchup as a meal, and insuring a higher minimum wage for our citizens then today's demagogues will succeed in their efforts to divide and conquer America.

Today's demagogues here in Congress and across the country on talk-radio have fought tooth and nail the motor-voter laws that make it easier for all Americans to register to vote when they renew their driver's licenses or vehicle registrations.

They have been gerrymandering Congressional Districts for their advantage for more than 200 years.

But now that Congress has been fairly and legally diversified through the Voter Rights Act, the demagogues want to challenge the Voting Rights Act in court.

And just as police and fire departments, construction sites, corporate offices and graduate school classrooms are beginning to show the kind of racial, cultural and gender diversity that is America, the demagogues want to abolish any and all Government programs that they call "affirmative action."

Mr. Speaker, my trepidation comes when I hear the demagogues make blanket condemnations of all affirmative action programs—as though it was affirmative action and not a changing global economy that is to blame for America's anxiety over job security.

Let me be clear, Mr. Speaker, I welcome positive debate on affirmative action programs and we can work together to improve any utilization of these programs.

But let us make no mistake about it, affirmative action is not and never was some crazy scheme foisted on America by bleeding heart zealots. It was and remains the direct consequence of sustained and oppressive racism, and to those who argue that that kind of racism is a thing of the past, let me share with you some of my recent mail.

Mr. Jack Clark of Morgan, Georgia, offers his insight into American race relations. Mr. Clark claims it was the white male who made our country great and that, quote, "Niggers Will Destroy America."

Mr. Speaker, another anonymous correspondent, also from Georgia, offers this Nazi-like solution to racial tensions, quote, "Save America, Nigger Genocide."

Mr. Speaker, I did not consider lightly whether or not to share this mail with my House colleagues and the rest of America, and it is with mixed feelings that I did so.

As an American first, I am ashamed that such thinking still goes on in any quarter.

As an African-American who has worked all her life to improve racial harmony in my hometown of Houston and across the country, I was stunned to receive such cruel insults by people who haven't the slightest idea who I am or what I stand for.

Mr. Speaker, I know the vast majority of white Americans would be as insulted as I am by these disgusting thoughts.

And I know they are not the ones discriminating against African-Americans in matters of education, employment, housing or finance.

But, as we commemorate the Selma to Montgomery march for freedom, and the Voter's Rights Act, this good-hearted majority must be reminded that tremendous evil still lurks in the hearts of a dangerous minority.

And if we are not careful, we run the risk of returning to our dark past.

Let me conclude, Mr. Speaker, with a heartfelt plea to all Americans—white, black, brown and yellow.

We must celebrate our diversity, we must maintain our courage, and we must stay strong so we can resist the demagogues' message of fear and hatred.

Despite skin color and cultural heritage, we are all brothers and sisters, and brothers and sisters must care for each other and see to it that justice is done.

Let us remain vigilant and never forget that united we stand, and divided we shall surely fall.

□ 2114

Mr. LEWIS of Georgia. Mr. Speaker, I want to thank the gentlewoman from Texas for participating in this special order and say to her that I am very grateful for her involvement and for her leadership. I think the mail that you got from my State tends to dramatize to the Nation and to all of us that the scars and stains of racism are still deeply embedded in the American society. So we must still act. We must still speak. And thank you.

Ms. JACKSON-LEE. I am grateful for those words and let me say to you that our challenge is before us. You have paved the way and we join you in making this country a better place for all of us.

Mr. LEWIS of Georgia. Thank you. Mr. Speaker, I now would like to recognize the gentleman, my friend and colleague, the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. I rise today to stand with this brave man, Representative JOHN LEWIS, to commemorate the anniversary of the Selma to Montgomery march, one of the milestones in civil rights history. Thirty years ago today hundreds of brave African-American men and women, Representative JOHN LEWIS among them, risked their lives to ensure the voting rights of all people, regardless of their race.

During the 1960s, the State of Alabama was notorious for its practices of segregation. Like many States in the South, Alabama did not even acknowledge the equal rights of black men and women. In 1965, the Reverend Dr. Martin Luther King, Jr., and other began trying to escalate his Selma voting registration campaign. But whites in Alabama, including then Governor George Wallace, were just as adamant in their protests against the voter registration campaign.

On March 7, 1965, more than 600 marchers gathered in front of Brown's Chapel AME Church in Selma to prepare for the 50-mile march from Selma to Montgomery. This march was intended to dramatize the demands for voting rights. Led by the Reverend Hosea Williams, a King lieutenant and my distinguished colleague, Congressman JOHN LEWIS, who at that time was the national chairman of the Student Nonviolent Coordinating Committee, the marchers headed for the Edmond Pettus Bridge in Selma. Unfortunately, they were not prepared for what was in store for them. A solid wall of State troopers, a smoke bomb and an ensuing attack and chase by the troopers and sheriff's posse. The marchers were violently driven back as ambulances shuttled the injured to the hospital and treated others on site for cuts, bruises, and tear gas aftereffects.

The infamous bloody Sunday became a monument to history. Many of these marchers, including Representative LEWIS, were college students who heeded the call of civil rights leaders for all blacks to become active in the movement. Students in my own congressional district heeded the call 5 years prior to the Selma march in 1960. Four African-American students, black students from North Carolina A&T State University in Greensboro, NC, including one of my constituents, Franklin McCain, made history for the civil rights movement and the State of North Carolina.

On February 1, 1960, these African-American students staged a sit-in at the Woolworth's department store counter in Greensboro. This was by no means the first sit-in in North Carolina but this particular one opened the doors for a student movement that began creeping up throughout the South.

On the evening following the four students' sit-in, 50 students met and created the Students Executive Committee for Justice. The following day, the four A&T students were joined by more than 300 African-American students from A&T and Bennett College, also in my congressional district. They organized a massive sit-in at various lunch counters across the city of Greensboro. Four days later, 1,600 students decided to halt the demonstrations at the request of city leaders who promised talks and negotiations.

However, no compromise became evident to any of the students, so the sit-ins resumed on April 1. On April 21, 45 demonstrators were arrested for their protest. Yet, subsequent sit-ins and boycotts forced the city of Greensboro to reopen lunch counters on a desegregated basis by July 1960.

The students' acts made a tremendous difference in both of these historical civil rights milestones: the sit-ins and the march in Selma. Their involvement and commitment not only helped make strides in voting rights but in the entire arena of desegregating America.

Mr. Speaker, I had hoped that this would be the end of my presentation in this special order, but when I went back to my office today I was reminded of the significance of the Selma march again. When I went back to my office from the floor today, in March 1995, I had a memo from the NAACP Legal Defense Fund. They reminded me once again that we have not yet quite arrived.

It said on April 19 the Supreme Court will hear arguments in two crucial voting rights cases from Louisiana and Georgia. These cases ask the Supreme Court to consider whether race or ethnicity can constitutionally be considered in constructing electoral districts.

The attack is not limited to oddly shaped or bizarre congressional districts, said the memo. It is not the districts' shapes but their racial composition as majority black and majority Hispanic that is being challenged as unconstitutional.

"The legal principles," the memo went on to say, "established in these cases will have wide-reaching impact." Plessy versus Ferguson ensconced the nationwide principle of separate but equal in a case that presented the claim of one person seeking to ride in a white-only railroad car. Brown versus Board of Education directly involved only four school districts, but the decision revolutionized the law of racial equality.

And the memo went on to say the lower court in the Louisiana case ruled that any race consciousness in districting is always subject to strict scrutiny. Yet, the creation of majority-minority electoral districts almost never occurs by chance. Because race is such a dominant force in American politics, it would be impossible to provide fair representation to racial and ethnic minorities without taking race into account.

Since minorities have been elected almost exclusively from majority-minority districts, the U.S. Congress and State and local legislative bodies are at risk of once again becoming virtually all white.

So, today, once again, we are reminded of why these brave people made that march in Selma. And, unfortunately, once again we are reminded that the march and the fight and the struggle for equality in the voting rights area and in every segment of our society still has not been completed.

□ 2130

Mr. WATT of North Carolina. We must fight. We must continue to march together. I commend my colleague, Representative LEWIS for putting together this special order, and I express my thanks to him for inviting me to participate, but more importantly, I express my sincere thanks to him for the bravery that he demonstrated 20 years ago today when he faced the marshals and the tear gas and the fear that must have existed on that bridge in Selma, AL. Thank you for allowing me to participate, Representative LEWIS.

Mr. LEWIS of Georgia. Mr. Speaker, let me thank my friend and colleague from North Carolina for those kind words and for participating in this special order tonight. We are very grateful for your participation. Thank you.

Mr. Speaker, I would like to recognize the head of the Congressional Black Caucus, the chairman of the Congressional Black Caucus, the Honorable Mr. PAYNE from the State of New Jersey.

Mr. PAYNE of New Jersey. Mr. Speaker, let me thank the gentleman from Georgia, the Honorable Representative LEWIS, who over 30 years ago led the Nation in the march on bloody Sunday. It was in fact the same date as tonight when he led the march over the Edmund Pettus Bridge, when Sheriff Jim Clark and his posse, with the Alabama State troopers, stood there and treated people as brutally as any act in this Nation.

As chairman of the Congressional Black Caucus, I take great pride in drawing attention to a very important piece of legislation that resulted from that action. After years of judicial and administrative wars, which were highlighted with the passage of the Voting Rights Act of 1965, this country just recently began to get women and minority officials elected in significant numbers.

The Voting Rights Act of 1965 and its extension in 1970 and 1975 had a profound effect on the black political participation in the South. The percentage of voting age blacks registered in the South in March, 1965 was only 35.5 percent, compared with 73.4 percent of the white population. The percentage of blacks registered was especially low in States targeted by the special provisions of this act, and it was in the area of the South that the act had the most direct and important impact.

By the end of 1965, Federal examiners, working in 32 counties in the covered States, had listed the names of 79,000 African-Americans to be added to the voting registration rolls. By the end of 1967, more than half a million new black voters were listed in the States covered by the Voting Rights Act. Since 1970, changes in black registration rates have been more erratic, but have generally moved upward. Moreover, the substantial increase in the number of black registered voters has been accompanied by a significant rise in the number of black elected officials.

So I share this history with you to emphasize how important this bill really is to African-Americans and to our communities. More importantly, I believe these statistics are even more remarkable when one considers that as late as 1940, 95 percent of adult blacks residing in the States in the South were deterred from voting. Many people had been beaten, lynched and harassed so that African-Americans could have the right to vote. The barriers at the time were numerous to them. They included all-white primaries, poll taxes, literacy taxes and economic intimidation. Within a generation, these barriers were largely dismantled; however, some still exist. By far the biggest increase in black registration occurred in the late 1060s in the southern States covered by the Voting Rights Act.

And let me say that it is interesting to note that it was not only in the South where we have had problems, but when we look at Black History Month, which just passed, we found that following the Civil War, it was the passage of the Reconstruction Act of 1867 that gave blacks the right to vote. Blacks were elected to Congress. Hiram Revels of Mississippi became the first black to serve in Congress, when he took his seat in the U.S. Senate on February 25, 1870. Joseph Rainey of South Carolina became the first black Member of the House of Representatives when he took his oath of office on December 12, 1870. In fact, in the first Presidential election open to African-American voters, the blacks gave the deciding vote. Ulysses S. Grant defeated Horatio Seymour by a margin of 300,000 votes. It was estimated that Grant received 450,000 votes from newly freed slaves.

Unfortunately, in my home State of New Jersey, African-Americans were shut out of the political system for a very long time. In fact, in 1807 the State legislature restricted voting rights to only white males, eliminating privileges that our State's 1776 Constitution had existed for both African-Americans and women. Despite immediate opposition to the 1807 restrictions, the State's 1844 Constitution continued to limit the franchise to white men.

In an effort to gain a right to vote, the first statewide black convention was convened at Trenton's Zion AME Church in 1849. The convention petitioned the legislature to put aside prejudice and allow all citizens to vote. Their effort was unsuccessful. The reality is that New Jersey in the 1800s was sometimes compared to the South. New Jersey was a slave holding State and it was reluctant to change. References to New Jersey as the land of slavery are found in historical letters of pre-Civil War era. New Jersey was the last northern State to approve laws abolishing slavery. It was in 1804 when a bill was passed establishing a gradual system of the practice of ending slavery, but the bill actually allowed slavery to continue until after the Emancipation Proclamation to the end of the Civil War.

So as I conclude, it is important that we do know about history, that we do know that New Jersey questioned President Abraham Lincoln's authority to free the slaves. It was also the only northern State that failed to ratify the 13th, 14th, and 15th amendments to the Constitution.

And so as we look around, we have seen a great deal of improvement. As we look around, we see that the importance of this bill is important. As we look around, we see that we have seen a great deal of progress in the course of history as African-Americans. We have seen many move into elective offices. Today there are over 8,000 elected African-Americans as compared to 280 in 1965, and so as I conclude, I once again want to congratulate the gentleman from Georgia for this very important event tonight and I thought that it was important, as we celebrate Black History Month, that we hear a bit about the history of African-Americans throughout this country and thank you, Mr. LEWIS, for this opportunity.

Mr. LEWIS of Georgia. Mr. Speaker, I want to thank my colleague and my friend, the gentleman from New Jersey, for participating in this special order, for his remarks, and for taking the time out to remember the people that participated in the march from Selma to Montgomery. I think it is fitting and appropriate tonight that we pause and commemorate, to take stock of the distance we have come as a Nation and as a people. I think as a Nation and as a people, we are on our way down that long road to creating a truly interracial democracy in America, a creative and beloved community, the open society, and this is what America is all about, creating a society where all of our people are able to participate and share in the fruits and dream of this great country of ours.

So tonight, as we commemorate, as we celebrate, as we pause, as I stated before, we have a distance to go, but we are on our way and there will be no turning back.

I would like to, Mr. Speaker, yield to a colleague and a friend, the gentleman from Louisiana [Mr. FIELDS], who, if not for the Voting Rights Act of 1965 and the march from Selma to Montgomery, Mr. FIELDS, like many of us, would not be here tonight.

Mr. FIELDS of Louisiana. I thank the gentleman for yielding. Let me just say to the gentleman that I too appreciate his efforts and I think on this very floor I have expressed my appreciation and my gratitude to the gentleman for all the commitments he has made to civil rights and voting rights in this country, and while the gentleman was walking across the bridge in 1965 I was only 2 years old, a little bit better than 2 years old, and I just want to thank the gentleman for, irrespective of the dogs and irrespective of the tear gas and irrespective of the police officers and the fire hoses, the gentleman still found the gall and the courage to march for what was right, and I just want to thank the gentleman. I think even today the gentleman would probably realize that the Voting Rights Act is still under attack.

The gentleman from North Carolina, MEL WATT, mentioned about the case in Louisiana, but in his own State there is a challenge in terms of the redistricting of his congressional district and the district that he represents. In the State of Georgia, in the gentleman's own State, there is a challenge in redrawing the congressional districts in the State of Georgia and in the State of Texas, and on the 19th the Supreme Court will hear both the Georgia and Louisiana cases. I want to thank the gentleman; irrespective of the outcome of that case, he certainly has made his mark on this institution, and I rightfully am here largely because of people like you who have opened up the doors for people like me, and I thank you for that.

Mr. LEWIS of Georgia. I thank my friend and colleague for those kind words.

Mr. FIELDS of Louisiana. Mr. Speaker, at this time I would like to talk a little bit about some of the rescissions and some of the things that have taken place here in Washington, DC, just to change the subject just a minute, and I am going to yield back to the gentleman because I think the gentleman has just received another invited guest.

Mr. LEWIS of Georgia. Well, Mr. Speaker, if I may, let me yield to my colleague from the great State of Georgia, the gentleman from the second Congressional District of Georgia, Mr. BISHOP.

Mr. BISHOP. I thank my colleague, Mr. Speaker.

Mr. Speaker, 8 days following the event known to history as Bloody Sunday, President Lyndon Johnson came to this Chamber to formally call on Congress to enact the Voting Rights Act.

In his remarks, the President predicted that Selma would prove to be a turning point in the country's history comparable to Lexington and Concord.

As we now know, he was right. The Voting Rights Act had been under discussion for some time. But it was Bloody Sunday that gave it the momentum to finally get through the House of Representatives and Senate and become law.

Its impact was nothing less than revolutionary. The new law authorized the Attorney General to send Federal examiners to supersede local registrars wherever discrimination occurred. This provided a means for dealing with disenfranchisement cases quickly and effectively without going through the prolonged and cumbersome process of litigation. Prior to enactment, millions of Americans were routinely denied the right to vote. After enactment, the opportunity to register and vote was immediately opened to all Americans for the first time in the country's history.

Although a majority of Selma's residents were black, only 3 percent had been permitted to register in 1965. Many techniques were employed to keep people disenfranchised. If an "i" was not dotted or a "t" crossed, a registration form was thrown out. If the registration form was filled out perfectly, a verbal literacy test was administered with questions so obscure the registrars themselves could not have answered them. And even if the questions were answered correctly, the registrars could tell applicants they failed anyway. There was, after all, no appeal.

When organized voter registration efforts got underway in Selma as early as 1962, firings, arrests, and beatings became recurring realities of life. On one occasion, 32 teachers were fired, en mass, just for trying to register. There were instances when blacks tried to register in large numbers and were kept waiting in lines from morning to night without ever having a chance to register with police standing guard throughout the day to prevent anyone from giving them food or water.

These forms of government oppression intensified when Dr. King made Selma the center of the civil rights movement early in 1965. Within a few months, hundreds of people involved in the voter registration campaign—white and black—were severely injured and three lost their lives. Much of the violence—particularly the brutal trampling and beatings of men, women and children on Bloody Sunday—was carried out in plain view of television audiences from coast to coast.

Millions of Americans of both races were outraged. In fact, thousands of people ignored the dangers and poured into Alabama from all over the country in the weeks following Bloody Sunday to join the continuing demonstrations.

People were outraged over the injustice. On one side, people saw courage. On the other, they saw an extreme abuse of power. They saw one side simply seeking the right to vote. And the other advocating the denial of rights. They saw the nonviolence of one side and the unrestrained and often unlawful violence of the other. And they could not miss the fact that one side was steeped in faith and spirituality and the other side in raw hatred. These stark contrasts certainly influenced the tide of public opinion.

But I believe many Americans were influenced by something more personal. I believe people throughout the country began to understand that if the most fundamental right of citizenship could be denied to one group of people it could surely be denied to anyone. It might be African-Americans today, tomorrow it might be people who belong to the wrong political party, or the wrong religion, or nationality.

The denial of voting rights to black Americans was, in fact, threatening to undermine the very foundation on which our republic stands. In my view, it was a struggle that involved more than the rights of one group of citizens. In a very real sense, it was a struggle for the very soul of our country.

Selma galvanized America behind the Voting Rights Act. And the Voting Rights Act changed America. When our esteemed colleague, JOHN LEWIS, received a key to the city where he was clubbed 30 years ago, it was dramatically symbolic of this change.

To be sure, the country still has its share of problems. Poverty and hunger and intolerance still exist. Too much crime and drug abuse and violence plague our communities. We still have disparities in opportunities. But just as the Selma demonstrators walked across the Edmund Pettus Bridge 2 weeks after Bloody Sunday during those memorable days in 1965, and continued their march freely and triumphantly to Montgomery, so has America crossed a bridge into a new ERA of expanded freedom and opportunity for all.

Throughout the country's history, one of our strengths has been our capacity for self-correction—the capacity to confront our problems, to deal with them, and eventually to emerge with a renewed and strengthened commitment to the ideals of equality of justice and opportunity on which America was founded. Lexington and Concord were early examples. Selma is a more recent one.

I am proud to be an American. I am proud of my native State of Alabama and my adopted State of Georgia where I have lived and worked for most of my adult life. With all my heart, I believe in the values our country and our States have advanced for more than two centuries—values which so many Americans have defended with their lives.

We commemorate the events that took place in Selma three decades ago for a reason. It is a part of our history that reaffirms these values that we treasure more than life itself. It is reaffirmation of the march toward justice and equality of opportunity that our country has been engaged in for more than 200 years.

□ 2145

But more than that, it forces us to focus on the threats of immediate and imminent danger that America now faces from the attacks on affirmative action, to remedy the effects of hundreds of years of discrimination, intimidation, violence and race, to the renewed attacks in the courts on the Voting Rights Act that was paid for with blood, with sweat and with tears on the Edmund Pettus Bridge.

Mr. Speaker, I come here tonight to commemorate the brave people who stood before the tremendous odds, the violence, and faced the harsh punishment of merely seeking to ask for their rights. I salute my colleague, the gentleman from Georgia, Mr. JOHN LEWIS, and the hundreds and hundreds of others who paid the price that we might have our voting rights.

America, this is 1995, 30 years later. Let us not turn back the clock. Let us not go back to where we were in 1965. Thank God we can remember the bloody Sunday in Selma in 1965.

Mr. LEWIS of Georgia. Mr. Speaker, let me thank my friend and colleague from the State of Georgia for those kind words and for his brilliant statement. He is a native of the State of Alabama. We both left the State of Alabama and moved to Georgia and now we both represent the State of Georgia in the Congress.

Mr. Speaker, I think tonight we have tried to say why we marched from Selma to Montgomery 30 years ago and why we come tonight to commemorate, to celebrate the great progress we have made as a Nation and as a people down that road toward a truly interracial democracy.

Mr. STOKES. Mr. Speaker, I want to thank my colleague, the distinguished Representative from Georgia, CYNTHIA MCKINNEY, for sponsoring this special order to commemorate two significant events in history, the 30th anniversary of the Voting Rights Act of 1965, and the historic march from Selma to Montgomery in 1965 which fueled its enactment. I am pleased to join my colleagues in reflecting upon these important events.

The march on Selma was a journey that forever transformed America's racial politics. Out of the violence and turmoil came the passage of our Nation's strongest voting rights legislation. On Sunday, March 7, 1965, about 500 marchers assembled at a church in Selma, AL, to begin a 50-mile march to the State capital of Montgomery.

For many years the leader of the civil rights movement, Dr. Martin Luther King, Jr., and others had fought to put African-American citizens on the voter rolls. The need was urgent, since the ballot box represented the key to equality, political empowerment, and economic opportunity. Dr. King recognized the fact that he could not succeed without a Federal voting rights law. It was determined that Selma, AL, the "cradle of the Confederacy," would be the focal point for a drive to bring about such a statute.

Mr. Speaker, when marchers gathered in Selma, AL, on March 7, 1965, they thought the journey to Montgomery would take only 4 days. Instead, before they could even leave the city of Selma, America was left with the painful images of a brutal confrontation at the Edmund Pettus Bridge that exposed State troopers swinging clubs, firing tear gas, and using their horses to run down marchers. Our Nation watched as African-Americans were beaten and trampled.

The day after Bloody Sunday, Dr. King issued a national call for protestors to join the effort in Selma. The call was answered by thousands of black and white Americans from all parts of the Nation and all segments of society, including Baptist ministers, Jewish rabbis, and civil rights activists. This time the marchers made it to Montgomery. In August, just 5 months later, President Johnson signed into law the Voting Rights Act of 1965, providing the Nation with the strongest voting rights legislation in nearly a century.

As we gather today to mark the anniversary of the Selma to Montgomery march, we recognize the leadership of our good friend and colleague, JOHN LEWIS. He was only 25 years old when he and other protestors were brutally beaten in Selma. His determination and perseverance placed him in the forefront of the struggle for civil rights in America. We are proud that today he represents Georgia's Fifth Congressional District in the Congress.

Mr. Speaker, the Voting Rights Act is considered to be one of the most effective civil rights laws which this Nation has adopted. When President Lyndon B. Johnson signed into law the Voting Rights Act of 1965, he started America on a new course of equality for those who had lacked political representation. In 1957, 1960, and 1964, Congress enacted civil rights laws to eliminate racial discrimination in the electoral process. However, the initiatives proved to be ineffective largely because they provided for enforcing voting rights in the courts on a case-by-case basis, which proved to be a time-consuming and ineffective approach.

The Voting Rights Act was originally designed to implement the 15th amendment to the Constitution which guaranteed the right to vote free of discrimination based on color or race. It was later amended to extend protection to the Nation's non-English speaking minority populations. Thus, the act has been instrumental in bringing our Nation nearer to realizing the goal of full equality in the electoral process.

In their book, "Controversies in Minority Voting: The Voting Rights Act in Perspective," the authors, Edward G. Carmaines and Robert Huckfeldt, write that the Voting Rights Act: "has altered the racial composition of the electorate, the party coalitions and the officeholders. It has transformed the appeals of politicians, the lines of political debate and the bases of political cleavage. Most important, it has transformed the strategies and agenda of American politics." Nowhere is the law's impact more evident than in Congress itself. In 1965, there were six black Members of Congress and four Hispanic Members. Today, there are 41 members of the Congressional Black Caucus and 18 Hispanic Members serving in this legislative body.

Mr. Speaker, those of us who have fought to secure voting rights and equal representation join today to commemorate the historic anniversary of the march on Selma and the passage of the Voting Rights Act. We also gather to reaffirm our commitment to the principles upon which this Nation was founded—liberty and justice for all. Many battles have been waged to secure these rights. Yet, we cannot and shall not rest until they apply to each and every citizen in this great democracy.

Mr. CONYERS. Mr. Speaker, 30 years ago, Selma, AL captured the attention of people around the world. At a time when there were 6 African-American Members of Congress and thousands of disenfranchised people in this country, 500 peaceful marchers were brutally attacked at the Edmund Pettus Bridge by State troopers for dramatizing the need for voting rights legislation.

All Americans, black, white, and every color, benefited from the conviction of these bold marchers. Dr. Martin Luther King once suggested in a Detroit speech that if you haven't found a cause worth dying for, you haven't found anything to live for. These brave members of the civil rights movement, found their cause in a simple act of conscience. For this they suffered the brutality of Bloody Sunday and experienced the joy of seeing the Voting Rights Act become law on August 6, 1965.

The struggle for voting rights was not over, far from it. The Reagan Justice Department in cases involving Mississippi, Louisiana, North Carolina, and Virginia supported the annexation of areas designed to dilute black voting strength. In 1985 they initiated a series of criminal prosecutions against civil rights workers in the five black majority counties in Alabama. Eight of the very people who led the march from Selma to Montgomery were indicted for voter fraud.

Thirty years later, our hard won victories are still under attack. States are refusing to implement the motor-voter law, the drawing of majority minority districts is under fire and affirmative action is in jeopardy. Frederick Douglass, a crusader in the fight against slavery who died 100 years ago, said something once that still applies today, "where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob, and degrade them, neither persons nor property will be safe."

We must never forget the legacy of struggle, survival and perseverance left to us by our African-American forebears. It is forged on a vision of freedom, equality, and opportunity that we must preserve for our children. Our memory of these individuals should only serve to fuel our fires as we attempt to preserve the rights of all Americans to participate in the political process. We must be as courageous as the marchers were on that Sunday morning in 1965 and meet the challenge head on.

Mr. WATTS of Oklahoma. Mr. Speaker, we take it so blithely nowadays. Every 2 years—sometimes more often—we go to our local library, school, dry cleaners and pull a lever, darken a circle or punch a hole—all to cast our vote for the representatives of our choice. Whether it's the school board, county assessor, or the highest office in this land—voting has become commonplace, even sometimes considered a burden by some.

But in 1965 in Selma, AL, it was not commonplace—it was not a burden. In fact, voting was worth marching for, demonstrating for and even dying for by those whose choices were restricted by oppression.

It is those heroes who marched from Selma to Montgomery—we all remember the famous names like King and all of the other not so famous names who had a burning desire to make sure all people—red or yellow, black or white, had the right to vote freely.

On this 30th anniversary of the march from Selma to Montgomery, it is fitting that we reflect on yet another recent voting success.

In South Africa last year, black Africans had the opportunity to vote for the first time. The stories are poignant. One account is told about a couple of black housekeepers who rose early that morning, put on their best going-to-meeting clothes, rode in with their white employers and stood together, for hours, waiting to cast their votes for the first time.

It was not a burden; it was not an inconvenience; it was a privilege—an event—a time to wear your Sunday's finest because the vote took on a sacredness. That vote in Johannesburg, Capetown, and Soweto was exercised for the first time after blood shed, unrest, and revolution. That revolution ended in the election of Nelson Mandela and for the first time true freedom rings in South Africa.

That story is repeated over and over again in the States of the former Soviet Union, the countries of South America and even in the far east where the concept of one man, one woman, one vote is becoming the archetype.

Let us not ever be so brazen, so commonplace that we forget the struggle, the heartbreak, the price paid for the Voting Rights Act. On this the thirtieth anniversary, let us be vigilant for any continued injustices or breaches of that inalienable right and let the words of Dr. Martin Luther King ring true: An injustice anywhere is a threat to justice everywhere.

Ms. BROWN of Florida. Mr. Speaker, I rise tonight to commemorate the 30th anniversary of the Voting Rights Act. In 1962, only 5.3 percent of the voting-age black population was registered to vote in Mississippi. There were only 500 black elected officials in the entire country.

The year I was elected to Congress was historic—especially for Florida. For the first time in over 120 years, an African-American represents my district in Congress. Representatives CARRIE MEEK and ALCEE HASTINGS also represent Florida in Congress. The Congressional Black Caucus has grown to 40 members, the largest ever. Sixteen new African-American Members, most from the South, were seated in the House of Representatives and one African-American Senator, CAROL MOSELEY-BRAUN, was seated, expanding the number of Congressional Black Caucus members to 40. There are now 57 women, 19 Hispanics, 8 Asians, and 1 American-Indian. This is the highest number of minorities to ever serve in the history of the U.S. Congress. Despite these gains, less than 2 percent of the elected officials in this country are black. We still need the Voting Rights Act, we still have a long way to go.

Let me tell you a little bit about Florida's first Member of Congress. Josiah Wells, from Gainesville, FL, was first elected to the House of Representatives in 1879 but his election was challenged and he lost his seat after only 2 months in office. However, by that time, he had already been reelected to a new term. Believe it or not, his next victorious election was challenged after ballots were burned in a courthouse fire. And thus ended the congressional career of Florida's first black Representative.

Once Reconstruction began, 21 black Congressmen were elected from the South between 1870 to 1901. However, after 1901, when Jim Crow tightened his grip, no black person was elected to Congress from the South for over 70 years. As we celebrate the 30th anniversary of the Voting Rights Act, it is more timely than ever, to study what happened to black representation during Reconstruction. This period may seem like ancient history, but what happened then seems to be happening all over again.

Although history was made with the 103d Congress, reaction to that history was the election of 1994—the revolution of the conservative right. Angry white men were not happy with the history we made in 1992. They have launched a contract on America and in just the first 50 days they have:

Threatened school lunch programs; threatened Meals on Wheels for seniors; cut Pell grants; eliminated the Cops on the Beat Program that have provided more than $11 million for over 150 cops to the Third Congressional District; and threatened to eliminate affirmative action programs, including the 8(a) Small Business Program.

For the first 100 years of America's history, African-Americans did not have the right to vote; they were enslaved. Eventually, the Constitution was amended to make African-Americans free. After the Civil War, some African-Americans were able to exercise their rights to vote but this lasted for just a brief time. After the Reconstruction period, things actually got worse and Jim Crow ruled the South. The civil rights movement exploded because African-Americans were fed up with living in America without real democracy. Dr. Martin Luther King, Jr., whose birthday we recently celebrated, and many others sacrificed their lives to have the Voting Rights Act passed into law. The Voting Rights Act was enacted in 1965 but it has taken almost 30 years to implement in the South. The reason districts were redrawn was because of a long history of violations of the Voting Rights Act—we cannot lose sight of this. The Voting Rights Act was enacted because people that should have been represented were not represented. Too many have died for us to allow a few frightened individuals to steal back these long-overdue rights to representation. What matters most is not what the district looks like, but who is in them—those who have been left out.

New attacks, just like the attacks on Josiah Wells, are from the good old boys from the bad old days who are trying to roll back the clock and send minorities to the back of the political bus. Congress now looks more like America than at any time in the past. However, even though there are more women and African-Americans in Congress than ever before, neither group is fully represented proportionately to their numbers in the general population. Blacks and women are still underrepresented even though we have begun to make progress. The voters of America should be outraged that a few people are trying to take away the representation blacks, Hispanics, women, and other minorities have been struggling for over 127 years to achieve.

Mr. CLAY. Mr. Speaker, today marks the 30th anniversary of the signing of the Voting Rights Act—perhaps the most significant piece of legislation since the adoption of the 14th and 15th amendments to the Constitution.

The Voting Rights Act has revolutionized the American political landscape. Were it not for the Voting Rights Act, the black Members of this body would be able to meet in a telephone booth—our numbers would be virtually that small. Were it not for the Voting Rights Act, all of the State legislatures and nearly all of the city and county legislative bodies in the South would still consist of white elected officials. Were it not for the Voting Rights Act, we would not have had the first black Governor elected since Reconstruction.

With all of the positive revolutionary changes brought about by the Voting Rights Act, you would think that this 30th anniversary would be celebrated in every corner of the land. But, sadly, Mr. Speaker, we have once again come to the stark realization that many people in this great country are simply opposed to America becoming a society that includes racial minorities rather than one that excludes them from full participation as citizens.

I am always amazed and puzzled by those Americans who argue persuasively and passionately on behalf of equal treatment for blacks while simultaneously supporting measures to deny the same people the opportunity for achieving equality. The drawing of race-based congressional districts, which is at the very heart of the Voting Rights Act, is a perfect example.

Last year, in a 5 to 4 decision, the Supreme Court ruled that drawing congressional districts for the purpose of giving blacks an opportunity to be elected, dilutes the votes of white citizens. In the case of Shaw versus Reno, the high court discounted the fact that until the drawing of two congressional districts with a majority of black voters, North Carolina had not elected a black Member to Congress since 1901. The high court ignored the fact that for over 90 years a State with 35 percent black population had deliberately created white race-based on districts which diluted the voting strength of black citizens.

Mr. Speaker, this is the hypocrisy of which I speak when describing those Americans who creatively and passionately argue on behalf of equal treatment while simultaneously denying blacks the vehicle for equal opportunity.

The alternative to drawing race-based congressional districts thus making it possible for blacks to be elected, is to draw race-based districts that make it impossible for blacks to be elected.

North Carolina is not an isolated case where black people have been denied the right of legitimate representation. Until recently, every State in the union drew legislative districts at the local, State and congressional levels that were purposely designed to deny blacks fair representation. From one end of this country to the other, north, south, east and west wherever large numbers of blacks resided, districts were drawn in these cities to dilute the black vote.

From the turn of this century until the election of Oscar DePriest to Congress in 1928, being black in America meant suffering taxation without representation. This condition existed until just a few years ago. Black representation, at all levels of government, was sparse indeed.

The self-described liberal State of New York did not elect its first black to the State assembly until 1916, 53 years after the Emancipation Proclamation. California did not elect its first black to the State assembly until 1918 and Missouri followed suit in 1920. Thirty-six years later in 1956, the great State of Illinois, the land of Abraham Lincoln, elected its first black to the State legislature.

At the time of DePriest's election, major industrial cities with large concentrations of black residents like Memphis, Atlanta, New York, Pittsburgh, Baltimore, Little Rock, Charleston, Charlotte, Richmond, New Orleans, Cleveland, Cincinnati, Louisville, Philadelphia, Boston, Buffalo, Savannah, Birmingham, and Detroit had no elected black official

The cities of New York and St. Louis did not elect their first blacks to their city councils until 1941 and 1943 respectively. Los Angeles did not elect it first black city councilman until 1963. It would be 17 years after DePriest's election before another black was elected to the U.S. House of Representatives, and not until 1966 before the first black in the 20th century was elected to the U.S. Senate.

Three events occurred that now make it possible for 41 blacks to sit in the House of Representatives and one in the United States Senate. First, the passage of the 1965 Voting Rights Act by Congress enabled blacks to register and vote in large numbers throught the Southern States. Prior to this time, chicanery, trickery, fraud, intimidation, gerrymandering, and the purging of registration rolls were common techniques capriciously employed to deny black people the opportunity to vote and to serve in elective office. For over 100 years, poll taxes, literacy tests, all white primaries, threats of bodily harm and murder kept 95 percent of the black populace from registering and voting.

Second, the 1964 Supreme Court one man, one vote, ruling required the redrawing of legislative districts at all levels of elective government, ensuring equal weight to each individual vote cast. Some States had congressional districts as large as 900,000 and others had districts as small as 180,000. This ratio meant that one vote in one district was equal to 5 in the other. This inequitable arrangement was used extensively to keep blacks from having too much voting power in a particular district.

Third, the Federal Court decision that rendered as unconstitutional the gerrymandering of districts to diminish the importance of minority voters played an important role in the dramatic increase in black elected officials in every sector of the country.

Clearly, the 1965 Voting Rights Act is the centerpiece of this triad of empowerment.

Prior to these legislative and judicial decisions, most State laws failed to give adequate protection to the rights of black voters. State officials either overtly sanctioned this injustice or gave tacit approval to those who flagrantly disregarded the rights of their minority citizens. Scandalously, these political entities were permitted by the Federal Government to operate with impunity.

Mr. Speaker, beginning in 1876, black voters were systematically reduced to non-citizens by the denial of their right to fully and freely participate in the political process. They were almost totally purged from voter lists in the eleven southern States: Alabama, Arkansas, Florida, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

This diminution of black political power eventually resulted in the virtual disfranchisement of 90 percent of the black populace. Within 20 years after 1876, 8 States enacted devastating literacy tests as a requirement for blacks to register and vote. By requiring black folk to read, understand and interpret any section of the State constitution, Mississippi was able to reduce the number of qualified black voters from over 235,000 to 5,300. The situation was identical in Alabama where the number of black voters was reduced from 187,000 to 3,000.

In some communities prominent black educators and other professionals never passed the tests. Blacks with Ph.D.'s were denied the right to register because they were unable to give a satisfactory response to such obtuse and irrelevant questions from some illiterate, ignorant white registrar as "how many bubbles are in a bar of soap?"

The Supreme Court, a majority of whom were appointed by ultra conservative ideologues, Presidents Reagan and Bush, issued an opinion in *Shaw* v. *Reno* which implied that blacks who constitute 10 percent of the Nation's population and less than 2 percent of the total elected officials in the country have made too much progress. Shamefully, Clarence Thomas, a Negro on the Supreme Court, voted with the majority in this 5 to 4 decision. His vote has seriously jeopardized the future of a viable, black presence among elected officials.

Of course, his action was consistent with his prior positions involving the rights of black citizens when he as Chairman of the Equal Employment Opportunity Commission. Additionally, in his very first case as a Supreme Court Justice, Thomas displayed his contempt for the Voting Rights Act. In a critical decision interpreting the act, the court adopted a restrictive view of the law and rejected arguments presented by the Justice Department on behalf of black elected officials in two Alabama counties. The two, after being elected, were stripped of the budgetary authority traditionally and customarily accompanying the positions by the all white county board. Judge Thomas voted with the 6-to-3 majority in sanctioning the right of districts under the Voting Rights Act to change laws, rules and regulations without prior approval of the Department of Justice.

If these cases were not bad enough, the Supreme Court now is poised to act on two additional redistricting cases involving black districts in Louisiana and Georgia. Again, they are taking aim at the very meat of the Voting Rights Act.

Mr. Speaker, if blacks are to unshackle the chains of bondage that bind us to a status of economic deprivation, decent people must counter the warped mentalities of those misfits in society whose penchants for racial fairness is flawed beyond redemption. This body should make it clear that black people have a basic right not only to participate in the affairs of government but also to govern.

Mr. Speaker, the Voting Rights Act was passed within the context of massive protests by black Americans and other Americans of good will. As we stand on the eve of its 30th anniversary, let us prepare now to meet the challenge of racist motivated proposals that would destroy all that is decent in our society.

Mr. LEWIS of Georgia. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to extend their remarks on the subject of my special order tonight.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

WHICH WAY AMERICA? ONE DOLLAR AND NINE CENTS A PERSON FOR PUBLIC TV OR ZERO DOLLARS AND A WASTELAND?

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from California [Mr. HORN] is recognized for 60 minutes as the designee of the majority leader.

Mr. HORN. Mr. Speaker, whenever a measure that affects a broad spectrum of America comes before the House, our offices are inundated with calls, letters, and telegrams. The proposed budget cuts to the Corporation for Public Broadcasting [CPB], National Public Radio [NPR], and the Public Broadcasting System [PBS] have sparked just such an outpouring. While we are all familiar with the various letter-writing campaigns that produce mail bags full of mass-produced—usually computerized here in Washington—letters and cards, this has not been my experience with those who write to tell of their support for funding public television and public radio. What I have received is letter after letter—personally conceived and written—each telling how the proposed budget cuts would affect them. As we all know, these are the ones that touch our heart and our conscience.

What these letters demonstrate is that public broadcasting opens the world to its listeners and viewers in a way that commercial radio and television have never been able to do. The letters show that funding for the Corporation for Public Broadcasting is not an arts issue, nor one of entertainment or communications. It is far broader. The letters I have received tell me that funding for public television and radio is a seniors issue—an education issue—a children's issue—a community issue.

Most important, these letters are the voices of public broadcasting's viewers and listeners. They are the voices of America.

As for seniors, let's start with Mrs. Alta Valiton, 81 years of age, a resident of Long Beach, who observes that she:

> Has been watching TV from its beginning. In some ways it has deteriorated, giving much time to sitcom after sitcom and shows appealing to the uneducated, but there is always public television to bring a breath of fresh air and mental exercise and aesthetic pleasure. What would our lives be without the Nature Series, the National Geographic features, and the great music—the Met, the concerts by the great trio of men singers, the Christmas Day program from the [Los Angeles] Music Center, and the scientific programs. Need I go on?

She closes.

Or Mr. Harold Weir, a 68-year-old from Downey, who wrote:

> I am retired and living on a very limited income. I cannot afford cable TV. PBS is virtually the only TV channel I watch, other than for local news.

Mrs. Bernice Van Steenberg, another Long Beach senior, says:

> PBS is my favorite station and I am not an elite, wealthy person. I'm a senior citizen on a limited income who doesn't have cable TV and who relies on the good programs PBS presents. I'd be lost without PBS.

These voices are also experienced parents who know the value that public broadcasting has brought to their children over the years. Mr. and Mrs. Raymond Collins of Long Beach recalled:

> Because of "Sesame Street," the "Electric Company," "Mr. Rogers," and many other

programs of the early to late 1970's, our son Philip—who is now 22—was able to read and count quite well before he began grade school. It was the only period since first having a television set in our home that we were able to watch daytime TV—we'd watch with Philip—without becoming bored, agitated, and having to turn the set off. I wonder how we would survive without public television.

And, an alumni viewer of such shows as "Sesame Street' and "Mr. Roger's Neighborhood"—Dr. Gregory K. Hong of Bellflower—noted:

> * * * those are the programs that I watched to learn English when our family immigrated to America twenty some years ago.

These voices are typical of the millions of people who enjoy and benefit from public broadcasting. With national public radio, for instance, almost 16 million people listen over the course of a week—that is 1 in every 10 adults in America. This audience has almost doubled in the last 10 years to include people from all walks of life. Many radio listeners work in a professional or managerial occupation; one out of every four works in a clerical, technical, or sales position.

Some say that shows elitism. What nonsense. More than half of public radio listeners are not college graduates, and 48 percent live in households with combined annual incomes below $40,000 per year. My letters confirm this. Grandparent R.M. Dunbar of Long Beach wrote me to say that:

> I'm not one of the elite that someone said all public television watchers are—I'm just a person who became full to the brim with soap operas and lousy sitcoms.

Long Beach residents Jim and Pat Bliss agree:

> We have heard public broadcasting's fans described as an elite. Not so; if we were an elite group, we would buy cassettes to entertain us en route to work, hire someone else to do those mindless chores, and pay the heavy subscription rates required for cable TV.

Public television viewers and public radio listeners are not just listening to entertainment; they are receiving programming that is enhancing the quality of their lives and that of their communities. Mrs. Shirley Freedland of Long Beach summed up this aspect rather dramatically: "Without PBS our brains will shrivel up and die." Across the country, public broadcasting is serving Americans. In Huntington Beach, CA, Channel 50, KOCE–TV offers teacher training workshops and television specials in both English and Spanish designed to promote parenting skills such as helping with homework and drug abuse prevention.

Mr. Speaker, a decade ago, I recall offering the first TV course of "Congress: We the People" over Channel 50. The public-spirited channel has a long record of bringing first rate educational programming to Southern Los Angeles and Orange Counties. The community colleges of Orange County have been pioneers in developing educational programming.

After the devastating Northridge earthquake last year, KCET–TV in Los Angeles—the region's premier public TV station—taped programs that reassured children and helped them to deal with the chaos around them. In Gainsville, FL, WUFT–FM radio provides a 24-hour reading service for the blind. In Evansville, IN, WNIN installed public access terminals in low-income housing areas so users could access local public libraries, and newspapers, and use Internet e-mail. Town halls and State legislature sessions are broadcast over public radio and television stations in Alaska, Illinois, and Florida. Prairie Public Radio in North Dakota is planning a native American language program to promote the continued use and study of native American languages. It is patterned after a similar public broadcasting program in Hawaii which has regularly scheduled Hawaiian language shows.

□ 2200

Karen Johnson, a disabled Long Beach resident, is at home all day. She subscribes to three southern California public radio stations: KLON–FM88, KUSC, and KCRW. She can hear "MacNeil-Lehrer" and a local show "Which Way L.A.?" which is carried by KCRW, a radio station based at Santa Monica College. Hosted by Warren Olney, this program has had a major impact as it daily brings together people across age, race, and ethnic lines to talk about the key problems facing America's second largest city and one of the major metropolitan regions in the world. Karen sums it up well: "Daytime broadcasting (commercial) is a wasteland. And commercial news' broadcasts lack any analytic depth."

In rural America, public broadcasting plays a special role in linking listeners to their communities and the world at large—particularly in areas where the local newspaper is published just once a week and where the economic base cannot support locally generated commercial broadcasting. Without National Public Radio, for instance, households in western North Dakota would be without radio news. Throughout Alaska's Prince William Sound, listeners—who frequently do not have telephone or television—would lose their messaging service, their only way to communicate to the outside world. At a reservation in rural Wisconsin, they would lose the service that records and broadcasts tribal meetings, the Head Start Program, and health and environment conferences. In the Chico area—80 miles north of Sacramento in northern California, there are no large cities—listeners would no longer be able to earn college credits by taking courses through the radio. Without public broadcasting in remote Pine Hill, NM, the area's farmers and ranchers would simply no longer have a radio station to connect them with the outside world. it would be very, very tough—if not impossible—for these communities to replace the services provided to them by public broadcasting.

The services provided by public broadcasting come cheap—a Federal investment of just $1.09 in Federal funds per year for each American; let us repeat that, $1.09 for each American. That's 80 cents for public television and 29 cents for public radio. And this money is a good investment. In public broadcasting, every dollar in Federal funding leverages $5 in other funding.

Where do these Federal funds go? Twenty-five percent of the Federal funds received by the Corporation for Public Broadcasting are designated for public radio. Almost all of that money—93 percent—goes directly to local public radio stations. At these local stations, the Federal funds equal about 16 percent of the average public radio station's operating budget.

This 16 percent may seem to be a rather small amount over which to be fighting—but let me relate an interesting fact told to me by Judy Jankowski, general manager of KLON–FM 88—a public radio station that I brought to California State University, Long Beach, when I was president. According to Judy, this relatively modest amount of funding is what banks and other financial institutions use as a basis for loans to public stations. In other words, without Federal funding, public broadcasting stations would be severely hampered in their ability to borrow funds.

Some argue that public broadcasting provides a free, publicly subsidized platform for the promotion of Barney and "Sesame Street"-type products. As the parent of two former "Sesame Street" watchers, I can attest to the fond memories related to the characters on that show. Friends with young children tell me that it is no different with Barney, the purple dinosaur. And the popularity of these two programs over the years has created a great market for products which are related to the shows.

When "Sesame Street' went on the air in 1969, the financial arrangements between the show's products—the nonprofit Children's Television Workshop—and PBS were not commercial. They continue that way today. In 1973, the matter of income-sharing was discussed, and PBS agreed to allow the Children's Television Workshop to retain all of its income because the workshop agreed that all income from merchandising would be reinvested in "Sesame Street" and other of its productions and educational activities. This has allowed the workship to produce four additional major children's series: "The Electric Company," "Square One TV," "3–2–1 Contact" and

"Ghostwriter." Last year, the workshop received approximately $27 million from its merchandising. From this amount, $7 million paid the expenses associated with managing the workship's merchandising business, $13.5 million was reinvested into the production of "Sesame Street." And, the remainder went to other workship educational activities.

In the 1980's, PBS and CPB had an income-sharing policy for all public television programs that brought them a share of revenues. However, until the "Barney and Friends" show, this was not a significant source of revenue for either PBS or CPB. With the advent of Barney's merchandising success, PBS and CPB took steps to obtain a share of the revenues. However, because the Barney show was developed and is produced by a for-profit organization—the Lyons Groups—the negotiations and agreements are much more complicated than those with the nonprofit Children's Television Workshop.

In 1991, the Public Broadcasting System made a commitment to increasing its children's programming. Because of the long development process involved in producing a children's TV series—between 12 and 36 months—PBS sought to acquire children's TV shows which were already being produced. At that time, Barney had appeared on Connecticut Public Television [CPTV] and briefly on Disney. So, in 1991, PBS, CPB, CPTV, and the Lyons Group entered into an agreement to bring the show to public broadcasting. Under the terms of the agreement, PBS and CPB each committed $1,125,000. Connecticut Public Television agreed to commit almost $700,000—mainly in-kind services entailed in establishing the liaison between Lyons and the public television stations airing Barney. Lyons and Connecticut Public Television had already worked out an income sharing arrangement which called for CPTV to receive 30 percent of the share of foreign broadcast and audio and video sales royalties. However, payments to CPTV would not commence until after Lyons Group had recouped its initial $2 million investment, as well as costs it incurred in making sales in the home video and foreign markets.

When PBS and CPB became involved, it was agreed that half of CPTV's income share would be split between PBS and CPB. Payments to PBS and CPB would not begin until after CPTV had recouped its initial $700,000 investment. PBS tried to secure a share of the ancillary income with the Lyons Group, but Lyons refused, citing the $2 million it had invested in producing "Barney and Friends."

CPTV continues to share in the Barney program sales and shares this money with PBS. To date, public television has received approximately $600,000 from the Lyons Group. PBS, CPTV, and Lyons have reached an agreement on future book and audiotape sales. PBS estimates that future revenues—based on the latest contract with Lyons—will be at least $2.4 million next year.

The Corporation for Public Broadcasting is very aware of the growing limitations on the availability of Federal funds. Its staff members are working hard to increase other sources of funding so that it can better support the stations for which it is responsible. But PBS is not a media investment company. Its mission is to maximize service to the public and to provide high-quality programs based on sound educational principles to benefit America's children. If the mission of public television were strictly to maximize commercial return, the program selection criteria would be quite different. Selection criteria would be based not on program nor educational value, but rather on retail market potential. Put simply, public broadcasting would cease to be the national treasure that it is today.

There have been many myths floating around about public broadcasting. Misstatements and incorrect perceptions have clouded up the real picture. I have already discussed the so-called elitist listener issue, as well as the program merchandising revenues situation. But there are others that need to be cleared up. Let me review some of them.

First myth: "Telecommunications companies could step into the funding role now played by the Federal government."

Reality: The Corporation for Public Broadcasting is not a network. There are no assets for a private company to acquire. Under statute, CPB is not allowed to own stations or sources of programming. It is a funding mechanism to shield the station from direct Government control. National Public Radio [NPR] and the Public Broadcasting Service [PBS], which do have assets, are private companies and are not for sale. The local stations are individually licensed by the FCC for noncommercial service. Noncommercial licenses are available only to not-for-profit entities which provide noncommercial educational services, such as KLON–FM 88. Its entity that is a nonprofit one is the California State University Long Beach Foundation.

If the critics are referring to possible private donors, it is too bad that American commercial television and commercial radio have not stepped up to the plate and assured that public TV and public radio survive. The more public-spirited cableowners stepped up to the plate and funded C–SPAN—the Cable Satellite Public Affairs Network. If a Donald McGannon still headed Westinghouse—Group W—and Dr. Frank Stanton still headed the Columbia Broadcasting System, maybe that would happen. It should. But it hasn't.

Second myth: "PBS and NPR programs already feature advertising—known by the code word 'underwriting.'"

Reality: Sec 399(b)(2) of the Communications Act of 1934, which guides the policy in American television and radio, public and private, states that "No public broadcast station may make its facilities available to any person for the broadcasting of any advertisement." Public broadcasters are allowed, under the statute, to make statements on the air for corporate sponsors in exchange for remuneration, as long as the statement is in no way a promotion of the sponsors' products or services. The comment at the beginning or the end of a sponsored program—"Brought to you by the HPC Company"—is all the touting a corporate sponsor gets.

Third myth: "75 cents out of every dollar spent in public broadcasting goes to overhead."

Reality: This misstatement appears to come from a report called "Quality Time" which was issued by the Twentieth Century Fund task force on public television. The report stated, "Of the $1.2 billion spent in the public television system in 1992, approximately 75 percent of the funds were used to cover the cost of station operations." The term "station operations" meant every activity a station undertakes besides national programming—such things as administration, community service programs, delivery of services, and the cost of producing or acquiring local programming, indeed, a lot of what a station does. Community service and local programming are a vital part of public broadcasting's role in the community—a responsibility many commercial stations ignore.

Fourth myth: "With so many television channels available—CNN, Discovery, the Learning Channel, the History Channel, Arts & Entertainment—there are plenty of substitutes for public broadcasting."

Cable channels are available without government subsidy because they have two revenue streams—advertising and subscription fees averaging $40 per month. For the 40 percent of the American people who do not have cable programming, these programs are not viable alternatives. Public broadcast services reach 99 percent of American households—for free.

In addition, there are no channels of this type for radio. There are virtually no other radio sources with the kind of in-depth news, public affairs, information, and cultural programming that public radio provides.

Fifth myth: "Direct Broadcast Satellite is now available everywhere in the 48 contiguous states with over 150 channels of digital video and audio programming."

Reality: This type of audio programming service is not yet widely available to the American public, nor will it be for several years—unless one has somewhere between $600 and $3000 for the equipment. It will be the late nineties before the hardware and infrastructure are in place to deliver the service. And, this will not be a free service.

Sixth myth: "If the 5.2 million PBS members were to contribute only $55 more a year, it would equal the Federal share for CPB. It is clear that those donors are the very people who can afford to contribute an additional $55 a year."

Reality: Not so. Not all public radio listeners can afford an additional $55 per year. In fact, 41 percent of the 15 million people who listen to public radio earn less than $30,000 annually, and 48 percent live in households with combined incomes of under $40,000 per year.

Seventh myth: "Current public broadcasting formulas favor large urban, elite stations. They get most of the Federal funds."

Reality: Again, not so. In fiscal year 1994, more than $5.7 million in additional support funding was given to unserved areas and underserved audiences. From 1991 to 1993, CPB expansion grants to markets with fewer than 25,000 people, to stations that provide the only full-power broadcast service to their communities, and to stations in unserved markets helped 3.5 million people receive public radio signals for the first time.

Eighth myth: "Public broadcasting is the mouthpiece of the liberal elite."

Reality: In response to Congressional concern in 1993, a joint, bipartisan project by two established research firms—Lauer, Lalley & Associates and Public Opinion Strategies—conducted a national survey to assess public perceptions of balance, objectivity, and bias in programming aired by public broadcasting. They found that roughly equal percentages agree that public televisions is too slanted toward liberal positions—28 percent—and too slanted toward conservative positions—28 percent.

The reality check to these myths shows us that America is getting quite a bargain for the modest support we in Congress give to public broadcasting. They do a lot with a little. We must do all we can to help further their efforts. While we all know that cuts must be made across the board in virtually all federally funded activities, let us make sure that any cuts we make take into consideration the value of the activity to the American people.

So, when we vote on any cuts to the Corporation for Public Broadcasting, let us keep in mind Americans such as Mrs. Ida May Bell of Long Beach who wrote, "I watch KCET-TV every day. I live on a small pension and can't afford cable, but with KCET available, I am able to enjoy excellent TV."

Let us recall the comments of educators such as Barbara Mowers of Long Beach who wrote about using public television as a classroom learning tool to expand the horizons of her students.

Or the remarks of Lakewood resident Donald Versaw who told me that he "doesn't think the country should make grants to individuals for inane 'art'—but, by and large, Public TV and Radio is something this country needs."

We must remember the words of CPB supporters such as Long Beach resident Glenn Skalland who wrote "Having recently suffered a back injury, I have viewed more TV than I'm proud to admit. I can attest to the desolation on commercial television. Sex and violence sell. Public TV needn't sell anything; consequently, their programming needn't appeal to our baser instincts. Shows are informative and, on the whole, family-oriented. Please don't throw the baby out with the bath water. Keep public television free and on the air."

And, the words of Allen Robinson of Long Beach will be hard to forget: "I've heard it charged that PBS is only watched by the cultural elite. Well, I don't have an elite bone in my whole body, but I do have half a brain which is twice as much that's required to watch the drivel served up by the commercial stations. This must be a nation of idiots judging from what 'sells.' Good taste, decency, and integrity can't compete with sensationalism, pornography, distortion, and push-your-button politically correct slices of touchy-feely liberal humbug or a race-baiting right-wing blowhard egomaniac. No wonder the kids are so screwed up. A democracy depends on a literate informed citizen. PBS is going its share."

Most of us in the House want to see a greater emphasis on personal responsibility. Some of the proposals we are considering in the Contract With America correctly focus on that. Welfare reform is an example. President and Congress claim to be of one mind on creating a framework of law which will encourage personal responsibility. In brief, most of us believe values are important. Most Americans who sent us here believe the same as we do.

Hamid R. Rahai, a resident of my district, put his finger on what all of us need to ask ourselves: He speaks "as a parent and an educator" and admits that he is "quite puzzled that at a time when Congress and its leadership champion teaching of values and personal responsibilities, they plan to do away with educational tools needed to educate the public and specially young people." He sees public TV as "an excellent educational tool. It offers a fresh alternative to the mundane (at best), useless or sometimes outright destructive programming offered by commercial and cable networks that are being offered as an alternative. It is free and accessible to all, particularly to the underprivileged who need it most, and could not afford the cost of cable networks."

Mr. Rahai is absolutely correct.

We all know that for the last several decades most Americans receive their political information to decide presidential and statewide races from commercial television—the occasional debates, the ceaseless number of paid—by the candidates—misleading and shallow advertisements, the horse-race focus of the national commentaries. "Who's up?" and "Who's down?" The endless chatter leads many voters to ask: "Who cares?" Public radio and public television provide an island of sanity by sponsoring debates and in-depth interviews of candidates at all levels of our system.

As Pat and Jim Bliss of Long Beach wrote, "there is probably no dearer institution to the hearts of almost everyone who values education and the arts than public radio and television."

Mr. Speaker, we must, in some way, preserve this great national treasure. Margaret M. Langhans of Long Beach saw an analogy between our national parks and public television and radio: "To lessen access to public airwaves is akin to lessening access to our national parks. We hold both in trust for the benefit of the Republic."

I could not have said it better, Margaret.

□ 2215

THE SCHOOL NUTRITION PROGRAMS

The SPEAKER pro tempore (Mr. DUNCAN). Under the Speaker's announced policy of January 4, 1995, the gentleman from Louisiana [Mr. FIELDS] is recognized for 60 minutes.

Mr. FIELDS of Louisiana. Mr. Speaker, I want to advise the Speaker that at some point in the discussion I will be yielding to my colleague, the gentleman from South Carolina [Mr. CLYBURN], to enter into a colloquy.

Mr. Speaker, on Monday of this week I had the opportunity to meet with young students at Kenilworth Middle School in Baton Rouge, LA. I had an opportunity to meet with them for breakfast and talk with them about the school lunch program and the breakfast program. At that breakfast meeting, Mr. Speaker, I had an opportunity to see young students with real dreary eyes, and they were not Democrats, they were not Republicans. They were simply hungry. They wanted the opportunity to have breakfast and go to class and start the class day. At lunch they had an opportunity, after staying in school for 4 hours, or so, to go to lunch.

But one student had asked a very significant question. He walked up to me after a briefing that we did at the school, and he asked the question, he said, "Congressman FIELDS, what is a rescission?" And I explained to him that a rescission was something that you rescind, something that you take away, something that you grant and then at a later time you take it away, and I guess I want to start tonight explaining what actually took place and what is taking place here in Congress and what took place in the subcommittee and the full committee as relates to the rescissions that are taking place in education.

Last year we had an opportunity to review the budget and review the priorities of this country, and we granted different budget items, and now we find ourselves in this Congress rescinding many of the dollars that we were able to allocate last year. Many local school boards, many local governments, and many people in many departments across the country find themselves in a very awkward position preparing for their fiscal year, relying on the confidence of Washington, the Congress, as a result of them approving a budget in 1994, and now we find ourselves here rescinding the very dollars that we committed to them.

Now, I rise tonight because I represent, Mr. Speaker, a very, very poor district. Last year I represented the poorest congressional district in the entire country, but because of redistricting, now I represent the second poorest congressional district in the country.

It really amazes me, because according to the Center on Budget and Policy Priority, 53 percent of all of the rescissions fall on the backs of poor people, low-income people in America, and I want to talk a little bit about how these rescissions will affect my own State, the State of Louisiana.

Nationally, $5 billion will be cut from the school lunch program. How would that affect Louisiana? One hundred sixty four million dollars in the school lunch program, the nutrition program, will be taken away from the State of Louisiana.

Now, many of my colleagues on the other side of the aisle argue that, "We did not cut funding for school lunch and school nutrition programs. We, in fact, increase funding." Increase is in the eye of the beholder.

Let us talk a little bit about the increase versus the decrease. I submit to you today, Mr. Speaker, there was an actual decrease, because last year we committed a 5.2-percent increase for 1995. This year we rescind that, and we only give a 4-percent increase. So according to my mathematical knowledge, that is a 1.2-percent decrease in the school lunch program. The difference in the annual increase will result in the loss of $1.3 billion nationally and $78 million to Louisiana. That is how much money the State of Louisiana will lose as a result of this rescission package.

Now, Louisiana has a very strong reputation in the area of school lunches. I am proud to stand on the floor of the House tonight and state that Louisiana is right at the very top as it relates to its nutrition program, and they should be commended for that.

Now, there is also the need to be some clarity as it relates to what type of lunch programs we are talking about, because many people when you say school lunch, many people think it is free lunch. There are actually three tiers of the school lunch, many people think it is free lunch. There are actually three tiers of the school nutrition program. First, there is the free-lunch students who can take advantage of the free-lunch programs. Students can take advantage of the reduced-price lunch program, or they can take advantage of just paying the regular cost.

And the way this program is set up under the current law, if a family income is 130 percent of the poverty level or less, they receive free lunch; 185 percent of the poverty level or less, they receive reduced lunches; and those families that are more than 185 percent of the poverty level, they receive a simple, regular lunch.

If you look at the statistics, you find most schools cannot even maintain their school lunch program based on the revenues from free lunch or reduced lunch and, therefore, those individuals who come to school every day and are able to have the wherewithal to pay the full price for lunch or breakfast actually help sustain the lunch program. Under this proposal, many of those individuals will be basically knocked away.

The other problem is 57 percent of all students actually participate in the school lunch program. In Louisiana 76 percent of the people, of the students, who attend public school, attend school in Louisiana, participate in the school lunch program. That is 622,000 students in Louisiana that take advantage of the school lunch program.

Why do we have such a disproportionate number in Louisiana versus the national average? The national average is 57 percent, Louisiana 76 percent. Well, because Louisiana is a poor State. That is one of the problems I have with this school lunch program, the revised version, the rescission package that passed the committee. What is going to happen is it is not going to award States that have a very, very high poverty rate. It only awards States based on their participation in the lunch program, based on the number of students who participate in the school lunch program.

In my State, I am going to be judged by other States that are very, very wealthy States. They do not have the poverty rate that we have in Louisiana. As a result, we are going to get a disproportionate amount of money appropriated to our State simply because this formula that this committee adopted did not give any deference whatsoever to those States that have a high, high poverty level.

Let us talk a little bit about how this block grant will actually work and how it will affect local government. But most local governments, they like the idea of block grants, because they feel they have the opportunity to manage their own affairs. That sounds great, Mr. Speaker.

□ 2230

That sounds great, Mr. Speaker, but the problem with that, first of all, it gives local governments the opportunity to cut 20 percent or to use 20 percent of the 100-percent funding in that block grant for something else. They do not have to use it for school nutrition, so we are going to be sending money to local governments with a blindfold, money that is appropriated for the purpose of feeding children, who cannot afford to buy meals, children who can only pay a reduced price for their meals, and students who, in fact, can pay the full price, 20 percent of these dollars can be allocated for other programs. So that is a 20-percent cut in and of itself, so we are not actually allocating a 100-percent block grant. We are only allocating an 80-percent block grant.

We also give a 2-percent—give local governments the opportunity to use 2 percent for administrative costs, so that is, in fact, 22 percent that would not go on the tables of cafeterias all across the State of Louisiana and cafeterias all across American, and I think that is a crying shame, to add insult to injury. The whole though and the whole idea of giving local governments the opportunity to manage their own affairs—from people, for many of my colleagues on the other side of the aisle, they say the reason we want to do that is because we want to cut out the bureaucracy, we want to cut out the Federal waste. But what we actually do is we create more bureaucracy. I would be the last to say or state on this floor that Federal Government is not a bureaucracy, but what we are doing is we are dismantling the Federal bureaucracy, and we are creating 50 separate State bureaucracies under this program that passed the House.

The other problem that I have with it, and the biggest problem that I have with this proposal, is that it gives no consideration whatsoever to what we feed children. We put the blindfold on, and we send millions upon millions of dollars to the States, and we do not tell them that they have to feed children a balanced meal.

Now, my God, if the Federal government does not have an interest in the well-being of individual students in this country, then what do we have an interest in? Why should we not make it a requirement of every State who receives one of these block grants, participate and live up to a certain nutrition standard?

I, along with other Members of my—of other colleagues of mine will be introducing legislation, introducing amendments trying to amend this legislation so we can take out the 20 percent. We are going to be making serious attempts on this floor to try and take out the percentage that gives local governments the opportunity to just use money however they see fit. We are going to try to put nutritional standards within this block grant proposal because we feel that it will be a step in the wrong direction to just give States an opportunity to take—to use money and not give them any guidelines in terms of nutrition.

States, some States, may adopt policies. I think the fast-food market will just take over the school system at school lunch programs. We are going to be serving our kids french fries, and who is to say one State would not choose to choose to serve kids peanut butter and jelly? No standards whatsoever.

My God, do we not have an interest in what children eat? But according to this proposal we do not. But do we have an interest in what we feed prisoners? Yes, we do.

It is a crying shame in this country that this very Congress, we appropriate $10 billion to build more prisons, and another $20 billion for more prisons and other programs for prisoners, and every prisoner that walks into a jail cell receives three balanced meals a day, and they regulate it, and if they do not receive one, they can complain, and then the Federal courts in this country will come to their rescue, and the Justice Department will come to their rescue, but we are going to have children who walk into school houses all across this Nation, trying to learn, get a decent education, and then when that stomach growls, walk to the cafeteria. There is no guarantee any one of them will receive a balanced meal. But if you are a prisoner, you can receive a balanced meal. So I think it is wrong that we choose to try to fix something that is not broke.

I want to also talk, Mr. Speaker, about infant mortality, another rescission, $25 million from Food and nutrition services, WIC. Only $3.5 billion remain. Fifty to a hundred expectant parents, expectant mothers, women pregnant, just cut off the rolls.

In my State I take a moment of personal privilege because in my State we lead the Nation in infant mortality. We have more babies that die after they are born in Louisiana than from anything else.

So I just think this Federal Government should have an interest in children once they are born, and the only way you can have an interest in children once they are born is by taking an interest in the mother while she is pregnant. That is the way we reduce infant mortality rates in this Nation.

According to GAO, WIC saves $3.50 for every dollar we spend, so this is, in fact, a cost savings. We are now going to spend less money by cutting this nutrition program by $25 million. We are going to spend more money. Healthy Start and other very, very important programs for expectant mothers cut. One hundred million dollars remain, $10 million cut, not to mention elementary and secondary education infrastructure.

I mean every time I walk into a school house in my own State and many States across this country, many times the ceilings leak, the air condition does not work, heating system does not work, kids in buildings that were built in the 1950's, lead paint, asbestos, and here we have the audacity to take $100 million for infrastructure for public schools and in the same breath appropriate $10 billion to build more jails.

And we tell our kids that in the future—education is the future. Teach the children well, and let them lead the way. I believe the children are our future, and we take $100 million in building schools and building schools' infrastructure so they can be safe, and we spend $10 billion more in building jails.

So, if you are a prisoner in this country, you get three square meals a day, and you walk into a prison where the air condition works during the summertime, the heat works during the wintertime, and the ceilings do not leak. But if you are a kid, wants to get an education in this country, your food program is in jeopardy. No standards for national nutrition. Your ceilings will continue to leak, air condition will continue to not work, and you may freeze during the wintertime, but we care about your education, and we care about our children.

You know, 86 percent of the people who are in jail in this country are high school dropouts for crying out loud. There are some serious correlations between education and incarceration. If we reduce the drop-out rate, then we can reduce the prison rate, and it just appears that we put more time and emphasis on putting people in jail than we do in educating a young child. Twenty-eight to $30,000 a year to incarcerate a prisoner, but, if you are a child, we only spend about $4,000 a year to educate you. We have kids who walk in public school every day that do not have a book for a subject, and I think there is something wrong with that, and we continue to cut money from education.

Public broadcasting, another rescission, $141 million cut over 2 years. Promise that we have made to kids all across America, it is cut, and I commend the Speaker who decided to give $2,000 a year to public broadcasting. But with all due respect, Mr. Speaker, $2,000 compared to $141 million does not even come close. How can one cut $141 million out of a program and then write a check for 2,000 and expect people to be happy and kids to jump for joy?

We know about the violence that we have on our networks. I mean last year we debated that issue in committee. We had all the major networks to come to this Congress, and thank God for our Attorney General Janet Reno who tried to make these individuals more responsive in their programming, and yet we still take away this very viable, clean, wholesome opportunity for children to learn.

Twenty-eight million dollars we take out of the drop-out program. How much money remains? Zero. Why take issue with that? Because in my State we lead the Nation in high school drop-out. So I cannot be happy tonight. When we were saying $28 million from a drop-out program, you would think, based on this budget, we have no drop-out problem. Everything in education is perfect. So now, kids, the message is it is okay to drop out of school because we are not going to give any money to try to keep you from dropping out.

Literacy program; you would think we led the Nation, lead the world, in literacy. We all know that is not the case as much as I would like to stand in this House tonight and say, "America leads the world, all of our citizens are literate, we don't have a drop-out problem, we don't have an educational problem." If you look at this budget, you would think that is the case, $54 million from literacy programs. Here again a direct impact on the State I represent, direct impact on the district that I represent. I have a literacy problem in the district I represent, and in the State we rank high in the Nation.

You know, I was looking at this budget with staff the other day. I said, "Maybe Louisiana is not a member of this Union anymore, or maybe the Committee on the Budget and the Committee on Economic Opportunity know nothing about Louisiana's statistics."

Eleven point two million dollars for Trio program, a program that is designed to help young people who are disadvantaged, who had a tough start, who may have one parent at home versus two. Maybe the parent died, one of the parents died. You know, I also take personal privilege on that program, Mr. Speaker, because I am a product of that program, as I am the lunch program. You know all parents, all kids, do not have two parents because one parent walked out. Some kids have one parent because one parent died, like it was in my case, and this government thought enough of me to give me a Trio program to help me to give teachers an incentive to help me believe in myself.

Do we still have that problem today? We know that the number of kids who are coming from single parent households went up, did not go down. Who does this budget represent?

Drug-free schools and communities, safe schools and drug-free schools. Now it does not take a rocket scientist to know that in this country we have a serious problem with drugs, and guns, and violence within our schools. Does this budget represent that? Absolutely not. How much money do we appropriate for safe and drug-free schools? Well, we committed $481 million. We committed to Louisiana $10 million. They have already planned to spend that money because there is a serious problem there. How much did we put in this budget? Zero. We cut $481 million, the entire safe and drug-free schools budget, out of this rescission package.

Now I do not know about in other States, but in Louisiana we have a drug problem in schools and a violence problem in schools. We have kids who bring guns to school. Problem needs to be addressed. And I do not come from the school of thought that you just throw money at problems, but you should have a structure there to assist teachers, and parents and school administrators to deal with these very, very serious problems.

□ 2245

Mr. FIELDS of Louisiana. Goals 2000 last year we appropriated $371 million. This year we took away $142 million. Louisiana, my State, will lose $8,200,000, money that is needed to develop our educational system. School improvement programs last year we appropriated $320 million. This year we took away $60 million.

How would it affect my own State? Seven million dollars the State will receive, $1.3 million will be rescinded from the State. Education for the disadvantaged, we appropriated in this Congress $6.7 billion. We took away $105 million. Louisiana will lose $2.9 million as a result of this recisioin package.

What about education for the homeless, children, and youth? We are supposed to be family friendly. We appropriated last Congress $28 million. How much did we appropriate this year? Zero. We took it all back. These are no monies for 1996. These are monies that we committed for 1995. We just zeroed the budget.

How would it affect my State? Seven hundred ninety-five thousand dollars in my State, gone. Do we have a children and youth problem and homeless problem in our State? Yes.

Tech prep, I have received more faxes from people across my district about this program. Vocational and adult education program, Federal funding, we funded for 1995 $108 million. In this recision package we took each and every dollar away from that program, $108 million rescinded. In my State $2.2 million, gone.

Every student can't go to college. Every student—some students just don't want to go to college. But should we say we should have nothing between high school graduation and college? If you graduate from high school, and you don't go to college, then no programs? I don't think so. The only thing we got between school and college are jails. We rescind all of the money for tech prep and educational programs that helped kids.

State student initiative program, took away all that money. My State will lose $901,000.

And let me start closing by talking a little bit about summer jobs and yield to the gentleman from South Carolina.

I really have real difficulty with the summer jobs program—I have real difficulty with the elimination of the summer jobs program. One point two million children will lose the opportunity to become employed and educated over this summer. Many students use this as an opportunity to buy school clothes, opportunity to buy school supplies.

And here again I take a moment of personal privilege. I guess I reflect my district because I benefitted from many of these programs. And it would be hypocritical for me to not stand on this floor and defend some of these programs because maybe some people here think that these programs are just pork-barrel programs and they don't really affect real people.

I couldn't wait for the summer—not to play, not because we didn't have school. I wanted—I was waiting for the summer because I was ready to go to work. I wanted to be on somebody's payroll. I wanted to help my mother buy my school clothes. I wanted to be able to buy books and supplies.

Can you imagine not a student will be able to benefit from the summer jobs program this summer? And we want to decrease crime? So not only are we going to take mothers off welfare rolls, we want to take students off payrolls.

How do we in good conscience in this Congress just wipe out a jobs program for young people overnight? You have to have very little conscience or just no idea how these programs affect people.

In Louisiana, for example, 19 million eliminated. How many summer jobs? Thirteen thousand students in Louisiana will not go to work this summer. What are they going to do? Well, we are building $10 billion more in jails, putting $10 billion more in jails. It is almost the attitude we are not going to give you a job, we are not going to improve your schools, and we may not even give you lunch, but we are going to give you a jail.

I can't go back to my district or to my State and tell 13,000 young people that they don't deserve a summer job this summer. They are not committing crimes. They are not on drugs. All they want to do is work. They want to work. They want to wake up every morning, go to work, and then come home at the end of the day.

And last, many say we do this to balance the budget. We ought to cut some of these programs. I would be the last to state that we should not cut the budget. But I have strong debate and strong, strong opposition to this rescission package because where are the cuts? It cuts innocent people, children, young people, poor people, people who can put up the least amount of defense.

And if we really want to balance the budget, then why not rescind the $14.4 billion that we are going to send outside of this country? How can we tell kids in Texas and South Carolina and Louisiana—I certainly can't go back to my district and tell kids in Baton Rouge and Appaloosa that they can't have a summer job but we are going to give Russia $1.2 billion. I cannot tell them that. I can't tell a child in one of the high schools that you may not have a balanced meal but we are about to send $1.2 billion in foreign aid to other countries.

How can you tell them they are not going to have a summer job when you send economic aid to the tune of $2.3 billion outside of this country?

How can you even tell them we cannot spend money on people in America when we just signed a $20 billion note for Mexico?

Yes, I want a balanced budget, but if we are going to balance the budget, let's be real. If we are really balancing the budget, then let's not give Mexico a $20 billion loan and let's not give these other countries $14 billion.

And I thank the gentleman from South Carolina for being patient, and at this time I want to yield to the gentleman from South Carolina.

Mr. CLYBURN. Thank you. I appreciate that.

Mr. Speaker, since the beginning of the 104th Congress I have become increasingly alarmed at the rapid speed and harmful nature of much of the legislation that we are passing on this floor. But as the gentleman from Louisiana has just indicated, none has caused me more concern thus far than the proposal that would actually take the food out of the mouths of our Nation's youth.

I am referring of course to the legislative proposals that are before us that would threaten the very survival of such programs as supplemental nutrition program for women, infants, and children, better known as WIC, and the school lunch program.

Now, the gentleman has gone through most of these and so I will not be redundant and mention them, but there are a couple of other things in addition to the feeding programs that I am particularly concerned about.

For instance, if you look at this rescission package, one of the things you will see in there will be rescissions that will take away 52,000 slots for dislocated workers. Now, I am particularly concerned about that because just outside of my district, within my State, and, of course, having a tremendous impact on my district, happens to be that area down in Charleston where we just closed five Naval installations and we have now begun to hand out pink slips to the people who have worked 20, 30 years in those installations, and we, in closing those installations, led people there to believe that we would be there for them to help assist them as they seek other employment, as they, in fact, become dislocated workers.

But here we are now, after all that has been done, we are now saying to the people down there that we are going to pass legislation to rescind at least 52,000 of those slots.

Now, I don't know how many of those will fall on people who live in my congressional district. Though the naval base is not in my district, many of the people who work there live in my district. All of them are in South Carolina. And I feel as much responsibility for them as I do the people who are in my district.

But we are United States Congresspeople. And there are many other sections in our country where dislocated workers are going to find their futures dimmed tremendously because of these rescissions. And so now we are going to see 52,000 fewer slots.

I do not believe that that is a fair way to go about trying to find monies to balance the budget or to cut back on the so-called deficit. The interesting thing in all of this is that I began to analyze what it is that we plan to do with this money. I don't see that it is going in that direction at all.

In fact, I have just read with some degree of interest what we are planning to do with the new food stamp proposals. We are now saying that we want to cut billions of dollars out of the food stamp program, not to correct and do away with fraud. We are now saying we want to balance the—or eliminate funds for the food stamp program so that we can have enough money to fund a tax cut for people who make more than $200,000 a year. That seems to be somehow the mind-set of many of the people in this body. And I think that that is a tremendous demonstration of the lack of compassion that I think all public servants ought to have for those people among us who are less fortunate.

But let's look at a couple of other things as well. The Department of Labor has made a four-year commitment to funding 17 communities where we have these youth fair chance programs. According to the rescission package, approximately 2,000 at-risk youth per site will not be served if we go forward with these rescissions.

But then we move from the youth, the most vulnerable among us, and go over and look at the next most vulnerable among us, the elderly, and we look at this rescission package and then we see 3,300 fewer elderly workers will be provided employment opportunities in this program year.

Now, it is kind of interesting as we go through this rescission package, we look at educational programs, educational programs for the youth. We look at the Labor Department, their programs for people who are considered to be disadvantaged and people who are the elderly.

Now, why is it necessary for us to only look in these directions in order to find funds to cut back on the level of expenditures?

There are billions of dollars to be found in other areas. And many of them, if we were to bring them to this floor, I would not only vote for, but I would be a strong advocate helping to work the floor on behalf of their passage.

□ 2300

Mr. CLYBURN. But to focus on those who are the weakest, those who do not have high powered lobbyists to argue their causes, to me is a bit much for us to be doing, and so I want to congratulate the gentleman from Louisiana [Mr. FIELDS] for bringing us here this evening to talk about this rescission package because in the next day or two, we are going to begin to focus. Now, I have had a lot of visitors in my office in the last few days. I would be there at 7:30, I will be having breakfast with people from the technical education people in my community, vocation educational people are all here, wanting us to really be sensible about some of these cuts.

But I want to mention one last area because I think it is so important, and that is the area of literacy. The interesting thing, there are three significant literacy programs that these rescissions will just terminate; not cut back so that we will serve fewer people. They are terminated altogether. The workplace literacy partnerships, terminated. The literacy program for homeless adults, terminated. The literacy program for prisoners, terminated. Here we are building more prisons, and what we seem to be focused on is a warehousing of prisoners. It would seem to me that we ought to be looking at ways to rehabilitate people, and the best way I know to rehabilitate many of the people who find their ways into our prison systems is to teach them to read and write. We know that significant numbers of people who find themselves incarcerated need basic literacy training, and here we are terminating that program.

So what we are going to do, we will take a person off the street, the person who does not know how to read or write, incarcerate that person for a number of years, or what have you, under these new no-parole programs we have got, and let them just sit there for five years or whatever number of years and then when the time is up, turn them back out on the street, not allow them an opportunity to learn to read or write, and many other programs that we have already begun to take away in other areas as well.

And so I plead with the Members of this body, I plead with the influential people in the various communities across this country, to use their influence with the Members of this body, to ask them to begin to look seriously at the consequences of the actions that we take. What it is that we can expect to get in return for the actions that we take here. Do we really expect to build a better America, to build better people, better communities by these kinds of actions? I don't think so. I do think that we ought to feed our children. I do think that we ought to take care of those people who find themselves in the twilight years of their lives, and I do think that we ought to do what is necessary to strengthen those who are the weakest links in our society and I believe that we as a Nation will be better off because of it.

Mr. FIELDS of Louisiana. Will the gentleman yield?

Mr. CLYBURN. Yes, I will be pleased to yield.

Mr. FIELDS of Louisiana. I thank the gentleman for yielding. There has been a lot of talk about contract and we often talk about our own contract, our contract being the United States Constitution. Within our contract, the preamble of our contract, which is the preamble to the Constitution it states in no uncertain terms that we must promote the general welfare of our citizens in our country. And it appears that this rescission package certainly violates that contract, when you take money away from kids in school, you take money away from summer jobs and you put more kids on the street, but let me just add a couple of other things.

Did the gentleman know that under the job training program, youth training program that provides direct training to help economically disadvantaged youth in my State, $7 million will be eliminated from this program, cancelling about 2,500 young people's jobs this summer? Did the gentleman further know that I have the poorest area in the whole country in my State, in Lake Providence, and we have been fighting very hard and profusely to get a job corps center and under the 1995 budget. There were four new job corps centers in the budget and the state—certainly Louisiana was an area that would fall right in line with obtaining—appreciating one of those benefits. The benefits of one of those programs, simply because it is so economically depressed, particularly is teenagers. We have more teenagers who are impoverished and who are dropping out of school than probably any other state.

A total of 100,000 participants would be entirely canceled as a result of this job corps reduction in this rescission package, and we are going to have to cancel about 1,600 positions that we anticipated that we had the opportunity to get this program. Did the gentleman further know that we talk about getting people off of welfare and adults need to go out and learn a skill and go to work, but under this rescission package how can people get out of welfare and learn a skill had we cut funding for adult training?

I mean, employment training for adults and disadvantaged and dislocated workers, as you stated, is eliminated. My State will lose $700,000. And a thousand participants will be affected. That is going to take place as soon as this rescission package passes this body and the other body and perhaps signed by the man on Pennsylvania Avenue.

We didn't state the impact that it may have on housing. Let's talk a little bit about those people who live in public housing, for crying out loud, in this country. I think people in public housing need to know that 63,000 families will lose housing assistance as a result of this rescission package; 12,000 homeless families, homeless. These are people who don't have homes. They are going to lose any kind of housing assistance that they may be entitled to under this rescission package. To add insult to injury, 2,000 disabled individuals. I just think that is just a—it is almost a slap in the face, and I just want to close with the damage that it does to veterans.

I mean, I don't know if the gentleman has served in the military, but I know people in my district who have served in the military and I tell you, nothing makes me prouder than to see a man in uniform who serves this country. I mean, we sit and talk in this hall, in this Congress, and we enjoy the freedoms of this country and we enjoy the protection of this country, and we engage in debate and it is the kind of debate where you are at one mike and I am at another, but these are people who put their lives on the line and go and fight for our freedom so we can be free and have this kind of exchange in a Democratic society.

But what do we do for them? Well, they are going to suffer $206 million in cuts, $50 million from equipment, $156 million in construction projects, and approximately 171 hospitals and clinics will be affected by the loss of this funding. I mean, if we can't protect our children, can't protect our elderly, can't protect our veterans, and particularly the poor, I mean, even the Bible says the poor shall always be with us.

Mr. CLYBURN. If the gentleman would yield, I want to thank you very much for mentioning the veterans cuts, because on tomorrow evening, hopefully at an earlier hour than we are here at the moment, our colleague from Florida, Ms. CORRINE BROWN, has organized a special order in which we are going to go through all of these rescissions as it relates to veterans, the two of us that serve on the Veterans Affairs Committee, and we are very concerned about what these rescissions also mean to the veterans of our country.

□ 2310

I had a significant number of DAV members in my office today, Disabled American Veterans, talking about the impact that these rescissions will have on them and you are talking about a contract. This is breaking a contract. These people, we had a contract with them. They went off to defend the Nation. They are now back, many of them disabled, and we are now seeing that we are going to break faith with them, if these rescissions go through, as well as proposed cuts for future years. So tommorrow evening, we are going to spend an hour going through those rescissions, section by section, and inform the American people, especially those who served in the military, of the exact impact that this is going to have on them.

So I thank the gentleman very much for bringing that up. That is why I did not get into that this evening, because I plan to participate tommorrow evening with the gentlewoman from Florida, Ms. CORRINE BROWN.

Mr. FIELDS of Louisiana. I thank the gentleman for spending this time with me on this special order. I thank the gentleman for making the comments that he made about all the programs that are in this rescission package.

Let me just close by simply saying, in basic contracts, when I was in law school, Professor DeBassenet, who was my contracts professor, taught me, we often, I guess about almost half a semester we talked about what is a contract. I learned that a contract was a manifestation to enter into a bargain so made as to justify the other one's consent to that bargain will conclude that bargain.

We entered into a contract with the American people. We entered into that contract in 1994 in this hall, in this Congress. We told the American people that we were going to fund this program and that program, meaningful programs so that we could promote the general welfare of this country. We come right here in 1995 and we rescind or violate that contract. We call it a rescission, but it is not really a rescission. It is a violation of the contract. We entered into a contract with the American people. Now we are rescinding from what we agreed to do. We are taking something away. Like that little kid at Kenilworth who said, what is a rescission? It is when you rescind something, when you take it away. We entered into a contract, and now we are taking it away.

I want to thank the gentleman, and I want to thank the Speaker for giving us the opportunity to talk about these very important issues. I certainly hope that my colleagues, once this debate reaches this floor, really will just put away their partisanship, throw away their Democratic buttons, throw away their Republican buttons, but do not though throw away their conscience.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. CONDIT (at the request of Mr. GEPHARDT), for today, on account of personal business.

Ms. MCKINNEY (at the request of Mr. GEPHARDT), for today, on account of official business

Mr. ORTON (at the request of Mr. GEPHARDT), for today before 1:30 p.m., on account of family medical business.

Mr. MCDADE (at the request of Mr. ARMEY), for today, on account of illness.

Mr. ROGERS (at the request of Mr. ARMEY) for today until 1 p.m., on account of personal reasons.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. WARD) to revise and extend their remarks and include extraneous material:)

Mr. GEPHARDT, for 5 minutes, today.

Mr. OBERSTAR, for 5 minutes, today.

Mr. OLVER, for 5 minutes, today.

Mr. BROWDER, for 5 minutes, today.

Mr. WYNN, for 5 minutes, today.

Mr. BISHOP, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. GUTIERREZ, for 5 minutes, today.

Ms. DELAURO, for 5 minutes, today.

Mr. FILNER, for 5 minutes, today.

Mr. GENE GREEN of Texas, for 5 minutes, today.

Mr. BECERRA, for 5 minutes, today.

Mr. BROWN of Ohio, for 5 minutes, today.

Mr. FOGLIETTA, for 5 minutes, today.

Mrs. MINK of Hawaii, for 5 minutes, today.

Ms. ESHOO, for 5 minutes, today.

(The following Members (at the request of Mr. SMITH of Michigan) to revise and extend their remarks and include extraneous material:)

Mr. SAXTON, for 5 minutes, today.

Mr. RAMSTAD, for 5 minutes, today.

Mr. WELDON of Florida, for 5 minutes, today and March 8, 9, and 10.

Ms. Ros-Lehtinen, for 5 minutes, today.

Mr. Diaz-Balart, for 5 minutes, today.

Mr. Tiahrt, for 5 minutes, today.

Mr. Kingston, for 5 minutes, today.

Mr. Duncan, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. Cunningham, for 5 minutes, today.

(The following Member (at her own request) to revise and extend her remarks and include extraneous material:)

Mrs. Morella, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. Ward) and to include extraneous matter:)

Mr. Torres.

Mr. Stark.

Mr. Cardin.

Mr. Visclosky.

Mr. Kennedy of Massachusetts.

Mr. Skelton.

Mr. Towns in 10 instances.

Mr. Traficant.

Mr. Hastings of Florida in two instances.

Mr. Reed.

Mr. Berman.

Mr. Coleman.

Mr. Kennedy of Rhode Island.

Mr. Owens.

Mr. Gutierrez.

Mr. Hall of Texas in two instances.

(The following Members (at the request of Mr. Smith of Michigan) and to include extraneous matter:)

Mr. Cunningham.

Mr. Taylor of North Carolina.

Mr. Baker of California.

Mr. Lazio of New York.

Mr. Hastings of Washington.

Mr. Burton of Indiana in two instances.

Mr. Weldon of Pennsylvania in three instances.

Mr. Largent.

ADJOURNMENT

Mr. FIELDS of Louisiana. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 13 minutes p.m.) the House adjourned until Wednesday, March 8, 1995, at 11 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

484. A letter from the Under Secretary of Defense, transmitting a report of five related violations of the Anti-Deficiency Act, pursuant to 31 U.S.C. 1517(b); to the Committee on Appropriations.

485. A letter from the Under Secretary of Defense, transmitting a report of a violation of the Anti-Deficiency Act which occurred in the Department of the Air Force, pursuant to 31 U.S.C. 1517(b); to the Committee on Appropriations.

486. A letter from the Secretary of Defense, transmitting the Department's annual report to the President and the Congress, February 1995, pursuant to 10 U.S.C. 113 (c) and (e); to the Committee on National Security.

487. A communication from the President of the United States, transmitting the bimonthly report on progress toward a negotiated solution of the Cyprus problem, including any relevant reports from the Secretary General of the United Nations, pursuant to 22 U.S.C. 2373(c); to the Committee on International Relations.

488. A letter from the Inspector General, Agency for International Development, transmitting an audit of USAID's compliance with the lobbying restriction requirements in 31 U.S.C. 1352, pursuant to Public Law 101–121, section 319(a)(1) (103 Stat. 753); to the Committee on Government Reform and Oversight.

489. A letter from the Chair, Federal Energy Regulatory Commission, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(e); to the Committee on Government Reform and Oversight.

490. A letter from the Chairman, National Credit Union Administration, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552; to the Committee on Government Reform and Oversight.

491. A letter from the Chairman, Administrative Conference of the United States, transmitting a draft of proposed legislation to amend the Administrative Conference Act; to the Committee on the Judiciary.

492. A letter from the Administrator, Federal Aviation Administration, transmitting the FAA report of progress on developing and certifying the Traffic Alert and Collision Avoidance System [TCAS] for the period October through December 1994, pursuant to Public Law 100–223, section 203(b) (101 Stat. 1518); jointly, to the Committees on Transportation and Infrastructure and Science.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. LINDER: Committee on Rules. House Resolution 108. Resolution providing for consideration of the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes (Rept. 104–69). Referred to the House Calendar.

SUBSEQUENT ACTION ON A REPORTED BILL SEQUENTIALLY REFERRED

Under clause 5 of rule X the following action was taken by the Speaker:

The Committee on Commerce discharged from further consideration of H.R. 956; H.R. 956 referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ENGLISH of Pennsylvania:

H.R. 1142. A bill to amend the Internal Revenue Code of 1986 to repeal the alternative minimum tax; to the Committee on Ways and Means.

By Mr. FOX:

H.R. 1143. A bill to amend title 18, United States Code, with respect to witness retaliation; to the Committee on the Judiciary.

H.R. 1144. A bill to amend title 18, United States Code, with respect to witness tampering; to the Committee on the Judiciary.

By Mr. FOX (for himself, Mr. Hyde, Mr. Conyers, Mr. McCollum, and Mr. Schumer):

H.R. 1145. A bill to amend title 18, United States Code, with respect to jury tampering; to the Committee on the Judiciary.

By Mr. HASTINGS of Washington (for himself, Mr. Fox, Mr. Shadegg, Mrs. Chenoweth, Mr. Doolittle, Mr. Inglis of South Carolina, Mr. Metcalf, Mr. Scarborough, and Mr. Neumann):

H.R. 1146. A bill to reduce the Federal welfare bureaucracy and empower States to design and implement efficient welfare programs that promote personal responsibility, work, and stable families by replacing certain Federal welfare programs with a program of annual block grants to States, and for other purposes; to the Committee on Ways and Means, and in addition to the Committees on Commerce, Agriculture, Resources, Economic and Educational Opportunities, Banking and Financial Services, the Judiciary, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LANTOS (for himself, Ms. Pelosi, Mr. Smith of New Jersey, and Mr. Solomon):

H.R. 1147. A bill to encourage liberalization inside the People's Republic of China and Tibet; to the Committee on International Relations.

By Mr. LAZIO of New York (for himself, Ms. Molinari, Mr. Forbes, Mr. Traficant, Mr. King, Mr. Fox, Mr. Packard, Mr. Saxton, Mr. Ackerman, Mrs. Maloney, Mr. Watt of North Carolina, Ms. Lofgren, Mr. Lipinski, Mr. Hilliard, Mr. Serrano, Mr. McCrery, and Mr. English of Pennsylvania):

H.R. 1148. A bill to amend the Internal Revenue Code of 1986 to permit penalty-free withdrawals by unemployed individuals from certain retirement plans; to the Committee on Ways and Means.

By Mr. LAZIO of New York (for himself, Ms. Molinari, Mr. Forbes, Mr. Traficant, Mr. King, Mr. Fox, Mr. Packard, Mr. Saxton, Mr. Ackerman, Mrs. Maloney, Ms. Lofgren, Mr. Lipinski, Mr. Serrano, Mr. English of Pennsylvania, and Mr. McCrery):

H.R. 1149. A bill to amend the Internal Revenue Code of 1986 to provide for the nonrecognition of gain on the sale of a principal residence if the taxpayer is unemployed; to the Committee on Ways and Means.

By Mr. TRAFICANT:

H.R. 1150. A bill to require professional boxers to wear headgear during all professional fights in the United States; to the Committee on Economic and Educational Opportunities.

H.R. 1151. A bill to authorize appropriations for fiscal years 1996 and 1997 for the Coast Guard, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. VISCLOSKY:

H.R. 1152. A bill to amend the Federal Water Pollution Control Act to establish a national clean water trust fund and to authorize the Administrator of the Environmental Protection Agency to use amounts in that fund to carry out projects to restore and recover waters of the United States from damages resulting from violations of that act, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. WELDON of Pennsylvania (for himself, Mr. McHugh, Mr. Zimmer, Mr. Wolf, and Mr. Beilenson):

H.R. 1153. A bill to improve the collection, analysis, and dissemination of information that will promote the recycling of municipal solid waste; to the Committee on Commerce.

By Mr. WELDON of Pennsylvania (for himself, Mr. Pallone, Mr. Manton, Mr. Studds, Mr. Underwood, Mr. Beilenson, and Mr. Fields of Texas):

H.R. 1154. A bill entitled the "Ocean Radioactive Dumping Ban Act of 1994"; to the Committee on Transportation and Infrastructure.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. SHAW:

H.R. 1155. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade of the vessel *Fifty One;* to the Committee on Transportation and Infrastructure.

H.R. 1156. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Big Dad;* to the Committee on Transportation and Infrastructure.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 65: Mr. McCollum.

H.R. 70: Mr. Largent.

H.R. 103: Mr. Borski, Mr. Gordon, Mr. Goss, Mr. Weldon of Florida, and Mr. Fields of Texas.

H.R. 109: Mr. Filner, Mr. Parker, and Mr. Wolf.

H.R. 303: Mr. McCollum.

H.R. 328: Mr. Weldon of Pennsylvania.

H.R. 357: Ms. Lowey, Mr. Smith of New Jersey, Mr. Klink, Mrs. Maloney, Mr. Rangel, Ms. Rivers, Mr. Stark, Mr. Faleomavaega, Mr. Roemer, Mr. Hinchey, and Mr. Reed.

H.R. 359: Mr. Lazio of New York, Mr. Abercrombie, Mr. McDade, and Mr. Spence.

H.R. 467: Mr. Metcalf, Mr. McNulty, Mr. Montgomery, Mr. Frost, and Mr. King.

H.R. 468: Mr. Petri.

H.R. 482: Mr. Zimmer.

H.R. 499: Mr. Scarborough, Mr. Stupak, Mr. Royce, and Mr. Martinez.

H.R. 500: Mr. Chrysler, Mrs. Cubin, and Mr. Tauzin.

H.R. 593: Mr. Gutknecht.

H.R. 605: Mr. Parker.

H.R. 609: Ms. Lofgren, Ms. Pelosi, and Mr. Torkildsen.

H.R. 612: Mr. Gejdenson.

H.R. 682: Mr. Lightfoot.

H.R. 747: Mrs. Johnson of Connecticut and Mrs. Kennelly.

H.R. 789: Mr. Upton, Mr. LaHood, and Mr. Emerson.

H.R. 832: Mr. Packard, Mr. Wolf, Mr. Baker of Louisiana, Mr. Armey, Mr. Knollenberg, Mr. Kingston, Mr. Chrysler, Mr. Gutknecht, and Mr. Canady.

H.R. 863: Mr. Jacobs.

H.R. 866: Mr. Moran, Mr. Lipinski, Mr. Clyburn, and Mr. Bryant of Texas.

H.R. 888: Mr. Filner, Mr. Owens, Mr. Mineta, Ms. Kaptur, Mr. Brown of California, and Mrs. Mink of Hawaii.

H.R. 896: Mr. Deutsch, Mr. Barrett of Wisconsin, Mr. Hinchey, and Mr. Romero-Barcelo.

H.R. 949: Mr. Hutchinson and Mr. Stearns.

H.R. 983: Ms. Velazquez, Mr. Jacobs, Mr. Kleczka, Mr. Frank of Massachusetts, Ms. Lofgren, Mr. Torricelli, and Mr. Markey.

H.R. 991: Mr. Johnston of Florida, Mr. Pallone, Ms. Velazquez, and Mr. Conyers.

H.R. 1066: Mr. Wolf, Mr. Hastert, Mr. King, and Mr. Wicker.

H.R. 1076: Mr. McHugh, Mr. Forbes, Mr. Lipinski, Mr. Cremeans, Mr. Saxton, Mr. Parker, and Mr. Gunderson.

H.R. 1077: Mr. Allard, Mr. Radanovich, Mr. Watts of Oklahoma, Mr. Herger, Mr. Stump, and Mr. Emerson.

H.R. 1115: Ms. Rivers and Mr. Hoyer.

H.J. Res. 70: Mr. Filner, Ms. Roybal-Allard, Mr. Martinez, Mr. Evans, Mr. Wynn, Mr. Jefferson, Mr. Ward, Mr. Frank of Massachusetts, and Mr. Underwood.

H. Res. 95: Mr. Poshard.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 481: Mr. Callahan.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1058

Offered By: Mr. Meehan

Amendment No. 14: Page 21, beginning on line 13 strike paragraph (4) through page 22, line 23 and insert the following:

"(4) Reasonable expectation of integrity of market price.—A plaintiff who buys or sells a security for which it is unreasonable to rely on market price to reflect all current information may not establish reliance pursuant to paragraph (2). The Commission shall, by rule, define for purposes of this paragraph markets or types of securities that are not sufficiently active and liquid to justify such reliance. The Commission shall consider the following factors in determining whether it was reasonable for a party to expect the market price of the security to reflect substantially all publicly available information regarding the issuer of the security—

"(A) whether the issuer and its securities are regularly reviewed by two or more analysts;

"(B) the weekly trading volume of any class of securities of the issuer of the security;

"(C) the existence of public reports by securities analysts concerning any class of securities of the issuer of the security;

"(D) the eligibility of the issuer of the security, under the rules and regulations of the Commission, to incorporate by reference its reports made pursuant to section 13 of this title in a registration statement filed under the Securities Act of 1933 in connection with the sale of equity securities; and

"(E) a history of immediate movement of the price of any class of securities of the issuer of the security caused by the public dissemination of information regarding unexpected corporate events or financial releases.

H.J. Res. 2,

Offered By: Mr. Crane

Amendment No. 2: Strike all after the resolving clause and insert the following:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"Article—

"Section 1. No person may be elected to the House of Representatives more than three times, and no person who has been a Member of the House of Representatives for one year of a term to which some other person was elected may be elected to the House of Representatives more than two additional times.

"Section 2. No person may be elected or appointed to the Senate of the United States more than one time, and no person who has been a Senator for three years of a term to which some other person was elected or appointed may be elected to the Senate of the United States.

"Section 3. Only elections occurring after ratification of this article shall be considered for purposes of sections 1 and 2.".

H.J. Res 2

Offered By: Mr. Frank of Massachusetts

Amendment No. 3: Section 4., strike "No election" and insert "Election".

H.J. Res 2

Offered By: Mr. Inglis of South Carolina

Amendment No. 4: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as a part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"Article —

"Section 1. No person who has been elected for a full term to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected for a full term to the House of Representatives three times shall be eligible for election to the House of Representatives.

"Section 2. No person who has served as a Senator for more than three years of a term to which some other person was elected shall subsequently be eligible for election to the Senate more than once. No person who has served as a Representative for more than one year shall subsequently be eligible for election to the House of Representatives more than two times.

"SECTION 3. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.".

H.J. RES. 2

OFFERED BY: MR. MCCOLLUM

AMENDMENT NO. 5: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"ARTICLE —

"SECTION 1. No person who has been elected for a full term to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected for a full term to the House of Representatives six times shall be eligible for election to the House of Representatives.

"SECTION 2. No person who has served as a Senator for more than three years shall subsequently be eligible for election to the Senate more than once. No person who has served as a Representative for more than one year shall subsequently be eligible for election to the House of Representatives more than five times.

"SECTION 3. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.".

H.J. RES. 2

OFFERED BY: MR. MCCOLLUM

AMENDMENT NO. 6: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"ARTICLE —

"SECTION 1. No person who has been elected for a full term to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected for a full term to the House of Representatives six times shall be eligible for election to the House of Representatives.

"SECTION 2. No person who has served as a Senator for more than three years shall subsequently be eligible for election to the Senate more than once. No person who has served as a Representative for more than one year shall subsequently be eligible for election to the House of Representatives more than five times.

"SECTION 3. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

"SECTION 4. Nothing in the Constitution or law of any State shall diminish or enhance, directly or indirectly, the limits set by this article.".

H.J. RES. 2

OFFERED BY: MR. MCCOLLUM

AMENDMENT NO. 7: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. The term of office of a Representative in Congress shall be four years and shall coincide with the term of the President of the United States.

"SECTION 2. No person who has been elected for a full term to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected for a full term to the House of Representatives three times shall be eligible for election to the House of Representatives.

"SECTION 3. No person who has served as a Senator for more than three years shall subsequently be eligible for election to the Senate more than once. No person who has served as a Representative for more than two years shall subsequently be eligible for election to the House of Representatives more than two times.

"SECTION 4. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

"SECTION 5. No Member of one House of Congress may, except in the final year of that Member's current term, qualify under applicable State law as a candidate for the other House of Congress, unless that Member has resigned from the House in which that Member currently serves.

"SECTION 6. This article shall apply with respect to terms of office of Representatives and Senators beginning after the first day of the year immediately following the first presidential election after ratification of this article.".

H.J. RES. 2

OFFERED BY: MR. PETERSON OF FLORIDA

AMENDMENT NO. 8: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three fourths of the several States within 7 years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. The House of Representatives shall be composed of Members chosen every 4th year by the people of the several States. The terms of Representatives shall begin at noon on the 3rd day of January of the years that occur 2 years after the years in which the term of the President begins.

"SECTION 2. A person may not be a Senator if the person has been a Senator for more than 12 years during the lifetime of the person. A person may not be a Representative if the person has been a Representative for more than 12 years during the lifetime of the person. Any term as a Senator or Representative for which a person is elected or appointed to fill a vacancy in the representation of any State in the Congress may not be counted for purposes of computing the 12-year limits in this section.

"SECTION 3. Sections 1 and 2 shall apply only to Representatives who are elected on or after the date occurring 1 year after the 1st day that this article is valid as part of the Constitution and on which the electors of the President and the Vice President are chosen.

"SECTION 4. Section 2 shall apply only to Senators who are elected or appointed on or after the date occurring 1 year after the 1st day that this article is valid as part of the Constitution and on which the electors of the President and the Vice President are chosen.".

H.J. RES. 2

OFFERED BY: MR. PETERSON OF FLORIDA

AMENDMENT NO. 9: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three fourths of the several States within 7 years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. A person may not be a Senator if the person has been a Senator for more than 12 years during the lifetime of the person. A person may not be a Representative if the person has been a Representative for more than 12 years during the lifetime of the person. Any term as a Senator or Representative for which a person is elected or appointed to fill a vacancy in the representation of any State in the Congress may not be counted for purposes of computing the 12-year limits in this section.

"SECTION 2. This article shall apply with respect to terms of Senator and Representative beginning more than one year after the date of the ratification of this article.".

EXTENSIONS OF REMARKS

DISLOCATED WORKERS' SELF-HELP TAX RELIEF PACKAGE

HON. RICK LAZIO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. LAZIO of New York. Mr. Speaker, my congressional district on Long Island, like several others around the country, has been especially hard hit by the downsizing of our Nation's defense production lines. The Pentagon estimates that total defense-related employment has dropped by 1.5 million workers over the last 7 years, and that trend is expected to continue into the foreseeable future.

More than 40 percent of manufacturing on Long Island is dependent on the Defense Department. Consequently, this defense builddown has had a devastating financial effect on many of Long Island's workers and their families.

What can be done to bring much needed economic relief to people who lose their livelihood through no fault of their own? Last August, I introduced two bills designed to help such dislocated workers under these circumstances help themselves get back on their feet. Today, with bipartisan support, I am reintroducing these bills, which would change the tax laws on capital gains and individual retirement accounts to enable dislocated workers to use their hard-earned assets to help them in their time of need.

My first bill would allow unemployed workers to make penalty-free withdrawals from individual retirement accounts [IRA's] and 401(k) retirement plans. IRA's and 401(k) plans allow tax-deferred accumulations of retirement savings. Currently both are subject to a 10-percent penalty tax if funds are withdrawn before retirement. My proposal would let dislocated workers withdraw funds from these accounts and not be charged the 10-percent penalty tax. Allowing these workers to use some of their retirement savings without paying the 10-percent penalty could be of considerable benefit to them at a time when they are in need of money to pay their bills.

My second bill would allow any person eligible for unemployment benefits—or an unemployed person whose benefits have expired—to exclude from taxable income the capital gain from the sale of his or her home.

Under current law, homeowners are taxed on the gain from the sale of a principal residence unless the home is replaced within 2 years with a new one of equal or greater value. Taxpayers aged 55 or over can exclude—on a one-time occurrence—the capital gains from the sale of a principal residence of up to $125,000. This allows such individuals to move into a smaller home and apply the capital gain toward their retirement years.

Dislocated workers are often forced to move into a smaller home—or even rent—just to make ends meet. So, it makes no sense to impose a capital gains tax on someone under those circumstances.

My bill would allow an unemployed worker to claim an exemption from the capital gains tax—up to $125,000—when they sell their home during their period of unemployment. The definition of unemployment corresponds to the definition used in calculating eligibility for unemployment insurance.

These proposals can provide solutions to problems that unemployed workers face: the challenge to meet the daily demands of life—food, shelter, and clothing; and the need to find a new source of income. The money realized by the sale of one's home or withdrawing from an IRA can, in fact, be used as an investment in the future, perhaps even for an entrepreneurial undertaking as a way to start over.

We should not deny dislocated workers who face hard times the ability to use their assets to support themselves and their families. I believe these two measures offer a commonsense approach to help Americans pull themselves out of financial hard times so they can get on with their lives.

THE BUDGET FOR CORPORATE FARMERS MUST BE CUT

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. OWENS. Mr. Speaker, American Agribusiness is one of the most successful industries on the face of the Earth. Due to the vision and foresight of the Congress which enacted the legislation which created the land grant colleges, the agricultural experiment stations, and the county agents, Government research and development made it possible for our farmers to leap way ahead of the rest of the world. No other nation's agriculture industry is even close to the United States when it comes to farm output and efficiency.

Let us applaud the Department of Agriculture and all of the nameless workers who over the years have done such a magnificent job in supporting our farmers. But now, Mr. Speaker, most of that work has been done. The mission has been accomplished. We have a monumental success and we can relieve the taxpayers of the burden of helping the agriculture industry, especially the rich corporate farmers. Let's have a means test and from now on let's support only the few remaining poor farm families. Let's stop the indiscriminate subsidies. Let's end the crop insurance. Let's stop the special mortgages. Let's leave the marketplace alone and end the crop subsidies and price supports. Let's get the fat farmers off the dole. The time has come to drastically downsize the Department of Agriculture. We must end farm welfare as we know it. We owe it to the American taxpayers. In this Congress let's work hard to get fat farmers off the dole.

The following poem summarizes the seriousness of the situation:

Farmers on the Dole

Republican patriots
Come play your role
Keep fat farmers
On the dole
Helping cuddly honey bees
Coddling cattle grazing fees
Meat a city orphan
Never eats
Dole for welfare
Dole for cheats
Congress sink your fork
Deep into Republican pork
Hyprocisy over all
Drives you up the wall
O beautiful spacious skies
Small town editorials
Festering full of lies
Farmers on the dole
Farmers on the dole
Hi-ho the dairytake
Rich farmers on the dole
Decades over
And over it repeats
Dole for welfare
Dole for cheats
The story's never told
About farmers on the dole
Seeds not sown
Wheat not grown
Plow the dollars
Deep in the dirt
Hide the shame
Cover hypocrisy's hurt
Farmers on the dole
Farmers on the dole
Confess to free money's role
Rich farmers on the dole
Mortgage the barn
Until it drops
Timid taxpayers
Insure the crops
Rural swindlers
High on the hog
Food for the homeless
Thrown to the dog
The story's never told
About farmers on the dole
Republican patriots
Come play your role
Keep fat farmers
On the dole.

THE SAN DIEGO SUPERCOMPUTER CENTER

HON. RANDY "DUKE" CUNNINGHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. CUNNINGHAM. Mr. Speaker, I would like to enter into the permanent RECORD of the Congress of the United States the following brief outlining the work of the San Diego

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Supercomputer Center. This summary, based largely on a "Site Report" article by Mr. Peter Taylor, printed in the fall 1994 issue of the periodical "Computational Science and Engineering," is intended to inform my colleagues and other interested citizens of the work of this center in my community.

The San Diego Supercomputer Center (SDSC), one of four supercomputer centers sponsored by the National Science Foundation (NSF), is both a national resource and a tribute to the scientific ingenuity of the people of San Diego County.

SDSC's mission is to advance scientific research through computation, serve as a national focal point of development in key enabling high-performance computational technologies, and enhance American economic competitiveness. With a staff of 100 scientists, software developers, and researcher support personnel, the center serves more than 4,850 researchers from 355 institutions and 52 industrial partners.

In operation since 1986, SDSC is administered by General Atomics and is closely affiliated with the University of California, San Diego. It receives policy guidance from a consortium of 27 leading universities and institutions. Major funding for the SDSC includes grants from the NSC, the State of California, and the University of California.

The center is involved in advanced scientific research, including the fields of macromolecular structure and biomedical computation. It participates in the development of new technologies, such as the simulation of global environmental change, applied computer network research, and operating systems development. Furthermore, its close ties with the university and the community foster educational and outreach programs, including undergraduate and postgraduate research, curriculum development, and demonstrations for students in grades K-12.

The SDSC's new MetaCenter collaboration with other NSF centers also gives scientific researchers access, through a single portal, to the country's best available technologies and intellectual resources.

IN MEMORY OF REPRESENTATIVE ROY TAYLOR

HON. CHARLES H. TAYLOR

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. TAYLOR of North Carolina. Mr. Speaker, last week, western North Carolina lost a great statesman and a friend. Former Congressman Roy Taylor who served the constituents of North Carolina's 11th District for 16 years died March 2, after years of declining health.

During his tenure on Capitol Hill, Congressman Taylor championed the conservation of natural resource and was known for his exhaustive work on behalf of the people of our district. Those who were here tell of his commitment to 12-hour days and 6-day workweeks.

Roy Taylor was born, January 31, 1910, in Vader, WA, but his parents moved to western North Carolina not long after he was born. He attended the public schools in Buncombe County, spent 2 years at Asheville-Biltsmore College, and then graduated from Maryville College in Tennessee in 1931.

Mr. Taylor began a career as a schoolteacher in 1931 at Black Mountain High School and the next year married Evelyn Reeves of Leicaster. While teaching, Taylor began studying law and in 1936 graduated from Asheville University Law School. Upon passing the bar that same year, he quit his teaching job and began to practice law in Asheville.

In 1943, Taylor left his law practice to serve in combat with the U.S. Navy. Upon fulfilling his duty to the Nation, he was discharged as a lieutenant in 1946.

After returning to western North Carolina, Taylor began his political career as a member of the North Carolina General Assembly from 1947 to 1949. He then served as Buncombe County attorney from 1949 to 1960. During this time, he also served as a member of the board of trustees of Asheville-Biltmore College.

In 1960, Taylor was elected as a Democrat to the 86th Congress, during a special election to fill the vacancy created by the death of Representative David Hall. Taylor was reelected to the eight succeeding Congresses and retired in 1976. Taylor served 10 of those years as chairman of the House Interior Committee's Subcommittee on National Parks and Recreation.

After public service, Congressman Taylor dedicated his time to the church and his community. He was district governor of Lions Clubs in western North Carolina. He also served as a deacon and Sunday school superintendent of Black Mountain First Baptist Church.

Taylor is survived by his wife, Evelyn; daughter, Toni Robinson of Plymouth; son, Alan Taylor of Bent Creek; granddaughter, Stacy Taylor; grandsons, Marshall and Gregg Robinson; sister, Alberta Greene of Enka; great-grandchildren, Katherine Taylor Robinson and Charlotte Whittfield Robinson.

PATIENTS BEWARE: SELF-SERVING PHYSICIANS URGE REPEAL OF PHYSICIAN SELF-REFERRAL LAWS

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. STARK. Mr. Speaker, the following list of physician self-referral studies highlights the urgent need to uphold self-referral laws. Greedy physicians, interested more in personal gain than in their patient's welfare, have mounted an effort to repeal these laws.

Physician self-referral is one of the most significant cost drivers in American medicine. According to some experts, billions of dollars are wasted each year on referrals motivated by physicians' financial gains and not strictly by their patients' medical needs. The following studies represent just some of the evidence that demonstrates when physicians are in a self-referring situation, they order more tests and charge more money for services than non-self-referring physicians. The evidence is convincing—patients need protection.

[From the Department of Health and Human Services]

SELF-REFERRAL STUDIES

A. Financial Arrangements Between Physicians and Health Care Businesses: Office of Inspector General—OAI-12-88-01410 (May 1989)

In 1989, the Office of Inspector General (OIG) issued a study on physician ownership and compensation from entities to which they make referrals. The study found that patients of referring physicians who own or invest in independent clinical laboratories received 45 percent more clinical laboratory services than all Medicare patients in general, regardless of place of service. OIG also concluded that patients of physicians known to be owners or investors in independent physiological laboratories use 13 percent more physiological testing services than all Medicare patients in general. Finally, while OIG found significant variation on a State by State basis, OIG concluded that patients of physicians known to be owners or investors in durable medical equipment (DME) suppliers use no more DME service than all Medicare patients in general.

B. Physicians Responses to Financial Incentives—Evidence from a For-Profit Ambulatory Care Center; Hemenway D, Killen A, Cashman SB, Parks CL, Bicknell WJ: New England Journal of Medicine, 1990:322;1059-1063

Health Stop, a chain of for-profit ambulatory care centers, changed its compensation system from a flat hourly wage to a system where doctors could earn bonuses that varied depending upon the gross income they generated individually. A comparison of the practice patterns of fifteen doctors before and after the change revealed that the physicians increased the number of laboratory tests performed per patient visit by 23 percent and the number of x-ray films per visit by 16 percent. The total charges per month, adjusted for inflation, grew 20 percent, largely due to an increase in the number of patient visits per month. The authors concluded that substantial monetary incentives based on individual performance may induce a group of physicians to increase the intensity of their practice, even though not all of them benefit from the incentives.

C. Frequency and Costs of Diagnostic Imaging in Office Practice—A Comparison of Self-Referring and Radiologist-Referring Physicians; Hillman BJ, Joseph CA, Mabry MR, Sunshine JH, Kennedy SD, Noehter M. New England Journal of Medicine, 1990:322;1604-1608

This study compared the frequency and costs of the use diagnostic imaging for four clinical presentations (acute upper respiratory symptoms, pregnancy, low back pain, or (in men) difficulty in urinating) as performed by physicians who used imaging equipment in their offices (self-referring) and as ordered by physicians who always referred patients to radiologists (radiologist-referring). The authors concluded that self-referring physicians use imaging examinations at least four times more often than radiologist-referring physicians and that charges are usually higher when the imaging is done by the self-referring physicians. Those differences could not be attributed to differences in the mix of patients, the specialties of the physicians or the complexity of the complexity of the imaging examinations performed.

D. Joint Ventures Among Health Care Providers in Florida: State of Florida Cost Containment Board (September 1991)

This study analyzed the effect of joint venture arrangements (defined as any ownership, investment interest or compensation arrangement between persons providing health care) on access, costs, charges, utilization, and quality. The results indicated that problems in one or more of these areas existed in the following types of services: (1) clinical laboratory services; (2) diagnostic imaging services; and (3) physical therapy services—rehabilitation centers. The study concluded that there could be problems or that the results did not allow clear—conclusions with respect to the following health care services; (1) ambulatory surgical centers; (2) durable medical equipment suppliers; (3) home health agencies; and (4) radiation therapy centers. The study revealed no effect on access, costs, charges, utilization, or quality of health care services for: (1) acute care hospitals; and (2) nursing homes.

E. New Evidence of the Prevalence and Scope of Physician Joint Ventures; Mitchell JM, Scott E: Journal of the American Medical Association, 1992:268:80–84

This report examines the prevalence and scope of physician joint ventures in Florida based on data collected under a legislative mandate. The results indicate that physician ownership of health career businesses providing diagnostic testing or other ancillary services is common in Florida. While the study is based on a survey of health care businesses in Florida, it is at least indicative that such arrangements are likely to occur elsewhere.

The study found that at least 40 percent of Florida physicians involved in direct patient care have an investment interest in a health care business to which they may refer their patients for services; over 91 percent of the physician owners are concentrated in specialties that may refer patients for services. About 40 percent of the physician investors have a financial interest in diagnostic imaging centers. These estimates indicate that the proportion of referring physicians involved in direct patient care who participate in joint ventures is much higher than previous estimates suggest.

F. Physicians' Utilization and Charges for Outpatient Diagnostic Imaging in a Medicare Population; Hillman BJ, Olson GT, Griffith PE, Sunshine JH, Joseph CA, Kennedy SD, Nelson WR, Bernhardt LB: Journal of the American Medical Association, 1992:268:2050–2054

This study extends and confirms the previous research discussed in section C, above, by focusing on a broader range of clinical presentations (ten common clinical presentations were included in this study); a mostly elderly, retired population (a patient population that is of particular interest with respect to Medicare reimbursement); and the inclusion of higher-technology imaging examinations. The study concluded that physicians who own imaging technology employ diagnostic imaging in the evaluation of their patients significantly more often and as a result, generate 1.6 to 6.2 times higher average imaging charges per episode of medical care than do physicians who refer imaging examination to radiologists.

G. Physician Ownership of Physical Therapy Services; Effects on Charges, Utilization, Profits, and Service Characteristics; Mitchell JM, Scott E: Journal of the American Medical Association, 1992:268:2055–2059

Using information obtained under a legislative mandate in Florida, the authors evaluated the effects of physician ownership of freestanding physical therapy and rehabilitation facilities (joint venture facilities) on utilization, charges, profits, and service characteristics. The Study found that visits per patient were 39 to 45 percent higher in facilities owned by referring physicians and that both gross and net revenue per patient were 30 to 40 percent higher in such facilities. Percent operating income and percent markup were significantly higher in joint venture physical therapy and rehabilitation facilities. The study concluded that licensed physical therapists and licensed therapist assistants employed in non-joint venture facilities spend about 60 percent more time per visit treating patients than those licensed workers in joint venture facilities. Finally, the study found that joint ventures also generate more of their revenues from patients with well-paying insurance.

H. Consequences of Physicians' Ownership of Health Care Facilities—Joint Ventures in Radiation Therapy; Mitchell JM, Sunshine, IH; New England Journal of Medicine 1992; 327; 1497–1501

This study examined the effects of the ownership of freestanding radiation therapy centers by referring physicians who do not directly provide services ("joint ventures") by comparing data from Florida (where 44 percent of such centers were joint ventures during the period of the study) to data from elsewhere (where only 7 percent of such centers were joint ventures). The analysis shows that the joint ventures in Florida provide less access to poorly served populations (rural counties and inner-cities) than non-joint venture facilities. The frequency and costs of radiation therapy treatments at free-standing centers in Florida were 40 to 60 percent higher than in non-joint venture facilities; there was no below-average use of radiation therapy at hospitals or higher cancer rates to explain the higher use or higher costs. Some indicators (amount of time spent by radiation physicians with patients and mortality among patients with cancer) show that joint ventures cause either no improvement in quality or a decline.

I. Increased Costs and Rates of Use in the California Workers' Compensation System as a Result of Self-Referral by Physicians; Swedlow A, Johnson G, Smithline N, Milstein A; New England Journal of Medicine, 1992;327;1502–1506

The authors analyzed the effects of physician self-referral on three high-cost medical services covered under California's workers compensation physical therapy, psychiatric evaluation and magnetic resonance imaging (MRI). They compared the patterns of physicians who referred patients to facilities of which they were owners (self-referral group) to patterns of physicians who referred patients to independent facilities (independent-referral group). The study found that physical therapy was initiated 2.3 times more often by the self-referral group than those in the independent-referral group (which more than offset the slight decrease in cost per case). The mean cost of psychiatric evaluation services was significantly higher in the self-referral group (psychometric testing, 34 percent higher, psychiatric evaluation reports, 22 percent higher) and the total cost per case of psychiatric evaluation services was 26 percent higher in the self-referral group than in the independent-referral group. Finally, the study concluded that of all the MRI scans requested by the self-referring physicians, 38 percent were found to be medically inappropriate, as compared to 28 percent of those requested by physicians in the independent-referral group. There were no significant differences in the cost per case between the two groups.

J. Medicare: Referrals to Physician-Owned Imaging Facilities Warrant HCFA's Scrutiny (GAO Report No. B–253835; October 1994)

The U.S. General Accounting Office (GAO) issued a report regarding: (1) referrals by physicians with a financial interest in joint-venture imaging centers; and (2) referrals for imaging provided within the referring physicians' practice settings. The analyses are based on information collected by researchers in Florida for the Florida Health Care Cost Containment Board and include information on 1990 Medicare claims for imaging services ordered by Florida physicians. GAO analyzed approximately 1.3 million imaging services performed at facilities outside the ordering physicians' practice settings and approximately 1.2 million imaging services provided within the ordering physicians' practice settings. These results are significant because they are based on a large-scale analysis of physician referral practices.

GAO found that physician owners of Florida diagnostic imaging facilities had higher referral rates than nonowners for almost all types of imaging services. The differences in referral rates were greatest for costly, high technology imaging services; physician owners ordered 54 percent more MRI scans, 27 percent more computed tomography (CT) scans, 37 percent more nuclear medicine scans, 27 percent more echocardiograms, 22 percent more ultrasound services, and 22 percent more complex X rays. Referral rates for simple X rays were comparable for owners and nonowners. In addition, while referral practices among specialties differed, physician owners in most specialties had higher referral rates than nonowners in the same specialty.

GAO also compared the imaging rates of physicians who have in-practice imaging patterns (i.e., more than 50 percent of the imaging services they ordered were provided within their practice affiliations) with physicians with referral imaging patterns (i.e., more than 50 percent of the imaging services they ordered were provided at facilities outside their practice affiliations). GAO found that physicians with in-practice imaging patterns had significantly higher imaging rates than those with referral imaging patterns—the imaging rates were about 3 times higher for MRI scans; about 2 times higher for CT scans; 4.5 to 5.1 times higher for ultrasound, echocardiography, and diagnostic nuclear medicine imaging, and about 2 times higher for complex and simple X rays.

TRIBUTE TO ROSALIE AND GEORGE EIKENBERG

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. CARDIN. Mr. Speaker, I rise today to pay tribute to Rosalie and George Eikenberg, who were just named first runner-up of the Knights of Columbus' International Family of the Year Program. The Eikenbergs live in Elkridge, MD, and their dedication and commitment to their community and their family are truly inspiring.

George Eikenberg worked for American Can Co. for 30 years and the Oles Envelope Co. for 10 years. Rosalie is the cafeteria manager at Thunder Hill Elementary School. They had two natural children and adopted four others. From 1962 to 1985, they opened up their family to care for 42 foster care children, some of whom stayed for long periods of time.

In addition to their commitment to their children and foster children, the Eikenbergs have both volunteered their time to make their community a better place to live. In addition to their many commitments, George is treasurer of the Grand Knights of Columbus and is a member of the board of directors at Mt. St. Joseph High School. He has served as an adult advisor for the CYO, and coached basketball and little league.

Rosalie has been equally busy. She is the former president of the mother's club at St. Augustine's School, served on their parish council, and so did George, was president of the PTA at Waterloo Middle School and was chairman of the Title I Program at Elkridge Elementary School and St. Augustine's School.

Rosalie and George Eikenberg are an inspiring example to all of us that we can always find the time if we want to make our community a better place. I hope my colleagues will join me in extending congratulations and best wishes to a family that truly is a "Family of the Year."

SOLDIER'S MEDAL FOR SGT. JERRY SEABAUGH

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. SKELTON. Mr. Speaker, my congratulations to Sfc. Jerry Seabaugh of Jefferson City, MO, who was recently awarded the prestigious Soldier's Medal, the Army's highest peace time medal for valor. Sergeant Seabaugh, a member of the Missouri National Guard, saved the life of State Representative Sue Shear from flooding waters in Jefferson City. Sergeant Seabaugh rescued Mrs. Shear from her car which was nearly submerged by the high water.

This award, approved by the Secretary of the Army, is rarely given, and I know that the Members of this body join me in saying a job well done to Sergeant First Class Seabaugh. His heroism not only makes the Missouri National Guard proud, but all Missourians as well.

TRIBUTE TO TERESA AUDREY MOORE

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. TOWNS. Mr. Speaker, I am pleased to introduce to my colleagues Teresa Audrey Moore, a tireless community servant. Ms. Moore was born in Pittsburgh, PA. She moved to New York in 1941 and worked for Brooklyn Union Gas until her retirement in 1985.

Ms. Moore has been very active since she retired. She has been involved in Area policy board No. 5, is a member of community board No. 5, works on the board of elections, and is treasurer of Central Brooklyn A.A.R.P. chapter No. 4171. Additionally, she is a member of the senior advisory committee for the department of aging and the State of New York. Teresa also volunteers her time at Pink Senior Center and at East Brooklyn High School where she positively impacts the lives of young people.

When she is not performing labors of love, Ms. Moore is attending to the needs of her 3 children, 12 grandchildren, and 8 great-grandchildren. Teresa Moore exemplifies the ideal of public service and community involvement. I am proud to recognize her for devoted and unconditional service.

THE RECYCLING INFORMATION CLEARINGHOUSE ACT OF 1995

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. WELDON of Pennsylvania. Mr. Speaker, the Recycling Information Clearinghouse Act calls for the creation of a recycling clearinghouse within the Environmental Protection Agency's [EPA] Office of Solid Waste Management. With the monumental environmental problems this Nation faces in the future, it is imperative we examine all possible solutions to these problems.

America's garbage problem is heavy indeed. Each year we generate over 180 million tons of garbage. We discard enough paper in a year to build a 12-foot high wall stretching from coast to coast. Every hour we dispose of 2.5 million potentially recyclable plastic bottles. The EPA estimates that this amount of waste will continue to increase rapidly through the year 2000.

Our traditional method of disposing of garbage in landfills is becoming obsolete. Ten years ago in Pennsylvania, we had over 1,000 active landfills; today we have under 100. In addition to dwindling capacity, the cost to dump in landfills is skyrocketing. The latest trend in disposal technology is incineration. Unfortunately, this method has proven to be both hazardous and inefficient.

The first step in tackling our waste problem is to convert from a throwaway society to a recycling one, by shifting our focus from waste disposal to waste reduction. Although we possess the technology to recycle 80 to 90 percent of glass and aluminum, we recycle only 13 percent of our garbage annually. Recycling is cleaner and more energy efficient than both landfills and incineration.

Having set up the first comprehensive recycling program in Pennsylvania, I know recycling works at the local level. Our recycling programs have provided substantial savings in county disposal costs. The key to success is information. The success of Delaware County should be made available to other officials who are interested in setting up their own programs.

My legislation would create a clearinghouse of information on the national level in the EPA. The bill would authorize $500,000 to be matched by the private sector. The clearinghouse would provide easy access to information regarding recycling to any interested State or local officials through a toll-free hotline. Technical assistance would be disseminated through seminars and other resources.

Although the clearinghouse will not eliminate the waste problem, it is definitely a step in the right direction. Recycling can be a clean, cost-effective means of dealing with our garbage glut. I urge my colleagues to join me in support of the Recycling Clearinghouse Information Act.

NATIONAL SPORTSMANSHIP DAY

HON. JACK REED

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. REED. Mr. Speaker, I rise in honor of National Sportsmanship Day, which is being observed today in America and throughout the world. A national sportsmanship day presents the opportunity to stress the importance of ethics and fair play, both on the playing field and in the classroom.

National Sportsmanship Day was conceived by the Institute for International Sport, which is located in my district at the University of Rhode Island, to create an awareness of the issues of ethics, fair play, and sportsmanship within athletics and society. Since its inception in 1991, over 7,000 schools in all 50 States, have benefited from this program. This year 5,000 schools from all 50 States and 48 countries will join in the National Sportsmanship Day festivities.

The goal of good sportsmanship is an important one. It is worthwhile for us to demonstrate to our children the good values and ethics learned through sports. These same lessons will guide them in all aspects of everyday life.

With the help of Sports Ethics Fellows like Olympic skater Bonnie Blair, the institute is providing an example of the pride young athletes can find in competition. As a result, young athletes learn that while winning is a goal worth working for, it is honesty, integrity, and hard work that is most important.

Mr. Speaker, I ask my colleagues to join the President's Council on Physical Fitness and Sports and the Rhode Island congressional delegation in recognizing this day.

TRIBUTE TO MARIETTA SMALL

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. TOWNS. Mr. Speaker, in my district I am fortunate to have people who provide assistance to members of the community who wish to pursue their eduction. Marietta Small is illustrative of that type of educator. Marietta is chairperson of the Husain Institute of Technology [HIT] which provides excellent computer technical training to adults and mathematics and english training to elementary students of the local community.

Marietta was appointed to community board No. 17 in recognition of her assiduous performance and exemplary track record in community affairs. She was elected to the office of State committeewoman of the 42d assembly district in September, 1986, where she served until 1992.

Due to reapportionment she was redistricted into the newly created 58th assembly district, where she successfully ran for State committeewoman and is presently serving her second term. I am honored to recognize Marietta Small for her relentless dedication to helping the community.

HONORING A HOOSIER HERO

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. BURTON of Indiana. Mr. Speaker, I would like to take a moment to honor the life and memory of a young Hoosier soldier who recently fell while serving his country in the U.S. Army.

Capt. Milton Palmer was a bright and committed American soldier pursuing his dream of becoming an Army Ranger and serving his country for the balance of his life. Training in the swamplands of Florida's Eglin Air Force Base, Captain Palmer was just a few days away from completing the grueling 13-week trial that would set him apart as one of America's elite soldiers—a U.S. Army Ranger. The final days of training were understandably the most difficult, the most demanding. During one of these fateful days, the Ranger trainees had to simulate an assault operation in chest-deep, 50-degree waters, which would push any man to the very edge of survival.

Captain Palmer would not join his fellow trainees as they graduated from the Ranger Program in Fort Benning, GA, and solemnly accepted their new monikers. He and three other determined would-be Rangers died of hypothermia during that combat training exercise on February 15.

While I did not know Captain Palmer, I know some of his inspiring story. He was the middle child of three. Along with his older sister Torria and little brother Nathan, Milton grew up in a military family. His parents were able to keep the family close-knit, even during the moves and long tours of duty that are common among Army families. His father, a retired major, dedicated his entire adult life to military service, and Milton planned to follow in his father's footsteps. He was only 27 when he took the last of these steps.

Like other American heroes and leaders, Captain Palmer had an indomitable spirit and a willingness to meet adversity head-on. He attended the Citadel Military Academy, graduating with honors in 1990. Once in the service of his country, Captain Palmer earned several achievement commendations. He was awarded for his skills as an infantryman and parachutist—"leading the way"—to paraphrase the Ranger motto. And not long after graduation, he entered the Ranger Training Program in hopes of realizing one of his ambitious goals. Suffering from exposure and frostbite, Milton was eventually forced to cut short his participation in the demanding and grueling program.

But this would not deter him from pursuing his dream of joining the ranks of the U.S. Army Rangers. Captain Palmer would return to the Ranger Program to inspire his comrades as they pursued the same dream. He would challenge them to overcome both the elements that weakened their bodies and the fears that tried their spirits. It was during this second trial in the Ranger Program that Capt. Milton Palmer would pass away. He died while pursuing his goal, inspiring those who knew him and his story through it all.

However, to remember Captain Palmer and those other fallen trainees only for their pursuit of a common personal goals is not enough, because in the end these brave young men died for something much greater than themselves or any one of us who survive them. Captain Palmer and the three Ranger trainees that died with him laid down their lives so that we might be free. Their deaths were not senseless. The tragedy at Eglin Air Force Base reminds us that our freedom comes at a high price. Readiness and preparedness—ensured by training missions like the one that claimed young Milton and three of his brothers—deter our enemies and prevent war. These men did not die in vain.

And so, it is fitting that Arlington National Cemetery, the eternal home of so many of America's other heroes and martyrs, will serve as Capt. Milton Palmer's final resting place. For Captain Palmer was a hero, epitomizing the American military tradition of fidelity and bravery, preserving our freedom, and challenging us to follow his courageous example.

WINNERS OF BLACK HISTORY COMPETITION

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. HASTINGS of Florida. Mr. Speaker, I would like to take this opportunity to congratulate seven students in my district who won the Black History and Cultural Brain Bowl competition.

These outstanding students are Mickel Anglin, Kevan McIntosh, Kim Jefferson, Latonya Cooper, Jason Gibson, Markease Doe, and Rolando Cooper. All seven attend Plantation High School.

For 6 months these students studied black history during lunch, after school, late at night, and on weekends. They read books by major African-American authors, and learned about the contributions that African-Americans have made to American history, politics, sports, entertainment, the arts, and sciences.

They won the Broward County School district competition in October, and in late February beat out 10 other teams for the trophy and 4-year college scholarships.

I am proud to represent such outstanding young people and I am confident that all of these students will join the next generation of African-American leaders.

TRIBUTE TO ARLENE SUAREZ

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. TOWNS. Mr. Speaker, in my district I am fortunate to have business people who are dedicated to supporting the community. Arlene Suarez is one such person. Arlene was born and raised in New York City and attended Mother Cabrini High. She then attended New York Institute of Technology where she majored in Computer Science and Business Management.

Arlene has been employed by Good Paz Development Corp. [Good Paz] as managing director for commercial properties for the past 7 years. As the liaison between the Good Paz Corp. and the Bedford-Stuyvesant community she has been actively involved in the reopening of the Paz Williamsburg Center.

As a certified New York City Fire Safety Director, Arlene has consistently ensured stellar safety performances by all individuals who work with the Good Paz Development Corp. I am honored to recognize Arlene Suarez for her professionalism and dedication.

TRIBUTE TO JAMES W. GALLAGHER

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. WELDON of Pennsylvania. Mr. Speaker, I rise today to recognize an outstanding constituent, James W. Gallagher, for his service to the Nation and Delaware County, PA.

A resident of Newtown Square, PA, Mr. Gallagher is well known and highly regarded by many people throughout our community for his selfless charitable contributions. A graduate of the University of Pennsylvania's Wharton School and a U.S. Marine Corps veteran, Jim has remained dedicated to his country as an active historian, by preserving our patriotic history like no other.

Jim is best known throughout the region and the Nation as his alter ego, "George Washington." As vice-president of the Washington Crossing Foundation, Jim portrays George Washington as the principal speaker at the Nationwide Bell Ringing Ceremony sponsored by the Pennsylvania Society at Independence Hall in Philadelphia. Jim portrays our first President every Christmas in the reenactment of Gen. George Washington's historic journey during the Revolutionary War. He has promoted the legacy of George Washington by appearing in many parades and in our Nation's Capitol in costume.

Jim, like many throughout our great Nation, has worked to overturn the Supreme Court's decision of 5 years ago that ruled people who burn American flags are entitled to legal protection under the first amendment's provisions regarding free speech. As cosponsor of the flag protection amendment, I am gratified the amendment has been reintroduced and is gaining wide support among Members.

As a member of the General Society Sons of the Revolution, Jim published an eloquent and inspirational piece entitled "Freedom is a Light for Which Many Men had Died in Darkness." I would like to submit this article for the record so that my colleagues can appreciate Jim's keen insight. It is my hope that those who read it will be inspired as I was to reflect upon our rich historic roots.

I have been honored to work with Jim and am pleased to call him a friend. He deserves our recognition and continued support. I ask the Members of the House to join me in honoring this outstanding American.

FREEDOM IS A LIGHT FOR WHICH MANY MEN HAVE DIED IN DARKNESS

(By James W. Gallagher)

Independence Day is a day to remember what transpired here 218 years ago. In July 1776 John Adams wrote a letter to his wife, Abigail, in Massachusetts. He wanted her to know about an important vote that he had just cast in Philadelphia as a member of the Continental Congress. The subject of his letter was the passage that day of something that we now call the Declaration of Independence. Adams wrote his wife that a single day in July 1776 would be honored "as the most memorable day in the history of America."

That is a remarkable prediction to make about a nation that did not even exist then, that first had to free itself from the control of the world's most powerful country. Other predictions that Adams wrote to his wife about a special day in July 1776 were right on target, too. In his letter he said, "It will be celebrated by succeeding generations as a great anniversary festival. It ought to be solemnized with pomp and parades, with shows, games, sports, guns, bells, bonfires and illuminations . . . from one end of the continent to the other . . . from this time forward . . . forever more."

John Adams got only one major detail wrong in his amazing prediction—he had the wrong date.

He wrote his wife that he could foresee those parades and fireworks happening every year on July Second. That is because it was on July 2, 1776 that the Continental Congress, meeting in secret session, actually voted on the Declaration of Independence. Two days later, on July 4, the delegates to the Continental Congress signed the Declaration. Also on that day they came out of their secret session and showed the world what they had done.

Does that mean we are wrong in celebrating July Fourth? Should we be having Second of July picnics and Second of July fireworks? No.

Most legal documents take effect when they are signed and July Fourth is the day when signatures were put on a draft of that incredible document written by Thomas Jefferson.

Many historians will tell you it is not because of the signatures that we use July 4 as the official birthday of our country. It is because that is the day people first heard about the Declaration of Independence. In this country the people count. What is important is the involvement of the people in managing their own affairs, not governmental bodies making decisions in secret. For most of human history—and even in large parts of the world today—that is still a revolutionary idea.

We should remember every July Fourth that the rights we often take for granted do not come easily or automatically. Those rights are re-purchased by each generation, often at a terrible price.

Nearby we have the graves of some of our Revolutionary War dead. They know that freedom is not free since they paid with their very lives. On the tombstone [of the Unknown Soldier in Washington Square] is the inscription "Freedom is a Light for Which Many Men Have Died in Darkness."

Fifty years ago today the beachhead at Normandy was not quite a month old. Nearly a million men and women from the United States, Great Britain and our wartime allies had landed there. They were beginning to spread out from that small foothold in northern France and each mile of liberated Europe demanded a high price in human lives and suffering. Many terrible struggles were still ahead of the U.S. military 50 years ago today during World War II.

Today our enemies are harder to identify, but they are out there. Our commitment to the men and women in uniform should be as strong today as it was 50 years ago. History has taught us the best way to avoid war is to be better prepared than any adversary. Vigilance is also the watchword in our domestic life. Even the best of governments can forget that government is the servant of the people and that the people should never be the servant of government.

Just five years ago the Supreme Court ruled that people who burn American flags are entitled to legal protection under the First Amendment's provisions safeguarding free speech. This decision outraged many Americans who see the flag as a sacred symbol of the country, as a symbol of our values that ought to be respected and, especially, as a symbol of the brave sacrifices of our men and women in wartime. We want to amend the Constitution to allow the states and the federal government to enact laws prohibiting physical desecration of the flag. If it is in the Constitution then the courts cannot rule it unconstitutional.

"Old Glory" is precious to me. So is the idea that government should be answerable to the people. We hear more these days about the search for values in America. Some of us do not have to look very far to find values. We start with devotion to God, love of country and respect for the flag. These are solid foundations upon which this country has been built and they are foundations upon which we can grow. If we need to find values, we can start with the values laid down 218 years ago in that remarkable document we honor today, the Declaration of Independence. It says: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights governments are instituted."

That is still the best statement of who we are as a people, what we hold dear and what we will fight to preserve.

God Bless America.

REFORMING THE WELFARE SYSTEM "NO STRINGS ATTACHED"

HON. RICHARD "DOC" HASTINGS

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. HASTINGS of Washington. Mr. Speaker, I rise today to introduce legislation aimed at reforming our failed Federal welfare system. Reforming welfare is among my top priorities and is supported by a majority of the American people.

The time for reform has come. Since 1965 we have spent $5 trillion on the War on Poverty—yet the poverty rate is higher today than it was then. The current welfare system has failed both the people it was created to help and those whose tax dollars support it. It is a bureaucratic nightmare and it offers the wrong incentives for recipients. It fosters illegitimacy and dependency, rather than strong families and economic independence. We must act now to enact fundamental and far reaching change.

I believe the most important change Congress can make would be to allow States and local communities the flexibility to find creative solutions and determine who should be eligible to receive benefits. The legislation I am introducing empowers States and local communities by shifting the responsibility for welfare to the States in a single block grant—with no strings attached.

I repeat: no strings attached. This isn't just a swap for government control of Medicaid or other assistance programs—it strictly empowers the States and local communities to address the problem in the most effective manner possible. No additional mandates would be imposed on the States. Finally, Federal funding will be reduced by 5 percent per year and will be phased out completely in 20 years.

The States have proven themselves to be more successful than the Federal Government in dealing with welfare and developing innovative and effective solutions. States better understand the problems within their own communities and can more efficiently determine who should be eligible to receive benefits.

Consider, for example, Wisconsin. Governor Tommy Thompson's welfare reform proposal has reduced State welfare rolls by 25 percent and saved the taxpayers $16 million per month. In Michigan, Governor John Engler requires that welfare recipients sign a social contract agreeing to work, receive job training, or volunteer at least 20 hours a week. In just 2 years, the plan has helped almost 50,000 welfare recipients gain independence, and welfare caseloads have fallen to their lowest level in 7 years, saving the taxpayers $100 million.

The urgent need for reform—particularly welfare reform—was exemplified during the November elections. It is time for the Government to return control to the States. My proposal to shift the power to the local level is ambitious—yet it is only at the local level that the most effective solutions and most efficient answers will be found.

TRIBUTE TO BEVERLY TWITTY

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. TOWNS. Mr. Speaker, in my district I am fortunate to have individuals dedicated to helping the Brooklyn community. Beverly Twitty personifies this kind of dedication. Beverly is a native New Yorker, educated in the

New York City public school system. She attended Brooklyn College and New York University where she earned a B.A. degree and two masters degrees respectively.

Beverly is involved in many community activities and has been very active for many years with the Girl Scouts and the American Red Cross. She is a former member of Operation Bread Basket, the economic arm of the Southern Christian Leadership Conference.

Beverly Twitty is a member of the Cornerstone Baptist Church and continues to be an inspiration to the community. I am proud to recognize Beverly Twitty for her unyielding dedication to the Brooklyn community.

NATIONAL CLEAN WATER TRUST FUND ACT OF 1995

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. VISCLOSKY. Mr. Speaker, today, I am introducing legislation to expedite the cleanup of our Nation's waters. This bill, the National Clean Water Trust Fund Act of 1995, would create a trust fund established from fines, penalties, and other moneys collected through enforcement of the Clean Water Act to help alleviate the problems for which the enforcement actions were taken. This legislation is identical to a measure I introduced with bipartisan support in the last Congress, and it was the model for a provision I secured in last year's Clean Water Act reauthorization bill, H.R. 3948.

Currently, there is no guarantee that fines or other moneys that result from violations of the Clean Water Act will be used to correct water quality problems. Instead, some of the money goes into the general fund of the U.S. Treasury without any provision that it be used to improve the quality of our Nation's waters.

I am concerned that EPA enforcement activities are extracting large sums of money from industry and others through enforcement of the Clean Water Act, while we ignore the fundamental issue of how to pay for the cleanup of the water pollution problems for which the penalties were levied. If we are really serious about ensuring the successful implementation of the Clean Water Act, we should put these enforcement funds to work and actually clean up our Nation's waters. It does not make sense for scarce resources to go into the bottomless pit of the Treasury's general fund, especially if we fail to solve our serious water quality problems due to lack of funds.

Specifically, my bill would establish a national clean water trust fund within the U.S. Treasury for fines, penalties, and other moneys, including consent decrees, obtained through enforcement of the Clean Water Act that would otherwise be placed into Treasury's general fund. Under my proposal, the EPA Administrator would be authorized to prioritize and carry out projects to restore and recover waters of the United States using the funds collected from violations of the Clean Water Act. However, this legislation would not preempt citizen suits or in any way preclude EPA's authority to undertake and complete supplemental environmental projects [SEP's] as part of settlements related to violations of the Clean Water Act and/or other legislation.

For example, in 1993, Inland Steel announced a $54.5 million multimedia consent decree, which included a $26 million SEP and a $3.5 million cash payment to the U.S. Treasury. I strongly support the use of SEP's to facilitate the cleanup of serious environmental problems, which are particularly prevalent in my congressional district. However, my bill would dedicate the cash payment to the Treasury to the clean water trust fund.

The bill further specifies that remedial projects be within the same EPA region where enforcement action was taken. Northwest Indiana is in EPA region 5, and there are 10 EPA regions throughout the United States. Under my proposal, any funds collected from enforcement of the Clean Water Act in region 5 would go into the national clean water trust fund and, ideally, be used to cleanup environmental impacts associated with the problem for which the fine was levied.

To illustrate how a national clean water trust fund would be effective in cleaning up our Nation's waters, I would like to highlight the magnitude of the fines that have been levied through enforcement of the Clean Water Act. Nationwide, in fiscal year 1994, EPA assessed $35 million in penalties for violations of the Clean Water Act. These penalties represented 27 percent of all penalties assessed by EPA under various environmental statutes.

My bill also instructs EPA to coordinate its efforts with the State in prioritizing specific cleanup projects. Finally, to monitor the implementation of the national clean water trust fund, I have included a reporting requirement in my legislation. One year after enactment, and every 2 years thereafter, the EPA Administrator would make a report to Congress regarding the establishment of the trust fund.

My legislation has garnered the endorsement of several environmental organizations in northwest Indiana, including the Grand Calumet task force, the northwest Indiana chapter of the Izaak Walton League, and the Save the Dunes Council. Further, I am encouraged by the support within the national environmental community and the Northeast-Midwest Institute for the concept of a national clean water trust fund. I would also like to point out that, in a 1992 report to Congress on the Clean Water Act enforcement mechanisms, and Environmental Protection Agency workgroup recommended amending the Clean Water Act to establish a national clean water trust fund.

In reauthorizing the Clean Water Act, we have a unique opportunity to improve the quality of our Nation's waters. The establishment of a national clean water trust fund is an innovative step in that direction. By targeting funds accrued through enforcement of the Clean Water Act—that would otherwise go into the Treasury Department's general fund—we can put scarce resources to work and facilitate the cleanup of problem areas throughout the Great Lakes and across this country. I urge my colleagues to support this important legislation.

BURTON AND TORRICELLI BLAST IDEA OF EASING CUBAN EMBARGO

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Congressman DAN BURTON, chairman of Western Hemisphere Affairs Subcommittee and ROBERT TORRICELLI, ranking minority member of the subcommittee expressed strong opposition to any easing of United States economic sanctions on Cuba.

According to a report in the Washington Post today, several of President Clinton's advisers are recommending that the economic embargo on Cuba be eased, allowing dollar remittances to be sent to Cuba, and making it easier to travel to Cuba. In response, Congressmen BURTON and TORRICELLI have issued the following statement:

> We are absolutely dismayed over reports that the Clinton Administration is considering easing certain aspects of the United States economic embargo on Cuba. We believe that any easing of pressure on the Fidel Castro regime will only prolong the suffering of the Cuban people and will send the wrong signal to the dictatorship.
>
> The communist dictatorship in Cuba is one of the most notorious violators of human rights in existence today. Despite the monumental changes in the world over the past six years, Fidel Castro remains as committed as ever in his nefarious, failed ideology.
>
> The loss of over $6 billion a year in subsidies from the Soviet Union has caused the Cuban economy to contract by sixty percent. It is for this reason that Castro, desperate for foreign currency, has been forced to adopt superficial measures aimed at increasing foreign investment. There is no mistaking the fact that Castro is only interested in perpetuating his own dictatorial rule.
>
> At a time when the Castro regime is clearly on its last leg, the United States should maintain pressure and resist any calls to lift the embargo. This was the clear message of the Cuban Democracy Act of 1992, which the President supported; and it is the aim of the Cuban Liberty and Democratic Solidarity Act (Libertad), which we recently introduced.
>
> Any easing of the U.S. embargo at this time would send the absolutely wrong message to Fidel Castro, and to the Cuban people. We will fiercely resist any such move.

TRIBUTE TO ELINORE MANDELL

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. TOWNS. Mr. Speaker, I would like to acknowledge Ms. Elinore Mandell, a native of Brooklyn. Ms. Mandell was born, reared and educated in Brooklyn. Her children are products of the public school system. And her grandchildren currently attend public school. Elinore Mandell has always been concerned about the quality of life for children. Her concern and devotion was quite evident during her children's formative years when she participated in various community activities. She served as an assistant leader for both the

Brownies and Girl Scouts, and as a den mother for the Cub Scouts. And she also held a number of positions in the parents association.

In 1980 Elinore moved to East New York/Starrett City and ran successfully for membership on the district 19 school board, where she served for 10 years. She retired from the school board in 1993. Elinore is employed by Assemblyman Anthony Genovesi as his administrative assistant, and has ably served him for the past 20 years.

RECOGNITION OF NATIONAL SPORTSMANSHIP DAY, MARCH 7, 1995

HON. PATRICK J. KENNEDY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. KENNEDY of Rhode Island. Mr. Speaker, I rise today in support of March 7, 1995 being recognized as National Sportsmanship Day. Since its inception in 1991, over 7,000 schools nationwide have taken part in celebrating the essential life lessons that are developed through participation in sports. The participants, who range from elementary students right up through the university level will spend the day in constructive competition.

For the past 5 years, the Institute for International Sport, located at the University of Rhode Island, has worked hard to help establish greater awareness in the area of physical fitness. In addition to National Sportsmanship Day, the institute works all year to promote initiatives like the Student-Athlete Outreach Program, where student-athletes from high schools and colleges travel to local elementary and middle schools to serve as positive role models and promote good sportsmanship.

I fully support these initiatives and would like to acknowledge all the individuals who have devoted their time and efforts to broaden participation in the arena of friendly competition and sportsmanship.

TRIBUTE TO JUDGE JUDITH M. ASHMANN

HON. HOWARD L. BERMAN

OF CALIFORNIA

HON. HENRY A. WAXMAN

OF CALIFORNIA

HON. ANTHONY C. BEILENSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. BERMAN. Mr. Speaker, we are honored to pay tribute to Judge Judith M. Ashmann, supervising judge of Los Angeles Superior Court's North Valley district, who has been named Judge of the Year by the San Fernando Valley Bar Association. Judge Ashmann, a friend for many years, has a distinguished legal career, including her tenure on the superior court bench, nearly 6 years spent as a municipal court judge in Van Nuys and a decade working in the city, State and Federal attorney offices.

Last year, in the aftermath of the devastating Northridge Earthquake, Judge Ashmann had her finest hour. The San Fernando courthouse suffered severe damage, rendering it uninhabitable. Without quick action by Judge Ashmann, the result could have been chaos.

But she kept her cool under fire, supervising the orderly transfer of judicial duties to other locations, including trailers outside the Van Nuys courthouse. At the same time, Judge Ashmann embarked on an ambitious, time-consuming but absolutely essential project to eliminate the backlog of civil cases created by the earthquake, the most expensive natural disaster in American history.

During a 2-week period, teams of volunteer attorneys and judges assembled by Judge Ashmann disposed of more than 1,000 cases in San Fernando Valley courts. Along with community leaders, Judge Ashmann has been responsible for restoring a sense of normalcy to the earthquake zone.

Mr. Speaker, we ask our colleagues to join us today in saluting Judge Judith Ashmann, who combines a sound legal mind with exceptional qualities of leadership. She is an inspiration to all of us.

TRIBUTE TO SUSAN PINTO

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. TOWNS. Mr. Speaker, I would like to highlight the contributions of Susan Pinto who was born and raised in Brooklyn. Susan is that rare person who travels to the beat of a different drummer. She attended parochial elementary and secondary schools, and graduated from Brooklyn College. After completing college, she began performing drug-free treatment work. Susan helped design and open treatment and prevention programs in East New York, Brownsville, Bed-Stuy, Sheepshead Bay, and Canarsie. She is a certified substance abuse counselor [CSAC].

Susan is a woman of commitment to everything she is involved in, particularly her immediate, extended family, and circle of friends. Her other endeavors include work in real estate sales and management, construction, and development. Susan Pinto is a member of the Rosetta Gaston Democratic Club, and the interfaith auxiliary. I am proud to commend her to my House colleagues.

OCEAN RADIOACTIVE DUMPING BAN ACT OF 1995

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. WELDON of Pennsylvania. Mr. Speaker, currently the ocean dumping of radioactive waste is regulated under the Ocean Dumping Act [ODA] allows dumping of radioactive waste only after Congress has passed a joint resolution authorizing the dumping. Although this provision has been in force since 1985, Congress has yet to authorize any radioactive dumping.

For decades, U.S. law on ocean pollution has been more stringent than international law. At the time of enactment, the radioactive dumping provisions in the ODA were among the most restrictive in the world, going well beyond international treaty obligations. That is no longer the case.

The Ocean Radioactive Dumping Ban Act corrects this, eliminating ODA's current arduous permitting process and replacing it with a simple ban. It ensures that the United States retains its leadership position in protecting the world's marine environment.

The relevance of the United States banning radioactive dumping is far-reaching. Historically, the United States has set international policy on ocean dumping of radioactive waste. Until last year, the United States had resisted an international ban. Through U.S. influence, the issue was left unresolved.

That all changed last November when the Clinton administration, following heavy lobbying from the Global Legislators Organization for a Balanced Environment [GLOBE] and other organizations, reversed U.S. policy and announced its support for a ban.

Prompted largely by the new U.S. position, in November 1993, the parties to the Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter of 1972, known as the London Convention, amended annexes I and II to ban the deliberate ocean dumping of low-level radioactive waste. The Convention has always banned the dumping of high-level radioactive waste.

During the 103d Congress, as the ranking Republican on the oceanography, Gulf of Mexico, and Outer Continental Shelf Subcommittee, and the newly appointed chairman of the GLOBE Ocean Protection Working Group, I have spent the last year working to eliminate the threat of radioactive contamination of the sea.

On September 30, 1993, at my request, the Oceanography Subcommittee held a hearing on the threat of contamination from the Russian dumping of nuclear waste. For four decades the former Soviet Union, and now the Russian Federation has been dumping nuclear waste from nuclear submarines and weapons plants into the world's oceans. The information gathered by the subcommittee was sobering.

The West's first concrete evidence on the dumping came last summer following the release of the Yablokov report which was commissioned by President Boris Yeltsin to detail the extent of Soviet nuclear disposal at sea. According to the report, the Soviet Union has dumped over 2.5 million curies of radioactive waste into the Arctic Ocean and other marine environments. By comparison, the accident at Three Mile Island in my home State of Pennsylvania released 15 curies of radiation.

During the hearing, the subcommittee discovered that since 1959, the former Soviet Union dumped into the ocean 18 nuclear reactors and a reactor screen, 11,000 to 17,000 canisters of nuclear waste, and hundreds of thousands of gallons of liquid radioactive waste. It also learned that nuclear waste totaling 10 million curies is currently stored aboard vessels in Murmansk harbor.

Although water quality monitoring in the Arctic suggests that large-scale contamination of the ocean has yet to occur, our knowledge about the possibility of future leakage and transportation is very limited. Significant environmental contamination is a real possibility in the future.

Even after the fall of communism, Moscow has continued to dispose of radioactive waste at sea. In October 1993, Russia dumped 900 tons of low-level radioactive waste in the Sea of Japan in violation of a previously agreed upon international moratorium. According to Japanese press accounts, high ranking Russian officials have admitted that ocean dumping is likely to persist.

The Russian Federation's actions followed the October 1993 dumping have only reinforced these fears. Russia was one of only five nations to abstain from voting to approve the London Convention radioactive dumping ban in November 1993. Then, in February 1994, it became the only nation to declare its intention not to comply with the new international ban on dumping.

Only through strong Western pressure will this change. But before we can pressure Russia, we have to act. That is why I reintroduced the Ocean Radioactive Dumping Ban Act. This act will make U.S. law consistent with the London Convention by amending the ODA to ban the dumping of radioactive waste.

As with the amendments to the Convention's annexes I and II, which contain provisions exempting de minimis radioactive waste from the ban, the Ocean Radioactive Dumping Ban Act exempts de minimis waste from the ban. Since all matter is radioactive to some degree, a de minimis, or negligible, exemption is necessary to ensure that critical commercial activities such as dredging can continue.

Although no uniform definition for de minimis waste currently exists, the International Atomic Energy Agency [IAEA] has produced significant guidance on the issue and is working on an internationally recognized standard. Once an international standard is devised, I expect the U.S. Environmental Protection Agency [EPA] will promulgate regulations on this issue based on the IAEA's efforts.

Hopefully, with pressure from the United States, the Russian Federation can be convinced to change its policy. With 10 million curies of radiation stored aboard ships in Murmansk Harbor and awaiting disposal, the risk to the marine environment is significant if we fail. The Ocean Radioactive Dumping Ban Act will significantly strengthen our position and will set an example as we further discuss such dumping with the Russian Federation.

Clearly the world's oceans should not be used as nuclear disposal sites. I ask my colleagues to join me in sending a strong message to the rest of the world, and support the Ocean Radioactive Dumping Ban Act of 1995.

PROMOTING THE PRIVATE SECTOR IN AFRICA

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. BURTON of Indiana. Mr. Speaker, I want to commend the Subcommittee on Africa under the able chairmanship of our colleague ILEANA ROS-LEHTINEN, on their upcoming hearing on promoting the private sector in Africa. As ranking member of that subcommittee over 8 years, I felt very strongly that only through the proper and vigorous encouragement of the private sector will Africa be able to develop and prosper.

In this context, I want to highlight the activities and efforts of the Corporate Council on Africa, which is doing yeoman's work in advancing these goals.

I also want to salute two members of the council. M&W Pump has done fantastic work in Nigeria and elsewhere, through its water pump business which has benefited so many people. Finally, Coca-Cola one of the largest and oldest companies in Africa, has been a very positive force in Africa. Its social responsibility program in South Africa is exemplary, and it has indeed been a positive force on the continent.

TRIBUTE TO SYLVIA STOVALL

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. TOWNS. Mr. Speaker, there is a very special woman in Brooklyn named Sylvia Stovall, who is a district administrator in district 13. Sylvia is also a consistent advocate on behalf of children. Her concern for the emotional and academic welfare of students is reflected in the mentoring she has done with young men and women, many of whom have graduated from college and experienced successful careers.

Sylvia attended North Carolina Central University, and graduated respectively from Brooklyn and Bank Street College. She is currently pursuing a doctoral degree.

Ms. Stovall is a member of the board of directors of the Cypress Hills Local Development Corp. located in Brooklyn, and she was recently honored as one of the unsung heroes and heroines of our community by the Harriet Tubman club at the First A.M.E. Zion Church in Brooklyn. It is my pleasure to highlight her contributions to Brooklyn.

BILL TO REQUIRE ALL PROFESSIONAL BOXERS IN UNITED STATES TO WEAR HEADGEAR

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. TRAFICANT. Mr. Speaker, today I am introducing legislation to require all professional boxers to wear headgear during all professional fights held in the United States. Under my bill, all professional fighters in the United States would have to wear headgear that meets the standards established by the International Olympic Committee. Any State or tribal boxing authority that allows a professional boxer to fight in a professional fight without headgear would be subject to a Federal fine of up to $1,000,000.

The recent incident in the super-middleweight championship fight between Gerald McClellan and Nigel Benn is yet another reminder that something must be done to better protect professional boxers from head injuries. After being knocked out in the 10th round of what was described by the British press as one of the most brutal fights of the century, McClellan collapsed in his corner. He was rushed to the hospital and underwent emergency surgery to remove a blood clot in his brain. He is still in critical condition.

While headgear alone will not prevent all head injuries in boxing, it will go a long way in protecting boxers. Amateur boxing requires all fighters to wear headgear, and the number of serious head injuries in amateur boxing is significantly lower than in professional boxing. According to an article that appeared in the British Medical Journal on June 18, 1994,

> During boxing training sessions head protection is regularly worn and is now a feature of the Olympic Games. In countries where headgear is compulsory there has been a reduction in the number of facial cuts and knockouts.

My legislation, Professional Boxing Safety Act of 1995, is a modest measure that will provide professional boxers in this country with some protection against head injuries. I urge my colleagues to cosponsor this bill. The full text of the legislation appears below:

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Professional Boxing Safety Act of 1995".

SEC. 2. HEADGEAR REQUIREMENT FOR PROFESSIONAL BOXERS.

Any individual who participates as a boxer in a professional boxing match shall, during such participation, wear headgear that meets the standards established by the International Olympic Committee.

SEC. 3. CIVIL PENALTY.

The Attorney General of the United States may impose a civil monetary penalty against any State boxing authority if the Attorney General determines on the record after opportunity for an agency hearing that the State boxing authority has allowed a boxer to participate in a professional boxing match without the headgear required by section 2. The civil monetary penalty may not exceed $1,000,000 for each violation.

SEC. 4. DEFINITIONS.

For purposes of this Act:

(1) PROFESSIONAL BOXING MATCH.—The term "professional boxing match" means a boxing contest held in a State between individuals for compensation or a prize, and does not include any amateur boxing match.

(2) STATE.—

(A) IN GENERAL.—The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Virgin Islands, any other territory or possession of the United States, and any Indian tribe.

(B) INDIAN TRIBE.—The term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and is recognized as possessing powers of self-government.

(3) STATE BOXING AUTHORITY.—The term "State boxing authority" means a State agency with authority to regulate professional boxing.

SEC. 5. EFFECTIVE DATE.

Sections 2 and 3 shall take effect 90 days after the date of the enactment of this Act.

THE ATTORNEY ACCOUNTABILITY ACT

HON. EARL POMEROY

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. POMEROY. Mr. Chairman, I rise today in opposition to the bill, H.R. 988, the Attorney Accountability Act.

The authors of this bill would have you believe this legislation is intended to reduce the number of frivolous lawsuits. This bill would more likely discourage average Americans—most likely middle-income citizens—from seeking redress in our judicial system. As the bill is written plaintiff's whose cases were found to have merit would actually be punished under this legislation.

This bill alters the playing field between parties to a lawsuit and gives all the benefits to the large financially secure party. While a family would potentially risk all of their assets if a jury would rule against them, a large corporation could easily absorb these costs. Accordingly, the large corporation would have a tremendous advantage in a pretrial settlement conference in light of the dire risks the family would have with an adverse jury ruling.

I wholeheartedly support curtailing frivolous lawsuits. Yesterday we had an opportunity to bring this bill back in line with the rhetoric that surrounds it. An amendment offered by Representative MCHALE, as modified by Representative BERMAN, would have replaced the loser pays provisions in H.R. 988 with provisions awarding attorney's fees to a defendant if the court finds the plaintiff's case to be frivolous. The court would entertain this motion anytime in the first 90 days after the complaint was filed. If found to be meritorious, it would put a halt to the nonsense before the parties underwent the costly discovery process. More importantly, the claim would be dismissed and all legal costs would be born by the plaintiff.

The McHale-Berman amendment would have given courts discretion to get rid of frivolous lawsuits that are filed in bad faith or with only the intention to harass.

This bill is appropriately called the loser pays bill. Unfortunately, the real loser here is the American people.

TRIBUTE TO ANN LAWSON

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. TOWNS. Mr. Speaker, many of us are public servants, but some of us are God's servant. Mrs. Ann Lawson is indeed one of God's servants. Born in Florence, SC, she later moved to New Jersey.

At an early age she professed her love and devotion to her Lord and joined New Jerusalem Baptist Church. In 1980 she joined New Canaan Baptist Church under the pastorship of the late Dr. Augustus Leon Cunningham. During the same period she met Rev. Richard J. Lawson and they were married. After the death of Dr. Cunningham, Dr. Lawson was installed as the new pastor of the church. As the first lady of New Jerusalem Baptist Church, Mrs. Lawson has been actively involved in various church affairs.

Mrs. Lawson is involved in numerous church activities. She is the acting supervisor for the red circle missionary department, the South Carolina club, and serves as the chairperson for the Woman of the Year Awards. Mrs. Lawson shares her unbridled energy, faith, and love with everyone, especially children. It is my pleasure to recognize the contributions and accomplishments of a remarkable woman, Mrs. Ann Lawson.

THE ATTORNEY ACCOUNTABILITY ACT

HON. BILL BAKER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. BAKER of California. Mr. Chairman, as a member of the Leader's Legal Reform Task Force, I rise in support of H.R. 988, the Attorney Accountability Act.

In this historic 100 days of progress, among the most profound reform measures Congress is enacting is legal reform. The threat of predatory lawsuits looms over every business, organization, and individual. Liability insurance alone increases the costs of doing business for all Americans.

H.R. 988 has three major components: a loser pays provision, the prevention of junk science, and new rules of conduct for attorneys.

The loser pays provision puts a stop to get-rich-quick, lottery-style lawsuits where litigants have little to lose and everything to gain. Plaintiffs would be encouraged to accept reasonable pretrial settlements offers. This incentive would free up our courts for meritorious cases and slow the growth of multimillion dollars awards.

The junk science provision prevents the use of so-called experts in a technical field by either side of a lawsuit. Both plaintiffs and defendants hire potentially biased experts who bring unsubstantiated scientific theories for the purpose of influencing the outcome of the case. The experts are often paid only if their sides wins. Our legislation lists factors for a judge to consider in weighing the admissibility of a scientific opinion.

The attorney accountability rules, mandate previously optional guidelines set for trial lawyers. There rules require that Federal courts punish attorneys who engage in litigation tactics that harass, make frivolous legal arguments, or unwarranted factual assertions. The punishment is not only to deter this conduct, but to compensate injured parties. The court may order the attorney at fault to pay the opposing party for reasonable expenses as a direct result of the violation.

I strongly urge my colleagues to support H.R. 988, the Attorney Accountability Act. This is the first of three bills that make up the Common Sense Legal Reform Act—a major element of the Contract With America.

TRIBUTE TO RUBY WESTON

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. TOWNS. Mr. Speaker, I would like to highlight the life of Ruby Weston of Brooklyn, NY. Mrs. Weston is an administrator for the Marcus Garvey Nursing Home in Brooklyn. She toils unselfishly to provide for the needs of the patients at the nursing home. Mrs. Weston's generous and caring nature are reflective in her management style. Prior to serving as a nursing home administrator, Ruby Weston was a realty specialist for the U.S. Department of Housing and Urban Development.

Mrs. Weston received her bachelor's of professional studies from Pace University, and her master's in public administration from Long Island University. She holds licenses in nursing home administration, real estate, and insurance.

Mrs. Weston is married to Dr. Peter Weston, and they are parents to five children. She and her husband reside in Brooklyn. I would like to commend her to my colleagues for her work with the Brooklyn elderly.

THE VOICE OF AMERICA: 53 YEARS AT THE MICROPHONES

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. TORRES. Mr. Speaker, as the Voice of America [VOA] steps up to its 53d year at the microphone, it is talking to nearly 100 million people each week in 46 languages plus English—and its listeners are talking back.

With the end of the cold war and the advent of interactive technology, VOA has engaged in a dialog with its listeners, many of whom are living under very different circumstances than just a few years ago. To that end, the Voice of America is experiencing a renewal, or perhaps, more appropriately, a change in its tone of voice to accommodate the many new missions it has to perform, to fulfill the changing needs and interests of its worldwide audience and to take advantage of new technology to allow for better reception and an increasingly vast global reach. Yet despite these changes, VOA remains evergreen, ever retaining its freshness, relevance and diversity—and its importance as America's voice to the world.

As changes continue to occur in many parts of the world with lightning speed paving the way for the information superhighway, VOA has adapted its programming and how it delivers its message to meet the challenges of the competitive global marketplace with innovation and fervor. VOA has initiated a series of exciting broadcast ventures inviting its listeners to be active participants in the new generation of international broadcasting.

With the placement on the Internet of a text version of VOA's English language programs and VOA audio in 15 languages, listeners can connect with VOA instantaneously, 24 hours a day, to offer feedback on its programming. VOA listeners not only want credible and reliable news of happenings in their country, the United States, and the world, but also practical information on how to build and maintain new democracies and free market economies. They look to the United States, the most powerful and successful example of a working democracy, to learn about its institutions, policies, and way of life. They want to know how to set up a city council, how to start a newspaper, how the stock market works, how to organize a school system, how to get a bank loan, and how to write a constitution. And VOA's programs are there—in their living rooms and grass huts, in their castles and caravans—to provide these new societies with the guidance and support to secure their newfound freedom and independence.

VOA now gives its listeners the opportunity to participate regularly in its programming through a new live international call-in show, "Talk to America," which receives calls in English daily from listeners spanning the globe. VOA listeners want to take part in an open forum to voice their views on the foremost issues affecting the world today—AIDS, drugs, human rights, population, and the environment to name a few—and VOA invites their discussion and debate. VOA has also rolled out a series of bold new programs to East Asia in eight languages through a $5 million enhancement from the Congress. In addition, VOA has launched five new thematic programs exploring regional and global economic trends: political and social issues of concern in the United States; the impact of international developments; major news stories from a reporter's perspective; and religion, spirituality, ethics and values.

Mr. Speaker, the Voice of America marked its 53d year milestone on February 24, I hope you will join me in paying tribute to its past success and its bright future as one of the largest and most respected newsgathering organizations in the world. Although we wish that governments that censor the news and miscommunicate the truth would disappear, history has shown us that there will always be a need for a service like the Voice of America—evergreen, ever present, and ever truthful. Through crisis and calm, discovery and disaster, victory and celebration, VOA has continued to uphold its mission established by the intrepid broadcast pioneers who founded America's voice 53 years ago: "The news may be good. The news may be bad. We shall tell you the truth." And VOA, we shall salute you.

TRIBUTE TO EDNA RUSSELL

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

Mr. TOWNS. Mr. Speaker, in my district I am fortunate to have individuals dedicated to helping others in the community. Edna Russell has this unyielding dedication. Edna came to New York from Costa Rica, Central America, where she graduated from the Salvation Army School and worked as a nurse in Tony Facio Hospital in Port Limon in Costa Rica.

After Edna arrived in New York, she was employed as a nursing assistant at Jack Low Foundation which is now the New York Community Hospital of Brooklyn. Edna devoted her caring skills in the nursing department for 27 years before transferring to the x-ray department where she is now an x-ray transporter and is also their No. 1199 union representative.

Always giving honor to God, in all that she does, Edna is the first person to give a helping hand whenever a crisis occurs. She is a member of the Sacred Heart Church and is affiliated with the Sacred Heart Shrine. I am proud to recognize Edna Russell for her relentless dedication to the Brooklyn community.

SENATE—*Wednesday, March 8, 1995*

(Legislative day of Monday, March 6, 1995)

The Senate met at 10:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Today we have a guest Chaplain, Dr. Neal T. Jones, pastor of Columbia Baptist Church of Falls Church, VA.

PRAYER

The guest Chaplain, the Reverend Dr. Neal T. Jones, Columbia Baptist Church, Falls Church, VA, offered the following prayer:

Let us pray:

Our Father in Heaven, we thank You that history is a human record of which You are the superintendent. We are the infinitesimal creatures of a few historical moments. We thank You for endowing these temporal moments with eternal significance. We, therefore, ask for wisdom and understanding of history in the ordering of our times.

By Your wisdom, transport us to that eternal expanse before the beginning. By Your wisdom, take us to the other side of the end. By Your wisdom, take us to the heart of reality where time and eternity merge. Finally, by Your wisdom, wrap us in the sufficiency of Your knowledge and love.

By grace, we promise to fill our lives with more than the momentary and more of the eternal—in order to praise the One who is everything and benefit our constituents in time.

In Jesus' name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader, the Senator from Mississippi [Mr. LOTT], is recognized.

SCHEDULE

Mr. LOTT. Thank you, Mr. President. This morning, the Senate will resume consideration of H.R. 889, the supplemental appropriations bill. Pending is the amendment offered last night by Senator HELMS regarding Cuba. Rollcall votes are expected throughout today's session, and it is the hope of the majority leader to complete action on the supplemental appropriations bill today.

I understand perhaps the Chair has some pending announcements. I yield the floor.

APPOINTMENT BY THE MAJORITY AND MINORITY LEADERS

The PRESIDING OFFICER (Mr. INHOFE). On behalf of the majority and minority leaders, pursuant to Public Law 102-166, the Chair appoints the Senator from Maine [Ms. SNOWE] as a member of the Glass Ceiling Commission, vice the Senator from Georgia [Mr. COVERDELL], resigned.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under a previous order the leadership time is reserved.

THE EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT OF 1995

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 889, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 889) making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness for the Department of Defense for the fiscal year ending September 30, 1995 and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Helms (modified) amendment No. 326 (to committee amendment beginning on page 1, line 3), to strengthen international sanctions against the Castro government in Cuba, to develop a plan to support a transition government leading to a democratically elected government in Cuba.

PRIVILEGE OF THE FLOOR

Mr. INOUYE. Mr. President, I ask unanimous consent that Barbara Jean Scherb, a member of my staff, be given the privileges of the floor during consideration of this legislation

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I ask unanimous consent that I proceed as in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

WELCOME REVEREND JONES

Mr. LOTT. Mr. President, I know we are ready to go momentarily to H.R. 889, the supplemental appropriations bill. I do expect the committee members to be here shortly so we can proceed.

In the interim, I would like to take a moment, Mr. President, to welcome the distinguished guest Chaplain to the Senate today, Dr. Neal Jones. I truly believe that some of the most meaningful lessons that could ever have been learned on the floor of the U.S. Senate have come from our Chaplains.

I also always remember the prayers of Peter Marshall, when he served as the Chaplain of the Senate, and his prayers were actually put in book form. I have one of those. Not many of them are around any more. They were very meaningful, and I am sure they sustained the Senators in the days that they were delivered as prayers in the Senate.

I know Dr. Neal Jones to be the same type of man. He is pastor of Columbia Baptist Church. I have known him in his role there at that very fine church for I guess close to 20 years. He has meant a great deal to this Senator personally. I just wanted to acknowledge the fine work he has done at Columbia Baptist Church and the work he has done, and it extends down to Texas.

It extends, as a matter of fact, in the international community. As a member of Columbia Baptist Church, I remember many occasions when Dr. Jones had the congregation and the church family there to reach out to international members of the Washington area community, members of the ambassadorial corps, and staff members from our embassies. They were always wonderful events, dinners and lunches, where we welcomed representatives from countries all over the world to Columbia Baptist Church.

I also would note that both of my children were baptized along with my wife by Dr. Neal Jones at Columbia Baptist Church. I really appreciate the fine work he does. I have been enjoying and appreciating his prayers this week and I look forward to hearing more of them. He is a perfect example of why the Senate has always had a Chaplain. I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SIMON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FALLOUT FROM BALANCED BUDGET AMENDMENT

Mr. SIMON. Mr. President, I would like to make an observation or two. Sometimes we do things in the U.S.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Senate that no one pays much attention to around the world. In the 4 days since we have turned down the balanced budget amendment, we have seen a precipitous fall in the dollar.

I heard on the radio as I came in this morning, and at a breakfast meeting where I heard the distinguished presiding officer speak, I heard a reference to the international markets being concerned about the action and our failure to face up to our deficit problems.

The Chicago Tribune, yesterday, front page subhead "Dollar's Role as the Top Currency of International Trade Is Threatened." And I ask unanimous consent that the article be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

Where Will the Buck Stop?

(By Ronald E. Yates)

THE DOWNSIDE

Americans face higher prices for many imports and foreign trips, and the dollar's role as the top currency of international trade is threatened.

THE UPSIDE

A cheaper dollar makes American exports more competitive abroad, helping U.S. companies that sell overseas and combating trade imbalances.

A LOSING BATTLE WITH MARK, YEN

With the dollar continuing its free fall in currency markets around the world Monday, questions furrowed brows from London to Tokyo:

Does the buck stop here? Or will it fall further? And if it does fall further, what will the impact be?

The answers depend on who you are and what your agenda is.

If you are an American consumer thinking about buying a new Japanese or German car, the weaker dollar means you'll pay more because it takes more dollars to buy the vehicle. It's the same thing for those who are planning a trip to Europe or Asia. Hotels, meals and other costs associated with travel will cost more for those traveling with dollars.

On the other hand, if you are Federal Reserve Board Chairman Alan Greenspan, you aren't too concerned about the plummeting greenback because a weaker dollar helps drive domestic economic growth. How? A devalued dollar makes U.S. goods cheaper and more competitive overseas.

But if you are Japanese Finance Minister Masayoshi Takemura, the idea of the dollar weakening and the yen strengthening has no appeal.

At one point Monday, the Japanese yen was trading at a new post World War II high of 92.80 against the wobbly dollar. Takemura and the other leaders of the Japanese economy hate news like that.

Why? Because a strong yen makes Japanese products expensive in overseas markets, thereby decreasing their competitiveness. That, in turn, slows the Japanese economy, which is still struggling to come out of a 4-year-old recession.

While neither Greenspan nor Federal Reserve Board member Susan Phillips have said outright that they support a weaker dollar, that's the way it's being read around the world.

"Certainly the dollar is something we look at," Phillips told reporters Sunday. "But domestic considerations are in many ways primary [to a falling dollar]."

Traders and analysts were in general agreement Monday about what that statement meant.

"Not only doesn't the buck stop here, but the U.S. government apparently doesn't care if the dollar falls further," said currency trader Manfried Holliger in Zurich. "It's a strange attitude for a government to take about its currency."

While many currency nationalists might deplore the government's apparent lack of concern over the falling dollar, there is another, more practical reason to be concerned about the currency's plunge, some economists say. If the dollar continues to nose dive, its 50-year reign as the currency of choice for global business transactions may be over.

That's a much more serious matter than old-fashioned currency chauvinism, say some analysts. Worldwide confidence in the U.S. economy is already at one of its lowest points in recent memory.

The U.S. is already the world's biggest debtor nation, with liabilities at the end of 1994 of some $750 billion. Foreign economists say that Congress' refusal last week to pass a constitutional amendment that would have required a balance budget by 2002 showed that Washington is simply not serious about putting its economic house in order.

"The German mark is already replacing the dollar as the currency of choice in Europe, and it may do so in Asia, too," Holliger said. "That will undermine international faith in the U.S. economy and its government even further. I can't understand what benefit U.S. leaders see in allowing the dollar to fall even more than it already has."

From the perspective of Greenspan and the Federal Reserve, who, some economists say, continue to be obsessed by the fear of inflation, a weaker dollar may force another rise in interest rates.

The Fed already has raised interest rates seven times in 13 months. The fear in Washington is that when a weaker dollar spurs economic growth by making American goods more attractive in foreign markets, it will rekindle inflation.

"The Fed does care about the dollar's value," said Susan Hering, an economist with Salomon Brothers in New York. "A weaker dollar will intensify the Fed's concerns about inflation and make it more prone to raise [interest] rates."

Not all analysts agreed with that assessment, however. "We see no chance the Federal Reserve will hike U.S. short-term interest rates to defend the dollar, because they have never done so before," said Carl B. Weinberg, chief economist at High Frequency Economics in New York.

The dollar fell to 92.80 yen in late trading Monday in New York, down from a Friday record low of 94.05. It also declined against the German mark, dropping to 1.4042 marks, the lowest level in more than two years and down from Friday's close in New York of 1.4250 marks. The dollar was down against other major currencies as well.

The dollar's low against the mark is 1.387, reached in September 1992. In London, the dollar was quoted at 1.4013 marks, down from 1.4355 Friday.

In overnight trading in Asia, the dollar sank as low as 92.63 yen in Tokyo, the lowest it has been since modern exchange rates were established after World War II.

Against other currencies, the dollar sank to 4.9580 French francs from 5.0270; to 1.1735 Swiss francs from 1.2010; and to 1,661.00 Italian lire from 1,672.50.

"The dollar is being flawed by a huge U.S. current-account deficit," said Weinberg, referring to the trade measure that includes goods as well as services. He added that central-bank intervention in propping up the dollar last week failed to do anything other than create profit-taking opportunities for speculators, who continued to dump the currency by the billions.

"This means [central] banks either have to give up their support for the dollar—which is unlikely—or inflict more pain on speculators this week by propping it up with more dollar purchases," Weinberg said.

A poll of several analysts revealed that many feel the dollar will fall to 1.35 marks and 90 yen before beginning a slow climb back.

"Any return to its old glory days as the leading currency in the world will be slow," Holliger said. "It doesn't take much for a government to destroy the confidence people have in a currency, but it takes an awful lot of work to revive that confidence. That's where the dollar is today."

Mr. SIMON. Mr. President, this article mentions a currency trader that is apparently very prominent. I have to say I am not that knowledgeable in this field. A gentleman from Zurich, Switzerland, Manfried Holliger, says:

> Foreign economists say that Congress' refusal last week to pass a constitutional amendment that would have required a balanced budget by 2002 showed that Washington is simply not serious about putting its economic House in order.
>
> The German mark is already replacing the dollar as the currency of choice in Europe, and it may do so in Asia, too [Holliger said].
>
> That will undermine international faith in the U.S. economy and its government even further. I cannot understand what benefit U.S. leaders see in allowing the dollar to fall even more than it already has.

When I served overseas in the Army—and I have to say that was a long time ago, 1951 to 1953—for $1, you got 4 German marks. That has changed dramatically.

Every once in a while, we do things here that are of monumental importance to the Nation. What happened last week is of such import. If we want to stop the slide of the dollar, the U.S. Senate can do it very, very quickly by adopting the balanced budget amendment.

I say to my 34 colleagues who voted against it, any one of you can do a great favor for this Government and for the future of world stability by changing that vote. I hope before too long we will have a changed vote. The news on the dollar should be a matter of concern to all of us.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I did not know my friend was going to speak on the subject of the falling dollar, but I fit right in with his discussion. I ask unanimous consent that I have up to 7 minutes as in morning business to discuss this issue.

The PRESIDING OFFICER. Without objection, it is so ordered.

FALLING DOLLAR: IMPORTANT IMPACT ON AMERICAN PEOPLE

Mr. DOMENICI. Mr. President, first of all, let me suggest that the falling dollar seems like something out in the sky that does not have an impact on the American people. Let me suggest it has a very, very important impact on the American people.

I said to my staff this morning, "Let's not talk about Wall Street and the markets. Let's talk about a couple in their home, living in an apartment house with two children and are thinking about buying a new house." That is the kind of American who is going to get hurt, or the American who is thinking about buying a new car or a new refrigerator and is going to have to borrow money, because essentially as the dollar lowers in value and America's appetite for borrowed money grows because we do not have a balanced budget and we do not have any game plan to get our deficit under control, what happens is that those foreigners who invest in American debt will insist on higher interest rates. Because the dollar is worth less money, they want higher interest rates.

So what are we already seeing as a result of the falling price of the dollar? We are seeing higher interest rates, higher long-term interest rates. So I want to discuss for a few minutes with the U.S. Senate and those interested in this about things we ought to be doing that we are not doing to see if we cannot stop this and put America's dollar and America's economy back, from the standpoint of the world, in the proper light, in the light it should be and should have.

The currency markets might even be said to be in turmoil. Yesterday's news on that is not a disconnected Wall Street event. It is a critical comment on the U.S. economy and on the budget policy of this Nation, as I see it. Leadership in this country requires more than just saying a strong dollar is in our interest. Who would not say that today? And waiting around to see what happens is not an appropriate response.

It is backing that up with responsible fiscal policy that does not take a walk on the deficit. Half a year ago, I spoke to the Senate the last time America's currency was falling precipitously to new lows against foreign currencies. The yen per dollar exchange rate was flirting then with a historic floor of 100.

At that time, I warned that the dollar slide was a global vote of no confidence on the direction of U.S. policy, both foreign and domestic, and, in particular, fiscal policy. Now we are seeing the dollar hitting new record lows every day since the Senate's failure to pass the balanced budget amendment to the Constitution.

On Monday, our currency declined to a record low of 93 yen per dollar, down 4.5 percent. In a week, it fell a similar amount against the German mark and entered a record low territory against that currency as well.

Yesterday, the dollar slide accelerated. By afternoon, the dollar had fallen sizably further, 2 percent, since the previous day to a record of 90 yen to the dollar, setting a fourth consecutive record low in as many days. Against the mark, the dollar fell to 137, a new record low against that currency as well. As a result, long-term interest rates were pushed higher and stock values declined, just what I said in my opening remarks. Interest rates are pushed up.

This is not the work of the Federal Reserve Board, which has been adjusting short-term rates. Clearly, this is not that. This is the world currency market responding.

These are not random disconnected events. Here is how we got to this place:

First, Federal deficits are going up, not down, I say to my good friend from Illinois. Last July, the projected deficits were said to be $173 billion for 1996 and much was made of that decline.

In February, without any changes in policy, the administration upped its estimate to $196 billion and took a walk on controlling long-term deficits—that is the President's budget—took a walk on having any impact on long-term deficits, thus, avoiding involvement by our country in a meaningful way in getting long-term interest rates under control.

Second, and I regret to state this but it is absolutely true, we must borrow even more, I say to Senator SIMON, even more from abroad, rather than less. Higher Federal deficits and low national savings rates mean America's borrowing from abroad will have to grow tremendously in order to fund America's investment needs.

Over the last four quarters, America has increased its net borrowing from abroad by 50 percent, from $100 billion in 1993 to $150 billion in 1994. Last month, the administration projected borrowing needs from abroad to rise to $170 billion by 1996.

The administration's shaky leadership with reference to the peso also contributed somewhat to the crisis and is part of a connected web of American activities that have shaken the market. I believe that event on the Mexican peso contributed to some lack of confidence in the dollar and our abilities to get involved in an appropriate way.

Then last Thursday, the U.S. Senate sent a message to the world capital markets that the U.S. Government did not have the resolve to deal with these damaging trends. The balanced budget amendment failed in the Senate by one vote after passing overwhelmingly in the House. The dollar now stands 7 percent lower against the yen and 6 percent lower against the mark relative to 1 week ago.

The current 7.6-percent interest rate on 30-year Treasury bonds is 20 basis points higher than a week ago, and the Federal Reserve Board has done nothing to adjust interest rates, so it is something else causing it because they have not changed short-term interest rates, which many think has no impact on long-term rates anyway.

A weak dollar and higher interest rates is prima facie evidence that foreign investors lack confidence in dollar investments. Foreign central banks time and time again have had to pick up the slack through currency interventions, as they attempted to do last Friday, apparently without success.

What should we be doing? There are many factors that can affect the dollar. They include strengthening economies in Germany and elsewhere, Japan's earthquake, and the peso crisis, but there will always be events like that occurring outside our immediate control.

The question is, what are we doing to guide America's future in this sea of uncertainty? If we do not provide a firm currency, obviously our economic goals are put in jeopardy. That does not mean relying on the Federal Reserve Board to increase rates enough to entice foreign lenders to hold American-denominated securities, because obviously there are two sides to that coin. When you do that, you hurt America, although you might help the dollar overseas. When it comes to changing interest rates, the U.S. Federal Reserve Board should always place domestic interests first. A U.S. recession helps no one.

The only way to strengthen America's rate of return is to strengthen America's economy by reducing long-term deficits, improving our savings and investment climate, and getting the Government out of the way of workers and business. All of these are on the agenda for this year and next year, right on the table. Allowing confidence in the stability of U.S. currency to significantly erode is not just unfortunate, it reflects misguided and, I believe, irresponsible Government policies.

This is a very simple graph, easy to understand. It talks about the U.S. dollar and its decline to new lows. The green one is its decline against the yen. The red one is its decline against the other major currency, the mark. This is all in the period of time, I say to my friend from Illinois, from April 1, 1994, to March 7; that is yesterday. It is rather significant, not something that is esoteric and outside of impacting our people. It is very, very important to average Americans and to our continued success as a viable economy.

I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

A BALANCED BUDGET

Mr. EXON. Mr. President, I have been listening with interest to the remarks by the chairman of the Budget Committee, the distinguished Senator from New Mexico, who has served so well and so long here. I know the people back in his home State recognize and realize that New Mexico is well served here with my great friend and colleague.

I want to simply add my voice of concern, as I think has been so well articulated by himself, and I think before him by my friend and colleague from the State of Illinois, who has been with us in trying to focus attention on the dire consequences of the United States of America continuing its course of reckless spending.

I just cite a statistic or two that I think have been said so many times they may be old hat, but I am still not sure are fully understood.

The national debt is the accumulation, year after year after year, of budget deficits. Put another way, that means the Government, year after year after year, is spending more than it takes in. Then, whether that is in millions or billions, it is shifted over at the end of each fiscal year to the national debt. But in 1980, the national debt was below $1 trillion, the accumulation of all the deficits since this Nation started over 200 years ago. From 1980 until 1995, that debt has gone up about five times, from under $1 trillion to $4.8 trillion as of now. And everyone in this body who understands the budget knows it is going to go up over $5 trillion sometime in this calendar year. Then it is going to go on up from there, because I have not seen a single projection yet by anybody, Democrat, Republican, independent, or any of the think tanks, that does not show continual, as far as we can see into the future, year after year after year, including up to the magic year 2002 that we had outlined in the constitutional amendment to balance the budget—it is going to go up each year. That is another way of saying—with that kind of accumulation, it is an understatement—that the debt will be at least $6 trillion by the year 2000, which is another shattering statement. It may be part of the reason for the decline of the dollar and the concern for that the chairman of the Budget Committee has just outlined. I think it is well we understand that.

Having said that, there are many complicating factors in play right now. I am not an isolationist, either in military policy or in economic policy, but the more and more we internationalize the United States of America's economy—the more and more we talk about free trade, the more and more NAFTA's that we have, the more and more GATT's that we have—that is continually putting the economy of the United States of America in hands that are beyond our borders, so people in foreign countries have more and more to do with whether or not the economy of the United States of America is a sound one or a fragile one.

The Senator from New Mexico made quite a point that the earlier estimate by the Clinton administration for the budget deficit at the end of this year was about $172 billion and the chairman of the Budget Committee further said that has now been revised upward from $172 billion to $197 billion or $198 billion. Of course, the basic reason for that, among other things, was partially a shortfall in the amount of money coming into the Treasury, but primarily it was due to the Federal Reserve Board raising interest rates, so that hurt Americans. But it also hurts the taxpayers in America because they have to pay more interest, a higher interest rate on the national debt. So not only is the national debt continuing to rise from under $1 trillion in 1980 to $4.8 trillion now, going up over $6 trillion before we can have any hopes of beginning to get it under control through some mechanism, but at the same time the interest that the taxpayers pay on that is going up dramatically for two reasons. No. 1, the debt keeps going higher and, No. 2, interest rates keep inching up.

Now, we are seemingly getting ourselves into a situation that, after NAFTA and after GATT and after the bailout of the Mexican economy that some of us understood NAFTA was going to take care of—that was to take care of everything. That would smooth things out between those who live north and south of the border, which it obviously has not. But after all those concerns, we are still back to a situation where, among the other concerns of the budget, the fastest-growing, percentagewise, portion of the budget today is not national defense, it is not welfare, it is not Social Security benefits, it is not Medicare and Medicaid; the fastest growing percentage increase in the national debt is the interest, which is now approaching $300 billion a year.

Talk about the foreigners pulling their money out of the United States of America; that is the good news/bad news situation once again. The facts of the matter are that foreign investors in the United States, those buying T-bills in the United States of America, are now receiving somewhere between $50 and $60 billion a year interest that the American taxpayers are paying. That is what they get for buying our T-bills.

Another alarming thing, consider that about 25 percent of our debt, the excesses that we continue to spend, is being handled by foreigners. What kind of shape is the United States of America in today? What more reason do we need for some discipline to get our expenditures in line with our income on some kind of a reasonable, enforceable glidepath to a balanced budget?

What more reason do we need than the fact that now we are becoming nervous because of the collapse of the dollar? The foreign investors in the United States may be pulling their money out of the United States of America. That could increase our interest rates. I think the sum of this whole thing is that the United States of America finds itself in an additionally perilous situation today where actions of foreigners, foreign entities, could cause a major recession in the United States of America. I am not sure, if we could balance the budget tomorrow, it would stop that, but it would certainly be a step in the right direction.

Let me conclude, though, Mr. President, by saying let us not be pointing fingers at the President of the United States on this. I do not agree with the connotation made by the Senator from New Mexico with regard to the fact that he said the President of the United States had walked away from the deficit problem.

Mr. President, I submit the record shows that clearly is not correct. The President of the United States and the Democrats in 1993 passed, for the first time, the only significant decrease in the annual deficit that we have ever seen. We took a lot of heat for that. Whether you agree with everything that President Clinton does or whether you disagree with that, President Clinton is the first President since Harry Truman to establish a policy that has had a downward trend in the deficit for 3 consecutive years.

No, he has not licked the problem. There is more to do. And I, too, criticize the President's budget this year. Not only did the President not attack the deficit as I had hoped and wished that he would, but he also fell into line with the Contract With America that is supported by the Republicans on the House side and maybe some of the Republicans in the Senate to have a tax cut at a time we are screaming that we have to balance our budget.

You cannot have it both ways. Anyone who is out there preaching a tax cut today, if they have any basic understanding of the budget of the United States of America, is either dead wrong or they are trying to mislead the people of the United States of America.

So I simply say I am pleased that my colleague from New Mexico has outlined a very serious problem, another problem, something else that we had not anticipated that could have some rather dire circumstances on the United States of America. While I say I think it is important we press ahead even without the constitutional amendment to balance the budget, which I was for and strongly supported, the world has not come to an end because that did not pass, and we still have the responsibility to work as best we can on a nonpartisan basis to move ahead with balancing the budget by the year 2002 or as soon thereafter as possible given the new realities of the situation.

SENATE COMITY

Mr. President, I wish to make some brief remarks on another subject that I think ties in with the reason that this Senate of ours gets itself tied up from time to time in gridlock. The events following the failure by one vote in this body last week to pass the constitutional amendment are something on which I wish to make a few remarks.

I appeal to all Members of this body, regardless of which side of the aisle they sit on and what their political affiliation is, to begin to recognize the lack of comity, the lack of understanding, the failure of those of us on both sides of this aisle to walk in other people's shoes on the other side of the aisle.

I have been here now for 17 years. I must say, Mr. President, I am very much concerned about the fact that this body is becoming more and more a body of vicious arguments, a body that does not play within its rules somehow that we do not falsely accuse each other, with the teamwork that is necessary in passing many good pieces of legislation; the fact that if someone on the other side of the aisle or someone on our side of the aisle does not go along with a key vote that one of us thinks is absolutely critical, then there are some recriminations taking place.

I need only cite the meeting that I understand from the press is going on today where the Republican majority in this body is meeting to see whether or not they are going to censure one of the most dedicated and talented Members on that side of the aisle, Senator HATFIELD from the State of Oregon. Senator HATFIELD had the unmitigated gall, in the opinion of some, to vote his conviction from that seat the other day and thereby, along with several other Senators that could be mentioned, caused the balanced budget amendment to fail.

Now, I think I have the credentials to talk about that, Mr. President, because I did not agree with Senator HATFIELD's vote. But I will defend to the end his right to vote his convictions. And if we are going to send a message throughout the land directed by the new majority that was elected in both the House and the Senate in the November elections, if that majority is going to be sending out the message that you march in lockstep with the contract, you march in lockstep with whatever we tell you to do or you are out as chairman of a committee or can be otherwise censured, then I think that points up and proves the point I am trying to make today, that this institution is beginning to break down and become a pit of rhetoric, not understanding that each one of us is pledged to do what he or she thinks is best for our State and best for our Nation.

The Democrats sure do not have all the answers. We have proven that. The Republicans do not have the answers either, and I think they are proving that even faster than I thought they could. I simply say it is about time the freshmen Members of this body come into it with a bit of humbleness. Just because they served over in the other body where they could not talk more than 1 minute at a time, time and time again I have seen them come over to this body and languish in their new found freedom of talk, talk, talk, talk, talk.

It does hurt, Mr. President, when Members on this side of the aisle or Members on that side of the aisle by statement, by implication, and by action indicate that we are going to punish our Members when they do not hew the line.

I would only hearken back for a moment, if I might, Mr. President, to that 1993 budget bill that was passed by 50 votes in this body. We had to have the Vice President in the chair to cast the vote to break the tie. Those were all Democratic votes. There were defections from what was the position of the President of the United States, a Democrat. There were defections from what most of the Democrats in this body, including this one, thought was the right thing to do. Some of those defections were some of my closest friends and associates in this body who I served with and considered their actions and their decision at that particular time. While I did not agree with it, there was never a murmur on this side. I have never heard even in Cloakroom talk or out on the street a thought of trying to punish the six over seven Democrats that did not follow the party line. And maybe in the end, Mr. President, that is a basic difference between the Democratic Party and the Republican Party in the United States of America. They choose to try and whip their people into lockstep.

I am proud to say—at least as far as I know—while we hope that there is discipline on this side to a degree when things which are fundamentally important are concerned, I have never heard of the Democrats ever considering censoring someone because they had the courage to vote their conviction.

MARK HATFIELD voted his conviction last week. While I thought it was a wrong vote, I admire him for that conviction. I hope that the cooler heads—and there are many of them on that side of the aisle—will not start on a warpath and not demean the standing and respect that I think this body should have in the public's eye by trying to whip or punish Senator HATFIELD for casting the vote that he thought was right.

Democrats and Republicans, it seems to me, can only expect us—and our constituents can only expect us—to trust our judgment to listen to them, but in the end vote our convictions and our consciences as to what is the right thing for our State and the right thing for our Nation. MARK HATFIELD did that last week.

I again say that I wish he had done otherwise. I wish he would have been the one vote that we needed to pass it. But I felt that I would not be stating my fondness for this institution and what it stands for without coming to the floor in defense of my friend MARK HATFIELD because I am convinced that, while he did what he thought was right, if we ever get to the place in this body where Democrats are going to dictate whether they are in the majority or the minority, the Republicans are going to dictate whether they are in the majority or the minority, how I and every one of the Members of the party vote, then we have destroyed, I think, the deliberative body that I think the people expect from this great institution that we call the U.S. Senate.

Mr. President, I yield the floor.

Mr. MACK addressed the Chair.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from Florida.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT OF 1995

The Senate continued with the consideration of the bill.

AMENDMENT NO. 326, AS MODIFIED

Mr. MACK. Mr. President, is the pending business the Helms amendment?

The PRESIDING OFFICER. That is correct.

Mr. MACK. The Cuban Liberty and Democratic Solidarity Act?

The PRESIDING OFFICER. That is correct.

Mr. MACK. Thank you, Mr. President.

Mr. President, the Cuban Liberty and Democratic Solidarity Act is designed to once and for all bring about the end of the Castro regime in Cuba.

Senator DOLE and Senator HELMS and my colleagues were forced to act quickly to bring this measure to the Senate floor last night because word had seeped out of the Clinton administration that administration officials have recommended that the President move to lift certain sanctions on the Castro regime and hold out a list of steps leading to bilateral talks between the United States and Cuba.

The introduction of this bill in Congress is a message to the President: Just do not do it. Just do not do it.

In fact, people are saying that what has happened is there is a trial balloon that is being floated out there to see how it might sell, how it might fly.

Well, I would suggest that the President of the United States himself ought to pop that balloon. This is not the time to be talking about opening a discussion with Fidel Castro and entering into normal relations.

What possible justification could the administration have for removing even the slightest pressure from the Castro regime? How can anyone argue that the way to end repression in Cuba is to end the regime's isolation when Cuba will not even allow the visit of one man? That one man is an individual by the name of Carl-Johan Groth, the U.N. special rapporteur assigned to investigate Cuba's human rights records.

Let me put that in perspective. The United Nations has assigned an individual as a result of a series of resolutions that were passed in Geneva condemning Fidel Castro and Cuba for its human rights violations. For years they have been trying to get someone into Cuba to investigate these human rights violations and Cuba has denied entrance, access, to Cuba of this U.N. special rapporteur.

Groth, though denied an entry visa, has made a—I am quoting now from an editorial in the Miami Herald of 4 days ago—"harrowing compilation of violations of political and civil rights, arbitrary arrests, intimidation of the opposition and political prisoners kept in woeful conditions."

His report describes the July sinking of a tugboat full of refugees fleeing Cuba. The tug, attacked off the Cuban coast, sank. Most aboard, including men, women, and children drowned.

I think my colleagues will remember that we discussed this issue on the floor of the Senate last year.

Fidel Castro puts his faith in the tirelessness of some policymakers who, not living in the hell Castro has created, search for new avenues for negotiation, dialog, and compromise with a dictator who has outlasted administration after administration. I say to those who want to find those new avenues, when will they ever learn?

I put my faith in the Cuban people who continue to struggle and hope that we here in the United States will not forget them.

On a personal note, I want to build on that last comment. I have the opportunity from time to time to speak with refugees or defectors from Cuba. And one of the questions that I always ask them is, "Should the United States maintain this embargo? Should the United States still attempt to isolate Fidel Castro because some people say there is a hardship that we are creating on the people of Cuba?"

Every single one that I have spoken to says, you cannot back away. You cannot lift that embargo because, if you do, the message you are sending to us is you have abandoned us. And in fact, it is the message that comes with the result of the embargo that is beginning to embolden us that gives us hope that maybe there is an opportunity that we can change things.

So the worst possible thing that we could do would be what is being suggested by those in the administration that now it is time to lift some of the embargo, that now is the time to begin to open a dialog, a terrible, terrible mistake.

I also remind my colleagues that last year—in fact, I believe it was the last day of the last Congress—there was a hearing in the Senate Foreign Relations Committee, a hearing that was designed to deliver the message that now is the time to lift the embargo, open up dialog, move to normalization.

The amazing thing, as I sat there at that hearing and I testified, was that it was the day after President Mandela had addressed a joint session of the Congress of the United States and told us if it had not been for the commitment of the United States, and specifically, he said, the United States Congress, to the isolation of the regime in South Africa, his people and he would not be free. And for the people who supported that to turn around today and say, "Oh, we can't follow the same approach with Cuba and Fidel Castro," makes absolutely, positively no sense.

So as I say, in my opinion, the President of the United States ought to embrace the Cuban Liberty and Democratic Solidarity Act and he ought to pop the balloon that has been floated by those in the administration.

This is not the time for us to weaken our resolve. We need to continue to send that message to the people of Cuba—that we have not forgotten them, that we will not forget them, and that this country is united behind the idea of freedom and democracy returning to that tiny little island south of Florida.

I yield the floor.

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. COVERDELL. Mr. President, first I want to commend my colleague from Florida, who has perhaps more personal knowledge regarding Cuba and its effect on our country than many of the other Members here in this body. I appreciate his remarks.

I would like to elaborate on the comments that he has made as they relate to certain suggestions from the administration that we should enter into a new era with Cuba, one in which we ease and/or normalize relations.

I would like to read from the Washington Post, March 7. It says:

> President Clinton's foreign policy advisers are recommending he take steps toward easing relations with Cuba by revoking some economic sanctions adopted against the nation in August.
>
> The time has come, some U.S. officials believe, to test whether Castro is willing to make deep economic and political reforms, a senior administration official said.

Mr. President, my colleague from Florida has, I think, made a very good case that indeed this is not the time—not the time—to ease sanctions.

In Fidel Castro, we have a dictator; in Fidel Castro, we have empirical evidence of continued human rights violations, torture, murder, extended imprisonment.

Mr. President, in Fidel Castro, we have an avowed enemy of the United States of America, a man who has proliferated hostility throughout the hemisphere to the country, a man who has made no suggestion to us that, given new resources, they, too, would not be turned against the United States of America, a man whose history is riddled with attacks on this country and whose history, in contemporary terms, has been avowed hostility to the United States.

Mr. President, there has to be some sense of linkage or continuity in the way in which we engage this hemisphere.

If we could just step back for a moment, in very recent terms, we have just imposed the harshest of sanctions possible on a little country in the same region that offered no threat to the United States—Haiti; massive sanctions on the little country of Haiti. Now, Cuba is a threat. We could never argue that Haiti was. But the sanctions were harsh and strict and with effect.

Mr. President, in addition, we had an alleged dictatorship in Haiti, and so we sent an invasion to Haiti. We have landed on Haiti's soil with United States troops and personnel to remove the dictatorship and to impose or reimpose a democracy.

I may be missing something here, but I cannot get the connection with sanctions on Haiti, an invasion in Haiti, the expenditure of millions on preserving a new democracy and, in the same breath, I am reading in the Washington Post that, with Cuba, we should relieve the sanctions and engage in a dialog, as if we had a partner off our shores.

You know, we are the only world power. We are the dominant figure in this hemisphere. There has to be a logic and a connection about the way we communicate to our own hemisphere and the world. There is no logic at this time to follow the suggestions that have been floated by this administration to alleviate the sanctions on Cuba.

Mr. President, I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, let me join in the remarks of the distinguished Senator from Georgia and the distinguished Senator from Florida, and commend my colleague from North Carolina, Senator HELMS.

I have heard, I do not know where, stated that "The sands of history bleach the bones of countless thousands who, on the eve of victory, hesitated and, having hesitated, died."

Such is the case with Cuba. The sanctions are working.

Now is not the time to get fanciful ideas of world policy and peace on Earth. Now is the time to look at the realities of this particular situation.

If Castro would renounce communism and replace it with perestroika in Cuba, as Gorbachev did in Russia, it would be a different thing. But instead, Castro says, "Oh, no; I have let tourists in, let the farmers sell to keep the Communist system afloat."

Mr. President, I just do not believe in financing the opposition. I almost am tempted to digress on the subject of Mexico, but I will attest to that tomorrow before the distinguished Banking Committee.

Enough on that particular point, Mr. President. I see the distinguished chairman of the Appropriations Committee is ready to move along on this subject.

BUDGET CRISIS

Mr. HOLLINGS. Mr. President, before yielding the floor, I cannot let pass two particular items that occurred here this morning.

One was made by my friend, the distinguished chairman of the Budget Committee. He claimed that the President had "taken a walk" with respect to budgetary matters.

Now, Mr. President, let's set the record straight. In the last 12 years, we have seen the ills of our reckless fiscal policies manifested in exorbitant, extravagant, obsessive budget deficits. But, when Members talk about who it was who "took a walk," certainly it was not President Clinton. He was not even here.

Talk about taking a walk, when the current President came to town and inherited a financial basket case of a nation, it was he who had the courage and willingness—not walking, but working—to put in a $500 billion deficit reduction package that included taxes.

It was not unfair. It was really making things more fair by proposing the cuts and revenues needed to reduce the deficit. As part of that plan, he put in motion a program that is over half complete of reducing 272,000 employees from the Federal work force. When complete, we will have the smallest Federal work force since the Kennedy administration, and for what? To balance the budget, not walk.

Mr. President, I remember to December 18, 1994, when the distinguished Senator from New Mexico and his House counterpart, Congressman KASICH were on "Meet the Press." At that time they were crowing. They were going to have three budgets in January, ready, willing, and able to go with the understanding that we would put the spending cuts in the bank to pay for tax cuts. But we did not get those spending cuts in January. We did not get those spending cuts in February. And March is marching by.

Mr. President, before they talk about the wonderful record that President Clinton made year before last without a single Republican vote in the Senate or the House of Representatives, we should straighten the history about who is walking and who is talking. Where is the budget?

I remember my friend, former Senator Hart from Colorado, wanting to know, "where's the beef?" It's high time we asked, "Where's the budget?" I outlined one in January to show the hard task ahead.

Mr. President, I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HOLLINGS RELEASES REALITIES ON TRUTH IN BUDGETING

Reality No. 1: $1.2 trillion in spending cuts is necessary.

Reality No. 2: There aren't enough savings in entitlements. Have welfare reform, but a jobs program will cost; savings are questionable. Health reform can and should save some, but slowing growth from 10 to 5 percent doesn't offer enough savings. Social Security won't be cut and will be off-budget again.

Reality No. 3: We should hold the line on the budget on Defense; that would be no savings.

Reality No. 4: Savings must come from freezes and cuts in domestic discretionary spending but that's not enough to stop hemorrhaging interest costs.

Reality No. 5: Taxes are necessary to stop hemorrhage in interest costs.

	1996	1997	1998	1999	2000	2001	2002
Deficit CBO Jan. 1995 (using trust funds)	207	224	225	253	284	297	322
Freeze discretionary outlays after 1998	0	0	0	−19	−38	−58	−78
Spending cuts	−37	−74	−111	−128	−146	−163	−180
Interest savings	−1	−5	−11	−20	−32	−46	−64
Total savings ($1.2 trillion)	−38	−79	−122	−167	−216	−267	−322
Remaining deficit using trust funds	169	145	103	86	68	30	0
Remaining deficit excluding trust funds	287	264	222	202	185	149	121
5 percent VAT	96	155	172	184	190	196	200
Net deficit excluding trust funds	187	97	27	(17)	(54)	(111)	(159)
Gross debt	5,142	5,257	5,300	5,305	5,272	5,200	5,091
Average interest rate on debt (percent)	7.0	7.1	6.9	6.8	6.7	6.7	6.7
Interest cost on the debt	367	370	368	368	366	360	354

Note.—Figures are in billions. Figures don't include the billions necessary for a middle-class tax cut.

Nondefense discretionary spending cuts	1996	1997
Space station	2.1	2.1
Eliminate CDBG	2.0	2.0
Eliminate low-income home energy assistance	1.4	1.5
Eliminate arts funding	1.0	1.0
Eliminate funding for campus based aid	1.4	1.4
Eliminate funding for impact aid	1.0	1.0
Reduce law enforcement funding to control drugs	1.5	1.8
Eliminate Federal wastewater grants	0.8	1.6
Eliminate SBA loans	0.21	0.282
Reduce Federal aid for mass transit	0.5	0.1
Eliminate EDA	0.02	0.1
Reduce Federal rent subsidies	0.1	0.2
Reduce overhead for university research	0.2	0.3
Repeal Davis-Bacon	0.2	0.5
Reduce State Dept. funding and end misc. activities	0.1	0.2
End P.L. 480 title I and III sales	0.4	0.6
Eliminate overseas broadcasting	0.458	0.570
Eliminate the Bureau of Mines	0.1	0.2
Eliminate expansion of rural housing assistance	0.1	0.2
Eliminate USTTA	0.012	0.16
Eliminate ATP	0.1	0.2
Eliminate airport grant in aids	0.3	1.0
Eliminate Federal highway demonstration projects	0.1	0.3
Eliminate Amtrak subsidies	0.4	0.4
Eliminate RDA loan guarantees	0.0	0.1
Eliminate Appalachian Regional Commission	0.0	0.1
Eliminate untargeted funds for math and science	0.1	0.2
Cut Federal salaries by 4 percent	4.0	4.0
Charge Federal employees commercial rates for parking	0.1	0.1
Reduce agricultural research extension activities	0.2	0.2
Cancel advanced solid rocket motor	0.3	0.4
Eliminate legal services	0.4	0.4
Reduce Federal travel by 30 percent	0.4	0.4
Reduce energy funding for Energy Technology Develop	0.2	0.5
Reduce Superfund cleanup costs	0.2	0.4
Reduce REA subsidies	0.1	0.1
Eliminate postal subsidies for nonprofits	0.1	0.1
Reduce NIH funding	0.5	1.1
Eliminate Federal Crop Insurance Program	0.3	0.3
Reduce Justice State-local assistance grants	0.1	0.2
Reduce export-import direct loans	0.1	0.2
Eliminate library programs	0.1	0.1
Modify Service Contract Act	0.2	0.2
Eliminate HUD special purpose grants	0.2	0.3
Reduce housing programs	0.4	1.0
Eliminate Community Investment Program	0.1	0.4
Reduce Strategic Petroleum Program	0.1	0.1
Eliminate Senior Community Service Program	0.1	0.4
Reduce USDA spending for export marketing	0.02	0.02
Reduce maternal and child health grants	0.2	0.4
Close veterans hospitals	0.1	0.2
Reduce number of political employees	0.1	0.1
Reduce management costs for VA health care	0.2	0.4
Reduce PMA subsidy	0.0	1.2
Reduce below cost timber sales	0.0	0.1
Reduce the legislative branch 15 percent	0.3	0.3
Eliminate Small Business Development Centers	0.056	0.074
Eliminate minority assistance SCORE, small business interstate and other technical assistance programs, women's business assistance, international trade assistance, empowerment zones	0.033	0.046
Eliminate new State Department construction projects	0.010	0.023
Eliminate Int'l Boundaries and Water Commission	0.013	0.02
Eliminate Asia Foundation	0.013	0.015
Eliminate International Fisheries Commission	0.015	0.015
Eliminate Arms Control Disarmament Agency	0.041	0.054
Eliminate NED	0.014	0.034
Eliminate Fulbright and other international exchanges	0.119	0.207
Eliminate North-South Center	0.002	0.004
Eliminate U.S. contribution to WHO, OAS, and other international organizations including the United Nations	0.873	0.873
Eliminate participation in U.N. peacekeeping	0.533	0.533
Eliminate Byrne grant	0.112	0.306
Eliminate Community Policing Program	0.286	0.780
Moratorium on new Federal prison construction	0.208	0.140
Reduce Coast Guard 10 percent	0.208	0.260
Eliminate Manufacturing Extension Program	0.03	0.06
Eliminate coastal zone management	0.03	0.06
Eliminate national marine sanctuaries	0.007	0.012
Eliminate climate and global change research	0.047	0.078
Eliminate national sea grant	0.032	0.054
Eliminate State weather modification grant	0.002	0.003
Cut weather service operations 10 percent	0.031	0.051
Eliminate regional climate centers	0.002	0.003
Eliminate Minority Business Development Agency	0.022	0.044
Eliminate Public Telecommunications Facilities Program grant	0.003	0.016
Eliminate children's educational television	0.0	0.002
Eliminate national information infrastructure grant	0.001	0.032
Cut Pell grants 20 percent	0.250	1.24
Eliminate education research	0.042	0.283
Cut Head Start 50 percent	0.840	1.8

Nondefense discretionary spending cuts	1996	1997
Eliminate meals and services for the elderly	0.335	0.473
Eliminate title II social service block grant	2.7	2.8
Eliminate community services block grant	0.317	0.470
Eliminate rehabilitation services	1.85	2.30
Eliminate vocational education	0.176	1.2
Eliminate chapter 1 20 percent	0.173	1.16
Reduce special education 20 percent	0.072	0.480
Eliminate bilingual education	0.029	0.196
Eliminate JTPA	0.250	4.5
Eliminate child welfare services	0.240	0.289
Eliminate CDC Breast Cancer Program	0.048	0.089
Eliminate CDC AIDS Control Program	0.283	0.525
Eliminate Ryan White AIDS Program	0.228	0.468
Eliminate maternal and child health	0.246	0.506
Eliminate Family Planning Program	0.069	0.143
Eliminate CDC Immunization Program	0.168	0.345
Eliminate Tuberculosis Program	0.042	0.087
Eliminate Agricultural Research Service	0.546	0.656
Reduce WIC 50 percent	1.579	1.735
Eliminate TEFAP:		
Administrative	0.024	0.040
Commodities	0.025	0.025
Reduce cooperative State research service 20 percent	0.044	0.070
Reduce Animal Plant Health Inspection Service 10 percent	0.036	0.044
Reduce food safety inspection service 10 percent	0.047	0.052
Total	36.942	58.407

Mr. HOLLINGS. Mr. President, when Members talk of taking walks and waving white flags, what they are really angry about is that a large part of their budget plan has disappeared. I will ask unanimous consent at this time that the GOP alternative deficit reduction and tax relief plan of the year before last be included in the RECORD.

There being no objection, the plan was ordered to be printed in the RECORD, as follows:

GOP ALTERNATIVE: DEFICIT REDUCTION AND TAX RELIEF—SLASHING THE DEFICIT, CUTTING MIDDLE CLASS TAXES

The Republican alternative budget will reduce the deficit $318 billion over the next five years—$287 billion in policy savings and $31 billion from interest savings. This is $322 billion more in deficit reduction than the President proposes and $303 billion more in deficit reduction than the House-passed resolution contains.

Moreover, the GOP alternative budget helps President Clinton achieve two of his most important campaign promises—to cut the deficit in half in four years and provide a middle-class tax cut. The GOP plan:

Reduces the deficit to $99 billion in 1999. This is $106 billion less than the 1999 deficit projected under the Clinton budget.

Even under this budget federal spending will continue to grow.

Total spending would increase from $1.48 trillion in FY 1995 to more than $1.7 trillion in FY 1999.

Medicare would grow by 7.8-percent a year rather than the projected 10.6-percent. Medicaid's growth would slow to 8.1-percent annually rather than the projected 12-percent a year growth.

It increases funding for President Clinton's defense request by the $20 billion shortfall acknowledged by the Pentagon.

Provides promised tax relief to American families and small business.

Provides tax relief to middle-class families by providing a $500 tax credit for each child in the household. The provision grants needed tax relief to the families of 52 million American children. The tax credit provides a typical family of four $80 every month for family expenses and savings.

Restores deductibility for interest on student loans.

Indexes capital gains for inflation and allows for capital loss on principal residence.

Creates new incentives for family savings and investments through new IRA proposals that would allow penalty free withdrawals for first time homebuyers, educational and medical expenses.

Establishes new Individual Retirement Account for homemakers.

Extends R&E tax credit for one-year and provides for a one-year exclusion of employer provided educational assistance.

Adjusts depreciation schedules for inflation (neutral cost recovery).

Tax provisions result in total tax cut of $88 billion over five years.

Fully funds the Senate Crime Bill Trust Fund, providing $22 billion for anti-crime measures over the next five years. The Clinton budget does not. The House-passed budget does not. The Chairman's mark does not.

Accepts the President's proposed $113 billion level in nondefense discretionary spending reductions and then secures additional savings by freezing aggregate nondefense spending for five years.

Accepts the President's proposed reductions in the medicare program and indexes the current $100 annual Part "B" deductible for inflation. Total medicare savings would reach $80 billion over the next five years.

Achieves $64 billion in medicaid savings over the next five years, by capping medicaid payments, reducing and freezing Disproportionate Share Hospital payments at their 1994 level.

Achieves additional savings through reform of our welfare system totaling $33 billion over the next five years.

Repeals Davis-Bacon, reduces the number of political appointees, reduces overhead expenditures for university research, and achieves savings from a cap on civilian FTE's.

Mr. HOLLINGS. Mr. President, I read:

Accepts the President's proposed reductions in the Medicare program and indexes the current $100 billion part "B" deductible for inflation. Total Medicare savings would reach $80 billion over the next 5 years.

Now, with respect to that $80 billion, the President struggled to find budget savings within the context of health care reform. For that effort, he and the First Lady got ridiculed. If I was his lawyer, this year I would say, for Heaven's sake, do not do it this year. Let them come up with it. You tried and lost Democratic seats in November as a result. Let them try. You did it. So let's not talk about taking a walk.

Mr. President, it is clear to me that Republicans want to come back and accept the President's cut so that they can run around with demonstrations in front of the Capitol and say that it was the President that cut Medicare. Do they think we were born yesterday? They talk about walking all they like, but where is the budget?

During the debate on the constitutional amendment I asked, "Where is the budget?" I said rather than showing us 7 years, just give me 1 year. That is my request this morning. Where's the budget? It is the middle of March, and under the rules we are suppose to complete the hearings and complete conference by April 15.

Are we just going to come in with a fixed vote and say, "All right, no use offering amendments; we have to report it out now. No use to hear from you, you can be heard on the floor." That is not the way to run things; that is terrible government.

Now, with respect to the other matter, that the balanced budget constitutional amendment failed by one vote. Mr. President, in the next 10 minutes, they could get five votes. The five votes were offered to them time and time again if only they would do what they said they wanted done—namely, protect Social Security.

I notice my friend, James Glassman, on the front of the business page of the Washington Post, wrote an article which was the truth, but it was not the whole truth. Section 13301 of the Congressional Budget Act, signed by President George Bush on November 5, 1990, says that Social Security shall be protected. Unless we honor that law, we will continue to move the deficit, not eliminate it.

That is the game, not to eliminate the deficit, but to move it from the Federal Government to the Social Security trust fund. If they violate section 13301, Mr. President, they can move $636 billion in the next 7 years from the deficit over to the trust fund.

And who flip-flopped? It is really at best ironic to see Senators meet in front of a placard, and I laugh because I got calls on it, that says I am in a rogues' gallery for keeping my word. They claimed that there were six Senators who flip-flopped. Could it be that I could cast the same stone at those who voted in 1990 for section 13301, and then for the balanced budget amendment to repeal section 13301?

Should I get the pictures of all those Senators and go in the front of the Capitol and holler, "Flip-flop, flip-flop, they broke the trust with Social Security"?

Under the rules, as the distinguished former President pro tempore knows, we are supposed to have the courtesy and decency to call each other distinguished. But 10 minutes later, they have me in a rogue's gallery. It is wonderful serving up here now. The devil take the hindmost and forget about the truth.

The truth is that the majority leader wanted to protect his troops. The truth is that while saying that they were going to protect Social Security, the Republicans were running around saying: "We cannot do it without Social Security funds." I can tell you—you cannot do it with Social Security funds, because all you do is you move the deficit over from the Government over to the trust funds. You are not paying anything. You are taking credit and misleading the people. And with that, the creativity is just starting.

Those who say all they need is $1.2 trillion in the 7 years are acknowledging that they are going to use Social Security trust funds. If we take Social

Security out, it should be $1.7 trillion. Today's creativity is to get rid of the Department of Commerce, get rid of the Department of Education, get rid of the Department of Energy. Send welfare, send food stamps, send everybody else back to the States; give them the deficit. Give it to Social Security to the tune of $636 billion. In addition, they say, "We will not raise taxes and we will not cut Social Security benefits, but we are going to recompute the CPI." But check the fine print. Changing the CPI will force many Americans to pay higher taxes and will cut Social Security COLA's for retirees. They are meeting themselves coming around the corner.

But with a lower CPI, they can pick up another $150 billion. Next, they can go to dynamic scorekeeping and pick up another $150 billion. If they need more money, they can start selling assets, like the electric power grid, or move to a capital budget.

Oh, we know all the tricks. We ought to get our friend Stockman, who wrote about Dunkirk, and let him come and write about duplicity. There is no discipline coming to this tricky crowd who will not take five votes, or more. All they have to do to get my vote is to let me keep my word, keep section 13301, and keep it there for the next generation.

My crowd—Senator THURMOND and I—are getting our money. It amazes me, but at 72 years of age, you have to take it. But be that as it may, the next generation is going to pay more. When it comes their time to retire, Mr. Parliamentarian, they are going to raise your taxes.

Now, that is what is happening. That is what is happening, and it ought to stop. They ought to quit running around making these silly statements. The distinguished majority leader was on "Face the Nation" Sunday, and I saw him categorically say we are going to protect Social Security. If he really means it, accept this little amendment. You accepted an amendment on the courts. You accepted an exception for borrowed funds. Just except Social Security trust funds rather than repeal section 13301. That is all you have to do to pass a balanced budget to the Constitution.

But do not go around moaning and groaning all over Washington that all we need is to get one vote, get one vote, get one vote. He can walk out here this afternoon and pick up five.

I yield the floor.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT OF 1995

The Senate continued with the consideration of the bill.

Mr. HATFIELD. Mr. President, parliamentary inquiry. What is the status of our parliamentary situation?

The PRESIDING OFFICER. The pending amendment is amendment No. 326, as modified. That is to strengthen international sanctions against the Castro government in Cuba.

Mr. HATFIELD. I thank the Chair. At this time, I urge any Members who wish to be heard on this amendment by the Senator from North Carolina [Mr. HELMS] relating to Cuba, to come to the floor and express their views and, hopefully, we may bring this amendment to a conclusion shortly. We have been on this now for a number of hours, and it seems to me that we should bring it to that culmination and get on with other amendments.

So I urge Members to come to the floor if they wish to be heard on this.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I want to just speak for a very brief time about this amendment that is pending by the Senator from North Carolina. I have just been trying to read through it. It is a 37-page amendment, which is essentially a bill which I gather he introduced earlier, called the Cuban Liberty and Democratic Solidarity Act of 1995.

To my knowledge, there have been no hearings on this bill, and the Senator from North Carolina is the chairman of the committee before which hearings would be held. I have great difficulty understanding why the chairman of the committee with jurisdiction would want to have the issue dealt with without hearings.

It seems to me it is a very important issue, a very important issue of public policy for our country, and one that needs to be thoroughly debated and discussed. Clearly, that cannot be done as an amendment to a supplemental appropriations bill pending before the Senate today.

So I hope very much that we will not proceed to actually enact something like this without having the wisdom to go back and subject it to scrutiny in the hearing process in the committee, in the committee of jurisdiction, which the Senator from North Carolina now chairs. I think that would be the appropriate course to follow.

I have not had a chance to do a detailed analysis of this legislation, but I do think that it would be foolhardy in the extreme for us to proceed and try to adopt it as an amendment at this point.

I did want to make a couple of other points on the general subject of our relations with Cuba, because I know it has been in the news this week. I have been noticing that there are suggestions in the news that the President is considering going back on a couple of things that he did by Executive order this last August. Let me just recount for the Senate what I understand the history of that to be.

We had a very major problem that occurred this last August where the Cuban Government stopped preventing Cubans from fleeing to the United States by boat. This change in Cuban policy on about the 15th of August caused a surge of migration to the United States. It was the largest since the Mariel boat lift of 1980.

With this situation occurring, 5 days later the President acted to try essentially, as I understood it, to build some leverage for more negotiations with the Cuban Government, and he put in place four measures against the Cuban regime.

First, cash remittances to Cuba would no longer be permitted. Previously, United States citizens could provide up to $300 each quarter to their relatives in Cuba, which is not, as the President would understand, an excessive amount to send. That works out to about $100 a month. And I do not think that is an excessive amount to be sending. But we stopped that. The President stopped it by Executive order.

Second, chartered flights between Havana and Miami were to be restricted for those designed "to accommodate legal migrants and travel consistent with the Cuban Democracy Act."

Third, the United States would use all appropriate means to increase and amplify its broadcasts to Cuba.

And, fourth, the United States would continue to bring before the nations and other international organizations evidence of human rights abuses.

Now, the recent news accounts indicate that the President is considering advice from some of his advisers that the first two of those, the prohibition against cash remittances to relatives in Cuba and the prohibition against travel to Cuba, be relaxed again.

I believe the thinking there is that on September 9 of last year the United States and Cuba signed a migration agreement that stemmed the flow of Cubans flowing to the United States by boat. So the immediate crisis, the crisis which had caused the President to put in place those Executive orders, has gone and is now no longer facing us, and the President was considering, or at least his advisers were urging him to consider, a change in that policy back to what it had been before.

Mr. President, I for one hope the President will take the advice that evidently he is receiving from his advisers. I can honestly say to my colleagues here in the Senate that it strikes me as contrary to our own interests to have in place, to continue in place, the policies that are now being discussed in the White House. To say that Cuban-Americans cannot send, cannot remit to their relatives in Cuba up to $300 per quarter strikes me as unduly onerous and is hurting the very people who we proclaim we are trying to help with all of these sanctions against Cuba.

The distinction which needs to be kept in mind, Mr. President, is how can we help the people of Cuba without giving assistance to the government there? And I would say, if there is one way we can help the people of Cuba without giving assistance to the government, it would be to allow their relatives in this country to remit to them very small amounts as they see fit up to $300 per quarter.

This is not going to threaten the future of our Republic. I think this is an eminently responsible course for the President to take, to go ahead and repeal or rescind that portion of the Executive order and go on with allowing remittances to relatives in Cuba.

The other issue, Mr. President, also strikes me as one that should be clearly changed by this President, and that is the prohibitions against travel to Cuba. One of the great constitutional rights which I think has been recognized since the beginning of our Republic is the right to travel, the right of Americans to travel.

Now, I understand that there are exceptions. There are occasions where we are in hostility with another government and it is not appropriate for U.S. citizens to travel to that country, or where those citizens are in danger and we do not want to see them travel to another country because of the risk of international incident that that would create. But I do not believe either of those circumstances adequately prevail at the present in this situation to justify prohibiting travel to Cuba.

I would also point out, Mr. President, that the present law which is on the books prohibiting travel to Cuba is not enforced. I picked up the New York Times Sunday Magazine 3 days ago and was reading through it, and there was a big advertisement: "10-day excursion to Cuba."

That is not something which is being advertised for Canadians or for Germans. That is for Americans who want to go to Cuba for 10 days and view downtown Havana and old town Havana and all the other things that are available there. I know Members of this body have traveled to Cuba.

This is a law which is not being enforced. In my view, it is a law which does not make sense at this time in our history, and it is a law which causes all who look at it to wonder about our resolve in enforcing any of our laws relative to Cuba.

So I think that for the President to rescind that portion of his Executive decree would make good sense. I for one believe that is the proper course to follow. At a later time I hope we can have an extended debate about this whole embargo issue. I know it is of great concern on all sides to a lot of people in this country whether we should retain an embargo of Cuba.

However, today I at least want to go on record as indicating that remittances of small amounts of cash to relatives in Cuba should be permitted, in my opinion; travel to Cuba by American citizens should generally be permitted. In fact, it is being permitted today, since everyone seems to be winking at it or looking the other way or finding ways not get your passport stamped or some other subterfuge so that the penalties which are in the law are in fact not applied. This is a law that does not make sense. We should recognize that the President should rescind those portions of his Executive decree.

Again, getting back to that which I guess is the specific issue pending before the Senate, that is, the proposed amendment by the Senator from North Carolina, again I hope very much we do not take it upon ourselves to legislate a whole new regime of sanctions and embargoes and onerous provisions at this time as an amendment to an appropriations bill. It strikes me as an act which would not be responsible, and I very much hope colleagues would see it that way as well and that the amendment, if it is brought to a vote, would be defeated.

I thank the Chair. I yield the floor.

Mr. SMITH. Mr. President, I am going to follow the Presiding Officer in the chair, and I will be very brief.

Mr. President, I rise in very strong support of the amendment offered by the Senator from North Carolina. I am deeply troubled by some of the comments that I have seen in the press yesterday and today in that apparently President Clinton was considering easing the sanctions on the Castro regime. Either the President has been misled or has misread the will of the American people or he continues to get the wrong advice from advisers such as Morton Halperin because in either case this is a grave mistake.

The attempts to oust Fidel Castro go back many, many years to the Eisenhower administration. It transcends party, for sure; a number of Presidents in both political parties have been steadfast in their attempts to at least bring this blemish on our hemisphere to an end.

Now, when we are just about to cross the finish line, to do anything that would keep that from happening is just a serious mistake. It is not the time to relax our pressure on Fidel Castro. It is time to turn up the heat, not turn it down.

The Castro regime as we all know it is morally and economically bankrupt. It has been for over 40 years. Decades of corruption and communism have left the Cuban people disillusioned, left them in poverty, left them yearning, almost begging, crying out for new leadership on that island nation. For those who are struggling for this freedom and democracy in Cuba, at this very time when we have the chance to win that for them, to move away from that is a serious, serious foreign policy mistake. Those people, the people who suffer at the hands of Fidel Castro, do not want us to coddle him. They do not want us to ease the pressure on this corrupt regime. They do not want us to give him the economic benefits of investment or tourism. They do not want it, and they are the people who are suffering at the hands of Fidel Castro.

On the contrary, they would like us to do everything possible to hasten this Communist leader's demise, that is what they want, to accelerate his removal from power and to help bring about this transition to democracy.

This is exactly what the amendment of the Senator from North Carolina does. It keeps the pressure on Cuba and it accelerates the planning for a transition to democracy in Cuba and the humanitarian and economic assistance programs that will ensue in a democratic Cuba, which we all are waiting for.

So, I urge my colleagues to reject this effort on the part of the administration to coddle Fidel Castro, maybe not intentionally, but the result is to promote this Communist regime which is now on the ropes, finally. The Cuban people not only need our support, they deserve our support. They deserve it. They have suffered long enough. They need us to turn the pressure up. We are on the threshold, now, of removing Fidel Castro. Many people have said that on this floor and in Presidential offices for many, many years. "One more year, a few more months, Castro will be gone." But we are on the verge right now. This amendment will hasten Fidel Castro's demise. More important, it keeps faith with the Cuban people.

I congratulate the Senator from North Carolina for his amendment, and I am proud to be a cosponsor of it. I urge my colleagues to vote in favor of it and to think very carefully about what this policy, the President's policy, will do to the Cuban people who live under this dictator, No. 1, and, No. 2, the people who await—not only here in the United States but in other nations around the world—who await the opportunity to go back to a democratic Cuba and build that island nation into the country it can and should be in the Western Hemisphere.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, the chairman's amendment on Cuba is a very serious one. Cuba is a country of significance to the United States and our policy toward it should be very carefully considered, measured, and open to a wide range of dynamics which necessarily come up between virtual neighbors.

I have been one, like the chairman, who has supported an aggressive policy toward Cuba which will promote democracy and respect human rights.

Like the chairman, I believe that was, in large part, why we fought the cold war. It was part of the effort.

But I advocate a different approach.

To my mind, further isolating Cuba is just not an effective approach. In a world where we are trying to establish multifaceted, global post-cold-war relationships, it makes little sense to ignore that your neighbor exists, or to try to build regional coalitions around a major island, as if there is a black hole in the Caribbean. We cannot do much to push democracy and respect for human rights if we will not even talk to the Cubans. Indeed, we only hurt ourselves if we pretend that a country—particularly if it is objectionable or threatening—does not exist. That is what I am afraid is the direction of this amendment.

I also think that pushing our friends and allies to also impose embargoes on Cuba is a waste of diplomatic chits. It is a waste of time. We have much higher priorities with countries like Canada and Great Britain, and most of Latin America than to try to ask them as a high priority to further isolate Fidel Castro. It would be far more constructive to work with our regional partners to develop a post-Castro policy—a policy which will help rebuild Cuba economically, establish democratic institutions, and strengthen regional relationships, including trade and investment opportunities when the time is appropriate.

Finally, I am a little amused that anyone could even advocate increased funding for TV Marti. This program is a proven failure both technically and substantively.

Among its programming highlights have been baseball—a popular sport in Cuba—and sitcoms such as "Kate and Allie," "Fame," and "Que Pasa, USA?," a show about a Cuban-American family adapting to Miami.

I am told technically, it is almost inoperable. I have had occasion to refer to it as a "balloondoggle." Its signal is jammed by the regime—that is, when the signal reaches Cuba. Transmission is faulty at best most of the time.

The programs are produced each day in Maryland. They are then uplinked—beamed up—from Washington and relayed to an aerostat balloon—a blimp known as "Fat Albert"—which hangs on a tether 10,000 feet above Cudjoe Key. From there it is projected to Havana.

However, because of inclement weather, the blimp can only be flown sometimes. Often volatile weather conditions knock Fat Albert off its tethered cable. In 1991, the blimp was found in the Florida Everglades, after a $35,000 search, where it laid damaged for months.

TV Marti is even more useless when you think that we have an effective program in Radio Marti. Radio Marti is not jammed, and I am told, unlike TV Marti, it enjoys a large Cuban audience.

To recommend more funding for TV Marti—to single it out for increases in a year when we are slashing so many other worthwhile accounts—is just ludicrous. It's hardly the way to balance the budget.

It is just the opposite.

These are just some of the varying views on Cuba. Some of my other colleagues on the Senate Foreign Relations Committee, including the ranking member of the full committee, Senator PELL, and the ranking member of the subcommittee, Senator DODD, favor lifting the U.S. trade embargo. I may want to link such a proposal to human rights reforms in Cuba, which apparently are quite needed.

Therefore, instead of conducting an ad hoc, seat-of-the-pants debate here today, I would respectfully request that the chairman of the Senate Foreign Relations Committee hold hearings in the committee on this topic. I know that the ranking members of both the full committee and the subcommittee would work closely with you to make that happen.

A full examination of all the options, proposals, and ramifications is long overdue, but quite necessary. There are serious implications to what we do: The refugee flow we witnessed this summer is but one example. That shows this has great implications, not just for Cuba but for us.

It would be to the credit of the committee to hold such hearings and shape the public debate on United States-Cuba relations in a deliberative and constructive way.

I am sure we all agree that United States policy toward Cuba is too important and too complicated to offer statements today with full confidence that we are doing the right thing.

I will very much appreciate it if the chairman will consider that possibility.

The PRESIDING OFFICER (Mr. SMITH). The Senator from Rhode Island.

Mr. PELL. Mr. President, I commend the Senator from Wisconsin on his words, which I agree with and endorse.

Mr. President, with all due respect to my esteemed colleague, the senior Senator from North Carolina and chairman of the Committee on Foreign Relations, I add that I, too, strongly oppose the amendment he has offered to the pending DOD supplemental appropriations bill.

First, this amendment is virtually identical to legislation the Senator introduced earlier which was referred to the Committee on Foreign Relations. Clearly, the committee should have hearings on this legislation, so that the full impact of these proposed changes in U.S. policy can be publicly discussed prior to Senate action. Although I oppose the policy direction set forth in the amendment, as the ranking minority member of the Committee on Foreign Relations I will work with the distinguished chairman of the committee to facilitate committee consideration after full public hearings. The Senate should have the views and recommendations of our committee prior to voting on legislation as important and significant as this.

Second, the distinguished chairman and I both want to see a free and democratic Cuba, but we disagree on the policy our country should adopt to achieve our common goal. I have long spoken to the need for a serious reexamination of our country's policy toward Cuba. However, the chairman's amendment clearly does not reflect the direction I had in mind.

Yesterday I was encouraged to read that President Clinton is considering taking some modest steps toward altering the existing sanctions policy in favor of more communication and contact between the Cuban and American people—and I must say I applauded that initiative.

Existing United States policy, consisting of a rigidly enforced embargo and an aversion to any significant dialog with Cuba, has, as best I understand them, three goals: To promote a peaceful transition to democracy; to support economic liberalization; and to foster greater respect for human rights while controlling immigration from Cuba.

These three goals have guided our national policy toward Cuba for 30 years, Mr. President, yet there has been scant progress toward achieving any of them. There is still a government in Cuba which is not freely elected, which is only just beginning tentative steps toward a market economy, and which continues to fall short of international standards in the area of respect for human rights.

Therefore, I can only conclude that this policy is not only outdated and ineffective, but, far worse, it is counterproductive. We should be ratcheting up and not down. It seems to me that the time has come to admit the obvious. The policy is a failure and will never achieve its stated objectives.

Consequently, it would be a serious mistake, in my view, to intensify the embargo and impose even more stringent measures on the people of Cuba as proposed in the pending amendment.

I believe that, rather than tightening the embargo and further isolating Cuba, the United States should expand contact with the Cuban people and enter into negotiations on all issues of mutual concern to our two countries, including the lifting of the economic embargo.

For example, I believe the President will find a great deal of support within the Cuban-American community to a rolling back of last August's sanctions that were imposed during the Cuban migrant crises—sanctions that have prohibited Cuban-Americans from sending money to family members in Cuba or visiting them, except in cases of dire emergency. This would be a small first step in the direction I support, but we must go much further.

I say this not because of any regard for the government in Havana, a one-party state with a record of intolerance toward dissident voices within the society. Rather, I say this because, if our country and Cuba are to break the impasse that has existed in our relations for more than three decades, someone must take the first step in that direction. We are large enough and strong enough, and we can afford to do so.

I believe, and have said many times, it is in the U.S. national interest to take that first step—to agree to sit down at a negotiating table, where all issues can be discussed.

In the meantime, there should be greater contact between our own citizens and the Cuban people. Such contact will serve to plant the seeds of change and advance the cause of democracy on that island. Just as greater exchange with the West helped hasten the fall of communism in Eastern Europe and the former Soviet Union, so, too, it can achieve the same results much closer to our shores.

I well remember when I was living in Czechoslovakia. The people would come to visit America and then came back. They came back much less convinced of communism than when they went. The more exchange of people and ideas the more likely communism is to erode. To erode means contacts, and this is what is necessary.

Liberal Democrats are not alone in holding this view. Former President Richard Nixon wrote shortly before his death last year that, "we should drop the economic embargo and open the way to trade, investment and economic interaction." Learned people across the political spectrum have made similar comments and observations about the policy.

Why? Because they have all observed across the globe that policies which foster greater commerce and communication between countries work and those which engender isolation and enforced misery do not work. We have a choice. Let's take the one which works. It has been impossible for those who would seek to defend the status quo to cite an instance in modern history where a policy of forced isolation has successfully transformed a totalitarian state into a democracy.

United States travel restrictions to and from Cuba are among the most prohibitive in the world—this to an island that is only 90 miles from our shores. At this point, only United States Government officials and journalists have unrestricted access to Cuba and only a small percentage of Cubans who apply are allowed to travel to the United States each year. The pending amendment would restrict binational contacts even further.

Mr. President, do we as a nation not have enough faith in the power of our democratic system and the strength of our ideas to let contact between our citizens and other peoples flourish? I would hope so.

In my view, the strongest advocate for democracy and a free market economy would be a Cuban student or family member who had recently visited the United States and seen the sharp contrast between our way of life and that in Cuba.

Current policy not only denies the United States the opportunity to promote positive change in Cuba, but it increases the likelihood of widespread political violence and another mass exodus of refugees to Florida. The Cuban Government, which is vigorously pursuing expanding political and economic ties with the rest of the world, is unlikely to give in to unilateral United States demands. Nor is there much indication that a viable opposition currently exists within Cuba strong enough to wrest power from existing authorities.

We have made it very easy for Cuban authorities to justify the lack of political freedom in Havana. They simply point to the external threat posed by a hostile U.S. policy.

I am concerned that adoption of the pending amendment would add further justification to the Cuban Government's repression—quite the opposite effect from that intended by the sponsors of this amendment. That justification would lose all credibility were we to adopt a more reasoned U.S. policy. Cuban authorities would then be hard pressed to justify the denial of political rights and economic opportunities that the Cuban people readily observe elsewhere.

Mr. President, I have urged the administration to take the first step toward a new and enlightened policy—a policy that can once again unite Americans and Cubans. Consequently, I urge my colleagues to join me in sending a message that it is time to open up a new and constructive dialogue with Cuba by voting against the pending amendment.

The best reason for doing that—as we see what has happened in the past few years as the Iron Curtain has dissolved—is the fact, as exposure is being increased between the East and West, that communism has been eroded as seen by its present disappearing act and what then follows in Europe today.

I yield the floor.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I again urge any colleagues who wish to be heard on this pending amendment on Cuba to present themselves on the floor. We have a number of other amendments pending, that we are at least aware of, that Senators will ask to be considered.

We do not want to lose a lot of the time waiting for that to happen. So let all Members be on notice that we are prepared to dispose of this amendment in an orderly way at some point soon and/or take up any other amendment and set this one aside.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. What is the pending business, Mr. President?

The PRESIDING OFFICER. Amendment No. 326, as modified.

Mr. HELMS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I am sorry that I missed my friend and colleague from North Carolina. He was on the floor here. I gather he has gone to a conference lunch.

I was unable to talk to him, and I am unclear whether or not this amendment will be withdrawn or voted on. I will work on the assumption it will be voted on. If it is not, then these remarks can be used in the context of when it comes up at some future date. I am unclear as to whether or not we will actually have a vote on the amendment.

Let me address, if I could, Mr. President, the amendment that the Senator from North Carolina has proposed and, at the very outset, urge that all of our colleagues read this amendment very, very carefully.

This is an amendment that does not deal with the present situation in Cuba. There is nothing that I know of in this amendment, with the possible exception of changing the frequency of TV Marti to ultra-high frequency to deal with the present situation. The amendment is geared to deal with the post-Castro situation in Cuba.

For that reason, knowing full well how a strong majority of my colleagues feel about boycotts and embargoes and so forth on the present regime, I strongly urge them to look at the amendment because it does not deal with primarily what exists now, but rather what comes afterward.

My concern is that this could have a very, very negative impact on our ability to deal in the post-Castro period, whenever that comes, hopefully sooner rather than later. It seems to me this amendment will complicate our ability to assist any post-Castro regime as it grapples with the difficult period of transition to democracy. We do not even know what that government may look like. It may be a carbon copy of what exists now. It may be a flourishing Jeffersonian democracy.

We have been asked to take a position, if we adopt this amendment, that would predetermine in many ways what kind of government would follow Castro and, I think, tie the hands of not only our own Government but of United States industry and business from doing business in Cuba by making them subject to potential civil lawsuits by persons who may later claim to have owned property at some point in Cuba.

United States companies are clearly not going to set themselves up for such lawsuits, and they will stay away from Cuba until all property claims are resolved. What I mean by this is the amendment says no assistance can occur in Cuba, no businesses can do business in Cuba in a post-Castro regime until all property claims dating back to 1959 are resolved. I do not know of anyone who would go down and want to make investments in Cuba with the possibility that at some future point a claim may arise which would prohibit them from engaging in a business practice to assist this new government, whatever it may be, in Cuba.

That will not be the case, obviously, with foreign interests who want to do business in Cuba. They will not be constrained by such limitations.

So I urge my colleagues to look carefully at this amendment because, again, I understand the intent. Senator HELMS cares deeply about expropriation of property, and he is right to do so. We have had a number of cases in El Salvador and, I think, in Nicaragua where there have been some pending. I have been supportive of them in those efforts to see to it that American citizens who own property that was expropriated get the property back. But I do not think we have ever taken the position that nothing ought to happen in these countries until all the matters are resolved.

From time to time, we exerted pressure on those governments. We held back foreign aid, we provided aid, we held it back—we used the levers to try and achieve the desired results. Here we are now about to take a position in a post-Castro Cuba in which we are saying no matter what government emerges, no matter what the circumstances may be, that you are not going to be able to do business there until all the claims, which potentially, I guess, go back to 1959 when Castro took over, have been resolved.

So I think, in a sense, it gets way beyond what we ought to be doing. Even if there are those who see merit in this approach, this is a complicated matter. It is not a simple matter. It really not ought to be the subject of an amendment on the floor. This ought to be the kind of legislation that is at least subject to a couple hours of discussion and hearing as to what the implications are in terms of the Claims Settlement Act of 1949—how does it work; could we apply this internationally, as the amendment would seem to suggest?

The distinguished Senator from North Carolina is now the chairman of the Foreign Relations Committee. I could almost understand if someone in the minority were offering this amendment on the floor because they are unable to get a hearing or there was no ability to conduct some analysis of what the amendment might be. But here the chairman of the committee is offering a floor amendment without the full Foreign Relations Committee or even a subcommittee thereof having an opportunity to analyze what the implications might be.

So I know that any amendment that has "Cuba" on it, we have a tendency automatically to vote for it. I just urge in this short amount of time that my colleagues take a look at this. I think this goes a lot further than anything that has ever been suggested in any other place, that I know of, in the world.

I suspect it may have been motivated in part by a story that appeared in the Washington Post about lessening some of the sanctions that were imposed, I think, last August during the deluge of humanity that poured out of Cuba and how we were going to work with that. That situation having been resolved, as I understand it, some of the sanctions we put in place then, in light of what was happening, we now may be lifting, although, frankly, I do not have any specific personal knowledge as to the genesis of that particular story myself.

But that aside, it seems to me that we are breaking some significant new ground as to who would be eligible to be compensated under the International Claims Act of 1949 which, by the way, Mr. President, is the primary mechanism for settling U.S. persons' property claims, to make eligible individuals who are not citizens of the United States at the time of expropriation and who may not even be citizens today. This is not international law, international law standard, I point out, and may seriously complicate efforts to resolve claims of individuals who are U.S. citizens at the time of expropriation, which is where our prime interest ought to be. Not that we are unsympathetic to non-U.S. citizens' claims. But, it seems to me, our thrust in this body ought to be focused on what happens to U.S. citizens where expropriation has occurred.

To invoke the International Claims Settlement Act, it seems to me, is going to complicate this situation dramatically at the expense of our own people. That is what I am really trying to emphasize.

I said at the outset that there is a piece of this that one might argue does have some immediate effect on the Castro government. The bill would require the President to convert TV Marti to ultra-high frequency UHF broadcasting but fails, I point out, to provide the necessary funding to accomplish this effort.

I think we have been through a pretty significant debate with overwhelming support in this body for unfunded mandates. Here we have a mandate that requires the change of frequency and no allocation of resources to do it. I just raise that as a further point.

Mr. President, I will not raise a point of order at this point, but I do believe this is legislation on an appropriations bill. I want to make sure everyone has an opportunity to discuss the amendment, and certainly I would not do it without informing my colleague from North Carolina ahead of time that I intended to do that so that he would have an opportunity to exhaust whatever remarks he wanted to make about his amendment. But at an appropriate time, Mr. President, if the amendment is not withdrawn—and maybe it will be withdrawn. I gather there is some discussion about offering this at a later time. I urge we have a hearing on it.

Senator COVERDELL—I have not had a chance to talk with him—who is now chairman of the Western Hemisphere Subcommittee, I suspect would be willing to have a subcommittee hearing if the full membership was not interested in examining this issue. I certainly would take the time to do it with him. If not that, then the full committee.

I am a little surprised in a way that we have the chairman offering an amendment on an appropriations bill that he has the power on his notice to call a hearing on this issue so we really understand what the issues are.

Again, my emphasis is primarily that this could be very, very deleterious to U.S. business interests. I do not know of any business which is going to want to make investments knowing at some date there may be a cloud on titles of property that have not been resolved. This will not be the case with the Spanish and other Latin American countries, the European Community, the Canadians, our friends to the north who are already involved there. They will be going gung ho in the post-Castro period. Our business interests, which may see some real value in being involved in Cuba, I suspect would be very reluctant to get involved if this amendment is adopted.

Again, I urge my colleagues who may be listening, or their staffs, please take a good look at this amendment. Again, anything that has "Castro Cuba" on it has almost an immediate Pavlovian response to the amendment. This is all post-Castro regime. So you are not doing anything to Fidel Castro with this amendment, except the UHF issue, and that one you ought to take a look at.

But the other issues are all after Castro and what the implications are for us. I am not sure Members of this body necessarily want to be in a position without knowing what that government looks likes. We prohibit all assistance to that new government in this amendment, except just the most dire humanitarian kind of assistance. Maybe that is what we want to do when that new government emerges. I do not know if anyone can say with any certainty today—and I have studied the issue for a long time—I cannot tell you how that issue is going to resolve itself when Castro leaves, dies, or whatever else happens. To say today no matter what happens we are going to put in law a prohibition of doing anything, it seems to me to go far beyond where we ought to be going in the consideration of an appropriate foreign policy program.

So I urge, Mr. President, last again—just to emphasize—please take a look at this amendment. I urge my colleague from North Carolina not to proceed with the amendment. That will be the best course of action so we do not have to have a vote on this. But if he does proceed, I will raise the point of order about it as legislation on an appropriations bill, and if I fail at that, then obviously urge my colleagues to defeat the amendment.

Again, take a good hard look at this before you walk in here and just hear the words "Castro Cuba" and decide it is OK. I think a lot of people, particularly the majority here, would have some strong concerns about the implications for U.S. interests.

Mr. President, I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I concur completely with my colleague from Connecticut.

Foreign policy should reflect the national interest, not the national passion. Our policy in Cuba reflects the national passion, not the national interest. If the old leaders of the Soviet Union and Cuba had gotten together and said let us try and figure out a United States policy that will keep Castro in power, they could not have figured out a better policy than the policy we have followed that made Castro a hero to his own people, that isolated him.

I think we need, if there is such a word, to de-isolate Cuba. I think, for example, we ought to at a minimum sell food and medicine to Cuba. What harm comes to the United States if we sell food and medicine to the people of Cuba? And as I read this amendment, all of a sudden we are saying to countries all over the world, if you do not follow the policy that we and we alone are following—no other country in the world has this policy toward Cuba—if you do not follow our policy, then you are going to have economic reprisal against you.

That is not the way. It may have been, immediately after World War II, when we had better than 50 percent of the world's economy, we could muscle our way around like that even though it would not have been good public relations for the cause of freedom and democracy. Today, we are one-fifth of the world's economy. Yes, we are the only superpower that is left, but it just is not rational to follow this kind of policy.

I think we ought to be sitting back and asking ourselves, No. 1, is Castro a threat to the United States? I think the answer to that clearly is he is not a threat to the United States. No. 2, is he violating basic civil liberties, human rights, in Cuba? Yes. He is, in fact, probably the worst violator of human rights throughout this hemisphere.

Then the question is, How do we get them to change their policy? That is what we ought to be asking ourselves, not how we can pick up a few votes back home from people who want us just to corner him. You corner a dog, you corner a snake, and they lash out.

I think we ought to be taking another look at this. I think the Helms amendment is well intentioned. It will not serve the national interest, not serve our national policy at this point.

AMENDMENT NO. 327

(Purpose: To delete the rescission of funds for the National Security Education Trust Fund)

Mr. SIMON. Mr. President, I have an amendment, but I do not see either of the floor managers present.

I think it would not violate anything if I asked unanimous consent to set the Helms amendment aside so that I can offer an amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. SIMON. Mr. President, I offer an amendment.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Illinois [Mr. SIMON] proposes an amendment numbered 327.

Mr. SIMON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 22, strike out line 16 and all that follows through page 23, line 2.

On page 22, line 2, strike out "65,000,000", and insert "81,000,000" in lieu thereof.

Mr. SIMON. Mr. President, this is an amendment that restores the National Security Education Act. This was introduced by our former colleague, Senator David Boren, and was cosponsored by Senators NUNN and WARNER. It was signed into law by President Bush.

Before he leaves, I say to my colleague, the former chairman of the Senate Foreign Relations Committee, because I know of his interest in this field, this is our former colleague, David Boren's bill. It sets up studies in foreign languages, in these isolated foreign languages where we have very little knowledge, and it is extremely important. I just mention it to Senator PELL because I know of his interest in this area.

Mr. PELL. I thank the Senator very much and share the Senator's admiration for Senator Boren. I think some of his ideas about how we get more bipartisanship should be followed.

Mr. SIMON. I thank my colleague from Rhode Island.

In Desert Storm, we sent 500,000 American troops over there, and we found we had only 5 people who could translate Iraqi military documents. The need for having knowledge in these areas is extremely important. I called David Boren, who is now president of the University of Oklahoma, and I say to my colleague from Mississippi, he indicated not only were Senators WARNER and NUNN cosponsors of this, but Senator MURKOWSKI and Senator COHEN, and he also indicated that Senator LIEBERMAN and Senator FEINGOLD had been of help to him in this.

The other day, I asked the Secretary of Defense about this, and he said this is a small item but extremely important. He said it really is important that we have people who learn these isolated languages.

My reason for being involved in this is back when I was a member of the House Education and Labor Committee, the then Secretary of Education, Ted Bell, asked to zero out our foreign language program, and Cap Weinberger, who was then Secretary of Defense, and Bill Casey, who was then head of the CIA, contacted me and said this is extremely important for us. This is an area where we have serious deficiencies.

My hope is that the managers will be willing to accept my amendment. But if they are not, then I would want to press forward to have a vote on the amendment.

I will yield the floor at this point, and the floor managers can have a chance to look at this. But, again, this is the measure, the chief sponsor of which was Senator David Boren, and Senators NUNN and WARNER were cosponsors. President Bush signed the legislation. The Secretary of Defense says this is very important for the Defense Department. It is a relatively small amount we are talking about, $6 million. The offset is more than the $6 million because to handle the outlay portion of that, we need to do better than that.

Mr. President, I yield the floor.

Mr. LOTT. Mr. President, if I could at this point just observe the absence of a quorum momentarily so we can discuss this matter with the distinguished subcommittee chairman.

The PRESIDING OFFICER (Mr. BROWN). The absence of a quorum has been suggested. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I understand full well the amendment of the Senator from Illinois. It is one directed toward preserving the Boren fund concept, that provided for education, particularly educational opportunities in foreign cultures and languages. The House had totally eliminated this program. Our committee tried to fund the ongoing grants and those that had already been approved under the Boren plan. We provided for the elimination of the fund at the end of the settlement of the obligations that have been made to date.

I think there is a serious question about the redundancy in the defense bill of moneys for research and activities of this type. The university grants under the current bill, this year, amounted to $1.6 billion. We are looking now at, really, a difference of some $16.5 million, as far as the amendment of the Senator from Illinois is concerned, and our position as represented by the Senate report.

My advice—and I have conferred with my good friend from Hawaii—my advice to the Senate is we accept the amendment of the Senator from Illinois, knowing full well that the full spectrum of the House's recommendations will still be in conference. We are going to battle the whole subject. We might as well battle it from the point of view of the Senator from Illinois as from the point of view of our proposal to the Senate. In the way the Senator from Illinois presented it to us, it does not affect the outlays or does not affect the basic authorizations under the bill available to the Department of Defense for this current fiscal year.

Under these circumstances, unless the Senator from Hawaii wants to comment, I am prepared to accept the amendment of the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I have conferred with the chairman of the committee and I am prepared to accept his recommendation.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 327) was agreed to.

Mr. SIMON. Mr. President, I move to reconsider the vote.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMON. Mr. President, I thank my colleagues. I thank them not only on my behalf but on behalf of our former colleague, Senator David Boren. I will call him and tell him the news. And I believe I am safe, after my conversation with the Secretary of Defense, in saying the Secretary of Defense also thanks you.

Mr. STEVENS. The ghost of Boren is alive and well on the floor of the Senate, Mr. President. However I am not sure that will be the case in the conference. We will do our best.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. LEAHY. Mr. President, I ask unanimous consent that I be allowed to continue as though in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE REPUBLIC OF IRELAND

Mr. LEAHY. Mr. President, I assure my colleagues, the distinguished managers of the bill and my good friends, that I will not hold the floor long. I noted that nobody else was speaking just at the moment.

Mr. President, a couple of weeks ago I went on Senate business to the Republic of Ireland in Northern Ireland and the United Kingdom over a 3- or 4-day weekend as one who has been involved in the international fund for Ireland. It was at a time just prior to the publication of the framework Document of Peace between the Republic of Ireland and the United Kingdom. Our distinguished former colleague, Senator George Mitchell, was also there representing the President of the United States. He and I had various meetings in Dublin and elsewhere. I have discussed those before.

But I thought of this earlier this week. I picked up the New York Times and saw under a heading "Belfast Journal" a very, very moving article by James F. Clarity. I will speak to that in just a moment.

What I noticed were rather hopeful signs as I drove from Dublin to Belfast and went into Northern Ireland leaving the Republic of Ireland. The gates and barriers and bomb detectors, police and military that you normally see across the border were absent. In fact, you could see the marks on the ground where the speed bumps had been removed. And you did not see the all-pervasive military patrols, at least in the daylight hours throughout Belfast.

In Belfast, I met with both Protestant and Catholic groups. They talked of their fears, their concerns, and their hopes. Then on Sunday I met with some mothers who spoke to me—it really makes no difference which faith is involved here because I heard the same thing from all mothers I spoke with—that for the first time since the troubles began they were able to walk with their children on the streets and not have to worry about car bombs. For the first time they did not have to worry about the knock in the middle of the night of somebody telling them their husband will be killed or witness such a killing in front of the rest of the family.

The presence of armed authorities on the streets of Belfast were greatly diminished, in contrast with the Republic of Ireland where the occasional police officer you might see goes unarmed. These were the hopeful signs. The "War Widow's" journal is so moving.

I ask unanimous consent that I might put the whole article in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

A WAR WIDOW'S THOUGHTS AT PEACE'S DAWNING

(By James F. Clarity)

BELFAST, NORTHERN IRELAND.—Pauline Hegney, the mother of four young children whose husband was slain three and a half years ago by Protestant paramilitaries on a Belfast street, prays every day that the Government peace effort will work and that there will be no more killings here in the name of patriotism.

She is among the tens of thousands of survivors of the 3,172 Protestants and Roman Catholics who have been killed in sectarian warfare here since 1969. She speaks with a soft Ulster lilt and there is passion in her voice, but no hatred.

Her husband, Karl, an unemployed house painter, was gunned down in the street on his way home from a pub. Both his widow and the police say he had no involvement in the Irish Republican Army. The police told her they had an idea who the killers were, but no proof, she said. No one has been arrested.

She was left with their four young children and a job at the Europa Hotel in the city center, as head of the banquet dining room staff. But the I.R.A. viewed the hotel as a major economic target and bombed it frequently. The bombings often shut it down, putting her out of work, sometimes for months.

The I.R.A. declares that it is fighting for Northern Ireland's Catholics. Mrs. Hegney, who is Catholic, said she prays for them, and for the Protestant guerrillas too.

She told her children that "a sick man" had killed their father and that he was now in heaven with Granny, his mother. Her daughter, Julie-Anne, said that at first she hated Granny for taking him away and that she saw her father return to her room one night. She said she wanted to die and go to heaven with him. Lately Julie-Anne, who is not 8, says only, "I wish I could see him, mummy, for one wee minute."

Mrs. Hegney joined a group of Catholic and Protestant widows of guerrilla war victims, and they exchange their feelings and problems.

But the cease-fires that have raised the hopes for peace and for a normal life for most people in Northern Ireland also left her and the other widows feeling depressed, she said.

"During the trouble, we were all in it together," she said. "Everyone in Belfast was affected. But when the peace came, I felt isolated. Other people can get on with their lives. We can't."

Last October, as reports spread that the Protestant guerrillas, following the lead of the I.R.A., were going to call their own cease-fire, she hoped it would not be on Oct. 13, the third anniversary of her husband's killing, but it was announced on that day.

"It didn't feel right," she said. "I was praying for peace, but I didn't want it on that day." Now, she said, she faces the prospect of seeing representatives of the guerrillas become celebrated personalities as they approach formal negotiations with the British and Irish Governments and the other political parties in the North.

"I don't like the idea that after they've killed so many people, they'll be sitting down to say what the future will be, when people like these destroyed my children's future. But if it stops people being murdered, I've no objection."

Her children still miss their father. Karl Jr., who is 14, wants to be a lawyer. She said she asked him if he would defend someone he knew to be guilty of a "terrible crime." Karl said: "Would you serve him if he came into the Europa. You do what you're paid to do." She shrugged.

"I'll get through it," she said. "I'm a struggler. I've begun to write about it."

In her account of the night her husband was killed, she wrote: "We never know what's to come for us, though, do we? I put the boys to bed when their daddy went out. I went into the kitchen and had a little laugh to myself when I saw the saucepans sitting on the cooker. One was full of potatoes and the other one had sprouts in it all ready for the Sunday. He also had the roast cooked. I thought how organized my Karl is.

"A very curt male voice came on the phone saying he was a police officer and asked if I could make my way to the police station as my husband was in the hospital seriously ill. I lost my mind at that moment and I don't think I have actually found it all again.

"The nightmare for me had only just begun. I went to see Karl lying in that operating theater where he had died with the doctors fighting to save his life. He lay there still and cold, no life left in the body of the man who had taken the core of me, loved me and made my life worth living. I thought how could he leave me? What would I do without him? How was I going to live without him?

"I held Karl's hand and it was like holding the hand of a wax dummy. It felt so strange. I didn't cry. I just asked him to give me strength to get through the next few hours. I went and sat at the top of the stairs waiting for the first of the children to waken. I knew this would be our 5-year-old daughter, Julie-Anne. She was wearing her little pink and green pajamas and she still had her hair in pigtails from the day before. She was just so beautiful.

"What I was going to tell her was going to rob her of her little innocent childhood. She came over to me with her wee arms out and said, 'Where's my daddy?' I sat her down on my knee and told her that her daddy had gone up to heaven to see his own mummy, her granny Nancy. 'When's he coming back?' she said. I explained to her that some sick man had shot her daddy and that he had died and would not be coming back. She had to blame somebody, God love her, so she started crying and said she hated her granny.

"I told our three little boys what had happened to their lovely daddy. None of them spoke. Karl and Michael began to cry. Mario just sat there. I think he was in deep shock. I put my arms around all four of them and all but Mario cried sorely for what we had lost."

Mr. LEAHY. Mr. President, let me read something from the journal of a mother who lost her husband 3½ years ago. She wrote in her account:

> We never know what's to come for us, though, do we? I put the boys to bed when their daddy went out. I went into the kitchen and had a little laugh to myself when I saw the saucepans sitting on the cooker. One was full of potatoes and the other one had sprouts in it all ready for the Sunday. He also had the roast cooked. I thought how organized my Karl is.
>
> A very curt male voice came on the phone saying he was a police officer and asked if I could make my way to the police station as my husband was in the hospital seriously ill. I lost my mind at that moment and I don't think I have actually found it all again.

She went on to say how when she arrived her husband was there but no longer alive, and speaks of her 5-year-old daughter awakening in the morning. She said:

> What I was going to tell her was going to rob her of her little innocent childhood. She came over to me with her wee arms out and said, "Where's my daddy?"

Mr. President, there is more to it, of course, and it will be in the RECORD. But it is a tale that I have heard from mothers and widows throughout Northern Ireland.

And really to that 5-year-old daughter, and those other children, it makes no difference whether the killer was Protestant or Catholic, whether they were unionists or loyalists in their allegiances, the fact is, of course, the children have lost their father. Those who are left in the family find their lives unalterably altered, their hopes and dreams are dashed.

I only hope, Mr. President, the peace we now see—a still somewhat tenuous peace—in Northern Ireland might hold and that all the parties involved, all the parties involved, might make an effort to make the peace lasting; that those who feel that they have to hold to past prejudices or to some rigors of diplomacy that may have made sense in a different age will now come together and start showing the kind of flexibility and willingness to talk to all parties, and all parties can sit down and talk together.

Mr. President, I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT OF 1995

The Senate continued with the consideration of the bill.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the pending amendment be set aside so that I may offer an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 328

Mr. MURKOWSKI. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

> The Senator from Alaska [Mr. MURKOWSKI] proposes an amendment numbered 328.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> On page 25, between lines 4 and 5, insert the following:
>
> SEC. 110. None of the funds appropriated or otherwise made available by this Act may be obligated or expended for assistance to or programs in the Democratic People's Republic of Korea, or for implementation of the October 21, 1994, Agreed Framework between the United States and the Democratic People's Republic of Korea, unless specifically appropriated for that purpose.

Mr. MURKOWSKI. Mr. President, the amendment that I offer today is attached to H.R. 889, Department of Defense supplemental appropriations bill.

Specifically, the amendment, which I offer on behalf of myself and the majority leader, Senator DOLE, requires that funds to be used under this act for implementation of the framework agreement, which was dated October 21, between the United States and the Democratic People's Republic of Korea—that is North Korea—must be specifically appropriated for that purpose.

What the amendment would prohibit in the future is the following: It would prohibit using emergency provisions to implement provisions of the agreed framework with North Korea; second, it would prohibit using reprogrammed funds to implement the provisions of the agreed framework with North Korea.

Mr. President, I feel the amendment is necessary because as my colleagues will recall a number of Members joined Senator DOLE and myself in adding similar restrictive language in the last Congress to the foreign aid appropriations bill and defense appropriations bill. Although both of those measures passed overwhelmingly, they were stripped at the conference on assurances from the administration that the United States was not preparing to give aid to North Korea.

However, since signing of the agreed framework, the administration has already seen fit to use $4.7 million in emergency Department of Defense funds to pay for the provision of heavy oil for the benefit of the Democratic People's Republic of Korea.

Further, the administration has asked for $10 million in reprogrammed Department of Energy funds to pay for the treatment of spent fuel in North Korea associated with their existing nuclear reactors. I have recently learned that the administration is prepared to ask for an additional $5.4 million of State Department funds to pay for startup costs of an international consortium known as KEDO.

Many of us were dismayed that the administration chose to use emergency funds to pay for the provision of heavy oil—essentially giving foreign aid to North Korea without congressional authorization, and despite all the restrictions in law prohibiting any assistance to the DPRK. The administration lawyers downtown found the only provision they could to get around congressional approval.

This amendment would prohibit such actions in the future. The amendment prevents the administration from going around Congress again to find additional funds to assist North Korea. If the administration is firmly convinced that such expenditures are in the national security interests of the United States, then the administration should first come up and ask for specific appropriations for that purpose.

The overall cost of the provision of the two light-water reactors and hundreds of thousands of tons of interim energy to the North Koreans is going to cost billions of dollars. The light-water reactors alone are estimated to cost over $4 billion.

The administration has testified to committees of jurisdiction that the U.S. portion of the costs of implementing the agreed framework will be in the "tens of millions of dollars." The President's fiscal year 1996 budget requests $22 million specifically for the Korean Energy Development Organization, which is KEDO. I am informed that the Department of Energy will seek to use fiscal year 1996 funds to support spent fuel related activities in North Korea.

Mr. President, I intend to offer this amendment to all subsequent appropriations bills, if necessary.

Mr. President, at this time, I would also like to call my colleagues' attention to an event scheduled for tonight that will likely have far reaching implications for whether the agreed framework with North Korea will be successful.

Tonight, something called KEDO is supposed to kick off with a cocktail party in New York. Some of my colleagues might be wondering what KEDO is and why is the administration seeking $27 million for its activities. KEDO, the Korean Energy Development Organization, is the international consortium the administration pledged to put together under the agreed framework. The agreed framework calls on the United States "to organize under its leadership an international consortium to finance and supply" the light water reactor project in North Korea. As I mentioned, this light water project is expected to cost at least $4 billion. Further, the United States "representing the consortium, will make arrangements to offset the energy foregone due to the freeze" of the existing North Korean nuclear power program. In other words, we are expected to arrange to give North Korea free oil. Fifty thousand tons were delivered on January 21. One hundred thousand tons are scheduled to be delivered by October 21, 1995. Every year thereafter North Korea is expected to receive 500,000 tons until the light water reactor project is complete.

In addition to these substantial commitments, North Korea is demanding that the United States pay for about $1 billion worth of projects to upgrade the electrical grid to make the light water reactor project worthwhile. It is still unclear whether North Korean demands will be met.

If the United States agreed to put together the international consortium, who agreed to pick up all the bills? That is where the accountability gets cloudy. So far, only the United States has actually signed any checks. First, the Department of Defense used nearly $5 million in Defense Department emergency funds to purchase the first trench of oil. Then, the Department of Energy successfully sought $10 million in reprogrammed funds for treatment of spent fuel from the graphite moderated reactors in North Korea. Now, additional funds are being sought from the Department of State—and none of the really expensive projects has even started.

The South Korean Government has repeatedly said it will play the central role in the international consortium in financing the light water reactor project. But, the South Koreans have wisely added that this can only occur if North Korea agrees to accept South Korean reactors and if North Korea engages in substantive dialog with the South.

The Japanese Government has also said it will play an appropriate role. But, the Japanese have been quick to add that their role is dependent on having widespread participation in KEDO, including a United States financial role. I often remind my friends in Japan that we spend $2 billion per year to keep 37,000 American troops on the Korean Peninsula. To this Senator that is a big contribution.

Ambassador Robert Gallucci, the lead U.S. negotiator of the agreed framework, has indicated that 20 nations are expected to attend the inauguration of KEDO, but he admitted that not all of the countries will actually join KEDO. In fact, the only additional contributions announced thus far are from New Zealand and Australia.

The test for KEDO—and the State Department—is whether KEDO is anything more than a convenient multinational cover for what could become a costly and dangerous U.S. obligation. The North Korea nuclear situation should certainly be a multilateral and a regional issue. I have always felt that South Korea and Japan should have been original signatories to the agreed framework. I believe that the ASEAN nations should all contribute. I firmly believe that China should be playing a significant financial role given China's historical role in aiding North Korea. Has the United States simply taken over that aid role from China?

But the most disturbing aspect of KEDO for this Senator is that if KEDO fails to solicit the necessary funds, President Clinton has already committed the United States to fulfilling the terms of the agreed framework. On October 20, President Clinton sent a letter to Kim Jong Il, the new leader of North Korea, pledging to use the full powers of his office to provide the light water reactor project and interim fuel from the United States if other means fail. I ask that a copy of President Clinton's letter of assurance be submitted for the record. The President acknowledged that his pledge was subject to "the approval of the U.S. Congress," but no Member of Congress that I know was briefed on the contents of this letter before it was sent.

This Senator continues to believe that if the President must come to Congress to seek funds for this multibillion-dollar deal, after having ignored Congress in agreeing to the terms and conditions of the agreed framework, then Congress has the right to reexamine the conditions attached to that appropriation. I will continue to insist that North Korea allow immediate inspection of the two suspected nuclear waste sites that they have kept hidden from IAEA inspectors.

In addition, other issues should be addressed. I strongly believe that North Korea must agree to joint recovery teams to search for the 8,177 service personnel still listed as MIA from the Korean war. Second, North Korea must agree to stop exporting ballistic missiles. Finally, North Korea must engage in meaningful dialog with South Korea. But these are issues to take up at another day.

The purpose of my statement today is to urge my colleagues to remind the administration of the congressional role in implementing the agreed framework and to call your attention to the inauguration of KEDO.

Thank you, and I wish the Chair a good day.

I have no further statement, Mr. President. I believe that both sides have looked at this, and I defer to my colleague, the senior Senator from Alaska [Mr. STEVENS].

The PRESIDING OFFICER. Is there further debate on the Murkowski amendment? The senior Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I am informed that the amendment offered by my colleague has been discussed and is in a position now where it can be accepted as an amendment to this bill.

I ask my friend from Hawaii if he agrees. I believe it applies to funds in this act and, under that limitation, we are prepared to accept it.

Mr. INOUYE. Mr. President, I am personally prepared to accept the amendment, but I just received a request from the Senator from Rhode Island [Mr. PELL] that he would like to look over the amendment, and he will be here shortly. So may I request that the acceptance be held up for, say, 5 minutes?

Mr. STEVENS. Mr. President, there is no objection on my part and, I am sure, that of my colleague.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. MURKOWSKI. Will the Senator just yield? I wonder if the senior Senator will be on the floor and can proceed on my behalf because I have a hearing.

Mr. STEVENS. Mr. President, I shall be glad to do that. I think the Senator from Iowa and the Senator from Illinois want time. Does the Senator from Iowa seek the floor to offer an amendment?

Mr. GRASSLEY. No, to speak on the bill.

Mr. STEVENS. Will the Senator from Iowa pardon me and allow me to interrupt?

I am now informed that the amendment offered by my colleague from Alaska can be adopted at this point. There is no further objection, as I understand it.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the junior Senator from Alaska.

The amendment (No. 328) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GRASSLEY. Mr. President, I rise to discuss my reasons for voting for the bill, but also to state some concerns I have about the direction that the Department of Defense is taking.

I want to commend, first of all, the Appropriations Committee and, of course, its chairman, Senator HATFIELD, for doing what I think is a very responsible thing, and that is to offset the cost of the readiness through rescissions, not from other Departments of Government, but from Defense Department programs.

I recently requested both the CBO and the General Accounting Office, GAO, to review the defense budget to determine whether there were programs being funded that were not directly related to a strong military and our national security operations and responsibilities.

CBO identified $64 billion falling into that category, and the GAO identified $70 billion. Those are figures that cover the next 5 years. They suggested that these programs were absolutely clearly not related to our national security, but they identified these programs for review to determine whether these programs should be continued in the defense budget.

I am pleased to note that some of the programs contained in the reports that I requested have been used by the Appropriations Committee as offsets in this bill.

My view, in general, is that we should not only scrutinize nondefense spending in the defense budget but many defense-related items as well. So along that line, I commend specifically Senators MCCAIN and WARNER, both of them very respected members of the Senate Armed Services Committee, for their work in identifying defense programs that should be cut or reduced, such as the B-2 bomber and the M-1 tank upgrade.

Because I firmly believe that we must closely scrutinize both military programs, as Senator MCCAIN and Senator WARNER have suggested, but also I go beyond that to other so-called nondefense spending, which is in the defense budget, before we consider increasing defense spending above this administration's proposed levels. And I hope you remember that for the 5 years in this year's budget, the President's proposing $25 billion above what it was in his first budget.

Now, I think that scrutinizing these programs is exactly what the Appropriations Committee has done in this bill. The committee found it unnecessary to increase defense spending to meet the readiness needs because it found alternative options to new spending.

Mr. President, last year I supported what we call in this body defense firewalls so spending cannot be taken out of defense and spent some place else. Many of my colleagues were concerned then that we might rob the defense budget to pay for domestic programs. Rather, we believe that if defense spending is reduced, it should be used to cut the deficit, not to increase domestic spending.

I also believe there is another corollary, because I believe that defense firewalls should work both ways. We should not rob funding for domestic programs to pay for defense spending either. There is clearly sufficient funding within the defense budget to meet readiness concerns. It is simply a matter of the Pentagon prioritizing its funding and improving its management. Because the Appropriations Committee has not robbed the domestic spending accounts to pay for defense readiness, I am willing to support this supplemental appropriations bill, and I commend the committee's work. I strongly urge the committee, however, to continue its good work and to resist in conference any efforts by the other body to pay for defense programs from domestic offsets.

Now, having said that, Mr. President, I wish to address briefly the issue of the obligations and expenditures of public money that has not been appropriated by the Congress and specifically to alert my colleagues to some pending requests from the Department of Defense to amend authorizing language, present statute, which I think gives them the capability of spending money not appropriated by the Congress.

The bill before us, if approved, would provide $126.3 million to bail out two Army fiscal year 1994 appropriations accounts. They would do it this way: $3.3 million for the military personnel account and $123 million for the operation and maintenance account. These two accounts are overobligated. They are overdrawn. They are in the red.

When the Army was ordered to deploy troops to Haiti, its financial accounts contained insufficient funds to cover the cost of the operation but we know that the Army deployed anyway. The Army spent money that it did not have. As a result of that operation, those accounts have negative balances. They are in the red to the tune of $126.3 million. If the $126.3 million is needed to meet legitimate obligations, then we in this Congress have no choice. We have to pony up the money because we have to pay our bills.

Well, under the Constitution, as we know, that is not the way the spending process of the Federal Government, including the Defense Department, is supposed to work because under our Constitution Congress has the sole authority to decide when and to what extent public moneys are committed.

Now, Mr. President, I am not suggesting that the bill before us contains unauthorized appropriations. Quite the contrary. The Department of Defense is authorized under the law to spend money in excess of available appropriations. That authority is contained in the Feed and Forage Act that dates back to the Civil War.

The authority was justified in those days. Troops often went on long periods without pay and had to forage to survive. Government chits were issued to exchange for food and redeemed later on for cash. The Feed and Forage Act is embodied in section 11 of title 41 of the United States Code. The Feed and Forage Act was last invoked by the Department of Defense on September 19, 1994. That decision generated the request for these $126.3 million that are in this bill. The authorizing documents were signed by Mr. Deutch, Deputy Secretary of Defense, and Mr. Hamre, the Comptroller.

I ask unanimous consent that those be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE DEPUTY SECRETARY OF DEFENSE,
Washington, DC, September 19, 1994.

Memorandum for Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff, Commander in Chief, U.S. Special Operations Command.

Subject: Obligations in Excess of Appropriations for Restoration of Democracy in Haiti.

The Department of Defense is likely to incur, in accordance with applicable law, obligations in excess of available appropriations to ensure the necessary funding to support units of the U.S. Armed Forces conducting military operations in connection with the restoration of democracy in Haiti.

I authorize the incurring of deficiencies for clothing, subsistence, forage, fuel, quarters, transportation, and medical and hospital supplies, not in excess of the necessities of the current year, under the authority of Section 3732 of the Revised Statutes (41 U.S.C. 11), known as the Feed and Forage Act. On my behalf, the Comptroller of the Department of Defense shall make the reports to Congress required by law with respect to the use of this authority.

Also, pursuant to Section 2201(c) of Title 10 of the United States Code and the necessity based on Presidential determination to increase the number of members of the Armed Forces on active duty beyond the number for which funds were provided in Appropriations acts for the Department of Defense, I authorize the incurring of deficiencies for costs of such personnel under Section 3732(a) of the Revised Statutes.

The Comptroller of the Department of Defense shall issue such instructions as may be necessary to implement this memorandum, including prescription of the dollar levels for deficiencies by appropriations account.

JOHN DEUTCH.

COMPTROLLER OF THE
DEPARTMENT OF DEFENSE,
Washington, DC, September 20, 1994.

Hon. ALBERT GORE, Jr.,
President of the Senate, Washington, DC.

DEAR MR. PRESIDENT: On behalf of the Secretary of Defense, this is to advise that the Secretary of Defense has invoked the authority granted by Section 3732 of the Revised Statutes (41 U.S.C. 11) to authorize the Military Departments to incur obligations in excess of available appropriations for clothing, subsistence, forage, fuel, quarters, transportation, and medical and hospital supplies, not in excess of the necessities of the current year in support of U.S. military. He has also invoked the authority granted by Section 2201(c) of Title 10 U.S.C. to authorize incurring deficiencies for the costs of additional members of the Armed Forces. This action will ensure that the Department of Defense can support U.S. military operations in connection with the restoration of democracy in Haiti.

Sincerely,

JOHN J. HAMRE.

Mr. GRASSLEY. The Feed and Forage Act allows military services to make contracts and to purchase in advance of appropriations for clothing, subsistence, forage, fuel, quarters, transportation, and medical supplies. The Feed and Forage Act gives the Department of Defense an open-ended authority to spend money almost without limits. The Department of Defense can invoke the authority whenever it sees fit. No special condition or no special circumstances must be met before that law can be invoked. We need not be at war. We need not be engaged in military combat overseas for the Department of Defense to tap the Treasury without an appropriation. And there is essentially no limit on the amount of money that can be spent. It is like, you might say, Mr. President, an open line of credit.

Now, thank God, no other agency of the Federal Government has this kind of authority. Admittedly, in wartime, when our national security is threatened, this kind of authority may be essential. But, Mr. President, I am concerned about the use of this authority in peacetime, like today. My concerns are fueled by a Pentagon proposal to expand the authority beyond existing law. And remember, I just said that I wish to tell you what I am concerned about what the Department of Defense is thinking about doing.

The original fiscal year 1995 defense supplemental bill as submitted to Congress included a request for special legislative authority. It would be numbered section 1863. Secretary of Defense Perry has referred to section 1863, and these are his words, as his "readiness preservation authority." Readiness preservation authority. I ask unanimous consent to print that language in the RECORD, too, for my colleagues to study.

There being no obligation, the material was ordered to be printed in the RECORD, as follows:

EXCERPT FROM THE 1995 SUPPLEMENTAL BUDGET

(Supplemental language now requested, existing legislation)

SEC. 1863. During the last two quarters of the current fiscal year, upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, incur necessary obligations to preserve the readiness of the Armed Forces in excess of contract authority and amounts available in appropriations of the Department of Defense during the current fiscal year: Provided, That obligations incurred shall be limited to those which are required for essential readiness functions and activities of the Armed Forces, including activities associated with mission critical proficiency training, scheduled unit exercises, the acquisition of spare parts that are critical to the missions of the Armed Forces and such other activities that the Secretary of Defense determines cannot be postponed without a major impact on the readiness of the Armed Forces: Provided further, That obligations incurred under the foregoing authority shall not be more than 50 percent of the total amount appropriated to the Department of Defense for Operation and Maintenance, Budget Activity 1: Provided further, That any proposal transmitted by the President to the Congress to liquidate costs incurred under the provisions of this section shall be accompanied by offsetting rescission proposals, unless the President determines that emergency conditions exist which preclude such rescissions: Provided further, That the Congress shall be notified when funds are made available for obligations under this authority.

This provision would allow the Department of Defense, with OMB approval and Congressional notification, to make obligations in excess of its total budget authority during the last two quarters of 1995 to fund essential readiness activities and functions. Excess obligations incurred under this provision are limited to 50 percent of Budget Activity 1 under the Operation and Maintenance title. Any proposal to liquidate excess obligations incurred under this provision must be accompanied by offsetting rescission proposals unless the President determines that emergency conditions exist which preclude rescissions.

Mr. GRASSLEY. Section 1863 is intended to build on and to expand the authority granted in the Feed and Forage Act. The Department of Defense would be authorized to obligate and authorized to spend money, in advance of and in excess of congressional appropriations, in a great big, broad area well beyond anything that the Feed and Forage Act has ever done. That area is defined then in 1863 as follows, and I quote.

> Essential readiness functions and activities of the Armed Forces.

"Essential readiness functions and activities of the Armed Forces" obviously covers a lot of territory. That conceivably covers just about anything and everything that the Department of Defense wants. I am thankful to report that section 1863 is not included in either version of the fiscal year 1995 supplemental bill, the bill that is before us now in this body, the bill that passed the House of Representatives.

But I understand the issue will be revisited during consideration of the fiscal year 1996 defense authorization bill. That is why I want my colleagues to study this issue, and if it is in there you can assume that I am going to bring it to your attention and to highlight it and to make sure we are responsible as we consider that.

The practice of spending public money before it is appropriated by Congress in peacetime—I want to emphasize in peacetime as opposed to wartime—that practice needs to be reexamined. It needs scrutiny.

First, the practice is inconsistent with the Constitution. Section 9 of article I of the Constitution says, "No money shall be drawn from the Treasury, but in Consequence of Appropriation made by law." That ought to be crystal clear to everyone.

Second, the practice of doing this is inconsistent with the Anti-Deficiency Act, section 1341, title 31. This law, the Anti-Deficiency Act, causes it to be a felony to obligate or expend money before an appropriation is made, or in excess of amounts available in an appropriation account.

When Congress discovered, as we did in the late 1980's, that the Pentagon was using $50 billion—what was called M accounts, nothing but a slush fund—to circumvent the law and to hide the Anti-Deficiency Act violations, the Congress shut down those M accounts. That year was 1990.

The Department of Defense is always going to find some way to give just a little bit more freedom on the shuffling around of money. So I am afraid, with this new 1863, that DOD may try to use the Feed and Forage Act and the proposed Readiness Preservation Authority, that is 1863, for another end run around the Constitution and around the law. I am afraid the Pentagon may use this authority to hide deficient accounts that they are very qualified at doing.

In order to better understand this whole issue, for the benefit of my colleagues, I am taking three specific steps. I have already started this process.

First, I have asked the American Law Division at CRS for an opinion on all pertinent legal points involved.

Second, I have asked the General Accounting Office to follow the audit trail on the $126.3 million in this bill to make sure the disbursements are properly recorded in the books.

Third, I have asked the Department of Defense to tell me how much money has been spent under the Feed and Forage Act over the last 25 years.

Once I have all this information, I should be in a better position to make a final judgment about this matter, about 1863, and the intent of the Secretary of Defense.

I will say this. He has tried to assure me that he is not trying to reestablish an M account sort of approach. That may be his sincere motive, but I question whether or not the language of 1863 is specifically tight enough so that will not happen. It might not happen under his watch, but once it is on the books, there will be some Secretary of Defense who will find a way of doing it, because we had these M accounts evolve over a period of the 1950's to 1990.

The idea of spending money before it is appropriated ought to bother every one of us. It surely bothers me. It seems to undermine our control of the purse strings and our system of checks and balances. With a simple stroke of the pen, a Pentagon bureaucrat can write checks with public money which has not been appropriated and then, thereafter, practically extort the funds from Congress to pay the bills.

Bureaucrats demand the money, and Congress coughs it up. That is just not right. If we are ever to balance the budget—and that debate was last week but the problem is still ahead of us—we need to put a tight lid on this kind of behavior, whether it is in the Department of Defense that I have spoken about or any agency of the Federal Government.

I yield the floor.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Illinois.

Mr. SIMON. Mr. President, I ask unanimous consent to address the Senate as in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE BALANCED BUDGET AMENDMENT

Mr. SIMON. Mr. President, I spoke earlier today about the falling dollar. I quoted the Chicago Tribune. I ask unanimous consent to have printed in the RECORD some more items.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Mar. 6, 1995]

CURRENCY'S SLIDE MAY MARK END OF RESERVE ROLE

(By Michael R. Sesit)

LONDON.—Undercut by years of U.S. deficits, the dollar's days as the world's reserve currency may be drawing to a close.

On Friday, eighteen central banks spent a half-billion dollars in a futile attempt to resist that notion, following a similar $250 million effort by the Federal Reserve the day before. In Germany and Japan, finance ministries scolded dollar bears as wrongheaded. In the U.S., Treasury Secretary Robert Rubin tried talking up a strong dollar as "in our national interests."

Traders, unperturbed by the fuss, continued to dump dollars by the billions. As the greenback fell to another post-World War II low against the yen and continued sliding against major European currencies, foreign-exchange dealers and money managers predicted more to come.

In trading Monday in Tokyo, the dollar hit a new postwar low of 92.75 yen and skidded to 1.3875 marks, just short of its historical low of 1.3870 marks. About noon Monday, the dollar was trading at 93.25 yen, and at 1.4030 marks; sterling was at $1.6473.

At its lowest point Friday, the U.S. currency touched a postwar low of 93.75 yen, and a 29-month low against the mark. By late trading in New York, the dollar stood at 94.05 yen and 1.4240 marks, compared with 95.25 yen and 1.4415 marks late Thursday. The pound, meanwhile, rose to $1.6295 from $1.6135 a day earlier.

"There is a firm belief that the dollar doesn't have the reserve-currency status it once had," says Jeremy Hodges, head of global foreign-exchange sales for Lehman Brothers Inc. "Globalization and diversification" are progressively eroding the dollars's mystique, he explains. "More and more people are adjusting their portfolios to include other currencies—yen, deutsche marks, French francs, Canadian dollars."

Meanwhile, weaker currencies continue to lose out. Early this morning, after an emergency meeting of the European Union's monetary committee, the Spanish peseta and Portuguese escudo were devalued, by 7% and 3.5% respectively, following weeks of difficult trading.

Within the next three months, Mr. Hodges predicts the dollar could tumble another 5%, to 1.35 marks, and another 4%, to 90 yen, although he cautions not to expect a freefall. So far this year, the dollar has fallen 6% against the yen and 8% against the mark.

The basic problem for the dollar is that there are just too many of them sloshing around, says George Magnus, chief economists at S.G. Warburg & Co. in London. The U.S. current account deficit—a broad measure of trade in goods and services plus certain financial transfers—is huge and growing. In addition, "there is still an underlying outflow of investment capital" as U.S. companies continue to invest in plants and equipment overseas, he says.

"And don't forget that the U.S. is the world's biggest debtor nation, with external liabilities of $750 billion at the end of 1994," he adds. Last week's defeat of a constitutional amendment that would have required a balanced budget by 2002 only underscored the country's lack of will to reform its way.

What's more, Mr. Magnus argues, Fed policy isn't as tight as many people suspect. The evidence: strong growth in U.S. loan demand, increasing bank borrowing from the Fed and the modest pickup in bank reserves since October. And, he added, "the Mexican bailout is going to result in the creation of additional dollar reserves, either by the Fed, the Treasury or both."

Based on 10-year government-bond yields, U.S. inflation-adjusted interest rates are 4.35%, compared with 5.4% in Germany and 4.4% in Japan. While stronger fundamentals could propel the dollar to 110–120 yen and 1.60–1.65 marks in a year or so, for now, * * *

[From the Washington Post, Mar. 7, 1995]

DOLLAR KEEPS FALLING AGAINST YEN AND MARK—ANALYSTS CALL DECLINE A LONG-TERM TREND

(By John M. Berry)

The dollar continued to fall on international currency markets yesterday, hitting a new low against the Japanese yen for the third day in a row and weakening further against the German mark.

Many foreign exchange experts said the dollar's weakness is not just a temporary problem, but rather part of a long-term downward trend against the mark and yen, although the dollar is likely to rally from time to time.

There was broad agreement among experts that there is little President Clinton, the Treasury Department or the Federal Reserve can do to give the dollar a boost. Coordinated purchases of dollars on Friday by the Fed and other central banks around the world had almost no impact on the currency's value.

In late New York trading yesterday, it took just 92.80 yen to buy a dollar, down from 94.05 on Friday. Against the mark, it took 1.4048 marks to buy a dollar, the lowest level in more than two years, down from 1.4250 on Friday.

The reasons for the dollar's downward trend, the analysts said, are complex and varied. Some are real, some are psychological; some are as new as the financial crisis in Mexico and some are as old as the tendency of Americans not to save money.

First and foremost is the fact that the United States is running a deficit with the rest of the world of more than $150 billion a year in trade, tourism and similar transactions, said economist L. Douglas Lee of NatWest Washington Analysis.

That means that each year foreigners end up with $150 billion that they may not wish to hold and so exchange for another currency, driving down the dollar's value. In the view of Lee and many other analysts, as long as the United States keeps pushing that many dollars into foreign hands every year, the currency has little chance of strengthening in a fundamental way.

A second key reason for the recent weakness of the dollar that many analysts cited is an abrupt shift in expectations about the level of U.S. interest rates compared with those in other countries, especially Germany.

"The dollar's decline this year has coincided with the evaporation of earlier expectations of future sharp increases in U.S. short-term rates," said John Lipsky, chief economist at Salomon Brothers Inc. in New York.

The level of interest rates is important for a currency because higher rates can encourage investors to move their money from one country to another. Until a few weeks ago, many analysts and investors had expected that the Fed would continue to raise interest rates as it did all last year to cool off the U.S. economy and prevent a surge of inflation. However, recent statistics suggest that U.S. economic growth is slowing and many analysts are no longer looking for higher rates.

A third major reason the dollar is being hammered is that its value has been declining for many years compared with German and Japanese currencies, and some foreign central banks are switching their foreign exchange reserves out of dollars.

"The track record of the dollar in recent years has been poor, and that's what these investors look at, the record," said Scott E. Pardee, special adviser at Yamaichi International (America) in New York. "The U.S. economy is doing fine, but dollars that have been in other hands for many years are being converted into marks and yen."

A fourth key development hurting the dollar, the analysts said, is the political and financial crisis in Mexico, which led the Clinton administration to forge a huge international rescue package, with the United States putting up $20 billion in loans and loan guarantees.

There is a widespread perception that the United States will suffer in a variety of ways because of its close links to Mexico, including a likely large decline in U.S. exports that will make the U.S. trade deficit worse.

Yet another reason mentioned by the analysts is the currency turmoil within Europe that led to a devaluation yesterday of the Spanish peseta and Portuguese escudo relative to the mark, which is seen by investors and speculators as a "safe haven."

Meanwhile, many Japanese firms are selling the dollars they are earning from exports to the United States in exchange for yen. They are using that yen to cover losses or operating expenses at a time when Japanese banks are reluctant to make new loans.

Analysts such as Lee noted that so long as Americans save such a small portion of total national income that they cannot finance the nation's investment costs—plus the combined deficits of federal, state and local governments—foreign investors must make up the difference. In an accounting sense, the gap between saving and investment is equal to the U.S. deficit in trade, tourism and other transactions.

"The way to address the problem is to do something to bring savings and investment closer together—such as reduce the federal [budget] deficit", Lee said. And that pointed to yet another reason for the dollar's weakness—last week's Senate defeat of a constitutional amendment to require a balanced budget, which "was read as a negative by the currency market," Lee said.

[From the Wall Street Journal, Mar. 7, 1995]

DOLLAR FALLS AGAINST YEN AND MARK, BUT UNITED STATES DECLINES TO INTERVENE IN MARKET

(By David Wessel)

WASHINGTON.—The dollar fell again yesterday against the yen and mark, but U.S. officials kept their mouths shut in public and didn't intervene in currency markets to support the struggling currency.

The dollar set another post-World War II low against the yen yesterday, touching 92.70 yen in Asia before rebounding to 92.90 late yesterday, down from 94.05 late Friday. The dollar, flirting with its postwar low against the mark of 1.3870 set in September 1992, was trading at 1.4048 marks yesterday, down from 1.4240 Friday.

Having failed to stop the dollar's slide with rhetoric and money, the U.S. government simply watched nervously yesterday. At earlier moments of market turmoil, Treasury Secretary Robert Rubin, once a currency trader himself, has advised: "Stay calm and focus on the fundamentals." Apparently he was doing just that yesterday. Neither he nor his aides would talk about the currency.

While Mr. Rubin was consulting with his German and Japanese counterparts, U.S. officials are holding off on further dollar-buying efforts until the officials sense such intervention is likely to work. Having demonstrated that the U.S. is unhappy about the sliding dollar and convinced the market has gone too far, the officials may now just wait for the market to bring the dollar back up.

TWO OPTIONS

If words and intervention won't work, then the government has only a couple of other options should it decide to try to strengthen the dollar: The Federal Reserve could raise short-term interest rates to try to attract global investors, or President Clinton and Congress could reduce the federal budget deficit to shore up confidence in U.S. macroeconomic management. Neither policy change appears imminent.

Economists' list of explanations for the dollar's decline is growing longer every day. Rudiger Dornbusch, a Massachusetts Institute of Technology economist, figures that expectations about interest-rate trends in the U.S. and Germany account for 70% of the dollar's woes. Based on comments by Fed Chairman Alan Greenspan and other Fed officials, the markets have decided that the Fed isn't going to raise short-term rates anytime soon—and might even cut them. That tends to draw investors to the mark.

The failure of the U.S. to reduce further its government budget deficit accounts for 30%, he estimates. The recent slump in the dollar coincides with the Senate's rejection of a constitutional amendment that would have required a balanced budget. "Germany is balancing the budget without big talk over the next four years. We are widening the deficit with big talk," Mr. Dornbusch said. "They are concerned about inflation at 2½%. We declare it dead at 3½%." Global investors, not surprising, prefer marks to dollars, he reasons.

"If you need a third [reason for the weak dollar]," he said, referring to Mexico's economic crisis, "the mess in our backyard gives you one more reason."

Other economists and traders, however, aren't so confident that they can discern the causes of the dollar's fall. "I'm puzzled. I didn't expect it. I don't claim to know [the reasons] after the event," said Deutschebank economist Norbert Walter. "Wall Street doesn't like Washington. Everything that happens is considered to be negative for the dollar."

GLOBAL LACK OF CONFIDENCE

The U.S., as Mr. Rubin made clear last week, sees "a strong dollar" to be in "its national interest." A falling dollar does help U.S. exporters by making their goods more attractive overseas, but it tends to push up import prices. It also tends to push up long-term interest rates in the bond market even if the Fed doesn't move the short-term rates it controls. A weaker dollar also suggests a global lack of confidence in the U.S. and its government, hardly a welcome development for Mr. Clinton or Mr. Greenspan. In Germany and particularly in Japan, strong currencies could hurt exports at a time when both nations are counting on them to buoy economic growth.

While the dollar is sinking against the mark and yen, it has strengthened against two of its major trading partners. The Canadian dollar closed at 1.4168 Canadian dollars to the U.S. dollar yesterday, compared with 1.3557 Canadian dollars to the U.S. dollar a year ago. The Mexico peso closed at 6.575 pesos to the dollar, compared with 3.25 pesos to the dollar a year ago. As a result, the value of the dollar against all its trading partners hasn't fallen much, reducing the risks of imported inflation and making it easier for the Fed to ignore the weakness against the yen and mark.

Until the dollar plunged last week, the Fed had been widely expected to hold short-term interest rates steady when officials hold their next scheduled meeting on March 28.

And if signs of a slowing pace of growth continue to emerge, the Fed isn't likely to raise rates at that meeting. Just yesterday, Fed Vice Chairman Alan Blinder, speaking to bankers here, tentatively predicted the sort of "soft landing"—an economy that slows, but not too much—that central bankers are always trying to engineer. "There are indications, but certainly not definitive sort of indications, that makes me think we have a fighting chance of achieving this sort of soft landing."

With the dollar weak, strong evidence that the U.S. economy hasn't cooled off—which could come as soon as this Friday's Labor Department report on employment in February—could tilt the Fed toward higher rates. Mr. Blinder wouldn't talk about the dollar, but House Banking Chairman Jim Leach (R., Iowa) did: "Obviously a weak dollar enhances prospects of [interest rates] going up again," he said. "No one likes that. But no one likes a weak dollar either."

Economists who are adherents to the monetarist school, gathered in Washington yesterday, cautioned the Fed against raising rates to defend the dollar. "Why is the dollar going down? We don't know. But it isn't a monetary phenomenon," said Lee Hoskins, chairman of Huntington National Bank and former Cleveland Federal Reserve Bank president. "What should the Fed do? Nothing."

But David Hale, economist at Chicago's Kemper Corp., said the Fed could help the dollar by making clear it doesn't intend to *cut* rates soon.

Mr. Leach also said that the dollar "underscores the absolutely mandatory need to get the fiscal house in order so that the monetary side doesn't have to do everything." Economists reason that a move to shrink the U.S. budget deficit would increase overall savings in the U.S. and that, in turn, should reduce what is known as the current-account deficit, the broadest measure of international financial and trade flows. That big and growing deficit is, economists say, a major long-run factor in the dollar's weakness.

Although the defeat of the balanced budget amendment was seen in Washington as a sign that Congress is less likely to attack the deficit this year, traders and economists disagree about its impact on the dollar. "You can point to that as a trigger," said Virginia Parker of Ferrell Capital Management, Greenwich, Conn. "But the dollar has been in a pretty significant downturn since the end of 1994."

Mr. Hale suggested the defeat "played a role at the margin," but called other factors more important. Most are beyond the Clinton administration's control. Among them: the likelihood that U.S. exports to Mexico will be hurt by the economic crisis there, the side effects on the dollar of internal European currency tensions, the evaporation of the Soviet threat (which makes investors more confident about the mark) and Japanese investors' seasonal urge to repatriate capital in advance of the March 31 end of their fiscal year.

[From the Washington Times]

Dollar Again Plunges, Setting Off Stock Selloff—Economy: Record Lows Against Mark, Yen Stirs Doubts About Currency's Premier Status—Dow Loses 34.9 Points

(By Jonathan Peterson)

The U.S. dollar continued its extraordinary slide Tuesday, plunging to record lows against the German mark and Japanese yen, as currency worries slammed the stock market and eroded the greenback's once-lofty status throughout the world.

For the second straight day, U.S. Government officials choose not to resist the anti-dollar mania, fueling speculation that the currency could hurtle even lower in the coming days.

And unlike recent dollar-selling stampedes, high-rolling speculators were joined Tuesday by corporations, banks and mutual funds in the selloff, traders said.

"Right now it's a panic situation—we're in uncharted territory," declared Frank Conte, a currency dealer at Royal Bank of Canada in New York. "There's no sign from the Federal Reserve. There's no talk from the Administration. So traders are wondering: 'Where's the bottom for the dollar?' "

Such questions spread to the stock market * * *.

The punishing treatment of America's long-trusted currency, combined with investors' decided preference for German marks and Japanese yen Tuesday, startled veteran traders who wondered aloud how the episode would unfold.

"It's pandemonium, isn't it?" said Robert A. White, senior vice president at Standard Chartered Bank in New York. "It's shocking to a lot of us old-timers in the market to see the dollar ostensibly removed as the reserve currency of the world."

The dollar hasn't suffered alone. In what has become a massive, global shuffling of money, currencies of Canada, Mexico, Italy, Sweden, Belgium and other nations have all been walloped. Germany's surging mark, meanwhile, has reached post-World War II highs against the British pound, French franc, Spanish peseta, Portuguese escudo and Swedish krona.

In New York trading Tuesday, the dollar closed at 1.3702 marks, down from 1.4048 late Monday. It closed at 90.05 yen after falling as low as 89.05, down sharply from 92.80, the previous post-World War II low.

The buck has slipped 6% against the mark and yen this month alone, compared to an 11% loss against both currencies for all of last year.

"What can we do to stabilize the dollar or cause it to go up without doing long-term economic damage?" asked Monica Williams, vice president and foreign exchange manager at Sanwa Bank California.

While that answer seemed elusive Tuesday, economists cited several reasons for the problem that has erupted in recent days. German interest rates are expected to rise this year, benefiting lenders. By contrast, Fed Chairman Alan Greenspan recently hinted that U.S. rates were at or near their peak levels.

The prospect of a "soft landing" for the U.S. economy—slower growth but no recession—suggests that U.S. consumers will continue to gobble up imports, keeping the nation's trade balance deep in the red this year.

What is more, highly visible news from Washington seems to have convinced speculators that the dollar is a less attractive haven than in the past. Traders have repeatedly mentioned the rescue plan for Mexico and the defeat of the balanced-budget amendment in Congress in recent days as reasons to abandon the dollar.

"There's a complete lack of faith in the Fed, the Administration and in Congress to get the budget in order, to get the trade balance in order," White contended.

The controversy spread on Capitol Hill Tuesday, as members of Congress worried about the dollar and also complained about the rescue plan for Mexico, entailing $20 billion of U.S. loans and loan guarantees for the peso.

"It appears that the currency speculators, the vultures of the world, are beginning to circle around the U.S. currency because they seem to sense that our currency is vulnerable," Rep. Dana Rohrabacher (R—Huntington Beach) said during a hearing of the House International Relations Committee.

* * *

Mr. SIMON. Yesterday's Washington Post, in an article by John Berry, "Dollar Keeps Falling Against Yen and Mark," quotes a Washington economist, L. Douglas Lee:

"The way to address the problem is to do something to bring savings and investment closer together—such as reduce the federal [budget] deficit," Lee said. And that pointed to yet another reason for the dollar's weakness—last week's Senate defeat of a constitutional amendment to require a balanced budget, which "was read as a negative by the currency market," Lee said.

The Wall Street Journal, the day before yesterday, in an article by Michael Sesit, "Currency's Slide May Mark End of Reserve Role."

The basic problem for the dollar is that there are just too many of them sloshing around, says George Magnus, chief economist at S.G. Warburg & Co. in London. The U.S. current account deficit—a broad measure of trade in goods and services plus certain financial transfers—is huge and growing. In addition, "there is still an underlying outflow of investment capital" as U.S. companies continue to invest in plants and equipment overseas, he says.

Here I might add what encourages that outflow is when you do not have a decline in interest here and when it is more productive, when you get more for your capital, to invest in other countries. The balanced budget amendment, every projection said, would send interest rates in this country down.

Then the article continues, quoting this London economist:

"And don't forget that the U.S. is the world's biggest debtor nation, with external liabilities of $750 billion at the end of 1994," he adds. Last week's defeat of a constitutional amendment that would have required a balanced budget by 2002 only underscored the country's lack of will to reform its ways.

Here is another one, an article from yesterday's Wall Street Journal, quoting Rudiger Dornbusch, a Massachusetts Institute of Technology economist, listing the budget deficit accounts as one of the two major reasons for the drop in the dollar.

The recent slump in the dollar coincides with the Senate's rejection of a constitutional amendment that would have required a balanced budget. "Germany is balancing the budget without big talk over the next four years. We are widening the deficit with big talk," Mr. Dornbusch said.

And today's Los Angeles Times, "Dollar Again Plunges, Setting Off Stock Selloff."

In the middle it says,

"It's pandemonium, isn't it?" said Robert A. White, senior vice president at Standard

Chartered Bank in New York. "It's shocking to a lot of us old-timers in the market, to see the dollar ostensibly removed as the reserve currency of the world."

* * * * *

* * * highly visible news from Washington seems to have convinced speculators that the dollar is a less attractive haven than in the past. Traders have repeatedly mentioned the rescue plan for Mexico and the defeat of the balanced-budget amendment in Congress in recent days as reasons to abandon the dollar.

"There's a complete lack of faith in the Fed, the Administration and in Congress to get the budget in order, to get the trade balance in order," White contended.

The reality is, if we had our fiscal house in order the $20 billion loan guarantee for Mexico would just be a blip out there. It just would not have any kind of an impact. In a $6 trillion economy that is not a big thing.

But when you compound it with our failure to address our fiscal deficit, then the little things become big things.

I hope we learn the lesson. My hope is that 1 of the 34 who voted against the balanced budget amendment will recognize that a great mistake has been made, and that we are harming our country right now. We are now talking about calling on the Federal Reserve and many other nations to come to the rescue of the dollar, and that is going to cost us a great deal. There is a much less expensive way to do it—pass the balanced budget amendment.

Mr. President, if no one else seeks the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

Mr. HELMS. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 329

Mr. HELMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration. I ask that it be read in full.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 329.

At the appropriate place in the bill, insert the following new section:

SEC. . LIMITATION ON EMERGENCY AND EXTRAORDINARY EXPENSES

(a) IN GENERAL.—Funds appropriated or otherwise made available to the Department of Defense may not be obligated under section 127 of title 10, United States Code, for the provision of assistance, including the donation, sale, or financing for sale, of any time, to a foreign country that is ineligible under the Foreign Assistance Act of 1961 or the Arms Export Control Act to receive any category of assistance.

(b) EFFECTIVE DATE.—The limitations in subsection (a) shall apply to obligations made on or after the date of enactment of this Act.

Mr. HELMS. Mr. President, the amendment speaks for itself.

Mr. President, the pending amendment to funds appropriated for title 10, section 127 of the United States Code makes the point that if and when a country is not allowed to receive foreign aid from the United States, then, under the provision, that country would not be allowed to benefit from any of the funds provided by the authority of section 127.

Section 127 authorizes the Department of Defense to provide for "any emergency or extraordinary expense which cannot be anticipated or classified." It is a slush fund for unanticipated expenses; the Department does not have to ask for congressional approval to expend any of the money.

Let me add that I might not even have known about this little authority had the State Department not abused it so clearly in January of this year. At the Department of State's insistence, the Secretary of Defense authorized an almost $5 million expenditure from this account to purchase fuel oil for our enemy of 40 years, North Korea. Not once, since 1938 when the Department was first allowed to spend money for emergencies, has this fund ever been used for anything like this.

So why did they use it this time? To get around Congress. According to a senior U.S. defense official who spoke to the Washington Post on January 6 of this year, the United States had to use this authority because the Department of Defense "had the funds on hand and no U.S. allies agreed to contribute money for the oil * * *" It was not an emergency. It was simply one of the few accounts the State Department could raid to support its buy out of North Korea without having to come to Congress for approval.

Congress has voted time and again that North Korea should not be eligible to receive aid because it is a known sponsor of international terrorism, it is a Communist country, and it is a country known to trample the human rights of its own citizens. Just last year, Congress voted to prohibit all direct and indirect assistance for North Korea. And yet, the administration found some way to get around all of this. And they abused DOD authorities in the process. My amendment aims to ensure that will not happen in the future.

It is hard for me to imagine how there could be opposition to this one. If we are all in agreement that terrorists and drug traffickers should not get foreign aid from AID, then why should they be able to get foreign aid from the Department of Defense? My amendment is not retroactive and it would not prevent the Secretary of Defense from using emergency moneys the way they have been used since 1938. What it does is shore up one of the gaping loopholes in the way we provide foreign aid to other countries.

Mr. President, I hope to move my amendment expeditiously.

Mr. President, I think the amendment has been cleared on both sides.

Mr. INOUYE. Mr. President, speaking in behalf of the chairman of the Appropriations Subcommittee on Defense, I am happy to report that we have studied this amendment. We find it proper. We accept it.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 329) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PRESSLER. Mr. President, I ask unanimous consent that I be allowed to speak for 5 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

REALITY-BASED BROADCASTING

Mr. PRESSLER. Mr. President, I want to call the Senate's attention to an article in this morning's Washington Post that I shall place in the RECORD. It is an op-ed written by myself. It involves the subject of how public broadcasting could become self-sufficient.

I ask unanimous consent to have this article printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, March 8, 1995]

REALITY-BASED BROADCASTING

(By Larry Pressler)

"Public broadcasting is under attack!" "Congress wants to kill Big Bird!" These and other alarmist cries have been common in recent weeks. The problem is they are lies. That's right, lies. I tried to conceive of a more polite way to say it. I could not. With rare exceptions the press largely has ignored the specifics of the position taken by members of Congress seeking to reinvent public broadcasting.

I have struggled to make my position clear. Yet the misrepresentations continue. I am convinced many simply do not care to report the facts—facts they do not find as interesting as the scenarios they create. That is too bad. The average American taxpayer would find the facts extremely interesting.

As chairman of the Senate Committee on Commerce, Science, and Transportation. I am not seeking to destroy public televisions and radio. I am a strong supporter of public broadcasting, both in my home state of South Dakota and nationally. Pull the plug? Absolutely not. Rather, my plan would expand opportunities and save taxpayer dollars.

Why do I seek change? Because times have changed. Today's electronic media are vastly different from those of the 1960s, when the current system of federal subsidies for public broadcasting was established. The old theory of "market failure" for educational programming is completely untenable in today's environment. Educational and cultural programs can and do make profits when their quality is good and marketing astute. The only money losers in today's arrangement are the taxpayers.

A Feb. 24 Post editorial stated it is time for the public broadcasting industry to face reality. The issue no longer should be whether federal subsidies for public broadcasting will be cut. I could not agree more. Congress now is debating when and how much. The House Appropriations subcommittee on labor, health and human services already has cut the public broadcasting budget. The House leadership promises more to come. I fully expect the Senate to follow suit.

Instead of crying over public cash, it would be more prudent for public broadcasting executives to use their talents and resources developing the numerous potential sources of revenue available to replace the federal subsidy rather than continuing to fan the flames of fear and exaggeration. As captains of a major corporation, their responsibilities should be clear. The Corporation for Public Broadcasting (CPB), National Public Radio (NPR) and the Public Broadcasting System (PBS) need to learn to stand on their own feet.

To help in that effort, I recently provided the chairman of the board of CPB with a plan to end its dependency on federal welfare in three years. Ideas to end CPB's addiction to taxpayer dollars include:

PROFITS FROM SALES

CPB should renegotiate sales agreements and improve future agreements to get a larger share of the sales of toys, books, clothing and other products based on its programming. In 1990, Barney-related products retailed at $1 billion! Steps have been taken by the CPB board to improve its share of such sales. More should be done.

MAKE THE MOST OF NEW TECHNOLOGY

Use of new compressed digitization technology would permit existing noncommercial licensees to expand to four or five channels where once they had only one. Public broadcasting stations could rent, sell or make use of the additional channels for other telecommunications and information services.

END REDUNDANCY

At least one-quarter of public television stations overlap other public television stations' signal areas. Public radio also suffers from the inefficiencies of redundancy. Ending this overlap and selling the excess broadcast spectrum would provide substantial revenues to public broadcasting.

SWITCH CHANNELS

Moving public television stations from costly VHF channels to less costly UHF channels in certain markets would provide a substantial source of new revenue.

TEAM WITH OTHER INFORMATION SERVICES

CPB could increase commercial arrangements in the computer software markets and with on-line services.

These are only a few of the ways in which the CPB could reinvent itself into a self-sufficient corporation for the '90s and, indeed, for the next century. Ending federal dependency does not end public broadcasting. Today's subsidy amounts to only 14 percent of the industry's spending! Indeed, my current plan asks the Corporation for Public Broadcasting to end its dependency on federal welfare in three years—that's one year more than what current proposals would give welfare recipients to get off federal assistance.

It would be tragic if the public broadcasting industry ignores its responsibilities when the federal budget is in crisis. It also would be tragic if the industry spurns exciting opportunities in new markets and technologies. Perhaps most tragic of all, however, would be continued retrenchment from public broadcasting executives crying, "It can't be done." It can be done. It should be done.

Mr. PRESSLER. Mr. President, I have felt strongly that the Corporation for Public Broadcasting does not need Federal dollars. I serve as chairman of the committee that oversees the Corporation for Public Broadcasting. The public broadcasting sits on a treasure trove of opportunities that will enable it to become self-sufficient.

I have had some disagreements with the Washington Post over the reporting on this issue, and I thank them for running my article this morning. My article explains five ways public broadcasting on a national level can be funded without taxpayers' dollars.

Now, remember that most State public radio and TV organizations are funded by State legislatures and by contributors. My concerns are about inside-the-beltway operations here, where a system has sprung up that I feel is self-serving. A significant amount of Federal funds does not get out to the States. Federal money that is sent out ends up coming right back to Washington.

In my op-ed, I point out that there are a number of ways that national public broadcasting can make money. No. 1, they can get a higher percentage of ancillary sales of products based on programs that appear on taxpayer-funded public broadcasting. They can also market much of their product through digital compression, and making programming available for sale through other parts of the information superhighway.

They can also sell or rent some of their spectrum in signal areas where there is redundancy and overlap. Indeed, digital compression also frees up spectrum that could be rented or sold for other telecommunications and information services. They already have what they call enhancements—others might call them advertisements—and they have fundraisers.

Mr. President, I support public broadcasting. I have been a contributor to public broadcasting in the past. My colleague in the House, NEWT GINGRICH, also has assisted a public broadcasting station in his home State of Georgia during a recent fundraising drive. But what this Senator is concerned about—and I speak only for myself—is the inside-the-beltway system that has grown up.

That money is not getting out to the States' public broadcast radio and TV. It is sent out, but much of it gets sent right back to Washington to pay for PBS or NPR programming. I would rather they have more options. Some might want to buy programming from the Learning channel or Arts and Entertainment or the Disney channel or the History channel. There is a lot of this kind of programming being made for profit, and I commend them.

In conclusion, Mr. President, I hope that my colleagues will take note of this article. Because regardless of my position on this issue, even the Washington Post has also pointed out in another editorial that the days when public broadcasting is funded by the Federal Government are coming to an end. I have suggested five ways they can fund themselves without Federal assistance.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

Mr. HELMS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending question is amendment No. 326 offered by the Senator from North Carolina, to the first committee amendment.

Mr. HELMS. Is it correct that the yeas and nays have been ordered on that amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. Mr. President, I am advised that a Senator on the other side who does not wish this amendment to pass, despite the clamor for it by Cuban people everywhere—and we have millions of Cubans in this country—I understand that the distinguished Senator is going to raise a point of order claiming that this amendment is legislation on an appropriations bill.

Well, la-di-da. We legislate regularly on every appropriations bill. The Appropriations Committee itself reports out legislation on just about every appropriations bill. But let it be known, if such a point of order is raised, it is a ruse to do nothing about Fidel Castro in Cuba. Anybody voting to support that point of order will be voting to do nothing about Fidel Castro.

True enough, sooner or later, we will get to it in the normal process of the Foreign Relations Committee, of which I am the Chairman. But I do not want to delay one more day for the removal of Fidel Castro from Cuba. He is a tyrant, a Communist tyrant who has been so cruel in his treatment of his own people.

So I wish to forewarn Senators that any point of order based on this amendment being legislation on an appropriations bill is nothing but a ruse. You cannot get to it any other way, so you are going to try to get it defeated on a point of order. I hope that the Senate will not buy that turkey because it is not justified. I reiterate, again and again as Franklin Roosevelt used to say, every appropriations bill that comes through this Chamber has legislation in it, often put there by the Appropriations Committee itself.

So do not be deceived. A point of order is just a ruse to defeat this amendment when no other avenue of defeat is available to any Senator raising such a point of order.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. GORTON. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 2:52 p.m., recessed subject to the call of the Chair.

The Senate reassembled at 4:28 p.m., when called to order by the Presiding Officer (Mr. KEMPTHORNE).

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

Mr. KEMPTHORNE. The pending question before us is amendment No. 326 of the Senator from North Carolina in the second degree to the first committee amendment.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I ask unanimous consent that I may be permitted to proceed as if in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEXICAN PESO CRISIS AND BAILOUT

Mr. D'AMATO. Mr. President, it does not take a great economic wizard or professor to know that some deeply troubling things are taking place with the American economy. So I am going to address myself to a couple of points, because when we see a 10-percent drop in the value of the dollar against some foreign currencies, the dollar going from close to 100 yen per dollar to below 90, and now so-called stabilizing at or about 90, this should be very, very troubling to people.

Mr. President, the time has come for Congress to stand up and fight for the American taxpayers—the men and women who must work harder and harder just to make ends meet.

Last month, President Clinton ignored the will of the American people to bail out a mismanaged Mexican Government and global currency speculators. That was wrong.

Now that the dollar is in a free fall, Congress must closely examine the administration's raid on our Exchange Stabilization Fund to bail out Mexico. That fund, known as ESF, is supposed to be used to strengthen the dollar. It was never intended to prop up either the Mexican peso or foreign currency.

The American taxpayers and the American dollar have taken a double hit. First, the failure of the balanced budget amendment has sent a clear signal to the economic markets that we do not have the courage to cut the deficit and strengthen our economy.

And then, add to that, the President of the United States out campaigning against the balanced budget amendment, telling the world's economic markets that we are not serious about reducing our deficit. If we do not get the Federal deficits under control, we are going to be Mexico II.

It is ironic, Mr. President, that here we are fighting to stabilize Mexico's peso and our dollar is just in free fall. Oh, we have propped it up for a while. But what the marketplace is telling us is, if you continue this, if you do not have the courage to get your house in order, you will be Mexico II.

It is ironic that we spend as much time as we have with Mexico, the President lobbying Members of this Congress to support loan guarantees, first $40 billion, now we have $20 billion, and campaigning against a balanced budget amendment that would do something that would have an impact to strengthen the American dollar, to cut the deficits, to bring interest rates down. And now we are faced with just the opposite.

The second tough hit we took was the administration's blatant disregard of the will of the governed when they opened up our Treasury to $20 billion of our taxpayers' money.

Now, who does that money go to? Where is it being spent? There is not one Member of this Congress who can tell us how that money is being spent. There is not one Member of this Congress who can say that the Mexican Government is not still continuing to print pesos.

Why are we doing this? Who is getting paid off? Who is getting the money down there?

We just read where we have the man who was murdered, the No. 2 man in the Mexican Government, his brother-in-law ran away and they found he has $6.5 million in the bank, American dollars.

Is that what we are doing? We are not talking about a democracy. That is a corrupt, dictatorial government. Those elections are a farce. It is about time we ponied up and told the people the truth.

Never before has a President sent $20 billion from our Exchange Stabilization Fund to bail out a foreign country. This is not the President's personal piggy bank.

Mr. President, Congress must not stand on the sidelines while the administration allows the dollar to fall in a failed attempt to save the peso and a failed administration policy toward Mexico. Congress has an obligation to insist that the administration account for its actions.

The Banking Committee will hold hearings tomorrow and Friday on Mexico and on the administration's use of the funds to bail out Mexico and the impact of Mexico on the dollar. We have an obligation to determine what the administration knew about Mexico and when did the administration know it. We have an obligation to investigate whether the administration's inaction or silence caused the crisis or exacerbated it. We have an obligation to find out if this administration advised Mexico to devalue the peso.

The vast majority of Mexicans, Mr. President, deeply resent the Clinton administration's meddling in their affairs. There is a grave risk that the Mexican people will blame the United States for Mexico's economic meltdown.

Could you imagine if your interest rates on your home went from 20 percent on the mortgage to 85 percent and you were told that is because the

Americans have insisted on these new austere measures? Is that designed to gain us respect and confidence from the Mexican people?

The Mexican economic policy should be set in Mexico and not in Washington, DC.

The President has set a terrible precedent. What happens next time the peso collapses? What happens when some other country hits an economic currency collapse? Does the American taxpayer come forward and bail them out? What happens if our neighbors to the north have serious economic problems? We gave $20 billion or made it available to Mexico. Certainly Canada is every bit as important, and historically has been very close to this country.

Can we afford to bail out the global currency speculators every time a foreign currency collapses? Who will bail out the United States if we collapse under a mountain of debt? The Japanese? The Germans? I doubt it.

Make no mistake about it. The time for Congress to act has come. I understand that, as of March 3, the Mexican Government has already drawn down $3 billion of the first $20 billion and it will draw down another $7 billion by the end of June.

Before Mexico draws down further funds, and particularly in view of the deteriorating situation in Mexico, I think Congress must reassert its right and its prerogatives with regard to this matter. Congress must consider whether or not we should amend the ESF statute.

The President was wrong to go around Congress to bail out Mexico, and although I recognize that the Secretary of the Treasury must have some discretion in administering these funds, Congress must have the final say on the spending of $20 billion of taxpayers' money on what amounts to foreign aid.

The Constitution says we have to appropriate. This was just a mechanism and a vehicle to get around this, a loophole. Never intended for these purposes. Now that the dollar is under assault, the American people have a right to know the full facts. More of our money is being shipped to Mexico, and before it is being shipped, what is going to be taking place with that money? Mr. President, we must fight for the American taxpayers, not for mismanaged foreign governments and global currency speculators.

Mr. President, to conclude, let me say again that what we have seen is a misuse of this fund. Mr. President, that fund was never set up to be a guarantor or guarantee for foreign currencies. There was no prohibition, but it certainly was not set up for that purpose.

It seems to me that Congress has an absolute obligation, at the very least, to see how those moneys are being utilized and that the administration cannot hide behind a shield of some kind of executive immunity; that certainly at the very least we should know what conditions are being imposed as it relates to the money being drawn down, whether or not Mexico is complying, whether or not it was practical for those conditions that are being set out to be implemented.

Is it practical to raise interest rates to a height where we may have a revolution in the country? What about the stability of the Mexican Government? All of these are questions that are absolutely mandatory. We have a responsibility. The Government may have used this loophole—the President and the administration—but we have an absolute obligation to see how these funds are spent, at the very least, if not amend the statute, to see that this kind of invasion of the Treasury without congressional authority is never undertaken again. We intend to pursue that.

Mr. President, I think this should be very disturbing to all Members of Congress—Democrats and Republicans. There is no accountability. We are fighting to cut the budget. Yet here is $20 billion, and I daresay, $3 billion at least has been spent. We have not been notified how it has been utilized, nor whether this is just more money going to more corrupt officials, to more speculators.

Whether or not the American people have had a say in this, seems to me to be of some consequence and some importance. We, as their representatives, have had little if anything to say. We have little in the way of ability to give an accounting of how these taxpayers' dollars are being utilized.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, Senator DOLE and myself, and I estimate about 30 to 35 Senators who met at lunch today, had a purpose yesterday in my offering the pending amendment. We wanted to send a clear and unmistakable message to the administration that any proposal to make life easier for Fidel Castro will be vigorously opposed on a bipartisan basis by a majority of the U.S. Senators. The presence of Senator DODD on the floor illustrates that.

I believe that the point has been made. I believe it has been heard on Pennsylvania Avenue. If it has not, perhaps they should order some hearing aids.

Let me make a confession or two. First of all, I do not like to break the Senate rules, or bend them. When I offered the amendment yesterday, I knew that it was legislation on an appropriations bill.

The distinguished Senator from Hawaii and I have a little joke about sanctimony, about when an amendment is legislation on an appropriations bill. This is done all the time. But that does not make it right, really.

So my intent yesterday was just to make a point—and I had discussed with Senator DOLE my intention to make a few remarks, which I did, and then to withdraw the amendment. But there was so much excitement about the amendment and so much support for it that I had to back up and see what I had to do.

The pending amendment, the Helms amendment, as the television is referring to it, is in fact the exact text of S. 381, "The Cuban Liberty and Democratic Solidarity Act," which I introduced on February 9, with 21 cosponsors. There is a companion bill in the House with a number of cosponsors—I do not know the exact number.

Let me say this: As chairman of the Senate Foreign Relations Committee, and the distinguished Senator from Connecticut is an able member of that committee, I guarantee—and I think Senator DODD will help me—that S. 381 will be the subject of a hearing, as early as about the 1st of May, before we get to it because of various schedules in the Senate.

I say again that the pending amendment is legislation on an appropriations bill. While every appropriations bill does have legislation in it, at least everyone which I have seen, I do not enjoy testing the working rules of the Senate.

Mr. President, I ask unanimous consent to vitiate the yeas and nays on the pending amendment.

The PRESIDING OFFICER (Mr. GORTON). Is there objection?

Mr. DODD. Mr. President, reserving the right to object, and I will not object, first, I thank my colleague from North Carolina for his courtesy.

Also, something that should come as no great surprise to people who have been around here any length of time, the Senator from North Carolina, I suppose next to our distinguished colleague from West Virginia—I think he would agree with that—is about as good a master of rules as there is in the U.S. Senate, but also one who respects the rules. He knows how to use them effectively, but also respects them. I am not surprised in any way that he would take the position he has on the procedural issue here at all. I commend him for that.

This is a complicated piece of legislation. There are a lot of sections to it. I am delighted that there will be a hearing. I look forward to it and will participate in it.

Let me also say, Mr. President, if I can, that I picked up yesterday's morning paper and read the headline of the paper and had no prior awareness or knowledge that something was changing with regard to our policy in Cuba. Whether or not I agreed with the sanctions being in place, the fact they were there, the fact that something may be done, came as somewhat of a surprise.

I have suggested to my colleague, Mr. President, the Senator from North Carolina, that we might request in the next few days a meeting with the appropriate personnel from the State Department or the White House to have a private briefing with Members as to exactly what is being considered, what actions may be taken.

I think that may be an appropriate way to find out whether this is exactly just a news story or there is something more to it. We can find that out. I certainly support the Senator in that request that we get a briefing.

Again, I look forward to the hearing. I appreciate immensely the decision of the Senator from North Carolina, the chairman of the committee, not to proceed with this particular amendment at this time.

The PRESIDING OFFICER. The Senator from North Carolina has asked unanimous consent to withdraw the yeas and nays.

Without objection, it is so ordered.

Mr. HELMS. Mr. President, I now withdraw the amendment.

The PRESIDING OFFICER. The Senator has the right.

The amendment (No. 326), as modified, was withdrawn.

Mr. HELMS. Mr. President, I thank the Chair. I thank my friend from Connecticut. It is always a pleasure to work with him.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that I may speak for up to 10 minutes, as if in morning business.

The PRESIDING OFFICER. The first committee amendment is pending.

Mr. MURKOWSKI. Mr. President, I ask that the pending amendment be set aside until I complete my speech.

The PRESIDING OFFICER. Is there objection?

Mr. BUMPERS. Mr. President, reserving the right to object, and I shall not object, I would like the unanimous-consent order to also agree that upon the completion of the remarks of the Senator from Alaska, I be recognized for the purpose of offering an amendment.

The PRESIDING OFFICER. The Senator from Alaska need not ask that the committee amendment be set aside. He has asked unanimous consent to speak as if in morning business.

Does the Senator from Alaska modify his request, to be followed by the Senator from Arkansas?

Mr. MURKOWSKI. The Senator from Alaska is pleased to modify.

The PRESIDING OFFICER. Is there objection to the request as modified?

Without objection, it is so ordered.

The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, yesterday, Senator CRAIG and I, and a number of our colleagues introduced the 1995 mining law reform bill.

Mr. President, during the last several years, members and staff of the Committee on Energy and Natural Resources have spent thousands of hours debating, staffing, and pontificating reform of the 1872 mining law.

During the 101st, 102d, and 103d Congresses, legislation to reform the 1872 mining law has been introduced, debated, and actively pursued. Last year, Congress came within striking distance of enacting comprehensive legislation. Unfortunately, negotiations on a final bill broke down during conference consideration and Senate and House leadership made the decision to pull the plug on reform in the 103d.

Mr. President, I rise today to join with Senator CRAIG and others to begin the debate on mining law reform in the 104th Congress. I've thought long and hard about reforming the 1872 mining law. What effect will reform have on the mining industry? Will the legislation cost jobs? What impact will reform have on exploration and development in the United States? Will the environmental community support mining law reform? The bottom line is this: The voters sent a clear message to Congress in the November elections. No more delay, no more gridlock; get on with the Nation's business.

The debate over mining law reform has been around longer than many of us in the Senate. Everyone agrees there should be reform, the question is what kind of reform?

We need to protect the environment, but we also have a responsibility to protect and create jobs in the United States. We should encourage exploration and development in the United States, not only for the hardrock mining industry, but for all of our natural resource based industries. We should not drive these industries off shore.

During the last 12 years we've seen the oil and gas industry lose approximately 500,000 jobs in the United States. I do not want to see this happen to the hardrock mining industry.

The legislation we are introducing today is real reform. It is comprehensive reform that addresses every substantive issue raised during the past several years of debate.

PATENTS

Critics argue that patenting must be eliminated because individuals can patent/purchase land for $2.50 per acre and that some of these patented lands can be used for nonmining uses—ski cabins or fishing lodges.

The Craig-Murkowski bill specifically requires miners to pay fair market value for the surface of mineral-bearing lands and includes a provision requiring all patented land to be used for good faith mining purposes.

If the Secretary of the Interior discovers patented land being used for any purpose other than conducting good faith mineral activities, the Secretary is required to serve notice to the owner of the patent to stop nonmining activities. If the owner does not comply with the Secretary's notice, the State in which the patented land is located will have the opportunity to take title to the patented estate. If the State does not want the land, title and interest in the estate will revert to the Federal Government.

ROYALTY

Critics argue that individuals are allowed to extract minerals from the Federal estate without paying a royalty to the Federal Government.

The Craig-Murkowski bill requires miners to pay a 3-percent net proceeds royalty. The royalty is modeled on the Nevada net proceeds on mines tax, a well-established program which—like the mining taxes of many of the Western States—collects substantial revenues at a very modest administrative cost.

In 1993 Nevada collected $34 million in net proceeds taxes at an administrative cost of less than two-tenths of 1 percent.

The bill shares royalty revenues with the States. One-third of the royalties will be distributed to the States from which production comes, one-third to individual State abandoned mine funds, and one-third to the U.S. Treasury.

Why a net royalty for hardrock mining and a gross royalty for oil and gas?

It's simple, oil and gas come out of the ground in a condition almost ready for market.

Impurities are then extracted from the oil and gas.

Gold, silver, copper, and other hardrock minerals come out of the ground as raw ore in the form of rock-like material.

Before a gold bar can be produced, several steps must be taken that add value to the product.

Crushing; separating rock from the mineral; beneficiating to remove foreign materials; producing a concentrate; and smelting.

In short, an operator must take several steps to get hardrock minerals ready for the market. The theory that the oil and gas industry is similar to the hardrock mining industry is just not true.

RECLAMATION

Critics argue that the hardrock mining industry needs Federal reclamation standards.

In 1979, in a study authorized by the Surface Mine Control and Reclamation Act [SMCRA]—the COSMAR study—the National Academy of Sciences concluded that uniform Federal reclamation standards—like those in SMCRA—were not appropriate for hardrock mining.

Furthermore, in January 1995, the Western Governors' Association [WGA] released a position paper on mining law reform in the 104th Congress. The WGA specifically requested that "Reclamation on federal and non-federal lands should be conducted at the state level, through existing state abandoned mine programs where possible, rather than creating new duplicative federal reclamation programs."

In other words, please don't create uniform Federal reclamation standards.

In 1995, every State with substantial areas of Federal lands open to mineral location under the general mining laws has adopted substantive reclamation standards for hardrock mining. State standards are tailored to the environment of the States where the mining will occur. Disturbances created by mining on Federal lands must be reclaimed, but the standards found in State reclamation law should provide the substantive requirements of every reclamation program. The Craig-Murkowski bill recognizes that State reclamation standards, along with applicable Federal and State environmental requirements, are adequate to prevent unnecessary and undue degradation.

RECLAMATION

During last year's House-Senate conference, over my objection, language was included in the chairman's mark which gave the Secretary of the Interior authority to regulate control over western water resources.

The Craig-Murkowski bill does not. I repeat, this bill does not include any provisions which threaten to upset the historical vesting control over western water resources in the Western States.

The Western Governors' Association has made it clear that they don't want the Federal Government involved in the regulation of western water rights.

SUITABILITY

Critics argue that the Secretary of the Interior should be allowed to make a suitability determination related to each mining proposal on Federal lands.

The Craig-Murkowski bill does not include a suitability provision because the provision is unnecessary and redundant.

Federal lands are already required to go through a suitability test. Lands open to mineral entry have gone or will go through the Department of the Interior resource management process. If people are not satisfied with the Bureau of Land Management's Land Management Program, Congress should change BLM, not insert suitability language in a mining law bill.

In addition, all mining plans of operation on Federal land undergo analysis under the National Environmental Policy Act [NEPA] either in the form of an environmental assessment or a full environmental impact statement.

Finally, any lands with special characteristics can be withdrawn from entry under the mining law pursuant to section 204 of the Federal Land Policy and Management Act of 1976 [FLPMA].

Mr. President, again, as I stated earlier, this legislation is comprehensive reform.

I say to the environmental community and the mining industry, if you truly want reform, this is the year.

If we fail to enact reform this year it will not be through lack of effort. I will pursue comprehensive reform starting with a hearing this month to consider the legislation we introduce today.

I urge my colleagues to support the bill.

REBUTTAL OF BABBITT CRITICISM OF MINING LAW BILL

Mr. MURKOWSKI. Finally, Mr. President, I would like to enter into the RECORD a response to the Secretary of the Interior with regard to his comments regarding the Craig-Murkowski bill.

He indicates a criticism, stating:

> This law would do nothing to resolve the most glaring shortcomings of existing 1872 mining law.

As a rebuttal, I say the Secretary's position is either based on lack of knowledge or it is simply a falsehood, because the Secretary ignores the fact that the bill requires paying a fair market value for the surface estate of patented lands and using patented lands for good faith mining purposes. If a miner uses the patented land for nonmining purposes the land transfers to the State in which the patented land is located or reverts to the Federal Government. In addition, the bill imposes a 3-percent net proceeds royalty on minerals produced and prevents unnecessary or undue degradation of surface lands. This is not a do-nothing approach, Mr. President.

Further criticism, he states:

> It continues the giveaway of valuable public-owned hardrock minerals like gold, silver and platinum for peanuts.

Again, the Secretary is wrong, Mr. President. The bill requires a payment of fair market value determined by the Bureau of Land Management appraisal methods for the surface of estate patented land. The bill requires a payment of 3-percent net proceeds royalty on the production of minerals from public lands. The bill also requires a one-time payment fee of $25 per claim and a $100 annual maintenance fee per claim. The amount of money generated by the fair market value net royalty and location and maintenance fees is not peanuts.

Mr. President, another criticism from the Secretary:

> It is actually a step backward from existing law on a number of points such as the level of environmental protection that is now possible, and the amount of holding fee claimants would pay per acre.

That is absolutely incorrect, Mr. President. The Craig-Murkowski bill does not diminish environmental protection in any respect whatever. In fact, the legislation assures compliance with all major Federal environmental laws—including those governing air, water, solid and hazardous waste, endangered species, historic preservation, safety and health, toxic substances and others—and applicable State reclamation laws.

The environmental standard set by the Federal Land Policy and Management Act of 1976—prevention of unnecessary or undue degradation of public lands—is the standard adopted to the Craig-Murkowski bill, and the one against which mining performance will be measured under our bill.

The bill also contains $100 per claim maintenance fee for the first 5 years following enactment, but thereafter requires the payment of $100 fee for assessment work.

The last criticism, Mr. President:

> It has a royalty that is likely to be a net loser to the taxpayers. Given the low royalty rate and the fact it is on net rather than gross proceeds, we believe it will cost more to administer than the Federal Treasury will receive.

Another falsehood. It is totally absurd. A 3-percent net royalty, which is patterned after Nevada net proceeds on mine tax, is likely to generate more revenue to the Federal Treasury in the long run than a gross royalty of the same amount. Why? Because a gross royalty forces companies to mine the high-grade, low-production cost mineral ores first to recover the costs of mining. Once the reserves are mined the companies would be forced to prematurely abandon low-grade, high-cost reserves. Is this what we want?

Second, the criticism of cost to administer the 3-percent net royalty is more of an indictment of Secretary Babbitt's own department than it is of the legislation. In 1993, the State of Nevada generated approximately $34 million in revenues from the net proceeds tax, at administrative cost of less than two-tenths of 1 percent. A study by Secretary Babbitt's own department indicates an 8-percent gross royalty would cost $11 million to administer in the first year alone, and result in a loss of 1,100 jobs in 3 years.

The problem is not with the Craig-Murkowski bill. The problem is with Secretary Babbitt's bloated bean-counting bureaucracy at the Department of the Interior.

Finally in conclusion, there is not one criticism of our bill levied by the Secretary that has any merit. The facts contradict all the charges made by Secretary Babbitt and his supporters in the House, and for me to even have to respond to these half truths, absurdities and distortions in order to ensure that the mining law reform process begins properly is simply an outrage. I resent having to take the time of my colleagues to set the record straight, but it is necessary to set the record straight.

Finally, Mr. President, we have a criticism from our good friend, GEORGE MILLER, on the House side. His criticism is that the mining industry will become rich, the taxpayers will receive virtually nothing for their riches, and the environment will be desecrated. This is the type of the-sky-is-falling exaggeration we have heard from the House under the leadership of GEORGE MILLER for so long and it is absolutely an exaggeration.

What MILLER forgets is this: The mining companies will pay fair market value, royalties, maintenance fees and location fees and they also pay corporate income tax, and their employees will pay State and Federal income taxes. Materials, supplies, and equipment that their mines will use will cost millions of dollars and have to be made payable as a consequence of the prosperity of the people here in the United States. All this means is more economic activity.

Second, the entire Nation will benefit from mineral production and from the stimulation mining gives the economy, and finally the environment will remain protected by every single conceivable environmental law that Mr. MILLER and his colleagues could think to impose on an industry to make public land use more difficult and put the U.S. mining industry more at disadvantage in competing in global markets.

As a consequence, Mr. President, I think it is fair to let my colleagues reflect on not only is this administration critical of the mining industry as it exists in this Nation today, they are critical of the timber industry as it exists today, critical of the oil and gas industry, the grazing industry. It is hard to find one single natural resource industry that this administration supports.

As a consequence, we are exporting our dollars and losing our jobs. As chairman of the Energy Committee, I intend to hold hearings on these matters to try and reduce our dependence on imports by stimulating our own resource industry. I thank the President for the time allocated to me.

THE MINING LAW REFORM ACT OF 1995

Mr. DOMENICI. Mr. President, I rise today to join Senators CRAIG and MURKOWSKI by cosponsoring reasonable and responsible legislation to reform the mining law of 1872. Our goal in revising this act is twofold, to maintain mining and mining jobs, and to provide for a healthy environment.

First, I would like to deal with the environmental components of this legislation. This legislation affirms that mining activities are subject to at least 15 Federal laws designed to protect the environment, as well as any State regulations that have been adopted since the original mining law was passed in 1872. A partial list of Federal laws includes: the Clean Water Act, the Clean Air Act, the Endangered Species Act, the Federal Mine Safety and Health Act of 1977, the Solid Waste Disposal Act, the Federal Land Policy and Management Act, the National Historic Preservation Act, the Forest and Rangeland Renewable Resources Planning Act of 1974, and the Toxic Substances Control Act of 1990. Although this list is not complete, I believe that it illustrates that modern miners operate far differently than the old image of the prospectors from the unregulated days of the industry. This legislation will ensure that this is the case.

The reclamation of mining sites is an important part of this legislative proposal, as well as the provision for requiring financial assurance that the work will be accomplished. The filing and approval of the plan of operation with the land management agency has been an important component in mining of public lands. This legislation promotes its importance and requires that environmentally sensitive reclamation is included in the plan.

It is important that mining be planned through the entire operation until reclamation is completed. With the highly speculative nature of the industry, even well intentioned operations may falter before completion. With this bill, financial assurance will be provided in advance of operations to assure the mined lands will be reclaimed.

Providing a reclamation program for abandoned mine sites is another feature of this legislation. The program will greatly improve those sites that have been long overdue for restoration. The costs of environmental repair will be derived from funds generated through royalty payments by the mining industry.

While several fees are set in the body of this bill, let me focus on the major new economic item, the royalty. I am concerned about the imposition of a royalty on hardrock mining, knowing that it will be an added cost in jobs to an industry that often faces difficult economic times.

Consequently, I support the imposition of a royalty allowing for some specific costs of production to be deducted prior to the royalty being assessed. This has been demonstrated in several studies to be the most reasonable method of assuring that the taxpayers will receive a return from the production of minerals on Federal lands. In addition, a similar provision adopted by the State of Nevada has proved to be relatively simple to administer, and it provides a substantial return to the taxpayers of that State, while allowing for the continuation of mining jobs that are vitally important to the economy of that State.

One-third of the revenues from the royalties will be distributed to the States from which the mining was conducted to assist these States in offsetting the costs of infrastructure that support the mining industry. These funds will also be available to the States to offset the costs of enforcement of both State and Federal regulations.

The second third of royalty revenues will be held on deposit and dedicated to programs for the reclamation and restoration of abandoned mine, mill, and processing areas. Not all States have reclamation funds established to assure financing for such activities. It is unquestioned that we are faced with abandoned sites throughout the Nation that need attention. With this legislation, we will provide a source of funding for the reclamation programs on lands where the mining practices of the distant past have resulted in well publicized environmental problems.

The final third of revenues collected from the royalty established in this legislation will go directly into the Federal Treasury for deficit reduction.

The Mining Law Reform Act of 1995 is a sensible and significant reform of the general mining laws. It provides the needed assurances to allow mining to continue to provide needed jobs and resources in this country, as well as requirements that the environment will be protected. The provisions for access and patenting are included in this legislation because of the importance for these to make mining viable and workable. Added to the law are adequate bonding to assure that the reclamation envisioned will actually occur on every operation, a royalty that provides support for abandoned mine reclamation and a return to the Federal Treasury, and assurances that lands patented for mineral activities will be used for that purpose, and that purpose only.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, is there a pending amendment at the desk?

The PRESIDING OFFICER. The first committee amendment is the pending amendment.

Mr. BUMPERS. Mr. President, I ask unanimous consent the pending amendment may be laid aside so I may offer an amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 330

(Purpose: To restrict the obligation or expenditure of funds on the NASA/Russian Cooperative MIR program)

Mr. BUMPERS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 330.

Mr. BUMPERS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following:

SEC. . Notwithstanding any other provision of law, effective 30 days after the date of enactment of this Act, none of the funds made available for the National Aeronautics and Space Administration by any previously enacted Act shall be obligated or expended for the NASA/Russian Cooperative MIR program, unless the President certifies to Congress that Russia has agreed not to sell nuclear reactor components to Iran.

Mr. BUMPERS. Mr. President, I will be very brief, and I think that the floor managers might be in a position to accept this. It goes right to the heart of something that is near and dear to me, and I think all Senators and, indeed, the country share my sentiments. This simply says that the funds which have been allocated to NASA in 1995, $251.9 million, for cooperation with the United States-Russian MIR space station will be suspended effective 30 days after the adoption of this amendment until the President certifies to us that the Russians will not sell nuclear reactors to Iran.

Now, Mr. President, as you know, opposing cooperation with Russia is not normally my cup of tea. I have been a strong supporter of the Nunn-Lugar initiative to help the Russians dismantle their bombers and their nuclear weapons. That is in our interest. That is the reason we do it. But for the Russians to cavalierly sell nuclear reactors to the number one terrorist regime in the world is not in their interest; it certainly is not in our interest—indeed, Mr. President, it is not in the world's interest—until there are significant changes in the governing body of Iran.

It is a militant regime. To the State Department and everybody else who assesses the nations most culpable in shielding terrorism, Iran is always at the top of the list.

Now, Mr. President, this does not need to be debated. What I have just said is absolute, and I believe that everybody in this country agrees with the principle. I wish to help Russia. I want them to become a real democracy. I want them to become viable economically. But I do not want to be sending all this money to Russia if they are going to demonstrate a callous, total indifference to the safety of this world from nuclear weapons by selling nuclear technology to renegade governments such as Iran.

Until this very day, Mr. President, until this very day, whenever there is a demonstration in Tehran, Uncle Sam and the American flag are invariably the subject of all the venom that the speakers and the marchers can muster.

I am not trying to destroy the cooperation between the United States and Russia in space. But we are funding almost one-third of the entire Russian space program, and it is on the ropes. Thus the Russians need space cooperation with us more than we need space cooperation with them. I do not want to kill the Russian space program. But I do not want them selling reactors to Iran either.

Mr. President, I yield the floor.

Mr. President, I ask unanimous consent that Senator LAUTENBERG be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Mr. President, today the Senate is considering H.R. 889, the Defense emergency supplemental appropriations. This bill provides $1.96 billion to the Department of Defense for readiness by rescinding funds from other DOD programs. I will support H.R. 889 because it replenishes defense funds which were depleted to support unbudgeted operations in Haiti, Somalia, Rwanda, Bosnia, Korea, and refugee support in the Caribbean. Without these reimbursements, defense readiness will certainly suffer.

The Chief of Staff of the Army, Gen. Gordon Sullivan, testified before the House National Security Committee that "readiness will drop off the table" if the supplemental appropriations is not passed. He further stated that all Army training will cease May 31 if the funds are not provided. The Navy reports that 4 carrier airwings would be forced to stand down and 500 aircraft would be grounded. The Air Force has indicated that its flight time would be cut in half if the supplemental fails.

The readiness crisis faced by the Armed Forces is not, unfortunately, a recent phenomenon. Defense Secretary William Perry admitted last year that in 1994, 3 of the Army's 12 divisions were far below peak readiness standards, and that 2 of the Army's main quick-reaction units would have been unable to fulfill some of their missions if they were ordered into combat. It was further revealed that, due to funding shortfalls, some platoon leaders had never taken their soldiers into the field for training exercises, tank crews had not completed their drill evaluations, and platoons had not been evaluated with live fire exercise.

The Armed Forces have found themselves in a readiness crisis for a variety of reasons, such as the new, unplanned deployments mentioned above. But, increased spending on nondefense items in the defense bill is another reason that funds are being syphoned off readiness accounts. For example, nondefense expenditures imposed by Congress in last year's bill include funding for community roads, ponds, sewers, and a plethora of other development projects. The Department of Defense, for instance, is paying for security at the World Cup Games and the Olympics. DOD is even paying for the roundup of wild horses in New Mexico. Nondefense programs are growing, gobbling up larger portions of the defense budget. The Congressional Research Service estimates that nondefense spending by DOD has nearly quadrupled from $3.5 billion in fiscal year 1990 to $13 billion in fiscal year 1994.

This is not to say that all R&D programs are unjustifiable. Some technology reinvestment programs [TRP], for example, are properly funded through the Department of Defense, because the program demonstrates a direct linkage back to defense. Other programs, such as some of the projects identified above, have no linkage to defense. This Nation simply cannot afford to allow the defense budget to become the cash cow for nondefense-related programs. In my view, the general rescission identified by the Appropriations Committee is justifiable provided the funds come from the nondefense programs.

I do disagree with the committee on one notable program recommended for rescission—the $77 million for the Apache AH64 attack helicopter. Last year, the Congress provided $77.6 million to procure 6 AH-64A aircraft because, as I recall, we were concerned that a break in production between the AH-64A and AH-64D could cause the program to escalate the costs of the low-rate procurement. At the same time, the Army requested $117.7 for advance procurement of Longbow radar, a key modernization feature, but only received $80 million. Faced with a difficult choice, the Army elected to submit a reprogramming request in order to proceed with full funding of the Longbow radar at the expense of the procurement of the six helicopters. The committee rejected the reprogramming request and rescinded the $77 million.

I believe this action is a mistake since the Longbow program is clearly an essential Army helicopter modernization effort and certainly a justifiable defense program. For this reason, I intend to work with the chairmen of the House and Senate Appropriations Committees to restore the funds for the Apache-Longbow procurement.

Mr. INOUYE. Mr. President, may I suggest the absence of a quorum?

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, if during this period the managers do not mind, I would ask unanimous consent to be able to speak for 10 minutes as if in morning business and to set aside the pending amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the Senator from North Dakota is recognized for not to exceed 10 minutes.

THE U.S. WORLD TRADE DEFICIT

Mr. DORGAN. Mr. President, today there has been discussion in Congress about the problems of the dollar on the international currency exchanges and the collapse of the dollar in the last week or two and especially the collapse of the dollar in recent months.

I noted that one of the leaders of the other body said, well, that dollar problem relates all to the constitutional amendment to balance the budget. Mr. Greenspan, the head of the Federal Reserve Board, testified before a congressional committee today, and he said that there were several reasons for the collapse of the dollar.

I would like to add my opinion today to what is happening. I think people need to know that the collapse of the dollar on the currency exchanges is not something that should be unexpected, given the current circumstances in this country.

We received about 3 or 4 weeks ago the trade data for December, which means that we have trade information for all of last year to try to evaluate how did America do in international trade.

The chart that I brought to the floor shows how our country has done in international trade in the past year. This chart shows a history full of red ink. It shows that in the last calendar year we suffered the largest merchandise trade deficit in the history of this country—in fact, the largest trade deficit in the history of humankind. This trade policy, yes, belongs to this administration, but it belongs also to the previous administrations because it is a continuation of the same trade policy we have been conducting and following in this country for nearly 40 years. The deficits are staggering in international trade.

Most importantly, you will see what is happening to our manufacturing base in this country. This is a chart that shows foreign imports taking over now one-half of the manufacturing gross domestic product in our country. In 1970, manufacturing imports as a percent of U.S. manufacturing GDP was 10 percent. Last year, it was nearly 50 percent. You can see what is happening to manufacturing in this country by virtue of what we are importing in manufactured goods.

"U.S. faces historic losses in manufacturing trade." In other words, the trade on goods that are manufactured, that is a trade process in which we lose. The fact is in international trade, there are winners and there are losers. The winners have the jobs and the opportunities, and the losers suffer economic decline. This trade picture in this country shows a picture, a bleak picture, of decline, and it is something that we must change.

The last chart is an illuminating one. It shows what has happened in recent years to the major economic powers, the net exports of the major economic powers in the world. And you will see what has happened to Japan, to Germany, and then take a look at what has happened to the United States in terms of net exports. It has collapsed. It weakens and injures this country.

This trade policy does not work. This trade policy flows from the post-Second World War era, when our country decided that our trade policy was also going to be our foreign policy and we were going to have trade policies that helped a lot of other countries get back on their feet. These days the continuation of that policy weakens our country. Our country suffers very stiff, steep deficits in international trade balances, and the fact is it means lost jobs and lost opportunity here in the United States.

We hear this chant about free trade. Well, the suggestion is that we should compete anywhere around the world and win. That is free trade. If it is free, if it is open competition, we should compete and we should win.

The difficulty, of course, is in free trade this chart shows the average manufacturing wages in various countries. The United States is here, $16.79 an hour. Germany is up here at $25, and you can see who we are going to compete with. We compete with countries around the world where they pay 12 cents an hour to 12-year-olds who work 12 hours a day to manufacture products and say that is free trade; there are no tariffs on that commodity trade, so you go ahead and compete, Mr. and Mrs. America.

The problem is American workers cannot and should not have to expect to compete against 12-cents-an-hour wages, and yet that is where we are in that kind of trade scheme in this country.

I want to put the first chart back up because this is what I want to talk about, the historic trade deficits in this country today and the need for us to fundamentally revisit trade strategy and decide that we need to reinvent our trade strategy in this country.

The post-Second-World-War trade strategy of 50 years is failing this country and it is injuring this country. These trade deficits cannot be compiled in a country like ours without threatening the dollar, weakening the dollar, and causing the collapse of the dollar we have seen over a period of a dozen years on the international currency exchanges.

I have talked about the numbers, but the specifics are even more devastating. If you take a look at the specifics on the 1994 trade deficit what you find is that our trade deficit in autos and auto parts total $50 billion; our trade deficit in data processing equipment and parts totals $21 billion; telecommunications equipment, $17 billion; electrical equipment, $13 billion. These are the high-technology items in which manufacturing pays good wages. These are good jobs. These are the very items we ought to be winning in and instead we are losing. It is where our jobs are being exported in wholesale quantity to other parts of the world.

In fact, if you take a look at this trade deficit you will see, though I have not annotated the countries on here, we have a nearly $65 billion trade deficit with Japan at a time when the dollar is at a nearly record low against the yen. That is a time when you would expect we would be making progress in reducing our trade deficit with Japan. In fact it grew. Our trade deficit with China is $30 billion and growing astronomically; again, shipping American jobs outside of this country and weakening America's currency and causing others around the world to look at this mess and say, "We do not have confidence. We do not have the kind of confidence we should because the fact is this country, the United States of America, is running an enormous trade deficit which it cannot continue to do."

At least with respect to the budget deficit you can make a case that it is money owed, one to other. With respect to the trade deficit, the trade deficit must be repaid by a lower standard of living in the United States. It is inevitable and it is true. This bleeds the American work force, bleeds American opportunity, and bleeds away American jobs.

I must say the Mexican example—largely I raise that because of the deterioration of the dollar—the Mexican example in my judgment is an example of the kind of policy we should not follow. When we link the American dollar to the peso—as we did when we formed an economic union with Mexico and as we did when we decided on a bailout strategy as a result of the collapse of the peso—it seems to me inevitable that we diminish confidence in the dollar, linked to an economic circumstance like they have in Mexico.

It is interesting, I did not support NAFTA but we were told, with NAFTA, if we can negotiate lower tariffs across the United States-Mexican border we will see a massive new trade coming across the border that will strengthen and help both countries. Of course what happened then was the peso was devalued and the fact is to sell American goods now in Mexico means the American goods are 40-percent higher priced than they were when NAFTA was passed and Mexican goods to be sold in this country now sell at a 40-percent discount vis-a-vis when we passed NAFTA.

What has happened? We had a very significant trade surplus with Mexico, about $4 billion. That shrunk last year to over a billion, and in recent months we even have a trade deficit with Mexico. Of course that threatens to grow.

My feeling is that as we look at the collapse of the dollar on the international currency exchanges and wonder why, we ought not wonder too long without understanding that a country cannot continue this kind of trade policy. Yes, I want open markets. Yes, I want free trade. But this country ought to take the lead in this world to say, "We also expect fair trade. There is an admission price to the American marketplace and the admission price to sell your products in the American marketplace is, yes, you must pay living wages. And you must have a safe workplace, and you cannot hire 12-year-old kids for 12 cents an hour."

We must, it seems to me, stand for our own economic interest and stop this kind of policy. That is the sort of thing that ultimately will strengthen confidence in the dollar on the international currency exchanges.

I hope this President and others who care about this issue—including Members of Congress—will decide that it is time for us to have a new Bretton Woods conference, a new type of Bretton Woods strategy in which we take a new analysis of trade strategy 50 years after the end of the Second World War and decide what is right for this country. What will set us on a course where we will not see these kinds of staggering trade deficits that weaken our country? What will promote new jobs, good jobs, with good income in this country?

I hear about everybody being upset in our country, and I understand that. At least one of the reasons the American people are upset is no matter what the economic indicators say, no matter what the dials and indicators say in the engine room with respect to this ship of state, most American families having dinner tonight understand they are working harder for less money. Mr. President, 60 percent of the American families earn less money today, if you adjust it for inflation, than they did 15 years ago. One can tell those American families, "Things are better for you." But if they are earning less money on a real income basis than they were 15 years ago, it is awfully hard to convince them that they are doing better. You do better when you have good jobs and good opportunity.

I might say, all the other issues that are going to come before this Senate in the coming months—almost all of those issues can also be addressed by good jobs with good incomes. You can talk about welfare reform, you can talk about crime, you can talk about 100 different issues—you can address most of them in this country with a good job and opportunity for Americans who are skilled and want to work.

So, as we discuss the collapse of the dollar and all of the macroeconomic reasons and we hear the economists give us their notions of what is at work in the world, at least I would like to contribute, from this Senator, my notion that these staggering trade deficits, the worst in history last year, contribute to a weakening of the confidence in the American dollar and I think call out—virtually call out for a new trade strategy, a summit on international trade in this country, to wonder: What on Earth are we doing, bleeding away good American jobs and good income for the American people with a trade strategy that does this?

Let me finish by saying we have a Trade Ambassador, Mickey Kantor, who is the best I have seen since I have been in Washington. He gives me hope. He has been tough with other countries. He stood up to the Japanese and the Chinese and others to say this cannot continue.

I appreciate that. I want to offer him strength to whatever extent I can. But I also say we are dealing with a trade regime that is fundamentally flawed and we need to build a new foundation and a new understanding of the various obligations that we and our trading partners have for and with each other as we conduct commerce in the years ahead.

Our interests must in this country be interests in promoting and creating stronger means to promote jobs and opportunity and hope for the American people. Frankly, this kind of trade picture, not just with Democrats—yes, this is under a Democratic administration—but Republicans and Democrats together have embraced a trade regime that in my judgment is fundamentally flawed and cries out for reinvention and cries out for reform.

I yield the floor.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER (Ms. SNOWE). The Senator from Hawaii.

Mr. INOUYE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATFIELD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

Mr. HATFIELD. Madam President, I ask unanimous consent to temporarily lay aside the Bumpers amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Madam President, I now ask unanimous consent to temporarily lay aside the committee amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas [Mrs. KASSEBAUM] is recognized.

Mrs. KASSEBAUM. Madam President, if I may ask a parliamentary question, Is the Bumpers amendment the pending business? Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. HATFIELD. Madam President, if the Senator will yield, I may have gone too far in setting aside the committee amendments because I knew the Senator from Kansas wished to amend one of the committee amendments. Therefore, I ask to withdraw that unanimous-consent request of laying aside both committee amendments.

Will the Chair please instruct us which committee amendment we would lay aside in order to make it clear for the Senator from Kansas?

The PRESIDING OFFICER. Without objection, it is so ordered.

The first excepted committee amendment is pending.

AMENDMENT NO. 331 TO THE FIRST EXCEPTED COMMITTEE AMENDMENT

(Purpose: To limit funding of an executive order that would prohibit Federal contractors from hiring permanent replacements for striking workers)

Mrs. KASSEBAUM. Madam President, I send an amendment to the desk which is a second degree to the first committee amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mrs. KASSEBAUM] proposes an amendment numbered 331.

Mrs. KASSEBAUM. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the first excepted committee amendment insert the following:

SEC. 110. (a) Congress finds that (1) it is the role of Congress, as the representative body of the people, to decide the policy of the United States with respect to relations between management and labor; and (2) the executive branch should not use the Federal procurement process to initiate major changes in the labor-management relations of the United States.

(b) The purpose of this Act is to ensure that the Congress decides important labor-management relations policy by prohibiting the executive branch from spending any appropriated funds for the purpose of implementing an executive order that would debar or in any way limit the right of Federal contractors under common law to use permanent replacements for workers engaged in a strike.

(c) None of the funds made available under any appropriations Act for fiscal year 1995 may be used to implement, administer, or enforce any executive order, or other rule, regulation, or order, that limits, restricts, or otherwise affects the ability of any existing or potential Federal contractor, subcontractor, or vendor to hire permanent replacements for lawfully striking employees.

Mrs. KASSEBAUM. Madam President, if I may just explain for a moment. I believe it is going to be the expressed wish of the chairman and the managers on the floor to bring this amendment up again tomorrow, but I would like to briefly talk about it yet this evening.

I am offering an amendment which would prohibit the executive branch from spending any money to implement the Executive order limiting Federal contractors from hiring permanent striker replacements. This legislation assures that the Congress, rather than the executive branch, decides major labor-management relations policy.

Federal labor law permits workers to strike. It also permits employers to continue to operate during a strike, if necessary, by hiring permanent replacements for striking workers. This has been the law of the land for 60 years.

Madam President, as my colleagues may recall, during both the 102d and the 103d Congress, the Senate rejected legislation that would have amended our Federal labor laws to prohibit employers from hiring permanent striker replacements. In fact, more Senators voted against the measure in 1994 than in 1992.

In an attempt to make an end-run around the Congress, the administration today has issued an Executive order that would debar Federal contractors that hire permanent striker replacements. I view this as a direct challenge to congressional authority.

Congress makes the laws, not the administration. We have the responsibility, as the representative body of the people, to decide labor-management policy through legislation. The executive branch should not attempt to use the Federal procurement process to make major changes in our labor laws.

The amendment I am offering today prohibits the administration from spending any appropriated funds during the 1995 fiscal year to implement or enforce any Executive order that would limit Federal contractors or subcontractors in their use of permanent striker replacements. This amendment assures that the Congress, rather than the administration, establishes Federal labor policy.

Madam President, I understand that the administration contends that the striker replacement Executive order is no different than previous Executive orders issued by past Republican Presidents. This argument has no merit.

If I may just for a moment comment on those previous Executive orders. The Reagan and Bush administrations issued Executive orders requiring Federal contractors to post a notice informing workers of their rights under Federal labor law, prohibiting Federal contractors from signing agreements that they would hire only unionized work forces, and prohibiting the illegally striking air traffic controllers from being rehired into Federal jobs.

None of these Executive orders that I mentioned—and there were three—dealt with a subject that the Senate had debated and rejected. None of these Executive orders was an attempt to make wholesale changes in the balance of labor-management relations. Clearly, these previous Executive orders differed significantly from the striker replacement Executive order.

Madam President, I suggest this action is without precedent. I urge my colleagues to give support to this amendment.

Madam President, if there is no further debate at the moment on this amendment, I ask unanimous consent to speak as if in morning business for a few moments.

The PRESIDING OFFICER. Without objection, it is so ordered.

REMEMBERING SENATOR JACOB JAVITS

Mrs. KASSEBAUM. Madam President, I would like to speak for just a moment in memory of Senator Jacob Javits, the distinguished New York Republican who served in this Chamber for 24 years. I think it does us all good to reflect on his career.

I was honored to serve with Senator Javits for 2 years. In that time, I came to admire and respect him as a man who always scrupulously prepared for any legislation, who worked hard out of the spotlight, and who voted his conscience. And what a conscience it was.

He did not have his name attached to very many bills—he was a Republican, after all, back when Republicans were not in the majority. Senator Javits served from 1958, just missing the years that the Republicans were in a majority at the time of President Eisenhower, to 1980, just again missing the time the Republicans had a majority.

But Jack Javits had his hand in more landmark legislation than most. The War Powers Act, the ERISA Act protecting private pensions, and the establishment of the National Endowment for the Arts and Humanities are often cited. But he also played important roles in civil rights and housing legislation, and late in his career, as the ranking member of the Foreign Relations Committee, he helped set the stage for the historic Middle East peace settlement.

Nine years ago yesterday, Senator Javits died. His daughter, now the director of a housing program for disabled homeless, wrote a tribute to her father for yesterday's New York Newsday. She carries on his legacy well. I ask unanimous consent that her article be printed in the RECORD. It is a fitting homage to her father, a man of public service and conscience. We miss his presence, but we remember his example.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From New York Newsday, Mar. 7, 1995]

ABOUT REPUBLICANS—MY FATHER WAS CUT FROM A DIFFERENT CLOTH

(By Carla Javits)

Today is the ninth anniversary of my father's death. My sense of loss has been acute at times, and now is one of them. Jacob Javits served as a proud Republican in public office, entering the U.S. Senate the year after I was born and staying there until 1980. His achievements included sponsoring the legislation that established the now controversial National Endowments for the Arts and the Humanities; the Employee Retirement Income Security Act (ERISA), which for the first time established standards to protect the private pensions of working people from bankruptcy; and the War Powers Act, requiring the president to consult with Congress before committing America to war. But the legislative battle I remember most clearly was passage of the 1964 Civil Rights Act. When my father returned from the vote on that historic bill, he lifted me and threw me up into the air.

Throughout my life, I turned to my father to illuminate the reasons for our country's political decisions. Despite our differences of opinion, I could always rely for insight on his balance, thoughtfulness and genuine love of debate. I have recently felt his absence not only because of this March anniversary, but also because I am so curious about what he'd think of his party, which has taken control of Congress for the first time since the 1950s. Because he is not here I've been reading his books, and I find myself amazed by how relevant they are to today's debate about the role of government.

In 1964, following the defeat of Barry Goldwater by Lyndon Johnson in the presidential election, my father wrote "Order of Battle: A Republican's Call to Reason," an attempt to redefine Republicanism. He maintained that the American people had rejected Goldwater on the basis of his stance that the federal government should shed its responsibility for America's poor and working people, and had opted instead for Johnson's War on Poverty. Personally, he withheld his support from Goldwater "as a matter of conscience. I could not support a ticket which proposed to reverse the policies of Arthur Vandenberg and Dwight D. Eisenhower in respect to foreign policy; the policies of Abraham Lincoln and Dwight D. Eisenhower in civil rights and the policies of Robert A. Taft in education and housing."

Even though the 1994 elections have pushed the pendulum in the opposite direction, my father's insights in 1964, still strike me as stunningly on target: "The main issue is this: Under modern conditions how can we strike the right balance between the need to decentralize the power of decision in matters affecting our individual preferences, and the need for a unity of direction in matters affecting all of us as members of the American state and society?"

While he was viewed as a liberal, I think my father saw himself more as a patriot and proponent of free markets, with a strong interest in how democracy could balance the just claims of a diverse populace. He suggested that instead of dividing ourselves into camps of liberalism and conservatism, we focus on concrete proposals, testing them in light of three questions: "Will the specific terms of the proposal enlarge the area of freedom and opportunity for the individual while serving the common good? Given the aim of the proposal, is it beyond the reach of private resources, and therefore, must it be made a government matter? If a government matter, is it beyond the reach of local and state resources, and must it, therefore, be entrusted to the central government?"

My father's Republicanism found its roots in Alexander Hamilton, Abraham Lincoln and Theodore Roosevelt, and combined a strong belief in free enterprise with firm convictions about the role of federalism and government activism. His politics were also informed by his personal history—growing up poor on New York's Lower East Side. One of his favorite stories was about a boxing match in which he was knocked to the ground. The lesson he drew from it? Always get back up swinging.

Buried deep in his book I found several pages dedicated to his activism in the development of housing programs. While he favored programs that strongly encouraged private-sector, federal and local cooperation, he stated, ". . . to get done what the people needed done by government was good, orthodox Republicanism—if the private sector could not do it alone," and that "federal activity in housing should be expanded in those directions where it has a proven record and should strike out in new directions with imaginative programs that show promise."

Those pages spoke directly to me. My father died before I took my current job with an organization that helps non-profit, nongovernmental agencies provide housing, combined with health and social services, to homeless people with disabilities. I can't help but think that my father who worked so hard to eliminate poverty, would have been a leader in efforts to end homelessness, which exploded in the years after his death. I imagine that he might have especially advocated the public/private partnership that drives the successful development of supportive housing. It remains to be seen whether his congressional successors will feel as he did, that federal support of effective, cost-efficient and humane housing for our most vulnerable citizens is "good, orthodox Republicanism."

One afternoon toward the end of my father's life, when he was already ill, I was talking to him and crying over how much I would miss him when he was gone. He said, "You will not miss me, you will remember me." On the second point he was right.

Mrs. KASSEBAUM. Madam President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. GRAMM. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Texas.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

Mr. GRAMM. Madam President, I ask unanimous consent to add my name as a cosponsor of the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Madam President, I know we are going to debate this issue tomorrow, but I wanted to come down and make a very short statement on it tonight.

I believe that the President, through Executive order, is trying to accomplish something that he has been unable to accomplish through Congress and the legislative process. I think it is very important that we not allow the President to use an Executive order to limit the freedom of our people.

The issue of whether or not an employer can hire someone to replace a worker who refuses to work is not a matter of labor rights. It is a matter of freedom. If I do not want to work for you, I have the right to quit or to strike, but I do not have the right to prevent someone else from working for you. I think this is a very important issue.

I wish to commend the Senator from Kansas for providing leadership on this issue. I think it is very important that we pass this amendment, and I intend to vigorously support it.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Madam President, I appreciate the Senator's statement. I, too, think it is a very important issue.

I ask unanimous consent that the following Senators be listed as original cosponsors: Senators DOLE, WARNER, HATCH, THURMOND, GRAMM, and GREGG.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. KASSEBAUM. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Madam President, I want to congratulate my colleague, Senator KASSEBAUM. I am pleased to be a cosponsor of her amendment.

I believe that President Clinton started the 1996 reelection campaign when he signed the Executive order sent special delivery to his friends in organized labor.

The President may say his directive is designed to foster fairness in the Federal workplace. Its real purpose, of course, is to help shore up a political base the President currently believes is critical to his own political future.

The issue here is simple:

Just as an employer's demands are moderated by the knowledge that his employees are legally entitled to strike, so too are the demands of workers moderated by the knowledge that a strike over wages and other economic conditions may result in the hiring of permanent replacements.

This uncertainty is an essential element of collective bargaining. It forces both labor and management to negotiate in good faith and resolve their differences through compromise.

With today's power grab, the President has upset the careful balance that has been the hallmark of our system of collective bargaining for more than 60 years.

The President has also set a dangerous precedent forgetting that it is the responsibility of Congress, not the administration, to write the laws governing labor-management relations in this country.

Unfortunately, the President has chosen to do an end run around Congress. Congress has repeatedly rejected the so-called striker replacement bill. The President is making a big, big mistake if he believes he can revive the defeated legislation by issuing an Executive order. The President may enjoy thumbing his nose at Congress but his enjoyment will be short-lived at best.

I certainly urge my colleagues to support the amendment offered by my colleague from Kansas, Senator KASSEBAUM. It is Congress who should set labor policy in the United States, not the President.

MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with Senators permitted to speak for not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO JOHN WHITE

Mr. DOLE. Madam President, this past January, America lost a patriot, and many in the Senate lost a friend with the passing of John White.

Several Members of Congress joined me attending memorial services for John on January 31, here in Washington, DC.

It was a very moving ceremony, filled with stories of John's life in and out of politics.

White House Counselor Mack McLarty obtained a transcript of the services, and I believe that all those who knew John will enjoy the memories it provides, and those who did not know John will learn more about a remarkable public servant.

Mr. President, I ask unanimous consent that the transcript be printed in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SERVICES FOR JOHN C. WHITE, TUESDAY, JANUARY 31, 1995, FIRST BAPTIST CHURCH OF THE CITY OF WASHINGTON, DC

Reverend Dr. Gladstone. We welcome you to this memorial service for Mr. John C. White, and I welcome you on behalf of this Church, of which they were members, and on behalf of Mrs. White, his dear wife, and the members of the family.

Let us worship God. God is our refuge and strength, a very present help in trouble. Though the earth change and the mountains be removed, God will be with us and will not leave us. Jesus said, "I am the resurrection and the life. He who believes in Me, though he dies yet shall he live, and whoever lives and believes in Me shall never die."

Let us pray. Great and marvelous are Your works, Lord God almighty, just and true are Your ways, oh King of Saints. Who shall not fear You, oh Lord, and glorify Your Name for You only are holy, wherefore with your whole church both in Heaven and on Earth. We worship and adore You, Father, Son, and Holy Spirit. Ever one God, world without end. Oh Lord, Jesus Christ, we do not ask for Your presence with us in this service of remembrance, and gratitude and love. For you have promised that where two or three are gathered together in Your name, there You are in the midst. But we do ask You that You would help us to recognize Your presence. Open our eyes that we may know You. Melt our coldness so that we may love You. Loosen our tongues that we may praise You. Take our wills that we may commit them afresh to Your service. And may go through this journey of life without fear and in great confidence. And this we pray for Your love's sake. You taught us when we pray to say together. Our Father, who art in Heaven, hallowed be Thy name. Thy Kingdom come, Thy will be done on Earth as it is in Heaven. Give us this day our daily bread and forgive us our trespasses as we forgive those who trespass against us. Lead us not into temptation, but deliver us from evil. For Thine is the Kingdom, the Power, and the Glory for ever and ever. Amen.

I want us now to listen to the Word of God as it comes to us in the Scripture and in writings based on the Scripture. We pray that this word may be a source of comfort and inspiration as we face the future.

We begin with a writing from the book of Ecclesiastics. Let us now sing the praises of famous men, the heroes of our nation's history through whom the Lord established His renown and revealed His majesty in each succeeding age. Some held sway over kingdoms and made themselves a name by their exploits. Others were sage counselors who spoke out with prophetic power. Some led the people by their councils and by their knowledge of the nation's law. Out of their fund of wisdom they gave instruction. Some were composers of music or writers of poetry. Others were endowed with wealth and strength, living peacefully in their homes. All these won fame in their own generation and were the pride of their times. Some there are who had left their names behind them, to be commemorated in story. There are others who are unremembered. They are dead, and it is as though they had never existed, as though they had never been born or left children to succeed them. Not so our forefathers. They were men of loyalty whose good deeds had never been forgotten. Their prosperity is handed onto their descendants and their inheritance to future generations. Thanks to them their children are within the covenant. The whole race of their descendants. Their line will endure for all time and their fame will never be blotted out. Their bodies are buried in peace, but their name lives forever. Nations will recount their wisdom, and God's people will sing their praises.

Psalm number 23: The Lord is my shepherd. I shall not want. He makes me lie down in green pastures. He leads me beside still waters. He restores my soul. He leads me in paths of righteousness for His name's sake. Even though I walk through the Valley of the Shadow of Death, I fear no evil, for Thou art with me. Thy rod and Thy staff they comfort me. Thou prepares a table for me in the presence of my enemies. Thou anoints my head with oil, my cup overflows. Surely goodness and mercy shall follow me all the days of my life. And I will dwell in the house of the Lord for ever.

John. Chapter XIV. The Words of our Lord Jesus Christ. Let not your hearts be troubled. Believe in God, believe also in Me. In my Father's house there are many rooms. If it were not so, would I have told you that I go to prepare a place for you? And when I go to prepare a place for you, I will come again and will take you to Myself, that where I am, you may be also. "And you know the way where I'm going," Thomas said to Him, "Lord, we do not know where You are going. How can we know the way?" Jesus said to him, "I am the Way, and the Truth, and the Life.

And finally, I want to read a passage from a book, which to so many people is next to The Bible, John Bunyon's "Pilgrims Progress." And I think that you'll agree that, as you listen to it, it describes this good man, this servant of this nation whom we remember today. It is the passing of Mr. Valiant for truth. After this it was known abroad that Mr. Valiant for truth was taken with a summons by the same post as the other and had this for a token that the summons was true. That his pitcher was broken at the fountain. When he understood it, he called for his friends and told them of it. Then said he, "I am going to my father's. And though with great difficulty I got hither yet how I do not repent me of all the trouble I have been at to arrive where I am. My sword I give to him that shall succeed me in my pilgrimage. And courage and skill to him that can get it. My marks and scars I carry with me to be a witness for me that I have fought his battles who now will be my rewarder. When the day that he must go hence must come, many accompanied him to the riverside into which as he went into he said, "Death, where is thy sting?" And as he went down deeper, he said, "Grave, where is thy victory?" So he passed over, and all the trumpets sounded for him on the other side. Thanks be to God.

Thomas F. (Mack) McLarty III. As a young state legislator well over twenty five years ago now, I had my first occasion to meet John White when a group of us from a neighboring state to that rather large state to our west traveled to Austin, Texas. I was struck with Commissioner White's understanding of his job, the depth of his thinking, the commitment to public service. But as a young legislator at 23 I was even more struck by his thoughtfulness, his ability. Despite great pride and love for his state, he didn't brag on it too much in our presence, and even said a few nice things about Arkansas. We stayed in touch and some years later serving under another distinguished chairman, Bob Strauss, I had the occasion to spend considerable time with Commissioner White. I benefited again from his wisdom and his counsel, but continued to be influenced by his thoughtfulness, his ability and his example.

When Donna and I moved to Washington, just over two years now, no one was more gracious than Nellie and John White to us. I continued to be influenced by his example and his thoughtfulness. As has been written, politics and party are both poorer for his passing. Commissioner, Secretary, Chairman John White leaves a rich legacy and an enduring example.

Another young man from Arkansas met Commissioner White about two or three years after I had. He also was struck by those qualities and characteristics that I noted, but was in a little bit more of a hectic time in a national campaign working with Bob Armstrong for Senator George McGovern. He, too, stayed in close touch with John White over the years and was influenced by his wisdom, his counsel, by his ability, and by his example. He writes to the family and friends of John C. White:

"A patriot, a wise counselor, a truly honorable man, John White consistently displayed the best of the American spirit. His decency, determination, and humor are models for all of us who are working to move our Nation forward and to improve our people's lives. I was lucky to know John and benefit from his advice for many years, and I will miss him. His life's work is an inspiration to all of us in public life and we will always be grateful for his extraordinary efforts to help make our government and our country better. His legacy of leadership and compassion will serve as a guiding force for generations to come. Hillary and I extend our deepest sympathy to you. You are in our thoughts and in our prayers." Signed, Bill Clinton.

John White leaves a rich legacy and an enduring example.

Honorable Robert Strauss. Most of you, friends of John White's, are also friends of mine and well aware of the fact that I enjoy speaking, but this is one time remarks don't come very easy. I suspect that John knows we're here. I suspect he's looking on, and I further suspect that, if he could communicate, he would say, "Strauss, would you ever have believed that a distinguished group like this would gather in a memorial service for me?" And in keeping with our typical conversation I suspect that I would reply, "No, White, you know I carried you a long way for no more talent than you have." And that would be in keeping with most of our conversations. So much has been written and so much has been said about John in such a good taste, so marvelously done that I certainly don't want to try to say much for fear of being too repetitive. But John would have loved to know that you were all here. He had tremendous personal pride and, like all of us, vain. He had his share of vanity. Not too much, just about right. And he would be very pleased if he were here today. John and I, as most of you know, had lunch a couple of times a week. Had lunch at Duke Zeibert's, who I see here today. I used to say to White every now and then, "You know this food at

Duke's is gonna kill you, John." And sure enough, it did.

John White was an old fashioned fellow with old fashioned values, and we liked to talk about them. He had values that don't show up too often in the political marketplace, particularly here in this community. But he never varied from them, and no matter what his troubles were, he was never self-indulgent, and he never felt sorry for himself. He enjoyed living every day. He had pride in himself. He had tremendous pride in Nellie and all the rest of his family.

I remember planning the 1976 Convention. John called me from Austin and said, "Strauss, Nellie wants to be on the platform committee." And said, "Can you put her on there?" And he said, "You said you know you have a vote there." And I said, "Well, that's what I'm looking for." All of you remember the Democratic Party in the 1970's. You needed votes if you were trying to get anywhere, and so we put Nellie on the platform committee, and I'll never forget the platform committee had deliberated quite a few days, maybe a few weeks, and I called White or I saw him in town, I don't remember which, and I said, "Damn, White, that Nellie's tough." He said, "What do you mean?" I said, "Well, she wants to prove everyday that I don't own her and you don't own her." And he told me of the guaranteed vote I had; "Well, she's never voted against you, has she?" I said, "No, but why she makes me work for every one of them so hard?"

Well, and so it is that we are here today. It was just a couple of months ago that Vera Marie who is also here today called John and said, "John, we're having a birthday party for Bob. It's his birthday, last October 19, and I hope you can make it." He said, "Well, I have a date, but I'll break it. I'll break it." And then he said, "You know, Vera, we may not get to go to many more of these." I know John was thinking that he would be here and I wouldn't and it worked the other way.

Last Friday we were in Austin for John's funeral service, and it was a lovely service, and a mob of people were there, and they had such a pride in John and in his life, and the Reverend Jesse Jackson spoke. And he spoke eloquently, and beautifully, and tastefully, and the crowd was moved by every word he said. And as he finished, he did something that startled me, something that I had never seen done before. But I enjoyed that. I enjoyed it. And I know Nellie did, so I'll do what the Reverend Jackson did. I'll ask each of you: Join me in a round of applause for John White. He earned it. Thank you.

Senator Robert Dole. Nellie and members of the family. When Tip O'Neill looked back at his political career, he said one of the best pieces of advice he ever received was from the legendary Boston mayor, James Curley. Curley once told him, he said, "Son, it's nice to be important. But remember, it's more important to be nice." And I suppose that anyone looking to life of John C. White, he would say that he was important. And the news stories about John's passing listed the official and unofficial positions in which he served during a very remarkable career. But I believe the lasting legacy of John White is he knew that important titles and spacious offices are only temporary. He knew, as Mayor Curley said when it's said and done, it's more important to be nice. And I think during each and every day of John's sixteen years in this city, he proved that Harry Truman was wrong when he said, "if you want a friend in Washington, buy a dog." And I am just one of the countless men and women who learned over the years—as a Republican I might say—"Just needed a friend? Call John White."

I remember my first meeting with John White. It was in 1977. Senate Agriculture Committee. Senator McGovern was there. It was a rather raucous hearing—we used to have those in the Senate. But I was very impressed with Commissioner White, who was about to become Deputy Secretary of Agriculture, and I remember seconding his nomination, which I think surprised him and surprised maybe some of my colleagues, because it didn't take me long to learn that, realize that America would be well served with John's decency, and honesty, and integrity, and above all, just a lot of good common sense. A few days after John passed away I saw a survey that said, "one of the things that makes Americans most angry is people in positions of power who say one thing and do another." And I thought that probably John would agree with that statement, for in his life he was a man of his word, regardless of politics. He was a man of his word. And if you read Washington's Sunday Post, an excellent piece by Mark Shields, in which he wrote, "John White didn't bob or weave or hedge or trim. If he was with you, you always knew it." And when it came to politics, John didn't bob or weave. He was a Democrat through and through. But he always knew that being a partisan was far less important than being a patriot. And no doubt about it, John was a patriot. He loved Texas. He loved America. He loved his family. And few served them better.

At the beginning of his first inaugural address in 1953, my political hero, Dwight Eisenhower, led America in prayer. And while the words may be Ike's, the sentiments expressed are also undeniably those of John White, and I quote, "May cooperation be the mutual aim of those who, under the concepts of our Constitution, hold a different political face. So it all may work for the good of our beloved country and Thy Glory. Amen." End of quote. Thank you.

Honorable Bob Armstrong. When I talked to Nellie, she said, "I'd like to have somebody up there that just knew him as a friend." And John C. and I were friends. Over a long period of time, we were thrown together because we did politics together. We were thrown together because we liked to do a lot of the same things. We had an office arrangement where he happened to be above my office in a building and we could see each other every day and I really loved this man. You know, he came from an interesting part of Texas. It was a part where rain was important, and people's lives and their fortunes were governed in the old days by how much it rained. It was a strip of Texas that produced products like Sam Rayburn, and Lyndon Johnson, and John Nance Garner, and Ann Richards, and Bob Strauss, and Webb, and Bedacek and Dobie, and John C. White.

And as John C. said in one of these quotes in the program, he couldn't wait to get out. But it still had a profound effect on him and the kind of person that he was. He always had fun. One of the poems that he liked, kind of harked back to his upbringing. It was by Carlos Ashley, who when they moved the inauguration into the House chamber, because it had started a cloud burst, stood there and looked out and wrote, "Oh the glamour and the clamor that attend affairs of state seem to fascinate the rabble and to some folks seem just great. But when the final scale is balanced in the field of loss and gain there's not one inauguration's worth a good, slow, two-inch rain." And those were John's sentiments about pomp and circumstance and what real values were. He always had fun, his advice was always sound, and he was always an unflagging and an unequivocal friend. First example of advice he gave to me: I was two years elected in a state which was pretty topsy-turvy and he'd been there for eight or ten years and George McGovern became our nominee, not the most popular person to be a nominee for the Democratic Party in Texas.

I went to John's house one afternoon and, as was always the case there was the New York Times and The Washington Post on the coffee table, because he loved to find out and know what was going on, and he said, "Armstrong, they need us. We really need to help them." I said, "Well, it's probably gonna be political suicide, but if you say that's what we need to do, John, let's do it." And so he and I started on that endeavor. Never always pleasant. Not with much chance. Again as Mark Shields pointed out, but you knew it had to be done, and he told you, "let's do it," and so we did. His advice turned out to be pretty good. I never had an opponent for the next ten years. But you couldn't have convinced me of that when I started that out with him that day. And he also told me that it didn't make much difference whether it was popular or not as long as it was the right thing to do.

You know, Nellie said, "I want you to tell them the story about the limo, because you always had a good time." And I said, "Nellie, in church?" And she said, "Yeah, in church." But I'm going to get to that in a minute. I think that most of what we did that was fun had to do with campaigning, but the times that I remember the most were the things that we just did together. We'd leave the office and go over to Memorial Stadium and we would run, because we thought that was good for us. And frequently there would be coeds on that running track, and some of them just lying out there in the sun. And John White developed what he called "the slow run." And he was still running, but it was awful slow when we went by and watched them.

Bruce Babbitt told me the other day that he thought that I was the product of a misspent adulthood. And I want to tell you that John White was a major contributor to that condition. I remember after he'd been there for about fifteen years, he said, "You know, I've got this office where I can just do it with my eyes closed." And he said, "One thing I started doing there for a little while was I'd get to the office about 7:00 or 7:30," (and he was just the proper amount of devious about this), "and at 10:00 o'clock I was on the golf course, I was back at 4:00 and I would stay and make calls until about 7:00 at night, and people would think I was the hardest working public employee they'd ever seen; in at 7:30 and out at 7:00." And he always enjoyed those kinds of times when we would get out. When he got up here and I'd come to see him he introduced me to golf at Congressional in the leaves, in the fall. And we never did have partners. We'd just ride together and he talked to me about his dad and I talked to him about mine and how we hated them, because they made us do chores and made us be disciplined when we didn't want to be. But they also taught us what was right and what was wrong, and they also got real smart, our dads did, when we went away to college. And when we came back they were a lot smarter than they were when we went. But I guess the things that I remember the most was that he always bragged on Nellie, and he always said, "You know, it's just amazing to me how Linda and Nellie put up with us." And that they do. And he always talked about his kids, and he talked about how wonderful they were. If I had one wish right now, I wish that you could have heard what his children had to say about him in Austin, because John R. and Ed were just absolutely perfect; (that) was the term I used about their dad and their relationship.

Well, I'll tell you about the limo. We weren't used to riding in them, but we were in Houston and we went down to some kind of a meeting and on our way back on the road. It was very hot in Houston, as it can be, and we were riding along there, kind of embarrassed that we were in a limo, and it was air-conditioned, and there came along a '57 Chevrolet with about five to six kids in it, and they pulled up alongside and looked over there at these guys riding in that air-conditioned limo, and they gave what I would call the "Texas hot weather hand signal," that people give to people in a limo. And John was sort of appalled by this and I said, "Just think about it as them giving us a hand, one finger at a time." And he always liked that and used that. Sometimes, good things come out of bad ones.

I guess he understood about money and how important it was in politics, and his favorite story was about the time that Speaker Rayburn woke up one day and found out that the money from cotton had not come to Washington, and Roosevelt was in his fourth election. He had a new guy named Harry Truman replacing John Nance Garner and the cotton money hadn't gotten in, but, as they did in those days, they sent a fellow up with a satchel with the money in cash, and he got to Union Station and the money was burning a hole in his pocket, and he didn't know what to do, but what he did was he went over and said, "Where's the Democratic headquarters?" And they said, "It is over right next to the Senate." And sure enough, there was a small headquarters over there that they had set up for Senator Truman, because he could just go there and kind of do what he needed to do and nobody ever came to it. And so, Mr. Jackson, who had the money, walked in and he said, "Here's the cotton money." And Harry Truman looked at it and it was a lot of money, and nobody had ever done that. And he got back on the train. He went back to Austin. They said, "What did you do with the money?" He said, "I gave it to the headquarters." They said, "Which one?" He said, "Harry Truman's." They said, "You, fool. That's not the right headquarters. You gave it to the wrong person." One year later, Mr. Jackson had his own desk in the White House, in the Truman White House, where he could do all the business that he wanted to do. And John White thought that was simple justice, and he loved to tell that story.

He gave me one other piece of advice. He said, "You really ought to come up here." He said, "You'll love it," and, "They need you." The last thing was superfluous. He always had that ability to flatter you, just a little bit. They didn't need me, but he'd say "They need you." But you could always kind of believe in it if John C. told you that. But he loved this city, and he loved the people, and he loved the power, and he loved the system. But he didn't love the power as an end in itself. He loved the fact that people could use that power for good if they were the right kind of office holders and if they used it wisely.

I used to ask him when he was going back. And he wouldn't ever answer me directly. He just kind of looked off in the distance maybe and say that he really had a lot of friends here in Washington. And in a way, that was an answer. And so, I had a great time knowing him. I always said that a conversation with John White was like a drink of cold water from a hill country spring on a hot day. He was always refreshing and he was always sustaining.

Let us pray. John C. is with You now, God. Thanks from all of us for letting us have him for a while. Amend.

Mr. Jack Nelson. Bob Strauss said that, uh, John White would have loved to have seen you all here today and I know he would have looking out over this crowd. You know what John White would've really loved? He would've loved the Reverend Jesse Jackson preaching his funeral in the rotunda of the Texas State capital and Bob Dole eulogizing him at a memorial at the First Baptist Church here. He would have really loved that.

Most of you were not at John's funeral, but as one of many of his reporter friends, I want to report just briefly on what a moving and extraordinarily unusual funeral service it was. It was a sad—but I must say a magic—moment. Jesse Jackson, in a flowing, white robe, conducted the service in a packed rotunda. The first funeral service ever held there.

The Texas Democratic establishment turned out in force: Ann Richards, Jim Wright, Bob Strauss, Lloyd Bentsen, and many others—and they came from all over Texas and from all over the country. His family and friends spoke movingly of John as father, grandfather, business associate, politician and friend, and in his eulogy, Jesse Jackson made a point that's central of John's life: He was one of the few white men who had the courage to take the political risk to bring equal justice to Texas and the South. "Look around you," said Jackson, "Look around you at the black and the brown faces among all the white faces. Thirty years ago you wouldn't have seen that, and you can see it now because of John C. White." And then Jesse did what Bob Strauss said startled him, and then I must say sort of surprised me. He said, "Everyone should express themselves," and calls for the applause and it rang out throughout the capital. And I gotta tell you, it made us all feel a lot better. Jesse said, "When we go to the state cemetery for the burial you'll see '1924 dash 1995' on John's tombstone." He said, "Well the year he was born, 1924, means nothing. We don't have anything to do with when we are born and come into this world. And 1995 doesn't mean anything either. We don't have anything to do with when we leave. It's the dash that counts." And Jesse touched on a long and impressive list of what John did with that dash.

You know, John told me more than once—and like Robert Strauss, I went out to lunch frequently with John White; maybe not twice a week, but an awful lot of times. John told me more than once, "God, I love this town, but I wish it hadn't gotten so mean." And I thought that said a lot about John. He did love Washington, and he did love the political game, and he played a key role in it. But Washington never changed him. He was never mean, and he despised the kind of personal attacks aimed at destroying political careers that has become so commonplace here. He always said the way he saw Washington was that it wasn't so much made up of Democrats and Republicans as it was of real people and jackasses. John had a lot of friends on both sides. Real people, of course.

He did have an extraordinary relationship with the press. And I thought it was appropriate that you got two reporters here among the political figures who are eulogizing him. He was a source for many reporters, and some of them are in the audience here. For me it was like having another reporter in the bureau. I could call him up and say, "John, have you heard so and so?," and he then might, say, either, "Give me some information," or he'd say, "Well, I don't know a lot about that, but let me make a few calls." Reporters saw him as much more than a news source. He was our friend. In most cases, he was a close friend, and certainly in my case, he was first and foremost.

Men sometimes have a hard time sharing their innermost thoughts and feelings, but I could do that with John. He could do that with me. And when John asked, "How you doing?," it wasn't a routine greeting. He really wanted to know how you were doing. He was concerned if you had a problem. He always wanted to know if he could help. He was reassuring, too. He would tell you that he had similar problems. "Not to worry, things will work out alright." He used to say that people he liked most were those who would stand by their friends and their commitments and who never forgot where they came from. John certainly never forgot where he came from. He took pride in his humble beginnings and he stood by his friends through thick and thin, even when that caused him more than a little trouble. When a Republican friend most of us knows was hit by a criminal charge, John concluded that the criminal charge was unfair, and he not only stood by his friend, but he helped raise funds for his defense. And he made a point of being seen at lunch with him at popular Washington restaurants such as Duke's. Later, of course, the friend was exonerated. John didn't tear down people. He built them up. He was proud of his friends and his family. He talked with pride of Nellie and her work in Romania. He was proud of his children and grandchildren, and he often talked of them.

Nellie has asked me to share with John's friends the letter she received, a personal letter. It says, "I'm glad we had a chance to talk. I'll never forget the first time I met John back in 1972. He had such a great balance of common sense and compassion with an energy, and I was elated when he became the DNC chair, and I am grateful for all he has given to our party and our country since. All of us who know John are better for the experience and all of us will miss him. I know you will miss him most of all, and I hope the memory of your great years together and the love and support of your friends will help to sustain you. Hillary and I send you our thoughts and prayers. Sincerely, Bill"

You know, it's hard to avoid all the clichés when remembering John, because in his case they're all so true. His word was his bond. He would give you the shirt off his back. He did light up a room when he walked in. And I'm proud to call him a friend. He's a friend we'll all miss, but we'll remember, I think, with deep affection.

Mr. Jim Wooten. Here's a good rule for reporters: Don't be pals with pols. It doesn't mean that you can't enjoy their company, once in a while. It doesn't mean you can't have lunch with them, once in a while. It doesn't mean you can't like them, once in a while. It just means there needs to be some proper distance in space between us and them. Between those of us who cover the news and those who make it. Because the closer you get, the less you see. So if you want to see clearly, don't get too close.

Don't be pals with pols. This is a very good rule for all reporters.

Sometimes, though, he was a pol, wasn't he? You could tell that, because of the pure pleasure he derived from telling the political story. And not only that, from listening to them. To yours. To Strauss's (now there's a real test). And to mine, too. I don't think I ever told my political stories to better listeners that John C. Even if he knew they weren't exactly true (and what political story ever is). Even if he heard them before, he'd sit there and listen and help you along, and encourage you, and chuckle you, and then give a big rip of a laugh, and then he'd say, "I knew some old boys like that." And off he'd ride on some wonderful jaunt down the trails of his remarkable life. For John C., a good story was like a pair of boots: the more you worn them, the more comfortable they were. I loved his story about how much he grew in the eyes of Lyndon once he'd introduced him to Nellie. I loved listening to him. His voice for me was like the distant bell of a country church, always reminding me of home. And he said once, "Well, pal, they have fewer voters in Alabama, but I expect we come out about even on mules and fools."

He was a pol, wasn't he? You could tell that because he made it look so easy. Whether he was managing an unmanageable national convention or untying some devilish knot in the party, or settling some bloody internecine squabble or just working the tables at Duke's—he made it look easy. And politics never is. Not in this town, and not in Texas. And especially not for a man who felt about his party the way most men feel about their mothers. It was where he came from, and who he was. He was his party's son, and he would, by God, wear its name as proudly as he wore his own. White, John C., Democrat, Yellow-Dog. And in five separate decades, in the stormy politics of Texas and America, those were John C.'s unimpeachable credentials. When governor Shivers defected to Ike, John C. backed Adlai. When the preacher said, "Catholics oughtn't be president," John C. was a Kennedy man. When herds of Texas democrats stampeded over to Goldwater and Nixon, John C. stood straight up for L.B.J. and Humphrey. "Hubert Umphrey" as he called him—and McGovern, too. Over the years in campaign after campaign, from Carter through Clinton, through the sunshine and the rain, he rode that same old horse. And he was as tall in the saddle when he finally got off as when he first got on.

This is important to remember about John C. Not that he was blind to his party's warts or deaf to its bologna, but rather that he loved it for its promise. Not that he was indifferent to its foolishness or insensitive to its folly, but rather that he was committed to its possibilities.

John C. was the most hard-headed, down-to-earth, practical, realistic, commonsense dreamer I ever knew. That was his strength and the source of his stamina. This fierce embrace of an imperfect party as the perfect political expression of the ideas and ideals that he cherished. Others might stray or waffle or wander or waiver; John C. always danced with the girl who brung him. He was a pol wasn't he? You can see that in the respect that other pols had for him; even if he wouldn't give a dime to their party. You can see that here today, look around. And you can hear it too, in the unspoken affirmations of everybody who ever knew him or worked with him or worked against him, that here was one politician who gave politics a good name.

Years ago over lunch at Duke's, he was scolding me for my appearance; "Listen pal," he said, "you ain't a newspaper man no more—you've got to get yourself some clothes. You need more than one suit and tie. Hell, I'll loan you the money!" And that progressed into us listing the real friends we had, the genuine pals, people who might even lend us money, folks in whom we could place our complete trust. John C. had too many to count, he said, which was true, look around, and I had too few to mention and now one less. He was a pol and he was a pal.

We argued about a lot of things over the years, but there was one thing we agreed on and that was that we were both literary critics. And that we had found and read and reread the great American novel. A rough and tumble saga about two Texas rangers who went off up to Montana, far far away from Lonesome Dove. How he loved that book, how I did too and we'd recite from it over lunch. Especially, its last few pages: "mortally wounded and down to his last, few breaths, Augustus McCray looked up at his long time pal and partner Captain Caw and he whispered, 'My God, Woodrow, it was quite a party.'" My God, chairman, it was quite a party.

Reverend Dr. Gladstone. We have listened with gratitude, with admiration, and with hope. Charles Haddon Spurgeon, the Victorian Baptist preacher said of William Ewart Gladstone, four times Prime Minister of Britain, he said, "We believe in no man's infallibility, but it is restful to believe in one man's integrity. Let us pray. Eternal God before who's face the generations rise and fall. Beneath who's will and within who's patience the story of our lives is told. In this memorial service, for your servant John, we lift up our hearts in gratitude, we thank you for his character. We know that this is the true wealth of life. We may be festooned with the whole haberdashery of success and yet go to our graves castaways. We thank you that we heard Senator Dole say that while it is nice to be important, it is more important to be nice. And so we thank you for the decency, the integrity, and the loyalty of your servant John. We thank you his commitment to the political affairs of this nation. We thank you for all those who are ready to walk the lonely places of leadership, to become vulnerable to criticism, abuse, misrepresentation and public failure and yet who believes they are called to do this for love of country and party. For his commitment to his president, his party, and to the whole nation we give you thanks. And we thank you for his enjoyment of his family. For his dear wife, Nellie, for his children, whom he admired so much, for his sister and for his grandchildren. We remember them all now tenderly and commit them to your loving care. And we pray that as they sigh for the touch of a vanished hand and the sound of a voice that is still, they may know your living presence. And we thank you for our Lord Jesus Christ who has defeated death and brought life and immortality to light. We thank you that we can say he is not here but he is risen again until we meet in your presence. So bless each one of us here members of the family friends and colleagues and keep us at it and with it and for it until our work is done our course is run and on your kind arms we fall. And this we pray through Jesus Christ our Lord. Amen.

Will the congregation stand for the blessing and the benediction and remain standing while the family and speakers leave.

Go forth on your journey, Christian soul. Go in the strengths of God and may He bring you at last to the land of Promise, the Country of the Great King. The grace of our Lord Jesus Christ and the love of God and the fellowship of the Holy Spirit be with us all ever more. Amen.

NATIONAL AND COMMUNITY SERVICE ACT

Mr. PELL. Mr. President, one of the more exciting and innovative programs enacted during the 103d Congress was the National and Community Service Act proposed by President Clinton. Under the AmeriCorps program established as a result of that act, young men and women are now able, through community service, to earn an education benefit to help defray the costs of a higher education.

I am concerned, however, that this program may now be the target of severe cutbacks. Because of this, I wanted to bring to my colleagues' attention the correspondence I recently received from Mr. George Graboys of Barrington, RI, where he is a distinguished and widely respected business leader. Having retired as the chief executive officer of Citizens Bank, Mr. Graboys, nevertheless, remains very active in civic affairs. Among many activities, he serves presently as the vice chairman of the Rhode Island Children's Crusade for Higher Education.

Mr. Graboys' view on the operation of AmeriCorps in Rhode Island merit careful and thoughtful consideration. I ask unanimous consent, therefore, that the text of his January 31, 1995, letter to me be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

BARRINGTON, RI, *January 31, 1995.*

Hon. CLAIBORNE DEB. PELL,
Washington, DC.

DEAR SENATOR PELL: I am writing to express my strong support for the AmeriCorps national service program and to enlist your assistance in light of the recent call by House Speaker Newt Gingrich to eliminate the program.

From my perspective, AmeriCorps is a refreshing new government initiative. I am impressed, particularly, by its grassroots nature and its ability to place 20,000 dedicated individuals directly into community agencies in its first year of operation.

As Vice Chairman of the Rhode Island Children's Crusade for Higher Education, I have had the opportunity to see the merits of the program first hand. The Crusade's 51 AmeriCorps participants—13 full-time and 38 part-time—have provided an infusion of new energy to the organization. In less than two months, they have built relationships with over 40 schools and community agencies and have created 23 new Crusade mentoring programs in the seven Rhode Island communities with the greatest numbers of low-income children. At the same time, they have been busy phoning parents whose children may need services and going door to door to recruit new Crusaders. Presently, 324 children are being served through these AmeriCorps programs. Crusade Corps members are well on their way to reaching their goal of creating 26 programs that will serve 780 children.

Newt Gingrich has called the program "coerced voluntarism." Based upon what I have seen, nothing could be further from the truth. Our AmericCorps participants represent a racially diverse group of people from ages 16–55, including 10 parents of Crusaders. Within this diversity, all of them share an intense desire to serve the community and to better themselves in the process. AmeriCorps and the Crusade provide a structure and direction that meshes with their sense of altruism. The modest living stipends they receive make it possible for them to dedicate a full year to community service—rather than a few hours a week. This substantive volunteer experience is something that is likely to effect many participants' choice of careers and to foster a commitment to community service that will endure as their careers advance.

Speaker Gingrich has also indicated that it is a "waste of money to give limited benefits to college students." Again, I think he has missed the mark. The Crusade's AmeriCorps participants cover a broad range of educational attainment. Approximately 30% do not have an undergraduate degree, 53% have earned or are in the process of earning a Bachelors degree, and 17% have or are working towards their Masters or Ph.D. Each of the Crusade's participants has indicated, however, that they have a desire to further their education. For them, the educational benefits of AmeriCorps—$4,725 for full-time participants and $2,363 for part-time participants—will be of substantive help along the way. Moreover, the leadership and community building skills they are acquiring through their experience with AmeriCorps will complement their formal education and enable them to become more productive citizens.

I think the AmeriCorps program has produced remarkable results in a very short period of time. It has tremendous potential for strengthening the nation's service ethic while impacting community needs in a cost of effective manner. I hope that I can count on your support in ensuring that the program nurtured and protected.

Sincerely,

GEORGE GRABOYS.

PEACE IN NORTHERN IRELAND

Mr. KENNEDY. Mr. President, as we approach St. Patrick's Day 1995, Irish eyes are smiling as perhaps never before in the quarter century of violence that has wracked Northern Ireland. In celebrating the remarkable progress made toward peace during the past year, we are also mindful of the responsibility that all of us who care about Northern Ireland have to the people there who have suffered so much from the violence. We must do all we can to make certain that a lasting peace is achieved.

Last Monday, the New York Times carried an eloquent and very poignant article by James Clarity about Pauline Hegney, a Catholic mother in Belfast. Her husband, the father of her four children, was killed by Protestant paramilitaries more than 3 years ago. She is one of the countless survivors of the violence who, rather than harboring hatred, feverently hopes that no one else—Protestant or Catholic—will suffer her fate.

Clearly the people of Northern Ireland want the current cease-fire to continue and peace talks to begin. All of us share that hope as well.

Mrs. Hegney wrote an extremely moving account of the death of her husband, and Mr. Clarity quotes at length from her words in his article.I believe that his story and her words will be of interest to all of us, and I ask unanimous consent that the article by James Clarity may be printed in the RECORD. I also ask unanimous consent that a poem by W.H. Auden, which speaks to all such loss, may be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Mar. 6, 1995]

A WAR WIDOW'S THOUGHTS AT PEACE'S DOWNING

(By James F. Clarity)

BELFAST, NORTHERN IRELAND.—Pauline Hegney, the mother of four young children whose husband was slain three and a half years ago by Protestant paramilitaries on a Belfast street, prays every day that the Government peace effort will work and that there will be no more killings here in the name of patriotism.

She is among the tens of thousands of survivors of the 3,172 Protestants and Roman Catholics who have been killed in sectarian warfare here since 1969. She speaks with a soft Ulster lilt and there is passion in her voice, but no hatred.

Her husband, Karl, an unemployed house painter, was gunned down in the street on his way home from a pub. Both his widow and the police say he had no involvement in the Irish Republican Army. The police told her they had an idea who the killers were, but no proof, she said. No one has been arrested.

She was left with their four young children and a job at the Europa Hotel in the city center, as head of the banquet dining room staff. But the I.R.A. viewed the hotel as a major economic target and bombed it frequently. The bombings often shut it down, putting her out of work, sometimes for months.

The I.R.A. declares that it is fighting for Northern Ireland's Catholics. Mrs. Hegney, who is Catholic, said she prays for them, and for the Protestant guerrillas too.

She told her children that "a sick man" had killed their father and that he was now in heaven with Granny, his mother. Her daughter, Julie-Anne, said that at first she hated Granny for taking him away and that she saw her father return to her room one night. She said she wanted to die and go to heaven with him. Lately Julie-Anne, who is now 8, says only, "I wish I could see him, mummy, for one wee minute."

Mrs. Hegney joined a group of Catholic and Protestant widows of guerrilla war victims, and they exchange their feelings and problems.

But the cease-fires that have raised the hopes for peace and for a normal life for most people in Northern Ireland also left her and the other widows feeling depressed, she said.

"During the trouble, we were all in it together," she said. "Everyone in Belfast was affected. But when the peace came, I felt isolated. Other people can get on with their lives. We can't."

Last October, as reports spread that the Protestant guerrillas, following the lead of the I.R.A., were going to call their own cease-fire, she hoped it would not be on Oct. 13, the third anniversary of her husband's killing, but it was announced on that day.

"It didn't feel right," she said. "I was praying for peace, but I didn't want it on that day." Now, she said, she faces the prospect of seeing representatives of the guerrillas become celebrated personalities as they approach formal negotiations with the British and Irish Governments and the other political parties in the North.

"I don't like the idea that after they've killed so many people, they'll be sitting down to say what the future will be, when people like these destroyed my children's future. But if it stops people being murdered, I've no objection."

Her children still miss their father. Karl Jr., who is 14, wants to be a lawyer. She said she asked him if he would defend someone he knew to be guilty of a "terrible crime." Karl said: "Would you serve him if he came into the Europa. You do what you're paid to do." She shrugged.

"I'll get through it," she said. "I'm a struggler. I've begun to write about it."

In her account of the night her husband was killed, she wrote: "We never know what's to come for us, though, do we? I put the boys to bed when their daddy went out. I went into the kitchen and had a little laugh to myself when I saw the saucepans sitting on the cooker. One was full of potatoes and the other one had sprouts in it all ready for the Sunday. He also had the roast cooked. I thought how organized my Karl is.

"A very curt male voice came on the phone saying he was a police officer and asked if I could make my way to the police station as my husband was in hospital seriously ill. I lost my mind at that moment and I don't think I have actually found it all again.

"The nightmare for me had only just begun. I went to see Karl lying in that operating theater where he had died with the doctors fighting to save his life. He lay there still and cold, no life left in the body of the man who had taken the core of me, loved me and made my life worth living. I thought how could he leave me? What would I do without him? How was I going to live without him?

"I held Karl's hand and it was like holding the hand of a wax dummy. It felt so strange. I didn't cry. I just asked him to give me strength to get through the next few hours. I went and sat at the top of the stairs waiting for the first of the children to waken. I knew this would be our 5-year-old daughter, Julie-Anne. She was wearing her little pink and green pajamas and she still had her hair in pigtails from the day before. She was just so beautiful.

"What I was going to tell her was going to rob her of her little innocent childhood. She came over to me with her wee arms out and said, 'Where's my daddy?' I sat her down on my knee and told her that her daddy had gone up to heaven to see his own mummy, her granny Nancy. 'When's he coming back?' she said. I explained to her that some sick man had shot her daddy and that he had died and would not be coming back. She had to blame somebody, God love her, so she started crying and said she hated her granny.

"I told our three little boys what had happened to their lovely daddy. None of them spoke. Karl and Michael began to cry. Mario just sat there. I think he was in deep shock. I put my arms around all four of them and all but Mario cried sorely for what we had lost."

FUNERAL BLUES
(By W.H. Auden)

Stop all the clocks, cut off the telephone,
Prevent the dog from barking with a juicy bone,
Silence the pianos and with muffled drum,
Bring out the coffin, let the mourners come.
Let aeroplanes circle moaning overhead
Scribbling on the sky the message He Is Dead,
Put crêpe bows round the white necks of the public doves,
Let the traffic policemen wear black cotton gloves.
He was my North, my South, my East and West,
My working week and my Sunday rest,
My noon, my midnight, my talk, my song;
I thought that love would last for ever: I was wrong.
The stars are not wanted now; put out every one,
Pack up the moon and dismantle the sun,
Pour away the ocean and sweep up the woods;
For nothing now can ever come to any good.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Mr. President, let us say it again: Anyone even remotely familiar with the U.S. Constitution knows that no President can spend a dime of the taxpayers' money that has not first been both authorized and appropriated by Congress.

So if you hear a politician or an editor or a commentator declare that "Reagan ran up the Federal debt" or that "Bush ran it up," just bear in mind that the Founding Fathers made it very clear that it is the constitutional duty of Congress to control Federal spending.

The fiscal irresponsibility of Congress has created a Federal debt which stood at $4,851,012,058,348.35 as of the close of business Tuesday, March 7. Averaged out, every man, woman, and child in America owes a share of this massive debt, and that per capita share is $18,414.53.

TRIBUTE TO PRIVATE TRACIE JOY McBRIDE

Mr. WELLSTONE. Mr. President, it is with great sadness that I speak today in remembrance of 19-year-old Army Pvt. Tracie Joy McBride of Centerville, MN, who reportedly was abducted nearly 3 weeks ago from Goodfellow Air Force Base in Texas and then murdered.

Private McBride joined the Army last April because she wanted to serve her country. She had just finished basic training in California and had only been on the base in Texas for about 2 weeks for advanced intelligence training at the time of her death.

Private McBride brought pride and dedication to her military service, and I want to take this occasion to recognize her honorable service to our country.

Mr. President, as Private McBride is being laid to rest today in Fort Snelling National Cemetery in Minnesota, my wife Sheila and I extend our deepest sympathy to Private McBride's family and friends.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF THE FEDERAL COUNCIL ON THE AGING—MESSAGE FROM THE PRESIDENT—PM 28

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources.

To the Congress of the United States:

In accordance with section 204(f) of the Older Americans Act of 1965, as amended (42 U.S.C. 3015(f)), I transmit herewith the Annual Report for 1994 of the Federal Council on the Aging. The report reflects the Council's views in its role of examining programs serving older Americans.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 8, 1995.*

REPORT OF THE TRADE POLICY AGENDA AND ANNUAL REPORT ON THE TRADE AGREEMENTS PROGRAM—MESSAGE FROM THE PRESIDENT—PM 29

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance.

To the Congress of the United States:

As required by section 163 of the Trade Act of 1974, as amended (19 U.S.C. 2213), I transmit herewith the 1995 Trade Policy Agenda and 1994 Annual Report on the Trade Agreements Program.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 8, 1995.*

REPORT ON THE ADMINISTRATION OF THE FEDERAL RAILROAD SAFETY ACT OF 1970—MESSAGE FROM THE PRESIDENT—PM 30

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation.

To the Congress of the United States:

I transmit herewith the 1993 annual report on the Administration of the Federal Railroad Safety Act of 1970, pursuant to section 211 of the Act (45 U.S.C. 440(a)).

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 8, 1995.*

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-475. A communication from the U.S. Trade Representative, transmitting, a draft of proposed legislation to provide authorization of appropriations for the Office of the United States Trade Representative for fiscal years 1996 and 1997; to the Committee on Finance.

EC-476. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a Presidential Determination relative to the Serbia and Montenegro Sanctions Program; to the Committee on Foreign Relations.

EC-477. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, the report of the texts of international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC-478. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, the report of the texts of international agreements, other than treaties, and background statements; to the Committee on Foreign Relations.

EC-479. A communication from the Director of the U.S. Information Agency, transmitting, a draft of proposed legislation entitled "U.S. Information Agency Authorization Act, Fiscal Years 1996 and 1997"; to the Committee on Foreign Relations.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PACKWOOD, from the Committee on Finance:

Maurice B. Foley, of California, to be a judge of the U.S. Tax Court for a term expiring 15 years after he takes office.

Juan F. Vasquez, of Texas, to be a judge of the U.S. Tax Court for a term expiring 15 years after he takes office.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. HOLLINGS (for himself, Mr. BREAUX, and Mr. KERRY):

S. 517. A bill to eliminate the Board of Review for the Metropolitan Washington Airports Authority and increase the number of Presidential appointees to the Authority, and for other purposes; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CHAFEE (for himself, Ms. SNOWE, Mrs. BOXER, Mr. BRYAN, Mr. HOLLINGS, Mr. THURMOND, Mr. LUGAR, Mrs. HUTCHISON, Mr. WARNER, Mr. AKAKA, Mrs. MURRAY, Ms. MOSELEY-BRAUN, Mr. SIMON, Mr. STEVENS, Mr. MURKOWSKI, Mr. KEMPTHORNE, Mr. LOTT, Mr. INOUYE, Mr. HATFIELD, Mr. MCCAIN, Mr. JEFFORDS, Mr. COCHRAN, Mr. JOHNSTON, Mr. BURNS, Mr. BAUCUS, Mr. DODD, Mr. KERREY, Mr. DORGAN, Mr. BRADLEY, Mr. LEVIN, Mr. LEAHY, Mr. BROWN, Mr. DOMENICI, Mr. DASCHLE, Mr. SARBANES, Mrs. FEINSTEIN, Mr. GRASSLEY, Ms. MIKULSKI, Mr. ROBB, and Mr. CRAIG):

S. Res. 85. A resolution to express the sense of the Senate that obstetrician-gynecologists should be included in Federal laws relating to the provision of health care; to the Committee on Labor and Human Resources.

By Mr. DOLE (for himself and Mr. DASCHLE):

S. Res. 86. A resolution to make effective the appointment of the Deputy Senate Legal Counsel; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HOLLINGS (for himself, Mr. BREAUX, and Mr. KERRY):

S. 517. A bill to eliminate the Board of Review for the Metropolitan Washington Airports Authority and increase the number of Presidential appointees to the Authority, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY AMENDMENTS ACT OF 1995

Mr. HOLLINGS. Mr. President, today, I am introducing a bill that seeks to accomplish two goals: first, to make sure that the Metropolitan Washington Airports Authority [MWAA] can continue to operate and prosper; and second, to ensure that appropriate input into the decisions of the MWAA is maintained. The bill thus protects the interests of the traveling public and maintains many well-developed and defined compromises on which many of my colleagues have worked over the years.

I had initially considered legislation recreating a board of review with authority to oversee the actions of MWAA. That was part of the original arrangement in transferring these airports—Congress would be able to oversee actions of the airports because they are critical resources, not just for Virginia, but for all of the States. Such an approach also would have protected the traveling public and maintained the resolution of difficult issues accomplished with the transfer. This bill does not take that step, but instead is intended as a compromise, and one that is workable for all concerned.

I want to put this matter in perspective for my colleagues. In 1986, I spent many days on the Senate floor debating the transfer of Washington National and Dulles Airports. I believed then, as I do now, that we have a responsibility to ensure that Federal assets are properly used, are properly valued, and are able to provide benefits to their users. These airports are important to all of us and our constituents. As a result, when Congress created the MWAA, a number of critical and interrelated compromises were made, including assurances that access to the airports would be appropriately maintained and that the Federal Government would retain its authority and oversight of the airports.

In addition, Congress specifically recognized the historic use of the airports and legislated that the number of operations, or slots, and the rules governing flights would be frozen. The local community, including Maryland, the District of Columbia, and Virginia, recognized that National Airport would be allowed to continue to serve cities that it had traditionally served, and Dulles would be given a chance to grow into a major domestic and international airport. This meant that noise problems would be minimized at National, and growth would occur at a then-distant facility some 22 miles from the Capital.

As my colleagues know, both Washington National and Dulles International are undergoing major renovations. The airports floated more than $1.3 billion in bonds and currently have underway about $700 million in construction projects. All of us have seen first hand the major construction going on at these airports. That construction came about because Congress recognized that the airports served different purposes, and we facilitated future planning and growth opportunities. National Airport has a perimeter rule, which ensures service to communities within the perimeter rule. That was part of the original deal. The former Governor of Virginia, Gerald Baliles, at a hearing before the Commerce Committee's Aviation Subcommittee, recently reiterated how carefully balanced the transfer legislation was. Dulles, without a perimeter rule, has the benefit of a superhighway with door-to-door access from downtown Washington to the airport, to facilitate its growth. And it has grown. We need to make sure that we keep our commitments to all of the States involved.

Congress also recognized that these airports are more than just local airports, and because the underlying land is Federal property, we established a congressional board of review and an Airports Authority—two separate bodies, appointed in different ways, and with different responsibilities.

Unfortunately, the Supreme Court disagreed with our method of oversight, and on January 23, 1995, the Supreme Court denied certiorari in Hechinger versus Metropolitan Washington Airports Authority. The Court of Appeals had struck down as unconstitutional the congressional board of review. The appellate court's decision has been stayed until March 31, 1995.

Under the existing legislation, because the board of review has been found to be unconstitutional, the Airports Authority is unable to move forward on major decisions.

As a result, Congress must now take action to address the problem. There are many options available, but our goal should be to ensure appropriate oversight of a facility on Federal property being operated under a long-term lease, without creating a maze of oversight. This is a fine line, but a responsibility we must accept. Therefore, today I am introducing legislation that will add six Presidentially appointed and Senate-confirmed members to the MWAA board of directors. This will ensure that the Federal Government continues its active participation in the decisions of these airports, but also will recognize that the communities have an important and critical role in shaping the future of these airports. The bill eliminates the congressional board of review.

The legislation goes to the heart of the problem—and does so in a way that is constitutional. I urge my colleagues to support it.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 517

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Metropolitan Washington Airports Authority Amendments Act of 1995".

SEC. 2. ELIMINATION OF BOARD OF REVIEW.

Section 6007 of the Metropolitan Washington Airports Act of 1986 (formerly 49 U.S.C. App. 2456) is amended—

(1) by striking subsection (f); and

(2) by striking subsection (h) and redesignating subsection (i) as (h).

SEC. 3. INCREASE IN NUMBER OF PRESIDENTIALLY-APPOINTED MEMBERS OF BOARD.

(a) IN GENERAL.—Section 6007(e) of the Metropolitan Washington Airports Act of 1986 (formerly 49 U.S.C. App. 2456(e) is amended—

(1) by striking "one member" in paragraph (1)(D) and inserting "7 members"; and

(2) by striking "Seven" in paragraph (5) and inserting "10".

(b) SEPARABILITY.—

(2) Section 6011 of that Act (formerly 49 U.S.C. App. 2460) is amended by striking "Except as provided in section 6007(h), if" and inserting "If".

(c) STAGGERING TERMS FOR PRESIDENTIAL APPOINTEES.—Of the members first appointed by the President after the date of enactment of this Act—

(1) one shall be appointed for a term that expires simultaneously with the term of the member of the Metropolitan Washington Airports Authority board of directors serving on that date (or, if there is a vacancy in that office, the member appointed to fill the existing vacancy and the member to which this paragraph applies shall be appointed for 2 years);

(2) two shall be appointed for terms ending 2 years after the term of the member to which paragraph (1) applies expires; and

(3) three shall be appointed for terms ending 4 years after the term of the member to which paragraph (1) applies expires.

SEC. 4. PRESERVATION OF ACTIONS BY PREVIOUS BOARD.

Any action taken by the Board of Review under section 6007(f) of the Metropolitan Washington Airports Act of 1986 (49 U.S.C. App. 2456(f)) as such section was in effect before its amendment by this Act is hereby ratified and deemed valid.

SEC. 5. RECONSTITUTED BOARD TO FUNCTION WITHOUT INTERRUPTION.

Notwithstanding any provision of State law, including those provisions establishing, providing for the establishment of, or recognizing the Metropolitan Washington Airports Authority, and based upon the Federal interest in the continued functioning of the Metropolitan Washington Airports (as defined in section 6004(4) of the Metropolitan Washington Airports Authority Act of 1986 (formerly 49 U.S.C. App. 2451(4)), the board of directors of such Authority, including any members appointed under the amendments made by section 3, shall continue to meet and act after the date of enactment of this Act until such time as any necessary conforming changes in State law are made in the same manner as if those conforming changes had been enacted on the date of enactment of this Act.

SEC. 6. STATUS UNAFFECTED.

Nothing in this Act, or the amendments made by this Act, shall affect the treatment of the Metropolitan Washington Airports Authority under Federal, State, or local tax law.

SEC. 7. ADVISORY GROUP TO REVIEW LEASE PAYMENTS.

(a) IN GENERAL.—Section 6007 of the Metropolitan Washington Airports Authority Act of 1986 (formerly 49 U.S.C. App. 2456) is amended by adding at the end thereof the following new subsection:

"(i) ADVISORY GROUP TO REVIEW LEASE.—

"(1) APPOINTMENT.—The Secretary shall appoint an advisory group of 3 individuals not otherwise employed by the United States Government to review—

"(A) the lease arrangements under section 6005; and

"(B) any renegotiation of that lease or any portion of it, including subleases, including any change in the terms or conditions of that lease, and including the amount of any payments made or received under it.

"(2) TERMS; QUALIFICATIONS.—

"(A) Members of the advisory group shall serve at the pleasure of the Secretary.

"(B) Members of the advisory group shall be chosen on the basis of their experience in aviation matters and in addressing the needs of airport users.

"(3) REIMBURSEMENT OF EXPENSES.—Members of the advisory group shall serve without compensation but shall be reimbursed by the Airports Authority for expenses actually incurred in carrying out their responsibilities under this Act.".

(b) CHANGE IN DISPOSITION OF LEASE PAYMENTS.—Section 6005(b)(1) of that Act (formerly 49 U.S.C. App. 2454(b)(1)) is amended by striking "general fund of the Treasury" and inserting "the Airport and Airway Trust Fund".

ADDITIONAL COSPONSORS

S. 190

At the request of Mr. PRESSLER, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 190, a bill to amend the Fair Labor Standards Act of 1938 to exempt employees who perform certain court reporting duties from the compensatory time requirements applicable to certain public agencies, and for other purposes.

S. 270

At the request of Mr. SMITH, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 270, a bill to provide special procedures for the removal of alien terrorists.

S. 275

At the request of Mr. GRASSLEY, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 275, a bill to establish a temporary moratorium on the Interagency Memorandum of Agreement Concerning Wetlands Determinations until enactment of a law that is the successor to the Food, Agriculture, Conservation, and Trade Act of 1990, and for other purposes.

S. 323

At the request of Mrs. KASSEBAUM, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of S. 323, a bill to amend the Goals 2000: Educate America Act to eliminate the National Education Standards and Improvement Council, and for other purposes.

S. 356

At the request of Mr. SHELBY, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 356, a bill to amend title 4, United States Code, to declare English as the official language of the Government of the United States.

S. 439

At the request of Mr. THOMAS, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 439, a bill to direct the Director of the Office of Management and Budget to establish commissions to review regulations issued by certain Federal departments and agencies, and for other purposes.

SENATE JOINT RESOLUTION 21

At the request of Mr. THOMPSON, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of Senate Joint Resolution 21, a joint resolution proposing a constitutional amendment to limit congressional terms.

SENATE RESOLUTION 85—RELATIVE TO HEALTH CARE LEGISLATION

Mr. CHAFEE (for himself, Ms. SNOWE, Mrs. BOXER, Mr. BRYAN, Mr. HOLLINGS, Mr. THURMOND, Mr. LUGAR, Mrs. HUTCHISON, Mr. WARNER, Mr. AKAKA, Mrs. MURRAY, Ms. MOSELEY-BRAUN, Mr. SIMON, Mr. STEVENS, Mr. MURKOWSKI, Mr. KEMPTHORNE, Mr. LOTT, Mr. INOUYE, Mr. HATFIELD, Mr. MCCAIN, Mr. JEFFORDS, Mr. COCHRAN, Mr. JOHNSTON, Mr. BURNS, Mr. BAUCUS, Mr. DODD, Mr. KERREY, Mr. DORGAN, Mr. BRADLEY, Mr. LEVIN, Mr. LEAHY, Mr. BROWN, Mr. DOMENICI, Mr. DASCHLE, Mr. SARBANES, Mrs. FEINSTEIN, Mr. GRASSLEY, Ms. MIKULSKI, Mr. ROBB, and Mr. CRAIG) submitted the following resolution; which was referred to the Committee on Labor and Human Resources:

S. RES. 85

Whereas women constitute more than 50 percent of the population of the United States;

Whereas, because women's health historically has received little attention in terms of Federal funding and in terms of research priorities, there should be an increased emphasis on the needs and preferences of women in such areas;

Whereas the Federal Government should increase its support for women's health and can make a significant difference in improving the status of women's health;

Whereas increased funding for research is insignificant if women's health care services are restricted;

Whereas many women view their obstetrician-gynecologist as their primary or sole physician;

Whereas approximately 70 percent of women would be unwilling to change their obstetrician-gynecologist to save money;

Whereas an obstetrician-gynecologist improves the access to health care of a woman by providing primary and preventive health care throughout the woman's lifetime, encompassing care of the whole patient in addition to focusing on the processes of the female reproductive system;

Whereas preventive and primary care provided by an obstetrician-gynecologist includes instruction in breast self-examination, cervical cancer screening, health education, instruction in health promotion, hypertension and cardiovascular surveillance, osteoporosis counseling, sexually transmitted diseases counseling, and identification of victims of domestic violence;

Whereas the most effective way to treat health problems is to prevent such problems from occurring or to catch such problems in the early stages, when such problems are most treatable;

Whereas 60 percent of all office visits to obstetrician-gynecologists are for preventive care;

Whereas obstetrician-gynecologists refer their patients to other physicians less frequently than other primary care providers, thus avoiding costly and time-consuming referrals;

Whereas more than two-thirds of all visits to obstetrician-gynecologists were by established patients of the physician who were returning for care of a medical condition;

Whereas obstetrician-gynecologists manage the health of women beyond the reproductive system, and are uniquely qualified on the basis of education and experience to provide such health care services to women;

Whereas obstetrician-gynecologists provide health care to women with an awareness of the relationship of disease to family history;

Whereas over two-thirds of general family practice physicians do not deliver newborns and will not be able to address this need of women; and

Whereas 80 percent of maternity care services in the United States are provided by obstetrician-gynecologists: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) obstetrician-gynecologists should be included as primary care providers for women in Federal laws relating to the provision of health care; and

(2) legislative proposals that define primary care should include primary care services performed by obstetrician-gynecologists in such definition.

• Mr. CHAFEE. Mr. President, today I join with my colleagues Senator BOXER and Senator SNOWE, along with 37 other Senators in submitting a sense-of-the-Senate resolution that obstetrician-gynecologists [OB–GYN's], should be recognized as primary care physicians under Federal health programs.

This resolution is a very important first step in guaranteeing American women the access to quality medical care that they need in order to lead healthy and productive lives. Such a change in policy would give women greater access to the medical treatment they need, while eliminating much of the bureaucracy in our current health care system.

American women use obstetrician-gynecologists more than any other type of physician. In 1987, more than 53 percent of women aged 15 and older, who visited an OB–GYN, did so to receive a general check-up. In 1990, over 7 million women visited an OB–GYN for a general examination. When asked, the majority of these women stated that they regarded their OB–GYN as their primary care physician. In fact, receiving a general check-up was cited more frequently as a motivating factor for seeing an OB–GYN than for visiting either family physicians or internists.

OB–GYN's provide a variety of services which are vital to women's health: screenings for breast, ovarian, and cervical cancer; counseling about sexually transmitted diseases, such as HIV; and identifications of domestic violence victims.

One of the most important services that OB–GYN's provide is prenatal care. Lack of adequate prenatal care has serious ramifications on our society: mental retardation, deafness, blindness, autism, cerebral palsy, epilepsy, or chronic lung ailments, are just a few of the problems that affect children whose mothers did not receive adequate prenatal care. The Institute of Medicine, in its report, "Preventing Low Birthweight," found that prenatal care is most effective in reducing the chance of low birthweight among high-risk women.

Dr. Ruth Schwartz, clinical professor of obstetrics and gynecology at the University of Rochester School of Medicine and Dentistry, has stated that a woman with prenatal care is five times as likely to give birth to a living child than women who have no prenatal care. Although only 7 percent of live births were low-birth-weight babies, this number accounts for nearly 60 percent of all infant deaths.

Infant mortality rates in this country should be a concern to all of us. We are the richest nation on the planet, the most industrialized country in the world, and yet we have one of the highest infant mortality rates in the industrialized world. As the preceding statistics attest, one way to defeat this statistic is to provide American women freer access to OB–GYN's.

The majority of American women perceive their OB–GYN's as their primary care physicians. The challenges that we face with regard to battling infant mortality and ensuring health babies point us toward one direction: giving women direct access to OB–GYN's.

Mr. President, I urge my colleagues to cosponsor this important resolution.•

SENATE RESOLUTION 86—RELATIVE TO THE DEPUTY SENATE LEGAL COUNSEL

Mr. DOLE (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 86

Resolved, That the appointment of Thomas B. Griffith to be Deputy Senate Legal Counsel, made by the President pro tempore this day, shall become effective on March 13, 1995, and the term of service of the appointee shall expire at the end of the One Hundred Fifth Congress.

AMENDMENTS SUBMITTED

THE EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

SIMON AMENDMENT NO. 327

Mr. SIMON proposed an amendment to the bill (H.R. 889) making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes; as follows:

On page 22, strike out line 16 and all that follows through page 23, line 2.

On page 22, line 2, strike out "65,000,000", and insert "81,000,000" in lieu thereof.

MURKOWSKI (AND DOLE) AMENDMENT NO. 328

Mr. MURKOWSKI (for himself and Mr. DOLE) proposed an amendment to the bill H.R. 889, supra; as follows:

On page 25, between lines 4 and 5, insert the following:

SEC. 110. None of the funds appropriated or otherwise made available by this Act may be obligated or expended for assistance to or programs in the Democratic People's Republic of Korea, or for implementation of the October 21, 1994, Agreed Framework between the United States and the Democratic People's Republic of Korea, unless specifically appropriated for that purpose.

HELMS AMENDMENT NO. 329

Mr. HELMS proposed an amendment to the bill H.R. 889, supra; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . LIMITATION ON EMERGENCY AND EXTRAORDINARY EXPENSES.

(a) IN GENERAL.—Funds appropriated or otherwise made available to the Department of Defense may not be obligated under section 127 of title 10, United States Code, for the provision of assistance, including the donation, sale, or financing for sale, of any time, to a foreign country that is ineligible under the Foreign Assistance Act of 1961 or the Arms Export Control Act to receive any category of assistance.

(b) EFFECTIVE DATE.—The limitations in subsection (a) shall apply to obligations made on or after the date of enactment of this Act.

BUMPERS (AND LAUTENBERG) AMENDMENT NO. 330

Mr. BUMPERS (for himself and Mr. LAUTENBERG) proposed an amendment to the bill H.R. 889, supra; as follows:

At the end of the bill add the following:

SEC. Notwithstanding any other provision of law, effective 30 days after the date of enactment of this Act, none of the funds made available for the National Aeronautics and Space Administration by any previously enacted Act shall be obligated or expended for the NASA/Russian Cooperative MIR program, unless the President certifies to Congress that Russia has agreed not to sell nuclear reactor components to Iran.

KASSEBAUM (AND OTHERS) AMENDMENT NO. 331

Mrs. KASSEBAUM (for herself, Mr. DOLE, Mr. HATCH, Mr. THURMOND, Mr. GRAMM, Mr. GREGG, Mr. CHAFEE, Mr. COVERDELL, and Mr. WARNER) proposed an amendment to the bill, H.R. 889, supra; as follows:

At the end of the first excepted committee amendment, insert the following:

SEC. 110. (a) Congress finds that (1) it is the role of Congress, as the representative body of the people, to decide the policy of the United States with respect to relations between management and labor; and (2) the executive branch should not use the Federal procurement process to initiate major changes in the labor-management relations of the United States.

(b) The purpose of this Act is to ensure that the Congress decides important labor-management relations policy by prohibiting the executive branch from spending any appropriated funds for the purpose of implementing an executive order that would debar or in any way limit the right of Federal contractors under common law to use permanent replacements for workers engaged in a strike.

(c) None of the funds made available under any appropriations Act for fiscal year 1995 may be used to implement, administer, or enforce any executive order, or other rule, regulation, or order, that limits, restricts, or otherwise affects the ability of any existing or potential Federal contractor, subcontractor, or vendor to hire permanent replacements for lawfully striking employees.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, March 8, 1995, to conduct a hearing on credit unions.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, March 8, 1995, for purposes of conducting a Full Committee hearing which is scheduled to begin at 9:30 a.m. The purpose of this oversight hearing is to consider domestic petroleum production and international supply.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet Wednesday, March 8, 1995, beginning at 10 a.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing on welfare reform.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, March 8, 1995, at 1:30 p.m. to hold a hearing on Intellectual Property Rights and the People's Republic of China.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. HATFIELD. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Wednesday, March 8, at 9:30 a.m. for a hearing on regulatory reform.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, March 8, 1995, beginning at 2:30 p.m., in room 485 of the Russell Senate Office Building on reforming and downsizing of the Bureau of Indian Affairs.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on health professions consolidation and reauthorization, during the session of the Senate on Tuesday, March 8, 1995, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON SMALL BUSINESS

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the sessions of the Senate on Wednesday, March 8, 1995, at 9:30 a.m., in room SR–428A, to conduct a hearing focusing on the Regulatory Flexibility Amendments Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, March 8, 1995, at 2 p.m. to hold a closed hearing on intelligence matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FORESTS AND PUBLIC LAND MANAGEMENT

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Subcommittee on Forests and Public Land Management of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, March 8, 1995, for purposes of conducting a subcommittee hearing which is scheduled to begin at 2 p.m. The purpose of this oversight hearing is to consider Forest Service appeals.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

INDIAN ISSUES

• Mr. CAIN. Mr. President, last November's election signaled the end of business as usual on the part of the Federal Government. With the post-election talk of welfare reform and block grants, Indian country has been swept up by concern that the unique needs of Indian tribes will be ignored during the debate on block grants and welfare reform. Indeed, in the dozens of meetings I have had with tribal leaders over the past month, they have expressed concern that current block grant proposals in the Congress will diminish the already inadequate level of welfare and social service resources available to tribes and their members. I understand these concerns because, as a practical matter, tribal governments have been routinely shut out of the policy debates and kept away from the table when major policy decisions are made.

What is most frustrating, however, is that during the past 2 months I have heard statements that are premised solely on the notion that promoting block grants implies that the new majority in Congress intends to diminish the trust responsibility that the Congress and the administration have toward American Indians and Alaska Natives, and that the majority intends to use reform to undermine tribal sovereignty and the government-to-government relationship between the United States and Indian tribes. I find it unfortunate that there are those who would choose to spread this message of impending doom rather than work constructively and creatively to find ways to include tribal governments in the current debate.

Mr. President, let me set the record straight. I do not believe any Member of this body, Republican or Democrat, would deliberately and purposefully seek to diminish the benefits that various Federal programs have provided for individual Indians and Indian tribes. In fact, I believe that the new Congress has the potential for offering a rare opportunity for Indian tribes to reshape how the Federal Government has dealt with them. The primary reason we are undertaking welfare and block grant reform is to enhance the control of local governments over these programs. This rationale is quite similar to the Federal-Indian policies I have continuously promoted for Indian tribal governments since the beginning of my tenure on the Senate Committee on Indian Affairs.

As the chairman of the committee, I will continue to advance Federal policies that are intended to enhance the control of tribal governments over Federal programs. Therefore, I intend to do everything I can to ensure two things—first, that tribes are not swept aside as we reform the welfare system. And second, that any block grants support, rather than undermine, the unique role that tribal governments have in the Federal system.

In order to accomplish these goals I intend to advocate for the provision of direct Federal funding to Indian tribes for programs otherwise under consideration for consolidation into Federal block grants. I will promote direct funding for tribal governments through tribal block grants. To do otherwise would be inconsistent with the Federal Government's legal and fiduciary obligations to Indian tribes. Direct Federal grants to tribes, bypassing the State governments, is consistent with the government-to-government relationship between the Indian tribes and the Federal Government.

At present, in most Federal welfare programs, more often than not, State governments use Indian population figures to justify higher levels of Federal funding. But no matter how much Federal money a State gets, tribal members continue to experience inequity in the quality and quantity of services available under State administered programs. What is most shocking is the fact that, despite the piles upon piles of existing Federal regulations requiring State government accountability in operating welfare programs, there are literally no requirements to ensure that tribal populations receive an equitable share of these Federal funds. The only excuse given by State government administrators for this inequity is that administering programs for tribal populations is problematic and more costly because of the remoteness of many tribal communities. If this is indeed the case, States should embrace, not oppose, a new approach that vests in tribal governments the Federal funds and flexible authorities necessary to carry out these responsibilities.

I know that there are some tribal and State governments which have established cooperative working relationships under the present Federal-State arrangement despite the legal and structural impediments to such relationships. There are also many tribal governments which are either too small or unable to administer specific federally funded programs. Many of these tribes have to rely on State governments to administer these programs for their tribal members. In these instances, Indian tribal governments should have the opportunity to use the Federal funding to contract with a State government to administer programs for tribal members.

Many tribal governments have the ability to administer these and many other federally funded programs. Many are eager to do so. As with State governments, excessive Federal regulations have hindered tribal governments in their efforts to administer these programs to serve their communities. For this reason, in the current legislative efforts to reform welfare and other social service programs, tribal governments seek changes that will provide direct Federal funding to them along with reductions in regulatory burdens so that administrative costs are diminished and tribal innovation and flexible authority is increased.

Indian tribal members have long received direct services from a variety of State administered programs. More than 1.1 percent of all Indian people have received State-administered Aid to Families With Dependent Children [AFDC]. The Head Start Program has had a successful track record of serving Indian children and families living in proverty. The Job Opportunity Basic Skills [JOBS] and Job Training Partnership Act [JTPA] programs have helped to improve the lives of thousands of Indians by providing training and employment opportunities both on and off reservation communities. Therefore, I believe it is imperative that the Congress outline a clear role for tribal governments in the block grant and welfare reform debates. Consider, for a moment, the certain result of failure if we do not include tribal governments as part of the solution.

Mr. President, under the Constitution, Congress has plenary power to prescribe the Nation's Indian policy. Over the past 2 centuries Congress has poorly exercised that power, developing inconsistent or contradictory policies which over time have wasted or misdirected millions upon millions of scarce Federal dollars. More importantly, the periodic contortions in Federal Indian policy have had grave consequences for American Indian people.

I believe Congress has finally begun to make significant strides in improving its dealings with the Indian tribes. Last year, by passing the Indian Self-Determination Act amendments and making the Tribal Self-Governance Demonstration project permanent, Congress clearly set a new course. This new direction offers two key principles that should likewise guide all welfare reform and block grant efforts: (1) Provide direct Federal funding to tribes, in recognition of the government-to-government relationship; and (2) affirm the right of tribes to choose to administer their own programs or to use their funds to contract with States to administer programs according to tribal design.

I am convinced that these principles must be the cornerstone of a viable and fiscally sound Federal policy that will prove to be beneficial to individual Indians and Alaska Natives who have been so critically underserved by Federal-State arrangements. I firmly believe that this policy is wholly consistent with the goal of shifting funds, power, responsibility, and accountability for such programs to local governments, like Indian tribes, which are closest to the people to be served. In addition, I am sure that many tribal leaders will agree with me that all programs currently claiming to serve Indian people should be scrutinized to find ways to cut administrative waste and enhance local tribal government control and flexible tribal administration.

Finally, Mr. President, I must remind those who spread fear that the conditions of Native Americans and their tribal governments will greatly suffer under a Republican-controlled Congress: Indian issues are neither Republican nor Democratic. They are unique, human issues which call for understanding and cooperation on both sides of the aisle. I believe it both wrong-minded and counterproductive to suggest that the new majority party intends to place Native American tribes in some new or greater peril. The far more constructive approach would be to work, in a nonpartisan manner, to adapt the new directions being discussed in the Congress to the unique needs and arrangements that have characterized the best Federal-Indian relations, and that uphold the unique moral and constitutional relationship we have with Indian tribes—that of direct, government-to-government dealings between each tribe and the United States.•

NATIONAL SPORTSMANSHIP DAY

• Mr. CHAFEE. Mr. President, yesterday marked the celebration of the fifth annual National Sportsmanship Day. Designed to promote ethics, fair play, and good sportsmanship in athletics, as well as in society as a whole, National Sportsmanship Day was initiated by the Institute for International Sport at the University of Rhode Island.

The Institute for International Sport gained national attention in 1993 as the sponsor for the highly successful World Scholar-Athlete Games. More than 1,500 student-athletes from 108 countries participated in athletic and scholastic competitions. This year, the institute will sponsor the Rhode Island Scholar-Athlete Games, which will serve as a model for similar events in all 50 States.

Schools and colleges from across the United States are encouraged to participate in National Sportsmanship Day. This year, 5,000 schools representing all 50 States and 48 countries are expected to participate in the celebration. The programs to celebrate National Sportsmanship Day include discussions, debates, and essay writing and are based on material that the institute provides.

The information provided to participants by the institute also outlines the Student-Athlete Outreach Program, which encourages high schools and colleges to send talented student-athletes to local elementary and middle schools as positive role models. The institute also selects individuals to serve as Ethics Fellows. This year's Ethics Fellows include a Rhode Islander, Claire Ferguson, who is best known as President of the U.S. Figure Skating Association. All of this is done in an effort to highlight the qualities that comprise sportsmanship—honesty, integrity, and humility.

National Sportsmanship Day is recognized by the President's Council on Physical Fitness and Sports. Florence Griffith Joyner and Tom McMillen, co-chairs of the President's Council, pointed out the "valuable life skills and lessons that are learned by youth and adults through participation in sports." I ask that the full text of the letter be printed in the RECORD at the conclusion of my remarks.

I am delighted that National Sportsmanship Day was created in Rhode Island and I applaud all of those who participated in this inspiring event from the students and teachers, to the Ethics Fellows and the participants in the Outreach Program. Finally, I would like to congratulate all of those at the Institute for International Sport at the university of Rhode Island who have made this program a success for the past 5 years.

The letter follows:

THE PRESIDENT'S COUNCIL
ON PHYSICAL FITNESS AND SPORTS,
Washington, DC, November 28, 1994.

Mr. TODD SEIDEL,
Director of National Sportsmanship Day, Institute for International Sport, University of Rhode Island, Kingston, RI.

DEAR MR. SEIDEL: The President's Council on Physical Fitness and Sports is pleased to recognize March 7, 1995, as National Sportsmanship Day. The valuable life skills and lessons that are learned by youth and adults through participation in sports cannot be overestimated.

Participation in sports makes contributions to all aspects of our lives, such as heightened awareness of the value of fair play, ethics, integrity, honesty and sportsmanship, as well as improving levels of physical fitness and health.

The Council congratulates the Institute for International Sport for its continued leadership in organizing this important day and wish you every success in your efforts to broaden participation and awareness of National Sportsmanship Day.

Sincerely,

FLORENCE GRIFFITH JOYNER,
Co-Chair.
TOM MCMILLEN,
Co-Chair.●

APPOINTMENT OF DEPUTY SENATE LEGAL COUNSEL

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 86, submitted earlier today by Senators DOLE and DASCHLE, regarding the Deputy Senate Legal Counsel, that the resolution be considered and agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the resolution (S. Res. 86) was agreed to, as follows:

Resolved, That the appointment of Thomas B. Griffith to be Deputy Senate Legal Counsel, made by the President pro tempore this day, shall become effective on March 13, 1995, and the term of service of the appointee shall expire at the end of the One Hundred Fifth Congress.

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Madam President, I ask unanimous consent that during the 104th Congress the authority of the majority leader to make six appointments and that of the minority leader to make seven appointments to the Senate Arms Control Observer Group, pursuant to S. Res. 105 of the 101st Congress as amended, shall be increased to seven appointments for the majority leader and eight for the minority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPOINTMENT BY THE MAJORITY LEADER

The PRESIDING OFFICER. The Chair announces on behalf of the majority leader, pursuant to Public Law 96-114, as amended, the appointment of the Senator from Idaho [Mr. CRAIG] to the Congressional Award Board.

ORDERS FOR THURSDAY, MARCH 9, 1995

Mr. DOLE. Madam President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:30 a.m. on Thursday, March 9, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and there be a period for the transaction of routine morning business not to extend beyond the hour of 11 a.m., with Senators permitted to speak for up to 5 minutes each, with the exception of the following: Senator THOMAS, 10 minutes; Senator BAUCUS, 25 minutes; Senator DASCHLE, 30 minutes; Senator MCCONNELL, 10 minutes; Senator BREAUX, 15 minutes.

I further ask that at the hour of 11 a.m. the Senate resume consideration of H.R. 889, the supplemental appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DOLE. Madam President, I will yield to the Senator from Massachusetts in a moment. We will adjourn or recess following that statement.

For the information of my colleagues, we will complete action on the supplemental bill tomorrow; therefore, Senators should be aware rollcall votes are expected throughout tomorrow's session, probably into the evening, and I ask that following the statement by the distinguished Senator from Massachusetts, Senator KENNEDY, the Senate stand in recess under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Madam President, President Clinton is right to use his executive authority to side with American workers and defend their basic right to strike. An insidious business practice has grown up in recent years like mushrooms in the dark under which employers hire permanent replacements for striking workers. That practice is unfair and ought to be prohibited, and that is what the President's Executive order does. It restores the fair balance in labor-management relations and ends the unfair tilt against working families.

I urge the Senate to defeat the Kassebaum amendment, to support the President and reject the unseemly business and Republican right wing pressure to nullify his order.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Minnesota.

Mr. WELLSTONE. I ask unanimous consent that I have up to 5 minutes to speak before we adjourn.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. I thank the Chair. Madam President, let me rise in this Chamber to echo the words of the Senator from Massachusetts.

I believe the action taken by the President is an extremely important message. It is an important message that has a great deal to do with fairness and restoring some balance of power between those who work for wages and management. I do not think we are really going to be able to build the kind of successful economy we need for ourselves, for our children, and for our grandchildren unless we have high morale, high levels of productivity, and a really good working relationship between labor and management.

I have seen over the past decade-plus so many strikes defeated, so many unions busted, so many broken lives, so many broken families, and so many broken dreams, and the right to strike has now become the right to be fired, and so much of what many of us or many of our parents or many of our grandparents fought for, which was basic collective bargaining rights, some kind of fairness in the workplace, some kind of support for working people is, I think, really very much in peril.

So, Madam President, I just want to make it clear as we discuss this amendment tomorrow I will be in the Chamber, I will be in the Chamber with documents, I will be in the Chamber with a very full analysis, and I will make every effort possible as a Senator to make this debate real in terms of what it means in personal terms for working people, whether they be in unions or whether they not be in unions. So I look forward to a very spirited and a lively and very important and I think a very long debate.

Madam President, I thank the Chair, and I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I look forward to the debate tomorrow. I applaud the action, as I mentioned earlier, the President has taken. We will have an opportunity to debate both the authority and the reasons for that.

Quite clearly, the President has the responsibility to make sure, in terms of implementing the various contracting responsibilities in which the Federal Government is involved, that there is going to be a good product received in a timely way which meets the various quality standards. He has a responsibility to do so. He has made the judgment that this action is called for.

I was not here earlier tonight at the time those who opposed this action were saying that we ought to have a legislative solution. Last year I was on the floor of the Senate, with, I believe, my friend and colleague, the Senator from Minnesota, when we attempted to take that action, and it was effectively filibustered by those who refused to let the majority of the Members of this body take that action in a bipartisan way. The House of Representatives had taken that action in an overwhelming way. So we were denied the opportunity to take action by the Congress to address this in a legislative way.

The President has responded in a responsible way, and we will have an opportunity to look over the recent history as we debate this issue—the actions that were taken by the President, President Bush, and other Presidents who had used Executive orders to diminish the legitimate rights of workers in this country at a time when legislative proposals were before this body.

But it is important that we understand what is at risk for tens of thousands, hundreds of thousands of working families. I do not know what it is about the Republicans. They have it in for working families, for the most part families that are making $25,000, $26,000 a year, trying to pay a mortgage, trying to educate their children, trying to make sure that their parents are going to live constructive and productive and hopeful lives. I do not know what it is that the Republican leadership and the Republican Party has against those Americans who are the backbone of this country.

We already heard the efforts in our committee, the Labor and Human Resources Committee. We have seen the actions taken by the House to effectively emasculate the Davis-Bacon Act. The average construction worker is making $27,000 a year—$27,000 a year. What is it about working families that the Republicans have to try to diminish the wages and the working conditions and the rights of working families? We have seen that. And we will see and have the opportunity to debate that issue on the floor of the U.S. Senate.

Here we have another example about the attitude of Republicans towards working families. It is very interesting. You talk about trying to do something about health care for working families—"No, we cannot do that. We cannot possibly address it, to make sure that working families are going to be able to have health insurance."

We want to do something about minimum wage—"Oh, no, we cannot pass that. We cannot have an increase in the minimum wage. We cannot bring the minimum wage up to try to make it a livable wage. We cannot do that, even though we have record profits in this country and even though the minimum wage has decreased in terms of its purchasing power to what it was the last time we increased the minimum wage and with Republican—with bipartisan support. No, we cannot have an increase in the minimum wage."

We have to do something about those families whose kids are going on to college. We have to assist those two-thirds of the young people in my State, 67 percent of whom require student loans, to be able to afford a college education. But the Republicans say, "No, we are going to make them pay increased interest rates while they are going to school and college. The indebtedness of those sons and daughters of working families is not high enough. We are going to make them pay more."

And now we find when it comes to an economic issue for working families we have them in the bullseye again. When you just look across the spectrum: No on the minimum wage, retreat in terms of Davis-Bacon, to try to make sure workers rights are going to be preserved so we are going to get quality product—that is basically the issue. As John Dunlop has pointed out, the issue is not the wages, it is performance. You can pay less wages and get a lousy product and the taxpayer will be left holding the bag.

So we have "no" on the minimum wage, "no" in terms of trying to do something to protect the construction workers and give the assurance to the taxpayers on their interests, "no" in terms of looking out after the legitimate rights of working families who are trying to participate in this dramatic expansion of the profits that we have seen in the period of the last 4 or 5 years for the major companies and corporations. The workers are not getting any participation in it. For the first time, basically, in the history of the industrial revolution in the United States, workers are not participating.

All they are trying to do is, not demand, but what they want to do is to be able to represent their views, economic views, in a collective bargaining context which is as old as the industrial policy of this country. We find the first time the President stands up on that to try to protect it, the ink is not even dry and our Republican friends are declaring all-out war on these working families.

Sometimes we have to say "no." I look forward to the debate and discussion when we will get into greater detail, not only on these measures but on the particular Executive order. On tomorrow we will have a chance to debate this issue.

Mr. WELLSTONE. Will the Senator yield for a moment?

Mr. KENNEDY. I will be glad to yield.

Mr. WELLSTONE. Will the Senator, my colleague from Massachusetts, agree that actually tomorrow will be a very important day for the Senate and for the country, because we really will have a full opportunity to talk about the concerns and circumstances of working families? That this really will be an opportunity to talk about wages, to talk about jobs, talk about opportunities—

Mr. KENNEDY. Talk about children.

Mr. WELLSTONE. To talk about children, that is correct. To really talk about what is being attempted right now in the House of Representatives, and over here in the Senate, and to try to take all of this discussion about strategy—I really respect the way the Senator put it just a moment ago—all this talk of strategy and which buttons to push, to put it in personal terms: families, people's lives, opportunities.

I think tomorrow will be a day—I ask the Senator—where we will take the opportunity to really spell out in great detail what the meaning of all this is.

Mr. KENNEDY. I agree with the Senator. We just got notice of the introduction of this amendment a short while ago. We will have a full opportunity to debate it tomorrow. I was prepared to debate it this evening or tomorrow or the day after or whatever it takes. The Senator is one of our leaders in terms of what has been happening to children, to children's rights and children's interests, what has been happening to hungry children. These are the sons and daughters of working families. All of this is coming into a sharper perspective. And all of these are basically related to the economic rights of working families.

They are not able to pursue those economic rights which have been basic and fundamental rights in our society, and which have been the backbone of our strength and vitality—the fact that men and women were able to pursue their economic dreams, as well as the success of the private sector, in a way which both of the parties were able to grow and to prosper. And to see that kind of effort to diminish that, and to also see, Madam President, the efforts that have been made in the recent days on changing Taft-Hartley, and that 8(a)2 provision, to try to repeal the existing ability for the trade union movement to organize workers, to have that whole concept threatened with company-controlled unions, as I fear would be the case with the 8(a)2 recommendations—this is all part of an effort.

We are only into this year some 2½ months. Take how we are going to change the whole Taft-Hartley law and the 8(a)2, take the action this evening on the President's Executive order to protect workers rights, take the opposition to the minimum wage—the whole series. We will have a chance to debate this, hopefully, in an informed, balanced way tomorrow and to really point out what is at risk with this particular amendment from my friend and colleague.

I urge my colleagues this evening to think deeply about this amendment. It is a matter of enormous importance and I think it will tell a great deal about this Senate and also about where we as a country are really going in these next few years.

Mr. WELLSTONE. If the Senator will yield for one final question?

Mr. KENNEDY. Yes.

Mr. WELLSTONE. Will the Senator agree with me that some of the issues that he just highlighted tonight have a great deal to do with 60 years of history, and to an extent this agenda we see right now is an attempt to really turn the clock back in a way people of the United States of America, when they see it, will just not support? It is beyond the goodness of people. It is beyond what people are about in our country.

Will the Senator agree that this really calls for, tomorrow, a full debate? This really calls for a day of real debate on this question? So it will be our hope that Senators will be out here and we will have a chance to go through these issues in great depth.

Mr. KENNEDY. The Senator is absolutely correct. I will look forward to that opportunity.

Mr. WELLSTONE. I look forward to that.

APPOINTMENT BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 95-521, appoints Thomas B. Griffith as Deputy Senate Legal Counsel, effective March 13, 1995.

RECESS UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate now stands in recess until 9:30 a.m. tomorrow, March 9, 1995.

Thereupon, the Senate, at 7:09 p.m, recessed until Thursday, March 9, 1995, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate March 8, 1995:

IN THE ARMY

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

To be lieutenant general

GLYNN C. MALLORY, JR [redacted]

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

RONALD V. HITE [redacted]

IN THE AIR FORCE

THE FOLLOWING OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE, TO THE GRADE INDICATED, UNDER THE PROVISIONS OF SECTIONS 593, 8373, AND 8374, AND 12004, TITLE 10, UNITED STATES CODE:

AIR FORCE RESERVE

To be major general

LOUIS A. CRIGLER [redacted]
TERRENCE L. DAKE [redacted]
ROBERT A. NESTER [redacted]
REESE R. NIELSEN [redacted]
RALPH H. OATES [redacted]

To be brigadier general

LOUIS C. FERRARO, JR [redacted]
CLAYTON T. GADD [redacted]
WALTER T. HATCHER III [redacted]
ROBERT A. KRELL [redacted]
SHARON K. MAILEY [redacted]
JAMES L. MARTIN [redacted]
WAYNE L. PRITZ [redacted]
EDWARD F. RODRIGUEZ, JR. [redacted]
DENNIS W. SCHULSTAD [redacted]
LAWRENCE F. SHEEHAN [redacted]
LARRY L. TWITCHELL [redacted]
ERNEST R. WEBSTER [redacted]
GEOFFREY P. WEIDEMAN, JR [redacted]

THE FOLLOWING OFFICERS FOR APPOINTMENT IN THE REGULAR AIR FORCE UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 531, WITH A VIEW TO DESIGNATION UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 8067, TO PERFORM DUTIES INDICATED WITH GRADE AND DATE OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE PROVIDED THAT IN NO CASE SHALL THE FOLLOWING OFFICERS BE APPOINTED IN A HIGHER GRADE THAN THAT INDICATED.

REGULAR AIR FORCE

NURSE CORPS

To be lieutenant colonel

ROBERTA L. FIERRO [redacted]
MARGARET A. JEALOUS [redacted]

BIOMEDICAL SCIENCE CORPS

To be lieutenant colonel

HARVEY J.U. ADAMS, JR [redacted]
ANDREW COLON [redacted]
JOHN G. SCHLEIFER [redacted]
ROBERT H. SCHWARZHOFF [redacted]
NANCY A. SLICNER [redacted]

NURSE CORPS

To be major

JACQUELINE D. ALLEN [redacted]
BRUCE D. BISHOP [redacted]
CAROLYN A. CRAMER [redacted]
JEREMIAH J. FLANIGAN [redacted]
SELEA A. HAYES [redacted]
JANET A. HAYHURST [redacted]
ROBERT G. HONTZ [redacted]
BARBARA A. JARRETT [redacted]
SUSAN E. JONES [redacted]
DAVID L. KUTZLER [redacted]
HELEN F. LINDSEY [redacted]
BONNIE L. MACK [redacted]
KATHLEEN A. MCCLELLAN [redacted]
EILEEN B. MOFFITT [redacted]
MARIAN B. NUTT [redacted]
JANICE E. PEEBLY [redacted]
SIDNEY H. POTMESIL II [redacted]
JEANNE C. ROGERS [redacted]
VICTORIA M. RUTLEDGE [redacted]
DENNIS C. SAMPSON [redacted]
STEVEN L. VIEIRA [redacted]
WALLACE K. WINTER [redacted]

BIOMEDICAL SCIENCE CORPS

To be major

GREGORY D. CLIFT [redacted]
MARY A. ELLIOTT [redacted]
JEFFREY L. FOSTER [redacted]
JOE F. GROSS, JR [redacted]
SCOTT O. HAIL [redacted]
FRED C. KELSEY [redacted]
JOHN A. KILDEW [redacted]
MONTE C. MCMEANS [redacted]
JEFFREY W. SHRIFTER [redacted]
JAMES N. SOTACK, JR [redacted]
JOHN T. SWINSON [redacted]
TIPTON W. YOUNG [redacted]

THE FOLLOWING INDIVIDUALS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE, IN GRADE INDICATED, UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 12203, WITH A VIEW TO DESIGNATION UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 8067, TO PERFORM THE DUTIES INDICATED.

MEDICAL CORPS

To be lieutenant colonel

MARTIN E. APPLEBAUM [redacted]

NURSE CORPS

To be lieutenant colonel

CAROL P. MANN [redacted]

THE FOLLOWING AIR FORCE OFFICER FOR PERMANENT PROMOTION IN THE U.S. AIR FORCE, IN ACCORDANCE WITH TITLE 10, UNITED STATES CODE, SECTION 624 AND 1552, WITH DATE OF RANK TO BE DETERMINED BY THE SECRETARY OF THE AIR FORCE.

CHAPLAIN CORPS

To be lieutenant colonel

STEPHEN D. HESS [redacted]

IN THE NAVY

THE FOLLOWING-NAMED U.S. NAVAL RESERVE OFFICERS TO BE APPOINTED PERMANENT ENSIGN IN THE LINE OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

AMY L. DIGIOVANNI [redacted]
MICHAEL J. HANNA [redacted]
ANTONIO HICKS [redacted]

THE FOLLOWING-NAMED NAVAL RESERVE OFFICERS TRAINING CORPS PROGRAM CANDIDATES TO BE APPOINTED PERMANENT ENSIGN IN THE LINE OR STAFF CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

KUMAR ATARTHI [redacted]
SCOTT AYERS [redacted]
WILLIAM BAXTER [redacted]
ESTHER BOPP [redacted]
VICTORIA DASHNERWUERTZ [redacted]
AARON FORESTER [redacted]
JEFFREY GILBERTSON [redacted]
DONALD JENKINS [redacted]
CHRISTIAN JURS [redacted]
DAVID LALIBERTE [redacted]
AMY MARION [redacted]
JOHN T. MARTIN [redacted]
CARLOS MONTANEZ [redacted]
ANTHONY MOORE [redacted]
DORIAN PARKER [redacted]
CHRISTOPHER R. RUSSELL [redacted]
JOSE SANCHEZ [redacted]
KARL SASSER [redacted]
RONALD TERRELL [redacted]
JOHN VECOLI [redacted]
DONNA WATKINS [redacted]

THE FOLLOWING-NAMED CANDIDATES IN THE NAVY ENLISTED COMMISSIONING PROGRAM TO BE APPOINTED PERMANENT ENSIGN IN THE LINE OR STAFF CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

DWAYNE BANKS [redacted]
GREGORY DIXON [redacted]
JOSEPH ESPINO [redacted]
ANDREW FISCHER [redacted]
MATTHEW FLEMMING [redacted]
BRUCE W. FORD [redacted]
THOMAS M. GOLSON [redacted]
JADON LINCOLN [redacted]
CHARLEYEN A. LINDER [redacted]
MATTHEW MEMMELAAR [redacted]
ROSS NISWANGER [redacted]
RONALD ROEN [redacted]
EDWARD L. STEVENSON [redacted]
BRYAN N. THOMPSON [redacted]
RICHARD WATERS [redacted]

THE FOLLOWING-NAMED U.S. NAVAL RESERVE OFFICER TO BE APPOINTED PERMANENT LIEUTENANT IN THE MEDICAL CORPS OF THE U.S. NAVY, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 531:

SUSAN A. LIPPOLD [redacted]

THE FOLLOWING-NAMED U.S. NAVY OFFICERS TO BE APPOINTED PERMANENT COMMANDER IN THE MEDICAL CORPS OF THE U.S. NAVAL RESERVE, PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 12203:

LYNN S. BEMILLER [redacted]
MARK S. SPITZER [redacted]

THE FOLLOWING-NAMED COMMANDERS OF THE RESERVE OF THE U.S. NAVY FOR PERMANENT PROMOTION TO THE GRADE OF CAPTAIN IN THE LINE, IN THE COMPETITIVE CATEGORY AS INDICATED, PURSUANT TO THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 5912:

UNRESTRICTED LINE OFFICERS

To be captain

ABERNATHY, JOHN M., III [redacted]
ADAMS, ALLAN B., JR. [redacted]
ADAMS, JOE R. [redacted]
ALLYN, WILLIAM R. [redacted]
ANDERSON, DALE N. [redacted]
ANDERSON, LARRY E. [redacted]
BALDWIN, HENRY S. [redacted]
BARR, ROBERT C. [redacted]
BARRINGER, FRED A., JR. [redacted]
BARTHOLD, DAVID H. [redacted]
BASS, JOHN R., I [redacted]
BELL, FREDRICK A [redacted]
BENNETT, GARY D. [redacted]
BLACK, BRUCE M. [redacted]
BRACKEN, FRANK L., JR. [redacted]
BRANCHFLOWER, JOHN L. [redacted]
BREINER, THOMAS L. [redacted]
BROWN, DAVID A. [redacted]
BROWN, THOMAS R., JR. [redacted]
BRUCE, ROBERT C., JR. [redacted]
BUBB, THOMAS A. [redacted]
BUDDE, THOMAS J. [redacted]
CASTNER, ROBERT G. [redacted]
CHAMBERLAIN, ROBERT M. [redacted]
CHRISTENSEN, NYLES L. [redacted]
COFFER, ALAN B. [redacted]
COLLINS, DOUGLAS L. [redacted]
CORLEY, ROBERT D. [redacted]
COX, VINCENT H. [redacted]
CRANDALL, JAMES W., JR. [redacted]
CRAWFORD, BERTRAM M., JR. [redacted]
CRAWFORD, DANIEL A. [redacted]
CRITES, DON M. [redacted]
CROWE, RICHARD C. [redacted]
CUNNINGHAM, JAMES A. [redacted]
DANFORTH, PETER A. [redacted]
DARLAND, DALLAS M. [redacted]
DAVIDSON, GARY R. [redacted]
DAVIS, DAVID H. [redacted]
DEVEAUX, CHARLES M., III [redacted]
DICK, RICHARD [redacted]
DOMBROWSKI, PAUL R. [redacted]
DOUGLAS, MICHAEL L. [redacted]
DOYLE, MERRILL C. [redacted]
DRIVER, JOHN J. [redacted]
DYSON, JAMES J [redacted]
ECKERMAN, LAWRENCE I. [redacted]
ELIASEN, EDWARD S. [redacted]
ERICKSON, RICHARD R. [redacted]
FISHER, EARLE B., JR. [redacted]
FITZGERALD, DOUGLAS P. [redacted]
FLOWERS, WILLIAM A. [redacted]
FOWLER, HAROLD E., JR. [redacted]
FRIDGEN, MICHAEL J. [redacted]
FULLER, JAMES T. [redacted]
GADZINSKI, GARY F. [redacted]
GAHRAN, BRIAN H. [redacted]
GALECKI, RICHARD M. [redacted]
GAUTILLE, JOSEPH C. [redacted]
GEIGER, JAMES M. [redacted]
GEORGE, STEPHAN P., I [redacted]
GHOLZ, LEE A. [redacted]
GILMORE, GREGORY, C. [redacted]
GINTZER, HARRY C., III [redacted]
GLASSER, DONALD J. [redacted]
GLENN, LONNIE L. [redacted]
GOUDGE, DEREK [redacted]
GROVER, GRETCHEN G. [redacted]
GUNDERSON, KENNETH J. [redacted]
HAAS, JAMES E. [redacted]
HAILE, LAMAR C., III [redacted]
HAMILTON, GEORGE K., JR. [redacted]
HARDEN, TIMOTHY S. [redacted]
HARMON, STEPHEN C. [redacted]
HART, KENNTEH R. [redacted]
HARWOOD, THEODORE L., II [redacted]
HAWKENS, EDWARD R. [redacted]
HAYDEN, JOHN W. [redacted]
HAYES, FRED E. [redacted]
HEINRICH, RICHARD D. [redacted]
HELLER, LEIGHTON J., JR. [redacted]
HELSELL, PETER F. [redacted]
HENDERSON, GLENN [redacted]
HENDERSON, THOMAS J. [redacted]
HESSEY, JOHN H. V [redacted]
HINSON, DAVID E. [redacted]
HOGAN, GARY P. [redacted]
HOGAN, JOHN D. [redacted]
HOWARD, WILLIAM R. [redacted]
HOYT, JOHN R., JR. [redacted]
IAIA, JOHN T. [redacted]
JACKSON, FREDERICK P., 246-84-8054
JACKSON, ROBERT W. [redacted]
JOHNSON, JEFFREY M. [redacted]
JOHNSON, JOHN A., JR. [redacted]
KEARNEY, JAMES P. [redacted]
KELLY, PATRICK M. [redacted]
KLOCH, STEPHEN J. [redacted]
KONDRACK, CHARLES J. [redacted]
KUTZER, JOHN F. [redacted]
KVAMME, JAMES C. [redacted]
LARNED, ROBERT T. [redacted]
LAWSON, JEFFREY E. [redacted]
LEONARD, DAVID L. [redacted]
LEVEDAHL, WILLIAM K. [redacted]
LINDSEY, ANDREW E. [redacted]
LINGERFELT, MICHAEL L. [redacted]
MANGANARO, WILLIAM F. [redacted]
MARGUTH, JERRY W. [redacted]
MARQUES, JOHN B., II [redacted]
MARTIN, DOUGLAS F. [redacted]
MARTIN, LANCE S. [redacted]
MARTIN, WILLIAM E., II [redacted]
MC CLELLAN, STEPHAN A. [redacted]
MC KNIGHT, BRADLEY D. [redacted]
MEANEY, PATRICK J. [redacted]
MEARSHEIMER, THOMAS J., J [redacted]
MEEKINS, CHARLES D. [redacted]
MERRITT, JOHN H. [redacted]
MICHAUD, BRIAN K. [redacted]
MILLER JOSEPH G. [redacted]
MILLER, ROBERT K. [redacted]
MITCHELL, GARY C. [redacted]
MURPHY, JOHNSS. [redacted]
NEMECHEK, MICHAEL M. [redacted]
NIEDERMAIER, DAVID G. [redacted]
NIELSEN, WILLIAM F. [redacted]
NIEMYER, ANDREWS S. [redacted]
NORLAND, ERIC R. [redacted]
OLEXIK, CARL S., JR. [redacted]
OLSON, LARRY A. [redacted]
O'SHAUGHNESSY, JOHN L. [redacted]
OWENS, MICHAEL K. [redacted]
PARK, JOHN S. [redacted]
PEBERDY, CHARLES A., JR. [redacted]
PIERCE, GREGORY D. [redacted]
PRATT, ROBERT W., I [redacted]
PRING, BRIAN L. [redacted]
RACHEL, DAVID F. [redacted]
RAINES, FRANK E. [redacted]
RATCLIFFE, ROBERT E. [redacted]
RICHARDS, STUART A. [redacted]
RICKETTS, GARY A. [redacted]
ROBINSON, CHRISTOPHER B. [redacted]
RODWELL, KEITH E. [redacted]
ROLAND, MICHAEL J. [redacted]
ROSE, FRANK J. [redacted]
ROUEN, DOUGLAS M. [redacted]
RYAN, CHARLES T. [redacted]
RYAN, PAUL J. [redacted]
RYAN, RICHARD S. [redacted]
SATORIUS, MARK A. [redacted]
SCHEER, JOSEPH [redacted]
SCHNECK, ANDREW E. [redacted]
SCOBY, DAVID H. [redacted]
SEWELL, STEVEN R. [redacted]
SHACKELFORD, THOMAS F., II [redacted]
SHINNICK, WILLIAM B. [redacted]
SIMMONDS, THOMAS L. [redacted]
SMITH, NORMAN K., II [redacted]
SMITHWICK, JAMES P. [redacted]
SNOOK, WILLIAM V. [redacted]
SPEIGHTS, WILLIAM D. [redacted]
STANFIELD, WAYNE S. [redacted]
STANLEY, TIMOTHY D. [redacted]
STANTON, ROBERT S. [redacted]
STEAGALL, WILLIAM F., JR. [redacted]
STEVENSON, GEORGE R., JR. [redacted]
STEWART, JOHN M., JR. [redacted]
SWINDAL, FREDERICK L., JR. [redacted]
TABB, HENRY J. [redacted]
TOMLINSON, CRAIG S. [redacted]
TREVINO, ROBERT C. [redacted]
UDICIOUS, RICHARD A. [redacted]
VANDERSLICE, JOHN A., II [redacted]
VECCIA, JAMES V. [redacted]
VEREMAKIS, DEAN S. [redacted]
WALSH, DENNIS P. [redacted]
WEBB, DAVID R. [redacted]
WEBB, GREGORY G. [redacted]
WESTON, EDWARD G. [redacted]
WHEELER, DANIEL A. [redacted]
WHITMAN, BARTON W. [redacted]
WIEDENHAEFER, RICHARD C. [redacted]
WILLIAMS, JEFFREY C. [redacted]
WILLIS, JOHN R. [redacted]
WILLY, CHARLES S. [redacted]
WILSON, JOSEPH D. [redacted]
WOODY, GARRY L. [redacted]

UNRESTRICTED LINE OFFICERS (TAR)

To be captain

ALLISON, JOHN M. [redacted]
BRANNAN, TANDY T., II [redacted]
CHRISTOPHER, STEVEN C. [redacted]
COMER, DAVID S. [redacted]
DEBBOUT, JOHN P. [redacted]
ERICKSON, GARY M. [redacted]
FILKINS, MICHAEL J. [redacted]
GILMORE, BRIAN W. [redacted]
GLADDEN, RILEY J. [redacted]
HEILENDAY, RICHARD M. [redacted]
HOLLYFIELD, WALLACE G., JR. [redacted]
LAPORTE, CRAIG B. [redacted]
LAVIGNE, BARRY A. [redacted]
LIVINGSTONE, DAVID D. [redacted]
NAGELIN, THOMAS F., JR. [redacted]
SABOL, ALEXANDER J. [redacted]
SCHORN, DAVID M. [redacted]
STUART, WAYNE S. [redacted]
WANDELL, ALTON J. [redacted]
WILLIAMS, RICHARD C. [redacted]
WRINKLE, MICHAEL R. [redacted]

ENGINEERING DUTY OFFICERS

To be captain

ALLEN, WILLIAM H. [redacted]
ANDRYUK, NICHOLAS A. [redacted]
CARLSON, JOHN E., III [redacted]
CLANCY, EDWARD V. [redacted]
COHEE, FRANK E., III [redacted]
CROSS, WILLIAM A. [redacted]
GOSLER, JAMES R. [redacted]
HOUGH, PHILLIP G. [redacted]
KLEE, CARL R. [redacted]
LASH, JAMES H. [redacted]
PERREIRA, NOLAN G. [redacted]
RIX, WILLIAM H. [redacted]

AEROSPACE ENGINEERING DUTY OFFICERS (ENGINEERING)

To be captain

ALLEY, THOMAS C., JR. [redacted]
BUSHELLE, WILLIAM R. [redacted]
CRAIG, RAYMOND P., JR. [redacted]
MORRISON, GRAY D. [redacted]
ROEDER, FREDERICK J. [redacted]
SHANNON, JOHN G. [redacted]

AEROSPACE ENGINEERING DUTY OFFICERS (MAINTENANCE)

To be captain

BELL, WILLIAM H. [redacted]
TYSON, DAN M. [redacted]

SPECIAL DUTY OFFICERS (CRYPTOLOGY)

To be captain

ALLEN, JOHN M. [redacted]
CHESSON, MICHAEL B. [redacted]
DAVIS, MICHAEL H. [redacted]
DILLON, VERONIQUE S. [redacted]
DUNN, DAVID P. [redacted]
HOLSTEAD, RONALD E. [redacted]
PASKEWITZ, EARL T. [redacted]
VOGEL, FREDERICK Q. [redacted]
ZELLMER, RICHARD J., [redacted]

SPECIAL DUTY OFFICERS (MERCHANT MARINE)

To be captain

FUNK, WILLIAM D. [redacted]
JIMENEZ, MICHAEL A. [redacted]
KUCHARSKI, MICHAEL J. [redacted]
MC NAMARA, BRIAN S. [redacted]
MOSS, WILLIAM A. [redacted]
NELSON, RICHARD T., JR. [redacted]
PATTEN, BARRY A. [redacted]
PEACOCK, ROBERT J., II [redacted]
SPILLANE, CORNELIUS V. [redacted]
WHITE, EDWARD F., JR. [redacted]

SPECIAL DUTY OFFICERS (INTELLIGENCE)

To be captain

BLEVINS, DAVID H. [redacted]
BRIANT, CHARLES C. [redacted]
CHUNG, BELINDA W. [redacted]
CODY, JOSEPH P., JR. [redacted]
DAVIS, JORDAN B [redacted]
DUVEEN, JUDI A. [redacted]
FORBES, LAURIE E. [redacted]
GREEN, NORMAN K., JR. [redacted]
GREENLEE, JIM M. [redacted]
HILL, JOHN B [redacted]
HOLLIMAN, WILLIAM M. [redacted]
HURLEY, RODNEY G. [redacted]
KELLEY, JACKSON D. [redacted]
LILLJEDAHL, SHARON L. B. [redacted]
LOOKABILL, ROBERT L. [redacted]
MACLIN, JAMES S. [redacted]
NEATHERY, JAMES W. [redacted]
PATTERSON, WILLIAM M. J. [redacted]
PATTON, GREGORY D. [redacted]

RIVET, LEONARD N [redacted]
ROESLER, GORDON M., JR [redacted]
SCHOONOVER, ELEANOR S. T [redacted]
SEGHERS, PHILIP E [redacted]
SIDONI, JAMES A [redacted]
TERRELL, LEANNA F [redacted]
TROUT, RICHARD W [redacted]
WELLS, JAMES D [redacted]

SPECIAL DUTY OFFICERS (INTELLIGENCE) (TAR)

To be captain

CURFS, THOMAS P [redacted]

SPECIAL DUTY OFFICERS (PUBLIC AFFAIRS)

To be captain

DANIELS, THOMAS H [redacted]
DAYTON, DANIEL S [redacted]
FISCH, STEPHEN R [redacted]
HULTS, ARTHUR S., II [redacted]
JARVIS, KENNETH A [redacted]
PANDZIK, MICHAEL L [redacted]
PINARD, THOMAS C [redacted]
SCHNEIDER, CHARLES F [redacted]
URBAN, WALTER M., JR [redacted]
WILKINSON, JOSEPH B., JR [redacted]
WYATT, JOHN D., II [redacted]

SPECIAL DUTY OFFICERS (FLEET SUPPORT)

To be captain

ALLEN, SHIRLEY [redacted]
ATWATER, CHARLES D [redacted]
BARY, CHARLENE G [redacted]
BRENNAN, CHRISTOPHER P [redacted]
BUTLER, MARVIN G [redacted]
CELLINI, ANTHONY L [redacted]
CULPEPPER, MICHAEL L [redacted]
DALTON, JOSEPH A [redacted]
DICKSON, GARY W [redacted]
DRISCOLL, SONDRA L [redacted]
FEENEY, KEVIN J [redacted]
GOLDSTEIN, KATHLEEN M [redacted]
GOMEZ, LAWRENCE T [redacted]
GONZALES, ROMAN, III [redacted]
GROESBECK, DEBORAH [redacted]
HARLAN, WAYNE A. [redacted]
HARRIS, VASCAR G [redacted]
HEBERT, VERONICA D [redacted]
HONDA, FRANCES T [redacted]
HOWES, SANDRA L. R [redacted]
JACQUES, PHILIPPE A. [redacted]
JOHNSON, BARNEY G., III [redacted]
JOHNSON, ROXANNE T [redacted]
KATIN, ROBERT A. [redacted]
KERMEN, ROBERT J [redacted]
LOPEZ, GILBERTO J., JR [redacted]
MARTINEZ, JACK, JR [redacted]
MCDEVITT, CAROL J [redacted]
MORGAN, JONI P. [redacted]
NIENOW, CLARK B [redacted]
NOBLE, RUSSELL S [redacted]
ODOM, DENNIS F. [redacted]
PARK, ALAN M. [redacted]
PITCHFORD, GAYEL A [redacted]
PRITZ, DAVID G. [redacted]
RICK, DENNIS L. [redacted]
RINANDO, ALAN R. [redacted]
ROBINSON, DONALD L [redacted]
SMITH, MARK W. [redacted]
SMITH, RALPH R. [redacted]
STOFFELS, GARY B [redacted]
TRITCHLER, JAMES A [redacted]
WEBSTER, RICHARD M., JR. [redacted]

SPECIAL DUTY OFFICERS (FLEET SUPPORT) (TAR)

To be captain

DENARDO, JANET E. [redacted]

SPECIAL DUTY OFFICERS (OCEANOGRAPHY)

To be captain

SHAYNE, GEORGE R. [redacted]

HOUSE OF REPRESENTATIVES—*Wednesday, March 8, 1995*

The House met at 11 a.m.

PRAYER

Rabbi Rachel S. Mikva, Congregation Hakafa, Glencoe, IL, offered the following prayer:

For the sake of Heaven.

The rabbis taught: Any argument conducted for the sake of Heaven will bear fruit. If not for the sake of Heaven, it yields nothing.

God, Source of knowledge and insight, what does it mean: For the sake of Heaven?

That each of us has the courage to face and to speak the truth? And still, however, passionately we may cling to our vision of truth, we must never fail to recognize Your image, God, reflected in the face of the other.

For the sake of Heaven.

That we are always mindful before whom we stand? Committed to serve constituents, the Nation, the people of the world, ultimately we stand before You, naked of power or possessions, seeking only to understand Your will and do it with a whole heart.

For the sake of Heaven. God, we pray that our words and our deeds may be for Your sake, bringing healing to our world and wholeness to all those whose lives we touch. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentlewoman from Maryland [Mrs. MORELLA] come forward and lead the House in the Pledge of Allegiance.

Mrs. MORELLA led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Edwin Thomas, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 244. An act to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

REPORT ON H.R. 1158, EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR ADDITIONAL DISASTER ASSISTANCE AND MAKING RESCISSIONS FOR FISCAL YEAR 1995

Mr. LIVINGSTON, from the Committee on Appropriations, submitted a privileged report (Rept. No. 104–70) on the bill (H.R. 1158) making emergency supplemental appropriations for additional disaster assistance and making rescissions for the fiscal year ending September 30, 1995, and for other purposes, which was referred to the Union Calendar and ordered to be printed.

REPORT ON H.R. 1159, SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS FOR FISCAL YEAR 1995

Mr. LIVINGSTON, from the Committee on Appropriations, submitted a privileged report (Rept. No. 104–71) on the bill (H.R. 1159) making supplemental appropriations and rescissions for the fiscal year ending September 30, 1995, and for other purposes, which was referred to the Union Calendar and ordered to be printed.

COMMUNICATION FROM CHAIRMAN OF THE COMMITTEE ON HOUSE OVERSIGHT

The SPEAKER laid before the House the following communication from the chairman of the Committee on House Oversight:

COMMITTEE ON HOUSE OVERSIGHT,
Washington, DC, March 3, 1995.

Hon. NEWT GINGRICH,
Speaker, House of Representatives, The Capitol, Washington, DC.

DEAR MR. SPEAKER: Pursuant to House Rule 51, clause 7, I have appointed the Honorable Lincoln Diaz-Balart as chairman of, and the Honorable Robert W. Ney to serve on, the review panel established by that Rule for the 104th Congress.

Best regards,

BILL THOMAS,
Chairman.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will recognize 10 Members on each side for 1-minutes, after the gentleman from Illinois [Mr. PORTER].

TO WELCOME RABBI RACHEL MIKVA

(Mr. PORTER asked and was given permission to address the House for 1 minute.)

Mr. PORTER. Mr. Speaker, I have the great pleasure today of welcoming to the House Chamber Rabbi Rachel Mikva of Temple Hakafa who graciously began our session this morning with her opening prayer. It is an honor to welcome Rabbi Mikva to Washington and to the House of Representatives, and the wonderful words she shared with us today reflect the strong leadership she provides to the people of her congregation in Glencoe, IL.

But my connection with Rabbi Mikva goes far beyond the fact that her synagogue is located in my congressional district. Her father, Abner Mikva, is well known to all of us in this Chamber for his distinguished service as a judge and later as chief judge for the Circuit Court of Appeals for the District of Columbia, a position to which he was appointed by President Jimmy Carter. After many years of outstanding work as a jurist, Ab agreed last year to leave the bench to serve in his current office in the White House as counsel to the President.

What newer Members may not know is that Ab Mikva once represented the 10th District of Illinois. And in 1978, I challenged him for the seat. Our campaign that year was heated and energetic and was a race of ideas and respectful debate in the greatest tradition of American politics.

The victor of the campaign was not known on election evening. And when we awoke the morning after, Ab had retained his seat by a margin of 650 votes. Rachel at that time was 18 years of age, and one can expect that with her hard work for her father perhaps she provided enough of her fellow 18-year-old votes to win so close an election.

Shortly thereafter, Ab was appointed to the bench by President Carter, and I ran successfully in the special election that followed to succeed him and represent the wonderful people of the 10th District here in Washington.

We have remained good friends over the years, and it is a pleasure to welcome him here today. He is in the gallery to my right with his grandchildren

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

and Rachel's children, Jacob and Karen, and I thank his daughter, Rabbi Rachel Mikva, for inspiring us with her opening prayer today.

Mr. MYERS of Indiana. Mr. Speaker, will the gentleman yield?

Mr. PORTER. I yield to the gentleman from Indiana.

Mr. MYERS of Indiana. Mr. Speaker, I join many friends of the Mikva family in welcoming Rabbi Rachel. The Mikva family and my family became friends many years ago when they first came to Washington. We lived in the same neighborhood. Little Rachel and our youngest daughter, Lori, became very good friends, schoolmates.

I can recall and I can recommend it to about 350 high school kids here this morning, when they would come to visit their fathers. Rachel would sit on this side of the aisle, on the center aisle, and our daughter, Lori, on the other side, and just stare at each other, good friends at home and in school, but they became very competitive here. So we always remember that little Rachel, so proud today as we join the Mikva family and their grandchildren and welcome Rachel. We thank her for joining us today.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. CUNNINGHAM). Members should not refer to the gallery.

REPUBLICAN CONTRACT WITH AMERICA

(Mr. CHABOT asked and was given permission to address the House for 1 minute.)

Mr. CHABOT. Mr. Speaker, our Contract With America states the following: On the first day of Congress, a Republican House will require Congress to live under the same laws as everyone else; cut committee staffs by one-third; and cut the congressional budget.

We kept our promise.

The contract goes on to state that in the first 100 days, we will vote on the following items: A balanced budget amendment—we kept our promise; unfunded mandates legislation—we kept our promise; line-item veto—we kept our promise; a new crime package to stop violent criminals—we kept our promise; national security restoration to protect our freedoms—we kept our promise; Government regulatory reform—we kept our promise; and commonsense legal reform to end frivolous lawsuits—we are doing this now.

And we have these items still to go: Welfare reform to encourage work, not dependence; family reinforcement to crack down on deadbeat dads and protect our children; tax cuts for middle-income families; Senior Citizens' Equity Act to allow our seniors to work without Government penalty; and congressional term limits to make Congress a citizen legislature.

This is our Contract With America.

RESPONSIVE TO THE NEEDS OF VETERANS

(Mr. MONTGOMERY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MONTGOMERY. Mr. Speaker, I also would like to welcome Rabbi Mikva to be our guest Chaplain today.

Mr. Speaker, doctors still are unable to diagnose some illnesses affecting gulf war veterans. Speaking before the Veterans of Foreign Wars Monday, the President of the United States indicated his intention to continue the search for the answers, and we certainly congratulate him on that.

Mr. Speaker, moving to another area, we will have a vote on this floor next week to cut some funding for veterans' programs. I hope the House will not do this and will continue to appreciate our great veterans.

INTERNATIONAL WOMEN'S DAY

(Mrs. MORELLA asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MORELLA. Mr. Speaker, today, March 8, we commemorate International Women's Day, and is it not appropriate to have Rabbi Rachel Mikva offer us the morning inspiration.

This is a time to recall the difficulties which women in the United States and around the world continue to face in their efforts to achieve equal rights and equal opportunity and to commit ourselves to remedy the difficulties.

Recent times have seen great attention to the subject of women and human rights. Women made great gains at the Vienna Human Rights Conference, and last September's International Conference on Population and Development focused attention not only on the need for access to family planning but other issues also concerning women, literacy, girls' education, and childhood and maternal nutrition programs. Women's issues are central to the current economic conference in Copenhagen and will take center stage at the Beijing conference later this year.

As we look to cutting U.S. foreign assistance, I hope we will take care to see the benefits which we receive when we support women's rights. Let us in all ways make sure that we celebrate International Women's Day.

REPUBLICAN SHELL GAME

Mr. GENE GREEN of Texas. Mr. Speaker, the Republicans should stop playing the shell game with promising increased funding for school lunches but not guaranteeing that increase. The Republican welfare reform bill removes the guarantee of school lunches, but it does provide an increase in the spending authorization. Promising an increase in one bill at the same time passing this week massive education and school rescissions in another bill proves to America that no program is safe from the budgetary axe of the majority party, including school lunches.

I ask my colleagues from Texas to contact the State agency which is running the school breakfast and lunch program. They estimate a cut in meals to children.

We may wish to waive this off as a reduction of an increase, but what about the increase in population which has occurred in Texas and particularly in Houston.

Let us be fair, take school lunches and breakfast program out of welfare reform and put it back into education. A hungry child is not a good student. These programs could be streamlined, but Congress should guarantee that every child in America should have a hot nutritious meal at school.

Under the Republican bill, we lose the lunch guaranteed by this shell game, promising an increase, taking away an appropriation and yet letting the State transfer 20 percent.

THE TOP 10 LIST

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Mr. Speaker, from the home office in Scottsdale, AZ, the top 10 falsehoods of 1995: No. 10, owners and players really care only about the game of baseball; No. 9, Republicans are cutting children's nutrition programs; No. 8, you can trust Connie Chung; No. 7, the protesters around here in recent days are not paid with taxpayer funds; No. 6, the media is fair and unbiased; No. 5, we need more Federal regulations, not less; No. 4, those six Democrats voted against a balanced budget amendment for principle, not for politics; No. 3, Bill Clinton really knows what he is doing in Mexico; No. 2, the President really wants to end welfare as we know it; and, Mr. Speaker, the No. 1 falsehood of 1995 we will get out early tonight.

□ 1115

A TRIBUTE TO MARYAM RAJAVI AND FREEDOM FIGHTERS IN IRAN ON INTERNATIONAL WOMEN'S DAY

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, today is International Women's Day, celebrated here in America, but not in Iran. In Iran, women are treated like cattle. Women cannot own property. In fact, women cannot even choose their own clothing, and are still stoned to death.

What is ironic is this terrorist nation, this totalitarian regime is now being challenged by a new democratic resistance party led by a woman, Maryam Rajavi. I rise today to pay tribute to Maryam Rajavi and the freedom fighters in Iran and, on International Women's Day, to pay tribute to the achievement of all women, but advise Congress to take a look at Iran.

Iran will not change from without; Iran must change from within. President Maryam Rajavi and her government in exile, a democratic government in exile in France, can do that, and provide human rights in Iran.

REFORMING THE WELFARE SYSTEM SO IT WORKS FOR THE PEOPLE, NOT AGAINST THE PEOPLE

(Mr. HEFLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HEFLEY. Mr. Speaker, it is time for us to admit to ourselves that the grandiose welfare programs of the 1960's have failed. Welfare has been riddled with crime and abuse for years. At long last, it is time to fix the welfare system from just maintaining the poor to transforming the poor.

Middle-income Americans no longer equate compassion with spending more money in Washington for programs that do not work. Money is not the answer. Change is the answer. And that is what we want to do—change the welfare system so that it works for the people not against the people.

The three principles of change are personal responsibility, work, and State control.

Mr. Speaker, we are keeping our promises. Instead of defending the status quo, we will produce real change.

DON'T CUT THE SCHOOL LUNCH PROGRAM

(Mr. ROMERO-BARCELÓ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROMERO-BARCELÓ. Mr. Speaker, the school lunch program is a good, proven program. It feeds hungry children nutritious meals. Children who are not hungry learn better and are healthier. This is a simple premise, but it is a premise that has worked well since the original school lunch program was signed into law in 1946.

I believe that it is a travesty and a disgrace to destroy such a successful program. Throwing this program into a block grant does absolutely nothing to ensure that such funds will end up in a school lunch program of the high caliber that we now have. As a former mayor and Governor, I have grave reservations about the effectiveness of a system of block grants where vitally necessary nutrition programs are forced to compete against each other for increasingly scarce dollars.

No child in a nation like ours should go to school hungry or suffer from malnutrition. The school lunch program helps to ensure that this does not happen. It is a proven program—it works. Do not cut the school lunch program. Do not cut taxes for wealthy corporations at the cost of our children's physical and emotional health.

This is not a Contract with America, this is a contract with the wealthy of America against the poor, against the veterans, and against the children of America.

THROUGH WELFARE REFORM AMERICANS WILL BE AGAIN EMPOWERED, NOT ENTITLED, TO LIFE, LIBERTY, AND THE PURSUIT OF HAPPINESS

(Mr. MARTINI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARTINI. Mr. Speaker, when my grandfather, Michael, came from Italy to America over 90 years ago, he came because of a promise. It was the promise that sets the United States apart from every other nation in the world.

That promise is the American dream: the deal that if you are willing to sacrifice and live by the rules set out by the world's greatest democracy, then you are empowered, not entitled, to follow a life of liberty and a pursuit of happiness that only America can offer.

When I came to Congress, I came because of that promise. I told my constituents I would protect that dream that our forefathers created, nurtured, and cherished.

Mr. Speaker, after 2 months on the job, I can say with great satisfaction that we are indeed restoring that sacred promise. Our efforts to date protect in our society what was so dear to my grandfather and all of our ancestors: a sense of opportunity, responsibility, and accountability that truly distinguishes these United States of America.

DEMOCRATS WILL NOT BE HAPPY UNTIL EVERY CHILD GETS GOOD NUTRITION

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, the Los Angeles Times today reports that when Speaker NEWT GINGRICH was asked about the Democrats and the school lunch program, he said, "The Democrats won't be happy until every child gets a Ferrari."

Let me tell you, this is not a school car program, this is a school lunch program, and the Democrats will not be happy until every child gets good nutrition, "Why Johnny can't eat." We are not talking about happy meals with little prizes in them, and we are not talking about big fancy cars, because we do not give them to our kids; besides which, I must say to the Speaker, if Democrats were going to give anything, they would give a Ford.

ENDING POVERTY, CONTROLLING WELFARE ARE GOALS OF BLOCK GRANTS TO STATES

(Mr. JONES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. JONES. Mr. Speaker, during the past 30 years, the Government has tried solving the problems of the poor. The Government has invested over $5 trillion to create a better life for the needy while in reality, this outdated and bureaucratic-laden system has encouraged a destructive social behavior in recipients, including an ever increasing illegitimacy rate. Since 1965, the average household has spent $50,000 in taxes to support this system and of the 5 million families who receive benefits only 20,000 people work.

As members of Congress, we have the responsibility to end this cycle of dependency. The Republican proposal will do just that. We will merge four cash welfare programs into one block grant to the States, saving the taxpayer $5.6 billion. Under this block grant, States will gain greater responsibility in administering the program and more flexibility to be innovative in combating poverty and welfare.

We will continue to create programs to restore the power of the States and to return the American dream to everyday people.

CURTAILMENT OF JOBS PROGRAM THREATENS 1.2 MILLION CHILDREN WITH ILLNESS

(Mr. FIELDS of Louisiana asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FIELDS of Louisiana. Mr. Speaker, I rise today to voice my strong opposition to the dismantling of our National Summer Youth Job Programs.

Mr. Speaker, 1.2 million children will lose the opportunity to be employed and educated this summer. In my State $19 million would be eliminated, canceling 13,000 summer youth jobs. That is right, Mr. Speaker, this summer we will have an additional 600,000 young people nationwide on the streets with nothing to do, at a time when we should be encouraging work, and discouraging crime.

I submit, Mr. Speaker, this rescission is a crime and we should defeat the rescission proposal when it arrives to the floor.

I urge my colleagues on both sides of the aisle to look beyond our whips, look beyond our caucuses, look beyond our party positions. Let us not look beyond our consciences.

Let us stand up for our young people and say "yes, you will have and deserve the right to work this summer."

INTERNATIONAL WOMEN'S DAY

(Ms. PRYCE asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. PRYCE. Mr. Speaker, today is International Women's Day, a day in which women around the world are commemorating their struggles and victories.

One of the most important ways to ensure the safety and success of women throughout the world is to provide them with economic stability.

This is especially true in America, and is center to the debate taking place in this body over welfare reform. The current welfare system locks women into dependency and destroys their futures. It does not provide the incentives to obtain job skills or an education. It is a system that encourages teenage mothers to leave their parents' home and take a premature step into life's troubles. In short, not only does the current welfare system fail to help women, it suppresses women and destroys chances for their futures and those of their children.

We have to create a welfare system that encourages responsibility; one that provides women with opportunities to become self-sufficient and to provide for their families.

Economic stability allows women to take charge of their lives and not live as victims of government dependency.

In the spirit of International Women's Day, I urge my colleagues to support America's women through meaningful welfare reform—we all should be able to live the American Dream.

GINGRICH REVOLUTIONARIES SAY TO HUNGRY CHILDREN "LET THEM EAT BLOCK GRANTS"

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DEFAZIO. Mr. Speaker, a school principal in my district told me of children lined up at the door of one of our neighborhood schools on a Monday morning, not because they were so anxious to learn, but because they were hungry. Their school breakfast was to be their first hot meal since school lunch on Friday, 2½ days without a hot meal.

Those hungry kids are just going to have to go a little bit longer if the Republican cuts in the Nutrition Programs and the School Lunch Programs go through. They tell us it is just the administrative costs, they just want to eliminate the Federal bureaucrats to the cook in the local school, that would be 4 percent of the costs. Their cuts are seven times the administrative costs.

Mr. Speaker, just a little decrease or increase in the price of food? More eligible hungry kids? The Republicans have an answer for that: Give them smaller portions, that is the Republican plan. Two centuries ago Marie Antoinette said "Let them eat cake." Today's Gingrich revolutionaries say "Let them eat block grants."

PRESIDENTIAL EXECUTIVE ORDER BANNING THE HIRING OF PERMANENT REPLACEMENT WORKERS BY FEDERAL CONTRACTORS

(Mr. GOODLING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GOODLING. Mr. Speaker, this morning, President Clinton signed an Executive order that would ban Federal contractors from hiring permanent replacement workers. I rise today to express my strong opposition to the President's action, both in terms of what it means for our country's workplace policy, as well as the manner in which it was done.

In terms of workplace policy, the President's order will have serious negative implications for our system of collective bargaining. The foundation of that system is a balancing of the interests and risks of labor and management that allows the bargaining process to prod both parties toward a collective agreement on the terms and conditions of employment.

A ban on the use of replacement workers will undoubtedly lead to more strikes, and the ripple effects of those strikes will result in lost jobs and lost business opportunities throughout industry.

Beyond its policy implications, the legality of the Executive order is also questionable. The Congress has expressed its will with respect to the legality of permanent replacement workers and the President's order runs completely counter to that will. The responsibility for setting employment policy rests in the Congress, not in the White House.

I call on President Clinton to reconsider his decision to pursue this dangerous and ill-conceived threat to our national labor policy.

COMMEMORATING INTERNATIONAL WOMEN'S DAY

(Mrs. LOWEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. LOWEY. Mr. Speaker, I rise today to Commemorate International Women's Day. Today we celebrate the victories and commemorate the struggles of women around the globe.

While women have made considerable progress in the struggle for civil rights and equity, we still have a long way to go. Women have gained greater access to education. But currently, throughout the world there are about 85 million fewer girls enrolled in school than there are boys, despite nearly equal numbers of girls and boys in the world. We must do better.

Women have gained greater access to jobs and the economy, but currently, women compromise nearly two-thirds of the world's illiterate population. We must do better.

Women have fought, in this country and around the world, to gain access to adequate health care and full reproductive rights. But an estimated 500,000 women die each year from pregnancy related causes, including unsafe abortions. And in this country, the debate over abortion rights, and recent actions to eliminate that right in the case of victims of rape and incest, threatens to undermine the health and safety of women. We must do better.

Mr. Speaker, the upcoming U.N. Fourth International Conference on Women will provide us an opportunity to look at how we might do better. I join my colleagues in commemorating today, International Women's Day. It is a day to look toward the future, when we must do better for women.

OPPOSING THE EXECUTIVE ORDER BANNING THE USE OF PERMANENT REPLACEMENT WORKERS DURING STRIKES

(Mr. FAWELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FAWELL. Mr. Speaker, in the collective-bargaining process, the union has the ultimate right to strike in an economic strike. The employer has the right, however, to hire permanent replacement workers in order to be able to continue his business.

I rise today to express my strong opposition to the Executive order just issued by the President which would ban the use of permanent replacement workers during strikes against government contractors. I question the authority of the President to issue such an order, and I urge him to rethink this divisive strategy.

The labor law implications of banning permanent replacements have been debated at length in this Chamber. The fact that many, many days have been devoted to the issue in recent years should leave no doubt in anyone's mind that this is a legislative issue. Any Executive order that touches on this same issue is an infringement on the separation of powers so vital to our constitutional form of government. It would be an usurpation of the congressional authority.

THE GOP'S DRAMATIC CUTS TO PROGRAMS FOR CHILDREN

(Mr. STUPAK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STUPAK. Mr. Speaker, the GOP budget cutters are at it again. In yesterday's Congress Daily, the GOP chairman said "I want to downsize in a way that makes sense, but is dramatic."

Yes, the GOP is dramatic. It is dramatic to cut the children's preschool nutrition program. It is dramatic to cut the school breakfast program. It is dramatic to cut the school lunch program. It certainly is dramatic, but where does all this dramatic money go?

After the GOP dramatically cuts the children's nutrition program, the money will go not to the deficit, not to reduce our debt, but it goes to those families who will get a tax break, those families who make more than $180,000 a year.

□ 1130

Tax breaks for those families who do not worry about hot lunch or who worry about preschool nutrition programs.

Oh, yes, it is dramatic. Let us reject these Republican cuts aimed at all children. While it may be dramatic, Mr. Speaker, it certainly does not make sense.

EXECUTIVE ORDER BARRING USE OF REPLACEMENT WORKERS DURING LABOR DISPUTES CALLED UNCONSTITUTIONAL

(Mr. LAHOOD asked and was given permission to address the House for 1 minute.)

Mr. LAHOOD. Mr. Speaker, 8 months ago the striker replacement legislation died in the Senate of the United States. Almost 4 months ago, the people of the United States vetoed the failed policies of the past. They demanded less intrusion in our lives. The President of the United States is seeking to force through that which we and the American people have rejected.

Mr. Speaker, we learn from the media that the administration has issued an Executive order to ban the use of permanent replacement workers during labor disputes involving government contractors. We have not seen the details yet, but I cannot imagine such an order that would be constitutional or lawful.

The Executive order will be a serious impediment to our defense readiness. The order would debar Federal contractors for reasons other than quality and effectiveness. As a result, for political reasons, our fighting men and women would not necessarily be guaranteed the best product by the best possible contractors. This I cannot countenance.

Mr. Speaker, it is a sad day for our Nation whenever one branch of our constitutional form of government seeks to encroach on the province of another. I am afraid we are on the verge of such a day.

SUPPORT FEDERAL NUTRITION PROGRAMS

(Ms. ESHOO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. ESHOO. Mr. Speaker, we have become the most powerful country in the world because previous generations invested in us. Now the new Republican majority is treating this generation of children differently. If we do nothing else in this body, we need to take care of our children, those whom we inherit as legislators, the children of our Nation. I am a mother and I have spent my adult life raising, nurturing, and caring for my children. They are my first priority and my reason for living.

The children of our country deserve the same from us. We must feed their bodies to keep them healthy and nourished and feed their minds to help them become productive citizens. That is why we provide school lunches. That is why we have a public education system, and job training programs. That is why mind-enriching noncommercial public programming and public television is so important.

The Republican majority is cutting the funding for the children of our Nation, the nutrition for their bodies and the food for their minds, and these cuts will starve our Nation's future.

I urge my colleagues to think about our Nation's children and not rob them of their future.

ANNUAL REPORT ON ADMINISTRATION OF FEDERAL RAILROAD SAFETY ACT OF 1970—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore (Mr. CUNNINGHAM) laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Transportation and Infrastructure.

To the Congress of the United States:

I transmit herewith the 1993 annual report on the Administration of the Federal Railroad Safety Act of 1970, pursuant to section 211 of the Act (45 U.S.C. 440(a)).

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 8, 1995.*

1995 TRADE POLICY AGENDA AND 1994 ANNUAL REPORT ON TRADE AGREEMENTS PROGRAM—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Ways and Means.

To the Congress of the United States:

As required by section 163 of the Trade Act of 1974, as amended (19 U.S.C. 2213), I transmit herewith the 1995 Trade Policy Agenda and 1994 Annual Report on the Trade Agreements Program.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 8, 1995.*

ANNUAL REPORT OF FEDERAL COUNCIL ON THE AGING—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Economic and Educational Opportunities.

To the Congress of the United States:

In accordance with section 204(f) of the Older Americans Act of 1965, as amended (42 U.S.C. 3015(f)), I transmit herewith the Annual Report for 1994 of the Federal Council on the Aging. The report reflects the Council's views in its role of examining programs serving older Americans.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 8, 1995.*

SECURITIES LITIGATION REFORM ACT

The SPEAKER pro tempore. Pursuant to House Resolution 105 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1058.

□ 1135

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes, with Mr. COMBEST in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Tuesday, March 7, 1995, the amendment offered by the gentleman from Texas [Mr. FIELDS] had been disposed of and the bill was open for amendment at any point.

Six hours and thirty-five minutes remain for consideration of amendments under the 5-minute rule.

Are there further amendments to the bill?

AMENDMENT OFFERED BY MS. ESHOO

Ms. ESHOO. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Ms. ESHOO: Page 18, beginning on line 2, strike "For example, a defendant who genuinely forgot to disclose, or to whom disclosure did not come to mind, is not reckless.".

Ms. ESHOO. Mr. Chairman, I offer this amendment to improve the standard by which H.R. 1058 determines if a person has acted recklessly in misleading buyers or sellers of securities.

Protecting against reckless conduct is critical in securities law because in the world of finance there is ample opportunity to mislead investors with recklessly fraudulent statements.

My amendment is an effort to improve H.R. 1058 in this critical area. H.R. 1058 has many solid and much needed legal reforms. And as several of my colleagues mentioned yesterday, we should have had legislation on this issue before this House long before today. It is needed, and it is overdue.

However, Mr. Chairman, the bill before us is seriously deficient when it comes to recklessness—not so much by what is missing, but by what has been added. My amendment protects the recklessness standard by striking the sentence which allows the defendant to escape liability by saying, "Your honor, I forgot to disclose that important fact to the customer." In other words, I forgot to tell the truth.

Outside of this sentence, Mr. Chairman, the bill's definition of recklessness is perfectly adequate. It follows the so-called Sundstrand decision which has been supported by 75 percent of the Federal courts.

Yet, H.R. 1058 has taken Sundstrand and modified it to include a provision which exempts from liability defendants who forgot to act responsibly.

Mr. Chairman, I believe there is a reason that no U.S. appellate courts have adopted the definition for recklessness as it is stated in H.R. 1058.

Our Nation's judges, most of them conservative appointees, understand the difficulty plaintiffs, with legitimate cases, have in proving "knowing" fraud. Our courts have resoundingly said recklessness is not the same as knowing fraud, and "I forgot" is not an excuse.

For two centuries this country has prided itself on the fact that we are governed by the rule of law rather than by the whim of individuals. Now the majority proposes to overturn this principle with one sentence providing every guilty defendant the opportunity to escape retribution.

Mr. Chairman, I am not a lawyer. But I have a lay person's respect for our Nation's statutes. They should be written with care and with the goal of providing justice for every citizen.

Now with that in mind, Mr. Chairman, when we write the statute which prohibits reckless and fraudulent conduct in securities law, do we want to include the following sentence: "For example, a defendant who genuinely forgot to disclose, or to whom disclosure did not come to mind, is not reckless."

Mr. Chairman, do we want our laws to say such a thing? Do we want to give the defense of faulty memory to a reckless person? I don't think so.

The high-technology companies in my district need relief from meritless lawsuits now. We need to pass legislation that will end these suits yet protect investors' rights.

My amendment would be one step in the long process of writing a bill which Congress passes and that the President can sign. I urge my colleagues on both sides of the aisle to support this reasonable amendment and improve this legislation.

Mr. BLILEY. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the second sentence of the recklessness definition comes directly from the Sundstrand decision. It is part of the holding of the case. Take it out and we change the law. In footnote 20 of the Sundstrand decision, the court wrote, "[t]hus, if a trial judge found, for example, that a defendant genuinely forgot to disclose information or that it never came to his mind, etc., this prong of the * * * test would defeat a finding of recklessness * * * " 553 F.2d 1033, 1045F n. 20 (7th Cir. 1976). Thus, the second sentence comes directly from the original decision at the point where the judges were explaining the standard. Opponents of the legislation seem to want to choose selectively from Sundstrand or to pretend that the explanatory second sentence does not exist. But it does.

Opponents of the language argue that the second sentence is merely a footnote. If we ignore footnotes, we should ignore the recklessness issue—because the Supreme Court created the issue in the now-famous footnote 12 in the Hochfelder decision. Other famous footnotes in judicial history include footnote 4 in the Carolene Products case, which has generated dozens of law review articles and thousands of pages of commentary.

The Sundstrand court was using the footnote to explain that the standard for recklessness is something more than inexcusable negligence. In the Hochfelder decision, the Supreme Court expressly recognized that negligence is not enough for liability under IOb-5. Thus, a mistake, even a bad mistake, is not enough to establish liability. The wrongdoing must be conscious for liability to attach. In applying the Supreme Court's standard, the Sundstrand court explained that for a party to be liable for recklessness, the omission must derive from something more egregious than even "white heart/empty head, good faith." The footnote explains that "this is a subjective test with the requirement of something more than "inexcusable negligence" imposed because of Hochfelder." Thus, by including the second sentence in the legislation, Congress is clarifying its intent not to lower the standard under IOb-5 cases to mere negligence or gross negligence. As the Court explained, forgetting facts is not actionable.

Not a single Federal district or appellate court relying on the Sundstrand standard has raised any objections to footnote 20, or have found it inconsistent with the recklessness standard articulated in the case. Federal district courts have referred to footnote 20 when articulating the Sundstrand test. The courts appear to accept footnote 20 as part of the holding in the case. For example; *Seifer* v. *Topsy's International, Inc.* 487 F. Supp. 653, 665 (D. Kan. Mar. 19, 1980):

> [T]he core requirement of Hochfelder and Ultramereal is that the plaintiff establish that the defendant lacked a genuine belief that the information disclosed was accurate and complete in all material respect.—Accord, Sundstrand, 553 F.2d at 1045 n. 20.

None of the circuit courts that have adopted the Sundstrand standard have rejected footnote 20 or its substance.

Opponents claim that the second sentence would reverse the rule of "ignorance of the law is no excuse." This argument is nonsense. The Sundstrand standard speaks of ignorance of the facts, not ignorance of the law. Ignorance of the law is, indeed, no excuse. But, as the footnote says, ignorance of the facts is negligence, or even inexcusable negligence, and actors are not liable for negligence under IOb-5 actions. The law is not intended to penalize individuals who forget particular facts. The second sentence says nothing about ignorance of the law and does not provide an affirmative defense for one who forgot to obey the law—as the minority argues. It speaks only to ignorance of facts.

I urge a "no" vote on the amendment.

Mr. DEFAZIO. Mr. Chairman, I move to strike the last word.

Mr. Chairman, as I heard the former Member speaking, I could hear a distant sound and I think it was champagne corks popping on Wall Street. This is extraordinary. I am not an attorney, so I will not cite chapter and verse of precedents. I will go straight to the heart of the matter.

□ 1145

If a person who has worked hard their whole life to put together a little bit of savings for retirement, or maybe they want to annuitize their pension, they have to depend upon someone for advice. And they go and they depend upon the advice of a stockbroker or a prospectus written by some $500-an-hour lawyer on Wall Street. And there is a little omission in that prospectus. It forgets to tell you that you are not investing in Treasury bills, you are investing in derivatives. You lose your money, your life savings, your annuitized pension. It is gone. You are broke.

Do my colleagues know what? You now have a little problem. Two things. One is if you want to sue, this has loser pay in it. So if you are the individual who lost your life savings, you have to find the wherewithal to come with the money to pay for the costs.

Second, it has a new and novel defense from a lay person's perspective. I do not know of any other law in America where you can say, "I forgot. I forgot."

What this means is the next time that someone tries to go to court to recover against the next Charles Keating—there will not be another Charles Keating—that would be great if there were no more frauds that cost the American people millions of dollars like the savings and loan scandals. No, that is not what it means. What it means is you will not have recourse to sue them because they forgot or they just overlooked the disclosure that the bank was on the brink of insolvency when you put your money in there, or when you invested it in that bank.

At a time of turmoil in international markets, just after the bank's scandal, not very long after the Orange County scandal, how is it that we can come credibly before the American people and say Wall Street needs protection from those little stockholders, Wall Street needs protection from people who are putting their life savings in their hands. Why? Well, because Wall Street might forget to tell them something crucial.

This is absolutely outrageous beyond the pale. It is a step through a looking glass into some bizarre new world.

Mr. BLILEY. Mr. Chairman, will the gentleman yield?

Mr. DEFAZIO. I yield to the gentleman from Virginia.

Mr. BLILEY. Mr. Chairman, the gentleman makes a strong argument, but he is wrong on one of the facts, and that is if the firm knew of some information that was derogatory and withheld it, they would not be excused under this language. They could not use the "I forgot" defense, because they knew the language to begin with.

Mr. DEFAZIO. If I can reclaim my time, I think what this leads to is full employment for psychologists, because we are going to have an awful lot of amnesia on Wall Street. It was not that they knew or recklessly disregarded or consciously omitted, but it is just they forgot at the moment that they were drafting it, or when the print of the prospectus came back from the printer, the proof, and it left out the section on risky derivatives, well, they forgot. They forgot that that should have been there.

Mr. BLILEY. Mr. Chairman, will the gentleman yield again?

Mr. DEFAZIO. I yield again to the gentleman from Virginia.

Mr. BLILEY. The word in there is genuinely forgot, and as a proof in fraud, you have to prove all fraud in court. But they would not be able to stand a chance of maintaining a defense under this language if they knew in advance and deliberately just withheld it, because they could not use that defense because they did not genuinely forget.

Mr. DEFAZIO. If I can reclaim my time, I understand this is not the reckless disregard section, so we already have reckless disregard, and this is a further definition of reckless disregard. That is, a defense for reckless disregard is "I forgot." Is that not correct? It is a definition of reckless disregard.

Mr. BLILEY. It is a definition of reckless, yes. The gentleman is correct.

Mr. DEFAZIO. Reclaiming my time, if someone recklessly disregards and they lose your pension or your annuity, I think at that point they should be liable. I do not think they should have the defense of they forgot. I do not think the average American is going to think depending on experts, that is an incredible position to be taken by the U.S. Congress.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, as we are having this debate I think it is important for all of us as Members not to forget certain points.

Point No. 1 mentioned by Chairman BLILEY just a moment ago is if you take this sentence out of the statute as the statute is currently drafted, you change the law. This sentence that is the subject matter of the debate comes directly from Sundstrand.

Some people say that this is not important because this sentence comes from a footnote. But it is important to point out, as the chairman did just a moment ago, that in footnote 12 of Hockfelder that footnote created the issue of recklessness and whether recklessness might meet the standard of intent that was required.

This sentence in Sundstrand was used to describe what was meant by the court in interpreting recklessness. This sentence has been litigated and relitigated. This sentence has stood the test of judicial review. In fact, this sentence as part of Sundstrand has been adopted by 9 of the 12 Federal circuit courts.

I think it is really important for this debate to put this in perspective. Where does this particular amendment affect the legislation, and it is important for Members to know that this occurs in subsection 4 in defining recklessness. But it occurs in section 10(a) where we are talking about the requirements for securities fraud actions, and particularly under section (a) of Scienter, and we say under this section, it says to establish Scienter and we list elements, the defendant indirectly made a fraudulent statement, the fact that the defendant possessed the intention to deceive, manipulate or defraud and the defendant made such fraudulent statement knowingly or recklessly, and that is why the definition of reckless is so important in its definition and how it is put down in this particular statute.

So it is important to go to the definition of recklessness in the statute as it is drafted to understand the purpose of that particular sentence.

I will read in section 4, recklessness. "For the purposes of paragraph 1," the paragraph I will refer to in just a moment, "a defendant makes a fraudulent statement recklessly if the defendant in making such statement is guilty of highly unreasonable conduct that involves not simply merely simple or even gross negligence, but an extreme departure from standards of ordinary care; and (b) presents a danger of misleading buyers or sellers that was either known to the defendant or so obvious that the defendant must have been consciously aware of it."

Then the sentence that is the subject of this follows. It says: "For example, a defendant who genuinely forgot to disclose or to whom disclosure did not come to mind is not reckless." The court was indicating what was meant in the definition of reckless in that Sundstrand decision, so it is important that this sentence remain, and it is important that people recognize that this has already been adopted, it has been litigated time and again, but adopted by 9 of the 12 Federal circuit courts.

Mr. MANTON. Mr. Chairman, I move to strike the requisite number of words, and I rise in favor of the Eshoo amendment.

At the outset, I want to commend my colleague, Ms. ESHOO, for offering this important amendment which would dramatically improve the bill's recklessness standard.

As a representative who hails from New York City, the financial capital of the world and the headquarters of most of our Nation's securities accounting firms, I share my colleague's interest in passing securities litigation reform and easing capital formation for our local, regional, and national economies.

However, as the representative of New York's Seventh Congressional District, I am also committed to protecting the people of Queens and the Bronx, who help keep New York City running by supplying the city's businesses with skilled labor. My district is also home to a large number of retired middle class workers.

I want to state that I support a level playing field in securities litigation.

I think clear rules will serve to define prohibited activities and eventually lead to better protection of all parties. We must resist the temptation to try to address the uncertainties of the securities market by presuming bad faith by either party in securities litigation cases.

In that regard, I rise in support of Ms. ESHOO's amendment which would correct the bill's untenable standard for defining recklessness which would protect fraudulent conduct.

When first introduced, this securities litigation reform legislation contained no provisions designed to hold businesses accountable for reckless conduct, instead, defrauded investors would have had to prove that defendants actually intended to defraud them. After much criticism from members of the Commerce Committee, liability for recklessness was restored, but was defined as willful blindness, a definition which has been adopted by no circuit courts of appeal.

It is difficult to understand why willfulness that is, intent, should be required as a prerequisite to a finding of recklessness.

In fact, the only thing that seemed to recommend that obscure definition was that it was so narrow that it was unlikely anyone could be found reckless under its definition, and in fact, no one had never been found reckless through its use.

For the benefit of my colleagues who are not on the Commerce Committee I would like to point out that, contrary to what they may hear today, there is little disagreement about what recklessness means in Federal courts. The majority of circuits, including the second circuit in New York, which most people acknowledge has special expertise in securities matters, has adopted the seventh circuit's determination in Sundstrand versus Sun Chemical, that:

> Reckless conduct may be defined as a highly unreasonable omission involving not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.

While H.R. 1058 now contains language similar to Sundstrand, I ask my colleagues to consider why the "For Example" sentence, which the Eshoo amendment would strike, was added to this accepted standard. I do not think that I am being unreasonably suspicious by suggesting that these changes were designed to undermine the Sundstrand standard. If my colleagues are not trying to weaken the accepted standard, why don't they simply accept this amendment?

The issue before us is not a complex legal question.

If the Congress passes something which represents the accepted definition of recklessness plus "something," then we are not codifying the current court standard. Courts will determine that we must mean something besides the accepted definition of recklessness, and set about to determine what else the addition of the footnote will require before a showing of recklessness can be made.

As Anthony Lewis pointed out in the New York Times on Monday, this extra sentence will likely open new loopholes for securities fraud.

I can think of no reason to allow businesses to escape liability for their own fraud if they conveniently forget that they perpetrated fraud on investors.

I cannot fathom the common sense in this definition of recklessness.

My colleague, Ms. ESHOO, and I have worked together through the committee process to improve the securities litigation portion of the Contract With America.

In an unfortunately all too partisan setting, Ms. ESHOO has attempted to forge reasonable legislation which balances the rights of businesses and investors. She has drafted a commonsense amendment. I urge my colleagues to support it.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA AS A SUBSTITUTE FOR THE AMENDMENT OFFERED BY MS. ESHOO

Mr. COX of California. Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

> Amendment offered by Mr. COX as a substitute for the amendment offered by Ms. ESHOO: Page 18, beginning on line 2, strike "For example" and all that follows through line 5 and insert the following: "Deliberately refraining from taking steps to discover whether one's statements are false or misleading constitutes recklessness, but if the failure to investigate was not deliberate, such conduct shall not be considered to be reckless."

□ 1200

Mr. COX of California. Mr. Chairman, I would like to address myself to the comments that have been made thus far by my colleagues concerning one sentence in our definition in the statute of the court-created cause of action for reckless violation of the securities laws. The 1934 act and the 1933 act do not contain any private cause of action. This has been created by the courts.

Likewise, they do not contain any cause of action for recklessness. That, too, has been created by the courts in very recent years.

Our legislation takes the rather dramatic step of codifying this judge-made law of recklessness in the lower courts, judge-made law that the Supreme Court has never agreed to; only in a footnote in a Supreme Court decision did they say they were not prepared to decide whether recklessness could be a cause of action at all.

So for the first time our legislation would be codifying recklessness, and to do this, we borrowed, at the suggestion of Democrats on the Committee on Commerce, language from the seventh circuit Sundstrand case. The Sundstrand decision itself crafted a recklessness standard borrowed from another court in the western district of Oklahoma, and that court had its opinion quote verbatim in the Sundstrand case.

Then the judge in the Sundstrand case came up with his own interpretation of what that meant, which he put in a footnote. We have both the western district of Oklahoma case that was recited in Sundstrand and the judge's own words in this proposed legislation. It is the judge's own words in Sundstrand that contain the definition of the distinction between recklessness and negligence, so that someone who honestly makes a mistake is definitionally negligent but not reckless. Therein lies the distinction. And it is that language that is giving rise to all of this debate.

So my colleague from California has proposed merely to strike that sentence which would leave us with something of a vacuum in our legislative definition of recklessness, but her reason for wanting to strike it is, I think, a fair one, and that is that examples are not normally contained in statutes.

Now, one of the reasons that I think we need to put as much as possible into the statute is that judges increasingly are not looking to legislative history to determine what Congress meant. I actually support that mode of judicial interpretation of statute.

I think there is a way to solve the problem. I am going to agree with my colleague from California that we can strike this last sentence and still achieve the objective, and I have proposed that we substitute instead language from a court case in the southern district of New York that simply harmonizes the Hochfelder standard that we have already written into subparagraph (b) of this statute with the idea of recklessness. The sentence we would substitute says simply this:

> Deliberately refraining from taking steps to discover whether one's statements are false or misleading constitutes recklessness, but if the failure to investigate was not deliberate, such conduct shall not be considered to be recklessness.

I think we can all agree this is exactly what this statute means. This is what the judge-made case law already on the books means. Even if we do not enact this statute, it clarifies precisely what is our congressional intent. It offers guidance to the courts, and most importantly of all, guidance to the American people who would like to know in advance the standard to which they should conform their conduct.

So I congratulate my colleagues for focusing our attention on this issue. I think that this is a fair resolution.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I appreciate the gentleman's congratulations. We tried very hard to focus you on this issue in committee. Let us just go over, briefly, what happened here.

In the subcommittee you told us the Sundstrand decision said one thing. We argued vigorously with that. In full committee you told us it said another thing which is what is in the bill today. Now you are presenting us with a handwritten amendment in which you say that you have tried to find some way to further codify what you were after.

I think it raises a serious question about exactly what you guys are doing. I mean, have you thought this thing through or not? Why is this just a handwritten amendment? Was this just patched together in the last hour? We are writing laws that affect pension plans, affect people's stock investments, affect the stability of the market. This is a serious matter. You come up here at the very last minute with a handwritten amendment which, by the way, I find to be very difficult, much of which is almost impossible to distinguish from what is in the bill already.

When did you write this amendment, I ask the gentleman from California [Mr. COX]?

Mr. COX of California. Reclaiming my time, the gentlewoman from California, at the close of business last night, was recognized as the opening amendment today, and it is, therefore, timely that we are discussing her amendment to this bill today, and it is because of the initiative to change the legislation that we are now engaged in describing how to do that. It is, of course, important for all of us to participate in this debate.

Mr. BRYANT of Texas. If the gentleman will yield further, the Republican leadership told us yesterday there would be no additional amendments. We just saw this in the last 5 minutes.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the substitute amendment.

We are talking literally about the last sentence of the definition contained in the Sundstrand decision of recklessness. I want to point out for the members of the committee that the last sentence that is being debated here by the Eshoo amendment is contained in the Sundstrand decision. It is contained in the Sundstrand decision in further elaboration of what recklessness is not; Sundstrand adopts the language from the Oklahoma case which was the first case that was decided after the Supreme Court case of Hochfelder. It adopted that language and defined what recklessness is. That is in the bill exactly, indeed, as the court described it in the Sundstrand decision.

But Sundstrand and the court in Sundstrand went a step further. It said not only is this what recklessness is, this is what it is not.

And why was that important? It was important because in the original Supreme Court decision the Court made it very clear to its circuit courts who are going to be interpreting the law even more precisely than the Supreme Court did, it made it very clear, and here is a quote from Hochfelder, that "When a statute," like 10(b)(5) "when a statute speaks so specifically in terms of manipulation and deception and of implementing devices and contrivances, the commonly understood terminology of intentional wrongdoing, and when its history reflects no more expansive intent, we are quite unwilling to extend the scope of this statute to negligent conduct."

In effect, what Hochfelder was saying was that this statute, 10(b)(5), that we are codifying and amending today, was clearly in its origination and in its history an intentional-fraud statute, not a negligence statute. Now, I know that there are many who would like to turn it into a negligence statute. That is not what it is. It is an intentional-fraud statute.

The courts have interpreted that statute to say that when somebody's conduct is not quite clearly intentional but so reckless as to get real close to intentional misconduct, that that, too, can be used as a cause of action under the statute.

Hochfelder was saying you still need to find some elements that lead you to that conclusion that recklessness is so severe that it is the equivalent of intentional wrongdoing, and so Sundstrand came along, the Oklahoma case came along interpreting that Supreme Court decision even further and defined recklessness in those terms.

Let me quote from what is in the bill and what is in Sundstrand: "Reckless conduct may be defined as a highly unreasonable omission involving not merely simple or even inexcusable negligence." Hear this again, "Not even inexcusable negligence, but an extreme departure from the standards of ordinary care and which presents a danger of misleading buyers or sellers that is either known by the defendant or is so obvious that the actor must have been aware of it."

Sunstrand is, in effect, saying that you have got to get awfully close to intentional negligence.

What the gentleman is now offering in place of further clarifying language of what is not negligence that is contained in Sundstrand, verbatim, is a statement that is taken from other court decisions, again interpreting the Supreme Court decision saying "deliberately refraining from taking steps to discover whether your statement is true or false is, indeed, recklessness." In effect, referring again, as the Supreme Court said you must refer to, some kind of deliberateness, some kind of intentional misconduct, something so close to the intent to defraud that it meets both the history, the intent, and the original language of section 10(b)(5). Let me say it again: There are many people who would like this section of the law to be a negligence section. It is not. This is a fraud section of law, and you can try to turn it into a negligence standard if you like by amendment. That is not what this law is all about. That is not what this section of litigation is all about.

There are many lawyers who try to turn it into a negligence standard. The court in Sundstrand and the Supreme Court said that is not the law. This is a recklessness, almost right up there close to intent to defraud, and if you want to make sure that that is true, the gentleman's substitute amendment is not only right but eliminates, indeed, an example that is in Sundstrand, because I frankly think that is not good text in the law and substitutes instead a finding of the court.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has expired.

(By unanimous consent, Mr. TAUZIN was allowed to proceed for 1 additional minute.)

Mr. BRYANT of Texas. Mr. chairman, will the gentleman yield?

Mr. TAUZIN. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. A few moments ago you all were quoting to us from a 1976 decision in Sundstrand saying this is the common law; we are just going to codify it.

Last night we were told there would be no more amendments to the bill. In the last 5 or 10 minutes, we have been handed a very illegible handwritten amendment which you are now lauding as a great new standard for this industry.

I would like to ask the gentleman, if I can——

Mr. TAUZIN. Reclaiming my time, I will be happy to respond; whatever time I have, I have got your question. The question is should the example that is quoted in Sundstrand of what is not negligence be contained in this bill. You have objected to that. The gentlewoman has asked we take it out. We are saying OK, if you really want to do that, let me answer the question——

Mr. BRYANT of Texas. Do you take it out?

Mr. TAUZIN. Let me answer your question.

Mr. BRYANT of Texas. I did not ask a question. I have got a question for you.

Mr. TAUZIN. If the gentleman has suggested it should come out as he and the gentlewoman have, we are saying OK, if you are going to take that out, you need to clarify as the Supreme Court asked us to do that you are still talking about a deliberate refraining from taking steps to discover the truth or falsity of the statement.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has again expired.

(At the request of Mr. BRYANT of Texas and by unanimous consent, Mr. TAUZIN was allowed to proceed for 1 additional minute.)

Mr. BRYANT of Texas. If the gentleman will yield further, when did you first see this handwritten amendment that we have been handed here in the last few minutes?

Mr. TAUZIN. We have been discussing that and other language taken from the Supreme Court decisions for some days now in an effort to try to make this bill more palatable to my friend from California who was going to offer this amendment.

Mr. BRYANT of Texas. We know as of last night there was no plan to offer any additional amendment. Now we see a handwritten amendment in the last few minutes.

Mr. TAUZIN. Reclaiming my time, this is not an additional amendment. This is a substitute for your own amendment. The idea is before I and other Members who support this bill are willing to accept your amendment which deletes language from the Sundstrand decision, we think you ought to have language that clarifies what the Supreme Court said. That is what this amendment does.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. Mr. Chairman, I would just point out last night this amendment did not exist, that this has been a dynamic process. We have taken the concerns expressed by people on the other side of the aisle. We have attempted to address those concerns to make the legislative language a little tighter, and we worked as late as this morning trying to come up with the particular language.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to oppose the substitute.

I rise first to commend the gentlewoman from California for her amendment. It should be adopted.

Second of all, this curious piece of paper that has been passed around should be rejected. The gentleman from California has presented us with an amendment that was never before seen. This is not inconsistent with the practices that we have observed.

But I want to take my colleagues through what is going on here. What is at stake here is the rights of investors, not a bunch of slippery lawyers, but investors, investors who were hurt in things like Orange County, things like the Milken, Boesky defalcations and a large number of other items of rascality, also in questions like we saw in connection with the savings and loan debacles where lawyers and accountants gave bad opinions, where they audited improperly, where they failed to keep track of property, where they did not find that property which was carried on the books did not exist, or where they failed to find that it was overvalued. Those matters have been found to be reckless, reckless by the courts, and actionable.

Now we find that there is an attempt to get away from the problem of these people by defining recklessness to essentially be deliberate misbehavior. At question is not the issue of negligence or even of fraud. It is simply of reckless misbehavior.

The amendment which is offered by the gentleman from California would say that if the failure to investigate was not deliberate, such conduct shall not be considered to be reckless. We are talking here about lawyers giving opinions as to suitability. We are talking here about accountants who are failing to ascertain that the property which is carried on the books and which is filed in the reports which are submitted to the shareholders and the SEC, in fact, does not exist or does not have the value which is assigned to it. Is that fraud? Quite probably. Is it reckless? Absolutely. These people have a fiduciary duty, a fiduciary duty, a duty of the highest responsibility to the shareholders, and they have a responsibility which they must carry out to the Federal Government and to the State regulators to file their reports truthfully and to use due care and proper care to find out that the value is there, that the property exists, that it is not overvalued in some kind of a fraudulent evaluation.

□ 1215

That is what is at stake. This is an attempt to reduce the amendment offered by the gentlewoman from California [Ms. ESHOO] as an attempt to reduce the responsibility and to define recklessness now as some kind of deliberate misbehavior. That is not it.

What is at stake here is the question of whether or not the individual has carried out his proper fiduciary relationship, whether he has been reckless, and recklessness comes to the brink of, but does not include, deliberate wrongdoing.

This is an attempt to get a little more protection for wrongdoers and to strip a little more of the protection from the ordinary citizen who has invested his or her life savings in a stock or a security which can be converted to worthlessness by the kind of wrongdoing that this amendment offered by the gentleman from California [Mr. COX] would sanctify. That is what is at stake here.

Now, the original amendment offered by the gentlewoman simply struck out dicta, struck out a footnote. The committee was largely agreed that what we should do was to address this within the framework of the Sundstrand decision. The gentleman from California now finds that inadequate. He essentially would seek now to repudiate the language which he pushed in the committee. That is perhaps right, and I think that he should be commended for retreating from it, but not for retreating to something which raises the burden on the litigants to a still higher level, to address the problem of wrongdoing by people who are failing to carry out their fiduciary responsibility to investors and investing public of this country.

Mr. WHITE. Mr. Chairman, I move to strike the requisite number of words. I would say simply I yield to the gentleman from California for his comments on this issue.

Mr. COX of California. I thank the gentleman for yielding.

Mr. Chairman, I listened carefully to the comments of the gentleman from Michigan [Mr. DINGELL], and I must say it proves the law of the inverse correlation between desperate level and factual content on many occasions.

What the gentleman from Michigan may have forgotten is that the bill we are discussing today simply embodies the policy choices that, for decades and decades, have been made by Democrat Congresses and confirmed by our Supreme Court.

The pattern of the Federal securities laws is clear. When Congress wanted to impose absolute liability or impose liability for mere negligence, it did so explicitly. What the gentleman may have forgotten is that the securities laws already impose strict and absolute liability on the directors of a company for fraudulent misstatements and omissions. It is not just recklessness, not just negligence, but strict liability and absolute liability for the directors of a company under section 11. It is the same thing for the officers of the company.

By and large, what the Congress has chosen to do in securities laws is deal differently with formal documents filed with the SEC and deal differently with the enforcement powers of the SEC, on the one hand, and, on the other hand, informal documents and conversations ranging from press releases to telephone conversations and so on, where we want to make sure we facilitate the free movement of informal communications between issuers of securities and participants in the security markets.

So we find that the legislative judgment made by the New Deal Congresses of the 1930's was that it was appropriate to apply a very high standard of liability and not to require liability and not to require fraudulent intent where prepared offering documents, formal prepared offering documents and SEC filings are involved.

On the other hand, as is the case with private litigation that we are dealing with in this bill, Congress did not want to chill candid, free, and informal communications.

The language which the gentleman is discussing would affect private securities actions way outside the bounds of the formal offering documents that are provided prospectuses and so on, where we have strict liability. The "I forget" defense does not work for any people who are the issuers of securities.

I think we need to focus on the fact that what we are doing here is not writing language for the first time in this bill, we are taking language from court decisions and putting it into statutes, and we are doing it, I think, in a very foresighted way. So that for the very first time, what the gentleman would like to see, I think, a codification of recklessness, would exist in our securities laws, and that codification will reflect the best reconciliation of our Supreme Court decisions in Hochfelder, which said every violation of section 10–B has to be intentional and which our lower courts have said sometimes that would include recklessness.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding to me.

Mr. Chairman, the gentleman from Michigan has asserted that the addition of the word "deliberately," which is contained in the gentleman's substitute, is something new to the law. Let me beg to differ, and let me quote from the Supreme Court.

The court said on page 212 of the decision, "We note that such a reading cannot be harmonized," a reading of nonintentional fraud, "with the history of this ruling. A history making clear that when the Commission adopted the rule, it was intended to apply only to activities that involved Scienter."

Scienter is defined by the court on page 194. It means "a mental state embracing intent," that is deliberateness, "intent to deceive, manipulate, or defraud."

I will quote from Sundstrand as well. This is the Sundstrand language, the definition of recklessness is "the kind of recklessness that is equivalent to willful fraud." Willful, deliberate fraud.

Further, "Indeed the franking definition," which is what they used, "of recklessness should be viewed as the functional equivalent of intent."

Deliberateness is what the Supreme Court in Sundstrand talked about, is absolutely part of our law, and it should be part of it. And I thank the gentleman for yielding.

Mr. ALLARD. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Colorado.

Mr. ALLARD. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of H.R. 1058 and the Cox amendment.

Mr. Chairman, abuses of securities litigation are particularly excessive. This act restricts the filing of frivolous suits by imposing stricter conditions.

The act requires class action suits to have plaintiff steering committees to ensure that the interests of the lawyers to do dominate those of the plaintiffs. It equalizes individual plaintiff awards in a class action suit and restricts named plaintiffs from filing more than five suits in a 3-year period. The act also allows the court to order the "lower pays" rule in unjustified cases.

The plaintiff has a greater burden of proof under this act, which allows the defendant to avoid liability if there is no intentional deceit. Also, the plaintiff must prove that loss was incurred because of reliance on a fraudulent statement. Finally, the act protects publishers of market predictions if the forecasts are well-reasoned but do not hold true.

Without these reforms, plaintiff lawyers can file securities cases with few restraints. They routinely pounce on companies following a chance drop in stock. They have good reason to take, and in fact promote these suits. The plaintiff's counsels generally spend little time determining the facts of the case, yet receive a considerable amount of money for their involvement. Such practices are fostered by so-called professional plaintiffs who are sometimes recruited by lawyers with the promise of easy money. H.R. 1058 removes the incentives to file unfounded claims.

Mr. Speaker, it is time we restore the notion that a capitalist economy, there are risks. The process is simple. Stocks rise, you win, stocks drop, you lose. Each person making an investment knows that it is a risk, still certain investors have been encouraged by counsel to fault companies for their inability to predict earnings. We can no longer afford to operate this way. Risk is an important element in the market.

In Colorado alone it is estimated that frivolous securities litigation unjustly costs tens of millions of dollars every year. The assailed companies feel like they are dealing with a terrorist. Following a simple shift in stock price or a particular corporate decision, they find that their company is suddenly held hostage and they are compelled to negotiate a ransom payment.

The cost of these suits is even more outrageous when you consider that the filing parties never see the bulk of the payment, it is the plaintiff attorneys who reap most of the benefits. When the law provides such incentives for greed, the law should be revised.

H.R. 1058, the Securities Litigation Reform Act, will effectively limit unreasonable law suits. I strongly support this legislation.

Mr. BRYANT of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the question for Members of the House is what should the standard, what would the standard be, if the Eshoo amendment were adopted? It is that simple.

Leaving aside all else you have heard today; if the Eshoo amendment was adopted, what would be the standard? Here is the standard. It is in the bill as brought out by the majority. The standard would be: "Reckless conduct may be defined as highly unreasonable (conduct) involving not merely simple," not merely simple, "or even inexcusable negligence, but an extreme departure from the standards of ordinary care and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the action must have been aware of it." That is the standard. That is an extremely high standard.

Simple negligence is not enough, gross negligence is not enough; it has got be even worse than that before you can hold one of these security dealers liable in a civil action.

What we are arguing about is, should anything more come at the end of this paragraph? What the gentleman from California [Mr. COX] wanted to put at the end of this paragraph is a sentence that would have said, "Even if they do as bad as all of that, if they just plain forgot, it is all right, and they are not in trouble."

Now, having been, I assume, embarrassed by the absurdity of that proposal, he comes now with a last-minute rewrite, a handwritten amendment which we have just seen in the last few minutes, which says, "Add at the end of this extremely high standard a sentence that, "Deliberately refraining from taking steps to discover whether one's flagrant or false or misleading conduct would constitute recklessness. But if the failure to investigate was not deliberate, such conduct shall not be considered to be reckless."

Mr. Chairman, this language does not need an add-on. But, second, it sure does not need an add-on. But, second, it sure does not need an add-on that says, I forgot. In effect, Mr. COX's last-minute rewrite, which we did not see until 10 or 15 minutes ago, is just another way of saying, I forgot.

What does it say: "If the failure to investigate was not deliberate, such conduct shall not be considered to be reckless." What does that mean if failure to investigate is not deliberate?

The point is the law should hold somebody who is in the business of issuing securities to at least this standard so that those who invest will know that they are not being the victim of false statements or grossly reckless statements that could cause them to lose their money.

If they lost their money, under the Cox language, they could say, "Well, our failure to investigate the facts which we put into the issuing documents was not deliberate." How can a failure to investigate be not deliberate? Who has the burden to decide whether or not an investigation ought to be done? Surely the burden ought to be upon those who are in a position, with an office full of experts and unlimited resources to do the investigation of whether or not the facts set forth in the offering document are true or not. The burden should not be left upon the pensioner, or upon the widow, upon the hopeful investor who has no way whatsoever to know what facts should or should not be investigated.

Members of the House, we have never ever allowed ignorance to be an excuse in a civil action or in a criminal action. If an American citizen forgets to buy their license plate after the old one has expired, they do not get to plead, "I forgot." They do not get to say, "Well, my failure to investigate whether or not my license plate has expired was not deliberate." You do not get off with that. If your lawyer fails to record your deed, he does not get off by saying, "I forgot," or, "My failure to investigate my file to see whether or not I had a deadline to record the deed," somehow or other was accidental. That does not let him off the hook.

Who should be held responsible? Surely it is not the average person, relying upon the representations of experts, who invests his money. This level of responsibility is higher than we place on probably any other potential defendant in a civil action. You cannot hold him responsible for simple negligence or even gross negligence. In fact, you cannot hold him responsible unless they exhibit an extreme departure from the standards of ordinary care or present a danger of misleading buyers and sellers known to the defendant are so obvious that he should have known it.

Ms. ESHOO wants to leave a period at the end of that sentence. These guys want to say, "However, if in spite of all that, the guy says, 'I forgot,' he gets off the hook."

Now, embarrassed by the words "I forgot," they come up with a last-minute rewrite which means, in effect, the same thing as I forgot.

I strongly urge you to vote down the Cox amendment, to say "no" to this reckless kind of legislative procedure where amendments are thrown together at the last minute on critical legislation like this, to say "no" to the Cox amendment, say "yes" to the Eshoo amendment, and let us leave some kind of protection in this law for the average American investor so that those who take advantage of them by misleading them in offering documents will not be able to profit from their recklessness.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to thank you for recognizing me because I really had intended to stay out of this discussion, but I got more and more outraged as I heard the debate taking place on the floor about what was going on. I want to respond to my colleague from Louisiana, Mr. TAUZIN, who said we were trying to go back to a negligence standard.

I want to admit to my colleagues that if it were me, I would be happy with a negligence standard. I did not come to the floor to play games with you. Lawyers are subject to negligence standard, doctors are subject to a negligence standard, ordinary people who drive automobiles and run into folks are subject to a negligence standard. If they make a mistake and they injure somebody, they are held liable.

But I will not recognize to you that under the law as it is written Congress has already imposed a higher level of standard for folks in the stock brokerage business and those who engage in securities business. They have said, "You can be held liable only if you do something fraudulently, knowingly, recklessly." That is a higher standard or actually, from the common, ordinary people's vernacular, it is a lower standard.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. No, I will not yield. I want to make sure that you can confuse the issue if you want, but right now is my time to try to relate this to some semblance of sanity rather than missed—come and go that you all are engaged in.

□ 1230

What my colleagues want to do is take the already high standard, the one that is a step up, that applies to every other member of society, and create what I would call an impossibility standard, because if we adopted this language, you would never ever be able to win any cases in the securities area because any time recklessness is alleged or somebody is engaged in fraudulent conduct, the securities person would come back and say, "Oh, well, that might be true, but I forgot to tell you," and all of a sudden they would be off the hook.

Well, my colleagues, I thought the purpose of this bill was to get rid of frivolous lawsuits and to cut down on the amount of securities litigation which we have built in a wonderful procedure for trying to stop those kinds of lawsuits, but, Mr. Chairman, when we start to raise the standard to an even higher level of care, an impossibility standard, then I start to wonder is the purpose really to get rid of frivolous lawsuits or is it to protect the buddies up on Wall Street from what goes on in the real world, from the standard that everybody else in our society, these people, all of whom are seated in the gallery, are subject to, this common, everyday standard, and all of a sudden securities people, whom we have already given a higher level of protection to, now they want to give an impossible level of protection to.

So, Mr. Chairman, I want to make sure that everybody understands in common, everyday language what is being proposed here: If I do something, if I am reckless, if I do it knowingly, and I come into court and say, Oh, no, I forgot, all of a sudden I am shielded from liability under this amendment.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from California.

Mr. COX of California. I would just point out, to correct the record, that underwriters, brokers and dealers who act as underwriters are absolutely and strictly liable, and I say to the gentleman, "You don't need to prove negligence and recklessness; they are strictly——

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. The Chair would remind Members not to make reference to individuals in the gallery.

Mr. MARKEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from California [Mr. COX] to the amendment offered by the gentlewoman from California [Ms. ESHOO].

Mr. Chairman, let us make it quite clear that today there is a standard which is used by the Federal courts, and that standard is largely an agreed upon standard, and it is the standard which is in the well of the House which has been sitting there as a printed statement of what has been accepted by 80 percent of the Federal courts of the United States.

Now, remember the standard is one which Federal judges across the country, most of them Reagan and Bush Federal district court judges, have used as their standard, and it has served our country quite well.

Now, if over the course of the last 10 to 15 years 75 to 80 percent of the Federal district court judges, almost all of them Reagan and Bush appointees, have drafted a standard, have adopted a standard, which they use, why would we on the floor of the U.S. Congress adopt a standard which is a handwritten standard just presented to us that will override 15 years of precedents of the Reagan and Bush era judges that have reached the consensus as to what the standard should be?

Should we not give some deference to these Federal district court judges? Should we not allow them in their courts, knowing all of the facts and law, the history of this country, to come to some consensus?

Now, I have the greatest respect for the legal knowledge of the gentleman from California, but it is not so substantial a level of respect that I think that a handwritten amendment on the floor, with no notice to any Members and in contradiction to the promise that there would be no additional majority party amendments to the legislation here today, should serve as a substitute for 15 years of settled law. The intent of this amendment, I think, at the end of the day, is nothing more, nor less, then to dress up, dress up the I-forgot defense. It puts it in fancier words. It uses a legalese that, I think, is probably more professional than actually putting the words "I forget" into the law, but the effect of it is the same, to ensure that the standard for ordinary Americans to be able to bring actions against executives of companies who have misled those individuals in the investment of their money have a more difficult time in court.

That is what this is all about, by the way, or else we would not be out here on the floor of the House of Representatives. We would not be here if they were really happy with what the Sundstrand decision says, which is again, and this is what we believe the public should have as their protection, that there be reckless conduct which may be defined as highly unreasonable conduct involving not merely simple or even inexcusable negligence, but an extreme departure from the standards of ordinary care and which presents a danger of misleading buyers or sellers that are either known to the defendant or so obvious that the actor must have been aware of it.

This standard is one which the Federal district court judges have, George Bush and Ronald Reagan judges, codified for all intents and purposes as the national standard. We cannot use, we should not be allowed to use, a handwritten amendment on the floor of the House of Representatives to be attached to this profoundly important piece of American jurisprudence, and I just hope that anyone who is listening to this debate understands quite clearly that any additions to this are meant to reduce the ability of ordinary Americans to recover in the courts of the United States when executives of S&L's, when executives of a private company, have deliberately misled—

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. Markey] has expired.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first of all I want to compliment the gentleman from California [Mr. Cox]. In Sundstrand the court defined "recklessness" building on the court decision in Hochfelder, and that is what we have currently in the statute. We have language that has already been litigated, and relitigated, and been adopted by 9 of the 12 Federal circuit courts.

Now, I am complimenting the gentleman because, if I understand what the gentleman from California is doing with his handwritten amendment, which at one time that is the only type of amendments we had on the floor, handwritten amendments, but what the gentleman is doing is, first, I understand, he is trying to be cooperative. There were some concerns expressed on the other side of the aisle, and the gentleman is stepping up to the plate to meet some of those concerns, and we take the amendment offered by the gentlewoman from California [Ms. Eshoo] as being a sincere attempt to make the language better. Well, I hope that the other side of the aisle can look at this in the same vein, that the gentleman from California is trying to make this a better piece of legislation, and in doing so he is being consistent with what is in the statute now, and I would ask the gentleman: "Is that the gentleman's intent; first, to be cooperative; and, second, to be consistent with the thrust of the language that is currently in the statute as drafted?"

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from California.

Mr. COX of California. Mr. Chairman, I thank the gentleman from Texas for his kind words. That is, of course, precisely the purpose here.

I say to the gentleman, naturally, when we put the Sundstrand language into the case, or, excuse me, into the statute, to begin with in committee, it was an accommodation in itself in response to concerns expressed on the other side of the aisle. What we now seek to do is to remove part of the Sundstrand decision even though there was request to put it in to begin with and instead to clarify, as best we can, how we are harmonizing the Supreme Court decision in Hochfelder, which all lower courts recognize is the law of the land. It states rather clearly that there must be an intent to deceive, manipulate, and defraud. We have put that into the statute with the common law of recklessness that has developed in concert with that, and we are simply saying that good faith is not reckless.

There are many different ways to say this. We want to say it as clearly and as often as we can so we can avoid litigation on this subject, and while there has been much reference to a handwritten amendment, the fact is the handwriting was a mere transcription of language that appears in the Second Circuit of New York District Court case from which we are quoting. It is the courts' language; it is the courts that have crafted this common law remedy.

I would also just like to point out for the record that one would think from this debate that recklessness is the only standard by which we judge securities laws violations, but in fact it is the standard by which Congress, acting in the wake of the Depression, the New Deal Congress, sought to judge actions on the periphery of securities transactions, at the center of securities transactions, involving issuers, underwriters, accountants and experts. We have strict liability.

I say to my colleagues, so the notion that you can't sue someone who was reckless or someone who was merely negligent is wrong. You can sue and win on the basis of strict liability against the company, the issuer, the directors, the officers, the accountants who issue the registration statement and act as its underwriters and its experts. There is strict liability.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman from Texas [Mr. Fields] for yielding, and I, too, want to compliment the gentleman from California [Mr. Cox]. What he did was to listen very carefully to the concerns expressed by the gentlewoman and try to address them and answer them and bridge the gap. What he has done is not made up language. The language is from the latest expression of the courts, the U.S. District Court for the Southern District of New York, interpreting the Supreme Court decision in Hochfelder, and what the court said in that case, and I quote:

> When the defendant deliberately failed to acquire the information that would have indicated to her that statements were false or misleading, that constituted recklessness.

That is the exact language the gentleman has presented to us today in this amendment. In quotes, "The defendant deliberately refrained from taking steps to discover whether their statements were false or misleading constitutes recklessness," which is an exact statement of what the court said, not what the gentleman from California said.

Mr. FIELDS of Texas. Reclaiming my time for just a moment to see if the gentleman agrees, this has been an evolutionary process. There have been changes from the time this bill was originally introduced up until today. I mean we have changed on the loser pay provisions, we have changed on this particular section. There have been other things that we have done in trying to craft a good piece of legislation working with all parties.

The CHAIRMAN. The time of the gentleman from Texas [Mr. Fields] has expired.

(On request of Mr. BRYANT of Texas and by unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 1 additional minute.)

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. Mr. Chairman, I would just like to appeal to the common sense of the gentleman from Texas. This amendment, which they all have handwritten at the last minute, says that deliberately from taking steps—for refraining from taking steps to discover whether or not one's own statements are false is reckless, but if the failure to investigate whether one's own statements were false was not deliberate, then that conduct is not considered to be reckless.

How in the world could a failure to investigate whether or not one's own statements were false, that it was not deliberate, possibly justify as a way of exonerating one from responsibility? I ask, who has responsibility to make sure that your statement is not false in the first place?

☐ 1245

Mr. FIELDS of Texas. Mr. Chairman, reclaiming my time, first of all, I think this is an honest-to-goodness, legitimate attempt to clarify, and I also think it is an honest-to-goodness attempt to work with the other side of the aisle. Again I want to compliment the gentleman from California for doing that, and I want to go one step further. I think it makes the standard even stronger.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield further?

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

The question is on the amendment offered by the gentleman from California [Mr. COX] as a substitute for the amendment offered by the gentlewoman from California [Ms. ESHOO].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. FIELDS of Texas. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 252, noes 173, answered "present" 1, not voting 8, as follows:

[Roll No. 210]

AYES—252

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kennedy (RI)
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
McNulty
Menendez
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Peterson (MN)
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—173

Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Duncan
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Hoyer
Istook
Jackson-Lee
Jefferson
Johnson (SD)
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
Meehan
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Pickett
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

ANSWERED "PRESENT"—1

Lowey

NOT VOTING—8

Abercrombie
Gibbons
Johnson, E.B.
McDade
McKinney
Meek
Rangel
Waters

☐ 1304

Mr. HALL of Texas and Mr. WELLER changed their vote from "no" to "aye."

So the amendment offered as a substitute to the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from California [Ms. ESHOO], as amended.

The question was taken; and on a division (demanded by Mr. FIELDS of Texas) there were—ayes 120, noes 73.

So the amendment, as amended, was agreed to.

AMENDMENT OFFERED BY MR. MARKEY

Mr. MARKEY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MARKEY:

Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

SEC. 6. INAPPLICABILITY TO DERIVATIVES.

This Act and the amendments made by this Act shall not apply to any action based on an allegation of fraud in connection with the purchase or sale of a derivative instrument. For purposes of this section, the term "derivative instrument" means any financial contract or other instrument that derives its value from the value or performance of any security, currency exchange rate, or interest rate (or group or index thereof), but does not include—

(1) any security that is traded on a national securities exchange or on an automated interdealer quotation system sponsored by a securities association registered under section 15A of this title;

(2) any forward contract which has a maturity at the time of issuance not exceeding 270 days;

(3) any contract of sale of a commodity for future delivery, or any option on such a contract, traded or executed on a designated contract market and subject to regulation under the Commodity Exchange Act; or

(4) any deposit held by a financial institution.

Mr. MARKEY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MARKEY. Mr. Chairman, the amendment which is now pending before the House is one that deals with one of the most complex areas of the financial world. The issue is derivatives. The issue here today is whether or not these new financial products, derivatives, which are causing more and more trouble out in our financial marketplace, are going to be given the proper respect, which they should in this legislation, with respect to protection of investors.

Derivatives are financial products whose value is dependent upon or derived from the value of some underlying financial asset, such as a stock or a bond, a foreign currency, a commodity or an index representing the values of that asset.

Some derivatives have been around for many years, such as exchange traded futures and options used by investors and dealers seeking to hedge positions taken in the stock and bond markets, or to speculate on future market movements.

Within the last few years, however, exchange traded futures and options have been supplemented by a vast and dizzying array of over-the-counter derivatives. These include structured securities, forwards, swaps, options, swaptions, caps, floors, and callers that may be linked to the performance of the Japanese stock market, the dollar, deutsche mark, the S&P 500, or virtually any other asset out in our marketplace.

Today the outstanding value of the principal underlying the over-the-counter derivatives is estimated to be $12 trillion. Remember, we are going to have a big debate here this year on how to spend $1.5 trillion, which will divide this Congress quite bitterly. We are talking here now about instruments that are valued at $12 trillion in their principal form.

Now, the dynamic growth of the over-the-counter derivatives market is the direct result of developments in telecommunications and computer technologies and breakthroughs in new concepts and modern portfolio management strategies.

Using these new tools of technology and portfolio management strategies, a new generation of Wall Street geniuses have begun to market these products out across out country. By breaking down the price movement into individual deltas and gammas, betas, and vegas dancing across the computer screen, the quants, that is the mathematical geniuses who call themselves quants because they deal in quantitative mathematics, they deal as physicists, who have moved over from the nuclear physicist world into the world of creating these new products, have created the new world of cyberfinance, which is reshaping both the United States and the global financial marketplace.

□ 1315

These geniuses, these young men and women that work with computers and highly sophisticated mathematical and other principles, have developed these captions and flortions, the accreting and amortizing swaps, the digital options, the butterfly spreads, the condors, the straddles, the cylinders, the roller coaster swaps.

All of these products have now been sent out into the American marketplace, in many instances with the promise that they are quite safe for a municipality to purchase. There might be a home town that has been told they can purchase some of these products. There may be people inside of the district who have been told they are quite safe to purchase.

The problem is, Mr. Chairman, is that in the hands of "The Boy Who Lost $1 Billion; Nicholas Leeson, the 28-Year-Old Trader Who Bankrupted England's Oldest Financial Firm," that is Newsweek's cover this week; Fortune magazine, "Cracking the Derivatives Case: the Untold Story of Lies, Arrogance, and Ignorance That Cost Major Players Billions." This is Fortune magazine we are talking about.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

(By unanimous consent, Mr. MARKEY was allowed to proceed for 3 additional minutes.)

Mr. MARKEY. Mr. Chairman, this is Time magazine: "Ego and greed, the insider story of the 28-year-old trader who blew $1 billion, broke a bank, and stunned the world."

This is Fortune magazine from 2 weeks ago: "The risk that won't go away; financial derivatives are tightening their grip on the world economy, and nobody knows how to control them."

Mr. Chairman, we are talking here about ensuring that these very sophisticated geniuses not be able to inoculate themselves against suit while they are dealing in these very risky financial products that are so complex that, in more instances, the CEO's of the companies themselves do not understand them. Proctor & Gamble, Gibson, companies across this country are alleging that they were misled into these products.

The objective of the Markey amendment out here is to ensure that investors are protected when they are misled into products of this nature, which by their very personality cannot possibly be understood by ordinary, unsophisticated investors. By that, I mean the town treasurers, the country treasurers, the ordinary individual that thinks that they are sophisticated, but they are not so sophisticated that they can understand an algorithm that stretches out for half a mile and was constructed only inside of the mind of this 26- or 28-year-old summa cum laude in mathematics from Cal Tech or from MIT who constructed it. No one else in the firm understands it.

The lesson that we are learning is that the heads of these firms turn a blind eye, because the profits are so great from these products that, in fact, the CEO's of the companies do not even want to know how it happens until the crash, which brings down the oldest bank in England, which brings down a company, a county, a municipality, an individual.

Mr. Chairman, this amendment is intended to ensure that protections are given to individuals against these kinds of products being sold to them. Mr. Chairman, I urge every Member that is very concerned about Fortune magazine's identification of this as one of the most serious problems in our economy to vote "yes" on the Markey amendment, to give real protection to the ordinary investor in this country.

Mr. FIELDS of Texas. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the purpose of this legislation is to stop frivolous lawsuits. That is the purpose, to stop lawyers from rolling the dice. I want to point out that the example of Mr. Leeson does not fit under this particular legislation because he acted with intent, knowingly.

The proposed amendment would exclude from the coverage of the Securities Litigation Reform Act many derivative instruments. The benefits of the act should not be denied to any type of transaction that is a security. Vexatious and expensive litigation is a general problem, not just in one area and not another.

The proposed amendment is based upon a fundamental misunderstanding of derivatives. Few derivative transactions are securities. Of those that are securities, fewer still are traded off the exchange. This act that has been drafted is designed to provide protection against frivolous securities litigation.

It would be counterproductive to introduce exclusions based upon classes of transactions, particularly for transactions that frequently provide substantial hedging benefits to end-users throughout the United States.

Derivative transactions are now essential risk management tools. Exposing these transactions that are securities to the risk of frivolous litigation would raise the cost of essential risk management activities.

To adopt this amendment, and I cannot say it any more succinctly than this, to adopt this amendment is to adopt two standards of fraud for securities, one for derivative securities traded in the over-the-counter market, and then a separate standard for all other securities. That is not fair. This amendment is flawed, and I urge Members to vote against it.

Mr. DINGELL. Mr. Chairman, I rise in support of the amendment. Mr. Chairman, this amendment would remedy a problem that is being largely ignored throughout this society, and is largely being ignored in connection with this legislation.

This is a problem of huge investments by pension funds, investment funds, mutual funds, and State and local governments across the country in the high-risk derivative securities. These investments are often made without purchasers being informed by their brokers of the true nature or the great risk of these investments or, in some cases, without the brokers even informing the purchaser that they are making these investments at all.

The amendment would exempt derivative securities from the bill. Those are the securities which caused the collapse of the investment pool run by Orange County. Americans are only beginning to understand the risks associated with these things, which are little better than financial time bombs. Only because of investments in derivatives which caused one of the wealthiest communities in the country, Orange County, CA, to go belly up in a matter of months and now be in bankruptcy, has the public begun to focus on the huge risks associated with these kinds of investments.

In Orange County the derivative losses have forced cutbacks in vital Government services such as health care, education, and even road maintenance. In some cases, county employees have been laid off completely, or else have had their hours of pay reduced.

Mr. Chairman, Orange County is not alone, as the "60 Minutes" expose on Sunday night dramatically highlighted. A particularly chilling moment in that piece toward the end was when "60 Minutes" asked their expert whether there may be other Orange counties out there, and he responded with this warning: "It is not a question of whether there are others out there. There are, and many other municipalities are out there sitting on huge derivative timebombs, without any of them even knowing that they confront this great peril on behalf of themselves and their constituents."

As we debate this bill in only 7 hours, literally hundreds of local municipal governments scattered all over the country are just beginning to discover the extent of their exposure to high-risk derivative securities. Many of them are seeking to avoid this disaster and to climb out of the pit after suffering colossal losses on their investments.

From Auburn, Maine, to the State of Florida, from Charles County, MD, to Odessa College, TX, to Aspen, CO, and to Orange County, State and local governments are suffering staggering losses due to incredibly complex, incomprehensible high-risk securities whose risk cannot only not be calculated, but not even understood.

There is a chart here which explains and shows the communities and public institutions across the United States which have just so far reported losses from investments in speculative derivatives. Look at the list: Orange County, $1.7 billion in losses; Louisiana State pension fund, $50 million; Georgia Municipal Electric Authority, $49 million; City College of Chicago, $46 million; Minnetonka fund in Minnesota, over $90 million; New Hampshire State pension fund, $25 million; the Virginia State retirement system, $66 million, and West Virginia investment pool, up to $279 million.

How would the Members from all these States and all the others who might be afflicted with this situation explain to their constituents that they have voted to prevent their county governments and their governments from acting to recover from wrongdoers for their failure to properly advise, or their failure to properly reveal facts associated with the speculative and risky character of the investment?

We just got over paying $150 billion to bail out the savings and loans institutions from a financial disaster, largely caused by legislation that was rushed through this body because big business came in here pleading for relief.

If Members will recall, they came in saying that they had to have the ability to engage in all kinds of businesses so that they would then be able to go out and make money and get themselves out of a hole which they had rapidly been digging.

The same situation is here. Mr. Chairman, in a nutshell, this is deja vu all over again. I urge my colleagues to support the Markey amendment. Vote to protect the American people against derivatives. Vote to allow them to engage in proper self-help, to retrieve ill-gotten gains from wrongdoers who carelessly and recklessly disregard their responsibility to investors, to taxpayers, and to this country.

Mr. COX of California. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise in opposition to the amendment. The effect of this amendment is to carve out a $1.5 trillion hunting preserve for strike suit lawyers. It would exempt from the protections for plaintiffs who are class members, plaintiffs who are involved in actions related to derivatives.

Presumably in order to protect the citizens of Orange County, CA, the gentleman from Michigan would make sure that our legislation would not be available to provide for people in Orange County a plaintiffs' steering committee, so that the plaintiff class has a means to protect themselves against abusive practices. There would be no court-appointed guardian for members of the class if they happen to be suing in relation to Orange County. There would be no ban on professional plaintiffs. There would be no ban on bonus payments to preferred plaintiffs, so some members of the class could be discriminated against. All the protections in our bill would be unavailable.

There is also an incredible non sequitur in the argument that I just heard, and that is that Barings and Orange County and Proctor & Gamble's problems with derivatives and Gibson Greetings' problems with derivatives, all of these things would never have happened if only we had the present strike suit system in place.

Of course, we do have the present strike system in place, and these things happened. What we are seeking to do is prevent fraudulent abuse using the securities laws.

Our existing security laws are targeted at abusive practices, devices to deceive, manipulate, and defraud. For the first time what the gentleman from Massachusetts would be doing is shifting us away from focusing on bad practices and saying that "We are only going to focus on these bad practices if they involve certain kinds of securities, and we will discriminate from one kind of security to another." It would be an incredible hodge-podge, unmanageable for our Nation's capital markets.

It is not as if we have to deal with this issue at the 11th hour with a floor amendment. We have actually had hearings on this subject. The Senate Committee on Banking had extensive hearings on derivatives and on their role in Orange County.

Alan Greenspan, the Chairman of the Federal Reserve System, testified. Arthur Levitt, Chairman of the Securities and Exchange Commission, testified. Here is what he said, Arthur Levitt: "It would be a grave error to demonize derivatives and blame them for the loss in Orange County. Derivatives are not inherently bad or good. They are a bit like electricity, dangerous if mishandled, but bearing the potential to do tremendous good."

□ 1330

Alan Greenspan: "It would be a serious mistake to respond to these developments by singling out derivative instruments for special regulatory treatment." The Chairman of the Federal Reserve said it would be a serious mistake to pass the Markey amendment because the amendment singles out derivatives for special treatment and special legal status in 10b-5 actions. It would create a separate legal status for the treatment of derivatives.

Furthermore, there is no reason Congress should permit abusive litigation to continue if a derivative is involved. What we are after here with this legislation is the prevention of abusive practices. Why would we want those abusive practices to go on if derivatives were involved? It makes no sense at all. Congress would defeat its purpose if it allowed abusive lawsuits to continue in one special area of securities transactions. Congress should end abusive securities litigation, regardless of the particular type of transaction that was involved.

I urge the defeat of this ill-considered amendment.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. Mr. Chairman, just very quickly, I ask the gentleman if he concurs with me. Two examples that have been prominently used in this particular debate on this amendment, Barings and Orange County. If we apply the requirements of Scienter under this particular statute that we are discussing, the defendant directly or indirectly made a fraudulent statement, the defendant possessed the intention to deceive, manipulate, or defraud, the defendant made such fraudulent statement knowingly or recklessly.

As we know the facts of these two particular cases, in these two particular cases, they would not be afforded any of the benefits under the statute that we are debating which is aimed at stopping frivolous lawsuits. Is that the gentleman's understanding?

Mr. COX of California. Mr. Chairman, that is exactly right. What we will be doing by passing this amendment would be opening the door for frivolous lawsuits in a particular type of case. Ironically, there would even be new issues to litigate. Now we could litigate the question of whether a derivative product was involved or not, whether it was peripheral to the transaction, whether it was central to the transaction, whether it was really derivative or not. All of this is rather abstruse and in any case irrelevant to what we are trying to do right here.

Mr. KLINK. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am not an attorney and I will not stand in the well and say that I understand everything about derivatives, either, even having served the last 2 years on the Committee on Banking, Finance and Urban Affairs. But what I do know is that the more you know about them, the more you have to be a little bit leery about how they are handled. They are extremely complicated and they are dangerous financial products. Even some very sophisticated investors do not understand derivatives completely. Their value is derived from the value of other assets, other instruments, other indices, and they are frequently traded over the counter in very highly leveraged transactions. At this time really no one can make a reasonable prediction of the potential losses that institutional holders, including many public entities, face from the derivatives. The one chart that the gentleman from Michigan [Mr. DINGELL] was pointing to showed how many municipalities, how many counties across this Nation, and those are just the ones we know about, may risk some sort of danger and some taxpayers' dollars. I will be offering an amendment very soon to try to deal with that.

But this scantily regulated market is thought to be rife with fraud and abuse. I will point right now to Fortune magazine, we have blown this up, and it says, "Cracking the Derivatives Case, the Untold Story of Lies, Arrogance and Ignorance that Cost Major Players Billions."

We are talking about billions of dollars and we do not know the stories about the lies, we do not know how much arrogance and how much ignorance there is.

The point is that now is not the time to relax the already lax controls that exist on the misconducts in the derivatives market.

During the past year, private companies like Procter & Gamble, Gibson Greetings, and public entities like Orange County, CA, have made headlines. Financial institutions like Barings Bank PLC have experienced sudden and dramatic losses based on derivatives trading. According to Sunday's "60 Minutes," the question is not whether there are going to be more losses but the question really is when will those losses be known and how much will they be? How many more billions of dollars will be lost in the derivatives market?

For that reason I would say just as all of the headlines that the gentleman from Massachusetts [Mr. MARKEY] had pointed to earlier, this is just not the time to relax those already lax controls.

Orange County has filed a multi-billion-dollar Federal securities suit already against Merrill Lynch and others. The suit will not be affected because after that news, Orange County was grandfathered in and some other municipalities, other local governments have not been. The gentleman from California [Mr. COX] determined that he wants to make this bill prospective only. Other institutions may soon find themselves in the same predicament.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. KLINK. I yield to the gentleman from Massachusetts.

Mr. MARKEY. We have here Fortune magazine. This is not some populist perspective on this issue. Here is the headline in their magazine, "The Risk That Won't Go Away."

"Like alligators in a swamp, derivatives lurk in the global economy. Even the CEO's of the companies that use them don't understand them."

We have to give the public protection. We have to ensure that they are going to be able to bring class-action suits if there is a systematic pattern of trying to defraud investors in this area.

Derivatives are just not as well understood as they should be even by the people who are selling them, even by the people who are making profits from them. We have to have the protection of the Markey amendment for all investors in this country.

Mr. KLINK. Reclaiming my time and asking the gentleman a question, would you say, sir, by everything that we know that certainly we have had much more experience in the normal securities market. We have not had that experience in understanding how to deal with derivatives and the cases of these billions of dollars. My understanding also is this is sometimes constructed much like just going into one of the gambling casinos in Las Vegas and laying your money down and spinning the wheel.

Mr. MARKEY. If the gentleman would yield further, I think it is a pretty big step for Fortune to take to say that CEO's of the companies do not even understand them, and we are talking about the companies that are selling them as well as buying them. I think that we should give the protection to the ordinary investor on a financial product that is that complex.

Mr. KLINK. I thank the gentleman from Massachusetts, and I support his amendment.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. KLINK. I yield to the gentleman from Texas, the chairman of the subcommittee.

Mr. FIELDS of Texas. I appreciate the gentleman yielding. As always I appreciate the work of the gentleman.

Let me just ask, the gentleman mentioned Procter & Gamble. As I understand, Procter & Gamble is an over-the-counter derivative which is not a security derivative and consequently would not be covered by this amendment. Is that the gentleman's understanding?

Mr. KLINK. It may or may not be true. Again not being an attorney, I do not know the intricacies of my knowledge.

Mr. FIELDS of Texas. Also the gentleman has mentioned Barings.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. KLINK. Barings is offshore. Reclaiming my time for a moment, I yield to the gentleman from Massachusetts.

Mr. MARKEY. I thank the gentleman for yielding.

The answer is that it is an over-the-counter interest rate swap which again the CEO's of these companies are contending were not accurately described to them. There are many derivatives that are infinitely more complex, in fact exotic in their nature.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. KLINK] has expired.

(At the request of Mr. FIELDS of Texas and by unanimous consent, Mr. KLINK was allowed to proceed for 3 additional minutes.)

Mr. KLINK. I continue to yield to the gentleman from Texas.

Mr. FIELDS of Texas. I am certainly not trying to put the gentleman on the spot. Going back to Barings, Barings is, as I understand, a situation involving exchange-traded derivatives which again would not be the subject matter of this particular amendment and not the subject matter of this legislation.

Mr. KLINK. Reclaiming my time from the gentleman, I appreciate what the gentleman is trying to do. My problem with this is the process.

The gentleman raises some good questions, but again with the last substitute amendment from the gentleman from California [Mr. COX], the way we are approaching this legislation, I do not think that we have had the opportunity given the fact that we are on this 100-day calendar to address these things, and certainly not to the satisfaction of this Member.

I just think that when we are talking about something as volatile, something that is as dangerous and as complicated as derivatives that I think that the gentleman's amendment from Massachusetts certainly makes a great deal of sense, to say let us just take a step back in this one instance and have the adequate time to hold hearings so that we are not placing this extremely volatile portion where billions of dollars are being lost on the same train that is taking that 100-day ride.

Let us take time. I may find after we have those hearings that I agree with the gentleman from Texas.

Mr. FIELDS of Texas. Because I am willing to make a commitment to the gentleman that we will have hearings on the subject of derivatives. It is my understanding that the report comes out this week from the Securities and Exchange Commission. I think that is subject matter that must be addressed by our subcommittee and we will be having hearings on that particular subject.

Mr. KLINK. I appreciate the chairman's promise of that. I still support the amendment of the gentleman from Massachusetts. I urge its passage.

Mr. BAKER of Louisiana. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, if this amendment were to be properly characterized in financial terms, it may well be a derivative in itself because it is not apparently well-understood and second is attempting to solve a very complicated problem in a very simplistic manner. Further, if this were to be classified as a forward-looking statement, the disclosure required for the sale of initial public offering, it might well be actionable under the public fraud statute.

Let me explain why. This amendment is purporting to solve the derivatives problem that exists in our marketplace internationally. It was inferred that if this were in effect, the Barings failure might not well have occurred. It was inferred that if this amendment had been operational, Orange County might well have been somehow prevented.

The simple fact is this amendment creates a new cause of action for only a very small number of derivatives transactions. There are huge numbers of derivatives transactions on a daily basis. The ones that are the target of this amendment deal specifically with a very small number of investors and frankly are not held for investment purposes in most cases but are actually transactions between two knowledgeable business interests who are trying to minimize their business future risk. For instance, one gentleman may have a variable interest rate, one may have a fixed interest rate and for reasons we do not understand, they want to enter into the transaction which limits both their risk.

The irony in this debate is derivatives have been lost, they have been mischaracterized. Derivatives in essence are instruments intended to minimize risk-taking. And because of the sensationalism surrounding a few very significant and unfortunate losses that have occurred in the international market, this amendment is being proposed to appear to be responsive to those problems. It is not in fact. If it had been adopted by this Congress and had been the law of the land, it would make no difference in any of the failures we are now discussing or debating and in fact will likely not preclude any forward failures as a result of its adoption.

The chairman of the committee has proposed hearings on the matter and in our own Committee on Banking and Financial Services, there will be hearings on the matter and we should be taking a responsible look into the regulation of derivatives, but let me quickly add, none of the current regulators, whether it is the SEC, the Federal Reserve, the FDIC, the Comptroller of the Currency, all of whom have testified before the Committee on Banking and Financial Services at any time in the near term have indicated any need for any regulatory authority beyond which that they already have.

I suggest to the Members this amendment is not well thought out, it is ill-timed, and should be rejected.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. BAKER of Louisiana. I yield to the gentleman from California.

Mr. COX of California. The gentleman is exactly correct in noting first that this amendment as drafted excludes most of the big derivatives problems that we have all been made publicly aware of. It also includes many things that are not derivatives at all. The definition as drafted includes, and I quote, a contract that derives its value from the value of any security. That includes a lot of things that most people would not consider to be derivatives at all.

For example, many people in firms across America, many in California, have their compensation package comprised of something called phantom stock. Phantom stock is not real shares of stock but it is just a contract that tracks the value of the underlying stock. The way this is written, because those are not exchange-traded securities, any lawsuit arising out of that employee compensation would be exempt from the coverage of what we are passing right now, the Securities Litigation Reform Act. Surely the gentleman does not mean to include those types of things as derivatives.

Mr. BAKER of Louisiana. If I could reclaim my time, the gentleman's point is well made, and that is that in many cases these are negotiations entered into between two well-intended and understanding business partners for their mutual benefit. If we are actually looking to protect the unsophisticated investor from acquiring an interest in a product which they do not understand, this amendment does not accomplish that goal. If we are worried about pension fund investments or the working person who is trying to enhance his financial condition, adopting this amendment will not in fact help. It may in fact hurt. I thank the gentleman for his comment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts [Mr. MARKEY].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MARKEY. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 162, noes 261, answered "present" 1, not voting 10, as follows:

[Roll No. 211]

AYES—162

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barrett (WI)
Bateman
Becerra
Beilenson
Berman
Bishop
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
DeFazio
DeLauro
Dellums
Dicks
Dingell
Dixon
Doggett
Doyle
Duncan
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frost
Furse
Gejdenson
Gephardt
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Horn
Hoyer
Jackson-Lee
Jacobs
Johnson (SD)
Johnson, E. B.
Johnston
Kaptur
Kennedy (MA)
Kennelly
Kildee
Kleczka
Klink
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McNulty
Meehan
Menendez
Metcalf
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Rivers
Roemer
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Slaughter
Smith (WA)
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Thompson
Thornton
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Visclosky
Volkmer
Ward
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—261

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bentsen
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
de la Garza
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kanjorski
Kasich
Kelly
Kennedy (RI)
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Largent
Latham
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Moran
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Thurman
Tiahrt
Torkildsen
Upton
Vento
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—1

Lowey

NOT VOTING—10

Davis
Fattah
Gibbons
Jefferson
LaTourette
McDade
McKinney
Meek
Rangel
Waters

☐ 1403

The clerk announced the following pair:

On this vote:

Mr. Fattah for, with Mr. Davis against.

Messrs. DEUTSCH, LAFALCE, and TEJEDA changed their vote from "aye" to "no."

Mr. PAYNE of New Jersey and Mr. BERMAN changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. DINGELL

Mr. DINGELL. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DINGELL: Page 28, line 12, insert before the period the following: ", except that this Act and the amendments made by this Act shall not apply to any action commenced by any State or local government, or any agency or instrumentality of any State or local government, before the date which is 3 years after such date of enactment.".

The CHAIRMAN. The gentleman from Michigan [Mr. DINGELL] is recognized for 5 minutes.

Mr. DINGELL. Mr. Chairman, the purposes of the amendment are very simple, to permit counties and local units of government, States, to continue to sue under existing law for 3 years. If we are concerned about frivolous litigation, that is not a matter of concern here.

Mr. Chairman, the purpose of the amendment is very simple, to permit cities, States, local units of government to continue suing under existing practices for a period of 3 years. This will not afford any professional litigant, any sly lawyer to run around forming class-action suits. It simply allows communities to have the same protection that Orange County would have to sue where wrongdoing is done them using the new derivatives.

I would urge my colleagues to support this legislation.

Mr. Chairman, I yield to my friend and colleague, the gentleman from Pennsylvania [Mr. KLINK], a cosponsor of the amendment.

Mr. KLINK. Mr. Chairman, I thank the gentleman, the ranking member of the Committee on Commerce, for yielding to me.

I am very proud and pleased to cosponsor this amendment with him. Indeed, the gentleman is correct, this is a simple amendment. It allows State and local governments who have been defrauded in the securities market to bring suit for recovery of their losses under current rules for 3 years after the enactment of this bill.

The derivatives disaster that we have seen, we have talked about all morning long, in Orange County, CA, has shown us the risks that currently face State and local governments that have invested public moneys in the securities market.

Again, Orange County, CA, lost $1.7 billion, almost $2 billion. If you take a look at this chart, these are other municipalities, other counties across this country. Many will be in the States of the Members who are in this Chamber.

And what we are simply saying is that residents there now face cutbacks in public services. Orange County's biggest employer now faces layoffs; small investors might lose their nest eggs; retirees in Orange County might lose their pensions. We do not want this to happen in other counties either. We want them to have the same course of action as the people in Orange County will have after they have been grandfathered by this bill that we are taking up today.

Other communities and States across the country face these problems. We have seen losses. You will see the list.

It is in places like Minnesota, Colorado, Maine, Maryland, Illinois, Wyoming, Florida, South Carolina, Georgia, Ohio, Louisiana, California, New Hampshire, Texas, Virginia, and Wisconsin.

Mr. Chairman, the losses will run into the multibillions of dollars. These are taxpayers' dollars. We want to protect the taxpayers of your counties, of your cities, of your townships in the same way that we have grandfathered the people from Orange County, CA.

Now, regardless, ladies and gentlemen, of whether you support the provisions of H.R. 1058, you have to agree that they are going to make it more difficult to pursue securities litigation. The bill provides for heightened pleading requirements, a modified losers-pay rule, a more stringent definition of recklessness, and hundreds of other, or many other legal hurdles.

However, I believe that if and when these provisions take effect, State and local governments should have extra time to bring legal action under the current law in order to recover public money that has been lost.

Three years is the current statute of limitations in securities fraud. This amendment that I cosponsor along with the gentleman from Michigan [Mr. DINGELL] will provide that extra amount of time after this bill takes effect for those State and local governments that are now facing losses, or may discover losses in the next year or two, to determine whether they have been defrauded and then to decide the best way to recover those losses.

State and local governments have successfully countered in fraud cases in the past. The city of San Jose, CA, recovered $12.7 million in a case 10 years ago when it sued two investment companies after they lost $60 million. The State of West Virginia successfully sued several brokerage firms after they lost $200 million between 1986 and 1987. These are not frivolous lawsuits. These are government entities that are trying to protect the taxpayers' dollars, those same taxpayers that pay our salaries, from having losses due to securities fraud.

We have all heard stories about frivolous lawsuits, but I would beg to differ that municipalities, government entities, are not going to bring frivolous lawsuits. If they do, then they are going to suffer term limits at the ballot box, because the people that live there and pay their taxes will not allow for people to risk their dollars hiring attorneys, hiring solicitors to file frivolous lawsuits.

This is an attempt to be able to bring back money that has been lost on the securities market. This amendment is simple. It would allow State and local governments who may have been defrauded to bring suit for recovery of their losses under the existing rules but only for 3 years from enactment of H.R. 1058.

Orange County and others can get their suits filed before this bill takes place, will have an easier time to recover their losses; your State and your community deserve the same chance.

I urge people to support this amendment.

Mr. DINGELL. One last point, this amendment does not roll back the statute of limitations.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has expired.

(At the request of Mr. FIELDS of Texas and by unanimous consent, Mr. DINGELL was allowed to proceed for 3 additional minutes.)

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I am happy to yield to my good friend from Texas, for whom I have greatest regard.

Mr. FIELDS of Texas. Mr. Chairman, I appreciate that.

First of all, I appreciate the gentleman clarifying this does not toll the statute of limitations. That is just what I heard the gentleman say.

Mr. DINGELL. I was aware of the apprehensions of my good friend from Texas. I wanted to ease them as best I could.

Mr. FIELDS of Texas. I appreciate that. If the gentleman will continue to yield, could the gentleman give us the specific examples that he is trying to address?

Mr. DINGELL. Matters of the sort that you see on the poster in the well. You are looking there at, I would say, probably 40 or 50 cities, States, and local units of government as well as possibly a number of State governments where they would be compelled to sue now on matters which might involve derivatives under the new law as opposed to the old law. The amendment permits them to sue under the old law for a period of 3 years. That is because the derivatives situation is growing and expanding, and every day we find some new situation which requires, quite frankly, great concern.

For example, the Barings Bank which just collapsed, Orange County, other places as listed on the chart that my good friend has just shown to the House.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Massachusetts.

Mr. MARKEY. If I may ask the gentleman a question, Have there been any allegations that any municipality in the United States has filed a frivolous lawsuit? Is there any allegation that has ever been made that they should be prevented under this legislation from being exempted and using the older standard?

Mr. DINGELL. If the gentleman would permit, the gentleman has come up with a very good point. The thrust of the legislation before this body at this minute relates to lawyers who assemble class-action suits for their personal profit. This relates, this amendment protects intact for a period of 3 years cities, States, counties, and local units of government, so that they may go in and sue. There have been no allegations whatsoever, none, that cities, States, or counties have engaged in any kind of frivolous litigation on matters of this kind.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. Again, just as a point of clarification, and I appreciate the gentleman yielding, are these the only examples that the gentleman is speaking to in his amendment?

Mr. DINGELL. Well, these are the only ones of which I am aware at this particular minute, but I would observe that every day, if you read the Wall Street Journal, you will find that there are new and additional derivatives problems which are afflicting everybody, including highly sophisticated people like General Electric, Barings Bank or, indeed, Orange County, which ran a several-billion-dollar investment trust.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Does the gentleman's amendment exempt countries and municipalities from the other provisions of this bill?

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has again expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. TAUZIN. I understand the gentleman to explain the amendment that it allows the municipalities to sue under the old liability regimes.

☐ 1415

The question is, does it also exempt the municipalities and pension funds from the other provisions, such as not paying bounties, conflict-of-interest provisions, and other protections of this bill?

Mr. DINGELL. Those matters, I would observe to the gentleman, are not relevant to the kind of litigation that we are discussing here.

Mr. TAUZIN. If the gentleman will yield further, the question is, does this amendment also exempt these suits from the conflict-of-interest provisions, the payment of bounties, other problems we have had with lawsuits where lawyers are, in fact, sometimes engaged in a conflict-of-interest provision?

Mr. DINGELL. If the gentleman would permit, cities, States, counties, local units of government are covered under existing law in all matters; all matters, all fashion, all purposes for a period of 3 years. They are given no additional right over those which they have now, and none are taken away from them. They may proceed to litigate in the fashion they may now do for a period of 3 years.

Mr. TAUZIN. If the gentleman would yield further, the answer is that this amendment does, in fact, exempt cities and these funds from the other protections of this bill, conflict-of-interest, payment of bounties?

Mr. DINGELL. Let me advise my good friend that the protections of this bill have never been extended to investors. The protections of this bill are extended to a bunch of high-priced lobbyists, to a group of people in the accounting profession, large numbers of whom are now in the gallery up above watching this proceeding, and to a group of slippery people in the investment industry who have been taking advantage of investors by marketing questionable derivatives, by engaging in an assortment of difficult, improper series of behaviors.

Mr. TAUZIN. If the gentleman would yield further, then a lawyer who wants to pursue a case for one of these listed up here in front of us could still engage in a conflict-of-interest position that is prohibited by this bill, could still engage in payment of bounties prohibited by this bill?

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. DINGELL. What the gentleman [Mr. TAUZIN] is referring to are class action matters. Those are matters which really do not relate to the business that we are discussing. Here we are talking about communities, cities, States, local units of government, governmental agencies which need to go in and sue. These are not class actions in the sense that we have been talking about in the basic legislation which we address, the actions to which we are addressing ourselves with this amendment are not class actions. No professional plaintiffs, no bodies, no illegal behavior of the kind that would be condemned by this legislation.

It would be illegal for a county treasurer to accept a bounty, and indeed if he were to do so, he would first of all be committing a crime, but second of all if he were to do so, he would be responsible for paying those moneys over to the county or to the governmental agency of which he was a part because that money would belong to the county as opposed to belonging to him.

Mr. TAUZIN. If the gentleman would yield further, I just want to be absolutely clear that the amendment that the gentleman has offered goes further than exempting these kind of lawsuits from the liability standards, it exempts it from the entirety of this bill, is that correct?

Mr. DINGELL. That is correct, but, remember, the language of this bill is not something which is applicable to the kind of lawsuit about which we are addressing under this particular amendment. The language of this bill relates to bounty hunting, to a large number of other practices which are engaged in by people who participate in class action suits, according to the charges which have been made here, and not governmental institutions which are going out and suing to recover moneys improperly taken from their taxpayers.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Massachusetts.

Mr. MARKEY. I thank the gentleman for yielding to me.

Mr. Chairman, is it not true that the U.S. Conference of Mayors and the Government Finance Officers Association of the United States both favor this?

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has again expired.

(On request of Mr. MARKEY and by unanimous consent, Mr. DINGELL was allowed to proceed for 1 additional minute.)

Mr. DINGELL. I yield to the gentleman.

Mr. MARKEY. I thank the gentleman for yielding.

Mr. Chairman, the mayors of the United States, those whom we are talking about putting block grants together and trusting them with hundreds of billions of dollars of American taxpayers' money, now we are going to put real restrictions upon them, putting them into a suspect class of frivolous plaintiffs who have been abusing the court system of this country. Whereas the mayors and Government Finance Officers Association has a sterling record for bringing suits only where they are justified.

Mr. DINGELL. There is no evidence of abuse by the mayors and Government Finance Officers of the cities, States and counties. It is also a fact their behavior has been exemplary.

It is also a fact that they are engaged in litigation to protect their taxpayers against wrongdoing done not only to the cities, States, and counties, but also to the taxpayers thereof.

U.S. CONFERENCE OF MAYORS,
Washington, DC, March 6, 1995.

Hon. NEWT GINGRICH,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: On behalf of the United States Conference of Mayors, I would like to raise some serious concerns regarding H.R. 1058—formally title II of H.R. 10, the Common Sense Legal Reforms Act.

Local governments participate in the securities markets both as investors of pension funds and temporary cash balances as well as issuers of municipal debt. Therefore, we have an interest both in preserving well-established and vital investor rights and protecting ourselves from unwarranted and expensive litigation.

While we recognize the goal of H.R. 1058 to curtail "frivolous" private securities actions under the federal securities law, we believe that the intended reforms may severely limit justified litigation, lessen deterrence to securities fraud, and weaken existing legal standards.

In addition, as has been pointed out by the Government Finance Officers Association (GFOA), this legislation fails to address key issues such as an extension of the statute of limitations to provide a fair and reasonable period for filing a securities fraud case and the creation of investor rights to pursue private actions against person who violate appropriately clear standards in aiding and abetting securities fraud.

We ask that these concerns be addressed as this legislation is considered on the House floor. Thank you for your continued attention to our nation's cities.

Sincerely yours,

VICTOR ASHE,
Mayor of Knoxville,
President.

GOVERNMENT FINANCE
OFFICERS ASSOCIATION,
Washington, DC, March 3, 1995.

Re H.R. 1058 (Title II of H.R. 10 concerning securities litigation reform).

Hon. FRANK TEJEDA,
U.S. House of Representatives, Cannon House Office Building, Washington, DC.

DEAR CONGRESSMAN TEJEDA: The House of Representatives will take up H.R. 1058 (formerly Title II of H.R. 10, the Common Sense Legal Reforms Act) next week. I am writing on behalf of the Government Finance Officers Association (GFOA) to register opposition to the package of securities litigation reform changes scheduled for a vote on Tuesday. The GFOA is a professional association of state and local government officials, both elected and appointed, whose duties include the investment of temporary cash balances and pension funds and the issuance of municipal debt.

Our members are both investors in securities and issuers of securities. Therefore, it is especially important to GFOA that any reform legislation strike an appropriate balance to ensure the rights of investors and at the same time correct flaws in the litigation process that result in frivolous litigation. We oppose H.R. 1058 because it is harmful to investors and the markets. We believe the reforms that are intended to deter frivolous lawsuits do not simply address abuses, but chill litigation, even when justified. We support limited and targeted litigation reforms that preserve investors' rights, preserve accountability and instill market discipline.

Additionally, we do not support this bill because it fails to address important issues identified by our members. These are an extension of the statute of limitations to provide a fair and reasonable period for filling a securities fraud case and the creation of investor rights to pursue private actions against persons who violate appropriately clear standards in aiding and abetting securities fraud. Also, we continue to be concerned about the method used to allocate financial liability faced by defendants in securities fraud litigation.

Federal securities litigation reform is an important issue for state and local government officials. However, we urge you to vote "no" on final passage of H.R. 1058.

Sincerely,

CATHERINE L. SPAIN,
Director,
Federal Liaison Center.

Mr. COX of California. Mr. Chairman, I move to strike the requisite number of words, and I rise in strong opposition to this amendment.

Mr. Chairman, this amendment proceeds on the mistaken premise that what is good for trial lawyers is always good for everybody else. It proceeds on the mistaken assumption that the trial lawyers' interests are always the same as their clients. But what we heard in hearings on this very bill is that that, unfortunately, is not always the case.

The Dodd-Domenici bill which preceded this in the Senate last year, drafted in principal part by the current chairman of the Democratic National Committee contained no such carveout as is being offered today.

The Tauzin bill that was offered in the Congress last year contained no such carveout. This legislation contains no such carveout, for a very good reason. Every client deserves the protections of this legislation. The mere fact that there happens to be a government that is the client does not mean that that client should not still have protections against abusive practices by lawyers.

Let us take, for example, the provisions in this legislation that prevent abusive conflicts of interest. The judge is given the opportunity to disqualify a lawyer from representing the client if it turns out that the lawyer owns the securities that are the subject of the action. That is a conflict of interest, and judges should, except for exceptional cases which this bill provides for, have the opportunity to disqualify the lawyer for conflict of interest.

Why in the world would we want to say, just because taxpayers are involved, they should not have protections against conflict of interest that are provided on page 11 of this bill? There is a full recovery rule in this bill that is a substantial protection to plaintiffs with winning cases. Right now we have a winner/loser system under which, when you get all finished, the winner has to pay the costs anyway even though they proved somebody else is responsible and committed the injury.

We have heard that in some cases that might deter people without much money from bringing cases, and we have already provided for that by letting the contingent fee arrangement take care of that. But obviously, if the government is bringing the case, that is not a question. Instead the problem is going to be at the other end of the case when the government prosecutes a very good cause of action and the taxpayers then end up holding the bag for the damages committed by someone else and that the court has already proven and accepted were established by someone else.

The gentleman from Michigan said that governments cannot be involved in class actions. Nonsense. Of course they can.

This is a new rule that he has just, invented on the floor of this Congress. But there is nothing in the Federal Rules of Civil Procedures that would prevent a subdivision of a local government from being a member of a class. And why should they not be entitled to the same protection for class members as this bill provides? Right now we know that one of the abuses that occurs in that kind of litigation is that the lawyer settle the cases on terms favorable to themselves, giving only cents on the dollar to investors.

But this bill provides protections for members of that class so that they find out up front how much is going to the lawyers per share and how much is going to plaintiffs in the action. All of these protections are designed for investors' benefit. As a practical matter, what the gentleman would do with his amendment is strip all of these investor protections simply on the ground it happened to be a government or a subdivision of a government, not prosecuting under the Federal securities law, not SEC acting as a plaintiff on its own behalf. This makes absolutely no sense whatever. There is no precedent for it in 60 years of Federal securities law, and we should not start at the 11th hour having not taken it up in any committee or subcommittee or any time heretofore, and do it right now.

I strongly oppose the amendment.

Mr. BRYANT of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, ladies and gentlemen, I do not think there is anything that more highlights the real purpose of this legislation more than the refusal of the gentleman from California [Mr. COX] and the gentleman from Texas [Mr. FIELDS] and others to go along with this amendment.

All this amendment says is that the very harsh new standards for winning one of these cases are not going to apply in the future, will not be made to apply for the next 3 years to cities and to public institutions.

This bill was brought to us because the other side told us, without any evidence, by the way, but told us there were a bunch of greedy lawyers out there and a bunch of greedy professional plaintiffs and all of them got together and would file these strike suits, making life miserable for people in business who need to raise capital.

Well, assuming that that is correct, they never did tell us that the cities and towns of the country and the counties of this country and the universities and public institutions of this country were involved in that kind of behavior. In fact, everybody knows they are not.

I wonder if the city council of a city is going to vote to engage in an irresponsible lawsuit to try to make a little money. I hardly think so. I wonder if the University of Minnesota, which was on this chart before it was taken away, was going to vote that the board of regents involved themselves in an irresponsible lawsuit. I don't think so.

This amendment by Mr. KLINK is a very fine idea. It just says we are not going to apply these standards to public institutions because we have seen an enormous number of them who have gotten into trouble lately and they ought to be able to file lawsuits based upon the current law.

A very remarkable thing with regard to Orange County, Mr. COX's area, should be commented upon. H.R. 1058, when drafted and circulated last fall, contained a provision which would have applied the new, harsh standards in the bill today retroactively to pending cases. Well, then Orange County got in big trouble, lost a whole bunch of money, and lo and behold, without comment, the retroactive provisions of the bill are now out.

So, Mr. COX's community, which is the biggest example in the country of the point that is being made here today, is allowed to file and prosecute its lawsuit under the low standard, but my town and city or your town or city will in the future have to prosecute its case under the harsh standards. What a curious development. Where did that provision go?

The point is this: Even if there is justification for this legislation, and I think there is not, no case has been made that we have had irresponsible lawsuits filed by cities and communities and universities.

For goodness sakes, if these people who sometimes I think are more easily than they ought to be duped and fooled and get into trouble, they ought to be able to file their lawsuits under the existing standards.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from California.

Mr. COX of California. I thank the gentleman for yielding to me.

Mr. Chairman, I would just like to correct the record. The bill, as originally introduced, had the same effective date that the bill on the floor has. This has never been changed.

Mr. BRYANT of Texas. I want to reclaim my time. The gentleman has changed my words. This is a debating technique which is very clever, but it does not work.

What I said was the draft of the gentleman's bill which was circulated last fall after you guys won the election and had your Contract With America, had a retroactivity provision in it. Lo and behold, Orange County realizes it cannot live with the retroactivity provision, and the retroactivity provision, which would have affected your community negatively, was taken out. So all the rest of us will have to prosecute our cases for our towns and cities under the high standard, but your county gets to keep going under the low standard.

My point is that the bill no longer applies retroactively, and therefore the gentleman's community of Orange County is protected, but all the rest of our communities are not.

Vote for the amendment. At least give the taxpayers a break.

Mr. MOORHEAD. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment, and I yield to the gentleman from California [Mr. COX].

Mr. COX of California. I thank the gentleman from California for yielding to me. I will be brief.

Mr. Chairman, I have already made my complete presentation on why I think this amendment would gut the bill. It would strip all the protections concerning conflict of interest, protection of litigants from abuses by the attorneys not in the interests of the clients and so on, just on the thin tissue that there happens to be a government entity involved.

But I did want to address the comments of the gentleman just preceding concerning the applicability of this legislation to litigation arising out of the Orange County problems.

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Any litigation arising out of the Orange County problems that anyone chooses to file under Federal securities laws will be covered by this bill as soon as it is passed by the Congress. Thus far the actions have been filed, not under the Federal laws, but under State laws, so it really would not matter what is the effective date for this purpose, and I have taken it to be an affront to this Member to suggest that, when we introduced the bill on January 4 and made sure that the bill was drafted with a provision that makes it clear that there will be only one rule applying in the middle of any lawsuit, that that was somehow directed to Orange County.

In my view this is good legislation which I want applicable to my constituents. I would like to have all of my constituents have the protections against conflict of interest, against abusive practices by lawyers that foment litigation against strike suits apply to them. This will help the taxpayers of Orange County, and I would not be surprised, mark my words, that somebody does not bring a lawsuit against the county of Orange, against the taxpayers of Orange County, and it is they who will be the ultimate deep pockets unless we have these strike suit protections. The new incoming treasurer of Orange County, the guy who has come in at the request of all the people, picking up the pieces, is the guy who knows what is going on here, has written a letter, wrote to our committee, and he said he strongly supports this legislation without the carve out that the gentleman's amendment would provide because it will protect the taxpayers of Orange County from precisely the kind of abuses that we are legislating against here today.

Mr. MARKEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from Michigan [Mr. DINGELL] and I rise just to make again the very simple point that the gentleman from Michigan is seeking to ensure that the cities and towns of the United States, who may have already been placed in jeopardy by financial transactions that have yet to fully manifest themselves in terms of the financial losses which their citizens, their taxpayers, are going to suffer, be allowed to be exempt from this legislation for 3 years so that a lot of this financial activity can be made more manifestly obvious.

The reason for it is quite simple. One, there has been no allegation that any mayor, that any city counselors, that any city solicitor, in the United States has ever filed a frivolous lawsuit, and the ostensible justification for this legislation is that we are going after the lawyers and the professional plaintiffs who are making a mockery of the court system of this country.

If that is our justification for passing legislation, let us not allow the cities and towns, the taxpayers of this country, to be swept into this. If we do not have the capacity to exempt municipalities from this legislation, even though there are no allegations against them, then clearly the intent is to inoculate those whose municipalities might sue rather than protect municipalities themselves.

So let us know what this amendment is all about. I say to my colleagues, The Dingell amendment is to give your mayor, your city counselors, the ability to sue.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield once again to the gentleman from Michigan, the author of this amendment, so he can elaborate upon that point.

Mr. DINGELL. Mr. Chairman, there is absolutely no evidence of wrongdoing on the part of any municipal, State or local government official in connection with litigation of this kind, absolutely none. There are absolutely no protections given to cities, States, and local units of government by the bill, but what is given, and it is a prodigious benefit, is to a group of slippery rascals from the derivatives business. They will receive an inoculation against litigation against them for wrongdoing in connection with derivatives and in connection with investments which the cities have made and the counties and the local units of government have made to increase their earnings on the monies which they have as tax receipts during the time that they are waiting to expend those monies.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. Mr. Chairman, I thank the gentleman from Massachusetts [Mr. MARKEY], and to supplement the remarks he just made I would just like to address the gentleman from California [Mr. COX] one more time here. He stood up here a moment ago and said what a curiosity that the original draft that was circulated in the fall said that this bill is going to be retroactive, so these high standards would apply retroactively to everybody, and, lo and behold, Orange County got in trouble, got its lawsuit filed, and the retroactively provision went out. The gentleman from California [Mr. COX] said, "Oh, it wouldn't make any difference because that case is filed in State court."

I say to the gentleman, Well, I just went there and checked, Mr. COX. The fact is that Orange County filed a $3 billion lawsuit under rule X(b)5 in Federal Bankruptcy Court, so your community gets the lower standard, but our communities get the higher standard.

I urge my colleagues to vote for the Dingell amendment.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from California.

Mr. COX of California. Mr. Chairman, I oppose retroactive legislation. It does not work. We had the same question come up on title I of this bill. I opposed it there.

I say to my colleagues, The fact is, if you have two different rules operating inside of the same lawsuit, it doesn't work.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield to me again?

Mr. MARKEY. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. Why did the gentleman just tell us his case was filed in State court when it was filed in Federal court? I mean the grounds of the gentleman's defense continue to shift from moment to moment around here.

I say to the gentleman, The fact is whatever you propose, whatever you support, the fact of the matter is it was going to be retroactive until your community got in trouble, and now all of our communities have to face a higher standard, but not Orange County. Your community gets to go in the lower standard. That's not a good idea.

Vote for the Dingell amendment.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from California.

Mr. COX of California. The original lawsuits were filed under State laws and in State courts. The gentleman brings a new matter to my attention, but I assure him that lawsuit was surely filed after January 4, after the date of introduction of this bill, which gets directly to the gentleman's point.

The gentleman just speaks of motive, and I gave the gentleman my answer to his question, which is that I wanted to be sure, when we introduced that bill on January 4, that it was not retroactive.

Indeed, Mr. Chairman, I was in a radio debate with a Member of the other body from California in which she alleged that this was retroactive——

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

(By unaniomus consent, Mr. MARKEY was allowed to proceed for 1 additional minute.)

Mr. COX of California. Mr. Chairman, will the gentleman continue to yield?

Mr. MARKEY. I yield to the gentleman from California.

Mr. COX of California. She stated that the bill was retroactive, and I stated that it was not, and I then went back and checked, and indeed that provision of the bill, the effective date, which is a biolerplate provision that comes at the end that this Member had never been involved in drafting, was improperly constructed, and it would have required that inside a lawsuit two different rules apply. That makes no sense whatever.

Mr. MARKEY. Reclaiming my time, Mr. Chairman, just to conclude by making this point:

Once again there are no allegations against any mayor or city council in the United States. Why are we going to charge them with being frivolous in any lawsuits which they are going to bring if there has never been an allegation in the history that has come before this body as testimony that would lend that kind of limitation upon their ability to sue if they have been defrauded?

The gentleman from Michigan [Mr. DINGELL] does not even ask that they be given the rights for eternity, but only for the next 3 years so that the existing body of financial sales, of representations which have been made in the marketplace to municipalities, continue to be litigated under the old law.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, let me, first of all, address what I almost hear as a basic assumption that the underlying piece of legislation is bad. This is not a bad piece of legislation. This legislation is aimed at the filing of frivolous lawsuits, and I will be glad to stipulate to my good friend from Michigan and my good friend from Massachusetts that our county and local governments do not file frivolous lawsuits.

Now, having said that, the underlying piece of legislation would not apply to them in the filing of lawsuits that have merit, which we are willing to stipulate that is what they do. But why deny for 3 years the protections that we think are in this piece of legislation when frivolous lawsuits are filed?

Now, having stipulated that frivolous lawsuits are not filed by governmental entities, let me create a scenario because, as the gentleman from Michigan pointed out just a moment ago, we have had some local governmental entities who have lost money. There is a fact question in each of those situations whether the money was lost on bad judgment, by someone who represents that governmental entity, or whether money was lost because of some fraudulent and intentional advice. If it was fraudulent and intentional advice, then this statute would not affect that type of cause of action. If it was bad judgment on the part of the agent for the governmental entity, we could envision under some circumstances where a lawsuit could be brought that would be frivolous.

The point is this statute is designed to stop the filing of the frivolous lawsuits, should not be construed in any way as stopping the legitimate lawsuits that can be brought when there is fraud or some other type of intent, and with that I would have to reluctantly oppose the amendment offered by the gentleman from Michigan [Mr. DINGELL]. I think he brings it with every good intention.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, I will express the highest regard to my good friend, the gentleman from Texas [Mr. FIELDS].

First of all, a litigant must prove and plead what is going on in the mind of the other side before he can properly get into court. He has literally got to define the thought process and the intentions of the other party. Cities, States, counties, local units of government, would not be compelled to bear that burden. That is hardly something that I think they ought to be compelled to do because they are litigating on behalf of their taxpayers. There are a large number of other burdens that they must pay before they can get into court and a large number of other burdens they must carry, and I do not see why it is that they should have to carry these burdens to litigate on behalf of their people.

There is no allegation, none, that there has ever been any wrongdoing, that there is any ambulance chasing or any shyster lawyer practices engaged in in connection with these matters, and I would just urge my colleagues to support this, and I appreciate the concerns of my friend from Texas, but I would just say that the burdens that he is imposing on the cities, and States and local units of government by this amendment do not need to be accepted because there is no abuse on their part.

Mr. FIELDS of Texas. Reclaiming my time, Mr. Chairman, again I have the highest admiration for my friend, I return the compliment and I sincerely mean that.

There is a difference of opinion perhaps on the need for the specificity of pleading whether it is a governmental entity or it is a private class seeking some redress, but I will restate to the gentleman that it is my strong belief that this is a fair statute and there should not be two different types of treatments, one for governmental entities and those for all others. I think this is fair to all who might be subject to some action that would be fraudulent, particularly with intent.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from California.

Mr. COX of California. I will just underscore what the gentleman from Texas has just said.

The assertion is made that government entities generally do not bring frivolous lawsuits. So what? That is really not what we are talking about here. What we are talking about is abusive practices in the context of litigation, and in many of the cases and in many of the parts of this legislation those abusive practices are maintained by lawyers acting otherwise than in the interests of their clients, so this bill protects the client, and who is the client for purposes of this amendment? The government entity and the taxpayer.

Why would we want to strip the taxpayer of the protection against abusive practices that this legislation affords?

On the question of pleading, the gentleman from Michigan, although I am sure with every good intention, misstates rather dramatically what the legislation says. What the legislation says is that the complaint shall specify each statement or omission alleged to have been misleading. That is not an onerous requirement for anyone inasmuch as rule X(b)5, section 10(b), in the 1934 act predicates liability on some misstatement or omission, and we already have a requirement in here that either you prove reliance or fraud on the market. So there has to be a fraudulent statement out there somewhere, and asking somebody to identify what those fraudulent statements are before they bring litigation is, I think, entirely reasonable.

Second, the complaint shall also make—

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

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(By unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 2 additional minutes.)

Mr. FIELDS of Texas. Mr. Chairman, I yield to the gentleman from California.

Mr. COX of California. Mr. Chairman, I thank the gentleman for yielding further.

Finally, the section says an allegation may be made on information and belief. So there are several parts of this pleading section that the gentleman from Michigan has conveniently left out of his description.

First of all, we are talking today about allegations, so we do not need to know that they are true. You simply allege it and you get on with your lawsuit, you go through discovery, you take depositions, you subpoena records, and so on, and see if you can back up those allegations. But you make the allegations in your complaint; you do not put the proof in your complaint.

Second, you can do it on information and belief, so you just state in your pleading that the plaintiff is informed and believes and thereupon alleges that—and that is very, very easy to do. The complaint shall make allegations which, if true, would be sufficient to establish Scienter.

So for purposes of judging the pleading, all the court does is assume all of the allegations are true even before you have actually proved them, and if added together, assuming their truthfulness, they would state a cause of action and you get by judgment on the pleadings, and away you go and you are off with your lawsuit. That is the way it ought to work.

Many, many years ago a young lawyer wrote a Law Review article in which he said that the noticed pleadings which, up until that point, had been the rule of Federal pleadings, should be departed from and we should have this rule where you specifically plead, because it would help end abuses in this area. The young lawyer who wrote this, it turns out, is a lawyer named William Shannon Lerach, who is now one of the big securities class action lawyers in America—he lives out in San Diego, out my way in California—and he came as a witness and I asked him about this Law Review article and he said, "I still agree with that today."

So I think the gentleman from Michigan should get in league with Mr. Lerach and get on board with our pleading requirements. They are good ones, and we need them.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has again expired.

(On request of Mr. DINGELL, and by unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 3 additional minutes.)

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, the new rights that would be afforded cities, States, and local units of government would be the following: No. 1, loser pays. Before a city, State, or local unit of government can go into court in connection with derivatives fraud or other fraud upon their consumers involving securities, they would have to absorb the risk of paying the entire cost, lawyers and everything else, if they lost.

In addition to this, there would be, as I mentioned, the heightened pleading requirements. There would be no more joint and several liability. So slippery people would escape. There would be no fraud-on-the-market protections for inactively traded securities.

Now, here is what the United States Conference of Mayors says with regard to protections that the bill would afford them. Reduced to its simplest form, it is "thanks but no thanks." I will, by unanimous consent, at the appropriate time include this with my remarks.

> While we recognize the goal of H.R. 1058 to curtail frivolous private securities actions under Federal securities laws, we believe that the intended reforms may severely limit justified litigation, lessen deterrence to security frauds, and weaken existing legal standards insofar as the communities are concerned.

Mr. Chairman, I thank my friend for yielding.

Mr. FIELDS of Texas. Mr. Chairman, reclaiming my time, let me address a few of the points the gentleman has just made.

First of all, with regard to the loser-pay provision in our bill, there is a substantial justification clause, and the court has the discretion in the requirement for the posting of a bond.

On the second point, we do have a legitimate disagreement on the specificity of pleadings. I think it is important to have pleadings that are specific.

The third point the gentleman made is with regard to joint and several liability. Joint and several liability is in this statute where there is knowing fraud. Again we have talked about this, and we have been willing to stipulate that the cases we are aware of at this particular moment are cases that are legitimate that the county governments and local governments have against others.

The final point the gentleman made was regarding the fraud on the market. Nothing is changed with this particular statute based on what the law is at this particular moment. We are codifying Levinson.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I am glad to yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, it would require in addition to that also that State or local units of government, cities or counties, before they could litigate, could be required to post a bond; is that not so?

Mr. FIELDS of Texas. That is possible, but also, reclaiming my time, the judge has the discretion to say, "Your bond is $1," or your bond is something else that is reasonable. The judge has the discretion to come in and ask for something other than the posting of what could be the entire cost of that particular lawsuit.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. Reclaiming my time, Mr. Chairman, let me finish and then I will be glad to yield to the gentleman.

We did that on purpose to give the judge the discretion to look at cases like this and use good common sense.

Mr. DINGELL. But under the current law, however, there is no requirement that a city, county, State, or local unit of government post a bond.

Mr. Chairman, I thank my friend for yielding.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, there are two classes of stockholders whose interests can be affected by a 10B(5) statute. There is a class of investors who believes they have been defrauded, and they ought to be able to file a lawsuit. Under this bill they can file that suit. Any city, county, or individual in this country who believes they have been defrauded in their investments can file a suit, and if there is a fraudulent claim, they will have the full protections of joint and several liability that exists in current law.

Under this bill the big change is that if you file a suit for something other than intentional fraud in this judge-made area of the law, you are going to have to specify who is guilty of the recklessness or who is guilty of the misconduct, and in the court proceedings they are going to find out what percent they contributed, and they will be liable for that percentage. It is called proportionate liability.

So stockholders or investors, whether they be cities, counties, pension funds, or individuals who believe they have been caused to have a loss in their investments through someone's recklessness, can still file a lawsuit under this bill. They simply have to point to the guilty party, and the proportion of liability is assessed against that guilty party. That is the big change in this bill.

But there is another class of stockholders who under current law are horribly affected under 10B(5) lawsuits. They are the stockholders who still own stock in the company that is being sued, who are still a part of the corporation that just got sued by one of these lawyers, and who find out that the value of their stock has been depressed because their company is suddenly involved in a big extended lawsuit that may be without merit. In fact, most of these cases are settled regardless of merit. In fact, one of the persons who went bankrupt as a result of some of these suits was quoted as saying, "It wasn't the litigation we would lose that was the problem; it was the cost of winning that caused the greatest part of our financial distress."

As companies around America are being sued under 10B(5) judge-made law, with deep pockets, or anybody who gets shotgun suits filed against them, finds out that their company is depressed and their stock is hurt, who do we find out is hurt then? It is the pension investor, the private investor, who still owns stock in that company and who finds out that the company is spending most of its money on lawyers and courtrooms instead of on creating products and creating jobs.

Now, should it matter whether a lawsuit is brought by a government or by an individual when that is the result? This amendment will exempt all government suits under this 10B(5) filing, whether it was a derivative investment or not. The suit may be against a small company struggling to create jobs and indeed to return profits to its investors, as is often the case. Are we going to say that governments get better protections, that they can sue in deep pockets liability under this act, when citizens will be under this new standard? Are we going to say under our system of justice that governments have a better standing in court than citizens? If the reforms in this bill are not good for this country, and I firmly believe they are, I would not have engaged in this effort for 4 solid years to reform this section of law. If the Chairman of the SEC is correct when he said, "There are two classes of stockholders whose rights must be balanced here," should we give government better protection under the law than we extend to citizens? Should we not have the same rules applying to government investors as we have applying to individual investors?

If there is one thing Americans hate the most around here, it is when we apply different standards to government that we do to citizens. We just went through that in the first week of this Congress when we decided that the Congress should be accountable to the same laws we impose on businesses across America. Are we now going to say that when we are reforming this body of law, we are going to have a separate set of laws for government and a separate set of laws for citizens? I do not think we should do that.

Let me concede, as my friend, the gentleman from Texas did, that I do not believe that governments bring frivolous lawsuits, but they do bring lawsuits against companies just like individuals do, and they ought to have the same rules apply to them as will apply to citizens in this case, and if Members believe as I do that we are reforming this law for the right reasons, they should vote against this amendment. If they do not, then they should vote for the amendment and vote against the bill.

Mr. KLINK. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take the full 5 minutes, but there are a couple of points that I think need to be made on this amendment. Again let me say that I am proud to cosponsor this amendment with the gentleman from Michigan [Mr. DINGELL].

As for the previous speaker, the gentleman from California [Mr. COX], I agree with much of his intent, but as to his point about having two classes, the fact that there is one set of laws for governments and one for citizens, the fact if that government is citizens. The government has no money. The only money that the government has is that which the citizens send to us.

Now, I would put it this way: When a normal citizen makes an investment, that citizen has the responsibility for that decision, and whether or not they are going to be able to sue, whether that suit is frivolous, we ought to address that in some form. But normal taxpayers do not very often have much of a say in how moneys are invested on their behalf by their local governments.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield on that point?

Mr. KLINK. Yes, I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, citizens invest in money market funds that make investments, just as they invest in pension funds that are run by governments and by private entities that make investments. There is no difference.

My question to the gentleman is this: Why should we say to a citizen that chose a private investment fund to make his investments, "You're going to have a set of laws that relate to you, but if you invest in a government pension fund, you get a different set of laws that apply to you"? That is what is wrong.

Mr. KLINK. Mr. Chairman, I think, to answer the gentleman's question, there appears to be, with this whole derivative thing, the fact that things are changing from moment to moment and from hour to hour. Every time we pick up a newspaper something new has happened, and we are learning something new about it all the time. If I may respond to one of the comments that I think the gentleman from California [Mr. COX] made, he mentioned the fact that this carve-out did not exist and the Dodd-Domenici language did not exist in his bill, but I think things have changed dramatically.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. KLINK. I would like to finish my thought, and then I would be glad to yield to the gentleman.

The fact of the matter is that things are changing all the time in this regard. So what we are saying is, let us not create two separate bodies of law. But the amendment delays the effect of this bill on State and local governments for 3 years, and that is the same period of time that currently is the statute of limitations for securities fraud.

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I think it is unfair to require State and local governments to risk taxpayers' money in a loser-pay system. That is one of the problems.

Let me just finish with this, and that is I have a letter here from the mayor of Philadelphia, Edward Rendell. The first paragraph of the letter says, "The city of Philadelphia," and this is like other municipalities, some are much larger and some are smaller, "The city of Philadelphia is responsible for proper administration of over $2 billion in public pension funds for its workers and its retires. Like other private and public institutional investors, the city is completely dependent on a strong Federal system of securities laws and remedies to ensure probity in the financial marketplace and to deter would be wrongdoers."

This next sentence is what really bothers me. He says, "We are deeply concerned by the incidence of fraud in securities markets, and most particularly by the fact that many questionable investment schemes seem to target municipalities and government entities."

They find themselves being targeted because they are not up-to-date, and they are talked into these investments, and just like Mr. COX's Orange County, CA, all of a sudden something bad happens.

I will tell you that I think large and small municipalities across the State, not wanting to bring frivolous lawsuits, not wanting to spend taxpayers' money in pursuing frivolous cases, they are shocked by what happened in Orange County, CA, they are shocked when they look at what happened in San Jose and in States across this Nation.

We simply say let us delay it for the statute of limitations. Let us not have different sets of rules for other municipalities than we have for Orange County.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. KLINK. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding. I asked him to yield to make this point. Any municipality or pension fund that thinks they have been defrauded under any kind of investment, be it a derivative or something else, has that right to file that suit today. These lawsuits are cranked out normally up to 2 hours after the stock prices fall. If somebody has a case on that list that we were shown this morning, they can bring that suit today under the old law. They can bring it next week under the old law. Until this law goes into effect, they can file this suite.

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. KLINK. I yield to the gentleman from California.

Mr. MILLER of California. Mr. Chairman, yes, they can file a lawsuit today, but what we are finding out about derivatives is as this instrument spins around the world and its consequences, this is like peeling an onion. The fact is this law may become law before people realize the extent to which they have been damaged. A lot of these investments are very indirect investments. They join pools. State laws require it. We are talking about the money of school boards.

The CHAIRMAN. The time of the gentleman form Pennsylvania [Mr. KLINK] has expired.

(By unanimous consent, Mr. KLINK was allowed to proceed for 2 additional minutes.)

Mr. KLINK. I yield to the gentleman from California [Mr. MILLER].

Mr. MILLER of California. Mr. Chairman, in the California example, people who really had very little say over the investment of their money, school districts, water districts, sewer districts, citizen boards, without this kind of experience, and they were indirectly part of this arrangement and now they want to unravel that and assert their rights, we ought to let time for that to happen.

This is like the early days of the S&L scandal. There are a lot of people that do not know today that they are going to be affected by this because something else that goes wrong in the market triggers the vulnerability into this investment pool fund or instrument that looks safe today or looks safe 3 months from now, but may not turn out to be safe a year from now.

Mr. TAUZIN. If the gentleman will yield further, I would say to my friend from California [Mr. MILLER] that we just had that debate. We agreed not to exempt derivative lawsuits from this bill. That is another debate. But my point is this amendment covers more than investments in derivatives, does it not?

Mr. KLINK. Yes, it does.

Mr. TAUZIN. It exempts the city in all of its suits. So if the city, county, or pension board wants to bring a suit against a small company, under this amendment they would be exempted from this bill, would they not be?

Mr. KLINK. Mr. Chairman, reclaiming my time, I think this is an instance where we just have to agree to disagree. I understand that.

My point is this: If it is fair for Orange County, CA, to go under the old rule, then I think we need to take the statute of limitations, and I do not think that is being unreasonable, and say for not the period of enactment, but for the period of the statute of limitations, while this is being shaken out.

Mr. TAUZIN. If the gentleman will yield further so I may make one final point, just to clarify it, the gentleman is saying this statute of limitations will apply to new claims that might arise during the 3 years. The gentleman is not saying you are extending the statute of limitations for claims that already exist, are you?

Mr. KLINK. No.

Mr. TAUZIN. No, you are actually extending this law for 3 years applied to new claims. So it is not an extension of the statute of limitations, is it?

Mr. KLINK. Mr. Chairman, reclaiming my time, the gentleman is correct. I am saying extend it for the period of time of the statute of limitations. The gentleman is correct. I think this will give us time to see how this is shaking out. Again, there is a lack of confidence across this country because of what happened in the gentleman's area in Orange County, CA.

Mr. COX of California. Mr. Chairman, I ask unanimous consent to proceed for 3 additional minutes.

The CHAIRMAN. Without objection, the gentleman from California [Mr. COX] is recognized for 3 additional minutes.

There was no objection.

Mr. COX of California. Mr. Chairman, we actually have had testimony on this very subject, on the application of this bill as presently drafted to Orange County, and the testimony came in a letter addressed both to the testimony came in a letter addressed both to the chairman and to the ranking member of the Subcommittee on Telecommunications and Finance. It comes from John M.W. Moorlach, who will soon be nominated and sworn in as the new Treasurer of Orange County to pick up the pieces where Bob Citron left off.

Here is what his testimony said:

> The taxpayers of Orange County will suffer severe financial repercussions resulting from its longtime former treasurer's investment strategy. Now lawyers may victimize our taxpayers a second time by extorting multimillion dollar settlements under rigged rules that stack the deck against the county. This will further compound our already tragic financial losses. As a certified public accountant, I'm well aware that members of my profession for years have been victimized by strike suits brought by a handful of unscrupulous lawyers. These unethical few neither know nor care whether their so-called clients have actually been victimized. They simply bring cases for their extortion value and settle them without trial on the merits. As a result, accountants and companies innocent of any wrongdoing end up paying out millions of dollars to get rid of nuisance suits, while entire classes of victims of real fraud may only get pennies on the dollar for their claims. The biggest share by far goes to the lawyers.

Now, here is where we get to the point of this amendment.

> This game has already started in Orange County. Whatever the rights and wrongs of these cases, the only certainty is that under the current system, only the lawyers will get rich. Justice will not be done, not for the plaintiffs who will receive a percentage on the dollar as their lawyers benefit from handsome fees, and not for Orange County's taxpayers, who may have to take another multimillion dollar hit that will be as unnecessary and destructive as Citron's investment strategy itself.

Mr. Moorlach's point is that the County of Orange, already suffering, and you have seen the layoffs, 11,000 people, already suffering from the consequences of the Citron strategy, may now itself be the target of strike suits. And, yes, some of these suits may be brought by unscrupulous lawyers who are lucky enough to land as a client any one of the municipalities or subdivisions that invested in this pool.

Lawyers have great sway over their clients. We want to make sure that the clients always have rights against the lawyers, that they have the right to control the litigation, and that litigation device is not abused. If it were to be abused, then Orange County, read "the taxpayers," would end up paying the damages.

John Moorlach concludes,

> The Contract With America bill will stop this legalized embezzlement farce. It will strengthen the rights of real victims of fraud, while preventing frivolous cases from victimizing responsible people. It will be good for the country and for Orange County. I wish you well as you consider this important legislation."

So the point is that when municipalities are suing municipalities, it is just as likely that lawyers can get out of control as when lawyers are representing someone else. We want to make sure that Orange County's taxpayers are protected to the extent that Orange County might be a victim of lawsuits that are brought for their settlement value, because it is the taxpayers, not Bob Citron, that will end up paying those damages. And we want to be sure that the municipalities who are plaintiffs have all of the protections against conflict of interest, protections for lawyers to drive the litigation so that the lawyer does not do it, protections against lawyer-driven litigation that are part of this bill. Stripping all of those protections out of this bill just because it is the taxpayers who are the clients and the taxpayers who would otherwise get those protections makes no sense at all.

So I hope at least in the context of my home county, having heard from the people who are handling that, that we would understand just how destructive this amendment might be.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. Mr. Chairman, that is the point I made a moment ago. Your home county has already been taken care of. They have already filed their Federal case under the lower standard. Now you are raising the standard for the rest of our communities.

Mr. COX of California. Reclaiming my time, the gentleman is aware that the statutes of limitation that apply to what went on in Orange County are sufficiently long so that people can file lawsuits after this legislation. It is my sincere and fond hope that this legislation will apply to as much of the litigation that might arise out of Orange County as is possible, for precisely the reasons that John Moorlach, the soon-to-be Treasurer of Orange County, just pointed out.

Mr. BRYANT of Texas. If the gentleman will yield further, the gentleman just verified what I just said in a long round and about way of saying it.

The second question I have for the gentleman is, inasmuch as all this amendment does is say we are not going to apply the standards of this bill to the cities and counties and public institutions for the next 3 years, can you name a city or county or public institution that has been accused of filing a frivolous securities case?

The question has already been answered, and the answer is "no."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. DINGELL].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. DINGELL. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 179, noes 248, answered "present" 1, not voting 6, as follows:

[Roll No. 212]

AYES—179

Abercrombie
Ackerman
Andrews
Bachus
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
de la Garza
DeFazio
DeLauro
Dellums
Dicks
Dingell
Dixon
Doggett
Doyle
Duncan
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hall (TX)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jefferson
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McNulty
Meehan
Menendez
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pickett
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Roemer
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—248

Allard
Archer
Armey
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kennedy (RI)
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—1

Lowey

NOT VOTING—6

Gibbons
McDade
McKinney
Meek
Rangel
Sisisky

☐ 1527

Mr. BACHUS changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

☐ 1530

AMENDMENT OFFERED BY MR. TAUZIN

Mr. TAUZIN. Mr. Chairman, I offer an amendment, the Mineta-Tauzin amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. TAUZIN: Page 26, beginning on line 1, strike section 37 through page 28, line 2, and insert the following:

"SEC. 37. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

"(a) SAFE HARBOR IN GENERAL.—In any private action arising under this title based on a fraudulent statement (as defined in section 10A), a person shall not be liable with respect to any forward-looking statement if and to the extent that the statement—

"(1) contains a projection, estimate, or description of future events; and

"(2) refers clearly (or is understood by the recipient to refer) to—

"(A) such projections, estimates, or descriptions as forward-looking statements; and

"(B) the risk that such projections, estimates, or descriptions may not be realized. The safe harbor for forward-looking statements established under this subsection shall be in addition to any safe harbor the Commission may establish by rule or regulation.

"(b) DEFINITION OF FORWARD-LOOKING STATEMENT.—For the purpose of this section, the term 'forward-looking statement' shall include (but not be limited to) projections, estimates, and descriptions of future events, whether made orally or in writing, voluntarily or otherwise.

"(c) NO DUTY TO MAKE CONTINUING PROJECTIONS.—In any private action arising under this title, no person shall be deemed to have any obligation to update a forward-looking statement made by such person unless such person has expressly and substantially contemporaneously undertaken to update such statement.

"(d) AUTOMATIC PROCEDURE FOR STAYING DISCOVERY; EXPEDITED PROCEDURE FOR CONSIDERATION OF MOTION ON APPLICABILITY OF SAFE HARBOR.—

"(1) STAY PENDING DECISION ON MOTION.—Upon motion by a defendant to dismiss on the ground that the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section and that the safe harbor provisions of this section preclude a claim for relief, the court shall stay discovery until such motion is decided.

"(2) PROTECTIVE ORDERS.—If the court denies a motion to dismiss to which paragraph (1) is applicable, or if no such motion is made and a party makes a motion for a protective order, at any time beginning after the filing of the complaint and ending 10 days after the filing of such party's answer to the complaint, asserting that the safe harbor provisions of this section apply to the action, a protective order shall issue forthwith to stay all discovery as to any party to whom the safe harbor provisions of this section may apply, except that which is directed to the specific issue of the applicability of the safe harbor. A hearing on the applicability of the safe harbor shall be conducted within 45 days of the issuance of the protective order. At the conclusion of the hearing, the court shall either dismiss the portion of the action based upon the use of the forward-looking information or determine that the safe harbor is unavailable in the circumstances.

"(e) REGULATORY AUTHORITY.—The Commission shall exercise its authority to describe conduct with respect to the making of forward-looking statements that will be deemed not to provide a basis for liability in private actions under this title. Such rules and regulations shall—

"(1) include clear and objective guidance that the Commission finds sufficient for the protection of investors;

"(2) prescribe such guidance with sufficient particularity that compliance shall be readily ascertainable by issuers prior to issuance of securities; and

"(3) provide that forward-looking statements that are in compliance with such guidance and that concern the future economic performance of an issuer of securities registered under section 12 of this title will be deemed not to be in violation of this title. Nothing in this section shall be deemed to limit, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under other statutes under which the Commission exercises rulemaking authority.".

Mr. TAUZIN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. TAUZIN. Mr. Chairman, I yield to the gentleman from California [Mr. MINETA].

Mr. MINETA. Mr. Chairman, the amendment that the gentleman from Louisiana [Mr. TAUZIN] and I are offering addresses the issue of the safe harbor for forward-looking statements—statements made by companies and others about the future prospects of earnings, products, technologies or the like.

Mr. Chairman, if a company fails to meet analysts' earnings projections—or other projections—because of changes in the business cycle or a change in the timing of an order or contract, the company often finds itself faced with a lawsuit. In fact, more than one out of every two companies in Silicon Valley have been subject to a class action securities lawsuit. Many of these lawsuits are based upon forward-looking information.

Once a company experiences a drop in stock price or if earnings fail to meet expectations, plaintiffs' lawyers use the discovery process as a fishing expedition to find any statements or records within a company that could support an allegation of fraud. Quite often, they base their charges of fraud on what they allege are false and misleading past statements of future expectations. Technology companies are prime targets for this type of senseless litigation because of the nature of the technology industry. By definition, forward-looking statements in the high tech industry involve a future product, innovation, or technology. Failing to meet one expectation or another is often inevitable.

Why is a safe harbor for forward-looking information important? Because the threat of costly and disruptive litigation has a chilling effect on the willingness of companies to make disclosures in the marketplace. And over the long term, less information results in a less efficient marketplace. According to a recent study, technology companies are sued far more frequently than any other industry, and pay the highest settlements of any industry—averaging over $9 million per case. A National Venture Capital Association study of over 200 publicly traded entrepreneurial companies found that 71 percent reported being more reluctant to discuss company performance with analysts or the public. To all of these companies, the SEC safe harbor rules have proven to be legally nonexistent.

Let me offer you two Silicon Valley examples:

John Adler, CEO, Adaptec, a Silicon Valley high technology company. Mr. Adler says Adaptec has adopted a "no communications" policy, which "means they say nothing beyond what they must disclose by law."

Scott McNealy, CEO, Sun Micro-systems, spoke of his company's policy of offering only "limited guidance" to Wall Street analysts. Concluding that the legal risks of providing earnings and revenue projections to Wall Street analysts are too high, the company no longer releases this information and refuses to comment directly on analysts' projections.

Mr. Chairman, technology companies are popular targets for class action lawsuits because of several industry-wide factors which provide grist for the securities litigation mill: First, they have many new cutting edge products, which sometimes do not succeed in the marketplace; second, their earnings and stock price are volatile; and third, they have a custom and practice of paying officers and employees in part with stock or stock options.

These factors are seized upon by plaintiffs' lawyers over and over again to create a false picture of fraud by technology companies, where none in fact exists. For example, if a company announces that earnings during the quarter were negatively affected by various external market factors, plaintiffs' lawyers proceed to sue the company, accusing it of fraud for having failed to predict the adverse effects of price competition, and so forth. These cases involve nothing more than fraud by hindsight, the basic theory of which is that the company should have known, or must have known, that the future would not be as predicted. The safe harbor rules have proven ineffective to stop this type of abusive litigation.

Faced with a barrage of suits alleging fraud by hindsight, it is no wonder that technology companies have become reluctant to provide forward-looking information to the market.

Another phenomenon which is almost universally experienced by technology companies, and is predominantly a function of customer behavior, is the extremely uneven pattern of bookings during a particular quarter. Many technology companies will experience a significant percentage of bookings in the last few weeks of a quarter—the so-called hockeystick—as a result of customers waiting until the end of the quarter to negotiate the best deal. The hockeystick pattern makes the task of predicting revenues and earnings extremely difficult, particularly for technology companies selling higher-priced products and equipment, where the loss of just a few orders will make or break the quarter.

A number of recent class actions have been brought against companies which missed the quarter, but did not know that would occur until just a few weeks—or in some cases, days—before the end of the quarter. Nevertheless, under the fraud by hindsight theory, these companies have been sued for not having predicted the future, and for giving supposedly baseless statements of optimism at the beginning of the quarter. The safe harbor rules have utterly failed to protect these companies from abusive shareholder litigation.

Mr. Chairman, the litigation risks associated with making forward-looking disclosures also have been compounded in recent years by two key developments in the caselaw: First, the so-called duty to update, and second, the judicial refinement of the bespeaks caution doctrine.

Very frequently, companies provide soft forward-looking information to the market, such as "demand should continue to be strong for our products." The duty to update would authorize a claim, even when the original statement was true when made, if the company does not timely inform the market when demand no longer is strong. Under this rule, the requirement to track all forward-looking statements given to the market, including soft information, and continually update it, can quickly overwhelm the abilities of even the most dedicated of companies. Further, companies cannot reasonably rely on risk factor disclosures, since plaintiffs may argue that a company disseminated literally dozens of cautionary statements to cover all the specific risks and contingencies it sees in its futures business. In short, companies continue to proceed at considerable peril in making forward-looking disclosures.

Mr. Chairman, my amendment is intended to promote maximum disclosure by corporate executives by providing a safe harbor for forward-looking statements if, and only if, certain requirements are met. Only statements involving projections, estimates or descriptions of future events are covered. In order to be protected the statements must be referred to clearly as forward-looking statements or be understood as forward-looking statements. Second, the risk that such projections, estimates or descriptions may not be realized must also be clearly stated.

This approach has broad support in the business community.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has expired.

(At the request of Mr. MINETA and by unanimous consent, the gentleman from Louisiana, Mr. TAUZIN, was allowed to proceed for 2 additional minutes.)

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I continue to yield to my colleague, the gentleman from California.

Mr. MINETA. Mr. Chairman, it is supported by the American Business Conference, the American Electronics Association, the Association of Publicly Traded Companies, the Business Roundtable, the National Association of Manufacturers, the National Venture Capital Association, and the American Institute of Certified Public Accountants.

More importantly, Mr. Chairman, this approach has broad support among recipients of forward-looking information—the investment community. The California Public Employee Retirement System [CALPERS] stated "We recommend that the existing safe harbor rule be amended to provide a safe harbor from private actions to any issuer who adequately couches its projections in cautionary language."

This amendment is also consistent with the recent testimony of the executive director of the Council of Institutional Investors, representing hundreds of local, State, and labor pension funds.

Finally, this amendment would not prevent the Securities and Exchange Commission from bringing an enforcement action against any person on the basis of a forward-looking statement. It would only curb "fraud-by-hindsight" alleged in private, speculative strike suits. So, Mr. Chairman, this amendment will finally provide some clear guidance to companies in the area of forward-looking statements; it will maximize disclosure and improve the efficiency of the market, and most importantly it will provide investors with the ammunition they need to make sound decisions based on maximum information.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first and foremost, I want to congratulate my good friend, the gentleman from Louisiana [Mr. TAUZIN] and my good friend, the gentleman from California [Mr. MINETA] for offering this good amendment. It is an amendment that I plan to support. I encourage all of my colleagues to do so. In fact, on this side of the aisle, we have examined the amendment, and we would be more than happy to accept it.

I represent a community in my district that has a very high biotechnology presence, in Woodlands, TX. I am told constantly by these companies that they have to be very careful in what they say and how they disclose information. It is very difficult for them to communicate, particularly when they are trying to raise capital.

I think what the gentleman from California [Mr. MINETA] does in his statement is goes in a direction that provides that safe harbor, gives protection, and certainly puts investors on notice as to what is a forward-looking statement.

Let me also say that I believe this is a pro-investor, pro-disclosure amendment. I support it, because it is clear that if we do not provide an effective safe harbor for forward-looking information companies who disclose only boilerplate information specifically required by the Securities and Exchange Commission, in that instance, the investors does not win.

We have seen the study cited by my colleague. The threat of litigation has a chilling effect on disclosure of forward-looking information. In the end, investors are deprived of valuable information.

Mr. Chairman, we should face it, investors want company officials to talk about their future prospects. Investors want to hear the opinions of company officials, analysts, and others. The SEC has said this kind of information is important to investors, but company officials cannot know with certainty what the future actually holds.

That is so true for my companies in the Woodlands. When they in good faith respond to questions from analysts, or when they talk or write about trends and future uncertainties, they risk being sued by some plaintiff's lawyer at some point in the future.

The Securities and Exchange Commission itself has recognized that it needs to provide a safe harbor for this kind of information or companies will never in fact disclose that information. However, the rules the SEC wrote years ago just do not work.

The area of the gentleman from California [Mr. MINETA] is an example: 19 of the 30 largest companies in Silicon Valley have been sued since 1988; the aggregate settlement cost was $500 million. A National Economic Research Association study found that high-tech companies were involved in almost one-third of the settlements analyzed, making the industry a disproportionate target of securities suits.

A National Venture Capital Association survey found that 62 percent of responding entrepreneurial companies that went public since 1986 had been sued by 1993, so there has got to be change, Mr. Chairman. We think that the safe harbor provisions of this bill are strengthened by this Mineta amendment. It offers the companies and others the certainty that they need.

The amendment also gives investors that information they need. It ensures that investors will understand that statements about projections, estimates, and future events are just that, projections, clearly identified as such. It requires that clear warnings are given that these projections may not be realized.

If these requirements are met, and only if these requirements are met, the safe harbor will be available. This is the Speakes caution doctrine, which courts have recognized. This is hardly a radical or new idea. We have had far too many lawsuits based on fraud by hindsight after people of good faith have made forward-looking statements, or for reasons beyond their control, fell short.

This amendment would curb those abusive private actions, but it does not affect the SEC's enforcement powers in any way. If the SEC has found any company has attempted to take advantage of the safe harbor by committing fraud, it could bring an injunctive action against the company, impose civil fines, impose sanctions on its officers or directors, refer the matter to criminal authorities, and get a court to order disgorgement of any illegal profits.

The range of enforcement powers of the SEC are simply not effective, so any suggestions that fraud would go unremedied are unfounded. This would also make it clear that the SEC has the authority to write additional safe harbor rules.

This is especially important because this amendment applies only to actions brought under the Exchange Act.

I want to conclude by complimenting my good friend, the gentleman from California, who has been a leader in this particular area, and also I want to compliment my good friend, the gentleman from Louisiana [Mr. TAUZIN].

□ 1545

Mr. FARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Mineta amendment. It will take only a minute of my time, but I want to clarify for my colleagues what the amendment will do and what the amendment will not do. This amendment will result in greater disclosure of information to investors. It will encourage corporate officials to give investors useful information about their future plans. It will prevent the "fraud-by-hindsight" lawsuits that are crippling our high-technology industries.

The bill will not give corporate officials a license to lie, because the authority of the SEC, the State regulators, the Justice Department and other law enforcement agencies will not be affected. It will not permit brokers or others to make promises about the company's prospects, because it clearly does not cover statements that are promises or assurances and it will not change the law of insider trading. If corporate insiders try to hype their company's stock and bail out before the investors know the real facts, they can be sued by the investors as well as by the SEC.

This amendment simply says that when company officials talk about the future, the statements must be taken in context, and when they give clear warnings that their projections or estimates may not come true, they cannot be sued by private actions.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FARR. Mr. Chairman, I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank the gentleman for yielding. I asked him to yield for only one purpose and that is indeed to congratulate the gentleman from California for the excellent amendment.

This amendment has the unique advantage of being supported by both the high-technology community, which is the subject of many of these lawsuits, and by many investor groups. For example, CALPERS, the California public employees investment group, is in support of this approach. The executive director of the Council of Institutional Investors, a group of large corporate and labor union pension funds, has endorsed this approach. It is the right approach, it brings us closer to the bill the gentleman from California [Mr. MINETA] himself has cosponsored and filed in this session and in former sessions of the Congress. I want to congratulate him again for this fine work and urge adoption of the amendment.

Mr. COX of California. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

I too want to join in congratulating my colleague, the gentleman from California [Mr. MINETA], for offering a very constructive proposal on safe harbor. It is in fact part of the legislation that we had intended to change in the committee but because of our deadline to bring the bill to the floor, we determined that it would be best accomplished on the floor of the House. But I do not want anyone to think that because this amendment is being made on the floor that it has not been carefully discussed and thoughtfully considered.

It has had the complete benefit of analysis by every member on our Committee on Commerce, and I think the gentleman from California, who is not on the committee, is to be congratulated for broadening that discussion and that debate and the support for this amendment to be on the committee.

This amendment does a number of things that is really long overdue in the area of forward-looking information. It codifies the "bespeaks caution" doctrine in effect, something that we have found very workable in the common law, and now we are making it very clear as a matter of congressional policy, very clear as a matter of statute, that we intend to do that in the securities laws themselves, in the positive law.

A very important part of this amendment is that it will permit people who project honestly and diligently the future as best they can with the limited tools that all of us have to prognosticate, permit them to avoid a lawsuit on the basis of those statements.

CALPERS testimony was just referred to by my colleague the gentleman from Louisiana. I want to read just briefly from that testimony. This is of course a huge investor of pension funds. Their view is from the investor standpoint.

They say, "By definition projections are inherently uncertain."

"The more such statements are based on assumptions susceptible to change, the less useful they are in assessing prospective performance. Investors recognize this and appropriately discount the importance of such information when making investment decisions. We see no reason why investors should then be allowed to rely upon such statements in an action for fraud after the speculative nature has been fully disclosed."

That is precisely the basis for this amendment. What my colleague the gentleman from California does in his amendment is put into law a clear, understandable and readily accessible procedure to automatically stay discovery and to avoid all the rest of the lawsuit while the court takes a look at whether the safe harbor applies and we do not get ourselves mixed up in long months and years of discovery on the general lawsuit itself until first we dispose of this question of the safe harbor. It makes it truly a safe harbor.

This is very much the approach that I think we ought to take. For some time, we have asked the SEC to help us with rules in this area. But as we worked on this legislation, we discovered that the SEC itself did not want the responsibility of writing the court procedures for early dismissal of an action, the court procedures to stay discovery, because that would put an independent agency of the Federal Government in the business of writing rules to govern the article 3 courts. It is appropriately the role of Congress to do that in the statute.

I think what we have got here, in sum, is a safe harbor provision that will work, it is clear and easy to understand for all of the people, not just the issuers of securities but people who talk about securities, for their business, the analysts, the people on the telephone and so on, people will not be afraid to talk about the future anymore for fear of a lawsuit; and we have satisfied the concerns of investors who desperately want this information.

Right now, we have something of a black market in forward-looking information. Nobody wants officially to state for the record, least of all CEO's speaking to the press, what might happen in the future of their company because they know they might be sued if they are wrong, if they guess wrong about the future. But investors all want this information. They are interested mildly in the track record of a company, what has happened in the past, but what they really want to know is what is going to happen if I buy this security, if I buy this stock or this bond today, tomorrow and the next day, what will happen in the future, is this a good investment or not?

It is that future information that matters the most, that is what the market demands, and the market gets it after a fashion right now, they get it in whispered conversations, under the table, it is a black market, it is not the best information, it is not the highest quality information, and we would like it to be. That will be the effect of this amendment. It has been adequately demonstrated, I think, to everyone's satisfaction that this will help investors in that fashion, it will help issuers, it will stop frivolous and abusive lawsuits, which is precisely the centerpiece of this bill.

I heartily endorse it. I congratulate my colleague the gentleman from California for bringing it, and I am happy to support it.

Ms. HARMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

(Ms. HARMAN asked and was given permission to revise and extend her remarks.)

Ms. HARMAN. Mr. Chairman, I am pleased to join in the bipartisan effort to clarify and improve upon the safe-harbor language contained in the securities litigation reform bill.

Investors, the SEC, and securities analysts all agree that forward-looking information, that is, information about a company's future prospects, is critically important to investors. Such information is particularly important to investors of high-technology, high-growth companies, whose very existence pushes the boundaries of technology that are essential to our economy's future growth.

By their very nature, the statements of these companies involve a future product, innovation, or technology whose performance is subject to the vagaries of the economy.

By their very definition, projections of performance are inherently uncertain and it is often inevitable that the company will fail to meet one or more analysts' expectations.

When these companies fail to meet analysts' expectations, they often face abusive lawsuits, which sap resources that could otherwise be used for research, product promotion, and market development.

As a consequence, corporate executives have been increasingly reluctant to make forward-looking statements. They are unwilling to put scarce assets at risk if a product is delayed or an earnings estimate is not met.

A study by the National Venture Capital Association of more than 200 publicly traded entrepreneurial companies found that 71 percent reported being more reluctant to discuss company performance with analysts or the public.

While the immediate loser of such practices are the companies dependent on raising capital in the markets, the ultimate loser is the investor, for whom these statements are invaluable sources of information.

Thus, it is not surprising that the safe-harbor language offered by my friend from Silicon Valley is supported by the investment community, the recipients of forward-looking information.

One of the largest institutional investors, the California Public Employee Retirement System said that "a revision to the safe harbor is warranted in order to better balance the dual objectives of maintaining efficient capital markets and promoting investor protection." The safe-harbor amendment achieves this balance.

I urge its adoption.

I yield to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, I thank the gentlewoman for yielding.

I want to congratulate her on her statement. It is exactly correct. The adoption of this amendment not only furthers the cause of this legislation, which is to encourage good disclosure, but certainly to make it clear that forward-looking statements, particularly when they are carefully framed the way this amendment requires them to be so that investors are warned in advance that these projections may not be realized, is the way in which to protect against both these kinds of lawsuits, and at the same time encourage information to come forward above the table, not under the table.

I congratulate the gentlewoman on her statement.

Ms. HARMAN. I appreciate that.

I would make one additional point, that is, the bottom line from this amendment is more information, not less, to investors, and everyone wins from that practice.

Mr. TAUZIN. The gentlewoman is correct.

Mr. MARKEY. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, the subject matter on the floor at this time is an extremely sensitive one, because it deals with the public materials made available to investors in this country, and upon that information, investors make their decisions as to whether or not they should put their money into any particular company in this country.

If you are CALPERS, that is, this huge institutional investor, you do not have to worry. You are able to hire dozens of extremely sophisticated analysts to give you all the information you want. So it would make sense for CALPERS to sign up on something like this. I think they are wrong. I think they should be embarrassed, because they know that the ordinary investor does not have the same kind of access to information. Perhaps they are looking for more people to sign into CALPERS as their agent to do this kind of analysis. But for the ordinary investor, they are dependent upon the prospectuses, upon the annual reports, upon the registration reports, upon the quarterly reports of publicly held companies.

Now, a forward-looking statement under historical definition is one which the company makes projections about what they think is going to happen. Inside the contours of that statement, they have to be respectful of the truth as opposed to absolute outright conjecture.

For example, you cannot say today in your forward-looking statement, "And over the next year, we expect to find the cure for AIDS. And we expect to see our stock increase in value 1,000 percent."

"And, by the way, the cure for cancer could come in one year, but that might be a two-year project and then we expect to see yet a doubling again of our stock."

That kind of forward-looking statement historically has not been allowed, unless you know that is going to happen, because people might think that you are asserting that you are going to find a cure for AIDS, or for cancer, or some other breakthrough in some other area of American entrepreneurial endeavor.

You can, however, make a forward-looking statement about what you think looks reasonable for the future, reasonable.

What we have in this amendment is for all intents and purposes not a safe harbor. A safe harbor is something we can all support and historically we do, and the Securities and Exchange Commission right now is in the process, as the experts in this field, of drafting new safe harbor legislation, new regulation for this country.

□ 1600

But if this particular amendment passes, we are going to have to change the old statement to be amended to "lies, damn lies, and forward-looking statements" because you will be able to say whatever you want and you will be protected.

And here is the language in the amendment that makes that possible, it is pretty simple:

> A person shall not be liable with respect to any forward-looking statement if the risk that such projections, estimates, or descriptions may not be realized is made part of the statement.

So you just have to say after 30 pages of describing the cure for AIDS and the cure for cancer, psoriasis, and baldness and then put in one sentence that says, "the risk that such projections, estimates, or descriptions may not be realized," that is it, that could be a footnote, but it will be in there after 30 pages.

Now if you are CALPERS you will find it. You are hiring summa cum laudes from Stanford or Harvard Business School to read these things for you. You are investing billions of dollars. But what about the tens of thousands of individuals who are just going to be relying upon a prospectus? They are going to be reading this statement without any real knowledge that in fact this one little sentence is the disclosure, the inoculation against suit after you put your life savings in this company thinking they are guaranteeing.

So I do not have any problem with forward-looking statements. As a matter of fact, I could even construct this amendment.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

(By unanimous consent, Mr. MARKEY was allowed to proceed for 1 additional minute.)

Mr. MARKEY. I can even imagine a situation where we draft something that allows for even those kinds of statements to be made. But of course we would have to put some kind of skull and crossbones around it and inside of the statement so we differentiated it from the facts ma'am, nothing but the facts in terms of what the actual condition of the company is.

So this is, in my opinion, a very dangerous amendment. We can change the forward-looking statement regulations of this country. I do not have any problem with doing that and I think a lot of CEO's in this country need some relief, and I think we can work with them to do it. But the way this is drafted right now, the single worst, most unscrupulous business executives in this country will be free to make any kind of misstatements they want and by just making this very simple disclaimer that the estimates may not be realized, they are off the hook. And they will hire the fanciest law firms in America to draft a 30-page statement with this one line in it and it is caveat emptor out in the marketplace, running completely contrary to our long history of disclosure and protection for investors.

So this is not a safe harbor, this is a safe ocean of fraud, and the SEC will have to wage a two-ocean struggle with limited resources to keep track of all of the fraud and misrepresentation that will be possible. I sincerely hope that the Members would reject this amendment. I think it can be drafted in a way which does in fact comport with the needs to reform the forward statement conditions under which we are now operating, but this is not that amendment.

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. MARKEY. I am glad to yield to the gentleman from California.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has again expired.

(At the request of Mr. MINETA and by unanimous consent, Mr. MARKEY was allowed to proceed for 2 additional minutes.)

Mr. MINETA. Mr. Chairman, under the example the gentleman gives, it seems to me that the SEC would still be able to bring an action against the individual, or there are State regulations or there is common law fraud that would still subject the maker of those kinds of statements to action.

Mr. MARKEY. If I may reclaim my time, it is not the SEC we are talking about in this particular legislation, it is the investor, him or herself who will be limited in their ability to sue to get money back for themselves.

Mr. MINETA. In my opinion, if my friend would further yield, it seems to me that again in those instances, the gentleman used the example of CALPERS as a number of us did, it seems to me that whether they are sophisticated individuals who are investors, or the grandmother who wants to buy stock for grandchildren, that they would still be subject to the provisions of this bill and that they are going to be subject to suit.

On the other hand, let me also mention where the gentleman said the SEC is drawing rules on this right now, as I understand it they are just looking at the issue. They have done nothing to get into rulemaking or even holding a hearing on this issue.

Mr. MARKEY. If I can reclaim my time, the SEC comment letter to the committee on it said:

> Because the Commission is in the midst of a rulemaking proceeding, it would be inappropriate to take a position on the substantive safe-harbor provisions. The most appropriate solution to the issue, from the Commission's perspective, would be a provision directing the Commission to complete its rulemaking proceeding and report back to Congress.

So they are in the midst of doing the rulemaking on this issue right now and they have been, and again, the point is that we are stripping individuals from their ability to sue, not the SEC to bring an enforcement action. We want some ordinary person who has put $50,000 or $100,000 of their own money into a company, maybe even $1,000 of their own money into a company under completely, or almost fraudulent, not almost, but actually a fraudulent set of misrepresentations made by the company.

Mr. WHITE. Mr. Chairman, I move to strike the requisite number of words, and I rise to speak in favor of the amendment.

Mr. Chairman, I am new to Congress and new to the Commerce Committee. I would like to say in the very short period of time I have been on the Commerce Committee I have developed a great deal of respect and even admiration for the gentleman from Massachusetts. I think he does a very good job of explaining his points to us. But I have to say he is absolutely dead wrong on this issue because this is a case where it is the ordinary investor not the large investor that will benefit from this amendment.

The securities laws as they exist now are an example of laws that are distorted by our legal system to work against the purposes for which they were actually intended. These laws were designed to promote disclosure, and yet the threat of liability is so great, the uncertainty is so great, that companies are restrained and prevented from disclosing information that they would like to disclose.

It is not the large investor who suffers. The large investor will figure out that information. They do have staffs, they can get that information on their own, but the small investor, precisely the person who needs to have this information and who would benefit from a little bit greater information flow, does not get this information.

Mr. Chairman, I spent the last 15 years or so representing small companies in the Seattle area, and in that area we have hundreds and hundreds of small technology companies, biotechnology companies, just the sort of companies that would love to disclose lots of information to the public. They do not do so because of the threat of liability that exists under the current law.

It is absolutely essential for the ordinary investor to get this information, and this amendment is long overdue to allow that information to be disclosed.

So I would urge every single one of my colleagues to vote for it.

Mr. FIELDS of Texas. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from Texas.

Mr. FIELDS of Texas. I appreciate the gentleman yielding because it is important to focus this debate again on companies that have actually been affected, and the fact that the safe-harbor language that is currently in place does not work.

Netrix, a typical small company located in Virginia went public in September 1992, and in 5 months the company's stock doubled in value. In February the company announced that the first quarter earnings for 1993 would be disappointing. The stock fell and the company was immediately hit with a lawsuit. In the weeks following the filing, Netrix had to produce 50,000 documents and 200,000 electronic messages to plaintiffs' attorney. The company estimated that to defend the suit would cost $250,000 and possibly millions more if it lost in an extended court battle. They settled the suit for $975,000. The lawyers got 33 percent plus expenses, shareholders were left with what amounted to about $400 per person.

Silicon Graphics, a California computer company, has been hit by four class action lawsuits in the past 3 years. In 1991 the company was hit with a lawsuit. The CEO, Ed McCracken, decided to fight the suit. After 1 year of legal dispute, the judge dismissed the suit. Two other law firms sued the company again. After another year of dispute, they settled for an undisclosed amount, perhaps close to $1 million. By that time the company had spent more than $1 million in legal fees.

Legent, a Virginia software firm, was sued within hours of acknowledging in

July 1993 that its quarterly earnings would be lower than expected. Over the next 8 to 10 weeks the company had to provide 290,000 pages of documents to respond to plaintiffs' subpoenas. The CEO of the company spent nearly 90 percent of his time preparing the company's defense. Legent wanted to settle but was outraged by the amount. A Federal judge finally dismissed the charges, but by that time the company had spent $2 million in legal fees.

Mr. Chairman, this is abusive, particularly when you realize that the vast majority of the suits are against these high-technology developing, emerging companies.

We need the amendment offered by my good friend from Louisiana [Mr. TAUZIN] and the amendment offered by the gentleman from California [Mr. MINETA]. This is necessary for this legislation.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. WHITE. I yield to the gentleman from California.

Mr. COX of California. Mr. Chairman, I thank the gentleman for yielding. I want to concur with the gentleman's earlier assessment that the safe harbor protects investors of all sizes. There is certainly no reason to think that the same investor who in one of the litigations that is covered in other parts of this legislation, who would be relying upon the fraud-on-the-market doctrine, would not rely for the same effect on what CALPERS or other large investors are doing when they assess information.

The market price, according to the fraud-on-the-market doctrine reflects knowable information enacted in a liquid market, and if we have big institutional investors that are pouring over all these prospectuses, reading all of the press releases and so on, if they are the big market makers and traders, of course, that gets translated to the price under what we call efficient markets theory as quickly as can be.

The CHAIRMAN. The time of the gentleman from Washington [Mr. WHITE] has expired.

(At the request of Mr. COX of California and by unanimous consent, Mr. WHITE was allowed to proceed for 2 additional minutes.)

Mr. COX of California. Mr. Chairman, would the gentleman yield?

Mr. WHITE. I am happy to continue to yield to the gentleman from California.

Mr. COX of California. Once that market price then reflects the assessment that CALPERS or some other institutional investor has made of forward-looking information, an individual who does not read the prospectus is put in the position of benefiting from that expertise. That is how the fraud-on-the-market doctrine works. That is why we were asked to put it into the legislation.

So it really does not do to say that the individual investor is left only with the prospectus, because as the gentleman knows, most individual investors, would that it were otherwise, do not read those prospectuses. It would be a much better market if everybody did, but just as shoppers go into grocery stores, and so many hasty shoppers like I used to be before I had kids, I would hurry myself down the down the supermarket aisle and just grab things, and go down the checkout and I would depend on all of the other shoppers actually looking at the prices in the supermarket and that is what kept the supermarket honest. It was not CHRIS COX when I was moving down the aisle that quickly.

But it is the same way with individual investors who would buy so many shares of stocks. They are not for such a trivial investment going to read the prospectus and read everything available to the investors, but somebody is, and it is in fact the case that the market is capable of discounting forward-looking information.

What is most important about this amendment is that the quality of forward-looking information that we have not got under the current rules is defective and it is injuring investors. Bad information is being traded on because it is the only information in many cases. When companies know things that could be of use to investors they are sitting on it because it may affect the future and they are afraid to say yes or no, here is what is going to happen. And we have material event disclosure already. We have to talk about things as they occur, but what about having a best estimate of the future? That is what investors want to know and that is what this amendment will get out to the marketplace.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words and I rise in opposition to the amendment.

Mr. Chairman, I am going to try and make this simple enough so that all of my colleagues can understand, and so that a Philadelphia lawyer is not needed to interpret what is about here.

□ 1615

This does not deal, the amendment, with the authorities of the SEC. It deals, however, with the authorities of the ordinary citizen to go to court, to sue over matters in which he has been deceived, hoodwinked, or in which he has been taken advantage of my someone who has made a forward-looking projection or statement, provided that meets certain tests. Those tests are really very simple. They say that the disclosures are forward-looking statements and, second, it refers to the risk that the projections made may not be realized.

Once those two tests are met, no rascality, no deceit, no duplicity, no outrage, no falsehood, no misleading statement is of a character which would ban a citizen to go to court to seek redress for the fact that he has been deceived and that he has lost money because of that condition. That is all it says.

This is an immunity bath for wrongdoing so long as the disclosures say that they are forward-looking statements; and, second, that it refers to the risk that the projections may not be realized. If those conditions are met, this is an immunity bath, and any kind of rascality, any kind of deceit is fully justified.

This is an amendment which would have been loved by Mr. Ponzi, who was the builder of enormous fiscal undertakings which were bottomed on fraud, holding companies, and other kinds of misbehavior. This is the kind of proposal that would have been loved by Mr. Insull, who built himself an enormous empire of electrical utilities through devices which would have been sanctified under this by simply the use of the two devices which are set forth in the language of the amendment.

It will only be a little while if this is adopted into law that Members of Congress are going to have people saying, "Why is it that you permitted this kind of behavior to go forward?" And we are going to have to address our constituents as to why it is we have taken from the American investing public the protections which they now have with regard to truth, fairness, honesty, and integrity in the marketplace and in reporting and disclosures. It has all been done on the thesis there are a bunch of slippery lawyers out there forming a large number of citizen suits which I happen to think is occasionally a very good idea, but it is important that they keep in mind one thing: the end result of this is going to be that citizens are going to be less able to protect themselves from wrongdoing, and the protection that we have built up over prospectuses and other things is going to be shrunk significantly by the unfortunate language of this amendment.

Mr. HASTERT. Mr. Chairman, I rise in support of the amendment by the gentleman from California.

This amendment, to provide a true safe harbor, strikes a balance between the need to encourage companies to provide information to the marketplace and the need to protect investors.

The amendment requires companies to include a cautionary statement in their prospectus for investors. This statement, describing activities expected to be undertaken by the company, would make it clear to investors that the statement is forward-looking and inherently subject to risk because the statement may not come to pass.

If investors are properly warned, then the company will not be subject to suit for the statements made. This provides a true safe harbor for companies that want to reveal as much information as possible.

The amendment will also make clear that the SEC has the power and flexibility to provide other safe harbors.

The safe harbor provisions offered up to this point do not provide clear definitions, so they still leave companies vulnerable to lengthy and expensive litigation. It's not really a safe harbor if the jagged rocks and sandbars of continued litigation threaten to run U.S. companies aground.

Therefore, I urge my colleagues to adopt this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Louisiana [Mr. TAUZIN].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. WYDEN

Mr. WYDEN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. WYDEN: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly).

SEC. 6. FINANCIAL FRAUD DETECTION AND DISCLOSURE.

(a) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 is amended by inserting after section 13 (15 U.S.C. 78m) the following new section:

"SEC. 13A. FRAUD DETECTION AND DISCLOSURE.

"(a) AUDIT REQUIREMENTS.—Each audit required pursuant to this title of an issuer's financial statements by an independent public accountant shall include, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission, the following:

"(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

"(2) procedures designed to identify related party transactions which are material to the financial statements or otherwise require disclosure therein; and

"(3) an evaluation of whether there is substantial doubt about the issuer's ability to continue as a going concern over the ensuing fiscal year.

"(b) REQUIRED RESPONSE TO AUDIT DISCOVERIES.—

"(1) INVESTIGATION AND REPORT TO MANAGEMENT.—If, in the course of conducting any audit pursuant to this title to which subsection (a) applies, the independent public accountant detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the issuer's financial statements) has or may have occurred, the accountant shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

"(A)(i) determine whether it is likely that an illegal act has occurred, and (ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

"(B) as soon as practicable inform the appropriate level of the issuer's management and assure that the issuer's audit committee, or the issuer's board of directors in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or otherwise come to the attention of such accountant in the course of the audit, unless the illegal act is clearly inconsequential.

"(2) RESPONSE TO FAILURE TO TAKE REMEDIAL ACTION.—If, having first assured itself that the audit committee of the board of directors of the issuer or the board (in the absence of an audit committee) is adequately informed with respect to illegal acts that have been detected or otherwise come to the accountant's attention in the course of such accountant's audit, the independent public accountant concludes that—

"(A) any such illegal act has a material effect on the financial statements of the issuer,

"(B) senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to such illegal act, and

"(C) the failure to take remedial action is reasonably expected to warrant departure from a standard auditor's report, when made, or warrant resignation from the audit engagement,

the independent public accountant shall, as soon as practicable, directly report its conclusions to the board of directors.

"(3) NOTICE TO COMMISSION; RESPONSE TO FAILURE TO NOTIFY.—An issuer whose board of directors has received a report pursuant to paragraph (2) shall inform the Commission by notice within one business day of receipt of such report and shall furnish the independent public accountant making such report with a copy of the notice furnished the Commission. If the independent public accountant making such report shall fail to receive a copy of such notice within the required one-business-day period, the independent public accountant shall—

"(A) resign from the engagement; or

"(B) furnish to the Commission a copy of its report (or the documentation of any oral report given) within the next business day following such failure to receive notice.

"(4) REPORT AFTER RESIGNATION.—An independent public accountant electing resignation shall, within the one business day following a failure by an issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the accountant's report (or the documentation of any oral report given).

"(c) AUDITOR LIABILITY LIMITATION.—No independent public accountant shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rules promulgated pursuant thereto.

"(d) CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.—If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 21C of this title, that an independent public accountant has willfully violated paragraph (3) or (4) of subsection (b) of this section, then the Commission may, in addition to entering an order under section 21C, impose a civil penalty against the independent public accountant and any other person that the Commission finds was a cause of such violation. The determination whether to impose a civil penalty, and the amount of any such penalty, shall be governed by the standards set forth in section 21B of this title.

"(e) PRESERVATION OF EXISTING AUTHORITY.—Except for subsection (d), nothing in this section limits or otherwise affects the authority of the Commission under this title.

"(f) DEFINITIONS.—As used in this section, the term 'illegal act' means any action or omission to act that violates any law, or any rule or regulation having the force of law.".

"(b) EFFECTIVE DATES.—As to any registrant that is required to file selected quarterly financial data pursuant to item 302(a) of Regulation S-K (17 CFR 229.302(a)) of the Securities and Exchange Commission, the amendments made by subsection (a) of this section shall apply to any annual report for any period beginning on or after January 1, 1996. As to any other registrant, such amendment shall apply for any period beginning on or after January 1, 1997.

Mr. WYDEN. Mr. Chairman, this amendment stipulates that if there is a major fraud perpetrated at a corporation and corporate management refuses to correct the abuse, the corporation's accountant would be required to report the fraud to government regulators. This amendment is important to the legislation we are working on, because fraud and abuse often result in securities litigation. By providing new tools to root out financial fraud, Congress can help prevent securities lawsuits from ever being filed.

Now, we all know that it is simply impossible to wave a wand and prevent greed. The taxpayers and investors have a right to expect that corporate management, to whom they entrust their savings, will not go out and steal from them, and our citizens have a right to expect that those that they rely on to alert them to outright egregious cases of fraud, the public accountants who audit the corporate financial statements, will be at their post and ready to blow the whistle on a rogue executive. The Resolution Trust Corporation estimated that 40 percent of the savings and loan failures were attributable to fraud, but yet time after time the public accountants either did not know what was going on or simply did not tell anyone. The files now bulge with examples of companies that were shut down after receiving a clean audit.

For example, the General Accounting Office found that 28 of 30 savings and loans went bankrupt in California in 1985 and 1986 after receiving clean audits shortly before they went under. A most notorious example involved Mr. Keating and Lincoln Savings and Loan. The judge, when this case went to court, issued a blistering opinion and asked, "Where were the professionals when these clearly improper transactions were being consummated? Why didn't any of them speak up or dissociate themselves from the transactions?"

Had the accountants blown the whistle when they should have, Mr. Keating could have been shut down much earlier and taxpayers and investors could have been saved a lot of money.

This amendment will provide the investing public with a truth serum for the corporate financial statements.

The fun-house mirror that is used by ripoff artists and those with fraudulent intentions can be shattered. The word "public" in the title "certified public accountant" means that the auditors work for the public and not for management. They are not paid to compile a company's financial statements. That is the job of the internal auditor. The public auditor is paid to certify to investors and creditors that the statements that are compiled by the firm are accurate.

Let me close by saying that the Securities and Exchange Commission and the State securities regulators have long supported this amendment. To their credit, the accounting profession is now in support of the legislation.

I think that the staff on both sides, both the majority and the minority, probably can recite the language of this amendment by heart. We have worked cooperatively on this for many years.

Mr. Chairman, I yield to my friend, the gentleman from Texas [Mr. FIELDS].

Mr. FIELDS of Texas. Mr. Chairman, I appreciate the gentleman yielding, and he is absolutely correct in the work that has been done through the years, the labor that he has put into this particular amendment.

I support the amendment, because it provides a more efficient mechanism for an auditor to report the discovery of acts of questionable legality to management, the board of directors, and, if necessary, to the Securities and Exchange Commission.

The current practice requires an auditor to resign if illegal practices are not addressed by the company. This can create an obvious disincentive to an auditor doing the right thing and pursuing his discovery up the corporate chain of command until it is addressed.

This amendment is the same legislation our committee and the House have reported out before, and I urge my colleagues to support the gentleman's amendment.

Mr. WYDEN. I thank my friend for his very gracious statement. He is absolutely right. We have passed this from our committee unanimously on several occasions.

Mr. Chairman, I would conclude by asking unanimous consent that debate on this amendment and all amendments thereto be limited to 15 minutes, equally divided, with the time I have already consumed to be counted against our side.

The CHAIRMAN. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The CHAIRMAN. Is any Member opposed to the amendment?

If not, the Chair will allocate the remaining time by unanimous consent.

Mr. FIELDS of Texas. Mr. Chairman, if it is possible, we would like the time divided at this point. I do not have any requests for time, but I never know when someone might come on the floor, and I would ask if the gentleman would mind dividing the time equally.

Mr. WYDEN. I would be happy to do that, Mr. Chairman.

The CHAIRMAN. Without objection, the gentleman from Texas [Mr. FIELDS] controls 7½ minutes.

There was no objection.

Mr. FIELDS of Texas. Mr. Chairman, I yield such time as he may consume to the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Chairman, I thank the gentleman very much for yielding. I asked him to yield only because this is going to be a consensus, and the gentleman from Oregon has already consumed most of his time, and I would like to have an opportunity to hear him again before the amendment is put to the House.

The Wyden amendment is consistent with H.R. 1058's goal of curbing the explosive growth of securities fraud lawsuits. It requires frauds to be detected, reported, and corrected before they become lawsuits.

The Wyden amendment will restore the confidence of the investing public in the integrity of financial disclosures made by public companies. It requires that audits include procedures designed to detect fraud and related-party transactions as well as to evaluate the issuer's ability to continue as a going concern.

It deters frivolous lawsuits against accountants by precluding private rights of action against accountants for any finding, conclusion, or statement expressed in the fraud reports made to the SEC by the accountant or by the accounting firm.

The amendment has already been reported unanimously twice by the full House, three times by the full Committee on Commerce. It is based on a solid record of 34 days of hearings conducted since 1985. It is a voluminous set of reports which covers just about every case from ESM to the American Savings & Loan Association case to the Home State Savings, the Z.Z. Best, Mission Insurance, Transit Casualty, the whole range of issues that have been raised over the last decade.

The gentleman from Oregon [Mr. WYDEN] has synthesized it into a single amendment with a set of recommendations which we believe go a long way toward insuring that there will be early and adequate detection of fraud by the accounting firms of this country, while inoculating them against suit in any of the activities which they undertake pursuant to the amendment which we are now considering.

Mr. FIELDS of Texas. Mr. Chairman, I yield such time as he may consume to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, I, too, want to say not only a good word in favor of this amendment but in favor of its author. The gentleman from Oregon [Mr. WYDEN] has been a stalwart advocate for the proposition that when accountants do detect fraud that they make it known; they have a public responsibility, even though they are working for a private firm. His efforts in the last Congress to pass this amendment as a bill and move it into the Senate are well known by his colleagues on the Committee on Commerce, and I just want to make sure that the American public also is aware of his tremendous efforts to do that.

His efforts, combined with this bill, I think, will produce a combination that says when the public gets information it is going to be good information. When accountants detect fraud, it is going to get reported. We will have a better system that leads to fewer lawsuits and much more accurate information and hopefully many less of the problems that have engendered the debate we have had today.

The gentleman has been an extraordinary advocate of this proposition. I have been pleased to join with him in the past in favor of this bill.

I am pleased to say to the accountants' association, who have worked with him and I on this bill, and in deep support of it, and are anxious to see it become law, they, too, have recognized their public responsibility in this area as the gentleman has pointed it out so many times in the past.

I think we have come to closure on this issue. We begin to build a much better system with fewer lawsuits, hopefully fewer problems for investors, fewer problems for all of us who do not want to see problems settled in court, but want to see good investments made with good information, and I again want to congratulate the gentleman and thank my friend from Texas for yielding.

Mr. WYDEN. Mr. Chairman, I yield myself such time as I may consume.

Let me just say that over the last 6 or 7 years under the leadership of the gentleman from Michigan [Mr. DINGELL] and the gentleman from Massachusetts [Mr. MARKEY], our subcommittee has held more than 20 hearings to examine the kinds of fraud that this amendment deals with.

□ 1630

That has been the bipartisan tradition in the Committee on Commerce. I want to thank the gentleman from Texas [Mr. FIELDS] for continuing that bipartisan tradition. I think this is going to help reduce the kind of problems that make for securities litigation.

Mr. Chairman, I yield back the balance of my time.

Mr. FIELDS of Texas. Mr. Chairman, I want to compliment our friend, the gentleman from Oregon [Mr. WYDEN], for this amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oregon [Mr. WYDEN].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. BRYANT OF TEXAS

Mr. BRYANT of Texas. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

> Amendment offered by Mr. BRYANT of Texas: Page 18, beginning on line 6, strike subsections (b) and (c) and insert the following (and redesignate the succeeding subsections accordingly):
>
> "(b) PLEADING REQUIREMENT.—In any action arising under this title in which the plaintiff may recover money damages only if it proves that the defendant acted with scienter, the plaintiff must allege in its complaint facts suggesting that the defendant acted with that state of mind.

Mr. BRYANT of Texas. Mr. Chairman, one of the most, I think, difficult to understand portions of the bill before us today is the portion that has heretofore not been focused upon, regarding the requirements for pleading the case when a person might file if he has been defrauded by someone in the business of issuing securities.

The requirements of H.R. 1058 will, in simple statement, be impossible for real-life plaintiffs to meet because they require that investors who bring securities fraud cases must make specific allegations which, if true, would be sufficient to "establish," which word comes from the bill, to establish that the defendant had acted knowingly or recklessly. That means prior to discovery when it is virtually impossible for plaintiff to establish the facts that would be necessary to meet this new requirement that would have to be known and filed with the case in the beginning or you could not even proceed.

I want to quote now: Plaintiffs would be required "to make specific allegations, which, if true, would be sufficient to establish Scienter as to each defendant at the time the alleged violation occurred."

That is to establish a knowing element on the part of the actor, the defendant, at the time the defendant committed the alleged violation.

Obviously, no defrauded investor could pursue a claim for fraud unless that plaintiff is lucky enough to have the clearest proof of each defendant's state of mind before filing suit.

State of mind is one part, but in spite of the specificity requirements of the Federal rules, state of mind is one part of the case that you cannot know, cannot prove in the beginning. Prof. Arthur Miller of Harvard University testified that an excessive pleading such as proposed in this bill is totally unrealistic. It is only in the rarest cases that this type of evidence exists in the beginning.

So, not only are we raising in this bill the bar so high that it would be almost impossible to win, not only are we making it impossible for average person to file cases because of the loser-pays provisions, but we are now saying that their filing must, in effect, allege, specifically cite so much evidence that you could prove the state of mind of the defendant from the very beginning.

Financial claims are complicated, more so than other types of cases. In many cases it is difficult to even understand the basic transaction. It can take years of work, reading documents and questioning witnesses to be able to put together the case to determine the defendant's state of mind.

Obviously, corporate defendants are not ignorant. They know not to make statement up front that can be used in this fashion. so it leaves the defendant or the plaintiff in a very, very difficult situation.

We had the director of the securities division of the Utah Department of Commerce, Mark Griffin, who testified on behalf of the State regulators, that,

> This new pleading requirement would go well beyond what are current acceptable standards of pleading fraud with specificity. For example, plaintiffs may not know at the pleading stage information about a defendant's state of mind, which is usually not within a plaintiff's knowledge until after discovery.

No Federal court currently requires a pleading standard that is anything like the provision in this bill. Our distinguished former colleague, Judge Abner Mikva, now counselor at the White House, said it is very hard indeed, and almost impossible, for a plaintiff to know such things about a defendant's state of mind before his lawyers obtain documents and testimony in discovery.

In addition to the stat of mind requirement, this bill has a second flawed pleading requirement. Again, at the beginning of the case the plaintiff would have to set forth "with specificity all information," they have to give all the information in advance that forms the basis for the allegations of the plaintiff, meaning any whistleblower within a securities firm involved would have to be uncovered in the pleadings in the very, very beginning.

Third, a further deficiency in this bill is the language limiting the plaintiff to one amended complaint. That is, you file your complaint, and you had better comply with the specificity requirements I just mentioned and you only get one chance to amend your complaint.

Now, let me compare this, for example: In the suite filed against Charles Keating, talking about the civil suit filed by the defrauded bondholders in southern California, it was necessary for them to amend their securities complaint six times as new facts were discovered.

In the ZZZZ Best case, a notorious fraud in which the perpetrator and 10 others were convicted of crimes, there were 5 amended consolidated complaints before the case was allowed to stand.

As currently written, the bill would have prevented these cases from going forward, simply put.

My amendment would replace with the language my good friend from Louisiana [Mr. TAUZIN] set forth in H.R. 417, as introduced in the 103d Congress, with 180 cosponsors. The gentleman from Louisiana's [Mr. TAUZIN] language is better than what is in the bill today. What it simply says is there would be a heightened pleading requirement that goes well beyond current law with respect to fraud, but it is not so high as having to establish fraud without hard evidence.

My amendment would require that plaintiff alleged facts suggesting that the defendant acted intentionally or recklessly. It is the same language the gentleman from Louisiana [Mr. TAUZIN] used, the same language as cosponsored by the gentleman who is offering this bill today.

It is a heightened pleading requirement which was acceptable last year, and I would hope it would be acceptable this year. For goodness' sake, after all the other barriers raised in this bill, do not make it impossible for them to even file the case.

I urge support of the amendment.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, again I can appreciate the sincerity with which my colleague from Texas comes to the well. But pleading with specificity is something that every attorney should be prepared to do. Otherwise, the burden is unfairly required to guess what that person did wrong, what the defendant did wrong in a given set of circumstances.

H.R. 1058's provision is plain common sense. It requires a complaint to specify the statement alleged to be misleading. You have to ask the question: Is that unreasonable? Should not a defendant be told what he said or did not say that was misleading or fraudulent or that there was intent? The complaint must also specify the allegations which, if true, would be sufficient to establish scienter. Is it unfair to say to a plaintiff who wishes to sue for fraud that that plaintiff must plead the facts that, if they are later proven, would establish the case for fraud? To do otherwise is to sanction lawsuits where the plaintiff forces the defendant to guess how the defendant felt instead of merely producing evidence to defend himself.

Mr. Chairman, we talk about this all day, but what we are really aiming at in this legislation is to stop the frivolous lawsuit, not to stop the lawsuit, where there is a fraudulent statement made directly or indirectly by the defendant. We do feel that the defendant—it has to be shown that the defendant made such statement knowingly or recklessly and that the defendant possessed the intention to deceive, manipulate, or defraud. If we do not have a more specific pleading requirement in this statute, then you are going to see continued what has already been discussed today, and that is people watching to see stock prices fall, coming in with a very general pleading, going into protracted discovery where all types of information is required, tying up the efforts and the resources of offices and directors of that particular corporation.

We do not think it is too much to require that, under this particular type of lawsuit, there be better and greater specificity.

Mr. BRYANT of Texas. Will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I thank the gentleman for yielding.

Mr. Chairman, I would just like to point out that the language which is in my amendment is exactly the same amendment which Mr. TAUZIN introduced in the bill last year and which I suspect the gentleman from Texas, Mr. FIELDS, probably cosponsored, because 180 Members did. That was the bill to address the problem that this bill is addressing today, reportedly. Why would not the standard be as good as when it was introduced last year?

Mr. FIELDS of Texas. Mr. Chairman, we had the opportunity, first, to work on that piece of legislation. Second, the dynamics in this House and the Senate have changed. If you look at the requirements for explicit pleadings of scienter in our particular statute, I do not see that as being too burdensome for a plaintiff or a plaintiff's lawyer. It basically says he probably would add to subsection A, referring to scienter, section 10A applies to complaints,

> * * * shall specify each statement or omission alleged to have been misleading, and the reasons the statement or omission was misleading. The complaint shall also make specific allegations which, if true, would be sufficient to establish Scienter as to each defendant at the time the alleged violation occurred. It shall not be sufficient for this purpose to plead the mere presence of facts inconsistent with the statement or omission alleged to have been misleading.
>
> If an allegation is made on information and belief, the complaint shall set forth with specificity all information on which that belief is formed.

We do not believe that is a terrible burden for someone to carry as they walk into the courtroom door. That is the reason we have added the section.

Mr. BRYANT of Texas. Mr. Chairman, the principal point of my amendment is to point out what all lawyers agree to; that is, you can allege with specificity as required under the rules the violations of the law and the wrongdoing, but you cannot allege the facts which prove the state of mind of the wrongdoer.

The gentleman's bill requires someone to allege that in the very beginning, which cannot be done. Legal scholars agree it cannot be done. I am simply saying if you do that, that means no one can file a case. So why not make it higher than that presently, but make it a reasonable standard which can be met so that people can file these cases?

The gentleman's bill also says you only get one amended complaint. In the Keating case, they had to amend the complaint six times, as I said a moment ago, in order to get it together because they kept on discovering more and more detail.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

Mr. BRYANT of Texas. Mr. Chairman, I ask unanimous consent that there be a limit on debate of 20 minutes on the remainder of the consideration of this amendment, equally divided and controlled by both sides, and that request would go to any amendments to the amendment as well.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas [Mr. BRYANT]?

There was no objection.

The CHAIRMAN. The time is to be controlled equally by the gentleman from Texas [Mr. BRYANT] and the gentleman from Texas [Mr. FIELDS].

Mr. BRYANT of Texas. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Chairman, I commend the gentleman for his amendment. The hard fact is that this legislation, as now drawn, makes it impossible to win without having both an attorney, a psychiatrist, and probably a psychic, because you must plead to prove the state of mind of the defendant in this litigation. And the way the language on this section is drafted, it also requires, for example, that you submit a witness list because you must literally, in your pleadings, include the names of confidential informants, employees, competitors, Government employees, members of the media, and others who have provided information leading to the filing of the case. And even where they have requested anonymity, ofttimes out of fear of retaliation you must submit those names.

This is not something which has been approved by the bar or by scholars. Bar groups, academics, and regulators have all opposed heightened pleading requirements. Arthur Miller, the Bruce Bromley Professor of Law at Harvard Law School, testified in 1994:

> The proposal seems to suggest that at the outset of the case, plaintiffs have the burden of proof of each individual defendant's state of mind. But this is totally unrealistic. It is not only in the rarest of cases that this type of evidence exists, under the best of circumstances requiring plaintiffs to plead defendant's state of mind generally calls for the drawing of subtle inferences from facts available prior to the institution, a task that is highly treacherous. It would be impossible in the vast majority of cases in which these facts are simply unavailable prior to the lawsuit.

Mark Griffin, director of the securities division of the State of Utah Department of Commerce, had this to say:

> This new pleading requirement would go well beyond what are currently acceptable standards of pleading in fraud with specificity. For example, plaintiffs may not know at the pleading stage information about a defendant's state of mind, which is usually not within a plaintiff's knowledge until after discovery. Therefore, such information could not be included in a complaint. It should be pointed out that this provision would appear to directly overrule, to directly overrule, rule 9B of the Federal Rules of Civil Procedures.

Beyond this, it must be observed there is something else here which has to be addressed, and that is a matter of very legitimate concern to those of us in this body. It is a fact that under this proposal, only one amendment of the pleadings would be permitted. Now, how do we compare that with existing law? Let us take the Lincoln Savings & Loan, the Keating fraud.

□ 1645

Plaintiffs were required to amend their complaint not once, but six times, before it met all requirements for defendants. The case ultimately led to recovery of $240 million for thousands of elderly victims who had been victimized. With that requirement, Mr. Chairman, there would have been no recovery in the Keating Lincoln Savings & Loan case. In the WPPSS scandal, where thousands of victims of fraud ultimately recovered over $750 million, Mr. Chairman, plaintiffs were required to amend their complaint several times before it met the requirements of all the defendants.

This proposal changes it. It keeps a requirement, a reasonable requirement for scienter, but it requires a reasonable number of occasions in which the pleadings may be reformed and may be amended. It is clearly fair. It is clearly proper. It protects the concerns of legitimate complaints, and it does not trammel or unfairly amend the provisions for existing Federal rules of civil procedure.

I urge the adoption of the amendment. The gentleman is wise in having offered it, and he deserves accommodation of the House. The amendment should be adopted.

Mr. FIELDS of Texas. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. COX].

Mr. COX of California. Mr. Chairman, I was just, during the debate, refreshing my recollection about Dodd-Domenici. It is now S. 240 introduced January 18, 1995, for Mr. DOMENICI, Mr. DODD, who I need not remind people is now the chairman of the Democratic National Committee, Mr. HATCH, Ms. MIKULSKI, Mr. BENNETT, Ms. MOSELEY-BRAUN, Mr. LOTT, Mrs. MURRAY, Mr. MACK, Mr. JOHNSTON, Mr. FAIRCLOTH, Mr. CONRAD, Mr. BURNS, Mr. CHAFEE, on and on. It is a completely bipartisan group.

The provisions of Dodd-Domenici on specific pleading are a heck of a lot tougher than what we have in our bill because over in the other body they have recognized the problems that are created when someone launches a lawsuit which can take years and years and consume a whole lot of money on both sides with just vague conclusory allegations.

We have heard some horror stories, or not really horror stories because they never happened, but we have heard horror future fiction about what would have happened in old cases that were successful if the new rule had been put in place. We are told, for example, in one case they had to amend their pleading six times. Well, right now the current rules are sufficiently lax that nobody bothers a great deal when they file the complaint. In the very abusive cases we know they just roll them right off the word processor. The worst that can happen to them after all, since one can amend one's complaint nearly an infinite number of times, is that some judge will make them go back and amend it.

It is very difficult these days to get knocked out on the pleadings because one can simply amend. It is only when, even after amendment, people cannot state a cause of action. They end up losing on the pleadings, but it is not a logical form of argument to say that a case that was filed under the old rules where one could freely amend their complaint would have not make it if they could not have amended it so often. They simply would have taken more care in investigating the facts and bringing those cases to begin with, and what we heard about those cases is that the facts were on their side, that eventually they got it right even in their complaint.

The other thing we need to point out here is we are not asking anyone do anything other than allege. We are asking people to make an allegation. That is they can charge something. They do not have to prove it until later. But they have to know what it is they are charging. The definition of a fishing expedition lawsuit is one in which somebody does not know what they are after at first. They want to start the lawsuit to get the civil discovery tools to figure out their cause of action as they go along. They sort of make it up as they go along.

That is exactly the abusive kind of litigation we are trying to stop. This is the centerpiece of the bill that will permit us to stop it.

The language that is in Dodd-Domenici is:

> The complaint shall allege specific facts demonstrating the state of mind of each defendant.

Now we had a lot of complaint about that language on our side because people said, "Well, you would have to be a mind reader in order to demonstrate the state of mind of each defendant." So now our bill no longer says that. It says that the complaint shall specify each statement or omission alleged to have been misleading. Those are objective facts and the reasons that the statement or omission was misleading. That is factual as well, and of course one only has to allege it.

The complaint shall also make specific allegations which, if true, would be sufficient to establish scienter. So one only has to allege things which, if true, if they were proved later, would add up to a case that meets all the requirements of the existing law.

Then we go on to say it shall not be sufficient for this purpose to plead the mere presence of facts inconsistent with a statement or omission. If an allegation is made on information and belief, the complaint shall set forth with specificity all information on which that belief is formed. These are all things that are within the capacity of anyone initiating a lawsuit to comply with.

So, we are left with the fact that the Bryant amendment is probably directed at the language that people have complained about in Dodd-Domenici, which I point out again is sponsored by some of our most liberal Democrats in the U.S. Senate. This is a bipartisan agreement that fishing expedition lawsuits are a bad thing and we should stop them.

I also should point out that we have heard that the bill that we are amending here would overrule 9(b), but in fact Federal Rules of Civil Procedure 9(b), rule 9(b), requires that one pleads fraud with particularity. Since these are fraud cases, Mr. Chairman, that is exactly what we are requiring here, and we do flesh out in greater detail precisely what we mean so we can avoid litigation on this subject.

Ironically the amendment is completely inconsistent with Federal Rules of Civil Procedure 9(b) because, while it requires that one pleads fraud or particularity, the Bryant amendment would let a costly lawsuit go ahead if the complaint only, quote, suggests that fraud may have occurred. This is a hunting license for aggressive lawyers and frivolous lawsuits.

Finally the Bryant amendment is inconsistent with court decision after court decision which have said that, when the plaintiffs cannot state what statements are false, they cannot proceed.

So, Mr. Chairman, we are on solid ground here, and I hope that we will reject the Bryant amendment.

Mr. BRYANT of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think, and perhaps in this debate more than most, it is just a question of who to believe. Mr. COX's characterization of this amendment is in my view completely incorrect, and I think that a careful study of it would cause most Members to agree.

When it comes to alleging fraud, Mr. Chairman, one must plead with specificity in order that the defendant might know what he is being charged with. The difference though is not with regard to alleging fraud. It is in the bill that is before us today, "You must, as well, allege what's called scienter," which means there was a knowing element on the part of the defendant, and one must allege the specific facts which prove the knowing element.

That is why the gentleman from Michigan [Mr. DINGELL] said a moment ago, "For the first time you're going to have to have a psychiatrist in your office if you're going to figure out a way to file one of these cases, and frankly even that wouldn't work. Basically they're raising the bar so high that nobody could file the case."

I have taken in my amendment the same standard which these fellows over here all supported last year and which the gentleman from Louisiana [Mr. TAUZIN] introduced last year in his bill. It raises the standard from where it is today, but it does not go bananas, go to the extremes, that make it impossible for anybody to file a case, and the second thing the amendment will do is it would eliminate the portion of their bill which for the first time says, "You can only file one amended complaint."

I ask, "Why would you want to stop a plaintiff from being able to file amended complaints?"

As the point was made by me and the gentleman from Michigan [Mr. DINGELL] together a moment ago in the Keating case, they had to file five or six amended complaints in order to finally get the case right because they kept on discovering things.

Let me show my colleagues one of the things they discovered right here. This is a blow-up of a document that was given out to their bond sellers that was used to tell them what they ought to emphasize in order to sell those bonds. It says at the top up there, "Capitalize on this," and then it goes over a series of sales points.

Look at the last one. Look at the last sales point on the second page of this memo. It says, "No. 13, and always remember the weak, the meek and the ignorant are always good targets." Now that is what they found in their discovery efforts in the Keating case.

Under the bill brought forth today by the gentleman from California [Mr. COX], this would not have been allowed to have been pled in the Keating case because, after the first amendment, one cannot amend anymore, so they could not have amended their complaint based upon the finding of this document. These documents are not waiting around for plaintiffs to find them. In the beginning they have got to find them through discovery.

What my amendment would say is that we are going to require, continue to require, specificity in pleading in allegations made with regard to fraud. But we do not go so far as to say, "You've got to plead the specific facts that prove scienter (that is knowledge) because nobody can get those facts. You can't file them," and under the bill before us today, if it has not been filed that way, they are going to be out court. So a person whose pension has gone down the drain, whose personal investments have gone down the drain, a person who has been defrauded, who has very few resources, even if he had a case, is not going to be able to get a lawyer to take the case because under the standard being brought to us today they could not win the case.

For goodness sakes. Let us at least go with the standard that these fellows said was the one we should go with last year rather than go with the standard of the new revolution in the House, which is go to enormous extremes.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Massachusetts.

Mr. MARKEY. As my colleague knows, the problem with this provision in the legislation is that it requires each person who has been defrauded, knows they have been defrauded, every bone in their body tells them that this financial advisor, this banker, this person that sold them this stock that has gone sour, defrauded them. But if they are going to sue, they have to be like Carnac. They have to be able to know exactly what was in the mind of the person who defrauded them, exactly on that night, December 18, 1993, when that person sold them or concocted the concept of defrauding the individual with the life savings losing investment which the person made as a result.

I say to my colleagues, you couldn't sue Charlie Keating. You couldn't sue anybody because, as the other person, absent the psychic Carnac-like powers, you're left to the marketplace to have a strong sense that you, in fact, have been defrauded, know that all of the circumstantial evidence points in that direction, but not be able to plead with the specificity that satisfies this Mount Everest of burdens which has been constructed.

And we have everyone from Anthony Lewis in the New York Times who has said it is very hard, indeed impossible for a plaintiff to know such things about a defendant's state of mind. We have Judge Abner Mikva who was an experienced Federal judge and is now counsel to the President who has spoken out against this smoking gun pleading requirement in the bill. This just creates insurmountable obstacles to an ordinary person being able to bring an action.

And remember the pleadings standard in the Bryant bill is identical to the Tauzin bill of last year. All we have done is taken the language that the gentleman from Louisiana [Mr. TAUZIN] had in his bill and brought it out here on the floor for those of my colleagues who supported the Tauzin bill last year.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BRYANT] has expired.

The Chair recognizes the gentleman from Texas [Mr. FIELDS] for 4 minutes.

Mr. FIELDS of Texas. Mr. Chairman, I yield myself such time as I may consume.

□ 1700

Mr. FIELDS of Texas. Mr. Chairman, since we spent most of today talking about intent, let us talk about what our intent is in this pleadings section. Let us also talk about what the effect is of our pleadings section.

Does the legislation as it is currently drafted, and particularly the pleadings section as it is currently drafted, bar a plaintiff or plaintiff class harmed by an untrue statement or material omission which was knowingly made and relied upon? Absolutely not.

In fact, we believe that the specificity of the pleading of facts required in this legislation should promote faster recovery at lower plaintiff cost; that the plaintiff should actually see a higher return when those type lawsuits are brought.

But it is important again to point to the facts, to constantly point to the facts that small and medium-sized companies alone have paid out nearly $500 million during the last 2 years, and we all recognize that settling a case is oftentimes cheaper and quicker than defending in court, and the problem is getting worse.

In the last 5 years the number of strike suits have tripled. The intent here is to stop the frivolous lawsuit, to stop the fishing expedition. If people do not think that happens, then I would be glad to refer them to a letter from a Mr. Dick Egan of Hopkinton, MA, dated January 16, 1995, this year.

In the body of the letter Mr. Egan talks about the two class action lawsuits filed against him. But let me just read down in the body of the letter where he says, "Our second Strike Suit came in 1991 when we pre-announced that we would not meet analysts expectations." The expectation of analysts. "We just weren't going to have a loss. In fact, we were (and still are) quite profitable. We just weren't going to meet the numbers someone else said we would.

"The stock tanked," to use his words, "and we were sued by a law firm that makes a business by initiating strike suits against high-tech companies. They sued us within 48 hours on behalf of two Planitiffs which together owned only 300 or 400 shares* * *

"Of course the lessons we learned from the 1988 suit were not forgotten and now being a larger company and knowing we did not do anything wrong to mislead sharehoders, I decided to fight this one out.

"I am pleased to report that the Judge's verdict was rendered in our favor and contained the comments that 'this case was dead on arrival' and he would not 'allow a continuance of this fishing expedition.' Certainly it did not help the Strike Suit Lawyers case when we pointed out their motion contained throughout the name of a prior plaintiff."

"Of course," Mr. Egan goes on, "we still had to pay our legal costs which were over $100,000 and while I never estimated the cost and time lost through the discovery process, I'm sure it was it was twice as much."

I will present this letter to anyone as an example of the type of fishing expedition, frivolous lawsuit this legislation is intended to stop.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I would just point out the language in the bill is much improved over the language last year that the gentleman from Texas [Mr. BRYANT] and I offered. If the language we had in the bill was so good last year, I want to know why we did not get a markup on the bill. This language is much better, much more specific. It is the kind of language that would prevent fishing expeditions. We ought to reject this amendment and pass this good bill.

The CHAIRMAN. All time having expired, the question is on the amendment offered by the gentleman from Texas [Mr. BRYANT].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BRYANT of Texas. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 168, noes 255, answered "present" 1, not voting 10, as follows:

[Roll No 213]

AYES—168

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson

Bentsen
Berman
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chambliss
Chapman
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Cooley
Costello
Coyne
Cramer
de la Garza
DeFazio
DeLauro
Dellums
Dicks
Dingell
Dixon
Doggett
Doyle
Duncan
Durbin
Engel
Evans
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McCollum
McDermott
McHale
Meehan
Menendez
Mfume
Miller (CA)
Minge
Mink
Moakley
Mollohan
Murtha
Nadler
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Thompson
Thornton
Thurman.
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—255

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Barton
Bass
Bateman
Bereuter
Bevill
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Everett
Ewing
Farr
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCrery
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Mineta
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—1

Lowey

NOT VOTING—10

Bartlett
Bilbray
Clay
Gibbons
Hayes
McDade
McKinney
Meek
Neal
Rangel

☐ 1721

Mr. McCOLLUM changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. MANTON

Mr. MANTON. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. MANTON: Page 7, beginning on line 19, strike subsection (c) through page 11, line 8, and insert the following:

"(c) AWARDS OF FEES AND EXPENSES.—

"(1) AUTHORITY TO AWARD FEES AND EXPENSES.—If the court in any private action arising under this title enters a final judgment against a party litigant on the basis of a default, a motion to dismiss, motion for summary judgment, or a trial on the merits, the court shall, upon motion by the prevailing party, determine whether—

"(A) The complaint or motion is being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

"(B) the claims, defenses, and other legal contentions in the complaint or motion, taken as a whole, are unwarranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

"(C) the allegations and other factual contentions in the complaint or motion, taken as a whole, lack any evidentiary support or would be likely to lack any evidentiary support after a reasonable opportunity for further investigation or discovery; or

"(D) the denials of factual contentions are unwarranted on the evidence or are not reasonably based on a lack of information or belief.

"(2) AWARD TO PREVAILING PARTY.—If the court determines that the losing party has violated any subparagraph of paragraph (1), the court shall award the prevailing party reasonable fees and other expenses incurred by that party. The determination of whether the losing party violated any such subparagraph shall be made on the basis of the record in the civil action for which fees and other expenses are sought.

"(3) APPLICATION FOR FEES.—A party seeking an award of fees and other expenses shall, within 30 days of a final, nonappealable judgment in the action, submit to the court an application for fees and other expenses that verifies that the party is entitled to such an award under paragraph (1) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.

"(4) SANCTIONS AGAINST ATTORNEY.—The court—

"(A) shall award the fees and expenses against the attorney for the losing party unless the court determines that the losing party was principally responsible for the actions described in subparagraph (A), (B), (C), or (D) of paragraph (1); and

"(B) may, in its discretion, reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy.

"(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit or impair the discretion of the court to award costs pursuant to other provisions of law.

"(6) DEFINITIONS.—For purposes of this subsection, the term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees and expenses. The amount of fees awarded under this section shall be based upon prevailing market rates for the king and quality of services furnished.

Mr. MANTON. Mr. Chairman, virtually all of the evidence assembled by the Commerce Committee during its consideration of the securities litigation reform issue indicated that Congress can and should take reasonable steps to reduce or eliminate frivolous securities lawsuits while at the same time protecting—rather than diminishing or even wiping out—the legitimate rights of defrauded individual investors to seek redress in our courts.

My amendment, based on rule XI of the Federal Rules of Civil Procedure, strikes that balance. This amendment provides that Federal courts *must* shift the cost of attorney's fees to the losing party if the court finds that the loser's arguments were frivolous or presented in bad faith. Furthermore, this amendment would also require the court to impose sanctions on attorneys who bring these cases.

This is a tough standard but, and this is critical, it's also a fair standard.

The amendment responds directly to the concerns about frivolousness and abuse that underlie the legislation we have been considering.

The purpose of the legislation before us today is to deter those who exploit the otherwise effective laws Congress has enacted to protect the investor.

We have been told that securities lawsuits with virtually no merit, but which are expensive to defend, force companies into settlements.

According to many companies, these cases are sometimes brought in bad faith by lawyers whose sole interest is in securing a lucrative award or fees.

My amendment corrects this problem because it sends a clear message to Federal judges about their role in overseeing securities fraud cases.

It informs these judges that the Congress is dissatisfied with the discretionary approach to fee shifting adopted by the Supreme Court and the Administrative Office of the Courts, and wants fees and expenses imposed whenever a case is found to be frivolous or brought in bad faith.

My amendment also sends a message to overzealous plaintiffs' lawyers, because it will require the Court to impose the defendants' legal fees on them or the individual investor if the case is frivolous or brought in bad faith.

The approach of my amendment is superior to the fee shifting language contained in H.R. 1058 because my amendment does not mandate that judges require class action plaintiffs to post a bond before they can bring their case to court.

While I strongly support the concept of securities litigation reform, I cannot support a proposal to require ordinary people to pay for the right to have their day in court.

I understand my colleagues view that requiring undertakings from class action plaintiffs will curtail the number of suits which unscrupulous lawyers may bring. Fortunately, section 11(E) of the Securities Act of 1933 already grants judges the discretionary power to require class plaintiffs to post a bond.

This discretionary power allows judges to distinguish between the so-called professional plaintiffs and those plaintiffs who are professional, hard working Americans.

While I share my colleagues' interest in eliminating strike suits, the bill's reach is simply too broad, and would result in too great of a disincentive to plaintiffs with meritorious cases.

The approach taken in this amendment is vastly superior to the philosophy underlying the loser almost always pays rule contained in H.R. 1058.

□ 1730

Mr. Chairman, despite the so-called bipartisan support for this bill, I want my colleagues to be aware that virtually all witnesses with a reasonable claim to being objective and impartial strenuously oppose H.R. 1058's severe proposal to shift attorney's fees to investors.

The Securities and Exchange Commission opposes it. The group regulating the securities regulators from all 50 States oppose it. The group representing the officials in State and local governments who issue municipal bonds oppose it. The AARP, the National Association of Senior Citizens, and the Gray Panthers oppose it.

Consumer Reports, the Consumer Federation of America, and a host of other consumer groups oppose it. At least 65 of the Nation's leading corporate and securities law professors oppose it.

And the Economist, for years one of the world's leading voices in support of conservatism and the free market, believes that this type of fee shifting offends one of the most basic principles of a free society, and threatens to expel the middle class from the courts. The Economist concluded that this issue has by itself undermined the legitimacy of the entire British civil justice system. I can think of no reason why we would want to adopt any such rule in the United States

Make no mistake, my amendment is necessary to ensure that H.R. 1058 does not require average citizens to pay, that is, to post a bond, before they can have their day in court after they have been defrauded.

In a nutshell, this bill will require plaintiffs in a class action, who have lost the value of their nest egg because of corporate fraud, to put up good money after bad in order to simply earn the privilege of entering the courtroom.

My amendment clarifies Congress' intention with regard to whom this bill is designed to affect. It makes clear that it is only those cases which are frivolous or brought in bad faith which we want to discourage.

By eliminating meritless securities suits, we will serve to protect industry, but, and this is equally important, we will ensure that cases of actual securities fraud get the undivided attention of the public and our courts that they deserve.

Finally, I want to point out that I voted in favor of reporting securities litigation out of the Committee on Commerce. I suggest and recommend to all of my colleagues that if this amendment is defeated, they vote against the bill. I certainly will.

Mr. TAUZIN. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, let me first commend my friend, the gentleman from New York [Mr. MANTON] for his attempt to, in effect, rewrite rule XI of the Rules of Federal Procedure in a way that is much better than rule XI, and to suggest that it be part of this act.

If this were the only chance we had to improve upon the condition of allocating the cost in a lawsuit, it would certainly be better than the existing law. His amendment is better than rule XI in two major respects, because it does make imposition of the fees mandatory and it does cover four clauses, not just the one clause covered under the current rule XI.

However, there is a better provision in the bill today than rule XI, and even this improved version of rule XI. The provision in the bill that is before us literally says that fees are going to be shifted in one of these cases only, and only under the following conditions:

First, that the position of the losing party was never substantially justified; that is to say, not only did he lose the case, not only did he dismiss the case, not only did he perhaps lose it on a motion for summary judgment, but that he never should have brought it in the first place. There was no substantial justification for bringing that case;

Second, that imposing the fees on the party who brought the suit with no substantial justification would not create an injustice, so the court has to make that substantial, substantive judgment;

And, last, that the cost of the fees on the prevailing party, the party who was sued unjustly, that the cost of those fees on that prevailing party indeed would be substantially burdensome and unjust, so the court has to make three findings.

Now, the Committee on Commerce did one additional thing in our effort to reach out to broaden support for the bill, and to make it clear that the court should use this fee-shifting arrangement only when these three things are proven. We put the burden of proof on all three of the things on the prevailing party.

In other words, if I bring a suit under this 10(b)(5) section of the law, I sue you and your company, and I lose that suit, and I lose it either on a judgment or a motion to dismiss, or I voluntarily dismiss it at some point, under our bill it would be your burden of proof to prove that I did not have a substantial, justifiable reason to bring that case. You have to prove the negative.

Second, you have to prove that it would not be unjust to make me pay your expenses in defending a suit I should not have brought.

Third, you have to prove that it would not be too much of a burden on me to pay my own expenses in defending that lawsuit.

What I am saying is, Mr. Chairman, that when we shifted the burden of proof to the prevailing party, we made it extremely difficult, I think, for the fee shift ever to occur.

Let me tell the Members two other reasons why the Manton amendment needs to be defeated.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I am happy to yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, in layman's terms, as I interpret the amendment, and I agree, I respect the proponent of the amendment, the gentleman from New York, but as I read this bill, it cuts the losers-pay provision of the bill, because as I read this, it replaces the losers-pay language with language that would seem to make the attorneys of the party filing frivolous claims accountable.

Mr. TAUZIN. The answer is it could, because under rule XI the fees can be imposed on the attorney. However, my problem with it is bigger than that. The problems are the following:

First, rule XI does not allow sanctions in discovery proceedings. In fact, you cannot have sanctions where discovery proceedings have been conducted without justifiable cause. Rule XI, for example, permits the withdrawal of your suit or voluntary dismissal of your suit in order to avoid fee shifting.

Let's say you brought a suit against me you never should have brought. You have made me hire attorneys, you have kept my company in all kinds of legal trouble for a year or 2 years. Then it becomes clear that you should not have brought suit in the first place. The judge is about to impose sanctions on you, so you immediately withdraw the case. Under that scenario, under the Manton amendment, the judge could not impose sanctions, could not shift fees over to the party who should not have brought this suit.

In short, while it is an improvement over the existing law, and I must commend my friend for doing a good job in offering a solution that is better than existing law, the provisions of our bill are much better, much better, and this amendment should be defeated.

Mr. DINGELL. Mr. Chairman, I rise in support of the Manton amendment.

Mr. Chairman, I commend the gentleman from New York [Mr. MANTON] on his amendment on fee shifting. I rise in support of that amendment. As reported by the committee, H.R. 1058 would provide for fee shifting when the court determines that the loser's case was not substantially justified.

The bill, however, would require the court to order a bond from a plaintiff in a securities case. These are high hurdles in front of the courthouse door for any person, including those who have legitimate claims.

Let us talk first about the bond requirement. This section provides no guidance to the court on the amount of the bond or the form of the bond. It appears to me that a judge could require a middle-class plaintiff to post his or her house as collateral, or their retirement account, or the children's college savings as collateral. That is a high admission fee to the Federal courts.

I would remind my colleagues, the requirement for the bond is mandatory. It is absolute. The "substantially justify" test, as we are told, comes from the Equal Access to Justice Act. This act requires Government agencies to pay back attorney's fees to small businesses they sue when their case is not substantially justified. That is, I would note, however, a quite different case, Government against a small defendant.

Here we are talking about a little investor against a large and wealthy wrongdoer who has every incentive to run up the costs of the litigation. When the SEC brings a case, it does so only after it completes an investigation. That investigation involves the use of the investigative authority, including the subpoena power, which is possessed by the SEC.

Middle-class citizens have no such abilities. They do not possess subpoena powers. They should not be held, then, to the same standard as the SEC, nor should they be held to the same standard as the Federal Government.

Prof. Arthur Miller of Harvard Law School, who is perhaps the foremost expert in the area of civil procedure, has testified that fee shifting is almost invariably an intimidation device against plaintiffs. It is used to intimidate plaintiffs and to preclude them from proceeding with the protection of their rights, using the courts as they properly should.

This is especially true in the class action cases where one investor, the class representative, could find himself responsible for the fees incurred by huge corporations defending against the claims of the entire class. Remember, these corporations use enormous numbers of lawyers to litigate. Whole floors of hotels are peopled with attorneys whose sole function is to run the plaintiff out of money and out of resources.

Who could then afford to bring an action against Merrill Lynch or Charles Keating or Baring Bank or the people who brought the Orange County debacle if, at the end of the day, there was not just a chance but an almost certainty that the investor would be required to foot the entire legal bill for a corporate defendant, if it were certain that he had to post a bond amounting to enormous sums of money to assure that his lawsuit was not frivolous, and that he would be able to pay if the lawsuit went against him?

Here we see a significant difference between a suit that is unsuccessful and one that is frivolous. We are all opposed, I think, in this body to frivolous lawsuits, and indeed, we should be. The Manton amendment makes a clear distinction. Not all lawsuits are successful, and many that are not should have been.

It does not have to be done to American citizens this way. We do not have to have unfair, harsh, and restrictive bonding requirements. We do not have to impose enormous burdens on American citizens seeking to use their courts to protect their rights against wrongdoing and against the loss of assets taken from them by malefactors of great wealth.

I urge my colleagues to support the Manton amendment. I urge them to be fair to the little people of this country.

Mr. FIELDS of Texas. Mr. Chairman, I move to strike the last word.

Mr. Chairman, once again, I appreciate the manner in which my good friend, the gentleman from New York [Mr. MANTON], brings this amendment, but it is our opinion that the language of the amendment as it is currently drafted does not write rule XI of the Federal Rules of Civil Procedure into the law.

The current system that this statute is dealing with makes it easy for entrepreneurial plaintiffs' lawyers to file speculative suits simply for their settlement value. There is little risk. Plaintiffs' lawyers take these cases on a contingency basis, and since over 90 percent of the cases settle, they are basically guaranteed a recovery.

That is why we have come in with the language that we have. It is essential that reforms to the system must change the incentives so plaintiffs' lawyers will weigh the merits of the lawsuit before racing to the courthouse.

The language that is in the statute is not an automatic loser-pay type of situation. Judges retain ample discretion under the statute as it is drafted. The court may impose attorney fees only when a party pursues a case that lacks substantial justification, and imposing the fee on the loser or making the winner pay his own fees would not be unjust.

These will not be shifted in close cases, only those that should never have been brought. That is the purpose of this particular section of the statute.

The court has discretion to require all or part of the winner fees to be paid by the loser's attorney, rather than the losing parties themselves. This discretion allows the court to avoid undue hardship, while still sending the message that bringing frivolous litigation will result in penalties.

Armed with the knowledge that their fees are recoverable, defendants will have greater resolve to resist settling what many have begun to call nuisance lawsuits. Plaintiffs who prevail will not lose any of their rightful damages in paying huge attorney fees because the defendant will be forced to pay for having chosen to fight the plaintiff's meritorious claim.

Mr. Chairman, I would also like to go to the statute for just a moment, because much has been made of the undertaking required. I want to read this section of the bill that is labeled "Security for payment of cost in class actions."

It says in the statute that,

> In any private action arising under this title that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the court shall require an undertaking from the attorneys for the plaintiff class, the plaintiff class, or both in such proportions and at such times as the court determines are just and equitable for the payment of the fees and expenses that may be awarded under paragraph 1.

□ 1745

We believe, Mr. Chairman, that this statute grants wide latitude and great discretion to that trial judge. We did that for a very important reason. Because there are cases in which the judge may come in and say that stock is put up to satisfy that undertaking, or perhaps a dollar. So that is why that was built into this particular statute. By striking this, I think it makes the effort that we have mounted today defective and therefore I urge rejection of the Manton amendment.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank my friend for yielding. He stated very well the case against this amendment. If the case against this amendment were ever made perhaps even more eloquently than my friend from Texas, it would have been the judge in the 1989 decision entitled Necklin versus Weatherly Securities, Inc. In that case the judge held, and I quote, plaintiffs have not alleged a single fact which supports an inference of fraud.

He dismissed the case. But he declined to impose sanctions. The bottom line is that even in a case where the judge found that there was not even an allegation of an inference of fraud, he declined to impose sanctions under rule 11. I know the gentleman makes it mandatory under his amendment. The problem is that rule 11 has been terribly ineffective and even codifying it is not going to work. The provisions we have adopted out of the Committee on Commerce in this bill are much stronger and at the same time they give the judge great discretion to do what justice requires. If someone brings a lawsuit and they should not have brought it, not even substantially justified, but it would still be unjust for the judge to impose costs on them, when he dismisses the suit, he can do so.

But the gentleman knows as we have discussed this thing even further, there is even one greater reason to oppose the gentleman from New York's amendment, and, that is, if you want to avoid the deterrent sanction of this bill, under the gentleman from New York's amendment, all you have to do is hurriedly dismiss your suit right before the judge imposes the sanctions, because his amendment lets you do that. Under our amendment, you cannot get away with that.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has expired.

(By unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 2 additional minutes.)

Mr. FIELDS of Texas. I asked for 2 minutes so that I could first of all compliment the gentleman from New York and just say how much I appreciate the gentleman's sincere efforts in working out this section. I appreciate that deeply. I wish that we could have come to closure, but I did want to make this statement that the gentleman has made an honest attempt. I wish we could have come to closure.

Mr. MANTON. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from New York.

Mr. MANTON. I thank the gentleman for his kind words, Having the time, I would direct the question to the gentleman from Louisiana, referring to the case he just cited, if I understood correctly, in that case the judge found that the plaintiff's case was not meritorious, but if I understand the legislation before us that I am attempting to amend, you have to put the bond up in advance, it is a precondition before the judge decides anything. Am I correct?

Mr. TAUZIN. If the gentleman from Texas will yield, the judge may impose the requirement of a bond under the bill. He may impose the bond at $1, $1,000, whatever he thinks——

Mr. MANTON. If the gentleman will yield, that has been the rule since 1933, on both sides, both the plaintiff and the defendant could be subjected to having to put up an undertaking.

Mr. TAUZIN. If the gentleman would further yield to me so I can respond, this legislation does say now that we are providing a method by which the judge can impose fees upon the losing party if in fact the suit never should have been brought if it would not be unjust to do so and if it would not be undburdensome for the winning defendant to carry those fees.

He has got to find all three things. It does allow the judge to do that. Therefore, the requirement is that a bond be established, the lawyer can put up the bond if he has got an indigent plaintiff or the client can put up a bond, the judge determines how much of a bond, and the bond satisfies the requirements if it is ordered.

Mr. FIELDS of Texas. If I could reclaim my time, I just point out to the gentleman from Louisiana, the defendant is not there voluntarily.

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has again expired.

(At the request of Mr. MANTON and by unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 1 additional minute.)

Mr. MANTON. I have one last question from the gentleman from Louisiana if I could have the time.

Mr. FIELDS of Texas. I yield to my friend the gentleman from New York.

Mr. MANTON. I ask the gentleman from Louisiana, is it not a little unfair that the legislation that I am seeking to amend has the word "shall" when it refers to plaintiffs before they file suit, put up a bond, it makes no mention as does the old rule 11–E that everybody's familiar with that goes back to 1933, that has been in the act from the very beginning, it gave the judge discretion to impose a bond on either the plaintiff or the defendant.

Yet in this legislation, it says plaintiffs "shall" before there is any indication that this might be a spurious lawsuit or might be one without merit. Does that not seem a little unfair, a little one-sided to the gentleman?

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. The answer is that the judge has discretion to fix that undertaking. He can fix it at $1, $1,000, $2,000 $10,000 whatever it requires to guarantee that in effect the losing party is going to be able to respond to his order to shift the fees if it should occur and the judge still maintains a great deal of discretion.

Mr. MANTON. Should not the judge also say to the defendant, because it might be that the prevailing party might be the plaintiff who would then seek costs. Why is it that only the plaintiff class has to put up a bond, and it does say "shall," whereas no mention at all is made of the defendants who might not be the prevailing party?

The CHAIRMAN. The time of the gentleman from Texas [Mr. FIELDS] has again expired.

(At the request of Mr. TAUZIN and by unanimous consent, Mr. FIELDS of Texas was allowed to proceed for 30 additional seconds.)

Mr. FIELDS of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. The answer is that plaintiff has brought the lawsuit and has incurred those costs upon the defendant in a case where the judge has found the lawsuit never should have been brought. That is what fee shifting is all about.

If the plaintiff wins the case, the judge has the capacity to award the plaintiff such damages as the plaintiff incurred, and in many cases that includes much of his expenses.

It is only in the case where the judge says you never should have brought this case and it would not be unjust for you to have to pay the fees of a person you made hire an attorney and go through all this mess for nothing that we require the bond.

Mr. ROTH. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I will attempt to be brief. I want to say that I respect our friend the gentleman from New York in introducing this amendment, but I am opposed to this amendment because as I interpret this amendment, it guts the loser-pay provisions of the bill and that is one of the key provisions of this bill. It would replace the loser-pays language with language that when you look at it would seem to make the attorneys for the parties filing frivolous claims accountable. However, its conditions would be so numerous that very few attorneys, if any, would ever be penalized.

To analyze just a couple of these conditions: It would require that the defendant prove that the plaintiff's complaint was meant to harass or to increase the cost of the litigation. That is a whole new standard of proof.

This amendment is a poor substitute for discouraging frivolous claims. It shifts the burden of responsibility on attorneys, not to the parties filing the frivolous claims. Those filing the frivolous claims should be held accountable.

A major purpose of this bill is to discourage frivolous strike lawsuits that are costing American businesses billions of dollars in unnecessary expenses and billions of hours in wasted time.

Worse still, the costs of the legal liability are passed on to the consumers. That is, you and me and all the people that we represent wind up paying more than is necessary, and the legal costs make American products less competitive overseas. That is the real reason I took these few minutes to speak on this bill, because as chairman of the Subcommittee on International Economic Policy and Trade, I have been working to strengthen American exports and this amendment will not help in that endeavor. When American products cost more, fewer companies can export. My friends, we already have a $150 billion trade deficit. How much more do we want?

Further, according to the Rand study, 90 percent of all American companies can expect to become parties to litigation. I want to repeat that. According to the Rand study, 90 percent of all of American companies can expect to become parties to litigation. Already 15 percent of American companies lay off employees out of fear of excess liability.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. ROTH. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. The Rand study says 90 percent of these companies will be parties to litigation, but not tort litigation and not securities litigation. It is commercial litigation. Give the House the full benefit of the Rand study.

Mr. ROTH. Let me take back my time.

You are correct, the Rand study does say that 90 percent of all American companies can expect to be parties to litigation. That is just nuts. We cannot continue to operate that way. That is why the American people are out there screaming and asking this Congress to do something about reform. Too many jobs are being lost and too many people are being harmed. How long can we continue to let this happen? No wonder the American people are demanding reform.

Yes, the gentleman who offered this amendment is a nice guy, but this is a terrible amendment. We cannot vote for this amendment. The securities litigation reform bill is more than legal reform. That is the point. It is not only legal reform. That is the point. It is not only legal reform, this should be a job creation bill. That is what we have to vote on.

For that reason, I would hope that the Members would vote against the amendment.

Mr. BRYANT of Texas. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. If the Chair might, the gentleman was correct in suggesting that there be alternating recognition. The gentleman from Wisconsin had been on his feet when no one else was standing at the time. The Chair had thought earlier that the other colloquy had ended. The Chair wants to make sure the gentleman understood that.

Mr. BRYANT of Texas. I thank the Chair. The Chair has done a fine job in presiding. I appreciate his remarks.

The CHAIRMAN. The Chair was trying to be fair.

Mr. BRYANT of Texas. Mr. Chairman, I move to strike the requisite numbers of words.

Mr. Chairman, the comments by the previous speaker I think really say a great deal about yesterday's bill, today's bill and the one we are going to take up tonight and tomorrow. The Rand study was quoted, when he said 90 percent of all companies are going to be a party to the litigation. Yes, they are going to be a party to the litigation, commercial litigation. Not securities litigation like we are talking about today or tort litigation like we are going to be talking about tonight and tomorrow, but commercial litigation. I think it is incumbent upon us to stick with the facts. If the real purpose of this bill is to get rid of frivolous suits and that was the only purpose, first we would have some evidence, some kind of scientific evidence, economic evidence, something to show us that there really was a growing number of frivolous lawsuits against securities dealers, and second, we would have the Securities and Exchange Commission down here talking in favor of this bill and they are not doing that.

I think it is important for us in this last amendment to get this thing in perspective. What has the gentleman from New York [Mr. MANTON] proposed? What he has proposed is a reasonable standard for shifting the cost of the lawsuit to the plaintiff. If the lawsuit was found to have been brought by an improper purpose, or if the lawsuit was found to have been rewarded by existing law, or if the lawsuit lacked evidentiary support or would be lacking any evidentiary support after an opportunity for further investigation, or denials of factual contentions are unwarranted on the evidence, any four of those could work. If that happens, what does the judge do? The judge on motion shifts the costs of the case to the plaintiff.

This is rule 11, but it is rule 11 made mandatory and it is rule 11 including the shifting of fees, not just sanctions. It is a reasonable approach. What does it replace? It replaces the standards in this bill which really, I think, is a fitting end to this debate today. Hardly anything now is actionable any longer. Almost anything a securities dealer wants to do now, he can do and get away with. This bill has eliminated the ability to recover. The final provision we are debating in the bill today eliminates the ability of a person even to go to court. Why?

Because nobody has the money to post a bond in advance which the bill requires, or to face the possibility that they might have to pay the enormous fees of these firms.

I would just point out to the Members of the House here what The Economist, perhaps the most respected British journal, says about the British system which has rules like these fellows would like to put into law. It is interesting that the Republican bill here would sort of take us back to the royalist way of doing things. It says that the worst aspect of Britain's civil justice system is that it denies access to justice to huge numbers of people. Only the very wealthy can afford the costs and risks of most litigation. This offends one of the most basic principles of a free society. The best way to open the doors of the courts to everyone is to learn from a county whose legal system is closely modeled on that of Britain, America.

That was written in January 1995 by the Economist, hardly a liberal socialist fuzzy-headed group of theorists.

I would just conclude by saying that to rewrite the law so that the securities dealers always win, to rewrite the law so that a plaintiff or a class of plaintiffs or a city or a county or a pension plan or somebody who has lost their life savings cannot win a case against a securities dealer who has all the resources in the world at his disposal is bad enough, but to add into this bill a loser pay rule which says you have got to post a bond before you go to court and that you do not dare take your case to court because you might lose your home, your savings, everything you put aside for the kids' college, your farm or your ranch, that in my view is absolutely reprehensible.

□ 1800

The gentleman from New York [Mr. MANTON] has done a fine job of bringing this amendment forward and I urge Members to vote for the amendment.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, I would like the gentleman to go back to the Rand study again. Do you mean as presented by the last speaker that the Rand study is saying that 90 percent of the businesses that get sued or involved in suits that would involve the collection of debt between businesses, for example?

Mr. BRYANT of Texas. Of course.

Mr. DOGGETT. It has absolutely nothing to do with this bill, does it?

Mr. BRYANT of Texas. That is exactly right.

Mr. DOGGETT. Yet it is the kind of statistic that has been brought out every day this week and I guess we will hear it tonight and tomorrow also. It is totally and completely misleading, and this bill is going to do nothing about that statistic. Any business that is out there that has a commercial dispute with a supplier, either trying to collect a debt or because it thinks it has a legitimate defense to a debt, those suits are going to go on. And of that 90 percent, the vast majority of them will not be touched by one bill that is being considered on the floor of this House this week.

Mr. BRYANT of Texas. The gentleman's point is very well-taken; that is exactly right.

Mr. MARKEY. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Massachusetts.

Mr. MARKEY. Is it not true that out of the 270,000 cases in Federal district court that this bill is only going to touch 300 of them, which only affects 125 companies per year, and yet the number of tens of thousands we are talking about a half of a half of a half of 1 percent of all of the law cases brought in Federal court in the course of a year? And the gentleman from Wisconsin is completely wrong in his statistical representations.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BRYANT] has expired.

(On request of Mr. ROTH, and by unanimous consent, Mr. BRYANT of Texas was allowed to proceed for 30 additional seconds.)

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Chairman, if 90 percent of the business being sued is not high enough for the gentleman, does he think we should say have it 100 percent, if I say if you go into business you are absolutely automatically a criminal?

Mr. BRYANT of Texas. Of course not. The gentleman follows the point we are making, and he got up and quoted a figure that has no relevance. Eighty percent of the courts have commercial suits, and the Rand study the gentleman quoted was talking about commercial suits and he knows it.

Mr. COX of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will just pick up where this discussion has left off because I think the gentleman from Wisconsin is right on point when he talks about the litigiousness of our society, the crowded dockets, et cetera, in our Federal and State courts and the sense that every American is left with, that the civil justice system is not for them. They know when they go to the Federal courthouse near me in the Southern District of California, downtown Los Angeles, that they are looking at the second most crowded docket in America. They wonder why it takes them 5, 7 years to get to trial. Maybe all they have got is a case to collect a debt, but they have to wait in line behind these mammoth class action litigation suits that are taking years to resolve.

The fact of the matter is one out of every eight companies traded on the New York Stock Exchange has been hit with a strike suit. That is according to Vincent O'Brien and Richard Hodges in their study of class action securities fraud cases from 1988 to 1993 published in Law and Economics Consulting.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield on that point?

Mr. COX of California. Yes, I yield to the gentleman from Louisiana.

Mr. TAUZIN. I think a more important statistic, if the gentleman wants to argue statistics, is that the regime of law that they are defending they do not want to change today, according to that Vincent O'Brien-Richard Hodges study, found that investors received an average of 6 cents on the dollar in this legal dispute system under 10(b)5.

The only people making money are the attorneys. The investors get 6 cents on the dollar and that is the system being defended down here, the system people do not want to change. I suggest that is the most important statistic that has ever been quoted on the floor in this debate.

Mr. COX of California. I thank the gentleman for that elucidating point. What the Manton amendment does is merely import the requirements of rule XI of the Federal Rules of Civil Procedure into our bill and takes the post-December 1993 version of it, except it makes the imposition of fees mandatory as they were in the pre-December 1993 rule XI.

I went down and spoke at the American Bar Association winter meeting of their litigations sections, several hundred lawyers, and we talked in some detail about this legislation. We also talked about other pending legislation, legal reform, and when it came to rule XI, which is not part of our bill, the lawyers who were there to argue for and against every single one of these issues were unable to do so. The fellow who got up to argue the pro cases for rule XI, and he was just assigned the job, said I know I am a layer; I can take both sides of every issue, usually, but in this case rule XI, there is not any argument in favor of it. It does not work.

And that is what we know about rule XI. It has been tested and it does not work. It has been field tested, it has not accomplished its purpose.

Unlike the bill as it is presently written, the Manton amendment would permit the reduction of awards to the extent that the prevailing party unreasonably delays, but the Manton amendment requires imposition of fees on the attorney unless the court determines that the losing party was principally responsible for violation. In contrast, the bill as written leaves the issue of who to impose the sanction on in the discretion of the court. One of the reasons that all of those folks at the ABA meeting did not like rule XI was this very element of what the gentleman from New York [Mr. MANTON] would be introducing into the bill.

Mr. WHITE. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Washington.

Mr. WHITE. I think the gentleman is making an excellent point. It is clear to all of us that rule XI is virtually never invoked in court. That is why we need this legislation so badly.

I also would like to point out we do not need to get caught in the minutia of this bill; we are coming to the end, I think it is important to realize what is at stake.

I come from a suburb of Seattle that represents the future of the United States economy. It is home to Microsoft, McCaw Cellular, home to hundreds and hundreds of other small companies who are affected by these sorts of lawsuits, and I can tell you this bill is for them.

That is what this bill is all about. It is designed to allow our future economy to prosper without the sort of sword of Damocles of this sword hanging over them.

If I could, for just 1 minute I would like to read a letter I got from the founder of one of these small companies in my district, because I think it points out exactly what is at stake here. This comes from Mr. Darland, founder of Digital Systems in my district, a company that did not exist 10 years ago but was started in Mr. Darland's garage and has grown to be a very successful company.

Mr. MARKEY. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. The gentleman from Massachusetts [Mr. MARKEY] is recognized for the balance of the time.

Mr. MARKEY. Mr. Chairman, I rise in support of the Manton amendment. The Manton amendment seeks to prevent the scrapping of 200 years of American law being used to ensure that plaintiffs can bring cases where they feel they have been wronged in the financial marketplace. The English rule in this bill creates a burden on a plaintiff, a set of obstacles on a plaintiff that are higher than the set of obstacles that were in yesterday's loser-pay bill that was out here to be considered in diversity cases. It is an even stricter burden.

Loser pays is un-American. It is something that is completely outside of the traditions of the American jurisprudential history. It is absolutely impossible to imagine a situation where an investor who has lost only $5,000 or $10,000 or $15,000 would even consider bringing a case against a major financial institution, against a large company, if they feel that they have been defrauded; and if they lose the case, not lose the case and be out of court, but then have to prove that in fact the case was substantially justified, not just that it was not frivolous, but have to go through an entirely new proceeding to avoid having all of the costs that have been assumed by the large financial institution, by the large corporation, and hiring the largest law firms in New York or California or Boston to represent them.

It is un-American. The Manton amendment seeks to preserve the American tradition, where individuals can go to court and ensure that their case can be heard and not risk losing their house, losing everything they have saved in trying to fight to restore that which they have been wrongfully defrauded.

So this is a critical moment again for the House. It is once again going to vote on whether or not we want to impose the English rule, the loser-pay standard, upon American investors.

My heartfelt recommendation to every Member who is about to come out here and to vote is to continue, those who stood against loser pay yesterday to stand with the Manton amendment, to ensure that we retain that 200-year tradition of giving every American the right to go to court, the right to vindicate themselves before the bar of justice, without having to risk everything that they have ever earned in their life in paying the legal bills incurred by large corporations in trying to defend themselves against average Americans.

The CHAIRMAN. All time for consideration of the amendment has expired.

The question is on the amendment offered by the gentleman from New York [Mr. MANTON].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MANTON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 167, noes 254, answered "present" 1, not voting 12, as follows:

[Roll No. 214]

AYES—167

Ackerman
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Buyer
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Duncan
Durbin
Edwards
Engel
Eshoo
Evans
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kildee
King
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McNulty
Meehan
Menendez
Mfume
Miller (CA)
Mineta
Moakley
Mollohan
Murtha
Nadler
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Slaughter
Spratt
Stark
Studds
Stupak
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Wise
Woolsey
Wyden
Wynn
Yates

NOES—254

Abercrombie
Allard
Andrews
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Farr
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson (SD)
Johnson, Sam
Jones
Kasich
Kelly
Kennelly
Kim
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Minge
Mink
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Tucker
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Williams
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff

ANSWERED "PRESENT"—1

Lowey

NOT VOTING—12

Archer
Bilbray
Gibbons
Jefferson
McDade
McKinney
Meek
Neal
Rangel
Seastrand
Stokes
Zimmer

☐ 1828

Mr. FAZIO and Mr. DEUTSCH changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. POMEROY. Mr. Chairman, I rise today in opposition to the bill, H.R. 1058.

Before coming to Congress, I served 8 years as North Dakota's insurance commissioner. I was the State's chief regulator for insurance and came to know the job of protecting consumers very well.

It is with this background that I place great importance on the position of the State and Federal securities regulators with regard to this legislation. They unequivocally oppose H.R. 1058. The sole purpose of these regulators is the protection of investing consumers, and their opposition to this bill comes directly from that purpose. They believe it deals an unfair blow to the investing public.

Regulators have no financial stake in this legislation and I weigh their position as highly credible. We have regulators to provide a check in the system—to make sure someone is looking out for the consumer. In considering legislation like this, I believe it is imperative that we listen to their expertise. While I approve of the goal of H.R. 1058—to deter frivolous claims or curtail strike suits—this bill goes too far and limits the ability of aggrieved investors to pursue just recovery from fraud.

I regret the committee did not work with the financial regulators to devise a carefully tailored response to this important issue.

Mrs. COLLINS of Illinois. Mr. Chairman, I rise in opposition to H.R. 1058, the Securities Litigation Reform Act. This legislation, as was the case with the ill-conceived Attorney Accountability Act we just had before us, would slam the doors of justice on hard-working Americans who unwittingly fall victim to corporate misconduct and fraud. H.R. 1058's anti-consumer, pro-big-business, special-interests-at-any-expense outlook falls right in line with the rest of the GOP Contract With America.

I believe all of us in this Chamber recognize that there continue to be isolated cases in which meritless securities class action lawsuits are brought and we should take steps to deter such behavior. But the GOP's approach on this issue, as with all other issues during this first 100 days of the 104th Congress, has been to isolate instances of meritless suits, blow them out of proportion, and then attack them with a sledgehammer rather than with the laser-beam specificity they deserve. This is irresponsible politicking, not sensible legislating, Mr. Chairman.

H.R. 1058 couldn't offer a more favorable climate for corporate misconduct. The number of egregious provisions in this legislation is overwhelming. For starters, H.R. 1058 would require defrauded investors, prior to the discovery stage of a suit, to establish the fact that a defendant acted knowingly or recklessly. This is an almost impossible task that goes way beyond the already stringent judicial standard now in place that requires investors to allege facts providing a strong inference that they were wronged.

However, the bill perpetrates an even greater miscarriage of justice by allowing parties against whom suits are brought to employ an "I forgot to obey the law" defense. You got it—all a defendant in a securities fraud case will have to do if this bill passes is to say "Oops, I'm sorry, I just didn't remember to disclose that pertinent information," and they will be excused from prosecution. You can bet that this provision alone is making a whole bunch of unethical corporate wolves out there salivate at the prospects of an easy way out in cases of fraudulent activity.

Yet most distressing, as we have heard for a couple of days now from several Members, is the fact that H.R. 1058 imposes loser-pays requirements forcing a losing small investor in a securities fraud suit to shoulder the legal fees of the investment banking houses, accounting firms, megacorporations, and so forth. I don't want to tell my constituents who lose their life savings that they had invested in mutual funds, IRA's, or pension plans because of a fraudulent action that they must then risk their homes and whatever else they may have left to have even a chance of recovering a small portion of what they lost. Do you think these investors will pursue any suit? Get real, Mr. Chairman.

Conspicuously absent from this bill are provisions which would effectively balance the scales of justice in securities cases such as a restoration of aiding and abetting liability standards, restrictions on secret settlements and protective orders, and mandated preservation of evidence to name a few.

The fact remains that private securities lawsuits have been a powerful deterrent to fraud and have been invaluable in supplementing and enhancing Securities and Exchange Commission [SEC] enforcement of Federal securities laws. The Lincoln S&L debacle and the Drexel Burnham disaster were just two high-profile cases of many that were initiated as a result of private investor action. It is not justifiable to throw the baby out with the bath water in the name of so-called reform.

Mr. Chairman, the SEC is strongly opposed to this legislation. SEC Chairman Arthur Levitt testified before the Commerce Committee last year on this issue that "in the balance between the interests of investors and the interests of a better system, a better system is important, but it can't be at the expense of those investors." In follow-up comments this year the SEC reiterated that their first priority is "the rights of American investors and the integrity of the American capital markets," something this legislation is weak in addressing.

Obviously my Republican friends don't agree with the No. 1 priority of the Commission. Otherwise, we would not be debating the misguided legislation we have before us today.

I urge my colleagues to vote "no" and prevent what will amount to a grave injustice to our Nation's consumers and small investors should H.R. 1058 pass.

Mr. REED. Mr. Chairman, I believe legislation is needed to deter the meritless strike suits that are siphoning resources away from so many of our innovative bio-technology and high-technology companies. I also strongly support the sections of the bill dealing with proportionate liability for defendants who did not act knowingly. In fact, I have been a cosponsor of bills to correct these problems with securities litigation that were introduced by the gentleman from Louisiana [Mr. TAUZIN] in past Congresses.

However, I am troubled by some of the extraneous provisions that have been included in the legislation before us today. I am particularly concerned about the redefinition of the recklessness standard. Initially, section 204(a)(4) of the bill would have allowed any defendant to escape liability by asserting they genuinely forgot or that disclosure did not come to mind. Fortunately the drafters of this provision realized this sentence created a giant loophole for wrongdoers. Unfortunately, instead of deleting this absurd provision, a hastily drafted amendment was adopted that, to my mind, confuses the issue even further.

There are other troubling provisions. For example, the bill limits the plaintiff to only one amended complaint: there were six amended complaints in the suit against Charles Keating. An amendment to exempt municipalities from some of the bills restrictions was defeated. Municipalities are hardly the professional plaintiffs we are attempting to stop and should not be barred from protecting their—and the taxpayer's—interests.

As Arther Levitt, the chairman of the Securities Exchange Commission, has said, "Our markets are the best in the world, partly because our securities laws are the best in the world. We tamper with the securities regulation system at our peril."

If this bill comes back from the Senate in a more reasonable form, I intend to support it. But I cannot support it as it now stands. Responsible legislation is needed to stop frivolous lawsuits. But we should not hinder our ability to police future calamities like the savings and loan frauds, the Orange County bankruptcy, and an increasing number of derivatives scandals.

Mr. BAKER of California. Mr. Chairman, I rise today to express my support for H.R. 1058, the Securities Litigation Reform Act.

As a member of the leader's task force on legal reform, I am particularly pleased that we are passing the second of three major legal reform bills in this the first 100 days of the Contract With America.

The Securities Litigation Reform Act will limit the practice of frivolous strike suits against companies merely because their stock prices experience sudden fluctuations.

Under current law, we have witnessed the emergence of a cottage industry of attorneys who prey upon companies with volatile stock prices. To correct the problem of professional plaintiffs, H.R. 1058 restricts these unlucky investors from filing more than five class action suits within a 3-year period.

Additionally, the bill imposes loser-pays sanctions where the court determines that the position of the losing party was not substantially justified. In such cases, the loser is responsible for paying all court and legal fees. This provides a disincentive for litigants to flippantly file suits without merit.

Finally, H.R. 1058 creates a safe harbor from frivolous lawsuits to protect companies that publish market predictions. This forewarns potential investors of risk inherent in investing.

In my home State of California, and the bay area in particular, there are many small, high-growth, high-technology firms which are volatile by nature. These firms are often victimized by frivolous securities litigation.

For the good of the bay area, the State of California, and the entire United States, I am proud that the House of Representatives is passing this monumental legislation.

Mr. CARDIN. Mr. Chairman, there is no question that the securities litigation system can be improved. Too often, class actions are filed which result in each investor receiving a check for an insubstantial amount such as 50 cents while the attorney who filed the case reaps inordinace fees.

Changes to our securities laws must encourage innovation and investment, while at the same time deter white-collar crime and ensure the integrity of the financial markets. It must target frivolous lawsuits and other problems in the litigation process without impairing the ability of defrauded investors to sue.

While I support reasonable reforms, time has demonstrated that taxpayers and honest business people can suffer greatly from fraud and improper behavior. Although I supported final passage of H.R. 1058, there were some provisions—were too extreme. I voted in favor of the Securities Litigation Reform Act in order to show support for reform and to push the process forward. However, if the bill returns to the House, in the same form as it is presently drafted, I would find it difficult to support this legislation.

My concerns regarding H.R. 1058 include: Elimination of recklessness as a cause of action in securities fraud cases, enhanced pleading requirements which force plaintiffs to establish, before the discovery process occurs, that the defendant acted with the intent to deceive or defraud, requirement for class plaintiff to post a bond covering the legal fees and expenses of the defendants should the class plaintiffs not prevail and severe limitation of cases based on a fraud on the market.

Mr. Chairman, we must create reforms which control outrageous securities litigation without hurting investors. I am hopeful that a good compromise bill can be reached in conference with the Senate and that the House of Representatives will have an opportunity to vote on a bill that is reasonable but strong security litigation reform.

Mr. BILIRAKIS. Mr. Chairman, today we are considering an important piece of legislation, H.R. 1058, the Securities Litigation Reform Act. This bill reforms Federal securities law to stop the proliferation of strike lawsuits—suits filed by class-action attorneys on behalf of shareholders whose stock investments have failed to live up to their expectations.

Prior to the full Commerce Committee markup, I received numerous phone calls from constituents who were concerned that the Securities Litigation Reform Act would limit the ability of stockholders to sue if they are the victims of fraud. Normally, constituent communication is one of the most important sources of information that I rely upon to represent my district. However, in this particular case, I am not sure that the phone calls I received truly represent the views of my constituents.

Whenever Congress debates a controversial issue, all of my congressional offices are inundated with phone calls from concerned constituents. However, my district offices did not receive one phone call on this bill.

In fact, many of the calls my Washington office received were not even generated directly from individuals in my district. Rather, groups opposed to this legislation called my constituents and transferred their calls to Washington. These organizations instructed my constituents to say they were opposed to securities litigation reform. In many instances, my constituents were given very little information regarding this important legislation.

I find this practice abhorrent and misleading, Under the circumstances, I find it hard to believe that my constituents were presented with all of the facts regarding this legislation.

Over the last 5 years, the number of securities fraud suits has tripled. One of every eight companies traded on the New York Stock Exchange has been hit with a strike suit, and the most frequent targets of strike suits are small, fast-growing companies. In many instances, lawsuits are filed just hours after the news of a stock price decline with no evidence of wrongdoing.

Opponents of H.R. 1058 argue that investors will be hurt by the reforms included in this legislation. However, current law hurts victims of real fraud in several key ways.

First, individual shareholders who are part of the class action do not reap anywhere near the full amount of damages that are claimed in the suit. A study by the National Economic research Associates showed that the average investor recovers only seven cents for every dollar lost in the market, prior to the award of attorney's fees.

Second, current law encourages lawyers to file as many suits as possible and to settle them quickly, regardless of their merit. The sheer cost of going to trial is enough to compel most companies to settle out of court, even if they have done nothing wrong. Approximately 90 percent of companies sued eventually decide to settle.

In many cases, the plaintiffs would be better off going to trial but the cases are settled because a settlement guarantees a significant attorney's fee and eliminates any risk of failure to recoup funds already invested in the case.

To correct these shortcomings, H.R. 1058 creates plaintiff steering committees that are appointed by the court to make sure that class action lawyers act in the best interests of their clients.

This legislation will also make it easier for plaintiffs to understand a settlement agreement reached on their behalf. H.R. 1058 requires that class action plaintiffs receive a simple, easy-to-understand summary of the proposed settlement terms, including the full amount of attorney's fees and costs.

The present system shortchanges victims of real fraud because even successful plaintiffs must pay their own attorney's fees out of their judgment, thus ensuring that victims of fraud do not recover all they are owed. In some cases, victims of fraud must pay as much as one-third of the compensation they receive to their own lawyers.

H.R. 1058 allows prevailing parties to recover their attorney's fees from the losing side, ensuring that victims of fraud recover everything they are entitled to receive.

Under H.R. 1058, the court may impose attorney's fees only when a party pursues a case that lacks substantial justification and imposing the fees on the loser would not be unjust. The court also has the discretion to require all or part of the winner's fees to be paid by the loser's attorney rather than the losing parties themselves.

The bottom line is that strike lawsuits hurt investors by diminishing the value of their holdings. Investors lose when the stock price declines because of litigation, and they lose again when the company has to deplete its assets for defense fees and settlement costs.

Moreover, strike suits harm the economy. Instead of spending money on research and development, hiring more employees or reducing the cost of their products, companies end up spending a great deal of money on strike suit insurance and legal fees.

Mr. Chairman, I urge my colleagues to support H.R. 1058. I believe this is an important piece of legislation which will benefit both companies and investors.

Mr. DELAY. Mr. Chairman, today we consider legislation to end widespread abuses in our legal system—to end a litigation tax on many of the most productive companies in America.

The securities litigation reform bill before us today—H.R. 1058—will restore common sense to the Federal securities laws. When Congress wrote these statutes 60 years ago, the private right of action that H.R. 1058 addresses was not even contemplated. But 60 years of judge-made law have created a system that Congress never anticipated and that no one can defend. Today, the Federal securities laws are compensating defrauded investors little, but are making plaintiffs' lawyers rich.

The consensus for reform is overwhelming—SEC Chairman Arthur Levitt, pension fund managers from some of our largest cities and States, investor representatives, issuers, auditors, academics, business leaders, entrepreneurs, Democrats and Republicans—all agree that meaningful reform is necessary. And this is the legislation to do it.

Mr. Chairman, H.R. 1058 is a good bill that will protect jobs and stimulate economic growth—particularly for high-tech companies that are frequently the targets of these securities strike suits. It will end the legal extortion practiced today against many of America's most promising companies. It will free-up resources for investment in R&D, business expansion and job creation—rather than in lawyers and litigation expenses.

H.R. 1058 is a compromise bill that has been amended since its introduction to address many of the concerns expressed by our friends on the other side of the aisle.

And it is a bipartisan bill that includes among its original cosponsors my good friend from Louisiana and enjoys the support of many of my colleagues from the Democratic Party.

Mr. Chairman, Congress has avoided its responsibility to fix the securities litigation system for 60 years. But today we have the opportunity to act. Today we have the opportunity to restore the Federal securities laws to their intended purpose—to protect investors and keep America's securities markets the safest and most liquid in the world.

I urge my colleagues to pass H.R. 1058 and put an end to abusive securities litigation.

Mr. BILBRAY. Mr. Chairman, a core component of the American Dream is that hard work, creativity, and innovation is encouraged, and more often than not, rewarded with success. Unfortunately, for a vast number of small, fast-growing high-technology and biotech companies in southern California, the Silicon Valley, and elsewhere around the country, this dream has turned into a nightmare. A small fraternity of attorneys have discovered that exploitation of loopholes in our existing securities laws can be extremely lucrative, and they have elevated the cunning application of meritless class action lawsuits to an art form.

Class action lawsuits, or strike suits, have had a devastating effect on biotech and high-technology firms, whose traits—volatile stock prices, rapid product development, and constantly evolving technology—make them an easy target for strike suits. If a company's stock shifts abruptly in one direction or another, or quarterly earnings are less than projected, it is likely to be targeted by a strike suit filed by plaintiffs' attorneys alleging fraud. Often, these suits are filed within hours of the stock fluctuation.

These suits have the effect of draining massive amounts of time and money from some of America's most competitive industries. A perverse result of these situations is that once hit with a strike suit, for many small companies it is cheaper to settle out of court—despite their innocence—in order to avoid a prolonged and costly court process. This amounts to legalized blackmail, and makes a mockery of that quaint concept of innocent until proven guilty.

Far from benefiting investors—on whose behalf these suits are ostensibly filed—these settlements typically recover only pennies on the dollar for investors, while the attorneys who brought the suit recover an average of 30 percent from large pretrial settlements. Investors are also penalized in the long run, as another side effect of strike suits is to reduce the incentive for voluntary disclosure of forward-looking information by a given company.

From my district in San Diego, up the State to the bay area, and elsewhere across the United States, these predatory strike suits have hamstrung some of our most competitive and growth-oriented industries, with predictable results. If a company is fortunate enough not to have to downsize or lay off employees, it is often forced to divert its resources from R&D, or product improvement.

In many instances, these companies are researching cures for such diseases as Alzheimers, AIDS, or breast cancer, or are developing medical implant devices which can help prolong or improve the quality of life for the ill and the elderly. If such research is discouraged, as it now is, and these products are kept from the market, as many have been, who is actually benefiting? Certainly not the little guys whom the strike suit attorneys claim to represent. A cursory review of the average fees garnered by strike suit attorneys indicates exactly whose interests are truly being furthered.

The bottom line is that American people are being taken for a ride under the current system—here's how:

First, new drugs and medical products that American consumers need and want are being priced out of reach, or kept from the market altogether by meritless strike suits;

Second, American taxpayers are footing the bill for the lengthy trial and appeal processes forced by these meritless strike suits; and

Third, America's competitive advantage in high-technology and biotechnology markets is being crippled by meritless strike suits, which adversely affect local and regional economies through lost jobs and business opportunities, in addition to hamstringing our ability to compete in the international markets.

H.R. 1058 will address these abuses, making rational, substantive, and fair changes in our system. It will benefit our economy, our competitiveness, and most importantly, the American people. Mr. Chairman, I urge my colleagues to rise in strong support of the Securities Litigation Reform Act; it's been a long time coming.

Mr. GANSKE. Mr. Chairman, I rise today in strong support of H.R. 1058. We must end the abuse that is eroding our legal system.

As so poignantly stated by SEC Chairman Arthur Levitt:

> Private actions are intended to compensate defrauded investors and deter securities violations. If the current system fails to distinguish between strong and weak cases, it serves neither purpose effectively.

I couldn't agree more. Unfortunately, this is precisely what we are left with today—an ineffective system.

The changes mandated by the Securities Litigation Reform Act currently before the House help restore responsibility and respectability to our court system.

First, the provision that imposes the loser-pays rules when the court determines the position of the losing party was not substantially justified. This prevents the consummate race to the courthouse. Plaintiffs with have to weigh the merits of their case before filing suit.

Opponents claim this will have a chilling effect on a plaintiff's right to sue. This simply is not the case. The modified loser-pays provision will only result in fee shifting in cases which should not have been brought in the first place. The only thing chilled by this provision will be meritless suits, which I believe deserve to be put in the deep freeze.

Second, as for the definition of recklessness, the current law is vague and uncertain. Parties may engage in nearly identical conduct, yet courts will reach completely different results. The vagueness and uncertainty of the current standard has led to a great deal of inconsistency, confusion and unfairness in our judicial system. I think all of us would agree that by creating consistency, we increase fairness and decrease the possibility of injustice in our legal system.

In general, strike suits under current law do more harm than good. Reform is needed for two main reasons. No. 1, proper plaintiffs must have a place to redress valid grievances in a system ensuring fraud victims recover their losses and not merely the estimated pennies on the dollar.

Number two, the securities industry must be allowed to get back to its intended functions. We must help foster a market that allows the industry to do its job and not spend all of its time defending meritless strike suits.

H.R. 1058 accomplishes both of these goals. I urge my colleagues to support this legislation which protects both the securities industry and individual investors.

Mr. LAFALCE. Mr. Chairman, I rise today to state my reluctant opposition to this bill, for I had hoped it would be adequately amended so that I could support it. Instead, I must comment on several serious issues that yet remain to be addressed with this legislation.

This week's so-called tort reform legislation consists of three bills, addressing in turn civil litigation, securities litigation, and product liability. In each case, I believe the proponents of the bill have recognized a real problem, but have attempted to write into law remedies that far exceed those needed to address the problem, and far exceeding those that are desirable.

Today's bill, H.R. 1058, is the least problematic of these bills. It addresses a discrete but serious issue—the filing of frivolous securities fraud class action lawsuits. As the Chairman of the Securities and Exchange Commission agrees, this problem clearly exists and may be growing. A very small group of overzealous attorneys pursue these lawsuits, often within hours of a significant change in the price of a stock or security. These attorneys keep on hand stables of professional plaintiffs for these suits, and prey on high-technology companies whose stock prices are naturally volatile. In many cases, companies are forced to settle out of court, rather than endure a lengthy and expensive trial on the merits.

The evidence indicates that such lawsuits are often baseless. However, the costs of defending such suits places a significant drag on high-technology and startup companies, not to mention their directors, officers, and accounting firms.

Without a system of proportionate liability—such as that proposed in H.R. 1058—accounting firms, for example, justifiably fear the prospect of being named as codefendants in these class action lawsuits. As a result, some now choose not to perform accounting and auditing services for this growing sector of our economy.

For these reasons, I had hoped to be able to support a bill that would address the specific problem of securities fraud class action lawsuits in a responsible way. Instead, like so many other bills seeking to enact the so-called Contract With America, we have today considered a bill that far overreacts and far overreaches.

H.R. 1058 did improve somewhat as it moved through the Commerce Committee, both at the subcommittee and the full committee level. Unfortunately, House leaders chose to circumvent the Legislative process in the Judiciary Committee, where further improvements could have been made. Today on the House floor, several valuable amendments to the bill were offered, including one by my colleague from New York [Mr. MANTON]. These amendments were not even considered seriously. I am forced to conclude that proponents of this bill do not intend to pursue reasonable compromise. I hope that the Senate will be more deliberate, and that any future conference agreement might weigh these difficult issues in a more responsible manner.

But at this time, H.R. 1058 contains numerous flaws, including: an unduly burdensome loser pays provision, prohibitive fact pleading requirements, an onerous bond requirement for the filing of class action suits, the need to show scienter rather than recklessness in order to prove securities fraud, et cetera.

These are serious defects, which must be responsibly and deliberately addressed. For these reasons, I must now oppose passage of H.R. 1058, but hope it will be moderated significantly in conference with the Senate, so that I could then support final passage of the conference report.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. McINNIS) having assumed the chair, Mr. COMBEST, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

□ 1830

The SPEAKER pro tempore (Mr. McINNIS). Under rule the previous question is ordered.

Is a separate vote demand had on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. MARKEY

Mr. MARKEY. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman from Massachusetts opposed to the bill?

Mr. MARKEY. I am opposed to the bill in its present form, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Markey moves to recommit the bill, H.R. 1058, to the Committee on Commerce with instructions that the committee report the bill back to the House forthwith, with the following amendments:

Page 7, beginning on line 19, strike subsection (c) through page 11, line 8, and insert the following:

"(c) AWARD OF FEES AND EXPENSES.—

"(1) AUTHORITY TO AWARD FEES AND EXPENSES.—If the court in any private action arising under this title enters a final judgment against a party litigant on the basis of a default, a motion to dismiss, motion for summary judgment, or a trial on the merits, the court shall, upon motion by the prevailing party, determine whether—

"(A) the complaint or motion is being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

"(B) the claims, defenses, and other legal contentions in the complaint or motion, taken as a whole, are unwarranted by existing law of by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

"(C) the allegations and other factual contentions in the complaint or motion, taken as a whole, lack any evidentiary support or would be likely to lack any evidentiary support after a reasonable opportunity for further investigation or discovery; or

"(D) the denials of factual contentions are unwarranted on the evidence or are not reasonably based on a lack of information or belief.

"(2) AWARD TO PREVAILING PARTY.—If the court determines that the losing party has violated any subparagraph (1), the court shall award the prevailing party reasonable fees and other expenses incurred by that party. The determination of whether the losing party violated any such subparagraph shall be made on the basis of the record in the civil action for which fees and other expenses are sought.

"(3) APPLICATION FOR FEES.—A party seeking an award of fees and other expenses shall, within 30 days of a final, non appealable judgment in the action submit to the court an application for fees and other expenses that verifies that the party is entitled to such an award under paragraph (1) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.

"(4) SANCTIONS AGAINST ATTORNEY.—The court—

"(A) shall award the fees and expenses against the attorney for the losing party unless the court determines that the losing party was principally responsible for the actions described in subparagraph (A), (B), (C), or (D) of paragraph (1); and

"(B) may, in its discretion, reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy.

"(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit or impair the discretion of the court to award costs pursuant to other provisions of law.

"(6) DEFINITIONS.—For purpose of this subsection, the term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees and expenses. The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of services furnished.

Page 28, line 12, insert before the period the following: ", except that this Act and the amendments made by this Act shall not apply to any action commenced by any State or local government, or any agency or instrumentality of any State or local government, before the date which is 3 years after such date of enactment.".

Mr. MARKEY (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MARKEY] is recognized for 5 minutes.

Mr. MARKEY. Mr. Speaker, this recommittal motion contains two of the worst elements of the legislation which is pending before the House right now and seeks to correct those two portions of the legislation.

The first part of the recommittal motion deals with the issue of the English rule versus the American rule. That is the question of whether or not a plaintiff, when they file a case and lose, should be subject to having to pay the legal bills of the prevailing side.

The English rule is completely outside the traditions of American jurisprudence. What we seek to do in the recommittal motion is to insure that there is a correction made that does not in fact impose upon plaintiffs who happen to lose cases which they have brought against large financial or industrial institutions in this country the responsibility of shouldering the legal bills of those financial or industrial firms.

The Manton amendment, which we just considered, dealt with this issue extensively in debate. We are sure all the Members understand this issue. We debated a similar form of this "loser pays" proposal all day yesterday on the floor of this House.

The second part of the recommittal motion deals with the Dingell amendment, which was made unsuccessfully earlier this evening. The Dingell amendment seeks to deal with the reality that no municipality, no mayor, no city council in this country has ever been charged with bringing a frivolous action in a case where they believe that the municipality has been defrauded.

As a result, the Dingell amendment sought to insure that there is a 3-year period in which the onerous burdens of this legislation are not imposed upon a municipality, that those municipalities can still bring actions up to 3 years based upon financial irregularities. So the heart of the Dingell amendment was that any State government, any municipality, any county in the United States can sue under existing law without the much higher burden which is imposed by the bill which is now pending before the House.

This measure insures that those mayors, those Governors, those city councilmen, those county commissioners who have never had a single charge levied against them that they ever brought a frivolous case, can continue to bring actions under the existing law. So, if the case exists where the derivatives, where fraudulent financial instruments have in fact been sold to municipalities, to State governments, to county governments, that they in fact are able to continue to bring lawsuits under the existing standard which had served our country well for the last 60 years in this country in securities fraud cases.

So this is a very simple case. The National Association of Mayors support the Dingell amendment and want the language in the existing bill to be deleted. The National Association of Government Securities Officials want this language to be deleted from the language. The recommittal language sends back to committee the portions which deal with "loser pays."

This bill is a much harsher version of the English rule than the "loser pays" rule that was voted on yesterday. Under this bill, if the 3-part test of not substantially justified, imposing fees and expenses on the losing party or its attorney would be just and the cost of the fees to the prevailing party is burdensome or unjust, then the loser must pay all of the attorney fees for the entire case.

In contrast, yesterday's bill just required the loser to pay that part of the attorneys' fees occurring after an offer of settlement was made and rejected or if the verdict was lower than the offer. The Manton language, in contrast, would require the losing party to pay the winner's fees if the case was frivolous or brought in bad faith. This responds to exactly the concern that the Republicans are complaining about.

If you are serious about wanting to penalize the attorneys when they have brought frivolous cases, then vote for this motion.

If you want the investors who have just lost their life savings to bet the house and put up a bond at the beginning of the case, then that would be incredibly intimidating. It would have a chilling effect on the willingness of investors to sue.

The recommittal motion seeks to insure that we do not establish insurmountable barriers to investors to be able to sue large industrial and financial powers in this country and insures the State, county, and municipal elements have the same laws they have always been able to use in order to protect their rights in court.

I hope there is an affirmative vote by this House to send this recommittal motion successfully back to committee so we can have an inclusion of these matters.

Mr. FIELDS of Texas. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from Texas [Mr. FIELDS] is recognized for 5 minutes.

Mr. FIELDS of Texas. Mr. Speaker, I will try to be very brief.

Both portions of the motion to recommit we have already voted on. The Dingell amendment, we do not want to see a dual standard: One standard that applies to municipalities and cities, and another standard that applies to everyone else.

In regard to the Manton amendment, we do not want to see the "loser pays" provision weakened.

What we do want to see, Mr. Speaker, is H.R. 1058 should not be changed as it was brought to the House because it revolutionizes the standard by which disputes arising under the securities laws are litigated.

This truly is an historic moment. This legislation will introduce for the first time the concept of proportional liability into the Federal securities laws. A defendant may be liable for joint and several damages only if found to have acted knowingly. Defendants found liable for recklessness will be held proportionately liable. Arguably, this is the most significant development in private securities litigation in the 61 years since the Securities Act was passed.

The bill also provides that the losing party, his attorney, or both, will pay the prevailing party's legal fees if the court enters a final judgment against them. The court has the discretion not to award fees if the losing party establishes that its position was substantially justified. The court will require the attorney, class, or both to post security for costs to insure that funds are available to pay the legal fees if they are awarded.

The Manton amendment would strike this out.

Mr. Speaker, I know the hour is late, and I will stop at this particular moment other than to say this is an historic moment for those who believe that we need commonsense legal reform.

Mr. Speaker, what I would like to do, for a moment, is to yield to the gentleman from Louisiana [Mr. TAUZIN], who has played such an important role not only in this Congress but in previous Congresses in moving a very important piece of legislation.

Mr. Speaker, I yield to the gentleman from Louisiana.

Mr. TAUZIN. I thank my friend for yielding. I will be brief. I do ask him to yield just to say a word thanks, a word of thanks not only to the chairman, who has been extraordinarily cooperative, the gentleman from California [Mr. COX], and others who have worked with us to moderate this bill, but also, more importantly, to Members of this body who are original cosponsors of this effort 4 years ago and have remained faithful to this effort to bring this bill to a conclusion. Members like Mr. PARKER, like Mr. HALL, Mr. MONTGOMERY, Mr. SHAW, Mr. MORAN, Members like Mr. RUSH, Mr. TOWNS, and Mr. BROWN, who have helped bring us to this point. I think we are about to pass a good bill. Defeat this motion to recommit, and we can pass this very historic bill.

I want to again thank all of those who persevered for 4 years to bring us to this point.

Mr. FIELDS of Texas. In closing, Mr. Speaker, I just want to thank the gentleman from Oregon [Mr. WYDEN] for his improving amendment regarding accounting reform. Also, Mr. MINETA for his amendment regarding safe harbor.

Mr. Speaker, with that, I urge my colleagues to vote down this motion to recommit and then vote for passage.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken, and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. MARKEY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 172, noes 251, answered "present" 1, not voting 10, as follows:

[Roll No 215]

AYES—172

Abercrombie
Ackerman
Andrews
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Duncan
Durbin
Edwards
Engel
Eshoo
Evans
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hall (TX)
Hamilton
Hastings (FL)
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
King
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McNulty
Meehan
Menendez
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Moran
Murtha
Nadler
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Rivers
Roemer
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Vento
Visclosky
Volkmer
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—251

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger

Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Farr
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

ANSWERED "PRESENT"—1

Lowey

NOT VOTING—10

Bilbray
Gibbons
Hoke
Johnston
McDade
McKinney
Meek
Neal
Rangel
Velázquez

□ 1901

Ms. ESHOO and Mr. EDWARDS changed their vote from "no" to "aye."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MARKEY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 325, noes 99, answered "present" 1, not voting 10, as follows:

[Roll No. 216]

AYES—325

Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Bevill
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brown (OH)
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeLauro
DeLay
Deutsch
Diaz-Balart
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Everett
Ewing
Farr
Fawell
Fazio
Fields (LA)
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Gallegly
Ganske
Gejdenson
Gekas
Geren
Gilchrest
Gillmor
Gilman
Gingrich
Goodlatte
Goodling
Gordon
Goss
Graham
Green
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson-Lee
Johnson (CT)
Johnson, E. B.
Johnson, Sam
Jones
Kasich
Kelly
Kennedy (RI)
Kennelly
Kim
King
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lucas
Maloney
Manzullo
Martini
McCarthy
McCollum
McCrery
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Meehan
Menendez
Metcalf
Meyers
Mica
Miller (FL)
Mineta
Minge
Molinari
Montgomery
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Olver
Ortiz
Orton
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Royce
Rush
Sabo
Salmon
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schroeder
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Tiahrt
Torkildsen
Torricelli
Towns
Traficant
Upton
Vento
Visclosky
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Wyden
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—99

Abercrombie
Becerra
Beilenson
Berman
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Bryant (TX)
Clay
Clayton
Clyburn
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
DeFazio
Dellums
Dicks
Dingell
Dixon
Doggett
Durbin
Engel
Evans
Fattah
Filner
Flake
Foglietta
Ford
Gephardt
Gonzalez
Gutierrez
Hall (OH)
Hastings (FL)
Hilliard
Hinchey
Jacobs
Jefferson
Johnson (SD)
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kildee
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Luther
Manton
Markey
Martinez
Mascara
Matsui
McDermott
Mfume
Miller (CA)
Mink
Moakley
Mollohan
Murtha
Nadler
Obey
Owens
Pastor
Payne (NJ)
Pelosi
Pomeroy
Poshard
Rahall
Reed
Reynolds
Rivers
Roybal-Allard
Sanders
Scott
Serrano
Stark
Stokes
Studds
Stupak
Taylor (MS)
Thompson
Thurman
Torres
Tucker
Velazquez
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wynn
Yates

ANSWERED "PRESENT"—1

Lowey

NOT VOTING—10

Bilbray
Coleman
Dickey
Gibbons
McDade
McKinney
Meek
Moorhead
Neal
Rangel

□ 1911

Mr. TAYLOR of Mississippi changed his vote from "aye" to "no."

Mr. MEEHAN changed his vote from "no" to "aye."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. BILBRAY. Mr. Speaker, I was absent due to an illness. I would like the RECORD to show that had I been present, on rollcall 213 I would have voted "nay," on rollcall 214 I would have voted "nay," on rollcall 215 I would have voted "nay," and on rollcall 216 I would have voted "aye."

Mr. ABERCROMBIE. Mr. Speaker, on Wednesday, March 8, 1995, I was meeting with a group of high school students—who traveled to Washington, DC, from the State of Hawaii—in a part of the Capitol where the voting bells could not be heard and missed rollcall vote No. 210. I want the RECORD to show that had I been present I would have voted "nay" on rollcall vote No. 210, the Cox substitute amendment to the Eshoo amendment.

AUTHORIZING THE CLERK TO MAKE TECHNICAL AND CONFORMING CHANGES IN H.R. 1058, SECURITIES LITIGATION REFORM ACT

Mr. FIELDS of Texas. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, the Clerk be authorized to make technical corrections and conforming changes to the bill.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

GENERAL LEAVE

Mr. FIELDS of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include extraneous material, on H.R. 1058, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

REMOVAL OF NAMES OF MEMBERS AS COSPONSORS OF H.R. 56

Mr. ARCHER. Mr. Speaker, I ask unanimous consent that the following Members be removed as cosponsors of H.R. 56: Messrs. WELLER, FUNDERBURK, MINGE, HOLDEN, CRAPO, KNOLLENBERG, MCDADE, BRYANT of Tennessee, BASS, and OXLEY, and Mrs. WALDHOLTZ.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. SOLOMON asked and was given permission to address the House for 1 minute.)

Mr. SOLOMON. Mr. Speaker, for the benefit of the Members, the next order of business is the rule and general debate only on H.R. 956. This is an agreed-to rule. We do not expect a vote on it. Thereafter, we would go right to general debate. The gentleman from Missouri [Mr. VOLKMER] just shook my hand and agreed to this, so I think we can safely say there will be no further votes tonight.

Mr. WISE. Mr. Speaker, if the gentleman will yield so I can speak out of turn for 1 minute, let me just say I do not pretend to speak from great knowledge, but I would advise members that I have been informed that that assurance may not be able to hold up as to no votes. I just do not want Members to leave here. That is not coming from me.

Mr. SOLOMON. Mr. Speaker, I would just point out that the rule that is about to be debated provides for 2 hours of general debate. This is not a rule dealing with the amendment process. That rule will not come on the floor until tomorrow. I wanted to make that clarification.

Mr. WISE. Mr. Speaker, as the gentleman is aware, any Member on either side can call for a vote on even this uncontested rule.

FURTHER LEGISLATIVE PROGRAM

(Mr. ARMEY asked and was given permission to address the House for 1 minute.)

Mr. ARMEY. Mr. Speaker, I wish to address the House for the purpose of announcing a schedule change.

Mr. Speaker, last week I announced that the House would be considering term limit legislation on Monday and Tuesday, March 13 and 14. After meeting with the term limit supporters, we have decided to move term limits to the end of the month to maximize public debate and to give our constituents the opportunity to express their views on this historic legislation.

Mr. Speaker, a byproduct of this schedule change, one that I know Members will be particularly interested in, is that there will be no votes on next Monday, the 13th.

Mr. Speaker, on Tuesday the House will convene at 12:30 for morning hour. Business will begin at 2 o'clock, and there will be no votes before 5 o'clock on Tuesday next.

PROVIDING FOR CONSIDERATION OF H.R. 956, COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

Mr. LINDER. Mr. Speaker, by direction of the Committee on Rules I call up House Resolution 108 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 108

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 956) to establish legal standards and procedures for produce liability litigation, and for other purposes. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed two hours equally divided among and controlled by the chairmen and ranking minority members of the Committee on the Judiciary and the Committee on Commerce. After general debate the Committee of the Whole shall rise without motion. No further consideration of the bill shall be in order except pursuant to a subsequent order of the House.

□ 1915

The SPEAKER pro tempore (Mr. EWING). The gentleman from Georgia [Mr. LINDER] is recognized for 1 hour.

Mr. LINDER. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas [Mr. FROST], pending which I yield myself such time as I may consume.

During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 108 provides for 2 hours of general debate on H.R. 956, the Common Sense Legal Standards Reform Act. Such time is to be divided equally between the chairmen and the ranking minority members of the Judiciary and Commerce committees, after which time the Committee will rise without motion.

Mr. Speaker, this is a rather simple rule which will not require a great amount of discussion. The House has completed 3 days of dialog on the first two components of legal reform, and House Resolution 108 simply assures a full discussion of H.R. 956.

This rule is designed to allow the House to continue this week's historic discussion over how to restore sanity to our Nation's legal system. These critical reforms will benefit virtually every phase of American life, and I believe that 2 hours of general debate provides ample time to discuss these reforms that will limit the devastating legal costs on the U.S. economy and the American work force.

The Committee on Rules had delayed reporting the second component of this rule until earlier this afternoon in order to provide more time to consult with the minority and the leadership. It has been our intention to present the minority with every opportunity to offer and vote on amendments to the principal sections of this bill, and the Rules Committee wanted to guarantee an additional day of discussions to provide Members on both sides of the aisle with this opportunity.

The majority has supported, these measures in the past, and I am pleased that House Resolution 108 was reported favorably from the Rules Committee yesterday by voice vote. I urge my colleagues to support this rule, and I look forward to a thoughtful and deliberative debate on all of the significant issues raised by this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I will not oppose this rule, but I must take this time to express my strong opposition to this so-called reform of product liability. Mr. Speaker, I am joined in my opposition to this bill by a variety of groups including, to name but a few, the Consumer Federation of America, the Consumers Union, the American Association of Retired Persons, the National Conference of State Legislators, and the YWCA.

Mr. Speaker, these groups oppose this legislation because it is an assault on American consumers—the very American people the Contract With America seeks to assist by getting government off their collective backs. This bill does get something off someone's back, but what the bill really does is provide immunity to manufacturers and industry. The bill does it by making it very difficult for injured consumers to seek redress in the courts and thereby insuring that dangerous products remain on the market.

Mr. Speaker, this legislation will dismantle 200 years of State common and statutory law. This bill ignores the fact that at least 45 States have undertaken significant reform in response to the perceived problems in local civil justice systems. If we are to undertake civil judicial reform, such reform should complement, not undo, the efforts of the States. This legislation does not do that.

My Republican colleagues contend we must pass this legislation because of an explosion of product liability litigation. Mr. Speaker, there is absolutely no evidence to support this claim. In fact, Mr. Speaker, product liability claims filed in Federal courts have actually declined by 36 percent between 1985 and 1991 and they represent only 4 percent of all tort filings in State courts. The National Center for State Courts reported last year that since 1990, the national total of State tort filings has decreased by 2 percent. They estimated that if this trend continues, in the next 10 years State courts will experience a decline of 10 percent in State tort filings. This, Mr. Speaker, is hardly an explosion. Quite the opposite in fact.

My Republican colleagues contend that this legislation is required because juries are making outrageous and excessive punitive damage awards that damage American business, both large and small. My Republican colleagues contend that the only way to protect business and insure its competitiveness is to cap punitive damage awards.

But the fact of the matter is, Mr. Speaker, punitive damages are only rarely awarded—39 States already do not permit them or severely limit their size. These limits have been imposed at the State level in spite of the fact that consumer products are responsible for an estimated 29,000 deaths and 30 million injuries each year. In fact, between 1965 and 1990, punitive damages were awarded in only 353 product liability cases, 91 of which were asbestos cases. Three hundred and fifty-three in 25 years hardly add up to excessive number of awards.

Mr. Speaker, the GAO has reported that the size of damage are closely related to the severity of the injury and the economic harm suffered by the victim. Is it excessive or outrageous to award punitive damages in the case of a severely burned 4-year-old when her pajamas catch fire? Is it excessive or outrageous to award punitive damages when an oil tanker runs aground and bespoils a large portion of the coastline of Alaska? I think not.

Mr. Speaker, the Rules Committee met earlier this evening to consider amendments to this bill. The recommended rule severely restricts the number and scope of those amendments which will be debated on the floor. My Republican colleagues have long complained that the process in the House was closed and did not permit open debate on critical issues facing this Nation. If this issue is so critically important, the Rules Committee majority should have seen fit to open the process when we consider this legislation for amendment tomorrow. I would hope the American people deserve at least that much.

I noted that the majority leader just a few moments ago announced that we are not going to have votes on Monday and that we will not have votes on Tuesday until 5. And yet we were told in the Committee on Rules that we just do not have enough time to consider all these amendments that Members want to offer. They cannot have it both ways. They cannot cancel, effectively cancel 2 days of votes and then tell the Members that we do not have enough time to vote. There are a number of speakers on my side who wish to be heard on this matter.

Mr. Speaker, I reserve the balance of my time.

Mr. LINDER. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. SOLOMON], chairman of the committee.

Mr. SOLOMON. Mr. Speaker, I thank the gentleman from Georgia for yielding me the time.

Mr. Speaker, I rise in strong support of this rule for H.R. 956, the Common Sense Legal Standards Reform Act of 1995. The rule provides 2 hours of general debate equally divided between the chairman and ranking members of the Committee on the Judiciary and the Committee on Commerce.

This is part 1 of a two-part rule which will provide Members adequate time to debate the principles associated with product liability reform as well as a large number of both Democrat and Republican amendments to this bill.

Recognizing the merits of this rule, the Rules Committee favorably reported this rule by a voice vote.

The rule will allow a fair and open debate of the important issues associated with this bill.

Mr. Speaker, our legal system needs reform. It has been reported that Americans file a lawsuit every 14 seconds in this country. This litigation explosion has been most evident in the area of products liability lawsuits.

Between 1973 and 1988, as courts liberalized product liability laws, the number of product liability cases increased by 1,000 percent. The cost of these suits has been estimated to be as high as $80 billion a year—this is greater than the combined profits of America's 200 largest corporations.

The cost of these frivolous lawsuits is devastating to America's businesses, consumers, and families. Today, our excessive reliance today on a patchwork quilt of conflicting State statutes and common law relating to product defects burdens interstate commerce, discourages innovation, exacerbates liability insurance costs, compromises American competitiveness, and forces Americans to pay higher prices.

H.R 956 will establish uniform Federal rules by which manufacturers and consumers alike will be able to abide as they engage in interstate commerce. The commerce clause of the Constitution reserved this right for the Federal Government and I believe it is time for the Federal Government to correct this area of our legal system. This bill must be passed to prevent the further growth of these burdens.

I urge my colleagues to support fair rule and the bill.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS of Illinois. Mr. Speaker, I rise in opposition to this rule and I do so for a number of reasons, first and foremost of which is the fact that H.R. 1075 is far from the commonsense reform that it purports to be. While this legislation is bolstered by a good deal of Republican rhetoric it is supported by little empirical need.

My GOP colleagues insist there is an explosion of product liability litigation and punitive damage awards which is negatively impacting American competitiveness and stifling business growth in this country. This is pure bunk, Mr. Speaker.

Product liability cases represent less than one-half of 1 percent of all civil filings in the State courts. In addition, a mere 355 awards for product liability punitive damages have been given out over the last 25 years, and those few awards have served to not only hold obviously negligent manufacturers accountable but also increase consumer safety. Ironically, there has been a 232 percent explosion commercial litigation between corporations over the same time period which H.R. 1075 doesn't even address.

Moreover, liability costs to American industries represent less than 1 percent of total operating costs and the fact remains that all companies, both foreign and domestic, are subject to the same laws in each State as well as abroad. What the current product liability system has done is increase American innovation and our reputation for safe and reliable products—something in which we can take pride and must continue.

Mr. Speaker, H.R. 1075 represents an absolute Federal power grab in an area that has historically been the province of the States. As a popular phrase in my city of Chicago states, "Stick around and the weather is bound to change," it seems a similar phrase could be used to refer to the manner in which my friends on the other side of the aisle continue to legislate with respect to State's rights.

H.R. 1075 will not create uniformity in product liability laws, as the National Conference of State Legislatures has testified. H.R. 1075 will not improve the functioning of our civil justice system. The only thing H.R. 1075 will do is preempt those State laws that effectively allow for injured consumers to be properly compensated for the harm caused them in favor of protections for the GOP's negligent, corporate, fat-cat contributors. This sure is not common sense to me or my constituents Mr. Speaker.

Before my colleagues cast a vote on this rule, I would ask them to consider the following:

A recent national telephone survey asked registered voters what they want, and don't want, as well as the kinds of things they mean when they think about common sense reforms.

Seventy-three percent said that the regulation of the civil justice system is just more of the same old big Government solution from Washington. Sixty-eight percent said the Federal Government shouldn't tamper with a justice system that lets citizens hold wrongdoers accountable, and 66 percent said politicians shouldn't tamper with a system that holds large corporations accountable to any individual.

Seventy-five percent of the respondents believe that "The only way corporations will stop making dangerous products is if they know they can be sued."

Eight out of 10 agree that "Corporations should be held accountable for their actions when they injure someone even if it is an accident."

Over 75 percent said that the current system should either remain the way it is, or be tilted more in favor of those injured in accidents.

Sixty-six percent of all people, and 72 percent of women believe that the "award a jury gives to the accident victim should not depend on how much the victim earns."

The survey also shows that there are some common sense legal reforms that people want. They include requiring court records to be open and available for reference rather than kept secret) a change I support and hope to accomplish along with Representatives SCHUMER and DOGGETT should H.R. 1075 proceed forward.

This is kind of thing the public thinks about when they hear the term "common sense legal reforms." It is pretty clear that what they don't think about are the unnecessary and draconian provisions such as those embodied in H.R. 1075.

I urge my colleagues to vote no on this rule and support the innocent victims of corporate misconduct, not the perpetrators of such activity.

□ 1930

Mr. LINDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, there are corporate fat cat contributors on both sides of this, I suspect. The trial lawyers contributed $2 million to the folks on the other side.

Mr. Speaker, for purposes of debate only I yield 5 minutes to the gentleman from North Carolina [Mr. COBLE].

Mr. COBLE. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Speaker, much has been said about the Contract With America. I think it has served most Americans well. I think most Americans are embracing it warmly.

That is not to say that I endorse all of the provisions of the contract. In fact, I have some problems with the bill that will be before us tomorrow. I do intend, however, to vote in favor of the rule now before us.

Mr. Speaker, as a member of the Committee on the Judiciary, I voted in favor to bring this bill to the full House because this issue deserves to be debated fully and openly in the House, not in the insular environs of a committee. This bill, as we all know, has been adeptly denied admittance to this floor for years.

Many times in the House, Mr. Speaker, Members who have no interest in legislation will indifferently reply "I have no dog in that fight." I have nothing but dogs in this fight, friendly dogs all: the insurance community, the business community, the medical community, the trial lawyers, and individual constituents throughout my district; this compounds the complexity of this issue, parties with whom I enjoy harmonious relationships, but who find themselves at odds with each other on this issue.

Mr. Speaker, I am troubled by what we are proposing here, because it is my belief that the law of torts and surrounding issues thereto which usually involve the insurance industry directly or indirectly are more appropriately addressed in the 50 State legislatures and/or the 50 offices of State insurance commissioners. I am not comfortable, Mr. Speaker, extending the tentacles of the Congress into an area that has traditionally been administered and regulated at the State level.

I, too, am uneasy about the proposal of capping the amount of damages. The awarding of damages, in my opinion, is best determined by the juries, the tryers of the fact in lawsuits. When we begin tampering with damages, this inevitably constitutes an invasion of the province of the jury. That province should be invaded only very infrequently, and only under extremely rare circumstances.

There are extreme examples of jury awards that are applied in defense of each side of this argument, Mr. Speaker, but extreme examples do not serve as valid reasons for dramatic change, nor for immediate reform.

Finally, during debate in the House Committee on the Judiciary it was implied that this issue pits rich against poor. That was indeed unfortunate, because this is not opulence on the one hand and poverty on the other. There are wealthy, poor, and middle class represented on each side of this very emotionally charged issue.

Perhaps some adjustment, some fine-tuning, if you will, is needed, but I fear the steps proposed by the bill at hand are giant steps when deliberate baby steps might be more appropriate.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. Mr. Speaker, I begin by commending the gentleman from Texas [Mr. FROST] for a valiant effort that nonetheless has produced the most grievous rule that I have had to work on in my career in the Congress.

On the matter of product liability, not discussed in this Chamber for many years, we now are presented with a modified closed rule, 6 hours of debate, 15 amendments designated by name, limited by amount of time, none being given over 40 minutes, none, and under these circumstances it makes legislating almost a travesty. I want this body to know that I have never felt so badly about the way that we have been treated in the Committee on Rules, not just this side, but the whole Congress, in taking up this measure.

Mr. Speaker, right off the bat, we are not going to be able to do much about the preemption of State laws, because we are putting caps on punitive damages on State laws.

In New Jersey, the damages, punitive damages that are now available against sexual predators will now be capped by this law. In Minnesota, a victim injured or killed by a driver under the influence of drugs or alcohol, the punitive damages will be capped under this law. In Illinois, punitive damages that are available to any person who sells or transfers an illegal drug to a child will be capped under this law.

This is absolutely outrageous, that we would be taking a few minutes to quickly run through a bill in a contractual effort to keep within a time limit.

Mr. Speaker, I ask my friends on the other side, and I have raised this a couple of times, if this is not friendly legislation to big business, then we do not know where we are and what we are doing. If you need the Wall Street Journal to help you out, here it is: "Big business is striking it rich in the GOP contract." I could say that, and I do, but they said it.

Just in case Members want to pretend that this is consumer-friendly or friendly to working people, it is not. It is an outrage.

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Ohio [Mr. HOKE].

Mr. HOKE. Mr. Speaker, I rise in strong support of this rule and in strong support of the bill.

Mr. Speaker, this rule or this bill is the kind of legislation that article 1, section 8 of the Constitution cries out for, the commerce clause, which says that the United States Congress has the power to regulate commerce between the States.

There is such a hodgepodge of legislation that exists in this country from State to State with respect to product liability legislation that we are in a situation where we absolutely need, we require, we must have a bill such as this that will standardize the way that product liability is dealt with in every State.

The reason for that is that in fact everything that is manufactured in this country is manufactured in a way that it flows immediately in interstate commerce. There is clearly justification, rationale, and frankly, the necessity of dealing with this problem at a congressional level for the entire Nation.

Mr. Speaker, this is a genuinely proconsumer bill. It may not be what the trial lawyers want, it may be anti-trial lawyer. Members may describe it that way; I am not sure that I agree with that, but it is clearly pro-consumer, because what it is saying is that we will not allow a lottery to be thrown any more to find out in what State or at what situation a particularly persuasive, a particularly eloquent, a particularly loquacious and compelling attorney will be able to bring forward a judgment that could never be brought if it were a criminal situation, bringing a fine against a particular defendant.

That is really one of the things that is at stake here, is that we have to remember that when we are talking about punitive damages, when we are talking about the awarding of punitive damages, we are talking about awarding damages in addition to economic damages, in addition to noneconomic damages. It is after the plaintiff, the damaged person, the aggrieved party, has actually been compensated, been compensated for all of the economic losses that they have incurred and all of the noneconomic losses they have incurred.

What this bill does is it says that punitive damages will be either a maximum of $250,000, or three times the economic damages that have been incurred. The reason that that is important is because we have something in this country called a Criminal Code, and the Criminal Code is designed to punish people for their wrongdoings, for their criminal acts.

If we have a sexual predator in New Jersey violating criminal statutes, then that is when the Criminal Code should be used and that person should be sanctioned, should be found guilty, and should be thrown away, but that is not the purpose of punitive damages.

Mr. FROST. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, people watching this debate at home on television may wonder what in the world is going on here. Let me take just a moment to explain.

Mr. Speaker, under the procedure imposed by the majority for the consideration of this bill, there are two rules, one rule tonight providing for two hours of general debate, and there will be another rule tomorrow, proffering a certain number of amendments, only five hours and 40 minutes to deal with all the amendments in the bill.

The second rule is so outrageous that Members who want to be able to speak against the bill must take time during the consideration of the first bill, because of the fact that the majority has so severely limited the opportunity to offer amendments. That is why Members are standing up and speaking on the merits, on the outrageous provisions of this bill, during consideration of the first of these two rules.

Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, this whole process is absolutely ridiculous. Let us talk about what we are doing here. We are taking the tradition of this country that has been in effect since this country began, and we are just throwing it up in the air and starting all over. We are doing it with one hearing, in which everybody was allowed 5 minutes to question witnesses, it was a huge panel of witnesses, and now we are not allowed any real amendments tomorrow.

There are all sorts of amendments, but they have been filed way, way down. I was not allowed to present mine, and many others were not allowed to present many of theirs. They have put real strict time limits on it.

I think most people in this body have no idea what they are doing. However, before people at home say "Oh, there they go again, they are all whining; don't the Democrats sound terrible," let me tell the average American how they are affected by this.

If you go into a drugstore and you go to buy some drugs, you assume that they have been looked at by the Food and Drug Administration, and you assume a certain safety level. You can forget that, because last week we did away with all that through risk assessment and regulatory reform and all the other stuff, because we wanted to lighten up on the pharmaceuticals.

Then you say "Okay, as an American, if I did buy something and it did not work, I can always hold the company accountable by suing them." Guess what, now we are taking on the other bookend tonight. That is what we are going to be talking about the next 2 days, taking away your right to sue, severely limiting your right to sue.

Therefore, the two things that Americans have relied upon, the little guy, the little guy, to hold the big guy accountable in this great system that we have, so we did not have Bhopal, and so we did not have those kinds of things, have really been radically changed in this contract. I am saying tonight "Wake up, America."

When you also look at what we are doing with punitive damages and preempting State laws, it is absolutely amazing.

□ 1945

The prior speaker, the gentleman from Michigan [Mr. CONYERS], our leader, was pointing out all the different laws there are. We could go on and on and on.

How about this one? Any agency that recklessly or willfully makes a mistake while transferring electronic funds.

You want to know how the average American could be messed up by that anymore? New Jersey would allow unlimited punitive damages in that case if you proved that they willfully did it.

"Hey, wrong. We're taking that away from them."

These things are very clearly on point.

How about Virginia where somebody can have unlimited punitive damages or there are no caps right now if an award is made available from a person who is injured or killed if someone is driving intoxicated? Someone like the *Exxon Valdez* or someone driving a train or a bus.

Under this, "No, we're going to cap it."

There are all sorts of issues in here for women and for children. This is another women-and-children-first bill, because noneconomic damages do not count. That means that if you are a parent that stays at home, you know what your value is? Zero when it comes to noneconomic value, because you did not get a paycheck. If you are a child, the same thing.

If it is about your reproductive organs or if it is about a fetus, the amendment I wanted to offer went to those issues, because women have seen over and over and over again the drug industry play fast and lose with them, whether we are talking about toxic shock syndrome, whether we are talking about IUD's, DES, or any number of things.

To say to women that the value of your reproductive organs are nothing unless I guess you have a job as a surrogate mother, then I suppose you would have economic damages, but that is not the average woman in America and we are not even allowed to present that amendment, the one that I think was the family-friendly amendment.

I hope people realize that we are not yelling to yell. We are yelling because we are throwing up hundreds of years of tradition in this country and this is the night where the little guys did not have the money to put in the legislative machine so the legislative machine is getting ready to roll right over them.

Mr. LINDER. Mr. Speaker, I yield myself such time as I may consume.

In response to the gentlewoman's comment that we are taking away the right to sue, only in Alice in Wonderland does that kind of language suffice. It reminds me of the character in one of those Alice-in-Wonderland stories that said, "When I use a word, it means exactly what I want it to mean."

Mrs. SCHROEDER. Mr. Speaker, will the gentleman yield?

Mr. LINDER. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. What does the gentleman mean, that I am Alice in Wonderland?

Mr. LINDER. The language the gentlewoman used, that this is taking away the right to sue, has an Alice-in-Wonderland quality about it.

The gentleman from Michigan who says this is the most egregious rule he has ever seen has a very short memory, because less than a year ago on the assault weapons ban, no amendments were allowed from either side at any time, a totally closed rule, an up-or-down vote.

As a matter of fact, this is not a 6-hour debate, this is a 12-hour debate. We have taken out the time for voting which your side has consistently asked us to do in the Committee on Rules. Six hours of actual debating on amendments.

Let me just say that the gentleman from Michigan was debating not this rule. This rule is about 2 hours of general debate. He was debating tomorrow's rule. Tomorrow's rule, he was speaking about with the time frames. As a matter of fact, tomorrow's rule has eight amendments in order from Democrats, six from Republicans and one bipartisan. I think it was just about March or May of last year when we were given the choice of voting up or down on the assault weapons ban with no opportunities for amendments. I think this is hardly more egregious than that.

Mr. Speaker, for the purpose of debate only, I yield 5 minutes to the gentleman from North Carolina [Mr. HEINEMAN].

Mr. HEINEMAN. I thank the gentleman from Georgia for yielding me the time.

Mr. Speaker, I stand in strong support of the rule and the bill itself. Why? Because meaningful tort reform is of great importance to all Americans, not just big business as the trial lawyers would have you believe. By limiting runaway punitive damage awards, we have the opportunity to help a myriad of local groups, such as the Little League, and the Boy Scouts, the Girl Scouts, cities and town governments, entrepreneurs, small business, doctors and nurses, and other providers of service.

Americans pay billions of dollars a year in litigation and higher insurance premiums resulting from product liability and personal injury cases. These litigation costs are prohibitive and stifle necessary innovation and research and development.

In a recent survey, 47 percent of U.S. firms said they withdrew products from the market for fear of litigation. Twenty-five percent had discontinued some form of research and development. Fear of litigation, that is what it was, a fear of litigation.

Frivolous litigation even threatens Little League. The astronomical cost of litigation and fear of being sued scares away volunteer coaches, umpires, and even the families of kids. Little League has seen its liability insurance skyrocket, up 1,000 percent from $75 a league to $795 a league.

Unbearable litigation insurance costs and fear of being sued unnecessarily is a common problem to all nonprofits. That is why the Common Sense Legal Reform Act will provide the predictability and proportionality in all civil tort cases.

Passage of the Common Sense Legal Reform Act is a vital step forward to provide equity throughout our civil justice system for all Americans.

Let's rein in those who are abusing the system and are negatively impacting small business, the YMCA, the United Way, the Boy Scouts, the Girl Scouts, and the Little League.

I strongly urge my colleagues to support the Common Sense Legal Reform Act.

Mrs. SCHROEDER. Mr. Speaker, will the gentleman yield?

Mr. HEINEMAN. I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. I thank the gentleman for yielding.

I just wanted to ask the gentleman about the State statutes that do allow civil recovery of punitive damages in the incidents of sexually abused children and so forth. I am sure the gentleman would agree with me that we should not be capping those in here, yet the attorneys we have talked to have all said that is what we are doing, whether it is sexually abused children or whether it is any number of these other things where States have allowed civil suits.

What do we do about that? I think it is terrible that we are not allowed to have a debate on that.

Mr. HEINEMAN. As the gentleman from Ohio [Mr. HOKE] had spoken before, he said that punitive damages are a surcharge and the meat and potatoes of litigation addresses itself to economic and noneconomic damages.

Mr. CONYERS. Mr. Speaker, will the gentleman yield?

Mr. HEINEMAN. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman for yielding. I happen to enjoy working with the gentleman. I know of his career as a law enforcement officer.

I do not believe that you would approve of us preempting the State law's punitive damages on sexual predators that are found guilty in any State. That is not a law enforcement position, it is not a civil rights position. It should not be your or my position. Right?

Mr. HEINEMAN. No, I do not believe so. I believe that what we are talking about are Federal tort cases, cases that are brought before the Federal Government. As far as punitive damages are concerned, punitive damages happen to come about by the fact that people go overboard in their conduct, in their premeditated conduct almost as much as the law says in this bill.

Mr. CONYERS. The gentleman is against punitive damages for sexual predators when the State law provides it and we are capping it in this bill? Please.

Mrs. SCHROEDER. If the gentleman would yield, I think it is very clear——

Mr. HEINEMAN. Excuse me. Let me reclaim my time. We are talking about the replacement of State law by Federal law. Federal law is to address itself to product liability as well as all other civil cases as the bill states.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentleman from California [Mr. BERMAN].

Mr. CONYERS. Mr. Speaker, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Michigan.

Mr. CONYERS. I just want to cite the law to the other side so there is no confusion. Title II, Punitive Damages Reform, section 201(c). "Except as provided, in any Federal or State court on any theory where punitive damages are sought." Applicability and Preemption.

This preempts State laws where punitive damages are concerned, no question about it. Maybe that is the reason that the gentleman made the response that he did to me on that question.

I thank the gentleman for yielding.

Mr. BERMAN. Mr. Speaker, I rise not in opposition to this rule. This rule is only to deal with the general debate issue. I rise, and I hardly ever do, in opposition to a rule, the rule that is being filed tonight, because I am so outraged by what it has done. Let's talk for a moment about what the Republican majority is doing.

On a bill which is different in many, many respects from the bill passed either out of Energy and Commerce or Judiciary, in other words, a bill unilaterally changed, we are being asked now to debate, without any kind of committee record on a number of its provisions, with a rule that will be offered tomorrow that will authorize amendments which were never raised in committee and which massively expand the scope of the bill. But neither one of those points I think are that critical.

I have not been one of the people who have been decrying the Republican decision to limit the time. You have to limit the time in House with 435 Members. I am not even one who decries doing a modified closed rule.

The balanced budget amendment I thought was a fair rule. You gave the Democrats the chance to take the shots they wanted to and the amendments that they had. But in this case, you are doing exactly and in the most outrageous and egregious form what you accuse the Democrats of doing. You are denying the Democrats the chance to participate in choosing their amendments and you are carefully selecting out of a large number of amendments that have been offered those amendments which would moderate this bill and the amendments which would moderate the excessive provisions of this bill and which have a chance of passage, which are in many cases being proposed by members of you own party, you are denying them the chance in allowing the amendments that are the most extreme, that raise the issue in the most clearer fashion and which are destined to lose.

You are determining the results of the legislation by the process of the rules. It is just what you ran on in November and said you would never do. It is just what the Speaker said he would never do, after the election, in his acceptance speech, what you at every press conference scream about and in every rules debate scream about. You are denying the amendments.

I am going to give a couple of examples. Punitive damages: There is a cap on punitive damages. The gentleman from New Mexico [Mr. SCHIFF], a Republican, proposes an amendment to limit that cap on all punitive damages just to product liability. He proposes another amendment to raise the cap to 3 times all damages, not just noneconomic damages.

The gentleman from Florida [Mr. MCCOLLUM], a Republican proposes an amendment to raise the cap from $250,000 to $1 million and from $250,000 to $500,000. You deny each and every one of those amendments and every other Democratic amendment, except one, the amendment, which I think is a good amendment, but it is an amendment which has no chance of passage, by the gentlewoman from Oregon that eliminates the cap entirely, because you cannot stand the test of a suggestion that something less extreme than what you are proposing but which still addresses the problem of runaway punitive damages might be offered on the floor, might win.

It is patently unfair, indefensible. I am waiting to hear the explanation for why the Schiff amendments, the McCollum amendments, the other Democratic amendments were not allowed, so you could allow the most far out amendment, an amendment that I plan to vote for, by the way, but an amendment that would totally wipe out any cap on punitive damages.

Let's talk about joint and several liability. You allow no amendment to strike joint and several, the change in joint and several liability. You do not allow my amendment to say that the minor tort-feasors no longer have joint liability but the major tort-feasors do. And you allow a Cox amendment never offered in either committee to extend the elimination of joint liability to every tort case in the country. A little automobile accident case in a rural county in Montana is now preempted by the proposed Cox amendment which you allow, never offered, and allow no amendments to modify.

□ 2000

You do not allow the Frank amendment which would have put a 20-percent limit on joint liability for both economic and noneconomic damages. It is an outrage, and I think tomorrow I am going to repeat this speech and I am going to find even better examples because you should have to face that you have betrayed everything you have been saying in this rule.

Mr. LINDER. Mr. Speaker, for the purposes of debate only, I yield 5 minutes to the gentleman from Florida [Mr. GOSS].

Mr. GOSS. Mr. Speaker, I thank the distinguished gentleman from Georgia, my colleague, Mr. LINDER, for yielding me this time, and I congratulate him on his handling of this rule.

I think it is very important that we bring the debate back to what we are here about tonight. What we have, as the gentleman from Texas has properly said, is the first of two rules. This evening's rule I think we could call the starter rule. It is designed to begin the discussion of product liability reform, and we want to have enough time over the next 2 days to consider all of the amendment proposals, but offered by Members from both sides of the aisle.

It was clear from our mini-marathon Committee on Rules meeting yesterday which lasted about 6 hours as we will recall, that Members acknowledge both the significance and complexity of product liability reform because we had 82 or so amendments. The two committees of jurisdiction, Judiciary and Commerce, worked diligently to present the House with a solid product. The combined bill we expect to consider in the coming days starting tomorrow and the next the day, under a carefully structured and I believe fair rule, takes important steps to bring about consistency and fairness in product liability law, while setting the parameters for consideration of damage claims.

Now, there is going to be disagreement on some of that. This is not an easy subject, but I think it is important to point out that the gentleman from Michigan who got up and said that he was feeling bad about this rule tonight is feeling bad a little prematurely because when I went back and took a look at some of the problems, this is a mighty good rule. There is no problem with this rule. And if he is concerned about the rule that is coming tomorrow, then I would suggest that we do a little comparison, reminding Members that we had 15 amendments made in order out of 80-some submitted. Eight of those happen to be Democrat amendments. One happened to be bipartisan, and 6 happened to be Republican.

Let me make a comparison with that and some of the rules, the modified and closed rules of the 103d under the other leadership. At that time we had the Reinventing Government Act. That came through with 34 amendments submitted to the Committee on Rules; 3 allowed, zero Republican.

How about campaign reform, 35 amendments submitted upstairs in the Rules Committee, 1 allowed? How about Motor Voter, 19 amendments submitted to the Committee on Rules, 1 allowed?

Omnibus Budget Reconciliation, 51 amendments brought before the Committee on Rules, 8 allowed, 7 Democrat, 1 Republican. The RTC Completion Act, 12 submitted, 1 allowed.

Now I ask Members when they bring a performance standard like that against what we are going to propose for the second staging of this rule which we will be happy to discuss with the Members tomorrow, I suggest they might want to go back and refresh their memories about how it was in the 103d and how much more open and how much fairer it is in the 104th in the way we are handling these things.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. GOSS. I am happy to yield to the gentleman from California because he is going to ask if the Democrats were allowed selection. They were invited to participate always, and my friend from California, Mr. DREIER, is going to speak in just a moment. I think if the gentleman will save his question for the gentleman from California [Mr. DREIER], he will find the gentleman from California [Mr. DREIER] is going to answer that question. I am happy to yield to the gentleman from California.

Mr. BERMAN. I might just add on that point that was not going to be my question.

Mr. GOSS. Well, I hope the gentleman is going to ask that question.

Mr. BERMAN. That is directly contrary to what the ranking member of the Rules Committee and the ranking member of the Judiciary Committee have told me.

Mr. GOSS. Present ranking? Ranking last year, ranking this year? I would be very happy, I am not sure which ranking members the gentleman is talking about. But I guess I could further complete my statement by saying all these egregious closed rules that we complained about so mightily last year, and I just read the gentleman's statistics, the very people who are complaining about this relatively open rule compared to them all voted for those egregiously closed rules and the RECORD is clear on that.

So I think it is a little bit disingenuous to say the sky is falling on this very important subject when we have made in order 15 amendments, have got all kinds of debate time out there. We have taken out, as we have been asked to do in the Committee on Rules, the walking time, the voting time and we have it adjusted down to pure debate time.

The gentlewoman from Colorado, who is rising, who I will yield to in a moment, complained she did not have all of her amendments made in order, but I believe she does have one of her amendments made in order if I am not mistaken.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. GOSS. I am happy to yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman for yielding.

First of all, there were 60 germane amendments as I understand that were not made in order. The ones made in order have very severe time limits on them, and the only thing I wanted to ask the gentleman about his analogy in prior years is I cannot think of any piece of legislation that was preempting all of this jurisdiction from the States in such a radical new direction and that is a very different kind of legislation.

Mr. FROST. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, the gentleman from Florida [Mr. GOSS] is a friend of mine, and an honorable person. However, he has engaged in this just extraordinary double negative. That was, it was bad in the last session, and so that justifies doing bad things in this session.

This is not what his party ran on in November. His party ran on open rules and open process, and now he is trying to justify an extraordinarily closed process that would rewrite 200 years of civil law in this country by saying what was done in the last Congress was terrible; this is not quite as terrible; but we are justified in doing this because of terrible things that were done in the previous Congress.

Mr. GOSS. Mr. Speaker, will the gentleman yield briefly?

Mr. FROST. There will be ample time as it goes on. I only yield myself 1 minute.

Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. Mr. Chairman, I would say to the gentleman from Florida [Mr. GOSS] that the sky is falling when your party takes two bills that came out of committee and rewrites them, and sends them out here and, lo and behold, we find out what they do is they take, put a cap on punitive damages for somebody who sexually abuses a child. I would say the sky is falling. That is a curious position for your party to take. They put a cap on punitive damages for somebody that is killed or injured by a drunk driver or somebody who is on drugs. I would say the sky is falling if your bill does that.

I would say the sky is falling if you put a cap for punitive damages for somebody that sells drugs to a kid. And that is what the Republican bill does that has been sent out here, that you rewrote after it came out of committee.

An very interesting about this rule you are talking about here for tomorrow, you are bragging about it, and we are going to hear some more bragging here about it in a minute I guess, the gentleman said he spent 6 hours in the Committee on Rules rewriting the rule but there are less than 6 hours of debate on the whole bill, and we are not even going to be working on Monday now, apparently, a bill that wipes out 200 years of common law.

I looked at these amendments. The gentleman knows what he said, that he has an open rule here, he has been fair and so forth like that. Sixty percent of the time in the rule for tomorrow is set aside for the very Republicans that wrote the rule in the committee, the bill in the committee, and then rewrote the bill when it came out of the committee.

There is only 2 hours and 20 minutes set aside for amendments from Democrats that disagree with the bill. Do not tell us it is a fair rule. At least you ought to get out here and admit you just tried to rig it so you are not going to be embarrassed by meaningful amendments.

The fact of the matter is you have a bill out here for which there is no empirical data to support the allegation that will underlie the philosophy of the bill. You are trying to tell the American people, the gentleman from New York [Mr. SOLOMON] ought to pay attention to what I am saying here because I am talking about what he said a minute ago, he said all of these tort filings are up and so forth. You do not have any study that says that; I do not know where you guys get the facts except I guess you all just talk to each other at the country club and you just agree, "Ain't it awful, ain't it awful what is happening?" and talk about what the facts are.

The facts are that the National Center for State Courts found that product liability cases are only 4 percent of all tort filing. Tort filings in turn are only 9 percent of all civil filings, and civil filings are only 27 percent of all filings, which means product liability cases represent 36/100ths of a percentage point of the civil caseload and 97/1000ths of a percentage point of the total caseload in the State courts.

In addition to that, the studies indicate that the total number of these cases is going down, not up, and the Rand Corp.'s study indicates that only 10 percent of people who are injured ever use the tort system to seek compensation for their injuries in the first place.

Look, you guys are doing your corporate buddies a big favor out here. That is what is going on. You have written the rule in such a way we cannot offer amendments. The bill is a bad bill, and when we start taking up amendments tomorrow, the bill is going to be made even more bad when it comes to final passage. And we have so little time to talk about it and offer amendments that we are having to get up on the rule tonight, the first rule and 2 hours of debate and use the time to talk about the contents of the bill.

What does the bill do? The bill lets sexual abusers and drug abusers and people that sell drugs to kids off the hook.

It also says if I commit an intentional tort, if I get a baseball bat and come over to your house and beat the stuffings out of you with it, or if I burn your house down because I do not like you, there is a cap on punitive damages, you cannot get but $250,000 in punitive damages if I do that to you or three times your economic damages, which would not be much of a factor in this situation.

You guys are on the side of wrongdoers, not just corporate wrongdoers but every other kind of wrongdoers, and you are saying States cannot do anything about it because you have a cap in here which, despite what was said by one of the speakers a while ago, applies to the State courts as well as to the Federal court.

This is an outrageous procedure. It is an outrageous bill. It is not based upon any factual data whatsoever. But to bring it to the floor with a rule like this where we have 2 hours and 20 minutes of debate and amendments brought by the other side, by opponents of the bill, and is an embarrassment and humiliation, and you have forever forfeited your ability to stand on this floor or anywhere else and criticize the Democrats for the way in which they write rules.

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from California [Mr. DREIER].

Mr. DREIER. Mr. Speaker, I would like to take just a couple of moments to address one particular item that was raised in the debate earlier, and that has to do with the attempt made by the majority, those of us on the Republican side, to listen to and get some input from Members of the minority when we came to discussing not the rule that we are going to be voting on in just a few minutes, but tomorrow's rules because the one we are voting on in just a few minutes is simply calling for 2 hours of general debate. So it is interesting we have begun debating a rule that we are not considering now on the House floor.

I am very happy to see my good friend from south Boston, the former chair and ranking minority member of the Committee on Rules [Mr. MOAKLEY] here, and of course my friend from Glens Falls, the distinguished chairman of the Committee on Rules. I was standing in the back of the Chamber when a discussion took place between the chairman and the ranking minority member. Now my hearing is awfully good, I had a hearing test downstairs. I could not hear exactly what was being said, but I got a report from the chairman and the chairman told me that an offer was made to the minority to come forward by 2:30 this afternoon with recommendations as to what amendments we might consider making in order, and it was not until we met at 4 o'clock this afternoon and gave a 10-minute break at the request of the minority to look at the amendments that were made in order that we heard anything at all about what ideas we wanted to have considered.

Mr. MOAKLEY. Mr. Speaker, will the gentleman yield?

Mr. DREIER. I am more than happy to yield to my friend, the gentleman from south Boston.

Mr. MOAKLEY. Actually, the gentleman is partially correct. I had a conversation with the chairman and I said, "What have we got to look at; have you got a draft?" And he says, "No, I do not have a draft yet." I said, "We would like to see what you have so we could talk about it." He says, "Well, why don't you see what you can do and then come back and we will talk?"

But in the meantime the Committee on Commerce came down and other people from the committee came down and said that your committee was getting information from them.

Mr. DREIER. I expect I sort of became the intermediary here.

At this point, with the indulgence of my friend from south Boston I think Glens Falls ought to be represented.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. DREIER. I am glad to yield to the distinguished gentleman from Glens Falls, NY, the chairman of the Committee on Rules.

Mr. SOLOMON. Mr. Chairman, I thank my good friend for yielding. But to my good friend from Massachusetts, [Mr. MOAKLEY] he has had an alphabetical listing of 82 amendments. Fifty-one of those amendments are Democrat amendments, and I simply said give us a list of your priority amendments and let us consider them. And at 2:30 I expected to get those so we could sit down and caucus, talk about the amendments, and try to be fair. When no list came, we simply went through the list, picking out all of the issues throughout all of the titles and then had to make the decisions ourselves.

Mr. DREIER. And we ended up making eight Democrat amendments in order, five Repbulican amendments and two bipartisan amendments.

Mr. SOLOMON. The gentleman is absolutely correct.

Mr. BERMAN. Mr. Speaker, will the gentleman yield on this?

Mr. DREIER. I yield to the gentleman from California.

Mr. BERMAN. Mr. Speaker, I thank the gentleman very much for yielding. I do not even want to get into the debate about what was said or who chose what because I was not there for any of the conversations.

Mr. DREIER. I was simply repeating a discussion I had.

Mr. FROST. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. MOAKLEY].

Mr. MOAKLEY. Mr. Speaker, I yield to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. The question of the number of amendments that are Democratic and the number of Republican is all nonsense.

Address the issue of why you allowed the amendment that was the most extreme and none of the amendments by Republicans or Democrats that sought to refine the bill. I submit, and you will have to show me why it is not so, that you went through a systematic process of making sure no amendment that might moderate this bill, that could win, could be offered, and only amendments that could not win would be allowed.

You rigged the process, until you show me otherwise, and that is the real outrage of this rule.

Mr. MOAKLEY. Reclaiming my time, in answering to my dear friend from New York, the chairman of the committee, our side did not have that list until 4 o'clock. I never saw that list until 4 o'clock when I walked into that committee room.

Mr. SOLOMON. If the gentleman will yield, you had that yesterday all day long during the hearing; during the hearing you had the list of amendments, 82 amendments as we went through the testimony.

Mr. MOAKLEY. This was not the list you and I were talking about. I mean, that was matters that were going on then, and it was my understanding that somewhere we would have met and sat down rather than go up and then see our choices already picked by you on the schedule to be voted out.

Mr. DREIER. I am just sorry I was not there for the conversation.

Mr. MOAKLEY. You have got good ears.

Mr. LINDER. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Speaker, I have watched a lot of debate in my life on television usually between Senatorial candidates. Sometimes the hyperbole gets pretty extreme. One phrase I have heard pretty often, "You are shameless, you are shameless." I would never bring that word to bear here in this Chamber. I must say I advise my friend from Texas of an old equitable doctrine called clean hands. You do not come to court complaining of somebody's dirty hands unless you have clean hands yourself. That is the problem, the fatal flaw with your argument. There are eight Democratic amendments made in order, six Republican, on this legislation, and your complaint is we are only five times as generous as you were.

Now, I look at the motor voter bill. That was a big one, one amendment, one. Assault weapons. Did that reach into the States and the cities and the communities? Zero, zip, nada, no amendments at all. My God, and you have the chutzpah to complain that you have got eight amendments here? How do you do it? What do you drink? What do you eat that gives you that?

How about reinventing government? How many Republican amendments on that one? Zero. How about campaign reform? There is a big one. How many Republican amendments did you permit in your Committee on Rules? Zero.

Motor voter, assault weapons, omnibus budget reconciliation, one Republican amendment. Thank you, thank you very much. One Republican.

It is just too much, to take all of this moaning, and weeping, and gnashing of teeth, with your record.

Clean your hands, please.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. HYDE. I yield to my friend, the gentleman from New York.

Mr. SOLOMON. Mr. Speaker, I say to the gentleman from Illinois [Mr. HYDE], the thing that just bothers me is that all of the speakers that are complaining here, that are squawking, every one of them voted for every single restricted rule in the last 2 years.

Mr. HYDE. We need an analysis of these rules. This is just cursory. This is off the top of my head. Let us go into this in depth.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield myself 30 seconds.

I would remind my good friend, the gentleman from Illinois [Mr. HYDE], and my good friend, the gentleman from New York [Mr. SOLOMON], that it was their party that ran for office last year, promising open rules, not promising partially open rules, not promising modified rules, promising open rules.

I would raise a question about the cleanliness of the hands, I say to my good friend, the gentleman from Illinois [Mr. HYDE]; your contract and your Speaker promised open rules. That is not what we have here today.

Mr. Speaker, for purposes of debate only, I yield 1½ minutes to the gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Speaker, I hate to disagree with colleagues on both sides of the aisle. I do not think it is tremendously important to the American people, you know, who allowed more amendments when.

The question is: What does this bill do to or for the American people? This Corporate Liability Shield Act which we will take up tomorrow I heard earlier described as pro-consumer, and I heard some discussion of Alice in Wonderland. If you think this bill is pro-consumer, you have stepped through the looking glass.

The next time the Ford Motor Co. knowingly puts out a defective product and keeps it on the road and people burn to death, they will have a little different equation to deal with. It will be easier to keep it on the road, because they know the punitive damages are going to be limited next time around. That is pro-consumer?

Is it pro-consumer to preempt the States, 200 years of State law, to preempt every jury in every State in America with your judgment and cap damages? I do not think that is pro-consumer.

And how about the special provision for the wealthy? You know, if you get punitive damages under this bill, you are going to enshrine something into Federal law. You can get three times your monetary damages, generally including your wages. So if you are an electrician and you earn $30,000 a year, you are limited, but if you are a fat cat and you earn $250,000 a year, you can get three times that amount. That is pro-consumer?

Well, I suppose that is pro-consumer if the people you think of as consumers are the wealthiest people in America.

This sticks it to average Americans, again, like every other bill this week.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield the balance of our time to the gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Speaker, there may well be some debate about which of the various pieces of legislation considered this week is the most outrageous. Is it the reversal of 200 years of American law with reference to the way attorneys are handled in our society? Is it the potential for bilking those who invest our pension funds in securities in this country? Or is it denying the rights to those who are injured across this country from defective products?

There may be debate about that. But there can be no debate about what is the most outrageous rule for consideration of any of these measures, because we are tonight part of a double whammy, a double whammy to deny the people of America through a gag rule on this Congress the opportunity to discuss the full dimensions of this issue of taking away the States rights at the same time we take away the rights of victims.

We know full well there is ample time to debate the dimensions of this piece of legislation. We have just had the distinguished majority leader come to the floor of this House and tell us we have all day Monday, be it to play golf, be it to be wined and dined by the great corporate lobbyists who are so interested in this piece of legislation, but we have no time, not 1 minute, to spend on Monday discussing the rights that are being destroyed of the American citizens through this piece of legislation.

We have courts all over this land, we have State capitals all over this land struggling with the issues involved. Let them struggle on without the Federal Government taking over these issues and doing it in a way that is not actually debated on the floor of this House.

It deserves more than one evening, it deserves more than one day when you trample on the rights of our citizenry in the way this is being done.

Mr. LINDER. Mr. Speaker, I yield myself the balance of our time.

Mr. Speaker, I realize that it is fun and interesting to debate the bill while discussing the rule, and tonight we debated tomorrow's rule instead of tonight's rule about which I will make just a couple of references.

It is a fact that the minority was offered an opportunity to prioritize their amendments and tell us which ones, in their judgment, were most important. They did not do that.

It is also true that of the 82 amendments that were printed on our desks for roughly 2 days both during the hearing and during the markup of this bill, there were eight to nine substantive idea differences. We had many amendments offered changing the cap, abolishing the cap; we had many amendments offered changing joint and several. We made a sincere effort to find in each of the areas where there were substantive differences and ideas to find the amendment to be voted on at that time, to debate it and vote on that idea.

If the amendments that are put forth, the 14 amendments or 15 amendments, 8 Democrat, 6 Republican, and 1 bipartisan, if they pass, it will dramatically alter this bill if it passes and goes to the Senate. The changes are substantive. They are sincere, and they are real. The debate will be long tomorrow and the next day on the substance of the amendments. The opportunity for the amendments to be voted on is rather unique, in my experience here, because we did not have opportunities in the last Congress to offer many amendments at all.

I urge my colleagues to remember just this: The rule we are voting on tonight says this, tonight there will be 2 hours of general debate on the bill, divided between the ranking members and the chairmen of the two committees, Judiciary and Commerce. That is it. That is hardly, hardly a difficult rule to take, and I urge my colleagues to support the rule.

The SPEAKER pro tempore (Mr. EWING). Without objection, the previous question is ordered on the resolution.

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION PROVIDING FOR FURTHER CONSIDERATION OF H.R. 956, COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

Mr. LINDER, from the Committee on Rules, submitted a privileged report (Rept. No. 104–72) on the resolution (H. Res. 109) providing for further consideration of the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PERMISSION FOR SUNDRY COMMITTEES AND THEIR SUBCOMMITTEES TO SIT TOMORROW DURING 5-MINUTE RULE

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the 5-minute rule.

Committee on Banking and Financial Services; Committee on Commerce; Committee on Economic and Educational Opportunities; Committee on Government Reform and Oversight; Committee on International Relations; Committee on National Security; Committee on Resources; Committee on Science; Committee on Small Business; Committee on Transportation and Infrastructure; Committee on Veterans' Affairs; and Select Committee on Intelligence.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. DOGGETT. Mr. Speaker, reserving the right to object, we have consulted with the ranking member of each of those communities, and I believe this is by agreement.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 108 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 956.

□ 2029

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 956, to establish legal standards and procedures for product liability litigation, and for other purposes, with Mr. DREIER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Illinois [Mr. HYDE] will be recognized for 30 minutes, the gentleman from Michigan [Mr. CONYERS] will be recognized for 30 minutes, the gentleman from Virginia [Mr. BLILEY] will be recognized for 30 minutes, and the gentleman from Michigan [Mr. DINGELL] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois [Mr. HYDE].

□ 2030

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong support of the Common Sense Legal Standards Reform Act of 1995.

Mr. Chairman, this is an historic debate. After more than a decade of work by Members on both sides of the aisle, product liability and legal reform legislation is finally being considered on the floor of the House for the first time. For too many years discussion and debate was blocked by Members who are unsympathetic to the goals of this legislation.

Mr. Chairman, this legislation is directed at some basic fundamental problems with our civil justice system. It is intended to address the serious problems of lawsuit abuse. Lawsuit abuse saps our economy, eliminates jobs, pits neighbor against neighbor, injures our country's global competitiveness. In the words of former Attorney General William Barr, "Our civil justice system is slow, expensive, uncertain, and capricious."

Mr. Chairman, lawsuit abuse is harming American industry and American workers. The uncertainty and unfairness of the present system discourages employers from investing capital, making better and more innovative products, and creating new jobs.

Lawsuit abuse undermines our international competitiveness. Our companies pay liability insurance costs which are 20 to 50 times higher than foreign competitors. Those higher costs translate into higher prices for U.S. products, which in turn reduce our exports and job opportunities, they otherwise would provide.

Lawsuit abuse slows research efforts to find cures for many serious diseases. According to Science magazine, many of America's leading medical research and pharmaceutical companies have decided to abandon, or to avoid altogether, products that would be extremely helpful to America's health system. Numerous other life-saving medical products are not reaching the market because of liability concerns.

Lawsuit abuse means higher prices for consumers. Higher liability costs necessitated by the current legal atmosphere, and the lack of clear national standards, are ultimately passed on to consumers in the form of higher prices for products and services. Our legal system acts like a hidden tax, a "litigation tax" on the American consumer and too little goes to the injured victims.

The U.S. Department of Commerce has estimated only 40 cents from each dollar expended in product liability suits ultimately reaches injured victims. The tort system is too costly. The current system imposes a staggering cost on the United States. The annual cost of this tort system is estimated at $117 billion. It is the most costly system in the world.

Mr. Chairman, no single State can effectively resolve these problems. Frequently, a product is manufactured in one State, and sold in another State, while the alleged injury occurs in a third State. On average, over 70 percent of the goods manufactured in one State are shipped out of the State and sold elsewhere. So, the fundamental interstate character of this area of the law gets a uniform national solution.

Mr. Chairman, excessive, inflative punitive damage awards have effects far beyond the borders of one State. They affect the investment decisions of large and small businesses. They hamper job creation, and they discourage new products from going on the market. They affect the present and the future of virtually every American. In an increasingly global economy our confusing, crazy-quilt, patchwork of 50 separate State liability laws presents roadblocks to America's economic growth and job creation.s

Opponents say we should not preempt State law. Opponents of this legislation ironically talk of interference with states rights, but many of these same persons are quite comfortable preempting State law, and allowing expansive Federal regulation, in numerous other areas with the EPA, FDA, OSHA, Consumer Product Safety Commission, Equal Employment Opportunity Commission, NLRB, FTC, FERC, FCC, Securities and Exchange Commission, CFTC; and, who knows how many other Federal agencies regulating virtually every segment of the American economy?

It is ironic that the multibillion-dollar litigation industry should be one aspect of the economy, but they believe the Federal Government should not touch. The truth is that they are for the status quo.

This bill will not result in any new Federal spending, no new Federal department or agency will be created, no new Federal program will be established, no new Federal regulations will be issued, no new Federal court jurisdiction is created, and no new costs to the Federal taxpayer. Instead, what we will have are constant, and consistent, legal standards governing civil actions brought in both Federal and State courts. Instead of the uneven patchwork of 50-plus, confused, and inconsistent State laws, there will be basic uniform rules and legal standards that everyone will understand.

PUNITIVE DAMAGES REFORM

Importantly, in the area of punitive damages, this bill goes beyond product liability suits and extends punitive damage reform to all civil actions.

SEVERAL LIABILITY REFORM

We will hear more about this as we go along, but we have adopted the California rule, which is working very well out there.

PRODUCT SELLER FAIRNESS

We distinguish between a seller and a manufacturer, something that should have been done a long time ago; and, very importantly, we initiate a statue of repose, a uniform statute of 15 years on all goods. A statute of repose specifies the period of time after manufacture of a product during which a lawsuit relating to a product may be brought. Thus, manufacturers cannot be sued for products 15 years after their delivery. This is an important concept already recognized in Federal law because last year we passed the General Aviation Revitalization Act of 1994.

ALCOHOL AND DRUG DEFENSE

This bill includes language that would prevent a claimant from recovering in a product liability action if that person was more than 50 percent responsible for the harm because of the use of alcohol or drugs.

Mr. Chairman, the American people overwhelmingly support reforms in our current legal system. Why is that? Well, when the Girl Scouts of America have to trudge door to door in our neighborhoods to sell tens of thousands of boxes of cookies just to raise the funds necessary to protect themselves from liability, the American people know that something is seriously wrong with our legal system. When Americans see breakthrough work on medical devices and medical vaccines that could save lives halted because of the fear of lawsuits, the public is rightfully outraged. In a society where lawyers, not the injured victims, receive over half of every dollar spent on product liability litigation, it is time for change. Under our current system consumers lose, workers lose and businesses lose.

Mr. Chairman, as part of the Contract With America the Republican Party made a commitment to end lawsuit abuse in America and return fairness and common sense to our legal system. Mr. Chairman, H.R. 956 is at the core of this pledge and deserves the support of every Member of this body.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. CONYERS] for 30 minutes.

Mr. CONYERS. Mr. Chairman, I yield myself 4 minutes.

My colleagues, we have reached the moment in the frantic 104th Congress where we will begin consideration of product liability reform, the conceded centerpiece of the new majority's contract with corporate America. But we should carefully study the signatories to this contract provision: the party of the first part, the Republican Party; the party of the second part, corporate America.

But where are the American people? They are nowhere to be found.

So, Mr. Chairman, let us be clear at the outset of this debate. What masquerades under the arcane title of product liability reform is nothing less than a frontal assault on consumers, on the courthouses and the juries of the 50 States, and on the continued safety of products found in our grocery stores, at our schools, and, yes, at our very homes.

Not to be allowed to be considered is joint and several liability which has now been severely reduced.

Not to be considered are various amendments on punitive damages, to raise the limit at least to a million dollars and to include noneconomic damages.

Not to be considered is the Federal preemption of State laws that include sexual abuse violations, drug violations and even, yes, regular assaults on individual to individual.

There is no way to change the law under this very strictured debate. I say to my colleagues, "Prepare yourselves for a journey into a dream-like world where proponents of this legislation are unable or unwilling to distinguish myth from reality for the myths have grown way out of control."

Mr. Chairman, this bill is all about the rights of States, and I do not stand as a States righter, but for over 200 years each State developed its own law; my colleagues know that. We have developed tort law at the State level by citizens, by their courts, by their legislatures, and they have done a great job. The laws kept apace of striking the proper balance between citizens rights and business interests. In the past decade alone over 45 States have modified their tort laws in various ways where they needed correction, but this bill is a move to federalize all State tort law so that corporate lobbyists can get from the Federal Government what they could not get from the States.

The pressure by corporations to do this in the first 100 days of this Congress has been enormous. It had to be to make the Republican majority turn its back and swim upstream from the central theme of the Contract With America which is, obviously, returning power to the States and to the people. I ask, "Remember that theme that we had only a few weeks ago? Remember it?" Well, it is history now, at least for the next few days.

In this bill the new majority is saying, "Welcome back to the world of the Great Society where the Federal Government will tell you how to run your courts, your juries, your business and your home."

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The Chair recognizes the gentleman from Virginia [Mr. Bliley] for 30 minutes.

Mr. BLILEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong support of H.R. 956, the Common Sense Product Liability and Legal Reform Act. While many amendments will be offered to this bill from both sides of the aisle, I am confident that H.R. 956 represents the best compromise possible from the communities of jurisdiction.

The bill before the House today is the culmination of almost two decades of grappling with the issue of tort reform system under control, particularly in the area of products liability. I am especially proud to have the opportunity to bring this bill to the floor as chairman of the Commerce Committee.

While I am not a lawyer and do not profess to comprehend all of the finer points of legal discourse, I do know that today's tort system has grown into something that no one ever intended.

Today, people seem to talk to their lawyers more than they talk to one another. For every problem, the answer seems to be another lawsuit. It used to be that when you drank a case of beer and fell of a ladder, you were drunk and stupid. Now you sue the ladder company because the ladder was somehow defective. The only people who have profited from this change in attitude are the lawyers. Americans everywhere want this profiteering to stop.

That is why product liability is such a bipartisan issue. In the Commerce Committee, where my predecessor and good friend, the gentleman from Michigan, has historically championed the cause of meaningful product liability reform, we have held well over a dozen hearings and nearly 20 days of markup on product liability reform legislation. We reported out product liability reform legislation not just once, but twice, with significant bipartisan majorities. H.R. 956 is the ultimate product of those efforts, and there is a lot for Members on both sides of the aisle to support.

This bill injects some rationally into how punitive damages are awarded. It lifts the burden placed on interstate commerce by 51 separate jurisdictions. And it gives manufactures a small degree of predictability about what they face when they put their product on a truck bound for this marketplace we call America. However, there is nothing in this bill which impairs the ability to legitimately injured people to collect damages from the people or companies who injured them. That is what the tort system was designed to do and no one wants to take that away.

There will be a great many amendments offered to this legislation over the next several days. Some of these amendments will improve the bill while others are designed to gut it. I trust that Members will look at each amendment and listen to the debate carefully. And in the end, I hope that Members will make the right decision and vote for a more rational and measured product liability system rather than for the trial lawyers.

□ 2045

Mr. Chairman, I reserve the balance of my time.

Mr. TAUZIN. Mr. Chairman, I yield 4 minutes to the gentleman from Michigan [Mr. DINGELL], the honorable ranking Member of our Committee on Commerce.

Mr. DINGELL. Mr. Chairman, I thank the distinguished gentleman from Louisiana for yielding.

Mr. Chairman, I have supported product liability reform for over a decade. In 1988 I presided over the infamous "torts class from hell" when the Committee on Energy and Commerce spent 10 long days in a markup to report a product liability reform bill. Regrettably, that bill died when other committees failed to take action. Since then, I have repeatedly cosponsored other major legislation on this subject and have sought to see to it that it was enacted into law.

I observed that this is a painful process to me because it is my view that the bill is being rammed through the House. Unlike previous efforts, there has been little meaningful attempt to work out a bipartisan piece of legislation, fair and balanced. The rush to judgment has produced a number of defects, inconsistencies, and errors, and indeed it has been fraught with what I view as being procedural errors and failures. Despite my misgivings about the process and certain provisions, I voted in favor of the Committee on Commerce bill. I did so because the core of the bill was consistent with those that I had previously supported and because there were assurances made at the markup that some of the bill's shortcomings would be corrected.

I will note, however, that under the probable rule, opportunities to correct some of the defects which I seek will become much smaller and much less opportune, but before the ink on the Committee on Commerce bill was dry, Chairman HYDE and Chairman BLILEY introduced yet another bill, H.R. 1075. This new bill differed significantly from the bill I voted for in committee.

One major change is the punitive damages provisions of H.R. 1075. They apply to all actions for harm, not just product liability actions. I am curious why this is so. It is possible it is motivated by any of a number of reasons, one, to protect all wrongdoers from punitive actions and two, to open up the bill so perhaps more extreme legislation unrelated to product liability reform might be considered. I hope that that second course will not be followed. The idea of limiting punitive damages and product liability actions is something I am willing to consider carefully but I do not believe that this legislation should be used to enact wholesale changes to all of our Federal and State laws with regard to civil actions in the courts of the Federal Government or the several States.

I am particularly concerned about the amendments that might arise to limit medical malpractice liability and to put severe limits on noneconomic damages in all civil cases. I believe that something should be done about medical malpractice liability, but I believe it should be done carefully and with consistency in terms of good practice of the kind that we have seen over the years. This bill should be about product liability reform, not about rewriting liability laws for all State and Federal cases.

Amendments that go to key provisions in this bill on product liability reform should be debated on and they should be voted on and sufficient time should be given. If the bill becomes an attempt to rewrite all civil liability law without hearings, without consideration in the committees of jurisdiction, and without proper notice and opportunity to participate for all Members, it will certainly diminish bipartisan support for the bill and threaten support for product liability reform. That would be a shame because we worked too long to try to achieve reform of what is a serious economic, social, and other problem.

I will participate in the debate allowed by this rule. I intend to listen to the arguments on all sides. I hope that fair and balanced debate will lead to fair and balanced product liability reform legislation, as I have for many years. But this bill cannot become a vehicle for another attempt to deal with issues outside the needed reform.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. I thank the gentleman from Illinois.

Mr. Chairman, when the evidence is in, we hope that the American public acting as the jury of us all will be able to render a final verdict in favor of what we are attempting to do here, and exhibit A among the evidence that we are going to present to the American people is title III, for instance, in this bill.

Here is the situation, and I ask the public to weigh this. We have an individual who is suffering from severe heart disease. The doctors who were attending this individual insist that the only way that life can be saved or life made better for this individual is for a valve of some sort to be implanted in the body of this individual. It has come to pass that medical devices that are intricately prescribed for this kind of condition have become scarce on the market, not because the innovative spirit of the scientists and doctors and practitioners and inventors who are involved in this field do not have new products and new ways of doing things, but because suppliers of the raw materials that go ultimately into the manufacture of these medical devices have found themselves liable to suits in which they have been found not to be culpable in the long run, but which has caused them millions of dollars in expenses for litigation, not to mention the time expended away from their ordinary business to defend a suit that ultimately ends up in their favor, but because they do not want the hassle of this kind of liability, they are leaving the marketplace, and that leaves the individual with the heart disease, the consumer, if you will, because this is a pro-consumer tenet that we are advancing here on this products liability bill, that consumer no longer has access to a heart valve that is important to saving that individual's life. That is what this is all about, and we can expand this type of example to hundreds of other examples in the marketplace which prevent, because of liability suits and the reluctance of companies to advance new products, depriving the consumer of lower prices, of a better selection, of new innovation devices and, in the example that I have offered to you here tonight and which is supported by many people in this room here tonight, the consumer, the consumer that we most want to benefit, the patient, the heart disease patient, the brain-damaged individual, the one who requires a hip joint or any other kinds of medical devices that can save lives or produce a better quality of life, the marketplace is shrinking because we do not have the type of legislation which we offer here tonight.

Mr. CONYERS. I am delighted to yield 4 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman from Michigan for yielding.

Mr. Chairman, I think the way to frame this bill is this is the Washington-knows-best bill, and, for the life of me, I cannot figure out why we are doing this. We are here upsetting over 200 years of tradition and we are doing it after almost everyone has gone home. Let's face it, only the committees are here debating and this whole thing has been ramrodded through.

We are beginning to see now what people who contributed to the campaign are getting. The fat cats are going to get their tax cuts and they are going to get a huge liability shield, because that is what we are really constructing here is a shield for them against any liability.

It is almost like saying the Congress has now decided that the highest value in America is making money, making money at any cost. I mean, we want these fat cats to not have to deal with regulation, heaven forbid, because they might have to make something safe, and then, if you have taken the regulation away, you have got to change the legal rules, because otherwise, they are going to get sued.

So if we can take away the regulation and take away the legal rules, wow, and America will be out there and we will be competitive again. I guess this is the new trickle down thing. So the employers will all be happy because they will have more money and hire more workers if the workers do not happen to get hurt. But if they do, it is too bad.

I find this really, really surprising, because this has very severe limits on damages. We are saying to all the State legislatures, we know better than you. Of course not in school lunch. We are going to take school lunches and give it back to the State legislature. They are nutritional experts but they do not know anything about product liability or torts or whether or not they want to put punitive damages on sexually abusive people and so forth and so on. We are going to take all that away from them and they get to do nutrition, which I think is really interesting.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I would be happy to yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I do not want her to suggest that our friends on the other side are indifferent to the fate of these children at the Federal level. Is it not true that if everything they want goes through, while the school lunch program would be in the hands of the State and they would decide without competitive bidding who would be the suppliers, if a child in fact were to have an untoward incident in what he or she ate, they would sue under Federal law so it would be a State administered law but it would be a Federal lawsuit?

Mrs. SCHROEDER. You got it. And then, of course, the child, not having a wage, would have a lot of trouble because of noneconomic damages, and children are certainly, most of them, I think the child labor laws are still in effect, but I have not looked, is that in the contract too, because a child does not have a job, they come out on the short end of the stick because they fall under the noneconomic damages that we are talking about.

I just find this something that is very drastic, and it really is changing the course of what we thought government was for. I thought government was to help protect the little guy from the big guy. Now we are finding out the government is helping protect the big guy from the little guy.

Well, most of the big guys I know have done a pretty good job of protecting themselves and I must say, I am very, very saddened by this.

□ 2100

Mrs. SCHROEDER. As I stand here looking at things that States have done that make sense to me, I am saddened. When you see people saying we ought to get kingpin drug dealers that are out pushing drugs to young kids and we ought to be able to get them in civil court, where obviously the standards are not as high, and we ought to be able to hit them with punitive damages, we are going to come in tonight and say no, we do not think so. We do not want kingpins to pay more than $250,000.

Mr. BLILEY. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Virginia.

Mr. BLILEY. Is the gentlewoman a lawyer?

Mrs. SCHROEDER. Yes, I most certainly am.

Mr. BLILEY. Is the lady's husband a lawyer?

Mrs. SCHROEDER. Yes, he most certainly is.

We know what punitive damages are, and what we are doing tonight is we are putting a cap on punitive damages. Now, the $250,000 might be a lot to us, but to a kingpin drug dealer it is not very much.

Mr. BLILEY. Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio [Mr. OXLEY], the chairman of the subcommittee.

Mr. OXLEY. Mr. Chairman, I rise in support of the Common Sense Product Liability and Legal Reform Act. Product liability reform has occupied the Subcommittee on Commerce, which I chair, for almost two decades. It is testimony to the strength of the opposition that never before has this House considered comprehensive liability reform, but a new day has dawned. Let those who wish to defend the status quo do so, but my sense is that the American public is far ahead of them on this very important issue. Members of both the majority and the minority parties have worked hard for many years on product liability reform, and at least success is in sight.

Our bill comes to the floor today under the able leadership of Chairman BLILEY, and I commend him for his efforts. I thank the ranking committee member, my friend from Michigan, Mr. DINGELL, for his leadership on this issue over the many years. I know he is frustrated by both the pace and the process of this bill, but I commend the gentleman for his commitment to reform, which has remained constant through these years.

I also want to thank the gentleman from Louisiana [Mr. TAUZIN], my ranking member, again for his excellent work in this area. I also want to thank the Committee on Energy and Commerce staff who has worked long and hard, Doug Bennett, Robert Gordon, and Hugh Halpern for the majority, David Tittsworth for the minority, for their constant and hard work as well.

My colleagues on both sides of the aisle know that the product liability system in America costs the people of this country dearly. We pay more for products, we are denied life-saving medicines, we force companies to lay off workers, and we suffocate innovation. Just listen to the numbers.

Because of product liability exposure, 47 percent of American manufacturers have withdrawn products from the U.S. market; 39 percent have decided not to introduce new products; 25 percent have discontinued new product research. These decisions hit consumers, and it hits them hard. The Conference Board reports that again as a direct result of existing product liability laws, 36 percent of American manufacturers have stopped some manufacturing; 15 percent have laid off workers; and 8 percent have closed plants. What does our product liability system offer American workers? Lost jobs and lost opportunities.

Mr. Chairman, opponents of this legislation have portrayed the bill as anticonsumer. Nothing could be further from the truth. The status quo is anticonsumer and antiworker. America's liability system is a huge liability to American and its workers.

The bill before us today is effective, it is fair, and it is long overdue. It protects the right of those injured by defective products to recover all damages, both economic and noneconomic. It puts an end to the abuse of punitive damages and provides a reasonable statute of repose.

Manufacturers will be encouraged to innovate and compete and sellers of products will no longer face unlimited punishment for sins they did not commit. H.R. 956 loosens the self-imposed strangled hold our liability system places on the American economy.

Mr. Chairman, I do not want to take a lot of time, so I will close with the words of Francois Castaing, vice president of engineering for Chrysler Corp.

> It is well understood that product liability laws have a purpose. They are supposed to compensate for injury, promote safety and penalize gross negligence. If a corporation is irresponsible, it should be held accountable. But the situation in the United States has gone beyond punishing gross negligence. Now punishment is meted out for many risks that simply cannot be avoided when a product is produced and sold to a public that has wide discretion in how it chooses to use that product. When no distinctions are made in assigning responsibility for risk and all companies are held responsible—and penalized—for all risk, the ability to innovate, engineer, and compete is compromised.

Mr. Chairman, I am in strong support of this legislation. We have worked on this for a number of years in our committee. I think the efforts by the Committee on the Judiciary and our committee have brought us here today, where we can pass an outstanding bill with a good, strong, bipartisan support.

I would say to those who would continue to defend the status quo, that the burden of proof is on you to prove that the current system is not inimical to the American worker.

Mr. TAUZIN. Mr. Chairman, would it be useful for the Chairman to summarize how much time remains for each of the parties?

The CHAIRMAN. The gentleman from Louisiana [Mr. TAUZIN] has 26 minutes remaining; the gentleman from Virginia [Mr. BLILEY] has 22 minutes remaining; the gentleman from Illinois [Mr. HYDE] has 19 minutes remaining, and the gentleman from Michigan [Mr. CONYERS] has 22 minutes remaining.

Mr. TAUZIN. Mr. Chairman, I yield 5 minutes to my friend, the honorable gentleman from Texas, [Mr. BRYANT].

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. BRYANT].

The CHAIRMAN. The gentleman from Texas [Mr. BRYANT] is recognized for 6 minutes.

Mr. BRYANT of Texas. Mr. Chairman, I thank the gentleman for yielding.

I would say to the gentleman from Ohio [Mr. OXLEY], yes, Chrysler Corp. ought to be quoted in this debate. They have had the best 5 or 6 years of the company's history. They are doing extremely well. I own two of their products. So is Ford and so is General Motors. They are doing better than ever. Products liability cases have not kept them from doing well. They are doing extremely well.

I will say to the gentleman from Virginia, [Mr. BLILEY] who said a moment ago at the beginning of his remarks that this is the end of 20 years of working on products liability reform, the truth is, this is the culmination of 20 years of these big companies campaigning for products liability reform. Not based possible upon any empirical data, because there is not any to support your case; not based upon any economic studies, because there is not any to support your case.

You called the witnesses before your committee, Mr. HYDE, and you called them before your committee, Mr. BLILEY. You all set up these hearings, and I was at both of them. And I asked the question, do any of you guys have an empirical data to show that there is a products liability crisis in terms of the increase in the number of cases or increase in the size of the verdicts? And they all said no, we do not have any data like that.

In fact, the data is just the opposite. The National Center for State Courts finds that product liability cases are only 4 percent of all tort filings; tort filings are only 9 percent of all civil filings; civil filings are only 27 percent of all cases; which means that product liability cases represent a mere .36 percentage point of the civil caseload. Thirty-six hundredths of a point of the civil caseload.

In addition, in recent years the number of product liability filings has been steadily declining. If you challenge me, I will quote the studies for you. Steadily declining.

There is no data to support the movement you are asking this House to take in this bill. The fact is this is the culmination of a 20-year campaign that goes on, on the radio as we speak. One of the cases that you all like to talk about and be derisive of and they like to talk about on the radio all the time is the McDonald's coffee case.

Well, we found out the other day why you had not heard the other side of the McDonald's coffee case, because the lady who filed the case has a secrecy order imposed upon her. She could not talk about it. While McDonald's was talking about it, she could not talk about it. What were the facts? McDonald's was warned 700 times by complaints from people saying they had been burned by this super-heated coffee.

The average temperature of the coffee was 180 to 190 degrees. You are warned not to keep your hot water heater over 135 degrees because it might scald your children. Yet McDonald's continued. Here are pictures of three cases that you did not read about right here. You did not hear about these cases.

Here is an 11-year-old boy from South Carolina. The coffee he was holding spilled, causing horrible scalding. Tests conducted during the trial showed that the coffee was 180 degrees when spilled, even though it was poured 15 minutes earlier. That is what happened to that 11-year-old kid.

I have a picture here of a 3-year-old child. She was burned when she was 1½-years-old. The same situation. McDonald's coffee, they were warned but they did not do anything about it. Other folks in the coffee business have not had this problem.

This woman, this is a tragic case. She was critically burned when a cup of McDonald's coffee burned down the front of her body in Las Cruces, NM. She spent the following months in the hospital, remained wheelchair bound after the discharge, the wounds never completely healed, and she died 2 months after being released from the hospital.

Now, you can make fun of these cases if you want to, but what are these people supposed to do, Mr. HYDE? What are these people supposed to do, Mr. BLILEY? Just take it? They complained and nothing was done. The only way you get corporate America to move is tell them if you do not do something about it, you are going to be sued or you are going to lose money one way or the other. How else are they to deal with it?

You can make fun of these people if you want to, but they were burned, they were hurt. So they took the case to finality. You did not hear about these cases. You heard about the so-called $2.7 million verdict which that lady got. You know what? She got it because the jury heard this company had 700 times been warned and still did not change their behavior. The jury got mad and stuck them with a big giant punitive verdict. Of course, it was cut down to $400,000 by the judge later.

That is what goes on, and that is what you are trying to prevent. You have put a cap now on punitive damages in this bill. What a curiosity. Your cap on punitive damages now says that even if a person is found guilty in court of sexually abusing a child, now the Republican bill is going to put a cap on the punitive damages.

I think what I have said speaks for itself. This is a bad bill. You ought to be ashamed for bringing it before the House.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Texas.

Mr. DOGGETT. Let me ask the gentleman if the lack of any data to support this bill is why these special interests are hiding behind the skirts and the little league outfits of the Girl Scouts of America, and whether you are aware of the fact that the Girl Scouts of America have repudiated this ad that is on television?

Mr. BRYANT of Texas. I am aware of it. It is an outrage. That is exactly why they are hiding behind it. They have no empirical data to back that bill up.

Mr. DOGGETT. For every one of these so-called horror stories they tell us about, there is a real live horror story, just like you told us about at McDonald's.

Mr. HYDE. Mr. Chairman, I yield myself 30 seconds to tell the gentlemen on the other side I have 3 pages of studies here. I know they are not familiar with them, but if they want to see them, we will get them Xeroxed and have them sent to their offices.

Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. HOKE].

Mr. HOKE. Mr. Chairman, I thank the gentleman for yielding, and I thank the gentleman for his leadership in bringing this bill to the floor. It has been a long time coming. I would say to my friends on the other side of the aisle, first of all, that I personally sat in a meeting in which the executive director of the Girl Scouts of America for Washington, DC, told an entire group of people in a public place that they had to sell 87,000 boxes of Girl Scout cookies just to pay their insurance premiums; that they no longer can use diving boards in their pools, they can no longer rent cars, they no longer can have horses in the summertime in their camps, because of their problems with liability insurance.

The other thing I would say is, what I really want to talk about is exactly what they are concerned about, and that is special interests, because the fact is that there are Democrats in this House that are working overtime to defeat these reforms to end lawsuit abuse. And it is an ugly side of American politics that is rarely talked about. But you have got to follow the money if you want to figure out what is really going on.

What you find out when you follow the money is that in the 1993–94 cycle, 341 Democrats were given money by the American Trial Lawyers Association. Ninety-four percent of all of the contributions that that PAC, that special interest political action committee gave were to Democrats. Thirteen out of 15 Members, Democrat Members of the House Committee on the Judiciary received substantial contributions, up to $12,000. We are talking about $114,500, $2 million given in the last cycle, the 1993–94 cycle, to Democrat candidates.

While it is lovely to talk about that this is for the women and this is for children and what we are really doing is protecting consumers, I thank you have to ask yourself who is really being spoken for in this regard.

Mr. Chairman, just to sum up, the fact is if you want to take a look at politics in America, it would be very disingenuous, you would be missing the point, if you did not also look at the money. When it comes to money, the trial lawyers have purchased themselves an awful lot of time in this Congress. They have made tremendous investments over a long, long period.

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And when you are going to see this debate, you will see this debate couched in the terms of consumers versus anticonsumers, of prochildren versus antichildren, of prowomen versus antiwomen. That is not what this debate is about. It is pro-trial lawyers against proconsumers, people who are really trying to make the system work for American workers once again.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Chairman, we are seeing over these next couple of days one of the most complete degradations of the legislative process I have ever been sorry enough to witness. I am a supporter of product liability reform. I voted in the last Congress for medical malpractice reform. I voted for caps. I was prepared to support a good product liability bill, but the procedure and the substance to which we are going to be subjected over the next couple of days are so degraded and degrading and I cannot be part of it.

In the first place, we have the great inconsistency of people talking about States' rights. And the gentleman from Illinois said, Well, we are being inconsistent. No, most of us have not claimed to be either consistently for States' rights or Federal rights. Many of us have said, You look at it issue by issue and you see what makes the most sense.

The Republican Party that has clothed itself in States' rights garb until and unless their corporate allies decide they want it differently and then they change. And when the corporate allies say, Do not let States experiment with single-payer health insurance, don't amend ERISA, they say, OK. And when we federalize tort law, they say, OK, especially when it has nothing to do with manufacturing.

We heard a great rationale from the Chairman of the Committee on the Judiciary. This is all about manufacturing. The gentleman said in the Rules Committee, This is about exports. We don't export Little Leaguers. Sometimes they play Taiwan but they come back. They are not an export.

The amendments that are about to come—and this is all preordained, these amendments will pass—the amendments that are going to come will put limits on the amount of noneconomic damages that can be awarded into virtually any civil case in America. So this argument that this is justified because manufacturing is an economic activity is nonsensical. The Girl Scouts do not manufacture.

There may or may not be a case for covering the Girl Scouts or the Little League or every other lawsuit, but we are are not talking about manufacturing. We are also not talking about anything that resembles a respectable legislative process. In the Committee on the Judiciary controversial amendments on medical malpractice, et cetera, that were offered were withdrawn so they couldn't be debated. They will now come forward here.

I have voted in the past for medical malpractice reform. I have voted for limitations, and I say to my friends who are pressing for that, if you make a pact of this sort to take legislation and give it no hearing in this Congress and no markup in committee, if it is withdrawn and then pulled back, and then it comes up to be debated for a grand total of 40 minutes in the House, do not expect those of us who conscientiously agree with you to vote with you.

We have a list of amendments, 40 minutes, 20 minutes, 10 minutes, extending this legislation to virtually every civil lawsuit in America, expressing the contempt the majority apparently feels for the jury system, because what they say is the jury does not count.

We got an example of the intellectual level of the argument when the gentlewoman from Colorado was interrupted by the gentleman from Virginia. The gentlelady was nice enough to yield and the gentleman said, Are you a lawyer and is your husband a lawyer? That is third-grade type of debate and this is what we are getting in this complex legislation.

If you only have 40 minutes to talk about it, I suppose that is what you get. And it comes from someone who has been supportive of malpractice reform and who wants to support product liability reform. I say to those of my friends who want it, if you are serious about it, you will break this alliance with people who show such disrespect for the legislative process, such disrespect for your intellects, such total disrespect for the jury system, and decide because they have raw numbers, people who will vote however they are told, then they will win. They will win a short-term victory and they will discredit the important cause of product liability reform and those of us who really want to see it will in fact be suffering, because what will happen is by this unfair, overloaded, under-debated bill, they will bury the good.

Mr. BLILEY. I yield myself 1½ minutes.

I will point out to the gentleman on the other side that between 1973 and 1988 product liability suits in Federal courts increased 1,000 percent. In State courts, the increase was between 300 and 500 percent. One estimate of the total cost of these suits is $132 billion a year, a sum equal to the combined profits of the Nation's 200 largest corporations. And I stipulate that that is the reason that we are here debating this.

To the gentleman from Massachusetts I would say, when we were accused today in a bill that we passed overwhelmingly with bipartisan support for securities litigation reform, that we were bringing this because we were rewarding our fat cats, maybe some of us might beg to say that the gentleman on the other might be trying to defend them.

Mr. Chairman, that may be one of the reasons that they so vociferously defend the current system is that one of the heaviest contributors to their campaign coffers are the trial lawyers of the United States.

Mr. Chairman, I yield 3 minutes to the gentleman from Colorado [Mr. SCHAEFER].

(Mr. SCHAEFER asked and was given permission to revise and extend his remarks.)

Mr. SCHAEFER. Mr. Chairman, I thank the gentleman for yielding time.

PARLIAMENTARY INQUIRY

Mr. BRYANT of Texas. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. BRYANT of Texas. Do the rules prohibit implying a motive or the improper motive on the part of your adversary in debate for presenting legislation?

The CHAIRMAN. The rules of the House prevent Members from engaging in personal attacks.

Mr. BRYANT of Texas. I thank the Chair. But my further inquiry was, do the rules prohibit you from implying a prohibited motive, unsavory motive for offering amendments for advocating legislation?

The CHAIRMAN. The rules do not prohibit Members from engaging in discussions of political motivation.

Mr. BRYANT of Texas. What about motivations that relate to your personal occupation or your personal sources of income?

The CHAIRMAN. The rules prohibit Members from engaging in personal attacks.

Mr. BRYANT of Texas. I thank the Chair.

Mr. SCHAEFER. Mr. Chairman, I rise today in strong support of the Common Sense Product Liability and Legal Reform Act of 1995.

Members of the House, frivolous litigation has become a fact of American life whether we like to recognize it or not. Too often bringing people to court has taken the place of personal responsibility. Much of this behavior is due to the distorted incentives built into our current product liability laws.

Today, many people no longer look at themselves first to blame but instead search out the easiest way for a big court settlement. Overzealous litigation costs consumers literally billions of dollars every year. This price inflation comes in the form of liability insurance costs built to price products and services, estimated to be approximately $1,200 per person each year.

This litigation tax, as you might call it, is extremely regressive, raising the price of products to those that least can afford them. Unfortunately, the Committee on Commerce and Committee on the Judiciary have crafted a piece of legislation that restored sanity to the Nation's liability system. I would like to address one portion of that and that is the biomaterials access provision, and my good friend the gentleman from Pennsylvania [Mr. GEKAS] did hit on that but I would like to expand a bit.

One of America's leading industries is the biomaterial device field. These products literally save and enhance lives every day from pacemakers to artificial heart valves to cataract replacements. These products provide recovery and allow people to continue their lives.

The suppliers of base materials oftentimes provide the manufacturer with elements of the device that are too costly to produce except in mass quantities but alone have no implant value or purpose. Unfortunately, in recent times these suppliers have been named as codefendents in lawsuits, and in almost every case they are cleared of wrongdoing or negligence. Nevertheless, in the process they are forced to expend financial resources to achieve exoneration and to provide insurance.

The litigation risk has caused many supply companies to simply stop providing base materials for these lifesaving devices. Consequently the inability of device manufacturers to obtain the needed base supplies is causing the death of the biomaterials industry in this country.

The biomaterials section addresses this tragic consequence of overzealous litigation. This language will ensure that simply unless the supplier is negligent in the design specification requested by the device manufacturer or if the supplier is also a party in the overall manufacture or marketing of the device, the supplier is cleared of liability.

Mr. Chairman, I urge my colleagues to support this long overdue legislation, the Common Sense Product Liability and Legal Reform Act, which will help put an end to frivolous litigation while preserving each person's right to seek out compensation for real injury.

Mr. TAUZIN. Mr. Chairman, I yield myself 6 minutes.

Mr. Chairman, let me return the very fine compliments of the gentleman from Ohio [Mr. OXLEY] the chairman of our subcommittee, for the work that was done in our Committee on Commerce on this bill.

I should also quickly acknowledge the extraordinary efforts put in over the last 12 years of the former chairman of our committee, Mr. DINGELL, who spoke earlier tonight. Mr. DINGELL has been committed to the issue of product liability reform for many, many years. This was in 1988 when our committee finally agreed upon a product liability reform bill and produced it for the House, that bill unfortunately never made it to the House floor because it could not come out of the other subcommittee of jurisdiction. As a result, the product liability reform bill that Mr. DINGELL and our committee fought so hard for in 1988 died its unnatural death in Congress, and it has never until this day had a chance to be debated again.

The bill we have before us is in many ways like that bill of 1988 and in many substantial ways very different. It is a bill that does, in fact, divide standards of liability between economic and noneconomic damages.

Joint and several liability for economic losses, the losses you can put your finger on, the ones you can put an easy dollar equation on, and several proportionate liability for noneconomic losses, losses that are harder to estimate, the pain and suffering, the mental anguish and such that jurors very often award in numbers that surprise us.

The bill also deals, as our bill did in 1988 with punitive damages, also it deals with them very differently and with a statute of repose although it deals with it very differently.

I want to for a minute talk about those differences. In the statute of repose that we produced in 1988, a statute, a section of the bill that was designed to end liability for products that were manufactured many years ago, the statute of repose time was set at 25 years. This bill sets it at 15. We are told the reason it is set at 15 is to coincide more nearly with State statutes of repose which are generally in the 10- to 12-year range. But the big difference is that this statute of repose extends beyond capital goods, the goods that are normally depreciated, heavy machinery, and now extends to all products. That is a big change and one that we will want to debate I am sure when we get to the amendments on that section and on the bill.

On the punitive damages area, there are two very—three very large differences as we look at the bill as it arises on the floor. The first large area of difference is the fact that the punitive damage cap, which is set in this bill which was apparently not in the bill in 1988, is set not only at $250,000 on products but it now is made to apply to all tort law and all civil suits, both State and Federal law, in civil actions for harm where plaintiffs, in fact, prove by clear and convincing evidence conduct that was specifically intended to cause harm, intentional harm.

□ 2130

There are two other differences. In the bill that we produced in 1988, we clearly said that the provisions on statute of repose did not apply to any plaintiff who did not have their medical bills paid. That bill, that provision, is still included in this bill, but I understand there will be an amendment from the other side to delete that language. I hope that does not occur, I hope we have a chance to debate the reason why that provision was in the 1988 bill and is currently contained in this statute.

In the punitive damage area, there was an exemption from punitive damages for drugs that were previously approved by the FDA. That exemption has been deleted from this bill. There will be an attempt, I will join in that attempt, to reinstate that exemption. The reason is, punitive damages are designed in our civil procedure as a quasi-fine. How ludicrous it is to fine a company for producing a product that we ourselves as a government approved. If that product causes some harm, it makes sense to make sure the harm is repaid, the harm is made whole, but should the government punish someone in a civil action or in a regulatory or criminal action for an action that the government itself approved? We are going to debate that tomorrow and I hope frankly we can come to the conclusion that that exemption ought to be returned to the bill as it did apply to the bill in 1988.

As I said, the major difference in the punitive damage section is a cap in this application to all civil suits. We will debate that. I personally have a problem with punitive damages in civil suits, so capping them is not as severe a problem for me as it is for other folks.

But I want to make a point that I hope we get a chance to make in debate tomorrow. I am disappointed frankly when I see the list of amendments that will be offered that we will not have an opportunity to offer more amendments in this section. Punitive damages are designed to punish a defendant who put us all at risk. My question is why should those damages go to the plaintiff? My question is why should not a very large percent of those damages go to the general public? If a company, a person, puts us all at risk with a product, the plaintiff obviously ought to receive some benefit for having brought that suit and called that to the court's attention and recovered some measure of damages for the rest of us. But a punitive damage award, a quasi-fine, ought to in fact insure to the benefit of the public at large. Some States have done that in their laws. We will have a chance to look at at least one amendment that does that, but I would hope that the majority would permit us to look at different ways of characterizing punitive damages so that the public at large benefits when a fine is levied in a civil case in the form of a punitive damage.

Mr. Chairman, I reserve the balance of my time.

Mr. BLILEY. Mr. Chairman, I yield myself 1½ minutes.

I would ask my friends on the other side of the aisle, do they think there is really any coincidence in the fact that for 20 years the Judiciary Committee has refused to allow a bill on this subject to come to the floor for debate and the fact that their members that were there in the majority received overwhelming contributions from the Trial Lawyers Association?

Mr. BRYANT of Texas. Will the gentleman yield?

Mr. BLILEY. On his own time.

Mr. BRYANT of Texas. You asked a question. Let me answer it for you. Do I have the time, Mr. Chairman?

The CHAIRMAN. The committee will be in order. The gentleman from Virginia controls the time.

Mr. BRYANT of Texas. Will the gentleman yield?

The CHAIRMAN. The gentleman from Virginia is recognized.

Mr. BLILEY. Would the Chair ask the gentleman to stop interrupting?

The CHAIRMAN. The gentleman from Virginia controls the time and is recognized.

Mr. BLILEY. I thank the Chair. May we have order?

The CHAIRMAN. The committee will be in order.

Mr. BLILEY. I thank the Chair.

I also would point out that in a recent article in the Wall Street Journal that Creighton Hale, the CEO of Little League Baseball, wrote of a case in which a volunteer coach was sued for punitive damages in pain and suffering after one of his youthful outfielders was beaned by a pop fly. These types of suits lead to skyrocketing insurance costs.

A spokesman for the Girl Scout Council of the Nation's capital tells us that they have to sell an additional 87,000 boxes of cookies annually just to pay their liability premiums.

With that, Mr. Chairman, I yield 4 minutes to the gentleman from Illinois [Mr. HASTERT], a valued member of the committee.

Mr. HASTERT. I thank the gentleman for yielding me the time, and I certainly thank him for his great work on the bill on product liability. And certainly the gentleman from Ohio [Mr. OXLEY], our chairman of the subcommittee, has done yeoman's work as well, working the last few years with the gentleman from Michigan [Mr. DINGELL], the chairman of the then majority, in trying to put together H.R. 1910.

I have been involved in trying to work on product liability since I first came to Congress and certainly have looked forward to participating in this debate on the floor for many, many years.

Last year I was the cosponsor with a gentleman from the other side of the aisle by the name of Doc Rowland, a former member from Georgia, who was committed to bringing on the Fairness in Product Liability Act, and along with that we had garnered 126 cosponsors from both sides of the aisle.

I might also add that many of the provisions of this bill came from H.R. 1910, which was that act. It is plain to see that this is a bipartisan issue.

I was also extremely pleased to see that this issue was important enough that it was included in the contract.

As Members know, this issue of product liability reform is a mature issue that has been around for some 14 years. The Committee on Commerce was fortunate to hear from some true veterans of the field that have appreciated the hard work and commitment that many have made to this issue. I know they are just as pleased as I am to see the House is finally considering it on this floor.

Since I first became involved with product liability, I have been amazed at the adverse effects our current system has on American productivity, competitiveness and innovation.

We talk here a lot in Congress about competitiveness. We try to find ways to encourage it through legislation. I can tell Members without a doubt that if we enact this bill, we will boost the ability of American industry to compete. The best news is it will not cost taxpayers a dime.

United States liability costs are 15 times greater than Japan's and 20 times greater than Europe's. These costs represent American dollars not spent for research or development or employee benefits or new job creation. U.S. costs are higher because all manufacturers, U.S. or foreign, sell most of their products at home. Since liability costs per product are based on liability exposure, and exposure is so much less under the legal systems of our competitors, our liability costs are higher than those of other countries.

It seems to me that we should be encouraging American companies to stay in business. But this flawed system under which we currently work has just the opposite effect. We are not saying that you cannot file a suit if you have been wrongfully harmed or a company has been knowingly negligent, but if you pick up your lawn mower to use as a hedge trimmer, then you should not be able to sue the manufacturer. This bill only limits the number of lawsuits that have little or no merit.

If we were only interested in employing lawyers, then maybe we would not need to be concerned about product liability. But American families are paying more for everything they buy, from their air conditioners to their Zenith TV's, because companies must pay billions for meritless lawsuits.

I know some argue that we simply do not need to create uniform standard product liability laws. I have heard the opponents of the bill saying Republicans are doing an about-face, trying to pass laws on States from the Federal level, but the fact of the matter is that the creation of Federal uniform standard laws has been called for twice by the National Governors Association. Humor me for just a minute, but it is my guess that these folks are tuned in to what is needed at the State level.

It is critical that the manufacturers of each of our districts have a good grasp of what their responsibilities are as producers. And our constituents' rights as consumers should not vary widely from State to State.

I am hopeful that we will be able to address this issue, not only Republicans and Democrats as a united front here but as legislators committed to fixing the inequities and inconsistencies that currently exist in our laws.

Mr. TAUZIN. Mr. Chairman, I yield 3 minutes to my friend the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. I thank the gentleman for yielding me the time.

I would say that I think that the gentleman from Illinois [Mr. HASTERT] is speaking out a sincere belief. I would just call upon you and those similarly situated in your position to base those kinds of beliefs on empirical data and there is no empirical data to support the conclusions which you offered to the House in your remarks. That is the fundamental reason why we oppose this legislation.

The gentleman from Virginia [Mr. BLILEY] has talked about campaign contributions. That is an unfortunate topic to get into I think from his standpoint. We could talk about campaign contributions from the cigarette industry which is located in your district, I know. In fact, I think it is the capital of it. But let me say this. I think the gentleman will be for this legislation even if he did not live within a thousand miles of a cigarette factory. I think he believes in it. I am not taking issue with your belief in it. But you suggested that our position is based upon the fact that the trial lawyers make contributions. I think I am typical in saying that many of the Members who have taken a strong position like mine have received as much as $10,000 in campaign contributions in each cycle, every two years, from the trial lawyers political action committee, out of probably $900,000 or so that gets spent. I have received probably $150,000 in campaign contributions from the companies' political action committees that support your position, and that is true of all of us over here, and you know that. There is one American Trial Lawyers Association PAC, there must be 2,000 corporate PAC's out there that agree with you.

I really think it is important, it is more I think accurate of you to base your arguments, your conclusions, your opinions, if you had some data, and I do not think you do, you would base it upon that, but to suggest it is based on campaign contributions I think demeans all of it. I do not think it is based on those from you or based on those from me. But I do question on where you guys are getting your information.

The gentleman from Illinois [Mr. HYDE] waved around a list of studies earlier this evening and he waved them around once in the committee. I would like to get the list. I will come over and get it in just a second.

The ones he read off in the committee were all studies that supported our side of the issue. I read to you from the minority report which made very clear that the number of products liability cases are going down, they are not a significant percentage of the overall cases. Obviously American industry is doing very well and I hope it does better in the future, but for goodness sakes, we have got to pay attention to the fact that we do have situations where corporations behave irresponsibly because they are human beings and all of our laws, all of our jurisprudence is written to deal with the behavior of a minority of every class, not a majority.

I think General Motors, Ford and Chrysler are great assets in our society but I think that they have in some cases behaved horribly. The Pinto case, all these other automobile cases, with an exploding gas tank, where they flip over, where they have not put a roll bar where they ought to put a roll bar and they cripple people. Look, they are human beings, giant bureaucracies. Some human beings in one corporation do not know what the other human beings are doing. We have no way to protect the public from this except a system of private litigation.

As the point I made a moment ago, I think should be reiterated, that private litigation is a tiny percentage of the overall litigation.

When you guys get up and talk about all the lawsuits, you forget that the lawsuits are commercial cases, 80 percent of them are commercial cases, not personal injury cases.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3½ minutes to the distinguished gentleman from New Mexico [Mr. SCHIFF], a valued committee member.

Mr. SCHIFF. I thank the gentleman for yielding me the time. I particularly want to commend his integrity in giving me this time since he knows full well in advance I do not fully support the leadership position on this bill.

Mr. Chairman, I support a products liability bill. I think the rationale for it is not perfect. I think arguments can be legitimately made against a Federal products liability bill. But I think a case can be made and has been made for the idea that when goods are shipped in interstate commerce and the same good is for sale in different States, that there ought to be a Federal standard for how to handle tort litigation if there is an alleged defect in those goods because it is the same good, whether it is being sold in New Mexico or being sold in Illinois.

However, there is no rationale for the second part of this bill, because as presently written, the first part of this bill deals with products liability, the second part, title II, does not deal with products liability. It deals with all tort litigation, and I am referring specifically to the punitive damages provision.

As written, the bill says that all punitive damages actioned in State court are under the control of Federal legislation. So that if two individuals go out on their front lawns and start a fistfight with each other, Federal legislation will control the punitive damages standard, whatever it might be, in that particular case.

I want to say particularly to my fellow Republicans, it is wrong. It is wrong for two reasons. First of all, it philosophically reverses everything we have been arguing for the last 2 months on everything. From police block grants to child nutrition programs, we have been saying that the States know best how to handle their local problems. Today we are saying, "But they don't know how to set up a tort system within their courts on cases of simply local application."

□ 2145

Second of all it is dangerous practically because Federal preemption is a genie that cannot be put back into the bottle once it is released if we exercise Federal preemption with respect to punitive damages in all cases of whatever kind in the State courts and we do so with a policy of limiting damages. A future Congress of a different philosophical mind can use that preemption and reverse it, not only reverse it, but they can say there will be no caps on punitive damages anywhere in the United States and they can preempt all of those States which have in fact already imposed caps on punitive damages.

I offered an amendment to the Committee on Rules which would have allowed this body a vote on changing the punitive damages provision from applying to every single kind of case in the United States of America, no matter what it is, to limiting it to product liability. The rest of the bill is product liability, the argument in favor of the bill is based on product liability. The only problem is it is not what the bill says. I regret to say the Committee on Rules did not make that in order.

I want to conclude by thanking the gentleman again for the time and by commending our Committee on Rules with respect to my colleagues on the democratic side. I have seen more openness and more fairness to rules granted under our Rules Committee in 2 months than I saw in the previous 6 years I was here, but in this particular case I think the Committee on Rules with respect to them made a mistake in not allowing a vote which is important as an issue and is important to the previous votes by our own party.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 3½ minutes to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I first want to point out that we obviously do not have enough time to debate the issue. As we have seen, Members do not even have time to yield to each other as is customarily.

Second, I wanted to point out since the Girl Scouts have come up, the information I have is that the conference data base uncovered that only one punitive damage award was ever awarded against Little League, Boy Scouts of America, or Girl Scouts of America. This punitive damage award stemming from a sexual molestation claim was subsequently vacated by an appellate court.

Mr. Chairman, the lawsuits we are talking about are designed to empower consumers who are ripped off, maimed or injured, but with the right to go to court every consumer is somebody. And if a corporation thinks about ripping somebody off or recklessly exposing them to serious injuries, because they want to make a little bit more profit, that corporation has to remember that every consumer has the right to be treated fairly. And they cannot calculate whether or not they can make a little bit more money by exposing someone to serious injuries or danger.

With the changes made earlier this week, Mr. Chairman, we make it harder for individuals to bring suit. Even if they bring a suit and win, if they come in under the amount offered in settlement, a corporation is rewarded by that legislation, but the plaintiff, having had the nerve to challenge a corporate behavior, may end up losing their homes.

Mr. Chairman, there are only a few punitive damage cases in American history. Let me just cite a few which are typical of the kind of cases we are talking about.

We are talking about a 43-year-old teacher who was injured after having being treated with surgical bandages when the company knew that the bandages were contaminated. They had been notified on numerous occasions that the bandages in the warehouse were contaminated. The quality control director had placed a hold on the bandages, and they had nevertheless decided to sell the bandages and dispute the findings of the FDA and others that there was a contamination.

The plaintiff suffered extensive scarring, loss of motion in his back and emotional distress. His medical bills are only $4,200 and that is the kind of behavior that would be protected if we pass this bill. That is Darby versus Western Medical Enterprises, a 1984 California case. And I want to cite that case so we do not get into these wild examples that you can never track down.

Mr. Chairman, in Oglevie versus International Playtex, a significant punitive damage award, they had complied, technically complied with the Food and Drug Administration regulations, but the court found that there was an abundance of evidence that Playtex had deliberately disregarded studies and medical reports linking high-absorbency tampon fibers with increased risk of toxic shock syndrome when other manufacturers were responding to this information by modifying or withdrawing their products. Moreover, there is evidence that Playtex deliberately sought to profit from the situation by advertising their high-absorbency tampons when they knew that other manufacturers were recalling their products.

Mr. Chairman, there are also cases of cotton flannel pajamas that the court found were just about as flammable as newsprint. They were hit with a punitive damage case.

That is the kind of behavior we are trying to prevent.

Mr. BLILEY. Mr. Chairman, I yield myself 30 seconds. I would hope that in the course of this very learned debate some Member on the other side would explain to us since they claim their motives are as pure as the driven snow, why for 20 years the Judiciary Committee refused to allow any bill to come to this floor for any debate or any vote.

Mr. Chairman, I yield 3 minutes to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Chairman, I rise today in strong support of the bill before the House. And I commend Chairman HYDE and Chairman BLILEY for their efforts to pass real civil justice reform.

This legislation creates uniform product liability laws. It is no news that juries have been out of control over the past decade in awarding punitive damages far in excess of what is necessary to make a plaintiff whole. Part of the blame rests with the system, because it gives juries very little guidance with which to make such awards.

As Supreme Court Justice Lewis Powell has pointed out—

> Courts simply instruct jurors in punitive damages cases to determine what dollar amount between zero and infinity would appropriately serve the States' interest * * * no act of the legislature guides them, nor do any judicial instructions narrow the range of appropriate punishment.

Mr. Chairman, nobody supporting this bill wants to deny injured individuals access to the courts. Those injured by a defective product should have a proper legal remedy. Nothing in this bill would change that.

Moreover, the bill does not place any limits on the size of economic damage awards. Contrary to what the trial lawyers want Americans to believe, injured individuals could still collect every penny to which they are entitled to make up for lost wages, both past and future. The damages would also include past and future medical expenses for the individual. These awards for economic loss would fully compensate the injured party for all of their out-of-pocket expenses.

Trial lawyers would tell you that the provisions relating to punitive damages will deny fairness to injured parties. They could not be more mistaken. This bill does not ban punitive damages. But they are capped at $250,000 or three times economic damages, whichever is greater. In serious injury cases, in which the plaintiffs would have large medical bills and lost wages, the cap on punitive damages can quickly exceed several million dollars.

Mr. Chairman, as Justice Powell has also observed,

> As recently as a decade ago, the largest punitive damages award approved by an appellate court in a product liability case was $250,000. Since then awards more than 30 times as high have been sustained on appeal. It is long past time to bring the law of punitive damages into conformity with our notions of just punishment.

Mr. Chairman, I urge my colleagues to support this bill.

Mr. OXLEY. Mr. Chairman, will the gentleman yield?

Mr. GANSKE. I yield to the gentleman from Ohio.

Mr. OXLEY. I want to commend the gentleman for his statement and to point out the fact that we are making these plaintiffs whole; that is essentially the idea behind the law, is to make them whole. And I appreciate his statement because I think it really highlighted exactly why we are here today and I congratulate the gentleman on his statement.

Mr. TAUZIN. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, we live in an age when attorneys are not very popular. That was evident when the movie "Jurassic Park" was such a big hit, and the only person eaten by that monster in "Jurassic Park" was a lawyer, and audiences stood and cheered. I was in one of the movie theaters and witnessed that awesome event.

Having been schooled in the law myself at LSU Law School in Baton Rouge, and having a deep love and appreciation for the art of lawmaking and the general artistry of well-crafted laws and how they can help order our society and make our lives better when they work right, I want to quickly report that there are many lawyers in this body who do support product liability reform, and I am one of them.

When I was a young state legislator in Louisiana, we had a proposition then before the States called no-fault insurance. I and several other young attorney legislators lead the fight for the adoption of a no-fault insurance bill in our State, a bill opposed generally by the Bar Association and the Lawyers Association of our State. We passed it out of the House; 17 of the 31 attorneys in the House voted for it, a majority.

It died in the Senate on a tie vote; never became law. But nevertheless, it illustrated that an attorney can be and should be the most interested in making sure legal systems work. If anybody has a stake in improving the legal systems of our country certainly those who have been trained in the law, who have come to learn to love it and appreciate it as a working instrument of good in our society, have a major responsibility in correcting bad legal systems and making good legal systems out of them.

That is what this effort is all about, and so I rise again tonight in strong support of reforms in our legal system and certainly in product liability reforms, such as we produced in 1988 and such as we are trying to produce on the floor of the House this week.

But I also rise to sound a note of alarm and concern about some of the amendments that will be offered in this debate tomorrow, amendments that would extend so-called fair-share liability and establish a cap on noneconomic damages to all lawsuits, not just product liability suits.

The combination of those two ideas can be lethal. When you think about a young person, a woman who is a homemaker who does not have economic losses in a lawsuit, or an elderly citizen who is on a fixed retirement income and who gets injured and therefore suffers no real economic losses other than restoration of their medical losses, when you consider the fact that under one of those amendments that person would be limited to several liability to restore their losses for noneconomic damages, and in addition may face a cap on those same damages, you get this kind of a situation. You get a situation where they have not covered any economic losses because they had none, but they have been severely damaged, perhaps incapacitated for the rest of their lives. They may suffer severely both pain and mental distress from a disability for the rest of their lives and yet maybe there is only one defendant standing who may be responsible for only 10 percent, and so they can only collect 10 percent of those damages for pain and suffering and disabilities.

On top of that, an amendment would come forward to put a cap on those damages, so it would be 10 percent of a capped amount.

□ 2200

I would hope my friends on the other side would think very seriously before the combination of those two amendments are adopted. We have adopted a cap on noneconomic losses in our State for medical malpractice, but we allow joint and several liability to make sure that persons can collect the amount of that cap when they have suffered real and severe extended disabilities and pain and suffering and mental distress, and perhaps had no other economic losses.

To combine the loss of joint and several liability with a cap on those noneconomic losses may, indeed, create some real injustice in our society. I would hope my friends on the other side would strongly consider before we adopt those two amendments in tandem.

In short, before we extend these very valuable reforms in product liability to all tort law in America, we ought to think very carefully, and we certainly ought to think about caps and the new system of liability together.

Mr. OXLEY. Mr. Chairman, I yield 3 minutes to the gentleman from Washington [Mr. WHITE], one of our outstanding freshmen.

Mr. WHITE. Mr. Chairman, I thank the gentleman, the esteemed chairman of one of our subcommittees, for his excellent leadership on this bill.

I would like to say, Mr. Chairman, that as I have listened to the debate over the last few days, one thing struck me, the fact is nobody is against tort reform from President Clinton down to the lowliest, most junior, humble member of the freshman class in this House, probably me. Nobody is against legal reform. We all recognize the need to make these changes.

But when the bill comes to the floor, that is the time when we have to separate the sheep from the goats, and I am sorry to say that now that the bill is on the floor and now that we may actually be able to make some of these reforms, we now hear that we are going too far, we are going too fast, we need more empirical data, we need more time.

Mr. Chairman, we have had 40 years for the citizens of this country, who have been crying out for the kind of reform we are hoping to adopt in these next few days. The time is now. We need this bill.

Mr. Chairman, I would like to make one other point: As we listened to the debate, we are told that this bill is for the rich, it is for the corporations, it is not for the average citizen, and I suppose we are going to hear these themes of class warfare for the next several months of this Congress. But, Mr. Chairman, I do not know where these people have been.

I have spent the last 2 years shaking every hand I could find in the First Congressional District of Washington, and I can tell you that the ordinary citizens in my district and probably in all of our districts are begging for this bill, and I will tell you the reason why. It is not because they have got empirical data about how many additional tort suits have been filed over the years, about whether there is an increase or a decrease. They are asking for this bill because they are asking this body to restore some respect for the law of our country. They know and we all know that every day in every court in this country we get results that do not make sense, that offend our sense of right and wrong, and they are asking for us to change that.

Mr. Chairman, the system is out of whack. It desperately needs to be changed. We have an opportunity to do that now, not for the corporations, but for the ordinary citizens of this country, and I hope that every single Member of this House will vote for this bill.

Mr. CONYERS. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. BERMAN].

Mr. TAUZIN. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. BERMAN].

Mr. HYDE. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BERMAN].

The CHAIRMAN. The gentleman from California [Mr. BERMAN] is recognized for 9 minutes.

Mr. BERMAN. Mr. Chairman, I thank my friend, the ranking member of the Committee on the Judiciary, and I particularly thank the manager for the Committee on Commerce, a committee which I am not on, and to take a position which he does not share, and so I appreciate it.

I would like to follow up on the themes of the last couple of speakers. We have a product liability bill on the floor. Personally I do not find it a bit offensive that the Congress chooses to federalize the whole question of the standards for product liability. I think a very good case can be made for giving the manufacturers uniform rules around the country, it makes sense to federalize it.

I do not even quarrel with all of the features of this bill. A statute of repose, which tells a manufacturer there is a certain period of time after which that manufacturer has procured and sold the product, that will pass, and he will no longer be liable for things that go wrong with that product unless he intentionally misrepresented aspects of that product that he was selling. The Bryant amendment dealt with that slight change in the statute of repose. He was denied a chance to offer that amendment. I think that can make sense.

And I think you can talk about punitive damages in the area of product liability. I personally think once you have left enough incentive for the plaintiff to pursue the punitive damages remedy, the notion that he might get a million or multimillion-dollar windfall is wrong, and that a significant portion of that should be shared with the State or a nonprofit agency or a third party, because the purpose of punitive damages is not to make that person whole. You need enough to go to him to let him have the incentive to pursue it, but the purpose is to punish and deter future conduct, and so amendments which speak to that issue in a fair fashion I find acceptable.

But there are many changes about this bill that make me curious. And first of all, we keep hearing talk about product liability.

The gentleman from Georgia [Mr. BARR] in the committee offered an amendment, findings and purposes, to establish the Federal interest under the commerce clause in doing this. He withdrew that amendment, but the amendment reappeared in a perhaps slightly different form in the bill we are not voting on, and I understand that. That is in title I. But there is not even a plausible effort to provide the constitutional basis for the Federal Government preempting a punitive damages award when Joe Smith hits Bill Jones on the street, and this has historically been a State interest and no Federal interest. All of a sudden the punitive damages for that intentional tort are federalized and capped. There is no premise for this.

I have talked to several constitutional law professors, Professor Van Alstine at Duke and others, since this bill passed out of committee. They think this whole section is of doubtful constitutionality, and the proponents of the bill do not even make an attempt to justify it on any constitutional ground, a little less on a policy ground, a ground that would say we have an interest in what New Jersey's punitive damages award is against sexual predators or what California says for a lawyer who divulges certain kinds of information or a journalist who violates the shield law in some fashion. These are all, and there are dozens of other State remedies for punitive damages for intentional torts that the Federal Government has no interest in, and are not a cause of any particular problem.

I do not understand why this bill has a provision in here which says a civil action brought for commercial loss shall be governed only by applicable commercial or contract law. Why if the parties to a contract provide for four times actual damages as liquidated damages clause, that is OK, when the only loss is commercial, but if a person is injured, they are capped, and they cannot get anywhere near that amount. It is a funny notion to put damage to property on such a higher pedestal than damage to the human body.

I guess I just want to close my comments by dealing with the comments really made; I thought they were somewhat cheap and tawdry comments made by the gentleman from Ohio that essentially impugned the motives of the Democrats who are opposed to this bill for why they are voting against this bill. Like the gentleman from Texas [Mr. BRYANT], I get contributions from the American Trial Lawyers' Association. I get far more contributions from the corporate and association PAC's that support this legislation.

I have no doubt that my perspective on this bill perhaps is shaped by the fact that I was trained in a law school. I do not think the gentleman from Illinois [Mr. HYDE] is doing this because he is in somebody's hip pocket or the gentleman from Virginia [Mr. BLILEY] or the gentleman from Ohio [Mr. OXLEY]. I think we see the world a little bit differently, and that is what this whole place is supposed to be about, people coming from very different backgrounds. We are all affected by our life experiences and our careers, and we come down in different places, and the notion that everything comes down to who is in whose hip pocket debases the whole place, and while outsiders are always going to talk about it, the notion that people who are inside the process and rely on what is essentially a very cheap argument, I think, is not healthy to this process.

I do not understand why the Republicans, who are against this bill, are they motivated by high motives, but the Democrats who are against this bill are motivated by low motives? I do not think anybody seriously believes that.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I do not want to trespass on the gentleman's time. I agree with the gentleman. But it really cuts both ways, and I believe it started on the other side with our camaraderie with corporate America and the economic royalists and all that tone was set, that they were our friends and we were doing this because they were telling us to do it. I agree with the gentleman, let us dispense with that line of argument on both sides.

Mr. BERMAN. This does sound like another clean-hands argument, but in the end, four dirty hands really do not help the process.

Mr. HYDE. I was talking about the rules. I was talking about your love affair with really closed rules during the entire last Congress and now complaining that we only gave you eight amendments this time.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Louisiana.

Mr. TAUZIN. I want to commend the gentleman for that comment. It is time that we stopped impugning motives to either side in this debate. Our effort ought to be to build a good legal system. If we concentrate on that, perhaps the American public will appreciate this a lot better.

Mr. BERMAN. I want to make one other point. The gentleman from Virginia [Mr. BLILEY] several times, my friend, said that if there was not some interest in this, why did they kill it for 20 years? For the same reason the House Committee on the Judiciary did not pass a balanced budget amendment or a school prayer amendment or a whole variety of things, because the majority of the committee at that time did not like the bill and we did not want to vote for it, and that is why we killed it, and that is why it did not come out to the House floor. It is no big mystery. It is part of the process. We just had a little change now; all of a sudden certain things we never thought of passing are rushing out here. It is part of the process.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Michigan.

Mr. CONYERS. I really am impressed by this recognition that some have gone too far, but to tell us that we should not suggest that business is going to benefit, for the chairman of Judiciary to suggest we should also, as we are washing each other's hands, and finding that nobody is guilty and that we are getting contributions from everywhere, that we also suggest that business is not the beneficiary, the clear beneficiary of some of these matters. That now, I say to the gentleman from Illinois [Mr. HYDE] is perfectly obvious, and I am not prepared at this moment, while I had dirty hands on the Committee on Rules, I do not think I am misinforming anybody to suggest to you that the beneficiaries of these restrictions that are being rushed upon us are not the consumers but are, indeed, the business interests of this country.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Illinois.

Mr. HYDE. I never doubted the business community will benefit from this legislation. I have never said otherwise. But I also do not make the distinction between the common working man and woman and the consumer and corporate America that you do. I think they each need each other, and when one is damaged, the other is damaged, and they should be working together, not at each other's throats.

Mr. HYDE. Mr. Chairman, I yield 3 minutes to the gentleman from Georgia [Mr. BARR], a valued member of the committee.

Mr. BARR. Mr. Chairman, I thank the distinguished chairman of the Committee on the Judiciary, the gentleman from Illinois [Mr. HYDE].

I might point out to the gentleman from California [Mr. BERMAN] that the report of the committee of the House on this legislation very clearly indicates that the amendment that I had proposed stayed in, was voted on, was not withdrawn, and the language, as far as I can tell, on findings and purposes which appears in the report is accurate. If he knows otherwise, I certainly would like to know that.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. BARR. I yield to the gentleman from California.

Mr. BERMAN. I agree. It only applies to title I. It does not apply to title II. There is no ostensible constitutional basis for title II.

Mr. BARR. That is fine. I appreciate the gentleman's remarks.

During the debate here this evening, we have heard a great deal of talk, a great deal of sophistry, a great deal of hyperbole about who this legislation, if it is enacted, is going to help. Is it going to help corporations, companies? You bet it is. These are corporations that provide products for consumers. These are corporations and companies, small businesses that provide jobs in our communities. Will it help doctors? You bet it will. Will it help pregnant women? You bet it will.

□ 2215

When I am home, Mr. Chairman, to my district, when I am in my district, I am like the gentleman from Texas [Mr. BRYANT]. I talk with real people. I do not talk with statisticians. I do not review reports. I do not sit down across a table from a constituent who has a problem, who has had to see their business go under because of the exorbitant costs of liability insurance. I talk with them, and I do not demand to see a report of how many cases there have been in court before I listen to their real problems.

The real people who are harmed by our litigation system being out of balance are pregnant women who in my district sometimes have to drive an additional 30 or 40 miles to find an ob/gyn doctor because there is none in their communities because of the high cost, prohibitive cost, the prohibitive risks of being sued and not be able to get insurance. That is a real problem that is not a statistic. That is not something that may be in a report, but is a real problem involving real people that we are trying to help through reforming and bringing balance back to our system.

When I am in my home district, when I am in Marietta, GA, and I talk with a small business person, and when I talk with a Cub Scout leader who is unable to take a group of Cub Scouts from my own neighborhood on a field trip because he cannot get liability insurance to take that group of Cub Scouts downtown, that is a real problem.

Mr. Chairman, those are real problems.

What we are trying to do here today, Mr. Chairman, is not to revamp, or reinvent, or throw out our legal system. What we are trying to do, Mr. Chairman, is bring it back to what it was intended to be. It was intended to be a system of laws and justice open to people who have really been hurt, not who want to look for responsibility, not in their own selves, but somewhere else where it should not lie. We are bringing balance back to a system that sorely needs balancing being brought back to it. We are not closing out the system. We are making it more responsive to the people who really need it.

I say that, Mr. Chairman, not based on some artificial reports, statistic or book. I say it is based on real life problems that we see out in our communities.

This is not the last word on this, Mr. Chairman. This is the beginning of a process. We will listen to people on the other side, listen to people on this side, read those reports as they are forthcoming to see what further changes need to be made to make sure the system stays in balance, but we have to start, and we should start with this bill.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentlewoman from Texas [Ms. JACKSON-LEE].

Ms. JACKSON-LEE. Mr. Chairman, I thank the gentleman very much for allowing me to simply try to bypass all that has occurred maybe this evening in terms of whose fault, who is responsible, and really talk to the American people, business and consumer alike.

I would not have spent the time in the Committee on the Judiciary attending to detail and working with the entire committee if I did not think, as the gentleman from Louisiana thought, that this is important business. And this business is the challenge for those of us who were trained as lawyers and those of us who are not to propose laws that will work, and, whether or not we have discussed this for some 40 years prior, the key is whether or not this legislation will last 40 years hence and that we can be assured that collectively we have designed legislation that responds to the concern that all of us have raised, the idea of fairness for the litigants who come into the courts of America.

I simply stand here to raise the concerns of women and children, and I dutifully attempted to work through the Committee on Rules to seek an opportunity to raise an amendment that I had raised in committee that talked about exemptions for women particularly with breast implant devices and, as well, children who would have a hard time, as the gentleman from Louisiana, and maybe a homemaker even, of defining or being able to project economic damages because that child obviously has not worked, and I ask my colleagues, "Even though you might not project it, who would know that someone from an inner city like Houston, possibly in a place that you would not expect would turn out to be the rocket scientist, the President of the United States which doesn't get a lot of money, but therefore would, of course, have the future to earn a certain degree of money that is not projected for that individual?"

But how can I tell Marilyn, who is a loving grandmother in my community, the hometown of Houston, whose faulty silicon breast implants have caused her total disability and agony, that she would be limited in recovery? What about Marilyn's daughter, Theresa, also who suffers from severe neurological disorders that have been passed on to her by her mother? And what about Theresa who has breast fed her three children, and that is Marilyn's 5-year-old granddaughter is now showing symptoms of silicon poisoning, too?

My question, as the gentleman from Louisiana raised, is why we could not come together and deal with issues to respond to the concerns of those who would want to put legislation forward that would last 40 years into the future.

I believe this is not a bashing game because I know, as a former corporate lawyer, that a vast majority of American companies want to do what is right. America's manufacturers have tended to be the very best in the world. They can improve further as we move into the 21st century, but, when we have some 80-some amendments offered in good faith, I would hope, and I realize the Committee on Rules has to work in fairness, and then, out of that, the opportunity to discuss breast implant device?

And then we wind up with eight that does not take into consideration, if my colleagues will, the concerns of children and the inability to measure their economic damages and, of course, women who may be having an ongoing problem with devices like breast implant devices.

I think that we are not coming to the table to address this in the fullest measure that we possibly could, and so I think the challenge we have, noting that there are two amendments that were not in any committee, as far as I understand, and now attempting to cap noneconomic damages, that we have the question raised by the honorable gentleman from New Mexico about preemption and whether or not this law will now intrude into the many States across the Nation who are working in good intention to develop tort reform and to do it well according to their State needs, and then, lastly, would we be able to find out for sure as to whether or not the new device of punitive damages standard and the applicability to all civil liability, or civil litigation, is, in fact, fair and is, in fact, responsive to business and consumers alike.

Let me conclude, Mr. Chairman, by simply saying, "What about a bifurcated bill that would have worked for businesses in America? Why not do a bill that really works for Americans and is fair?"

Mr. OXLEY. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, I was struck with the discussion we have had this evening and hark back to our hearing on the product liability issue in which the representative trial lawyers testified that they were, of course, opposed to Federal legislation in this area. I reminded him of the time when in Ohio, not too many years ago, the Ohio trial lawyers appeared in testimony before the Ohio General Assembly and said that they felt that it was the province of the Federal Government to deal with a national problem like products liability, and indeed the States, if they were to pass 50 different statutes, would be a hodgepodge that would never solve the problem.

It seems to me a rather interesting dichotomy that we hope to address in this Federal legislation. It is imperative, it seems to me, based on what we have heard in the committee, in the committee of the gentleman from Illinois [Mr. HYDE], to really provide a national standard for those goods that are sold in interstate commerce, and indeed over 70 percent of the goods that are manufactured in this country are sold in interstate commerce.

And so it behooves us in the Congress to set those Federal standards, and that is exactly what we propose to do in this particular piece of legislation, and I would urge that my colleagues do likewise.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield such time as he may consume to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I think the gentleman from Michigan [Mr. CONYERS] has yielded me such time as I may consume because I have gotten the reputation for talking a long time, but I want to surprise people tonight. I know it is late, and I want to make three concise points and sit down.

I think this has been a good debate, not long enough to do justice to this issue, but certainly a good debate.

The first point I want to make, Mr. Chairman, is that this bill is referred to by my colleagues as the Common Sense Legal Reform Act, and I have seen it go through the process over time through the Committee on the Judiciary, and I suspect tomorrow and the next day on the floor it will cease to be a Common Sense Legal Reform Act and become a Nonsense Legal Reform Act. I think it is nonsense because it is contrary to everything I had thought my Republican colleagues stood for in their Contract With America.

I thought they believed in States rights, but here I find in this bill that we are preempting all State law on punitive damages on products liability, and tomorrow an amendment will be offered to preempt State law in a number of other areas that have been traditionally reserved to the States, and I will remind my colleagues that the folks at the State level cannot want conservatives telling them what their values are and imposing their values on them any more than they want liberals doing that.

I thought my colleagues believed in not mandating things to the States. But in this bill, after they have preempted State law on punitive damages, preempted State law even on the burden of proof, which is a procedural issue, I would submit to my colleagues, they have turned around at the end of the bill and said, "We deny you the right to the Federal courts even though we have set the standards by which you must comply."

So I am scratching my head a little bit and wondering if that is not a Federal mandate, then what is?

The second point I want to make is that the chairman of the Committee on the Judiciary, for whom I have the utmost respect, said in general debate earlier that we have the most costly legal system in the world.

□ 2230

I want my colleagues and the American people to know that not only do we have the most costly legal system in the world, but we have the very, very best legal system in the world; we are the envy of the world. Our jury system is something that every person around the world will tell you works, and despite that, with $6 trillion in GNP, we spend less than 1 percent resolving all of the disputes that take place on this issue. All of our disputes, we spend less than 1 percent.

So I do not think we can take this as a justification for the massive revisions that we are undertaking. The justification, it seems to me, is that we are hurting little people at the same time that we are protecting and upping the standards and protections for wealthy people, and that leads me to the third point that I want to make, and by far the most serious point that I will make on this bill. I raise the question with my colleagues, what will the people do when they cannot get justice in the courts? What is their alternative when there is no justice in the courts?

I want my colleagues to contemplate this issue. People go to court because they feel vigorously about issues. You deprive them of that right, it does not do away with the vigor with which they approach these issues. It just means they must direct it in some other way. They must seek their justice in the streets. We used to, I understand, dual and take out our guns and shoot each other. Heaven forbid if we ever get back to that kind of system.

I will close and tell you that I am deeply troubled by the direction of this bill, and I hope that there will be a process for making it better, but it will not happen.

Mr. HYDE. Mr. Chairman, I am pleased to yield 2 minutes to a valued member of the committee, the gentleman from South Carolina [Mr. INGLIS].

Mr. INGLIS of South Carolina. I thank the gentleman from Illinois for yielding.

I rise tonight in strong support of this legislation and really to make two points. One is a story, and then second, what I believe to be the bottom line of this whole discussion, but the story first.

There is a plant in my district that makes food processing equipment. It is a very successful company that makes very fine food equipment, processing equipment that can grind meat and do all kinds of things like that, high-quality, highly skilled work that is done by very trained people.

Early in my campaign for the Congress of 1992 I visited that plant, and the owner took me on a tour, and he showed me this very sophisticated equipment they can build, and he told me that actually the growth of his business is out of that and into pizza delivery boxes for export to Mexico. The reason, he says, it is a growth industry in Mexico, apparently pizza is selling well in Mexico, but also he cannot afford the liability insurance associated with that food processing equipment. He can no longer afford the multiple lawsuits that are filed against his company, particularly when people alter the product, take off the warnings, and sue him many years later for a product long ago forgotten by his company.

I would submit to my colleagues that that is happening all across this country, and if we want to move out of high-technology, truly specialized equipment, highly sophisticated equipment like this food processing equipment and into making pizza boxes, I guess that is all right, but I think that is the wrong direction to go. We should encourage these manufacturers to make these very skilled products.

The second observation I would make is really the bottom line of all of this, is whether we are a nation that is going to focus on responsibilities and not just rights, and that is really what it boils down to. In this debate, what you are going to hear is a whole lot of discussion about how somebody else is responsible for my actions, somebody else is a guarantor of my health and happiness and that really is not the case.

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the gentleman from Kansas [Mr. TIAHRT].

Mr. TIAHRT. I thank the gentleman from Illinois for yielding me the time.

I just want to speak in support of this, Mr. Chairman, because of the impact that has happened in my district, because of the statute of repose or the produce liability for airplanes. In Independence, KS, in April, we are going to break ground for a new plant. Cessna Aircraft is going to build a plant and bring 1,000 jobs into Independence, KS, the Montgomery County area. There will be another 1,000 jobs that are going to be started in Wichita. The spin-off is going to create 7,000 jobs because of product liability for aircraft.

I heard earlier that we were concerned because there was no measurable impact from product liability, that there were no benefits that could be created from such limitations, that it was only going to hamper individuals, but I am here to tell you tonight that in my district of south central Kansas, we are going to see 7,000 jobs over the next 5 years. And we are excited about that.

The industry tells us that there may be a possibility of 25,000 jobs nationwide from product liability on aircraft. Now, if we expand that beyond aircraft, if we go into other products, we are going to see that there will be jobs created. But there will be people working, and it is not the rich people or the corporations that are going to benefit. It is the guy that carries a lunch bucket to work. It is the guy that tries to create a safe environment for his kids, he tries to clothe them and to feed them. Those are the people we are benefiting by product liability.

Mr. Chairman, I just want to consider this legislation, pass it out of here in a quick manner, because it is good for the working people of America.

Mr. TAUZIN. Mr. Chairman, I yield my remaining 5 minutes to the gentleman from Oklahoma [Mr. BREWSTER].

Mr. BREWSTER. Mr. Chairman, I rise this evening in support of H.R. 956 and will offer an amendment with my colleagues Messrs. OXLEY, COBURN, BURR, TAUZIN, and STENHOLM.

The enactment of this amendment simply exempts the manufacturer or seller of drugs or medical devices which are FDA approved, from punitive damages.

It is important to note that this amendment does not limit actual or noneconomic damages. But, ensures that companies who have acted in good-faith and received FDA approval will not be hit with punitive damages. When this amendment becomes law, lives will be saved.

This country has the most rigorous drug and medical device approval process in the world. Companies which research and develop new treatments spend millions, and sometimes billions, of dollars on developing and testing new treatments in order to meet FDA standards of approval and make these important treatments available to the public.

The out-of-control tort situation in our country is forcing companies to back away from developing and putting on the market many important new treatments related to illnesses such as cancer and AIDS. This amendment would, to a great extent, remedy this situation.

Mr. Chairman, I would like to make a few remarks on the bill itself. I support final passage of H.R. 956. This bill will establish a unified set of standards and procedures for product liability and civil litigation.

The vast array of product liability laws that face manufacturers, businesses, and consumers have suppressed entrepreneurial creativity for fear of frivolous lawsuits.

H.R. 956 will result in predictable and marketable policies to consumers and manufacturers, and enhance job creation and innovation. I encourage my fellow Members on both sides of the aisle to vote in favor of the Oxley amendment and final passage of this critical legislation.

Mr. HYDE. Mr. Chairman, I am pleased to yield such time as he may consume to the gentleman from Minnesota [Mr. RAMSTAD], who is chairman of a task force on the subject of product liability.

Mr. RAMSTAD. I thank the distinguished chairman for yielding me the time, and, Mr. Chairman, as one who chaired the task force which drafted H.R. 10, the Common Sense Legal Reform Act, I rise in strong support of this legislation which derived from that initial legislation.

I want to commend the respective chairmen of the Committees on the Judiciary and Commerce for ensuring that we honor our pledge to the American people to bring this legislation to the full House for a vote within the first 100 days.

Chairman HYDE, Chairman BLILEY, and Chairman OXLEY deserve a lot of credit for their work, as well as their members.

Now, I recognize, Mr. Chairman, that some Members who support tort reform are genuinely concerned about the Federalism issue; that is, whether the issue of tort reform should be left to the States.

Members with this concern, I believe, should find instructive the counsel of three sources: Judge Robert Bork, State Representative Steve Flowers and last but not least, the American people.

First, Judge Bork is certainly no fan of an expansive reading of the commerce clause, but he readily concludes that these reforms are well within the scope of Congress's authority under the commerce clause. I want to quote from a letter dated February 27 to the Speaker in which Judge Bork concludes that Federal intervention for this purpose is not merely constitutionally permissible. It is very important to vindicate the Framer's constitutional design. Judge Bork's basic argument is that it can no longer be disputed that abusive litigation is having a profoundly adverse impact on interstate commerce.

It is, therefore, necessary for Congress to protect interstate commerce from parochial discriminatory regulation by States and localities.

Also, Members should pay particular attention to State Representative Steve Flowers of Alabama. Representative Flowers once believed that tort reform should be left to the States, but not now. Why?

In 1993, the Alabama State supreme court ruled that the State legislature does not have the authority to impose any cap on punitive damages and struck down the tort reform law that Representative Flowers had authored back in 1987. Even George McGovern in the Washington Post, and most Members, I am sure, agree we should cap punitive damages. Since the Alabama's supreme court's decision, Alabama's punitive damage awards have gone through the roof. Forbes magazine recently described Alabama as, "the worst place in America in which to be a civil defendant."

Finally, Mr. Chairman, the American people understand the need for uniformity of liability laws. In a recent survey of 1,000 adults, 84 percent—I mean, 84 percent of the people don't agree whether it is a nice day or not, what the weather is like—but 84 percent of the people agree that because State liability laws often conflict with each other and because so many lawsuits cross State lines, there should be one set of rules for the liability system instead of 50 different sets of rules.

Mr. Chairman, I hope this addresses the concerns of my colleagues regarding Federalism. We must address these national problems, Mr. Chairman, with a national solution and that national solution lies in the legislation brought here tonight. And I urge its support tomorrow.

Mr. BERMAN. Will the gentleman yield?

Mr. RAMSTAD. I yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, I am curious. First of all, was title II of this bill, the preemption of punitive damages in nonproduct liability cases, part of the Republican contract that you were involved in drafting?

□ 2245

Mr. RAMSTAD. Mr. Chairman, it was certainly thought if it applied, the limitation on punitive damages applied to products cases, it should apply to all civil actions.

Mr. BERMAN. Was that in the contract?

Mr. RAMSTAD. The cap on punitive damages was in the contract.

Mr. BERMAN. Was the cap in nonproduct liabilities cases? Because I think the contract was only limited to caps on punitive damages in product liability cases.

Mr. RAMSTAD. The present bill I am sure the gentleman recognizes applies to all civil actions, as it properly should.

Mr. SENSENBRENNER. Mr. Chairman, the current system of product liability law in the United States is detrimental to our Nation's economic prosperity. The cost of insurance and litigation causes manufacturers to increase prices, provides a disincentive for business to create new products, and impedes interstate commerce. Tort liability costs are substantially higher in the United States than any other country and currently represent 2.3 percent of U.S. gross domestic product.

For the past 20 years, the Democrat-controlled Congress has refused to seriously consider obvious problems inherent in our product liability laws. I am pleased that the new Republican majority has made product liability reform a priority and I enthusiastically support H.R. 956, The Common Sense Product Liability and Legal Reform Act.

H.R. 956 will enact several important reforms. It ensures that product sellers will receive reasonable protection against liability for manufacturer error. A plaintiff whose use of drugs or alcohol is partly responsible for an accident will be prohibited from collecting damages from defendants with lesser degrees of responsibility. Limits are established regarding a defendant's liability for non-economic damages to a proportionate share of responsibility. A 15-year limitation for brining most liability actions will also be enacted. The bill also makes important reforms to the system of awarding punitive damages. It addresses burden of proof, proportionality of awards, and bifurcation of proceedings.

In addition, I support the Cox amendment to H.R. 956 which expands the legislation to include reform of the medical malpractice system. Congress has spent a great deal of time debating elaborate proposals that would control skyrocketing medical costs. This amendment provides a simple first step to reducing the cost of medical care. In my State, Wisconsin, the average physician pays $40,000 a year in medical malpractice insurance premiums, and specialists pay more. If you assume that the average doctor works 2,000 billable hours per year and charges $20 per hour, then the first $10, or the average cost of the first half-hour of the office visit, is the patient's share of the medical malpractice insurance premium. Medical malpractice premiums have been the fastest growing component of physician's costs. This amendment will reduce frivolous malpractice suits and the corresponding increases in insurance premiums. In my opinion, reforming medical malpractice is an essential start to reforming America's health care system.

In the coming months, Congress will debate significant cuts in Government spending for research and development, small business programs, and export promotion. Enactment of this legislation will reduce tort liability costs for American companies and enhance American competitiveness in the world marketplace.

Mr. SANDERS. Mr. Chairman, I am very distressed about some of the proposals that have been considered and passed by the House recently. Although one in three Americans will get cancer and one in four of us will die from it, the proposals we have been passing under the Contract With America are making it substantially easier for big corporations to pollute our environment and bodies with toxic chemicals with complete immunity. They make it extremely difficult, if not impossible, for the Federal Government to protect the public health and take away the financial incentives for private industry to use care when manufacturing products.

Forces who think its appropriate to ignore the public health successfully defeated important amendments I offered to the unfunded mandates reform and the regulatory moratorium bills which would have allowed the Federal Government to protect the public health—especially from cancer-causing toxic exposures. On Monday, under the guise of attorney accountability, these same forces successfully passed a provision that would make it extremely difficult to win a suit against a company that manufactures products that cause toxic injuries. It will likely prohibit evidence of newly discovered injuries that we are discovering in the toxic tort area like chemical sensitivity and immune deficiency syndrome. Obviously, attorney accountability only demands accountability to corporate interests and not accountability to the consumer.

But those of us who want to protect the public health are beginning to win the fight. This legal reform bill was amended so consumers harmed by toxic products like the Dalcon shield, DES, breast implants, and asbestos, can sue for compensatory damages. The bill does not allow suits 15 years after purchase of the product. Yet, in committee the time limit provision was changed to exclude injuries that do not ordinarily appear within 15 years of exposure. Although this provision addresses latent injuries like cancer and asbestosis, it is badly written and could leave many seriously injured consumers without legal recourse. Which injuries ordinarily appear more than 15 years after exposure? Which types of cancer? How about AIDS? And chemical sensitivity? What if an injury usually arises within 10 years, what happens to the victims who were lucky enough to have a longer latency period? Will they not be able to sue? Clearly this bill does not adequately protect consumers from cancer-causing and other toxic products.

Mr. Chairman, there is one other serious flaw in this bill I would like to address. It is extremely regressive. The cap on punitive damages is based, in part, on the victim's income. Not only does this allow wealthier victims to win larger recoveries, but it also creates an incentive to use less care when developing and manufacturing products that are typically used by low-income consumers.

This bill is a badly written bill that puts consumers' rights in serious jeopardy and I strongly urge you to vote "no" on final passage.

Mr. PACKARD. Mr. Chairman, the House is moving forward with common sense legal reforms. We restored attorney accountability and curbed nuisance securities lawsuits. Now we must work to restore fairness to the legal system by ensuring that real victims are rewarded.

Polls show that 72 percent of American workers and consumers favor legislation that places tighter limits and restrictions on an individual's ability to sue another person or company. Americans are tired of paying the tab for lawsuit abuse and litigation greed. They want a civil justice system that protects their rights and restores fairness, not one that promotes unfair behavior.

Lawsuit abuse has taken on a life of its own. It clogs our courts, dampens job growth, promotes slick lawyer tactics, produces higher prices, inflates insurance premiums and keeps Americans out of the competitive world market. We must stop this trend. American consumers, workers, and producers work too hard to suffer the economic consequences promoted by a greed driven legal system.

Our Republican Common Sense Product Liability and Legal Reform Act, H.R. 956, restores fairness and deters frivolous lawsuits by placing caps on punitive damage awards and reforming product liability laws. H.R. 956 represents a legitimate effort to stem the tide of costly and trivial lawsuits. Reforming our product liability laws will strengthen the economy and the free market by encouraging and promoting manufacturer innovation, in turn creating new jobs and more consumer products.

Mr. Chairman, I strongly support passage of the Common Sense Product Liability and Legal Reform Act. It is time to end out of control lawsuit abuse. Americans want a legal system that works for them—a system where legitimate grievances will be addressed and not overshadowed by baseless, costly litigation.

Mr. STOKES. Mr. Speaker, I rise in strong opposition to H.R. 956, the Common Sense Legal Standards Reform Act of 1995. While I agree that some reform of our Nation's product liability laws may be appropriate, this legislation goes too far, favors producers of dangerous products too much and provides too little protection for ordinary citizens. I cannot support this effort to significantly curtail Americans' rights to seek redress in the courts when they have been needlessly injured, maimed, or killed by dangerous products.

This dangerous and hurried legislation will not only fail to truly reform the product liability litigation laws that need reforming, but will endanger the American public by stripping away the most important checks and balances system Americans have—the American judicial system. It would be the height of irresponsibility for Congress to take from the American people their ability to protect themselves, their families and loved ones from dangerous products.

The bill before us today, the Common Sense Legal Standards Reform Act of 1995, will not only attempt to undo many of the important accomplishments of the U.S. Congress, Federal agencies and over 200 years of American common law, but also seeks to undermine many of our Nation's most important mechanisms to enhance safety for all Americans.

The stated purpose of the Common Sense Legal Standards Reform Act is to impose on State and Federal juries limits on the amount of punitive damages of $250,000. It also imposes on States, Federal standards for all product liability lawsuits. Additionally, the bill contains several special interest exceptions for drug companies and aircraft manufacturers in addition to other friends of the new majority.

While I agree that Congress should investigate reforming products liability litigation, this proposed measure goes well beyond the legitimate objective of balancing responsibilities and risks. In fact, this bill is specifically designed to inhibit the will of the people by creating artificial special interest exceptions, and obstacles for injured and maimed citizens who seek redress in the courts. The current majority has long sought to weaken, if not totally eliminate, Americans ability to protect themselves in the courts.

Supporters of H.R. 956 have argued, and I agree, that most products produced in this Nation are the safest, highest quality products produced in the world. Yet, the fact remains that too many dangerous products exist. When injured by one of these dangerous products, Americans' last recourse is the American judicial system.

Proponents of this bill have argued that curtailing citizens' rights to open access to the courts is justified because there has been an explosion of product liability litigation. This argument is simply not supported by the facts. According to the "1992 Annual Report of the National Center for State Courts," the actual number of product liability claims is extremely low, a mere 4 percent of all personal injury cases. The evidence shows that products liability cases represent only .0036 percent of the total civil caseload in State and Federal courts.

There has been no explosion in products liability lawsuits as republicans assert. Excluding asbestos cases, the number of product liability cases filed in Federal courts between 1985 and 1991 actually declined by approximately 35 percent, from 8,268 to 5,263. The only significant increase in litigation over the past few years has not taken place in the area of products liability. It has been caused instead by large corporations suing other large corporations. A 1990 study reveals that corporate contract cases increased 232 percent and make up more than 18 percent of all civil cases as opposed to .0036 percent for product liability cases.

Another artificial justification for passage of H.R. 956 has been the alleged explosion in the frequency and size of punitive damages awards. The fact is, courts rarely award punitive damages. A 1993 Suffolk University law school and Northeastern University study found that only 355 punitive damage awards were granted in product liability cases between 1965 and 1990. Only 20 percent of those 355 cases were affirmed on appeal. The research also shows that the vast majority of companies subject to punitive damages awards between 1965 and 1990 took some post-litigation steps to make their products safer. Without punitive damages many products would simply be more dangerous. Clearly, the current system of checks and balances system is working.

H.R. 956 will have a devastating impact on the children and elderly of this Nation. The limitation of damages awards places children and elderly at an especially significant disadvantage. Since compensatory damage awards are based solely on economic loss, these individuals can prove few tangible economic damages because they generally do not work, or work for small salaries, and would therefore not receive nearly as much compensation as the rich, who bring home big paychecks. This result would be fundamentally unfair to thousands of Americans, and would constitutes an extreme injustice to the youth and elderly of our Nation.

I hope that no one in this House would want to increase the risk of disease, injury, and premature deaths caused by exposure to dangerous products. But that is exactly what H.R. 956 would do. This bill, in concert with H.R. 988, the Attorney Accountability Act of 1995, would slam the doors of the courthouses of this Nation in the faces of the American public. In my 27 years in congress I have seen few more obnoxious measures, that so cruelly and unfairly places a substantial burden on the American public.

This bill will also compromise citizen and worker safety. Last year, over 10,000 American workers died in the workplace. Another 70,000 were permanently disabled, and more than 100,000 contracted fatal occupational illnesses. H.R. 956 will greatly inhibit our citizens' ability to protect themselves from unsafe products, dangerous working conditions and avoidable disasters. I cannot in good conscience endanger American workers by supporting this bill.

In addition to endangering the health and lives of Americans, approval of H.R. 956 would not result in additional enhancement in competitiveness or innovation. The differences between the U.S. product liability system and the legal systems in other countries do not provide foreign manufactures with a competitive advantage. All companies are subject to the liability laws of the country where a product is sold or where the injury is incurred. Therefore, there is no significant harmful effect on American competitiveness as a result of the American products liability system.

Contrary to representations of proponents of H.R. 956, no real evidence has ever been presented that supports the claim that products liability laws have a chilling effect on business innovation. In fact, the current products liability system enhances innovation by providing a significant incentive for companies to develop safe products.

Mr. Speaker, this legislation is unprecedented in its scope and cynicism. Few areas of State and Federal products liability litigation will be unaffected by this measure, yet, with very little opportunity for open hearing, and with severely limited debate, this act has been placed before us. The rule under which this bill has come before us is so draconian that many members with reasonable and bi-partisan amendments will not be heard. A measure of this kind requires detailed analysis of the impact it may have on the American people, but no such review has or will take place. In the current rush to force this bill to the floor of this House, the will of the American people will certainly be compromised.

Furthermore, this legislation would remove from the wise discretion of State and local governments the determination of how to handle products liability litigation. My colleagues on the other side of the aisle have often claimed that they favor retracting the tentacles of the Federal Government from local people, who best know and understand the issues they face. Yet, this bill flys in the fact of this often touted Republican ethic. H.R. 956 strips from local communities the ability to establish products liability standards. This modification of the products liability laws by Federal mandate is unjustified, ill-advised and will lead to injustice for working and middle-class Americans.

Mr. Speaker, it is my belief that H.R. 956 and the circumstances under which it is presented in this house is an attempt to mislead the American people to believe that meat cleaver, simplistic solutions will end the fictional "avalanche of litigation" so often mentioned by supporters of this bill. As the facts have shown, evidence clearly establishes that this bill has been pushed on us all under tragically false premises.

As our Nation faces an epidemic of joblessness, poverty, and economic troubles, the solution to these problems will not be found in quick fixes like H.R. 956. The American people elected us to act in their best interest, not compromise their welfare because congress does not have the will to permit Americans to protect themselves from dangerous products. I urge my colleagues to vote against this bill.

Mr. BUYER. Mr. Chairman, in the past 50 years, the cost of torts—personal injury, product liability, and medical malpractice cases—have grown at 4 times the rate of the overall economy. Currently, the cost of this system is in the neighborhood of $132 billion.

Other than diversity jurisdiction in Federal court, predominately, tort actions have been tried in State courts. Historically, consumers bought goods and services locally—intrastate—where many companies primarily conducted commercial trade locally. State rules for tort actions were probably quite appropriate. In the last half century, however, interstate commerce has dominated the market. Consumers buy products that are manufactured in other States, with company headquarters in still another State. Companies no longer serve local markets, but sell products nationally, even internationally. The mechanism by which civil disputes are settled has not kept pace with a changing world and its economy.

From 1973 to 1988, product liability suits in Federal courts increased 100 percent; in State courts the increase was between 300 and 500 percent.

This increase in litigation has not come without a price. Because 70 percent of products manufactured in any one State cross State borders before the point of final sale, American manufacturers must contend with the uncertainty of 50 different civil justice systems. The awards for damages in one State affect the prices to consumers, insurance rates, and job market in other States. According to surveys reported by Pace University Professor of Law M. Stuart Madden, because of liability costs, 36 percent of American manufacturers have withdrawn products from the world market, 47 percent have withdrawn products from the domestic market, 30 percent have decided not to introduce new products, and 25 percent have discontinued new product research.

It can be argued that our tort system is already federalized, except that no consistent standards apply. Even criminals in our criminal justice system face a clear definition of what constitutes crime and there is a limit on what punishment is deemed to be just.

For the average American, the current tort system denies the right of free choice in the marketplace and inflates the prices for available products. It also discourages innovation, retards capital formation and creates a distinct competitive disadvantage in the world market, affecting ability of the economy to create and maintain jobs.

The chief flaws of the existing system is that it is unpredictable and there is little individual responsibility where all are considered victims.

Article I, section 8 of the Constitution gives Congress the power to regulate interstate and foreign commerce. The intent of H.R. 956, the Common Sense Product Liability and Legal Reform Act, is to return a sense of reasonableness and predictability to this system.

H.R. 956 would: First, limit the liability of product sellers; second, limit the liability of manufacturers for injuries due to drug or alcohol abuse, or to the misuse or alteration of their product; third, institute a 15-year statute of repose on product liability; fourth, impose sanctions for bringing frivolous product liability suits; fifth, eliminate joint liability for noneconomic damages in product liability suits; sixth, require a higher standard of proof for punitive damages in all civil suits; seventh, cap punitive damage awards in all civil suits at $250,000 or 3 times economic damages, whichever is greater, and eighth, require strict standards of proof for claims against biomaterial suppliers.

In no way does H.R. 956 limit the ability of a plaintiff to recover actual economic loss—medical bills, lost wages, and the like.

This legislation will help benefit many of the small businesses in the 5th District of Indiana. Let me site just two examples.

Whallon Machinery of Royal Center, IN, manufacturers industrial material handling machines. The machines incorporate hydraulic and pneumatic components as well as sophisticated electronics. This equipment can be found in nearly every State and many foreign countries. In nearly 30 years of business, over 83 percent of all machines built are still in use. In 1993, Whallon received notice of an incident involving their equipment. Previous to this, Whallon had no product liability claims. A customer modified a Whallon machine to the extent that an operator could place himself into the working mechanism of the equipment while the machine was still in automatic operation. An operator, without first hitting the emergency stop button, as instructed by the owner of the machine, entered the machine while it was running and sustained injuries. Whallon ultimately settled out of court.

Whallon was quickly affected by this. First, its insurance carrier decided to not renew Whallon's policy. New insurance was found but at nearly 4 times its 1993 premium. The company had to alter plans for plant improvements and expansion, which meant neither additional hiring nor improvement in employee benefits.

In another example, medical device manufacturers, such as BIOMET, Zimmer, DePuy, and Danek in Warsaw, IN, provide critically needed products to patients across the country and in the world. Medical device manufacturers have improved the quality of life for countless individuals, through pacemakers, heart valves, artificial blood vessels, hip and knee joints.

Three major suppliers—DuPont, Dow Chemical, and Dow Corning—recently announced that they would limit, or cease altogether, their shipments to medical implant manufacturers. Under current law, suppliers of the raw materials used in implantable devices may be brought into the litigation process. Huge damage awards are often sought from these biomaterial suppliers, even though suppliers have no role in the design, manufacturer, or sale of the implantable device. The courts are not finding the suppliers liable—one supplier has a record of 258 to 1. Nevertheless, it can cost millions to defend and win these lawsuits. The risks and costs of responding to product liability suits far exceeds the limited revenues generated from the sale of these materials and it is driving suppliers away from the medical device industry.

Alternate suppliers have been identified for certain of the materials, but they have expressed similar liability fears. In many cases, no other supplier exists. Alternate suppliers will likely sell materials only to those medical implant companies with the financial ability to back stringent indemnification agreements. According to Dane Miller, president of BIOMET, he is having to look at offshore biomaterial suppliers and the substitute materials made available may be substantially different and require quality assurance and new testing. Small implant manufacturers and start-up companies, however, are not in a financial position to guarantee adequate indemnification to suppliers. Small medical technology manufacturers are a primary source of innovation in the medical technology industry.

By limiting liability to instances of genuine fault, H.R. 956 will enable life-saving and life-improving medical devices to remain on the market.

We must return a sense of reasonableness to ensure that injured parties are compensated in a manner that protects all consumers and America's competitiveness. H.R. 956 is a good start in that direction.

Mr. HYDE. Mr. Chairman, I yield back the balance of my time.

Mr. OXLEY. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired for general debate.

Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. DICKEY) having assumed the chair, Mr. DREIER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes, had come to no resolution thereon.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

COMMONSENSE PRODUCT LIABILITY REFORM NEEDED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas [Mr. TIAHRT] is recognized for 5 minutes.

Mr. TIAHRT. Mr. Speaker, I want to carry on with what we talked about earlier this evening. It is natural for each of us to feel sorry for a person who suffers in an accident or mishap. One of our fundamental freedoms is the ability to bring suit in order to receive justice. When big corporations get sued, we often side with the individual against the companies. We think "big bad corporation" and "poor individual." And when the big companies pay millions of dollars in settlements, we pretty much shrug and say, "Well, they can afford it."

But that is not really true, Mr. Speaker, because the people who pay the price for those big settlements are the working people of America, and they pay it at the cash register. When companies are forced to pay outrageously high settlements, they eventually have to cut jobs, raise prices, and pass the costs on to the American people. This does not affect the rich as much as it affects the hard-working families who have to pay this price.

Mr. Speaker, in 1994 Congress passed the General Aviation Revitalization Act. This act implemented a statute of repose of 18 years on suits involving single engine airplanes, product liability for airplanes. That means that after 18 years, the legal liability of a manufacturer is greatly diminished. This act applies to planes with seating capacity of 20 or less. Cessna Aircraft Co. which is headquartered in Wichita, KS, was for years the world's leading producer of single engine aircraft. But because of aging airplanes and the litigation explosion that followed, America lost its aviation manufacturing advantage.

In 1977, the single engine aircraft industry was producing over 13,000 airplanes per year. But with the onslaught of the legal tidal wave, Cessna completely stopped manufacturing these planes by 1986. By 1994, the entire industry produced less than 600 aircraft, less than 5 percent of what was previously produced, and many of them came from outside America.

Mr. Speaker, this is just not about making fewer airplanes, it is about losing American jobs. When the company is forced to pay sky-high legal judgments in cases where their legal liability is at best suspect, the working families are taking the hit and we are lining pockets of rich lawyers. What has happened to Cessna and other companies was that judges were holding them accountable and liable for aircraft malfunctions that could be reasonably accounted for in pilot error, maintenance failure, or simply just an old airplane

Mr. Speaker, there comes a time when a plane is just old. Those who are flying these old airplanes were simply taking a risk. How can you blame the manufacturer for a properly designed airplane and properly built airplane?

For the last 2 days we have been debating legal reform on the floor, and some have stated that this reform is unnecessary, that the system works fine the way it is. As we talk about product liability, I would like to offer what is happening in Independence, KS, as an example of what could happen in other industries if we could just pass the much-needed product liability reform.

Because we passed the statute of repose containing the General Aviation Revitalization Act in 1994, Cessna Aviation has announced it will build a new manufacturing plant in Independence, KS. Groundbreaking will be this April. Cessna intends to invest over $75 million in this community, and it is all the result of placing a reasonable limit on product liability.

Cessna's production of single engine aircraft was destroyed in 1986, but because Congress took action in the next 2½ years, Cessna estimates they will produce 2,000 airplanes per year. Once again, this is not about more planes as much as about hope for southeast Kansas and for 7,000 people who are going to be employed over the next 5 years. The benefits of this plant will also be felt in Oklahoma and nationally. All told, it is predicted over 25,000 jobs will be created from product liability reform for airplanes. This is just one example that can happen when you rein in the lawyers and give manufacturers a chance to pass laws.

This is clear Congress should pass commonsense product liability reform. Jobs and security for people across the Nation will be the result. People should have the right to sue. That is not the question here. The question is should there be reasonable limits on product liability, and the answer is "yes."

SUPPORT FOOD STAMP PROGRAM AND COMMODITY DISTRIBUTION ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee [Mr. BRYANT] is recognized for 5 minutes.

Mr. BRYANT of Tennessee. Mr. Speaker, I would like to talk about something we did last night on the Committee on Agriculture on which I serve, but first, before I get into that, I would like to address briefly some of the remarks I have heard on the debate this evening concerning the tort reform bill, and particularly the punitive damages aspect of that bill, the claims being made on one side that sexual predators and drug dealers will no longer be subject to punitive damages.

Certainly as an emotional issue as this type of conduct, these types of conduct are, I wanted to clarify from my viewpoint and from my experience as a civil attorney for about 20 years, which included about 2 years as a U.S. attorney as a Federal prosecutor, my experience in the area of punitive damages and this type of conduct which I find was not really connected.

I never saw, in my experience, a sexual predator suit in civil court, but rather the more likely remedy the law has there is a criminal prosecution, the aggressive criminal prosecution of people who sexually pray on children.

Likewise with drug dealers, what we come out there with drug dealers is they are arrested and prosecuted under the criminal law, not suing them civilly, where we put these types of people in jail for their conduct. Certainly in the area of drug dealers' civil forfeiture, that was available to us as prosecutors, to seize the ill-gotten gains that these people had, their assets, their homes and cars, things that were gained through the sale of drugs. It was certainly valid forfeitures. But not again in my experience have I seen the use of punitive damages in either one of those cases, but rather the more appropriate remedies of putting these people in jail.

Mr. Speaker, I would now like to talk about the Committee on Agriculture, on which I serve.

Last night, the House Agriculture Committee passed H.R. 1135, the Food Stamp Program and Commodity Distribution Act.

This legislation is a big first step in the direction of real welfare reform.

For 2 years now, Americans have been waiting for the current administration to end welfare as we know it.

Last night, that process began.

What this legislation will do is give those States the choice to determine how they want to run their Food Stamp Program.

One of the most important aspects of this legislation is that it would require food stamp recipients must work to be eligible to receive food stamps.

The hard-working taxpayers of my district in Tennessee would agree that if an able-bodied person is going to receive food stamps, then they should be required to work to receive them.

It simply is not fair to stay on the rolls and make no effort to better one's self and try to become a productive, tax paying citizen of society.

Another important part of this legislation is that it contains stiffer penalties for those caught abusing food stamps.

The Federal Government will now be allowed to seize property and proceeds from illegal food stamp traffickers without having to go through mountains of red tape.

As a former U.S. attorney, I once prosecuted an individual who tried to purchase a vehicle with food stamps.

So I know firsthand that we must crack down hard on waste, fraud, and abuse in the Food Stamp Program.

Mr. Speaker, the welfare reform process has indeed begun.

The welfare system of the past and present has been a tragic failure.

It has encouraged dependency, discouraged self-reliance, and created a burden for those of us who choose to be productive.

Only until our welfare system encourages work and self-dependence will it be truly beneficial to society.

H.R. 1135 will do this.

I urge my colleagues to support H.R. 1135 when it comes to this Chamber for consideration.

DISCUSSION ON NEWSPAPER STORIES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. HAYWORTH] is recognized for 5 minutes.

Mr. HAYWORTH. Mr. Speaker, earlier today it was my privilege to appear on C-SPAN with one of our colleagues on the other side of the aisle from Illinois to discuss the morning newspapers, and a rather lively discussion ensued, and it was very interesting to go over many different articles in the Nation's press.

One article, however, we failed to get to, and I would bring to your attention, Mr. Speaker, and indeed the attention of the American people, on the editorial page of the Wall Street Journal, an article entitled "Protest, Washington Style." Quoting from the article now:

> Newt Gingrich and other speakers were prevented from addressing the National Association of Counties in Washington on Monday after 500 shouting protesters invaded the hotel ballroom and used megaphones to call for higher school lunch funding. Many of the protesters had been bused in from out of town, prompting Mr. Gingrich to ask some pointed questions. Why weren't they at work? Who are they? Who paid them? Well, it turns out the protest was organized by the left wing activist group, ACORN, a frequent recipient of Federal and state grants.
>
> The Washington Times reports that 42 participants in President Clinton's new national service program are working for ACRON at a cost to taxpayers of more than $1.1 million. Several operate out of ACORN's Washington,

D.C. offices. We may never know if federally funded 'volunteers' helped ruin meetings for 2,000 county officials, but we hope Congress plans some oversight hearings on the groups involved in Mr. Clinton's service program.

☐ 2300

It was interesting today, Mr. Speaker, to see yet more protesters arrive here on Capitol Hill. And I find it especially interesting that it appears that some of these protesters are subsidized with tax money from you and me and from the American people, so now we have really reached a new low in the concept of protest.

And please don't misunderstand. I uphold the first amendment and applaud the first amendment, and certainly people have a right to peaceably assemble and petition the Government for redress of grievances. But the problem comes as certainly there is a cloud of suspicion that what we have now are protesters subsidized with tax money here to champion the tired old policies of the past.

And what is even more true, and I will come back to this fact until the American people have it clear in their minds, all this talk about cutting the school lunch programs, about cutting the Federal nutrition programs, can only be characterized as false.

Again, the numbers speak for themselves. This new Republican majority is willing to fund these programs $200 million in excess of what President Clinton has called for this year. And moreover, we called for increases of 4.5 percent.

Now the guardians of the old order bankrupt of any new ideas come here and march to the will of this House and say, No, no, those are cuts. Again, only in Washington can it be considered a cut when you reduce a future planned increase.

My friends on the other side are upset because the increase will not be 5.1 percent. Instead, the increase is only 4.5 percent. But I would ask, amidst all of these allegations, amidst the misreading of numbers, amidst this phantom number of $7 billion with imaginary money that is not even there, who has been harmed?

We know who has been scared. Name for me the school children, show me the schools that are being deprived of lunches. They are not there. Again, it is the policy of this new majority to empower people, to enfranchise people and not to hold down people in the form of a permanent underclass but to truly feed the needy and to give the opportunities to feed the needy in the classrooms, the people who really need it, to have that opportunity at the local level. But the money is not being taken away.

And with reference to people coming to lobby us, to come to see us, I thought it was very interesting that in previous weeks folks would come bringing cut-out dolls of this nature and they would list names of very, very small children. Now, look, it is obvious a 3-year-old, precocious though she might be, did not assemble this doll. This was something done by adults, from government bureaucrats who have paid money into political action committees that have funded the tired old order 10 to 1 over Republicans. That is part of the problem. That is the real story. That is what we will move to correct.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. BILBRAY (at the request of Mr. Armey) after 3:30 p.m. today, on account of illness.

Mr. UNDERWOOD (at the request of Mr. Gephardt) for today and the balance of the week, on account of official business in the district.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. Jackson-Lee) to revise and extend their remarks and include extraneous material:)

Mr. Wynn, for 5 minutes, today.
Mr. Gutierrez, for 5 minutes, today.
Ms. Woolsey, for 5 minutes, today.
Mr. Reed, for 5 minutes, today.
Mrs. Lowey, for 5 minutes, today.
Mr. Gene Green of Texas, for 5 minutes, today.
Mrs. Clayton, for 5 minutes, today.
Mr. Stokes, for 5 minutes, today.
Mr. Hoyer, for 5 minutes, today.
Mr. Scott, for 5 minutes, today.
Ms. Kaptur, for 5 minutes, today.
Mr. Owens, for 5 minutes, today.

(The following Members (at the request of Mr. Tiahrt) to revise and extend their remarks and include extraneous material:)

Mr. Tiahrt, for 5 minutes, today.
Mr. Ensign, for 5 minutes, today.
Mr. Bateman for 5 minutes on March 13, 14, and 15.
Mr. Talent for 5 minutes on March 9 and 15.
Mr. Hayworth for 5 minutes, today.
Mr. Kingston for 5 minutes, today.
Mr. Bryant of Tennessee for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Ms. Jackson-Lee) and to include extraneous matter:)

Mrs. Meek of Florida.
Mr. Kildee.
Mr. Foglietta.
Mrs. Schroeder.
Mr. Underwood.
Mr. Menendez.
Mr. Deal of Georgia.
Ms. Eshoo.
Mr. Filner.
Mr. Sanders.
Mr. Stokes.
Mr. Romero-Barceló.
Mr. Traficant.
Ms. Lofgren.

(The following Members (at the request of Mr. Tiahrt) and to include extraneous matter:)

Mr. Crapo.
Mr. Smith of New Jersey.
Mr. Goodling.
Mrs. Gallegly.
Mr. Goodlatte.
Mr. Packard in two instances.
Mr. Bliley.
Mr. Fields of Texas.
Mr. Baker of California.
Mr. Stump.
Mr. Porter.
Mr. Foley in four instances.
Mr. Ramstad.
Mr. Davis.
Mr. Emerson.
Mr. Shaw.
Mr. Solomon.
Mr. Christensen.

ADJOURNMENT

Mr. HAYWORTH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 5 minutes p.m.), the House adjourned until tomorrow, Thursday, March 9, 1995, at 10 a.m.

EXECUTIVE COMMUNCIATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

493. A letter from the Director of Legislative Affairs, Equal Employment Opportunity Commission, transmitting the Commission's fiscal year 1994 annual report on the operations of the Office of General Counsel, pursuant to 42 U.S.C. 2000e–4(e); to the Committee on Economic and Educational Opportunities.

494. A letter from the President, U.S. Enrichment Corporation, transmitting the Corporation's annual report for fiscal year 1994, pursuant to Public Law 102–486, section 901 (106 Stat. 2929); to the Committee on Commerce.

495. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11–23, "Recycling Fee and Illegal Dumping Amendment Act of 1995," pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

496. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11–24, "Litter Control Fine Increase Amendment Act of 1995," pursuant to D.C. Code, section 1–233(c)(1); to the Committee on Government Reform and Oversight.

497. A letter from the Chairman, Consumer Product Safety Commission, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

498. A letter from the Chairman, Federal Deposit Insurance Corporation, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

499. A letter from the Secretary, Federal Trade Commission, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

500. A letter from the Freedom of Information/Privacy Officer, Interstate Commerce Commission, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

501. A letter from the President, National Endowment for Democracy, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

502. A letter from the Acting Director of Legislative and Public Affairs, National Science Foundation, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

503. A letter from the Director, Office of Personnel Management, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

504. A letter from the Director, Office of Science and Technology Policy, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

505. A letter from the Librarian of Congress, transmitting the report of the activities of the Library of Congress, including the Copyright Office, for the fiscal year ending September 30, 1993, pursuant to 2 U.S.C. 139; to the Committee on House Oversight.

506. A letter from the Administrator, General Services Administration, transmitting informational copies of prospectuses for three U.S. courthouses located in Jacksonville, FL, Albany, GA, and Corpus Christi, TX, pursuant to 40 U.S.C. 606(a); to the Committee on Transportation and Infrastructure.

507. A letter from the Secretary of Energy, transmitting notification that the report on coal research, development, demonstration, and commercial application activities regarding coal-based technologies is expected to be submitted by June 30, 1995; to the Committee on Science.

508. A letter from the Secretary of Health and Human Services, transmitting a draft of proposed legislation to reduce costs and make improvements in the Medicare Program, and for other purposes; jointly, to the Committees on Ways and Means and Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. LIVINGSTON: Committee on Appropriations, H.R. 1158. A bill making emergency supplemental appropriations for additional disaster assistance and making rescissions for the fiscal year ending September 30, 1995, and for other purposes (Rept. 104–70). Referred to the Committee of the Whole House on the State of the Union.

Mr. LIVINGSTON: Committee on Appropriations, H.R. 1159. A bill making supplemental appropriations and rescissions for the fiscal year ending September 30, 1995, and for other purposes (Rept. 104–71). Referred to the Committee of the Whole House on the State of the Union.

Mr. LINDER: Committee on Rules, House Resolution 109. Resolution providing for further consideration of the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes (Rept. 104–72). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ARCHER:

H.R. 1157. A bill to restore families, promote work, protect endangered children, increase personal responsibility, attack welfare dependency, reduce welfare fraud, and improve child support collections; to the Committee on Ways and Means, and in addition to the Committee on Economic and Educational Opportunities, Commerce, the Judiciary, National Security, and Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LIVINGSTON:

H.R. 1158. A bill making emergency supplemental appropriations for additional disaster assistance and making recissions for the fiscal year ending September 30, 1995, and for other purposes; to the Committee of the Whole House on the State of the Union.

H.R. 1159. A bill making supplemental appropriations and recissions for the fiscal year ending September 30, 1995, and for other purposes; to the Committee of the Whole House on the State of the Union.

By Mr. BROWDER:

H.R. 1160. A bill to amend the International Code of 1986 to provide that new income tax deductions, credits, exclusions, and other benefits shall be allowed only if the projected Federal budget deficit meets certain deficit targets; to the Committee on Ways and Means.

By Mr. CAMP (for himself and Mr. MCDERMOTT):

H.R. 1161. A bill to amend the Internal Revenue Code of 1986 to provide an exclusion from unrelated business taxable income for certain sponsorship payments; to the Committee on Ways and Means.

By Mr. CRAPO (for himself, Ms. HARMAN, Mr. HASTERT, Mr. SCHUMER, Mrs. MORELLA, Mr. BREWSTER, Mr. SHAYS, Mr. EDWARDS, Mr. INGLIS of South Carolina, Mr. STENHOLM, Mr. KASICH, Ms. MOLINARI, Ms. DUNN of Washington, Mr. ACKERMAN, Mr. FROST, Mr. KLUG, Mr. WELDON of Pennsylvania, Mr. WELLER, Mr. MEEHAN, Mr. MINGE, Mr. POSHARD, Mr. HANCOCK, Mr. LIPINSKI, Mr. ORTON, Ms. ESHOO, Mr. CASTLE, Mrs. LINCOLN, Mr. GREENWOOD, Mr. BURTON of Indiana, Mrs. WALDHOLTZ, Mr. BEREUTER, Mr. BARRETT of Wisconsin, Mr. BUYER, Mr. BROWDER, Mr. BURR, Mr. DEAL of Georgia, Mr. NEUMANN, and Mr. BROWN of Ohio):

H.R. 1162. A bill to establish a deficit reduction trust fund and provide for the downward adjustment of discretionary spending limits in appropriation bills; to the Committee on the Budget and in addition, to the Committees on Government Reform and Oversight, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FORBES:

H.R. 1163. A bill to authorize the exchange of National Park Service land in the Fire Island National Seashore in the State of New York for land in the Village of Patchogue, Suffolk County, NY; to the Committee on Resources.

H.R. 1164. A bill to direct the Secretary of Transportation to convey to the Montauk Historical Society light station located at Montauk, NY; to the Committee on Transportation and Infrastructure.

By Mr. GOODLATTE (for himself and Mr. BOUCHER):

H.R. 1165. A bill to amend the Appalachian Regional Development Act of 1965 to include Montgomery, Roanoke, and Rockbridge Counties, VA, as part of the Appalachian region; to the Committee on Transportation and Infrastructure.

By Ms. LOWEY (for herself and Mr. WYDEN):

H.R. 1166. A bill to require the Secretary of Health and Human Services to develop recommendations for proposed model adoption legislation and procedures; to the Committee on Economic and Educational Opportunities.

H.R. 1167. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for certain adoption expenses; to the Committee on Ways and Means.

By Mr. MONTGOMERY:

H.R. 1168. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax to employers who employ members of the Reserve components of the Armed Forces of the United States and to self-employed individuals who are members of such Reserve components; to the Committee on Ways and Means.

By Mr. MORAN:

H.R. 1169. A bill to amend the Truth in Lending Act to prohibit issuers of credit cards from limiting the ability of Federal, State, and local government agencies to impose fees for honoring credit cards, and for other purposes; to the Committee on Banking and Financial Services.

By Mr. BONO (for himself, Mr. HYDE, Mr. MOORHEAD, Mr. SENSENBRENNER, Mr. GALLEGLY, Mr. COBLE, Mr. GEKAS, Mr. CANADY, Mr. GOODLATTE, Mr. HOKE, Mr. COX, Mr. MCCOLLUM, Mr. DREIER, Mr. PAXON, Mr. RIGGS, Mr. LEWIS of California, Mr. ROHRABACHER, Mr. SCHIFF, Mr. CALVERT, Mr. PACKARD, Mr. SMITH of Texas, Mr. BAKER of California, Mr. HERGER, Mr. HUNTER, Mr. DORNAN, Mr. THOMAS, Mr. HEINEMAN, Mr. CUNNINGHAM, Mr. POMBO, Mr. INGLIS of South Carolina, Mr. MCKEON, Mr. DOOLITTLE, Mr. KIM, Mr. BUYER, Mr. ROYCE, Mr. FLANAGAN, Mr. BARR, Mr. HORN, Mr. BRYANT of Tennessee, Mr.

Bilbray, Mr. Chabot, Mr. Radanovich, and Mrs. Seastrand):

H.R. 1170. A bill to provide that cases challenging the constitutionality of measures passed by State referendum be heard by a three-judge court; to the Committee on the Judiciary.

By Mr. SHAW (for himself, Mr. Rangel, Mr. Crane, Ms. Eddie Bernice Johnson of Texas, Mr. Thomas, Mr. Hancock, Mr. Neal of Massachusetts, Mr. English of Pennsylvania, Mr. Sam Johnson, and Mr. Herger):

H.R. 1171. A bill to amend the Internal Revenue Code of 1986 to provide a shorter recovery period for the depreciation of certain leasehold improvements; to the Committee on Ways and Means.

By Mr. SMITH of New Jersey (for himself, Mr. Hoyer, Mr. Gilman, Mr. Bonior, Mr. Markey, Ms. Molinari, Mr. Wolf, Mr. Royce, Mr. Cardin, Mr. Torricelli, Mr. Rohrabacher, Mr. Moran, Mr. Wynn, Ms. DeLauro, Mr. Engel, Mr. Gallegly, and Mr. Menendez):

H.R. 1172. A bill to terminate the United States arms embargo applicable to the Government of Bosnia and Herzegovina; to the Committee on International Relations.

By Mr. STUMP (for himself, Mr. Roberts, Mr. Callahan, Mr. Bachus, and Mr. Everett):

H.R. 1173. A bill to prohibit the expenditure of Federal funds for constructing or modifying highway signs that are expressed only in metric system measurements; to the Committee on Transportation and Infrastructure.

By Mr. UPTON:

H.R. 1174. A bill to provide additional flexibility for the Department of Energy's program for the disposal of spent nuclear fuel and high level radioactive waste, and for other purposes; to the Committee on Commerce.

By Mr. YOUNG of Alaska:

H.R. 1175. A bill to amend Public Law 89-454 to provide for the reauthorization of appropriations; to the Committee on Resources.

By Mr. GOODLING (for himself, Mr. Fawell, Mr. Ballenger, Mr. Hoekstra, Mr. Cunningham, Mr. McKeon, Mrs. Roukema, Mr. Gunderson, Mr. Barrett of Nebraska, Mr. Castle, Mrs. Meyers of Kansas, Mr. Sam Johnson, Mr. Greenwood, Mr. Hutchinson, Mr. Knollenberg, Mr. Graham, Mr. Weldon of FLorida, Mr. Funderburk, Mr. Souder, Mr. Norwood, Mr. Boehner, Mr. Stenholm, Mr. Dooley, Mr. Parker, Mr. Deal of Georgia, Mr. Brewster, Mr. Hancock, Mr. Zeliff, Mr. Rohrabacher, and Mr. Ewing):

H.R. 1176. A bill to nullify an executive order that prohibits Federal contracts with companies that hire permanent replacements for striking employees; to the Committee on Economic and Educational Opportunities.

By Mr. HILLEARY (for himself, Mr. Nethercutt, Mrs. Myrick, Mr. McIntosh, Mr. Bryant of Tennessee, Mr. Graham, Mr. Royce, Mr. LaTourette, Mr. Kingston, Mr. Wamp, Mr. Tate, Mr. Salmon, Mr. Weller, Mrs. Waldholtz, Mr. Latham, Mr. Christensen, Mr. Norwood, Mr. Brownback, Mr. Bass, Mr. Neumann, Mrs. Smith of Washington, Mr. Thornberry, Mr. Largent, Mr. Coburn, Mr. Tiahrt, Mr. Hutchinson, Mr. Stockman, Mr. Paxon, Mr. Dickey, Mr. Klug, and Mr. Peterson of Minnesota):

H.J. Res. 76. Joint resolution proposing an amendment to the Constitution of the United States limiting the terms of office of Senators and Representatives; to the Committee on the Judiciary.

By Mr. McCOLLUM (for himself, Mr. Hoke, Mr. Wamp, and Mr. Foley):

H.J. Res. 77. Joint resolution proposing an amendment to the Constitution of the United States with respect to the terms of Senators and Representatives; to the Committee on the Judiciary.

By Mr. GILCHREST:

H. Con. Res. 34. Concurrent resolution authorizing the use of the Capitol Grounds for the Ringling Bros. and Barnum & Bailey Circus anniversary commemoration; to the Committee on Transportation and Infrastructure.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII:

Mr. BARTLETT of Maryland introduced a bill (H.R. 1177) for the relief of Debra Bargeski; which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 24: Mr. Bunn of Oregon.

H.R. 78: Mr. Burr and Mr. McKeon.

H.R. 104: Ms. Molinari.

H.R. 110: Mr. Serrano.

H.R. 120: Mr. Parker.

H.R. 123: Mr. Deal of Georgia, Mr. Crane, Mr. Cooley, Mr. Graham, Mr. Souder, Mr. Sanford, Mr. Gekas, Mr. Weldon of Florida, Mr. Nethercutt, Mr. Allard, and Mr. Stockman.

H.R. 240: Mr. Stearns and Mr. Smith of New Jersey.

H.R. 373: Mr. Taylor of Mississippi.

H.R. 375: Mr. Taylor of Mississippi.

H.R. 394: Mr. Rahall, Mrs. Lincoln, Mr. Calvert, Ms. Lowey, Mrs. Smith of Washington, Mr. Gejdenson, Ms. Furse, Mr. Hall of Texas, Mr. Wilson, Mr. King, and Mr. Livingston.

H.R. 398: Mr. Fattah.

H.R. 470: Mr. Schumer, Mrs. Roukema, Mr. Nadler, and Mr. Torricelli.

H.R. 580: Mr. Davis and Mr. Watts of Oklahoma.

H.R. 612: Mr. Serrano.

H.R. 645: Mr. Bentsen and Ms. Jackson-Lee.

H.R. 658: Ms. Slaughter.

H.R. 662: Mr. Filner, Mr. Parker, Mr. Franks of Connecticut, and Mr. Burton of Indiana.

H.R. 699: Mr. Stenholm and Mr. Largent.

H.R. 709: Mr. Parker, Mr. Fattah, Mr. Hinchey, and Mr. Serrano.

H.R. 739: Mrs. Chenoweth, Mr. LaHood, Mr. Baker of California, and Mr. Livingston.

H.R. 759: Mr. Livingston, Ms. Molinari, and Mr. Ehlers.

H.R. 789: Mr. Christensen.

H.R. 791: Mr. Forbes, Mr. Kingston, Mr. Skeen, Mr. Bilbray, and Mr. Parker.

H.R. 793: Mr. Clinger.

H.R. 839: Mr. Forbes.

H.R. 860: Mr. Wicker and Mr. Hancock.

H.R. 873: Ms. DeLauro, Ms. Lowey, Mr. Ganske, and Ms. Slaughter.

H.R. 882: Mr. McDermott, Ms. Eshoo, Ms. Slaughter, Ms. Pelosi, Ms. Harman, Ms. Rivers, Mr. Walsh, and Ms. Furse.

H.R. 930: Mr. Orton.

H.R. 941: Mr. Waxman, Mr. Oberstar, Mr. Martinez, Mr. Bonior, Mr. Calvert, Mr. Hinchey, Ms. Furse, Mr. Foglietta, and Mr. Serrano.

H.R. 958: Mr. Bonior, Ms. Lofgren, Mr. Wynn, Mr. Faleomavaega, Mrs. Thurman, Mr. Scott, and Ms. Woolsey.

H.R. 995: Mr. Cunningham, Mr. Weller, Mr. McHugh, and Mr. Calvert.

H.R. 996: Mr. Cunningham, Mr. Weller, Mr. McHugh, and Mr. Calvert.

H.R. 1021: Mr. Canady.

H.R. 1023: Mr. Towns and Mr. Camp.

H.R. 1058: Mr. Brewster.

H.R. 1077: Mr. Skeen and Mr. Cremeans.

H.R. 1085: Mr. Walsh and Mr. LoBiondo.

H.R. 1094: Mr. Minge.

H.R. 1111: Mr. Tiahrt.

H.R. 1114: Mr. Sisisky.

H.R. 1138: Ms. Dunn of Washington.

H.R. 1145: Mr. English of Pennsylvania, Mr. Inglis of South Carolina, Mr. Bereuter, Mr. Towns, Mr. King, Mr. Smith of Texas, Mr. Frost, Mr. LaHood, Mr. Canady, Mr. McHugh, Mr. Frank of Massachusetts, Mr. Heineman, Mr. Bryant of Tennessee, and Mr. Livingston.

H.J. Res. 61: Mr. King.

H.J. Res. 72: Mr. Bunn of Oregon.

H. Con. Res. 12: Mr. Lazio of New York, Mr. Hyde, Mr. Clyburn, Mr. Knollenberg, and Mr. Mica.

H. Con. Res. 23: Ms. Furse, Mr. Fazio of California, Mr. Gutknecht, Mr. Fattah, Mr. Laughlin, Mr. Gilman, Ms. Rivers, Ms. Dunn of Washington, Mr. Metcalf, Mr. Volkmer, Mr. King, Mr. Serrano, Mr. Gillmor, and Mr. Spence.

H. Res. 59: Mr. Pallone, Mr. Durbin, Mrs. Mink of Hawaii, Mr. Bevill, Mr. Torricelli, Mr. Pickett, Mr. Frost, Mr. Underwood, Ms. Rivers, Mr. Gene Green of Texas, Mr. Lipinski, Mr. Miller of California, Mr. Romero-Barcelo, Mr. Vento, Mr. Coleman, Mr. Filner, Mr. Johnson of South Dakota, Mr. Torkildsen, Mr. Evans, and Mr. McDermott.

H. Res. 98: Mr. Frank of Massachusetts, Mr. Gene Green of Texas, Ms. Velazquez, Mr. Mfume, Mr. Gordon, Mr. Rose, Mr. Clyburn, and Mr. Barrett of Wisconsin.

H. Res. 99: Mr. Kanjorski.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 56: Mr. Weller, Mr. Funderburk, Mr. Minge, Mr. Holden, Mr. Crapo, Mr. Knollenberg, Mr. McDade, Mr. Bryant of Tennessee, Mr. Bass, Mrs. Waldholtz, and Mr. Oxley.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.J. Res. 2

Offered By: Mr. Brownback

Amendment No. 10: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE —

"SECTION 1. No person who has been elected for a full term to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected for a full term to the House of Representatives five times shall be eligible for election to the House of Representatives.

"SECTION 2. No person who has served as a Senator for more than three years of a term to which some other person was elected shall subsequently be eligible for election to the Senate more than once. No person who has served as a Representative for more than one year shall subsequently be eligible for election to the House of Representatives more than five times.

"SECTION 3. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

"SECTION 4. A State may impose term limits shorter than those provided under this article.".

H.J. RES. 2

OFFERED BY: MR. DEAL OF GEORGIA

AMENDMENT NO. 11: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. No person who has been elected to the Senate two times after the date of the ratification of this article shall be eligible for election or appointment to the Senate. No person who has been elected to the House of Representatives six times after the date of the ratification of this article shall be eligible for election to the House of Representatives.

"SECTION 2. A State may establish limitations on the length of service for Members of Congress from that State that do not exceed the limits set forth in this article.".

H.J. RES. 2

OFFERED BY: MR. DEAL OF GEORGIA

AMENDMENT NO. 12. Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. No person who has been elected to the Senate two times after the date of the ratification of this article shall be eligible for election or appointment to the Senate. No person who has been elected to the House of Representatives six times after the date of the ratification of this article shall be eligible for election to the House of Representatives.

SECTION 2. A State may establish limitations on the length of service for Members of Congress from that State that do not exceed the limits set forth in this article, whether enacted before, on, or after the date of the ratification of this article.".

H.R. RES. 2

OFFERED BY: MR. DINGELL

AMENDMENT NO. 13. Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States:

"ARTICLE —

"SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives for a seventh consecutive term.

"SECTION 2. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

"SECTION 3. This article shall be inoperative unless it shall have been ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

SECTION 4. Any election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

"SECTION 5. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article,".

H.J. RES. 2

OFFERED BY: MR. DINGELL

AMENDMENT NO. 14: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States:

"ARTICLE—

"SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives three consecutive times shall be eligible for election to the House of Representatives for a fourth consecutive term.

"SECTION 2. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

"SECTION 3. This article shall be inoperative unless it shall have been ratified by the legislature of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

"SECTION 4. Any election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

"SECTION 5. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article.".

H.J. RES. 2

OFFERED BY: MR. FRANK OF MASSACHUSETTS

AMENDMENT NO. 15: Strike all after the resolving clause and insert the following:

"ARTICLE—

"SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives for a seventh consecutive term."

"SECTION 2. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

"SECTION 3. This article shall be inoperative unless it shall have been ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

"SECTION 4. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

"SECTION 5. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article."

H.J. RES. 2

OFFERED BY: MR. FRANK OF MASSACHUSETTS

AMENDMENT NO. 16: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"ARTICLE —

"SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives.

"SECTION 2. No person who has served as a Senator for more than 3 years shall subsequently be eligible for election to the Senate more than once. No person who has served as a Representative for more than 1 year shall subsequently be eligible for election to the House of Representatives more than five times.

"SECTION 3. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.".

H.J. RES 2

OFFERED BY: MR. FRANK OF MASSACHUSETTS

AMENDMENT NO. 17: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"ARTICLE—

"SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives.

"SECTION 2. No person who has served as a Senator for more than three years shall subsequently be eligible for election to the Senate more than once. No person who has served as a Representative for more than one year shall subsequently be eligible for election to the House of Representatives more than five times.

"SECTION 3. No election or service occuring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

"SECTION 4. Nothing in the Constitution or law of any State shall diminish or enhance, directly or indirectly, the limits set by this article.".

H.J. RES 2

OFFERED BY: MR. FRANK OF MASSACHUSETTS

AMENDMENT NO. 18: Strike all after the resolving clause and insert the following:

"ARTICLE—

"SECTION 1. No person who has been elected to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected to the House of Representatives six times shall be eligible for election to the House of Representatives.

"SECTION 2. Election as a Senator or Representative before this Article is ratified shall be taken into account for purposes of section 1. Any State limitation on service for Members of Congress from that State, whether enacted before, on, or after the date of the ratification of this Article shall be valid, if such limitation does not exceed the limitation set forth in section 1.".

H.J. RES. 2

OFFERED BY: MR. GOSS

AMENDMENT NO. 19: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. No person who has been elected to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected to the House of Representatives six times shall be eligible for election to the House of Representatives.".

"SECTION 2. No person, upon becoming ineligible under this article shall again be elected or appointed to the House with respect to which that ineligibility applies, until at least 4 years have passed from the end of that person's most recent term in that House.

"SECTION 3. A State may impose a shorter, but not a longer, limit on the terms than that imposed by this article.".

H.J. RES. 2

OFFERED BY: MR. HALL OF TEXAS

AMENDMENT NO. 20: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States to be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"ARTICLE —

"SECTION 1. No person who has been elected for a full term to the House of Representatives three consecutive times shall be eligible for election to the House of Representatives for a fourth consecutive term.

"SECTION 2. Service as a Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

"SECTION 3. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

"SECTION 4. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article.".

H.J. RES. 2

OFFERED BY: MR. HEFLEY

AMENDMENT NO. 21: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States.

"ARTICLE —

"SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives for a seventh consecutive term.

"SECTION 2. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

"SECTION 3. This article shall be inoperative unless it shall have been ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

"SECTION 4. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

"SECTION 5. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article.

"SECTION 6. Any judge appointed to a court ordained and established by Congress under article III of this Constitution after the adoption of this article of amendment shall cease to hold office unless reconfirmed by the Senate before the end of each successive 12-year period of service.".

H.J. RES. 2

OFFERED BY: MR. HILLEARY

AMENDMENT NO. 22: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"ARTICLE —

"SECTION 1. No person who has been elected to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected to the House of Representatives six times shall be eligible for election to the House of Representatives.

"SECTION 2. Election as a Senator or Representative before this Article is ratified shall not be taken into account for purposes of section 1, except that any State limitation on service for Members of Congress from that State, whether enacted before, on, or after the date of the ratification of this Article shall be valid, if such limitation does not exceed the limitation set forth in section 1.".

H.J. RES. 2

OFFERED BY: MR. HILLEARY

AMENDMENT NO. 23: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

"ARTICLE —

"SECTION 1. No person who has been elected for a full term to the Senate two times shall be eligible for election or appointment to the Senate. No person who has been elected for a full term to the House of Representatives six times shall be eligible for election to the House of Representatives.

"SECTION 2. No person who has served as a Senator for more than three years of a term to which some other person was elected shall subsequently be eligible for election to the Senate more than once. No person who has served as a Representative for more than one year shall subsequently be eligible for election to the House of Representatives more than five times.

"SECTION 3. Election as a Senator or Representative before this Article is ratified shall not be taken into account for purposes of this article, except that any State limitation on service for Members of Congress from that State, whether enacted before, on, or after the date of the ratification of this Article shall be valid, if such limitation does not exceed the limitation set forth in section 1.".

H.J. RES. 2

OFFERED BY: MR. LIVINGSTON

AMENDMENT NO. 24: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several states within seven year from the date of its submission to the States by the Congress:

"ARTICLE —

"Each State may prescribe the number of terms a person may be elected or appointed to the Senate or the House of Representatives from that State.".

H.J. RES. 2

OFFERED BY: MS. WATERS

AMENDMENT NO. 25. Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"ARTICLE —

"SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives for a seventh consecutive term.

"SECTION 2. In the application of section 1 to a Representative whose service as a Representative began after 1990 but before the

ratification of this article, "five" shall be substituted for "six" and "sixth" shall be substituted for "seventh". In the application of section 1 to a Representative whose service as a Representative began after 1980 but before 1990, "four" shall be substituted for "six" and "fifth" shall be substituted for "seventh". In the application of section 1 to a Representative whose service as a Representative began after 1970 but before 1980, "three" shall be substituted for "six" and "fourth" shall be substituted for "seventh". In the application of section 1 to a Representative whose service as a Representative began after 1960 but before 1970, "two" shall be substituted for "six" and "third" shall be substituted for "seventh". In the application of section 1 to a Representative whose service as a Representative began after 1950 but before 1960, "one" shall be substituted for "six" and "second" shall be substituted for "seventh".

"SECTION 3. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of this article.

"SECTION 4. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article.".

EXTENSIONS OF REMARKS

END THE ARMS EMBARGO ON BOSNIA-HERZEGOVINA

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. SMITH of New Jersey. Mr. Speaker, I am introducing today a bill which would terminate the United States arms embargo applicable to the Government of Bosnia-Herzegovina.

The situation in Bosnia-Herzegovina today is dismal. After three winters of war, there is still no end in sight. The contact group plan of last summer, which had been offered with a 2-week deadline for an unconditional response, has been held open indefinitely to the Bosnian Serbs to accept. The Bosnians, who accepted the plan on time and without condition, have watched the international community subsequently ease sanctions on Serbia, despite the fact that it was Serbian President Slobodan Milosevic that instigated this conflict and sustains the aggressors who rejected the plan. The Bosnians have heard our Secretary of State explain how the contact group formed to respond to the Bosnian conflict is somehow more important than the conflict itself, and that preserving NATO is more important than meeting the challenges Europe faces today.

Meanwhile, the Bosnians feel the human suffering and the injustice of continuing conflict. That is their reward for working with the international community, human suffering, and injustice.

The problem we now confront in Bosnia-Herzegovina is quite straightforward. The Serb militants occupy over 70 percent of Bosnia-Herzegovina, while the contact group settlement grants the Serbs 49 percent of the country. Mr. Speaker, the international community has absolutely no plan for getting the Serbs to relinquish control of and return that one-third of the territory they seized by force.

Yes, the contact group countries meet with each other, with the Bosnians, with the Serb militants. They convene additional conferences to bring the sides together. We have seen this for nearly 3 years, a farcical display of resolve in contrast to the horrible tragedy on the ground. This approach has not worked, and there is no reason to believe it will now.

As many have said from the beginning, a unilateral lifting of the arms embargo on Bosnia-Herzegovina is a last option. Until now, the international community, including the United States, has not taken genuine action to enforce U.N. Security Council resolutions regarding Bosnia-Herzegovina, despite having the authority to do so. It has not intervened to stop Serb aggression with punitive air strikes or other measures, despite the fact that the genocidal nature of this aggression should have compelled us legally and morally to do so. And the United States has not sought—really and formally sought—a multilateral lifting of the arms embargo on Bosnia-Herzegovina, despite that U.N. member's inherent right to its own self-defense. Absent these other measures, Mr. Speaker, we have no other recourse than at least to lift the U.S. arms embargo on Bosnia-Herzegovina.

Of course, until such time that this bill is passed and its provisions go into effect, President Clinton can seek to make the lifting of the embargo a multilateral action at the United Nations. He can also take other decisive steps to compel the Bosnian Serb militants to accept the contact group plan. But time is running out. The present course is untenable, and to support its continuation—even implicitly by our own inaction—would be irresponsible.

It is therefore my hope, Mr. Speaker, that the Clinton administration will take the time they are now using to defeat congressional efforts to lift the embargo, and use it instead to get others to agree to what we all would prefer, a multilateral lifting. After all, it was 2 years ago last Friday that Secretary of State Christopher, unveiling the administration's Bosnia policy, lamented the fact that the West had repeatedly missed earlier opportunities to effectively address the conflict and prevent it from deepening. The Secretary said: "Our conscience revolts at the idea of passively accepting such brutality. It tests our commitment to the nurturing of democracy." Recognizing the implications of the Bosnian crisis he warned, "The world's response to the violence in the former Yugoslavia is an early and crucial test of how it will address the concerns of ethnic and religious minorities in the post-cold-war world."

One year ago, in the aftermath of the market place massacre in Sarajevo, President Clinton himself echoed this view when he said, "This century teaches us that America cannot afford to ignore conflicts in Europe. And in this case, our Nation has distinct interests." He concluded, "While the cold war may be over, the world is still full of dangers and the world still looks to America for leadership." And let us not forget his inaugural address, when he vowed that, "When our vital interests are challenged or the will and conscience of the international community is defied, we will act, with peaceful diplomacy whenever possible, with force when necessary."

Let the Congress be clearly understood, the issue of Bosnia's survival is important and must be addressed. It is a bipartisan issue, where the most conservative and the most liberal share a common outrage over the inhumanity that has been allowed to take place in that country.

This applies as well to the Senate, where Senators DOLE and LIEBERMAN have already introduced an identical bill. I hope, Mr. Speaker, for the opportunity to move on this legislation quickly, and today I am joined by the ranking minority member of the Helsinki Commission, Mr. HOYER, Commission members, Mr. MARKEY, Mr. WOLF, Mr. CARDIN, and Mr. BONIOR, Ms. MOLINARI, Mr. ROYCE, Mr. TORRICELLI, Mr. ROHRABACHER, Mr. MORAN, and Mr. WYNN.

RESTORING ATTORNEY ACCOUNTABILITY

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. PACKARD. Mr. Speaker, our civil justice system is caught in a web of abuse. It is time to stop unscrupulous lawyers who rig the system to generate profits rather than justice. Excessive legal claims, frivolous lawsuits, and overzealous lawyers overburden our justice system. Republicans know this and are working to restore fairness to our legal system.

Our civil justice system is a lawyer's paradise. We sue each other too often and too easily. Excessive litigation and jury awards alone cost Americans $130 billion.

Instead of a legal system that citizens trust and rely upon, ours remains dominated by savvy experts that grow rich from confusion, greed and fear. Republicans pledge to reverse this trend by passing meaningful civil justice reform. Our Attorney Accountability Act, H.R. 988, works to creates a fair legal system that recognizes lawsuits with merit and rewards real victims rather than rewarding greedy lawyers.

This bill's "loser pays" provision curtails frivolous lawsuits, opening the system to legitimate grievances. It ensures that expert witnesses will be unbiased and reliable. Furthermore, this bill will sanction unethical attorneys who abuse the system for their benefit. H.R. 988 helps restore sensibility and efficiency to our litigation madness.

Mr. Speaker, the courts are supposed to protect the consumers and workers in our society, not the lawyers. Frivolous lawsuits and outlandish damage awards make a sham out of our civil court system. H.R. 988 injects common sense into our legal system by closing the door to people who use our courts in an abusive way.

HELP FIRST TIME HOMEBUYERS

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. GOODLING. Mr. Speaker, today I am introducing the First Time Homebuyers Assistance Act which will make the American Dream of owning a home a reality for thousands of renters. Today's renters often pay as much for rent as homeowners pay for a monthly mortgage payment. It is not surprising that the

● **This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.**

Matter set in this typeface **indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.**

1994 Fannie Mae National Housing Survey found 86 percent of renters believe they would be better off owning a home. And with interest rates on the rise again, buying a home isn't getting any easier.

To many Americans, homeownership means financial psychological, and familial security particularly for minorities, younger Americans, and those with lower incomes. It means a stronger economy, safer neighborhoods, and a better quality of life. Mr. Speaker, given such an optimistic view of homeownership, why do so many renters continue to rent? According to the Fannie Mae survey, an overwhelming 65 percent of renters rank the downpayment as their primary obstacle to owning a home.

Several years ago, I visited a home builder in York, PA, located in my congressional district, who developed a unique and innovative arrangement in which moderately priced single-family homes are constructed for purchase with no downpayment. A local financial institution finances 80 percent of the loan, while the remaining 20 percent, in the form of a second mortgage, is financed by the local builder. This creative financing plan makes the purchase of a home affordable for financially, hard-working people who want to buy a home, but cannot afford a downpayment.

However, the Tax Code penalizes builders who finance the downpayment on behalf of the purchasers. Currently, the Tax Code limits a builder's ability to finance second mortgages because it assumes that buyers are paying the entire balance of their tax obligations in the year the property is purchased. The law also requires builders to pay taxes on the entire amount of the income received from a mortgage in the year the purchase is made. For a builder, it becomes almost impossible to pay these taxes, not having cash on hand to do so until the balance of the mortgage payment is received at a future date. In other words, the Tax Code prohibits a builder from using the installment method to calculate his tax liability. This situation places a builder in a financial bind and jeopardizes the future of this and similar housing programs.

The First Time Homebuyers Assistance Act will enable a builder to use the installment method to calculate his tax liability under certain specific circumstances. The bill applies to any one family, owner-occupied unit. The purchaser must be a first-time homebuyer who qualifies for 100 percent of the loan. Further, the legislation directs that a second mortgage on the property be no more than 20 percent of the sale price and applies only to single-family homes costing no more than 75 percent of the median home price for newly constructed one-family residential real property in a given area.

Mr. Speaker, I urge my colleagues to cosponsor this legislation which is specifically geared to helping those who need the most assistance in buying a home. With your support, the First Time Homebuyers Assistance Act can make the American Dream an American reality.

IN HONOR OF JOHN HUGHES 25 YEARS AS SCOUTMASTER

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. MENENDEZ. Mr. Speaker, I rise today to pay tribute to Scoutmaster John Hughes of Bayonne for his 25 years of service to Boy Scout Troop 25. There will be a ceremony honoring Mr. Hughes on March 11, 1995, for his dedication and leadership.

Mr. Hughes has served the community in many different ways. There are not many people who can juggle a successful career, and find time to work with our children on a regular basis. Yet, Mr. Hughes has made the time, because he realizes the importance of helping our youth. These children are our future leaders. Mr. Hughes investment in them is a great service to our Nation, and the city of Bayonne.

In 1970, Mr. Hughes took control of Troop 25 as scoutmaster. He worked with each Scout individually helping to make them better Scouts and citizens. Mr. Hughes has taught them a priceless lesson in dealing with some of life's obstacles. He has acted as a guardian angel for each Scout by showing interest in their personal lives. His efforts show what an excellent role model he is for the community as well as for Boy Scout Troop 25. In 25 years, Mr. Hughes has taken the Scouts on camping trips, and excursions throughout the United States and Canada. During these trips Scouts have been exposed to various learning experiences, people, and their customs.

Mr. Hughes has established a successful partnership in the law firm of Hughes & Finnerty, located in Bayonne. In the past he has served the community in a wide variety of functions. He has served as president of the Bayonne Council, and has worked as an assistant prosecutor for Hudson County. Mr. Hughes has dedicated his time to raising money for the City Youth Fund, and currently serves as president of the Hudson United Soccer Club, which he founded in 1976. At the current time he is serving as public defender for the city of Bayonne.

Mr. Hughes has been a dedicated businessman and scoutmaster. He is a model citizen who embodies qualities of an outstanding community leader. I am proud to have Mr. Hughes as one of my constituents. I ask that you please join me in honoring Mr. Hughes for his great tasks as scoutmaster of Troop 25.

STATES RIGHTS AMENDMENT TO HOUSE JOINT RESOLUTION 2

HON. NATHAN DEAL

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. DEAL of Georgia. Mr. Speaker, I am submitting for the Record a substitute amendment that I, along with Marty Meehan, Jack Kingston, David Minge, Scott Klug, and others wish to offer to House Joint Resolution 2, the term limits legislation that the House will consider next week. This amendment will clearly resolve the issue of State preemption by explicitly providing that States may enact limits on the time a Federal legislator may serve that are shorter than the Federal limits in the amendment. Our amendment is based on House Joint Resolution 66, legislation which we introduced on January 27. This legislation has received bipartisan support.

As is the case on many issues, the States are moving ahead of the Federal Government on political reform. Twenty-two States have approved limits on the number of terms to which Members of Congress can be elected. Just as in the House, the States disagree among themselves as to the number of years a person should serve in Congress. Nineteen States have enacted limits of less than 12 years for Members of the House. Several other States are considering enacting term limits proposals on their own.

There is considerable doubt about whether the States have authority under the Constitution to enact term limits. Article I of the Constitution establishes three qualifications for Members of Congress: age, citizenship, and residency. In Powell versus McCormack, the Supreme Court held that the House's power was limited to judging a Member's compliance with the qualifications in Article I of the Constitution. The Court's holding in Powell was grounded upon its conclusion that the qualifications established in the Constitution are exclusive. Based on this precedent, I am concerned that the Court may not uphold the limits on terms established by the individual States.

The amendment we are offering would lay to rest these constitutional questions by explicitly stating that the States have the authority to enact more limited terms. Allowing the States to set limits on terms of Members of Congress would be a step toward restoring the federalism envisioned by the Framers of the Constitution. As a strong supporter of States' rights, I believe that the efforts in the States to enact term limits are healthy for our democracy. We should foster this development by explicitly granting the States authority to limit terms of Federal legislators.

Beyond the constitutional issues, the principal criticism of allowing individual States to set limits on terms for Members of Congress is that it could result in a disparity in power in Congress among States. For example, voters in Washington State rejected term limits in 1991 largely in response to concerns that limiting the terms of legislators from Washington would give California greater power in relation to Washington State.

Our amendment would address this concern by establishing a uniform Federal limit of no more than 12 years in Congress, while allowing States to set lower limits within this overall limit. By providing that no Member of Congress may serve more than 12 years, this proposal would prevent legislators in any State from amassing disproportionate power. Secure in the knowledge that no State would be able to send legislators to Congress for more than 12 years, any State would be able to decide whether its interests would be better served by more rapid turnover in its State delegation to Congress or by allowing its Members of Congress to build experience and effectiveness by serving for up to 12 years.

In addition to resolving the issue of State preemption, the amendment seeks to resolve the conflict among supporters of term limits in Congress regarding the appropriate length in terms. As you know, there is a disagreement between those who support a 12-year limit and those who prefer a limit of 6 or 8 years. Although there is stronger support for a 12-year limit, several Members and organizations have threatened to oppose legislation establishing term limits of more than 6 years. I believe it would be truly unfortunate if a difference over the ideal term limit proposal prevents us from enacting any term limits.

Our amendment would establish a Federal limit of 12 years in the House, 12 years in the Senate, and would explicitly give the States the authority to set lower limits if they choose to do so. The amendment seeks to capitalize on the support in Congress for a 12-year limit, while empowering States to enact shorter limits if they desire to do so.

I believe this compromise will improve the prospects for passage of the legislation in Congress as well as the chances for ratification by the States while, at the same time, accommodating the varied opinions on the exact length of limited terms. I ask my colleagues to join me in supporting this balanced approach to the issue of term limits.

SALUTE TO AMGEN AND TO THE AMERICAN BIOTECHNOLOGY INDUSTRY

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. GALLEGLY. Mr. Speaker, I rise today to salute the American biotechnology industry, which continues to dominate the world market in producing breakthrough medicines based on cellular and molecular biology—bringing relief and cures to millions of patients around the world.

Although other nations, notably Germany, Great Britain and Japan have renewed their efforts to narrow the biotech gap, America's leadership in this vital field continues to be overwhelming.

Although it has existed for little more than a decade, the biotechnology industry has already made tremendous advances in science and research. Today, there are more than 1,000 biotech companies in the United States, most in the research stage of their development.

Many of these companies are located in my home state of California and one, Amgen Inc. of Thousand Oaks, is located in an area that was formerly part of my congressional district.

It is through Amgen that I first became aware of this burgeoning industry and that I continue to stay apprised of its development and progress. We in California are especially proud of this industry, which brings so much hope and promise to the economy of our state and nation. In fact, in the face of military and corporate cutbacks that have truly challenged the state of California and its residents, biotech represents one of the few industries to actually grow over the past decade.

Mr. Speaker, in a recent column in the Los Angeles Times, An American Upbringing for Promising Industry, February 12, 1995, James Flanigan detailed the dynamics of the biotechnology industry and explained some of the reasons why it holds so much potential for real gains in medicine and is expected to have such a positive influence on the nation's economic growth.

In his article, Mr. Flanigan singled out Amgen as an example of the awesome medical potential of biotechnology, both in the immediate and long-term future.

As someone who is acutely aware of the progress Amgen has made in this truly progressive field, I find this recognition quite appropriate. Just this past December, Vice President AL GORE presented Amgen with a Presidential National Medal of Technology for its pioneering role in this new industry and its success in bringing remarkable medicines to patients around the world.

Mr. Speaker, I would like to include Mr. Flanigan's article in the RECORD to share with you and my colleagues information about an industry that will surely play a larger role in all of our lives in the coming years.

[From the Los Angeles Times, Feb. 12, 1995]

AN AMERICAN UPBRINGING FOR A PROMISING INDUSTRY

(By James Flanigan)

With professional investors pumping billions of dollars into Amgen Inc. stock last week on rumors—later denied—of a takeover that would have cost at least $12 billion, ordinary folks must wonder what connection there could be between mega-deal speculation and lower prices for prescription drugs and medical treatments.

But there is a connection, just as there is a more obvious link to fresh investor interest in biotechnology, an industry scarcely 20 years old that speaks volumes about U.S. methods of financing discoveries and innovations.

In fact, dozens of biotech companies are starting up these days, thanks to a new research technology.

And in a larger context, though there may be no single cure for cancer, the outlook for Amgen and the biotech industry says remedies to alleviate cancer symptoms and those of AIDS. Alzheimer's and other afflictions are in the works.

Amgen's stock shot up 21% in two days last week, from under $63 a share to more than $76, on rumors that Bristol-Myers Squibb, maker of Bufferin and other such products as well as prescription medicines, would offer $90 a share for Amgen's stock.

Amgen's price fell back when Bristol denied the rumor—it closed at $68.44 on Friday. But speculation about buyouts is sure to continue in an atmosphere in which Glaxo Holdings recently paid $500 million for Affymax, a biotech company, and is offering $14 billion for Wellcome, which makes a leading AIDS treatment.

The big companies' intent is to acquire research capabilities and the rights to promising drugs at a time when hard bargaining by corporate benefit managers are driving down drug prices and big company laboratories are becoming expensive luxuries.

"The big companies are well equipped to handle worldwide marketing and clinical trials for the Food and Drug Administration," says Viren Mehta, managing partner of Mehta & Isaly, an investment firm specializing in health issues. "But their research laboratories have been less productive of successful new drugs."

Thus Amgen is particularly attractive because it has two of the most successful new compounds: Epogen, which stimulates production of red blood cells to alleviate anemia in kidney patients on dialysis, and Neupogen, which stimulates white blood cell production to guard against infections in cancer patients undergoing chemotherapy.

On growth and development of those two products alone, Amgen's earnings could rise 13% a year for the next five years, says Eric Hecht, a physician and a security analyst for Morgan Stanley.

The drugs are economically effective because they reduce the need for costly blood transfusions and medically effective because they bolster the immune systems of patients, thus reducing risk of often fatal infections.

And they are called biogenetic because they use synthesized genes to stimulate the body's own curative processes—blood cell production from the bone narrow, for example.

Biotechnology, though a young industry, already contains some 700 companies, most of them in the United States, and already has gone through several cycles of exaggerated hopes—and sky-high stock prices—followed by returns to realistic expectations.

Born in the wake of President Richard Nixon's War on Cancer, biotech's first aim was to find a single cure, a "silver bullet" to cure the dread disease. But through the years, a growing realization that cancer and AIDS and afflictions of the brain such as Alzheimer's are complex, changeable and unpredictable has humbled drug companies and investors.

Now efforts are undertaken one step at a time. For example, Amgen, in partnership with a small company named Regeneron, is in clinical trials with a genetic compound intended to slow the degenerative processes of Lou Gehrig's disease. Hopes of finding compounds to restore lost functions due to sclerosis or stroke are for the future.

The very fact that biotech research is at the frontier of science has made it difficult for big company laboratories with corporate budgets and procedures. So biotech has grown as a decentralized industry, encouraging university and medical center researchers to join business managers in entrepreneurial companies.

That's why major biotech centers are clustered near university complexes—in the San Francisco Bay Area and San Diego, in Cambridge and Boston, Mass., Princeton, N.J., and the Texas Medical Center in Houston.

Venture capital firms offer initial financing in such places and, when markets are receptive, bring companies public with new stock. But it's a tough field to predict. Even the renowned scientist Jonas Salk's company, Immune Response Corp., has been plagued by worsening losses and a sinking stock price.

Yet new companies are being formed at a furious pace in California and elsewhere. The reason is a technological mouthful called combinatorial chemistry. It uses the techniques of semiconductor manufacturing and super-computing to screen thousands of molecules for potential sources of new genetic drugs.

The effects could be dramatic. "Combinatorial chemistry will make it much quicker and cheaper to identify attractive new drugs," writes James McCamant, editor of Berkeley's Medical Technology Stock Letter. "Over the next 10 years it will change the nature of the pharmaceutical industry."

Drug companies are aware of that: Marion Merrell Dow has already acquired Selectide and Glaxo has bought Affymax, two pioneers in combinatorial chemistry.

There will be many more buy-outs and start-ups to come in the normal ferment of a new industry. The promise is that biotechnology will bring down the costs of prescription drugs and medical treatments as it brings entrepreneurs and investors opportunities in small companies as well as large ones like Amgen.

A good example of the ability of U.S. industry, academia and government to adapt to scientific discovery and changing circumstances, biotech is a field to watch.

TRIBUTE TO BERNARD M. BOUR

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Ms. ESHOO. Mr. Speaker, I rise today to pay tribute to Bernard M. Bour who is retiring after 20 years as the editorial page editor of the San Mateo Times in California.

Bernard Bour has been an opinion leader in the San Francisco Bay Area since joining the Times in 1975. His thoughtful editorials have raised the level of public discourse and have bettered both our community and our country. During his remarkable career, Mr. Bour has provided his readers with valuable insights on a vast array of subjects, from local to world affairs, and many topics in between. He has been a particularly persistent voice for better government and campaign reform, and I have come to cherish his reflections on these matters.

During the many years I have known Mr. Bour, I have been struck by his respectful manner and always appreciated his courteous disposition. He is both a gentleman and a gentle man whose unparalleled professionalism have made him a treasure to his loyal readers.

Prior to arriving at the Times, Mr. Bour worked for the Asia Foundation in San Francisco and the U.S. Mission to the United Nations in New York. Now he is returning to these earlier interests by spending part of his retirement assisting with the noble effort to commemorate the 50th anniversary of the signing of the U.N. Charter.

Mr. Speaker, Bernard Bour has graced the pages of the San Mateo Times for two decades with flair and distinction. I ask my colleagues to join me in saluting this outstanding writer and wishing him the best of everything in his well earned retirement.

APPALACHIAN REGIONAL DEVELOPMENT ACT AMENDED TO INCLUDE MONTGOMERY, ROANOKE, AND ROCKBRIDGE COUNTIES, VA

HON. BOB GOODLATTE

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. GOODLATTE. Mr. Speaker, my fellow Virginian, Congressman RICK BOUCHER, and I join once again to introduce legislation which would include the counties of Roanoke, Rockbridge, Montgomery, and the contiguous, independent cities of Roanoke, Salem, Radford, Lexington, and Buena Vista as part of the Appalachian Regional Commission. Our bill amends the Appalachian Regional Development Act of 1965 and is identical to legislation we introduced in the 103d Congress which passed the House but was not acted upon by the Senate in the end of the session rush.

The Appalachian Regional Commission [ARC] was established in 1965 as a Federal-State partnership in economic and social development. ARC's goals have been to encourage the economic development and growth of the Appalachian region.

ARC's mission has been to develop an infrastructure to help Appalachia become economically viable and competitive. It has done so by constructing some 2,100 miles of highways, implementing recycling programs, creating vocational education facilities, and building reliable waste disposal facilities, water, and sewer systems.

Already a part of the Appalachian region both geographically and culturally, Roanoke, Rockbridge, and Montgomery Counties were asked to join ARC when it was created over 25 years ago. At that time the local officials decided not to become members.

In hindsight, this decision was a mistake, not only for the three counties, but also for the area counties which are members. Many economic development projects require the participation of adjoining counties. Yet, Roanoke, Rockbridge, and Montgomery Counties are excluded from any project funded by the ARC.

If the counties and the contiguous independent cities are designated as part of the ARC region there will be an enhanced opportunity to pursue joint programs. The potential for combined efforts in tourism, infrastructure projects, and strengthening competitiveness in attracting new businesses would be tremendous.

The three counties which we propose to add are all vital to the ultimate success of the ARC. One of them, Montgomery County, along with the independent city of Radford, is in Mr. BOUCHER'S district to the south of Roanoke County which is the southern most part of my district.

Montgomery County, which has a total population of 74,000 people, is geographically part of the Appalachian region. Although it is blessed with an abundance of natural resources and creative people, it is plagued with cyclical unemployment. Despite being home to Virginia Tech and possessing the fourth highest concentration of Ph.D.'s per capita in the Nation, 26 percent of all Montgomery County residents aged 25 and over do not have a high school education. In some areas of the county, that figure exceeds 50 percent.

Rockbridge County, and the independent cities of Lexington and Buena Vista, which occupy the central portion of my congressional district, are bordered on the west by the counties of Allegheny, Bath, and Highland, and the cities of Clifton Forge and Covington. Lexington is home to the Virginia Military Institute and Washington and Lee University. Despite benefiting from these universities and an impressive tourism industry, the area has been plagued by layoffs and plant closing. Rockbridge is surrounded by counties that are members of ARC and has been cooperating with its neighbors on a number of projects including a regional landfill. Rockbridge continues to explore the concept of regionalism and would like to become involved in the Appalachian Regional Recycling Consortium [ARRC]—an ARC project.

However, Rockbridge has been denied involvement in ARRC because it is not a member of ARC. As a result, the recycling effort has suffered because the participating counties are unable to supply a large enough volume of recyclable material to make the program cost-effective. The addition of Rockbridge County to the ARC could help the recycling effort become a reality.

Roanoke County and the independent cities of Roanoke and Salem could well be the lynch-pin between success of the ARC and its failure. With a population of approximately 200,000, the Roanoke, Valley has a history of cooperative agreements and joint ventures with surrounding counties. Some of the joint opportunities the Roanoke area governments have pursued include, the further development of tourism and industrial sites along the I–81 and I–581 corridors, educational/vocational training projects, and the enhancement of water and sewer infrastructure. If admitted to the ARC, Roanoke County could combine its resources and economic vitality with its less urban neighbors to help facilitate much-needed ARC regional projects.

In addition, for the ARC to ultimately succeed in its mission to provide Appalachia with the infrastructure it needs to develop into an economically viable region, it only makes sense that these three important counties be added to its membership.

Their addition will provide an essential sense of regionalism with the countries already within ARC, allowing them to work together to solve the many problems of the area. It's time to realize that city, county and even States lines are becoming less and less a barrier to cooperation.

Finally, by designating the Roanoke Valley, Rockbridge County, and Montgomery County as a part of ARC, Congress will be strengthening the partnership between western and southwestern Virginia.

I urge my colleagues to support this much needed legislation.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. PACKARD. Mr. Speaker, our courts have become a lucrative feeding ground for unscrupulous lawyers and greedy plaintiffs who abuse the system. Litigation is spinning out of control when a woman can file suit over spilt coffee and walk away millions richer. Republicans will work to curb this lucrative feeding frenzy by passing a commonsense product liability and legal reform bill.

In our civil justice system the very laws which are supposed to protect American workers and consumers hurts them the most. Our current legal system imposes a "litigation tax" on every hardworking American. Higher prices, higher insurance premiums, and stifled productivity dampen job creation and deny consumers new, safer, and less expensive products. The American people should not be forced to pay the tab for baseless litigation and unsettling jury awards.

Our Commonsense Product Liability and Legal Reform Act, H.R. 956 takes a balanced approach to provide fairness to consumers, products sellers and manufacturers alike. Increased uniformity and certainty in civil law will encourage settlements before trial—reducing legal costs and helping to speed just compensation to victims.

The American people are fed up with a senseless civil justice system that works against them. They want a legal system that works to protect their rights as workers and consumers. H.R. 956 restores accountability and responsibility to a legal system currently mired in abuse.

REINTRODUCTION OF THE BIPARTISAN DEFICIT REDUCTION LOCK-BOX

HON. MICHAEL D. CRAPO

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. CRAPO. Mr. Speaker, I rise today with Representative JANE HARMAN and 35 of our colleagues in favor of a critical budget process reform in the 103d Congress. As you know, the Nation finds itself saddled with ever more Federal debt. If the debt were to be paid off today, some estimate that each person's share would be over $17,000. Addressing this debt, and exploring ways of cutting this debt through budget process reform, has been one of my primary goals as a Member of Congress.

Today, I would like to speak on a budget process reform that is included in a bill which I am pleased to have engineered with my colleagues from both sides of the aisle: The Deficit Reduction Lock-Box Act. In the 103d Congress, this legislation (H.R. 4057) garnered the support of over 150 cosponsors almost evenly divided between party affiliation.

Congress debates on numerous amendments that are designed to reduce spending for specific Federal programs or agencies. Unfortunately, passage of these amendments does not guarantee or mandate real spending cuts.

We need to begin the process of bringing truth to the budget process and make our cuts count. When Congress votes for cuts they should be just that—cuts. Only by finding a method to reduce the spending caps and the related subcommittee allocations will we be certain that spending cuts to appropriations bills will ever be realized. This is what the deficit reduction lock-box addresses. And these spending cuts would be self-initiating, unless otherwise specifically designated or transferred.

Endorsing this legislation since the 103d Congress are several national groups including the U.S. Chamber of Commerce, Citizens Against Government Waste, the National Taxpayers Union, and Citizens for a Sound Economy. It should be stressed that this bill is a truly bi-partisan product that would lead the way to making discretionary cuts count.

I have a strong interest in proposals to require appropriations bill cuts to be translated into actual budget reductions. The lock-box must be considered as a stand-alone budget process reform measure, and a first-step in passing other necessary budget process reforms. It is an independent effort that does not seek to block other worthy budget process reforms. If anything, this budget process reform would complement other necessary efforts in this arena. Based on its proven bi-partisan in Congress since its introduction early this year, I feel it deserves a vote this year on the House floor.

As I mentioned already, the House and Senate do not save money when they vote against approval of a specific program. What this means is that the whole Congress has no way to cut discretionary spending without the cooperation of the committees that appropriate Federal funds. Even when both Houses of Congress vote to defund a program, the committees that control appropriations are free to design new ways to spend the Federal money that they control.

After repeated exhortations on the necessity for thrift in an age of deficit financing by, for example, the space station's political opponents, defenders like myself argued that its elimination is not going to give one penny of deficit reduction. The spending that has already been appropriated would merely be plowed back into other programs.

The lock-box bill is geared toward finally doing what we constantly tell the American people that we're supposedly doing. Many people think that when we vote to make cuts and when we have success, that cuts are actually going to take place. Under present law, these dollars are reallocated. This proposal would ensure that we can actually address the deficit, which the American people want us to do.

When Congress votes to cut Federal spending but the Treasury doesn't really save any money, it harms both American taxpayers and representative democracy. Congress should reform spending procedures to make its cuts count. When it votes against Federal spending, there should be a way to create opportunities for savings that are both substantial and mandatory. That way, money would in effect be deposited in the Federal treasury for deficit reduction, not just retreat a step back in the spending pipeline. Until Congress changes the way it approves Federal spending so cuts can really count, even if rank-and-file Members vote to cut every program in the world, conference committees can simply reallocate the money.

Ensuring real spending cuts through this lock-box bill is a necessary first step in this process of spending reform. Members of Congress must seriously consider listening to their constituents about spending cuts and place good government over the self-interest of specific projects by indicating their support for this lock-box bill. Only through budget process reforms like this will Members be able to vote for cuts and be able to communicate the authenticity of these cuts honestly to the public. I am proud to reintroduce this key legislation today.

RETIREMENT OF JUDGE JOAQUIN V.E. MANIBUSAN

HON. ROBERT A. UNDERWOOD

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. UNDERWOOD. Mr. Speaker, I would like to take this occasion to commend and congratulate a distinguished public servant, Judge Joaquin V.E. Manibusan, who is retiring from the superior court of Guam. Judge Manibusan is a loyal citizen who has dedicated over 50 years of service to the government, the island, and the people of Guam.

Judge Manibusan was born on March 23, 1921, in the city of Agana. He is the son of the late Judge and Mrs. Jose C. Manibusan. After his graduation from George Washington High School in 1940, he pursued legal studies through correspondence. This established his foothold on Guam's judicial institution.

His distinguished government career dates back to the days prior to World War II. He began working for the civil affairs department in the machine shop at the naval air station on February 1941. He stayed there until the outbreak of the war the following December. Japanese occupation of the island put things on hold for him until 1944 when he was again hired by the civil affairs department to work at the Anigua refugee camp.

Currently Guam's senior judge on the bench, his affiliation with the island's court system can be traced back to February 1945 when he was hired as a clerk typist for the island court. He was promoted to senior clerk in 1948 and, later that year, he was appointed as deputy clerk of the island court by Governor C.A. Pownhall. The Honorable Joaquin C. Perez, chief judge of the island court of Guam, reaffirmed this appointment in February 1952 and, in December 1963, appointed him to the post of clerk of the island court.

Gov. Manuel F.L. Guerrero, on June 24, 1969, submitted Judge Manibusan's appointment to the Guam Legislature for confirmation as judge of the police court of Guam. When the superior court of Guam was created, Judge Manibusan was sworn in as a judge in the court assigned exclusively to the traffic division. The following year, he was reappointed by Gov. Ricardo J. Bordallo as a judge in the superior court of Guam's traffic division. The people of Guam expressed their approval when he went before the voters and was retained as a judge of the superior court back in 1982.

Outside the courtroom, the good judge has played an active role in community organizations. This is something that he has done throughout his career. Judge Manibusan's participation as a delegate to the Guam Constitutional Convention of 1969 and his chairmanship of the grand opening of the Guam Judicial Center in 1991 are great indications of his civic mindedness. He has also been a member of the Holy Name Society as well as a charter member of the Sinajana Civic Improvement Club. This is all in addition to his participation in Christmas Seal drives and active involvement in Guam's sports, particularly in baseball.

The more than 50 years of service dedicated by Judge Joaquin Manibusan to the island of Guam and its people has truly earned him a place in our hearts. The judge's wife, Alejandrina, and his children, Marilyn, a former senator, Joaquin, Thomas, and Geraldine certainly have every right to celebrate and be proud of the man who has always been a father to the island. On behalf of the people of Guam, I say Si Yu'os Ma'ase to a distinguished public servant and community leader in the Territory of Guam.

HONOR INTERNATIONAL WOMEN'S DAY BY STOPPING FEMALE GENITAL MUTILATION

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mrs. SCHROEDER. Mr. Speaker, it is unusual for holidays originating in this country to be widely adopted and observed in other nations, including socialist countries. But that is the case with International Women's Day, which had its origins in an 1857 New York City march by female garment and textile workers and went on to become an international event honoring women. But just as this holiday transcends national lines, so do human rights. And so does female genital mutilation, a painful ritual that involves cutting off of all or part of a female's genitalia. It is estimated that more than 100 million females of all ages in more than 30 countries have been subjected to female genital mutilation. About 10,000 of them migrate to this country annually, and some of them bring this practice with them. People ask me in disbelief if FGM happens in this country. Based on the calls I receive, the answer is "yes." But we need to know more about its practice here, as part of an effort to stop it and educate communities about its devastating effect on female health. I invite my colleagues to cosponsor my bill, H.R. 941, which would do just that. And I remind them of the declaration made by the United Nations conference on population last year in Cairo, which urged governments to prohibit FGM and vigorously support efforts to eliminate it.

SALUTE TO MABEL CLEMENTS

HON. THOMAS M. FOGLIETTA

OF PENSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. FOGLIETTA. Mr. Speaker, I rise to salute Mrs. Mabel Clements whose 75th birthday will be celebrated on March 18, 1995, at the St. Luke C.C. Church Center in Chester, PA. Born on March 20, 1920, Mrs. Clements, a resident of Chester, has contributed a great deal to her church and her community throughout her lifetime.

Mrs. Clements has given endless support, love, dedication, and spiritual commitment to her family, friends, and church throughout her lifetime. Her steadfast dedication and commitment, combined with her gentle and delightful sense of humor has earned her the respect and admiration of her church and the entire community.

Mr. Speaker, I join with Ms. Norma Jordan and the family and friends of Mrs. Clements in wishing her a very happy 75th birthday.

COMMUNITY COLLEGES: PART OF THE SOLUTION

HON. CARRIE P. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mrs. MEEK of Florida. Mr. Speaker, an established resource for Florida's future economic security is in jeopardy due to lack of adequate State and Federal support. This resource is the community college system which is the access point to higher education, skills training, and successful employment for a growing underclass and increasingly diverse State population. As funding for public educational institutions, in Florida and elsewhere, is steadily declining, community colleges are faring most poorly of all as demands for their services continue to increase.

While it has long been recognized that the community colleges play a crucial role in helping dependent individuals become self-sufficient, the financial commitment to this longer term, solid solution is being abandoned to cover prison expenditures, law enforcement, and immediate public assistance. The continued funding of these escalating programs results in a starving of the ultimate solution to these runaway problems, and I am sure that the State of Florida is not unique in this experience. As a former faculty member of Miami-Dade Community College, I am directly familiar with the fine educational and training services the school provides and its value to the greater Miami area.

I would like to share with my colleagues the following statement by Dr. Robert H. McCabe, president of Miami Dade Community College, which points out the value of this Nations community college.

Mr. Speaker, funding for community colleges is an investment in our future.

STARVING THE SOLUTION

(By Robert H. McCabe)

The growing underclass of individuals who are dependent on society is threatening the well-being of all Floridians. Our state is becoming overwhelmed by the cost of sustaining this dependency. The number of persons receiving Aid to Families with Dependent Children (AFDC) has been rising at a rate of 20% a year since 1988. The state's Medicaid expenditure skyrocketed to almost two billion dollars by 1990 and over $4.1 billion by 1993. This was equal to the state general revenue budget in 1980–81. Expenditures on prison and law enforcement are escalating exponentially, in Dade County alone, nearly one quarter of our citizens are receiving public assistance—in housing, health care, or food stamps.

Florida has exceptional prospects for a bright economic future as the business connector to the emerging nations of the Caribbean and Central and South America. However, the loss of our human resources, because of lack of skills, and the cost of sustaining growing numbers of individuals in a dependent status, threatens to destroy that potential.

Florida's productive and efficient community colleges have been the primary access to college and post-secondary education for our residents. Community colleges are uniquely positioned to help dependent individuals gain the skill and become self-sufficient, thus providing business and industry with a much needed quality work force and saving Floridians literally billions of dollars. Despite the community colleges' excellent record of performance, reduced resources are provided to the community colleges to support essential services to our communities. Over the history of the community college system, the income per student has been reduced from 50% more to 22% less than that provided for public schools, grades K through 12. In 1994–95, community colleges received just over half as much per lower division student as the state universities.

The current level of funding for community colleges threatens their capacity to carry out their mission—Florida is, in effect, starving the most promising solution to the problem of reducing the number of dependent individuals by denying the colleges the resources they need to help these individuals gain the skills they need to be productively employed.

VIRGINIA NATIONAL PARKS ACT

HON. THOMAS J. BLILEY, JR.

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. BLILEY. Mr. Speaker, today I am pleased to introduce legislation that responds to the concerns of Virginians regarding national parks in the Commonwealth. The Virginia National Parks bill confronts a number of Virginia's pressing park issues, addressing Shenandoah National Park, Richmond National Battlefield Park, Shenandoah Valley National Battlefields, and Colonial Parkway.

First, my bill addresses constituent concerns about the expansion of Shenandoah National Park and Richmond National Battlefield Park. These two parks share an unusual status in that they are each a relatively small park with a much larger authorized boundary. The result of this situation is that, unlike the vast majority of national parks, these parks can expand whenever they want, without congressional approval or proper representation of local communities' interests.

While Shenandoah National Park includes 196,000 acres of land, its enormous 1926 authorized boundary includes 521,000 acres, enveloping parts of many surrounding communities. Similarly, while Richmond National Battlefield is composed of several small sites surrounding Richmond, its sprawling 1936 authorized boundary includes about 250 square miles of the metropolitan area.

Many citizens and local governments within the authorized boundaries of both the Shenandoah and Richmond parks fear that there is a cloud hanging over local property titles and that the parks could expand without a fair consideration of the local communities' concerns.

My bill would put to rest these fears by amending the two parks' authorized boundaries to conform to the land that the National Park Service currently owns. This legislation doesn't preclude future expansion of these parks. It simply gives the people most affected by park expansion a proper voice in the decision. I believe that these provisions will relieve the long-standing tensions between these parks and their neighbors and promote more cooperative and fruitful relationships.

Another provision of my bill responds to a Virginia General Assembly resolution asking for legislation to allow for the maintenance of secondary roads inside Shenandoah National Park. Since the park's inception in 1935, Virginia has maintained and operated secondary roads in the park under a series of temporary-use permits. These permits have recently expired and the National Parks Service has not renewed them, leaving the State without permission to maintain the roads. Many of these secondary highways are regularly traveled by school buses and are badly in need of repairs and safety improvements. My bill returns these roads to the State so that they can be properly maintained.

This legislation I introduced today also incorporates the provisions of the Shenandoah Valley National Battlefields Partnership Act, legislation sponsored by Congressman WOLF, which passed the other body last year. This legislation conserves for future generations 10 Civil War battlefields of the Shenandoah Valley. Importantly, the act accomplishes these goals without infringing on the rights of private property owners. This legislation establishes partnerships between Federal, State, and local governments and the private sector to conserve and interpret the legacy of some of the most vital battlefields of the Civil War.

Another provision of my bill authorizes the National Parks Service to buy a small plot of land for the Colonial Parkway near Jamestown.

The Virginia National Parks bill addresses the concerns of Virginians on a variety of issues pertaining to national parks and I welcome the support of my colleagues in cosponsoring this legislation.

THE 125TH ANNIVERSARY OF IMLAY CITY

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. KILDEE. Mr. Speaker, I rise today to urge my colleagues in the House of Representatives to join me in paying tribute to a great city in Michigan's Ninth Congressional District. Imlay City is celebrating its 125th anniversary during the week of August 2–6, 1995.

Imlay City, located at the intersection of I–69 and M–53—the Gateway to the Thumb Area of Michigan from Detroit—was named after William Imlay, an Eastern Seaboard capitalist who moved to the area in 1828. The village was settled in 1870 when the construction of the Port Huron and Lake Michigan Railway was completed as far as Attica, MI.

The chief engineer of the railroad, Charles Palmer, selected Imlay City as a likely produce market between Lapeer and Capac. He then purchased 240 acres of land which he surveyed and proceeded to plot. Since the township was called Imlay, he decided to name this site Imlay City.

The city celebrated its 100th anniversary in 1970. Also in that year a change was made from a village home rule to a city form of government. Today, this eastern Lapeer County community is home to several farming operations, commercial facilities and industries. The city is continuing to grow and prosper as many people move into the area from throughout the State of Michigan.

I have had the privilege of representing this area for many years. I have come to know many fine people in this community and consider them to be friends and advisors. The area surrounding Imlay City is rich with agricultural history. Businesses and industries have seen the potential for this area and have located their factories in this area, creating great economic opportunities for Imlay City. But throughout the years, with all the growth, Imlay City has retained the best features of a small town, with an excellent educational system and a friendliness that has remained constant though those 125 years.

Mr. Speaker, it is indeed an honor and a privilege for me to rise before my colleagues in the House of Representatives to honor this great community for celebrating its 125th anniversary. It is a shining jewel in the Ninth Congressional District of Michigan.

HONORING THE 1995 VALOR AWARD WINNERS

HON. THOMAS M. DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. DAVIS. Mr. Speaker, I rise today to pay tribute to the 1995 Prince William County, VA Annual Valor Award winners. On Friday, March 10, 1995, the Prince William County Chamber of Commerce and the Prince William County-Greater Manassas Chamber of Commerce will present the Annual Valor Awards at the FBI Academy, Quantico Marine Base.

The Valor Awards honor public service officers who have demonstrated extreme self-sacrifice, personal bravely, and ingenuity in the performance of duty. There are five categories: The Gold Medal, The Silver Medal, The Bronze Medal, Certificate of Valor, The Lifesaving Award.

The Valor Awards is a project under the Prince William County Chamber of Commerce's Education and Safety Committee and the Prince William County-Greater Manassas Chamber of Commerce's Valor Committee. This is the ninth year the Prince William County Chamber of Commerce has held the Valor Awards and the first year that the Prince William County-Greater Manassas Chamber has participated.

The Gold Medal Award is the highest award for bravery and heroism. Awarded in cases in which a public safety official knowingly places his/her life in peril of death or extreme serious bodily harm while saving or attempting to save the lives of others who are clearly at risk.

The Gold Medal Winners for 1995 are: Richard R. Kassler and Dwayne A. Palermo.

The Silver Medal is the second highest award for bravery and heroism. Awarded in situations when a public safety official knowingly exposes himself/herself to great personal risk in the performance of an official act.

The Silver Medal Award Winner for 1995 is: Dwayne K. Moyers.

The Bronze Medal is awarded in situations where during the course of an emergency, a public safety official demonstrates judgment, ingenuity, or performance at a level that clearly exceeds that required and expected in the performance of his/her duties. This may include the saving of a life that is threatened by medical or physical reasons.

The Bronze Medal Award Winners for 1995 are: Charles P. Gardiner, Heidi D. Greaves, Franklin Ray Osborne, Bernard R. Rfluger, Brian F. Wing, and Mark K. Fleming.

The Certificate of Valor is awarded for acts involving personal risk and/or demonstration of judgment, zeal, or ingenuity above what is normally expected in the performance of duty.

The Certificate of Valor Award Winners for 1995 are: William A. Lawrence, Carter M. Boston, Wesley K. Brown, Douglas J. Buchanan, and Douglas H. Litton.

The Lifesaving Award is awarded in recognition of acts taken in a life-threatening situation where an individual's life is in jeopardy, either medically or physically.

The Lifesaving Award Winners for 1995 are: Lori A. Kiley and Michael T. Neary.

Mr. Speaker I know my colleagues join me in commending these fine citizens who are truly deserving of the title, hero.

BAN WASTEFUL SPENDING ON METRIC CONVERSION OF OUR HIGHWAYS

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. STUMP. Mr. Speaker, today I am introducing legislation which will prohibit the use of Federal funds to require States to construct or modify highway signs using metric measurement.

In 1977, the Federal Highway Administration [FHA] attempted to convert all road signs to solely metric measurement. The plan was scrapped because 98 percent of the public comments received by the agency opposed the idea. However, some FHA bureaucrats are not getting the message. They believe that a section of the 1988 Omnibus Trade and Competitiveness Act which required Government agencies to use the metric system in procurement, contracts, and grants to enhance our international competitiveness gives them the authority to demand all U.S. highway signs be in metric. In 1993, the FHA again published a mandatory metric transition plan in the Federal Record. Again, the vast majority of public responses received were negative. Exactly how metric highway signs in the United States will aid us in overseas markets eludes me.

Clearly, there is widespread public opposition to a heavy handed Government attempt to impose the use of metric measurement on our highways. We cannot afford to waste money on such nonsense. Not only would the American people be made to suffer with the inconvenience brought about by changing to a system currently unknown to many of them, but would be forced to pick up the enormous price tag. Think of it—in addition to highway signs, such items as road maps, manuals, speedometers, odometers, and machinery would have to be changed and workers would need to be retrained.

Let me make it clear that I do not oppose the voluntary use of the metric system. Those who wish to use metric measurement or stand to benefit from it, can and should use it. What I do strongly oppose is the Government's unwarranted and costly imposition of metric on our highways. The American people do not want it and stand to gain nothing from it.

As we are fighting to cut Federal spending and get the budget deficit under control, converting our highway signs to metric measurement is an inexcusable waste of tax dollars.

AMERICAN LEGION POST 114, SIKESTON, MO

HON. BILL EMERSON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. EMERSON. Mr. Speaker, over the course of my years as a private citizen and public servant I have been witness to a great, unfolding story. That story is one of pride and principle, enterprise and excellence, and perhaps more than anything else, life and liberty. It is the story of the American people and the right and true Nation that they have struggled to forge.

Without the brave Americans who responded to our country's need and who pledged themselves to the banner of freedom and democracy, the United States might not be what it is today; might not, in fact, even be at all. I would like to reverently pay tribute to all of the American men and women who have served in our Armed Forces—they truly represent uncommon and unsurpassed devotion. I am further honored to be able to present to you a shining example of the fine caliber of those who wore America's uniform in World War II.

Sikeston, MO, in my congressional district, is home to a group of veterans worth this special attention. I would like to recognize the active members of American Legion Post 114 who served under President Franklin Roosevelt and Missouri's own Harry Truman when the fate of the world's democracies was in the balance during World War II. America asked these sons and daughters to throw back the tide of despotism and injustice and Post 114 answered without pause.

May it be entered into the U.S. CONGRESSIONAL RECORD that the courageous members of Post 114 of Sikeston, MO, are hereby recognized for their selfless service to their country. We applaud you, we honor you, we thank you.

The members of Post 114: James W. Abernathy, Marcus W. Abernathy, Ray Alberson, Hugh Aldrich, Ralph Armour, James A. Armstrong, James A. Baker, James M. Beaird, J.D. Bearden, Eli Beason, Gaines B. Beck, C.C. Beason, John Beetrum, William W. Bess, and Howard E. Billman.

David E. Blanton, Lee A. Bowman, Woodrow Brashears, L.V. Brothers, Phonzie W. Brown, Reece Brown, Arthur O. Bruce, Joel G. Buchanan, Arthur Bunch, Ray Burnett, Henry S. Bussey, Cline Carter, Ray Cathey, Mark L. Childs, and Lewis H. Conley.

Marshall Craig, Francis E. Crenshaw, William L. Crowden, Don Culbertson, Edgar Culbertson, B.G. Daugherty, Jr., John W. Davis, Joseph H. Davis, Eugene Dawson, Marion K. Day, Dan Delplane, Robert Dempster, Richard Dillender, Pete Dominquez, Sr., Durwood Dover, and Elmer Elfrank.

Leonard Etienne, Lloyd B. Evans, John F. Ferrell, Ulie F. Fitts, Glenn Forbis, Morris E. French, Jeremiah Fulton, Gene Gadberry, Arthur J. Gall, Jerry Gilliland, Gilbert Gilmore, Woodrow Glass, Brewer Glenn, William A. Gnann, and Kelly B. Goza.

Frank E. Grimms, William A. Guess, Charles R. Hammock, Douglas L. Hammock, Billie J. Harp, Lloyd G. Harris, James H. Hart, Gorman Hartlein, Everetta W. Hays, Sr., Tommie N. Hefner, Benjamin R. Heil, James T. Hensley, Hubert Hill, Glen Hines, and Jewell R. Hinkle.

R.H. Hodge, Bill Holleman, Cecil O. Holman, J.W. Homes, Lynn Ingram, Z.T. Jackson, Forrest Johnson, Sol D. Johnson, Jerry Kellum, L.E. King, Hugh Klasing, Leo J. Klekamp, James W. Lackey, Raymond C. Landers, Dayton A. Lasater, and Onis H. Learue.

Harry S. Littleton, George Mannon, Johnny Marshall, Joseph D. Martinez, Jr., Edward C. Matthews, Jr., Ruby Maynard, James E. Mayo, Alfred H. McCutchen, Sr., Willard McDaniel, Dean McDonald, James E. McGarity, Mary M. McNay, Charlie Meunier, Vincent R. Michelena, and Ray A. Moll.

William C. Moore, Jr, Joel A. Montgomery, Kenneth R. Morgan, Charles W. Myers, Claude A. Myracle, Paul Nugent, John R. O'Neal, George W. Orr, William K. Parker, Ishmael T. Payne, Carl H. Phillips, James V. Phillips, Martha S. Pickett, Rachael R. Pierce, and Irick A. Poe.

Vincent J. Polito, Charles F. Powell, Otto W. Pratt, Arnold Raburn, Patrick Regan, Paul Rennier, Carroll Robertson, Leo Rofkahr, Walter J. Rogers, Herbert Rowell, William P. Sappenfield, William L. Scarbrough, Billy G. Schock, Ellavyn Schubert, Harold H. Schultz, and Bernie L. Seagraves.

Albert Seiler, Charles Shelby, Paul Scherrard, Earl Sloan, Nat M. Snider, Walter B. Spence, Jr., Burleigh Spitler, R.L. Stalcup, Hank F. Switala, Goble Trail, Jr., Charles M. Trucks, Charles W. Tucker, Lynn Twitty, Russel Walker, and Linzy Walls.

Leroy Wamble, Charles Watson, Manuel F. Whitener, Oren Whiteside, Curtis Wilborn, Denzel W. Williams, George Williams, Charles D. Wood, Edgar L. Woodard, and James S. Woods.

We, as Americans, have ample reason to be proud of these World War II veterans and the country they helped build for us today. Our economy is invigorated, our cities and communities are prospering, and our democracy is strong and secure. In these good times, we must never forget who paved the trail before us; it is precisely to forestall and combat such a happenstance that I wanted to honor American Legion Post 114.

Now, more than ever, we should recall the struggles and sacrifices of these patriots who responded to our country's need and pledged themselves to defend the causes of freedom and democracy. When dark shadows threatened to strike down that which is good, the members of post 114 rallied and brought with them grit, fortitude, and ultimately triumph. Because they exceeded the call of duty, stood in harm's way, and met each challenge without wavering: America continues to be free.

TAX LEGISLATION

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. SHAW. Mr. Speaker, I am pleased to introduce, along with my Ways and Means Committee colleague Mr. RANGEL, long overdue tax legislation to reform the cost recovery rules associated with leasehold improvements. Simply stated, our legislation would enable building owners to more closely match the expenses incurred to construct these improvements with the income the improvements generate under the lease.

Office, retail, or other commercial rental real estate is typically reconfigured, changed or somehow improved on a regular basis to meet the needs of new and existing tenants. Internal walls, ceilings, partitions, plumbing, lighting and finish each are elements that might be the type of improvement made within a building to accommodate a tenant's requirements, and thereby ensure that the work or shopping space is as modern, efficient, and environmentally responsible as possible.

Logically, the time period during which the costs associated with constructing leasehold improvements are recovered, through depreciation deductions, should match the time period during which the improvement is useful. Unfortunately, today's depreciation rules do not differentiate between the economic useful life of a building improvement—which typically corresponds with a tenant's lease-term—and the life of the overall building structure. The result is that current tax law dictates a depreciable life for leasehold improvements of 39 years—the depreciable life for the entire building—even though most commercial leases typically run for a period of 7 to 10 years. Correcting this mismatch between income and expense is the goal of our legislation.

Compounding this problem is confusion in the marketplace today concerning whether a building owner may close out and deduct currently any unrecovered costs remaining at the time a leasehold improvement is destroyed. It seems almost absurd, but the current rules are in some cases being interpreted to deny the ability of a building owner to "close out" its investment for tax purposes even though the improvement has been scrapped, demolished or otherwise permanently retired from service. Theoretically, in 30 years a building owner could have had 6 different 5-year tenants, each requiring different improvements to accommodate their individual business needs. Because of the current confusion, the owner may be required to depreciate improvements that in fact no longer exist. In addition to more closely recovering the costs of the improvements with the income generated by them, this close out issue needs to be addressed.

As a result of today's flawed depreciation rules in this area, the after-tax cost of reconfiguring, or building out, office, retail, or other commercial space to accommodate new tenants or modernizing work places is artificially high. This is because building owners are unable to fully deduct the economic costs expended on leasehold improvements over the period in which the improvements actually generate income.

In addition, the current policy hinders urban reinvestment and construction job opportunities as improvements are delayed or not undertaken at all. Especially given the absence of new building construction in many markets, opportunities for the Nation's 7 million construction and building trades workers in the remainder of the decade will largely be tied to the renovation and rehabilitation of existing commercial space.

Moreover, a widespread shift to more energy-efficient, environmentally sound building elements is discouraged by the current tax system because of their typically higher expense. For example, the Natural Resources Defense Council notes that commercial lighting alone consumes more than one-third of the electrical energy produced in the United States. If a greater conservation potential of energy-efficient lighting were to be realized, the demand for the equivalent of one hundred 1,000-mega-watt power plants could be eliminated, with corresponding reductions in air pollution and global warming.

To address this issue, our legislation would establish a new depreciation recovery period of 10 years for a carefully defined category of interior building improvements. In general, to qualify under the legislation the improvement must be constructed by a lessor or lessee in the tenant-occupied space. In an effort to ensure that the legislation is as cost efficient as possible, improvements constructed in common areas of a building, such as elevators, escalators, and lobbies, would not qualify; nor would improvements made to new buildings.

Equally important, our legislation would clarify that building owners are permitted to fully deduct and close out any unrecovered leasehold improvement expenses remaining at the time a lease expires and the improvement is demolished.

Our legislation should be enacted this year. This would acknowledge the fact that improvements constructed for one tenant are rarely suitable for another, and that when a tenant leaves, the space is typically built-out all over again for a new tenant. It is important to note that prior to 1981 our tax laws allowed these improvement costs to be deducted over the life of the lease. Subsequent legislation, however, abandoned this policy as part of a move to simplify and shorten building depreciation rules in general to 15 years. Given that buildings are now required to be depreciated over 39 years, it is time to face economic reality and reinstate a separate depreciation period for building improvements to tenant occupied space.

I am pleased that several members of the Ways and Means Committee have joined me today in introducing this legislation. I urge all members of the House to review and support this important job producing, urban revitalization legislation, and I look forward to working with the Ways and Means Committee to enact this bill.

SALUTING THOMAS JOE HARRIS OF THE WOODLANDS, TX—WESTINGHOUSE SCIENCE TALENT SEARCH FINALIST

HON. JACK FIELDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. FIELDS of Texas. Mr. Speaker, this evening, I will have the privilege of meeting a constituent—Thomas Joe Harris of The Woodlands, TX—who is a finalist in the Westinghouse Science Talent Search competition. At a time when too few young people use their high school years to explore the world around them, Thomas Harris is an exception—and has proven himself to be a young man of exceptional intelligence and potential.

Thomas is the son of Jeff and Aletha Harris of Falling Start Court in The Woodlands.

The Westinghouse Science Talent Search brings together the brightest, most creative science students from across the country. Each talent search hopeful is required to submit a written description of the student's research, plus a completed entry form that is designed to measure a student's creativity and interest in science.

Many of our Nation's top scientists and mathematicians share the common bond of having participated in the talent search when they were students. The 54th annual Westinghouse Science Talent Search caps more than a half century of remarkable achievements by more than 1,500 semifinalists and 2,000 finalists who have participated in this, America's most highly regarded precollege science competition.

In his science project, Thomas looked at ways to increase the population of red-cockaded woodpeckers—an endangered species. Thomas studied the red-cockaded woodpecker's feeding habits and determined whether or not the birds would accept artificial nests in established colonies.

As a result of his innovative research, Thomas concluded that protecting the birds' specialized feeding niche in older pine forests, as well as private property owners providing artificial nests on their land, are essential for the survival of the red-cockaded woodpecker.

Thomas attends the Academy of Science and Technology in Conroe, where he is student council president and a member of the math club. Additionally, he is an environmental speaker for the Boy Scouts, and a basketball coach for the YMCA youth league.

First-place winner in a dozen science competitions, Thomas also has won the U.S. Navy Honors Academic Award and was an invited guest at the Texas Endangered Species and Wildlife Conference.

Mr. Speaker, I know you agree that Thomas Joe Harris personifies the qualities we all seek in our high school students: a thirst for knowledge, an interest in science, and an eagerness to learn new ways to solve old problems. In this age of high-technology and nonstop scientific advances, the United States will need the skills and imagination of Thomas Joe Harris—and the other Westinghouse Science Talent Search finalists—if we are to remain the most advanced nation in environmental research and other sciences. And I know you also join with me in congratulating this remarkable young man on being named a finalist in the Westinghouse Science Talent Search.

1995 YEAR OF THE VETERAN

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. FILNER. Mr. Speaker and colleagues, I rise today to join the county of San Diego in honoring our Nation's veterans. The following resolution by the county of San Diego designates 1995 as the "Year of the Veteran":

> Whereas, on May 8, 1995, America will observe the 20th anniversary of the end of the Vietnam war; and,
>
> Whereas, on September 2, 1995, our Nation will celebrate the 50th anniversary of the end of World War II; and,
>
> Whereas, San Diego County has the highest retired military population in the state of California; and,
>
> Whereas, San Diego County has the second largest veteran population in the Nation; and,
>
> Whereas, the county homeless veteran population is double the national percentage, and others are at risk of becoming the "News" homeless; and,
>
> Whereas, veterans of all eras are still facing the aftermath and reconstruction of their lives after military service; and,
>
> Whereas, these veterans, their families, their widows and their survivors continue to be adversely affected by military downsizing, base closures, massive defense industry cutbacks; and,
>
> Whereas, a concerted effort to assist these worthy citizens and former soldiers with decent jobs adequate housing and economic, self-empowering opportunities, will demonstrate our concern and gratitude; and,
>
> Whereas, as the County of San Diego is committed to finding new and creative solutions and programs, that provide "continuum of care" solutions to combat and reverse this national and local tragedy that has befallen our veterans: Now, Therefore, Be it
>
> *Resolved*, That the County of San Diego designates 1995 as the "Year of the Veteran." We call upon our citizens, the business community, non-profit groups, service providers, our individual cities and others throughout the county to join together for the purpose of focusing on providing effective solutions to those who have not overcome the effects of their military service and still need our help.

Mr. Speaker, I submit this resolution to recognize the tremendous debt of gratitude we owe to our Nation's veterans for their valor and service to our country. Let us resolve to make 1995 not only the Year of the Veteran, but more importantly, the year we begin to make real strides toward keeping our contract with these brave men and women.

TRIBUTE TO FRANK GANDOR

HON. MARK FOLEY

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. FOLEY. Mr. Speaker, today, I rise to salute an exceptional member of the south Florida Polish-American community as he celebrates his 80th birthday, Mr. Frank Gandor of Lantana, FL. I would like to share with the Nation some information about this outstanding individual.

Frank Gandor was born in 1915 in Bielsko, Poland, the youngest of six children. While in the Polish Army Corps he fought the Germans in World War II and helped liberate Bologna in Italy. He was awarded a Certificate of Recognition by the United States Army for his employment in the Polish Labor Service in the years following the war.

An exceptionally gifted lyric tenor, Mr. Gandor has devoted his life to music, from singing solo in the church choir at age 9 to directing the Chopin Choir of the American Polish Club for the past 10 years in Lake Worth, FL. Today the songs of his homeland and the patriotic renditions of his adopted country, these United States, are still sung with pride and vigor at the age of 80. He is an active citizen in his community and is always busy with musical and veterans activities.

Mr. Speaker, the heart of this honorable man and gifted maestro surely beats with the "Sound of Music." I am proud today to recognize Mr. Frank Gandor on his 80th birthday and the contributions he has made to his community and to America.

RESULTS OF MUNICIPAL ELECTION IN BURLINGTON, VT

HON. BERNARD SANDERS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. SANDERS. Mr. Speaker, at a time when the congressional leadership is proposing huge tax breaks for the wealthy, an increase in military spending and major cutbacks in a wide variety of programs which tens of millions of low and moderate Americans desperately need, I am happy to tell you about the results of the municipal election yesterday in Burlington, VT—the State's largest city.

Peter Clavelle, a Progressive, won the mayoral election with 5,055 votes. Peter Brownell, the Republican incumbent, came in second with 4,815 and Paul Lafayette, the Democrat, came in third with 1,793. Further, Progressives and Independents held their seats on the city council which will give the Progressives more voting power than they have ever had before.

Mr. Clavelle, in opposing the Republican and Democratic candidates, called for property tax reform and a progressive tax system which is based on ability to pay. He also called for keeping Burlington's waterfront open for all the people—not just the wealthy. He indicated that the goal of his administration would be to make government work for the average citizen—not just those who have a lot of money. Mr. Clavelle had the support of city unions, women's groups, environmentalists, and many low income citizens.

I should also mention to you that Mr. Clavelle and the Progressives did their best in the low and moderate income wards of the city. In ward 2 he received 65 percent of the vote in the 3-way race, and in ward 3 he received 58 percent of the vote. The voter turnout was also significantly higher than the 38 percent by which the Republican's won their national mandate on November 8, 1994.

While the results of this municipal election have almost everything to do with local issues and local personalities, I do believe that national politics played a role. In Burlington, VT, as in other communities across America, middle income and working people are becoming increasingly concerned about the class warfare which is going on in Washington. They want to see Government represent all the people—not just big money interests. They want to see Government protect the elderly, the children, women, and the poor—rather than just those who make large campaign contributions.

IN HONOR OF THE STEVENSON PATRIOTS, 1994–95 WOMENS' BASKETBALL CLASS AA STATE CHAMPIONS

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. PORTER. Mr. Speaker, it gives me great pleasure to rise today to salute the Adlai Stevenson High School Patriots Womens' Basketball Team, who last weekend won the Class AA State Championship. This is a wonderful achievement for the team, for their school, and for all the people of our area, as this is the first-ever State championship for Stevenson High and the first-ever basketball State championship for any Lake County high school.

The Patriots cruised to victory over Mother McAuley, their highly regarded opponent, by a final margin of 77 to 47. In the process, they showed why they are ranked No. 1 in the State. They jumped out to an early 12-point lead and never let Mother McAuley come closer than 7 points throughout the game.

All of the people involved with this remarkable team have earned special recognition. We should begin with head coach Frank Mattucci and assistant coach Tom Kelly, athletic director John Martin and assistant athletic director Pete Weber, junior varsity coaches Mike Fitzgerald and Tim Tomaso, freshman coaches Trish Betthauser and Renee Gates, managers Jenny Mendigutia and Romy Rosenbaum, scorer Willis Wudtke and equipment manager Cathy Coradini.

The players who were part of the championship roster are Aarin Bartelt, Ashley Campbell, Kim Carter, Tamika Catchings and her sister, Tauja Catchings, Amy Chaness, Kelly Cole, Katie Coleman, Trish DeClark, Rebekah Ford, Noelle Medenwaldt, Christy Miller, Felice Rosenzweig, Carolyn Roth, Jamie Smith, and Jennifer Warkins.

Yes, this was a magical year for Stevenson, but there was nothing mysterious about their championship. Their team motto highlights three words that are at the heart of their winning season: pride, hustle, and dedication. In other words, they didn't win just because they had the talent—they won because they worked hard, they had the desire to succeed, and they were dedicated to one another. The Patriots have reminded us what character and teamwork are all about.

That's why, Mr. Speaker, I am proud to salute the women of the Stevenson High School Patriots, who gave their school and our area a State basketball championship and so much more. They are the pride of all Illinois and we can't wait for next season.

IN SUPPORT OF H.R. 1119

HON. JIM RAMSTAD

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. RAMSTAD. Mr. Speaker, last Friday I introduced H.R. 1119 to improve section 457 pensions for police officers, firefighters, and other public employees.

Currently, these public servants are not eligible for 401(k) pension plans, but may elect to contribute to employee-funded plans governed by section 457 of the Internal Revenue Code [IRC]. Unfortunately, these deferred compensation plans have been left out of many of the improvements that have been made over the years to the more well-known 401(k) plans.

My legislation will make three important improvements to 457 pension plans. First, it will index the maximum contribution amount to account for inflation. While maximum contributions to 401(k) plans are indexed for inflation, the maximum contribution for 457 plans is set at $7,500 a year and can only be increased by Congress.

Second, H.R. 1119 will allow participants to make a one-time change in the date when benefits are received. Currently, participants must make an irrevocable, one-time decision about the exact date they want to begin receiving benefits. This decision is a difficult one, especially for police and other public safety officers, because they often retire at relatively young ages and might pursue other careers.

Third, my bill will allow plans to be cashed out if they contain less than $3,500 and have been inactive for at least 2 years. Currently, some enroll in 457 plans and find, for one reason or another, that they cannot make payments. Maybe they have gotten married, had children or bought a home, and simply cannot afford to make the necessary contributions. For whatever reason, these accounts can lie dormant for long periods of time. Yet, plan administrators must continue to maintain records on them. My bill will allow these accounts to be cashed out and taxed at the usual rate for income.

The important changes H.R. 1119 makes to 457 plans will help public employees enrolled in these pensions contribute more to their retirement savings and better plan for their retirement years. I encourage all of my colleagues to cosponsor H.R. 1119.

SCHODACK, NY CELEBRATES BICENTENNIAL ON MARCH 18

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. SOLOMON. Mr. Speaker, our smaller municipalities exhibit the small-town virtues that make this country the greatest nation on Earth. I'd like to say a few words today about one of them.

The town of Schodack is celebrating its bicentennial this year. It occupies 63 square miles in a picturesque spot along the east bank of the Hudson River in the southwest corner of Rensselaer County. Indian tribes warred over the region until Dutch settlers arrived in 1630. The town of Schodack was formed on March 17, 1795. Farming spread from the river banks to the interior, and Schodack became important as a trading and shipping port. The abundant waterpower opened the door for paper factories and other industries. One of the paper mills, the Fort Orange Paper Co., is still operating today. Such industries as ice harvesting during the winter linked the town to larger metropolitan areas such as New York.

Schodack was a frequent crossroads for colonial armies, including the caravan taking captured cannon from Ticonderoga to Boston. In 1777, thousands of British prisoners captured in Saratoga were marched through Schodack to prisons in New England.

Many of the houses still standing in the town were built in the 18th century. One structure, the Staats house, has been occupied by the same family for 12 consecutive generations, and is on the National Register of Historic Places.

Today, despite the accelerating changes of 20th century life, Schodack has preserved its smalltown charm, making it a great place to live and raise families.

On March 18, town officials and residents are celebrating with a grand gala-dinner dance.

With that in mind, Mr. Speaker, I ask all Members to join me in wishing the town of Schodack all the best on this proud occasion of its bicentennial, and all the best as it enters its third century.

COAST GUARD AUTHORIZATION LEGISLATION

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. TRAFICANT. Mr. Speaker, yesterday I introduced H.R. 1151 to authorize appropriations for the U.S. Coast Guard. This bill was developed by the Coast Guard and represents the Clinton administration's legislative goals and approach for the Coast Guard.

I serve as the ranking Democrat on the Subcommittee on Coast Guard and Maritime Transportation. Subcommittee Chairman HOWARD COBLE and I are working in a bipartisan fashion to develop a Coast Guard authorization bill that we plan to mark up in the subcommittee next week.

We will be drawing heavily from the administration's bill as we develop our own as it has many useful legislative proposals. I commend the Coast Guard and the administration for the work and thought that went into their legislation. It has been most useful to have it before us.

INTERNATIONAL WOMEN'S DAY

HON. CARLOS A. ROMERO-BARCELÓ

OF PUERTO RICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. ROMERO-BARCELÓ. Mr. Speaker, I take this opportunity to salute women as we commemorate the International Women's Day. On this most special day, I would like to salute American women, including my fellow Puerto Rican women. Women of courage who are seeking better opportunities, women who refuse to be second-class citizens, women who are eager to build a new society but have been denied their opportunity.

Unfortunately, in some instances, our legal system has entrenched the subordinate status of women. These attitudes have contributed to the perpetuation of stereotypes which must be eliminated for they only contribute to all types of violence against women. On this day, I invite you to join women in their request to live in peace and to be recognized as equal citizens with equal rights to equal opportunities. Their claim is nothing more than what they deserve. This is simply an issue of human rights.

I commend the Organization of American States for its approval of a convention holding nations responsible for violence against women. I believe this groundbreaking convention should be followed by other international organizations.

This is the first convention in the world to focus exclusively on a woman's human right to be free from violence. Moreover, it is the first convention to provide a mechanism for individual women to file complaints with an international body, charging their governments with failing to protect them from violence. Although the Organization of American States has no direct enforcement power, its decisions would be intended to trigger legal and policy reforms so necessary in member states.

Today, I urge Congress to sustain our commitment to women. Today, I remind the nations of the world to continue to build a gender-respectful society.

On the threshold of the 21st century, it is imperative to recognize women's rights. Let us not forget that all men and women are created equal and they are both moral and accountable human beings.

H.R. 1058

HON. ZOE LOFGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Ms. LOFGREN. Mr. Speaker, today I voted for H.R. 1058 even though I continue to have concerns about some provisions of the bill. Because the bill has been significantly improved and moderated, I was willing to support it as a vehicle for the Senate to complete the improvements.

I oppose loser pays or the English rule and I note that the provisions in H.R. 1058 allow judges for good cause to order the loser to pay what that result would not be unjust. In fact, to some extent the language in the bill tracks language found in section IIe of the Securities Act of 1933. Nevertheless, I believe that section 20(B)(c) could be improved. I continue to have concerns about section 20(B)(c)(2) of the bill. I realize that this provision has been moderated considerably and may, in actual practice, prove to be workable. Nevertheless, it is my hope that the Senate will further revise this section so that it might substitute rule II on a mandated basis. I understand that existing pleadings requirements may need reform, but have concerns that the pleading language in the bill may go to far. This is one area where a more deliberative legislative process would have been extremely helpful in shedding light on what changes should be made.

My colleague, ANNA ESHOO, prepared a thoughtful amendment to the recklessness standard that was superior to the changes adopted in the bill. Nevertheless, the amendment adopted is an improvement over the original language.

Over the past year of study, I have reached the conclusion that, especially for high technology companies, there is a problem of strike lawsuits that requires remedy. While H.R. 1058 is considerably better than H.R. 10, I have concerns about some provisions as I have outlined here. Had I had the opportunity to provide meaningful input into this legislation, I would have written something different. But that luxury is not available to me.

Because I am convinced there is a problem requiring remedy, I voted for H.R. 1058. Some vehicle for reform must be passed in order to allow the Senate to act and, I hope, to correct the remaining problems that exist in this bill, when it comes before me again after the conference committee. My standard for judging the Senate's efforts will be, does this prevent abusive lawsuits while preserving the rights of legitimate victims of fraud in the securities arena?

I know that the Senate will proceed more deliberately than has the House of Representatives in reviewing this bill. It is a shame that the current processes in this body preclude more thoughtful action and consideration of laws here. It is a shame, indeed, that useful amendments offered by knowledgeable people to improve the bill have not been permitted because of arbitrary time constraints. Had we taken the time, I am convinced we could have crafted a bill that would have attracted broad bipartisan support. I am hopeful yet that we will see a final product out of conference committee that allows for that to occur.

TRIBUTE TO JERRY MILLER, SR.

HON. JON CHRISTENSEN

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. CHRISTENSEN. Mr. Speaker, we have lost a good friend, the country has lost a good man, and the family of Jerry Miller, Sr., has lost a husband and father.

On Saturday, March 4, 1995, Jerry lost his fight with cancer at the age of 74 and he will be missed by all who knew him and loved him.

A lifelong resident of the community of Omaha, Jerry graduated from Creighton Prep in the class of 1939 and took with him a celebrated record as a varsity football and baseball squad member.

Jerry also served with the U.S. Navy during the Second World War and saw action in the Pacific theater before returning home to Omaha.

As founder and president of Kiess/Kraft Dental Laboratories, Inc., in Omaha, Jerry was a significant member of the community. He devoted his entire life to his business and literally ran it until he was physically unable to continue to do so. Over the years, he turned his business into one of the most respected technical dental laboratories in the country.

As a war veteran, a responsible community leader, and a man who loved his family, Jerry Miller will be sorely missed. Condolences go to his extensive family circle in the loss of this member of the Omaha community.

NOTING THE PASSING OF BLANCHE RANGEL

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 8, 1995

Mr. STOKES. Mr. Speaker, I rise with sadness today upon learning of the passing of Mrs. Blanche Rangel, the mother of our good friend and colleague, CHARLIE RANGEL. Mrs. Rangel was called to rest on Monday, March 6, 1995, at the age of 90. Our thoughts and prayers are with CHARLIE and his family during this time of sorrow.

With the passing of this devoted human being, CHARLIE has lost a good friend and close confidant. Like many of us, his mother occupied a special place in his heart and played a very special role in his life.

Blanche Rangel was born in New York on March 20, 1904. She worked in the garment industry until 1965 and was an active member of the International Ladies Garment Workers Union.

During her lifetime, Mrs. Rangel was a person who took great pride in her family and their achievements. We can envision her joy many years ago when her son, CHARLIE RANGEL, was elected to the United States Congress. She was a devoted mother, an affectionate grandmother and a proud great-grandmother.

Blanche Rangel was married to the late Ralph Rangel, and raised three children. Ralph Rangel, Jr. passed away in 1975. Mrs. Rangel is survived by our colleague, CHARLIE RANGEL, and a daughter, Mrs. Frances McDermott. She also leaves to mourn her passing two daughters-in-law, Mrs. Alma Rangel and Mrs. Dolores Rangel; a son-in-law, Mr. Donald McDermott; a brother, Mr. Percy Wharton; a sister, Mrs. Sylvia Curtis; seven grandchildren and seven great-grandchildren.

Mr. Speaker, for many years my wife, Jay, and I have enjoyed a very close friendship with CHARLIE and Alma Rangel and their family. It is out of that deep friendship that I ask my colleagues to join me in extending our deepest sympathy to CHARLIE RANGEL on this occasion.

We pray that the Rangel family will find comfort in knowing that their mother has left behind a legacy of love that will endure forever.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, March 9, 1995, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

MARCH 10

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Science Foundation, and the Office of Science and Technology Policy.
SD-138

Environment and Public Works
Superfund, Waste Control, and Risk Assessment Subcommittee
To hold oversight hearings on the implementation of the Comprehensive Environmental Response, Compensation, and Liability Act.
SD-406

Joint Economic
To hold hearings to examine the employment-unemployment situation for February.
SD-562

10:00 a.m.
Finance
To continue hearings to examine welfare reform proposals, focusing on the Administration's views.
SD-215

MARCH 13

9:30 a.m.
Finance
To hold hearings to examine the status of the consumer price index.
SD-215

MARCH 14

9:00 a.m.
Judiciary
To hold hearings to examine proposals to reduce illegal immigration and to control financial costs to taxpayers.
SD-226

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on wetlands and farm policy.
SR-332

Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense.
SD-138

Appropriations
Energy and Water Development Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Energy Office of Energy Research.
SD-192

Finance
To resume hearings to examine welfare reform proposals, focusing on teen parents receiving welfare.
SD-215

10:00 a.m.
Banking, Housing, and Urban Affairs
Housing Opportunity and Community Development Subcommittee
HUD Oversight and Structure Subcommittee
To hold joint hearings to examine proposals to reorganize the Department of Housing and Urban Development.
SD-538

Foreign Relations
To hold hearings on the nominations of Jacquelyn L. Williams-Bridgers, of Maryland, to be Inspector General, Philip C. Wilcox, Jr., of Maryland, for the rank of Ambassador during his tenure of service as Coordinator for Counter Terrorism, and Ray L. Caldwell, of Virginia, for the rank of Ambassador during his tenure of service as Deputy Assistant Secretary for Burdensharing, all of the Department of State.
SD-419

Governmental Affairs
To hold hearings to examine nuclear non-proliferation issues.
SD-342

Labor and Human Resources
To hold hearings to examine health care reform issues in a changing marketplace.
SD-430

2:00 p.m.
Judiciary
Administrative Oversight and the Courts Subcommittee
Business meeting, to consider pending calendar business.
Room to be announced

2:30 p.m.
Armed Services
Acquisition and Technology Subcommittee
To hold hearings on the technology base programs in the Department of Defense.
SR-222

MARCH 15

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Smithsonian Institution.
SD-116

Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

Labor and Human Resources
To continue hearings to examine health care reform issues in a changing marketplace.
SD-430

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for farm and foreign agriculture services of the Department of Agriculture.
SD-138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Justice.
Room to be announced

Judiciary
To hold hearings on proposed legislation to reform the Federal regulatory process.
SD-226

2:00 p.m.
Appropriations
Energy and Water Development Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bonneville Power Administration.
SD-192

Select on Intelligence
To hold closed hearings on intelligence matters.
SH-219

2:30 p.m.
Indian Affairs
To hold hearings on S. 349, to authorize funds for the Navajo-Hopi Relocation Housing Program.
SR-485

MARCH 16

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on taxpayers' stake in Federal farm policy.
SR-332

Rules and Administration
To hold hearings to examine Architect of the Capitol funding authority for new projects.
SR-301

10:00 a.m.
Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Bureau of Investigation and Drug Enforcement Agency, both of the Department of Justice.
S-146, Capitol

Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Highway Administration, Department of Transportation.
SD-192

Judiciary
Business meeting, to consider pending calendar business.
SD-226

2:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Education.
SD-192

Armed Services
Personnel Subcommittee
To hold hearings on proposed legislation authorizing funds for fiscal year 1996 for the Department of Defense and the future years defense program, focusing on manpower, personnel, and compensation programs.
SR-222

MARCH 22

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Fish and Wildlife Service, Department of the Interior.
SD-192

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Natural Resources Conservation Service, Department of Agriculture.
SD-138

2:30 p.m.
Indian Affairs
To hold hearings on S. 441, to authorize funds for certain programs under the Indian Child Protection and Family Violence Prevention Act.
SR-485

MARCH 23

9:30 a.m.
Governmental Affairs
Oversight of Government Management and The District of Columbia Subcommittee
To hold oversight hearings to examine initiatives to reduce the cost of Pentagon travel processing.
SD-342

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Railroad Administration, Department of Transportation, and the National Passenger Railroad Corporation (Amtrak).
SD-192

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Alcohol, Tobacco and Firearms and the United States Customs Service, Department of the Treasury.
SD-192

3:00 p.m.
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Institutes of Health, Department of Health and Human Services.
SD-138

MARCH 24

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Housing and Urban Development.
SD-138

MARCH 27

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Executive Office of the President, and the General Services Administration.
SD-138

MARCH 28

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Land Management, Department of the Interior.
SD-116

MARCH 29

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Food Safety and Inspection Service, Animal and Plant Health Inspection Service, Agricultural Marketing Service, and the Grain Inspection, Packers and Stockyards Administration, all of the Department of Agriculture.
SD-138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Judiciary, Administrative Office of the Courts, and the Judicial Conference.
S–146, Capitol

10:30 a.m.
Indian Affairs
Business meeting, to consider pending calendar business.
SR–485

MARCH 30

9:30 a.m.
Rules and Administration
To hold hearings to examine the future of the Smithsonian Institution.
SR–301

Veterans' Affairs
To hold joint hearings with the House Committee on Veterans Affairs to review the legislative recommendations of AMVETS, American Ex-Prisoners of War, Vietnam Veterans of America, Blinded Veterans Association, and the Military Order of the Purple Heart.
345 Cannon Building

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Aviation Administration, Department of Transportation.
SD–192

MARCH 31

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on agricultural credit.
SR–332

Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Veterans Affairs, the Court of Veteran's Appeals, and Veterans Affairs Service Organizations.
SD–138

APRIL 3

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Internal Revenue Service, Department of the Treasury, and the Office of Personnel Management.
SD–138

APRIL 4

9:30 a.m.
Agriculture, Nutrition, and Forestry
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on market effects of Federal farm policy.
SR–332

Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Park Service, Department of the Interior.
SD–138

APRIL 5

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Aeronautics and Space Administration.
SD–192

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Agricultural Research Service, Cooperative State Research, Education, and Extension Service, Economic Research Service, and the National Agricultural Statistics Service, all of the Department of Agriculture.
SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Immigration and Naturalization Service, and the Bureau of Prisons, both of the Department of Justice.
S–146, Capitol

APRIL 6

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Emergency Management Agency.
SD–138

Rules and Administration
To resume hearings to examine the future of the Smithsonian Institution.
SR–301

2:00 p.m.
Appropriations
Treasury, Postal Service, General Government Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of the Treasury and the Office of Management and Budget.
SD–116

APRIL 26

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for energy conservation.
SD–116

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Food and Consumer Service, Department of Agriculture.
SD–138

Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Legal Services Corporation.
S–146, Capitol

11:00 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for fossil energy, clean coal technology, Strategic Petroleum Reserve, and the Naval Petroleum Reserve.
SD–116

APRIL 27

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Transit Administration, Department of Transportation.
SD–192

MAY 2

9:30 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Forest Service of the Department of Agriculture.
SD–138

MAY 3

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Environmental Protection Agency, the Council on Environmental Quality, and the Agency for Toxic Substances and Disease Registry.
SD–192

10:00 a.m.
Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Agriculture.
SD–138

MAY 4

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Coast Guard, Department of Transportation.
SD–192

MAY 5

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for Environmental Protection Agency science programs.
SD–138

MAY 11

10:00 a.m.
Appropriations
Interior Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Bureau of Indian Affairs, Department of the Interior.
SD–116

1:00 p.m.

Appropriations

Interior Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Indian Health Service, Department of Health and Human Services.

SD–116

MAY 17

9:30 a.m.

Appropriations

Interior Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of the Interior.

SD–192

SENATE—*Thursday, March 9, 1995*

(Legislative day of Monday, March 6, 1995)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable JOHN ASHCROFT, a Senator from the State of Missouri.

PRAYER

The guest chaplain, the Reverend Dr. Neal T. Jones, Columbia Baptist Church, Falls Church, VA, offered the following prayer:

Let us pray:

Gracious Heavenly Father, we thank You for the support of our constituents: optimists, pessimists, and realists. We ask Your help in passing legislation that will meet the needs of all our people.

Save us from optimism that exaggerates human goodness and ignores evil capacities. Deliver us from pessimism that looks at light and calls it darkness. Deliver us from pessimism that cloaks the world in black. Also, take us beyond the borders of realism. We need more than diagnostic accuracy and cold verdicts of limited human insight.

We, therefore, ask You to raise us above optimism, pessimism, and realism to hope. Help us to trust You, the One before, after, and within—always in charge of history. We praise You for giving us existential usefulness because of eternal trust.

In Jesus' name. Amen.

The PRESIDING OFFICER. Thank you, Reverend Jones.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. THURMOND].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 9, 1995.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN ASHCROFT, a Senator from the State of Missouri, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Mr. ASHCROFT thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. DOLE. Mr. President, this morning the leader time is reserved, and there will now be a period for the transaction of routine morning business until the hour of 11 a.m. with Senators permitted to speak therein for up to 5 minutes each with the following Senators to speak for up to the designated times: Senator THOMAS 10 minutes; Senator BAUCUS for 25 minutes; Senator DASCHLE for 30 minutes; Senator MCCONNELL for 10 minutes; and, Senator BREAUX for 15 minutes.

At the hour of 11 a.m. the Senate will resume consideration of H.R. 889, the supplemental appropriations bill.

We expect rollcall votes throughout the day and into the evening.

I am not certain how many amendments are pending. I guess it depends upon the disposition of one particular amendment. We will see what happens as we hopefully make progress on this important bill today.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for not to extend beyond the hour of 11 a.m. with Senators permitted to speak therein for up to 5 minutes each.

Mr. THOMAS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. THOMAS. I thank the Chair.

(The remarks of Mr. THOMAS pertaining to the introduction of S. 518 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. BAUCUS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, what is the pending business?

The ACTING PRESIDENT pro tempore. The Senate is conducting morning business. The Senator from Montana is recognized to speak for up to 25 minutes.

Mr. BAUCUS. I thank the Chair.

(The remarks of Mr. BAUCUS, Mr. CONRAD, and Mr. DASCHLE pertaining to the introduction of the legislation are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. DASCHLE addressed the Chair.

(The remarks of Mr. DASCHLE, Mr. DORGAN, Mr. BUMPERS, Mr. KOHL, and Mr. FORD, pertaining to the introduction of S. 519 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Kentucky is recognized to speak for up to 10 minutes.

Mr. MCCONNELL. I thank the Chair.

LEGAL REFORM

Mr. MCCONNELL. Mr. President, the House of Representatives is in the midst of Legal Reform Week and on its way to passing three bills which, if enacted, would dramatically overhaul and improve our civil justice system. So, Mr. President, the first thing I would like to do is commend the House for its determination and its commitment to change the legal system.

With the exception of the general aviation bill last year, no court reform legislation of any sort has ever gotten anywhere in the Congress.

So the House this week is about to do something truly historic. Over in the House and over here I hope we now realize the civil justice system is broken.

Injured parties wait too many years to have their cases heard. While a few win big damage awards, many people suffering personal injuries do not get adequately compensated for those injuries. We know that for every dollar spent in America in these tort cases only 43 cents makes it to the injured party and 57 cents is taken up by the courts and the lawyers; 57 cents out of every dollar for transaction costs. That is not civil justice. More than half the money goes to transaction costs—lawyers, and expert witness fees, as well as administration of the court system.

Not only do victims fare poorly in the current legal system, but scarce economic resources are drained from more productive uses. Municipalities and nonprofit organizations must absorb spiralling insurance costs, threatening the important public services they provide. No small businessman can afford to be without a lawyer because of the liability maze. And, ultimately, the burden falls on the American people—as taxpayers and consumers, paying more for Government services and higher costs at the checkout counter.

In fact, enactment of legal reform would give the American people a much deserved tax break—a break from the litigation tax that is strangling our

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

economy. This tax break, unlike all others, will not even require a budgetary offset. And, even more significantly, it will not impact the Social Security trust fund.

Perhaps if we add some specific language protecting Social Security to these bills, we will pick up a few Democrat votes. And, maybe then the President could support legal reform. Because as we learned from Attorney General Reno this week, the administration is strongly opposed to the legal reform effort. Interestingly, the administration's unhappiness with these initiatives focuses on federalism—State's rights. I am quite amazed by this approach; after all this administration has not met a problem that could not be solved without a new or expanded Federal program. We only need to remind ourselves of the health care debacle. It is only on this issue—legal reform—that they have suddenly found the 10th amendment.

The fact is, the problem is a national one, and Congress has ample power to act, consistent with the commerce clause of the Constitution. Former Judge Robert Bork has eloquently disposed of the federalism issue in a letter he recently wrote to the Speaker. I ask that Judge Bork's letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, DC,
February 27, 1995.

Hon. NEWT GINGRICH,
Office of the Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: I understand that several provisions either already in H.R. 956, the Contract With America's legal reform provision, or proposed to be included in it, have been criticized as unwarranted intrusions on the authority of the States.

The provisions include virtually all the reform measures that have been discussed over the previous several Congresses, including limits on punitive or non-economic damages and joint and several liability (whether applied to product liability suits or broader categories of cases); defenses relating to compliance with applicable federal regulations; regulation of contingency fees and other aspects of attorney conduct; and various statute of limitations reforms.

There can be little question that these reforms are well within the scope of Congress' authority under the Commerce Clause of the Constitution as it has been interpreted for many years. Beginning in the 1930s, the courts have read this Clause as a comprehensive grant of authority to Congress to regulate virtually any type of activity affecting the national economy. The measures under discussion indisputably fall within this broad category of regulation.

As you know, I have long believed, like many scholars and jurists (and many Members of Congress), that these broad interpretations of the Commerce Clause are questionable, and arguably out of keeping with the scheme of coordinate sovereignty intended by the Framers of the Constitution. Rather than simply resting on the federalism case law, therefore, I believe those measures are justifiable and necessary to protect the balance between State and Federal authority contemplated by the Framers. They could not have foreseen the spectacular growth, complexity, and unity of today's economy. It cannot be said with any certainty that they would not have passed a measure like H.R. 956 in today's circumstances.

The problems addressed by H.R. 956 are national problems. That is true not only because interstate commerce is affected, and not only because products and services are made more expensive as insurance costs rise, but also because the plaintiffs' tort bar chooses to sue in jurisdictions where awards of compensatory and punitive damages are highest. As a consequence, a state like California or Texas can impose its views of appropriate product design and the penalties for falling short on manufacturers and distributors across the nation. This is a perversion of federalism. Instead of national standards being set by the national legislature, national standards are set by the courts and juries of particular states.

No problem more preoccupied the Constitutional Convention than the necessity of protecting interstate commerce from self-interested exploitation by the States. Madison observed in Federalist No. 42 that no defect in the Articles of Confederation was clearer than their inability to protect interstate commerce. And in Federalist No. 11, Hamilton made clear that one of the key purposes of the new Constitution was to prevent interstate commerce from being "fettered, interrupted and narrowed" by parochial state regulation.

The civil justice reforms under discussion are all designed to vindicate this central constitutional purpose. It can no longer be disputed that abusive litigation is having a profoundly adverse impact on interstate commerce. Indeed, a growing body of evidence suggests that the very purpose of much of this litigation is to discriminate against interstate commerce on behalf of local interests. Although discrimination of this type was anticipated by the Framers, the misuse of litigation to achieve this effect is a relatively recent development. It is not surprising, therefore, that Congress has not previously found it necessary to regulate in this area.

It is thus neither inconsistent nor hypocritical for Congress simultaneously to protect interstate commerce from parochial discrimination and to protect States and localities from unwarranted federal interference. Both steps are essential to maintain the constitutional balance established by the Framers. Clearly, over the last fifty years the overwhelming trend has been towards the unwarranted expansion of Federal authority at the expense both of the States and of individual liberties, and Congress can and should reverse that trend. But this fact should not blind us to the continuing necessity of protecting interstate commerce from parochial, discriminatory regulation by states and localities. Federal intervention for this purpose is not merely constitutionally permissible, it is important to vindicate the Framers' constitutional design.

Sincerely,

ROBERT H. BORK.

Mr. MCCONNELL. Mr. President, there is only one objection to reforming the legal system. And it is the objection of the trial bar. They may be getting beat in the House, but they have not really begun to fight. We will see them use their muscle in the Senate. They will throw everything they have at us. They will wrap themselves in the tragic stories of real people who have suffered injuries. And they will let Ralph Nader and his network of organizations which they—the trial lawyers—fund argue on their behalf.

Contrary to their assertions, our reforms will not hurt victims. We want to help victims get fairly compensated without long, drawn-out litigation. We want to encourage those responsible for injuries to settle with injured parties early. And, the House bill moves in the right direction.

But as the debate shifts to the Senate, I want to encourage my colleagues to look seriously at the McConnell-Abraham bill, S. 300. Our bill reverses the incentive structure of the legal system. We set up rewards for early settlement. We want to put more money in the hands of victims. Our limitation on attorney contingent fees, as the Washington Post editorial page noted this week, will do just that.

Mr. President, I ask unanimous consent that the Washington Post editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Mar. 8, 1995]

CIVIL JUSTICE REFORMS

House Republicans are moving quickly to pass a series of bills designed to reform the civil justice system. At least three separate measures are expected to go to the Senate before the weekend: a bill concerning the payment of attorneys' fees, another making changes in securities fraud law and a third setting new rules for the payment of punitive damages and changes in product liability law.

Not every bill deserves support in its present form. But there is no denying that the majority party has taken on a problem that has been festering for some time. In their favor, it should also be noted that some of the more defective provisions of the "Contract With America" on this subject have already been improved by compromise and will probably be further fixed by the Senate.

The "loser pays" provisions of the first bill, which was passed yesterday, would have required unsuccessful litigants to pay winners' lawyers fees. It was always a bad idea. Taking any case to court would have been extremely risky, especially for those of modest means. As originally drafted, the bill deserved to be defeated. But it has been modified so that a loser must pay only if he has rejected a settlement offer and after trial is awarded less than that offer. Better, but still not perfect. The Senate should consider an alternative offered by Sens. Mitch McConnell and Spencer Abraham that would provide an incentive to litigants to settle (immediate payment and hourly attorneys' fees) and a penalty (reduced contingency fees in some cases) to attorneys who don't. Both measures are designed to encourage early settlement of disputes, but the McConnell-Abraham bill is less Draconian.

Securities fraud provisions have also been softened to take into account some of the suggestions offered by the chairman of the Securities and Exchange Commission, Arthur Levitt. The problem here—frivolous class-action lawsuits against a company as soon as its stock drops—is a real one. As reported by the House Commerce Committee, this bill drew support from almost half the Democrats. But additional changes may be warranted to protect stockholders in meritorious cases.

The most hotly contested bill will be considered last. It would limit punitive damages in all civil cases to three times compensatory damages including pain and suffering, or $250,000, whichever is more. It would also narrow the risk of manufacturers' and sellers' liability in certain cases involving defective products. Many of the latter provisions make sense. Why not limit damages if the user has altered or misused the product, or if the accident was caused by drug or alcohol abuse? As for punitive damages, reform is overdue. Guidelines and limits must be set, whether caps are $250,000 or $1 million or something higher. Juries are at sea and sometimes come in with awards that are neither reasonable nor justified.

Yes, the fear of high punitive damages may keep manufacturers on their toes. But so would the fear of large fines payable to the public treasury in case of egregious misconduct. The system of providing unpredictable multimillion-dollar awards to single plaintiffs in order to deter corporate misconduct is unfair and inefficient. A shift to fines would make sense. Barring that change, clear guidelines on punitive damages are needed.

Mr. MCCONNELL. Mr. President, our early offer provision, which builds upon a bill introduced by House Minority Leader GEPHARDT 10 years ago, will pay victims all of their losses, while taking many cases out of the court system altogether.

Our Nation is suffering from, as one editorial cartoonist called it, lawsuitenitus. It is a contagious disease and it is raging at epidemic proportions. The cure is a strong dose of legal reform. The only ones who will not like the medicine are those who thrive on the disease and profit from the spread of lawsuitenitus by earning huge fees.

Mr. President, we will have a number of bills here in the Senate to consider—the McConnell-Abraham Lawsuit Reform Act; the McConnell-Lieberman-Kassebaum Health Care Liability Reform and Quality Assurance Act; the Product Liability Fairness Act will be introduced next week, and there will be other initiatives. I look forward to comprehensive hearings on these bills, in the Judiciary, Commerce, and Labor Committees.

I am genuinely excited about the possibility of something happening on this issue. I remember being here 10 years ago as chairman of the Courts Subcommittee of Judiciary in 1985 and 1986, and we had numerous hearings on the subject of tort reform. But I knew we had no chance. We have had no chance for years. One of the positive results of last year's election, Mr. President, is that civil justice reform is now on the front burner and that genuinely excites this Senator who has had a great interest in this issue for many, many years.

And, most importantly I am hopeful we will enact reforms which give the American people a legal system that is fair, equitable, and accessible for the resolution of their disputes.

Mr. President, I thank you for your time.

I yield the floor.

Mr. BREAUX addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

THE CONGRESS CAN BREAK THE TELECOMMUNICATIONS POLICY STALEMATE

Mr. BREAUX. Mr. President, for more than 10 years the Congress has deferred to Federal courts on making and shaping telecommunications policy. Antitrust law intended to remedy anticompetitive practices when AT&T dominated all facets of America's telecommunications services is the basis of court controlled communications policy. The resulting breakup of AT&T in 1983–84 under Judge Greene's modified final judgment is still the policy basis for keeping the brakes on the future development of this critical industry: Telecommunications is the engine of America's continuing race into the information age.

Technical complexities and the massive scale of economic returns for potential competitors in the industry have made it difficult to arrive at any industry-led agreement on fair and just terms for bringing full competition to reality. Certainly such an agreement would simplify congressional efforts to unleash the industry from Federal court edicts so that the benefits of open competition will bring new and lower cost services, increased employment, and a continually improved telecommunications infrastructure.

Right now, Mr. President, between 50 and 65 percent of all U.S. jobs involve information processing, goods, or services; 90 percent of jobs created over the last 10 years were information related.

But there is more to come if we in the Congress can fashion reasonable legislation for evenhanded treatment of potential major competitors. Telecom giants are poised to spend billions over the coming 10 years to restructure their networks. One estimate of capital spending by the Bell companies alone on the information highway for equipment and infrastructure between 1994 and 1998 is $25 to $50 billion.

Mr. President, I believe that we can supercharge and sustain this potential growth if we fashion communications laws that will assure all telecommunications competitors that each of them will have a fair chance to thrive in fully competitive markets. We have a situation now in which each competitor is fearful of a law that will give an unfair advantage to equally powerful competitors.

As I see it, Mr. President, the key to establishing open competition in telecommunications is to deliver a fair process for freeing the grip that Bell operating companies now have on the local exchange system. Ideally, Mr. President, if any telecom carrier can have interference-free, open access to the local exchange to fully compete for the delivery of telecommunications, video, and information services to homes and businesses and at the same time allow for the regional Bells to have access to and the ability to provide long distance service for their customers, we would have created the stimulus for maximum growth in this industry.

But the Bell operating companies, Mr. President, are understandably reluctant about engaging in a process of enabling open access to the local exchange if it means tying their hands while equally strong competitors are raiding their customer bases. I am considering legislation that would require the Bells to provide to competitors interconnection to Bell company local exchange switches; provide access to network features on an itemized basis; provide technology that will allow consumers to move to a competitor and keep the same telephone number, and take other steps to assure State and Federal regulators that their systems are open to full competition.

The Bells are concerned, Mr. President, that this process of opening up the local loop under some legislative proposals will not be satisfied until competitors: Long distance, cable television, electric utility companies with massive capital, and customer bases of their own will have permanently eroded Bell Co. customer bases. This is not a situation, Mr. President, of a world-dominant AT&T competition with an upstart, customer-poor MCI in the early 1980's. Major Bell company competitors are customer rich, and they are capital rich. They are more than capable, Mr. President, of competing on a level playing field.

I have discussed these issues and my suggestions with the Long Distance Companies Coalition, with cable television representatives, and with Bell Co. executives, and they agree that my idea offers a possible compromise and is worth further discussion.

I believe that if we can assure each competitor, region by region, that none of them is to have a headstart or an unfair advantage in the race to acquire customers for new services, that we can reach an accommodation that will lead to the passage of important and far-reaching telecommunications legislation in 1995.

I believe that we can do this, and I believe it is urgent that the Congress direct our attention to this in this session. I urge my colleagues to help and join me in crafting a workable telecommunication fair competition amendment. I think my suggestion is one that can be ultimately agreed to by both the long distance carriers, the cable companies, as well as the regional Bells. It is an idea and a concept that needs further discussion, further debate, and further exploration by the various interests that are going to be affected by it. I think it does provide us an opening which I think is significant and one that hopefully the companies and people affected will take advantage of.

Mr. President, I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

EXTENSION OF MORNING BUSINESS

Mr. REID. I see the Senator who offered an amendment on the floor and a Senator who is going to speak.

The time for morning business is about to expire. I ask unanimous consent that I be allowed to speak as in morning business until 5 after the hour.

The PRESIDING OFFICER. Without objection, it is so ordered. Morning business is extended until 11:05.

HEALTH CARE

Mr. REID. Mr. President, as most know, I offered an amendment on Social Security that led ultimately to the defeat of the balanced budget amendment. I am glad that we had the debate on the balanced budget amendment. I think, No. 1, it indicated that we have a problem with the deficit. No. 2, we need to do something about the deficit, and No. 3, we should not use Social Security as a method of trying to mask the deficit.

Mr. President, while we are having all this talk about a balanced budget, one of the areas we have not talked about and that we should talk about is health care. Why should we talk about health care?

Mr. President, one of my colleagues on the other side of the aisle was quoted in the Washington Post on February 15 saying, "Health care is not very bright on anybody's radar screen, if it shows up at all."

Mr. President, it may not show up on the radar screen of some Senators in this body, but it shows up on the radar screen of the people of America. Health care is still brightly flashing in the minds of the American public.

The Gallup Poll taken before the end of last year, completed December 30, showed that almost 75 percent of the American people felt that reform of the country's health care system should be a top or a high priority for Congress within the first 100 days.

Mr. President, nobody is talking about health care. We should talk about health care. A CNN poll showed that approximately 60 percent of those surveyed say that if a major illness were to occur in their family, they could not handle the costs of that major illness at all. There is a problem with health care. If we are wondering why the deficit is being driven up, we need look no place else other than the high cost of health care. There are interesting phenomenons occurring in the country. We have some managed care operations that are ongoing.

We find that doctors are not being paid as much, hospitals are not being paid as much, but the consumer, the patient, is being charged more. Where is that money going? Who is the great middleman that is making all this money? Who is that? And should we identify him? Health care costs are increasing and we should do something about it.

Mr. President, I received a letter from a friend of mine in Las Vegas who is a physician. He was complaining about a patient who was injured in a car accident in California, a Nevada resident. This patient was injured and spent 31 days in the hospital.

Now, how much would a hospital bill be for a day? Would it be $1,000 a day, $2,000 a day, $3,000, $4,000, $5,000, $6,000, $7,000, $8,000, $9,000? Ten-thousand dollars a day is what it cost the patient before he was allowed to come back to Nevada; $10,000 a day is what it cost that patient in the hospital.

I think, by any standards, that is steep, and I think certainly, Mr. President, we should be concerned about that.

If we are wondering why we are having trouble balancing the budget, let us look at health care. A man spends 31 days in the hospital and his bill is $278,000 for the hospital and $33,000 for the physician.

Well, health care may not be on the screen of some Members of this body, but health care costs should be on the screen of every one of us. Health care costs are insurmountable for State and local governments and the Federal Government, even though we do not talk about it any more.

We brought a health care reform bill on the floor last year. We debated it at length. We lost the issue. Now I guess we are just not going to talk about it any more, even though health care cost is the No. 1 cost driving up deficits all over this country.

Uninsureds—I am only talking about uninsureds, I am not talking about underinsureds—uninsureds, Mr. President, have increased in the last 2 years by 2 million people. Now it is up to 41 million Americans. Eighteen percent of the people in the State of Nevada have no health insurance.

We have introduced legislation through the minority leader, certainly not nearly as comprehensive as last year—and that is an understatement—but we have introduced legislation to address these problems. I direct this body's attention to S. 7, which deals with some of the big problems facing health care, including paperwork reduction, administrative simplification, to help in rural areas. I see my friend from Illinois on the floor. He has been a leader in trying to provide health care for rural Americans.

Specifically, S. 7 will provide portability, limit preexisting condition exclusions, prohibit companies from raising rates when consumers get sick, and require that all insurers offer at least one plan with the same benefits available to Members of Congress.

The bill will also provide assistance for families and small businesses through tax incentives and modest subsidy programs. Specifically, this bill will reinstate the self-employed tax deduction, a proposal supported by 50 Members of this body in a letter to the majority and minority leaders.

S. 7 will reduce paperwork and provide administrative simplification by implementing standard billing and claims forms. This legislation also provides privacy protection for an individual's health records, strengthens fraud and abuse efforts, and reforms our medical malpractice system.

Two other elements in the bill which I particularly support are measures to provide cost and quality information to consumers and the provisions to enhance rural health care delivery. By providing consumers with accurate cost and quality information on health plans we can put the buying power in the hands of the consumer.

S. 7 will help rural areas establish telemedicine networks and financially viable rural health plans. The Washington Post in its health section recently cited a University of North Carolina at Chapel Hill study which found that of the 50 million Americans living in rural areas, more than 21 million are in locations that don't have enough health care professionals to meet their needs. Moreover, the study found that 2,000 primary care doctors are needed in rural areas.

The elements of this bill were supported by both sides of the aisle in last year's debate and were contained in several health care proposals put forth by both Republicans and Democrats. Thirty-three Democratic Senators have rallied around a sound set of principles for health care reform and invited our Republican colleagues to join us in addressing this important issue. These principles includes: Insurance market reform, 100 percent health insurance tax deductibility for the self-employed, affordable coverage for children, assistance for workers who lose their jobs to keep their health coverage, and a wide range of accessible and affordable home, and community-based options for families caring for a sick parent or a disabled child.

I believe these principles are ones we, as Members of the Senate, and representative of our constituents, can support. S. 7 and the Democratic principles for reform are a sound starting point. I remain committed to working for reform of our health care system, and I hope we can work together to provide working American families with the quality health care they deserve, at a price they can afford.

I would only say, Mr. President, that if we ignore health care in this body, we are ignoring the No. 1 cost issue facing people all across America. And before we stop hearing the words "balanced budget" and all the debates that took place in that regard, let us not forget about health care. If we are ever going to address the deficit that accumulates yearly in this country, we must be concerned with health care or we will never handle the problem.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER (Mr. KYL). The Senator from Nebraska.

If I may interrupt the Senator from Nebraska, under the previous order, morning business was to expire at 11:05.

Mr. EXON. I ask unanimous consent that morning business be extended for at least 5 minutes, for the purpose of brief remarks by the Senator from Nebraska.

The PRESIDING OFFICER. Is there objection to extending morning business by 5 minutes?

Mr. EXON. Mr. President, I would just like to say a few words with regard to the bill that was introduced today.

As the body well knows, I favored the constitutional amendment to balance the Federal budget. I am sorry that it did not pass. But now that it has failed, we need to press ahead to build what discipline we can into the budget process.

We are introducing today a statutory requirement that would have most, if not all, of the teeth that the constitutional amendment to balance the budget would have instituted.

The bill requires the Budget Committee to report out a resolution that shows us when we will get to a balanced budget without using the Social Security trust funds.

The practical effect of this requirement would be to require the Government to run surpluses in the unified budget, surpluses that would start to reduce—and I emphasize, reduce—the debt held by the public and prepare us for the financial needs of the next century.

Our bill enforces this requirement with a 60-vote point of order against budget resolutions that do not show how we get to balance.

The bill allows for waiver in wartime and in recessions, using the same mechanisms that Congress put in the Gramm-Rudman-Hollings law.

As for the schedule, the Budget Act requires the Senate Budget Committee to report a budget resolution by April 1.

The Budget Act requires the Congress to complete action on the budget resolution conference report by April 15. I hope we can meet that deadline.

Last year, the Senate Budget Committee reported the budget resolution on March 18.

The year before last, when Congress enacted the deficit reduction bill that has reduced the deficit by over $600 billion, the Senate Budget Committee reported the budget resolution on March 12, and Congress completed action on the conference report on April 1.

We look forward to working with the Republican majority to expeditiously fashion a budget resolution that shows us how we will get to a balanced budget and get on with the obvious work in this area that we must do.

I reserve the remainder of my time and I yield the floor.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Mr. President, for about 3 years I have been making daily reports to the Senate regarding the exact Federal debt as of the previous day.

We must pray that this year, Federal spending will begin to be reduced. Indeed, if we care about America's future, Congress must face up to its responsibility to balance the Federal budget.

As of the close of business yesterday, Wednesday, March 8, the Federal debt stood (down to the penny) at $4,848,281,758,236.20, meaning that on a per capita basis, every man, woman, and child in America owes $18,404.16 as his or her share of the Federal debt.

It's important to note, Mr. President, that total Federal debt a little over 2 years ago (January 5, 1993) stood at $4,167,872,986,583.67—or averaged out, $15,986.56 for every American. During the past 2 years (that is, during the 103d Congress) the Federal debt has escalated by more than $6 billion, which illustrates the point that so many politicians talk a good game at home about bringing the Federal debt under control, but vote in support of bloated spending bills when they get back to Washington.

If the Republicans do not concentrate on getting a handle on this enormous debt, their constituents are not likely to overlook it 2 years hence.

ATTACKS IN PAKISTAN

Mr. KERRY. Mr. President, yesterday we learned of the attack on three Americans on their way to work at the United States Consulate in Karachi, Pakistan. While they were stopped at a traffic light, gunmen jumped out of a yellow taxi and opened fire with AK-47 assault rifles.

Two of the Americans were killed: Jackie van Landingham, a secretary; and Gary Durell, a communications technician. And I know I speak for every Senator when I extend our deepest sympathy to the friends and families of these two Americans who were killed in service to their Nation in a changing and often dangerous world.

Mr. President, the third American, a young man from Framingham, MA, Mark McCloy, who worked in the consulate's post office, was injured in the attack and was taken to Agha Khan Hospital. He is now in stable condition. Last evening I spoke with his mother, Muriel McCloy, in Massachusetts, and I have assured her that the United States is doing everything we can to bring those who are responsible for this terrorist act to justice; and I assured her that we would do everything we can to bring her son home safely.

Mr. President, this attack reminds us of the dangers that exist in the world and the courage of those who choose to serve their country in spite of those dangers. We cannot underestimate the commitment of foreign service personnel who serve at a time when the post-cold-war world realigns—and the national, regional, religious, and cultural interests of peoples in every country are put to the test of sovereignty and self-determination. The courage and contribution of the men and women of the foreign service in this new world deserve our admiration and our respect.

So, Mr. President, though we are saddened by this tragedy, we are also strengthened in our appreciation of the contribution of those who serve. To the thousands of Americans around the world who have suffered the separation from families and home, from friends and loved ones, to embark on a great adventure to promote peace, understanding, and the principles of American foreign policy—in the name of those who have paid the ultimate price—we salute you.

Mr. President, for Jackie van Landingham and Gary Durell the adventure came to an end in a distant land, but for those of us at home who reap the benefits of their sacrifice, their memory will never die.

Mr. President, in light of this tragedy let us honor the thousands of men and women in the foreign service who ask little from us, but contribute a lot. And let us pray for the speedy recovery of Mark McCloy, and for the friends and families of those who, yesterday, gave their lives in service to their country.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 889, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 889) making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness for the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Bumpers amendment No. 330, to restrict the obligation or expenditure of funds on the NASA/Russian Cooperative MIR program.

Kassebaum amendment No. 331 (to committee amendment beginning on page 1, line 3), to limit funding of an executive order that would prohibit Federal contractors from hiring permanent replacements for striking workers.

AMENDMENT NO. 331

The PRESIDING OFFICER. Pending is amendment No. 331, offered by the Senator from Kansas, to committee amendment beginning on page 1, line 3.

The Senator from Kansas is recognized.

Mrs. KASSEBAUM. Mr. President, if I may speak for a few moments. I spoke last night, when I offered my amendment, about what I regarded as an exceptionally important issue. I would like to go through some of those same arguments again for those who might not have been in their offices or on the floor last night.

I offered an amendment that would prevent the President's Executive order on striker replacements from taking effect. I offered the amendment because I am deeply troubled by the precedents that will be set by this Executive order.

This is not a debate about whether there should or should not be the opportunity to replace striking workers with permanent replacement workers.

As we debate this amendment, Mr. President, we will hear a great deal on both sides about the use of permanent replacements. In my view, a ban on permanent replacements will upset the fundamental balance in management-labor relations that has existed now for 60 years. We have debated this issue for three Congresses now, and I know there are strongly held views on both sides.

That is not the only issue that is at stake here. The central issue before Members this morning is whether our national labor policy should be determined by executive fiat rather than by an act of Congress. I think this is an enormously important question, Mr. President, because it really does set a precedent that we should consider carefully.

By limiting the rights of Federal contractors to hire permanent replacements, the President has, in effect, overturned 60 years of Federal labor law with the stroke of a pen. I am not a constitutional scholar. But I do know that it is the President's role to enforce the laws, not to make them. By issuing this Executive order, the President has, in my view, overstepped his bounds.

For the first time, to my knowledge, the President has issued an Executive order that contravenes current law. The order will effectively prohibit one group, Federal contractors, from taking action that every other company is legally permitted to do under current law.

Regardless of what one thinks about the merits of the striker replacement issue, we should all be concerned about the precedent that this order will set. For example, what if a President decided to debar Federal contractors whose workers decided to go on strike?

Mr. President, the right to strike is legal, just as the right to hire permanent replacement workers for striking workers is legal. So it could eventually affect both sides of the coin if indeed we are going to start down this slippery slope.

Supporters of the President's action should think twice about the precedent this will set for future administrations that wish to alter labor law through the Federal procurement process. We will hear in the course of this debate that this Executive order is nothing new, that such orders were issued by previous administrations. The fact is that none of those Executive orders ran contrary to established labor law.

For example, President Bush issued an Executive order to enforce the Supreme Court's Beck decision. That order merely required employers to post a notice to employees informing them of the law. Its purpose was to enforce the law as set by Congress and interpreted by the courts.

No one's rights were infringed. No congressional policy was violated. No new rights were established. No existing rights were taken away. By contrast, this new Executive order overturns a legal right that has existed for 60 years and undermines the existing framework of our Federal labor law which Congress, for decades, has declined to change.

Mr. President, we all have sympathy for the situations occurring in plants today where there have been long ongoing strikes. We have sympathy for the hardships striking workers face. But I am a strong supporter of the collective bargaining process. If indeed we tie one hand behind our back, whether it is for strikers or for employers, we have harmed the collective bargaining process.

I urge my colleagues to look at the fine print of this Executive order. It sets out a new and unprecedented enforcement and regulatory scheme, all without the slightest input of Congress. The Executive order gives the Secretary of Labor the power to determine violations of the order, a power which Congress in similar circumstances has delegated to the National Labor Relations Board.

In addition, the Executive order gives the Secretary of Labor authority to write new regulations on who will be subject to the order. Not only does the Executive order circumvent Congress by making a new law, it also creates more new regulations.

According to the Washington Post today, at least part of the administration's motivation for issuing the Executive order stems from recent strikes such as Bridgestone/Firestone Co. We can all appreciate the emotions and upheavals that occur in any labor dispute. They are troubling to each and every one of us whether it occurs in our State or not. Just weeks ago the Senate overwhelmingly rejected a sense-of-the-Senate resolution urging intervention in the Bridgestone dispute.

Here again, the administration has chosen to go around Congress by this Executive order. Many on both sides feel quite strongly about the issue of striker replacements. I believe existing law provides an appropriate balance between the interests of management and labor. But we will also hear from those who oppose this amendment because they believe that using striker replacements is inherently unfair.

That issue will be debated, I am sure, at another time. We have done so in the past. Mr. President, that misses the point. Regardless of what we believe about striker replacements, it is up to Congress and not the President to set our national labor policy through legislation. We should not relinquish that authority by permitting this Executive order to stand.

Mr. CHAFEE. Mr. President, I strongly support the amendment being offered by the Labor and Human Resources Committee Chairwoman, Senator KASSEBAUM, which would prohibit funding for the implementation of the President's Executive order which was signed yesterday.

What does that Executive order do? It bars Federal contractors from hiring permanent replacement workers during an economic strike. A similar prohibition has already been included in the FEMA supplemental appropriation bill which is pending in the House.

In the event of a finding that permanent replacement workers are used in any Federal contract exceeding $100,000, which is about 90 percent of the dollar value of all Federal contracts—in other words, this in effect covers all Federal contracts—the Executive order authorizes the Secretary of Labor to instruct affected agencies to terminate such contracts, if convenient.

While the Secretary may not compel agency compliance, he may then proceed to debar the contractor from receiving or performing any Federal contracts until the offending labor dispute is settled.

Now, Mr. President, I think it is regrettable that the President has chosen to circumvent the will of Congress on this issue. That is what is happening here. Legislation to prohibit businesses from hiring permanent replacement workers was the subject of a bipartisan filibuster in 1992 and again in 1994. This matter has come before this body twice in the last 3 years.

Senators feel very strongly that overturning this Supreme Court decision of Mackay Radio, 1938—which was some 55 years ago—either overturning that by legislation or by Executive order, many Senators believe would undermine the very foundation of modern labor relations policy. Namely, the collective bargaining process. In Mackay Radio the Supreme Court held that employers had the right to maintain business operations with the replacement workers in the event of an economic strike. That is what the Court said. Just as affected employees have the right to strike for better wages or benefits.

The change proposed would eliminate, in our judgment, any incentive for good-faith negotiation and bargaining and create an unlevel playing field to the detriment of the employers.

Now, the bottom line, Mr. President, is that the President's Executive order would force Federal contractors hit with a strike to accept union economic demands or face the prospect of a prolonged shutdown that could prove fatal to these companies. Alternatively, such businesses could elect to abandon the Federal contractual marketplace altogether.

One, that is an unlikely option for some of our large contractors; two, it is bad for our country. We do not want to eliminate prospective bidders. We want to have more bidders, and hopefully that would be achieved. That is what we seek. Certainly not possible under this legislation.

Now, Senators also feel strongly that this is a question of labor-management policy. This is not a procurement issue. The President somehow in order to achieve his goal put this in the terms of procurement issue. It is a labor-management policy, a labor-management situation.

The Congress, not the executive branch, must initiate any changes in our labor laws—that is where this matter belongs, in the Congress of the United States—and a change of the kind the President has proposed is clearly ill-advised and unwarranted. For this reason, I am certain that the President's decision to go forward with this Executive order will be challenged in the Federal courts.

H.R. 889, which is the legislation before us—not the amendment, but the basic bill we are debating today—provides urgently needed funding to the Department of Defense to shore up sagging readiness and to reimburse for services for unexpected contingencies in Haiti, in the Persian Gulf, and other hot spots of the world. It would be unfortunate, I believe, to delay this funding over the striker replacement issue, but the President's decision has left the Senate no alternative but to rehash this issue again and to prohibit its implementation, if possible.

The President's Executive order, in our judgment, for those of us who oppose the ban on striker replacements, is a job-killing one which, if left to stand, would harm our economy, would increase labor strife, would reduce productivity, and weaken the competitiveness of U.S. industry. Thus, I will vote for the Kassebaum amendment to prohibit its implementation, and I urge my colleagues to support the Senator from Kansas likewise. I thank the Chair.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I rise in opposition to the amendment of the Senator from Kansas. We will have an opportunity to debate the amendment, but I was interested in listening to the Senator from Kansas talk about the procedure which is being followed by the President and how this was, in effect, overriding existing law. I think that the examples that were touched on briefly, last night regarding the issuance of Executive orders or other examples that have been mentioned that were utilized by President Bush, for example, were of a different nature.

I take issue because prehiring agreements are basically legal and the Executive order by President Bush effectively excluded prehiring agreements, any prehiring agreement under Federal contract. It was thus in complete conflict with the existing law. We know that, because the definitive case at issue involving a prehiring agreement involved all of the work being done on Boston Harbor. That agreement was entered into and was subsequently upheld by the Supreme Court. It is, at the present time, working, and working extremely effectively, I might add. I will not take the time of the Senate right now to go into how effective that particular agreement has been in terms of the saving of resources and taxpayers' funds. But an effort to prevent prehire agreements certainly was an action that was taken by the previous administration, and I did not hear the chorus rise up at the time and talk about exceeding the authority and responsibility of the executive branch in moving ahead to address that issue. To the contrary, there was broad support for the President's action in that area.

But I would like to just take a few moments to put this amendment in some perspective. I think all of us understand the urgency and the importance of the underlying legislation and the importance of having it concluded at an early time. This legislation is important to our national security and national defense, a matter which has been raised by the Senator from Kansas. The Senator raises an important public policy matter with her amendment. I would have thought we would have addressed it in some other forum, although we will certainly welcome the opportunity to debate this because it is an extremely important issue affecting workers' rights. It is more of an effort, I feel—I do not want to draw conclusions in terms of the motivations of it—a real attempt to embarrass the President of the United States who has issued this proclamation on behalf of working families.

I think if we look over the period of just recent times, both on the floor of the U.S. Senate and also in our committee systems and also actions in the House, we find out, if we have a chance to go into it, that this is just one more step that is being taken by the majority in the House and Senate to undermine the very legitimate interests and rights of working families in this country. But I will have a chance to address that issue in just a few moments.

But let me bring focus to the particular matter which is before us in the form of the Senator's amendment. Our Republican colleagues have asserted that we need to act because the President has exceeded his authority by acting on a labor relations issue without specific congressional authority and that Congress has already rejected the President's action through last year's vote on S. 55, the Workplace Fairness Act.

In fact, a majority, Mr. President, in both Houses of Congress, supported making it unlawful for any employer to use permanent replacements. The ban was not enacted because a minority of the Senate was able to prevent the consideration of S. 55, but Congress never rejected the lesser step of prohibiting the use of permanent replacements by Federal contractors. We never addressed that issue. There was majority support to address this issue in the House of Representatives. It was bipartisan. There was majority support to readdress the whole striker replacement issue in the Senate, but a small minority was able to defeat that action and defeat that policy question. No action was taken on the particular authority of the President to take the action which he did yesterday.

President Clinton's action, in issuing this order, is simply an exercise of his well-recognized authority over procurement and contracting by the executive branch authorities, an authority that was exercised both by President Reagan and President Bush, with no objections from those who are now expressing such dismay.

In 1992, President Bush issued two Executive orders dealing with Federal contractor labor relations which are clear precedents for President Clinton's action, which many of my colleagues on the other side of the aisle applauded rather than condemned.

The first of those two Executive orders required all unionized Federal contractors to post a notice in their workplace informing all employees that they could not be required to join a union and that they had a right to refuse to pay dues for any purpose unrelated to collective bargaining.

Those requirements are not requirements of the National Labor Relations Act, and not only were they never enacted by Congress, but proposed legislation to establish such rules had so little support that it was never even reported from the committee. Indeed, when President Bush issued that Executive order, his press secretary pointed to Congress' failure to act on the legislation as the President's reason for acting.

That is in dramatic contrast to the current situation on the whole question of permanent replacement where a majority of the Members of the House and even a majority of the Members of the Senate were prepared to act, wanted to act, and that action was foreclosed by a small group of Members in the Senate. In contrast to this situation, they could not even get the support for that particular proposal to get the measure out of committee.

So was there objection at that time either from the Senator from Kansas or others? Were there any protests from my Republican colleagues? There were not. It is clear that the objections that are now being raised to President Clinton's action are not based on principle or a consistent view of the President's authority with respect to labor relations in Federal procurement.

The second of the two Bush Executive orders on Federal contractor labor relations issued in October 1992 dealt with prehiring agreements, collective bargaining agreements that establish labor standards for construction work prior to the hiring of workers.

Prehire agreements are common in the construction industry and lawful under the National Labor Relations Act, yet President Bush, without any specific authorization by Congress, prohibited Federal contractors from entering into such agreements for work on Federal projects.

Did my Republican colleague object to the fact that President Bush was prohibiting a labor relations practice that Congress had chosen to permit? She did not, and neither did any of the other Republican Senators.

What is this really all about? The truth is that this debate is a continuation of our debates in the past two Congresses on the Workplace Fairness Act. Only now the shoe is on the other foot and it is clearly pinching our Republican friends. They forced us to get 60 votes to pass the act, which we were unable to do.

The basic principle behind the President's action has strong public support. In the latest poll from Fingerhut Associates, 64 percent of respondents said that once a majority of workers have voted to strike, companies should not be allowed to hire permanent replacements to take their jobs. The American people understand that this is a question of simple justice for workers.

That is what the issue is about, simple justice for workers.

It is unlawful for any employer to fire a worker for exercising the right to strike, and it should be equally unlawful for an employer to be able to deprive a striking worker of his job by permanently replacing that worker. It is as simple as that.

Repeatedly, when we are debating economic legislation and U.S. competitiveness in the world economy, Senators from both sides of the aisle praise the high productivity of American workers, their excellent skills, and their pride in their work. Yet much of the legislation we pass ignores the importance of treating American workers fairly. The Executive order is for the American worker. It will restore the balance of power intended between management and labor under the National Labor Relations Act.

Basically, the striker replacement legislation was to restore the balance which had existed for years and contributed so mightily in terms of our whole economic progress and our industrial strength. That balance has been shifted and changed in recent times with the strike replacement activities of a number of employers, and that has diminished the economic standing of American workers who continue to be the backbone of the American economy.

That farsighted act, the National Labor Relations Act, signed into law by President Roosevelt in 1935 as the cornerstone of the New Deal, recognized the inherent inequality between the ineffective bargaining power of a lone worker seeking to improve wages and working conditions and the overwhelming bargaining power of the employer.

As part of comprehensive legislation enacting the fundamental goals of national labor policy, the 1935 act guaranteed the rights of workers to form and join labor organizations and engage in collective bargaining with their employers. The act gave workers strength in numbers. It gave them countervailing power, capable of matching the power of the employers.

As the Supreme Court said in 1935 in a landmark decision upholding the constitutionality of the National Labor Relations Act, long ago we stated the reason for labor organizations. We said they were organized out of the necessities of the situation, that a single employee was helpless in dealing with an employer, and that he was dependent ordinarily on his daily wage for the maintenance of himself and his family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employer's employ and resist arbitrary and unfair treatment; that the union was essential to give laborers an opportunity to deal on an equal basis with the employer.

Today, as much as ever, the employees need the right to organize to improve their wages, working conditions, and enter into a dialog with their employers about how work should be arranged so that the firm can achieve its productivity, its profitability goals, while at the same time ensuring fair treatment for workers. But the right to organize and bargain collectively is only a hollow promise if management is allowed to use the tactic of permanently replacing the workers that go on strike.

No one likes strikes, least of all the strikers who lose their wages during any strike and risk the loss of health coverage and other benefits. Because both workers and employers have a mutual interest in avoiding economic losses, the overwhelming majority of collective bargaining disputes are settled without a strike, but the right to strike helps to ensure that a fair economic bargain is reached between employers and workers.

The labor laws give workers the right to join together to combine their strength, and the union movement has been responsible for many of the gains that workers have achieved in the past half century. The process of collective bargaining works. It prevents workers from being exploited and has created a productive balance of power between management and labor. And the cornerstone of collective bargaining is the right to strike. That right is nullified by the practice of permanently replacing workers who go on strike. The entire process of collective bargaining is undermined.

That is basically what is at issue here, as I described. That is the basic and fundamental matter of principle that is before the Senate today. It is as old as the debate in terms of our whole industrial development and strength as a country, and it is basic and fundamental to the issues of economic justice and social progress in our country. That is why it is such a principal issue that has to be addressed today and why it will need discussion and debate.

Both the National Labor Relations Act and the Railway Labor Act explicitly prohibited employers from firing employees who exercised their right to strike. As a result of a loophole created by the Supreme Court half a century ago but seldom used until recent years, the practice of permanently replacing striker workers allows employers to achieve the same result. The ability to hire permanent replacements tilts the balance unfairly in favor of business in labor-management relations, and it is no surprise that business is lobbying hard to block this Executive order.

Hiring permanent replacements encourages intransigence by management in negotiating with labor. It encourages employers to replace current workers with new workers willing to settle for less and to accept smaller pay checks and other benefits. The Executive order will help restore the balance that has been distorted in recent years. It will reaffirm the original promise of the statutes and give workers the right to bargain collectively and participate in peaceful activity in furtherance of their goals without fear of being fired.

The Supreme Court's decision in the Mackay Radio case in 1938 is a source of the current problem, even though the issue is not squarely raised in the case itself. In Mackay, the Court ruled it was unlawful for an employer to refuse to reinstate striking union leaders when the employer had reinstated other striking union members. The Court refused to allow the employer to discriminate between strike leaders and other strikers. It ordered the employer to put the permanently replaced striking union leaders back to work. In fact, the Supreme Court did not even have before it the issue of the legality of permanently replacing striking workers, but language in the decision condoning the employer's hiring of permanent replacements has been interpreted as permitting the practice as long as the employer does not use it in a discriminatory way.

This aspect of the Mackay decision had no significant impact on labor relations for nearly half a century. Few employers resorted to permanent replacements or even threatened to use that tactic. Employers and workers had a mutual understanding that strikes are only temporary disruptions in an ongoing satisfactory relationship. Businesses responded to strikes in various ways, by having supervisors perform the work, by hiring temporary replacements, and by shutting down operations. Employers acted on the belief that their work force was valuable and not easily replaced and that once the temporary labor dispute was over, the two sides would resume the collective bargaining relationship that brought the benefits and stability to each.

In fact, a survey by the Wharton Business School in 1982 revealed that most employers found no need to hire any replacements during a strike. Many believed that hiring even temporary replacements was undesirable because it would make the settlement of the strike and resumption of stable labor relations more difficult after the dispute, and under those circumstances there was no need to seek a change in the law.

But in the 1970's and 1980's, this de facto pattern began to change, and most observers feel that the strongest signal for change came in 1981 when President Reagan summarily dismissed the PATCO, air traffic controllers who went on strike and permanent replacements were hired by the FAA.

The increased use of permanent replacements in recent years has been confirmed by a survey of the NLRB decisions and other reported cases. During the four decades from 1935 to 1973, the survey found an average of 6 strikes a year in which permanent replacements were used, but the number quadrupled to an average of 23 strikes per year for the period 1974 through 1991.

Mr. President, I have other remarks but I see my friend from Illinois and also Wisconsin on the floor. I know other colleagues are here, so I will yield in just a few moments and then come back and continue my discussion of this issue.

Mr. President, I am somewhat troubled by the whole pattern that has been developed in the period of these last several weeks and what it means for working families in this country. I cannot help but conclude that the actions that we have before us in the proposal of my good friend, the Senator from Kansas, is not unrelated to a whole stream of activities and statements and comments that have been made about the condition of working families in this Nation that are really the backbone of our country.

I can think of the recent discussion and debate that we had on an issue which is as basic and fundamental as the increase in the minimum wage. The origins of this minimum wage go back in time to a similar period that we had discussed, with the development of the National Labor Relations Act, where it was generally understood in the United States of America that if an individual member of the family was prepared to work 40 hours a week, 52 weeks of the year, that member was going to have a sufficient income so they would not be in poverty, so their children would not be in poverty, so that their wife would not be in poverty or their husband would not be in poverty—that they would not be in poverty. They would effectively be able to own their own home—hopefully be able to pay a mortgage—provide for their children, live with some sense of dignity and some sense of a future.

That was a part of the whole social compact that was basically supported by Republicans and Democrats alike for a considerable period of time. It really lost its thrust in the period of the 1980's, when an increase in the minimum wage was vetoed. Eventually a compromise was reached. We had an incremental addition of a 45-cent and a 45-cent increase in the minimum wage, and we saw that increase go into effect. And all of the various suggestions and recommendations that had been made about the loss of jobs failed to develop. What happened was that hard-working Americans—overwhelmingly women in our society; close to 75 percent of the people who earn the minimum wage are women in our society—they were able, not really to make it but to at least continue to work and to try to provide for their children. Make no mistake, the issue of minimum wage is an issue for children in our society as well as for those individuals who are working to make the minimum wage.

So a number of us introduced legislation to just raise the minimum wage—we thought 50 cents, 50 cents, 50 cents—over the period of the next 3 years to try to regain the concept that for a working family, work was going to pay, and that people who were prepared to work would be able to make sufficient income to provide for their families. Then we cut that back to 45 cents and 45 cents. These are effectively the same amounts that were accepted previously and supported by a President and supported in this body overwhelmingly, by Republicans and Democrats, and signed into law by a Republican President. We thought if we had that ability with a Republican President and a Democratic House and a Democratic Senate, that at least we would be able to do the same with a Republican House, a Republican Senate, and a Democratic President. We thought with a signing into law of 45 cents and 45 cents we would get back effectively to where we were in terms of purchasing power, to the purchasing power that would be available to families that had received the minimum wage a number of years ago, in the late 1980's—1989, 1990—under a law signed by President Bush.

We had the Republican leadership condemn this measure, saying they were unalterably opposed to the increase. Some even expressed opposition to any minimum wage. And we have been trying to see how we might be able to make that a part of the real Contract With America—the real Contract With America: Rewarding work. Rewarding work.

We do not need a great deal of hearings on that measure. I know I attended one, of the Joint Economic Committee, between the House and Senate. It was very interesting. The overwhelming number of independent studies, of 11 independent studies that reviewed the history of the minimum wage increase, showed no effective loss of jobs. All we have to do is look historically at the seven increases in the minimum wage since the time it had been actually implemented, and we find the same result. Nonetheless we have the harshness and the criticism of any increase, in terms of the minimum wage. So we have that out there on the deck for the working families.

If you had a little scorecard you could say, all right, now let us also try and repeal what the President did for working families on this Executive order: opposition to that. You could write underneath it: opposition to the increase in the minimum wage.

Then we come back to hearings in our Labor and Human Resources Committee about the repeal of the Davis-Bacon Program. All the Davis-Bacon Program says is we are going to have a prevailing wage in various Federal contracting so the Government will have a neutral role, in terms of wages, in terms of performance of various work.

We have the assault on the Davis-Bacon Program. Who is affected by the Davis-Bacon Program? The worker's average income is $26,000 a year. What have we done to workers that are making $26,000 a year, in some of the most dangerous work in America? Outside of mining, construction is one of the two or three most dangerous employments in our country. Mr. President, $26,000 a year, and we are declaring war on those families.

No, we are not going to give working families a minimum wage increase. No, we are not even going to give the protections for a family earning $26,000 a year that wants to work in construction and build America—no, that is too much for those individuals.

So we say OK, we are not going to permit the President to protect workers on Federal contracts that are being threatened with permanent strike replacements, which have been part of our industrial tradition. We are against the minimum wage. Now we are against those workers.

Not only are we against those workers but we have a new gimmick. We are having what we call 8(a)(2) of the National Labor Relations Act, to try to promote company unions. We are not satisfied that the working relationship between employers and employees is a balance. We want something different. Sure, we had that matter discussed by distinguished and thoughtful men and women on the Dunlop Commission, but they did not recommend a unilateral action in terms of section 8(a)(2). They did not recommend that particular measure. They understood what was at risk on this measure. We have those who are trying to undermine even the heart and the soul of the concept of workers being able to come together to at least exercise their rights for economic gain. That is out there. So we have that on the table as well.

Mr. President, all we have to do is look at what has happened to workers' interests over the period of the last 12 or the last 15 years. On the one hand you see the extraordinary rise in profits—and we are all thankful that we have American companies and corporations that are being successful and being able to compete internationally and are experiencing some of the greatest profits in the history of this country. But it is virtually flat in terms of real wages and take-home pay for working families. It is virtually flat, if not diminished, in terms of the entry-level jobs and jobs at the bottom, effectively, 65 or 70 percent of workers who are out there. It is effectively flat or being reduced.

Every day their financial interests are being assaulted out there. Instead of being out here on the floor of the U.S. Senate saying: Look, they are the men and women who are the backbone of this country, what can we do to try to make sure that they are going to be able to live in some peace and dignity and respect? We cannot even wait a few hours in order to tag an amendment on something which is vital to our national security and begin the debate to diminish them. That is what this debate is all about: Do not let them get ahead a little bit, in spite of the fact that under the previous administration, under the Bush administration, they issued Executive orders and those that are supporting this particular proposal were then silent—for example with regard to the prehearing agreement.

The prehiring agreement was legal. He made it illegal. I do not want to hear talk about going beyond or exceeding the authority of the power of the President. I mean, give us a break, Mr. President, in terms of this measure. We know what it is about. I think the American people ought to understand it.

What is it about working families? Not only their interest, but what is it about their children? They are trying to raise the cost of their children going to college, raise the cost of the interest on those loans while those kids are going on to the universities and colleges across this country, raise that $20 billion over a period of 10 years, raise that $20 billion so that every son and daughter of that working family that is hardly able to put it together is going to pay even more. No; do not try to find ways to try to make it easier for the sons and daughters to continue on and get a higher education understanding that what you learn is related to what you earn. Make it more difficult.

This has been established as a matter of discussion and debate at the various Budget Committees and in the House Appropriations Committee. Make it more difficult. That is not bad enough. For their younger brothers and sisters who are going to school, they take their school lunch away from them. What is it about, Mr. President? What is it about this whole concept, whether it is the Contract With America or whatever it is, that is declaring war on working families? War on the children in terms of the kids and whether they are getting fed, or whether that kid may need a summer job. Eliminate all the summer jobs.

They eliminated 13,000 summer jobs in my State of Massachusetts. Those summer jobs came in the wake of the Los Angeles riots. I think we should learn a lesson. We wanted to try to get young people at the time when they are not involved in school to try to get them starting to do something gainful such as employment. They eliminate those summer jobs.

So they take away something that those younger brothers and sisters can eat and take away the employment in time of summer. Take that away. Cut back on the education programs. Say to the mayors of the various cities that are trying to do something in various areas of working families with their community development block grant programs, we are going to cut that as well. We are going to make it more difficult for you to try to make life somewhat better in terms of the inner cities.

Sure, Mr. President, we have to get our handle on the costs of escalating Government expenditures. But my good friend from Nevada, Senator REID, said it more wisely than I have heard here on the floor of U.S. Senate for some period of time. That is, you are never going to do it until you reform the health care system. You are never going to do it until you reform the health care system. Health care costs are going up at 10 or 11 percent, double the rate of inflation. It does not make sense just to put a cap on those Medicare and Medicaid costs because all you will do is transfer it to the private sector with all its inefficiency and back to those communities in all those cities that have those emergency rooms in inner cities. It is going to cause even more distress and poor outcomes in terms of health results as well as the cost of it. This is the serious matter of trying to do it.

So, Mr. President, I see my colleagues here on the floor. I hope that we will have a chance to focus on precisely this amendment. I think it underlines some basic kinds of protections which are not going to solve all of the problems that we are facing in terms of working families. But it seems to me at some time we just have to say we have had enough. We have had enough in terms of the continued assault on working families in this country. It is only the beginning of March.

We have only just touched very briefly on some of the measures that are going to affect the children. Cut back on the day care programs; day care programs for working families. Only about 5 or 6 percent of the needs are being met today, and we get a recommendation to cut back on those programs as well. So you are a mother. You want to go out and work. You are not going to be able to get any day care for your kids, as inadequate as it is today.

What is this common sense? What is it about the families that have children in our society that are the subject and the target of this kind of an attitude? It makes no sense.

This measure that we have now before us is related to that whole concept. It is unwise in terms of policy. It is unwise in terms of the interests of the workers that it is going to protect.

I will have more to say about it later in the debate.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mrs. KASSEBAUM). The Senator from Illinois.

Mr. SIMON. Madam President, I rise in opposition to this amendment. I think it is not in the national interest.

I simply remind my colleague from Kansas, who is the chief sponsor of the amendment, and all of my colleagues that consistency is not necessarily the virtue of any of us in this body. But I remind my colleague from Kansas, who is now the Presiding Officer, that on January 6 of this year, 2 months and 3 days ago I introduced a resolution, a sense of the Senate—nothing nearly as sweeping as the Kassebaum amendment—which simply said to the Bridgestone/Firestone Co., a wholly owned Japanese subsidiary with 4,200 workers, they ought to get together and have talks and not have the permanent replacement.

At that point, the distinguished Senator from Kansas, who is my friend, with whom I enjoy working on African issues and many other things, said:

> I know the Senator from Illinois is well-intentioned. But this is neither the time nor the place for Congress to be considering anything other than this very important bill which is before us. The amendment offered by the Senator from Illinois is completely extraneous from the matter at hand, and for that reason alone I believe the Senate should table his amendment.

If I may use the words of the Senator from Kansas, and just modify them slightly, I would say the amendment offered by the Senator from Kansas "is completely extraneous from the matter at hand, and for that reason alone I believe the Senate should table her amendment."

Her words were heeded by this body, and by a narrow margin that amendment was defeated. I hope this amendment will be defeated. It is part of what Senator KENNEDY was just talking about.

We have a very fundamental philosophical decision to make in Government—whether Government is going to help the wealthy and powerful, or whether it is going to help those who really struggle. My strong belief is the wealthy and powerful do a pretty good job of taking care of themselves, particularly with the system of campaign financing that we have in this country. And what we ought to be doing is trying to help people who struggle. This amendment goes in the opposite direction.

I point out that in the United States today only 16 percent of our work force is organized by labor unions. No other Western industrialized democracy has anywhere near that low a figure. If you exclude the governmental unions, that number drops down to 11.8 percent.

Not too long ago, George Shultz, the distinguished former Secretary of State and Secretary of Labor, made a speech that was quoted in the New York Times in which he said things are out of balance in our country, that the fact that labor union membership is so low, so small in our country, is not a healthy thing for the United States of America.

I agree with him completely. I think we need greater balance. That is the word that ought to be part of our dialog here.

The reality is that we had pretty good balance in labor-management relations over the years, since the early 1930's. When a Democrat came in, the National Labor Relations Board shifted a little bit on the side of labor, and when the Republicans came in, it would shift a little more on the side of management; but it was a pretty good balance. Then Ronald Reagan became President, and all of a sudden it got way out of balance. That has done real harm to labor-management relations in our country.

The minimum wage that Senator KENNEDY talked about is one part of providing a little balance. Real candidly, I think the minimum wage would do more in terms of welfare reform than any of the bills that I see before us that are labeled "welfare reform" right now.

But in terms of permanent striker replacement, I mentioned Bridgestone/Firestone, a Japanese-owned corporation. Permanent striker replacement is illegal in Japan; it is illegal in Italy, it is illegal in Germany; it is illegal in France; it is illegal in Denmark; it is illegal in Norway; it is illegal in Sweden. I do not know what countries I have skipped now, but the only countries outside of the United States of America where it is legal—the only democracies where it is legal to fire permanent strikers are Great Britain, Hong Kong, and Singapore. In every other Western industrialized democracy, that kind of action is illegal. Traditionally, we just have not done that in our country. I do not think we ought to be moving down that line. I think the President's action provides a little balance that is needed.

Let me add, Madam President, if this amendment is adopted, I am going to have a series of amendments on labor law reform. For example, if you have a pattern and practice of violating the civil rights laws of this country, you cannot get a Federal contract. I think it ought to be the law in this country that if you had a pattern and practice of violating labor laws, you should not be able to get a Federal contract. I think if you have a pattern and practice of violating worker safety laws, you should not be able to get a Federal contract.

When you organize—in Canada, for example, if you want to organize a plant or site, you have 30 days in which a majority of people can—the 30 days comes after you get the majority of people. You get a majority of people to sign cards and pay $1, and 30 days after that, that plant or site is organized. In the United States, it can draw out for 7 years before a plant is organized, and in the meantime, an employer, for all practical purposes, has the legal right to fire people for their union activity.

There are a whole series of things that can be done. If this amendment is adopted, we are going to have other amendments in this area. But I would get back to the fundamental point that my colleague from Kansas made to me when I proposed an amendment, which was just a sense of the Senate and had no permanent implication, as this one does, when she says, "The amendment offered by the Senator from Illinois is completely extraneous from the matter at hand, and for that reason alone, I believe the Senate should table his amendment."

The Senate listened to her then. I hope they will listen to her words now and table the amendment of the Senator from Kansas.

Madam President, I yield the floor.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Madam President, I did not expect to spend much time on the floor today discussing the subject of permanent striker replacement. As we have seen, we have had eloquent speeches by Members of the minority who have set forth an issue for us which was led to by action of the President just recently and the amendment by the Senator from Kansas.

I rise in favor of that amendment. Like many of my colleagues, I thought we had put this issue to bed last year when both the House and Senate considered S. 55 and it was rejected, or never even left the desk in the Senate.

President Clinton made his support of this type of legislation clear during the 1992 election campaign, and he and Secretary of Labor Reich have reaffirmed their commitment to a striker replacement bill on numerous occasions since. Clearly, the President would have signed a congressional bill if it had been laid on his desk. However, as we know, S. 55 never left the Senate desk.

The President certainly is free to attempt another legislative push for a bill like S. 55. I would not welcome the attempt, but it would be well within the normal flow of our governmental process for him to do so.

However, it is abnormal, unusual, and unprecedented for President Clinton to address this issue through the Executive order he issued yesterday.

The legal arguments against the President's action are many and compelling. Congress has spoken consistently on this subject in the context of the National Labor Relations Act for over half a century.

In 1938, the Supreme Court handed down the Mackay Radio decision authorizing permanent replacement of economic strikers. Since then Congress has considered amendments to the act several times, but it has never approved overturning Mackay.

So it is important to remember this, because as we go forward and talk about Executive orders and the power of Executive orders, it must be remembered that this present law is consistent with a U.S. Supreme Court decision.

An Executive order that directly contravenes the express will of Congress calls into question significant separation of powers issues under the Constitution. For the past several weeks, we have heard very powerful arguments on the importance of this separation of powers in the context of the balanced budget amendment, and I expect we will hear more when we soon turn to consideration of the line-item veto.

These arguments, while perhaps valid, are speculative. In the case of the Executive order in question, the challenge is clear and present. An Executive, frustrated by legislative inaction, is seeking to accomplish by Executive order what has been explicitly denied him by the legislatures and which is inconsistent with the U.S. Supreme Court decision. I hope those of my colleagues who have been concerned about the issue of the separation of powers will see fit to support the Kassebaum amendment, regardless of their views on the merits of the legislation banning permanent replacements.

This is not to say that the President cannot use Executive authority to attach conditions to parties entering into contracts with the Federal Government. But that power has generally been used to force or encourage contractors to do something that is consistent with existing law or policy.

By contrast, the present order would deny contractors the right to take action which is authorized under the National Labor Relations Act, which has been upheld by the National Labor Relations Board and the Supreme Court, and which Congress has repeatedly refused to outlaw. Thus, the President's order swims upstream against the current of existing law and policy. In doing so, it is unprecedented and unsupportable.

Legal arguments aside, perhaps the most compelling evidence on the weakness of this policy comes from the administration itself. We witnessed, or more accurately did not witness, a stealth signing ceremony, where partisans were invited but the press was excluded.

In fact, the defense of the policy from the White House gives "weak" a bad name. Ostensibly, the policy is designed to ensure the quality of products the Government procures. This is an extraordinary position for at least two reasons.

First, it exhibits a total lack of faith in the Government procurement process. Apparently, all the administration's efforts to retool the procurement process have produced and Edsel, as it apparently will be unable to distinguish and reject faulty products in the absence of this Executive order. This is a very sad commentary on GSA, the Department of Defense, and every contracting agency.

But even if we could believe this sad state of affairs, it belies a fundamental misunderstanding of the dynamics of a strike. The alternative to permanent replacement workers is not a happy stable of industrious elves, but shutdowns, shorthanded shifts staffed by managers and supervisory staff, of temporary replacements. It is hard to see how these alternatives will result in the production of appreciably higher quality goods or services.

Back in the real world, the failure to meet standards would free the Government to contract with other providers. Future Federal contracts might be jeopardized as a result of failure to live up to contract terms. Thus, it would be a self-defeating act of the highest order for a contractor to put itself in this position.

If the administration were really worried about the impact of strikes and permanent replacement workers on the procurement process, then it would condition the receipt of Federal contracts on the assurance that performance of the contract would not be interrupted by a strike. That step, and that step alone, would ensure that a trained and stable work force would do the work throughout the contract.

Doing so, of course, would be a bad idea, because it would diminish the rights of one party to a collective bargaining agreement, it would reduce the pool of potential bidders and would likely increase costs to the Federal Government. But this description applies equally well to the administration's policy.

Madam President, I think it is clear that the President's purpose is not to aid the cause of public procurement, but that of partisan politics. It is a bad idea whose time will never come.

His action is a clear affront to the separation of powers, is of questionable legality, and will ill serve labor management relations and the taxpayers. Given all these considerations, I strongly support the amendment offered by the chairman of the Labor and Human Resources Committee, the Senator from Kansas, Senator KASSEBAUM, and hope that the vast majority of my colleagues on both sides of the aisle will agree that this step, putting aside all of the partisan politics, is just ill-advised from the perception of the separation of powers and for good policy.

It seems that no traditional labor law issue so galvanizes the actions of the interested parties as does the legislative debate on striker replacements. While all can agree that this issue cuts to the very heart of the collective bargaining relationship, there is wide disagreement on whether a ban of replacements would help or hurt the institution of collective bargaining.

At the outset, Madam President, we need to agree on whether there is a problem requiring a solution before passing that solution into law or mandating it by Executive order. My difficulty with the President's order is that I am not convinced there is a problem with the hiring of permanent striker replacements that requires any solution, much less the absolute ban advocated by this Executive order. Moreover, even the data produced in support of similar legislation over the past several years are at best inconclusive on whether use of permanent replacements is a growing trend in the business community or that it is any more prevalent now than it was in the past.

Madam President, the impetus for this Executive order is, to a large extent, driven by the celebrated cases where permanent replacements were used. Thus we have heard over the years about Eastern Airlines, Greyhound, the New York Daily News, and now Bridgestone-Firestone to name just a few. However, these and other examples of the use of permanent replacements do not suggest models of successful corporate strategies. To the contrary, many of these companies have suffered grinding reversals of their business fortunes, up to and including total business collapse, following the use of replacements. I do not believe that many companies will want to adopt a pattern of behavior which leads to such results. And again, of course, the statistics do not show that many have chosen to do so.

The Clinton administration has set in motion the process of taking a hard look at our system of labor laws. Toward that end, a blue ribbon Dunlop Commission was established with the mission of studying workplace cooperation and recommending ways of reforming worker-management relations to "create an environment within which American business can prosper." That Commission has now issued its report and recommendations. It is significant to note that the Commission did not recommend the radical change in the law on replacements that the President's Executive order mandates.

From the beginning of the debate on this issue, I have suggested that we need to open up a broad-based discussion on the way in which labor relations disputes are resolved. I am a supporter of the American system of collective bargaining and I believe, for the most part, that it does a good job. However, the simple truth is that system works better for everyone in times of economic expansion than it does in connection with the setbacks and retrenchment found during a recession. This elementary fact probably has as more to do with any increase that may have occurred in replacement situations than does some fanciful conclusion about changes in employer attitudes brought on by President Reagan's handling of the air traffic controllers strike.

I for one would be willing to explore the options which exist in the area of alternative dispute resolution. We do have some history on this issue. There are segments of the American work force where the right to bargain collectively does not include the right to strike. The majority of these are within the public sector. In those instances, various systems have been devised for resolving disputes on which the parties themselves cannot agree. Perhaps it is time to begin moving away from the ultimate labor warfare of strikes, lockouts, and replacement workers and toward some alternative system of dispute resolution for more of the private sector.

Madam President, this is not a new exercise that we engage in today. Elements found in the bill have been seen in legislative offerings at least as far back as the last big labor law reform effort in the 1970's. Further, significant legislative battles have been waged on the issue in each of the past two Congresses. The fact that there has been no evolution toward consensus in the terms of this debate is a sad testament to our collective failure to address this issue realistically.

Given the long history of the underlying issues, and the work of the Dunlop Commission, there are many aspects of collective bargaining that we might productively reexamine. For example, it troubles me that unfair labor practice strikers must wait so long for a resolution of their charges. Further, it might be profitable to examine stronger sanctions against those who engage in unfair labor practices. And as one who supported labor law reform in the late 1970's, I am certainly open to suggestions on ways to streamline the process of deciding whether or not a group of workers wishes to organize.

With specific regard to permanent replacement of economic strikers, for the past few years I have stated that we should look at the special circumstances presented in concessionary bargaining situations and first contract negotiations. As I stated on the floor of the Senate during the 1992 debate, the situation presented by an employer's demand for contract give backs or concessionary bargaining demands may well be one in which the use of permanent replacements is not justified. Adoption of a restriction on this practice would address most, if not all of the instances of abuse presented to Congress as demonstrating the need for legislation on this issue.

Similarly, in first contract negotiations, where there is no established bargaining relationship, I believe a third party intermediary could serve a useful role. Neither the Senate nor the House Labor Committees have examined these ideas in their handling of this issue. Rather, the limited amendments which the Democratic majority permitted to be offered in the House were persistently rejected, while in the Senate S. 55 remained almost defiantly unchanged even in the face of fatal opposition. In the current Congress, this issue is very low on the priority list for the committees of jurisdiction.

Perhaps the biggest revolution since the Mackay decision in 1938 has been the shrinking of our world. We were an insular power, one of many, and we emerged from World War II as the greatest economic power on the planet. This was not surprising given that our country was spared from damage during the war. Nor is it surprising that our preeminence has eroded in the decades that followed the war as other countries have rebuilt and retooled.

In 1938, we could afford to consider labor-management relations in isolation. In 1994, we no longer have that luxury.

Enforcement of the present Executive order will change the face of labor relations in this country. Clearly that is the intent, but is it in the best interest of the country? That is the question. I have yet to hear sufficiently compelling answers to prompt me to vote for legislation doing what the order attempts to do. The fact that the President has opted to proceed by Executive order does not change my mind or prompt my support.

Accordingly, while I remain open to the possibility of passing meaningful and wise legislation in this area, this Executive order is not such legislation. Thus, I will vote to stop its implementation and enforcement.

Madam President, I yield the floor.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

(Mr. JEFFORDS assumed the Chair.)

Mr. FEINGOLD. I thank the Chair.

Mr. President, I rise to oppose the amendment offered by the Senator from Kansas that would prohibit the U.S. Labor Department from expending funds to enforce the President's recent Executive order barring Federal contracts with contractors that use permanent replacements.

Mr. President, I am very pleased to follow the Senator from Illinois and the Senator from Massachusetts, who were extremely eloquent in pointing out how terribly unfair this practice of the use of permanent replacements really is.

The President has issued the Executive order, in my view, simply to restore a measure of equality to Federal labor law by guaranteeing the workers the right to strike without the fear of being permanently replaced. In this case, it relates particularly to those whose wages are being paid with Federal resources, being paid by Federal taxpayers' dollars.

I do not think Federal resources should be used to put people out of work. These are people who are exercising their rights under the Federal labor law.

Unfortunately, the measure of the Senator from Kansas would block the President's ability to protect these workers and companies that are Federal contractors.

Mr. President, this would be the second time in less than a year that the supporters of striker replacements have used what I consider to be subterfuge to undermine striking workers. In the 103d Congress, the opposition used parliamentary tools to prevent a vote on S. 5.

The Senator who is occupying the chair right now spoke a few moments ago and said he thought we had put this permanent replacement issue to bed. Well, in my view, we have not done that. We have not even given it a nap. We did not give it a chance. In fact, the American people, although some people did not like the outcome, elected a President in 1992—he did get a majority of the electoral votes—who was openly and clearly committed to passing and signing a ban on the use of permanent replacement workers.

So, no, this issue has not been put to bed. This issue has not been given a fair vote on the floor of the Senate and this issue has not gone away, regardless of the hopes of the folks who did prevail on November 8.

I believe that this particular amendment does a great disservice to the working men and women of America. In my State of Wisconsin, the abusive use of permanent replacement workers by a few—not most, but by a few—employers during labor disputes has a pretty long history. And it is an issue that I have been pretty deeply concerned about for many years. In fact, when I was serving in the Wisconsin State senate, I was the author of the Wisconsin striker replacement bill and had the opportunity to testify before a committee of the other body here when I was still serving in the State Senate, asking that there be a Federal law banning the use of permanent replacement workers.

But the issue has not even come close to resolution. These folks, trying to exercise their right, their legitimate, lawful right to strike, have still been harmed and undermined by the use of permanent replacement workers.

Mr. President, I know that the use of permanent replacements is a many faceted issue. But to me at its core, this is the question that it raises: should workers have the right to use the strike as an economic device during times when negotiations with their employers break down? That is really the question. Because that is the issue when permanent replacement workers are used.

It effectively destroys the lawful right to strike. The National Labor Relations Act of 1935 clearly guarantees the right of workers to organize and engage in concerted activities, and included in that series of rights is the right to strike.

Workers and management have always shared relatively equally in the risks and hardships of a strike. It is no picnic for either side. Workers lose income and their families, and often whole communities, face economic insecurity and the threat of losing their homes and their savings. At the same time, a clear incentive has existed for management to come to an agreement, as they struggle to maintain production and productivity in their market share with a more limited work force.

That is the relative balance that has existed in the past, prior to the early 1980's. Because of that balance, as a general rule, strikes were to be avoided by both sides, if possible, and that was the driving force behind the success of collective bargaining and peaceful negotiations.

For many years, even during strikes, labor and management were able to cooperate and come to an agreement. That is what I observed growing up in a very strong General Motors-UAW hometown, Janesville, WI.

Management now often advertises—instead of negotiating, they advertise for permanent replacements, the moment a strike begins, sometimes even in advance. I have seen advertisements preparing to hire a nonunion force in anticipation and, in fact, in the effort to precipitate the strike.

The threat of permanently lost jobs casts a pall over the entire bargaining process and breaks down that mutual incentive to come to a peaceful collective agreement. Mr. President, as the power of the strike becomes more and more tenuous, the voice of the labor negotiators over his or her employment weakens considerably.

I do not believe, at a bare minimum, that Federal resources, Federal tax dollars, should be used to do more of this, to erode the power of working people. If the use of permanent replacements is allowed in federally financed work, we then become directly involved in further weakening the voice of the working sector of this country, or even maybe worse, maybe we are in the process here of silencing the voice of working people for good.

It reminds me, Mr. President, of an act of kicking someone when they are down. I am not saying that is the intention of the Senator from Kansas. In fact, she is the last person in this whole body that I would accuse of trying to kick someone when they are down.

I am afraid that the effect of this, the unwillingness to say the Federal tax dollars should not be used in order to assist the use of permanent replacement workers is, in fact, kicking working people when they are down, when they have seen many rough years, many years of unfair advantage to employers in management relations, many years of jobs being lost overseas, sometimes in the name of free trade, but often to the detriment of the people that have helped build this country.

During disputes between employers and employees, Government should at the very least act to ensure that both sides are playing on a level playing field. The Federal Government should not act to give an advantage to one side or the other.

At times, such actions in the past have given that advantage in the form of police protection for strikers and nonstrikers. At other times, in the form of court proceedings.

I might add that employers still have many options in overcoming or surviving a strike. There are many things they can do, apart from this very harsh act of using permanent replacement workers. They can hire temporary employees, they can stockpile inventory in advance of a potential strike, or assign supervisors to take over some aspects of production. I know this is not a first choice. But of course neither is striking ever a first choice of the working people who feel compelled to go on strike. These options exist for the employers. They have always been available to employers, and they are if no way limited by the President's Executive order.

Mr. President, last year the Washington Post ran an excellent editorial called "Women and the Right to Strike" which pointed out that as a class, women and minorities are the most in need of protection against the use of permanent replacements. They are overrepresented in low-skill low-wage jobs where it is easy to find and train replacements, while they are also in need of those jobs simply to meet the most basic necessities.

Mr. President, I find this attempt to prevent the Executive order in this case to be very surprising in light of the emphasis on welfare reform that has come through as a very important part of the so-called Republican contract. The notion of welfare reform, which I agree with, is that if somebody can work they should work.

If we are going to pass some important legislation this year to make that much more likely, what is the message of this amendment to those who are being encouraged to go to work? The message is, you will lose your welfare benefits, you will leave your children and go to work, you will not necessarily be guaranteed health care. As we know, we do not have universal coverage. We have universal coverage for the people on welfare, but not necessarily for those who work.

So this is the message that the new majority wants to give to people on welfare who want to go to work. Go to work, for maybe the same amount, maybe a little more, and you may have your jobs torn away from you in a very short period of time by the use of permanent replacement workers. No job security. No meaningful right to strike. It is the worst message we can possibly send to those people who are genuinely striving to leave welfare.

Mr. WELLSTONE. Mr. President will the Senator yield?

Mr. FEINGOLD. Mr. President, I am happy to yield to the Senator from Minnesota.

Mr. WELLSTONE. I gather from what the Senator has just said that he is trying to make a connection between welfare reform and welfare recipients—who are, in the main, women, single parents—being able to find a job they can count on. With "a job you can count on" meaning a decent wage with decent fringe benefits.

In the State of Wisconsin, has the Senator seen situations where workers have been essentially forced out on the strike and permanently replaced? Has the Senator actually seen that happen in Wisconsin? Can the Senator give, so that people know what this debate is about, are there some examples that come to mind, as a Senator from Wisconsin?

Mr. FEINGOLD. I thank the Senator from Minnesota for his question.

Mr. President, in response to the question, have we seen this happen in Wisconsin, the answer I am sorry to say is yes. Increasingly, through the 1980's and early 1990's, there were systematic efforts in certain places to use permanent replacement workers.

Among the ones that stick out is what happened to people in De Pere, WI, when International Paper chose to use permanent replacement workers. I held a hearing as a State senator, at the time, and heard some of the most compelling and troubling testimony I have ever heard as an elected representative from families that were broken by the loss of that job security that the Senator has described. In fact, I am quite sure that some of those folks were forced from being workers to being on welfare, as a result.

I saw the same thing near Milwaukee, in Cudahy, WI, another very tense, and difficult, public hearing when the story of that situation was laid out. Closer to my own home in Madison, WI, a lot of pain, a lot of hurt, and a lot of destruction of family—another value that the new majority likes to talk about.

In the context of the Stoughton Trailer strike involving UAW workers, I always like to say my very first political encounter as a kid was when my father took me down to the UAW plants in Janesville to the Walter Reuther Hall. I remember that the gatherings there, there were a lot of Democrats there, there were Republicans there, too, in those days. It was not necessarily a partisan issue. It was pretty good spirit there in the 1960's. But when I returned in 1988, to that same hall, it was not an upbeat spirit. It reminded me of a wake, because people felt absolutely dejected and abandoned because of the use of permanent replacement workers. We have had it all over the place.

I want to reiterate to my friend from Minnesota, Mr. President, it is a small percentage of the employers, but, unfortunately, sometimes it is some of the biggest employers. Sometimes it is some of the best jobs. And it cuts at the heart of the feeling that we want to be able to give people that if they do a good job for a company and come to work on time and produce a good product, they should be able to keep that job, generally speaking.

That is something that has to be as much a part of the American dream as home ownership or little league baseball.

Mr. WELLSTONE. Will the Senator yield for another question?

Mr. FEINGOLD. I am happy to yield.

Mr. WELLSTONE. Mr. President, this Executive order really applies, as I understand it, to Government agencies that work with contractors with contracts of $100,000, or more, and only in cases where those contractors permanently replace striking workers, not temporarily replace, then the Government would no longer be willing to continue with the contract. Is that correct?

Mr. FEINGOLD. Mr. President, that is my understanding. It is not as extensive as the kind of law I would like to see passed.

Mr. WELLSTONE. And ultimately this would affect very, very, few companies because we have no reason to believe that most of the contractors doing business with the Government would engage in such a practice.

So my question is as follows: This debate now on this amendment almost becomes a debate about more than just this aim of the Senator was talking about welfare and the reports of welfare reform with jobs being key.

Does the Senator, based upon your experience in Wisconsin, does the Senator feel that this whole issue of permanent replacement of striking workers is key to the question of balance between labor and management so that people, working people in the country, whether they are in unions or not in unions, will have the ability to represent themselves and bargain and have a decent job at a decent wage for their family?

Has this amendment become really more of a debate about decent jobs for people, more of a debate about families having an income that they can live on, more of a debate about really working families and middle-class families; is that the way the Senator sees this?

Mr. FEINGOLD. In response to the question of the Senator from Minnesota, it almost has to become a broader debate. I do not believe it was the intent of the Senator from Kansas to have it be. I do not know how you can talk about just the narrow issue of particular companies, and I think the Senator from Minnesota is right that there maybe is not going to be Federal money to do this. But it does bring up the whole issue of what kind of consistency is there between this sort of amendment and the agenda that we have been talking about in this Congress and will talk about having to do with getting people to work.

Mrs. KASSEBAUM. I wonder if the Senator from Wisconsin will yield to me for a moment for a question? Going back to a question between the Senator from Minnesota and the Senator from Wisconsin a minute ago.

Mr. FEINGOLD. I will be happy to.

Mrs. KASSEBAUM. First, you implied this Executive order would not affect very many companies, that it will only touch on a few Federal contractors. I notice there is some confusion about this that maybe you can clarify.

There has been some question as to whether it would or would not affect the Bridgestone/Firestone strike for which, of course, there have been permanent replacement workers. For all intents and purposes, it has been thought that this Executive order was only proactive, not reactive. It states:

> The provisions of section 3 of this order shall only apply to situations in which contractors have permanently replaced lawfully striking employees after the effective date of this order.

In section 3, there is some confusion. It says:

> When the Secretary determines that a contractor has permanently replaced lawfully striking employees, the Secretary may debar the contractor, thereby making the contractor ineligible to receive Government contracts.

So I think it could be read that the Secretary of Labor could, as a matter of fact, go back and say that if there were permanent replacement workers, then the contractor could be debarred from Federal contracts. This places us, of course, right in the middle of a major management/labor dispute. One which, of course, is taking a real toll.

I would like to ask the Senator from Wisconsin, who has the floor, if he knows what the clarification may be? I think this could cause real confusion.

Mr. FEINGOLD. I defer to the Senator from Minnesota on that particular aspect, except to say when the Senator from Minnesota asked me how many firms do I think this would apply to, my saying I did not think it would apply to many firms was to the fact that I hope and believe most firms would not do this.

If this, in fact, does apply to the current situation you refer to, it would not trouble me. I am not going to represent what exactly that language does. I am happy to take a look at it. My view is that use of permanent replacement workers in any context where Federal dollars are involved should not be permitted.

That is what I would want it to be, but I did not, of course, draft the Executive order, and I would have to defer to the Senator from Minnesota if he knows the specific answer.

Mr. WELLSTONE. Mr. President, I thank the Senator from Kansas for her question. The President's Executive order would cover them, but the existing contract could not be terminated. It is my understanding that they would be barred from future contracts, and that is the distinction. I think that is the purpose of this Executive order.

I might also add that when I asked the question of the Senator from Wisconsin, my working assumption—which I think is a correct one—is that ultimately we are talking about what kind of companies might, in fact, engage in this practice, because the Senator from Wisconsin is correct; most companies are good corporate citizens and good businesses and do not engage in this practice. Probably we are talking about very few cases.

Mrs. KASSEBAUM. Mr. President, I appreciate the answer. I think it is still very unclear, and I think it indicates why there would be a lot of uncertainty about this Executive order. I appreciate the answer.

Mr. FEINGOLD. Mr. President, if I may conclude, I know the Senator from Minnesota wishes to speak.

The senior Senator from Massachusetts referred to the people who would be affected by the use of permanent replacement workers as the backbone of our country. That is exactly what they are. They are not the people who so many people like to rail against who are not willing to work who can work; these are people who work, who have worked hard, who report to work every day, many of whom have to have both parents working to make ends meet. They are trying awfully hard to make it. All they want is to know that this country, whether it be a Democrat majority or a Republican majority, is committed to helping them get to work and have a job and make an honest living.

I thought that is what this whole welfare debate is about; that everybody is better off if they are working and that if they are not working, they are taking advantage of the rest of us. That is what I thought it was about. I thought that is why so many working people are frustrated and irritated by our current welfare system.

What kind of a mixed message is it to kick people who are working and not guarantee them the right to strike at the same time you tell them get back to work and help us out in this society by working and paying your taxes and make our economy go? It does not add up.

This Republican agenda is contradictory. Are we for deficit reduction, or are we for tax cuts? Are we for getting people back to work, or are we for driving people out of work by the use of permanent replacement workers? Which one is it? Where is the sense of community? Where is the sense of helping somebody when they are down? Where is the sense of making sure that if somebody is really trying to work, that we will do whatever we can to make sure that that job has some stability, has decent wages, some rights, some health insurance. Which is it?

I believe that every Member of this body is committed to those principles in their heart, but when you look at the agenda and the way that it works at cross-purposes with an amendment like this, it is very, very troubling; and it is hard for me to tell the hardworking people in Wisconsin, those who are part of organized labor, in particular, that you really mean it, that you really mean it when you say you want people to work. If you want them to work, give them a fair chance to have a balance to keep those jobs when the management is being unfair.

Mr. President, I strongly oppose the Kassebaum amendment for the reasons I have outlined. I encourage my colleagues to vote against it.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. I thank the Chair. I thank my colleague from Wisconsin for his strong words on the floor.

Mr. President, I could read from my prepared statement. I think I would rather not. I just would like to try to lay out, if you will, the basis of my position and marshal evidence. I think that it is very important that the U.S. Government not be on the side of contractors who have permanently replaced their workers who have gone out on strike.

Let me say one more time, as I understand this Executive order, if the Secretary of Labor issues such a ruling and it is clear that a contractor with a $100,000-or-more contract has, in fact, permanently replaced striking workers, then that company could be barred from future contracts after the careful, deliberative process set forth in the order is exhausted. I think that is the key clarification.

I think that this Executive order is very important. I do not think it is very important so much because, in fact, it will end up covering that many businesses. I think it will be rather narrow in scope, but I think it is important that the Government be on the side of what I would call basic economic justice.

A word on the context, Mr. President. In the early 1980's, there was the PATCO strike, and many striking air traffic controllers were permanently replaced. I think what has happened—and I wish this was not the case, and maybe it had something to do with the mergers that took place in the 1980's, maybe it had something to do with different hard-nosed management approaches—but what happened really, with the PATCO strike I think being the triggering event, is that we moved into a different era of labor/management relations wherein the implicit contract between workers and management was torn up.

In addition, I would argue that in the international economic order—and the Senator from Illinois was quite correct when he said the United States almost stands alone among advanced economies without having some protection for a work force against being permanently replaced—I think the key for our country is going to be a trained, literate, high-morale, productive work force.

I know the Senator from Kansas agrees because I have seen her work and admire her work in promoting this.

I think the disagreement we have is that when people can essentially be crushed—and I have seen too many people who have been crushed in my State of Minnesota—when they go out on strike because they feel they have no other recourse but to do so, it leads to just the opposite of what we need when it comes to real labor/management cooperation.

The process is fairly simple, and I wish I did not have to identify this process. It is not an invention on my part. Too often, companies—I am very pleased to say not most companies, not most businesses—provoke strikes as part of a plan to replace striking workers and bust unions. And this is a relatively small number of rogue employers. I think, in fact, many businesses would greatly benefit from this reform because they are not the real culprits here. But too often, certain employers will force a unionized work force out on strike, permanently replace them, then move to have the union decertified. That is union-busting, plain and simple.

Now, Mr. President, it could very well be that part of this debate about this amendment—although I think the Senator from Kansas can speak for herself better than I ever could; I do not actually think this is her framework—but as I see it, as I analyze the votes on this amendment and this question, at least some of the votes, some of the votes are going to really have to do with the larger question than this amendment.

The larger question than this amendment is this Contract With America—I think it is more a con than a contract—that we see being pushed forward with a vengeance in the House of Representatives. The connection I make is that I think what we see happening right now—and it is why I come to the floor feeling so strongly about this amendment, because of this larger context—is an effort on the part of some of the leadership in the House to overturn 60 years of people's history. I actually do not think that this Contract With America is an attack on the 1960's. It is an attack on the basic reforms put in place in the thirties, which have served us well for decades.

Now, Mr. President, some of us, or some of our parents—in my case, I guess it was my grandparents—gave a lot of sweat and tears to make sure that in the 1930's we moved forward as a Nation with some protection for people against strikebreaking, some protection against the fear of being unemployed, some protection against jobs that paid wages on which people could not support their families. This is when we protected in law the right to form or join a union. This is when we developed some of our collective bargaining machinery. This is when we passed minimum wage legislation. This is when we passed Social Security. This is when, Mr. President, if we want to talk about contracts, we actually built a contract in the United States of America the purpose of which was a more just system of economic relationships for people.

But, more importantly, I think it was a huge step toward greater stability in the workplace, and toward greater fairness. We no longer said if you own your own large corporation and you are powerful, then you matter, but if you are a working family, you do not. This was an important contract.

Quite frankly, Mr. President, I see a real effort in the Congress, especially on the House side, to rip this contract up.

Mr. President, there are an estimated 14,000 workers that are covered by the NLRA that are permanently replaced each year by American employers and thousands more under the Railway Labor Act.

Now, there was a report done by the General Accounting Office in January 1991—and maybe there is a more recent report. I think all of us agree that GAO does very rigorous work, and in this report the GAO indicates that since 1985, employers have hired permanent replacements in one out of every six strikes and threatened to hire replacements in one out of every three.

Mr. President, the right to strike has become the right to be fired. You could, if you wanted to, just travel around the United States, and in State after State you could talk to priests, ministers, rabbis, mayors, small business people, union people, and others affected by long and bitter strikes that divided communities all too often precipitated by the use of outside replacements.

In my State of Minnesota, I could give many, many examples of men and women who essentially were forced out on strike. Nobody goes out on strike on a lark. But they were faced with a package of concessions that they could not make in terms of their own economic situation and their basic dignity. The companies knew they could do it to them. The companies wanted them out on strike. The companies then permanently replaced them and then decertified them. That is union busting.

Now, I think this Executive order just simply says that the U.S. Government will not be on the side of union busting. This Executive order—and again, that is why I think it is such an important issue that goes beyond this Executive order—says that the U.S. Government will be on the side of working families, that the U.S. Government will be on the side of collective bargaining rights, that the U.S. Government will be on the side of the right to strike, and that the U.S. Government takes the position that the right to strike should not become the right to be fired.

I do not know how many of my colleagues—maybe many or maybe very few—have actually visited with families who have essentially been wiped out because the husband or the wife or both were permanently replaced. I have. And I do not say "I have" to suggest that I care more about working people than anyone else. Many Senators do. We reach different conclusions, sometimes, as to the best way to support families.

But I have seen, and I will say this to my colleague from Kansas—I have seen too many broken dreams and broken lives and broken families, all caused by permanently replacing men and women. It is just shattering.

I will say this to my colleague from Kansas, I will, with every ounce of strength I have as a U.S. Senator, fight to end this practice. That is why this amendment assumes a larger importance than this amendment. That is why this amendment assumes a larger importance, and that is why this amendment must be stopped.

There were many of us—one is no longer here on the floor of the Senate because he retired, certainly he was one of my mentors, Senator Metzenbaum from Ohio—who fought and fought and fought for change. S. 55 would have been the change. That would have prohibited employers—I am not talking about just contractors with the Government—from permanently replacing striking workers. It was filibustered. Let me repeat that one more time. It was filibustered.

I remember meeting—I think Sheila came out with me—on a Sunday morning in Minnesota with a group of workers who had been permanently replaced. They were outside with their families. It was raining. Certainly there were as many women as men who worked for this company. I remember saying to them: I really have some hope that we will be able to pass this legislation.

I do not think they thought that meant they would get their jobs back. But it represented some real hope for them, because they had been very courageous. What this company asked of these workers, I say to my colleague from Kansas, was unacceptable. I do not think there is a Senator here who would have been able to have accepted those terms.

They went out on strike. They were scared to death. They knew they probably were going to lose their jobs, but it was a matter of dignity. You know, dignity is important to people.

I said: We have this piece of legislation and I believe the United States of America is going to join the other advanced economies by providing some protection for working people, working families. But we could not get a vote on it. It was filibustered.

Mr. President, now we come to this amendment by my good friend from Kansas, which is an attempt to effectively overturn the President's Executive order. The Executive order, which sends I think a very, very important and positive message to people in this country, which is that the Government is not going to be on the side of companies that permanently replace workers, companies that quite often force people out on strike, in keeping with a typical pattern—forcing people out on strike when people cannot accept these concessions which are unreasonable; then bringing in permanent replacements; then decertifying the union; and then busting the union. The U.S. Government will not be on the side of union busting.

I think this amendment also brings into focus on the floor of the U.S. Senate a whole question of this Contract With America. I believe that. I do not think that is the intent of the Senator from Kansas, but that is why I feel so strongly about this debate, about this amendment.

I say to my colleague from Wisconsin, what is now going on—actually legislation that is being passed on the floor of the House of Representatives—is beyond the goodness of people in this country. It is mean-spirited, because it targets the citizens who are the most politically vulnerable and who have the least political clout. That is why I have come out with this amendment on children over and over, which the Chair voted for and my colleague from Wisconsin voted for, to get the Senate on record in favor of ensuring that nothing we do this year will create more hungry or homeless children.

When I first came out with this amendment at the beginning of the session, a sense-of-the-Senate amendment, there were some colleagues who thought this is just symbolic. Some people said this is just politics. But, my gosh, look at what has happened on the House side, and what is coming over here to the Senate. We can see what is happening to the school lunch program, the school breakfast program, nutritional programs, the child care centers. Look at the headlines every day. The other day on the floor of the Senate I observed: Here is a front page Washington Post piece with a title, not "Can Johnny Read?" but "Can Johnny eat?" And you begin to wonder. This is not the America we know.

I insist that this debate is all about families. I know my colleague has a question and I will be pleased to yield, but if I can just make this last point. I think, whether we are talking about nutrition programs and children, whether we are talking about Pell grants, or low-interest loans for higher education; whether we are talking about affordable health care or whether we are talking about minimum wage; or the Small Business Administration—guaranteed loan programs, 8-A loan programs and the like—or whether we are talking about jobs, jobs that families can count on, jobs that pay a decent wage with decent fringe benefits—that is the core question here.

On this question I think the administration is in the right. I think this Executive order is extremely important and ultimately it gets down to the question, to quote an old song, "Which Side Are You On?" It happens to be an old labor song sung by Florence Reece—"Which Side Are You On?" Which side is the Government on? Is the Government on the side of companies that permanently replace workers, that crush workers? Or is the U.S. Government, the Government of the United States of America, on the side of working people and working families?

I want to continue to speak but if the Senator has a question I will yield.

Mrs. KASSEBAUM. Mr. President, no, I do not. I would simply, though, make a statement. This is not about the Contract With America. This is not about whose side one is on. I would say to the Senator from Wisconsin, what this is about is the ability of the President, by an Executive order, to change the labor law of the land which has existed for 60 years.

The debate on whether to have a permanent replacement of workers can come at a different time. I am sure it will. It has through the past two Congresses. But that is what troubles me—and I know the Senator from Wisconsin has the floor. It is not a question so much as to state indeed what this debate is about.

Mr. WELLSTONE. Mr. President, I say to my colleague from Kansas that I respectfully disagree. The reason I say that is I do not believe that we can decontextualize this amendment proposed by my colleague from the reality of the agenda that is being pushed by the Republican Party in this 104th Congress. I believe all of the parts are interrelated. That is the way I view this amendment. I view this as being connected to all these other questions. Is there going to be adequate nutrition for children? Whatever happened to affordable health care? Are people going to be able to afford higher education? How come the proposed cuts are so targeted, as Marian Wright Edelman and others have said over and over again, on the most vulnerable citizens? Why are we not willing to raise the minimum wage? And what are we doing, coming out with an amendment that essentially tries to undo an Executive order that only says the U.S. Government ought not to be supporting companies that permanently replace workers, given, I think, a rather bleak and shameful history of the last decade or so as to what has actually been happening to working people in this country?

So I say to my colleague, I respectfully disagree.

Does my colleague have a question?

Mrs. KASSEBAUM. No. I will respond when the Senator from Minnesota yields the floor.

Mr. WELLSTONE. I thank my colleague.

Mr. President, I know the Senator from Iowa will be here in a moment. I will be pleased to yield the floor to my colleague from Iowa.

Mr. President, I would like to just quote from page 1 of a General Accounting Office report published a few years ago on striker replacement in the last 20 years. It is a summary to give some context for my remarks and my response to the Senator from Kansas.

> The number of strikes in the United States during the 1980's was about one half what it was during the 1970's. More specifically, strikes declined about 53 percent in the 1980's compared with the 1970's. They estimate that in strikes reported to the Federal Mediation and Conciliation Service in 1985 and 1989, employers announced they would hire permanent replacements in about one-third of the strikes in both years and hired them in about 17 percent of all strikes in each year. They generally found little difference in the use of permanent replacements by employers in large force strikes.

Mr. President, is this Executive order meeting a real need? Yes. Is there a precedent for it? Yes—ample precedent.

One more time I say to my colleagues that I believe there is a larger significance to this amendment than may originally be apparent. This amendment goes to the very question of workplace fairness. This amendment goes to the very heart of the Contract on America's assault on working families' ability to rely on jobs that pay decent wages with decent fringe benefits. This amendment is an attempt to undo an Executive order, I think, which is narrow in scope and which makes it clear that the Federal Government will not be on the side of companies which permanently replace striking workers. The Federal Government will not be on the side of union busting. The Federal Government will not, through taxpayers' money, support unfairness in the workplace. The Federal Government will side with regular working people. The Federal Government will side with working families.

And while I believe that this Executive order represents a lawful exercise of Presidential authority, I think it also represents something more. It represents a commitment by the President of the United States of America to many, many, many working families in our country.

Please remember, when I say working families, I mean union and nonunion, I mean the vast majority of people in this country who in fact are employed.

At this point, Mr. President, if the Senator from Kansas does not have a question for me, I yield the floor.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I want to respond to several things that have come up during the course of the debate this morning.

First, this amendment is not an effort to embarrass the President.

Second, I feel strongly that this Executive order sets a precedent that we need to carefully examine.

Third, we all care about justice in the workplace and for the workers. But it has been stated that this Executive order will actually restore the balance. That through this Executive order there will be balance that then will be maintained between management and labor. I argue that actually it will totally unbalance the labor/management relationship which has existed over 60 years under our Federal labor laws.

Sometimes it has been abused by management. Sometimes it has been abused by labor. It was stated that if management can hire permanent replacement workers, then it would be very unfair to the strikers. Why would, indeed, strikers not be able to have any voice at that point? Strikes have continued on, and at great loss to those who were striking, where permanent replacement workers have been hired. However, if you were to forbid any permanent replacement workers, then strikes could continue on forever and the workplace could be totally shut down. A business could be totally shut down. Leverage has to be equal on both sides.

I suggest that when discussing this Executive order it is very murky to talk about either Caterpillar or Bridgestone/Firestone because at some point large companies, in fact many companies large or small, have Federal contracts. This would say, if indeed a strike is ongoing—which Bridgestone/Firestone is—and there have been permanent workers hired, it does apply to them.

So I suggest the Executive order will not restore the balance between labor and management. It actually undermines it. This is not a debate about the minimum wage. This is not a debate about Davis-Bacon. This is not a debate about school lunches or child care or welfare reform—all the things that have come into play. It is indeed not about any of these.

I suggest to the Senator from Minnesota, because he cares passionately about this, that there could be a time when a Republican President could issue an Executive order banning all strikes. If you start down this slippery slope of totally disregarding labor law, the legislative authority to enact law, this could happen. Where authority to shape labor law should be is in the halls of Congress where it is determined through legislation.

There has been much talk here about President Reagan and President Bush by Executive order having done the same thing.

If I may, I will just go through this again. The Bush administration did issue an Executive order requiring Federal contractors to post a notice informing workers of their rights under Federal labor law. That is a given. That was not, in any way, changing labor law.

President Reagan, when air traffic controllers went on an illegal strike, did replace those striking workers with permanent replacement workers. There was legislation that followed in both the House and Senate wanting reinstatement of those fired air traffic controllers after a certain period of time, but this legislation did not pass. And that is why we get to the third one, Mr. President, which I suggest might be a little murkier—and I listened to Senator KENNEDY's arguments regarding the prehire agreements.

There are some, in fact, who believe that President Bush's Executive order was illegal although it was never challenged in court. It could have been challenged, just as I assume this Executive order will be challenged. Unlike the case of the prehire agreement Executive order, we are currently faced with a situation where Congress has declined to change the law for more than 60 years. I argue that this striker replacement Executive order has far broader implications. If we continue down what I have said is a slippery slope, I fear we may see future administrations that will then be trying to limit not only the rights of management but the rights of workers as well.

This is not the way we should determine major labor law—by an Executive order. I share many of the sympathies that have been expressed by either the Senator from Wisconsin or the Senator from Minnesota about the desire to see stability in the workplace, the desire for good wages, the desire for those who are working today to know they have a future in that workplace instead of uncertainty from month to month, if not year to year. But this is not the answer. And I suggest, Mr. President, that it creates an imbalance that will cause greater uncertainty in the workplace and greater instability in the workplace, not less.

As we look to the future of trade, productivity, and competition, we want to be able to be partners with both labor and management and try to realize a stable and productive workplace. But through this Executive order, we have undermined, I think, and further eroded a sense of trust and a responsibility that should exist between labor and management.

If we tie one hand behind management's back, or if someone finds a way to tie one hand behind labor's back, we have created imbalance. Who is to say what issue is fair or unfair? It cannot be done here. Many of us argue this about the baseball strike. We have said that Congress should not intervene in these strikes. There must be some credence given to the bargaining table, where management and labor have to come together, I hope, for the best interests of both sides.

That is what this argument is about. It is not about the Contract With America and all of these other extraneous issues. It is about an Executive order that takes away the rights of Congress to, by legislation, enact or reject legislation—in this case, affecting labor law, which has always been our prerogative.

We can have the debate once again on permanent replacement for striking workers at another time and in another forum. But this debate is simply about an Executive order. The reason I add it as an amendment to the defense supplemental is that many of those who have worked with defense contracts are the very workers and businesses that could well be affected by this Executive order.

That is why it seems to me to fit on the defense supplemental legislation before us today. I do not think there needs to be extended debate because I believe we all know what the issue at hand is and how we feel. I would be happy to enter into a time agreement. I would be happy to have the vote in a limited amount of time, and stand willing to do so, Mr. President, if that will be agreed to by the other side of the aisle.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, first of all, I want to make it clear that when it comes to time agreements—and I think this is a sort of fundamental difference we have. This is a central, central, central question. One more time, I say, with all due respect to my colleague from Kansas, first, I think the significance of this amendment goes beyond the Executive order. I think it cannot be contextualized to what I consider to be really sort of an assault on working families and middle-income families in America.

Second, I choose to define the issue differently. Each Senator has to make his or her own decision. But I believe this is a question of whether or not the Federal Government will be on the side of a practice which, unfortunately, has become all too common during the decade of the 1980's and early 1990's, which is essentially demanding concessions of a work force that you know they cannot make, forcing them out on strike, hiring permanent replacements, decertifying the union, and busting the union.

So the question is, is the Government of the United States of America going to use taxpayer dollars to encourage that practice, to be on the side of that kind of practice—the practice of union busting, of breaking unions, of driving many, many honest, hardworking people essentially out of work because they are replaced? I do not think so. I think it is a question of where the Government stands. This Executive order says we ought to have a Government that stands on the side of workplace fairness.

Actually, I heard my colleague from Illinois say earlier that this is but the beginning of what we should have done, which was S. 55, which joined all of the other advanced economies with legislation to prohibit this egregious practice. We would be so much better off—I will not repeat all of the arguments I made earlier—in terms of productivity and labor-management partnerships, and in terms of higher levels of morale.

I ask my colleague from Illinois whether it is his intention to speak on the floor.

Mr. SIMON. No.

Mr. WELLSTONE. Well, let me finish my remarks. I am expecting the Senator from Iowa to be here in a moment.

Let me just clear up this interpretation on Bridgestone-Firestone. Negotiations between Bridgestone-Firestone and the United Rubber Workers began in March of 1994, and the collective bargaining agreement expired on April 24, 1994. The United Rubber Workers called the strike against Bridgestone-Firestone on July 12, 1994. If the Executive order had been in effect, Secretary Reich would have intervened immediately by notifying the company that any effort to permanently replace its workers could cause Bridgestone-Firestone to suffer immediate termination of several million dollars worth of contracts it has with the Federal Government. This action might have been enough to persuade Bridgestone-Firestone not to permanently replace the strikers.

On January 4, 1995, Bridgestone-Firestone permanently replaced 2,300 striking workers, without any warning, by sending letters to the strikers at their home. If the Executive order had been in effect, Secretary Reich could have immediately investigated and made a finding that the company violated the policy in the Executive order, that the executive branch will not contract with employers who permanently replace striking workers, and notified all of the agencies that have contracts with Bridgestone-Firestone that they should terminate their contract. These agencies would have terminated the contracts, again putting pressure on Bridgestone-Firestone to attempt a reasonable settlement of the strike—the same kind of pressure that the strikers were under, I might add—at the time.

It also says, "The Secretary of Labor may pursue a debarment action against Bridgestone/Firestone after the executive order takes effect. The debarment would block Bridgestone/Firestone from getting any new Federal contracts"—any new Federal contracts—"until its labor dispute is settled."

The language is very clear. The interpretation is very clear.

Mr. President, I yield the floor to my colleague from Iowa.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I very strongly oppose the amendment offered by the Senator from Kansas. Instead of passing this amendment, we should be saluting the leadership of President Clinton in providing a good degree of protection for workers that Congress failed to protect last year in the striker replacement bill.

American workers and companies doing business of over $100,000 with the

Federal Government can finally be assured that they will not be permanently replaced if they go out on a strike. While that represents only 10 percent of all contracts, this order will affect 90 percent of Federal contract dollars.

Over the past decade, a worker's right to strike has too often been undermined by the destructive practice of hiring permanent replacement workers. Workers deserve better. Workers are not disposable assets that can be thrown away when labor disputes arise.

When we were considering the striker replacement bill last year, the Senate Committee on Labor and Human Resources heard poignant testimony about the emotional and financial hardships that are caused by the hiring of permanent replacement workers. We heard of workers losing their homes, going without health insurance due to the cost of COBRA coverage, as well as the feelings of uselessness that workers often feel when they are permanently replaced after years of loyal and efficient service.

The right to strike, as we all know, is an action taken as a last resort, for no worker takes the financial risks of a strike lightly. I have never, in all my years, met one worker who would rather be on strike than he would be in the plant working. The right to strike is, however, fundamental to preserving a worker's right to bargain for better wages and better working conditions.

I challenge those who say they support the Wagner Act, and the right of collective bargaining, and yet say that if workers go out on a legal strike, that company can permanently replace them. In essence, that position means that there really is no right to strike; there is only a right to go out and be replaced.

And if there is no right to strike, then there is no right to collective bargaining. Because there is only one thing and one thing alone that the worker brings to the bargaining table and that is his or her labor. They do not have money to bring to the table. They do not have contracts. If they cannot withhold that labor, then there is no real effective bargaining position for labor. Then they are going to have to take exactly what management wants. If they do not take what management wants, then they can go out and strike, but then management says, "We will bring in permanent replacements: you are done and you are out the door."

So what we have in America today is no right to collective bargaining. It is a sham, a phony right.

The kind of rights that workers enjoy in other capitalist societies, whether it is Great Britain or France, all over Europe or even in Japan—and I will have more to say about Bridgestone—workers there do indeed have the right to strike, and they cannot be permanently replaced.

So only in America, the bastion of free labor, the country that gave the world the kind of laws under which labor can exert its legitimate rights and bargaining rights, this country has now taken a step backward of saying, "No, there is no more right to collective bargaining in this country."

Recent studies have shown that the stagnation we have seen in middle-class standards of living is closely correlated with the decline of unions and the loss of meaningful bargaining power. A Harvard University study showed that blue-collar incomes have dropped in constant dollars from $12.76 an hour in 1979, down to only $11.51, a drop of almost 10 percent. If unions represented just 25 percent of the work force, that wage would be nearly $12 per hour.

At the same time, workers are losing the benefits that unions were able to negotiate. Since 1981, fewer workers have health insurance, pensions, paid vacations, paid rest time, paid holidays, and other benefits. Without the bargaining power of a union, companies provide these benefits only out of the goodness of their hearts. Without the right to strike, a right that is theoretically guaranteed by law but that is in fact totally undermined by permanent replacements, workers have virtually no bargaining power left.

The right to replace workers is insidious. If one employer in an industry chooses to cut costs by breaking the union and cutting the workers' salaries and benefits and dignity, then all the other companies in that industry are faced with having to compete against a cut-rate, cutthroat business, or they are going to have to follow suit.

A company has to respond to its shareholders. It cannot be beat by the company that treated its workers shabbily. So, since it has to respond to its board of directors and the shareholders, they follow suit. It is insidious. It is like dominoes. One company starts it, other companies have to follow suit or they are going to lose market share.

Workers faced with being replaced have to make the choice of staying with the union and fighting for their jobs or crossing picket lines to avoid losing the job they have had for 10 to 20 years. Is this a free choice, as some of our colleagues would suggest, or is this not really blackmail? It takes away the rights and dignity of workers in this country.

What does it mean to tell workers you have the right to strike when exercising that right means that you will be summarily fired and replaced by another worker?

This is not about whether a company has to close its doors in the face of a strike. This only concerns the permanent replacement strikers. Permanent replacements are given special priorities in their new jobs, placing new hires above people with seniority and experience. We are not suggesting that replacement workers cannot compete for jobs. They just should not get special rights over and above those of the workers who have devoted their lives to the company.

As a nation, we have a choice: Continue down the path of lower wages, lower productivity, and fewer organized workers, or take the option pursued by our major economic competitors of cooperation, high wages, high skills, and high productivity.

We want to pursue that high-skill path. We must do it with an organized work force. We cannot do it with the destructive management practices of the past decade such as the hiring of replacement workers.

Instead, we need new approaches to management that foster enhanced labor-management relations and cooperative approaches that stimulate employee productivity and enable management to get the most from its employees' skills, brain power, and effort.

Our Nation cannot afford to limit our competitiveness through practices that promote distrust between our workers and our managers. Instead, we must work for the mutual interest of all parties. I believe the President's Executive order is a positive step toward such goals.

Mr. President, this is an issue of particular interest to my State of Iowa. In January, Bridgestone/Firestone, a large employer in the Des Moines area and other Midwestern States, announced the permanent replacement of nearly 3,000 workers involved in the strike against the company for better working conditions and fairer treatment by their employers.

The bargaining sessions had broken down and the employees exercised their legal right to strike. This is Bridgestone/Firestone, and maybe not too many people have heard of Bridgestone, but certainly everyone has heard of Firestone Tire and Rubber Co. Firestone sold out to the Bridgestone Corp., which is a wholly Japanese-based corporation based in Japan, which bought the Firestone Co. and now it is called Bridgestone/Firestone.

Many of the workers at the Bridgestone/Firestone plant in Des Moines are folks I grew up with. I come from a small town of about 150 people. Most of the people in that town either worked at John Deere or they worked at Firestone.

So I know what these people are like. They are good people. They are hard-working people. They are churchgoing people. They support their schools. They have good, strong families.

What does this say to our working people of this country? Certainly we have to understand we cannot just take people like that and throw them out on the trash heap. There is something about dignity, something about the fact that these people put in all these years for this company. And it is not as if they are asking for the sky and the Moon and the Sun and the stars in bargaining.

As a matter of fact, a couple of years ago, Bridgestone/Firestone asked the employees to do certain things, and they did. They asked them to increase their productivity at Bridgestone/Firestone. Let me read a letter from one of those employees sent to me in January of this year. This is quite a long letter so I will not read the whole thing.

Sherrie Wallace is a Bridgestone tractor tiremaker:

> I was raised to respect my peers, act responsibly to my community, do the very best I could on whatever I did * * *.
>
> When Bridgestone came to each of us asking for help because we were not doing as well as the company needed to do, we all did our best. They asked me for one more tire every day and to stay out on the floor and forego my cleanup time. Not only did I respond, so did each and every member of the URW. Not only did I give them the one more tire per day, I gave them three times what they asked for. Our production levels soared. We threw ourselves into our company believing that we all must succeed together in order to create a better way of life for all. The membership joined committees and we became involved, we gave them our hearts. We began to believe this company was different. We gave them our input to create a better working environment. To increase productivity we began to meet our production levels. We were proud of our company and our union. Together, we did make a difference. It is these things that make me wonder why does Bridgestone now demand such unreasonable demands?
>
> This is not an issue of money. It is an issue of work ethics, fairness to your employees, good working conditions, reasonable working hours and benefits.

Now, Mr. President, let me talk about this a second. It is not about money. Let me give one of the things that Bridgestone was demanding of its workers in terms of negotiating agreement. Bridgestone, for as long as I can remember—Firestone since I was a kid growing up—they always had three shifts a day.

I know the present occupant of the chair is from the State of Ohio, and I know they have a lot of industry there. I know that the three shifts, the 8-hour shifts, three shifts a day, has been pretty commonplace in our history of this country. Three shifts a day, 8 hours a day. And as a person goes up the seniority level—obviously, when you start at a plant you get the graveyard shift. Stay there longer, you get the evening shift. And after a while you work up and you get the day shift.

That has been a well-accepted practice in our country for a long time. At least with that kind of working condition, you knew when you went to work, when you came home, you knew when you had time off to be with your family.

Here is what Bridgestone wanted their employees to do; not three 8-hour shifts a day but two 12-hour shifts a day and there would be three shifts. So here is what it would do: You would be on 3 days working 12 hours and then you would be off 2 days; then you would be on 2 days working 12 hours, and you would be off 2 days; then you would be on 3 days 12 hours, and off 2 days; then you would be 3 days on and 2 days off. See what they are getting at?

How would you ever know when you will be home with your family? How could you plan a Little League activity on Saturday or Sunday? You might be home one Saturday, and then you might not be home for a couple Saturdays after that. You might be home in the middle of a week. When you work 12 hours a day, how do you spend time with your kids and family?

I have to say, Mr. President, who knows as well as I do, that a lot of these people, now both husband and wife are working. Take one of them working a 12-hour shift and the other might be working an 8-hour shift someplace else. They have precious little time together. This is what Bridgestone is demanding.

I said Bridgestone is a Japanese company. Do they do that in Japan? No. They have three 8-hour shifts a day, with the seniority system. Would they ask their workers in Japan to go to a rotating 12-hour shift? Not on your life, because they have agreements with those workers. If they tried to do something like that, they would have a strike and in Japan they cannot permanently replace those workers. But they can here.

Well, like Sherrie Wallace said, it is not even an issue about money. But if we want to talk about money, we will talk about it a little bit. A person might think, however, that Bridgestone probably has better productivity and lower wages in Japan. Not true. Productivity is higher here per worker in America.

Mr. President, the average annual wage of a Bridgestone/Firestone employee in Japan is $52,500 a year. The average wage for that same Bridgestone/Firestone employee in the United States is $37,045.

But this issue is not about the money. That is not the point. The point is, what kind of working conditions are they going to have? Are they going to be able to spend time with their families? I might add as a postscript, since the last time I gave this speech on the floor about this—Senator SIMON and I have worked very closely on this—Senator SIMON got hold of the Bridgestone people at their headquarters in Tennessee. They agreed to come back, sit down and talk. And I came out on the floor and congratulated them. I said, "I am glad to see that. Maybe we will get some movement here."

What has happened since that time is the Bridgestone/Firestone people basically came in and said, "Here is our offer, take it or leave it." That is not talking, that is not negotiating.

Since I last took the floor to talk about this, it looks like Bridgestone/Firestone had no intentions to sit down and bargain in good faith or negotiate at all. We thought they were; we hoped they were. The workers even agreed—even agreed—to save their dignity and to save their jobs, they agreed to go to the 12-hour shift. I do not think they ever should have agreed to it, but they did. Guess what Bridgestone/Firestone said? That is not enough. They want further concessions.

I think it is absolutely clear that in the case of Bridgestone/Firestone they only want one thing: Bust the union, drive down the wages to the lowest possible unit they can get, squeeze them as much as possible.

Mrs. KASSEBAUM. I wonder if the Senator will yield for a question.

Mr. HARKIN. I will be delighted to.

Mrs. KASSEBAUM. I do not want to get into a debate about Bridgestone's policies in this country, but wouldn't the Senator from Iowa agree that labor law is very different in Japan? So I think that when you say that in Japan they could not do this, this is because they have different labor laws in Japan and seldom have strikes. I do not think it is an exact comparison about what they may be trying to do in the United States versus the fact they would not do it in Japan. There are many reasons they cannot do it in Japan, is that not correct?

Mr. HARKIN. Is the Senator saying—

Mrs. KASSEBAUM. They do not strike in Japan.

Mr. HARKIN. But they have the right to strike and they can strike and they cannot be permanently replaced. It is against labor law in Japan to have a striking worker permanently replaced.

Mrs. KASSEBAUM. We can debate the differing interpretations of Japanese labor law, but I do think it is different. I just wanted to say that I think it is unfair to compare the two. At some point, I will go into it, but I wanted to make that point. I thank the Senator.

Mr. HARKIN. I appreciate the Senator. I will be glad to engage in more dialog if my friend from Kansas would like to do that. I am not suggesting the labor law in Japan is the same as in United States. I am just saying in regard to this one company, what they are doing here in the United States of America they would not be allowed to do under Japanese labor law. That is all I am saying.

I know labor laws are different, but they would not be allowed to do in Japan what they are doing in this country. That is the point I am making.

I want to make a further point, too, that I do not want to be accused of Japanese bashing. The fact is, most

Japanese companies that operate in America do not operate in this way. In fact, a lot of the Japanese companies that operate here have darn good working relationships with their workers, with organized labor. They have sat down at the bargaining table and have bargained in good faith. In fact, in many ways, they have been better than some U.S. companies, as a matter of fact.

I am not saying this is endemic of all Japanese companies. In fact, this is a rogue Japanese company, quite frankly. I think it is casting a bad light over a lot of other Japanese companies. We said that to the Ambassador from Japan—and others said it to the Prime Minister when he was here. If you get one bad apple in the barrel, like Bridgestone/Firestone, it can spoil the whole barrel.

I will be glad to engage in any further dialog with the Senator from Kansas on this issue later on, if she so desires.

Again, my point was that Bridgestone/Firestone I do not believe now is acting in good faith. I thought before maybe these were bargaining techniques, to hold out a little bit. We have been through this before. But after the last instance in which they indicated they were going to sit down and bargain and talk and then they just basically said, "Here is our offer, take it or leave it," it indicates to me that if they ever were bargaining in good faith, they certainly are not operating in good faith right now.

I wanted to finish a little bit more of Sherrie Wallace's letter.

You can not know how betrayed we American workers feel. You can not know the hours of fear and heartache we have endured. You can not know how we fear for our safety when we are on the picket lines. We are just average family people pursuing a dream called the "American dream."

Many of us in the plants have injuries that we have substained because of our employment at Bridgestone. Back injuries, muscle tearing, joint replacement, arm injuries, carpal tunnel, cancer and asbestosis these are just a few. Many of our brothers and sisters have died because of conditions at these types of companies. Many of us just can't get another job. Who would hire half a man or woman. We can't stand to lose our jobs. There is no place else to go. Many of us are unfit to work anywhere else. Where do you go to work when your arms hurt you so badly you finally have to have surgery. Yet knowing full well you will never fully recover from the physical and mental abuse you have endured. You know that the pain will never fully go away. Your physical abilities will never be the same. It is unconceivable that this company would throw you aside like a piece of used up machinery. But they did and they still do.

* * * You see, we are one of those families that both husband and wife work at Bridgestone/Firestone * * *. We both have lost our jobs, our benefits and our livelihood. We have had days and nights of no sleep, wondering where our life is heading. Trying to keep the "American dream" alive with dignity, conviction to stand up for what you believe in and hope * * *.

Mr. President, I ask unanimous consent to print the letter in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JANUARY 8, 1995.

Senator HARKIN.

DEAR SENATOR HARKIN: You have been on my mind since the day I heard you speak in Des Moines, Iowa at our local 310 United Rubber Workers rally in December. I was so proud of you. I was proud that you represented me and my family. You gave me hope for my future when at a time like this there seems to be no bright future. You seem to know my frustrations, my pain and my intense anger towards a foreign owned company who truly treats their American Worker as a second class citizen. In Japan it is illegal to practice those same work ethics that they are attempting to establish in the American Bridgestone Memberships.

I was raised to respect my piers, act responsibly to my community and to do the very best I could on whatever I did. So it is very hard for me to understand their lack of respect for their American laborer.

When Bridgestone came to each of us asking for help because we were not doing as well as the company needed to do. We all did our best. They asked me for one more tire everyday and to stay out on the floor and forego my clean-up time. Not only did I respond, so did each and every member of the URW. Not only did I give them the one more tire per day, I gave them three times what they asked for. Our production levels soared. We threw ourselves into our company believing that we all must succeed together in order to create a better way of life for all. The membership joined committees and we became involved, we gave them our hearts. We began to believe this company was different. We gave them our input to create a better working environment. To increase productivity we began to meet our production levels. We were proud of our company and our union. Together we did make a difference. It is these things that make me wonder why does Bridgestone now demand such unreasonable demands?

This is not an issue of money. It is an issue of work ethics, fairness to your employees, good working conditions, reasonable working hours and benefits.

You can not know how betrayed we American workers feel. You can not know the hours of fear and heartache we have indurred. You can not know how we fear for our safety when we are on the pickit lines. We are just average family people persuing a dream called the "American Dream."

Many of us in the plants have injuries that we have substained because of our employment at Bridgestone. Back injuries, muscle tearing, joint replacement, arm injuries, carpal tunnel, cancer and asbestosis these are just a few. Many of our brothers and sisters have died because of conditions at these types of companies. Many of us just can't get another job. Who would hire half a man or woman. We can't stand to lose our jobs. There is no place else to go! Many of us are unfit to work anywhere else. Where do you go to work when your arms hurt you so badly you finally have to have surgery. yet knowing full well you will never fully recover from the physical and mental abuse you have indurred. You know that the pain will never fully go away. Your physical abilities will never be the same. It is unconceivable that this company would throw you aside like a piece of used up machinery. But they did and still do!

Please do not let forty-six years of continued bargaining for better wages, vacations, working hours, working conditions, health benefits and retirement, everything a union stands for, be destroyed in one six month struggle with one foreign owned company end. Because in reality the Japanese owned Bridgestone tire manufacturer wants an economical advantage over the other American tire manufacturers that are doing fine with the same contracts we are striving for. In the process they will undermine those businesses causing a domino effect, which will undermine American economics. If this is let to happen the process will undermine those American businesses causing them to do the same thing this Japanese company is doing which in turn will undermine the American economy.

Where do you go to work when you have worked thirty-three years at Bridgestone? You are to young to retire and no one else wants you because you are too old for them. What do you do? There is no money coming in, no job, and no hope of a decent job. You lose your home, your car and sometimes through all the tears and frustration you lose your wife, and if your young enough, your children. What do you have left? You have even lost your self respect.

What about if both parents work at Bridgestone. The entire family becomes a disfunctional family. Even young children feel the pain. These are not scenearious, they are true life stories.

The Japanese tire companies in this country got together and became the unholy alliance. Their goal was to try and break the membership. They deliberately set out to undermine our contracts, our work ethics and to destroy our integrity. The other Japanese companies failed to accomplish their entire goals because they are small companies and could not economically continue to lose their cash flow. Bridgestone has several tire manufacturing plants in foreign countries. It is those plants that are supporting them now. The greatest concern I have is knowing that we are not the first union that will have this problem. There will be more union brothers and sister that will fall.

I am so perplexed—why hasn't our government seen the dangers and helped her people? Why doesn't our Congressman help? Why do not our leaders that we elected into office see that her American working middle class people need their help? What is it we have to do to get your help? Violence has already broken out. Have our congressmen forgotten why we elected them? There is a great need for a change in our laws. We need laws to protect our working citizens and to prohibit replacement workers. We need our Congress, governors and President to take off their blinders. Stop turning the other cheek. We need you now!

Please please help this kind of thing to never happen again. This is just a beginning of a big war with foreign owned businesses to continue to strip American workers of their dignity, their values and to undermine the American family.

Please restore my faith in our American Government! Let me see that our people still are important to you. Let me see that the little guy is still in your hearts and minds. Please help me keep the pride in my heart when I help my son study his American history. When we read about the famous ride of Paul Revere or of Ben Franklin the father of knowledge and George Washington the father of our country that the tears of pride and joy fall down my checks and when he sees them I can smile and tell him this great nation and her great leadership is still that strong, determined, fair and brave people they were two-hundred years ago. Do not let him see the tears of pain that I now cry and the dispair I feel show in my eyes. You see, we are one of those families that both husband and wife work at Bridgestone/Firestore in Des Moines, Iowa. We both have lost our jobs, our benefits and our livelihood. We have had days and nights of no sleep, wondering where our life is heading. Trying to keep the "American Dream" alive with dignity, conviction to stand up for what you believe in and HOPE * * *.

Please hear our plead for help * * * Over 25,000 employees, spouses and children will be effected by this one American-Japanese incident. If this is not stopped, more heartache will follow. Please don't let us down! May God be with you.

Sincerely in hope,
SHERRIE WALLACE,
Bridgestone Tractor Tire Builder.

Mr. HARKIN. Mr. President, that is a letter from the heart. This is not a canned letter. That letter comes from the heart. I do not believe I know Sherrie Wallace personally, but I sure know a lot of people like her, and I know some of my cousins are in the same situation. It tears your heart out when you see them and when you talk to them. These are people who have given their lives—like I said, it is not as if they were shirking, it is not as if they were cutting down on productivity. In fact, the productivity at that Bridgestone/Firestone, as Sherrie Wallace has said in her letter, has gone up in the last couple of years.

The company they went to the State of Iowa in the 1980's and said, "We need some help, we need government help or we can't exist. We have all these workers here and, oh my gosh, we have to have government help."

Here is what they asked for: They asked for grants of $1 million from the State; $300,000 from Polk County; $100,000 from the city; $100,000 from Iowa Power; $50,000 from Midwest Gas. They asked for that in May 1987, and in June 1987, they received all the grants.

In July 1987, they got their $1 million from the State of Iowa. That same year, they went to the workers and said you have to take cuts or we cannot exist. So the workers took another $4 an hour cut in wages and benefits in 1987. So they asked the workers to produce more. In October 1993, the Des Moines Bridgestone/Firestone plant profit was $5 million ahead of their budget schedule. In March—get this now—1994, the workers reached a new high of 80.5 pounds per man-hour and set an all-time record for pounds that they had in the warehouse.

The company boasted that they did it with 600 fewer workers. So like Sherrie said, they came and they said build me an extra tire a day. They went out and built three extra tires a day. They asked them to take wage cuts. They did. They took wage cuts, actually in the latter part of the 1980's, totaling over $7.43 an hour. So they increased their work productivity, took their wage cuts, and Bridgestone/Firestone gets almost $1.5 million in grants from State and local governments.

And in March—this is important—of 1994 they reached this record production level, an all-time record for pounds warehoused. And guess when it was that Bridgestone/Firestone said they would not negotiate further and forced the workers out on strike? You got it, the summer of 1994. After they had pushed their workers, got the production up, got all this stuff warehoused, then they said: OK, now we are not going to bargain with you to reach an agreement.

I have said it before, and I will keep saying, I think Bridgestone/Firestone is perhaps the prime example of corporate irresponsibility and bad faith more than any company I have ever seen in this country.

Again, these are very hard-working people. Times are a little better. The company is making a good profit. Workers just want fair treatment. That is all they want.

What did President Clinton say in his Executive order? He said something very important to the workers at Bridgestone/Firestone. He said we are not going to continue to take your tax dollars and then use them in the Federal Government to buy from Bridgestone/Firestone those tires since they will not even negotiate in good faith with you.

I think that is the right decision. I am proud of President Clinton for making that decision. I think the workers who work at that plant ought to have the assurance of knowing that their dollars are not going to buy those tires for the Federal Government.

The President's action is entirely lawful, fully within his authority, and conforms with the practice of previous Republican Presidents in labor issues. President Bush issued Executive Order No. 12818 in October 1992 that prohibited prehire agreements in Federal contracting. These are collective bargaining agreements that set labor standards for construction work prior to the hiring of workers. Yet, I did not hear any of our colleagues on the other side of the aisle complaining then that President Bush had exceeded his authority. That's because he issued an Executive order that came down on the side of business, not on the side of workers.

President Bush also issued an Executive order to implement the Beck decision concerning the use of union funds for political purposes despite legislation that was then pending. At that time, Congressman DeLay, who is now the House Republican whip, said that Bush's action was, and I quote, "* * * * an effort by the President to do something through Executive order that he cannot get Congress to do."

What is sauce for the goose is sauce for the gander. When the Republicans controlled the White House and not the Congress, this kind of Presidential policy happened all the time. Back then, I did not hear a peep from our friends on the other side of the aisle concerned about a President stepping on the prerogatives of Congress. In fact, they applauded the action.

So, Mr. President, although I know it is allowed under the rules of the Senate this amendment is not in the best interests of the workers of our country. It is not in the best interests of our economy. It is not in the best interests of labor relations in this country. The President has the authority. He acted lawfully.

The fact is, we had the votes to pass the striker replacement bill last year. It passed the House. President Clinton said he would sign it. It came to the Senate. We debated it. We voted. We got 53 votes on a cloture motion, seven short of the number needed. But the majority of the Members of this body voted to pass the anti-striker-replacement bill. So it is not as if the President did something that Congress was totally opposed to. A majority of Congress supported that action.

This amendment is one I think we are going to have to talk about, and I do not think it is in the best interests of this country. I think we ought to reject it.

There are those, Mr. President, who might say that the workers at Bridgestone/Firestone have not been permanently replaced. I have a letter here from Gary Sullivan, and it is a copy of a letter that was sent to him by—I think the name is Lamar Edwards, labor relations manager for Bridgestone/Firestone. Here is what the letter says:

> On January [and then it is handwritten in] 19, 1995, you did not report to work because you were on strike and you were permanently replaced. Please address any questions you have to the Labor Relations Office.

Not even "Sincerely," just "Lamar Edwards, Labor Relations Manager."

Gary Sullivan wrote me a note on this letter.

> This is all I'm worth after 24 years of devoted and loyal service. Please continue to hang in there. We need your help. Gary Sullivan, Sr.

Not even so much as a thank you for 24 years. No thanks for increasing productivity, no thanks for taking the wage cuts you did in the 1970's to help get the company back on its feet. No thanks for your tax dollars that came from the State of Iowa or the county of Polk to give us grants to help get us back. No, nothing like that. Just out the door.

There are those who are saying these people have not been permanently replaced. Well, here is the letter. I ask unanimous consent that a copy of this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

This is all I'm worth after 24 years of devoted and loyal service. Please continue to hang in there, we need your help.

P.S. I'll help you all I can on election day.

GARY R. SULLIVAN, Sr.

G.R. SULLIVAN,
Des Moines, IA:

On January 19, 1995 you did not report to work because you were on strike and you were permanently replaced.

Please address any questions you have to the Labor Relations Office.

LAMAR EDWARDS,
Labor Relations Manager.

Mr. KENNEDY. Will the Senator yield on that point?

Mr. HARKIN. I am delighted to yield to my colleague.

Mr. KENNEDY. Mr. President, I have been listening to the Senator from Iowa and I certainly hope my colleagues have paid attention to the last few moments of the Senator's presentation. I hope they listen to the whole presentation, but particularly the latter part of it highlights what this debate is really all about.

As I understand it—and I would appreciate the Senator correcting me—here was a person who had worked for a particular company over virtually a lifetime. The company was successful, and reaped large profits. This worker tried to enhance his own and his family's economic condition—trying to at least participate in the growing success of his company—by using the accepted, standard practice in this Nation since it has been a great industrial power, of joining with his colleagues to advance their economic interests and the interests of their children in a company that had been very successful. And he was virtually fired—although technically that is illegal under the National Labor Relations Act. But effectively, that person was thrown out of that job, terminated and permanently replaced, in terms of any chance for the future.

We are talking about hard-working families, people who are playing by the rules, people going to work, trying to educate their children, and effectively they are dismissed, put out on unemployment compensation and perhaps even onto the welfare rolls.

As I understand it, what this Executive order says is that we are not going to tolerate that. This President is not going to tolerate that kind of activity when it comes to Government contracting, where there is a Government contract which is effectively being paid for by the people's taxes. Under the Executive order we are not going to perpetuate that kind of injustice to workers who are being treated like that.

My understanding is, the order only applies if there is a legitimate strike—we are not talking about the termination of the contract. My understanding is further that it is only in these circumstances, as in the example the Senator from Iowa gave, where we have someone who has been a hard-working person, effectively replaced, thrown out of his job. And what this Executive order is saying is that we are not going to use American taxpayers' funds to encourage or support or perpetuate that kind of activity in the United States of America. When it comes to the taxpayers' funds, this President has a responsibility, and he is not going to continue to support or encourage that activity; he is saying: in those circumstances, we will not grant contracts to those kinds of companies.

Am I correct in understanding what the Senator's position on this is?

Mr. ABRAHAM assumed the chair.

Mr. HARKIN. The Senator from Massachusetts is absolutely right. He has distilled it down to its essential points.

It really says something. I do not know if the Senator was here when I was reading the history of Bridgestone/Firestone. They went to the State of Iowa and they got all this money, taxpayers' money, to build their plant up. Then they asked the workers to take all the cuts in wages. Now they are out on strike and replacing them.

It is all right for them to get taxpayers' money, I guess, in order to get their plant up and working. Then they go ahead and fire the very workers who paid those taxes. But it is not all right for us to say that taxpayer dollars are not going to be used to buy products made by a company that refused to bargain reasonably, that treated their loyal workers like used-up equipment.

Talk about a double standard. We are saying: Listen, Bridgestone/Firestone, you already had your hand in the till. You already took money before from the State government—I say, not the Federal, the State, county, and local government. Then you cannot be complaining now when we are saying we are not going to use taxpayers' dollars to enhance your position.

Mrs. KASSEBAUM. Mr. President, I wonder if the Senator from Iowa will yield for a moment, again?

Mr. HARKIN. Yes.

Mrs. KASSEBAUM. Mr. President, in response to the Senator from Massachusetts saying a family had worked a lifetime at Firestone, is it not correct to say that Firestone was going broke when it was purchased by Bridgestone? So the future of the workers at the old Firestone Co. was in some jeopardy at that time. Not to go into, again, a lengthy debate on the practices of Bridgestone, but, at the time the whole issue was not wages so much as hours. The Senator from Iowa has already discussed that. But they said they needed to do the shift in hours to cover capital costs.

When you mentioned what Iowa chipped in and asked the taxpayers to spend in support of Bridgestone. Was that not something that was debated, at least, in the Iowa Legislature? Or was it a decision made by the Governor, I suppose, on how much taxpayers' support would be given to Bridgestone at that time? It was not something that was done without some approval somewhere along the line, isn't that correct?

Mr. HARKIN. Absolutely. I think the legislature, I think Polk County, all agreed to give them these dollars, these grants.

Mrs. KASSEBAUM. So these very workers who were in jeopardy of losing their jobs because the company was going bankrupt now have at least had an opportunity, if they so chose to do so, to work for a company that is productive and is going strong.

Whether or not they should have done it by replacing striking workers, I would argue, is not what we should be debating here. I suggest to the Senator from Iowa, we can have this debate at another time.

But what we should be debating here is something that follows on just the past weeks and months of debate that we have had on the separation of powers regarding the Constitution. That is why I feel we ought to take seriously this Executive order.

I do not mean to intrude on the time of the Senator from Iowa, but I think that if you get into the particular situation of Bridgestone/Firestone it was not a question of long-time workers somehow being forced out in the cold. There was a great tragedy that Firestone was teetering on the edge of bankruptcy and was going under. But I would like to go back to the fundamental issue here, which really is the separation of powers.

I yield and thank the Senator from Iowa.

Mr. HARKIN. I would just respond by saying I do not know where the truth lies in this. But I would say to the Senator from Kansas, there is some evidence that the Bridgestone Corp. overbought. They overpaid for Firestone. As a result of that, they tried to get in a more competitive mode by doing the things that I mentioned.

For example, they asked the union members to take $7.43 an hour cuts, from 1985 to 1990.

They got their taxes reduced in the county in which they reside. They got the grants to get going again. And, as Sherrie Wallace said in her letter: We were willing to do that to save our jobs. They asked me to produce one more tire a day, I produced three more tires a day. As I pointed out, in March of last year they reached an all-time high for productivity. So the plant is making a lot more money. They are much more profitable. Yet, they are not sharing some of these profits with the workers. The workers took their cuts, I respond to my friend from Kansas, in the 1970's; big cuts. The taxpayers coughed up a lot of money to get this plant going and to help Bridgestone make it. They have now made it. No one—not even

Bridgestone—is claiming that they are not making good money now. They are making a lot of money. They are very profitable.

So instead of saying, OK, Mr. Sullivan. You have worked here for 24 years. You took a lot of cuts in the seventies. We got our plant going again. Instead of saying we are going to raise your wages a little bit, give you a little bit better deal, no. Take more cuts. Instead of working 8 hours a day, we will make you work 12 hours a day. That is what they are saying to them.

I again point out to my friend from Kansas that I have cousins working all over the place in the tire industry. I have a cousin who is one of the negotiators for Armstrong Tire, another tire company in Des Moines. They went out on strike. But they got back together and they sat down and negotiated. They reached an agreement. Goodyear did the same thing. They reached an agreement.

But then what this company has come in and done—that is why I talk about this kind of path the company is taking—is insidious because Bridgestone/Firestone is able to do this. They have put Goodyear and Armstrong and Dunlop at a competitive disadvantage. Goodyear acted in good faith. They went out and bargained. They reached agreements. They signed a contract. The Goodyear workers are happy. They are organized, union, and everybody seems to be happy with them. And Goodyear is making money. But now Bridgestone comes in and undercuts them with this kind of depressing of wages and getting rid of longtime workers. What is Goodyear going to do? What are they going to do? They say, well, they have to answer to their shareholders, too. That is what is so insidious about this.

Mrs. KASSEBAUM. Mr. President, I say to the Senator from Iowa that I cannot disagree with what he is saying. But then, would you turn right around and say that the President of the United States should enter into and completely change the dynamics by intervention? I think what we are debating about is what authority the President has to tilt the balance of what we really have felt was a balance. And I am sympathetic with what the Senator from Iowa is pointing out; that Goodyear worked it out and they did not at Bridgestone. But I argue that through this Executive order we now find the President completely intruding in a labor-management relationship. If we find legislation to decide to do so and have that debate and vote, that is a different matter. But I think the Senator from Iowa certainly recognizes that we have some question about what is in the Constitution and the separation of powers between the executive and the legislative branches.

As much as I am sympathetic with the argument that the Senator from Iowa is pointing out, the argument I would want to make on this amendment is the way we are trying to intrude on law that does exist. That is my point. I think the case made is one that obviously resonates, but this is the wrong way to handle it.

Mr. HARKIN. Mr. President, again the Senator was here in 1992 when President Bush issued Executive Order No. 12818, October 1992, that prohibits prehire agreements in Federal contracts. These are collective bargaining agreements that set labor standards for construction work prior to the hiring of workers. Again, this is labor-management agreement. Yet, we interfered. Maybe the Senator did speak out against that at that time. I do not remember.

Mrs. KASSEBAUM. Mr. President, did the Senator from Iowa speak out against it?

Mr. HARKIN. No. Because there are times when a President can, in fact, issue Executive orders. I am not speaking out against this one either.

Mrs. KASSEBAUM. Mr. President, let me suggest to the Senator from Iowa, that there were those who questioned the legality of the prehire Executive order, but never challenged it in the courts. While it was a bit questionable in my mind, I did not challenge it.

But I think in this case we have a situation where Congress has addressed striker replacements the past two Congresses, and labor law matters generally for over 60 years. We can argue whether President Bush's prehire contract Executive order should have been challenged. That is debatable. As the Senator says, he did not challenge it because he agreed with it. I would suggest President Bush's prehire contract Executive order has worked successfully. In all honesty, Mr. President, I probably did not think about it much at the time. But I suggest that this Executive order goes even further. That is my concern.

Mr. HARKIN. Again, I appreciate the frankness of the Senator from Kansas. To be honest, I did not know about it myself. I am saying that these things take place by a President. Quite frankly, they have a right to do so in these kinds of situations.

It just seems to me that President Bush issued this Executive order, the one on the Beck decision, and the whip on the House side said that a President will do something by Executive order that he cannot get Congress to do. This is the same thing here, although in another way Congress wants to do something about striker replacement. The House passed it last year. The Senate voted 57 votes. It is only because of the filibuster rule that we were unable to pass it and get it down to the President for his signature.

So again, I say to the Senator from Kansas that I think we have every right for the President to do this. It is perfectly lawful. But this is not really the place for this amendment. We are on the supplemental appropriations bill. This is not the place for this kind of an amendment.

Again, Mr. President, I close my remarks by saying that we just cannot continue to use taxpayer dollars to subsidize—that is exactly what it is any way you cut it—companies that say to those same taxpayers I do not care how long you have worked here, and I do not care if you are exercising your legal rights, we do not care. We are going to permanently replace you. Well, I think it is time for us to say that we are not going to subsidize them anymore. That is exactly what we have been doing. That is what President Clinton's Executive order does. I wholeheartedly support it. I think it is a step in the right direction and a courageous decision by the President.

I am going to do everything in my power as a U.S. Senator, regardless of how long I have to stand here, how many days it takes, to make sure that Executive order can go forward and this amendment is defeated.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank our friend and colleague for his excellent presentation on this issue and for the focus that he has brought to this issue. The fact of the matter is that the President is entitled to make these judgments. In terms of his contracting authority, the President is charged with oversight of billions and billions of dollars. The President has the responsibility to be sure that we are going to get a dollar's worth for the dollar expended.

What basically is at risk here is quality. The fact is, that when you have replacement workers, and you have individuals who do not have the appropriate training, who do not have the necessary skills, who do not have the ability, you are putting at serious risk the results and the quality of the purchases. We have seen that time in and time out. One of the great authorities on this is a fellow named John Dunlop, who is not a Democrat, he is a Republican. But when the issue comes down to being sure that we are going to have decent wages for skilled workers, he comes down against the permanent replacement of strikers because he knows that it is not just the dollars and cents of a particular wage, but about the competency of the individual, the skills they have, and the oversight of their performances. The President has the responsibility and he is exercising it. He is making a judgment that these replacement workers may be individuals who do not have the skills or the background to do the job, and as a result the Federal Government's investment is threatened.

So I believe that the President has taken wise, sound action. I must say, as I was listening to the Senator from Iowa make his presentation, I was thinking back on the testimony of Cynthia Zavala, who testified in March 1993 before our committee. It is a similar story to the story recounted by the Senator from Iowa. Here is what she said:

> I live in Stockton, CA. I am 52 years old and I have four children, 11 grandchildren, and 1 great grandchild. I have been employed at Diamond Walnut Processing Plant in Stockton for 24 years, starting in 1961, with several breaks when I had my children. During my years with the company, I worked my way up to cannery supervisor. My husband also worked for Diamond for 33 years.

So they have 57 years between them.

> I have always worked hard for the company. They called me "Roadrunner" because I always moved so fast. Everybody in the plant always worked hard. We felt a lot of pride in our work. We took a personal interest in the products. That is why, in 1985, when the managers came to us and said the company was in trouble, we agreed to cut our own pay to help save our company. It was hard for us. People who had been with the company for 20, 30 years would have to go back to what they earned maybe 10 years ago. Most of us only got between $5 and $10 an hour. We had responsibilities and families to think about.
>
> Well, we felt that Diamond Walnut was our family, too. The managers said if we stuck by them, they would stick by us. Some people ended up taking pay cuts as high as 40 percent. After those cuts, we worked even harder; production levels were up. This allowed us to double our productivity and cut the work force in half, from 1,200 to 600, at the same time.
>
> In 1990, I was picked to be employee of the year, along with another supervisor. I felt like the award was really for the whole department. We broke the production record on the line that year. Our hard work paid off for Diamond Walnut. The next year, the net sales reached an all-time high, $171 million. The growers' return on their investment was 30 percent.
>
> Our contract was up for renegotiation, and we felt sure the company would be ready to repay us for our sacrifices and hard work. Instead, the company wanted to cut our pay even more. They offered a small hourly increase of 10 cents, but they were going to turn right around and take twice that away by making us pay $30 a month for our health coverage. The managers started coming to the production line and brought young men from the outside with them. They wanted to know how we did our work, how they could watch, but they weren't allowed to touch the machines.
>
> We knew they were getting ready to replace us. We would go home sometimes at the end of the day and cry because they were forcing us to train the people who were going to take away our jobs. We tried to get the company to be fair. We knew our lower-paid people were just getting by. We were down to $5, $6 for full time. Seasonal workers were getting $4.25 an hour with no health benefits. We knew we could not take another pay cut, but the company said, "Take it or leave it."
>
> We had never gone on strike before and we had been in the union almost 40 years. We felt the company gave us no other choice, so we went out. The next year, the company put the scabs to work on the line. The long-time, loyal workers—75 percent of us women and minorities—ended up on the picket line fighting for our jobs. That was September 4, 1991, 18½ months ago. We are still trying to get our jobs back. They told us we were not wanted. Their loyalty is to the replacement workers.
>
> We still can't believe this happened to us. We thought we had the right to strike to defend ourselves from being exploited by the company. As the months go by, many strikers are losing their homes, their cars, and are getting behind in their bills. Some of us could not afford to pay for insurance, so we have had to skip going to the doctor and hope we wouldn't get sick. Two weeks ago, one of our workers died, without health insurance. We try to cheer each other up. We work toward the day we get our jobs back. We hold prayer meetings on the picket line every Tuesday.
>
> While we are struggling to get the jobs back, the U.S. Agriculture Department has given Diamond millions of dollars in subsidies to help the company sell more of its product in Europe. Diamond now sells 40 percent of its walnuts in Europe. The people I talked to were shocked about what Diamond Walnut has done. When I told them the U.S. Government has allowed the company to hire permanent replacements, they didn't believe me and made me repeat the whole story.
>
> The union has been working very hard to help us but we need our Government to help us, too. If the law says we have the right to strike without being punished, then how can Diamond Walnut get away with replacing us? I have dedicated 24 years of my life to Diamond Walnut. I will work hard for the company when I get my job back. I believe in our country, in justice and, most of all, I believe in God. I believe that Congress and President Clinton will do the right thing this year.

By God, he has done the right thing this year. He has done the right thing. He is saying that we are not going to provide those additional funds for Diamond to go ahead and expand their product overseas, while at the same time holding these hardworking Americans by their necks and denying them the opportunity to even be able to go into negotiations and collective bargaining. That is what we are talking about here.

That is why I am amazed that this is the first issue to come before the Senate in this Congress that concerns working families. Instead of trying to help them, we are talking about further disadvantaging people making $5 or $10 an hour. We are talking about the "Cynthia Zavalas."

Why are we having this debate now? Why are we delaying the important appropriations necessary for our national security in order to shortchange Cynthia Zavala? That is what I am wondering. That is what I am wondering. It is wrong. We are just talking about the condition of working families.

I will be participating in a forum tomorrow morning on the proposed increase in the minimum wage. We are not out here this afternoon offering an amendment to increase the minimum wage. But tomorrow, we are going to provide an opportunity for some individuals to speak to us about the needs of people like Cynthia Zavala, whom I just talked about here.

We are going to hear from Barbara and Bill Malinowski, owners of the Yum-Yum Donut Shop in Waynesburg, PA. A former mineworker who lost his job when U.S. Steel closed down the mine, Bill and his wife Barbara bought a doughnut shop which now employs 14 people. As small-business employers, they support an increase in the minimum wage.

We are going to hear from a small businessman and woman who lost their jobs. They lost their jobs. We are talking about people trying to make it in America, who are playing by the rules, and they want to work. This issue is about working. We are talking about protection of workers' rights—not about people who don't want to work. When we talk today about workers' rights, I am reminded that we are not even talking about giving working families in America a livable wage. That is not the issue before the Senate. That is not the issue in the Contract With America. That is not here. We are talking about taking away protections for workers like Cynthia Zavala.

The Executive order does not promise Cynthia Zavala her job back, but it says that we are not going to see the Department of Agriculture use millions of dollars of taxpayers' funds that come from my State that represent the toil of workers in my State to go out and help this company shortchange Cynthia, slam the door on Cynthia. Fifty-seven years your family has given to that company and they have slammed the door on you. All we are saying is they are not going to get another bonus. But now we have an amendment on the floor of the U.S. Senate to stop that simple act of justice.

At tomorrow's forum, Americans will also have a chance to hear from Barbara and Bill Malinowski. Bill is a former mineworker who lost his job, but now he employs 14 others and, as a small employer, supports increasing in the minimum wage.

We'll hear from Nancy Carter, from Monaco, PA, in Beaver County, near Pittsburgh. Mrs. Carter's husband has had little success finding work after losing his job of 27 years in 1979, when the St. Joseph's Mineral Co. shut down. The family has been on and off unemployment and welfare as they struggle to find work. Their adult children help support the family at jobs at $4.50, $5, and $5.50 an hour.

These are the kind of working Americans we are talking about. With all the other kinds of problems and challenges that we face in this country, our friends across the aisle want to pass legislation to diminish the rights of workers.

David Dow, a pizza shop worker and parent, from Southfork, PA, near Johnstown. David and his wife work at low-wage jobs, staggering shifts to accommodate child care needs of their two children. They are trying to make it, working at low-wage jobs, staggering their shifts to accommodate child care. And now in furtherance of the Contract With America, the House has voted to diminish child care support.

We will have a chance to hear David Dow tell us how he is going to have to look harder for child care if this budget goes through. And if you strike to increase your wages, you are going to get replaced and you may lose your job.

We will hear from Tonya Outlaw, a child care center worker at Kiddie World Day Care, Windsor, NC. Ms. Outlaw is a single mother of two who quit an above-minimum-wage job because she could not afford child care. She is allowed to bring her children with her to her current minimum wage job as a child care center worker.

This is what is really happening in America.

We will hear from Alice Ballance, the owner of Kiddie World Child Development Center, Windsor, NC. Ms. Ballance owns licensed day care centers in rural North Carolina, primarily serving low-income working families. She pays minimum wage but supports an increase.

We will hear from Keith Mahone, a contracted custodial worker from Baltimore, MD. Mr. Mahone, a single father with joint custody of his daughter, is employed at minimum wage cleaning school buildings for a Baltimore city contractor. He is a founding member of an organization which lobbied for the Baltimore living wage law. Effective July 1995, employers under contract with the city must pay their employees a livable wage.

And we will hear from Robert Curry, a small business owner, from Braintree, MA. Mr. Curry employs 60 workers at several hardware stores in the South Shore area of Massachusetts. He supports an increase.

These are examples, Mr. President, of what is happening out there in the work force. We are in the Senate talking about the technicalities of an Executive order, whether the President has the power to issue an Executive order. Well, I believe he absolutely does. That can be contested and it will be contested. I am sure there are many political leaders who would like to contest it and embarrass a President who is trying to provide some degree of protection to working Americans.

And, my God, they need that protection. They need that protection, as they have seen the minimum wage effectively disappear in value over the last several years. These are real families, real workers, people trying to play by the rules, people who want to work to provide for their families, who want to make sure their kids can get a hot lunch at the school; or maybe that their teenage child can get a summer job because it is so difficult to find employment; or maybe their older child, who has been able to make it as a gifted, talented, motivated young person, can attend a good State college.

Is that difficult? Increasingly so. In my own State of Massachusetts, it is more and more difficult for students to attend college.

Mr. President, the larger issue we face, an issue clearly illustrated by this debate, is the issue of whether we in Congress are on the side of the working families across the country, or on the side of the wealthy and powerful.

The amendment before us would put the Senate squarely on the side of the wealthy and powerful corporations and against working men and women exercising their legal right to strike. This is a clear example of the brazen Republican attempts to tilt the balance of labor-management relations in favor of business and against the workers of America.

But this amendment is far from the only example of that kind of bias against working families. In fact, as the Republican Contract With America comes into sharper focus, it is becoming increasingly clear that the first 100 days of this Congress are turning into a 100-day Republican reign of terror against working men and women, against the elderly, and against children in need.

I would like to take just a few moments to cite some of the examples of the harsh approach that our Republican colleagues seem bent on taking.

The House Republicans are not only intent on slashing funds for low-income Americans, they also want to rob them of any opportunity to improve their lives. The rescission package eliminates the funding for the summer jobs program for 1995 and for 1996, too; 1.2 million young Americans from the Nation's neediest areas will be without jobs this summer because of those Republican cuts. In Massachusetts, 30,000 young men and women who were to participate in the summer jobs program over the next two summers will have to look elsewhere for employment.

The summer jobs program is more than just a paycheck. It offers an opportunity to learn the work ethic, acquire real job skills and training, and gain a sense of accomplishment. Why would anyone deny young people that opportunity?

Republicans are not only attacking the poor, they are also assaulting the Nation's cities. The Democratic and Republican mayors of America's largest cities have come out strongly against the elimination of the summer jobs program. They know firsthand how important it is to their local economy because it provides a practical way for private-sector firms to create jobs for low-income men and women.

In my own city of Boston, private sector companies meld their programs with the public service and the summer jobs program. They take young people the first year they work in a summer jobs program, and they bring them under programs developed by the mayor in conjunction with the private sector. Then they search out promising young people in the second or third year of the program and put them in line for a good job with one of several corporations in the Greater Boston area.

This is one of the extraordinary examples of the public and private sectors working together in an effective and efficient summer jobs program. And there are other cities in my Commonwealth that have similar efforts.

Victor Ashe, the Republican mayor of Knoxville and president of the U.S. Conference of Mayors, recently contacted Speaker NEWT GINGRICH and urged him to restore funding for the summer jobs program. Republican Mayor Tom Murphy of Pittsburgh has emphasized that this program would employ 8,000 young men and women this summer in his city to tutor youngsters, assist in food pantries and soup kitchens, rehabilitate housing, and learn the value of community service programs.

Mayor Richard Daley of Chicago said, "The summer jobs program truly makes a difference in our lives, and without these jobs, more young people will fall prey to drugs, costing society even more down the road."

Ask any prosecutor in any major urban area about the value of a summer jobs program as crime prevention. Ask any police officer working on the problems of gangs and violence in local communities and they will talk about the value of the summer jobs program.

This program was developed in the wake of the riots in California. Now perhaps we must relearn the lessons of our time with the cancellation of these programs.

Boston Mayor Tom Menino declared the Republicans' misplaced budget priorities will be billions for prisons, zero for summer jobs, and opportunities. If the Republicans are serious about work, they should begin by restoring funding for the summer jobs program. Perhaps they intend to put these young Americans to work in the orphanages or the prisons they are planning to build.

The House Republican plan also includes drastic cuts in the School Lunch Program, and in nutrition programs for women, infants, and children. As many of my colleagues have stated, the famous cry of "women and children first," is gaining a new, more sinister meaning. Women and children are the first to go hungry, the first to suffer, and the programs that serve them are the first to be cut.

Among the programs under attack are the School Lunch Program, which feeds 25 million children every day with a hot meal; the School Breakfast

Program which feeds 6 million children a day; the WIC Program, which provides food to 5 million women, infants, and children every year, more than 3 million of them children under the age of 5, including about 2 million infants; and the Child Care Feeding Program which provides food to millions of children in child care every day.

These are programs being cut. These are the sons and daughters of the working parents who need the protection that this Executive order provides. Even worse, the Republican plan also lumps into the same block grant program the programs that feed senior citizens, to provide summer meals for schoolchildren, and special supplement nutrition programs for women and infants.

One of the principal criticisms of the feeding programs, the school-based programs, is that they stop in the summer. We have seen efforts to provide continuing services through the summer, so that we can try to make sure that we can adequately support these children. But now we move backward.

This is all against the background of a Carnegie Commission report just a few months ago that talked about the permanent effects in terms of brain development and behavioral patterns of children, over 1 year and under 3 years of age who do not have adequate nutrition.

We talk about the challenges that exist for children in schools today. If we do not provide adequate nutrition for children between 1 and 3, we are permanently damaging the ability of those children to develop their cognitive skills and social skills to survive in a complex, difficult, challenging place called school.

With the Carnegie report, we have just had that evidence presented again by thoughtful men and women, Republicans and Democrats, people who have spent the last 2 years studying this problem. Nonetheless, we see not an expansion of programs targeted toward those children; we see a cutback.

We will hear the answer, "We are consolidating these programs." Everyone is for consolidation. Many are for consolidation. We were hearing testimony just the other day about what consolidation is going to mean.

According to the General Accounting Office, we are talking about at most 5 percent. Maybe 5 percent. We are expecting the States to pick up that 5 percent. Come to Massachusetts. Come to Massachusetts, and I will show you where it is not being picked up.

My colleagues say on the floor of the Senate that those Governors will pick up the slack. But they are not doing it. They are not doing it. And the cutbacks in work-study programs, for example, affect 70,000 sons and daughters of working families in my State of Massachusetts. The State is not helping these sons and daughters of working families. Instead, working families are paying higher fees and tuition to go to school in my State. That is the rule, not the exception.

The health needs of the elderly and the poor will be severely cut back as well. I noticed the other day that as we talk about these working families and their children, we have not even begun to talk about cutbacks in chapter 1, which is the program directed toward the neediest children.

We also ought to talk a little bit about what will happen to the parents of these working families. Child care is being cut back, food programs are being cut back, job opportunities are being cut back.

If these families live in a colder climate, they face cutbacks in energy assistance. This program helps needy, primarily elderly, seniors who would like to retain the dignity of living in their own homes rather than being dependent upon other members of the family, or selling their homes and going to a nursing home, but need some help and assistance with the fuel oil. That program is being cut.

Then we have the chairman of the Finance Committee who has talked about $400 billion in cuts in Medicare and Medicaid over the next 7 years. Cuts of that magnitude will threaten the various academic health centers, the hospitals serving the poor, the other health facilities that are dependent on Medicare and Medicaid. We had the opportunity just a few years ago on the Nunn-Domenici amendment to cap Medicare-Medicaid. It only failed by five or six votes at that time. We almost passed that. It sounded like a pretty good way to cut Government spending. But we know what would happen. We would shift it right back to the States, they would shift it right to the private sector, and they would shift it back to working families who cannot afford it. And we move further away from any sensible health care policy.

So we are talking about our seniors. Our Republican friends propose to block grant health funds in a way that would eliminate the Federal commitment to early detection and screening of breast and cervical cancer. That is an issue that our committee has been working on.

So, Mr. President, I would just advise seniors and others who have incurred higher and higher out-of-pocket medical expenses to keep a very close eye on what happens here in terms of Medicare.

They should also keep an eye on how any Medicare savings are spent. Are they going to finance a cut in the capital gains tax.

We have already heard discussed in our budget committees the path that will lead to significant cuts for the Medicare. I supported the President's program last year that would have included some tightening in terms of Medicare, targeted not just on recipients but also on providers. But those cuts financed important benefits: prescription drug benefits for our seniors, community-based care, home care for our senior citizens. That plan was an effort to take scarce resources in our health care system to make sure they are going to be utilized more efficiently, more effectively, more humanely, and more sensibly.

I listened to my good friend, HARRY REID, today talk about health care. I want to assure him that just because we have not been debating it on the floor of the Senate yet does not mean we are not going to have an opportunity to do so later in this session.

It is not my purpose this afternoon to get back into the reasons for the failure of the health care bill. But hopefully that process can lead to a new bipartisan effort. On the first day of this Congress, Senator DASCHLE introduced S. 7 as a vehicle to explore common ground. It begins to identify the areas where there has been broad bipartisan support for health care reform.

Health care is not even a part of the Contract With America, not even mentioned in the Contract With America, not even referenced in there. But the problem has not disappeared. More and more people are not covered, more and more people are being squeezed, more and more children are failing to get the care they need. The problem is not diminishing, the problem is growing. We need to focus on that issue. We cannot afford to put that matter to the side.

Mr. President, I will come back later to some of the other examples of callous policies being pursued by the new Republican majority. I see my colleague and friend from Illinois here. I just want to say in summation that I am just amazed as we gather here in the early part of March that this is the issue before us. After spending a number of weeks on the issue of the unfunded mandates, which is an enormously important issue, and after several weeks on the enormously important question of amending our Constitution, now we have an emergency measure before the Congress which the Secretary of Defense says we need in a timely way, and yet the matter we are now debating is an amendment to diminish the protections for working families in this country.

It is important as we are having this debate to ask: What has the Congress been doing with regard to working families during the period of the past weeks? What have they been doing? It is important for American families to understand what Congress has been doing. Sure, it is reported this way or that way that we are trying to cut this kind of program to squeeze out administrative costs. Most families are too busy trying to make a nickel to really follow in great detail the path that is being followed in the House of Representatives and in the Senate of the United States.

I have tried in a brief manner, and will continue to do so, to give them some idea of what is happening. Is the measure before us this afternoon going to enhance working families, the families that are hard pressed, the families that are being held back, held down, whose incomes are static, who do not participate in the expanding profits of major companies? Is that the matter we are talking about in this new Congress, how we are going to do something for those families and give them more help, give them more hope, give them a greater future, give their children a greater future? Is that what we are talking about here on the floor of the U.S. Senate this afternoon? Of course not. Tragically we are not. I should not say "of course not," but we are not. We are not. The echo of the proposal that is before the U.S. Senate is not one that is going to resonate in families tonight and lead parents to say, "All right, it might not help me, but at least it is going to help my children."

"It might not help me, but it is going to help one of my children get a job this summer."

"It is not going to help me, but maybe it is going to help my daughter get a better education."

That is not the message. It is not a message that says, "It is not going to do much for me and my family, but for my parents, who worked hard over their lifetime, it is going to mean a little greater hope for them." That is not the message.

What is it saying to all those I mentioned earlier, what it is saying to Cynthia Zavalas, a person just about making minimum wage as part of a family that has worked 57 years in a company? It is saying: You have been permanently replaced, effectively fired, and we are not going to help.

The Executive order will not get her job back, but it says that we are not going to give an additional financial reward to the company that has treated her poorly. That is what we are saying. And it is just because of that simple concept that this measure involving our national security is being delayed.

I am always amazed around here about how we spend our time and what we spend our time fighting for or fighting against. This is one of the examples that really takes the cake.

Mr. President, I see my colleague and friend, and others, on the floor. I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER (Mr. GREGG). The Senator from Washington.

Mr. GORTON. Mr. President, I have come over here to the floor this afternoon believing that the subject was the President's almost certainly unlawful Executive order with respect to striking replacements. I have not understood the debate was going to be on the entire panoply of social programs piled up over the course of the last 20 or 30 or 40 years on the backs of the people of the United States. But I think comments on those programs do deserve at least a certain degree of response.

Last week, many of the most eloquent proponents of a wide range of social and cultural programs voted to reject the constitutional amendment requiring a balanced budget. Many of them, at least, on the grounds that it should be the Congress itself which provides the necessary discipline to protect future generations from the consequences of our propensity to run up huge unpaid debts. And yet when it comes to any criticism, any reduction in even the growth rate of dozens, perhaps hundreds, of those programs, the proponents of fiscal responsibility are denounced as uncaring and indifferent to the needs of the American people.

Perhaps that argument would carry some weight if the growth of those programs had been accompanied by greater opportunities, a higher degree of family stability, more unity—in other words, had been accompanied by some demonstrable success as a result of all of those spending programs.

Of course, the contrary is true. During exactly the period of time during which there have been growing social and economic challenges to this country, deterioration of the society of this country has accompanied the growth of those programs hand in hand.

That does not prove in and of itself a cause and effect relationship, Mr. President, but it certainly makes dubious the proposition so eloquently presented here by the Senator from Massachusetts. The real burden which we have imposed on the people of the United States is the burden of debt, a burden which day after day, week after week, month after month, constricts our ability to provide jobs and opportunities for the people of this country.

We need a change in direction, and the debate here today, as it was last week and the week before, is paradoxically between those who over the years have been known as conservatives but who now believe that radical changes are necessary for this country, and those who have led the drive for all of these social programs, these spending programs, one piled on top of another, who are now so intensely conservative that we hear from them no desire for any change whatsoever, save perhaps to spend more money on programs which have not worked in the past.

The true proponents of the status quo are those who constantly fight against any change in our spending priorities whatsoever, who ask for more of the very programs which have been associated with a decline not just in our society and our economy but even our civility.

I am firmly convinced, Mr. President, that we need a new way, a new direction. The failure to take that new direction, that new road last week has been accompanied in the last week by a substantial loss in the value of our currency, the dollar, a substantial loss in confidence in nations and among people overseas in our seriousness in the retention of our leadership. If we cannot pass a constitutional amendment for a balanced budget, at least we have to be willing to do something about out-of-control spending programs even though we are almost certain to be criticized, no matter how small the changes in our priorities, as being somehow or another unfeeling. We are not unfeeling, Mr. President. It is our set of policies that will provide true opportunity for the people of the country in the future.

And now to the amendment proposed by my distinguished colleague and seatmate, the Senator from Kansas [Mrs. KASSEBAUM].

I believe that, as important as the issue of striker replacement is, the issue of who can make such rules under our constitutional system is even more important. This debate is not so much over the merits or lack of merits of striker replacement as it is over the wrong, and I believe almost certainly unlawful, action of the President of the United States to attempt to impose by fiat, by dictate, a policy which has been rejected explicitly in a long series of debates by the Congress of the United States.

This action, Mr. President, is without precedent. This action is clearly in defiance of laws relating to labor/management relationships dating back some 60 years, expressly interpreted and approved by the Supreme Court of the United States, and debated in each of the last several Congresses without change. And yet, in spite of this statutory history, in spite of this judicial history, in spite of this political history, the President of the United States purports to change those rules. When his action is challenged, Mr. President, I am convinced that it will be overturned by the courts as entirely unlawful and beyond his authority.

However, we should not wait passively, without reaction, to have the constitutional separation of powers be upheld by the courts of the United States. We should take that action ourselves. We should take that action ourselves, whatever our views on the merits of striker replacement, but simply to protect the rights and the duties of the elected representatives of the people of the United States to make fundamental determinations about statutory policies with respect to labor-management relations.

That is the issue, Mr. President, with respect to the Kassebaum amendment.

And it is for that reason that all Members of this body who care about the Constitution and the laws and about the separation of powers should vote for this amendment, whatever their views on the merits of the underlying policy itself.

I am convinced that the Senator from Kansas should be commended. She has a special responsibility as the chairman of the Senate Committee on Labor. She is carrying out her duties under difficult circumstances, knowing that the issue itself is a contentious one, but she by this action has reminded us of our duties which we should now undertake to perform.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I wish to congratulate and compliment my colleague, Senator KASSEBAUM, from Kansas, for her amendment. I think it is regrettable that her amendment is necessary.

I heard one of my colleagues say is this not terrible that here the Republicans are and they have this amendment—this is an antiworker amendment. I totally disagree. This amendment is necessary because of an Executive order by the President of the United States to circumvent Congress and circumvent the U.S. Supreme Court. Congress has clearly stated its will or its desire to keep the law to where employers have the right to hire replacement workers. This President—and the Vice President, I might mention, because I caught part of his speech that he made to the leadership of the AFL-CIO in a speech in Florida—wants to overturn that by Executive order. They want to change law by Executive order.

The President of the United States is President, but he is not king, and he cannot pass law by Executive order. I totally agree with my friend, Senator GORTON, from Washington, who said this Executive order will be determined unconstitutional. It clearly will. It is not a valid Executive order. It will not stand the test of time. It will not stand up in a test in court. Clearly it is the President exceeding his Presidential authority and power, and it is a flagrant abuse of power.

I am reading this Executive order. If my colleagues have not seen it, I would encourage them to read it. Just looking at the Executive order—this is dated March 8—it talks about, in the first paragraph:

> The * * * Government must assist the entities with which it has contractual relations to develop stable relationships with their employees.

Why is that a Federal Government responsibility? It says the Federal Government "must." According to the President's Executive order, they will be forced to.

It goes on to say:

> All discretion under this Executive order shall be exercised consistent with this policy.

"All discretion."

> The Secretary of Labor may investigate an organizational unit of a Federal contractor to determine whether the unit has permanently replaced lawfully striking workers. Such investigation shall be conducted in accordance with procedures established by the Secretary.

We are going to give the Secretary of Labor great latitude to investigate something that he might determine is illegal and, if he so determines, then he can bar them from any Federal contracts.

Let us just take as an example, let us say, a defense contractor. Maybe they are working on building a nuclear aircraft carrier or fighter aircraft planes, the F-16 or F-14 or something along that line. Maybe there is a division within their unit that is having a strike, and that employer has a contract with the U.S. Government to produce those planes on time or to make this part on time so they can stay on time and on schedule and not be overpriced.

You could have the Secretary of Labor determine: Wait a minute, this is a violation. Therefore, you are going to lose this contract.

What if they are 70 percent through with the contract? We are going to get a new contractor to come in and finish the aircraft carrier? We are going to have a new contractor come in and try to pick up with the delivery on the F-16? I do not think so.

Talk about discretion for the Secretary. I was wondering how this section 11 of this Executive order—it says:

> The meaning of the term "organizational unit of a Federal contractor" as used in this order shall be defined in regulations that shall be issued by the Secretary of Labor, in consultation with the affected agencies. This order shall apply only to contracts—

And on and on. So they are going to give the Secretary of Labor total discretion to determine whatever organizational unit might apply. If they have a strike and they hire permanent replacement workers, then they are totally banned or barred from Federal work.

How much would that cost the Federal Government, if you disrupt a contract right in the middle of procuring a particular product or completing a contract? It could cost a lot of money.

Talk about caving in to a special interest group—and I do not say caving in to organized labor, I say caving in to leadership of organized labor. This is not a benefit to benefit labor. This is a benefit to say the Federal Government, under this administration, thinks they should be involved in labor-management disputes.

I heard my colleague say this is not about the underlying issue. One should vote for the Kassebaum amendment regardless of how they feel about striker replacement. I agree with that statement, because clearly the President has exceeded his authority, both against the will of Congress and against previous court rulings.

On the underlying issue the President is wrong as well. Individuals certainly should have the right to organize. They have the right to strike. If they do not want to work, they should not have to work. But, likewise, an employer has to have the right to hire permanent replacement workers to keep the doors open, to keep the plant running, to make the contracts, to meet the schedules, to be on budget or under budget.

Then this President's Executive order says: No, if you hire permanent replacement workers, you are going to lose any Federal contracts, you are going to be debarred, you will not be able to do Federal contracting.

This is an outrageous power grab, and it will not stand the test of time. It should not stand. I hope my friends and colleagues will support Senator KASSEBAUM in her amendment. She happens to be right. I wish it was not necessary.

I might mention, after the President made mention of his Executive order, we wrote the President a letter and said by what authority do you do this? The President does not have the authority to do this. The President does not have the authority to do by Executive order a statutory change, to change the law. Yet that is exactly what he is trying to do. His efforts will not succeed. They should not succeed.

I encourage my colleagues to support the Senator from Kansas in this amendment, and I hope it will prevail.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I wonder if I might ask for unanimous consent to speak for 5 minutes as though in morning business so as not to interrupt this debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE DUCK HUNTING SEASON IN MINNESOTA

Mr. WELLSTONE. Mr. President, this is an announcement I want to make on the floor of the Senate that is certainly important to my State of Minnesota. Today, the Governmental Affairs Committee, consistent with a request that I made 2 weeks ago, corrected an error in the regulatory moratorium bill, that is S. 219, in order to protect the 1995 migratory bird hunting season. I am delighted that my colleagues, Democrats and Republicans alike, responded to the concerns of thousands and thousands of people who participate in the bird hunting season in Minnesota.

When I learned that a provision in the regulatory moratorium bill threatened the 1995 bird hunting season, I asked my colleagues on the Senate

Governmental Affairs Committee to correct the bill. I also introduced a piece of legislation to protect the 1995 hunting season from the moratorium provision. I am delighted to report to the people of Minnesota that the committee took the time to remedy the problem so that Minnesotans can enjoy this cherished annual event. I owe a special debt of gratitude to Senator GLENN and Senator PRYOR for their work on the committee.

Mr. President, in our rush to reform the regulatory process we almost canceled a tradition for this year. Some of my colleagues criticized my efforts to correct the language in the bill. They claimed I was using scare tactics, that this was some kind of political magic show. But now, by correcting this legislation, the committee has made clear that there was an error in the original bill, an error that was overlooked and then vehemently denied for the sake of trying to rush through the Contract With America. Sometimes haste makes waste.

Last week one of my colleagues, a cosponsor of the bill, said that the language in S. 219 exempted the annual bird hunting rulemaking from the moratorium. Perhaps we should note that my colleague was from a Southern State—which from my point of view is fine because I love the South and grew up, part of my early years, in North Carolina. But the normal duck hunting season opens later in the South—I know my colleague from Oklahoma knows this —than it does in Minnesota.

And if the Fish and Wildlife Services' estimated best case scenario proved correct, the original S. 219 would have served to delay the necessary rulemaking, and thus opening the season in Minnesota would have been postponed by no less than 30 days.

Since Minnesotans do the majority of their hunting at the local shoot in early October—our season begins in early October, before the local ducks fly south—such a delay would have effectively canceled a major part of our season. But in my colleague's State, duck hunting season was mid to late November, and therefore might not have been as seriously affected by the delay.

It has always been clear to me that the bill as originally introduced did not protect the 1995 bird hunting season. Despite strong statements that it was never the intent of the bill's sponsors to put the season at risk—and, by the way, I agree that it never was the intent—the language of the bill is what matters most. And now, because of the action of the Governmental Affairs Committee, we have the protection that we need, the rulemaking goes on, and I am very proud of the fact that the men and women in the State of Minnesota and their children can rest assured that we will have no delay or cancellation and that we will have our season.

So this is a sort of thank you to my colleagues and a delivery of a very positive message to Minnesotans.

Mr. NICKLES. Will the Senator yield?

Mr. WELLSTONE. I will be pleased to.

Mr. NICKLES. Just for the Senator's clarification, as original sponsor of S. 219, I would like to inform my colleague that we did have in the original bill an exception for administrative actions. When Senator ROTH introduced the bill for markup, we had an exception for routine administrative actions. Also we have always had exceptions for licensing.

So the arguments that were made by many people—including President Clinton—who said that duck hunting licenses and burials at Arlington cemetery were jeopardized by the moratorium, were totally incorrect. The bill did state—just so my colleague will know— the bill stated and exempted from routine administrative actions—and it exempted agencies in their licensing process—which happens to include hunting and fishing licenses. So they were never in jeopardy. But I know that an amendment was clarified just to make absolutely sure that people in Minnesota would be able to hunt ducks and people would be able to go fishing without any prohibition whatsoever by this moratorium on rulemaking.

Mr. WELLSTONE. Mr. President, I appreciate the comments of my colleague. I want to say to him that I have, of course, heard this before. The key distinction was that the hunting season is not covered by the administrative exemption nor are we talking about licensing. We were talking about the rulemaking the Fish and Wildlife Service undergoes every year to open the migratory bird hunting season. The problem was that the moratorium on rulemaking would affect this hunting rule. That is what I said. The legislators have to be careful with the language. The fact is that the change was made today in Governmental Affairs to make sure that Fish and Wildlife could go forward with that rulemaking and we will have our season. The proof is in the pudding. I am delighted the change took place.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

Mr. WELLSTONE. Mr. President, I would like to respond for a moment, and then defer to my colleagues from Massachusetts and Illinois because I had an ample amount of time to speak this mornings. I will not take more than 5 minutes.

I want to make two points. I made them this morning. I would like to be as concise as possible.

The first point is I think the issue is very clear. Senators can vote different ways on this question. The President's Executive order says that when the U.S. Government has a contract with a company, a contractor which in turn permanently replaces its workers during a strike, then our Government will not be using taxpayer dollars to support future contracts with such a company. It is a simple proposition. Which side is the Government on?

What we are saying is that our Government is on the side of workers, of middle-class people, of working families. It is very simple. One more time it is a shame that our country has not joined many other advanced economies with legislation that would prohibit this permanent replacement of workers. I think we would have passed that bill if not for a filibuster in the last session. That is in fact what happened.

The second point. I think it is extremely important that—as much as I respect the Senator from Kansas, I think she is one of the finest Senators—I believe that her amendment is profoundly mistaken because I think this Executive order is extremely important.

The second point is that I do not think that you can separate this amendment that we are speaking against from the overall Contract With America which has just represented an attack on men and women who are trying to work for decent wages, on children, on the whole question of higher education being affordable for families, on the question of whether or not people are going to be able to afford health care. These issues become very interrelated.

In that sense, this debate and this vote is about more than this amendment. To be able to be work at a job that pays a decent wage so that you can support your family is very closely tied to whether or not you have collective bargaining rights, very closely tied to whether or not you have some assurance that if a company forces you out on strike, if nobody wants to go out on strike, what will then happen is that you will essentially not be permanently replaced and crushed. That is what this is all about, protection for many workers, many employees, and many of their families. That is what this is all about.

For the life of me, Mr. President—I conclude on this because I spoke this morning—I simply do not understand why some of my colleagues make such serious objection to this proposition.

I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I spoke earlier today in opposition to the amendment by the Senator from Kansas.

I would like to point out a couple of things. I mentioned this morning that permanent striker replacement is against the law in a number of countries, and someone apparently has since questioned whether that is true in Japan because I list Japan as one of the countries where it is illegal.

Let me quote article 7, section 1 of the labor union law of Japan.

> The employer shall not engage in the following practices: (1) discharge or show discriminatory treatment towards a worker by reason of his being a member of a labor union or having tried to join or organize a labor union or having performed an appropriate act of a labor union * * *

Now I would like to quote from the Congressional Research Service.

> The words "an appropriate act of a labor union" are construed to include acts arising from collective bargaining with the employer, such as strikes, picketing, and so on. Therefore, under Japanese law it is unlawful for an employer to discharge a striking employee.

In other words, what President Clinton has done is to give through Executive order workers in the United States the same protection that workers in Japan, Italy, the Western European nations have, with the exception of Great Britain. The only Western industrialized nations that do not offer this protection are Great Britain, Hong Kong, Singapore, and the United States of America. This morning someone pointed out to me that I failed to mention Greece as one of the nations that has this particular stipulation.

When my friend from Oklahoma, Senator NICKLES, mentioned that the action is unprecedented and invalid, the courts would find it invalid. Let the courts decide—not the Senate of the United States on an emergency supplemental appropriations for the Department of Defense.

Mr. KENNEDY. Will the Senator yield?

Mr. SIMON. I am pleased to yield to my colleague from Massachusetts.

Mr. KENNEDY. Mr. President, I notice that the Senator from Oklahoma had been talking about the amendment of the Senator from Kansas and raising questions about what would happen to the Defense Department should they have a contract, for example, on the F–16 or F–18. I take pride that most of the engines for the military are manufactured at a General Electric plant in Lynn, MA. There are some Pratt & Whitney engines by our good neighbors in Connecticut—but for the most part the engine parts are manufactured in my State. The company does absolutely spectacular work on the new advanced fighters and beyond that.

The question was raised by the Senator from Oklahoma, what would happen to these engines should this major contractor go out and have these striker replacements. Well I was watching the sports program last night where we saw those replacement players trying out for the major leagues. And I think it is every young boy's goal to play in the majors.

But I sure would not want our pilots, our servicemen and women, if they had to be called back to the Persian Gulf or elsewhere to have to be flying planes manufactured by replacement workers, or those engines being made by replacement workers, or those weapons systems, which could be the difference between life and death. Does the Senator agree with me that one of the principal reasons for this kind of Executive order is to make sure that we are going to have thorough, professional, competent, highly skilled, highly trained, and highly disciplined workers doing a job for America? I am just wondering whether the Senator reaches a similar conclusion.

Mrs. KASSEBAUM. I wonder if the Senator will yield for a question?

Mr. SIMON. I have the floor, and I would like to respond to his question, and then I will be happy to yield to the Senator for a question. I think the point made by the Senator from Massachusetts is absolutely valid. You can be a good, sincere person, but just not be a good replacement baseball player or person working in an airplane factory. I am going to be leaving the U.S. Senate after 1996. The Chicago White Sox are not interested in me. I cannot understand it, but that is the reality. Michael Jordan was a great basketball player, but he did not do very well on the baseball field.

I think the point made by my colleague from Massachusetts, Senator KENNEDY, is extremely important. We find, even where you do not have permanent replacements, sometimes factories try to keep going and the results have not been quality products. When we are talking about the defense industry, we want quality production. I point out also to Senator KENNEDY that France makes military equipment. They sell planes, and they prohibit permanent striker replacement. Germany makes weapons; they prohibit permanent striker replacement. Italy manufactures military equipment; they prohibit permanent striker replacements. I have not heard from anyone that has said that, in any way, inhibited them from moving ahead. My colleague from Kansas wishes to ask a question.

Mrs. KASSEBAUM. I thought I heard the Senator from Massachusetts suggest that permanent replacement workers would not be able to offer the same type and quality of work. Would you feel any safer with temporary replacement workers, because this Executive order permits temporary replacements? So I think, if the question was what type and quality of work will be done by the permanent replacements, I suggest it could be far more risky with temporary workers.

Mr. SIMON. I say to my friend from Kansas that if she wants to go further and prohibit temporary striker replacement, I will support that endeavor. As a matter of fact, Quebec does that right now. Canada, as a whole, prohibits permanent striker replacements. In Quebec, you cannot even have temporary striker replacement. But whether they are temporary or permanent, there is no question that striker replacement results in a diminution of quality of the end product. The point made by Senator KENNEDY is an absolutely valid point.

Let me make a couple of other points while I have the floor, Mr. President. When the Senator from Oklahoma says Congress has clearly stated its opinion on striker replacement, that is true, only it is not quite the way it was implied by my friend, Senator NICKLES. The reality is that the House of Representatives passed a bill to prohibit striker replacement, and in the U.S. Senate, 53 Members went on record for this, a majority in the U.S. Senate—53–47. But because of our filibuster rule, we did not pass a law.

When the Senator from Oklahoma says Congress has clearly stated its opinion, he is correct. But contrary to the situation when in 1991, a number of people, including the present Speaker and present majority leader of the House, introduced legislation that would have required employees to be notified in writing that they could not be required to join a union, that did not pass either body. But George Bush issued an Executive order requiring that notices be put up in all workplaces telling employees that they are not required to join a union.

To my knowledge, no one tried to reverse that. We recognize the authority of the President to issue that kind of a statement.

Finally, Mr. President, I see my friend from Texas anxiously waiting a chance to get the floor. Because we have had a discussion of social issues, and the Senator from Washington, Senator GORTON, said that there has been no demonstrable success in our social programs, the reality is, as we have pared down the appropriations for our social programs, more and more of our children are living in poverty. We, today, have 23 percent of the children of the United States living in poverty—far more than any other Western industrialized nation. That is not, as I have said on the floor of this Senate before, an act of God; that is a result of flawed policies. We have to show greater sympathy and concern and we need to have programs to help people.

We are on one of these basic philosophical arguments here: Should Government tilt against working men and women, or should it not? I think Government should not tilt against working men and women. I think that is the fundamental issue here.

Mr. President, I yield the floor. I see the Senator from Texas, and I am sure he will agree with every word I have said here.

Mr. GRAMM. Mr. President, I know it does not have anything to do with the debate we are having, but I want to answer two questions that were posed by our colleagues.

Let me go back to the Executive order issued by President Bush, because the Executive order issued by President Bush was to enforce a Supreme Court decision called the Beck decision. I am not terribly proud of the fact that Executive order was delayed for 2 years before it was finally issued. The Beck decision came about when a man named Beck, who was working in a State that permitted mandatory unionism, said that part of his dues were being used for political purposes and that he did not support the political aim of organized labor. So Mr. Beck, through long court battles that ultimately reached the Supreme Court, argued that his constitutional rights were being violated, because he was being forced to provide money for political purposes that he did not support.

The Supreme Court ruled that Mr. Beck was right and ordered that he and every other worker be told how much of their union dues went for purposes other than to fund collective bargaining. President Bush and the Bush administration, after delaying the implementation of that ruling, finally issued an Executive order to implement it.

So the Beck decision was based on a Supreme Court ruling having to do with the constitutional rights of a worker.

It is hardly worth arguing the point raised by our dear colleague from Massachusetts when he asked if our men in combat want spare parts produced by replacement workers? Well, if the alternative is no spare parts, the answer is clearly, yes.

None of this, however, has anything to do with this issue. People want to cloak this issue in the union-management cloak. And since there are more people who work than people who hire workers, it is a good cloak in which to try to hide that which is a legitimate issue of freedom. But the issue involved here could not be clearer, no matter how you define it, when looking at the rights of a free people.

If I do not want to work for you, I have the right to quit, and no one can deny me that right as a free person. But if I do not want to work for you, I do not have a right to keep you from hiring somebody else.

What is being proposed here is that the Government step in and say, oh, it is all right, if I decide not to work for you, for me to quit; but if I decide to quit through a strike—even though it may put you out of business, even though it may decimate the city in which your company is located—you cannot hire people to take my place. Now, you can hire temporary workers, who have to be fired the minute I want to come back, which means in reality that the company has almost an impossible time finding people to work for it. So what you are doing, in essence, is giving one party to a labor contract the right to put the other party out of business.

We have debated this issue. It has been debated many times in Congress. It was debated in the last Congress when the Democratic Party had a majority in both Houses of Congress. And under the rules that we operate under, as a free society and as the greatest deliberative body in history, it was rejected. Those who supported taking away the rights of an employer to hire another worker when a worker refused to work for that employer were defeated in the U.S. Senate.

Now President Clinton has come in and said that what he could not do through the legislative process, he is going to do through Executive order; that by Executive order, he is going to say to any company that has a contract with the Federal Government of over $100,000, that the Secretary of Labor will be empowered to say to those companies that if you have a strike and the strikers will not come back to work, you cannot hire permanent replacement workers who want to work to keep your company in business. And if you do hire permanent replacement workers, we have the right to take away and break any Government contract you have and bar you from getting any contracts with the Federal Government.

There are a lot of gray areas here, but as I read this, if General Dynamics—of course now Lockheed of Fort Worth—had a sand and gravel operation, in addition building F-16's, and they had a strike in their sand and gravel operation that shut them down as the major employer in a small town in North Carolina, and that small town had lots of unemployment and many people who were willing to come to work in sand and gravel extraction, those people could not come on as permanent employees because General Dynamics would have its contracts in Fort Worth with the Federal Government abrogated.

Mr. President, why, in a free society, should we want to do this? Why, in a free society, should we say to someone who, after all, has put up their capital, saved all their lives to start a business, created jobs—which people voluntarily took and voluntarily decide leave—that they are prohibited from hiring somebody else who wants to do the work? Why should we do that?

Well, there is no argument for doing that other than greedy special interests.

A President who says that he is some new kind of Democrat, whatever that means, a President who says that he was coming to Washington to end the cozy special-interest way of doing business, comes to Washington, and by Executive order, gives one of the largest and most powerful special-interest groups in America the right to intimidate and the right to destroy people's businesses. It is not right.

This ought to be stopped, not because of labor and management rights; it ought to be stopped for the very simple reason that it is fundamentally and profoundly wrong to do this.

What the President is doing is using the contract power of the Federal Government to deny people their rights. What he is doing is denying the rights of the people who have put up their life savings, who have started businesses, and who want to provide jobs when there is a strike. The people who had the jobs do not want to do the work.

Under our existing laws, under our legal system, if other people are willing to come in—and often subject themselves to all kinds of intimidation, both physical and verbal—and take a job and work because they want the job, they have that right. The Congress voted on this issue and the President was unable to prevail. He certainly could not prevail in this Congress, because Americans, based on the areas where he did prevail, said no to exactly this kind of special-interest deal.

Now the President is trying to do this by Executive order. What we are trying to do is to stop the President. This is within the prerogative of Congress to make the law of the land. And I do not think anybody here who looks at this will see this as anything more than a payoff to special interest.

I do not know what is going to happen on this amendment. I understand there is going to be a motion to table. There may be a point of order. I, for one, am going to vote to overrule the Chair on this issue.

And I want to promise my colleagues this issue is not going to go away. I do not know how many times we are going to debate it, but I am determined that the President is not going to win on this issue, because it is not right. I can assure you that, in good time, when the American people finish the job they started in 1994, if this Executive order is still standing, it will not be standing much longer after 1996.

But this is a very important issue. This is a freedom issue. This does not have anything to do with unions. This does not have anything to do with employers. It has to do with the right of a free people to withhold their labor and the right of the employer to hire somebody else who is willing to work.

To get into all of this jargon about collective bargaining confuses the issue and is an attempt to cloak the fact that we are really talking about the rights of a free people.

I am going to do everything I can, as one Member of the Senate, to stop the President from limiting the freedom of employers, people who put up their capital, to hire replacement workers when the people who are currently working refuse to work. And I am going to do it not because of labor versus management, or management versus labor, but because you either believe in freedom or you do not, and I do. I think this is a fundamental issue.

I congratulate our colleague for bringing this issue up. I want to urge her to stand by this issue. I would rather lose on a technicality and continue to fight this issue than to pull this down and allow the President to do this. He may be successful. But I think people ought to know where our party stands and where our Members stand. We are opposed to this kind of special-interest power grab and political payoff, because it is fundamentally wrong and it is fundamentally rotten, and it ought to be stopped.

So I urge my colleagues to support this amendment, whether we vote on a motion to table or whether we vote on the germaneness rule—we have overruled germaneness on many occasions, and it takes simply a majority. I think that we ought to do it in this case. If we cannot do it this time, we will have a lot more bills that this President is going to want to pass. He will face this issue on each and every one of them until finally we prevent this outrage from occurring.

I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I have listened to the distinguished Senator from Texas with great interest. Let me say to begin with that I am not a strong apostle of Executive orders. I suppose they number into the thousands. There have been Executive orders going back over many, many decades.

Some things that the distinguished senior Senator from Texas said have caught me with a strong sense of fascination. He talked about this Executive order's being a "political payoff" by the President. It seems to me that we allow ourselves sometimes to make some very extreme statements. I do not know that that statement by the Senator from Texas can be documented. I do not know that it can be proved. I think it is a rather reckless charge. I would assume that those Members, like myself, who oppose this amendment might likewise be charged with political payoffs, if that theory is carried to its ultimate conclusion.

Let me say to the distinguished Senator that he has no monopoly on standing up for freedom—freedom of conscience, freedom of the individual to work. When God drove Adam and Eve from the garden, he issued an edict that has followed man through the course of the dusty centuries and will accompany man to the end of his days: "In the sweat of thy face shalt thou eat bread, till thou return unto the ground; for out of it wast thou taken: for dust thou art, and unto dust shalt thou return."

The distinguished Senator from Texas speaks of "intimidation." I can remember the days when the Baldwin-Felts Detective Agency was brought into West Virginia.

The Baldwin-Felts Detective Agency was headquartered in Roanoke, Virginia and Bluefield, West Virginia.

The Roanoke office operated primarily as railroad detectives.

The Bluefield office, headed by Tom Felts, operated primarily as mine guards. They were originally employed by the coal companies to police the unincorporated coal company towns. As the union movement began to grow, they began to serve more and more as union busters. The miners would call them "thugs."

It became their primary job to keep union organizers out of the company towns. If the miners went on strike, they evicted the miners from the company houses, and used whatever means necessary to break the strike, from bullying the miners, to beating, and even murdering.

The Baldwin-Felts operated throughout southern West Virginia with the exception of Logan County. In that county, Sheriff Don Chafin maintained a 200-man deputy sheriff force, allegedly in the pay of the coal companies in Logan County, and it was their job to keep the union organizers out of the county.

I mentioned that Tom Felts headed the Bluefield office. His brothers, Lee and Albert, both Baldwin-Felts mine guards, were two of the eight guards who were killed in the Matewan Massacre.

The coal miners of West Virginia have seen intimidation. I grew up in a coal miner's home. I can remember when there was no union. The man who raised me, who was kind enough to take me as an orphan—I was 1 year old—and brought me up in his home, was a coal miner. I can remember the days when he worked from daylight until after dark to "clean up his place."

That meant that a coal miner, if he did not clean up his working place, if he did not remove all the slate, the coal, and the rock, that had been shot down with dynamite, if he did not clean it up before he left that night, was told that there was always someone else who would be glad to take his place. There was no union to protect his job.

The coal miners took what they were given. They had no weapon with which to fight back. Many times as a boy I recall going down to the company store at Stotesbury, in Raleigh County where I lived, and reading on the bulletin board a notice that, come the beginning of the next month, the miners would suffer a cut in their wages. The price per ton of slate, the price per ton of coal, would be reduced from 50 cents to 45 cents, or to 30 cents or to 25 cents.

In those days coal miners wore their carbide lamps on cloth caps. They had no way of demanding that safety be enforced in the workplace. They bought their own dynamite, they bought their augur, their pick, their ax, their shovel. I have been in the mines, and I have seen where my dad worked. I could hear the timbers cracking to the right, the timbers cracking to the left.

I saw the water holes through which those men had to make their way on their knees. The roof was not high enough for them to walk upright. They had to walk on their knees. They had to shovel that coal, shovel the rock and heap those cars with the loads of slack or lump coal or slate or rock or whatever it was, while on their knees.

They had no way of demanding that their pay be increased. They just had to take whatever the company decided at a given time to pay them. There was no union. I was there when the coal miners union came to West Virginia, the coal miners union. I can remember the coal miners having to meet, in barns, in empty buildings, clandestinely, in order to organize a union.

Many times I have seen my dad overdrafted on payday. He had worked the full 2 weeks, and on payday was in debt to the coal company. Then when the union came, I saw the faces of those coal miners. The faces would light up. At last, the coal miners had a weapon with which they could bargain collectively concerning their wages and their working conditions. They could strike, if need be, to force the company to improve health and safety conditions, and to enforce safety in the workplace.

Many times I walked into the miners' bathhouse at Stotesbury—not many times, but several times I walked into the bathhouse at Stotesbury—as a boy and as a young man and I saw stretched out on the bathhouse floor a dead coal miner who had been electrocuted or run over by a mine motor. One of my friends, Walter Lovell, had both legs—both legs—cut off one night by a runaway motor. In this day and time, his life might have been saved. But he died of loss of blood and gangrene. My own dad mashed his fingernail. He lost his finger. If it had been 2 or 3 days later before going to the hospital, he would have lost a hand. Another week, he may have lost his life.

I can remember seeing a man in the coal mining company's doctor's office at Stotesbury, waiting in great pain because he had mashed his finger and gangrene had set in. Within a few days, he was dead.

The distinguished Senator from Texas used the phrase "they don't want to work," "don't want to work." Perhaps they do not want to work because they want certain safety conditions improved. It is not laziness always. Now, I have not always agreed with the unions, and on some occasions, I have not sympathized with strikes. There have been some strikes that I thought were not called for. But because miners or other workers seek to improve their safety conditions, their working conditions, their wages is not a matter of their not wanting to work.

When I ran for the U.S. Senate, I was initially opposed by John L. Lewis, the coal miner's chieftain. He eventually came around to support me, but the thing that made my decision to run for the U.S. Senate, may I say to the Senator from Texas, the thing that made the decision for me to run for the U.S. Senate was the very fact that Mr. John L. Lewis, the president of the United Mine Workers, sent word to me in West Virginia not to run for the Senate, but instead to run again for the House of Representatives.

I had been elected to the House three times, and I decided I would like to get around the State during a break between the sessions and determine what kind of support I would have for a Senate race. While I was in Wheeling, West Virginia, one night, I got word from a man by the name of Bob Howe, representing the United Mine Workers of America—John L. Lewis' liaison man working on the House side.

While I was in West Virginia, Mr. Howe called me on the telephone and said, "I'd like to talk with you. When will you be back in Washington?"

I said, "I don't know when I'll be back. What do you want to talk about?"

He said, "Well, 'the boss' "—the boss—"wants me to get a message to you."

I said, "Well, the closest I will be to Washington for several weeks will be when I go to Romney next Thursday night to speak to a Lion's Club," or whatever it was, a civic organization.

He said, "Fine, I will come over there and meet you."

So he drove over to Romney, West Virginia. We met. The message was from Mr. John L. Lewis, who sent word that he did not want me to run for the Senate; Mr. Lewis wanted me to run for reelection to the House.

He said, "You have a good labor record. We will be glad to support you for the House, but if you run for the Senate, Mr. Lewis will come into West Virginia and campaign against you. He will campaign for William Marland," who was a former Governor of West Virginia. So I said to Mr. Howe, "I'll be in touch with you."

That very night, I drove south into Beckley, WV. Those were the days when we had nothing better than a two-lane road in West Virginia. We did not have four-lane roads in West Virginia. I can remember the days when we did not have two-lane roads in West Virginia and when we even had to blow the horn on the car when we went around a curve.

In any event, I drove to southern West Virginia that night, and on the way, I stopped at a telephone booth in Petersburg, Grant County, which, by the way, is a strong Republican county, about 4-to-1 Republican, and goes for ROBERT C. BYRD.

Snow was up around my ankles when I went into that telephone booth. I called my wife and I said, "Erma, I've reached my decision."

She asked, "Concerning what?"

I said, "Running for the Senate." I said, "I've made up my mind."

"What made your mind up?"

I said, "John L. Lewis. When he threatened to come into West Virginia and campaign against me, that made my decision."

She was back here in Arlington in our little five-room house at that time, taking care of our young daughters and the dog. We had a dog named Billy. That was Billy Byrd I. We now have Billy Byrd II.

I drove south and got into Beckley in the early morning, called a few people in southern West Virginia, called in the press, and I said, "I'm going to be a candidate for the Senate. William C. Marland is going to be my opponent, and John L. Lewis is going to come into the State and support Mr. Marland."

Not long thereafter, Senator Matthew M. Neely, a Senator from the State of West Virginia, died. Instead of Mr. Marland's running against me, he filed for the unexpired seat of Mr. Neely. It was then that Mr. Lewis asked me to come downtown and see him at his office. The coal miners in West Virginia had been upset at the prospect that Mr. Lewis had planned to support Mr. Marland against ROBERT BYRD.

So I went downtown to meet with Mr. Lewis at his office. Mr. Lewis looked at me with those twinkling blue eyes that seemed to pierce right through me, and said, "Young man, I resented your announcing that I would come into West Virginia and support Bill Marland against you. I'm in the habit of making my own press announcements."

And I said, "Well, Mr. Lewis, you are a great labor leader. My dad was a coal miner. I can remember when there weren't any unions and today there are 125,000 coal miners in West Virginia, and they are in your union. You have been a good labor leader. And the union has been good for the coal miners. But when you sent Mr. Howe into West Virginia to tell me to run for the House again, not run for the Senate, and that you would come into West Virginia and campaign for Marland against me, I resented that. And that made up my mind. That made my decision to run for the Senate. Mr. Lewis became a strong supporter, and we were friends until his death.

I say this just to say to my friend from Texas that some of us who oppose this amendment today do not feel that we are paying off any debt to any special-interest group.

I was opposed by Mr. George Titler, the president of the United Mine Workers, district 29, when I ran for the West Virginia State Senate in 1950. Why? He called me into his office after I was elected to the House of Delegates in 1946, before the first meeting of the House of Delegates in the session of 1947, and told me he wanted me to vote for a certain individual for Speaker of the House of Delegates. I said, I can't do it. I'm going to vote for his opponent.

I told him why. I said, "In the first place, I have assured this man I would vote for him. In the second place, I have been told by those who serve in the legislature that he is the better man. I am going to vote for him as I promised." Whereupon Mr. Titler said, "When you run for reelection, we will remember you." Consequently, in 1948, when Harry Truman ran for reelection, the leadership of the United Mine Workers in that district was opposed to my reelection.

Here I was, a little old Member of the House of Delegates, running for reelection to the House of Delegates in a big election. There were many other offices at stake. Yet, the headquarters of the UMWA District office concentrated on that poor little old coal miner's son's run for reelection to the House of Delegates. I won the election. Do you know how I did it? I went right down into the local union meetings with my campaign.

George Titler even visited the Stotesbury local union—of which my dad was a member—and urged those miners to vote against me. I sat in on the meeting, and when Mr. Titler completed his speech, I spoke to the coal miners; I spoke their language. And they gave me their overwhelming support.

The distinguished Senator from Texas speaks of those who invest capital. We have to have investors of capital. They have helped to make this country a great country. But what is the working man's capital? The working man's capital, my old coal miner dad's capital, his only capital was his hands and the sweat of his face. God had laid that penalty upon man: "In the sweat of Thy face shalt thou eat bread."

There is nothing more noble than honest toil. And so it is, that I stand today against this amendment. Intimidation works two ways. No longer is the coal miner intimidated. No longer is he driven as with a lash. "Clean up your place; if you don't, there is somebody else waiting for your job." No longer does the coal miner have to buy at the company store.

Something can be said, of course, pro and con, about almost everything. I have never been ruled by any union. They know that. I have never worn any man's collar but my own—none. The Governor of West Virginia once asked me to get off the Democratic ticket. I said no.

I could tell the Senator from Texas many stories, I think, which would perhaps delight him because I stood up against the top leadership in the union, but the rank and file coal miner stood with ROBERT C. BYRD. They knew I was their friend. I was their friend then. I will always be their friend.

The Senator may very well remember an occasion when I offered an amendment here to help the coal miners and fought hard for it. I went to the offices of Republicans and Democrats in the interest of my coal miners amendment. The then majority leader, Mr. Mitchell, was against me. The then minority leader, Mr. DOLE, was against me. The President, Mr. Bush, was against me. I had the battle won until right there in the well of the Senate, the joint leadership peeled off three votes that had looked me in the eye and said they would vote for my amendment.

Well, that was pretty tough to lose, but I got up off the carpet, dusted myself off and, magnanimous in defeat, said, "I lost. Let's go on to the next one."

I say to my friend from Texas that I have faced intimidation personally, and I have seen the coal miners and other workers of this country face intimidation when the only weapon that they had was the union—the only weapon they had with which to protect their rights. And so I stand against the amendment.

I do not speak evil of those who support the amendment. We have different viewpoints around here. But these are not "greedy special interests," not the people I represent. They are not greedy special interests, the workers in West Virginia.

The Senator may wish to comment while I have the floor. I will be glad to hear what he has to say.

Mr. GRAMM. If the Senator will yield, I am always educated when I listen to the great former chairman of the Appropriations Committee, and I think he has given us a great lecture this afternoon.

I appreciate him yielding because I have to go back for an appointment, but I wanted to make a point. Everything that the Senator has said today I agree with. There was a time in this country where power was vested too greatly in the hands of business, and it created a distortion in the marketplace. That needed to change, and we changed it. Now, some people did escape it. I am looking at one of those people, a great testament to the fact that America works. ROBERT C. BYRD is a great testament to the fact that America is a great country and a land of opportunity.

My point, Mr. President, is that you can go beyond the point of having a fair balance. It is one thing to guarantee the rights of people to strike, to be a member of a union and give them the ability to go to the employer and say these are things we demand or we will withhold our labor. But once you reach the point where you can say to the employer, not only will we withhold our labor but we will have Congress, or in this case the President using Executive power, prevent you from hiring anybody else, that puts us in a similar position today that we were in during the era of which the Senator speaks—only this time it is those who provide the jobs having their rights denied.

I am concerned that we are going too far in strengthening the rights of labor as compared to the rights of people who invest their money.

I am concerned that we are going to have a rash of strikes, and we are going to initiate labor unrest. Since the short period after World War II, where we had labor unrest for good reason—we had held wages back; prices had risen in the war—we have had relative stability.

I am concerned that if we take away the rights of the employer to hire a replacement worker or replacement workers when the union will not come back to work, that we will go to the opposite extreme from that the Senator spoke of. And I simply say that you can go too far in the direction of management, as the law did in the 1930's, but I think you can go too far in the direction of labor, as I believe this Executive order does.

So, with profound respect for everything that the Senator is saying, I think the President's Executive order was wrong.

Obviously this is a free society. This is the greatest deliberative body in the world. And one of the reasons it is, is because the distinguished Senator from West Virginia is a Member. But this is an issue where I think the President is wrong and I believe that this is a case of promoting the interests of one special interest—and it is a special interest. Just as business is a special interest, so is labor. I think the President is going too far. I think it hurts the country. That is why I am in support of the amendment.

It is not to say that I would ever go back; and I hope, had I served when the Senator served, that on many of those issues we might have been on the same side. But today I do not think anybody can argue that labor lacks rights. It is a question of what are the legitimate rights of the people who invest their own money, who create jobs.

It is the balance of the two that I seek, and I believe this goes beyond that delicate balance.

I appreciate the Senator yielding. I am not opposing the question, and it is very generous of him, as he always is.

Mr. BYRD. Mr. President, I respect the Senator's viewpoint. I respect every Senator's viewpoint, here.

I, too, seek a balancing of the interests. And I think that is what we are doing in opposing this amendment. As I understand the amendment, it speaks of lawful—lawful strikes. I think the strikes we are talking about are those that are lawful strikes. I think we are just going in the opposite direction if we support this amendment.

This amendment prevents any funds appropriated in fiscal year 1995 from being used to "implement, administer, or enforce any Executive order, or other rule, regulation, or order, that limits, restricts, or otherwise affects the ability of any existing or potential Federal contractor, subcontractor, or vendor to hire permanent replacements for lawfully striking workers." Obviously, if it is unlawful that puts a different color on it, a different face on it. Mr. President, the ultimate tool and the legal right of an American worker under collective bargaining, the right to strike, should not become the right to be fired. It should not become the right to be fired.

President Clinton signed an Executive order that allows the Secretary of Labor to terminate for convenience any Federal contract with a firm that permanently replaces lawfully striking workers. So I emphasize again the word "lawfully." President Clinton's order also allows the Secretary of Labor to debar contractors that have permanently replaced lawfully striking workers, thereby making the contractor ineligible to receive Government contracts until the labor dispute that sparked the strike is resolved. This order will affect some 28,000 companies that receive 90 percent of Federal contract dollars. In signing this order, the President has thrown his support, and the protection of the Federal Government, behind the principle that American workers can employ every facet of collective bargaining, including the right to strike, in their efforts to resolve labor disputes. The amendment we are considering today in my judgment would destroy that protection.

In recent years, the right to lawfully strike has more and more become the reason to be fired, or to be displaced by permanent replacement workers. Being replaced by temporary replacement workers is one thing. But being replaced by permanent replacement workers is quite another. The ability of companies to easily hire permanent replacement workers for employees lawfully engaged in a strike over proposed changes in the terms of their employment undermines the incentive of companies to negotiate the speedy resolution of labor-management conflicts. I note that, in recent years, changes in the terms of employment are just as likely to be decreases in compensation levels or health benefits to workers, rather than increases. American workers are being asked to do more and more for less and less, or with fewer and fewer workers, than ever before. In a hearing conducted by the Senate Committee on Labor and Human Resources in the last Congress, Mr. Jerry Jasinowski, president of the National Association of Manufacturers, testified that as a result of increased global competition, additional costs must often be passed back to workers in the form of "lower compensation or lower employment." Strikes may often be the last resort for employee groups that have been squeezed hard by this process.

Proponents of this amendment have suggested in the past that legislation that would protect the return to work of American workers engaged in a lawful strike would drive jobs out of America and dampen economic growth. This is a scare tactic, plain and simple. American jobs have already been moving out of the United States. They are leaving our shores for a variety of reasons—lower production costs due to cheaper labor, greater international use of child labor, lax environmental and worker safety standards, Government subsidies, and easy or even preferential access to the U.S. market from abroad. In some overseas locations, workers have no collective bargaining rights—none. Just like the situations that were prevalent back in the coal fields when I was a boy, when miners could be intimidated or cowed into accepting wages and working conditions which would be unthinkable today. And those conditions are prevalent overseas in may countries. These would be unthinkable today in these United States. Just as those conditions back in the hollows and hills of West Virginia today would be unthinkable. They were unthinkable then, but who was there to champion the rights of the hard-working people who had to go down into the bowels of the Earth and labor with their hands and in the sweat of their face earn a crust of bread for their children?

All of these factors reduce costs for companies moving off of U.S. shores, and increase their profits. But what is good for profits is not always good for the human beings who do the work. Millions of men and women in this country have only the capital of their bare hands, a strong back, a strong neck. They will not go back to the days when that strong back felt the lash of intimidation and the threat: "Clean up your place before you leave. There is someone else waiting for your job."

I do not believe that the United States should lower its safety and environmental standards, or promulgate Third World working conditions, in order to compete on this kind of a playing field. Historically, unions and collective bargaining have served to contain the abuses of owners and management. Unions and collective bargaining have also worked historically to improve conditions for large numbers of working people previously employed in the sweatshops, in the shipyards.

Try riveting. Try welding. Try the job of being a shipfitter in the shipyards in Baltimore when the cold winds whip across the bay and freeze the vapor of your breath when it hits your eyelashes. I can hear those rivets in my dreams. I know what it is to be a worker, to have to work with my hands. There is nothing dishonorable about it. The Bible says, "The laborer is worthy of his hire."

Throughout the years, unions have helped to ensure fair and equitable treatment for employees, and these standards have carried through to nonunion workers as well. They have benefited likewise. Now, unions must strive to protect the jobs, the health benefits, the retirement packages, and compensation levels of employees from excessive devaluation in the name of competitiveness, downsizing, or restructuring.

While I agree that the United States must work to compete more effectively in global markets, and that restructuring the economic relations among the United States and her trading partners may be essential to improving and expanding trade, I do not believe that we should enter into any agreement, or support any action, that does not benefit both the American industries and American workers.

I voted against the North American Free-Trade Agreement. I voted against the Uruguay Round of the General Agreement on Tariffs and Trade in part because these agreements will likely lead, in this Senator's judgment, to the displacement of many American workers—workers unlikely to have the skills required to easily secure other employment. Such displaced workers only add to burdens we already face in terms of meeting the challenges of an increasingly competitive international economy, and also mean a continued decline in the basic standard of living for millions of Americans and their children.

Undermining whatever support exists for striking workers to return to their jobs upon the successful conclusion of negotiations further encourages companies to hire permanent replacement workers at the lowest wage that the market will bear. Strikes, it is important to note, are the absolute last resort of working men and women in some situations. A strike is not a desirable consequence for labor or management. Striking workers are faced with a considerable loss of income for an undetermined period of time.

I know. I once was a small businessman; a small, small businessman; very small; very small. I had a little grocery store in Sophia, WV. There was a big coal mining strike in West Virginia in the beginning of the 1950's. The strike lasted several months. Some of the coal miners could not get food for their children. They could not get credit at the company store. So they came to ROBERT BYRD's little jot'em down store.

They came to the little jot'em down store, the Robert C. Byrd grocery store in Sophia. I let them have food on credit. They were on strike. It was a long strike. But I let them have whatever I had in the shelves. I did not have a lot. But it saw some of them through—the coal miners in Raleigh County.

In 1952, I ran for the U.S. House of Representatives. I attended a Democratic rally one night. And the president of the United Mine Workers District, headquartered in Charleston, the State capital, was speaking at the rally.

There were three candidates for Governor. And, of course, that meant three factions. And I did not want to align myself with any faction. I wanted to be liked by everybody. I wanted everybody to be for me. I wanted the votes of all.

UMWA District President Bill Blizzard, one of those fire-eating, union leaders in the old days, was speaking when I arrived at the rally a bit late. He pointed his finger at me and said, "Whether they are a candidate for constable or for Congress"—he pointed his finger right at me. I was a candidate for Congress—"if they do not vote for our candidate for Governor, don't you coal miners vote for them."

I was not welcome at the rally. The master of ceremonies happened to be a young attorney who, after Mr. Blizzard had finished speaking, said, "Now we will have the benediction, and after the benediction go over into the other room of the schoolhouse and get yourself some ice cream and cakes and refreshments."

About that time, an old, grizzled coal miner stood up in the back of the room, and said, "We want to hear BYRD." And this enterprising young lawyer said, "You can hear BYRD some other time. We are going to have the benediction." Well, nobody is going to argue with that. Let the preacher give the benediction.

But then I said to a couple of my friends who were there with me that night, "Go out to the car and get my fiddle." I started playing a few tunes and the whole crowd came back in with their ice cream and cake and sat down. They filled the room.

I said, "When you were on strike, you coal miners, when you coal miners were on strike, who fed your children? Did Bill Blizzard, the United Mine Worker President, feed your children? How many groceries did he provide when you were in need? I fed your children. Are you going to vote against the man who helped the coal miners when they were on strike?" They answered with a loud "No!" The miners gave me a big vote in that election, and Bill Blizzard became my supporter and friend.

So I have been a worker in the field myself. I know what it is to have my brother-in-law's father killed in a slate fall in the coal mines. I know what it is to have the brother-in-law die from pneumoconiosis—black lung.

Workers do sometimes strike for better working conditions, for safer working conditions.

They do not strike "because they don't want to work."

A strike often pits brother against brother, neighbor against neighbor, and can tear entire communities apart. However, gutting this action of last resort by allowing companies to hire permanent replacement workers, as this amendment does, removes the incentive for companies to seriously negotiate with their work force.

Research has shown that strikes involving permanent replacement workers last an average of seven times longer than strikes that do not involve permanent replacement workers. Strikes involving permanent replacements also tend to be more contentious, and can disrupt whole communities for long periods. In my own State of West Virginia, a labor dispute at Ravenswood Aluminum Corporation was unresolved from November 1990, until June 1992. This dispute resulted in the hiring of 1,000 new workers as permanent employees by the company. The striking workers were told that if and when the dispute was resolved, they would not get their jobs back. Eventually, contract negotiations resumed and an agreement was finally reached that returned union workers to their jobs. If it had not been possible to promise these replacement workers permanent jobs, efforts to find the replacements might have been hindered, giving the company greater incentive to negotiate with the union and likely resolving this labor conflict much sooner.

Proponents have argued that the status quo should remain the status quo—that no effort should be made to shore up the eroding ability of workers to strike for fair and equitable compensation, health benefits, and retirement packages. This argument simply does not recognize the changing economic and employment conditions brought about by changes in the world economy and by the adoption of recent trade agreements that have eroded the income power and options of American workers.

We must not take actions that would denigrate the inherent dignity of work or the noble role of the American worker in the life of this Nation. All of us enjoy the fruits of their labor. The sweat of their collective brows, the calloused hands, the bent backs, the wrinkled faces, and their broken health deserve our gratitude and our utmost respect. Where would any of us be without their toil?

Out on the roads they have gathered, a hundred-thousand men,
To ask for a hold on life as sure as the wolf's hold in his den.
Their need lies close to the quick of life as rain to the furrow sown:
It is as meat to the slender rib, as marrow to the bone.
They ask but the leave to labor, for a taste of life's delight,
For a little salt to savor their bread, for houses water-tight.
They ask but the right to labor, and to live by the strength of their hands—
They who have bodies like knotted oaks, and patience like sea-sands.
And the right of a man to labor and his right to labor in joy—
Not all your laws can strangle that right, nor the gates of Hell destroy.
For it came with the making of man and was kneaded into his bones,
And it will stand at the last of things on the dust of crumbled thrones.

Mr. President, I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I ask unanimous consent that I might yield 5 minutes to the Senator from Idaho and then have the floor.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I thank my colleague from New York for yielding. I will not use the 5 minutes, but I did want to make a few comments in relation to the Kassebaum amendment and what I believe to be its importance in this issue that we are debating here on the floor.

Mr. President, I will also add to my statement a letter from NFIB [National Federation of Independent Business], for in that letter are several quotes that I think are extremely valuable to this debate. One of those quotes which is important, and I will mention it at this moment, as it relates to what our President has just done and the meaning of that act as it relates to a balance that we have held in labor law now for a good long while. It says:

> This balance of labor's right to strike with management's right to stay in business using temporary or permanent replacement workers during economic strikes has not been challenged by any President since 1935.

Are the working conditions and are the labor conditions of America today so different, have they changed so dramatically since we placed quality labor laws on the books of our country since 1935 that our President would act as he has acted? I simply do not believe that is true.

What our President has said by this act is, "Give in or go out of business." No President has said it that way, nor should they. It is unilateral disarmament of employers at the bargaining table. And that has never been public policy and it should never be public policy.

What was then was then; what is now is now. The world has changed significantly. And it is important that the laws that still work be allowed to work.

Certainly, the action that was taken by this President is to disallow fundamental labor law in this country and the unique balance that has been created and held for so many years.

The amendment to prohibit funds from being used to implement any Executive order that bars hiring Federal contractors who hire permanent worker replacements is an amendment that should be passed by this Congress, and I support it strongly.

If there had been a pressing need for such an order, why did this President not issue it more than 2 years ago? What has changed over the course of this President's administration that would cause for this destabilizing act to occur when no President has taken this stand for 35 years? Nothing has happened. That is the answer. So why would he do it?

If the President actually had a clear legal authority to issue such an Executive order, why did he not do it earlier?

Well, he does not have, in our opinion, that legal authority.

Why, instead, did he put all of his eggs in one basket of striker replacement legislation during the last Congress?

One has to wonder if the answer does not lie more in politics than in policy.

I concur with the Senator from Washington [Mr. GORTON] that the President has exceeded his constitutional and legal authority.

The Executive order flies in the face of 57 years of settled employment law as written by Congress, as consistently applied by the courts, and as consistently enforced by 10 Presidents and their administrations.

No President has ever launched such a full frontal attack on settled Federal laws governing employer-employee relations; on fair and flexible bargaining in the work place; on the rights of employers and employees to determine their own negotiating behavior on a level playing field; and on the Federal Government's role as impartial referee, rather than coach and cheerleader for one side.

This Executive order will be costly to taxpayers, as strikes are encouraged and prolonged against contractors working on Federal jobs; and to the general public and the economy, as the ripple effect of these strikes cause bottlenecks elsewhere in the economy, affecting suppliers, subcontractors, carriers, and others.

Like so many other clever schemes that erupt within the Capital Beltway, this one will not help workers, it will hurt them; will not create jobs, it will destroy them; was designed to court a few elite lobbyists, not rank and file workers and their families; will shut the door to Federal contracting on many small businesses who will find this condition economically impossible to meet.

I ask unanimous consent that the letter from the NFIB be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
Washington, DC, March 9, 1995.

Senator NANCY LANDON KASSEBAUM,
U.S. Senate,
Washington, DC.

DEAR SENATOR KASSEBAUM: On behalf of the more than 600,000 members of National Federation of Independent Business (NFIB) I urge your colleagues to support your amendment to H.R. 889, the Defense Supplemental Appropriations bill. The amendment would effectively void the President's Executive Order barring federal contractors from the use of permanent replacement workers.

Such an Executive Order could increase the taxpayers' cost of federal contracts and would destroy the equality of economic bargaining power between labor and management which has been preserved for 55 years. This balance of labor's right to strike with management's right to stay in business using temporary or permanent replacement workers during economic strikes has not been challenged by any President since 1935.

In a recent poll, 81% of NFIB members oppose striker replacement legislation. Small business owners view any change in the delicate balance between labor and business as a threat to the livelihood of their business. They believe upsetting this balance will result in the following:

Increased work disruptions affecting both union and non-union businesses;

A confrontational workplace setting, which will lead to more strikes, diminished competitiveness, and lost productivity;

Increased strike activity in large companies, which adversely affects small businesses that are located near or contract with the struck company;

The creation of an unfair union organizing tool; and

An unbalancing of over 55 years of labor law.

Small business owners urge your colleagues to support your amendment to H.R. 889. Your vote on passage of the Kassebaum amendment will be considered a Key Small Business Vote for the 104th Congress.

Sincerely,
JOHN J. MOTLEY III,
Vice President,
Federal Governmental Relations.

Mr. HATFIELD. Mr. President, the announcement of an Executive order banning the use of replacement workers by Federal contractors disturbs me because it appears to circumvent congressional authority to amend this Nation's labor laws. Because of this concern, I support the effort to prevent the implementation and enforcement of this order. Nevertheless, I remain a supporter of legislative attempts that would amend the National Labor Relations Act and overturn Supreme Court decisions which have weakened what I believe to be the original intent of the law—to explicitly protect a worker's economic self-help activities through the right to strike.

Mr. BIDEN. Mr. President, all of us here, on both sides of this issue, agree that the right to strike is essential to preserving the balance of power between labor and management in this country. But that right is hollow if, by exercising it, a worker faces the loss of his or her job.

President Clinton has taken the important step of clarifying that in this country, as in the rest of the industrial democracies with less than a handful of exceptions, workers cannot be fired for exercising their legal rights.

Unfortunately, our attempts to clarify that right through legislation, led for years by Senator Metzenbaum, were blocked by filibusters, despite clear majorities that favored a ban on striker replacements.

President Clinton's Executive order is needed because Congress has been frustrated in its attempts to clear up the current untenable situation.

His action follows established precedent, such as actions by President Bush, who, in 1992, issued an Executive order to require unionized contractors to post notices in their workplaces informing all employees that they could not be required to join a union.

President Bush also used executive authority to ban unions from using for political purposes fees collected that had been collected from union members who disagreed with union policy positions.

As a Republican Congressman said at the time, this was an "effort by the President to do something through Executive order that he cannot get Congress to do."

So let's not be distracted by procedural arguments. President Clinton was well within his authority and established precedent when he issued his Executive order. Let's stick to the substance of this issue, an issue that goes to the fundamental rights of workers, and to the very foundations of labor-management relations in this country.

Mr. President, before the New Deal, striking workers had no legal protection against being fired. To provide legal protection for the right to strike, Congress passed and President Roosevelt signed the National Labor Relations Act in 1935. Without it, hostile, confrontational, and often violent labor-management relations would have persisted.

But in 1938, a Supreme Court ruling that confirmed the right to strike offered an unsolicited comment that established a legal basis for hiring permanent replacements for striking workers.

This language has remained a logical and legal anomaly ever since. In law schools across the country, law professors have struggled in vain to distinguish between firing and permanently replacing striking workers.

For many years, this problem was, in fact, academic; it had little application in the real world.

But for the last decade and more, the issue has become all too real for thousands of workers who have lost their jobs by exercising what the vast majority of Americans believe should be their right under the law.

The permanent replacement of striking workers has become an all too common tactic in labor-management disputes. In a survey last year, 25 percent of employers said that they would hire or consider hiring permanent replacements, in response to a strike. A recent GAO report found that employers hire or threaten to hire permanent replacements in one of every three strikes.

Today, the threat of permanent replacement calls into question the fundamental right to strike, upsets the balance of power between workers and management, and introduces an unnecessary source of friction and hostility into labor relations.

We have evidence that strikes in which permanent replacement workers are hired are longer, and more heated, than those in which that tactic is not used.

Mr. President, I know that there is much emotion on both sides of this issue, and I would like my colleagues who disagree with me to understand that I do not take their concerns lightly. Let me address a few of those concerns now.

We have heard in recent debate that President Clinton's Executive order will upset the balance of power between labor and management and make strikes more likely as a result. This argument is not only inaccurate, Mr. President, it shows a fundamental misunderstanding of the costs of a strike to workers and their families.

First, it is the increasing use of striker replacements that has upset the traditional balance of power between workers and employers. The President has acted to remove this source of much of the hostility and divisiveness that now attends labor-management relations.

Second, Mr. President, under no circumstance is a strike an easy option for workers who will suffer the loss of wages, health benefits, savings, and even major assets such as cars and homes to undertake a strike with no knowledge of what the outcome will be.

We have also heard, Mr. President, that without the threat of hiring permanent replacements, employers will be powerless in the face of union demands. The fact of the matter is that employers did quite well for over four decades, by stockpiling inventories, hiring temporary replacements, transferring work, and by other tactics, without recourse to permanent replacement workers.

As we seek new ways to encourage labor-management cooperation, to recognize the shared goals of American workers and employers in a changing global economy, a first step ought to be to eliminate the unnecessary, inflammatory practice of permanently replacing strikers.

Mr. President, simple fairness demands it. And simple fairness demands that we defeat this attempt to cut out the funding for President Clinton's Executive order. I urge my colleagues to vote with me to put this relic of another era of labor-management relations behind us.

Mr. PELL. Mr. President, I strongly oppose this amendment by the Senator from Kansas. Her amendment, if adopted, would prevent the expenditure of funds by the Labor Department to carry out the Executive order President Clinton signed yesterday.

The Executive order is entitled "Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts." Simply put, this order would prevent Federal agencies from contracting with companies that permanently replace striking workers.

Current law protects workers who strike for unfair labor practices, but allows those who strike for economic reasons to be permanently replaced—a curious synonym for being fired.

Congress has attempted to legislatively rectify this inequity. Time after time, however, a minority of our colleagues has frustrated the will of the majority, often even preventing the Senate from debating the matter. In the last 3 years, the Senate has been forced to vote to invoke cloture on the bill four different times. Each time, despite garnering a majority necessary to pass the bill, a minority has ruled the day and frustrated the will of that majority: June 11, 1992, cloture failed 41 to 55; June 16, 1992, cloture failed 42 to 57; July 12, 1994, cloture failed 47 to 53; and July 13, 1994, cloture failed 46 to 53. Now, Mr. President, the opponents complain that the President is thwarting the will of Congress.

Whenever striker replacement legislation has come before us in the past, I have heard from Rhode Islanders with views on both sides of the issue. Many business people have told me of their fear of a tilt in the balance of power in labor-management relations. They have discussed their concern with being faced with one of two choices: agree to union economic demands or be forced out of business. One gentleman even remarked that he considered employee demands for increased wages to be blackmail.

I view striker replacement legislation and this Executive order differently. The legislation would restore a proper balance of power between employees and employers. Employees would have the right to strike for increased wages and management would have the right to hire replacement workers on a temporary basis. This Executive order tells businesses that if they want to do business with the Federal Government, they must respect the legal rights of working men and women or look elsewhere for business.

I look forward to a full debate on this matter and urge my colleagues to reject this amendment.

Ms. MIKULSKI. Mr. President, I rise today in strong opposition to Senator KASSEBAUM's amendment that effectively vetoes President Clinton's Executive order that prevents striker replacement from being used by Federal contractors.

I am a blue collar Senator. I support the right to strike. I can't support Solidarity's right to strike in the shipyards of Gdansk and not support the rights of American unions to strike here at home.

The President's Executive order protects the right of Americans to strike by prohibiting Government contractors who make their profit off the Federal funds from permanently replacing striking employees. The Executive order will also force these managers to deal with the issues raised in the strike, not just replace workers who protest as a last resort. It will restore basic fairness to the bargaining process.

Strikers can mean economic ruin for both the workers and the company they rely on for work. There must also be equal pressure on both the workers and the company to compromise if a strike does occur.

I believe that allowing management the threat of replacing workers gives them an unfair advantage at the bargaining table. If strikers can be permanently replaced, there is considerable less pressure on businesses to address the underlying problem and settle with their workers. However, if businesses can hire only temporary replacements and workers have to face the social economic disruption of a strike, the pressure remains on both sides to work out their differences.

It's a matter of basic fairness to American workers. It ensures fairness in resolving labor disputes. My roots are in blue collar neighborhoods—this goes to my basic values.

That is why I strongly oppose Senator KASSEBAUM's amendment. This amendment vetoes my values. I urge my colleagues to join me opposing this amendment.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I know this is a very contentious issue, and I do not question anybody's motivations on either side.

I have a deep-rooted feeling and philosophy—and I have voted on this many times—that people have a fundamental right to withhold their labor—that is, to strike—if they feel it is the only way they can make their point. I do not know what other alternatives labor has in certain cases when the process breaks down.

I support the right to strike. It is fundamental. I believe that all of my colleagues feel that way. Therefore, if one says that it is an inherent, innate right for the citizens of our country, then I have to ask the question: is it a myth, that, on the one hand we say you have the right to strike, but, on the other hand we say if you exercise that right, you will lose your job permanently? That appears to me to be an inconsistency.

I can understand if we were to set up conditions. I can understand if we said that there would be a period of time in certain industries, and if there was a certain strike in an industry that in terms of the health and welfare of the people that this simply could not be tolerated. I understand there are laws in various States—in my State—that say if you are a municipal employee and strike, you can lose your job, benefits and procedures. But that is not what we are talking about. What we are talking about is taking people and just saying, "If you strike, we will replace you permanently." I believe that flies in the face of what we are about as a Nation.

Therefore, Mr. President, I am going to, with great reluctance, make a motion to table the amendment that is before the Senate and ask for the yeas and nays.

The PRESIDING OFFICER (Mr. GORTON). Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. CRAIG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, had I asked for the yeas and nays?

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question is on agreeing to the motion to lay on the table amendment No. 331.

The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Wyoming [Mr. SIMPSON] is necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. SIMPSON] would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 42, nays 57, as follows:

[Rollcall Vote No. 102 Leg.]

YEAS—42

Akaka
Baucus
Biden
Bingaman
Boxer
Bradley
Breaux
Bryan
Byrd
Conrad
D'Amato
Daschle
Dodd
Dorgan
Feingold
Feinstein
Ford
Glenn
Graham
Harkin
Heflin
Inouye
Johnston
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Leahy
Levin
Lieberman
Mikulski
Moseley-Braun
Moynihan
Murray
Pell
Reid
Robb
Rockefeller
Sarbanes
Simon
Wellstone

NAYS—57

Abraham
Ashcroft
Bennett
Bond
Brown
Bumpers
Burns
Campbell
Chafee
Coats
Cochran
Cohen
Coverdell
Craig
DeWine
Dole
Domenici
Exon
Faircloth
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Hatch
Hatfield
Helms
Hollings
Hutchison
Inhofe
Jeffords
Kassebaum
Kempthorne
Kyl
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Nunn
Packwood
Pressler
Pryor
Roth
Santorum
Shelby
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Warner

NOT VOTING—1

Simpson

So the motion to lay on the table the amendment (No. 331) was rejected.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, the question is on what?

The PRESIDING OFFICER. The question is on the amendment of the Senator from Kansas.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I have stated earlier, many of us want to get about the business of the appropriations bill. But it has been the decision of the Senator from Kansas to offer an amendment that affects the quality of life of hundreds of thousands of workers in this country.

As I stated earlier in the day, it is amazing to me that this institution has debated mainly two issues. One has been unfunded mandates, and the second is the balanced budget amendment. And now the first issue that comes before us affecting working people is to limit their rights and liberties in the workplace. If this amendment were to be passed tonight, millions of workers would be affected by it. Their working conditions would not be enhanced. Their wages would not be increased.

The well being of the children of those workers will not be enhanced. Their parents will not have a greater assurance of where we are going and where the Contract With America is going.

So it is an extraordinary fact that the first measure before us affecting working families is to diminish their rights and interests.

I am quite prepared to go forward, as we did earlier, with debate about the Executive order and its importance to working families. We have no interest in prolonging consideration of the underlying bill. But we do believe that this is a matter of considerable importance, and there are Senators who want to be heard.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I ask unanimous consent that I be allowed to speak on a matter separate and apart from the existing bill for a period of about 7 or 8 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized.

RURAL TELECOMMUNICATIONS TECHNOLOGY DEMONSTRATION

Mr. STEVENS. Mr. President, I want to bring to the attention of the Senate a demonstration that is currently taking place in the rotunda of the Russell Senate Office Building. I urge all Members of the Senate and their staffs to stop by and see this exhibit.

It is a demonstration of a new satellite telecommunications technology and the potential for advancing telecommunications to rural areas.

The satellite technology demonstrated in the rotunda is just one of the new applications that is coming on line in the near future. Telemedicine is one of the applications that I hope it will help bring to the farthest reaches of my State.

As I think the Senate knows, Alaska is one-fifth the size of the Continental United States. We have been using satellite technology to communicate with remote Alaskan communities since the 1970's, and in many of those communities, we have only one village health aide. Using the advanced digital technology that is now becoming available—and it is used in this demonstration—it will be possible for that nurse to send medical images to hospitals in Anchorage, or even to what we call the lower 48 States, for review by a doctor, something that cannot be done today. In these remote clinics, staffed by people who just have high school education, we are going to be able to take medicine, good telemedicine, directly to the villages.

Eventually, I hope to see even more advanced telemedicine applications like the remote surgery that is being developed by the joint civilian and military medical teams today. At the rotunda demonstration, there is also a telemedicine display, and I hope other Senators will stop by and take time to look at this display.

There are a lot of other possibilities to this type of technology. Tele-education and telecommunicating are two that come to mind.

Recently, I heard of a person who is moving his family to an island in southeastern Alaska where he is going to install advanced telecommunications facilities to allow him to continue to run his business in another State. When that same technology comes down in price, as I am sure it will, I am very hopeful that others will gladly do the same thing and come enjoy our State year round.

Finally, I want to point out that this demonstration of modern technology will allow anyone who comes by to be instantly updated on the status of the last great race on Earth. That is the Iditarod. The Iditarod is going on now. The race is 1,049 miles, from Anchorage to Nome, in the middle of winter by dogsled. Each day at 2 p.m., I receive a call over this new technology that is in the Russell Building from Susan Butcher, a four-time winner of the Iditarod. She is going point to point along the trail. She is not a contestant this year. She is reporting on the race from remote checkpoints where mushers are required to rest each day. The reason she is not in the race is because she is expecting her first child and decided not to be involved in the Iditarod this year.

The demonstration will be in the Russell rotunda until next Tuesday, March 14. It is open from 9 a.m. to 5 p.m. each weekday, and we will have a reception there on Monday evening. It is my hope that other Members of the Senate and staff will come by and see the potential of telecommunications to rural areas, such as we have in Alaska. It is a very informational, very educational demonstration, and I personally invite everyone to stop by.

I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from New Mexico.

CBO ESTIMATE OF PRESIDENT'S BUDGET

Mr. DOMENICI. Mr. President, I apologize to the Senate for my voice, but I have a cold. Nonetheless, I have something to share with you that I think is important.

Today, the Congressional Budget Office has given their estimate of the President's budget or, might I say, reestimate. The Congressional Budget Office released its analysis of the President's budgetary proposals for 1996. The analysis debunks the President's claim that his budget holds the deficit in line at about $200 billion by revealing a total lack of restraint in the President's budget.

Using CBO's economic and technical assumptions, the deficit would climb from $177 billion in 1995 to $276 billion in 2000. That is a 55-percent increase in that period of time over what the President estimates and has told the American people.

Even under the administration's favored measure, the deficit, as a percentage of the gross domestic product, will rise from 2.5 percent in 1995 to 3.3 percent in the year 2000, a rather significant increase.

The Congressional Budget Office estimates that the President's budget policies will result in higher deficits than the administration projected of nearly $200 billion over 1995 to the year 2000. It will be $200 billion higher; on average, $35 billion a year.

Although the difference in the economic forecasts of the Congressional Budget Office and the administration are not great, the Congressional Budget Office's slower economic growth—the assumptions that they have—reduce the revenue take by about $65 billion.

On the spending side, the Congressional Budget Office agrees that growth in Medicare and Medicaid has slowed. It is not as optimistic as the OMB because the CBO estimates that $79 billion higher will be the cost of Medicare and Medicaid over these years.

They also estimate that the President is $27 billion low in the estimate of housing assistance and $10 billion low on unemployment compensation. That merely points out the President's budget not only did nothing, which all of you said, took no difficult steps, bit no difficult bullets, but underestimates the deficit by about $35 billion for each of the years from now until the year 2000, a 55-percent increase in the deficit. That cries out for real action.

I only regret that we will not have the balanced budget amendment to help us when we undertake this ordeal. But I am reminded over the past 4 or 5 days, some on the other side have told us that we do not need the balanced budget amendment to balance the budget. I hope when we present a way of doing it, they will support that without the balanced budget amendment as a hammer from the people of this country.

I yield the floor, and I suggest the absence of a quorum, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

CLOTURE MOTION

Mr. DOLE. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on amendment No. 331 to the committee amendment to H.R. 889, the supplemental appropriations bill.

Hank Brown, Nancy Landon Kassebaum, John Ashcroft, Jon Kyl, Lauch Faircloth, Don Nickles, Strom Thurmond, Dan Coats, Judd Gregg, Slade Gorton, Bob Dole, Chuck Grassley, Craig Thomas, Conrad Burns, Trent Lott, Mike DeWine, Pete Domenici.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I understand that the exact time for the vote on the cloture motion will be determined by the majority and minority leaders, but I would expect that the vote will be sometime next Monday. Am I roughly correct?

Mr. DOLE. The Senator is correct. It will not be on Saturday.

Mr. KENNEDY. And I imagine the exact time will be established by the leaders.

Mr. President, I look forward to the opportunity to vote on the amendment at that time. I will urge my colleagues to vote in opposition to the amendment. It seems to me that this is legislation on an appropriations bill. It is an amendment that is unrelated to the underlying measure. It is an important public policy issue and question.

I have tried over the course of the debate to raise the particular fact that the first measure that we are considering in this Chamber affecting working people is basically to diminish their rights, their hopes, their opportunities. A number of us have been struggling to try to find ways to enhance the lives, the opportunities, and the resources of working families because I think that is a core issue for the future of our country and for the millions of Americans, over 100 million Americans, who go to work every day.

Many of these workers face diminished incomes, increasing concern about the quality of life for themselves and their families. They are looking to the future with increasing concern about the schools their children attend, the services of which are being cut back on the Contract With America. There will be cutbacks in the school lunch program, cutbacks in summer jobs, and cutbacks that are being recommended in the Budget Committees for the student loan programs and the work study programs. These are programs that benefit working families.

So the working families of this country watching this debate tonight are not going to have a great deal of satisfaction about the Kassebaum amendment and I hope they understand why we are resisting it.

One of the important measures which we will have an opportunity to consider, hopefully earlier in the session rather than later, will be the proposed increase in the minimum wage. That is something that can make an important difference in the lives of working families in this country, to recognize that work is important, that work ought to be rewarded, that men and women who are prepared to play by the rules and work the 40 hours a week, 52 weeks a year, ought to be able to have a living wage. The proposal that the President has suggested would not restore the minimum wage to the purchasing power that it had at other times, but nonetheless would make a very important and significant difference to those families.

A number of those families will be here tomorrow at 10 a.m., in the Russell caucus room, on March 10, 1995, at 10 a.m.

The Secretary of Labor, Secretary Reich, and the mayor of Baltimore, Kurt Schmoke, will both be there, as will a number of business owners, economists and others at a forum on the minimum wage. We will learn about what is happening to working families in Main Street America.

In the plants and factories, in the small shops, what are the real conditions that are out there? Earlier in the day we discussed the profile of many of the workers who had been permanently replaced by strikebreakers.

But let me just take a few more moments of the Senate's time to talk about some of those who have been replaced, some of the workers who have been replaced. These are the kind of "special interests" that I am standing up for tonight and will stand up for, because their lives, and similar workers' lives, can be affected by whether we continue the President's Executive order or whether that is undermined by legislative action.

I am thinking of Francis Atilano, 58 who was hired by Diamond Walnut in September 1978.

> I worked for them until the strike began, I was replaced by a new employee.
>
> The strike has caused many changes in our lives. I have been very depressed about losing my job and not knowing what will happen in the future. I have been under a doctor's care for depression.
>
> I had hoped that maybe I could retire from Diamond Walnut in the future with a pension. Now I don't know what we will do since my husband's low paying job has no pension plan.
>
> We at the present time are having a very hard time trying to make ends meet. We have our youngest son whom we are trying to get through college, so he will not have to struggle with life as we have.
>
> The depression even sets in more whenever I think of our 6 children and 19 grandchildren. While I was employed I was able to buy them a little gift once in awhile, and also take the grandchildren to a park or somewhere.

Francis Atilano, age 58, has been replaced by a permanent strike replacement.

Or Willa Miller, 54, started working at Diamond Walnut in 1961, as a young mother with 3 children.

> I am now a grandmother with 7 grandchildren. I went out as a QC Supervisor, worked there 30 years. I was a sorter, checker and QC Sample Girl.
>
> I had to sell my second car and I had to get a part-time job to make ends meet. The Union has really helped me during this strike and I have made many friends and I am closer to them. I joined a prayer group which has really helped me also, other prayer sisters in this strike. We have been there for each other.

Five-year-old Vanessa Contreras was 3 years old when Diamond Walnut permanently replaced her striking mother, causing Vanessa and her mother to lose their family home.

Vanessa is in kindergarten at the Stockton Commodore Skills Center. Her favorite subjects are writing and drawing, and she likes to play with dolls. Her birthday is March 26. Vanessa's mother reports that she has just been learning about the President in school.

Griselda Contreras had been working at Diamond Walnut since 1979. She started as an entry sorter, and over the years worked her way through a number of positions. By the time of the strike in 1991, she was a supervisor in the canning department.

Ms. Contreras volunteers once a week in her daughter's class. She came to the United States from Guadalajara when she was 15 years old. Before going to Diamond, she worked as a bilingual aide for the school district.

I think of Olga Riuz, 62, who is a single parent who has worked for Diamond Walnut for 10 years.

She has two sons, aged 38 and 36 in addition to a 9-year-old grandson and a 5-year-old granddaughter. Olga says they are "good kids," and that she "talks frequently with them about the strike."

When she goes to Stockton, Olga's granddaughter loves to go see the strikers carrying their signs at Diamond Walnut. She asks lots of questions about the strikers.

In her spare time she loves to crochet and raise vegetables in her garden. Her spare time has been cut into by the strike. Olga is no longer able to read the Bible in church because of her added responsibilities * * *.

The list goes on and on. These are the real people who have been replaced. These are the real people who saw their wages reduced. These are the real people who saw the profits go up at the Diamond Walnut some 30 percent. These are the real people who were striking to get the $8, $9, $10, $11 an hour, were receiving that, then took the pay cut, and then were trying to recover that when they saw the company's profits rise by millions and millions of dollars. They tried to at least reclaim the wages that they had forsaken earlier. And these are the individuals, these are the special interests, individuals who have all been dismissed at a time when Diamond Walnut was participating with Government assistance in expanding their markets overseas.

Those are the real Americans whose interests we are attempting to protect with this Executive order. Those are interests that are worthy of protection. I know that there are those who say, "Well, it is the right of employers who control capital to treat workers the way that they want to in a free country." There are those who believe survival of the fittest is not just the law of the jungle, it is the law of the economy as well. I do not think that represents the views of the American people.

There were those in my own State at the turn of the century who believed that, and used to employ child labor in the textile mills up in Lowell and Lawrence—8-, 9-, 10-, and 11-year-old children who worked in those mills. There were people who said the employer had the capital. He was prepared to put up the money and, therefore, we ought to have permitted him to exploit those children; if those children were not prepared to be exploited, there are other children prepared to go through with that. But we rejected that. Just as we have rejected unsafe working conditions.

We as a society did not believe that workers should work in conditions that were a danger to their health and well-being, that they should endure toxic gases and acids and other kinds of dangerous work conditions. The senior Senator from West Virginia described in great detail the conditions in the mines in the earlier part of this century.

We as a country have not said: Devil beware; we will permit anyone to exploit any of the workers in any kind of manner that they want to. There is always someone else to pick up the pieces. That has not been a part of the great social compact of this country and this society. We have rejected that, although there are those voices that today perhaps would like to return to that period. But I do not believe that is the view of our fellow citizens.

Mr. President, I hope that attention will be paid to the forum tomorrow in the Russell caucus room. We should listen to those individuals who will be coming down here to speak about what is really happening out there on the front line for workers.

It will be useful, I think, for Members to perhaps drop by and listen to what is really happening out there in the work force, how people are trying to make it, the problems they are facing, the conditions which have been exploiting them.

Workers in this country, at this time, are facing extraordinary challenges and burdens which were virtually unforeseen for years and years. They have been battling hard. We need to listen to them and to be reminded once again what this Executive order is really all about; that is, to provide some protection for them so that they can look to the future with a sense of hope for themselves and for their families.

Mr. President, I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I would like to congratulate my colleague from Massachusetts for his efforts in the course of this day to try to help Americans to focus on the increasing plight of those who labor in this country.

It is very interesting. The labor law is long established after years of extraordinary confrontation and some very difficult times. Senator BYRD was on the floor earlier this afternoon talking about some of the background of the labor movement, some of the price that was paid by people in an effort to win certain rights in the workplace.

As we think back on the history of this country, there really is not one of us as a school kid, I think, who was not moved by the images as well as the stories of some of the working conditions that grandparents, forebears, and many Members of the U.S. Senate went through.

We all remember that there was a time when child labor was exploited. We remember when there was a time when people worked in sweatshops without rights, without breaks, without the ability to even relieve themselves; we remember a time when people would be injured and there would be no compensation, no recourse. They might even lose the job as a consequence of the injury. There would be no payment.

There is such a long category or list of the ways in which human labor has been pressed to the limit, in ways that we came to believe were considered un-American. We felt that those things were not the way people ought to live in the United States of America. Indeed, most Members of the Senate have spent time arguing about Mexican workers, arguing about workers in other countries, China, and places where workers are exploited today. Thank God, that is not the situation in the United States.

But one of the principal reasons all workers in America have made advances, particularly those today who do not have to join a union, is because a sense of responsibility has entered into the broad marketplace, where most employers now even try to preclude the creation of a union by offering a certain set of benefits—health care, compensation, time off, family leave; a whole set of things that people have come to understand are fair for people to have as they labor.

The last and only real tool available to people who are organized in the marketplace to protect their rights is the right to strike. We have a long-established set of laws in the United States by which people can strike legally, and by which they are restrained from striking illegally. We all remember what happened with PATCO when the air controllers struck in what was deemed to be an illegal strike. They were fired. They were, in the judgment of many in the United States Senate, properly replaced.

Mr. President, there is no rationale that I think can be argued legitimately except a rationale—and it is not legitimate—called union busting, which could justify saying that you would take away from people in a legal strike the right to be able to do it, to strike.

There is enormous power in the hands of employers today; enormous power. For those who are organized, in an effort to try to guarantee that they are adequately paid, that they are given the safety protections and other benefits that we have come to believe people ought to have in America, the only leverage they have in the marketplace is their right to band together and say to that employer, "We don't think we are being treated fairly."

What is the employer's recourse if that happens? The employer is not without recourse. These people cannot shut down his or her plant, or their plant. They have to leave and leave without pay. They have to leave and interrupt their lives, and start to live on the accumulated savings of a union, or those who contribute to their effort to fight for what they think is right. And the employer is permitted, under the law, to replace those people with temporary workers.

So the employer can continue to make profits. The employer can continue to sell goods. There is no disruption, other than the good workers who regularly work and the folks who know each other and the spirit of the plant and all of the good things that come with a good relationship between management and labor; there is none of that. Business is not interrupted, but there can be disruptions, though they do not stop the employer from getting a salary. They do not stop the shareholders from earning money. They do not stop the company from growing or putting out goods.

Meanwhile, people who have labored hard, more often than not under tough conditions, are out in the streets marching up and down, extraordinarily disrupted, having a hard time paying for their needs, for their kids, for their mortgage, for a car, for vacation, for clothing—in an effort to do what? To hurt the United States? To do injury? No; to try to make it, to try to get their little piece of the rock.

I wish I had with me the statistics. I do not have them. But the statistics on corporate pay increases in America relative to the increase of the average working American are shocking.

You know, from the end of World War II, right up until 1979, America grew together, all of us grew.

This chart is a stark reminder of that. This is 1950 to 1978. If you divide America up into quintiles, the lowest quintile, the bottom 20 percent, saw their personal income increase 138 percent. The next quintile went up 98 percent. The third quintile, 106 percent. The fourth quintile, 11 percent. And the top 20 percent of Americans went up 99 percent. So three quintiles grew faster than the top 20 percent in the United States.

From 1979 until 1993, look at this dramatic inversion. This is the story of the working person in America. The bottom quintile went down 17 percent. The next quintile went down 8 percent. The third quintile went down 3 percent. The fourth quintile went up 5 percent. And, Mr. President, the top 20 percent of Americans gained by 18 percent. That is the growing gap in America from 1979 to 1993.

The American worker, the average worker, the person taking home anywhere from $20,000 up to $50,000, has been going down and the person earning over $100,000 is going up.

But it is even more dramatic, Mr. President, when you look at what happened to middle-class incomes in that period, for middle-class incomes in America have gone down. The bottom 20 percent went down a 10-percent drop. The middle 20 percent went down 4 percent. Mr. President, the top 1 percent in America went up 105 percent.

There is nobody who looks at the demographics of this country who will not tell you that the gap between the working American and those who are making it and who have it is growing, and growing substantially. And here we are talking about whether or not that worker, who is increasingly hard pressed to make ends meet, is going to have the ability, in the labor-management relationship that is already significantly weighted toward management, is going to have the ability to simply hold on to the right of collective bargaining.

If you are not allowed to hold on to the right to strike—which, clearly, if you can have permanent replacement workers—you have lost, then you have wiped out the entire gain of the whole concept of collective bargaining.

Mr. President, I do not know of anything more fundamental than that. I really do not. Every single company in this country has the right to go out and hire a replacement person temporarily. So this issue is really a very fundamental one, and I think the President has appropriately offered leadership at the national level, following in the tradition of other Presidents who have issued Executive orders in order to implement a particular policy.

The record is very clear. Franklin Roosevelt, in 1941, issued an Executive order requiring defense contractors to refrain from racial discrimination.

In 1951, after the enactment of the Procurement Act, President Truman issued an Executive order extending that requirement to all Federal contractors.

In 1964, President Johnson issued an Executive order prohibiting Federal contractors from discriminating on the basis of age and, at the time, Federal law permitted such discrimination. The Civil Rights Act of 1964 merely directed the President to study the issue. But the President, rightfully, issued the Executive order.

In 1969, the Nixon administration expanded the antidiscrimination Executive order to encompass a requirement that all Federal contractors adopt affirmative action programs, something a lot of Americans do not remember, but it was President Nixon who put that program in place.

In 1978, President Carter issued an Executive order requiring all Federal contractors to comply with certain guidelines limiting the amount of wage increases. And that order had the effect of limiting what Federal contractors could agree to in collective bargaining, notwithstanding the longstanding Federal policy of encouraging free collective bargaining.

In 1992, President Bush issued an Executive order requiring unionized Federal contractors to notify their unionized employees of their right to refuse to pay union dues. The National Labor Relations Act did not require any of that. In the 101st Congress, legislation had been proposed to impose that right, but the legislation had not been passed. But the President's Executive order, President Bush's Executive order, was not subject to judicial challenge.

So I believe President Clinton's Executive order is an appropriate one under the law, under the historical precedent, and it is obviously a necessary one, Mr. President.

We have learned through the history of strikes that, in fact, a strike that involves permanent replacements actually lasts seven times longer than strikes that do not involve permanent replacements. And they tend to be much more contentious, often changing a limited dispute into a much broader and more contentious kind of struggle. So if one is really interested in good management-labor relations, and in letting the free market work, I might add, Mr. President, it is appropriate to stand by the law as it now stands, which protects the right of workers to collectively bargain.

In 1937, John L. Lewis said that, "The voice of labor insisting upon its rights should not be annoying to the ears of justice nor offensive to the conscience of the American people." And that is really what this is about—the ears of justice and the conscience of the American people, Mr. President.

I think when you look at the trendlines of what is happening, it is very clear that, if we continue down this road, probably more Americans will come together and question whether or not it is time to begin—somehow—to bargain for themselves. And I believe that the struggle for every working American family's right to a decent and safe workplace and the most fundamental right, which is to seek a redress of those grievances within the workplace, is a very hard-fought victory that deserves to be preserved in order to preserve the fabric of this country.

I do not think it is too much to ask, Mr. President, at a time when the changing economic landscape is throwing American jobs into greater and greater competition in the marketplace, that American management simply grant their fellow Americans—the people who live in their towns and make up their communities—the right to bargain for working conditions without the fear of losing their job. For anyone for whom that is the choice, it is no choice. That is very clear.

And all of us who are here for a brief period of time, and we earn so much more, significantly more, than the average American does, we should stop and think about what is it like to make that decision to walk out of a workplace in order to get those better conditions.

That is not, for anyone here who has ever talked to somebody on a picket line, an easy choice. It is not a choice without extraordinary hardship in and of itself. To be faced with the prospect of potentially never walking back into a plant, as a consequence of simply standing up to be able to bargain for the better conditions, is not to live up to the American dream. It is certainly not to respect the history of what we have all been through as a country.

I think we have a code of conduct between labor and management and a set of rules that create a fair playing field. But that fairness would be stripped away by an effort to suggest that any employer who can simply replace people who try to bargain collectively and exercise their right to strike.

I hope, Mr. President, we will remember what this is really all about. It is not as if the corporate entity of this country in the last years has not gained enormously from the measures of the U.S. Congress. I would hope that as we go forward in these next days we will remember those who are increasingly being separated from their potential to touch the American dream, let alone to provide basics for their kids.

I yield the floor.

Mr. HARKIN. Mr. President, would the Senator yield for a dialog here?

Mr. KERRY. Mr. President, I would be delighted.

Mr. HARKIN. I listened carefully earlier when the Senator was going through his charts about the decline in middle income, and the disparity in who is getting the money in our country.

I was intrigued by the charts and how up until the 1960's, I believe, or the 1970's, the Senator was showing how most people increased and advanced together. But it has only been in the last few years where the discrepancies—and where the income was going—has really shown up.

Would the Senator show that last chart, where the disparities came in? Now, this was the chart that shows from 1950 to 1978 we were all kind of growing together, if I am not mistaken.

Mr. KERRY. That is correct.

Mr. HARKIN. And it shows that we basically all increased at the same rate, no matter what income level.

Mr. KERRY. In fact, the lowest 20 percent increased the most.

Mr. HARKIN. The most.

Now, what has happened now since 1978?

Mr. KERRY. Since 1978, right up until the present, there has been a dramatic turnaround where the lower three-fifths of America are going downhill; the fourth quintile has risen marginally, about 5 percent; and the top 20 percent are the people who are really taking home the gravy.

Mr. HARKIN. So that has happened just recently.

Mr. KERRY. Since 1979; since the dramatic increase—I might add, it is a very interesting coincidence.

The year 1979 marks the period where we had a $1 trillion debt in this country. From 1980 to 1993, which represents the greatest period of diminution of earnings, we also have the greatest single period of increase of debt in America.

As I know the Senator from Iowa knows, if we separate it out—the interest payments on that debt period from the current budget—not only are we in balance, but we run a surplus.

So it is the Reagan-Bush years and Congress, too. I will not dump that one. I am tired of hearing that it is exclusively one or the other. Both were complicitous in a process of unwillingness to be fiscally responsible.

But that irresponsibility has become one of the things that is stripping away the capacity of these folks at the bottom to gain the skills necessary in the new marketplace, where information is power, and skills, or the capacity to earn income that has significantly stripped away those folks' access to those skills or to that opportunity.

Mr. HARKIN. Mr. President, I thank the Senator for going over that again, because as the Senator was going through these charts it reminded me of an article I read, from May 23, 1994, "Why America Needs Unions."

> The slide in unions has been linked to a lower level of blue-collar wages, a wider disparity in incomes, and a loss of benefits for workers.

Let me read part of this article. It is titled "Scary gap"—the gap in income.

> New research from respected economists of such schools as Harvard and Princeton shows that blue-collar wages trailed inflation in the 1980's, partly because unions represented fewer workers. The resulting drag on pay for millions of people accounts for at least 20 percent of the widening gap between rich and poor which has reached Depression-era dimensions.

A person might think this came out of some labor-management periodical. This is Business Week, May 23, 1994. I think that even responsible capitalists and responsible free enterprise publications like Business Week are beginning to understand that when we start doing away with unions and start doing away with the bargaining power of unions, we will be in for real trouble.

In fact, the article went on to say that:

> Free market economies need healthy unions. They offer a system of checks and balances, as former Labor Secretary George Shultz [a Republican] has put it, by making managers focus on employees as well as on profits and shareholders.

I think this Business Week article really buttresses what the Senator was saying in terms of the disparity in income and where it is going. I also believe that it shows that it is because of the lack of union bargaining power, because of the threat that is always held over their heads that, "Well, you got to take what management wants, or leave it; and if you leave it and go on strike, which is legal, you will be permanently replaced, and therefore you have no bargaining power anymore."

The Senator from Massachusetts has hit it right on the head. We just cannot permit this widening gap to continue.

Mr. KERRY. Mr. President, if I may point out to my colleague even further, this is another chart which shows that more working families—working families in America, we are not talking about the poor that are so quickly bashed here in Washington today who are on welfare; the poor who are not even on welfare and do not qualify and are not working; these are working Americans—Americans who are out there paying their taxes, struggling to make it. And what is happening?

In 1975, only about 8.2 or 8.3 percent of Americans who were working families qualified as poor in America. Dramatically, beginning in 1979, that went up to about 11.4 percent. We can see the incredible increase when we went through that very dramatic period of raising the defense spending, cutting the taxes, and increasing the deficit. It started down marginally for 3 years, between 1982 to 1985. Now it is going back up, and it is higher than it was in 1980. It is now at the highest level it has been in years, that is—the number of working Americans who are poor.

What is also interesting is back in 1960, 1970, 1980, the minimum wage could lift those folks out of poverty. The minimum wage, 100 percent value of the minimum wage between 1960 and 1980, if a person were earning just the minimum wage they could be lifted out of poverty. But that is no longer the case. The trend line has been straight down since 1980, so that now, in 1995, the minimum wage will only bring a person up to a 70 percent level of the poverty line.

What we are witnessing is an increase in the difficulty of those who are working. And the folks who are working in those conditions, by and large, are not the people who do not have the need to join a union, who are working in a high-technology company or would have a benefits package that is basically geared to be fair and keep the union from growing. They are the folks who most need the union, and now they are also the folks who are finding that there is an effort to deprive them of the capacity to raise those wages to a level where they can make ends meet.

I have been, I will say to my friend from Iowa, I am not someone who has come to the floor and always pleased labor. I voted for GATT, I voted for NAFTA, and I have taken a lot of heat from friends in labor for doing it. I certainly have come to understand that there are in some practices in the marketplace, things that I object to on both sides of the fence.

But I cannot understand what it is that is so compelling in America, other than the effort to try to break the movement altogether, that suggests that it is appropriate to deprive people of the right to say that they can bargain collectively for a better effort, for a better wage, particularly given the fact that unlike the past, today's law does not shut the company down. They can bring in workers. They can keep on selling. They can keep on growing. They keep their salaries. They are not giving up anything.

So why should not that worker who has bargained—and we saw an example of this in a hospital the other day in New York where nurses went out, trying to get a contract, and some of the nurses refused to go out, and they stayed in the hospital and kept working. The patients were served. They brought in extra people. They made it work. And then they finally settled with those who had gone out and, indeed, the whole spirit of the place changes. People who are part of the fabric of that plant or endeavor come back together, they work together.

The best companies I have seen in America are companies where management brings labor into the process, where they are working closely together, where they never have a need for strikes because they are not adversarial.

Clearly, it seems to me, this effort to reduce the capacity of people to bargain simply runs counter to all of the experience of the marketplace since the robber baron days and on through the early 1900's up until the present. I do not think we can say labor law today is so stacked against management or, in fact, so balanced toward labor that there is some huge rationale that suggests that it is an appropriate moment for the U.S. Senate to join in gutting the entire history of the movement altogether.

I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, first of all, I want to thank my friend and colleague from Massachusetts for his very eloquent and, I think, on-the-mark statement regarding what is happening in this country today, as we stand here and watch unions be taken apart piece by piece around the United States.

Mr. President, I want to recap what this is all about, why we are here, and what this amendment is for those Senators who are in their offices or for viewers who may be watching on C-SPAN.

Yesterday, President Clinton issued an Executive order giving the authority to the Secretary of Labor to make a decision, to make a finding whether or not a company was permanently replacing workers who had exercised their legal right to strike. If such a finding was made, then the President would issue orders to relevant agencies of the Federal Government, to say they could no longer contract with that company in the future for any goods as long as that company persisted in hiring permanent replacements.

The amendment we have on the floor by Senator KASSEBAUM from Kansas would make that null and void by stating that through the power of the purse string in the Congress, that moneys could not be spent to enforce that Executive order. Now a cloture motion has been filed to cut off debate and bring it to a vote by Monday.

What precipitated all this? What precipitated the President of the United States in issuing such an Executive order?

It is a culmination of things, but I do not think there can be a clearer example of what brought this about than the example from my own State of Iowa, in the actions by Bridgestone/Firestone. So I am going to take the time of the Senate to walk through one of the—I was going to say saddest—one of the sickest episodes in the history of U.S. labor/management relations. I am sorry that it had to take place in my State of Iowa. I am sorry because our workers in Iowa have been good workers, loyal, productive, hardworking, and now they have been told by Bridgestone/Firestone that they can just go out on the trash heap.

We all have heard of Firestone Tire & Rubber, a well-known name in American industry. I am sure we all, at one time or another, had a Firestone tire on our car. Firestone in the 1980's was up for sale. There were a couple bidders for Firestone. One was Pirelli, an Italian-based company, which bought Armstrong Tire. The other was Bridgestone, which is a Japanese-based company.

They began bidding up the price. It is not that Firestone was bankrupt. We heard those comments earlier today. It was not bankrupt. In fact, Firestone was doing pretty well prior to that. In 1981, Firestone recorded a $121 million profit for the first 9 months. Bridgestone paid some $2.6 billion for Firestone.

In the early 1980's, Firestone began a series of actions, ratcheting down on the workers. First, they started laying off workers. Then in February 1985, they asked the workers to take a wage cut. The workers accepted a cut of $3.43 an hour. Later in 1985, Firestone asked that their property taxes be reduced from $1 million to $800,000, which was approved. So the property owners in Polk County, the county in which Firestone is located, had to make up the $200,000 through other increased property taxes.

Then in 1987, they asked union members to take another wage cut, and they did—$4 an hour. So now in the space of a little over 2 years, the workers at Firestone have taken wage and benefit cuts of $7.43 an hour.

Then in May 1987, Firestone requested some assistance from the government: $1 million from the State; $300,000 from Polk County; $100,000 from the City of Des Moines; $100,000 from Iowa Power; $50,000 from Midwest Gas. And the next month, Firestone gets all the grants from the taxpayers of the State of Iowa.

Bridgestone purchased the company for $2.6 billion, as I mentioned before, in 1988.

By 1993, the Des Moines Bridgestone/Firestone plant was profitable. They are $5 million ahead of budget.

By March of last year, the Bridgestone/Firestone plant in Des Moines set a new high record of productivity, 80.5 pounds per man-hour, and set an all-time record for pounds warehoused.

And then what happened? Last summer, when the contract came up for renewal, Bridgestone/Firestone, the employers, the management, refused to bargain with the employees.

So, left with no other recourse, the employees went out on strike. They have now been out for 8 months.

So this is not about workers who refuse to work. These workers worked hard.

Let me read a letter that I referred to earlier today from Sherrie Wallace. She wrote me this letter on January 8. She said:

> When Bridgestone came to each of us asking for help because we were not doing as well as the company needed to do, we all did our best. They asked me for one more tire every day and to stay out on the floor and to forgo my clean-up time. Not only did I respond, so did each and every member of the URW.
>
> Not only did I give them the one more tire per day, I gave them three times what they asked for. Our production levels soared. We threw ourselves into our company believing that we all must succeed together in order to create a better way of life for all. The membership joined committees and we became involved, we gave them our hearts. We began to believe this company was different. We gave them our input to create a better working environment. To increase productivity, we began to meet our production levels. We were proud of our company and our union. Together we did make a difference.

And then what did they get for it? When their contract came up for renewal, Bridgestone said, "Sorry, suckers. Too bad. Too bad you gave your all. Too bad you worked hard. Too bad you increased your productivity three times. Too bad you took $7 an hour in wage and benefit cuts in the 1970's. Too bad that your tax money gave us money so that we could become more profitable. You are a bunch of suckers. Out the door."

That is in effect what Bridgestone did. They never sat down and negotiated. Not once, not once in 8 months have the employers sat down to negotiate.

There is a report in the Des Moines Register of today: "Bridgestone/Firestone officials have not met with local union negotiators since the beginning of the record 8-month dispute."

So it is not the workers. They are willing to sit down and negotiate under the law. We are a nation of laws, are we not? We have an existing legal structure under which these workers operate. They just want to abide by the law and negotiate.

The company said, "Here are our demands. Take them or leave them."

That is not negotiation. That is not good-faith bargaining. In fact, there is a case now pending before the National Labor Relations Board that the employer, Bridgestone/Firestone, is in violation of section 8, refusal to bargain in good faith. I do not see how anybody could find otherwise because section 8 does say that both sides are required to meet at reasonable times and under reasonable circumstances to negotiate on issues of wages, hours, and conditions of employment.

So I am hopeful that very soon the NLRB, which has had this case since last October, will render a decision. I can only hope that that decision will be that Bridgestone/Firestone is in violation of the law.

Earlier today, I talked about some of the demands that they were making on the workers of Bridgestone/Firestone, about the fact that they want lower wages and longer hours for our workers here than for their workers in Japan. Bridgestone/Firestone is trying to make up for the exorbitant prices they paid for Firestone by taking it out of the workers.

It is not that Bridgestone/Firestone is not profitable. No one has stated that. They are very, very profitable as a matter of fact. In fact, this is from the Wall Street Journal talking about the strike. They said:

> The eight-month strike, the longest running in the tire industry, fails to hurt the company, Bridgestone/Firestone, which reports an 11 percent jump in sales and tripled profits for 1994.

"Tripled profits for 1994." And yet they will not even sit down and negotiate with workers.

> The company operates tire plants with 3,000 permanent replacements and 1,300 workers who cross picket lines and says it doesn't need any more help.

No, it does not need any more help now. It got all the help in the beginning. They got all the help in workers taking wage cuts, concession cuts. They got help from the State of Iowa and the City of Des Moines giving them money, giving them grants.

There was another strike at Pirelli/Armstrong, and they have agreed to go back to work. Pirelli has to hire workers back or face fines under a National Labor Relations Board ruling.

Well, I think that same ruling is going to come down on Bridgestone/Firestone, that they have failed to negotiate in good faith. Again, I hope that that decision will be coming soon.

Mr. President, I ask unanimous consent that the article dated March 7, 1995 appear in full in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Mar. 7, 1995]

Rubber Workers strike out in their walkout at Bridgestone/Firestone.

The eight-month strike, the longest-running in the tire industry, fails to hurt the company, which reports an 11% jump in sales and tripled profits for 1994. The company operates tire plants with 3,000 permanent replacements and 1,300 workers who cross picket lines, and says it doesn't need any more help. David Meyer, a labor expert at the University of Akron, predicts replacement workers will eventually vote to decertify the United Rubber Workers. The standoff drains the strike fund, forcing the union to stop $100-a-week checks to strikers.

The URW tries to save 1,000 jobs at Pirelli Armstrong by offering an unconditional end to the strike there. Pirelli has to hire the workers back or face fines under a National Labor Relations Board ruling. "This way," Mr. Meyer says, the union "can at least stay in the plant and fight another day."

Mr. HARKIN. The Wall Street Journal in December of this year, December 27, 1994, had a story about Bridgestone/Firestone. I am going to read some excerpts from it, and I ask unanimous consent that the entire article from the Wall Street Journal appear in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. BENNETT). Without objection, it is so ordered.

(See exhibit 1)

Mr. HARKIN. Here is part of the article from the Wall Street Journal. It says:

> When he took the wheel at Bridgestone Corp's U.S. operations 3 years ago, Japanese executive Yoichiro Kaizaki warned managers that he's a born gambler, and that he always wins. Mr. Kaizaki—who spent more time at the mahjong table than his college economics classes, a classmate says—was given bad odds for turning around the ailing U.S. operation . . .
>
> Now, Mr. Kaizaki has cast the dice in perhaps his toughest wager yet; that he can crush a six-month-old strike at three of the company's eight U.S. tire plants, allowing Bridgestone to stand alone against a costly master contract adopted by its industry peers. Analysts think it would be tougher for the United Rubber Workers to maintain its clout in the industry if Bridgestone prevails in the strike.

That is why this is so insidious. Goodyear settled. Pirelli/Armstrong is going back to work. Dunlop, they have all signed on. They all have contracts. But now here is Bridgestone. They are saying, no, we are not going to reach an agreement. We will crush the union. We will depress our wages. And that will put Goodyear, Dunlop, and Armstrong at a competitive disadvantage. And what are they going to do? Their shareholders are going to say, "Wait a minute; we have to do the same thing they are doing." And thus you get the ratcheting down of conditions in this country. So this does not have just to do with Bridgestone. It has to do with the whole tire industry in the United States and what is going to happen to the workers there.

> The 61-year-old Mr. Kaizaki isn't looking for a compromise.

Here's more from the article from the Wall Street Journal, quoting Mr.

Kaizaki: "Ending the strike is not necessary for the company if we are forced to set working conditions that kill the company."

> Mr. Kaizaki says Bridgestone is racking up losses of about $10 million a month at the three striking plants.

And you would think that would bring them in, but even with that their profits tripled in 1994. So they are making big money. The real point is they do not want their workers to share in a legitimate, fair way with the increased profits they are making. That is what this is all about.

Earlier this afternoon, the senior Senator from Texas, Mr. GRAMM, said "This has to do with the right of a free people to withhold their labor and the right of the employer to hire somebody else willing to work."

That is what the Senator from Texas, who has now thrown his hat in the ring as an announced candidate for the President of the United States, said. Let me read that again. "It has to do with the right of a free people to withhold their labor and the right of the employer to hire somebody else willing to work."

Mr. President, I have a lot of cousins who work at Bridgestone/Firestone. There is not a one of them not willing to work. Many of them have worked there 20, 30 years. They want to work. And as Sherrie Wallace said in her letter to me not only do they want to work, they will work very hard. The company asked them to produce one more tire a day. She said, "I gave them three more tires a day."

Now, I am sorry. Mr. GRAMM has it wrong. They are willing to work. They are just not willing to be slaves. And we ought not to stand here and allow a company like Bridgestone/Firestone to make them slaves.

I chose my words carefully. I mean exactly what I said—these workers are like slaves, with no voice in what they are going to get as a share of the profits of that company. "Take it or leave it," from the employer. "No matter how long you have worked there, we do not care. You worked there 20 years, you give your best years to the company, we do not care. Take it or leave it, or out the door."

That is slavery, pure and simple. These people are willing to work. They want to work. They want to work under the rubric of the laws of the United States of America. These are law-abiding citizens. They are not breaking any law. If there is a law breaker it is Bridgestone, violating section 8 of the National Labor Relations Act.

And Bridgestone/Firestone cannot say that they are not hiring permanent replacements. They are hiring permanent replacements. That is exactly what they are doing. Here is a letter that was sent to Gary Sullivan, Sr., by Lamar Edwards, labor relations manager for Bridgestone.

> On January 19, 1995, you did not report to work because you were on strike and you were permanently replaced.

That is what the letter says.

> Please address any questions you have to the labor relations office. Lamar Edwards, Labor Relations Manager.

Not even "Sincerely." Not even "Cordially Yours."

Gary Sullivan penned a note on the letter he sent to me. He said: "This is all I am worth after 24 years of devoted and loyal service. Please continue to hang in there. We need your help."

Mr. President, 24 years Gary Sullivan gave to this plant. He worked hard; he produced a lot of tires. They did not even say thank you.

I only have one question for Bridgestone. Where is their heart? Where is their conscience? Do they not have just a little bit of compassion? Do they not have just a little bit of feeling for working people, people like Gary Sullivan or Sherrie Wallace, or all my cousins who have been working at Bridgestone/Firestone?

We are not asking the company to go broke. Profits tripled last year. They are in a great position. But what is happening is they are taking all the money for Mr. Kaizaki and his shareholders, and they are going to see how little they can pay their workers to get the production levels that they want. And they will keep squeezing them down.

That is what this is all about. That is what this is all about, pure and simple. It has to do with whether or not in the specific instance we are about here—whether or not the Federal Government will take tax dollars from Sherrie Wallace and Gary Sullivan and Richard Harkin and Martin Harkin and Edward Harkin—I can go through all my cousins who worked there; it will take me about half an hour—whether they will take their tax dollars; will our Federal Government take their tax dollars and use those tax dollars to turn around and buy tires from Bridgestone/Firestone for the U.S. Government?

The fact is we have contracts with them; there are several contracts with Bridgestone/Firestone from the Federal Government. We know of some 47 Federal contracts held by Bridgestone/Firestone nationwide, not including contracts held by the corporation's subsidiaries. With this Executive order, Bridgestone would not be able to renew over $8 million in Government contracts, $1.5 million from the Des Moines plant alone.

So will we let the Federal Government take the tax dollars of these workers and turn around and use them to buy tires from a plant that has told them, no, we will not bargain with you; we are going to permanently replace you even though you have exercised your legal right to strike? That is why I am proud of what President Clinton did. He said: No, we are not. We are not going to renew our contracts with Bridgestone/Firestone. We are not going to buy tires from that company for the Federal Government if they will not even sit down and bargain and abide by the National Labor Relations Act and bargain in good faith.

Again, I do not know where Bridgestone/Firestone gets off on this. I do not know Mr. Kaizaki. I never met the man. But I do know something. They were talking about violence. We had a couple of violent instances at the Des Moines plant, strikers who were fearful of what is going to happen to their families and their children. I want to read one letter here: There are many ways to do violence. Twelve workers at Bridgestone/Firestone were fired by the company three days before Christmas as a response to what the company referred to as "acts of violence, threats and aggressive behavior."

> I do not condone physical violence and physical threats. Most of us abhor such things as they occur in labor confrontations. However, that is what company officials are counting on in this situation as they commit their own brand of violence by refusing to bargain in good faith for an end to the strike. The company is using its financial might as a club over the workers.
>
> The management of Bridgestone/Firestone wants nothing less than complete capitulation by the members of the United Rubber Workers union. The union is trying to hang on to benefits gained over the years in legitimate negotiating processes.
>
> It behooves the rest of us in the community to understand that what is happening out on Second Avenue in Des Moines and at the other Bridgestone/Firestone locations around the country is an attempt to further erode the rights of workers to maintain some control over their own lives, minds and bodies rather than become the de facto property of the company.
>
> Do not be fooled by the actions of the management of Bridgestone/Firestone. It is every bit as violent (and more so) as any act of physical violence on the picket line in its destructive effects on human life—The Rev. Carlos C. Jayne.

So what Bridgestone/Firestone is doing are acts of violence, violence to decent, hard-working people, many of whom served in our military, fought in our wars; many who gave the best years of their lives; many who have sustained injuries of one form or another; many who are now in their fifties and will not be able to find work anywhere else.

And what Bridgestone is saying is it is just tough luck. We are going to throw you out on the trash heap of life.

It did not just start here. It started a long time ago. It started with other companies, but now it has reached epic proportions. Basically, what we are seeing in America today is the destruction of the working spirit, because what we are telling workers is they are like a piece of machinery. We can use you up and depreciate you down and then we can just kind of throw you out. I think it is destructive of the work ethic. I know it is destructive of human nature. I know it has destroyed a lot of people.

I first came across something like this, when my brother Frank was working at a plant in Des Moines, Delavan Manufacturing Co., started by Mr. Delavan, right before the Second World War. During the Second World War, it grew big because it made a lot of defense articles and it continued to make a lot of defense equipment on through the years. My brother went to work there. He was a machine tool operator and worked there for 23 years.

He loved his job. He loved the plant. He loved Mr. Delavan, a man I had met myself. He had a good job. He belonged to the United Auto Workers. He was a proud union man. He worked there for 23 years. In the first 10 years he worked there, he did not miss 1 day of work and was not late once in 10 years.

I remember I came home from the service on leave one time, and at a Christmas dinner they gave him a gold watch with his name on it because in 10 years he had not missed 1 day of work and he had not been late once in 10 years.

My brother worked in that plant for 23 years. He missed 5 days of work in 23 years because of the snow conditions. We lived in a small town outside Des Moines, and he could not make it to work.

The same thing happened there as happened at Firestone. Mr. Delavan got old. He sold the company. He took care of his workers. In all of those 23 years that plant never had labor strife; they never went on strike. When the contract went up for renegotiation, Mr. Delavan would sit down with them, and they would renegotiate.

Mr. Delavan got old and sold the company to a group of investors. They bought the company. One of the leaders of this investor group bragged at a speech in Des Moines. "If you want to see how to bust a union, come to Delavan." The contract came up for negotiation. He refused to sit down and bargain.

The same thing is true at Bridgestone/Firestone. The workers went out on strike. They brought in the permanent replacements. That was the end of it.

For 23 years my brother worked there. My brother is a high school graduate. He gave the best years of his life, and worked hard. He would stay after work. No matter what they asked him to do, he would do it; 23 years.

Another part of the story I have not mentioned. My brother is disabled; he's deaf. He went to the Iowa School for the Deaf and Dumb. I remember he always said, "You know, I may be deaf but I am not dumb." But that is what they called it: The Iowa School for the Deaf and Dumb.

When he went there, they said, "You can be three things: A shoe cobbler, a printer's assistant, or a baker. It is your choice." He said, "I do not want to be any one of those." But he said, "OK. I am going to be a baker."

He got out of school and baked for a while. Then he got this great job at Delavan's. He made good money. He was a union member. He bought his own car. It was incredible. Here is a deaf man in his early twenties making decent money, bought a new car, out on his own.

You see, Mr. Delavan had gone out and hired disabled people—he was way ahead of his time—to work in his plant and found out that they made some of the best workers. When this new crowd came in and bought the plant, did they give a hoot? They did not care. The bottom line was profits. That was it. They figured it out. If they could take my brother, Frank, who had been there for 23 years and worked his way up the wage scale, if they could get rid of him, they could hire somebody else for a third less. That is exactly what they did.

I will never forget as long as I live two things my brother said to me. The one was when he said to me, "I may be deaf but I am not dumb." I will never forget that. I will never forget that after he lost his job at Delavan's, he was then 54 years old. Do you know where a 54-year-old deaf man finds a job? He got a job as a janitor working at night cleaning out the latrines.

Here is a man who for 23 years operated a nice piece of equipment. It was a drill press. As a matter of fact, he made jet engine nozzles that I used in the jets that I flew in the Navy. He was contributing to the defense of his country. He was making a good wage. He was a member of a union; highly productive; 54 years old. No one is going to hire a 54-year-old deaf man. He went and got a job as a janitor at minimum wage; no union; no benefits; no health care; no anything.

The second thing he said to me that I will never forget. He said, "I feel like that piece of machinery." Delavan had out in back a dump where they dumped all the tailings, and worn out machines. He said, "I feel like one of those pieces of machinery that they used up and they threw out."

I will tell you. When those things hit home, you never forget them. So I have been in favor of doing something about striker replacement ever since that time. It is just not right. It is not right for companies to do this to people. Not all companies do this. It started small. But now it is like a wildfire. Now they are all starting to do it. If Bridgestone/Firestone gets by with it, it will be Armstrong next and then it will be Goodyear and then it will be Dunlop and it will just keep going on because they are going to have to compete. That is what is happening in our society.

So that is what this is all about. It is not convoluted. It is not complicated. It is very simple. It is about whether or not working people in America have any dignity, whether they have any rights at all, whether we believe that people who work should have some bargaining power to bargain with their employer, or whether or not the employer can just say "take it or leave it." That is all it is about. It is nothing more than that.

Finally, it is about whether or not we in the Federal Government will permit our tax dollars to be used to help subsidize this kind of corporate greed, corporate irresponsibility.

President Clinton did the right thing, and I hope we do the right thing. I hope we defeat the Kassebaum amendment and send a strong signal to our workers that the Federal Government, at least, is not going to use their tax dollars to subsidize companies like Bridgestone/Firestone.

I yield the floor.

EXHIBIT 1

[From the Wall Street Journal, Dec. 27, 1994]

CORPORATE FOCUS: BRIDGESTONE BETS IT CAN DEFEAT RUBBER WORKERS' STRIKE—KAIZAKI TRIES TO TURN AROUND FIRESTONE BY BUCKING INDUSTRYWIDE CONTRACT

(By Valerie Reitman, Masayoshi Kanabayashi, and Raju Narisetti)

When he took the wheel at Bridgestone Corporation's U.S. operation three years ago, Japanese executive Yoichiro Kaizaki warned managers that he's a born gambler, and that he always wins.

Mr. Kaizaki—who spent more time at the mahjong table than his college economics classes, a classmate says—was given bad odds for turning around the ailing U.S. operation. So far, he has beaten them.

His aggressive restructuring, known as "risutora" in Japanese, has produced the beginning of a turnaround at rusty Firestone Tire & Rubber Co., which Bridgestone acquired for $2.6 billion in 1988. Mr. Kaizaki's performance at the U.S. operation, known as Bridgestone/Firestone Inc., led to his promotion last year to president of the Tokyo-based parent company, one of the world's largest tire makers, with $10.7 billion in tire revenue last year.

Now, Mr. Kaizaki has cast the dice in perhaps his toughest wager yet: that he can crush a six-month old strike at three of the company's eight U.S. tire plants, allowing Bridgestone to stand alone against a costly master contract adopted by its industry peers. Analysts think it would be tough for the United Rubber Workers to maintain its clout in the industry if Bridgestone prevails in the strike.

The battle is reaching a flash point: Bridgestone says it's about to replace workers permanently, while the union vows to keep Bridgestone from gutting the hard-won increases at other companies.

The outcome likely will determine whether Bridgestone's purchase of Firestone—widely considered one of the worst Japanese investments in America several years ago—will prove a durable winner. Or whether it will go down on the list that includes Sony Corp.'s purchase of Columbia Pictures and Matsushita Electric Industrial Co.'s acquisition of MCA Inc.

The strike's resolution also will stand as a verdict on the management performance of Mr. Kaizaki, who has been applying the restructuring lessons he learned in America to Japan.

When it acquired Firestone, Bridgestone instantly gained a substantial base of U.S. and European factories and sales outlets, doubling its revenue. But Mr. Kaizaki's sweeping reorganization in the U.S. including cost cuts and massive layoffs, and his attempts to boost productivity, have led to this year's strike. Bridgestone and the union are "locked in mortal combat," says William McGrath, a Cleveland tire-industry consultant.

Negotiations are at a stalemate in the strike, which has already surpassed the 141-day walkout that crippled the U.S. tire industry in 1976. Bridgestone is considering making permanent many of the temporary workers hired to replace the 4,200 strikers. Tension has erupted on racial lines, with pickets bearing placards saying "Nuke 'em" and "WWII Part II—Japan's Bridgestone Attack on American Economy."

The union wants Bridgestone to extend the same master contract adopted by U.S. tire industry bellwether Goodyear Tire & Rubber Co. The contract calls for wage and benefit increases of 16% over a three-year period from the current average of $67,000, with the average salary portion going up to $49,000 from $45,000.

Bridgestone and Mr. Kaizaki aren't budging. The company says its crushing debt load—$2 billion left over from the acquisition and subsequent capital investment, and another $500 million of off-balance-sheet debt—makes it unfeasible to accept the same agreement as its powerful rival, Goodyear. But Bridgestone contends its proposal is generous, providing average annual compensation of $63,000 when pegged to productivity improvements and 12-hour rotating shifts. The union abhors the work schedule and says it's impossible to calculate the value of the proposal, given several proposed reductions of pension and medical benefits.

The 61-year-old Mr. Kaizaki isn't looking for a compromise. "Ending the strike is not necessary for the company if we are forced to set working conditions that kill the company," he says in an interview.

Mr. Kaizaki says Bridgestone is racking up losses of about $10 million a month at the three striking plants, but that the U.S. operations overall will still earn a profit for the year. Its five other plants are operating full throttle: Union contracts there do not fall under the URW master agreement. Indeed, for the first time since Bridgestone's acquisition, the U.S. operation swung into the black with a $6 million profit last year, and another $10 million in profit is expected this year.

While the strike has forced Bridgestone to import costly tires from Japan and to fall behind in farm-tire deliveries, the betting is that Mr. Kaizaki will prevail. With the union's war chest running low and some union workers crossing pickets, "this one is an endgame," says University of Akron management Prof. Daniel Meyer. "If the URW picket lines break and a lot of those workers go back, they (URW) will still be a force, but their ability to impact in a major way would be gone"

Judging by his past record, Mr. Kaizaki isn't likely to retreat. A maverick by any standard, he particularly stands out among Japanese managers. The son of a soy-sauce brewer, built like a fireplug, the chain-smoking Mr. Kaizaki resembles the bulldog of a manager he is.

He surprised Firestone workers when he arrived in the U.S. in 1991. He admitted that he knew little about the tire business, coming from Bridgestone's chemical division, and even less about North America. Nor did he speak English. But what he did say was memorable—that he could make tough decisions because he "had a strong stomach and no problem sleeping at night," recalls Bridgestone/Firestone Inc.'s vice president, Trevor Hoskins.

The first Japanese word many Firestone workers learned when he took over was dame (pronounced DA-may), or "no good," which he often used about compromises with the union, according to Nikkei Business magazine.

Productivity assessments have been another hallmark. Mr. Kaizaki quickly divided the U.S. operation into 21 divisions, set clear goals for each manager and gave each division chief "The Buck Stops Here" placards. He says he has no second thoughts about the demands that prompted the strike, including a nonstop production cycle and tying wages to productivity.

From his U.S. vantage, Mr. Kaizaki says he could "see many defects" in the Japanese headquarters. "When I went to the U.S., the parent in Japan did not possess the ability to institute cost-cutting measures." Now, he's implementing some of his U.S. changes at the Japanese parent, putting it on a restructuring diet that he calls slim-ka, in order to offset rubber-price increases (50% this year alone), the yen's appreciation and anemic sales. He has halved management positions, established direct managerial communication lines and meted out the lowest raises in the Japanese tire industry to Bridgestone workers, still the industry's highest-paid.

The diet is working: Bridgestone just boosted its 1994 earnings forecast for Japanese operations to 21.5 billion yen ($216 million), a 26% increase from 17.05 billion yen last year.

In the interview, Mr. Kaizaki dares to say he would lay off workers at the parent if it starts losing money. Even suggesting such a possibility is radical in Japan. But, he says, "I will fire people if the company here falls into as bad a situation as Firestone was in when I was in the U.S."

Even now, he acknowledges that it will be some time before Bridgestone beats the long odds placed on its investment in Firestone. "I think it will take a long time for us to see results. We are getting on the right track, but we are still deeply hurt."

Bridgestone by the numbers—the fundamentals

	1993	1992
Sales (trillions)	1.60	1.75
Net income (billions)	28.39	28.40
Earnings per shares	36.8	36.8

Major product lines: Tires (accounting for 74.5% of total sales), wheels, industrial rubber products, chemical products, sporting goods, bicycles.

Major competitors: Group Michelin (in Europe), Goodyear Tire & Rubber (in U.S.).

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Thank you, Mr. President.

Mr. President, I want to associate myself and concur with the remarks of the Senator from Iowa, my neighbor. I, too, rise in opposition to the pending amendment.

This amendment would block the Executive order issued by President Clinton that prevents the Federal Government from contracting with employers that permanently replace legally striking employees. I strongly support the Executive order.

The time has come, Mr. President, for all of us in this body to begin to correct the significant imbalance that exists in labor law today; an imbalance that must be corrected if America is going to thrive in the increasingly competitive global marketplace.

Mr. President, under our Federal labor law, an employee cannot be fired for exercising the right to strike. Congress guaranteed that right in 1935 with the passage of the National Labor Relations Act, which told every worker that he or she had the right to organize labor unions, to bargain collectively with employers, and to strike in support of those bargaining demands.

Unfortunately, based on the Supreme Court decision in the case of NLRB v. MacKay Radio and Telegraph Company, that same employee who cannot be fired can be "permanently replaced." Mr. President, I have yet to figure out how to console an employee who just lost his or her job for going out on strike by telling her that she has not really been "fired," she has just been "permanently replaced."

The distinction makes absolutely no sense. It is newspeak. It is a distinction without a difference. Perhaps those in the Congress who oppose the President's Executive order could take a moment to explain the distinction to the Senate, the difference between being permanently replaced on a job versus being fired from that job. Or, better yet, perhaps they could take a minute to explain the difference to people like Carol Little, a former employee of the Woodstock Die Cast Co. in Woodstock, IL. I want to tell Carol's story because I think it is significant and it points to some of the issues that the Senator from Iowa raised in his eloquent statement.

In 1988, Woodstock workers went out on strike to protest severe company cutbacks. At issue were proposed reduction in wages and health care benefits, as well as complete elimination of pension benefits, all in a time when the company was making a profit.

Many strike participants had 30 and 40 years of service in the plant, and a majority had over 10 years of service. Carol Little was one of the 370 workers who went on strike as a typical Woodstock Die Cast worker. A 22-year veteran of the plant, she began working at Woodstock Die Cast in 1966.

The job made it possible for her to support her children and disabled husband, while putting a son through college. As the family's primary breadwinner, she depended on the fair wages and benefits historically provided by the Woodstock Die Co.

Within 2 days of the beginning of the strike, the company began advertising for and hiring permanent replacement workers. The company ultimately replaced 220 of the 370 strikers.

While the union provided hardship payments to workers facing severe financial problems, a number of strikers still lost their homes. Several of the striking Woodstock Die Cast workers were forced to file for bankruptcy. In addition, the practice of replacing strikers had severe repercussions throughout the community. The stress caused by the strike and the ensuing job losses contributing to an increase in the divorce rate among former Woodstock Die Cast employees. The most poignant example of tragic personal loss, however, is that of a 26-year-old striker who, in an act of hopelessness, took his own life after his wife left him.

Fortunately, everything turned out OK for Carol Little. She was able to find another job and continue to support her family, but not everyone was as fortunate as Carol Little.

This tragic story is not unique, Mr. President. Similar stories could be told by the 85 workers replaced by Capitol Engineering in 1983; the 100 workers replaced by Calumet Steel in 1986; the 160 workers permanently replaced by Aircraft Gear Corp. in Chicago, in 1990; and the 338 members of the Chicago Beer Wholesalers Association who were permanently replaced—to cite just a few examples.

Over the last few months, the Bridgestone/Firestone Corp. has also permanently replaced several hundred workers in its plant in Decatur, IL. There is a plant in Decatur as well as Des Moines. This decision has created severe economic disruptions for working families that depend on Bridgestone/Firestone for their livelihood. It has also impacted many people and businesses throughout the Decatur area that are not directly connected with the company.

The fact of the matter is, Mr. President, that there is no difference between permanently replacing a striking worker, or firing a striking worker. As Thomas Donahue, secretary-treasurer of the AFL–CIO stated:

> Stripped of the legal niceties, the Mackay doctrine is a grant to employers of the 'right' to punish employees for doing no more than unionizing and engaging in collective bargaining. Mackay takes back a large part of the Federal labor law's broad promise to employees that they are protected against employer retaliation if they choose to exercise their freedom to associate in unions. And it does so when that promise would have the most meaning: A collective bargaining dispute. At that critical time, the Mackay doctrine sacrifices basic workers' rights in the interest of aggrandizing employer prerogatives.

Mr. President, the Senate failed to end debate on the striker replacement act last July. This legislation would have amended both the National Labor Relations Act and the Railway Labor Act by banning the permanent replacement of striking workers.

The Executive order issued yesterday by President Clinton will help us take a small, first step; toward restoring the long-standing imbalance in labor-management relations by prohibiting the Federal Government from contracting with employers that replace legally striking workers.

It does not mean that the choice that employees have will be removed from them. They can still decide if they want to avail themselves of the right to permanently replace somebody, but it does mean that taxpayers will not be a party to decisions to permanently replace workers when indeed the law that guarantees people the right to strike would have prohibited it.

Mr. President, this order represents a lawful exercise of Presidential authority. The Federal Procurement Act, enacted by Congress in 1949, expressly authorizes the President to "prescribe policies and directives, not inconsistent with the provisions of this act, as he shall deem necessary to effectuate the provisions of said act."

Republican and Democratic Presidents alike have issued Executive orders addressing the conduct of companies with which the Federal Government does business. For example, in 1941, President Roosevelt issued an Executive order which prohibited defense contractors from discriminating against individuals on the basis of race. In 1951, after enactment of the Procurement Act, President Truman—whose desk I share, by the way, Mr. President—issued an Executive order extending that requirement to all Federal contractors. When both orders were issued, such discrimination was not unlawful and, in fact, Congress had failed to enact an antidiscrimination law proposed by President Truman.

In 1964, President Johnson issued an Executive order prohibiting Federal contractors from discriminating on the basis of age. At the time, Federal law permitted such discrimination.

In 1969, President Nixon expanded the antidiscrimination Executive order by requiring all Federal contractors to adopt affirmative action programs. President Nixon did that.

In 1992, President Bush issued an Executive order requiring unionized Federal contractors to notify their unionized employees of their right to refuse to pay union dues.

Mr. President, since being elected to the Senate I have had the opportunity to speak to hundreds of workers about the issue of striker replacements throughout my State and indeed in other places, as well. The most important point that I try to make when I talk with working people is that a company's most important asset is its labor force.

This permanent replacement situation, I believe, is counterproductive in that it sets up a dynamic of mistrust and hostility between labor and management that cannot be constructive or conducive to productivity. That really breaks down the capacity of the organization to function.

Of course, every time I talk to working people, I am preaching to the choir. Telling a group of UAW members, for example, about the importance of passing legislation that would prohibit permanent striker replacements is like telling South Africans about the importance of voting. They get it right off, and they understand immediately what it means.

But I have also tried to get the same message through to members of the business community in Illinois. I hope I have been successful. America's employers have nothing to fear from President Clinton's Executive order. In the end, labor and management's interests really are the same. We are all in a global economy and we will rise or fall, sink or swim together. We are all in this together.

Mrs. BOXER. Will my colleague yield to me on that point for just a very brief comment?

Ms. MOSELEY-BRAUN. Certainly.

Mrs. BOXER. Mr. President, I really am pleased to hear the Senator talk about how important it is to have good relations between the workers and management.

I know that our Presiding Officer is a very successful business person. I know how much we think of him. We think he is one of the finest Senators, and I am sure that his workers felt the same way about him because this is a man of quality. I think that relationship is crucial.

I just wanted to put in the RECORD at this point a comment that was made by a nurse who was voted the nurse of the year in one of our great hospitals in California. There was a terrible strike going on and the nurses felt that they were really being abused in many, many ways. I will not go into all the details. It is not important here.

But what is important is that they went out on strike and within a day they were replaced. This is what she said:

> I always felt that you strike because of the issues and when you settle the issues you go back to work. You do not win every issue. You compromise. That is how we do it in America. I never thought they would replace the workers. Why would anyone ever go on strike then?

And I think that very simple message gets through to me. We need to settle our differences amicably. And if you know that you are going to be replaced the minute you withhold your labor, which is a human right, then I think it has a tremendously chilling effect.

So I am very pleased to associate myself with the Senator's remarks, the fact that I think that it is the right thing for business and for the working people and that our President did the right thing. He stood up and said, you know, "I'm drawing a line here in the sand."

I am very sorry that we are into this on a bill that is supposed to reimburse the Pentagon for peacekeeping expenses. It seems to me very odd that the Republicans would offer such an amendment on a bill I know they want to get through. It is delaying us, but I guess that is the way it goes.

I am proud to associate myself with my colleague. I look forward to working with her on this issue.

Ms. MOSELEY-BRAUN. Thank you very much.

I thank the Senator from California for her remarks, as well.

Mr. President, I would like to address some of the incorrect statements that have been made about President Clinton's Executive order.

The President's Executive order will not encourage workers to strike, it will only restore balance to their relations with employers. It also will not prevent employers whose workers choose to strike from carrying on with their business.

A company faced with a strike has a number of options. It can hire temporary replacements. It can rely on supervisory or management personnel to complete jobs. It can transfer work to another plant, subcontract work, or stockpile in advance of a strike. In addition, the Supreme Court has long held that an employer lawfully may lock out employees as a means of controlling the time of a work stoppage and gain an advantage thereby in bargaining. The President's Executive order will not take away any of those alternatives.

All it will do, again, is keep taxpayers from being made an inadvertent, unwilling, and unexpected party to the capacity of an employer to permanently replace a worker. Again, "permanently replace"—in my mind, I would like someone to explain how that is different from firing somebody.

There are, of course, those who say that the Executive order is unnecessary, that employers are no more likely to hire permanent replacements for their workers now than they were when the Mackay decision was originally issued. The facts, however, tell another story. Since 1980, employers have made far more frequent use of permanent replacements.

In 1990, Mr. President, the General Accounting Office released a study on the use of permanent replacements by employers of labor disputes covered by the NLRA. The study covered the years 1985 to 1989. The study found that in fully one-third of the strikes examined, employers indicated they intended to hire permanent replacements. In approximately 17 percent of the strikes, employers actually did hire permanent replacements. The GAO stated that approximately 14,000 striking workers were replaced in 1985 and 14,000 more in 1989.

Of course, this figure did not cover employees covered by the Rail Labor Act, or the RLA, such as the 8,000 pilots, machinists and flight attendants replaced by Continental Airlines in 1985, or the 7,000 employees replaced by Eastern Airlines in 1989. An AFL-CIO study found 11 percent of striking workers, 126,450 individuals in all, were permanently replaced in 1990.

What we are seeing is an increase in the use of permanent replacements, and an increase in the use of this tactic by employers. Again, given the trauma that it occasioned, I daresay it cannot be in our national interests to promote or to continue.

What is even more important to realize, Mr. President, is the real issue is not ultimately how often the permanent replacement weapon is used. The truth is that the mere availability of this weapon to management distorts the collective bargaining process in many, many more labor disputes than those in which it is actually used. The mere existence of the threat, whether or not it is carried out, is enough to undermine the right to organize and to undermine workers' ability to bargain on a level playing field about the conditions of their work.

In that regard, I reference the letter that was read by the Senator from California, when the letter writer said, "If you knew you were going to get fired, why would you try?"

After 12 years of antagonism during previous administrations, the time I believe has come to forge a new direction. The time has come for labor and management to work together in this country. Our major industrial competitors including Canada, Japan, Germany, and France, have recognized that banning the permanent replacement of strikers restores balance in the collective bargaining process and makes good economic sense. The time has come for Congress to do the same.

I point out again, with regard to Bridgestone/Firestone in Decatur and Des Moines, what is happening in Decatur, and what is happening in Des Moines, is illegal in Japan. It is almost too perverse to contemplate.

America's union workers are not simply another cost to be cut. They are human beings who are often struggling to provide for their families to make ends meet. Under our Nation's labor laws they have certain rights, including the right to strike. Congress thought that we were guaranteeing that in 1935 when the NLRA was passed. Unfortunately, they were wrong. They had not counted on someone coming up with the idea that to be permanently replaced was not the same thing as being fired.

But we can guarantee that today. We can acknowledge what everyone knows to be true: That absent the right to strike without being permanently replaced, collective bargaining does not work. It cannot. It cannot if management can replace workers the minute they take to the picket lines. Workers then do not have the right to bargain. They walk around in every negotiation with a loaded gun, frankly, at their heads.

Mr. President, we are entering a new era in economic competition. All over the world, barriers to trade between nations are falling. We are witnessing the development of a truly global marketplace. I believe that America can and must lead the way in this marketplace, but if we are to succeed, if we are to retain our competitive edge into the 21st century, there must be a symbiosis between labor and management and government. That means a mutually beneficial working relationship, one of mutual respect: Labor needs jobs, workers need jobs, workers need the business to be competitive to make a profit to be able to compete. Government should be a partner of all of that.

Certainly, this issue of permanent replacement of strikers just cuts against the grain and prohibits and precludes our ability to advance ourselves and to go forward in terms of this global marketplace and the competitiveness challenges that we are facing in the world.

Mr. President, President Clinton's Executive order, I believe, is a first step in restoring the balance, the delicate balance, that will allow America to retain its competitive edge. I would, therefore, like to conclude my remarks by urging this body to oppose the pending amendment. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

THE PELL GRANT PROGRAM

Mr. PELL. Mr. President, recently, concern was expressed that the Pell Grant Program may be giving college students a free ride, and that Federal funds might be better spent by transferring funds to the College Work Study Program. Because of this, I thought it might be helpful to take a somewhat closer look at the Pell Grant Program, and place it in a more proper context regarding student aid in general and its relationship to college work study in particular. I thought it might also be good to see just how many students today have to work to help pay for their college education.

At the outset, let me make it clear that I support both of these very worthy programs. The Pell Grant Program provides students with need the opportunity to pursue a college education that might be beyond their financial reach. The College Work Study Program often supplements the Pell Grant Program and offers deserving students the chance to help defray their educational expenses by working. Both programs are important, and both programs are essential.

I am concerned, however, that with respect to the Pell Grant Program, the impression in the public's mind might be that these students do not have to work and that their college education is being fully financed by their Pell grant. Nothing could be farther from the truth.

As my colleagues know, the Pell grant award is need-based, which means it goes only to students who demonstrate financial need. Over 75 percent of all students who receive Pell grants come from families with incomes of less than $15,000 a year, which means that the program is targeted to those students who have the greatest financial need.

In addition, it is very important that one realize that the maximum Pell grant can be no higher than $2,340, the current maximum, or 60 percent of the cost of attendance, whichever is less. Thus, in no situation does the Pell grant pay for a student's entire education. At best, it covers only 60 percent of the cost of attendance, and that in the case of those students who demonstrate the very greatest need.

Increasingly, more and more students find they must work in order to obtain the additional funds necessary to pay for a college education. A recent Washington Post article indicated that the proportion of all fulltime college students between the ages of 16 and 24 who worked to help pay for their education had increased from 35 percent in 1972 to 51 percent in 1993. And, fulltime students now work an average of 25 hours a week.

The figures for Pell grant recipients are even more dramatic. Of those who responded to a recent survey by the U.S. Department of Education, more than 75 percent of all Pell grant recipients worked and 60 percent worked while they were in school. Numerically, this means that almost 2.8 million Pell grant recipients work, and over 2.2 million must work and go to college at the same time.

I am equally concerned that there may simply not be enough hours in a day for needy and deserving students to pay for their entire education by working. One goes to college to learn. If that is to be done and done well, students must have sufficient time to study. While work may be both necessary and laudable, it should not rob students of the time they need to fulfill the academic responsibilities that led them to seek a college education in the first place.

Further, it is very doubtful that there are enough jobs in and around campus to meet the demand that would be created if the Pell Grant Program were handed over to college work study. When we reauthorized the Higher Education Act in 1992, we considered an expansion of the Work Study Program, but found that many colleges were literally stretched to the limits in terms of finding employment for their students. Thus, as worthwhile and important as the College Work Study Program is, it simply cannot meet the overwhelming needs of students.

One of the unique features of the Pell Grant Program is that it is targeted to the student and not the institution. If students demonstrate need, Pell grant funds are available to help them attend a college of their choice. Transferring that approach to the campus-based Work Study Program would change the very nature of the Pell Grant Program. Access and choice are twin features of this important program, and I am of the mind that we should not alter that approach.

The Pell Grant Program has helped literally millions of students achieve a college education that otherwise would have been beyond their reach. This year more than 3.7 million students received Pell grants, and more than 54 million grants have been made since the program began in 1973–74 school year. It is a program that has outstripped the widely popular and important GI bill on which it was modeled.

Mr. President, today we are faced with the fact that more students and families are having to go deeply into debt to pay for a college education. The number of students and families who must borrow and the amount of money they are borrowing are reaching gigantic proportions. A decade ago the anticipated new loan volume in the Guaranteed Student Loan Program was $7.9 billion with just under 3.4 million borrowers. This year the anticipated loan volume is $25.8 billion and almost 6.6 million borrowers. The number of borrowers has less than doubled, but the amount borrowed has more than tripled.

Instead of focusing concern on either the Pell Grant Program or the College Work Study Program, we should be examining with care the long-term effects of student indebtedness. Instead of a debate that would have us choose between grants or work study, we should be debating how to increase both of those programs in order to relieve students and families of the terrible debt burden they are incurring through student loans.

Mr. President, in a Congress where the size of the national debt is rightfully a major focus and where the need for a better balance between income and expenditures is absolutely necessary, we should not lose sight of the fact that this applies not only to Federal spending but also to family spending and the deficit they face in trying to pay for a college education.

In a Congress where budget cutting is a major theme, it may not be popular to suggest that the right and prudent course to follow in student aid is to increase funding in both the Pell grant and the College Work Study program. Yet, that is, to my mind, the course we should be following if, in fact, we are really, truly concerned about the debt American students and families are incurring as they invest not only in education but in their own and their Nation's future strength and well-being.

What Disraeli said of England over a century ago is surely just as true for America today: "Upon the education of our children depends the future of the nation."

COMMEMORATION OF NATIONAL SPORTSMANSHIP DAY

Mr. PELL. Mr. President, it is with great pride that I bring to the attention of my colleagues National Sportsmanship Day which was celebrated on March 7.

My pride stems from the fact that this celebration, which is recognized by the President's Council on Physical Fitness and Sports, originated as a concept of the Institute for International Sport. The institute, housed at the University of Rhode Island, has brought us the hugely successful World Scholar-Athlete Games and the soon to be held Rhode Island Scholar-Athlete Games. National Sportsmanship Day, now in its fifth year, has grown into a national and now an international movement.

National Sportsmanship day was conceived to create an awareness among the students of this country—from grade school to university level—of the importance of ethics, fair play, and sportsmanship in all facets of athletics as well as society as a whole. The need to periodically refocus our young people on sportsmanship and fair play is sadly evident on the playing field in these days of taunting, fighting, winning at all costs mentality, and the lure of huge sums of money for athletes hardly ready to cope with life's normal challenges.

To commemorate National Sportsmanship Day, the Institute for International Sport sends to all participating schools—now numbering 5,000 in all 50 States as well as a number of schools in nearly 50 countries—packets of information with instructional materials on the themes surrounding the issue of sportsmanship. Throughout the country, students are involved in discussions, writing essays, creating art work, and in other creative ways engaging each other on the subject.

The institute's nationally recognized Sports Ethics Fellows Program, which counts among its present members

Olympic gold medal skater Bonnie Blair, promotes and supports National Sportsmanship Day activities.

Mr. President, as it has in past years, the President's Council on Physical Fitness and Sports had recognized National Sportsmanship Day. I ask unanimous consent that the letter signed by the council's cochairs Florence Griffith Joyner and former Congressman Tom McMillen be printed in the RECORD following my remarks. I also urge my colleagues, Mr. President, to encourage students to focus on National Sportsmanship Day.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE PRESIDENT'S COUNCIL ON
PHYSICAL FITNESS AND SPORTS,
Washington, DC, November 28, 1994.

Mr. TODD SEIDEL,
Director of National Sportsmanship Day, Institute for International Sport, University of Rhode Island, Kingston, RI.

DEAR MR. SEIDEL: The President's Council on Physical Fitness and Sports is pleased to recognize March 7, 1995, as National Sportsmanship Day. The valuable life skills and lessons that are learned by youth and adults through participation in sports cannot be overestimated.

Participation in sports makes contributions to all aspects of our lives, such as heightened awareness of the value of fair play, ethics, integrity, honesty and sportsmanship, as well as improving levels of physical fitness and health.

The Council congratulates the Institute for International Sport for its continued leadership in organizing this important day and wish you every success in your efforts to broaden participation and awareness of National Sportsmanship Day.

Sincerely,

FLORENCE GRIFFITH JOYNER,
Cochair.
TOM MCMILLEN,
Cochair.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Labor and Human Resources.

REPORT RELATIVE TO THE ATOMIC ENERGY ACT—MESSAGE FROM THE PRESIDENT—PM 31

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations.

To the Congress of the United States:

The United States has been engaged in nuclear cooperation with the European Community, now European Union, for many years. This cooperation was initiated under agreements that were concluded in 1957 and 1968 between the United States and the European Atomic Energy Community [EURATOM] and that expire December 31, 1995. Since the inception of this cooperation, EURATOM has adhered to all its obligations under those agreements.

The Nuclear Non-Proliferation Act of 1978 amended the Atomic Energy Act of 1954 to establish new nuclear export criteria, including a requirement that the United States have a right to consent to the reprocessing of fuel exported from the United States. Our present agreements for cooperation with EURATOM do not contain such a right. To avoid disrupting cooperation with EURATOM, a proviso was included in the law to enable continued cooperation until March 10, 1980, if EURATOM agreed to negotiations concerning our cooperation agreements. EURATOM agreed in 1978 to such negotiations.

The law also provides that nuclear cooperation with EURATOM can be extended on an annual basis after March 10, 1980, upon determination by the President that failure to cooperate would be seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize the common defense and security, and after notification to the Congress. President Carter made such a determination 15 years ago and signed Executive Order No. 12193, permitting nuclear cooperation with EURATOM to continue until March 10, 1981. Presidents Reagan and Bush made similar determinations and signed Executive orders each year during their terms. I signed Executive Order No. 12840 in 1993 and Executive Order No. 12903 in 1994, which extended cooperation until March 10, 1994, and March 10, 1995, respectively.

In addition to numerous informal contacts, the United States has engaged in frequent talks with EURATOM regarding the renegotiation of the U.S.-EURATOM agreements for cooperation. Talks were conducted in November 1978; September 1979; April 1980; January 1982; November 1983; March 1984; May, September, and November 1985; April and July 1986; September 1987; September and November 1988; July and December 1989; February, April, October, and December 1990; and September 1991. Formal negotiations on a new agreement were held in April, September, and December 1992; March, July, and October 1993; June, October, and December 1994; and January and February 1995. They are expected to continue.

I believe that it is essential that cooperation between the United States and EURATOM continue, and likewise, that we work closely with our allies to counter the threat of proliferation of nuclear explosives. Not only would a disruption of nuclear cooperation with EURATOM eliminate any chance of progress in our negotiations with that organization related to our agreements, it would also cause serious problems in our overall relationships. Accordingly, I have determined that failure to continue peaceful nuclear cooperation with EURATOM would be seriously prejudicial to the achievement of U.S. nonproliferation objectives and would jeopardize the common defense and security of the United States. I therefore intend to sign an Executive order to extend the waiver of the application of the relevant export criterion of the Atomic Energy Act until the current agreements expire on December 31, 1995.

WILLIAM J. CLINTON.
THE WHITE HOUSE, *March 9, 1995.*

REPORT ON UNITED STATES SUPPORT FOR MEXICO—MESSAGE FROM THE PRESIDENT—PM 32

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

On January 31, 1995, I determined pursuant to 31 U.S.C. 5302(b) that the economic crisis in Mexico posed "unique and emergency circumstances" that justified the use of the Exchange Stabilization Fund [ESF] to provide loans and credits with maturities of greater than 6 months to the Government of Mexico and the Bank of Mexico. Consistent with the requirements of 31 U.S.C. 5302(b), I am hereby notifying the Congress of that determination. The congressional leadership issued a joint statement with me on January 31, 1995, in which we all agreed that such use of the ESF was a necessary and appropriate response to the Mexican financial crisis and in the United States' vital national interest.

On February 21, 1995, the Secretary of the Treasury and the Mexican Secretary of Finance and Public Credit signed four agreements that provide the framework and specific legal arrangements under which up to $20 billion in support will be made available from the ESF to the Government of Mexico and the Bank of Mexico. Under these agreements, the United States will provide three forms of support to Mexico: short-term swaps through which Mexico borrows dollars for 90 days and that can be rolled over for up to 1 year; medium-term swaps through which Mexico can borrow dollars for up to 5 years; and securities guarantees having maturities of up to 10 years.

Repayment of these loans and guarantees is backed by revenues from the export of crude oil and petroleum products formalized in an agreement signed by the United States, the Government of Mexico, and the Mexican government's oil company. In addition, as added protection in the unlikely event of default, the United States is requiring Mexico to maintain the value of the pesos it deposits with the United States in connection with the medium-term swaps. Therefore, should the rate of exchange of the peso against the U.S. dollar drop during the time the United States holds pesos, Mexico would be required to provide the United States with enough additional pesos to reflect the rate of exchange prevailing at the conclusion of the swap.

I am enclosing a Fact Sheet prepared by the Department of the Treasury that provides greater details concerning the terms of the four agreements. I am also enclosing a summary of the economic policy actions that the Government of Mexico and the Central Bank have agreed to take as a condition of receiving assistance.

The agreements we have signed with Mexico are part of a multilateral effort involving contributions from other countries and multilateral institutions. The Board of the International Monetary Fund has approved up to $17.8 billion in medium-term assistance for Mexico, subject to Mexico's meeting appropriate economic conditions. Of this amount, $7.8 billion has already been disbursed, and additional conditional assistance will become available beginning in July of this year. In addition, the Bank for International Settlements is expected to provide $10 billion in short-term assistance.

The current Mexican financial crisis is a liquidity crisis that has had a significant destabilizing effect on the exchange rate of the peso, with consequences for the overall exchange rate system. The spill-over effects of inaction in response to this crisis would be significant for other emerging market economies, particularly those in Latin America, as well as for the United States. Using the ESF to respond to this crisis is therefore plainly consistent with the purpose of 31 U.S.C. 5302(b): to give the United States the ability to take action consistent with its obligations in the International Monetary Fund to assure orderly exchange arrangements and a stable system of exchange rates.

The Mexican peso crisis erupted with such suddenness and in such magnitude as to render the usual short-term approaches to a liquidity crisis inadequate to address the problem. To resolve problems arising from Mexico's short-term debt burden, longer term solutions are necessary in order to avoid further pressure on the exchange rate of the peso. These facts present unique and emergency circumstances, and it is therefore both appropriate and necessary to make the ESF available to extend credits and loans to Mexico in excess of 6 months.

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THE WHITE HOUSE, *March 9, 1995.*

MESSAGES FROM THE HOUSE

At 11:53 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 9. An act to create jobs, enhance wages, strengthen property rights, maintain certain economic liberties, decentralize and reduce the power of the Federal Government with respect to the States, localities, and citizens of the United States, and to increase the accountability of Federal officials.

H.R. 988. An act to reform the Federal civil justice system.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 9. An act to create jobs, enhance wages, strengthen property rights, maintain certain economic liberties, decentralize and reduce the power of the Federal Government with respect to the States, localities, and citizens of the United States, and to increase the accountability of Federal officials; to the Committee on Governmental Affairs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–480. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, the report on a transaction involving U.S. exports to various countries; to the Committee on Banking, Housing, and Urban Affairs.

EC–481. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, the report on a transaction involving U.S. exports to various countries; to the Committee on Banking, Housing, and Urban Affairs.

EC–482. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, the report on a transaction involving U.S. exports to various countries; to the Committee on Banking, Housing, and Urban Affairs.

EC–483. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, the report on tied aid credits; to the Committee on Banking, Housing, and Urban Affairs.

EC–484. A communication from the Secretary of Housing and Urban Development, transmitting pursuant to law, the report entitled "Effect of the 1990 Census on CDBG Program Funding"; to the Committee on Banking, Housing, and Urban Affairs.

EC–485. A communication from the Secretary of Energy, transmitting a draft of proposed legislation to provide additional flexibility for the Department of Energy's program for the disposal of spent nuclear fuel and high level radioactive waste, and for other purposes; to the Committee on Energy and Natural Resources.

EC–486. A communication from the Assistant Secretary of the Interior for Territorial and International Affairs, transmitting a draft of proposed legislation to authorize appropriations for United States insular areas, and for other purposes; to the Committee on Environment and Public Works.

EC–487. A communication from the Deputy Administrator of the General Services Administration, transmitting, pursuant to law, a report of the building project survey for Hilo, Hawaii; to the Committee on Environment and Public Works.

EC–488. A communication from the Assistant Secretary of the Interior for Policy, Management and Budget, transmitting, pursuant to law, a report relative to the progress in conducting environmental remedial action at federally owned or federally operated facilities; to the Committee on Environment and Public Works.

EC–489. A communication from the Secretary of the Treasury, transmitting the Administration's policy proposals on disaster assistance and disaster-related insurance; to the Committee on Environment and Public Works.

EC–490. A communication from the Acting Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, the "Report to Congress on Abnormal Occurrences, July-September 1994"; to the Committee on Environment and Public Works.

EC–491. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, prospectuses for U.S. courthouses in Jacksonville, FL, Albany, GA, and Corpus Christi, TX; to the Committee on Environment and Public Works.

EC–492. A communication from the Fiscal Assistant Secretary of the Treasury, transmitting, pursuant to law, the report of the December 1994 issue of the Treasury Bulletin; to the Committee on Finance.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources:

Wilma A. Lewis, of the District of Columbia, to be inspector general, Department of the Interior.

(The above nomination was reported with the recommendation that she be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. THOMAS (for himself, Mr. NICKLES, Mr. HELMS, Mr. BURNS, Mr. LOTT, Mr. STEVENS, and Mr. KYL):

S. 518. A bill to limit the acquisition by the United States of land located in a State in which 25 percent or more of the land in that

State is owned by the United States, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DASCHLE (for himself, Mr. Exon, Mr. Ford, Mr. Conrad, Mr. Dorgan, Mr. Kohl, Mrs. Feinstein, Mr. Bumpers, Mr. Robb, Mr. Kerry, Mr. Feingold, Mr. Harkin, Mr. Reid, Mr. Hollings, Mrs. Boxer, Mr. Levin, Mr. Pryor, and Mr. Biden):

S. 519. A bill to require the Government to balance the Federal budget; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mr. SHELBY:

S. 520. A bill to amend the Internal Revenue Code of 1986 to allow a refundable tax credit for adoption expenses; to the Committee on Finance.

By Ms. SNOWE:

S. 521. A bill entitled "the Small Business Enhancement Act of 1995"; to the Committee on Finance.

By Mr. DOMENICI (for himself and Mr. Bingaman):

S. 522. A bill to provide for a limited exemption to the hydroelectric licensing provisions of part I of the Federal Power Act for certain transmission facilities associated with the El Vado Hydroelectric Project in New Mexico; to the Committee on Energy and Natural Resources.

By Mr. BENNETT (for himself, Mr. Brown, Mr. Campbell, Mr. Hatch, and Mr. Kyl):

S. 523. A bill to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. WELLSTONE (for himself, Mr. Kennedy, Mr. Reid, Mr. Bradley, and Mrs. Murray):

S. 524. A bill to prohibit insurers from denying health insurance coverage, benefits, or varying premiums based on the status of an individual as a victim of domestic violence and for other purposes; to the Committee on Labor and Human Resources.

By Mr. BAUCUS (for himself, Mr. Daschle, Mr. Dorgan, and Mr. Pressler):

S. 525. A bill to ensure equity in, and increased recreation and maximum economic benefits from, the control of the water in the Missouri River system, and for other purposes; to the Committee on Environment and Public Works.

By Mr. GREGG (for himself and Mr. Bond):

S. 526. A bill to amend the Occupational Safety and Health Act of 1970 to make modifications to certain provisions, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. LOTT:

S. 527. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Empress;* to the Committee on Commerce, Science, and Transportation.

S. 528. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for three vessels; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THOMAS (for himself, Mr. Nickles, Mr. Helms, Mr. Burns, Mr. Lott, Mr. Stevens, and Mr. Kyl):

S. 518. A bill to limit the acquisition by the United States of land located in a State in which 25 percent or more of the land in that State is owned by the United States, and for other purposes; to the Committee on Energy and Natural Resources.

THE NO-NET-LOSS OF PRIVATE LANDS ACT

Mr. THOMAS. Mr. President, I rise today to introduce a bill, the No-Net-Loss of Private Lands Act.

Mr. President, this is a bill that I think is a commonsense approach that would begin to slow and halt the Federal Government's continual land acquisition in the public land States.

This is an issue that is peculiar to the West; peculiar to public land States. As you know, as the original States grew at the Mississippi River and beyond, as the States came into the Union, they acquired all the lands that lay within their States. They even went into private ownership, or in fact belonged to the State. Those kinds of things that were of public interest, such as parks and forests and others, were withdrawn later by the Government for a particular use. I certainly support that idea.

In the West, however, it was handled differently. There was a period of time for homestead, and much of the public land was taken up. But there were incentives to take it up. However, the West is peculiar. The arid States are peculiar in that the lands pretty much rely on the water. They rely on the feed for livestock.

So lands that were not taken up were left after the homestead time was over. These were simply lands that were there when all the private ownership was done.

So they were managed by the Federal Government. And in fact, the organic act of the land management agencies indicated that they would be held prior to pending disposal. The fact is, to make a long story short, there was no disposal, and that they are now permanently managed by the Federal Government.

The Federal Government continues in addition to that to acquire substantial amounts of land throughout the Nation in every State. I think people are saying it is time to slow or stop the growth of the Federal Government in its land ownership and to limit its ever-increasing impact on our lives.

In my State of Wyoming, approximately 50 percent of the surface belongs to the Federal Government, and more, as a matter of fact, in the subsurface in the State. But when half of your State belongs to the Federal Government and is managed by Federal land managers, then your economic future depends a great deal upon how the management takes place and what happens in those lands.

Other Western States have an even higher percentage of Federal ownership. For example, in Idaho it is 61 percent; Utah, 63 percent; and, in Nevada, nearly 85 percent of that State is owned and managed by the Federal Government.

Unfortunately, particularly, in recent years, as the economies begin to grow, the Federal Government has not always been a good neighbor to the people of the West. The Federal land management agencies continue to make it more difficult, and continue to lock up vast amounts of land in the West.

We are not talking here in multiple use of parks or wilderness. We are talking about lands that have been set aside for multiple use and the Federal Government—and particularly this administration—has made it increasingly difficult to use these lands as multiple use for timber harvest, for grazing, and for mining. All these uses, many of which are compatible ones with another, play a very important part, of course, in our economy. So there has indeed and continues to be a "war in the West."

Just yesterday we had some hearings to talk about domestic energy. One of the issues that certainly is a part of that is the difficulty of access to public lands for exploration and production of minerals. It has been almost a deathblow to the domestic oil industry in the West.

Recently, the General Accounting Office released a report detailing the growth of the amount of lands and found that over the last 3 decades the Federal land ownership has increased dramatically. In the fiscal year 1994 alone, the Federal land management agencies acquired an additional 203,000 acres of land in the United States.

These increases, of course, were a result of expansion to the forests or wildlife refuges or national parks. I have no objection to that. As a matter of fact, when there is a reason to acquire lands for a public purpose that is determined through the process, I have no problem with it.

The purpose of this bill is to say that in States where more than 25 percent of the surface is owned by the Federal Government and when additional lands are acquired, there should be lands of equal value disposed; a fairly simple concept, and I think a fairly fair concept. It is particularly, of course, appropriate only for the West, only with those States with more than 25 percent.

It seems to me it is a fairness issue. It puts the West in sort of the same position as the rest of the States. It is an equity issue. It certainly is an issue of economics for us.

So I am very pleased to introduce this bill. I have a number of cosponsors. I urge my colleagues to take a look at this bill and see if they think there is fairness causing the Federal Government through trades or sales to dispose of lands of equal value to additional lands that are acquired.

It is time for the Federal Government to take a look at itself. Of course, that is what this whole Congress has been about; making some fundamental changes in Government in terms of the size of Government, in terms of the cost of the Government, and in terms of shifting those things—that can be managed better in the private sector or by the States—back to the private sector and to the States. This bill is consistent with that view.

Mr. LOTT. Mr. President. I am pleased to join Senator THOMAS in introducing legislation which will limit land acquisition by the Federal Government. Very simply, it makes no sense for the Federal Government, with all of its financial problems, to continue buying land that it can not afford to properly manage.

On the contrary, the Federal Government should be examining its current land holdings for possible sale prospects. I am sure there are many instances where the Government bought land over 100 years ago to support a program or policy which is no longer valid in today's society. Here is where Senator THOMAS' bill will ask the question: why do we still have the land? Under this legislation, a review would occur prior to any land purchase to maintain a no-net-gain public lands policy. This analysis will permit the identification of land to be sold to compensate for the piece considered for purchase. It will also answer that important question.

This legislation applies only to States in which the Federal Government currently controls more than 25 percent of the land. This approach focuses a legislative solution where the problem is the greatest. It avoids that one-size-fits-all mentality which existed in past Congresses.

Presently, there are 13 States in which the Federal Government already owns and controls over a fourth of the land. You could call these States Federal colonies. They are virtual hostages to Federal policies and to the Washington bureaucrats who dominate the States' economies by their whims and agenda.

Fortunately, Mississippi's public lands percentage is under 5 percent. That does not mean I do not appreciate the problem. I became a cosponsor because Federal intrusion into local jurisdictional matters is pervasive.

Every State must have the ability to sustain a viable growing economy and to manage its natural resources. How can a State or local municipality function when out of the blue, a Federal policy can override legitimate local concerns? We saw that happen last year with regard to a questionable agenda concerning grazing fees.

Let's talk numbers because they will illustrate the magnitude of the Federal Government's appetite. There are roughly 2 billion acres in the United States, of which the Government already owns about 650 million acres. When this patchwork of Government ownership is consolidated, it translates into a land mass equal to the size of 11 Southern States starting with Virginia and stretching around the gulf to Texas and going north to Arkansas and Kentucky. And we still need more. In addition to the South, you would have to add the west coast from California through Oregon and half of Washington is required to equal the size of the land area controlled by the Federal Government.

That's over one-fourth of the United States, and if that is not enough, the Federal Government continues on a buying frenzy. Just last year, it claimed over 7 million more acres of land. That represents an area larger than the State of Maryland. I do not think anyone can dispute the fact that this Federal land policy needs to be reviewed and put on a diet. The Thomas legislation provides a responsible first step. It merely tries to stabilize the growth.

When you visualize the extent of Federal ownership, several questions come to mind. Why does the Federal Government need so much land? Is it all really needed? Will the sky fall if this Government stops buying up more private land?

Beyond Federal land gluttony, what is even more disturbing is how poorly the Federal Government manages these lands. For the Government to take land on the premise that it will do a better job conserving the land, ignores reality. There is ample evidence that private lands are far better managed ecologically than Government lands.

A review of the budgets for just two Federal agencies responsible for land management reveals they are funded only to a level to perform custodial care. Ordinarily, I would be sympathetic to their desire for more funds for land management improvements, but these same agencies are the ones who seek to acquire more and more land. The Bureau of Land Management and the National Park Service just can not say no. Rather than use their budget to manage and husband natural resources already in their care; they are out shopping for more land. They have become the Nation's largest absentee landlord. Evidently, their agenda is to take as much private land as possible with no real intention to manage it wisely.

Today, Senator THOMAS is offering a win-win legislative solution. The Federal Government gets a maintenance diet, and the States get a chance to chart their own destiny without fear of more Government intrusion.

Let me be clear about this: Federal holdings take land off local tax rolls, causing the property tax base to shrink and tax rates to rise commensurately for those who remain. This only gets worse as more and more land is taken.

Let me be even more candid: A growing Federal presence is increasingly perceived as an oppressive Federal occupation. In most instances, the Federal Government is not necessarily a good neighbor.

Our Founding Fathers deeply believed in individual rights. That includes freedom of speech and religion; and the right for Americans to own property. Unfortunately, today it looks as if the Federal Government believes it must own and control the land, rather than individual Americans. Senator THOMAS has provided us an opportunity to stop this policy and restore our country to what our Founding Fathers envisioned.

I thank my colleagues for their consideration, and I hope they will examine this worthwhile legislation.

By Mr. DASCHLE (for himself, Mr. EXON, Mr. FORD, Mr. CONRAD, Mr. DORGAN, Mr. KOHL, Mrs. FEINSTEIN, Mr. BUMPERS, Mr. ROBB, Mr. KERRY, Mr. FEINGOLD, Mr. HARKIN, Mr. REID, Mr. HOLLINGS, Mrs. BOXER, Mr. LEVIN, Mr. PRYOR, and Mr. BIDEN):

S. 519. A bill to require the Government to balance the Federal budget; to the Committee on the Budget and the Committee on Governmental Affairs, pursuant to the order of August 4, 1977, with instructions that if one committee reports, the other committee have 30 days to report or be charged.

THE BALANCED BUDGET ACT OF 1995

Mr. DASCHLE. Mr. President, I wish to thank the distinguished Senator from North Dakota for his comments this morning. I have respected the leadership of Senator CONRAD on this issue, as I have of the distinguished Senator from Montana.

Mr. President, a number of Senators have been developing for some time a bill that we are introducing today that would put our money where our mouth is when it comes to making the tough decisions on the budget that we all know must be made.

Over the course of the last several weeks, we have had a vigorous debate about the advisability, the practicality, and the prudence, of a balanced budget amendment to the U.S. Constitution.

As everyone knows, by a very close vote, the Senate has decided, at least for now, that there will not be a constitutional amendment to balance the budget. But no one should interpret that to mean there will not be an effort to reduce the deficit, or that we will not continue on the progress that we have made in the past 3 years on getting the deficit under control. We intend to continue deficit reduction further than it has come to this point. We want to balance the budget by a date certain without relying on the Social Security trust funds.

We made good progress. We have reduced the deficit, now, by 40 percent from what it was just 3 years ago. It has been a long time since the Senate and the Congress has done that. The last time Washington has reduced the deficit 3 years in a row was during the time of Harry Truman. So we have come a long way. We have made some very tough choices. We made tough choices with regard to both revenue as well as cuts in 1990. We made very tough choices, and on another very close vote, passed a $600 billion deficit reduction package in 1993.

We have come this far as a result of those very tough choices, choices for which a lot of Members took a lot of political heat. We can say, perhaps somewhat boastfully, that because of those tough choices, our country is stronger today. Because of those tough choices, we have actually been able to make real progress in meaningful deficit reduction.

We need another effort just like that this year. The only change that I hope we can make is that in 1993, unfortunately, it became a very partisan choice, the Republicans versus Democrats. I hope this year, given the tremendous burden we all must share in coming to grips with this deficit, that it does not have to be partisan; that it indeed will be a bipartisan effort at deficit reduction; that we could put the next installment on deficit reduction into place now in 1995.

So the bill that we are introducing, Mr. President, will do just that. It says very fundamentally three things. First and foremost, that we shall reduce the deficit to zero by the year 2002, or at the earliest possible date set by the Budget Committee.

Our view is that unless we have a time certain, it is really impossible to develop the necessary blueprint to get us from here to there. Recognizing that we have $1.8 trillion of deficit reduction decisionmaking ahead of us, there is no way we can come to grips with it and do all that we must to do it right unless we take it in installments year after year, recognizing that each year has to be a downpayment.

So that is the provision in our bill: to set a date certain, either 2002 or the earliest date set by the Budget Committee.

The second provision is one that we have talked a good deal about: protecting Social Security. I said the deficit over the course of the next 7 years will be $1.8 trillion more if we do nothing. That is our goal. It would be $1.2 trillion if we were to use the Social Security trust funds to finance the deficit. Many of us feel that using Social Security trust funds to pay for other government programs is wrong. There is a designated purpose for those trust funds, and we do not want to play games with trust fund dollars or with the revenue that would be required to meet the obligations we have to workers who will need the trust funds to retire in future years.

So our view is to take Social Security off the table, to recognize the magnitude of the problem for what it really is—$1.8 trillion—and to begin making the effort to balance the budget, as we know we must.

The third, and an equally important element in this budget package, is one which simply says this must be the Congress to start this effort. This must be the Congress to begin making the headway and leading the way to ensure that future Congresses do what we know we must do. We cannot delegate the responsibility to future Congresses, it has to be this one now, this year, this session of Congress. And so our bill makes that point very clear.

Our bill provides for a budgetary point of order—a requirement that 60 Senators must vote to overturn—against any reported budget resolution that does not balance the budget by a date certain.

So, Mr. President, there has been a lot of discussion, a lot of debate, and a lot of strongly held feelings about how we get from here to there. I believe the time has come for us to put aside the rhetoric, to get down to the real hard decisionmaking that we all must do if we are going to accomplish this in a successful way.

In 23 days' time, the Budget Committee is required—by law—to produce a budget blueprint. In 38 days, Congress must approve a plan. We stand ready to work with our Republican colleagues to craft a plan that meets the goals set out in the bill we are introducing today. We hope they will support this bill.

Mr. President, the Social Security trust funds are the only Federal funds that are explicitly excluded from the deficit calculations under this bill. That is because, as I have said, the surplus revenues building up in those trust funds—amounting to $705 billion between now and 2002—would otherwise be raided to balance the budget.

Just as we are determined to protect Social Security, this bill would force Congress to set national priorities as we balance the budget. As we engage in that process, we need to protect those who need our help. Cutting back on meals for schoolchildren, as some are proposing, is not what proponents of this bill have in mind. Neither would we support cutting back on benefits to veterans with service-connected disabilities.

The debate should be about priorities. We must balance the budget, and we must do it in a way that strengthens the economy and that is fair.

I am very pleased that so many of my colleagues have joined me in cosponsoring this bill. Many of them are on the floor this morning to participate in this colloquy. I yield the floor at this time to accommodate the other statements.

Mr. President, I ask that the time that I have just used be taken from my leader time. And I ask unanimous consent that the full 30 minutes under my control be made available to my colleagues.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. With that, I yield to the distinguished Senator from North Dakota, and I designate the distinguished Senator from North Dakota as the manager of the time.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I yield myself such time as I may consume.

The discussion by Senator DASCHLE, the minority leader, is about an initiative that would give this Congress a procedure to try to reduce the Federal budget deficit and reach a balanced budget. All of us understand that changing the Constitution will not change the budget deficit. That requires specific actions by the Congress.

We finished a battle last week that was a bruising debate, a battle on the question of should the U.S. Constitution be amended to require a balanced budget. That proposition would have had 75 or 80 votes had it included a provision that said the Social Security trust funds will not be used to balance the budget. But that provision was voted down, and, therefore, the amendment itself lost.

But the question is not whether there is a constitutional amendment. The question is whether we will balance the Federal budget. We have proposed today a process by which we hope Republicans and Democrats can join together to say it is up to us now together to balance the Federal budget.

I said yesterday I had watched ESPN 1 day just very briefly and they were showing a bodybuilding contest. The announcer, in announcing this bodybuilding contest, said something kind of interesting that I thought applied to Congress as well. He said, "You know, there's a difference in the skills a bodybuilder uses between when he poses and when he lifts," because in this contest they were posing. He said, "That requires a different skill than lifting."

It occurred to me that that is a perfect description of what happens here. Some are skillful posers and do no lifting at all. The question at the moment is not how do we pose on the issue of a balanced budget, the question is how will we all decide to lift together to cut the spending, to do the things necessary in a real way to balance the Federal budget.

So we propose that by statute we require that as a Congress we complete a budget that includes a specific plan to bring the deficit down to zero by the year 2002, without raiding the Social Security trust funds. No one need force us to do that. It is our job to do that.

We propose a 60-vote point of order against any budget that would come to the floor of the Senate that does not do that. We propose to set up a supermajority against legislation that would fail to do exactly what everyone in this Chamber says we want to do, and that is require a budget plan to balance the Federal budget by the year 2002.

That is real medicine. That is not in the sweet by-and-by. That is not posing. That is deciding on a process that will require real lifting.

Everyone in this Chamber understands, or should, that what happened in 1993 probably will not happen again. We won by one vote a $500 billion reduction in the Federal deficit over 5 years. It turned out to be a $600 billion reduction in the accumulated deficits. We carried that by one vote because one side of the aisle decided they would help lift, the other side did not. That probably will not happen again.

The only way we can achieve progress toward a goal the American people want and a goal the American people know this country needs is if every one of us, all of us—Republicans and Democrats, conservatives and liberals—decide our goal is 2002, our responsibility is a budget plan that is real and enforceable and our determination, our grim determination is to get there and to do that. This legislation establishes a process that will accomplish that.

The question then for Members of the Senate is not a question of posing anymore. It is a question of who is going to join together to be involved in helping balance the budget in a real way.

I hope that in the coming days, we will decide as a Senate to adopt this process, which was proposed by the minority leader and I hope will be embraced on a bipartisan basis. The minority leader is saying that we share a common goal and we will come together for a common purpose. We will legislate in a manner that gives this country a balanced budget by the year 2002. No excuses. No raiding the Social Security trust funds. No dishonest budgeting. If we do that, this country will have been well served by all of us working together for a change, and I think that will strengthen America.

Mr. President, I yield the floor and I yield 3 minutes to the Senator from Wisconsin, Senator KOHL.

Mr. KOHL. I thank the Senator. Mr. President, I rise today to offer my support for the Democratic leadership's balanced budget legislation. This legislation says two things: First, the only budget that Congress should consider is one that contains a plan that will bring us into balance; and second, in bringing our budget into balance, Congress should protect Social Security.

Though there is disagreement on whether we need a constitutional amendment to balance the budget, there are few who think that we should not be moving toward that goal. And though a few want Social Security on the budget cutting table, a large majority believe that we ought to balance the budget without using the Social Security trust fund. And so I do not see why the legislation that we are talking about today should not gain a huge majority vote in the U.S. Senate.

Anyone who voted for the balanced budget amendment, as I did, and anyone who believes that we should not balance the budget using Social Security, as I do, should clearly support this legislation. The American people are tired of hearing us endlessly debate the idea of a balanced budget. They want to see us do something to get there. If that means changing our rules so we cannot consider a budget that is out of balance, then we ought to change our rules. And if that means Democrats and Republicans sitting down together to map out the hard cuts we need to make, then we ought to sit down together. But make no mistake, we will be held accountable if we let our work toward a balanced budget end with the defeat of the balanced budget amendment. I voted for the balanced budget amendment even though it would not take effect for years because I believe that it is imperative we get our Nation's fiscal affairs in order. I support this legislation because it does something right now to force Congress into balancing the budget.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 519

Be it enacted in the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Balanced Budget Act of 1995".

SEC. 2. ENFORCEMENT OF A BALANCED BUDGET.

(a) PURPOSE.—The Congress declares it essential that the Congress—

(1) require that the Government balance the Federal budget without counting the surpluses of the Social Security trust funds;

(2) set forth with specificity in the first session of the 104th Congress the policies that achieving such a balanced budget would require; and

(3) enforce through the congressional budget process the requirement to achieve a balanced Federal budget.

(b) POINT OF ORDER AGAINST BUDGET RESOLUTIONS THAT FAIL TO SET FORTH A GLIDE PATH TO A BALANCED BUDGET.—Section 301 of the Congressional Budget Act of 1974 is amended by inserting at the end thereof the following new subsection:

"(j) CONGRESSIONAL ENFORCEMENT OF A BALANCED BUDGET.—

"(1) POINT OF ORDER.—It shall not be in order to consider any concurrent resolution on the budget (or amendment, motion, or conference report thereon) unless that resolution—

"(A) sets forth a fiscal year (by 2002 or the earliest possible fiscal year) in which, for the budget as defined by section 13301 of the Budget Enforcement Act of 1990 (excluding the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust fund), the level of outlays for that fiscal year or any subsequent fiscal year does not exceed the level of revenues for that fiscal year;

"(B) sets forth appropriate levels for all items described in subsection (a)(1) through (7) for all fiscal years through and including the fiscal year described in paragraph (A);

"(C) includes specific reconciliation instructions under section 310 to carry out any assumption of either—

"(i) reductions in direct spending, or

"(ii) increases in revenues.

"(3) NO AMENDMENT WITHOUT THREE-FIFTHS VOTE IN THE SENATE.—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, motion, or conference report that would amend or otherwise supersede this section.".

(c) REQUIREMENT FOR 60 VOTES TO WAIVE OR APPEAL IN THE SENATE.—Section 904 of the Congressional Budget Act of 1974 is amended by inserting "301(j)," after "301(i)," in both places that it appears.

(d) SUSPENSION IN THE EVENT OF WAR OR CONGRESSIONALLY DECLARED LOW GROWTH.—Section 258(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting "301(j)," after "sections".

Mr. BUMPERS. Mr. President, I rise today to join my colleagues in introducing the Balanced Budget Act of 1995. It is my understanding that this proposal will be offered as an amendment on legislation the Senate will be considering shortly. I look forward to working with my colleagues to pass this legislation to put the Federal Government on a path toward a balanced budget.

The proposal we are introducing today contains elements of an amendment Senator EXON, the distinguished ranking Democrat on the Budget Committee, offered when the Senate considered the congressional accountability bill, and an amendment I offered during Senate consideration of the constitutional balanced budget amendment. In my opinion this proposal is one of the most sensible ideas ever presented to this body. It is sensible because it is more likely to actually achieve a balanced Federal budget than the amendment to the Constitution considered by the Senate last week and secondly because this proposal is statutory in nature, and thus would not trivialize the Constitution with an unenforceable amendment.

The proposal we are introducing today would set the Federal budget on a glide path toward being balanced beginning this year. What this means is that, rather than waiting 7 years before acting, as the constitutional balanced budget amendment provided for, the Congress would have to begin reducing the deficit this year. Under this glide path the Federal budget deficit would be lower every year between now and 2002, when the budget presumably would be balanced.

If the Budget Committee were to report a budget resolution that did not set us on a glide path toward a balanced budget or that failed to achieve a balanced budget by the targeted date, any Member of this body could raise a point of order. It would take 60 votes to overcome this point of order. In comparison, the constitutional balanced budget amendment failed to provide an enforcement mechanism. If Congress failed to achieve a balanced budget, nothing would happen unless Congress passed legislation permitting the courts to enforce the amendment—a result most proponents of the amendment said would not occur.

When I offered my amendment as an alternative to the constitutional amendment, Senator HATCH, the distinguished manager of House Joint Resolution 1, pointed out that statutory budget restrictions don't work because they can be overcome by a simple majority vote. However, Senator HATCH failed to note that my amendment required 60 votes in order to modify or repeal the balanced budget requirement. The very same 60 votes that would have nullified the balanced budget requirement of the constitutional amendment. The Balanced Budget Act of 1995, which we are introducing today, contains the very same 60 vote requirement before changes could be made.

The proposal we are introducing today is also far superior to the constitutional amendment because it addresses some of the very legitimate concerns expressed by Senators during the debate on House Joint Resolution 1. For instance, unlike the constitutional amendment, the Social Security trust fund would not be able to be used to mask the deficit. When we say the budget is balanced, it will really be balanced.

In addition, our proposal would prevent a minority of Senators from sending this country into an economic tailspin. Congress could suspend the balanced budget requirement by passing a joint resolution in a fiscal year which CBO identified a period of low-growth—at least 2 consecutive quarters of below zero real economic growth. The constitutional amendment, in comparison, would have allowed 41 Senators to stop any effort by the Government to prevent a depression through stimulus spending.

Mr. President, the people of this country do not expect miracles. They expect us to be sensible, and they expect us to keep faith with them in their demands to get our deficit under control. The beauty of the proposal we are offering today is that we can both achieve a balanced federal budget and save our sacred organic law called the Constitution of the United States, which every single one of us held up our hand to protect, preserve, and defend when we were sworn into the Senate. That did not just mean to protect the Constitution and all the rights it provides for the people of this country; it also meant protecting it against trivialization and politicization.

There have been over 11,000 efforts to amend the Constitution since this country was founded. Think of it, 11,000. And because of the eminent good sense of the Congress and people of this country, we have only amended the Constitution on 18 separate occasions, and that includes the Bill of Rights, which was adopted at the same time the Constitution was.

The only time we have ever attempted to put social policy into the Constitution was Prohibition. We found out that you can say as an amendment to the Constitution everybody will love the Lord, but you cannot enforce that. You should not put things that are unenforceable into the Constitution.

Mr. President, I ask unanimous consent I be permitted to proceed for 3 more minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, since last week's vote on the balanced budget amendment I have received calls and letters from people saying, "Senator, you are going to be in big trouble if you run for reelection in 1998." My response is far better that I be in political trouble than the Nation be in big trouble by starting down the path of putting every single whim and caprice that somebody can come up with in some national magazine in the Constitution.

The people in this body who do not want the issue for political purposes but who really want a balanced budget are not only going to support the Balanced Budget Act of 1995 when the Senate considers the proposal, they are going to support it strongly, because it has teeth and it requires action immediately.

The people in this country are not interested in all the partisan bickering that has taken place in Congress. When it comes to the deficit, they expect the people of this body to hold hands and work together.

I made a chamber of commerce speech the other night. I said the beauty of our system is that while you may not like our politics, the truth of the matter is that we agree on a lot more things than we disagree on.

The people on that side of the aisle and the people on this side of the aisle get awfully partisan, almost personal at times. But the truth of the matter is where the country is at risk we join hands. And every day in the world, we agree on a lot more things than we do not agree on.

Mr. President, if there ever was a time when the American people have a legitimate demand that we join hands and agree on something, it is this deficit. And the proposal we are introducing today does what the American people want and it does not tinker or clutter our Constitution.

I yield the floor.

Mr. FORD. Mr. President, it is always good to listen to my distinguished friend from Arkansas. He tells it like it is, and I think we all enjoy his remarks and the manner in which he expresses his convictions. It is very difficult for some of us in this Chamber to be as eloquent as he is. We are no less sincere than he is, but his sincerity can be put in a way that communicates with all of us.

During the debate over the balanced budget amendment, our colleagues from the other side of the aisle put forth grand sounding resolutions about how they would balance the budget by a date certain without using the Social Security trust fund to do it. That was all well and good, and many Democrats voted in favor of the honorable sounding proposals. The problem is, they did not do anything. Those sense-of-the-Senate resolutions, you know, had no teeth. We could vote for that, go back home, pound our chests and say we voted for it, but it did not mean anything. It had no enforcement provisions.

Yesterday, several of our colleagues, those who voted for the constitutional amendment and those who voted against the amendment passing this Chamber—but all with the same goal, the same end, and that is a balanced budget—said let us start eliminating the deficit, get to paying off the debt. As the Senator from Arkansas said, we all want the same thing and the way to get there is here and now. It is not later. We can do it today.

So our colleagues yesterday held a press conference. We put forth what I feel is a real budget balancing piece of legislation. This proposal replaces words with action. It calls for a 60-vote point of order on any budget resolution that comes before this body that does not lead to a balanced budget by a certain date. This point, a certain date, is important. It may be difficult to get there. But we need, as the Senator from Arkansas said, to tell our constituents that we are making an honest effort. I have heard my colleagues on the other side say, and in the press, making speeches back in their home States: I have never supported a tax increase in my political career. But now, if we pass this balanced budget amendment, I will start considering tax increases.

That tells this Senator—and it does not take a brain surgeon to understand it, I do not think—they want a gun to their head to balance the budget. Otherwise, they are not going to do it. They are not going to lean on this amendment to the Constitution to be that gun to their head to start helping.

You can hear a lot of things, but in 1993, when it was a tough vote and the hide was coming off politically, we stood here without a Republican; 50 of us voted, and the Vice President of the United States broke that tie. We reduced the deficit over $600 billion, and we did it without any help of those who proposed a constitutional amendment. That proves that the body can, with a capital C—do it.

Now, all we have to say is let us get down to it; pass this amendment and say every year, every year, every year the deficit has to be less than it was the year before.

With or without a balanced budget amendment to the Constitution, Mr. President, we the Congress must still act to implement it. We have the power to achieve the desired goal right now. We do not have to wait until 38 States ratify an amendment. We do not have to wait until 2005, if they do not ratify it until 2003. We can start right now.

So let us use that power that the people placed in our hands. Our proposal would force this action—and I underscore force this action. If the constitutional amendment would force that Republican who made the speech, that he would now consider increased taxes if you have the balanced budget amendment in the Constitution, why do we not have the intestinal fortitude to do it now?

Our proposal would force this action and get on the path to what we all want. As the Senator from Arkansas said, we all agree on more things than we disagree on. Already this morning, I have seen reports that suggested our colleagues from the other side of the aisle have already labeled our actions that we took yesterday and are attempting to take here as just another political ploy—just another political ploy.

Vote for this amendment and see if it is a political ploy. See if we do not start on the right path to get a balanced budget. And we will come closer by this action today, or tomorrow, than we would have had we voted for a balanced budget amendment and waited for the States to ratify it. Try us. That is all I ask. If you think this is a political ploy: Try us. Vote for it and see what happens.

I hope they do not mean this, that it is a political ploy. I truly believe that this amendment will do what everybody in this Chamber talks about but we do not have the right kind of action on, such action as this is, to achieve a balanced budget. If they do not join us in this effort, we will never get to a balanced budget. This can be the most political of all actions, trying to take the issue—trying to take the issue.

I said last evening that before the vote in the hearts of some of those on the other side of the aisle, and at the national committee, they hope it fails because they want the issue. Boy, it did not take 24 hours to find out they wanted that issue. I want to tell you. My phone calls are still the same. They are still better than 50 percent. If you count the votes, you win by better than 50 percent. You do not lose. So I am still getting more thanking me than those saying you are out of here. They are going to get a chance, I guess, to tell me more in the next few years. But let us not take the issue. Let us take the action. The action is necessary to actually balance the budget.

So if this is a political ploy, I say again, Mr. President, try us. Vote for this amendment. Let us start doing something right and leave Social Security alone. I was here in 1983. We made a hard decision then. I think it would have been very, very tough on any of us to vote in 1983 to say in 12 years we are going to take this tax that we are taking out of the pockets of the employees and the employers to pay for foreign aid and welfare, and to attempt to do all these other things.

So, Mr. President, I hope that all our colleagues will join on this and not say that it is just anther political ploy.

By Mr. SHELBY:

S. 520. A bill to amend the Internal Revenue Code of 1986 to allow a refundable tax credit for adoption expenses; to the Committee on Finance.

THE ADOPTION ASSISTANCE FOR FAMILIES ACT

• Mr. SHELBY. Mr. President, today I am introducing a bill to help strengthen the role of the family in America. With the hustle and bustle of the world today, we sometimes overlook simple, commonsense ways to help one another. My bill, entitled "Adoption Assistance for Families Act," would effectively find homes for children who need parents and find children for parents who need families. Mr. President, the objective of my legislation is to provide an appropriate and reasonable incentive to encourage a policy which should be embraced by all Americans.

Adoption is a positive action that benefits everyone involved. Obviously, a loving, caring family is the primary benefit of adoption. Studies show the child also receives a strong self identity, positive psychological health and a tendency of financial well-being.

On the other hand, parents who adopt children also benefit. They receive the joy and responsibility of raising a child as well as the love and respect only a child can give. The emotional fulfillment of raising children clearly contribute to the fullness of life.

Lastly, do not forget society. Society is unambiguously better off as a result of adoption. Statistics show time and again that children with families intact are more likely to become productive members of society than children without both parents.

Unfortunately more times than not, a financial barrier stands in the way of otherwise qualified parents-to-be. The monthly costs of supporting the child is not the hurdle, but instead the initial outlay. Many people may not realize, but there are many fees and costs involved with adopting a child. These include: maternity home care, normal prenatal and hospital care for the mother and child, preadoption foster care for the infant, home study fees, and legal fees. These costs can range anywhere from about $13,000 to $36,000 according to the National Council for Adoption.

Just like the person who wants to buy a home, but cannot because the financial hurdle of a downpayment stops them, so are the parents-to-be who cannot adopt a child because of the substantial initial fees, fees that could actually exceed the cost of a downpayment for a house. As a result, the benefits to everyone involved never materialize; children do not receive loving parents and married couples are prohibited from welcoming children into their compassionate family.

My bill seeks to address this problem. The Adoption Assistance for Families Act would allow a $5,000 refundable tax credit for adoption expenses. This credit would be fully available to any individual with an income up to $60,000 and phased out up to an income of $100,000.

I believe this tax credit will go a long way in helping children find the caring homes they so desperately need. This legislation would undeniably benefit children, parents, and society as a whole. Mr. President, I hope my colleagues will join me in reaching out to families in order to provide a better, brighter future for our children and a heightened degree of appreciation for the potential life holds.

Mr. President, I urge my colleagues to support this legislation.•

By Ms. SNOWE:

S. 521. A bill entitled "the Small Business Enhancement Act of 1995"; to the Committee on Finance.

THE SMALL BUSINESS ENHANCEMENT ACT OF 1995

• Ms. SNOWE. Mr. President, I introduce a package of legislation to meet the needs of America's small businesses. The legislation I am introducing today will help these small businesses by extending a tax deduction for health care coverage, requiring an estimate of the cost of bills on small businesses before Congresses passes those costs, and assign an Assistant U.S. Trade Representative for Small Business.

In order to create jobs both in my home State of Maine and across America, we must nurture small businesses, because small business is the engine of our economy. Businesses with fewer than 10 employees make up more than 85 percent of Maine's jobs, and nationally, small businesses employ 54 percent of the private work force. In 1993, small businesses created an estimated 71 percent of the 1.9 million new jobs. When we call small business the "engine" of our economy, we mean it: and America's small businesses are jump-starting our economy.

Small businesses are the most successful tool for job creation that we have. They provide two-thirds of the initial job opportunities in this country, and are the original—and finest—job training program. Unfortunately, as much as small businesses help our own economy—and the Federal Government—by creating jobs and building economic growth, Government too often gets in the way. Instead of fueling small business, Government too often stalls our small business efforts.

Government regulations and redtape add up to more than a billion hours of paperwork time by small businesses each year, according to the Small Business Administration. Moreover, because of the size of some of the largest American corporations, U.S. commerce officials too often devote a disproportionate amount of time to the needs and jobs in corporate America rather than in small businesses.

My legislation will address three aspects of our Nation's laws on small businesses, and I hope it will both encourage small business expansion and fuel job creation.

First, this legislation will allow self-employed small businessmen and women to fully deduct their health care costs for income tax purposes. This provision will place these entrepreneurs on equal footing with larger companies by eliminating a provision in current law that limits deductions to 25 percent of the overall cost. In addition, the legislation makes the tax deduction permanent. At a time when America is facing challenges to its health care system, and the Federal Government is seeking remedies to the problem of uninsured citizens, this provision will help self-employed business people to afford health insurance without imposing a costly and unnecessary mandate.

From investors to start-up businesses, self-employed workers make up an important and vibrant part of the small business sector—and too often they are forgotten in providing benefits and assistance. Indeed, 11 percent of uninsured workers in America are self-employed. By extending tax credits for health insurance to an these small businesses, we will help to provide health care coverage to millions of Americans.

I am pleased that the Committee on Ways and Means in the U.S. House of Representatives has decided to report out a bill restoring the 25-percent tax deduction retroactively. This decision will allow self-employed small business people to deduct health care costs on their 1994 tax returns. I can think of no better incentive for small businesses than a positive action of this nature.

Earlier this month, I joined 74 of my colleagues in writing to the Senate leadership urging quick consideration of this issue once it is transmitted to the Senate from the other body. I remain committed to working with the leadership to restore this crucial provision.

My legislation will also require a cost analysis of legislative proposals before new requirements are passed on to small business. Too often, Congress passes well-intended programs that shift the costs of programs to small businesses. The proposal will ensure that these unintended consequences are not passed along to small businesses. According to the U.S. Small Business Administration, small business owners spend at least 1 billion hours a year preparing Government forms, at an annual cost that exceeds $100 billion. Before we place yet another obstacle in the path of small business job creation, we should understand the costs our plans will impose on small businesses.

The legislation will require the Director of the Congressional Budget Office to prepare for each committee an analysis of the costs to small businesses that would be incurred in carrying out proposals contained in new legislation. This cost analysis will include an estimate of costs incurred in carrying out the bill or resolution for a 4-year period, as well as an estimate of the portion of these costs that would be borne by small businesses. This provision will allow us to fully consider the impact of our actions on small businesses—and through careful planning, we will succeed in avoiding unintended costs.

Finally, this legislation will direct the U.S. Trade Representative to establish a position of Assistant U.S. Trade Representative for Small Business. The Office of the U.S. Trade Representative is overburdened, and too often overlooks the needs of small business. The new Assistant U.S. Trade Representative will promote exports by small businesses and work to remove foreign impediments to these exports.

Mr. President, I am convinced that this legislation will truly assist small businesses, resulting not only in additional entrepreneurial opportunities but especially in new jobs. I urge my colleagues to join me in supporting this legislation.●

By Mr. BENNETT (for himself, Mr. BROWN, Mr. CAMPBELL, Mr. HATCH, and Mr. KYL):

S. 523. A bill to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner, and for other purposes; to the Committee on Energy and Natural Resources.

THE COLORADO RIVER BASIN SALINITY CONTROL ACT AMENDMENTS ACT OF 1995

Mr. BENNETT. Mr. President, I rise to introduce legislation which will amend the Colorado River Basin Salinity Control Act and authorize additional measures to carry out the salinity program. During the last session of Congress, this noncontroversial bill passed the Senate Energy Committee; however, the legislation was stalled in a log jam in the closing days of the session. I am hopeful we will be able to move this bill early in this session of Congress.

The Colorado River Basin Salinity Control Program has been authorized by Congress and implemented by Federal and State entities for the last 20 years. There is now a need to update and revise the authorizations provided for in the Colorado River Basin Salinity Control Act so that the Bureau of Reclamation [Reclamation] can move ahead in a more responsive and cost-effective way with the portion of the program which Reclamation is responsible for administering. The following statement provides general background as to the purposes and legislative history of the Salinity Control Act and the identified reforms necessary to the act.

BACKGROUND

In the 1960's and early 1970's, rising salinity levels in the Lower Colorado River caused great concern because of damages inflicted by salt dissolved in the water. This damage was occurring in the United States and Mexico. In 1972, with the passage of the Clean Water Act, it was apparent that water quality standards needed to be adopted in the United States, and a plan of implementation to meet those water quality standards needed to be identified. The U.S. Environmental Protection Agency [EPA] published water quality standards for the Colorado River. The United States modified the treaty with Mexico to add to the United States commitments a water quality parameter.

The Colorado River Basin States were involved in many of the discussions with respect to both the Mexico commitment and the water quality standards. Through the formation of a Colorado River Basin Salinity Control Forum, the States became collectively and formally involved in discussions with Federal representatives concerning the quality of the Colorado River.

At the urging and with the cooperation of the basin States and the State

Department in 1974, the Colorado River Basin Salinity Control Act was enacted by Congress. That authority became formally known as Public Law 93-320 (88 Stat. 266), the Colorado River Basin Salinity Control Act. That act consisted of two titles. Title I addressed the United States commitment to Mexico, and title II addressed the authorization for programs above Imperial Dam to help control the water quality in the river for the benefit of users in the United States.

The amendments now being proposed in this legislation are exclusively related to title II authorizations. Title I has not been amended since the original enactment in 1974. Title II has received minor modifications as authorities were given to Reclamation to consider salinity control implementation strategies in some additional areas of the Colorado River Basin. More importantly, title II was amended in 1984 by Public Law 98-569 (98 Stat. 2933). The 1984 amendments provided for a formally constituted U.S. Department of Agriculture [USDA] program within the Salinity Control Act. The amendments gave additional responsibilities to the U.S. Bureau of Land Management [BLM] to seek cost-effective salinity control strategies. The amendments further described the basin States' cost-sharing responsibilities with respect to the USDA program, and further increased the cost-sharing requirements of the basin States with respect to newly authorized and implemented Reclamation programs.

NEEDED REFORMS

The Colorado River Basin Salinity Control Forum [Forum] has perceived for some period of time the need for amendments to the authorization relating to Reclamation's program. It has been felt by the States that the program has, at times, been encumbered by formalities imposed by Reclamation and the authorizing legislation which related to procedures Reclamation used in implementing major water development projects in decades past. It is felt that authorization which would allow Reclamation to avoid some of these encumbrances and move more expediently and cost effectively to the best salinity control opportunities would ensure compliance with the water quality standards of the Colorado River, and this compliance could be accomplished at less cost.

There is a need to allow Reclamation to consider salinity control strategy implementation in three geographic areas where planning documents have been prepared and cost-effective salinity control strategies have been identified. In the past, for Reclamation to implement salinity strategies in new areas, formal approval by Congress has been required. It is viewed that this is encumbering.

Further, it is felt that Reclamation needs flexibility so that it might move to opportunities with the private sector to cost-share, offer grants, and/or allow the private sector, rather than the Federal Government to contract for the expenditure of appropriated funds. In this manner the limited dollars would not be partially lost through expenses which have been directly identified with the use of Federal procurement procedures.

Last, Reclamation was authorized a ceiling expenditure in 1974 by Congress. After two decades, the funds expended are approaching the authorized ceiling. It is believed that it would be more appropriate for a $75 million authorization provision to be placed on the program. This will allow the salinity program to move forward for approximately 3 to 5 years at proposed spending levels.

The Salinity Forum believes that legislative reform for the Reclamation program would be tailored after authorities given to the USDA by the Congress in 1984. The inspector general for the Department of the Interior released findings in 1993. Those findings are incorporated in a document entitled, "Audit Report, Implementation of the Colorado River Basin Salinity Control Program, Bureau of Reclamation", March 1993. The above legislation proposals are in keeping with the recommendations of the inspector general.

Last year, Reclamation sent out a broad-based mailing to affected parties and interest groups asking for recommendations concerning the need for potential future efforts by Reclamation with respect to salinity control. Further, Reclamation asked for input as to how the program might possibly be reformulated. The responses received by Reclamation are in keeping with this legislation, and it is my understanding that the Bureau of Reclamation is expected to support this legislation again this year.

To that end, I appreciate the excellent working relationship that has existed between my office, the Commissioner's Office of the Bureau of Reclamation, and the Colorado River Basin Salinity Control Forum.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 523

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BASINWIDE SALINITY CONTROL PROGRAM FOR THE COLORADO RIVER BASIN.

(a) AUTHORIZATION TO CONSTRUCT, OPERATE, AND MAINTAIN A BASINWIDE SALINITY CONTROL PROGRAM.—Section 202 of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592) is amended—

(1) in subsection (a)—

(A) in the first sentence—

(i) by striking "the following salinity control units" and inserting "the following salinity control units and salinity control program"; and

(ii) by striking the period at the end and inserting a colon; and

(B) by adding at the end the following:

"(6) SALINITY CONTROL PROGRAM.—

"(A) IN GENERAL.—The Secretary, acting through the Commissioner of Reclamation, shall implement a basinwide salinity control program.

"(B) CONTRACTS AND OTHER VEHICLES.—The Secretary may carry out this paragraph directly, or may enter into contracts and memoranda of agreement, or make grants, commitments for grants, or advances of funds to non-Federal entities, under such terms and conditions as the Secretary considers to be appropriate.

"(C) COST-EFFECTIVE MEASURES.—The salinity control program shall consist of cost-effective measures and associated works to reduce salinity from saline springs, leaking wells, irrigation sources, industrial sources, erosion of public and private land, or other sources, as the Secretary considers to be appropriate.

"(D) MITIGATION.—The salinity control program shall provide for the mitigation of incidental fish and wildlife resources that are lost as a result of the measures and associated works described in subparagraph (C).

"(E) PLANNING REPORT.—The Secretary shall submit a planning report concerning the salinity control program to the appropriate committees of Congress.

"(F) The Secretary may not expend funds for any measure or associated work described in subparagraph (C) before the expiration of a 30-day period beginning on the date on which the Secretary submits a planning report under subparagraph (E)."; and

(2) in subsection (b)(4) by striking "and (5)" and inserting "(5), and (6)".

(b) ALLOCATION OF COSTS.—Section 205(a) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1595(a)) is amended—

(1) in paragraph (1) by striking "authorized by sections 202(a) (4) and (5)" and inserting "authorized by section 202(a) (4), (5), and (6)"; and

(2) in paragraph (4)(i) by striking "sections 202(a) (4) and (5)" each place it appears and inserting "section 202(a) (4), (5), and (6)".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 208 of the Colorado River Basin Salinity Control Act (43 U.S.C. 1598) is amended by adding at the end the following new subsection:

"(c) ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.—In addition to the amounts authorized to be appropriated under subsection (b), there are authorized to be appropriated—

"(1) such sums as are necessary to pay for nonfederally financed salinity control; and

"(2) $75,000,000 for the construction of federally financed improvements described in section 202(a).".

By Mr. WELLSTONE (for himself, Mr. KENNEDY, Mr. REID, Mr. BRADLEY, and Mrs. MURRAY):

S. 524. A bill to prohibit insurers from denying health insurance coverage, benefits, or varying premiums based on the status of an individual as a victim of domestic violence and for other purposes; to the Committee on Labor and Human Resources.

THE VICTIMS OF ABUSE ACCESS TO HEALTH INSURANCE ACT

Mr. WELLSTONE. Mr. President today I am introducing the Victims of

Abuse Access to Health Insurance Act. This bill would outlaw the practice of denying health insurance coverage to victims of domestic violence.

In Minnesota three insurance companies denied health insurance to an entire women's shelter because "as a battered women's program we were high risk." The women's shelter in Rochester was told that it was considered uninsurable because its employees are almost all battered women.

A woman sought the services of Women House in St. Cloud because the abuse during her 12-year marriage had escalated to such an extent that she was hospitalized for a broken jaw and spent 2 weeks in a mental health unit of a hospital. She was subsequently denied coverage by two insurance companies—one said they would not cover any medical or psychiatric problems that could be related to the past abuse.

These are just a couple examples of women who have been physically abused and sought proper medical care only to be turned away by insurance companies who say they are too high of a risk to insure.

Victims of domestic violence are being denied health insurance coverage. This is a abhorrent practice. It is plain old-fashioned discrimination. It is profoundly unjust and wrong. And, it is the worst of blaming the victim.

We must treat domestic violence as the crime that it is—not as voluntary risky behavior that can be easily changed and not as a pre-existing condition. Insurance company policies that deny coverage to victims only serve to perpetuate the myth that the victims are somehow responsible for their abuse.

Domestic violence is the single largest threat to women's health. Denying women access to much needed health care must be stopped.

The Victims of Abuse Access to Health Insurance Act is a very simple and straightforward bill. It would prohibit insurance companies from "engaging in a practice that has the effect of denying, canceling, or limiting health insurance coverage or health benefits, or establishing, increasing or varying the premium charged for the coverage or benefits" for victims of domestic violence.

It would prohibit insurance companies from considering domestic violence as a preexisting condition. Under the bill, domestic violence is defined as any violent act against a current or former member of the family or household, or someone with whom there has been or is an intimate relationship. This could mean spouse, partner, lover, boyfriend, or children. If an insurance company, or even a company that is large enough to self-insure, violates this act it could be held civilly and criminally liable.

Reporting domestic violence and seeking medical help is often the first step in ending the cycle. Oftentimes health care providers are the first, and sometimes the only, professionals in a position to recognize violence in their patient's lives. Battered women should be encouraged to seek medical help. We should not be discouraging this by allowing insurance companies to use this information against them. Women should not have to fear that when they take that first step they could lose their access to treatment.

Doctors and other health care providers need to be encouraged to properly diagnose, treat, and document domestic violence. Denial of health insurance coverage will cause doctors not to document it accurately if only to protect the victim.

Domestic violence is the leading cause of injury to women, more common than auto accidents, muggings, and rapes by a stranger combined. It is the No. 1 reason women go to emergency rooms. And research indicates that violence against women escalates during pregnancy.

Last year during the health care reform debate, I raised this issue in the context of requiring insurance companies to make insurance available to all people who wanted it. We should certainly all be moving toward that goal. However, this is a real immediate need and it must be addressed.

Last year Congress passed the first most comprehensive package of legislation to address gender based violence—the Violence Against Women Act. It was a great step forward in stopping the cycle of violence. But, it is not enough. We cannot stop at reforming and improving the judicial system and think it will solve the problem. The entire community must be involved in the solution—we all must be involved in stopping the cycle of violence.

Insurance companies should not be allowed to discriminate against anyone for being a victim of domestic violence. This is an abhorrent practice and should be prohibited.

I urge my colleagues to support it.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 524

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Victims of Abuse Access to Health Insurance Act".

SEC. 2. PROHIBITION OF HEALTH INSURANCE DISCRIMINATION RELATING TO VICTIMS OF CERTAIN CRIMES.

(a) IN GENERAL.—No insurer may engage in a practice that has the effect of denying, canceling, or limiting health insurance coverage or health benefits, or establishing, increasing, or varying the premium charged for the coverage or benefits—

(1) to or for an individual on the basis that the individual is, has been, or may be the victim of domestic violence; or

(2) to or for a group or employer on the basis that the group includes or the employer employs, or provides or subsidizes insurance for, an individual described in paragraph (1).

(b) PRE-EXISTING CONDITIONS.—

(1) IN GENERAL.—A health benefit plan may not consider a condition or injury that occurred as a result of domestic violence as a pre-existing condition.

(2) PREEXISTING CONDITION.—As used in paragraph (1), the term "preexisting condition" means, with respect to coverage under a health benefit plan, a condition which was diagnosed, or which was treated, prior to the first date of such coverage (without regard to any waiting period).

SEC. 3. CIVIL AND CRIMINAL REMEDIES AND PENALTIES.

(a) IN GENERAL.—Whoever violates the provisions of this Act shall be—

(1) subject to a fine in an amount provided for under title 18, United States Code, for a class A misdemeanor not resulting in death;

(2) subject to the imposition of a civil monetary penalty; and

(3) subject to the commencement by the aggrieved party of a civil action under subsection (b).

(b) CIVIL REMEDIES.—

(1) IN GENERAL.—Any individual aggrieved by reason of the conduct prohibited in this Act may commence a civil action for the relief set forth in paragraph (2).

(2) RELIEF.—In any action under paragraph (1), the court may award appropriate relief, including temporary, preliminary, or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for plaintiffs attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5,000 per violation.

(3) CONCURRENT JURISDICTION.—Both Federal and State courts shall have concurrent jurisdiction over actions brought pursuant to this section.

SEC. 4. DEFINITIONS.

For purposes of this Act:

(1) DOMESTIC VIOLENCE.—The term "domestic violence" means the occurrence of one or more of the following acts between household or family (including in-laws or extended family) members, spouses or former spouses, or individuals engaged in or formerly engaged in a sexually intimate relationship:

(A) Attempting to cause or intentionally, knowingly, or recklessly causing bodily injury, rape, assault, sexual assault, or involuntary sexual intercourse.

(B) Knowingly engaging in a course of conduct or repeatedly committing acts toward another individual, including following the individual, without proper authority, under circumstances that place the individual in reasonable fear of bodily injury.

(C) Subjecting another to false imprisonment.

(2) INSURER.—

(A) IN GENERAL.—The term "insurer" means a health benefit plan, a health care provider, an entity that self-insures, or a Federal or State agency or entity that conducts activities related to the protection of public health.

(B) HEALTH BENEFIT PLAN.—The term "health benefit plan" means any public or private entity or program that provides for payments for health care, including—

(i) a group health plan (as defined in section 607 of the Employee Retirement Income

Security Act of 1974) or a multiple employer welfare arrangement (as defined in section 3(40) of such Act) that provides health benefits;

(ii) any other health insurance arrangement, including any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organization subscriber contract;

(iii) workers' compensation or similar insurance to the extent that it relates to workers' compensation medical benefits (as defined by the Secretary of Health and Human Services); and

(iv) automobile medical insurance to the extent that it relates to medical benefits (as defined by the Secretary of Health and Human Services).

SEC. 5. INAPPLICABILITY OF MCCARRAN-FERGUSON ACT.

For purposes of section 2(b) of the Act of March 9, 1945 (15 U.S.C. 1012(b); commonly known as the McCarran-Ferguson Act), this Act shall be considered to specifically relate to the business of insurance.

SEC. 6. REGULATIONS.

The Secretary of Health and Human Services shall issue regulations to carry out this Act.

SEC. 7. EFFECTIVE DATE.

This Act shall take effect 90 days after the date of the enactment of this Act.

Mr. KENNEDY. Mr. President, I strongly support the Victims of Abuse Access to Health Insurance Act, and I commend Senator WELLSTONE for introducing it. This needed legislation will prohibit insurers from denying health insurance coverage, benefits, or premiums to victims of domestic abuse. Enactment of this measure is an essential step in the struggle to combat domestic violence and to assist women and children who are its victims.

Violence against women has reached epidemic proportions. Nationwide a woman is beaten every 18 seconds. A woman is raped every 5 minutes. More than 1 million women across the country are victims of reported crimes of domestic violence; 3 million more such crimes go unreported.

Last year, as part of the omnibus crime bill, Congress passed the Violence Against Women Act. In doing so, we established new Federal penalties for spouse abusers, provided a civil rights cause of action for gender-motivated crimes of violence, and authorized funds for services for victims, including victim counselors, battered women's shelters, rape crisis centers, and a national domestic violence toll-free hotline.

By enacting that law, Congress made a strong commitment to do more to help the victims of domestic violence. We encouraged them to report their abusers, and to seek assistance. We gave them new means to help them protect themselves. And now, with this legislation, we must tell them that they will not be denied health insurance for doing what is necessary to protect themselves and their children.

Insurance companies that refuse to cover battered women commit an injustice to those women and to society. Denial of health insurance to victims of domestic violence is discrimination against women and children. It is another way to blame and punish the victim, while letting the abuser go free. Allowing this discrimination tacitly endorses it—and endorses the myth that victims of domestic abuse are responsible for the violence committed against them.

Denying such insurance also discourages victims of domestic abuse from reporting the crimes against them and from leaving their abusers and seeking help. It discourages victims from seeking medical treatment for injuries inflicted by their abusers. For countless Americans, health insurance is the only realistic means of obtaining access to health care. The loss of health care for themselves and their children is enough to intimidate many victims into staying in abusive environments and keeping silent.

We must not condone any practice which makes it harder for women to leave their abusers or deters them from reporting the crimes against them and their children. We must not condone any practice which punishes women for seeking medical treatment for themselves and their children, for seeking safety from violence, or for speaking out against the crimes committed against them. I urge my colleagues to support this legislation, and I look forward to working with my colleagues to promote its passage.

By Mr. BAUCUS (for himself, Mr. DASCHLE, Mr. DORGAN, and Mr. PRESSLER):

S. 525. A bill to ensure equity in, and increased recreation and maximum economic benefits from, the control of the water in the Missouri River system, and for other purposes; to the Committee on Environment and Public Works.

THE MISSOURI RIVER WATER CONTROL EQUITY ACT

Mr. BAUCUS. Mr. President, I will not speak for the full 25 minutes; it will be 10 or 15 minutes. I thank the Chair for recognizing me. Mr. President, I rise this morning with my colleagues from North Dakota and South Dakota to discuss the Army Corps of Engineers and particularly the Missouri River system.

We are here today to make our side of the story known on what is called the Preferred Alternative to the Missouri River Master Water Control Manual. That sounds very technical, but it is really about the heart and soul of our State of Montana. Let me explain.

MONTANA AND THE MISSOURI RIVER

It is difficult to describe what the Missouri River means to Montana. People across the country may be familiar with the writer Norman Maclean's book "A River Runs Through It." He grew up in Missoula, and the title refers to the Big Blackfoot on the western side of the Divide. But for so many of us growing up east of the Continental Divide, the river is the Missouri.

This river was part of our life before we became a State. Our attachment to Missouri began eight decades before statehood, when Lewis and Clark came up in their boats way back in 1805.

I grew up in the Helena Valley. My parents and friends—my friends and I, in particular, spent our summers swimming in Holter Lake by my family's ranch on the Missouri. Sometimes in Hauser Lake, sometimes Canyon Ferry. Is it impossible to imagine Montana without lie on the Missouri River.

The Missouri is where farmers get water for their crops; where ranchers take their stock to drink; where sportsmen take the weekend to go rafting or fishing. It comes up through Broadwater and Lewis and Clark Counties, Great Falls, and Fort Benton, and runs all the way through the State to the Fort Peck Dam and the North Dakota line.

So when people at the Army Corps of Engineers headquarters in Washington, DC, or St. Louis, or Omaha, decide how high the reservoirs will be, how much water we will have for irrigation, or whether we can dock our boats at Fort Peck, it is an emotional, important decision that affects us.

THE 1987–92 DROUGHT

That would be true even if they at corps made good decisions. but up to now, most of the decisions have not been good. They have been bad—very bad.

We were hit by a big drought a few years ago that lasted 6 years, from 1987 to 1992. During most of that drought, the corps did absolutely nothing to help us out. It stuck like a leech to the status quo. Everything for irrigation down river, almost nothing for recreation up river. One drawdown after another—drawdown during a drought—when we had no rain to refill our reservoirs.

Our lake levels fell dramatically. At Fort Peck, the lake shore receded until it was more than a mile from many boat ramps. Weeds were growing in fields by the docks. This picture to my left will give you an idea of the wreckage. At that point, I and other Montanans decided we had enough, we were not going to take any more. We needed the corps to go back to the book and make basic changes.

TRADITIONAL CORPS MANAGEMENT MISTAKEN

Well, why did the corps allow this disaster to take place? Because the corps has traditionally given the maximum preference to barge traffic down river, which makes no sense.

According to the corps' own numbers, navigation is worth only about $15 million a year. Many experts think even that is too high. Recreation and tourism, according to the corps' own numbers, bring in much more—about $77 million annually, which is five times the value of navigation.

For years, the corps said the law required this approach. They said, that is the law, you have to do it. But again, the corps is wrong—dead wrong.

As the General Accounting Office testified at a hearing I held in Glendive, MT, last year:

> Contrary to what the Corps believed, Federal statutes do not require the Corps to give recreation a lower priority than other project purposes—flood control, navigation, irrigation, and the generation of hydroelectric power—in major decisions about water releases.

NEW MASTER MANUAL IS INADEQUATE

For years, I urged the corps to update its operating plan for the Missouri River. The draft of the new preferred alternative operating plan is a step in the right direction.

But I am sorry to say it is not good enough. It is not much more than a rehash of the status quo. It continues to give recreation the lowest priority, even though recreation yields the most economic benefits. It ignores the need to raise permanent reservoir levels, and it ignores erosion below Fort Peck Dam. Let me examine these issues one by one.

DISPROPORTIONATE BENEFITS FOR LOWER BASIN STATES

The first is simple fairness.

The four upper basin States receive about $358 million, or 32 percent of the benefits, from river management. Lower basin States get $756 million, or 68 percent of benefits. As for Montana, we receive only about 4 percent—not even a nickel of each dollar—of all of the economic benefits of the Missouri River system. The preferred alternative will not change that.

As you can see from this chart, it will mean that 32 percent for the upper basin States and 68 percent for the lower basin States. That is the allocation; no change, which is obviously unfair.

RECREATION TOO LOW A PRIORITY

Second, the corps still values navigation over recreation. That is backwards. Navigation is worth only 1 percent of the river system's economic benefits. One percent. Recreation brings in more. It is more than just pleasure boating, it is jobs. Recreation is therefore more valuable to the country, and it should be a much higher priority.

As I mentioned earlier, recreation benefits, overall, are five times navigation benefits. The corps undervalued recreation in its Master Manual Review. According to the corps, the average visitor to a corps reservoir spends about $7 a day. But the Sports Fishing Institute found that the amount spent for walleye fishing, for example, is $45 a day. And at Fort Peck, the average was $69 a day. The corps' figures do not add up.

MINIMUM POOL LEVEL MUST BE HIGHER

Third, the new plan does not change reservoir levels. The minimum pool level, below which the corps will not release water in a drought, is now 18 million acre-feet. At that level, weeds grow on the bed of Fort Peck Reservoir. Boat ramps are high and dry a mile from shore. Under the preferred alternative, the minimum pool level is still 18 million acre-feet.

The right level should be 44 million acre-feet. The master manual environmental impact statement prepared by the corps states that 44 million—not 18—44 million acre-feet yields the greatest economic benefit to the Missouri basin States. Repeating that, 44 million acre-feet yields the greatest economic benefit to the Missouri basin States. Specifically, it adds $1.28 million to the regional economy.

As you can see from the chart on my left, those numbers speak for themselves. And that level would benefit the environment and the quality of life—things we cannot estimate in cold cash, but which are more important in Montana than I can tell you.

River management requires compromise, and we understand that. Downstream States have not understand that in the past. They wanted to stone wall. They wanted everything, and they have usually gotten it in the past. But the problems remain. We pledge to work with our friends downstream to find a fair solution.

I can tell you now, Mr. President, that anything under 44 million acre-feet is unacceptable, and anything that gives navigation more than its fair share will not fly.

PLAN IS INADEQUATE IN COMBATING EROSION

Finally, the plan ignores erosion. Before we completed Fort Peck Dam in 1940, there was virtually no erosion anywhere along the river, from what is now the dam to Lake Sakakawea. Since then, 4,935 acres of prime farm land have eroded away, washed down to North Dakota by explosive releases from the Fort Peck Reservoir. And the corps itself predicts in the next 50 years, erosion will cost us another 4,500 acres.

Talk about taking private property without compensation. Here is an example. The farmers in Montana have received no compensation for what they have lost. And the corps has done nothing to stop further erosion. In the 54 years we have had the Fort Peck Dam, the corps has built one—just one—streambank stabilization project in Montana.

That defies common sense. It defies good policy. And it defies the law. The Water Resources Development Act of 1990 requires the corps to spend $3 million every year to perform streambank stabilization. And under the preferred alternative, there will be more releases, not fewer. It is no better—in fact, it is worse—than the status quo.

FDR'S PROMISE

Plain and simple, the corps must do better. It is time the corps kept the old promise that the river would be managed for everybody.

President Franklin Delano Roosevelt made that promise to us. He came to Fort Peck 4 years before I was born. In those days, few Montanans owned cars. The Depression had us flat on our back. Twenty-eight Montana counties applied for aid from the Red Cross. We have only 56 counties in the entire State. North of Fort Peck, in Daniels County, 3,500 of the county's 5,000 citizens were on Federal relief—3,500 of the county's 5,000 citizens were on relief.

But even so, 20,000 Montanans came out to see their President. FDR stood under the massive wooden scaffold they put up to build the dam. And he said:

> The Nation has understood that we are building for future generations of our children and grandchildren, and that in the greater part of what we have done, the money spent is an investment which will come back a thousand-fold in the coming years.

We believed him. We put in the investment. Montana farmers gave up 250,000 acres of prime riverbottom land. But very little of it—forget "a thousand-fold"—has returned.

Year after year, for six decades, the corps has betrayed FDR's promise. We are sick and tired of it. It is time to put it right.

CONCLUSION

I am sorry if I have gotten a little emotional about this. But when it comes to keeping Montana's water in Montana, most of us get emotional. And I do want to recognize the progress the corps has made.

Ken Byerly, the editor emeritus of the Lewistown News Argus, once wrote that "solving this problem is like eating an elephant; you take it one bite at a time."

We have taken some bites already. About 4 years ago, the late Senator Quentin Burdick and I convinced the corps to admit that the basic manual—a work drafted in the 1950's, before the Interstate Highway System made barge traffic more or less obsolete—had to be redone to meet the needs of the 1990's.

But the corps has not spent a penny. Instead, it orders releases of water that increase erosion.

In 1993, at our hearing in Glendive, Colonel Schaufelberger, who was the commander of the Missouri River Division of the corps at that time, somewhat sheepishly agreed that the corps' lawyers had been wrong. Federal laws actually do let the corps consider recreation on an equal basis with navigation and other uses. I ask unanimous consent that an excerpt of his testimony be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXCERPT FROM A HEARING BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, OCTOBER 1, 1993

Senator BAUCUS. * * *

I would like to begin with Mr. Duffus. You state in your report that there is no legal requirement that the Corps give preference to navigation over recreation; in fact, you state in your report that recreation must be given at least equal status to navigation. That is, the law makes that clear, in GAO's judgment, that recreation has equal status compared with navigation. Is that correct?

Mr. DUFFUS. That's correct, Mr. Chairman.

Senator BAUCUS. And what do you base that on? Is that just your reading of the statute? What's the reason for that?

Mr. DUFFUS. The basis for the Corps' categorization of project purposes as primary or secondary rose out of their conclusion that if a project purpose was not identified and had cost allocated to it, then it was not primary, it was secondary. It had to be relegated to a secondary purpose. In documents that they sent up to the Congress when the project was authorized in 1994 and approved, recreation was not allocated any cost. So it was on that basis that the Corps came to the conclusion that recreation was a secondary purpose.

Our review of the statute and our review of the legislative history found no basis for that.

Senator BAUCUS. Colonel, do you agree that there is nothing in the law that requires navigation to be given preference over recreation—or to ask the same question turned around, that the law in fact requires that equal emphasis be given to recreation as compared to navigation?

Colonel SCHAUFELBERGER. Sir, the law does not discriminate. The law says in the purposes of the reservoirs—and they are enunciated—there is no priority established. So there is nothing in the law that says there has to be one priority over the other. The only priority established in the law is the O'Mahoney-Milliken amendment, which specifies that consumptive use has priority over other purposes. That's the only priority that I'm aware of that is specified by law.

Senator BAUCUS. But there is nothing in the law that gives preference to navigation over recreation?

Colonel SCHAUFELBERGER. That is correct, there is nothing in the law.

Mr. BAUCUS. And today I am introducing a bill entitled the "Missouri River Water Control Equity Act." It will balance the equities between the upper and lower basin States. It will require a greater emphasis on recreation. And it will ensure that common sense, not pork-barrel politics, determine how the Missouri River is run.

It may seem unimportant compared to many bills before the Congress. But it means everything to Montanans. We have a lot of elephant steak left to fry, but we are firing up the grill and we are determined to make progress.

I thank you, Mr. President, and I want to thank my colleagues, particularly the distinguished minority leader and also my very good friend, the Senator from North Dakota, Senator CONRAD, for joining me here today.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 525

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1 SHORT TITLE.

This Act may be cited as the "Missouri River Water Control Equity Act."

SEC. 2. FINDINGS.

Congress finds that—

(1) gross revenues from recreation on the Missouri River system are estimated by the Army Corps of Engineers to be $77,000,000 annually;

(2) gross revenues from navigation on the Missouri River system are estimated by the Army Corps of Engineers to be $15,000,000 annually;

(3) barge traffic produces only 1 percent of the annual net revenue that derives from the operation of the Missouri River system;

(4) the Army Corps of Engineers requires 18,000,000 acre-feet of water to remain in the reservoirs of the Missouri River system;

(5) maximum economic benefits for the Missouri River system are estimated by the Army Corps of Engineers to be achieved if 44,000,000 acre-feet of water are maintained in the reservoirs of the Missouri River system;

(6) the recreation industry along the Missouri River has been stifled by drawdowns of the reservoirs of the Missouri River system during drought periods;

(7) barge traffic on the Missouri River has steadily decreased since 1977 so that currently the quantity of cargo shipped on the Missouri River is only 1,400,000 tons annually;

(8) the States of Missouri, Iowa, Kansas, and Nebraska receive 68 percent of the total economic benefits of the Missouri River system; and

(9) the States of Montana, North Dakota, South Dakota, and Wyoming receive only 32 percent of the total economic benefits of the Missouri River system.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to ensure that the States of Montana, North Dakota, South Dakota, and Wyoming receive an equitable portion of the economic benefits from the operation of the Missouri River system;

(2) to encourage the development of the recreation industry along the Missouri River;

(3) to maximize the economic benefits to the United States of the operation of the Missouri River system; and

(4) to phase out navigation, which is the least productive use of the Missouri River system, in order to increase the productivity of other competing uses of the system such as hydropower and flood protection.

SEC. 4. MINIMUM POOL LEVELS.

(a) MISSOURI RIVER SYSTEM.—The Secretary of the Army, acting through the Assistant Secretary of the Army having responsibility for civil works (referred to in this Act as the "Secretary"), shall not permit the permanent pool levels in the Missouri River system to fall below 44,000,000 acre-feet at any time unless the Secretary makes a finding that a lower level is required to provide necessary—

(1) emergency flood control to protect human life and property;

(2) hydropower; or

(3) water supply.

(b) FORT PECK LAKE.—The Secretary shall not permit the permanent pool level in Fort Peck Lake to fall below 12,000,000 acre-feet (which is equivalent to an elevation of 2,220 feet) at any time unless the Secretary makes a finding that a lower level is required to provide necessary—

(1) emergency flood control to protect human life and property;

(2) hydropower; or

(3) water supply.

SEC. 5. NAVIGATION DEAUTHORIZED.

(a) TRANSITION PROVISION.—The Secretary shall decrease the length of the first navigation season that begins after the date of enactment of this Act, and each navigation season thereafter, by 30 days from the length of the previous navigation season, until such time as the navigation season for the Missouri River is eliminated.

(b) PROHIBITION.—Beginning on the day after the end of the last navigation season under subsection (a), the Secretary may not authorize a program, project, or activity that involves navigation on the Missouri River.

SEC. 6. MITIGATION OF EROSION.

(a) IN GENERAL.—Not later than January 1, 1997, the Secretary shall develop and implement a plan to mitigate streamback and reservoir erosion caused by the operations of the Missouri River system.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the plan developed under subsection (a) $20,000,000 for each fiscal year.

Mr. CONRAD. Mr. President, I would like to salute the Senator from Montana, Senator BAUCUS, for his leadership on this subject. The Senator from Montana has been an absolute champion for our part of the country in trying to get fair treatment and equity with respect to the management of the mainstream reservoirs. He has been absolutely determined and dedicated to achieving a fair result.

I can remember very well when the Senator from Montana and I teamed up to stop the appointment of a new head of the Corps of Engineers until our part of the country got fair treatment in the depths of the worst drought we had suffered since the Great Depression. The Senator from Montana, Senator BAUCUS, has shown nerves of steel in taking on the Corps of Engineers on this issue. Very frankly, our part of the country has gotten short shrift, gotten shortchanged, and it has to be altered.

Now we know that for years the Corps of Engineers was operating on a policy that was not supported by law and was not supported by fact. And it is because of the energy and effort of the Senator from Montana, in large measure, that we are moving toward a new day today. I want to thank him publicly for everything he has done.

Mr. BAUCUS. Will the Senator yield?

Mr. CONRAD. Yes.

Mr. BAUCUS. I thank the Senator.

Mr. President, I think that North Dakotans should know that there is no Senator who has worked harder on this issue than their Senator, KENT CONRAD. He and I have teamed up many times on this matter. And I must say it is a combination of working with the Senator from North Dakota, as well as the other Senator from North Dakota, Senator DORGAN, and other members of the House delegation that has enabled us to stem—pardon the pun—more of the flow down the stream. But this is a problem that has to be corrected, and I thank my colleague for joining me in assuring this correction is made.

Mr. CONRAD. I thank the Senator from Montana. It has been a team effort, but I think there is no doubt the Senator from Montana, Senator BAUCUS, has been a key player in this effort.

Mr. President, from its origins in Montana to its end near St. Louis, the mighty Missouri River is managed and controlled by the Army Corps of Engineers. Five years ago, the Army Corps of Engineers began a review of its river management plan, commonly called the master manual. This was the first major review of the manual since it was implemented in 1960.

The corps started this review in response to our concerns over falling reservoir levels in the Dakotas and Montana. At that time, we were in the middle of the worst drought since the Great Depression, and the corps was draining huge amounts of water from the reservoirs for the sole purpose of keeping a small number of barges on the Missouri River afloat.

I can remember very well holding a hearing in the midst of that terrible drought and learning, to my shock and my surprise, that the Army Corps of Engineers was releasing record amounts of water from our reservoirs in the midst of the worst drought in 50 years. I mean, think about it. It is absolutely extraordinary. In the worst drought in 50 years, they were releasing record amounts of water and, as a result, our reservoir levels were dropping like a stone.

Mr. President, while the barges continued to float, Lake Sakakawea and other mainstream reservoirs dropped by almost 30 feet. It is hard to imagine. It is hard to visualize what that meant, Mr. President. I know the occupant of the chair, the distinguished occupant of the chair, is from a downstream State, and I know there are legitimate interests there as well. But I say to you, if you could have seen what was happening in our part of the country, I think even the downstreamers would have been stunned. To see a reservoir drop 30 feet in a very short period of time and to see the economic wreckage caused by that drop, I think, told many of us that something was badly askew.

I can still remember a young couple. He had been a pro football player. He and his wife put everything they had into a resort right before the drought hit. And when the reservoir dropped, they found their marina high and dry. They found everything they had put in, all their life savings, everything they could borrow, was lost, all of it put at risk and all of it lost.

Mr. President, the water has returned to our reservoirs, but the need to change the master manual remains. Five years of corps study has made it clear that the current master manual provides disproportionate benefits for downstream States at the expense of upstream States. About 70 percent of the system's economic benefits goes to downstream States, while upstream States get roughly 30 percent. This is not a fair distribution of benefits and it should change.

Of special concern to me is the fact that the current plan destroys a growing recreation industry from the upper basin to keep subsidizing a shrinking Missouri River barge industry.

The main problem with the current manual is that it is slanted toward navigation and based on outdated assumptions. The master manual anticipates annual river navigation traffic of 12 million tons. We have never even gotten close to that number. Commercial navigation is now around 2 million tons per year; in other words, one-sixth of what is assumed in the current master manual.

Navigation supplies only 1 percent of the system's annual economic benefits—$17 million out of $1.3 billion. This compares with $76 million in annual benefits from recreation. Yet, the corps continues to manage the entire system for the benefit of navigation and to the detriment of other functions. Navigation is the only project function managed for 100 percent of its potential—potential—economic output.

In economic terms, does it make any sense for the corps to favor navigation over recreation? Anyone who takes an honest look at the facts would answer "No."

Mr. President, the time has come to change this policy. The corps should stop pretending that navigation is king. It is not. It never was. My colleagues may be surprised to hear that the entire Missouri River system would actually generate greater economic benefits if Missouri River navigation were deemphasized. In other words, we would give the taxpayers a better return on their investment if we would place less emphasis on barges on the Missouri.

I believe that a better way to manage the river would be to deemphasize Missouri navigation and keep more water in the upstream reservoirs. Such a move would increase total economic benefits, improve the river ecosystem, and result in more equitable distribution of the benefits. Recreation and hydropower benefits would increase while flood control and water supply functions would be largely unaffected.

In addition, deemphasizing Missouri river navigation would significantly improve the river ecosystem. This approach makes economic sense. It makes environmental sense. I cannot understand how any rational review of the situation could reach any other conclusion.

Mr. President, the public has been fed a good deal of misinformation about the master manual review. I want to address two falsehoods that are being spread by some who are opposed to change.

First, the upstream States are not trying to use up, take away, or sell all of the Missouri River water that would otherwise go downstream. There is no way that North Dakota or any other upstream State could use enough Missouri River water to affect the downstream flows. It simply cannot be done. In addition, North Dakota has, I say, no—and I repeat no—plans to divert to another State, sell, or trade away the rights to Missouri River water.

Second, changes in the Missouri River master manual will not significantly impact navigation and water supply on the Mississippi River. Corps analysis concluded that "Changes in the Missouri River operations would not"—let me repeat that—"would not affect water supply on the Mississippi River." Corps analysis also found there was essentially no difference in Mississippi navigation between the current plan and the corps' proposed change.

Finally, my colleagues should keep in mind that there is a legitimate issue of fairness at work here. The upstream States have sacrificed 1.2 million acres of prime land to house the reservoirs that serve and protect the downstream States. In return, we get a fraction of the benefits and a fraction of the water projects that were promised as compensation some 50 years ago.

Mr. President, let me emphasize, we have given up 1.2 million acres—a permanent flood in our States—in order to save the downstream States from repetitive flooding. So we have the permanent flood to save them from annual flooding. Yet, they get the lion's share of the benefits of the management of the system.

In contrast to what we have experienced upstream, the downstream States have sacrificed nothing but received the lion's share of the benefits, including navigation water supply, and to date $5 billion worth of flood control—not million—$5 billion worth of flood control. This is not what I call equity.

Mr. President, what we need in the Missouri River Basin is balance in fairly meeting the competing interests along the river. By making key changes in the master manual, we can achieve this balance while at the same time increasing economic and environmental benefits.

Mr. DASCHLE. Mr. President, the Corps of Engineers manages the flow of the Missouri River based on assumptions about economic uses of the river that have not been seriously reexamined or revised in 50 years. Impartial observers, including the General Accounting Office, acknowledge that the rules for operating the dams along the river, known as the master manual, are outdated.

Historically, upstream States, including South Dakota, have accepted the burden of flood control on the river. This tradition began with the sacrifice of prime land to the construction of dams to prevent downstream flooding.

Over time, recreation in upstream States has come to play a much more prominent role in producing economic benefits from the river. Yet corps management of the river ignores this development and continues to give recreation lower priority than competing downstream uses.

Today there is general consensus on the need to substantially revise the guidelines by which the Federal Government operates the dams on the Missouri River. After reviewing the management of the Missouri River in 1992, the General Accounting Office concluded that the corps has been managing the river based on "assumptions about the amount of water needed for navigation and irrigation made in 1944 that are no longer valid." According to GAO, "the plan does not reflect the current economic conditions in the Missouri River Basin."

As a result, in 1989 the Corps of Engineers initiated a study of the operation of the main stem of the Missouri River, in anticipation of revising the master manual. A number of alternative management plans were developed and, based on the historical behavior of the river—from 1898 to 1994—the economic and environmental impacts of each alternative were evaluated. The goal of this exercise was to identify which alternative would maximize the economic value of the river, considering such factors as flood control, navigation, hydropower, water supply, and recreation.

In May 1994, the corps selected a preferred alternative, which called for shortening the navigation season by 1 month and maintaining a higher permanent pool behind the dams. In July 1994, the draft environmental impact statement [EIS] was released for review. The public comment period ended on March 1.

What has become clear through this 6-year process is that the downstream States will go to great lengths to prevent this reassessment from moving forward. Congressional representatives from downstream States consistently have attempted to block any revision of the Master manual that reflects the changing economics of the river and gives recreation the priority it deserves.

The House Appropriations Committee in 1993—at the behest of downstream members—called on the corps "to follow the legislative priorities and regulatory guidelines expressed in its current master manual until a new management plan is approved by Congress." Now that the corps has selected the preferred alternative, the downstream States have made it clear that they will fight the changes it recommends.

It appears increasingly unlikely that even modest changes in the master manual will be allowed to occur without legislation. That is regrettable.

To focus light on the heart of this issue, today Senator BAUCUS is introducing the Missouri River Water Control Equity Act, which seeks to ensure that the changing economic conditions are acknowledged and reflected in the management of the river. This bill simply states explicitly policy that should be implicit.

This bill reflects the analysis of corps professionals. It would require the agency to maintain a permanent pool of 44 million acre-feet behind most dams, while allowing it to maintain lower levels if necessary to meet downstream needs for flood control, water supply and hydropower. It would also reduce the navigation season and require the corps to develop and implement a plan to mitigate stream bank erosion caused by operation of the dams.

Mr. President, times have changed. Assumptions valid 50 years ago are no longer valid today.

Since 1944, significant economic changes have occurred in the economy of the Missouri River. The downstream users refuse to accept this fact. Instead, they cling to the outdated assumptions that disproportionately reward their States to the detriment of upstream users.

Given the results of the corps' own evaluation, the revisions should have gone much farther. Greater consideration should have been given to increasing the permanent pool from its current level of 18 million acre-feet. The analysis performed by the corps demonstrates significant increases in recreation and wildlife habitat benefits at higher permanent pool levels. Given the immense economic value of recreation in the upstream States—now a $77 million per year industry—as well as the ecological damage that has been suffered over the years due to disruption of wetlands and the flooding of prime crop land—the master manual should be altered to better support these activities.

The bill introduced today would require the corps to make modest changes in the management of the river that their professionals have recommended; changes that are fair and that increase national environmental and economic benefits from the river.

Neither the upstream States nor the Nation as a whole can afford to continue business as usual. It is my hope that Congress will take an objective look at this issue, recognize the merits of this legislation and move swiftly to enact it.

By Mr. GREGG (for himself and Mr. BOND):

S. 526. A bill to amend the Occupational Safety and Health Act of 1970 to make modifications to certain provisions, and for other purposes; to the Committee on Labor and Human Resources.

THE OSHA AMENDMENTS OF 1995

• Mr. GREGG. Mr. President, when OSHA was enacted it was intended to make the workplace free from "recognized hazards that are causing, or likely to cause, death or serious physical harm to * * * employees." As with many programs established by Congress, however, over the years OSHA has developed a well-earned reputation for over-regulation. OSHA has moved from its original purpose of protecting the workers to hindering businesses with excessive mandates.

While I feel that a major problem within OSHA is of a cultural nature, the bill will concentrate on five areas that will relieve the oppressive and burdensome regulations. My bill, the OSHA Amendments of 1995, addresses the need for employee participation, risk assessment in standard making, consultation services, reduced penalties for nonserious violations, and warnings in lieu of citations.

This balanced approach will remove a feeling among the American employers and employees that OSHA is the bad cop, and institute an awareness of a partnership in assuring safety and health in the workplace. The limitation of burdensome and repetitious paper work, compiled with risk assessment and a reduced threat of large fines, will make for a more business-like approach.

As Chairman of the Labor Subgroup of the Regulatory Relief Task Force, I have received numerous requests for the reform of OSHA. This past month I held a roundtable on regulatory reform in my State of New Hampshire and, although there were many issues raised, the one that was unanimously supported was OSHA reform. Businesses across America share New Hampshire's exasperation with what OSHA has become, as well as their demands for relief. This bill begins to answer that call to action.•

By Mr. LOTT:

S. 527. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Empress;* to the Committee on Commerce, Science, and Transportation.

CERTIFICATE OF DOCUMENTATION LEGISLATION

Mr. LOTT. Mr. President, I am introducing a bill today to direct the vessel *Empress*, Official Number 975018, be accorded coastwise trading privileges.

The *Empress* was constructed in 1925 in the United States. It is 75 feet in length, 16 feet in width, 5.5 feet in depth, and is self-propelled. The vessel was owned by the United States until 1960. The vessel has been used as a corporate business vessel, private residence, and charter vessel. It has also been used by nonprofit groups such as the Special Olympics, March of Dimes, and the Ronald McDonald House.

The current owner obtained the boat from his father. The owner has all ownership records except for the years 1960 to 1965, when the vessel was being used by the Boy Scouts of America.

The owner of the vessel is seeking a waiver of the existing law so that the vessel can be used as a charter vessel.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 527

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding section 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel EMPRESS (United States official number 975018).

By Mr. LOTT:

S. 528. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for three vessels; to the Committee on Commerce, Science, and Transportation.

CERTIFICATE OF DOCUMENTATION LEGISLATION

Mr. LOTT. Mr. President, today I am introducing legislation which seeks to temporarily authorize the operation of three vessels in the coastwise trade. Ordinarily, I do not support any legislative relief from section 27 of the Merchant Marine Act of 1920 to allow operation of vessels not constructed in the United States. In this particular instance, however, temporary relief from the Merchant Marine Act will increase jobs in the shipbuilding industry, support the addition of maritime jobs and expand the maritime transportation base.

I want to point out that the bill I am introducing today protects the U.S.-build requirements of the Jones Act by stipulating that these three vessels are authorized to operate in the coastwise trade if, and only if, three criteria are met. These criteria are:

The owner of these vessels must execute a binding contract for construction of replacement vessels within 9 months of enactment of this provision;

All necessary repairs required to operate these vessels in the coastwise trade must be performed in shipyards in the United States; and

Each of these vessels must be manned by U.S. citizens.

If this legislation is adopted, jobs in the U.S. maritime industry will be increased and new opportunities for maritime passenger transportation in high demand areas will be created. Without this authorization, these opportunities—including the addition of over 100 new shipyard jobs—will not occur.

I appreciate the attention of my colleagues and yield the floor.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 528

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. COASTWISE TRADE AUTHORIZATION FOR HOVERCRAFT.

Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), the Act of June 19, 1886 (46 U.S.C. App. 289), and sections 12106 and 12107 of title 46, United States Code, the Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement for each of the vessels IDUN VIKING (Danish Registration number A433), LIV VIKING (Danish Registration number A394), and FREJA VIKING (Danish Registration number A395) if—

(1) all repair and alteration work on the vessels necessary to their operation under this section is performed in the United States;

(2) a binding contract for the construction in the United States of at least 3 similar vessels for the coastwise trade is executed by the owner of the vessels within 6 months after the date of enactment of this Act; and

(3) the vessels constructed under the contract entered into under paragraph (1) are to be delivered within 3 years after the date of entering into that contract.

ADDITIONAL COSPONSORS

S. 4

At the request of Mr. McCAIN, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 4, a bill to grant the power to the President to reduce budget authority.

S. 50

At the request of Mr. LOTT, the names of the Senator from Utah [Mr. HATCH], and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of S. 50, a bill to repeal the increase in tax on Social Security benefits.

S. 88

At the request of Mr. HATFIELD, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 88, a bill to increase the overall economy and efficiency of Government operations and enable more efficient use of Federal funding, by enabling local governments and private, nonprofit organizations to use amounts available under certain Federal assistance programs in accordance with approved local flexibility plans.

S. 90

At the request of Mr. HATFIELD, the name of the Senator from Oregon [Mr. PACKWOOD] was added as a cosponsor of S. 90, a bill to amend the Job Training Partnership Act to improve the employment and training assistance programs for dislocated workers, and for other purposes.

S. 145

At the request of Mr. GRAMM, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 145, a bill to provide appropriate protection for the constitutional guarantee of private property rights, and for other purposes.

S. 191

At the request of Mrs. HUTCHISON, the names of the Senator from Missouri [Mr. BOND], and the Senator from Wyoming [Mr. THOMAS] were added as cosponsors of S. 191, a bill to amend the Endangered Species Act of 1973 to ensure that constitutionally protected private property rights are not infringed until adequate protection is afforded by reauthorization of the Act, to protect against economic losses from critical habitat designation, and for other purposes.

S. 240

At the request of Mr. DOMENICI, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 240, a bill to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act.

S. 267

At the request of Mr. STEVENS, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 267, a bill to establish a system of licensing, reporting, and regulation for vessels of the United States fishing on the high seas, and for other purposes.

S. 327

At the request of Mr. HATCH, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 327, a bill to amend the Internal Revenue Code of 1986 to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home.

S. 348

At the request of Mr. NICKLES, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 348, a bill to provide for a review by the Congress of rules promulgated by agencies, and for other purposes.

S. 351

At the request of Mr. HATCH, the names of the Senator from New York [Mr. D'AMATO], and the Senator from Oklahoma [Mr. INHOFE] were added as cosponsors of S. 351, a bill to amend the Internal Revenue Code of 1986 to make permanent the credit for increasing research activities.

S. 478

At the request of Mr. BREAUX, the names of the Senator from Connecticut [Mr. DODD], and the Senator from

Washington [Mr. GORTON] were added as cosponsors of S. 478, a bill to amend the Internal Revenue Code of 1986 to allow the taxable sale or use, without penalty, of dyed diesel fuel with respect to recreational boaters.

S. 497

At the request of Mr. HELMS, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 497, a bill to amend title 28, United States Code, to provide for the protection of civil liberties, and for other purposes.

S. 503

At the request of Mrs. HUTCHISON, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 503, a bill to amend the Endangered Species Act of 1973 to impose a moratorium on the listing of species as endangered or threatened and the designation of critical habitat in order to ensure that constitutionally protected private property rights are not infringed, and for other purposes.

S. 508

At the request of Mr. MURKOWSKI, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 508, a bill to amend the Internal Revenue Code of 1986 to modify certain provisions relating to the treatment of forestry activities.

S. 510

At the request of Mr. MCCAIN, the name of the Senator from Colorado [Mr. CAMPBELL] was added as a cosponsor of S. 510, a bill to extend the authorization for certain programs under the Native American Programs Act of 1974, and for other purposes.

AMENDMENT NO. 331

At the request of Mrs. KASSEBAUM the names of the Senator from Oklahoma [Mr. NICKLES], and the Senator from Tennessee [Mr. FRIST] were added as cosponsors of Amendment No. 331 proposed to H.R. 889, a bill making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

At the request of Mr. HELMS his name was added as a cosponsor of Amendment No. 331 proposed to H.R. 889, supra.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. NICKLES. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Energy Production and Regulation.

The hearing will take place Tuesday, March 21, 1995, at 10 a.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to receive testimony on S. 92, a bill to provide for the reconstitution of outstanding repayment obligations of the administrator of the Bonneville Power Administration for the appropriated capital investments in the Federal Columbia River Power System.

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Howard Useem or Judy Brown at (202) 224-6567.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Thursday, March 9, at 9:30 a.m., in SR-332, to discuss "Farm Programs: Are Americans Getting What They Pay For?"

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 9:30 a.m., on Thursday, March 9, 1995, in open session, to receive testimony on the defense authorization request for fiscal year 1996 and the future years defense program.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, March 9, 1995, at 10 a.m. to conduct a hearing on the Mexican peso.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, March 9, 1995, for purposes of conducting a full committee business meeting, which is scheduled to begin at 10:30 a.m. The purpose of this meeting is to consider the nomination of Wilma Lewis to be inspector general of the Department of the Interior.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet Thursday, March 9, 1995, beginning at 9:30 a.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing on welfare reform.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 9, 1995, at 10 a.m. to hold a hearing on "Implementation and Costs of U.S. Policy in Haiti."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 9, 1995, at 2 p.m., to hold a hearing on the "Overview of South Asian Proliferation Issues."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. JEFFORDS. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Thursday, March 9, for a markup, at 9:30 a.m., on S. 219, Regulatory Transition Act of 1995.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, March 9, 1995, at 10 a.m., to hold a hearing on "S. 227, the Performance Rights in Sound Recordings Act of 1995."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. JEFFORDS. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a hearing on the nomination of Dennis M. Duffy to be Assistant Secretary for Policy and Planning for the Department of Veterans Affairs, and on the budget for veterans programs for fiscal year 1996. The hearing will be held on March 9, 1995, at 10 a.m., in room 418 of the Russell Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON AVIATION

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Aviation Subcommittee of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on March 9, 1995, at 2:30 p.m., on the Metropolitan Washington Airports Authority.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

ODDS AGAINST CONTROLLING GAMBLING FEVER IN ILLINOIS

• Mr. SIMON. Mr. President, recently, the Bloomington Pantagraph had an editorial that I ask be printed the RECORD, commenting on the matter of gambling in Illinois.

The phenomenon is not a problem only in Illinois.

I have introduced legislation calling for a national commission to look at where we are going in this area and to look into its impact on the Nation.

We are talking about the fastest growing industry in the United States, and there are obviously problems that go with that escalation.

The Drake Law Review recently had a very extensive study of this question and came to the conclusion that we are harming our country.

I hope Congress will authorize a careful look at this whole question.

The editorial follows:

[From the Pantagraph, Feb. 23, 1995]

ODDS AGAINST CONTROLLING GAMBLING FEVER IN ILLINOIS

Gambling fever seems to be spreading across Illinois like a prairie fire.

Horse tracks have been around for awhile, but the state broke new ground by subsidizing the rebuilding of Arlington International Raceway when the original track burned.

For those who didn't want to go to the tracks, there have been plenty of bingo parlors around. And the state finally got around to licensing them to make them legal.

And there is the state lottery, where the proliferation of games to lose money—with a few exceptions, of course—never ceases to amaze us.

We also have the riverboats, the floating crap games. It hasn't been enough to just have the riverboats; owners have chartered buses to transport gamblers from various cities.

Oh yes, let's not forget the offtrack betting parlors that have sprung up in at least a half-dozen Illinois cities.

But there is still constant stirring in Springfield for more licensed gambling—casino gambling.

Had enough? There's more.

The mega-raffles seem to be hitting Illinois much harder this year, too.

There's one in Bloomington-Normal now. Central Catholic High School's Dream House raffle is offering a top prize of a $200,000 house under construction on Bloomington's northeast side. Only 2,400 tickets are being sold at $100 each.

Sangamon County is concerned enough about such raffles that it regulates them with a code. Last month, the county raised the maximum for such raffles from $150,000 to $250,000. Since then, a fourth "mega-drawing" of the year has been announced in Springfield—this one for a $180,000 house to benefit Big Brother/Big Sister of Sangamon County.

Perhaps we shouldn't be surprised that in that same city, legislation was introduced two weeks ago to permit video lottery gambling at locations licensed to conduct charitable games, primarily private/social clubs.

We haven't even mentioned the office pools or the illegal bookies and tip boards in probably every major city.

It seems rather ironic that this fever pitch for gambling is often tempered because proceeds are earmarked for charity, or education, or county fairs.

We know gambling is an easy way to make a quick buck—for the sponsor.

And we haven't mentioned that a small bet for a large prize can be titilating.

But the stakes seem to be escalating. It's time Illinois legislators take a more critical look at gambling—what it was, what it has become, what it has done and where it is going.

Please, no more legalized gambling. We'll bet there are ample opportunities to lose money now.•

ORDERS FOR TOMORROW

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 10 a.m. on Friday, March 10, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and there then be a period for the transaction of morning business not to extend beyond the hour of 11:00 a.m., with Senators permitted to speak for up to 5 minutes each, with the following exceptions: Senator GRASSLEY, 10 minutes; Senator Abraham, 10 minutes; Senator KOHL, 10 minutes; and Senator GRAHAM from Florida, 15 minutes.

I further ask unanimous consent that at the hour of 11:00 a.m., the Senate resume consideration of H.R. 889, the supplemental appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DOLE. Mr. President, for the information of all of my colleagues, a cloture motion was filed today on the pending amendment offered by Senator KASSEBAUM. Therefore, cloture will occur on the Kassebaum amendment during Monday's session of the Senate. It is my hope that tomorrow we will temporarily set aside the Kassebaum amendment so we may continue to consider other amendments to the bill. Senators should be aware that rollcall votes are expected throughout Friday's session of the Senate.

I will just say to my colleagues who are in their offices, or staff, that I have not had a procedural vote this year. I do not like procedural votes. I do not like Sergeant at Arms votes, but unless we can make some progress tomorrow—of course, if Senators are talking, there would be no need, but unless those who are opposing us from putting the question on the pending amendment are willing to talk, we will have procedural votes tomorrow, even though I have never been particularly excited about that approach.

I will also say, we come in at 10 a.m., and tomorrow Dr. Halverson will lead us in prayer for the final time. So I hope my colleagues will be here a little before 10 a.m. tomorrow morning.

RECESS UNTIL 10 A.M. TOMORROW

Mr. DOLE. Mr. President, if there be no further business to come before the Senate, I now ask that the Senate stand in recess under the previous order.

Thereupon, the Senate, at 8:03 p.m., recessed until Friday, March 10, 1995, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate March 9, 1995:

UNITED STATES INSTITUTE OF PEACE

DANIEL A. MICA, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 1997, VICE W. SCOTT THOMPSON, TERM EXPIRED.

HARRIET M. ZIMMERMAN, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 1999, VICE WILLIAM R. KINTNER, TERM EXPIRED.

HOUSE OF REPRESENTATIVES—*Thursday, March 9, 1995*

The House met at 10 a.m.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

In this brief moment of quiet, O gracious God, direct our hearts and minds to those themes that are at the center of our stewardship. We pray that we will be worthy of the high calling to public service by serving people with honesty and courage and by committing ourselves to the virtues of justice and peace and reconciliation. May our eyes not only be focused on what must be done in the coming hour or the day, but may our vision also grasp the great responsibilities to which we have been called. May we ever heed the words of Your prophet Amos: "Let justice flow down like waters and righteousness like an everflowing stream." Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Michigan [Mr. KILDEE] come forward and lead the House in the Pledge of Allegiance

Mr. KILDEE led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair announces that there will be 10 1-minutes on each side.

REPUBLICAN CONTRACT WITH AMERICA

(Mr. HOKE asked and was given permission to address the House for 1 minute.)

Mr. HOKE. Mr. Speaker, our Contract With America states the following:

On the first day of Congress, a Republican House will require Congress to live under the same laws as everyone else; cut committee staffs by one-third; and cut the congressional budget.

We kept our promise.

It continues that in the first 100 days, we will vote on the following items: A balanced budget amendment—we kept our promise; unfunded mandates legislation—we kept our promise; line-item veto—we kept our promise; a new crime package to stop violent criminals—we kept our promise; national security restoration to protect our freedoms—we kept our promise; government regulatory reform—we kept our promise; commonsense legal reform to end frivolous lawsuits—we are doing this now; welfare reform to encourage work, not dependence; family reinforcement to crack down on deadbeat dads and protect our children; tax cuts for middle-income families; senior citizens' equity act to allow our seniors to work without government penalty; and congressional term limits to make Congress a citizen legislature.

Mr. Speaker, this is also a contract with our Founders for our future.

This is our Contract With America.

INFANT FORMULA AND THE WIC PROGRAM

(Mr. KILDEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KILDEE. Mr. Speaker, in the debate about child nutrition in the Committee on Economic and Educational Opportunities we witnessed the triumph of ideology over practical public policy and the best interests of our children.

The Republicans, who espouse a free-market economy, recently rejected my amendment to require States to use competitive bidding when purchasing infant formula for the WIC Program.

Only one Republican had the courage to vote for my amendment.

The only winners from this action are the big three infant formula companies. The losers are pregnant women and infants, many of whom will suffer from malnutrition or anemia, and the taxpayers who will get less efficient use of their tax dollars.

Some would say that the States will continue to use competitive bidding. I would point out that fewer than half the States used competitive bidding prior to passage of the 1989 Federal law that required them to do so. When this amendment was adopted we found that it saved over $1 billion a year and enabled us to serve 1½ million more pregnant women and infants a month. The committee voted to drop this requirement.

Weakening cost containment measures will mean a less efficient, less effective program that gives taxpayers less return for their dollars but helps the three infant formula companies improve their balance sheets.

Mr. Speaker, this program was designed to help poor women and children, not a few major corporations. Let us not take food out of the mouths of babies.

IN SUPPORT OF H.R. 956

(Mr. TIAHRT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIAHRT. Mr. Speaker, today we are going to address H.R. 956, common sense product liability reform. In the last 40 years we have passed one product liability reform bill. What has it done? It was passed for single-engine aircraft. And in the Fourth District of Kansas it has created 7,000 jobs, thanks to the vision of Russ Meyers who heads up Cessna Aircraft.

In 1977, we were building over 13,000 aircraft in the single-engine aircraft business. And Cessna was building over half of those. By 1986 they had to quit building aircraft because of lawsuits. By 1994 they were down to 600 single-engine aircraft and many of them were built overseas.

Product liability reform works and the choice is clear. If you protect trial lawyers who are getting rich from lawsuits—they get over 50 cents of every dollar in the cost of a lawsuit—or you create jobs. It is lawsuits or lunch buckets. I support more lunch buckets and less lawsuits. Let us pass H.R. 956.

REPUBLICANS AND TERM LIMITS

(Mr. GUTIERREZ asked and was given permission to address the House for 1 minute.)

Mr. GUTIERREZ. Mr. Speaker, yesterday, in a move that demonstrates the gulf between the rhetoric about the Contract With America and the reality of what it means for Americans, the majority ducked a vote on term limits.

And they did it for a simple reason. They know they are not serious about it.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

For all of their talk about citizen legislators, their term limit bill is really about one thing—protecting their power. So I say to the Republicans: Stop hustling the American people. If what you really want is term limits and not limitless headlines, send us a real bill.

If letting the American people decide every 2 years who should represent them doesn't sit too well with Mr. GINGRICH and Mr. ARMEY and Mr. MCCOLLUM—three term limit supporters who have now been citizen legislators for a total of 44 years—then I say give us a real term limits bill.

Make it retroactive.

If you want the headlines, then clean out your desks and head for home the day we pass the bill. When the citizen legislators who have been here for decades show me they are that serious about term limits, then I am with you.

TORT REFORM

(Mr. CHABOT asked and was given permission to address the House for 1 minute.)

Mr. CHABOT. Mr. Speaker, I rise to make a confession. There was a time in my life when I was a member of both the American Bar Association and the Association of Trial Lawyers of America. But I resigned from both organizations some years ago when I came to realize that the interests of the legal elite do not always coincide with the public interest. I am happy to say that redemption is possible, and I am here to urge courage in the fight for legal reforms.

Now, I can also tell my colleagues that not all trial lawyers are bad, at least most of them are not. They serve a necessary function in our society and no one here is arguing to put them out of business. Granted there are some lawyers who are convinced that their lifestyle depends upon defending every excess of the tort system, no matter how senseless, no matter how much it adds to the cost of everyday goods and services. But we are on the side of the ordinary people of this country, the consumers.

Maybe our response to the lawyers who do not like these reforms is: If you do not like it, sue us.

IT'S THE TRADE DEFICIT, CONGRESS

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, the value of the dollar is so low, the dollar could walk underneath a closed door with a top hat on. And it is not really all that cerebral. The problem in America is a trade deficit and Congress has the blinders on.

For the last 15 years we have had trillions of dollars floating around overseas. The supply is so great, the dollar is not in demand, and the dollar is dropping. It is the trade deficit, Congress. Not budget deficits. We cannot separate the two.

And to tell my colleagues the truth, we have a trade program that is so misdirected, if we threw it at the ground it would probably miss.

We will not balance the budget, Congress, with minimum wage jobs and highly skilled American workers in unemployment lines. Think about that. I think the whole country is saying, "Beam me up."

Congress, get at that trade deficit and we will solve the budget deficits in America.

PRODUCT LIABILITY'S CHILLING EFFECT ON MEDICAL RESEARCH

(Mr. BURR asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURR. Mr. Speaker, I want to bring to my colleagues' attention an article from Sunday's Washington Post entitled "America, the Plaintiff."

The story starts out like this. Suppose for a moment that a small drug company miraculously discovers a vaccine that can prevent cancer. Suppose that the drug is cheap, easy to administer and has a single, albeit serious, drawback: One in 10,000 people who take the drug may experience acute vision loss. Should the company bring the product to market, figuring that a relative handful of people may go blind, so that millions of lives can be saved?

This is a question that pharmaceutical manufacturers ask every day. Each day they must weigh their hopes to save human lives against the threat of being punished over an FDA-approved product. How many times will we miss the opportunity to have a cure for cancer, or AIDs, or even the common cold, because a manufacturer knows that one product liability suit will jeopardize the future use of the product and possibly the company.

I hope you will keep this story in mind when you consider your vote today in our lifesaving bipartisan amendment to encourage manufacturers to market FDA-approved products.

REPUBLICANS TAKE APPLES AND MILK AWAY FROM CHILDREN

(Mr. BARRETT of Wisconsin asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARRETT of Wisconsin. Mr. Speaker, when the Republicans announced that they were going to close down the school lunch program and fold it into a block grant program, I went to my favorite expert in my district, my wife, who is a schoolteacher, to ask her what she thought.

She said, I think we should have welfare reform and I understand why people are upset with the Food Stamp Program, but this is the food that these kids eat every day. It is not like they take this food out onto the street and sell it. There is no black market for school lunch programs. Why do the Republicans want to take apples and milk away from 6-year-olds in the United States?

Why could I not answer that question for my wife? In the Halls of Congress I am still waiting for the answer. Why do the Republicans want to take milk and apples away from 6-year-olds in the United States of America?

THE FACTS ON REPUBLICANS AND NUTRITION PROGRAMS

(Mr. HAYWORTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYWORTH. Mr. Speaker, I will depart from my prepared text directly to answer my good friend from Wisconsin. First of all, my friend, you know it is an out and out falsehood; we will not take apples nor milk nor any food out of the mouths of the children of this country.

Once again, let us engage in some elementary mathematics. We propose, as Republicans, to up the budget spent, to up the allocation to $200 million over what President Clinton asked for in the food program. We propose an increase of 4.5 percent for next year.

We propose giving the power to feed these children to people on the front lines fighting the battle. I wish my friends on the other side would stop this demagoguery and deal with the facts, Mr. Speaker. Those are the facts and that is the difference we will make for America.

TRYING TO HAVE IT BOTH WAYS

(Mr. MILLER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MILLER of California. Mr. Speaker, in 1993, the Ethics Committee explicitly cautioned Speaker GINGRICH to avoid using congressional resources in conjunction with his course on American civilization. He rejected that advice and promoted the course from the House floor.

Now that he is being challenged on that he is trying to use the Constitution to defend his speech on the House floor.

The Speaker cannot have it both ways.

The same Speaker that barred the gentlewoman from Florida, Congresswoman CARRIE MEEK, from discussing the Speaker's book deal on the House floor is now saying that a Member can say virtually anything on the House floor because it is protected speech under the Constitution.

Speaker GINGRICH said yesterday in his press conference: "It is totally legitimate for a Member of Congress to stand up on the floor of the House and say virtually anything. Nothing the Ethics Committee advises can supersede the constitutional provisions of speech and debate."

The speech and debate clause of article I of the Constitution, however, is solely designed to protect Members of Congress from being questioned in any other place, meaning that a Member cannot be prosecuted or held liable for anything he or she says on the House floor. We all know the House has rules that explicitly forbid Members of Congress from doing this, as the Speaker was advised by the Ethics Committee in promoting his book.

□ 1015

OVERTURN EXECUTIVE ORDER ON STRIKER REPLACEMENTS

(Mr. BARRETT of Nebraska asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARRETT of Nebraska. Mr. Speaker, with the stroke of a pen, President Clinton yesterday shattered more than 50 years of labor law by issuing an Executive order to prohibit the hiring of permanent replacement workers for companies with Federal contracts.

For 50 years Congress has maintained a careful balance between the powers of labor and management at the bargaining table. We have often fought long and hard on this floor to ensure that neither side had an unfair advantage.

The long arm of organized labor—which represents less than 12 percent of the private labor force—now has privileged status among American workers—something Congress has fought hard to avoid. Some might even say that it is payback time for organized labor, since they gave campaign contributions to Democrats versus Republicans by a ratio of 9 to 1.

Mr. Speaker, the President yesterday slapped the face of Congress, and I am ready to settle the matter as a gentleman. I urge my colleagues to cosponsor H.R. 1179 that would nip this Executive order in the bud by making it null and void.

FARM BILL AWAITS WHILE POST OF SECRETARY OF AGRICULTURE REMAINS VACANT

(Mr. EWING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EWING. Mr. Speaker, President Clinton nominated Dan Glickman to be his Secretary of Agriculture on December 28, 1994, over 2 months ago. Here we are in the first week of March, and no hearings have been held on Mr. Glickman's nomination and it could be many weeks before the Secretary is confirmed.

News reports indicate that the nomination is stalled because of unanswered questions. This is unfortunate as there is no proof of any wrongdoing.

This Congress will begin holding hearings on the 1995 farm bill in the next few weeks, and the Clinton administration has nobody in charge of its agriculture policy. In fact, it would appear that agriculture policy generally is of minor concern to the administration. How can we write a fair and reasonable farm bill or establish agriculture policy when the lights are out in the Agriculture Secretary's office?

IN SUPPORT OF FUNDING FOR LIHEAP

(Mr. DOYLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DOYLE. Mr. Speaker, I rise today in strong support of continued funding for LIHEAP, the Low-Income Home Energy Assistance Program. LIHEAP is a block grant that provides funding for programs that assist low-income households with heating during the winter months. On February 22, the House Appropriations Committee voted to eliminate funding for the entire program. Lack of funding for this program would effectively destroy the ability of 5.8 million American families to pay their energy bills. Cutting LIHEAP would effectively put people—children, seniors, disabled, and the working poor alike—out in the cold. In my State, Pennsylvania, 466,000 households would be affected.

At a time when the crux of all the rhetoric coming from the other side of the aisle is the need for input and control for those on the State and local level—why is it that LIHEAP, a successful block grant providing an outstanding example of a Federal-State partnership with the built-in flexibility that allows States to design programs to respond to the heating needs of their citizens being decimated? The irony of this situation is rich, Mr. Speaker, but irony will not keep you warm—at anytime—and especially not during a Pennsylvania winter. The constituents of western Pennsylvania did not send me to Washington to participate in ideological shell games that employ a bait and switch mentality. All of us were sent here to ultimately improve the quality of life for those we represent.

I urge for continued funding for the proven successful Low-Income Home Energy Assistance Program.

CONGRESS MUST CORRECT THE PROBLEM OF FRIVOLOUS LAWSUITS

(Mr. LATOURETTE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LATOURETTE. Mr. Speaker, as a lawyer, I am the last person to suggest that everybody in my profession is a money-grubbing, scum-sucking toad. The actual figure is only about 73 percent.

Ha ha, I am of course just pulling the Speaker's honorable leg. The vast majority of lawyers are responsible professionals, as well as, in many ways, human beings.

But we really do need to do something about all these frivolous lawsuits. We have reached the point where a simply product such as a stepladder has to be sold with big red warning labels all over it, telling you not to dance on it, hold parties on it, touch electrical wires with it, hit people with it, swallow it, and so forth, because some idiot somewhere, some time, actually did these things with a stepladder, got hurt, filed a lawsuit—and won.

My feeling, Mr. Speaker, is that anybody who swallows a stepladder deserves whatever he gets. And I am sure the vast majority of the American people would agree with me. The minority would probably sue.

REQUESTING THE NAMES OF SOCIALISTS ON NEWSPAPER EDITORIAL BOARDS

(Mr. FROST asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FROST. Mr. Speaker, I read with interest comments by Speaker GINGRICH which appeared in yesterday's newspapers about the editorial boards of many of our Nation's newspapers.

The Washington Post reported that Speaker GINGRICH told a group of business executives Monday night that many newspaper editorial boards contain Socialists. Speaker GINGRICH has been accused recently of exaggerating the truth or making plain misstatements of facts.

Quite frankly, I do not know whether the Speaker is telling the truth in this instance or not. But I am willing to give the Speaker the benefit of the doubt. According, I call on Speaker GINGRICH to name names. Who are the Socialists on the editorial board of the Dallas Morning News? Who are the Socialists on the editorial board of the Fort Worth Star Telegram? Who are the Socialists on the editorial board of the Houston Post? Who are the Socialists on the editorial board of the San Antonio Express News? Who are the Socialists on the editorial board of the Austin American-Statesmen? Who are the Socialists on the editorial board of the New Orleans Times Picayune? Who are the Socialists on the editorial board of the Daily Oklahoman?

If you are telling the truth, name names, Mr. Speaker. We are all waiting.

WELFARE THAT WORKS

(Mrs. WALDHOLTZ asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. WALDHOLTZ. Mr. Speaker, our current welfare system reminds me of the old adage about a certain road that was paved with good intentions. My home State of Utah decided to create its own new program that has gone from good intentions to good results.

In order to create its own program, Utah had to get 48 Federal policy waivers, which allowed the State to design a program that fits our citizens, gives innovation a chance, and promotes learning and independence. Utah's program, SPED—the single parent employment demonstration project—moves the focus of welfare from income maintenance to increasing family income. And let me tell you, it works.

In Salt Lake City alone, after 18 months under this new program, the average AFDC grant went from $352 per month down to $149 per month while the average family income has climbed from $697 per month to $795 per month. And 35 percent of all participants have left the system due to increased earnings.

This program works because it is based on the belief that the State is the most effective tool for providing these services. I hope Congress will give other States the flexibility to find programs that work for them as well as SPED works for Utah.

LET US BALANCE THE BUDGET WITHOUT PLAYING POLITICAL PROMISING GAMES WITH TAX CUTS

(Mr. ROEMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROEMER. Mr. Speaker, yesterday Alan Greenspan testified before Congress and said that the dollar plunged to historic lows due in large part to the Federal budget deficit. We in the House passed a constitutional amendment to balance the budget.

We need to make the courageous decisions to help balance that budget, but tax cuts, further taking away from lunch programs for hungry children across America, taking food out of their mouths to pay for a tax cut, is not the way to go.

Recently before the Committee on the Budget such economists as Stephen Roach and Roger Brinner both said tax cuts are a bad idea. Let us make the courageous decisions and provide all American people with the best tax cut we can. That is to reduce the deficit. That will create better interest rates to buy a new home, to refinance a home, and to buy a car.

Let us not play political promising games with tax cuts. Let us make courageous decisions to balance the budget.

NOW IS THE TIME TO BALANCE THE BUDGET

(Mr. BASS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BASS. Mr. Speaker, the Committee on the Budget yesterday heard from Federal Reserve Board Chairman Alan Greenspan, and when he was asked by the chairman of the Committee on the Budget why it is important that we balance the budget, he said, and I quote "I would say * * * in the short run * * * that there would be some strain leading to a period in which I think their," meaning the people of this country, "real incomes and purchasing power would significantly improve, and I think the concern, which I find very distressing, that most Americans believe that their children will live at a standard of living less than they currently enjoy, that that probability would be eliminated and that they would look forward to their children doing better than they."

Mr. Speaker, we have heard a lot of talk this morning about children and the welfare of children. If we really care about the future of the children in this country, in whose millions of little hands the future of this country will lie, then we will move as a body to balance our budget, and balance it by the year 2002.

This is spoken by the Chairman of the Federal Reserve Board. If there was ever a need to move forward, the time is now.

LET US NOT QUESTION PARENTS FIGHTING FOR THEIR CHILDREN'S NUTRITION

(Mr. MENENDEZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MENENDEZ. Mr. Speaker, on Monday, demonstrators protesting the Republican cuts in school lunch and child nutrition programs raised their voices in opposition loud enough to scare the Speaker away.

What was most interesting however, was not that the Speaker refused to confront his critics, but what the Speaker's later comments revealed about the way his mind works. With regard to the protesters, the Speaker asked, "Why weren't they at work?"

I have never heard the Speaker ask why bankers, who visit Washington to lobby for deregulation, were not at work.

I have never heard the Speaker ask why high rollers who come to lobby for capital gains tax cuts were not at work.

I have never heard the Speaker ask why the people who pay $50,000 for an exclusive fundraising dinner for one of his pet projects were not at work.

Mr. Speaker, you gave us a rare look at your darkest, most privately held thoughts with that comment. Chanting with bullhorns may not qualify as dialog, but neither do comments such as yours.

Let us not question those parents fighting for their children's nutrition.

FEDERAL FOOD ASSISTANCE

(Mrs. CLAYTON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CLAYTON. Mr. Speaker, from Tuesday morning into the wee hours of yesterday morning, the Committee on Agriculture marked up title V of the Personal Responsibility Act.

That bill is now poised for consideration on the House floor.

Leadership of the committee is to be commended for eliminating the mandate for block granting the Food Stamp Program.

A State option on block grants, however, remains and will be an issue on the floor.

Also, during markup, the committee accepted my amendment which requires those who must work for food stamps to be paid at least the minimum wage for their labor.

The Agriculture Committee was also wise to take that course.

But, with action by other committees, the block grant issue continues to loom large and will be hotly contested during floor consideration.

I urge my colleagues to stand up against nutrition program block grants. Welfare reform without that reform will hurt the poor.

EXTENSION OF WAIVER OF APPLICATION OF EXPORT CRITERION OF THE ATOMIC ENERGY ACT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed.

To the Congress of the United States:

The United States has been engaged in nuclear cooperation with the European Community (now European Union) for many years. This cooperation was initiated under agreements that were concluded in 1957 and 1968 between the United States and the European Atomic Energy Community

(EURATOM) and that expire December 31, 1995. Since the inception of this cooperation, EURATOM has adhered to all its obligations under those agreements.

The Nuclear Non-Proliferation Act of 1978 amended the Atomic Energy Act of 1954 to establish new nuclear export criteria, including a requirement that the United States have a right to consent to the reprocessing of fuel exported from the United States. Our present agreements for cooperation with EURATOM do not contain such a right. To avoid disrupting cooperation with EURATOM, a proviso was included in the law to enable continued cooperation until March 10, 1980, if EURATOM agreed to negotiations concerning our cooperation agreements. EURATOM agreed in 1978 to such negotiations.

The law also provides that nuclear cooperation with EURATOM can be extended on an annual basis after March 10, 1980, upon determination by the President that failure to cooperate would be seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize the common defense and security, and after notification to the Congress. President Carter made such a determination 15 years ago and signed Executive Order No. 12193, permitting nuclear cooperation with EURATOM to continue until March 10, 1981. Presidents Reagan and Bush made similar determinations and signed Executive orders each year during their terms. I signed Executive Order No. 12840 in 1993 and Executive Order No. 12903 in 1994, which extended cooperation until March 10, 1994, and March 10, 1995, respectively.

In addition to numerous informal contacts, the United States has engaged in frequent talks with EURATOM regarding the renegotiation of the U.S.-EURATOM agreements for cooperation. Talks were conducted in November 1978; September 1979; April 1980; January 1982; November 1983; March 1984; May, September, and November 1985; April and July 1986; September 1987; September and November 1988; July and December 1989; February, April, October, and December 1990; and September 1991. Formal negotiations on a new agreement were held in April, September, and December 1992; March, July, and October 1993; June, October, and December 1994; and January and February 1995. They are expected to continue.

I believe that it is essential that cooperation between the United States and EURATOM continue, and likewise, that we work closely with our allies to counter the threat of proliferation of nuclear explosives. Not only would a disruption of nuclear cooperation with EURATOM eliminate any chance of progress in our negotiations with that organization related to our agreements, it would also cause serious problems in our overall relationships. Accordingly, I have determined that failure to continue peaceful nuclear cooperation with EURATOM would be seriously prejudicial to the achievement of U.S. nonproliferation objectives and would jeopardize the common defense and security of the United States. I therefore intend to sign an Executive order to extend the waiver of the application of the relevant export criterion of the Atomic Energy Act until the current agreements expire on December 31, 1995.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 9, 1995.*

COMMUNICATION FROM THE HONORABLE EDWARD J. MARKEY, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable EDWARD J. MARKEY, a Member of Congress:

Washington, DC, March 7, 1995.

Hon. NEWT GINGRICH,
Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: This is to formally notify you pursuant to Rule L(50) of the Rules of the House that a staff person in my office has received a subpoena for testimony and documents concerning constituent casework. The subpoena was issued by the Middlesex County Probate and Family Court of the Commonwealth of Massachusetts.

After consultation with the General Counsel, I have determined that compliance with the subpoena is consistent with the privileges and precedents of the House.

Sincerely,

EDWARD J. MARKEY,
Member of Congress.

□ 1050

COMMUNICATION FROM THE HONORABLE KWEISI MFUME, MEMBER OF CONGRESS

The SPEAKER pro tempore (Mr. SHAYS) laid before the House the following communication from the Honorable KWEISI MFUME, a Member of Congress:

Washington, DC, March 8, 1995.

Hon. NEWT GINGRICH,
Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: This is to formally notify you pursuant to Rule L (50) of the Rules of the House that a member of my staff has been served with a subpoena issued by the United States District Court for the Eastern District of Virginia for materials related to a civil case.

After consultation with the General Counsel, I have determined that compliance with the subpoena is consistent with the privileges and precedents of the House.

Sincerely,

KWEISI MFUME,
Member of Congress.

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 956, COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

Mr. LINDER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 109 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 109

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for further consideration of the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes. No further general debate shall be in order. The bill shall be considered for amendment under the five-minute rule. In lieu of the amendment recommended by the Committee on the Judiciary, it shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment in the nature of a substitute consisting of the text of H.R. 1075. That amendment in the nature of a substitute shall be considered as read. No amendment to that amendment in the nature of a substitute shall be in order except those specified in the report of the Committee on Rules accompanying this resolution. Each amendment may be offered only in the order specified in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Georgia [Mr. LINDER] is recognized for 1 hour.

Mr. LINDER. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas [Mr. FROST], pending which I yield myself such time as I may consume.

During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, today we continue our historic debate that will restore sanity to our legal system. Over the next 2 days, we will take the first crucial steps toward limiting the significant costs on the U.S. economy that continue to force manufacturers to fire workers and withdraw products from the market, including medical devices and medication available in most of the world, sadly resulting in preventable deaths. For too long, this Nation has capitulated to the power of Ralph Nader and the trial lawyers. It is high time that we level the playing field. The full consideration of H.R. 956 will allow this body to consider a wide range of issues designed to bring common sense and personal responsibility back to our courts.

The modified closed rule reported by the Rules Committee will allow the House to fully consider the significant issues raised by the bill H.R. 956. Yesterday's rule already provided for 2 hours of general debate. Today, House Resolution 109 first provides for consideration under the 5-minute rule of an amendment in the nature of a substitute consisting of the text of H.R. 1075. This bill represents the combined efforts of the Judiciary Committee and Commerce Committee to create a comprehensive, consensus bill that moves our legal system toward more rational behavior. In addition, the rule makes in order 15 amendments designated in the Rules Committee report. Each of these amendments is debatable only for the time specified in the report, equally divided and controlled by the proponent and an opponent of that particular amendment.

Finally, the rule provides a motion to recommit, with or without instructions, which will give the minority an additional opportunity to offer any amendment which complies with the standing rules of the House.

No Member is ignorant of these proposals to save our legal system, and it is not as if these proposals have been designed overnight. The common-sense legal reforms were presented on September 27, the bill was introduced on the opening day of this Congress, both the Judiciary and Commerce Committee held days of hearings, and many of these proposals have been studied and under consideration in Congress for decades.

Mr. Speaker, this rule is a fair rule. The Rules Committee received 82 amendments, many of which were duplicative and overlapping in their scope. House Resolution 109 allows for 15 amendments which will thoroughly address every major issue presented by this bill. I also believe that the Rules Committee has been extraordinarily fair and prudent in that minority amendments outnumber majority amendments by a count of 8 to 6, with one bipartisan amendment.

As I stated, many duplicative amendments were offered to the Rules Committee, and I am pleased that 15 distinct amendments to this bill will be considered on the House floor in the coming days. Chairmen HYDE and BLILEY, and many minority members, asked for sufficient time to debate the important sections of H.R. 956. That is exactly what we have done under this rule.

Almost one dozen amendments were presented to the Rules Committee that either increased the cap on punitive damages or deleted the cap entirely. The rule adequately provides for debate on the Furse amendment which would strike the cap on punitive damages. I would also add that the minority will have an additional chance to offer an amendment on punitive caps during the motion to recommit.

A number of Members expressed concerns about the increased standards in the burden of proof in the law of evidence, and the rule allows the gentleman from North Carolina [Mr. WATT] with an opportunity to strike the new clear-and-convincing-evidence standard.

Minority Members also argued that the provision to eliminate joint liability for noneconomic damages in product liability cases would harm certain plaintiffs. While I personally believe that we protect plaintiffs and enact reasonable reforms in this provision, the rule enables the gentlewoman from Colorado [Mrs. SCHROEDER] the opportunity to delete that section.

The rule also provides for meaningful debate on significant issues ranging from:

An amendment offered by Mr. SCHUMER that prevents the sealing of court documents in product liability cases.

An amendment offered by Mr. GEREN to clarify liability rules for persons who rent or lease products.

An amendment offered by Representatives OXLEY, BURR, and TAUZIN that exempts medical device manufacturers from punitive damages when the product in question has been approved by FDA.

After consideration of 14 amendments, those Members who wish to limit the scope of the bill will have the opportunity to vote on an amendment offered by Mr. SCHUMER that would put a 5-year sunset on titles I through III.

As attested to by the number and extent of amendments made in order, this is an equitable rule that permits more minority amendments that—if passed by the House—would extensively alter the original bill. I urge my colleagues to save our legal system, end the punitive tax on the American people, and support this rule.

Mr. Speaker, I have a rather unusual step, an amendment to the rule, and I want the other side to listen closely. It has come to my attention that the gentleman from Texas, Mr. PETE GEREN, and the gentleman from California, Mr. COX, both of whose amendments were included in the rule, have expressed their interest in revising their amendments.

First, my amendment to the resolution makes a technical change to clarify the definition of product seller in the amendment numbered 1 in the report, offered by Mr. GEREN.

Second, my amendment allows for a more substantive change in the amendment numbered 12 in the report which was offered by Mr. COX. This amendment, as it currently reads, would cap noneconomic damages at $250,000 for all civil cases. The revised amendment which I am offering to the House provides for a cap on noneconomic damages at $250,000 and limits its application to health care liability actions only.

The reason for this is that shortly before the Rules Committee meeting, a copy of a revised version of the Geren amendment No. 25 was received by the Committee. Since the change could be considered a substantive one, Representative GEREN's staff was advised instead to seek unanimous consent on the House floor to modify his amendment.

Shortly after the Rules Committee ordered the rule reported, a request was received from Representative COX's office that he be allowed to offer a modified version of the Cox amendment No. 51. Again, Representative COX was advised to seek unanimous consent in the House to offer a modified version of the amendment.

However, it became clear from the tone of the debate on the first rule on H.R. 956 that the climate on the floor would not be hospitable for any such unanimous-consent requests.

Consequently, after consulting with the majority leadership, a decision was made to offer an amendment to the rule that provides for the consideration of both the Geren and Cox amendments in their modified forms. In both instances, the modifications are germane and no special waivers are required.

To repeat, the Geren language has been changed to more precisely identify a renter or leaser and the Cox amendment was made to narrow the scope of noneconomic awards in civil actions to those dealing with medical malpractice only.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. LINDER. I yield to the gentleman from New York.

Mr. SOLOMON. I thank the gentleman for yielding. I would just say that we have a Committee on Rules meeting starting in just a few minutes on term limitations in the Committee on Rules at 11.

I commend the gentleman from Georgia [Mr. LINDER], such a valuable member of the Committee on Rules, and the gentlewoman from Ohio [Ms. PRYCE], because a lot of work has gone into trying to structure a rule that would allow us to have a free and fair debate on these issues.

The gentleman has outlined that we have covered all of the specific areas in the bill. There were 82 amendments filed to the bill and the fact is that working with the Democrats and, as the gentleman has alluded to, even with the gentleman from Texas, Mr. PETE GEREN, who had sought a modification in his amendment since he came to the Committee on Rules too late to request that, we certainly have taken all these into consideration.

I would just hope that every Republican votes for the amendment that the gentleman is offering even though it is a bipartisan amendment, and I hope that they vote for this rule. It is terribly important that we get this legislation on the floor today and that it pass by 3 p.m. on Friday.

Again, I repeat, I urge every Republican to vote for this amendment to the rule.

Mr. LINDER. Mr. Speaker, I thank the gentleman.

Mr. Speaker, the amendment is at the desk, it has been made available to the minority side, and I reserve the balance of my time.

The SPEAKER pro tempore. Does the gentleman from Georgia offer the amendment?

Mr. LINDER. Yes, Mr. Speaker.

AMENDMENT OFFERED BY MR. LINDER

Mr. LINDER. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LINDER:

Page 2, line 11, insert the following before the period: ", provided that the amendments numbered 1 and 12 printed in that report shall be considered in the forms specified in section 2 of this resolution"; and

At the end of the resolution add the following:

SEC. 2. (a) The amendment numbered 1 in the report accompanying this resolution shall be considered in the following form:

Page 7, insert after line 3 the following:

"(c) Notwithstanding any other provision of law, any person, except a person excluded from the definition of product seller, engaged in the business of renting or leasing a product shall be subject to liability pursuant to subsection (a) of this section, but shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.".

(b) The amendment numbered 12 in the report accompanying this resolution shall be considered in the following form:

Page 19 redesignate section 202 as section 203 and after line 19 insert the following:

SEC. 202. LIMITATION ON NONECONOMIC DAMAGES IN HEALTH CARE LIABILITY ACTIONS.

(a) MAXIMUM AWARD OF NONECONOMIC DAMAGES.—In any health care liability action, in addition to actual damages or punitive damages, or both, a claimant may also be awarded noneconomic damages, including damages awarded to compensate injured feelings, such as pain and suffering and emotional distress. The maximum amount of such damages that may be awarded to a claimant shall be $250,000. Such maximum amount shall apply regardless of the number of parties against whom the action is brought, and regardless of the number of claims or actions brought with respect to the health care injury. An award for future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the limitation on noneconomic damages, but an award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment or by amendment of the judgment after entry. An award of damages for noneconomic losses in excess of $250,000 shall be reduced to $250,000 before accounting for any other reduction in damages required by law. If separate awards of damages for past and future noneconomic damages are rendered and the combined award exceeds $250,000, the award of damages for future noneconomic losses shall be reduced first.

(b) APPLICABILITY.—Except as provided in section 401, this section shall apply to any health care liability action brought in any Federal or State court on any theory or pursuant to any alternative dispute resolution process where noneconomic damages are sought. This section does not create a cause of action for noneconomic damages. This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of noneconomic damages. This section does not preempt any State law enacted before the date of the enactment of this Act that places a cap on the total liability in a health care liability action.

(d) DEFINITIONS.—As used in this section—

(a) The term "claimant" means any person who asserts a health care liability claim or brings a health care liability action, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent or a minor.

(b) The term "economic loss" has the same meaning as defined at section 203(3).

(c) The term "health care liability action" means a civil action brought in a State or Federal court or pursuant to any alternative dispute resolution process, against a health care provider, an entity which is obligated to provide or pay for health benefits under any health plan (including any person or entity acting under a contract or arrangement to provide or administer any health benefit), or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, in which the claimant alleges a claim (including third party claims, cross claims, counter claims, or distribution claims) based upon the provision of (or the failure to provide or pay for) health care services or the use of a medical product, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, or defendants or causes of action.

Page 17, line 10, insert "AND OTHER" after "PUNITIVE".

Mr. LINDER (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

Mr. MOAKLEY. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

The Clerk completed the reading of the amendment.

□ 1045

Mr. FROST. I yield myself such time as I may consume. It is my intention to yield in just a few seconds to the ranking member of the Committee on rules since he has to then go up to the committee for a hearing. After he completes his statement I will reclaim my time because I would like to give the traditional opening statement.

I would point out, Mr. Speaker that what we have just witnessed is one of two things. Either it is incomplete staff work on the part of the majority side because of the enormous pressure, time pressure being put on their staff by the majority Members, or it is bait and switch. I do not know which it is. But we are under a very unusual procedure where we are being asked to amend on the floor a rule granted in the Rules Committee yesterday.

Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts [Mr. MOAKLEY], the distinguished ranking member of the Rules Committee.

Mr. MOAKLEY. Mr. Speaker, I would like to have the attention of the gentleman from New York [Mr. SOLOMON]. I know that the gentleman has got scheduled hearings on the term limit bill up before the committee this morning. Since we are not going to take it up until the end of the month, and we are discussing two major amendments to the rules that are taking place here on the floor, does the gentleman not think we should be on the floor making sure this thing comes out right this time rather than going up to the committee to take evidence and term limits where we have so much time in order to put it together?

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. MOAKLEY. I yield to the gentleman from New York.

Mr. SOLOMON. The gentleman's points are well taken. We will delay the Committee on Rules meeting until 1 minute after the final vote on final passage of this rule. Is that fair, sir?

Mr. MOAKLEY. I think this is very nice. I thank the gentleman.

Mr. SOLOMON. And we will notify everyone involved.

Mr. MOAKLEY. Mr. Speaker, again, this rule is the ultimate closed rule. They say that they allowed 8 Democratic amendments to be part of the rule, but they picked out the 8; we did not. That would be like the Republican Party picking the Democratic Members to serve on the Committee on Rules. I think we have to balance this thing out.

I think that the Speaker, NEWT GINGRICH, on November 11, 1993, said and I quote, "We very specifically made the decision early on in our Contract With America that we would bring up all 10 bills under open rules."

I do not know where they are. We know the definition of rules has been changed this year from the definition that we had last year. So I would like to just put Members on notice to listen quickly and if the Committee on Rules had enough time to do the job assigned to it up in the rules Committee we would not have these two major amendments to the rule here on the floor. This is a highly complicated bill and should have been treated in the committees of authorization or else on the Committee on Rules.

So I urge my colleagues to defeat the previous question and make in order the McCollum-Oxley-Gordon amendment. This amendment by two Republican subcommittee chairmen and one moderate Democrat will raise the cap on damages to $1 million, and as the Republican leadership knows very well, will ultimately pass if it is made in order.

Mr. Speaker, Republicans are breaking their promises to do open rules on all of the contract items and to do 70 percent open rules in general.

Mr. Speaker, I agree with most Americans that we have too many lawsuits in this country, but I am not aware of some huge product liability crisis in the United States. I know we have a big, huge, crime problem out there. I know our health care system needs work. I know American Children need school lunches, but I have not heard anyone say there has been a product liability crisis in the United States.

The fact is juries rarely award punitive damages. In the 25 years between 1965 and 1990, punitive damages were awarded in only 355 cases. So why the cap, particularly since my colleagues have been so eager to defend the States, rights? My Republican colleagues said that we needed to empower the States but today's bill preempts the States. So, which is it? Do the Republicans want to empower the States or do they want to empower the Federal Government?

Mr. Speaker, in terms of Republican consistency, the only consistent Republican effort is to give Wall Street a handout at the expense of Main Street.

My colleagues are quick to point out the trial lawyers and name them as the bad guys. But let us make sure we also remember the people that are represented by the trial lawyers, the elderly, women, and middle-income Americans.

Mr. Speaker, I have very serious concerns about the effect this bill will have on those people and I hope they will be resolved. But that will be difficult, Mr. Speaker. Republicans have broken their open rule promise again. I understand my colleagues' hurry to finish the contract and start that April recess, but I think the American people will support us if we stay just a little bit longer and allow Members to have their input into this very serious legislation.

I may add, Mr. Speaker, that just 2 days ago my dear friend from California, Mr. DREIER, stood on this floor and said that Republicans imposed time caps on bills because they did not want to pick and choose among amendments. Today, they have picked and chosen between amendments. What a difference a day makes.

It looks like Republicans are taking very seriously Ralph Waldo Emerson saying "a foolish consistency is the hobgoblin of little minds." They are as consistent as the water rates in Massachusetts and they are still breaking promises.

Mr. Speaker, I would urge my colleagues to defeat the previous question and make the McCollum-Oxley-Gordon amendment in order.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume, and I would like to at this point continue my opening statement.

Mr. Speaker, I rise in strong opposition to this rule.

Mr. Speaker, this is a closed rule. This rule doesn't meet the standards set by the infamous Contract With America, nor does it meet the promises of the Speaker or the chairman of the Rules Committee. We were promised free and open debate in the House. This rule doesn't even come close to meeting that promise.

Mr. Speaker, I would like to read from the January 4, 1995, CONGRESSIONAL RECORD quoting the Speaker of the House, Mr. GINGRICH, on the first day of the session, Page H6,

> We then say that within the first 100 days of the 104th Congress we shall bring to the House floor the following bills, each to be given full and open debate, each to be given a full and clear vote, and each to be immediately available for inspection.

Words of the Speaker of the House.

Mr. Speaker, I am sure my Republican colleagues will protest my characterization of this rule and will complain that when the Democrats were in the majority that the Rules Committee cut off debate through the use of modified or closed rules.

Mr. Speaker, that argument is not the point. The point, Mr. Speaker, is that the Republican party promised—promised—that debate in the House of Representatives would be open.

Mr. Speaker, the Rules Committee majority voted down 17 amendments to the chairman's mark last night. The majority on the Rules Committee even denied the gentleman from Tennessee [Mr. QUILLEN] the opportunity to offer an amendment to this legislation. The majority opposed giving the House the opportunity to vote on amendment relating to punitive damages in the case of manufacturers or product sellers who were aware of an existing defect in that product. Mr. Speaker, is this free and open debate?

Mr. Speaker, 82 amendments were submitted to the Rules Committee for inclusion in the rule. Fifteen—15 amendments, Mr. Speaker—were made in order by the Rules Committee majority. The gentleman from Georgia explained during our hearing last night that a sincere effort was made to include every major issue in the rule. Our distinguished chairman opposed including any additional amendments in the rule because the House must finish consideration of this legislation, which is a major upheaval of our civil court system in the country, by 3 o'clock tomorrow afternoon. Mr. Speaker, this does not strike me as an open process.

And, Mr. Speaker, I have yet another example of how this rule has been shut down. An amendment which both the chairman of the committee of jurisdiction, Mr. BLILEY, and the gentleman from Massachusetts, Mr. MARKEY had agreed would be included in the rule, was not on the list presented to the Rules Committee members last night. Chairman SOLOMON explained to us that it was missing because of negotiations between staff—between staff, Mr. Speaker—and that he intends to ask unanimous consent to permit its consideration.

Mr. Speaker, I not only oppose this rule, but I will oppose the previous question. If the previous question is defeated, it is my intention to offer an amendment to the rule which will permit the consideration of two amendments relating to punitive damages caps. I will offer an amendment to include the McCollum amendment which raises the cap to $500,000 and the Oxley-Gordon amendment to raise those limits to $1 million.

Mr. Speaker, I urge defeat of the previous question.

Mr. Speaker, I include for the RECORD a chart of floor procedure on rules in the 104th Congress as follows:

FLOOR PROCEDURE IN THE 104TH CONGRESS

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H.R. 1	Compliance	H. Res. 6	Closed	None.
H. Res. 6	Opening Day Rules Package	H. Res. 5	Closed; contained a closed rule on H.R. 1 within the closed rule	None.
H.R. 5	Unfunded Mandates	H. Res. 38	Restrictive; Motion adopted over Democratic objection in the Committee of the Whole to limit debate on section 4; Pre-printing gets preference.	N/A.
H.J. Res. 2	Balanced Budget	H. Res. 44	Restrictive; only certain substitutes	2R; 4D.
H. Res. 43	Committee Hearings Scheduling	H. Res. 43 (OJ)	Restrictive; considered in House no amendments	N/A.
H.R. 2	Line Item Veto	H. Res. 55	Open; Pre-printing gets preference	N/A.
H.R. 665	Victim Restitution Act of 1995	H. Res. 61	Open; Pre-printing gets preference	N/A.
H.R. 666	Exclusionary Rule Reform Act of 1995	H. Res. 60	Open; Pre-printing gets preference	N/A.
H.R. 667	Violent Criminal Incarceration Act of 1995	H. Res. 63	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 668	The Criminal Alien Deportation Improvement Act	H. Res. 69	Open; Pre-printing gets preference; Contains self-executing provision	N/A.
H.R. 728	Local Government Law Enforcement Block Grants	H. Res. 79	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.

FLOOR PROCEDURE IN THE 104TH CONGRESS—Continued

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H.R. 7	National Security Revitalization Act	H. Res. 83	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 729	Death Penalty/Habeas	N/A	Restrictive; brought up under UC with a 6 hr. time cap on amendments	N/A.
S. 2	Senate Compliance	N/A	Closed; Put on suspension calendar over Democratic objection	None.
H.R. 831	To Permanently Extend the Health Insurance Deduction for the Self-Employed.	H. Res. 88	Restrictive; makes in order only the Gibbons amendment; waives all points of order; Contains self-executing provision.	1D.
H.R. 830	The Paperwork Reduction Act	H. Res. 91	Open	N/A.
H.R. 889	Emergency Supplemental/Rescinding Certain Budget Authority	H. Res. 92	Restrictive; makes in order only the Obey substitute	1D.
H.R. 450	Regulatory Moratorium	H. Res. 93	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 1022	Risk Assessment	H. Res. 96	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 926	Regulatory Flexibility	H. Res. 100	Open	N/A.
H.R. 925	Private Property Protection Act	H. Res. 101	Restrictive; 12 hr. time cap on amendments; Requires Members to pre-print their amendments in the Record prior to the bill's consideration for amendment, waives germaneness and budget act points of order as well as points of order concerning appropriating on a legislative bill against the committee substitute used as base text.	1D.
H.R. 1058	Securities Litigation Reform Act	H. Res. 103	Restrictive; 8 hr. time cap on amendments; Pre-printing gets preference; Makes in order the Wyden amendment and waives germanes against it.	1D.
H.R. 988	The Attorney Accountability Act of 1995	H. Res. 104	Restrictive; 7 hr. time cap on amendments; Pre-printing gets preference	N/A.
H.R. 956	Product Liability and Legal Reform Act	H. Res. 109	Restrictive; makes in order only 15 germane amendments and denies 64 germane amendments from being considered.	8D; 7R.

Note: 75% restrictive; 25% open. These figures use Republican scoring methods from the 103rd Congress. Not included in this chart are three bills which should have been placed on the Suspension Calendar. H.R. 101, H.R. 400, H.R. 440.

Mr. Speaker, I reserve the balance of my time.

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentleman from New Mexico [Mr. SCHIFF].

Mr. SCHIFF. Mr. Speaker, I thank the gentleman from Georgia for yielding me this time and I especially want to commend his integrity because he knew that I sought this time to criticize the proposed rule from the Committee on Rules. However, I do have to say that although I am critical of the rule, I still intend to vote for it for this reason: I think the issue of legal reform is very important. I think it needs to get moving in the House of Representatives, and the issue with which, the matters with which I take issue can be addressed elsewhere in the process. Any bill that begins has a long way to go before it ever is proposed to the President for signature.

I want to say I do not criticize the rule because it simply does not include an amendment that I offered. I offered an amendment to the balanced budget amendment which was not accepted by the Committee on Rules. Nevertheless, they proposed a fundamentally fair and open exchange of views on the balanced budget amendment which I think was perfectly appropriate even if it did not happen to include an amendment that I offered.

☐ 1100

In this particular case, however, as I look at the amendments which have been made in order in this bill, it appears to me that amendments have been allowed which either the Committee on Rules believes will not be accepted by a majority in the House of Representatives or they do not care if a majority in the House of Representatives adopts these amendments. And those rules, those amendments which might change this bill in a way that the Committee on Rules does not wish it changed were not even allowed to be offered on the House floor.

There has already been reference to a proposed amendment from the gentleman from Tennessee [Mr. QUILLEN]. There has been references to a bipartisan amendment that would deal with raising the damage caps on punitive damages, not taking the caps away, which I think the majority will not support, but simply raising the caps, which I think a majority would support.

Here is where I believe my proposed amendment is highly relevant. This bill is being argued in terms of a products liability bill, but it is only products liability in part. Section 1 of this bill deals with products liability. Title II, dealing with punitive damages, is not limited to products liability. In fact, it is not limited to anything.

According to title II of this bill, as it is now written, the Federal Government is going to take over the State courts with respect to punitive damages in every single case, no matter what is the subject of the case.

In other words, if two individuals get into a first fight on the front lawn between their houses, Federal law is going to govern how that lawsuit that might arise out of that takes place. Now, particularly to my Republican colleagues, let me say first I think that violates philosophically everything we have been arguing for the last 2 months. We have said the States can handle police grant block grants, we have said the States can handle child nutrition programs and now we are saying the States for some reason cannot handle the court system.

Further, we set the precedent that running the courts should be a Federal issue. And some day a Congress of a different philosophic bent can say there will be a Federal law on punitive damages which is there will be no caps on punitive damages anywhere and we will overrule and take away those existing punitive damage caps which now exist. If you can do one, you can do the other.

My amendment will simply have said the punitive damages proceedings, whatever it is, applies only to products liability.

I want to conclude with one respectful exception to the opening statement of the gentleman from Georgia [Mr. LINDER] which has been said by a number of our leaders, which makes reference to Mr. Ralph Nader and the Trials Lawyers Association. That approach reminds me very much of the others side's saying we have to pass certain laws to send a message to the National Rifle Association. I just want to say on this floor that I have voted for and against the trial lawyers' positions and voted for and against the National Rifle Association position. We should pass laws that are good laws and not based on whether or not they are supported or opposed by any particular group.

I thank the gentleman again for yielding.

FURTHER MESSAGE FROM THE PRESIDENT

A further message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 956, COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. I thank the gentleman from Texas for yielding this time to me.

I am very honored to be able to follow the gentleman from New Mexico because I think he gave a very, very thoughtful approach to this rule.

Look, this bill is doing something very drastic. It is changing the entire legal system of this country as it has worked since the country began. And this bill has been written and rewritten and rewritten, and we do not even know who the final author is.

It has been like a fast-bill breeder reactor and a fast-amendment breeder reactor, and, as you see, they are now changing the rule one more time because they want to change some more amendments.

I think really we must vote down this rule because we do not know what we are doing.

Let me emphasize again what the gentleman from New Mexico said about title II. This goes far beyond product liability. We are saying in title II the Federal Government knows best and we are going to preempt all sorts of State laws.

You heard some of them last night. In New Jersey they allow punitive damages against any person that sexually abuses a child. Well, if we pass this bill, we are going to put a cap on it. And in all sorts of States, they allow punitive damages for someone who has been killed by a driver under the influence of drugs or alcohol. Do you think we should put a cap on that and say they did not have any idea what they were doing?

Other States have put on punitive damages for people who are selling drugs to children. I am for those things. I do not think we have all the wisdom here. I think it is amazing we are going to run out and give the school lunch program to the States, which a lot of them were not asking for, and we are going to take away all of the things they tried to do if we pass title II here today.

I also must say, when we look at these amendments, there were very many amendments, as the gentleman from New Mexico said, that were not allowed that we know would have passed. And I think that is troubling.

There are other amendments that I certainly hope people listen to today because they are very important: the noneconomic damages, the "feelings" amendment, as they are calling it. Let me tell you, if someone's reproductive organs are destroyed, if their capacity to reproduce is destroyed, I think that goes way beyond feelings. And I know very few people who would look very favorably upon someone putting a punitive cap on what they could receive if someone intentionally did that.

We see instance after instance in this bill where we think it is not ripe for decision, where we really do need much more debate. And I think that the people assumed we would have some thoughtful application before we took a system that has been functioning for over 200 years and changed it, and changed it with such haste that we hardly know what we are doing and we are having to change the rule as it goes.

This is massive micromanagement, this is a closed rule. These are serious issues. There are limits on debate, limits on amendments, limits on everything. I hope people vote against this rule.

And I thank the gentleman for yielding the time.

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Florida [Mr. BILIRAKIS].

Mr. BILIRAKIS. I thank the gentleman for yielding this time to me.

Mr. Speaker, in spite of the controversy and disagreements on the rule, the bill itself is a good one, and I urge all of my colleagues to support it.

Mr. Speaker, simply put, it is imperative that we bring some uniformity to tort law in respect to product liability. If we hope to compete in an equal marketplace, if we hope to protect our Nation's citizens without hamstringing our industries and our quality of life, we must meet this challenge squarely today.

We come armed with study after study documenting the adverse impact of widely varying State tort laws on competitiveness, innovation, and even safety: it's not working, it's broke and it's long past time to fix it.

Under our current system, we are, in effect, exporting American ideas. With outrageous liability awards hanging over their heads like the sword of Damocles, U.S. manufacturers often dare not bring much-needed, much-requested products to market. Mr. Speaker, our foreign competitors eagerly fill that gap.

They have not burdened themselves with the crushing product liability costs borne by U.S. manufacturers—and, in the end, consumers. Nowhere—not west of us on the Pacific rim nor east of us in the European Economic Community—are liability standards so onerous as they are in the United States.

Not least of all, we need this legislation's single, predictable set of rules to protect consumers—and we should emphasize that. None of us wants to write the common man out of the law, leaving him no redress in the courts. That's not the object of this bill. What we want to do is restore some balance between liability and accountability.

Rather than voiding the commonsense accountability of an injured party, this bill places the responsibility for accident prevention back where it belongs. Indeed, injured parties will have to bear some of that burden if they alter or misuse a product. Employers and employees alike will be encouraged to create a safer workplace.

Also, by bringing some balance back to the system, we free consumers from having to pay for accidents by individuals who abuse illegal drugs or misuse alcohol.

Predictability. Uniformity. Fairness. This legislation will bring a certainty to our tort laws that has been long missing. It will help to stop the erosion of our Nation's competitiveness and protect the consumer.

We can promise nothing more and we should accept nothing less.

Again, I urge support of the bill.

Mr. FROST. Mr. Speaker, for purpose of debate only, I yield 3 minutes to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Speaker, I urge the House to defeat the previous question, to allow an amended rule which would allow three amendments, all of them Republican amendments.

The gentleman from Florida, Mr. MCCOLLUM's amendment to raise the cap on all punitive damage. The bill does not just restrict punitive damages caps to products liability. It covers every single State's punitive damages remedy that exists, to raise that cap from $250,000 to $500,000. Also, to allow the Oxley-Gordon amendment, which provides a million-dollar alternative cap for all punitive damages remedies. And the Schiff amendment, which limits the punitive damages cap to what every single speaker who comes down here on the majority side talks about, which is product liability.

The bill before us provides a punitive damages cap for everything. If I were to have a product liability bill in title I and nationalize the steel industry in title II and I refused to discuss title II, I would be somewhat disingenuous. I suggest that as Republican after Republican comes down on this legislation and talks about product liability, never discusses the other issues, they are wrong.

What did the Committee on Rules do here? Why is this so objectionable? I do not think you can have a product liability under an open rule.

I know the Republican promise. I think it was silly. I think they should be allowed to change that promise. You cannot consider everything on an open rule. I do not even mind that it is a very modified time-restricted closed rule and the majority of the 82 amendments filed are not considered.

But, in essence, what the Republicans in the Committee on Rules have done, what they are threatening to do if they adopt this rule, is to say, "Yes, there is the status quo, and some people just want to keep the status quo and do not want to change it." I guess that is the position of the trial lawyers.

Then there is what I consider the extreme of this bill and every amendment, which is somewhere between the status quo and the extreme of this bill offered by a Republican which has a chance to win will be denied a chance to be offered.

So that, in effect, what you are doing is what you have been yelling about the Democrats doing; you blocked amendments that could win on the House floor and you were so sanctimonious during the campaign and afterward, the outrage of what the Democrats did. "We had amendments that could win, but they would not let us offer them." That is what Mr. SCHIFF's amendment is, that is what Mr.

McCOLLUM's amendment is, that is what the Oxley-Gordon amendments are; not to let all the Democratic amendments come in, but to let these three amendments come in.

I would urge the body to defeat the previous question and allow that very limited amendment to allow moderate proposals to come in.

When Mr. DREIER spoke yesterday, when my friend from California on the floor, he talked about letting ideas from the left and the right come in. They will not even let ideas from the center come in. And that is what those amendments are. They should be allowed.

I urge defeat of the previous question so that that amended rule may be offered.

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentlewoman from Ohio [Ms. PRYCE].

Ms. PRYCE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I am pleased to rise in support of this rule, and to compliment my friend from Georgia, Mr. LINDER, for his excellent description of this legislation.

This is a fair and responsible rule, Mr. Speaker, because it permits the House to consider 15 separate amendments reflecting a wide range of issues which are central to the product liability reform debate. Of those 15 amendments made in order, 8 are sponsored by Democrats, 6 by Republicans, and 1 is offered with bipartisan sponsorship. This rule should be even more palatable to many in this body due to the floor manager, Mr. LINDER's amendment to impose the caps on noneconomic damages to medical malpractice cases only.

On Tuesday, the Committee on Rules sat for nearly 7 hours to hear testimony from Members on a variety of amendments—83 in all—affecting many aspects of the bill, including economic and noneconomic losses, punitive damages, and joint and several liability, to name just a few.

Under this rule, Mr. Speaker, we have attempted to give ample time to the minority, and quite frankly, to the entire House, to discuss all of these critical areas, while eliminating overlapping or duplicative amendments.

Mr. Speaker, not every amendment I supported and fought for was adopted, but I believe that, all in all, the rule is fair.

□ 1115

Mr. Speaker, for nearly two decades Congress has grappled with the issue of products liability reform. Some say we are going too fast and we are going too far, but what we went too fast and too far on are the horrendous unchecked abuses over the past decade. Having been a jurist in my previous life, I can say without hesitation that there is room for commonsense legal reform in our system, especially in the area of product liability law. This bill seeks to restore common sense and fairness to product liability litigation by establishing uniform national standards in place of the patchwork system currently compromise of 50 separate State product liability laws.

Given the significant impact that product liability has upon interstate commerce, competitiveness, insurance cost and the lives of each and every American, the provisions in this legislation and the Federal action it endorses are not only warranted, but also very sound. My colleagues need look no further than the Constitution to see that action taken by this body to regulate interstate commerce is well within Congress' assigned duties.

Mr. Speaker, by adopting this fair and responsible rule, we can continue this week's process of enacting meaningful and reasonable changes to our civil justice system. Mr. Speaker, I urge my colleagues on both sides of the aisle to support this fair and reasonable rule.

Mr. FROST. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, I rise in strong opposition to this oppressive rule and urge Members to defeat the previous question.

It is no secret that this important legislation—that I have worked on for many years—is being grossly mishandled. There was but one subcommittee hearing on an extreme bill introduced 1 week earlier. There was no subcommittee markup—an important step in ensuring well-crafted and defensible legislation. We were given three completely different substitutes in as many days before the committee markup. Even before we received a draft of the committee report, a new bill—H.R. 1075—was introduced last week by Chairmen HYDE and BLILEY.

Before the ink was dry on H.R. 1075, Chairman SOLOMON stood here and announced the Rules Committee would meet this week "to grant a rule which may restrict amendments." It is clear the Republican leadership decided sometime ago they would ram this bill through without adequate debate and without regard to the rights of Members to debate the issues and offer amendments to the bill.

We asked for an open rule, but have been given a closed rule. The Republicans have picked amendments they want to debate and foreclosed the ability of Democrats to offer and debate other important ones. Moderate or bipartisan amendments have been completely excluded by this closed rule.

For example, Mr. OXLEY and Mr. GORDON filed an amendment to raise the cap on punitive damages to $1 million. And the gentleman from Florida, a member of the Judiciary Committee, Mr. McCOLLUM, has an amendment to raise the cap to $500,000. Instead of making these moderate and bipartisan amendments in order, the Republicans are instead only giving the House the stark choice between an extreme $250,000 cap on the one hand and no cap at all on the other. It seems the Republican leadership was very worried that the Oxley-Gordon or McCollum amendments would pass. I urge Members to defeat the previous question to give the House an opportunity to vote on these middle ground alternatives.

Even worse, the rule allows Republican amendments that go far beyond product liability reform. For example, Mr. GEKAS' amendment on medical malpractice and Mr. COX's amendments to severely limit damages for pain and suffering in all State and Federal cases will be in order if this rule passes. There has not been one hearing on these amendments by this Congress. There has not been one day of committee meetings on these amendments by this Congress. No Member has been given adequate notice or time to consider these sweeping changes to our legal system.

This unfair and ill-advised process erodes bipartisan efforts. It produces legislation fraught with defects, inconsistencies and errors. This is not about common sense, as the authors of the bill want us to believe. It is the herd mentality in action.

I stand ready to work with all of my colleagues to craft fair, balanced, and appropriate legislation in this area. But the rule before us denies me and all Members of that opportunity. As all Members of this body know: we are here to legislate, not to punch holes in laminated cards.

We should be working to produce a products liability bill that we fully understand, in which we can take pride, and which we may defend without reservation. Vote "no" on the previous question so that we can consider the Oxley-Gordon and McCollum amendments on punitive damages. Vote "no" on the rule if the previous question is approved.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. Mr. Speaker, Members of the House, simply put, the rule before us today is an outrage. It is a bill that is designed to make sure that we cannot moderate in any way in a very extreme bill. It goes far beyond what any reasonable legal scholar would ever have asked for, and it is part of a 20-year, the culmination of a 20-year campaign, by companies who have repeatedly been sued for putting dangerous products on the market to convince the public that somehow we should ignore the plight of the victims of their outrageous behavior and have sympathy instead for them, and they have been telling people on the radio ads and through their various propaganda sources that there is a big crisis with regard to product liability cases, but the fact is that in the hearings, which had witnesses chosen by the Republicans, we asked the witnesses, "Do any of you have a study to show that there is a big increase in the number of product liability cases?" And the answer was, no, nobody had any such study.

"Do any of you have a study to show there's a big increase in the number, in the size, of the verdicts?" No, nobody had any such study, and in fact the studies that do exist tell us just the opposite.

The fact of the matter is that product liability cases filed represent a mere thirty-six one hundredths of a percentage point of the civil case load and ninety-seven thousands of a percentage point of the total case load in the State courts. In recent years the number of product liability filings has been steadily declining. The objective stories in the press in the last few days have indicated just that. Only 10 percent of the people who were sued, who were injured, ever used the tort system to seek compensation for their injuries anyway, and, finally, the number of fraud liability cases in Federal court declined 36 percent from 1985 to 1981.

Those are the facts. There are not any other facts, and yet, because the corporate friends of the Republican Party want to see their fondest dream come true, we have a rule before us today that says we are going to pass an extreme bill with no possibility of improving it.

What has been the hallmark of this campaign of propaganda? It has been the McDonald's coffee case. We were told all about what an outrage the McDonald's coffee case was. Well, let me tell my colleagues about a few McDonald coffee cases they did not know about.

This is a picture of an 11-year-old boy from South Carolina. The McDonald's coffee he was holding spilled and caused extreme scalding. The tests conducted during the trial showed that the coffee was 180 degrees when it was spilled even though it was poured 15 minutes earlier. Now their highest recommended temperature for the hot water heater is 140 degrees. That kid was badly hurt.

Here is a 1½-year-old child. This is a scalding of five—a 1½-year-old child that was scalded by McDonald's coffee.

As it turned out, there were 700 complaints of scalding to the McDonald's company. We never did hear about that in these radio ads; did we?

And here is the partial picture of perhaps the saddest story of all. This is a lady that was burned all the way down the front of her body, and in between her legs as well, in New Mexico. She spent the following month in the hospital. She remained wheelchair-bound after discharge and died 2 months later. She had extreme burns over all of her body.

This is a bill that would have prohibited these people from filing these cases. The truth will be told in the debate. I urge my colleagues to vote against the rule.

Mr. LINDER. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. COX], the author of the amendment for which we bent the rule.

Mr. COX of California. Mr. Speaker, I appreciate the opportunity to explain the need for amendment to the rule.

Obviously this amendment will change an amendment offered by one Democrat at the request of that Democratic Member and an amendment offered by one Republican at the request of that Republican.

In my case I have asked to narrow the scope of my amendment so that I can accommodate requests from Members on the other side of the aisle.

The gentleman who just spoke, I take it, is an opponent of tort reform in the Congress for a variety of reasons. He would not, presumably, have voted for an amendment that will cover all torts in all courts in terms of noneconomic damages. Likewise, Mr. Speaker, I imagine he would not vote for an amendment that covers medical malpractice which is a subset. But several Members on that side of the aisle have indicated that they very much share the desire for reducing health care costs by getting at the problem of health care lawsuits, which is a subset of the amendment that I originally offered.

So, Mr. Speaker, for that purpose, to focus the amendment more narrowly on a subject that is of broader concern in our Congress, I have asked to amend the rule to permit me to offer a more narrow amendment, and I appreciate the gentleman from the Committee on Rules offering me the opportunity to explain the purpose of my amendment.

Mr. FROST. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I would ask the gentleman who just spoke, the gentleman from California [Mr. COX] a question:

Mr. COX, why did you have to change the language between the time we considered the amendment yesterday afternoon in the Rules Committee and this morning? Why wasn't the language that you really wanted before the Rules Committee when we considered the rule yesterday afternoon?

Mr. COX of California. Mr. Speaker, will the gentleman yield?

Mr. FROST. I yield to the gentleman from California.

Mr. COX of California. As life occurred, I ran into the chairman of the Committee on Rules when I was here on the floor yesterday debating the Securities Litigation Act 15 minutes after the Committee on Rules had concluded their business, and so I just missed the bus. If I had not been on the floor all day yesterday doing the Securities Litigation Reform Act, I would have been up in the Committee on Rules, but it is literally a matter of minutes here that I was unable to learn that the Committee on Rules had already finished business.

Mr. FROST. Mr. Speaker, I say to the gentleman, Well, Mr. COX, you have submitted an amendment to the Rules Committee; isn't that correct? Originally the amendment that we made in order yesterday was one that you had actually submitted?

Mr. COX of California. Yes, not this week, but last week under the deadline that was set by the Committee on Rules. That was preprinted in the RECORD last week.

Mr. FROST. I understand——

Mr. COX of California. And after last week, as a result of conversations with Members on the Democratic side, it was suggested to me that I narrow the scope of my amendment and that I not propose an amendment to Federal law that would cover tort litigation in all the 50 States.

Mr. FROST. Mr. Speaker, I would only ask the gentleman, Mr. COX, our meetings are publicly noticed. Members know when the Rules Committee is going to meet, particularly when we're going to vote to actually take final action on a rule, and other Members have not had difficulty in getting the language of their amendments to us in a timely manner——

Mr. COX of California. I would just respond to the gentleman by saying, "Of course this took place yesterday in the Rules Committee, and there was only one Member of Congress yesterday who had his legislation on the floor of the House, and it was this Member."

Mr. FROST. Mr. Speaker, for purpose of debate only, I yield 3 minutes to the gentleman from Tennessee [Mr. GORDON].

Mr. GORDON. Mr. Speaker, I rise today as a support of products liability reform, not only this year, but also in the past. Last year I joined the gentleman from Florida [Mr. BILIRAKIS] and many others in a bipartisan bill, House Resolution 1510, to reform products liability, and that is why I am so concerned today that we are met with this rule that is going to gag a true debate on products liability reform and maybe put it at jeopardy, and why is that?

Mr. Speaker, why is it that the Republican leadership is going to such extremes to break a contract that they had with the American people? That contract said there would be full and open debate on this issue. Why are they breaking that contract?

Are they breaking it because there is not enough time to debate this? Well, no, that cannot be the case because just last night they announced that we are not going to be in session on Friday—I am sorry; we are going to go out of session on Friday at 3 o'clock. We are not going to be in session on Monday, we are not going to be in session Tuesday until 5 o'clock, and we are not going to be in session next Friday. So clearly there is plenty of time to debate this next week. I think we can work more than 2 hours.

Is it because they are trying to stop some partisan shenanigans? No, that is not the case because they are also not allowing some amendments from the gentleman from Ohio [Mr. OXLEY] who is a very capable chairman of the subcommittee that brought forth this bill. They are not allowing amendments by the gentleman from Florida [Mr. McCOLLUM], their own Member, once again who is one of the subcommittee chairmen in the Committee on the Judiciary—as well as a number of other Republican amendments.

So why are they blocking, why are they gagging, this rule? Well, the only thing I can find out, Mr. Speaker, is they are gagging this rule because it is such an extreme bill that they are afraid to have debate for the American public to hear about it, for their own Members to come forward with their own amendments.

So I think the question today, and I know it is very difficult for Republicans when their leadership clamps down on them and says, "You've got to toe the line," and there may be threats and may be retribution. I know it is tough to be able to step forward. But today I think it is important because this is such an important bill.

Mr. Speaker, the questions before my friends and colleagues on the other side of the aisle are:

"Are they going to be lackeys for their leadership or conduits for their constituents?"

"Are they going to be robots for their rulers or defenders of their districts?"

"Are they going to be servants for their sovereign, or are they going to be supporters of their citizens?"

We will have that answer today, so I urge a defeat of this rule so that we can come back with a rule with open debate so that Democrats, and Republicans, and the American people can all participate in this and get a products liability reform that this country deserves and needs.

Mr. LINDER. Mr. Speaker, I yield 2 minutes to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Speaker, I urge my colleagues to vote for this rule.

As the gentleman from California [Mr. COX] has stated so well, many Members across the aisle, and some on this side, have concerns that this legislation not go too far. One of the changes proposed in this rule will allow a previously allowed amendment to narrow its scope. I believe that there is support on both sides of the aisle for this change. It would seem to me that voting against this rule would actually limit many Members from voting for what they consider to be a better amendment.

I would urge my colleagues to support this rule. This rule is an improvement, not a gag.

Many Members want to debate a medical malpractice amendment because we know how it has added to the cost of our health care system in terms of defensive medicine. This rule will change that, will allow that to happen.

□ 1130

Mr. FROST. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. CONYERS].

(Mr. CONYERS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONYERS. Mr. Speaker, I rise in opposition to the rule.

The list of broken promises and pledges of the Republican majority continues to grow with every day.

First the new Republican majority refused to protect Social Security from cuts under the proposed balanced budget amendment contrary to the protection that the new Speaker promised Social Security would receive. The amendment went down as a result in the Senate.

Next, came the promise to return crime fighting tools to the States, a promise promptly revoked in the prison funding legislation which dictated strict eligibility requirements to the States that they could not meet.

And then came the promise for open rules, a promise which has been broken on nearly every major bill coming out of the Judiciary Committee. Sure, strict time limits that include voting time which allow for open amendments, are not quite closed rules. But the strictures of these time limits have repeatedly cut off meritorious amendments not just by Democrats but by Republicans as well.

And now on one of the most important bills affecting every American's right to be free from harm, every American's right to go to court to right a wrong done to them, we have the ultimate in closed rules. A rule that allows only a limited number of amendments on a highly technical and complicated body of law. A rule that irresponsibly allows amendments nongermane amendments limiting rights of medical malpractice victims, an issue which was not properly considered and refined in committee, to be hoisted onto members for a vote of first impression on the House floor.

This rule refused to make in order the vast majority of amendments that Judiciary Democrats requested be made in order. It refused my amendment making particularly egregious conduct subject to criminal liability, amendments dealing with reproductive rights, the statute of repose, making businesses play by the same rules as individuals, requiring insurance reporting.

How ironic it is that such a restrictive rule comes on a bill that is attempting to restrict people's fundamental rights. That's right, this is not a bill to clean up the legal system, as a matter of fact it is doubtful that this bill will cause any reduction in American litigation.

Rather this bill is about depriving people of fundamental rights, of rights to be free from unknowable harms in our midst, in the every day products we consume. This bill is about depriving people of legal rights when they are wronged. This bill is about telling manufacturers that its OK to produce children's pajamas which are flammable, pharmaceutical which will injure rather than cure, household products which will maim, because the deterrent purpose of punitive damages will be so limited that wrongdoers will only have to pay small sums in punitive damages relative to the huge profits they will reap.

And not only does this bill guillotine damages in Federal court, but it does so for State laws as well. That's the ultimate Washington power grab. Folks at home, listen up. This bill will severely limit punitive damages in your State laws for sexual abuse of children, victims of drunk driving, and criminals who sells drugs to children. Women of America, listen close. This bill says a male corporate executive who loses wages because of temporary incapacitation will probably get more damages than you if you're sterilized by defective products in the marketplace.

This bill is about limiting individual rights, particularly for middle income Americans. The rule is about limiting members amendments to expand rights. The bill cuts off the American people's rights to go to court, the rule the right to go to the House floor. Never before has the Contract With America been bolder in its statement that it is really a "Contract With Corporate America."

Mr. FROST. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS of Illinois. Mr. Speaker, I rise in opposition to the rule.

Mr. Speaker, I am vehemently opposed to this closed rule on a piece of legislation that threatens to decimate the health and safety of innocent men, women, and children across the United States with its enaction. I urge my colleagues to join me in vociferously voting no.

Tuesday afternoon I testified before the Rules Committee on an amendment I submitted to the bill which would have required manufacturers to retain for 25 years documents that directly relate to the elements of a product liability action. With my amendment, materials concerning design specifications, warranties, warnings, and general product safety would have been preserved and available for use at trial by injured consumers bringing suit.

Unfortunately, and to this moment without presenting me or my staff with a reason, the committee did not rule my amendment in order. I strongly object to this attempt to muffle my ability to effectively represent my constituents. It is wrong and it is unwarranted, Mr. Speaker.

Today, many companies regularly feed documents into shredders, incinerators, et cetera under the guise of "document reduction" programs. In reality, however, they are effectively eliminating documents which could be crucial to the merits of a plaintiff's product liability claim. Such practices must be stopped and my amendment would have done just that.

This issue arises in a variety of contexts in product liability suits. The documents obtained during the discovery process help the plaintiff's lawyer to verify the statements of witnesses, refresh the memory of those who have forgotten key details of design and safety, and fill in the gaps from witnesses who have died, disappeared, or are beyond the court's jurisdiction. Where a lengthy statute of repose is involved, as the 15-year statute in H.R. 956, the manufacturer's documents are especially important due to the difficulty in remembering details from so many years before. Most significantly, on matters where the plaintiff carries the burden of proof they must have access to the evidence necessary to present their case.

The importance of providing plaintiffs with access to a manufacturer-defendant's documents is illustrated in a fascinating book written about the Dalkon Shield tragedy. As the author describes:

> Thousands of documents sought by lawyers for victims * * * sank from sight in suspicious circumstances. A few were hidden for a decade in a home basement in Tulsa, Oklahoma. Other records were destroyed in a city dump in Columbus, Indiana, and some allegedly in an A.H. Robins furnace.

This is not an isolated case Mr. Speaker. After an American Airlines DC–10 crashed in Chicago in 1979, one of the most serious aircraft crashes in history, the airline's lawyer instructed the author of an in-house report on the accident to destroy all notes, memoranda, and other data. Many believe that this material could have established the fact that the airline knew of a crack in the engine bulkhead before the accident occurred.

As I stated, to prohibit these practices, my amendment would have required manufacturers to retain for 25 years their documents and other data which directly relate to the elements of a product liability action.

Strong civil penalties would have been imposed by my amendment in instances where evidence was destroyed or concealed. If a court found that a litigant willfully destroyed or altered any key evidence, it could have concluded that the facts at issue did, in fact, exist as contended by the opposing party. Monetary penalties would also have been assessed, as they are a tried and true method for encouraging compliance with the law. A rebuttable presumption would have applied where the documents were nonwillfully eliminated in some other way.

My amendment is necessary for a number of reasons. First and foremost, it would ease backlogs in our court system and shorten the time it takes for cases to be resolved—a primary goal of H.R. 956, or so I thought. Where documents are destroyed or made unavailable, the result is more searching and time consuming discovery because secondary and more attenuated sources of evidence must be used.

In the process, attorney's fees are needlessly increased, limiting the number of claimants who can afford to bring their cases to court. Also, there is a higher likelihood of error by the factfinder by using secondary sources of evidence instead of the essential documents themselves. Thus my amendment would save not only the valuable time of the court and the litigants, but also increase access to our justice system for more citizens as well as promote fairer and more consistent verdicts.

Finally, my record retention amendment would encourage parties to come forward promptly with requested documents to avoid the monetary penalties and adverse presumptions of my proposal. In subsequent cases involving the same product, settlement prospects would be enhanced because manufacturers would not want these negative findings to apply again.

At the very least, my amendment would have encouraged manufacturers to rethink the wisdom of destroying, altering, or hiding vital documents. Under the best of circumstances, it would have forced companies to act in the most responsible manner and take safety precautions or correct defective products where records warn of such hazards. After all, I believe greater product safety remains the bottom line. Obviously the GOP does not.

Mr. Speaker, if anyone doubts the importance of record retention, they should consider two memorable cases. First, what recourse would asbestos victims have had if someone did not locate the Johns-Manville memo showing that the company knew of the health hazards of its product as early as 1930? Second, what compensation would have been awarded to the Grimshaw family if the cost-benefit analysis done by Ford in its Pinto accident cases had not "come to light?" The answer in both cases is little, if anything, and the victims would have been denied true justice.

I am sorry the majority on the Rules Committee don't care much for justice of any kind.

Again, I urge my colleagues to vote no on this ludicrous rule.

Mr. FROST. Mr. Speaker, for the purposes of debate only, I yield 3 minutes to the gentleman from New York [Mr. NADLER].

Mr. NADLER. Mr. Speaker, I rise to deliver a eulogy for a major pillar of the Republican Contract on America. This rule buries perhaps the only part of the contract that justifiably earned the support of most Members on both sides of the aisle.

The Republican majority has entertained us over the past few weeks with moving lectures on the importance of States rights and local autonomy. They have further declared what they describe as a new openness, which supposedly allows unprecedented freedom of debate on important issues on the floor of this, the People's House. How hypocritical and really tragic, then, that on this legislation that obliterates the rights of consumers to be protected against dangerous products and against those cynical corporations that calculate that there is more money to be made by selling exploding cars or medications with life-threatening side effects than by cleaning up their act. The closed rule would severely censure the debate.

I and others, for example, have proposed amendments that would preserve the States' authority over tort law. These amendments were not made in order. Is this the fine print in the contract? Are we to be forced to listen to pious homilies about local control, about an end to the Washington-knows-best attitude, but when it comes to something as important as the rights of consumers who have been injured or killed, local authorities no longer are on the list of the Speaker's approved political vocabulary and it is not even considered important enough to allow it to be debated on the floor of the House?

The State's authority over tort law, over medical malpractice and product liability, is to be consigned to history without even a moment's debate on the floor? What a mockery. What hypocrisy. The Republican leadership is afraid of an open debate on the arrogation to the Federal Government of the entire field of tort law.

For 200 years, Mr. Speaker, tort law and consumer protection have been entrusted to the States. Today an arrogant national government coldly steals that power without a moment's discussion on the floor of this House.

Mr. Speaker, I hope the American people are watching today's vote. I hope they keep track of who supports this political power grab. I hope the American people will remember this vote the next time someone who voted for this closed rule delivers a pious but empty and hypocritical sermon about States rights or about open government.

Mr. Speaker, I urge defeat of this terribly shameful closed rule.

Mr. LINDER. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. SOLOMON], the chairman of the committee.

Mr. SOLOMON. Mr. Speaker, I do not know who the previous speaker was talking about as being hypocritical, but we ought to be a little careful about how we describe other Members.

Let me just say that 72 percent of the American people favor legislation that places tighter limits and restrictions on an individual's ability to sue another person or company; 84 percent favor requiring defendants to pay damage awards according to their percentage of fault, and 78 percent favor limiting the amount awarded in punitive damages to no more than three times the amount of economic damages.

Mr. Speaker, the thing that gets me is that lawyers, with all due respect to them, take 50 to 70 percent of every dollar spent on product liability litigation, driving up the cost of everything. Since 1977 the revenue of the lawsuit abuse industry has compounded at 12 percent per year. That is faster even than the health care industry. And Americans pay $130 billion a year in litigation and higher insurance premiums as a result of product liability and personal injury cases.

Mr. Speaker, our legal system needs reform. It has been reported that Americans file lawsuits every 14 seconds in this country. This litigation explosion has been most evident in the areas of product liability lawsuits. That is what this legislation deals with here today. That is why we need to pass this rule without question and get on with this debate. This Congress has been gagged for 20 years from debating this issue on the floor of this Congress.

Finally, the American people are going to be heard. We are going to debate this issue in a few minutes, and we are going to pass it and send it to the Senate and on to the President.

And that President had better sign this bill because the American people want it.

Mr. FROST. Mr. Speaker, let me inquire as to the time remaining.

The SPEAKER pro tempore (Mr. EWING). The gentleman from Texas [Mr. FROST] has 1½ minutes remaining, and the gentleman from Georgia [Mr. LINDER] has 8½ minutes remaining.

Mr. LINDER. Mr. Speaker, I do not have any other speakers at this time, and I will reserve the right to close the debate.

The SPEAKER pro tempore. The gentleman from Georgia [Mr. LINDER] reserves the balance of his time.

Mr. FROST. Mr. Speaker, I want to serve notice that I intend to ask for a rollcall vote on the previous question, as well as on the passage of the rule, if the previous question is agreed to.

Mr. Speaker, for the purposes of debate only, I yield the remaining time on our side to the gentleman from Rhode Island [Mr. REED].

The SPEAKER pro tempore. The gentleman from Rhode Island [Mr. REED] is recognized for 1½ minutes.

(Mr. REED asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. REED. Mr. Speaker, I rise in opposition to this rule.

This is an outrageous rule, and my opposition is not based on any underlying opposition to the bill as it came from the Committee on the Judiciary. I was one of two Democrats who supported this bill as it came to the Committee on the Judiciary. But what has taken place with this rule is that the Committee on Rules has cut off consideration of important amendments.

For example, the gentleman from California [Mr. BERMAN] has an amendment that would clarify the issue of de minimis tort feasors. This amendment received bipartisan support in the Judiciary Committee. It was not made in order.

The gentleman from Florida [Mr. MCCOLLUM] has an amendment to raise the punitive damage ceiling to $1 million. Once again this amendment received bipartisan support in the committee and is not being allowed to be considered on this floor today. That is outrageous. I think the reason is because these amendments do have bipartisan support. They would have likely engaged not only a full debate but they may well have passed and may well have improved this legislation. And clearly, that seems to be the last thing the majority wants to do at this moment, make better legislation or conduct a fair and open debate on these issues.

In addition to these points, they have made matters worse by approving a whole list of amendments which, if they pass, have the potential of making this bill a special interest Christmas tree, not tort reform but a special interest Christmas tree.

Furthermore, they have compounded that by in fact, through the rule, changing amendments that they were adopting in the Rules Committee, and this is a travesty.

Mr. Speaker, we should reject this rule and get on to real tort reform, not rhetoric on the floor.

Mr. LINDER. Mr. Speaker, I yield myself the balance of my time to close the debate.

First, Mr. Speaker, let me address the question of closed rules that keeps coming up from the Democrat side. Not to sound too remedial, but the gentleman from Texas [Mr. FROST] made it clear that the only reference in the contract was to full and open debate, not open rules. The only open rule promised in the contract was on the term limits bill, and it will be open.

The ceilings of $250,000 for punitive damages will tend to be floors in the long run. But that is not the way most of these cases are settled.

The bill also provides for three times economic losses. Judge Griffin Bell, the former Attorney General, was in my office 1 week ago and said that a case he represented, the famous case of a $100 million settlement from General Motors, with this bill, would have been a $6 million settlement, which is about what the family is going to get anyway.

To address a final point about States rights, the gentleman from New York made the case that we are taking away from the States. However, his mayor in a letter to the editor of the New York Times, after pointing out that a jury awarded $18 million to an 18-year-old student who decided to see if he could leap over a volleyball net in gym class and wound up a quadriplegic, awarded $4.3 million to a convicted felon who was caught mugging a 71-year-old. As the thief fled, a transit policeman shot him, leaving him paralyzed. The mugger sued and won.

A jury awarded $1 million to the estate of a drunken woman who had entered a closed city park illegally and drowned in three feet of water.

Then $676,000 went to the estate of a motorist killed after a drunk drove onto an expressway the wrong way and crashed into the motorist's car.

Then the mayor's office in a letter to the editor said this: "Congress is reviving the principles of single 'federalism' and returning power to the States, cities and other local governments. Toward that end, it should enact this simple measure to give cities like New York more control over their own fate."

The law department of the city of New York wrote in a memorandum in support of the Common Sense Legal Standards Reform Act: "I write to ask you to support" these amendments.

The city of New York has experienced an exponential growth in tort settlements and judgments. In 1984, New York City paid out $83 million in tort cases; this past fiscal year we paid plaintiffs and their lawyers an astounding $262 million. A substantial portion of that amount went for the all too familiar amorphous awards known as 'pain and suffering' damages. Our civil justice system is clearly in need of an overhaul.

Mr. Speaker, I urge my colleagues to support this rule and the amendment thereto.

Mr. DOGGETT. Mr. Speaker, will the gentleman yield?

Mr. LINDER. I am happy to yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Speaker, if I understand it, under the rule you are urging us to adopt, you have put out of order any amendments that would remove control of the States from this and focused it only on the Federal courts, so that the mayor of New York will have to turn to Washington rather than Albany, and the people of my State, instead of going to the State capital, will return to Washington for their product standards? In essence, you rip the tenth amendment apart?

Mr. LINDER. Mr. Speaker, the gentleman may have that opinion if he would like. I am just reading what the city of New York and its mayor said about it. The gentleman can take up his argument with him.

Mr. DOGGETT. Gladly.

Mr. LINDER. Mr. Speaker, I move the previous question on the resolution and the amendment thereto.

The SPEAKER pro tempore. The question is on ordering the previous question on the amendment and on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FROST. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to the provisions of clause 5 of rule XV, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the question of agreeing to the amendment and on the question of the adoption of the resolution.

This is a 15-minute vote on the previous question.

The vote was taken by electronic device, and there were—yeas 234, nays 191, not voting 9, as follows:

[Roll No. 217]

YEAS—234

Allard
Archer
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Brownback

Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Houghton
Hunter
Hutchinson
Hyde
Inglis
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Peterson (MN)
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—191

Abercrombie
Ackerman
Andrews
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
de la Garza
DeFazio
DeLauro
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gordon
Graham
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Montgomery
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Pickett
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Sisisky
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Tauzin
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velázquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Wyden
Wynn
Yates

NOT VOTING—9

Armey
Dellums
Greenwood
Hostettler
Istook
LoBiondo
Moran
Rangel
Woolsey

□ 1202

Mr. BROWN of Ohio and Mr. WARD changed their vote from "yea" to "nay."

Messrs. BASS, DEAL, and TATE changed their vote from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. EWING). The question is on the amendment offered by the gentleman from Georgia [Mr. LINDER].

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the resolution, as amended.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MOAKLEY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 247, noes 181, not voting 6, as follows:

[Roll No. 218]

AYES—247

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—181

Abercrombie
Ackerman
Andrews
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards

Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gordon
Graham
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velázquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOT VOTING—6

Clay
Istook
LoBiondo
Mfume
Moran
Rangel

□ 1212

So the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LINDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

ANNOUNCEMENT BY CHAIRMAN OF COMMITTEE ON RULES REGARDING CONSIDERATION OF AMENDMENTS TO H.R. 1158, MAKING EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS, AND TO H.R. 1159, MAKING SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS

(Mr. SOLOMON asked and was given permission to address the House for 1 minute.)

Mr. SOLOMON. Mr. Speaker, the Rules Committee is planning to meet on next Tuesday, March 14, to grant a rule which may limit the kind of amendments which may be offered to H.R. 1158, making emergency supplemental appropriations and rescissions and to H.R. 1159, making supplemental appropriations and rescissions.

The rule will, subject to the approval of the Rules Committee, include a provision requiring that amendments not increase the net level of budget authority in the bill. This means that if there is a proposal to add budget authority, it must be offset by other cuts in budget authority. And rescissions would be treated in a similar manner. If an amendment proposes to eliminate a rescission, it would need to include offsetting cuts.

The rule may further provide that the bill will be read for amendment by chapter, which means that any addition to a particular chapter of the bill would have to be offset by increasing rescissions in the same chapter.

New rescissions affecting programs other than those in the bill would constitute legislation on an appropriation and violate the standing rules of the House.

Subject to the approval of the Rules Committee this rule will include a provision requiring amendments to be preprinted in the amendment section of the CONGRESSIONAL RECORD. Amendments should be submitted for printing no later than Monday, March 13, 1995.

Amendments to be preprinted should be signed by the Member, and submitted at the Speaker's table.

The bill may be considered for amendment under the 5-minute rule, with a possible overall time limitation on the amending process.

Members should use the Office of Legislative Counsel to ensure that their amendments are properly drafted and should check with the Office of the Parliamentarian to be certain their amendments comply with the rules of the House. It is not necessary to submit amendments to the Rules Committee or to testify.

□ 1215

That is certainly optional.

Mr. MOAKLEY. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Massachusetts.

Mr. MOAKLEY. According to our latest information, the House is not in session Monday; is that so?

Mr. SOLOMON. In order to give Members a fair opportunity to prefile their amendments on this very important issue dealing with rescissions, the House is going to be in session pro forma on Monday, which means Members would have that opportunity to prefile their amendments so that they would appear in Tuesday's RECORD. That is very important.

Mr. MOAKLEY. Does the gentleman mean Members are going to come in here to sit for 5 minutes in order that they can file an amendment?

Mr. SOLOMON. No, I think that Members can submit their amendments, they can prefile them like we always do on Monday. You sign your name to it, your staff then drops them in the hopper for you.

Mr. MOAKLEY. How long will we be in session in the pro forma session?

Mr. SOLOMON. That depends.

Mr. MOAKLEY. It does not depend on us, how long we would be in session.

Mr. SOLOMON. It depends on how many 1-minutes there might be and how many special orders.

Mr. MOAKLEY. With no votes, the gentleman from New York [Mr. SOLOMON] is going to tell me we are going to go through an extensive pro forma session?

Mr. SOLOMON. Under unanimous-consent requests, filing of amendments would be in order up until 5 p.m. and that is the normal procedure of the House. We would have no objection to that.

Mr. MOAKLEY. Yes, but that request has not been made.

Mr. SOLOMON. No, we intend to make it.

Mr. MOAKLEY. When?

Mr. SOLOMON. So Members could be assured that they would have until 5 p.m. to file their amendments Monday. Again, this is in lieu of making them file their amendments by Friday at 5. This gives Members and their staffs the entire weekend and all day Monday.

Mr. MOAKLEY. So it is giving us our day off to come back here and file amendments. Is that what the gentleman is giving us?

Mr. SOLOMON. If the gentleman will let me interrupt him, I will make the unanimous-consent request right now.

PERMISSION FOR MEMBERS TO PREFILE AMENDMENTS ON H.R. 1158, EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS AND H.R. 1159, SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS

Mr. SOLOMON. Mr. Speaker, I ask unanimous consent that Members would have until 5 p.m. on Monday to prefile their amendments on the rescission bills.

The SPEAKER pro tempore (Mr. EWING). Is there objection to the request of the gentleman from New York?

Mr. MOAKLEY. Mr. Speaker, reserving the right to object, would the gentleman be kind enough to withhold that request until we clear it with our leadership on this side, because I am sure this comes as quite a surprise.

Mr. SOLOMON. If the gentleman will yield, the gentleman is one of my best friends, and I would be glad to withdraw it at his request.

Mr. MOAKLEY. I thank the gentleman.

Mr. DINGELL. Mr. Speaker, I would also like to reserve the right to object.

Mr. SOLOMON. I have withdrawn the request, Mr. Speaker.

The SPEAKER pro tempore. The gentleman has withdrawn his request.

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, let me ask the gentleman two questions that relate to the original announcement made by the gentleman from New York [Mr. SOLOMON], the committee chairman.

First of all, the gentleman mentioned legislating on an appropriation bill. Am I correct that the intent of the Committee on Rules will be to protect that legislation that is on the bill as it was reported by the committee?

Mr. SOLOMON. Absolutely. We intend to abide by the rules of the House.

Mr. HOYER. So you will be protecting——

Mr. SOLOMON. All we are saying is that if Members have amendments that would reinstate any of the cuts appearing in the bill that they would have to have offsetting cuts by chapter. In other words, in the Department of Veterans Affairs, HUD and Independent Agencies chapter, if you were going to reinstate a cut in that chapter, then you would have to provide for offsetting cuts within that chapter. But you are still allowed to offer further cuts on any of the chapters if you see fit, without offsetting anything.

Mr. HOYER. I understand. So if you wanted to make a cut in the defense chapter, there is no defense chapter, but if there were, you would have to make the cut in defense?

Mr. SOLOMON. Absolutely.

Mr. HOYER. That was, however, not the same when we added to the defense and made rescissions in the domestic side of the ledger some weeks ago. So we are changing that; is that correct?

Mr. SOLOMON. As we are doing it by chapter, right, because of the complexity of this legislation.

Mr. DINGELL. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Michigan.

Mr. DINGELL. What I am trying to do is to find out from my good friend the gentleman from New York, when will the basic legislation be available to us and when will the requirement for publication take place so we understand how much time we are going to have between the time the legislation becomes available and the time that the amendments——

Mr. SOLOMON. It is in today's RECORD. The gentleman has access to it. It was filed last night.

Mr. DINGELL. It was filed last night?

Mr. SOLOMON. Yes.

Mr. DINGELL. If the gentleman would yield further, could the gentleman tell me whether there will be changes in the legislation between now and the time that the printing requirement bites, so that we can understand that our amendments if drafted will be drafted to the legislation that will be considered by the House?

Mr. SOLOMON. To my knowledge, there will be no changes made. The report has been filed and the legislation is before you. It is pretty cut and dried.

Mr. MOAKLEY. Mr. Speaker, will the gentleman yield?

The SPEAKER pro tempore. The time of the gentleman from New York [Mr. SOLOMON] has expired.

Mr. SOLOMON. I am waiting for the gentleman from Massachusetts up in the Committee on Rules. We are holding up all these people.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. MOAKLEY. Mr. Speaker, I ask unanimous consent to address the outstanding chairman of the Committee on Rules.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MOAKLEY. The gentleman from New York [Mr. SOLOMON] says this is all cut and dried. So is there any reason for any amendments to be offered by Democrats? Are we going to be given any choice when you are picking out the Democratic amendments?

Mr. SOLOMON. There is a prefiling requirement. We intend to place a time limitation, but we would hopefully be able to take care of anyone's amendments, Democrat or Republican, liberal or conservative. We want to be as fair as we possibly can.

Mr. MOAKLEY. Mr. Speaker, I want to yield to our mutual friend, the chairman of the Committee on Veterans' Affairs, the Honorable General MONTGOMERY.

Mr. SOLOMON. He is not the chairman. He is the former good chairman, though.

Mr. MOAKLEY. He is always chairman to me.

Mr. MONTGOMERY. Mr. Speaker, if the gentleman will yield, I have been talking to him about the rescission of $206 million on veterans programs, mainly outpatient clinics which have been very, very important to take care of the older vet now that we have got about 20 million that are over age 60.

I have talked to the gentleman before. How does this affect the veterans?

Mr. SOLOMON. This means if you want to offer an amendment reinstating the cuts that appear in that chapter of the rescission bill—and I would support such an amendment, and I will take the floor and fight for it with you—it means that you are going to have to offset that reinstatement with a like amount of dollar cuts from other items appearing in that same chapter. Again that chapter takes in the Department of Veterans Affairs, it takes in HUD and independent agencies.

Just, for example, if you want to reinstate the veterans' cuts—and I do want to reinstate them, too—you are going to have to take them out of something like the National Service Corps, Americorps. In other words, we are going to have to decide which is the priority, and I will support the gentleman no matter where he takes it out of, out of that chapter.

Mr. MONTGOMERY. Will the gentleman support me if we do not take it away from anybody and just offer a clean amendment?

Mr. SOLOMON. No, I would not support that, because we have a responsibility to maintain the defense budget. With all the money that has been taken out of the defense budget for all of the peacekeeping missions, that is wrong. We have got to reinstate it someplace, and I will support your amendment if you offer it and will take the cuts out of somewhere else in the chapter.

The SPEAKER pro tempore. All time has expired.

(By unanimous consent, Mr. MOAKLEY was allowed to proceed for 1 additional minute.)

Mr. MOAKLEY. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. To the chairman of the Committee on Rules, one more question.

Mr. SOLOMON. One more time.

Mr. MONTGOMERY. In that chapter, the only thing the veterans have would be compensation and pensions, and I certainly would not want to cut compensation and pension programs.

Mr. SOLOMON. No.

Mr. MONTGOMERY. In that chapter, what else does it include that we could get the money from? And would you let me offer a clean amendment just to take care of the $206 million?

Mr. SOLOMON. SONNY, as a matter of fact, here is a list I will be glad to give to you. There are a lot of items in that chapter. Certainly I would not want to see you take it out of other veterans' benefits, but if you want to take it out of the National Service Corps, I will support your amendment. If you do not want to do that, I will do it.

Mr. MOAKLEY. Is the gentleman from New York [Mr. SOLOMON] going to allow the amendments that have been subject to the Appropriations Committee's——

The SPEAKER pro tempore. All time has expired.

Mr. MOAKLEY. May the gentleman from New York [Mr. SOLOMON] have enough time just to answer the question Mr. Speaker?

Mr. SOLOMON. That is up to the Committee on Rules, JOE, and you are the ranking member.

Mr. MOAKLEY. You are the Committee on Rules. I am asking.

COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 109 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 956.

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IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes, with Mr. DREIER in the chair.

The Clerk read the title of the bill.

THe CHAIRMAN. When the Committee of the Whole rose on Wednesday, March 8, 1995, all time for general debate pursuant to House Resolution 108 had expired.

Pursuant to House Resolution 109, no further general debate is in order.

The amendment in the nature of a substitute consisting of the text of H.R. 1075 is considered as an original bill for purposes of amendment and is considered as having been read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 1075

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Common Sense Product Liability and Legal Reform Act of 1995".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.

TITLE I—PRODUCT LIABILITY REFORM

Sec. 101. Findings and purposes.
Sec. 102. Applicability and preemption.
Sec. 103. Liability rules applicable to product sellers.
Sec. 104. Defense based on claimant's use of intoxicating alcohol or drugs.
Sec. 105. Misuse or alteration.
Sec. 106. Frivolous pleadings.
Sec. 107. Several liability for noneconomic loss.
Sec. 108. Statute of repose.
Sec. 109. Service of process.
Sec. 110. Definitions.

TITLE II—PUNITIVE DAMAGES REFORM

Sec. 201. Punitive damages.
Sec. 202. Definitions.

TITLE III—BIOMATERIALS SUPPLIERS

Sec. 301. Liability of biomaterials suppliers.
Sec. 302. Procedures for dismissal of civil actions against biomaterials suppliers.
Sec. 303. Definitions.

TITLE IV—EFFECT ON OTHER LAW; EFFECTIVE DATE

Sec. 401. Effect on other law.
Sec. 402. Federal cause of action precluded.
Sec. 403. Effective date.

TITLE I—PRODUCT LIABILITY REFORM

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the manufacture and distribution of goods in interstate commerce is to a large extent a national activity which affects national interests in a variety of important ways;

(2) in recent years, the free flow of products in interstate commerce has been increasingly burdened by product liability law;

(3) as a result of this burden, consumers have been adversely affected through the withdrawal of products and producers from the national market, and from excessive liability costs passed on to them through higher prices;

(4) the rules of product liability law in recent years have evolved rapidly and inconsistently within and among the several States, such that the body of product liability law prevailing in this nation today is complex, contradictory, and uncertain;

(5) the unpredictability of product liability awards and doctrines are inequitable to both plaintiffs and defendants and have added considerably to the high cost of liability insurance, making it difficult for producers and insurers to protect their liability with any degree of confidence;

(6) product liability actions and punitive damage awards jeopardize the financial well-being of many industries and are a particular threat to the viability of the nation's small businesses;

(7) the extraordinary costs of the product liability system undermine the ability of American industry to compete internationally, and is costing the loss of jobs and productive capital; and

(8) because of the national scope of the manufacture and distribution of most products, it is not possible for the individual states to enact laws that fully and effectively respond to these problems.

(b) PURPOSES.—Based upon the powers contained in Article I, clause 3 of the United States Constitution, the purposes of this title are to promote the free flow of goods in interstate commerce—

(1) by establishing certain uniform legal principles which provide a fair balance between the interests of product users, manufacturers, and product sellers,

(2) by placing reasonable limits on product liability law,

(3) by ensuring that product liability law operates to compensate persons injured by the wrongdoing of others,

(4) by reducing the unacceptable transactions costs and delays which harm both plaintiffs and defendants,

(5) by allocating responsibility for harm to those in the best position to prevent such harm, and

(6) by establishing greater predictability in product liability actions.

SEC. 102. APPLICABILITY AND PREEMPTION.

(a) PREEMPTION.—This title governs any product liability action brought in any State or Federal court, on any theory for harm caused by a product. A civil action brought for commercial loss shall be governed only by applicable commercial or contract law.

(b) RELATIONSHIP TO STATE LAW.—This title supersedes State law only to the extent that State law applies to an issue covered by this title. Any issue that is not governed by this title shall be governed by otherwise applicable State or Federal law.

SEC. 103. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—Except as provided in subsection (b), in any product liability action, a product seller other than a manufacturer shall be liable to a claimant for harm only if the claimant establishes that—

(1)(A) the product which allegedly caused the harm complained of was sold by the product seller; (B) the product seller failed to exercise reasonable care with respect to the product; and (C) such failure to exercise reasonable care was a proximate cause of the claimant's harm; or

(2)(A) the product seller made an express warranty applicable to the product which allegedly caused the harm complained of, independent of any express warranty made by a manufacturer as to the same product; (B) the product failed to conform to the warranty; and (C) the failure of the product to conform to the warranty caused the claimant's harm; or

(3) the product seller engaged in intentional wrongdoing as determined under applicable State law and such intentional wrongdoing was a proximate cause of the harm complained of by the claimant.

For purposes of paragraph (1)(B), a product seller shall not be considered to have failed to exercise reasonable care with respect to the product based upon an alleged failure to inspect a product where there was no reasonable opportunity to inspect the product in a manner which would, in the exercise of reasonable care, have revealed the aspect of the product which allegedly caused the claimant's harm.

(b) EXCEPTION.—In a product liability action, a product seller shall be liable for harm to the claimant caused by such product as if the product seller were the manufacturer of such product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action might have been brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

SEC. 104. DEFENSE BASED ON CLAIMANT'S USE OF INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—In any product liability action, it shall be a complete defense to such action if—

(1) the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug when the accident or other event which resulted in such claimant's harm occurred; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for such accident or other event.

(b) CONSTRUCTION.—For purposes of subsection (a)—

(1) the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law; and

(2) the term "drug" means any controlled substance as defined in the Controlled Substances Act (21 U.S.C. 802(6)) that has been taken by the claimant other than in accordance with the terms of a lawfully issued prescription.

SEC. 105. MISUSE OR ALTERATION.

(a) GENERAL RULE.—Except as provided in subsection (c), in a product liability action, the damages for which a defendant is otherwise liable under State law shall be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of a product by any person if the defendant establishes by a preponderance of the evidence that such percentage of the claimant's harm was proximately caused by—

(1) a use or alteration of a product in violation of, or contrary to, the defendant's express warnings or instructions if the

warnings or instructions are adequate as determined pursuant to applicable State law, or

(2) a use or alteration of a product involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(b) WORKPLACE INJURY.—Notwithstanding subsection (a), the damage for which a defendant is otherwise liable under State law shall not be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of the product by the claimant's employer or any co-employee who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries.

SEC. 106. FRIVOLOUS PLEADINGS.

(a) GENERAL RULE.—

(1) SIGNING OF PLEADING.—The signing or verification of a pleading in a product liability action in a State court subject to this title constitutes a certificate that to the signatory's or verifier's best knowledge, information, and belief, formed after reasonable inquiry, the pleading is not frivolous as determined under paragraph (2).

(2) DEFINITIONS.—

(A) For purposes of this section, a pleading is frivolous if the pleading is—

(i) groundless and brought in bad faith;

(ii) groundless and brought for the purpose of harassment; or

(iii) groundless and interposed for any improper purpose, such as to cause unnecessary delay or needless increase in the cost of litigation.

(B) For purposes of subparagraph (A), the term "groundless" means—

(i) no basis in fact; or

(ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(b) DETERMINATION THAT PLEADING FRIVOLOUS.—

(1) MOTION FOR DETERMINATION.—Not later than 60 days after the date a pleading in a product liability action in a State court is filed, a party to the action may make a motion that the court determine if the pleading is frivolous.

(2) COURT ACTION.—The court in a product liability action in a State court shall on the motion of a party or on its own motion determine if a pleading is frivolous.

(c) CONSIDERATIONS.—In making its determination of whether a pleading is frivolous, the court shall take into account—

(1) the multiplicity of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the party to investigate and conduct discovery; and

(4) affidavits, depositions, and any other relevant matter.

(d) SANCTION.—If the court determines that a pleading is frivolous, the court shall impose an appropriate sanction on the signatory or verifier of the pleading. The sanction may include one or more of the following:

(1) the striking of a pleading or the offending portion thereof;

(2) the dismissal of a party; or

(3) an order to pay to a party who stands in opposition to the offending pleading the amounts of the reasonable expenses incurred because of the filing of the pleading, including costs, reasonable attorney's fees, witness fees, fees of experts, and deposition expenses.

(e) CONSTRUCTION.—For purposes of this section—

(1) a general denial does not constitute a frivolous pleading; and

(2) the amount requested for damages does not constitute a frivolous pleading.

SEC. 107. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

In any product liability action, the liability of each defendant for noneconomic loss shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic loss attributable to such defendant in direct proportion to such defendant's proportionate share of fault or responsibility for the claimant's harm, as determined by the trier of fact.

SEC. 108. STATUTE OF REPOSE.

(a) GENERAL RULE.—A product liability action shall be barred unless the complaint is served and filed within 15 years of the date of delivery of the product to its first purchaser or lessee, who was not engaged in the business of selling or leasing the product or of using the product as a component in the manufacture of another product. This subsection shall apply only if the court determines that the claimant has received or would be eligible to receive full compensation from any source for medical expense losses.

(b) EXCEPTION.—Subsection (a)—

(1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved which was longer than 15 years, but it will apply at the expiration of such warranty,

(2) does not apply to a physical illness the evidence of which does not ordinarily appear less than 15 years after the first exposure to the product, and

(3) does not affect the limitations period established by the General Aviation Revitalization Act of 1994.

SEC. 109. SERVICE OF PROCESS.

This title shall not apply to a product liability action unless the manufacturer of the product or component part has appointed an agent in the United States for service of process from anywhere in the United States.

SEC. 110. DEFINITIONS.

As used in this title:

(1) The term "claimant" means any person who brings a product liability action and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(2) The term "commercial loss" means any loss of or damage to a product itself incurred in the course of the ongoing business enterprise consisting of providing goods or services for compensation.

(3) The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings, medical expense loss, replacement services loss, loss due to death, and burial costs) to the extent recovery for such loss is allowed under applicable State law.

(4) The term "harm" means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(5) The term "manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who (i) designs or formulates the product (or component part of the product), (ii) has engaged another person to design or formulate the product (or component part of the product), or (iii) uses the design or formulation of the product developed by another person;

(B) a product seller of the product who, before placing the product in the stream of commerce—

(i) designs or formulates or has engaged another person to design or formulate an aspect of the product after the product was initially made by another, or

(ii) produces, creates, makes, or constructs such aspect of the product, or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the user of the product.

(6) The term "noneconomic loss" means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(7) The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(8)(A) The term "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state which—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) The term does not include—

(i) human tissue, human organs, human blood, and human blood products; or

(ii) electricity, water delivered by a utility, natural gas, or steam.

(9) The term "product liability action" means a civil action brought on any theory for harm caused by a product or product use.

(10) The term "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, rents, leases, prepares, blends, packages, labels a product, is otherwise involved in placing a product in the stream of commerce, or installs, repairs, or maintains the harm-causing aspect of a product. The term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; or

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

(11) The term "State" means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision of any of the foregoing.

TITLE II—PUNITIVE DAMAGES REFORM

SEC. 201. PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded in any civil action for harm in any Federal or State court against a defendant if the claimant establishes by clear and convincing evidence that the harm suffered was result of conduct—

(1) specifically intended to cause harm, or

(2) conduct manifesting a conscious, flagrant indifference to the safety of others.

(b) PROPORTIONAL AWARDS.—The amount of punitive damages that may be awarded in any civil action subject to this title shall not exceed 3 times the amount of damages awarded to the claimant for the economic loss on which the claimant's action is based, or $250,000, whichever is greater.

(c) APPLICABILITY AND PREEMPTION.—Except as provided in section 401, this title shall apply to any civil action brought in any Federal or State court on any theory where punitive damages are sought. This title does not create a cause of action for punitive damages in any jurisdiction that does not authorize such actions.

(d) BIFURCATION.—At the request of any party, the trier of fact shall consider in a separate proceeding whether punitive damages are to be awarded and the amount of such award. If a separate proceeding is requested, evidence relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(e) CONSIDERATION.—In determining the amount of punitive damages, the trier of fact shall consider all relevant, admissible evidence, including—

(1) the severity of the harm caused by the conduct of the defendant,

(2) the duration of the conduct or any concealment of it by the defendant,

(3) the profitability of the specific conduct that caused the harm to the defendant,

(4) the number of products sold, the frequency of services provided, or the type of activities conducted by the defendant of the kind causing the harm complained of by the claimant,

(5) awards of punitive damages to persons similarly situated to the claimant,

(6) possibility of prospective awards of compensatory damages to persons similarly situated to the claimant,

(7) any criminal penalties imposed on the defendant as a result of the conduct complained of by the claimant,

(8) the amount of any civil and administrative fines and penalties assessed against the defendant as a result of the conduct complained of by the claimant, and

(9) whether the foregoing considerations have been a factor in any prior proceeding involving the defendant.

SEC. 202. DEFINITIONS.

As used in this title:

(1) The term "claimant" means any person who brings a civil action and any person on whose behalf such an action is brought. If such action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(2) The term "clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(3) The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings, medical expense loss, replacement services loss, loss due to death, and burial costs), to the extent recovery for such loss is allowed under applicable State law.

(4) The term "harm" means any legally cognizable wrong or injury for which punitive damages may be imposed.

(5) The term "punitive damages" means damages awarded against any person or entity to punish or deter such person or entity, or others, from engaging in similar behavior in the future.

(6) The term "State" means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision of any of the foregoing.

TITLE III—BIOMATERIALS SUPPLIERS

SEC. 301. LIABILITY OF BIOMATERIALS SUPPLIERS.

A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by a medical device, only if the claimant in a product liability action shows that the conduct of the biomaterials supplier was an actual and proximate cause of the harm to the claimant and—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts:

(ii)(I) provided to the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary of Health and Human Services and that is currently maintained by the biomaterials supplier of purposes of premarket approval of medical devices; or

(iii)(I) included in the submissions for the purposes of premarket approval or review by the Secretary of Health and Human Services under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary of Health and Human Services, if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the raw materials or component parts;

(2) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(3) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

SEC. 302. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—

(1) GENERAL RULE.—Any biomaterials supplier who is a defendant in any product liability action involving a medical device which allegedly caused the harm for which the action is brought and who did not take part in the design, manufacture, or sale of such medical device may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action on the grounds that—

(A) the claimant has failed to establish that the supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier; or

(B) the claimant has failed to comply with the requirements of subsection (b).

(2) EXCEPTION.—The biomaterials supplier may not move to dismiss the action if—

(A) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(B) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

(b) MANUFACTURER OF MEDICAL DEVICE SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the medical device to which the biomaterials supplier furnished raw materials or component parts as a party to the product liability action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(2) an action against the manufacturer is barred by applicable law.

(c) PROCEEDINGS ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO STATUS OF DEFENDANT.—

(A) DEFENDANT AFFIDAVIT.—The defendant in the action may support a motion to dismiss by filing an affidavit demonstrating that defendant is a biomaterials supplier and that it is neither the manufacturer nor the product seller of the medical device which caused the harm alleged by the claimant.

(B) RESPONSE TO MOTION TO DISMISS.—In response to a motion to dismiss described in this section, the claimant may submit an affidavit demonstrating why it asserts that—

(i) the defendant who filed the motion to dismiss is not a biomaterials supplier with respect to the medical device which caused the harm alleged by the claimant;

(ii) on what basis it asserts that the supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier;

(iii) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(iv) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—If a defendant files a motion to dismiss, no discovery shall be permitted in connection with the action that is the subject of the motion, unless the affidavits submitted in accordance with this section raise material issues of fact concerning whether—

(A) the supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier;

(B) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(C) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

Any such discovery shall be limited solely to such material facts.

(3) RESPONSE TO MOTION TO DISMISS.—The court shall rule on the motion to dismiss solely on the basis of the affidavits filed under this section and on the basis of any evidence developed in the course of discovery under paragraph (2) and subsequently submitted to the court in accordance with applicable rules of evidence.

(d) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 303. DEFINITIONS.

For purposes of this title:

(1) The term "biomaterials supplier" means an entity that directly or indirectly supplies, or licenses another person to supply, a component part or raw material for use in the manufacture of a medical device—

(A) that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids of internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(2) Notwithstanding paragraph (1), the term "biomaterials supplier" excludes any person, with respect to a medical device which is the subject of a product liability action—

(A) who is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the medical device, and has registered with the Secretary of Health and Human Services pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section, and has included the medical device on a list of devices filed with the Secretary of Health and Human Services pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section; or

(B) who, in the course of a business conducted for that purpose, has sold, distributed, leased, packaged, labeled, or otherwise placed the implant in the stream of commerce after it was manufactured.

(3) The term "harm" means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(4) The term "product liability action" means a civil action brought on any theory for harm caused by a product or product use.

TITLE IV—EFFECT ON OTHER LAW; EFFECTIVE DATE

SEC. 401. EFFECT ON OTHER LAW.

Nothing in title I, II, or III shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

SEC. 402. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction pursuant to this Act based on section 1331 or 1337 of title 28, United States Code.

SEC. 403. EFFECTIVE DATE.

Titles I, II, and III shall apply with respect to actions which are commenced after the date of the enactment of this Act.

The CHAIRMAN. No amendment to the amendment in the nature of a substitute shall be in order except the amendments printed in House Report 104–72 or in section 2 of House Resolution 109, as amended. Each amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

Debate time on each amendment will be equally divided and controlled by the proponent and an opponent of the amendment.

It is now in order to consider amendment number 1 printed in section 2 of House Resolution 109, as amended.

AMENDMENT OFFERED BY MR. PETE GEREN OF TEXAS

Mr. PETE GEREN of Texas. Mr. Chairman, I offer an amendment made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. PETE GEREN of Texas: Page 7, insert after line 3 the following:

(c) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product shall be subject to liability under subsection (a) but shall not liable to a claimant for the tortious act of another involving a product solely by reason of ownership of such product.

The CHAIRMAN. Pursuant to the rule, the gentleman from Texas, Mr. PETE GEREN and a Member opposed will each be recognized for 5 minutes.

The Chair recognizes the gentleman from Texas, Mr. PETE GEREN.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is in fact a clarifying amendment to title I of H.R. 1075. Our amendment would clarify that companies that rent or lease products are covered by the provisions of title I. Currently under title I it is clear that product liability actions against companies that sell products are subject to section 103. Section 103 provides that a product liability action cannot be pursued against a product seller unless the seller has been negligent, has offered an express warranted offer, or has engaged in intentional wrongdoing. Simply stated, there should be no liability without fault. That is the intention of this clarifying amendment.

Mr. HYDE. Mr. Chairman, will the gentleman yield?

Mr. PETE GEREN of Texas. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, this amendment amplifies and is consistent with an amendment offered in the committee by the gentleman from Illinois [Mr. FLANAGAN]. We find it perfectly acceptable, and I am pleased to accept the amendment.

Mr. PETE GEREN of Texas. Reclaiming my time, Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. Mr. Chairman, I thank the gentleman for yielding me the time, and I rise in support of the amendment.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. I thank the gentleman for yielding me the time.

Mr. Chairman, I too rise in strong support of this amendment. Vicarious liability is plain and simple: liability without fault. Every month car dealers, rental companies and leasing firms are held liable under these vicarious liability laws for harm to third parties that they in no way could prevent. There is no negligence whatsoever, and I believe that this clarifying amendment is essential because of the cost to American consumers literally equaling tens of millions of dollars in higher prices for car rental leases and also we are paying a price in terms of competition in these industries.

This bill has the support of the auto manufacturers, the new and used car dealers and the car rental industry. If there is any opposition, it comes from those who have used the vicarious liability laws to coerce companies into unfair and inequitable settlements.

This reform is long overdue. I commend the gentleman from Texas for bringing this amendment to the floor. I urge my colleagues to support it.

The CHAIRMAN. The Chair would inquire if there is any Member who wishes to speak in opposition to the amendment.

Mrs. SCHROEDER. Mr. Chairman, I rise in opposition.

The CHAIRMAN. The gentlewoman from Colorado [Mrs. SCHROEDER] is recognized for 5 minutes.

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I do not rise in strong opposition to this but I must say I rise with great concern because there were so many amendments that were really very, very substantive and they were not allowed, and here we are with the first amendment, one that was basically adopted by the committee. I do not think there is a tremendous amount of dissent about it, and I think it just shows what a lot of us have been trying to say during the rules debate.

□ 1230

Really critical issues about which there is a lot of debate and a lot of concern have been moved aside, and they made room instead for amendments like this which were really more like a love-in. Basically, this amendment too goes to the issue a little bit more of tort. I think it is a little bit more of concern to some that it is kind of squeezed into the product liability, and I have some question as to how it may have moved into the torts area, and it is not quite clear. But nevertheless, my position at this point, and the committee's position on this side of the aisle would be that it is a shame we could not have substituted some of the amendments that there was much more dissent about than spending precious time on the floor on this.

Mr. Chairman, I reserve the balance of my time.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield 30 seconds to the gentleman from Florida [Mr. DEUTSCH].

Mr. DEUTSCH. Mr. Chairman, I rise in support of this amendment. This amendment clarifies what the committee tried to do in terms of making sure that a renter of a product is not automatically liable in that situation, and I urge the adoption of the amendment.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield 30 seconds to the gentleman from Illinois [Mr. FLANAGAN].

Mr. FLANAGAN. Mr. Chairman, I also rise in support of this amendment.

During the Committee on the Judiciary markup of the product liability bill I offered an amendment which was adopted by voice vote to assure that companies who rent products were covered under the definition of product seller. This amendment is a further improvement on the Judiciary Committee bill, and it expressly states that a company that rents and leases products is to be treated as a product seller under title I of the bill. It makes clear that those companies will not be held liable for injuries they do not cause.

This amendment deserves the support of every Member of the body, and I urge my colleagues to support it overwhelmingly.

Mr. Chairman, among the problems H.R. 1075 is designed to address is the tort doctrine of vicarious liability for motor vehicles. The amendment, which I have coauthored with Messrs. Geren, Ramstad, and Cox, is a mere clarification of the bill's scope. It would assure that vicarious liability—or liability without fault—is covered under the product liability legislation before us today.

Mr. Chairman, 11 States and the District of Columbia currently have these vicarious liability laws on the books—laws which hold the owners of motor vehicles liable for damages caused by their vehicles even though the owners were not negligent and there is no defect in their automobiles.

Many businesses, such as car rental companies, automobile dealers, and leasing companies are being held strictly liable in these vicarious liability States for injuries they did not cause and could not prevent. These companies have not been negligent, and yet they are being forced to pay for the negligence of others.

For example, in my neighboring State of Iowa, a renter of an automobile fell asleep at the wheel. The vehicle he was driving left the road and struck a parked truck. Unfortunately, the renter's wife and child were killed in the accident. Although there was no negligence on behalf of the car rental company, the court still imposed a $800,000 judgement on the rental company. Mr. Chairman, is this fair?

To cite one more example, this time in New York, where a renter, allegedly using the vehicle for drug trafficking, struck a pedestrian on a downtown Manhattan street. The pedestrian received severe head injuries from the accident. The settlement by the car rental company was set at $1.226 million. Again, the car rental company had to pay-out $1,226,000 although it was not negligent. Surely, in this instance, the car rental company should not have been held at fault.

The Geren-Ramstad-Cox-Flanagan amendment will provide relief in these circumstances and would assure that companies that rent or lease products are not held liable for damages caused by rented or leased products if the company could not have prevented the harm.

This provision would not exempt these companies from liability if the company is negligent and would not exempt these companies from State financial responsibility laws for vehicle owners in each State.

In addition, this amendment would not, as has been alleged, cover all automobile accidents. Such a statement ignores the plain wording of the amendment. The amendment would cover only civil actions involving product sellers, not civil actions against all drivers of motor vehicles. Again, this amendment only covers product sellers as defined in section 110 of the bill.

Mr. Chairman, I believe it is appropriate to include the Geren-Ramstad-Cox-Flanagan provision in H.R. 1075 because vicarious liability impacts the car rental industry in the same fashion that product liability impacts other product sellers.

Vicarious liability claims cost car rental companies over $75 million annually—costs which drive up rental and leasing rates for all Americans.

In addition, vicarious liability has driven smaller companies out of business or forced them to refrain from doing business in States with vicarious liability laws. This leads to decreased competition, increased rates, and limited choice for consumers.

In sum, Mr. Chairman, section 103 of H.R. 1075 states that a product seller shall not be held liable without fault. This amendment simply extends this principle to companies that rent or lease products.

Therefore, Mr. Chairman, I urge my colleagues to support the amendment.

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I continue my protest that we had amendments that were very, very critical that were shut out. One of the ones that I had wanted to offer that had everybody from the Right to Life Committee to NARAL joining in consensus on was a very critical one.

It dealt with people's reproductive organs, and the fact that it should be removed from this bill because people feel very, very strongly, and especially women who have had incident after incident after incident of people manufacturing things that did affect their reproductive organs. We really felt we wanted to make it very clear we thought that that should not be covered by this bill. That was not allowed.

I find that pretty amazing when we have this consensus from right to left, and it is rather historic, I do not think we have had that kind of consensus in this body for a very long time, that that amendment was not allowed, and yet we have this as an amendment that was adopted by voice vote, as the gentleman from Illinois said, in the committee, and here we are just continuing to perfect it a little bit and taking up time.

There are many other amendments similar to mine in the 82 that were there, and of course many fell off the table. And then of course many of the ones that we had, such as the one I will have next, has been limited to 20 minutes. We got hardly any time to discuss very serious legal principles that have been established in this country since the beginning of the Republic that we are now changing today, and it seems to me that we should have taken the precious time that we have and allocated it to many more of the serious issues about which there is real contention than this, which is really more of a cosmetic, housekeeping amendment about which there really has not been a lot of disagreement.

Mr. Chairman, I reserve the balance of my time.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield myself such time as I may consume, and I yield to the gentleman from Louisiana [Mr. TAUZIN] for the purposes of a colloquy.

The CHAIRMAN. The gentleman from Texas, Mr. PETE GEREN, has 1½ minutes remaining.

Mr. TAUZIN. Mr. Chairman, will the gentleman yield?

Mr. PETE GEREN of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding. It is my understanding that this amendment is intended only to preempt the State laws in a small minority of jurisdictions that impose unlimited financial liability on owners of motor vehicles for harm caused by the permissive users of their vehicles, and that nothing in this amendment should be construed to excuse any motor vehicle owner from meeting the minimum financial responsibility laws required by each State.

Mr. PETE GEREN of Texas. The gentleman's understanding of this amendment is correct, and that is an accurate characterization of it. I appreciate the gentleman helping us to clarify the intent of this amendment.

Mr. TAUZIN. I thank the gentleman, and I urge support for the amendment.

Mr. PETE GEREN of Texas. Mr. Chairman, borrowing from the wisdom I picked up from the gentleman from Louisiana over my years here, and drawing on the comments of the gentlewoman from Colorado, when the package is sold, you wrap it up.

Mr. Chairman, I yield back the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, obviously I have a lot to say on my next amendment, and whatever time I have left, if I could just use it for that I would be very, very appreciative.

In my next amendment I am going to be talking about noneconomic damages, and it is called the family values amendment. I think even the gentleman from Texas would join me in saying that this body should stand up for this next family values amendment that hopefully will be coming up almost immediately after a voice vote on this, because it is a very serious amendment. We are talking about we cannot talk family values and say they do not amount to anything, and unless we pass this amendment that is exactly what we will be saying. So I apologize to the gentleman from Texas for using our 5 minutes to talk about some of the problems we have in trying to deal with this because of the rule, but I felt that that was really the only fair thing to do since we were not allowed to offer many of the amendments that really, really were coming up. So what I will be able to do then, hopefully, is find a way to get people's attention as to how patched together this is, how uncertain many of us are, and the concerns we have.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has expired. All time has expired.

The question is on the amendment offered by the gentleman from Texas, Mr. PETE GEREN.

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in section 2 of House Resolution 109.

AMENDMENT OFFERED BY MRS. SCHROEDER

Mrs. SCHROEDER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mrs. SCHROEDER: Page 11, strike lines 17 through 24, and redesignate succeeding sections accordingly.

Page 17, line 25, insert "and noneconomic" before "loss".

The CHAIRMAN. Pursuant to the rule, the gentlewoman from Colorado [Mrs. SCHROEDER] and a Member opposed will each be recognized for 10 minutes.

The Chair recognizes the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, this amendment I have called the family values amendment, and I think it is very critical. I was very pleased when I offered it in the committee that it had a very large vote, and we had votes from both sides of the aisle.

Americans value their families. We talk family values. Here is a chance to put our money where our mouths are, because under this bill noneconomic damages are discriminated against very, very much, and I do not think that is fair.

Noneconomic damages mean if you do not get a paycheck, you do not count. So the fact that you were staying home and taking care of your family, no matter which parent you are, that does not matter. That is noneconomic damages. You do not count.

Let me tell my colleagues, every parent is a working parent, whether they are working in the house or out of the house, so I think that is ridiculous.

Second, if you are a child obviously you are not getting a paycheck, so that does not count.

Third, if a woman is working outside the home, they are still, unfortunately, very apt to be discriminated against, so any paycheck they would get still reflects the discrimination we have in society.

Finally, one of the areas I feel strongest about is the whole area of people's reproductive organs, because we have seen so many problems in this area in the past, with the Dalcon shield and all sorts of other issues that people are more and more familiar with. If we do not deal with this noneconomic damage issue in this bill, then we are really saying those do not matter. And we will not have joint and several liability on those issues, which means even if you get some kind of a judgment, it is very apt that you will not be able to collect it, you cannot collect it nearly as easy as you can with economic damages.

And this bill discriminates on punitive damages by not allowing noneconomic damages to count. So we are really saying you are only valued for your paycheck. There is no other value to you, and any other value that you have, whether it is about your reproductive organs or not, it does not count.

The CHAIRMAN. Does any Member seek recognition in opposition to the amendment?

Mr. HYDE. Mr. Chairman, indeed there is. I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] is recognized for 10 minutes.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the amendment offered by the gentlewoman from Colorado eliminates the protection against disproportionate liability for subjective, nonmonetary losses and weakens the protection of the punitive damages cap. For these reasons I urge the defeat of the pending amendment. It was offered in committee and was defeated in committee.

Section 107, in the interests of fairness, protects a defendant from being held liable for noneconomic losses that are attributable to the fault or responsibility of another individual or entity. The concept of a defendant paying for its own proportionate share of fault or responsibility sounds self-evident to most people. Many States, however, give expression in their law to the principle of joint and several liability, which in its unrestricted form means that a party with relatively nominal responsibility, perhaps 1 percent, can be held liable for the fault attributable to the others, perhaps 99 percent.

The result of the principle of joint and several liability is that litigation imposes severe risks for solvent businesses, often necessitating excessive settlement offers, increasing liability insurance costs, and making goods more expensive for consumers. All of these factors have negative implications for our competitiveness in international markets and our ability to keep enterprises, with all of the jobs involved, in the United States.

Section 107 essentially is a compromise between the principle of joint and several liability with its disproportionate attendant costs, and the concept of liability limited to degree of fault or responsibility. Under section 107, a defendant can only be held liable for noneconomic losses in proportion to its share of the total fault or responsibility, but can continue to be held liable to the extent authorized by State law for economic losses that exceed its proportionate share.

This bill does not impinge on the rights of claimants to recover noneconomic damages from a defendant for the harm it inflicts, but appropriately safeguards one party from having to pay for the harm others inflict. Disproportionate liability for noneconomic damages not only is unfair, but results in expenses that are passed on to all Americans.

I strongly recommend defeat of this amendment.

Mr. Chairman, I reserve the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I just wanted to quickly answer my chairman. If joint and several is so terrible, then joint and several liability should be removed for both compensatory and noneconomic damages, and it is not. They are keeping it for one and taking it away for another, which is saying that family values do not count.

Mr. DOGGETT. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, if I understand the focus of the gentlewoman's amendment, this bill as written discriminates against the young child who has a limb severed or is decapitated, really, as a result of playground equipment, a senior citizen who is burned horribly in a fire with a defective heater, a student who is exposed to toxic substances and is impaired for life, a homemaker, be that male or female, but usually it ends up being female, a woman who is at home providing for her family but not a wage earner at that time? All of these people are treated as second-class citizens under this piece of legislation unless the gentlewoman's amendment is adopted.

□ 1245

Mrs. SCHROEDER. The gentleman is absolutely correct. That is why we call it family values. I think we respect something besides just a paycheck.

The paycheck is raised to a much higher level in this bill. It is going to be much easier to collect if you can show a paycheck. If you cannot, then you do not get the options of joint and several liability, you do not get the punitive damages. You are in real trouble. Those are the people that we are saying that do not count. We say, "We like you, but good luck getting any damages on that."

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Wisconsin [Mr. SENSENBRENNER], a valued member of the committee.

Mr. SENSENBRENNER. I thank the gentleman for yielding.

Mr. Chairman, this amendment is a killer amendment, and it is a killer amendment because it goes back from the principles stated in the bill that the party who is at fault pays and the party who is not at fault does not pay.

The bill provides for several liability for noneconomic losses. That means that if a person or a party is determined by the jury to be 1 percent at fault, that party will pay 1 percent of the noneconomic losses, not 100 percent, if the party who is found more negligent by the jury ends up not having any assets or not having any insurance to pay for the judgment.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. SENSENBRENNER. I have a limited amount of time. I think it is only fair, the gentlewoman from Colorado, that the opponents use their time to lay out the case and not horn in on the opponents' time and take all of the time in support of it.

Second, what the gentlewoman from Colorado's amendment also proposes to do is to limit the cap on punitive damages. Punitive damages are not compensation for anything. It is designed to be punishment for the party or the parties that are at fault. And the bill provides an elastic ceiling on punitive damages of $250,000, or three times the actual damages, whichever is greater. So if there is more than $83,000 or $84,000 of actual damages, then the punitive damages cap goes up.

Punitive damages are not compensation for anything, whether it is an economic loss or a noneconomic loss.

So the gentlewoman is now trying to increase punitive damages awards, which will end up, of course, enriching not only a plaintiff for not what they actually lost but also manufacture's attorney.

I would hope, for these two reasons, that this killer amendment would be defeated.

Mrs. SCHROEDER. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. I thank the gentlewoman for yielding this time to me.

Mr. SENSENBRENNER, as we all know, the purpose of punitive damages is to deter manufacturers of dangerous products from being willing to put the dangerous products on the market because they might hurt somebody.

As we all know, because we are all human beings, some companies have done this, there will always be someone willing to do that, and we want them to be afraid to do it because if they do do it, they could get socked with punitive damages. That is the purpose of punitive damages.

You are taking these out of the bill. Basically, you are saying the cap on punitive damages is $250,000, which is not enough to frighten any major company, or three times earnings.

Once again, this is a bill basically for rich folks and it is a bill that is going to hurt poor folks, poor working people. Why? Because under the Republican bill, you could get three times your economic damages for punitive damages. So, for a wealthy fellow who is making a lot of money, it is going to be three times a whole lot of money. But for a working person who is not making very much money, it is going to be three times not much, even though they both lost the same thing—that is, their ability to live a normal life and to make a living for their families.

So the rich are going to get plenty of money under your bill, the poor folks are not going to get much at all.

Or the regular folks, the working folks, the retired folks, or women who work in the home, for example, who cannot show great economic loss because they cannot work anymore, they are going to get very little. Your friends are going to get a whole lot. Why? Because your friends make a lot of money.

That is the bill you brought out to the House here today.

In 1966, 24 American young men were killed playing football. In 1990, none were killed playing football. Sports Illustrated reported that that is because of the fear of the manufacturers of football equipment that if they did not make the stuff safer, they would get sued and get a punitive damage award.

You are taking the punitive damage awards out of this bill, for all practicable purposes. You are saying the cap is $250,000, or three times economic damages, and you know that for 99 percent of the American people economic damages will not amount to very much. Well, they certainly will not amount to enough to deter one of these big companies from putting a bad product on the market.

I urge a vote for the amendment of the gentlewoman from Colorado [Mrs. SCHROEDER].

Mr. HYDE. Mr. Chairman, I am pleased to yield 2 minutes to the distinguished gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. I thank the chairman for yielding this time to me.

Mr. Chairman, let me say first of all that I hope we could have avoided some of the class war rhetoric that we have heard in debating this legislation. The fact is that in many cases in Europe, for example, where they probably have the safest automobiles in the world, there is no provision for punitive damages over there. The fact is that the American automobile manufacturers could not have child safety seats for about 7 years after Europe had introduced them because of the concern for product liability suits over here.

I suspect there are a number of young people who were killed in auto crashes before these child restraint seats were made available in the United States because of the fear of excessive litigation in this country versus Europe.

The idea behind our system was to make the plaintiff whole. It was basically to provide that the plaintiff be made whole. That is whole system that we talk about. Joint liability was created as a risk distribution insurance mechanism to insure that valid claimants would receive at least some compensation. However, no insurance program, not any workers' compensation program in any State, provides benefits or coverage for noneconomic damages.

The voters of California passed a State initiative in 1986 which eliminated joint liability for noneconomic damages. California trial attorney Suzel Smith, who practices for both defendants and plaintiffs, testified twice last year in the Senate that the elimination of joint liability for noneconomic damages in California has been fair and that there has been no effort to repeal or modify the law.

I think it is fundamentally unfair to have a situation where you have got a defendant who is found to be 1 percent responsible and yet, because they may have deep pockets, they will get 100 percent of the judgment.

Mrs. SCHROEDER. Mr. Chairman, I now yield 2 minutes to the distinguished gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. I thank the gentlewoman for yielding.

Mr. Chairman, we have already heard the outrage that this bill has, by discriminating against children, retirees and homemakers who may lose limbs, suffer blindness or others, without the economic loss. And they do not receive the same kind of treatment under this bill as someone with a big fat paycheck.

I want to talk a minute about joint and several liability. Mr. Chairman, we have heard the scare tactics of 1 percent fault having to pay the full damage. Well, Mr. Chairman, the majority saw an amendment proposed that would have said that only those with a substantial amount of participation, 20 percent, would be forced to pay the full freight, not those with 1 percent. That amendment was ruled out of order.

Mr. Chairman, if we have a situation where there is a problem with the design and the manufacture and the possible misrepresentation at sale, why should the victim have to sort all this out, getting three separate verdicts and having to chase down three separate defendants?

The fact is that in the business community you can insure for that loss and apportion it before it happens, and you ought not have to have that done by the defendant.

Mr. Chairman, there is a case, Gray versus Dayton Hudson Corp., where the manufacturers of children's pajamas had a product that the court found the manufacturer was uniquely aware that the product was flammable. The court noted that the pajamas in question burned almost as quickly as newsprint.

Mr. Chairman, this company could have, economically, feasibly treated the pajamas so they would not burn. This company would benefit if this amendment were not passed.

Children sleep safely tonight, Mr. Chairman, because punitive damages removed these from the market.

Let us not turn the clock on consumer protection.

Mr. HYDE. Mr. Chairman, does the gentleman from Illinois have the right to close debate?

The CHAIRMAN. The gentleman is correct. The chairman of the committee has the right to close.

Mr. HYDE. I have only one speaker left, Mr. Chairman, and I reserve the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I must say this has been frustrating because we have not been able to have a debate and all the artificial time limits on here have made this all really kind of a charade.

When you listen to people stand up and talk about how terrible it is we have punitive damages, there are no punitive damages and punitive damages are terrible. OK. But this bill does not do away with punitive damages, it just leaves it for economic interests. So if you guys think punitive damages are so bad, then be fair and do away with all of them. But you are leaving them for your fat cat friends. If you happen to have a paycheck, you get economic damages and punitive damages. If you do not have a paycheck, if you are a child who has been burned by pajamas, it is tough bunchies, you do not get anything because they just burn a child who is not worth anything because a child is not working and does not have a paycheck.

Listen to what the gentleman from Virginia is saying. If that were your child, America, you would be angry.

Now, if we are going to do away with all punitive damages, fine. But this bill does not do it. It puts a fence around wage earners and fat cats, and it allows them joint and several liability. You heard the gentleman from Wisconsin saying how terrible joint and several liability is. Yes; this does not do away with it, it just limits it to people with a paycheck. So if you have a paycheck, America, we love you. If you have a paycheck, you get both joint and several liability, which means even if they are only 1 percent liable, they will pay your whole paycheck. And you also get punitive damages. But if you do not get a paycheck, you are nothing.

So, if you are staying home taking care of your children, you do not get punitive damages and you do not get joint and several liability. If you are a child, you do not get that. If you take a drug and it ruins your reproductive organs, too bad. If you are caught up with breast implants, too bad. On and on and on.

I thought in America we had a few values left for things other than just paychecks. So, before you listen to this rhetoric that, "That is right, we don't need punitive damages and we don't need joint and several," you are not getting the whole picture. This does not do away with those. It only does away with those for noneconomic damages. If you vote "yes" on this amendment, you will have a level playing field.

Mr. Chairman, this amendment can be called the family values amendment, because it amends two provisions in this bill that have the effect of discriminating against families and family values.

When I offered this amendment in committee, although it failed narrowly, it received votes from both sides of the aisle. This amendment should receive bipartisan support from everyone in this body who believes, as I do, that we Americans value our families more than their jobs, and that our ability to have children is more valuable than any paycheck could ever be.

Without my amendment, the bill before us today will establish into law the notion that the paycheck is valued more in our system of civil justice than our families, and our right to bear children. The bill divides compensatory damages into two categories, economic and noneconomic, and says that the type of loss that includes our paychecks—wages that a victim loses because of an injury—are to be given first class treatment, while family-related losses, including loss of reproductive capacity, are to be given second-class treatment. My amendment would make sure that economic and noneconomic losses are treated equally for purposes of joint and several liability—which in many cases means the difference between collecting or not collecting your damages. My amendment also makes sure that all compensatory damages could for purposes of calculating the cap on punitive damages, and not just economic losses. Noneconomic losses reflect real injury, and that is no reason to give them second-class status.

The two-class system of justice this bill would establish hurts women and children in several ways. First, because of the enduring wage gap between women and men in the workforce, any provision that gives preferential treatment to "economic" losses, and gives second-class treatment to "noneconomic" losses, will have a disproportionately harsh impact on women, as well as on children and lower-income workers. This second-class treatment will be particularly evident in the case of women who are housewives, and women who are staying home with their children, because the damages they suffer are strongly weighted toward "noneconomic" losses.

The second way this bill devastates families has to do with reproductive harm. Many of the most infamous, dangerous products ever sold have been products like DES and the Dalkon Shield that inflicted terrible reproductive injuries upon their victims. DES exposed approximately 10 million women and men to reproductive damage. The Dalkon Shield caused injuries to the reproductive systems of thousands of women. Accutane, an anti-acne medication, caused birth defects when women used it while they were pregnant.

Harm to the reproductive system is an extremely devastating form of loss. I feel very confident that if you surveyed Americans about whether they would consider the loss of their reproductive capacity to be of less importance to them than the loss of wages, you would find very few people who would say, as this bill does, that lost wages are more highly valued than loss of reproductive capacity. Yet, unless my amendment is adopted, this bill will write into the law of this land that lost wages are deserving of better treatment under the law than is loss of reproductive capacity.

Mr. Chairman, this amendment is truly a family values amendment. It makes sure that our justice system values the family as much as it values the paycheck. It eliminates the harsh, discriminatory impact this bill has on women, children, and lower income individuals. I urge the adoption of this family values amendment.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] is recognized for 3 minutes to close debate.

Mr. HYDE. Mr. Chairman, we have heard for the last 2 days capping noneconomic damages and liability suits would hurt women. The reason given is that women stay at home, so juries cannot calculate economic damages for them in the way they can for men who work. This is a strange argument, even a bizarre argument, coming from women who have spent their political careers telling us the traditional family is dead and we had better get used to it. I never thought I would hear the gentlewoman portray an "Ozzie and Harriet" view of America.

The facts are, in fact, just the opposite. Many women now, of course, work. There is no problem in calculating the economic damages there. But even more striking, juries now regularly calculate what the market value of a woman's services to a household would cost on the open market. Every woman has done this calculation in her head. I dare say the gentlewoman from Colorado has: chauffeur, cook, nanny, housecleaner, manager of the family budget, child care professional; the list goes on and one.

I am told that when juries make this calculation, they regularly come up with six figures; in other words, more than what most families make through their jobs. Juries respect and honor the economic role of women, including homemakers.

Mr. Chairman, I am amazed that those in this Chamber who have been so self-righteous for so long about their role in defending women would make arguments that essentially demean the role of women in our society.

This amendment severely weakens the much-needed punitive damages reform.

□ 1300

It will undermine the punitive damages reform contained in the bill by lumping in highly speculative, noneconomic damages such as pain and suffering, and emotional distress, into the basis for determining punitive damages. This will result in a continuation of inflated punitive damages awarded, exactly what this bill is seeking to contain.

Mr. Chairman, I respectfully request my colleagues to vote no on the amendment offered by the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. Of course, I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Would the gentleman like to talk about children? Would he like to talk about the elderly? Would he like to talk about——

Mr. HYDE. I am one of each.

Mrs. SCHROEDER. Reproductive organs?

I also think the gentleman knows that economic damages for women in the workplace are very severely limited—who are not in the workplace, and I think——

Mr. HYDE. Reclaiming my time, Mr. Speaker, I respectfully disagree with the gentlewoman from Colorado [Mrs. SCHROEDER].

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Colorado [Mrs. SCHROEDER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mrs. SCHROEDER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 179, noes 247, not voting 8, as follows:

[Roll No. 219]

AYES—179

Abercrombie
Ackerman
Andrews
Baldacci
Barcia
Barrett (WI)
Bateman
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
English
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jefferson
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Peterson (FL)
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schiff
Schroeder
Schumer
Scott
Serrano
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOES—247

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Bonilla
Bono
Brewster
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
Longley
Lucas
Manzullo
Martini
McCollum
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Moran
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Seastrand
Sensenbrenner
Shadegg

Shaw
Shays
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—8

Boehner
Gibbons
Istook
LoBiondo
McCrery
Pelosi
Rangel
Watts (OK)

□ 1320

The Clerk announced the following pair:

On this vote:

Mr. Rangel, with Mr. Watts of Oklahoma for against.

Mr. CLEMENT changed his vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Ms. PELOSI. Mr. Chairman, I was unavoidably absent for rollcall No. 219, the amendment offered by the gentlewoman from Colorado, Mrs. SCHROEDER. Had I been present I would have voted "aye".

I support the Schroeder amendment which would strike from the bill the section which abolishes joint and several liability and would modify the bill's cap on punitive damage.

As written, this bill will discriminate against women, children, and the elderly by placing greater value on economic losses over noneconomic losses. Similarly, placing a cap on punitive damages awards also discriminates against these groups.

Women, for example, will suffer because noneconomic losses such as reproductive capacity and physical disfigurement are much harder to qualify than annual earning capacity. In addition, women's earning capacity is historically and currently less than men and would be punished by this bill.

The Schroeder amendment acknowledges this legal discrimination and deserves our support.

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. HYDE

Mr. HYDE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HYDE: Page 12, strike lines 8 through 11.

The CHAIRMAN. Pursuant to the rule, the gentleman from Illinois [Mr. HYDE] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

The Chair recognizes the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, every State has statutes of limitation that prescribe the period of time within which a law must be brought. Similar but not identical is a statute of repose. Statutes of repose specify the period of time after which a manufacturer may not be sued for an alleged injury caused by its product. Consequently, a statute of limitations specifies when an existing right to bring a suit expires, while statutes of repose specify the period of time after which no right to sue will be recognized at all.

Seventeen States have enacted statutes of repose, but they vary in length and in their applicability to various products. A uniform statute of repose is needed in order to provide certainty and finality in commercial transactions. Section 108 of H.R. 956 would establish a 15-year Federal statute of repose in product liability cases. Thus, a product liability action against a manufacturer would be barred 15 years after the date of first delivery of the product.

To be fair to plaintiffs, the provision would not apply in instances involving a latent illness—a physical illness the evidence of which does not ordinarily appear less than 15 years after the first exposure to the product. In addition, the statute of repose does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved where the express warranty given was longer than 15 years.

This legislation is similar to legislation that passed the Congress last year known as the General Aviation Revitalization Act of 1994 (Public Law 103–298). That Federal statute created an 18-year statute of repose for general aviation aircraft.

Section 108 is intended to reflect the view that, after a reasonable length of time, manufacturers should be free from the burden of disruptive litigation and potential liability. It recognizes that difficulty that exists in locating reliable evidence and defending claims many years after a product has been manufactured. It also prevents the unfairness that occurs when manufacturers are held liable for goods that have been beyond their control and subject to misuse or alteration, perhaps for decades. A statute of repose also helps to avoid the possibility of juries unfairly imposing current legal and technological standards on products manufactured many years prior to suit.

Even though manufacturers of older products frequently are successful in defense of these lawsuits they nevertheless must invest time and money into legal and transactional costs. These costs are wasted costs that could be better applied to create jobs and assist American companies in competing globally.

My amendment is aimed in ensuring that this statute of repose section does what it is intended to do. As part of the effort to combine the Judiciary Committee's legal standards bill with a product liability measure reported by the Commerce Committee, new language was inserted into the statute of repose section. It says "(T)his subsection shall apply only if the court determines that the claimant has received or would be eligible to receive full compensation from any source for medical losses." Though unintended, this new language could effectively render the statute of repose provision useless.

My amendment is directed at deleting this one sentence because it would create a giant loophole for trial lawyers and would reverse the work of both committees in seeking a fair and effective statute of repose. Under the language I would strike, all a trial lawyer would have to show—to avoid the statute of repose—is that his client did not receive or was ineligible to receive full compensation for medical expenses. So, if there was any insurance copayment provision, if there was any insurance deductible, if reimbursed medical expenses are limited in any way, such as ordinarily and customary expense limitations—the statute of repose might not apply. Once the statute of repose is successfully evaded, a litigant could then seek additional economic damages, noneconomic damages and punitive damages. This is certainly not the result that the Judiciary Committee intended.

Unless this sentence is stricken, it will prompt further lawsuit abuse. Under this exception language, a manufacturer seeking to invoke the statute of repose would first have to litigate the issue of whether or not a claimant has received full compensation from medical losses. That is, has every medical test, prescription, bandage or Band-Aid been fully covered by insurance? This loophole would encourage a plaintiff to continue to claim medical expenses for as long as possible and to the maximum degree possible, so as to prevent full payment from triggering the statute of repose and its protections.

It is important to point out that the European Economic Community has a 10-year statute of repose with no such language contained within its provisions. Japan has a 10-year statute of repose with no such language. Again 17 States currently have statutes of repose, none has language like this in it. No such language was contained in the General Aviation Revitalization Act.

This language is an unwise, unfair and unworkable addition to an otherwise good strong and effective statute repose section. It must be removed if this House is to have the opportunity to vote for a statute of repose that really helps American manufacturers and encourages American productivity.

I strongly urge the adoption of my amendment. It will ensure that section 108 will be effective and provide manufacturers with the kind of certainty and finality that they deserve.

The CHAIRMAN. Is there a Member in opposition to the amendment?

Mr. BERMAN. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from California is recognized for 10 minutes.

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, will the chairman of the committee respond to a question? Mr. Chairman, I would ask, the language in the bill is changed in one of the sections. I ask a question during the hearings as to whether or not asbestos cases would be exempted from this bill. In committee I was told that asbestos cases would not be affected by the passage of this bill.

With the change and with this amendment, is that still the case?

Mr. HYDE. Mr. Chairman, if the gentleman will yield, this amendment does not change that.

Mr. SCOTT. So asbestos cases are not changed as a result either of the amendment or the passage of the bill?

Mr. HYDE. That is correct.

Mr. BERMAN. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, we are dealing here probably with the only amendment I think on the status of repose. When I saw the language as it came out of the two committees and was reintroduced in this new bill, H.R. 1075, I said, well, this is not a bad effort. We are federalizing the product liability law in this one title. We will not even talk about what we are doing in the rest of the bill. We are providing the manufacturers with a certainty in terms of the amount of years. We are exempting it based on an amendment that the gentleman from Illinois, the chairman, accepted in committee for express warranties. If we could just get the Bryant amendment, to deal with a manufacturer who intentionally conceals problems with his product. We have a provision in the bill that says this subsection shall apply only if the court determines that the claimant has received or would be eligible to receive full compensation from any source for medical expense losses.

I thought with the addition of the Bryant amendment, which the Committee on Rules prevented him from offering, you could have a reasonable statute of repose as part of this federalization of the product liabilities scheme.

Lo and behold, the Committee on Rules does not grant Mr. BRYANT'S amendment, but instead grants an amendment that says when the person is injured by the defective product, if it occurs after the period of the statute of repose, even if he has no insurance, no other way of paying any of his medical bills, we are going to put him off on the county, put him into indigency, make him go on the dole in order to pay for the injuries which he suffered, which could be very extensive, because of this amendment.

□ 1330

What you looked like you were giving, you now, in substantial part, have taken away with this amendment. I think this is the wrong amendment. I am surprised that gentleman is offering it. It was a balance, it was a nice balance to the proposal. It is being totally thrown out of whack.

Mr. HYDE. Mr. Chairman, I yield myself 30 seconds.

I am equally surprised that the gentleman is opposing this amendment. The language I seek to strike was not in the bill in our committee. It was put in by the Committee on Commerce, and I think upon mature reflection it undoes the purpose of the statute of repose. It would leave it open-ended, almost impossible to predict or fulfill, and, therefore, if you are for a statute of repose, I should think you would be for having it a definite, time-certain.

Mr. BERMAN. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, it is a balance. We are not talking about punitives. We are not talking about pain and suffering. We are not talking about wage loss. We are talking about the medical bills this injured person has to pay to get treatment. In this small set of cases, which side do we come down on? Do we come down on the manufacturer of the machinery, the product, or do we come down on the side of plaintiff who has no medical insurance, who has no way of paying his medical bills?

Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. Mr. Chairman, a moment ago, the gentleman from Illinois [Mr. HYDE] talked about the European Community statute of repose. As always, the other side likes to quote sources for their purposes but leave out the more relevant facts about the sources that might say something about the other side. The European Community provides cradle to grave medical care for all of its citizens. We do not do that in the United States. So the statute of repose which says that after 15 years you cannot sue somebody for making a defective product has a provision attached to it that says that does not count if the person would be made unable to get their medical care paid for.

Only if they have been able to cover their medical care does the manufacturer have a defective product escape liability 15 years after it is manufactured. It is a great irony. The gentleman from California [Mr. BERMAN] referred to it a moment ago. Of all things, we ask for time to offer amendments to make an extremely unreasonable bill a little more reasonable. They do not grant time on the reasonable amendments. They grant time to the chairman of the committee, who could have written the bill any way he wanted to, to make the bill worse for the average person.

A 15-year statute of repose is a new addition to American law. We have one reasonable exception in here. It does not stop a guy that manufactured a bad product that blew up and hurt somebody from being held liable unless the victim gets their medical care taken care of. The gentleman from Illinois [Mr. HYDE] would say, forget the victim. It does not matter whether he gets his medical care taken care of or not. After 15 years even if the product was totally defective, totally responsible for hurting or killing somebody, you are not going to be able to recover anything.

I think that is absurd. It is, in my view, completely opposite of what the American people would want us to be doing.

I had an amendment which was designed to make this statute of repose a little more workable and a little more reasonable. What it would have said is, OK, we have a 15-year statute of repose. At the end of 15 years, you cannot sue somebody even if their product is defective unless that person who made the product knew the product was defective at the time it was made. In that case, they do not get the benefit of the 15-year cutoff. But the Republicans would not let us offer that amendment today. Instead they let the gentleman from Illinois [Mr. HYDE] offer an amendment that says, too bad if you cannot cover you medical care. After 15 years, you are out of luck.

Unfortunately, for you so-called conservatives, you phony conservatives on the other side, what that is going to mean most of time is that taxpayers are going to have to pay for that guy's medical care while you let your rich friends off the hook.

Mr. HYDE. Mr. Chairman, I yield myself 1 minute. The gentleman objected last night to mentioning the American Trial Lawyers. You thought that was an invidious comparison. I did not yield to the gentleman. I did not yield to you.

The gentleman has no problem attacking us and linking us with rich friends and that sort of thing. The gentleman ought to do and practice what he preaches.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Chairman, I rise in support of the Hyde amendment. The statute of repose currently in H.R.

956 has been threatened by language that has been added to the bill after it left the Committee on the Judiciary that has created a giant loophole in the statute of repose. This one provision in the law says that unless, unless all possible damages or health care is met by the insurance policy or by the health care program, that the statute of repose will not be effective. There are no insurance policies that provide that kind of protection.

Certainly the Federal policies that many of us are under do not provide that kind of protection. It gives the trial lawyers a giant loophole that will enable them in almost every instance to open up the issue of whether the statute of repose is to be effective or not.

The loophole will prolong litigation because we will first have to try the issue of whether all the possible damages, health care needs have been met before we ever go on to the basic issue that is involved, the language that will destroy one of the major goals of the product liability reform legislation in having finality of an issue 15 years after the product was issued.

The Hyde amendment is supported by many national organizations. It is necessary to make this bill effective.

Mr. BERMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Chairman, there is considerable irony in the fact that the distinguished chair of the Committee on the Judiciary should lead off the presentation of this amendment by pointing to the example of what 17 States do with their statutes of repose, because the whole theory of this bill is to junk States' rights.

If the people in Illinois in their constitution want a statute of repose with or without this, I say that is fine. If the people in Texas want it, that is fine. It is not our job to come along and junk States' rights and say, you have to do it the way we say do it in Washington. That is what is the theory and the approach of this bill, is not to rely on the States but rather to consider and argue and to contend that we have this terrible patchwork of States' laws that pose a great burden.

There was a time in this country, my colleagues, when that terrible patchwork that is criticized here on this floor today was called something a little different. It was called the laboratory of democracy, the fact that each State might look at the laws of its civil justice system and decide what is most appropriate. And it is that laboratory of democracy with reference to our State civil justice system that is being thrown out the window of this capitol building by this piece of legislation.

There is a second problem, of course, alluded to by my friend, the gentleman from Texas [Mr. BRYANT]. And that is that this amendment takes a blame the victim approach. The problem here with this whole statute of repose is that it allows every manufacturer in America, and that is really all that the section does, to write on its product after 15 years, do not look to us, buddy. It says, we will not be responsible no matter how defective our product for anything after 15 years.

And that would be fine and proper, except for the fact that they allow the manufacturer to do that in invisible ink. The same manufacturer can advertise on the Home Shopping Network this afternoon that you get a lifetime guarantee with our product. Indeed, you do. It is just that you do not get any right to recover after 15 years. So there is no burden placed on the manufacturer to identify the fact that in invisible ink we have limited the rights of the victim.

I say blame the victim because the choice with this specific amendment is between those who put defective products in the stream of commerce throughout this country and those who do not have the insurance even to cover their own medical bills, because that is what this very good language took care of.

One of the problems in the consideration of this entire week's legislative work in this Capitol is our failure to listen to the victims, to the people that have lost life and their family, a limb, those people have been excluded in this debate.

The CHAIRMAN. The gentleman from California [Mr. BERMAN] has 30 seconds remaining, and the gentleman from Illinois [Mr. HYDE] has the right to close debate.

Mr. HYDE. Mr. Chairman, I yield 30 seconds to the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Let me respond, first of all, there is an expressed warranty provision in that that would cover the situation the gentleman mentioned. Let me say to my colleagues that when working on the statute of repose, we were looking for a particular length of time for the statute of repose. we found, to our amazement, that the longest statute of repose of any State is the State of Texas, the Lone Start State. And basically the statute of repose that is in this statute or in this bill copies almost word for word the Texas statute.

Mr. BERMAN. Mr. Chairman, I yield myself the balance of my time.

Let the body just remember, the product liability bill that the Committee on Energy and Commerce over several years has been passing and promoting on a bipartisan basis, the one that the gentleman from Ohio [Mr. OXLEY] always supported, was a product liability bill limiting the statute of repose to capital goods and providing 25 years. This is any product, any manufactured product, any manufactured product 15 years. And now you are taking out the medical benefit.

Mr. CHAIRMAN. All time in opposition to the amendment has expired. The Chair recognizes the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, I yield such time as me may consume to the gentleman from Wisconsin [Mr. SENSENBRENNER], a member of the committee, to close debate.

Mr. SENSENBRENNER. Mr. Chairman, I think to close debate it is important for us to focus on what a statute of repose is. A statute of repose is a limit during which period a lawsuit can be filed alleging negligence in the manufacture of that product.

The statute of repose here that is proposed is 15 years. That means that the product will have to be on the market and be used for 15 years, during which period of time a lawsuit can be filed and the manufacturer exposes himself to liability.

Is not 15 years long enough? If the product is defective, should not that defect become apparent within a 15-year period of time? I think the answer to that question is yes.

The gentleman from Ohio [Mr. OXLEY] has correctly stated that the 15-year statute of repose that is proposed in this bill is the longest of the State statutes of repose. So by federalizing this issue, we are in effect extending the time for which lawsuits can be filed in most States.

The amendment that the gentleman from Illinois is proposing is one that is very important, and that is taking out this last sentence, which was put in the statute of repose section by mistake, that says that if there is a penny of copayment or a penny of a deductible, then there is no statute of repose whatsoever, no limitation on when the lawsuit can be brought.

□ 1345

That will mean much higher product liability insurance premiums that manufacturers will have to pay. Who pays those product liability insurance premiums? We all do, as consumers, because those premiums are a cost of doing business. They are folded into the cost of the product.

By passing this amendment and establishing a standard of repose, we can lower those premiums, and thus lower the cost to our constituents. I urge an "aye" vote.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Illinois [Mr. HYDE].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 4 printed in House Report 104-72.

AMENDMENT OFFERED BY MR. SCHUMER

Mr. SCHUMER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SCHUMER: Page 13, redesignate section 110 as 111 and insert after line 3 the following:

SEC. 110. SUNSHINE, ANTI-SECRECY, CONSUMER EMPOWERMENT, AND LITIGATION AVOIDANCE.

(a) IN GENERAL.—To empower consumers with the information to avoid defective products, court records in all product liability actions are presumed to be open to the general public. No court order or opinion in the adjudication of a product liability action may be sealed. No court record, including records obtained through discovery, whether or not formally filed with the court, may be sealed, subjected to a protective order, or otherwise have access restricted except through a court order based upon particularized findings of fact that—

(1) such order would not restrict the disclosure of information which is relevant to public health or safety; or

(2)(A) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

(B) the requested order is no broader than necessary to protect the privacy interest asserted.

No such order shall continue in effect after the entry of final judgment or other final disposition, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) or (2) have been met.

(b) BURDEN.—The party who is the proponent for the entry of an order, as provided under subsection (a), shall have the burden of proof in obtaining such an order.

(c) AGREEMENT.—No agreement between or among parties in a product liability action filed in a State or Federal court may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such product liability action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

(d) INTERVENTION.—Any person may intervene as a matter of right in a product liability action for the limited purpose of participating in proceedings considering limitation of access to records upon payment of the fee required for filing a plea in intervention.

The CHAIRMAN. Pursuant to the rule, the gentleman from New York [Mr. SCHUMER] and a Member opposed will each be recognized for 10 minutes.

The Chair assumes the gentleman from Illinois [Mr. HYDE] will manage the time in opposition to the amendment.

The Chair recognizes the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, I yield myself 3 minutes and 15 seconds.

Mr. Chairman, I have been so used to open rules that I have forgotten how a closed rule functions.

Mr. Chairman, if there ever was a commonsense legal reform, this amendment is it. Every year hundreds of manufacturers who know their products are dangerous hide behind court secrecy orders to conceal the truth from the American public.

As a result, thousands of innocent, men, women, and children are maimed, poisoned, injured, and even killed simply because they never learn the truth. The truth and their fates are sealed in secret by lawyers behind closed doors. In some cases, secrecy order follows secrecy order, year after year, while the list of mutilated and dead grows longer and longer.

Let me just give one case, because this has been so much a battle of the anecdotes, that shocked me. It ought to shock everybody.

There is no more innocent activity than little kids going out to play. Yet, for over 13 years, an equipment manufacturer of playground equipment sold a merry-go-round that it knew was causing serious injury to scores of small children, mostly around 5 or 7 years old, children like little Rebecca Walsh, who had two fingers chopped off; like Larry Espinosa and Dale Lukens, whose bones were crushed; other children who had their hands and feet cut off. These kids were hurt and their lives forever twisted.

In spite of dozens of lawsuits against the manufacturer, because those lawsuits were settled in secret, the parents of these kids never had a chance to protect their children, and their children never had a chance to grow up whole.

The sad truth is that the history of product liability litigation is full of cases like that.

Mr. Speaker, I do not know what goes on in the minds of the men and women who sell these products, even after they know they are killing and injuring innocent people, but I do know one way to stop it. That is to open up the courthouse doors and shine the bright light of day on these dangerous products. That is all this amendment does. I hope we could get bipartisan support it. It bars courts from sealing their orders in product liability cases. It prohibits any other record in a product liability case from being restricted, unless, and there is indeed an exception, the court specifically finds that the order will not restrict information relating to public health or safety, or that some specific secrecy interest clearly outweighs the public interest in disclosing public health and safety.

In other words, there can be sealed orders, but the burden of proof ought to be the other way. When health and safety are at stake, the burden of proof ought to be that the order be open.

Finally, Mr. Chairman, it permits product liability settlement agreements that restrict parties from giving information to regulatory agencies. This is real common sense. I urge my colleagues to vote for this amendment. It is a vote against secrecy, for openness, and for the right of all Americans to know the truth about dangerous products.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think this is a very dangerous amendment. It is one that should be defeated. It would impair litigants' rights to maintain their privacy, protect valuable property interests, and interfere with settling legal disputes.

Massive amounts of private information are produced through the modern discovery process. The amendment requires the court to weigh the value of confidentiality versus the public interest in disclosure. To conduct such a weighing process on every document that is private would indeed weigh the courts down in endless disputes. Disputes over discovery issues would skyrocket, and further clog our courts.

The amendment would restrict judicial discretion in protecting confidential information, and would create lawsuit abuse, not eliminate it. The courts would have to conduct extensive and complex factual inquiries, which could include extensive hearings on and in camera review of thousands of documents. Such in camera review could result in an unfair and prejudicial prejudgment of the case.

This amendment would make it much more difficult to settle cases. It would prevent the mutual agreement between parties on issues of confidentiality, and would result in more contentious trials, consuming more time and attention than ever before.

There is no need for this amendment. The proponents of this amendment may trot out some tragic anecdotes allegedly supporting forced disclosure, but in each case the proponents of this amendment should be asked whether or not such information relating specifically to the alleged defect was not available to the public prior to the protective order, and in many cases, long before the lawsuits were even filed.

There is proprietary information, private information, information that does not belong in the public domain, and the judge now has ample authority to rule on whether this information shall be sealed or whether it should be made public. It is something that is best handled by court rules, not legislation.

Mr. Chairman, I do not know what else to call this but the Ralph Nader amendment, because it would permit any citizen at any time to intervene to get information that it wants, and that may or may not be helpful, but as a rule of law, it is the sort of thing that would obstruct the settlement of cases. It would make people very reluctant to disclose information on a nonconfidential basis.

I would sincerely hope that this gutting amendment would be defeated.

Mr. Chairman, this amendment represents a mischievous effort to compromise confidential information with potential adverse consequences for both businesses and injured parties. The amendment raises a new subject we did not consider in the Committee on the Judiciary.

The amendment can be interpreted as including a flat prohibition on sealing a court order or opinion in a product liability case. This prohibition—in contrast to the prohibition relating to a court record—apparently admits of no exception and may result in compromising trade secrets of American firms if the court order or opinion refers to such secrets.

By providing for public access to material obtained through discovery, we place in the public domain information that may have no relevance to pending litigation. The evidentiary standards for obtaining information through discovery are much broader than those applicable in a trial—a fact that renders inappropriate treating the discovery process like a public proceeding. The need to obtain a court order to restrict public access to records obtained through discovery can be expected to add immeasurably to the transaction costs of litigation—as parties go to court to safeguard the confidentiality of the discovery process. Alternatively, parties to litigation can be expected to resist discovery in order to keep irrelevant material from reaching the public domain. Efforts to avoid discovery or limit its scope may also add greatly to the transaction costs of litigation.

Providing that orders protecting confidentiality do not remain in effect after final disposition unless separate particularized findings are made by the court also complicates and prolongs the litigation process. Courts will be bogged down in considering such matters, and attorneys will invest considerable time and effort at additional costs to the litigants. Consumers will end up paying higher prices because of increased legal fees.

The amendment also discourages settlements by barring agreements between parties that purport to restrict disclosure of information to Government agencies.

Finally, this amendment adds to the costs of litigation—and exacerbates problems of delay—by allowing any person to intervene in a product liability action to participate in proceedings considering limitation of access to records. Although facilitating opportunities for some third parties to intervene in limited circumstances may be justifiable, the unlimited intervention mechanism this amendment establishes needlessly encumbers the litigation process.

Although I am committed to facilitating public access to relevant safety-related information, this shotgun approach to a complex subject is not the answer. Issues of confidentiality implicate not only the public's right to know but also the rights of victims to lead private lives and the rights of American corporations to protect proprietary information from foreign competitors; American jobs may depend on it.

Next week, the Judicial Conference of the United States will be considering proposed changes in rule 26(c) of the Federal Rules of Civil Procedure relating to protective orders. We should not precipitously preempt that process today.

I urge my colleagues to vote against this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. SCHUMER. Mr. Chairman, I yield 3 minutes to the gentlewoman from Illinois [Mrs. COLLINS], a coauthor of the amendment and ranking member of the former Committee on Government Operations, which is now the Committee on Government Reform and Oversight.

Mrs. COLLINS of Illinois. Mr. Chairman, one of the most questionable, if not unethical practices in product liability suits today is the use of court orders to bar public disclosure of manufacturer's information concerning product safety.

These orders result where, in a claim involving a defective product, the plaintiff's attorney, for example, needs documents and other evidence to establish a claim. Often, the manufacturer-defendant will seek a court order that requires the plaintiff, at the end of the case, to destroy or return to the manufacturer the evidence, without making it public. Since the plaintiff's attorney has a duty to protect the interests of his or her client—as opposed to those of the public at large—that attorney acquiesces to this request and agrees to seek the court order. The agreements are blessed by the court and then the documents are placed under confidential seal. Thus, access to product information comes at a heavy price.

In an interesting book describing litigation of asbestos cases, these bargaining tactics and their consequences that are harmful to the general public were graphically illustrated. After a Federal judge literally locked the lawyers in a room for 16 hours a day, 5 days a week, for 3 weeks, the parties agreed to a financial settlement of certain worker claims. In exchange, the plaintiff's attorneys agreed that whatever evidence they obtained from discovery could not be passed along to subsequent claimants. All papers were then sealed by the court.

One of the plaintiff's lawyers, acknowledging he had made a serious mistake in agreeing to the settlement terms, later said of the court's action:

> As a result, the disposition of Richard Gaze—a company physician—which provided powerful evidence of what the Pittsburgh Corning people really knew about asbestos disease, and when they knew it, remained under wraps for the next 5½ years.

Indeed, during that time period, the company denied to hundreds of claimants that it had any knowledge of this hazard until the mid-1960's, a contention that plaintiff's lawyers obviously could not rebut.

Unfortunately, this is not an isolated case. A serious design defect in the heating systems of Chevy Corvairs, first discovered in the mid-1960's, was not disclosed until 1971 because of a protective order. In another instance, involving the crash of several Pan Am 707's an attorney said that if certain in-house and FAA reports had not been sealed, "no one would have ever gotten on a Pan Am plane again." Similar orders were also entered into in Dalkon Shield cases. The list goes on and on.

It is time we put a halt to these orders, Mr. Chairman. The Schumer-Doggett-Collins amendment before you would do just that.

Our amendment would prevent the sealing of court records in all product liability actions, except under limited circumstances. Such court records could be sealed only through a court order in those instances in which, first, the order would not restrict the disclosure of information which is relevant to public health or safety, or second, the need to maintain confidentiality would substantially outweigh the public interest in disclosing potential health or safety hazards, and the order would be no broader than necessary to protect the privacy interest asserted.

The benefits of this amendment are numerous. First, it will promote greater public safety. If repeated litigation demonstrates that a product has a serious design flaw, or contains inadequate warnings, the public will be appraised of this information and can take appropriate action. Similarly, liberal disclosure will put pressure on a manufacturer to correct dangerous aspects of a product which might not be changed if the manufacturer could easily avoid the responsibility for its flaws.

The amendment will streamline the litigation process. Parties and courts involved in the trial of subsequent cases over the safety of a product will no longer face time-consuming and costly discovery procedures. They will not have to re-create the same information or relocate identical documents, starting from scratch. Consequently, attorney's fees will be reduced, and the choice of whether or not to bring a product liability claim to court will not be based on the ability to afford one.

The backlog of cases often faced by courts would be reduced and fairer and more consistent verdicts may result since juries would have the same facts before them.

Mr. Chairman, this issue's importance is reflected by the American Bar Association's recommendations, stemming back to 1986, that courts allow disclosure of relevant product information. The Schumer-Doggett-Collins amendment offers many positive benefits to the public, foremost of which is enhancement of public safety.

I urge support for this amendment, Mr. Chairman. It is time we let the sun shine in on corporate secrecy.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Wisconsin [Mr. SENSENBRENNER], a member of the committee.

Mr. SENSENBRENNER. Mr. Chairman, I would like to make two points. First, under the present procedure, whether or not court records are sealed is a matter of judicial discretion. I believe it ought to be kept that way. The judge who presided over the case, and assuming that there is a settlement offer that is coming before the court for approval, makes a determination on whether or not sealing the records is a reasonable request, and I think we ought to, in this instance, trust the judges to represent what is in the public interest.

This has to be done on a case-by-case basis. That is not to say that all records should be sealed, but it also is not to say that all records should be open, which is what the gentleman from New York is proposing.

The second problem with this amendment is, I think, what the gentleman from New York is trying to do is to do the work for lawyers in subsequent lawsuits on the same issue. Rather than doing their own discovery and finding out their own facts, they can simply go to the courthouse and rummage through the records that are already on file. Consequently, they end up not having to do as much work.

Mr. Chairman, we all know that most of these types of cases are taken on a contingency fee basis. By opening up the records and not having the lawyers do the work that they would have to do, they are going to end up spending less time, but their fees are not going to be reduced, because the fees are a certain percentage of the amount that is recovered.

For all these reasons, I think this amendment is a bad one, and ought to be defeated.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The gentleman yields back 1 minute to the gentleman from Illinois.

Mr. SCHUMER. Mr. Chairman, I yield the remainder of my time to the gentleman from Texas [Mr. DOGGETT], who has been a leader on this issue, and has provided invaluable help and assistance on this amendment.

The CHAIRMAN. Based on the 15 seconds consumed by the gentleman from New York [Mr. SCHUMER], the gentleman from Texas [Mr. DOGGETT] is recognized for 3¾ minutes.

Mr. DOGGETT. Mr. Chairman, the philosophy of this amendment is embodied in the first sentence, which is to empower individual consumers with the information to avoid defective products; court records in all product liability actions are presumed to be open.

The thrust of this amendment is that if we empower people to be responsible, to have the information to avoid defective products, they avoid litigation, and trial lawyers and all the problems that the authors of this legislation say their legislation is designed to resolve.

It is rather shocking to hear a series of contradictions from those who oppose the amendment. First they tell us that we should trust the judges. Mr. Chairman, if we trusted the judges of the 50 States, we would not be here this afternoon with this piece of legislation in the first place. The whole theory of House Resolution 1075 is that this body does not trust the judges of the 50 States, nor the 50 legislatures.

If we are going to address the problem as they see it, as they see fit to do it, why do we not try to do something constructive? That is what this amendment does. It says secrecy is not in the interests of the American people.

In fact, court records across this country, and this is not an anecdote, it is based on fact, court records across this country hide facts that literally kill and maim thousands of people in this country.

Two States have done something about it. The State of Florida passed a statute on the subject, and they have done a great deal to focus a little Florida sunshine, which is what we are trying to copy in this piece of legislation, so people are not deceived by facts that are sealed and hidden away in some dusty file drawer from the people that it could protect.

□ 1400

The second State is my own State of Texas, where we chose to do it by trusting the judges in a court rule of procedure to deal with this problem.

Of course what we do in this amendment does relate to court rules of procedure just as the rest of the bill does in dealing with bifurcation of punitive damages which is a rule of procedure that the majority has not the least bit of concern about interfering with the States on that.

The suggestion that this particular amendment would open all records belies the very words of the amendment. It does not do that. There are legitimate privacy interests in every lawsuit. There are legitimate trade secrets. All that we ask is that the better law of the Federal jurisdictions, the law that prevails, I think, in most Federal courts today, be codified in this statute as we are codifying other law, and require the trial judge to do what only judges can do if they act in their proper role, and, that is, to balance the interest. Is the public's interest in avoiding more deaths and more injuries? Does it outweigh whatever interest is claimed by the manufacturer?

Let me give Members some specific examples of where this kind of amendment, if it had been the law of this land, would have made the difference and would have prevented the destruction, interference and harm of thousands of lives.

One of these examples is the whole problem with breast implants. In 1984, 8 years before the major crisis over breast implants, there was information available concerning the danger of these implants and it was locked up in San Francisco in a vault, sealed in the first places of this litigation. That information could have been there so that those women avoided those breast implants in the first place. Instead, we have the literal and physical scars on many American women that would have never been there had they known the dangers that were locked up in those file drawers.

Another good example comes from the State of Florida, where it enacted this statute, where one pharmaceutical manufacturer of an arthritis medication actually convinced a court judge to prohibit any of the documents, not from being shared with Ralph Nader but from being shared with the Federal Food and Drug Administration so that they could do something about it. Indeed, the Food and Drug Administration learned much of the problems with breast implants, not from anything filed there but from what was sealed and secreted away in that vault in San Francisco.

That is the kind of thing that is happening in this country ever single day where people come in with one price to settle a lawsuit if the documents are open and one price if they are sealed.

Of course the person who is facing large medical bills, a serious threat to their earnings stream, many times is encouraged to take the higher price. But somewhere in all this the public interest gets left out. The role that we could play is by empowering citizens across this country to protect their own interests by knowing of the dangers that they face in the marketplace, making an informed decision, not locking this away but opening it up.

I would trust the judge to use this statute as we propose it through this amendment to carefully balance the interest, but to assume and presume that this Government operates best when it operates in the sunshine, when it operates in the open. That is what this amendment is all about, against secrecy, in favor of empowering the people of this country to protect themselves.

It is incredible that it would not be accepted because it represents true commonsense legal reform.

Mr. HYDE. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Ohio [Mr. OXLEY], and I ask that the gentleman yield to me briefly.

Mr. OXLEY. I yield to the gentleman from Illinois.

Mr. HYDE. I thank the gentleman for yielding. I would simply like to state the rule 26(c) of the Federal Rules of Civil Procedure has to do with protective orders and it provides the trial judge with authority in an appropriate case to seal documents or not to seal them. I prefer to leave it to the trial judge who is on the firing line and has the case before him or her and can make these decisions based on the type of case, the type of information, the demands of privacy, the embarrassment, the humiliation, the revelation of proprietary information or not. These are tough decisions, they are difficult decisions, and why should we make it for the judge and require the disclosure of these things?

I personally would like to know the formula for making Coca-Cola. I would suggest that has some monetary value. I would suggest the Coca-Cola people want to keep it quiet. In a lawsuit, why require its disclosure, if it is not essential to the litigation?

I yield to my friend, the gentlewoman from Chicago, IL.

Mrs. COLLINS of Illinois. I thank the gentleman for yielding. But, you know, if it were found that there was something in Coca-Cola that was killing folk, I certainly would want everybody to know about that.

Mr. HYDE. I certainly would expect our counsel or the plaintiff's counsel to urge the trial judge to disclose that if it was——

Mrs. COLLINS of Illinois. And I would urge them not to——

The CHAIRMAN. The Chair observes that the gentleman from Ohio [Mr. OXLEY] controls the time.

Mr. HYDE. The Chair is correct. I certainly should not have yielded, but she looked at me and I could not say no.

Mrs. COLLINS of Illinois. I know I have great charm. I thank the gentleman for recognizing it.

Mr. HYDE. I thank the gentleman for yielding.

Mr. OXLEY. Mr. Chairman, I had a judge tell me one time that a poorly settled lawsuit is much better than a well-tried one. I found in my experience that that was the case.

Indeed this provision, if it were to be adopted, the Schumer amendment, would clearly discourage the parties from considering whether that case should be settled. It seems to me that our public policy ought to be encouraging settlements, not discouraging settlements.

Judge Higginbotham, from the fifth circuit, testified on the Senate side as the chairman of the Advisory Committee on the Federal Rules of Practice and Procedure. He testified that his advisory committee had studied this particular idea and had found that no change was needed to the basic approach to the issuance and the use of protective orders.

In particular he stated that the results of these studies had shown that there was no need for these provisions and that they would create more burdensome and costly discovery as well as greater burdens on the court system.

Mr. Chairman, this amendment makes a mockery of our system of justice by allowing third-party special interests unlimited access to private corporate documents.

The gentleman previously had stated that one of the States that he pointed out that had changed the rules was Florida. In Florida, a trial lawyer recently testified that it has resulted in negative and confusing experiences that have discouraged out-of-court settlements.

I would suggest that the reason why 39 out of 41 State legislatures have rejected the type of change that the gentleman from New York would ask for is precisely because it would discourage the ability of companies and people involved in a lawsuit, to encourage them to come to a conclusion and to settle out of court.

I would think the gentleman from New York would want to have these kinds of settlements and not discourage those kind of settlements out of court and having to go to a trial and use up a lot of the resources of the court.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from New York.

Mr. SCHUMER. I thank the gentleman for his courtesy in yielding.

Does the gentleman not think that if these records were opened, particularly in some of the egregious cases, it would actually reduce litigation because you would not have to go through the same discovery and the same process over and over and over again?

First it would reduce it in that people would not use the product, but second, once they did, it would greatly shorten whatever kind of trial time we would need. Why go over it 100 times?

The only other point I would make to the gentleman is that we are not opening all records. We are just changing the burden of proof when the health and safety, in effect changing the burden of proof when the health or safety of someone is at stake.

I await, I am sure, the gentleman's thoughtful and carefully considered answer.

Mr. OXLEY. Let me just simply respond by saying that Judge Higginbotham's advisory committee that did a serious study on exactly what the gentleman from New York would try to do came to the very solid conclusion as he testified in the other body that it would have a deleterious effect on the litigation system and it would in fact discourage out-of-court settlements. This is somebody who has studied the issue, who has been a Federal judge, a well-regarded Federal judge, and I think that we ought to take his advice very carefully, as well as the 39 out of the 41 States that have essentially rejected the gentleman from New York's recommendations.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. SCHUMER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. SCHUMER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This will be a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 184, noes 243, not voting 7, as follows:

[Roll No. 220]

AYES—184

Abercrombie
Ackerman
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Bunn
Cardin
Chapman
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
Danner
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dixon
Doggett
Dooley
Doyle
Duncan
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gordon
Graham
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
Klug
LaFalce
Lantos
Lewis (GA)
Lipinski
Lofgren
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McNulty
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Moran
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOES—243

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brownback
Bryant (TN)
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dingell
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest

Gillmor
Gilman
Goodlatte
Goodling
Goss
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Orton
Oxley
Packard
Parker
Paxon
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—7

Andrews
Chenoweth
Clay
LoBiondo
Lowey
McKinney
Rangel

□ 1428

Mr. BARTLETT of Maryland changed his vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. LOWEY. Mr. Chairman, I unavoidably missed rollcall vote No. 220. Had I been there, I would have voted "aye."

The CHAIRMAN. It is now in order to consider amendment No. 5 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. CONYERS: Page 13, redesignate section 110 as section 111, and insert after line 2 the following:

SEC. 110. FOREIGN PRODUCTS.

(a) GENERAL RULE.—In any product liability action for injury that was sustained in the United States and that relates to the purchase or use of a product manufactured outside the United States by a foreign manufacturer, the Federal court in which such action is brought shall have jurisdiction over such manufacturer if the manufacturer knew or reasonably should have known that the product would be imported for sale or use in the United States.

(b) ADMISSION.—If in any product liability action a foreign manufacturer of the product involved in such action fails to furnish any testimony, document, or other thing upon a duly issued discovery order by the court in such action, such failure shall be deemed an admission of any fact with respect to which the discovery order relates.

(c) PROCESS.—Process in an action described in subsection (a) may be served wherever the foreign manufacturer is located, has an agent, or transacts business.

The CHAIRMAN. Pursuant to the rule, the gentleman from Michigan [Mr. CONYERS] and a member opposed will each be recognized for 5 minutes.

The Chair recognizes the gentleman from Michigan [Mr. CONYERS].

□ 1430

Mr. CONYERS. Mr. Chairman, this is a very important amendment. I apologize for having such little time.

This amendment makes sure that foreign manufacturers comply with the U.S. Court rules if they choose to have their goods sold in this country, and that includes discovery, which is one of the most important parts of court rules, if there is a lawsuit against a foreign manufacturer.

Our hearings revealed that many times our liability laws are of little use against foreign companies because it is so difficult to obtain jurisdiction over them and obtain discovery of the documents necessary to establish legal liability. And that is why within my 5 minutes I have asked the former chairman of the Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL], and the gentleman from Illinois [Mr. DURBIN] to share this time with me.

Mr. Chairman, I think my amendment will make sure that foreign firms can be brought to justice in this country just as American companies can be.

Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. I thank the gentleman for yielding this time to me.

Mr. Chairman, this is a fair amendment. It treats American corporations and foreign corporations in American courts exactly the same way. If you are interested in fairness, this is an amendment to vote for because it says foreign corporations must make the same disclosures in American courts under discovery process that must be made by American corporations.

If you are interested in competitiveness, this is an amendment on which you should vote. The argument for this legislation is that it is going to contribute to competitiveness. Well, if it is going to do so, it should do it fairly and completely. This says that foreigners do not get a greater advantage in dealing with American courts and American litigants than the foreign corporation. It says they have got to make the same discovery. Discovery is absolutely essential to the judicial process. Without fair discovery, there can be no fair judicial process, and without discovery in product liability suits, there can clearly be no discovery.

Without this amendment, what the bill will say is American corporations in court on product liability suits involving perhaps the same matter that might be involved with the litigation by a foreign corporation, have to disclose their whole case, but foreign corporations do not.

If you want American corporations to be competitive in a market in which foreigners sell better than $500 billion worth of goods, my suggestion is that you should then vote for this amendment. It is fair, it protects American corporations, it contributes to competitiveness, and it is in the interest of the United States.

Vote for the Conyers amendment.

The CHAIRMAN. The Chair inquires, is there a Member who wishes to manage time in opposition to the amendment?

Mr. HYDE. I do, Mr. Chairman.

The CHAIRMAN. The distinguished gentleman from Illinois [Mr. HYDE], chairman on the Committee of the Judiciary, is recognized for 5 minutes.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I oppose the amendment offered by the gentleman from Michigan because it raises significant constitutional and international law questions, represents a serious potential irritant in our bilateral relations with other countries, and raises the specter of foreign retaliation against American firms. For the United States to take unilateral action that is likely to be perceived as overbearing in character and constituting an affront to other nations is shortsighted and counterproductive.

The due process clause of the fifth amendment and principles of international law are implicated when we purport to confer jurisdiction on a U.S. court over a foreign manufacturer based merely on the fact that the manufacturer knew or reasonably should have known that the product would be imported into the United States. The criteria for U.S. jurisdiction in the amendment would even embrace situations where a manufacturer might not want its product imported into this country but knew or reasonably should have known that that eventuality would materialize in spite of its wishes.

The extent to which American statutes apply to foreign nationals already is a point of contention in our relations with other countries. Prudence dictates that we proceed cautiously in this arena rather than act precipitously without adequate consideration. Although the author of this amendment offered another amendment in the Committee on the Judiciary markup relating to service of process on a foreign manufacturer, our committee did not have the opportunity to give any consideration to the proposal now presented to this body.

There are internationally recognized procedures for Americans, litigating matters in the United States, to obtain relevant information or material from foreign countries. These procedures involve going initially to an American court—with the discovery request eventually being presented to the appropriate foreign court.

Many countries react negatively to U.S. discovery procedures—and efforts to give extraterritorial effect to discovery orders of U.S. courts, by deeming failure to comply as an admission, fail to show appropriate deference to the sensibilities and prerogatives of other countries. Our own discovery practices have been subject to severe criticism even within the United States—and efforts to export them in circumvention of the courts of a foreign country are unjustified. The extent to which failure to furnish material is deemed an admission under proposed section 110(b) is overbroad, in any event, because the admission embraces any fact with respect to which the discovery order relates even though the testimony, document, or other thing that is sought may turn out to be irrelevant.

The potential for foreign retaliation cannot be overlooked when we contemplate the possibility of foreign countries taking the position that American firms must respond in foreign courts—under foreign law—when the particular product is sold or used there.

The new proposed section also raises significant interpretive problems when we try to give content to the term "foreign manufacturer." U.S. manufacturers, for example, often have affiliates in other countries that manufacture component parts. The ambiguity of the reference to foreign manufacturer in proposed section 110 undoubtedly would precipitate much litigation.

It makes much more sense, in my judgment, to place primary emphasis in resolving this type of issue on international conventions and bilateral agreements. This body is not in a position today to contribute in a helpful way to addressing this subject.

I urge the defeat of the amendment.

Mr. CONYERS. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, what we just heard explained as the reason for opposing this amendment is absolutely astonishing. We are saying we should not subject a foreign manufacturer to our legal process because of free trade considerations. Now, ladies and gentlemen, if we are prepared to say that they should have a more lenient way in our courts than our own manufacturers, I will be astounded to hear such a statement.

Mr. Chairman, I yield the balance of my time to the distinguished gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. I thank the gentleman for yielding this time to me.

Mr. Chairman, the position taken by the Republicans in opposition to the Conyers amendment is going to give free trade a bad name. If foreign corporations want to sell their products to Americans in America, they should be subject to our laws.

Consider this possibility: There is a collision in my hometown of Springfield between a car made in Detroit and one made in Tokyo. People are severely injured. There is a suspicion that one of these cars had some type of defect in its brakes, for example, but we are not sure which one. So the person who is injured goes to court and sues both the American car company and the Japanese car company. Guess what? You can discover all the documents in the world from the American car company to find out whether you have a claim. But as soon as you try to get the Japanese car makers to supply this information, they say, as the gentleman from Illinois [Mr. HYDE] said, "No, no, no, it is a matter of international treaty. You can't find this out. You have to go to Tokyo."

We bought the car in Springfield, but you have to go to Tokyo for discovery. Let me tell you what we are talking about here is concealment and evasion. If my colleagues want to get up here, wave their American flags, and vote "Buy American" day in and day out, for goodness sakes, take a look at what this amendment says. If foreign corporations want to sell products to American consumers, why in the world should they not comply with American law?

The CHAIRMAN. In order to close debate, the gentleman from Illinois [Mr. HYDE] is recognized for 1 minute.

Mr. HYDE. Mr. Chairman, this amendment is unfair, it violates due process by allowing suits against corporations that "should have known" their products would be sold in the United States. It violates the fundamental principles of fairness, and it subjects corporations to suits that might never have intended to do business over here.

I know the distinguished gentleman from Illinois [Mr. DURBIN] who just spoke is familiar with the Hague Convention on the taking of evidence abroad. He would not intentionally want to violate those rules of discovery of foreign corporations which already exist. The amendment is unnecessary. It casts too large a net. We are subject to retaliation. There is no definition of a foreign manufacturer.

There are just so many things wrong with this that I urge a "no" vote.

The CHAIRMAN. All time has expired on this amendment.

The question is on the amendment offered by the gentleman from Michigan [Mr. CONYERS].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. HYDE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 258, noes 166, not voting 10, as follows:

[Roll No. 221]

AYES—258

Abercrombie
Ackerman
Allard
Andrews
Bachus
Baesler
Baldacci
Barcia
Barrett (WI)
Bateman
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bevill
Bishop
Blute
Boehlert
Bonior
Borski
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Brownback
Bryant (TX)
Bunn
Cardin
Chambliss
Chapman
Chenoweth
Clay
Clayton
Clement
Clinger
Clyburn
Coleman
Collins (IL)
Collins (MI)
Condit
Conyers
Cooley
Costello
Coyne
Cramer
Crapo
Danner
de la Garza
Deal
DeFazio
Dellums
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Doyle
Duncan
Durbin
Edwards
Emerson
Engel
Ensign
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Foglietta
Forbes
Ford
Fowler
Fox
Frank (MA)
Frost
Furse
Gallegly
Gejdenson
Gephardt
Geren
Gibbons
Gillmor
Gilman
Gonzalez
Gordon
Graham
Green
Gunderson
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hayworth
Hefley
Hefner
Hinchey
Hobson
Holden
Horn
Hostettler
Hoyer
Hunter
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Jones
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kildee
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Longley
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDade
McDermott
McHale
McInnis
McIntosh
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Meyers
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Montgomery
Murtha
Nadler
Neal
Ney
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Parker
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Poshard
Pryce
Rahall
Ramstad
Reed
Regula
Reynolds
Richardson
Riggs
Rivers
Roberts
Roemer
Rohrabacher
Rose
Roth
Roukema
Roybal-Allard
Royce
Rush
Sabo
Sanders
Sawyer
Scarborough
Schiff

Schroeder
Schumer
Scott
Serrano
Shuster
Sisisky
Skaggs
Skelton
Slaughter
Smith (MI)
Spratt
Stark
Stearns
Stenholm
Stokes
Studds
Stupak
Tanner
Tate
Tauzin
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Walsh
Wamp
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Williams
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Yates

NOES—166

Archer
Armey
Baker (CA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bilbray
Bilirakis
Bliley
Boehner
Bonilla
Bono
Bryant (TN)
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Christensen
Chrysler
Coble
Coburn
Collins (GA)
Combest
Cox
Crane
Cremeans
Cubin
Cunningham
Davis
DeLay
Dickey
Dornan
Dreier
Dunn
Ehlers
Ehrlich
English
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Ganske
Gekas
Gilchrest
Goodlatte
Goodling
Goss
Greenwood
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Heineman
Herger
Hilleary
Hoekstra
Hoke
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
Lucas
Manzullo
Martini
McCollum
McCrery
McHugh
McKeon
Mica
Miller (FL)
Molinari
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Norwood
Nussle
Oxley
Packard
Paxon
Porter
Portman
Quillen
Quinn
Radanovich
Rogers
Ros-Lehtinen
Salmon
Sanford
Saxton
Schaefer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Skeen
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stockman
Stump
Talent
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—10

Baker (LA)
DeLauro
Flake
Hilliard
Houghton
Kennelly
LoBiondo
Moran
Rangel
Towns

□ 1504

Messrs. PAXON, COBLE, and CHRYSLER changed their vote from "aye" to "no."

Messrs. BLUTE, WAMP, JONES of North Carolina, CHAMBLISS, POMBO, GALLEGLY, ROTH, PETRI, HORN, HAYWORTH, RAMSTAD, RIGGS, ROHRABACHER, HOBSON, McINTOSH, ROYCE, BEREUTER, CRAPO, CLINGER, and BACHUS, Ms. PRYCE, Mrs. CHENOWETH, and Mrs. FOWLER changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. MORAN. Mr. Chairman, during rollcall vote No. 221 on H.R. 956 I was unavoidably detained. Had I been present I would have voted "aye."

The CHAIRMAN. It is now in order under the rule to consider amendment No. 6 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. WATT of North Carolina: Page 17, lines 16–17, strike "by clear and convincing evidence".

Page 20, lines 4–11, strike the section in its entirety and renumber the subsequent sections accordingly.

The CHAIRMAN. Pursuant to the rule, the gentleman from North Carolina [Mr. WATT] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, let me put this in perspective for my colleagues, because this started out to be a part of a three-amendment package. Unfortunately, two of the three amendments the Committee on Rules did not see fit to make in order. So I want to talk a minute about the other two amendments and put this in context.

No. 1, this bill clearly preempts State law insofar as substantive law is concerned on products liability and in the area of punitive damages. But the bill actually goes beyond that to preempt State law, procedural law, by not only telling the States what standard of proof will be required, but also what the burden of proof will be in their courts.

The bill then, after it has preempted both procedural and substantive State law, says you cannot have access to the Federal courts under any circumstances to do any of this, so in effect it mandates the State courts not only the substance of what they shall apply as law, but the procedure by which they must apply the substantive law.

In North Carolina, in punitive damages cases, the burden of proof is beyond a preponderance of the evidence. That is the standard you must meet to win a case in North Carolina and in most State courts. This bill takes the standard and raises it to a standard of clear and convincing evidence, and by doing so not only preempts the substantive law of the State, but also preempts the procedural law of the State.

For my colleagues who have any respect for States' rights, it is one thing to say we will tell you what law to apply. It is an entirely different thing to say to the States we will tell you how to apply that law and how much of the evidence will be required to win a case and how you should try the case.

My colleagues, what I am trying to do by striking this clear and convincing evidence standard which is in this bill is to protect the integrity of our law in North Carolina insofar as we can do so to make sure that we at least begin to maintain the integrity of our procedural laws in North Carolina, even if my colleagues will not respect the substantive law in North Carolina.

Mr. Chairman, I reserve the balance of my time.

Mr. HYDE. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman is recognized for 10 minutes.

Mr. HYDE. Mr. Chairman, I thank the chairman for yielding me this time.

The amendment offered by the gentleman from North Carolina would strike section 201 of the bill, the clear and convincing evidence standard in punitive damages cases. This is an intermediate burden of proof that is higher than preponderance of the evidence, the general rule in civil cases, and a lower standard than proof beyond a reasonable doubt, which is the burden in criminal cases. Because punitive damages are not designed to compensate injured parties, but rather to punish or to deter egregious conduct, a higher threshold than that required for establishing a right to compensation seems entirely appropriate. It is inconsistent with our concept of fairness to impose punishment in the form of punitive damages merely on the basis of showing a probability, perhaps a 51-percent likelihood.

The discussion of this subject in the American Law Institute Reporters' Study on Enterprise Responsibility for Personal Injury in 1991 has this to say:

> In the case of punitive damages, the immediate victim's interests are not as important as society's need for optimal care, which includes avoiding overdeterrence and undue risk aversion by defendants to the detriment of people who need their goods and services. While the full-blown retributive rationale for punitive damages might suggest imposition of the criminal law standard of proof "beyond a reasonable doubt," what is at issue here is a civil monetary penalty against an organization, not the criminal condemnation and deprivation of liberty (or even life) of an individual. Consequently, we endorse the emerging consensus among legal scholars, practitioners, and state legislators in favor of an intermediate "clear and convincing evidence" burden of proof.

That is exactly what we have in this bill.

The report of the Special Committee on Punitive Damages of the American

Bar Association, its section on litigation, reached the same result. What they said in their report:

> Because one of the purposes of punitive damages is punishment, the committee feels that it is important that persons who are not guilty of conduct warranting an award of punitive damages should not be punished. The value in ensuring that innocent defendants are not held liable for punitive damages overrides the effects of a small number of instances where guilty defendants might not be held liable. The committee concludes, therefore, that the "clear and convincing" burden of proof is appropriate for an award of punitive damages.

That is what we have in this legislation. If we allow punitive damage awards based on too loose an evidentiary standard, we risk punishing defendants unfairly, and exacerbate pressures to offer settlements in cases of tenuous liability. Consumers of goods and services often end up paying the cost of inappropriate awards of punitive damages. For these reasons, I believe the standard of clear and convincing evidence is fair and reasonable. It is not a mere preponderance; it is not beyond a reasonable doubt; it is right in the middle, clear, and convincing evidence. The American Bar Association, recommends it; the American Law Institute recommends it; and I recommend it.

Mr. Chairman, the amendment offered by the gentleman from North Carolina would strike from section 201 of the bill the "clear and convincing evidence" standard in punitive damages cases. This is an intermediate burden of proof that is a higher standard than "preponderance of the evidence," the general rule in civil cases, and a lower standard than "proof beyond a reasonable doubt," the burden in criminal cases.

Because punitive damages are not designed to compensate injured parties but rather punish or deter egregious conduct, a higher threshold than that required for establishing a right to compensation seems entirely appropriate. It is inconsistent with our concept of fairness to impose punishment, in the form punitive damages, merely on the basis of showing a probability—perhaps a 51-percent likelihood.

The discussion of this subject in the American Law Institute Reporters' Study on Enterprise Responsibility for Personal Injury [1991] is particularly pertinent:

> [I]n the case of punitive damages, the immediate victim's interests are not as important as society's need for optimal care, which includes avoiding overdeterrence and undue risk aversion by defendants to the detriment of people who need their goods and services. While the full-blown retributive rationale for punitive damages might suggest imposition of the criminal law standard of proof "beyond a reasonable doubt," what is at issue here is a civil monetary penalty against an organization, not the criminal condemnation and deprivation of liberty (or even life) of an individual. Consequently, we endorse the emerging consensus among legal scholars, practitioners, and state legislators in favor of an intermediate "clear and convincing evidence" burden of proof.

The Report of the Special Committee on Punitive Damages of the American Bar Association Section of Litigation [1986] reached the same result. That report concludes:

> Because one of the purposes of punitive damages in punishment, the committee feels that it is important that persons who are not guilty of conduct warranting an award of punitive damages should not be punished. The value in insuring that innocent defendants are not held liable for punitive damages overrides the effects of a small number of instances where guilty defendants might not be held liable. The committee concludes, therefore, that the "clear and convincing" burden of proof is appropriate for an award of punitive damages.

If we allow punitive damages awards based on too loose an evidentiary standard, we not only risk punishing defendants unfairly but also exacerbate pressures to offer settlements in cases of tenuous liability. Consumers of goods and services often end up paying the costs of inappropriate awards of punitive damages.

For all these reasons, I believe the standard of "clear and convincing evidence" is fair and reasonable. I urge the defeat of the pending amendment.

□ 1515

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from California.

Mr. BERMAN. The gentleman makes a very good, well-documented case for the appropriateness of the clear and convincing standard.

Mr. HYDE. I thank the gentleman.

Mr. BERMAN. But what he has not said one word about is why we should be pushing our judgment onto a State in an area of which there is no Federal interest in deciding whether it wants a higher standard or a lower standard.

Mr. HYDE. Reclaiming my time, Mr. Chairman, there is a great interest in standardizing the elements of proof. We are trying to have a products liability and litigation standard that transcends the 50 boundaries, so as to not have 50 separate standards. It seems to me, when you get to the subject of punitive damages, which can affect the entire stream of commerce, it is beneficial to have a standard level of proof.

Mr. Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I think we need to put this amendment and others into context, because this is not the only bill that we have passed regarding this subject. We have the loser pays bill that is designed to get rid of frivolous lawsuits, but it also has an impact on lawsuits like this.

If you had a case, for example, that you could win under the present law and this change comes about, you had a case that was previously a winner, now is a loser on the punitive damages. And if you failed to settle the case for what was offered and because of this higher standard, you come in a little bit under what was offered, you now have a frivolous lawsuit, in which case you have to pay both sides attorney's fees.

Mr. Chairman, there is a case in 1984 where a plaintiff presented evidence in a case involving bandages that had been contaminated and they had bought the bandages, the warehouse, they had already been notified about the contamination. The quality control advisor had told them that the bandages were contaminated. And they were used, sold anyway, and a person was injured. Damages totaled, medical damages of only $4,200. But if that case had not been settled, and they received punitive damages under the present law, if this amendment is not adopted and they lost the case because of the higher standard, that would now be a frivolous case and they could be in a situation where they are paying not only their attorney's fees but the other attorney's fees.

Mr. Chairman, I would hope that we would leave it up to the States, not change the standard and not turn the clock back on consumer protection, because the fact that these cases can be brought means that other consumers can have bandages that are not contaminated, because the companies have not had to pay the punitive damages.

Mr. Chairman, this is a very valuable amendment. I hope we leave it up to the States to decide what the standard ought to be.

Mr. HYDE. Mr. Chairman, would the Chair advise how much time I have left?

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] has 5 minutes remaining, and the gentleman from North Carolina [Mr. WATT] has 4 minutes remaining.

Mr. HYDE. Mr. Chairman, I yield myself 1 minute.

I just wish to say, we are talking about punitive damages, which can have a serious impact on the economy, on jobs. They can extend, and do extend, well beyond the borders of a State. The purpose of this legislation is to standardize, as much as possible, in a fair way, the elements of proof that impact on our economy. If we want to have 50 patchwork sets of laws to deal with the economy and deal with products liability, why, I suppose we can. But the purpose of this legislation is to assist manufacturers, to give some certitude, some predictability, to do away with lawsuit abuse, forum shopping. Therefore, I must resist the gentleman's amendment.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1½ minutes to the gentlewoman from North Carolina [Mrs. CLAYTON].

Mrs. CLAYTON. Mr. Chairman, I rise in support of the Watt amendment. The bill before us would take certain legal standards in a direction that is inconsistent with our system of justice. First, under the bill, the burden of proof in awarding punitive damages would be imposed by the Federal Government, thereby preempting the States from regulating this area. And, second, the bill imposes an awkward standard of proof in civil litigation that would make it unusually and unfairly difficult for victims to recover.

The Watt amendment corrects these imperfections.

The bill establishes a standard of "clear and convincing" evidence as the burden of proof for the award of punitive damages. A victim would have to show that the defendant, first, specifically intended to cause harm and, second, manifested a conscious, flagrant indifference to the safety of others.

These new requirements would totally change the punitive damages burden of proof in each of the 50 States. It has been my understanding, Mr. Chairman, that the majority has been pressing to return power to the States, not to take it away. The bill language takes power from the States and imposes a federally created standard.

More importantly, however, the bill creates a new standard in civil litigation. Currently, the standard is "preponderance of the evidence." Apparently, under the bill, the preponderance standard would apply in the case in the main, but the "clear and convincing" standard would apply in assessing punitive damages. That is an awkward way to proceed and, in my view an unfair and unequitable way to proceed.

If you support the rights of States, and if you support a level playing field among litigants, support the Watt amendment.

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Ohio [Mr. HOKE], a member of the committee.

Mr. HOKE. Mr. Chairman, I think we have forgotten again what the basis is of punitive damages. Punitive damages comes from the doctrine of punishment which is really a quasi-criminal remedy. It is not strictly a civil remedy. That is the whole purpose of raising the standard of proof.

As we all know, lawyers on this committee know that the standard of proof, when it comes to proving a crime, is one of "beyond a reasonable doubt." And when you are merely proving a civil case, it is the "preponderance of the evidence." Well, "clear and convincing" is in between.

We are not talking about compensation here. We are talking about punishment. If we are going to go to a standard of proof that is going to mete out punishment, then we should require that that standard of proof be higher than the normal standard of proof that you find in a civil case.

While you can talk about States' rights or you can make other arguments until your heart is content, the fact is that what is really going on here is the need to have a standard of proof which meets the remedy. And the remedy is punitive, punishing—punishing the wrongdoer—if we are going to go to that point, after having compensated the victim for either his or her personal injuries or for property damages, to have a higher standard of proof. Otherwise, it is simply not fair and it is a way of using the civil justice system as a substitute for the criminal justice system in a way that is completely unintended, never was intended by our justice system and simply will not work.

Finally, it will undermine the confidence of the public in a system when they cannot predict what the outcomes are going to be, when they do not know what is going to happen and when they know that it is easier to get a punitive damage award for punishment at the civil bar than it is to actually convict someone of a crime at the criminal bar.

For all those reasons, I very strongly urge that we defeat this amendment.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, I listened to the gentleman from Ohio and I finally got it. New Jersey has a law that provides punitive damages uncapped for suits against sexual predators. They have a standard of "preponderance of the evidence."

How can we allow 50 different States to have 50 different standards against sexual predators? Sexual predators should know what the uniform, nationwide, 50-State standard is for punitive damages. This is a punitive kind of a thing. We have to protect these people against actions against them. Stream of commerce? Come on. Give me a break.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Chairman, at the same time last year I sat on the highest State court in the State of Texas, struggling with this very issue. Our court looked at what the standard should be on the question of punitive damages. It looked at "clear and convincing evidence." It looked at burden by "a preponderance." It looked beyond "a reasonable doubt," and it chose not to pursue this standard.

Other States have chosen to pursue the "clear and convincing" standard. There are some good arguments for it. But the one thing that is clear and very convincing about this debate is that our States are being denied that right and that people that come here praising the 10th amendment are shredding it in the course of this debate and are saying that State jurists and legal scholars and State legislators around this country shall not have the right to set the standard that will apply to their citizens.

So much of this debate is built on the theory that we not only need trickle-down economics, that what we need is trickle-down government and that it ought to trickle down from Washington instead of gushing up from the people and their State and local leaders.

I reject that, as this amendment does.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN. The gentleman from North Carolina [Mr. WATT] is recognized for 1 minute.

Mr. WATT of North Carolina. Mr. Chairman, it is clear that this is not about what the appropriate standard should be for burden of proof for punitive damages. The issue is not what that appropriate standard should be. The issue is, who ought to be setting that standard? If Members believe that the States have a place in our federation, which is what I have heard over and over and over again, I submit to my colleagues that the States ought to be determining for themselves what their own burdens of proof are and that we ought not at this level, at the Federal level, to be telling them that.

Regardless of whether we think it ought to be one thing or the other, higher or lower, the States have the right to make this decision, not my colleagues here in this body.

Mr. HYDE. Mr. Chairman, I yield the balance of my time to the distinguished gentleman from Wisconsin [Mr. SENSENBRENNER].

The CHAIRMAN. The gentleman from Wisconsin [Mr. SENSENBRENNER] is recognized for 2 minutes.

Mr. SENSENBRENNER. Mr. Chairman, I am shocked at listening to the argument from the gentleman from North Carolina [Mr. WATT] and the gentleman from Texas [Mr. DOGGETT]. That was the same argument that was used 30 years ago in this Chamber by those who were opposed to the civil rights legislation that revolutionized our society.

This Congress, 30 years ago used the commerce clause for passing the Civil Rights Act of 1964, one which opened up public accommodations, lunch counters, mom and pop cafes, local city buses to people of all races without discrimination. And that is one of the things that this Congress can take pride in doing.

What we are proposing to do here is to use the commerce clause for something that is just as much interstate commerce as the civil rights legislation. And that is to try to have a uniform standard throughout the country on punitive damages so that there will not be forum shopping in a State that has a lower standard on what has to be proven in order to get punitive damages.

There are a number of States that have adopted the clear and convincing standard, including California, and Colorado has adopted the beyond a reasonable doubt standard for punitive damages.

What will happen in the States that have adopted a higher standard than preponderance of the evidence is that those manufacturers will end up paying much higher product liability insurance premiums even though the people in that State will not be able to enjoy what they are paying for.

☐ 1530

Consequently, you are going to be seeing people in California, which has passed a clear and convincing evidence standard, through their higher consumer prices, benefiting the people in the other States that have not. This issue should be federalized, and the amendment should be defeated.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from North Carolina [Mr. WATT].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WATT of North Carolina. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This is a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 150, noes 278, not voting 6, as follows:

[Roll No. 222]

AYES—150

Abercrombie
Ackerman
Andrews
Baldacci
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
de la Garza
Deal
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Engel
Eshoo
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Frost
Furse
Gejdenson
Gephardt
Gibbons
Green
Gutierrez
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jefferson
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Maloney
Manton
Markey
Mascara
Matsui
McCarthy
McDermott
McKinney
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moran
Nadler
Oberstar
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Reed
Reynolds
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tejeda
Thompson
Thornton
Thurman
Torres
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—278

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Borski
Boucher
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cunningham
Danner
Davis
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Hunter
Hutchinson
Hyde
Inglis
Istook
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kaptur
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
Longley
Lucas
Luther
Manzullo
Martinez
Martini
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Morella
Murtha
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Obey
Oxley
Packard
Parker
Paxon
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—6

Cubin
Graham
Hall (OH)
Houghton
LoBiondo
Rangel

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The clerk announced the following pairs:

On this vote:

Mr. Rangel for, with Mrs. Cubin against.

Mr. POMEROY changed his vote from "aye" to "no."

Mr. FOGLIETTA changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. LOBIONDO. Mr. Chairman, I was granted a leave of absence through 4 o'clock this afternoon. I would like the RECORD to reflect that had been present I would have voted "Yes" on rollcall No. 217, "Yes" on rollcall No. 218, "No" on rollcall No. 219, "No" on rollcall No. 220, "Yes" on rollcall No. 221, and "No" on rollcall No. 222.

The CHAIRMAN. It is now in order under the rule to consider amendment No. 7 printed in House Report 104–72.

AMENDMENT OFFERED BY MS. FURSE

Ms. FURSE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Ms. FURSE: Page 17, strike line 22 and all that follows through line 2 on page 18 and redesigate the succeeding subsections accordingly.

The CHAIRMAN. Pursuant to the rule, the gentlewoman from Oregon [Ms. FURSE] and a Member opposed will each be recognized for 15 minutes.

The Chair recognizes the gentlewoman from Oregon [Ms. FURSE].

Ms. FURSE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment lifts this bill's caps on punitive damages because the cap in this bill discriminates against women, children, retirees, and low-wage workers. My amendment does not change the high standards of proof needed to get punitive damages.

What are punitive damages? They are damages the court sets as a punishment for conscious, flagrant indifference to the safety of others. In the few cases where they have been awarded, just 15 nationwide in 1994, they have proved to be effective. They have caused important changes in articles that people use or come in contact with, and these changes have saved lives.

This Republican bill for the very first time ties punitive damages to economic damages in such a way that it discriminates because it sets these punitive damages in such a way that injuring a rich person is punished more heavily than injuring a poor person. I ask Members, is that fair? Is that the American way of justice?

Under the Republican bill, the punishment of a conscious indifference to the safety of a person whose economic damages were $1 million could be capped at $3 million. Yet the punishment for the same conscious, flagrant indifference to the safety of a person whose economic damages were only $10,000 would be capped at $250,000.

Why? Why would we do that? I want to remind my colleagues that women, children, retired persons, people who earn less money than others would all have far smaller economic damages than a person who makes a great deal of money, $1 million a year, say.

I am in favor of some cap on punitive damages, but not a cap that discriminates against women and children and low-wage workers.

My amendment is simply a fair amendment. It believes that when we punish people for their flagrant disregard for the safety of the people who use a product that they will be punished fairly. I ask a "yes" vote on the Furse-Mink amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. HYDE. Mr. Chairman, I rise in opposition to the Furse amendment.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] will be recognized for 15 minutes to manage the opposition to the Furse amendment.

Mr. HYDE. Mr. Chairman, this amendment eliminates one of the most important features of this bill: the cap on punitive damages. Under section 201(b), a punitive damages award cannot exceed three times the award for economic loss, or $250,000, whichever is greater. Without a cap on punitive damages, our ability to compete in international markets is compromised, the settlement value of cases is inflated, consumers pay higher prices, and defendants face risks out of proportion to injuries sustained.

U.S. competitiveness is compromised because many countries of the world do not recognize the concept of punitive damages at all. We, in the United States, allow virtually unlimited punitive damages. The settlement value of cases is greatly inflated because defendants feel pressure to settle cases with very tenuous liability rather than face the possibility of high punitive damages awards. American consumers pay higher prices because American businesses, from manufacturers to service providers, factor their punitive damages exposure into their costs.

Punitive damages are not designed to compensate for losses. They are designed to punish wrongdoers, not compensate victims. The provisions in H.R. 956 do not affect, in any way, a victim's full recovery of complete economic damages, such as medical costs and lost wages, or noneconomic damages, such as for pain and suffering and emotional distress.

Even, would you believe, the Washington Post editorial staff supports punitive damages reform. Just last Wednesday they wrote that punitive damages reform is "long overdue, guidelines and limits must be set."

Due process must limit States' authority to impose punitive damages. In a recent case, Pacific Mutual Life Insurance versus Haslip, the U.S. Supreme Court held that the due process clause limits the ability of States to impose punitive damages. The Court expressed concern about punitive damages, which have run wild, and made it clear that this was an area calling for reasonable and rational reform.

Punitive damages impede quick settlements. Under today's system, punitive damages vary so greatly and are so uncertain they get in the way of quick settlements.

These damages are a total wild card in today's lawsuits. Because under the current system, no one has any idea of what a final punitive damage verdict might be, both sides find it difficult to reach the agreement necessary for speedy resolution.

I urge a "no" vote on the Furse amendment which removes from the bill the reasonable limits on punitive damage awards.

Mr. Chairman, I reserve the balance of my time.

Ms. FURSE. Mr. Chairman, I yield 5½ minutes to the gentlewoman from Hawaii [Mrs. MINK].

Mrs. MINK of Hawaii. Mr. Chairman, I thank the gentlewoman for yielding me time.

I am very proud to rise in support of the Furst amendment which I also submitted to the Committee on Rules for consideration. Under our system of justice, individuals who are injured have the absolute right to go to court to seek compensation for damages that they have suffered. This is a basic right under our American system of law and it is a right that has to be defended, and that is why the gentlewoman from Oregon [Ms. FURSE] and I are here today, defending the basic fundamental right of all Americans to have the same equal provisions of justice applied to all of us irrespective of whether we work or do not work, whether we are men or women, poor or rich, young or old. The system of justice has to be equal. This section that we are seeking to strike from the bill is an absolute discriminatory provision which goes against women who are homemakers or women who are low-wage earners, children, elderly, and the poor in our society.

I find it very difficult to understand why this provision was added to the bill except perhaps it helps insurance companies. Because as I understand the majority party and those that I have worked with over the years, they are champions, absolute champions of individual rights. Besides that, they belabor the point that they do not want interference from the Federal Government of the rights and prerogatives of State governments. This is exactly what we are trying to strike out of the bill, an absolute invasion on the prerogatives of the State to decide how they want to apply this concept of punitive damages under State law.

I believe that punitive damages are appropriate and that the State statutes ought to govern how they are to be applied. States have enacted them. They have worked under punitive laws setting up standards and whatever. I do not understand where the justification is for now coming in and overturning all of these State statutes. In fact, when you look at the records of the number of punitive awards that have been made in the last 25 years, there have been only 355 such punitive damage awards. Half of them have been either reduced or overturned. So where is this overwhelming necessity to supplant the State laws with now the wisdom of the Congress of the United States? I submit that the case has not been made for such intervention.

□ 1600

The courts ought to be allowed to determine whether punitive damages ought to be leveled and what the damages should be dependent on the egregiousness of the injuries sustained by the victims. There should be no limits and if there has to be one, certainly it has to be nondiscriminatory.

Limits that are discriminatory should be banned under any concept of equal justice in America. Where people are allowed to receive more damages, punitive damages because of their economic status, because they are a CEO or they are a rich attorney, is simply not fair. The economic standing of the individual who has gone to court and supported the concept of punitive damages and won that concept by the court should not have those damages limited because they are poor, because they do not work, because they are children, because they are women or because they are retired. Unfortunately this bill sets a punitive damage cap which is unfair and only allows the rich to have the kind of award as indicated here in the chart.

Mr. DOGGETT. Mr. Chairman, will the gentlewoman yield?

Mrs. MINK of Hawaii. I yield to the gentleman from Texas.

Mr. DOGGETT. A couple of questions that the gentlewoman's comments have raised. The first one is I believe every Member has received today a package of old fashioned Girl Scout cookies. Does the gentlewoman have any understanding of why these special interests keep hiding behind the skirts of the Little League and outfits like the Girl Scouts instead of fighting their own battles?

Mrs. MINK of Hawaii. I think it is basically because they cannot stand up on their two feet and defend what they are doing to the women and children of this country, so they are using mischievous allegations that the Girl Scouts support this.

Mr. DOGGETT. Will the gentlewoman yield for another question?

Mrs. MINK of Hawaii. Yes, I yield to the gentleman from Texas.

Mr. DOGGETT. If the young women who are pictured on this box of Girl Scout cookies, if they get injured and they are scarred or maimed for life, will they get less unless the amendment is adopted than the corporate lobbyists who sent these boxes of cookies to every Member?

Mrs. MINK of Hawaii. Unless they can prove economic damages, which children cannot do, they will get nothing, no matter how egregious the injury and suffering of the children, and I urge this amendment be adopted.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the distinguished gentleman from Ohio [Mr. HOKE], a member of the committee.

Mr. HOKE. Mr. Chairman, we have heard repeatedly over the past several days of debate that there have been only 350 cases in all of American history that have resulted in the assessment of punitive damages and we have just heard that in fact this movement to try to put some sort of cap on punitive damages is being brought by special interests. But what we are not hearing about from the other side is the biggest special interest of all in the U.S. Congress, and that is the special interest of the trial lawyers. Two million dollars was spent by the trial lawyers in the 1993–94 cycle supporting Democratic candidates.

Let us look at the truth about this outrageous claim there have only been 350 cases in all of American history resulting in the assessment of punitive damages. That is complete hogwash and they know it is hogwash. They know there is no central list of punitive damages nationwide and they can pay for studies that will say whatever the lawyers want to say.

The case the trial lawyers mentioned represents a fraction of the type of cases in which punitive damages have been recovered. In just the last 4 years in the State of California alone there have been 253 jury verdicts in punitive damages cases to the tune of $1.6 billion, and in the past 2 years in four other States there have been 158 punitive damages alone. That is all punitive damage awards in just five States since 1990.

In order to understand the rationale for capping punitive damages we have to first look at the doctrine that underlines punitive damages themselves. Punitive damages are meant to be punishment for wrongdoing, the civil analog to a criminal fine. As we all know they are in addition to compensatory damages, those are the damages that are meant to compensate the victim for personal injury or damage to property. Punitive damages are a civil remedy that in many ways take on the qualities of a criminal remedy, and it is where the civil and the criminal law intersect.

This is why there is a fundamental problem with not having some outer limit on what the jury can render as punitive damages.

In order for our system of justice to inspire confidence in the public, it has to be meted out in a dispassionate and evenhanded and fairminded way which is consistent with respect to all parties in all situations or at least as consistent as possible. But the development of the doctrine of punitive damages in the past several decades has actually moved us in the opposite direction and it has moved us in the direction of unpredictability, not evenhandedness and is very much subject to passions which can be aroused by vigorous and inflammatory representation and counsel. To ensure public confidence in our justice system justice cannot be subject to capricious and unpredictable results. This is why in criminal cases we have never given juries the unfettered ability to set maximum fines.

Ms. FURSE. Mr. Chairman, I yield 1½ minutes to the distinguished gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Chairman, in case Members have not been following the debate closely, it has been a great break for Wall Street and the advice of the day is buy insurance company stocks because this legislation is a tremendous gift to the insurance companies. The gentleman who preceded me talked about generous contributions of the Democrats to the trial lawyers and consumers groups but what he forgot was that more than 12 times as much money flowed from insurance companies and other corporations to the Republican Party. And they are getting their payoff here today.

We are going to preempt the judgment of every jury in America on this floor today. The judgment of that side of the aisle is better than those 12 or 10 men and women who sit in judgment of their peers. We are throwing equal justice out the window. We are imposing caps, we are imposing discriminatory caps, caps that say, well, if you are a middle-income worker or you are a spouse or you are a child or a college student, you are worth a lot less in terms of punitive damages than a corporate executive.

That is what this amendment would overturn. Otherwise we will impose that discrimination, we will give that benefit to the better off, enshrine it in Federal law. We always knew the wealthy have done better in court. Now we are going to mandate that the wealthy do better in court.

What about the Ford Pinto? There has not been much discussion of that down here today. Do my colleagues not think there is a place for punitive damages when one of the largest corporations in the world willfully, it knows that its product is defective and it will cause death, and it willfully hides that.

Mr. HYDE. Mr. Chairman, I am pleased to yield 4 minutes to the gentleman from Virginia [Mr. GOODLATTE], and I would hope the gentleman could tell us some insurance companies that cover punitive damages. My understanding is they will cover negligence, but they do not cover punitive. But apparently they do; the gentleman from Oregon said so.

Mr. GOODLATTE. I thank the chairman for yielding me this time and I think he makes an excellent point.

This is a very important amendment to defeat, and the reason it is is that it is going to effectively limit our ability as a country to have a due process, a due course for setting public policy in this country. The problem we have is that only in recent decades has it become popular to offer up through juries multimillion dollar punitive damage awards that have the effect of going well beyond what juries were selected to do. And the jury system in this country is an excellent one. It works very well when it is working to resolve disputes between two or more people in court.

But when you arbitrarily have a system in this country where a jury in one community in the country can impose a multimillion dollar punitive damage award and have the effect of changing public policy in this country, sometimes good, sometimes not so good, as in the case of a Mercedes Benz scratch on a vehicle where a multimillion-dollar award is made.

And how about this case that Justice Lewis Powell wrote about involving an insurance company that appealed a jury's punitive damage award of $3.5 million on its alleged bad faith failure to pay $1,650.22 on a $3,000 insurance claim. Now where is the predictability and fairness of this to anybody doing business in this country, large business or small, to say that when you have a $3,000 insurance policy, and one of your many thousands of employees screws up and does not pay $1,650, that somebody should be liable for $3.5 million? What kind of windfall is that to the plaintiff in that case? It is absolutely inappropriate and it should not be allowed. That is why these caps are important.

The gentlewoman makes a point that there is discrimination in the way this is imposed, because somebody who has larger economic damages will receive more than somebody who has smaller economic damages.

In point of fact it could be the reverse, though, because an executive could have very small economic damages and a janitor could have very high medical bills and lost income and so on if it goes for many years.

But notwithstanding that point, let me point out this: We can cure this problem by adopting the amendment that is coming up shortly. Why should the plaintiff receive punitive damages in the first place? The plaintiff is rewarded for economic damages. That is the lost income they have. That is the lost future income they have. That is the medical bills they have and other out-of-pocket expenses. In addition, though, they are entitled to noneconomic damages for pain and suffering.

This is something that is beyond what the plaintiff has lost, both in terms of their pain and in terms of their actual loss, and it ought to be going to a public good, if it is indeed intended to punish somebody.

We can solve this by adopting the Hoke amendment which gives the preponderance of punitive damage awards to the State, to the State Treasury for the general public good. That is what should be done with the punitive damage awards we allow underneath the caps and that will solve the problem of discrimination, because plaintiffs are given compensation based on economic damages and noneconomic damages and not based upon punitive damage awards.

That is what Justice Powell pointed out when he wrote that "Alabama's system," that is where that award was made, "like that employed by other States that permit punitive damages, invites punishment so arbitrary as to be virtually random: In each case, the amount of punitive damages is fixed independently, without reference to any statutory limit or the punishment applied in any other case." Jurors award punitive damages cases, they determine the dollar amount between zero and infinity. "This grant of standardless discretion to punish has no parallel in our system of justice. In the Federal system and in most States criminal fines are imposed by judges," and I oppose the amendment.

Ms. FURSE. Mr. Chairman, I yield 1½ minutes to the gentleman from New York [Mr. HINCHEY].

Mr. HINCHEY. Mr. Chairman, there is no doubt that our legal system can and should be improved. But this measure like so much of the Contract With America, goes too far. It is extreme, it is radical and it is unfair. It would deny people their opportunity to go to court to get justice.

Let me tell you a story of a person who lives near my district. Alice Hayes, 57 years old, worked on an assembly line all her life, went to work one day in the plastics molding factory, stuck her hands in the machine to remove the plastic mold, and the machine came down on those hands and severed them and her forearms as well. Alice Hayes no longer has her hands and no longer has her forearms; she will never get those hands back. But under the present law in New York, she at least has the opportunity to get justice. Under this bill she will lose both, her hands and the opportunity for justice.

This amendment at least provides some opportunity for punitive damages, so that she could be somewhat compensated for the loss that she has sustained. This bill will deny that opportunity.

This amendment should be passed.

Furthermore, this bill ought to be defeated.

There was another instance, an elementary school in Coldenham in which one day the cafeteria wall collapsed and the roof came crashing down on the children in that school. A number of them lost their lives, others were injured.

This bill will prevent them from getting the opportunity for justice.

The amendment should be passed.

The bill should be defeated.

Ms. FURSE. Mr. Chairman, I yield 1 minute to the gentlewoman from New York [Ms. VELÁZQUEZ].

Ms. VELÁZQUEZ. Mr. Chairman, I thank the gentlewoman for yielding time to me.

Mr. Chairman, I rise in strong support of the amendment. The cap on punitive damages is one of the most antiwomen extreme Republican measures introduced this year. It must be removed.

Contraceptives, breast implants, and other pharmaceutical products have been put on the market, and later found to cause very serious injury to millions of women. Punitive damages are often the only thing that saves millions of others.

A. H. Robbins implanted over 2 million women with Dalkon Shields—even though the company knew that they could develop a life-threatening uterine infection. After large punitive damage awards, they quickly pulled the IUD from the market.

Juries award punitive damages when manufacturers act with extreme recklessness, or conscious disregard of harm. Large awards encourage companies to quickly pull dangerous products from the shelves. They deter others from selling harmful devices.

Punitive damages save lives—often women's lives. I urge my colleagues to vote for this amendment, and remove one of the worst antiwomen measures considered by this Congress.

□ 1615

Ms. FURSE. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas [Ms. JACKSON-LEE].

Ms. JACKSON-LEE. I thank the gentlewoman for yielding this time to me.

Mr. Chairman, I rise to ask the real question as to what we are doing here today. First of all, because I think that we are misleading the American people by saying that by this amendment we are removing the element of protection under punitive damages. The States are already handling this.

What this amendment does is it recognizes needs of women and children, and it particularly helps me to address the questions of Marilyn, a loving grandmother in my district in my hometown of Houston, TX, whose faulty silicon breast implants have caused her total disability and agony.

Marilyn's daughter, Theresa, also suffers from severe neurological disorders that have been passed on to her by her mother. And as Theresa breastfed her three children, Marilyn's 5-year-old granddaughter now shows symptoms of silicon poisoning.

Do we not realize that since 1965 to 1990 there have only been approximately 358 punitive damages cases, and most of them have been overturned? The real question is that we must look at whom we are trying to address, business to business? We are willing to do tort reform and help them, but we are also going to abuse our women and children in the process.

Ms. FURSE. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. Mr. Chairman, I rise in strong support of this important Furse amendment.

Mr. Chairman, one of the most revealing features in the Republican Contract With America is the limit on punitive damages. Because this limit will take away one of the most effective means of protecting Americans from the products that will kill, maim, induce sterility, or otherwise injure.

Of course, the most profound lie being told about punitive damages is that they are awarded too often. The truth is that punitive damages are awarded only in rare cases. Between the years 1965 and 1990, there were just 355 punitive damage awards in product liability cases. Excluding asbestos cases, there were an average of only 11 such awards each year, many of which were reduced on appeal.

In exchange for the rare egregious cases that punitive damages are assessed, there are immeasurable gains in public safety. That's right, this limit on punitive damages to three times economic loss or $250,000 is a massive assault on public safety. I ask you to listen closely and I will tell you why.

Parents of America listen to this. In 1980 a darling 4-year-old girl was permanently maimed with second and third degree burns when her highly flammable pajamas caught fire. She merely reached across the kitchen stove to turn off a timer. Company officials were quoted as saying they new the pajamas were unreasonably flammable, and that making them flame retardant was economically feasible. But they failed to take the steps needed to protect the little girl. It took the sanction of punitive damages to get the company to act responsibly and make children's pajamas safe.

Women of America remember the crime of super-absorbent tampons and toxic shock. The manufacturers of Playtex's super-absorbent tampons knew, according to the 10th Circuit Court's findings, that their product could increase the risk of toxic shock but, according to the 10th Circuit Court, "deliberately disregarded studies and medical reports linking high absorbance tampons fibers with increased risk of toxic shock." Countless of innocent women suffered. It took $10 million in punitive damages to force Playtex to take the deadly product off the market. This is the type of crime the Republican contract would allow to go unchecked.

Women of America will also remember breast implants that manufacturers knew were not safe. Women were left in wheelchairs, weak, ill, and disabled for life. Punitive damages got these off the market.

And for anyone who likes the outdoors, listen to this. Had this bill been law during the Exxon *Valdez,* the punitive damage limit would have shielded Exxon's liability to just $860 million, the equivalent of 4 minutes of Exxon's annual revenues.

And even worse, the punitive damages limit preempts all State punitive damages laws. This bill will limit punitive damages in State actions for sexual abuse of children [New Jersey Stat. Ann Sec. 26:5C–14], Drunk Driving [Minnesota], for the selling of drugs on minors [Illinois], and for much else at the State level.

This bill's obnoxiousness does not end there. It is patently discriminatory against women as well as middle and low wage earners. That's because punitive damages are calculated by economic damages alone, with noneconomic damages like the loss of reproductive ability being totally discounted. If an insurance executive making $1 million and a middle-class housewife who stays at home taking care of her family are both injured by the same product, the insurance executive would be eligible for $3 million in punitive damages, whereas the housewife eligible for only $250,000, less than 10 percent. This would be so even if the injury resulted in the woman's sterility.

Where is this new majority's commitment to fighting these types of crime. Why such the rhetoric when it comes to stopping crime that occurs in the streets, but not crimes that occur in our commercial relations.

Without this amendment, this bill will severely limit the rights of States trying to stop child sexual abuse, of women whose reproductive organs will be vastly undervalued, of average working Americans who depend on our laws to deter the biggest corporations from injuring us with defective products. I urge support of the amendment.

Ms. FURSE. Mr. Chairman, I yield 1 minute to the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. I thank the gentlewoman for yielding this time to me.

Mr. Chairman, if we take the case which is before us and we change it just slightly, the business executive who was mowing the lawn and his 15-year-old son or daughter was mowing the lawn and the engine of the lawnmower exploded, blinding the executive, blinding the daughter, the measure of damages now would be, under this punitive new standard, that the executive could collect his $3 million as a punitive damage. The girl, the daughter, could only collect whatever the jury might think she might be entitled to, but capped at her economic worth, which is $5 an hour, which is what her mother or father was paying her to mow the lawn.

The point of a punitive suit being to send a signal to the entire lawnmower industry to fix this engine. Now, who should collect? It should be that little girl, not some socialistic scheme that gives the money back to the States. It should be to that girl who had the courage to bring the case.

Mr. HYDE. Mr. Chairman, I yield 3 minutes to the gentleman from Iowa [Mr. GANSKE].

While Mr. GANSKE is approaching the well, I might add that the case that the gentleman from Massachusetts [Mr. MARKEY] mentioned, the lifetime diminution of earnings for the young girl, would amount to a lot more than what the gentleman has on the chart.

Mr. GANSKE. I thank the Chairman for yielding this time to me.

Mr. Chairman, I rise to speak against the amendment and in support of the bill.

For 2 days now, the opponents of this bill have brought up the issue of breast implants.

Now, although I disagree with their interpretation of the facts, I think the issue of silicon silastic is a good example of why we need a product liability bill.

There has been a tremendous amount of disinformation on this issue. I can speak from personal experience. My mother had breast cancer when she was 23 years old. She had a breast reconstruction about 8 years ago.

I have personally reconstructed over 200 women who have had mastectomies for cancer.

The science shows a couple of things: First, there is no correlation between silicon implants and cancer. There is no correlation between silicon implants and autoimmune diseases, as attested to by the recent statement by the American College of Rheumatology.

But I think a bigger issue—and we can disagree with these things—but the bigger issue is this: If you get into a situation where a jury is making this kind of decision as to whether a whole class of products will be available or not, then that jury is legislating. And what we have is a situation then where, if we lose, a type of class of medical products, silicon silastic, for example, is the basic material for such things as in-dwelling catheters for cancer patients. It covers cardiac pacemaker batteries, for example. It is a material that makes cerebral spinal fluid shunts for babies who have hydroencephalitis.

The point is that if you have a disagreement on a material, the proper procedure would be for this to go through a regulatory agency process, have a cost-benefit scientific analysis, and if there is a disagreement, then you bring that on to the floor of the legislature to be debated.

I think the issue is really this: that when we get involved with some of the scientific issues, let us go through a regulatory process, debate it on the floor of Congress. But the situation with the punitive damages is that one jury out of 100 will make such a huge award that their action, then, is making a determination for the whole rest of the country in terms of a whole class of products.

That is why I would urge my colleagues to reject this amendment and to vote for the bill.

Ms. FURSE. Mr. Chairman, I would like to close by saying that this is such a simple amendment. In this amendment we are not talking about whether there should be punitive damages. The Speaker who came before me I do not think realizes that for punitive damages you have to prove conscious, flagrant indifference to the safety of others.

What my amendment says is, if you have two cases, two cases with the same injury, the same guilt, you should have the same punishment.

But under H.R. 956, the Republican bill, if you have two cases with the same injury, the same guilt, you get different punishments. Why is that? That is not justice as we know it in America.

I ask people to vote for my amendment. What my amendment says is that every person injured has the right to the same treatment under the law.

I thank the gentleman and yield back.

Mr. HYDE. Mr. Chairman, I yield the remainder of the time to the distinguished gentleman from Wisconsin [Mr. SENSENBRENNER].

Mr. SENSENBRENNER. Mr. Chairman, the people who support this amendment would have everyone believe that unless the amendment is adopted, we are taking away peoples' rights to sue. That is not the case. There is a constitutional right to sue, and even if we wanted to take that away, which we do not, that could not be taken away under the Constitution.

Second, those who support the amendment would have everyone believe that there is a different standard of justice that is applied. That is not true either. The jury makes the determination of economic damages based upon the evidence that is placed before it. That jury cannot discriminate based upon race, based upon age, or based upon gender. It is based upon the evidence that is introduced in that trial and admitted into evidence. And they make the determination on what the economic damages are, and they issue a verdict that will make a plaintiff who has been a victim of the negligence of another, whole.

What we are talking about here is punitive damages which are over and above making the injured party whole, in placing a cap on those punitive damages. Punitive damages are not intended as compensation, they are intended to be punishment. In the case of Browning Ferris Industries versus Kelso, 1989, all nine members of the Supreme Court of the United States expressed concern regarding punitive damages. Those justices are not extremists, those justices are not Republicans, those justices look at the law in the cases that come before them.

Justice Brennan, who is hardly a rightwing extremist, and countless other members of the Court have stated time and time again that punitive damages are for punishment of aggravated conduct and are a windfall to the plaintiffs.

The impact of such a windfall recovery is both unpredictable and at times substantial, said the court in Newport versus Fall Concerts, 1981. "Juries assess punitive damages in wholly unpredictable amounts bearing no necessary relation to the actual harm caused," said the Supreme Court in Gertz versus Robert Welsh, Inc., 1974.

Let us put some sense in this area. Let us reject the Furse amendment.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentlewoman from Oregon [Ms. FURSE].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Ms. FURSE. Mr. Chairman, I demand a recorded voter.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 155, noes 272, not voting 7, as follows:

[Roll No. 223]

AYES—155

Abercrombie
Ackerman
Andrews
Baldacci
Barcia
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Clay
Clayton
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
English
Eshoo
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Istook
Jackson-Lee
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Mascara
Matsui
McDade
McDermott
McHale
McKinney
Meehan
Meek
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Murtha
Nadler
Neal
Oberstar
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Pomeroy
Poshard
Rahall
Reynolds
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Skelton
Slaughter
Stark
Stokes
Studds
Stupak
Tejeda
Thompson
Thurman
Torres
Traficant
Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wyden
Yates

NOES—272

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Boucher
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cunningham
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Ensign
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kaptur
Kasich
Kim
King
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
LoBiondo
Longley
Lucas
Manzullo
Martinez
Martini
McCarthy
McCollum
McCrery
McHugh
McIntosh
McKeon
McNulty
Menendez
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Moran
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Obey
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Reed
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thornton
Tiahrt
Torkildsen
Torricelli
Towns
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Wynn
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—7

Cubin
Forbes
Kelly
Livingston
McInnis
Morella
Rangel

□ 1646

The Clerk announced the following pairs: On this vote:

Mr. Rangel for, with Mr. Forbes against.

Mr. CHAPMAN and Mr. TORRICELLI changed their vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. KELLY. Mr. Chairman, I voted "nay" on the Furse amendment to H.R. 956, Common Sense Product Liability and Legal Reform Act, but my vote did not register by the electronic voting device.

PERSONAL EXPLANATION

Mr. MCINNIS. Mr. Chairman, I was unable to vote on rollcall Vote No. 223 because I was serving as the chairman pro tem of the Committee on Rules, during this vote. Had I been present, I would have voted "no" on the amendment offered by Representative FURSE.

The CHAIRMAN. It is now in order to consider amendment No. 8 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. HYDE

Mr. Chairman, I offer an amendment at the desk, made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HYDE: Page 3, line 12, strike "are" and insert "is".

Page 3, line 15, strike "protect" and insert "project".

Page 3, line 23, strike "and is costing" and insert "causing".

Page 4, line 18, strike "transactions" and insert "transaction".

Page 8, beginning in line 2, strike "Except as provided in subsection (c) in" and insert "In".

Page 8, line 11, strike "the" and insert "a".

Page 18, redesignate subsection (e) as subsection (f) and insert after line 16 the following:

(e) EXCEPTION.—

(1) REASONABLE CARE.—A failure to exercise reasonable care in selecting among alternative product designs, formulations, instructions, or warnings shall not, by itself, constitute conduct that may give rise to punitive damages.

(2) AWARD OF OTHER DAMAGES.—Punitie damages may not be awarded in a product liability action unless damages for economic and noneconomic loss have been awarded in such action. For purposes of this paragraph, nominal damages do not constitute damages for economic and noneconomic loss.

Page 18, line 17, strike "CONSIDERATION" and insert "CONSIDERATIONS".

Page 29, in lines 8 and 12, strike "has" and insert "has or should have".

MODIFICATION TO AMENDMENT OFFERED BY MR. HYDE

Mr. HYDE. Mr. Chairman, I ask unanimous consent to delete lines 1 through 9 on page 1 of my amendment in subparagraph E, and on page 2, lines 1 through 4.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment offered by Mr. HYDE: Strike out "Page 18, redesignate" and all that follows through the proposed new subsection (e) of section 201.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. CONYERS. Mr. Chairman, reserving the right to object, I want to commend the gentleman from Illinois [Mr. HYDE] for this modification, which has come about as a result of the discussions between our staffs. I think this is a very important deletion, because it makes the amendment more technical and takes out the part that was giving us a lot of trouble. I commend the gentleman.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN. The amendment is modified.

The text of the amendment, as modified, is as follows:

Amendment offered by Mr. HYDE, as modified: Page 3, line 12, strike "are" and insert "is".

Page 3, line 15, strike "protect" and insert "project".

Page 3, line 23, strike "and is costing" and insert "causing".

Page 4, line 18, strike "transactions" and insert "transaction".

Page 8, beginning in line 2, strike "Except as provided in subsection (c), in" and insert "In".

Page 8, line 11, strike "the" and insert "a".

Page 18, redesignate subsection (e) as subsection (f) and insert after line 16 the following:

Page 18, line 17, strike "CONSIDERATION" and insert "CONSIDERATIONS".

Page 29, in lines 8 and 12, strike "has" and insert "has or should have".

The CHAIRMAN. Pursuant to the rule, the gentleman from Illinois [Mr. HYDE] is recognized for 5 minutes, and a Member in opposition will be recognized for 5 minutes.

The Chair recognizes the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment consists primarily of technical corrections to the text of H.R. 1075. It is almost exclusively technical in nature.

In section 101, Findings and Purposes, the amendment changes the tense of words, corrects typographical errors, and makes a plural word singular.

In section 105, Misuse or Alteration, it removes the reference to a nonexistent subsection (c) and says "a" defendant, rather than "the" defendant.

In the heading for subsection 201(f) the amendment makes the word "Consideration" plural, because there is a list of nine different factors that the jury is directed to consider.

In section 303 which is the Definitions section of the Biomaterials Suppliers title, the amendment makes it clear that a person would not be a "biomaterials supplier" within the meaning of title III, if it has "or should have" registered with the Secretary of Health and Human Services pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act, or has "or should have" included a medical device on the list of devices filed with the Secretary of HHS pursuant to section 510(j) of the same law.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman from Michigan [Mr. CONYERS] can claim the 5 minutes in opposition to the amendment.

There was no objection.

Mr. CONYERS. Mr. Chairman, I do so, and I yield myself such time as I may consume. Mr. Chairman, I agree that the interpretation given by the chairman of the Committee on the Judiciary is correct. I think the gentleman has facilitated this, with a lot of time being saved by his having made the deletion. We have no objection to the technical amendment, and urge support of the amendment.

I yield back the balance of my time.

Mr. HYDE. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. HYDE] as modified.

The amendment, as modified, was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 9 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. OXLEY

Mr. OXLEY. Mr. Chairman, I offer an amendment made in order pursuant to the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. OXLEY: Page 19, insert after line 19 the following:

(f) DRUGS AND DEVICES.—

(1)(A) Punitive damages shall not be awarded against a manufacturer or product seller of a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) or medical device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) which caused the claimant's harm where—

(i) such drug or device was subject to premarket approval by the Food and Drug Administration with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging or labeling of such drug or device, and such drug was approved by the Food and Drug Administration; or

(ii) the drug is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(B) Subparagraph (A) shall not apply in any case in which the defendant, before or after pre-market approval of a drug or device—

(i) intentionally and wrongfully withheld from or misrepresented to the Food and Drug Administration information concerning such drug or device required to be submitted under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or section 351 of the Public Health Service Act (42 U.S.C. 262) that is material and relevant to the harm suffered by the claimant, or

(ii) made an illegal payment to an official or employee of the Food and Drug Administration for the purposes of securing or maintaining approval of such drug or device.

(2) PACKAGING.—In a product liability action for harm which is alleged to relate to the adequacy of the packaging (or labeling relating to such packaging) of a drug which is required to have tamper-resistant packaging under regulations of the Secretary of Health and Human Services (including labeling regulations related to such packaging), the manufacturer of the drug shall not be held liable for punitive damages unless the drug is found by the court by clear and convincing evidence to be substantially out of compliance with such regulations.

The CHAIRMAN. Pursuant to the rule, the gentleman from Ohio [Mr. OXLEY] will be recognized for 20 minutes, and a Member opposed to the amendment will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Chairman, I rise to offer the bipartisan FDA defense amendment, along with my colleagues Mr. COBURN, Mr. BURR, Mr. TAUZIN, Mr. BREWSTER, and Mr. STENHOLM.

Mr. Chairman, the amendment states simply that when the manufacturer of a drug or medical device receives premarket approval from the FDA and complies with all post-approval reporting requirements, the manufacturer will not be liable for punitive damages in a civil suit.

The amendment protects the rights of plaintiffs to receive full compensatory damages, including pain and suffering. Punitive damages are not compensatory. They are intended to punish malicious conduct. To bring a drug from the laboratory to the marketplace takes on average 9½ years and costs manufacturers $350 million. The sponsors and supporters of this amendment believe that compliance with the process, and post-approval reporting requirements, clearly demonstrate a lack of malice. Punitive damages are quasi-criminal in nature, and careful adherence to an expensive 10-year process is certainly not criminal.

Members have asked me, what if the manufacturer knows the drug is dangerous, but still goes through the process and gets FDA approval? The defense is denied in that case, as it is when a manufacturer discovers a problem after approval. The defense only applies when the maker of the drugs or device acts in good faith and discloses all relevant information.

This amendment is needed to provide some predictability for liability in the development of life-saving drugs and medical devices. Because of our liability lottery, drugs are more expensive in the United States than almost anywhere on Earth. Products are kept off the market, or withdrawn after introduction. The effect of our liability system on drugs and medical devices was recently summarized by the American Medical Association:

> Innovative new products are not being developed or are being withheld from the market because of liability concerns * * * Certain older technologies have been removed from the market not because of sound scientific evidence indicating lack of safety or efficacy, but because product liability suits have exposed manufacturers to unacceptable financial risks.

Mr. Chairman, writing on punitive damage damages, Justice Lewis Powell said, "* * * punitive damages invite punishment so arbitrary as to be virtually random."

Faced with a threat of random punishment, many manufacturers are understandably reluctant to put a new drug or device on the market. Our amendment says to them invest $350 million, wait 9½ years, obtain FDA approval, observe all reporting requirements, disclose fully, and we will say you did not act wantonly or maliciously. If your product causes injury, you are responsible for compensation. That determines the difference between economic and noneconomic and punitive damages. The plaintiff will be able to recover economic and noneconomic damages.

This amendment is common sense and deserves the support of this body. I urge my colleagues to support this amendment.

Mr. Chairman, I reserve the balance of my time.

☐ 1700

The CHAIRMAN. Is there a Member who wishes to manage opposition to the amendment?

Mr. DINGELL. Mr. Chairman, I do.

The CHAIRMAN. The gentleman from Michigan [Mr. DINGELL] is recognized for 20 minutes.

Mr. DINGELL. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, the FDA defense has been a topic of considerable discussion and controversy over the years. In the past I have supported the adoption of provisions affording the FDA defense. This was done based on my belief that strong support and appropriate oversight by the Congress would enable the FDA to provide thoughtful, careful review for drug and medical device approvals and scrupulous post-market surveillance, all of which are essential to the protection of the American consuming public.

If this were to be the case, there would be no question but what Congress should afford the FDA approval as a defense against punitive damages. Regrettably, that appears not, however, to be the case. Times have changed and it appears that congressional support for FDA and support for a strong, viable, adequately-funded, well-staffed agency is at risk at this particular time.

We have been hearing about privatizing, cutting back, reducing and eliminating FDA. It is my strong belief that until these questions have been satisfactorily resolved and until we are satisfied that FDA approval really means something, that we should not then afford a weakening of the civil suit process which affords protection to the American consumer from misbehavior by manufacturers of devices and prescription pharmaceuticals.

The ability of FDA to properly process the business before them, to see to it that the new drugs are properly approved, that all information necessary is produced, to see to it that there is no deceit or duplicity in the offer, to see to it that there are no changes in the drugs as manufactured, to see to it that the Food and Drug Administration's requirement for good manufacturing practices be met during the manufacturing of the drugs is absolutely essential to consumer safety. If that is to be tampered with or impaired with through the budget process or through actions of Congress or through less than vigorous enforcement by the administration because of lack of adequate funds or because of congressional pressure, then clearly this kind of amendment is not in the public interest.

I would urge, therefore, that until we have seen more fully the state of affairs with regard to the strength and the adequacy of FDA supervision of new drugs, new drug applications, and with regard to the safety and adequacy of supervision by FDA of devices, that this Congress should not relax the supervision that is given to manufacturers of both devices and prescription pharmaceuticals until we are more sure that the protections of FDA are meaningful and have not been impaired by budget cuts, by reductions in the authority of the agency, by roll back of the abilities of the agency to carry out its responsibility or by actions like those taken more recently by the Congress in setting up cost-benefit analyses and things of that kind. Those are actions which are inimical to good protection of the consumer and to assurances of adequate safety, because if FDA must take that length of time to do these things, they will not be looking at the question of safety of prescription pharmaceuticals or devices from the standpoint only of health and safety of the individual who purchases that commodity.

Mr. Chairman, I reserve the balance of my time.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from North Carolina [Mr. BURR].

Mr. BURR. Mr. Chairman, I rise today in support of the FDA exemption amendment. In the past several weeks, we have made many efforts to streamline government and to eliminate unnecessary duplication. This is another area where we can effectively do just that.

The Food and Drug Administration has been charged with scientifically weighing the risks and benefits that go along with the development of pharmaceuticals and medical devices. Anyone would be hard pressed to successfully argue that randomly selected tort juries are more qualified to reach these difficult, scientific conclusions.

Progress comes with a certain degree of risk. Opponents of this amendment have argued that it will limit the ability of those harmed by a minimal risk factor to receive compensatory and non-economic damages such as pain, suffering, and lost wages.

This amendment does not preclude their right to just compensation.

By offering this exemption from punitive damages, our amendment will allow many people to reap the benefits of drugs and devices that companies have not manufactured, for fear of litigation.

Support life drug research. Support a scientific balance between benefits and risk. Support the Oxley-Burr-Coburn-Tauzin-Brewster-Stenholm amendment to H.R. 1075.

Mr. DINGELL. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I just wanted to cite a case of corporate wrongdoing that would benefit by the passage of this amendment as an example of why it should not pass. This is the O'Gilvie versus International Playtex case from Kansas, 1985, where Playtex voluntarily removed from the market tampons linked to toxic shock syndrome after a Federal court jury awarded compensatory and punitive damages. A Kansas woman died from toxic shock syndrome using the company's super-absorbent tampons.

Playtex had complied with FDA regulations. It had gotten that approval fair and square. However, the jury found that the FDA requirements only set minimum standards and mere compliance with those standards had been inadequate under the circumstances.

Mr. Chairman, the 10th circuit, in reviewing the case on appeal, found that there is an abundance of evidence that Playtex deliberately disregarded studies and medical evidence linking high-absorbency tampon fibers with increased risk of toxic shock at a time when other manufacturers were responding to this information by modifying or withdrawing their product. Moreover, there is evidence that Playtex deliberately sought to profit from this situation by advertising the effectiveness of its high-absorbency tampons when it knew that other manfacturers were reducing the absorbencies of their products due to the evidence of casual connection between high absorbency and toxic shock.

Mr. Chairman, consumers are now protected from this product. With the passage of this amendment, we will be turning the clock back on consumer protection. Unfortunately, it is consistent with the loser pays and limits on awards and other discouragements from people bringing these meritorious suits to protect the consumer from these products.

I hope we will defeat the amendment.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Oklahoma [Mr. COBURN].

Mr. COBURN. Mr. Chairman, I want to thank the gentleman from Virginia for bringing this up for in fact that is a misconception on the case against the Playtex. And under this bill, they would be fully liable. They would not be excluded under this amendment from full prosecution, and they would have been exposed to FDA clearance and punitive damages. This bill would not have excluded that agreement from punitive damages. Because, in fact, they have knowledge or did have knowledge of the worsening condition which was required to be reported to the FDA.

Mr. SCOTT. Mr. Chairman, will the gentleman yield?

Mr. COBURN. I yield to the gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, if they complied and provided all of the information and FDA approved it anyway, when there were studies that the FDA just approved it, when the jury found that only minimum standards were set——

The CHAIRMAN. The time of the gentleman from Oklahoma [Mr. COBURN] has expired.

Mr. DINGELL. Mr. Chairman, how much time remains on both sides, please?

The CHAIRMAN. The gentleman from Michigan [Mr. DINGELL] has 14 minutes remaining, and the gentleman from Ohio [Mr. OXLEY] has 14 minutes remaining.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, I thank the gentleman for yielding time to me.

Just on this last point, the exemption from immunity for punitive damages is the defendant before or after premarket approval of a drug or device intentionally and wrongfully withheld from or misrepresented to the FDA information concerning such drug or device. It is not whether or not the party knew that harm could come from the product, whether there was any of that kind of conduct. It is withholding of information from the FDA. That is the only escape clause here.

I disagree, from what I have heard about this case, with the gentleman.

The point I would like to make follows up a little bit on the gentleman from Michigan's point. We are getting, sometimes there is a great deal of pressure on the FDA to loosen up its regulatory process to allow drug approval quicker. In my own area where the medical device manufacturers, they are furious and being driven crazy by the delays they have in getting products on the market. But never one has ever said to me that they should be able to get away from accountability and responsibility for their negligence or avoid punitive damages for the conduct, intentional or wanton disregard, conduct, or reckless conduct from tort liability.

I just find it very strange that the same party that is promoting the concept of deregulation so strongly now wants to undermine the other way in which we can keep parties responsible to a high standard of conduct, which is the accountability through the judicial process. When you do both, I promise you the consequence is going to be greater negligence, greater harm, less willingness to take the kinds of precautions necessary to avoid danger. That is why I think this is a bad situation.

I would like to read about one case myself. In 1980 the drug Zomax, a painkiller, was marketed by the McNeil Drug Co. Reports in 1982 of allergic reactions causing death and severe illness came to McNeil. McNeil reported those adverse drug reactions to the FDA as required, thereby not getting out of avoiding that problem of the punitive damage suit if this were to be in effect, and the company embarked on a massive selling campaign to get rid of the supply before the word spread about the negative side effects. The salesmen were instructed to not bring up the subject.

During the McNeil sales campaign 14 people died and over 400 suffered life-threatening allergic reactions. Incidentally, McNeil Pharmaceutical called its Zomax campaign one-eleven, representing the $111 million sales target by McNeil.

When you have this law in place, FDA has approved it, FDA had all the information, but Zomax acted wrongfully and in an intentional—McNeil acted wrongfully and in an intentional fashion to market a product they knew had adverse reactions without advising the consumers of this and without letting the FDA know that they were increasing their marketing.

Mr. OXLEY. Mr. Chairman, I yield 1 minute and 30 seconds to the gentlewoman from New York [Ms. MOLINARI].

Ms. MOLINARI. Mr. Chairman, I rise today in strong support of the amendment of the gentleman from Ohio [Mr. OXLEY], and I urge my colleagues to include it in the bill.

The purpose of the amendment is very simple. If the FDA has approved a drug or a device, then the manufacturer cannot be held liable for punitive damages, unless, as in the case of the tampons and the toxic shock syndrome, the company withheld information regarding potential damages. This amendment in that case clearly would not apply.

Mr. Chairman, I find it disturbing that some opponents of this amendment claim it is antiwoman. This is a provision that is prowomen. I will tell you why.

Last year $600 million was spent on cosmetic research, $30 million was spent on contraceptive research. Only two companies currently perform contraceptive research. The reason why is they fear huge punitive damages. Research in this area and in the larger area of reproductive health is too risky for companies. And it is not just reproductive health research. It is research on other diseases, too.

One in nine women will get breast cancer in her lifetime, and although there are treatments, there are no cures. It frightens me that there may be a cure out there but companies will not find it, because the risk liability is too great. We cannot afford to let this happen, not for breast cancer, not for uterine cancer, not for any disease that strikes predominantly men or women.

It is a tragedy, but we should not punish companies that play by FDA's stringent rules. If you ask me, I think it is a far greater tragedy that young men and women die because drug companies are afraid to pursue research.

□ 1715

Mr. DINGELL. I yield 4 minutes to the gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. Mr. Chairman, let us understand that this legislation before us today sets a very high threshold before punitive damages can be awarded. I think what this amendment is doing is using the FDA as a cover for manufacturers whose products have caused real harm to consumers. Even in cases where the manufacturers' behavior has been egregious, malicious, or knowingly negligent, there is a high standard for collection of awards. Title II of the bill states that in order to collect punitive damages, a claimant must be able to show by clear and convincing evidence that a manufacturer specifically intended to cause harm or engage in conduct that illustrated a conscious, flagrant indifference to the safety of others.

If a plaintiff who is injured can maintain that threshold and show that a company acted with flagrant disregard for the safety of others, why should a drug company be protected because of the FDA approval? The FDA approval does not mean that the FDA is there as a watchdog, to be sure that the company, after it has that approval, is doing everything it properly should. The FDA may never know about the complaints that the company has had that the product that they manufacture is now causing a lot of harm to people, yet they continue to sell it. Should an injured consumer be punished if a company continues to sell a product which it knows or suspects is not performing properly, when the company was in possession of numerous consumer complaints or other kinds of reports that it may, technically, not have been "required to submit" to the FDA?

Mr. Chairman, the FDA has very limited independent legal authority to demand documentation from manufacturers, nor does the agency have the resources to police these manufacturing facilities. The agency relies on the manufacturers to be honest and to follow the rules. The majority of them, no doubt, do that.

However, what about those cases where they do not, but they still technically meet the test of this amendment; that is, they submitted what was required to FDA, they have not bribed an official, they have not lied to the FDA during the product review in order to receive an approval? What about those cases where there is harm and that harm is a result of the company's misconduct, or of the company's taking chances on safety, of a company's operating just on the razor's edge of legality?

For those cases, this bill establishes, elsewhere, a high standard under which consumers would seek punitive damages. That standard is sufficient to protect ethical, honest, careful companies. Such companies do not need to hide behind the shield of this FDA defense that this amendment would provide.

Mr. Chairman, I would like to point out that we do not have a crisis of high punitive damages being awarded in these cases. The reports about this kind of national crisis traceable to outlandish and numerous awards of punitive damages are not supportable by actual data. Contrary to what the supporters of this amendment would like us to believe, punitive damages are not common in product liability lawsuits. In the cases where such damages are awarded, they are not excessively high.

A number of scholarly legal studies published between 1987 and 1991 concluded that punitive damages in a variety of State jurisdictions was awarded in no more than 8 percent of the cases. In those cases, awards were on the average comparable in size to amounts awarded for compensatory damages.

Mr. OXLEY. Mr. Chairman, I yield 6 minutes to my good friend, the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Chairman, I thank the gentleman for yielding me this time, and I yield to the gentlewoman from California [Ms. HARMAN].

Ms. HARMAN. Mr. Chairman, as a woman, mother of four, and corporate lawyer, my life experience intersects the issues involved in this amendment in many ways. My decision to support it was a close one for me, and I thank my colleagues on both sides for giving me the time to explain my views.

On the one hand, all of us are horrified by the stories of individuals, many of them women, injured by drugs and medical devices. However, on the other hand, there is a fundamental fairness argument, and real evidence that our present system chills research and development on new drugs and medical device breakthroughs which could be enormously helpful to various at-risk communities, especially women.

This amendment is based on the view that if a drug manufacturer is in full compliance, and I stress, full compliance with Federal regulatory requirements, it should not be liable for damages designed to otherwise punish that behavior. I agree. To be sure, the FDA is not all-knowing when it comes to assuring product safety, but it is the best mechanism we have available in balancing the social values associated with drugs and medical devices and the unfortunate injuries which may result from known or unknown side effects. If there are ways to improve the FDA's performance, let us do it.

There are risk living in a modern, technologically advanced society. I hope we can minimize those risks, but I give a very high priority to the development of a predictable and fair system where pharmaceutical and biotechnology firms can rely on Government approval and reasonable limits on liability, and thus, invest the millions of dollars it takes to develop medical breakthroughs that will benefit all our citizens. Without these breakthroughs, women really will not have choice, none of us will have choice. None of us will have the opportunities that our first-rate and first-in-the-world medical system could offer.

I urge support of this amendment, and would make three related comments about this legislation. First, I hope as it moves through the Congress, two things will change. First, I think the noneconomic damages, which are extremely important to women, will be brought to a parity with economic damages, and, second, I think the cap on punitive damages should be raised at least to $1 million. I know many of us would have supported an amendment in this body to do so.

And third, my colleagues from California, Mr. WAXMAN, who preceded me to the well, was correct in pointing out that the explosion of civil suits has not been in the personal injury area. In California, at least, the number of personal injury suits has been level if not on the decline. Indeed, the number of such suits declined from 132,000 in 1988 to 88,000 in 1992. Still the bill before us is important in that it replaces the costly patchwork of state laws with a uniform law that speeds recovery and provides certainty to manufactures.

Mr. STENHOLM. Mr. Chairman, I yield to the gentleman from Oklahoma [Mr. BREWSTER].

Mr. BREWSTER. Mr. Chairman, I rise this afternoon to support this legislation. As a pharmacist, I know firsthand the need for the passage of the Oxley amendment. Our country has the most rigorous drug approval process in the world. A company which has researched and developed a new drug spends an average of $359 million to get that drug from the laboratory to the market.

They undertake exhaustive clinical trials involving thousands of individuals, spanning many years, before they are able to sell the product on the market. Often during the course of the trials problems arise and the project is stopped. Often a treatment has been in the research and development pipeline for many years before warning signs or problems have arisen and the trials are halted. Such clinical trials are similar to the gut-wrenching dry holes those of us in the oil patch are all too familiar with.

This amendment puts no limits on actual or noneconomic damages. It simply protects companies who have, in good faith, invested many years of work and millions of dollars in a product, from the fear of frivolous lawsuits and out-of-sight jury awards. I encourage my fellow Members on both sides of the aisle to vote "yes" on the amendment.

Mr. STENHOLM. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I thank the gentleman from Ohio [Mr. OXLEY] for his generosity with time. I rise in strong support of the amendment. This is an attempt to put some common sense back into our public liability system, and to allow technology in America to move forward.

Most of the criticisms of this amendment have to be balanced with a commonsense statement of saying that our current system is broken. Perhaps there are weaknesses by moving forward, but in my judgment, adopting this amendment, allowing technology to move forward, and saying to any individual company that if you in fact have a product that is approved under the best technology possibly available, and then something goes wrong because CHARLES STENHOLM uses it, at that time no punitive damages should be allowed because you have followed the rules.

If we cannot bring ourselves to adopt this kind of legal law, we are going to have a difficult time competing in the future marketplace.

Mr. Chairman, I rise in strong support of the Oxley-Burr-Coburn-Tauzin-Brewster-Stenholm amendment to H.R. 956, the Common Sense Product Liability and Legal Reform Act.

Our amendment offers a limited exemption from punitive damages for Food and Drug Administration [FDA] approved products. Manufacturers of drugs and medical devices are already subject to the agonizing delays and costly bureaucratic scrutiny of the FDA approval process, in order to determine if the benefits of a product outweigh the risks—not to assert that the use of a product carries no risk, or that all uses, under any circumstances are completely safe. In doing so, the FDA and medical community decide if the risks that a product poses are socially acceptable.

Under our current liability system, a jury second guesses this scientific evaluation done by the medical community and can punish manufacturers because their products are inherently risky.

Our amendment is simple, if a manufacturer or product seller of a drug or medical device which caused the claimants harm was premarket approved by the FDA, punitive damages shall not be awarded.

Opponents of this measure have said that it will prevent plaintiffs from suing drug and device manufacturers, and that it will hurt the consumer. This is simply not true. Punitive damages can still be sought in appropriate cases—those where the manufacturer was at fault, either by withholding or misrepresenting information or through participation in fraudulent activities. More importantly, injured parties will still be able to sue for compensatory damages. This amendment in no way limits compensation for loss, damages, pain and suffering.

The Oxley-Burr-Coburn-Tauzin-Brewster-Stenholm amendment makes good sense. I urge my colleagues to support this important amendment.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in reluctant opposition to the amendment, reluctant because one of the sponsors is my colleague, the gentleman from North Carolina [Mr. BURR].

However, I have concerns about this amendment on three counts. First, the FDA's responsibility is to set minimum standards for bringing a product to the market, and we should note that while we are setting a clear and convincing standard in our courts of law to win these cases, no such standard applies to the FDA.

Second, the regulatory process is subject to political pressures, economic pressures, and pressures that hopefully the jury system is not subject to. We factor out all of these things in the court, we hope, to the best extent possible, and get a fair and impartial verdict in the process.

The third point I want to make, Mr. Chairman, is when all else fails, I have started to read the fine print in these amendments that are being offered. I would submit to my colleague, the gentlewoman from California [Ms. HARMAN], that I do not see anything in this amendment which talks about full compliance.

I do see a second provision in the bill that goes beyond simply FDA approval, which says that the producer or manufacturer is exempt if the drug is generally recognized as safe and effective, pursuant to conditions established by the Food and Drug Administration. I have no idea, and I would submit to my colleagues that they have no idea, what kind of Pandora's box that opens up for litigation, because every kind of product or drug which comes to the market that ever gets through the process is going to be recognized, we hope, as generally safe and effective.

Mr. Chairman, I think when we start setting one standard, clear and convincing, to win cases, we ought to at least be holding the regulatory bodies to that same standard if we are going to say that compliance with their regulations will make the manufacturer immune from liability.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BILBRAY], a valuable member of the Committee on Commerce.

Mr. BILBRAY. Mr. Chairman, tonight we are speaking a lot about lawyers, a lot about corporations, a lot about pharmaceutical companies, but we are talking about consumers only as victims. However, the victimization goes both ways, Mr. Chairman. We hear a lot about the things that go wrong in our society when people use products. We hear about the bad things that the consumer products do.

However, Mr. Chairman, we do not talk about the fact, about the woman who goes to her pharmacist to be able to get a drug that she has used for years, but that drug no longer is available to her, not because the FDA found it not safe, not because a court found that it was not safe, but because of the huge liability that was being created by lawsuits that were being brought forward without merit, but with substantial resources, to the point where they were driving these products off the market.

Mr. Chairman, for years Bendectin has been used by pregnant women for a long time, and it is not available today for one reason, and that is because of lawsuits.

□ 1730

Mr. DINGELL. Mr. Chairman, I yield 1 minute to the gentleman for Louisiana [Mr. TAUZIN], a member of the committee.

Mr. TAUZIN. I thank my good friend, the gentleman from Michigan [Mr. DINGELL], for yielding me the time.

Mr. Chairman, let me just say that when we talk about punitive damages, we are talking about quasi-fines. Quasi-fines. It is one thing to say that you are going to fine somebody for doing something wrong. It is another thing to say that we are going to first authorize you to do it as a Government agency and then allow you to be fined for doing it even though we said it is OK to do it. That is the issue in this debate.

The FDA goes through an extraordinary process of approving drugs for the American public. It is a lengthy, complicated process. Once they approve something for us, they put their stamp of approval on it, should we as a government say now we are going to allow somebody to sue you and collect a fine after we have authorized you to sell that particular drug or product to the American public?

It seem a bit ludicrous. I suggest to Members that if the speed limit says you can go 35, you ought not have to pay a fine if you have stayed under that speed limit. That is essentially what this argument is all about. I urge Members to adopt the amendment and make this bill a better bill.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Georgia [Mr. NORWOOD], a member of the committee.

Mr. NORWOOD. Mr. Chairman, I rise to strongly support the Oxley-Burr amendment.

Mr. Chairman, I know the FDA is not perfect, I will admit that, but if we have to choose between the FDA and tort juries, the FDA is obviously better suited to make judgments as to what products should be on the market. This amendment is intended to prevent tort juries from second-guessing and overriding often very, very difficult but essential and scientific conclusions and risk-benefit assessments the FDA must make in approving a drug and deciding what warnings must and must not accompany a drug.

We must pass this amendment, Mr. Chairman, for the health of our Nation. When juries are permitted to punish defendants for conduct approved by the FDA, substituting their amateur scientific judgment and cost-benefit analysis for the judgment of the FDA's professional scientists, it makes drug manufacturers very wary of producing new products.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. Mr. Chairman, I thank the gentleman for yielding me the time.

I rise to strongly support this amendment today. It is very clear from the work we did in the Committee on the Judiciary that this is essential. What we are talking about is only application to punitive damages and it is obvious that if a pharmaceutical company gets the approval of the Food and Drug Administration for a pharmaceutical product, then the Government has gone through about 12 years of processing to determine if that product is indeed sound and safe.

No product is 100 percent safe, but for gosh sakes if the FDA has approved it and sanctioned it, why should we be subjecting a pharmaceutical company to the threat of punitive damages for something that goes awry in that product that comes out later? We are only stifling the opportunity to develop the diversity of new products that we need for the health of America.

I urge in the strongest of terms that this amendment be adopted today. It is a good, sound exemption and safeguard for the pharmaceutical industry, for the health of the future of this country if we give this particular protection in those cases, those limited punitive damage cases where the FDA has approved a pharmaceutical product.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Oregon [Mr. COOLEY].

Mr. COOLEY. Mr. Chairman, before coming to Congress and being in the cattle business for a few years, I spent 10 years as director of regulatory affairs for an international pharmaceutical company. Our company literally spent millions and millions of dollars in complying with the FDA approval process. This process is the most rigorous process in the entire world to prove safety and efficacy of a drug. If we have no confidence in the FDA to do this, then we should find another agency to do this job for us.

As long as a company complies with the licensing requirements and continues the research after a drug is introduced on the market, I cannot believe that we can have punitive damages which should be only directed toward those companies who have reckless misconduct in the selling and administering of the drug. Currently prices of important drugs and medical devices are artificially high because of the cost of the liability insurance. Under this amendment plaintiffs still will have full compensation.

I urge passage of this amendment.

Mr. OXLEY. Mr. Chairman, I yield 30 valuable seconds to the gentleman from Ohio [Mr. CHABOT].

Mr. CHABOT. Mr. Chairman, I strongly support this amendment. It makes no sense to allow punitive damages against companies that have acted in good faith and gotten the FDA's approval. Most importantly, this amendment will help those who truly need help the most, those who need drugs which otherwise would probably not come on the market at all to relieve agonizing pain and those who need drugs which may preserve life itself.

The CHAIRMAN. The Chair will inform the committee that the gentleman from Ohio [Mr. OXLEY] is entitled to close debate.

PARLIAMENTARY INQUIRY

Mr. WATT of North Carolina. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. WATT of North Carolina. My inquiry has to do with why the gentleman on that side has the right to close debate. We are defending the committee position on this side this time.

The CHAIRMAN. If the Chair might respond to the inquiry, the gentleman from Ohio is the author of the amendment and there is no official committee position that is being represented here by opposition to the amendment. So the gentleman from Ohio is entitled to close debate on the amendment.

POINT OF ORDER

Mr. WATT of North Carolina. Mr. Chairman, I make a point of order.

The CHAIRMAN. The gentleman will state the point of order.

Mr. WATT of North Carolina. Mr. Chairman, I make this point of order, and I have already gone through this with the parliamentarian today.

The CHAIRMAN. The Chair is aware of that.

Mr. WATT of North Carolina. Any time that anyone makes a position that is contrary to the committee's position which in this case is the bill, and the amendment is contrary to the bill, I was told earlier today that whoever is defending the committee's position would be entitled to close.

The CHAIRMAN. In response to the gentleman's question, this amendment does not strike language from the bill at all.

Mr. WATT of North Carolina. Mr. Chairman, pursuing my point of order, the amendment on which I made the inquiry this morning did not strike any language from the bill. It was Mr. SCHUMER's amendment——

The CHAIRMAN. The Chair is not aware of exactly what amendment it was that was being discussed with the parliamentarian.

The gentleman may proceed.

Mr. WATT of North Carolina. I thank the Chair. I thought we had gotten to the point in this body that a Member cannot even make a point of order anymore.

The inquiry that I made this morning was on Mr. SCHUMER's amendment which struck nothing from the bill, and I was told at that time by the parliamentarian that any amendment that was contrary to the position, and it was presumed that the position of the bill was that it would not be amended at all, it would be the party that was defending the committee's position, which in this case is presumed to be the bill itself, not the amendment, that would be allowed to close.

The CHAIRMAN (Mr. DREIER). The Chair has perceived that the gentleman from Michigan [Mr. DINGELL] is not necessarily carrying the position of the committee.

The Chair will acknowledge that it is a difficult call, but that is the determination of the Chair.

PARLIAMENTARY INQUIRIES

Mr. FRANK of Massachusetts. I have a parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FRANK of Massachusetts. Are there any standards by which the Chair perceives? This is a very disturbing statement the Chair has just made.

The gentleman from Michigan is the ranking minority member, I believe, of one of the two committees of jurisdiction over this bill, and when we have had stated that there is nothing in the bill one way or the other, are we totally dependent——

The CHAIRMAN. The gentleman offers a very good parliamentary inquiry. The issue is addressed as follows:

It is the call of the Chair and it is the determination of the Chair that the gentleman from Michigan [Mr. DINGELL] does not represent the position of the committee. It is for that reason that it has been determined that the gentleman from Ohio [Mr. OXLEY], the author of the amendment, would be entitled to close debate on the amendment.

Mr. FRANK of Massachusetts. I have a parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. FRANK of Massachusetts. Mr. Chairman, we have a very important point here, and I must say I am distressed by the tone of these rulings. By what standards can Members know how a chairman is going to divine whether or not someone represents the position of the committee? Is there no objective standard as to who represents the position of the committee when the ranking minority member defends the position of the committee? I would point out this amendment as I understand it was considered at least in one of the committees and rejected by one of the committees. What are the standards?

The CHAIRMAN. Under the rules of the House, the proponent of the amendment has the right to close unless the committee position is being offered by another member.

Mr. FRANK of Massachusetts. I have further parliamentary inquiry, Mr. Chairman.

Anytime there is silence in the bill on an amendment, can we safely assume that the proponent of an amendment will then be allowed to close?

The CHAIRMAN. The Chair does not take that position.

Mr. FRANK of Massachusetts. Or does the chairman take the position whatever he wants will be the case and if he wants to give his party an advantage, he will do it?

The CHAIRMAN. The Chair has stated that the proponent of the amendment has the right to close unless the committee position is being represented by another Member.

Mr. FRANK of Massachusetts. But the question is, by what standard do you determine that? My parliamentary inquiry is, are there any standards by which you determine that? Or is it just arbitrary as it appears to be in this case?

The CHAIRMAN. There is not an absolute objective standard that exists for making that determination.

Mr. FRANK of Massachusetts. Is there a relative standard?

The CHAIRMAN. It is the prerogative of the Chair to make that determination and the Chair has determined that in this case, the proponent of the amendment, because a position of the committee is not being represented by another Member, has the right to close.

Mr. FRANK of Massachusetts. I have another parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FRANK of Massachusetts. Mr. Chairman, if the Chair decides to give partisan advantage, is there any recourse?

The CHAIRMAN. The gentleman will state his inquiry.

Mr. FRANK of Massachusetts. If the chairman decides then to simply follow partisan instincts, does the Member have any recourse?

The CHAIRMAN. This is the discretion of the Chair, and this is the ruling of the Chair.

Mr. WATT of North Carolina. A parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. WATT of North Carolina. My inquiry is, is the Chair expecting to consult with the parliamentarian? Because the parliamentarian clearly gave me this morning a completely contrary opinion. Is the Chair planning to consult with the parliamentarian?

The CHAIRMAN. It is the determination of the Chair that in this instance, the proponent of the amendment will close debate as the committee position is not being represented by another Member.

Mr. WATT of North Carolina. I have parliamentarian inquiry, Mr. Chairman.

My inquiry is, is the Chair planning to consult with the parliamentarian?

The CHAIRMAN. The Chair will consult with the parliamentarian. It is the determination, having consulted with the parliamentarian, that in this instance the gentleman from Ohio, the proponent of the amendment, has the right to close as the committee position is not being represented by another Member.

Mr. WATT of North Carolina. A parliamentary inquiry Mr. Chairman.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. WATT of North Carolina. Does the Chair have some psychic connection with the parliamentarian since nobody here has seen him consult?

The CHAIRMAN. That is not a parliamentary inquiry.

Mr. SENSENBRENNER. Regular order, Mr. Chairman.

The CHAIRMAN. The gentleman knows that is not a parliamentary inquiry.

Mr. OXLEY. Mr. Chairman, I yield 30 seconds to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. I thank the gentleman for yielding me time.

Mr. Chairman, I rise in strong support of the Oxley amendment as cochair of the bipartisan House Medical Technology Caucus.

Why in the world, Mr. Chairman, should any manufacturer be deemed malicious if it has complied with all regulations, reported all relevant information, and received FDA approval to market a product?

Mr. Chairman, let's quit stifling medical innovation. Let's quit stifling research and development, drugs and medical devices. Let's adopt the Oxley amendment.

Mr. Chairman, I rise in strong support of the Oxley amendment, as cochair of the bipartisan House Medical Technology Caucus. This amendment is needed because manufacturers are currently being forced to withhold life-saving drugs and medical devices rather than face unlimited liability.

Why in the world should any manufacturer be deemed malicious if it has complied with all regulations, reported all relevant information, and received FDA approval to market a product?

The FDA defense was originally in H.R. 917 and should be part of this important tort reform legislation. Let's quit stifling research and development in drugs and medical devices. Let's quit stifling medical innovation. Let's help those consumers and patients who need life-saving drugs and medical devices.

Let's adopt the Oxley FDA amendment.

Mr. OXLEY. Mr. Chairman, I yield 30 seconds to the gentleman from Indiana [Mr. MCINTOSH].

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Mr. MCINTOSH. Mr. Chairman, I rise in support of this amendment. It is vitally needed.

In talking with one of the leading medical device industry specialists, Mr. Dane Miller of Indiana, he has told me it is becoming extremely difficult if not impossible for that industry to provide lifesaving devices because of the threat of liability. The reason: I think liability risks are forcing the suppliers of raw materials, companies such as DuPont and Dow Chemical which have an outstanding record will not take the risk of providing the materials because of the threat of liability.

I urge Members to vote in favor of this amendment.

Mr. OXLEY. Mr. Chairman, may I inquire how much time I have remaining?

The CHAIRMAN. The gentleman from Ohio [Mr. OXLEY] has 2 minutes remaining, and the gentleman from Michigan [Mr. DINGELL] has 3 minutes remaining.

Mr. OXLEY. Mr. Chairman, I yield 30 seconds to the gentleman from North Carolina [Mr. HEINEMAN].

Mr. HEINEMAN. Mr. Chairman, the FDA defense is simple and it is fair. If the Food and Drug Administration approves a drug, then the pharmaceutical company which manufactures that drug should not be liable for punitive damages.

Currently the fear of unnecessary litigations stifles innovations and limits the types of drugs which are available to the American consumer. Without the FDA defense, beneficial drugs will be driven out of the marketplace and manufacturers will continue to be discouraged from developing new drugs to treat illnesses such as AIDS and cancer. I urge my colleagues to support the amendment.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes, my remaining time, to the distinguished gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. Mr. Chairman, I thank the gentleman from Michigan for yielding me this time. He has worked on this matter for many years, and I have noted his change of position, his reluctance now to allow FDA approval to reign superior in this instance; we now have those who are seeking this amendment, many of them are at the same time holding FDA in a suspended state of animation, which could result in an important diminution of its powers and resources and ability to do the job.

I have heard it said here on the floor several times, if there are ways to improve the FDA's ability to get the job done, then let us do it. But we may be going in the opposite direction. As badly as the FDA needs support, the problem right now is whether it is going to be able to continue funding at its present level.

So I rise in clear opposition to an amendment which will ultimately have the effect of immunizing manufacturers of defective products who happen to obtain FDA approval.

This amendment would provide a complete defense to liability for any drug or medical device that received premarket approval from the FDA. In other words, if the FDA for whatever reason allows a defective product on the market, the victims would not be able to sue at all. Even if both the manufacturer and the FDA have evidence of the dangers of a product but permitted it to be marketed anyway, the innocent, injured victim would be left without any opportunity for compensation whatsoever.

Do the authors of this amendment really want us to place that much faith in an underfunded Federal regulator?

It goes without saying that the amendment would have a disproportionate impact on the ability of women in particular to recover punitive damages which could occur from grossly negligent conduct, since many of the cases that involve large awards involve defective medical products placed inside women's bodies, the very products likely to need FDA approval.

These are products such as the Dalkon Shield, the Cooper-7 IUD device, high-absorbency tampons linked to toxic shock syndrome and silicone breast implants. For each of these products, the manufacturer had information indicating the dangers posed by the product.

So join me and the gentleman from Ohio in opposing this amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. OXLEY] is recognized for 1½ minutes to close debate.

Mr. FRELINGHUYSEN. Mr. Chairman, I strongly support this amendment which will strengthen H.R. 956, the Common Sense Product Liability and Legal Reform Act and address what I see as a deterrent to research and development of lifesaving pharmaceuticals and medical devices.

The out-of-control tort situation in our country is forcing companies that research and develop medical equipment and lifesaving drugs to back away from developing important new treatments for diseases such as AIDS or cancer.

The United States has the most rigorous drug and medical device approval process in the world. Companies which research and develop new medical treatments spend millions, sometimes billions of dollars, on developing and testing these products in order to meet FDA standards and approval, before they are able to make these important products available to the public. In addition to the money spent, the time involved with the process of FDA approval can take up to 10 years.

The proposed limitation on punitive damages makes sense. Even when every effort is made to ensure the safety and efficacy of the drug for the illness or condition it is designed to treat, no drug is 100 percent risk free. The FDA recognizes this and in making its approval decision must weigh the risks and benefits of each new pharmaceutical in order to minimize, if not eliminate, risk of injury. If injury does occur, despite all the companies research and the government's review, and the manufacturer has complied with all relevant federal requirements, it should not then be held liable for "punitive damages."

Without this amendment, there remains a powerful disincentive to certain types of pharmaceutical research. Enacting the government-standards defense will encourage new research and development.

I am pleased to support this amendment which I believe offers a fair balance of protection for consumers and businesses alike.

Mr. ROEMER. Mr. Chairman, I rise today to support the amendment to H.R. 956 offered by the gentleman from Ohio [Mr. OXLEY]. This amendment will bar punitive damages for the sale or manufacture of drugs or devices which have been approved by the Food and Drug Administration.

Our medical device and pharmaceutical companies must be able to continue to pioneer life-saving, cost-effective products. The explosion of litigation and the skyrocketing costs that are attendant to such lawsuits are in great part responsible for the high costs of healthcare in the United States. They also dampen our enthusiasm for innovative and breakthrough research that produces products that enhance our quality of life. This amendment would produce a "government standards" defense where companies that adhere to strict government regulations designed to preserve safety would not be held liable for punitive damages involving a product.

New medicines and medical devices increase life expectancy and make life better for those who need it most: people afflicted with disease or people with disabilities. Our approval process for these items is the most stringent in the world, and require huge investments of funding and human resources. The testing process is rigorous and complete. Clinical trials are exhausting. Paperwork substantiating these processes usually runs 100,000 pages or more for a single product.

Clearly the decision to allow such products on the market prove that their benefits outweigh any risk that may be involved. Punitive damages were designed to punish businesses or individuals for willfully negligent or harmful behavior. Companies that submit products for FDA review do not do so in bad faith.

Mr. Chairman, in my Indiana District we are the home of three important producers of biomedical products. The Biomet, Zimmer and DePuy Corporations are the makers of orthotic and prosthetic devices that are critical to the health and well-being of people throughout the world. They invest constantly in improving their products, and in turn create good jobs and contribute heavily to our trade balance. The work they do is only for the common good, and their contribution to modern health and quality of life must be acknowledged in this legislation.

This amendment provides a level of protection for these companies while protecting the rights of individuals to seek damages for expenses, pain or suffering. I commend the gentleman from Ohio for offering this measure and encourage my colleagues to support this important provision.

Mr. OXLEY. Mr. Chairman, this has been a very worthwhile debate. I am only sorry we did not have more time. This has been a worthwhile and edifying debate.

Let me conclude by answering some questions that have been raised during the debate and particularly from some conversations I have had with my good friend from New York, Mr. TOWNS, as to what this amendment does or does not do.

First of all, this amendment applies only to punitive damages. Second, the amendment does not cap noneconomic damages in any way, so that the plaintiff would be entitled to receive economic and noneconomic damages; only punitive damages would not be permitted.

Thirdly, the FDA is the agency we rely on to regulate food and drug purity and the only agency authorized to give premarket approval.

This amendment encourages innovations, it protects consumers and it makes good common sense.

Mr. Chairman, this was a bipartisan effort on this amendment, and we think it goes to the heart of the entire process of approving medical devices and drugs. It is in the best interests of our consumers and of our constituents that we have a system that we can rely on and that provides adequate protection against voracious punitive damage awards against drug companies or other manufacturers of medical products.

The Oxley bipartisan amendment is an amendment that all Members can and should support.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. OXLEY].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 10 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. HOKE

Mr. HOKE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

Amendment offered by Mr. HOKE: Page 19, redesignate section 202 as section 203 and insert after line 19 the following:

SEC. 202. DEPOSIT OF DAMAGES.

If punitive damages of more than $250,000 are awarded in a civil liability action, 75 percent of the amount of such damages in excess of $250,000 shall be deposited—

(1) if the action was in a Federal court, in the treasury of the State in which such court sits, and

(2) if the action was in a State court, in the treasury of the State in which such court sits.

This section shall be applied by the court and shall not be disclosed to the jury.

The CHAIRMAN. Pursuant to the rule, the gentleman from Ohio [Mr. HOKE] will be recognized for 10 minutes and a Member in opposition to the amendment will be recognized for 10 minutes.

The Chair recognizes the gentleman from Ohio [Mr. HOKE].

Mr. HOKE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this punitive damages amendment is fairly simple and straightforward. What it does is it restores the original intent of punitive damages awards which is namely to punish wrongdoers, it is not to compensate plaintiffs.

Every day in courtrooms across America, plaintiffs are compensated for lost wages, for medical and rehabilitation costs, loss of the use of property, emotional distress, injury to their reputation, humiliation, and loss of companionship or consortium. These are the awards that are intended to make the defendant whole or complete. These are compensatory awards.

But in addition to these economic and noneconomic damages, plaintiffs are receiving themselves windfalls that were never meant to play part in making them whole. This windfall comes in the form of punitive damages that by their very definition are intended to be punishment for wrongdoing defendants. This punishment is intended to deter future wrongdoing.

The key to a fine's effectiveness is not who receives it but who is forced to pay. That is why I am proposing that 75 percent of punitive damages in excess of $250,000 be paid to the State in which the action is litigated. In other words, plaintiffs will still receive 100 percent of any punitive damages up to $250,000 and will receive 25 percent of any amount awarded in excess of $250,000.

I believe this arrangement strikes a very good balance between maintaining the plaintiff and the plaintiff's attorney's incentive to seek punitive damages, and emulating the model of a criminal fine.

This amendment also stipulates that the arrangement is to be applied by the court and is not to be disclosed to the jury. This provision safeguards against juries using punitive damages to finance State initiatives in a way that would improperly bias their outcome.

Ten States have adopted laws sending a portion of punitive damages to their State for a variety of purposes. The Georgia Supreme Court has upheld its law sending a portion of punitive damage awards directly to the State.

This has broad support, Mr. Chairman. It is supported by people from former Attorney General Griffin Bell to the State legislatures of 10 States across this country.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Is there a Member who wishes to manage the opposition to the Hoke amendment? Does the gentleman from Michigan [Mr. CONYERS] wish to manage the opposition to the Hoke amendment?

Mr. CONYERS. I do, Mr. Chairman.

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] is recognized for 10 minutes.

PARLIAMENTARY INQUIRY

Mr. CONYERS. Mr. Chairman, on a point of procedure, would I have the right to close on this since this is an amendment against the bill?

The CHAIRMAN. As a member of the reporting committee, the gentleman has the right to close.

Mr. CONYERS. Mr. Chairman, I yield myself 3½ minutes.

Mr. Chairman, this amendment continues chipping away at the entire concept of punitive damages by reducing punitive damages over $250,000 by an additional 75 percent and giving it to the Federal or State treasury rather than to the individual who sued.

Do State treasuries want these awards? New York said, "No thanks," and repealed its apportionment law. In Colorado, the supreme court held that giving punitive awards to a State fund was an unconstitutional "taking."

Who benefits? The corporations who will simply build economic damages into their costs of doing business, without fear of facing large punitive damages that would have deterred them from knowingly selling products that cause devastating injury to the buyer.

Who loses? Those at the lower end of the economic scale who will have less incentive to sue, especially when their recovery is determined by how much they earn rather than the outrageousness of the defendant's conduct.

Some Members on the other side will argue that punitive damages should punish wrongdoers and are not intended to compensate plaintiffs, but they should know better. Lawsuits brought by victims, not Government regulation, brought about safety improvements like restricting asbestos use, like beepers on reversing garbage trucks that had resulted in numerous injuries to children, like recalling the Dalkon Shield. Punitive damages put an end to the exploding fuel tank and the heart by-pass drug that resulted in amputation caused by gangrene.

The likely result if this amendment passes is more dangerous products on the market and less incentive for the victims to sue, a prospect that does not advance the common good but will only please the sponsors of this Contract with Corporate America.

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Please reject the Hoke amendment.

Mr. HOKE. Mr. Chairman, I point out once more, while we are talking about our punitive damages, not compensatory damages, compensatory damages are already paid to compensate a victim for his economic and noneconomic losses.

Mr. Chairman, at this time I yield 1 minute to the gentleman from Illinois [Mr. HYDE], the chairman of the committee.

Mr. HYDE. I thank the gentleman for yielding this time to me.

Mr. Chairman, the amendment offered by the gentleman from Ohio [Mr. HOKE] provides for 75 percent of punitive damages awards in excess of $250,000 to be deposited to the treasury of the State in which the particular Federal or State court sits. Since punitive damages are limited under Section 201(b) to $250,000 or 3 times the damages awarded for economic loss—whichever is greater—punitive damages can exceed $250,000 only if the damages for economic loss exceed $83,333.33. I support this proposal because it effectuates the public interest in allowing large punitive damages awards to benefit the appropriate State without either compromising the rights of claimants to full compensation for injuries sustained or eliminating incentives to seek punitive damages.

Punitive damages are designed to punish or deter egregious misconduct—in contrast to compensatory damages that compensate claimants for both economic and non-economic losses. Compensatory damages cover such monetary items as medical expenses and lost wages and such non-monetary items as pain and suffering. Claimants who are fully compensated for both monetary and non-monetary losses receive windfalls when they also collect punitive damages. It makes eminent good sense for punitive damages to be allocated for public purposes—which essentially is what we accomplish by directing such funds to state treasuries. The States in turn can decide on the best uses to be made of these funds.

Although in theory all of these awards should go to the appropriate State, we recognize the practical need to retain incentives for claimants to seek such awards. For that reason, the amendment leaves untouched State law schemes that allow claimants to collect punitive damages up to $250,000. The claimant's share of amounts in excess of $250,000 will equal 25 percent provided the law of the particular State permits the claimant to collect it. The amendment includes sufficient incentives for claimants to continue seeking punitive damages in appropriate cases while recognizing the public interest in retaining benefits from large punitive damages awards.

The amendment is meritorious and represents a positive contribution to this legislation.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. NADLER].

Mr. NADLER. I thank the gentleman for yielding this time to me.

Mr. Chairman, I recognize the intention of the gentleman from Ohio [Mr. HOKE]. I had a similar amendment, similar but different, in committee, which I am sorry that the Committee on Rules did not make in order.

The purpose of punitive damages, the main purpose, is to deter, to deter egregious, terrible conduct. When we are dealing with a malefactor of great wealth, as the Republican President once put it, you need a large punitive award.

But why should the individual victim be unjustly enriched just because the tort feasor was a very wealthy individual or a big corporation.

So I do not mind the limit of $250,000 or 3 times the economic damage, whichever is greater, as the recovery for the victim. But that will totally limit the deterrent effect against the large tort feasor.

So I suggested let the victim get the $250,000 or 3 times economic damage, whichever is greater, and let government, for deficit reduction, get any award in excess of that.

So you still get the deterrent effect, but not unjust enrichment.

The gentleman from Ohio turned it around, and he says let us give 75 percent to the government of the excess over $250,000 below 3 times economic damages. So if the economic damage was $400,000, 3 times economic damages would be $1.2 million. Mr. HOKE says limit what the victim gets to $250,000 plus a quarter of that difference.

So this is reducing below what the bill said the possible recovery is. I think this is wrong because the victim is entitled to some reasonable recovery of punitive damages in relation to economic damages.

Mr. HOKE. Mr. Chairman, will the gentleman yield?

Mr. NADLER. I yield to the gentleman from Ohio.

Mr. HOKE. I thank the gentleman for yielding.

Mr. Chairman, I ask the gentleman, is it not true what his amendment would have done would have been to eliminate the cap on punitive damages?

Mr. NADLER. Yes. Reclaiming my time, that is exactly the point. There should not be a cap on punitive damages necessary as a deterrent but to avoid unjust enrichment. I can understand the cap on the recovery to the victim. But to cap the total award and then to say underneath that cap we are going to say the victim cannot get it all, that I think is wrong to the victim and does not provide an adequate deterrent to the tort feasor.

Mr. HOKE. Would the gentleman not agree that it is true that we just rejected that concept by rejecting soundly the First Amendment in this Congress? We just rejected that idea.

Mr. NADLER. Well, I think the majority is wrong.

Mr. HOKE. But we had a vote on what the gentleman wanted.

Mr. NADLER. But what the gentleman is doing goes further. What the gentleman is saying is the cap of 3 times economic damages $250,000, and we are going to deny part that have to the victim.

If you want to say we should not have any cap at all, then it makes sense to say to the victim he should not unjustly enrich himself to any extent.

I urge defeat of the amendment.

Mr. HOKE. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. I thank the gentleman for yielding and commend him for what I think is a very good amendment.

In fact, it is an amendment that helps to cure one of the objections raised on the other side to the fact that there is a cap on punitive damages. The cap is important in order to keep juries from becoming legislators. They are not elected. They do a very good job of resolving disputes between individuals, but when you have multimillion-dollar awards, you have a problem with juries imposing rules on society that ought to be imposed by State legislatures.

In this case, you are now dealing with the problem that they observe once you impose the cap, and that is that it is discriminatory because they said somebody with a very wealthy background might have high economic losses, they got 3 times that and recover far more than somebody with a poorer background who could only have a $250,000 cap.

So I compliment the gentleman because he is saying that everybody up to $250,000 is equal. Once you get beyond $250,000, we have gone already beyond the purpose of punitive damages. They are not to reward an individual or even compensate an individual for loss they get from the economic loss and the noneconomic loss.

That is medical bills that they are entitled to be reimbursed for, lost income, pain and suffering, all of that is not affected by punitive damages.

So, by saying that 75 percent of the amount above $250,000 will go to the public treasury where it should go because it is, in effect, a fine is a very good idea. And that is exactly the parallel to fines.

The standard for punitive damages is a very high one. It is only for people who do serious wrong.

So when we impose a fine on people and it is a serious wrong meeting a high standard, it ought to go into that public treasury just as a fine imposed on a criminal wrongdoer.

That was exactly the point made by former Supreme Court Justice Lewis Powell, who said that the private windfall aspects of punitive damages aggravates the problems that we have with the whole rack of standards in punitive damages because, unlike fines, which go to the public treasury, punitive damages go to the private plaintiffs. To a limited extent, that is fine, and your bill does it. Beyond that, it goes into the public treasury.

I commend the gentleman for a very good amendment.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from Virginia [Mr. SCOTT], a member of the Committee on the Judiciary.

Mr. SCOTT. Mr. Chairman, we keep hearing these generalities about excessive awards, but we do not hear specific cases that outraged juries so much that they actually awarded punitive damages.

We have to put this amendment in the context of the other amendments that we have already had and recognize punitive damages are designed to be high enough to protect society from a corporate calculation that it is easier to pay the damages for somebody injured, maimed or killed, than it is to correct the situation.

Earlier today we talked about the situation with flammable pajamas where the court found that the corporation knew that the pajamas—that newsprint burned only slightly faster than the pajamas. Because of the punitive damages, children can now go to bed safely knowing they are not wearing these things.

In the context of loser pays and a separate trial for punitive damages, this amendment would essentially remove any incentive that a plaintiff would have to go after punitive damages, thereby removing the safety valve that others will enjoy by virtue of the fact that corporations are afraid of these punitive damages. The loser pays, you can win the case, on the compensation, you could even win punitive damages. But if you come in under the offer, you end up paying your attorneys' fees, the other peoples' attorneys' fees, and you are therefore discouraged from bringing these cases.

This amendment is another discouragement in protecting society from corporate wrongdoing and ought to be defeated.

Mr. HOKE. Mr. Chairman, I would just like to respond to the last speaker by saying that clearly when you still have a $250,000 amount of money, I do not know why that is not considered to be an incentive, not to mention that in terms of criminal fines that is a tremendous fine. If somebody is fined for criminal negligence or felonious activity, a $250,000 fine is disproportionate to almost anything you will find in a State legislature's code of criminal penalties.

Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BILBRAY].

Mr. BILBRAY. I thank the gentleman for yielding this time to me.

Mr. Chairman, frankly, I think if you tried to explain this to the average citizen in the United States, they would think it is absurd that somebody is going to be given a fine and that fine is going to be given to the plaintiff. With fines and forfeitures in criminal cases, we do not have those fines and forfeitures going to the victim of the crime. That may be more logical than what we have here because at least in the criminal case they have not been made whole.

By definition, they should have been made whole before punitive is ever considered.

I think what we have to do is get the lottery out of this. I would ask that we support this amendment. I would prefer that all punitive damages go to a public fund because that is where penalty fees should be going. They go to a public fund in a criminal case. By definition, they should be going to such a fund.

Mr. HOKE. Mr. Chairman, I yield 1 minute to the gentleman from Tennessee [Mr. BRYANT].

Mr. BRYANT of Tennessee. Mr. Chairman, I rise in strong support of this amendment.

I think the concept has oft been repeated today about compensatory and punitive damages and the purposes of each. Clearly, we have established today that punitive damages are to punish and deter. We have a parallel concept in the criminal code when we have restitution and fines. In that instance, the court may award restitution; that is to the victim of the crime. But the fine that they punish that criminal with goes to the State.

In the instance of the civil justice system, punitive damages are used in a civil case to deter conduct. In our civil justice system, punitive damages are used to deter conduct for the good of society as a whole. Under those circumstances it is only right that society as a whole should reap the benefit of the punitive damages. For that reason I strongly support and commend the gentleman from Ohio for his amendment.

Mr. HOKE. I thank the gentleman for those kind words.

I will close with two thoughts. First of all, I want to thank the gentleman from California [Mr. BILBRAY] for wanting to speak on this subject. He has been walking around with pneumonia for 3 days. He felt so strongly enough, he said he wanted to come down and speak on this, and I think that says a great deal.

Mr. Chairman, this is not a farfetched amendment, by any means. What you are going to hear from the other side is somehow this is taking rights away, money away, dollars away from people. Nothing could be further from the truth than that.

□ 1815

The fact is that a punitive damage award is meant to take the place of a criminal fine. We are saying that the first $250,000 of that can go to the victim. After that, it still goes 25 percent to the victim and 75 percent to the State. It was never intended to make a plaintiff whole. We have already done that with economic and noneconomic compensatory damages. That is not what this is intended to do, never has been, never will be. But what we have to do is we need to put the money back to the State. That is where criminal fines go. That is where this, the punitive damage awards should go.

That is what this bill is all about; it is a common sense balancing approach to this problem.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. CONYERS] for 1½ minutes to close debate.

Mr. CONYERS. Members of the Committee, we have seen a chipping-away effect that has now reached the point that I think Members on the other side will begin to be repelled by it. The entire concept of punitive damages are now being reduced by an additional 75 percent when they exceed $250,000 by giving it to the Federal or State treasury rather than to the individual who sued.

When is this going to end? What reason does a person have to come into court with a lawyer, to risk his all, under the accentuated costs and risks that he must not attend, and then, if he recovers, it goes not to him, but it goes to the State or to the Federal Government itself? What kind of nationalistic scheme are we talking about?

I say to my colleagues, "You don't have to be a supporter of states rights to take exception to this."

Where will we draw the line? What are we doing? Has each citizen become an apparatchik for the State even when he or she goes to court and recovers?

The New York State court has said "no," the Supreme Court of Colorado has said "no," and now we should say "no" to the gentleman from Ohio [Mr. HOKE].

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. HOKE].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HOKE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 162, noes 265, not voting 7, as follows:

[Roll No. 224]

AYES—162

Andrews
Archer
Armey
Baker (CA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bereuter
Bevill
Bilbray
Bliley
Boehner
Bonilla
Browder
Brownback
Bryant (TN)
Bunn
Buyer
Calvert
Camp
Chenoweth
Christensen
Chrysler
Coburn
Collins (GA)
Condit
Cox
Crane
Cremeans
Cunningham
Deal
DeLay
Doggett
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ewing
Fawell
Fields (TX)
Flanagan
Fowler
Frisa
Funderburk
Gallegly
Ganske
Geren
Gilchrest
Gillmor
Goodlatte
Goodling
Goss
Greenwood
Gunderson
Gutknecht
Hancock
Hastert
Hastings (WA)
Hefley
Heineman
Hilleary
Hobson
Hoke
Hostettler
Houghton
Hunter
Hyde
Inglis
Jacobs
Johnson, Sam
Jones
Kanjorski
Kasich
Kim
Kingston
Klug
Knollenberg
Kolbe
LaFalce
Laughlin
Leach
Lewis (KY)
Lincoln
Linder
Luther
Maloney
Martinez
McCollum
McCrery
McInnis
McKeon
McNulty
Metcalf
Mica
Miller (CA)
Miller (FL)
Moorhead
Neumann
Norwood
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pombo
Pomeroy
Porter
Portman
Pryce
Regula
Roberts
Rogers
Rohrabacher
Roth
Royce
Sabo
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schumer
Seastrand
Sensenbrenner
Shaw
Shuster
Skeen
Smith (MI)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stenholm
Stump
Talent
Tanner
Tauzin
Taylor (NC)
Thomas
Thornberry
Thurman
Towns
Upton
Vucanovich
Walker
Watts (OK)
Weldon (FL)
Weller
Williams
Wolf
Young (FL)
Zimmer

NOES—265

Abercrombie
Ackerman
Allard
Bachus
Baesler
Baker (LA)
Baldacci
Barcia
Barrett (WI)
Bass
Bateman
Becerra
Beilenson
Bentsen
Berman
Bilirakis
Bishop
Blute
Boehlert
Bonior
Bono
Borski
Boucher
Brewster
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Bunning
Burr
Burton
Callahan
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Combest
Conyers
Cooley
Costello
Coyne
Cramer
Crapo
Danner
Davis
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Dooley
Doyle
Duncan
Durbin
Edwards
Engel
Ensign
Eshoo
Evans
Everett
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Foley
Ford
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frost
Furse
Gejdenson
Gekas
Gephardt
Gilman
Gonzalez
Gordon
Graham
Green
Gutierrez
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harman
Hastings (FL)
Hayes
Hefner
Herger
Hilliard
Hinchey
Hoekstra
Holden
Horn
Hoyer
Hutchinson
Istook
Jackson-Lee
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
King
Kleczka
Klink
LaHood
Lantos
Largent
Latham
LaTourette
Lazio
Levin
Lewis (CA)
Lewis (GA)
Lightfoot
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Manton
Manzullo
Markey
Martini
Mascara
Matsui
McCarthy
McDade
McDermott
McHale
McHugh
McIntosh
McKinney
Meehan
Meek
Menendez
Meyers
Mfume
Mineta
Minge
Mink
Moakley
Molinari
Mollohan
Montgomery
Moran
Morella
Murtha
Myers
Myrick
Nadler
Neal
Nethercutt
Ney
Nussle
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor

Payne (NJ)
Pelosi
Peterson (FL)
Pickett
Poshard
Quillen
Quinn
Radanovich
Rahall
Ramstad
Reed
Reynolds
Richardson
Riggs
Rivers
Roemer
Ros-Lehtinen
Rose
Roukema
Roybal-Allard
Rush
Sanders
Sawyer
Schiff
Schroeder
Scott
Serrano
Shadegg
Shays
Sisisky
Skaggs
Skelton
Slaughter
Smith (NJ)
Spratt
Stark
Stearns
Stockman
Stokes
Studds
Stupak
Tate
Taylor (MS)
Tejeda
Thompson
Thornton
Torkildsen
Torres
Torricelli
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Waldholtz
Walsh
Wamp
Waters
Watt (NC)
Waxman
Weldon (PA)
White
Whitfield
Wicker
Wilson
Wise
Woolsey
Wyden
Wynn
Yates
Young (AK)
Zeliff

NOT VOTING—7

Cubin
Forbes
Gibbons
Hayworth
Rangel
Tiahrt
Ward

☐ 1838

Messrs. ZELIFF, TATE, BUNNING of Kentucky, BREWSTER, HANSEN, VENTO, BONO, BARCIA, DICKS, KENNEDY of Massachusetts, OBERSTAR, CALLAHAN, WAMP, MONTGOMERY, CHAMBLISS, EVERETT, and SISISKY, and Ms. BROWN of Florida changed their vote from "aye" to "no."

Messrs. PAYNE of Virginia, PAXON, GREENWOOD, McINNIS, McCRERY, and DORNAN changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 11, printed in House Report 104–72.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

Mr. COX of California. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. Cox of California:

Page 1, strike line 7 and all that follows through the matter that precedes line 1 on page 2, and insert the following:

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Findings and purposes.

TITLE I—PRODUCT LIABILITY REFORM

Sec. 101. Applicability.
Sec. 102. Liability rules applicable to product sellers.
Sec. 103. Defense based on claimant's use of intoxicating alcohol or drugs.
Sec. 104. Misuse or alteration.
Sec. 105. Frivolous pleadings.
Sec. 106. Several liability for noneconomic loss.
Sec. 107. Statute of repose.
Sec. 108. Definitions.

TITLE II—LIMITATION ON SPECULATIVE AND ARBITRARY DAMAGE AWARDS

Sec. 201. Treble damages as penalty in civil actions.
Sec. 202. Limitation on additional payments beyond actual damages.
Sec. 203. Fair share rule for noneconomic damage awards.
Sec. 204. Definitions.

TITLE III—BIOMATERIALS SUPPLIERS

Sec. 301. Liability of biomaterials suppliers.
Sec. 302. Procedures for dismissal of civil actions against biomaterials suppliers.
Sec. 303. Definitions.

TITLE IV—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

Sec. 401. Application limited to interstate commerce.
Sec. 402. Effect on other law.
Sec. 403. Federal cause of action precluded.
Sec. 404. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the civil justice system, which is designed to safeguard our most cherished rights, to remedy injustices, and to defend our liberty, is increasingly being deployed to abridge our rights, create injustice, and destroy our liberty;

(2) our Nation is overly litigious, the civil justice system is overcrowded, sluggish, and excessively costly, and the costs of lawsuits, both direct and indirect, are inflicting serious and unnecessary injury on the national economy;

(3) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability have a direct and undesirable effect on interstate commerce by increasing the cost and decreasing the availability of goods and services;

(4) the rules of law governing product liability actions, damage awards, and allocations of liability have evolved inconsistently within and among the several States, resulting in a complex, contradictory, and uncertain regime that is inequitable to both plaintiffs and defendants and unduly burdens interstate commerce;

(5) as a result of excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability, consumers have been adversely affected through the withdrawal of products, producers, services, and service providers from the national market, and from excessive liability costs passed on to them through higher prices;

(6) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability jeopardize the financial well-being of many individuals as well as entire industries, particularly the Nation's small businesses, and adversely affects governments, taxpayers, nonprofit entities and volunteer organizations;

(7) the excessive costs of the civil justice system undermine the ability of American companies to compete internationally, and serve to decrease the number of jobs and the amount of productive capital in the national economy;

(8) the unpredictability of damage awards is inequitable to both plaintiffs and defendants and has added considerably to the high cost of liability insurance, making it difficult for producers, consumers, and individuals to protect their liability with any degree of confidence and at a reasonable cost;

(9) because of the national scope of the problems created by the defects in the civil justice system, it is not possible for the several States to enact laws that fully and effectively respond to those problems;

(10) it is the constitutional role of the national government to remove barriers to interstate commerce; and

(11) there is need to restore rationality, certainty, and fairness to the civil justice system in order to protect against excessive, arbitrary, and uncertain damage awards and to reduce the volume, costs, and delay of litigation.

(b) PURPOSES.—Based upon the powers contained in Article I, Section 8, Clause 3 of the United States Constitution, the purposes of this Act are to promote the free flow of goods and services and to lessen burdens on interstate commerce by—

(1) establishing certain uniform legal principles of product liability which provide a fair balance among the interests which provide a fair balance among the interests of product users, manufacturers, and product sellers;

(2) placing reasonable limits on damages over and above the actual damages suffered by a claimant;

(3) ensuring the fair allocation of liability in civil actions;

(4) reducing the unacceptable costs and delays of our civil justice system caused by excessive litigation which harm both plaintiffs and defendants; and

(5) establishing greater fairness, rationality, and predictability in the civil justice system.

Page 2, strike line 3 and all that follows through line 24, and page 4 (and redesignate subsequent sections accordingly).

Page 11, strike lines 17 through 24 (and redesignate subsequent sections accordingly).

Page 12, strike line 24 and all that follows through line 2 on page 13 (and redesignate the subsequent section accordingly).

Page 17, strike lines 10 through 12 and insert the following:

TITLE II—LIMITATION ON SPECULATIVE AND ARBITRARY DAMAGE AWARDS

SEC. 201. TREBLE DAMAGES AS PENALTY IN CIVIL ACTIONS.

Page 17, line 21, insert "rights or" before "safety".

Page 17, beginning in line 25, strike "for the economic loss on which the claimant's action is based" and insert "for economic loss".

Page 18, insert after the period in line 2 the following: "This section shall be applied by the court and shall not be disclosed to the jury.".

Page 18, line 3, strike "AND PREEMPTION".

Page 18, strike "title" in lines 4 and 6 and insert "section".

Page 18, beginning in line 7, strike "in any jurisdiction that does not authorize such actions" and insert after the period in line 8 the following: "This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of punitive damages.".

Page 19, after line 19, insert the following new sections (and redesignate the subsequent section accordingly):

SEC. 202. FAIR SHARE RULE FOR NONECONOMIC DAMAGE AWARDS.

(a) FAIR SHARE OF LIABILITY IMPOSED ACCORDING TO SHARE OF FAULT.—In any product liability or other civil action brought in State or Federal court, a defendant shall be liable only for the amount of noneconomic damages attributable to such defendant in direct proportion to such defendant's share of fault or responsibility for the claimant's actual damages, as determined by the trier of fact. In all such cases, the liability of a defendant for noneconomic damages shall be several and not joint.

(b) APPLICABILITY.—Except as provided in section 401, this section shall apply to any product liability or other civil action brought in any Federal or State court on any theory where noneconomic damages are sought. This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the application of the theory of joint liability to any kind of damages.

Page 19, after line 21, insert the following new paragraph:

(1) The term "actual damages" means damages awarded to pay for economic loss.

Page 19, line 22, strike "(1)" and insert "(2)".

Page 20, line 4, strike "(2)" and insert "(3)".

Page 20, line 12, strike "(3)" and insert "(4)".

Page 20, line 18, strike "(4)" and insert "(5)".

Page 20, after line 20, insert the following new paragraph (and redesignate subsequent paragraphs accordingly):

(6) The term "noneconomic damages" means damages other than punitive damages or actual damages.

Page 20, line 21, strike "(5)" and insert "(7)".

Page 21, line 1, strike "(6)" and insert "(8)".

Page 30, strike lines 6 and 7, and insert the following:

TITLE IV—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

SEC. 401. APPLICATION LIMITED TO INTERSTATE COMMERCE.

Titles I, II, and III shall apply only to product liability or other civil actions affecting interstate commerce. For purposes of the preceding sentence, the term "interstate commerce" means commerce among the several States or with foreign nations, or in any territory of the United States or in the District of Columbia, or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia and any State or territory or foreign nation.

Redesignate subsequent sections accordingly.

The CHAIRMAN. Pursuant to the rule, the gentleman from California [Mr. COX] and a Member opposed will each be recognized for 20 minutes.

PARLIAMENTARY INQUIRY

Mr. FRANK of Massachusetts. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. FRANK of Massachusetts. As a member of the reporting committee, I wonder, by whatever process of mental divination the Chair uses, if he would decide that I had the right to close on this.

The CHAIRMAN. The gentleman is correct, he will have the right to close.

Mr. FRANK of Massachusetts. I thank the Chair.

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. COX].

Mr. COX of California. Mr. Chairman, I yield myself 2½ minutes.

Mr. Chairman, the tenor of the debate on this entire bill and all of the amendments to this bill is pretty clear: We have too many lawsuits in America. We have become too litigious. It costs too much money, and simple justice is not being served.

The amendment that I am proposing, along with my colleague, Mr. PETE GEREN from Texas, advances a simple rule that will go a long way to making sure that fair justice exists once again in our courts. Our simple rule is called the fair-share rule.

Under this provision, a person will be made to pay for the damages that he, she, or it caused, but no person will be made to pay for damages that someone else caused. Our rule will hold wrongdoers responsible for their actions, and our rule will permit people who are not responsible for that damage to understand that their conduct will have been rewarded faithfully by the law.

The so-called joint and several liability doctrine is really the fair-share rule stood on its head. If you are adjudged 1 percent liable, you can be required to pay under the current system 100 percent of the damages caused by someone else if it turns out that you are the only one in the picture that has any money. It is known to plaintiffs' trial lawyers as the deep-pockets opportunity. Find somebody, not necessarily a rich person, perhaps just a small business person or an individual who has an insurance policy, who you think can therefore be made to pay, or just from whom a settlement can be extorted, and bring them into the lawsuit.

Take the case of a drunk driver going down the street, goes off the sidewalk onto the front lawn and kills someone. If that person is sued and the jury were to find, and this is approximately the facts in a real case in California, the jury finds that the drunk driver is 95 percent liable for the damage that the drunk driver caused, but the city is 5 percent liable because there was a pothole on the way, and the drunk driver does not have any money, then the taxpayers are stuck for all of the damage caused by the drunk.

□ 1845

That is our current system. Under the fair share rule, someone adjudged 5 percent liable will pay 5 percent of the damage. That is the fair share rule.

I urge support for this amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 4 minutes and 30 seconds to the gentleman from Michigan [Mr. CONYERS], the ranking member of the full Committee on the Judiciary.

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding time to me.

We are confronted with a very strange amendment here, because what has not been mentioned by the author of it is that it seeks to exclude foreign manufacturers from the service of process requirement that American manufacturers are subject to. And so members of the committee, we are back to the same amendment on the other end that we voted only a few hours ago, where we said that a foreign manufacturer was subject to the same discovery proceedings that a national manufacturer, a domestic manufacturer is subject to.

We said that we should not be able to have them avoid litigation because their discovery may take them to Europe or to Japan, that they must subject themselves to discovery. And this amendment, although strangely enough it has not been said yet, and you are going to have to read pretty carefully to find it anywhere, is that this is going to change the service of process in suits brought against foreign manufacturers.

It is another way to let them out of playing the game on a level playing field with domestic manufacturers.

I think we all know what some of them are doing. They sell their goods, freight on board, in Japan or Germany, just so they will not be treated as having contacts in this country which could subject them to suit there. They know that this makes U.S. citizens go through repeated hurdles to bring suit against them, ranging from translating the complaint into another language and asking the State Department to serve action, and even then the foreign business may elect to ignore the action.

This is another backdoor way of giving a foreign manufacturer a leg up. To make sure that everybody knows what the gentleman is doing, I do not know why the gentleman did not just come out, the gentleman from California did not just come out and say what this is going to do. It is going to change the way service of process is implemented by a foreign manufacturer, and that is just the front door way of getting around the discovery amendment that would have given them a break that we just rejected.

Why do you want to give different rules in court to foreign companies? What benefit do you see in that? I know there are a lot of foreign companies here, but do you not see, my friend, that citizens that are sued and want to sue will need to have service of process. And if you try to take this out, we are going to be doing ourselves a grave disservice to all of our constituents?

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from California.

Mr. COX of California. Mr. Chairman, the gentleman makes a very fair point. In fact, the effect of the gentleman's just having won on his amendment is that the provisions of this amendment that would otherwise have dealt with service of process will have no effect. The gentleman has carried the day, and the gentleman's amendment will in fact be successfully included in this bill.

Mr. CONYERS. Reclaiming my time, the current language in this bill is carefully balanced. It offers a carrot and a stick. The end result is a substantially more balanced playing field.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. My sense would be, in most parliamentary situations, that the last enactment would supersede the previous one. So the notion that by a prior action we could somehow control a subsequent action is a dubious proposition at best. The gentleman has got a drafting problem. He cannot solve it by something that we did a couple of hours ago, because by a subsequent action we would be deemed to have amended or modified the previous action.

Mr. CONYERS. Mr. Chairman, this amendment strikes a blow against U.S. citizens, the same as the other discovery amendment tried to do.

Mr. COX of California. Mr. Chairman, I yield 3 minutes to the gentleman from Texas, Mr. PETE GEREN.

Mr. Chairman, will the gentleman yield?

Mr. PETE GEREN of Texas. I yield to the gentleman from California.

Mr. COX of California. Our amendment dealt with section 109 and struck it. The gentleman from Michigan added a new section 110. Our amendment has no effect on it. So the gentleman has carried the day.

Mr. PETE GEREN of Texas. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of this amendment. The amendment in front of us applies to noneconomic damages known to most people as pain and suffering, emotional distress. Joint and several liability for noneconomic damages is a system that asks Peter to pay for Paul's sins. The bill currently remedies this inequity for all products cases.

However, our amendment extends this much-needed reform to all civil actions. This means that each defendant will be liable for damages for pain and suffering in an amount proportional to his fair share.

When joint and several liability was first developed, plaintiffs had to be found completely blameless to recover damages. Now with few exceptions, plaintiffs can recover damages even if they are partially or mostly at fault. In a recent case involving Walt Disney and a woman injured on bumper cars, Walt Disney was found 1 percent at fault in an accident, yet the trial court held and the Florida Supreme Court affirmed that Disney had to pay 86 percent of the plaintiff's damages.

It may make sense to require that a single defendant be held accountable for all economic damages to make sure that the defendant is made financially whole to the extent that dollars can account for the problems suffered by the plaintiff, but there is little justification for allocating liability in this manner for highly subjective noneconomic damages.

I urge my colleagues to join me in voting for this amendment. The problems of joint and several liability are not limited exclusively to the product liability area. Excessive noneconomic damages are not commmonplace in all types of cases, including claims against citizen, small businesses, charities, and the Little League.

Let us ask each citizen to pay his or her fair share of the damages, no more, no less. That is fair.

Mr. Chairman, I ask my colleagues to support this amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 4 minutes to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Chairman, the House a little earlier rejected an amendment which would have denied discovery to American firms which were involved in product liability cases where foreigners were taking advantage of them and where they were receiving shelter under the bill. Note that the vote was 258 in favor of that amendment, an overwhelming win. This amendment would, and language of section 109, eliminate the requirement that foreign companies inside this country appoint an agent for purposes of receiving service in the case of product liability suits.

I say that the House has once rejected that principle and should again reject it. Under the previous amendment, you could not get discovery. Now you cannot even get into court under this amendment.

Let us talk about something other. In eliminating the joint and several liability, a man hires two hoodlums to kill his mother-in-law. The woman is horribly disfigured. Judgment is collected ultimately by the woman against the husband and the two hoodlums. She can only collect approximately a third because no longer is there joint and several liability.

Another case: A Member of Congress is liabled by his local newspaper, charged with contributing to the delinquency of a minor. No longer under this amendment is there joint and several liability. He sues the newspaper and the two reporters. Because joint and several liability is no longer there, he can only collect approximately a third of the damages which would have been appropriately assessed against the wrongdoers.

This is a bad amendment. It is an admirable reason for why we ought not write legislation of this kind on the floor. It carries the question of liability. It carries the question of compensation well beyond the question of product liability.

It carries it into all civil wrongs and all civil litigation.

The amendment should be rejected. It favors foreigners, it favors wrongdoing. It puts the innocent at risk. It denies people proper recovery for serious wrongs, intentional or otherwise.

I urge the amendment be rejected.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, the section that is being deleted by the Cox amendment requires the foreign manufacturer to appoint an agent for service or process. The prior amendment of the gentleman from Michigan [Mr. CONYERS] did not touch that issue at all. So what this is doing is something very inconsistent with the spirit of the Conyers amendment, but if this amendment should pass, contrary to the author's representations, it would do great damage just as the gentleman has suggested.

Mr. DINGELL. Reclaiming my time, Mr. Chairman, it strikes the provision relative to service of process. It strikes the proper requirement that foreign companies appoint an agent for purposes of receiving service.

Mr. DOGGETT. Mr. Chairman, if the gentleman will continue to yield, the House, previously, by an overwhelming margin adopted the amendment of the ranking Member, the gentleman from Michigan [Mr. CONYERS]. It does deal with trying to assure parity that we, for once, do not give all the advantages to the foreign manufacturers, that we realize the importance of American manufacturers and now the spirit and the principle of that amendment is being undermined by the amendment being offered at this point, because it deletes the section in this particular provision that requires these foreign manufacturers to have an agent for process, something that every American manufacturer has to do.

Mr. DINGELL. The House has already spoken. Foreigners should respond in discovery. But this amendment strikes the ability to even get them in court. It takes away the ability of an American injured by foreign misbehavior in the area of product liability to even get service, because no longer must the foreigner appoint an agent for purposes of receiving service under this legislation.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

It is very interesting to note that the fair share rule that we are proposing in this amendment is apparently so unobjectionable that the minority chooses not even to debate it, but rather to debate the red herring, first, that the Conyers amendment that we earlier passed might be stricken by this amendment. They have now conceded that the Conyers amendment is protected, is part of this bill. We have just passed it. It is not stricken.

But the argument is raised that the service of process provisions in another part of the bill, which are required in order to make the Conyers amendment work, would be stricken. That is neither here nor there because the Hague Service Convention already provides procedures consistent with our international agreements that will permit the Conyers amendment to work perfectly fine.

Mr. Chairman, I yield 3 minutes to the gentleman from Nebraska [Mr. CHRISTENSEN].

Mr. CHRISTENSEN. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise in support of the Cox-Geren-Ramstad-Christensen bill under debate here. This is an important piece of legislation that will ensure small businesses and volunteer organizations, to make sure that they are brought under the umbrella of protection that we have sought to provide other American manufacturers.

This amendment will extend the prohibition against the unjust application of joint and several liability to all civil cases involving interstate commerce.

□ 1900

The litigation explosion is having an adverse affect, not only on our manufacturing, but also on the Nation's start-up businesses and other small businesses. Frivolous and excessive litigation has an especially destructive affect on small businesses.

We all know these sorts of businesses. They are undercapitalized and understaffed, which means they cannot afford either the lawyer bills or the ridiculous amounts of time it takes for an individual to deal with a legal matter.

Under the rule of joint and several liability, a small business can find itself literally driven out of business by a jury in search of a pocket, and a pocket with money in it. It is usually the deep pocket they are looking for.

But small businesses are not alone in being threatened by joint and several liability. We have all heard the horror stories about the vastly increased insurance premiums that volunteer organizations and municipalities across the country are being forced to pay because of the ridiculous rulings against them.

Those rulings, based on the doctrine of joint and several liability, based on the idea that you can be held entirely responsible for the injury if you are only 1 percent or 2 percent at fault, are absolutely wrong. When trial lawyers go looking for a State that has been very kind to them, and sympathetic juries, they go to States like Alabama and Texas. I will tell the Members, it is time to restore some common sense back to this rule.

That is why Congress needs to exercise its authority to serve as the arbiter on the issues that are involving interstate commerce, so that we have cases that are judged similarly in New York and in Texas and in Alabama and in Omaha, NE, where I am from.

We need to end the arbitrary doctrine of joint and several liability, and we need to end it today. I urge my colleagues to vote for this Cox-Ramstad-Geren-Christensen amendment, and to do it today.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. BATEMAN].

Mr. BATEMAN. I thank the gentleman for yielding time to me.

Let me say first of all, Mr. Chairman, there is bipartisan support for this amendment, but my opposition I hope will demonstrate that there is indeed some bipartisan opposition to this amendment. I wish there were more than 2 minutes in order for me to explain all of the variety of reasons why I do so.

Fundamental to it is, No. 1, the recitations of the findings and purposes of the amendment I think are inordinately broad. They represent a conclusion by this Congress that we think there are too many lawsuits being brought in America, and plaintiffs are winning too many of them. That may or may not be the case, but I suggest it is not even the function of this Congress to make that judgment. The function of this Congress is as to Federal law, to set forth the ground rules, the parameters, and the substantive law for the Federal courts in cases where there is Federal jurisdiction.

I complain of this amendment because it federalizes a significant aspect of the law which, until now, has been relegated to the State courts and to a State court system in which most of the litigation is brought. I would suggest that we make a mistake to federalize civil justice in this United States from this Congress, and would say to my colleagues, especially on this side of the aisle, if we do it today in this fashion, under these findings, for these purposes, it can be done tomorrow for entirely different purposes.

Mr. Chairman, let me finally say that this notion of joint and several liability is bottomed on principles, principles that were part of the common law of England, brought to America in the 13 original colonies, and a part of the law of all of those 13 original colonies forming the Union, and have been a part of the law of all of the States for all of the years since.

I wish there was time for me to discuss with the Members, and I hope someone else will, the principle on which that rule regarding joint and several liability is bottomed. There is a principle involved.

Mr. COX of California. Mr. Chairman, I yield 3 minutes to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in strong support of this amendment to extend the fair-share rule to all civil actions.

Mr. Chairman, other than the vote on final passage, make no mistake about it, this will be the most important vote we will have on tort reform. The bottom-line question for each of us to answer is this: Why on earth should a defendant with 1 percent or 2 percent of liability be held 100 percent responsible for payment of noneconomic damages. That is the question each of us has to answer. That is not fair, and everyone knows it.

Let me stress what this amendment will not do. It will not end joint liability for medical expenses. Thus, even though a party may be only 1 or 2 percent at fault, such a defendant could still be held 100 percent liable for the plaintiff's medical expenses and other economic damages, such as lost wages.

While this also may not be fair to such a defendant, it would be more unfair to deny an injured plaintiff the means to be made whole again, and that is what our tort system is all about, to make an injured plaintiff whole.

Mr. Chairman, let us make it perfectly clear that this amendment simply limits noneconomic damages in proportion to each defendant's share of fault. This, Mr. Chairman, is just common sense. Let me give Members an idea of an actual case involving the problem that joint liability can cause.

Those of the Members who have been there or lived there know that in Minnesota we have two seasons, winter and road construction. We see signs for most of the year "Slow down, give them a break, under construction."

Now, picture among these signs a drunk driver careening at an excessive speed through detours posted at 45 miles an hour. The end result is a crash. Next comes a lawsuit brought by the drunk driver. Who does the drunk driver sue? For starters, he sues the State highway department, but the State in this case imposes limits on its liabilities, so the driver's attorney sues every deep pocket imaginable: in this actual case, not only the State but the road contractor, the utility company who owned the adjoining property, the engineering firm who designed the detour through which the drunk driver plowed his car, and so forth.

In the end, the defendants decided to settle out of court for $35,000 each. This was after a 15-member engineering firm spent over $200,000 in legal fees over 5 years, and 100 hours of work that should have been spent on engineering. Clearly, the drunk driver's attorney would have thought twice about suing all possible deep pockets if joint liability were not available.

I urge all of my colleagues to support this amendment to restore common sense to our legal system, to restore proportionate liability and the fair share rule.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, the intellectual weakness of the arguments of the proponents is really quite amazing, if you take just a couple of moments to think about it. First, every case they cite talks about the 1-percent negligent party, but the vast majority, I believe all the Republicans, voted for a rule which prohibited amendments to eliminate any minor wrongdoer, anyone below 20 percent, from having joint liability, while keeping the major wrongdoers in the case, because in the end, the issue is who is going to get shafted. Either it is the plaintiff, or it is one of the wrongdoers.

We concede, at least in my amendment that I offered, and it was denied, that minor tort feasor should not have to pay the entire judgment. Second, a great deal is made about how important and logical this is, and it is only fair, but it does not apply to economic damages.

The gentleman from Massachusetts [Mr. FRANK] had an amendment to exclude anybody who is under for economic or noneconomic damages. If it is unfair to pay the pain and suffering, why is it fair to pay the economic damages?

I know why you did not do it that way, because it looked too cruel, because the proponents of the amendment talk about "We are just dealing with the feelings part of this." If a person becomes a quadriplegic because of the negligence of another, and they say "You pay the medical bills and the wage loss and that is it, everything else is just about feelings," you amputate the wrong leg because of the negligence of the hospital or the doctor, you pay whatever wage loss there is, there may be none, you pay the medical bills, and then everything else is just feelings, we are talking about compensating the person and making them whole.

Get rid of the minor tort feasors by excluding the 1 percent, 2 percent, 5 percent, 10 percent case. Do not let off the major wrongdoers, and leave the plaintiff without being made whole, without compensation. You talked about the drunk driving case. What you have passed with title II in this bill is a punitive-damages statute which keeps a person who is injured by a drunk driver from suing the drunk driver for punitive damages on State remedies.

The amendment is so broad it reaches into the typical automobile case in a neighborhood in any city in America. It is not limited to product liability. It is not limited to interstate commerce. It is the most far-reaching, intrusive kind of amendment imaginable.

The best comments I have heard today were from the gentleman from Virginia [Mr. BATEMAN], a true conservative, who wanted to know what business is it of Congress' whether in an automobile accident case at an intersection, there is joint and several liability or not?

We can make arguments either way, but the State legislature and the Governor, they are the people to decide. They are the ones closest to the voters. There is no Federal question involved in this, but there are some economic interests and some insurance companies who want it, and I do not believe that is the motivation, because I am not into attributing motivations to people; some people see that perspective, but they do not see what is going to be left for the plaintiff or for the concept of Federalism.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman who just spoke stated "It isn't limited to interstate commerce." Were that true, I would not support this amendment, but of course, it is expressly limited to interstate commerce, which is precisely the role of this Congress under Article 1, section 8.

Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. HYDE], the distinguished chairman of the Committee on the Judiciary.

Mr. HYDE. Mr. Chairman, I shall have to talk fast.

Mr. Chairman, 33 States have abolished joint and several liability. That is the problem. There are 33 different laws, different methods of avoiding and evading joint and several liability, which is very unfair. The serious problem of inconsistency in the tort laws of the 50 States is there. This seeks uniformity, which makes legal common sense.

Mr. Chairman, let me briefly address the federalism aspect that I have heard so much about today. I have heard from Members on our side of the aisle who are troubled by our preempting of State laws. They insist that the States are important and should not be administrative districts of the Federal Government.

I just want them to know what the passing of time has done to that notion. We have the Environmental Protection Agency, Food and Drug Administration, Occupational Safety and Health Administration, Consumer Product Safety Commission, Equal Employment Opportunity Commission, National Labor Relations Board, Federal Trade Commission, Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Commodities Futures Trading Commission. Every aspect of life is regulated by the Federal Government. I have not mentioned the Americans with Disabilities Act, ERISA.

The only facet of our great economy that is left untouched is the multibillion-dollar litigation industry. It seems to me it is eminently justified that we try to put some common sense and rationality, predictability, into this big business of lawsuits. That is what the gentleman is trying to do. I support it wholeheartedly.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 1 minute to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, in these cases, all the victim knows is that he was injured. If you have a doctor who is clearly negligent, the doctor can escape some liability by saying it was 5 percent the nurse's fault, 10 percent the anesthesiologist's, 10 percent the hospital, 10 percent the product, and now where are we in the lawsuit?

The plaintiff has to have five different defendants, five different sets of lawyers, five different judgments, five different collections, some insolvent. This consumer just has to, I guess, get over it. They are not going to be able to become whole.

Mr. Chairman, we have always had loser pays. Even if they win, they might be having to pay opposing counsel. We have limited damages. We have come up with new defenses.

Mr. Chairman, this reduces the accountability of wrongdoers. It allows wrongdoers to escape responsibility for their actions, at the expense of the innocent victims. Consumer protection is taking another giant step backward. I would hope that we would defeat this amendment.

Mr. COX of California. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Connecticut [Mr. SHAYS].

Mr. SHAYS. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, 50 States, 50 different State laws affecting interstate commerce, and we have for so long allowed a tremendous ripoff. It blows my mind that we have tolerated this for so many years.

Mr. Chairman, I rise in support of Common Sense Product Liability and Legal Reform Act of 1995, and I rise in support of the amendment of the gentleman from California [Mr. COX] and the gentleman from Texas [Mr. PETE GEREN] the fair share amendment.

It is so simple. It does not take a lot of words, a lot of legalese. The bottom line is so simple. If you are responsible, you should pay your proportionate share of whatever problem you caused, but if you are not responsible, you should not be held liable.

When I hear of the outrageous awards that are given to an individual plaintiff, and then I learn of the liability that company had, which was 100 percent, when in fact they only caused 5 or 10 percent of the action, and then I think "Who pays?" I pay, you pay. We all pay for this outrage. This outrage needs to end.

□ 1915

The bottom line is so simple, it is so clear and maybe it is just one has to be an attorney to find it confusing. If you are in fact responsible, you should pay. If you are 50 percent responsible, you should pay 100 percent of your 50 percent. But you should not have to pay when you are not responsible in the vast majority of the cases.

I urge my colleagues to vote this amendment and vote this bill. I consider it of all the bills coming before this Chamber the most important bill that we will vote on in this entire 2 years.

Mr. FRANK of Massachusetts. Mr. Chairman, I reserve the balance of my time.

Mr. COX of California. May I inquire of the Chair how much time remains on each side?

The CHAIRMAN. The gentleman from California [Mr. COX] has 3 minutes remaining and the gentleman from Massachusetts [Mr. FRANK] has 5½ minutes remaining.

Mr. DOGGETT. Perhaps the gentleman might yield on section 109.

Mr. COX of California. As I indicated, I would like to reserve time at the end for such purpose.

Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee [Mr. BRYANT].

Mr. BRYANT of Tennessee. I thank the gentleman for yielding me the time.

I rise in strong support of this bill to abolish the doctrine of joint and several liability. The core of our judicial system, I think, is one of fairness and has been repeated so often today.

In this context, it just seems to me the fairest thing, that a person at fault have to pay and if a person is not at fault, then they should not have to pay, that it ought to be grossly unfair for this system to require a defendant to pay the full judgment, 100 percent of a judgment, when a jury has decided that they are not 100 percent liable, perhaps as little as 1 percent liable.

The example that I have seen used so many times, you have got 3 defendants, X, Y, and Z, and X is held to be 10 percent at fault and Y and Z 45 percent at fault each for a total of 100 percent. If 10 percent is the deep pockets in the case and they are going to have to pay 100 percent of the judgment, they may have a right to go back against the other two defendants, Y and Z, but if Y and Z have no money, which is usually the case, it is worthless.

Let me address just briefly before I sit down two examples that have been brought forward from the other side. One had to do with the doctor who might be 5-percent liable and point the finger at the nurse and this nurse and this doctor and this hospital and that the lawsuit would result in more defendants coming in. Let me assure the gentleman from Virginia that the lawsuit will certainly include all of those people, anyway. There is a shotgun approach that is used so often in litigation to sue anybody that might be at fault and that is what happens in the type of system we are working under.

Under another example cited by the gentleman from Michigan, he used the example of a husband hiring two hoodlums to beat up his wife and somehow that the husband might escape 100-precent fault on that because of the actions of the hoodlums. I would suggest that the legal theory of principal and agent would be at work there and certainly whatever the hoodlums did to his wife, he would be held 100-percent accountable and I would assume a jury would so find him and he would be 100-percent liable for the judgment to his wife. Again I think this is the only fair thing to do under the circumstances, and I strongly support the bill.

Mr. FRANK of Massachusetts. Mr. Chairman, I reserve the balance of my time for the purpose of closing.

Mr. COX of California. Would the gentleman from Massachusetts who has significantly more time be willing to yield to the gentleman to ask a question?

Mr. FRANK of Massachusetts. No.

Mr. COX of California. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Chairman, I just learned something this evening. O.J. Simpson does not have the most creative lawyers in the world; the most creative lawyers in America are right in this Chamber.

Did Members hear some of these arguments? One fellow from Michigan who I admire a great deal got up and said, "Don't vote for this amendment, people in Congress, because if you do, you can't sue your local newspaper if they wrong you."

Have you ever heard of a Congressman winning a case against a local newspaper? In fact, Sullivan versus New York Times says you cannot sue your local newspaper.

The reason that this is a great amendment comes not from this body but from George McGovern. Remember him? After he left the Senate, he went into business, and here is what he said in the New York Times. He said,

> America is in the midst of a new Civil War, a war that threatens to undercut the civic basis of our society. The weapons of choice are not bullets and bayonets but abusive lawsuits brought by an army of trial lawyers subverting our system of civil justice while enriching themselves.

That is why this is a good amendment. The Manhattan Institute says it costs $100 billion a year. Vote for this amendment. It is a great amendment.

The CHAIRMAN. To close debate, the Chair recognizes the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. To begin, Mr. Chairman, there is not the remotest evidence that George McGovern was talking about this particular amendment, because this amendment is not about product liability. The restriction on joint and several liability for noneconomic damages on product liability is in the bill. This bill, and I was glad to hear the gentleman from Illinois proclaim the death of States rights, because what this bill says is, "This section shall apply to any product liability or other civil action brought in any Federal or State court on any theory where noneconomic damages are sought."

This is an amendment that does not deal with product liability but that is already covered. This says any lawsuit anywhere in America where people are looking for noneconomic damages, we will tell the States how to run things. People said, "Well, we've got to protect our manufacturing. We do a lot of exports." Then they mentioned the Little League. Well, it is not my impression we export that many little leaguers. I know the kids go overseas to play ball, but most come home. They rarely leave but one or two behind. The fact is that this is a statement by the Republican Party on the whole, not all of them, saying, "We don't trust local juries, we don't trust local legislatures, we don't trust local judges. We will tell you how to run, not manufacturing, not interstate commerce, any civil lawsuit." Someone falls down the steps, someone is sued for libel, someone claims alienation of affection, anyone, so it is the most arrogant grab from the States by the Federal Government. Because it is not about manufacturing. We do not need that. The amendment is about every single lawsuit and it says we cannot trust the juries and we cannot trust the States.

As to the noneconomic damage thing, I offered an amendment that said if you are less than 20 percent responsible, you do not get joint liability for economic or noneconomic damages. That must have been a good amendment. How do I know? The Committee on Rules would not let it in. The Committee on Rules is for openness on any amendment they think they can beat.

The argument made is that it is unfair to the small tort-feasor to give that person joint liability. It is unfair economically and it is unfair in the noneconomic. The distinction is not between economic and noneconomic damages in a logical world but between the large and the small degree of responsibility.

So I said all right, let's not discriminate between economic and non-economic with the gender bias and the class bias that that implicates, let's cut off the small versus the large. But the Republican Committee on Rules said, "Oh, no, that's too logical and we can't have that, because if we're going to tell every State court in America how to deal with every lawsuit in America where anybody alleges noneconomic damages, then we better do it the other way."

Plus we also have the gentleman's amendment which does weaken the amendment of the gentleman from Michigan. Under the amendment of the gentleman from Michigan, a foreign manufacturer must name an agent to be served here. The gentleman strikes that in this amendment. We would still theoretically have jurisdiction if we can find them to serve them.

I mean in Croatia, they have jurisdiction over Serbian war crimes but they are not going to try many Serbs and we will still have technical jurisdiction over foreign manufacturers but if the gentleman from California's amendment passes and they do not have to designate an agent for accepting process, we will not get many of them into court. It is an abstract discussion and what he is saying is to every State court in America, every State court in America, if there is a foreign manufacturer, you can't require them to serve process and if you want to sue them in State court, good luck to you. Maybe the United Nations can pick them up on the way to try and find some Serbs in Croatia, because they will have about as much chance.

This belies the notion that the Contract is about empowering the States. This says when we feel that the economic interests with which we are in most sympathy will be better served by nationalizing matters that have been State law for 200 years, we will do so. And we will claim it is according to interstate commerce, that will be the entering wedge. Then we will give you an amendment which says any civil action in any Federal or State court on any theory.

This is the "anys" amendment. Every "any" that applies got put into this amendment. Any case, any State, any cause of action, any reason they want, congratulations, you are now under Federal law.

This amendment brings back Selective Service. You have just drafted every State court and every State jury and every State cause of action and it has nothing to do with interstate commerce. Maybe the Republican party has adopted the theory that there is no more interstate commerce.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. No, no more than the gentleman would yield to the gentleman from Texas.

Maybe you have now adopted a theory that there is no more interstate commerce, that we are all one big unitary society. I think you are going a little far myself, but I take it after we heard the gentleman from Illinois who said everything in American life has been nationalized except this, that you have now conceded that everything is now fair game nationally and we will not hear the States rights arguments again.

Fifty different State laws, is that not terrible? Of course where poor children are concerned, 50 different State laws is a good idea. Where school lunches are concerned, 50 different low levels of State nutrition, that is a good idea. Where Aid to Dependent Children 3- and 4-year-olds who need economic support, let's give it back to the States.

I have never seen such selectivity about what goes to the States and what does not.

I yield to my friend the gentleman from Texas.

Mr. DOGGETT. This amendment deletes section 109 from the bill. Section 109 of this bill requires that a foreign manufacturer to benefit from this bill at all, to get any benefit from it, appoint an agent for service of——

The CHAIRMAN. The time of the gentleman has expired.

The question is on the amendment offered by the gentleman from California [Mr. COX].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. COX of California. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This will be a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 263, noes 164, not voting 7, as follows:

[Roll No. 225]

AYES—263

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cunningham
Danner
Davis
Deal
DeLay
Dickey
Dicks
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kennelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Maloney
Manzullo
McCarthy
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (CA)
Miller (FL)
Molinari
Montgomery
Moorhead
Morella
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pombo
Pomeroy
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—164

Abercrombie
Ackerman
Andrews
Barrett (WI)
Bateman
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Chapman
Clay
Clayton
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Hoyer
Istook
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kildee
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Manton
Markey
Martinez
Martini
Mascara
Matsui
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Mfume
Mineta
Minge
Mink
Moakley
Mollohan
Moran
Nadler
Oberstar
Obey
Olver
Orton
Oxley
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pickett
Poshard
Rahall
Reed
Reynolds
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schiff
Schroeder
Scott
Serrano
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tauzin
Thompson
Thornton
Thurman
Torres
Towns
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)

Waxman
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOT VOTING—7

Cubin
Forbes
Gibbons
Murtha
Owens
Rangel
Tucker

□ 1945

Messrs. POSHARD, HAYES, and COLEMAN changed their vote from "aye" to "no."

Messrs. HOLDEN, MILLER of California, FAZIO, TEJEDA, and Mrs. KENNELLY changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

□ 1945

The CHAIRMAN. It is now in order to consider amendment No. 12, printed in section 2 of House Resolution 109, as modified.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

Mr. COX of California. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. COX of California:

Page 19 redesignate section 202 as section 203 and after line 19 insert the following:

SEC. 202. LIMITATION ON NONECONOMIC DAMAGES IN HEALTH CARE LIABILITY ACTIONS.

(a) MAXIMUM AWARD OF NONECONOMIC DAMAGES.—In any health care liability action, in addition to actual damages or punitive damages, or both, a claimant may also be awarded noneconomic damages, including damages awarded to compensate injured feelings, such as pain and suffering and emotional distress. The maximum amount of such damages that may be awarded to a claimant shall be $250,000. Such maximum amount shall apply regardless of the number of parties against whom the action is brought, and regardless of the number of claims or actions brought with respect to the health care injury. An award for future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the limitation on noneconomic damages, but an award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment or by amendment of the judgment after entry. An award of damages for noneconomic losses in excess of $250,000 shall be reduced to $250,000 before accounting for any other reduction in damages required by law. If separate awards of damages for past and future noneconomic damages are rendered and the combined award exceeds $250,000, the award of damages for future noneconomic losses shall be reduced first.

(b) APPLICABILITY.—Except as provided in section 401, this section shall apply to any health care liability action brought in any Federal or State court on any theory or pursuant to any alternative dispute resolution process where noneconomic damages are sought. This section does not create a cause of action for noneconomic damages. This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of noneconomic damages. This section does not preempt any State law enacted before the date of the enactment of this Act that places a cap on the total liability in a health care liability action.

(d) DEFINITIONS.—As used in this section—

(a) The term "claimant" means any person who asserts a health care liability claim or brings a health care liability action, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent or a minor.

(b) The term "economic loss" has the same meaning as defined at section 203(3).

(c) The term "health care liability action" means a civil action brought in a State or Federal court or pursuant to any alternative dispute resolution process, against a health care provider, and entity which is obligated to provide or pay for health benefits under any health plan (including any person or entity acting under a contract or arrangement to provide or administer any health benefit), or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, in which the claimant alleges a claim (including third party claims, cross claims, counter claims, or distribution claims) based upon the provision of (or the failure to provide or pay for) health care services or the use of a medical product, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, or defendants or causes of action.

Page 17, line 10, insert "and other" after "punitive".

The CHAIRMAN. Pursuant to the rule, the gentleman from California [Mr. COX] will be recognized for 20 minutes, and a Member in opposition will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. COX].

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we are coming to the conclusion of our debate about reform of our civil justice system in America so that the courts will once again earn the maxim "Equal justice under law," and no longer will people have to fear the courthouse and think it is not a place for them and think it merits rather the admonition from Dante's Inferno, "Abandon hope, all ye who enter here."

It is impossible, it is unthinkable, to handle lawsuit reform in the Congress without considering health care, because nowhere in our American life have the skyrocketing costs of lawsuits done more damage than in our health care system.

For the last 2 years, in 1993 and 1994, we debated health care in this country. And during that last 2 years of debate, in 1993 and 1994, through all the hearings, we all know the story. The American people came to the essential realization that we need to control health care costs so that we can increase access for those who are least able to afford basic care from doctors and good hospitals.

We decided we did not want a government-run system, but we decided if we can, we would like to get rid of all of the extra costs that lawsuits and lawyers suck out of our health care system, to get rid of all of the extra costs that defensive medicine imposes on our health care system, that is all the unnecessary tests that all doctors perform. Three-quarters admit they do this because of the threat of liability, if for no other good reason, $9 billion in extra malpractice premiums attributed to defensive medicine. Another $20 or $30 billion according to various estimates are attributed to this defensive medicine, which is doctors behaving not in the best interests of the patients, but lawyers, so Ralph Nader and Joel Hyatt seem to have more to say about the kind of health care we have in this country than doctors and patients.

We have a system in place in several States in this country, in particular my home State of California, that has worked very well, called MICRA. It has limited our health care premiums for the average Californian from somewhere between 33 percent and over 50 percent less than other States without these reforms. That is what I propose in this amendment today. The only change that this makes is in health care cases; not all civil cases like the last one, just health care cases.

We believe that we should have a system in America that compensates without limit, 100 percent of all of the damages that somebody might suffer. They should be able to claim these through a lawsuit, all of the damages for their medical expenses, for their doctors' expenses, for their hospital expense, without limit, all of their rehabilitation expenses, all of their future estimated lost income and earnings. All of these things called economic damages should be compensable without limit.

We have already decided that on top of that, they should be able to multiply all of their real, actual damages times three and get that in punitive damages. In our country uniquely we have something called noneconomic damages. That means things we cannot really monetize, we cannot figure out how much it is worth, but we just want to add extra on top of all the real damages and punitive damages.

Only four other countries in the world allow this kind of damage. For the rest of the world it is zero, and for the other countries that allow it limit it sharply. In Canada this type of damage award is limited to $180,000. In California we limit it to $250,000. That is what we would do in this amendment.

Mr. Chairman, I urge my colleagues to vote for this vitally important health care reform. We know we need it. I hope that Members will act upon it.

Mr. Chairman, I reserve the balance of my time.

Mr. BERMAN. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from California [Mr. BERMAN] is recognized for 20 minutes.

Mr. BERMAN. Mr. Chairman, I yield myself two minutes.

Mr. Chairman, let me initially correct some of what I am sure are the inadvertent misrepresentations of the gentleman from California. No. 1, California's health care premiums did not go down 33 percent over what they would have been. The gentleman is referring to the malpractice premiums paid by physicians, not the health care premiums paid by citizens.

Second, this bill is not in any fashion limited to medical malpractice. It covers, with a $250,000 limit on pain and suffering, any health care liability action which is defined in this bill under any theory, tort, or contract, that a contractor could have a provision for liquidated damages, anything like that that goes beyond the medical costs and the lost wages, and it seeks to put this $250,000 limit on that.

The anomaly is when this day is done, if this amendment passes, and you ride in a car which is manufactured defectively, it explodes, and you are paralyzed, there is no limit on what you can get for pain and suffering. Difficult to quantify, but very real. You are paralyzed for the rest of your life, you are a quadriplegic, the wrong leg is amputated, there is something there beyond wage loss, and there is something there beyond just the simple cost of your medical treatment.

If you are injured in that explosion by that defective car, no limit. If you are injured because of the negligence in a defective medical device and it results in your being paralyzed, you are capped at $250,000.

What is the logic of the distinction? I do not know. I will be interested in hearing the gentleman speak to that particular issue.

Once again, we have gone way beyond the issue of product liability and gone way beyond the issue of medical malpractice. In California there are a series of damage remedies for bad faith insurance practices. If it is a health insurance policy and the health insurance company does not pay and the result is serious injury to the person, if he is arbitrarily canceled and there are massive losses and a breach of contract, under that theory, no matter what the contract provision provides for damages, this comes in and caps the pain and suffering with those limitations.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to respond to the gentleman from California by saying he is correct that as a result of the health care lawsuit reform passed in California, by a Democratic legislature I should add, medical liability premiums are 33 percent to 50 percent lower on average than those in other States that do not have these reforms.

Mr. Chairman, I yield to the distinguished coauthor of this amendment, the gentleman from Texas [Mr. PETE GEREN], 2 minutes.

Mr. PETE GEREN of Texas. Mr. Chairman, I rise in support of this amendment, and I want to direct Members' attention to the change that has been made in this amendment. This was an amendment that was the subject of the rules change earlier today in the printing in DSG that describes it as a limit on noneconomic damages for all civil actions. That is no longer correct. This is limited to health care liability actions. It is patterned after the MICRA system in California.

The Office of Technology Assessment reported in 1993 that limits of this type that will come about as a result of this amendment are the single most effective reform in containing medical liability premiums. Ohio is a good example of a State in which a cap on noneconomic damages had a substantial impact on costs until it was struck down. Prior to the enactment of the cap, Ohio's payment of medical malpractice claims was 3.7 percent of the total nationwide. That declined to 2.9 percent while the reforms were in force. In 1982, the Supreme Court invalidated the claim, and by 1985 the percentage of nationwide claims had almost doubled to 5.4 percent.

California had the highest liability premiums in the Nation prior to its enactment of a cap of this type. Since its enactment, cap premiums are now one-third to one-half of those in New York, Florida, Illinois and other States that do not have these kind of limits.

Contrary to what many are saying, a ceiling on noneconomic damages will not in any way restrain the ability of an injured party to recover medical expenses, lost wages, rehabilitation costs, or any other economic out-of-pocket loss suffered. It only limits those damages awarded for pain and suffering, loss of enjoyment, and other intangible items. These items routinely account for 50 percent of the total payment of a suit and are highly subjective.

Mr. Chairman, this system has worked in California, it is an important planning in any health care reform we consider as a country, and it will help us hold down the skyrocketing costs of health care in this country.

Mr. Chairman, I urge my colleagues to support this amendment.

□ 2000

Mr. BERMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. Mr. Chairman, I do not profess to be an expert on any subject. But I come to this debate with some experience. Prior of my election to Congress, I spent 10 years practicing law, specializing in medical malpractice. I defended doctors, and I brought suit against them.

Let me ask my colleagues, if they can for a few moments, to forget the lobbyists, forget the companies, the insurance companies, and forget all of the special interests and listen to one simple tragic story.

One of my first cases involved a baby girl. I would say to the gentleman from California, Mr. COX, and to the gentleman from Texas, Mr. PETE GEREN, that like most parents in America, these parents took their baby girl to the pediatrician for her baby shots. Unfortunately, this little girl has suffered from a rash called roseola a few days before she went for her shots. Because of the doctor's failure to ask and examine, the little girl suffered a devastating reaction to the vaccination. The brain damage was so severe she was left in a permanent vegetative state. She would never speak, never walk, never go to school. She would be in diapers as long as she lived.

For 5 years or 50 years or more, she and her loving parents would suffer from the negligent act of that doctor.

Mr. COX and his amendment would decide that no matter how long she lived, no matter how long she suffered, her maximum recovery for pain and suffering would be $250,000. Mr. COX would take away from any court or jury in America the right to decide that she and her parents deserve 1 penny more.

My Republican colleagues call this common sense legal reform. Limiting a deserving victim's right to recover for pain and suffering does not even reach the threshold of common decency.

We are not talking about frivolous lawsuits. We are talking about parents facing a lifetime of caretaking because of a doctor's negligence. We are not talking about verdicts that we giggle about when we hear about them on the radio. We are talking about verdicts that when you hear about them you say, it could not be enough. You could not pay me enough money to live with that injury to myself or my baby.

But Mr. COX is prepared to say no matter what your injury, no matter what your pain, no matter how many years you will be crippled and broken, your right to recover will be limited.

Our system of justice is far from perfect, but this Cox amendment would invite tragic, unjust results which would be visited on the lives of innocent victims and their families for decades to come.

This amendment is mean in the extreme. Vote "no."

Mr. COX of California. Mr. Chairman, I yield 2 minutes to the gentleman from Nebraska [Mr. CHRISTENSEN].

Mr. CHRISTENSEN. Mr. Chairman, do not be confused about the opponents that I just heard visit on this, this little child will be compensated for those damages for the rest of her life. The plaintiffs bar are going to try to confuse the issue here, but in Omaha, NE, an ob/gyn pays 20,000 in medical malpractice insurance. Just across the river that same ob/gyn pays 60,000 in medical malpractice insurance. Why? Because of the reason we have tort reform in Nebraska. We have a cap on medical malpractice in Nebraska. And that is why we need to continue to enforce this State by State so other States can enjoy what we have in my home State.

Because of the litigation explosion, the cost of insurance to obstetricians jumped 350 percent between 1982 and 1988. In some areas a doctor will spend over 100,000 on medical malpractice insurance. Faced with these numbers, many doctors cannot afford to deliver babies in rural areas and poor areas. We need to put a reasonable ceiling on health care liability so it will open the way for lower insurance costs. Too many personal injury lawyers are making their careers out by waging war on doctors these days. Because of their activity, men and women and children across this land are going to suffer each and every day. This bill restores some common sense to what we need to restore in our civil justice system.

I yield to the gentleman from Georgia [Mr. BARR].

Mr. BARR. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, this begins an important process that is not independent of the process but it begins an important process, this legislative proposal, in curbing the worst excesses of the current tort system. In the future, I propose that we address additional amendments that will take into account extraordinary circumstances warranting adjustments to these otherwise generous caps.

Mr. BERMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Oklahoma [Mr. ISTOOK].

Mr. ISTOOK. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in opposition to this amendment. I believe this is a deadly amendment. I believe it is a damaging amendment. I think it is an amendment that fails to take stock of reality. Under this bill, your losses must be one of two types: either they must be economic damages, as defined on page 20 of the bill, something that is a financial loss. Everything else is noneconomic damage.

If you lose your sight, it is noneconomic damage. If you lose any other organ, your ears, your hearing, it is noneconomic damage. If you lose your arm, if you lose both legs, if you are paralyzed for the rest of your life, it is noneconomic damage. And it is capped; it is treated under the same cap as intangibles such as pain and suffering.

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. ISTOOK. I yield to the gentleman from Missouri.

Mr. SKELTON. Mr. Chairman, what does this do to the nature and extent of the injuries such as someone with an amputated foot?

Mr. ISTOOK. This means that if you can still make a living with your amputated foot, then you are restricted in what you can recover, even if you can no longer play football with your kids or soccer or baseball. If you lose your sight, you cannot even go to a movie or watch a TV program. You cannot see your children. You cannot see a family picture. You cannot check out and watch a video. Whatever it may be, that is what we are restricting if this amendment is adopted.

Mr. SKELTON. I thank the gentleman for yielding to me.

Mr. ISTOOK. I want to urge my fellow Republicans, those of us who have been supporting tort reform, to vote down this amendment. I do not think a lot of Members realize what you are lumping in. The reference in the text of the amendment to pain and suffering is only by way of example and inclusion. It is not the complete definition of noneconomic damages. It does not pretend to be. Do not tell me that there is no difference between having a lifetime where you may have perpetual pain.

I had a young man that I hired in my office as a staff member that was a paraplegic in a wheelchair. Do not tell me that because he was still able to work, which he did, tremendous young man, tremendous worker, but do not tell me because of that, the accident that cost him his feelings from below the waist, is not worth anything more than someone that says, I hurt or I have emotional distress. Do not treat those as the same. Do not treat someone that has this type of disability as no different than someone who just says, I have pain or I have emotional distress.

This amendment does that. I urge my colleagues, even those who support tort reform, vote down this amendment.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

I am sure that the gentleman from Oklahoma did not mean to mischaracterize in his statement. He said that there are only two types of damages, economic and noneconomic. He inadvertently left out punitive damages which has been the subject of much debate here. Under our legislation, punitive damages are allowed, in addition, up to three times all of the actual damage.

I should also point out that there is another more important reason that we need to do health care lawsuit reform tonight. It is that the poor and the disadvantaged who use our public hospitals, our free clinics and our community clinics are the worst injured by the high liability costs today.

Qualified doctors increasingly are refusing to do high-risk procedures. And where do these high-risk procedures occur but in our public hospitals.

The front page of the New York Times last Sunday is a great example. The bottom line for babies weighing over 5½ pounds, the cutoff they use as a general gauge of good health for babies, the death rate the first 4 weeks after birth in New York City's public hospitals is 80 percent higher than for babies born at private hospitals. New York's unlimited tort liability system has not stopped malpractice cases.

They hired as an obstetrician a man who had failed for 14 years his national exams. Just a few months after he was hired by the city hospitals of New York, he became another one of their malpractice cases. New York, unlike California, does not have this kind of health care reform.

They have thousands of lawsuits. Over the past two decades those lawsuits have not stopped malpractice. They have made it worse. A 1992 report studied lawsuits of 64 children in those New York hospitals who have been left brain damaged or permanently crippled because of negligence in the delivery room. These 64 lawsuits alone cost city hospitals $78 million and another 793 lawsuits were still pending. What is seen is that more and more lawsuits lead to ever higher liability premiums and this leads to even fewer qualified doctors willing to handle the kinds of higher-risk cases that typify low-income health care.

That in turn leads to less and less access to quality care for the poor. The patients suffer.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. THOMAS].

(Mr. THOMAS asked and was given permission to revise and extend his remarks.)

Mr. THOMAS. Mr. Chairman, I want to thank the gentleman from California [Mr. COX] and the gentleman from Texas [Mr. PETE GEREN] for having the courage to bring this amendment to the floor.

I just wanted to tell my colleagues that the high point in the last Congress for me was as ranking member of the health subcommittee in discussing the President's health care plan. Democrats and Republicans together in a bipartisan way passed a medical malpractice reform provision out of the subcommittee. It was, of course, denied in the full committee, and we went on not to do anything at all on the floor of the 103d Congress about health care reform.

And 3 months into this Congress, on the floor of the House, is the key to health reform.

A yes vote on this amendment will, of course, lower health care costs by lowering malpractice insurance rates. A yes vote on this amendment will remove the defensive medicine costs and lower health care rates. A "yes" vote on this amendment will get rid of the ridiculous border games now played between States and doctors because of the nonuniformity of malpractice laws across this country.

But more important and fundamentally, get your eyes off of this amendment and look up. This vote is on health care reform. It this amendment loses, the chances of meaningful health care reform in this Congress are virtually gone. This is the time and this is the moment.

I also might add, we maybe need truth in packaging around here. I want to confess, I am not an attorney. And I am for this amendment, because in passing this amendment, we have laid the fundamental groundwork for real health care reform in this Congress. Three months into this Congress, we will have made a statement to everybody. This Congress intends to be bipartisan, not just in subcommittees, not just in committees, but on the floor. Pass this amendment, and we can pass health care reform. Vote "yes" on this amendment.

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. Mr. Chairman, I am astounded at the comments of my colleague from California, new chairman of the Subcommittee on Health of the Committee on Ways and Means. Our State of California has these limits that this proposal would impose upon the whole country. Is that health care reform? The State of California has 3 million people who are uninsured. It has not solved our problems. Has it led to any less defensive medicine? There is no evidence of that whatsoever. Has it reduced the premiums the doctors pay? Perhaps, somewhat, it is stabilized. It may have had that value. But this is not health reform.

If you are being told we have to keep somebody who is injured and maybe even butchered in surgery from recovering to make them whole so that we have health reform, this is not what health reform is all about.

Mr. THOMAS. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from California.

□ 2015

Mr. THOMAS. Mr. Chairman, I ask the gentleman, is he an attorney?

Mr. WAXMAN. Mr. Chairman, I would say to the gentleman, I am an attorney. What is that supposed to mean?

Mr. THOMAS of California. Thank you.

Mr. WAXMAN. Mr. Chairman, is the gentleman a doctor?

Mr. COX of California. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Florida [Mr. BILIRAKIS].

Mr. BILIRAKIS. Mr. Chairman, in the previous Congress I coauthored consensus health reform legislation with our former colleague, Dr. Roy Rowland of Georgia, health reform that sought to bring to the table issues upon which broad agreement existed in the Congress and among the public. It became one of the leading health reform proposals at that time, and it was the one truly bipartisan health bill considered by the 103d Congress.

One of the consensus issues in our bill was medical malpractice reform. It was an issue upon which many Members of this body on both sides of the aisle agreed. In fact, it was a consensus item addressed in most of the health reform bills introduced in the previous Congress. I have no reason to believe that medical malpractice reform is any less of a priority in this Congress. All of these bills included a $250,000 cap on noneconomic damages, just as does this amendment.

Did the 98 Members who signed onto our legislation, 36 of them Democrats, support this cap because they wished to deny an individual the full legal redress to which he or she was entitled? The answer, of course, is no. Opponents of this amendment today claim that we cannot quantify the pain and suffering of a victim of injury. I tell them this, I cannot agree with them more. I believe that our legal system should pay the complete costs of injury, including lifetime medical costs, rehabilitation, disfigurement, or other forms of actual damage, without limit.

But the very fact that noneconomic pain and suffering damages cannot be quantified has led us into a swamp of astronomical awards that amount not to judgments but to windfalls. No other country in the world, Mr. Chairman, allows these kinds of windfall awards. Is that because they have any lack of feeling or sympathy for the victims of injury? Again, the answer is, of course not. The true reason for limiting these awards is that it is the single most effective method of reducing medical liability costs. This, in turn, leads to reduced health care costs for everyone. I strongly urge my colleagues to vote for the Cox-Geren-Ramstad-Christensen amendment today.

Mr. BERMAN. Mr. Chairman, I yield 2 minutes to the gentleman from North Dakota [Mr. POMEROY], a nonlawyer.

Mr. POMEROY. Mr. Chairman, I would tell the gentleman from California [Mr. BERMAN], I do have a law degree, and practiced for 5 years. I never brought a medical malpractice action. More recently, I regulated insurance for 8 years. I am the only former State insurance commissioner in Congress, and it is in connection with this that I rise.

My friend, the gentleman from California [Mr. THOMAS], urged you to take your eyes off the amendment and look at the health care issue and pass this bill. The health care issue is not before us; the amendment is. I urge Members to go back and look at the text, because we could embarrass ourselves by passing this amendment as drafted.

Mr. Chairman, on page 2, between lines 13 and 16, it says "This shall apply to any health care liability action brought on any theory." I wish the sponsor of the amendment would have yielded to my question, because I was going to ask him, does that mean you cannot sue for noneconomic loss in excess of $250,000 a psychologist that was abusing his patients? I believe yes, under the strict terms of the text you have offered.

On page 3 of the bill, health liability action is defined as more than the providing of health care, but also the paying for health care. In connection with this, I have a lot of experience, because I adjudicated claims that were unfairly denied by health insurers. I am aware of people who have had bills, hospital bills they have owed, bill collectors hounding them on those bills, and yet they have not been paid by their insurance company.

Clearly, Mr. Chairman, we do not want to protect that. There is a lot of noneconomic loss that can flow from that, but that is covered under the bill, the liability is capped under the bill on any theory. No matter how egregious the conduct of the health insurer, no matter how blatant, how cruel, the liability is capped.

This bill may address a very important concept, one we need to work on. We did not have a hearing on it, we did not discuss it. The language brought before us in this amendment overreaches and would put you in the position of protecting the abusing psychologist and the claim-denying health insurer. You do not want to be in that position.

The CHAIRMAN. The Chair would inform the committee that the gentleman from California [Mr. BERMAN] has the right to close debate.

The Chair recognizes the gentleman from California.

Mr. BERMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Michigan [Ms. RIVERS].

Ms. RIVERS. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I offer the committee the words of one Frank Cornelius, who says "I think tort reform as we know it is totally bad. We have a judicial system that I find quite adequate, if allowed to function in its own way;" so you have to ask, who is Frank Cornelius? Is he some parasitic trial lawyer? Is he some rabid consumer rights advocate? No, Frank Cornelius is a lobbyist for the insurance industry. He was part of an effort in Indiana to cap noneconomic damages. What happened to Frank Cornelius? Soon after these caps were put in place, major malpractice was worked upon him. He expects to die within the next 2 years from those problems. He has a different point of view now that he sees the problem from the side of a patient, as opposed to the side of the insurance industry. He acknowledges there is a certain poetic justice to the injury that he suffered, but he adds "If there is a God, and I believe there is, what happened to me has a purpose. It changed my way of thinking and looking at things." He says "Medical negligence cannot be reduced by simply restricting consumers' legal rights." That is what is being proposed here. Mr. Cornelius found this out the hard way.

Mr. Chairman, how many other citizens will have to learn this selfsame lesson? Not many, I hope.

Mr. BERMAN. Mr. Chairman, I yield 1 minute and 30 seconds to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Chairman, I want Members to look at what this amendment says, at page 13. It covers anything of a medical character. It caps pain and suffering and noneconomic damages at $250,000.

Let us look at some of the things for which a person will get $250,000 maximum for pain and suffering and other noneconomic damages. A person is blinded, a person is rendered a paraplegic, loss of a leg or an arm, loss of reproductive capacity. A woman can never have a child again, she gets $250,000.

How can this body justify the enactment of a proposal which has this, on which there has been no hearings whatsoever; no hearings, no testimony, nobody knows what this does. It springs like Hebe from the brain of Jove, without the faintest appreciation of what is done, without the least awareness of what it acccomplishes.

Think of the hurt and pain and suffering that you are not properly compensating with this outrageous amendment. This is an outrageous amendment. I cannot in conscience see how I can vote for it, and I cannot imagine anybody else who could contemplate voting for this kind of outrage. No hearings, capping pain and suffering, without the faintest acknowledgment of what it will in fact cost.

Let me remind the Members, a citizen can get more on workmen's compensation, on railroad compensation, or on maritime compensation than they could get under this.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from Michigan suggests that it is outrageous to propose health care reform on this floor because health care reform has not had hearings in this Congress. I think that is something, after 2 years of hearings on health care, the American people would find outrageous.

Mr. Chairman, I yield 1½ minutes to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Chairman, I rise to support this amendment. I am a doctor. I would like to talk about three things. I would like to talk about the economic costs of medical malpractice, I would like to talk about the noneconomic costs to the patient, and let us talk for just a second about how lawsuits have limited care.

Twenty years ago when I was in medical school, when we would make rounds we would talk about the patient's illness and we would talk about the solutions. Today when you make hospital rounds you talk about the patient's illness and solutions, and how those solutions may cause a lawsuit.

What happens? You practice defensive medicine. What happens with defensive medicine? Additional tests get ordered that you would not naturally do to cover your backside, and unfortunately, this results in tremendous increases in expense to the total system.

This is real, Mr. Chairman. When I get called to the emergency room to take care of somebody with a scalp laceration, if I did not tell the emergency room doctor "Do not order that series of x-rays until I see the patient," there would be $400 worth of facial or scalp x-rays sitting there, whether it is needed or not.

The funny thing about this issue is that the noneconomic costs to patients by invasive tests that sometimes are ordered to prevent a lawsuit actually cause a paradox. Every type of invasive test has a small chance of injury, so what are we doing? We are taking and making an increased chance of injury. I urge my colleagues to support this amendment.

Mr. BERMAN. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. CARDIN].

Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. BRYANT] for purposes of a dialog.

Mr. BRYANT of Texas. Mr. Chairman, I wonder if I could ask the gentleman, the doctor, who just spoke, a question.

Mr. GANSKE. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Iowa.

Mr. GANSKE. Mr. Chairman, I would be happy to respond.

Mr. BRYANT of Texas. Mr. Chairman, last week a member of the gentleman's profession did some surgery down in Florida. I heard on the radio, he was supposed to cut off a person's foot. He amputated it, and when that person woke up, they had cut off the wrong foot.

How much money does the gentleman think that fellow ought to get for pain and suffering and noneconomic damages? He woke up and he lost the wrong foot, which means he is going to lose both his feet, because a fellow in your profession made a mistake.

How much money do you think he ought to get for noneconomic damages, an open-ended question?

Mr. GANSKE. If the gentleman will continue to yield, it is inevitable that mistakes are going to be made.

Mr. BRYANT of Texas. Yes, it is.

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. NADLER].

□ 2030

Mr. NADLER. Mr. Chairman, in 1986 I and a number of other Members of this House were members of the New York Legislature and we took up the issue of medical malpractice. We made so-called tort reforms, we limited joined and several liability, we limited ability of continent fees, and did a number of other things. But we also ordered a study to see what was really going on, what would really work to reduce malpractice premiums.

Several years later, the Harvard study that we had ordered came down. What it showed is this: It showed that limiting damages for pain and suffering to a quarter of a million dollars would not reduce insurance premiums. It showed that 2 percent of the doctors were responsible for 80 percent of the claims and 80 percent of the awards, that the real answer to this problem of insurance premiums overwhelming the doctors is to tell the States to crack down on the 1½ percent or 2 percent of the doctors who are killing and maiming people because they are incompetent and are driving up everyone else's insurance rates.

Victimizing the victim further by this amendment is not the answer. Cracking down on incompetent doctors is the answer.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume to say that earlier in the debate, one of the Members on the other side put a question to one of our Members but then did not yield him sufficient time to respond to that question. The question that was put was what ought to be the recompense for someone who has lost a foot due to the negligence of a doctor or a hospital, and the answer to that question is quite clear. Replacing someone's lost foot is very expensive in today's world. It involves a great deal of technology, a great deal of doctors and professional care, probably lifelong rehabilitation and hospitalization, and in a fair system, 100 percent of those costs without limit would be paid by the people who were responsible, and that is exactly what we will obtain when we pass this amendment. Nothing in this amendment will change that.

Mr. Chairman, I yield the balance of my time to close the debate to the distinguished gentleman from Texas [Mr. STENHOLM].

The CHAIRMAN. The gentleman from Texas is recognized to close debate for 2¾ minutes.

Mr. STENHOLM. Mr. Chairman, status quo is not acceptable. This debate today is about changing the status quo. Everyone agrees that patients must be reasonably protected against malpractice and against undue harm for medical devices, drugs and other medical products. Unfortunately, our current system is not working, and to all of those who have spoken so eloquently against all of the faults of this amendment, none of those comments have been addressed to changing the status quo.

As one Member who has wanted to have hearings last year, the year before, the year before, of reasonably getting into debating this question, we were denied. We were never able to bring this discussion to the floor as we are doing today. I wished we had not brought that point up, because that is a sore point to this man.

Patients and physicians all are losing under our current system. That is what some of us want to change tonight, the status quo. Numerous reforms must be enacted if we are going to control health care costs. My colleague from California, a classmate from the 96th Congress, said it very eloquently and very truthfully and very factually. If we want to reform our health care system, we must start with malpractice reform. We must begin to honestly deal with the problems of health system reform by changing first the malpractice system. That alone will not solve it.

It is ironic that in one of our largest States, what we are now saying will not work has been working. This is puzzling to me. The case for medical liability relief is overwhelming. Lawsuit abuse is driving up the cost of health care for all of us. As one who represents a rural district in which we can no longer get doctors to come to our rural hospitals to deliver babies, how in the world can anyone stand here today and say the current system is adequate, the current system cannot be changed, we cannot dare to try something new, that we have to preserve that which we are doing today?

I strongly urge the support of the Cox-Geren amendment. Change the status quo. Let us make our system better.

Mr. BERMAN. Mr. Chairman, to close the debate, I yield the balance of my time to the gentleman from Texas [Mr. DOGGETT].

The CHAIRMAN. The gentleman from Texas [Mr. DOGGETT] is recognized for 4¾ minutes.

Mr. DOGGETT. I thank the gentleman for yielding me the time.

Mr. Chairman, perhaps it is a peculiar observation at a time when we focus so much attention on lawyers and lawsuits to suggest that maybe a little bitty part of the problem of malpractice in this country, malpractice litigation, is malpractice itself. The statistics from the Harvard Medical School study conducted by a group of doctors in 1990 suggest that every 7 minutes in this country, someone dies in a hospital from medical malpractice. Maybe that has something to do with why we have a medical malpractice problem in this country. But the suggestion that, well, there will be mistakes completely avoids the question, because the question is, who is going to bear the burden of that mistake, and the suggestion by the author of this amendment that we can somehow give back a foot through medical technology suggests the ability to do something that only God can do.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from California.

Mr. WAXMAN. I want to make the point that this amendment which was just thrown together on the floor last night, revised again today, never had a day of hearings, it does not apply just to mistakes. It applies to intentional conduct. A doctor who comes in, a surgeon who comes in drunk and butchers somebody would be protected under this amendment to no more than $250,000 in damages. It has no relationship to the kind of conduct that might have been involved, like a psychiatrist raping an individual patient and harming that person for life. That is a psychological damage. If you say they are $250,000 in total noneconomic damages, there may be no economic damages for that kind of case. But to say that somebody should get $10,000 a year, when their lives are destroyed, for 25 years, that is good enough? I find that tremendously offensive. If you cannot create a leg to put on somebody whose leg was amputated improperly, then the pain and suffering and the humiliation means nothing more than some limited damage. I just want to point that out to the gentleman.

Mr. DOGGETT. This is as the gentleman suggests a poorly crafted amendment that applies not only to careless conduct but to grossly careless conduct, to intentional conduct. It applies not only to the family physician that drags this legislation along in the speeches but to the nursing home that intentionally abuses older Americans. But to suggest that this has something to do with health care reform is frivolous in and of itself. The studies have shown that all the medical malpractice insurance and litigation in this country amounts to a big 63 cents out of every $100 spent on medical care. If that is where you want to start health care reform, I would submit that we start with the other 99-plus dollars out of health care and not focus on the part that relates to protecting people who are harmed by those who are careless or in this case engaged in intentional misconduct.

Mr. WAXMAN. If the gentleman will permit, medical malpractice and defensive medicine is a real problem. We need to address it. We need to look at a lot of different alternatives, alternative dispute mechanisms, some ways to compensate people who can never find an attorney to allow them to get some access to some reward for the pains that they have suffered. But this does not address these issues. The committees have never held hearings on it. This is an amendment dropped on us this morning in this latest form and I am sure that as they read through how poorly drafted it is, with the unintended, I assume unintended consequences, that it is an embarrassment to those who are supporting it.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from Michigan.

Mr. DINGELL. This amendment does absolutely nothing to deter litigation. It simply cuts the amount that can be paid to a person who has been wronged by medical malpractice or by other unfortunate improper practices. It denies them proper recovery. If that is medical reform, I do not know what it is.

I urge the rejection of the amendment. I thank the gentleman.

Mrs. SEASTRAND. Mr. Chairman, we need to institute a phrase from the NFL when they were still using instant replay called, "Upon further review." Because upon further review, it is clear our judicial system is filled with inconsistencies and arbitrary decisions. The "feelings" or non-economic damage claims lead the pack. These claims result in unlimited damage awards and turn our system into a virtual lottery. The lawyers get rich while the system is brought to its knees.

Make no mistake. Our system should and will pay for the full cost of injury, medical costs, property damage and income, without limit. I will fight for that. But we simply must do something to cap the unlimited and arbitrary damage claims to pay for someone's feelings. The way our system currently operates brings a whole new meaning to the Clinton phrase "I feel your pain." Do we ever.

However, there is a model for reform. The state of California. Our state set in place a cap of $250,000 for non-economic damages and that is what this amendment does. It says the defendant is responsible for all medical costs, all past and future income and all real economic damages. Then they can also be held accountable for up to a quarter of a million dollars in non-economic or pain and suffering damages. And this model works. In fact this model is credited with being the most effective reform in containing medical liability costs.

Mr. Chairman, we will never be able to put a price tag on someone's feelings or pain, but this amendment does try to place a reasonable limit on the awards so those involved in suits won't have to play the lawsuit lottery.

Mr. BARR. Mr. Chairman, I strongly believe along with many of my colleagues that tort reform must address the serious abuses that occur in the area of punitive awards for non-economic damages. On this subject, I seek a balance that takes into account important but diverse interests. We must protect against awards that bear no reasonable relation to the injury and threaten the economic integrity of our profit and non-profit enterprises. We must also permit sufficient discretion to ensure that injuries are compensated in full. In this regard, I continue to believe that while arbitrary caps on punitive damages in all instances are to be avoided, this legislation begins an important process in curbing the worst excesses of the current tort system. In the future, I propose that we address additional amendments that will take into account extraordinary circumstances warranting adjustments to those otherwise generous caps.

Mr. NORWOOD. Mr. Chairman, we have gone too far in the area of non-economic damages. No other country in the world awards non-economic damages at or even near the levels of awards in the United States. It is almost impossible for anyone to put a dollar figure on such non-economic terms as pain and suffering; yet, our legal system continues to allow unlimited awards for pain and suffering. No other nation in the world comes close to placing economic burdens on society through non-economic damages the way we do in this country.

Mr. Chairman, this amendment is particularly important to our constituents. It is a major factor in the cost of health care today. This amendment will provide one of the best weapons possible in reducing the cost of health care. Forty percent of all MD's will find themselves party to a lawsuit, 50 percent of all surgeons will be party to a lawsuit, and 75 percent of all obstetricians will be party to a lawsuit. The problems of our tort system are not insignificant in the medical profession—they threaten the health of this nation by tying the hands of doctors. Doctors should not be forced to practice defensive medicine because they are terrified of $30 million lawsuits. The practice of medicine is not perfect. It is the science and art of the practice of medicine. No matter how good a doctor you are, when dealing with the human body, things do not always turn out perfect—as we would like.

Of course, neither is the legal profession perfect. In fact, writing laws is not perfect. Each law we write hurts some people—but the goal should be to pass laws that help the most people possible. This amendment is not perfect, but it will greatly help the majority of people in this country by reducing the cost of health.

Our physicians are being forced to practice defensive medicine. To perfect their own families. We have taken away one of the most important things you want in your doctor—to use good judgment in the practice of medicine. But when every decision is being watched over by suit-minded lawyers just waiting for the less than perfect outcome so they can get rich, it forces the doctor to make his or her first decision "How can I not be sued?" The thought process goes like this—I know we do not need this test or this x-ray for the patients benefit—but I must order this test or this x-ray in case I am sued, because some lawyer will make it appear I did not do all I can do.

There is a limit to how much malpractice one can pay for, but there is no limit to how much a jury of our peers can award. Some physicians pay as much as $150,000 per year for malpractice insurance. That increases the cost of medicine. And with jury verdicts in the tens of millions of dollars, one can never carry enough insurance to be sure you aren't ruined by a lawsuit. There must be a cap if you wish this country to continue to have the best health care system in the world—There must be a cap if you want the cost of health care to come down.

We have listened so long to the half-truths about protecting the middle class put out by the other side, it is time to lower the veil of obfus-cation and look at the costly reality that our tort system has become. We must no longer endanger the health of this Nation—we must place limits on all non-economic damages.

We should pass this amendment today.

Mr. Chairman, Congress has recognized this problem before. In 1992, Congress created the Federal Tort Claims Act in response to skyrocketing malpractice insurance premiums from federally funded community health centers. Under this act, judges rather than juries decide damages. Attorney's fees are limited and punitive damages are disallowed altogether. Why would the Federal Government institute such a restrictive system? Because the Federal Government, that is of course the taxpayers has to pay for the cost of these suits. If it is good enough for the government, it ought to be good enough for the rest of the health care industry. Let's give the rest of the medical industry that same relief.

Mr. Chairman, I end my remarks with one simple thought for your consideration. The Office of Technology Assessment recently identified a ceiling on non-economic damages as the single most effective reform in containing medical liability costs. We should do the same.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. COX].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. COX of California. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 247, noes 171, not voting 16, as follows:

[Roll No. 226]

AYES—247

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cunningham
Davis
DeLay
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Everett
Ewing
Fawell
Fazio
Fields (TX)
Foley
Fowler
Fox
Franks (CT)
Franks (NJ)
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Goodlatte
Goodling
Gordon
Goss
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Johnson (SD)
Johnson, Sam
Jones
Kasich
Kelly
Kim
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
Longley
Lucas
Manzullo
McCollum
McCrery
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Poshard
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Seastrand
Sensenbrenner
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Wamp
Watts (OK)
Weldon (FL)
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—171

Abercrombie
Ackerman
Andrews
Baesler
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Clay
Clayton
Clement
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
de la Garza
Deal
DeLauro
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Edwards
Engel
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Flanagan
Foglietta
Ford
Frank (MA)
Frelinghuysen
Frost
Furse
Gejdenson
Gephardt
Gilchrest
Gillmor
Gilman
Gonzalez
Graham
Green
Gutierrez
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoyer
Istook
Jackson-Lee
Jacobs
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
King
Kleczka
Klink
LaFalce
Lantos
LaTourette
Levin
Lewis (GA)
Lincoln
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martini
Mascara
Matsui
McCarthy

McDade
McDermott
McKinney
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Nadler
Neal
Nethercutt
Oberstar
Obey
Olver
Ortiz
Orton
Pastor
Payne (NJ)
Pelosi
Pomeroy
Pryce
Rahall
Reed
Reynolds
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schiff
Schroeder
Schumer
Scott
Serrano
Shadegg
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tejeda
Thompson
Thornton
Thurman
Torres
Towns
Tucker
Velazquez
Vento
Visclosky
Walsh
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Wilson
Wise
Woolsey
Wyden
Wynn

NOT VOTING—16

Boucher
Clinger
Cubin
DeFazio
Forbes
Gibbons
Hall (OH)
Jefferson
Johnson (CT)
Martinez
Murtha
Owens
Rangel
Weller
Williams
Yates

□ 2057

Messrs. JACOBS, GILCHREST, and DE LA GARZA changed their vote from "aye" to "no."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. JOHNSON of Connecticut. Mr. Speaker, it has come to my attention that I was not recorded on rollcall vote No. 226. I voted in the affirmative. I was on the House floor. I put my card in the machine; I saw the light go on. I did not remember to check whether it had recorded on the board, and I regret the fact that it did not record, but I am absolutely certain I voted.

I have been a long-time advocate of malpractice reform. I support the cap, and I regret that my vote was not recorded in rollcall 226 but I would have voted "aye."

PERSONAL EXPLANATION

Mr. DEFAZIO. Mr. Speaker, on March 9, I was having dinner at a nearby restaurant with the Oregon State labor commissioner and apparently my electronic beeper malfunctioned and I missed a recorded vote on the Cox amendment to H.R. 956 which would cap noneconomic pain and suffering damages in health care liability cases at $250,000. If I had been present I would have voted "no."

Mr. RICHARDSON. Mr. Chairman, product liability legislation has been debated in Congress for several years now and I would like to express some thoughts on past efforts to rectify problems with our legal system.

In 1987, I introduced H.R. 1115, the Uniform Product Safety Act of 1987, to establish standards in determining product liability lawsuits. This legislation was the subject of 22 hearings and mark-ups which enabled manufacturers, sellers and consumers to offer their views. My bill had 96 cosponsors from both sides of the aisle. Comparatively, today's bill H.R. 956, the Common Sense Legal Standards Reform Act has received little bipartisan input and leans heavily in favor of business interests.

My legislation clearly defined reasonable standards of liability for manufacturers that would have reduced excessive lawsuits without infringing on State laws or the rights of consumers. H.R. 1115 did not try to restructure technical provisions of the legal code such as abolishing joint and several liability for noneconomic loss. With congressional prodding, legislators in New Mexico have enacted reforms that meet the needs of both consumers and business groups.

Today's short-sighted debate is discouraging to Members who believe such broad measures are not only unnecessary but potentially dangerous. Among my concerns for today's legislation is the 15 years statute of repose for all products. I am hesitant to support such an all-knowing directive.

Furthermore, my legislation exempted from the new standards industrial waste, pollutants or contaminants released into air or water, tobacco and tobacco products, alcoholic beverages, and any drug or device which is used as a contraceptive or abortifacient or which interferes with human reproduction under certain circumstances. Have we really considered the long-term ramifications of today's bill?

Finally, H.R. 1115 contained provisions to increase the availability of information in product liability actions. The 1988 bill allowed courts to disclose information that presented a risk to the public health and safety. It is hypocritical for Congress to place the burden of proof on consumers as H.R. 956 does while allowing companies to withhold information that could educate consumers.

My efforts to enact responsible legislation in the 100th Congress are indicative of my support for product liability reform. In the light of current research used by the U.S. Supreme Court which claims that there is no epidemic of punitive damage awards, I remain hesitant to support the broad, precedent-setting legislation before us today. It is unfortunate that we have not been able to craft a responsible piece of legislation.

Mr. BEREUTER. Mr. Chairman, this Member rises in support of this measure and to express his pleasure at seeing this much needed legislation finally brought before this body.

This Member introduced the first product liability legislation in the Nebraska Unicameral Legislature in 1977. During this process this Member realized that this issue must be dealt with on the Federal level, because the vast majority of products and services move through interstate commerce. Addressing product liability at the state level is like patching one hole in a tire with fifty holes.

Now, finally, this issue is being debated on the House floor after years of being bottled-up in committee by the trial attorneys and the former chairmen of the respective committees.

Mr. Speaker, all Americans are paying much higher prices for consumer goods and services because this legislation has been delayed for so very long. The insurance costs incurred by companies protecting against and paying for outrageous and unreasonable product liability suits are passed along to the consumer each and every day, in nearly every product and service purchased.

Perhaps even more outrageously, the current system unfairly imposes upon the American public product design standards, which are created in response to penalties awarded in a few states with the highest punitive and compensatory damages. Those States get to impose their juries' ideas of appropriate design and safety standards on the rest of the Nation. That is a perversion of Federalism. National standards should be set by the national legislature. That is what this bill will do.

Mr. Chairman, this Member has been a long-time co-sponsor of product liability reform, dating back to at least 1986. This Member is pleased that this long delayed measure is finally being debated on the House floor and urges his colleagues to support it.

Ms. PELOSI. Mr. Chairman, I rise today to voice my opposition to H.R. 956, the Common Sense Product Liability Reform Act of 1995. This bill is an undisguised assault on the safety of the American people that will result in more unsafe products, more injuries, and less compensation for those who are hurt by corporate misconduct and negligence.

Mr. Chairman, this bill contains two provisions that are particularly harmful to women: The punitive damages cap and the provision that shields FDA-approved products from full liability.

Punitive damages in our Legal System Act as a powerful incentive for companies to make safety improvements to their products.

A punitive damages award as little as $250,000 will fail to serve as an effective deterrent in many cases. In addition, capping punitive damages awards at $250,000, or at three times the amount of economic damages, whichever is greater, discriminates against women and others who may not have large incomes.

Economic damages were generally not as high in the products liability cases of women who developed endometriosis, pelvic inflammatory disease, toxic shock syndrome, and other illnesses that left them sterile when they used copper-7 intrauterine devices or super absorbency tampons.

A punitive damage award cap is less harmful to those with higher salaries and discriminates against those who have lower incomes, many of whom are women. Justice would be meted out very differently for two people injured by the same defective Ford Pinto. The corporate CEO could seek a large punitive award based on economic damages, while the homemaker would be severely limited by the provisions of this bill.

Second, Mr. Chairman, this bill shields products from liability that have been previously approved by the FDA in spite of the fact that the record is filled with examples of drugs that have been approved or underregulated by the FDA only to cause immense physical harm once authorized for sale on the open market.

For example, the FDA approved high estrogen birth control pills which caused renal failure. It also approved the copper-7 intrauterine device which caused sterility in young childless women. The FDA defense shields negligent manufacturers at the expense of our nation's women and should be rejected.

Mr. Chairman, there is no national crisis in products liability litigation, nor is there any epidemic in punitive damages awards. To the contrary, the facts demonstrate that our current State-based products liability system works well.

It allows our citizens to seek redress when they have been injured by corporate negligence and it provides ample incentives to correct defective products when they cause harm.

This bill favors powerful corporations at the expense of women, the elderly, the young, and all working Americans.

I urge my colleagues to reject these ill-advised reforms and to vote against H.R. 956.

Mr. RUSH. Mr. Chairman, I rise today in strong opposition to H.R. 956, the so-called Commonsense Product Liability and Legal Reform Act.

There is nothing even vaguely commonsensical about this bill. On the contrary, this bill is nothing more than a thinly disguised, let's kill all the trial lawyers bill.

Mr. Chairman, unlike so many of my colleagues on both sides of the aisle, I am not an attorney. But, unlike many who support this bill, I do not view the trial lawyers to be inherently greedy or evil.

Instead, it is my strong and considered opinion that a good lawyer can be a wronged party's only friend just when he or she needs one the most.

The overwhelming majority of our Nation's products liability plaintiffs are not just nameless, faceless individuals but hard-working Americans with mortgages and families. Their right to seek compensation for faulty or defective workmanship in consumer products cannot and should not be denied.

Many States are also moving to harm consumers and working Americans by placing arbitrary limits on monetary damage awards in product liability suits. The Governor of my State, for example, signed into law today a measure that caps punitive and pain and suffering awards while making it harder for wronged citizens to see justice served in Illinois State Courts. My colleagues, this is an outrage. We must work ever harder to see that these efforts are defeated at all levels of government.

The bill before us today would make sure that many of these persons will have nowhere to turn to redress their injuries. The rights of working-class American consumers have never been more under threat than they are now. I therefore implore my fellow Members on both sides of the aisle to oppose this extremely underhanded and reckless bill. We must work together to see that it is defeated.

Mr. MOORHEAD. Mr. Chairman, I rise in strong support of the Common sense Legal Reform Act of 1995. Civil justice reform is an extremely important part of the Contract with America. The time for enacting effective product liability reform is now. The first comprehensive product liability bill was introduced in the House of Representatives six Congresses ago by former Representative Jim Broyhill. I was proud to be an original cosponsor of this legislation. Since that time we have been blocked from action time and time again. During this long wait for federal action, the situation has only deteriorated.

The average American is confronted with a civil justice system that is too costly, too protracted and oftentimes seems to work better for the attorneys than for their clients. Each day in America, hundreds of lawsuits are filed by lawyers against fellow citizens, businesses, civic institutions, government entities, and countless other targets. This seemingly endless series of legal attacks has practically numbed America to the fact that, as a Nation, we have become the most litigious society on Earth and that an onslaught of lawsuit abuse has had damaging and lasting effects on the standard of living of all Americans. While most legal actions brought in the United States seek legitimate redress for harm caused, unfortunately many are groundless, frivolous and the result of lawyers who abuse the system and seek to claim lottery sized dollar awards from both their advisory and their client. It is these types of abuses that bring discredit to the American legal system, damage the U.S. economy, and drain precious national resources into the dark hole of endless litigation. The current system creates fear among Americans that they will likely be the victim of an unjust lawsuit. It chills their desire to volunteer and participate in many aspects of ordinary life, and it prevents the introduction of new and beneficial products and services to the American people. Companies in many industries across the 50 states have discontinued product lines, closed plants, shut down divisions, been forced overseas and, in some cases, have been bankrupted by the current product liability system in this country. We should ask the men and women who have lost their jobs in these industries whether or not we need to change the current system. When the House Judiciary Committee considered this legislation, we heard testimony from a medical equipment manufacturer that it will soon be unable to get raw materials to make pacemakers and other implantable medical devices because of liability concerns of its suppliers. We have been warned specifically that the current product liability system is stifling innovation and preventing newer and more effective lifesaving medical devices from ever coming to market. Biomedical and pharmaceutical executives have testified repeatedly before Congress that they are not developing vaccines and medicines because of fear generated by the current unpredictable liability lottery they face in this country. We should ask the millions of Americans suffering from heart disease, AIDS, cancer and other deadly illnesses whether there is an urgent need to unleash medical innovation and discovery by reforming the current system.

Today, standards of liability vary from State to State, and sometimes even from Court to Court within a State. Neither the injured individual, the product manufacturer, nor the seller has any idea what liability standard will be applied, and all are subjected to conflicting rules on their responsibility in the use, design, production, and sale of products. The legislation before us establishes clear guidelines for determining who shall be responsible for harm caused by an accident. Uniformity is essential in order to provide fairness and predictability to consumers, manufacturers, and sellers. Although tort law is generally considered a matter for the States, it has been clear for quite some time that, due to the interstate nature of the sale of products, liability reform should be dealt with at the Federal level.

It is time to recognize that America will never be the best place in the world to create a job until we reform our current product liability system. It is time we provide the reform necessary to unleash American ingenuity in the development of new and more effective products, create jobs, increase our international competitiveness, and provide fairness to product consumers, sellers and manufacturers alike. Enactment of the proposals put forth in H.R. 956 will form the basis of strong and effective legal reform which will loosen the grip of lawyers on America. These commonsense reforms are necessary to ensure that American consumers, manufacturers, product sellers, employers and employees alike receive fairness and justice under our civil justice system. The time has come to end lawsuit abuse in America.

Mrs. COLLINS of Illinois. Mr. Chairman, I am dumbfounded that this bill to restrict the rights of victims and consumers to adequate compensation for and reasonable protection from injury caused by unsafe, down right dangerous, and sometimes even deadly products has been named the Common sense Legal Reforms Act. This bill absolutely turns common sense on its head.

Tell me, Mr. Chairman, is it common sense that the greatest leniency will be reserved for manufacturers of products that hurt children? That's what this bill will do. Is it common sense that a pharmaceutical company could face lower penalties if its product kills a senior citizen rather than a middle-aged man? That's what this bill will do. Is it common sense that victims of hazardous and unsafe products will have less of a chance to recover damages if they are women, or poor? That's right—this bill will do that too.

Most importantly, do the American people really think that it's common sense to take away the power of our most democratic institution—the citizen jury—to impose deterrents against unsafe products and practices? I think not.

It's not hard to sell common sense reforms to the American people but supporters of this bill should be ashamed to put that label on a package of tricks that are crafted to increase corporate profits at the expense of the most vulnerable in our society. Perhaps the most dangerous product around these days is this bill, and when people get a chance to look inside the box and see what's really there they will be outraged. The Members of Congress who vote for it, however, will ultimately have to answer to the consumers, which is more than you can say for negligent manufacturers if this bill passes.

One of the most troubling aspects of H.R. 956 is the rule for calculating punitive damages, setting a cap at three times the amount of economic loss, or $250,000, whichever is greater. This bill establishes appallingly unequal penalties based not on the severity of the harm caused or the extent of negligence or even malice, but on the income of the victim.

Punitive damages have a positive impact on decisions made by product manufacturers and sellers. The Conference Board, a business-funded research organization, surveyed companies about the effect of strong product liability penalties on their operations. They reported, managers say that products have become safer, manufacturing procedures have improved, and labels and use instructions have been more explicit.

Yet by tying the amount of punitive damages to monetary loss alone, and not noneconomic damages like pain and suffering, this bill takes away the threat of heavy punitive damages for products that severely hurt people with low-income, or no-income, like kids.

Think about it. Under this bill, if a product kills a child, punitive damages, regardless of the situation, will be capped at $250,000 since there will be no lost earnings to calculate as monetary losses.

I worked hard during the 103rd Congress to improve product safety, especially for children. A child toy safety bill was one of the products of my efforts. Yet now we are seriously considering a bill that says that a toy manufacturer's concern about product safety might be diminished because the potential penalties are tied to the income of the victim. Large manufacturers and corporations will simply calculate punitive damages as defined under this bill as a small cost of doing business rather than attempt to improve the safety of their products.

Recently, a group of Illinois families joined together around their concerns about the lack of a safety latch on the rear hatch of a popular brand of mini-van. Since 1993, the National Highway Traffic Safety Administration has been investigating the rear liftgate of these vans because they fly open in crashes. According to the NHTSA, the latches failed to keep the rear hatches closed in at least 51 accidents, causing 74 ejections and 25 known deaths. Who rides in the rear seats of minivans? Kids, of course. This bill would mean that the van manufacturer probably does not need to worry about hefty punitive damages in civil actions. If the issue were the front door latch of a luxury sports car, a manufacturer would almost certainly pay more attention.

Is this common sense?

Harming senior citizens would also tend to carry lesser punitive damages under this bill, since their incomes tend to be less. Of course, senior citizens are big consumers of pharmaceutical drugs. With this bill the majority is setting a lower standard for safety for drugs marketed to seniors than for drugs marketed to the general population. Pharmaceutical manufacturers often say that fear of liability keeps them from marketing certain drugs. Does that mean that removing some fear of extensive punitive damages will lead them to market drugs to seniors that they might not otherwise sell? Is this really what the GOP wants to accomplish?

Is this really common sense?

Punitive damages are levied by juries as punishment for actions by manufacturers and sellers to deter the marketing of unsafe products. Therefore, punitive damages should be related to the severity of injury and the actions of the manufacturer or seller, not the economic status of the victim.

That is true common sense.

Unfortunately, the bill before us also sets up yet another dual standard for recovery of damages in a product liability case based on the income of the victim. The bill eliminates the doctrine of joint and several liability, which ensures compensation for an injured party even if one or more of the defendants are unable to pay, for non-economic damages.

Women, senior citizens, children, and low-wage workers are more likely to receive compensation in the form of non-economic damages rather than economic damages. Yet this bill says that if one of the parties responsible for hurting someone goes bankrupt, the victim cannot recover full compensation, regardless of what the jury says. Upper-income men, who are more likely to be awarded economic damages for loss of income, are not affected by this provision of the bill because joint and several liability for economic damages remains intact.

Consider a case where two people suffer an injury. One is a man, the other a woman. The man is a lawyer and receives his full compensation whether or not all responsible parties contribute. The woman is a homemaker, and so the compensation she receives could be severely limited if one of the responsible parties is unable to pay.

Is this fair? Is this common sense?

Are the Republicans saying with this bill that they don't value women, seniors, children, or the poor? You bet they are.

Mr. Chairman, I have just finished fighting a bill passed by this chamber which suspends all new Federal regulations, including those designed to protect the public from unsafe products. Now the majority has come forward with this effort to close the only remaining mechanism average citizens have to protect themselves. With one hand, they remove regulation, and with the other, they take away the power of citizen juries to control corporate behavior through the threat of punitive damages.

What next? I probably shouldn't ask.

The American people have plenty of common sense, and when they are able to step back and see the whole of what is being done here, they will know whose interests are being protected, and who is being sold down the river.

The leadership may want to call this bill the Corporate Profits Protection Act, or the Corporate Wrongdoers Protection Act, or even the "Profits Regardless of Who Gets Hurt Act," but they will find that the people are far too smart to let them call this the Common Sense Legal Reform Act for long. Its not hard to see why the majority wants to act so quickly on this bill. After all, you can't fool all the people all the time. And time is running out.

Mr. Chairman, the American people will be shocked when they find out what this bill calls common sense.

I urge my colleagues to reject H.R. 956.

Mr. DINGELL. Mr. Chairman, on March 10, the House passed H.R. 956, the so-called Common Sense Product Liability and Legal Reform Act of 1995. Unfortunately, the final bill distinguishes itself by not having enough to do with product liability reform and having very little to do with common sense. The bill is an extreme measure that makes sweeping changes in the Nation's legal system that go far beyond the scope of fair and balanced product liability reform. It protects wrongdoers at the expense of injured individuals. It excludes procedural safeguards designed to put U.S. companies on a more equal footing with foreign corporations. It creates extreme and rigid rules that fail to account for circumstances involving gross misconduct or severe and permanent injuries. It fails to simplify current law and creates a complex and confusing jurisdictional puzzle.

BACKGROUND AND COMMITTEE CONSIDERATION

I have long supported product liability reform legislation. In 1988, I presided over the infamous "Torts Class From Hell," when the Committee on Energy and Commerce spent 10 days in markup before reporting H.R. 1115.[1] since then, I have cosponsored major bills in the area and worked with Republicans and Democrats alike to enact effect and well-crafted legislation.

This year's legislation was not the result of meaningful bipartisan efforts. It was forced through the committees and the House at breakneck speed. H.R. 917 was introduced by Chairman OXLEY on February 13, 1995. It was the subject of one hearing.[2] No subcommittee markup was held. We were given 3 different substitute amendments in as many days prior to the markup on February 22. In Additional Views to the committee report, I cite examples of mistakes, defects, and inconsistencies found during this process.[3] These problems largely were the result of the severe timetable dictated by the Republican leadership. Given proper time and consultation with all Members, the Committee could have produced a better bill supported by a more significant bipartisan majority of the Committee.

H.R. 917, as reported, imposed more restrictions on product liability actions than previous bills, such as the bipartisan bill I cosponsored in the last Congress, H.R. 1910.[4] Punitive damages were capped at the greater of $250,000 or 3 times economic damages, whereas H.R. 1910 had no cap. It set a 15-year statute of repose applicable to all products, whereas H.R. 1910 had a 25-year statute limited to capital goods. It voided joint liability for noneconomic damages for all defendants, whereas provisions in H.R. 1910 applies solely to product manufacturers and sellers. It added new provisions that were not in H.R. 1910, including a section on pleading requirements and a narrow special interest provision to benefit biomaterials suppliers.

Despite misgivings, I voted to report the Committee bill. I did so because its core was consistent with bills I previously supported and because assurances were made that its shortcomings would be addressed when the bill reached the floor. But before the ink on the committee bill was dry, Chairmen HYDE and BLILEY introduced yet another bill, H.R. 1075. Apart from deleting the so-called FDA defense, its product liability provisions were similar to those in H.R. 917. But other provisions went far beyond product liability reform, including Title II applying to punitive damages "in any civil action for harm in any Federal or State court." This expansion of the bill was motivated by two interests: (1) to protect wrongdoers from punitive damages in nearly all civil cases, and (2) to open up the bill so that amendments unrelated to product liability reform would be germane on the floor.

FLOOR CONSIDERATION

The Republican leadership decided to muzzle meaningful debate long before any formal rule was adopted. Within moments after H.R. 1075 was introduced on February 28, Chairman SOLOMON announced that: the Rules Committee intended to make H.R. 1075 in order as a substitute for H.R. 956[5]; amendments to the bill should be submitted by March 3; and the Rules Committee intended "to grant a rule which may restrict amendments for the consideration of H.R. 956."[6]

Footnotes at end of article.

After its March 7 hearing to consider 81 amendments filed by the announced deadline,[7] the Rules Committee voted to report a gag rule.[8] The Committee made 15 amendments in order, allocated severe time limits for each, and prohibited amendments to the specified amendments. They chose to reject many moderate amendments, including those that had bipartisan support and would have undoubtedly passed. They refused to make in order amendments concerning the bill's preemptive effect on State laws, denying debate on one of the most important aspects of the bill. They made in order extreme Republican amendments applying to matters beyond the scope of product liability reform that have not been the subject of any hearings or consideration by any committee during this Congress.

The basis for product liability reform is that frivolous lawsuits are stifling American competitiveness and innovation; that because product liability is inextricably related to interstate commerce, a uniform, national approach is needed; and that "legislation should address key topics and provide a fair resolution of claims."[9] But the House bill goes far afield of fair and balanced product liability reform legislation.

PREEMPTION STANDARDS

H.R. 956, as passed by the House, creates numerous, varying standards for preemption of State laws that will create confusion rather than uniformity. Consider the following:

1. Under Title I (product liability actions), State laws are superseded "only to the extent that State law applies to an issue covered by this title."[10] It states that civil actions for "commercial loss" will be governed "only by applicable commercial or contract law,"[11] creating one standard for injured individuals and another for corporations that sue each other.[12]

2. Section 201 (punitive damages) applies to "any civil action brought in any Federal or State court on any theory where punitive damages are sought" but it "does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of punitive damages." Section 203 (liability for noneconomic damages) applies to "any product liability or other civil action brought in any Federal or State court on any theory where noneconomic damages are sought" but it "does not preempt or supersede any State or Federal law to the extent that such law would further limit the application of the theory of joint liability to any kind of damages." Sections 201 and 202 apply "[e]xept as provided in section 401," limiting their application to cases that "affect" interstate commerce.

3. Section 202 (noneconomic damages cap) applies to "any health care liability action brought in any Federal or State court on any theory" but it "does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of noneconomic damages" nor does it preempt "any State law enacted before the date of enactment of this Act that places a cap on the total liability in a health care liability action." It also applies "[e]xcept as provided in section 401."

4. Section 401 of the bill provides that "Titles I, II, and III shall apply only to product liability and other civil actions affecting interstate commerce."[13]

Anyone claiming the bill creates uniformity is sadly mistaken. It makes rules, exceptions to rules, and special rules that, if enacted, would take years of litigation to sort out. The rules governing product liability actions in Title I are relatively clear, although their relationship to title III needs clarification. Sections 201, 202, and 203 promote restrictions on noneconomic and punitive damage awards rather than consistency in the States. They preempt State laws except where State laws "further limit" the subject of such provisions, creating an elusive measure subject to varying interpretations. For example, do State laws requiring proof beyond a reasonable doubt for punitivedamages but that do not cap such damages "further limit the award of punitive damages"? Likewise, the purpose of section 401 is unclear and its application difficult. It purports to prohibit preemption of State laws where "pure" State cases are involved—that is those involving parties and claims that do not "affect" interstate commerce. Is this a bone being thrown to the concept of States' rights or is there some other reason to treat identical cases differently if a court determines one "affects" interstate commerce while the other does not? And the special rule in section 202(b)—prohibiting preemption of a previously enacted State law that caps total liability in health care liability actions—apparently is motivated by the desire to preserve one specific California law.

Amendments that would have improved or affected the bill's preemption provisions were not made in order by the Republicans on the Rules Committee, including: (1) Representative QUILLEN's amendment to limit product liability rules in the bill to cases in Federal court; (2) Representative SCHIFF's amendment to make title II applicable solely to product liability actions; and (3) Representative DEUTSCH's amendment to require uniformity in State laws governing joint liability for economic loss and punitive damage awards. It is clear the Republicans did not wish to even debate the important issues pertaining to the bill's application to State laws and instead chose to concoct a complicated scheme that creates more disorder than consistency.

THE COX AMENDMENTS

The House adopted two amendments offered by Representative COX. The first abolishes joint liability for noneconomic damages and applies to "any product liability or other civil action brought in State or Federal court."[14] I could not support this broad expansion of the bill for the following reasons:

1. It was not considered by either committee nor were any hearings held on the amendment. Under the rule, 40 minutes were allocated to debate fundamental changes the amendment would make to more than 200 years of American jurisprudence.

2. It expands the bill far beyond product liability cases, abolishing joint liability in any State or Federal case affecting interstate commerce. I am particularly concerned that it treats simple negligence in the same manner as intentional and gross misconduct. Is it unfair to hold one of several wrongdoers fully responsible for noneconomic harm if he maliciously caused harm? Should victims of intentional torts such as assault, battery, and intentional infliction of emotional distress bear any costs for harm instead of holding fully responsible any single wrongdoer who proximately caused the harm?

3. Examples cited in support of the amendment included defendants found to be minimally at fault who, under joint liability laws, would be fully liable if other defendants were insolvent or absent. But it abolishes joint liability for even those who are principally at fault. Amendments that would apply several liability only to minimally responsible defendants were not made in order, denying Members any option to consider more moderate provisions.[15]

4. Proponents emphasized that it applies only to noneconomic damages and that it would not affect actual damages. The subtext here is that noneconomic damages are not as easy to calculate as economic damages and thus are not as real. The amendment even renames Title II as "Limitations on Speculative and Arbitrary Damage Awards." But it fails to recognize that pain and suffering, total disability, permanent disfigurement, loss of reproductive capacity, and similar noneconomic harms are a very real part of many injuries. For those with low or moderate wages, noneconomic damages may be a greater part of total losses. By limiting recovery for noneconomic damages, the amendment treats injured middle- and low-income workers, homemakers, retirees, children, and disabled persons less favorably than corporate executives and others who have large economic losses.

The amendment also struck a provision in H.R. 956 (section 109) requiring foreign manufacturers to appoint a U.S. agent for service of process in order to claim the benefits of the legislation. Section 109 was truly a commonsense provision designed to level the playing field between foreign corporations and American companies.[16] By striking it, the House also gutted the previously adopted Conyers amendment subjecting foreign companies to discovery in our courts, giving those foreign companies a distinct advantage over American companies, and making it more difficult for persons injured by foreign products to obtain relief. Reflecting a strong bipartisan consensus, 258 Members voted in favor of the Conyers amendment,[17] but this bipartisan effort was nullified by the Cox amendment. Because of the speed of the proceedings and incorrect claims by Mr. COX and others that striking the service of process requirement would have no effect on the Conyers amendment, Members did not have an adequate opportunity to understand the situation. Restoring the service of process provision was one of two items in the motion to recommit, which received 195 votes. Had there been sufficient time to explain the true effect of the amendment, I am confident the motion would have been adopted.

The second Cox amendment limits noneconomic damages in "health care liability actions" to $250,000.[18] This provision goes well beyond medical malpractice cases, and includes any civil case in State or Federal court against a health care provider, any entity obligated to provide or pay health benefits, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, where a claimant alleges a claim "based upon the provision of (or the failure to provide or pay for) health care services or the use of a medical product."[19] No hearings were held on the amendment nor was it considered by either committee. Only 40 minutes of floor time were allowed to debate this fundamental change in our legal system. An alternative amendment encouraging resolution of such cases by mediation and arbitration was not made in order by the Rules Committee.

The amendment arbitrarily caps noneconomic damages at $250,000, striking hardest at vulnerable individuals whose main damages are noneconomic. It prevents compensation even in the most extreme cases, such as loss of sight or other senses, loss of reproductive capacity, loss of limbs, and loss of life. The most jaded argument made by its proponents is that the amendment constitutes health care reform. Arguably, the amendment gives license to doctors and other health providers to make mistakes and practice bad medicine. It may provide a financial windfall to physicians, manufacturers and sellers of drugs and devices, and other health care providers who injure persons, not to mention health insurance companies that deny health claims in bad faith. None of the alleged savings from the amendment are redirected in adjustments to Medicare and Medicaid payments or reduced private health insurance premiums. It does nothing to deter litigation and limits the ability of injured persons to receive compensation for harm caused by health care professionals and providers. If this is health care reform, we are all in great peril.

THE FDA DEFENSE

The House passed an amendment immunizing manufacturers and sellers of drugs and medical devices from punitive damages if the drug or device was approved by the Food and Drug Administration [FDA] and the manufacturer or seller has not misrepresented or withheld information required to be submitted to the FDA or has not bribed an FDA official.[20] While I previously have supported such a provision, I am compelled to reconsider my position due to the Republican leadership's stated desire to change FDA's approval process radically, to privatize functions of the agency, to reduce its funding, or even to eliminate the agency.

The FDA defense is based on the idea that FDA approval is meaningful and effective. It assumes a strong, vigorous, and adequately funded FDA. It is entirely inconsistent with the vision of a weak agency whose primary focus is to get products on the market as fast as possible based on weakened standards of safety and efficacy. Americans trust that when they take a drug or use a medical device, it will not harm them. This trust is based on a careful, scrupulous process that allows only safe, effective products on the market and removes products from the market when they may pose harm. I am committed to continuing efforts to ensure that FDA is an agency in which we may all place our trust. But I find it difficult to support the FDA defense when the Republican leadership and interest groups are pulling out the long knives to drastically alter the mission and slash the already limited resources of the agency.

OTHER PROVISIONS

Statute of repose.—The 15-year statute of repose in the bill is significantly more restrictive than previous bipartisan bills. It applies to all products, instead of only capital goods, subject to limited exceptions.[21] H.R. 1075 also limited it to cases where "the court determines that the claimant has received or would be eligible to receive full compensation from any source for medical expense losses."[22] This provision was intended to ensure that claimants would not be completely foreclosed from at least recovering medical expenses where an older product causes harm. But an amendment offered by Mr. HYDE and passed by the House struck this commonsense provision from the bill. This mean-spirited amendment is further evidence of the Republicans' extreme views. It increases public costs and places uninsured workers and others at risk. Nor has any adequate explanation been offered as to why the provision should apply to all products instead of capital goods alone or why an absolute limit of 15 years makes sense in each and every case. An amendment filed by Mr. BRYANT would have created a statute of repose based on a resumption of 15 years. Under the amendment, the presumption could be rebutted if the claimant could prove the defendant concealed or failed to give adequate warning of a defect that he knew about or if the claimant was required to use the product as a condition of employment. This amendment was not made in order. Because the statute's application is so severe, these issues deserve further scrutiny.

Punitive damages cap.—The bill caps punitive damage awards in any civil case for harm in any State or Federal court at the greater of $250,000 or 3 times economic loss.[23] An amendment to delete the cap was made in order and defeated by the House,[24] but other moderate amendments that enjoyed bipartisan support were never considered under the gag rule adopted by the Rules Committee. For example, Chairman OXLEY and Representative GORDON filed an amendment to replace $250,000 with $1 million. It is my firm belief that, if made in order, the Oxley/Gordon amendment would have passed. Other amendments put the minimum at $500,000 or allowed punitive damages based on three times compensatory damages. Given the required quantum of proof (clear and convincing evidence), new procedures that benefit defendants (separate proceeding for punitive damages and standards for determining awards), and the type of conduct involved (conscious flagrant indifference to safety of others or intentional conduct), the cap on punitive damages in the bill may be too severe to adequately address actions by those who engage in gross misconduct.

Biomaterials suppliers.—Title III of the bill limits the liability of biomaterials suppliers in certain circumstances. During committee markup of a similar provision, I questioned the wisdom of insulating suppliers even if they had intentionally and wrongfully withheld material information or if they knew of fraudulent or malicious activities in the use of their supplies. Mr. HASTERT, the author of the amendment, and others indicated their desire to try and address these concerns before floor consideration. I was pleased to see an effort to accommodate these matters in H.R. 1075 (section 302(c)(2)(B) and (C)). While I filed an amendment to make technical and other clarifying changes to Title III, I decided to withdraw it when it became evident that there were many other problems with this title. I support a fair and balanced provision to ensure that biomaterials suppliers are not subjected to needless harassment, but I do not believe it should be converted to a wholesale abolition of all responsibility by such persons, particularly if these suppliers are significantly at fault for a claimant's injuries.

SUMMARY

The issues involved in product liability reform are complex and controversial. While Federal legislation is needed, I firmly believe any such legislation must be fair and balanced. H.R. 956 does not pass this test. Nor can it be considered in a vacuum. H.R. 988, passed shortly before H.R. 956 was considered, applies to certain Federal civil cases. The bill requires the "loser" to pay the opposing party's attorney fees under certain circumstances, amends rule 11 of the Federal Rules of Procedure to mandate sanctions a Federal judge must impose against lawyers who file frivolous lawsuits or engage in abusive litigation tactics, and limits the admissibility of certain scientific testimony of expert witnesses. These provisions, if enacted, would apply further limits on certain product liability actions, health care liability actions, and other civil actions for harm filed in Federal court governed by H.R. 956. H.R. 988 further tilts the balance in favor of defendants in all such cases.

Cheap sound bites and anecdotal examples of extreme results—while more easily understood than the details of these complex and controversial issues—do not serve the public interest. Both proponents and opponents of legal reform legislation have used such tactics to justify their respective positions. But the Republican majority has a public responsibility to be careful in its drafting and, above all, to do harm. Instead, it artificial and unrealistic timetable for passing legal reforms made speed more of a priority than crafting sensible and defensible legislation.

I plan to work with my colleagues on both sides of the aisle and on both sides of Capitol Hill to enact fair and balanced product liability reform legislation this year. But in doing so, I refuse blindly to support extreme legislation that is contrary to common sense.

FOOTNOTES

1. H. Rpt. 100–748, Part 1.

2. Hearing on H.R. 917, the Common Sense Product Liability Reform Act, including related product liability legislation, Feb. 21, 1995, Subcommittee on Commerce, Trade, and Hazardous Materials.

3. H. Rpt. 104–63, Part 1.

4 H.R. 1910 Republican cosponsors included: Representatives Gingrich, Hyde, Bliley, Moorhead, Oxley, Barton, Hastert, Upton, Stearns, Paxon, Gillmor, Klug, Franks, and Greenwood.

5. H.R. 956 was a bill referred to and reported by the Judiciary Committee, H. Rpt. 104–64, Part 1.

6. Congressional Record, Feb. 28, 1995.

7. An additional amendment, filed by Chairman Solomon after the March 3 deadline, was considered but not made in order by the Rules Committee.

8. H. Res. 109.

9. Testimony of Victor E. Schwartz, Esq., on behalf of the Product Liability Coordinating Committee; hearing before the Subcommittee on Commerce, Trade, and Hazardous Materials Feb. 21, 1995.

10. Section 102(b), H.R. 956 (as passed by the House).

11. Section 102(a) and section 110(2), H.R. 956 (as passed by House).

12. An amendment filed by Representative Markey that would have treated commercial loss cases in the same manner as product liability actions was not made in order by the Rules Committee.

13. Sec. 401 defines "interstate commerce" as "commerce among the several states or with foreign nations, or in any territory of the United States or the District of Columbia, or between any such territory and another, or between any such territory and

any State or foreign nation, or between the District of Columbia and any State or territory or foreign nation."

14. Congressional Record, Mar. 9, 1995.

15. For example, Representatives Frank and Berman filed amendments that would apply several liability to defendants found to be less than 20 percent responsible for the claimant's harm.

16. Section 109 of H.R. 1075 was entitled "Service of Process" and provided: "This title shall not apply to a product liability action unless the manufacturer of the product or component part has appointed an agent in the United States for service of process from anywhere in the United States." This section was deleted from the bill by the Cox amendment.

17. Congressional Record, Mar. 9, 1995.

18. Congressional Record, Mar. 9, 1995.

19. Section 202(b), H.R. 956 (as passed by House).

20. Section 201(f), H.R. 956 (as passed by House). See, Congressional Record, Mar. 9, 1995.

21. Section 108(b)(2), H.R. 956 (as passed by House).

22. Section 108(a), H.R. 956 (as passed by House).

23. Section 201(b), H.R. 956 (as passed by House).

24. Amendment offered by Representative Furse, Congressional Record, Mar. 9, 1995.

Mr. HYDE. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the SPEAKER pro tempore (Mr. LONGLEY) having assumed the chair, Mr. DREIER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes, had come to no resolution thereon.

UNITED STATES SUPPORT FOR MEXICO—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 44)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Banking and Financial Services and ordered to be printed.

To the Congress of the United States:

On January 31, 1995, I determined pursuant to 31 U.S.C. 5302(b) that the economic crisis in Mexico posed "unique and emergency circumstances" that justified the use of the Exchange Stabilization Fund (ESF) to provide loans and credits with maturities of greater than 6 months to the Government of Mexico and the Bank of Mexico. Consistent with the requirements of 31 U.S.C. 5302(b), I am hereby notifying the Congress of that determination. The congressional leadership issued a joint statement with me on January 31, 1995, in which we all agreed that such use of the ESF was a necessary and appropriate response to the Mexican financial crisis and in the United States' vital national interest.

On February 21, 1995, the Secretary of the Treasury and the Mexican Secretary of Finance and Public Credit signed four agreements that provide the framework and specific legal arrangements under which up to $20 billion in support will be made available from the ESF to the Government of Mexico and the Bank of Mexico. Under these agreements, the United States will provide three forms of support to Mexico: short-term swaps through which Mexico borrows dollars for 90 days and that can be rolled over for up to 1 year; medium-term swaps through which Mexico can borrow dollars for up to 5 years; and securities guarantees having maturities of up to 10 years.

Repayment of these loans and guarantees is backed by revenues from the export of crude oil and petroleum products formalized in an agreement signed by the United States, the Government of Mexico, and the Mexican government's oil company. In addition, as added protection in the unlikely event of default, the United States is requiring Mexico to maintain the value of the pesos it deposits with the United States in connection with the medium-term swaps. Therefore, should the rate of exchange of the peso against the U.S. dollar drop during the time the United States holds pesos, Mexico would be required to provide the United States with enough additional pesos to reflect the rate of exchange prevailing at the conclusion of the swap.

I am enclosing a Fact Sheet prepared by the Department of the Treasury that provides greater details concerning the terms of the four agreements. I am also enclosing a summary of the economic policy actions that the Government of Mexico and the Central Bank have agreed to take as a condition of receiving assistance.

The agreements we have signed with Mexico are part of a multilateral effort involving contributions from other countries and multilateral institutions. The Board of the International Monetary Fund has approved up to $17.8 billion in medium-term assistance for Mexico, subject to the Mexico's meeting appropriate economic conditions. Of this amount, $7.8 billion has already been disbursed, and additional conditional assistance will become available beginning in July of this year. In addition, the Bank for International Settlements is expected to provide $10 billion in short-term assistance.

The current Mexican financial crisis is a liquidity crisis that has had a significant destabilizing effect on the exchange rate of the peso, with consequences for the overall exchange rate system. The spill-over effects of inaction in response to this crisis would be significant for other emerging market economies, particularly those in Latin America, as well as for the United States. Using the ESF to respond to this crisis is therefore plainly consistent with the purpose of 31 U.S.C. 5302(b): to give the United States the ability to take action consistent with its obligations in the International Monetary Fund to assure orderly exchange arrangements and a stable system of exchange rates.

The Mexican peso crisis erupted with such suddenness and in such magnitude as to render the usual short-term approaches to liquidity crisis inadequate to address the problem. To resolve problems arising from Mexico's short-term debt burden, longer term solutions are necessary in order to avoid further pressure on the exchange rate of the peso. These facts present unique and emergency circumstances, and it is therefore both appropriate and necessary to make the ESF available to extend credits and loans to Mexico in excess of 6 months.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 9, 1995.*

AMENDMENT FILING DEADLINE ON H.R. 1158 AND H.R. 1159

Mr. SOLOMON. Mr.Speaker, earlier today I announced a preprinting requirement for amendments to the two supplemental appropriations and rescissions bills, H.R. 1158 and H.R. 1159 and noted that amendments should be submitted for printing no later than Monday, March 13, 1995.

I now ask unanimous consent that Members have until 5 p.m. on Monday, March 13, which is a pro forma day to file their amendments for preprinting in the CONGRESSIONAL RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

PERMISSION FOR SUNDRY COMMITTEES AND SUBCOMMITTEES TO SIT ON TOMORROW DURING THE 5-MINUTE RULE

Mr. SOLOMON. Mr.Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the 5-minute rule.

Committee on Economic and Educational Opportunities, Committee on Government Reform and Oversight, Committee on House Oversight, Committee on the Judiciary, and Committee on Transportation and Infrastructure.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. DOGGETT. Mr. Speaker, reserving the right to object, we have consulted with the ranking minority member of each of those committees and subcommittees, and there is no objection.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. TAYLOR of Mississippi. Mr. Speaker, reserving the right to object, I had hoped, with the change in the House, this practice of Members being expected to be in three places at once would hopefully come to an end. Today, for example, I had a Committee on Government Reform and Oversight and a Committee on National Security meeting as we had some very important tort reform legislation going on on the floor.

Is it the intention of the Republican leadership to continue this practice for the remainder of the Congress, or at some time can we get to the point where Members can do one or maybe two things, and do them very well rather than running around like a bunch of chickens with our heads cut off?

Mr. SOLOMON. Mr. Speaker, if the gentleman will yield, I would say to him we are doing everything possible to get that Member home for the Easter break to have a work period. And once we have reached that April 8 date I would think that we would go back to the regular rules of the House and probably would not be making these requests, or very seldom.

Mr. TAYLOR of Mississippi. If I may, there are things that are more important than the Easter break. Passing well-thought-out legislation is more important than the Easter break, and I would sure hope the Republican leadership would keep that in mind.

Mr. SOLOMON. If the gentleman will yield, we certainly will, and I hope the gentleman has a happy Easter break when the time comes.

Mr. TAYLOR of Mississippi. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

THE REPUBLICANS' WAR ON KIDS

Mr. SKAGGS. Mr. Speaker, I would like to commend to all Members of the House a striking series of articles from the Los Angeles Times. They provide a poignant rejoinder to current House Republican doctrine that we can somehow cut school lunch and breakfast programs without really hurting anybody.

The articles tell the story of the kids from West Covina, CA, a place where the local school board decided not to participate in the school breakfast program. Let me just give an excerpt.

By 10 many mornings there is a long line outside the nurse's door. Some children clutch their stomachs, others their heads. In this mostly middle-class bedroom community, these children share a common ailment. They are hungry.

Phys ed teacher Barbara Davids sometimes fed 12-year-old boy who volunteered to help custodians pick up after lunch so he could salvage garbage scraps.

Another student got in trouble so he could be sent to the principal's office, where a jar of candies was perched on the desk. "I'm so hungry. I'm so hungry," sobbed the 12-year-old-boy dipping his hand into the jar. * * *

Mr. Speaker, I include these articles for the RECORD.

The articles referred to are as follows:

[From the Los Angeles Times, Nov. 20, 1994]

GOING TO SCHOOL HUNGRY

As poverty spreads, teachers often see students who have not eaten for days. Malnutrition hinders learning, but resistance to breakfast programs raises question of how far districts should go to help.

The symptoms have swept through Edgewood Middle School.

By 10 many mornings there is a long line outside the nurse's door at the West Covina school. Some children clutch their stomachs. Others grasp their heads. In this mostly middle-class bedroom community, these children share a common ailment. They are hungry.

One boy came into Assistant Principal Amelia Esposito's office last year and confessed to stealing food from a 7-Eleven store. "Every night I go to bed hungry." the 13-year-old told her, bowing his head. "There isn't enough food."

"It's scary how many kids here are hungry," says Esposito, who believes one in four children comes to class undernourished.

America's hunger is not the starvation of Somalia or Rwanda that galvanizes global attention: bloated bellies, emaciated arms, failing bodies along roadsides. Hunger here saps people in more subtle ways: families eat only once a day or skip meals for several days, causing chronic malnutrition. It is a problem that many researchers say eased markedly in the 1960s and '70s, but resurfaced with a vengeance in recent years.

Hunger, they say, afflicts up to 30 million Americans. Twelve million of them are children, many in recession-ravaged Southern California.

Their plight has emerged most publicly in the schools, where teachers delve into their own pockets to feed children whose ability to learn is being crippled by hunger.

Yet half of California's schools—including all 11 in the West Covina Unified School District—do not offer one ready remedy: breakfast, a federally funded entitlement. Nationally, 37% of the 13.6 million low-income children who get a subsidized lunch also eat a morning meal at school. In some districts, breakfast has been barred or eliminated by school officials who oppose it on philosophical grounds. Many in West Covina, where Christian conservatives dominate the school board, oppose feeding children breakfast at school, calling it anti-family and a usurpation of what should be a parent's responsibility.

"I want kids to eat at home with their families," said school board President Mike Spence. "Breakfast at school is just one more thing school districts do rather than allowing parents to take care of their children."

A suburb that blossomed from orange groves in the San Gabriel Valley after World War II, West Covina, the "City of Beautiful Homes," is an unlikely haven for hunger. In the 1980s, however, teachers watched as lost jobs, an influx of new-comers from the inner city and an increase on single mothers left many students living hand-to-mouth. Although the median family income in West Covina is $51,000, there are pockets of poverty: one in four single mothers lives on less than $14,800 a year.

Although the shifts in West Covina are hardly unique, the town's emerging economic stratification has made hunger highly visible in the schools.

The number of students qualifying for free or reduced-price lunches at Edgewood, the district's only middle school, has surged to nearly two-thirds from one-third a decade ago.

Among them is Cristina Yepez, a soft-spoken 12-year-old with freckles and wide-set blue eyes, who spends some mornings at the school health office complaining of stomachaches. Last year, she says, she got dizzy on the playground, crumpling onto the blacktop at Merced Elementary. She had had no breakfast that day. Dinner the night before was a potato.

"A lot of times, we have just break," says Cristina, gently combing the silky red hair on her Little Mermaid doll as her family prepares for an evening's meal. "Sometimes, I get really hungry. But there's nothing more to eat. I go to my friend's house and pretend to play and say: 'Oh, can I have something to drink?'"

Cristina sits down with her mother, Darlene, and sister, Jesseca, 13, for dinner. It is their only meal today. One hot dog each, and water. Darlene Yepez, 38, who is divorced, was sidelined from a forklift job by a back injury but is searching for work. Meanwhile, the family survives on $607 in welfare and $130 in food stamps, which run out halfway through the month. Swallowing her pride, the mother has gone to West Covina's food pantry—but has used her five allowed visits. A few times, the girls have gone up to three days without food, she says, quietly beginning to sob. The last two weeks, she says, they have had one meal.

Studies show that hungry students are fatigued. They cannot concentrate. They do worse than their peers on standardized tests. Because they are ill twice as often, they miss class more frequently.

"They are dazed. You can see it in their eyes. Sometimes, their hands tremble," says Edgewood teacher Kim Breen, who estimates that three-quarters of her students arrive without eating breakfast. Some do not have the energy to raise their heads from their desks. One girl broke down last year in class, her hands shaking, describing how she had gone all weekend without eating.

Kathi Jennings sees hunger's toll daily at Edgewood, which has about 1,800 students. Knowing many of them are undernourished, she keeps a choice of rewards for daily tasks on her desk: a baseball card, a small top or a cup of applesauce. Many kids choose food.

Two guards who patrol Edgewood's playground say one 13-year-old girl chases their green security cart, asking for food. Physical education teacher Barbara Davids says she sometimes fed a 12-year-old boy who volunteered to help custodians pick up after lunch so he could salvage garbage scraps.

Another student got in trouble regularly so he could be sent to the assistant principal's office, where a jar of diabetic candies is perched on her desk. "I'm so hungry. I'm so hungry," sobbed the 12-year-old boy, dipping his hand into the jar and stuffing six candies into his mouth.

Hunger plagues many U.S. schools. More than a quarter of elementary schoolchildren come to class without breakfast, said Doris Derelian, president of the American Dietetic Assn.

The Los Angeles Unified School District, like many urban areas, has long served breakfasts so the problem on those campuses is less pronounced.

Rural and suburban districts are less likely to serve a morning meal. In the Baldwin Park Unified District, nearly half of 16,000 visits to the school nurse last year were tied to hunger. Since then, the district has started offering breakfast at many of its schools.

The mounting toll in schools mirrors a resurgence in hunger, which studies show was brought under control in the '70s but grew by 50% between 1985 and 1991. Even for Americans with jobs, a growing percentage—now nearly one in five—work full time but earn less than the poverty level.

Divorce and out-of-wedlock births left children, along with their mothers, the nation's biggest losers. More than one in five children live in poverty, and almost a quarter of low-income children in the United States are anemic—a condition linked to inadequate or poor nutrition. Government cuts have not helped: median Aid to Families With Dependent Children benefits for a family of three have dropped 47% since 1970. California food stamp payments average 70 cents a meal, slightly more than half of what the U.S. Department of Agriculture says it takes to get an adequate diet.

In an effort to assess the extent of hunger in America, the federal government has launched its first tally on malnutrition. Results from the survey of 60,000 households are expected to be released in 1996.

Recent academic research already has focused on the effects of hunger in the classroom. A 1993 Tufts University study said hunger is stunting cognitive development as lethargic children disengage from learning, and warned that "our country may be heading for a crisis of enormous proportions."

"Health and nutrition are powerful determinants of educational competence," says Ernesto Pollitt, a UC Davis human development professor. His 1993 study found that anemic and iron-deficient toddlers lag behind their peers in mental development by up to 25%. Nonetheless, Pollitt said he is surprised to find that many schools do not serve breakfast and ignore the effects of hunger on the ability to learn.

A study of 1,023 public schoolchildren in Lawrence, Mass., found that when schools started to serve breakfast, students' standardized test scores rose, and absenteeism and tardiness declined. Math, another study shows, is hardest hit when children are not given a morning meal.

"Scientific evidence shows that if you don't do this, you are undermining the very reason for your existence, which is to educate children," says J. Larry Brown, director of the Tufts University Center on Hunger, Poverty and Nutrition Policy.

At Edgewood school, mid-morning is the worst, said science teacher Breen. "How many eat three meals a day? Two? One?" Breen asks her class. Most say they eat twice, some only once. It is her annual informal body count on hunger, and the results are more grim each year. Breen estimates a sixth of her students are hungry regularly.

"I have to repeat instructions two or three times," she says. "I try to teach them physics, but I can't." By second period, a boy in the third row drops his head to his desk. "I just leave them alone. They aren't going to get it," Breen says, her voice full of frustration.

Just before lunch, a 14-year-old girl rises from her desk and slowly approaches her teacher. She says she has not eaten in two days. Earlier, on the playground, she nearly fainted, dizzy from lack of food. "Could I have 50 cents?" she says quietly so the other children can't overhear. "I'm hungry." Breen—who often gets requests for food—fishes out four quarters. The girl, who has not yet been issued a card that will allow her to get a free lunch, still lacks enough money to buy one. She eats what she can: a bag of Doritos from the school vending machine.

"I keep my own stuff," says the school health clerk, Deborah Paschal, swinging open the office cabinet. Sandwiched between the Band-Aids and medicines are peanut butter, crackers and boxes of juice, all purchased with her own money. Counselor Pamela Clausen sometimes gives away her sack lunch. Physical education teacher Barbara Davids occasionally brings in grocery bags of food. When she runs out, or does not have money, she sends children to the cafeteria with a note: "Feed this kid."

Throughout southern California, teachers like Ernie Sanchez are picking up the slack. When he was a second-grade teacher at Vejar Elementary School in Pomona, Sanchez spent the first period each morning making cheese sandwiches for every student. If he had no cheese, he scooped a cup of cereal into a napkin on each child's desk.

Once, he brought apples to the school, where 99% of the children qualify for free or reduced-price meals. "All these little hands reached out toward me," says Sanchez.

"We don't have food sometimes," says one 13-year-old Edgewood student, nervously adjusting her glasses. Asked what her mother does, the girl said. "She stays in the house and watches TV every day." Her father? "He takes drugs. That's why my mom threw him out."

But most, Esposito says, suffer because their parents have been laid off, work long hours and leave their children to fend for themselves in the mornings, or work at jobs that barely cover the rent.

Lisa Drynan, 32, was recently laid off from her administrative job at an engineering firm, the second position she's lost to "downsizing" in three years. She is again searching for work. Drynan has gone up to two days at a time without food. Her three boys, Kevin, 3, Kenny, 9, and Keith, 11, who attends Edgewood, often eat once or twice a day. The night before, says Drynan, staring inside her bare refrigerator, her three sons split two hot dogs.

"There are many days I don't have anything for them for breakfast," she says in her tidy apartment, where the toys are lined up outside the front door. Even though she buys generic brand foods, her $102 in food stamps each month run out after 2½ weeks. Drynan, who is divorced, has used up her five trips to the West Covina food bank. "I know food is important. But I know we need a roof over our heads more," she says, adding that most of her income goes to the $690-a-month rent, bills and collection agencies to pay off thousands of dollars in medical costs owed from one son's head injury.

"I'm hungry," says Kevin, tugging at his mother's white T-shirt. Drynan has heard that her 3-year-old ventures to neighbors' homes, asking for food. She pulls out a Popsicle—the last bit of food in her freezer—and gives it to Kevin, who consumes the treat in seconds.

Kenny, a skinny boy with big brown eyes, laments not having had his favorite food, pork chops, since his birthday in March. At school, he says "in the mornings, I get real hungry." By 10:30, he begins a daily lunch-time countdown, eyes focused on the classroom clock. Other children sit down after morning recess for snack time—a treat from home. "They read us a story, or we do our work. I just have to work. I don't have a snack," Kenny says quietly. "I get hungry when I look at them.

Drynan knows hunger afflicts other families in her neighborhood, even those in which the parents have jobs. When Drynan sent her children for a sleep-over to Susie Ballard's house across the street, they were told to eat supper at their own home, then come over.

Ballard, 38, whose daughter Kristin attends Edgewood, explains that although she works, she cannot put three meals on the table for her own three children, much less visitors. Ballard, whose marriage broke up two years ago, lost her long-time job as a pizza company training manager. Work as a cleaning lady barely covers the rent. Half the month, there is no breakfast. Ballard stretches a pack of spaghetti into three meals, thinning down the red sauce with cans of water.

"There are nights I tell the kids: 'I'm not hungry. You eat.'" says Ballard, nervously smoothing the lace doily on the apartment's living room table. She gives the kids Kool-Aid to fill their bellies. Fresh fruit, vegetables and coffee are luxuries of the past.

"I tell them: 'If someone offers you a free meal, take it, take it.' I used to go to bed crying every night. I feel a failure to them. I ask: How can they look up to me?"

Kristin, 13, is curled up in a chair in the corner of the sparsely furnished but immaculate apartment. "If the food was there, I would eat more," she says shyly.

Anti-hunger advocates are waging a coordinated, nationwide campaign in a school-to-school battle to get the tens of thousands of schools without breakfast programs to sign up. Without breakfast in schools, the $16 billion California spends on elementary and high school education may be wasted money, Assemblywoman Gwen Moore warned in a January letter to colleagues, prodding them to push the program in their districts. Twenty-one states—including New York and Texas—now mandate that all or some of their schools serve breakfast. Bills to make breakfast mandatory in California schools have failed, partly because they are viewed by some legislators as coddling immigrant children.

In La Habra, a recently implemented breakfast program has made teaching more productive. Morning stomachaches used to afflict half her students daily, said Maria Vigil, a Las Lomas elementary kindergarten teacher. "They were all nauseous" and lethargic, she said. Her office brimming with more than a dozen hungry children by mid-morning, Las Lomas Principal Mary Jo Anderson found that for 10% of the students, school lunch was their only solid meal. "I their tummies hurt, their brains can't work." Anderson says. School breakfast she adds, resulted in a 95% drop in disciplinary problems. "They are calm, happy. They aren't angry. They aren't hurting. It's like a miracle."

"Teacher! I am going to eat!" children yell at Vigil as they spill out of yellow school buses. Sandra Andrade. 5, races from the parking lot, grabs her green meal ticket, then rushes to the wire screen window, waiting impatiently for her tray of milk, juice, cereal and string cheese. Unemployed father Roberto Andrade—who some days can't scrounge up the gas money to search for work—hovers over the school breakfast tables, where four of his children who attend Las Lomas share their food with his other three younger children. "Without this, they might not eat some days," says the handyman. Three-year-old Eduardo devours a packet of graham crackers with his sister Sandra.

The focus on food is everywhere. As soon as class starts in Vigil's Room 6, she notices that 6-year-old Jonathan Quintana is irritable and crying. Vigil's hand dives into a desk drawer and pulls out a bag of crackers: "Let's get you a little cereal, OK?"

Jonathan is ushered to a table, seated next to his teddy bear, and given cereal, juice, milk and more crackers. The lesson quickly continues. Jonathan's sobs become more infrequent. He sniffles. By 9, he is seated with the other students, at work on lessons about the calendar and the weather.

As Vigil offers each child a animal cracker from a large jar. Jonathan cheerfully plays with Legos. Even as lunchtime approaches, children attentively listen to Vigil's rendition of "The Three Bears," jostling to see the book's pictures. Later, Alberto Cueva. 5, savors his lunch—a burrito, followed by corn and milk—before his half day of school ends.

"Sometimes, we eat at night," says the boy, urgently shoveling the burrito into his tiny mouth. "Sometimes we don't."

Schools Defend Decision Against Offering Breakfast

Although school breakfast programs could help many children, there are many reasons why schools do not offer a morning meal.

Logistic barriers can be a nightmare, said Wanda Grant, food services director for El Monte City School District. Her district, which serves breakfast at its 18 schools, had to shuffle bus schedules, buy trucks to haul more food supplies and deal with water heaters that could not handle bigger dishwashing loads. Food service directors, principals and custodians usually do not jump at the chance to do more work for the same pay.

However, schools that want to offer breakfast find a way. When the Riverside Unified School District could not juggle bus schedules, it offered breakfast pizza and pancakes on the school bus.

Often, philosophical objections are the bigger obstacle. Many people believe parents, not taxpayers, should provide something as basic as breakfast for their children. If schools take on more duties—offering sex and drug education, for example—won't that encourage parents to abdicate more responsibilities?

In a case that attracted widespread attention, the Meriden, Conn., school board, arguing that children should eat at home with their families, repeatedly voted down school breakfast programs from 1990 to 1993—flouting a 1992 school breakfast state mandate until there were sued by the state attorney general.

A survey this year by the California Department of Education, which allocated only a third of the $3 million in breakfast start-up grants last year because of a dearth of applicants, found that many principals and superintendents voiced philosophical objections to breakfast programs. "The parents have some responsibility for these kids. It's not the schools' job to be all things to all people," one principal wrote.

Since the 1980s, Shyrl L. Dougherty, the nutrition services director for Montebello Unified, has prodded four of 26 schools balking at serving breakfast. In one school, 98% of the children would qualify for free or reduced-cost morning meals. "How much are we supposed to do for families?" one principal protested to Dougherty.

Only about a tenth of students in Orange County's second-largest district, Garden Grove Unified, get free or reduced-price breakfasts, although half qualify.

"What's next? Are we going to provide housing for these people too?" one principal asked the district's food services director, Karen Papilli.

In the West Covina Unified School District, many administrators and teachers believe the decision not to offer breakfast is rooted in conservative attitudes. The school board begins its meetings with Christian prayer.

"We have a conservative school board. They are very concerned about the role of the school," said Mary J. Herbener, the district's child welfare and attendance supervisor. Merced Elementary Principal Janet Swanson said: "Breakfast is a hot potato. It's a political issue."

Edgewood Middle School Assistant Principal Amelia Esposito said she has pushed for breakfast for three years. "This board is stuck in the '60s. Lunch is OK, but breakfast is controversial."

Anthony Reymann, who calls himself the board's lone liberal, sizes up his colleagues' reaction to a breakfast program: "They will say: 'Ultimately God put parents on this earth to take care of their children. By God, that is what they should be doing.'"

The board's conservative president, Mike Spence, said: "The government is trying to usurp the responsibilities of the parent. There is a trend to take over aspects of what the family does."

"Schools need to educate," said Susan Langley, the West Covina School District Council-PTA president. She says parents should turn elsewhere for food assistance. "We are really big on self-help." Some teachers are skeptical as well. One told Esposito: "If they (parents) weren't on drugs, their kids wouldn't be hungry.

Since bringing in breakfast last year at Santa Ana's Pio Pico Elementary School, the droves of hungry children who arrived at Principal Judy Magsaysay's office sick with hunger in the morning have disappeared. Teachers are astounded at the difference in the classroom: 10 to 11:30 a.m., once dead time, has become a fertile learning period.

Magsaysay said she knows the difference the meals make when she watches students return from month-long vacations visibly thinner. Twenty-five children line up against the cafeteria's outer wall by 6:45 a.m. for breakfast. Sometimes the cafeteria lady runs late. When she finally swings open the door, the children clap and cheer.

The Food Angel of 42nd Street

Mae Raines loads an old pickup with donated food and hands it out in some of the city's poorest areas. 'When I can ease someone's pain, I feel good,' she says.

To the children running excitedly after her rusty blue 1978 Dodge pickup for a piece of bread, or an orange, she is Mother Raines or the Muffin Lady.

Mae Raines' food truck pulls to a stop in South-Central Los Angeles and she begins the task of easing hunger. "A lot of kids don't know what a snack or lunch is," says Mae, who watches some children devour whole bags of bread. Women sometimes sob when she puts food in their hands. Men bow their heads and say thanks.

At 71, when most are quietly enjoying their golden years, Mae spends her time hauling truckloads of food to some of the most dangerous streets in Los Angeles, places many people in the City of Angels avoid. In her mind, she is simply a good Christian. "God said: Take care of the poor and the widows. I do what the Word says," says Mae, a widow herself. To her neighbors, she is the food angel of 42nd Street.

On a crisp autumn morning with wisps of clouds in the sky, Mae arrives at the Los Angeles wholesale produce market's "charity dock," where she gets donations of fruits, vegetables and bread. An ample woman, Mae—clad in flowing purple culottes, black high-top sneakers and a royal blue beret covering salt-and-pepper hair—points two of her foster sons at boxes of food to load. The boys pile the scratched and scarred Dodge with loaves of bread, sweet corn, oranges, pumpkins, even doughnuts. And they never forget an item children in her neighborhood south of the Coliseum count on May to bring; English muffins.

"We need radishes, four boxes," Mae prods her foster son, Donell.

An hour later, Mae and the children scramble into the cab of the truck. The squeaky doors clang shut. She grasps her window and pushes it down by hand. Peering out the shattered windshield, she eases away from the concrete loading dock, heading south, through the warehouse district near Downtown, over two railroad tracks, past rubble-strewn lots and graffiti-marred walls, zigzagging into the heart of the city.

Rolling past low-slung houses, Mae's food wagon brakes at her first stop. Most who converge on her truck are very old or very young.

One 4-year-old boy, Minor Beli, can barely believe it when Mae holds out a box of doughnuts. "Do you want it?" she asks. For a moment, Minor hesitates, then reaches out, tightly grasping the box. His eyes look lovingly at the treat, then at Mae. Minor's mother, Ana Beli, 27, says she must often limit how much her children eat to stretch their food to the end of the month. "When I pay the rent, there is little left," she says.

The Belis pay $350 a month for a room in a house they share with another family. Her husband works for minimum wage as a garment worker. Last night, she says, Minor, 2-year-old Jennifer and Angel, 7 months, ate one egg each.

Mary Lou Ellis, an 83-year-old with tufts of gray hair peeking out from under her cap, hobbles down the block to Mae's truck. Mae thrusts a bag of bread, radishes and tomatoes into trembling hands. "Oh lordy, lordy. Thank you! Thank you!" the woman says, beaming at Mae.

The former Lockheed Corp. riveter and housecleaner says that there often isn't enough food, so she skips meals. The rent eats up $400 of her $645 Social Security check. Utilities consume most of the rest. Someone swindled her out of her meager retirement savings, she says. Her house was emptied of furniture in a recent break-in. She leans heavily on her brown cane and stares hard at the ground. "I've never lived like this," she says, confessing to no one in particular. "I feel like taking a gun and shooting my brains out."

The stooped woman hobbles away. But as word gets out, her neighbors emerge from their homes, creating a crowd. "Are you selling this?" one woman asks. Mae turns to her with a warm smile. "No," she says. "I'm giving it away."

"Oh! There's my girl," Mary Washington squeals at Mae, who has helped her ever since she fell and broke her neck a decade ago. A former cook and janitor, she points to a long surgical scar that runs the length of her neck. Her head tilts to the side. Ever since the accident, seizures have made it hard to keep a job.

"She'll dress you. She'll feed you," she says, striking Mae's shoulder as her friend fills a bag with radishes and corn. Each month, she tries to survive on $212 in welfare—which lets her rent a room in a house—and $103 in food stamps. Collecting cans and bottles from trash bins brings in $15 more, which buys some food for the end of the month.

* * * * *

Two years ago, at 69, Mae took in a 2-day-old crack baby for a year. She has had 10 foster children over the years, and also has taken in 10 other neighborhood children off and on, occasionally sleeping on the living room window seat to accommodate them.

Sometimes, the tough grandmother feels fear on her food runs. Once, she had driven her truck Downtown to Skid Row, parked and begun laying out pans of homemade rice, chicken wings, cheese toast and cobbler. Chris and Cee were at her side, wrapping forks and spoons in napkins. A group of homeless men gathered around her menacingly. Mae quickly solicited one of the ragged men to help her. "You can come here anytime," he said, staring down the others. "I guarantee no one will take advantage of you and your children." She fed 200 that day.

Mae's neighborhood is rough, too. In recent years, two neighbors' sons—neither one in gangs—were killed in drive-bys, shot through the back and neck. One an 18-year-old boy, was buried in a grave site Mae had purchased for herself The Menlo Avenue School one block from her home has a "gunfire evacuation plan." Its schoolyard has been sprayed with bullets 10 times in the past year and a half, once just as kindergarten was letting out, says Principal Arthur W. Chandler. Police helicopters often hover overhead, tracking clashes among the 18th Street Gang, the Rolling 40 Crips and increasingly violent tagging groups such as the Dirty Old Men.

Poverty is another mounting concern. Part of Mae's route traverses an area of South-Central in which more than one in four residents didn't have the resources to feed themselves the entire month, according to a UCLA study.

Since the 1980s, as a growing tide of poverty has left more people hungry, the efforts of nonprofit groups and individuals have become increasingly critical in curbing hunger's toll. "The government cannot do it all. If it weren't for the private sector, the tragedy would be, I think, unbelievable," says Roy B. McKeown, president of World Opportunities. Requests from people like Mae, he says, have become more urgent in recent years as joblessness in the inner cities has skyrocketed.

Mae's drive through this hungry landscape often includes a stop at her neighborhood Unocal gas station. "C'mon baby," she beckons to a man furiously washing windshields one recent day. Word spreads like wildfire down the street. Soon, the truck is surrounded by homeless women and men, many of whom have known Mae for years. She plucks oranges, apples and bread from boxes around the rim of the truck.

One bag goes to Tyrone Richardson, a 32-year-old unemployed construction worker. Taking the food, he fishes a wadded-up dollar bill from his pants. He stuffs it into Mae's shirt pocket. "This will help you get gas to help others. Sometimes I don't have a dime. Today I do," he says. The gift amounts to half of his total assets. Mae vehemently refuses the money. But, cradling a watermelon in his arm, he walks away, saying only, "She got a good heart."

"This is what we do," Mae says simply, stuffing more plastic bags with food.

"What's the problem? Tell me?" Mae quietly asks Sheree Wilson, 31, who has been homeless for three months and was headed to Jack-in-the-Box to eat a free packet of jelly when she noticed Mae's truck.

"This is my baby," the woman says, pulling from her jacket a crumpled photograph of her 1-year-old boy, Joshua, beaming from his crib. She stops peeling her orange and begins to sob, explaining that she left the baby with her mother because she is addicted to crack and "going crazy."

She says her best friend, who was on the streets with her, was recently arrested for prostitution and drug dealing. Now that she's alone, the streets are wildly dangerous. She's not sure how to get out, or if she has the will to leave crack behind.

Mae pulls out a small coin purse, counts out four quarters. Then, standing by her truck, Mae lays her hand on the woman's chest and leads her in prayer. "You are gonna be all right. Nothing is too hard," she urges.

"I have faith," Sheree says, lovingly fingering the picture of her son. "I just went the other way."

Mae pulls out of the station, leaving behind a destitute crowd on the blacktop, all of them munching apples.

It's not long before Mae happens upon Rosa Ramirez, 20, with her two children. Marbella Heredia, 1, and Jose Heredia, 2. Her husband, she explains, gets sporadic work in the garment industry. Now things are slow and he brings home as little as $50 a week. Marbella virtually inhales an orange she grasps in her tiny right hand. The juice cascades down her chin, trickling onto her white sweater. "I try to feed them something every day. Sometimes, it's just rice and beans," she says.

Mae prepares to leave, but Jose's brown eyes look pleadingly at her as he stuffs the orange into his mouth. "More?" he asks.

Mae's last stop of the day is Tarlee McCrady's house on Raymond Avenue. Mae peers inside the two-story house from her truck and, seeing no sign of life, drives on. But a loud pleading wail comes from behind the front door: "I'm here! I'm here!"

Mae parks in the shade. "You want a pumpkin?" she asks. The woman, who has sweptback gray hair, runs out and nods.

A 65-year-old living on Social Security, she met Mae in church nearly two decades ago. When her body is up to it, she goes out on the truck with Mae, helping distribute food. Today, she says, she is fretting over how to pay her water bill. She, too, gets much of her sustenance from Mae.

If not for the help, she says, "I'd be down on Skid Row. What else would I do?"

"She doesn't do a lot of talking. But she does a whole lot of doing," says Brenda White, who works at Church of the Harvest, which Mae attends. She says she's seen Mae take a bed out of her house—even the food in her own refrigerator—and give it away. Brenda, who has two daughters, was divorced six years ago and had a breakdown, leaving her temporarily unable to work at her hair salon. She was too embarrassed to ask for help from relatives. Mae didn't need prodding. Every other week, she began to bring bags of food.

In addition to her Social Security, Mae receives a modest income from caring for her foster children. Everything that's left after paying bills—about $100 a month—is put in a coin purse and slowly given out to people in need. The only hand-out she's taken from the government is some cheese.

"People have millions of dollars, they die, and their children fuss over it. I give my surplus money for children," she says.

Mae, nearing exhaustion, steers her truck home.

Wheeling into her driveway, Mae still has a third of the food. "Hi, Mother Raines!" a little girl from next door cries, waving. Other neighbors drop by. "What kind of bread you need? Brown bread? White bread? Your grandma feel better today?" Mae asks Erick, 8. He nods. Mae knows that many neighbors skip some meals each day but are too embarrassed to ask for food. "I know which ones won't come out," she says. "Some people would rather die than ask for help." For these, she packs boxes, which Donell begins delivering on people's stoops.

"I work in the shadows of an inner city overrun by gangs and riotous living. But when I can ease someone's pain, or can encourage them, I feel good," Mae says. "If I never do anything for the community I live in, why am I here? I don't want to hear the baby next door cry from lack of milk or see a child walk by without shoes.

"It's not hopeless. Everyone isn't extending themselves."

On Thanksgiving Day, Mae says, she will bake 17 traditional dishes. In the morning, her natural and foster children will gather, and read prayers. "Thanksgiving is for my family," Mae says, closing her front gate as the last of the food is dispensed and dusk approaches. That said, Mae concedes that last year, she gathered her leftovers at the end of the day, some paper plates and plastic silverware and summoned her children to help. She went to the corner of her street and served food to the thankful until every crumb was gone.

EPILOGUE

Three weeks after this series ran, the West Covina Unified school board voted to institute a government-subsidized breakfast program at Edgewood Middle School and at seven of its elementary schools, thus assuring breakfast—and a chance to learn unimpeded by hunger—to thousands of children.

West Covina's move to join the program was part of a rush by 60 schools in California. Thirty-three of these schools were in Southern California. They were among a group of 193 Southland schools that the state says should offer breakfast because a high proportion of their students are low income, but did not do so for a variety of reasons.

The Times reported on these schools and their struggles over whether to serve breakfast in a follow up to the series on Dec. 12.

Back at Edgewood, donations poured in. More than $22,500 had been pledged or delivered by Dec. 13. A citizens group, formed spontaneously after the series to fight hunger in West Covina Unified schools, used the money to serve breakfast to children until the government-funded breakfast could begin.

West Covina residents were not the only ones moved to get involved. One donor offered a secondhand truck to Mae Raines, the food angel of 42nd street, to replace her old clunker. Several churches and temples read the story about "the Muffin Lady" during weekend services. At the Ahavat Zion Messianic Synagogue, 40 worshippers passed a plate and collected $307 for Raines. Then, they planned a food drive.

"It really made us look in the mirror and say: 'We aren't doing enough'," said Ron Bernard, synagogue board president.

Others pledged $12,000 to the Charity Dock, an innovative hunger program at the Los Angeles Wholesale Produce Market.

Hundreds of callers flooded the newspaper with offers of help for some of the people profiled in the series. Many called crying, saying they wanted to know how they could help a food pantry, a food drive, or assist a family in need.

"My husband is ill on life support. And I'm crippled from arthritis," wrote Majorie B. Walker of Los Angeles in halting handwriting. "But never have we went without food." She sent $50 to one family profiled in the series.

"My wife and I found your article to be a rude awakening to a problem which we did not know existed," wrote Bob J. Ratledge of Palm Desert, who fired off a letter to the West Covina Unified school board urging that it adopt a breakfast program. Other letters to the board were more blunt, threatening a recall if action wasn't taken. Some who sent checks apologized that they couldn't afford to send more. Others said they sat their children down and read them the stories of hunger.

Lisa Drynan, who was profiled with her three young sons, received more than 200 calls from readers offering to help. She said the assistance promised to make this the best holiday season ever for her children.

The story also sparked calls from hungry people seeking food assistance. At the Southern California Interfaith Hunger Coalition, a stream of people called to ask how they could apply for food stamps. The Self-Help and Resource Exchange—a program that helps people pool their resources to buy wholesome food at half the retail cost—has also seen an uptick in activity.

And at the Los Angeles Regional Foodbank, which struggles to get a decent share of corporate salvage food products to feed the hungry, this series helped focus new attention nationwide on the difficulties private efforts are encountering in stemming hunger. Pointing to subsequent national TV news and magazine stories touching on the issue, executive director Doris Bloch said, "these stories have built a fire under people."

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

TAKING FOOD OUT OF THE MOUTHS OF CHILDREN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. VOLKMER] is recognized for 5 minutes.

Mr. VOLKMER. Mr. Speaker, we are now at day 65, if my math is right, of 100 days and we are now getting to see toward the final 35 days of that 100 days. And when we look at it we look to see that we are going to have severe reductions in food stamps, school lunches, nutrition aid, the Women, Infants and Children's Program, hearing assistance for the elderly, and all because we have to give a big tax cut for the wealthy. It is not going to deficit reduction, it is not going to balance the budget. It is going to go to the wealthy, and it is going to be coming up from the young kids down here that are hungry and need that nourishment.

When I look at the school lunch program, we contacted our State Department of Education, we contacted the Governor's office, we contacted some of our local school districts, and the analysis of that school lunch program is in. Members do not have to take my word for it. The Governor of Missouri, the school superintendent of Missouri, the experts who operate the school lunch program in Missouri all agree. The majority party, led by NEWT GINGRICH, is taking food out of the mouths of children by cutting the school lunch program. Even worse, the majority party at the same time is cutting the same children's food stamps. Poor children in this country not only will not get a hot meal in school, but when they get home there will be less food. In the morning when they wake up there will be less or no food, and when they go to school there will not be any breakfast program at the school for them.

How are they going to learn on empty stomachs, their stomachs growling and turning around and churning because they have not gotten the nutrition that they need?

The majority party, quite simply, does not care if poor children in this country eat or not.

Is the majority party taking this mean-spirited approach in order to reduce the deficit? Oh, no, Mr. Speaker, not to balance the budget, not to reduce the deficit, but to give a tax cut to the wealthy. How callous can you get, taking food from children to give fat cats more money?

□ 2110

Let us look at it. These young children out here, we have got a man and a wife working part-time, making a little over minimum wage. They are making about $20,000 a year, $19,000, $19,000 a year. They are scraping by. They have got two kids. They are eligible for food stamps. In some ways they are eligible for a reduced price for the school lunch.

But when they pass their bills on welfare reform, they call it, those folks are not going to get anything.

Well, they say, hey, we are going to give you a $500 per child tax cut. That is what we are going to do for you.

But for that couple, folks, and those children, that $500 is zip. It is nothing, because it is not a refundable tax cut. So they do not get a thing.

But what they are doing is, they are saying, those kids, you do not need any help, because your parents are making all of $20,000, you do not need any help.

You know what they say who really needs the money, folks? Who really needs that money? Well, under their tax bill, the man and wife who are making $200,000, $200,000, they are going to get, for those same two kids, they are going to get $1,000; $1,000 is what they are going to get. And they tell you those people making that $200,000 need it. They need it for their kids. But the one making $18,000, $19,000, they do not need anything, they need less. And that is what they are going to get from the majority party.

You know why they say that $200,000 couple needs that money, that $1,000 for their kids? They need it so they can be the leaders of this country, so they can go to Harvard and Yale and all those other places and they can sock the money away. So if you have ever seen Robin Hood in reverse, just watch the next 35 days, America.

FEDERAL FOOD ASSISTANCE

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from North Carolina [Mrs. CLAYTON] is recognized for 5 minutes.

Mrs. CLAYTON. Mr. Speaker, from yesterday morning into the wee hours of this morning, for 15 hours, the Committee on Agriculture marked up title five of the Personal Responsibility Act. That bill, with great reductions and many restrictions on feeding hungry Americans, is now poised for consideration on the House floor. Leadership of the committee is to be commended for eliminating the mandate for block granting the Food Stamp Program.

A State option on block grants, however, remains in title five and will be an issue on the floor. Also, during mark up, the committee accepted my amendment, which requires persons 18 to 50 years old, those who must work for food stamps, to be paid at least the minimum wage for their labor. Without my amendment, the bill would have forced many food stamp recipients to work for less than $1 an hour. The Agriculture Committee was wise to support the amendment. But, with action by other committees, the block grant issue continues to loom large and will be hotly contested during floor consideration.

Mr. Speaker, I would urge our colleagues, as we consider the block grant issue, to recall their days in school. Recall the importance of a hearty breakfast and a healthy lunch. Recall the necessity of the mid-morning and mid-afternoon milk or snack break. Recall the sense of urgency each of you felt the first time you experienced the pangs of hunger. And, recall how the ache of not being fed in your stomachs prevented you from being fed in your minds. Mr. Speaker, this debate is not about party or politics or pocketbooks. This debate is about our young, and our old. This debate is about strong bodies and clear minds. This debate is about the future of this Nation. Understanding the future, however, sometimes lies in remembering the past. Recall the infant mortality rate in America before the WIC Program. That rate has been lowered by as much as 66 percent, in some cases. WIC works. Babies don't die today like they died in the past, because we invested in life. Recall the fact that since the Institution of

Nutrition Programs, the gap between the diets of low-income and other families has narrowed, significantly. Stunting has decreased by 65 percent. Anemia has dramatically improved. Low birthweights are down. Mr. Speaker, it is easy to forget. Members of Congress dine at some of the finest restaurants. Eating is taken for granted. Hunger is unknown. But, while it is easy to forget, it is dangerous to fail to remember. This Nation is strong because we care for our weak. Every citizen is important. All can make a contribution. But, none, who is hungry, can participate or contribute in any meaningful way. Even those incarcerated in our jails and prisons, throughout the United States, are assured of three square meals a day. Surely, our children and seniors should get nothing less.

Mr. Speaker, I have been increasingly concerned about how rapidly we are making major and dramatic changes to the way our Government functions, indeed, many of our colleagues have commented on the pace of this Congress. It seems that we are emphasizing quantity at the expense of quality, and, more importantly, at the expense of the American people. The U.S. Constitution has been amended just 27 times in more than 200 years, yet this Congress has proposed several new amendments in less than 50 days. Moreover, in the space of fewer than 3 months, we have proposed a balanced budget amendment, passed unfunded mandates legislation, proposed a Presidential line-item veto, rewritten last year's crime bill, passed a plethora of regulatory reform measures, acted on defense spending and national security matters in a couple of days, considered term limits, welfare reform and rescissions, and we are now in the midst of tort reform. In our rush to meet an artificial, 100-day goal, it is a fair question to ask, are we hurting more than we are helping? Consider an article which appeared in today's New York Times. When the Personal Responsibility Act was marked up by the Committee on Economic and Educational Opportunities, the language passed resulted in 57,000 children of military families being denied access to the State feeding programs that would be established. To restore this feeding program for the military, it will cost the Pentagon more than $5 million for meals and another $5 million for administrative costs. It seems, Mr. Speaker, that we profess to want a strong military, yet we pass legislation that will cause military children to go hungry. These actions are either mean spirited or grossly negligent. Either way, America suffers.

I urge my colleagues to stand up against nutrition program block grants. Let us demonstrate that a wise and thankful Nation really does remember.

WELFARE REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. TALENT] is recognized for 5 minutes.

Mr. TALENT. Mr. Speaker, on March 21, the House will take up comprehensive, real and historic welfare reform. The object of that bill will be an historic and fundamental change in the direction of our welfare policy, away from a failed system that is destroying the poor and towards a system of relief and a system of relief and assistance that is based on marriage, on family, on work and on personal responsibility.

Mr. Speaker, how is the welfare system hurting the poor? First and foremost, it is destroying their families. Let us take a look at this graph here on my left.

In 1965, Mr. Speaker, one out of 15 children in the United States, about 6 percent, were born out of wedlock. Federal and State welfare spending at that time was about 30 billion. Today the out-of-wedlock birth rate is one out of three. It has increased by six times since 1965. The welfare spending has gone up 10 times to about $300 billion a year.

Welfare spending has not brought us a decrease in poverty, as I will show in a minute. It has caused an explosion in illegitimacies. The best social studies also agree. A controlled study in New Jersey showed that a small restriction in the growth of welfare benefits caused a 30 percent reduction in illegitimacy. And June O'Neill, who is the current head of the Congressional Budget Office, conducted a study showing that a 50 percent increase in AFDC and food stamps led to a 43 percent increase in the out-of-wedlock birth rate.

President Clinton has said there is no question that if we reduced Aid to Families with Dependent Children, and I am sure he meant substituting that with a different form of assistance for the poor, it would be some incentive for people not to have dependent children out of wedlock.

So history, social science, the President and common sense all agree: the welfare system as it is currently structured with its current incentives destroys families. It promotes illegitimacy by promising young men and women a measure of security and independence through a welfare package, but if and only if they have a child without being married, without having a work skill and earlier than they otherwise would. That means that the existing welfare system causes poverty, because, Mr. Speaker, work and marriage are essential to eliminating poverty. The best antipoverty programs are family and work.

I invite the House to look at the next graph. The red line in that graph shows the poverty rate in the postwar era. It has declined steadily all throughout that era until about 1965, when it reached approximately 15 percent.

The blue shaded area on the graph shows State and Federal spending on welfare since 1948. As the graph shows, that welfare spending held basically steady until about 1965, when the Great Society programs were started. At that time it exploded and increased by a factor of 10 times to about $300 billion.

At the same time as we were increasing welfare spending by a factor of 10 times, the poverty rate actually increased slightly. It was a little under 15 percent in 1965, and now it is a little bit over 15 percent.

In the last generation, the Federal Government has transferred trillions of dollars to the poor. But the welfare system at the same time has destroyed their families and, therefore, their incentives to seek the American dream for themselves and their children.

□ 2120

It is as if you are bailing out a boat with one hand while you were pouring water into the boat with the other.

Mr. Speaker, as we proceed through this debate on welfare we should remember two principles. The debate over welfare should not be about blaming the poor. It is the Federal Government that has perversely given material assistance to the poor on the conditions that they accept the kind of innervating spiritual poverty. We should not reform this system because people on welfare are abusing it, although that does happen. We should reform the welfare system because the system has been abusing people on welfare.

The second principle is this: Welfare reform shouldn't mean abandoning the poor. America must stand or fall together as a people with common ideals and aspirations. Welfare reform should mean bringing back the welfare system to reliance on those ideals.

My friend, the distinguished freshman from Oklahoma [Mr. WATTS] put it this way. He says that for the past 30 years the Federal Government has measured the success of welfare by how many people we could get on AFDC and food stamps and medicaid.

We need to measure success by a different index. Real welfare reform means measuring success this way by how many people we can get off of AFDC, food stamps and medicaid and into a life of dignity and hope. That is what the fight for welfare reform over the coming weeks in this House should be about. It is a fight that we can and must and will win for all of the American people.

ISSUES IN AMERICAN POLITICS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Vermont [Mr. SANDERS] is recognized for 5 minutes.

Mr. SANDERS. Mr. Speaker, let me just touch upon a few issues that are very rarely talked about in this Congress. We do a lot of talking about a lot of things but I am always amazed that sometimes the very most important issues that face the American people, the dynamics of our Nation seem to be ignored here in the Congress. So let me just touch upon a few points that I consider to be quite important.

Number one, if we are to understand the dynamics of American politics, it might be appropriate to understand that in the U.S. Congress today approximately 20 percent of the Members of Congress themselves are millionaires. And everything being equal, until we get campaign finance reform, we can only expect that number to increase.

A democracy is supposed to mean that ordinary people can run for office, ordinary people can get elected to represent their neighbors back home. Clearly, there is something wrong in this country today when at a time that perhaps one-half of 1 percent of our people are millionaires, 20 percent of the Members of the House and Senate of millionaires.

We recently had a gentleman in California who took out his checkbook wrote himself a check for $25 million in attempting to buy the Senate seat in that State, and that is happening increasingly. So if we want to understand why the policies of the U.S. Congress so often work to reflect the interest of the wealthy and the powerful, it has something to do with who is in Congress and who funds people who go to Congress.

Many of you may have seen in the papers that last month the Republican Party held a fundraiser. It was a nice little fundraiser. It was only $1,000 a plate. It was a good dinner. Nice dessert. It was a good bargain. The point is that the Republican Party on that night left with $11 million.

Now, why do people go to a dinner at a $1,000 a plate? The food is good, that is true, but there are other reasons and the reasons might be that they are not donating, they are investing.

Now, as the only Independent in Congress I would point out the Democrats are not far behind. They also have dinners of that kind. Wealthy people invest so that when this session, this Congress comes together, they vote tax breaks for the wealthiest people. They vote for trade policies which help large corporations export our jobs to Third World countries. That is a very, very serious problem. We desperately need campaign finance reform so that we can limit the amount of money that can be spent on a campaign and that we can really have democracy in this institution.

Number two, another issue that we don't often talk about is the very, very unfair distribution of wealth in America. Very rarely is that talked about. It is important to point out that in the United States today the wealthiest 1 percent of the population owns more wealth, not that bottom 90 percent. We have a situation now where the chief executive officers of the largest corporations in America are earning 150 times what their workers are earning.

Now, nobody thinks that everybody in America should all earn the same amount of money, but clearly there is something very wrong when so few people have so much money, while at the same time, the middle class is shrinking and at the same time poverty in America is growing.

While the richest 1 percent of the population own 37 percent of the wealth in America, we have 18 percent of our workers, people who are working full time, they are earning poverty wages.

We have 22 percent of our children living in poverty. That is the highest rate of childhood poverty in the industrialized world by far. That is double the rate of any other country. And we have at a time that some of our friends are proposing to cut back on WIC and to cut back on food stamps, we have 5 million children in America who are hungry today.

Let's talk about that issue. Tax breaks for the rich increased hunger for children at a time when we have the highest rate of childhood poverty in the industrialized world.

Let me talk about another issue. Our Republican friends talk about the mandate they received on November 8. Let me say a word about that mandate.

What percentage of the people came out to vote in that mandate? Thirty-nine percent of the people came out to vote. Republicans ended up with a smaller percentage, a little bit larger percentage than the Democrats did. Thirty-nine percent of the people came out to vote.

I am happy to say that in my home city of Burlington, VT on election day just this last Tuesday a progressive was elected mayor. We had 50 percent of the people coming out in a local election.

Why is it that so few people participate in the Democratic process in America? Why is it that poor people in America virtually don't vote at all, many working people don't vote at all? And I think the reason is that the people are basically giving up on the political system.

WELFARE REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nevada [Mr. ENSIGN] is recognized for 5 minutes.

Mr. ENSIGN. Mr. Speaker, since Lyndon Johnson first launched the Great Society programs of the 1960s this country has now spent over $5 trillion to defeat poverty, a war that we have since lost and lost miserably.

You know, some people around here try to define compassion as how much money we can give to people and how many people we can put on welfare and how many people we can make dependent on a system that has failed that has destroyed the family. That has had crime rate skyrocket over the last 30 years, that has seen out-of-wedlock birth and we need to abandon that system and start over.

Incremental welfare reform will not work. President Clinton said it is time to honor and reward people who work hard and play by the rules. The administration knows that our welfare system is broken.

The people who defend our current welfare system want to keep people, or at least they seem to at least want to keep people in poverty. That can be the only justification for defending the current welfare system.

We are here and we were sent here to revolutionize the welfare system. It does not work. Government cannot be compassionate by definition because the word compassion means "to suffer with." Only individuals can suffer with other individuals, to offer them a hand up instead of a handout.

Our welfare system was intended to be a safety net in between work. If you happened to get in trouble, there was a safety net. What was intended to be a safety net has now become a hammock that, in time, becomes like a spider web that just entraps people and they cannot get out of it.

When I was campaigning, I would go through and meet different people, and I have a brochure and one of the things in the brochure talked about mandatory work for welfare recipients. Single mothers that I met with, that was the thing that they picked up on almost immediately every time that I met them. Mandatory work for people that are out there struggling, and they know that their tax dollars are going to pay for somebody that could be working, but is not. That is the hallmark of our welfare plan that will be voted on later this month.

You know, our country is a great country. And we have been known to be an opportunity society that has attracted people from around the world. But to continue to keep people in poverty is wrong. It is morally wrong.

This is not a question of economics; this is a question of morality. It is morally wrong to keep people in poverty by making them dependent on a system that they just don't see any way that they can get out of.

I believe that our country needs to become that opportunity society once again. We need to encourage small businesses and jobs, encourage entrepreneurs that are going to get out there and create opportunities for minorities and women and all people. We need to look for economic principles that don't benefit the rich, that don't benefit the middle class or the poor, they benefit all classes of people, young and old, black and white, Hispanic. It does not matter.

We need to have principles that look for situations where all classes of people win. Instead of saying it is the Republicans or the Democrats, we need to put partisanship aside. I have only been here a short time and the partisanship of this place is sickening on committees and on the House floor. We need to put that aside and work for the American people. We were all sent here to solve the problems that a lot of this government has created. We were sent here to solve those problems, and we need to get down to doing the business that the American people sent us here to do.

In conclusion, let me say that I am proud to represent the people of Nevada. They are hard-working people with the work ethic, I think, that is known throughout the West. And because of that work ethic, they sent me here to get people off of welfare and into work.

CHILD SUPPORT ENFORCEMENT AND COLLECTION SYSTEM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland [Mr. HOYER] is recognized for 5 minutes.

Mr. HOYER. Mr. Speaker, one of the most critical areas in need of reform is our child support enforcement and collection system. Too many absent parents are not meeting their responsibility of emotionally and financially supporting their children.

Bringing children into this world and not supporting them is an irresponsible act and it is wrong. The time has come for us to put an end to this irresponsible behavior.

Those of us who work hard and play by the rules can no longer continue supporting a system in which responsibility is abandoned. Enough is enough.

Americans expect and we need to demand that both parents support their children. We must discourage government dependence and expect every able-bodied American to be personally responsible for their actions. The previous speaker talked about that. This is not a partisan issue. This is a critical issue if America is going to succeed to build a better society for our children and generations to come.

Payment of child support should be as certain as taxes and death. Each year failure to collect child support costs our country billions of dollars and children billions of dollars.

The potential for our child support collection is estimated at around $48 billion. However, only $14 billion is actually collected. This leaves an estimated collection gap of $34 billion per year that parents are not paying to support their children and expecting the rest of us to pick up the slack.

Clearly, we need to take care of those children. But we also need to demand that parents are there first.

Moreover, half of the women eligible for child support are receiving nothing. These statistics send a clear signal that we have got a lot more work to do.

Last week President Clinton moved us another step forward in our continuing effort to improve our Nation's child support enforcement system. I want to commend him on taking such a bold step in issuing an Executive order which will improve and expedite child support enforcement for Federal employees.

The Executive order will cross-match the names of Federal employees with Federal employment records and inform the States if there is a match. A determination will be made by the State as to whether wage withholding or other actions are necessary. The order will simplify service of process for Federal employees.

In addition, it will require every Federal agency to cooperate with the Federal parent locator service. The Executive order also cuts the time in half between the day a paycheck is garnished and the day it is received by the custodial parent.

Now, almost every Member of this body knows and my constituents know that I am a strong supporter of Federal employees and fight for their pay and benefits. But they, like others, need to be responsible. And they need to support their children.

The President has established a working model upon which the Congress can build. In the next couple of weeks I hope this House will bring a bill to the floor which contains meaningful reform to the current system.

The previous speaker talked about welfare reform and a couple of others did as well. There is not a person in this body that does not know that welfare is broke. And the issue is, how do we fix it? How do we fix it, and, yes, expect and demand work, but also understand that to get to work, we are going to have to take actions to facilitate that transfer from dependency to independence.

Before we reach the floor for the final vote, there is still ground which can be covered such as revocation of driver's licenses for persons owing child support arrearages. While I applaud my colleagues for including child support in their welfare reform package, I am disappointed that they chose to not include this provision. The inclusion of such a provision would have the effect of again holding parents responsible for support of their children.

The State of Maine has instituted such a plan. Since implementation, the State has revoked less than 20 licenses, but because of the threat of license revocation, the State has received about 12 million additional dollars for back child support.

Just imagine how much could be collected and used to support our Nation's children if this were implemented in all 50 states.

Mr. Speaker, we all agree the child support system is in need of reform. Let us take actions in the coming weeks to make sure that children receive the support from their parents that they are due morally and legally.

PUNITIVE DAMAGES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee [Mr. BRYANT] is recognized for 5 minutes.

Mr. BRYANT of Tennessee. Mr. Speaker, punitive damages have clearly gotten out of hand. Tonight, I want to share with you a case involving punitive damages in my home State of Tennessee.

Sadly, it involved the death of an individual from Alabama by carbon monoxide poisoning.

The plaintiff claimed that the carbon monoxide poisoning was caused by a natural gas water heater made in Tennessee. It was a used heater obtained by a homeowner and installed by someone with no plumbing background. It was installed behind a wall without combustion air, with no vent, and was connected to an LP gas line. The local gas company wasn't notified, and that was a violation of local law.

In short, the heater was altered from its original manufactured condition and was installed improperly and illegally. Nevertheless, a jury verdict was rendered against State industries. The jury awarded $5.5 million in compensatory damages and $6.5 million in punitive damages. In fact, one of the jurors wanted to give $25 million.

On appeal, the Alabama Supreme Court reduced the compensatory damages to $850,000, but the punitive damages stood.

Now I am not criticizing in any way, shape, or form the person who installed the heater. In his mind's eye, he was lending a helping hand. And I am truly sorry for the death of anyone. But what I am criticizing is the award the jury made.

Punitive damages are intended to punish—not to redistribute wealth. Compensatory damages are designed to compensate for medical costs, lost wages, pain and suffering, and emotional distress. Punitive damages are intended to punish—to send a message that whatever was done wrong, don't do it again.

Had the legislation before us tonight been in place, the plaintiff still could have received almost $3.5 million. That's a substantial amount of money which would have served to both compensate the plaintiff for their suffering and punish the defendant for whatever wrong they may have done.

This legislation will not impede upon anyone's right to sue, despite the many fallacious and misleading charges by its opponents.

I would support no legislation that would close the courthouse doors to anyone. Access to the courts is a fundamental right that must be acknowledged. But as a lawyer, I can tell you we must have tort reform, and we must have it now.

It's time we establish common sense and reason in our judicial system, and this legislation does just that. Many States have already placed caps on punitive damage awards.

It's time the Federal Government followed their lead, and passed tort reform legislation.

A CHALLENGE TO THE DEMOCRATIC PARTY: GIVE US YOUR SPENDING CUTS

The SPEAKER pro tempore (Mr. LONGLEY). Under a previous order of the House, the gentleman from Georgia [Mr. KINGSTON] is recognized for 5 minutes.

☐ 2145

Mr. KINGSTON. Mr. Speaker, the balanced budget amendment is not truly dead, but it is in the hospice care unit across the hall. In the House about 130 Democrats voted against it, 2 Republicans. In the Senate, 33 Democrats and 1 Republican voted against it, so apparently, I know the Democrats had some heartburn with the concept of a balanced budget amendment.

One of the big reasons that they gave, particularly in the Senate, was monkeying with the Constitution. Apparently, not monkeying with the Constitution is more important than not letting the country go bankrupt. Obviously, interpretation of the Constitution and its sacredness is relative to proximity to reelection.

I would say that so many times, if you watch the Senators speaking, they flip-flop back and forth more than an old Patsy Cline record on the jukebox.

First, they said, the Constitution: "I'm not going to vote for a balanced budget amendment because of the Constitution." Then, they said "Give us your specifics, Republicans. You want to balance the budget by the year 2002, give us the specifics."

Last week, the Committee on Appropriations gave $17 billion in specific cuts, very difficult cuts, heart-wrenching in many cases, painful, many times politically risky, politically unwise. Members had programs in their own districts that were reduced, at a time when there is a lot of screaming and crying back home to keep these programs.

What the Republican Party has had to do is say "Look, we are on a sinking boat. We are asking everybody to throw out a little bit of your own luggage, but we think if you do that, we can get the boat ashore. We can guarantee you if you won't let go of your luggage, we are going down."

At a $4.5 trillion debt, and an item on our budget called interest on the national debt, which is the third largest expenditure in the national budget, $20 billion a month, we are going bankrupt.

Yet, Mr. Chairman, we hear time and time again, as we did earlier tonight from the gentleman from Missouri, "We are not doing things for the children." Back home, Mr. Speaker, it reminds me of when I was a kid. My daddy had a charge account at a pharmacy.

I found out when I was about 10 years old I could go down there and get myself a 25-cent Coke and charge it to my dad, just write his signature, and I didn't have to reach in old Jack's pocket, because I just had to sign my dad's name.

Then at the end of the month my dad would see a 25-cent charge for Coca-Colas and he would have some stern words for me, but he would also get his 25 cents back.

We have got an opposite case going on in the U.S. Congress, particularly on the Democrat side, particularly on those who will not give it a rest on the school lunch program. They would prefer misinterpretation of reality to reality.

Mr. Speaker, what they are saying is "Go ahead and charge it, not to your dad, charge it to your son and your grandson and your daughter and your granddaughter. Years from now, when your children's children come to pay the bill, you will be dead and you will not have to worry about their debt."

That is what we are doing. We talk about doing things for children. How about not saddling them when they get out of school, when they get out into the work world, how about not saddling them right off the bat with a huge, tremendous debt? That is what we are doing.

It is kind of like saying, you know, people want ice cream for today. It might not be in their best interests to eat ice cream three meals a day. Let us kind of cut back a little bit, and maybe there will be enough tomorrow, but we have to take some meat and vegetables now. It is very important to do it.

We had $17 billion in specific cuts. To my knowledge, not one Democrat voted for any of them. They grandstanded about how harsh all of them were. I understand that, that is fair game. I would say the Republican Party has done it to the Democrats many times themselves.

However, the fact is we are taking away one of their arguments for voting against the balanced budget amendment, Mr. Speaker. We are giving specific cuts.

Now, in the spirit of good sportsmanship, in the spirit of preservation of America, in the spirit of the best interests of the taxpayers, I challenge the Democrat party, give us your cuts. You do not like ours. That does not change the fact that we have a $4.5 trillion debt. That does not change the fact that we are paying $20 billion a month in interest. That does not change the fact that the third largest expenditure on our national budget each year is interest. So give us your specifics. We need to hear from you.

I think if the Democrat Party would go ahead and decide to jump in the water with us, that maybe we could take the best of their ideas with the best of the Republican ideas and do what is best for the United States of America, so that our children and our children's children will not be saddled with such a huge and tremendous debt and a bankrupt nation.

THE TRUE REPUBLICAN PROPOSALS FOR SPENDING ON THE SCHOOL LUNCH PROGRAM AND ON WIC

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. HAYWORTH] is recognized for 5 minutes.

Mr. HAYWORTH. Mr. Speaker, I would associate myself fully with the remarks made by my good friend, the gentleman from Georgia [Mr. KINGSTON], and for that matter, I listened with great interest to my good friend, the gentleman from Maryland on the other side of the aisle in his call, in his plea for bipartisanship, echoing our good friend and fellow newcomer from Nevada, [Mr. ENSIGN].

I would implore Members on both sides of the aisle, and indeed, people across this Nation, who have watched with interest, Mr. Speaker, as we have been involved, setting an historic pace for legislation, fulfilling a Contract With America, working to establish a new partnership together, knowing what is at stake, to truly understand the terms of this debate.

It has happened again, and doubtless will happen yet still, when those who fail to answer the challenge and call of my friend, the gentleman from Georgia [Mr. KINGSTON], proffer not new ideas, but, instead, inflammatory rhetoric, and inaccurate rhetoric.

For that purpose, once again tonight, I feel it is important as part of the truth squad to share with the American people, Mr. Speaker, the true proposals on spending for the School Lunch Program and for the program we called WIC, Women, Infants, and Children.

We start here in 1995 with an expenditure for WIC of almost $3.5 billion. We start with a school lunch expenditure in 1995, for the fiscal year, of $4.5 billion. Note in the succeeding years, the totals always go up. In 1996 for WIC, $3.6 billion. For the School Lunch Program, it is $4.7 billion. Look down to the year 2000. For the WIC Program, there is an increase of almost, or really in excess, of one-half billion dollars, up to $4.2 billion, and an increase in the School Lunch Program, an increase in the School Lunch Program of $1.5—pardon me, $1.1 billion, all the way up to $5.6 billion. Mr. Speaker, how on earth can that be characterized as a cut?

Now, the unkindest cut of all is the broad swath of truth that is shunted aside for purposes of political theatrics, for purposes of partisan advantage, for purposes of inflammatory rhetoric. The numbers speak for themselves.

Mr. KINGSTON. Mr. Speaker, will the gentleman yield?

Mr. HAYWORTH. I am glad to yield to the gentleman from Georgia.

Mr. KINGSTON. Mr. Speaker, I am disturbed about that. Somebody is lying. Are you lying, or is the gentleman from Georgia lying? If the taxpayers of America want to have those numbers, will you be willing to send them to them? Are you going to stand behind them?

Mr. HAYWORTH. Mr. Speaker, I am very happy to send these numbers. I believe everyone in the new majority is happy to share these numbers as part of the new proposals. Will there be different delivery systems? Sure.

Mr. KINGSTON. If the gentleman will yield, let's do this. Let's say if you are represented by a Democrat, write and get a copy of these. Send them to your representative and ask him why those numbers are not the truth.

If you are a Republican, we are going to send them to you. Let us just talk to the Democrat district tonight: Write and ask for those numbers.

Mr. HAYWORTH. Reclaiming my time from the gentleman, Mr. Speaker, I think he makes an excellent point. As we engage in this debate, in this new partnership, the American people really should write, write any of us, Members of the House, and ask for these numbers; specifically, the GOP proposed spending on WIC and School Lunch Programs.

We will be happy to supply those numbers, and challenge our friends on the other side to talk about this term "cuts," because again, there are no cuts. In the popular imagination, the only "cuts" are decreases in future increases in expenditures. Again, only in this culture, only in this curious combination and curious advantage-taking of political opportunism can that term even be bandied about.

I guarantee, I say to the gentleman from Georgia, and Mr. Speaker, the families gathered around the kitchen table making hard decisions about the family budget deal with real cuts, not phantom cuts and not theatrics.

I noted with interest my good friend, the gentleman from Missouri, who really started the special orders tonight, I think his information was inaccurate. This is the real story.

THE RESCISSION PACKAGE OF THE REPUBLICAN MAJORITY

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from California [Mr. BECERRA] is recognized for 60 minutes as the designee of the minority leader.

Mr. BECERRA. Mr. Speaker, I appreciate the opportunity to come tonight and speak to my colleagues about something that will be coming before us next week. That is the Republican majority's rescission package, which, in essence, is the cuts that were made in the Committee on Appropriations in the last week or two to the tune of about $18 billion, cuts that are going to be used, we first were told, for purposes of trying to finance the disaster relief efforts in places like California, as a result of the Northridge earthquake; in places like Florida, that still have some final tasks to be done to take care of the hurricane disasters they suffered from; northern California, earthquake; the Midwest, floods; a number of different disasters that this country has experienced over the last couple of years.

Unfortunately, if you take a closer look at this rescission package, you see something very, very disturbing. I would like to go into that a bit.

Again, the rescission package, what it really means in plain English is that we have wiped out funding for certain programs which have already been approved for such funding. In other words, Mr. Chairman, last year's budget, which may have allocated $1 for a program, this past week the Committee on Appropriations went in and decided to make cuts in particular programs under which it has discretion to do so.

It cannot touch things like Medicare, Medicaid, Social Security, because those are entitlement programs, and they are not discretionary. The discretionary programs include things like the Department of Defense, Department of Education, job training, veterans' benefits, and so forth.

If you are concerned about the quality of public education in this country, teen drug use, the increasing potential of today's youth being involved in gang violence, in crime, if you are concerned about veterans, if you are concerned about housing for seniors that are on a limited budget, then you have good reason to be very concerned, if not outraged, about what the majority party has done with regard to this rescission package.

The majority party's main target, as it turns out, happens to be kids and senior citizens. The GOP's main beneficiaries in this rescission package happen to be the very wealthy. Let us take a look at a few things done through this rescission package.

I have put together a chart here to give us an idea of what happened with all the cuts that came out of the Committee on Appropriations recently. Who takes the hit? Of all the cuts, the close to $18 billion in cuts, 63 percent of those cuts will hit low-income individuals. Close to two-thirds of all the moneys cut come from programs that help veterans who are low-income, the elderly who are low-income, children, $17 billion. It will be interesting, because we will talk about where that money goes, and it is going to be interesting to find out why we had to cut $17.5 or so billion.

Mr. Speaker, let me focus a little bit more on where those cuts are that we see here listed as having hit mostly the low income. Where did the money come from? For the most part you can see the biggest hit was taken by housing, housing for seniors, housing for low-income individuals, housing to help supplement those who are having a tough time making a living, that are working poor; job training, job experience. Of all the cuts 14 percent come from job training programs to help young people and those who are trying to get off of welfare, and those who are trying to get back on a job because the recession has caused them to lose their job as a result of downsizing in areas like the aerospace industry.

□ 2200

Health care, health cuts, 10 percent. Education, 9 percent. Within the other 25 percent, I should mention that we list veterans benefits programs. Let me give some quick details on some of those areas in cuts.

Housing, $7.2 billion comes from housing; $2.7 billion comes in rental assistance for low-income families. That is about 62,000 vouchers down the drain, 62,000 families that will not be able to qualify for some assistance to try to make sure they are able to rent a place to stay; $186 million comes from housing for persons with AIDS. In Los Angeles, I can tell you that thousands of people with AIDS will now probably find as a result that they will be denied certain housing because that assistance that was being provided for this population of needy individuals is now being cut.

Job training cuts, $2.35 billion. Included in that is the complete elimination, not a cut, complete elimination of summer youth employment programs, $1.7 billion. That is money that has been used in a lot of different areas, including places like New York, in rural States, in places like Los Angeles, to try to help youth who otherwise might just hang around the street corner at night.

The impact on Los Angeles of that cut, well, we can expect about 23,000 kids to be denied job training and classroom instruction over the next year.

Impact nationwide, probably about 600,000 children, not children, young adults, will be deprived of a chance to do some good work and learn something as they prepare themselves to become working adults.

Education, $1.7 billion in cuts. What do we do? Well, eliminate the drug-free schools program. That is a program to try to make sure kids don't start using drugs and as we know, most folks who are arrested these days, it is as a result of using drugs, selling drugs or somehow drugs are related. Yet we are eliminating the drug-free schools program that tries to keep drugs out of the school and tries to make sure kids don't start using or selling drugs.

What else? We eliminate also school construction programs. How many of our neighborhood schools need some type of refurbishing, how many of our neighborhoods just need schools? Well, we have eliminated a program for that. We have got massive reductions in grants to reform schools, so we finally get caught up in technology. We use money for homeless youth, to educate homeless youth, that is eliminated.

We have a cut in national service. That is the program that "Says young man, young woman, you are interested in going to college, you want to serve your community, we will give you a little money, pay you low wage, minimum wage, at the same time we'll also tell you that after a year you'll have a grant of about $4,700 that can be used for your education, only for your education. If you go on to college, we'll give you $4,700 to help offset some of the cost of that education." Huge cut in national service.

Health cuts, $10 million cut in the Healthy Start Program. That is a program to help working women, poor women who have very little access to health care. It provides them with prenatal care so that they can make sure that they do not end up costing the local government and the community and its taxpayers additional dollars because they end up having a child that is born with low birthweight or some abnormality and has to go to the approximate intensive care units and costs us 10 times as much as it would have cost to have given decent prenatal care.

A $25 million hit on the WIC Program, Women, Infants, and Children Program; 100,000 women and kids are going to probably be denied proper nutrition.

What else? Low-Income Home Energy Assistance Program. That is the program that helps low-income seniors, others who have a very difficult time during winter months in places where it is cold, to survive those chilling winter months. We are cutting $1.3 billion from that program.

Other cuts, I will mention veterans' benefits, take a hit of about $206 million. That is a real slap in the face of our veterans who certainly do not believe they get enough as it is in the types of programs available under the Veterans' Administration. Yet they are going to take another hit.

Corporation for Public Broadcasting, $47 million hit, a $94 million hit is projected for the next fiscal year. What we are doing with the Corporation for Public Broadcasting in Congress is the Republican majority is trying to get us to a glide path in about 3 or 4 years where we actually eliminate all funding for public broadcasting.

The EPA—That is the Environmental Protection Agency, lots of cleanups to do, all the toxic dumps we know that are in our communities. Well, $1.3 billion mostly for Clean Water Infrastructure Program is being gutted.

Where does all of this money go from this $17.5 billion or so bill that cuts from these programs? Let's take a look.

We were told first that since the President sent a bill over requesting that we provide some additional moneys to help provide for disaster relief, as I mentioned earlier, that was one of the reasons the Committee on Appropriations had to find some way to fund it. We have never done it before where in a disaster we have taken money from other programs to pay for a disaster, we have always said this is a disaster, we have to pull together as Americans and find a way to help people. But this time we did it differently. But not only did we do it differently, let's take a look at what happened.

The committee, the Republican majority, decided to give about $5.3 billion for disaster relief. Yet they cut about $17.5 billion in programs. So where did the other two-thirds of the money go if only $5.3 billion went to disaster relief?

Well, you see, the Republicans ran a campaign last year saying in their Contract on America that they were going to provide tax relief. The problem is the tax relief they are providing goes to the wealthy. So two-thirds of all the moneys cut, from veterans, from our schools, from programs that help children stay away from drugs and out of gangs and away from crime, from health care programs, from housing programs for seniors, for moneys that go to help AIDS victims, all of that is being packaged in the $17, $18 billion package. Less than one-third is going to go for actual disaster relief to help people who are still suffering from natural disasters, and two-thirds is going to go to tax cuts. I know I have a colleague who is going to join me in a few moments, I want to talk soon about what those tax cuts are going to do. But let me just make a couple of quick comments more.

Why tax cuts now? But more importantly, when we looked at the programs that were being cut, why did we not see anything that hit the military? Are we so convinced that there is no fat in the Department of Defense? Is this not the same department that gave us $500 toilet seats and that gave us billion dollar cost overruns on military projects in the last few years? But why is it that we do not see a single cut there? But more importantly, why is it that about 2 weeks ago, this same House with majority Republican support passed out a bill that increased spending for the military, including moneys for star wars? Increasing money for the military spending, giving tax cuts to the wealthy, paying for it through cuts to low income and middle income people. That is what we see.

If you do not believe it, let's take a look at one last chart.

That tax cut that is in that Contract on America, where does it go? Part of it is for a capital gains tax cut. It is important to understand that when you give a capital gains tax cut, that does not go to every American, and especially not to most working Americans who earn a wage. Most of that goes to people who are fairly wealthy, who have a lot of assets and who get to deduct some of the profits on those assets when they sell them. So much so that let's take a look at who benefits from that capital gains tax cut that the Republican majority is proposing in the House of Representatives. That tax cut, by the way, will cost over the next 10 years when it is implemented, should it ever get implemented, about $208 billion. That is $208 billion to our deficit over the next 10 years. Who gets the majority of the benefits of that? As you can see in this chart, and if it may be kind of small for people to see some of the type, this is broken down into different income levels.

Less than $10,000 incomes, well, you're going to get about half of a percent of the benefits. If you earn between $10,000 and $20,000, well, your benefits will be about 0.8 percent of the entire cut. Well, $20 to $30,000, you get about 1.7 percent. So all the families in America that earn $20,000 to $30,000 can expect to get as a group 1.7 percent of the tax cuts under the capital gains tax cut; $30,000 to $40,000 income range, you'll get, as a group, about 2.6 percent of all that; $40,000 to $50,000, you'll get about 3.2 percent of the benefits of that. If you make between $50,000 to $75,000, that whole group of Americans within the $50,000 to $75,000 income range will get about 9 percent of all the $208 billion in benefits. If you make between $75,000 and $100,000, you are going to get about 9.4 percent of that $208 billion in capital gains tax cut benefits. And If you happen to make more than $100,000, which represents about 9 percent of all taxes-filing, taxpaying Americans, you get about 72.6 percent of all the benefits. These are the folks that are going to make out like bandits from the capital gains tax cut. And who is getting cut to finance this capital gains tax cut? As I said in that rescission package, if only 5.3 billion is being used for disaster relief, the other $12 billion or so, which is coming out of low-income and middle-income individuals, families and children and seniors, is being used to finance this.

Let me at this stage ask my colleague from Vermont to join me. I want to first thank him for taking the time at this late hour to come and chat with me a bit about this.

Maybe he has a few comments he would like to make as well about what I have just had a chance to discuss.

Mr. SANDERS. First I want to thank the gentleman from California for his wonderful presentation, because I think he hit the nail right on the head.

Essentially what we are talking about tonight are priorities. That is what a government does, like every family in America. It has to make choices as to how it allocates money and where it saves money.

What the gentleman said in terms of the rescission package is basically consistent with the whole thrust of the Contract With America. What that is about, as his charts have amply demonstrated, is that on one hand, despite all of the loud rhetoric about the terrible deficit and the $4.5 trillion national debt, the first point is our Republican friends are proposing massive tax breaks for the wealthiest people in America. Here we have a situation today where the gap between the rich and the poor in America has never been wider, the wealthiest 1 percent of the population own more wealth than the bottom 90 percent. We have a terrible deficit. All kinds of very serious social needs in America. And our Republican colleagues are proposing massive tax breaks for the wealthiest people in America.

Now, that may make sense to somebody, but not to the many people in the State of Vermont and around this country that I talk to who work for a living. That is point number one.

The second point that the gentleman from California made, which is also absolutely appropriate, is that today at a time when the cold war has finally ended, when the Soviet Union is no longer our enemy, Russia wants to join in NATO, many of the Communist bloc, former Communist bloc countries want to join in NATO, at a time when we have the ability to significantly lower military spending, to help us deal with the deficit, to help us pump money into all kinds of enormous needs that this country faces, our Republican friends, if you can believe it, and I know that many people may have a hard time actually believing it, are proposing tens of billions of dollars more for the star wars program.

So tax breaks for the rich, more money for star wars, and for other military programs.

If you are going to do those things, which will cost us tens of tens of billions of dollars and if you want to move toward a balanced budget in 7 years, something has got to give. That is the equation. Tax breaks for the rich, more money for star wars. Well, what has got to give?

And the gentleman from California mentioned a number of the areas that have been affected by rescissions, that is, cutbacks in money that has already been appropriated.

Let me reiterate some of them as they apply to the State of Vermont. I was particularly outraged that one of the areas where we saw the most savage cutbacks, $1.3 billion, was for the Low Income Heating Assistance Program, also referred to as LIHEAP. The LIHEAP program provides heating assistance to low-income people, many of them elderly people who live in cold climates. In my State of Vermont, the weather gets down to 20 below zero to 30 below zero. We have many elderly people who are living on very fixed incomes. These are people who often have to choose between heating their homes or buying the prescription drugs they need to ease their pain.

□ 2215

The LIHEAP program impacts upon 24,000 households in the State of Vermont. The Republican rescission package would cut back 100 percent, would eliminate the LIHEAP program.

One of two things will happen as a result. Either elderly people will go cold in Vermont and in Maine and throughout northern America, or they will take the little money they have to put into heating and not have the food that they need or the medicine that they need.

I do not know about other people's priorities, but it does not make a whole lot of sense to me to talk about spending billions of dollars more for Star Wars to cut taxes for the rich by tens of billions of dollars and then force tens and tens of thousands of elderly people in America to go cold in the wintertime.

Every politician who gets up here talks about the serious drug problems that we have. It is a problem in Vermont, it is a problem in California, it is a problem in Virginia, it is a problem all over America.

In my State of Vermont I was recently at a town meeting in Bennington and teachers there talked about how important the drug education money that comes into that community is in keeping kids away from drugs. Every sensible human being understands that an ounce of prevention is worth a lot more than spending billions of dollars throwing people into jail. People in Vermont and all over this country are working day and night to keep kids away from drugs, away from gangs.

This rescission program cuts back significantly on money that goes to help teachers and educators keep kids away from drugs. And on and on it goes, cutbacks for education, for people who are homeless.

I think what the rescission package talks about is the priorities that some of our Republican friends have, and I think that they are not the priorities that the ordinary American people have. And I hope that out of this discussion tonight people all over this country will stand up and say, now wait a second, that is not what the United States of America is supposed to be, it is not supposed to be making the elderly go cold in the wintertime, it is not supposed to be taking away educational opportunity from homeless people.

I would simply conclude my remarks by thanking the gentleman from California very much for this extremely important discussion.

Mr. BERCERRA. I thank the gentleman from Vermont [Mr. SANDERS] for participating and I hope he will have a chance to stay and we will have a chance to indulge in further colloquy.

I would like to recognize my other colleagues in a second. But I would like to make one quick point. The gentleman from Vermont left off on a very important note and I would like to follow up on that and return to this chart which shows where the money goes. As I said, only less than a third of the money is actually going to disaster relief. But let me talk a little bit about this disaster relief.

Something very interesting was done here. It was a play with hands, you know it is a shuffle game. Part of that money that was cut in that $17.5 billion in cuts included the following: $350 million of unused funds from the Federal Highway Administration. That is money that was allocated for the Federal Highway Administration to help in the earthquake relief efforts to get roads and bridges back up to working condition. It has not yet been expended because we have not finished the fiscal year.

So, what did the Republican majority do in the Committee on Appropriations? They cut that remaining $351 million, but interestingly enough we see we are getting $5.3 billion for disaster relief, so what they did was say we are taking $351 million, putting it in our pocket, pulling it out and saying now we are giving, about to give $5.3 billion for disaster relief. They do not tell you they really cut $351 million from disaster relief, they are just saying that they have made cuts and they are trying to say that they are mostly cuts in waste, fraud and abuse, but quite honestly we know it is much more than that.

It is really discouraging to see how this is being done.

Let me now take a moment to recognize a good friend and colleague from the State of Virginia [Mr. SCOTT], who is here I hope to join us and discuss some of these things as well.

Mr. SCOTT. I thank the gentleman. It is a pleasure to join him and the gentleman from Vermont and the gentleman from New Jersey to discuss these rescissions. As the gentleman has indicated, the rescissions are going to pay mostly tax cuts.

Comment was made earlier about school children and lunches and whether we are spending more money or less money. You can call it whatever you want, but if we adopt the Republican budget many school children who are eligible for school lunches today will not be eligible if that budget is adopted.

Mr. BECERRA. Mr. Speaker, if the gentleman will yield back the time for just a moment, we should give some detail because the gentleman who spoke earlier about this and said we are actually increasing the budgets over the next several years for those school, those child nutrition programs wants to leave the impression that actually we are giving more under this Republican proposal than was allocated under current law.

Mr. SCOTT. Well, no, it is not more than current law; it is less than current law.

If we continue going as we had planned, to cover the school children that need to be covered, more would be covered. They are going to cover less school children, and some eligible today will not be eligible with inflation; costs go up, more children show up in school, and if we continue at the rate they want to go, some children that are eligible today just simply will not be eligible if this budget is adopted, period.

Mr. BECERRA. So in other words, the Republican proposals do increase from this current fiscal year what will be allotted next year, but they do not cover the true costs because they do not take into account the growth in the number of kids in the schools or the inflation rate.

Mr. SCOTT. This is exactly right.

Mr. BECERRA. So the schools will have to do with a little bit more money, but with more kids and inflation on top of that.

Mr. SCOTT. And more costs and some children will not be able to get fed as a direct result of that budget.

Mr. Speaker, I would like to again thank the gentleman from California for having this special order. The 1995 rescissions touch many programs, but frankly the ones I want to talk about just very briefly are the targeted prevention-oriented programs.

I am particularly concerned about the mean-spirited cuts in the Safe and Drug Free Schools and Communities Program and the Summer Jobs Program. These programs will not just suffer a reduction in funds, but are at risk of being completely eliminated. The Drug Free Schools Program and the Summer Jobs Program are not frivolous programs, they are designed with specific intentions. Drug Free Schools was authorized as a means to repeal the onslaught of drugs and violence in the schools. The most significant changes in 1994 included an emphasis on violence prevention.

In the city of Richmond in my State of Virginia, we have a program called Richmond Youth Against Violence. Recognizing the overlap and risk factors for violence and substance abuse, the school system decided to focus on violence prevention as an effective means to reduce or eliminate drugs used by our young people.

Richmond Youth Against Violence is operating in all eight middle schools. It teaches mediation, how to avoid violence and the circumstances of violence and provides counseling for students suspended for violence. Funds from the Drug Free Schools and Communities Act provided the startup money for Richmond Youth Against Violence, and it works. Through various evaluations, research on this program has shown that boys in the program do not display an increase in violence, violent behavior and they are less likely to initiate substance abuse activities.

Mr. Speaker, the Summer Youth Program is another successful program. The GOP, however, has decided the program that gives over 1.2 million low-income youth their first opportunity at work and their first step toward learning work ethics has no place in the Republican Contract With America.

□ 2230

Summer youth jobs has a long history. It started in 1964 and has been enjoyed by youth in inner cities and rural areas. Kids 14 to 21 are eligible for the program and they flock to it. Last year there were two applicants for every job in the summer program.

For those who say that the program is ineffective, I say look at the research. The Department of Labor's inspector general says that the program is run very tightly and is well administered, and unlike the stereotypical welfare programs, the summer youth jobs program involves real jobs. It is not uncommon to see youth performing clerical work for city offices, supervising and tutoring children in daycare centers, serving as a nurse's assistant in a hospital.

Work and study done by Westat, Incorporated on the 1993 summer job program gave high marks for the program. The supervisors who were surveyed reported that there are no serious problems related to kid's behavior, attendance or turnover, and, Mr. Speaker, we know the importance about feeling good about your job and feeling that what you are doing is worthwhile. The young people in the summer youth jobs program feel the same way, they work hard and feel good about their summer jobs.

These two programs, like many others, like the education for homeless children and youth, the training for careers and early childhood development and training for careers, and counseling young children affected by violence, the literacy programs for prisoners, all have merit and need to be continued.

Some may oppose the short-term costs, but I remind them of the long-term risks. We cannot continue to undermine the programs which have been proven to deter violence and crime. We must also provide an environment for young people to gain the experience necessary for them to function as adults. Drug-free schools and communities program and the summer youth and jobs program accomplish these goals.

In conclusion, Mr. Speaker, the prevention programs work. We can pay for them now or we can pay a lot more for prisons later. We need to defeat these mean-spirited, short-sighted rescissions.

Mr. BECERRA. I want to thank the gentleman from Virginia for taking the time to come here and present a cappella testimony about why we should fear these cuts that are being proposed at this particular time.

Let me at this time recognize another distinguished colleague and friend, the gentleman from New Jersey [Mr. ANDREWS], and ask him if he has a few things would he like to say. And I thank my friend from California for giving me this time and organizing this discussion.

Mr. BECERRA in particular is to be commended for leading on this floor tonight a discussion of priorities in our country and where the taxpayer's money ought to go. Mr. Speaker, Mr. BECERRA deserves particular praise because this may be the only discussion we have an opportunity to have about priorities under the way this bill is going to be brought to the floor, and I want to speak for just a few minutes about what is wrong with that and how that cuts off a real debate about where the public's money ought to go and what the Federal Government's priorities ought to be.

Myself and Mr. SCOTT and Mr. SANDERS and Mr. BECERRA may have different priorities as to how this bill ought to come down. Frankly, I think it is an urgent priority to cut the size of the Federal budget and to make this government leaner and smaller and more efficient.

I think it is a demanding priority that we find a way to lessen the burden of taxes on the American people, and perhaps there would be some agreement or disagreement among the four of us as Democrats on that point. The point is, this is the place where we are supposed to thrash out those differences over priorities and have our say.

Mr. Speaker, as we all know, when a bill is brought to this floor, it is brought to the floor under something called a rule and the rule sets forth which amendments may be debated and voted upon and which amendments may not be debated and voted upon.

This afternoon, March 9, the chairman of the Rules Committee, the distinguished GERALD SOLOMON of the State of New York circulated a letter, which I will make part of the record at the appropriate time, which outlines his proposals to what the rules should be under which this bill is brought to the floor, in other words, the rules of debate, what we can vote on and what we can't vote on.

The rules of debate are totally closed, totally unfair, and will totally shut off the kind of priorities debate, Mr. Speaker, that Mr. BECERRA has launched tonight. Let me give you some examples.

The Republican bill that will be before us will cut a net $12 billion from this year's budget. Now, one could take one of three different positions on that—four, I guess. You could say that we should cut $12 billion and these are the right $12 billion to cut, and you will have that chance because you will have a chance to vote for this bill. You can say that we shouldn't cut any of it, that we should add to the budget. You won't have that chance because you won't be permitted to add to the budget under this bill. You will only be permitted to subtract from it.

Frankly, I find that OK but I don't think that others that don't find it OK should be denied the chance to add if they so desire.

You might say we should cut less than $12 billion from the budget. You won't have that chance because the number that is fixed in this bill must be going forward and you may say, as I would, we should cut $12 billion but we should cut a different $12 billion than the Republican have proposed. I will not get that chance. Mr. SANDERS will not get that chance. Mr. BECERRA will not get that chance. Mr. SCOTT will not get that chance, nor will any of our colleagues under the rules being brought to the floor.

Let me tell you what I want to do. I am working on and tomorrow will complete a proposal as a substitute for this rescission bill that doesn't cut the budget by $12 billion as our Republican friends would, but cuts it by $13 billion, but cuts it in different places.

The Republican proposal says to an 82-year-old woman who has a fixed income of $9,000 a year and heating bills of $1,500 a year, that the little bit of help that she gets right now, the little bit of help, the couple hundred dollars she gets to pay her electric bill, her heating bill, will be eliminated next winter.

I say instead we should cut research contracts that benefit Exxon and Mobil and Fortune 500 corporations that sell her the energy for that heat. Let's give this House a choice between cutting her heating subsidy and the research subsidy of the Fortune 500 energy companies that brought her her energy. We won't have that choice under this rule.

I would say this, to a 17-year-old who is trying to work a summer job from a low-income family so he or she can earn money to get a college education. The Republican bill would say there will be no federally sponsored summer jobs anywhere in America starting this summer.

So, Mr. Speaker, a young person who is listening to us tonight, 16 years old, planned on getting a job this summer, maybe saving $500 or $600 or $1,000 toward their school tuition, no job, nothing this summer. I say, why don't we cut out some of the bureaucratic jobs in the Department of Agriculture, the press secretaries, the statistics gatherers, the people who compile information about the American agriculture system.

I would say give us a choice between cutting summer jobs for young people around this country and bureaucratic jobs in the Department of Agriculture. we will not have that choice under this bill, and I will yield to Mr. SANDERS for a moment.

Mr. SANDERS. I thank my friend from New Jersey, as he opens up a whole area of discussion that I was intending to get to in a moment and I thank him for getting there earlier, and that is the whole issue of what some of us call corporate welfare.

Now, at the same time as we are seeing massive cutbacks in heating programs for low-income senior citizens, cutbacks in drug prevention programs, cutbacks in programs for the homeless, does my friend from New Jersey or California or Virginia happen to notice if there are any cutbacks in the corporate welfare programs that are providing tens and tens of billions of dollars of Federal subsidies and Federal aid and tax breaks for some of the largest corporations in the United States of America?

Now, maybe they are there. I happen not to have seen them. I have a list of all of the programs. I did not see them.

If I might for one moment, and there is a long list, the Progressive Policy Institute, I might say a conservative Democratic organization, suggested that there were tens and tens of billions of dollars of savings if the Congress had the guts to call for welfare reform on large corporations and wealthy people. We all know that.

The savings can take place within the energy industry where there are huge tax subsidies for companies who are extracting oil, gas and minerals. There are special tax credits for producers of fuel from nonconventional sources. There are depletion cost allowances for oil, gas, and nonfuel mineral firms. On and on it goes.

My friend from New Jersey makes exactly the right point: We should have that debate right here on the floor in front of the American people as to how we proceed to save money. And reclaiming my time, I would say to my friend from Vermont, who truly is an Independent, not only the way he thinks, I have read the bill. There were 228 cuts in the bill. Virtually none of them cut out the kind of corporate welfare, the Wall Street welfare that you make reference to.

So I would say to you that this bill, Mr. Speaker, demonstrates that the majority party of the Republicans are not against the welfare state at all. They are against the welfare state for those who tend to vote for the Democrats, but not for those who tend to vote for the Republicans. And this bill is ample evidence of that.

Let me give you other examples of things we will not get a chance to vote on that some of us would prefer. This bill says that if you are a senior citizen living in what we call section 8 subsidized housing, what that means is you live in a senior citizens high-rise and your rent is limited to 30 percent of your income and a subsidy pays less. So let us say your income is $10,000 a year, you only pay $3,000 a year toward rent and if your rent is really $5,000, the Federal Government picks up the other $2,000 so you can rent a modest apartment in a senior high-rise.

I have had senior citizens call me from around New Jersey scared to death that they are going to lose their apartments because of what is in this bill, because this bill eliminates $2.7 billion from that subsidy. You know what answer I could give them, Mr. Speaker? You just might lose your apartment, it is true.

Some of us, instead of denying housing to senior citizens under this program, would like to stop building so many courthouses and Federal buildings around America. We would like to substitute a provision that says, Do not cut the housing for senior citizens to have an apartment. Stop building a courthouse everywhere that a certain Member of Congress who is well connected enough to get one built.

Yes, we need courthouses in America, but I will tell you what. If we have to wait a few more years before we give a few more judges an elaborate place to sit and hear cases and save the money there and put it into keeping senior citizens in their homes and apartments, I think we should do that. And at the very least, Mr. Speaker, we ought to have that debate and we ought to have a choice, and this Republican rule will not let us do that.

One more example. One more example. This Republican bill says we are going to take $105 million from the program that hires remedial reading teachers, speech therapists, child psychologists, and other educators that help young people with a learning disability get through their school years, and is going to take $38 million from a program that helps young children who do not speak English learn how to. If they come to this country from Vietnam or Cambodia or Mexico or Russia or Poland or wherever, $38 million so those teachers can help our children learn English first when they are in first grade. That is gone from this bill.

Some of us would rather take the money from something called the Export-Import Bank, which is a program paid for, Mr. Speaker, by the people watching us tonight, that gives subsidies to major American corporations to help them underwrite the sale of their goods around the world.

Now, let me say this. I hope that American companies are able to sell their goods around the world tenfold what they do right now because that is good for the country, but the people who will profit from selling those goods should underwrite the cost of selling those goods. The shareholders and investors of those companies ought to pick up the tab of this, not the American taxpayer.

So let me summarize. I would like to see us vote on an amendment to substitute the cut that cuts heating assistance for senior citizens and instead cuts energy research that benefits oil companies. We will not get that chance.

I would like to see us get rid of the cut that abolishes the summer job program for young people in urban and rural and suburban areas around this country, including my hometown, and give us a chance to get rid of some of the bureaucracy in the Department of Agriculture or the Commerce Department or the Department of the Treasury or wherever. We will not get that chance.

I would like to see us restore the cut that would say to senior citizens, we are going to take away the subsidy that helps you get an apartment and instead stop building so many courthouses for so many judges and so many Federal buildings around America. We will not get that chance.

I would like to restore the cut that says no more remedial reading teachers, no more education for children who cannot speak the English language as their first language, no more assistance for those children. I would like to get rid of some of the spending in the Export-Import Bank that helps IBM and AT&T sell their products around the world. We will not get that change.

Now, my friends as a Democrat, I have been wanting to sponsor an initiative in the last Congress called the A-to-Z spending cuts plan. Any Member can come to this floor during a special session and propose his or her best idea to cut spending. There would then be a debate and a vote.

When they were in the minority, my friends on the Republican side thought that was a terrific idea. The Speaker, the majority leader, the majority whip, all of them signed on to the bill and signed a petition forcing the bill to the floor that almost made it but did not. They thought it was a great idea that everybody's spending priorities could be brought here in debate.

Now they are in charge. Now they have the majority. Now they can win any vote because they have a certain number of more votes than we do. Now they are not quite sure the idea is so good with the majority change in this House, Mr. Speaker, because the people are fed up with a system that is closed, that does not permit free and honest debate.

We are going to have an opportunity to make a decision on Tuesday whether we have a free or honest debate about this rescissions bill. If you vote for the rule that Chairman SOLOMON wants, we are not going to have a free and honest debate. We are going to have a closed debate and a lousy bill. If you defeat the rule, give us a chance to offer these and other ideas and have the kind of discussion we are tonight, the public will be well served.

I thank the gentleman from California [Mr. BECERRA] for this time.

Mr. BECERRA. I thank the gentleman for his eloquent words to make it clear it is not just an issue of substance when it comes to this issue of cuts and our priorities, but it is also an issue of mechanics, how we actually get to the point in the House of the people of making decisions for the people of America. And when it becomes clear to the people of America that their voice, through their Representatives, is not allowed to express itself because we cannot offer amendments, because we cannot try to sell the idea of where our priorities should be and instead must accept what is force fed to us, then clearly we are not doing the jobs as Representatives and clearly that frustrates the American people even more, as the gentleman so eloquently said with regard to why we had a change in November 1994. Clearly the people are frustrated and we must do some things to change that.

Let me point out a couple of things that disturb me most about this direction that we are heading, the fact that we have closed debates, the fact that we have these cuts that go after middle-income and lower-income people, but yet will benefit the wealthy.

I cannot understand why we are seeing proposals for a capital gains tax cut that, as you can see, will benefit the most wealthy. But when you take a look at how much the average annual tax cut will be received by the income groups, it is astonishing.

If you earn $20,000 or below, you know how much you are going to get in tax cut relief over the year? About $7.63. That is what a family that earns $20,000 or below can expect to get from the capital gains tax cut proposal that the Republican majority in the House has proposed.

How much tax relief will you get if you have earned between $20,000 and $50,000 for the vast majority of American families? About $33 in the entire year. That is what a family will receive in tax relief from this Republican proposal.

Now, if you are $50,000 to $100,000, what will you get back in extra income? About $124.

Now, what happens if you earn between $100,000 and $200,000? Well, now you are going to get about 100 times what a person or a family earning $20,000 gets. You are going to get about $636 in that year.

But what will 2 percent of America's tax filers get? The 2 percent wealthiest filers of tax forms in this country, the 2 percent wealthiest Americans, what will they get, those earning $200,000 and above? Four-thousand-three-hundred and fifty-seven dollars in a year.

The folks that need it least get the most, and that, I think tells us a bit about the priorities of this new Congress, where we are heading. It seems anomalous to think that we are going to head in that direction but that is what it looks like.

Mr. SANDERS. If the gentleman would yield.

Mr. BECERRA. Of course.

Mr. SANDERS. Let us reiterate what all four of us have been talking about. No. 1, with a huge deficit, huge national debt, and terrible social needs in America, there are significant increase tax breaks for the rich, at the same time as the gap between the rich and the poor has never been wider.

□ 2245

No. 2, despite the end of the cold war, increased military spending at a time, in my view, when we should be cutting back on the military. And then in order to move toward a balanced budget, savage cutbacks which go against low-income elderly people, including people in the northern part of America who will be cold this winter if our heat program is cut.

Programs for homeless people; programs for children; cutbacks in the WIC Program. There is one program that Mr. BECERRA touched upon earlier that I think we have not perhaps discussed enough and that is a $200 million cutback for the veterans of America.

I do not apologize to anybody for being an antiwar Congressman. Yes; I voted against the Persian Gulf war. I think very often we can resolve international conflict without wars.

But it seems to me that if the Government of the United States of America sends people off to war and asks them to put their lives on the line, and they do that, and then they come back to America and 40 or 50 years goes by, as in the case of World War II veterans and these veterans are sleeping down in VA hospitals throughout this country, it seems to me to be very, very wrong to say to those men and women who put their lives on the line, were wounded in body and wounded in spirit, that you say to them now, Hey, guess what? We have got a cutback on the VA hospitals. Thank you very much for putting your life on the line. Thank you for getting wounded, but now we have got a budget problem and we have to give tax breaks to the wealthiest people. We have to build the star wars. We have got to cut back for you.

I think that this particular cut of $200 million is absolutely uncalled for. I fear very much that as the Contract With America progresses, and I had the opportunity of meeting with Jesse Brown, the very fine and excellent Secretary for Veterans Affairs, and he shares this fear, that in the months and months to come there will be increased cutbacks on the needs of our veterans.

So, I think the bottom line is that we have got to get our priorities right and that is we respect those people who put their lives on the line and we will not go forward with those cuts.

Mr. ANDREWS. Mr. Speaker, will the gentleman yield?

Mr. SANDERS. I yield to the gentleman from New Jersey.

Mr. ANDREWS. The gentleman from Vermont makes an outstanding point about the veterans issue, and Mr. SANDERS and I have our differences on defense policy and our voting records will reflect that, but let me chime in to support a point he just made and going back to the point I made about the choices that we are not going to be given a chance to make.

This bill cuts $200 million out of this year's expenditures for the veterans' hospital system across the country and it forgives a $50 million loan to the Government of Jordan.

I am going to repeat that. This bill says to the Government of Jordan, You do not have to pay us the $50 million you owe us. We forgive you. Then it says to the veterans across this country, Oh, by the way, we are taking $200 million, four times that amount, out of your VA hospital system.

Now, some of us would like to offer an amendment that would at least reduce that cut of the $200 million by not forgiving the $50 million loan to Jordan. A lot of us would like to be able to say maybe the Jordanians should find the $50 million and pay us back.

I find it ironic that in the Persian Gulf war, which was the first vote that Mr. SANDERS and I cast as Members of this House, at the time of that war the Jordanians chose to remain neutral. They chose not to take the side of the United States for their own reasons.

The men and women who served in our Armed Forces did not choose to remain neutral. They swore allegiance to our country and served us. We are taking money away from them, who put their lives on the line, and then we are forgiving a loan to the Government of Jordan.

Mr. SANDERS. To the best of my knowledge, King Hussein is not exactly on the welfare rolls as well.

Mr. ANDREWS. I would assume King Hussein will not be receiving home heating assistance this winter.

I yield to the gentleman from California [Mr. BECERRA].

Mr. BECERRA. I know that we are running short of time. I want to make sure that any of my colleagues have a chance to express themselves.

I want to quote something that was said by the new chairman of the Committee on the Budget, Mr. JOHN KASICH, who said this about deficit reduction. "I do not think that Republican special interest programs ought to be spared. I think we ought to look at corporate welfare before this process is over." That is a quote in the Washington Post of yesterday.

Well, I think those of us who are here, the four of us who are here, along with a number of my colleagues, I suspect both Democrat and Republican, are going to keep the chairman of the Budget Committee to his word. We want to see those cuts, because quite honestly, we have not seen them in this particular $15.5 billion rescission package, but certainly we must see those.

So I would say that in this new "Newt" world that we face, that the needs of hard-working, middle-class families should not take a back seat to the needs of the very affluent. But quite honestly, I cannot see anything that says that we are not going in that direction, when everything points to capital gains tax cuts. Cuts to the poor, cuts to the middle income in their programs. Not tax cuts, but spending cuts that would help them. Child Nutrition Program cuts, all of this, yet we are going to increase spending for the military.

And somehow we get into this whole idea about a balanced budget amendment that was up here a couple of weeks ago for debate where we had the Republican majority saying we are going to balance the budget. And they are talking about balancing the budget, which is going to cost us over the next 5 to 7 years, about $1.2 trillion and if you add the tax cuts that the Republicans are proposing, that adds another $200 billion or so. And if you add the defense billions of dollars in military increases, that adds another $100 billion.

You end up with $1.5 trillion deficit that you have to make up in about 7 years. And I take a look at that and find that they are saying they want to balance the budget and I take a look at where they are cutting now. It makes it clear to me what they are going to do to try to balance this budget, on whose backs they are going to do it, and it scares me.

And I offer my colleagues the final chance to speak.

Mr. SANDERS. I just want to thank the gentleman from California [Mr. BECERRA]. I think this is an enormously important discussion dealing with what the priorities of America should be. And I thank you very much for leading this discussion.

Mr. BECERRA. The gentleman from Virginia.

Mr. SCOTT. I want to thank the gentleman from California. This is an excellent presentation. We have choices to make and we have to look at our priorities and the quality of life and what we are doing here as legislators. And I thank you for giving us the opportunity to bring these facts forward.

Mr. ANDREWS. I join in thanking my friend from California. We are all equal Members of the People's House. We may disagree over what our priorities shall be, but we should never disagree over our right to debate those priorities.

The majority is about to deny us that right unless we defeat the rule that comes before us on Tuesday night.

Mr. BECERRA. I would say that the majority is not just denying the four of us, the majority of this House is now denying the American people the chance to express itself and that must change.

I thank all of my colleagues for being here.

GETTING OUR FINANCIAL HOUSE IN ORDER

The SPEAKER pro tempore (Mr. LONGLEY). Under the Speaker's announced policy of January 4, 1995, the gentleman from Connecticut [Mr. SHAYS] is recognized for 30 minutes as the designee of the majority leader.

Mr. SHAYS. Mr. Speaker, I thank my colleagues for the dialog they had. This is going to be a long process and hopefully when we are done we will find some common ground.

Mr. Speaker, I am speaking tonight on an issue that to me is extraordinarily important and that is getting our financial House in order. And I think in terms of this, what I have looked at as I have served now in Congress for 7 years and have been a State legislator 13 years before, I see a society where we have 12-year-olds having babies; a society where we have 14-year-olds selling drugs and 15-year-olds killing each other; a society where our 18-year-olds who have diplomas cannot even read their diplomas. I see a society where we have 25-year-olds who have never worked and 30-year-olds who are grandparents.

That is a society I see in our country, and I believe a society like that cannot long endure.

I also am seeing a society where we have had for the last 20 years extraordinarily large budget deficits. We have seen the national debt go up and up and up, our annual deficits adding to the national debt each year.

And I do not single out any one party. We all shared in that to the extent that we were a part of it. I would like to think that I was a force for restraint in this, but we had Republicans who did not want to cut defense and we had Democrats who did not want to control the growth of entitlements.

And Gramm-Rudman only focused in on what we called discretionary spending. It never dealt with entitlements. What we had was a Republican President, and now a Democratic President, who are willing to have the status quo continue.

And I have often been asked what do I think about a balanced budget amendment. I think it would be great if we did not need it. And we do not need it if we have a President who submits a balanced budget, be he a Republican or Democrat. We would not need it if we had a Congress that decided to reject unbalanced budgets. And we would not need it if we had a President, who was receiving a budget that was not balanced, that would simply decide to veto it.

But that has not been the case and that is why I have become convinced that the only way we are going to see some sanity to what we have is to require a balanced budget amendment. The White House to submit a balanced budget and Congress to vote out a budget that is, in fact, balanced.

I thought long and hard about how much have I, as a Member of Congress, or in the State House, been a part of the solution and a part of the problem. And when I was elected 7 years ago, I was determined that I could look my family in the eye and my constituents, go to a town meeting and say, I have voted to control the growth in spending. I have voted to get our financial house in order.

I am finally going to see the opportunity to have that come to fruition in a real way. When I first started out, there were about 30 of us who were voting to control the growth in spending. That number grew to about 60. It then got to be about 80, including Republicans and some Democrats. And then there were times that we were up to about 160 during the last session.

In fact, during the Penny-Kasich debate, when Republicans and Democrats, 15 Republicans, 15 Democrats, got together, led by Mr. KASICH and Mr. Penny, the Democrat, Mr. KASICH the Republican, and we put together a package of $90 billion of cuts in spending.

And I went to the White House and spoke to Leon Panetta and asked him to support this proposal and I said, "If you cannot support it, at least do not oppose it." I received my answer a week after my visit when the White House decided to oppose, for the very first time in Congress, a bipartisan effort to control spending.

I will tell you that was probably one of the most disheartening things that has happened, because I thought you want to nurture that. You want, if you have Republicans and Democrats who are willing to cut spending in Congress, no less, you want to nurture that. But it was not nurtured. It was an attempt to stamp it out. The vote failed by just four votes.

So I guess I could take some real satisfaction we came so close. And how encouraging that would have been to have seen that bipartisan effort succeed. It did not succeed and our deficits continue and Congress still is wrestling with how we get our financial house in order.

I often think about whether we are a caretaking society or a caring society. And I describe it this way: a caretaking society is a society that tries to take care of people, and then those who vote for the bills that take care of people feel good that they have voted for something that takes care of someone, without asking what are they actually doing.

To me, the preferable one is the caring society. The caretaking society gives the food; the caring society shows someone how to grow the seed so it becomes food and feeds them until they get to that point.

Now, the stereotype I have of a liberal is an individual who sees someone drowning 50 feet out and runs to the end of the pier and grabs 100 feet of rope and throws that rope out to the person who is drowning 50 feet out.

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The person who is drowning is trying to grab onto the rope and make it taut, ready to be pulled in. The stereotype liberal, when the line is taut, drops the line and says, "I have done my good deed. Now on to the next good deed."

I have just as discomforting a view of the stereotyped conservative who sees someone drowning 50 feet out, grabs 25 feet of line, throws it to the individual, it does not quite reach him, and says, "You swim halfway, and I will do my part and I will pull you in."

I have to feel that somewhere between that stereotype of the liberal and the stereotype of the conservative is a sensible program that tries to reach out to the person who is drowning, takes the temporary step of pulling them in, throwing them enough line to work, making sure the program works, not walking on to the next program, pulls the individual in, and then just does not part company, but teaches that person how to swim.

Mr. Speaker, what I wrestle with is the fact that as I look at this budget chart, and the task that I have as a member of the Committee on the Budget, what is in the dark green is basically what we call entitlements; Social Security. Entitlement is not a bad word, it means someone is truly entitled. It has gotten to mean something that is not always positive, but someone who has paid into Social Security is entitled because they put money into a system and expect to receive it back in retirement.

In the shades of different green there is Medicare, that is 10 percent of the budget; there is Medicaid, which is 5.7. Then there are other entitlements that are 121.3 percent. These entitlements add up to 50 percent of the budget. They are on automatic pilot.

I have been here since 1987, and I rarely get an opportunity to vote on these, because they are in the law, and if the law is not changed, they just keep happening. The numbers keep growing, and the costs keep growing. They begin to consume more and more of our Federal budget.

No one, Mr. Speaker, Republican and Democrat, has yet to truly address entitlements. We also have something else that is on automatic pilot for the most part. It is in yellow, and it is interest in the national debt.

Collectively, entitlements, 49 percent of our budget; interest on the national debt, 15 percent of our budget—and by the way, interest on the national debt is $234 billion—two-thirds of our budget are on automatic pilot.

What do I vote on? I get to vote on 36 percent, which is in the 3 tones of pink, domestic discretionary spending. It funds the judicial, legislative, executive branch, all the departments of the executive branch, all the grants of the executive branch, minus the Defense Department.

The Defense Department is so large that we just isolate it as a similar expenditure. It is almost identical, it is 1 percent more than discretionary domestic spending. Defense is 1 percent more. Then we have what we call international, about 1.4 percent. That is the State Department and foreign aid.

I vote, when I get the Committee on Appropriations expenditure bill, I vote on one-third of this entire pie. Two-thirds has been on automatic pilot, and growing.

Mr. Speaker, what do we need to do? We need to take an honest look at what we can control. Democrats and Republicans, candidly, have done a pretty good job of trying to control the growth in discretionary spending, both defense and nondefense. You see a good example of it right here.

You see the growth in spending for each of the next, from 1995 to the year 2000, and you see the annual growth. What was in the solid greens, the entitlements, different shades, they are growing at extraordinary rates: Social Security, 5.2; Medicare, 9.6; Medicaid, 9.1. The numbers we have from CBO, Congressional Budget Office, are higher, but I used the President's own numbers. Other entitlements are at 6.1 percent.

What is happening is interest on the national debt is going up nearly 6 percent. The entitlements are growing, they are 50 percent of the budget. They are on automatic pilot. What I vote on, defense spending, will go down three-tenths, will go down less than a percent, three-tenths of 1 percent. Foreign aid and the State Department will go down about 1.9 percent during each of the next 5 years. Domestic spending is only going to go up a tenth of 1 percent.

So what I vote on, what we debate, the discretionary spending out of Committee on Appropriations is basically, for the next 5 years, at a standstill. This is what we have to address. We have to address the extraordinary growth of Medicare and Medicaid.

Mr. Speaker, there was discussion earlier on about the food and nutrition program. I will use this as an example of what makes the debate difficult. What makes the debate difficult is that people simply are not leveling with the American people about what is truly happening. We may disagree with the WIC Program and the School Lunch Program as proposed by the Republicans, but we know that the School Lunch Program is going to go up at 4.5 percent during each of the next 5 years. This is in the solid blue. The black is the number that it would grow without our program. It would be slightly more expensive, ever so slightly. You probably cannot even see it.

The program devised by the Republicans will allow spending on the School Lunch Program to go up 4.5 percent during each of the next 5 years. The WIC Program is seen in the red. It also will continue to grow at that basic rate of over 4 percent a year. We can call it a cut in spending, yes, I guess you could call it that. It would not be accurate, but you could call it.

What you can call it is a growth in spending, a significant growth in spending of 4.5 percent as it relates to the School Lunch Program.

The problem we have in Washington is, and I did not have it when I was in the State House, we could never get away with it in the State House, but when I came down here I would always hear how we were cutting spending, yet I was finding that spending was continuing to grow. I could not figure out how we could call it a cut in spending if it was continuing to grow.

Then I learned after just watching this process for a while that if a program cost $100 million to run this year, and $105 next year, and we appropriate $103 million, Washington, the White House, Congress, both parties, have historically, and the press, have historically called it a $2 million cut in spending. Even though it went from $100 to $103 million, they are going to call it a $2 million cut in spending, because they said it should have gone up to $105. What most people would call it is a $3 million increase in spending.

We are not going to succeed in balancing our budget unless we are able to get a handle on the entitlement spending that is on automatic pilot and slow the growth.

What we anticipate by the year 2002 is that spending, without our taking any action, will grow over $3 trillion of new money. We want to bring that down to a level of growth of about $1.9 trillion, almost $2 trillion. We want it to grow, we just do not want it to grow as quickly.

The reason we want it not to grow as quickly is we want to eliminate the deficits. We want to make the interest of what we pay on the national debt smaller. I think of the generations that have preceded me in Congress, the Members that preceded and voted out these large deficits, and those that were here while I was here who continue to vote out large deficits.

We now spend $234 billion on interest on the national debt. Think of what we could do with that money if it was not interest on the national debt. Think of the programs that we could do, that would be meaningful.

Mr. Speaker, I do not think we are going to succeed in slowing the growth of Medicare and Medicaid unless it is bipartisan. I'm not sure how that is going to happen, because the dialog to date has not been encouraging. We have not had the President come in with a recommendation on how he would suggest we slow the growth in spending; still spend more, just not spend as much.

We are having a dialog now where Republicans are saying we need to take tough stands on some of these programs, tough; we are going to allow the nutrition program to go up 4.5 percent, instead of 5.2 percent. I guess we could call it tough. I think it makes sense.

I think it makes sense to block grant the program. I think it makes sense to spend more of the money on the poor children in our school districts. I had some of the school nutrition people come to my office and tell me they did not want that to happen, they want to subsidize lunch for all students. I said "I want it to go to the students who cannot pay for it."

They said "We do not want two lines in our school system, the poorer kids, and the kids who can afford that." I said "Do not have two lines, have one line, but give one of the students a voucher, a coin, something that enables him to have a subsidized lunch."

So as I think about this debate, and wonder if we are going to continue the way we are going, or whether we are going to have change, I am encouraged. I think that there are a number of Republicans who are willing to take some tough votes and take responsible votes. I think there are going to be a number of Democrats who will as well. I think we are going to have an honest debate about what was discussed earlier about taxes. To me, deficit reduction comes before cutting taxes.

I might have a disagreement as to what the tax cuts do. I happen to think a capital gains cut makes sense. I happen to think that what we need to worry about is what happens to the money once it is provided to that taxpayer, what do they do with it.

If we can provide tax cuts where a person takes the money and invests it in new plant and equipment and increases productivity, and it means more jobs for Americans, I think it makes sense. If it means that it is not going to encourage growth, then I have a question mark.

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The jury is still out as to what is going to happen to the tax cuts. They will be funded. I think they will pass, but ultimately what the Senate will do for me, I am going to vote to control the growth in spending. I am going to allow my Government to spend more money on these very needed programs. I am just going to have the growth be more sensible and not so out of control. And I am going to vote to make rational controls as well to some of the discretionary spending that we see.

We need to slow the growth in spending. We are going to spend more, we are just not going to spend as much as we have been spending.

With that, Mr. Speaker, I would like to thank you and the staff who are here staying up late to allow us to share our views on what we think are some very important issues.

RULES OF PROCEDURE FOR THE JOINT COMMITTEE ON PRINTING FOR THE 104TH CONGRESS

(Mr. THOMAS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. THOMAS. Mr. Speaker, pursuant to and in accordance with clause 2 (a) of rule XI of the Rules of the House of Representatives and clause B of rule I of the Rules of the Joint Committee on Printing, I submit for publication in the CONGRESSIONAL RECORD a copy of the rules of the Joint Committee on Printing for the 104th Congress as approved by the Committee on March 6, 1995.

JOINT COMMITTEE ON PRINTING

RULE 1—COMMITTEE RULES

(a) The rules of the Senate and House insofar as they are applicable, shall govern the Committee.

(b) The Committee's rules shall be published in the Congressional Record as soon as possible following the Committee's organizational meeting in each odd-numbered year.

(c) Where these rules require a vote of the members of the Committee, polling of members either in writing or by telephone shall not be permitted to substitute for a vote taken at a Committee meeting, unless the ranking minority member assents to waiver of this requirement.

(d) Proposals for amending Committee rules shall be sent to all members at least one week before final action is taken thereon, unless the amendment is made by unanimous consent.

RULE 2—REGULAR COMMITTEE MEETINGS

(a) The regular meeting date of the Committee shall be the second Wednesday of every month when the House and Senate are in session. A regularly scheduled meeting need not be held if there is no business to be considered and after appropriate notification is made to the ranking minority member. Additional meetings may be called by the chairman as he many deem necessary or at the request of the majority of the members of the Committee.

(b) If the chairman of the Committee is not present at any meeting of the Committee, the vice-chairman or ranking member of the majority party on the Committee who is present shall preside at the meeting.

RULE 3—QUORUM

(a) Five members of the Committee shall constitute a quorum which is required for the purpose of closing meetings, promulgating Committee orders or changing the rules of the Committee.

(b) Three members shall constitute a quorum for purposes of taking testimony and receiving evidence.

RULE 4—PROXIES

(a) Written or telegraphic proxies of Committee members will be received and recorded on any vote taken by the Committee, except at the organization meeting at the beginning of each Congress or for the purpose of creating a quorum.

(b) Proxies will be allowed on any such votes for the purpose or recording a member's position on a question only when the absentee Committee member has been informed of the question and has affirmatively requested that he be recorded.

RULE 5—OPEN AND CLOSED MEETINGS

(a) Each meeting for the transaction of business of the Committee shall be open to the public except when the Committee, in open session and with a quorum present, determines by roll call vote that all or part of the remainder of the meeting on that day shall be closed to the public. No such vote shall be required to close a meeting that relates solely to internal budget or personnel matters.

(b) No person other than members of the Committee, and such Congressional staff and other representatives as they may authorize, shall be present in any business session which has been closed to the public.

RULE 6—ALTERNATING CHAIRMANSHIP AND VICE CHAIRMAN BY CONGRESSES

(a) The chairmanship and vice chairmanship of the Committee shall alternate between the House and the Senate by Congresses. The senior member of the minority party in the House of Congress opposite of that of the chairman shall be the ranking minority member of the Committee.

(b) In the event the House and Senate are under different party control, the chairman and vice chairman shall represent the majority party in their respective Houses. When the chairman and vice chairman represent different parties, the vice chairman shall also fulfill the responsibilities of the ranking minority member as prescribed by these rules.

RULE 7—PARLIAMENTARY QUESTIONS

Questions as to the order of business and the procedures of the Committee shall in the first instance be decided by the chairman, subject always to an appeal to the Committee.

RULE 8-HEARINGS: PUBLIC ANNOUNCEMENTS AND WITNESSES

(a) The chairman, in the case of hearings to be conducted by the Committee, shall make public announcement of the date, place and subject matter of any hearing to be conducted on any measure or matter at least one week before the commencement of that hearing unless the Committee determines that there is good cause to begin such hearing at an earlier date. In the latter event, the chairman shall make such public announcement at the earliest possible date. The staff director of the Committee shall promptly notify the Daily Digest of the Congressional Record as soon as possible after such public announcement is made.

(b) So far as practicable, all witnesses appearing before the Committee shall file advance written statements of their proposed testimony at least 48 hours in advance of their appearance and their oral testimony shall be limited to brief summaries. Limited insertions or additional germane material will be received for the record, subject to the approval of the chairman.

RULE 9—OFFICIAL HEARING RECORD

(a) An accurate stenographic record shall be kept of all Committee proceedings and actions. Brief supplemental materials when required to clarify the transcript may be inserted in the record subject to the approval of the chairman.

(b) Each member of the Committee shall be provided with a copy of the hearings transcript for the purpose of correcting errors of transcription and grammar, and clarifying questions or remarks. If any other person is authorized by a Committee member to make his corrections, the staff director shall be so notified.

(c) Members who have received unanimous consent to submit written questions to witnesses shall be allowed two days within which to submit these to the staff director for transmission to the witnesses. The record may be held open for a period not to exceed two weeks awaiting the responses by witnesses.

(d) A witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Committee. Testimony received in closed hearings shall not be released or included in any report without the approval of the Committee.

RULE 10—WITNESSES FOR COMMITTEE HEARINGS

(a) Selection of witnesses for Committee hearings shall be made by the Committee staff under the direction of the Chairman. A list of proposed witnesses shall be submitted to the members of the Committee for review sufficiently in advance of the hearings to permit suggestions by the Committee members to receive appropriate consideration.

(b) The Chairman shall provide adequate time for questioning of witnesses by all members, including minority members, and the rule of germaneness shall be enforced in all hearings.

(c) Whenever a hearing is conducted by the Committee upon any measure or matter, the minority of the Committee shall be entitled, upon unanimous request to the Chairman before the completion of such hearings, to call witnesses selected by the minority to testify with respect to the measure or matter during at least one day of hearing thereon.

RULE 11—CONFIDENTIAL INFORMATION FURNISHED TO THE COMMITTEE

The information contained in any books, papers or documents furnished to the Committee by any individual, partnership, corporation or other legal entity shall, upon the request of the individual, partnership, corporation or entity furnishing the same, be maintained in strict confidence by the members and staff of the Committee, except that any such information may be released outside of executive session of the Committee if the release thereof is affected in a manner which will not reveal the identity of such individual, partnership, corporation or entity in connection with any pending hearing or as a part of a duly authorized report of the Committee if such release is deemed essential to the performance of the functions of the Committee and is in the public interest.

RULE 12—BROADCASTING OF COMMITTEE HEARINGS

The rule for broadcasting of Committee hearings shall be the same as Rule XI, clause 3, of the Rules of the House of Representatives.

RULE 13—COMMITTEE REPORTS

(a) No Committee report shall be made public or transmitted to the Congress without the approval of a majority of the Committee except when Congress has adjourned; Provided, that any member of the Committee may make a report supplementary to or dissenting from the majority report. Such supplementary or dissenting reports should be as brief as possible.

(b) Factual reports by the Committee staff may be printed for distribution to Committee members and the public only upon authorization of the chairman either with the approval of a majority of the Committee or with the consent of the ranking minority member.

RULE 14—CONFIDENTIALITY OF COMMITTEE REPORTS

No summary of a Committee report, prediction of the contents of a report, or statement of conclusions concerning any investigation shall be made by a member of the Committee or by any staff member of the Committee prior to the issuance of a report of the Committee.

RULE 15—COMMITTEE STAFF

(a) The Committee shall have a professional and clerical staff under the supervision of a staff director. Staff operating procedures shall be determined by the staff director, with the approval of the chairman of the Committee, and after notification to the ranking minority member with respect to basic revisions of existing procedures. The staff director, under the general supervision of the chairman, is authorized to deal directly with agencies of the Government and with non-Government groups and individuals on behalf of the Committee.

(b) The chairman and vice chairman, on behalf of their respective bodies of Congress, shall be entitled to designate two senior staff members each. During any Congress in which both Houses are under the control of the same party, the ranking minority member, on behalf of his party, shall be entitled to designate two senior staff members.

(c) All other staff members shall be selected on the basis of their training, experience and attainments, without regard to race, religion, sex, color, age, national origin or political affiliations, and shall serve all members of the Committee in an objective, non-partisan manner.

RULE 16—COMMITTEE CHAIRMAN

The chairman of the Committee may establish such other procedures and take such actions as may be necessary to carry out the foregoing rules or to facilitate the effective operation of the Committee. Specifically, the chairman is authorized, during the interim periods between meetings of the Committee, to act on all requests submitted by any executive department, independent agency, temporary or permanent commissions and committees of the Federal Government, the Government Printing Office and any other Federal Government, the Government Printing Office and any other Federal entity, pursuant to the requirements of applicable Federal law and regulations.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. LoBIONDO (at the request of Mr. ARMEY) until 4 p.m. today, on account of a medical emergency.

Mrs. CUBIN (at the request of Mr. ARMEY) after 2:50 p.m. today through tomorrow, on account of surgery.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. KENNEDY of Rhode Island) to revise and extend their remarks and include extraneous material:)

Mr. WYNN, for 5 minutes, today.

Mr. VOLKMER, for 5 minutes, today.

Mrs. CLAYTON, for 5 minutes, today.

Mr. SANDERS, for 5 minutes, today.

Mr. FIELDS of Louisiana, for 5 minutes, today.

Mr. HOYER, for 5 minutes, today.

(The following Members (at the request of Mr. TALENT) to revise and extend their remarks and include extraneous material:)

Mr. ENSIGN, for 5 minutes, today.

Mr. WHITFIELD, for 5 minutes, today.

Mr. BRYANT of Tennessee, for 5 minutes, today.

Mr. KINGSTON, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. HAYWORTH, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. FROST, to include extraneous matter in the CONGRESSIONAL RECORD, on House Resolution 109, in the House today.

(The following Members (at the request of (Mr. KENNEDY of Rhode Island) and to include extraneous matter:)

Mr. MATSUI in two instances.

Mr. ABERCROMBIE.

Mr. GEJDENSON.

Mr. LANTOS.

Mrs. LOWEY.

Mr. WAXMAN.

Mr. ACKERMAN.

Ms. KAPTUR.

Mr. HASTINGS of Florida.

Mr. HAMILTON.

Mr. MANTON.

Mr. RICHARDSON.

Ms. ESHOO in three instances.

Mr. PALLONE.

(The following Members (at the request of Mr. TALENT) and to include extraneous matter:)

Mr. COMBEST.

Mr. STUMP.

Mr. KIM.

Mr. PETRI.

Mr. NEY.

Mr. BILBRAY.

Mr. BARR.

ADJOURNMENT

Mr. SHAYS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 10 minutes p.m.), the House adjourned until tomorrow, Friday, March 10, 1995, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

509. A communication from the President of the United States, transmitting the fifth monthly report on the situation in Haiti, pursuant to 50 U.S.C. 1541 note; to the Committee on International Relations.

510. A communication from the President of the United States, transmitting a report on the status of efforts to obtain Iraq's compliance with the resolutions adopted by the U.N. Security Council, pursuant to Public Law 102–1, section 3 (105 Stat. 4); to the Committee on International Relations.

511. A communication from the President of the United States, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on International Relations.

512. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of the Department's intent to reprogram certain fiscal year 1995 funds made available to monitor the cease-fire between Ecuador and Peru, pursuant to Public Law 103–306, section 515; to the Committee on International Relations.

513. A letter from the Auditor, District of Columbia, transmitting a copy of a report entitled "Audit of the Operations of the Office of the Campaign Finance," pursuant to D.C. Code, section 47–117(d); to the Committee on Government Reform and Oversight.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. YOUNG of Alaska: Committee on Resources. H.R. 402. A bill to amend the Alaska Native Claims Settlement Act, and for other purposes (Rept. 104–73). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CAMP (for himself and Mr. LEVIN):

H.R. 1178. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of effectively connected investment income of insurance companies; to the Committee on Ways and Means.

By Mr. CLEMENT (for himself and Mr. DUNCAN):

H.R. 1179: A bill to authorize appropriations for the preservation and restoration of historic buildings at historically black colleges and universities; to the Committee on Resources.

By Mr. UPTON (for himself, Mr. BOUCHER, and Mr. BONIOR):

H.R. 1180. A bill to amend the Solid Waste Disposal Act to provide congressional authorization for restrictions on receipt of out-of-State municipal solid waste and for State control over transportation of municipal solid waste, and to clarify the authority for certain municipal solid waste flow control arrangements, and for other purposes; to the Committee on Commerce.

By Mr. FLAKE:

H.R. 1181. A bill to strengthen families receiving aid to families with dependent children through education, job training, savings, and investment opportunities, and to provide States with greater flexibility in administering such aid in order to help individuals make the transition from welfare to employment and economic independence; to the Committee on Ways and Means.

By Mr. FRANK of Massachusetts:

H.R. 1182. A bill to permit certain Federal employees who retired or became entitled to receive compensation for work injury before December 9, 1980, to elect to resume coverage under the Federal employees' group life insurance program; to the Committee on Government Reform and Oversight.

By Mrs. MALONEY:

H.R. 1183. A bill to amend title II of the Social Security Act to provide more appropriate remedies for failures to report information relating to the earnings test; to the Committee on Ways and Means.

By Mr. McCOLLUM (for himself, Mr. LEACH, Mrs. ROUKEMA, Mr. BEREUTER, Mr. ROTH, Mr. BAKER of Louisiana, Mr. LAZIO of New York, Mr. BACHUS, Mr. CASTLE, Mr. KING, Mr. ROYCE, Mr. WELLER, Mr. EHRLICH, Mr. CHRYSLER, Mr. CREMEANS, Mr. HEINEMAN, and Mr. LOBIONDO):

H.R. 1184. A bill to amend the Truth in Lending Act to clarify the intent of such act and to reduce burdensome regulatory requirements on creditors; to the Committee on Banking and Financial Services.

By Mr. MICA:

H.R. 1185. A bill to amend chapters 83 and 84 of title 5, United States Code, to increase the percentage of basic pay required to be contributed by individuals; to change the method for computing average pay; and for other purposes; to the Committee on Government Reform and Oversight.

By Mr. OXLEY:

H.R. 1186. A bill to provide for the safety of journeymen boxers, and for other purposes; to the Committee on Economic and Educational Opportunities, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. PETRI (for himself (by request) and Mr. LAUGHLIN):

H.R. 1187. A bill to increase the safety for the public health and the environment by reducing the risks associated with the pipeline transportation of natural gas and hazardous liquids, and for other purposes; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. RAHALL:

H.R. 1188. A bill to provide for the preservation of the coal mining heritage of southern West Virginia, and for other purposes; to the Committee on Resources.

By Mr. SCHUMER:

H.R. 1189. A bill to prohibit arms transfers and other military assistance to certain countries unless the President certifies that a state of war does not exist between the country concerned and Israel and that such country has accorded formal recognition to the sovereignty of Israel; to the Committee on International Relations.

By Mr. SCHUMER (for himself, Mrs. MALONEY, Mr. NADLER, Ms. VELAZQUEZ, Mr. MANTON, Mr. ENGEL, Mrs. LOWEY, and Mr. TORRICELLI):

H.R. 1190. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of cooperative housing corporations; to the Committee on Ways and Means.

By Mr. SCHUMER:

H.R. 1191. A bill to prohibit insurers from denying health insurance coverage or benefits or varying premiums based on the status of an individual as a victim of domestic violence, and for other purposes; to the Committee on Commerce, and in addition to the Committees on the Judiciary, and Economic and Educational Opportunities, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.R. 1192. A bill to amend the Export Administration Act of 1979 to grant a private right of action to persons injured by reason of a violation of the antiboycott provisions, and for other purposes; to the Committee on International Relations, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.R. 1193. A bill to require that the United States Government hold certain discussions and report to the Congress with respect to the secondary boycott of Israel by Arab countries; to the Committee on International Relations, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SHAYS (for himself and Mr. PARKER):

H.R. 1194. A bill to require recreational camps to report information concerning deaths and certain injuries and illnesses to the Secretary of Health and Human Services, to direct the Secretary to collect the information in a central data system, to establish a President's Advisory Council on Recreational Camps, and for other purposes; to the Committee on Economic and Educational Opportunities.

By Mr. STUMP (for himself, Mr. CALLAHAN, and Mr. EVERETT):

H.R. 1195. A bill to impose certain requirements on health care liability claims; to the Committee on the Judiciary.

By Mr. MCDERMOTT (for himself, Mr. WAXMAN, Mr. CONYERS, Mr. ABERCROMBIE, Mr. PAYNE of New Jersey, Ms. VELAZQUEZ, Mr. OBERSTAR, Mr. STARK, Mr. SCOTT, Mr. VENTO, Mr. GONZALEZ, Mr. YATES, Mr. DELLUMS, Mr. BECERRA, Ms. WOOLSEY, Mr. SANDERS, Mr. MARTINEZ, Mr. DIXON, Mr. OLVER, Mrs. COLLINS of Illinois, Mr. GIBBONS, Mr. WATT of North Carolina, Mr. GUTIERREZ, Mr. HINCHEY, Mr. EVANS, Mr. ENGEL, Mr. FRANK of Massachusetts, Ms. PELOSI, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. MILLER of California, Mr. COYNE, Mr. SABO, Mr. CLAY, Mr. BERMAN, Mrs. MEEK of Florida, Mr. TORRES, Mr. OWENS, Mr. SCHUMER, Mr. STOKES, Mr. ROMERO-BARCELO, Mr. LEWIS of Georgia, Mr. STUDDS, Mr. TOWNS, Mr. NADLER, Ms. NORTON, Mr. FATTAH, Mr. SERRANO, Mr. FORD, Mr. RANGEL, Mrs. MINK of Hawaii, Mr. FRAZER, Ms. RIVERS, Mr. FLAKE, Mr. MOAKLEY, Mr. KENNEDY of Massachusetts, and Ms. WATERS):

H.R. 1200. A bill to provide for health care for every American and to control the cost and enhance the quality of the health care system; to the Committee on Commerce, and in addition to the Committees on Ways and Means, Government Reform and Oversight, National Security, and Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ENGEL (for himself, Mr. MCCOLLUM, Mr. ANDREWS, Mr. LINDER, and Mr. PALLONE):

H. Con. Res. 35. Concurrent resolution expressing the sense of the Congress that Pakistan should be designated as a state sponsor of terrorism; to the Committee on International Relations.

By Mr. SCHUMER:

H. Con. Res. 36. Concurrent resolution concerning the 3,000th anniversary of King David's establishment of Jerusalem as the capital of the Jewish kingdom; to the Committee on International Relations.

H. Con. Res. 37. Concurrent resolution concerning the 28th anniversary of the reunification of Jerusalem; to the Committee on International Relations.

By Mr. GONZALEZ (for himself, Mr. LAFALCE, Mr. VENTO, Mr. SCHUMER, Mr. KENNEDY of Massachusetts, Mr. FLAKE, Mr. MFUME, Ms. WATERS, Mr. SANDERS, Mrs. MALONEY, Mr. GUTIERREZ, Ms. ROYBAL-ALLARD, Mr. BARRETT of Wisconsin, Ms. VELAZQUEZ, Mr. WYNN, Mr. FIELDS of Louisiana, Mr. WATT of North Carolina, Mr. HINCHEY, and Mr. ACKERMAN):

H. Res. 110. Resolution affirming the support of the House of Representatives for the American consumer banking bill of rights; to the Committee on Banking and Financial Services.

By Mr. STOCKMAN:

H. Res. 111. Resolution providing for consideration of the bill (H.R. 807) to protect the Constitution of the United States from unauthorized encroachment into legislative powers by the executive branch, and to protect the American taxpayer from unauthorized encroachment into his wallet by an unconstitutional action of the President; to the Committee on Rules.

H. Res. 112. Resolution providing for consideration of the bill (H.R. 807) to protect the Constitution of the United States from unauthorized encroachment into legislative powers by the executive branch, and to protect the American taxpayer from unauthorized encroachment into his wallet by an unconstitutional action of the President; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mrs. FOWLER:

H.R. 1196. A bill to extend the deadline for the conversion of the vessel M/V *Twin Drill;* to the Committee on Transportation and Infrastructure.

By Mr. KENNEDY of Rhode Island:

H.R. 1197. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for each of 10 vessels, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. REED:

H.R. 1198. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Isabelle;* to the Committee on Transportation and Infrastructure.

H.R. 1199. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the fisheries for the vessel *Aboriginal;* to the Committee on Transportation and Infrastructure.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 44: Mr. MCDERMOTT, Mr. OBERSTAR, Mr. ORTON, Mr. MINETA, and Ms. LOWEY.

H.R. 62: Mr. BAKER of California.

H.R. 70: Mr. POSHARD.

H.R. 118: Mr. HEINEMAN and Mr. HERGER.

H.R. 127: Mrs. KELLY, Mr. PAXON, Mr. OBERSTAR, and Mr. FAWELL.

H.R. 139: Mr. PORTER.

H.R. 208: Mr. PAXON.

H.R. 224: Mr. EMERSON.

H.R. 244: Mr. QUINN, Mr. HINCHEY, Mr. TORRICELLI, Ms. VELAZQUEZ, Mr. KLUG, Mr. MARTINI, and Mr. RUSH.

H.R. 248: Mr. GEJDENSON.

H.R. 485: Mr. FOX.

H.R. 553: Mr. MENENDEZ.

H.R. 559: Mr. SERRANO.

H.R. 567: Mr. BRYANT of Texas, Mr. FATTAH, and Ms. LOWEY.

H.R. 598: Mr. CALVERT, Mrs. LINCOLN, Mr. TIAHRT, Mr. GREENWOOD, Mr. KLUG, Mr. NORWOOD, Mr. TAYLOR of North Carolina, and Mr. MOORHEAD.

H.R. 613: Mr. LIPINSKI.

H.R. 739: Mr. BAKER of Louisiana.

H.R. 755: Ms. RIVERS and Mr. DEAL of Georgia.

H.R. 801: Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. BALDACCI, Mr. BERMAN, Mr. BEILENSON, Mr. BISHOP, Mr. BROWN of California, Mr. BROWN of Ohio, Mr. CLAY, Mrs. CLAYTON, Mr. CONYERS, Mr. DEFAZIO, Mr. DELLUMS, Mr. DICKS, Mr. DICKEY, Mr. DIXON, Mr. ENGEL, Ms. ESHOO, Mr. EVANS, Mr. FARR, Mr. FIELDS of Louisiana, Mr. FILNER, Mr. FROST, Ms. FURSE, Mr. GENE GREEN of Texas, Mr. HILLIARD, Mr. HOLDEN, Mr. HOYER, Ms. JACKSON-LEE, Ms. KAPTUR, Mr. LEWIS of Georgia, Mr. LIPINSKI, Ms. LOFGREN, Mrs. LOWEY, Mrs. MALONEY, Mr. MATSUI, Mr. MCHALE, Ms. MCKINNEY, Mrs. MEEK of Florida, Mr. MEEHAN, Mr. MFUME, Mrs. MINK of Hawaii, Mr. MINETA, Mr. NADLER, Mr. NEAL of Massachusetts, Mr. OLVER, Mr. PASTOR, Mr. PARKER, Ms. PELOSI, Mr. POMEROY, Mr. PORTER, Mr. RAHALL, Mr. RICHARDSON, Ms. RIVERS, Ms. ROYBAL-ALLARD, Mr. ROEMER, Mr. SABO, Mr. SANDERS, Mr. SAWYER, Mr. SERRANO, Mrs. SCHROEDER, Mr. SCHUMER, Mr. SPRATT, Mr. STARK, Mr. STUDDS, Mr. STUPAK, Mr. TAYLOR of North Carolina, Mr. TRAFICANT, Ms. VELAZQUEZ, Mr. VENTO, Mr. VOLKMER, Mr. WYNN, and Mr. WICKER.

H.R. 809: Mr. FOX.

H.R. 914: Mr. OBEY, Mr. FRANK of Massachusetts, and Mr. BEREUTER.

H.R. 977: Mr. PAXON.

H.R. 987: Mr. SKEEN, Mr. GENE GREEN of Texas, Mr. FROST, and Mr. ROGERS.

H.R. 1000: Mr. BORSKI, Mr. FATTAH, Mrs. LOWEY, Mr. MCDERMOTT, Mrs. MALONEY, Mr. MINETA, and Mr. PETERSON of Minnesota.

H.R. 1020: Mr. SPRATT, Mr. FAWELL, Mr. PETERSON of Florida, Mr. CANADY, and Mr. PORTER.

H.R. 1066: Mr. WALSH, Mr. PACKARD, and Mr. KNOLLENBERG.

H.R. 1085: Mr. JACOBS.

H.R. 1104: Mr. ROYCE, Mr. MEEHAN, Mr. HEINEMAN, Mr. MCINTOSH, Mr. MCINNIS, Mr. LAHOOD, and Mr. BLUTE.

H.R. 1110: Mr. KNOLLENBERG, Mr. HANCOCK, Mr. PORTER, Mr. KLUG, and Mr. BARTLETT of Maryland.

H.R. 1120: Mr. HEINEMAN, Mr. HOBSON, Ms. MOLINARI, and Mr. LIVINGSTON.

H.R. 1145: Mr. CUNNINGHAM and Ms. LOFGREN.

H.J. Res. 3: Mr. LAHOOD.

H. Con. Res. 12: Mrs. COLLINS of Illinois, Mr. DUNCAN, and Mr. STUMP.

H. Con. Res. 19: Mrs. CHENOWETH and Mr. CALVERT.

H. Res. 102: Mrs. MYRICK.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1120: Mr. STEARNS.

PETITIONS, ETC.

Under clause 1 of rule XXII,

3. The Speaker presented a petition of Western Shoshone National Council, Indian Springs, NV, relative to the Shoshone nation reaffirmation of their sovereignty; which was referred to the Committee on Resources.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.J. RES. 2

OFFERED BY: MR. HOYER

AMENDMENT NO. 26: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"ARTICLE—

"SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives for a seventh consecutive term.

"SECTION 2. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

"SECTION 3. Any election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

"SECTION 4. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article.".

H.J. RES. 2

OFFERED BY: MR. ORTON

AMENDMENT NO. 27: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE—

"No person shall be elected to the office of Representative more than six times, excluding any election of a person to fill a vacancy of an office of a Representative if such person has held such office for less than one year. No person shall be elected to the office of Senator more than twice, excluding any election of a person to fill a vacancy of an office of a Senator if such person has held such office for less than three years. For purposes of this section, an election which occurs before the date of the ratification of this article shall be included in determining the number of times a person has been elected as a Representative or Senator.".

H.J. RES. 2

OFFERED BY: MR. ORTON

AMENDMENT NO. 28: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of it submission for ratification:

"ARTICLE—

"SECTION 1. The term of office of Representatives shall be four years and shall begin at noon on the third day of January of the year in which the term of office of the President begins.

"SECTION 2. No person shall be elected to the office of Representative more than three times, excluding any election of a person to fill a vacancy of an office of a Representative if such person has held such office for less than two years. No person shall be elected to the office of Senator more than twice, excluding any election of a person to fill a vacancy of an office of a Senator if such person has held such office for less than three years. For purposes of this section, an election which occurs before the date of the ratification of this article shall be included in determining the number of times a person has been elected as a Representative or Senator.".

H.J. RES. 2

OFFERED BY: MR. ORTON

AMENDMENT NO. 29: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE—

"SECTION 1. No person who has been elected for a full term of the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives for a seventh consecutive term.

"SECTION 2. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

"SECTION 3. This article shall be inoperative unless it shall have been ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

"SECTION 4. Any election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

"SECTION 5. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article.".

"Person shall be elected to the office of Representative more than six times, excluding any election of a person to fill a vacancy of an office of a Representative if such person has held such office for less than one year. No person shall be elected to the office of Senator more than twice, excluding any election of a person to fill a vacancy of an office of a Senator if such person has held such office for less than three years. For purposes of this section, an election which occurs before the date of the ratification of this article shall be included in determining the number of times a person has been elected as a Representative or Senator.".

EXTENSIONS OF REMARKS

KILLINGS OF U.S. DIPLOMATS IN KARACHI, PAKISTAN

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. ACKERMAN. Mr. Speaker, I rise today to express my condolences to the families of the two Americans killed Tuesday in a terrorist attack in Karachi, Pakistan. United States personnel in Pakistan have long faced extremely dangerous and difficult conditions, especially in Karachi. Despite these obstacles, Americans have worked bravely and loyally.

I also wish to voice my outrage at this brutal murder of the two American diplomats and the wounding of a third. This tragedy is made worse in that it was not a random attack, but targeted American consulate personnel. The perpetrator is still at large.

Last month, a major suspect in the 1993 World Trade Center bombing fled to Pakistan. Because of the assistance of U.S. authorities, he was captured and extradited to face trial in New York. Extremist and terrorist groups with the mission of spreading violence through South Asia and other parts of the world continue to operate training centers in northern Pakistan, and apparently feel comfortable in seeking refuge there.

We must press the government of Pakistan to apprehend and prosecute the perpetrators of this crime. Pakistan's Government must also take more effective measures to control outlaw terrorist groups with training centers based in Pakistan. When Prime Minister Bhutto visits the United States next month, I urge the administration and Members of Congress to raise these issues in the strongest possible ways.

Given the existence of terrorist training centers in Pakistan, the question arises as to the charges that the Islamabad Government is "looking the other way," and why Pakistan should not be placed on the United States list of "State Sponsors of Terrorism." I urge Secretary of State Christopher to review our relations with Pakistan in light of these ongoing problems and in response to yesterday's horrible attack.

H.R. 1142—CODE OF CONDUCT FOR U.S. BUSINESSES IN CHINA: NEW LEGISLATION INTRODUCED

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. LANTOS. Mr. Speaker, I rise today to call to the attention of my colleagues legislation I have introduced with three of our distinguished colleagues that would require United States businesses operating in China to adhere to internationally recognized labor standards. Its purpose is to ensure that the United States corporate presence in China promotes better working conditions and thereby contributes to political liberalization and respect for human rights inside that country. The bill's three original cosponsors, NANCY PELOSI, CHRIS SMITH, and GERALD B.H. SOLOMON, reflect the broad, bipartisan support for a tougher United States stance toward China.

When President Clinton decided last May to renew most-favored-nation trade status [MFN] for China and to delink human rights performance from trade benefits, I predicted that this action would not lay to rest this divisive issue, but only postpone our coming to terms with the brutal Chinese regime.

The recent crisis over China's blatant violation of United States intellectual property rights [IPR] proves my point, and demonstrates that it is not possible to compartmentalize our relations with a state that has a total disregard for the rule of law. We are foolish to believe that the same Chinese Government that rejects the entire corpus of international human rights law will dutifully uphold international trade agreements. The truth, as the IPR dispute so clearly shows, is that a government that disregards international law in one area is going to do so in any area where it perceives an interest in following its own rogue course. Thus, the Chinese routinely violate arms control and trade agreements.

Moreover, China's human rights performance has worsened since the President renewed MFN for China, as documented in State Department and Human Rights Watch/Asia reporting. Obviously, the Chinese Government feels that Washington will exact no price for its abysmal human rights record, and the continuing ruthless repression exposes the fallacy of the argument that trade provides an avenue for construction engagement with repressive regimes.

Nevertheless, as the trips to China of Secretaries Brown and O'Leary demonstrated, the United States business community is eager to pursue promising opportunities in China, and enhanced United States-Chinese commercial relations will no doubt greatly benefit both countries.

However, in the mad dash to get a piece of the action, let us at least ensure that United States companies do not inadvertently contribute to the maintenance of the intolerable status quo for hundreds of millions of Chinese workers. The foreign business community's ultimate value comes from its good example, not its mere presence. It must adhere to internationally recognized standards of labor law in order to be a catalyst of progress.

Therefore, Mr. Speaker, I am introducing legislation with my three distinguished colleagues that would require United States businesses operating in China to follow internationally recognized labor standards. This code of conduct is not burdensome or unreasonable. It does not impose heavy reporting requirements or advocate labor practices as stringent as those found in the United States, but its adoption by the United States business community would spur political liberalization in China by making the workplace a safer, more humane environment where coercion, repression, and intimidation have no role.

It is important for the Chinese Government, the American business community, and the administration to know that the Congress is serious about seeing progress on human rights in China. If voluntary action does not bring results, then binding legislation is required.

The Sullivan principles were a major catalyst for change in South Africa, and it is my strong feeling that these principles can play the same role in China.

If United States business truly wants to promote positive change in China, then adherence to this code of conduct offers an excellent vehicle for the implementation of that agenda without in any way harming United States competitiveness in the international marketplace. Demonstrating that the U.S. corporate community believes that good ethics and good business go hand-in-hand would send an unmistakable signal to the Chinese Government and provide powerful support to Chinese workers.

ACKNOWLEDGEMENT OF THE USAF AIR COMMANDO 50TH ANNIVERSARY

HON. JAY KIM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. KIM. Mr. Speaker, I rise today to express my sincere congratulations to the Air Commandos of World War II, which celebrated its 50th anniversary in October 1994. The Air Commandos were originally founded by Col. Phil Cochran, who was forever immortalized by Milton Caniff in his Terry and the Pirates cartoon as Steve Canyon.

This organization represents the heart and soul of what our Armed Forces are all about. Through unfaltering dedication and spirit, the men of the Air Commandos of World War II set the standard for today's U.S. Air Force [USAF] special operations units. Their fearless giving of themselves for the good of the United States during World War II is a testament to the intestinal fortitude they have displayed over these 50 years in keeping the memory of their fallen companions alive.

This dedication to protecting U.S. interests abroad, no matter what the cost, are best exemplified by the motto—Please be assured that we will go with your boys any place, any time, anywhere—which has become the motto of the USAF special operations groups today. I extend a heart felt gratitude to these men for their efforts and hope that their tradition carries on for years to come.

TRIBUTE TO PRESIDENT MARC E. HALL AND COSUMNES RIVER COLLEGE

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. MATSUI. Mr. Speaker, I rise today to pay tribute to two Sacramento community assets: Cosumnes River College and the man who has led the college's remarkable growth and success, president Marc E. Hall. This year marks the 25th anniversary of Cosumnes River College and the end of Dr. Hall's tenure as president.

Cosumnes River College opened in 1970, in a storefront in south Sacramento. In the beginning, student enrollment was slightly over 2,000 and in the 25 years which have passed, the college has attracted an average semester enrollment of 9,000 students at their main campus alone.

Since its first year, the college has served more than 152,000 students, illustrating a growth which has necessitated the college's newly expanded El Dorado Center and the Folsom Lake Center.

During the last 25 years, the college's curriculum has expanded and contracted to reflect the region's job and economic markets. A statewide leader in partnerships, CRC has joined with other educational institutions and business and industry leaders such as Ford Motor Co., Sacramento Educational Cable Commission, PacWest Cable, Citizens Telecommunication and several allied health agencies, all in an effort to bring quality education to the region's students.

With the benefit of strong leadership, the college has become an active participant in community affairs and has led a movement in establishing educational goals for its service area.

An example of the college's success is the foodservice production and control program to the area in the 1989–90 school year. The program includes a special cooperative effort with the Sacramento Area Community Kitchen, training unemployed workers for careers in the foodservice industry while simultaneously preparing nutritious meals for the area's homeless shelters. This cooperative effort took 80 percent of the students enrolled in this special food preparation course off the public assistance rolls and put them to work in a variety of jobs. The college has implemented many other partnership programs, reflecting a model approach to serving both students, workers and employers in this region.

Three of the four presidents of CRC are still active in the local education and business communities. Oliver Durand, founding president, Vincent "Pete" Padilla, emeritus and Dr. Marc E. Hall, current president. All three were recently recognized by the college's foundation for their excellent leadership and commitment to education.

Dr. Hall, has chosen to close his tenure as president in June of this year and will return to the scene of his first love, the classroom. He will be sorely missed by the staff and the students who followed his leadership through the shared governance process, during one of the community's largest growth periods.

I ask my colleagues to join me in saluting the outstanding contributions Cosumnes River College has made to the region and also in thanking Dr. Hall for his remarkable leadership.

TRIBUTE TO TOGO TANAKA

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. WAXMAN. Mr. Speaker, I ask my colleagues to join me in saluting Mr. Togo Tanaka on the occasion of his receipt of the Spirit of Wellness Community Award from the Wellness Community in Santa Monica, CA.

As an active member of the Wellness Community Board of Directors, Mr. Tanaka has made a tremendous contribution to realizing the goal of the Wellness Community.

Togo Tanaka is one of the most prominent members of the large Los Angeles Japanese-American community. A political scientist by training, Mr. Tanaka has also served as a newspaper editor, publisher, and leading figure in the field of real estate. In addition, he served 10 years as a director of the Federal Reserve Bank of San Francisco and on the advisory council of the California World Trade Commission.

During World War II, like virtually every other individual of Japanese ancestry, Mr. Tanaka was interned at a remote rural relocation center. Tanaka, who is a native-born American citizen, has never been bitter about the great injustice he and others of Japanese ancestry suffered from the unconstitutional and unconscionable forced relocation program.

Despite Mr. Tanaka's busy professional life and strong commitment to his family, he has found the time and energy to become deeply involved in numerous philanthropies. Among those to which he is most dedicated are the Wellness Community, the Crippled Children's Society, the American Red Cross, and the Japanese Cultural and Community Center.

I ask you, Mr. Speaker, and all of our colleagues to congratulate Togo Tanaka and to wish him continued happiness, good health, and success in all future endeavors.

INTRODUCTION OF PIPELINE SAFETY LEGISLATION

HON. THOMAS E. PETRI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. PETRI. Mr. Speaker, today, I am introducing legislation, at the request of the pipeline industry, to reauthorize our pipeline safety programs. This legislation represents the consensus view of both the natural gas and hazardous liquid pipeline industries on the future direction of pipeline safety programs and will be considered at a Surface Transportation Subcommittee hearing to be held next week.

TRIBUTE TO PHIL ZIMMERMAN

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Ms. KAPTUR. Mr. Speaker, I rise today to commemorate the 100 years of living by one of our community's most endearing constituents, Mr. Phil Zimmerman of Toledo, OH. Mr. Zimmerman, born on March 16, 1895, married his wife Eva, 70 years ago. Together they have reared 3 daughters, 7 grandchildren, and 13 great-grandchildren, all of whom join our community in congratulating this centurion of a man on his 100th birthday.

One of the founding fathers of Toledo's Old Newsboys Goodfellow Association, Mr. Zimmerman serves now as the organization's honorary president, the only person ever to hold the post. A life member, he remains actively involved in its good works—providing scholarships to talented students and winter outerclothes to needy children—by serving as a cochairman of the finance committee.

Phil Zimmerman has been active in our community in other ways as well. He is a 32d-degree Mason, a Shriner, member of B'nai B'rith, and past president of the Fraternal Order of Eagles. He was a business leader as well and owned the Diamond Jewelry Co., and served as vice president of the Toledo Blueprint Co.

The actress Helen Hayes has said, "Old age is not something at which I have arrived reluctantly, it is something which I have achieved." His family, friends, and community honor and applaud Phil Zimmerman on his rare and remarkable achievement of a lifetime with 100 years and more.

SETTING RECORD STRAIGHT ON ALAR

HON. SAM GEJDENSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. GEJDENSON. Mr. Speaker, conventional wisdom now claims that the so-called alar scare was overblown, and that the chemical sprayed on apples posed no real threat to children, as had been reported on "60 Minutes" from a Natural Resources Defense Council study.

This mistaken impression that alar was never dangerous is sad testimony to the skillfulness of a highly financed disinformation campaign by the agricultural chemical industry.

Six years later, and with this false story fueling the debate to overturn current regulations, it's time to set the record straight.

On two occasions after the "60 Minutes" broadcast—in July 1991, and again in September 1992—further scientific studies prompted EPA to reaffirm alar as a probable human carcinogen. EPA set a zero tolerance for alar, meaning no foods can contain any residues of the chemical whatsoever.

These findings were reached after EPA's scientific advisory board, under the Bush administration, considered further animal tumor data. This data showed that alar was even more dangerous than originally believed. In apple juice and other processed foods, the studies show alar breaks down into nitrosamines—a highly potent carcinogen according to all mainstream, responsible science.

Indeed EPA staff had been pressing to ban alar since 1985, under the Reagan administration, because of the scientific evidence. Massachusetts and New York had already banned alar long before the NRDC report, and the American Academy of Pediatrics had urged such a ban at the Federal level.

Final vindication came in 1993 when the National Academy of Sciences released a landmark report affirming the basic premise of NRDC's study—that infants and young children are more susceptible to cancer causing agents in food. Yet to date no Federal exposure standards have been recalculated to compensate for the increased sensitivity of children.

Said the chairman of the National Academy of Sciences report, Dr. Philip Landrigan, "NRDC was absolutely on the right track when they excoriated the regulatory agencies for having allowed a toxic material such as alar to stay on the market for 25 years."

Meanwhile, the apple industry has prospered without alar, earning record revenues. The banning of this chemical based on real, sound, mainstream, nonideological science in the long run hurt this industry not one bit.

By distorting the facts and blurring the real issues, I'm afraid some of my colleagues aim to condition the public to reject future reports of pesticides hazards as invalid, as another alar. Yet the record proves alar was dangerous to children, and the Republican administration of George Bush was absolutely correct to remove it from all foods altogether.

JACK SCARANGELLA: A PUBLIC SERVANT WHO WENT THE EXTRA MILE

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mrs. LOWEY. Mr. Speaker, I rise today to pay tribute to Jack Scarangella—a resident of the 18th Congressional District of New York—for his enduring commitment to our Nation's senior citizens, and for his extraordinary service to the best traditions of public leadership. On January 20, Jack Scarangella retired as the District Manager of the Social Security Administration for the New Rochelle, NY area, which I proudly represent. Jack has dedicated the last 46 years of his life to Government service, overseeing tens of thousands of Social Security claims each year. He began his career with Social Security as a claims examiner in 1951, and 5 years later became the New Rochelle District Manager, a post he then held until the day he retired.

Jack's inspired leadership, creative decision making, and insistence on reevaluating the way the Social Security Administration conducts business have improved the efficiency of the Social Security Administration and helped enhance service to Social Security beneficiaries. He has been recognized for the improvements in operational procedures he has helped implement over the years through the receipt of numerous awards for performance and service. The fact that Jack received another such award just last year is testament to the fact that he was as ambitious and dedicated at the end of his career as he was when he first joined the Social Security Administration almost five decades earlier.

Jack was not content to help only those recipients who came through his doors or whose problems crossed his desk. That is why he enlisted the support of prominent citizens and local celebrities in information campaigns, hosted a weekly radio show on WVOX featuring questions and answers on topical agency issues, and hosted a community access show on TCI cable. Initiatives and public forums such as these have allowed Jack to expand public knowledge and, in turn, assist countless older Americans and their families with the Social Security system.

Mr. Speaker, these years of service alone would have been enough to merit recognition. Jack Scarangella, however, has been more than a dedicated worker. Jack has felt committed to his entire community, not just those in need of assistance with Social Security. He has been active in civic life through his work with Westchester 2000, the Chamber of Commerce, the Boys' and Girls' Club, the American Heart Association, Legal Awareness of Westchester, and several other local service organizations. I am confident that his service will continue for years to come.

Mr. Speaker, on behalf of the friends, colleagues, admirers, and family of Jack Scarangella, I hereby express heartfelt appreciation for his years of service and recognize the joyous occasion of his retirement.

IN RECOGNITION OF DR. MIKE MOSES

HON. LARRY COMBEST

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. COMBEST. Mr. Speaker, I rise today to pay tribute to a man who has for many years devoted himself and his talents to the community of Lubbock, TX. Dr. Mike Moses is now in his sixth year as superintendent of the Lubbock Independent School District.

Recently, Dr. Moses was selected by Governor George W. Bush to become the State commissioner of education. This prestigious appointment is certainly deserved by Dr. Moses for his efforts, not the least of which is that his management expertise and business abilities kept LISD financially viable after he inherited an almost bankrupt district in 1989.

Dr. Moses was named "Educator of the Month" in the July/August 1994 issue of Texas School Business. In the summer of 1993 he served as a member of the Select Committee for Sunset of Texas Education Agency, and was awarded the first ever "Good Scout Award" in December, 1993.

In addition to his tireless efforts to strive for better educational opportunities for our young people, he is a Rotarian and a member of the First United Methodist Church. He is also involved in the chamber of commerce, Boy Scouts, and United Way.

Mr. Speaker, it is a honor for me to recognize such an involved and devoted citizen of west Texas. I salute Dr. Mike Moses for willingness to freely give of his own time, energy, and talents. He has positively affected the lives of many in Lubbock, TX, and has dedicated himself and his life to a better education for our young people.

LIABILITY LAW REFORM

HON. BRIAN P. BILBRAY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. BILBRAY. Mr. Speaker, I submit the following article from the Washington Post because it encapsulates a unique perspective that I believe I bring to the debate we are having today on product liability reform.

[From the Washington Post, Mar. 7, 1995]

GETTING PERSONAL ON PRODUCT LIABILITY—TWO LAWMAKERS' OPPOSING VIEWS STEM FROM THEIR OWN PAINFUL EXPERIENCES

(By Caroline E. Mayer)

To Rep. Brian P. Bilbray (R-Calif.), product liability legislation is "a personal blood and guts issue"—a measure needed to protect women and children who otherwise wouldn't be able to get the drugs they need.

"It's actual flesh and blood that we're talking about," said the freshman lawmaker, who saw his wife go into shock during a pregnancy 10 years ago because a drug she needed to help her deal with severe morning sickness had been pulled off the market by its manufacturer for fear of product liability suits.

But to Rep. Patsy T. Mink (D-Hawaii), legislative efforts to make it harder to sue for damages from defective products is "a great offense" to women and children, especially DES mothers—among them herself—who, by taking a drug thought to prevent miscarriages, exposed her child to a greater risk of cancer.

"Having had the personal experience, I want to make sure the people who are voting for the bill will understand that justice is being thwarted for millions of Americans," said Mink, who collected a $250,000 settlement from a lawsuit over the medication.

It should be no surprise that these two lawmakers—on different sides of the political aisle—have divergent views about the product liability legislation before the House this week. But it is the personal experience and intensity each brings to the debate that makes their positions stand out in the battle to overhaul the nation's tort laws.

Mink's vociferous opposition stems from her use of DES, diesthylstilbestrol, when she was pregnant 43 years ago. "Knowing the agonies that women in other kinds of product liability lawsuits went through, I have a special responsibility to speak out," she said.

Approved by the Food and Drug Administration in 1947 to prevent miscarriages, DES was discovered, decades later, to cause significant damage to the babies born to mothers who used DES. In some cases, DES children have severely deformed sexual organs, cannot have children, have impaired immune systems or a high risk of developing a rare from of cancer.

Mink was given DES as part of an experiment testing the drug's effectiveness, but did not know it until 25 years later, when she received a "blunt letter" from the university where she had been treated. The university asked if she or her daughter had developed cancer.

Mink sued the university and company that supplied the DES, winning a $250,000 settlement. In addition, the university promised to care for all DES daughters of mothers it treated at no cost if the daughters developed a certain type of cancer of the vagina or cervix at any time before they are 70.

"Under the legislation under consideration, it is unlikely that any DES mother or child would have been able to recover any damages," Mink said.

Bilbray has not been as eager to discuss his experience. "It's not something I prefer to talk about," he said after a House Commerce Committee meeting last month. But that's what Bilbray did when the committee drafted its version of the product liability bill.

"Women and children are dying as a result of existing laws," Bilbray told his colleagues at the drafting session. "Products that are needed are being pulled off the shelves because of lawsuits." Some people may think lawsuits may make all the pain better, he said. But, he added, "please do not think there's any amount of money that's ever going to pay a parent back by never being able to hug their child."

"Listening to all these members stand up and talk about how consumer products have done all these terrible things, it was like a knife cutting into me * * * Sometimes you just have to stand up and scream," he said in an interview afterward.

KEY FACETS OF THE LEGISLATION

Product liability legislation to be considered by the House would:

Preempt state laws and set a national standard for product liability lawsuits.

Bar any lawsuit for damage incurred from products more than 15 years old unless they cause a chronic illness, such as cancer caused by asbestos or DES.

Limit punitive damages to the greater of $250,000 or three times the economic damages.

Require "clear and convincing evidence" that a manufacturer either intended to cause harm or acted with conscious, flagrant indifference for punitive damages.

Bar damages if the person bringing the suit was intoxicated or under the influence of drugs when the harm occurred and if alcohol or drug use was the principal cause of the accident.

Make retailers liable only if they engaged in intentional wrongdoing, negligence or if the product failed to comply with an express warranty made by the retailer. The retailer also would be liable if the manufacturer went bankrupt or could not be sued in the claimant's state.

Sanction attorneys for filing frivolous pleadings in product liability actions.

Separate legislation would require the loser of any lawsuit to pay the winner's legal costs if the loser rejected a settlement before the jury verdict. Even if a jury found in favor of the person bringing the suit, that person could still be required to pay the other side's legal fees if the jury award is less than a rejected settlement.

Ten years ago, Bilbray's wife had to go into the intensive care unit "when she couldn't get access to the drug she desperately need," he said.

In three earlier pregnancies in a previous marriage, Karen Bilbray had taken a drug called Bendectin to control severe morning sickness. But in 1984, when she was pregnant with Bilbray's child, Bendectin was no longer available.

The manufacturer, Merrell Dow Pharmaceuticals Inc., had removed the drug from the market after several women successfully sued the company, alleging that the drug produced birth deformities. Even though scientific data never proved it was harmful, Merrell stopped selling the drug.

"My wife was not allowed to make a decision on what she wanted to put into her body; it was made by a lawyer suing, maybe well-intentioned but misguided and very critical to her well-being," Bilbray said.

Without Bendectin, Bilbray's wife became so sick she went into shock, he said. "If it wasn't for a doctor willing to take the risk [and give her some Bendectin], I probably would have lost her." A son, Brian, was born several months later, to live only three months before he died of crib death. Bilbray is convinced that the trauma of his wife's first three months of pregnancy contributed to the child's death.

"People are going to suffer no matter what you do" to reform the civil justice system, Bilbray said. But Congress "needs to be more sensitive to the damage that these lawsuits create by denying benefits" to people who may need them.

TRIBUTE TO WILLIAM MEEHAN

HON. ROBERT T. MATSUI

OF CALIFORNIA

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. MATSUI. Mr. Speaker, we rise today to pay tribute to Mr. William Meehan, a native Californian who has devoted his professional career to the preservation and growth of labor's health in this great State.

In the many years Mr. Meehan has been a major force in the labor realm, both of our offices have relied on his expertise and counsel. We join with the scores of colleagues who salute the outstanding leadership you have given to the Sacramento-Sierra's Building and Construction Trades Council and to the Sacramento Central Labor Council.

In an era of shrinking resources, Mr. Meehan has been one of Sacramento's great defenders, ensuring jobs for thousands of men and women throughout the region.

Not only has Mr. Meehan been an outstanding defender of the labor force, but we would be remiss in not commending his steadfast support of this entire community. The list of political, charitable, and labor related organizations with which he has aligned himself reflects the great character all leaders strive to achieve. An abbreviated list of organizations who are indebted to his leadership and hard work include the Greater Sacramento Area Plan, Labor and Business Alliance, Sacramento Water Intelligently Managed, Private Industry Council, Auburn Dam Council, Friends of Light Rail, American Red Cross, Sacramento Employment Training Agency, Harps, National Toxics Coalition, United Way, Hundred Dollar Club, Sacramento Metropolitan Chamber of Commerce, and the Sacramento Fire Board.

Truly, Sacramento is a better place to work and live thanks to what we hope is only the first half of Mr. Meehan's career. As he begins to undertake his latest challenge for the Painter's International, we ask our colleagues to join us in wishing him continued happiness and success.

HOPALONG CASSIDY FAN CLUB PROCLAMATION—THE CITY OF CAMBRIDGE IN THE STATE OF OHIO

HON. ROBERT W. NEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. NEY. Mr. Speaker, I submit the following proclamation from the city of Cambridge in the State of Ohio.

Whereas, the Hopalong Cassidy Fan Club has contributed untold volunteer hours in building character, citizenship, and leadership in this community; and,

Whereas, the Hopalong Cassidy Fan Club is celebrating the 100th birthday of Hopalong Cassidy on June 5, 1995; and,

Whereas, members have made in kind contributions of service, financial contribution to the Cambridge area, contribution to the Park School, and to other important needs of the community; and,

Whereas, the local Hopalong Cassidy Fan Club has extended the interest of Hopalong Cassidy within this community; and,

Whereas, the members of schools, churches, service clubs, union organizations, and others have been members of the Hopalong Cassidy Fan Club; and,

Whereas, the city of Cambridge and all the surrounding areas of Ohio are better places to live because of Cambridge's Hopalong Cassidy Fan Club, we join in the celebration of the 100th birthday of Hopalong Cassidy on the fifth day of June in 1995.

TRIBUTE TO THE DISTINGUISHED ELECTED WOMEN OFFICIALS IN EDUCATION OF CALIFORNIA'S 14TH CONGRESSIONAL DISTRICT

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Ms. ESHOO. Mr. Speaker, I rise today during National Women's History Month to salute the remarkable women of California's 14th Congressional District who have been entrusted with the honor and sacred duty of educating our youth.

This year, as we celebrate the 75th anniversary of women's suffrage, it is fitting that we honor the women who devote their time and talents to preserving and enhancing our public education system. The efforts and public service of these remarkable women provide our district with extraordinary leadership, and our excellent school systems benefit from their unique ideas and skills. While we take time during this month to commemorate historic women and their achievements, we also take this opportunity to honor the contributions women in education are currently making to our communities.

The 14th Congressional District's distinguished women elected officials in education are: Boardmember Helen Hausman of the San Mateo County Community College District; Boardmembers Mary Mason, Judith Moss and Dolly Sandoval of the Foothill/De Anza Community College District; Boardmembers Susan Alvaro and Beverly Willis-Gerard of the San Mateo County Board of Education; Boardmembers Maria Ferrer, Anna Kurze and Andrea Leiderman of Santa Clara County Board of Education; Boardmembers Nancy Gisko, Francesca Karpel and Nancy Kehl of the Belmont Elementary School District; Boardmembers Toni Foster, Mary Freeman-Dove, Ruth Palmer and Marina Stariha of the Cabrillo Unified School District; Boardmembers Debbie Byron, Sandra James and Emily Lee Kelley of the Cupertino Union School District; Boardmember Nancy Newton of the Fremont Union High School District; Boardmembers Tracey Demma, Janet Gomes-Simms, Erika Perloff and Connie Sarabia of the La Honda-Pescadero Unified School District; Boardmembers Kerry Bouchier and Elyce Haskell of the Las Lomitas Elementary School District; Boardmembers Gerri Carlton and Terri Sachs of the Los Altos School District; Boardmembers Karen Canty, Margaret Draper and Valerie Rynne of the Menlo Park City Elementary School District; Boardmembers Donnal Larson, Ann Lewis and Leslie Pantling of the Montebello School District; Boardmembers Marta Clavero-Pamilla, Rose Marie Filicetti, Nancy Mucha and Susan Ware of the Mountain View School District; Boardmembers Lynn Alvarado, Ann Baker, Sue Graham and Judy Hanneman of the Mountain View-Los Altos Union High School District; Boardmembers Julie Jerome, Diane Reklis and Susie Richardson of the Palo Alto Unified School District; Boardmembers Holly Meyers, Kathryn Reavis and Pat Steuer of the Portola Valley Elementary District; Boardmembers Lois Frontino, Donna Rutherford and Keisha Williams of the Revenswood City Elementary School District; Boardmembers Terri S. Bailard, Patricia Brown and Magda Gonzalez-Hierro of the Redwood City Elementary School District; Boardmembers Joy L. Ferrario and Beth Hunkapillar of the San Carlos Elementary School District; Boardmembers Beverly Scott, Allene Seiling and Sarah Stewart of the Sequoia Union High School District; Boardmembers Linda Kilian, Pamela Kittler, Ellen McHenry and Margaret Quillinan of the Sunnyvale School District; Boardmembers Fran Kruss and Sanda Jo Spiegel of the Whisman School District; and Boardmembers Heidi Brown, Ann Nolan and Abby Wilder of the Woodside Elementary School District. Appointed leaders include Colleen Wilcox, Superintendent of the Santa Clara County Office of Education, Martha Kanter, President of DeAnza College, and Bernadine Fong, President of Foothill College.

Mr. Speaker, I ask my colleagues to join me in honoring these remarkable women whose leadership, expertise and commitment have made California's 14th Congressional District a wonderful place to live and learn. These great leaders are fitting representatives of the many women who make history every day and are the shapers of the young women who will make history in the future.

H.R. 510, THE MISCLASSIFICATION OF EMPLOYEES ACT

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. LANTOS. Mr. Speaker, I rise today to say a few words about the job classification of workers, and to urge my colleagues to support H.R. 510, the Misclassification of Employees Act.

Small business men and women have contacted many of us to explain some of the important reasons why Congress should take another look at how workers are classified for Federal income and employment tax purposes, as well as for many non-tax purposes. We know that confusion with employee classification rules can lead to costly disputes with the IRS with devastating effects on small businesses. These costs include, among others, assessments of back taxes, interest and penalties for businesses which misclassify workers as independent contractors, as well as the legal costs involved with coming into compliance with or defending against an IRS audit.

There are other issues relating to the misclassification of workers that arise out of the current procedures for determining who is an employee and who is an independent contractor, including the effect of misclassification on the unsuspecting worker, the effect of misclassification on the honest businessman trying to compete with a competitor who has misclassified his workers, and the effect of misclassification on the Federal budget deficit. H.R. 510 would remedy some of the unintended effects that arise out of the current procedures for determining who is an employee and who is an independent contractor.

I would like to make clear from the outset, however, that I agree with and recognize the appropriate and valuable roles of those who work as independent contractors. This country has benefited greatly from the spirit and independence of the self-employed individual and I do not think there is anyone who wants to stifle the creativity of these individuals. It is the misuse of the independent contractor status and its serious adverse effect on both employer and worker that concerns me.

My colleague, CHRIS SHAYS, and I became interested in the classification of workers several years ago when we served together on the Employment and Housing Subcommittee of the Government Operations Committee. We found that the current means of determining employment status has had several negative effects: First, it results in similarly situated employers being treated very differently under tax law; second, it allows—and actually encourages—businesses to undercut competitors through unfair practices; third, it leaves some workers exploited and unprotected; and fourth, it deprives the Federal Government of significant revenue.

Under current law, workers are classified as either employees or independent contractors in one of three ways. First, some workers are explicitly categorized as either employees or independent contractors by statute. Second, workers may be classified as independent contractors under statutory "safe harbors" enacted in section 530 of the Revenue Act of 1978. Third, if a worker is not classified statutorily, and cannot be classified under the statutory "safe harbor," then the worker is classified by applying a very subjective common law test. Most workers fall under this third category.

Current law allows some employers to misclassify workers if they have a "reasonable basis" for classifying employees as independent contractors. Thus, an employer may rely upon a prior IRS audit, including audits not made for employment tax purposes, in holding a reasonable basis for classifying workers. It makes no sense to permit the wrongful classification of workers based on a previous audit which may have had nothing to do with the issue of worker classification. Our legislation eliminates the "safe harbor" provisions which allow the misclassification of employees to continue. We thus restore a level playing field and eliminate the unfair competitive advantages which arise due to the misclassification of workers.

Because the common law test is extremely subjective, employers have trouble in properly determining worker classification, and revenue agents often classify workers differently even where the underlying circumstances of their employment are the same. Since a large part of the misclassification of workers is due to a lack of understanding of the laws, clearer rulings and definitions will eliminate a tremendous amount of uncertainty in this area. Our legislation eliminates the restrictions on the IRS to draft regulations and rulings on the employment status of workers for tax purposes.

Employers who have unintentionally misclassified workers should be given the incentive to come into compliance. Therefore, our legislation offers a 1-year amnesty to employers who have misclassified workers on the basis of a good faith interpretation of common law or of section 503. This provision removes the devastating possibility of large assessments for back taxes, interest and penalties and insures compliance in the future.

Misclassification can have a devastating effect on the unsuspecting worker. As a contractor, he or she may receive a higher take-home pay and may be allowed to deduct more business expenses from income taxes. But the loss of financial benefits and of the many protections which are provided to employees can be catastrophic in cases of illness, unemployment and retirement. For example, there is no unemployment compensation for the independent contractor to fall back on between jobs. Health insurance is an individual responsibility and is usually far more costly than an employer's group policy. In the case of work-related injury or illness, there is no worker's compensation available. Our legislation would require prime contractors to notify legitimate independent contractors of all their tax obligations and other statutory rights and protections.

Mr. Speaker, our investigation found that the economic incentives for businesses to misclassify workers as independent contractors are huge. An employer who misclassifies a worker as an independent contractor escapes many obligations, including paying social security taxes, unemployment taxes and workers compensation insurance, withholding income taxes and providing benefits such as vacation, sick and family leave, health and life insurance, pensions, et cetera. Most employers are honest, but the law abiding employer is put at a serious disadvantage since he or she cannot compete on a level playing field with those who illegally cut their labor costs. Law abiding employers will not be able to compete fairly until we provide more clear, objective standards by which businesses and the Government can determine whether an individual is an employee or an independent contractor.

Lastly, Mr. Speaker, billions of dollars in Federal and State tax revenues are being lost as a result of the intentional misclassification of workers. This is one of the few remaining areas where we can help balance the Federal budget deficit without further cutting Government services or levying new taxes. A recent Coopers and Lybrand study found that at least $35 billion in legitimate tax revenue over the next 9 years will be lost by the Federal Government due to the misclassification of employees. At a time when critical services are on the chopping block, we can no longer allow this waste and abuse to continue. We must take steps to curb the continued misclassification of employees.

H.R. 10

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. HASTINGS. Mr. Speaker, H.R. 10 will strip American citizens of their ability to hold wrongdoers accountable and, when necessary, to punish reckless or other outrageous behavior on the part of manufacturers of dangerous products.

There is no explosion in punitive damages claims. In fact, such claims are extremely rare. In one comprehensive study conducted by the U.S. Supreme Court, only 355 punitive damage awards in product liability cases have been awarded over the last 25 years, and a number of those involved asbestos.

Mr. Speaker, Americans would be much worse off if they were unable to hold wrongdoers accountable. Punitive damages make Americans safer and have removed from the market products like flammable children's pajamas, asbestos, and the Dalkon shield. H.R. 10 is unwise and unnecessary.

TRIBUTE TO THE DISTINGUISHED WOMEN ELECTED OFFICIALS OF CALIFORNIA'S 14TH CONGRESSIONAL DISTRICT

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Ms. ESHOO. Mr. Speaker, I rise today during National Women's History Month to salute the remarkable women of California's 14th Congressional District who have been elected to govern it.

This year, as we celebrate the 75th anniversary of women's suffrage, it is fitting that we honor those women who devote their time and talents to local and State government. The efforts and public service of these remarkable women provide our district with extraordinary leadership. While we take time during this month to commemorate historic women and their achievements, we also take this opportunity to honor the contributions women in government are currently making to our communities.

Our region is blessed with superbly capable women leaders. These distinguished women are: State Assemblywoman Jackie Speier; Mary Griffin of the San Mateo County Board of Supervisors; Blanca Alvarado and Dianne McKenna of the Santa Clara County Board of Supervisors; city council members Nanette Chapman and Mayor Dianne Fisher of Atherton; Nancy Levitt, Pam Rianda, and Mayor Adele Della Santina of Belmont; Barbara Koppel and Lauralee Sorenson of Cupertino; Mayor Rose Jacobs Gibson, Myrtle Walker, and Sharifa Wilson of East Palo Alto; Mayor Naomi Patridge and Deborah Ruddock of Half Moon Bay; Patricia Williams and Margaret Bruno of Los Altos; Toni Casey and Mayor Elayne Dauber of Los Altos Hills; Bernie Nevin of Menlo Park; Susan Ayers, Suzanne Hayes-Kane, and Angela Meyer of the Midcoast Community Advisory Council; Dena Bonnell, Mayor Patricia Figueroa, and Maryce Freelen of Mountain View; Liz Kniss, Jean McCown, Micki Schneider, and Lainie Wheeler of Palo Alto; Beverly Fields, Maeva Neale, and Meredith Reynolds of the Pescadero Municipal Advisory Council; Nancy Vian of Portola Valley; Judy Buchan, Mayor Daniela Gasparini, Georgia LaBerge, Diane Howard, and Janet Steinfeld of Redwood City; Sally Mitchell of San Carlos; Robin Parker, Frances Rowe, and Mayor Barbara Waldman of Sunnyvale; and Susan Crocker, Carol Fisch, and Barbara Seitle of Woodside.

Mr. Speaker, I ask my colleagues to join me in saluting these remarkable women and the extraordinary contributions they are making to their communities and our country. These gifted leaders are fitting representatives of the many women who make history every day, and their efforts on behalf of the people of California's 14th Congressional District are invaluable and appreciated by all.

THE HEALTH CARE LIABILITY REFORM ACT OF 1995

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. STUMP. Mr. Speaker, today I am introducing the Health Care Liability Reform Act to establish fundamental tort system reforms.

This legislation will: set a $250,000 cap on noneconomic and punitive damages; limit attorneys fees to 25 percent of the first $100,000 and reduce the allowable percentage as the award increases; eliminate the collateral source rule that allows for double recovery; abolish joint and several liability, so only defendants who are actually at fault are liable; require periodic payment of damages over $50,000; establish a 1 year reasonable discovery rule and 3 year statute of limitation with special exceptions for minors; and require pretrial dispute resolution to encourage reasonable settlement.

Our current medical malpractice system is not effective in compensating injured individuals or at improving the quality of health care. It is a system with powerful incentives for wasteful spending. Plaintiffs are allowed to sue even if the facts do not merit a lawsuit and cash payments of 3 to 4 times claimants' medical bills are awarded. The median verdict in medical liability claims, according to a Jury Verdict Research report jumped by almost $200,000 in one year from an all time high in 1991 of $450,000 to $646,487 in 1992. The General Accounting Office reported that over half of total health care liability costs are spent defending against claims that result in no payment. A RAND Corp. study found that 57 percent of the money spent in health care liability litigation does not reach the injured patient.

Physicians and hospitals are forced to provide care, not for the well-being of the patient, but to protect themselves from lawsuits. Our physicians are the best trained and equipped, yet they are also the most often sued. Claims against doctors rose form 2-per-100 in the 1960's to 16-per-100 in the late 1980's. Physicians fearing malpractice suits are increasingly opting out of high-risk specialties and medicine altogether. Those hurt most are disadvantaged pregnant women, rural communities and senior citizens.

Medical malpractice liability adds at least $15 billion a year to the cost of health care, according to a recent study by the Competitiveness Center of the Hudson Institute. It is driving up the cost of treatments, services, medical devices and pharmaceuticals and inhibits the research and development of new products. It is a detriment to patients, providers and taxpayers. If we allow this litigation explosion to continue unrestrained, any effort to bring down health care costs and increase access to care will surely fail.

MURDER OF TWO AMERICAN DIPLOMATS IN PAKISTAN LATEST EXAMPLE OF LAWLESSNESS IN KARACHI

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. PALLONE. Mr. Speaker, I call to the attention of my colleagues an article in today's Washington Times entitled "Blood on Karachi Streets Flows From Multiple Feuds." The article, written by John Stackhouse, discussed how Pakistan's largest city has degenerated into a lawless urban battlefield where innocent citizens are killed while the government and the police stand by idly. The latest victims of this sectarian and religious bloodshed were two American diplomatic employees who were brutally murdered yesterday by masked gunmen who ambushed their consular van in broad daylight.

Mr. Speaker, Pakistan for many years has been at the center of terrorism. Islamic militants have operated training camps, where young men have been trained and violence has been exported to many countries, including to India, Egypt, Israel and the United States. Pakistan was the country where those accused of the World Trade Center bombings were recruited and trained. Pakistan was the country where the terrorist who killed five people in front of the CIA fled to. Now, Pakistan has shown that it cannot protect U.S. diplomatic personnel on their way to work in that nation's largest city.

Mr. Speaker, I urge my colleagues to read the Washington Times article. It provides an excellent summary of the reasons behind Karachi's fall into the abyss of lawlessness, violence and terrorism.

I join with all my colleagues in this body, and all Americans, in expressing my deepest sympathies to the families of our diplomats who served their country with great distinction and courage.

BLOOD ON KARACHI STREETS FLOWS FROM MULTIPLE FEUDS POLITICS, RELIGION, ETHNICITY FUEL VIOLENCE

(By John Stackhouse)

KARACHI, PAKISTAN—With martyrs, guns and killing sprees, Karachi is no longer simply Pakistan's biggest city and commercial capital. It is a city at war.

The two American diplomatic workers gunned down yesterday were among 164 persons killed in Karachi in the past month in a spiral of violence that is a complex swirl of political, religious, ethnic and criminal currents.

A recent attack on two mosques has pitted the city's Shi'ite and Sunni Muslim sects against each other. Most of the fighting, however, has been between the two main factions of the Muhajir Qaumi Movement, Karachi's leading political force, which represents Urdu-speaking migrants, or "muhajirs," originally from India.

Many fear that if the two battles—one sectarian, the other ethnic—overlap, Karachi will slide toward anarchy.

Already mosques, normally symbols of peace and security, are bolted shut with steel doors, opened only long enough for worshipers to pass weapons checks. At night, the streets have mere trickles of traffic. Many residents are even talking of not celebrating the coming Muslim festival of Eid.

Day after day, in a city once renowned for its seaside tranquility and cosmopolitan night life, the killings continue, each seeming to set a new standard for senselessness.

In December, seven artisans were shot dead in their shop as they crafted lacework. The same month, on one of Karachi's main roads, seven persons were burned to death in a bus in the early evening. Last week, a passing motorist sprayed bullets in a tailor's shop, killing three persons.

Much of the city's crisis has been laid at the feet of Karachi's police force, which has been both ineffectual and, in some places, linked to criminal gangs.

Although the army ruled the streets of Karachi from 1992 to 1994 in a special operation against urban violence, it pulled out in December—and 437 persons have been killed since.

"I would advise the government to go to the extent of disarming the police," said Nizam Haji, a local businessman who heads a liaison committee between police and civilians. "The police have gone rotten in Karachi. Totally corrupt, incompetent and politicized."

Last month, gunmen opened fire on a crowd across the street from one of Karachi's main police stations, killing 11. Despite several police near the scene, no one fired at the assailants or gave chase. Nor have there been any arrests for the attack, although five police officers were charged with dereliction of duty.

With little law and no order, drug lords and criminal gangs also have taken to Karachi's streets, launching robberies, extortion and retribution killings.

In Pakistan's most international city, the rise of sectarian violence has raised concern about foreign involvement, perhaps even proxy battles.

Sherry Rheman, managing editor of the Herald, Pakistan's leading newsmagazine, said that Shi'ite factions in the city appear to be backed by Iran, while Sunni gunmen receive money, weapons and training from Saudi Arabia.

There also are concerns that official agencies, perhaps the government itself, has sponsored the terror. Many observers believe the army, during its rule in Karachi, armed and trained a new muhajir faction to launch a fratricidal war among the migrant population.

The new faction is now seen to be supported by the country's infamous intelligence agencies, the same bodies that backed the Afghan mujahideen in the 1980s.

For any Pakistani government, support of the muhajirs is a key to political survival. With about half of Karachi's 10 million people, they hold sway over the country's biggest economic center, as well as the influential southern province of Sindh.

Despite their numbers, though, the muhajirs feel they are marginalized by Sindh's powerful rural elite, which includes the Bhutto family.

"These 2 percent of the population control 98 percent of the country," said Shoaib Bokhari, a muhajir member of the Sindh assembly.

Mr. Bokhari did not deny the muhajir ambition for a new province of Karachi. The city now is administered by the Sindh government, and while the federal government relies heavily on Karachi and its port for tax revenue, it spends little on the thriving commercial center.

The Sindh government also keeps 15 percent of Karachi's property tax, the city's main source of revenue, as a service charge for collecting it. And the province reserves the majority of government jobs, on a quota system, for rural Sindhis, who tend to be less educated than the muhajirs.

While the muhajirs once controlled Karachi's city council, their government was dismissed in 1992. The party's top officials either were arrested or went underground, and the muhajir leader fled to London, where he lives in self-exile.

When the army withdrew from Karachi in December, Prime Minister Benazir Bhutto appointed her helicopter pilot as city administrator and stacked the rest of the city council with members of her Pakistan People's Party.

U.S. ASSISTANCE FOR POSSIBLE NATO EFFORT TO HELP UNPROFOR WITHDRAW FROM BOSNIA AND CROATIA

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. HAMILTON. Mr. Speaker, last year President Clinton made the commitment to deploy United States forces to assist in a NATO effort to withdraw U.N. peacekeeping troops from Bosnia if this becomes necessary. On March 31, we are approaching a deadline imposed by the Government of Croatia for the beginning of the withdrawal of UNPROFOR from Croatia, to be completed by the end of June. The President still has not committed United States forces to assist in a possible withdrawal from Croatia, in part so as not to prejudice delicate on-going negotiations with the Croatian government.

Given the seriousness and the implications of the President's commitment of United States forces for these possible missions and the dangerous situation in Croatia, I wrote to Secretary Christopher in February setting forth my concerns. I received a response to my letter today. I am including both in the RECORD in order that my colleagues can be informed about the important, serious issues before us.

In the response to my letter Assistant Secretary of State for Legislative Affairs, Wendy Sherman, emphasizes that in assisting the possible pull-out of UNPROFOR, "NATO has no intention of engaging in offensive combat in Bosnia and/or Croatia, or of remaining in the region following the UNPROFOR pull-out."

Assistant Secretary Sherman also stresses that to give our diplomatic efforts a chance to succeed, the administration is not yet making a public case for assistance with the UNPROFOR withdrawal from Croatia. But if there is no alternative, the President will explain to the American people what is at stake, which above all, is "our collective security, as exemplified by mutual commitment to Allies."

In testimony today before the International Relations Committee, Assistant Secretary of State for European Affairs, Richard Holbrooke, gave assurances that United States troops, if they are ever deployed in Bosnia or Croatia, will do so only to help UNPROFOR troops leave, period.

The exchange of letters follows:

COMMITTEE ON
INTERNATIONAL RELATIONS,
Washington, DC, February 22, 1995.

HON. WARREN CHRISTOPHER,
Secretary of State, Department of State,
Washington, DC.

DEAR MR. SECRETARY: On January 3, I wrote to you regarding the President's decision in principle to commit U.S. ground forces to a future NATO-led operation to support UNPROFOR withdrawal from Bosnia. I appreciated your reply of January 19.

I am writing again because my policy and process concerns about this decision persist. Indeed, they have been sharpened, as a result of: (1) the increasingly fragile situation in Bosnia; (2) information provided to the Committee that the first contingency steps to implement a withdrawal of UNPROFOR from Bosnia are now going forward; and (3) the decision of the Croatian government to terminate the mandate of UNPROFOR in Croatia after March 31, 1995.

I would like to ask a number of questions about U.S. policy:

1. Does the President's commitment to assist in the withdrawal of UNPROFOR from Bosnia extend to a withdrawal of UNPROFOR from Croatia as well?

If such a commitment has not been made, is it under active consideration at this time?

What would be the U.S. troop and cost requirements of such an additional commitment?

2. How would a prior withdrawal of UNPROFOR from Croatia complicate an UNPROFOR withdrawal from Bosnia?

How would an UNPROFOR withdrawal from Croatia change the U.S. troop, cost and logistics requirements of a NATO-led operation to support UNPROFOR withdrawal from Bosnia?

3. How does the possibility of renewed fighting in both Bosnia and Croatia affect your estimates of the U.S. troop and cost requirements of a NATO-led operation to support UNPROFOR withdrawal?

If fighting resumes, do you believe that U.S. forces participating in a NATO-led withdrawal of UNPROFOR will be able to keep out of the conflict?

4. I appreciate the Department of State's reply of January 19th, "that the Administration has no intention of keeping U.S. ground forces in Bosnia following a withdrawal operation." I agree with that policy limitation, but I remain concerned about the strong pressures on U.S. ground forces—during and in the aftermath of an UNPROFOR withdrawal—to intervene in the conflict:

To provide humanitarian assistance;

To protect civilian populations; or

To respond to military provocations by parties to the conflict.

How do you address each of these issues, from the standpoint of keeping U.S. forces focused on their mission, and preventing mission creep?

I also want to reiterate my concern, which I know you share, that a commitment to put U.S. ground troops in harm's way is the most serious undertaking a President can make.

To my knowledge, the President has yet to make a public case for sending U.S. ground forces to assist in UNPROFOR withdrawal from Bosnia. Unless or until the President makes the case directly to the American people, I believe there will be little support for his decision in the Congress or among the public at large. I strongly urge the President to state the policy and explain the commitment.

I appreciate your attention to this letter, and I look forward to your answers to the several questions raised.

With best regards,
Sincerely,
LEE H. HAMILTON,
Ranking Democratic Member.

UNITED STATES DEPARTMENT OF STATE,
Washington, DC, March 9, 1995.

DEAR MR. HAMILTON: Thank you for your letter of February 22 to Secretary Christopher, in which you pose additional questions about possible U.S. participation in a NATO-led effort to help UNPROFOR withdraw from Bosnia and/or Croatia.

Before addressing your questions individually, I would like to stress that the Administration shares your concern over an UNPROFOR pull-out: like you, we fear withdrawal may contribute to a widening of the war in both Bosnia and Croatia. For this reason, we have undertaken an active diplomatic campaign to convince President Tudjman to allow an international peacekeeping force to remain in his country. Assistant Secretary Holbrooke held meetings in Zagreb March 6 to that end.

Because all the Allies agree that an international force should remain in the region, NATO's planning for assistance to UNPROFOR withdrawal has been conducted on a contingency basis only. NATO has taken care to ensure that laying solid groundwork for possible withdrawal does not imply accession to UNPROFOR's departure. President Clinton has avoided making an explicit statement that the U.S. would help facilitate UNPROFOR withdrawal from Croatia so as not to precipitate a pull-out. Practically speaking, if a situation were to develop in Croatia where no alternative to NATO-led withdrawal appeared feasible, as in Bosnia our Alliance commitments would militate in favor of U.S. participation. But let me emphasize that we do not want this to come to pass, and we are pressing Tudjman to moderate his stance so UNPROFOR does not have to leave and NATO does not have to deploy.

You correctly suggest that UNPROFOR withdrawal from Croatia would significantly complicate the situation for UNPROFOR in Bosnia. Evacuation routes through Croatia that soldiers in UNPROFOR/Bosnia would have to use might be harder to secure if UNPROFOR/Croatia were no longer in place. Also, if the Krajina Serbs tried to prevent UNPROFOR withdrawal from Croatia (as they have sometimes threatened), conflict could spill over into the volatile Bihac area, where Bosnian Serbs might feel compelled to support Krajina Serbs, thus endangering UNPROFOR forces in Bosnia.

Because UNPROFOR's departure from one state may bring it under threat in the other, and in response to President Tudjman's stated wish to end UNPROFOR's mandate on March 31, NATO military authorities have been tasked with updating their contingency Bosnia withdrawal plan to include steps to facilitate withdrawal from both countries. NATO's revised plan is scheduled to be ready in mid-March. We do not yet have NATO's final cost estimates, but a team of budget experts from the Department of Defense, the Office of Management and Budget, the State Department, and the National Security Council travelled to Brussels and to AFSOUTH headquarters in Naples the week of March 6 to study existing figures for Bosnia withdrawal and determine whether figures were available for Croatia. Once NATO has released its revised plan, and we have made preliminary decisions on what our response should be, we will discuss funding options with Congress.

As for troop numbers, NATO has not yet asked member states to indicate possible contributions, nor has it projected troop needs. It is worth noting that a significant number of NATO troops facilitating UNPROFOR withdrawal would be reflagged UNPROFOR contingents from Allies already in the region. As with costs, troop needs for a Bosnia-only operation would be somewhat higher than for a Croatia-only operation, and somewhat lower than for an operation to help UNPROFOR withdraw from both states. Again, once NATO has released its revised plan in mid-March, we will be in a better position to consult with you on possible U.S. troop contributions.

For planning purposes, NATO is calculating personnel and equipment needs under the most adverse circumstances. NATO projects that in facilitating UNPROFOR's departure, it might provide close air support to UNPROFOR troops, as it is already committed to do, and undertake other activities in defense of the international peacekeepers. NATO has no intention of engaging in offensive combat in Bosnia and/or Croatia, or of remaining in the region following an UNPROFOR pull-out.

The pressures you describe on NATO—and thus the U.S.—to become involved in the conflict should UNPROFOR withdraw are real and sobering. Without UNPROFOR, civilian populations will indeed have little protection. International relief organizations will find it difficult to make humanitarian deliveries. Minor conflicts that could be quelled even by the presence of international observers would escalate. Thus, as we note above, it is clearly preferable for UNPROFOR, or a similar international presence, to remain in the region. We are working actively toward that end in Croatia; in Bosnia, the Contact Group is in touch with the various parties to try to prevent a resurgence of fighting, which might provoke UNPROFOR withdrawal. The Administration is also continuing to argue against unilateral lift, the other likely trigger for UNPROFOR withdrawal from Bosnia.

As the situation clarifies itself, we will need to make decisions. We want UNPROFOR to stay, but if an upsurge in fighting threatens the safety of our Allies, we do not intend to leave them stranded. In order to give our diplomatic efforts a chance to succeed, we are not yet making a public case for assistance with an UNPROFOR pull-out. But should there be no alternative, the President will explain to the American people what is at stake: our collective security, as exemplified by mutual commitments to Allies. We trust we can count on your support, and that of the Congress, should we have to undertake an operation to assist our Allies depart from the former Yugoslavia.

We hope this information will be helpful to you and the members of the Committee. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,
WENDY R. SHERMAN,
Assistant Secretary, Legislative Affairs.

TRAGEDY IN PAKISTAN

HON. THOMAS J. MANTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. MANTON. Mr. Speaker, I rise today to call to the attention of my colleagues an article which appeared in today's Washington Post. Yesterday, in Pakistan, the brutal ambush of a United States consulate van left two American diplomats dead and a third wounded. These deaths are a constant reminder of the continuation of terrorism in our world. In the last 3 months, more than 437 people have been murdered by religious zealots in Pakistan alone.

This cowardly act of terrorism is an unfortunate reminder that we must work to end these acts of violence. As we enter a new age of peace in many parts of the world, it is important to bring those who continue to terrorize others to justice.

Mr. Speaker, I offer my prayers to the families who lost loved ones in this unspeakable incident. I intend to work closely with my colleagues to investigate this act of terror and bring those responsible to justice.

[From the Washington Post, March 9, 1995]

KARACHI AMBUSH WAS WELL PLANNED

(By Kamran Khan and Molly Moore)

KARACHI, PAKISTAN, MARCH 8.—The ambush of a U.S. Consulate van by masked gunmen who killed two Americans and injured a third at a busy intersection in downtown Karachi, Pakistan, this morning was a "well-planned campaign to create panic and terror" among Americans and other Westerners, according to a Pakistani official.

Today's attack marked the first time terrorists have targeted Westerners after a year of rampant religious, ethnic and political violence that has left more than 1,000 people dead in Pakistan's financial and commercial capital.

In Washington, a senior administration official said one of the two Americans killed was an intelligence agent working under diplomatic cover, but the U.S. government does not believe this was related to the attack.

Instead, the official said, investigators believe the attack was intended as a payback for the U.S. capture in Pakistan last month of Ramzi Ahmed Yousef, the suspected mastermind of the 1993 World Trade Center bombing in New York, or was related to the ethnic violence in Pakistan. The official said there is "no evidence whatsoever" that the assailants knew about the victim's intelligence work.

As Pakistani authorities vowed to launch a full-scale investigation of today's shooting, Karachi police officials revealed that police in a squad car equipped with a rooftop machine gun were at the intersection where the ambush occurred but refused to pursue the attackers' getaway car because they were afraid of being killed.

Both U.S. and Pakistani officials said the attack appeared to be carefully planned and coordinated, although authorities said no group or organization has claimed responsibility. FBI agents were sent to Pakistan today, and Karachi police said the FBI will lead the investigation.

U.S. Consulate officials said Gary C. Durell, 45, a communications technician from Alliance, Ohio, was killed instantly when two gunmen opened fire on the van. Jackie Van Landingham, 33, a consulate secretary from Camden, S.C., died of gunshot wounds after being taken to a hospital. Mark McCloy, a 31-year-old mailroom worker from Framingham, Mass., was scheduled to undergo surgery today for his wounds, Pakistani officials said. The three consulate employees were stationed in Karachi with their spouses and children, according to U.S. officials.

Although officials at the consulate said today that they were taking extra precautions to safeguard personnel, a spokesman said, "they live and work in this community. We've told people to keep their heads down, but we can't build a wall around them." U.S. officials said there are no plans to close the consulate or evacuate family members.

U.S. and Pakistani authorities condemned the assault, which occurred as the van, with an identifying license plate, was driving the three employees to work at the consulate from the diplomatic residential neighborhood at about 7:45 a.m.

"This wanton act of terrorism deserves the severest condemnation," the Pakistani government said. "It is clear that this tragic incident is part of a premeditated plan to create fear and harassment in sensitive areas of Karachi."

In Washington, President Clinton denounced the attack as a "cowardly act." Secretary of State Warren Christopher, arriving in Cairo at the beginning of a visit to the Middle East, said the United States and Pakistan would use "every means at our disposal to bring those responsible for this crime to justice."

The incident came at an awkward time for Pakistani Prime Minister Benazir Bhutto, who is scheduled to visit Washington next month in an effort to improve the uneasy relations between the two countries. Pakistanis have criticized her government for its failure to control the violence in Karachi.

The White House said today the shooting would not affect first lady Hillary Rodham Clinton's scheduled tour of Pakistan, India, Sri Lanka, Nepal and Bangladesh at the end of this month. She will not be visiting Karachi.

The Pakistani government censored reports of the incident carried today by the BBC and CNN television networks and played down the story on the government-controlled national television network.

Details of the attack were pieced together by Karachi police, using reports from witnesses and an account provided to U.S. officials by the Pakistani van driver, who was not injured and immediately drove his wounded passengers to one of Karachi's major hospitals.

According to police, three armed gunmen in a stolen yellow taxi followed the white consulate van for several blocks before opening fire on it with automatic weapons from a distance.

The yellow taxi then swerved in front of the van and cut it off while a red car blocked the van from the opposite side. At least two masked gunmen then stepped out of the vehicles and began firing on the van, shattering its side windows and spraying the windshield with bullets, according to U.S. officials.

As the gunmen fired on the van, traffic constable Tanvir Ahmed, who was at the intersection, spotted the police car with the machine gun approaching from an adjacent lane. Ahmed said he dashed toward the police vehicle and pointed to the yellow taxi, then speeding away.

Ahmed said the officer in charge of the police vehicle responded, "Stupid, shall we get killed by chasing these people?" Police officials, who confirmed Ahmed's account, said the police vehicle did not radio for help, but drove six minutes to its home station to report the incident.

Such a response has not been uncommon among Karachi police. More than 90 law enforcement officials have been killed in Karachi's violence in the past year, including four who were the targets of shooting sprees last weekend.

U.S. diplomats in Pakistan have become sensitive to terrorism as a result of a 1979 attack on the U.S. Embassy in the capital, Islamabad, in which hundreds of Pakistani men stormed the compound and set several buildings on fire, killing four people. The assault stemmed from unfounded rumors blaming the United States for an attack on the Grand Mosque in Mecca, Saudi Arabia, the holiest site in Islam.

Karachi police said several threatening telephone calls have been made to the U.S. Consulate in Karachi in recent weeks.

Karachi police and Pakistani intelligence sources said today they are investigating an Iranian-backed militant Shiite Muslim organization called Sipahae Muhammad (Army of the Prophet Muhammad). Sipahae Muhammad and other Shiite extremists have accused the United States of fanning Karachi's sectarian violence.

TRIBUTE TO THE LEAGUE OF WOMEN VOTERS

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Ms. ESHOO. Mr. Speaker, I rise today to honor the League of Women Voters and all its members who are celebrating this outstanding organization's 75th anniversary. The League of Women Voters is a respected advocate for education, political awareness and the active participation of women in the political process across our country, and provides an essential and valuable service to all Americans.

The League of Women Voters was founded in 1920 as a result of the movement to assure women the right to vote. Since then, it has helped generations of voters understand the structure and function of Government by providing nonpartisan information about candidates and public policy issues. The League of Women Voters has also served the public interest by promoting equality, encouraging voter registration and informed voting, and offering leadership training to women. Thousands of League members throughout the United States devote untold volunteer hours to educate and inform their fellow citizens.

Mr. Speaker, I ask my colleagues to join me today in saluting the extraordinary contributions made by the League of Women Voters. In particular I want to highlight the invaluable work of the many active Leagues in California's 14th Congressional District, including the Bay Area League of Women Voters, the League of Women Voters of Central San Mateo County, the League of Women Voters of South San Mateo County, the League of Women Voters of Palo Alto, the League of Women Voters of Mountain View-Los Altos, the League of Women Voters of Cupertino-Sunnyvale, and the League of Women Voters of San Jose-Santa Clara. I ask my colleagues to join me in celebrating the League of Women Voters' 75th anniversary and thanking them for their continued efforts to promote an informed electorate, the best assurance that our precious democracy will flourish and endure.